LAWS AND RESOLUTIONS OF THE STATE OF MONTANA

Enacted or Passed by the

SIXTY-FIRST LEGISLATURE IN REGULAR SESSION

Held at Helena, the Seat of Government
January 5, 2009, through April 28, 2009

and the

SIXTIETH LEGISLATURE IN SPECIAL SESSION

Held at Helena, the Seat of Government
September 5, 2007

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LAWS AND RESOLUTIONS

Enacted or Passed by the

SIXTY-FIRST LEGISLATURE
IN REGULAR SESSION

Held at Helena, the Seat of Government
January 5, 2009, through April 28, 2009

Explanatory Note: Section 5-11-205, MCA, provides that new parts of existing statutes be printed in italics and that deleted provisions be shown as stricken.

COMPILED BY MONTANA
LEGISLATIVE SERVICES DIVISION

OFFICERS AND MEMBERS OF THE MONTANA SENATE

2009

50 Members

27 Republicans 23 Democrats

OFFICERS

President.....Robert Story Jr.
President Pro Tempore.....Dan McGee
Majority Leader.....Jim Peterson
Majority Whips.....Greg Barkus, Roy Brown
Minority Leader.....Carol Williams
Assistant Minority Leader.....Jesse Laslovich
Minority Whips.....Kim Gillan, Trudi Schmidt
Secretary of the Senate.....Marilyn Miller
Sergeant at Arms.....Nancy Clark

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Gillan, Kim	(D)	24	750 Judicial Ave, Billings MT 59105-2130
Hamlett, Bradley Maxon	(D)	10	PO Box 49, Cascade MT 59421-0049
Hansen, Ken (Kim)	(D)	17	PO Box 686, Harlem MT 59526-0686
Hawks, Bob	(D)	33	703 W Koch St, Bozeman MT 59715-4477
Hinkle, Greg	(R)	7	5 Gable Rd, Thompson Falls MT 59873-8512
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Jent, Larry	(D)	32	1201 S 3rd St, Bozeman MT 59715-5503
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OFFICERS AND MEMBERS
OF THE MONTANA HOUSE OF REPRESENTATIVES

2009

100 Members

50 Democrats 50 Republicans

OFFICERS

Speaker....Bob Bergren
Speaker Pro Tempore....Franke Wilmer
Majority Leader....Margarett Campbell
Majority Caucus Leader....Mike Phillips
Majority Whips....Shannon Augare, Julie French
Minority Leader....Scott Sales
Assistant Minority Leader....Tom McGillvray
Minority Floor Leader....Scott Mendenhall
Minority Whips....Dee Brown, Llew Jones, Krayton Kerns, Chas Vincent
Chief Clerk of the House....Dave Hunter
Sergeant at Arms....Ed Tinsley

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55 *(House Bill No. 27; Wiseman)* ELIMINATING THE TERMINATION DATE FOR THE UNIVERSAL SYSTEM BENEFITS CHARGE RATES; CLARIFYING THE ENERGY AND TELECOMMUNICATIONS INTERIM COMMITTEE'S OVERSIGHT AUTHORITY OVER UNIVERSAL SYSTEM BENEFITS PROGRAMS; AMENDING SECTION 69-8-402, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 292

56 *(House Bill No. 37; Campbell)* GENDER NEUTRALIZING AND CONFORMING TITLES 10 THROUGH 90 OF THE MONTANA CODE ANNOTATED TO CURRENT BILL DRAFTING STANDARDS; AND AMENDING SECTIONS 10-1-201, 10-1-202, 10-1-206, 10-1-302, 10-1-405, 10-1-503, 10-1-601, 10-1-611, 10-1-804, 10-1-805, 10-1-806, 10-2-103, 10-2-105, 10-2-107, 10-3-101, 10-3-102, 10-3-112, 10-3-204, 10-3-302, 10-3-303, 10-3-313, 10-3-314, 10-3-501, 10-3-503, 10-3-505, 10-3-605, 10-3-607, 10-3-702, 10-3-1106, 13-1-114, 13-1-201, 13-2-112, 13-2-206, 13-2-221, 13-3-102, 13-3-103, 13-3-201, 13-3-211, 13-10-203, 13-10-305, 13-10-325, 13-10-501, 13-10-507, 13-10-602, 13-12-210, 13-13-118, 13-13-120, 13-13-225, 13-13-227, 13-13-602, 13-14-111, 13-14-211, 13-14-212, 13-15-201, 13-15-204, 13-15-205, 13-15-403, 13-15-404, 13-15-502, 13-15-504, 13-15-505, 13-15-506, 13-16-101, 13-16-201, 13-16-203, 13-16-204, 13-16-211, 13-16-301, 13-16-302, 13-16-307, 13-16-415, 13-16-416, 13-16-417, 13-16-418, 13-16-419, 13-19-101, 13-19-203, 13-19-301, 13-19-302, 13-19-304, 13-19-305, 13-19-306, 13-19-307, 13-19-308, 13-19-310, 13-27-305, 13-27-306, 13-27-308, 13-27-404, 13-27-405, 13-27-503, 13-35-106, 13-35-201, 13-35-204, 13-35-209, 13-35-214, 13-35-215, 13-35-217, 13-35-218, 13-35-221, 13-35-301, 13-36-101, 13-36-102, 13-36-103, 13-36-104, 13-36-201, 13-36-202, 13-36-204, 13-36-205, 13-36-206, 13-36-207, 13-36-208, 13-36-209, 13-36-210, 13-36-211, 13-37-104, 13-37-105, 13-37-116, 13-37-119, 13-37-122, 13-37-125, 13-37-201, 13-37-202, 13-37-203, 13-37-204, 13-37-205, 13-37-206, 13-37-207, 13-37-208, 13-37-215, 13-37-217, 13-37-225, 13-37-228, 13-37-231, 13-38-101, 13-38-201, 13-38-202, 13-38-203, 13-38-205, 15-1-104, 15-1-204, 15-1-601, 15-1-603, 15-1-702, 15-1-705, 15-1-707, 15-2-101, 15-2-103, 15-2-104, 15-2-304, 15-6-225, 15-8-501, 15-8-502, 15-16-503, 15-17-318, 15-24-1101, 15-24-1201, 15-24-1206, 15-24-2403, 15-30-113, 15-30-129, 15-30-132, 15-30-134, 15-30-135, 15-30-143, 15-30-156, 15-30-173, 15-30-205, 15-30-206, 15-30-302, 15-30-307, 15-30-314, 15-30-331, 15-31-521, 15-31-523, 15-31-524, 15-31-551, 15-32-101, 15-32-103, 15-33-104, 15-35-104, 15-44-102, 15-59-105, 15-60-207, 15-70-232, 16-1-203, 16-1-204, 16-3-105, 16-3-212, 16-3-223, 16-3-231, 16-3-232, 16-3-233, 16-3-242, 16-3-302, 16-3-306, 16-3-406, 16-4-104, 16-4-108, 16-4-110, 16-4-201, 16-4-209, 16-6-105, 16-6-205, 16-6-207, 16-6-209, 16-6-309, 16-6-313, 16-10-203, 16-11-134, 17-1-103, 17-1-112, 17-1-131, 17-5-715, 17-5-927, 17-5-1516, 17-6-204, 17-6-213, 17-7-113, 17-8-104, 17-8-308, 18-1-402, 18-1-403, 18-2-204, 18-2-424, 18-5-204, 18-5-411, 18-11-105, 19-1-301,

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76-15-710, 76-15-722, 76-15-723, 77-1-104, 77-1-111, 77-1-112, 77-1-114, 77-1-115, 77-1-201, 77-1-702, 77-1-801, 77-1-805, 77-1-806, 77-2-105, 77-2-315, 77-2-324, 77-2-329, 77-2-332, 77-2-333, 77-2-334, 77-2-335, 77-2-336, 77-3-102, 77-3-104, 77-3-115, 77-3-307, 77-3-409, 77-3-426, 77-4-108, 77-4-121, 77-4-128, 77-4-129, 77-6-108, 77-6-112, 77-6-115, 77-6-201, 77-6-209, 77-6-212, 77-6-401, 80-2-104, 80-2-202, 80-2-241, 80-2-243, 80-4-406, 80-4-424, 80-4-428, 80-4-430, 80-4-504, 80-4-506, 80-4-521, 80-4-522, 80-4-523, 80-4-524, 80-4-529, 80-4-530, 80-4-537, 80-4-539, 80-4-605, 80-6-102, 80-6-103, 80-6-104, 80-6-111, 80-6-1105, 80-7-505, 80-7-1104, 80-8-102, 80-8-103, 80-8-108, 80-8-202, 80-8-206, 80-8-208, 80-8-301, 80-8-303, 80-10-101, 80-10-201, 80-10-204, 80-10-211, 80-10-303, 80-10-503, 80-11-204, 80-11-305, 80-11-308, 80-11-311, 80-11-404, 80-11-405, 80-11-416, 80-12-202, 80-12-203, 80-12-211, 80-12-310, 80-15-218, 81-1-202, 81-1-301, 81-1-302, 81-2-101, 81-2-109, 81-2-112, 81-2-201, 81-2-204, 81-2-206, 81-2-208, 81-2-209, 81-2-303, 81-2-502, 81-2-602, 81-2-703, 81-3-106, 81-3-203, 81-3-204, 81-3-205, 81-3-214, 81-3-223, 81-3-231, 81-3-233, 81-4-104, 81-4-108, 81-4-207, 81-4-208, 81-4-212, 81-4-220, 81-4-308, 81-4-322, 81-4-326, 81-4-327, 81-4-405, 81-4-406, 81-4-410, 81-4-505, 81-4-506, 81-4-507, 81-4-508, 81-4-509, 81-4-512, 81-4-513, 81-4-603, 81-5-103, 81-6-102, 81-7-102, 81-7-115, 81-7-203, 81-7-204, 81-7-403, 81-7-501, 81-8-215, 81-8-232, 81-8-235, 81-8-251, 81-8-261, 81-8-263, 81-8-274, 81-8-278, 81-8-312, 81-8-315, 81-8-702, 81-8-704, 81-9-111, 81-9-112, 81-9-114, 81-9-218, 81-9-220, 81-9-230, 81-9-235, 81-9-313, 81-9-314, 81-9-315, 81-9-316, 81-9-402, 81-9-403, 81-20-204, 81-20-209, 81-21-102, 81-22-203, 81-22-205, 81-22-207, 81-22-402, 81-22-415, 81-23-201, 81-23-305, 81-23-403, 82-1-105, 82-1-108, 82-1-202, 82-1-203, 82-2-101, 82-2-102, 82-2-103, 82-2-105, 82-2-106, 82-2-107, 82-2-108, 82-2-109, 82-2-112, 82-2-114, 82-2-115, 82-2-203, 82-2-205, 82-2-401, 82-2-402, 82-2-405, 82-2-421, 82-4-142, 82-4-238, 82-4-355, 82-10-103, 82-10-401, 82-10-402, 82-10-506, 82-10-507, 82-11-103, 82-11-117, 82-11-141, 82-11-142, 82-11-151, 82-11-206, 82-11-209, 82-11-212, 82-11-303, 82-11-304, 82-11-305, 82-11-306, 82-15-204, 82-15-205, 85-1-622, 85-2-132, 85-2-134, 85-2-214, 85-2-218, 85-2-224, 85-2-234, 85-2-405, 85-2-412, 85-2-413, 85-2-416, 85-2-418, 85-2-804, 85-3-301, 85-3-411, 85-3-421, 85-5-102, 85-5-103, 85-5-104, 85-5-105, 85-5-108, 85-5-109, 85-5-110, 85-5-202, 85-5-302, 85-5-401, 85-5-402, 85-5-405, 85-5-406, 85-7-1504, 85-7-1506, 85-7-1507, 85-7-1508, 85-7-1615, 85-7-1618, 85-7-1703, 85-7-1811, 85-7-1901, 85-7-1912, 85-7-1924, 85-7-2017, 85-7-2027, 85-7-2114, 85-7-2115, 85-7-2116, 85-7-2133, 85-7-2153, 85-7-2166, 85-8-111, 85-8-115, 85-8-119, 85-8-121, 85-8-307, 85-8-308, 85-8-312, 85-8-314, 85-8-321, 85-8-345, 85-8-362, 85-8-364, 85-8-402, 85-8-403, 85-8-404, 85-8-612, 85-9-103, 85-9-304, 85-9-401, 85-9-402, 85-9-421, 85-9-502, 85-9-504, 85-9-628, 85-20-104, 85-20-105, 85-20-106, 87-1-204, 87-1-205, 87-1-206, 87-1-207, 87-1-208, 87-1-210, 87-1-225, 87-1-302, 87-1-402, 87-1-501, 87-1-511, 87-1-701, 87-1-704, 87-2-112, 87-2-203, 87-2-204, 87-2-602, 87-2-604, 87-2-1002, 87-3-123, 87-3-206, 87-3-221, 87-3-405, 87-3-506, 87-3-507, 87-4-301, 87-4-303, 87-4-602, 87-4-702, 87-4-703, 87-4-704, 87-4-705, 87-4-903, 87-4-904, 87-4-915, 87-4-1002, 87-4-1003, 87-5-108, 90-2-1111, 90-4-305, 90-4-309, 90-4-314, 90-4-317, 90-5-202, 90-6-120, 90-6-204, 90-6-303, AND 90-7-319, MCA. 295

57 *(House Bill No. 38; Campbell)* REVISING LAWS TO REFLECT THE ENACTMENT OF THE 6-MILL LEVY FOR UNIVERSITY SYSTEM PURPOSES; AMENDING SECTIONS 7-1-2111, 15-1-402, 15-10-420, 15-24-1703, 15-36-331, 15-39-110, AND 90-6-309, MCA; REPEALING SECTION 20-25-423, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1263

58 *(House Bill No. 44; Vincent)* REVISING THE REQUIREMENTS FOR THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION'S PARTICIPATION IN FEDERAL FOREST MANAGEMENT PLANNING; AMENDING SECTION 76-13-702, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 1273

59 *(House Bill No. 46; Fleming)* CHANGING THE REPORTING PERIOD FOR ESTABLISHING EMPLOYMENT ELIGIBILITY FOR THE QUALITY EDUCATOR LOAN ASSISTANCE PROGRAM FROM THE PREVIOUS SCHOOL YEAR TO THE CURRENT SCHOOL YEAR; AMENDING SECTION 20-4-502, MCA; AND PROVIDING AN EFFECTIVE DATE. . 1274

60 *(House Bill No. 57; Bean)* CLARIFYING SCHOOL DISTRICT CONSOLIDATIONS AND ANNEXATIONS; AMENDING SECTIONS 20-3-312, 20-6-411, 20-6-414, 20-6-422, AND 20-6-704, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE. 1275

61 *(House Bill No. 70; Sands)* CLARIFYING EXCLUSIONS FROM DRUG SCHEDULES; AMENDING SECTION 50-32-205, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1278

62 *(House Bill No. 94; McNutt)* REVISING THE LAW GOVERNING SECURITY INTERESTS IN LIQUOR LICENSES; CLARIFYING THAT THE USE OF LOAN AND SECURITY DOCUMENTATION CONSISTENT WITH THAT USED BY THE REGULATED LENDER GENERALLY DOES NOT CONSTITUTE CONTROL OF THE OPERATION OF THE BUSINESS OR THE LICENSEE; AMENDING SECTION 16-4-801, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 1279

63 *(House Bill No. 114; Henry)* PROVIDING FOR RECOGNITION OF LICENSURE AND FOR REGISTRATION OF OUT-OF-STATE VOLUNTEER PROFESSIONALS WHEN A DISASTER OR EMERGENCY IS IN EFFECT; ESTABLISHING ADMINISTRATIVE DISCIPLINARY SANCTIONS FOR VOLUNTEER PROFESSIONALS; PROVIDING RULEMAKING AUTHORITY; DEFINING "VOLUNTEER PROFESSIONAL"; PROVIDING IMMUNITY FOR THE ACTIONS OF VOLUNTEER PROFESSIONALS; AND AMENDING SECTIONS 10-3-103 AND 10-3-111, MCA 1280

64 *(House Bill No. 122; Menahan)* REVISING THE MONTANA FALSE CLAIMS ACT; LIMITING THE GOVERNMENT ATTORNEYS WHO MAY BRING AN ACTION UNDER THE FALSE CLAIMS ACT; EXTENDING THE TIME PERIOD FOR FILING A FALSE CLAIMS ACTION; REVISING DAMAGE AWARDS TO PRIVATE PLAINTIFFS; AMENDING SECTIONS 17-8-402, 17-8-403, 17-8-404, 17-8-405, 17-8-406, 17-8-407, 17-8-410, 17-8-411, AND 17-8-412, MCA; REPEALING SECTION 17-8-408, MCA; AND PROVIDING AN EFFECTIVE DATE. 1283

65 *(House Bill No. 136; Boland)* AUTHORIZING THE GOVERNOR TO APPOINT SUBSTITUTE MEMBERS TO THE BOARD OF PERSONNEL APPEALS WHEN A BOARD MEMBER IS UNABLE TO PARTICIPATE IN A PROCEEDING; AMENDING SECTION 2-15-1705, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1290

66 *(House Bill No. 149; Menahan)* REVISING THE COLLECTION OF RESTITUTION AND SUPERVISORY FEES BY THE DEPARTMENT OF CORRECTIONS FROM AN INDIVIDUAL CONVICTED OF A CRIMINAL OFFENSE; AMENDING SECTIONS 46-18-241, 46-18-246, AND 46-23-1031, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1291

67 *(House Bill No. 151; Becker)* CLARIFYING INSURANCE COVERAGE FOR RECONSTRUCTIVE BREAST SURGERY AFTER A MASTECTOMY;

AMENDING SECTION 33-22-135, MCA; AND PROVIDING AN EFFECTIVE DATE 1293

68 *(House Bill No. 172; Arntzen)* CREATING A PROVISIONAL HUNTER SAFETY AND EDUCATION CERTIFICATE FOR PERSONS WITH CERTAIN DEVELOPMENTAL DISABILITIES; ESTABLISHING CONDITIONS OF LICENSURE FOR PERSONS WHO USE A PROVISIONAL CERTIFICATE WHEN OBTAINING A HUNTING LICENSE; AMENDING SECTION 87-2-105, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE 1294

69 *(House Bill No. 245; Ankney)* AUTHORIZING A BOARD OF COUNTY COMMISSIONERS TO ESTABLISH A COMPENSATED ABSENCE LIABILITY FUND TO PAY ACCUMULATED SICK AND VACATION LEAVE WHEN AN EMPLOYEE TERMINATES EMPLOYMENT; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1296

70 *(House Bill No. 247; Bergren)* CLARIFYING THAT TO QUALIFY AS MONTANA-CERTIFIED NATURAL BEEF CATTLE, THE BEEF CATTLE MUST BE RAISED WITHOUT ANY ANTIBIOTICS; AMENDING SECTION 80-11-801, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 1297

71 *(House Bill No. 273; O'Hara)* GENERALLY REVISING SEARCH AND RESCUE FUNDING; INCREASING THE MAXIMUM AMOUNT THAT SEARCH AND RESCUE UNITS OF A COUNTY SHERIFF'S OFFICE ARE ABLE TO BE REIMBURSED; AND AMENDING SECTION 10-3-801, MCA 1298

72 *(House Bill No. 278; McChesney)* PROVIDING THAT LIMITED VEGETATIVE COVER OF WATER MANAGEMENT FACILITIES AND OTHER SUPPORT FACILITIES IN A STRIP MINE OPERATION IS ELIGIBLE FOR EARLY BOND RELEASE IF THE VEGETATIVE COVER MEETS RECLAMATION STANDARDS; AND AMENDING SECTION 82-4-235, MCA 1299

73 *(House Bill No. 285; Reinhart)* AUTHORIZING GRAY WATER REUSE FOR SYSTEMS OTHER THAN PRIVATE, SINGLE-FAMILY RESIDENCES; CLARIFYING THE BOARD OF ENVIRONMENTAL REVIEW'S RULEMAKING AUTHORITY; REVISING THE DEFINITION OF "GRAY WATER REUSE SYSTEM"; AND AMENDING SECTIONS 75-5-305, 75-5-317, AND 75-5-325, MCA 1301

74 *(House Bill No. 287; Driscoll)* AUTHORIZING A UTILITY TO REMOVE OR ALTER VEGETATION OR OTHER MATERIAL WITHIN A UTILITY RIGHT-OF-WAY; PROVIDING THAT THE UTILITY PROVIDE NOTICE UNDER CERTAIN CIRCUMSTANCES; PROHIBITING A PERSON FROM DENYING ACCESS OR INTERFERING WITH A UTILITY'S REMOVAL OR ALTERATION ACTIVITIES; AND PROVIDING AN EFFECTIVE DATE 1304

75 *(House Bill No. 293; Hiner)* REVISING TRAINING STANDARDS FOR PEACE OFFICERS; PROVIDING FOR RECOGNITION OF COURSES TAUGHT BY THE FEDERAL GOVERNMENT, OTHER STATES, AND THE UNITED STATES MILITARY; PROVIDING FOR THE EMPLOYMENT OF MILITARY LAW ENFORCEMENT WHO SERVED IN THAT CAPACITY IN THE PRIOR 5 YEARS; AND AMENDING SECTION 7-32-303, MCA 1305

76 *(House Bill No. 298; Blewett)* CLARIFYING THAT JUDGES HAVE THE AUTHORITY TO DEFER TRAFFIC VIOLATIONS EXCEPT FOR HOLDERS OF COMMERCIAL DRIVER'S LICENSES; AMENDING SECTION 61-11-101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE 1307

77 *(House Bill No. 426; Milburn)* CLARIFYING THE APPOINTMENT OF COMMISSIONERS OF REGIONAL AIRPORT AUTHORITIES AND SUBJECTING THE COMMISSIONERS TO ETHICS LAWS FOR LOCAL GOVERNMENT OFFICIALS; AND AMENDING SECTIONS 2-2-102 AND 67-11-104, MCA 1308

78 *(Senate Bill No. 5; Erickson)* REQUIRING APPROVAL BY THE BOARD OF LAND COMMISSIONERS FOR THE GIFT OR PURCHASE OF LAND FOR THE PURPOSE OF RECLAMATION OF MINES; AMENDING SECTIONS 82-4-239 AND 82-4-371, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 1310

79 *(Senate Bill No. 25; Wanzenried)* ELIMINATING CERTAIN CONTINGENCIES RELATED TO VIOLATIONS, PENALTIES, AND WAIVERS UNDER THE COAL AND URANIUM MINE AND RECLAMATION LAWS; AND REPEALING SECTION 6, CHAPTER 486, LAWS OF 2005, AND SECTION 30, CHAPTER 487, LAWS OF 2005 . . 1313

80 *(Senate Bill No. 40; Juneau)* CLARIFYING THE DEFINITION OF "FRIEND OF RESPONDENT" IN INVOLUNTARY COMMITMENT PROCEDURES; REQUIRING A FINDING THAT THERE IS A PERSON WILLING AND ABLE TO SERVE AS A FRIEND OF RESPONDENT AND CONSENT OF THE RESPONDENT PRIOR TO APPOINTMENT OF A FRIEND OF RESPONDENT; REQUIRING THE APPOINTMENT OF AN ALTERNATE FRIEND OF RESPONDENT AT THE REQUEST OF THE RESPONDENT OR IF A CONFLICT OF INTEREST IS DETERMINED TO EXIST; AMENDING SECTIONS 53-21-102 AND 53-21-122, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1314

81 *(Senate Bill No. 54; Steinbeisser)* REVISING THE MONTANA DEFERRED DEPOSIT LOAN ACT TO REQUIRE THE DEPARTMENT OF ADMINISTRATION TO REFUSE TO ISSUE OR RENEW A DEFERRED DEPOSIT LENDER'S LICENSE ON VARIOUS GROUNDS INCLUDING AN APPLICANT'S MAKING MATERIAL MISSTATEMENTS OF FACT; PROVIDING THAT A PERSON MAY NOT APPLY FOR A LICENSE FOR 1 YEAR FOLLOWING A DENIAL OR REFUSAL BY THE DEPARTMENT TO ISSUE OR RENEW A LICENSE; PROVIDING THAT THE VIOLATION OF CERTAIN SPECIFIED FEDERAL ACTS, INCLUDING THE TRUTH IN LENDING ACT AND THE FAIR CREDIT REPORTING ACT, IS ALSO A VIOLATION OF THE MONTANA DEFERRED DEPOSIT LOAN ACT; GRANTING THE DEPARTMENT RULEMAKING AUTHORITY; ELIMINATING THE EXEMPTION FROM THE PROVISIONS OF THE MONTANA DEFERRED DEPOSIT LOAN ACT FOR A COLLECTION AGENCY THAT HAS ENTERED INTO AN AGREEMENT WITH A DEFERRED DEPOSIT LENDER FOR THE COLLECTION OF CLAIMS; REVISING LICENSE APPLICATION REQUIREMENTS; REVISING THE DEPARTMENT'S FEES FOR EXAMINING LICENSEES; PROVIDING THAT A COLLECTION AGENCY ACTING ON BEHALF OF A LICENSEE MAY NOT COLLECT CERTAIN DAMAGES; AND AMENDING SECTIONS 31-1-704, 31-1-705, 31-1-711, AND 31-1-722, MCA. 1317

82 *(Senate Bill No. 77; Juneau)* DEFINING VOLUNTEER EMERGENCY MEDICAL TECHNICIAN; ADDING A VOLUNTEER EMERGENCY MEDICAL TECHNICIAN TO THE BOARD OF MEDICAL EXAMINERS; REQUIRING ONE PHYSICIAN MEMBER OF THE BOARD TO HAVE EXPERIENCE IN EMERGENCY MEDICINE; AMENDING SECTION 2-15-1731, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1320

83 *(Senate Bill No. 88; Tropila)* REVISING ALTERED SPEED LIMIT PROVISIONS FOR SCHOOL ZONES; DEFINING "SCHOOL ZONE";

CLARIFYING SIGNING REQUIREMENTS FOR SCHOOL ZONES; AND AMENDING SECTIONS 61-1-101, 61-8-310, AND 61-8-726, MCA 1322

84 *(Senate Bill No. 89; Tropila)* MAKING PERMANENT THE PRIMARY SECTOR BUSINESS WORKFORCE TRAINING ACT; REPEALING SECTION 10, CHAPTER 567, LAWS OF 2003, AND SECTION 4, CHAPTER 169, LAWS OF 2005; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1334

85 *(Senate Bill No. 102; Brueggeman)* AUTHORIZING THE ADOPTION OF RULES FOR CORRECTIVE ACTION BY PUBLIC WATER SUPPLY SYSTEMS OR PUBLIC SEWAGE SYSTEMS TO PREVENT OR CORRECT CONTAMINATION OF DRINKING WATER; AND AMENDING SECTION 75-6-103, MCA. 1334

86 *(Senate Bill No. 120; Zinke)* GENERALLY REVISING CONTROLLED GROUND WATER LAWS; GRANTING RULEMAKING AUTHORITY; ALLOWING PETITIONS FROM LOCAL ENTITIES AND WATER RIGHT HOLDERS; ALLOWING CONSIDERATION OF FUNDING AND STUDIES; REVISING CRITERIA FOR DESIGNATING OR MODIFYING A CONTROLLED GROUND WATER AREA; EXPANDING CONTROL PROVISIONS; REMOVING PREFERENCES FOR DOMESTIC AND LIVESTOCK WITHDRAWALS; ELIMINATING GROUND WATER SUPERVISORS; REMOVING PENALTIES ASSOCIATED WITH NONCOMPLIANCE WITH GROUND WATER STATUTES; AMENDING SECTIONS 85-2-306, 85-2-402, 85-2-501, 85-2-506, AND 85-2-508, MCA; REPEALING SECTIONS 85-2-507, 85-2-509, 85-2-511, 85-2-513, 85-2-518, AND 85-2-520, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1336

87 *(Senate Bill No. 135; Larsen)* REVISING THE SMALL BUSINESS HEALTH INSURANCE PROGRAM; ALLOWING THE INSURANCE COMMISSIONER TO EXEMPT THE SMALL BUSINESS HEALTH INSURANCE PURCHASING POOL FROM REPORTING AS REQUIRED FOR VOLUNTARY PURCHASING POOLS; CLARIFYING TERMS FOR PREMIUM INCENTIVE PAYMENT SCHEDULES; CLARIFYING THE DESCRIPTION OF HEALTH PLANS AS THOSE PROVIDING CREDITABLE COVERAGE; PROVIDING REVISED ELIGIBILITY TERMS FOR OWNERS, PARTNERS, OR SHAREHOLDERS EARNING MORE THAN $75,000 AND FOR CERTAIN EMPLOYEES OR DEPENDENTS; REVISING FUNDING TERMS FOR PREMIUM ASSISTANCE AND PREMIUM INCENTIVE PAYMENTS; AMENDING SECTIONS 33-22-1816, 33-22-2004, 33-22-2006, 33-22-2007, 33-22-2008, AND 53-4-1004, MCA; AND PROVIDING EFFECTIVE DATES 1348

88 *(Senate Bill No. 150; Brueggeman)* GENERALLY REVISING UNEMPLOYMENT INSURANCE LAWS; AUTHORIZING THE GOVERNOR TO APPOINT A SUBSTITUTE MEMBER TO THE BOARD OF LABOR APPEALS; PROVIDING FOR INELIGIBILITY FOR UNEMPLOYMENT BENEFITS DURING A LEAVE OF ABSENCE; ESTABLISHING THE INELIGIBILITY PERIOD FOR UNEMPLOYMENT BENEFITS FOR A PERSON SUSPENDED FROM EMPLOYMENT; CLARIFYING THE REQUISITIONING OF MONEY FROM THE UNEMPLOYMENT TRUST FUND; ALLOWING THE DEPARTMENT OF LABOR AND INDUSTRY TO CHARGE FEES FOR PROVIDING INFORMATION; REVISING CONFIDENTIALITY REQUIREMENTS; GRANTING RULEMAKING AUTHORITY; REVISING GENERAL BENEFIT ELIGIBILITY REQUIREMENTS; REVISING AGENCY REQUIREMENTS FOR PERSONS ACTING ON BEHALF OF A CLAIMANT; REVISING COLLECTION PROCEDURES FOR OVERPAYMENTS; AMENDING SECTIONS 2-15-1704, 35-8-304,

39-51-403, 39-51-501, 39-51-603, 39-51-1105, 39-51-1216, 39-51-1301, 39-51-2101, 39-51-2104, 39-51-2307, 39-51-2402, 39-51-2403, 39-51-2405, 39-51-3201, 39-51-3202, 39-51-3206, AND 39-51-3207, MCA; REPEALING SECTION 39-51-3104, MCA; AND PROVIDING EFFECTIVE DATES . . 1356

89 *(Senate Bill No. 155; Cooney)* REQUIRING A RANDOM-SAMPLE AUDIT OF VOTE-COUNTING MACHINES AFTER A FEDERAL ELECTION; ESTABLISHING AUDIT PROCEDURES; AUTHORIZING COUNTY AUDIT COMMITTEES; PROVIDING DEFINITIONS; PROVIDING RULEMAKING AUTHORITY; AND AMENDING SECTIONS 13-1-101, 13-1-303, 13-15-401, AND 13-15-502, MCA 1367

90 *(Senate Bill No. 160; Jent)* CLARIFYING DISCIPLINARY PROCEDURES FOR HIGHWAY PATROL OFFICERS, INCLUDING THOSE COVERED BY A COLLECTIVE BARGAINING AGREEMENT; CLARIFYING THAT DISCIPLINARY PROCEDURES FALL WITHIN THE EXEMPTION PROVISIONS OF THE WRONGFUL DISCHARGE FROM EMPLOYMENT ACT; AMENDING SECTIONS 44-1-806 AND 44-1-902, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1375

91 *(Senate Bill No. 170; Gebhardt)* CLARIFYING REIMBURSEMENT RATES FOR MEALS AND LODGING FOR FOREIGN TRAVEL; AUTHORIZING THE DEPARTMENT OF ADMINISTRATION TO DESIGNATE THE LOCATIONS AND CIRCUMSTANCES FOR REIMBURSING FOREIGN TRAVEL EXPENSES AT RATES HIGHER THAN THE MAXIMUM RATE; AMENDING SECTION 2-18-501, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 1376

92 *(Senate Bill No. 182; Esp)* CLARIFYING THE STANDARD TO BE USED BY A COURT TO DETERMINE PARENTAL FITNESS IN GRANDPARENT-GRANDCHILD CONTACT CASES; AMENDING SECTION 40-9-102, MCA; AND PROVIDING AN APPLICABILITY DATE 1377

93 *(Senate Bill No. 196; Windy Boy)* DESIGNATING THE LAST FRIDAY OF SEPTEMBER AS A DAY TO CELEBRATE AMERICAN INDIAN HERITAGE 1378

94 *(Senate Bill No. 219; Squires)* CHANGING THE MONTH USED IN CALCULATING THE INFLATION ADJUSTMENT APPLIED TO LIMITS ON AGGREGATE CAMPAIGN CONTRIBUTIONS BY POLITICAL COMMITTEES OR INDIVIDUALS; AND AMENDING SECTION 13-37-216, MCA 1379

95 *(Senate Bill No. 255; Tutvedt)* REVISING RESPONSIBILITY FOR DEBT LIABILITY WHEN RURAL FIRE DISTRICT PROPERTY IS ANNEXED BY A MUNICIPALITY; AND AMENDING SECTION 7-33-2129, MCA . 1380

96 *(Senate Bill No. 262; Wanzenried)* ALLOWING COUNTY WATER AND SEWER DISTRICTS TO ASSESS THE COST OF SERVICES AND IMPROVEMENTS BY DWELLING UNIT; AMENDING SECTION 7-13-2303, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1381

97 *(Senate Bill No. 296; Essmann)* REVISING THE REQUIREMENTS FOR THE NEWSPAPERS IN WHICH MUNICIPALITIES PROVIDE PUBLIC NOTICE WHEN PUBLICATION OF NOTICE IS REQUIRED; REQUIRING THE NEWSPAPERS TO SUBMIT CERTAIN INFORMATION TO THE CITY CLERK; AMENDING SECTION 7-1-4127, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1381

98 *(Senate Bill No. 331; Balyeat)* REVISING THE LAW RELATING TO CRIMINAL USE OF OFFICIAL POSITION; AND AMENDING SECTION 45-7-103, MCA 1383

99 *(Senate Bill No. 376; Black)* EXEMPTING UTILITIES' AFFILIATES FROM A CUSTOMER FISCAL IMPACT ANALYSIS; AND AMENDING SECTION 69-2-217, MCA 1383

100 *(Senate Bill No. 390; McGee)* AUTHORIZING CITIES AND TOWNS TO ENTER INTO LOAN AGREEMENTS WITH THE STATE OF MONTANA TO FUND IMPROVEMENTS WITHIN STREET MAINTENANCE DISTRICTS AND USE THE DISTRICT ASSESSMENTS TO SERVICE THE LOAN; AND AMENDING SECTION 7-12-4429, MCA. 1383

101 *(Senate Bill No. 438; Juneau)* REVISING THE DEFINITION OF "LIQUOR" TO INCLUDE CAFFEINATED OR STIMULANT-ENHANCED MALT BEVERAGES; DEFINING "CAFFEINATED OR STIMULANT-ENHANCED MALT BEVERAGE"; AND AMENDING SECTION 16-1-106, MCA 1384

102 *(House Bill No. 192; Taylor)* REVISING THE METHOD OF VOTING ON WHETHER TO OVERRIDE THE GOVERNOR'S VETO OF A BILL APPROVED BY TWO-THIRDS OF THE MEMBERS VOTING ON THE FINAL VOTE ON THE BILL WHEN THE LEGISLATURE IS NOT IN SESSION; AMENDING SECTION 5-4-306, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 1387

103 *(House Bill No. 39; Cohenour)* GENERALLY REVISING WATER RIGHT ENFORCEMENT LAWS; ALLOWING FOR THE LIMITED APPOINTMENT OF WATER MASTERS AS SPECIAL MASTERS IN DISTRICT COURT PROCEEDINGS; REQUIRING THAT PROTECTION OF PRIOR APPROPRIATORS BE GIVEN PRIORITY IN JUDICIAL ENFORCEMENT CONSIDERATIONS; MAKING THE PURSUIT OF VOLUNTARY COMPLIANCE OPTIONAL; ELIMINATING CERTAIN CRIMINAL PENALTIES; ESTABLISHING A WATER RIGHT ENFORCEMENT PROGRAM AND A WATER RIGHT ENFORCEMENT ACCOUNT; PROVIDING A STATUTORY APPROPRIATION; AMENDING SECTIONS 3-7-311, 17-7-502, 85-2-114, AND 85-2-122, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 1388

104 *(House Bill No. 41; Cohenour)* REQUIRING THAT A DISCHARGE PERMIT MUST BE OBTAINED, IF NECESSARY, FOR AN AQUIFER RECHARGE PLAN OR A MITIGATION PLAN IN A CLOSED BASIN; AMENDING SECTIONS 75-5-410, 85-2-362, AND 85-2-364, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE 1391

105 *(House Bill No. 45; Ingraham)* REVISING THE LAWS GOVERNING THE DISTRIBUTION OF FEDERAL FOREST RESERVE FUNDS TO COMPLY WITH FEDERAL LAW; AMENDING SECTIONS 17-3-211, 17-3-212, AND 17-3-213, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1395

106 *(House Bill No. 48; Beck)* REVISING LAWS RELATING TO THE GROWTH THROUGH AGRICULTURE ACT; REVISING ELIGIBILITY AND DISBURSEMENT GUIDELINES; ALLOWING THE USE OF GRANTS; GRANTING RULEMAKING AUTHORITY; AMENDING SECTIONS 90-9-102, 90-9-103, 90-9-202, 90-9-203, 90-9-301, 90-9-306, 90-9-307, 90-9-311, 90-9-401, AND 90-9-402, MCA; REPEALING SECTIONS 90-9-303, 90-9-312, 90-9-313, 90-9-314, 90-9-315, 90-9-316, AND 90-9-317, MCA; AND PROVIDING AN EFFECTIVE DATE 1397

107 *(House Bill No. 75; Van Dyk)* REVISING THE PROVISIONS OF THE ENVIRONMENTAL REHABILITATION AND RESPONSE ACCOUNT; AUTHORIZING THE EXPENDITURE OF FUNDS FROM THE ENVIRONMENTAL REHABILITATION AND RESPONSE ACCOUNT FOR THE CLEANUP OF SOLID WASTE SITES; AMENDING SECTION 75-1-110, MCA; AND PROVIDING AN EFFECTIVE DATE. 1402

108 *(House Bill No. 78; Hendrick)* INCREASING THE BOARD FEET OF SALVAGE TIMBER THAT MAY BE SOLD WITHOUT ADVERTISEMENT; AMENDING SECTION 77-5-212, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1403

109 *(House Bill No. 80; Kottel)* REVISING PROFESSIONAL AND OCCUPATIONAL LICENSING LAWS; REVISING AND CLARIFYING CERTAIN BOARD MEMBER REQUIREMENTS, BOARD TERMS, AND BOARD COMPOSITION; REQUIRING SENATE CONFIRMATION OF APPOINTMENTS TO THE BOARD OF RESPIRATORY CARE PRACTITIONERS AND THE BOARD OF SOCIAL WORK EXAMINERS AND PROFESSIONAL COUNSELORS; REVISING CERTAIN REGULATORY AND LICENSURE REQUIREMENTS; REVISING CERTAIN BOARD DUTIES; REVISING PROVISIONS RELATING TO UNPROFESSIONAL CONDUCT; REVISING HEARING AID DISPENSER TRAINEE AND BOARD DUTIES; CREATING A TEMPORARY PRACTICE PERMIT IN ADDICTION COUNSELING; REVISING CERTAIN LICENSING REQUIREMENTS FOR PUBLIC ACCOUNTANTS AND FIRMS; REMOVING AUTHORIZATION FOR LAETRILE MANUFACTURE, SALE, POSSESSION, AND DISTRIBUTION; AMENDING SECTIONS 2-15-1738, 2-15-1740, 2-15-1741, 2-15-1744, 2-15-1748, 2-15-1750, 2-15-1753, 2-15-1756, 23-3-501, 30-11-515, 37-1-316, 37-1-410, 37-3-102, 37-3-305, 37-3-306, 37-3-308, 37-3-311, 37-3-323, 37-3-342, 37-4-501, 37-8-202, 37-9-203, 37-9-301, 37-9-302, 37-9-305, 37-9-312, 37-10-302, 37-16-202, 37-16-405, 37-16-411, 37-16-413, 37-18-302, 37-25-303, 37-29-201, 37-35-201, 37-35-202, 37-36-202, 37-47-302, 37-47-404, 37-50-101, 37-50-102, 37-50-203, 37-50-301, 37-50-314, 37-50-330, 37-50-335, 37-50-341, 37-50-401, AND 37-50-402, MCA; AND REPEALING SECTIONS 37-21-101, 37-21-201, 37-21-301, 37-21-302, 37-21-405, 37-21-406, 37-50-323, 37-50-324, 50-41-101, 50-41-102, 50-41-103, 50-41-104, 50-41-105, 50-41-106, AND 50-41-107, MCA 1404

110 *(House Bill No. 82; Driscoll)* REVISING THE ALLOCATION OF FUNDS FOR 9-1-1 PURPOSES; REDUCING THE ALLOCATION OF FUNDS FOR ADMINISTRATION OF 9-1-1 LAWS; AMENDING SECTION 10-4-301, MCA; AND PROVIDING AN EFFECTIVE DATE 1435

111 *(House Bill No. 118; Klock)* REVISING THE DISTRIBUTION OF WIRELESS 9-1-1 FUNDS AMONG COUNTIES; REQUIRING LOCAL 9-1-1 JURISDICTIONS TO PROVIDE PROGRAM INFORMATION TO THE DEPARTMENT OF ADMINISTRATION; AMENDING SECTIONS 10-4-102, 10-4-302, AND 10-4-313, MCA; AND PROVIDING AN EFFECTIVE DATE 1436

112 *(House Bill No. 119; Hunter)* REVISING LAWS RELATED TO EMPLOYMENT; AUTHORIZING NEGOTIATION OF AGREEMENTS WITH TRIBAL GOVERNMENTS TO RECOGNIZE AND GIVE EFFECT TO CERTAIN TRIBAL WORKERS' COMPENSATION PLANS; AUTHORIZING PLAN NO. 1 EMPLOYERS TO TRANSFER CLAIM LIABILITIES TO THIRD PARTIES; REQUIRING CONTROLLING PERSONS OF PROFESSIONAL EMPLOYER ORGANIZATIONS TO SUBMIT FINGERPRINTS; INCLUDING RELIGIOUS ORGANIZATIONS AS EMPLOYERS FOR WORKERS' COMPENSATION PURPOSES UNDER CERTAIN CONDITIONS; PROVIDING A RANGE OF UP TO 3 PERCENT ON CERTAIN ASSESSMENTS ON PAID LOSSES; CLARIFYING CERTAIN PROCEDURES USED BY THE UNINSURED EMPLOYERS' FUND; CLARIFYING THAT THE TIME TO APPEAL TO MEDIATION IS FROM THE DATE OF DETERMINATION BY THE DEPARTMENT; PROVIDING FOR CERTAIN VOLUNTARY NONBINDING MEDIATION; SPECIFYING TYPES OF MEDICAL FEE

SCHEDULES THAT MAY BE USED FOR WORKERS' COMPENSATION CLAIMS; PROVIDING TIMELINES FOR PAYMENTS AND INTEREST PENALTIES; REMOVING THE 26-WEEK LIMIT ON TEMPORARY PARTIAL DISABILITY BENEFITS; ALLOWING FOR INCREASED PRESCRIPTION SUPPLIES; REVISING APPLICATION TIMELINES UNDER THE SUBSEQUENT INJURY FUND; INCREASING THE TRIGGERING AMOUNT NECESSARY FOR ASSESSMENTS UNDER THE SUBSEQUENT INJURY FUND; CLARIFYING THE JURISDICTION OF THE WORKERS' COMPENSATION COURT; AMENDING SECTIONS 39-8-202, 39-71-107, 39-71-117, 39-71-118, 39-71-123, 39-71-201, 39-71-307, 39-71-501, 39-71-506, 39-71-520, 39-71-601, 39-71-613, 39-71-704, 39-71-711, 39-71-712, 39-71-727, 39-71-743, 39-71-905, 39-71-915, 39-71-2339, 39-71-2905, AND 39-73-104, MCA; AND PROVIDING EFFECTIVE DATES AND A RETROACTIVE APPLICABILITY DATE 1439

113 *(House Bill No. 129; Getz)* CLARIFYING THAT POLITICAL SUBDIVISIONS MAY ADOPT FEDERAL FLOOD PLAIN MAPS TO COMPLY WITH THE NATIONAL FLOOD INSURANCE PROGRAM; AMENDING SECTIONS 76-5-103 AND 76-5-201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1468

114 *(House Bill No. 137; McNutt)* REVISING LICENSE BENEFITS FOR LANDOWNERS ENROLLED IN THE HUNTER MANAGEMENT PROGRAM; ALLOWING EMPLOYEES OF LANDOWNERS TO RECEIVE THE FREE BIG GAME COMBINATION LICENSE ALLOTTED TO THE LANDOWNER; DEFINING "EMPLOYEE"; DELETING THE REQUIREMENT THAT THE COST OF A FREE LICENSE RECEIVED BY A LANDOWNER BE DEDUCTED FROM COMPENSATION PAID; AMENDING SECTION 87-1-266, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 1470

115 *(House Bill No. 139; Vincent)* ALLOWING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO INTERVENE IN LITIGATION OR APPEALS ON FEDERAL FOREST MANAGEMENT PROJECTS IF THE DEPARTMENT DETERMINES THERE IS A SIGNIFICANT THREAT TO PUBLIC HEALTH AND SAFETY; AMENDING SECTION 76-13-702, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 1471

116 *(House Bill No. 140; Vincent)* INCREASING THE AMOUNT BY WHICH THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION MAY EXCEED THE ANNUAL SUSTAINED HARVEST LEVEL USING CONTRACT HARVESTING IF THE DEPARTMENT IS ADDRESSING FOREST HEALTH CONCERNS; AMENDING SECTION 77-5-216, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 1472

117 *(House Bill No. 153; Hands)* REVISING THE VOLUNTARY CLEANUP AND REDEVELOPMENT ACT; REVISING PROCEDURES GOVERNING APPLICATION FOR AND REVIEW OF VOLUNTARY CLEANUP PLANS; REVISING REIMBURSEMENT AND DISCLOSURE PROVISIONS; AND AMENDING SECTIONS 75-10-733, 75-10-735, AND 75-10-736, MCA . . 1473

118 *(House Bill No. 179; Villa)* REVISING THE DEFINITION OF COMPETITIVE ELECTRICITY SUPPLIER; AMENDING SECTIONS 69-3-2003 AND 90-3-1003, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE . . 1476

119 *(House Bill No. 203; Miller)* REQUIRING THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO NOTIFY THE PUBLIC WHEN INTRODUCING OR TRANSPLANTING WOLVES, BEARS, AND

MOUNTAIN LIONS ON PRIVATE OR PUBLIC PROPERTY; PROHIBITING THE TRANSPLANTATION OF ANY ANIMAL ONTO PRIVATE PROPERTY WITHOUT PRIOR PERMISSION FROM THE LANDOWNER; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1480

120 *(House Bill No. 204; Ebinger)* REVISING WORKERS' COMPENSATION LAW TO PROVIDE THAT AN APPLICANT WHO HAS BEEN CERTIFIED AS AN INDEPENDENT CONTRACTOR IS NOT REQUIRED TO SUBMIT DOCUMENTS PREVIOUSLY SUBMITTED IF THE APPLICANT VERIFIES THAT THE PREVIOUSLY SUBMITTED DOCUMENTS ARE STILL CURRENT AND VALID OR THE DEPARTMENT DECIDES THE DOCUMENTS ARE STILL CURRENT AND VALID; AND AMENDING SECTION 39-71-417, MCA 1480

121 *(House Bill No. 223; Cohenour)* REVISING LAWS GOVERNING THE REVOCATION OF HUNTING, FISHING, AND TRAPPING PRIVILEGES; AUTHORIZING THE REVOCATION OF THE PRIVILEGE TO HUNT, FISH, OR TRAP IF A PERSON COMMITS CRIMINAL MISCHIEF OR TRESPASS ON PROPERTY OWNED OR ADMINISTERED BY THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS OR COMMITS CRIMINAL TRESPASS WHILE HUNTING, FISHING, OR TRAPPING; AND AMENDING SECTIONS 23-1-106, 45-6-101, 45-6-203, AND 87-1-102, MCA 1483

122 *(House Bill No. 230; McClafferty)* REVISING LAWS GOVERNING LOCAL GOVERNMENT EMPLOYEE INCENTIVE PROGRAMS TO ALLOW FOR LIMITED INCENTIVE AWARDS FOR PARTICIPATION IN PROGRAMS DESIGNED TO IMPROVE EMPLOYEE HEALTH AND SAFETY; AMENDING SECTIONS 7-4-501, 7-4-505, AND 7-4-506, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1487

123 *(House Bill No. 244; Ankney)* REVISING THE CIRCUMSTANCES UNDER WHICH A COUNTY OFFICER MAY BE ABSENT FROM THE STATE WITHOUT FORFEITING THE OFFICER'S OFFICE; AMENDING SECTION 7-4-2208, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1489

124 *(House Bill No. 270; Reinhart)* REVISING FLOOD PLAIN LAWS; CLARIFYING THE DEFINITION OF "FLOOD PLAIN"; ELIMINATING THE REQUIREMENT FOR CONSTRUCTING STRUCTURES ON FILL WITHIN THE FLOOD PLAIN; AND AMENDING SECTIONS 76-5-103 AND 76-5-402, MCA 1489

125 *(House Bill No. 283; Himmelberger)* REVISING WORKERS' COMPENSATION LAWS; PROVIDING FOR VOLUNTARY CERTIFICATION OF WORKERS' COMPENSATION CLAIMS EXAMINERS; REQUIRING A LETTER OF INTENT TO CREATE A NEW EXEMPTION UNDER THE WORKERS' COMPENSATION ACT; ESTABLISHING CRITERIA FOR CERTIFYING CLAIMS EXAMINERS; AMENDING SECTION 2-6-109, MCA; AND PROVIDING AN EFFECTIVE DATE 1491

126 *(House Bill No. 288; Kerns)* BANNING REPRODUCTIVE HUMAN CLONING; AND ESTABLISHING PENALTIES. 1494

127 *(House Bill No. 294; MacLaren)* ALLOWING A NATURAL GAS UTILITY THAT HAS RESTRUCTURED TO ACQUIRE NATURAL GAS PRODUCTION AND GATHERING RESOURCES AND INCLUDE THEM IN THE RATE BASE; ESTABLISHING PROCEDURES FOR THE ACQUISITION AND INCLUSION OF THE RESOURCES IN THE RATE BASE; AMENDING SECTIONS 69-3-1402 AND 69-3-1404, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE 1495

128 *(House Bill No. 308; Augare)* ALLOWING A SENTENCING COURT TO ORDER THAT AN OFFENDER MAKE A DONATION OF FOOD TO A FOOD BANK PROGRAM TO FULFILL ALL OR PART OF A SENTENCE; AMENDING SECTION 46-18-201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 1499

129 *(House Bill No. 363; Jones)* REVISING THE TEACHERS' RETIREMENT SYSTEM TO ALLOW RETIRED TEACHERS, SPECIALISTS, AND ADMINISTRATORS TO RETURN TO WORK FOR A LIMITED PERIOD OF TIME UNDER CERTAIN CIRCUMSTANCES WITHOUT A REDUCTION IN THEIR RETIREMENT BENEFITS; AMENDING SECTION 19-20-731, MCA; AND PROVIDING AN EFFECTIVE DATE, AN APPLICABILITY DATE, AND A TERMINATION DATE 1502

130 *(House Bill No. 366; McGillvray)* ALLOWING THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO ENTER INTO AGREEMENTS WITH ADJOINING STATES REGARDING RECIPROCAL FISHING PRIVILEGES IN MONTANA RIVERS AND STREAMS IF THE BORDERING STATE GRANTS THE SAME OR SIMILAR PRIVILEGES; AMENDING SECTIONS 87-2-1001 AND 87-2-1003, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1505

131 *(House Bill No. 383; Arntzen)* PROVIDING FOR THE ISSUANCE OF A CERTAIN NUMBER OF FREE HUNTING LICENSES TO CERTAIN YOUTHS WITH LIFE-THREATENING ILLNESSES; DEFINING "LIFE-THREATENING ILLNESS"; AMENDING SECTION 87-2-805, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1505

132 *(House Bill No. 432; Mehlhoff)* CLARIFYING SCHOOL TRUSTEE ELECTIONS; AUTHORIZING ELECTION BY ACCLAMATION IF THE NUMBER OF CANDIDATES FOR VACANT SCHOOL TRUSTEE POSITIONS IS LESS THAN THE NUMBER OF POSITIONS TO BE ELECTED; AMENDING SECTION 20-3-313, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 1509

133 *(House Bill No. 545; Vincent)* REVISING THE MEMBERSHIP OF THE COUNTY COMPENSATION BOARD; AND AMENDING SECTION 7-4-2503, MCA 1509

134 *(Senate Bill No. 47; Steinbeisser)* REVISING THE MONTANA TITLE LOAN ACT TO REQUIRE THE DEPARTMENT OF ADMINISTRATION TO REFUSE TO ISSUE OR RENEW A TITLE LENDER'S LICENSE ON VARIOUS GROUNDS INCLUDING AN APPLICANT'S MAKING MATERIAL MISSTATEMENTS OF FACT; PROVIDING THAT A PERSON MAY NOT APPLY FOR A LICENSE FOR 1 YEAR FOLLOWING A DENIAL OR REFUSAL BY THE DEPARTMENT TO ISSUE OR RENEW A LICENSE; PROVIDING THAT THE VIOLATION OF CERTAIN SPECIFIED FEDERAL ACTS, INCLUDING THE TRUTH IN LENDING ACT AND THE FAIR CREDIT REPORTING ACT, IS ALSO A VIOLATION OF THE MONTANA TITLE LOAN ACT; GRANTING THE DEPARTMENT RULEMAKING AUTHORITY; REVISING THE DEPARTMENT'S FEES FOR EXAMINING LICENSEES; AND AMENDING SECTIONS 31-1-805 AND 31-1-810, MCA. 1511

135 *(Senate Bill No. 49; Wanzenried)* REQUIRING THE DEPARTMENT OF ADMINISTRATION TO ESTABLISH HIGH-PERFORMANCE BUILDING STANDARDS FOR STATE-OWNED BUILDINGS AND NEW STATE-LEASED BUILDINGS; AMENDING SECTION 17-7-201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE 1513

136 *(Senate Bill No. 184; Balyeat)* REVISING LICENSE APPLICATION RESTRICTIONS ON LICENSES FOR BEAR, MOUNTAIN LION, AND

WILD BUFFALO OR BISON; AMENDING SECTION 87-2-702, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1515

137 *(Senate Bill No. 216; Laslovich)* ALLOWING SCHOOL DISTRICT TRUSTEES TO ENTER INTO AN INTERLOCAL AGREEMENT WITH THE MONTANA YOUTH CHALLENGE PROGRAM TO PROVIDE EDUCATIONAL OR VOCATIONAL SERVICES TO A STUDENT WHO IS A RESIDENT OF THE DISTRICT; ALLOWING A SCHOOL DISTRICT TO INCLUDE A RESIDENT STUDENT WHO IS RECEIVING EDUCATIONAL OR VOCATIONAL SERVICES FROM THE MONTANA YOUTH CHALLENGE PROGRAM UNDER AN INTERLOCAL AGREEMENT IN THE ENROLLMENT COUNT OF THE DISTRICT FOR THE PURPOSE OF CALCULATING AVERAGE NUMBER BELONGING; AMENDING SECTIONS 20-7-420, 20-9-311, AND 20-9-707, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE. 1516

138 *(Senate Bill No. 323; Erickson)* PROVIDING THAT PRIOR TO SIGNING A WRITTEN RENTAL AGREEMENT THE LANDLORD AND TENANT SHALL AGREE TO ACCEPT THE DEFAULT EXTENSION PERIOD FOR THE LEASE CHOSEN BY THE TENANT THAT IS TO BE GIVEN EFFECT IF THE LEASE IS NOT REVISED OR NEITHER PARTY GIVES NOTICE OF TERMINATION TO THE OTHER PRIOR TO THE RENTAL AGREEMENT'S ORIGINAL TERMINATION DATE 1521

139 *(House Bill No. 106; French)* CHANGING "ALTERED" BIRTH CERTIFICATES TO "AMENDED" BIRTH CERTIFICATES; AND AMENDING SECTIONS 50-15-202 AND 50-15-204, MCA 1522

140 *(House Bill No. 304; Sonju)* NAMING A PORTION OF U.S. HIGHWAY 2 AFTER HIGHWAY PATROL OFFICER DAVID GRAHAM; REQUIRING THE DEPARTMENT OF TRANSPORTATION TO PROVIDE MARKERS TO RECOGNIZE THE DESIGNATION WHEN EXISTING SIGNS NEED REPLACING; REQUIRING NEW ROADWAY MAPS TO INCLUDE THE DESIGNATION; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1523

141 *(House Bill No. 311; Blasdel)* NAMING A PORTION OF U.S. HIGHWAY 2 AFTER HIGHWAY PATROL OFFICER EVAN F. SCHNEIDER; REQUIRING THE DEPARTMENT OF TRANSPORTATION TO PROVIDE MARKERS TO RECOGNIZE THE DESIGNATION WHEN EXISTING SIGNS NEED REPLACING; REQUIRING NEW ROADWAY MAPS TO INCLUDE THE DESIGNATION; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 1523

142 *(House Bill No. 324; Arntzen)* ALLOWING A RETIRING LAW ENFORCEMENT OFFICER TO PURCHASE CERTAIN FIREARMS ISSUED TO THE OFFICER; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1524

143 *(Senate Bill No. 141; Tropila)* REPEALING FRANCHISE DISABILITY INSURANCE; REPEALING SECTION 33-22-401, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1525

144 *(Senate Bill No. 173; Murphy)* CLARIFYING THE ABILITY OF SCHOOL DISTRICTS TO SHARE SUPERINTENDENTS AND PRINCIPALS; AND AMENDING SECTION 20-4-401, MCA. 1525

145 *(Senate Bill No. 208; Lewis)* AUTHORIZING THE GOVERNING BODY OF A COUNTY, CITY, OR TOWN TO CONSIDER THE EMPLOYEES OF PRIVATE, NONPROFIT HOSPITALS, HEALTH CENTERS, OR NURSING HOMES TO BE EMPLOYEES OF THE COUNTY, CITY, OR TOWN SOLELY FOR THE PURPOSE OF PARTICIPATION IN GROUP HOSPITALIZATION, MEDICAL, HEALTH, INCLUDING LONG-TERM DISABILITY, ACCIDENT, OR GROUP LIFE INSURANCE CONTRACTS

OR PLANS; AMENDING SECTION 2-18-702, MCA; AND PROVIDING AN EFFECTIVE DATE 1526

146 *(Senate Bill No. 409; Brueggeman)* PROVIDING FOR THE ENFORCEMENT OF THE USE OF A MUFFLER FOR AN ENGINE COMPRESSION BRAKE DEVICE; PROVIDING FOR A NOTICE OF DEFICIENCY; PROVIDING A PENALTY; AND AMENDING SECTIONS 61-9-321, 61-9-501, AND 61-9-503, MCA 1527

147 *(House Bill No. 24; Morgan)* INSTRUCTING THE MONTANA CODE COMMISSIONER TO RENUMBER AND RECODIFY TITLE 15, CHAPTER 30, MONTANA CODE ANNOTATED, SPECIFICALLY RELATING TO THE RATE AND RETURN OF THE INDIVIDUAL INCOME TAX AND CERTAIN PORTIONS OF THE ADMINISTRATION AND COLLECTION OF THE INDIVIDUAL INCOME TAX; COMBINING CERTAIN INDIVIDUAL INCOME TAX PROVISIONS TO IMPROVE USABILITY AND IMPROVE THE RECODIFICATION; AMENDING SECTIONS 15-30-111, 15-30-114, 15-30-171, 15-30-172, 15-30-174, 15-30-176, AND 15-30-177, MCA; AND REPEALING SECTIONS 15-30-110, 15-30-115, 15-30-173, 15-30-175, 15-30-178, AND 15-30-179, MCA. 1529

148 *(House Bill No. 67; Belcourt)* CLARIFYING THAT THE SCHEDULE OF PRICES FOR COUNTY LEGAL PRINTING ARE ADOPTED BY ADMINISTRATIVE RULE; DIRECTING THE CODE COMMISSIONER TO RENUMBER STATUTES RELATED TO COUNTY PRINTING AS PART OF THE STATUTES RELATED TO STATE PRINTING; AMENDING SECTION 7-5-2404, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 1538

149 *(House Bill No. 72; Sands)* CLARIFYING THE DURATION OF THE CARETAKER RELATIVE EDUCATIONAL AUTHORIZATION AFFIDAVIT; AMENDING SECTION 20-5-503, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE 1538

150 *(House Bill No. 93; Sands)* CLARIFYING MEDICAL DIRECTION FOR EMERGENCY MEDICAL SERVICES; CLARIFYING THE PROCEDURES FOR HANDLING COMPLAINTS RELATED TO PREHOSPITAL AND INTERFACILITY EMERGENCY CARE; AMENDING SECTIONS 50-6-104, 50-6-201, 50-6-203, 50-6-302, 50-6-317, AND 50-6-323, MCA 1541

151 *(House Bill No. 367; McGillvray)* PROVIDING FOR A SEPARATE POSTADOPTIVE COUNSELING AND SUPPORT PROGRAM WITHIN A CHILD-PLACING AGENCY; SPECIFYING THAT THE COSTS OF THE PROGRAM MAY NOT BE INCLUDED IN PLACEMENT FEES; AND AMENDING SECTIONS 42-2-409 AND 42-7-105, MCA. 1546

152 *(Senate Bill No. 20; Jent)* CLARIFYING THE MEANING OF THE TERM "SUBSTANTIAL COMPLIANCE"; PROVIDING A STATEMENT OF LEGISLATIVE PURPOSE FOR THE MONTANA ADMINISTRATIVE PROCEDURE ACT; AMENDING SECTIONS 2-4-101 AND 2-4-305, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 1548

153 *(Senate Bill No. 82; Steinbeisser)* GENERALLY REVISING LAWS RELATING TO RECOVERY OF MEDICAID BENEFITS FOR SERVICES PAID ON BEHALF OF MEDICAID RECIPIENTS; REMOVING THE COUNTY FROM THE RECOVERY OF MEDICAID BENEFITS PROCESS; PROVIDING DEFINITIONS; AMENDING SECTIONS 53-2-612, 53-6-165, 53-6-167, 53-6-168, AND 53-6-178, MCA; AND PROVIDING AN EFFECTIVE DATE. 1551

154 *(Senate Bill No. 197; Laslovich)* DEFINING COURT TRANSCRIPTS; ESTABLISHING TRANSCRIPT COSTS AND PROVIDING FOR COST-OF-LIVING ADJUSTMENTS IN TRANSCRIPT COSTS; AMENDING SECTIONS 3-5-604 AND 40-6-119, MCA; AND PROVIDING AN EFFECTIVE DATE 1558

155 *(Senate Bill No. 319; Keane)* ELIMINATING VIOLATIONS OF SIZE, WEIGHT, AND LOAD RESTRICTIONS AS VIOLATIONS THAT RESULT IN AN OFFENDER ACCUMULATING POINTS TOWARDS A HABITUAL OFFENDER DESIGNATION; AND AMENDING SECTION 61-11-203, MCA. 1560

156 *(Senate Bill No. 325; Perry)* CLARIFYING THAT A PERSON WHO IS A DESIGNATED CAREGIVER UNDER THE MEDICAL MARIJUANA ACT MAY NOT USE MARIJUANA AND MAY USE DRUG PARAPHERNALIA ONLY IN LIMITED CIRCUMSTANCES; AND AMENDING SECTIONS 45-10-103, 50-46-102, 50-46-103, 50-46-201, 50-46-205, AND 50-46-206, MCA. 1561

157 *(Senate Bill No. 368; Erickson)* EXTENDING THE LIABILITY LIMITS ON MEDICAL PRACTITIONERS AND DENTAL HYGIENISTS WHO PROVIDE SERVICES WITHOUT COMPENSATION TO COMMUNITY-BASED PROGRAMS; AMENDING SECTION 27-1-736, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1566

158 *(Senate Bill No. 432; Brown)* CLARIFYING THAT FAILURE OF AN OSTENSIBLE AGENT TO COMPLY WITH A HEALTH CARE PROVIDER'S POLICY OR PRACTICE REQUIRING THE AGENT TO SECURE PROFESSIONAL LIABILITY INSURANCE CONSTITUTES PROFESSIONAL MISCONDUCT; AMENDING SECTIONS 28-10-103 AND 37-1-316, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1567

159 *(House Bill No. 21; Dickenson)* REPEALING THE TERMINATION DATE FOR CREDIT AGAINST AIR QUALITY PERMITTING FEES FOR CERTAIN USES OF POSTCONSUMER GLASS IN RECYCLED MATERIAL; REPEALING THE TERMINATION DATE FOR THE TAX CREDIT FOR INVESTMENT IN PROPERTY USED TO COLLECT OR PROCESS RECLAIMABLE MATERIALS; REPEALING THE TERMINATION DATE FOR THE TAX DEDUCTION FOR THE PURCHASE OF RECYCLED MATERIALS; AMENDING SECTIONS 75-2-225 AND 75-2-226, MCA; REPEALING SECTION 9, CHAPTER 712, LAWS OF 1991, SECTIONS 4 AND 5, CHAPTER 542, LAWS OF 1995, SECTION 1, CHAPTER 411, LAWS OF 1997, SECTIONS 4, 5, 6, AND 7, CHAPTER 398, LAWS OF 2001, SECTION 8, CHAPTER 516, LAWS OF 2001, SECTIONS 3 AND 5, CHAPTER 129, LAWS OF 2005, AND SECTIONS 1, 2, 3, 4, 5, 6, 7, AND 8, CHAPTER 569, LAWS OF 2005; AND PROVIDING AN EFFECTIVE DATE. 1569

160 *(House Bill No. 54; Ingraham)* REQUIRING THE PREPARATION AND PUBLICATION OF A SEPARATE INDEX FOR THE MONTANA CONSTITUTION AS PART OF THE MONTANA CODE ANNOTATED; AMENDING SECTION 1-11-204, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 1571

161 *(House Bill No. 58; Ingraham)* ELIMINATING THE SOCIAL SECURITY CONTRIBUTION ACCOUNT AND RELATED PROVISIONS FROM STATE LAW; AMENDING SECTIONS 19-1-402, 19-1-503, 19-1-813, AND 19-1-825, MCA; REPEALING SECTIONS 19-1-601, 19-1-602, 19-1-603, 19-1-604, 19-1-701, 19-1-703, 19-1-706, 19-1-801, AND 19-1-814, MCA . . 1573

162 *(House Bill No. 146; MacLaren)* REQUIRING THE ITEMIZATION OF EXPENDITURES MADE TO CONSULTANTS, ADVERTISING

AGENCIES, POLLING FIRMS, OR OTHER PERSONS; AND AMENDING SECTION 13-37-230, MCA 1575

163 *(House Bill No. 155; Pomnichowski)* REQUIRING STATE AGENCIES TO PROTECT CERTAIN PERSONAL INFORMATION; REQUIRING STATE AGENCIES TO DEVELOP PROCEDURES TO PROTECT SOCIAL SECURITY NUMBERS; AND PROVIDING A NOTIFICATION PROCEDURE FOR STATE AGENCIES OR THIRD PARTIES REGARDING A BREACH SUSPECTED OF COMPROMISING CERTAIN PERSONAL INFORMATION 1576

164 *(House Bill No. 193; Augare)* CHANGING THE NAME OF THE STATE COORDINATOR OF INDIAN AFFAIRS TO STATE DIRECTOR OF INDIAN AFFAIRS; AMENDING SECTIONS 2-15-102, 2-15-149, 2-15-217, 2-15-225, 2-15-1205, 22-2-602, 90-1-104, 90-1-131, 90-1-132, 90-1-133, 90-11-101, AND 90-11-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1578

165 *(House Bill No. 214; MacDonald)* REVISING MEDICAID ELIGIBILITY REQUIREMENTS FOR PREGNANT WOMEN, INFANTS AND CHILDREN, AND CARETAKERS; AMENDING SECTION 53-6-131, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1588

166 *(House Bill No. 307; Roberts)* ALLOWING A MEDICAL PRACTITIONER TO DISPENSE DRUGS THAT ARE NOT AVAILABLE FROM A COMMUNITY PHARMACY; AND AMENDING SECTION 37-2-104, MCA 1590

167 *(House Bill No. 372; Wilmer)* REVISING EXEMPTIONS FROM JURY DUTY; PROVIDING THAT THE UNDUE HARDSHIP EXEMPTION APPLIES TO BREASTFEEDING MOTHERS AND OTHER PROSPECTIVE JURORS WHO ARE PRIMARY CAREGIVERS TO DEPENDENT PERSONS; AND AMENDING SECTION 3-15-313, MCA. 1591

168 *(House Bill No. 387; Reichner)* REVISING THE DEFINITION OF "INVENTORY" WITH RESPECT TO CANCELED DEALERSHIP CONTRACT REPURCHASE REQUIREMENTS; AMENDING SECTION 30-11-701, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE. 1593

169 *(House Bill No. 621; Wilson)* PROVIDING THAT AN EXISTING RETAIL BEER OR BEER AND WINE LICENSE FOR A FAIRGROUNDS COMPLEX MAY BE TRANSFERRED TO A POLITICAL SUBDIVISION OF THE STATE UNDER CERTAIN CIRCUMSTANCES; GRANTING RULEMAKING AUTHORITY TO THE DEPARTMENT OF REVENUE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 1594

170 *(House Bill No. 623; Milburn)* CLARIFYING THE AUTHORITY OF A COUNTY, CITY, OR TOWN TO DONATE REAL PROPERTY OR SELL REAL PROPERTY AT A REDUCED PRICE TO A CORPORATION FOR LOW-INCOME HOUSING; AMENDING SECTIONS 7-8-2219, 7-8-2301, 7-8-2308, 7-8-2402, 7-8-2502, 7-8-2504, 7-8-4201, AND 7-15-4262, MCA; AND PROVIDING AN EFFECTIVE DATE. 1595

171 *(Senate Bill No. 74; Laible)* REVISING THE DUTIES OF A GOVERNMENTAL FIRE AGENCY; REVISING REQUIREMENTS FOR PROVISION AND MANAGEMENT OF EMERGENCY SERVICES BY A FIRE CHIEF; REVISING THE ENTITY UNDER WHICH A FIRE CHIEF SERVES; AND AMENDING SECTION 7-33-2001, MCA 1601

172 *(Senate Bill No. 111; Ripley)* CLARIFYING THAT THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION MAY ENGAGE IN WILDFIRE INITIAL ATTACK; AMENDING SECTION 76-13-104, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 1602

173 *(Senate Bill No. 143; Laible)* ESTABLISHING A MINIMUM AMOUNT OF ASSESSMENT FEES FOR FIRE PROTECTION FOR PEOPLE WHO OWN A SHARE OF PROPERTY AND AN INDIVIDUAL UNIT ON THE PROPERTY; AMENDING SECTION 76-13-213, MCA; AND PROVIDING AN EFFECTIVE DATE 1603

174 *(Senate Bill No. 185; Balyeat)* CREATING A NONRESIDENT COLLEGE STUDENT BIG GAME COMBINATION LICENSE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 1604

175 *(Senate Bill No. 188; Balyeat)* PROVIDING THAT IN A HUNTING DISTRICT OR PORTION OF A DISTRICT WHERE THE HOLDER OF A GENERAL ELK LICENSE IS ALLOWED TO HUNT ANTLERLESS ELK DURING CERTAIN TIMES, THE HOLDER OF A SPECIAL ELK PERMIT TO HUNT ANTLERLESS ELK IN THAT DISTRICT OR PORTION OF A DISTRICT MAY ALSO HUNT ANY ELK AUTHORIZED UNDER THE REGULATIONS FOR A GENERAL ELK LICENSE DURING THOSE SAME TIMES; AMENDING SECTION 87-2-704, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1605

176 *(Senate Bill No. 209; Laslovich)* REPLACING THE UNIFORM FOREIGN MONEY-JUDGMENTS RECOGNITION ACT WITH THE UNIFORM FOREIGN-COUNTRY MONEY JUDGMENTS RECOGNITION ACT; AMENDING SECTIONS 25-9-601, 25-9-602, 25-9-603, 25-9-605, 25-9-606, AND 25-9-607, MCA; REPEALING SECTION 25-9-604, MCA; AND PROVIDING AN APPLICABILITY DATE 1606

177 *(Senate Bill No. 250; Wanzenried)* ESTABLISHING THE OFFENSE OF TRADEMARK COUNTERFEITING; PROVIDING CRIMINAL PENALTIES FOR TRADEMARK COUNTERFEITING; PROVIDING FOR RESTITUTION FOR PERSONS HARMED BY TRADEMARK COUNTERFEITING; PROVIDING FOR SEIZURE OF GOODS USED IN TRADEMARK COUNTERFEITING; AMENDING SECTIONS 30-13-301 AND 30-13-333, MCA; AND PROVIDING AN EFFECTIVE DATE 1609

178 *(Senate Bill No. 273; Laslovich)* REVISING THE CONFLICTS OF INTERESTS LAWS RELATIVE TO SCHOOL TRUSTEES; AND AMENDING SECTION 20-9-204, MCA. 1613

179 *(Senate Bill No. 340; Laslovich)* GENERALLY REVISING THE LAWS RELATING TO THE LIMITED EMANCIPATION OF MINORS; PROVIDING FOR NOTICE; MAKING TECHNICAL REVISIONS; AND AMENDING SECTIONS 41-1-306, 41-1-501, 41-3-102, AND 41-3-438, MCA. 1614

180 *(Senate Bill No. 341; Laslovich)* REVISING THE LAW RELATING TO THE RECOVERY FROM DEFENDANTS OF PROSECUTION COSTS; AMENDING SECTION 46-18-232, MCA; AND PROVIDING AN EFFECTIVE DATE 1623

181 *(Senate Bill No. 395; Gebhardt)* CLARIFYING AMBIGUITIES IN THE BEER FRANCHISE LAW; REAFFIRMING THE CORE PURPOSES OF THE ALCOHOLIC BEVERAGE CODE IN RELATION TO THE TWENTY-FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION; CLARIFYING THE NONWAIVER NATURE OF THE PROVISIONS OF THE BEER FRANCHISE LAW; CLARIFYING THAT JUST CAUSE REQUIRES THAT THE WHOLESALER FAILED TO COMPLY WITH THE REASONABLE CONTRACTUAL REQUIREMENTS OF THE BREWER; CLARIFYING THAT THE APPOINTMENT OF A WHOLESALER TO A BRAND IN AN EXCLUSIVE TERRITORY IS NOT AFFECTED BY A TRANSFER OF OWNERSHIP OF THE MANUFACTURER OF THAT BRAND; PROVIDING THAT THE BEER FRANCHISE LAW MUST BE LIBERALLY CONSTRUED;

AMENDING SECTIONS 16-1-101, 16-3-221, AND 16-3-222, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1624

182 *(House Bill No. 326; Mendenhall)* PROVIDING THAT A NOTICE OF THE RIGHT TO CLAIM A LIEN AND A RELEASE OF A NOTICE OF THE RIGHT TO CLAIM A LIEN MUST BE FILED WITH THE CLERK AND RECORDER AND MUST BE SIGNED BY THE PERSON OR THE PERSON'S AGENT WHO FILED THE NOTICE OF THE RIGHT TO CLAIM A LIEN OR THE RELEASE OF A NOTICE OF THE RIGHT TO CLAIM A LIEN; AND AMENDING SECTION 71-3-531, MCA 1627

183 *(Senate Bill No. 21; Story)* CLARIFYING THE DISTRIBUTION OF CERTAIN MOTOR VEHICLE REVENUE; CORRECTING THE BASE DISTRIBUTION AMOUNTS FOR THE ADOPTION SERVICES ACCOUNT AND THE DEPARTMENT OF TRANSPORTATION STATE SPECIAL REVENUE NONRESTRICTED ACCOUNT TO PROVIDE FOR FUNDING AS ORIGINALLY ENACTED FOR MOTOR VEHICLE FUND DISTRIBUTIONS; PROVIDING FOR A DISTRIBUTION TO THE ADOPTION SERVICES ACCOUNT FOR AN AMOUNT EQUAL TO THAT NOT PAID DUE TO THE USE OF THE ERRONEOUS BASE AMOUNT FOR COMPUTING THE DISTRIBUTION; AMENDING SECTION 15-1-122, MCA; AND PROVIDING EFFECTIVE DATES 1630

184 *(House Bill No. 133; Stoker)* REVISING LAWS RELATING TO THE ADMINISTRATION OF CHILD SUPPORT ENFORCEMENT; ALLOWING ALTERNATIVE METHODS OF PAYMENT IN LIEU OF INCOME WITHHOLDING; CONFORMING CHILD SUPPORT ASSIGNMENT PROVISIONS TO THE FEDERAL DEFICIT REDUCTION ACT OF 2005; AMENDING SECTIONS 17-4-105, 40-5-225, 40-5-403, 40-5-601, 40-5-907, 53-2-110, AND 53-2-613, MCA; AND PROVIDING EFFECTIVE DATES 1631

185 *(House Bill No. 144; McAlpin)* CLARIFYING AND RECODIFYING THE MANDATORY LEAVE OF ABSENCE FOR EMPLOYEES HOLDING PUBLIC OFFICE; AMENDING SECTION 2-18-601, MCA; REPEALING SECTION 2-18-620, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1642

186 *(House Bill No. 163; Cohenour)* EXTENDING THE AVAILABILITY AND USE OF TAX CREDITS UNDER THE BIG SKY ON THE BIG SCREEN ACT; AMENDING SECTION 17, CHAPTER 593, LAWS OF 2005, AND SECTION 9, CHAPTER 367, LAWS OF 2007; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 1644

187 *(House Bill No. 195; Hamilton)* REVISING THE LAWS RELATED TO THE QUALIFICATIONS AND CONDITIONS FOR OBTAINING A RESTAURANT BEER AND WINE LICENSE; CLARIFYING THE DEFINITION OF A FULL-SERVICE RESTAURANT; ELIMINATING THE REQUIREMENT THAT AN UNSUCCESSFUL LOTTERY APPLICANT BE GIVEN A PREFERENCE IN FUTURE LOTTERIES; AMENDING SECTION 16-4-420, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE . . 1645

188 *(House Bill No. 197; Ebinger)* REVISING SIGNATURE REQUIREMENTS FOR RECALL PETITIONS; AND AMENDING SECTIONS 2-16-612 AND 2-16-614, MCA 1650

189 *(House Bill No. 221; Cohenour)* REVISING THE TIME AT WHICH YOUTH REACHING 12 YEARS OF AGE DURING A LICENSE YEAR ARE ELIGIBLE TO HUNT; AMENDING SECTION 87-2-805, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE 1651

190 *(House Bill No. 243; Hunter)* DIRECTING THE CHILDREN'S SYSTEM OF CARE PLANNING COMMITTEE TO STUDY THE SYSTEM OF CARE FOR HIGH-RISK CHILDREN WITH MULTIAGENCY SERVICE NEEDS; REQUIRING A REPORT TO THE LEGISLATURE; AND PROVIDING AN EFFECTIVE DATE 1654

191 *(House Bill No. 290; Grinde)* INCREASING THE LIMIT ON THE AMOUNT OF GROSS ANNUAL SALES THAT REQUIRES A PERSON WHO GROWS AND RETAILS MONTANA-GROWN PRODUCE TO PAY PRODUCE ASSESSMENT FEES AND OBTAIN A PRODUCE DEALER LICENSE; AMENDING SECTIONS 80-3-314 AND 80-3-321, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1656

192 *(House Bill No. 291; Sonju)* REDEFINING THE MARKET PRICE THAT MUST BE USED WITH RESPECT TO AUTOMOBILE GLASS REPAIR AND WITH RESPECT TO AUTOMOBILE BODY REPAIR BUSINESSES; AMENDING SECTIONS 33-18-221, 33-18-222, 33-18-223, AND 33-18-224, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1657

193 *(House Bill No. 317; Furey)* GUARANTEEING A MEMBER OF THE ARMED FORCES WHO FORFEITED A SPECIAL HUNTING LICENSE OR PERMIT ISSUED BY DRAWING AS A RESULT OF DEPLOYMENT OUTSIDE OF THE CONTINENTAL UNITED STATES IN SUPPORT OF A CONTINGENCY OPERATION THE SAME SPECIAL LICENSE OR PERMIT, WITHOUT ADDITIONAL FEE, UPON APPLICATION IN THE YEAR OF THE MEMBER'S RETURN FROM MILITARY SERVICE OR IN THE FIRST YEAR THAT THE LICENSE OR PERMIT IS MADE AVAILABLE AFTER THE MEMBER'S RETURN; AND AMENDING SECTION 87-2-803, MCA 1660

194 *(House Bill No. 354; Glaser)* REVISING LAWS GOVERNING LICENSURE OF PRIVATE INVESTIGATORS; ELIMINATING THE DEFINITION OF AND REFERENCES TO FIRE INVESTIGATORS IN LAWS GOVERNING PRIVATE INVESTIGATORS AND PRIVATE SECURITY AND ELIMINATING THE NEED FOR A SEPARATE FIRE INVESTIGATION LICENSE; INCLUDING INVESTIGATION OF FIRES AMONG A LICENSED PRIVATE INVESTIGATOR'S ACTIVITIES; PROVIDING CERTAIN EXEMPTIONS FROM LICENSE REQUIREMENTS; AND AMENDING SECTIONS 37-60-101, 37-60-103, 37-60-105, 37-60-301, AND 37-60-304, MCA 1663

195 *(House Bill No. 365; Roberts)* PROVIDING FOR PROGRAMS OF ALL-INCLUSIVE CARE FOR THE ELDERLY; ALLOWING A WAIVER OF HEALTH MAINTENANCE ORGANIZATION REQUIREMENTS; CLARIFYING THAT PROGRAMS OF ALL-INCLUSIVE CARE FOR THE ELDERLY ARE NOT MEDICAID MANAGED CARE NETWORKS; AMENDING SECTIONS 33-31-102, 33-31-201, AND 53-6-702, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1669

196 *(House Bill No. 397; Kottel)* CREATING A REGISTRY FOR VOLUNTARY REGISTRATION BY CLOSE RELATIVES FOR PURPOSES OF NOTIFYING THOSE RELATIVES WHEN A CHILD THAT IS RELATED HAS BEEN REMOVED FROM THE CHILD'S HOME BY THE STATE; AND AMENDING SECTION 41-3-101, MCA. 1675

197 *(House Bill No. 400; Kottel)* REVISING THE ALCOHOL CONTENT OF BEER; AND AMENDING SECTIONS 16-1-102, 16-1-106, AND 16-3-244, MCA. 1676

198 *(House Bill No. 407; MacDonald)* REVISING THE LAW RELATING TO SEXUAL ABUSE OF CHILDREN; PROVIDING A REPORTING REQUIREMENT FOR PEACE OFFICERS; AND AMENDING SECTION 45-5-625, MCA 1679

199 *(House Bill No. 530; Arntzen)* REVISING THE DEFINITION OF "SOCIAL WORK" TO CLARIFY THAT THE TERM INCLUDES THE USE OF DIAGNOSES AND ADMINISTERING, EVALUATING, AND ASSESSING TESTS; AND AMENDING SECTION 37-22-102, MCA 1682

200 *(House Bill No. 593; Villa)* PROVIDING REQUIREMENTS FOR MINE AND SMELTER WASTE REMEDIATION PROJECTS; PROVIDING PENALTIES FOR FAILURE TO COMPLY WITH THE REQUIREMENTS; AMENDING SECTION 75-1-110, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 1683

201 *(House Bill No. 190; Van Dyk)* REVISING LAWS RELATED TO ACCESS TO STATE WATERS FROM COUNTY ROADS AND BRIDGES; PROVIDING THAT A FENCE ATTACHED TO OR ABUTTING A COUNTY ROAD BRIDGE IS NOT CONSIDERED AN ENCROACHMENT UNDER CERTAIN CIRCUMSTANCES; PROVIDING FOR PUBLIC ACCESS TO SURFACE WATERS FOR RECREATIONAL USE FROM A COUNTY ROAD RIGHT-OF-WAY AND FROM A COUNTY BRIDGE, ITS RIGHT-OF-WAY, AND ITS ABUTMENTS; PROVIDING FOR PUBLIC PASSAGE TO SURFACE WATERS THROUGH COUNTY ROAD AND BRIDGE RIGHTS-OF-WAY WHILE MAINTAINING LIVESTOCK CONTROL OR PROPERTY MANAGEMENT; REQUIRING THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO NEGOTIATE WITH AFFECTED LANDOWNERS TO PROVIDE METHODS TO ENSURE PUBLIC PASSAGE TO SURFACE WATERS FOR RECREATIONAL PURPOSES WHILE MAINTAINING LIVESTOCK CONTROL OR PROPERTY MANAGEMENT; PROVIDING FOR PAYMENT OF THE COSTS OF ANY FENCE MODIFICATION NECESSARY TO PROVIDE FOR PUBLIC PASSAGE; AMENDING SECTION 7-14-2134, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1685

202 *(House Bill No. 104; French)* CLARIFYING THAT STATE ACTIVE DUTY PAY AND EXPENSES MUST BE DRAWN ON APPROPRIATED FUNDS; AMENDING SECTION 10-1-501, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 1688

203 *(House Bill No. 116; McNutt)* CLARIFYING THE PROOF OF INSURANCE REQUIREMENT FOR AN OWNER OR OPERATOR OF A MOTOR VEHICLE; AMENDING SECTION 61-6-302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 1688

204 *(House Bill No. 161; Augare)* RATIFYING THE WATER RIGHTS COMPACT ENTERED INTO BY THE BLACKFEET TRIBE OF THE BLACKFEET INDIAN RESERVATION, THE STATE OF MONTANA, AND THE UNITED STATES OF AMERICA; TRANSFERRING $4 MILLION FROM THE GENERAL FUND TO THE BLACKFEET TRIBE WATER RIGHTS COMPACT INFRASTRUCTURE ACCOUNT; APPROPRIATING FUNDS FOR WATER-RELATED INFRASTRUCTURE PROJECTS WITHIN THE EXTERIOR BOUNDARIES OF THE BLACKFEET INDIAN RESERVATION; AMENDING SECTION 85-20-1505, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 1689

205 *(House Bill No. 246; Boniek)* EXEMPTING FROM FEDERAL REGULATION UNDER THE COMMERCE CLAUSE OF THE CONSTITUTION OF THE UNITED STATES A FIREARM, A FIREARM ACCESSORY, OR AMMUNITION MANUFACTURED AND RETAINED IN MONTANA; AND PROVIDING AN APPLICABILITY DATE 1716

206 *(House Bill No. 263; Smith)* REQUIRING CERTAIN HEALTH CARE PROVIDERS AND FACILITIES TO DISCLOSE ESTIMATED COSTS OF TREATMENT. 1718

207 *(House Bill No. 264; Smith)* REQUIRING HEALTH INSURERS TO DISCLOSE PREAUTHORIZATION OR PREAPPROVAL REQUIREMENTS AND ESTIMATED COVERED AND OUT-OF-POCKET COSTS FOR CERTAIN HEALTH CARE SERVICES; AMENDING SECTIONS 33-22-244 AND 33-22-521, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE 1719

208 *(House Bill No. 386; O'Hara)* CREATING THE MONTANA RIGHT OF DISPOSITION ACT PERTAINING TO FUNERAL OR OTHER DISPOSITION ARRANGEMENTS; ESTABLISHING A PRIORITY OF PERSONS WHO MAY ARRANGE FOR THE FUNERAL OR DISPOSITION OF OTHERS; PROVIDING FOR THE LOSS OF THE RIGHT OF DISPOSITION; PROVIDING FOR THE RESOLUTION OF DISPUTES AS TO THE RIGHT OF DISPOSITION; ESTABLISHING RIGHTS AND IMMUNITY FOR A MORTICIAN WHO RELIES ON INSTRUCTIONS OF A PERSON WHO THE MORTICIAN REASONABLY BELIEVES HAS THE RIGHT OF DISPOSITION; CLARIFYING THE RIGHT TO CONTROL THE DISPOSITION OF HUMAN REMAINS WITH RESPECT TO MAUSOLEUM AND COLUMBARIUM AUTHORITIES; REVISING THE DEFINITION OF "AUTHORIZING AGENT"; AND AMENDING SECTIONS 35-21-810 AND 37-19-101, MCA 1721

209 *(House Bill No. 402; French)* REVISING LAWS RELATED TO STATE LAND BANKING; REMOVING THE SUNSET OF THE LAND BANKING PROGRAM; INCREASING THE NUMBER OF ACRES OF STATE LAND THAT MAY BE SOLD OR DISPOSED OF; AMENDING SECTIONS 77-2-363 AND 77-2-366, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1729

210 *(House Bill No. 403; Kottel)* REQUIRING THAT COURTS CONSIDER A CHILD'S NEED FOR CONTINUITY OF CARE IN DETERMINING WHETHER THE CHILD SHOULD BE PLACED WITH A PERSON OTHER THAN A PARENT; AND AMENDING SECTIONS 40-4-211, 40-6-601, 40-6-602, 41-3-437, 41-3-438, 41-3-439, 72-5-223, AND 72-5-225, MCA. 1731

211 *(House Bill No. 495; Arntzen)* CLARIFYING THE RIGHTS OF RESIDENT ASSOCIATIONS IN A MOBILE HOME PARK; PROHIBITING LANDLORD INTERFERENCE WITH AN INVITEE TO RESIDENT ASSOCIATION MEETINGS; CLARIFYING THAT A RESIDENT ASSOCIATION'S MEETING MAY BE HELD RELATING TO THE FUTURE OF THE MOBILE HOME PARK; AMENDING SECTION 70-33-314, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1741

212 *(House Bill No. 509; Ingraham)* REVISING REQUIREMENTS FOR COUNTING VOTES FOR WRITE-IN CANDIDATES; AND AMENDING SECTION 13-15-206, MCA 1741

213 *(House Bill No. 513; Cohenour)* REVISING SCHOOL FINANCE LAWS BY ALLOWING BONDING CAPACITIES TO BE COMBINED IN HIGH SCHOOL DISTRICTS WITH AN ATTACHED ELEMENTARY DISTRICT; ELIMINATING TRANSITION COSTS FROM THE CALCULATION OF THE TOTAL AMOUNT OF THE DISTRICT BUILDING RESERVE FUND; AND AMENDING SECTIONS 20-9-406 AND 20-9-502, MCA. 1743

214 *(House Bill No. 534; Campbell)* REQUIRING THE ELECTRONIC RECORDING OF CUSTODIAL INTERROGATIONS IN FELONY CASES AND IN YOUTH COURT CASES INVOLVING AN OFFENSE THAT WOULD BE A FELONY IF COMMITTED BY AN ADULT 1746

215 *(House Bill No. 572; Pomnichowski)* ESTABLISHING A PROGRAM AND CRITERIA TO PROVIDE STATE MATCHING GRANTS FOR FEDERAL SMALL BUSINESS INNOVATIVE RESEARCH GRANTS OR FEDERAL SMALL BUSINESS TECHNOLOGY TRANSFER GRANTS; AMENDING SECTION 90-1-147, MCA; AND PROVIDING AN EFFECTIVE DATE . 1748

216 *(House Bill No. 626; Welborn)* REVISING PROVISIONS RELATED TO THE TRANSFER OF LOCAL POLICE RETIREMENT FUNDS AND MEMBERS TO THE STATEWIDE MUNICIPAL POLICE OFFICERS' RETIREMENT SYSTEM; EXTENDING THE TIME ALLOWED FOR THE LOCAL FUND TO PAY LIABILITIES; AMENDING SECTION 19-9-207, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1750

217 *(Senate Bill No. 124; Squires)* CLARIFYING THAT THE DEATH OF A CANDIDATE CREATES AN ERROR OR OMISSION ON A PRINTED ABSENTEE BALLOT; REQUIRING THAT ABSENTEE BALLOTS CAST FOR A DECEASED CANDIDATE BE COUNTED FOR THE DECEASED CANDIDATE; AMENDING SECTIONS 13-13-204 AND 13-15-106, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 1751

218 *(Senate Bill No. 192; Zinke)* PROVIDING SMALL BUSINESSES WITH AN OPPORTUNITY FOR WORKERS' COMPENSATION RELIEF BY ALLOWING POOLED RISK SAFETY GROUPS IN WORKERS' COMPENSATION PLAN NO. 3; PROVIDING AN OPPORTUNITY FOR A RETURN ON PREMIUM BASED ON REDUCED LOSSES TO EMPLOYERS THAT IMPLEMENT CERTAIN SAFETY AND RETURN-TO-WORK PROVISIONS; AMENDING SECTION 39-71-2311, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE 1752

219 *(Senate Bill No. 276; Squires)* REQUIRING ELECTION ADMINISTRATORS TO MAIL AN ADDRESS CONFIRMATION FORM TO EACH ELECTOR WHO HAS REQUESTED AN ABSENTEE BALLOT FOR SUBSEQUENT ELECTIONS; REVISING THE DURATION FOR WHICH A PROPERLY SUBMITTED ADDRESS CONFIRMATION FORM FOR ABSENTEE VOTERS IS VALID; AMENDING SECTION 13-13-212, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1754

220 *(Senate Bill No. 405; Moss)* EXTENDING GRANDPARENT-GRANDCHILD CONTACT RIGHTS TO GREAT-GRANDPARENTS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1755

221 *(Senate Bill No. 447; Moss)* CLARIFYING PRACTICES RELATED TO THE PRESERVATION AND DISPOSAL OF BIOLOGICAL EVIDENCE IN FELONY CRIMINAL CASES; AND AMENDING SECTION 46-21-111, MCA. 1755

222 *(House Bill No. 71; Sands)* REPEALING THE SUNSET PROVISION FOR THE UTILIZATION FEE FOR HOSPITAL INPATIENT BED DAYS; REPEALING SECTION 20, CHAPTER 390, LAWS OF 2003, SECTIONS 4 AND 7, CHAPTER 606, LAWS OF 2005, AND SECTIONS 4, 5, 6, AND 8, CHAPTER 517, LAWS OF 2007; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1756

223 *(House Bill No. 95; Hawk)* EXPANDING THE ENFORCEMENT AUTHORITY FOR COLLECTING PARENTAL COST-OF-CARE CONTRIBUTIONS THAT ARE ORDERED BY A YOUTH COURT; AMENDING SECTIONS 40-5-303, 40-5-601, 40-5-701, AND 41-5-1525, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE. 1757

224 *(House Bill No. 103; Wilson)* REQUIRING THAT COMMERCIAL TOW TRUCK OPERATORS FILE PROOF OF INSURANCE WITH THE DEPARTMENT OF JUSTICE RATHER THAN THE PUBLIC SERVICE COMMISSION; AND AMENDING SECTIONS 61-8-906 AND 69-12-102, MCA. 1764

225 *(House Bill No. 107; Hiner)* CLARIFYING THE DEFINITION OF ENTERPRISE FUNDS SUBJECT TO APPROPRIATION; AMENDING SECTIONS 17-7-111, 17-7-123, AND 17-8-101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1766

226 *(House Bill No. 112; Sesso)* INCREASING THE THRESHOLD AMOUNT CONSTITUTING A SIGNIFICANT CHANGE IN AN AGENCY OR PROGRAM'S OPERATING BUDGET SUBJECT TO REVIEW BY THE LEGISLATIVE FISCAL ANALYST; INCREASING THE THRESHOLD AMOUNT CONSTITUTING A SIGNIFICANT CHANGE IN AN AGENCY OR PROGRAM'S BUDGET TRANSFERS SUBJECT TO REVIEW BY THE LEGISLATIVE FISCAL ANALYST; AMENDING SECTIONS 17-7-138 AND 17-7-139, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1770

227 *(House Bill No. 127; Sesso)* CREATING A STATE SPECIAL REVENUE ACCOUNT FOR THE PURCHASE OF LAND FOR THE MONTANA NATIONAL GUARD FROM FUNDS DERIVED FROM THE STATE'S SALE OF ARMORIES; AMENDING SECTIONS 10-1-108 AND 17-7-502, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1773

228 *(House Bill No. 177; Kottel)* DEFINING A "CONDITIONAL DISCHARGE" FOR PROBATION AND PAROLE PURPOSES; AND ESTABLISHING GROUNDS FOR REVOKING A CONDITIONAL DISCHARGE. 1774

229 *(House Bill No. 218; Menahan)* GENERALLY REVISING FISH AND GAME LAWS; CLARIFYING PROHIBITIONS ON THE USE OF PROJECTED ARTIFICIAL LIGHT TO HUNT AND ON THE WASTE OF FUR-BEARING ANIMALS; DEFINING "PELT"; AMENDING SECTIONS 87-1-102, 87-3-101 AND 87-3-506, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 1775

230 *(House Bill No. 328; MacLaren)* ELIMINATING THE REQUIREMENT FOR SIGNATURES ON A PETITION FOR NOMINATION TO AN ELECTIVE PUBLIC OFFICE FOR WHICH NO SALARY OR FEES ARE PAID TO THE PERSON ELECTED; AND AMENDING SECTION 13-14-113, MCA 1778

231 *(House Bill No. 338; Ankney)* PROVIDING COMMON CARRIER STATUS TO PIPELINES MOVING CARBON DIOXIDE PRODUCED IN THE COMBUSTION OR GASIFICATION OF FOSSIL FUELS; AND AMENDING SECTIONS 69-13-101, 69-13-102, 69-13-201, 69-13-301, 69-13-302, AND 69-13-303, MCA 1779

232 *(House Bill No. 343; Noonan)* REVISING DEFINITIONS FOR THE ADMINISTRATION OF THE RENEWABLE RESOURCE STANDARD FOR PUBLIC UTILITIES AND ELECTRICITY SUPPLIERS; ALLOWING ELIGIBLE RENEWABLE RESOURCES OWNED BY A PUBLIC UTILITY TO BE USED TO COMPLY WITH THE COMMUNITY RENEWABLE ENERGY PROJECT REQUIREMENTS IN THE RENEWABLE RESOURCE STANDARD; REQUIRING A UTILITY TO CONSIDER DISPATCH ABILITY AND SEASONALITY IN MEETING THE RENEWABLE RESOURCE STANDARD; AMENDING SECTIONS 69-3-2003, 69-3-2005, 90-3-1003, AND 90-4-1202, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE 1783

233 *(House Bill No. 373; Wilmer)* CREATING GOLD STAR FAMILY SPECIAL LICENSE PLATES; AMENDING SECTIONS 49-4-302, 49-4-304, 61-3-407, 61-3-426, 61-3-458, AND 61-3-459, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE 1789

234 *(House Bill No. 378; Blasdel)* EXEMPTING FROM THE WORKERS' COMPENSATION ACT THE EMPLOYMENT OF PERSONS PERFORMING THE SERVICES OF AN INTRASTATE OR INTERSTATE COMMON OR CONTRACT MOTOR CARRIER IF HIRED BY A FREIGHT FORWARDER; AMENDING SECTION 39-71-401, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1793

235 *(House Bill No. 380; Stahl)* ALLOWING THE PURCHASER OF A MOTOR VEHICLE SOLD WITHOUT A MANUFACTURER'S CERTIFICATE OF ORIGIN TO TITLE THE VEHICLE UPON PURCHASING A SURETY BOND, EQUIPPING THE MOTOR VEHICLE WITH CERTAIN REQUIRED EQUIPMENT, AND OBTAINING A LAW ENFORCEMENT INSPECTION; AMENDING SECTION 61-3-208, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1797

236 *(House Bill No. 477; Menahan)* ADOPTING THE UNIFORM ADULT GUARDIANSHIP AND PROTECTIVE PROCEEDINGS JURISDICTIONS ACT; AMENDING SECTIONS 72-5-102 AND 72-5-304, MCA; AND REPEALING SECTIONS 72-5-232 AND 72-5-323, MCA 1798

237 *(House Bill No. 504; Reinhart)* PROVIDING THAT A COURT MAY NOT GRANT A FULL GUARDIAN AUTHORITY TO CONSENT TO THE WITHHOLDING OR WITHDRAWAL OF LIFE-SUSTAINING TREATMENT IF IT CONFLICTS WITH THE WARD'S WISHES; DEFINING "SUBSTITUTED JUDGMENT"; AMENDING SECTIONS 72-5-101 AND 72-5-321, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1806

238 *(House Bill No. 517; Hollenbaugh)* ESTABLISHING THE CRITICAL INCIDENT STRESS MANAGEMENT ACT; REQUIRING THAT CRITICAL INCIDENT MEETINGS BE CLOSED TO THE PUBLIC AND OTHERS; REQUIRING THAT CERTAIN INFORMATION PROVIDED DURING CRITICAL INCIDENT STRESS MANAGEMENT AND RESPONSE BE KEPT CONFIDENTIAL; PROVIDING DEFINITIONS; PROVIDING EXCEPTIONS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1809

239 *(House Bill No. 529; Jones)* REVISING ENVIRONMENTAL REVIEW LAWS RELATED TO ENERGY DEVELOPMENT PROJECTS; LIMITING THE SCOPE OF ENVIRONMENTAL REVIEW UNDER THE MONTANA ENVIRONMENTAL POLICY ACT FOR CERTAIN ENERGY DEVELOPMENT PROJECTS ON STATE LANDS; AMENDING SECTION 77-1-121, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE 1811

240 *(House Bill No. 542; Vance)* REVISING MOTORSPORTS MANUFACTURER UNFAIR TRADE PRACTICES LAW; REVISING DEFINITIONS; REVISING WHAT CONSTITUTES UNFAIR TRADE PRACTICES WITH RESPECT TO THE RELATIONSHIP BETWEEN MOTORSPORTS MANUFACTURERS AND MOTORSPORTS DEALERS; CLARIFYING INJUNCTION AND DAMAGES PROVISIONS AND ELIMINATING THE VENUE REQUIREMENT WITH RESPECT TO THE PROPER PLACE TO BRING A CLAIM FOR AN UNFAIR TRADE PRACTICE BY A MOTORSPORTS MANUFACTURER; AMENDING SECTIONS 30-14-2501, 30-14-2502, AND 30-14-2503, MCA; AND PROVIDING EFFECTIVE DATES, AN APPLICABILITY DATE, AND A TERMINATION DATE. 1812

241 *(House Bill No. 563; Kottel)* ESTABLISHING A PROCESS FOR A DISTRICT COURT TO RECOGNIZE A ROUTE OF A COUNTY ROAD AS THE LEGAL ROUTE IF CERTAIN CONDITIONS EXIST; AND AMENDING SECTIONS 7-14-2101 AND 60-1-201, MCA 1822

242 *(House Bill No. 591; Pease-Lopez)* PROVIDING THAT ONE MEMBER OF THE BOARD OF PARDONS AND PAROLE MUST BE AN ENROLLED MEMBER OF A STATE-RECOGNIZED OR FEDERALLY RECOGNIZED INDIAN TRIBE LOCATED WITHIN THE BOUNDARIES OF THE STATE OF MONTANA; AMENDING SECTION 2-15-2302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1825

243 *(Senate Bill No. 68; Wanzenried)* CREATING AN EXCEPTION TO THE UNLAWFUL DISPOSITION OF DEAD ANIMALS FOR LICENSED COMPOSTING FACILITIES; AMENDING SECTION 75-10-213, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1826

244 *(Senate Bill No. 136; Gebhardt)* CLARIFYING THE EXCEPTION TO AN ORDER ESTABLISHING TEMPORARY OR PERMANENT OIL AND GAS WELL SPACING UNITS; AMENDING SECTION 82-11-201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1826

245 *(Senate Bill No. 200; Erickson)* BANNING THE SALE OF PHOSPHORUS-CONTAINING HOUSEHOLD CLEANING PRODUCTS IN CERTAIN COUNTIES FOR WATER QUALITY REASONS; PROVIDING FOR ENFORCEMENT; AMENDING SECTION 75-7-411, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE. 1828

246 *(Senate Bill No. 261; Wanzenried)* ENABLING A CITY OR TOWN COUNCIL OR COMMISSION TO ADOPT ORDINANCES OR RESOLUTIONS TO PROVIDE FOR THE SAFE OPERATION OF THE MUNICIPAL BUSLINE TRANSPORTATION SYSTEM AND TO PROVIDE FOR THE ENFORCEMENT OF THOSE ADOPTED ORDINANCES OR RESOLUTIONS; AND AMENDING SECTION 7-14-4403, MCA 1830

247 *(Senate Bill No. 275; Squires)* ADDING AN ADDITIONAL PHARMACIST TO THE BOARD OF PHARMACY; AND AMENDING SECTION 2-15-1733, MCA 1830

248 *(Senate Bill No. 294; Gillan)* INCLUDING STREETS AND ROADS AMONG THE UNDERTAKINGS FOR WHICH A MUNICIPALITY MAY ISSUE REVENUE BONDS; AMENDING SECTIONS 7-7-4402 AND 7-7-4424, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1831

249 *(Senate Bill No. 311; Gallus)* ELIMINATING THE REQUIREMENT THAT A MEDICAL CERTIFICATE BE ATTACHED TO A DECLARATION OF MARRIAGE; AND AMENDING SECTION 40-1-311, MCA 1832

250 *(House Bill No. 23; Himmelberger)* REMOVING STATUTORY REFERENCES TO THE LEGISLATIVE ADMINISTRATION COMMITTEES; AMENDING SECTIONS 5-2-202 AND 5-11-402, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE; AND PROVIDING AN EFFECTIVE DATE. 1833

251 *(House Bill No. 40; Cohenour)* REVISING THE WATER PERMIT AND CHANGE IN APPROPRIATION RIGHT PROCESS; CLARIFYING THE DEFINITION OF "CORRECT AND COMPLETE"; REQUIRING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO ISSUE A PRELIMINARY DETERMINATION ON A WATER RIGHT PERMIT OR A CHANGE IN APPROPRIATION RIGHT; REQUIRING PERMIT OR CHANGE IN APPROPRIATION RIGHT DECISIONS WITHIN 90 DAYS AFTER CLOSE OF ADMINISTRATIVE RECORD; AMENDING SECTIONS 85-2-102, 85-2-307, 85-2-308, 85-2-309, 85-2-310,

85-2-401, AND 85-2-804, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE 1834

252 *(House Bill No. 147; MacLaren)* REVISING DISCLOSURE AND REPORTING OF CERTAIN CAMPAIGN EXPENDITURES, INCLUDING EXPENDITURES BY INDEPENDENT COMMITTEES, MADE AFTER THE CLOSING DATE OF THE PREELECTION REPORTING PERIOD; AND AMENDING SECTIONS 13-37-226 AND 13-37-228, MCA 1842

253 *(House Bill No. 222; Cohenour)* REQUIRING THAT A PERSON WHO IS CONVICTED OF A HUNTING, FISHING, OR TRAPPING CRIMINAL VIOLATION AND WHOSE PRIVILEGES TO HUNT, FISH, OR TRAP HAVE BEEN REVOKED IS NOT ELIGIBLE TO PURCHASE A LICENSE TO HUNT, FISH, OR TRAP UNTIL ALL SENTENCING TERMS ARE MET; AMENDING SECTIONS 87-1-102 AND 87-2-106, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1845

254 *(House Bill No. 357; Berry)* SHORTENING A CONSTRUCTION CONTRACTOR'S OBLIGATION TO PAY INTEREST ON A DELAYED PERIODIC OR FINAL PAYMENT TO A SUBCONTRACTOR FROM 30 DAYS PLUS 3 WORKING DAYS TO 30 DAYS; PROVIDING THAT ONLY ACCEPTANCE OF A FINAL PAYMENT, RATHER THAN ACCEPTANCE OF A PROGRESS PAYMENT OR FINAL PAYMENT, RELEASES ANY CLAIM FOR INTEREST; AND AMENDING SECTION 28-2-2104, MCA 1851

255 *(House Bill No. 362; Henry)* REVISING LAWS RELATING TO DISASTER AND EMERGENCY SERVICES; DEFINING "DISASTER MEDICINE"; LIMITING LIABILITY OF LICENSED HEALTH CARE PROFESSIONALS DURING THE PRACTICE OF DISASTER MEDICINE; AND AMENDING SECTIONS 10-3-101, 10-3-103, 10-3-111, 10-3-302, AND 10-3-303, MCA. 1852

256 *(House Bill No. 371; Cohenour)* REVISING THE MOTOR VEHICLE CODE TO INCLUDE OTHER ON-TRACK EQUIPMENT IN STATUTES CONCERNING APPROACHING TRAINS AT RAILROAD CROSSINGS AND SIGNALS; AND AMENDING SECTIONS 61-8-347, 61-8-348, 61-8-349, 61-8-350, 61-8-713, AND 61-8-813, MCA. 1856

257 *(House Bill No. 374; Arntzen)* GENERALLY REVISING ELECTRICIAN LICENSING LAWS; REVISING DEFINITIONS; REQUIRING ELECTRICIANS TO CARRY THEIR LICENSES ON JOBSITES; REVISING LICENSE EXEMPTION PROVISIONS; INCREASING PENALTIES FOR VIOLATING LICENSING LAWS; MAKING THE IMPOSITION OF CERTAIN PENALTIES PERMISSIVE RATHER THAN MANDATORY; AMENDING SECTIONS 37-68-101, 37-68-102, 37-68-103, 37-68-201, 37-68-301, 37-68-302, 37-68-303, 37-68-304, 37-68-305, 37-68-311, 37-68-315, AND 37-68-322, MCA; AND REPEALING SECTIONS 37-68-307 AND 37-68-314, MCA 1859

258 *(House Bill No. 404; Reinhart)* PROVIDING AUTHORITY TO THE BOARD OF PROFESSIONAL ENGINEERS AND PROFESSIONAL LAND SURVEYORS TO PRESCRIBE UNIFORM STANDARDS GOVERNING CERTIFICATES OF SURVEY AND FINAL SUBDIVISION PLATS . . . 1865

259 *(House Bill No. 412; Wiseman)* REVISING THE LIQUOR EXCISE TAX RATE SCHEDULE TO PROVIDE ADDITIONAL RATES FOR COMPANIES THAT PRODUCE LESS THAN 200,000 PROOF GALLONS OF LIQUOR; AMENDING SECTION 16-1-401, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE 1865

260 *(House Bill No. 416; MacDonald)* EXEMPTING CERTAIN BIODIESEL PRODUCED FROM WASTE VEGETABLE OIL FEEDSTOCK FROM THE SPECIAL FUEL TAX; PROVIDING DEFINITIONS; PROVIDING

REGISTRATION AND REPORTING REQUIREMENTS; AMENDING SECTION 15-70-301, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE 1866

261 *(House Bill No. 466; Beck)* PROVIDING THAT EMPLOYEES OF ALL POLITICAL SUBDIVISIONS OF THE STATE WHO ARE MEMBERS OF THE NATIONAL GUARD OR MILITARY RESERVES ARE ENTITLED TO PAID MILITARY LEAVE; AMENDING SECTION 10-1-1009, MCA; AND PROVIDING AN EFFECTIVE DATE. 1870

262 *(House Bill No. 544; Vincent)* PROVIDING THAT A DISABILITY INSURER MAY NOT CHARGE THE INSURED ANY FEES OR PENALTY FOR CANCELING COVERAGE THAT THE INSURED HAS PAID FOR IN ADVANCE; REQUIRING THE DISABILITY INSURER TO REFUND ANY UNEARNED PORTION OF THE PREMIUM TO THE INSURED; AND CREATING AN EXCEPTION FOR CERTAIN SHORT-TERM DISABILITY POLICIES 1870

263 *(House Bill No. 574; Vincent)* REVISING THE ELEMENTS OF THE OFFENSES OF BURGLARY AND AGGRAVATED BURGLARY; AND AMENDING SECTION 45-6-204, MCA. 1871

264 *(House Bill No. 588; Ankney)* REVISING THE DISTRIBUTION OF COAL GROSS PROCEEDS TAXES TO LOCAL TAXING JURISDICTIONS AND THE STATE; ESTABLISHING A BASIS FOR THE DISTRIBUTION OF COAL GROSS PROCEEDS TAXES; PROVIDING THAT COAL GROSS PROCEEDS TAXES MUST BE DISTRIBUTED ACCORDING TO THE PREVIOUS FISCAL YEAR MILL LEVIES; ELIMINATING THE DISTRIBUTION OF COAL GROSS PROCEEDS BASED ON THE UNIT VALUE CALCULATION; REMOVING THE STATUTORY APPROPRIATION OF COAL GROSS PROCEEDS TAXES; AMENDING SECTIONS 15-23-703 AND 17-7-502, MCA; REPEALING SECTIONS 15-23-705, 15-23-706, AND 15-23-707, MCA; AND PROVIDING AN EFFECTIVE DATE AND APPLICABILITY DATES 1871

265 *(Senate Bill No. 9; Erickson)* ALLOWING FOR CERTAIN PUBLIC TRANSPORTATION SYSTEMS TO BE INCLUDED IN PROJECTS FINANCED BY MUNICIPAL REVENUE BONDS; AMENDING SECTION 7-7-4402, MCA; AND PROVIDING AN EFFECTIVE DATE. 1875

266 *(Senate Bill No. 71; Erickson)* REVISING STATE REMEDIATION LAWS; ALLOWING REIMBURSEMENT OF CLAIMS FROM A LEAD LIABLE PERSON UPON COMPLETION AND APPROVAL OF CERTAIN REPORTS; CLARIFYING THE DEPARTMENT'S RESPONSIBILITY TO IDENTIFY PERSONS LIABLE FOR A RELEASE OR THREATENED RELEASE; AND AMENDING SECTIONS 75-10-743 AND 75-10-745, MCA 1875

267 *(Senate Bill No. 95; Brueggeman)* AUTHORIZING THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO USE TEMPORARY NUTRIENT CRITERIA TO ESTABLISH PERMIT LIMITS FOR POINT SOURCE DISCHARGES TO SURFACE WATER; ESTABLISHING A TIME LIMIT FOR TEMPORARY CRITERIA; REQUIRING A REPORT TO THE ENVIRONMENTAL QUALITY COUNCIL; AND AMENDING SECTION 75-5-103, MCA 1881

268 *(Senate Bill No. 96; Jent)* REQUIRING A MENTAL EVALUATION OF CERTAIN CRIMINAL DEFENDANTS CLAIMING A MENTAL DISEASE OR DEFECT OR A DEVELOPMENTAL DISABILITY; AMENDING SECTIONS 46-14-311 AND 46-18-111, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE . . 1886

269 *(Senate Bill No. 104; Esp)* REVISING THE TIME REQUIREMENTS APPLICABLE TO THE HOLDING OF ESTRAYS AND THE PUBLIC

NOTIFICATION REQUIREMENTS RELATING TO THE DISPOSITION OF ESTRAYS BY A STOCK INSPECTOR; AND AMENDING SECTION 81-4-603, MCA 1888

270 *(Senate Bill No. 123; Squires)* PROHIBITING THE USE OF AN AMENDED NOTICE OF PROPOSED RULEMAKING BY A STATE AGENCY TO CURE A DEFICIENCY IN A STATEMENT OF REASONABLE NECESSITY UNLESS CERTAIN CONDITIONS ARE MET; AMENDING SECTION 2-4-305, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 1889

271 *(Senate Bill No. 133; Kaufmann)* GENERALLY REVISING INSURANCE LAWS; SUBSTITUTING THE TERM "BUSINESS ENTITY" FOR "PARTNERSHIP" AND "CORPORATION" IN VARIOUS CONTEXTS THROUGHOUT THE INSURANCE CODE; AUTHORIZING THE COMMISSIONER OF INSURANCE TO ADOPT RULES TO FACILITATE ELECTRONIC FILING OF CERTAIN DOCUMENTS; EXTENDING THE TIME THAT A LICENSEE MAY NOT CLAIM AN EXEMPTION FROM CERTAIN PROVISIONS OF STATE INSURANCE LAWS BASED ON FEDERAL PRIVACY STANDARDS; PROVIDING THAT A BUSINESS ENTITY THAT IS OTHER THAN A CORPORATION OR PARTNERSHIP MUST BE ORGANIZED UNDER THE LAWS OF THIS STATE; CLARIFYING THAT DISABILITY INSURANCE IS SUBJECT TO GUARANTEED RENEWABILITY PROVISIONS; REQUIRING THAT INSUREDS PAY ONLY THE REQUIRED COPAYMENT OR OTHER COST-SHARING REQUIREMENT FOR COVERED PRESCRIPTION DRUGS AT THE TIME OF PURCHASE; CLARIFYING CERTAIN INCURRED GROUP HEALTH INSURANCE CLAIMS MAY BE HELD PENDING PREMIUM PAYMENT; AMENDING SECTIONS 33-1-601, 33-2-116, 33-2-301, 33-2-305, 33-2-306, 33-4-502, 33-4-503, 33-4-504, 33-17-211, 33-17-212, 33-17-214, 33-17-231, 33-17-301, 33-17-1001, 33-17-1002, 33-17-1103, 33-17-1204, 33-19-105, 33-20-606, 33-20-1303, 33-20-1307, 33-21-113, 33-22-101, 33-22-142, 33-22-232, 33-22-302, 33-22-530, 33-22-602, 33-22-1809, 33-28-104, 33-30-102, 33-31-102, 33-31-111, AND 33-31-311, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE 1891

272 *(Senate Bill No. 151; Brueggeman)* REVISING INSURANCE LAWS PERTAINING TO VIATICAL SETTLEMENTS; PROHIBITING VIATICAL SETTLEMENT FRAUD AND PROVIDING REMEDIES AND PENALTIES; INCLUDING SUSPECTED VIATICAL SETTLEMENT FRAUD IN ACTIVITIES THAT MUST BE REPORTED BY INSURERS AND OTHERS; REVISING REQUIREMENTS FOR VIATICAL SETTLEMENT CONTRACT TERMS; LENGTHENING TO 3 BUSINESS DAYS THE AMOUNT OF TIME A VIATICAL SETTLEMENT PROVIDER HAS TO DEPOSIT PROCEEDS OF A SETTLEMENT INTO AN ESCROW OR TRUST ACCOUNT; ESTABLISHING CRITERIA FOR DETERMINING CONFLICT OF LAWS QUESTIONS; AMENDING SECTIONS 33-1-1301, 33-1-1302, 33-1-1303, 33-20-1308, AND 33-20-1314, MCA; AND PROVIDING EFFECTIVE DATES 1918

273 *(Senate Bill No. 222; Hansen)* REVISING PROVISIONS RELATED TO FOUR-LANE HIGHWAY CONSTRUCTION ALONG U.S. HIGHWAY 2; REMOVING THE REQUIREMENT THAT THE DEPARTMENT SEEK FEDERAL FUNDING FOR THE PROJECT THAT DOES NOT REQUIRE A STATE MATCH; REMOVING THE PROHIBITION ON EXPENDING RESOURCES THAT WOULD JEOPARDIZE FUTURE HIGHWAY PROJECTS; AND AMENDING SECTION 60-2-133, MCA 1924

274 *(Senate Bill No. 227; Brown)* REVISING THE TIME FOR FILING CERTAIN CAMPAIGN FINANCE REPORTS; REQUIRING THAT

CERTAIN REPORTS BE FILED ELECTRONICALLY; AND AMENDING SECTION 13-37-226, MCA 1924

275 *(Senate Bill No. 228; Barrett)* REVISING LAWS RELATED TO WOLF MANAGEMENT; PLACING PRIORITY ON THE PROTECTION OF HUMANS, LIVESTOCK, AND PETS; ALLOWING THE REMOVAL OF PROBLEM WOLVES FOR LIVESTOCK DEPREDATION; DEFINING "PROBLEM WOLVES"; PROVIDING THAT FOLLOWING DELISTING SPECIAL KILL PERMITS MAY BE ISSUED TO LANDOWNERS AND PUBLIC LAND PERMITTEES; AMENDING SECTIONS 87-1-217 AND 87-5-131, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1926

276 *(Senate Bill No. 297; Larsen)* ESTABLISHING A SAND AND GRAVEL DEPOSIT PROGRAM WITHIN THE MONTANA BUREAU OF MINES AND GEOLOGY; ALLOWING THE MONTANA BUREAU OF MINES AND GEOLOGY TO ACCEPT GIFTS, GRANTS, AND REIMBURSEMENTS; REQUIRING PRESENTATIONS OF FINDINGS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1927

277 *(Senate Bill No. 308; Keane)* REVISING LAWS RELATED TO THE STANDARD PREVAILING RATE OF WAGES FOR PUBLIC WORKS CONTRACTS; PROVIDING FOR WAGE AND BENEFIT SURVEYS AND ALTERNATE METHODOLOGIES; SPECIFYING PAYMENT TERMS FOR APPRENTICES WORKING ON PUBLIC WORKS CONTRACTS; LIMITING TO 10 THE MAXIMUM NUMBER OF PREVAILING WAGE RATE DISTRICTS; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 15-6-157, 15-6-158, 15-6-159, 15-24-3111, 15-70-522, 18-2-401, 18-2-402, 18-2-403, 18-2-407, 18-2-411, 18-2-412, AND 69-3-2005, MCA; AND PROVIDING AN EFFECTIVE DATE 1928

278 *(Senate Bill No. 367; Hamlett)* REVISING REGISTRATION AND VOTING FOR ABSENT UNIFORMED SERVICES AND OVERSEAS ELECTORS; REQUIRING ELECTION ADMINISTRATORS TO ALLOW ABSENT UNIFORMED SERVICES AND OVERSEAS ELECTORS TO REGISTER AND VOTE ELECTRONICALLY; AUTHORIZING LATE AND SAME-DAY REGISTRATION AND VOTING BY ABSENT UNIFORMED SERVICES AND OVERSEAS ELECTORS; REVISING WHAT MUST BE INCLUDED IN RULES ADOPTED BY THE SECRETARY OF STATE CONCERNING ELECTRONIC REGISTRATION AND VOTING; REQUIRING THE SECRETARY OF STATE TO REPORT TO THE GOVERNOR AND THE LEGISLATURE; AMENDING SECTIONS 13-21-104, 13-21-201, 13-21-207, AND 13-21-210, MCA; AND PROVIDING EFFECTIVE DATES 1944

279 *(Senate Bill No. 392; Brueggeman)* AUTHORIZING THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO REVIEW PARCELS OF LAND SUBMITTED FOR REVIEW BY THE OWNER OF THE PARCEL TO DETERMINE WHETHER THE PARCEL MAY BE DEVELOPED WITH WATER AND WASTEWATER SYSTEMS AND TO PROVIDE ADEQUATE SOLID WASTE DISPOSAL AND STORM WATER MANAGEMENT; AUTHORIZING THE ISSUANCE OF A CERTIFICATE OF SUBDIVISION APPROVAL FOR THE PARCEL; AND PROVIDING AN EFFECTIVE DATE 1947

280 *(Senate Bill No. 426; Laslovich)* ADOPTING THE NATIONAL BISON RANGE WATER COMPACT; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1948

281 *(Senate Bill No. 463; Wanzenried)* CLARIFYING THAT RESPITE CARE WORKERS MAY BE EMPLOYED BY A FAMILY MEMBER; REQUIRING TRAINING AND EDUCATIONAL MATERIALS TO BE PROVIDED TO

AN INDIVIDUAL EMPLOYING A RESPITE CARE WORKER; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1956

282 *(House Bill No. 59; Hamilton)* REVISING THE TEACHERS' RETIREMENT SYSTEM LAWS; REVISING LAWS TO COMPLY WITH THE PENSION PROTECTION ACT OF 2006; CLARIFYING DEFINITIONS; CLARIFYING WHO MUST BE A MEMBER OF THE SYSTEM; CLARIFYING FAMILY LAW ORDERS; CLARIFYING OPTIONAL RETIREMENT ALLOWANCES; REQUIRING CERTIFICATION OF TERMINATION OF EMPLOYMENT IN COMPLIANCE WITH THE INTERNAL REVENUE CODE; COMPLYING WITH THE FEDERAL HEROES EARNINGS ASSISTANCE AND RELIEF TAX ACT OF 2008; AMENDING SECTIONS 19-20-101, 19-20-302, 19-20-305, 19-20-401, 19-20-409, 19-20-603, 19-20-605, 19-20-701, 19-20-702, 19-20-703, 19-20-718, 19-20-731, 19-20-804, 19-20-905, 19-20-1001, 19-20-1003, 20-15-106, AND 20-15-403, MCA; REPEALING SECTION 19-20-406, MCA; AND PROVIDING AN EFFECTIVE DATE AND RETROACTIVE APPLICABILITY DATES. 1958

283 *(House Bill No. 109; Hunter)* GENERALLY REVISING THE STATUTES CONCERNING CERTAIN PUBLIC EMPLOYEE RETIREMENT SYSTEMS; REQUIRING THE PUBLIC EMPLOYEE RETIREMENT BOARD TO ADOPT RULES; AMENDING SECTIONS 19-2-303, 19-2-506, 19-2-704, 19-2-710, 19-2-715, 19-2-801, 19-2-908, 19-3-201, 19-3-316, 19-3-403, 19-3-504, 19-3-513, 19-3-906, 19-3-1015, 19-3-1106, 19-3-1210, 19-3-2111, 19-3-2133, 19-5-601, 19-5-612, 19-5-801, 19-5-802, 19-6-612, 19-7-404, 19-7-612, 19-8-712, 19-9-904, 19-9-1101, 19-13-104, 19-13-704, 19-13-803, 19-13-804, 19-17-107, 19-17-401, 19-17-408, AND 19-17-504, MCA; AND PROVIDING AN EFFECTIVE DATE 1975

284 *(House Bill No. 170; Menahan)* GENERALLY REVISING STATUTES GOVERNING VARIOUS STATE RETIREMENT SYSTEMS IN ORDER TO ENSURE THAT THOSE SYSTEMS CONSTITUTE QUALIFIED RETIREMENT PLANS UNDER THE INTERNAL REVENUE CODE; AMENDING SECTIONS 5-2-304, 19-2-303, 19-2-602, 19-2-902, 19-2-907, 19-2-1001, 19-2-1002, 19-2-1005, 19-3-315, 19-3-412, 19-3-1501, 19-3-2123, 19-3-2126, 19-5-701, 19-7-1001, 19-8-801, 19-9-301, 19-9-1206, 19-9-1208, 19-13-210, AND 19-13-301, MCA; AND PROVIDING AN EFFECTIVE DATE AND RETROACTIVE APPLICABILITY DATES 2000

285 *(Senate Bill No. 22; Murphy)* CREATING THE WATER POLICY COMMITTEE; ALLOWING THE WATER POLICY COMMITTEE TO STUDY ANY ISSUE RELATED TO WATER POLICY; MODIFYING THE STATUTORY PROVISIONS REQUIRING THE ENVIRONMENTAL QUALITY COUNCIL TO STUDY WATER POLICY ISSUES; REQUIRING THE WATER POLICY COMMITTEE TO COORDINATE WITH THE ENVIRONMENTAL QUALITY COUNCIL AND ANY OTHER COMMITTEE TO AVOID DUPLICATION OF EFFORTS; AMENDING SECTIONS 5-5-202 AND 85-2-105, MCA; AND PROVIDING AN EFFECTIVE DATE 2030

286 *(Senate Bill No. 57; Gillan)* GENERALLY REVISING THE LAWS RELATING TO SPECIAL DISTRICTS; ALLOWING FOR THE CREATION OF SPECIAL DISTRICTS BY LOCAL GOVERNMENTS WORKING INDIVIDUALLY AND JOINTLY; ESTABLISHING UNIFORM STANDARDS FOR THE CREATION, ADMINISTRATION, AND OPERATION OF SPECIAL DISTRICTS BY GOVERNING BODIES AND ELECTED OR APPOINTED BOARDS; ELIMINATING SPECIFIC PROVISIONS RELATING TO CEMETERY DISTRICTS, COUNTY MUSEUMS, FACILITIES FOR THE ARTS, MUSEUM DISTRICTS, COUNTY PARK DISTRICTS, COUNTY FAIR COMMISSIONS, COUNTY

FAIR DISTRICTS, MULTICOUNTY FAIR DISTRICTS, JOINT SOLID WASTE MANAGEMENT DISTRICTS, LOCAL IMPROVEMENT DISTRICTS, MOSQUITO CONTROL DISTRICTS, MULTIJURISDICTIONAL SERVICE DISTRICTS, PARK MAINTENANCE DISTRICTS, ROAD IMPROVEMENT DISTRICTS, RODENT CONTROL DISTRICTS, SOLID WASTE MANAGEMENT DISTRICTS, AND TELEVISION DISTRICTS; GRANTING RULEMAKING AUTHORITY; AMENDING SECTIONS 7-1-201, 7-1-202, 7-6-2527, 7-7-2101, 7-11-1102, 7-11-1112, 7-13-2511, 7-13-2512, 7-14-2138, 7-16-2105, 7-16-2109, 7-21-3411, 7-22-2512, 15-6-201, 20-15-403, 53-30-503, AND 70-30-102, MCA; REPEALING SECTIONS 7-11-1101, 7-11-1105, 7-11-1106, 7-11-1107, 7-11-1111, 7-12-4001, 7-13-201, 7-13-202, 7-13-203, 7-13-204, 7-13-205, 7-13-206, 7-13-207, 7-13-208, 7-13-209, 7-13-210, 7-13-211, 7-13-212, 7-13-213, 7-13-215, 7-13-216, 7-13-217, 7-13-218, 7-13-231, 7-13-232, 7-13-233, 7-13-234, 7-13-235, 7-13-236, 7-13-237, 7-13-301, 7-13-302, 7-13-303, 7-13-304, 7-13-305, 7-13-306, 7-13-307, 7-13-308, 7-13-309, 7-13-310, 7-13-311, 7-13-2501, 7-13-2502, 7-13-2503, 7-13-2504, 7-13-2505, 7-13-2506, 7-13-2507, 7-13-2508, 7-13-2509, 7-13-2510, 7-13-2521, 7-13-2527, 7-13-2528, 7-13-2529, 7-13-2541, 7-13-2542, 7-14-2701, 7-14-2702, 7-14-2703, 7-14-2704, 7-14-2705, 7-14-2706, 7-14-2707, 7-14-2708, 7-14-2709, 7-14-2710, 7-14-2711, 7-14-2712, 7-14-2713, 7-14-2714, 7-14-2715, 7-14-2716, 7-14-2717, 7-14-2718, 7-14-2719, 7-14-2720, 7-14-2721, 7-14-2731, 7-14-2732, 7-14-2733, 7-14-2734, 7-14-2735, 7-14-2736, 7-14-2737, 7-14-2738, 7-14-2739, 7-14-2740, 7-14-2741, 7-14-2742, 7-14-2743, 7-14-2744, 7-14-2745, 7-14-2746, 7-14-2751, 7-14-2752, 7-14-2753, 7-14-2754, 7-14-2755, 7-14-2756, 7-14-2757, 7-14-2758, 7-14-2759, 7-14-2760, 7-14-2761, 7-14-2762, 7-14-2763, 7-14-2901, 7-14-2902, 7-14-2903, 7-14-2907, 7-14-2908, 7-16-2201, 7-16-2202, 7-16-2203, 7-16-2205, 7-16-2211, 7-16-2212, 7-16-2213, 7-16-2214, 7-16-2215, 7-16-2216, 7-16-2217, 7-16-2218, 7-16-2219, 7-16-2401, 7-16-2402, 7-16-2403, 7-16-2411, 7-16-2412, 7-16-2413, 7-16-2421, 7-16-2422, 7-16-2423, 7-16-2431, 7-16-2433, 7-16-2441, 7-16-2442, 7-16-2443, 7-21-3401, 7-21-3406, 7-21-3407, 7-21-3408, 7-21-3409, 7-21-3410, 7-21-3412, 7-21-3413, 7-21-3421, 7-21-3422, 7-21-3423, 7-21-3424, 7-21-3425, 7-21-3426, 7-21-3427, 7-21-3428, 7-21-3429, 7-21-3430, 7-21-3431, 7-21-3432, 7-21-3433, 7-21-3434, 7-21-3435, 7-21-3451, 7-21-3452, 7-21-3453, 7-21-3454, 7-21-3455, 7-21-3456, 7-21-3457, 7-21-3458, 7-22-2207, 7-22-2208, 7-22-2209, 7-22-2210, 7-22-2211, 7-22-2212, 7-22-2213, 7-22-2214, 7-22-2215, 7-22-2216, 7-22-2221, 7-22-2222, 7-22-2223, 7-22-2224, 7-22-2225, 7-22-2226, 7-22-2231, 7-22-2232, 7-22-2233, 7-22-2401, 7-22-2402, 7-22-2403, 7-22-2405, 7-22-2408, 7-22-2409, 7-22-2410, 7-22-2411, 7-22-2415, 7-22-2416, 7-22-2417, 7-22-2418, 7-22-2419, 7-22-2420, 7-22-2431, 7-22-2432, 7-22-2433, 7-22-2434, 7-22-2441, 7-22-2442, 7-22-2443, 7-22-2444, 7-22-2445, 7-22-2446, 7-22-2447, 7-22-2448, 7-35-101, 7-35-102, 7-35-2101, 7-35-2102, 7-35-2103, 7-35-2104, 7-35-2105, 7-35-2106, 7-35-2107, 7-35-2108, 7-35-2109, 7-35-2110, 7-35-2111, 7-35-2112, 7-35-2113, 7-35-2114, 7-35-2115, 7-35-2116, 7-35-2121, 7-35-2122, 7-35-2123, 7-35-2124, 7-35-2125, 7-35-2201, 7-35-2202, 7-35-4101, 7-35-4103, 7-35-4105, 7-35-4106, 7-35-4107, 7-35-4108, AND 7-35-4109, MCA; AND PROVIDING AN EFFECTIVE DATE 2032

287 *(Senate Bill No. 58; Gillan)* GENERALLY REVISING THE LAWS RELATING TO LOCAL GOVERNMENTS; ALLOWING CONTRACTING WITH PRIVATE INSTITUTIONS FOR THE SALE OF BONDS RELATED TO RURAL IMPROVEMENT DISTRICTS AND SPECIAL IMPROVEMENT DISTRICTS; AMENDING SECTIONS 7-12-2172 AND 7-12-4204, MCA; AND PROVIDING AN EFFECTIVE DATE 2056

288 *(Senate Bill No. 62; Laible)* CLARIFYING THE FUNDING FOR THE ENVIRONMENTAL CONTINGENCY ACCOUNT; AMENDING SECTION 15-38-202, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 2057

289 *(Senate Bill No. 113; Keane)* ESTABLISHING A PILOT PROGRAM FOR MECHANIZED EQUIPMENT FUELS REDUCTION ON STATE LANDS WITHIN THE WILDLAND-URBAN INTERFACE AND FOR FIRE SUPPRESSION PURPOSES; REQUIRING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO REPORT TO THE LEGISLATURE; PROVIDING RULEMAKING AUTHORITY; CREATING A MECHANIZED EQUIPMENT FUELS REDUCTION PILOT PROGRAM ACCOUNT; PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE. 2059

290 *(Senate Bill No. 126; Murphy)* PROVIDING FOR A PERMANENT TRANSPORTATION PERMIT FOR RODEO BULLS; ESTABLISHING CONDITIONS FOR ISSUANCE OF THE PERMIT; PROVIDING THAT THE PERMIT IS VALID FOR THE LIFE OF THE BULL OR UNTIL THE BULL CHANGES OWNERSHIP; REQUIRING RECOGNITION BY THE STATE OF VALID PERMANENT TRANSPORTATION PERMITS ISSUED FOR RODEO BULLS IN OTHER JURISDICTIONS; AMENDING SECTIONS 81-3-203 AND 81-3-211, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 2061

291 *(Senate Bill No. 148; Peterson)* GENERALLY REVISING AND CLARIFYING LAWS RELATED TO LOCAL GOVERNMENTS; RECOGNIZING ALTERNATIVE FORMS OF COUNTY GOVERNMENT; REVISING SPECIFIC DOLLAR AMOUNTS IN STATUTES; ELIMINATING ARCHAIC STATUTES; AMENDING SECTIONS 7-3-4465, 7-4-2101, 7-4-2102, 7-4-2104, 7-4-2105, 7-4-2108, 7-4-2111, 7-4-2312, 7-4-2503, 7-4-2504, 7-4-2525, 7-4-2715, 7-5-2129, 7-6-201, 7-6-4413, 7-8-2215, 7-14-2712, 7-21-2116, 7-21-2303, 7-21-2305, 7-21-2306, 7-21-2308, 7-21-2404, 7-21-2407, 7-21-2408, 7-21-2409, 7-21-2410, 7-21-2503, 7-21-2507, 7-21-3101, 7-21-3105, 7-21-3107, 7-21-3212, 7-33-2314, 81-4-505, AND 81-4-509, MCA; AND REPEALING SECTIONS 7-4-4202, 7-14-2713, 7-21-3202, 7-21-3213, 7-31-4102, AND 30-13-112, MCA. 2065

292 *(Senate Bill No. 156; Cooney)* CHANGING THE BEGINNING AND ENDING DATES THAT A CANDIDATE MAY FILE FOR CERTAIN ELECTIONS; CLARIFYING PROVISIONS FOR SPECIAL ELECTIONS CALLED TO FILL A VACANCY IN CONGRESSIONAL OFFICES; AND AMENDING SECTIONS 13-10-201, 13-10-208, 13-10-325, 13-10-326, 13-10-405, 13-10-503, 13-10-601, 13-12-201, 13-14-112, 13-14-113, 13-25-203, 13-25-205, 13-26-103, 13-35-107, AND 13-37-126, MCA 2076

293 *(Senate Bill No. 174; Perry)* CREATING THE PROFESSIONAL CLASSIFICATION OF CLINICAL PHARMACIST PRACTITIONER; PROVIDING DEFINITIONS AND QUALIFICATIONS; REQUIRING THE BOARD OF PHARMACY AND THE BOARD OF MEDICAL EXAMINERS TO ESTABLISH REQUIREMENTS FOR CLINICAL PHARMACIST PRACTITIONERS; AND AMENDING SECTIONS 37-7-101 AND 37-7-201, MCA. 2082

294 *(Senate Bill No. 202; Hinkle)* PROHIBITING THE FEEDING OF CERTAIN WILDLIFE; AMENDING SECTION 87-3-130, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 2088

295 *(Senate Bill No. 280; Gebhardt)* REVISING THE EXEMPTION OF CERTAIN PERSONAL PROPERTY OF A RENTAL PROPERTY BUSINESS BY EXTENDING THE EXEMPTION TO THE PERSONAL

PROPERTY RENTED ON A SEMIMONTHLY OR MONTHLY BASIS; AMENDING SECTION 15-6-219, MCA; AND PROVIDING AN APPLICABILITY DATE 2089

296 *(Senate Bill No. 424; Barkus)* ESTABLISHING THE MERCURY-ADDED THERMOSTAT COLLECTION ACT; BANNING MERCURY-ADDED THERMOSTAT SALES AND INSTALLATION; REQUIRING COLLECTION AND RECYCLING OF MERCURY-ADDED THERMOSTATS; PROVIDING RULEMAKING AUTHORITY; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 2090

297 *(House Bill No. 19; Ingraham)* CLARIFYING STATE ELECTION LAWS TO PROVIDE FOR CONSISTENT TREATMENT AMONG POLLING PLACE, ABSENTEE, MAIL, AND PROVISIONAL BALLOT PROVISIONS; PROVIDING DEFINITIONS; CLARIFYING PUBLIC NOTICE REQUIREMENTS; CREATING MORE CONSISTENCY BETWEEN THE ADMINISTRATION OF SCHOOL ELECTIONS AND OTHER ELECTIONS BY REQUIRING TRAINING AND REVISING PAYMENT FOR SCHOOL ELECTION JUDGES; CLARIFYING HOW TO HANDLE TIE VOTES IN A SCHOOL TRUSTEE ELECTION; ELIMINATING OUTDATED PROVISIONS; AND AMENDING SECTIONS 13-1-101, 13-1-108, 13-1-113, 13-1-115, 13-2-110, 13-2-116, 13-2-220, 13-2-222, 13-2-301, 13-2-304, 13-2-402, 13-3-205, 13-3-206, 13-4-102, 13-4-106, 13-4-202, 13-4-203, 13-10-211, 13-13-204, 13-13-205, 13-13-212, 13-13-213, 13-13-214, 13-13-222, 13-13-241, 13-13-301, 13-15-107, 13-17-103, 13-17-203, 13-17-212, 13-19-102, 13-19-105, 13-19-106, 13-19-204, 13-19-205, 13-19-206, 13-19-207, 13-19-301, 13-19-303, 13-19-304, 13-19-305, 13-19-306, 13-19-307, 13-19-308, 13-19-310, 13-19-311, 13-19-312, 13-19-313, 13-19-314, 13-21-203, 13-21-210, 13-27-311, 13-37-226, 20-20-107, AND 20-20-203, MCA 2095

298 *(House Bill No. 34; Wilmer)* REVISING TEACHERS' RETIREMENT SYSTEM LAWS; SUSPENDING RETIREMENT BENEFITS WHEN MEMBERS RETURN TO FULL-TIME EMPLOYMENT COVERED BY THE TEACHERS' RETIREMENT SYSTEM AND PROVIDING FOR THE CALCULATION OF A SECOND BENEFIT; REQUIRING EMPLOYER CONTRIBUTIONS ON WAGES PAID TO RETIRED MEMBERS; CLARIFYING THE EFFECTIVE DATE OF RETIREMENT OF A MEMBER WHO TERMINATES WITHIN 30 DAYS OF THE END OF A SCHOOL YEAR; AMENDING SECTIONS 19-20-501, 19-20-605, 19-20-703, AND 19-20-731, MCA; AND PROVIDING AN EFFECTIVE DATE 2127

299 *(House Bill No. 409; Pomnichowski)* ESTABLISHING A CANCER DRUG REPOSITORY PROGRAM AND PARTICIPANT REGISTRY; PROVIDING DEFINITIONS; PROVIDING IMMUNITY; AND AMENDING SECTIONS 37-7-101, 37-7-1401, 37-7-1402, AND 37-7-1408, MCA. 2134

300 *(House Bill No. 420; Reinhart)* PROVIDING THAT A COUNTY, CITY, OR TOWN WITH A BUILDING CODE ENFORCEMENT PROGRAM MAY ADOPT INCENTIVE-BASED ENERGY CONSERVATION STANDARDS FOR NEW CONSTRUCTION; PROVIDING THAT THE INCENTIVE-BASED ENERGY CONSERVATION STANDARDS ADOPTED MAY EXCEED ANY APPLICABLE ENERGY CONSERVATION STANDARDS CONTAINED IN THE STATE BUILDING CODE; AND AMENDING SECTIONS 50-60-102, 50-60-106, 50-60-301, AND 50-60-802, MCA 2142

301 *(House Bill No. 443; Menahan)* CLARIFYING THE AUTHORITY OF THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO MANAGE CERTAIN SPECIES; REVISING THE DEFINITION OF

"MANAGEMENT"; AMENDING SECTION 87-5-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 2146

302 *(House Bill No. 451; Ebinger)* REQUIRING GENERAL CONTRACTORS AND BUILDERS OR DEVELOPERS TO DISCLOSE CERTAIN INFORMATION AND TO PROVIDE EXPRESS WARRANTIES WITH RESPECT TO THE BUILDING OR SALE OF NEW RESIDENCES . . . 2148

303 *(House Bill No. 475; Phillips)* RELATING TO ELECTRONIC-FORMAT RULES AND RULEMAKING NOTICES, ELECTRONIC RULEMAKING SERVICES, AND FEES FOR THOSE RULES, NOTICES, AND SERVICES CHARGED BY THE SECRETARY OF STATE; AND AMENDING SECTIONS 2-4-305, 2-4-306, 2-4-311, AND 2-4-313, MCA. 2149

304 *(House Bill No. 480; Pomnichowski)* AUTHORIZING NONRESIDENT YOUTH TO HUNT UPLAND GAME BIRDS AND MIGRATORY BIRDS WITH THE PURCHASE OF A CLASS B-1 NONRESIDENT UPLAND GAME BIRD LICENSE AT A DISCOUNTED PRICE; AMENDING SECTIONS 87-1-270 AND 87-2-805, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 2153

305 *(House Bill No. 488; Jones)* REVISING TERRITORY TRANSFER LAWS RELATING TO SCHOOL DISTRICTS; AMENDING SECTION 20-6-105, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 2157

306 *(House Bill No. 499; French)* REVISING LAWS RELATED TO THE UPLAND GAME BIRD ENHANCEMENT PROGRAM; ESTABLISHING A CITIZENS' ADVISORY COUNCIL; AUTHORIZING DEVELOPMENT OF A STRATEGIC PROGRAM PLAN; REVISING REPORTING REQUIREMENTS; AMENDING SECTIONS 87-1-247 AND 87-1-250, MCA; AND PROVIDING AN EFFECTIVE DATE 2159

307 *(House Bill No. 546; Pomnichowski)* PROVIDING THAT A PRIVATE ENTITY MAY NOT, AS A CONDITION OF PROPERTY OWNERSHIP WITHIN THE JURISDICTION OF THE PRIVATE ENTITY OR BY OTHER MEANS, PROHIBIT THE PLACEMENT OF A SIGN ADVOCATING THE ELECTION, APPOINTMENT, OR DEFEAT OF A CANDIDATE FOR PUBLIC OFFICE OR THE PASSAGE OR DEFEAT OF A BALLOT ISSUE ON PROPERTY BELONGING TO AN INDIVIDUAL OR JOINT OWNER WHO AUTHORIZES THE SIGN TO BE PLACED ON PROPERTY BELONGING TO THE OWNER OR ON COMMON AREAS IN WHICH THE OWNER OWNS AN UNDIVIDED INTEREST; ALLOWING FOR REGULATION OF SIGN SIZE AND PLACEMENT; AND AMENDING SECTIONS 70-1-521, 70-17-203, 70-17-204, 70-17-206, 70-20-306, 70-23-308, 70-23-506, AND 70-23-601, MCA 2162

308 *(House Bill No. 567; Sonju)* GENERALLY REVISING NEW MOTOR VEHICLE FRANCHISING LAWS; REVISING DEFINITIONS; MODIFYING CLAIMS PROCEDURES BETWEEN FRANCHISORS AND NEW MOTOR VEHICLE DEALERS; REVISING PROCEDURES FOR CANCELLING OR TERMINATING FRANCHISE AGREEMENTS; REVISING PROVISIONS PERTAINING TO PROHIBITED ACTS; AMENDING SECTIONS 61-4-201, 61-4-202, 61-4-204, 61-4-205, 61-4-207, 61-4-208, AND 61-4-210, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 2164

309 *(House Bill No. 635; McChesney)* REPEALING THE MONTANA EQUITY CAPITAL INVESTMENT ACT; AMENDING SECTIONS 33-2-705 AND 90-1-112, MCA; REPEALING SECTIONS 15-30-184, 15-31-152, 90-10-101, 90-10-102, 90-10-103, 90-10-201, 90-10-202, 90-10-301, 90-10-302, 90-10-303, 90-10-304, 90-10-305, 90-10-306, 90-10-307, 90-10-308, 90-10-309, AND 90-10-310, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 2176

310 *(Senate Bill No. 26; Murphy)* REVISING THE REGULATION OF ECONOMIC CREDENTIALING OF PHYSICIANS; MODIFYING ECONOMIC CREDENTIALING REGULATIONS TO INCLUDE OUTPATIENT CENTERS FOR SURGICAL SERVICES AND TO EXCLUDE DIAGNOSTIC FACILITIES; DEFINING "CONFLICT OF INTEREST"; REVISING REGULATORY AUTHORITY OF DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES; RETAINING THE RESTRICTION ON HOSPITALS LIMITING MEMBERSHIP OR PRIVILEGES; AMENDING SECTIONS 50-5-117 AND 50-5-207, MCA; REPEALING SECTION 6, CHAPTER 351, LAWS OF 2007; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 2178

311 *(Senate Bill No. 76; Black)* REVISING THE PERCENTAGE OWNERSHIP REQUIREMENTS FOR APPROVAL OF UNIT PLAN OPERATIONS BY PERSONS PAYING THE COSTS OF UNIT OPERATIONS; AMENDING SECTION 82-11-207, MCA; AND PROVIDING AN EFFECTIVE DATE . 2181

312 *(Senate Bill No. 84; Gillan)* AUTHORIZING THE MONTANA CORRECTIONAL ENTERPRISES PROGRAM; REORGANIZING STATUTES DEALING WITH MONTANA CORRECTIONAL ENTERPRISES; AMENDING SECTIONS 39-71-118, 53-1-202, 53-30-131, 53-30-132, 53-30-133, AND 61-3-478, MCA; REPEALING SECTIONS 53-1-301, 53-1-302, 53-1-303, AND 53-1-304, MCA; AND PROVIDING A RETROACTIVE APPLICABILITY DATE. 2182

313 *(Senate Bill No. 127; Gillan)* REVISING LAWS RELATING TO INSURANCE PRODUCERS; REVISING INSURANCE PRODUCER LICENSING; PROVIDING DEFINITIONS; AMENDING SECTIONS 33-2-301, 33-2-305, 33-2-306, 33-17-102, 33-17-212, 33-17-214, 33-17-1001, AND 33-17-1203, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE 2192

314 *(Senate Bill No. 193; McGee)* REQUIRING THE PRESERVATION OF MONUMENTS FOR THE PURPOSES OF LAND SURVEYS 2200

315 *(Senate Bill No. 226; Hawks)* AUTHORIZING THE TEMPORARY LICENSURE OF NONRESIDENT DENTISTS AND DENTAL HYGIENISTS TO PROVIDE VOLUNTARY SERVICES TO PERSONS SERVED BY UNIVERSITY CLINICS, CORRECTIONAL FACILITY CLINICS, AND CERTAIN FEDERALLY FUNDED CLINICS 2201

316 *(Senate Bill No. 247; Black)* REVISING LAWS RELATED TO NONFERROUS METAL TRANSACTIONS; REQUIRING SALVAGE METAL DEALERS TO MAINTAIN AND RETAIN NONFERROUS METAL ACQUISITION RECORDS; AUTHORIZING INSPECTION OF THOSE RECORDS; AND PROVIDING THAT A VIOLATION CONSTITUTES A MISDEMEANOR 2202

317 *(Senate Bill No. 269; Brown)* GENERALLY REVISING LAWS REGULATING THE SALE OF TIMESHARES; REVISING DEFINITIONS; REVISING THE BOARD OF REALTY REGULATION'S RULEMAKING AUTHORITY; REVISING REGISTRATION APPLICATION PROCEDURES; SUBSTITUTING "PUBLIC OFFERING STATEMENT" FOR "DISCLOSURE DOCUMENT"; REQUIRING NOTICE TO THE BOARD OF ANY CHANGES IN A TIMESHARE OFFERING; EXPANDING THE EXEMPTIONS FROM REGISTRATION FOR TIMESHARE OFFERINGS; AMENDING SECTIONS 37-53-102, 37-53-104, 37-53-202, 37-53-203, 37-53-204, 37-53-205, 37-53-301, 37-53-302, 37-53-303, 37-53-304, 37-53-307, AND 37-53-308, MCA; REPEALING SECTIONS 37-53-211, 37-53-212, 37-53-214, 37-53-401, 37-53-402, 37-53-403, 37-53-504, AND 37-53-505, MCA 2203

318 *(Senate Bill No. 292; Gebhardt)* PROVIDING FOR A REDUCED SEVERANCE TAX RATE ON COAL RECOVERED FROM A STRIP MINE BY AUGER MINING; AMENDING SECTIONS 15-35-102 AND 15-35-103, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE 2211

319 *(Senate Bill No. 299; Tropila)* REVISING THE APPOINTMENT, QUALIFICATIONS, AND DUTIES OF NOTARIES PUBLIC; REQUIRING TRAINING IN SPECIFIED CIRCUMSTANCES; REQUIRING THAT A JOURNAL BE KEPT; REQUIRING THE DESTRUCTION OF THE NOTARY PUBLIC'S STAMP AND SEAL UPON TERMINATION FROM OFFICE; AMENDING SECTIONS 1-5-401, 1-5-402, 1-5-416, 1-5-419, AND 1-5-610, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE . . . 2213

320 *(Senate Bill No. 330; Moss)* STATING ACCOUNTABILITY AS A PURPOSE AND POLICY OF THE STATE FOR SERVICES FOR OLDER MONTANANS; PROVIDING A PROCESS TO ACHIEVE ACCOUNTABILITY AND REQUIRING REPORTS; AND AMENDING SECTION 52-3-503, MCA 2217

321 *(Senate Bill No. 351; Essmann)* GENERALLY REVISING MORTGAGE LENDING LAWS; EXPANDING THE MORTGAGE BROKER AND LOAN ORIGINATOR ACT TO INCLUDE MORTGAGE LENDERS; IMPLEMENTING PROVISIONS OF THE FEDERAL SECURE AND FAIR ENFORCEMENT FOR MORTGAGE LICENSING ACT OF 2008 WITH RESPECT TO MORTGAGE BROKERS, MORTGAGE LENDERS, AND MORTGAGE LOAN ORIGINATORS; PROVIDING FOR A REGISTERED AGENT FOR MORTGAGE BROKERS, MORTGAGE LENDERS, AND MORTGAGE LOAN ORIGINATORS WITHOUT AN IN-STATE OFFICE; REPEALING THE MONTANA RESIDENTIAL MORTGAGE LENDER LICENSING ACT; AMENDING SECTIONS 32-9-101, 32-9-102, 32-9-103, 32-9-104, 32-9-109, 32-9-110, 32-9-116, 32-9-117, 32-9-118, 32-9-121, 32-9-122, 32-9-123, 32-9-124, 32-9-125, 32-9-126, 32-9-130, AND 32-9-133, MCA; REPEALING SECTIONS 32-9-108, 32-9-115, 32-9-119, 32-10-101, 32-10-102, 32-10-103, 32-10-201, 32-10-202, 32-10-203, 32-10-204, 32-10-207, 32-10-208, 32-10-209, 32-10-301, 32-10-302, 32-10-303, 32-10-309, 32-10-310, 32-10-401, 32-10-402, 32-10-403, 32-10-404, 32-10-405, 32-10-406, 32-10-501, 32-10-502, 32-10-503, 32-10-504, 32-10-505, 32-10-506, 32-10-507, 32-10-512, 32-10-513, 32-10-514, AND 32-10-515, MCA; AND PROVIDING AN EFFECTIVE DATE 2218

322 *(Senate Bill No. 353; Black)* ELIMINATING THE LICENSE TAX RATE REDUCTION FOR ETHANOL; AMENDING SECTION 15-70-204, MCA; AND PROVIDING AN EFFECTIVE DATE. 2246

323 *(Senate Bill No. 361; Ripley)* REVISING LAWS RELATING TO TAX LIENS; PROVIDING THAT A COUNTY TREASURER MAY ALLOW A PURCHASER OF A PROPERTY TAX LIEN TO USE AN AFFIDAVIT OF COSTS IN LIEU OF PRODUCING THE RECEIPTS OF COSTS; PROVIDING THAT THE NOTICE OF PAYMENT FOR A TAX LIEN SALE CERTIFICATE MAY NOT BE MADE MORE THAN 60 DAYS PRIOR TO THE DATE OF PAYMENT; AND AMENDING SECTIONS 15-17-121 AND 15-17-212, MCA 2247

324 *(Senate Bill No. 375; Peterson)* PROVIDING THAT A STATE BANK, CREDIT UNION, OR MORTGAGE LENDER MAY NOT REQUIRE A BORROWER, AS A CONDITION OF OBTAINING OR MAINTAINING A LOAN SECURED BY REAL PROPERTY, TO PROVIDE INSURANCE ON IMPROVEMENTS TO REAL PROPERTY IN AN AMOUNT THAT EXCEEDS THE REASONABLE REPLACEMENT VALUE OF THE IMPROVEMENTS; AND AMENDING SECTIONS 32-1-430, 32-3-604, AND 32-10-401, MCA 2249

325 *(Senate Bill No. 388; Gillan)* CREATING AN INCUMBENT WORKER TRAINING PROGRAM; PROVIDING CRITERIA FOR PARTICIPATION AND FOR AWARDS; AND PROVIDING RULEMAKING AUTHORITY . 2251

326 *(Senate Bill No. 401; Laslovich)* REQUIRING THE BOARD OF MEDICAL EXAMINERS TO ENSURE THAT A LICENSEE WHO IS REQUIRED TO PARTICIPATE IN A REHABILITATION PROGRAM MUST BE ALLOWED TO ENROLL IN A QUALIFIED PROGRAM WITHIN MONTANA IF ONE IS AVAILABLE; AMENDING SECTIONS 37-3-203, 37-3-208, AND 37-3-401, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 2255

327 *(Senate Bill No. 441; Laslovich)* GENERALLY REVISING LAWS RELATING TO JUDGMENTS AND COLLECTIONS; CLARIFYING THE STATUTE OF LIMITATIONS FOR BRINGING AN ACTION TO COLLECT EXPENSES INCURRED BY EITHER SPOUSE FOR FAMILY EXPENSES OR CHILDREN'S EDUCATION; PROVIDING THAT WHEN A JUDGMENT IS FOR A FINE AND IMPRISONMENT, THE COURT MAY ORDER EXECUTION ON THE FINE PORTION OF THE JUDGMENT; AND AMENDING SECTIONS 40-2-106 AND 46-19-102, MCA. 2257

328 *(Senate Bill No. 444; Laslovich)* CLARIFYING THE APPLICATION OF THE UNIFORM PRUDENT MANAGEMENT OF INSTITUTIONAL FUNDS ACT TO PROPERTY CONTRIBUTED PRIOR TO OCTOBER 1, 2007; AMENDING SECTIONS 72-30-102, 72-30-207, 72-30-208, 72-30-209, AND 72-30-210, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 2258

329 *(Senate Bill No. 449; Keane)* AUTHORIZING THE BOARD OF OIL AND GAS CONSERVATION TO PROMOTE THE STATE'S OIL AND GAS INDUSTRY, TO ENCOURAGE EFFICIENT ENERGY USE, TO PROMOTE ENVIRONMENTALLY SOUND EXPLORATION AND PRODUCTION METHODS AND TECHNOLOGIES, TO DEVELOP THE STATE'S OIL AND GAS RESOURCES, AND TO SUPPORT RESEARCH AND EDUCATIONAL ACTIVITIES CONCERNING THE OIL AND NATURAL GAS EXPLORATION AND PRODUCTION INDUSTRY; ALLOWING COORDINATION WITH MONTANA TECH OF THE UNIVERSITY OF MONTANA; AUTHORIZING THE BOARD TO MAKE LOANS OR GRANTS, ENTER INTO CONTRACTS OR AGREEMENTS, ACCEPT FUNDS, AND DISTRIBUTE MONEY; AND AMENDING SECTION 82-11-111, MCA 2262

330 *(House Bill No. 42; Vincent)* REQUIRING THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO ADDRESS FIRE MITIGATION, PINE BEETLE INFESTATION, AND WILDLIFE HABITAT ENHANCEMENT FOR CERTAIN LANDS UNDER DEPARTMENT JURISDICTION; ESTABLISHING A FOREST MANAGEMENT SPECIAL REVENUE ACCOUNT; PROVIDING A STATUTORY APPROPRIATION; AMENDING SECTIONS 17-7-502, 87-1-201, AND 87-1-601, MCA; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE. . . . 2264

331 *(House Bill No. 150; Brown)* CREATING THE MONTANA RECREATION RESPONSIBILITY ACT; PROVIDING THAT A PERSON WHO ENGAGES IN A SPORT OR RECREATIONAL OPPORTUNITY ASSUMES THE INHERENT RISKS IN THAT SPORT OR RECREATIONAL OPPORTUNITY AND IS RESPONSIBLE FOR INJURIES AND DAMAGES RESULTING FROM THOSE INHERENT RISKS; LIMITING THE LIABILITY OF THE PROVIDERS OF A SPORT OR RECREATIONAL OPPORTUNITY; PROVIDING GOVERNMENTAL IMMUNITY; CLARIFYING THAT A PROVIDER IS NOT REQUIRED TO ELIMINATE, ALTER, OR CONTROL THE INHERENT RISKS WITHIN A

PARTICULAR SPORT OR RECREATIONAL OPPORTUNITY; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE 2269

332 *(House Bill No. 228; Kerns)* PRESERVING AND CLARIFYING LAWS RELATING TO THE RIGHT OF SELF-DEFENSE AND THE RIGHT TO BEAR ARMS; AMENDING SECTIONS 45-3-103, 45-8-321, AND 46-6-502, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 2271

333 *(House Bill No. 238; Milburn)* ESTABLISHING A STATE TEEN DRIVER SAFETY DAY AS AN OFFICIAL DAY OF OBSERVANCE IN MONTANA TO PROMOTE TEEN DRIVER EDUCATION AND SAFETY. 2275

334 *(House Bill No. 262; Ebinger)* REVISING THE DEFINITION OF "LOW-EMISSION WOOD OR BIOMASS COMBUSTION DEVICE" TO INCLUDE A MASONRY HEATER AND AN OUTDOOR HYDRONIC HEATER FOR THE PURPOSE OF CLAIMING THE TAX CREDIT FOR INSTALLING AN ALTERNATIVE ENERGY SYSTEM; AMENDING SECTIONS 15-32-102 AND 15-32-201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE 2276

335 *(House Bill No. 269; Mehlhoff)* REVISING THE DOLLAR RATE AT WHICH FINES FOR CERTAIN CRIMINAL OFFENSES WILL BE SATISFIED BASED ON EACH DAY OF IMPRISONMENT; AMENDING SECTIONS 46-17-302 AND 61-7-118, MCA; AND PROVIDING AN EFFECTIVE DATE 2278

336 *(House Bill No. 280; Hunter)* SPECIFYING THAT NEW COMMUNITY HEALTH CENTERS MAY RECEIVE STATE FUNDING FOR A MAXIMUM OF 6 YEARS; AMENDING SECTION 50-4-805, MCA; AND PROVIDING AN EFFECTIVE DATE. 2279

337 *(House Bill No. 306; Morgan)* REQUIRING THE DEPARTMENT OF JUSTICE TO DESIGN AND ISSUE SPECIAL MOTORCYCLE LICENSE PLATES FOR MILITARY PERSONNEL, VETERANS, AND SPOUSES; REQUIRING THE DONATION FOR A PLATE TO BE DEPOSITED INTO THE SPECIAL REVENUE ACCOUNT FOR THE STATE VETERANS' CEMETERIES; AMENDING SECTIONS 61-3-455 AND 61-3-458, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE 2280

338 *(House Bill No. 318; Kottel)* REGULATING DEBT SETTLEMENT PROVIDERS; PROVIDING DEFINITIONS; PROVIDING INSURANCE AND ACCOUNTING REQUIREMENTS FOR DEBT SETTLEMENT PROVIDERS; ESTABLISHING PROHIBITED PRACTICES FOR DEBT SETTLEMENT PROVIDERS; AND PROVIDING REMEDIES 2283

339 *(House Bill No. 322; Blewett)* REQUIRING A PERSON PROPOSED, NOMINATED, OR APPOINTED AS A NEUTRAL ARBITRATOR TO DISCLOSE A CONFLICT OF INTEREST; PROVIDING FOR VACATING AN AWARD BECAUSE OF A FAILURE TO DISCLOSE A CONFLICT OF INTEREST; AND AMENDING SECTIONS 27-5-211 AND 27-5-312, MCA 2286

340 *(House Bill No. 356; Wagner)* REVISING THE USE OF PORTABLE SCALES; REQUIRING PORTABLE SCALES TO BE USED ON ENGINEERED SITES; DEFINING "ENGINEERED SITE"; AND AMENDING SECTIONS 61-10-141 AND 61-10-144, MCA 2289

341 *(House Bill No. 384; Villa)* GENERALLY REVISING THE MONTANA UNIFIED VOLUME CAP BOND ALLOCATION PLAN ACT; INCREASING THE FEE FOR ISSUANCE OF THE BONDS; PROVIDING THAT AS A CONDITION TO ISSUING BONDS EACH ISSUER IS REQUIRED TO PROVIDE THE LEGISLATIVE AUDITOR WITH FULL ACCESS TO ITS FINANCIAL RECORDS; PROVIDING THAT AS A

CONDITION OF ISSUING BONDS THE MONTANA HIGHER EDUCATION STUDENT ASSISTANCE CORPORATION IS REQUIRED TO COMPLY WITH OPEN MEETING LAWS AND PROVIDE THE LEGISLATIVE AUDITOR WITH FULL ACCESS TO ANY MANAGEMENT OR LOAN SERVICING CONTRACTS; AMENDING SECTIONS 17-5-1302, 17-5-1312, AND 17-5-2201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 2291

342 *(House Bill No. 449; McChesney)* GENERALLY REVISING STATE AND LOCAL GOVERNMENT LAWS RELATED TO FINANCE; REVISING NOTICE INFORMATION IN CONNECTION WITH INTENTION TO CREATE A RURAL SPECIAL IMPROVEMENT DISTRICT; REVISING PROTEST PROVISIONS FOR THE CREATION OR EXTENSION OF A RURAL SPECIAL IMPROVEMENT DISTRICT; ALTERING THE TIME FOR CANVASSING OF VOTES FOR WATER AND SEWER DISTRICT ELECTIONS; CLARIFYING CHARGES FOR SERVICES; CLARIFYING THE LEVY OF DISTRICT WATER OR SEWER TAX TO PAY EXPENSES OF OR CLAIMS AGAINST THE DISTRICT; REMOVING CONDITIONS PLACED ON STATE REFUNDING BONDS; CLARIFYING THE ACCOUNTS FOR DEPOSIT OF PROCEEDS OF, AND THE USE OF BOND PREMIUMS ON, STATE GENERAL OBLIGATION BONDS; REMOVING THE REQUIREMENT THAT REVISED MUNICIPAL UTILITY RATE SCHEDULES BE FILED WITH THE PUBLIC SERVICE COMMISSION; EXTENDING THE MAXIMUM TERM OF LOAN UNDER WATER POLLUTION CONTROL STATE REVOLVING FUND PROGRAM IN CERTAIN CIRCUMSTANCES; AMENDING SECTIONS 7-12-2103, 7-12-2105, 7-12-2109, 7-12-2112, 7-13-2256, 7-13-2301, 7-13-2302, 17-5-305, 17-5-803, 69-7-112, AND 75-5-1113, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 2293

343 *(House Bill No. 487; McNutt)* PROVIDING THAT FARM IMPLEMENTS OR CONSTRUCTION EQUIPMENT THAT IS RENTED UNDER A PURCHASE INCENTIVE RENTAL PROGRAM IS CONSIDERED BUSINESS INVENTORY FOR THE PURPOSE OF EXEMPTION FROM PROPERTY TAXATION; REQUIRING THAT PROPERTY MUST MEET CERTAIN CONDITIONS TO QUALIFY AS PURCHASE INCENTIVE RENTAL PROGRAM PROPERTY; AMENDING SECTIONS 15-6-138, 15-6-202, AND 15-24-301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE 2301

344 *(House Bill No. 562; Cohenour)* ALLOWING A SCHOOL DISTRICT THAT HAS PROPERTY SUBJECT TO PENDING PROPERTY TAX PROTESTS TO WAIVE THE DISTRICT'S RIGHT TO RECEIVE ITS PORTION OF THE PROTESTED TAXES UPON SETTLEMENT OF THE TAX PROTEST; PROVIDING THAT A DISTRICT THAT HAS WAIVED ITS RIGHT TO RECEIVE ITS PORTION OF PROTESTED PROPERTY TAXES WILL HAVE ITS GUARANTEED TAX BASE AID DETERMINED ON PROPERTY VALUE THAT DOES NOT INCLUDE THE VALUE OF THE PROTESTED PROPERTY; AMENDING SECTION 15-1-402, MCA; AND PROVIDING AN APPLICABILITY DATE 2304

345 *(House Bill No. 585; McClafferty)* PROMOTING MONTANA'S FAMILY HUNTING HERITAGE BY CREATING NONRESIDENT COMBINATION HUNTING LICENSES THAT MAY BE USED BY ADULT NONRESIDENT FAMILY MEMBERS WHO WISH TO RETURN TO MONTANA TO HUNT WITH A SPONSOR OR FAMILY MEMBER; ESTABLISHING THE TERMS AND CONDITIONS OF LICENSURE AND SPONSORSHIP; DEDICATING MONEY FROM THE SALE OF THE LICENSES TO THE ACQUISITION OF PUBLIC HUNTING ACCESS TO INACCESSIBLE PUBLIC LAND; AND PROVIDING A DELAYED EFFECTIVE DATE AND A TERMINATION DATE 2307

346 *(House Bill No. 608; Sesso)* AUTHORIZING LOCAL GOVERNMENTS TO EXECUTE A LIEN FOR PURPOSES OF DEBRIS REMOVAL; AMENDING SECTIONS 27-18-101, 27-18-202, 27-18-203, 27-18-204, AND 27-18-1502, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 2309

347 *(House Bill No. 622; Himmelberger)* REVISING LAWS RELATING TO CONSTITUENT ACCOUNTS; EXPANDING THE PERSONS WHO MAY ESTABLISH A CONSTITUENT ACCOUNT; REQUIRING THAT MONEY REMAINING IN A CONSTITUENT SERVICES ACCOUNT ESTABLISHED PRIOR TO MAY 14, 2007, MUST BE DONATED TO CHARITY OR DEPOSITED TO A NEW CONSTITUENT SERVICES ACCOUNT; AMENDING SECTION 13-37-402, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE 2311

348 *(House Bill No. 628; Stoker)* PROVIDING A STATUTE OF LIMITATIONS FOR PROSECUTION OF CARELESS DRIVING RESULTING IN DEATH AND RECKLESS DRIVING RESULTING IN DEATH; AND AMENDING SECTIONS 45-1-205 AND 61-5-405, MCA 2312

349 *(House Bill No. 630; Sands)* REVISING LAWS RELATED TO REVOLVING FUNDS FOR RURAL IMPROVEMENT DISTRICTS AND SPECIAL IMPROVEMENT DISTRICTS; INCREASING THE AMOUNT OF MONEY THAT MAY BE REQUIRED FOR DEPOSIT IN REVOLVING FUNDS WHEN USED TO SECURE BONDS OR WARRANTS FOR IMPROVEMENTS; MAKING THE PURPOSES FOR WHICH EXCESS FUNDS IN RURAL IMPROVEMENT DISTRICT REVOLVING FUNDS MAY BE USED COMPARABLE TO THOSE OF SPECIAL IMPROVEMENT DISTRICT REVOLVING FUNDS; AMENDING SECTIONS 7-12-2153, 7-12-2182, 7-12-2185, 7-12-2186, 7-12-4169, 7-12-4222, 7-12-4225, AND 7-12-4227, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 2314

350 *(House Bill No. 653; Pomnichowski)* PROVIDING FOR THE ADJUSTMENT OF BASE TAXABLE VALUE IN AN URBAN RENEWAL AREA, AN INDUSTRIAL DISTRICT, OR A TECHNOLOGY DISTRICT FOR TAX INCREMENT FINANCING PURPOSES BECAUSE OF A LOCAL DISASTER; AMENDING SECTION 7-15-4293, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE. 2321

351 *(Senate Bill No. 8; Hansen)* ALLOWING FOR THE CREATION AND EXPANSION OF REGIONAL RESOURCE AUTHORITIES; GRANTING A REGIONAL RESOURCE AUTHORITY CERTAIN POWERS; AUTHORIZING THE ISSUANCE OF REVENUE BONDS TO FUND PROJECTS; AMENDING SECTIONS 2-7-501, 7-6-4020, 7-6-4035, AND 15-10-420, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 2322

352 *(Senate Bill No. 32; Barkus)* PROVIDING THAT CERTIFICATION OF A PERSON AS DISABLED FOR PURPOSES OF OBTAINING A PERMIT TO HUNT FROM A VEHICLE MAY BE ENDORSED BY A LICENSED CHIROPRACTOR IN ADDITION TO CERTAIN OTHER MEDICAL CARE PROVIDERS; AMENDING SECTION 87-2-803, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 2334

353 *(Senate Bill No. 73; Hawks)* REVISING THE DEFINITION OF MEDIUM-SPEED ELECTRIC VEHICLE; AND AMENDING SECTION 61-1-101, MCA 2337

354 *(Senate Bill No. 79; Juneau)* DEFINING "NONEMERGENCY AMBULANCE TRANSPORT" AND "VOLUNTEER EMERGENCY MEDICAL TECHNICIAN"; ESTABLISHING STAFFING

REQUIREMENTS FOR CERTAIN AMBULANCE TRANSPORTS; AMENDING SECTION 50-6-302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 2348

355 *(Senate Bill No. 86; Tropila)* GENERALLY REVISING GAMBLING LAWS; REVISING DEFINITIONS; REQUIRING THE SUBMISSION OF FINGERPRINTS FOR THE PURPOSE OF CRIMINAL BACKGROUND CHECKS BY LICENSE APPLICANTS; PROVIDING FOR A LICENSE FOR ASSOCIATED GAMBLING BUSINESSES; REQUIRING APPROVAL OF CERTAIN BINGO CARDS; REMOVING CERTAIN RESTRICTIONS ON RAFFLE PRIZES; AMENDING SECTIONS 23-5-112, 23-5-115, 23-5-157, 23-5-324, 23-5-412, 23-5-413, AND 23-5-621, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE 2349

356 *(Senate Bill No. 108; Jent)* REVISING CUSTODY LAWS RELATING TO MILITARY SERVICE; PRECLUDING A COURT FROM CONSIDERING MILITARY SERVICE ALONE AS A DETRIMENT TO THE BEST INTEREST OF THE CHILD IN CHILD CUSTODY PROCEEDINGS; ESTABLISHING AN EXPEDITED HEARING PROCEDURE WHEN A PARENT RECEIVES MILITARY SERVICE ORDERS; PROVIDING THAT A COURT-ORDERED MODIFICATION OF A PARENTING PLAN BASED ON MILITARY SERVICE ORDERS OF A PARENT IS TEMPORARY; ALLOWING VISITATION RIGHTS TO CERTAIN FAMILY MEMBERS WHEN A PARENT RECEIVES MILITARY SERVICE ORDERS; PRECLUDING A COURT FROM CONSIDERING MILITARY SERVICE ALONE IN PARENTING PLANS; AND AMENDING SECTIONS 40-4-212, 40-4-216, 40-4-219, 40-4-228, AND 40-4-234, MCA. 2358

357 *(Senate Bill No. 198; Lewis)* CLASSIFYING CERTAIN BIOMASS GENERATION FACILITIES UP TO 25 MEGAWATTS IN NAMEPLATE CAPACITY AS CLASS FOURTEEN PROPERTY; INCLUDING CLASS FOURTEEN BIOMASS GENERATION FACILITIES WITH WIND GENERATION FACILITIES RELATING TO CERTAIN TRANSMISSION LINES AS FACILITIES UNDER THE MAJOR FACILITY SITING ACT; AMENDING SECTIONS 15-6-137, 15-6-141, 15-6-156, 15-6-157, AND 75-20-104, MCA; AND PROVIDING AN APPLICABILITY DATE 2364

358 *(Senate Bill No. 231; Laible)* REQUIRING A GOVERNMENTAL ENTITY TO PREPARE A SERVICE AREA REPORT TO DOCUMENT THE CALCULATION OF IMPACT FEES; AMENDING SECTIONS 7-6-1602, AND 7-6-1603, MCA; AND PROVIDING AN EFFECTIVE DATE. 2371

359 *(Senate Bill No. 234; Gillan)* REQUIRING INSURANCE COVERAGE FOR AUTISM SPECTRUM DISORDERS; AMENDING SECTIONS 33-1-102, 33-22-706, 33-31-111, AND 33-35-306, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE AND AN APPLICABILITY DATE 2374

360 *(Senate Bill No. 281; Shockley)* REVISING LAWS GOVERNING DRIVER'S LICENSE SUSPENSIONS; AMENDING SECTIONS 46-6-310, 46-9-401, 61-5-214, AND 61-5-218, MCA; AND PROVIDING AN EFFECTIVE DATE 2381

361 *(Senate Bill No. 286; Brown)* REVISING AND CLARIFYING THE MILK CONTROL LAWS; TRANSFERRING CERTAIN FUNCTIONS FROM THE DEPARTMENT OF LIVESTOCK TO THE BOARD OF MILK CONTROL; AMENDING SECTIONS 81-1-101, 81-23-101, 81-23-103, 81-23-104, 81-23-201, 81-23-202, 81-23-203, 81-23-204, 81-23-302, 81-23-303, 81-23-401, 81-23-402, 81-23-404, 81-23-405, AND 81-23-406, MCA; REPEALING SECTIONS 81-23-304 AND 81-23-305, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE . . 2384

362 *(Senate Bill No. 350; Gillan)* PROVIDING FOR ROUTINE HIV SCREENING AND INCORPORATING THE SCREENING INTO THE

PATIENT'S GENERAL INFORMED CONSENT FOR MEDICAL CARE; INCORPORATING PRENATAL SCREENING FOR HIV-RELATED CONDITIONS INTO THE PREGNANT PATIENT'S GENERAL INFORMED CONSENT FOR MEDICAL CARE; PROVIDING FOR LABOR AND DELIVERY HIV SCREENING IN CERTAIN CIRCUMSTANCES; AMENDING SECTIONS 50-16-702, 50-16-1003, 50-16-1008, 50-16-1009, AND 50-16-1013, MCA; AND REPEALING SECTION 50-16-1007, MCA 2393

363 *(Senate Bill No. 356; Zinke)* PROVIDING FOR THE LICENSURE OF MANUFACTURED HOME DEALERS BY THE DEPARTMENT OF JUSTICE; ESTABLISHING LICENSE APPLICATION REQUIREMENTS; REQUIRING BONDS; AND PROVIDING RULEMAKING AUTHORITY TO THE DEPARTMENT 2398

364 *(Senate Bill No. 430; Hamlett)* REMOVING THE REQUIREMENT THAT COAL MINE OPERATORS REPORT TONS OF COAL SOLD TO PURCHASERS; CLARIFYING THE PROCEDURE TO COMPUTE OIL AND NATURAL GAS TAX IN ABSENCE OF A STATEMENT; CLARIFYING WHEN THE PENALTY PROVISIONS FOR DELINQUENT BENTONITE TAX AND THE WHOLESALE ENERGY TRANSACTION TAX RETURNS APPLY; DIRECTING INITIAL CIGARETTE TAX APPEALS TO THE DEPARTMENT OF REVENUE RATHER THAN TO THE STATE TAX APPEAL BOARD; AMENDING SECTIONS 15-35-104, 15-36-313, 15-39-105, 15-72-112, 16-11-105, 16-11-149, AND 72-3-1006, MCA; AND PROVIDING A RETROACTIVE APPLICABILITY DATE . . 2400

365 *(Senate Bill No. 442; Laslovich)* ESTABLISHING THE SHAKEN BABY SYNDROME EDUCATION PROGRAM; REQUIRING THE PREPARATION AND DISTRIBUTION OF SHAKEN BABY SYNDROME EDUCATIONAL MATERIALS; AND PROVIDING EFFECTIVE DATES 2403

366 *(Senate Bill No. 451; Wanzenried)* REPEALING THE MEGALANDFILL SITING LAWS; AMENDING SECTION 75-1-208, MCA; REPEALING SECTIONS 75-10-901, 75-10-902, 75-10-903, 75-10-906, 75-10-907, 75-10-908, 75-10-909, 75-10-910, 75-10-913, 75-10-914, 75-10-916, 75-10-917, 75-10-918, 75-10-919, 75-10-920, 75-10-921, 75-10-922, 75-10-923, 75-10-924, 75-10-925, 75-10-926, 75-10-927, 75-10-928, 75-10-929, 75-10-930, 75-10-933, 75-10-934, 75-10-935, 75-10-938, 75-10-939, 75-10-940, 75-10-941, 75-10-942, 75-10-943, 75-10-944, 75-10-945, 75-10-950, 75-10-951, 75-10-952, 75-10-953, AND 75-10-954, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 2404

367 *(Senate Bill No. 462; Steinbeisser)* CREATING A SEPARATE LIEN ON OIL OR GAS OR THE PROCEEDS OF OIL OR GAS FOR INTEREST OWNERS; CLARIFYING RIGHTS OF PURCHASERS; PROVIDING A PROCESS FOR CLAIMING A SECURITY INTEREST AND LIEN; PROVIDING A PERSONAL RIGHT OF ACTION; PROVIDING FOR PRIORITY OVER CERTAIN CONSTRUCTION LIENS; AND AMENDING SECTIONS 71-3-124, 71-3-1002, AND 71-3-1011, MCA 2406

368 *(Senate Bill No. 464; Laslovich)* PROHIBITING A PERSON CONDUCTING A REMEDIAL ACTION FROM INCLUDING A COVENANT NOT TO SUE IN A CONTRACT WITH A PROPERTY OWNER; PROVIDING CERTAIN EXCEPTIONS; ESTABLISHING A CIVIL PENALTY; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE 2411

369 *(House Bill No. 4; Jones)* APPROPRIATING MONEY THAT WOULD USUALLY BE APPROPRIATED BY BUDGET AMENDMENT TO VARIOUS STATE AGENCIES FOR THE FISCAL YEAR ENDING JUNE 30, 2009; PROVIDING THAT CERTAIN APPROPRIATIONS CONTINUE

INTO STATE AND FEDERAL FISCAL YEARS 2010 AND 2011; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 2412

370 *(House Bill No. 6; McNutt)* IMPLEMENTING THE RENEWABLE RESOURCE GRANT AND LOAN PROGRAM; APPROPRIATING MONEY TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR GRANTS UNDER THE RENEWABLE RESOURCE GRANT AND LOAN PROGRAM; PRIORITIZING GRANTS AND AMOUNTS; ESTABLISHING CONDITIONS FOR GRANTS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 2419

371 *(House Bill No. 7; McNutt)* APPROPRIATING MONEY TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR GRANTS FOR DESIGNATED PROJECTS UNDER THE RECLAMATION AND DEVELOPMENT GRANTS PROGRAM; PRIORITIZING GRANTS AND AMOUNTS; ESTABLISHING CONDITIONS FOR GRANTS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 2426

372 *(House Bill No. 8; McNutt)* APPROVING RENEWABLE RESOURCE PROJECTS AND AUTHORIZING LOANS; REAUTHORIZING RENEWABLE RESOURCE PROJECTS AUTHORIZED BY THE 60TH LEGISLATURE; APPROPRIATING MONEY TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR LOANS UNDER THE RENEWABLE RESOURCE GRANT AND LOAN PROGRAM; AUTHORIZING THE ISSUANCE OF COAL SEVERANCE TAX BONDS; AUTHORIZING THE CREATION OF A STATE DEBT AND APPROPRIATING COAL SEVERANCE TAXES FOR DEBT SERVICE; PLACING CERTAIN CONDITIONS UPON LOANS; AND PROVIDING AN EFFECTIVE DATE 2429

373 *(House Bill No. 55; Hawk)* REQUIRING THE YOUTH COURT TO IMPOSE RESTRICTIONS ON A DELINQUENT YOUTH'S RESIDENCY IF THE YOUTH HAS BEEN ADJUDICATED FOR A SEXUAL OFFENSE AND HAS BEEN DETERMINED TO BE A LEVEL 3 SEXUAL OFFENDER; REQUIRING NOTIFICATION TO SCHOOL DISTRICTS; AMENDING SECTIONS 41-5-215 AND 41-5-1513, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE 2432

374 *(House Bill No. 108; Hollenbaugh)* CREATING A CRIME VICTIMS COMPENSATION ACCOUNT; STATUTORILY APPROPRIATING THE ACCOUNT; PROVIDING THAT CERTAIN RESTITUTION MONEY PAID BY A CRIMINAL OFFENDER MUST BE DEPOSITED IN A STATE SPECIAL REVENUE ACCOUNT FOR CRIME VICTIMS COMPENSATION; AMENDING SECTIONS 17-7-502, 46-18-236, 46-18-241, 46-18-250, 46-18-251, 53-1-107, 53-9-104, 53-9-132, 53-9-133, AND 53-30-132, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE. 2435

375 *(House Bill No. 110; Sesso)* REVISING LAWS RELATING TO THE PROCUREMENT OF STATE OFFICE SPACE; SETTING SIZE AND TERM LIMITS; REQUIRING LEGISLATIVE APPROVAL FOR CERTAIN BUILDING LEASES ENTERED INTO BY THE STATE; REQUIRING THE CONSOLIDATION OF THE HELENA OFFICES OF STATE AGENCIES UNDER CERTAIN CIRCUMSTANCES; PROVIDING FOR REPORTS ON SPACE ALLOCATION; AND AMENDING SECTION 2-17-101, MCA 2444

376 *(House Bill No. 128; Sesso)* REVISING AND CLARIFYING THE APPROPRIATION OF BOND PROCEEDS FOR AEROSPACE TRANSPORTATION AND TECHNOLOGY PROJECTS;

APPROPRIATING BOND PROCEEDS; AMENDING SECTION 17-5-820, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 2446

377 *(House Bill No. 152; Hamilton)* CREATING THE QUALITY SCHOOLS FACILITY GRANT PROGRAM; PROVIDING FOR FUNDING OF THE PROGRAM THROUGH THE SCHOOL FACILITY AND TECHNOLOGY ACCOUNT; PROVIDING FOR ADMINISTRATION OF THE PROGRAM THROUGH THE DEPARTMENT OF COMMERCE; ESTABLISHING CRITERIA AND PRIORITIES FOR THE AWARD OF GRANTS; DEPOSITING CERTAIN TIMBER HARVEST REVENUE, CERTAIN MINERAL ROYALTIES, AND POWER SITE RENTAL PAYMENTS IN THE SCHOOL FACILITY AND TECHNOLOGY ACCOUNT; STATUTORILY APPROPRIATING $1 MILLION A YEAR FOR GRANTS FOR SCHOOL TECHNOLOGY PURPOSES; APPROPRIATING $12 MILLION TO THE DEPARTMENT OF COMMERCE TO AWARD SCHOOL FACILITY PROJECT GRANTS, MATCHING PLANNING GRANTS, AND EMERGENCY GRANTS TO PUBLIC SCHOOL DISTRICTS FOR SCHOOL FACILITIES DURING THE 2011 BIENNIUM; AMENDING SECTIONS 17-6-340, 20-9-342, 20-9-343, 20-9-516, 20-9-534, 20-9-620, 20-9-622, AND 77-4-208, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE . . 2448

378 *(House Bill No. 171; Augare)* RETAINING THE REGULATION OF PROFESSIONAL BOXING AND ELIMINATING ALL OTHER LAWS REGULATING PROFESSIONAL AND SEMIPROFESSIONAL COMBATIVE EVENTS; AMENDING SECTIONS 23-3-301, 23-3-402, 23-3-404, 23-3-405, 23-3-501, 23-3-502, 23-3-601, 23-3-602, AND 23-3-603, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 2456

379 *(House Bill No. 224; Hiner)* ESTABLISHING A LOAN REIMBURSEMENT PROGRAM FOR REGISTERED PROFESSIONAL NURSES WORKING AT THE MONTANA STATE PRISON AND MONTANA STATE HOSPITAL; PROVIDING AN APPROPRIATION; AND PROVIDING AN EFFECTIVE DATE 2459

380 *(House Bill No. 258; McChesney)* APPROPRIATING MONEY TO THE STATE AUDITOR FOR TAX CREDITS, PREMIUM ASSISTANCE PAYMENTS, AND PREMIUM INCENTIVE PAYMENTS FROM THE SMALL BUSINESS HEALTH INSURANCE POOL; AND PROVIDING AN EFFECTIVE DATE 2460

381 *(House Bill No. 312; Beck)* REVISING THE QUALIFICATIONS FOR RESORT AREAS AND RESORT COMMUNITIES; REVISING THE POPULATION CAP BASED ON THE MOST RECENT FEDERAL CENSUS FOR AN AREA OR A COMMUNITY TO QUALIFY AS A RESORT AREA OR RESORT COMMUNITY; AND AMENDING SECTION 7-6-1501, MCA 2460

382 *(House Bill No. 315; Blewett)* INCREASING THE MAXIMUM PENSION AND ANNUITY INCOME EXCLUSION BY PROVIDING FOR INFLATION ADJUSTMENTS TO THE EXCLUSION AMOUNT AND THE INCOME CAP; AMENDING SECTIONS 15-30-111, 19-2-1004, 19-17-407, 19-18-612, 19-19-504, 19-20-706, AND 19-21-212, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE. 2461

383 *(House Bill No. 333; Noonan)* ALLOWING THE BUREAU OF MINES AND GEOLOGY TO CONDUCT GEOTHERMAL RESEARCH; GRANTING UTILITIES NEAR GEOTHERMAL SITES THE ABILITY TO PARTICIPATE IN RESEARCH AND DEVELOPMENT OF THE SITE; AND PROVIDING AN EFFECTIVE DATE. 2467

384 *(House Bill No. 478; Grinde)* DEFINING "SMALL PLANT VENDOR"; EXEMPTING SMALL PLANT VENDORS FROM LICENSURE FEES; REVISING INSPECTION AND INFESTATION PROCEDURES TO INCLUDE SMALL PLANT VENDORS; REVISING UNLAWFUL ACTS AND PENALTIES; AMENDING SECTIONS 80-7-105, 80-7-106, 80-7-108, 80-7-109, 80-7-110, 80-7-122, 80-7-133, AND 80-7-135, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 2468

385 *(House Bill No. 578; Caferro)* CREATING THE MONTANA HEALTH CORPS ACT; PROVIDING FOR ENROLLMENT OF RETIRED PHYSICIANS IN THE HEALTH CORPS; PROVIDING FOR HOME HEALTH CARE VISITS TO PATIENTS ELIGIBLE FOR MEDICARE OR MEDICAID; LIMITING CHARGES MADE BY HEALTH CORPS MEMBERS; LIMITING THE LIABILITY OF HEALTH CORPS MEMBERS; GRANTING RULEMAKING AUTHORITY; AND PROVIDING AN EFFECTIVE DATE 2472

386 *(House Bill No. 583; Fleming)* SUPPORTING A NETWORK OF FOUR ESTABLISHED MONTANA FOOD AND AGRICULTURAL DEVELOPMENT CENTERS ADMINISTERED BY THE DEPARTMENT OF AGRICULTURE; PROVIDING A FUND TRANSFER; PROVIDING AN APPROPRIATION; AND PROVIDING AN EFFECTIVE DATE 2473

387 *(House Bill No. 615; MacLaren)* CREATING AN ONLINE MOTOR VEHICLE LIABILITY INSURANCE VERIFICATION SYSTEM; PROVIDING FOR LAW ENFORCEMENT USE OF THE SYSTEM; PROVIDING FOR A FUNDING MECHANISM AND OPERATING ACCOUNT FOR THE VERIFICATION SYSTEM; RAISING CERTAIN VEHICLE REGISTRATION FEES; ALLOWING THE DEPARTMENT OF JUSTICE TO SET REINSTATEMENT AND AUTHORIZED USER FEES; ALLOWING INSURERS TO DISCLOSE CERTAIN INFORMATION TO BE USED IN THE SYSTEM; GRANTING THE DEPARTMENT RULEMAKING AUTHORITY TO ADMINISTER THE SYSTEM; AMENDING SECTIONS 33-19-306, 61-3-321, 61-6-101, 61-6-102, 61-6-103, 61-6-105, AND 61-6-302, MCA; REPEALING SECTION 61-6-106, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE . . 2475

388 *(House Bill No. 634; McAlpin)* PROVIDING FOR THE TRANSPORTATION OF INDIVIDUALS WHO MAY BE SUFFERING FROM MENTAL ILLNESS TO THE STATE HOSPITAL FOR INVOLUNTARY COMMITMENT OR TREATMENT; ALLOCATING COSTS; REQUIRING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO ADOPT RULES AND PROVIDE A REPORT; CREATING A STATE SPECIAL REVENUE ACCOUNT; PROVIDING AN APPROPRIATION; AMENDING SECTIONS 7-32-2144 AND 53-21-132, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE 2487

389 *(House Bill No. 636; Dickenson)* EXCLUDING FROM CORPORATE GROSS INCOME AND FROM INDIVIDUAL ADJUSTED GROSS INCOME THE AMOUNT OF THE GAIN RECOGNIZED FROM THE SALE OR EXCHANGE OF A MOBILE HOME PARK TO CERTAIN ENTITIES; AMENDING SECTION 15-30-111, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE 2490

390 *(House Bill No. 655; Belcourt)* CREATING THE HORSE OWNER AMNESTY ACT; ALLOWING CERTAIN HORSE OWNERS TO SURRENDER A HORSE TO THE DEPARTMENT OF LIVESTOCK AT A LICENSED LIVESTOCK MARKET UPON PAYMENT OF A FEE; PROVIDING FOR THE DISPOSAL OF THE HORSE BY PUBLIC AUCTION OR ADOPTION; PROHIBITING THE HORSE OWNER FROM

BEING CHARGED WITH ANIMAL CRUELTY; CREATING A HORSE OWNER AMNESTY SPECIAL REVENUE ACCOUNT; PROVIDING A STATUTORY APPROPRIATION TO THE DEPARTMENT; GRANTING THE DEPARTMENT RULEMAKING AUTHORITY AND AUTHORITY TO SET CERTAIN FEES; AND AMENDING SECTION 17-7-502, MCA . 2495

391 *(House Bill No. 656; Stahl)* REVISING THE ADMINISTRATION OF AGENCY LIQUOR STORES; INCREASING THE VOLUME SALES AMOUNT FOR DETERMINING AGENCY LIQUOR SALES COMMISSIONS TO ACCOUNT FOR INFLATION; PROVIDING FOR FUTURE INCREASES IN THE COMMISSION AMOUNT TO BE DETERMINED BY A LIQUOR-SPECIFIC INFLATIONARY ADJUSTMENT TO BE DETERMINED BY THE DEPARTMENT OF REVENUE; AND AMENDING SECTION 16-2-101, MCA. 2498

392 *(Senate Bill No. 18; Wanzenried)* REVISING THE LAWS GOVERNING FISCAL NOTES; SUBSTITUTING A SPONSOR'S FISCAL NOTE REBUTTAL FOR A SPONSOR'S FISCAL NOTE; PROVIDING FOR THE CONTENT OF A SPONSOR'S FISCAL NOTE REBUTTAL; CLARIFYING THE CONTENT OF FISCAL NOTES; AMENDING SECTIONS 5-4-204 AND 5-4-205, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 2501

393 *(Senate Bill No. 38; Curtiss)* GENERALLY REVISING LAWS GOVERNING NURSERIES AND PLANT DEALERS; REVISING LICENSING PROVISIONS AND FEES APPLIED TO SELLERS OF NURSERY STOCK; AMENDING SECTION 80-7-106, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 2503

394 *(Senate Bill No. 48; Essmann)* STANDARDIZING THE STATUTES RELATED TO TAX INCREMENT FINANCING DISTRICTS BY CORRECTING CERTAIN INTERNAL REFERENCES AND TERMINOLOGY AND BY ENSURING CONSISTENT APPLICATION OF CERTAIN STATUTES TO EACH TYPE OF TAX INCREMENT FINANCING DISTRICT; AMENDING SECTIONS 7-15-4282, 7-15-4283, 7-15-4284, 7-15-4286, 7-15-4288, 7-15-4290, 7-15-4292, 7-15-4293, 7-15-4294, 7-15-4295, 7-15-4296, 7-15-4299, 7-15-4301, 7-15-4302, 7-15-4304, 7-15-4324, AND 17-5-820, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 2505

395 *(Senate Bill No. 55; Steinbeisser)* GENERALLY REVISING MONTANA FERTILIZER LAWS; PROHIBITING POLITICAL SUBDIVISIONS FROM REGULATING COMMERCIAL FERTILIZERS AND SOIL AMENDMENTS; REVISING DEFINITIONS; REVISING INSPECTION, ANALYSIS, APPLICATION, REGISTRATION, LICENSING, LABELING, ASSESSMENT, PENALTY, PUBLICATION, AND ENFORCEMENT PROVISIONS APPLICABLE TO FERTILIZERS; AND AMENDING SECTIONS 7-1-111, 75-10-701, 80-10-101, 80-10-102, 80-10-103, 80-10-201, 80-10-202, 80-10-204, 80-10-205, 80-10-206, 80-10-207, 80-10-208, 80-10-209, 80-10-303, AND 80-15-302, MCA; AND PROVIDING AN EFFECTIVE DATE 2516

396 *(Senate Bill No. 97; Wanzenried)* REVISING LAWS GOVERNING THE PETROLEUM TANK RELEASE CLEANUP FUND; REVISING REIMBURSEMENT AND ELIGIBILITY PROVISIONS; REVISING THE CONDITIONS FOR IMPOSING A CLEANUP FEE ON GASOLINE, FUEL, AND HEATING OIL DISTRIBUTED IN MONTANA; GRANTING RULEMAKING AUTHORITY; AMENDING SECTIONS 75-11-302, 75-11-307, 75-11-309, AND 75-11-314, MCA; AND PROVIDING AN APPLICABILITY DATE 2532

397 *(Senate Bill No. 131; Williams)* REQUIRING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO DESIGNATE THE WILDLAND-URBAN INTERFACE PARCELS IN EACH COUNTY USING CERTAIN CRITERIA; REQUIRING THE DEPARTMENT TO CREATE AND MAINTAIN MAPS OF THE WILDLAND-URBAN INTERFACE PARCELS; REQUIRING THE USE OF A COMMUNITY WILDFIRE PROTECTION PLAN IF ONE HAS BEEN ADOPTED; PROHIBITING ADDITIONAL OR INCREASED FEES IF LOCATION IN A WILDLAND-URBAN INTERFACE IS THE ONLY CRITERIA; PROVIDING AN APPROPRIATION; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 2540

398 *(Senate Bill No. 176; Perry)* PROVIDING A LIMITED EXEMPTION FROM CONTINUING EDUCATION REQUIREMENTS FOR INDIVIDUALS WHO EXECUTE ONLY SURETY BONDS; AMENDING SECTION 33-17-1203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 2541

399 *(Senate Bill No. 204; Moss)* CREATING A MONTANA CENTENNIAL FARM AND RANCH PROGRAM; PROVIDING FOR THE ADMINISTRATION OF THE PROGRAM; AND GRANTING RULEMAKING AUTHORITY FOR THE PROGRAM TO THE MONTANA HISTORICAL SOCIETY 2542

400 *(Senate Bill No. 214; Steinbeisser)* INCREASING PENALTIES FOR THEFT OF A COMMONLY DOMESTICATED HOOFED ANIMAL AND FOR ILLEGAL BRANDING OR ALTERING OR OBSCURING A BRAND; REQUIRING MANDATORY COMMUNITY SERVICE IF A PRISON SENTENCE IS DEFERRED; PROVIDING FOR FORFEITURE OF PROPERTY FOR THE THEFT OF A COMMONLY DOMESTICATED HOOFED ANIMAL AND FOR ILLEGAL BRANDING OR ALTERING OR OBSCURING A BRAND; AMENDING SECTIONS 45-2-311, 45-6-301, AND 45-6-327, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE 2543

401 *(Senate Bill No. 260; Gillan)* CLARIFYING THE TAX AND REPORTING REQUIREMENTS OF PUBLICLY TRADED PARTNERSHIPS; DEFINING THE RECAPTURE OF MONTANA SOURCE DEPRECIATION AND DEPLETION IN REGARD TO THE SALE BY A NONRESIDENT OF AN INTEREST IN A PUBLICLY TRADED PARTNERSHIP DOING BUSINESS IN MONTANA; CLARIFYING THAT THE BENEFICIAL OWNERS OF TRADED OWNERSHIP INTERESTS OF THE PARTNERSHIPS ARE TAXED; PROVIDING THAT A PUBLICLY TRADED PARTNERSHIP IS EXEMPT FROM COMPOSITE RETURN AND WITHHOLDING REQUIREMENTS IF IT FILES AN ANNUAL INFORMATION RETURN IDENTIFYING CERTAIN BENEFICIAL OWNERS OF TRADED OWNERSHIP INTERESTS OF THE PARTNERSHIP; AMENDING SECTIONS 15-30-101, 15-30-1102, AND 15-30-1113, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE 2548

402 *(Senate Bill No. 264; Brueggeman)* AUTHORIZING THE MONTANA FACILITY FINANCE AUTHORITY TO FINANCE CERTAIN PROJECTS FOR FOR-PROFIT OR NONPROFIT CORPORATIONS AND ORGANIZATIONS; PROVIDING FOR TAXATION OF THOSE PROJECTS; AMENDING SECTIONS 90-7-102 AND 90-7-104, MCA; AND PROVIDING AN EFFECTIVE DATE 2557

403 *(Senate Bill No. 271; Squires)* PROVIDING FOR REGULATION AND LICENSURE OF MARRIAGE AND FAMILY THERAPISTS; PROVIDING DEFINITIONS; PROVIDING LICENSURE REQUIREMENTS AND PRIVILEGES FOR MARRIAGE AND FAMILY THERAPISTS;

PROVIDING CERTAIN EXEMPTIONS FROM LICENSURE AS MARRIAGE AND FAMILY THERAPISTS; PROVIDING PENALTIES; AMENDING SECTION 37-22-201, MCA; AND PROVIDING AN EFFECTIVE DATE 2559

404 *(Senate Bill No. 303; Wanzenried)* REQUIRING THAT SECTIONS OF THE STATE WATER PLAN ADDRESS VARIOUS WATER ISSUES WITHIN THE CLARK FORK, MISSOURI, AND YELLOWSTONE RIVER BASINS; CREATING WATER USER COUNCILS; AND AMENDING SECTION 85-1-203, MCA 2562

405 *(Senate Bill No. 305; Tutvedt)* AMENDING AND CLARIFYING ASPECTS OF THE MONTANA SUBDIVISION AND PLATTING ACT; PROVIDING CONSEQUENCES FOR FAILURE TO COMPLY WITH ESTABLISHED SUBDIVISION REVIEW TIMELINES; GENERALLY INCREASING THE PREDICTABILITY OF THE SUBDIVISION REVIEW PROCESS; AMENDING SECTIONS 76-3-510, 76-3-604, AND 76-4-125, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 2564

406 *(Senate Bill No. 310; Shockley)* PROHIBITING A WAIVER OF RIGHT TO PROTEST AS A CONDITION OF SUBDIVISION APPROVAL; AND AMENDING SECTION 76-3-608, MCA. 2568

407 *(Senate Bill No. 369; Esp)* REVISING LOCAL GOVERNMENT NOXIOUS WEED LAWS; REVISING THE PROCEDURES FOR NOTIFICATION AND COMPLIANCE WITH REGARD TO NOXIOUS WEED CONTROL MEASURES; ELIMINATING THE PROVISION FOR AN ADMINISTRATIVE HEARING FOR A PERSON WHO IS ADVERSELY AFFECTED BY A WEED DISTRICT BOARD DECISION; AMENDING SECTIONS 7-22-2123 AND 7-22-2124, MCA; REPEALING SECTION 7-22-2110, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 2569

408 *(Senate Bill No. 404; Brueggeman)* REVISING LAWS RELATING TO THE LOCATION OF SHOOTING PRESERVES; AMENDING SECTION 87-4-502, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 2571

409 *(Senate Bill No. 427; Laslovich)* ESTABLISHING THE MONTANA CONTAMINATED PROPERTY COMPENSATION AND RESTORATION ACT; REVISING DAMAGES AWARDED FOR CONTAMINATION OF REAL PROPERTY; DEFINING "RESTORATION DAMAGES" AND "SPECIAL USE PROPERTY"; ESTABLISHING A PROVISION FOR BURDEN OF PROOF FOR A COMMON LAW CLAIM FOR CONTAMINATION OF SPECIAL USE PROPERTY; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE 2571

410 *(Senate Bill No. 457; Branae)* CREATING A SCENIC-HISTORIC BYWAYS PILOT PROJECT; DESIGNATING CERTAIN HIGHWAYS THAT MAY BE INCLUDED IN THE PROJECT; AMENDING THE DEPARTMENT OF TRANSPORTATION'S RULEMAKING AUTHORITY FOR ADMINISTERING THE PROJECT; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE 2573

411 *(Senate Bill No. 467; Balyeat)* REQUIRING THAT BEFORE A TAX DEED SALE MAY BE HELD A TITLE GUARANTEE MUST BE OBTAINED ON THE PROPERTY AND NOTICE MUST BE GIVEN TO ALL PARTIES, OTHER THAN UTILITIES, LISTED ON THE TITLE GUARANTEE; AND AMENDING SECTIONS 15-18-212, 15-18-213, AND 15-18-216, MCA . . 2574

412 *(Senate Bill No. 491; Lewis)* REVISING THE METHOD FOR DETERMINING THE PORTION OF THE PROPERTY TAX LEVY BY POLITICAL SUBDIVISIONS FOR GROUP BENEFIT INSURANCE CONTRIBUTIONS THAT ARE NOT SUBJECT TO THE PROPERTY TAX LIMITATION LAW; PROVIDING A TRANSITION PROVISION;

AMENDING SECTIONS 2-9-212, 2-18-703, AND 15-10-420, MCA; AND PROVIDING AN EFFECTIVE DATE 2578

413 *(Senate Bill No. 508; Brueggeman)* REVISING MOTOR VEHICLE LAWS; CREATING AN ONLINE MOTOR VEHICLE LIABILITY INSURANCE VERIFICATION SYSTEM; PROVIDING FOR LAW ENFORCEMENT USE OF THE SYSTEM; PROVIDING FOR A CONTRACT BETWEEN THE DEPARTMENT OF JUSTICE AND MONTANA CORRECTIONAL ENTERPRISES TO MANUFACTURE AND DISTRIBUTE LICENSE PLATES; CREATING A VEHICLE INSURANCE VERIFICATION AND LICENSE PLATE OPERATING ACCOUNT; CREATING A LICENSE PLATE PRODUCTION OPERATING ACCOUNT; ALLOWING INSURERS TO PROVIDE CERTAIN INFORMATION TO BE USED IN THE SYSTEM; REQUIRING THAT A VEHICLE OWNER COMPLY WITH MANDATORY MOTOR VEHICLE LIABILITY INSURANCE REQUIREMENTS BEFORE REGISTERING OR RENEWING REGISTRATION FOR A VEHICLE; PROVIDING FOR THE DEPOSIT OF CERTAIN FEES IN THE OPERATING ACCOUNTS; REVISING CERTAIN LICENSE PLATE FEES; REQUIRING REPLACEMENT OF LICENSE PLATES THAT ARE A CERTAIN AGE OR OLDER; ALLOWING PERSONALIZED LICENSE PLATES TO BE ISSUED FOR SPECIAL MILITARY PLATES; REVISING PROVISIONS FOR THE GENERIC SPECIALTY LICENSE PLATE SPONSOR FEE; GRANTING THE DEPARTMENT OF JUSTICE RULEMAKING AUTHORITY TO ADMINISTER THE ONLINE MOTOR VEHICLE LIABILITY INSURANCE VERIFICATION SYSTEM, THE REISSUANCE OF LICENSE PLATES, AND THE CONTRACT WITH MONTANA CORRECTIONAL ENTERPRISES; ALLOWING THE DEPARTMENT OF JUSTICE TO SET CERTAIN REINSTATEMENT FEES; REVISING LAWS GOVERNING PLACEMENT OF TAIL LAMPS; AMENDING SECTIONS 33-19-306, 61-3-301, 61-3-303, 61-3-312, 61-3-315, 61-3-321, 61-3-332, 61-3-333, 61-3-407, 61-3-465, 61-3-478, 61-3-480, 61-3-535, 61-3-562, 61-6-101, 61-6-102, 61-6-103, 61-6-105, 61-6-302, AND 61-9-204, MCA; REPEALING SECTION 61-6-106, MCA; AND PROVIDING EFFECTIVE DATES 2583

414 *(Senate Bill No. 511; Tropila)* ESTABLISHING A SACRAMENTAL WINE LICENSE FOR THE RETAIL SALE OF SACRAMENTAL WINE TO A CHURCH OR OTHER ESTABLISHED RELIGIOUS ORGANIZATION EXCLUSIVELY FOR OFF-PREMISES USE; AMENDING SECTION 16-1-106, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 2607

415 *(House Bill No. 173; Hendrick)* CREATING A PILOT PROJECT TO HELP LOCAL PUBLIC HEALTH AGENCIES UNDERTAKE ACTIVITIES RELATED TO MEETING NATIONAL GUIDELINES; PROVIDING FOR AN ALLOCATION OF FUNDS; AND PROVIDING AN EFFECTIVE DATE 2610

416 *(House Bill No. 418; Butcher)* AUTHORIZING INVESTOR-OWNED EQUINE SLAUGHTER OR PROCESSING FACILITIES; PROHIBITING A COURT FROM GRANTING AN INJUNCTION TO STOP OR DELAY THE CONSTRUCTION OF AN EQUINE SLAUGHTER OR PROCESSING FACILITY BASED ON LEGAL CHALLENGES OR APPEALS OF A PERMIT, LICENSE, CERTIFICATE, OR OTHER APPROVAL ISSUED IN CONJUNCTION WITH ENVIRONMENTAL LAWS; SETTING BONDING REQUIREMENTS; AND AMENDING SECTIONS 75-1-201, 75-2-104, 75-5-614, 75-5-621, 75-5-641, 81-9-111, 81-9-112, 81-9-115, 81-9-116, 81-9-201, 81-9-229, AND 81-9-230, MCA 2613

417 *(House Bill No. 459; Grinde)* CREATING THE MONTANA VIRTUAL ACADEMY; PROVIDING FOR THE ACADEMY'S PURPOSES AND

GOVERNANCE; REQUIRING A REPORT TO THE LEGISLATURE; AND PROVIDING AN EFFECTIVE DATE 2622

418 *(House Bill No. 464; O'Hara)* CREATING THE ADVANCING AGRICULTURAL EDUCATION IN MONTANA PROGRAM ACCOUNT; AND PROVIDING FOR THE USE OF THE ACCOUNT. 2623

419 *(House Bill No. 657; Stahl)* REQUIRING THE REVENUE AND TRANSPORTATION INTERIM COMMITTEE TO APPOINT A SUBCOMMITTEE TO CONDUCT A STUDY OF THE CLASSIFICATION, VALUATION, AND TAXATION OF OIL AND NATURAL GAS PROPERTY; PROVIDING AN APPROPRIATION; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 2624

420 *(House Bill No. 659; Roberts)* DIRECTING THE STATE ADMINISTRATION AND VETERANS' AFFAIRS INTERIM COMMITTEE TO EXAMINE AND RECOMMEND TO THE 62ND LEGISLATURE FUNDING AND BENEFIT CHANGES IN THE STATEWIDE PUBLIC EMPLOYEES' AND TEACHERS' RETIREMENT SYSTEMS; PROVIDING AN APPROPRIATION; AND PROVIDING AN EFFECTIVE DATE 2626

421 *(House Bill No. 670; Vincent)* PROVIDING FOR LOCAL GOVERNMENT AND SCHOOL DISTRICT DISCRETION TO ABATE PROPERTY TAXES ON CERTAIN COMMERCIAL OR INDUSTRIAL REAL PROPERTY AND PERSONAL PROPERTY TO FACILITATE THE CONTINUED OPERATION OF THE BUSINESS USING THE PROPERTY; REQUIRING JOINT APPROVAL OF THE ABATEMENT BY AFFECTED GOVERNING BODIES; PROVIDING FOR THE RECAPTURE OF THE TAX BENEFIT; AMENDING SECTIONS 15-6-134 AND 15-6-138, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE. 2628

422 *(Senate Bill No. 158; Barkus)* INCREASING THE NUMBER OF DISTRICT COURT JUDGES; PROVIDING FOR ADDITIONAL JUDGES IN THE 1ST, 11TH, AND 13TH JUDICIAL DISTRICTS TO BE ELECTED AT THE NOVEMBER 2010 GENERAL ELECTION; AMENDING SECTION 3-5-102, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE . . . 2633

423 *(Senate Bill No. 300; Steinbeisser)* INCREASING THE ASSESSMENT ON FERTILIZER SOLD IN MONTANA AND ADJUSTING THE PERCENTAGES OF THE ASSESSMENT TO BE USED BY THE COOPERATIVE EXTENSION SERVICE AND THE AGRICULTURAL EXPERIMENT STATION; AMENDING SECTIONS 80-10-103 AND 80-10-104, MCA; AND PROVIDING AN EFFECTIVE DATE 2633

424 *(Senate Bill No. 396; Story)* PROVIDING AN EXEMPTION FOR A REPLACEMENT APPROPRIATION FOR A WATER RIGHT FOR CERTAIN CHANGES IN POINTS OF DIVERSION; AND AMENDING SECTION 85-2-402, MCA 2634

425 *(Senate Bill No. 100; Black)* INCREASING THE COAL SEVERANCE TAX ALLOCATION TO THE OIL, GAS, AND COAL NATURAL RESOURCE ACCOUNT; AMENDING SECTION 15-35-108, MCA; AND PROVIDING EFFECTIVE DATES, APPLICABILITY DATES, AND TERMINATION DATES 2640

426 *(Senate Bill No. 117; Wanzenried)* REVISING STATUTORY APPROPRIATIONS; ELIMINATING CERTAIN STATUTORY APPROPRIATIONS CONCERNING VARIOUS MISCELLANEOUS PROVISIONS; TRANSFERRING THE AUTHORIZED USE OF THE STATUTORY APPROPRIATION FOR THE OPTIONAL RETIREMENT PROGRAM FOR THE ADMINISTRATIVE OFFICERS AND MEMBERS

OF THE INSTRUCTIONAL AND SCIENTIFIC STAFF OF THE MONTANA UNIVERSITY SYSTEM FROM THE STATE TREASURER TO THE BOARD OF REGENTS; CONSOLIDATING CERTAIN HORSERACING STATUTORY APPROPRIATIONS INTO ONE STATUTORY APPROPRIATION; ELIMINATING AN INVALID STATUTORY APPROPRIATION RELATIVE TO THE CERCLA MATCH DEBT SERVICE FUND; AMENDING SECTIONS 17-7-304, 17-7-502, 19-21-203, 23-4-105, 23-4-202, 23-4-204, 23-4-302, 23-4-304, 44-1-504, 53-6-703, 75-10-622, 80-5-510, AND 87-1-513, MCA; AND PROVIDING AN EFFECTIVE DATE 2643

427 *(Senate Bill No. 164; Barrett)* EXPANDING THE GOOD NEIGHBOR POLICY TO INCLUDE RECREATIONAL LAND AND WATER ACQUIRED BY THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS FOR PUBLIC HUNTING, FISHING, TRAPPING, AND OUTDOOR RECREATION AND ESTABLISHING MAINTENANCE PRIORITIES FOR THAT LAND; DEFINING "MAINTENANCE" AS APPLIED TO PUBLIC RECREATIONAL LAND AND WATER; REQUIRING THAT A PERCENTAGE ABOVE THE PURCHASE PRICE OF THE DEPARTMENT'S ACQUIRED LAND OR WATER RIGHTS BE BUDGETED FOR MAINTENANCE; ESTABLISHING A MAINTENANCE ACCOUNT; PROVIDING A STATUTORY APPROPRIATION; AMENDING SECTIONS 17-7-502, 23-1-126, 23-1-127, AND 87-1-209, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE. 2652

428 *(Senate Bill No. 268; Brown)* REVISING THE LAW REQUIRING CERTAIN VEHICLES TO SECURE CERTAIN LOADS WHEN TRAVELING ON A PUBLIC HIGHWAY; AND AMENDING SECTION 61-8-370, MCA 2657

429 *(Senate Bill No. 343; Jackson)* CREATING THE MONTANA AQUATIC INVASIVE SPECIES ACT; ESTABLISHING THE INVASIVE SPECIES ACCOUNT; DEFINING DEPARTMENTAL RESPONSIBILITIES; ENCOURAGING COOPERATION AMONG PUBLIC AND PRIVATE ENTITIES; GRANTING RULEMAKING AUTHORITY; AUTHORIZING THE USE OF MANAGEMENT AREAS TO PREVENT THE SPREAD OF AQUATIC INVASIVE SPECIES; PROVIDING FOR THE PREVENTION AND CONTROL OF INFESTATIONS; AUTHORIZING INSPECTION OF THE EXTERIOR OF VESSELS FOR AQUATIC INVASIVE SPECIES; PROHIBITING THE TRANSFER OR TRANSPORT OF AQUATIC INVASIVE SPECIES; PROVIDING EXCEPTIONS; AUTHORIZING EMERGENCY DECLARATIONS; PROVIDING CIVIL AND CRIMINAL PENALTIES; AMENDING SECTIONS 10-3-312, 87-1-506, AND 87-5-721, MCA; AND PROVIDING AN EFFECTIVE DATE 2658

430 *(Senate Bill No. 399; Laslovich)* PROVIDING CHILDREN WITH MENTAL HEALTH NEEDS WITH IN-STATE SERVICE ALTERNATIVES TO OUT-OF-STATE PLACEMENT; ESTABLISHING DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES INFORMATION COLLECTION AND REPORTING REQUIREMENTS REGARDING HIGH-RISK CHILDREN WITH MULTIAGENCY SERVICE NEEDS; AND AMENDING SECTION 52-2-302, MCA. 2666

431 *(Senate Bill No. 425; Bales)* REVISING LAWS RELATED TO THE FUNDING AND OPERATION OF THE FORT PECK MULTISPECIES FISH HATCHERY; AMENDING SECTION 87-3-235, MCA; REPEALING SECTION 87-3-236, MCA; AND PROVIDING EFFECTIVE DATES . . . 2668

432 *(Senate Bill No. 475; Esp)* REQUIRING NOTICE OF OIL AND GAS LEASE SALES; AND SETTING A NOMINATION DEADLINE 2670

433 *(Senate Bill No. 509; Gebhardt)* PROVIDING THAT COSTS OF WASHING AND CLEANING OF COAL MINED FROM AN UNDERGROUND MINE ARE NOT INCLUDED IN THE CONTRACT SALES PRICE OF COAL; REVISING WHEN THE DEPARTMENT MAY IMPUTE THE VALUE OF COAL; AMENDING SECTIONS 15-23-701, 15-23-703, 15-35-102, AND 15-35-107, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, AN APPLICABILITY DATE, AND A TERMINATION DATE 2671

434 *(House Bill No. 3; Ankney)* APPROPRIATING MONEY TO VARIOUS STATE AGENCIES FOR THE FISCAL YEAR ENDING JUNE 30, 2009; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 2675

435 *(House Bill No. 10; Wiseman)* APPROPRIATING MONEY FOR INFORMATION TECHNOLOGY CAPITAL PROJECTS FOR THE BIENNIUM ENDING JUNE 30, 2011; PROVIDING FOR MATTERS RELATING TO THE APPROPRIATIONS; PROVIDING FOR A TRANSFER OF FUNDS FROM THE GENERAL FUND TO THE LONG-RANGE INFORMATION TECHNOLOGY PROGRAM ACCOUNT; PROVIDING FOR THE DEVELOPMENT AND ACQUISITION OF NEW INFORMATION TECHNOLOGY SYSTEMS FOR THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES, THE DEPARTMENT OF ADMINISTRATION, THE DEPARTMENT OF REVENUE, AND THE DEPARTMENT OF LABOR AND INDUSTRY; AUTHORIZING THE ISSUANCE OF EMPLOYMENT SECURITY REVENUE BONDS; PLEDGING FUNDS IN THE EMPLOYMENT SECURITY ACCOUNT FOR THE REPAYMENT OF THE BONDS; PROVIDING TERMS AND CONDITIONS FOR THE BONDS; AUTHORIZING THE CREATION OF STATE DEBT; AMENDING SECTION 39-51-409, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 2676

436 *(House Bill No. 52; McNutt)* ESTABLISHING A GROUND WATER INVESTIGATION PROGRAM; PROVIDING FOR PRIORITIZATION OF SUBBASINS BY THE GROUND WATER ASSESSMENT STEERING COMMITTEE; ADDING A MEMBER OF THE DEVELOPMENT COMMUNITY TO THE GROUND WATER ASSESSMENT STEERING COMMITTEE; PROVIDING A CONTINGENT APPROPRIATION FOR THE PROGRAM; AMENDING SECTION 2-15-1523, MCA; AND PROVIDING AN EFFECTIVE DATE 2681

437 *(House Bill No. 85; Sands)* CREATING A GRANT PROGRAM FOR EMERGENCY MEDICAL SERVICE PROVIDERS; ESTABLISHING ELIGIBILITY REQUIREMENTS AND REVIEW CRITERIA; AUTHORIZING THE DEPARTMENT OF TRANSPORTATION TO ADOPT RULES; PROVIDING A CONTINGENT APPROPRIATION; PROVIDING DEFINITIONS; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE 2683

438 *(House Bill No. 97; Boland)* EXTENDING THE APPLICATION OF THE BOND VALIDATING ACT; AMENDING SECTION 17-5-205, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 2686

439 *(House Bill No. 98; Barrett)* AUTHORIZING STATE AGENCIES TO ENTER INTO ENERGY PERFORMANCE CONTRACTS; AMENDING SECTIONS 18-2-101, 18-4-132, 90-4-1101, 90-4-1102, 90-4-1103, 90-4-1104, 90-4-1105, 90-4-1106, 90-4-1107, 90-4-1108, AND 90-4-1109, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 2687

440 *(House Bill No. 135; Belcourt)* DIRECTING THAT STATE FUNDS FOR MITIGATION MEASURES REQUIRED BY THE FORT BELKNAP-MONTANA WATER RIGHTS COMPACT BE MADE AVAILABLE TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION; APPROPRIATING $1 MILLION TO THE

DEPARTMENT FOR THE PURPOSES OF SATISFYING THE STATE'S COST-SHARE OBLIGATIONS UNDER THE FORT BELKNAP-MONTANA COMPACT; AMENDING SECTION 85-20-1004, MCA; AND PROVIDING AN EFFECTIVE DATE 2692

441 *(House Bill No. 154; Bergren)* REVISING LAWS RELATING TO THE FIRE SUPPRESSION ACCOUNT; REVISING THE PURPOSE OF THE ACCOUNT; REMOVING THE STATUTORY APPROPRIATION OF THE ACCOUNT; APPROPRIATING MONEY FOR FIRE PREVENTION AND SUPPRESSION FOR THE 2011 BIENNIUM; AUTHORIZING EXPENDITURES FROM THE ACCOUNT FOR UNPAID FIRE COSTS; AMENDING SECTIONS 17-7-502 AND 76-13-150, MCA; REPEALING SECTION 6, CHAPTER 2, SPECIAL LAWS OF SEPTEMBER 2007; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 2693

442 *(House Bill No. 194; Mendenhall)* STATUTORILY APPROPRIATING THE COUNTY PAYMENTS FROM THE HARD-ROCK MINING IMPACT TRUST ACCOUNT; AMENDING SECTIONS 17-7-502, 90-6-304, AND 90-6-331, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE. 2695

443 *(House Bill No. 301; Kottel)* INCLUDING REASONABLE PARALEGAL FEES AS A COMPONENT OF ATTORNEY FEES THAT MAY BE AWARDED TO A PREVAILING PARTY IN CERTAIN CASES; DEFINING "PARALEGAL"; AMENDING SECTIONS 25-10-302 AND 37-61-215, MCA; AND PROVIDING AN APPLICABILITY DATE 2697

444 *(House Bill No. 332; Getz)* REVISING THE LAWS RELATING TO SCHOOLS; REVISING THE LAWS PERTAINING TO THE LOCATION OF AND NOTICE REQUIREMENTS FOR CERTAIN SCHOOL BOARD MEETINGS; EXPANDING THE DISCIPLINARY POWERS OF SCHOOL ADMINISTRATORS; CLARIFYING THE LAWS GOVERNING STUDENT SUSPENSIONS; AND AMENDING SECTIONS 20-3-322, 20-5-201, AND 20-5-202, MCA 2699

445 *(House Bill No. 483; Jones)* REVISING ENVIRONMENTAL LAWS RELATED TO ENERGY DEVELOPMENT PROJECTS; REVISING BOARD OF ENVIRONMENTAL REVIEW HEARING REQUEST PROCEDURES; REQUIRING A WRITTEN UNDERTAKING TO BE GIVEN BY CERTAIN PARTIES REQUESTING A HEARING OR A STAY BEFORE A COURT OR THE BOARD OF ENVIRONMENTAL REVIEW; MODIFYING THE EXPIRATION DATE REQUIREMENTS FOR A PERMIT OR LICENSE UNDER THE AIR QUALITY LAWS; CLARIFYING THE USE OF BEST AVAILABLE CONTROL TECHNOLOGY REGULATIONS AND GUIDANCE; ESTABLISHING DEADLINES FOR THE BOARD OF ENVIRONMENTAL REVIEW TO ISSUE A FINAL DECISION UNDER THE AIR QUALITY LAWS AND THE MAJOR FACILITY SITING ACT; AMENDING SECTIONS 2-4-623, 2-4-702, 75-2-103, 75-2-211, 75-5-103, AND 75-20-223, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE 2701

446 *(House Bill No. 486; MacLaren)* GENERALLY REVISING LAND USE LAWS; CLARIFYING SUBDIVISION REVIEW FOR CONDOMINIUMS; INCLUDING SAND AND GRAVEL RESOURCES AMONG THE ITEMS THAT MUST BE MAPPED IN A GROWTH POLICY; CHANGING PETITION AND PROTEST DEFINITIONS FOR PLANNING AND ZONING DISTRICTS; REVISING THE MEMBERSHIP OF PLANNING AND ZONING COMMISSIONS; ALLOWING A COUNTY COMMISSION TO VOID A PLANNING AND ZONING DISTRICT UNDER A CERTAIN CONDITION; REQUIRING A COUNTY TO ATTEMPT TO OBTAIN COMPLIANCE WITH CERTAIN ZONING REGULATIONS BEFORE

FILING A COMPLAINT; REVISING PUBLIC NOTICE REQUIREMENTS FOR ZONING AND REQUIRING PUBLIC NOTICE FOR INTERIM ZONING; REQUIRING A TIME LIMIT FOR PROVIDING A WRITTEN DECISION FOR A SUBDIVISION APPLICATION; ALLOWING A GOVERNING BODY TO REQUIRE THAT IMPROVEMENTS TO PROTECT PUBLIC HEALTH AND SAFETY BE COMPLETED BEFORE ALLOWING BONDING OR OTHER REASONABLE SECURITY; ESTABLISHING WHEN A PARK DEDICATION MAY BE REQUIRED FOR A FIRST MINOR SUBDIVISION FROM A TRACT OF RECORD; AMENDING SECTIONS 70-23-301, 76-1-601, 76-2-101, 76-2-102, 76-2-107, 76-2-202, 76-2-203, 76-2-205, 76-2-206, 76-2-210, 76-2-304, 76-3-207, 76-3-504, 76-3-506, 76-3-507, 76-3-510, 76-3-608, 76-3-609, 76-3-610, 76-3-620, 76-3-621, AND 76-3-625, MCA; REPEALING SECTION 76-3-210, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND APPLICABILITY DATES 2717

447 *(House Bill No. 531; Nooney)* TO PROHIBIT THE USE OF AN AUTOMATED ENFORCEMENT SYSTEM TO ENFORCE A TRAFFIC CONTROL DEVICE; PROVIDING EXCEPTIONS; AMENDING SECTIONS 61-8-203 AND 61-8-206, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 2738

448 *(House Bill No. 536; Malek)* REVISING IGNITION INTERLOCK DEVICE REQUIREMENTS; AMENDING SECTIONS 61-5-208, 61-8-442, AND 61-8-733, MCA; AND PROVIDING AN APPLICABILITY DATE 2739

449 *(House Bill No. 557; Belcourt)* DIRECTING THE BOARD OF ENVIRONMENTAL REVIEW TO ADOPT RULES FOR THE APPROVAL OF REGIONAL PUBLIC WATER SUPPLY SYSTEMS; AMENDING SECTION 75-6-103, MCA; AND PROVIDING AN APPLICABILITY DATE 2741

450 *(House Bill No. 598; Noonan)* EXEMPTING EMPLOYMENT OF A CONTRACT MUSICIAN FROM COVERAGE UNDER THE WORKERS' COMPENSATION ACT; AMENDING SECTION 39-71-401, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 2743

451 *(House Bill No. 662; Arntzen)* LICENSING AND REGULATING MASSAGE THERAPISTS; ESTABLISHING A BOARD OF MASSAGE THERAPISTS; PROVIDING RULEMAKING AUTHORITY FOR THE BOARD; ESTABLISHING QUALIFICATIONS FOR LICENSURE; PROVIDING PENALTIES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 2747

452 *(Senate Bill No. 119; Esp)* REQUIRING A MEDICAID PROGRAM FOR WORKERS WITH DISABILITIES; ESTABLISHING ELIGIBILITY REQUIREMENTS; PROVIDING FOR COST SHARING; AMENDING SECTIONS 53-6-113 AND 53-6-131, MCA; AND PROVIDING AN EFFECTIVE DATE 2751

453 *(Senate Bill No. 235; Murphy)* EXPANDING THE EXEMPTION FROM LICENSING AS A PSYCHOLOGIST TO INCLUDE PSYCHOLOGICAL TESTING, EVALUATION, AND ASSESSMENT BY QUALIFIED MEMBERS OF OTHER PROFESSIONS; CLARIFYING THAT THE QUALIFIED MEMBERS OF OTHER PROFESSIONS INCLUDE LICENSED PROFESSIONAL COUNSELORS; AND AMENDING SECTIONS 37-17-104 AND 37-23-102, MCA 2755

454 *(Senate Bill No. 290; Jackson)* REQUIRING THE ENERGY AND TELECOMMUNICATIONS INTERIM COMMITTEE TO REVIEW THE STATE ENERGY POLICY EACH INTERIM AND RECOMMEND CHANGES TO THE LEGISLATURE; AMENDING SECTIONS 90-4-1001 AND 90-4-1003, MCA; REPEALING SECTION 90-4-1002, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 2757

455 *(Senate Bill No. 400; Laslovich)* LIMITING DISMISSALS IN JUSTICES' COURT; AMENDING SECTION 25-31-409, MCA; AND REPEALING SECTION 25-33-208, MCA 2759

456 *(Senate Bill No. 446; Story)* REVISING HOSPITAL LAWS TO PROVIDE LICENSING REQUIREMENTS FOR SPECIALTY HOSPITALS; REQUIRING AN IMPACT STUDY BEFORE A SPECIALTY HOSPITAL IS LICENSED; REQUIRING PAYMENT NONDISCRIMINATION AND CHARITY CARE POLICIES FOR HOSPITALS; REQUIRING HOSPITALS TO ENSURE 24-HOUR EMERGENCY CARE; AMENDING SECTIONS 50-5-101 AND 50-5-245, MCA; AND PROVIDING AN EFFECTIVE DATE 2759

457 *(House Bill No. 9; Hollenbaugh)* ESTABLISHING PRIORITIES FOR CULTURAL AND AESTHETIC PROJECTS GRANT AWARDS; APPROPRIATING MONEY FOR CULTURAL AND AESTHETIC GRANTS; AND PROVIDING AN EFFECTIVE DATE 2768

458 *(House Bill No. 11; Sesso)* APPROPRIATING MONEY TO THE DEPARTMENT OF COMMERCE FOR FINANCIAL ASSISTANCE TO LOCAL GOVERNMENT INFRASTRUCTURE PROJECTS THROUGH THE TREASURE STATE ENDOWMENT PROGRAM; AUTHORIZING GRANTS FROM THE TREASURE STATE ENDOWMENT STATE SPECIAL REVENUE ACCOUNT; PLACING CONDITIONS UPON GRANTS AND FUNDS; APPROPRIATING MONEY TO THE DEPARTMENT OF COMMERCE FOR EMERGENCY GRANTS; APPROPRIATING MONEY TO THE DEPARTMENT OF COMMERCE FOR PRELIMINARY ENGINEERING GRANTS; APPROPRIATING MONEY FROM THE TREASURE STATE ENDOWMENT REGIONAL WATER SYSTEM STATE SPECIAL REVENUE ACCOUNT TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR FINANCIAL ASSISTANCE TO REGIONAL WATER AUTHORITIES FOR REGIONAL WATER PROJECTS; TERMINATING CERTAIN PRIOR TREASURE STATE ENDOWMENT GRANTS; AMENDING SECTION 90-6-701, MCA, AND SECTION 1, CHAPTER 383, LAWS OF 2007; AND PROVIDING EFFECTIVE DATES 2771

459 *(House Bill No. 123; Jones)* REDUCING THE STATUTORY APPROPRIATIONS FOR THE GROWTH THROUGH AGRICULTURE PROGRAM AND FOR RESEARCH AND COMMERCIALIZATION PROJECTS; EXTENDING THE TERMINATION DATE FOR CERTAIN ALLOCATIONS AND STATUTORY APPROPRIATIONS OF THE INTEREST INCOME FROM $140 MILLION OF THE COAL SEVERANCE TAX PERMANENT FUND; AMENDING SECTION 15-35-108, MCA, SECTION 3, CHAPTER 481, LAWS OF 2003, AND SECTION 6, CHAPTER 481, LAWS OF 2003; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE. 2780

460 *(House Bill No. 158; Augare)* PROVIDING FOR TRIBAL GOVERNMENTAL ELIGIBILITY FOR ALL GRANTS AND LOANS UNDER THE BIG SKY ECONOMIC DEVELOPMENT PROGRAM; AND AMENDING SECTIONS 90-1-201, 90-1-202, 90-1-203, 90-1-204, AND 90-1-205, MCA 2782

461 *(House Bill No. 213; Sesso)* ESTABLISHING A SOUTHWESTERN MONTANA STATE VETERANS' HOME IN BEAVERHEAD, DEER LODGE, JEFFERSON, MADISON, POWELL, OR SILVER BOW COUNTY; ESTABLISHING A SITE SELECTION COMMITTEE; ALLOCATING A PORTION OF CIGARETTE TAX MONEY TO AN ACCOUNT FOR USE IN CONSTRUCTION OF THE SOUTHWESTERN MONTANA STATE VETERANS' HOME SUBJECT TO APPROPRIATION

BY THE 62ND LEGISLATURE; AMENDING SECTIONS 10-2-401, 10-2-416, 16-11-119, 53-1-402, 53-1-413, 53-1-602, AND 53-6-1201, MCA; AND PROVIDING EFFECTIVE DATES 2785

462 *(House Bill No. 279; Reinhart)* PROHIBITING THE DEPARTMENT OF TRANSPORTATION FROM RECOVERING INDIRECT COSTS FOR THE COMMUNITY TRANSPORTATION ENHANCEMENT PROGRAM; AND AMENDING SECTION 17-1-106, MCA. 2790

463 *(House Bill No. 602; Cohenour)* REVISING PROVISIONS ON THE USE OF STATE-OWNED VEHICLES; ESTABLISHING RESTRICTIONS ON COMMUTING FROM AN EMPLOYEE'S RESIDENCE TO A WORKSITE; AMENDING SECTION 2-17-411, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 2790

464 *(House Bill No. 644; Sesso)* APPROPRIATING $200,000 FROM THE STATE GENERAL FUND TO BE USED BY THE DEPARTMENT OF COMMERCE TO PROVIDE FUNDING FOR CULTURAL DEVELOPMENT IN BUTTE-SILVER BOW; AND PROVIDING AN EFFECTIVE DATE 2792

465 *(Senate Bill No. 65; Hawks)* GENERALLY REVISING TRUST LAND FUNDING LAWS; DEFINING "DISTRIBUTABLE REVENUE"; PROVIDING A NEW FUNDING FORMULA; REVISING LAWS GOVERNING TRUST LAND ADMINISTRATION ACCOUNTS AND THEIR USES; CREATING AN EARNINGS RESERVE ACCOUNT; CREATING THE FOREST IMPROVEMENT ACCOUNT; ELIMINATING THE RESOURCE DEVELOPMENT ACCOUNT, THE RECREATIONAL USE ACCOUNT, THE STATE TIMBER SALE ACCOUNT, AND THE STATE SPECIAL REVENUE ACCOUNT FOR COMMERCIAL LEASING RENTAL PAYMENTS; TRANSFERRING UNENCUMBERED BALANCES; REQUIRING THE BOARD OF REGENTS TO DESIGNATE HOW CERTAIN TIMBER SALE PROCEEDS ARE DISTRIBUTED; AMENDING SECTIONS 17-2-107, 17-3-1003, 18-2-107, 20-9-341, 20-9-620, 20-25-422, 77-1-101, 77-1-108, 77-1-109, 77-1-127, 77-1-605, 77-1-613, 77-1-802, 77-1-808, 77-1-809, 77-1-810, 77-1-815, 77-1-905, 77-2-328, 77-2-362, 77-5-204, AND 77-5-219, MCA; REPEALING SECTIONS 77-1-602, 77-1-604, 77-1-606, 77-1-607, 77-1-608, AND 77-1-609, MCA; AND PROVIDING AN EFFECTIVE DATE. 2793

466 *(Senate Bill No. 171; Barkus)* CREATING THE OFFENSE OF DAMAGE TO RENTAL PROPERTY; PROVIDING A PENALTY; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE 2808

467 *(Senate Bill No. 263; Shockley)* REVISING LAWS GOVERNING THE OFFICE OF STATE PUBLIC DEFENDER; REQUIRING ASSIGNED COUNSEL TO FILE CERTAIN COSTS WITH THE DISTRICT COURT; CLARIFYING THAT AN ASSIGNMENT OF COUNSEL BY THE OFFICE OF STATE PUBLIC DEFENDER IS SUBJECT TO INQUIRY AND DENIAL BY A COURT; AMENDING SECTIONS 46-8-113 AND 47-1-111, MCA; AND PROVIDING AN EFFECTIVE DATE 2809

468 *(Senate Bill No. 322; Curtiss)* REVISING LAWS RELATED TO APICULTURE; REQUIRING AN APPLICATION FEE FOR A NEW REGISTRATION OF AN APIARY SITE; REVISING APIARY REREGISTRATION, LOCATION, ABANDONMENT, INSPECTION, QUARANTINE, FEE, AND PENALTY PROVISIONS; EXEMPTING HOBBYIST APIARY SITES FROM REGISTRATION PROVISIONS; AMENDING SECTIONS 80-6-101, 80-6-102, 80-6-103, 80-6-104, 80-6-111, 80-6-112, 80-6-113, 80-6-114, 80-6-201, 80-6-202, 80-6-203, AND 80-6-303, MCA; AND REPEALING SECTIONS 80-6-105 AND 80-6-115, MCA . . . 2811

469 *(Senate Bill No. 360; Keane)* GENERALLY REVISING THE MONTANA MAJOR FACILITY SITING ACT; CLARIFYING THE DEFINITION OF "FACILITY"; AMENDING SECTION 75-20-104, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE 2822

470 *(Senate Bill No. 418; Branae)* ALLOWING A TAXPAYER TO APPLY FOR RELIEF FROM JOINT AND SEVERAL LIABILITY UNDER THE INDIVIDUAL INCOME TAX; AUTHORIZING THE DEPARTMENT TO ADOPT RULES ON RELIEF FROM JOINT AND SEVERAL LIABILITY; UPDATING CERTAIN PROVISIONS RELATING TO THE INDIVIDUAL INCOME TAX EXEMPTION FOR A QUALIFYING CHILD; REQUIRING CONSISTENCY BETWEEN THE DEDUCTION PERMITTED AN ESTATE OR TRUST FOR TAXES PAID OR ACCRUED DURING A YEAR WITH THE DEDUCTION ALLOWED FOR INDIVIDUAL TAXPAYERS; CLARIFYING THE EXTENSION OF TIME ALLOWED FOR FILING AN INDIVIDUAL INCOME TAX RETURN; MAKING TECHNICAL CORRECTIONS REGARDING THE SUSPENSION OF THE STATUTE OF LIMITATIONS UNDER THE INDIVIDUAL INCOME TAX; CLARIFYING WHEN THE DEPARTMENT MUST PAY INTEREST TO INDIVIDUAL INCOME TAXPAYERS FOR LATE-FILED RETURNS; AMENDING SECTIONS 15-30-112, 15-30-136, 15-30-142, 15-30-144, 15-30-146, AND 15-30-149, MCA; AND PROVIDING EFFECTIVE DATES AND APPLICABILITY DATES 2824

471 *(Senate Bill No. 439; Story)* EXTENDING THE MORATORIUM ON LICENSURE OF SPECIALTY HOSPITALS; AMENDING SECTION 50-5-245, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 2831

472 *(Senate Bill No. 465; Hamlett)* REVISING AND CLARIFYING THE LAWS RELATED TO THE TREATMENT OF PROPERTY CONSISTING OF THE BED OF NAVIGABLE RIVERS AND STREAMS; PROVIDING FOR A REDUCTION FROM GRAZING LAND BEFORE A REDUCTION FROM CURRENT LAND USE FOR PROPERTY TAX PURPOSES; PROVIDING THAT IN A DISPUTE OVER THE OWNERSHIP OF THE BED OF A RIVER OR STREAM A PRESUMPTION MAY NOT BE MADE BASED UPON THE TAX STATUS OF THE PROPERTY; CLARIFYING THE OWNERSHIP OF STRUCTURES; CLARIFYING THE ABILITY TO CONTROL NOXIOUS WEEDS; AMENDING SECTIONS 61-8-371, 77-1-111, 77-1-126, 77-1-127, 77-1-806, 77-1-809, 77-3-442, 77-6-113, 77-6-115, 77-6-302, 77-6-303, AND 77-6-501, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 2831

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477 *(House Bill No. 678; Pomnichowski)* REVISING LAWS RELATED TO OPENCUT MINING; ESTABLISHING AN OPENCUT FUND AND ANNUAL FEE; EXEMPTING CERTAIN OPENCUT OPERATIONS FROM THE RESOURCE INDEMNITY AND GROUND WATER ASSESSMENT TAX; REVISING THE OPENCUT PERMITTING PROCESS; AMENDING SECTIONS 15-38-104, 15-38-106, 15-38-113, 82-4-405, 82-4-424, 82-4-432, AND 82-4-437, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND APPLICABILITY DATES 2887

478 *(House Bill No. 5; Sesso)* GENERALLY REVISING LAWS RELATING TO CAPITAL PROJECTS; INCLUDING ENERGY CONSERVATION PROJECTS AS CAPITAL PROJECTS; APPROPRIATING MONEY FOR CAPITAL PROJECTS FOR THE BIENNIUM ENDING JUNE 30, 2011; PROVIDING FOR OTHER MATTERS RELATING TO THE APPROPRIATIONS; PROVIDING FOR A TRANSFER OF FUNDS FROM THE STATE GENERAL FUND TO THE LONG-RANGE BUILDING PROGRAM ACCOUNT; CREATING AN ENERGY CONSERVATION CAPITAL PROJECTS ACCOUNT; PROVIDING FOR TRANSFERS OF FUNDS FROM THE STATE GENERAL FUND TO THE ENERGY CONSERVATION REPAYMENT ACCOUNT AND THE ENERGY CONSERVATION CAPITAL PROJECTS ACCOUNT; AUTHORIZING COMMUNITY COLLEGES TO PARTICIPATE IN THE ENERGY CONSERVATION PROGRAM; REQUIRING PAYMENT OF INTEREST ON ENERGY CONSERVATION PROJECT COSTS; REQUIRING THE INCLUSION OF ENERGY SAVINGS IN THE EXECUTIVE BUDGET;

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479 *(House Bill No. 130; Stoker)* PROVIDING FOR STATE MATCHING FUNDS TO BE GRANTED TO COUNTIES FOR CRISIS INTERVENTION, JAIL DIVERSION, INVOLUNTARY PRECOMMITMENT, AND SHORT-TERM INPATIENT TREATMENT COSTS FOR THE MENTALLY ILL; REQUIRING RULEMAKING; PROVIDING IMPLEMENTATION INSTRUCTIONS; REQUIRING A REPORT; AND PROVIDING EFFECTIVE DATES 2912

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481 *(House Bill No. 132; Stoker)* PROVIDING THAT A RESPONDENT IN AN INVOLUNTARY COMMITMENT CASE MAY AGREE TO SHORT-TERM INPATIENT TREATMENT IN LIEU OF FACING A COMMITMENT HEARING; AMENDING COURT PROCESS AND PROFESSIONAL EXAMINATION PROVISIONS; SPECIFYING SHORT-TERM INPATIENT TREATMENT PARAMETERS AND PATIENT RIGHTS; PROVIDING FOR A REPORT; AMENDING SECTIONS 53-21-102, 53-21-122, 53-21-123, 53-21-162, AND 53-21-1001, MCA; AND PROVIDING AN EFFECTIVE DATE. 2916

482 *(House Bill No. 331; Morgan)* REVISING LAWS RELATING TO LICENSED ESTABLISHMENTS; REVISING THE LICENSE FEES FOR ESTABLISHMENTS; AMENDING SECTIONS 50-50-103, 50-50-205, 50-51-204, 50-52-202, AND 50-57-205, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 2922

483 *(House Bill No. 658; Jopek)* GENERALLY REVISING TAX LAWS; MITIGATING THE EFFECTS OF PROPERTY TAX REAPPRAISAL; PHASING IN CHANGES TO THE TAX RATES FOR CLASS THREE AND FOUR PROPERTY; PHASING IN CHANGES TO THE TAX RATES OF CLASS TEN PROPERTY; ESTABLISHING EXEMPTION RATES FOR RESIDENTIAL AND COMMERCIAL CLASS FOUR PROPERTY; REVISING THE LOW-INCOME PROPERTY TAX ASSISTANCE PROGRAM; REVISING THE EXTENDED PROPERTY TAX ASSISTANCE PROGRAM; CHANGING THE WAY THE VALUE OF CERTAIN NEWLY CONSTRUCTED PROPERTY IS DETERMINED FOR LOCAL GOVERNMENT MILL LEVY AUTHORITY; REVISING THE METHOD FOR VALUING AGRICULTURAL PROPERTY BY INCREASING WATER LABOR COSTS FOR IRRIGATED LAND AND PROVIDING THAT ALFALFA HAY ADJUSTED TO 80 PERCENT OF THE SALES PRICE IS THE BASE CROP FOR NONIRRIGATED LAND; REVISING THE DETERMINATION OF THE CAPITALIZATION RATE FOR THE VALUATION OF FOREST LANDS; ESTABLISHING A FOREST LANDS TAXATION ADVISORY COMMITTEE TO ADVISE THE DEPARTMENT OF REVENUE IN ITS DETERMINATION OF THE VALUE OF FOREST LANDS; PROVIDING FOR THE APPOINTMENT AND TERMS OF THE MEMBERS OF THE COMMITTEE; REQUIRING NOTICE OF PROPERTY TAX ASSISTANCE PROGRAMS ON CLASSIFICATION AND APPRAISAL NOTICES AND PROPERTY TAX BILLS; EXTENDING APPLICATION DEADLINES FOR THE LOW-INCOME PROPERTY TAX ASSISTANCE PROGRAM AND THE

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484 *(House Bill No. 669; Vincent)* CREATING A DISTRESSED WOOD PRODUCTS INDUSTRY REVOLVING LOAN PROGRAM; GRANTING RULEMAKING AUTHORITY; AUTHORIZING A LOAN APPLICATION FEE; REQUIRING OUTCOME MEASURES; PROVIDING A STATUTORY APPROPRIATION; AMENDING SECTION 17-7-502, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 2942

485 *(House Bill No. 674; Vincent)* GENERALLY REVISING LAWS RELATING TO CERTAIN STATE LANDS; AUTHORIZING THE CREATION OF STATE DEBT THROUGH THE ISSUANCE OF GENERAL OBLIGATION BONDS FOR PURCHASE AND MANAGEMENT OF REAL PROPERTY AND APPURTENANCES FOR SUSTAINABLE FOREST MANAGEMENT, RECREATIONAL USE, AND INCOME-GENERATING POTENTIAL; APPROPRIATING THE PROCEEDS OF THE BONDS FOR PURCHASE AND MANAGEMENT OF REAL PROPERTY AND APPURTENANCES FOR SUSTAINABLE FOREST MANAGEMENT, RECREATIONAL USE, AND INCOME-GENERATING POTENTIAL; PROVIDING CONSIDERATIONS FOR THE BOARD OF LAND COMMISSIONERS TO TAKE INTO ACCOUNT WHEN DETERMINING WHETHER TO REQUEST THE ISSUANCE OF BONDS; PROVIDING FOR THE OFFSETTING OF LAND PURCHASES; PROVIDING FOR THE DISPOSITION OF INTEREST AND INCOME; REQUIRING NOTICE ON LAND ACQUISITIONS FOR THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS; REQUIRING THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO PAY AN AMOUNT EQUAL TO TAXES ON LAND PURCHASES; PROVIDING A STATUTORY APPROPRIATION; AMENDING SECTIONS 17-5-803, 17-7-502, 87-1-209, AND 87-1-603, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 2945

486 *(House Bill No. 676; Sesso)* IMPLEMENTING THE GENERAL APPROPRIATIONS ACT; ELIMINATING GENERAL FUND TRANSFERS TO THE HIGHWAY NONRESTRICTED STATE SPECIAL REVENUE ACCOUNT; RESTRICTING TRANSFERS OF CIGARETTE TAXES ALLOCATED FOR THE SUPPORT OF VETERANS' NURSING HOMES; REVISING THE DEFINITION OF PRESENT LAW BASE FOR THE ENSUING BUDGET CYCLE; REQUIRING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO DEVELOP ALTERNATIVE METHODS OF DELIVERING SERVICES AND TO DEVELOP GOALS, MILESTONES, AND MEASURES TO GUIDE THE REVIEW OF ALTERNATIVES; RESTRICTING THE TRANSFER OF THE UNRESERVED BALANCE IN THE COAL SEVERANCE TAX COMBINED ACCOUNT; PROVIDING AN INCREASE IN EACH YEAR OF THE 2011 BIENNIUM IN THE BASIC ENTITLEMENT AND THE TOTAL PER-ANB ENTITLEMENT; REQUIRING REPORTS BY THE OFFICE OF PUBLIC DEFENDER; REQUIRING THE ADOPTION OF RULES RELATING TO THE WORKING CARETAKER RELATIVE PROGRAM UNDER TANF; AUTHORIZING MONEY IN THE TOBACCO SETTLEMENT ACCOUNT AND THE HEALTH AND MEDICAID INITIATIVES ACCOUNT TO BE USED FOR THE HEALTHY MONTANA

KIDS PLAN; REQUIRING NOTICE TO ENROLLEES OF RESTRICTIONS ON ACCESS TO HEALTH CARE PROVIDERS; PROVIDING THAT CONTRACTS TO IMPLEMENT THE CHILDREN'S HEALTH INSURANCE PROGRAM MAY NOT RESTRICT ACCESS TO HEALTH CARE PROVIDERS; CHANGING THE LEAF-CUTTING BEE ENTERPRISE FUND TO A STATE SPECIAL REVENUE ACCOUNT; PROVIDING A FUND TRANSFER FROM THE WATER ADJUDICATION STATE SPECIAL REVENUE ACCOUNT TO THE NATURAL RESOURCES OPERATIONS STATE SPECIAL REVENUE ACCOUNT; PROVIDING A FUND TRANSFER FROM THE ENVIRONMENTAL QUALITY PROTECTION FUND TO THE NATURAL RESOURCES OPERATIONS STATE SPECIAL REVENUE ACCOUNT; PROVIDING A FUND TRANSFER FROM THE JUNK VEHICLE FUND TO THE NATURAL RESOURCES OPERATIONS STATE SPECIAL REVENUE ACCOUNT; REQUIRING A REPORT BY THE DEPARTMENT OF TRANSPORTATION ON EMERGENCY MEDICAL SERVICES GRANTS; REVISING THE ALLOCATION OF PREMIUM TAXES; PROVIDING CONDITIONS FOR THE SELECTION OF THE VENDOR FOR THE VEHICLE INSURANCE VERIFICATION SYSTEM; ELIMINATING THE RENAL DISEASE TREATMENT PROGRAM; AMENDING SECTIONS 2-15-3004, 7-14-112, 10-2-112, 10-2-603, 10-3-801, 15-1-122, 15-35-108, 15-38-301, 16-11-119, 17-6-606, 17-7-102, 17-7-111, 17-7-304, 20-9-306, 33-2-708, 47-1-201, 53-4-212, 53-4-1005, 53-4-1007, 53-4-1012, 53-4-1201, 75-10-704, 80-6-1109, AND 85-2-280, MCA; REPEALING SECTIONS 15-30-169, 50-44-101, 50-44-102, AND 50-44-103, MCA; AND PROVIDING AN EFFECTIVE DATE, APPLICABILITY DATES, AND TERMINATION DATES 2952

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489 *(House Bill No. 645; Sesso)* IMPLEMENTING THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009; PROVIDING APPROPRIATIONS OF FEDERAL FUNDS AND OTHER FUNDS AVAILABLE BECAUSE OF THE RECEIPT OF FEDERAL FUNDS; REVISING STATUTES TO IMPLEMENT THE RECEIPT AND EXPENDITURE OF THE FEDERAL FUNDS AND THE FUNDS AVAILABLE BECAUSE OF THE RECEIPT OF THE FEDERAL FUNDS; AUTHORIZING THE ADOPTION OF RETROACTIVE ADMINISTRATIVE RULES; REVISING THE ALLOCATION OF THE HOSPITAL BED TAX; REVISING INDIRECT COST RECOVERY LAWS; REVISING THE DEFINITIONS OF BASE BUDGET AND PRESENT LAW BASE FOR THE NEXT STATE BUDGET CYCLE; CLARIFYING THE PAYMENT OF SCHOOL DISTRICT EMPLOYEE RETIREMENT COSTS FOR THE ENSUING BIENNIUM; REVISING THE BASE PERIOD FOR UNEMPLOYMENT BENEFITS; PROVIDING FOR A PART-TIME WORK SEARCH AND PARTICIPATION IN WORKER TRAINING FOR UNEMPLOYMENT PURPOSES; REVISING THE USE OF THE HEALTH AND MEDICAID INITIATIVES ACCOUNT; INCREASING THE

ELIGIBILITY FOR CASH ASSISTANCE BENEFITS FROM THE TANF BLOCK GRANT; CLARIFYING WATER POLLUTION LAWS AND THE USE OF FEDERAL FUNDS FOR WATER PROJECTS; REVISING THE ALTERNATIVE ENERGY LOAN PROGRAM; ESTABLISHING THE DISTRESSED WOOD PRODUCTS INDUSTRY RECOVERY PROGRAM; PROVIDING FOR A QUICK START ENERGY PROGRAM WITHIN THE DEPARTMENT OF COMMERCE FOR QUICK START ENERGY EFFICIENCY IMPROVEMENTS FOR SCHOOL FACILITIES; REVISING THE PRIORITIES FOR FUNDING UNDER THE BIG SKY ECONOMIC DEVELOPMENT PROGRAM; PROVIDING FOR THE ALLOCATION AND AUTHORIZATION OF THE TYPES OF BONDS MADE AVAILABLE UNDER THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009; AUTHORIZING THE MONTANA FACILITY FINANCE AUTHORITY TO FINANCE CERTAIN PROJECTS FOR FOR-PROFIT OR NONPROFIT CORPORATIONS AND ORGANIZATIONS; PROVIDING FOR TAXATION OF THOSE PROJECTS; PROVIDING FOR THE DISTRIBUTION OF FUNDS FOR IMPROVEMENTS FOR SCHOOL FACILITIES; AUTHORIZING A PERMISSIVE SCHOOL LEVY FOR THE BASE BUDGET; AUTHORIZING A SCHOOL DISTRICT LEVY FOR THE OVER-BASE BUDGET; ESTABLISHING THE ENERGY DEVELOPMENT AND DEMONSTRATION GRANT PROGRAM; PROVIDING A FUND TRANSFER FROM THE STATE GENERAL FUND TO THE SENIOR CITIZEN AND PERSONS WITH DISABILITIES TRANSPORTATION SERVICES ACCOUNT; EXTENDING THE HOSPITAL BED TAX; AMENDING SECTIONS 2-4-306, 7-7-2255, 7-7-2501, 7-7-4255, 7-7-4421, 7-7-4501, 7-12-2171, 7-15-4290, 7-15-4301, 7-15-4302, 15-66-102, 17-1-106, 17-2-124, 17-5-504, 17-5-803, 17-5-922, 17-5-1506, 17-7-102, 17-7-402, 17-7-502, 20-9-403, 20-9-433, 20-9-501, 20-25-402, 20-25-427, 39-51-201, 52-3-115, 53-4-212, 53-6-149, 53-6-1201, 75-5-1102, 75-5-1107, 75-6-202, 75-6-226, 75-25-101, 75-25-102, 90-1-204, 90-5-101, 90-5-103, 90-7-102, AND 90-7-104, MCA, SECTION 20, CHAPTER 390, LAWS OF 2003, SECTIONS 4 AND 7, CHAPTER 606, LAWS OF 2005, SECTIONS 4, 5, 6, AND 8, CHAPTER 517, LAWS OF 2007, AND SECTION 9-B, CHAPTER 5, SPECIAL LAWS OF MAY 2007; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, A RETROACTIVE APPLICABILITY DATE, AND A TERMINATION DATE. 3039

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2008 BALLOT ISSUES

Legislative Referendum Number 118

SUBMITTING A 6-MILL LEVY FOR SUPPORT OF THE MONTANA UNIVERSITY SYSTEM TO THE ELECTORATE; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE 3257

Initiative Number 155

HEALTHY MONTANA KIDS PLAN ACT 3257

LAWS

Enacted by the

SIXTY-FIRST LEGISLATURE
IN REGULAR SESSION

Held at Helena, the Seat of Government
January 5, 2009, through April 28, 2009

Explanatory Note: Section 5-11-205, MCA, provides that new parts of existing statutes be printed in italics and that deleted provisions be shown as stricken.

COMPILED BY MONTANA
LEGISLATIVE SERVICES DIVISION

CHAPTER NO. 1

[HB 1]

AN ACT APPROPRIATING MONEY FOR THE OPERATION OF THE CURRENT AND SUBSEQUENT LEGISLATURE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Appropriation. (1) The following amounts are appropriated from the state general fund for fiscal years 2009, 2010, and 2011 for the operation of the 61st legislature and the costs of preparing for the 62nd legislature:

LEGISLATIVE BRANCH (1104)

1. Senate	$3,023,738
2. House of Representatives	4,805,661
3. Legislative Services Division	799,509

(2) The following amounts are appropriated from the state general fund for fiscal year 2011 for the initial costs of the 62nd legislature:

LEGISLATIVE BRANCH (1104)

1. Senate	$183,514
2. House	325,353
3. Legislative Services Division	6,000

Section 2. Effective date. [This act] is effective on passage and approval.

Approved January 15, 2009

CHAPTER NO. 2

[SB 7]

AN ACT GENERALLY REVISING AND CLARIFYING THE MONTANA CODE ANNOTATED; DIRECTING THE CODE COMMISSIONER TO CORRECT ERRONEOUS REFERENCES CONTAINED IN MATERIAL ENACTED BY THE 61ST LEGISLATURE; AMENDING SECTIONS 2-4-102, 2-5-103, 2-15-1781, 2-15-3113, 7-2-2723, 7-2-2743, 7-3-121, 7-3-122, 7-3-124, 7-3-154, 7-4-2505, 7-13-2527, 7-32-303, 10-3-1304, 10-4-101, 13-15-105, 13-15-107, 13-27-316, 15-1-121, 15-6-138, 15-6-192, 15-6-221, 15-7-111, 15-8-205, 15-8-301, 15-10-420, 15-16-402, 15-17-323, 15-17-911, 15-18-411, 15-18-413, 15-24-301, 15-24-2403, 15-30-140, 15-31-121, 16-1-306, 17-7-111, 17-7-138, 18-2-401, 18-5-605, 19-3-2121, 19-21-203, 20-7-328, 20-7-329, 20-7-330, 20-9-501, 20-9-707, 22-2-107, 23-5-119, 27-20-102, 30-10-324, 31-2-106, 33-1-111, 37-17-102, 39-51-403, 39-51-503, 39-71-2352, 39-73-104, 41-2-103, 41-3-205, 41-5-103, 41-5-322, 41-5-331, 41-5-1201, 41-5-1202, 41-5-1203, 41-5-1204, 41-5-1205, 41-5-1301, 41-5-1302, 41-5-1304, 41-5-1401, 41-5-1432, 41-5-1501, 41-5-1511, 41-5-1512, 41-5-1701, 41-5-1703, 41-5-1706, 44-1-303, 45-6-312, 46-23-508, 50-5-101, 50-6-503, 50-19-101, 52-3-813, 53-6-1201, 53-19-309, 53-20-125, 53-20-128, 53-20-133, 61-4-128, 69-8-419, 69-8-421, 70-32-106, 71-1-212, 72-3-606, 75-1-110, 75-1-220, 75-2-111, 75-2-211, 75-10-101, 75-10-102, 75-10-103, 75-10-112, 75-10-1007, 76-3-511, 76-7-204, 76-13-123, 76-13-211, 76-13-402, 76-13-405, 76-13-406, 76-15-408, 77-2-362,

85-1-619, 85-2-344, 87-1-272, 87-1-504, 87-1-505, 87-2-201, AND 87-2-514, MCA; AND REPEALING SECTIONS 15-7-134, 16-1-405, AND 20-9-631, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-4-102, MCA, is amended to read:

"2-4-102. Definitions. For purposes of this chapter, the following definitions apply:

(1) "Administrative rule review committee" or "committee" means the appropriate committee assigned subject matter jurisdiction in Title 5, chapter 5, part 2.

(2) (a) "Agency" means an agency, as defined in 2-3-102, of ~~the~~ state government, except that the provisions of this chapter do not apply to the following:

(i) the state board of pardons and parole, except that the board is subject to the requirements of 2-4-103, 2-4-201, 2-4-202, and 2-4-306 and its rules must be published in the ARM and the register;

(ii) the supervision and administration of a penal institution with regard to the institutional supervision, custody, control, care, or treatment of ~~youths~~ *youth* or prisoners;

(iii) the board of regents and the Montana university system;

(iv) the financing, construction, and maintenance of public works;

(v) the public service commission when conducting arbitration proceedings pursuant to 47 U.S.C. 252 and 69-3-837.

(b) ~~Agency~~ *The term* does not include a school district, *a* unit of local government, or any other political subdivision of the state.

(3) "ARM" means the Administrative Rules of Montana.

(4) "Contested case" means a proceeding before an agency in which a determination of legal rights, duties, or privileges of a party is required by law to be made after an opportunity for hearing. The term includes but is not restricted to ratemaking, price fixing, and licensing.

(5) (a) "Interested person" means a person who has expressed to the agency an interest concerning agency actions under this chapter and has requested to be placed on the agency's list of interested persons as to matters of which the person desires to be given notice.

(b) The term does not extend to contested cases.

(6) "License" includes the whole or part of an agency permit, certificate, approval, registration, charter, or other form of permission required by law but does not include a license required solely for revenue purposes.

(7) "Licensing" includes an agency process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal, limitation, transfer, or amendment of a license.

(8) "Party" means a person named or admitted as a party or properly seeking and entitled as of right to be admitted as a party, but this chapter may not be construed to prevent an agency from admitting any person as a party for limited purposes.

(9) "Person" means an individual, partnership, corporation, association, governmental subdivision, agency, or public organization of any character.

(10) "Register" means the Montana Administrative Register.

(11) (a) "Rule" means each agency regulation, standard, or statement of general applicability that implements, interprets, or prescribes law or policy or describes the organization, procedures, or practice requirements of an agency. The term includes the amendment or repeal of a prior rule.

(b) The term does not include:

(i) statements concerning only the internal management of an agency or state government and not affecting private rights or procedures available to the public, including rules implementing the state personnel classification plan, the state wage and salary plan, or the statewide ~~budgeting and~~ accounting, *budgeting, and human resource* system;

(ii) formal opinions of the attorney general and declaratory rulings issued pursuant to 2-4-501;

(iii) rules relating to the use of public works, facilities, streets, and highways when the substance of the rules is indicated to the public by means of signs or signals;

(iv) seasonal rules adopted annually or biennially relating to hunting, fishing, and trapping when there is a statutory requirement for the publication of the rules and rules adopted annually or biennially relating to the seasonal recreational use of lands and waters owned or controlled by the state when the substance of the rules is indicated to the public by means of signs or signals; or

(v) uniform rules adopted pursuant to interstate compact, except that the rules must be filed in accordance with 2-4-306 and must be published in the ARM.

(12) (a) "Significant interest to the public" means agency actions under this chapter regarding matters that the agency knows to be of widespread citizen interest. These matters include issues involving a substantial fiscal impact to or controversy involving a particular class or group of individuals.

(b) The term does not extend to contested cases.

(13) "Substantive rules" are either:

(a) legislative rules, which if adopted in accordance with this chapter and under expressly delegated authority to promulgate rules to implement a statute have the force of law and when not so adopted are invalid; or

(b) adjective or interpretive rules, which may be adopted in accordance with this chapter and under express or implied authority to codify an interpretation of a statute. The interpretation lacks the force of law."

Section 2. Section 2-5-103, MCA, is amended to read:

"2-5-103. Definitions. As used in this part, the following definitions apply:

(1) "Agency" means any board, bureau, commission, department, authority, or officer of the executive branch of state government authorized or required by law to make rules.

(2) "Consensus" means unanimous concurrence among the interests represented on a negotiated rulemaking committee established under 2-5-106~~,~~ unless the committee agrees upon another specified definition.

(3) "Convener" means a person who impartially assists an agency in determining whether establishment of a negotiated rulemaking committee is feasible and appropriate for a particular rulemaking procedure.

(4) "Facilitator" means a person who impartially aids in the discussions and negotiations among the members of a negotiated rulemaking committee to develop a proposed rule. A facilitator does not have decisionmaking authority.

(5) "Interest" means, with respect to an issue or matter, multiple parties that have a similar point of view or that are likely to be affected in a similar manner.

(6) "Negotiated rulemaking" means rulemaking through the use of a negotiated rulemaking committee.

(7) "Negotiated rulemaking committee" or "committee" means an advisory committee established under 2-5-106 and authorized under 2-4-304 to consider and discuss issues for the purpose of reaching a consensus in the development of a proposed rule.

(8) "Person" means an individual, partnership, corporation, association, governmental subdivision, agency, or public or private organization of any character.

(9) "Rule" means an agency regulation, standard, or statement of general applicability that implements, interprets, or prescribes law or policy or describes the organization, procedures, or practice requirements of an agency. The term includes the amendment or repeal of a prior rule but does not include:

(a) statements concerning only the internal management of an agency and not affecting private rights or procedures available to the public;

(b) formal opinions of the attorney general and declaratory rulings issued pursuant to 2-4-501;

(c) rules relating to the use of public works, facilities, streets, and highways when the substance of the rules is indicated to the public by means of signs or signals;

(d) rules implementing the state personnel classification plan, the state wage and salary plan, or the statewide ~~budgeting and~~ accounting*, budgeting, and human resource* system;

(e) uniform rules adopted pursuant to *an* interstate compact, except that the rules must be filed in accordance with 2-4-306 and must be published in the Administrative Rules of Montana."

Section 3. Section 2-15-1781, MCA, is amended to read:

"2-15-1781. Board of private security. (1) There is a board of private security.

(2) The board consists of seven voting members appointed by the governor with the consent of the senate. The members shall represent:

(a) one contract security company or proprietary security organization, as defined by 37-60-101;

(b) one electronic security company, as defined by 37-60-101;

(c) one city police department;

(d) one county sheriff's office;

(e) one member of the public;

(f) one member of the ~~peace officers'~~ *Montana public safety officer* standards and training ~~advisory~~ council; and

(g) a licensed private investigator or a registered process server.

(3) Members of the board must be at least 25 years of age and have been residents of this state for more than 5 years.

(4) The appointed members of the board shall serve for ~~a term~~ *terms* of 3 years. The terms of board members must be staggered.

(5) The governor may remove a member for misconduct, incompetency, neglect of duty, or unprofessional or dishonorable conduct.

(6) A vacancy on the board must be filled in the same manner as the original appointment and may ~~only~~ be *only* for the unexpired portion of the term.

(7) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."

Section 4. Section 2-15-3113, MCA, is amended to read:

"2-15-3113. Additional powers and duties of livestock loss reduction and mitigation board. (1) The livestock loss reduction and mitigation board shall:

(a) process claims;

(b) seek information necessary to ensure that claim documentation is complete;

(c) provide payments authorized by the board for confirmed and probable livestock losses, along with a written explanation of payment;

(d) submit monthly and annual reports to the board ~~[of livestock]~~ *of livestock* summarizing claims and expenditures and the results of action taken on claims and maintain files of all claims received, including supporting documentation;

(e) provide information to the board ~~[of livestock]~~ *of livestock* regarding appealed claims and implement any decision by the board;

(f) prepare the annual budget for the board; and

(g) provide proper documentation of staff time and expenditures.

(2) The livestock loss reduction and mitigation board may enter into an agreement with any Montana tribe, if the tribe has adopted a wolf management plan for reservation lands that is consistent with the state wolf management plan, to provide that tribal lands within reservation boundaries are eligible for mitigation grants pursuant to 2-15-3111 and that livestock losses on tribal lands within reservation boundaries are eligible for reimbursement payments pursuant to 2-15-3112.

(3) The livestock loss reduction and mitigation board shall:

(a) coordinate and share information with state, federal, and tribal officials, livestock producers, nongovernmental organizations, and the general public in an effort to reduce livestock losses caused by wolves;

(b) establish an annual budget for the prevention, mitigation, and reimbursement of livestock losses caused by wolves;

(c) perform or contract for the performance of periodic program audits and reviews of program expenditures, including payments to individuals, incorporated entities, and producers who receive loss reduction grants and reimbursement payments;

(d) adjudicate appeals of claims;

(e) investigate alternative or enhanced funding sources, including possible agreements with public entities and private wildlife or livestock organizations that have active livestock loss reimbursement programs in place;

(f) meet as necessary to conduct business; and

(g) report annually to the governor, the legislature, members of the Montana congressional delegation, the board of livestock, the fish, wildlife, and parks commission, and the public regarding results of the programs established in 2-15-3111 through 2-15-3113."

Section 5. Section 7-2-2723, MCA, is amended to read:

"7-2-2723. Vesting of property and legal rights. The county designated in the petition for the abandonment of a county as the county to which the territory of the abandoned county ~~shall~~ *is to* be attached, subject to the provisions of this part, shall:

(1) succeed to, have, possess, and own all other property, assets, liens, rights, remedies, and claims of every kind owned and belonging to or possessed by the abandoned county on the date ~~when the same~~ *that county* ceases to exist; and

(2) have the right to demand, collect, and receive ~~any and~~ all money to which ~~such~~ *the* abandoned county was entitled for taxes for which tax *lien* sales had not been held, for licenses, and for other demands remaining unpaid on the date ~~when such~~ *that the* abandoned county ceases to exist and to enforce in any manner authorized by law ~~any and~~ all ~~of such~~ rights, remedies, and claims."

Section 6. Section 7-2-2743, MCA, is amended to read:

"7-2-2743. Collection of taxes and other money. Taxes levied for all ~~such~~ funds ~~which~~ *that* were delinquent on the day ~~when such~~ *the* county ceased to exist and for which tax *lien* sales had not been held and all licenses and other money owing to ~~such~~ *the* county at ~~such~~ *that* time ~~shall~~ *must* be collected by the treasurer of the county designated in the petition for abandonment as the county to which its territory is to be attached and ~~become a part and placed in and~~ *must be* deposited to the credit of the funds of ~~such~~ *the* abandoned and abolished county ~~to which the same properly belong~~."

Section 7. Section 7-3-121, MCA, is amended to read:

"7-3-121. Purpose. The purpose of 7-3-121 through *7-3-125 and 7-3-141 through* 7-3-161 is to provide procedures for alteration of existing forms of local government."

Section 8. Section 7-3-122, MCA, is amended to read:

"7-3-122. Definitions. As used in 7-3-121 through *7-3-125 and 7-3-141 through* 7-3-161, unless the context indicates otherwise, the following definitions apply:

(1) "Authority" means:

(a) a municipal or regional airport authority as provided in Title 67, chapter 11;

(b) a conservancy district as provided in Title 85, chapter 9;

(c) a conservation district as provided in Title 76, chapter 15;

(d) a drainage district as provided in Title 85, chapter 8;

(e) an irrigation district as provided in Title 85, chapter 7;

(f) a hospital district as provided in Title 7, chapter 34, part 21;

(g) a ~~flood control and~~ water conservation *and flood control* district as provided in Title 76, chapter 5, part 11;

(h) a county water and sewer district as provided in Title 7, chapter 13, part 22; or

(i) an urban transportation district as provided in Title 7, chapter 14, part 2.

(2) "Finance administrator" means the individual responsible for the financial administration of the local government and generally means the

county or city treasurer or town clerk unless the alternative form or governing body specifies a different individual.

(3) "Form of government" or "form" means one of the types of local government enumerated in 7-3-102 and the type of government described in 7-3-111.

(4) "Governing body" means the commission or the town meeting legislative body established in the alternative form of a local government under Title 7, chapter 3, parts 1 through 7.

(5) "Local improvement district" means an improvement district in which property is assessed to pay for specific capital improvements benefiting the assessed property.

(6) "Plan of government" has the meaning provided in 7-1-4121.

(7) "Records administrator" means the individual responsible for keeping the public records of the local government and generally means the county, city, or town clerk unless the alternative form or governing body specifies a different individual.

(8) "Subordinate service district" means a special district within a local government in which certain services are provided and in which taxes may be levied to finance the services."

Section 9. Section 7-3-124, MCA, is amended to read:

"7-3-124. Election procedure. Except as otherwise provided in 7-3-121 through *7-3-125 and 7-3-141 through* 7-3-161, each election under 7-3-121 through *7-3-125 and 7-3-141 through* 7-3-161 is conducted in the same manner as an election involving ballot issues or *an election* of local officials."

Section 10. Section 7-3-154, MCA, is amended to read:

"7-3-154. Judicial review. Judicial review to determine the validity of the procedures whereby any charter or alternative plan of government is adopted may be initiated by petition in district court of 10 or more registered voters of the local government brought within 60 days after the election at which the charter or plan of government, revision, or amendment is approved. If no petition is filed within that period, compliance with all the procedures required by 7-3-121 through *7-3-125 and 7-3-141 through* 7-3-161 and the validity of the manner in which the charter or plan of government was approved is conclusively presumed. It is presumed that proper procedure was followed and all procedural requirements were met. The adoption of a charter or plan of government may not be considered invalid because of any procedural error or omission unless it is shown that the error or omission materially and substantially affected its adoption."

Section 11. Section 7-4-2505, MCA, is amended to read:

"7-4-2505. Amount of compensation for deputies and assistants. (1) Subject to subsection (2), the boards of county commissioners in the several counties in the state shall fix the compensation allowed any deputy or assistant of the following officers:

(a) clerk and recorder;

(b) clerk of the district court;

(c) treasurer;

(d) county attorney;

(e) auditor.

(2) (a) The salary of a deputy or an assistant listed in subsection (1), other than a deputy county attorney, may not be more than 90% of the salary of the officer under whom the deputy or assistant is serving. The salary of a deputy county attorney, including longevity payments provided in ~~7-4-2503(3)(d)~~ *7-4-2503(3)(c)*, may not exceed the salary of the county attorney under whom the deputy is serving.

(b) If a deputy or assistant is employed for a period of less than 1 year, the compensation of the deputy or assistant must be for the time employed~~, provided~~ *and* the rate of compensation may not be in excess of the rates provided by law for similar deputies and assistants."

Section 12. Section 7-13-2527, MCA, is amended to read:

"7-13-2527. List of property owners. (1) A copy of the order creating the district must be delivered to the department of revenue.

(2) The department shall, on or before August 1 of each year, prepare and certify a list of all persons owning class four property*, provided for in 15-6-134,* within the district and deliver a copy of the list to the board of trustees of the district."

Section 13. Section 7-32-303, MCA, is amended to read:

"7-32-303. Peace officer employment, education, and certification standards — suspension or revocation — penalty. (1) For purposes of this section, unless the context clearly indicates otherwise, "peace officer" means a deputy sheriff, undersheriff, police officer, highway patrol officer, fish and game warden, park ranger, campus security officer, or airport police officer.

(2) A sheriff of a county, *the* mayor of a city, *a* board, ~~or~~ *a* commission*,* or *any* other person authorized by law to appoint peace officers in this state may not appoint any person as a peace officer who does not meet the following qualifications plus any additional qualifying standards for employment promulgated by the Montana public safety officer standards and training council established in 2-15-2029:

(a) be a citizen of the United States;

(b) be at least 18 years of age;

(c) be fingerprinted and a search made of the local, state, and national fingerprint files to disclose any criminal record;

(d) not have been convicted of a crime for which the person could have been imprisoned in a federal or state penitentiary;

(e) be of good moral character, as determined by a thorough background investigation;

(f) be a high school graduate or have passed the general ~~education~~ *educational* development test and ~~have~~ been issued an equivalency certificate by the superintendent of public instruction or by an appropriate issuing agency of another state or of the federal government;

(g) be examined by a licensed physician, who is not the applicant's personal physician, appointed by the employing authority to determine if the applicant is free from any mental or physical condition that might adversely affect performance by the applicant of the duties of a peace officer;

(h) successfully complete an oral examination conducted by the appointing authority or its designated representative to demonstrate the possession of communication skills, temperament, motivation, and other characteristics

necessary to the accomplishment of the duties and functions of a peace officer; and

(i) possess or be eligible for a valid Montana driver's license.

(3) At the time of appointment, a peace officer shall take a formal oath of office.

(4) Within 10 days of the appointment, termination, resignation, or death of any peace officer, written notice thereof must be given to the Montana public safety officer standards and training council by the employing authority.

(5) (a) Except as provided in subsections (5)(b) and (5)(c), it is the duty of an appointing authority to cause each peace officer appointed under its authority to attend and successfully complete, within 1 year of the initial appointment, an appropriate peace officer basic course certified by the Montana public safety officer standards and training council. Any peace officer appointed after September 30, 1983, who fails to meet the minimum requirements as set forth in subsection (2) or who fails to complete the basic course as required by this subsection (5)(a) forfeits the position, authority, and arrest powers accorded a peace officer in this state.

(b) A peace officer who has been issued a basic certificate by the Montana public safety officer standards and training council and whose last date of employment as a peace officer was less than 36 months prior to the date of the person's present appointment as a peace officer is not required to fulfill the basic educational requirements of subsection (5)(a). If the peace officer's last date of employment as a peace officer was 36 or more but less than 60 months prior to the date of present employment as a peace officer, the peace officer may satisfy the basic educational requirements as set forth in subsection (5)(c).

(c) A peace officer *referred to* under ~~the provisions of~~ subsection (5)(b) or a peace officer who has completed a basic peace officer's course in another state and whose last date of employment as a peace officer was less than 60 months prior to the date of present appointment as a peace officer may, within 1 year of the peace officer's present employment or initial appointment as a peace officer within this state, satisfy the basic educational requirements by successfully passing a basic equivalency test administered by the Montana law enforcement academy and successfully completing a legal training course conducted by the academy. If the peace officer fails the basic equivalency test, the peace officer shall complete the basic course within 120 days of the date of the test.

(6) The Montana public safety officer standards and training council may extend the 1-year time requirements of subsections (5)(a) and (5)(c) upon the written application of the peace officer and the appointing authority of the officer. The application must explain the circumstances that make the extension necessary. Factors that the council may consider in granting or denying the extension include but are not limited to illness of the peace officer or a member of the peace officer's immediate family, absence of reasonable access to the basic course or the legal training course, and an unreasonable shortage of personnel within the department. The council may not grant an extension to exceed 180 days.

(7) A peace officer who has successfully met the employment standards and qualifications and the educational requirements of this section and who has completed a 1-year probationary term of employment must, upon application to the Montana public safety officer standards and training council, be issued a basic certificate by the council, certifying that the peace officer has met all the basic qualifying peace officer standards of this state.

(8) It is unlawful for a person whose certification as a peace officer, detention officer, or detention center administrator has been revoked or suspended by the Montana public safety officer standards and training council to act as a peace officer, detention officer, or detention center administrator. A person convicted of violating this subsection is guilty of a misdemeanor, punishable by a term of imprisonment not to exceed 6 months in the county jail or by a fine not to exceed $500, or both."

Section 14. Section 10-3-1304, MCA, is amended to read:

"10-3-1304. Radioactive waste transportation monitoring, emergency response, and training account — purpose — disbursement. (1) There is an account in the state special revenue fund to be known as the radioactive waste transportation monitoring, emergency response, and training account administered by the disaster and emergency services division of the department of military affairs.

(2) The money deposited into this account by the department of transportation pursuant to 10-3-1307 may be used only for the following purposes:

(a) to reimburse the highway patrol for expenses incurred in monitoring or providing escorts for motor carriers transporting high-level radioactive waste or transuranic waste through the state;

(b) to provide funding for training local emergency response personnel in handling radioactive waste accidents, spills, and other related emergencies; and

(c) to reimburse local emergency response entities for costs incurred in the event that an accident, spill, or other related emergency occurs.

~~(3) Prior to rulemaking provided for under 10-3-1309(3), the disaster and emergency services division of the department of military affairs shall coordinate with the public service commission and the department of transportation to provide to an appropriate legislative interim committee prior to the 59th legislature a plan that prioritizes prospective disbursement of money in the account described in subsection (1).~~"

Section 15. Section 10-4-101, MCA, is amended to read:

"10-4-101. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Allowable costs" means the actual costs associated with upgrading, purchasing, programming, installing, testing, operating, and maintaining data, hardware, and software necessary to comply with federal communications commission orders.

(2) "Basic 9-1-1 account" means the 9-1-1 emergency telecommunications account established in 10-4-301(1)(a).

(3) "Basic 9-1-1 service" means a telephone service meeting the standards established in ~~10-4-102~~ *10-4-103* that automatically connects a person dialing the digits 9-1-1 to an established public safety answering point.

(4) "Basic 9-1-1 system" includes equipment for connecting and outswitching 9-1-1 calls within a telephone central office, trunking facilities from the central office to a public safety answering point, and equipment, as appropriate, that is used for transferring the call to another point, when appropriate, and that is capable of providing basic 9-1-1 service.

(5) "Commercial mobile radio service" means:

(a) a mobile service that is:

(i) provided for profit with the intent of receiving compensation or monetary gain;

(ii) an interconnected service; and

(iii) available to the public or to classes of eligible users so as to be effectively available to a substantial portion of the public; or

(b) a mobile service that is the functional equivalent of a mobile service described in subsection (5)(a).

(6) "Department" means the department of administration provided for in Title 2, chapter 15, part 10.

(7) "Direct dispatch" means a 9-1-1 service in which a public safety answering point, upon receipt of a telephone request for emergency services, provides for a decision as to the proper action to be taken and for dispatch of appropriate emergency service units.

(8) "Emergency" means an event that requires dispatch of a public or private safety agency.

(9) "Emergency services" means services provided by a public or private safety agency, including law enforcement, firefighting, ambulance or medical services, and civil defense services.

(10) "Enhanced 9-1-1 account" means the 9-1-1 emergency telecommunications account established in 10-4-301(1)(b).

(11) "Enhanced 9-1-1 service" means telephone service that meets the requirements for basic 9-1-1 service and that consists of selective routing with the capability of automatic number identification and automatic location identification at a public safety answering point enabling users of the public telecommunications system to request emergency services by dialing the digits 9-1-1.

(12) "Enhanced 9-1-1 system" includes customer premises equipment that is directly related to the operation of an enhanced 9-1-1 system, including but not limited to automatic number identification or automatic location identification controllers and display units, printers, and software associated with call detail recording, and that is capable of providing enhanced 9-1-1 service.

(13) "Exchange access services" means:

(a) telephone exchange access lines or channels that provide local access from the premises of a subscriber in this state to the local telecommunications network to effect the transfer of information; and

(b) unless a separate tariff rate is charged for the exchange access lines or channels, any facility or service provided in connection with the services described in subsection (13)(a).

(14) "Federal communications commission order" means a federal communications commission enhanced 9-1-1 first report and order addressing 47 CFR 20.18.

(15) A "9-1-1 jurisdiction" means a group of public or private safety agencies who operate within or are affected by one or more common central office boundaries and who have agreed in writing to jointly plan a 9-1-1 emergency telephone system.

(16) "Phase I wireless enhanced 9-1-1" means a 9-1-1 system that automatically delivers number information to the public safety answering point for wireless calls.

(17) "Phase II wireless enhanced 9-1-1" means a 9-1-1 system that automatically delivers number information and location information to the public safety answering point for wireless calls.

(18) "Place of primary use" means the primary business or residential street address location at which an end-use customer's use of the commercial mobile radio service primarily occurs.

(19) "Private safety agency" means any entity, except a public safety agency, providing emergency fire, ambulance, or medical services.

(20) "Provider" means a public utility, *a* cooperative telephone company, or any other entity that provides telephone exchange access services.

(21) "Public safety agency" means the state and any city, county, city-county consolidated government, municipal corporation, chartered organization, public district, or public authority located in whole or in part within this state that provides or has authority to provide emergency services.

(22) "Public safety answering point" means a communications facility operated on a 24-hour basis that first receives 9-1-1 calls from persons in a 9-1-1 service area and that may, as appropriate, directly dispatch public or private safety services or transfer or relay 9-1-1 calls to appropriate public safety agencies.

(23) "Relay" means a 9-1-1 service in which a public safety answering point, upon receipt of a telephone request for emergency services, notes the pertinent information from the caller and relays the information to the appropriate public safety agency, other agencies, or other providers of emergency services for dispatch of an emergency unit.

(24) "Subscriber" means an end user who receives telephone exchange access services or who contracts with a wireless provider for commercial mobile radio services.

(25) "Transfer" means a 9-1-1 service in which a public safety answering point, upon receipt of a telephone request for emergency services, directly transfers the request to an appropriate public safety ~~answering~~ agency or other provider of emergency services.

(26) "Wireless enhanced 9-1-1" means either phase I wireless enhanced 9-1-1 or phase II wireless enhanced 9-1-1.

(27) "Wireless enhanced 9-1-1 account" means the wireless enhanced 9-1-1 account established in 10-4-301.

(28) "Wireless provider" means an entity, as defined in 35-1-113, that is authorized by the federal communications commission to provide facilities-based commercial mobile radio service within this state."

Section 16. Section 13-15-105, MCA, is amended to read:

"13-15-105. Notices relating to absentee ballot counting board. (1) Whenever an absentee ballot counting board is appointed under ~~15-15-112~~ *13-15-112*, the election administrator shall:

(a) publish in the contracted newspaper of the county as provided in 7-5-2411 a notice indicating the method that will be used for counting absentee ballots; and

(b) post in a conspicuous location at the office of the election administrator, by 5 p.m. of the day before an election, a notice that indicates the place and time that the counting board for absentee ballots will meet on election day.

(2) If the count will begin while the polls are open, the notice required under subsection (1) must inform the public that any person observing the procedures of the counting board must be sequestered with the board until the polls are closed and is required to take the oath provided in 13-15-207(4)."

Section 17. Section 13-15-107, MCA, is amended to read:

"13-15-107. Handling and counting provisional and challenged ballots. (1) To verify eligibility to vote, a provisionally registered elector who casts a provisional ballot has until 5 p.m. on the day after the election to provide valid identification information either in person, by facsimile, by electronic mail, or by mail postmarked no later than the day after the election.

(2) (a) If a legally registered elector casts a provisional ballot because the elector failed to provide sufficient identification as required pursuant to 13-13-114(1)(a), the election administrator shall compare the elector's signature on the affirmation required under 13-13-601 to the elector's signature on the elector's voter registration card.

(b) If the signatures match, the election administrator shall handle the ballot as provided in subsection ~~(6)~~ *(5)*.

(c) If the signatures do not match, the ballot must be rejected and handled as provided in 13-15-108.

(3) A provisional ballot must be counted if the election administrator verifies the elector's eligibility pursuant to rules adopted under 13-13-603. However, if the election administrator cannot verify the elector's eligibility under the rules, the elector's provisional ballot must be rejected and handled as provided in 13-15-108. If the ballot is provisional because of a challenge and the challenge was made on the grounds that the elector is of unsound mind or serving a felony sentence in a penal institution, the elector's provisional ballot must be counted unless the challenger provides documentation by 5 p.m. on the day after the election that a court has established that the elector is of unsound mind or that the elector has been convicted and sentenced and is still serving a felony sentence in a penal institution.

(4) The election administrator shall provide an elector who cast a provisional ballot but whose ballot was not counted with the reasons why the ballot was not counted.

(5) A provisional ballot cast by an elector whose voter information is verified before 5 p.m. on the day after the election must be removed from its provisional envelope, grouped with other ballots in a manner that allows for the secrecy of the ballot to the greatest extent possible, and counted as any other ballot."

Section 18. Section 13-27-316, MCA, is amended to read:

"13-27-316. Court review of attorney general opinion or approved petitioner statements. (1) If the proponents of a ballot ~~measure~~ *issue* believe that the ballot statements approved by the attorney general do not satisfy the requirements of 13-27-312 or believe that the attorney general was incorrect in determining that the petition was legally deficient, they may, within 10 days of the attorney general's determination regarding legal sufficiency provided for in 13-27-202, file an original proceeding in the supreme court challenging the adequacy of the statement or the attorney general's determination and requesting the court to alter the statement or modify the attorney general's determination.

(2) If the opponents of a ballot ~~measure~~ *issue* believe that the petitioner ballot statements approved by the attorney general do not satisfy the

requirements of 13-27-312 or believe that the attorney general was incorrect in determining that the petition was legally sufficient, they may, within 10 days of the date of certification to the governor that the completed petition has been officially filed, file an original proceeding in the supreme court challenging the adequacy of the statement or the attorney general's determination and requesting the court to alter the statement or overrule the attorney general's determination concerning the legal sufficiency of the petition. The attorney general shall respond to a complaint within 5 days.

(3) (a) Notice must be served upon the secretary of state and upon the attorney general.

(b) If the proceeding requests modification of ballot statements, an action brought under this section must state how the petitioner's ballot statements approved by the attorney general do not satisfy the requirements of 13-27-312 and must propose alternate ballot statements that satisfy the requirements of 13-27-312.

(c) (i) Pursuant to Article IV, section 7(2), of the Montana constitution, an action brought pursuant to this section takes precedence over other cases and matters in the supreme court. The court shall examine the proposed issue and the challenged statement or determination of the attorney general and shall as soon as possible render a decision as to the adequacy of the ballot statements or the correctness of the attorney general's determination.

(ii) If the court decides that the ballot statements do not meet the requirements of 13-27-312, it may order the attorney general to revise the statements within 5 days or certify to the secretary of state a statement that the court determines will meet the requirements of 13-27-312. A statement revised by the attorney general pursuant to the court's order or certified by the court must be placed on the petition for circulation and on the official ballot.

(iii) If the court decides that the attorney general's legal sufficiency determination is incorrect and that a proposed issue does not comply with statutory and constitutional requirements governing submission of the issue to the electors, any petitions supporting the issue are void and the issue may not appear on the ballot. A proponent of the ballot issue may resubmit a revised issue, pursuant to 13-27-202, subject to the deadlines provided in this chapter.

(iv) If the court decides that the attorney general's legal deficiency determination is incorrect and that a proposed issue complies with statutory and constitutional requirements governing submission of the issue to the electors, the attorney general shall prepare ballot statements pursuant to 13-27-312 and forward the statements to the secretary of state within 5 days of the court's decision.

(4) A petition for a proposed ballot issue may be circulated by a signature gatherer upon transmission of the sample petition form by the secretary of state pending review under this section. If, upon review, the attorney general or the supreme court revises the petition form or ballot statements, any petitions signed prior to the revision are void.

(5) An original proceeding in the supreme court under this section is the exclusive remedy for a challenge to the petitioner's ballot statements, as approved by the attorney general, or the attorney general's legal sufficiency determination. A ballot issue may not be invalidated under this section after the secretary of state has certified the ballot under 13-12-201.

(6) This section does not limit the right to challenge a constitutional defect in the substance of an issue approved by a vote of the people."

Section 19. Section 15-1-121, MCA, is amended to read:

"15-1-121. Entitlement share payment — appropriation. (1) The amount calculated pursuant to this subsection, as adjusted pursuant to subsection (3)(a)(i), is each local government's base entitlement share. The department shall estimate the total amount of revenue that each local government received from the following sources for the fiscal year ending June 30, 2001:

(a) personal property tax reimbursements pursuant to sections 167(1) through (5) and 169(6), Chapter 584, Laws of 1999;

(b) vehicle, boat, and aircraft taxes and fees pursuant to:

(i) Title 23, chapter 2, part 5;

(ii) Title 23, chapter 2, part 6;

(iii) Title 23, chapter 2, part 8;

(iv) 61-3-317;

(v) 61-3-321;

(vi) Title 61, chapter 3, part 5, except for 61-3-509(3), as that subsection read prior to the amendment of 61-3-509 in 2001;

(vii) Title 61, chapter 3, part 7;

(viii) 5% of the fees collected under 61-10-122;

(ix) 61-10-130;

(x) 61-10-148; and

(xi) 67-3-205;

(c) gaming revenue pursuant to Title 23, chapter 5, part 6, except for the permit fee in 23-5-612(2)(a);

(d) district court fees pursuant to:

(i) 25-1-201, except those fees in 25-1-201(1)(d), (1)(g), and (1)(j);

(ii) 25-1-202;

(iii) 25-9-506; and

(iv) 27-9-103;

(e) certificate of title fees for manufactured homes pursuant to 15-1-116;

(f) financial institution taxes collected pursuant to the former provisions of Title 15, chapter 31, part 7;

(g) all beer, liquor, and wine taxes pursuant to:

(i) 16-1-404;

(ii) 16-1-406; and

(iii) 16-1-411;

(h) late filing fees pursuant to 61-3-220;

(i) title and registration fees pursuant to 61-3-203;

(j) veterans' cemetery license plate fees pursuant to 61-3-459;

(k) county personalized license plate fees pursuant to 61-3-406;

(l) special mobile equipment fees pursuant to 61-3-431;

(m) single movement permit fees pursuant to 61-4-310;

(n) state aeronautics fees pursuant to 67-3-101; and

(o) department of natural resources and conservation payments in lieu of taxes pursuant to Title 77, chapter 1, part 5.

(2) (a) From the amounts estimated in subsection (1) for each county government, the department shall deduct fiscal year 2001 county government expenditures for district courts, less reimbursements for district court expenses, and fiscal year 2001 county government expenditures for public welfare programs to be assumed by the state in fiscal year 2002.

(b) The amount estimated pursuant to subsections (1) and (2)(a) is each local government's base year component. The sum of all local governments' base year components is the base year entitlement share pool. For the purpose of calculating the sum of all local governments' base year components, the base year component for a local government may not be less than zero.

(3) (a) The base year entitlement share pool must be increased annually by a growth rate as provided for in this subsection (3). The amount determined through the application of annual growth rates is the entitlement share pool for each fiscal year. By October 1 of each even-numbered year, the department shall calculate the growth rate of the entitlement share pool for each year of the next biennium in the following manner:

(i) Before applying the growth rate for fiscal year 2007 to determine the fiscal year 2007 entitlement share payments, the department shall subtract from the fiscal year 2006 entitlement share payments the following amounts:

Beaverhead	$6,972
Big Horn	$52,551
Blaine	$13,625
Broadwater	$2,564
Carbon	$11,537
Carter	$407
Cascade	$100,000
Chouteau	$3,536
Custer	$7,011
Daniels	$143
Dawson	$3,893
Fallon	$1,803
Fergus	$9,324
Flathead	$100,000
Gallatin	$160,000
Garfield	$91
Glacier	$3,035
Golden Valley	$2,282
Granite	$4,554
Hill	$31,740
Jefferson	$5,700
Judith Basin	$1,487
Lake	$38,314
Lewis and Clark	$160,000

Liberty	$152
Lincoln	$3,759
Madison	$8,805
McCone	$1,651
Meagher	$2,722
Mineral	$2,361
Missoula	$200,000
Musselshell	$23,275
Park	$6,582
Petroleum	$36
Phillips	$653
Pondera	$10,270
Powder River	$848
Powell	$5,146
Prairie	$717
Ravalli	$93,090
Richland	$3,833
Roosevelt	$9,526
Rosebud	$19,971
Sanders	$30,712
Sheridan	$271
Stillwater	$12,117
Sweet Grass	$2,463
Teton	$5,560
Toole	$7,113
Treasure	$54
Valley	$6,899
Wheatland	$918
Wibaux	$72
Yellowstone	$270,000
Anaconda-Deer Lodge	$20,707
Butte-Silver Bow	$53,057
Alberton	$675
Bainville	$258
Baker	$2,828
Bearcreek	$143
Belgrade	$11,704
Belt	$1,056
Big Sandy	$1,130
Big Timber	$2,910
Billings	$163,499

Boulder	$2,340
Bozeman	$52,805
Bridger	$1,303
Broadus	$766
Broadview	$258
Brockton	$414
Browning	$1,830
Cascade	$1,374
Chester	$1,430
Chinook	$2,275
Choteau	$3,050
Circle	$1,018
Clyde Park	$572
Colstrip	$4,090
Columbia Falls	$6,805
Columbus	$3,245
Conrad	$4,562
Culbertson	$1,216
Cut Bank	$5,316
Darby	$1,348
Deer Lodge	$5,708
Denton	$503
Dillon	$6,928
Dodson	$194
Drummond	$561
Dutton	$661
East Helena	$2,888
Ekalaka	$689
Ennis	$1,518
Eureka	$1,733
Fairfield	$1,120
Fairview	$1,152
Flaxville	$143
Forsyth	$3,286
Fort Benton	$2,579
Fort Peck	$393
Froid	$328
Fromberg	$855
Geraldine	$457
Glasgow	$5,361
Glendive	$8,099

Grass Range	$254
Great Falls	$96,422
Hamilton	$7,148
Hardin	$5,920
Harlem	$1,422
Harlowton	$1,678
Havre	$16,223
Helena	$45,877
Hingham	$263
Hobson	$397
Hot Springs	$912
Hysham	$482
Ismay	$43
Joliet	$1,006
Jordan	$606
Judith Gap	$263
Kalispell	$28,144
Kevin	$304
Laurel	$10,804
Lavina	$361
Lewistown	$10,170
Libby	$4,475
Lima	$397
Livingston	$12,145
Lodge Grass	$889
Malta	$3,389
Manhattan	$2,485
Medicine Lake	$410
Melstone	$234
Miles City	$14,152
Missoula	$104,264
Moore	$319
Nashua	$536
Neihart	$149
Opheim	$180
Outlook	$125
Philipsburg	$1,612
Pinesdale	$1,413
Plains	$2,007
Plentywood	$3,185
Plevna	$225

Polson	$7,722
Poplar	$1,544
Red Lodge	$3,903
Rexford	$263
Richey	$309
Ronan	$3,262
Roundup	$3,280
Ryegate	$465
Saco	$354
Scobey	$1,798
Shelby	$5,677
Sheridan	$1,150
Sidney	$7,747
Stanford	$737
Stevensville	$3,063
St. Ignatius	$1,367
Sunburst	$709
Superior	$1,521
Terry	$1,011
Thompson Falls	$2,272
Three Forks	$3,130
Townsend	$3,286
Troy	$1,654
Twin Bridges	$695
Valier	$817
Virginia City	$223
Walkerville	$1,183
West Yellowstone	$2,083
Westby	$263
White Sulphur Springs	$1,734
Whitefish	$9,932
Whitehall	$1,889
Wibaux	$893
Winifred	$259
Winnett	$314
Wolf Point	$4,497

(ii) The department shall calculate the average annual growth rate of the Montana gross state product, as published by the bureau of economic analysis of the United States department of commerce, for the following periods:

(A) the last 4 calendar years for which the information has been published; and

(B) the 4 calendar years beginning with the year before the first year in the period referred to in subsection (3)(a)(ii)(A).

(iii) The department shall calculate the average annual growth rate of Montana personal income, as published by the bureau of economic analysis of the United States department of commerce, for the following periods:

(A) the last 4 calendar years for which the information has been published; and

(B) the 4 calendar years beginning with the year before the first year in the period referred to in subsection (3)(a)(iii)(A).

(b) (i) The entitlement share pool growth rate for the first year of the biennium must be the following percentage of the average of the growth rates calculated in subsections (3)(a)(ii)(B) and (3)(a)(iii)(B):

(A) for counties, 54%;

(B) for consolidated local governments, 62%; and

(C) for incorporated cities and towns, 70%.

(ii) The entitlement share pool growth rate for the second year of the biennium must be the following percentage of the average of the growth rates calculated in subsections (3)(a)(ii)(A) and (3)(a)(iii)(A):

(A) for counties, 54%;

(B) for consolidated local governments, 62%; and

(C) for incorporated cities and towns, 70%.

(4) As used in this section, "local government" means a county, a consolidated local government, an incorporated city, and an incorporated town. A local government does not include a tax increment financing district provided for in subsection (6). For purposes of calculating the base year component for a county or consolidated local government, the department shall include the revenue listed in subsection (1) for all special districts within the county or consolidated local government. The county or consolidated local government is responsible for making an allocation from the county's or consolidated local government's share of the entitlement share pool to each special district within the county or consolidated local government in a manner that reasonably reflects each special district's loss of revenue sources listed in subsection (1).

(5) (a) The entitlement share pools calculated in this section and the block grants provided for in subsection (6) are statutorily appropriated, as provided in 17-7-502, from the general fund to the department for distribution to local governments. Each local government is entitled to a pro rata share of each year's entitlement share pool based on the local government's base component in relation to the base year entitlement share pool. The distributions must be made on a quarterly basis.

(b) (i) The growth amount is the difference between the entitlement share pool in the current fiscal year and the entitlement share pool in the previous fiscal year. For the purposes of subsection (5)(b)(ii)(A), a county with a negative base year component has a base year component of zero. The growth factor in the entitlement share must be calculated separately for:

(A) counties;

(B) consolidated local governments; and

(C) incorporated cities and towns.

(ii) In each fiscal year, the growth amount for counties must be allocated as follows:

(A) 50% of the growth amount must be allocated based upon each county's percentage of the base year entitlement share pool for all counties; and

(B) 50% of the growth amount must be allocated based upon the percentage that each county's population bears to the state population not residing within consolidated local governments as determined by the latest interim year population estimates from the Montana department of commerce as supplied by the United States bureau of the census.

(iii) In each fiscal year, the growth amount for consolidated local governments must be allocated as follows:

(A) 50% of the growth amount must be allocated based upon each consolidated local government's percentage of the base year entitlement share pool for all consolidated local governments; and

(B) 50% of the growth amount must be allocated based upon the percentage that each consolidated local government's population bears to the state's total population residing within consolidated local governments as determined by the latest interim year population estimates from the Montana department of commerce as supplied by the United States bureau of the census.

(iv) In each fiscal year, the growth amount for incorporated cities and towns must be allocated as follows:

(A) 50% of the growth amount must be allocated based upon each incorporated city's or town's percentage of the base year entitlement share pool for all incorporated cities and towns; and

(B) 50% of the growth amount must be allocated based upon the percentage that each city's or town's population bears to the state's total population residing within incorporated cities and towns as determined by the latest interim year population estimates from the Montana department of commerce as supplied by the United States bureau of the census.

(v) In each fiscal year, the amount of the entitlement share pool not represented by the growth amount is distributed to each local government in the same manner as the entitlement share pool was distributed in the prior fiscal year.

(6) (a) If a tax increment financing district was not in existence during the fiscal year ending June 30, 2000, then the tax increment financing district is not entitled to any block grant. If a tax increment financing district referred to in subsection (6)(b) terminates, then the block grant provided for in subsection (6)(b) terminates.

(b) One-half of the payments provided for in this subsection (6)(b) must be made by November 30 and the other half by May 31 of each year. Subject to subsection (6)(a), the entitlement share for tax increment financing districts is as follows:

Cascade	Great Falls - downtown	$468,966
Deer Lodge	TIF District 1	3,148
Deer Lodge	TIF District 2	3,126
Flathead	Kalispell - District 1	758,359
Flathead	Kalispell - District 2	5,153
Flathead	Kalispell - District 3	41,368

Flathead	Whitefish District	164,660
Gallatin	Bozeman - downtown	34,620
Lewis and Clark	Helena - #2	731,614
Missoula	Missoula - 1-1B & 1-1C	1,100,507
Missoula	Missoula - 4-1C	33,343
Silver Bow	Butte - uptown	283,801
Yellowstone	Billings	436,815

(7) The estimated base year entitlement share pool and any subsequent entitlement share pool for local governments do not include revenue received from countywide transportation block grants ~~or from countywide retirement block grants~~.

(8) (a) If revenue that is included in the sources listed in subsections (1)(b) through (1)(o) is significantly reduced, except through legislative action, the department shall deduct the amount of revenue loss from the entitlement share pool beginning in the succeeding fiscal year and the department shall work with local governments to propose legislation to adjust the entitlement share pool to reflect an allocation of the loss of revenue.

(b) For the purposes of subsection (8)(a), a significant reduction is a loss that causes the amount of revenue received in the current year to be less than 95% of the amount of revenue received in the base year.

(9) A three-fifths vote of each house is required to reduce the amount of the entitlement share calculated pursuant to subsections (1) through (3).

(10) When there has been an underpayment of a local government's share of the entitlement share pool, the department shall distribute the difference between the underpayment and the correct amount of the entitlement share. When there has been an overpayment of a local government's entitlement share, the local government shall remit the overpaid amount to the department.

(11) A local government may appeal the department's estimation of the base year component, the entitlement share pool growth rate, or a local government's allocation of the entitlement share pool, according to the uniform dispute review procedure in 15-1-211.

(12) A payment required pursuant to this section may not be offset by a debt owed to a state agency by a local government in accordance with Title 17, chapter 4, part 1."

Section 20. Section 15-6-138, MCA, is amended to read:

"15-6-138. Class eight property — description — taxable percentage. (1) Class eight property includes:

(a) all agricultural implements and equipment that are not exempt under 15-6-207 or 15-6-220;

(b) all mining machinery, fixtures, equipment, tools that are not exempt under 15-6-219, and supplies except those included in class five *under 15-6-135*;

(c) all oil and gas production machinery, fixtures, equipment, including pumping units, oil field storage tanks, water storage tanks, water disposal injection pumps, gas compressor and dehydrator units, communication towers, gas metering shacks, treaters, gas separators, water flood units, gas boosters, and similar equipment that is skidable, portable, or movable, tools that are not exempt under 15-6-219, and supplies except those included in class five;

(d) all manufacturing machinery, fixtures, equipment, tools, except a certain value of hand-held tools and personal property related to space vehicles, ethanol manufacturing, and industrial dairies and milk processors as provided in 15-6-220, and supplies except those included in class five;

(e) all goods and equipment that are intended for rent or lease, except goods and equipment that are specifically included and taxed in another class;

(f) special mobile equipment as defined in 61-1-101;

(g) furniture, fixtures, and equipment, except that specifically included in another class, used in commercial establishments as defined in this section;

(h) x-ray and medical and dental equipment;

(i) citizens' band radios and mobile telephones;

(j) radio and television broadcasting and transmitting equipment;

(k) cable television systems;

(l) coal and ore haulers;

(m) theater projectors and sound equipment; and

(n) all other property that is not included in any other class in this part, except that property that is subject to a fee in lieu of a property tax.

(2) As used in this section, *the following definitions apply:*

(a) "~~coal~~ *"Coal* and ore haulers" means nonhighway vehicles that exceed 18,000 pounds an axle and that are primarily designed and used to transport coal, ore, or other earthen material in a mining or quarrying environment.

~~(3)~~*(b)* "Commercial establishment" includes any hotel, motel, office, petroleum marketing station, or service, wholesale, retail, or food-handling business.

~~(4)~~*(3)* Class eight property is taxed at 3% of its market value.

~~(5)~~*(4)* The class eight property of a person or business entity that owns an aggregate of $20,000 or less in market value of class eight property is exempt from taxation."

Section 21. Section 15-6-192, MCA, is amended to read:

"15-6-192. Application for classification as new industrial property. (1) Any person, firm, or other group seeking to qualify its property for classification as new industrial property under class five*, as provided in 15-6-135,* shall make application to the department ~~of revenue~~ on a form provided by the department.

(2) The department ~~of revenue~~ shall promulgate rules for the determination of what constitutes an adverse impact, taking into consideration the number of people to be employed and the size of the community in which the location of the industrial property is contemplated.

(3) If the department makes an initial determination that the industrial property qualifies as new industrial property under class five, it shall publish notice of and hold a public hearing to determine whether the property should retain this classification.

(4) Local taxing authority officials may waive their objections to the property's classification in class five if the owner of the new industrial property agrees to prepay property taxes on the property during the construction period. The maximum amount of prepayment ~~shall be~~ *is* the amount of tax the owner would have paid on the property if it had not been classified under class five.

(5) If a new industrial facility qualifies under class five, its property tax payment may not be reduced for reimbursement of its prepaid taxes as provided in 15-16-201 until the class five qualification expires."

Section 22. Section 15-6-221, MCA, is amended to read:

"15-6-221. Exemption for rental housing providing affordable housing to lower-income tenants. (1) That portion of residential rental property that is dedicated to providing affordable housing for lower-income persons is exempt from property taxation in any year that:

(a) the property is owned and operated by an entity, including but not limited to a limited partnership, limited liability corporation, or limited liability partnership in which a general partner is a nonprofit corporation exempt from taxation under section 26 U.S.C. 501(c)(3), as amended, and incorporated and admitted under the Montana Nonprofit Corporation Act as provided in Title 35, chapter 2, or is a housing authority ~~created under~~ *as defined in* 7-15-4402 and the nonprofit general partner actively participates in accordance with the definition found in 26 U.S.C. 469(i). Section 26 U.S.C. 469(i) is applicable without reference to section 26 U.S.C. 469(i)(6).

(b) the board of housing, established in 2-15-1814, has allocated low-income housing tax credits to the owner~~,~~ under 26 U.S.C. 42, which requires that:

(i) at least 20% of the residential units in the property are rent-restricted, as defined in 26 U.S.C. 42, and rented to tenants whose household incomes do not exceed 50% of the median family income, adjusted for family size, for the county in which the property is located; or

(ii) at least 40% of the residential units in the property are rent-restricted, as defined in 26 U.S.C. 42, and rented to persons whose household incomes do not exceed 60% of the median income, adjusted for family size, for the county in which the property is located;

(c) a deed restriction or other legally binding instrument restricts the property's usage and provides that the units designated for use by lower-income households must be made available to or occupied by lower-income households for the period required to qualify for low-income housing tax credits at rents that do not exceed those prescribed by the terms of the deed restriction or other legally binding instruments;

(d) the property meets a public purpose in providing housing to an underserved population and provides a minimum of 50% of the units in the property to tenants at 50% of the median family income for the area, with rents restricted to a maximum of 30% of 50% of median family income, as calculated under 26 U.S.C. 42; and

(e) the owner's partnership or operating agreement or accompanying document provides that at the end of the compliance period, as that term is defined in 26 U.S.C. 42, the ownership of the property may be transferred to the nonprofit corporation or housing authority general partner as provided for in 26 U.S.C. 42(i)(7).

(2) Prior to the allocation of low-income housing tax credits to the owner, as provided in subsection (1)(b), the unit of local government where the proposed project is to be located shall give due notice, as defined in 76-15-103, and hold a public hearing to solicit comment on whether the proposed qualifying low-income rental housing property meets a community housing need. A record of the public hearing must be forwarded to the board of housing for consideration in granting the allocation of tax credits.

(3) For purposes of this section the following definitions apply:

(a) "Median family income" means the household income, adjusted for family size, determined annually by the United States department of housing and urban development, or its successor agency, to be the median family income for persons residing within each county of the state.

(b) A residential unit is "rent-restricted" if it satisfies the criteria of 26 U.S.C. 42(g)(2)."

Section 23. Section 15-7-111, MCA, is amended to read:

"15-7-111. Periodic revaluation of certain taxable property. (1) The department shall administer and supervise a program for the revaluation of all taxable property within ~~classes three, four, and ten~~ *class three under 15-6-133, class four under 15-6-134, and class ten under 15-6-143*. All other property must be revalued annually.

(2) The department shall value and phase in the value of newly constructed, remodeled, or reclassified property in a manner consistent with the valuation within the same class and the values established pursuant to subsection (1). The department shall adopt rules for determining the assessed valuation and phased-in value of new, remodeled, or reclassified property within the same class.

(3) The department ~~of revenue~~ shall administer and supervise a program for the revaluation of all taxable property within classes three, four, and ten. A comprehensive written reappraisal plan must be promulgated by the department. The reappraisal plan adopted must provide that all class three, four, and ten property in each county is revalued by January 1, 2009, effective for January 1, 2009, and each succeeding 6 years. The resulting valuation changes must be phased in for each year until the next reappraisal. If a percentage of change for each year is not established, then the percentage of phasein for each year is 16.66%."

Section 24. Section 15-8-205, MCA, is amended to read:

"15-8-205. Initial assessment of class four trailer, manufactured home, and mobile home property — when. The department shall assess ~~all class four~~ trailer, manufactured home, and mobile home property *as class four property under 15-6-134* immediately upon arrival in the county if the taxes have not been previously paid for that year in another county in Montana."

Section 25. Section 15-8-301, MCA, is amended to read:

"15-8-301. Statement — what to contain. (1) The department may require from a person a statement under oath setting forth specifically all the real and personal property owned by, in possession of, or under the control of the person at midnight on January 1. The statement must be in writing, showing separately:

(a) all property belonging to, claimed by, or in the possession or under the control or management of the person;

(b) all property belonging to, claimed by, or in the possession or under the control or management of any firm of which the person is a member;

(c) all property belonging to, claimed by, or in the possession or under the control or management of any corporation of which the person is president, secretary, cashier, or managing agent;

(d) the county in which the property is situated or in which the property is liable to taxation and, if liable to taxation in the county in which the statement is

made, also the city, town, school district, road district, or other revenue districts in which the property is situated;

(e) an exact description of all lands, improvements, and personal property;

(f) all depots, shops, stations, buildings, and other structures erected on the space covered by the right-of-way and all other property owned by any person owning or operating any railroad within the county.

(2) The department shall notify the taxpayer in the statement for reporting personal property owned by a business or used in a business that the statement is for reporting business equipment and other business personal property described in Title 15, chapter 6, part 1. A taxpayer owning exempt business equipment is subject to limited reporting requirements; however, all new businesses shall report their class eight property*, as defined in 15-6-138,* so that the department can determine the market value of the property. The department shall by rule develop reporting requirements for business equipment to limit the annual reporting of exempt business equipment to the extent feasible.

(3) Whenever one member of a firm or one of the proper officers of a corporation has made a statement showing the property of the firm or corporation, another member of the firm or another officer is not required to include the property in that person's statement but the statement must show the name of the person or officer who made the statement in which the property is included.

(4) The fact that a statement is not required or that a person has not made a statement, under oath or otherwise, does not relieve the person's property from taxation."

Section 26. Section 15-10-420, MCA, is amended to read:

"15-10-420. Procedure for calculating levy. (1) (a) Subject to the provisions of this section, a governmental entity that is authorized to impose mills may impose a mill levy sufficient to generate the amount of property taxes actually assessed in the prior year plus one-half of the average rate of inflation for the prior 3 years. The maximum number of mills that a governmental entity may impose is established by calculating the number of mills required to generate the amount of property tax actually assessed in the governmental unit in the prior year based on the current year taxable value, less the current year's value of newly taxable property, plus one-half of the average rate of inflation for the prior 3 years.

(b) A governmental entity that does not impose the maximum number of mills authorized under subsection (1)(a) may carry forward the authority to impose the number of mills equal to the difference between the actual number of mills imposed and the maximum number of mills authorized to be imposed. The mill authority carried forward may be imposed in a subsequent tax year.

(c) For the purposes of subsection (1)(a), the department shall calculate one-half of the average rate of inflation for the prior 3 years by using the consumer price index, U.S. city average, all urban consumers, using the 1982-84 base of 100, as published by the bureau of labor statistics of the United States department of labor.

(2) A governmental entity may apply the levy calculated pursuant to subsection (1)(a) plus any additional levies authorized by the voters, as provided in 15-10-425, to all property in the governmental unit, including newly taxable property.

(3) (a) For purposes of this section, newly taxable property includes:

(i) annexation of real property and improvements into a taxing unit;

(ii) construction, expansion, or remodeling of improvements;

(iii) transfer of property into a taxing unit;

(iv) subdivision of real property; and

(v) transfer of property from tax-exempt to taxable status.

(b) Newly taxable property does not include an increase in value that arises because of an increase in the incremental value within a tax increment financing district.

(4) (a) For the purposes of subsection (1), the taxable value of newly taxable property includes the release of taxable value from the incremental taxable value of a tax increment financing district because of:

(i) a change in the boundary of a tax increment financing district;

(ii) an increase in the base value of the tax increment financing district pursuant to 7-15-4287; or

(iii) the termination of a tax increment financing district.

(b) If a tax increment financing district terminates prior to the certification of taxable values as required in 15-10-202, the increment value is reported as newly taxable property in the year in which the tax increment financing district terminates. If a tax increment financing district terminates after the certification of taxable values as required in 15-10-202, the increment value is reported as newly taxable property in the following tax year.

(c) For the purpose of subsection (3)(a)(iv), the subdivision of real property includes the first sale of real property that results in the property being taxable as class four property *under 15-6-134* or as nonqualified agricultural land as described in 15-6-133(1)(c).

(5) Subject to subsection (8), subsection (1)(a) does not apply to:

(a) school district levies established in Title 20; or

(b) the portion of a governmental entity's property tax levy for premium contributions for group benefits excluded under 2-9-212 or 2-18-703.

(6) For purposes of subsection (1)(a), taxes imposed do not include net or gross proceeds taxes received under 15-6-131 and 15-6-132.

(7) In determining the maximum number of mills in subsection (1)(a), the governmental entity may increase the number of mills to account for a decrease in reimbursements.

(8) The department shall calculate, on a statewide basis, the number of mills to be imposed for purposes of 15-10-107, 20-9-331, 20-9-333, 20-9-360, 20-25-423, and 20-25-439. However, the number of mills calculated by the department may not exceed the mill levy limits established in those sections. The mill calculation must be established in whole mills. If the mill levy calculation does not result in a whole number of mills, then the calculation must be rounded up to the nearest whole mill.

(9) (a) The provisions of subsection (1) do not prevent or restrict:

(i) a judgment levy under 2-9-316, 7-6-4015, or 7-7-2202;

(ii) a levy to repay taxes paid under protest as provided in 15-1-402;

(iii) an emergency levy authorized under 10-3-405, 20-9-168, or 20-15-326; or

(iv) a levy for the support of a study commission under 7-3-184.

(b) A levy authorized under subsection (9)(a) may not be included in the amount of property taxes actually assessed in a subsequent year.

(10) A governmental entity may levy mills for the support of airports as authorized in 67-10-402, 67-11-301, or 67-11-302 even though the governmental entity has not imposed a levy for the airport or the airport authority in either of the previous 2 years and the airport or airport authority has not been appropriated operating funds by a county or municipality during that time.

(11) The department may adopt rules to implement this section. The rules may include a method for calculating the percentage of change in valuation for purposes of determining the elimination of property, new improvements, or newly taxable property in a governmental unit."

Section 27. Section 15-16-402, MCA, is amended to read:

"15-16-402. Tax on personal property lien on realty — separate assessment — filing of mortgage satisfaction. (1) The tax due on personal property is a prior lien upon the personal property. The lien has precedence over any other lien, claim, or demand upon the personal property. Except as provided in subsection (2), the tax on personal property is also a lien upon the real property of the owner of the personal property on and after January 1 of each year.

(2) The taxes on personal property based on a taxable value up to and including $10,000 are a first and prior lien upon the real property of the owner of the personal property. Taxes on personal property based on a taxable value in excess of $10,000 are a first and prior lien upon the real property of the owner unless the owner or holder of any mortgage or other lien upon the real property appearing of record in the office of the clerk and recorder of the county where the real property is situated, at or before the time the personal property tax attached to the real property, has filed a notice as provided in subsection (3). If the notice is filed, the personal property taxes on the taxable value in excess of $10,000 are not a lien upon the owner's real property. The county treasurer shall, at the request of a mortgagee or lienholder, issue a statement of the personal property tax due on the taxable value up to and including $10,000. Personal property taxes on a taxable value up to $10,000 may be paid, redeemed from a tax *lien* sale as provided by law, or discharged separately from any personal property taxes in excess of that amount. Payment of the taxes on a taxable value up to $10,000, as provided in this subsection, discharge the tax lien upon the personal property of the owner to the extent of the payment in the order that the person paying the tax directs.

(3) The holder of any mortgage or lien upon real property who desires to obtain the benefits of this section shall file each year in the office of the county treasurer of the county and with the department a notice giving:

(a) the name and address of the mortgagee and holder of the mortgage or lien;

(b) the name of the reputed owner of the land;

(c) the description of the land;

(d) the date of record and expiration of the mortgage or lien;

(e) the amount of the mortgage or lien; and

(f) a statement that the holder claims the benefit of the provisions of this section.

(4) The notice is ineffectual as to any taxes that are a lien upon real property prior to the filing of the notice as provided in subsection (3).

(5) A holder of a mortgage on real property upon which personal property taxes are a lien under this section, when the owner of the real property and personal property has failed to pay taxes due on the real property and personal property for 1 or more years, may file with the department a written request to have the personal property and real property of the owner separately assessed. The request must be made by certified mail at least 10 days prior to January 1 in the year for which property is assessed. Upon receipt by the department of the request, the department shall make a separate assessment of real and personal property of the owner of the property, and the personal property taxes may not be a lien upon the mortgaged real property. The personal property taxes must be collected in the manner provided by law for other personal property.

(6) The holder of a mortgage or lien upon real property who files a certificate of satisfaction and the proof and acknowledgment of filing the certificate, as provided for in 71-1-211, shall file a copy of the certificate and the proof and acknowledgment with:

(a) the county treasurer if the holder has filed a notice under subsection (3); and

(b) the department if the holder has filed a written request under subsection (5).

(7) The provisions of this section do not apply to property for which delinquent property taxes have been suspended or canceled under the provisions of Title 15, chapter 24, part 17."

Section 28. Section 15-17-323, MCA, is amended to read:

"15-17-323. Assignment of rights — form. (1) A tax lien sale certificate or other official record in which the county is listed as the purchaser must be assigned by the county treasurer to any person who, after providing proof of mail notice to the person to whom the property was assessed, as required by subsection (5), pays to the county the amount of the delinquent taxes, including penalties, interest, and costs, accruing from the date of delinquency.

(2) (a) The assignment made under subsection (1) must be in the form of an assignment certificate in substantially the following form:

I, ..., the treasurer of ..... County, state of Montana, hereby certify that a tax *lien* sale for tax year 20..., in the county of ....., was held on ..... (date), for the purpose of liquidating delinquent assessments, and I further certify that a property tax lien for delinquent taxes in the following property ..... (insert property description) was offered for sale and that there was no purchaser of the property tax lien. Accordingly, the county was listed as the purchaser as required by 15-17-214, MCA. As of the date of this certificate, the delinquency, including penalties, interest, and costs amounting to $ ....., has not been liquidated by the person to whom the property was assessed, nor has the delinquency been otherwise redeemed.

Because there has been no liquidation of the delinquency or other redemption, I hereby assign all rights, title, and interest of the county of ....., state of Montana, acquired in the property by virtue of the tax lien sale to ..... (name and address of assignee) to proceed to obtain a tax deed to the property or receive payment in case of redemption as provided by law.

Witness my hand and official seal of office this ..... day of ....., 20...

..... County Treasurer

..... County

(b) A copy of an assignment certificate must be mailed to the person to whom the taxes were assessed, at the address of record, together with a notice that the person may contact the county treasurer for further information on lien assignments and property tax *lien* sales.

(3) An assignment made by a purchaser other than the county, by an assignee of the county, or by a previous assignee may be made for any consideration whatsoever. An assignment so made is legal and binding only upon filing with the county treasurer a statement that the purchaser's or other assignee's interest in the property has been assigned. The statement must contain:

(a) the name and address of the new assignee;

(b) the name and address of the original purchaser of the tax lien sale certificate;

(c) the name and address of each previous assignee, if any;

(d) a description of the property upon which the property tax lien was issued, which must contain the same information as contained in the tax lien sale certificate or assignment certificate, as appropriate;

(e) the signature of the party, whether it is the purchaser or the assignee, making the assignment;

(f) the signature of the new assignee; and

(g) the date on which the statement was signed.

(4) If the certificate described in subsection (1) or the statement described in subsection (3) is lost or destroyed, the county treasurer shall, upon adequate proof and signed affidavit by the assignee that loss or destruction has occurred, issue a duplicate certificate to the assignee.

(5) Prior to making a payment under subsection (1), a person shall send notice of the proposed payment, by certified mail, to the person to whom the property was assessed. The form of the notice must be adopted by the department by rule. The notice must have been mailed at least 2 weeks prior to the date of the payment. The person making the payment shall provide proof of the mailing.

(6) The provisions of this section apply to any sale of land for which a treasurer's deed was not issued on or before March 5, 1917, or for which a tax deed was not issued on or before April 23, 1987, and the holder of any certificate described in subsection (1) has the same rights, powers, and privileges with regard to securing a deed as any purchaser of land at a tax lien sale may now have."

Section 29. Section 15-17-911, MCA, is amended to read:

"15-17-911. Sale of personal property for delinquent taxes — fee — disposition of proceeds — unsold property. (1) The tax on personal property may be collected and payment enforced by the seizure and sale of any personal property in the possession of the person assessed. Seizure and sale are authorized at any time after the date the taxes become delinquent or by the institution of a civil action for its collection in any court of competent jurisdiction. A resort to one method does not bar the right to resort to any other method. Any of the methods provided may be used until the full amount of the tax is collected.

(2) The provisions of 15-16-119 and this section apply to a seizure and sale under subsection (1).

(3) (a) A sale under subsection (1) must be:

(i) conducted at public auction;

(ii) conducted under the provisions of 25-13-701(1)(b); and

(iii) noticed as a treasurer's sale of personal property seized for taxes.

(b) The return on the levy and sale must be signed by the sheriff or deputy sheriff as ex officio deputy county treasurer.

(4) (a) The county treasurer shall charge $25 or a fee set by the county commissioners, plus the cost, as defined in 15-17-121, of the collection of delinquent personal property taxes. The cost must be assessed against the delinquent taxpayer and is in addition to any sheriff's fees, mileage, and costs charged under subsection (4)(b).

(b) The sheriff is entitled to the fees, mileage, and costs as provided in 7-32-2141 and 7-32-2143, which must be assessed against the delinquent taxpayer.

(5) On payment of the price bid for any property sold as provided in this section, delivery of the property, with a bill of sale, vests the title of the property in the purchaser.

(6) (a) After sale of the property, the proceeds of the sale must be used first to reimburse the county for all costs and charges incurred in seizing the property and conducting the sale. Any excess, up to the total amount of the taxes owed, must be distributed proportionally to the funds that would have received the taxes if they had been paid before becoming delinquent. Any remaining excess, up to the amount of the penalty and interest owed, must then be distributed proportionally to the fund that would have received the penalty and interest if they had been paid in full.

(b) Any money collected in excess of the delinquent tax, penalties, interest, costs, and charges must be returned to the person owning the property prior to the sale, if known. If the person does not claim the excess immediately following the sale, the treasurer shall deposit the money in the county treasury for a period of 1 year from the date of sale. If the person has not claimed the excess within 1 year from the date of sale, the county treasurer shall deposit the amount in the county general fund and the person has no claim to it.

(7) Any property seized for the purpose of liquidating a delinquency by a tax *lien* sale that remains unsold following a sale may be left at the place of sale at the risk of the owner.

(8) The provisions of this section do not apply to property for which delinquent property taxes have been suspended or canceled under the provisions of Title 15, chapter 24, part 17.

(9) The county commission, in its discretion, may cancel any personal property taxes, including penalty, interest, costs, and charges that remain unsatisfied after the property upon which the taxes were assessed had been seized and sold. If the taxes are canceled, one copy of the order of cancellation must be filed with the county clerk and recorder and one copy with the county treasurer."

Section 30. Section 15-18-411, MCA, is amended to read:

"15-18-411. Action to quiet title to tax deed — notice. (1) (a) In an action brought to set aside or annul any tax deed or to determine the rights of a purchaser to real property claimed to have been acquired through tax

proceedings or a tax *lien* sale, the purchaser, upon filing an affidavit, may obtain from the court an order directed to the person claiming to:

(i) own the property;

(ii) have any interest in or lien upon the property;

(iii) have a right to redeem the property; or

(iv) have rights hostile to the tax title.

(b) The person described in subsections (1)(a)(i) through (1)(a)(iv) is referred to as the true owner.

(c) Except as provided in subsection (1)(d), the order described in subsection (1)(a) may command the true owner to:

(i) deposit with the court for the use of the purchaser:

(A) the amount of all taxes, interest, penalties, and costs that would have accrued if the property had been regularly and legally assessed and taxed as the property of the true owner and was about to be redeemed by the true owner; and

(B) the amount of all sums reasonably paid by the purchaser following the order and after 3 years from the date of the tax *lien* sale to preserve the property or to make improvements on the property while in the purchaser's possession, as the total amount of the taxes, interest, penalties, costs, and improvements is alleged by the plaintiff and as must appear in the order; or

(ii) show cause on a date to be fixed in the order, not exceeding 30 days from the date of the order, why the payment should not be made.

(d) The deposit provided for in subsection (1)(c) may not be required of a person found by the court to be indigent following an examination into the matter by the court upon the request of a true owner claiming to be indigent.

(2) The affidavit must list the name and address of the true owner and whether the owner is in the state of Montana, if known to the plaintiff, or state that the address of the true owner is not known to the plaintiff.

(3) (a) The order must be filed with the county clerk and a copy served personally upon each person shown in the affidavit claiming to be a true owner and whose name and address are reasonably ascertainable.

(b) Jurisdiction is acquired over all other persons by:

(i) publishing the order once in the official newspaper of the county;

(ii) posting the order in three public places in the county at least 10 days prior to the hearing; and

(iii) giving a copy to the county treasurer."

Section 31. Section 15-18-413, MCA, is amended to read:

"15-18-413. Title conveyed by deed — defects. (1) All deeds executed more than 3 years after the applicable tax *lien* sale convey to the grantee absolute title to the property described in the deed as of 3 years following the date of sale of the property interest at the tax *lien* sale.

(2) The conveyance includes:

(a) all right, title, interest, estate, lien, claim, and demand of the state of Montana and of the county in and to the property; and

(b) the right, if the tax deed, tax *lien* sale, or any of the tax proceedings upon which the deed may be based are attacked and held irregular or void, to recover the unpaid taxes, interest, penalties, and costs that would accrue if the tax proceedings had been regular and it was desired to redeem the property.

(3) The tax deed is free of all encumbrances except as provided in 15-18-214(1)(a) through (1)(c).

(4) A tax deed is prima facie evidence of the right of possession accruing as of the date of the expiration of the redemption period described in 15-18-111.

(5) (a) Subject to subsection (5)(b), if any tax deed or deed purporting to be a tax deed is issued more than 3 years and 30 days after the date of the sale of the property interest at the applicable tax *lien* sale, the grantee may publish in the official newspaper of the county, once a week for 2 consecutive weeks, a notice entitled "Notice of Claim of a Tax Title". The notice must:

(i) describe all property claimed to have been acquired by a tax deed;

(ii) contain an estimate of the amount due on the property for delinquent taxes, interest, penalties, and costs;

(iii) contain a statement that for further specific information, reference must be made to the records in the office of the county treasurer;

(iv) list the name and address of record of the person in whose name the property was assessed or taxed; and

(v) contain a statement that demand is made that the true owner shall, within 30 days after the later of service or the first publication of the notice, pay to the county treasurer for use by the claimant the amount of taxes, interest, penalties, and costs as the same appear in the records of the county treasurer to redeem the property or the true owner may bring a suit to quiet the true owner's title or to set aside the tax deed.

(b) The notice described in subsection (5)(a) must be served on a taxpayer whose name and address are reasonably ascertainable.

(6) (a) Provided that the statutory requirements for a notice of intended issuance of a tax deed required by 15-18-212 have been complied with and if within the 30-day period the taxes, interest, penalties, and costs are not paid or a quiet title action is not brought, all defects in the tax proceedings and any right of redemption are considered waived. Except as provided in subsection (6)(b), after the 30-day period, the title to the property described in the notice and in the tax deed is valid and binding, irrespective of any irregularities, defects, or omissions in any of the provisions of the laws of Montana regarding the assessment, levying of taxes, or sale of property for taxes, whether or not the irregularities, defects, or omissions could void the proceedings.

(b) The proceedings in subsection (6)(a) are void if the taxes were not delinquent or have been paid."

Section 32. Section 15-24-301, MCA, is amended to read:

"15-24-301. Personal property brought into state — assessment — exceptions — custom combine equipment. (1) Except as provided in subsections (2) through (5), property in the following cases is subject to taxation and assessment for all taxes levied that year in the county in which it is located:

(a) personal property, excluding livestock, brought into this state at any time during the year that is used in the state for hire, compensation, or profit;

(b) property belonging to an owner or user who is engaged in a gainful occupation or business enterprise in the state; or

(c) property that becomes a part of the general property of the state.

(2) The taxes on this property are levied in the same manner, except as otherwise provided, as though the property had been in the county on the

regular assessment date, provided that the property has not been regularly assessed for the year in some other county of the state.

(3) This section does not levy a tax against a merchant or dealer within this state on goods, wares, or merchandise brought into the county to replenish the stock of the merchant or dealer.

(4) Except as provided in 15-6-217, a motor vehicle that is brought into this state by a nonresident person temporarily employed in Montana and used exclusively for transportation of the person is subject to registration under 61-3-701.

(5) Agricultural harvesting machinery classified ~~under~~ *as* class eight *property under 15-6-138*, licensed in another state, and operated on the land of a person other than the owner of the machinery under a contract for hire is subject to a fee in lieu of tax of $35 for each machine for the calendar year in which the fee is collected. The machinery is subject to taxation under class eight only if the machinery is sold in Montana."

Section 33. Section 15-24-2403, MCA, is amended to read:

"15-24-2403. Expanding industry taxable value decrease — application — approval — reports. (1) After December 31, 1991, an existing industry with qualifying property that represents an expansion of the industry is entitled to receive a decrease in the tax rate for class eight property if the property results in the hiring of full-time qualifying employees for each year in which the taxable value decrease is in effect.

(2) A person, firm, or other group seeking to qualify its property for the taxable value decrease under subsection (1) shall apply to the department ~~of revenue~~ on a form provided by the department. The application must include:

(a) the description of the personal property that may qualify for the taxable value decrease;

(b) the date on which the qualifying property is intended to be operational;

(c) the rate of pay and number of existing employees and new employees to be used in the operation of the qualifying property;

(d) a statement that the new employees are in addition to the existing workforce of the industry and the specific responsibilities of each new employee; and

(e) a statement that all the applicant's taxes are paid in full.

(3) The department shall make an initial determination as to whether the industry qualifies for the taxable value decrease.

(4) (a) If the department determines that the property qualifies for a taxable value decrease, the governing body of the affected county, consolidated government, incorporated city or town, or school district shall give due notice as defined in 76-15-103 and hold a public hearing. Each governing body may either approve or disapprove the grant of taxable value decrease. A governing body may not grant approval for the project until all of the applicant's taxes have been paid in full. Taxes paid under protest do not preclude approval.

(b) The resolution provided for in subsection (4)(a) must include the document that grants approval of the application that was submitted to the department by the taxpayer seeking the taxable value decrease.

(5) The tax reduction described in subsection (1) applies to:

(a) the number of mills levied and assessed by each governing body approving the benefit over which the governing body has sole discretion; and

(b) statewide levies if the governing body approving the tax reduction is a county, consolidated government, or incorporated city or town.

(6) The number of new employees used by the department to calculate the taxable value decrease in subsection (7) must be determined by the wages paid to qualifying employees. A qualifying employee paid the amount of the average wage as determined by the quarterly statistical report published by the department of labor and industry is considered one new employee. Qualifying employees are considered equivalent new employees if they are paid three-quarters of the average wage or more. The qualifying employee is the equivalent of a new employee in the same fraction that ~~his~~ *the employee's* wages are to the average wage, but a qualifying employee may not be considered more than two new employees.

(7) (a) Qualifying property is entitled to a decrease in the taxable rate of class eight property *under 15-6-138* based upon a percentage difference between a possible low rate of 3% and a high rate of the existing class eight property tax rate. The reduced taxable value rate is determined by calculating the inverse of the number of equivalent new employees divided by the number of existing employees and multiplying the product of that calculation by the decimal equivalent of the tax rate for class eight property.

(b) For each year that the taxable value decrease is in effect, the taxpayer shall report by March 1 to the department, on forms prescribed by the department, the wages of and the number of qualifying employees that are used in the operation of the qualifying property for which the taxable value decrease was granted."

Section 34. Section 15-30-140, MCA, is amended to read:

"15-30-140. Refundable income tax credit — statewide equalization property tax levies on principal residence — rules. (1) (a) There is a credit against the tax imposed by this chapter, which is calculated by multiplying the amount of property taxes imposed and paid on a property taxpayer's principal residence under 20-9-331, 20-9-333, and 20-9-360 on $20,000 of market value on the residence times the relief multiple.

(b) ~~(i)~~ As used in subsection (1)(a), the relief multiple is a number used to change the amount of tax relief allowed under this section. The relief multiple is 0. Each interim, the revenue and transportation interim committee shall, based upon actual and projected state revenue and spending and any other appropriate factors, determine if a change in the relief multiple is justified. If a change is justified, the committee shall request a bill to change the relief multiple.

~~(ii) The department of administration shall certify to the budget director on August 1, 2007, the amount of unaudited general fund revenue received in fiscal year 2007 as recorded when the fiscal year 2007 statewide accounting, budgeting, and human resources system records are closed in July 2007. Fiscal year 2007 is the period from July 1, 2006, to June 30, 2007. General fund revenue is as recorded in the statewide accounting, budgeting, and human resources system using generally accepted accounting principles in accordance with 17-1-102(2). If the unaudited general fund revenue received in fiscal year 2007 exceeds $1,802,000,000, for each $1,000,000 greater than $1,802,000,000, the factor in subsection (1)(b)(i) must increase by 0.1 for tax year 2007 only.~~

(2) As used in this section, "principal residence" means a class four residential dwelling *under 15-6-134* that is a single-family dwelling unit, unit of a multiple-unit dwelling, trailer, manufactured home, or mobile home and as much of the surrounding land, not exceeding 1 acre, as is reasonably necessary for its use as a dwelling and that is occupied by the owner for at least 7 months during the tax year.

(3) Only one claim may be made with respect to any property.

(4) If the amount of the credit exceeds the claimant's liability under this chapter, the amount of the excess must be refunded to the claimant. The credit may be claimed even if the claimant has no income taxable under this chapter.

(5) The department may adopt rules to implement and administer this section."

Section 35. Section 15-31-121, MCA, is amended to read:

"15-31-121. Rate of tax — minimum tax — distribution of revenue. (1) Except as provided in subsection (2), the percentage of net income to be paid under 15-31-101 is 6 3/4% of all net income for the tax period.

(2) For a taxpayer making a water's-edge election, the percentage of net income to be paid under 15-31-101 is 7% of all taxable net income for the tax period.

(3) Each corporation subject to taxation under this part shall pay a minimum tax of not less than $50.

~~(4) For fiscal year 2005, the tax collected from water's-edge corporations must be deposited as follows:~~

~~(a) $375,000 in the state special revenue fund to the credit of the department of public health and human services for state matching funds to maximize federal funds for medicaid health services; and~~

~~(b) the balance in the state general fund.~~"

Section 36. Section 16-1-306, MCA, is amended to read:

"16-1-306. Revenue to be paid to state treasurer. Except as provided in 16-1-404, ~~16-1-405,~~ 16-1-406, and 16-1-411, all fees, charges, taxes, and revenue collected by or under authority of the department must, in accordance with the provisions of 17-2-124, be deposited to the credit of the state general fund."

Section 37. Section 17-7-111, MCA, is amended to read:

"17-7-111. Preparation of state budget — agency program budgets — form distribution and contents. (1) (a) To prepare a state budget, the executive branch, the legislature, and the citizens of the state need information that is consistent and accurate. Necessary information includes detailed disbursements by fund type for each agency and program for the appropriate time period, recommendations for creating a balanced budget, and recommended disbursements and estimated receipts by fund type and fund category.

(b) Subject to the requirements of this chapter, the budget director and the legislative fiscal analyst shall by agreement:

(i) establish necessary standards, formats, and other matters necessary to share information between the agencies and to ensure that information is consistent and accurate for the preparation of the state's budget; and

(ii) provide for the collection and provision of budgetary and financial information that is in addition to or different from the information otherwise required to be provided pursuant to this section.

(2) In the preparation of a state budget, the budget director shall, not later than the date specified in 17-7-112(1), distribute to all agencies the proper forms and instructions necessary for the preparation of budget estimates by the budget director. These forms must be prescribed by the budget director to procure the information required by subsection (3). The forms must be submitted to the budget director by the date provided in 17-7-112(2)~~(a)~~, or the agency's budget is subject to preparation based upon estimates as provided in 17-7-112(5). The budget director may refuse to accept forms that do not comply with the provisions of this section or the instructions given for completing the forms.

(3) The agency budget request must set forth a balanced financial plan for the agency completing the forms for each fiscal year of the ensuing biennium. The plan must consist of:

(a) a consolidated agency budget summary of funds subject to appropriation or enterprise funds that transfer profits to the general fund or to an account subject to appropriation for the current base budget expenditures, including statutory appropriations, and for each present law adjustment and new proposal request setting forth the aggregate figures of the full-time equivalent personnel positions (FTE) and the budget, showing a balance between the total proposed disbursements and the total anticipated receipts, together with the other means of financing the budget for each fiscal year of the ensuing biennium, contrasted with the corresponding figures for the last-completed fiscal year and the fiscal year in progress;

(b) a schedule of the actual and projected receipts, disbursements, and solvency of each fund for the current biennium and estimated for the subsequent biennium;

(c) a statement of the agency mission and a statement of goals and objectives for each program of the agency. The goals and objectives must include, in a concise form, sufficient specific information and quantifiable information to enable the legislature to formulate an appropriations policy regarding the agency and its programs and to allow a determination, at some future date, on whether the agency has succeeded in attaining its goals and objectives.

(d) actual FTE and disbursements for the completed fiscal year of the current biennium, estimated FTE and disbursements for the current fiscal year, and the agency's request for the ensuing biennium, by program;

(e) actual disbursements for the completed fiscal year of the current biennium, estimated disbursements for the current fiscal year, and the agency's recommendations for the ensuing biennium, by disbursement category;

(f) for ~~only~~ agencies with more than 20 FTE, a plan to reduce the proposed base budget for the general appropriations act and the proposed state pay plan to 95% of the current base budget or lower if directed by the budget director. Each agency plan must include base budget reductions that reflect the required percentage reduction by fund type for the general fund and state special revenue fund types. Exempt from the calculations of the 5% target amounts are legislative audit costs, administratively attached entities that hire their own staff under 2-15-121, and state special revenue accounts that do not transfer their investment earnings or fund balances to the general fund. The plan must include:

(i) a prioritized list of services that would be eliminated or reduced;

(ii) for each service included in the prioritized list, the savings that would result from the elimination or reduction; and

(iii) the consequences or impacts of the proposed elimination or reduction of each service.

(g) a reference for each new information technology proposal stating whether the new proposal is included in the approved agency information technology plan as required in 2-17-523; and

(h) other information the budget director feels is necessary for the preparation of a budget.

(4) The budget director shall prepare and submit to the legislative fiscal analyst in accordance with 17-7-112:

(a) detailed recommendations for the state long-range building program. Each recommendation must be presented by institution, agency, or branch, by funding source, with a description of each proposed project.

(b) a statewide project budget summary as provided in 2-17-526;

(c) the proposed pay plan schedule for all executive branch employees at the program level by fund, with the specific cost and funding recommendations for each agency. Submission of a pay plan schedule under this subsection is not an unfair labor practice under 39-31-401.

(d) agency proposals for the use of cultural and aesthetic project grants under Title 22, chapter 2, part 3, the renewable resource grant and loan program under Title 85, chapter 1, part 6, the reclamation and development grants program under Title 90, chapter 2, part 11, and the treasure state endowment program under Title 90, chapter 6, part 7.

(5) The board of regents shall submit, with its budget request for each university unit in accordance with 17-7-112, a report on the university system bonded indebtedness and related finances as provided in this subsection (5). The report must include the following information for each year of the biennium, contrasted with the same information for the last-completed fiscal year and the fiscal year in progress:

(a) a schedule of estimated total bonded indebtedness for each university unit by bond indenture;

(b) a schedule of estimated revenue, expenditures, and fund balances by fiscal year for each outstanding bond indenture, clearly delineating the accounts relating to each indenture and the minimum legal funding requirements for each bond indenture; and

(c) a schedule showing the total funds available from each bond indenture and its associated accounts, with a list of commitments and planned expenditures from ~~such~~ *the* accounts, itemized by revenue source and project for each year of the current and ensuing bienniums.

(6) (a) The department of revenue shall make Montana individual income tax information available by removing names, addresses, and social security numbers and substituting in their place a state accounting record identifier number. Except for the purposes of complying with federal law, the department may not alter the data in any other way.

(b) The department of revenue shall provide the name and address of a taxpayer on written request of the budget director when the values on the requested return, including estimated payments, are considered necessary by the budget director to properly analyze state revenue and are of a sufficient magnitude to materially affect the analysis and when the identity of the

taxpayer is necessary to evaluate the effect of the return or payments on the analysis being performed."

Section 38. Section 17-7-138, MCA, is amended to read:

"17-7-138. Operating budget. (1) (a) Expenditures by a state agency must be made in substantial compliance with the budget approved by the legislature. Substantial compliance may be determined by conformity to the conditions contained in the general appropriations act and to legislative intent as established in the narrative accompanying the general appropriations act. An explanation of any significant change in agency or program scope must be submitted on a regular basis to the interim committee that has program evaluation and monitoring functions for the agency pursuant to Title 5, chapter 5, part 2. An explanation of any significant change in agency or program scope, objectives, activities, or expenditures must be submitted to the legislative fiscal analyst for review and comment by the legislative finance committee prior to any implementation of the change. A significant change may not conflict with a condition contained in the general appropriations act. If the approving authority certifies that a change is time-sensitive, the approving authority may approve the change prior to the next regularly scheduled meeting of the legislative finance committee. The approving authority shall submit all proposed time-sensitive changes to the legislative fiscal analyst prior to approval. If the legislative fiscal analyst determines that notification of the legislative finance committee is warranted, the legislative fiscal analyst shall immediately notify as many members as possible of the proposed change and communicate any concerns expressed to the approving authority. The approving authority shall present a report fully explaining the reasons for the action to the next meeting of the legislative finance committee. Except as provided in subsection (2), the expenditure of money appropriated in the general appropriations act is contingent upon approval of an operating budget by August 1 of each fiscal year. An approved original operating budget must comply with state law and conditions contained in the general appropriations act.

(b) For the purposes of this subsection (1), an agency or program is considered to have a significant change in its scope, objectives, activities, or expenditures if:

(i) the operating budget change exceeds $1 million; or

(ii) the operating budget change exceeds 25% of a budget category and the change is greater than $25,000. If there have been other changes to the budget category in the current fiscal year, all the changes, including the change under consideration, must be used in determining the 25% and $25,000 threshold.

(2) The expenditure of money appropriated in the general appropriations act to the board of regents, on behalf of the university system units, as defined in 17-7-102, is contingent upon approval of a comprehensive operating budget by October 1 of each fiscal year. The operating budget must contain detailed revenue and expenditures and anticipated fund balances of current funds, loan funds, endowment funds, and plant funds. After the board of regents approves operating budgets, transfers between units may be made only with the approval of the board of regents. Transfers and related justification must be submitted to the office of budget and program planning and to the legislative fiscal analyst.

(3) The operating budget for money appropriated by the general appropriations act must be separate from the operating budget for money appropriated by another law except a law appropriating money for the state pay plan or any portion of the state pay plan. The legislature may restrict the use of

funds appropriated for personal services to allow use only for the purpose of the appropriation. Each operating budget must include expenditures for each agency program, detailed at least by first-level categories as provided in 17-1-102(3). Each agency shall record its operating budget for all funds, other than higher education funds, and any approved changes on the statewide ~~budget and accounting state financial system~~ *accounting, budgeting, and human resource system*. Documents implementing approved changes must be signed. The operating budget for higher education funds must be recorded on the university financial system, with separate accounting categories for each source or use of state government funds. State sources and university sources of funds may be combined for the general operating portion of the current unrestricted funds."

Section 39. Section 18-2-401, MCA, is amended to read:

"18-2-401. Definitions. Unless the context requires otherwise, in this part, the following definitions apply:

(1) ~~A "bona~~ *"Bona* fide resident of Montana" ~~is~~ *means* a person who, at the time of employment and immediately prior to the time of employment, has lived in this state in a manner and for a time that is sufficient to clearly justify the conclusion that the person's past habitation in this state has been coupled with an intention to make it the person's home. Persons who come to Montana solely in pursuance of any contract or agreement to perform labor may not be considered to be bona fide residents of Montana within the meaning and for the purpose of this part.

(2) "Commissioner" means the commissioner of labor and industry provided for in 2-15-1701.

(3) (a) "Construction services" means work performed by an individual in construction, heavy construction, highway construction, and remodeling work.

(b) The term does not include:

(i) engineering, superintendence, management, office, or clerical work on a public works contract; or

(ii) consulting contracts, contracts with commercial suppliers for goods and supplies, or contracts with professionals licensed under state law.

(4) "Contractor" means any general contractor, subcontractor, firm, association, partnership, corporation, limited liability partnership, or limited liability company engaged in construction services.

(5) "Department" means the department of labor and industry provided for in 2-15-1701.

(6) "District" means a prevailing wage rate district established as provided in 18-2-411.

(7) "Employer" means any firm, association, partnership, corporation, limited liability partnership, or limited liability company engaged in nonconstruction services.

(8) "Heavy and highway construction wage rates" means wage rates, including fringe benefits for health and welfare and pension contributions, that meet the requirements of the Employee Retirement Income Security Act of 1974 and other bona fide programs approved by the United States department of labor and zone pay and travel allowance that are determined and established statewide for heavy and highway construction projects, such as alteration or repair of roads, streets, highways, alleys, runways, trails, parking areas, utility

rights-of-way, staging yards located on or off the right-of-way, or new or reopened pits that produce aggregate, asphalt, concrete, or backfill when the pit does not normally sell to the general public.

(9) "Nonconstruction services" means work performed by an individual, not including management, office, or clerical work, for:

(a) the maintenance of publicly owned buildings and facilities, including public highways, roads, streets, and alleys;

(b) custodial or security services for publicly owned buildings and facilities;

(c) grounds maintenance for publicly owned property;

(d) the operation of public drinking water supply, waste collection, and waste disposal systems;

(e) law enforcement, including janitors and prison guards;

(f) fire protection;

(g) public or school transportation driving;

(h) nursing, nurse's aid services, and medical laboratory technician services;

(i) material and mail handling;

(j) food service and cooking;

(k) motor vehicle and construction equipment repair and servicing; and

(l) appliance and office machine repair and servicing.

(10) "Project location" means the construction site where a public works project involving construction services is being built, installed, or otherwise improved or reclaimed, as specified on the project plans and specifications.

(11) (a) "Public works contract" means a contract for construction services let by the state, county, municipality, school district, or political subdivision or for nonconstruction services let by the state, county, municipality, or political subdivision in which the total cost of the contract is in excess of $25,000. The nonconstruction services classification does not apply to any school district that at any time prior to April 27, 1999, contracted with a private contractor for the provision of nonconstruction services on behalf of the district.

(b) The term does not include contracts entered into by the department of public health and human services for the provision of human services.

(12) "Special circumstances" means all work performed at a facility that is built or developed for a specific Montana public works project and that is located in a prevailing wage district that contains the project location or that is located in a contiguous prevailing wage district.

(13) (a) "Standard prevailing rate of wages" or "standard prevailing wage" means:

(i) the heavy and highway construction wage rates applicable to heavy and highway construction projects; or

(ii) those wages, other than heavy and highway construction wages, including fringe benefits for health and welfare and pension contributions, that meet the requirements of the Employee Retirement *Income* Security Act of 1974 and other bona fide programs approved by the United States department of labor and travel allowance that are paid in the district by other contractors for work of a similar character performed in that district by each craft, classification, or type of worker needed to complete a contract under this part. In each district, the standard prevailing rate of wages must be computed by the

department based on work performed by electrical contractors who are licensed under Title 37, chapter 68, master plumbers who are licensed under Title 37, chapter 69, part 3, and Montana contractors who are registered under Title 39, chapter 9, and whose work is performed according to commercial building codes. The contractor survey must include information pertaining to the number of skilled craftspersons employed in the employer's peak month of employment and the wages and benefits paid for each craft. In setting the prevailing wages from the survey for each craft, the department shall use the weighted average wage for each craft, except in those cases in which the survey shows that 50% of the craftspersons are receiving the same wage. When the survey shows that 50% of the craftspersons are receiving the same wage, that wage is the prevailing wage for that craft. The work performed must be work of a similar character to the work performed in the district unless the annual survey of construction contractors and the biennial survey of nonconstruction service employers in the district does not generate sufficient data. If the survey produces insufficient data, the rate may be established by the use of other information or methods that the commissioner determines fairly establish the standard prevailing rate of wages. The commissioner shall establish by rule the method or methods by which the standard prevailing rate of wages is determined. The rules must establish a process for determining if there is insufficient data generated by the survey of employers in the district that requires the use of other methods of determining the standard prevailing rate of wages. The rules must identify the amount of data that constitutes insufficient data and require the commissioner of labor to use other methods of determining the standard prevailing rate of wages when insufficient data exists. The alternative methods of determining the prevailing rate of wages must provide for review and the incorporation of data from work of a similar character that is conducted as near as possible to the original district.

(b) When work of a similar character is not being performed in the district, the standard prevailing rate of wages, including fringe benefits for health and welfare and pension contributions, that meets the requirements of the Employee Retirement *Income* Security Act of 1974 and other bona fide programs approved by the United States department of labor and the rate of travel allowance must be those rates established by collective bargaining agreements in effect in the district for each craft, classification, or type of worker needed to complete the contract.

(14) "Work of a similar character" means work on private commercial projects as well as work on public projects."

Section 40. Section 18-5-605, MCA, is amended to read:

"18-5-605. Implementation. (1) For the purposes of ensuring the effective phasing in of nonvisual access technology procurement, the head of any state agency may not approve exclusion of the technology access clause required by 18-5-604 from any contract with respect to the compatibility of standard operating systems and software with nonvisual access software and peripheral devices or with respect to the initial design, development, and installation of information systems, including the design and procurement of interactive equipment and software.

(2) This section does not require the installation of software or peripheral devices used for nonvisual access when the information technology is being used by individuals who are not blind or visually impaired.

(3) Notwithstanding subsection (2), the applications programs and underlying operating systems, including the format of the data, used for the manipulation and presentation of information must permit the installation and effective use of nonvisual access software and peripheral devices.

(4) Compliance with this part with regard to information technology purchased prior to July 1, 2001, must be achieved at the time of procurement of an upgrade or replacement of existing equipment or software.

~~(5) Until July 1, 2003, a state agency may be exempted from the requirements of 18-5-604 if the cost would cause the state agency's budget to exceed legislative appropriations.~~

~~(6)~~*(5)* A state agency may be exempted from the provisions of this part if the state agency makes a good faith determination that compliance would result in an undue burden."

Section 41. Section 19-3-2121, MCA, is amended to read:

"19-3-2121. Determination and adjustment of plan choice rate and contribution allocations. (1) The board shall periodically review the sufficiency of the plan choice rate and shall adjust the allocation of contributions under 19-3-2117 as specified in this section. The board shall collect and maintain the data necessary to comply with this section.

(2) The plan choice rate set in ~~19-3-2117(2)(b)~~ *19-3-2117(2)(a)(ii)* must be adjusted as provided in this section, taking into account:

(a) as determined under subsection (3), the change in the normal cost contribution rate in the defined benefit plan that is the result of member selection of the defined contribution plan; and

(b) as determined under subsection (4), the sufficiency of the plan choice rate to actuarially fund the defined contribution plan member's appropriate share of the defined benefit plan's unfunded liabilities.

(3) The change in the normal cost contribution rate must be an amount equal to the difference between the normal cost contribution rate in the defined benefit plan that would have resulted if all system members remained in the defined benefit plan and the normal cost contribution rate in the defined benefit plan for the actual members of the defined benefit plan, multiplied by the compensation paid to all of the members in the defined benefit plan, divided by the compensation paid to all of the members in the defined contribution plan. The measurements under this subsection must be based on the defined benefit plan in effect on the effective date of the defined contribution plan until the board determines that the defined benefit plan has been amended in a manner that significantly affects plan choices available to system members. After a board determination that the defined benefit plan has been significantly changed, the measurements in this subsection with respect to members entering the system after the significant change must be made on the basis of the defined benefit plan, as amended.

(4) The sufficiency of the plan choice rate to actuarially fund the appropriate share of the defined benefit plan's unfunded liabilities must be determined as follows:

(a) The board shall determine the number of years required to actuarially fund the defined benefit plan's unfunded liabilities as of the June 30, 1998, actuarial valuation, which must be the initial schedule for the defined contribution plan to actuarially fund the plan's share of the unfunded liabilities. The board shall reduce the schedule by 1 year each biennium.

(b) During each subsequent actuarial valuation of the defined benefit plan conducted pursuant to 19-2-405, the board shall determine whether the plan choice rate minus the amount provided in subsection (2)(a) of this section is sufficient to pay the unfunded liability obligations within the schedule determined under subsection (4)(a) of this section. If the amount is insufficient to fund the liability over a period of 10 years longer than the scheduled period or is more than sufficient to fund the liability over a period of 10 years earlier than the scheduled period, the board shall determine to the nearest 0.1% the amount of the increase or decrease in the plan choice rate that is required to actuarially fund the liabilities according to the established schedule.

(5) If the board determines that the plan choice rate should be increased or decreased, the plan choice rate under ~~19-3-2117(2)(b)~~ *19-3-2117(2)(a)(ii)* must be increased or decreased accordingly. If the plan choice rate is increased, the allocation of employer contributions to member accounts under 19-3-2117(2)(a)*(i)* must be decreased by that amount. If the plan choice rate is decreased, the allocation of employer contributions to member accounts under 19-3-2117(2)(a)*(i)* must be increased by that amount.

(6) If the board determines that the contribution rate to the disability plan under ~~19-3-2117(2)(d)~~ *19-3-2117(2)(a)(iv)* should be increased, the employer contribution to each member's account under 19-3-2117(2)(a)*(i)* must be decreased by that amount. If the board determines that the contribution rate to the disability plan under ~~19-3-2117(2)(d)~~ *19-3-2117(2)(a)(iv)* should be decreased, the employer contribution to each member's account under 19-3-2117(2)(a)*(i)* must be increased by that amount.

(7) By November 1 of the year of a determination pursuant to this section that the allocation of employer contributions under 19-3-2117(2) must be changed, the board shall notify system members, participating employers, employee and employer organizations, the governor, and the legislature of its determination and of the changes required.

(8) Effective January 1 of the year after the regular legislative session that immediately follows a determination under this section, the plan choice rate and the allocation of contributions under 19-3-2117(2) must be adjusted according to the board's determination."

Section 42. Section 19-21-203, MCA, is amended to read:

"19-21-203. Contributions — supplemental and plan choice rate contributions. The following provisions apply to program participants not otherwise covered under 19-21-214:

(1) (a) Each program participant shall contribute an amount equal to the member's contribution required under 19-20-602.

(b) (i) Each month, the board of regents shall calculate an amount equal to 1% of each participant's earned compensation, total the amounts calculated, and certify to the state treasurer the total amount for all participants combined.

(ii) Within 1 week of receiving notice of the certified amount, the state treasurer shall transfer the certified amount from the general fund to the board of regents. Upon receipt of the amount transferred, the board ~~[of regents]~~ *of regents* shall allocate and deposit to the account of each participant the amount calculated for that participant under subsection (1)(b)(i). The amounts transferred under this subsection (1)(b)(ii) are statutorily appropriated, as provided in 17-7-502.

(c) The board of regents shall contribute an amount that, when added to the sum of the participant's contribution plus the contribution made under subsection (1)(b)(ii), is equal to 13% of the participant's earned compensation.

(2) (a) The board of regents may:

(i) reduce the participant's contribution rate established in subsection (1) to an amount not less than 6% of the participant's earned compensation; and

(ii) increase the employer's contribution rate to an amount not greater than 6% of the participant's earned compensation.

(b) Notwithstanding the supplemental contributions required under 19-20-604 and subsection (5) of this section, the sum of the participant's contributions made under subsection (1)(a), the state's contributions made under subsection (1)(b), and the employer's contributions made under subsection (1)(c) must remain at 13% of the participant's earned compensation.

(3) The board of regents shall determine whether the participant's contribution is to be made by salary reduction under section 403(b) of the Internal Revenue Code, 26 U.S.C. 403(b), as amended, or by employer pickup under section 414(h)(2) of that code, 26 U.S.C. 414(h)(2), as amended.

(4) The disbursing officer of the employer or other official designated by the board of regents shall pay both the participant's contribution and the appropriate portion of the board of regents' contribution to the designated company or companies for the benefit of the participant.

(5) The board of regents shall make the supplemental contributions to the teachers' retirement system, as provided in 19-20-621, to discharge the obligation incurred by the Montana university system for the past service liability incurred by active, inactive, and retired members of the teachers' retirement system."

Section 43. Section 20-7-328, MCA, is amended to read:

"20-7-328. Legislative intent. (1) It is the intent of the legislature that the administration of the programs authorized by the Carl D. Perkins ~~Vocational and Applied Technology Education Act~~ *Career and Technical Education Improvement Act of 2006* provide a seamless system of services to those people seeking to improve their ~~vocational~~ *career* and technical skills.

(2) It is the intent of the legislature that the superintendent of public instruction and the commissioner work cooperatively in providing that system of ~~vocational~~ *career* and technical services at both the secondary and postsecondary levels.

(3) It is the intent of the legislature that the development of the state plan for ~~vocational~~ *career* and technical education be a cooperative effort of the superintendent of public instruction and the commissioner in consultation with teachers, students, and institutions or agencies that provide the services and activities."

Section 44. Section 20-7-329, MCA, is amended to read:

"20-7-329. Eligible agency for federal vocational education requirements. (1) The board of regents is the eligible agency for purposes of the ~~1984 federal~~ Carl D. Perkins ~~Vocational and Applied Technology Education Act~~ *Career and Technical Education Improvement Act of 2006*, as amended, which requires a state participating in programs under that act to designate a state board as the eligible agency responsible for administration or supervision of those programs.

(2) The board of regents shall contract with the superintendent of public instruction for the administration and supervision of K-12 career and ~~vocational/technical~~ *technical* education programs, services, and activities allowed by the ~~1984 federal~~ Carl D. Perkins ~~Vocational and Applied Technology Education Act~~ *Career and Technical Education Improvement Act of 2006*, as amended, and in concert with the state plan for ~~vocational~~ *career* and technical education required by the act. The board of regents may contract with other agencies for the administration and supervision of ~~vocational-technical~~ *technical* education programs, services, and activities that receive funding allowed by the ~~1984 federal~~ Carl D. Perkins ~~Vocational and Applied Technology Education Act~~ *Career and Technical Education Improvement Act of 2006*, as amended."

Section 45. Section 20-7-330, MCA, is amended to read:

"20-7-330. Creation of state plan committee — meetings — report. (1) The superintendent of public instruction and the commissioner shall each appoint three people from their respective advisory boards to serve on a committee to review and update the 5-year state plan for ~~vocational~~ *career* and technical education as required by 20 U.S.C. 2323. Two members appointed from each advisory board must be educators, and the remaining member appointed from each advisory board must be a representative of a business or community interest.

(2) At least four times a year, the board of regents shall meet with the superintendent of public instruction, teachers, students, labor organizations, businesses, and institutions or agencies involved in vocational and technical education to:

(a) discuss the state plan;

(b) identify any issues or concerns with the administration of the Carl D. Perkins ~~Vocational and Applied Technology Education Act~~ *Career and Technical Education Improvement Act of 2006* in Montana;

(c) identify the needs of ~~vocational-technical~~ *technical* students and programs in Montana and determine the best way to meet those needs; and

(d) if necessary, make changes in the administration and operation of the Carl D. Perkins ~~Vocational and Applied Technology Education Act~~ *Career and Technical Education Improvement Act of 2006* in Montana.

(3) The board of regents shall report the results of the meetings required in subsection (2) to the legislature in accordance with the provisions of 5-11-210."

Section 46. Section 20-9-501, MCA, is amended to read:

"20-9-501. Retirement costs and retirement fund. (1) The trustees of a district or the management board of a cooperative employing personnel who are members of the teachers' retirement system or the public employees' retirement system, who are covered by unemployment insurance, or who are covered by any federal social security system requiring employer contributions shall establish a retirement fund for the purposes of budgeting and paying the employer's contributions to the systems as provided in subsection (2)(a). The district's or the cooperative's contribution for each employee who is a member of the teachers' retirement system must be calculated in accordance with Title 19, chapter 20, part 6. The district's or the cooperative's contribution for each employee who is a member of the public employees' retirement system must be calculated in accordance with 19-3-316. The district's or the cooperative's contributions for each employee covered by any federal social security system must be paid in

accordance with federal law and regulation. The district's or the cooperative's contribution for each employee who is covered by unemployment insurance must be paid in accordance with Title 39, chapter 51, part 11.

(2) (a) The district or the cooperative shall pay the employer's contributions to the retirement, federal social security, and unemployment insurance systems from the retirement fund for the following:

(i) a district employee whose salary and health-related benefits, if any health-related benefits are provided to the employee, are paid from state or local funding sources;

(ii) a cooperative employee whose salary and health-related benefits, if any health-related benefits are provided to the employee, are paid from the cooperative's interlocal cooperative fund if the fund is supported solely from districts' general funds and state special education allowable cost payments, pursuant to 20-9-321, or are paid from the miscellaneous programs fund, provided for in 20-9-507, from money received from the medicaid program, pursuant to 53-6-101;

(iii) a district employee whose salary and health-related benefits, if any health-related benefits are provided to the employee, are paid from the district's school food services fund provided for in 20-10-204; and

(iv) a district employee whose salary and health-related benefits, if any health-related benefits are provided to the employee, are paid from the district impact aid fund, pursuant to 20-9-514.

(b) For an employee whose benefits are not paid from the retirement fund, the district or the cooperative shall pay the employer's contributions to the retirement, federal social security, and unemployment insurance systems from the funding source that pays the employee's salary.

(3) The trustees of a district required to make a contribution to a system referred to in subsection (1) shall include in the retirement fund of the final budget the estimated amount of the employer's contribution. After the final retirement fund budget has been adopted, the trustees shall pay the employer contributions to the systems in accordance with the financial administration provisions of this title.

(4) When the final retirement fund budget has been adopted, the county superintendent shall establish the levy requirement by:

(a) determining the sum of the money available to reduce the retirement fund levy requirement by adding:

(i) any anticipated money that may be realized in the retirement fund during the ensuing school fiscal year;

(ii) oil and natural gas production taxes;

(iii) coal gross proceeds taxes under 15-23-703;

~~(iv) countywide school retirement block grants distributed under 20-9-631;~~

~~(v)~~*(iv)* any fund balance available for reappropriation as determined by subtracting the amount of the end-of-the-year fund balance earmarked as the retirement fund operating reserve for the ensuing school fiscal year by the trustees from the end-of-the-year fund balance in the retirement fund. The retirement fund operating reserve may not be more than 35% of the final retirement fund budget for the ensuing school fiscal year and must be used for the purpose of paying retirement fund warrants issued by the district under the final retirement fund budget.

~~(vi)~~*(v)* any other revenue anticipated that may be realized in the retirement fund during the ensuing school fiscal year, excluding any guaranteed tax base aid.

(b) notwithstanding the provisions of subsection (9), subtracting the money available for reduction of the levy requirement, as determined in subsection (4)(a), from the budgeted amount for expenditures in the final retirement fund budget.

(5) The county superintendent shall:

(a) total the net retirement fund levy requirements separately for all elementary school districts, all high school districts, and all community college districts of the county, including any prorated joint district or special education cooperative agreement levy requirements; and

(b) report each levy requirement to the county commissioners on the fourth Monday of August as the respective county levy requirements for elementary district, high school district, and community college district retirement funds.

(6) The county commissioners shall fix and set the county levy or district levy in accordance with 20-9-142.

(7) The net retirement fund levy requirement for a joint elementary district or a joint high school district must be prorated to each county in which a part of the district is located in the same proportion as the district ANB of the joint district is distributed by pupil residence in each county. The county superintendents of the counties affected shall jointly determine the net retirement fund levy requirement for each county as provided in 20-9-151.

(8) The net retirement fund levy requirement for districts that are members of special education cooperative agreements must be prorated to each county in which the district is located in the same proportion as the special education cooperative budget is prorated to the member school districts. The county superintendents of the counties affected shall jointly determine the net retirement fund levy requirement for each county in the same manner as provided in 20-9-151, and the county commissioners shall fix and levy the net retirement fund levy for each county in the same manner as provided in 20-9-152.

(9) The county superintendent shall calculate the number of mills to be levied on the taxable property in the county to finance the retirement fund net levy requirement by dividing the amount determined in subsection (5)(a) by the sum of:

(a) the amount of guaranteed tax base aid that the county will receive for each mill levied, as certified by the superintendent of public instruction; and

(b) the taxable valuation of the district divided by 1,000.

(10) The levy for a community college district may be applied only to property within the district.

(11) The county superintendent of each county shall submit a report of the revenue amounts used to establish the levy requirements for county school funds supporting elementary and high school district retirement obligations to the superintendent of public instruction not later than the second Monday in September. The report must be completed on forms supplied by the superintendent of public instruction."

Section 47. Section 20-9-707, MCA, is amended to read:

"20-9-707. Agreement with accredited Montana job corps program. (1) The trustees of a school district may enter into an interlocal cooperative agreement for the ensuing school fiscal year under the provisions of Title 7, chapter 11, part 1, with a Montana job corps program accredited by the northwest ~~association of schools and colleges~~ *commission on colleges and universities* to provide educational or vocational services that are supplemental to the educational programs offered by the resident school district.

(2) A student who receives educational or vocational services at a Montana job corps program pursuant to an agreement authorized under subsection (1) must be enrolled, for purposes of calculating average number belonging, in a public school in the student's district of residence. Credits taken at the accredited Montana job corps program must be approved by the school district and meet the requirements for graduation at a school in the student's district of residence, must be taught by an instructor who has a current and appropriate Montana high school certification, and must be reported by the institution to the student's district of residence. Upon accumulating the necessary credits at either a school in the district of residence or at an accredited Montana job corps program pursuant to an interlocal cooperative agreement, a student must be allowed to graduate from the school in the student's district of residence.

(3) A school district that, pursuant to an interlocal cooperative agreement, allows an enrolled student to attend a Montana job corps program accredited as prescribed in subsection (1) is not responsible for payment of the student's transportation costs to the job corps program.

(4) A student attending a job corps program may not claim the job corps program's facility as the student's residence for the purposes of this section."

Section 48. Section 22-2-107, MCA, is amended to read:

"22-2-107. Gifts and donations. The council may acquire, accept, receive, dispose of, and administer in the name of the council any gifts, donations, properties, securities, bequests, and legacies that may be made to it. ~~Moneys~~ *Money* received by donation, gift, bequest, or legacy, unless otherwise provided by the donor, ~~shall~~ *must* be deposited in the state special revenue fund of the state treasury and used for the general operation of the council. The council is the official agency of the state to receive and disburse any funds made available by the national ~~foundation on~~ *endowment for* the arts."

Section 49. Section 23-5-119, MCA, is amended to read:

"23-5-119. Appropriate alcoholic beverage license for certain gambling activities. (1) Except as provided in subsection (3), to be eligible to offer gambling under Title 23, chapter 5, part 3, 5, or 6, an applicant ~~shall~~ *must* own in the applicant's name:

(a) a retail all-beverages license issued under 16-4-201, but *the owner of* a license transferred after July 1, 2007, to a quota area pursuant to a department-conducted lottery under 16-4-204(1)(a) is not eligible to offer gambling;

(b) except as provided in subsection (1)(c), a license issued prior to October 1, 1997, under 16-4-105, authorizing the sale of beer and wine for consumption on the licensed premises;

(c) a beer and wine license issued in an area outside of an incorporated city or town as provided in 16-4-105(1)(e). The owner of the license whose premises are situated outside of an incorporated city or town may offer gambling, regardless

of when the license was issued, if the owner and premises qualify under Title 23, chapter 5, part 3, 5, or 6~~;~~.

(d) a retail beer and wine license issued under 16-4-109;

(e) a retail all-beverages license issued under 16-4-202; or

(f) a retail all-beverages license issued under 16-4-208.

(2) For purposes of subsection (1)(b), a license issued under 16-4-105 prior to October 1, 1997, may be transferred to a new owner or to a new location or transferred to a new owner and location by the department of revenue pursuant to the applicable provisions of Title 16. The owner of the license that has been transferred may offer gambling if the owner and the premises qualify under Title 23, chapter 5, part 3, 5, or 6.

(3) Lessees of retail all-beverages licenses issued under 16-4-208 or beer and wine licenses issued under 16-4-109 who have applied for and been granted a gambling operator's license under 23-5-177 are eligible to offer and may be granted permits for gambling authorized under Title 23, chapter 5, part 3, 5, or 6.

(4) A license transferee or a qualified purchaser operating pending final approval under 16-4-404(6) who has been granted a gambling operator's license under 23-5-177 may be granted permits for gambling under Title 23, chapter 5, part 3, 5, or 6."

Section 50. Section 27-20-102, MCA, is amended to read:

"27-20-102. When and by whom receiver appointed. A receiver may be appointed by the court in which an action is pending ~~or by the judge thereof~~ *when the action is*:

(1) ~~in an action~~ by a vendor to vacate a fraudulent purchase of property~~,~~*;*

(2) by a creditor to subject any property or fund to ~~his~~ *the creditor's* claim~~,~~*;* ~~or~~

(3) between partners or others jointly owning or interested in any property or fund, on the application of the plaintiff or of any party whose right to or interest in the property or fund or the proceeds ~~thereof~~ *of the property or fund* is probable~~,~~ and ~~where~~ *when* it is shown that the property or fund is in danger of being lost, removed, or materially injured;

~~(2)~~*(4)* ~~in an action~~ by a mortgagee for the foreclosure of ~~his~~ *the mortgagee's* mortgage and sale of the mortgaged property~~, where~~ *and when* it ~~appears~~ *is shown* that the mortgaged property is in danger of being lost, removed, or materially injured or that the condition of the mortgage has not been performed and the property is probably insufficient to discharge the mortgage debt;

~~(3)~~*(5)* after judgment, to carry the judgment into effect;

~~(4)~~*(6)* after judgment, to dispose of the property according to the judgment or to preserve it during the pendency of an appeal; or

(7) ~~in~~ *for* proceedings in aid of execution, when an execution has been returned unsatisfied or when the judgment debtor refuses to apply ~~his~~ *the judgment debtor's* property in satisfaction of the judgment~~;~~

~~(5) in all other cases where, before February 1, 1864, receivers have been appointed by the usages of courts of equity~~."

Section 51. Section 30-10-324, MCA, is amended to read:

"30-10-324. Definitions. As used in 30-10-324 through 30-10-326, the following definitions apply:

(1) (a) "Compensation" means the receipt of money, a thing of value, or a financial benefit.

(b) Compensation does not include:

(i) payments to a participant based upon the sale of goods or services by the participant to third persons when the goods or services are purchased for actual use or consumption; or

(ii) payments to a participant based upon the sale of goods or services to the participant that are used or consumed by the participant.

(2) (a) "Consideration" means the payment of money, the purchase of goods or services, or the purchase of intangible property.

(b) Consideration does not include:

(i) the purchase of goods or services furnished at cost that are used in making sales and that are not for resale; or

(ii) a participant's time and effort expended in the pursuit of sales or in recruiting activities.

(3) (a) "Multilevel distribution company" means a person that:

(i) sells, distributes, or supplies goods or services through independent agents, contractors, or distributors at different levels of distribution;

(ii) may recruit other participants in the company; and

(iii) is eligible for commissions, cross-commissions, override commissions, bonuses, refunds, dividends, or other consideration that is or may be paid as a result of the sale of goods or services or the recruitment of or the performance or actions of other participants.

(b) The term does not include an insurance producer, real estate broker, or salesperson or an investment adviser, investment adviser representative, broker-dealer, or salesperson, as defined in 30-10-103, operating in compliance with this chapter.

(4) "Participant" means a person involved in a sales plan or operation.

(5) "Person" means an individual, corporation, partnership, limited liability company, or other business entity.

(6) (a) "Pyramid promotional scheme" means a sales plan or operation in which a participant gives consideration for the opportunity to receive compensation derived primarily from obtaining the participation of other persons in the sales plan or operation rather than from the sale of goods or services by the participant or the other persons induced to participate in the sales plan or operation by the participant.

(b) A pyramid promotional scheme includes a Ponzi scheme, in which a person makes payments to investors from money obtained from later investors, rather than from any profits or other income of an underlying or purported underlying business venture.

(c) A pyramid promotional scheme does not include a sales plan or operation that:

(i) subject to the provisions of subsection ~~(6)(b)(v)~~ *(6)(c)(v)*, provides compensation to a participant based primarily upon the sale of goods or services by the participant, including goods or services used or consumed by the participant, and not primarily for obtaining the participation of other persons in the sales plan or operation and that provides compensation to the participant

based upon the sale of goods or services by persons whose participation in the sales plan or operation has been obtained by the participant;

(ii) does not require a participant to purchase goods or services in an amount that unreasonably exceeds an amount that can be expected to be resold or consumed within a reasonable period of time;

(iii) is authorized to use a federally registered trademark or servicemark that identifies the company promoting the sales plan or operation, the goods or services sold, or the sales plan or operation;

(iv) (A) provides each person joining the sales plan or operation with a written agreement containing or a written statement describing the material terms of participating in the sales plan or operation;

(B) allows a person at least 15 days to cancel the person's participation in the sales plan or operation ~~plan~~; and

(C) provides that if the person cancels participation within the time provided and returns any required items, the person is entitled to a refund of any consideration given to participate in the sales plan or operation; and

(v) (A) ~~provides for,~~ upon the request of a participant deciding to terminate participation in the sales plan or operation, *provides for* the repurchase, at not less than 90% of the amount paid by the participant, of any currently marketable goods or services sold to the participant within 12 months of the request that have not been resold or consumed by the participant; and

(B) if disclosed to the participant at the time of purchase, provides that goods or services are not considered currently marketable if the goods have been consumed or the services rendered or if the goods or services are seasonal, discontinued, or special promotional items. Sales plan or operation promotional materials, sales aids, and sales kits are subject to the provisions of this subsection ~~(6)(b)(v)~~ *(6)(c)(v)* if they are a required purchase for the participant or if the participant has received or may receive a financial benefit from their purchase."

Section 52. Section 31-2-106, MCA, is amended to read:

"31-2-106. Exempt property — bankruptcy proceeding. An individual may not exempt from the property of the estate in any bankruptcy proceeding the property specified in 11 U.S.C. 522(d). An individual may exempt from the property of the estate in any bankruptcy proceeding:

(1) that property exempt from execution of judgment as provided in 19-2-1004, 19-18-612, 19-19-504, 19-20-706, 19-21-212, Title 25, chapter 13, part 6, 33-7-522, 33-15-512 through 33-15-514, 39-51-3105, 39-71-743, 39-73-110, 53-2-607, 53-9-129, Title 70, chapter 32, and 80-2-245;

(2) the individual's right to receive unemployment compensation and unemployment benefits; and

(3) the individual's right to receive benefits from or interest in a private or governmental retirement, pension, stock bonus, profit-sharing, annuity, or similar plan or contract on account of illness, disability, death, age, or length of service, excluding that portion of contributions made by the individual within 1 year before the filing of the petition in bankruptcy that exceeds 15% of the individual's gross income for that 1-year period, unless:

(a) the plan or contract was established by or under the auspices of an insider that employed the individual at the time the individual's rights under the plan or contract arose;

(b) the benefit is paid on account of age or length of service; and

(c) the plan or contract does not qualify under section 401(a), 403(a), 403(b), 408, or 409 of the Internal Revenue Code, 26 U.S.C. 401(a), *403(a),* 403(b), 408, or 409."

Section 53. Section 33-1-111, MCA, is amended to read:

"33-1-111. Eligibility requirements of health insurance issuers. As a condition of doing business in the state of Montana, a health insurance issuer, a multiple employer welfare arrangement, a third-party administrator, a health maintenance organization, a pharmacy benefit manager, a health services corporation, or any other party that by statute, contract, or agreement is legally responsible for payment of a claim for a health care item or service shall:

(1) upon request, provide to the department of public health and human services eligibility information for individuals who are eligible for or receiving medicaid, including but not limited to:

(a) data to determine during what period the medicaid recipient or medicaid-eligible individual or the spouse or dependents of the recipient or eligible individual may be or may have been covered by any of the entities listed in this section; and

(b) data regarding the nature of the coverage that is or was provided, including but not limited to the name, address, and identifying information of the entity providing coverage;

(2) respond to any inquiry from the department of public health and human services regarding a claim for payment for any health care item or service submitted not later than 3 years after the date the item or service was provided;

(3) accept the department of public health and human services' right of recovery and the assignment from the medicaid recipient to the department of public health and human services of any right of an individual or other entity to payment from any of the entities listed in this section for an item or service for which medicaid has paid; and

(4) agree not to deny a claim submitted by the department of public health and human services solely on the basis of the date of submission of the claim, the type or format of the claim form, or a failure to present proper documentation at the point of sale that is the basis of the claim if:

(a) the claim is submitted by the department of public health and human services within the 3-year period beginning on the date on which the service or item was provided; and

(b) any action by the department of public health and human services to enforce its rights with respect to the claim is commenced within 6 years after the department submitted the claim.

(5) This section may not be construed to:

(a) require that a third party pay any *claim by the* department ~~claim~~ *of public health and human services* for services or items that are not covered under the applicable health care plan;

(b) require that any third-party administrator, fiscal intermediary, or other contractor pay a *claim by the* department ~~claim~~ *of public health and human services* from its own funds unless the entity also bears the financial obligation for the claim under the applicable plan documents;

(c) impose any liability on an entity to pay claims that the entity does not otherwise bear; or

(d) negate any right of indemnification against a plan sponsor or other entity with ultimate liability for health care claims by a third-party administrator, fiscal intermediary, or other contractor that pays the claims."

Section 54. Section 37-17-102, MCA, is amended to read:

"37-17-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Accredited college or university" means a college or university accredited by the regional accrediting association for institutions of higher learning, such as the northwest ~~association of schools and colleges~~ *commission on colleges and universities*.

(2) "Board" means the board of psychologists provided for in 2-15-1741.

(3) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(4) (a) "Practice of psychology" means the observation, description, interpretation, and modification of human behavior by the application of psychological principles, methods, and procedures for the purpose of eliminating symptomatic, maladaptive, or undesired behavior and improving interpersonal relations, work and life adjustment, personal effectiveness, and mental health.

(b) The practice of psychology includes but is not limited to psychological testing and evaluation or assessment of personal characteristics such as intelligence, personality, abilities, interests, aptitudes, and neuropsychological functioning; counseling, psychoanalysis, psychotherapy, hypnosis, biofeedback, and behavior analysis and therapy; diagnosis and treatment of mental and emotional disorders or disabilities, chemical dependency, substance abuse, and the psychological aspects of physical illness, accident, injury, or disability; and psychoeducational evaluation, therapy, remediation, and consultation.

(5) A person represents to the public that the person is a "psychologist" when the person uses a title or description of services incorporating the words "psychologist", "psychological", "psychologic", or "psychology" and offers to render or renders psychological services ~~defined~~ *described* in subsection (4) to individuals, groups, corporations, or the public, whether or not the person does so for compensation or fee."

Section 55. Section 39-51-403, MCA, is amended to read:

"39-51-403. Money to be requisitioned from unemployment trust fund solely for payment of benefits — exception. (1) Money may be requisitioned from this state's account in the unemployment trust fund solely for the payment of benefits and in accordance with regulations prescribed by the department, except that money credited to this state's account pursuant to sections 903 and 904 of the Social Security Act, ~~(~~42 U.S.C. 1103 and 1104~~)~~, as amended, may also be withdrawn for the payment of expenses for the administration of this chapter and of public employment offices, as provided by this chapter. Money withheld by the department from a benefits payment at the request of an individual or in accordance with the department's rules pertaining to deductions and withholding for federal income tax purposes pursuant to 39-51-2207 or money withheld for repayment of an overissuance of food stamp ~~coupons~~ *benefits* pursuant to 39-51-2208 must be considered benefits for the purposes of this subsection.

(2) The department shall from time to time requisition from the unemployment trust fund amounts, not exceeding the amounts in this state in

the fund, ~~as~~ *that* it considers necessary for the payment of benefits for a reasonable future period. Upon receipt of a requisition, the treasurer shall deposit the money in the benefit account and shall issue warrants for the payment of benefits solely from the benefit account.

(3) Expenditures of money in the benefit account and refunds from the clearing account are not subject to any provisions of law requiring specific appropriations or other formal release by state officers of money in their custody.

(4) Any balance of money requisitioned from the unemployment trust fund that remains unclaimed or unpaid in the benefit account after the expiration of the period for which the sums were requisitioned must be deducted from estimates for and may be used for the payment of benefits during succeeding periods or, in the discretion of the department, must be redeposited with the secretary of the treasury of the United States to the credit of this state's account in the unemployment trust fund, as provided in 39-51-402."

Section 56. Section 39-51-503, MCA, is amended to read:

"39-51-503. Agreements with railroad retirement board. The department is authorized to cooperate with and enter into agreements with the railroad retirement board with respect to establishment, maintenance, and use of employment service facilities and to make available to the railroad retirement board the records of the department relating to employer's status and contributions received from employers covered by the Railroad Unemployment Insurance Act, ~~(~~45 U.S.C. 351, et seq.~~)~~, together with employee wage records and other data that the railroad retirement board considers necessary or desirable for the administration of the Railroad Unemployment Insurance Act. Any money received by the department from the railroad retirement board or any other governmental agency with respect to the establishment, maintenance, and use of employment service facilities must be paid into and credited to the proper division of the unemployment insurance administration ~~fund~~ *account* set up and established under 39-51-406 and 39-51-407."

Section 57. Section 39-71-2352, MCA, is amended to read:

"39-71-2352. Separate payment structure and sources for claims for injuries resulting from accidents that occurred before July 1, 1990, and on or after July 1, 1990 — spending limit — authorizing transfer of money. (1) Premiums paid to the state fund based upon wages payable before July 1, 1990, may be used only to administer and pay claims for injuries resulting from accidents that occurred before July 1, 1990. Premiums paid to the state fund based upon wages payable on or after July 1, 1990, may be used only to administer and pay claims for injuries resulting from accidents that occur on or after July 1, 1990.

(2) The state fund shall:

(a) determine the cost of administering and paying claims for injuries resulting from accidents that occurred before July 1, 1990, and separately determine the cost of administering and paying claims for injuries resulting from accidents that occur on or after July 1, 1990;

(b) keep adequate and separate accounts of the costs determined under subsection (2)(a); and

(c) fund administrative expenses and benefit payments for claims for injuries resulting from accidents that occurred before July 1, 1990, and claims

for injuries resulting from accidents that occur on or after July 1, 1990, separately from the sources provided by law.

(3) The state fund may not spend more than $1.25 million a year to administer claims for injuries resulting from accidents that occurred before July 1, 1990.

(4) As used in this section, "adequately funded" means the present value of:

(a) the total cost of future benefits remaining to be paid; and

(b) the cost of administering the claims.

~~(5) Based on audited financial statements adjusted for unrealized gains and losses for each fiscal year, funds in excess of the adequate funding amount established in subsection (4) must be transferred as follows:~~

~~(a) Prior to June 30, 2003:~~

~~(i) the amount of $1.9 million must be transferred to the general fund to be transferred to the state library equipment account and appropriated to the university system and the department of public health and human services;~~

~~(ii) the amount of $2.1 million must be transferred to the school flexibility fund, provided for in 20-9-543; and~~

~~(iii) the amount of $9,178,000 must be transferred to the general fund.~~

~~(b) Prior to June 30, 2004, an amount up to $4.3 million in available excess funds from fiscal year 2003 must be transferred to the general fund.~~

~~(c) Prior to June 30, 2005, an amount up to $3.78 million in available excess funds from fiscal year 2004 must be transferred to the general fund.~~

~~(d)~~*(5)* ~~In the fiscal years 2004 and 2005, any remaining amount, and in subsequent fiscal years, an~~ *An* amount of funds in excess of the adequate funding amount established in subsection (4), based on audited financial statements adjusted for unrealized gains and losses, must be transferred to the general fund.

(6) If in any fiscal year after the old fund liability tax is terminated claims for injuries resulting from accidents that occurred before July 1, 1990, are not adequately funded, any amount necessary to pay claims for injuries resulting from accidents that occurred before July 1, 1990, must be transferred from the general fund to the account provided for in 39-71-2321.

(7) The independent actuary engaged by the state fund pursuant to 39-71-2330 shall project the unpaid claims liability for claims for injuries resulting from accidents that occurred before July 1, 1990, each fiscal year until all claims are paid."

Section 58. Section 39-73-104, MCA, is amended to read:

"39-73-104. Eligibility requirements for benefits. Payment must be made under this chapter to any person who:

(1) has silicosis, as defined in 39-73-101, that results in the person's total disability so as to render it impossible for the person to follow continuously any substantially gainful occupation;

(2) has resided in and been an inhabitant of the state of Montana for 10 years or more immediately preceding the date of the application;

(3) is not receiving, with respect to any month for which the person would receive a payment under this chapter, compensation under ~~39-71-115~~ *39-71-715* equal to the sum of $350."

Section 59. Section 41-2-103, MCA, is amended to read:

"41-2-103. Definitions. As used in this part, the following definitions apply:

(1) "Agriculture" means:

(a) all aspects of farming, including the cultivation and tillage of the soil;

(b) (i) dairying; and

(ii) the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities, including commodities defined as agricultural commodities in the federal Agricultural Marketing Act, ~~(~~12 U.S.C. 1141j(g)~~)~~;

(c) the raising of livestock, bees, fur-bearing animals, or poultry; and

(d) any practices, including forestry or lumbering operations, performed by a farmer or on a farm as an incident to or in conjunction with farming operations, including preparation for market or delivery to storage, to market, or to carriers for transportation to market.

(2) "Department" means the department of labor and industry provided for in 2-15-1701.

(3) "Domestic service" means an occasional, irregular, or incidental nonhazardous occupational activity related to and conducted in or around a private residence, including but not limited to babysitting, pet sitting or similar household chore, and manual yard work. Domestic service specifically excludes industrial homework.

(4) (a) "Employed" or "employment" means an occupation engaged in, permitted, or suffered, with or without compensation in money or other valuable consideration, whether paid to the minor or to some other person, including but not limited to occupations as servant, agent, subagent, or independent contractor.

(b) The term does not include casual, community service, nonrevenue raising, uncompensated activities.

(5) "Employer" includes an individual, partnership, association, corporation, business trust, person, or group of persons acting directly or indirectly in the interest of an employer in relation to an employee.

(6) "Minor" means an individual under 18 years of age, except for an individual who:

(a) has received a high school diploma or has received a passing score on the general ~~education~~ *educational* development examination; or

(b) is 16 years of age or older and is enrolled in a registered state or federal apprenticeship program.

(7) "Occupation" means:

(a) an occupation, service, trade, business, or industry in which employees are employed;

(b) any branch or group of industries in which employees are employed; or

(c) any employment or class of employment in which employees are employed."

Section 60. Section 41-3-205, MCA, is amended to read:

"41-3-205. Confidentiality — disclosure exceptions. (1) The case records of the department and its local affiliate, the local office of public assistance, the county attorney, and the court concerning actions taken under

this chapter and all records concerning reports of child abuse and neglect must be kept confidential except as provided by this section. Except as provided in subsections (7) and (8), a person who purposely or knowingly permits or encourages the unauthorized dissemination of the contents of case records is guilty of a misdemeanor.

(2) Records may be disclosed to a court for in camera inspection if relevant to an issue before it. The court may permit public disclosure if it finds disclosure to be necessary for the fair resolution of an issue before it.

(3) Records, including case notes, correspondence, evaluations, videotapes, and interviews, unless otherwise protected by this section or unless disclosure of the records is determined to be detrimental to the child or harmful to another person who is a subject of information contained in the records, may be disclosed to the following persons or entities in this state and any other state or country:

(a) a department, agency, or organization, including a federal agency, military enclave, or Indian tribal organization, that is legally authorized to receive, inspect, or investigate reports of child abuse or neglect and that otherwise meets the disclosure criteria contained in this section;

(b) a licensed youth care facility or a licensed child-placing agency that is providing services to the family or child who is the subject of a report in the records or to a person authorized by the department to receive relevant information for the purpose of determining the best interests of a child with respect to an adoptive placement;

(c) a health or mental health professional who is treating the family or child who is the subject of a report in the records;

(d) a parent, guardian, or person designated by a parent or guardian of the child who is the subject of a report in the records or other person responsible for the child's welfare, without disclosure of the identity of any person who reported or provided information on the alleged child abuse or neglect incident contained in the records;

(e) a child named in the records who was allegedly abused or neglected or the child's legal guardian or legal representative, including the child's guardian ad litem or attorney or a special advocate appointed by the court to represent a child in a pending case;

(f) the state protection and advocacy program as authorized by ~~42 U.S.C. 6042(a)(2)(B)~~ *42 U.S.C. 15043(a)(2)*;

(g) approved foster and adoptive parents who are or may be providing care for a child;

(h) a person about whom a report has been made and that person's attorney, with respect to the relevant records pertaining to that person only and without disclosing the identity of the reporter or any other person whose safety may be endangered;

(i) an agency, including a probation or parole agency, that is legally responsible for the supervision of an alleged perpetrator of child abuse or neglect;

(j) a person, agency, or organization that is engaged in a bona fide research or evaluation project and that is authorized by the department to conduct the research or evaluation;

(k) the members of an interdisciplinary child protective team authorized under 41-3-108 or of a family group decisionmaking meeting for the purposes of

assessing the needs of the child and family, formulating a treatment plan, and monitoring the plan;

(l) the coroner or medical examiner when determining the cause of death of a child;

(m) a child fatality review team recognized by the department;

(n) a department or agency investigating an applicant for a license or registration that is required to operate a youth care facility, day-care facility, or child-placing agency;

(o) a person or entity who is carrying out background, employment-related, or volunteer-related screening of current or prospective employees or volunteers who have or may have unsupervised contact with children through employment or volunteer activities. A request for information under this subsection (3)(o) must be made in writing. Disclosure under this subsection (3)(o) is limited to information that indicates a risk to children, persons with developmental disabilities, or older persons posed by the person about whom the information is sought, as determined by the department.

(p) the news media, a member of the United States congress, or a state legislator, if disclosure is limited to confirmation of factual information regarding how the case was handled and if disclosure does not violate the privacy rights of the child or the child's parent or guardian, as determined by the department;

(q) an employee of the department or other state agency if disclosure of the records is necessary for administration of programs designed to benefit the child;

(r) an agency of an Indian tribe, a qualified expert witness, or the relatives of an Indian child if disclosure of the records is necessary to meet requirements of the federal Indian Child Welfare Act;

(s) a ~~youth~~ *juvenile* probation officer who is working in an official capacity with the child who is the subject of a report in the records;

(t) a county attorney, peace officer, or attorney who is hired by or represents the department if disclosure is necessary for the investigation, defense, or prosecution of a case involving child abuse or neglect;

(u) a foster care review committee established under 41-3-115 or, when applicable, a citizen review board established under Title 41, chapter 3, part 10;

(v) a school employee participating in an interview of a child by a social worker, county attorney, or peace officer, as provided in 41-3-202;

(w) a member of a county interdisciplinary child information team formed under the provisions of 52-2-211;

(x) members of a local interagency staffing group provided for in 52-2-203;

(y) a member of a youth placement committee formed under the provisions of 41-5-121; or

(z) a principal of a school or other employee of the school district authorized by the trustees of the district to receive the information with respect to a student of the district who is a client of the department.

(4) A school or school district may disclose, without consent, personally identifiable information from the education records of a pupil to the department, the court, a review board, and the child's assigned attorney, guardian ad litem, or special advocate.

(5) Information that identifies a person as a participant in or recipient of substance abuse treatment services may be disclosed only as allowed by federal substance abuse confidentiality laws, including the consent provisions of the law.

(6) The confidentiality provisions of this section must be construed to allow a court of this state to share information with other courts of this state or of another state when necessary to expedite the interstate placement of children.

(7) A person who is authorized to receive records under this section shall maintain the confidentiality of the records and may not disclose information in the records to anyone other than the persons described in subsection (3)(a). However, this subsection may not be construed to compel a family member to keep the proceedings confidential.

(8) A news organization or its employee, including a freelance writer or reporter, is not liable for reporting facts or statements made by an immediate family member under subsection (7) if the news organization, employee, writer, or reporter maintains the confidentiality of the child who is the subject of the proceeding.

(9) This section is not intended to affect the confidentiality of criminal court records, records of law enforcement agencies, or medical records covered by state or federal disclosure limitations.

(10) Copies of records, evaluations, reports, or other evidence obtained or generated pursuant to this section that are provided to the parent, the guardian, or the parent or guardian's attorney must be provided without cost."

Section 61. Section 41-5-103, MCA, is amended to read:

"41-5-103. Definitions. As used in the Montana Youth Court Act, unless the context requires otherwise, the following definitions apply:

(1) "Adult" means an individual who is 18 years of age or older.

(2) "Agency" means any entity of state or local government authorized by law to be responsible for the care or rehabilitation of youth.

(3) "Assessment officer" means a person who is authorized by the court to provide initial intake and evaluation for a youth who appears to be in need of intervention or an alleged delinquent youth.

(4) "Commit" means to transfer legal custody of a youth to the department or to the youth court.

(5) "Correctional facility" means a public or private, physically secure residential facility under contract with the department and operated solely for the purpose of housing adjudicated delinquent youth.

(6) "Cost containment pool" means funds allocated by the department under 41-5-132 for distribution by the cost containment review panel.

(7) "Cost containment review panel" means the panel established in 41-5-131.

(8) "Court", when used without further qualification, means the youth court of the district court.

(9) "Criminally convicted youth" means a youth who has been convicted in a district court pursuant to 41-5-206.

(10) (a) "Custodian" means a person, other than a parent or guardian, to whom legal custody of the youth has been given.

(b) The term does not include a person who has only physical custody.

(11) "Delinquent youth" means a youth who is adjudicated under formal proceedings under the Montana Youth Court Act as a youth:

(a) who has committed an offense that, if committed by an adult, would constitute a criminal offense; or

(b) who has been placed on probation as a delinquent youth and who has violated any condition of probation.

(12) "Department" means the department of corrections provided for in 2-15-2301.

(13) (a) "Department records" means information or data, either in written or electronic form, maintained by the department pertaining to youth who are committed under 41-5-1513(1)(b) or who are under parole supervision.

(b) Department records do not include information provided by the department to the department of public health and human services' management information system or information maintained by the youth court through the office of court administrator.

(14) "Detention" means the holding or temporary placement of a youth in the youth's home under home arrest or in a facility other than the youth's own home for:

(a) the purpose of ensuring the continued custody of the youth at any time after the youth is taken into custody and before final disposition of the youth's case;

(b) contempt of court or violation of a valid court order; or

(c) violation of a youth parole agreement.

(15) "Detention facility" means a physically restricting facility designed to prevent a youth from departing at will. The term includes a youth detention facility, short-term detention center, and regional detention facility.

(16) "Emergency placement" means placement of a youth in a youth care facility for less than 45 days to protect the youth when there is no alternative placement available.

(17) "Family" means the parents, guardians, legal custodians, and siblings or other youth with whom a youth ordinarily lives.

(18) "Final disposition" means the implementation of a court order for the disposition or placement of a youth as provided in 41-5-1422, 41-5-1503, 41-5-1504, 41-5-1512, 41-5-1513, and 41-5-1522 through 41-5-1525.

(19) (a) "Formal youth court records" means information or data, either in written or electronic form, on file with the clerk of district court pertaining to a youth under the jurisdiction of the youth court and includes petitions, motions, other filed pleadings, court findings, verdicts, orders and decrees, and predispositional studies.

(b) The term does not include information provided by the youth court to the department of public health and human services' management information system.

(20) "Foster home" means a private residence licensed by the department of public health and human services for placement of a youth.

(21) "Guardian" means an adult:

(a) who is responsible for a youth and has the reciprocal rights, duties, and responsibilities with the youth; and

(b) whose status is created and defined by law.

(22) "Habitual truancy" means recorded absences of 10 days or more of unexcused absences in a semester or absences without prior written approval of a parent or a guardian.

(23) (a) "Holdover" means a room, office, building, or other place approved by the board of crime control for the temporary detention and supervision of youth in a physically unrestricting setting for a period not to exceed 24 hours while the youth is awaiting a probable cause hearing, release, or transfer to an appropriate detention or shelter care facility.

(b) The term does not include a jail.

(24) (a) "Informal youth court records" means information or data, either in written or electronic form, maintained by youth court probation offices pertaining to a youth under the jurisdiction of the youth court and includes reports of preliminary inquiries, youth assessment materials, medical records, school records, and supervision records of probationers.

(b) The term does not include information provided by the youth court to the department of public health and human services' management information system.

(25) (a) "Jail" means a facility used for the confinement of adults accused or convicted of criminal offenses. The term includes a lockup or other facility used primarily for the temporary confinement of adults after arrest.

(b) The term does not include a colocated juvenile detention facility that complies with 28 CFR, part 31.

(26) "Judge", when used without further qualification, means the judge of the youth court.

(27) "Juvenile home arrest officer" means a court-appointed officer administering or supervising juveniles in a program for home arrest, as provided for in Title 46, chapter 18, part 10.

(28) "Law enforcement records" means information or data, either in written or electronic form, maintained by a law enforcement agency, as defined in 7-32-201, pertaining to a youth covered by this chapter.

(29) (a) "Legal custody" means the legal status created by order of a court of competent jurisdiction that gives a person the right and duty to:

(i) have physical custody of the youth;

(ii) determine with whom the youth shall live and for what period;

(iii) protect, train, and discipline the youth; and

(iv) provide the youth with food, shelter, education, and ordinary medical care.

(b) An individual granted legal custody of a youth shall personally exercise the individual's rights and duties as guardian unless otherwise authorized by the court entering the order.

(30) "Necessary parties" includes the youth and the youth's parents, guardian, custodian, or spouse.

(31) (a) "Out-of-home placement" means placement of a youth in a program, facility, or home, other than a custodial parent's home, for purposes other than preadjudicatory detention.

(b) The term does not include shelter care or emergency placement of less than 45 days.

(32) (a) "Parent" means the natural or adoptive parent.

(b) The term does not include:

(i) a person whose parental rights have been judicially terminated; or

(ii) the putative father of an illegitimate youth unless the putative father's paternity is established by an adjudication or by other clear and convincing proof.

(33) "Probable cause hearing" means the hearing provided for in 41-5-332.

(34) "Regional detention facility" means a youth detention facility established and maintained by two or more counties, as authorized in 41-5-1804.

(35) "Restitution" means payments in cash to the victim or with services to the victim or the general community when these payments are made pursuant to a consent adjustment, consent decree, or other youth court order.

(36) "Running away from home" means that a youth has been reported to have run away from home without the consent of a parent or guardian or a custodian having legal custody of the youth.

(37) "Secure detention facility" means a public or private facility that:

(a) is used for the temporary placement of youth or individuals accused or convicted of criminal offenses or as a sanction for contempt of court, violation of a parole agreement, or violation of a valid court order; and

(b) is designed to physically restrict the movements and activities of youth or other individuals held in lawful custody of the facility.

(38) "Serious juvenile offender" means a youth who has committed an offense that would be considered a felony offense if committed by an adult and that is an offense against a person, an offense against property, or an offense involving dangerous drugs.

(39) "Shelter care" means the temporary substitute care of youth in physically unrestricting facilities.

(40) "Shelter care facility" means a facility used for the shelter care of youth. The term is limited to the facilities enumerated in 41-5-347.

(41) "Short-term detention center" means a detention facility licensed by the department for the temporary placement or care of youth, for a period not to exceed 10 days excluding weekends and legal holidays, pending a probable cause hearing, release, or transfer of the youth to an appropriate detention facility, youth assessment center, or shelter care facility.

(42) "State youth correctional facility" means the Pine Hills youth correctional facility in Miles City or the Riverside youth correctional facility in Boulder.

(43) "Substitute care" means full-time care of youth in a residential setting for the purpose of providing food, shelter, security and safety, guidance, direction, and, if necessary, treatment to youth who are removed from or are without the care and supervision of their parents or guardians.

(44) "Victim" means:

(a) a person who suffers property, physical, or emotional injury as a result of an offense committed by a youth that would be a criminal offense if committed by an adult;

(b) an adult relative of the victim, as defined in subsection (44)(a), if the victim is a minor; and

(c) an adult relative of a homicide victim.

(45) "Youth" means an individual who is less than 18 years of age without regard to sex or emancipation.

(46) "Youth assessment" means a multidisciplinary assessment of a youth as provided in 41-5-1203.

(47) "Youth assessment center" means a staff-secured location that is licensed by the department of public health and human services to hold a youth for up to 10 days for the purpose of providing an immediate and comprehensive community-based youth assessment to assist the youth and the youth's family in addressing the youth's behavior.

(48) "Youth care facility" has the meaning provided in 52-2-602.

(49) "Youth court" means the court established pursuant to this chapter to hear all proceedings in which a youth is alleged to be a delinquent youth or a youth in need of intervention and includes the youth court judge, *juvenile* probation officers, and assessment officers.

(50) "Youth detention facility" means a secure detention facility licensed by the department for the temporary substitute care of youth that is:

(a) (i) operated, administered, and staffed separately and independently of a jail; or

(ii) a colocated secure detention facility that complies with 28 CFR, part 31; and

(b) used exclusively for the lawful detention of alleged or adjudicated delinquent youth or as a sanction for contempt of court, violation of a parole agreement, or violation of a valid court order.

(51) "Youth in need of intervention" means a youth who is adjudicated as a youth and who:

(a) commits an offense prohibited by law that if committed by an adult would not constitute a criminal offense, including but not limited to a youth who:

(i) violates any Montana municipal or state law regarding alcoholic beverages; or

(ii) continues to exhibit behavior, including running away from home or habitual truancy, beyond the control of the youth's parents, foster parents, physical custodian, or guardian despite the attempt of the youth's parents, foster parents, physical custodian, or guardian to exert all reasonable efforts to mediate, resolve, or control the youth's behavior; or

(b) has committed any of the acts of a delinquent youth but whom the youth court, in its discretion, chooses to regard as a youth in need of intervention."

Section 62. Section 41-5-322, MCA, is amended to read:

"41-5-322. Release from custody — detention — shelter care. (1) Whenever a peace officer believes, on reasonable grounds, that a youth can be released to a responsible person, the peace officer may release the youth to that person upon receiving a written promise from the person to bring the youth before the *juvenile* probation officer at a time and place specified in the written promise, or a peace officer may release the youth under any other reasonable circumstances.

(2) Whenever the peace officer believes, on reasonable grounds, that the youth must be detained, the peace officer shall notify the *juvenile* probation officer immediately and shall, as soon as practicable, provide the *juvenile*

probation officer with a written report of the peace officer's reasons for holding the youth in detention. If it is necessary to hold the youth pending appearance before the youth court, then the youth must be held in a place of detention, as provided in 41-5-348, that is approved by the youth court.

(3) If the peace officer believes that the youth must be sheltered, the peace officer shall notify the *juvenile* probation officer immediately and shall provide a written report of the peace officer's reasons for placing the youth in shelter care. If the youth is then held, the youth must be placed in a shelter care facility approved by the youth court."

Section 63. Section 41-5-331, MCA, is amended to read:

"41-5-331. Rights of youth taken into custody — questioning — waiver of rights. (1) When a youth is taken into custody for questioning upon a matter that could result in a petition alleging that the youth is either a delinquent youth or a youth in need of intervention, the following requirements must be met:

(a) The youth must be advised of the youth's right against self-incrimination and the youth's right to counsel.

(b) The investigating officer, *juvenile* probation officer, or person assigned to give notice shall immediately notify the parents, guardian, or legal custodian of the youth that the youth has been taken into custody, the reasons for taking the youth into custody, and where the youth is being held. If the parents, guardian, or legal custodian cannot be found through diligent efforts, a close relative or friend chosen by the youth must be notified.

(2) A youth may waive the rights listed in subsection (1) under the following situations:

(a) when the youth is 16 years of age or older, the youth may make an effective waiver;

(b) when the youth is under 16 years of age and the youth and the youth's parent or guardian agree, they may make an effective waiver; or

(c) when the youth is under 16 years of age and the youth and the youth's parent or guardian do not agree, the youth may make an effective waiver only with advice of counsel."

Section 64. Section 41-5-1201, MCA, is amended to read:

"41-5-1201. Preliminary inquiry — referral of youth in need of care. (1) Whenever the court receives information from an agency or person, including a parent or guardian of a youth, based upon reasonable grounds, that a youth is or appears to be a delinquent youth or a youth in need of intervention or that the youth is subject to a court order or consent order and has violated the terms of an order, a *juvenile* probation officer or an assessment officer shall make a preliminary inquiry into the matter.

(2) If the *juvenile* probation officer or assessment officer determines that the facts indicate that the youth is a youth in need of care, as defined in 41-3-102, the matter must be immediately referred to the department of public health and human services."

Section 65. Section 41-5-1202, MCA, is amended to read:

"41-5-1202. Preliminary inquiry — procedure — youth assessment. (1) In conducting a preliminary inquiry under 41-5-1201, the *juvenile* probation officer or assessment officer shall:

(a) advise the youth of the youth's rights under this chapter and the constitutions of the state of Montana and the United States;

(b) determine whether the matter is within the jurisdiction of the court;

(c) determine, if the youth is in detention, a youth assessment center, or shelter care, whether detention, placement in a youth assessment center, or shelter care should be continued or modified based upon criteria set forth in 41-5-341 through 41-5-343.

(2) In conducting a preliminary inquiry, the *juvenile* probation officer or assessment officer may:

(a) require the presence of any person relevant to the inquiry;

(b) request subpoenas from the judge to accomplish this purpose;

(c) require investigation of the matter by any law enforcement agency or any other appropriate state or local agency;

(d) perform a youth assessment pursuant to 41-5-1203."

Section 66. Section 41-5-1203, MCA, is amended to read:

"41-5-1203. Preliminary inquiry — youth assessment. (1) The *juvenile* probation officer or assessment officer may perform a youth assessment if:

(a) a youth has been referred to the youth court as an alleged youth in need of intervention with a minimum of two misdemeanor offenses or three offenses in the past year that would not be offenses if the youth were an adult;

(b) the youth is alleged to be a youth in need of intervention or a delinquent youth and the youth or the youth's parents or guardian requests the youth assessment and both the youth and the parents or guardian are willing to cooperate with the assessment process; or

(c) the circumstances surrounding a youth who has committed an act that would be a felony if committed by an adult indicate the need for a youth assessment and the safety of the community has been considered in determining where the youth assessment is conducted.

(2) A youth assessment:

(a) must be a multidisciplinary effort that may include, but is not limited to a chemical dependency evaluation of the youth, an educational assessment of the youth, an evaluation to determine if the youth has mental health needs, or an assessment of the need for any family-based services or other services provided by the department of public health and human services or other state and local agencies. The education component of the youth assessment is intended to address attendance, behavior, and performance issues of the youth. The education component is not intended to interfere with the right to attend a nonpublic or home school that complies with 20-5-109.

(b) must include a summary of the family's strengths and needs as they relate to addressing the youth's behavior;

(c) may occur in a youth's home, with or without electronic monitoring, or pursuant to 41-5-343 in a youth assessment center licensed by the department of public health and human services or in any other entity licensed by the department of public health and human services. The county shall provide adequate security in other licensed entities through provision of additional staff or electronic monitoring. The staff provided by the county must meet licensing requirements applicable to the licensed entity in which the youth is being held.

(3) The assessment officer arranging the youth assessment shall work with the parent or guardian of the youth to coordinate the performance of the various parts of the assessment with any providers that may already be working with the family or providers that are chosen by the family to the extent possible to meet the goals of the Youth Court Act."

Section 67. Section 41-5-1204, MCA, is amended to read:

"41-5-1204. Preliminary inquiry — determinations — release. Once relevant information is secured after a preliminary inquiry under 41-5-1201, the *juvenile* probation officer or assessment officer shall:

(1) determine whether the interest of the public or the youth requires that further action be taken;

(2) terminate the inquiry upon the determination that no further action be taken; and

(3) release the youth immediately upon the determination that the filing of a petition is not authorized."

Section 68. Section 41-5-1205, MCA, is amended to read:

"41-5-1205. Preliminary inquiry — dispositions available to *juvenile* probation officer. Upon determining that further action is required after a preliminary inquiry under 41-5-1201, the *juvenile* probation officer or assessment officer may:

(1) arrange informal disposition as provided in 41-5-1301; or

(2) refer the matter to the county attorney for filing a petition in youth court charging the youth to be a delinquent youth or a youth in need of intervention or for filing an information in the district court as provided in 41-5-206."

Section 69. Section 41-5-1301, MCA, is amended to read:

"41-5-1301. Informal disposition. After a preliminary inquiry under 41-5-1201, the *juvenile* probation officer or assessment officer upon determining that further action is required and that referral to the county attorney is not required may:

(1) provide counseling, refer the youth and the youth's family to another agency providing appropriate services, or take any other action or make any informal adjustment that does not involve probation or detention; or

(2) provide for treatment or adjustment involving probation or other disposition authorized under 41-5-1302 through 41-5-1304 if the treatment or adjustment is voluntarily accepted by the youth's parents or guardian and the youth, if the matter is referred immediately to the county attorney for review, and if the *juvenile* probation officer or assessment officer proceeds no further unless authorized by the county attorney."

Section 70. Section 41-5-1302, MCA, is amended to read:

"41-5-1302. Consent adjustment without petition. (1) Before referring the matter to the county attorney and subject to the limitations in subsection (3), the *juvenile* probation officer or assessment officer may enter into a consent adjustment and give counsel and advice to the youth, the youth's family, and other interested parties if it appears that:

(a) the admitted facts bring the case within the jurisdiction of the court;

(b) counsel and advice without filing a petition would be in the best interests of the child, the family, and the public; and

(c) the youth may be a youth in need of intervention and the *juvenile* probation officer or assessment officer believes that the parents, foster parents, physical custodian, or guardian exerted all reasonable efforts to mediate, resolve, or control the youth's behavior and the youth continues to exhibit behavior beyond the control of the parents, foster parents, physical custodian, or guardian.

(2) Any probation or other disposition imposed under this section against a youth must conform to the following procedures:

(a) Every consent adjustment must be reduced to writing and signed by the youth and the youth's parents or the person having legal custody of the youth.

(b) If the *juvenile* probation officer or assessment officer believes that the youth is a youth in need of intervention, the *juvenile* probation officer or assessment officer shall determine that the parents, foster parents, physical custodian, or guardian exerted all reasonable efforts to mediate, resolve, or control the youth's behavior and that the youth continues to exhibit behavior beyond the control of the parents, foster parents, physical custodian, or guardian.

(c) Approval by the youth court judge is required if the complaint alleges commission of a felony or if the youth has been or will be in any way detained.

(3) A consent adjustment without petition under this section may not be used to dispose of a youth's alleged second or subsequent offense if:

(a) the youth has admitted commission of or has been adjudicated or sentenced for a prior offense that would be a felony if committed by an adult;

(b) the second or subsequent offense would be a felony if committed by an adult and was committed within 3 years of a prior offense; or

(c) the second or subsequent offense would be a misdemeanor if committed by an adult and was committed within 3 years of a prior offense, other than a felony, unless the *juvenile* probation officer notifies the youth court and obtains written approval from the county attorney and the youth court judge.

(4) For purposes of subsection (3), related offenses committed by a youth during the same 24-hour period must be considered a single offense."

Section 71. Section 41-5-1304, MCA, is amended to read:

"41-5-1304. Disposition permitted under consent adjustment. (1) The following dispositions may be imposed by consent adjustment:

(a) probation;

(b) placement of the youth in substitute care in a youth care facility, as defined in 52-2-602 and pursuant to a recommendation made under 41-5-121;

(c) placement of the youth with a private agency responsible for the care and rehabilitation of the youth pursuant to a recommendation made under 41-5-121;

(d) restitution, as provided in 41-5-1521, upon approval of the youth court judge;

(e) placement of the youth under home arrest as provided in Title 46, chapter 18, part 10;

(f) confiscation of the youth's driver's license, if the youth has one, by the *juvenile* probation officer for a specified period of time, not to exceed 90 days. The *juvenile* probation officer shall notify the department of justice of the confiscation and its duration. The department of justice may not enter the confiscation on the youth's driving record. The *juvenile* probation officer shall

notify the department of justice when the confiscated driver's license has been returned to the youth. A youth's driver's license may be confiscated under this subsection more than once. The *juvenile* probation officer may, in the *juvenile* probation officer's discretion and with the concurrence of a parent or guardian, return a youth's confiscated driver's license before the termination of the time period for which it had been confiscated. The confiscation may not be used by an insurer as a factor in determining the premium or part of a premium to be paid for motor vehicle insurance covering the youth or a vehicle or vehicles driven by the youth, nor may it be used as grounds for denying coverage for an accident or other occurrence under an existing policy~~;~~.

(g) a requirement that the youth receive counseling services;

(h) placement in a youth assessment center for up to 10 days;

(i) placement of the youth in detention for up to 3 days on a space-available basis at the county's expense, which is not reimbursable under part 19 of this chapter;

(j) a requirement that the youth perform community service;

(k) a requirement that the youth participate in victim-offender mediation;

(l) an agreement that the youth pay a contribution covering all or a part of the costs for the adjudication, disposition, attorney fees for the costs of prosecuting or defending the youth, costs of detention, supervision, care, custody, and treatment of the youth, including the costs of counseling;

(m) an agreement that the youth pay a contribution covering all or a part of the costs of a victim's counseling or restitution for damages that result from the offense for which the youth is disposed;

(n) any other condition ordered by the court to accomplish the goals of the consent adjustment, including but not limited to mediation or youth assessment. Before ordering youth assessment, the court shall provide the family *with* an estimate of the cost of youth assessment, and the court shall take into consideration the financial resources of the family before ordering parental or guardian contribution for the costs of youth assessment.

(2) If the youth violates a parole agreement as provided for in 52-5-126, the youth must be returned to the court for further disposition. A youth may not be placed in a state youth correctional facility under *a* consent adjustment.

(3) If the youth is placed in substitute care, an assessment placement, or detention requiring payment by any state department or local government agency, the court shall examine the financial ability of the youth's parents or guardians to pay a contribution covering all or part of the costs for the adjudication, disposition, supervision, care, placement, and treatment of the youth, including the costs of necessary medical, dental, and other health care."

Section 72. Section 41-5-1401, MCA, is amended to read:

"41-5-1401. Petition — county attorney — procedure — release from custody. (1) The county attorney may apply to the youth court for permission to file a petition charging a youth to be a delinquent youth or a youth in need of intervention. The application must be supported by evidence that the youth court may require. If it appears that there is probable cause to believe that the allegations of the petition are true, the youth court shall grant leave to file the petition.

(2) A petition charging a youth who is held in detention or a youth assessment center must be filed within 7 working days from the date the youth

was first taken into custody or the petition must be dismissed and the youth released unless good cause is shown to further detain the youth.

(3) If a petition is not filed under this section, the complainant and victim, if any, must be informed by the *juvenile* probation officer or assessment officer of the action and the reasons for not filing and must be advised of the right to submit the matter to the county attorney for review. The county attorney, upon receiving a request for review, shall consider the facts, consult with the *juvenile* probation officer or assessment officer, and make the final decision as to whether a petition is filed."

Section 73. Section 41-5-1432, MCA, is amended to read:

"41-5-1432. Enforcement of restitution orders. If the court orders payment of restitution and the youth fails to pay the restitution in accordance with the payment schedule or structure established by the court or *juvenile* probation officer, the youth's *juvenile* probation officer may, on the officer's own motion or at the request of the victim, file a petition for violation of probation or ask the court to hold a hearing to determine whether the conditions of probation should be changed. The *juvenile* probation officer shall ask for a hearing if the restitution has not been paid prior to 60 days before the term of probation expires. The court shall schedule and hold the hearing before the youth's term of probation expires."

Section 74. Section 41-5-1501, MCA, is amended to read:

"41-5-1501. Consent decree with petition. (1) (a) Subject to the provisions of subsection (2), after the filing of a petition under 41-5-1402 and before the entry of a judgment, the court may, on motion of counsel for the youth or on the court's own motion, suspend the proceedings and continue the youth under supervision under terms and conditions negotiated with probation services and agreed to by all necessary parties. The court's order continuing the youth under supervision under this section is known as a "consent decree". Except as provided in subsection (1)(b), the procedures used and dispositions permitted under this section must conform to the procedures and dispositions specified in 41-5-1302 through 41-5-1304 relating to consent adjustments without petition and the responsibility of the youth's parents or guardians to pay a contribution for the costs of placement in substitute care.

(b) A youth may be placed in detention for up to 10 days on a space-available basis at the county's expense, which is not reimbursable under part 19 of this chapter.

(2) A consent decree under this section may not be used by the court unless the youth admits guilt for a charge of an offense set forth in the petition and accepts responsibility for the youth's actions.

(3) If the youth or the youth's counsel objects to a consent decree, the court shall proceed to findings, adjudication, and disposition of the case.

(4) If, either prior to discharge by probation services or expiration of the consent decree, a new petition alleging that the youth is a delinquent youth or a youth in need of intervention is filed against the youth or if the youth fails to fulfill the expressed terms and conditions of the consent decree, the petition under which the youth was continued under supervision may be reinstated in the discretion of the county attorney in consultation with probation services. In the event of reinstatement, the proceeding on the petition must be continued to conclusion as if the consent decree had never been entered.

(5) A youth who is discharged by probation services or who completes a period under supervision without reinstatement of the original petition may not again be proceeded against in any court for the same offense alleged in the petition, and the original petition must be dismissed with prejudice. This subsection does not preclude a civil suit against the youth for damages arising from the youth's conduct.

(6) If the terms of the consent decree extend for a period in excess of 6 months, the *juvenile* probation officer shall at the end of each 6-month period submit a report that must be reviewed by the court.

(7) A consent decree with petition under this section may not be used to dispose of a youth's alleged second or subsequent offense if that offense would be a felony if committed by an adult or third or subsequent offense if that offense would be a misdemeanor if committed by an adult unless it is recommended by the county attorney and accepted by the youth court judge."

Section 75. Section 41-5-1511, MCA, is amended to read:

"41-5-1511. Dispositional hearing — contributions by parents or guardians for expenses. (1) As soon as practicable after a youth is found to be a delinquent youth or a youth in need of intervention, the court shall conduct a dispositional hearing. The dispositional hearing may involve a determination of the financial ability of the youth's parents or guardians to pay a contribution for the cost of the adjudication, disposition, supervision, care, commitment, and treatment of the youth as required in 41-5-1525, including the costs of necessary medical, dental, and other health care.

(2) Before conducting the dispositional hearing, the court shall direct that a youth assessment or predisposition report be made in writing by a *juvenile* probation officer or an assessment officer concerning the youth, the youth's family, the youth's environment, and other matters relevant to the need for care or rehabilitation or disposition of the case, including a statement by the victim or the victim's family. The youth court may have the youth examined, and the results of the examination must be made available to the court as part of the youth assessment or predisposition report. The court may order the examination of a parent or guardian whose ability to care for or supervise a youth is at issue before the court. The results of the examination must be included in the youth assessment or predisposition report. The youth or the youth's parents, guardian, or counsel has the right to subpoena all persons who have prepared any portion of the youth assessment or predisposition report and has the right to cross-examine the parties at the dispositional hearing.

(3) Defense counsel must be furnished with a copy of the youth assessment or predisposition report and psychological report prior to the dispositional hearing.

(4) The dispositional hearing must be conducted in the manner set forth in 41-5-1502(5) through (7). The court shall hear all evidence relevant to a proper disposition of the case best serving the interests of the youth, the victim, and the public. The evidence must include but is not limited to the youth assessment and predisposition report provided for in subsection (2) of this section.

(5) If the court finds that it is in the best interest of the youth, the youth, the youth's parents or guardian, or the public may be temporarily excluded from the hearing during the taking of evidence on the issues of need for treatment and rehabilitation."

Section 76. Section 41-5-1512, MCA, is amended to read:

"41-5-1512. Disposition of youth in need of intervention or youth who violate consent adjustments. (1) If a youth is found to be a youth in need of intervention or to have violated a consent adjustment, the youth court may enter its judgment making one or more of the following dispositions:

(a) place the youth on probation. The youth court shall retain jurisdiction in a disposition under this subsection.

(b) place the youth in a residence that ensures that the youth is accountable, that provides for rehabilitation, and that protects the public. Before placement, the sentencing judge shall seek and consider placement recommendations from the youth placement committee.

(c) commit the youth to the youth court for the purposes of placement in a private, out-of-home facility subject to the conditions in 41-5-1522. In an order committing a youth to the youth court, the court shall determine whether continuation in the youth's own home would be contrary to the welfare of the youth and whether reasonable efforts have been made to prevent or eliminate the need for removal of the youth from the youth's home.

(d) order restitution for damages that result from the offense for which the youth is disposed by the youth or by the person who contributed to the delinquency of the youth;

(e) require the performance of community service;

(f) require the youth, the youth's parents or guardians, or the persons having legal custody of the youth to receive counseling services;

(g) require the medical and psychological evaluation of the youth, the youth's parents or guardians, or the persons having legal custody of the youth;

(h) require the parents, guardians, or other persons having legal custody of the youth to furnish services the court may designate;

(i) order further care, treatment, evaluation, or relief that the court considers beneficial to the youth and the community;

(j) subject to the provisions of 41-5-1504, commit the youth to a mental health facility if, based upon the testimony of a professional person as defined in 53-21-102, the court finds that the youth is found to be suffering from a mental disorder, as defined in 53-21-102, and meets the criteria in 53-21-126(1);

(k) place the youth under home arrest as provided in Title 46, chapter 18, part 10;

(l) order confiscation of the youth's driver's license, if the youth has one, by the *juvenile* probation officer for a specified period of time, not to exceed 90 days. The *juvenile* probation officer shall notify the department of justice of the confiscation and its duration. The department of justice may not enter the confiscation on the youth's driving record. The *juvenile* probation officer shall notify the department of justice when the confiscated driver's license has been returned to the youth. A youth's driver's license may be confiscated under this subsection more than once. The *juvenile* probation officer may, in the *juvenile* probation officer's discretion and with the concurrence of a parent or guardian, return a youth's confiscated driver's license before the termination of the time period for which it had been confiscated. The confiscation may not be used by an insurer as a factor in determining the premium or part of a premium to be paid for motor vehicle insurance covering the youth or a vehicle or vehicles driven by the youth and may not be used as grounds for denying coverage for an accident or other occurrence under an existing policy.

(m) order the youth to pay a contribution covering all or a part of the costs for adjudication, disposition, and attorney fees for the costs of prosecuting or defending the youth and costs of detention, supervision, care, custody, and treatment of the youth, including the costs of counseling;

(n) order the youth to pay a contribution covering all or a part of the costs of a victim's counseling;

(o) defer imposition of sentence for up to 45 days for a placement evaluation at a suitable program or facility with the following conditions:

(i) The court may not order placement for evaluation at a youth correctional facility of a youth who has committed an offense that would not be a criminal offense if committed by an adult or a youth who has violated a consent adjustment.

(ii) The placement for evaluation must be on a space-available basis. Except as provided in subsection (1)(o)(iii), the court shall pay the cost of the placement for evaluation from its judicial district's allocation provided for in 41-5-130 or 41-5-2012.

(iii) The court may require the youth's parents or guardians to pay a contribution covering all or a part of the costs of the evaluation if the court determines after an examination of financial ability that the parents or guardians are able to pay the contribution. Any remaining unpaid costs of evaluation are the financial responsibility of the judicial district of the court that ordered the evaluation.

(p) order placement of a youth in a youth assessment center for up to 10 days;

(q) order the youth to participate in mediation that is appropriate for the offense committed.

(2) The court may not order a local government entity to pay for care, treatment, intervention, or placement. A court may not order a local government entity to pay for evaluation and in-state transportation of a youth.

(3) The court may not order a state government entity to pay for care, treatment, intervention, placement, or evaluation that results in a deficit in the annual allocation established for that district under 41-5-130 without approval from the cost containment review panel."

Section 77. Section 41-5-1701, MCA, is amended to read:

"41-5-1701. Employment of juvenile probation officers and youth court staff. All *juvenile* probation officers and youth court staff are employees of the judicial branch of state government. The employees are subject to classification and compensation as determined by the judicial branch personnel plan adopted by the supreme court under 3-1-130 and must receive state employee benefits and expenses as provided in Title 2, chapter 18."

Section 78. Section 41-5-1703, MCA, is amended to read:

"41-5-1703. Powers and duties of *juvenile* probation officers. (1) A *juvenile* probation officer shall:

(a) perform the duties set out in 41-5-1302;

(b) make predisposition studies and submit reports and recommendations to the court;

(c) supervise, assist, and counsel youth placed on probation or under the *juvenile* probation officer's supervision, including enforcement of the terms of probation or intervention;

(d) assist any public and private community and work projects engaged in by youth to pay fines, make restitution, and pay any other costs ordered by the court that are associated with youth delinquency or need for intervention;

(e) perform any other functions designated by the court.

(2) A *juvenile* probation officer does not have power to make arrests or to perform any other law enforcement functions in carrying out the *juvenile* probation officer's duties except that a *juvenile* probation officer may take into custody any youth who violates either the youth's probation or a lawful order of the court.

(3) The duties of a full-time or part-time *juvenile* probation officer may not be performed by a person serving as a law enforcement officer."

Section 79. Section 41-5-1706, MCA, is amended to read:

"41-5-1706. Juvenile probation officer training. (1) The office of court administrator may conduct a 40-hour juvenile probation officer basic training program and other training programs and courses for juvenile probation officers.

(2) A juvenile probation officer who successfully completes the 40-hour basic training program or another program or course must be issued a certificate by the office of court administrator.

(3) Each chief *juvenile* probation officer and deputy *juvenile* probation officer shall obtain 16 hours a year of training in subjects relating to the powers and duties of *juvenile* probation officers."

Section 80. Section 44-1-303, MCA, is amended to read:

"44-1-303. Duties. The chief, with the approval of the attorney general and within the limits of any appropriation made available for such purposes, shall:

(1) designate the authority and responsibility in each rank, grade, and position;

(2) formulate standards, policies, and qualifications in the selection of recruit patrol officers;

(3) prescribe the official uniform of the Montana highway patrol;

(4) station employees in ~~such~~ localities as ~~he shall deem~~ *the chief determines to be* advisable for the enforcement of the traffic laws of this state;

(5) charge against each employee the value of property of the state lost or destroyed through the carelessness or neglect of ~~such~~ *that* employee;

(6) discharge, demote, or temporarily suspend after hearing, as provided in parts 7 and 8 of this chapter, any patrol officer of the department;

(7) have purchased or otherwise acquired by the purchasing department of the state motor ~~equipment~~ *vehicles* and all other equipment and commodities ~~deemed by him~~ *considered by the chief to be* essential to the efficient operation of the Montana highway patrol."

Section 81. Section 45-6-312, MCA, is amended to read:

"45-6-312. Unauthorized acquisition or transfer of food stamps. (1) A person commits the offense of unauthorized acquisition or transfer of food ~~stamps~~ *stamp benefits* if the person knowingly:

(a) acquires, purchases, possesses, or uses any food stamp ~~or coupon~~ *benefit* that the person is not entitled to; or

(b) transfers, sells, trades, gives, or otherwise disposes of any food stamp ~~or coupon~~ *benefit* to another person not entitled to receive or use it.

(2) A person convicted of an offense under this section shall be fined not more than $1,000 or be imprisoned in the county jail for not more than 6 months, or both. A person convicted of an offense under this section, which offense is part of a common scheme or in which the value of the food ~~stamps~~ *stamp benefits* exceeds $1,000, shall be fined not more than $50,000 or be imprisoned in the state prison for not more than 10 years, or both.

(3) As used in this section, "food stamp ~~or coupon~~ *benefits*" means any stamp, coupon, or type of certification provided for the purchase of eligible food pursuant to the Food Stamp Act of 1977, 7 U.S.C. 2011 through 2029, or any similar public assistance program."

Section 82. Section 46-23-508, MCA, is amended to read:

"46-23-508. Dissemination of information. (1) Information maintained under this part is confidential criminal justice information, as defined in 44-5-103, except that:

(a) the name and address of a registered sexual or violent offender are public criminal justice information, as defined in 44-5-103; and

(b) the department of justice or the registration agency shall release any offender registration information that it possesses relevant to the public if the department of justice or the registration agency determines that a registered offender is a risk to the safety of the community and that disclosure of the registration information that it possesses may protect the public and, at a minimum:

(i) if the offender is also a violent offender, the department of justice shall and the registration agency may disseminate to the victim and the public:

(A) the offender's name; and

(B) the offenses for which the offender is required to register under this part;

(ii) if an offender was given a level 1 designation under 46-23-509, the department of justice shall and the registration agency may disseminate to the victim and the public:

(A) the offender's address;

(B) the name, photograph, and physical description of the offender;

(C) the offender's date of birth; and

(D) the offenses for which the offender is required to register under this part;

(iii) if an offender was given a level 1 designation and committed an offense against a minor or was given a level 2 designation under 46-23-509, the department of justice shall and the registration agency may disseminate to the victim and the public:

(A) the offender's address;

(B) the type of victim targeted by the offense;

(C) the name, photograph, and physical description of the offender;

(D) the offender's date of birth;

(E) the license plate number and a description of any *motor* vehicle owned or operated by the offender;

(F) the offenses for which the offender is required to register under this part; and

(G) any conditions imposed by the court upon the offender for the safety of the public; and

(iv) if an offender was given a level 3 designation under 46-23-509, the department of justice and the registration agency shall give the victim and the public notification that includes the information contained in subsection (1)(b)(iii). The notification must also include the date of the offender's release from confinement or, if not confined, the date the offender was sentenced, with a notation that the offender was not confined, and must include the community in which the offense occurred.

(c) prior to release of information under subsection (1)(b), a registration agency may, in its sole discretion, request an in camera review by a district court of the determination by the registration agency under subsection (1)(b). The court shall review a request under this subsection (1)(c) and shall, as soon as possible, render its opinion so that release of the information is not delayed beyond release of the offender from confinement.

(2) The identity of a victim of an offense for which registration is required under this part may not be released by a registration agency without the permission of the victim.

(3) Dissemination to the public of information allowed or required by this section may be done by newspaper, paper flyers, the internet, or any other media determined by the disseminating entity. In determining the method of dissemination, the disseminating entity should consider the level of risk posed by the offender to the public.

(4) The department of justice shall develop a model community notification policy to assist registration agencies in implementing the dissemination provisions of this section."

Section 83. Section 50-5-101, MCA, is amended to read:

"50-5-101. Definitions. As used in parts 1 through 3 of this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Accreditation" means a designation of approval.

(2) "Accreditation association for ambulatory health care" means the organization nationally recognized by that name that surveys ~~ambulatory surgical centers~~ *outpatient centers for surgical services* upon their requests and grants accreditation status to the ~~ambulatory surgical centers~~ *outpatient centers for surgical services* that it finds meet its standards and requirements.

(3) "Activities of daily living" means tasks usually performed in the course of a normal day in a resident's life that include eating, walking, mobility, dressing, grooming, bathing, toileting, and transferring.

(4) "Adult day-care center" means a facility, freestanding or connected to another health care facility, that provides adults, on a regularly scheduled basis, with the care necessary to meet the needs of daily living but that does not provide overnight care.

(5) (a) "Adult foster care home" means a private home or other facility that offers, except as provided in 50-5-216, only light personal care or custodial care to four or fewer disabled adults or aged persons who are not related to the owner or manager of the home by blood, marriage, or adoption or who are not under the full guardianship of the owner or manager.

(b) As used in this subsection (5), the following definitions apply:

(i) "Aged person" means a person as defined by department rule as aged.

(ii) "Custodial care" means providing a sheltered, family-type setting for an aged person or disabled adult so as to provide for the person's basic needs of food and shelter and to ensure that a specific person is available to meet those basic needs.

(iii) "Disabled adult" means a person who is 18 years of age or older and who is defined by department rule as disabled.

(iv) (A) "Light personal care" means assisting the aged person or disabled adult in accomplishing such personal hygiene tasks as bathing, dressing, and hair grooming and supervision of prescriptive medicine administration.

(B) The term does not include the administration of prescriptive medications.

(6) "Affected person" means an applicant for a certificate of need, a health care facility located in the geographic area affected by the application, an agency that establishes rates for health care facilities, or a third-party payer who reimburses health care facilities in the area affected by the proposal.

(7) "Assisted living facility" means a congregate residential setting that provides or coordinates personal care, 24-hour supervision and assistance, both scheduled and unscheduled, and activities and health-related services.

(8) "Capital expenditure" means:

(a) an expenditure made by or on behalf of a health care facility that, under generally accepted accounting principles, is not properly chargeable as an expense of operation and maintenance; or

(b) a lease, donation, or comparable arrangement that would be a capital expenditure if money or any other property of value had changed hands.

(9) "Certificate of need" means a written authorization by the department for a person to proceed with a proposal subject to 50-5-301.

(10) "Chemical dependency facility" means a facility whose function is the treatment, rehabilitation, and prevention of the use of any chemical substance, including alcohol, that creates behavioral or health problems and endangers the health, interpersonal relationships, or economic function of an individual or the public health, welfare, or safety.

(11) "Clinical laboratory" means a facility for the microbiological, serological, chemical, hematological, radiobioassay, cytological, immunohematological, pathological, or other examination of materials derived from the human body for the purpose of providing information for the diagnosis, prevention, or treatment of a disease or assessment of a medical condition.

(12) "College of American pathologists" means the organization nationally recognized by that name that surveys clinical laboratories upon their requests and accredits clinical laboratories that it finds meet its standards and requirements.

(13) "Commission on accreditation of rehabilitation facilities" means the organization nationally recognized by that name that surveys rehabilitation facilities upon their requests and grants accreditation status to a rehabilitation facility that it finds meets its standards and requirements.

(14) "Comparative review" means a joint review of two or more certificate of need applications that are determined by the department to be competitive in that the granting of a certificate of need to one of the applicants would substantially prejudice the department's review of the other applications.

(15) "Congregate" means the provision of group services designed especially for elderly or disabled persons who require supportive services and housing.

(16) "Construction" means the physical erection of a health care facility and any stage of the physical erection, including groundbreaking, or remodeling, replacement, or renovation of an existing health care facility.

(17) "Council on accreditation" means the organization nationally recognized by that name that surveys behavioral treatment programs, chemical dependency treatment programs, residential treatment facilities, and mental health centers upon their requests and grants accreditation status to programs and facilities that it finds meet its standards and requirements.

(18) "Critical access hospital" means a facility that is located in a rural area, as defined in 42 U.S.C. 1395ww(d)(2)(D), and that has been designated by the department as a critical access hospital pursuant to 50-5-233.

(19) "Department" means the department of public health and human services provided for in 2-15-2201.

(20) "End-stage renal dialysis facility" means a facility that specializes in the treatment of kidney diseases and includes freestanding hemodialysis units.

(21) "Federal acts" means federal statutes for the construction of health care facilities.

(22) "Governmental unit" means the state, a state agency, a county, municipality, or political subdivision of the state, or an agency of a political subdivision.

(23) (a) "Health care facility" or "facility" means all or a portion of an institution, building, or agency, private or public, excluding federal facilities, whether organized for profit or not, that is used, operated, or designed to provide health services, medical treatment, or nursing, rehabilitative, or preventive care to any individual. The term includes chemical dependency facilities, critical access hospitals, end-stage renal dialysis facilities, home health agencies, home infusion therapy agencies, hospices, hospitals, infirmaries, long-term care facilities, intermediate care facilities for the developmentally disabled, medical assistance facilities, mental health centers, outpatient centers for primary care, outpatient centers for surgical services, rehabilitation facilities, residential care facilities, and residential treatment facilities.

(b) The term does not include offices of private physicians, dentists, or other physical or mental health care workers regulated under Title 37, including licensed addiction counselors.

(24) "Home health agency" means a public agency or private organization or subdivision of the agency or organization that is engaged in providing home health services to individuals in the places where they live. Home health services must include the services of a licensed registered nurse and at least one other therapeutic service and may include additional support services.

(25) "Home infusion therapy agency" means a health care facility that provides home infusion therapy services.

(26) "Home infusion therapy services" means the preparation, administration, or furnishing of parenteral medications or parenteral or enteral nutritional services to an individual in that individual's residence. The services include an educational component for the patient, the patient's caregiver, or the patient's family member.

(27) "Hospice" means a coordinated program of home and inpatient health care that provides or coordinates palliative and supportive care to meet the needs of a terminally ill patient and the patient's family arising out of physical, psychological, spiritual, social, and economic stresses experienced during the final stages of illness and dying and that includes formal bereavement programs as an essential component. The term includes:

(a) an inpatient hospice facility, which is a facility managed directly by a medicare-certified hospice that meets all medicare certification regulations for freestanding inpatient hospice facilities; and

(b) a residential hospice facility, which is a facility managed directly by a licensed hospice program that can house three or more hospice patients.

(28) (a) "Hospital" means a facility providing, by or under the supervision of licensed physicians, services for medical diagnosis, treatment, rehabilitation, and care of injured, disabled, or sick individuals. Except as otherwise provided by law, services provided may or may not include obstetrical care, emergency care, or any other service allowed by state licensing authority. A hospital has an organized medical staff that is on call and available within 20 minutes, 24 hours a day, 7 days a week, and provides 24-hour nursing care by licensed registered nurses. The term includes:

(i) hospitals specializing in providing health services for psychiatric, developmentally disabled, and tubercular patients; and

(ii) specialty hospitals.

(b) The term does not include critical access hospitals.

(29) "Infirmary" means a facility located in a university, college, government institution, or industry for the treatment of the sick or injured, with the following subdefinitions:

(a) an "infirmary—A" provides outpatient and inpatient care;

(b) an "infirmary—B" provides outpatient care only.

(30) (a) "Intermediate care facility for the developmentally disabled" means a facility or part of a facility that provides intermediate developmental disability care for two or more persons.

(b) The term does not include community homes for persons with developmental disabilities that are licensed under 53-20-305 or community homes for persons with severe disabilities that are licensed under 52-4-203.

(31) "Intermediate developmental disability care" means the provision of intermediate nursing care services, health-related services, and social services for persons with a developmental disability, as defined in 53-20-102, or for persons with related problems.

(32) "Intermediate nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed nurse to patients not requiring 24-hour nursing care.

(33) "Joint commission on accreditation of healthcare organizations" means the organization nationally recognized by that name that surveys health care facilities upon their requests and grants accreditation status to a health care facility that it finds meets its standards and requirements.

(34) "Licensed health care professional" means a licensed physician, physician assistant, advanced practice registered nurse, or registered nurse who is practicing within the scope of the license issued by the department of labor and industry.

(35) (a) "Long-term care facility" means a facility or part of a facility that provides skilled nursing care, residential care, intermediate nursing care, or intermediate developmental disability care to a total of two or more individuals or that provides personal care.

(b) The term does not include community homes for persons with developmental disabilities licensed under 53-20-305; community homes for persons with severe disabilities~~,~~ licensed under 52-4-203; youth care facilities~~,~~ licensed under 52-2-622; hotels, motels, boardinghouses, roominghouses, or similar accommodations providing for transients, students, or individuals who do not require institutional health care; or juvenile and adult correctional facilities operating under the authority of the department of corrections.

(36) "Medical assistance facility" means a facility that meets both of the following:

(a) provides inpatient care to ill or injured individuals before their transportation to a hospital or that provides inpatient medical care to individuals needing that care for a period of no longer than 96 hours unless a longer period is required because transfer to a hospital is precluded because of inclement weather or emergency conditions. The department or its designee may, upon request, waive the 96-hour restriction retroactively and on a case-by-case basis if the individual's attending physician, physician assistant, or nurse practitioner determines that the transfer is medically inappropriate and would jeopardize the health and safety of the individual.

(b) either is located in a county with fewer than six residents a square mile or is located more than 35 road miles from the nearest hospital.

(37) "Mental health center" means a facility providing services for the prevention or diagnosis of mental illness, the care and treatment of mentally ill patients, the rehabilitation of mentally ill individuals, or any combination of these services.

(38) "Nonprofit health care facility" means a health care facility owned or operated by one or more nonprofit corporations or associations.

(39) "Offer" means the representation by a health care facility that it can provide specific health services.

(40) (a) "Outdoor behavioral program" means a program that provides treatment, rehabilitation, and prevention for behavioral problems that endanger the health, interpersonal relationships, or educational functions of a youth and that:

(i) serves either adjudicated or nonadjudicated youth;

(ii) charges a fee for its services; and

(iii) provides all or part of its services in the outdoors.

(b) "Outdoor behavioral program" does not include recreational programs such as boy scouts, girl scouts, 4-H clubs, or other similar organizations.

(41) "Outpatient center for primary care" means a facility that provides, under the direction of a licensed physician, either diagnosis or treatment, or both, to ambulatory patients and that is not an outpatient center for surgical services.

(42) "Outpatient center for surgical services" means a clinic, infirmary, or other institution or organization that is specifically designed and operated to provide surgical services to patients not requiring hospitalization and that may include recovery care beds.

(43) "Patient" means an individual obtaining services, including skilled nursing care, from a health care facility.

(44) "Person" means an individual, firm, partnership, association, organization, agency, institution, corporation, trust, estate, or governmental unit, whether organized for profit or not.

(45) "Personal care" means the provision of services and care for residents who need some assistance in performing the activities of daily living.

(46) "Practitioner" means an individual licensed by the department of labor and industry who has assessment, admission, and prescription authority.

(47) "Recovery care bed" means, except as provided in 50-5-235, a bed occupied for less than 24 hours by a patient recovering from surgery or other treatment.

(48) "Rehabilitation facility" means a facility that is operated for the primary purpose of assisting in the rehabilitation of disabled individuals by providing comprehensive medical evaluations and services, psychological and social services, or vocational evaluation and training or any combination of these services and in which the major portion of the services is furnished within the facility.

(49) "Resident" means an individual who is in a long-term care facility or in a residential care facility.

(50) "Residential care facility" means an adult day-care center, an adult foster care home, an assisted living facility, or a retirement home.

(51) "Residential psychiatric care" means active psychiatric treatment provided in a residential treatment facility to psychiatrically impaired individuals with persistent patterns of emotional, psychological, or behavioral dysfunction of such severity as to require 24-hour supervised care to adequately treat or remedy the individual's condition. Residential psychiatric care must be individualized and designed to achieve the patient's discharge to less restrictive levels of care at the earliest possible time.

(52) "Residential treatment facility" means a facility operated for the primary purpose of providing residential psychiatric care to individuals under 21 years of age.

(53) "Retirement home" means a building or buildings in which separate living accommodations are rented or leased to individuals who use those accommodations as their primary residence.

(54) "Skilled nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed registered nurse on a 24-hour basis.

(55) (a) "Specialty hospital" means a subclass of hospital that is exclusively engaged in the diagnosis, care, or treatment of one or more of the following categories:

(i) patients with a cardiac condition;

(ii) patients with an orthopedic condition;

(iii) patients undergoing a surgical procedure; or

(iv) patients treated for cancer-related diseases and receiving oncology services.

(b) For purposes of this subsection (55), a specialty hospital may provide other services for medical diagnosis, treatment, rehabilitation, and care of

injured, disabled, or sick individuals as otherwise provided by law if the care encompasses 35% or less of the hospital services.

(c) The term "specialty hospital" does not include:

(i) psychiatric hospitals;

(ii) rehabilitation hospitals;

(iii) children's hospitals;

(iv) long-term care hospitals; or

(v) critical access hospitals.

(56) "State health care facilities plan" means the plan prepared by the department to project the need for health care facilities within Montana and approved by the governor and a statewide health coordinating council appointed by the director of the department.

(57) "Swing bed" means a bed approved pursuant to 42 U.S.C. 1395tt to be used to provide either acute care or extended skilled nursing care to a patient."

Section 84. Section 50-6-503, MCA, is amended to read:

"50-6-503. Rulemaking. (1) The department shall adopt rules specifying the following:

(a) the contents of the written notice required by ~~50-6-502(7)~~ *50-6-502(6)*;

(b) reporting requirements for each use of an AED;

(c) the contents of a plan prepared in accordance with 50-6-502 and requirements applicable to the subject matter of the plan;

(d) training requirements in cardiopulmonary resuscitation and AED use for any individual authorized by an AED program plan to use an AED;

(e) guidelines for medical oversight of an AED program;

(f) minimum requirements for a medical protocol for use of an AED;

(g) performance requirements for an AED in order for the AED to be used in an AED program; and

(h) a list of the AED training programs approved by the department.

(2) The department may not adopt rules for any purpose other than those in subsection (1)."

Section 85. Section 50-19-101, MCA, is amended to read:

"50-19-101. Definitions. *As used in this part, the following definitions apply:*

(1) "Department" means the department of public health and human services provided for in 2-15-2201.

(2) "Health care provider" means a licensed physician, a physician assistant, a registered nurse, an advanced practice registered nurse, a naturopathic physician, or a direct-entry midwife practicing within the scope of the provider's professional license.

(3) "Standard serological test" means a test for syphilis, rubella immunity, and blood group, including ABO (Landsteiner blood type designation—O, A, B, AB) and RH (Dd) type, and a screening for hepatitis B surface antigen, approved by the department."

Section 86. Section 52-3-813, MCA, is amended to read:

"52-3-813. Confidentiality. (1) The case records of the department, its local affiliate, the county attorney, and the court concerning actions taken under this part and all reports made pursuant to 52-3-811 must be kept confidential except as provided by this section. For the purposes of this section, the term "case records" includes records of an investigation of a report of abuse, sexual abuse, neglect, or exploitation.

(2) The records and reports required to be kept confidential by subsection (1) may be disclosed, upon request, to the following persons or entities in this or any other state:

(a) a physician who is caring for an older person or a person with a developmental disability who the physician reasonably believes was abused, sexually abused, neglected, or exploited;

(b) a legal guardian or conservator of the older person or the person with a developmental disability if the identity of the person who made the report is protected and the legal guardian or conservator is not the person suspected of the abuse, sexual abuse, neglect, or exploitation;

(c) the person named in the report as allegedly being abused, sexually abused, neglected, or exploited if that person is not legally incompetent;

(d) any person engaged in bona fide research if the person alleged in the report to have committed the abuse, sexual abuse, neglect, or exploitation is later convicted of an offense constituting abuse, sexual abuse, neglect, or exploitation and if the identity of the older person or the person with a developmental disability who is the subject of the report is not disclosed to the researcher;

(e) an adult protective service team. Members of the team are required to keep information about the subject individuals confidential.

(f) an authorized representative of a provider of services to a person alleged to be an abused, sexually abused, neglected, or exploited older person or person with a developmental disability if:

(i) the department and the provider are parties to a contested case proceeding under Title 2, chapter 4, part 6, resulting from action by the department adverse to the license of the provider and if information contained in the records or reports of the department is relevant to the case;

(ii) disclosure to the provider is determined by the department to be necessary to protect an interest of a person alleged to be an abused, sexually abused, neglected, or exploited older person or person with a developmental disability; or

(iii) the person is carrying out background screening or ~~employment-~~*employment-related* or volunteer-related screening of current or prospective employees or volunteers who have or may have unsupervised contact with an older person or a person with a developmental disability through employment or volunteer activities if the disclosure is limited to information that indicates a risk to an older person or a person with a developmental disability posed by the employee or volunteer, as determined by the department. A request for information under this subsection must be made in writing.

(g) an employee of the department if disclosure of the record or report is necessary for administration of a program designed to benefit a person alleged to be an abused, sexually abused, neglected, or exploited older person or person with a developmental disability;

(h) an authorized representative of a guardianship program approved by the department if the department determines that disclosure to the program or to a person designated by the program is necessary for the proper provision of guardianship services to a person alleged to be an abused, sexually abused, neglected, or exploited older person or person with a developmental disability;

(i) protection and advocacy systems authorized under the provisions of 29 U.S.C. 794e, ~~42 U.S.C. 6042, and~~ 42 U.S.C. 10805*, and 42 U.S.C. 15043*;

(j) the news media if disclosure is limited to confirmation of factual information regarding how the case was handled and does not violate the privacy rights of the older person, person with a developmental disability, or alleged perpetrator of abuse, sexual abuse, neglect, or exploitation, as determined by the department;

(k) a coroner or medical examiner who is determining the cause of death of an older person or a person with a developmental disability;

(l) a person about whom a report has been made and that person's attorney with respect to relevant records pertaining to that person only without disclosing the identity of the person who made the report or any other person whose safety might be endangered through disclosure;

(m) an agency, including a probation or parole agency, that is legally responsible for the supervision of an alleged perpetrator of abuse, sexual abuse, neglect, or exploitation of an older person or a person with a developmental disability; and

(n) a department, agency, or organization, including a federal agency, military reservation, or tribal organization, that is legally authorized to receive, inspect, or investigate reports of abuse, sexual abuse, neglect, or exploitation of an older person or a person with a developmental disability and that meets the disclosure criteria contained in this section.

(3) The records and reports required to be kept confidential by subsection (1) must be disclosed, upon request, to the following persons or entities in this or any other state:

(a) a county attorney or other law enforcement official who requires the information in connection with an investigation of a violation of this part;

(b) a court that has determined, in camera, that public disclosure of the report, data, information, or record is necessary for the determination of an issue before it;

(c) a grand jury upon its determination that the report, data, information, or record is necessary in the conduct of its official business.

(4) If the person who is reported to have abused, sexually abused, neglected, or exploited an older person or a person with a developmental disability is the holder of a license, permit, or certificate issued by the department of labor and industry under the provisions of Title 37 or issued by any other entity of state government, the report may be submitted to the entity that issued the license, permit, or certificate."

Section 87. Section 53-6-1201, MCA, is amended to read:

"53-6-1201. Special revenue fund — health and medicaid initiatives. (1) There is a health and medicaid initiatives account in the state special revenue fund established by 17-2-102. This account is to be administered by the department of public health and human services.

(2) There must be deposited in the account:

(a) money from cigarette taxes deposited under 16-11-119(1)(c);

(b) money from taxes on tobacco products other than cigarettes deposited under 16-11-119(3)(b); and

(c) any interest and income earned on the account.

(3) This account may be used only to provide funding for:

(a) the state funds necessary to take full advantage of available federal matching funds in order to maximize enrollment of eligible children under the children's health insurance program, provided for under Title 53, chapter 4, part 10, and to provide outreach to the eligible children. The increased revenue in this account is intended to increase enrollment rates for eligible children in the program and not to be used to support existing levels of enrollment based upon appropriations for the biennium ending June 30, 2005.

(b) a new need-based prescription drug program established by the legislature for children, seniors, chronically ill, and disabled persons that does not supplant similar services provided under any existing program;

(c) increased medicaid services and medicaid provider rates. The increased revenue is intended to increase medicaid services and medicaid provider rates and not to supplant the general fund in the trended traditional level of appropriation for medicaid services and medicaid provider rates.

(d) an offset to loss of revenue to the general fund as a result of new tax credits;

(e) funding new programs to assist eligible small employers with the costs of providing health insurance benefits to eligible employees;

(f) the cost of administering the tax credit, the purchasing pool, and the premium incentive payments and premium assistance payments as provided in Title 33, chapter 22, part 20; and

(g) providing a state match for the medicaid program for premium incentive payments or premium assistance payments to the extent that a waiver is granted by federal law as provided in 53-2-216.

~~(4) (a) Except for $1 million appropriated for the startup costs of 53-6-1004 and 53-6-1005, the money appropriated for fiscal year 2006 for the programs in subsections (3)(b) and (3)(d) through (3)(g) may not be expended until the office of budget and program planning has certified that $25 million has been deposited in the account provided for in this section or December 1, 2005, whichever occurs earlier.~~

~~(b)~~*(4) (a)* On or before July 1, the budget director shall calculate a balance required to sustain each program in subsection (3) for each fiscal year of the biennium. If the budget director certifies that the reserve balance will be sufficient, then the agencies may expend the revenue for the programs as appropriated. If the budget director determines that the reserve balance of the revenue will not support the level of appropriation, the budget director shall notify each agency. Upon receipt of the notification, the agency shall adjust the operating budget for the program to reflect the available revenue as determined by the budget director.

~~(c)~~*(b)* Until the programs or credits described in subsections (3)(b) and (3)(d) through (3)(g) are established, the funding must be used exclusively for the purposes described in subsections (3)(a) and (3)(c).

(5) The phrase "trended traditional level of appropriation", as used in subsection (3)(c), means the appropriation amounts, including supplemental

appropriations, as those amounts were set based on eligibility standards, services authorized, and payment amount during the past five biennial budgets.

(6) The department of public health and human services may adopt rules to implement this section."

Section 88. Section 53-19-309, MCA, is amended to read:

"53-19-309. Gifts and grants. The committee may accept contributions, gifts, and grants, in money or otherwise, to the program established in 53-19-306. Monetary contributions, gifts, and grants must be deposited in the ~~fund~~ *account* provided for in 53-19-310."

Section 89. Section 53-20-125, MCA, is amended to read:

"53-20-125. Outcome of screening — recommendation for commitment to residential facility or imposition of community treatment plan — hearing. (1) A court may commit a person to a residential facility or impose a community treatment plan only if the person:

(a) is 18 years of age or older; and

(b) is determined to be seriously developmentally disabled and in need of commitment to a residential facility or imposition of a community treatment plan by the residential *facility* screening team, as provided in 53-20-133, and by a court, as provided in 53-20-129 or in this section.

(2) After the screening required by 53-20-133, the residential facility screening team shall file its written recommendation and report with the court. The report must include the factual basis for the recommendation and must describe any tests or evaluation devices that have been employed in evaluating the respondent. The residential facility screening team shall provide to the court, the county attorney, the respondent's attorney, and any other party requesting it the social and placement information that the team relied upon in making its determination.

(3) Notice of the determination of the residential facility screening team must be mailed or delivered to:

(a) the respondent;

(b) the respondent's parents, guardian, or next of kin, if known;

(c) the responsible person;

(d) the respondent's advocate, if any;

(e) the county attorney;

(f) the residential facility;

(g) the attorney for the respondent, if any; and

(h) the attorney for the parents or guardian, if any.

(4) The respondent, the respondent's parents or guardian, the responsible person, the respondent's advocate, if any, or the attorney for any party may request that a hearing be held on the recommendation of the residential facility screening team. The request for a hearing must be made in writing within 15 days of service of the report.

(5) Notice of the hearing must be mailed or delivered to each of the parties listed in subsection (4).

(6) The hearing must be held before the court without jury. The rules of civil procedure apply.

(7) Upon receiving the report of the residential facility screening team and after a hearing, if one is requested, the court shall enter findings of fact and take one of the following actions:

(a) If both the residential facility screening team and the court find that the respondent is seriously developmentally disabled and in need of commitment to a residential facility, the court shall order the respondent committed to a residential facility for an extended course of treatment and habilitation.

(b) If both the residential facility screening team and the court find that the respondent is seriously developmentally disabled but either the residential facility screening team or the court finds that a less restrictive community treatment plan has been proposed, the court may impose a community treatment plan that meets the conditions set forth in 53-20-133(4). If the court finds that a community treatment plan proposed by the parties or recommended by the residential facility screening team does not meet the conditions set forth in 53-20-133(4), it may order the respondent committed to a residential facility. The court may not impose a community treatment plan unless the residential facility screening team certifies that all services in the proposed plan meet the conditions of 53-20-133(4)(c) and (4)(d).

(c) If either the residential facility screening team or the court finds that the respondent has a developmental disability but is not seriously developmentally disabled, the court shall dismiss the petition and refer the respondent to the department of public health and human services to be considered for placement in voluntary community-based services according to 53-20-209.

(d) If either the residential facility screening team or the court finds that the respondent does not have a developmental disability or is not in need of developmental disability services, the court shall dismiss the petition.

(8) (a) If the residential facility screening team recommends commitment to a residential facility or imposition of a community treatment plan and none of the parties notified of the recommendation request a hearing within 15 days of service of the screening team's report, the court may:

(i) issue an order committing the respondent to the residential facility for an extended period of treatment and habilitation;

(ii) issue an order imposing a community treatment plan that the court finds meets the conditions set forth in 53-20-133(4); or

(iii) initiate its own inquiry as to whether an order should be granted.

(b) The court may not impose a community treatment plan unless the residential facility screening team certifies that all services in the proposed plan meet the conditions in 53-20-133(4)(c) and (4)(d).

(9) The court may refuse to authorize commitment of a respondent to a residential facility for an extended period of treatment and habilitation if commitment is not in the best interests of the respondent.

(10) A court order entered in a proceeding under this part must be provided to the residential facility screening team."

Section 90. Section 53-20-128, MCA, is amended to read:

"53-20-128. Recommitment — extension of community treatment plan. (1) The qualified mental retardation professional responsible for a resident's habilitation or the case manager responsible for habilitation of a person under a community treatment plan may request that the county

attorney file a petition for recommitment or extension of the order imposing the community treatment plan.

(2) A petition for recommitment or extension must be filed with the district court before the end of the current period of commitment or the expiration of the order imposing the current community treatment plan.

(3) A petition for recommitment or extension of a community treatment plan must be accompanied by a written report containing the recommendation of the qualified mental retardation professional or case manager and a summary of the current habilitation plan or community treatment plan for the respondent.

(4) The petition must be reviewed in accordance with 53-20-133 by the residential facility screening team.

(5) Copies of the petition for recommitment and the report of the qualified mental retardation professional or case manager must be sent to:

(a) the court that issued the current order;

(b) the residential *facility* screening team;

(c) the resident;

(d) the resident's parents or guardian or next of kin, if any;

(e) the attorney who most recently represented the resident, if any;

(f) the responsible person appointed by the court, if any; and

(g) the resident's advocate, if any.

(6) The provisions of 53-20-125 apply to a petition for recommitment or extension of an order imposing a community treatment plan.

(7) If either the court or the residential facility screening team finds that the respondent has been placed voluntarily in community-based services or that the need for developmental disabilities services no longer exists, the court shall dismiss the petition.

(8) The court may not order recommitment to a residential facility that does not have an individualized habilitation plan for the resident.

(9) The court may not extend an order imposing a community treatment plan unless the residential facility screening team certifies that all services in the proposed plan meet the conditions set forth in 53-20-133(4)(c) and (4)(d)."

Section 91. Section 53-20-133, MCA, is amended to read:

"53-20-133. Residential facility screening team — referral by court — membership — rules. (1) When the district court receives a petition for commitment to a residential facility or for imposition of a community treatment plan under this part, the court, prior to proceeding, shall refer the respondent to the residential facility screening team for screening to determine whether commitment to a residential facility or imposition of a community treatment plan is appropriate for the respondent.

(2) A court may not commit a respondent to a residential facility or impose a community treatment plan under 53-20-125, 53-20-128, or 53-20-129 unless the residential facility screening team determines that commitment to a residential facility or imposition of a community treatment plan is appropriate for the respondent.

(3) The residential facility screening team may not determine that commitment to a residential facility or imposition of a community treatment

plan is appropriate on an extended basis unless the residential facility screening team determines that the respondent is seriously developmentally disabled.

(4) The residential facility screening team may not recommend ~~commitment to~~ *imposition of* a community treatment plan unless it finds that the proposed plan:

(a) provides adequate assurances of safety from the consequences of the behaviors of the respondent for both the respondent and the community;

(b) provides effective habilitation services for the respondent's developmental disability;

(c) is funded from public or private sources that are identified, committed, and available to pay for all of the proposed services to the respondent; and

(d) ensures services from identified, qualified providers that are committed and available to provide all of the proposed services to the respondent.

(5) For purposes of this part, the department of public health and human services shall adopt rules providing for the membership and terms of the members of the residential facility screening team and setting forth the criteria and procedures to govern the determinations made by the residential facility screening team."

Section 92. Section 61-4-128, MCA, is amended to read:

"61-4-128. Common standards — dealer plates — demonstrator plates — identification cards — fees. (1) (a) Dealer, demonstrator, and courtesy license plates authorized under this part must be designed by the department in a manner that is similar to standard license plates furnished under 61-3-332, but the word "dealer", "demonstrator", or "courtesy" must be included in the plate design.

(b) Dealer, demonstrator, and courtesy license plates must be numbered in a manner that is readily distinguishable from other plate styles issued by the department. The numbering system for dealer plates must contain the distinctive license number assigned by the department to a dealer and a number or alphanumeric *identification mark* that relates to the assignment of sets of dealer plates to a dealer. The numbering system for demonstrator plates may be sequential and unrelated to the number of demonstrator plates or the distinctive license number assigned to a dealer, wholesaler, or auto auction.

(c) Dealer, demonstrator, and courtesy plates issued under this part must be replaced on the same cycle that is required for standard license plates under 61-3-332.

(d) Except as provided in 61-4-124, dealer, demonstrator, and courtesy plates must display a registration decal, affixed as prescribed by the department, for the calendar year for which use of the plate or plates is authorized under this part.

(2) (a) Identification cards must be designed by the department and furnished to dealers to authorize the demonstration of a motorboat or personal watercraft, a snowmobile, or an off-highway vehicle by a dealer licensed under this part or a customer of a dealer licensed under this part. Each identification card must include the dealer's name and address and the license number assigned by the department to the dealer and must designate the type of power sports vehicle for which its use is authorized, such as a motorboat or personal watercraft, snowmobile, or off-highway vehicle.

(b) The department may use the same numbering system for identification cards as it uses for demonstrator plates.

(3) (a) Upon issuance of a license to a dealer whose business includes the sale of motorboats or personal watercraft, snowmobiles, or off-highway vehicles, the department shall furnish identification cards to a dealer as follows:

(i) for a dealer who sells motorboats or personal watercraft, one identification card;

(ii) for a dealer who sells snowmobiles, two identification cards; and

(iii) for a dealer who sells off-highway vehicles, two identification cards.

(b) The dealer may obtain additional identification cards for $2, as needed, and upon submitting justification for the need to the department.

(4) (a) An identification card issued to a dealer who sells motorboats or personal watercraft may be displayed on a dealer's motorboat or personal watercraft while the motorboat or personal watercraft is operating for a purpose related to the buying, selling, exchanging, or performance testing of the motorboat or personal watercraft by the dealer, manufacturer, or potential buyer.

(b) An identification card issued to a dealer who sells snowmobiles must be carried by the dealer when demonstrating the dealer's snowmobiles or by the dealer's customer.

(c) An identification card issued to a dealer who sells off-highway vehicles must be carried by the dealer when the dealer's off-highway vehicles are being demonstrated for sale purposes or by the dealer's customer.

(5) (a) All dealer, demonstrator, and courtesy plates and identification cards issued under this part expire on December 31 of the year of issue and must be renewed annually.

(b) A dealer, wholesaler, or auto auction that files the annual report required under 61-4-120, 61-4-124, or 61-4-125 on or before December 31 of the calendar year may display or use dealer or demonstrator plates and identification cards assigned for the prior calendar year through the last day of February of the following year."

Section 93. Section 69-8-419, MCA, is amended to read:

"69-8-419. Electricity supply resource planning and procurement — duties of public utility — objectives — commission rules. (1) The public utility shall:

(a) plan for future electricity supply resource needs;

(b) manage a portfolio of electricity supply resources; and

(c) procure new electricity supply resources when needed.

(2) The public utility shall pursue the following objectives in fulfilling its duties pursuant to subsection (1):

(a) provide adequate and reliable electricity supply service at the lowest long-term total cost;

(b) conduct an efficient electricity supply resource planning and procurement process that evaluates the full range of cost-effective electricity supply and demand-side management options;

(c) identify and cost-effectively manage and mitigate risks related to its obligation to provide electricity supply service;

(d) use open, fair, and competitive procurement processes whenever possible; and

(e) provide electricity supply service and related services at just and reasonable rates.

(3) By March 31, 2008, the commission shall adopt rules that guide the electricity supply resource planning and procurement processes used by the public utility and facilitate the achievement of the objectives in subsection (2) by the public utility. The rules must establish:

(a) goals, objectives, and guidelines that are consistent with the objectives in subsection (2) for:

(i) planning for future electricity supply resource needs;

(ii) managing the portfolio of electricity supply resources; and

(iii) procuring new electricity supply resources;

(b) standards for the evaluation by the commission of the reasonableness of a power ~~supply~~ purchase agreement proposed by the public utility; and

(c) minimum filing requirements for an application by the public utility for approval of an electricity supply resource."

Section 94. Section 69-8-421, MCA, is amended to read:

"69-8-421. Approval of electricity supply resources. (1) A public utility that removed its generation assets from its rate base pursuant to this chapter prior to October 1, 2007, may apply to the commission for approval of an electricity supply resource that is not yet procured.

(2) Within 45 days of the public utility's submission of an application for approval, the commission shall determine whether or not the application is adequate and in compliance with the commission's minimum filing requirements. If the commission determines that the application is inadequate, it shall explain the deficiencies.

(3) The commission shall issue an order within 180 days of receipt of an adequate application for approval of a power purchase agreement from an existing generating resource unless it determines that extraordinary circumstances require additional time.

(4) (a) Except as provided in subsections (4)(b) through (4)(d), the commission shall issue an order within 270 days of receipt of an adequate application for approval of a lease, an acquisition of an equity interest in a new or existing plant or equipment used to generate electricity, or a power purchase agreement for which approval would result in construction of a new electric generating resource. The commission may extend the time limit up to an additional 90 days if it determines that extraordinary circumstances require it.

(b) If an air quality permit pursuant to Title 75, chapter 2, is required for a new electrical generation resource or a modification to an existing resource, the commission shall hold the public hearing on the application for approval at least 30 days after the issuance of the final air quality permit.

(c) If a final air quality permit is not issued within the time limit pursuant to subsection (4)(a), the commission shall extend the time limit in order to comply with subsection (4)(b).

(d) The commission may extend the time limit for issuing an order for an additional 60 days following the hearing pursuant to subsection (4)(b).

(5) To facilitate timely consideration of an application, the commission may initiate proceedings to evaluate planning and procurement activities related to a potential resource procurement prior to the public utility's submission of an application for approval.

(6) (a) The commission may approve or deny, in whole or in part, an application for approval of an electricity supply resource.

(b) The commission may consider all relevant information known up to the time that the administrative record in the proceeding is closed in the evaluation of an application for approval.

(c) A commission order granting approval of an application must include the following findings:

(i) approval, in whole or in part, is in the public interest; and

(ii) procurement of the electricity supply resource is consistent with the requirements in 69-3-201, the objectives in 69-8-419, and commission rules.

(d) The commission order may include a provision for allowable generation assets cost of service when the utility has filed an application for the lease or acquisition of an equity interest in a plant or equipment used to generate electricity.

(e) When issuing an order for the acquisition of an equity interest or lease in a facility or equipment that is constructed after January 1, 2007, and that is used to generate electricity that is primarily fueled by natural or synthetic gas, the commission shall require the applicant to implement cost-effective carbon offsets. Expenditures required for cost-effective carbon offsets pursuant to this subsection (6)(e) are fully recoverable in rates. By March 31, 2008, the commission shall adopt rules for the implementation of this subsection (6)(e).

(f) The commission order may include other findings that the commission determines are necessary.

(g) A commission order that denies approval must describe why the findings required in subsection (6)(c) could not be reached.

(7) Notwithstanding any provision of this chapter to the contrary, if the commission has issued an order containing the findings required under subsection (6)(c), the commission may not subsequently disallow the recovery of costs related to the approved electricity supply resource based on contrary findings.

(8) Until the state or federal government has adopted uniformly applicable statewide standards for the capture and sequestration of carbon dioxide, the commission may not approve an application for the acquisition of an equity interest or lease in a facility or equipment used to generate electricity that is primarily fueled by coal and that is constructed after January 1, 2007, unless the facility or equipment captures and sequesters a minimum of 50% of the carbon dioxide produced by the facility. Carbon dioxide captured by a facility or equipment may be sequestered offsite from the facility or equipment.

(9) Nothing limits the commission's ability to subsequently, in any future rate proceeding, inquire into the manner in which the public utility has managed, dispatched, operated, or maintained any resource or managed any power ~~supply~~ purchase agreement as part of its overall resource portfolio. The commission may subsequently disallow rate recovery for the costs that result from the failure of a public utility to reasonably manage, dispatch, operate, maintain, or administer electricity supply resources in a manner consistent with 69-3-201, 69-8-419, and commission rules.

(10) The commission may engage independent engineering, financial, and management consultants or advisory services to evaluate a public utility's electricity supply resource procurement plans and proposed electricity supply resources. The consultants must have demonstrated knowledge and experience with electricity supply procurement and resource portfolio management, modeling, risk management, and engineering practices. The commission shall charge a fee to the public utility to pay for the costs of consultants or advisory services. These costs are recoverable in rates.

(11) By March 31, 2008, the commission shall adopt rules prescribing minimum filing requirements for applications filed pursuant to this part."

Section 95. Section 70-32-106, MCA, is amended to read:

"70-32-106. Contents of declaration. ~~The~~ *Subject to 70-32-216, the* declaration of homestead must contain a statement that the person making it is residing on the premises and claims them as a homestead and a description of the premises."

Section 96. Section 71-1-212, MCA, is amended to read:

"71-1-212. Penalties for failure to give certificate of discharge or release after full performance. After the full performance of the conditions of a mortgage and whether before or after a breach of the mortgage, a mortgagee or the personal representative or assignee of the mortgagee who refuses or neglects to execute, acknowledge, and deliver to the mortgagor a certificate of discharge or release of the mortgage within 90 days after a request for one is liable to the mortgagor or the mortgagor's heirs or assigns *in* the sum of $500 and all actual damages resulting from the neglect or refusal."

Section 97. Section 72-3-606, MCA, is amended to read:

"72-3-606. Possession and protection of estate. (1) Except as otherwise provided by a decedent's will ~~and subject to the provisions of chapter 12, part 7~~, ~~every~~ *a* personal representative has a right to and shall take possession or control of the decedent's property, except that any real property or tangible personal property may be left with or surrendered to the person presumptively entitled ~~thereto~~ *to the property* unless or until, in the judgment of the personal representative, possession of the property by ~~him~~ *the personal representative* will be necessary for purposes of administration. The request by a personal representative for delivery of any property possessed by an heir or devisee is conclusive evidence, in any action against the heir or devisee for possession ~~thereof~~ *of the property*, that the possession of the property by the personal representative is necessary for purposes of administration.

(2) The personal representative shall pay taxes on and take all steps reasonably necessary for the management, protection, and preservation of the estate in ~~his~~ *the personal representative's* possession. ~~He~~ *The personal representative* may maintain an action to recover possession of property or to determine the title ~~thereto~~ *to the property*."

Section 98. Section 75-1-110, MCA, is amended to read:

"75-1-110. Environmental rehabilitation and response account. (1) There is an environmental rehabilitation and response account in the state special revenue fund provided for in 17-2-102.

(2) There must be deposited in the account:

(a) fine and penalty money received pursuant to 75-10-1223, 82-4-311, and 82-4-424 and other funds or contributions designated for deposit to the account;

(b) unclaimed or excess reclamation bond money received pursuant to 82-4-241, 82-4-311, *and* 82-4-424~~, and 82-4-426~~; and

(c) interest earned on the account.

(3) Money in the account is available to the department of environmental quality by appropriation and must be used to pay for:

(a) reclamation and revegetation of land affected by mining activities, research pertaining to the reclamation and revegetation of land, and the rehabilitation of water affected by mining activities;

(b) reclamation and revegetation of unreclaimed mine lands for which the department may not require reclamation by, or obtain costs of reclamation from, a legally responsible party;

(c) remediation of sites containing hazardous wastes or hazardous substances for which the department may not recover costs from a legally responsible party; or

(d) response to an imminent threat of substantial harm to the environment, to public health, or to public safety for which no funding or insufficient funding is available pursuant to 75-1-1101.

(4) Any unspent or unencumbered money in the account at the end of a fiscal year must remain in the account until spent or appropriated by the legislature."

Section 99. Section 75-1-220, MCA, is amended to read:

"75-1-220. Definitions. For the purposes of this part, the following definitions apply:

(1) "Appropriate board" means, for administrative actions taken under this part by the:

(a) department of environmental quality, the board of environmental review, as provided for in 2-15-3502;

(b) department of fish, wildlife, and parks, the fish, wildlife, and parks commission, as provided for in 2-15-3402;

(c) department of transportation, the transportation commission, as provided for in 2-15-2502;

(d) department of natural resources and conservation for state trust land issues, the board of land commissioners, as provided for in Article X, section 4, of the Montana constitution;

(e) department of natural resources and conservation for oil and gas issues, the board of oil and gas conservation, as provided for in 2-15-3303; and

(f) department of livestock, the board of livestock, as provided for in 2-15-3102.

(2) "Complete application" means, for the purpose of complying with this part, an application for a permit, license, or other authorization that contains all data, studies, plans, information, forms, fees, and signatures required to be included with the application sufficient for the agency to approve the application under the applicable statutes and rules.

(3) "Cumulative impacts" means the collective impacts on the human environment of the proposed action when considered in conjunction with other past, present, and future actions related to the proposed action by location or generic type.

(4) "Environmental review" means any environmental assessment, environmental impact statement, or other written analysis required under this part by a state agency of a proposed action to determine, examine, or document the effects and impacts of the proposed action on the quality of the human and physical environment as required under this part.

(5) "Project sponsor" means any applicant, owner, operator, agency, or other entity that is proposing an action that requires an environmental review. If the action involves state agency-initiated actions on state trust lands, the term also includes each institutional beneficiary of any trust as described in The Enabling Act of Congress (approved February 22, 1899, 25 Stat. 676), as amended, the Morrill Act of 1862 (7 U.S.C. 301 through 308), and the Morrill Act of 1890 (7 U.S.C. 321 through ~~328~~ *329*).

(6) "Public scoping process" means any process to determine the scope of an environmental review."

Section 100. Section 75-2-111, MCA, is amended to read:

"75-2-111. Powers of board. The board shall, subject to the provisions of 75-2-207:

(1) adopt, amend, and repeal rules for the administration, implementation, and enforcement of this chapter, for issuing orders under and in accordance with 42 U.S.C. 7419, and for fulfilling the requirements of 42 U.S.C. 7420 and regulations adopted pursuant to that section, except that, for purposes other than agricultural open burning, the board may not adopt permitting requirements or any other rule relating to:

(a) any agricultural activity or equipment that is associated with the use of agricultural land or the planting, production, processing, harvesting, or storage of agricultural crops by an agricultural producer and that is not subject to the requirements of 42 U.S.C. 7475, 7503, or ~~7661~~ *7661a*; or

(b) a commercial operation relating to the activities or equipment referred to in subsection (1)(a) that remains in a single location for less than 12 months and is not subject to the requirements of 42 U.S.C. 7475, 7503, or ~~7661~~ *7661a*;

(2) hold hearings relating to any aspect of or matter in the administration of this chapter at a place designated by the board. The board may compel the attendance of witnesses and the production of evidence at hearings. The board shall designate an attorney to assist in conducting hearings and shall appoint a reporter who must be present at all hearings and take full stenographic notes of all proceedings, transcripts of which will be available to the public at cost.

(3) issue orders necessary to effectuate the purposes of this chapter;

(4) by rule require access to records relating to emissions;

(5) by rule adopt a schedule of fees required for permits, permit applications, and registrations consistent with this chapter;

(6) have the power to issue orders under and in accordance with 42 U.S.C. 7419."

Section 101. Section 75-2-211, MCA, is amended to read:

"75-2-211. Permits for construction, installation, alteration, or use. (1) The board shall*,* by rule*,* provide for the issuance, modification, suspension, revocation, and renewal of a permit issued under this part.

(2) (a) Except as provided in 75-1-208(4)(b), 75-2-234, and subsections (2)(b) and (2)(c) of this section, not later than 180 days before construction, installation, or alteration begins or as a condition of use of any machine,

equipment, device, or facility that the board finds may directly or indirectly cause or contribute to air pollution or that is intended primarily to prevent or control the emission of air pollutants, the owner or operator shall file with the department the appropriate permit application on forms available from the department.

(b) Except as provided in subsection (2)(e), the owner or operator of an oil or gas well facility shall file the permit application with the department no later than January 3, 2006, or 60 days after the initial well completion date, whichever is later. For purposes of this section, the initial well completion date for an oil or gas well facility is:

(i) for an oil or gas well facility producing oil, the date when the first oil is produced through wellhead equipment into lease tanks from the ultimate producing interval after casing has been run; and

(ii) for an oil or gas well facility producing gas, the date when the oil or gas well facility is capable of producing gas through wellhead equipment from the ultimate producing interval after casing has been run.

(c) An owner or operator who complies with subsection (2)(b) may construct, install, or use equipment necessary to complete or operate an oil or gas well facility without a permit until the department's decision on the application is final. If the owner or operator does not comply with subsection (2)(b), the owner or operator may not operate the oil or gas well facility and is liable for a violation of this section for every day of construction, installation, or operation of the facility.

(d) The board shall adopt rules establishing air emission control requirements applicable to an oil or gas well facility during the time from the initial well completion date until the department's decision on the application is final.

(e) The provisions of subsections (2)(b) and (2)(c) do not apply to an oil or gas well facility subject to the federal air permitting provisions of 42 U.S.C. 7475 or 7503.

(3) The permit program administered by the department pursuant to this section must include the following:

(a) requirements and procedures for permit applications, including standard application forms;

(b) requirements and procedures for submittal of information necessary to determine the location, quantity, and type of emissions;

(c) procedures for public notice and opportunity for comment or public hearing, as appropriate;

(d) procedures for providing notice and an opportunity for comment to contiguous states and federal agencies, as appropriate;

(e) requirements for inspection, monitoring, recordkeeping, and reporting;

(f) procedures for the transfer of permits;

(g) requirements and procedures for suspension, modification, and revocation of permits by the department;

(h) requirements and procedures for appropriate emission limitations and other requirements, including enforceable measures necessary to ensure compliance with those limitations and requirements;

(i) requirements and procedures for permit modification and amendment; and

(j) requirements and procedures for issuing a single permit authorizing emissions from similar operations at multiple temporary locations, which permit may include conditions necessary to ensure compliance with the requirements of this chapter at all authorized locations and a requirement that the owner or operator notify the department in advance of each change in location.

(4) This section does not restrict the board's authority to adopt regulations providing for a single air quality permit system.

(5) Department approval of an application to transfer a portable emission source from one location to another is exempt from the provisions of 75-1-201(1).

(6) The department may, for good cause shown, waive or shorten the time required for filing the appropriate applications.

(7) The department shall require that applications for permits be accompanied by any plans, specifications, and other information that it considers necessary.

(8) An application is not considered filed until the applicant has submitted all fees required under 75-2-220 and all information and completed application forms required pursuant to subsections (2), (3), and (7) of this section. If the department fails to notify the applicant in writing within 30 days after the purported filing of an application that the application is incomplete and fails to list the reasons why the application is considered incomplete, the application is considered filed as of the date of the purported filing.

(9) (a) Except as provided in 75-1-205(4) and 75-1-208(4)(b), if an application for a permit requires the preparation of an environmental impact statement under the Montana Environmental Policy Act, Title 75, chapter 1, parts 1 through 3, the department shall notify the applicant in writing of the approval or denial of the application:

(i) within 180 days after the department's receipt of a filed application, as provided in subsection (8), if the department prepares the environmental impact statement;

(ii) within 30 days after issuance of the final environmental impact statement by the lead agency if a state agency other than the department has been designated by the governor as lead agency for preparation of the environmental impact statement; or

(iii) if the application is for a machine, equipment, a device, or a facility at an operation that requires a permit under Title 82, chapter 4, part 1, 2, or 3, within 30 days of issuance of the final environmental impact statement in accordance with time requirements of Title 82, chapter 4, part 1, 2, or 3.

(b) If an application does not require the preparation of an environmental impact statement, is not subject to the provisions of 75-2-215, and is not subject to the federal air quality permitting provisions of 42 U.S.C. 7475, 7503, or ~~7661~~ *7661a*, the department shall notify the applicant in writing within 60 days after its receipt of a filed application, as provided in subsection (8), of its approval or denial of the application, except as provided in subsection (14).

(c) If an application does not require the preparation of an environmental impact statement and is subject to the federal air permitting provisions of 42 U.S.C. 7475, 7503, or ~~7661~~ *7661a*, the department shall notify the applicant, in

writing, within 75 days after its receipt of a filed application, as provided in subsection (8), of its approval or denial of the application.

(d) Except as provided in subsection (9)(e), if an application does not require the preparation of an environmental impact statement and is subject to the provisions of 75-2-215, the department shall notify the applicant of its approval or denial of the application, in writing, within 75 days after its receipt of a filed application, as provided in subsection (8).

(e) If an application for a permit is for the construction, installation, alteration, or use of a source that is also required to obtain a license pursuant to 75-10-221 or a permit pursuant to 75-10-406, the department shall prepare a single environmental review document pursuant to Title 75, chapter 1, for the permit required under this section and the license or permit required under 75-10-221 or 75-10-406 and act on the applications within the time period provided for in 75-2-215(3)(e).

(f) The time for notification may be extended for 30 days by written agreement of the department and the applicant. Additional 30-day extensions may be granted by the department upon the request of the applicant. Notification of approval or denial may be served personally or by certified mail on the applicant or the applicant's agent.

(g) Failure by the department to act in a timely manner does not constitute approval or denial of the application. This does not limit or abridge the right of any person to seek available judicial remedies to require the department to act in a timely manner.

(10) When the department approves or denies the application for a permit under this section, a person who is jointly or severally adversely affected by the department's decision may request a hearing before the board. The request for hearing must be filed within 15 days after the department renders its decision. An affidavit setting forth the grounds for the request must be filed within 30 days after the department renders its decision. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing before the board under this subsection.

(11) (a) The department's decision on the application is not final until 15 days have elapsed from the date of the decision.

(b) The filing of a request for hearing does not stay the department's decision. However, the board may order a stay upon receipt of a petition and a finding, after notice and opportunity for hearing, that:

(i) the person requesting the stay is entitled to the relief demanded in the request for a hearing; or

(ii) continuation of the permit during the appeal would produce great or irreparable injury to the person requesting the stay.

(c) Upon granting a stay, the board may require a written undertaking to be given by the party requesting the stay for the payment of costs and damages incurred by the permit applicant and its employees if the board determines that the permit was properly issued. When requiring an undertaking, the board shall use the same procedures and limitations as are provided in 27-19-306(2) through (4) for undertakings on injunctions.

(12) The board shall provide, by rule, a period of 30 days in which the public may submit comments on draft air quality permits for applications that:

(a) are subject to the federal air quality permitting provisions of 42 U.S.C. 7475, 7503, or ~~7661~~ *7661a*;

(b) are subject to the requirements of 75-2-215; or

(c) require the preparation of an environmental impact statement.

(13) The board shall provide, by rule, a period of 15 days in which the public may submit comments on draft air quality permits not subject to subsection (12).

(14) The board shall provide, by rule, the basis upon which the department may extend by 15 days:

(a) the period as provided in subsection (13) in which the public may submit comments on draft air quality permits not subject to subsection (12); and

(b) the period for notifying an applicant of its final decision on approval or denial of an application, as provided in subsection (9)(b).

(15) (a) The board may adopt rules for issuance, modification, suspension, revocation, renewal, or creation of:

(i) general permits covering multiple similar sources; or

(ii) other permits covering multiple similar sources.

(b) Rules adopted pursuant to subsection (15)(a) may provide for construction and operation under the permit upon authorization by the department or upon notice to the department."

Section 102. Section 75-10-101, MCA, is amended to read:

"75-10-101. Purpose. The purpose of this part is to encourage the good management of solid waste and the conservation of natural resources through the promotion or development of systems to collect, separate, reclaim, recycle, and dispose of solid waste for energy production purposes ~~where~~ *when* economically feasible and to provide a coordinated state solid waste *management* and resource recovery plan."

Section 103. Section 75-10-102, MCA, is amended to read:

"75-10-102. Public policies. (1) To implement this part, the following are declared to be public policies of this state:

(a) Maximum recycling from solid waste is necessary to protect the public health, welfare, and quality of the natural environment.

(b) Solid waste management systems ~~shall~~ *must* be developed, financed, planned, designed, constructed, and operated for the benefit of the people of this state.

(c) Private industry is to be utilized to the maximum extent possible in planning, designing, managing, constructing, operating, manufacturing, and marketing functions related to solid waste management systems.

(d) Local governments shall retain primary responsibility for adequate solid waste management with the state preserving those functions necessary to ~~assure~~ *ensure* effective solid waste management systems throughout the state.

(e) Costs for the management and regulation of solid waste management systems should be charged to those persons generating solid waste in order to encourage the reduction of the solid waste stream.

(f) Encouragement and support *should* be given to individuals and municipalities to separate solid waste at its source in order to maximize the value of ~~such~~ *those* wastes for reuse.

(g) The state shall provide technical advisory assistance to local governments and other affected persons in the planning, developing, financing, and implementation of solid waste management systems.

(h) Actions and activities performed or carried out by persons and their contractors in accordance with this part ~~shall~~ *must* be in conformity with the state solid waste *management and resource recovery* plan.

(i) When licensing a solid waste management system, the department shall consult with units of local government that have jurisdiction over the area encompassing the proposed system.

(2) This part is in addition and supplemental to any other law providing for the financing of a solid waste management system and does not amend or repeal any other law."

Section 104. Section 75-10-103, MCA, is amended to read:

"75-10-103. Definitions. Unless the context clearly requires otherwise, in this part, the following definitions apply:

(1) "Board" means the board of environmental review provided for in 2-15-3502.

(2) "Container site" means a solid waste management facility that:

(a) is generally open to the public for the collection of solid waste that is generated by more than one household or firm and that is collected in a refuse container with a total capacity of not more than 50 cubic yards; or

(b) receives waste from waste collection vehicles and:

(i) receives no more than 3,000 tons of waste each year;

(ii) has control measures in place, including onsite staffing, to adequately contain solid wastes and blowing litter on the site and to minimize spills and leakage of liquid wastes; and

(iii) is a site at which a local government unit requires commercial waste haulers to deposit wastes at the site only during hours that the site is staffed.

(3) "Department" means the department of environmental quality provided for in 2-15-3501.

(4) "Local government" means a county, incorporated city or town, or solid waste management district organized under the laws of this state.

(5) "Person" means any individual, firm, partnership, company, association, corporation, city, town, or local governmental entity or any other state, federal, or private entity, whether organized for profit or not.

(6) "Resource recovery facility" means any facility at which solid waste is processed for the purpose of extracting, converting to energy, or otherwise separating and preparing solid waste for reuse.

(7) (a) "Solid waste" means all putrescible and nonputrescible wastes, including but not limited to garbage, rubbish, refuse, ashes, sludge from sewage treatment plants, water supply treatment plants, or air pollution control facilities; construction and demolition wastes; dead animals, including offal; discarded home and industrial appliances; and wood products or wood byproducts and inert materials.

(b) Solid waste does not mean municipal sewage, industrial wastewater effluents, mining wastes regulated under the mining and reclamation laws administered by the department, slash and forest debris regulated under laws administered by the department of natural resources and conservation, or marketable byproducts.

(8) "Solid waste management system" means any system that controls the storage, treatment, recycling, recovery, or disposal of solid waste. For the

purposes of this definition, a container site is not a component of a solid waste management system.

(9) "State solid waste *management and resource recovery* plan" means the statewide plan formulated by the department as authorized by this part."

Section 105. Section 75-10-112, MCA, is amended to read:

"75-10-112. Powers and duties of local government. A local government may:

(1) plan, develop, and implement a solid waste management system consistent with the state's solid waste *management and resource recovery* plan and propose modifications to the state's solid waste *management and resource recovery* plan;

(2) upon adoption of the state plan by the board, pass an ordinance or resolution to exempt the local jurisdiction from complying with the state plan and subsequent rules implementing the state plan. The ordinance or resolution must include a means to provide solid waste disposal to the citizens of the jurisdiction as required in part 2 of this chapter.

(3) employ appropriate personnel to carry out the provisions of this part;

(4) purchase, rent, or execute leasing agreements for equipment and material necessary for the implementation of a solid waste management system;

(5) cooperate with and enter into agreements with any persons in order to implement an effective solid waste management system;

(6) receive gifts, grants, or donations or acquire by gift, deed, or purchase land necessary for the implementation of any provision of this part;

(7) enforce the rules of the department or a local board of health pertaining to solid waste management through the appropriate county attorney;

(8) apply for and utilize state, federal, or other available money for developing or operating a solid waste management system;

(9) borrow from any lending agency funds available for assistance in planning a solid waste management system;

(10) subject to 15-10-420, finance a solid waste management system through the assessment of a tax as authorized by state law;

(11) sell on an installment sales contract or lease to a person all or a portion of a solid waste management system that the local government plans, designs, or constructs for the consideration and upon the terms established by the local governments and consistent with the loan requirements set forth in this part and rules adopted to implement this part;

(12) procure insurance against any loss in connection with property, assets, or activities;

(13) mortgage or otherwise encumber all or a portion of a solid waste management system when the local government finds that the action is necessary to implement the purposes of this part, as long as the action is consistent with the loan requirements set forth in this part and rules adopted to implement this part;

(14) hold or dispose of real property and, subject to agreements with lessors and lessees, develop or alter the property by making improvements or betterments for the purpose of enhancing the value and usefulness of the property;

(15) finance, design, construct, own, and operate a solid waste management system or contract for any or all of the powers authorized under this part;

(16) control the disposition of solid waste generated within the jurisdiction of a local government;

(17) enter into long-term contracts with local governments and private entities for:

(a) financing, designing, constructing, and operating a solid waste management system;

(b) marketing all raw or processed material recovered from solid waste;

(c) marketing energy products or byproducts resulting from processing or utilization of solid waste;

(18) finance an areawide solid waste management system through the use of any of the sources of revenue available to the implementation entity for public works projects, by the use of revenue bonds issued by the city or county, or by fees levied by a solid waste management district, whichever is appropriate;

(19) enter into interlocal agreements in order to achieve and implement the powers enumerated in this part;

(20) regulate the siting and operation of container sites."

Section 106. Section 75-10-1007, MCA, is amended to read:

"75-10-1007. Criminal penalty. A person who violates this part or a rule adopted pursuant to this part is guilty of a misdemeanor. Absolute liability, as provided for in 45-2-104, is imposed for a violation of this ~~section~~ *part or a rule adopted under this part*."

Section 107. Section 76-3-511, MCA, is amended to read:

"76-3-511. Local regulations no more stringent than state regulations or guidelines. (1) Except as provided in subsections (2) through (4) or unless required by state law, a governing body may not adopt a regulation under 76-3-501 or ~~76-3-504(1)(f)(iii)~~ *76-3-504(1)(g)(iii)* that is more stringent than the comparable state regulations or guidelines that address the same circumstances. The governing body may incorporate by reference comparable state regulations or guidelines.

(2) The governing body may adopt a regulation to implement 76-3-501 or ~~76-3-504(1)(f)(iii)~~ *76-3-504(1)(g)(iii)* that is more stringent than comparable state regulations or guidelines only if the governing body makes a written finding, after a public hearing and public comment and based on evidence in the record, that:

(a) the proposed local standard or requirement protects public health or the environment; and

(b) the local standard or requirement to be imposed can mitigate harm to the public health or environment and is achievable under current technology.

(3) The written finding must reference information and peer-reviewed scientific studies contained in the record that forms the basis for the governing body's conclusion. The written finding must also include information from the hearing record regarding the costs to the regulated community that are directly attributable to the proposed local standard or requirement.

(4) (a) A person affected by a regulation of the governing body adopted after January 1, 1990, and before April 14, 1995, that that person believes to be more stringent than comparable state regulations or guidelines may petition the

governing body to review the regulation. If the governing body determines that the regulation is more stringent than comparable state regulations or guidelines, the governing body shall comply with this section by either revising the regulation to conform to the state regulations or guidelines or by making the written finding, as provided under subsection (2), within a reasonable period of time, not to exceed 12 months after receiving the petition. A petition under this section does not relieve the petitioner of the duty to comply with the challenged regulation. The governing body may charge a petition filing fee in an amount not to exceed $250.

(b) A person may also petition the governing body for a regulation review under subsection (4)(a) if the governing body adopts a regulation after January 1, 1990, in an area in which no state regulations or guidelines existed and the state government subsequently establishes comparable regulations or guidelines that are less stringent than the previously adopted governing body regulation."

Section 108. Section 76-7-204, MCA, is amended to read:

"76-7-204. Environmental control easement conveyances. (1) The designated grantee of an environmental control easement granted under this chapter is one or more of the following entities:

(a) a federal public entity;

(b) the state of Montana, acting by and through the department or any other state agency;

(c) any other public body having jurisdiction over the environmental control site; or

(d) a qualified private organization.

(2) A grantee's acceptance of the easement interest and related obligations must be evidenced by the grantee's execution of the instrument creating the environmental control easement.

(3) Prior to or contemporaneously with the conveyance of an environmental control easement to a designated grantee, the environmental control site owner shall:

(a) obtain documents demonstrating that every person or entity holding an interest in the environmental control site or any part of the site, including without limitation each mortgagee, lienholder, lessee, and encumbrancer, irrevocably subordinates the entity's interest to the environmental control easement;

(b) record the documents required under subsection (3)(a) in the appropriate county; and

(c) submit those documents required under subsection (3)(a) to the designated grantee.

(4) An environmental control easement may not be separated from the land and survives foreclosure of a mortgage, lien, or other encumbrance, as well as tax *lien* sales and the issuance of a tax deed."

Section 109. Section 76-13-123, MCA, is amended to read:

"76-13-123. Failure to extinguish recreational fire. A person who fails to extinguish a recreational fire that the person has set or ignited or in which the person has been left in charge or who negligently allows the fire to spread from the ~~plot~~ *area* described in 76-13-121 is subject to the penalty provided in 50-63-102 and is subject to the provisions of 50-63-103."

Section 110. Section 76-13-211, MCA, is amended to read:

"76-13-211. Amount due for protection treated as lien. (1) Whenever the department provides wildland fire protection for any wildland or timber not protected by the owner of the wildland or timber as required by part 1 or this part, the amount due for the protection is a lien upon the wildland or timber that continues until the amount due is paid.

(2) The lien has the same force, effect, and priority as general tax liens under the laws of the state and is subject and inferior only to tax liens on the ~~lands~~ *wildland or timber*. The county attorney of the county in which the ~~land~~ *wildland or timber* is situated shall on request of the department foreclose the lien in the name of the state and in the manner provided by law, or the county attorney upon the request of the department shall institute an action against the landowner in the name of the state in any district or justice court having jurisdiction to recover the debt. The state in the action is not required to pay any fees or costs to the clerk of the court or justice of the peace.

(3) The remedies provided by this section are cumulative and do not affect the other provisions of part 1 or this part for the payment and collection of amounts due to the department."

Section 111. Section 76-13-402, MCA, is amended to read:

"76-13-402. Basis for management of fire hazards. The fire hazard reduction or management referred to in this part ~~shall~~ *must* be carried on by the department in keeping with modern and progressive forest practices and effective ~~forest~~ fire protection and may include but is not limited to the taking of protective measures to prevent injury or the destruction of forest resources without actual abatement of the hazard."

Section 112. Section 76-13-405, MCA, is amended to read:

"76-13-405. Contracts with forest fire protection agencies. The department is authorized to enter into contracts with ~~forest~~ fire protection agencies, including agencies of the United States, for fire hazard reduction or management when in its opinion the work can best be accomplished in that manner."

Section 113. Section 76-13-406, MCA, is amended to read:

"76-13-406. Limitation on liability. The department and other recognized ~~forest~~ fire protection agencies, including any agency of the United States, with which the department has entered into an agreement for fire hazard reduction or management as provided in 76-13-405 and any officer, official, or employee of the department or other recognized ~~forest~~ fire protection agency is not liable for any damage to the land, product, improvement, or other things of value upon the lands on which the fire hazards are being managed or reduced in accordance with provisions of this part, the rules adopted under 76-13-403, and the fire hazard reduction agreement when reasonable care and caution has been used and the work is being or has been performed in compliance with the rules provided in 76-13-403."

Section 114. Section 76-15-408, MCA, is amended to read:

"76-15-408. Funding of storage reservoirs. Each district shall seek funding for the construction of off-stream storage reservoirs, especially funding from the ~~renewable resource fund~~ *natural resources projects state special revenue account*. The department shall provide assistance, both administrative and technical, in the preparation of grant and funding applications by the districts."

Section 115. Section 77-2-362, MCA, is amended to read:

"77-2-362. State land bank fund — statutory appropriation — rules. (1) There is a state land bank fund. The proceeds from the sale of state trust land authorized by 77-2-361 through 77-2-367 must be deposited into the state land bank fund. The purpose of the state land bank fund is to temporarily hold proceeds from the sale of trust land pending the purchase of other land, easements, or improvements for the benefit of the beneficiaries of the respective trusts. A separate record of the proceeds received from the sale of trust land for each of the respective trusts must be maintained. Proceeds from the sale of lands that are part of a trust land grant may be used only to purchase land for the same trust.

(2) (a) Proceeds deposited in the state land bank fund, except earnings on those proceeds, are statutorily appropriated, as provided in 17-7-502, to the department for the purposes described in 77-2-361 through 77-2-367. All earnings on the proceeds deposited in the state land bank fund are subject to the provisions of Article X, sections 5 and 10, of the Montana constitution.

(b) Except as provided in subsection (2)(c), up to 10% of the proceeds in the state land bank fund may be used by the department to fund the transactional costs of buying, selling, appraising, or marketing real property. Transactional costs may include realtor's fees, title reports, title insurance, legal fees, and other costs that may be necessary to complete a conveyance of real property.

(c) Proceeds from the sale of lands held pursuant to the Morrill Act of 1862, 7 U.S.C. 301 through 308, and the Morrill Act of 1890, 7 U.S.C. 321 through ~~328~~ *329*, may not be used for any transactional costs or trust administration purposes for those lands.

(d) The department may hold proceeds from the sale of state land in the state land bank fund for a period not to exceed 10 years after the effective date of each sale. If, by the end of the 10th year, the proceeds from the subject land sale have not been encumbered to purchase other lands, easements, or improvements within the state, the proceeds from that sale must be deposited in the public school fund or in the permanent fund of the respective trust as required by law, along with any earnings on the proceeds from the land sale, unless the time period is extended by the legislature.

(3) The board shall adopt rules providing for the implementation and administration of the state land bank fund, purchases, and sales."

Section 116. Section 85-1-619, MCA, is amended to read:

"85-1-619. Debt service fund — pledge and administration of sufficient balance. (1) The legislature may levy, impose, assess, and pledge and appropriate to the renewable resource loan debt service fund any tax, charge, fee, rental, or other income from any designated source. The state reserves the right to modify from time to time the nature and amount of special taxes and other ~~revenues~~ *revenue* pledged and appropriated to the renewable resource loan debt service fund, provided that the aggregate resources so pledged and appropriated are determined by the legislature to be sufficient for the prompt and full payment of the principal of and interest and redemption premiums when due on all bonds payable from that fund and provided that the pledge of the full faith and credit and taxing powers of the state for the security of all bonds ~~shall be and remain~~ *is and remains* irrevocable until they are fully paid.

(2) Money in the renewable resource loan debt service fund must be used to pay interest, principal, and redemption premiums when due and payable with

respect to renewable resource bonds, and for bonds issued prior to 1985, to accumulate a reserve for the further security of the payments.

(3) After the reserve provided for in subsection (2) for bonds issued prior to 1985 has been accumulated in the renewable resource loan debt service fund, money at any time received in the renewable resource loan debt service fund in excess of that amount must be transferred by the treasurer to the ~~renewable resource grant and loan program~~ *natural resources projects* state special revenue account."

Section 117. Section 85-2-344, MCA, is amended to read:

"85-2-344. Bitterroot River subbasin temporary closure — definitions — exceptions. (1) Unless the context requires otherwise, in this section, the following definitions apply:

(a) "Application" means an application for a beneficial water use permit pursuant to 85-2-302 or a state water reservation pursuant to 85-2-316.

(b) "Bitterroot River basin" means the drainage area of the Bitterroot River and its tributaries above the confluence of the Bitterroot River and Clark Fork of the Columbia River and designated as "Basin 76H".

(c) "Bitterroot River subbasin" means one of the following hydrologically related portions of the Bitterroot River basin:

(i) the mainstem subbasin, designated as "Subbasin 76HA";

(ii) the north end subbasin, designated as "Subbasin 76HB";

(iii) the east side subbasin, designated as "Subbasin 76HC";

(iv) the southeast subbasin, designated as "Subbasin 76HD";

(v) the south end subbasin, designated as "Subbasin 76HE";

(vi) the southwest subbasin, designated as "Subbasin 76HF";

(vii) the west central subbasin, designated as "Subbasin 76HG"; or

(viii) the northwest subbasin, designated as "Subbasin 76HH".

(2) As provided in 85-2-319, the department may not grant an application for a permit to appropriate water or for a state water reservation within a Bitterroot River subbasin until the closure for the basin is terminated pursuant to subsection ~~(3)~~ *(5)* of this section, except for:

(a) an application for a permit to appropriate ground water if the applicant complies with the provisions of 85-2-360;

(b) an application for a permit to appropriate water for use of surface water by or for a municipality;

(c) temporary emergency appropriations pursuant to 85-2-113(3);

(d) an application submitted pursuant to 85-20-1401, Article VI;

(e) an application to store water during high spring flow in an impoundment with a capacity of 50 acre-feet or more; or

(f) an application for a permit to appropriate surface water to conduct response actions related to natural resource restoration required for:

(i) remedial actions pursuant to the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601, et seq.;

(ii) aquatic resource activities carried out in compliance with and as required by the federal Clean Water Act of 1977, 33 U.S.C. 1251 through 1387; or

(iii) remedial actions taken pursuant to Title 75, chapter 10, part 7.

(3) A permit issued to conduct remedial actions or aquatic resource activities under subsection (2)(f) may not be used for dilution.

(4) A change of use authorization for changing the purpose of use may not be issued for any permit issued pursuant to subsection (2)(b), (2)(c), or (2)(f).

(5) Each Bitterroot River subbasin is closed to new appropriations and new state water reservations until 2 years after all water rights in the subbasin arising under the laws of the state are subject to an enforceable and administrable decree as provided in 85-2-406(4)."

Section 118. Section 87-1-272, MCA, is amended to read:

"87-1-272. (Temporary) **Future fisheries improvement program — funding priority — reports required.** (1) In order to enhance future fisheries through natural reproduction, the department shall establish and implement a statewide voluntary program that promotes fishery habitats and spawning areas for the rivers, streams, and lakes of Montana's fisheries.

(2) ~~The department shall when~~ *When* projects are suggested by the future fisheries review panel, *the department shall,* through a public hearing process and with the approval of the commission, prioritize projects that have been recommended by the review panel to be funded. Emphasis must be given to projects that enhance the historic habitat of native fish species. The department shall fund and implement the program regarding the long-term enhancement of streams and streambanks, instream flows, water leasing, lease or purchase of stored water, and other voluntary programs that deal with wild fish and aquatic habitats. A project conducted under the future fisheries improvement program may not restrict or interfere with the exercise of any water rights or property rights of the owners of streambeds and property adjacent to streambeds, streambanks, and lakes. The fact that a program project has been completed on private property does not create any right of public access to the private property unless that right is granted voluntarily by the property owner.

(3) The department shall work in cooperation with private landowners, conservation districts, irrigation districts, local officials, anglers, and other citizens to implement the future fisheries improvement program. Any department employee who is employed under this section to facilitate contact with landowners must have experience in commercial or irrigated agriculture. The department shall encourage the use of volunteer labor and grants, matching grants, and private donations to accomplish program purposes. The department may use contracted services:

(a) for negotiations with landowners, local officials, citizens, and others;

(b) for coordination with other agencies that may be involved in projects conducted under this section; and

(c) to perform and supervise project work.

(4) Funds expended under this section may be used only for projects for the protection of the fisheries resource that have been identified by the review panel established in 87-1-273 and approved by the commission and may not be used for the acquisition of any interest in land.

(5) (a) The department shall report to the commission on the progress of the future fisheries improvement program every 12 months and post a copy of the report on a state electronic access system to ensure public access to the report.

(b) The department shall also present a detailed report to the senate fish and game committee, the house fish, wildlife, and parks committee, and the natural resources and commerce joint appropriations subcommittee of each regular

session of the legislature on the progress of the future fisheries improvement program and shall include specific information regarding progress and projects related to the restoration of native Montana fish species. The legislative report must include the department's program activities and expenses since the last report and the project schedules and anticipated expenses for the ensuing 10 years' implementation of the future fisheries improvement program. The department shall include a listing of the funding source for each project funded since the last report and shall identify any project that involves stream remediation from mining activities. All financial information presented in the legislative report must conform to the requirements of the ~~state~~ *statewide* accounting, budgeting, and human ~~resources~~ *resource* system.

(c) In order to implement 87-1-273 and this section, the department may expend revenue from the future fisheries improvement program for up to two additional full-time employees. (Terminates July 1, 2009—sec. 3, Ch. 183, L. 2007.)

87-1-272. (Effective July 1, 2009) **Future fisheries improvement program — funding priority — reports required.** (1) In order to enhance future fisheries through natural reproduction, the department shall establish and implement a statewide voluntary program that promotes fishery habitats and spawning areas for the rivers, streams, and lakes of Montana's fisheries.

(2) ~~The department shall by April 1, 1996, and thereafter when~~ *When* projects are suggested by the future fisheries review panel, *the department shall,* through a public hearing process and with the approval of the commission, prioritize projects that have been recommended by the review panel to be funded. Emphasis must be given to projects that enhance the historic habitat of native fish species. The department shall fund and implement the program regarding the long-term enhancement of streams and streambanks, instream flows, water leasing, lease or purchase of stored water, and other voluntary programs that deal with wild fish and aquatic habitats. A project conducted under the future fisheries improvement program may not restrict or interfere with the exercise of any water rights or property rights of the owners of streambeds and property adjacent to streambeds, streambanks, and lakes. The fact that a program project has been completed on private property does not create any right of public access to the private property unless that right is granted voluntarily by the property owner.

(3) The department shall work in cooperation with private landowners, conservation districts, irrigation districts, local officials, anglers, and other citizens to implement the future fisheries improvement program. Any department employee who is employed under this section to facilitate contact with landowners must have experience in commercial or irrigated agriculture. The department shall encourage the use of volunteer labor and grants, matching grants, and private donations to accomplish program purposes. The department may use contracted services:

(a) for negotiations with landowners, local officials, citizens, and others;

(b) for coordination with other agencies that may be involved in projects conducted under this section; and

(c) to perform and supervise project work.

(4) Funds expended under this section may be used only for projects for the protection of the fisheries resource that have been identified by the review panel established in 87-1-273 and approved by the commission and may not be used for the acquisition of any interest in land.

(5) (a) The department shall report to the commission on the progress of the future fisheries improvement program every 12 months and post a copy of the report on a state electronic access system to ensure public access to the report.

(b) The department shall also present a detailed report to each regular session of the legislature on the progress of the future fisheries improvement program. The legislative report must include the department's program activities and expenses since the last report and the project schedules and anticipated expenses for the ensuing 10 years' implementation of the future fisheries improvement program.

(c) In order to implement 87-1-273 and this section, the department may expend revenue from the future fisheries improvement program for up to two additional full-time employees."

Section 119. Section 87-1-504, MCA, is amended to read:

"87-1-504. Protection of private property — duty of wardens. It is the duty of wardens ~~(state conservation officers)~~ to enforce the provisions of 45-6-101, 45-6-203, 75-10-212(2), 77-1-801, 77-1-806, and rules adopted under 77-1-804 on private and state lands being used for hunting and fishing ~~and to act as ex officio firewardens as provided by 77-5-104~~."

Section 120. Section 87-1-505, MCA, is amended to read:

"87-1-505. Warden's power in protection of private property. Wardens ~~(state conservation officers) shall~~ have the power of peace officers in the enforcement of 45-6-101, 45-6-203, and 75-10-212(2)."

Section 121. Section 87-2-201, MCA, is amended to read:

"87-2-201. Wildlife conservation license prerequisite for other licenses. Except as provided in ~~87-2-803(5)~~ *87-2-803(6)*, it is unlawful for any person ~~or persons~~ to purchase ~~any~~ *a* hunting, fishing, or trapping license without first having obtained a wildlife conservation license as ~~hereinafter~~ provided *in this part*."

Section 122. Section 87-2-514, MCA, is amended to read:

"87-2-514. Nonresident child of resident allowed to purchase nonresident licenses at reduced cost. (1) Except as otherwise provided in this chapter, a person who is not a resident, as defined in 87-2-102, but who is the natural or adopted child of a resident, as defined in 87-2-102, and who meets the qualifications of subsection (3) may purchase a Class B nonresident fishing license, a Class B-1 nonresident upland game bird license, and a Class B-7 nonresident deer A tag at the reduced cost specified in subsection (2) and may purchase a Class B-15 nonresident child's elk license as provided in 87-2-515. This section does not allow a nonresident child of a resident to purchase nonresident combination licenses at a reduced price.

(2) The fee for a nonresident license purchased pursuant to subsection (1) is twice the amount charged for an equivalent resident license. The nonresident child shall also purchase a nonresident wildlife conservation license as prescribed in 87-2-202 and pay the nonresident hunting access enhancement fee in 87-2-202(3)(d) if the nonresident child purchases a hunting license.

(3) To qualify for a license pursuant to subsection (1), a nonresident child of a resident shall apply at any department regional office or at the department's state office in Helena and present proof of the following:

(a) a birth certificate verifying the applicant's birth in Montana;

(b) a high school diploma from a Montana public, private, or home school or certified verification that the applicant has passed the general ~~education~~ *educational* development test in Montana; and

(c) proof that the applicant has a natural or adoptive parent who is a current Montana resident, as defined in 87-2-102.

(4) A qualified nonresident child of a resident may purchase licenses pursuant to subsection (1) for up to 6 license years after receiving a diploma or passing the general ~~education~~ *educational* development test as provided in subsection (3)(b).

(5) A nonresident child of a resident who has been issued a hunting license pursuant to this section is not eligible to apply for or be issued any nonresident special permit.

(6) A nonresident child of a resident who has been issued a hunting license pursuant to this section must be accompanied by a licensed resident family member while hunting in the field."

Section 123. Repealer. Sections 15-7-134, 16-1-405, and 20-9-631, MCA, are repealed.

Section 124. Directions to code commissioner. The code commissioner is directed to implement 1-11-102(2)(g)(ii) by correcting any clearly inaccurate references to other sections of the Montana Code Annotated contained in material enacted by the 61st legislature.

Approved February 10, 2009

CHAPTER NO. 3

[SB 10]

AN ACT REMOVING FROM DRUG COURT STATUTES LANGUAGE CONCERNING FEDERAL FUNDING FOR RESEARCH; AND AMENDING SECTION 46-1-1112, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-1-1112, MCA, is amended to read:

"46-1-1112. Funding. (1) There is a drug treatment court federal resources account in the federal special revenue fund that is administered by the office of the supreme court administrator. Any federal money received for funding drug treatment courts must be deposited in the drug treatment court federal resources account and may be used only for purposes of this part. The money in the fund may not be transferred at the end of each year but must remain deposited to the credit of the drug treatment court federal resources account.

(2) A drug offender shall pay the total cost or a reasonable portion of the cost to participate. The cost paid by a drug offender may not exceed $300 a month. The costs assessed must be compensatory and not punitive in nature and must take into account the drug offender's ability to pay. Upon a showing of indigency, the drug treatment court may reduce or waive costs under this subsection (2). Any fees received by the court from an offender are not court costs, charges, or fines.

~~(3) Funding must be provided from the drug treatment court federal resources account or other available resources for a period of 5 years from April 19, 2005, to research the impact of Montana drug treatment courts on recidivism and money saved as a result of implementing this part.~~

~~(4)~~*(3)* All federal funds received from grants for purposes of funding drug treatment courts must be exhausted before money is spent from other appropriations for that purpose.

~~(5)~~*(4)* This part does not prohibit drug treatment court teams from obtaining supplemental funds.

~~(6)~~*(5)* This part does not supplant funds currently utilized by drug treatment courts."

Approved February 10, 2009

CHAPTER NO. 4

[SB 11]

AN ACT CLARIFYING THE AMOUNT OF THE GROSS VALUE OF PRODUCT THAT IS NONTAXABLE UNDER THE METALLIFEROUS MINES LICENSE TAX; AMENDING SECTION 15-37-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-37-103, MCA, is amended to read:

"15-37-103. Rate of tax. (1) The license tax to be paid by a person engaged in or carrying on the business of working or operating any mine or mining property in this state from which gold, silver, copper, lead, or any other metal or metals or precious or semiprecious gems or stones are produced is an amount computed on the gross value of product derived by the person from mining business, work, or operation within this state during the preceding reporting period.

(2) Concentrate shipped to a smelter, mill, or reduction work is taxed at the following rates:

Gross Value of Product	Rate of Tax (percentage of gross value)
subject to subsection (4), the first $250,000	0%
more than $250,000	1.81% of the increment

(3) Gold, silver, or any platinum-group metal that is dore, bullion, matte, or another form of processed concentrate that is processed in a treatment facility owned or operated by the taxpayer and that is sold or shipped to a refinery for final processing is taxed at the following rates:

Gross Value of Product	Rate of Tax (percentage of gross value)
subject to subsection (4), the first $250,000	0%
more than $250,000	1.6% of the increment

(4) The amount of gross value of product that is nontaxable under subsection (2) or (3) may not exceed $250,000 in a calendar year."

Section 2. Effective date. [This act] is effective on passage and approval.

Section 3. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to metalliferous mines license taxes for reporting periods beginning after December 31, 2002.

Approved February 10, 2009

CHAPTER NO. 5

[SB 39]

AN ACT EXTENDING THE PERIOD FOR SUSPENSION OF ADJUDICATION PROCEEDINGS DURING NEGOTIATIONS OF FEDERAL INDIAN AND NON-INDIAN RESERVED WATER RIGHTS; EXTENDING THE TIME FOR A TRIBE OR FEDERAL AGENCY TO FILE ALL OF ITS CLAIMS FOR RESERVED RIGHTS AFTER TERMINATION OF NEGOTIATIONS; AMENDING SECTIONS 85-2-217, 85-2-702, AND 85-2-704, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 85-2-217, MCA, is amended to read:

"85-2-217. Suspension of adjudication. While negotiations for the conclusion of a compact under part 7 are being pursued, all proceedings to generally adjudicate reserved Indian water rights and federal reserved water rights of those tribes and federal agencies that are negotiating are suspended. The obligation to file water rights claims for those federal non-Indian and Indian reserved rights is also suspended. This suspension is effective until July 1, ~~2009~~ *2013*, as long as negotiations are continuing or ratification of a completed compact is being sought. If approval by the state legislature and tribes or federal agencies has not been accomplished by July 1, ~~2009~~ *2013*, the suspension must terminate on that date. Upon termination of the suspension of this part, the tribes and the federal agencies are subject to the special filing requirements of 85-2-702(3) and all other requirements of the state water adjudication system provided for in Title 85, chapter 2. Those tribes and federal agencies that choose not to negotiate their federal non-Indian and Indian reserved water rights are subject to the full operation of the state adjudication system and may not benefit from the suspension provisions of this section."

Section 2. Section 85-2-702, MCA, is amended to read:

"85-2-702. Negotiation with Indian tribes. (1) The reserved water rights compact commission, created by 2-15-212, may negotiate with the Indian tribes or their authorized representatives jointly or severally to conclude compacts authorized under 85-2-701. Compact proceedings must be commenced by the commission. The commission shall serve by certified mail directed to the governing body of each tribe a written request for the initiation of negotiations under this part and a request for the designation of an authorized representative of the tribe to conduct compact negotiations. Compact negotiations commence upon receipt of the written designation from the governing body of a tribe.

(2) When the compact commission and the Indian tribes or their authorized representatives have agreed to a compact, they shall sign a copy and file an original copy with the department of state of the United States of America and copies with the secretary of state of Montana and with the governing body for the tribe involved. The compact is effective and binding upon all parties upon

ratification by the legislature of Montana and any affected tribal governing body, and approval by the appropriate federal authority.

(3) Upon its ratification by the Montana legislature and the tribe, the terms of a compact must be included in the preliminary decree as provided by 85-2-231, and unless an objection to the compact is sustained under 85-2-233, the terms of the compact must be included in the final decree without alteration. However, if approval of the state legislature and the tribe has not been accomplished by July 1, ~~2009~~ *2013*, all Indian claims for reserved water rights that have not been resolved by a compact must be filed with the department within ~~6~~ *24* months. These new filings must be used in the formulation of the preliminary decree and must be given treatment similar to that given to all other filings."

Section 3. Section 85-2-704, MCA, is amended to read:

"85-2-704. Termination of negotiations. (1) The commission or any negotiating tribe or federal agency may terminate negotiations by providing notice to all parties 30 days in advance of the termination date. On the termination date, the suspension of the application of part 2 provided for in 85-2-217 ~~shall~~ also ~~terminate~~ *terminates*. The tribe or federal agency shall file all of its claims for reserved rights within ~~6~~ *24* months of the termination of negotiations.

(2) Once negotiations have been terminated pursuant to subsection (1), they may be reopened only by mutual agreement of the parties."

Section 4. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

Section 5. Effective date. [This act] is effective on passage and approval.

Approved February 19, 2009

CHAPTER NO. 6

[SB 115]

AN ACT TO SIMPLIFY INCOME-BASED PROPERTY TAX REDUCTION ENTITLEMENT DETERMINATIONS, INCLUDING THE PROPERTY TAX ASSISTANCE PROGRAM AND THE DISABLED VETERAN EXEMPTION; HARMONIZING INCOME THRESHOLDS AND APPLICATION FILING DATE DEADLINES; CLARIFYING THAT FOR THE PROPERTY TAX ASSISTANCE PROGRAM, THE THRESHOLD AMOUNTS FOR MARRIED COUPLE AND HEAD OF HOUSEHOLD ARE USED WHEN THE INCOME OF TWO OR MORE OWNERS IS CONSIDERED IN DETERMINING QUALIFICATION; HARMONIZING THE DISABLED VETERAN EXEMPTION TO PROVIDE THAT SINGLE VETERANS WHO ARE HEADS OF HOUSEHOLD HAVE THE SAME FILING THRESHOLD AS A MARRIED COUPLE; AMENDING SECTIONS 15-6-134, 15-6-211, AND 15-16-102, MCA; REPEALING SECTION 15-6-191, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-6-134, MCA, is amended to read:

"15-6-134. Class four property — description — taxable percentage. (1) Class four property includes:

(a) subject to 15-6-222 and subsections (1)(f) and (1)(g) of this section, all land, except that specifically included in another class;

(b) subject to 15-6-222 and subsections (1)(f) and (1)(g) of this section, all improvements, including trailers, manufactured homes, or mobile homes used as a residence, except those specifically included in another class;

(c) the first $100,000 or less of the taxable market value of any improvement on real property, including trailers, manufactured homes, or mobile homes, and appurtenant land not exceeding 5 acres owned or under contract for deed and actually occupied *by one or more qualified claimants* for at least 7 months a year as ~~the~~ *their* primary residential dwelling ~~of any person whose total income from all sources, including net business income and otherwise tax-exempt income of all types but not including social security income paid directly to a nursing home, is not more than $15,000 for a single person or $20,000 for a married couple or a head of household, as adjusted according to subsection (2)(b)(ii). For the purposes of this subsection (1)(c), net business income is gross income less ordinary operating expenses but before deducting depreciation or depletion allowance, or both.~~*;*

(d) all golf courses, including land and improvements actually and necessarily used for that purpose, that consist of at least nine holes and not less than 700 lineal yards;

(e) subject to 15-6-222(1), all improvements on land that is eligible for valuation, assessment, and taxation as agricultural land under 15-7-202, including 1 acre of real property beneath improvements on land described in 15-6-133(1)(c). The 1 acre must be valued at market value.

(f) (i) single-family residences, including trailers, manufactured homes, or mobile homes;

(ii) rental multifamily dwelling units;

(iii) appurtenant improvements to the residences or dwelling units, including the parcels of land upon which the residences and dwelling units are located and any leasehold improvements; and

(iv) vacant residential lots; and

(g) (i) commercial buildings and the parcels of land upon which they are situated; and

(ii) vacant commercial lots.

(2) Class four property is taxed as follows:

(a) Except as provided in 15-24-1402, 15-24-1501, and 15-24-1502, property described in subsections (1)(a), (1)(b), and (1)(e) through (1)(g) of this section is taxed at:

(i) 3.22% of its taxable market value in tax year 2005;

(ii) 3.14% of its taxable market value in tax year 2006;

(iii) 3.07% of its taxable market value in tax year 2007; and

(iv) 3.01% of its taxable market value in tax years after 2007.

(b) (i) Property qualifying under the property tax assistance program in subsection (1)(c) is taxed at the rate provided in subsection (2)(a) of its taxable market value multiplied by a percentage figure based on *the federal adjusted gross* income *for the preceding calendar year of the owner or owners who occupied the property as their primary residence* and determined from the following table:

Income Single Person	Income Married Couple Head of Household	Percentage Multiplier
$0 - $ 6,000	$0 - $8,000	20%
$6,001 - $9,200	$8,001 - $14,000	50%
$9,201 - $15,000	$14,001 - $20,000	70%

(ii) The income levels contained in the table in subsection (2)(b)(i) must be adjusted for inflation annually by the department. The adjustment to the income levels is determined by:

(A) multiplying the appropriate dollar amount from the table in subsection (2)(b)(i) by the ratio of the PCE for the second quarter of the year prior to the year of application to the PCE for the second quarter of 1995; and

(B) rounding the product thus obtained to the nearest whole dollar amount.

(iii) "PCE" means the implicit price deflator for personal consumption expenditures as published quarterly in the Survey of Current Business by the bureau of economic analysis of the U.S. department of commerce.

(c) Property described in subsection (1)(d) is taxed at one-half the taxable percentage rate established in subsection (2)(a).

(3) Within the meaning of comparable property, as defined in 15-1-101, property assessed as commercial property is comparable only to other property assessed as commercial property and property assessed as other than commercial property is comparable only to other property assessed as other than commercial property.

(4) (a) As used in this section "qualified claimants" means one or more owners who:

(i) occupied the residence as their primary residence for more than 7 months during the preceding calendar year;

(ii) had combined federal adjusted gross income as reported on their federal income tax return for the preceding calendar year that does not exceed the threshold provided in subsection (2)(b); and

(iii) file a claim for assistance on a form that the department prescribes on or before April 15 of the year for which the assistance is claimed.

(b) The combined federal adjusted gross income of two or more owners who are qualified claimants:

(i) may not exceed the married couple, head of household thresholds provided in subsection (2)(b); and

(ii) determines the amount of tax reduction under subsection (2)(b).

(c) If a claimant is not required to file a federal income tax return for the preceding calendar year, the claimant shall determine the claimant's federal adjusted gross income as if the claimant had filed a return and shall provide other evidence of income as required by the department."

Section 2. Section 15-6-211, MCA, is amended to read:

"15-6-211. Certain disabled or deceased veterans' residences exempt. (1) ~~A~~ *Subject to subsection (7), a* residence and appurtenant land, not to exceed 5 acres, on which it is built that is owned and occupied by a veteran or a veteran's spouse is exempt from property taxation *as provided in this section* if the veteran:

(a) was killed while on active duty or died as a result of a service-connected disability; or

(b) if living:

(i) was honorably discharged from active service in any branch of the armed services; and

(ii) is currently rated 100% disabled or is paid at the 100% disabled rate by the U.S. department of veterans affairs for a service-connected disability, as verified by official documentation from the U.S. department of veterans affairs.

(2) Property qualifying under subsection (1) is taxed at the rate provided in 15-6-134(2)(a) multiplied by a percentage figure based on income and determined from the following table:

Income Single Person	Income Married Couple *Head of Household*	Percentage Multiplier
$0 - $30,000	$0 - $36,000	0%
$30,001 - $33,000	$36,001 - $39,000	20%
$33,001 - $36,000	$39,001 - $42,000	30%
$36,001 - $39,000	$42,001 - $45,000	50%

(3) The property tax exemption under this section remains in effect as long as the property is the primary residence owned and occupied by the veteran or, if the veteran is deceased, by the veteran's spouse and the spouse:

(a) is the owner and occupant of the house;

(b) is unmarried; and

(c) has obtained from the U.S. department of veterans affairs a letter indicating that the veteran was rated 100% disabled or was paid at the 100% disabled rate by the U.S. department of veterans affairs for a service-connected disability at the time of death or that the veteran died while on active duty or as a result of a service-connected disability.

(4) Property qualifying under subsection (3) is taxed at the rate provided in 15-6-134(2)(a) multiplied by a percentage figure based on income and determined from the following table:

Income Surviving Spouse	Percentage Multiplier
$0 - $25,000	0%
$25,001 - $28,000	20%
$28,001 - $31,000	30%
$31,001 - $34,000	50%

(5) For the purposes of the exemption under this section, the income referred to in subsections (2) and (4) is the taxpayer's federal adjusted gross income *for the preceding calendar year*, as reported on ~~the latest~~ *the taxpayer's* federal income tax return. *A taxpayer who is not required to file a federal income tax return for the preceding calendar year shall determine the taxpayer's federal adjusted gross income as if the taxpayer had filed a return and shall provide other evidence of income as required by the department.*

(6) (a) The income levels contained in the tables in subsections (2) and (4) must be adjusted for inflation annually by the department. The adjustment to the income levels is determined by:

(i) multiplying the appropriate dollar amount from the table by the ratio of the PCE for the second quarter of the year prior to the year of application to the PCE for the second quarter of 2002; and

(ii) rounding the product obtained in subsection (6)(a)(i) to the nearest dollar amount.

(b) "PCE" means the implicit price deflator for personal consumption expenditures as published quarterly in the Survey of Current Business by the bureau of economic analysis of the U.S. department of commerce.

(7) A claim for exemption on a form prescribed by the department must be filed with the department on or before April 15 of the year for which the exemption is claimed."

Section 3. Section 15-16-102, MCA, is amended to read:

"15-16-102. Time for payment — penalty for delinquency. Unless suspended or canceled under the provisions of 10-1-606 or Title 15, chapter 24, part 17, all taxes levied and assessed in the state of Montana, except assessments made for special improvements in cities and towns payable under 15-16-103, are payable as follows:

(1) One-half of the taxes are payable on or before 5 p.m. on November 30 of each year or within 30 days after the tax notice is postmarked, whichever is later, and one-half are payable on or before 5 p.m. on May 31 of each year.

(2) Unless one-half of the taxes are paid on or before 5 p.m. on November 30 of each year or within 30 days after the tax notice is postmarked, whichever is later, the amount payable is delinquent and draws interest at the rate of 5/6 of 1% a month from and after the delinquency until paid and 2% must be added to the delinquent taxes as a penalty.

(3) All taxes due and not paid on or before 5 p.m. on May 31 of each year are delinquent and draw interest at the rate of 5/6 of 1% a month from and after the delinquency until paid, and 2% must be added to the delinquent taxes as a penalty.

(4) (a) If the date on which taxes are due falls on a holiday or Saturday, taxes may be paid without penalty or interest on or before 5 p.m. of the next business day in accordance with 1-1-307.

(b) If taxes on property qualifying under the low-income property tax assistance provisions of 15-6-134(1)(c) ~~and 15-6-191~~ are paid within 20 calendar days of the date on which the taxes are due, the taxes may be paid without penalty or interest. If a tax payment is made later than 20 days after the taxes were due, the penalty must be paid and interest accrues from the date on which the taxes were due.

(5) (a) A taxpayer may pay current year taxes without paying delinquent taxes. The county treasurer shall accept a partial payment equal to the delinquent taxes, including penalty and interest, for one or more full tax years if taxes for both halves of the current tax year have been paid. Payment of taxes for delinquent taxes must be applied to the taxes that have been delinquent the longest. The payment of taxes for the current tax year is not a redemption of the property tax lien for any delinquent tax year.

(b) A payment by a co-owner of an undivided ownership interest that is subject to a separate assessment otherwise meeting the requirements of subsection (5)(a) is not a partial payment.

(6) The penalty and interest on delinquent assessment payments for specific parcels of land may be waived by resolution of the city council. A copy of the resolution must be certified to the county treasurer.

(7) If the department revises an assessment that results in an additional tax of $5 or less, an additional tax is not owed and a new tax bill does not need to be prepared.

(8) The county treasurer may accept a partial payment of centrally assessed property taxes as provided in 76-3-207."

Section 4. Repealer. Section 15-6-191, MCA, is repealed.

Section 5. Effective date. [This act] is effective on passage and approval.

Section 6. Retroactive applicability. (1) [This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2008.

(2) (a) [Section 1] applies to claims for assistance for 2009.

(b) [Section 2] applies to claims for exemption for 2009.

Approved February 19, 2009

CHAPTER NO. 7

[HB 13]

AN ACT GENERALLY REVISING LAWS GOVERNING STATE EMPLOYEE CLASSIFICATION AND COMPENSATION; INCREASING THE EMPLOYER CONTRIBUTION FOR GROUP BENEFITS; APPROPRIATING FUNDS TO IMPLEMENT PAY AND BENEFIT REVISIONS, FOR PERSONAL SERVICE CONTINGENCIES, AND FOR A LABOR-MANAGEMENT TRAINING INITIATIVE; AMENDING SECTIONS 2-18-101, 2-18-202, 2-18-301, 2-18-303, 2-18-703, 2-18-1204, 13-37-106, 15-2-102, AND 44-1-504, MCA; REPEALING SECTIONS 2-18-110 AND 2-18-207, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-18-101, MCA, is amended to read:

"2-18-101. Definitions. As used in parts 1 through 3 and part 10 of this chapter, the following definitions apply:

(1) "Agency" means a department, board, commission, office, bureau, institution, or unit of state government recognized in the state budget.

(2) "Base salary" means the amount of compensation paid to an employee, excluding:

(a) state contributions to group benefits provided in 2-18-703;

(b) overtime;

(c) fringe benefits as defined in 39-2-903; and

(d) the longevity allowance provided in 2-18-304.

(3) "Benchmark" means a representative position in a specific occupation that is used to illustrate the application of the job evaluation factor used to determine the pay band for an occupation.

(4) "Board" means the board of personnel appeals established in 2-15-1705.

(5) "Broadband classification plan" means a job evaluation method that measures the difficulty of the work and the knowledge or skills required to perform the work.

(6) "Broadband pay plan" means a pay plan using a pay hierarchy of broad pay bands based on the broadband classification plan.

(7) "Compensation" means the annual or hourly wage or salary and includes the state contribution to group benefits under the provisions of 2-18-703.

(8) "Competencies" means sets of measurable and observable knowledge, skills, and behaviors that contribute to success in a ~~job~~ *position*.

(9) "Competitive pay zone" means that portion of the pay range for a band level of an occupation that is most consistent with the pay being offered by competing employers for fully competent employees within that occupation.

~~(9)~~*(10)* "Department" means the department of administration created in 2-15-1001.

~~(10)~~*(11)* (a) Except in 2-18-306, "employee" means any state employee other than an employee excepted under 2-18-103 or 2-18-104.

(b) The term does not include a student intern.

~~(11) "Entry salary" means the entry-level base salary for each occupational pay range.~~

(12) "Job evaluation factor" means a measure of the complexities of the predominant duties of ~~the job~~ *a position*.

(13) "Job sharing" means the sharing by two or more persons of a position.

(14) "Market salary" means the ~~midpoint in an occupational pay range, based on the average~~ *median* base salary that other employers pay to employees in comparable occupations as determined by the department's salary survey of the relevant labor market.

(15) "Occupation" means a generalized family of ~~jobs~~ *positions* having substantially similar duties and requiring similar qualifications, education, and experience.

~~(16) "Occupational pay range" means a range of pay, including an entry salary, market salary, and maximum salary, for a specific occupation within a specific pay band. An occupation may have more than one occupational pay range. An occupational pay range must fit within the appropriate pay band.~~

~~(17)~~*(16)* "Pay band" means a wide salary range covering a number of different occupations.

~~(18)~~*(17)* "Permanent employee" means an employee who is designated by an agency as permanent and who has attained or is eligible to attain permanent status.

~~(19)~~*(18)* "Permanent status" means the state an employee attains after satisfactorily completing an appropriate probationary period.

~~(20)~~*(19)* "Personal staff" means those positions occupied by employees appointed by the elected officials enumerated in Article VI, section 1, of the Montana constitution or by the public service commission as a whole.

~~(21)~~*(20)* "Position" means a collection of duties and responsibilities currently assigned or delegated by competent authority, requiring the full-time, part-time, or intermittent employment of one person.

~~(22)~~*(21)* "Program" means a combination of planned efforts to provide a service.

~~(23)~~*(22)* "Seasonal employee" means a permanent employee who is designated by an agency as seasonal, who performs duties interrupted by the

seasons, and who may be recalled without the loss of rights or benefits accrued during the preceding season.

~~(24)~~*(23)* "Short-term worker" means a person who:

(a) is hired by an agency for an hourly wage established by the agency;

(b) may not work for the agency for more than 90 days in a continuous 12-month period;

(c) is not eligible for permanent status;

(d) may not be hired into another position by the agency without a competitive selection process; and

(e) is not eligible to earn the leave and holiday benefits provided in part 6 of this chapter or the group insurance benefits provided in part 7 of this chapter.

~~(25)~~*(24)* "Student intern" means a person who:

(a) has been accepted in or is currently enrolled in an accredited school, college, or university and is hired directly by an agency in a student intern position;

(b) is not eligible for permanent status;

(c) is not eligible to become a permanent employee without a competitive selection process;

(d) must be covered by the hiring agency's workers' compensation insurance;

(e) is not eligible to earn the leave and holiday benefits provided for in part 6 of this chapter or the group insurance benefits provided in part 7 of this chapter; and

(f) may be discharged without cause.

~~(26)~~*(25)* "Telework" means a flexible work arrangement where a designated employee may work from home within the state of Montana or an alternative worksite within the state of Montana 1 or more days a week instead of physically traveling to a central workplace.

~~(27)~~*(26)* "Temporary employee" means an employee who:

(a) is designated as temporary by an agency for a definite period of time not to exceed 12 months;

(b) performs temporary duties or permanent duties on a temporary basis;

(c) is not eligible for permanent status;

(d) is terminated at the end of the employment period; and

(e) is not eligible to become a permanent employee without a competitive selection process."

Section 2. Section 2-18-202, MCA, is amended to read:

"2-18-202. ~~Guidelines for classification~~ *Identification of occupations.* ~~(1)~~ In providing for the broadband classification plan, the department shall group all positions in state service into defined occupations based on similarity of work performed, responsibilities assumed, difficulty of work, required knowledge, and required skills.

~~(2) Similar pay may be provided to individuals with the same occupation within an occupational pay range.~~"

Section 3. Section 2-18-301, MCA, is amended to read:

"2-18-301. ~~Purpose and intent~~ *Intent* of part — rules. ~~(1) The purpose of this part is to provide the market-based compensation necessary to attract and retain competent and qualified employees in order to perform the services that the state is required to provide to its citizens.~~

~~(2)~~*(1)* It is the intent of the legislature that compensation plans for state employees, excluding those employees excepted under 2-18-103 or 2-18-104, be based*, in part,* on an analysis of the labor market as provided by the department in a biennial salary survey. The salary survey must be submitted to the office of budget and program planning as a part of the information required by 17-7-111.

~~(3)~~*(2)* ~~Except as provided in 2-18-110, pay~~ *Pay* adjustments*, if any,* provided for in 2-18-303 supersede any other plan or systems established through collective bargaining after the adjournment of the legislature.

~~(4) Pay provided for in 2-18-303 may not be increased through collective bargaining after adjournment of the legislature.~~

~~(5)~~*(3)* Total funds required to implement the pay increases*, if any,* provided for in 2-18-303 for any employee group or bargaining unit may not be increased through collective bargaining over the amount appropriated by the legislature.

~~(6)~~*(4)* The department shall administer the pay program established by the legislature on the basis of ~~merit~~ *competency*, internal equity, and competitiveness to external labor markets when fiscally able.

~~(7)~~*(5)* The broadband pay plan must consist of nine pay bands. Each pay band must contain a salary range with a minimum salary and a maximum salary. ~~The department shall adopt an entry salary, market salary, and maximum salary for each occupation within each pay band. These salary ranges are also known as occupational pay ranges.~~

~~(8)~~*(6)* Based on the biennial salary survey, the department shall:

(a) identify current market rates for all occupations;

(b) establish *salary ranges for each* pay band ~~levels~~; and

(c) ~~set occupational pay ranges for all occupations~~ *recommend competitive pay zones*.

~~(9)~~*(7)* The department may promulgate rules not inconsistent with the provisions of this part, collective bargaining statutes, or negotiated contracts to carry out the purposes of this part.

~~(10)~~*(8)* Nothing in this part prohibits the board of regents from engaging in negotiations with the collective bargaining units representing the classified staff of the university system."

Section 4. Section 2-18-303, MCA, is amended to read:

"2-18-303. Procedures for administering broadband pay plan. (1) ~~(a)~~ On the first day of the first complete pay period in fiscal year ~~2008~~ *2010*, each employee is entitled to the amount of the employee's base salary as it was on June 30, ~~2007~~ *2009*.

~~(b) Effective on the first day of the first complete pay period that includes October 1, 2007, the base salary of each employee must be increased by 3%. Effective on the first day of the first complete pay period that includes October 1, 2008, the base salary of each employee must be increased by 3%.~~

~~(2) (a) Effective October 1, 2007, and October 1, 2008, the appropriation that represents 6/10 of 1% of the salary for each full-time equivalent position must be allocated to each agency to distribute to its employees for reasons including but not limited to market progression, job performance, or employee competencies.~~

~~(b) To the extent that this distribution applies to employees within a collective bargaining unit, the distribution is a negotiable subject under Title 39, chapter 31. The amount of money allocated to agencies and available to distribute to members of each bargaining unit must be determined by multiplying the salaries of the total number of full-time equivalents in the bargaining unit by 6/10 of 1%.~~

~~(c) The allocation described in subsection (2)(b) may not be distributed to members of a collective bargaining unit until the employer's collective bargaining representative receives written notice that the employee's collective bargaining unit has ratified a pay addendum to the collective bargaining agreement specifying the distribution.~~

~~(3)~~*(2)* An employee's base salary may be no less than the *minimum salary of the* pay band ~~entry salary for the~~ *to which the* employee's ~~assigned occupation~~ *position is allocated*.

(3) All full-time employees whose base pay is $45,000 or less annually will receive a one-time lump-sum payment of $450 for the first full pay period after July 1, 2009. All part-time employees who are regularly scheduled to work 20 hours or more per week and whose base pay is $21.635 per hour or less will receive a one-time lump-sum payment of $225 for the first full pay period after July 1, 2009.

(4) (a) (i) A member of a bargaining unit may not receive the pay ~~increase~~ *adjustment* provided for in subsection ~~(1)(b)~~ *(3)* until the employer's collective bargaining representative receives written notice that the employee's collective bargaining unit has ratified a collective bargaining agreement.

(ii) If ratification of a collective bargaining agreement, as required by subsection (4)(a)(i), is not completed by the date on which a legislatively authorized pay increase is implemented, members of the bargaining unit must continue to receive the compensation that they were receiving until an agreement is ratified.

(b) Methods of administration consistent with the purpose of this part and necessary to properly implement the pay adjustments provided for in this section may be provided for in collective bargaining agreements.

~~(5) The current wage or salary of an employee may not be reduced by the implementation of the broadband pay plan.~~

~~(6)~~*(5)* (a) Montana highway patrol officer base salaries ~~and biennial salary increases~~ must be established through the broadband pay plan. Before January 1 of each odd-numbered year, the department shall, after seeking the advice of the Montana highway patrol, conduct a salary survey to be used in establishing the base salary ~~and any biennial salary increase~~ for existing and entry-level highway patrol officer positions. The county sheriff's offices in the following consolidated governments and counties are the labor market for purposes of the survey: Butte-Silver Bow, Cascade, Yellowstone, Missoula, Lewis and Clark, Gallatin, Flathead, and Dawson. The base salary ~~and biennial salary increases~~ for existing and entry-level highway patrol officer positions must then be determined by the department of justice, using the results of the salary survey and the department of justice pay plan guidelines. ~~Base or biennial salary increases under this subsection are exclusive of and not in addition to any increases otherwise awarded to other state employees after July 1, 2006.~~ *Base or biennial salary increases under this subsection are exclusive of and not in addition to any increases otherwise awarded to other state employees after July 1, 2006.*

(b) To the extent that the plan applies to employees within a collective bargaining unit, the implementation of the plan is a negotiable subject under 39-31-305.

(c) The department of justice shall submit the salary survey to the office of budget and program planning as a part of the information required by 17-7-111.

(d) The salary survey and plan must be completed at least 6 months before the start of each regular legislative session."

Section 5. Section 2-18-703, MCA, is amended to read:

"2-18-703. Contributions. (1) Each agency, as defined in 2-18-601, and the state compensation insurance fund shall contribute the amount specified in this section toward the group benefits cost.

(2) For employees defined in 2-18-701 and for members of the legislature, the employer contribution for group benefits is ~~$557~~ *$626* a month from January ~~2007~~ *2009* through December ~~2007~~ *2009*, ~~$590~~ *$679* a month from January ~~2008~~ *2010* through December ~~2008~~ *2010*, and ~~$626~~ *$733* for January ~~2009~~ *2011* and for each succeeding month. For employees of the Montana university system, the employer contribution for group benefits is ~~$557~~ *$626* a month from July ~~2006~~ *2008* through June ~~2007~~ *2009*, ~~$590~~ *$679* a month from July ~~2007~~ *2009* through June ~~2008~~ *2010*, and ~~$626~~ *$733* for July ~~2008~~ *2010* and for each succeeding month. If a state employee is terminated to achieve a reduction in force, the continuation of contributions for group benefits beyond the termination date is subject to negotiation under 39-31-305. Permanent part-time, seasonal part-time, and temporary part-time employees who are regularly scheduled to work less than 20 hours a week are not eligible for the group benefit contribution. An employee who elects not to be covered by a state-sponsored group benefit plan may not receive the state contribution. A portion of the employer contribution for group benefits may be applied to an employee's costs for participation in Part B of medicare under Title XVIII of the Social Security Act, as amended, if the state group benefit plan is the secondary payer and medicare the primary payer.

(3) For employees of elementary and high school districts and of local government units, the employer's premium contributions may exceed but may not be less than $10 a month. Subject to the public hearing requirement provided in 2-9-212(2)(b), the increase in a local government's property tax levy for premium contributions for group benefits beyond the amount of contributions in effect on the first day of the last fiscal year is not subject to the mill levy calculation limitation provided for in 15-10-420.

(4) Unused employer contributions for any state employee must be transferred to an account established for this purpose by the department of administration and upon transfer may be used to offset losses occurring to the group of which the employee is eligible to be a member.

(5) Unused employer contributions for any government employee may be transferred to an account established for this purpose by a self-insured government and upon transfer may be used to offset losses occurring to the group of which the employee is eligible to be a member or to increase the reserves of the group.

(6) The laws prohibiting discrimination on the basis of marital status in Title 49 do not prohibit bona fide group insurance plans from providing greater or additional contributions for insurance benefits to employees with dependents than to employees without dependents or with fewer dependents."

Section 6. Section 2-18-1204, MCA, is amended to read:

"2-18-1204. Salary and benefits protection — employee transfer. An employee whose position is eliminated as a result of privatization, reorganization of an agency, closure of or a reduction in force at an agency, or other actions by the legislature and who is subsequently transferred to a different position in a state agency is entitled to:

(1) the same hourly salary as previously received if the new position is in the same ~~occupational pay range~~ *competitive pay zone* or higher as the one previously held;

(2) retain all accrued sick leave credits;

(3) retain, cash out, or use accrued vacation leave credits to extend the employee's effective layoff date; and

(4) relocation expenses as provided in agency policy."

Section 7. Section 13-37-106, MCA, is amended to read:

"13-37-106. Salary. (1) The commissioner of political practices is entitled to receive a salary within the ~~occupational pay range~~ *pay band*, as defined in 2-18-101, determined by the department of administration as provided in subsection (4).

(2) The commissioner is also entitled to longevity, expense reimbursement, leave, insurance, and other benefits provided to classified state employees under Title 2, chapter 18.

(3) The salary of the commissioner may not be reduced during the term for which the commissioner is appointed.

(4) The department of administration shall determine the appropriate occupation and ~~occupational pay range~~ *pay band* for the commissioner of political practices in the same manner that it determines the occupation and ~~occupational pay range~~ *pay band* for employees in state government pursuant to Title 2, chapter 18.

(5) The governor shall set the salary of the commissioner of political practices within the ~~occupational pay range~~ *pay band* established by the department of administration.

(6) The commissioner of political practices must receive pay adjustments consistent with those required by the legislature for state employees in 2-18-303 and 2-18-304."

Section 8. Section 15-2-102, MCA, is amended to read:

"15-2-102. Qualification and compensation. (1) To be appointed a member of the state tax appeal board, a person shall possess knowledge of the subject of taxation and skill in matters relating to taxation. A member may not hold any other state office or any office under the government of the United States or under the government of any other state. The person shall devote the entire time to the duties of the office and may not hold any other position of trust or profit or engage in any occupation or business interfering or inconsistent with the person's duties. The state tax appeal board is attached to the department of administration for administrative purposes only as provided in 2-15-121. However, the board may hire its own personnel, and 2-15-121(2)(d) does not apply.

(2) State tax appeal board members must be paid a salary within the ~~occupational pay range~~ *pay band*, defined in 2-18-101, determined by the department of administration as provided in subsection (3). State tax appeal

board members must receive pay and pay adjustments consistent with those required by the legislature for state employees in 2-18-303 and 2-18-304. The member designated as presiding officer as provided for in 15-2-103 must receive an additional 5% in salary. All members of the board must receive travel expenses as provided for in 2-18-501 through 2-18-503 when away from the capital on official business.

(3) The department of administration shall determine the appropriate occupation and ~~occupational pay range~~ *pay band* for the state tax appeal board members in the same manner that it determines the occupation and ~~occupational pay range~~ *pay band* for employees in state government pursuant to Title 2, chapter 18.

(4) The governor shall set the salary of the state tax appeal board members within the ~~occupational pay range~~ *pay band* established by the department of administration."

Section 9. Section 44-1-504, MCA, is amended to read:

"44-1-504. Special revenue account to partially fund highway patrol officers' salaries — statutory appropriation. (1) There is an account in the state special revenue fund provided for in 17-2-102.

(2) The money in the account is statutorily appropriated, as provided in 17-7-502, to the department of justice to fund, pursuant to ~~2-18-303(6)~~ *2-18-303(5)*:

(a) the base salary and associated operating costs for highway patrol officer positions; and

(b) biennial salary increases for highway patrol officers."

Section 10. Appropriations. (1) The following money for the indicated fiscal years is appropriated to the listed agencies to implement the adjustments provided for in 2-18-703:

Fiscal Year 2010

	General Fund	State Special	Federal Special	Proprietary
Legislative Branch	$41,022			
Consumer Counsel		$1,908		
Judicial Branch	$133,322	$6,360	$239	
Executive Branch	$1,629,967	$1,284,249	$782,932	$35,373
MUS	$1,429,997	$636	$54,060	
Total	$3,234,308	$1,293,153	$837,231	$35,373

Fiscal Year 2011

	General Fund	State Special	Federal Special	Proprietary
Legislative Branch	$123,840			
Consumer Counsel		$5,760		

Judicial Branch	$408,240	$19,200	$720	
Executive Branch	$4,931,731	$3,881,955	$2,364,781	$106,782
MUS	$2,885,088	$1,284	$109,140	
Total	$8,348,899	$3,908,199	$2,474,641	$106,782

(2) The following money for fiscal year 2010 is appropriated as one-time-only appropriations to the listed agencies to implement the adjustments provided for in 2-18-303(3):

	General Fund	State Special	Federal Special	Proprietary
Legislative Branch	$19,744			
Consumer Counsel		$527		
Judicial Branch	$124,649	$2,633	$395	
Executive Branch	$1,838,668	$1,344,238	$765,219	$37,480
MUS	$1,082,390	$527	$28,958	
Total	$3,065,451	$1,347,925	$794,572	$37,480

(3) The following money is appropriated for the biennium to the office of budget and program planning, from the designated state fund, to be distributed to agencies when personnel vacancies do not occur, retirement costs exceed agency resources, or other contingencies arise:

General Fund	State Special	Federal Special	Proprietary
$4,000,000	$2,400,000	$500,000	$100,000

(4) The amount of $75,000 is appropriated from the general fund to the department of administration for the biennium for a labor-management training initiative.

Section 11. Repealer. Sections 2-18-110 and 2-18-207, MCA, are repealed.

Section 12. Effective date. [This act] is effective July 1, 2009.

Approved March 11, 2009

CHAPTER NO. 8

[SB 2]

AN ACT REVISING THE DEADLINE FOR THE SUBMISSION OF THE BUDGET FOR THE CONSOLIDATED LEGISLATIVE BRANCH TO THE OFFICE OF BUDGET AND PROGRAM PLANNING; AMENDING SECTIONS 17-7-111 AND 17-7-112, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-7-111, MCA, is amended to read:

"17-7-111. Preparation of state budget — agency program budgets — form distribution and contents. (1) (a) To prepare a state budget, the executive branch, the legislature, and the citizens of the state need information that is consistent and accurate. Necessary information includes detailed disbursements by fund type for each agency and program for the appropriate time period, recommendations for creating a balanced budget, and recommended disbursements and estimated receipts by fund type and fund category.

(b) Subject to the requirements of this chapter, the budget director and the legislative fiscal analyst shall by agreement:

(i) establish necessary standards, formats, and other matters necessary to share information between the agencies and to ensure that information is consistent and accurate for the preparation of the state's budget; and

(ii) provide for the collection and provision of budgetary and financial information that is in addition to or different from the information otherwise required to be provided pursuant to this section.

(2) In the preparation of a state budget, the budget director shall, not later than the date specified in 17-7-112(1), distribute to all agencies the proper forms and instructions necessary for the preparation of budget estimates by the budget director. These forms must be prescribed by the budget director to procure the information required by subsection (3). The forms must be submitted to the budget director by the date provided in 17-7-112(2)~~(a)~~ or the agency's budget is subject to preparation based upon estimates as provided in 17-7-112(5). The budget director may refuse to accept forms that do not comply with the provisions of this section or the instructions given for completing the forms.

(3) The agency budget request must set forth a balanced financial plan for the agency completing the forms for each fiscal year of the ensuing biennium. The plan must consist of:

(a) a consolidated agency budget summary of funds subject to appropriation or enterprise funds that transfer profits to the general fund or to an account subject to appropriation for the current base budget expenditures, including statutory appropriations, and for each present law adjustment and new proposal request setting forth the aggregate figures of the full-time equivalent personnel positions (FTE) and the budget, showing a balance between the total proposed disbursements and the total anticipated receipts, together with the other means of financing the budget for each fiscal year of the ensuing biennium, contrasted with the corresponding figures for the last-completed fiscal year and the fiscal year in progress;

(b) a schedule of the actual and projected receipts, disbursements, and solvency of each fund for the current biennium and estimated for the subsequent biennium;

(c) a statement of the agency mission and a statement of goals and objectives for each program of the agency. The goals and objectives must include, in a concise form, sufficient specific information and quantifiable information to enable the legislature to formulate an appropriations policy regarding the agency and its programs and to allow a determination, at some future date, on whether the agency has succeeded in attaining its goals and objectives.

(d) actual FTE and disbursements for the completed fiscal year of the current biennium, estimated FTE and disbursements for the current fiscal year, and the agency's request for the ensuing biennium, by program;

(e) actual disbursements for the completed fiscal year of the current biennium, estimated disbursements for the current fiscal year, and the agency's recommendations for the ensuing biennium, by disbursement category;

(f) for only agencies with more than 20 FTE, a plan to reduce the proposed base budget for the general appropriations act and the proposed state pay plan to 95% of the current base budget or lower if directed by the budget director. Each agency plan must include base budget reductions that reflect the required percentage reduction by fund type for the general fund and state special revenue fund types. Exempt from the calculations of the 5% target amounts are legislative audit costs, administratively attached entities that hire their own staff under 2-15-121, and state special revenue accounts that do not transfer their investment earnings or fund balances to the general fund. The plan must include:

(i) a prioritized list of services that would be eliminated or reduced;

(ii) for each service included in the prioritized list, the savings that would result from the elimination or reduction; and

(iii) the consequences or impacts of the proposed elimination or reduction of each service.

(g) a reference for each new information technology proposal stating whether the new proposal is included in the approved agency information technology plan as required in 2-17-523; and

(h) other information the budget director feels is necessary for the preparation of a budget.

(4) The budget director shall prepare and submit to the legislative fiscal analyst in accordance with 17-7-112:

(a) detailed recommendations for the state long-range building program. Each recommendation must be presented by institution, agency, or branch, by funding source, with a description of each proposed project.

(b) a statewide project budget summary as provided in 2-17-526;

(c) the proposed pay plan schedule for all executive branch employees at the program level by fund, with the specific cost and funding recommendations for each agency. Submission of a pay plan schedule under this subsection is not an unfair labor practice under 39-31-401.

(d) agency proposals for the use of cultural and aesthetic project grants under Title 22, chapter 2, part 3, the renewable resource grant and loan program under Title 85, chapter 1, part 6, the reclamation and development grants program under Title 90, chapter 2, part 11, and the treasure state endowment program under Title 90, chapter 6, part 7.

(5) The board of regents shall submit, with its budget request for each university unit in accordance with 17-7-112, a report on the university system bonded indebtedness and related finances as provided in this subsection (5). The report must include the following information for each year of the biennium, contrasted with the same information for the last-completed fiscal year and the fiscal year in progress:

(a) a schedule of estimated total bonded indebtedness for each university unit by bond indenture;

(b) a schedule of estimated revenue, expenditures, and fund balances by fiscal year for each outstanding bond indenture, clearly delineating the accounts relating to each indenture and the minimum legal funding requirements for each bond indenture; and

(c) a schedule showing the total funds available from each bond indenture and its associated accounts, with a list of commitments and planned expenditures from such accounts, itemized by revenue source and project for each year of the current and ensuing bienniums.

(6) (a) The department of revenue shall make Montana individual income tax information available by removing names, addresses, and social security numbers and substituting in their place a state accounting record identifier number. Except for the purposes of complying with federal law, the department may not alter the data in any other way.

(b) The department of revenue shall provide the name and address of a taxpayer on written request of the budget director when the values on the requested return, including estimated payments, are considered necessary by the budget director to properly analyze state revenue and are of a sufficient magnitude to materially affect the analysis and when the identity of the taxpayer is necessary to evaluate the effect of the return or payments on the analysis being performed."

Section 2. Section 17-7-112, MCA, is amended to read:

"17-7-112. Submission deadlines — budgeting schedule. The following is the schedule for the preparation of a state budget for submission to the legislature convening in the following year:

(1) By August 1, forms necessary for preparation of budget estimates must be distributed pursuant to 17-7-111(2).

(2) *(a)* ~~By~~ *Except as provided in subsection (2)(b), by* September 1, each agency shall submit the information required under 17-7-111 to the budget director.

(b) By September 1, the consolidated legislative branch shall submit a preliminary draft of the information required under 17-7-111 to the budget director. By October 10, the consolidated legislative branch shall submit the information required under 17-7-111 in final form to the budget director.

(3) By September 1, the budget director shall submit each state agency's budget request*, except the budget request for the consolidated legislative branch,* required under 17-7-111(3) to the legislative fiscal analyst. The transfer of budget information must be done on a schedule mutually agreed to by the budget director and the legislative fiscal analyst in a manner that facilitates an even transfer of budget information that allows each office to maintain a reasonable staff workflow.

(4) By October 10, the budget director shall furnish the legislative fiscal analyst with a preliminary budget reflecting the base budget in a format agreed upon by both the office of budget and program planning and the legislative fiscal analyst.

(5) By October 30, a budget request must be prepared by the budget director and submitted to the legislative fiscal analyst on behalf of any agency that did not present the information required by this section. The budget request must be based upon the budget director's studies of the operations, plans, and needs of the institution, university unit, or agency.

(6) By November 1, the budget director shall furnish the legislative fiscal analyst with a present law base for each agency and a copy of the documents that reflect the anticipated receipts and other means of financing the base budget and present law base for each fiscal year of the ensuing biennium. The material must be in a format agreed upon by both the office of budget and program planning and the legislative fiscal analyst.

(7) By November 12, the budget director shall furnish the legislative fiscal analyst with the documents, in a format agreed upon by both the office of budget and program planning and the legislative fiscal analyst, that reflect expenditures to the second level, as provided in 17-1-102(3), by funding source and detailed by accounting entity.

(8) By November 15, the proposed pay plan schedule and the statewide project budget summary required by 17-7-111(4), a preliminary budget that meets the statutory requirements for submission of the budget to the legislature, and a summary of the preliminary budget designed for distribution to members and members-elect of the legislature must be submitted to the legislative fiscal analyst.

(9) By December 15, the budget director shall submit a preliminary budget to the governor and to the governor-elect, if there is one, as provided in 17-7-121, and shall furnish the legislative fiscal analyst with all amendments to the preliminary budget.

(10) By January 7, recommended changes proposed by a governor-elect must be transmitted to the legislative fiscal analyst and the legislature as provided in 17-7-121."

Section 3. Effective date. [This act] is effective on passage and approval.

Approved March 13, 2009

CHAPTER NO. 9

[SB 24]

AN ACT ELIMINATING THE MONTANA CONSENSUS COUNCIL; REPEALING SECTION 2-15-1027, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Repealer. Section 2-15-1027, MCA, is repealed.

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 13, 2009

CHAPTER NO. 10

[SB 29]

AN ACT GENERALLY REVISING AND CLARIFYING LAWS RELATED TO APPROPRIATIONS; REPEALING THE LAWS RELATED TO RETIRED HIGHWAY GENERAL OBLIGATION BONDS; AMENDING SECTIONS 16-11-124, 17-5-911, 17-5-912, 17-7-113, 17-7-122, 17-7-123, 20-9-603, 39-51-406, 50-19-322, 53-7-204, 53-22-104, 67-2-403, 75-10-625, 75-10-626, 80-7-908, 80-11-224, 87-1-201, AND 90-4-201, MCA; AND REPEALING SECTIONS 17-5-501, 17-5-502, 17-5-503, 17-5-504, 17-5-505, 17-5-506, AND 17-5-507, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 16-11-124, MCA, is amended to read:

"16-11-124. Disposition of license fees. (1) All license fees collected under the provisions of this part must be deposited with the state treasurer in the general fund.

(2) Each biennium, there must be appropriated to the department and the department of justice an amount justified and reasonable to operate the cigarette enforcement responsibilities of each department.

~~(3) All expenses charged against the appropriation must be justified by itemized claims coupled with standard accounting reports.~~"

Section 2. Section 17-5-911, MCA, is amended to read:

"17-5-911. Highway revenue bond debt service account — deposit of bond proceeds. (1) There is in the debt service fund a highway revenue bond debt service account. ~~Subject only to the prior pledge and appropriation made by 17-5-507, the~~ *The* state treasurer ~~must~~ *shall* deposit ~~such~~ highway revenues ~~as may be~~ *that are* pledged to the payment of particular bonds, to the credit of the highway revenue bond debt service account as required by resolution or indenture.

(2) All proceeds of an issue of bonds must be deposited in a separate account in the state special revenue fund, except that any premiums and accrued interest received may be deposited in a separate account in the debt service fund established for that bond issue by resolution or indenture. No more than the principal and interest on the bonds due in any year may be retained in the highway revenue bond debt service account for the payment of bonds. The remainder of pledged revenues is available for authorized purposes of the department. Money deposited in ~~such~~ *the* separate accounts in the state special revenue fund until spent for project purposes may be pledged and appropriated for the payment of bonds, which are a first lien and prior charge upon ~~such~~ *the* funds, and ~~such~~ *the* funds may be used for payment of bonds to the extent highway revenues deposited in the highway revenue bond debt service account are not sufficient for ~~such~~ *that* purpose.

(3) Interest and investment earnings on the separate accounts named in subsections (1) and (2) ~~shall~~ *must* be retained in the separate accounts referred to in subsection (2)."

Section 3. Section 17-5-912, MCA, is amended to read:

"17-5-912. Pledge of highway revenues. All or any portion of highway revenues may be pledged to the payment of the principal, interest, and redemption premium, if any, on particular issues of state highway revenue bonds, and ~~such~~ *the* pledge is and remains at all times a first lien and prior charge upon ~~such~~ *the* pledged highway revenues credited to the highway revenue bond debt service account, subject to ~~a first lien and charge in favor of certain highway bonds as provided in 17-5-507 and subject to~~ the pledge of particular highway revenues to secure particular issues of highway revenue bonds."

Section 4. Section 17-7-113, MCA, is amended to read:

"17-7-113. Inquiries and investigations by budget director. The budget director or ~~his~~ *the director's* designated representative shall make ~~such~~ further inquiries and investigations ~~as he~~ *that the budget director* considers necessary as to any item included in the report and estimates furnished by any department, agency, or institution. ~~In making such investigations, he shall be~~

~~allowed his travel expenses as provided for in 2-18-501 through 2-18-503, as amended, in visiting any institution or department in the state.~~"

Section 5. Section 17-7-122, MCA, is amended to read:

"17-7-122. Preparation of budget. (1) The governor shall, following the receipt of the preliminary budget from the budget director, have prepared a budget for the ensuing biennium and shall submit the budget to the legislative fiscal analyst in accordance with 17-7-112 ~~for inclusion in the combined governor's budget and budget analysis report~~.

(2) Legislative branch budget proposals must be included in the budget submitted by the governor without changes.

(3) Judicial branch budget proposals must be included in the budget submitted by the governor, but expenditures above the current base budget need not be part of the balanced financial plan pursuant to 17-7-123."

Section 6. Section 17-7-123, MCA, is amended to read:

"17-7-123. Form of executive budget. (1) The budget submitted must set forth a balanced financial plan for funds subject to appropriation and enterprise funds that transfer profits to the general fund or to accounts subject to appropriation for each accounting entity and for the state government for each fiscal year of the ensuing biennium. The ~~base level plan~~ *budget* must consist of:

(a) a consolidated budget summary setting forth the aggregate figures of the budget in a manner that shows a balance between the total proposed disbursements and the total anticipated receipts, together with the other means of financing the budget for each fiscal year of the ensuing biennium, contrasted with the corresponding figures for the last-completed fiscal year and the fiscal year in progress. The consolidated budget summary must be supported by explanatory schedules or statements.

(b) budget and full-time equivalent personnel position comparisons by agency, program, and appropriated funds for the current and subsequent biennium;

(c) the departmental mission and a statement of goals and objectives for the department;

(d) base budget disbursements for the completed fiscal year of the current biennium, estimated comparable disbursements for the current fiscal year, and the proposed present law base budget plus new proposals, if any, for each department and each program of the department;

(e) a statement containing recommendations of the governor for the ensuing biennium by program and disbursement category, including:

(i) explanations of appropriation and revenue measures included in the budget that involve policy changes;

(ii) matters not included as a part of the budget bill but included as a part of the executive budget, such as the state employee pay plan, programs funded through separate appropriations measures, and other matters considered necessary for comprehensive public and legislative consideration of the state budget; and

(iii) a summary of budget requests that include proposed expenditures on information technology resources. The summary must include funding, program references, and a decision package reference~~;~~.

(f) a report on:

(i) enterprise funds not subject to the requirements of subsections (1)(a) through (1)(e), including retained earnings and contributed capital, projected operations and charges, and projected fund balances; and

(ii) fees and charges in the internal service fund type, including changes in the level of fees and charges, projected use of the fees and charges, and projected fund balances. Fees and charges in the internal service fund type must be approved by the legislature in the general appropriations act. Fees and charges in a biennium may not exceed the level approved by the legislature in the general appropriations act effective for that biennium.

(g) any other financial or budgetary material agreed to by the budget director and the legislative fiscal analyst.

(2) The statement of departmental goals and objectives and the schedule *as required in 17-7-111(3)(b)* for each fund ~~required in 17-7-111(3)(b)~~ of the executive budget are not required to be printed but must be available in the office of budget and program planning and on the internet."

Section 7. Section 20-9-603, MCA, is amended to read:

"20-9-603. Acceptance and expenditure of federal moneys for state. (1) The governor and the superintendent of public instruction are authorized on behalf of the state of Montana to request and accept ~~such moneys as are now~~ *money that is* or will be made available under any act of congress of the United States or otherwise for purposes of public school building construction or for any other purposes of public schools and public education as permitted under the laws of the state of Montana and as authorized by the grants from the federal government. ~~Such moneys shall~~ *The money must* be deposited by the governor and superintendent of public instruction in the state treasury and ~~are appropriated and made~~ *is* available *for appropriation* to the superintendent of public instruction. ~~All such moneys shall~~ *The money must* be expended for the purpose of public school building construction or for any other purposes of public schools and public education as permitted under the laws of the state of Montana and as authorized by the grants from the federal government.

(2) The governor and superintendent of public instruction are further authorized on behalf of the state of Montana to accept ~~moneys~~ *money* provided from federal sources for the express purpose of distribution to nonpublic education. ~~Such moneys shall~~ *The money must* be deposited by the governor and superintendent of public instruction in the state treasury and ~~are appropriated and made~~ *is* available *for appropriation* to the superintendent of public instruction. ~~All such moneys shall~~ *The money must* be distributed in the manner provided by the laws of the state of Montana and as authorized or expressed by grants from the federal government.

(3) All expenditures of ~~moneys~~ *money* from federal sources under this section ~~shall~~ *must* be made under the supervision and in the discretion of the superintendent of public instruction. Any balance in the account in which ~~such moneys are~~ *the money is* maintained ~~shall~~ *may* not lapse at any time but ~~shall~~ *must* be continuously available to the superintendent of public instruction for expenditures consistent with this title and acts of the federal government."

Section 8. Section 39-51-406, MCA, is amended to read:

"39-51-406. Unemployment insurance administration account. (1) There is an account in the federal special revenue fund to be known as the unemployment insurance administration account. All money that is deposited, appropriated, or paid into this account is ~~appropriated and made~~ available *for appropriation* to the department. All money in the account must be expended

solely for the purpose of defraying the costs of administration of this chapter and costs of administration of other legislation specifically delegated by the legislature to the department for administration.

(2) All money received and deposited in the account from the United States or any agency of the United States pursuant to section 302, Title III, of the Social Security Act, 42 U.S.C. 502, must be expended solely for the purpose and in the amounts found necessary by the secretary of labor for the proper and efficient administration of this chapter.

(3) The account consists of:

(a) all money received from the United States or any agency of the United States pursuant to section 302, Title III, of the Social Security Act, 42 U.S.C. 502, as amended; and

(b) all money, trust funds, supplies, facilities, or services furnished, deposited, paid, and received from the United States or any agency of the United States.

(4) Notwithstanding any provisions of this section, all money requisitioned and deposited in this account pursuant to 39-51-403 through 39-51-405 must remain part of the unemployment insurance fund and must be used only in accordance with the conditions specified in 39-51-403 through 39-51-405.

(5) All money in this account must be deposited, administered, and disbursed in the same manner and under the same conditions and requirements as is provided by law for other accounts. The balance in this account may not lapse at any time but must be continuously available to the department for expenditure consistent with this chapter.

(6) Any reference to the unemployment insurance administration fund in this code means the unemployment insurance administration account in the federal special revenue fund."

Section 9. Section 50-19-322, MCA, is amended to read:

"50-19-322. Federal and other aid. (1) The department may apply for and receive federal aid and other funding available for the MIAMI project.

(2) Federal funds and other funding ~~as~~ *that* may be available ~~are~~ *may be* appropriated to the department for use in administering the provisions of this part."

Section 10. Section 53-7-204, MCA, is amended to read:

"53-7-204. Federal and other aid. (1) The department may apply for and receive federal aid money or other funding available for the programs provided for under this part.

(2) Federal funds and other funding ~~as~~ *that* may be available ~~are~~ *may be* appropriated to the department for use in administering the provisions of this part."

Section 11. Section 53-22-104, MCA, is amended to read:

"53-22-104. Annual budget. The department of public health and human services in its annual budget shall include amounts necessary to discharge the financial obligations incurred by it to carry out the purposes of the Interstate Compact on Mental Health~~, and the legislature shall appropriate sums necessary for carrying out the purposes of the compact~~."

Section 12. Section 67-2-403, MCA, is amended to read:

"67-2-403. Federal aid. (1) The department may cooperate with the government of the United States and any agency or department ~~thereof~~ *of the United States* in the acquisition, construction, improvement, maintenance, and operation of airports and other air navigation facilities in this state and may comply with the laws of the United States and any regulations made under those laws for the expenditure of federal ~~moneys~~ *money* upon airports and other navigation facilities.

(2) The department may accept, receive, and receipt for federal ~~moneys~~ *money* and other ~~moneys~~ *money*, either public or private, for and in behalf of this state or a municipality of this state, for the acquisition, construction, improvement, maintenance, and operation of airports and other air navigation facilities, whether the work is to be done by the state or by the municipalities or jointly, aided by grants of aid from the United States upon terms and conditions prescribed by the laws of the United States and any rules made under them. The department may act as agent of a municipality of this state upon the request of the municipality in accepting, receiving, and receipting for ~~moneys~~ *money* in its behalf for airports or other air navigation facility purposes and in contracting for the acquisition, construction, improvement, maintenance, or operation of airports or other air navigation facilities financed either in whole or in part by federal ~~moneys~~ *money*. The governing body of a municipality may designate the department as its agent for those purposes and enter into an agreement with it prescribing the terms and conditions of the agency in accordance with federal laws and rules. ~~Moneys~~ *Money* paid by the United States government ~~shall~~ *must* be retained by the state or paid to the municipalities under terms and conditions imposed by the United States government in making the grants.

(3) All contracts for the acquisition, construction, improvement, maintenance, and operation of airports or other air navigation facilities made by the department, either as the agent of this state or as the agent of a municipality, ~~shall~~ *must* be made under the laws of this state governing the making of ~~like~~ *similar* contracts by the state or by municipalities. However, ~~where~~ *when* the acquisition, construction, improvement, maintenance, and operation of an airport, landing strip, or other air navigation facility is financed wholly or partially with federal ~~moneys~~ *money*, the department, as agent of the state or of a municipality of the state, may let contracts in the manner prescribed by the federal authorities, acting under the laws of the United States and any rules made under them.

(4) All ~~moneys~~ *money* accepted for disbursement by the department under subsection (2) ~~of this section shall~~ *must* be deposited in the state treasury and, unless otherwise prescribed by the authority from which the money is received, kept in separate funds, designated according to the purposes for which the ~~moneys were~~ *money was* made available, and held by the state in trust for those purposes. All ~~those moneys are~~ *money* appropriated for the purposes for which ~~they were~~ *it was* made available~~, to~~ *must* be spent in accordance with federal laws and regulations and with this title. The department may, whether acting for this state or as the agent of any of its municipalities or when requested by the United States government or an agency or department of the United States, disburse the ~~moneys~~ *money appropriated* for the designated purposes, but this does not preclude any other authorized method of disbursement."

Section 13. Section 75-10-625, MCA, is amended to read:

"75-10-625. Authorization for sale of CERCLA bonds. The board of examiners is authorized to issue and sell CERCLA general obligation bonds in an amount not exceeding $10 million upon the request of the department of

environmental quality, as provided for in 75-10-623. Proceeds of the bonds or notes ~~are appropriated to~~ *must be deposited in* the hazardous waste/CERCLA special revenue account provided for in 75-10-621 to fund state participation in remedial action under section 104 of CERCLA, as amended, state costs for maintenance of sites at which remedial action under CERCLA has been completed, the state share required to obtain matching federal funds for underground storage tank corrective action, and costs of issuance of the bonds or notes."

Section 14. Section 75-10-626, MCA, is amended to read:

"75-10-626. Agreement with department of environmental quality. For the proceeds of bonds or notes authorized ~~and appropriated~~ by this part, the board of examiners and the department of environmental quality may enter into an agreement under the terms of which the department shall pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes ~~from which the appropriation was made~~ and to accumulate and maintain reserves as may be required under the bonds. The agreement must further provide that income from the investment of bond proceeds and the reserves not required for the purposes presented in 75-10-625 must be credited against the department's payment obligation. The agreement must also allow for the accumulation of reserves during the first year that the bonds are outstanding, if required. Payments by the department must be made from available funds."

Section 15. Section 80-7-908, MCA, is amended to read:

"80-7-908. Deposit and disbursement of funds — records — investment. (1) There is a state noxious weed forage account in the state special revenue account. All funds received by the department from fees or penalties collected or received under 80-7-905 through 80-7-907, 80-7-921, and 80-7-922(1) and all other related funds received must be deposited in the state noxious weed forage account.

(2) The department may by contract allow for the collection of fees authorized under 80-7-907. A portion of the fees collected may be retained by the collector, and the portion of the fees assigned to the department must be submitted to the department. The contract must require:

(a) a record of the name of the person collecting fees;

(b) a record of fees collected;

(c) a record of the amounts submitted to the department;

(d) a record of the amount retained by the collector; and

(e) that all records be kept in accordance with generally accepted accounting principles.

(3) Funds received under 80-7-905 through 80-7-907, 80-7-921, and 80-7-922(1) that are not immediately required for the purposes of this part must be invested under provisions of the unified investment program established in Title 17, chapter 6, part 2. The income from the investments must be deposited in the state special revenue fund and credited to the department.

(4) Funds received pursuant to this part are ~~appropriated~~ *available for appropriation* to the department for the administration of the noxious weed seed free forage program and for the purposes of this part."

Section 16. Section 80-11-224, MCA, is amended to read:

"80-11-224. Determination of amount and allocation of assessment. (1) The committee shall set the amount of the assessment each year in accordance with 80-11-206.

(2) Money deposited in the wheat and barley account pursuant to 80-11-210 is ~~appropriated~~ *available for appropriation* to the committee for purposes of carrying out research and marketing under this part.

(3) The committee may be assessed costs by the department for the services it provides upon request or pursuant to 2-15-121. However, the costs charged must have a substantial relationship to the cost of services supplied."

Section 17. Section 87-1-201, MCA, is amended to read:

"87-1-201. Powers and duties. (1) The department shall supervise all the wildlife, fish, game, game and nongame birds, waterfowl, and the game and fur-bearing animals of the state and may implement voluntary programs that encourage hunting access on private lands and that promote harmonious relations between landowners and the hunting public. ~~It~~ *The department* possesses all powers necessary to fulfill the duties prescribed by law and to bring actions in the proper courts of this state for the enforcement of the fish and game laws and the rules adopted by the department.

(2) The department shall enforce all the laws of the state ~~respecting~~ *regarding* the protection, preservation, management, and propagation of fish, game, fur-bearing animals, and game and nongame birds within the state.

(3) The department has the exclusive power to spend for the protection, preservation, management, and propagation of fish, game, fur-bearing animals, and game and nongame birds all state funds collected or acquired for that purpose, whether arising from state appropriation, licenses, fines, gifts, or otherwise. Money collected or received from the sale of hunting and fishing licenses or permits, from the sale of seized game or hides, from fines or damages collected for violations of the fish and game laws, or from appropriations or received by the department from any other sources is ~~appropriated to and~~ under *the* control of the department *and is available for appropriation to the department*.

(4) The department may discharge any appointee or employee of the department for cause at any time.

(5) The department may dispose of all property owned by the state used for the protection, preservation, management, and propagation of fish, game, fur-bearing animals, and game and nongame birds that is of no further value or use to the state and shall turn over the proceeds from the sale to the state treasurer to be credited to the fish and game account in the state special revenue fund.

(6) The department may not issue permits to carry firearms within this state to anyone except regularly appointed officers or wardens.

(7) The department is authorized to make, promulgate, and enforce reasonable rules and regulations not inconsistent with the provisions of *Title 87,* chapter 2*,* that in its judgment will accomplish the purpose of chapter 2.

(8) The department is authorized to promulgate rules relative to tagging, possession, or transportation of bear within or outside of the state.

(9) (a) The department shall implement programs that:

(i) manage wildlife, fish, game, and nongame animals in a manner that prevents the need for listing under 87-5-107 or under the federal Endangered Species Act, 16 U.S.C. 1531, et seq.;

(ii) manage listed species, sensitive species, or a species that is a potential candidate for listing under 87-5-107 or under the federal Endangered Species Act, 16 U.S.C. 1531, et seq., in a manner that assists in the maintenance or recovery of those species; and

(iii) manage elk, deer, and antelope populations based on habitat estimates determined as provided in 87-1-322 and maintain elk, deer, and antelope population numbers at or below population estimates as provided in 87-1-323. In implementing an elk management plan, the department shall, as necessary to achieve harvest and population objectives, request that land management agencies open public lands and public roads to public access during the big game hunting season.

(b) In maintaining or recovering a listed species, a sensitive species, or a species that is a potential candidate for listing, the department shall seek, to the fullest extent possible, to balance maintenance or recovery of those species with the social and economic impacts of species maintenance or recovery.

(c) Any management plan developed by the department pursuant to this subsection (9) is subject to the requirements of Title 75, chapter 1, part 1.

(d) This subsection (9) does not affect the ownership or possession, as authorized under law, of a privately held listed species, a sensitive species, or a species that is a potential candidate for listing.

(10) The department shall publish an annual game count, estimating to the department's best ability the numbers of each species of game animal, as defined in 87-2-101, in the hunting districts and administrative regions of the state. In preparing the publication, the department may incorporate field observations, hunter reporting statistics, or any other suitable method of determining game numbers. The publication must include an explanation of the basis used in determining the game count."

Section 18. Section 90-4-201, MCA, is amended to read:

"90-4-201. Weatherization money sources — consolidation. (1) All federal funds and grants available and becoming eligible to Montana under the provisions of the U.S. department of energy low-income weatherization assistance program, the U.S. department of health and human services low-income home energy assistance program, and any other federal funds intended to increase the energy efficiency of dwellings occupied by persons of low and fixed incomes, except for Title XX of the Social Security Act, are to be coordinated and are ~~appropriated~~ *available for appropriation* to the department of public health and human services.

(2) The department of public health and human services shall allocate and spend for home weatherization programs under this part at least 5% of the funds received from the U.S. department of health and human services low-income home energy assistance program if federal law permits this allocation."

Section 19. Repealer. Sections 17-5-501, 17-5-502, 17-5-503, 17-5-504, 17-5-505, 17-5-506, and 17-5-507, MCA, are repealed.

Approved March 13, 2009

CHAPTER NO. 11

[SB 43]

AN ACT REVISING THE LIST OF COUNTRIES THAT ARE CONSIDERED TAX HAVENS FOR THE APPORTIONMENT OF TAXABLE INCOME FOR THE PURPOSES OF A WATER'S-EDGE ELECTION UNDER THE CORPORATION LICENSE TAX; AMENDING SECTION 15-31-322, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-31-322, MCA, is amended to read:

"15-31-322. Water's-edge election — inclusion of tax havens. (1) Notwithstanding any other provisions of law, a taxpayer subject to the taxes imposed under this chapter may apportion its income under this section. A return under a water's-edge election must include the income and apportionment factors of the following affiliated corporations only:

(a) a corporation incorporated in the United States in a unitary relationship with the taxpayer and eligible to be included in a federal consolidated return as described in 26 U.S.C. 1501 through 1505 that has more than 20% of its payroll and property assignable to locations inside the United States. For purposes of determining eligibility for inclusion in a federal consolidated return under this subsection (1)(a), the 80% stock ownership requirements of 26 U.S.C. 1504 must be reduced to ownership of over 50% of the voting stock directly or indirectly owned or controlled by an includable corporation.

(b) domestic international sales corporations, as described in 26 U.S.C. 991 through 994, and foreign sales corporations, as described in 26 U.S.C. 921 through 927;

(c) export trade corporations, as described in 26 U.S.C. 970 and 971;

(d) foreign corporations deriving gain or loss from disposition of a United States real property interest to the extent recognized under 26 U.S.C. 897;

(e) a corporation incorporated outside the United States if over 50% of its voting stock is owned directly or indirectly by the taxpayer and if more than 20% of the average of its payroll and property is assignable to a location inside the United States; or

(f) a corporation that is in a unitary relationship with the taxpayer and that is incorporated in a tax haven, including Andorra, Anguilla, Antigua and Barbuda, Aruba, the Bahamas, Bahrain, Barbados, Belize, Bermuda, British Virgin Islands, Cayman Islands, Cook Islands, ~~Turks and Caicos Islands,~~ *Cyprus,* Dominica, Gibraltar, Grenada, Guernsey-Sark-Alderney, Isle of Man, Jersey, Liberia, Liechtenstein, Luxembourg, ~~Maldives,~~ *Malta,* Marshall Islands, *Mauritius,* Monaco, Montserrat, Nauru, Netherlands Antilles, Niue, Panama, Samoa, *San Marino,* Seychelles, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, ~~Tonga,~~ *Turks and Caicos Islands,* U.S. Virgin Islands, and Vanuatu.

(2) The department shall report biennially to the revenue and transportation interim committee with an update of countries that may be considered a tax haven under subsection (1)(f)."

Section 2. Effective date. [This act] is effective on passage and approval.

Section 3. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2008.

Approved March 13, 2009

CHAPTER NO. 12

[SB 125]

AN ACT INCLUDING THE 22ND JUDICIAL DISTRICT IN THE JUDICIAL DISTRICTS REPRESENTED IN THE COMPOSITION OF THE JUDICIAL NOMINATION COMMISSION; AMENDING SECTION 3-1-1001, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 3-1-1001, MCA, is amended to read:

"3-1-1001. Creation, composition, and function of commission. (1) A judicial nomination commission for the state is created. Its function is to provide the governor with a list of candidates for appointment to fill any vacancy on the supreme court or any district court and to provide the chief justice of the supreme court with a list of candidates for appointment to fill any term or vacancy for the chief water judge pursuant to 3-7-221. The commission ~~shall be~~ *is* composed of seven members as follows:

(a) four lay members who are neither judges nor attorneys, active or retired, who reside in different geographical areas of the state, and each of whom is representative of a different industry, business, or profession, whether actively ~~so~~ engaged or retired, who ~~shall be~~ *are* appointed by the governor;

(b) two attorneys actively engaged in the practice of law, one from that part of the state that is composed of judicial districts 1 through 5, 9, 11, and 18 through 21 and one from that part of the state that is composed of judicial districts 6 through 8, 10, ~~and~~ 12 through 17, *and 22,* who ~~shall be~~ *are* appointed by the supreme court;

(c) one district judge elected by the district judges under an elective procedure initiated and conducted by the supreme court and certified to ~~such~~ election by the chief justice of the supreme court. The election ~~shall be~~ *is* considered an appointment for the purposes of this part.

(2) Appointments provided for in this section ~~shall~~ *must* be made within 30 days of the completion of the preceding terms."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 16, 2009

CHAPTER NO. 13

[HB 74]

AN ACT GRANTING THE FISH, WILDLIFE, AND PARKS COMMISSION THE DISCRETION TO INCLUDE MOUNTAIN LION, BEAR, AND WOLF AMONG THE SPECIES FOR WHICH THE COMMISSION MAY DESIGNATE ARCHERY AND ARCHERY-ONLY SEASONS; AMENDING SECTION 87-1-304, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-1-304, MCA, is amended to read:

"87-1-304. Fixing of seasons and bag and possession limits. (1) (a) The commission may:

(i) fix seasons, bag limits, possession limits, and season limits;

(ii) open or close or shorten or lengthen seasons on any species of game, bird, fish, or fur-bearing animal as defined by 87-2-101; and

(iii) declare areas open to the hunting of deer, antelope, elk, moose, sheep, ~~and~~ goat*, mountain lion, bear, and wolf* by ~~bow and arrow permitholders~~ *persons holding an archery stamp and the required license, permit, or tag* and designate times when only bows and arrows may be used to hunt deer, antelope, elk, moose, sheep, ~~and~~ goat*, mountain lion, bear, and wolf* in those areas.

(b) The commission may restrict areas and species to hunting with only specified hunting arms, including bow and arrow, for the reasons of safety or of providing diverse hunting opportunities and experiences.

(c) The commission may declare areas open to special license holders only and issue special licenses in a limited number when the commission determines, after proper investigation, that a special season is necessary to ensure the maintenance of an adequate supply of game birds, fish, or animals or fur-bearing animals. The commission may declare a special season and issue special licenses when game birds, animals, or fur-bearing animals are causing damage to private property or when a written complaint of damage has been filed with the commission by the owner of that property. In determining to whom special licenses must be issued, the commission may, when more applications are received than the number of animals to be killed, award permits to those chosen under a drawing system. The procedures used for awarding the permits from the drawing system must be determined by the commission.

(2) The commission may adopt rules governing the use of livestock and vehicles by archers during special archery seasons.

(3) The commission may divide the state into fish and game districts and create fish, game, or fur-bearing animal districts throughout the state. The commission may declare a closed season for hunting, fishing, or trapping in any of those districts and later may open those districts to hunting, fishing, or trapping.

(4) The commission may declare a closed season on any species of game, fish, game birds, or fur-bearing animals threatened with undue depletion from any cause. The commission may close any area or district of any stream, public lake, or public water or portions thereof to hunting, trapping, or fishing for limited periods of time when necessary to protect a recently stocked area, district, water, spawning waters, spawn-taking waters, or spawn-taking stations or to prevent the undue depletion of fish, game, fur-bearing animals, game birds, and nongame birds. The commission may open the area or district upon consent of a majority of the property owners affected.

(5) The commission may authorize the director to open or close any special season upon 12 hours' notice to the public.

(6) The commission may declare certain fishing waters closed to fishing except by persons under 15 years of age. The purpose of this subsection is to provide suitable fishing waters for the exclusive use and enjoyment of juveniles under 15 years of age, at times and in areas the commission in its discretion considers advisable and consistent with its policies relating to fishing."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 17, 2009

CHAPTER NO. 14

[HB 90]

AN ACT TO INCLUDE LLAMAS AS ANIMALS FOR WHICH MONTANA LIVESTOCK PRODUCERS ARE ELIGIBLE FOR COVERAGE FOR LOSSES CAUSED BY WOLVES; AMENDING SECTION 2-15-3112, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-3112, MCA, is amended to read:

"2-15-3112. Livestock loss mitigation program — definitions. The livestock loss reduction and mitigation board shall establish and administer a program to reimburse livestock producers for livestock losses caused by wolves, subject to the following provisions:

(1) The board shall establish eligibility requirements for reimbursement, which must provide that all Montana livestock producers are eligible for coverage for losses by wolves to cattle, swine, horses, mules, sheep, goats, *llamas,* and livestock guard animals on state, federal, and private land and on tribal land that is eligible through agreement pursuant to 2-15-3113(2).

(2) Confirmed and probable livestock losses must be reimbursed at an amount not to exceed fair market value as determined by the board.

(3) Other losses may be reimbursed at rates determined by the board.

(4) A claim process must be established to be used when a livestock producer suffers a livestock loss for which wolves may be responsible. The claim process must set out a clear and concise method for documenting and processing claims for reimbursement for livestock losses.

(5) A process must be established to allow livestock producers to appeal reimbursement decisions. A producer may appeal a staff adjuster's decision by notifying the staff adjuster and the board in writing, stating the reasons for the appeal and providing documentation supporting the appeal. If the documentation is incomplete, the board or a producer may consult with the U.S. department of agriculture wildlife services to complete the documentation. The board may not accept any appeal on the question of whether the loss was or was not a confirmed or probable loss because that final determination lies solely with the U.S. department of agriculture wildlife services and may not be changed by the board. The board shall hold a hearing on the appeal within 90 days of receipt of the written appeal, allowing the staff adjuster and the producer to present their positions. A decision must be rendered by the board within 30 days after the hearing. The producer must be notified in writing of the board's decision.

(6) As used in this section, the following definitions apply:

(a) "Confirmed" means reasonable physical evidence that livestock was actually attacked or killed by a wolf, including but not limited to the presence of bite marks indicative of the spacing of canine tooth punctures of wolves and associated subcutaneous hemorrhaging and tissue damage indicating that the attack occurred while the animal was alive, feeding patterns on the carcass, fresh tracks, scat, hair rubbed off on fences or brush, eyewitness accounts, or

other physical evidence that allows a reasonable inference of wolf predation on an animal that has been largely consumed.

(b) "Fair market value" means:

(i) for commercial sheep more than 1 year old, the average price of sheep of similar age and sex paid at the most recent Billings livestock sale ring or other ring as determined by the board;

(ii) for commercial lambs, the average market weaning value;

(iii) for registered sheep, the average price paid to the specific breeder for sheep of similar age and sex during the past year at public or private sales for that registered breed;

(iv) for commercial cattle more than 1 year old, the average price of cattle of similar age and sex paid at the most recent Billings livestock sale ring or other ring as determined by the board;

(v) for commercial calves, the average market weaning value;

(vi) for registered cattle, the average price paid to the owner for cattle of similar age and sex during the past year at public or private sales for that registered breed;

(vii) for other registered livestock, the average price paid to the producer at public or private sales for animals of similar age and sex. A producer may provide documentation that a registered animal has a fair market value in excess of the average price, in which case the board shall seek additional verification of the value of the animal from independent sources. If the board determines that the value of that animal is greater than the average price, then the increased value must be accepted as the fair market value for that animal.

(viii) for other livestock, the average price paid at the most recent public auction for the type of animal lost or the replacement price as determined by the board.

(c) "Probable" means the presence of some evidence to suggest possible predation but a lack of sufficient evidence to clearly confirm predation by a particular species. A kill may be classified as probable depending on factors including but not limited to recent confirmed predation by the suspected depredating species in the same or a nearby area, recent observation of the livestock by the owner or the owner's employees, and telemetry monitoring data, sightings, howling, or fresh tracks suggesting that the suspected depredating species may have been in the area when the depredation occurred."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 17, 2009

CHAPTER NO. 15

[HB 100]

AN ACT REVISING THE COMPOSITION OF THE MONTANA MINT COMMITTEE; REDUCING THE NUMBER OF REQUIRED MEMBERS; CHANGING THE TERMS OF OFFICE; CHANGING THE REQUIREMENTS OF HOW THE COMMITTEE IS CONVENED; AMENDING SECTIONS 2-15-3006 AND 80-11-405, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-3006, MCA, is amended to read:

"2-15-3006. Montana mint committee — composition — allocation. (1) There is a Montana mint committee composed of ~~six~~ *at least four and not more than six* members. The members include the director of the department of agriculture and ~~five~~ *at least three and not more than five* members appointed by the governor.

(2) Each ~~of the five~~ appointed ~~members~~ *member* must be a citizen of Montana who is actively involved in the growing of mint in this state, and one of the appointed members must be a member of or otherwise represent the mint industry research council. The qualifications of members must continue during their terms of office.

(3) A list of nominees for appointment must be submitted to the governor by Montana associations representing mint growers. Names of nominees must be submitted at least 91 days before the expiration of a committee member's term. The governor shall appoint members from among the persons nominated.

(4) Appointed members shall serve ~~staggered~~ terms of ~~3~~ *4* years. ~~Initial appointment must be as follows:~~

~~(a) one member for a 1-year term;~~

~~(b) two members for 2-year terms; and~~

~~(c) two members for a 3-year term.~~

(5) The committee is allocated to the department of agriculture for administrative purposes only as prescribed in 2-15-121."

Section 2. Section 80-11-405, MCA, is amended to read:

"80-11-405. Election of ~~chairman~~ *presiding officer* — time of meetings. At the first meeting of the committee, it shall elect a ~~chairman~~ *presiding officer* from among its members. The committee ~~shall~~ *may* meet at least once annually *at the request of the department of agriculture* and at such other times as called by the ~~chairman~~ *presiding officer* or by any ~~three~~ *two* members of the committee."

Section 3. Effective date. [This act] is effective on passage and approval.

Approved March 17, 2009

CHAPTER NO. 16

[HB 125]

AN ACT CLARIFYING CERTAIN RULEMAKING AUTHORITY OF THE DEPARTMENT OF TRANSPORTATION; REMOVING THE REFERENCE TO THE OBSOLETE SINGLE-STATE REGISTRATION SYSTEM; CLARIFYING THAT THE DEPARTMENT OF TRANSPORTATION MAY ADOPT RULES RELATED TO COOPERATIVE OR RECIPROCAL AGREEMENTS WITH OTHER STATES; AMENDING SECTION 61-3-710, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-3-710, MCA, is amended to read:

"61-3-710. Rulemaking authority. The department of transportation may adopt and enforce rules for the administration of ~~the single-state registration system~~ *cooperative or reciprocal vehicle registration*, including the

setting of a fee, and for other matters necessary to carry out the provisions of 61-3-708 and 61-3-709."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 17, 2009

CHAPTER NO. 17

[HB 126]

AN ACT AUTHORIZING THE DEPARTMENT OF ADMINISTRATION TO MANAGE WORKERS' COMPENSATION COVERAGE WITH THE STATE FUND FOR ALL STATE AGENCIES; ALLOWING EXCEPTIONS FOR THE JUDICIAL AND LEGISLATIVE BRANCHES; PROVIDING RULEMAKING AUTHORITY FOR THE DEPARTMENT OF ADMINISTRATION; AMENDING SECTION 39-71-403, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-71-403, MCA, is amended to read:

"39-71-403. Plan three exclusive for state agencies — election of plan by public corporations — financing of self-insurance fund — exemption for university system — ~~definition~~ *definitions* — *rulemaking*. (1) *(a)* Except as provided in subsection (5), if a state agency is the employer, the terms, conditions, and provisions of compensation plan No. 3, state fund, are exclusive, compulsory, and obligatory upon both employer and employee. Any sums necessary to be paid under the provisions of this chapter by a state agency are considered to be ordinary and necessary expenses of the agency. The agency shall pay the sums into the state fund at the time and in the manner provided for in this chapter, notwithstanding that the state agency may have failed to anticipate the ordinary and necessary expense in a budget, estimate of expenses, appropriations, ordinances, or otherwise.

(b) (i) Subject to subsection (5), the department of administration, provided for in 2-15-1001, shall manage workers' compensation insurance coverage for all state agencies.

(ii) The state fund shall provide the department of administration with all information regarding the state agencies' coverage.

(iii) Notwithstanding the status of a state agency as employer in subsection (1)(a) and contingent upon mutual agreement between the department of administration and the state fund, the state fund shall issue one or more policies for all state agencies.

(2) A public corporation, other than a state agency, may elect coverage under compensation plan No. 1, plan No. 2, or plan No. 3, separately or jointly with any other public corporation, other than a state agency. A public corporation electing compensation plan No. 1 may purchase reinsurance or issue bonds or notes pursuant to subsection (3)(b). A public corporation electing compensation plan No. 1 is subject to the same provisions as a private employer electing compensation plan No. 1.

(3) (a) A public corporation, other than a state agency, that elects plan No. 1 may establish a fund sufficient to pay the compensation and benefits provided for in this chapter and to discharge all liabilities that are reasonably incurred during the fiscal year for which the election is effective. Proceeds from the fund

must be used only to pay claims covered by this chapter and for actual and necessary expenses required for the efficient administration of the fund, including debt service on any bonds and notes issued pursuant to subsection (3)(b).

(b) (i) A public corporation, other than a state agency, separately or jointly with another public corporation, other than a state agency, may issue and sell its bonds and notes for the purpose of establishing, in whole or in part, the self-insurance workers' compensation fund provided for in subsection (3)(a) and to pay the costs associated with the sale and issuance of the bonds. Bonds and notes may be issued in an amount not exceeding 0.18% of the total assessed value of taxable property, determined as provided in 15-8-111, of the public corporation as of the date of issue. The bonds and notes must be authorized by resolution of the governing body of the public corporation and are payable from an annual property tax levied in the amount necessary to pay principal and interest on the bonds or notes. This authority to levy an annual property tax exists despite any provision of law or maximum levy limitation, including 15-10-420, to the contrary. The revenue derived from the sale of the bonds and notes may not be used for any other purpose.

(ii) The bonds and notes:

(A) may be sold at public or private sale;

(B) do not constitute debt within the meaning of any statutory debt limitation; and

(C) may contain other terms and provisions that the governing body determines.

(iii) Two or more public corporations, other than state agencies, may agree to exercise their respective borrowing powers jointly under this subsection (3)(b) or may authorize a joint board to exercise the powers on their behalf.

(iv) The fund established from the proceeds of bonds and notes issued and sold under this subsection (3)(b) may, if sufficient, be used in lieu of a surety bond, reinsurance, specific and aggregate excess insurance, or any other form of additional security necessary to demonstrate the public corporation's ability to discharge all liabilities as provided in subsection (3)(a). Subject to the total assessed value limitation in subsection (3)(b)(i), a public corporation may issue bonds and notes to establish a fund sufficient to discharge liabilities for periods greater than 1 year.

(4) All money in the fund established under subsection (3)(a) not needed to meet immediate expenditures must be invested by the governing body of the public corporation or the joint board created by two or more public corporations as provided in subsection (3)(b)(iii), and all proceeds of the investment must be credited to the fund.

(5) ~~The provisions of subsection (1) do not apply to the Montana university system.~~ *For the purposes of subsection (1)(b), the judicial branch or the legislative branch may choose not to have the department of administration manage its workers' compensation policy.*

(6) The department of administration may adopt rules to implement [section 1(1)(b)(i)].

~~(6)~~*(7)* As used in ~~subsections (2) through (4),~~ *this section, the following definitions apply:*

(a) "~~public~~ *"Public* corporation" includes the Montana university system.

(b) (i) "State agency" means:

(A) the executive branch and its departments and all boards, commissions, committees, bureaus, and offices;

(B) the judicial branch; and

(C) the legislative branch.

(ii) The term does not include the Montana university system."

Section 2. Effective date. [This act] is effective July 1, 2009.

Approved March 17, 2009

CHAPTER NO. 18

[HB 168]

AN ACT EXPANDING ELIGIBILITY FOR LOANS UNDER THE AGRICULTURAL LOAN AUTHORITY ACT BY INCREASING THE ALLOWABLE MAXIMUM NET WORTH OF LOAN APPLICANTS; AMENDING SECTION 80-12-203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 80-12-203, MCA, is amended to read:

"80-12-203. Qualifications of applicants. (1) To be eligible for a loan approved by the authority for issuance of a bond, an applicant must:

(a) declare ~~his~~ *the* intention to maintain ~~his~~ residence in Montana during the length of the loan;

(b) have been approved by a financial institution; and

(c) have a net worth not to exceed ~~$250,000~~ *$450,000*.

(2) Applications for loans to be approved by the authority for issuance of bonds may be submitted by individuals, partnerships, associations, or joint ventures. All persons involved in the application must meet the requirements of subsection (1). Corporations, as defined in 35-1-113, may not apply."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 17, 2009

CHAPTER NO. 19

[HB 368]

AN ACT PROVIDING THAT THE DEPARTMENT OF AGRICULTURE MAY STATE A PARTIAL LIST OF FEES FOR INSPECTION, TESTING, AND WEIGHING OF AGRICULTURAL COMMODITIES ON THE PLACARD POSTED BY WAREHOUSE OPERATORS AND COMMODITY DEALERS; AMENDING SECTION 80-4-711, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 80-4-711, MCA, is amended to read:

"80-4-711. Agricultural commodity sampling — appeal procedure. (1) At the time of delivery of an agricultural commodity to a warehouse operator or commodity dealer for storage or sale, each warehouse operator or commodity

dealer shall take a representative sample from each load of agricultural commodity delivered and preserve the sample in a moistureproof container with the owner's name marked on the container. A written agreement must be given to the depositor authorizing the depositor to state a preference of grading facility. The options provided for grading facilities in the agreement must include but may not be limited to the state grain laboratory. The written agreement must specify the time period to which the agreement applies. If the state grain lab is chosen as the grading facility, a composite sample consisting of a minimum of 1 1/2 quarts or 1,050 grams of the representative sample must be submitted directly to the state grain laboratory for analysis as to grade, dockage, protein, and other factors that the laboratory is able to analyze that affect the purchase price. The warehouse operator or commodity dealer shall retain a minimum of 1 1/2 quarts or 1,050 grams of the remaining sample for 60 days.

(2) All fees and other charges associated with the grain sample analysis must reflect as nearly as possible the actual cost of the services.

(3) If a request for a state grain laboratory analysis is not made pursuant to subsection (1) and the depositor, warehouse operator, or commodity dealer is dissatisfied with the results of a private analysis, the depositor, warehouse operator, or commodity dealer may appeal to the state grain laboratory. When an appeal is made, the warehouse operator or commodity dealer shall submit 1 1/2 quarts or 1,050 grams of the representative sample to the state grain laboratory for appeal analysis.

(4) If the depositor, warehouse operator, or commodity dealer is dissatisfied with the results of a state grain laboratory analysis, as provided in subsection (1) or (3), the depositor, warehouse operator, or commodity dealer may appeal to the FGIS, United States department of agriculture. A FGIS appeal must be made within 10 working days of the state grain laboratory's analysis. The sample for FGIS appeal must be a portion of that agricultural commodity retained by the state grain laboratory when it conducted its analysis. The results on the state grain laboratory appeal sample are final and binding. In the absence of an appeal to FGIS or in the case of an agricultural commodity for which there are no FGIS standards, the state grain laboratory's analysis is final and binding.

(5) Each warehouse operator or commodity dealer shall post in a conspicuous place a placard, issued by the department, stating the procedures provided for in this section and *a partial list of* the fees established in 80-4-721. The department shall provide space on the placard on which the warehouse operator or commodity dealer is required to list anticipated shipping and handling fees.

(6) All samples submitted for analysis are the property of the state grain laboratory and subject to its disposition.

(7) An agricultural commodity purchased for resale as seed is exempt from the requirements of this section.

(8) A producer of malting barley may by contract waive the right to submit a sample to the state grain laboratory provided in this section."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 17, 2009

CHAPTER NO. 20

[SB 42]

AN ACT PROVIDING A PROCESS FOR THE SUBSTITUTION OF THE WORKERS' COMPENSATION JUDGE IN THE EVENT OF A RECUSAL BY THE WORKERS' COMPENSATION JUDGE; AMENDING SECTION 39-71-2901, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-71-2901, MCA, is amended to read:

"39-71-2901. Location of office — court powers — *withdrawal* — *substitution.* (1) The principal office of the workers' compensation judge ~~shall~~ *must* be in the city of Helena.

(2) The workers' compensation court has power to:

(a) preserve and enforce order in its immediate presence;

(b) provide for the orderly conduct of proceedings before it and its officers;

(c) compel obedience to its judgments, orders, and process in the same manner and by the same procedures as in civil actions in district court;

(d) compel the attendance of persons to testify; and

(e) punish for contempt in the same manner and by the same procedures as in district court.

(3) The workers' compensation judge shall withdraw from all or part of any matter if the judge believes the circumstances make disqualification appropriate. In the case of a withdrawal, the workers' compensation judge shall designate and contract for a substitute workers' compensation judge to preside over the proceeding from the list provided for in subsection (4). The substitute judge must be compensated at the same hourly rate charged by the department of justice agency legal services bureau for the provision of legal services to state agencies. The substitute judge must be reimbursed for travel expenses as provided for in 2-18-501 through 2-18-503. When the substitute judge has accepted jurisdiction, the clerk of the workers' compensation court shall mail a copy of the assumption of jurisdiction to each attorney or party of record. The certificate of service must be attached to the assumption of jurisdiction form in the court file.

(4) The workers' compensation judge shall maintain a list of persons who are interested in serving as a substitute workers' compensation judge in the event of a recusal by the judge and who prior to being put on the list of potential substitutes have been admitted to the practice of law in Montana for at least 5 years, currently reside in Montana, and have resided in the state for 2 years."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 17, 2009

CHAPTER NO. 21

[SB 90]

AN ACT CLARIFYING THE REQUIREMENTS FOR NOTIFICATION OF THE PRIMARY SPONSOR OF LEGISLATION IN THE ADMINISTRATIVE RULEMAKING PROCESS; REQUIRING A WRITTEN STATEMENT WHEN A PRIMARY SPONSOR'S COMMENTS ARE NOT INCORPORATED INTO

AN ADMINISTRATIVE RULE; AMENDING SECTIONS 2-4-110, 2-4-302, 2-4-305, AND 2-4-312, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-4-110, MCA, is amended to read:

"2-4-110. Departmental review of rule notices. (1) The head of each department of the executive branch shall appoint an existing attorney, paralegal, or other qualified person from that department to review each departmental rule proposal notice, adoption notice, or other notice relating to administrative rulemaking. Notice of the name of the person appointed under this subsection and of any successor must be given to the secretary of state and the appropriate administrative rule review committee within 10 days of the appointment.

(2) The person appointed under subsection (1) shall review each notice by any division, bureau, or other unit of the department, including units attached to the department for administrative purposes only under 2-15-121, for compliance with this chapter before the notice is filed with the secretary of state. The reviewer shall pay particular attention to 2-4-302 and 2-4-305. The review must include but is not limited to consideration of:

(a) the adequacy of the statement of reasonable necessity for the intended action and whether the intended action is reasonably necessary to effectuate the purpose of the code section or sections implemented;

(b) whether the proper statutory authority for the rule is cited;

(c) whether the citation of the code section or sections implemented is correct; ~~and~~

(d) whether the intended action is contrary to the code section or sections implemented or to other law*; and*

(e) for a rule that initially implements legislation, whether the intended action is contrary to any comments submitted to the department by the primary sponsor of the legislation for the purposes of 2-4-302.

(3) The person appointed under subsection (1) shall sign each notice for which this section requires a review. The act of signing is an affirmation that the review required by this section has been performed to the best of the reviewer's ability. The secretary of state may not accept for filing a notice that does not have the signature required by this section."

Section 2. Section 2-4-302, MCA, is amended to read:

"2-4-302. Notice, hearing, and submission of views. (1) (a) Prior to the adoption, amendment, or repeal of any rule, the agency shall give written notice of its proposed action. The proposal notice must include a statement of either the terms or substance of the intended action or a description of the subjects and issues involved, the reasonable necessity for the proposed action, and the time when, place where, and manner in which interested persons may present their views on the proposed action. The reasonable necessity must be written in plain, easily understood language.

(b) The agency shall state in the proposal notice the date on which and the manner in which ~~notification was given to~~ *contact was made with* the primary sponsor as required in subsection (2)(d). If the notification to the primary sponsor was given by mail, the date stated in the proposal notice must be the date on which the notification was mailed by the agency. If the proposal notice

fails to state the date on which and the manner in which the primary sponsor was ~~notified~~ *contacted*, the filing of the proposal notice under subsection (2)(a) is ineffective for the purposes of this part and for the purposes of the law that the agency cites in the proposal notice as the authority for the proposed action.

(c) If the agency proposes to adopt, increase, or decrease a monetary amount that a person shall pay or will receive, such as a fee, cost, or benefit, the notice must include an estimate, if known, of:

(i) the cumulative amount for all persons of the proposed increase, decrease, or new amount; and

(ii) the number of persons affected.

(2) (a) The proposal notice must be filed with the secretary of state for publication in the register, as provided in 2-4-312. Within 3 days of publication, a copy of the published proposal notice must be sent to interested persons who have made timely requests to the agency to be informed of its rulemaking proceedings, and to the office of any professional, trade, or industrial society or organization or member of those entities who has filed a request with the appropriate administrative rule review committee when the request has been forwarded to the agency as provided in subsection (2)(b). Each agency shall create and maintain a list of interested persons and the subject or subjects in which each person on the list is interested. A person who submits a written comment or attends a hearing in regard to proposed agency action under this part must be informed of the list by the agency. An agency complies with this subsection if it includes in the proposal notice an advisement explaining how persons may be placed on the list of interested persons and if it complies with subsection (7).

(b) The appropriate administrative rule review committee shall forward a list of all organizations or persons who have submitted a request to be informed of agency actions to the agencies that the committee oversees that publish rulemaking notices in the register. The list must be amended by the agency upon request of any person requesting to be added to or deleted from the list.

(c) The proposal notice required by subsection (1) must be published at least 30 days in advance of the agency's proposed action. The agency shall post the proposal notice on a state electronic access system or other electronic communications system available to the public.

(d) (i) When an agency begins to work on the substantive content and the wording of a proposal notice for a rule that initially implements legislation, the agency shall ~~notify~~ *contact, as provided in subsection (8),* the legislator who was the primary sponsor of the legislation *to:*

(A) obtain the legislator's comments;

(B) inform the legislator of the known dates by which each step of the rulemaking process must be completed; and

(C) provide the legislator with information about the time periods during which the legislator may comment on the proposed rules, including the opportunity to provide comment to the appropriate administrative rule review committee.

(ii) If the legislation affected more than one program, ~~notice must be given to~~ the primary sponsor *must be contacted* pursuant to this subsection (2)(d) each time that a rule is being proposed to initially implement the legislation for a program.

~~(ii)~~*(iii)* Within 3 days after a proposal notice covered under subsection (2)(d)(i) has been published as required in subsection (2)(a), a copy of the published notice must be sent to the primary sponsor ~~notified~~ *contacted* under *this* subsection (2)(d)~~(i)~~.

(3) If a statute provides for a method of publication different from that provided in subsection (2), the affected agency shall comply with the statute in addition to the requirements contained in this section. However, the notice period may not be less than 30 days or more than 6 months.

(4) Prior to the adoption, amendment, or repeal of any rule, the agency shall afford interested persons at least 20 days' notice of a hearing and at least 28 days from the day of the original notice to submit data, views, or arguments, orally or in writing. If an amended or supplemental notice is filed, additional time may be allowed for oral or written submissions. In the case of substantive rules, the notice of proposed rulemaking must state that opportunity for oral hearing must be granted if requested by either 10% or 25, whichever is less, of the persons who will be directly affected by the proposed rule, by a governmental subdivision or agency, by the appropriate administrative rule review committee, or by an association having not less than 25 members who will be directly affected. If the proposed rulemaking involves matters of significant interest to the public, the agency shall schedule an oral hearing.

(5) An agency may continue a hearing date for cause. In the discretion of the agency, contested case procedures need not be followed in hearings held pursuant to this section. If a hearing is otherwise required by statute, nothing in this section alters that requirement.

(6) If an agency fails to publish a notice of adoption within the time required by 2-4-305(7) and the agency again proposes the same rule for adoption, amendment, or repeal, the proposal must be considered a new proposal for purposes of compliance with this chapter.

(7) At the commencement of a hearing on the intended action, the person designated by the agency to preside at the hearing shall:

(a) read aloud the "Notice of Function of Administrative Rule Review Committee" appearing in the register; and

(b) inform the persons at the hearing of the provisions of subsection (2)(a) and provide them an opportunity to place their names on the list.

(8) *(a)* For purposes of ~~notifying~~ *contacting* primary sponsors under subsections (2)(a) and (2)(d) ~~who are no longer members of the legislature~~, a *current or* former legislator who wishes to receive notice ~~may~~ *shall* keep the *current or* former legislator's name, address, e-mail address, and telephone number on file with the secretary of state. *The secretary of state shall update the contact information whenever the secretary of state receives corrected information from the legislator.* An agency proposing rules shall consult the register when providing sponsor ~~notice~~ *contact*.

(b) An agency has complied with the primary bill sponsor contact requirements of this section when the agency has attempted to reach the primary bill sponsor at the legislator's address, e-mail address, and telephone number on file with the secretary of state pursuant to subsection (8)(a)."

Section 3. Section 2-4-305, MCA, is amended to read:

"2-4-305. Requisites for validity — authority and statement of reasons. (1) *(a)* The agency shall fully consider written and oral submissions respecting the proposed rule*, including comments submitted by the primary*

sponsor of the legislation prior to the drafting of the substantive content and wording of a proposed rule that initially implements legislation.

(b) (i) Upon adoption of a rule, an agency shall issue a concise statement of the principal reasons for and against its adoption, incorporating in the statement the reasons for overruling the considerations urged against its adoption. If substantial differences exist between the rule as proposed and as adopted and the differences have not been described or set forth in the adopted rule as that rule is printed in the register, the differences must be described in the statement of reasons for and against agency action. When written or oral submissions have not been received, an agency may omit the statement of reasons.

(ii) If an adopted rule that initially implements legislation does not reflect the comments submitted by the primary sponsor, the agency shall provide a statement explaining why the sponsor's comments were not incorporated into the adopted rule.

(2) Rules may not unnecessarily repeat statutory language. Whenever it is necessary to refer to statutory language in order to convey the meaning of a rule interpreting the language, the reference must clearly indicate the portion of the language that is statutory and the portion that is an amplification of the language.

(3) Each proposed and adopted rule must include a citation to the specific grant of rulemaking authority pursuant to which the rule or any part of the rule is adopted. In addition, each proposed and adopted rule must include a citation to the specific section or sections in the Montana Code Annotated that the rule purports to implement. A substantive rule may not be proposed or adopted unless:

(a) a statute granting the agency authority to adopt rules clearly and specifically lists the subject matter of the rule as a subject upon which the agency shall or may adopt rules; or

(b) the rule implements and relates to a subject matter or an agency function that is clearly and specifically included in a statute to which the grant of rulemaking authority extends.

(4) Each rule that is proposed and adopted by an agency and that implements a policy of a governing board or commission must include a citation to and description of the policy implemented. Each agency rule implementing a policy and the policy itself must be based on legal authority and otherwise comply with the requisites for validity of rules established by this chapter.

(5) To be effective, each substantive rule adopted must be within the scope of authority conferred and in accordance with standards prescribed by other provisions of law.

(6) Whenever by the express or implied terms of any statute a state agency has authority to adopt rules to implement, interpret, make specific, or otherwise carry out the provisions of the statute, an adoption, amendment, or repeal of a rule is not valid or effective unless it is:

(a) consistent and not in conflict with the statute; and

(b) reasonably necessary to effectuate the purpose of the statute. A statute mandating that the agency adopt rules establishes the necessity for rules but does not, standing alone, constitute reasonable necessity for a rule. The agency shall also address the reasonableness component of the reasonable necessity requirement by, as indicated in 2-4-302(1) and subsection (1) of this section,

stating the principal reasons and the rationale for its intended action and for the particular approach that it takes in complying with the mandate to adopt rules. Subject to the provisions of subsection (8), reasonable necessity must be clearly and thoroughly demonstrated for each adoption, amendment, or repeal of a rule in the agency's notice of proposed rulemaking and in the written and oral data, views, comments, or testimony submitted by the public or the agency and considered by the agency. A statement that merely explains what the rule provides is not a statement of the reasonable necessity for the rule.

(7) A rule is not valid unless notice of it is given and it is adopted in substantial compliance with 2-4-302, 2-4-303, or 2-4-306 and this section and unless notice of adoption of the rule is published within 6 months of the publishing of notice of the proposed rule. If an amended or supplemental notice of either proposed or final rulemaking, or both, is published concerning the same rule, the 6-month limit must be determined with reference to the latest notice in all cases.

(8) An agency may use an amended proposal notice or the adoption notice to correct deficiencies in citations of authority for rules and in citations of sections implemented by rules. An agency may use an amended proposal notice but, except for clerical corrections, may not use the adoption notice to correct deficiencies in a statement of reasonable necessity.

(9) If a majority of the members of the appropriate administrative rule review committee notify the committee presiding officer that those members object to a notice of proposed rulemaking, the committee shall notify the agency in writing that the committee objects to the proposal notice and will address the objections at the next committee meeting. Following notice by the committee to the agency, the proposal notice may not be adopted until publication of the last issue of the register that is published before expiration of the 6-month period during which the adoption notice must be published, unless prior to that time, the committee meets and does not make the same objection. A copy of the committee's notification to the agency must be included in the committee's records."

Section 4. Section 2-4-312, MCA, is amended to read:

"2-4-312. Publication and arrangement of register. (1) The secretary of state shall publish in the register all notices, rules, and interpretations filed with the secretary of state at least once a month but not more often than twice a month.

(2) The secretary of state shall send the register without charge to each person listed in 2-4-313(1) and to each member of the legislature requesting the register. The secretary of state shall send the register to any other person who pays a subscription fee, which must be established and deposited in accordance with 2-15-405. The register must be sent in electronic format unless a hard copy is requested.

(3) The register must contain three sections, *including* a rules section, a notice section, and an interpretation section, as follows:

(a) The rules section of the register must contain all rules filed since the compilation and publication of the preceding issue of the register, together with the ~~concise statement of reasons~~ *statements* required under 2-4-305(1).

(b) The notice section of the register must contain all rulemaking notices filed with the secretary of state pursuant to 2-4-302 since the compilation and publication of the preceding register.

(c) The interpretation section of the register must contain all opinions of the attorney general and all declaratory rulings of agencies issued since the publication of the preceding register.

(4) Each issue of the register must contain the issue number and date of the register and a table of contents. Each page of the register must contain the issue number and date of the register of which it is a part. The secretary of state may include with the register information to help the user in relating the register to the ARM."

Section 5. Effective date. [This act] is effective on passage and approval.

Approved March 21, 2009

CHAPTER NO. 22

[SB 116]

AN ACT CLARIFYING THE DISTRIBUTION OF THE AVIATION FUEL TAX; AMENDING SECTIONS 15-70-221 AND 67-1-301, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-70-221, MCA, is amended to read:

"15-70-221. Refund or credit authorized. (1) A person who purchases and uses any gasoline on which the Montana gasoline license tax has been paid for denaturing ethanol to be used in ethanol-blended gasoline, for operating stationary gasoline engines used off the public highways and streets, or for any commercial use other than operating vehicles upon any of the public highways or streets of this state is allowed a refund of the amount of tax paid directly or indirectly on the gasoline. The refund may not exceed the tax paid or to be paid to the state. Except as provided in subsection (5), a refund is not allowed for the tax per gallon upon aviation fuel allocated to the department of transportation by 67-1-301.

(2) A distributor who pays the gasoline license tax to this state erroneously is allowed a credit or refund of the amount of tax paid erroneously.

(3) (a) A distributor is entitled to a credit for the tax paid to the department on those sales of gasoline with a tax liability of $200 or greater for which the distributor has not received consideration from or on behalf of the purchaser and for which the distributor has not forgiven any liability. The distributor may not have declared the accounts of the purchaser worthless more than once during a 3-year period, and the distributor must have claimed those accounts as bad debts for federal or state income tax purposes.

(b) If a credit has been granted under this subsection (3), any amount collected on the accounts that were declared worthless must be reported to the department and the tax due must be prorated on the collected amount and must be paid to the department.

(c) The department may require a distributor to submit periodic reports listing accounts that are delinquent for 90 days or more.

(4) A person who purchases and exports for sale, use, or consumption outside Montana gasoline on which the Montana gasoline tax has been paid is entitled to a credit or refund of the amount of tax paid unless the person is not licensed and is not paying the tax to the state the fuel is destined for. The credit or refund must be made upon completion of the information reports required under

15-70-209 and presentation to the department of proof of delivery outside Montana as it may by rule require.

(5) A scheduled passenger air carrier certified under 14 CFR, part 121 or 135, may claim a refund of 2 cents on each gallon of aviation fuel purchased by the carrier on which the Montana gasoline license tax has been paid. *The refund must be paid from the account established in 67-1-301(3)(a)(ii).*"

Section 2. Section 67-1-301, MCA, is amended to read:

"67-1-301. Money — receipt and disbursement. (1) All costs and expenses of administering this title, including the salaries of employees of the department engaged in functions pertaining to aeronautics, the expenses of members of the board, and all other disbursements necessary to carry out the purposes of this title, must be paid out of the following revenue:

(a) all gifts and all legislative appropriations to the department for aeronautics;

(b) all money received from any branch or department of the federal government or from other sources for the purposes ~~mentioned in~~ *of* this title or for the furtherance of aeronautics generally in this state.

(2) All money collected under subsection (1) must be deposited in the state treasury to the credit of the department.

(3) (a) ~~The~~ *Except as provided in subsection (5), the* following amounts must be deposited from the proceeds of the 4-cent-a-gallon tax imposed on aviation fuel by 15-70-204(1)*(a)*:

(i) in the state special revenue fund to the credit of the department, an amount equal to the proceeds of 2 cents a gallon collected under 15-70-204(1)*(a)* for the sole purpose of carrying out its functions pertaining to aeronautics; and

(ii) in a separate account in the state special revenue fund to the credit of the department~~:~~*,*

~~(A)~~ an amount equal to the proceeds of 2 cents a gallon to *provide refunds pursuant to 15-70-221(5), to* provide grants to municipalities for airport development or improvement programs*,* and to provide navigational aids, safety improvements, weather reporting services, and other aeronautical services for airports and landing fields and for the state's airways~~; and~~

~~(B) 25% of the amount collected from scheduled passenger air carriers certified under 14 CFR, part 121 or 135~~.

(b) Money deposited in the account created in 67-1-306 may, with the approval of the board, be used only to provide loans to local governments and state agencies for aeronautical purposes, including airport improvement. The board shall establish procedures, including the interest rate charged, for providing loans. Proceeds of all repayments of loans, including interest, made under this subsection (3)(b) must be deposited in the account created in 67-1-306.

(c) Money deposited in the separate account established in subsection (3)(a)(ii) may, *after refunds are provided pursuant to 15-70-221(5) and* with the approval of the board, be used only to provide grants to municipalities for airport development or improvement programs and to provide navigational aids, safety improvements, weather reporting services, and other aeronautical services for airports and landing fields and for the state's airways. The board shall establish procedures for the awarding of grants.

(4) Except as provided in 15-70-221, the gasoline license tax imposed by the laws of this state on aviation fuel purchased and used for the operation of airplanes or aircraft may not be refunded.

(5) Of the amount of aviation fuel tax collected from the scheduled passenger air carriers certified under 14 CFR, part 121 or 135, 25% must be deposited in ~~the~~ *an account* separate *from the* account ~~provided for~~ *established* in subsection (3)(a)(ii) to be used only for pavement preservation grants, with the approval of the board, on airports served by these air carriers."

Section 3. Effective date. [This act] is effective July 1, 2009.

Section 4. Applicability. [This act] applies to taxes imposed on aviation fuel after June 30, 2009.

Approved March 17, 2009

CHAPTER NO. 23

[SB 130]

AN ACT REPEALING THE REQUIREMENT FOR A TRANSPORTATION PERMIT FOR THE ENTRY OF LIVESTOCK INTO MONTANA; REPEALING SECTION 81-3-214, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Repealer. Section 81-3-214, MCA, is repealed.

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 17, 2009

CHAPTER NO. 24

[SB 181]

AN ACT REQUIRING INFORMATION AGENTS TO REPORT PROCEEDS FROM CERTAIN REAL ESTATE TRANSACTIONS; AMENDING SECTION 15-30-301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-30-301, MCA, is amended to read:

"15-30-301. Information agents' duties. (1) ~~Every~~ *Each* information agent shall make a return to the department of complete information concerning the following distributions made for any individual during the ~~taxable~~ *tax* year upon which ~~no~~ withholding tax has *not* been deducted:

(a) sums in excess of $10 distributed as dividends, interest as defined in section 6049 of the Internal Revenue Code, 26 U.S.C. 6049, royalties, and payments made under a retirement plan covering an owner-employee as defined in section 401(c)(3) of the Internal Revenue Code, 26 U.S.C. 401(c)(3);

(b) all interest income in excess of $10 from obligations of another state and a county, municipality, district, or other political subdivision of that state;

(c) interest, other than that specified in subsections (1)(a) and (1)(b), rents, salaries, wages, prizes, awards, annuities, pensions, and other fixed or

determinable gains, profits, and income in excess of $600, except interest coupons payable to the bearer*; and*

(d) proceeds from real estate transactions that are required to be reported under rules or regulations of the United States department of the treasury.

(2) The return must be made under the ~~regulations~~ *rules adopted by the department* and in the form and manner prescribed by the department. For ease of reporting, the form must be as nearly identical to the comparable federal form as possible."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 17, 2009

CHAPTER NO. 25

[HB 76]

AN ACT REVISING UNEMPLOYMENT INSURANCE BENEFIT LAWS; CLARIFYING THE DEFINITION OF "BENEFIT YEAR"; UPDATING LAWS ON TRANSFER OF DUTIES FROM THE DEPARTMENT OF REVENUE TO THE DEPARTMENT OF LABOR AND INDUSTRY; CLARIFYING THE USE AND PROCEDURES FOR MONEY CREDITED TO THE UNEMPLOYMENT TRUST FUND BY THE SECRETARY OF THE TREASURY OF THE UNITED STATES; AUTHORIZING THE DEPARTMENT TO CHARGE FOR PROVIDING INFORMATION TO THE RAILROAD RETIREMENT BOARD; REVISING THE PROVISIONS RELATING TO RECIPROCAL BENEFIT ARRANGEMENTS WITH OTHER STATES AND THE FEDERAL GOVERNMENT; DISTINGUISHING BETWEEN THE DEFINITIONS OF "FEDERAL FISCAL YEAR" AND "STATE FISCAL YEAR"; REVISING THE COMPUTATION OF PAYMENTS IN LIEU OF CONTRIBUTIONS; MODIFYING THE CALCULATION TO DETERMINE THE MINIMUM WEEKLY BENEFIT AMOUNT; REVISING CRITERIA FOR DISQUALIFICATION FOR BENEFITS BASED UPON FAILURE TO APPLY FOR OR ACCEPT SUITABLE WORK; REVISING CRITERIA FOR PROMPT PAYMENT OF CLAIMS; REVISING PROVISIONS RELATING TO FALSE STATEMENTS AND MISREPRESENTATIONS; AMENDING SECTIONS 39-51-201, 39-51-301, 39-51-310, 39-51-404, 39-51-406, 39-51-407, 39-51-408, 39-51-503, 39-51-504, 39-51-602, 39-51-1105, 39-51-1121, 39-51-1125, 39-51-1212, 39-51-1213, 39-51-1302, 39-51-2201, 39-51-2304, 39-51-2306, 39-51-2401, 39-51-2405, 39-51-2408, AND 39-51-3204, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-51-201, MCA, is amended to read:

"39-51-201. General definitions. As used in this chapter, unless the context clearly requires otherwise, the following definitions apply:

(1) "Annual payroll" means the total amount of wages paid by an employer, regardless of the time of payment, for employment during a calendar year.

(2) "Base period" means the first 4 of the last 5 completed calendar quarters immediately preceding the first day of an individual's benefit year. However, in the case of a combined-wage claim pursuant to the arrangement approved by the secretary of labor of the United States, the base period is the period applicable under the unemployment law of the paying state. For an individual who fails to meet the qualifications of 39-51-2105 or a similar statute of another

state because of a temporary total disability, as defined in 39-71-116, or a similar statute of another state or the United States, the base period means the first 4 quarters of the last 5 completed calendar quarters preceding the disability if a claim for unemployment benefits is filed within 24 months of the date on which the individual's disability was incurred.

(3) "Benefit year"~~, with respect to any individual,~~ means the 52-consecutive-week period beginning with the first day of the calendar week in which ~~the~~ *an* individual files a valid claim for benefits, except that the benefit year is 53 weeks if filing a new valid claim would result in overlapping any quarter of the base ~~year~~ *period* of a previously filed new claim. A subsequent benefit year may not be established *in Montana* until the expiration of the current benefit year. However, in the case of a combined-wage claim pursuant to the arrangement approved by the secretary of labor of the United States, the ~~base period~~ *benefit year* is the period applicable under the unemployment law of the paying state.

(4) "Benefits" means the money payments payable to an individual, as provided in this chapter, with respect to the individual's unemployment.

(5) "Board" means the board of labor appeals provided for in Title 2, chapter 15, part 17.

(6) "Calendar quarter" means the period of 3 consecutive calendar months ending on March 31, June 30, September 30, or December 31.

(7) "Contributions" means the money payments to the state unemployment insurance fund required by this chapter but does not include assessments under 39-51-404.

(8) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(9) (a) "Domestic or household service" means employment of persons other than members of the household for the purpose of tending to the aid and comfort of the employer or members of the employer's family, including but not limited to housecleaning and yard work.

(b) The term does not include employment beyond the scope of normal household or domestic duties, such as home health care or domiciliary care.

(10) "Employing unit" means any individual or organization, including the state government and any of its political subdivisions or instrumentalities or an Indian tribe or tribal unit, partnership, association, trust, estate, joint-stock company, insurance company, limited liability company or limited liability partnership that has filed with the secretary of state, or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or the trustee's successor, or legal representative of a deceased person in whose employ one or more individuals perform or performed services within this state, except as provided under 39-51-204(1)(a) and (1)(q). All individuals performing services within this state for any employing unit that maintains two or more separate establishments within this state are considered to be employed by a single employing unit for all the purposes of this chapter. Each individual employed to perform or assist in performing the work of any agent or employee of an employing unit is considered to be employed by the employing unit for the purposes of this chapter, whether the individual was hired or paid directly by the employing unit or by the agent or employee, provided that the employing unit has actual or constructive knowledge of the work.

(11) "Employment office" means a free public employment office or branch of an office operated by this state or maintained as a part of a state-controlled system of public employment offices or other free public employment offices operated and maintained by the United States government or its instrumentalities as the department may approve.

(12) "Fund" means the unemployment insurance fund established by this chapter to which all contributions and payments in lieu of contributions must be paid and from which all benefits provided under this chapter must be paid.

(13) "Gross misconduct" means a criminal act, other than a violation of a motor vehicle traffic law, for which an individual has been convicted in a criminal court or has admitted or conduct that demonstrates a flagrant and wanton disregard of and for the rights, title, or interest of a fellow employee or the employer.

(14) "Hospital" means an institution that has been licensed, certified, or approved by the state as a hospital.

(15) "Independent contractor" means an individual working under an independent contractor exemption certificate provided for in 39-71-417.

(16) "Indian tribe" means an Indian tribe as defined in the Indian Self-Determination and Education Assistance Act, 25 U.S.C. 450b(e).

(17) (a) "Institution of higher education", for the purposes of this part, means an educational institution that:

(i) admits as regular students only individuals having a certificate of graduation from a high school or the recognized equivalent of a certificate;

(ii) is legally authorized in this state to provide a program of education beyond high school;

(iii) provides an educational program for which the institution awards a bachelor's or higher degree or provides a program that is acceptable for full credit toward a bachelor's or higher degree, a program of postgraduate or postdoctoral studies, or a program of training to prepare students for gainful employment in a recognized occupation; and

(iv) is a public or other nonprofit institution.

(b) All universities in this state are institutions of higher education for purposes of this part.

(18) "Licensed and practicing health care provider" means a health care provider who is primarily responsible for the treatment of a person seeking unemployment insurance benefits and who is:

(a) licensed to practice in this state as:

(i) a physician under Title 37, chapter 3;

(ii) a dentist under Title 37, chapter 4;

(iii) an advanced practice registered nurse under Title 37, chapter 8, and recognized as a nurse practitioner or certified nurse specialist by the board of nursing, established in 2-15-1734;

(iv) a physical therapist under Title 37, chapter 11;

(v) a chiropractor under Title 37, chapter 12;

(vi) a clinical psychologist under Title 37, chapter 17; or

(vii) a physician assistant under Title 37, chapter 20; or

(b) with respect to a person seeking unemployment insurance benefits who resides outside of this state, a health care provider licensed or certified as a member of one of the professions listed in subsection (18)(a) in the jurisdiction where the person seeking the benefit lives.

(19) "No-additional-cost service" has the meaning provided in section 132 of the Internal Revenue Code, 26 U.S.C. 132.

(20) "State" includes, in addition to the states of the United States of America, the District of Columbia, Puerto Rico, the Virgin Islands, and Canada.

(21) "Taxes" means contributions and assessments required under this chapter but does not include penalties or interest for past-due or unpaid contributions or assessments.

(22) "Tribal unit" means an Indian tribe and any tribal subdivision or subsidiary or any business enterprise that is wholly owned by that tribe.

(23) "Unemployment insurance administration fund" means the unemployment insurance administration fund established by this chapter from which administrative expenses under this chapter must be paid.

(24) (a) "Wages", unless specifically exempted under subsection (24)(b), means all remuneration payable for personal services, including the cash value of all remuneration paid in any medium other than cash. The reasonable cash value of remuneration payable in any medium other than cash must be estimated and determined pursuant to rules prescribed by the department. The term includes but is not limited to:

(i) commissions, bonuses, and remuneration paid for overtime work, holidays, vacations, and sickness periods;

(ii) severance or continuation pay, backpay, and any similar pay made for or in regard to previous service by the employee for the employer, other than retirement or pension benefits from a qualified plan; and

(iii) tips or other gratuities received by the employee, to the extent that the tips or gratuities are documented by the employee to the employer for tax purposes.

(b) The term does not include:

(i) the amount of any payment made by the employer for employees, if the payment was made for:

(A) retirement or pension pursuant to a qualified plan as defined under the provisions of the Internal Revenue Code;

(B) sickness or accident disability under a workers' compensation policy;

(C) medical or hospitalization expenses in connection with sickness or accident disability, including health insurance for the employee or the employee's immediate family; or

(D) death, including life insurance for the employee or the employee's immediate family;

(ii) employee expense reimbursements or allowances for meals, lodging, travel, subsistence, or other expenses, as set forth in department rules;

(iii) a no-additional-cost service; or

(iv) wage subsidies received pursuant to the alternative trade adjustment assistance for older workers program, 19 U.S.C. 2318.

(25) "Week" means a period of 7 consecutive calendar days ending at midnight on Saturday.

(26) "Weekly benefit amount" means the amount of benefits that an individual would be entitled to receive for 1 week of total unemployment."

Section 2. Section 39-51-301, MCA, is amended to read:

"39-51-301. Administration — duties and powers of department — emergency provisions. (1) It is the duty of the department to administer this chapter. The department may adopt, amend, or rescind rules to employ persons, make expenditures, require reports, make investigations, and take action that it considers necessary or suitable in administering this chapter.

(2) The department shall determine its own organization and methods of procedure in accordance with the provisions of this chapter and must have an official seal, which is judicially noticed.

(3) Whenever the department believes that a change in contribution or benefit rates is necessary to protect the solvency of the fund, it shall promptly inform the governor and the legislature and make recommendations with respect to the change.

(4) The department and the board may issue subpoenas and compel testimony and the production of evidence, including books and records, in regard to any investigation or proceeding under this chapter.

(5) (a) In the aftermath of a disaster, as defined in 10-3-103, the department may waive, suspend, or modify its rules concerning the filing of a claim for benefits, filing continued claims, registration for work, or work search if all of the following conditions are met:

(i) the president of the United States declares a disaster pursuant to 42 U.S.C. 5170, et seq.; and

(ii) the governor issues an executive order directing the department to waive, suspend, or modify rules relating to claims.

(b) In a disaster declared under subsection (5)(a), the department may waive, suspend, or modify its rules relating to claims in portions of the state named by the department as appropriate to address the nature of the disaster and the purposes of unemployment insurance laws.

~~(6) Employees transferring from the department of revenue to the department as a result of the termination of the delegation of duties associated with unemployment insurance contribution functions are entitled to all rights, including those under 2-15-131, possessed as a state officer or employee before transferring, including rights under any law or administrative policy including the State Employee Protection Act. Employees transferring must be considered internal applicants by the department of revenue for recruitment purposes for 1 year from the date of the termination of the delegation of duties associated with unemployment insurance contribution functions.~~

~~(7) The department shall succeed the department of revenue in its rights to property relating to the termination of the delegation of duties associated with unemployment insurance contribution functions to the extent that is consistent with federal property transfer policy. The property includes real property, records, office equipment, forms, supplies, and contracts other than the program budget plan with the United States department of labor.~~

~~(8) (a) The termination of the delegation of duties associated with unemployment insurance contribution functions does not affect the validity of any pending judicial or administrative proceeding.~~

~~(b) All appeals that have not been heard prior to the termination of the delegation of duties associated with unemployment insurance contribution functions must be made in accordance with the procedures identified in 39-51-1109.~~

~~(c) The department must be substituted for the department of revenue and succeed to all audits, determinations, and other actions following the date of the termination of the delegation of duties associated with unemployment insurance contribution functions.~~

~~(9) The rights, privileges, and duties of the holders of bonds and other obligations issued and of the parties to contracts, leases, indentures, and other transactions entered into before the termination of the delegation of duties associated with unemployment insurance contribution functions remain in effect, and none of those rights, privileges, duties, covenants, or agreements are impaired or diminished by reason of the delegation of duties. The department is substituted for the department of revenue and succeeds to the rights and duties under the provisions of those bonds, contracts, leases, indentures, and other transactions. The provisions of this subsection do not apply to the program budget plan agreement between the department and the United States department of labor.~~"

Section 3. Section 39-51-310, MCA, is amended to read:

"39-51-310. Function of board. The board shall act in a quasi-judicial capacity for the hearing of disputes concerning the administration of Montana's unemployment insurance laws ~~concerning benefits~~."

Section 4. Section 39-51-404, MCA, is amended to read:

"39-51-404. ~~Administrative expenses~~ *Special administrative funds.* (1) Money credited to the account of this state in the unemployment trust fund by the secretary of the treasury of the United States pursuant to ~~sections~~ *section* 903 ~~and 904~~ of the Social Security Act, 42 U.S.C. 1103 ~~and 1104~~, as amended, may be *used, pursuant to a specific appropriation by the legislature, for the payment of expenses incurred by the department for the administration of the unemployment insurance laws and public employment offices. The appropriation must specify the purposes of the appropriation and the amounts of the appropriation.* ~~requisitioned and used for the payment of expenses incurred for the administration of this chapter pursuant to a specific appropriation by the legislature if the expenses are incurred and the money is requisitioned after the enactment of an appropriation law that:~~

~~(a) specifies the purposes for which the money is appropriated and the amounts appropriated; and~~

~~(b) limits the amount that may be used during any 12-month period beginning on July 1 and ending on the next June 30 to an amount not exceeding the amount by which the aggregate of the amounts credited to the account of this state pursuant to sections 903 and 904 of the Social Security Act, 42 U.S.C. 1103 and 1104, as amended, during the same 12-month period and the 34 preceding 12-month periods exceeds the aggregate of the amounts used pursuant to this section and charged against the amounts credited to the account of this state during any of the 35 12-month periods.~~

~~(2) For the purposes of this section, amounts used during any 12-month period must be charged against equivalent amounts that were first credited and that are not already charged, except that an amount used for administration during any 12-month period may not be charged against any amount credited during a 12-month period earlier than the 34th preceding period. Money requisitioned for the payment of expenses of administration pursuant to this section must be deposited in the unemployment insurance administration account but, until expended, must remain a part of the unemployment insurance fund.~~

~~(3)~~*(2)* The department shall maintain a separate record of the deposit, obligation, expenditure, and return of funds deposited. If any money deposited is for any reason not to be expended for the purpose for which it was appropriated or if it remains unexpended at the end of the period specified by the law appropriating the money, it must be withdrawn and returned to the secretary of the treasury of the United States for credit to this state's account in the unemployment trust fund.

~~(4)~~*(3)* The following assessments must be levied against and paid by the indicated employers:

~~(a) beginning January 1, 2008:~~

~~(i)~~*(a)* 0.13% of all taxable wages paid by employers assigned a Rate Class 1, Schedules I and II, and Rate Class 2, Schedule I, contribution rate as provided in 39-51-1218;

~~(ii)~~*(b)* 0.18% of all taxable wages paid by employers assigned a contribution rate other than Rate Class 1, Schedules I and II, and Rate class 2, Schedule I, as provided in 39-51-1218;

~~(iii)~~*(c)* 0.18% of all taxable wages paid by employers assigned an industrial rate as provided in 39-51-1217;

~~(iv)~~*(d)* 0.08% of total wages paid by all employers as provided in 39-51-1124;

~~(b)~~*(e)* ~~beginning July 1, 2008,~~ 0.09% of total wages paid by all employers as provided in 39-51-1212.

~~(5)~~*(4)* All assessments and investment income must be deposited in the employment security account provided for in 39-51-409.

~~(6)~~*(5)* The following assessments and investment income from those assessments are designated to be used for the administration of the unemployment insurance program:

(a) 0.05% of all taxable wages paid by all employers as provided in 39-51-1218;

(b) 0.05% of all taxable wages paid by employers assigned an industry rate as provided in 39-51-1217;

(c) 0.03% of total wages paid by all employers as provided in 39-51-1124; and

(d) ~~beginning July 1, 2008,~~ 0.04% of total wages paid by all employers as provided in 39-51-1212.

~~(7)~~*(6)* If unemployment insurance funding sources exceed the needs of the unemployment insurance program, all or a portion of the excess may be appropriated and used for the purposes outlined in 39-51-409."

Section 5. Section 39-51-406, MCA, is amended to read:

"39-51-406. Unemployment insurance administration account. (1) There is an account in the federal special revenue fund to be known as the

unemployment insurance administration account. All money that is deposited, appropriated, or paid into this account is ~~appropriated and made~~ available *for appropriation* to the department. All money in the account must be expended solely for the purpose of defraying the costs of administration of this chapter and costs of administration of other legislation specifically delegated by the legislature to the department for administration *of unemployment insurance laws*.

(2) All money received and deposited in the account from the United States or any agency of the United States pursuant to section 302~~, Title III,~~ of the Social Security Act, 42 U.S.C. 502, must be expended solely for the purpose and in the amounts found necessary by the secretary of labor for the proper and efficient administration of this chapter.

(3) The account consists of:

(a) all money received from the United States or any agency of the United States pursuant to section 302~~, Title III,~~ of the Social Security Act, 42 U.S.C. 502, as amended; and

(b) all money, trust funds, supplies, facilities, or services furnished, deposited, paid, and received from the United States or any agency of the United States *that are designated for use in the administration of the unemployment insurance program*.

(4) Notwithstanding any provisions of this section, all money requisitioned and deposited in this account pursuant to 39-51-403 through 39-51-405 must remain part of the unemployment insurance fund and must be used only in accordance with the conditions specified in 39-51-403 through 39-51-405.

(5) All money in this account must be deposited, administered, and disbursed in the same manner and under the same conditions and requirements as is provided by law for other accounts. The balance in this account may not lapse at any time but must be continuously available to the department for expenditure consistent with this chapter.

(6) Any reference to the unemployment insurance administration fund in this code means the unemployment insurance administration account in the federal special revenue fund."

Section 6. Section 39-51-407, MCA, is amended to read:

"39-51-407. Reimbursement of fund by state. ~~This state recognizes its obligation to replace and pledges the faith of this state that funds will be provided in the future and applied to the replacement of any of the money received from the United States or any agency of the United States under Title III of the Social Security Act (now Subchapter III), any unencumbered balances in the unemployment insurance administration account, any money granted to this state pursuant to the provisions of the Wagner-Peyser Act (29 U.S.C. 49, et seq.), and any money made available by the state or its political subdivisions and matched by money granted to this state pursuant to the provisions of the Wagner-Peyser Act that the secretary of labor finds have,~~ *The state of Montana shall replace within a reasonable time any money received under section 302 of the Social Security Act, 42 U.S.C. 502, that,* because of any action or contingency, *has* been lost or ~~have~~ *has* been expended for purposes other than or in amounts in excess of those found necessary by the secretary of labor *of the United States* for the proper administration of ~~this chapter~~ *Montana's unemployment insurance laws*. ~~The money must be promptly supplied by money furnished by the state of Montana or any of its subdivisions for the use of the department and used only for purposes approved by the secretary of labor. The~~

~~department shall, if necessary, promptly report to the governor and the governor to the legislature, by a letter to the speaker of the house of representatives and the president of the senate, the amount required for replacement of the money.~~"

Section 7. Section 39-51-408, MCA, is amended to read:

"39-51-408. Advances from federal unemployment trust fund. (1) The department is authorized to apply for advances on behalf of the state of Montana from its account in the federal unemployment trust fund and to accept responsibility for repayment of ~~such~~ *any* advances in accordance with the conditions specified ~~by congress~~ *in section 1201 of the Social Security Act, 42 U.S.C. 1321.*

(2) (a) The interest cost, if any, from ~~such~~ *the* advances must be assessed against employers subject to experience rating. Interest cost may not be assessed against state or local government employers covered by 39-51-1212 or against nonprofit organizations making payments in lieu of contributions pursuant to 39-51-1124.

(b) An assessment must be made beginning with the calendar year following the calendar year in which it became necessary to apply for an advance from the federal unemployment trust fund and after the interest charges on the advance have been determined. The rate ~~will~~ *must* be determined by the department based upon the interest charges. This rate must be applied to the employer's taxable wages and be submitted in the same manner as regular contributions but as a separate payment.

(c) The amount received must be deposited in the unemployment insurance account and used to pay interest costs. Any surplus must be used to pay benefits. The department shall maintain separate records of deposits, obligations, and expenditures of all money collected pursuant to this section."

Section 8. Section 39-51-503, MCA, is amended to read:

"39-51-503. Agreements with railroad retirement board. *(1)* The department is authorized to cooperate with and enter into agreements with the railroad retirement board with respect to establishment, maintenance, and use of employment service facilities. ~~and to~~

(2) The department shall make available to the railroad retirement board the records of the department ~~relating to employer's status and contributions received from employers covered by the Railroad Unemployment Insurance Act (45 U.S.C. 351, et seq.), together with employee wage records and other data~~ that the railroad retirement board considers necessary or desirable for the administration of the Railroad Unemployment Insurance Act*, 45 U.S.C. 351, et seq*. ~~Any money received by the department from the railroad retirement board or any other governmental agency with respect to the establishment, maintenance, and use of employment service facilities must be paid into and credited to the proper division of the unemployment insurance administration fund set up and established under 39-51-406 and 39-51-407.~~

(3) The department may charge reasonable fees commensurate with the costs of producing and providing information pursuant to this section. The department shall deposit the fees in the department's state special revenue account."

Section 9. Section 39-51-504, MCA, is amended to read:

"39-51-504. Reciprocal benefit arrangements. (1) The department is ~~hereby~~ authorized to enter into *reciprocal benefit* arrangements with the appropriate agencies of other states, ~~or~~ the federal government*, or both*.

(2) (a) ~~whereby individuals~~ *Subject to subsection (2)(b), services performed by an individual* ~~performing services in this and other states~~ for a single employing unit *that are customarily performed in more than one state may be considered to be performed entirely within any one of the states in which:*

(i) any part of the services are performed;

(ii) the individual maintains the individual's residence; or

(iii) the employing unit maintains a place of business.

(b) An election made by the employing unit and approved by the department must be in place and must designate in which of the states described in subsection (2)(a) the services must be considered to have been performed. ~~under circumstances not specifically provided for in this chapter or under similar provisions of the unemployment insurance laws of such other states shall be deemed to be engaged in employment performed entirely within this state or within one of such other states and whereby potential rights to benefits accumulated under the unemployment insurance laws of several states or under such a law of the federal government or both may constitute the basis for the payment of benefits through a single appropriate agency under terms which the department finds will be fair and reasonable as to all affected interests and will not result in any substantial loss to the fund.~~

~~(2)~~*(3)* The department shall participate in any arrangements, approved by the U.S. secretary of labor, *for the payment of benefits on the basis of combining an individual's wages and employment covered under this chapter with the individual's wages and employment covered by the unemployment laws of another state or the federal government provided that the arrangements contain provisions:*

(a) for the application of the base period of a single state to a claim involving the combining of an individual's wages and employment covered by the laws of two or more states; ~~with the appropriate agencies of the other states or of the federal government whereby wages or services upon the basis of which an individual may become entitled to benefits under the unemployment insurance law of another state or of the federal government shall be deemed to be wages for employment by employers for benefit purposes, provided that:~~

~~(a) in any instance involving the combining of an individual's wages and employment covered under two or more state unemployment insurance laws, that the base period of a single state law will be used;~~

(b) ~~such~~ *that the* combining of wages will not involve the duplicate use of ~~such~~ wage credits; ~~and~~

(c) ~~such~~ *that the* other state agency or agency of the federal government has agreed to reimburse the unemployment insurance fund for ~~such~~ *the* portion of benefits paid under this chapter upon the basis of ~~such~~ *the* wages or services as the department finds will be fair and reasonable ~~as~~ *with regard* to all affected interests~~, and whereby the department will reimburse other state or federal agencies charged with the administration of unemployment insurance laws with such reasonable portion of benefits paid under the law of any such other states or of the federal government upon the basis of employment or wages for employment by employers as the department finds will be fair and reasonable to all affected interests.~~*; and*

(d) ~~Reimbursements so~~ *that the reimbursements* payable ~~shall~~ *must* be ~~deemed~~ *considered* ~~to be~~ benefits for the purposes of this chapter.

(4) Wages or services for which an individual may become entitled to benefits under the unemployment insurance laws of another state or the federal government must be considered wages for employment for benefit purposes by employers.

~~(3)~~*(5)* The department is ~~hereby~~ authorized to ~~make~~ *issue reimbursements* to other state or federal agencies *and to receive* reimbursements from *other state or federal agencies and to deposit or withdraw the reimbursements from* ~~or to~~ the unemployment insurance fund in accordance with arrangements made pursuant to this section."

Section 10. Section 39-51-602, MCA, is amended to read:

"39-51-602. Method to be used by department in keeping wage records. Wage records kept by the department ~~for the purposes of this chapter~~ must be kept on the basis of wages paid.~~, except that for the~~ *For* purposes of determining benefit eligibility and the amount and duration of benefits payable, wages, including lump-sum payments of accrued wages, ~~must~~ *may* be assigned to periods of time ~~as~~ determined in accordance with rules adopted by the department."

Section 11. Section 39-51-1105, MCA, is amended to read:

"39-51-1105. Liability for taxes, penalties, and interest owed. (1) The officer of a corporation whose responsibility it is to pay the taxes, penalties, and interest, as provided by 39-51-1103(1) and (2) and 39-51-1125(1) ~~and (2)~~, is liable for the taxes, penalties, and interest due.

(2) (a) The department shall consider the officer of the corporation individually liable with the corporation for filing reports and unpaid taxes, penalties, and interest upon a determination that the corporate officer:

(i) possessed the responsibility to file reports and pay taxes on behalf of the corporation; and

(ii) possessed the responsibility on behalf of the corporation to direct the filing of reports or payment of other corporate obligations and exercised the responsibility that resulted in failure to file reports or pay taxes due.

(b) The department is not limited to considering the elements set forth in subsection (2)(a) to establish individual liability and may consider any other available information.

(3) The liability imposed upon an individual by this section remains unaffected by the bankruptcy of a business entity to which a discharge cannot be granted under 11 U.S.C. 727. The individual is liable for the unpaid amount of taxes, penalties, and interest.

(4) In the case of a limited liability company treated as a partnership pursuant to 39-51-207, the liability for unemployment insurance taxes, penalties, and interest owed extends jointly and severally to each member.

(5) In the case of a limited liability company that is not treated as a partnership pursuant to 39-51-207, liability for unemployment insurance taxes, penalties, and interest owed extends jointly and severally to the managers of the limited liability company."

Section 12. Section 39-51-1121, MCA, is amended to read:

"39-51-1121. Definitions. As used in part 12 and this part, the following definitions apply:

(1) "Computation date" means the *12-month* reporting period ending September 30 preceding the calendar year for which a covered employer's contribution rate is effective.

(2) "Cutoff date" means October 31 immediately following the computation date. The department may extend the cutoff date in meritorious cases.

(3) "Deficit employer" means an employer who is subject ~~under~~ *to* this chapter and who has established a record of accumulated benefits charged to the employer's account in excess of the employer's accumulated contributions paid as of the cutoff date.

(4) "Eligible employer" means an employer who has been subject ~~under~~ *to* this chapter for the 3 *federal* fiscal years immediately preceding the computation date and who has:

(a) established a record of accumulated contributions in excess of benefits charged to the employer's account; and

(b) paid wages in at least 1 of the 8 calendar quarters preceding the computation date.

(5) "~~Fiscal~~ *Federal fiscal* year" means the four consecutive calendar quarters ending on September 30.

(6) "Governmental entities" means the state or any political subdivision of the state or an instrumentality of the state or a political subdivision, including any employing unit funded directly by tax levies.

(7) "New employer" means an employer who:

(a) has not been subject to the provisions of this chapter for the 3 *federal* fiscal years immediately preceding the computation date; and

(b) has established a record of accumulated contributions in excess of benefits charged to the employer's account.

(8) "State fiscal year" means the four consecutive calendar quarters ending on June 30.

~~(8)~~*(9)* "Taxable wage base" means the amount of wages subject to contributions and to assessments under 39-51-404 for each calendar year. Payment of contributions and of assessments under 39-51-404 may apply only to wages paid up to and including the amount specified in 39-51-1108."

Section 13. Section 39-51-1125, MCA, is amended to read:

"39-51-1125. Computation of payments in lieu of contributions. (1) ~~After June 30, 1987, qualified employers~~ *Employers* electing to make payments in lieu of contributions *under 39-51-1103* shall pay into the fund an amount equivalent to the full amount of regular benefits plus the state's share of extended benefits paid to individuals based on wages paid by the employing unit. ~~After December 31, 1978, governmental~~ *Governmental* entities shall pay the full amount of extended benefits.

~~(2) If benefits paid an individual are based on wages paid by both the employer and one or more other employers, the amount payable by any one employer to the fund bears the same ratio to total benefits paid to the individual as the base period wages paid to the individual by such employer bear to the total amount of base period wages paid to the individual by all the individual's base period employers.~~

~~(3)~~*(2)* ~~If~~ *When* the base period wages of an individual include wages from more than one ~~such~~ employer, the amount to be paid into the fund with respect

to the benefits paid to the individual ~~shall~~ *must* be prorated among the liable employers in proportion to the wages paid to the individual by each ~~such~~ employer during the base period.

~~(4)~~*(3)* The amount of payment required from employers ~~shall~~ *must* be ascertained by the department monthly and becomes due and payable by the employer quarterly as directed in this chapter. Penalty and interest for delinquency ~~shall~~ *must* be assessed ~~such~~ *to* employers as specified in 39-51-1301.

~~(5)~~*(4)* A payment may not be required under this section with respect to benefits paid to an individual if the qualified employer continues to provide employment to the individual ~~with no~~ *without a* reduction in hours or wages."

Section 14. Section 39-51-1212, MCA, is amended to read:

"39-51-1212. Experience rating for governmental entities. ~~(1) Governmental entities covered under this chapter shall make payments at the median rate.~~

~~(2)~~*(1)* The rates of governmental entities who have accumulated experience rating credits must be adjusted annually as follows with each governmental entity assigned a rate based upon:

(a) its benefit cost experience, to be arrived at by dividing the total sum of benefits charged to the employer's account for all past periods that are completed transactions by December 31 by total wages from date of subjectivity of the employing unit through December 31; and

(b) the benefit cost for all past years of governmental entities electing to pay contributions compared with total payrolls reported for all past years by these governmental entities used as a median, with the rates ~~so~~ fixed using the median *so* that the rates will, when applied to the total annual payroll for subject governmental entities, yield total paid contributions equaling approximately the total benefit costs.

~~(3)~~*(2)* New governmental entities electing to pay contributions must be assigned the median rate for the year in which they become subject.

~~(4)~~*(3)* The minimum rate may not be less than 0.06% and the maximum rate may not be greater than 1.5%. The rates are to be graduated at one-tenth intervals.

~~(5)~~*(4)* If benefit charges exceed contributions paid in the last 2 completed *state* fiscal years, governmental entities' rates must be adjusted by increasing all rates to the next higher schedule.

~~(6)~~*(5)* The computed rate is effective July 1 of each year.

~~(7)~~*(6)* Governmental entities must be charged for their share of the total benefits paid to a claimant if the governmental entity contributed wages during the claimant's base period. The benefit charged must be based on the percentage of wages paid by the governmental entity as compared to the total wages paid by all employers in the claimant's base period.

~~(8)~~*(7)* A payment may not be required under this section with respect to benefits paid to an individual if the governmental employer continues to provide employment to the individual ~~with no~~ *without a* reduction in hours or wages."

Section 15. Section 39-51-1213, MCA, is amended to read:

"39-51-1213. Classification of employers for experience rating purposes. (1) The department shall for each calendar year classify employers in accordance with their actual experience in the payment of contributions and

with respect to benefits charged against their accounts, with contribution rates reflecting benefit experience. Each employer's rate for a calendar year must be determined on the basis of the employer's record as of October 1 of the preceding calendar year.

(2) In making the classification, each eligible and deficit employer's contribution rate is determined in the manner set forth below:

(a) Each employer is given an "experience factor", which is contributions paid since October 1, 1981, minus benefits charged on each employer's account since October 1, 1981, divided by the employer's average annual taxable payroll rounded to the next lower dollar amount for the 3 *federal* fiscal years immediately preceding the computation date. The computation of the "experience factor" must be to six decimal places.

(b) Schedules must be prepared listing all eligible and deficit employers in inverse numerical order of their experience factors. There must be listed on the schedules for each employer in addition to the experience factor:

(i) the amount of the employer's taxable payroll for the *federal* fiscal year ending on the computation date; and

(ii) the cumulative total consisting of the sum of the employer's taxable payroll for the *federal* fiscal year ending on the computation date and the corresponding taxable payrolls for all other employers preceding that employer on the schedules.

(3) The cumulative taxable payroll amounts listed on the schedules provided for in 39-51-1218 must be segregated into groups that will yield approximately the average tax rate according to the tax schedule assigned for that particular taxable year. Each group must be identified by the rate class number listed in the table that represents the percentage limits of each group. Each employer on the schedules is assigned that contribution rate opposite that employer's rate class for the tax schedule in effect for the taxable year.

(4) (a) If the grouping of rate classes requires the inclusion of exactly one-half of an employer's taxable payroll, the employer is assigned the lower of the two rates designated for the two classes in which the halves of that employer's taxable payroll are required.

(b) If the group of rate classes requires the inclusion of a portion other than exactly one-half of an employer's taxable payroll, the employer is assigned the rate designated for the class in which the greater part of that employer's taxable payroll is required.

(c) If one or more employers on the schedules have experience factors identical to that of the last employer included in a particular rate class, ~~all such~~ *those* employers are included in and assigned the contribution rate specified for the class, notwithstanding the provisions of 39-51-1214.

(5) If the taxable payroll amount, the experience factor, or both of any eligible or deficit employer listed on the schedules is changed, the employer is placed in that position on the schedules that the employer would have occupied had that employer's taxable payroll amount or experience factor as changed been used in determining that employer's position in the first instance. However, the change does not affect the position or rate classification of any other employer listed on the schedules and does not affect the rate determination for previous years.

(6) An employer who has not filed all required payroll reports or paid all taxes, penalties, and interest due by the cutoff date must be assigned a

contribution rate in effect for the taxable year for the employer's classification as an eligible, deficit, or new employer, plus an additional assessment of 50% of the employer's assigned contribution rate, rounded to the nearest 1/100 of 1%."

Section 16. Section 39-51-1302, MCA, is amended to read:

"39-51-1302. Summary or jeopardy assessment of unpaid taxes. (1) If ~~any~~ *an* employer fails to file a report or return as required under this chapter or the ~~regulations of~~ *rules adopted by* the department ~~adopted thereunder~~ within the time specified or if the employer's records are inaccurate or are incomplete when an employer has ~~already~~ filed a quarterly wage report for the period in question, the department may make a summary or jeopardy assessment of the amount due by ~~making up such~~ *estimating the* report and determining the amount of taxes due and owing to the fund upon the basis of ~~such~~ *any* information ~~as~~ *that* the department may be able to obtain.~~, and thereupon the same shall~~ *The tax must* be collected the same as other reports and taxes due, with penalty and interest as provided in this chapter.

(2) Upon making ~~such~~ *a* summary or jeopardy assessment, the department shall immediately notify the employer in writing by personal service or by certified mail ~~in the usual course at~~ *sent to* the ~~last known~~ *last-known mailing address or* ~~principal~~ place of business operated by the employer. ~~Such~~ *The* assessment ~~shall be~~ *is* final unless*:*

(a) the employer ~~shall protest such~~ *protests the* assessment in writing within 15 days after service of the notice*;* ~~or,~~

(b) ~~within the same period of time,~~ the employer ~~shall file~~ *files within 15 days after service of the notice* a correct, signed, and sworn report and statement as provided *for* by ~~the~~ *this* chapter and the ~~regulations~~ *rules* of the department*; or*

(c) the department has good cause to amend the summary or jeopardy assessment, in which case the department shall notify the employer in the manner provided for in this subsection (2).

(3) Upon written protest being filed *by an employer,* ~~as above set forth, a day certain for the hearing thereof shall be fixed by the department and notice thereof mailed to the employer. At such hearing, the facts ascertained by the department shall be conclusive and the department may upon the basis of such facts ascertained assess the amount due, modify, set aside, or revise the prior assessment and require the employer to pay the amount due with penalty and interest as provided for in this chapter. A copy of the decision of the department and the assessment of the amount due shall be mailed to the employer at his last known principal place of business and thereupon become final~~ *the department may reconsider the summary or jeopardy assessment, and if the department redetermines the assessment, it shall notify the employer of its redetermination and the reasons for the redetermination. A summary or jeopardy assessment or redetermination by the department under this subsection is final unless the employer submits a written appeal within 10 days in the same manner as provided in 39-51-1109.*"

Section 17. Section 39-51-2201, MCA, is amended to read:

"39-51-2201. Weekly benefit amount — determination of average weekly wage. (1) An individual's weekly benefit amount must be an amount equal to 1% of the total base period wages or equal to 1.9% of the total wages paid in the 2 calendar quarters in which wages were the highest during the base period. The weekly benefit amount, if not a multiple of $1, must be rounded to

the nearest lower full dollar amount. However, the amount may not be less than the minimum or more than the maximum weekly benefit amount.

(2) On or before May 31 of each year, the total wages paid by all employers as reported on contribution reports submitted on or before that date for the preceding calendar year must be divided by the average monthly number of individuals employed during the same preceding calendar year as reported on the contribution reports. The amount obtained is the average annual wage. The average annual wage divided by 52, rounded to the nearest cent, is the average weekly wage.

(3) The maximum and minimum weekly benefit amounts are computed in the following manner:

(a) (i) If the unemployment insurance contributions schedule provided for in 39-51-1218 is Schedule II or higher, the maximum weekly benefit amount is 66.5% of the average weekly wage and must be applied to all maximum weekly benefit amount claims for benefits filed to establish a benefit year commencing on or after July 1 of the same year.

(ii) The minimum weekly benefit amount must be 19% of the average weekly wage.

~~(iii) The minimum weekly benefit amount, if not a multiple of $1, must be computed to the nearest lower full dollar amount.~~

(b) (i) If the unemployment insurance contributions schedule provided for in 39-51-1218 is Schedule I, the maximum weekly benefit amount is 67.5% of the average weekly wage and must be applied to all maximum weekly benefit amount claims for benefits filed to establish a benefit year commencing on or after July 1 of the same year.

(ii) The minimum weekly benefit amount must be 20% of the average weekly wage.

~~(iii) The minimum weekly benefit amount, if not a multiple of $1, must be computed to the nearest lower full dollar amount.~~"

Section 18. Section 39-51-2304, MCA, is amended to read:

"39-51-2304. Disqualification for failure to apply for or to accept suitable work. (1) (a) An individual is disqualified for benefits if the individual fails without good cause to:

(i) apply for available and suitable work when directed to do so by the employment office or the department; *or*

(ii) accept an offer from a former employer or a new employer of suitable work that the individual is physically able and mentally qualified to perform~~; or~~

~~(iii) return to customary self-employment, if any, when directed to do so by the department~~.

(b) The disqualification continues for the week in which the failure occurs and until the individual has performed services for which remuneration is received equal to or in excess of six times that individual's weekly benefit amount subsequent to the week the act causing the disqualification occurred, with a reduction in the individual's maximum benefit amount equal to six times the weekly benefit amount, as determined by the department~~, provided the individual has not left this work under disqualifying circumstances~~. The services ~~must~~ constitute employment as defined in 39-51-203 ~~and 39-51-204~~.

(2) In determining whether or not any work is suitable for an individual, the department shall consider:

(a) the degree of risk involved to the individual's health, safety, and morals;

(b) the individual's physical fitness and prior training;

(c) the individual's experience and previous earnings;

(d) the individual's length of unemployment and prospects for securing local work in the customary occupation; and

(e) the distance of the available work from the individual's residence.

(3) Notwithstanding any other provisions of this chapter, including subsection (4), work may not be considered suitable and benefits may not be denied under this chapter to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

(a) if the position offered is vacant due directly to a strike, lockout, or other labor dispute;

(b) if the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality;

(c) if, as a condition of being employed, the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

(4) Subject to subsection (3), after 13 weeks of unemployment, suitable work is work that meets the criteria in this section and that offers 75% of the individual's earnings in previous insured work in the individual's customary occupation. ~~An~~ *However, an* individual~~, however,~~ is not required to accept a job paying less than the federal minimum wage."

Section 19. Section 39-51-2306, MCA, is amended to read:

"39-51-2306. Disqualification because of receipt of certain other wages, compensation, or benefits. (1) An individual is disqualified for benefits for any week with respect to which the individual receives payment *for the week or part of the week* in the form of:

(a) compensation for disability under the workers' compensation law or the occupational disease law of this or any other state or under a similar law of the United States. However, when an injured claimant ceases to draw compensation benefits and returns to the labor market, the claimant is entitled to receive unemployment compensation benefits under this chapter if the claimant is otherwise qualified. Compensation received as a payment for a permanent partial disability may not be computed to be spread over a period of weeks in advance so as to bar the recipient from receiving unemployment compensation benefits under this chapter if the recipient has returned to the labor market and is otherwise qualified.

(b) benefits under the Railroad Unemployment Insurance Act, 45 U.S.C. 351, et seq., or any state unemployment compensation act or similar laws of any state or of the United States. This disqualification does not apply to any week with respect to which an individual receives benefits under an unemployment compensation law of another state or of the United States if the benefits are paid pursuant to 39-51-504.

(2) If an individual receives wages, compensation, or benefits as set forth in subsection (1) after payment of unemployment benefits with respect to the same week for which unemployment benefits were received, the individual shall repay the unemployment benefits, and the department may collect the

unemployment benefits in the same manner as provided for collection of benefits under 39-51-3206."

Section 20. Section 39-51-2401, MCA, is amended to read:

"39-51-2401. Claims to be made in accordance with regulations — ~~employers to post and make available copies of such regulations~~ *notice of coverage.* Claims for benefits ~~shall~~ *must* be made in accordance with ~~such regulations as~~ *rules adopted by* the department ~~may prescribe~~. Each employer shall post and maintain printed statements of ~~such regulations~~ *the notice of coverage that is prepared and distributed by the department* in places readily accessible to individuals in ~~his~~ *the employer's* service ~~and shall make available to each such individual at the time he becomes unemployed a printed statement of such regulations~~. ~~Such printed statements shall~~ *The notice of coverage must* be supplied by the department to each employer without cost to ~~him~~ *the employer*."

Section 21. Section 39-51-2405, MCA, is amended to read:

"39-51-2405. Prompt payment of claims. (1) ~~Notwithstanding any provision in 39-51-2402 or 39-51-2404, benefits shall~~ *Benefits must* be paid promptly in accordance with *the most recently issued:*

(a) ~~a~~ determination or redetermination under 39-51-2402*;*

(b) ~~or the~~ decision of an appeals referee~~, the board, or a reviewing court~~ under ~~39-51-2404~~ *39-51-2403;*

(c) decision of the board under 39-51-2404; or

(d) decision of a reviewing court pursuant to a judicial review initiated under 39-51-2404. ~~upon the issuance of such determination, redetermination, or decision regardless of the pendency of the period to apply for reconsideration, file an appeal, or petition for judicial review that is provided with respect thereto in 39-51-2404, as the case may be, or the pendency of any such application, filing, or petition, unless and until such determination, redetermination, or decision has been modified or reversed by a subsequent redetermination or decision, in which event benefits shall be paid or denied for weeks of unemployment thereafter in accordance with such modifying or reversing redetermination or decision.~~

~~(2) If a deputy's determination or redetermination allowing benefits is affirmed in any amount by an appeals referee or by the board or if a decision of an appeals referee allowing benefits is affirmed in any amount by the board, such benefits shall be paid promptly regardless of any further appeal or the disposition of such appeal and no injunction, supersedeas, stay, or other writ or process suspending the payment of such benefits shall be issued by the board or any court. Benefits shall not be paid for any weeks of unemployment involved in such modification or reversal that begins after such final decision.~~

(2) The filing of a request for redetermination, an appeal, or a request for judicial review may not delay or postpone the payment of benefits until the determination, redetermination, or decision has been modified or reversed.

(3) An individual considered eligible to receive benefits must be paid promptly regardless of any further appeal or disposition of an appeal that is not a final disposition of the case. An injunction, stay, writ, or other process suspending the payment of benefits may not be issued by the board or a court until the final disposition of the case."

Section 22. Section 39-51-2408, MCA, is amended to read:

"39-51-2408. Disputed claim — records of all proceedings to be kept. A full and complete record ~~shall~~ *must* be kept of all proceedings in connection with a disputed claim. All testimony at any hearing upon a disputed claim ~~shall~~ *must* be recorded but need not be transcribed unless ~~the disputed claim is further appealed~~ *required by a district court or appellate court for judicial review*."

Section 23. Section 39-51-3204, MCA, is amended to read:

"39-51-3204. Employing unit making false statement or representation, failing to disclose material fact, or failing or refusing to make contributions or other payments, furnish reports, or permit inspection or copying of records — criminal penalty. *(1)* Any employing unit or any officer or agent of an employing unit or any other person ~~who makes~~ *may not make* a false statement or representation knowing it to be false or ~~who~~ knowingly ~~fails~~ *fail* to disclose a material fact *in order* to*:*

(a) prevent or reduce the payment of benefits to any *entitled* individual*;* ~~entitled thereto or to avoid becoming or remaining subject hereto or to~~

(b) avoid or reduce any contribution or other payment required from an employing unit under this chapter or under the employment security law of any other state or territory or the federal government*; or*

(c) avoid the requirements of this chapter. ~~or who willfully fails or refuses to make any such contributions or other payment or to furnish any reports required hereunder or to produce or permit the inspection or copying of records as required hereunder~~

(2) An employing unit, any officer or agent of an employing unit, or any other person who violates a provision of subsection (1) shall be punished by a fine of not less than $50 or more than $500*,* ~~or~~ by imprisonment for not less than 3 days or more than 30 days in the county jail*,* or by both. ~~such fine and imprisonment, and each such~~ *Each* false statement or representation or failure to disclose a material fact and each day of ~~such~~ *the* failure *to disclose* ~~or refusal shall constitute~~ *constitutes* a separate offense.

(3) An employing unit or any officer or agent of the employing unit is subject to the penalty provisions of subsection (2) for willfully failing or refusing to:

(a) make any contributions or payments required by this chapter;

(b) furnish any reports required by this chapter; or

(c) produce or permit the inspection or copying of any records or materials as required by this chapter."

Section 24. Effective date. [This act] is effective July 1, 2009.

Approved March 20, 2009

CHAPTER NO. 26

[HB 101]

AN ACT REVISING THE TIME PERIODS WITHIN WHICH AN EMPLOYER MAY WITHHOLD MONEY FROM AN EMPLOYEE'S FINAL PAYCHECK IN CASES OF THEFT OF PROPERTY OR THEFT OF FUNDS; AMENDING SECTIONS 39-3-204 AND 39-3-205, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-3-204, MCA, is amended to read:

"39-3-204. Payment of wages generally. (1) Except as provided in subsections (2) and (3), every employer of labor in the state of Montana shall pay to each employee the wages earned by the employee in lawful money of the United States or checks on banks convertible into cash on demand at the full face value of the checks, and a person for whom labor has been performed may not withhold from any employee any wages earned or unpaid for a longer period than 10 business days after the wages are due and payable*, except as provided in 39-3-205*. However, reasonable deductions may be made for board, room, and other incidentals supplied by the employer, whenever the deductions are a part of the conditions of employment, or ~~other deductions~~ *as otherwise* provided for by law.

(2) Wages may be paid to the employee by electronic funds transfer or similar means of direct deposit if the employee has consented in writing or electronically, if a record is retained, to be paid in this manner. However, an employee may not be required to use electronic funds transfer or similar means of direct deposit as a method for payment of wages.

(3) If an employee submits a timesheet after the employer's established deadline for processing employee timesheets for a particular time period and the employer does not pay the employee within the 10-day period provided for in subsection (1), the employer may pay the employee the wages due in the ensuing pay period. An employer may not withhold payment of the employee's wages beyond the next ensuing pay period. If there is not an established time period or time when wages are due and payable, the pay period is presumed to be semimonthly in length."

Section 2. Section 39-3-205, MCA, is amended to read:

"39-3-205. Payment of wages when employee separated from employment prior to payday — exceptions. (1) ~~When~~ *Except as provided in subsection (2) or (3), when* an employee separates from the employ of any employer, all the unpaid wages of the employee are due and payable on the next regular payday for the pay period during which the employee was separated from employment or 15 days from the date of separation from employment, whichever occurs first, either through the regular pay channels or by mail if requested by the employee.

(2) Except as provided in subsection (3), when an employee is separated for cause or laid off from employment by the employer, all the unpaid wages of the employee are due and payable immediately upon separation unless the employer has a written personnel policy governing the employment that extends the time for payment of final wages to the employee's next regular payday for the pay period or to within 15 days from the separation, whichever occurs first.

(3) When an employee is discharged by reason of an allegation of theft of property or funds connected to the employee's work, the employer may withhold from the employee's final paycheck an amount sufficient to cover the value of the theft if:

(a) the employee agrees in writing to the withholding; or

(b) the employer files a report of the theft with the local law enforcement agency within 7 *business* days of the separation from employment, subject to the following conditions:

(i) if no charges are filed in a court of competent jurisdiction against the employee for the alleged theft within ~~15~~ *30* days of the filing of the report with a local law enforcement agency, wages are due and payable upon the expiration of the ~~15-day~~ *30-day* period.

(ii) if charges are filed against the employee for theft, the court may order the withheld wages to be offset by the value of the theft. If the employee is found not guilty or if the employer withholds an amount in excess of the value of the theft, the court may order the employer to pay the employee the withheld amount plus interest."

Section 3. Effective date. [This act] is effective on passage and approval.

Approved March 20, 2009

CHAPTER NO. 27

[HB 138]

AN ACT REVISING OCCUPATIONAL HEALTH AND SAFETY REGULATIONS; REPEALING THE OCCUPATIONAL HEALTH ACT OF MONTANA AND PARTS OF THE MONTANA SAFETY ACT AND REPLACING THEM WITH THE MONTANA OCCUPATIONAL SAFETY AND HEALTH ACT; LIMITING APPLICABILITY AND ENFORCEMENT OF CERTAIN PROVISIONS TO PUBLIC SECTOR EMPLOYERS AND EMPLOYEES; PROVIDING DUTIES FOR PUBLIC SECTOR EMPLOYERS AND EMPLOYEES; PROVIDING FOR STOP-WORK ORDERS, INJUNCTIONS, AND PENALTIES; PROVIDING FOR SAFETY CONSULTATIONS; PROHIBITING RETALIATION; REVISING COAL MINE INSPECTION STATUTES; PROVIDING PENALTIES; AMENDING SECTIONS 20-15-403, 39-71-201, 39-71-1503, 50-71-102, 50-73-102, 50-73-402, 50-73-406, AND 50-73-409, MCA; REPEALING SECTIONS 50-70-101, 50-70-102, 50-70-103, 50-70-104, 50-70-105, 50-70-107, 50-70-108, 50-70-109, 50-70-111, 50-70-112, 50-70-113, 50-70-114, 50-70-115, 50-70-116, 50-70-117, 50-70-118, 50-71-101, 50-71-103, 50-71-104, 50-71-105, 50-71-106, 50-71-107, 50-71-108, 50-71-109, 50-71-110, 50-71-301, 50-71-302, 50-71-303, 50-71-311, 50-71-312, 50-71-313, 50-71-314, 50-71-315, 50-71-316, 50-71-321, 50-71-322, 50-71-323, 50-71-324, 50-71-325, 50-71-326, 50-71-327, 50-71-331, 50-71-332, 50-71-333, AND 50-71-334, MCA; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Montana's general occupational safety act, the Montana Safety Act, was enacted in 1969, prior to the adoption of the federal Occupational Safety and Health Act of 1970; and

WHEREAS, as a result of the enactment of the federal Occupational Safety and Health Act of 1970, federal law has become the basis for occupational safety and health regulation in the private sector; and

WHEREAS, states have responsibility for nonfederal public sector compliance with occupational safety and health regulations; and

WHEREAS, since the creation of the federal Occupational Safety and Health Administration, the Montana Safety Act and the Occupational Health Act of Montana do not reflect the reality of federal occupational safety and health regulation and enforcement in Montana's private sector; and

WHEREAS, the Montana Safety Act contains various archaic rulemaking and hearings provisions because it was enacted prior to the adoption of the Montana Administrative Procedure Act; and

WHEREAS, the Occupational Health Act of Montana, enacted in 1971, suffers from many of the same jurisdictional and procedural flaws as does the Montana Safety Act; and

WHEREAS, it is appropriate to modernize Montana's occupational safety and health laws for occupations other than those in mining and consolidate them into a unified body of law that reflects the scope of state regulation of general occupational safety and health matters as limited to public sector employment.

Be it enacted by the Legislature of the State of Montana:

Section 1. Short title. [Sections 1 through 13] may be cited as the "Montana Occupational Safety and Health Act".

Section 2. Definitions. As used in [sections 1 through 13], the following definitions apply:

(1) "Department" means the department of labor and industry provided for in 2-15-1701.

(2) "Employee" has the meaning provided in 39-71-118.

(3) "Employer" has the meaning provided in 39-71-117.

(4) "Health" means protection against occupational illness.

(5) "Inspection" means an onsite review of a workplace by the department to determine compliance with standards adopted under [sections 1 through 13].

(6) "Private sector employer" means any employer that is not a public sector employer. The term includes for-profit and not-for-profit employers.

(7) (a) "Public sector employee" means an employee of a public sector employer.

(b) The term does not include a contractor.

(8) "Public sector employer" means:

(a) a state agency;

(b) each county in the state;

(c) each municipality in the state;

(d) each school district or community college; and

(e) any other political subdivision of the state.

(9) "Safety" means protection against occupational injury or death.

(10) "Safety consultation services" has the meaning provided in 39-71-1503.

(11) "Standard" means a rule adopted by the department pursuant to [sections 1 through 13] that is designed to promote or ensure safety or health in the workplace.

(12) "State agency" means any branch of government, including a department, board, commission, office, bureau, institution, university system entity, or unit of state government recognized in the state budget.

(13) "Workplace" means any site or location where an employee performs work for the employee's employer.

Section 3. Administrative authority — funding. (1) The department has authority to administer the provisions of [sections 1 through 13].

(2) In addition to administering the provisions of [sections 1 through 13], the department may:

(a) promote occupational safety and health;

(b) educate employers and employees in occupational safety and health matters;

(c) conduct research regarding occupational safety and health data, topics, and techniques; and

(d) investigate occupational injuries, illnesses, and deaths involving public sector employees.

(3) The department may develop and operate a statewide employment safety program. The statewide employment safety program may include but is not limited to:

(a) a safety awareness component;

(b) an employee education component;

(c) an employer education component; and

(d) industry-specific initiatives.

(4) The activities of the department under the provisions of [sections 1 through 13] are funded by the workers' compensation administration fund provided in 39-71-201.

(5) The department may accept, receive, and administer gifts, grants, or other funds from public or private agencies and from the United States for the purpose of carrying out the provisions of [sections 1 through 13]. Funds received by the department under this subsection (5) must be deposited into the fund provided for in 39-71-201.

Section 4. Rulemaking — variances. (1) The department may adopt appropriate standards for safety and health by administrative rule, including:

(a) any safety or health regulations promulgated by the federal occupational safety and health administration; and

(b) standards that are not inconsistent with federal safety and health regulation but that provide for a greater level of protection for employees.

(2) The department may adopt other rules that are reasonably necessary to implement [sections 1 through 13].

(3) (a) The department may by rule:

(i) provide a procedure to grant a temporary variance from the particular provisions of a standard; and

(ii) permit the temporary use of other or different devices or methods than provided by the standard.

(b) A temporary variance may be granted only if the public sector employer:

(i) has an effective program for complying with the standard as quickly as is practicable;

(ii) is taking all available steps to safeguard public sector employees against the hazards covered by the standard; and

(iii) is unable to comply with the standard because:

(A) professional or technical personnel needed to implement compliance with the standard are temporarily unavailable;

(B) material or equipment needed to comply with the standard is temporarily unavailable; or

(C) necessary construction or alteration of facilities cannot be completed by the effective date of the standard.

Section 5. Applicability of standards — exceptions. (1) The standards for safety and health and the enforcement rules adopted pursuant to [sections 1 through 13] apply to all public sector employers in this state and to public sector employees.

(2) The standards and enforcement rules adopted pursuant to [sections 1 through 13] do not apply to employment by:

(a) private sector employers;

(b) the federal government and its instrumentalities;

(c) a federally recognized tribal government; or

(d) a tribal government recognized by the state.

Section 6. Duties of public sector employers and public sector employees. (1) Each public sector employer shall:

(a) furnish a place of employment that is free from recognized hazards that cause or are likely to cause death or serious physical harm to public sector employees;

(b) adopt and use practices, means, methods, operations, and processes that are adequate to render the workplace safe; and

(c) take appropriate actions necessary to protect the life, health, and safety of public sector employees.

(2) Each public sector employee shall comply with the safety and health standards, rules, and orders issued pursuant to [sections 1 through 13] as they apply to the public sector employee's own actions and conduct.

Section 7. Public sector employer records and reports. (1) Each public sector employer shall maintain records of occupational injuries, illnesses, and deaths as the department may require by rule.

(2) The department may inspect those records or require that the public sector employer submit those records to the department for its review.

(3) Except as otherwise provided by rule, a public sector employer complies with the requirements of this section if the public sector employer completes and submits a first report of injury form to the department or to the public sector employer's worker's compensation insurer within 30 days of the public sector employer becoming aware of an occupational injury, illness, or death suffered by a public sector employee.

Section 8. Inspections. (1) The department may inspect all workplaces of any public sector employer for the purpose of determining whether the public sector employer is in compliance with the safety and health standards that apply to the employer and the employer's workplaces. A department employee conducting an inspection shall, upon request, present appropriate credentials to the public sector employer. The department shall invite a representative of the public sector employer and a representative of any labor organization that represents employees of the public sector employer who are working at the workplace that is to be inspected to accompany the department employee on the inspection. The labor organization representative must be on paid status while accompanying the department employee on the inspection.

(2) An inspection may be performed:

(a) periodically without prior notice or scheduling;

(b) at the request of the public sector employer;

(c) as the result of a complaint of a violation of a safety or health standard at a public sector employer's workplace;

(d) as part of a department investigation following a report of an occupational injury, illness, or death; or

(e) following the issuance of a citation, after the public sector employer has been given a reasonable opportunity to correct any violation of standards.

(3) A public sector employer may not interfere with a department inspection conducted pursuant to this section.

(4) The department may not unreasonably interfere with the operations of a public sector employer while conducting an inspection. An unscheduled inspection does not constitute unreasonable interference with the public sector employer's operations.

Section 9. Report of inspection — violations — penalty — appeal process. (1) (a) The department shall make a written report of each inspection that it conducts under [section 8].

(b) The inspection report must include a list of violations of standards that the inspector discovered during the inspection. A violation of a standard by a public sector employee is attributable to the public sector employer for the purposes of [sections 1 through 13].

(c) The department shall provide a copy of the inspection report to the public sector employer and to a representative of a labor organization that represents public sector employees at the workplace that was inspected.

(d) The public sector employer shall post a copy of the list of hazards included in the inspection report at one or more visible locations at the workplace that is the subject of the inspection report. The posting must be in a location likely to be seen by employees at that workplace.

(2) The department may issue a written citation to the public sector employer for a violation of a standard. The citation must specify:

(a) the nature of the violation;

(b) the standard that was violated; and

(c) a timeframe within which the public sector employer is required to correct the violation.

(3) (a) The department may impose upon a public sector employer a monetary penalty of not more than $1,000 for each violation for which a citation has been issued.

(b) The department may, in its sole discretion, waive or reduce a penalty under this subsection (3) if the public sector employer timely corrects or cures the violation for which the penalty was imposed.

(c) Monetary penalties collected pursuant to this subsection (3) must be deposited into the workers' compensation administration fund provided for in 39-71-201.

(4) (a) A public sector employer may appeal a citation or a penalty.

(b) An appeal to the department must be in writing and made within 30 days of the issuance of the citation.

(c) The appeal of a citation or a penalty is conducted as a contested case under Title 2, chapter 4.

Section 10. Stop-work orders. (1) The department may order a public sector employer to immediately and temporarily stop work at a particular workplace if a department inspector who has personally observed the workplace and the hazards that are present determines that:

(a) the conditions or operations that are present at the workplace constitute a violation of a standard established by the department;

(b) the violation poses an immediate and substantial risk of serious bodily injury or death to a public sector employee or a member of the public; and

(c) the public sector employer or a public sector employee who is present at the workplace is unable or unwilling to:

(i) immediately correct the violation; or

(ii) suspend the unsafe operation until the violation is corrected.

(2) The temporary stop-work order must be in writing and specify:

(a) the location of the workplace;

(b) the specific standard that is being violated;

(c) the nature of the risk posed by the violation;

(d) the date and the time that the temporary stop-work order is issued; and

(e) the name, employment address, and work telephone number of the person issuing the temporary stop-work order.

(3) The temporary stop-work order is effective upon communication or delivery to any one of the following:

(a) the public sector employer's onsite supervisor at the workplace;

(b) the public sector employer's manager in charge of workplace operations; or

(c) the chief executive of the public sector employer.

(4) A copy of the temporary stop-work order must be promptly posted by the department at the workplace. A posted temporary stop-work order may not be removed by any person while it is in effect.

(5) A temporary stop-work order is effective for 72 hours unless:

(a) the violation is corrected to the satisfaction of the department; or

(b) the temporary stop-work order is stayed by order of a district court judge following actual notice to the department and the public sector employer.

(6) The violation of a temporary stop-work order or the unauthorized removal of a posted copy of a temporary stop-work order is punishable as a contempt of court.

(7) As used in this section, the term "serious bodily injury" has the same meaning as provided in 45-2-101.

Section 11. Injunctive relief. In addition to any remedies available under [sections 1 through 13], the department may institute and maintain in the name of the state an action for injunctive relief as provided in Title 27, chapter 19, to:

(1) immediately restrain a public sector employer and public sector employees from engaging in any activity for which the department has issued a temporary stop-work order pursuant to [section 10];

(2) enjoin a violation of [sections 1 through 13];

(3) enjoin a violation of a rule, including a safety or health standard, adopted under [sections 1 through 13]; or

(4) require compliance with [sections 1 through 13], including compliance with any rules adopted under [sections 1 through 13].

Section 12. Safety consultation services. The department may, in its sole discretion, provide onsite safety consultation services to public sector employers and private sector employers that request onsite safety consultation services.

Section 13. Retaliation prohibited. A public sector employer may not retaliate against a public sector employee who:

(1) contacts the department with a complaint of a violation of a standard in the workplace;

(2) cooperates with the department in the performance of an inspection or an investigation; or

(3) testifies or cooperates with the department in any case arising out of:

(a) an inspection;

(b) an investigation;

(c) a citation;

(d) a temporary stop-work order; or

(e) a civil action seeking injunctive relief.

Section 14. Section 20-15-403, MCA, is amended to read:

"20-15-403. Applications of other school district provisions. (1) When the term "school district" appears in the following sections outside of Title 20, the term includes community college districts and the provisions of those sections applicable to school districts apply to community college districts: 2-9-101, 2-9-111, 2-9-316, 2-16-114, 2-16-602, 2-16-614, 2-18-703, 7-3-1101, 7-6-2604, 7-6-2801, 7-7-123, 7-8-2214, 7-8-2216, 7-11-103, 7-12-4106, 7-13-110, 7-13-210, 7-15-4206, 10-1-703, 15-1-101, 15-6-204, 15-16-101, 15-16-605, 15-70-301, 17-5-101, 17-5-202, 17-6-103, 17-6-204, 17-6-213, 17-7-201, 18-1-201, 18-2-101, 18-2-103, 18-2-113, 18-2-114, 18-2-401, 18-2-404, 18-2-432, 18-5-205, 19-1-102, 19-1-811, 22-1-309, 25-1-402, 27-18-406, 33-20-1104, 39-3-104, 39-4-107, 39-31-103, 39-31-304, 39-71-116, 39-71-117, 39-71-2106, 40-6-237, 49-3-101, 49-3-102, *[section 2],* 52-2-617, 53-20-304, 82-10-201 through 82-10-203, 85-7-2158, and 90-6-208 and Rules 4D(2)(g) and 15(c), M.R.Civ.P., as amended.

(2) When the term "school district" appears in a section outside of Title 20 but the section is not listed in subsection (1), the school district provision does not apply to a community college district."

Section 15. Section 39-71-201, MCA, is amended to read:

"39-71-201. Administration fund. (1) A workers' compensation administration fund is established out of which are to be paid upon lawful appropriation all costs of administering the Workers' Compensation Act and the statutory occupational safety *and health* acts that the department is required to administer, with the exception of the certification of independent contractors provided for in Title 39, chapter 71, part 4, the subsequent injury fund provided for in 39-71-907, and the uninsured employers' fund provided for in 39-71-503. The department shall collect and deposit in the state treasury to the credit of the workers' compensation administration fund:

(a) all fees and penalties provided in 39-71-107, 39-71-205, 39-71-223, 39-71-304, 39-71-307, 39-71-315, 39-71-316, 39-71-401(6), 39-71-2204, 39-71-2205, and 39-71-2337; ~~and~~

(b) all penalties assessed under [section 9]; and

~~(b)~~*(c)* all fees paid by an assessment of 3% of paid losses, plus administrative fines and interest provided by this section.

(2) For the purposes of this section, paid losses include the following benefits paid during the preceding calendar year for injuries covered by the Workers' Compensation Act without regard to the application of any deductible whether the employer or the insurer pays the losses:

(a) total compensation benefits paid; and

(b) except for medical benefits in excess of $200,000 for each occurrence that are exempt from assessment, total medical benefits paid for medical treatment rendered to an injured worker, including hospital treatment and prescription drugs.

(3) Each plan No. 1 employer, plan No. 2 insurer subject to the provisions of this section, and plan No. 3, the state fund, shall file annually on March 1 in the form and containing the information required by the department a report of paid losses pursuant to subsection (2).

(4) Each employer enrolled under compensation plan No. 1, compensation plan No. 2, or compensation plan No. 3, the state fund, shall pay a proportionate share of all costs of administering and regulating the Workers' Compensation Act and the statutory occupational safety acts that the department is required to administer, with the exception of the certification of independent contractors provided for in Title 39, chapter 71, part 4, the subsequent injury fund provided for in 39-71-907, and the uninsured employers' fund provided for in 39-71-503. In addition, compensation plan No. 3, the state fund, shall pay a proportionate share of these costs based upon paid losses for claims arising before July 1, 1990.

(5) (a) Each employer enrolled under compensation plan No. 1 shall pay an assessment to fund administrative and regulatory costs. The assessment is equal to 3% of the paid losses paid in the preceding calendar year by or on behalf of the plan No. 1 employer or $500, whichever is greater. Any entity, other than the department, that assumes the obligations of an employer enrolled under compensation plan No. 1 is considered to be the employer for the purposes of this section.

(b) An employer formerly enrolled under compensation plan No. 1 shall pay an assessment to fund administrative and regulatory costs. The assessment is equal to 3% of the paid losses paid in the preceding calendar year by or on behalf of the employer for claims arising out of the time when the employer was enrolled under compensation plan No. 1.

(c) Payment of the assessment provided for by this subsection (5) must be paid by the employer in:

(i) one installment due on July 1; or

(ii) two equal installments due on July 1 and December 31 of each year.

(d) If an employer fails to timely pay to the department the assessment under this section, the department may impose on the employer an administrative fine of $500 plus interest on the delinquent amount at the annual interest rate of 12%. Administrative fines and interest must be deposited in the workers' compensation administration fund.

(6) (a) Compensation plan No. 3, the state fund, shall pay an assessment to fund administrative and regulatory costs attributable to claims arising before July 1, 1990. The assessment is equal to 3% of the paid losses paid in the preceding calendar year for claims arising before July 1, 1990. As required by 39-71-2352, the state fund may not pass along to insured employers the cost of the assessment for administrative and regulatory costs that is attributable to claims arising before July 1, 1990.

(b) Payment of the assessment must be paid in:

(i) one installment due on July 1; or

(ii) two equal installments due on July 1 and December 31 of each year.

(c) If the state fund fails to timely pay to the department the assessment under this section, the department may impose on the state fund an administrative fine of $500 plus interest on the delinquent amount at the annual interest rate of 12%. Administrative fines and interest must be deposited in the workers' compensation administration fund.

(7) (a) Each employer insured under compensation plan No. 2 or plan No. 3, the state fund, shall pay a premium surcharge to fund administrative and regulatory costs. The premium surcharge must be collected by each plan No. 2 insurer and by plan No. 3, the state fund, from each employer that it insures. The premium surcharge must be stated as a separate cost on an insured employer's policy or on a separate document submitted to the insured employer and must be identified as "workers' compensation regulatory assessment surcharge". The premium surcharge must be excluded from the definition of premiums for all purposes, including computation of insurance producers' commissions or premium taxes. However, an insurer may cancel a workers' compensation policy for nonpayment of the premium surcharge. When collected, assessments may not constitute an element of loss for the purpose of establishing rates for workers' compensation insurance but, for the purpose of collection, must be treated as a separate cost imposed upon insured employers.

(b) The amount to be funded by the premium surcharge is equal to 3% of the paid losses paid in the preceding calendar year by or on behalf of all plan No. 2 insurers and 3% of paid losses for claims arising on or after July 1, 1990, for plan No. 3, the state fund, plus or minus any adjustments as provided by subsection (7)(f). The amount to be funded must be divided by the total premium paid by all employers enrolled under compensation plan No. 2 or plan No. 3 during the preceding calendar year. A single premium surcharge rate, applicable to all employers enrolled in compensation plan No. 2 or plan No. 3, must be calculated annually by the department by not later than April 30. The resulting rate, expressed as a percentage, is levied against the premium paid by each employer enrolled under compensation plan No. 2 or plan No. 3 in the next fiscal year.

(c) On or before April 30 of each year, the department, in consultation with the advisory organization designated pursuant to 33-16-1023, shall notify plan No. 2 insurers and plan No. 3, the state fund, of the premium surcharge percentage to be effective for policies written or renewed annually on and after July 1 of that year.

(d) The premium surcharge must be paid whenever the employer pays a premium to the insurer. Each insurer shall collect the premium surcharge levied against every employer that it insures. Each insurer shall pay to the department all money collected as a premium surcharge within 20 days of the end of the calendar quarter in which the money was collected. If an insurer fails to timely pay to the department the premium surcharge collected under this

section, the department may impose on the insurer an administrative fine of $500 plus interest on the delinquent amount at the annual interest rate of 12%. Administrative fines and interest must be deposited in the workers' compensation administration fund.

(e) If an employer fails to remit to an insurer the total amount due for the premium and premium surcharge, the amount received by the insurer must be applied to the premium surcharge first and the remaining amount applied to the premium due.

(f) The amount actually collected as a premium surcharge in a given year must be compared to the 3% of paid losses paid in the preceding year. Any amount collected in excess of the 3% must be deducted from the amount to be collected as a premium surcharge in the following year. The amount collected that is less than the 3% must be added to the amount to be collected as a premium surcharge in the following year.

(8) On or before April 30 of each year, upon a determination by the department, an insurer under compensation plan No. 2 that pays benefits in the preceding calendar year but that will not collect any premium for coverage in the following fiscal year shall pay an assessment equal to 3% of paid losses paid in the preceding calendar year, subject to a minimum assessment of $500, that is due on July 1.

(9) An employer that makes a first-time application for permission to enroll under compensation plan No. 1 shall pay an assessment of $500 within 15 days of being granted permission by the department to enroll under compensation plan No. 1.

(10) The department shall deposit all funds received pursuant to this section in the state treasury, as provided in this section.

(11) The administration fund must be debited with expenses incurred by the department in the general administration of the provisions of this chapter, including the salaries of its members, officers, and employees and the travel expenses of the members, officers, and employees, as provided for in 2-18-501 through 2-18-503, incurred while on the business of the department either within or without the state.

(12) Disbursements from the administration fund must be made after being approved by the department upon claim for disbursement.

(13) The department may assess and collect the workers' compensation regulatory assessment surcharge from uninsured employers, as defined in 39-71-501, that fail to properly comply with the coverage requirements of the Workers' Compensation Act. Any amounts collected by the department pursuant to this subsection must be deposited in the workers' compensation administration fund."

Section 16. Section 39-71-1503, MCA, is amended to read:

"39-71-1503. Safety consultation. (1) As used in this part, "safety consultation services" means assistance rendered by an insurer *or the department* to advise and aid an ~~insured~~ employer in the identification, evaluation, and control of existing and potential accidental and occupational health problems. The services may be delivered in person, by mail, *electronically,* or by telephone, based upon need.

(2) Safety consultation services include but are not limited to:

(a) surveys consisting of onsite identification and subsequent evaluation of exposures relative to employees, materials, equipment, work methods, processes, and facilities;

(b) recommendations expressed in the form of communications to an ~~insured~~ employer, with reference to control of exposures to occupational accident, injury, or illness and to improvement of safety programs and systems;

(c) *education and* training programs, including aids, programs, and materials made available to assist in the control of exposures;

(d) consultations to advise ~~insured~~ employers relative to risk, exposure, and experience in the ~~insured~~ employer's business;

(e) accident analysis consisting of review of reported accidents to determine cause and trends; and

(f) industrial hygiene services, including recognition, evaluation, and control of chemical, physical, and biological exposures."

Section 17. Section 50-71-102, MCA, is amended to read:

"50-71-102. Definitions. Unless the context requires otherwise, in this ~~chapter~~ *part*, the following definitions apply:

~~(1) "Amendment" means such modification or change in a code as shall be intended to be of universal or general application.~~

~~(2) "Code" means a standard body of rules for safety formulated, adopted, and issued by the department under the provisions of this chapter.~~

~~(3) "Department" means the department of labor and industry.~~

~~(4)~~*(1)* "Employee" and "worker" ~~are defined as~~ *have the meanings provided* in 39-71-118.

~~(5)~~*(2)* "Employer" ~~is defined as~~ *has the meaning provided* in 39-71-117.

~~(6) "Variation" means a special, limited modification or change in the code which is applicable only to the particular place of employment of the employer or person petitioning for such modification or change.~~"

Section 18. Section 50-73-102, MCA, is amended to read:

"50-73-102. Definitions. As used in this chapter, the following definitions apply:

(1) "Department" means the department of labor and industry and the state coal mine inspectors employed by the department.

(2) "Excavations" and "workings" mean all parts of a mine excavated or being excavated, including shafts, slopes, tunnels, entries, rooms, and working places, whether abandoned or in use.

~~(3) "Gassy mine" means a mine is considered to be potentially gassy. The department may further define this term in its rules.~~

~~(4)~~*(3)* "Mine" and "coal mine" mean all parts of the property of a mining plant under one management ~~which~~ *that* contribute, directly or indirectly, to the mining or handling of coal.

~~(5)~~*(4)* "Mine examiner" means a person charged with the examination of the condition of the mine before the miners are permitted to enter ~~it~~ *the mine* and who is commonly known as the "fire boss".

~~(6)~~*(5)* "Mine foreman" means a person who is charged with the general direction of the underground work or both the underground work and the

outside work of a coal mine and who is commonly known and designated as "mine boss".

~~(7)~~*(6)* "Operator", as applied to the ~~party~~ *entity* in control of a mine under this chapter, means the person, firm, or body corporate ~~which~~ *that* is the immediate proprietor as owner or lessee of the ~~plant~~ *mine* and, as such, is responsible for the condition and management ~~thereof~~ *of the mine*.

~~(8)~~*(7)* "Shaft" means any vertical opening through the strata ~~which~~ *that* is or may be used for the purpose of ventilation or escape or for hoisting or lowering of ~~men~~ *workers* or material in connection with the mining of coal.

~~(9)~~*(8)* "Slope" and "drift" mean respectively an incline or horizontal way, opening, or tunnel to a seam of coal to be used for the same purpose as a shaft.

(9) "Written inspection report" means a report prepared by the department identifying safety and health hazards noted during a mine inspection. The term includes any citation or order issued by the department that refers to a violation of safety or health standards at the mine."

Section 19. Section 50-73-402, MCA, is amended to read:

"50-73-402. Department authorized to enter and inspect coal mines. (1) The department may enter, inspect, and examine any coal mine or any shaft, drift, or slope in the process of sinking for the purpose of mining coal in this state and the workings and the machinery belonging ~~thereto~~ *to the coal mine* at all reasonable times either by day or night~~, but not so as to~~. *The department's entry, inspection, or examination under this subsection may not* impede or obstruct the workings of the mine.

(2) The department may at any time perform ~~such~~ inspections and investigations ~~as it~~ *that the department* considers necessary in surface and underground mines ~~which are~~ subject to this chapter*:* ~~for the purpose of obtaining, utilizing, and disseminating~~

(a) to obtain, use, and disseminate information relating to health and safety conditions in the mines, the causes of accidents involving bodily injury or loss of life, or the causes of occupational diseases originating ~~therein~~ *in the mine;* and ~~for the purpose of determining whether there is~~

(b) to determine compliance with a health and safety standard or order issued under this chapter.

(3) ~~For the purpose of making an inspection or investigation authorized by this chapter, representatives of the~~ *The* department may enter, upon or through, any mine ~~which is~~ subject to this chapter *to conduct an inspection or investigation*.

(4) The department shall prepare a written report for every inspection or investigation conducted under 50-73-406 and this section, noting the time and the material circumstances of the inspection or investigation."

Section 20. Section 50-73-406, MCA, is amended to read:

"50-73-406. Minimum inspection intervals. The department shall carefully examine all the coal mines in operation in this state at least ~~every 3 months~~ *quarterly* and more often if necessary to see that every precaution is taken to ~~insure~~ *ensure* the safety of all workers that may be ~~engaged~~ *working* in the coal mine. ~~The department shall make a record of the visit, noting the time and the material circumstances of the inspection.~~"

Section 21. Section 50-73-409, MCA, is amended to read:

"50-73-409. ~~Department~~ *Operator* to post statement of conditions ~~at some conspicuous location~~. *(1)* The ~~department~~ *operator* shall post ~~in some conspicuous location~~ *the department's written inspection report* at each mine visited and inspected by ~~it a plain statement of the conditions of the mine showing what in its judgment is necessary for the better protection of the lives and health of persons employed in the mine~~ *the department*.

(2) The ~~statement~~ *written inspection report*, signed by the department inspector, ~~shall give~~ *must include* the date of inspection *and be posted in one or more conspicuous locations and remain posted until replaced by a subsequent inspection report. For the purposes of this subsection, a conspicuous location is one where the written inspection report:*

(a) is likely to be seen by the mine workers; and

(b) is available to be read by any interested mine worker. ~~Where a local union has jurisdiction over the mine inspected, the department shall post three copies of the statement of conditions within 1 week after making the inspection. It~~

(3) The operator shall promptly provide a copy of the written inspection report to each exclusive representative of mine workers who are or may be affected by the conditions in the written inspection report.

(4) The operator shall also post a ~~copy~~ *notice* at the landing used by the workers stating what number of workers may be permitted to ride on the cage~~,~~ *or* car~~, or cars~~ at one time."

Section 22. Repealer. Sections 50-70-101, 50-70-102, 50-70-103, 50-70-104, 50-70-105, 50-70-107, 50-70-108, 50-70-109, 50-70-111, 50-70-112, 50-70-113, 50-70-114, 50-70-115, 50-70-116, 50-70-117, 50-70-118, 50-71-101, 50-71-103, 50-71-104, 50-71-105, 50-71-106, 50-71-107, 50-71-108, 50-71-109, 50-71-110, 50-71-301, 50-71-302, 50-71-303, 50-71-311, 50-71-312, 50-71-313, 50-71-314, 50-71-315, 50-71-316, 50-71-321, 50-71-322, 50-71-323, 50-71-324, 50-71-325, 50-71-326, 50-71-327, 50-71-331, 50-71-332, 50-71-333, and 50-71-334, MCA, are repealed.

Section 23. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

Section 24. Codification instruction — directions to code commissioner. (1) [Sections 1 through 13] are intended to be codified as an integral part of Title 50, and the provisions of Title 50 apply to [sections 1 through 13].

(2) Section 50-71-102 is intended to be renumbered and codified as an integral part of Title 50, chapter 71, part 2.

Section 25. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 26. Effective date. [This act] is effective July 1, 2009.

Approved March 20, 2009

CHAPTER NO. 28

[HB 160]

AN ACT REVISING CAPTIVE INSURANCE LAWS; AUTHORIZING THE COMMISSIONER OF INSURANCE TO WAIVE THE RBC REPORT FOR

CAPTIVE RISK RETENTION GROUPS; CLARIFYING COLLECTION OF THE PREMIUM TAX; CHANGING THE CALCULATION OF THE TAX ON DIRECT PREMIUMS; REVISING INVESTMENT REQUIREMENTS FOR CAPTIVE INSURERS; EXPANDING THE SCOPE OF LAWS APPLICABLE TO CAPTIVE INSURANCE COMPANIES; AMENDING SECTIONS 33-2-1903, 33-28-102, 33-28-105, 33-28-107, 33-28-201, 33-28-202, AND 33-28-207, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-2-1903, MCA, is amended to read:

"33-2-1903. RBC reports. (1) ~~Each~~ *Except as provided in 33-28-107(4)(b), each* domestic insurer shall, on or before each March 1 filing date, prepare and submit to the commissioner a report of its RBC levels as of the end of the previous calendar year in a form and containing information as required by the RBC instructions. In addition, each domestic insurer shall file its RBC report:

(a) with the NAIC in accordance with the RBC instructions; and

(b) with the insurance commissioner in any state in which the insurer is authorized to do business if that insurance commissioner has notified the insurer of the request in writing, in which case the insurer shall file its RBC report not later than the later of:

(i) 15 days from the receipt of notice to file its RBC report with that state; or

(ii) the March 1 filing date.

(2) A life and disability insurer's RBC must be determined in accordance with the formula set forth in the RBC instructions. The formula must take into account and may adjust for the covariance between:

(a) the risk with respect to the insurer's assets;

(b) the risk of adverse insurance experience with respect to the insurer's liabilities and obligations;

(c) the interest rate risk with respect to the insurer's business; and

(d) all other business risks and other relevant risks as are set forth in the RBC instructions and determined in each case by applying the factors in the manner set forth in the RBC instructions.

(3) A property and casualty insurer's RBC must be determined in accordance with the formula set forth in the RBC instructions. The formula shall take into account and may adjust for the covariance between:

(a) asset risk;

(b) credit risk;

(c) underwriting risk; and

(d) all other business risks and other relevant risks that are set forth in the RBC instructions and determined in each case by applying the factors in the manner set forth in the RBC instructions.

(4) An excess of capital over the amount produced by the risk-based capital requirements contained in this part and the formulas, schedules, and instructions referenced in 33-2-1906 through 33-2-1913 is desirable in the business of insurance. Accordingly, insurers should seek to maintain capital above the RBC levels required by this part. Additional capital is used and useful in the insurance business and helps to secure an insurer against various risks inherent in or affecting the business of insurance and not accounted for or only

partially measured by the risk-based capital requirements contained in this part.

(5) If a domestic insurer files an RBC report that in the judgment of the commissioner is inaccurate, the commissioner shall adjust the RBC report to correct the inaccuracy and shall notify the insurer of the adjustment. The notice must contain a statement of the reason for the adjustment. An RBC report so adjusted is referred to as an adjusted RBC report."

Section 2. Section 33-28-102, MCA, is amended to read:

"33-28-102. Licensing — authority. (1) A captive insurance company, when permitted by its organizational document, may apply to the commissioner for a license to provide property insurance, casualty insurance, life insurance, disability income insurance, *surety insurance, marine insurance,* and health insurance coverage or a group health plan as defined in 33-22-140, except that:

(a) a pure captive insurance company may not insure any risks other than those of its parent and affiliated companies and controlled unaffiliated business entities;

(b) an industrial insured captive insurance company may not insure any risks other than those of the industrial insureds that comprise the industrial insured group and their affiliated companies;

(c) an association captive insurance company may not insure any risks other than those of the members or affiliated companies of members;

(d) a captive insurance company or a branch captive insurance company may not:

(i) provide personal lines of insurance, including but not limited to motor vehicle or homeowner's insurance coverage or any component of those coverages;

(ii) accept or cede reinsurance except as provided in 33-28-203;

(iii) provide health insurance coverage or a group health plan unless the captive insurance company or branch captive insurance company is only providing health insurance coverage or a group health plan for the parent company and its affiliated companies; or

(iv) write workers' compensation insurance on a direct basis; and

(e) a protected cell captive insurance company may not insure any risks other than those of its participant affiliated companies and controlled unaffiliated business entities.

(2) A captive insurance company may not write any insurance business unless:

(a) it first obtains from the commissioner a license authorizing it to do insurance business in this state;

(b) its board of directors*, board of managing members,* or a reciprocal insurer's subscribers' advisory committee holds at least one meeting each year in this state;

(c) it maintains its principal place of business in this state; and

(d) (i) it appoints a registered agent to accept service of process;

(ii) the name and contact information and any subsequent changes regarding the registered agent are filed with the commissioner; and

(iii) it agrees that whenever the registered agent cannot be found with reasonable diligence, the commissioner's office may act as an agent of the captive insurance company with respect to any action or proceeding and may be served in accordance with 33-1-603.

(3) (a) Before receiving a license, a captive insurance company shall:

(i) with respect to a captive insurance company formed as a ~~corporation~~ *business entity*:

(A) file with the commissioner a certified copy of its ~~charter and bylaws~~ *organizational documents*, a statement under oath of ~~its president and secretary~~ *an officer of the business entity* showing its financial condition, and any other statements or documents required by the commissioner; and

(B) submit to the commissioner for approval a description of the coverages, deductibles, coverage limits, and rates, together with any additional information that the commissioner may reasonably require;

(ii) with respect to a captive insurance company formed as a reciprocal insurer:

(A) file with the commissioner a certified copy of the power of attorney of its attorney-in-fact, a certified copy of its subscribers' agreement, a statement under oath of its attorney-in-fact showing its financial condition, and any other statements or documents required by the commissioner; and

(B) submit to the commissioner for approval a description of the coverages, deductibles, coverage limits, and rates, together with any additional information that the commissioner may reasonably require.

(b) In the event of any subsequent material change in any of the items in the description provided for in subsection (3)(a), the captive insurance company shall submit to the commissioner for approval an appropriate revision and may not offer any additional kinds of insurance until a revision of the description is approved by the commissioner. The captive insurance company shall inform the commissioner of any change in rates within 30 days of the adoption of the change.

(c) In addition to the information required by subsections (3)(a) and (3)(b), each applicant captive insurance company shall file with the commissioner evidence of the following:

(i) the amount and liquidity of its assets relative to the risks to be assumed;

(ii) the adequacy of the expertise, experience, and character of the person or persons who will manage it;

(iii) the overall soundness of its plan of operation;

(iv) the adequacy of the loss prevention programs of its parent, members, or industrial insureds as applicable; and

(v) any other factors considered relevant by the commissioner in ascertaining whether the proposed captive insurance company will be able to meet its policy obligations.

(d) In addition to the information required by this section, each applicant that is a protected cell captive insurance company shall file with the commissioner the following:

(i) a business plan demonstrating how the applicant will account for the loss and expense experience of each protected cell at a level of detail found to be

sufficient by the commissioner and how it will report the experience to the commissioner;

(ii) a statement acknowledging that all financial records of the protected cell captive insurance company, including records pertaining to any protected cells, must be made available for inspection or examination by the commissioner or the commissioner's designated agent;

(iii) all contracts or sample contracts between the protected cell captive insurance company and any participants; and

(iv) evidence that expenses will be allocated to each protected cell in a fair and equitable manner.

(e) Information submitted pursuant to this subsection (3) must remain confidential and may not be made public by the commissioner or an employee or agent of the commissioner without the written consent of the company, except that:

(i) the information may be discoverable by a party in a civil action or contested case to which the captive insurance company that submitted the information is a party, upon a showing by the party seeking to discover the information that the information sought is relevant to and necessary for the furtherance of the action or case, the information sought is unavailable from other nonconfidential sources, and a subpoena issued by a judicial or administrative officer of competent jurisdiction has been submitted to the commissioner;

(ii) the commissioner may, in the commissioner's discretion, disclose the information to a public officer having jurisdiction over the regulation of insurance in another state or to a public official of the federal government, as long as the public official agrees in writing to maintain the confidentiality of the information and the laws of the state in which the public official serves, if applicable, require the information to be and to remain confidential.

(4) (a) Each captive insurance company shall pay to the commissioner a nonrefundable fee of $200 for the examining, investigating, and processing of its application for license, and the commissioner is authorized to retain legal, financial, and examination services from outside the department, the reasonable cost of which may be charged to the applicant.

(b) The provisions of Title 33, chapter 1, part 4, apply to examinations, investigations, and processing conducted under the authority of this section. In addition, each captive insurance company shall pay a license fee for the year of registration and a renewal fee for each subsequent year of $300.

(5) If the commissioner is satisfied that the documents and statements that the applicant captive insurance company has filed comply with the provisions of this chapter and applicable provisions of Title 33, the commissioner may grant a license authorizing the company to do insurance business in this state. The license is effective until March 1 of each year and may be renewed upon proper compliance with this chapter."

Section 3. Section 33-28-105, MCA, is amended to read:

"33-28-105. Formation of captive insurance companies. (1) A captive insurance company must be formed or organized as a business entity as provided in this chapter.

(2) An association captive insurance company or an industrial insured captive insurance company may be:

(a) incorporated as a stock insurer with its capital divided into shares and held by the stockholders;

(b) incorporated as a mutual insurer without capital stock, the governing body of which is elected by the members of its association or associations; ~~or~~

(c) organized as a reciprocal insurer under Title 33, chapter 5*; or*

(d) organized as a limited liability company.

(3) A captive insurance company incorporated or organized in this state ~~may not have less than three incorporators, at least one of whom must be a resident of this state~~ *must be incorporated or organized by at least one incorporator or organizer who is a resident of this state*.

(4) (a) In the case of a captive insurance company formed as a business entity and before the organizational documents are transmitted to the secretary of state, the organizers shall file a copy of the proposed organizational documents and a petition with the commissioner requesting the commissioner to issue a certificate that finds that the establishment and maintenance of the proposed business entity will promote the general good of the state. In reviewing the petition, the commissioner shall consider:

(i) the character, reputation, financial standing, and purposes of the organizers;

(ii) the character, reputation, financial responsibility, insurance experience, and business qualifications of any officers*,* ~~and~~ directors*, or managing members*; and

(iii) any other factors that the commissioner considers appropriate.

(b) If the commissioner does not issue a certificate or finds that the proposed organizational documents of the captive insurance company do not meet the requirements of the applicable laws, including but not limited to 33-2-112, the commissioner shall refuse to approve the draft of the organizational documents and shall return the draft to the proposed organizers, together with a written statement explaining the refusal.

(c) If the commissioner issues a certificate and approves the draft organizational documents, the commissioner shall forward the certificate and an approved draft of organizational documents to the proposed organizers. The organizers shall prepare two sets of the approved organizational documents and shall file one set with the secretary of state as required by the applicable law and one set with the commissioner.

(5) The capital stock of a captive insurance company incorporated as a stock insurer may be authorized with no par value.

(6) (a) At least one of the members of the board of directors of a captive insurance company must be a resident of this state.

(b) In the case of a captive insurance company formed as a limited liability company, at least one of the managers must be a resident of the state.

(c) In case of a reciprocal insurer, at least one of the members of the subscribers' advisory committee must be a resident of the state.

(7) (a) A captive insurance company formed as a corporation or another business entity has the privileges and is subject to the provisions of general corporation law or the laws governing other business entities, as well as the applicable provisions contained in this chapter.

(b) In the event of conflict between the provisions of general corporation law or the laws governing other business entities and this chapter, the provisions of this chapter control.

(8) (a) With respect to a captive insurance company formed as a reciprocal insurer, the organizers shall petition and request that the commissioner issue a certificate that finds that the establishment and maintenance of the proposed association will promote the general good of the state. In reviewing the petition, the commissioner shall consider:

(i) the character, reputation, financial standing, and purposes of the organizers;

(ii) the character, reputation, financial responsibility, insurance experience, and business qualifications of the attorney-in-fact; and

(iii) any other factors that the commissioner considers appropriate.

(b) The commissioner may either approve the petition and issue the certificate or reject the petition in a written statement of the reasons for the rejection.

(c) (i) A captive insurance company formed as a reciprocal insurer has the privileges and is subject to the provisions of Title 33, chapter 5, in addition to the applicable provisions of this chapter. If there is a conflict between Title 33, chapter 5, and this chapter, the provisions of this chapter control.

(ii) The subscribers' agreement or other organizing document of a captive insurance company formed as a reciprocal insurer may authorize a quorum of a subscribers' advisory committee to consist of at least one-third of the number of its members.

(d) A captive risk retention group has the privileges and is subject to the provisions of Title 33, chapter 11, and this chapter. If there is a conflict between Title 33, chapter 11, and this chapter, the provisions of this chapter prevail.

(9) Except as provided in 33-28-306, the provisions of Title 33, chapter 3, pertaining to mergers, consolidations, conversions, mutualizations, and voluntary dissolutions apply in determining the procedures to be followed by captive insurance companies in carrying out any of those transactions.

(10) (a) With respect to a branch captive insurance company, the foreign captive insurance company shall petition and request that the commissioner issue a certificate that finds that, after considering the character, reputation, financial responsibility, insurance experience, and business qualifications of the officers and directors of the foreign captive insurance company, the licensing and maintenance of the branch operation will promote the general good of the state. The foreign captive insurance company shall apply to the secretary of state for a certificate of authority to transact business in this state after the commissioner's certificate is issued.

(b) A branch captive insurance company established pursuant to the provisions of this chapter to write in this state only insurance or reinsurance of the employee benefit business of its parent and affiliated companies is subject to provisions of the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1001, et seq. In addition to the general provisions of this chapter, the provisions of this section apply to branch captive insurance companies.

(c) A branch captive insurance company may not do any insurance business in this state unless it maintains the principal place of business for its branch operations in this state."

Section 4. Section 33-28-107, MCA, is amended to read:

"33-28-107. Reports and statements. (1) A captive insurance company is not required to make an annual report except as provided in this section.

(2) (a) Except as provided in subsection (2)(b), on or before March 1 of each year, each captive insurance company shall submit to the commissioner a report of its financial condition in a form and manner as required by the commissioner, verified by oath of two of its executive officers.

(b) A pure captive insurance company, branch captive insurance company, or industrial insured captive company, excluding captive risk retention groups, may make written application for filing the required report on a fiscal yearend basis. If an alternative reporting date is granted:

(i) the required report is due 60 days after fiscal yearend; and

(ii) in order to provide sufficient information to support the premium tax return, a pure captive insurance company or industrial insured insurance company shall file a report acceptable to the commissioner prior to March 1 of each year for the prior calendar yearend.

(c) Each captive insurance company shall report using generally accepted accounting principles, unless the commissioner requires the use of statutory accounting principles, with any necessary or useful modifications or additions required by the commissioner. The commissioner may also require the report to be supplemented by additional information.

(d) On or before March 1 of each year, each branch captive insurance company shall submit to the commissioner a copy of all reports and statements required to be filed under the laws in which the foreign captive insurance company is formed, verified by oath of two of its executive officers. If the commissioner is satisfied that the annual report filed by the foreign captive insurance company in its domiciliary jurisdiction provides adequate information concerning the financial condition of the foreign captive insurance company, the commissioner may waive the requirement for completion of the captive annual statement for business written in the foreign jurisdiction.

(3) The commissioner shall consider financial statements filed pursuant to this section as confidential.

(4) (a) Captive risk retention groups shall file reports and statements in accordance with Title 33, chapter 2, part 7, except that a captive risk retention group~~:~~

~~(i)~~ may file using generally accepted accounting principles~~; and~~.

~~(ii) the~~ *The* filing may include letters of credit that are established, issued, or confirmed by a bank chartered in this state, a member of the federal reserve system, or a bank chartered by another state if that state-chartered bank is acceptable to the commissioner.

(b) The commissioner may waive the RBC report required in 33-2-1903 for a captive risk retention group that files a report or statement pursuant to subsection (4)(a) or for a captive risk retention group that was formed in the last 2 years.

~~(b)~~*(c)* The filings *in subsection (4)(a)* are required on an annual and quarterly basis."

Section 5. Section 33-28-201, MCA, is amended to read:

"33-28-201. Tax on premiums collected. (1) (a) Each captive insurance company shall pay to the commissioner, on or before March 1 of each year, a tax

on the direct premiums collected or contracted for on policies or contracts of insurance written by the captive insurance company during the year ending December 31, after deducting from the direct premiums subject to the tax the amounts paid to policyholders as return premiums, including dividends on unabsorbed premiums or premium deposits returned or credited to policyholders.

(b) The tax on direct premiums collected in this state must be calculated as follows:

(i) 0.4% on the first $20 million; *and*

(ii) 0.3% on ~~the next $20 million;~~ *each subsequent dollar collected.*

~~(iii) 0.2% on the next $20 million; and~~

~~(iv) 0.075% on each subsequent dollar collected.~~

(2) (a) Each captive insurance company shall pay to the commissioner on or before March 1 of each year a tax on assumed reinsurance premiums.

(b) A reinsurance tax does not apply to premiums for risks or portions of risks that are subject to taxation on a direct basis pursuant to subsection (1).

(c) A reinsurance premium tax is not payable in connection with the receipt of assets in exchange for the assumption of loss reserves and other liabilities of another insurer under common ownership and control if the transaction is part of a plan to discontinue the operations of the other insurer and if the intent of the parties to the transaction is to renew or maintain the business with the captive insurance company.

(d) The amount of the reinsurance tax must be calculated as follows:

(i) 0.225% on the first $20 million of assumed reinsurance premiums;

(ii) 0.150% on the next $20 million of assumed reinsurance premiums; and

(iii) 0.050% on each subsequent dollar of assumed reinsurance premiums.

(3) (a) ~~If~~ *(i) Except as provided in subsection (3)(a)(ii), if* the aggregate taxes to be paid by a captive insurance company calculated under subsections (1) and (2) amount to less than $5,000 in any year, the captive insurance company shall pay a tax of $5,000 for that year.

(ii) In the calendar year in which a captive insurance company that is subject to the minimum tax is first licensed, the tax must be prorated on a quarterly basis as follows:

(A) $5,000 if licensed in the first quarter;

(B) $3,750 if licensed in the second quarter;

(C) $2,500 if licensed in the third quarter; and

(D) $1,250 if licensed in the fourth quarter.

(b) Aggregate taxes to be paid by a captive insurance company under this section may not exceed $100,000 in any year.

(c) Each protected cell in a protected cell captive insurance company must be considered separately in determining the aggregate tax to be paid by the protected cell captive insurance company. If the protected cell captive insurance company insures any risks in addition to the protected cells, the determination of the aggregate tax to be paid by the protected cell captive insurance company must also include the premium on those risks.

(4) Two or more captive insurance companies under common ownership and control must be taxed as though they were a single captive insurance company.

(5) For the purposes of this section, "common ownership and control" means:

(a) in the case of stock corporations, the direct or indirect ownership of 80% or more of the outstanding voting stock of two or more corporations by the same shareholder or shareholders; and

(b) in the case of mutual insurers, the direct or indirect ownership of 80% or more of the surplus and the voting power of two or more insurers by the same member or members.

(6) Only the branch business of a branch captive insurance company is subject to taxation under the provisions of this section.

(7) The tax provided for in this section must be calculated on an annual basis notwithstanding policies or contracts of insurance or contracts of reinsurance issued on a multiyear basis. In the case of multiyear policies or contracts, the premium must be prorated for the purposes of determining the tax."

Section 6. Section 33-28-202, MCA, is amended to read:

"33-28-202. Legal investments. (1) *(a)* An industrial insured captive insurance company, an association captive insurance company, and a captive risk retention group shall comply with the investment requirements contained in Title 33, chapter 12, and the rules promulgated in accordance with these provisions.

(b) The commissioner may approve the use of alternative reliable methods of valuation and rating.

(c) When a captive insurance company's admitted assets total less than $5 million, the commissioner may approve an investment of up to 20% of admitted assets in rated credit instruments in any one investment that meets the requirements of 33-12-303(1)(c).

(2) A pure captive insurance company is not subject to any restrictions on allowable investments, except that the commissioner may prohibit or limit any investment that threatens the solvency or liquidity of the company.

(3) Only a pure captive insurance company may make loans to its parent company or affiliates. Loans to a parent company or any affiliate may not be made without prior written approval of the commissioner and must be evidenced by a note in a form approved by the commissioner. Loans of minimum capital and surplus funds required by 33-28-104 are prohibited."

Section 7. Section 33-28-207, MCA, is amended to read:

"33-28-207. Applicable laws. (1) The following apply to captive insurance companies:

(a) the definitions of *commissioner and department provided in 33-1-202,* property insurance provided in 33-1-210, casualty insurance provided in 33-1-206, life insurance provided in 33-1-208, health insurance coverage and group health plans provided in 33-22-140, and disability income insurance provided in 33-1-235;

(b) the limitation provided in 33-2-705 on the imposition of other taxes;

(c) the provisions relating to supervision, rehabilitation, and liquidation of insurance companies as provided for in Title 33, chapter 2, part 13; ~~and~~

(d) the provisions of 33-1-603, *33-3-431,* 33-18-201, 33-18-203, 33-18-205, and 33-18-242*; and*

(e) the provisions relating to dissolution and liquidation in Title 33, chapter 3, part 6.

(2) This chapter may not be construed as exempting a captive insurance company, its parent, or affiliated companies from compliance with the laws governing workers' compensation insurance.

(3) A captive insurance company or branch captive insurance company that writes health insurance coverage or group health plans as defined in 33-22-140 shall comply with applicable state and federal laws.

(4) Except as expressly provided in this chapter, the provisions of Title 33 do not apply to captive insurance companies."

Section 8. Effective date. [This act] is effective July 1, 2009.

Approved March 20, 2009

CHAPTER NO. 29

[HB 181]

AN ACT AUTHORIZING COUNTY WATER OR SEWER DISTRICTS TO USE ALTERNATIVE PROJECT DELIVERY CONTRACTS; AMENDING SECTION 18-2-501, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 18-2-501, MCA, is amended to read:

"18-2-501. Definitions. As used in this part, unless the context clearly requires otherwise, the following definitions apply:

(1) "Alternative project delivery contract" means a construction management contract, a general contractor construction management contract, or a design-build contract.

(2) "Construction management contract" means a contract in which the contractor acts as the public owner's construction manager and provides leadership and administration for the project, from planning and design, in cooperation with the designers and the project owners, to project startup and construction completion.

(3) "Contractor" has the meaning provided in 18-4-123.

(4) "Design-build contract" means a contract in which the designer-builder assumes the responsibility and the risk for architectural or engineering design and construction delivery under a single contract with the owner.

(5) "General contractor construction management contract" means a contract in which the general contractor, in addition to providing the preconstruction, budgeting, and scheduling services, procures necessary construction services, equipment, supplies, and materials through competitive bidding contracts with subcontractors and suppliers to construct the project.

(6) "Governing body" means*:*

(a) the legislative authority of:

~~(a)~~*(i)* a municipality, county, or consolidated city-county established pursuant to Title 7, chapter 1, 2, or 3;

~~(b)~~*(ii)* a school district established pursuant to Title 20; or

~~(c)~~*(iii)* an airport authority established pursuant to Title 67, chapter 11*; or*

(b) the board of directors of a county water or sewer district established pursuant to Title 7, chapter 13, parts 22 and 23.

(7) "Project" means any construction or any improvement of the land, a building, or another improvement that is suitable for use as a state or local governmental facility.

(8) "Publish" means publication of notice as provided for in 7-1-2121, 7-1-4127, 18-2-301, and 20-9-204.

(9) "State agency" has the meaning provided in 2-2-102, except that the department of transportation, provided for in 2-15-2501, is not considered a state agency."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 20, 2009

CHAPTER NO. 30

[HB 207]

AN ACT AMENDING THE DEFINITION OF "COMMUNITY RENEWABLE ENERGY PROJECT" UNDER THE MONTANA RENEWABLE POWER PRODUCTION AND RURAL ECONOMIC DEVELOPMENT ACT TO INCLUDE AN ELIGIBLE RENEWABLE RESOURCE THAT IS LESS THAN OR EQUAL TO 25 MEGAWATTS; AMENDING SECTIONS 69-3-2003 AND 90-3-1003, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-3-2003, MCA, is amended to read:

"69-3-2003. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Ancillary services" means services or tariff provisions related to generation and delivery of electric power other than simple generation, transmission, or distribution. Ancillary services related to transmission services include energy losses, energy imbalances, scheduling and dispatching, load following, system protection, and reactive power.

(2) "Common ownership" means the same or substantially similar persons or entities that maintain a controlling interest in more than one community renewable energy project even if the ownership shares differ between two community renewable energy projects. Two community renewable energy projects may not be considered to be under common ownership simply because the same entity provided debt or equity or both debt and equity to both projects.

(3) "Community renewable energy project" means an eligible renewable resource that is interconnected on the utility side of the meter in which local owners have a controlling interest and that is less than or equal to ~~5~~ *25* megawatts in total calculated nameplate capacity.

(4) "Competitive electricity supplier" means any person, corporation, or governmental entity that is selling electricity to small customers at retail rates in the state of Montana and that is not a public utility or cooperative.

(5) "Compliance year" means each calendar year beginning January 1 and ending December 31, starting in 2008, for which compliance with this part must be demonstrated.

(6) "Cooperative utility" means:

(a) a utility qualifying as an electric cooperative pursuant to Title 35, chapter 18; or

(b) an existing municipal electric utility as of May 2, 1997.

(7) "Eligible renewable resource" means a facility either located within Montana or delivering electricity from another state into Montana that commences commercial operation after January 1, 2005, and that produces electricity from one or more of the following sources:

(a) wind;

(b) solar;

(c) geothermal;

(d) water power, in the case of a hydroelectric project that does not require a new appropriation, diversion, or impoundment of water and that has a nameplate rating of 10 megawatts or less;

(e) landfill or farm-based methane gas;

(f) gas produced during the treatment of wastewater;

(g) low-emission, nontoxic biomass based on dedicated energy crops, animal wastes, or solid organic fuels from wood, forest, or field residues, except that the term does not include wood pieces that have been treated with chemical preservatives such as creosote, pentachlorophenol, or copper-chroma-arsenic;

(h) hydrogen derived from any of the sources in this subsection (7) for use in fuel cells; and

(i) the renewable energy fraction from the sources identified in subsections (7)(a) through (7)(h) of electricity production from a multiple-fuel process with fossil fuels.

(8) "Local owners" means:

(a) Montana residents or entities composed of Montana residents;

(b) Montana small businesses;

(c) Montana nonprofit organizations;

(d) Montana-based tribal councils;

(e) Montana political subdivisions or local governments;

(f) Montana-based cooperatives other than cooperative utilities; or

(g) any combination of the individuals or entities listed in subsections (8)(a) through (8)(f).

(9) "Public utility" means any electric utility regulated by the commission pursuant to Title 69, chapter 3, on January 1, 2005, including the public utility's successors or assignees.

(10) "Renewable energy credit" means a tradable certificate of proof of 1 megawatt hour of electricity generated by an eligible renewable resource that is tracked and verified by the commission and includes all of the environmental attributes associated with that 1 megawatt-hour unit of electricity production.

(11) "Small customer" means a retail customer that has an individual load with an average monthly demand of less than 5,000 kilowatts.

(12) "Total calculated nameplate capacity" means the calculation of total nameplate capacity of the community renewable energy project and other eligible renewable resources that are:

(a) located within 5 miles of the project;

(b) constructed within the same 12-month period; and

(c) under common ownership."

Section 2. Section 90-3-1003, MCA, is amended to read:

"90-3-1003. Research and commercialization account — use. (1) The research and commercialization account provided for in 90-3-1002 is statutorily appropriated, as provided in 17-7-502, to the board of research and commercialization technology, provided for in 2-15-1819, for the purposes provided in this section.

(2) The establishment of the account in 90-3-1002 is intended to enhance the economic growth opportunities for Montana and constitute a public purpose.

(3) The account may be used only for:

(a) loans that are to be used for research and commercialization projects to be conducted at research and commercialization centers located in Montana;

(b) grants that are to be used for production agriculture research and commercialization projects, clean coal research and development projects, or renewable resource research and development projects to be conducted at research and commercialization centers located in Montana;

(c) matching funds for grants from nonstate sources that are to be used for research and commercialization projects to be conducted at research and commercialization centers located in Montana; or

(d) administrative costs that are incurred by the board in carrying out the provisions of this part.

(4) At least 20% of the account funds approved for research and commercialization projects must be directed toward projects that enhance production agriculture.

(5) (a) At least 30% of the account funds approved for research and commercialization projects must be directed toward projects that enhance clean coal research and development or renewable resource research and development.

(b) If the board is not in receipt of a qualified application for a project to enhance clean coal research and development or renewable resource research and development, subsection (5)(a) does not apply.

(6) An applicant for a grant shall provide matching funds from nonstate sources equal to 25% of total project costs. The requirement to provide matching funds is a qualifier, but not a criterion, for approval of a grant.

(7) The board shall establish policies, procedures, and criteria that achieve the objectives in its research and commercialization strategic plan for the awarding of grants and loans. The criteria must include:

(a) the project's potential to diversify or add value to a traditional basic industry of the state's economy;

(b) whether the project shows promise for enhancing technology-based sectors of Montana's economy or promise for commercial development of discoveries;

(c) whether the project employs or otherwise takes advantage of existing research and commercialization strengths within the state's public university and private research establishment;

(d) whether the project involves a realistic and achievable research project design;

(e) whether the project develops or employs an innovative technology;

(f) verification that the project activity is located within the state;

(g) whether the project's research team possesses sufficient expertise in the appropriate technology area to complete the research objective of the project;

(h) verification that the project was awarded based on its scientific merits, following review by a recognized federal agency, philanthropic foundation, or other private funding source; and

(i) whether the project includes research opportunities for students.

(8) The board shall direct the state treasurer to distribute funds for approved projects. Unallocated interest and earnings from the account must be retained in the account. Repayments of loans and any agreements authorizing the board to take a financial right to licensing or royalty fees paid in connection with the transfer of technology from a research and commercialization center to another nonstate organization or ownership of corporate stock in a private sector organization must be deposited in the account.

(9) The board shall refer grant applications to external peer review groups. The board shall compile a list of persons willing to serve on peer review groups for purposes of this section. The peer review group shall review the application and make a recommendation to the board as to whether the application for a grant should be approved. The board shall review the recommendation of the peer review group and either approve or deny a grant application.

(10) The board shall identify whether a grant or loan is to be used for basic research, applied research, or some combination of both. For the purposes of this section, "applied research" means research that is conducted to attain a specific benefit or solve a practical problem and "basic research" means research that is conducted to uncover the basic function or mechanism of a scientific question.

(11) For the purposes of this section:

(a) "clean coal research and development" means research and development of projects that would advance the efficiency, environmental performance, and cost-competitiveness of using coal as an energy source well beyond the current level of technology used in commercial service;

(b) "renewable resource research and development" means research and development that would advance:

(i) the use of any of the sources of energy listed in ~~69-3-2003(6)~~ *69-3-2003(7)* to produce electricity; and

(ii) the efficiency, environmental performance, and cost-competitiveness of using renewable resources as an energy source well beyond the current level of technology used in commercial service."

Section 3. Effective date. [This act] is effective on passage and approval.

Approved March 20, 2009

CHAPTER NO. 31

[HB 208]

AN ACT EXTENDING A DEADLINE FOR PUBLIC UTILITIES TO COMPLY WITH THE COMMUNITY RENEWABLE ENERGY REQUIREMENTS OF THE RENEWABLE PORTFOLIO STANDARD; AND AMENDING SECTION 69-3-2004, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-3-2004, MCA, is amended to read:

"69-3-2004. Renewable resource standard — administrative penalty — waiver. (1) Except as provided in 69-3-2007 and subsections (11) and (12) of this section, a graduated renewable energy standard is established for public utilities and competitive electricity suppliers as provided in subsections (2) through (4) of this section.

(2) In each compliance year beginning January 1, 2008, through December 31, 2009, each public utility and competitive electricity supplier shall procure a minimum of 5% of its retail sales of electrical energy in Montana from eligible renewable resources.

(3) (a) In each compliance year beginning January 1, 2010, through December 31, 2014, each public utility and competitive electricity supplier shall procure a minimum of 10% of its retail sales of electrical energy in Montana from eligible renewable resources.

(b) ~~As~~ *Beginning January 1, 2012, as* part of their compliance with subsection (3)(a), public utilities shall purchase both the renewable energy credits and the electricity output from community renewable energy projects that total at least 50 megawatts in nameplate capacity.

(c) Public utilities shall proportionately allocate the purchase required under subsection (3)(b) based on each public utility's retail sales of electrical energy in Montana in the calendar year ~~2009~~ *2011*.

(4) (a) In the compliance year beginning January 1, 2015, and in each succeeding compliance year, each public utility and competitive electricity supplier shall procure a minimum of 15% of its retail sales of electrical energy in Montana from eligible renewable resources.

(b) (i) As part of their compliance with subsection (4)(a), public utilities shall purchase both the renewable energy credits and the electricity output from community renewable energy projects that total at least 75 megawatts in nameplate capacity.

(ii) In meeting the standard in subsection (4)(b)(i), a public utility may include purchases made under subsection (3)(b).

(c) Public utilities shall proportionately allocate the purchase required under subsection (4)(b) based on each public utility's retail sales of electrical energy in Montana in the calendar year 2014.

(5) (a) In complying with the standards required under subsections (2) through (4), a public utility or competitive electricity supplier shall, for any given compliance year, calculate its procurement requirement based on the public utility's or competitive electricity supplier's previous year's sales of electrical energy to retail customers in Montana.

(b) The standard in subsections (2) through (4) must be calculated on a delivered-energy basis after accounting for any line losses.

(6) A public utility or competitive electricity supplier has until 3 months following the end of each compliance year to purchase renewable energy credits for that compliance year.

(7) (a) In order to meet the standard established in subsections (2) through (4), a public utility or competitive electricity supplier may only use:

(i) electricity from an eligible renewable resource in which the associated renewable energy credits have not been sold separately;

(ii) renewable energy credits created by an eligible renewable resource purchased separately from the associated electricity; or

(iii) any combination of subsections (7)(a)(i) and (7)(a)(ii).

(b) A public utility or competitive electricity supplier may not resell renewable energy credits and count those sold credits against the public utility's or the competitive electricity supplier's obligation to meet the standards established in subsections (2) through (4).

(c) Renewable energy credits sold through a voluntary service such as the one provided for in 69-8-210(2) may not be applied against a public utility's or competitive electricity supplier's obligation to meet the standards established in subsections (2) through (4).

(8) Nothing in this part limits a public utility or competitive electricity supplier from exceeding the standards established in subsections (2) through (4).

(9) If a public utility or competitive electricity supplier exceeds a standard established in subsections (2) through (4) in any compliance year, the public utility or competitive electricity supplier may carry forward the amount by which the standard was exceeded to comply with the standard in either or both of the 2 subsequent compliance years. The carryforward may not be double-counted.

(10) Except as provided in subsections (11) and (12), if a public utility or competitive electricity supplier is unable to meet the standards established in subsections (2) through (4) in any compliance year, that public utility or competitive electricity supplier shall pay an administrative penalty, assessed by the commission, of $10 for each megawatt hour of renewable energy credits that the public utility or competitive electricity supplier failed to procure. A public utility may not recover this penalty in electricity rates. Money generated from these penalties must be deposited in the universal low-income energy assistance fund established in 69-8-412(1)(a).

(11) A public utility or competitive electricity supplier may petition the commission for a short-term waiver from full compliance with the standards in subsections (2) through (4) and the penalties levied under subsection (10). The petition must demonstrate that the:

(a) public utility or competitive electricity supplier has undertaken all reasonable steps to procure renewable energy credits under long-term contract, but full compliance cannot be achieved either because renewable energy credits cannot be procured or for other legitimate reasons that are outside the control of the public utility or competitive electricity supplier; or

(b) integration of additional eligible renewable resources into the electrical grid will clearly and demonstrably jeopardize the reliability of the electrical system and that the public utility or competitive electricity supplier has undertaken all reasonable steps to mitigate the reliability concerns.

(12) (a) Retail sales made by a competitive electricity supplier according to prices, terms, and conditions of a written contract executed prior to April 25, 2007, are exempt from the standards in subsections (2) through (4).

(b) The exemption provided for in subsection (12)(a) is terminated upon modification after April 25, 2007, of the prices, terms, or conditions in a written contract."

Approved March 20, 2009

CHAPTER NO. 32

[HB 296]

AN ACT INCLUDING TRIBAL FISH AND GAME WARDENS AS EX OFFICIO WARDENS WHEN A COOPERATIVE AGREEMENT EXISTS; AMENDING SECTION 87-1-503, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-1-503, MCA, is amended to read:

"87-1-503. Ex officio wardens. *(1) The following are ex officio wardens:*

(a) ~~All~~ *all* sheriffs and their deputies;

(b) all constables;

(c) all peace officers of the state or any subdivision of the state;

(d) the executive director and investigators of the board of outfitters;

(e) all state forest officers;

(f) as authorized by cooperative agreement, any officers of the United States forest service, agents of the United States fish and wildlife service, and peace officers of the bureau of land management, national park service, and corps of engineers that are assigned to duty in this state;

(g) as authorized by cooperative agreement, tribal fish and game wardens;

(h) former fish and game wardens; and

(i) field personnel of the department as *may be appointed by* the director ~~may appoint~~.

(2) ~~are ex~~ *Ex* officio wardens~~,~~ *serve* without pay, except that the department may, in its discretion, allow travel expenses as provided for in 2-18-501 through 2-18-503~~, which, if~~. *If* allowed, *travel expenses* must be paid upon proper vouchers from the state fish and game funds.

(3) Ex officio wardens have the same powers with reference to the enforcement of the fish and game laws of this state and the laws relating to parks and outdoor recreation contained in Title 23, chapters 1 and 2, except chapter 2, part 7, as regularly appointed wardens, and it is their duty to assist, whenever possible, in the enforcement of those laws."

Section 2. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

Section 3. Effective date. [This act] is effective on passage and approval.

Approved March 20, 2009

CHAPTER NO. 33

[SB 23]

AN ACT CLARIFYING AND SEPARATING REVENUE STREAMS TO THE OIL, GAS, AND COAL NATURAL RESOURCE ACCOUNT; SPECIFICALLY EARMARKING THE COAL TAX DISTRIBUTION FOR THE COAL BOARD TO BE USED FOR LOCAL IMPACT GRANTS; AMENDING SECTIONS 15-35-108, 15-36-304, 15-36-331, 15-36-332, AND 90-6-1001, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-35-108, MCA, is amended to read:

"15-35-108. (Temporary) **Disposal of severance taxes.** Severance taxes collected under this chapter must, in accordance with the provisions of 17-2-124, be allocated as follows:

(1) Fifty percent of total coal severance tax collections is allocated to the trust fund created by Article IX, section 5, of the Montana constitution. The trust fund money must be deposited in the fund established under 17-6-203(6) and invested by the board of investments as provided by law.

(2) The amount of 12% of coal severance tax collections is allocated to the long-range building program account established in 17-7-205.

(3) The amount of 5.46% must be credited to an account in the state special revenue fund to be allocated by the legislature for provision of basic library services for the residents of all counties through library federations and for payment of the costs of participating in regional and national networking, conservation districts, and the Montana Growth Through Agriculture Act. Expenditures of the allocation may be made only from this account. Money may not be transferred from this account to another account other than the general fund. Any unreserved fund balance at the end of each fiscal year must be deposited in the general fund.

(4) The amount of 1.27% must be allocated to a permanent fund account for the purpose of parks acquisition or management. Income from this permanent fund account, excluding unrealized gains and losses, must be appropriated for the acquisition, development, operation, and maintenance of any sites and areas described in 23-1-102.

(5) The amount of 0.95% must be allocated to the debt service fund type to the credit of the renewable resource loan debt service fund.

(6) The amount of 0.63% must be allocated to a trust fund for the purpose of protection of works of art in the capitol and for other cultural and aesthetic projects. Income from this trust fund account, excluding unrealized gains and losses, must be appropriated for protection of works of art in the state capitol and for other cultural and aesthetic projects.

(7) The amount of 2.9% must be credited to the ~~oil, gas, and~~ coal natural resource account established in 90-6-1001*(2)*.

(8) After the allocations are made under subsections (2) through (7), $250,000 for the fiscal year must be credited to the coal and uranium mine permitting and reclamation program account established in 82-4-244.

(9) (a) Subject to subsection (9)(b), all other revenue from severance taxes collected under the provisions of this chapter must be credited to the general fund of the state.

(b) The interest income from $140 million of the coal severance tax permanent fund that is deposited in the general fund is statutorily appropriated, as provided in 17-7-502, on an annual basis as follows:

(i) $65,000 to the cooperative development center;

(ii) $1.25 million for the growth through agriculture program provided for in Title 90, chapter 9;

(iii) $3.65 million to the research and commercialization state special revenue account created in 90-3-1002;

(iv) to the department of commerce:

(A) $125,000 for a small business development center;

(B) $50,000 for a small business innovative research program;

(C) $425,000 for certified regional development corporations;

(D) $200,000 for the Montana manufacturing extension center at Montana state university-Bozeman; and

(E) $300,000 for export trade enhancement. (Terminates June 30, 2010—sec. 6, Ch. 481, L. 2003.)

15-35-108. (Effective July 1, 2010) **Disposal of severance taxes.** Severance taxes collected under this chapter must, in accordance with the provisions of 17-2-124, be allocated as follows:

(1) Fifty percent of total coal severance tax collections is allocated to the trust fund created by Article IX, section 5, of the Montana constitution. The trust fund money must be deposited in the fund established under 17-6-203(6) and invested by the board of investments as provided by law.

(2) The amount of 12% of coal severance tax collections is allocated to the long-range building program account established in 17-7-205.

(3) The amount of 5.46% must be credited to an account in the state special revenue fund to be allocated by the legislature for provision of basic library services for the residents of all counties through library federations and for payment of the costs of participating in regional and national networking, conservation districts, and the Montana Growth Through Agriculture Act. Expenditures of the allocation may be made only from this account. Money may not be transferred from this account to another account other than the general fund. Any unreserved fund balance at the end of each fiscal year must be deposited in the general fund.

(4) The amount of 1.27% must be allocated to a permanent fund account for the purpose of parks acquisition or management. Income from this permanent fund account, excluding unrealized gains and losses, must be appropriated for the acquisition, development, operation, and maintenance of any sites and areas described in 23-1-102.

(5) The amount of 0.95% must be allocated to the debt service fund type to the credit of the renewable resource loan debt service fund.

(6) The amount of 0.63% must be allocated to a trust fund for the purpose of protection of works of art in the capitol and for other cultural and aesthetic projects. Income from this trust fund account, excluding unrealized gains and losses, must be appropriated for protection of works of art in the state capitol and for other cultural and aesthetic projects.

(7) The amount of 2.9% must be credited to the ~~oil, gas, and~~ coal natural resource account established in 90-6-1001*(2)*.

(8) After the allocations are made under subsections (2) through (7), $250,000 for the fiscal year must be credited to the coal and uranium mine permitting and reclamation program account established in 82-4-244.

(9) All other revenue from severance taxes collected under the provisions of this chapter must be credited to the general fund of the state."

Section 2. Section 15-36-304, MCA, is amended to read:

"15-36-304. Production tax rates imposed on oil and natural gas — exemption. (1) The production of oil and natural gas is taxed as provided in this section. The tax is distributed as provided in 15-36-331 and 15-36-332.

(2) Natural gas is taxed on the gross taxable value of production based on the type of well and type of production according to the following schedule for working interest and nonworking interest owners:

	Working Interest	Nonworking Interest
(a) (i) first 12 months of qualifying production	0.5%	14.8%
(ii) after 12 months:		
(A) pre-1999 wells	14.8%	14.8%
(B) post-1999 wells	9%	14.8%
(b) stripper natural gas pre-1999 wells	11%	14.8%
(c) horizontally completed well production:		
(i) first 18 months of qualifying production	0.5%	14.8%
(ii) after 18 months	9%	14.8%

(3) The reduced tax rates under subsection (2)(a)(i) on production for the first 12 months of natural gas production from a well begins following the last day of the calendar month immediately preceding the month in which natural gas is placed in a natural gas distribution system, provided that notification has been given to the department.

(4) The reduced tax rate under subsection (2)(c)(i) on production from a horizontally completed well for the first 18 months of production begins following the last day of the calendar month immediately preceding the month in which natural gas is placed in a natural gas distribution system, provided that notification has been given to the department.

(5) Oil is taxed on the gross taxable value of production based on the type of well and type of production according to the following schedule for working interest and nonworking interest owners:

	Working Interest	Nonworking Interest
(a) primary recovery production:		
(i) first 12 months of qualifying production	0.5%	14.8%
(ii) after 12 months:		
(A) pre-1999 wells	12.5%	14.8%
(B) post-1999 wells	9%	14.8%
(b) stripper oil production:		
(i) first 1 through 10 barrels a day production	5.5%	14.8%
(ii) more than 10 barrels a day production	9.0%	14.8%
(c) (i) stripper well exemption production	0.5%	14.8%
(ii) stripper well bonus production	6.0%	14.8%
(d) horizontally completed well production:		
(i) first 18 months of qualifying production	0.5%	14.8%
(ii) after 18 months:		
(A) pre-1999 wells	12.5%	14.8%

(B) post-1999 wells	9%	14.8%
(e) incremental production:		
(i) new or expanded secondary recovery production	8.5%	14.8%
(ii) new or expanded tertiary production	5.8%	14.8%
(f) horizontally recompleted well:		
(i) first 18 months	5.5%	14.8%
(ii) after 18 months:		
(A) pre-1999 wells	12.5%	14.8%
(B) post-1999 wells	9%	14.8%

(6) (a) The reduced tax rates under subsection (5)(a)(i) for the first 12 months of oil production from a well begins following the last day of the calendar month immediately preceding the month in which oil is pumped or flows, provided that notification has been given to the department.

(b) (i) The reduced tax rates under subsection (5)(d)(i) on oil production from a horizontally completed well for the first 18 months of production begins following the last day of the calendar month immediately preceding the month in which oil is pumped or flows if the well has been certified as a horizontally completed well to the department by the board.

(ii) The reduced tax rate under subsection (5)(f)(i) on oil production from a horizontally recompleted well for the first 18 months of production begins following the last day of the calendar month immediately preceding the month in which oil is pumped or flows if the well has been certified as a horizontally recompleted well to the department by the board.

(c) Incremental production is taxed as provided in subsection (5)(e) only if the average price for each barrel of oil as reported in the Wall Street Journal for west Texas intermediate crude oil during a calendar quarter is less than $30 a barrel. If the price of oil is equal to or greater than $30 a barrel in a calendar quarter as determined in subsection (6)(d), then incremental production from pre-1999 wells and from post-1999 wells is taxed at the rate imposed on primary recovery production under subsections (5)(a)(ii)(A) and (5)(a)(ii)(B), respectively, for production occurring in that quarter, other than exempt stripper well production.

(d) (i) Stripper well exemption production is taxed as provided in subsection (5)(c)(i) only if the average price for a barrel of oil as reported in the Wall Street Journal for west Texas intermediate crude oil during a calendar quarter is less than $38 a barrel. If the price of oil is equal to or greater than $38 a barrel, there is no stripper well exemption tax rate and oil produced from a well that produces 3 barrels a day or less is taxed as stripper well bonus production.

(ii) Stripper well bonus production is subject to taxation as provided in subsection (5)(c)(ii) only if the average price for a barrel of oil as reported in the Wall Street Journal for west Texas intermediate crude oil during a calendar quarter is equal to or greater than $38 a barrel.

(e) For the purposes of subsections (6)(c) and (6)(d), the average price for each barrel must be computed by dividing the sum of the daily price for west Texas intermediate crude oil as reported in the Wall Street Journal for the calendar quarter by the number of days on which the price was reported in the quarter.

(7) (a) The tax rates imposed under subsections (2) and (5) on working interest owners and nonworking interest owners must be adjusted to include the total of the privilege and license tax adopted by the board of oil and gas conservation pursuant to 82-11-131 and the derived rate for the oil~~,~~ *and* gas~~, and coal~~ natural resource *distribution* account as determined under subsection (7)(b).

(b) The total of the privilege and license tax and the tax for the oil~~,~~ *and* gas~~, and coal~~ natural resource *distribution* account *established in 90-6-1001(1)* may not exceed 0.3%. The base rate for the tax for oil~~,~~ *and* gas~~, and coal~~ natural resource *distribution* account funding is 0.08%, but when the rate adopted pursuant to 82-11-131 by the board of oil and gas conservation for the privilege and license tax:

(i) exceeds 0.22%, the rate for the tax to fund the oil~~,~~ *and* gas~~, and coal~~ natural resource *distribution* account is equal to the difference between the rate adopted by the board of oil and gas conservation and 0.3%; or

(ii) is less than 0.18%, the rate for the tax to fund the oil~~,~~ *and* gas~~, and coal~~ natural resource *distribution* account is equal to the difference between the rate adopted by the board of oil and gas conservation and 0.26%.

(c) The board of oil and gas conservation shall give the department at least 90 days' notice of any change in the rate adopted by the board. Any rate change of the tax to fund the oil~~,~~ *and* gas~~, and coal~~ natural resource *distribution* account is effective at the same time that the board of oil and gas conservation rate is effective.

(8) Any interest in production owned by the state or a local government is exempt from taxation under this section."

Section 3. Section 15-36-331, MCA, is amended to read:

"15-36-331. Distribution of taxes. (1) (a) For each calendar quarter, the department shall determine the amount of tax, late payment interest, and penalties collected under this part.

(b) For the purposes of distribution of oil and natural gas production taxes to county and school district taxing units under 15-36-332 and to the state, the department shall determine the amount of oil and natural gas production taxes paid on production in the taxing unit.

(2) (a) The amount of oil and natural gas production taxes collected for the privilege and license tax pursuant to 82-11-131 must be deposited, in accordance with the provisions of 17-2-124, in the state special revenue fund for the purpose of paying expenses of the board, as provided in 82-11-135.

(b) The amount of the tax *allocated in 15-36-304(7)(b)* for the oil~~,~~ *and* gas~~, and coal~~ natural resource *distribution* account established in 90-6-1001*(1)* must be deposited in the account.

(3) (a) For each tax year, the amount of oil and natural gas production taxes determined under subsection (1)(b) is allocated to each county according to the following schedule:

Big Horn	45.05%
Blaine	58.39%
Carbon	48.27%
Chouteau	58.14%
Custer	69.53%

Daniels	50.81%
Dawson	47.79%
Fallon	41.78%
Fergus	69.18%
Garfield	45.96%
Glacier	58.83%
Golden Valley	58.37%
Hill	64.51%
Liberty	57.94%
McCone	49.92%
Musselshell	48.64%
Petroleum	48.04%
Phillips	54.02%
Pondera	54.26%
Powder River	60.9%
Prairie	40.38%
Richland	47.47%
Roosevelt	45.71%
Rosebud	39.33%
Sheridan	47.99%
Stillwater	53.51%
Sweet Grass	61.24%
Teton	46.1%
Toole	57.61%
Valley	51.43%
Wibaux	49.16%
Yellowstone	46.74%
All other counties	50.15%

(b) The oil and natural gas production taxes allocated to each county must be deposited in the state special revenue fund and transferred to each county for distribution, as provided in 15-36-332.

(4) The department shall, in accordance with the provisions of 17-2-124, distribute the state portion of oil and natural gas production taxes remaining after the distributions pursuant to subsections (2) and (3) as follows:

(a) for each fiscal year through the fiscal year ending June 30, 2011, to be distributed as follows:

(i) 1.23% to the coal bed methane protection account established in 76-15-904;

(ii) 1.45% to the natural resources projects state special revenue account established in 15-38-302;

(iii) 1.45% to the natural resources operations state special revenue account established in 15-38-301;

(iv) 2.99% to the orphan share account established in 75-10-743;

(v) 2.65% to the state special revenue fund to be appropriated to the Montana university system for the purposes of the state tax levy as provided in 20-25-423; and

(vi) all remaining proceeds to the state general fund;

(b) for fiscal years beginning after June 30, 2011, to be distributed as follows:

(i) 2.16% to the natural resources projects state special revenue account established in 15-38-302;

(ii) 2.02% to the natural resources operations state special revenue account established in 15-38-301;

(iii) 2.95% to the orphan share account established in 75-10-743;

(iv) 2.65% to the state special revenue fund to be appropriated to the Montana university system for the purposes of the state tax levy as provided in 20-25-423; and

(v) all remaining proceeds to the state general fund."

Section 4. Section 15-36-332, MCA, is amended to read:

"15-36-332. Distribution of taxes to taxing units — appropriation. (1) (a) By the dates referred to in subsection (6), the department shall distribute oil and natural gas production taxes allocated under 15-36-331(3) to each eligible county.

(b) By the dates referred to in subsection (6), the department shall distribute the amount deposited in the oil~~,~~ *and* gas~~, and coal~~ natural resource *distribution* account under 15-36-331(2)(b) as provided in subsection (8) *of this section*.

(2) (a) Each county treasurer shall distribute the amount of oil and natural gas production taxes designated under subsection (1)(a), including the amounts referred to in subsection (2)(b), to the countywide elementary and high school retirement funds, countywide transportation funds, and eligible school districts according to the following schedule:

	Elementary Retirement	High School Retirement	Countywide Transportation	School Districts
Big Horn	14.81%	10.36%	2.99%	26.99%
Blaine	5.86%	2.31%	2.71%	24.73%
Carbon	3.6%	6.62%	1.31%	49.18%
Chouteau	8.1%	4.32%	3.11%	23.79%
Custer	6.9%	3.4%	1.19%	31.25%
Daniels	0	7.77%	3.92%	48.48%
Dawson	5.53%	2.5%	1.11%	35.6%
Fallon	0	7.63%	1.24%	42.58%
Fergus	7.88%	4.84%	2.08%	53.25%
Garfield	4.04%	3.13%	5.29%	26.19%
Glacier	11.2%	4.87%	3.01%	46.11%
Golden Valley	0	11.52%	2.77%	54.65%
Hill	6.7%	4.07%	1.59%	49.87%
Liberty	4.9%	4.56%	1.15%	35.22%
McCone	4.18%	3.19%	2.58%	43.21%
Musselshell	5.98%	4.07%	3.53%	32.17%

Petroleum	0	11.92%	4.59%	55.48%
Phillips	0.43%	6.6%	1.08%	41.29%
Pondera	6.96%	5.06%	1.94%	45.17%
Powder River	3.96%	2.97%	4.57%	22.25%
Prairie	0	8.88%	1.63%	36.9%
Richland	4.1%	3.92%	2.26%	43.77%
Roosevelt	9.93%	7.37%	2.74%	40.94%
Rosebud	3.87%	2.24%	1.05%	72.97%
Sheridan	0	3.39%	2.22%	47.63%
Stillwater	6.87%	4.86%	1.63%	41.16%
Sweet Grass	6.12%	6.5%	2.4%	37.22%
Teton	6.88%	8.19%	3.8%	29.43%
Toole	2.78%	4.78%	1.3%	43.56%
Valley	2.26%	12.61%	4.63%	41.11%
Wibaux	0	4.1%	0.77%	31.46%
Yellowstone	7.98%	4.56%	1.07%	52.77%
All other counties	3.81%	7.84%	1.81%	41.04%

(b) (i) The county treasurer shall distribute 9.8% of the Custer County share to the countywide community college district in Custer County.

(ii) The county treasurer shall distribute 14.5% of the Dawson County share to the countywide community college district in Dawson County.

(3) The remaining oil and natural gas production taxes for each county must be used for the exclusive use and benefit of the county, including districts within the county established by the county.

(4) (a) The county treasurer shall distribute oil and natural gas production taxes to school districts in each county referred to in subsection (2) as provided in subsections (4)(b) through (4)(d).

(b) The amount distributed to each K-12 district within the county is equal to oil and natural gas production taxes in the county multiplied by the ratio that oil and natural gas production taxes attributable to oil and natural gas production in the K-12 school district bear to total oil and natural gas production taxes attributable to total oil and natural gas production in the county and multiply that amount by the school district percentage figure for the county referred to in subsection (2)(a).

(c) For the amount to be distributed to each elementary school district and to each high school district under subsection (4)(d), the department shall first determine the amount of oil and natural gas taxes in the high school district that is attributable to oil and natural gas production in each elementary school district that is located in whole or in part within the exterior boundaries of a high school district and multiply that amount by the school district percentage figure for the county referred to in subsection (2)(a).

(d) (i) The amount distributed to each elementary school district that is located in whole or in part within the exterior boundaries of a high school district is equal to the amount determined in subsection (4)(c) multiplied by the ratio that the total mills of the elementary school district bear to the sum of the total

mills of the elementary school district and the total mills of the high school district.

(ii) The amount distributed to the high school district is equal to the amount determined in subsection (4)(c) multiplied by the ratio that the total mills of the high school district bear to the sum of the total mills of each elementary school district referred to in subsection (4)(c) and the total mills of the high school district.

(5) (a) Oil and natural gas production taxes calculated for each school district under subsections (4)(b) through (4)(d) must be distributed to each school district in the relative proportion of the mill levy for each fund.

(b) If a distribution under subsection (5)(a) exceeds the total budget for a school district fund, the board of trustees of an elementary or high school district may reallocate the excess to any budgeted fund of the school district.

(6) The department shall remit the amounts to be distributed in this section to the county treasurer by the following dates:

(a) On or before August 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending March 31 of the current year.

(b) On or before November 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending June 30 of the current year.

(c) On or before February 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending September 30 of the previous year.

(d) On or before May 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending December 31 of the previous year.

(7) The department shall provide to each county by May 31 of each year the amount of gross taxable value represented by all types of production taxed under 15-36-304 for the previous calendar year multiplied by 60%. The resulting value must be treated as taxable value for county classification purposes under 7-1-2111.

(8) The department shall distribute the funds received under 15-36-331(2)(b) to counties based on county oil and gas production. Of the distribution to a county, one-third must be distributed to the county government and two-thirds must be distributed to incorporated cities and towns within the county. If there is more than one incorporated city or town within the county, the city and town allocation must be distributed to the cities and towns based on their relative populations.

(9) The distributions to taxing units and to counties and incorporated cities and towns under this section are statutorily appropriated, as provided in 17-7-502, from the state special revenue fund."

Section 5. Section 90-6-1001, MCA, is amended to read:

"90-6-1001. Oil, gas, and coal natural resource ~~account~~ *accounts.* *(1)* There is an oil~~,~~ *and* gas~~, and coal~~ natural resource *distribution* account in the state special revenue fund. The collections allocated to the account from ~~15-35-108(7) and 15-36-331(2)(b)~~ *15-36-304(7)(b)* must be deposited in the account *to be used as provided in 15-36-332(8) and (9).*

(2) There is a coal natural resource account in the state special revenue fund. The collections allocated to the account from 15-35-108(7) must be deposited in the account. The money in the account is allocated to the coal board provided for in 2-15-1821 and may be used only for local impact grants provided for in 90-6-205 through 90-6-207 and costs related to the administration of the grant awards."

Section 6. Effective date. [This act] is effective July 1, 2009.

Approved March 20, 2009

CHAPTER NO. 34

[SB 53]

AN ACT EXTENDING THE TRIAL PERIOD FOR HEARING AIDS AND RELATED DEVICES PURCHASED FROM TRAVELING VENDORS; AND AMENDING SECTIONS 37-16-102, 37-16-303, AND 37-16-304, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-16-102, MCA, is amended to read:

"37-16-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Board" means the board of hearing aid dispensers provided for in 2-15-1740.

(2) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(3) "Hearing aid" means an instrument or device designed for or represented as aiding or improving defective human hearing and parts, attachments, or accessories of the instrument or device.

(4) "License" means a regular or trainee license.

(5) "Permanent place of business" means the primary site in this state at which a person licensed under this chapter conducts testing and fitting of hearing aids and related devices and that is open to the public at least 5 days a week.

(6) "Place of practice" means either a permanent place of business or a location on record with the department at which a person licensed under this chapter makes occasional visits. A place of practice must be affiliated with a permanent place of business.

~~(5)~~*(7)* "Practice of selling, dispensing, and fitting hearing aids" means the evaluation or measurement of the powers or range of human hearing by means of an audiometer and a visual examination of the ear and canal or by any other means devised and the consequent selection, adaption, sale, dispensing, or fitting of hearing aids intended to compensate for hearing loss, including eyeglass hearing aids and their fittings, and the making of an impression of the ear and the subsequent selection of a proper ear mold, but does not include batteries, cords, or accessories."

Section 2. Section 37-16-303, MCA, is amended to read:

"37-16-303. Bill of sale — medical evaluation requirements — waiver. (1) Any person who practices the selling, fitting, or dispensing of hearing aids and related devices shall, upon the sale of a hearing aid or related device, deliver to the customer a bill of sale that must contain:

(a) the seller's signature and license number*,* ~~and~~ the name and address of the seller's permanent place of business*, and if different from the permanent place of business, the address of the place of practice at which the sale was concluded*;

(b) a description of the make and type of the hearing aid or related device furnished and the amount charged;

(c) any warranty or guaranty and the right to cancel, ~~and~~ *as well as* the terms of the warranty or guaranty and the right to cancel;

(d) the condition of the hearing aid or related device and whether it is new, used, or reconditioned;

(e) a provision that maintenance service for the hearing aid or related device is available; and

(f) the following statement, in boldface, 12-point type: "If you have any questions regarding your consumer rights with respect to hearing aids and related devices, contact the state Board of Hearing Aid Dispensers." The statement must also list the current telephone number and address of the board's office.

(2) (a) Except as provided in subsection (2)(b), a hearing aid dispenser may not sell a hearing aid to a person unless the person has presented to the hearing aid dispenser a written statement signed by a licensed physician within the previous 6 months that states that the person's hearing loss has been medically evaluated and that there are no medical factors or conditions that render hearing aid use inadvisable as a treatment or remedy for hearing loss.

(b) If the prospective hearing aid purchaser is 18 years of age or older, the hearing aid dispenser may give that person the opportunity to waive the requirements of subsection (2)(a) in accordance with the disclosure, waiver form, and instructional brochure requirements of the U.S. food and drug administration regulations found at ~~42 CFR 801.420 and 42 CFR 801.421~~ *21 CFR 801.420 and 21 CFR 801.421*."

Section 3. Section 37-16-304, MCA, is amended to read:

"37-16-304. Right to cancel — return of hearing aid or related device — notice — refund — dispensing fee rules. (1) *(a)* ~~A~~ *Except as provided in subsection (1)(b), a* purchaser of a hearing aid or related device may, for any reason, cancel the sale within 30 days of the date of delivery *at a permanent place of business* ~~of the hearing aid or related device by providing written notice to the establishment that employed the licensed hearing aid dispenser at the time the hearing aid was purchased indicating the purchaser's intention not to be bound by the sale contract~~.

(b) (i) If a licensed hearing aid dispenser has provided a hearing test or a fitting consultation to a purchaser at a place of practice other than the dispenser's permanent place of business prior to or at the time the purchaser takes delivery of a hearing aid or related device, the purchaser may, for any reason, cancel the sale within 30 days from the date of the first postdelivery followup consultation conducted in person at the place of practice.

(ii) A purchaser subject to the provisions of subsection (1)(b)(i) may waive the extended trial period if, at the date of delivery, the purchaser was offered and declined in writing the followup consultation, in which case the 30-day period in subsection (1)(a) applies.

(c) The trial period in subsection (1)(a) or (1)(b) applies notwithstanding the provisions of Title 30, chapter 14, part 5.

(2) (a) A purchaser canceling a sale under subsection (1) shall provide written notice indicating the purchaser's intention not to be bound by the sales contract. The notice must be sent to the address of the licensed hearing aid dispenser's permanent place of business at the time the hearing aid was purchased.

(b) The purchaser shall return or hold for the licensed hearing aid dispenser's disposal the hearing aid or related device in substantially the same condition as it was received by the purchaser.

~~(2)~~*(3) (a)* For the purpose of determining whether cancellation has occurred within ~~30 days of the date of delivery~~ *the time specified in subsection (1)*, written notice:

~~(a)~~*(i)* given by mail is considered given on the date mailed; and

~~(b)~~*(ii)* delivered in person is considered given when delivered to the hearing aid dispenser's permanent place of business *or place of practice*.

(b) If the purchaser and the licensed hearing aid dispenser dispute the timing of a cancellation under the terms of subsection (1)(b), the dispenser shall provide documentation to the board that the dispenser provided written notice of the purchaser's entitlement to a postdelivery followup consultation at the place of practice and that the consultation either occurred or was waived by the purchaser in writing.

~~(3)~~*(4)* A licensed hearing aid dispenser shall refund to the purchaser the amount paid for a hearing aid or related device minus any authorized dispensing fee within 10 days of receipt of written notice of cancellation.

(5) If the board decides to authorize a dispensing fee, the form and manner of calculating a dispensing fee must be established by the board by rule. Dispensing fee rules adopted by the board may include but are not limited to consideration of business overhead and costs associated with initial hearing evaluations, consultations, fittings, and followup visits.

~~(4)~~*(6)* A licensed hearing aid dispenser may not sell a hearing aid in this state unless the ~~seller~~ *dispenser* provides the ~~buyer~~ *purchaser* with written notice of the ~~30-day~~ trial period*, as provided in subsection (1),* and *a* money-back guarantee.

~~(5)~~*(7)* If the hearing aid must be repaired, remade, or adjusted during the ~~30-day~~ trial period, the running of the ~~30-day~~ *trial* period must be suspended for each day that the hearing aid is not in the purchaser's possession. The provisions of this subsection may not be waived."

Approved March 20, 2009

CHAPTER NO. 35

[SB 72]

AN ACT REVISING LAWS RELATED TO PUBLIC SERVICE COMMISSION PERSONNEL; AMENDING SECTIONS 69-1-111, 69-1-112, AND 69-3-327, MCA; AND REPEALING SECTIONS 69-1-108 AND 69-1-109, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Commission recordkeeping and employment of personnel. (1) The commission shall keep a full and complete record of all its proceedings and preserve at the office of the commission all books, maps, documents, and papers entrusted to its care.

(2) The commission may appoint secretaries, stenographers, inspectors, experts, and other persons whenever determined necessary by the commission to perform its duties.

Section 2. Section 69-1-111, MCA, is amended to read:

"69-1-111. Reimbursement for expenses. The commission~~, secretary, and such clerks, experts, and persons as may be employed~~ *and its staff* ~~shall be~~ *are* entitled to ~~receive from the state their expenses while traveling on the business of the commission~~ *reimbursement for travel expenses*, as provided for in 2-18-501 through 2-18-503. ~~Such expenditure shall~~ *Expenditures must* be sworn to by the person who incurred the expenses and be approved by the ~~chairman~~ *presiding officer* of the commission or ~~his~~ *the presiding officer's* designee."

Section 3. Section 69-1-112, MCA, is amended to read:

"69-1-112. Prohibition on acceptance of favors from railroads. (1) ~~A public service commissioner or the secretary~~ *Public service commissioners or their staff* may not, directly or indirectly, solicit or request from or recommend to any railroad corporation or any officer, attorney, or agent ~~thereof~~ the appointment of any person to any place or position~~; nor shall~~*, and* any railroad corporation or its attorney or agent *may not* offer any place, appointment, or position or other consideration to ~~such~~ commissioners or ~~to any clerks or employees of the commission;~~ *their staff.* ~~neither shall the commissioners or~~ *Commissioners and* their ~~secretary, clerks, agents, employees, or experts~~ *staff may not* accept, receive, or request any pass from any railroad in this state, for themselves or for any other person, except as ~~herein~~ otherwise provided *in 69-1-111*, or any present, gift, or gratuity of any kind from any railroad corporation.

(2) ~~The~~ *A* request or acceptance ~~by them~~, except as ~~herein~~ specified *in 69-1-111*, of any ~~such~~ place or position, pass, present, gift, or other gratuity ~~shall work a~~ *referred to in subsection (1) results in* forfeiture of the office of the commissioner~~, secretary, clerk, agent, employee, or expert~~ *or the staff* requesting or accepting the same. ~~Any~~ *A* person violating any of the provisions of this section is guilty of a misdemeanor."

Section 4. Section 69-3-327, MCA, is amended to read:

"69-3-327. Subpoena of witnesses. If any party ordered to appear before the commission as a witness ~~shall fail~~ *fails* to obey ~~such~~ *the* order, the commission or ~~any member or the secretary thereof~~ *its staff* may apply to the clerk of the nearest district court for a subpoena commanding the attendance of ~~said~~ *the* witness before the commission. It ~~shall be~~ *is* the duty of ~~such~~ *the* clerk to issue ~~such~~ *the* subpoena and of any peace officer to serve the ~~same~~ *subpoena.* Disobedience to ~~such~~ *the* subpoena ~~shall be deemed a~~ *is considered* contempt of court and ~~punished~~ *is punishable* accordingly."

Section 5. Repealer. Sections 69-1-108 and 69-1-109, MCA, are repealed.

Section 6. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 69, chapter 1, part 1, and the provisions of Title 69, chapter 1, part 1, apply to [section 1].

Approved March 20, 2009

CHAPTER NO. 36

[SB 78]

AN ACT CLARIFYING THE MILL LEVY LIMIT FOR SOIL CONSERVATION DISTRICTS; AMENDING SECTION 76-15-515, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 76-15-515, MCA, is amended to read:

"76-15-515. ~~Maximum regular~~ *Regular* assessment. ~~Except as provided in 76-15-531 and 76-15-532, the~~ *The* regular assessment in any ~~one~~ *1* year ~~may not exceed 1 1/2 mills on the dollar of total taxable valuation of real property within the district~~ *is subject to 15-10-420*. The valuation must be determined according to the last assessment roll."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 20, 2009

CHAPTER NO. 37

[SB 91]

AN ACT REVISING THE YOUTH COURT ACT BY REQUIRING A YOUTH TO BE REPRESENTED BY AN ATTORNEY AT A DETENTION HEARING UNLESS THE RIGHT TO AN ATTORNEY IS WAIVED AFTER CONSULTING WITH AN ATTORNEY; AND AMENDING SECTIONS 41-5-331 AND 41-5-333, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 41-5-331, MCA, is amended to read:

"41-5-331. Rights of youth taken into custody — questioning — waiver of rights. (1) When a youth is taken into custody for questioning upon a matter that could result in a petition alleging that the youth is either a delinquent youth or a youth in need of intervention, the following requirements must be met:

(a) The youth must be advised of the youth's right against self-incrimination and the youth's right to counsel.

(b) The investigating officer, probation officer, or person assigned to give notice shall immediately notify the parents, guardian, or legal custodian of the youth that the youth has been taken into custody, the reasons for taking the youth into custody, and where the youth is being held. If the parents, guardian, or legal custodian cannot be found through diligent efforts, a close relative or friend chosen by the youth must be notified.

(2) A youth may waive the rights listed in subsection (1) under the following situations:

(a) when the youth is 16 years of age or older, the youth may make an effective waiver*, subject to the provisions of 41-5-333(2)*;

(b) when the youth is under 16 years of age and the youth and the youth's parent or guardian agree, they may make an effective waiver*, subject to the provisions of 41-5-333(2)*; or

(c) when the youth is under 16 years of age and the youth and the youth's parent or guardian do not agree, the youth may make an effective waiver only with advice of counsel."

Section 2. Section 41-5-333, MCA, is amended to read:

"41-5-333. Custody — hearing for probable cause — procedure. (1) At a probable cause hearing held pursuant to 41-5-332, the youth must be informed of the youth's constitutional rights and the youth's rights under this chapter.

(2) A youth must be represented by counsel at a probable cause hearing unless the right to counsel is waived after consultation with an attorney prior to the hearing.

~~(2)~~*(3)* A parent, guardian, or custodian of the youth may be held in contempt of court for failing to be present at or to participate in the probable cause hearing unless the parent, guardian, or custodian:

(a) cannot be located through diligent efforts of the investigating peace officer or peace officers; or

(b) is excused by the court for good cause.

~~(3)~~*(4)* At the probable cause hearing, a guardian ad litem may be appointed as provided in 41-5-1411."

Approved March 20, 2009

CHAPTER NO. 38

[SB 98]

AN ACT ADDING CERTAIN FOREST OR GRASSLAND HAZARDOUS FUELS REDUCTION PROJECTS AS AN ALLOWED PURPOSE FOR IMPOSING A PROPERTY TAX LEVY; AMENDING SECTION 7-6-2527, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-6-2527, MCA, is amended to read:

"7-6-2527. Taxation — public and governmental purposes. A county may impose a property tax levy for any public or governmental purpose not specifically prohibited by law. Public and governmental purposes include but are not limited to:

(1) district court purposes as provided in 7-6-2511;

(2) county-owned or county-operated health care facility purposes as provided in 7-6-2512;

(3) county law enforcement services and maintenance of county detention center purposes as provided in 7-6-2513 and search and rescue units as provided in 7-32-235;

(4) multijurisdictional service purposes as provided in 7-11-1106;

(5) transportation services for senior citizens and persons with disabilities as provided in 7-14-111;

(6) support for a port authority as provided in 7-14-1132;

(7) county road, bridge, and ferry purposes as provided in 7-14-2101, 7-14-2501, 7-14-2502, 7-14-2503, 7-14-2801, and 7-14-2807;

(8) recreational, educational, and other activities of the elderly as provided in 7-16-101;

(9) purposes of county fair activities, parks, cultural facilities, and any county-owned civic center, youth center, recreation center, or recreational complex as provided in 7-16-2102, 7-16-2109, and 7-21-3410;

(10) programs for the operation of licensed day-care centers and homes as provided in 7-16-2108 and 7-16-4114;

(11) support for a museum, facility for the arts and the humanities, collection of exhibits, or a museum district as provided in 7-16-2205;

(12) extension work in agriculture and home economics as provided in 7-21-3203;

(13) weed control and management purposes as provided in 7-22-2142;

(14) insect control programs as provided in 7-22-2306;

(15) fire control as provided in 7-33-2209;

(16) ambulance service as provided in 7-34-102;

(17) public health purposes as provided in 50-2-111 and 50-2-114;

(18) public assistance purposes as provided in 53-3-115;

(19) indigent assistance purposes as provided in 53-3-116;

(20) developmental disabilities facilities as provided in 53-20-208;

(21) mental health services as provided in 53-21-1010;

(22) airport purposes as provided in 67-10-402 and 67-11-302;

(23) purebred livestock shows and sales as provided in 81-8-504;

(24) economic development purposes as provided in 90-5-112; ~~and~~

(25) prevention programs, including programs that reduce substance abuse*; and*

(26) forest or grassland hazardous fuels reduction projects in areas near homes and communities where wildland fire is a threat."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 20, 2009

CHAPTER NO. 39

[SB 103]

AN ACT REQUIRING ALL PERSONS WHO ARE CONVICTED OF A SEXUAL OFFENSE AND WHO RECEIVE A SUSPENDED SENTENCE TO COMPLY WITH CERTAIN TERMS AND CONDITIONS DURING THE SUSPENDED PORTION OF THE SENTENCE; AMENDING SECTION 46-18-207, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-18-207, MCA, is amended to read:

"46-18-207. Sexual offender treatment. (1) Upon sentencing a person convicted of a sexual offense, as defined in 46-23-502, the court shall designate the offender as a level 1, 2, or 3 offender pursuant to 46-23-509.

(2) (a) Except as provided in subsection (2)(b), the court shall order an offender convicted of a sexual offense, as defined in 46-23-502, except an offense under 45-5-301 through 45-5-303, and sentenced to imprisonment in a state prison to:

(i) enroll in and successfully complete the educational phase of the prison's sexual offender treatment program;

(ii) if the person has been or will be designated as a level 3 offender pursuant to 46-23-509, enroll in and successfully complete the cognitive and behavioral phase of the prison's sexual offender treatment program; and

(iii) if the person is sentenced pursuant to 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(c), or 45-5-625(4) and is released on parole, remain in an outpatient sex offender treatment program for the remainder of the person's life.

(b) A person who has been sentenced to life imprisonment without possibility of release may not participate in treatment provided pursuant to this section.

(3) A person who has been ordered to enroll in and successfully complete a phase of a state prison's sexual offender treatment program is not eligible for parole unless that phase of the program has been successfully completed as certified by a sexual offender evaluator to the board of pardons and parole.

(4) (a) Except for an offender sentenced pursuant to 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(c), or 45-5-625(4), during an offender's term of commitment to the department of corrections or a state prison, the department may place the person in a residential sexual offender treatment program approved by the department under 53-1-203.

(b) If the person successfully completes a residential sexual offender treatment program approved by the department of corrections, the remainder of the term must be served on probation unless the department petitions the sentencing court to amend the original sentencing judgment.

(5) If ~~a person's sentence is suspended pursuant to subsection (4)(b),~~ *following a conviction for a sexual offense as defined in 46-23-502, any portion of a person's sentence is suspended*, during the suspended portion of the sentence the person:

(a) shall abide by the standard conditions of probation established by the department of corrections;

(b) shall pay the costs of imprisonment, probation, and any sexual offender treatment if the person is financially able to pay those costs;

(c) may have no contact with the victim or the victim's immediate family unless approved by the victim or the victim's parent or guardian, the person's therapists, and the person's probation officer;

(d) shall comply with all requirements and conditions of sexual offender treatment as directed by the person's sex offender therapist;

(e) may not enter an establishment where alcoholic beverages are sold for consumption on the premises or where gambling takes place;

(f) may not consume alcoholic beverages;

(g) shall enter and remain in an aftercare program as directed by the person's probation officer;

(h) shall submit to random or routine drug and alcohol testing;

(i) may not possess pornographic material or access pornography through the internet; and

(j) at the discretion of the probation and parole officer, may be subject to electronic monitoring or continuous satellite monitoring.

(6) The sentencing of a sexual offender is subject to 46-18-202(2) and 46-18-219.

(7) The sentencing court may, upon petition by the department of corrections, modify a sentence of a sexual offender to impose any part of a sentence that was previously suspended."

Section 2. Effective date. [This act] is effective on passage and approval.

Section 3. Applicability. [This act] applies to persons charged with a sexual offense, as defined in 46-23-502, on or after [the effective date of this act].

Approved March 20, 2009

CHAPTER NO. 40

[SB 140]

AN ACT REPEALING THE TERMINATION DATE OF THE DOMESTIC VIOLENCE FATALITY REVIEW COMMISSION; REPEALING SECTION 4, CHAPTER 81, LAWS OF 2003, CHAPTER 23, LAWS OF 2005, AND CHAPTER 185, LAWS OF 2007; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Repealer. Section 4, Chapter 81, Laws of 2003, Chapter 23, Laws of 2005, and Chapter 185, Laws of 2007, are repealed.

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 20, 2009

CHAPTER NO. 41

[SB 152]

AN ACT GENERALLY REVISING MOTOR VEHICLE REGISTRATION PROCEDURES AND PROVISIONS GOVERNING ELECTRONIC INDIVIDUAL DRIVING RECORDS; REVISING FILING OF SECURITY INTERESTS OR LIENS ON VEHICLES; REVISING DISPOSITION OF REVENUE COLLECTED FOR INSPECTION OF SALVAGE VEHICLES; ALLOWING THE DEPARTMENT OF JUSTICE TO ADOPT RULES GOVERNING ISSUANCE OF TEMPORARY REGISTRATION PERMITS; PROVIDING THAT REVENUE FROM CERTAIN VOLUNTARY DONATIONS MADE DURING MOTOR VEHICLE REGISTRATION BE FORWARDED BY THE COUNTY TREASURER TO THE DEPARTMENT OF JUSTICE; REVISING PROVISIONS GOVERNING REVOCATION OF GENERIC SPECIALTY LICENSE PLATE SPONSORSHIP; PROVIDING FOR TREATMENT OF DISHONORED INSTRUMENTS FOR PURPOSES OF COLLECTION AND REMITTANCE OF MOTOR VEHICLE FEES TO THE DEPARTMENT OF JUSTICE; REVISING CERTIFICATION AUTHORITY FOR ELECTRONIC INDIVIDUAL DRIVING RECORDS; AMENDING SECTIONS 61-3-103, 61-3-223, 61-3-224, 61-3-303, 61-3-474, 61-3-509,

61-5-208, AND 61-11-102, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-3-103, MCA, is amended to read:

"61-3-103. Filing of security interests — perfection — rights — procedure — fees. (1) (a) Except as provided in subsection (2), the department, its authorized agent, or a county treasurer shall, upon payment of the fee required by subsection (8), enter a voluntary security interest or lien against the electronic record of title for a motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile upon receipt of a written acknowledgment *of a voluntary security interest or lien* by *the owner of* a motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile ~~owner of a voluntary security interest or lien~~ on a form ~~required~~ *prescribed* by the department. ~~The entry may be made if:~~

~~(i) the person is applying for a certificate of title and the manufacturer's certificate of origin or a certificate of title is being surrendered; or~~

~~(ii) a transfer of ownership is not sought.~~

(b) After the voluntary security interest or lien has been entered on the electronic record of title for the motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile, the department, its authorized agent, or a county treasurer shall issue a transaction summary receipt to the owner and, if requested, to the secured party or lienholder, showing the date that the security interest or lien was perfected.

(c) A voluntary security interest or lien is perfected on the date that the department, its authorized agent, or a county treasurer receives the written acknowledgment of the voluntary security interest or lien from the owner of the motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile.

(d) ~~Unless~~ *Except as provided in subsection (3), when* a person applying for a certificate of title requests issuance of a certificate of title under 61-3-201, the department ~~may not~~ *shall* record ~~a~~ *the* voluntary security interest or lien on the face of a certificate of title.

(2) A security interest in a motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile held as inventory by a dealer licensed under Title 23, chapter 2, part 5, 6, or 8, or chapter 4 of this title must be perfected in accordance with Title 30, chapter 9A.

(3) Whenever a security interest or lien is filed against the electronic record of title for a motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile that is subject to two security interests previously perfected under this section and the applicant has requested issuance of a certificate of title under 61-3-201, the department shall endorse on the face of the certificate of title, "NOTICE. This vehicle is subject to additional security interests on file with the Department of Justice." Other information regarding the additional security interests is not required to be endorsed on the certificate.

(4) Upon default under a chattel mortgage or conditional sales contract covering a motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile, the mortgagee or vendor has the same remedies as in the case of other personal property. In case of attachment of motor vehicles, trailers, semitrailers, pole trailers, campers, motorboats,

personal watercraft, sailboats, or snowmobiles, all the provisions of 27-18-413, 27-18-414, and 27-18-804 are applicable except that deposits must be made with the department.

(5) A secured party or lienholder who has a perfected security interest in a motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile and who fails to file a satisfaction of the security interest or lien within 21 days after receiving final payment is required to pay the department $25 for each day that the secured party or lienholder fails to file the satisfaction.

(6) Within 24 hours after receiving notice of any involuntary liens or attachments against the record of any motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile registered in this state, the department shall mail to the owner or any secured party or lienholder of record a notice showing the name and address of the lien claimant, the amount of the lien, the date of execution of the lien, and, in the case of attachment, the full title of the court and the action and the names of the attorneys for the plaintiff and attaching creditor.

(7) (a) This section does not prevent a secured party or lienholder from assigning the secured party's or lienholder's interest in a motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile, for which a certificate of title is issued under this chapter, to any other person without the consent of and without affecting the interest of the holder of the certificate of title.

(b) If a secured party assigns all or part of the party's interest in a motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile for which a certificate of title is issued under this chapter, the secured party assigning the interest shall file a copy of the assignment with the department and the department shall record the assignment in the department's records.

(8) (a) A fee must be paid to the department to file any security interest or other lien against a motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile. The fee covers the cost of entering and, upon the subsequent satisfaction or release, of removing the security interest or lien from the electronic record of title.

(b) Beginning January 1, 2002, and ending June 30, 2016, the fee is $8. Of the $8 fee, $4 must be deposited in the state general fund in accordance with 15-1-504. The remaining $4 must be forwarded to the state for deposit in the motor vehicle information technology system account provided for in 61-3-550.

(c) Beginning July 1, 2016, the fee is $4 and must be deposited in the state general fund.

(9) (a) Until June 30, 2018, a fee of $10 must be paid to the department by a vehicle owner if, following satisfaction or release of a security interest and its removal from the department's records, the motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile owner requests issuance of a new certificate of title without the security interest or lien shown on the face of the title. Beginning July 1, 2018, the fee for a new certificate of title under this subsection is $5.

(b) Until June 30, 2018, the $10 fee must be deposited in the motor vehicle information technology system account provided for in 61-3-550.

(c) Beginning July 1, 2018, the $5 fee must be deposited in the state general fund."

Section 2. Section 61-3-223, MCA, is amended to read:

"61-3-223. Salvage vehicles. (1) A salvage vehicle for which a certificate of title is sought must be inspected for the vehicle identification number to authenticate the identity of the motor vehicle before an electronic record of title can be created or a certificate of title can be issued. The inspection does not attest to the roadworthiness or safety condition of the motor vehicle and must be performed by an authorized employee or an authorized agent of the department or by a peace officer designated by the department.

(2) The department may contract with a person or entity for use of a facility as a regional inspection site for salvage vehicles.

(3) The department shall collect an inspection fee of $18.50 from the person requesting the inspection for each salvage vehicle inspected. The ~~fees~~ *fee* collected under this section must be ~~distributed as follows:~~

~~(a) $5 must be~~ deposited in the state general fund~~; and~~

~~(b) $13.50 must be deposited in an account in the state special revenue fund to be appropriated only for the inspection of salvage vehicles~~.

(4) (a) A person authorized to inspect salvage vehicles may seize and hold a vehicle:

(i) if the person has probable cause to believe that the motor vehicle has been stolen;

(ii) on which a motor number or vehicle identification number has been defaced, altered, removed, covered, destroyed, or obliterated; or

(iii) that has a vehicle identification number that does not conform with the vehicle identification number on the certificate of title.

(b) A seized motor vehicle must be held until the identity of the motor vehicle is established and arrangements are made for its lawful disposition. A person authorized to inspect salvage vehicles may use any means necessary to identify a motor vehicle by its vehicle identification number or numbers.

(5) The department may not create an electronic record of title or issue a certificate of title for a salvage vehicle until the identity of the motor vehicle is established.

(6) The department may adopt rules for the inspection of salvage vehicles."

Section 3. Section 61-3-224, MCA, is amended to read:

"61-3-224. Temporary registration permit — *authority to adopt rules* — issuance — placement — fees. (1) ~~(a) The department, an authorized agent, or a county treasurer may issue a temporary registration permit to:~~

~~(i)~~ *The department may adopt rules governing the issuance of temporary registration permits. The rules must specify the purposes for which a temporary registration permit may be issued, including but not limited to issuance to:*

(a) a Montana resident who acquires a new or used motor vehicle, trailer, semitrailer, pole trailer, motorboat, sailboat that is 12 feet in length or longer, snowmobile, or off-highway vehicle for operation of the vehicle or vessel prior to titling and registration of the vehicle or vessel under this chapter;

~~(ii)~~*(b)* the owner of a salvage vehicle ~~for moving~~ *or a vehicle requiring a state-assigned vehicle identification number in order to move* the vehicle to and

from a designated inspection site prior to applying for a new certificate of title under *61-3-107 or* 61-3-212;

~~(iii)~~*(c)* the owner of a motor vehicle, trailer, semitrailer, or pole trailer registered in this state for operation of the vehicle while awaiting production and receipt of special or duplicate license plates ordered for the vehicle under this chapter;

~~(iv)~~*(d)* a nonresident of this state who acquires a motor vehicle, trailer, semitrailer, or pole trailer in this state for operation of the vehicle prior to its titling and registration under the laws of the nonresident's jurisdiction of residence;

~~(v)~~*(e)* a dealer licensed in another state who brings a motor vehicle or trailer designed and used to apply fertilizer to agricultural lands into the state for special demonstration in this state; ~~or~~

~~(vi)~~*(f)* a financial institution located in Montana for a prospective purchaser to demonstrate a motor vehicle that the financial institution has obtained following repossession*; or*

(g) an insurer or its agent to move a motor vehicle or trailer to auction following acquisition of the vehicle by the insurer as a result of the settlement of an insurance claim.

(2) (a) The department, an authorized agent, or a county treasurer may issue a temporary registration permit for any purpose authorized under the rules adopted by the department.

(b) An authorized agent or a county treasurer may issue a temporary registration permit without use of the department-approved electronic interface only if authorized by the department.

~~(2)~~*(3)* A person, using a department-approved electronic interface, may issue a temporary registration permit for ~~the specified purposes if the person is:~~

~~(a) a Montana resident who acquires a new or used motor vehicle, trailer, semitrailer, pole trailer, motorboat, sailboat that is 12 feet in length or longer, snowmobile, or off-highway vehicle for operation of the vehicle or vessel prior to titling and registration of the vehicle or vessel under this chapter;~~

~~(b) the owner of a salvage vehicle for moving the vehicle to and from a designated inspection site prior to applying for a new certificate of title under 61-3-212;~~

~~(c) a nonresident of this state who acquires a motor vehicle, trailer, semitrailer, or pole trailer in this state for operation of the vehicle prior to its titling and registration under the laws of the nonresident's jurisdiction of residence; or~~

~~(d) a financial institution located in Montana that intends to allow a prospective purchaser to demonstrate a motor vehicle that the financial institution has obtained following repossession.~~ *any purpose authorized under the rules adopted by the department.*

~~(3)~~*(4)* A temporary registration permit issued under this section must contain the following information:

(a) a temporary plate number~~, registration receipt number, or transaction record number,~~ as prescribed by the department;

(b) the expiration date of the temporary registration permit; and

(c) if required by the department, a description of the motor vehicle, trailer, semitrailer, pole trailer, motorboat, personal watercraft, sailboat, or snowmobile, including year, make, model, and vehicle identification number, the name of the person from whom ownership of the motor vehicle, trailer, semitrailer, pole trailer, motorboat, personal watercraft, sailboat, or snowmobile was transferred, the name, mailing address, and residence address of the person to whom ownership of the motor vehicle, trailer, semitrailer, pole trailer, motorboat, personal watercraft, sailboat, or snowmobile has been transferred, and the date of issuance.

~~(4)~~*(5)* A temporary registration permit for:

(a) a motor vehicle, trailer, semitrailer, or pole trailer must be plainly visible and firmly attached to the rear exterior of the vehicle where a license plate is required to be displayed; and

(b) a motorboat, a sailboat that is 12 feet in length or longer, a snowmobile, or an off-highway vehicle must be plainly visible and firmly attached to the vehicle or vessel.

~~(5)~~*(6)* (a) Except as provided in 61-3-431 and subsection ~~(5)(b)~~ *(6)(b)* of this section, a $3 fee is imposed upon issuance of a temporary registration permit by the department, an authorized agent, or a county treasurer. The fee must be paid by the owner of the vehicle or vessel and collected by the department, the authorized agent, or a county treasurer when the vehicle is registered.

(b) Except as provided in 61-3-431, a fee of $8 is imposed and must be paid upon issuance of a temporary registration permit by:

(i) the department, an authorized agent, or a county treasurer to a nonresident of this state who acquires a vehicle or vessel in this state; or

(ii) a person who issued a temporary registration permit using a department-approved electronic interface.

~~(6)~~*(7)* The fees imposed under this section, upon collection, must be forwarded to the state and deposited in the motor vehicle electronic commerce operating account provided for in 61-3-118.

~~(7)~~*(8)* If a temporary registration permit is issued under this section to a person to whom ownership of a vehicle or vessel has been transferred, the permitholder shall title and register the vehicle or vessel in this or another jurisdiction before the ownership of the vehicle or vessel may be transferred to another person."

Section 4. Section 61-3-303, MCA, is amended to read:

"61-3-303. Original registration — process — fees. (1) Except as provided in 61-3-324, a Montana resident who owns a motor vehicle, trailer, semitrailer, or pole trailer operated or driven upon the public highways of this state shall register the motor vehicle, trailer, semitrailer, or pole trailer in the office of the county treasurer in the county where the owner is domiciled.

(2) Except as provided in subsection (3), the county treasurer shall register any vehicle for which:

(a) as of the date that the motor vehicle, trailer, semitrailer, or pole trailer is to be registered, the owner delivers an application for a certificate of title to the department, its authorized agent, or a county treasurer; or

(b) the county treasurer confirms that the department has an electronic record of title for the motor vehicle, trailer, semitrailer, or pole trailer as provided under 61-3-101.

(3) (a) A county treasurer may register a motor vehicle, trailer, semitrailer, or pole trailer for which a certificate of title and registration were issued in another jurisdiction and for which registration is required under 61-3-701 after the county treasurer examines the current out-of-jurisdiction registration certificate or receipt and receives payment of the fees required in 61-3-701. The county treasurer may ask the motor vehicle, trailer, semitrailer, or pole trailer owner to provide additional information, prescribed by the department, to ensure that the electronic record of registration maintained by the department is complete.

(b) A county treasurer may register a motor vehicle, trailer, semitrailer, or pole trailer for which the new owner cannot, due to circumstances beyond the new owner's control, surrender a previously assigned certificate of title. The new owner may submit an application for certificate of title, subject to the registration renewal limitations of 61-3-312.

(4) Upon registering a motor vehicle, trailer, semitrailer, or pole trailer for the first time in this state, the county treasurer shall:

(a) update the electronic record of title, if any, maintained for the vehicle by the department under 61-3-101;

(b) assign a registration period for the vehicle under 61-3-311;

(c) determine the vehicle's age, if required, under 61-3-501;

(d) determine the amount of fees, including local option taxes or fees, to be paid under subsection (5); and

(e) assign and issue license plates for the vehicle under 61-3-331.

(5) Unless otherwise provided by law, a person registering a motor vehicle shall pay to the county treasurer:

(a) the fees in lieu of tax or registration fees as required for:

(i) a light vehicle under 61-3-321 or 61-3-562, in addition to, if applicable, any local option tax or fee under 61-3-537 or 61-3-570;

(ii) a motor home under 61-3-321;

(iii) a travel trailer under 61-3-321;

(iv) a motorcycle or quadricycle under 61-3-321;

(v) a bus, a truck having a manufacturer's rated capacity of more than 1 ton, or a truck tractor under 61-3-321 and 61-3-529; or

(vi) a trailer under 61-3-321;

(b) a donation of $1 or more if the person indicates that the person wishes to donate to promote awareness and education efforts for procurement of organ and tissue donations in Montana to favorably impact anatomical gifts; and

(c) a donation of $1 or more if the person indicates that the person wishes to donate to promote education on, support for, and awareness of traumatic brain injury.

(6) The county treasurer may not issue a registration receipt or license plates for the motor vehicle, trailer, semitrailer, or pole trailer to the owner unless the owner makes the payments required by subsection (5).

(7) The department may make full and complete investigation of the registration status of the motor vehicle, trailer, semitrailer, or pole trailer. A person seeking to register a motor vehicle, trailer, semitrailer, or pole trailer

under this section shall provide additional information to support the registration to the department if requested.

(8) Revenue that accrues from the voluntary donation provided in subsection (5)(b) must be forwarded by the respective county treasurer to the department ~~of revenue~~ for deposit in the state special revenue fund to the credit of an account established by the department of public health and human services to support activities related to awareness and education efforts for procurement of organ and tissue donations for anatomical gifts.

(9) (a) Except as provided in subsection (9)(b), the fees in lieu of tax, taxes, and fees imposed on or collected from the registration of a travel trailer, motorcycle, or quadricycle or a trailer, semitrailer, or pole trailer that has a declared weight of less than 26,000 pounds are required to be paid only once during the time that the travel trailer, motorcycle, quadricycle, trailer, semitrailer, or pole trailer is owned by the same person who registered the travel trailer, motorcycle, quadricycle, trailer, semitrailer, or pole trailer. Once registered, a travel trailer, motorcycle, quadricycle, trailer, semitrailer, or pole trailer is registered permanently unless ownership is transferred.

(b) Whenever ownership of a travel trailer, motorcycle, quadricycle, trailer, semitrailer, or pole trailer is transferred, the new owner is required to register the travel trailer, motorcycle, quadricycle, trailer, semitrailer, or pole trailer as if it were being registered for the first time, including paying all of the required fees in lieu of tax, taxes, and fees.

(10) Revenue that accrues from the voluntary donation provided in subsection (5)(c) must be forwarded by the respective county treasurer to the department ~~of revenue~~ for deposit in the state special revenue fund to the credit of the account established in 2-15-2218 to support activities related to education regarding prevention of traumatic brain injury."

Section 5. Section 61-3-474, MCA, is amended to read:

"61-3-474. Responsibility for design of generic specialty license plates — numbering — rulemaking — approval — registration decal — listing of plate sponsors. (1) The department shall:

(a) design the background and general format of generic specialty license plates;

(b) in consultation with the department of corrections, determine which license plate processing system is the most efficient and versatile manufacturing method for the production of generic specialty license plates;

(c) use a numbering system for generic specialty license plates that is distinctive from the numbering system required under 61-3-332 or used for collegiate license plates;

(d) adopt rules that prescribe:

(i) the minimum and maximum number of characters that a generic specialty license plate may display;

(ii) the general placement of the sponsor's name, identifying phrase, and graphic; and

(iii) any specifications or limitations on the use or choice of color or detail in the sponsor's graphic design.

(2) All sponsor names, identifying phrases, and graphics intended for use on generic specialty license plates must be approved by the department prior to the manufacture of the plates.

(3) Upon the issuance of generic specialty license plates, a registration decal must be affixed to the license plates as provided in 61-3-332.

(4) The department shall maintain a list of the sponsors that have been approved to promote the sale and issuance of generic specialty license plates, the initial distribution date for sale of each sponsored generic specialty license plate, and the donation fee established by the sponsor for each sponsored generic specialty license plate. The department shall, upon request, make copies of this list available to interested members of the public.

(5) The department may, in its discretion, revoke its previous approval of a sponsor's generic specialty license plate sponsorship if:

(a) the sponsor fails to comply with the provisions of 61-3-472 through 61-3-481;

(b) fewer than 400 sets of a sponsor's generic specialty license plate have been sold or renewed in the 12-month period immediately preceding the third anniversary of the date of initial distribution of the sponsored generic specialty license plate; or

(c) the department has reliable information that the sponsor is no longer qualified for sponsorship under 61-3-472 through 61-3-481.

(6) (a) Upon revocation of a sponsor's generic specialty license plate sponsorship status, the issuance and sale of the sponsor's generic specialty license plates must be terminated ~~and a donation fee may not be charged or collected upon registration renewal of a motor vehicle displaying previously issued generic specialty license plates affiliated with that sponsor~~.

(b) A person who owns a motor vehicle displaying valid generic specialty license plates affiliated with a sponsor whose sponsorship status has been revoked may continue to display those generic specialty license plates on the person's motor vehicle ~~if the motor vehicle's registration is properly renewed in subsequent years and the plates remain legible~~ *until the motor vehicle's registration is renewed*.

(c) Following revocation of a sponsor's sponsorship status, the department may not issue replacements or duplicates of generic specialty license plates affiliated with that sponsor ~~if the license plates are destroyed or mutilated~~."

Section 6. Section 61-3-509, MCA, is amended to read:

"61-3-509. Disposition of fees — *responsibility for dishonored payments.* *(1)* All registration fees imposed by 61-3-321 on light vehicles, motor homes, motorcycles, quadricycles, buses, motor vehicles having a manufacturer's rated capacity of more than 1 ton, and truck tractors for which a license is sought and an original application for title that includes a manufacturer's statement of origin is made must be remitted to the state as provided in 15-1-504 every 30 days. The payments must be deposited in the state general fund.

(2) (a) The department, its authorized agent, or a county treasurer is responsible for pursuing remedies available under 27-1-717 or otherwise provided by law when a check, draft, converted check, electronic funds transfer, or order for the payment of money is dishonored:

(i) for lack of funds or credit;

(ii) because the issuer does not have an account with the entity from which the funds are to be drawn; or

(iii) because the issuer stops payment with the intent to defraud the payee of the check or the payee named on the issued check, draft, converted check, electronic funds transfer, or order for the payment of money.

(b) Once fees have been remitted to the state under this section, adjustments may be made only for dishonored instruments if less than 1 year has elapsed from the date of remittance."

Section 7. Section 61-5-208, MCA, is amended to read:

"61-5-208. Period of suspension or revocation — limitation on issuance of probationary license — notation on driver's license. (1) The department may not suspend or revoke a driver's license or privilege to drive a motor vehicle on the public highways, except as permitted by law.

(2) (a) Except as provided in 61-2-302, a person whose license or privilege to drive a motor vehicle on the public highways has been suspended or revoked may not have the license, endorsement, or privilege renewed or restored until the revocation or suspension period has been completed.

(b) When a person is convicted or forfeits bail or collateral not vacated for a first offense of operating or being in actual physical control of a motor vehicle while under the influence of alcohol or any drug or a combination of alcohol or drugs or for a first offense of operation of a motor vehicle by a person with alcohol concentration of 0.08 or more, the department shall, upon receiving a report of conviction or forfeiture of bail or collateral not vacated, suspend the driver's license or driving privilege of the person for a period of 6 months. Upon receiving a report of a conviction or forfeiture of bail or collateral for a second, third, or subsequent offense within 5 years of the first offense, the department shall suspend the license or driving privilege of the person for a period of 1 year and may not issue a probationary license during the period of suspension. If the 1-year suspension period passes and the person has not completed a chemical dependency education course, treatment, or both, as ~~ordered by the sentencing court~~ *required under 61-8-732*, the license suspension remains in effect until the course, treatment, or both, are completed.

(c) For the purposes of subsection (2)(b), a person is considered to have committed a second, third, or subsequent offense if fewer than 5 years have passed between the date of an offense that resulted in a prior conviction and the date of the offense that resulted in the most recent conviction.

(3) (a) Except as provided in subsection (3)(b), the period of suspension or revocation for a person convicted of any offense that makes mandatory the suspension or revocation of the person's driver's license commences from the date ~~of conviction or forfeiture of bail~~ *of conviction or forfeiture of bail*.

(b) A suspension commences from the last day of the prior suspension or revocation period if the suspension is for a conviction of driving with a suspended or revoked license.

(4) If a person is convicted of a violation of 61-8-401 or 61-8-406 while operating a commercial motor vehicle, the department shall suspend the person's driver's license as provided in 61-8-802.

(5) (a) A driver's license that is issued after a license revocation to a person described in subsection (5)(b) must be clearly marked with a notation that conveys the term of the person's probation restrictions.

(b) The provisions of subsection (5)(a) apply to a license issued to a person for whom a court has reported a felony conviction under 61-8-731, the judgment for

which has as a condition of probation that the person may not operate a motor vehicle unless:

(i) operation is authorized by the person's probation officer; or

(ii) a motor vehicle operated by the person is equipped with an ignition interlock device."

Section 8. Section 61-11-102, MCA, is amended to read:

"61-11-102. Records to be kept by department. (1) Except as provided in subsection (6), the department shall create and maintain a central database of electronic files that includes an individual Montana driving record for each person:

(a) who has been issued a Montana driver's license;

(b) who does not have a driver's license from, or active driving record in, another jurisdiction and for whom the department receives a report of conviction of a traffic violation or an offense requiring suspension or revocation of the person's driver's license; and

(c) whose driver's license or driving privileges have been suspended, revoked, canceled, or otherwise withdrawn by the department.

(2) (a) An individual Montana driving record maintained under this section must include:

(i) personal information obtained from the application for a driver's license or a report of conviction;

(ii) the person's driver's license number, license type, status, endorsements, restrictions, issue and expiration dates, and any suspensions, revocations, disqualifications, or cancellations that have been imposed against the person;

(iii) all convictions reported to the department for the person; and

(iv) traffic accidents in which the person was involved, except that a record of involvement in a traffic accident may not be entered on a licensee's record unless the licensee was convicted, as defined in 61-11-203, for an act causally related to the accident.

(b) If the department receives notice that a person has been disqualified by the federal motor carrier safety administration as an imminent hazard under 49 CFR 383.52, the department shall record the disqualification on the person's individual Montana driving record.

(c) The department shall retain records created under this section for a period of time that meets or exceeds the standards established under 49 CFR, part 384.

(3) The department is further authorized, upon receiving a record of the conviction in this state of a nonresident driver of a motor vehicle of any offense under the motor vehicle laws of this state, to forward, by electronic or other means, a report of the conviction to the motor vehicle administrator in the state in which the person is a resident or licensed.

(4) The department may place on a computer storage device the information contained on original records or reproductions of original records made pursuant to this section. Signatures on records are not required to be placed on a computer storage device.

(5) (a) Except as provided in subsection (5)(b), a reproduction of the information placed on a computer storage device is an original of the record for all purposes and is admissible in evidence without further foundation in all

courts or administrative agencies when the reproduction of the information is signed by a named custodian of the record and the following certification appears on each page:

The individual named below, being a designated custodian of the driver records of the department of justice, motor vehicle division, certifies this document as a true reproduction, in accordance with 61-11-102(5), of the information contained in a computer storage device of the department of justice, motor vehicle division.

Signed:_____
(Print Full Name)

(b) An order, record, or paper generated from the department's central database of electronic files of individual Montana driving records may be certified electronically by the generating computer. The certification must be a certification of the order, record, or paper as it appeared on a specific date. ~~A court or the office of a clerk of court of this state that is electronically connected by a terminal device to the department's central database of electronic individual Montana driving records may receive and use as evidence without further foundation the computer-generated certified information obtained by the terminal device from the file. An authorized employee of a court of record of this state may certify in writing that an order, record, or paper was produced from a terminal device that is located in and under the control of the court and that is connected to the department's central database of electronic individual Montana driving records files and that the order, record, or paper was not altered in any way.~~

(c) A court, an office of a clerk of court, or an attorney licensed to practice law in this state may receive and use a computer-generated individual Montana driving record as evidence without further foundation when:

(i) the individual Montana driving record is electronically transmitted from the department's central database of electronic individual Montana driving records to a department-authorized terminal device maintained by the court, the office of the clerk of court, or the attorney; and

(ii) the judge, an officer of the court, or the attorney certifies that the record was not altered in any way.

(6) The department may remove any individual Montana driving record from the active database of electronic files maintained under this section if there has been no change in license status on or additional reports of conviction to the record in the immediately preceding 16 years. Any individual driving record removed must be retained elsewhere by the department as an inactive record in an electronic storage device that is searchable and retrievable."

Section 9. Effective date. [This act] is effective January 1, 2010.

Approved March 20, 2009

CHAPTER NO. 42

[SB 157]

AN ACT RESTRICTING TO MENTAL HEALTH PROFESSIONALS THOSE PERSONS WHO MAY OBJECT TO AND PREVENT THE USE OF TWO-WAY ELECTRONIC AUDIO-VIDEO COMMUNICATIONS IN INITIAL HEARINGS FOR CIVIL COMMITMENT; AND AMENDING SECTION 53-21-140, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-21-140, MCA, is amended to read:

"53-21-140. Use of two-way electronic audio-video communication. (1) For purposes of this chapter, a hearing that is conducted by the use of two-way electronic audio-video communication, allowing all of the participants to be observed and heard by all present, is considered to be a hearing in open court.

(2) Whenever the law requires that a respondent or patient in any of the hearings provided for in subsection (3) be present before a court, this requirement may, in the discretion of the court, be satisfied either by the respondent's or patient's physical appearance before the court or by two-way electronic audio-video communication. The audio-video communication must operate so that the respondent or patient, the respondent's or patient's counsel, and the judge can see each other simultaneously and converse with each other, so that the respondent or patient and the respondent's or patient's counsel can communicate privately, and so that the respondent or patient and counsel are both present during the two-way electronic audio-video communication. A respondent or patient may request that counsel from the board be present, for consulting purposes only, if the respondent or patient is located at the state hospital.

(3) At the discretion of the court, the following hearings may be conducted through two-way electronic audio-video communication:

(a) the initial hearing provided for in 53-21-122;

(b) the detention hearing provided for in 53-21-124;

(c) the trial or hearing on a petition provided for in 53-21-126;

(d) a hearing on posttrial disposition as provided for in 53-21-127;

(e) a hearing on the extension of a commitment period as provided for in 53-21-128;

(f) a hearing on rehospitalization of a person conditionally released from an inpatient treatment facility as provided for in 53-21-197;

(g) a hearing on an extension of the conditions of release as provided for in 53-21-198.

(4) This section does not abrogate a person's rights under 53-21-115, 53-21-116, or 53-21-117. A respondent or patient, the respondent's or patient's counsel, and a friend of respondent or patient, if any, must be informed of these rights prior to a hearing by two-way electronic audio-video communication in lieu of a hearing in person. A respondent or patient or the respondent's or patient's counsel and a friend of respondent or patient, acting together, may waive any of the rights, as provided under 53-21-119.

~~(5) If a respondent or patient, the respondent's or patient's counsel, or the professional person object to two-way electronic audio-video communication in lieu of a hearing in person, the court may not allow a two-way electronic audio-video communication.~~

(5) A two-way electronic audio-video communication may not be used:

(a) in an initial hearing provided for in 53-21-122 if the professional person objects; or

(b) in a hearing referred to in subsections (3)(b) through (3)(g) if a respondent or patient, the respondent's or patient's counsel, or the professional person objects."

Approved March 20, 2009

CHAPTER NO. 43

[SB 161]

AN ACT PROVIDING FOR A NOTICE ABOUT THE PRESENCE OF A CARBON MONOXIDE DETECTOR UPON THE SALE OF A RESIDENCE; REQUIRING A CARBON MONOXIDE DETECTOR IN DWELLING UNITS RENTED BY A LANDLORD; LIMITING LANDLORD LIABILITY FOR FAILURE OF A CARBON MONOXIDE DETECTOR; AND AMENDING SECTIONS 70-20-113 AND 70-24-303, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 70-20-113, MCA, is amended to read:

"70-20-113. ~~Definitions — notice~~ *Notice* of presence of smoke *and carbon monoxide* detectors upon sale of dwelling — *definitions.* ~~(1) In this section, the following definitions apply:~~

~~(a) "Dwelling" means a building or portion of a building, including a mobile home or housetrailer, that contains not more than two dwelling units.~~

~~(b) "Dwelling unit" means a building or portion of a building that contains living facilities with provision for sleeping, eating, cooking, and sanitation for not more than one family.~~

~~(c) "Smoke detector" means a device that detects visible or invisible particles or combustion.~~

~~(2)~~*(1)* Upon the sale or transfer of ownership of a dwelling not otherwise required to have a *carbon monoxide detector and a* smoke detector, the seller shall provide a written notice to the buyer in a buy-sell agreement or at the time of the sale to the buyer that the dwelling is equipped or is not equipped with *a carbon monoxide detector and* smoke detectors or other fire detection devices.

~~(3)~~*(2)* Neither the seller ~~nor his~~*, the seller's agent, nor the buyer's* agent is liable in a civil action for failure to comply with~~,~~ or *for* negligence in complying with~~,~~ the requirements of ~~this section~~ *subsection (1).* Evidence of failure to comply with~~,~~ or *of* negligence in complying with~~, this section~~ *subsection (1)* is not admissible in a civil action.

(3) In this section, the following definitions apply:

(a) "Carbon monoxide detector" means a device that detects the presence of carbon monoxide and emits an alarm at elevated levels of carbon monoxide.

(b) "Dwelling" means a building or portion of a building, including a mobile home or housetrailer, that contains not more than two dwelling units.

(c) "Dwelling unit" means a building or portion of a building that contains living facilities with provision for sleeping, eating, cooking, and sanitation for not more than one family.

(d) "Smoke detector" means a device that detects visible or invisible particles or combustion."

Section 2. Section 70-24-303, MCA, is amended to read:

"70-24-303. Landlord to maintain premises — agreement that tenant perform duties — limitation of landlord's liability for failure of smoke detector *or carbon monoxide detector*. (1) A landlord:

(a) shall comply with the requirements of applicable building and housing codes materially affecting health and safety in effect at the time of original construction in all dwelling units where construction is completed after July 1, 1977;

(b) may not knowingly allow any tenant or other person to engage in any activity on the premises that creates a reasonable potential that the premises may be damaged or destroyed or that neighboring tenants may be injured by any of the following:

(i) criminal production or manufacture of dangerous drugs, as prohibited by 45-9-110;

(ii) operation of an unlawful clandestine laboratory, as prohibited by 45-9-132; or

(iii) gang-related activities, as prohibited by Title 45, chapter 8, part 4;

(c) shall make repairs and do whatever is necessary to put and keep the premises in a fit and habitable condition;

(d) shall keep all common areas of the premises in a clean and safe condition;

(e) shall maintain in good and safe working order and condition all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other facilities and appliances, including elevators, supplied or required to be supplied by the landlord;

(f) shall, unless otherwise provided in a rental agreement, provide and maintain appropriate receptacles and conveniences for the removal of ashes, garbage, rubbish, and other waste incidental to the occupancy of the dwelling unit and arrange for their removal;

(g) shall supply running water and reasonable amounts of hot water at all times and reasonable heat between October 1 and May 1, except if the building that includes the dwelling unit is not required by law to be equipped for that purpose or the dwelling unit is so constructed that heat or hot water is generated by an installation within the exclusive control of the tenant; and

(h) shall install *in each dwelling unit under the landlord's control an approved carbon monoxide detector, in accordance with rules adopted by the department of labor and industry, and an approved smoke detector*, in accordance with rules adopted by the department of justice~~, an approved smoke detector in each dwelling unit under the landlord's control~~. Upon commencement of a rental agreement, the landlord shall verify that the *carbon monoxide detector and the* smoke detector in the dwelling unit ~~is~~ *are* in good working order. The tenant shall maintain the *carbon monoxide detector and the* smoke detector in good working order during the tenant's rental period. For *the* purposes of this subsection, an *approved carbon monoxide detector, as defined in 70-20-113, and an* approved smoke detector, ~~is a device that is capable of detecting visible or invisible particles of combustion and that bears~~*, as defined in 70-20-113, bear* a label or other identification issued by an approved testing agency having a service for inspection of materials and workmanship at the factory during fabrication and assembly.

(2) If the duty imposed by subsection (1)(a) is greater than a duty imposed by subsections (1)(b) through (1)(h), a landlord's duty must be determined by reference to subsection (1)(a).

(3) A landlord and tenant of a one-, two-, or three-family residence may agree in writing that the tenant perform the landlord's duties specified in subsections (1)(f) and (1)(g) and specified repairs, maintenance tasks, alteration, and remodeling but only if the transaction is entered into in good faith and not for the purpose of evading the obligations of the landlord.

(4) A landlord and tenant of a one-, two-, or three-family residence may agree that the tenant is to perform specified repairs, maintenance tasks, alterations, or remodeling only if:

(a) the agreement of the parties is entered into in good faith and not for the purpose of evading the obligations of the landlord and is set forth in a separate writing signed by the parties and supported by adequate consideration;

(b) the work is not necessary to cure noncompliance with subsection (1)(a); and

(c) the agreement does not diminish the obligation of the landlord to other tenants in the premises.

(5) The landlord is not liable for damages caused as a result of the failure of the *carbon monoxide detector or the* smoke detector required under subsection (1)(h)."

Approved March 20, 2009

CHAPTER NO. 44

[SB 201]

AN ACT REVISING THE WATER COMPACT BETWEEN MONTANA AND THE CROW TRIBE TO PROVIDE FOR AN AMENDMENT TO THE ESCROW AGREEMENT TO ALLOW INTEREST INCOME TO BE DISPERSED TO THE CROW TRIBE FOR ECONOMIC DEVELOPMENT AND WATER AND SEWER INFRASTRUCTURE WITHIN THE CROW RESERVATION; AMENDING SECTIONS 85-20-901 AND 85-20-904, MCA; AND PROVIDING EFFECTIVE DATES AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 85-20-901, MCA, is amended to read:

"85-20-901. Crow Tribe-Montana compact ratified. The compact entered into by the State of Montana and the Crow Tribe and filed with the Secretary of State of the State of Montana under the provisions of 85-2-702 on June 22, 1999, is ratified. The compact is as follows:

WATER RIGHTS COMPACT ENTERED INTO BY

THE STATE OF MONTANA,

THE CROW TRIBE,

AND THE UNITED STATES OF AMERICA

This Compact is entered into by and among the State of Montana, the Crow Tribe, and the United States of America for the purpose of settling any and all existing water rights claims of or on behalf of the Crow Tribe of Indians in the State of Montana.

ARTICLE I - RECITALS

WHEREAS, in 1975, the United States, on behalf of the Crow Tribe, brought suit in the United States District Court for the District of Montana to obtain a

final determination of the Tribe's water rights, see, U.S. v. Big Horn Low Line Canal Company, et al., No. CIV-75-34-BLG (filed April 17, 1975); and

WHEREAS, Congress consented to state court jurisdiction over the quantification of claims to water rights held by the United States of America in trust for the Tribe; see, "the McCarran Amendment", 43 U.S.C. 666(a)(1)(1952); Colorado River Water Conservation Dist. v. United States, 424 U.S. 800 (1976); Arizona v. San Carlos Apache Tribe, 463 U.S. 545 (1983); and

WHEREAS, the State of Montana initiated a general stream adjudication pursuant to the provisions of Chapter 697, Laws of Montana 1979, which includes Crow tribal water rights; and

WHEREAS, the United States has filed claims on behalf of the Crow Tribe in the general stream adjudication initiated by the State of Montana; and

WHEREAS, the lands and waters constituting the Crow Indian Reservation and Tribal Interests in the Ceded Strip were part of the area recognized as the territory of the Crow Indians under the Treaty of Fort Laramie of September 17, 1851 and also were part of the area set apart for the Crow Tribe under the Treaty of Fort Laramie of May 7, 1868; and

WHEREAS, for the purposes of this Compact, the priority date for the Tribal Water recognized is May 7, 1868, which is the senior water right on the water sources covered by this Compact; and

WHEREAS, the Montana Reserved Water Rights Compact Commission, under 85-2-702(1), MCA, is authorized to negotiate settlement of water rights claims filed by Indian tribes or on their behalf by the United States claiming reserved waters within the State of Montana; and

WHEREAS, the federal district court litigation was stayed in 1983 pending the outcome of Montana State court water adjudication proceedings, see, Northern Cheyenne Tribe v. Adsit, 721 F.2d 1187, 1189 (9th Cir. 1983); and

WHEREAS, the adjudication of Crow tribal water rights in the state court proceedings has been suspended while negotiations are proceeding to conclude a compact resolving all water rights claims of the Crow Tribe within the State of Montana; and

WHEREAS, the Crow Tribal Council, or its duly designated representatives, have authority to negotiate this Compact pursuant to Resolution No. 99-33; and

WHEREAS, the United States Attorney General, or a duly designated official of the United States Department of Justice, has authority to execute this Compact on behalf of the United States pursuant to the authority to settle litigation contained in 28 U.S.C. Sections 516-17 (1993); and

WHEREAS, the Secretary of the Interior, or a duly designated official of the United States Department of the Interior, has authority to execute this Compact on behalf of the United States Department of the Interior pursuant to 43 U.S.C. Section 1457 (1986, Supp. 1992), inter alia; and

WHEREAS, the Crow Tribe, the State of Montana, and the United States agree that the Tribal Water Right described in this Compact shall be in satisfaction of all the Tribe's water rights claims within the State of Montana; and

WHEREAS, it is in the best interest of all Parties that the water rights claims of the Crow Tribe be settled through agreement between and among the Tribe, the State of Montana, and the United States; and

WHEREAS, in settling the water rights claims of the Crow Tribe the Parties do not intend to alter or amend or to adopt or preclude any interpretation of the Yellowstone River Compact (Act of October 10, 1951, ch. 629, 65 Stat.663 (1951));

NOW THEREFORE, the Parties agree to enter into this Compact for the purpose of settling the water rights claims of the Crow Tribe within the State of Montana.

ARTICLE II - DEFINITIONS

The following definitions shall apply for purposes of this Compact:

1. "Acre-foot" or "AF" means the amount of water necessary to cover one acre to a depth of one foot and is equivalent to 43,560 cubic feet.

2. "Acre Feet Per Year" or "AFY" means the quantity of water to which the Tribe has a right each year measured in acre feet over a period of a year.

3. "Adverse Affect" or "Adversely Affect" means interference with or to interfere with the reasonable exercise of a water right.

4. "Bighorn River Basin" means Water Court Basin 43P, the mainstem of the Bighorn River and its tributaries (exclusive of the Little Bighorn River and its tributaries) within Montana to its confluence with the Yellowstone River, as depicted on the map attached as Appendix 2.

5. "Bighorn Lake" means the body of water impounded on the Bighorn River by Yellowtail Dam, Yellowtail Unit, Lower Bighorn Division, Pick-Sloan Missouri Program, Montana.

6. "Board" means the Crow - Montana Compact Board established by Section F, of Article IV of this Compact.

7. "Ceded Strip" means the area covered by Article III of the Act of April 27, 1904 (33 Stat.352), as depicted on the map attached as Appendix 5.

8. "Change in Use" as applied to the Tribal Water Right, means a change in the point of diversion, the place of use, the purpose of use, or the place or the means of storage.

9. "Clarks Fork Yellowstone River Basin" means Water Court Basin 43D, the mainstem of the Clarks Fork Yellowstone River and its tributaries from the Montana-Wyoming border to its confluence with the Yellowstone River, as depicted on the map attached as Appendix 2.

10. "Crow Irrigation Project" means the irrigation project authorized by the Act of March 3, 1891 (26 Stat. 989, 1040) managed by the United States, Department of the Interior, Bureau of Indian Affairs, as of the date this Compact has been ratified by the Montana legislature, consisting of the following project units: Agency, Big Horn, Forty Mile, Lodge Grass

1, Lodge Grass

2, Pryor, Reno, Soap Creek, and Upper Little Horn; and including land held in trust by the United States for the Tribe or a Tribal member within the Bozeman Trail and Two Leggins districts which are managed by private irrigation associations as of the date this Compact has been ratified by the Montana legislature.

11. "DNRC" means the Montana Department of Natural Resources and Conservation, or any successor agency.

12. "Effective Date" means the date on which the Compact is ratified by the Crow Tribal Council, by the Montana legislature, and by the Congress of the United States, whichever date is latest.

13. "Groundwater" means any water that is beneath the ground surface.

14. "Little Bighorn River Basin" means Water Court Basin 43O, the mainstem of the Little Bighorn River and its tributaries from the Montana-Wyoming border to its confluence with the Bighorn River, as depicted on the map attached as Appendix 2.

15. "Natural Flow" means water that would exist in the Bighorn River and its tributaries in the absence of human intervention.

16. "Parties" means the Tribe, the State, and the United States.

17. "Person" means an individual or any other entity, public or private, including the State, the Tribe, and the United States and all officers, agents, and departments of each of the above.

18. "Pryor Creek Basin" means Water Court Basin 43E, the mainstem of Pryor Creek and its tributaries from its headwaters to its confluence with the Yellowstone River, as depicted on the map attached as Appendix 2.

19. "Recognized Under State Law" when referring to a water right, means a water right arising under Montana law or a water right held by a nonmember of the Tribe on land not held in trust by the United States for the Tribe or a Tribal member.

20. "Release" means to discharge water from storage, or the discharge of water from storage.

21. "Reservation" means the Crow Indian Reservation consisting of the area as presently set apart for the Crow Tribe pursuant to the following Treaty and laws: Article 2 of the Fort Laramie Treaty of May 7, 1868 (15 Stat. 649); the Act of April 11, 1882 (22 Stat. 42); the Act of March 3, 1891 (26 Stat. 989); the Act of April 27, 1904 (33 Stat.352); the Act of August 31, 1937 (50 Stat. 884); and, the Act of November 2, 1994 (108 Stat. 4636), as depicted on the map attached as Appendix 4.

22. "Rosebud Creek Basin" means Water Court Basin 42A, the mainstem of Rosebud Creek and its tributaries from its headwaters to its confluence with the Yellowstone River, as depicted on the map attached as Appendix 2.

23. "Secretary" means the Secretary of the United States Department of the Interior, or his or her duly authorized representative.

24. "Shoshone River Basin" means Water Court Basin 43N, the mainstem of the Shoshone River and its tributaries within Montana, as depicted on the map attached as Appendix 2.

25. "State" means the State of Montana and all officers, agents, departments, and political subdivisions thereof.

26. "Tongue River Basin" means Water Court Basin 42B, the mainstem of the Tongue River and its tributaries from the Montana-Wyoming border to above and including Hanging Woman Creek, as depicted on the map attached as Appendix 2.

27. "Transfer" as applied to the Tribal Water Right, means to authorize a person to use all or any part of the Tribal Water Right through a service contract, lease, or other similar agreement of limited duration.

28. "Tribal Water Resources Department" or "TWRD" means the Crow Tribal Water Resources Department, or any successor agency.

29. "Tribal Interests in the Ceded Strip" means all present and acquired interests in real property, including mineral interests, held in trust by the United States for the Tribe or Tribal members within the Ceded Strip, consisting of: Crow Indian allotments held in trust by the United States for the Tribe or Tribal members; interests restored to the Tribe pursuant to the Act of May 19, 1958 (72 Stat. 121), as modified by the Act of August 14, 1958 (72 Stat. 575); and other interests held in trust by the United States for the Tribe or Tribal members.

30. "Tribal Water Right" means the right of the Crow Tribe, including any Tribal member, to divert, use, or store water as described in Article III of this Compact.

31. "Tribe" means the Crow Tribe and all officers, agents, and departments thereof.

32. "United States" means the federal government and all officers, agencies, and departments thereof.

33. "Yellowstone River Basin between Bighorn River and Tongue River" means Water Court Basin 42KJ, the mainstem of the Yellowstone River and its tributaries between Bighorn River and Tongue River, as depicted on the map attached as Appendix 2.

34. "Yellowstone River Basin between Clarks Fork Yellowstone River and Bighorn River" means Water Court Basin 43Q, the mainstem of the Yellowstone River and its tributaries between Clarks Fork Yellowstone River and Bighorn River, as depicted on the map attached as Appendix 2.

ARTICLE III - TRIBAL WATER RIGHT

A. Basin 43P: Bighorn River.

1. Quantification - Source - Volume.

a. Natural Flow. The Tribe has a quantified water right to the Natural Flow of the Bighorn River for current uses developed as of the date this Compact has been ratified by the Montana legislature and new development within the Reservation of 500,000 AFY. The use of this right is subject to Sections A.6. and A.8.a., of Article III, and the terms and conditions of the streamflow and lake level management plan agreed to in accordance with Section A.7., of Article III.

(1). The Tribe has a right to divert or use or to authorize the diversion or use of water from the Natural Flow of the Bighorn River within the Reservation, subject to the terms and conditions in Section C., of Article IV.

(2). The Tribe may change the source of water from the Natural Flow of the Bighorn River to surface flow or storage of any tributary within the Bighorn River Basin within the Reservation or to Groundwater within the Bighorn River Basin within the Reservation, subject to the terms and conditions in Section C.2.a., of Article IV.

(3). The use of the Tribal Water Right on units of the Crow Irrigation Project that divert water from the Bighorn River as part of that project is a use of the Natural Flow Tribal Water Right set forth in Section A.1.a., of Article III, in the Bighorn River Basin, and the use of this water shall be subject to federal law.

b. Storage in Bighorn Lake.

(1). Subject to the approval of, and any terms and conditions specified by, Congress and to the terms and conditions of the streamflow and lake level

management plan agreed to in accordance with Section A.7., of Article III, the Tribe shall be entitled to an allocation of 300,000 AFY of water stored in Bighorn Lake. The Tribe and the State agree to seek as a part of that allocation the following:

(a). not more than 150,000 AFY of the allocation provided in Section A.1.b.(1)., of Article III may be used or diverted as authorized by the Tribe, subject to the terms and conditions in Section C., of Article IV; provided that, not more than 50,000 AFY may be used outside the Reservation subject to the terms and conditions in Section C.2.c., of Article IV. This storage allocation is in addition to the Natural Flow Tribal Water Right provided in Section A.1.a., of Article III.

(b). not less than 150,000 AFY of the allocation provided in Section A.1.b.(1) of Article III shall only be:

(i) managed so as to be available as a Release during low flow periods pursuant to streamflow and lake level management plan agreed to under Section A.7., of Article III; or

(ii) used for beneficial purposes including diversions for consumptive uses in years of excess Natural Flows and excess storage, if any, when unappropriated or unallocated water is available, and subject to the terms and conditions in Section C., of Article IV.

(2). All other water stored in Bighorn Lake, except for the 6,000 AFY currently allocated by contract to the Montana Power Company, or its successor-in-interest, and the 30,000 AFY allocated by Congress to the Northern Cheyenne Tribe, shall be used only for flood control, production of power, maintenance of instream flows, maintenance of lake levels and carryover storage, consistent with Section A.7., of Article III and federal law.

2. Priority Date.

a. Natural Flow. The priority date of the Natural Flow Tribal Water Right set forth in Section A.1.a., of Article III shall be May 7, 1868.

b. Storage. The priority date of the Tribal Water Right to waters stored in Bighorn Lake set forth in Section A.1.b.(1)., of Article III shall be the priority date of the water right held by the Bureau of Reclamation as decreed or to be decreed by the Montana Water Court pursuant to 85-2-234, MCA.

3. Period of Use. The period of use of this water right shall be from January 1 through December 31 of each year.

4. Points and Means of Diversion. Subject to the terms and conditions in Article IV, and except for the 50,000 AFY that may be used outside the Reservation as provided in Section A.1.b.(1).(a)., of Article III, the Tribe may divert or permit the diversion of this water right from any place and by any means within the Reservation for use within the Reservation, provided that, any diversion structure of the Tribal Water Right upstream of the Two Leggins diversion on the Bighorn River will be constructed to bypass streamflows established or modified pursuant to Section A.7., of Article III.

5. Purposes. Subject to the terms and conditions in Article IV, the Tribal Water Right may be used for any purpose within the Reservation allowed by Tribal and federal law.

6. Protection of Water Rights Recognized Under State Law.

a. Except as provided in Section G.2., of Article III, water rights Recognized Under State Law in the Bighorn River Basin with a priority date before this

Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV, are protected from:

(1). an assertion of senior priority in the exercise of current uses of the Tribal Water Right developed as of the date this Compact has been ratified by the Montana legislature.

(2). new development of the Tribal Water Right after the date this Compact has been ratified by the Montana legislature. New development of the Tribal Water Right shall be exercised as junior in priority to water rights Recognized Under State Law in the Bighorn River Basin with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV.

b. The protection of water rights Recognized Under State Law set forth in Sections A.6.a.(1). and (2)., of Article III extends to: valid existing water rights as decreed or to be decreed by the Montana Water Court pursuant to 85-2-234, MCA; permits issued by DNRC; state water reservations issued by the Montana Board of Natural Resources and Conservation or DNRC (except for Water Reservation No. 1781-r (g)); water rights exempt from filing in the state adjudication pursuant to 85-2-222, MCA; and, water rights excepted from the permit process pursuant to 85-2-306, MCA. With the exception of rights exempt from filing in the state adjudication pursuant to 85-2-222, MCA, and rights excepted from the permit process pursuant to 85-2-306, MCA, a list of existing water rights as currently claimed and permits and reservations issued is attached as Appendix 3. Appendix 3 shall be modified by decrees resolving claims on the affected basin. Prior to issuance of the final decree, water rights protected shall be as recognized under state law, and all remedies available under state law shall be applicable. Appendix 3 may be modified due to clerical error or omission or to make Appendix 3 consistent with modifications in accordance with 85-2-237, 85-2-314, or 85-2-316(10) through (13), MCA.

c. Administration and distribution between State and Tribal water uses within the Reservation shall be as provided in Section A.4., of Article IV.

d. New development, Change in Use, or Transfer of the Tribal Water Right shall not Adversely Affect the exercise of water rights Recognized Under State Law in the Bighorn River Basin with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV. Measures to prevent Adverse Affect may include Release of water from Bighorn Lake.

e. Existing uses of the Tribal Water Right shall not be Adversely Affected by new development, Change in Use, or Transfer of the Tribal Water Right, except that the Tribe may allow Adverse Affect on uses of the Tribal Water Right on Tribally owned land.

7. Streamflow and Lake Level Management Plan. Pursuant to this Compact, the Tribe, the Secretary, and the State shall develop a streamflow and lake level management plan for the Bighorn River, from the Yellowtail Afterbay Dam to a point immediately upstream of the Two Leggins diversion, and for Bighorn Lake. The streamflow and lake level management plan shall be agreed to within one (1) year after this Compact has been ratified by the Montana legislature. If the streamflow and lake level management plan is not agreed to by the Tribe, the Secretary, or the State the provisions of Section A.4.d., of Article VII apply. The streamflow and lake level management plan is not required to be implemented until the Effective Date of this Compact. The streamflow and lake level management plan may be modified at any time with the consent of the

Tribe, the Secretary, and the State. The Montana legislature intends that the streamflow management plan should provide enforceable mechanisms that protect the long-term biological viability of the blue ribbon wild trout fishery on the Bighorn River from the Yellowtail Afterbay Dam to the Two Leggins diversion.

8. Basin Closure within the Bighorn River Basin.

a. In the Bighorn River Basin, DNRC shall not process or grant an application for an appropriation after this Compact has been ratified by the Montana legislature, provided that, in accordance with the terms and conditions in Section D.1., of Article IV, the DNRC may issue a certificate of water right or permit for use on fee land for:

(1). an appropriation of Groundwater by means of a well or developed spring with a maximum appropriation of 35 gallons per minute or less, not to exceed 10 acre-feet per year, unless the appropriation is a combined appropriation from the same source from two or more wells or developed springs exceeding the limitation.

(2). an appropriation of water for use by livestock if the maximum capacity of the impoundment or pit is less than 15 acre-feet and the appropriation is less than 30 acre-feet per year and is from a source other than a perennial flowing stream.

(3). temporary emergency appropriations as provided in 85-2-113(3), MCA.

b. The basin closure applies only to appropriations not excepted from the permit process, as provided in Section D.1., of Article IV, issued under state law and is not a limit on new development of the Tribal Water Right as set forth in this Compact.

c. The basin closure applies only to new appropriations not excepted from the permit process, as provided in Section D.1., of Article IV, and is not a limit on change of use or transfers of water rights Recognized Under State Law, subject to the terms and conditions in Section D.2., of Article IV.

B. Basin 43O: Little Bighorn River.

1. Quantification - Source - Volume.

a. The Tribe has a water right for all surface flow, Groundwater, and storage within the Little Bighorn River Basin, except as provided for in Sections B.6., and B.7.a., of Article III, and except for water apportioned to Wyoming, if any, as determined by a court of competent jurisdiction or Congress. Development of the Tribal Water Right shall be subject to the terms and conditions in Section C., of Article IV.

b. The use of the Tribal Water Right on units of the Crow Irrigation Project that divert water in the Little Bighorn River Basin as part of that project is a use of the Tribal Water Right set forth in Section B.1.a., of Article III, and the use of this water shall be subject to federal law. Water stored in Willow Creek Reservoir also is a use of the Tribal Water Right.

2. Priority Date. The priority date of the Tribal Water Right set forth in Section B.1., of Article III shall be May 7, 1868.

3. Period of Use. The period of use of this water right shall be from January 1 through December 31 of each year.

4. Points and Means of Diversion. Subject to the terms and conditions in Article IV, the Tribe may divert or permit the diversion of the Tribal Water Right from any place and by any means within the Little Bighorn River Basin

within the Reservation for use within the Reservation or in connection with Tribal Interests in the Ceded Strip subject to the terms and conditions in Section F., of Article III and Section C.2.b., of Article IV.

5. Purposes. Subject to the terms and conditions in Article IV, the Tribal Water Right may be used within the Reservation for any purpose allowed by Tribal and federal law.

6. Protection of Water Rights Recognized Under State Law.

a. Except as provided in Section G.2., of Article III, water rights Recognized Under State Law in the Little Bighorn River Basin with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV, are protected from:

(1). an assertion of senior priority in the exercise of current uses of the Tribal Water Right developed as of the date this Compact has been ratified by the Montana legislature.

(2). new development of the Tribal Water Right after the date this Compact has been ratified by the Montana legislature. New development of the Tribal Water Right shall be exercised as junior in priority to water rights Recognized Under State Law in the Little Bighorn Basin with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV.

b. The protection of water rights Recognized Under State Law set forth in Sections B.6.a.(1). and (2)., of Article III extends to: valid existing water rights as decreed or to be decreed by the Montana Water Court pursuant to 85-2-234, MCA; permits issued by DNRC; state water reservations issued by the Montana Board of Natural Resources and Conservation or DNRC (except for Water Reservation No. 1781-r (g)); water rights exempt from filing in the state adjudication pursuant to 85-2-222, MCA; and, water rights excepted from the permit process pursuant to 85-2-306, MCA. With the exception of rights exempt from filing in the state adjudication pursuant to 85-2-222, MCA, and rights excepted from the permit process pursuant to 85-2-306, MCA, a list of existing water rights as currently claimed and permits and reservations issued is attached as Appendix 3. Appendix 3 shall be modified by decrees resolving claims on the affected basin. Prior to issuance of the final decree, water rights protected shall be as recognized under state law, and all remedies available under state law shall be applicable. Appendix 3 may be modified due to clerical error or omission or to make Appendix 3 consistent with modifications in accordance with 85-2-237, 85-2-314, or 85-2-316(10) through (13), MCA.

c. Administration and distribution between State and Tribal water uses within the Reservation shall be as provided in Section A.4., of Article IV.

d. New development, Change in Use, or Transfer of the Tribal Water Right shall not Adversely Affect the exercise of water rights Recognized Under State Law in the Little Bighorn River Basin with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV.

e. Existing uses of the Tribal Water Right shall not be Adversely Affected by new development, Change in Use, or Transfer of the Tribal Water Right, except that the Tribe may allow Adverse Affect on uses of the Tribal Water Right on Tribally owned land.

7. Basin Closure within the Little Bighorn River Basin.

a. In the Little Bighorn River Basin, DNRC shall not process or grant an application for an appropriation after this Compact has been ratified by the Montana legislature, provided that, in accordance with the terms and conditions in Section D.1., of Article IV, DNRC may issue a certificate of water right or permit for use on fee land for:

(1). an appropriation of Groundwater by means of a well or developed spring with a maximum appropriation of 35 gallons per minute or less, not to exceed 10 acre-feet per year, unless the appropriation is a combined appropriation from the same source from two or more wells or developed springs exceeding the limitation.

(2). an appropriation of water for use by livestock if the maximum capacity of the impoundment or pit is less than 15 acre-feet and the appropriation is less than 30 acre-feet per year and is from a source other than a perennial flowing stream.

(3). temporary emergency appropriations as provided in 85-2-113(3), MCA.

b. The basin closure applies only to new appropriations not excepted from the permit process, as provided in Section D.1., of Article IV, issued under state law and is not a limit on new development of the Tribal Water Right as set forth in this Compact.

c. The basin closure applies only to new appropriations not excepted from the permit process, as provided in Section D.1., of Article IV, and is not a limit on change of use or transfers of water rights Recognized Under State Law, subject to the terms and conditions in Section D.2., of Article IV.

C. Basin 43E: Pryor Creek.

1. Quantification - Source - Volume.

a. The Tribe has a water right for all surface flow, Groundwater, and storage within the Pryor Creek Basin within the Reservation, except as provided for in Sections C.6. and C.7.a., of Article III. Development of the Tribal Water Right shall be subject to the terms and conditions in Section C., of Article IV.

b. The use of the Tribal Water Right on units of the Crow Irrigation Project that divert water in the Pryor Creek Basin as part of that project is a use of the Tribal Water Right set forth in Section C.1.a., of Article III, and the use of this water shall be subject to federal law.

2. Priority Date. The priority date of the Tribal Water Right set forth in Section C.1., of Article III shall be May 7, 1868.

3. Period of Use. The period of use of this water right shall be from January 1 through December 31 of each year.

4. Points and Means of Diversion. Subject to the terms and conditions in Article IV, the Tribe may divert or permit the diversion of the Tribal Water Right from any place and by any means within the Pryor Creek Basin within the Reservation for use within the Reservation.

5. Purposes. Subject to the terms and conditions in Article IV, the Tribal Water Right may be used within the Reservation for any purpose allowed by Tribal and federal law.

6. Protection of Water Rights Recognized Under State Law.

a. Except as provided in Section G.2., of Article III, water rights Recognized Under State Law in the Pryor Creek Basin with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV, are protected from:

(1). an assertion of senior priority in the exercise of current uses of the Tribal Water Right developed as of the date this Compact has been ratified by the Montana legislature.

(2). new development of the Tribal Water Right after the date this Compact has been ratified by the Montana legislature. New development of the Tribal Water Right shall be exercised as junior in priority to water rights Recognized Under State Law in the Pryor Creek Basin with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV.

b. The protection of water rights Recognized Under State Law set forth in Sections C.6.a.(1). and (2)., of Article III extends to: valid existing water rights as decreed or to be decreed by the Montana Water Court pursuant to 85-2-234, MCA; permits issued by DNRC; state water reservations issued by the Montana Board of Natural Resources and Conservation or DNRC; water rights exempt from filing in the state adjudication pursuant to 85-2-222, MCA; and, water rights excepted from the permit process pursuant to 85-2-306, MCA. With the exception of rights exempt from filing in the state adjudication pursuant to 85-2-222, MCA, and rights excepted from the permit process pursuant to 85-2-306, MCA, a list of existing water rights as currently claimed and permits and reservations issued is attached as Appendix 3. Appendix 3 shall be modified by decrees resolving claims on the affected basin. Prior to issuance of the final decree, water rights protected shall be as recognized under state law, and all remedies available under state law shall be applicable. Appendix 3 may be modified due to clerical error or omission or to make Appendix 3 consistent with modifications in accordance with 85-2-237, 85-2-314, or 85-2-316(10) through (13), MCA.

c. Administration and distribution between State and Tribal water uses within the Reservation shall be as provided in Section A.4., of Article IV.

d. New development, Change in Use, or Transfer of the Tribal Water Right shall not Adversely Affect the exercise of water rights Recognized Under State Law in the Pryor Creek Basin with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV.

e. Existing uses of the Tribal Water Right shall not be Adversely Affected by new development, Change in Use, or Transfer of the Tribal Water Right, except that the Tribe may allow Adverse Affect on uses of the Tribal Water Right on Tribally owned land.

7. Basin Closure within the Pryor Creek Basin.

a. In the Pryor Creek Basin, DNRC shall not process or grant an application for an appropriation after this Compact has been ratified by the Montana legislature, provided that, in accordance with the terms and conditions in Section D.1., of Article IV, DNRC may issue a certificate of water right or permit for use on fee land for:

(1). an appropriation of Groundwater by means of a well or developed spring with a maximum appropriation of 35 gallons per minute or less, not to exceed 10 acre-feet per year, unless the appropriation is a combined appropriation from the same source from two or more wells or developed springs exceeding the limitation.

(2). an appropriation of water for use by livestock if the maximum capacity of the impoundment or pit is less than 15 acre-feet and the appropriation is less

than 30 acre-feet per year and is from a source other than a perennial flowing stream.

(3). temporary emergency appropriations as provided in 85-2-113(3), MCA.

b. The basin closure applies only to new appropriations not excepted from the permit process, as provided in Section D.1., of Article IV, issued under state law and is not a limit on new development of the Tribal Water Right as set forth in this Compact.

c. The basin closure applies only to new appropriations not excepted from the permit process, as provided in Section D.1., of Article IV, and is not a limit on change of use or transfers of water rights Recognized Under State Law, subject to the terms and conditions in Section D.2., of Article IV.

D. Basin 42A: Rosebud Creek.

1. Quantification - Source - Volume. The Tribe has a water right for all surface flow, Groundwater, and storage within the Rosebud Creek Basin within the Reservation, except as provided for in Sections D.6. and D.7., of Article III. Development of the Tribal Water Right shall be subject to the terms and conditions in Section C., of Article IV.

2. Priority Date. The priority date of the Tribal Water Right set forth in Section D.1., of Article III shall be May 7, 1868.

3. Period of Use. The period of use of this water right shall be from January 1 through December 31 of each year.

4. Points and Means of Diversion. Subject to the terms and conditions in Article IV, the Tribe may divert or permit the diversion of the Tribal Water Right from any place and by any means within the Rosebud Creek Basin for use within the Reservation.

5. Purposes. Subject to the terms and conditions in Article IV, the Tribal Water Right may be used within the Reservation for any purpose allowed by Tribal and federal law.

6. Protection of Water Rights Recognized Under State Law.

a. Within the Reservation. Except as provided in Section G.2., of Article III, water rights Recognized Under State Law in the Rosebud Creek Basin within the Reservation with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV, are protected from:

(1). an assertion of senior priority in the exercise of current uses of the Tribal Water Right developed as of the date this Compact has been ratified by the Montana legislature.

(2). new development of the Tribal Water Right after the date this Compact has been ratified by the Montana legislature. New development of the Tribal Water Right shall be exercised as junior in priority to water rights Recognized Under State Law in the Rosebud Creek Basin with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV.

b. The protection of water rights Recognized Under State Law set forth in Sections D.6.a.(1). and (2)., of Article III extends to: valid existing water rights as decreed or to be decreed by the Montana Water Court pursuant to 85-2-234, MCA; permits issued by DNRC; state water reservations issued by the Montana Board of Natural Resources and Conservation or DNRC; water rights exempt from filing in the state adjudication pursuant to 85-2-222, MCA; and, water

rights excepted from the permit process pursuant to 85-2-306, MCA. With the exception of rights exempt from filing in the state adjudication pursuant to 85-2-222, MCA, and rights excepted from the permit process pursuant to 85-2-306, MCA, a list of existing water rights as currently claimed and permits and reservations issued within the Reservation is attached as Appendix 3. Appendix 3 shall be modified by decrees resolving claims on the affected basin. Prior to issuance of the final decree, water rights protected shall be as recognized under state law, and all remedies available under state law shall be applicable. Appendix 3 may be modified due to clerical error or omission or to make Appendix 3 consistent with modifications in accordance with 85-2-237, 85-2-314, or 85-2-316(10) through (13), MCA.

c. Administration and distribution between State and Tribal water uses within the Reservation shall be as provided in Section A.4., of Article IV.

d. Outside the Reservation. Except as provided in Section G.2., of Article III, water rights Recognized Under State Law in the Rosebud Creek Basin outside the Reservation are protected from an assertion of senior priority in the exercise of the Crow Tribal Water Right to the same extent provided in the Northern Cheyenne - Montana Compact, Sections A.3.c.i. and ii., of Article II, 85-20-301, MCA. Protection from an assertion of senior priority in the exercise of the Crow Tribal Water Right for the Northern Cheyenne Tribal Water Right shall only be as provided in Section D.7., of Article III.

e. New development, Change in Use, or Transfer of the Tribal Water Right shall not Adversely Affect the exercise of water rights Recognized Under State Law in the Rosebud Creek Basin within the Reservation with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV, or outside the Reservation to the same extent provided in the Northern Cheyenne - Montana Compact, Section A.3.c.i. and ii., of Article II, 85-20-301, MCA.

f. Existing uses of the Tribal Water Right shall not be Adversely Affected by development, Change in Use, or Transfer of the Tribal Water Right, except that the Tribe may allow Adverse Affect of uses of the Tribal Water Right on Tribally owned land.

7. Protection of Northern Cheyenne Tribal Water Rights within the Northern Cheyenne Reservation.

a. Except as provided in Section G.2., of Article III, the Northern Cheyenne Tribal Water Right, recognized in the Northern Cheyenne - Montana Compact, Section A.3.a., of Article II, 85-20-301, MCA, is protected from an assertion of senior priority in the exercise of the Crow Tribal Water Right.

b. New development, Change in Use, or Transfer of the Crow Tribal Water Right shall not Adversely Affect the exercise of the Northern Cheyenne Tribal Water Right, recognized in the Northern Cheyenne - Montana Compact, Section A.3.a., of Article II, 85-20-301, MCA.

8. Basin Closure within the Rosebud Creek Basin within the Reservation.

a. In the Rosebud Creek Basin upstream from the point that Rosebud Creek or any tributary of Rosebud Creek leaves the Reservation, DNRC shall not process or grant an application for an appropriation after this Compact has been ratified by the Montana legislature, provided that, in accordance with the terms and conditions in Section D.1., of Article IV, DNRC may issue a certificate of water right or permit for use on fee land for:

(1). an appropriation of Groundwater by means of a well or developed spring with a maximum appropriation of 35 gallons per minute or less, not to exceed 10 acre-feet per year, unless the appropriation is a combined appropriation from the same source from two or more wells or developed springs exceeding the limitation.

(2). an appropriation of water for use by livestock if the maximum capacity of the impoundment or pit is less than 15 acre-feet and the appropriation is less than 30 acre-feet per year and is from a source other than a perennial flowing stream.

(3). temporary emergency appropriations as provided in 85-2-113(3), MCA.

b. The basin closure applies only to new appropriations not excepted from the permit process, as provided in Section D.1., of Article IV, issued under state law and is not a limit on new development of the Tribal Water Right as set forth in this Compact.

c. The basin closure applies only to new appropriations not excepted from the permit process, as provided in Section D.1., of Article IV, and is not a limit on change of use or transfers of water rights Recognized Under State Law, subject to the terms and conditions in Section D.2., of Article IV.

E. Youngs Creek drainage, Squirrel Creek drainage, Tanner Creek drainage, Dry Creek drainage, and Spring Creek drainage within Tongue River Basin; Sarpy Creek drainage within Yellowstone River Basin between Bighorn River and Tongue River; Cottonwood Creek drainage, Five Mile Creek drainage, and Bluewater Creek drainage within Clarks Fork Yellowstone River Basin; Sage Creek drainage within Shoshone River Basin; and, Fly Creek drainage, Blue Creek drainage, Dry Creek drainage, and Bitter Creek drainage within Yellowstone River Basin between Clarks Fork Yellowstone River and Bighorn River.

1. Quantification - Source - Volume. The Tribe has a water right for all surface flow, Groundwater, and storage within the Reservation within Youngs Creek drainage, Squirrel Creek drainage, Tanner Creek drainage, Dry Creek drainage, and Spring Creek drainage within Tongue River Basin; Sarpy Creek drainage within Yellowstone River Basin between Bighorn River and Tongue River; Cottonwood Creek drainage, Five Mile Creek drainage, and Bluewater Creek drainage within Clarks Fork Yellowstone River Basin; Sage Creek drainage within Shoshone River Basin; and, Fly Creek drainage, Blue Creek drainage, Dry Creek drainage, and Bitter Creek drainage within Yellowstone River Basin between Clarks Fork Yellowstone River and Bighorn River, except as provided in Sections E.6. and E.7.a., of Article III. Development of the Tribal Water Right shall be subject to the terms and conditions in Section C., Article IV.

2. Priority Date. The priority date of the Tribal Water Right set forth in Section E.1., of Article III shall be May 7, 1868.

3. Period of Use. The period of use of this water right shall be from January 1 through December 31 of each year.

4. Points and Means of Diversion. Subject to the terms and conditions in Article IV, the Tribe may divert or permit the diversion of the Tribal Water Right from any place and by any means within the drainages listed in Section E.1., of Article III within the Reservation for use within the Reservation.

5. Purposes. Subject to the terms and conditions in Article IV, the Tribal Water Right may be used for any purpose within the Reservation allowed by Tribal and federal law.

6. Protection of Water Rights Recognized Under State Law.

a. Except as provided in Section G.2., of Article III, water rights Recognized Under State Law in the drainages listed in Section E.1., of Article III, with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV, are protected from:

(1). an assertion of senior priority in the exercise of current uses of the Tribal Water Right developed as of the date this Compact has been ratified by the Montana legislature.

(2). new development of the Tribal Water Right after the date this Compact has been ratified by the Montana legislature. New development of the Tribal Water Right shall be exercised as junior in priority to water rights Recognized Under State Law in the drainages listed in Section E.1., of Article III with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV.

b. The protection of water rights Recognized Under State Law set forth in Sections E.6.a.(1). and (2)., of Article III extends only to: valid existing water rights as decreed or to be decreed by the Montana Water Court pursuant to 85-2-234, MCA; permits issued by DNRC; state water reservations issued by the Montana Board of Natural Resources and Conservation or DNRC; water rights exempt from filing in the state adjudication pursuant to 85-2-222, MCA; and, water rights excepted from the permit process pursuant to 85-2-306, MCA. With the exception of rights exempt from filing in the state adjudication pursuant to 85-2-222, MCA, and rights excepted from the permit process pursuant to 85-2-306, MCA, a list of existing water rights as currently claimed and permits and reservations issued is attached as Appendix 3. Appendix 3 shall be modified by decrees resolving claims on the affected basins. Prior to issuance of the final decree, water rights protected shall be as recognized under state law, and all remedies available under state law shall be applicable. Appendix 3 may be modified due to clerical error or omission or to make Appendix 3 consistent with modifications in accordance with 85-2-237, 85-2-314, or 85-2-316(10) through (13), MCA.

c. Administration and distribution between State and Tribal water uses within the Reservation shall be as provided in Section A.4., of Article IV.

d. New development, Change in Use, or Transfer of the Tribal Water Right shall not Adversely Affect the exercise of water rights Recognized Under State Law in each drainage listed in Section E.1., of Article III, with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV.

e. Existing uses of the Tribal Water Right shall not be Adversely Affected by development, Change in Use, or Transfer of the Tribal Water Right, except that the Tribe may allow Adverse Affect of uses of the Tribal Water Right on Tribally owned land.

7. Basin Closure within the Reservation.

a. In the drainages listed in Section E.l., of Article III, upstream from the point that each stream or its tributaries leaves the Reservation, DNRC shall not process or grant an application for an appropriation after this Compact has been ratified by the Montana legislature, provided that, in accordance with the terms

and conditions in Section D.1., of Article IV, DNRC may issue a certificate of water right or permit for use on fee land for:

(1). an appropriation of Groundwater by means of a well or developed spring with a maximum appropriation of 35 gallons per minute or less, not to exceed 10 acre-feet per year, unless the appropriation is a combined appropriation from the same source from two or more wells or developed springs exceeding the limitation.

(2). an appropriation of water for use by livestock if the maximum capacity of the impoundment or pit is less than 15 acre-feet and the appropriation is less than 30 acre-feet per year and is from a source other than a perennial flowing stream.

(3). temporary emergency appropriations as provided in 85-2-113(3), MCA.

b. The basin closure applies only to new appropriations not excepted from the permit process, as provided in Section D.1., of Article IV, issued under state law and is not a limit on new development of the Tribal Water Right as set forth in this Compact.

c. The basin closure applies only to new appropriations not excepted from the permit process, as provided in Section D.1., of Article IV, and is not a limit on change of use or transfers of water rights Recognized Under State Law, subject to the terms and conditions in Section D.2., of Article IV.

F. Tribal Water Right in the Ceded Strip.

1. Quantification - Source - Volume.

a. Tribal Interests in the Ceded Strip. As part of the Tribal Water Right, the Tribe has a right to divert a total of 47,000 AFY from surface flow, Groundwater, or storage within the Ceded Strip from portions of the Sarpy Creek drainage and Yellowstone River within Yellowstone River Basin between Bighorn River and Tongue River; Fly Creek drainage and Yellowstone River within Yellowstone River Basin between Clarks Fork Yellowstone River and Bighorn River; Pryor Creek Basin; and Bighorn River Basin for use in connection with Tribal Interests in the Ceded Strip; and, water imported to the Ceded Strip from the Little Bighorn River Basin for use in connection with Tribal Interests in the Ceded Strip. Diversion and use shall be subject to the terms and conditions in Sections C.1.c. and C.1.d., of Article IV.

(1). This 47,000 AFY is in addition to the Tribal Water Right set forth in Sections A.1., B.1., C.1., and E.1., of Article III, except that any diversion of this right from surface flow, Groundwater, or storage within the Bighorn River Basin shall be deducted from the Tribal Water Right as set forth in Section A.1., of Article III.

(2). No more than 47,000 AFY may be diverted and used in connection with Tribal Interests in the Ceded Strip from all water sources, provided that:

(a). no more than 2,500 AFY from all water sources including the Yellowstone River may be diverted upstream from the confluence of the Bighorn River and the Yellowstone River.

(b). no more than 7,000 AF may be diverted from all sources including the Yellowstone River in any month, provided that, aggregate uses from all sources not exceed 47,000 AFY.

b. Use limited to within the Ceded Strip. The Tribal Water Right of 47,000 AFY for use in connection with Tribal Interests in the Ceded Strip shall be used only within the Ceded Strip and shall not be considered a Change in Use or Transfer outside the Reservation for purposes of Section C.2.c., of Article IV.

c. Any portion of the 50,000 AFY set forth in Section A.1.b.(1).(a)., of Article III which may be used outside the Reservation may also be used in connection with Tribal Interests in the Ceded Strip in addition to the Tribal Water Right of 47,000 AFY set forth in Section F.1.a., of Article III.

2. Priority Date. The priority date of the Tribal Water Right set forth in Section F.1.a., of Article III shall be May 7, 1868.

3. Period of Use. The period of use of this water right shall be from January 1 through December 31 of each year.

4. Points and Means of Diversion. Subject to the terms and conditions in Article IV, the Tribe may divert or permit the diversion of the Tribal Water Right from any place and by any means for use in connection with Tribal Interests in the Ceded Strip within the Ceded Strip.

5. Purposes. Subject to the terms and conditions in Article IV, the Tribal Water Right for use in connection with Tribal Interests in the Ceded Strip may be used for beneficial purposes allowed by Tribal, federal and state law.

6. Protection of Water Rights Recognized Under State Law.

a. Except as provided in Section G.2., of Article III, water rights Recognized Under State Law affected by the exercise of the Tribal Water Right in the Ceded Strip with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV, are protected from:

(1). an assertion of senior priority in the exercise of current uses of the Tribal Water Right developed as of the date this Compact has been ratified by the Montana legislature.

(2). new development of the Tribal Water Right after the date this Compact has been ratified by the Montana legislature. New development of the Tribal Water Right shall be exercised as junior in priority to water rights Recognized Under State Law with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV.

b. The protection of water rights Recognized Under State Law set forth in Sections F.6.a.(1). and (2)., of Article III extends to: valid existing water rights as decreed or to be decreed by the Montana Water Court pursuant to 85-2-234, MCA; permits issued by DNRC; state water reservations issued by the Montana Board of Natural Resources and Conservation or DNRC (except for Water Reservation Nos. 1781-r and 10006-r); water rights exempt from filing in the state adjudication pursuant to 85-2-222, MCA; and, water rights excepted from the permit process pursuant to 85-2-306, MCA. With the exception of rights exempt from filing in the state adjudication pursuant to 85-2-222, MCA, and rights excepted from the permit process pursuant to 85-2-306, MCA, a list of existing water rights as currently claimed and permits and reservations issued is attached as Appendix 3. Appendix 3 shall be modified by decrees resolving claims on the affected basins. Prior to issuance of the final decree, water rights protected shall be as recognized under state law, and all remedies available under state law shall be applicable. Appendix 3 may be modified due to clerical error or omission or to make Appendix 3 consistent with modifications in accordance with 85-2-237, 85-2-314, or 85-2-316(10) through (13), MCA.

c. New development, Change in Use, or Transfer of the Tribal Water Right shall not Adversely Affect the exercise of water rights Recognized Under State Law with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV.

d. Existing uses of the Tribal Water Right shall not be Adversely Affected by new development, Change in Use, or Transfer of the Tribal Water Right, except that the Tribe may allow Adverse Affect on uses of the Tribal Water Right on Tribally owned land.

G. Additional Rights to Water. As part of the water rights specifically set forth in Sections A., B., C., D., E., and F., of Article III, the Tribe has a right to water from the following sources:

1. Appurtenant Water Rights. For land within the Reservation acquired after the Effective Date of this Compact, the Tribe has the right to the use of any water right acquired as an appurtenance to the land. At such time that the acquired land is transferred to trust status, the water right appurtenant to the land acquired shall become part of and not in addition to the Tribal Water Right quantified in this Compact with a May 7, 1868 priority date, provided that, the acquired water right shall retain any protections set forth in this Compact. The Tribe shall notify DNRC of any acquisition of water in the Tribe's annual report and shall identify the water right acquired, as set forth in Section E.1., of Article IV. Any water right acquired shall be added as decreed by the Montana Water Court to the list of current uses of the Tribal Water Right as provided in Section E.2., of Article IV.

2. Exempt Rights.

a. Religious or cultural uses of the Tribal Water Right by Crow Tribal members within the Reservation in de minimis amounts shall be allowed without prior review by DNRC.

b. In accordance with the terms and conditions in Section C.1., of Article IV, TWRD may authorize development of the Tribal Water Right for:

(1). an appropriation of Groundwater by means of a well or developed spring with a maximum appropriation of 35 gallons per minute or less, not to exceed 10 acre-feet per year, unless the appropriation is a combined appropriation from the same source from two or more wells or developed springs exceeding the limitation.

(2). an appropriation of water for use by livestock if the maximum capacity of the impoundment or pit is less than 15 acre-feet and the appropriation is less than 30 acre-feet per year and is from a source other than a perennial flowing stream.

(3). temporary emergency appropriations necessary to protect lives or property.

c. Uses of the Tribal Water Right provided for in Sections G.2.a. and G.2.b., of Article III, are not subject to protection of water rights Recognized Under State Law provided in Sections A.6., B.6., C.6., D.6., D.7., E.6., and F.6., of Article III, or streamflows established or modified pursuant to Section A.7., of Article III.

H. Proposed Decree. For purposes of entry in the Montana Water Court, the proposed decree of the Tribal Water Right set forth in Article III is attached as Appendix 1. If there are differences between Appendix 1 and the Final Decree, the Final Decree shall control.

ARTICLE IV - IMPLEMENTATION OF TRIBAL WATER RIGHT

A. General Provisions.

1. Trust Status of Tribal Water Right. The Tribal Water Right shall be held in trust by the United States.

2. Tribal Water Right: Administration.

a. Subject to the limitations imposed by this Compact and federal law, the use of the Tribal Water Right shall be administered by the Tribe through TWRD within the Reservation, in the Ceded Strip, and outside the Reservation. Disputes, not within the jurisdiction of the Compact Board set forth in F.4., of Article IV, concerning use of the Tribal Water Right in the Ceded Strip and outside the Reservation which raise issues concerning the application of state or federal law shall be resolved in a court of competent jurisdiction. Those disputes concerning use of the Tribal Water Right in the Ceded Strip and outside the Reservation which do not raise issues concerning the application of state or federal law shall be within the exclusive jurisdiction of the Tribe. Subject to the limitations imposed by this Compact, the Tribe shall have the final and exclusive jurisdiction to resolve all disputes concerning the Tribal Water Right between holders of water rights under the Tribal Water Right. TWRD shall develop policies and procedures for monitoring water use, diversions, and maintaining records of water use and development consistent with this Compact. The current water use and diversions and new development shall be identified by location and quantity.

b. Administration and enforcement of the Tribal Water Right shall be pursuant to a Tribal water code, which shall be developed and adopted by the Tribe within two (2) years following the Effective Date of this Compact pursuant to any requirements set forth in the Constitution of the Crow Tribe. Pending the adoption of the Tribal water code, the administration and enforcement of the Tribal Water Right shall be by the Secretary of the Interior.

c. The Tribe shall not administer any water right Recognized Under State Law.

d. Administration, operation and maintenance, and delivery of the Tribal Water Right on the Crow Irrigation Project shall be conducted by the United States Department of the Interior, Bureau of Indian Affairs, in accordance with applicable federal laws. Portions of the Project within the Bozeman Trail and Two Leggins Districts shall be administered in accordance with applicable law.

3. Water Rights Recognized Under State Law: Administration.

a. The State shall administer and enforce all water rights Recognized Under State Law to the use of surface flows, Groundwater, and storage within or outside the Reservation. The State shall have the final and exclusive jurisdiction to resolve all disputes between holders of water rights Recognized Under State Law.

b. The State shall not administer or enforce any part of the Tribal Water Right.

c. For water rights Recognized Under State Law, if any, utilizing water delivered by the Crow Irrigation Project, administration and distribution of such water shall be conducted by the United States Department of the Interior, Bureau of Indian Affairs, in accordance with applicable federal laws.

4. Distribution of Water Between the Parties. When water availability is insufficient to satisfy all water rights under the Tribal Water Right and all water rights Recognized Under State Law within the Reservation, administration and distribution shall be as follows:

a. distribution between the water administered by the Tribe and the United States for current uses of the Tribal Water Right within the Reservation developed as of the date this Compact has been ratified by the Montana legislature and the water for water rights Recognized Under State Law within the Reservation with a priority date before this Compact has been ratified by the

Montana legislature shall be on an equitable basis in proportion to the amount of water required for Tribal water use as listed pursuant to Section E.2., of Article IV, and the amount of water required for water rights Recognized Under State Law, provided that, the Parties recognize that distribution may not be on a precise proportional basis due to the need to take into account the physical constraints of water delivery. Administration and distribution by the Tribe, the United States, and the State within their proportional shares shall be pursuant to Tribal, federal, and state law respectively, and shall be coordinated as necessary. This distribution shall not modify the right of a holder of a water right Recognized Under State Law to seek enforcement of such water right against other water rights Recognized Under State Law in priority without the agreement of the water right holder.

b. future development of the Tribal Water Right after this Compact has been ratified by the Montana legislature shall be enforced as junior in priority to the water rights subject to a proportional distribution as set forth in Section A.4.a., of Article IV.

c. nothing in Section A.4.a., of Article IV shall prevent water users from agreeing to an alternative water distribution plan on the basis of individual water rights pursuant to applicable state, Tribal, or federal law.

5. Subsequent Federal or State Law. Administration under Sections A.2.d., A.3.a. and A.3.c., of Article IV shall be as set forth in this Compact except as may otherwise be determined by a court of competent jurisdiction or established by Congress.

B. Use of the Tribal Water Right.

1. Persons Entitled to Use the Tribal Water Right. The Tribal Water Right may be used by the Tribe, Tribal members, or Persons authorized by the Tribe, provided that, the Tribe may not limit or deprive Indians residing on the Reservation or in the Ceded Strip of any right, pursuant to 25 U.S.C. . 381, to a just and equal portion of the Tribal Water Right set forth in Article III.

2. Effect of Non-Use of the Tribal Water Right. State law doctrines relating to the use of water rights, including but not limited to relinquishment, forfeiture or abandonment, do not apply to the Tribal Water Right. Thus, non-use of all or any of the Tribal Water Right described in Article III shall not constitute a relinquishment, forfeiture or abandonment of such rights.

C. Tribal Water Right: New Development, Change in Use, or Transfer.

1. New Development of Surface Flow, Groundwater, or Storage of the Tribal Water Right.

a. New Development of Surface Flow, Groundwater, or Storage Within the Reservation. After the Effective Date of this Compact, the Tribe may develop or authorize new development of surface flow, Groundwater, or storage of the Tribal Water Right within the Reservation; provided that, such development shall not Adversely Affect a water right Recognized Under State Law with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV.

b. Prerequisite Administrative Procedure within the Reservation. The following procedure for determining whether new development of surface flow, Groundwater, or storage of the Tribal Water Right within the Reservation will have an Adverse Affect on water rights Recognized Under State Law shall be followed prior to seeking relief from the Compact Board:

(1). Application for new development of a surface flow, Groundwater, or storage use within the Reservation shall be made to TWRD.

(2). TWRD shall review the application and make a determination of whether the new development will have an Adverse Affect on water rights Recognized Under State Law with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV. Upon request by TWRD, DNRC shall provide information on state water rights as recorded in the DNRC database to TWRD.

(3). If TWRD determines that the new development will have an Adverse Affect on a water right Recognized Under State Law with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV, TWRD shall deny the application. If TWRD determines that the new development will not have an Adverse Affect on a water right Recognized Under State Law with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV, TWRD shall forward the application with its determination to DNRC.

(4). If, based upon the evidence, DNRC agrees with TWRD's determination, DNRC shall notify TWRD. If, however, based upon the evidence, DNRC cannot agree with TWRD's determination, DNRC shall publish notice of the application once in a newspaper of general circulation in the area of the source and shall serve notice by first-class mail on any holder of a water right Recognized Under State Law who, according to the records of the DNRC, has a water right with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV, and may be affected by the proposed development. DNRC shall notify TWRD within ninety (90) days of DNRC's determination.

(5). DNRC and TWRD should attempt to resolve any disagreement on TWRD's determination of no Adverse Affect on a cooperative basis. If DNRC or a holder of a water right Recognized Under State Law with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV, disagree with the determination of no Adverse Affect, DNRC or the water right holder may seek relief from the Compact Board.

(6). In any proceeding concerning the effect of new Groundwater development of the Tribal Water Right within the Reservation either before TWRD, DNRC, or before the Compact Board, the following shall apply:

(a). Wells Less than 100 Feet: For new Groundwater wells to be completed at a depth beneath the surface of less than 100 feet, the applicant shall bear the burden of showing no Adverse Affect to a water right Recognized Under State Law with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV.

(b). 100 Feet or Deeper Wells: For new Groundwater wells to be completed at a depth beneath the surface of 100 feet or deeper, the owner of a water right Recognized Under State Law with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV, shall bear the burden of showing Adverse Affect to the water right.

(7). In any proceeding concerning the effect of new storage development of the Tribal Water Right within the Reservation either before TWRD, DNRC, or before the Compact Board, the following shall apply:

(a). Storage Over 50 AF: For new storage facilities with a planned constructed capacity of more than 50 AF, the applicant shall bear the burden of

showing no Adverse Affect to a water right Recognized Under State Law with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV.

(b). Storage 50 AF or Less: For new storage facilities with a planned constructed capacity of 50 AF or less, the owner of the water right Recognized Under State Law with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV, shall bear the burden of showing Adverse Affect to the water right.

c. New Development of Surface Flow, Groundwater, or Storage for Use in Connection with Tribal Interests in the Ceded Strip. After the Effective Date of this Compact, the Tribe may develop or authorize new development, from surface flow, Groundwater, or storage, of the Tribal Water Right as set forth in Section F., of Article III and subject to the terms and conditions in Section F.1., of Article III for use in connection with Tribal Interests in the Ceded Strip; provided that, such development shall not Adversely Affect a water right Recognized Under State Law with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV.

d. Prerequisite Administrative Procedure within the Ceded Strip. The following procedure for determining whether new development of surface flow, Groundwater, or storage of the Tribal Water Right for use in connection with Tribal Interests in the Ceded Strip will have an Adverse Affect on water rights Recognized Under State Law shall be followed prior to seeking relief from the Compact Board:

(1). Application for new development of surface flow, Groundwater, or storage of the Tribal Water Right for use in connection with Tribal Interests in the Ceded Strip shall be made to TWRD.

(2). TWRD shall review the application and make a determination of whether the new development will have an Adverse Affect on water rights Recognized Under State Law with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV or pursuant to 85-2-306, MCA. Upon request by TWRD, DNRC shall provide information on state water rights as recorded in the DNRC database to TWRD.

(3). If TWRD determines that the new development will have an Adverse Affect on a water right Recognized Under State Law with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV or pursuant to 85-2-306, MCA, TWRD shall deny the application. If TWRD determines that the new development will not have an Adverse Affect on a water right Recognized Under State Law with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV or pursuant to 85-2-306, MCA, TWRD shall forward the application with its determination to DNRC.

(4). If, based upon the evidence, DNRC agrees with TWRD's determination, DNRC shall notify TWRD. If, however, based upon the evidence, DNRC cannot agree with TWRD's determination, DNRC shall publish notice of the application once in a newspaper of general circulation in the area of the source and shall serve notice by first-class mail on any holder of a water right Recognized Under State Law who, according to the records of the department, has a water right with a priority date before this Compact has been ratified by the Montana

legislature or excepted rights that are provided in Section D.1., of Article IV or pursuant to 85-2-306, MCA, and may be affected by the proposed development. DNRC shall notify TWRD within ninety (90) days of DNRC's determination.

(5). DNRC and TWRD should attempt to resolve any disagreement on TWRD's determination of no Adverse Affect on a cooperative basis. If DNRC or a holder of a water right Recognized Under State Law with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV or pursuant to 85-2-306, MCA, disagree with the determination of no Adverse Affect, DNRC or the water right holder may seek relief from the Compact Board.

(6). In any proceeding concerning the effect of new Groundwater development of the Tribal Water Right for use in connection with Tribal Interests in the Ceded Strip either before TWRD, DNRC, or before the Compact Board, the following shall apply:

(a). Wells Less than 100 Feet: For new Groundwater wells to be completed at a depth beneath the surface of less than 100 feet, the applicant shall bear the burden of showing no Adverse Affect to a water right Recognized Under State Law with a priority date before this Compact has been ratified by the Montana legislature or exempt rights that are provided in Section D.1., of Article IV or pursuant to 85-2-306, MCA.

(b). 100 Feet or Deeper Wells: For new Groundwater wells to be completed at a depth beneath the surface of 100 feet or deeper, the owner of a water right Recognized Under State Law with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV or pursuant to 85-2-306, MCA, shall bear the burden of showing Adverse Affect to the water right.

(7). In any proceeding concerning the effect of new storage development of the Tribal Water Right for use in connection with Tribal Interests in the Ceded Strip either before TWRD, DNRC, or before the Compact Board, the following shall apply:

(a). Storage Over 50 AF: For new storage facilities with a planned constructed capacity of more than 50 AF, the applicant shall bear the burden of showing no Adverse Affect to a water right Recognized Under State Law with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV or pursuant to 85-2-306, MCA.

(b). Storage 50 AF or Less: For new storage facilities with a planned constructed capacity of 50 AF or less, the owner of the water right Recognized Under State Law with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV or pursuant to 85-2-306, MCA, shall bear the burden of showing Adverse Affect to the water right.

e. Groundwater Development of the Tribal Water Right Exempt from the Showing of No Adverse Affect. The following wells are exempt from the requirement of showing no Adverse Affect:

(1). Wells developed as of the date this Compact has been ratified by the Montana legislature are exempt from the burden to show no Adverse Affect. These wells may be replaced, repaired or rehabilitated to the original constructed capacity. A comprehensive list of wells developed as of the date this Compact has been ratified by the Montana legislature shall be kept on file in

TWRD offices as part of the requirement to list current uses of the Tribal Water Right in Section E.2., of Article IV.

(2). An authorized use of Groundwater by means of a well or developed spring with a maximum appropriation of 35 gallons per minute or less, not to exceed 10 acre-feet per year, unless the appropriation is a combined appropriation from the same source from two or more wells or developed springs exceeding the limitation.

f. Storage Development of the Tribal Water Right Exempt from the Showing of No Adverse Affect. The following storage facilities are exempt from the requirement of showing no Adverse Affect:

(1). Facilities storing the Tribal Water Right developed as of the date this Compact has been ratified by the Montana legislature are exempt from the burden to show no Adverse Affect. These storage facilities may be replaced, repaired or rehabilitated to the original constructed capacity. A comprehensive list of storage facilities developed as of the date this Compact has been ratified by the Montana legislature shall be kept on file in TWRD offices as part of the requirement to list current uses of the Tribal Water Right in Section E.2., of Article IV.

(2). An authorized use of water for use by livestock if the maximum capacity of the impoundment or pit is less than 15 acre-feet and the appropriation is less than 30 acre-feet per year and is from a source other than a perennial flowing stream.

2. Change in Use or Transfer of the Tribal Water Right.

a. Change in Use or Transfer of the Tribal Water Right Within the Reservation. Unless otherwise stated in this Compact, the Tribe may make or authorize a Change in Use or Transfer of a water right set forth in Article III of this Compact within the Reservation; provided that, such Change in Use or Transfer shall not Adversely Affect a water right Recognized Under State Law with a priority date before the date of the Change in Use or Transfer. Determination of Adverse Affect shall be made following the same procedure used for review of new surface flow, Groundwater, or storage development of the Tribal Water Right set forth in Sections C.1.a. and C.1.b., of Article IV.

b. Change in Use or Transfer of the Tribal Water Right Within the Ceded Strip. Unless otherwise stated in this Compact, the Tribe may make or authorize a Change in Use or Transfer of the Tribal Water Right set forth in Section F.1.a., of Article III within the Ceded Strip; provided that, such Change in Use or Transfer shall not Adversely Affect a water right Recognized Under State Law with a priority date before the date of the Change in Use or Transfer. Determination of Adverse Affect shall be made following the same procedure used for review of new surface flow, Groundwater, or storage development of the Tribal Water Right within the Ceded Strip set forth in Sections C.1.c. and C.1.d., of Article IV.

c. Change in Use or Transfer of the Tribal Water Right Outside the Reservation. Except as otherwise provided in this Compact, the Tribe, pursuant to federal law, may make or authorize a Change in Use or a Transfer of the Tribal Water Right for up to 50,000 acre-feet of water as provided in Section A.1.b.(1).(a)., of Article III, for use outside the Reservation; provided that, any Transfer shall be for a term not to exceed 100 years, and may include provisions authorizing renewal for an additional term not to exceed 100 years; and provided that, no such Transfer shall be a permanent alienation of the water Transferred. Any Change in Use or Transfer of any such water right involving a

point of diversion or place of use located outside the Reservation shall be considered a use outside the Reservation, except as provided in Section F., of Article III and Section C.2.b., of Article IV; and, further provided that, any use of Tribal water rights described in this Compact outside the Reservation shall not be deemed to convert such rights to rights arising under state law, and non-use of such rights outside the Reservation shall not constitute a relinquishment, forfeiture, or abandonment of the rights. The Tribe may change the point of diversion or purpose or place of use of the Tribal Water Right back to the Reservation without reduction in the amount of water provided in the Compact.

(1). Applicable Law. No person may initiate a use, Change in Use, or Transfer of a Tribal water right set forth in this Compact outside the Reservation without first complying with applicable state law. Approval of an application for a use, Change in Use, or Transfer outside the Reservation by the State shall be conditioned on a valid Tribal authorization for such use, Change in Use, or Transfer by the Tribe. The applicant shall provide DNRC with proof of a valid Tribal authorization prior to initiating the use, Change in Use, or Transfer.

(2). Diversion Facilities. With respect to diversion or transportation facilities located outside the Reservation which are to be used in connection with the exercise of a water right set forth in this Compact, the Tribe or Persons using such water right shall apply for all permits, certificates, variances and other authorizations required by state laws regulating, conditioning or permitting the siting, construction, operation, alteration or use of any equipment, device, facility or associated facility proposed to use or transport water. A diversion or use of water in the exercise of such water right may be made only after all permits, certificates, variances or other authorizations applied for pursuant to this paragraph have been obtained.

D. Water Rights Recognized Under State Law: New Development, Change in Use, or Transfer.

1. Limit on New Development. DNRC shall not process or grant an application for an appropriation after this Compact has been ratified by the Montana legislature within the Reservation, and outside the Reservation in Bighorn River Basin and in Pryor Creek Basin, provided that, the Department may issue certificates of water right or permits for use on fee land for:

a. An appropriation of Groundwater by means of a well or developed spring with a maximum appropriation of 35 gallons per minute or less, not to exceed 10 acre-feet per year, unless the appropriation is a combined appropriation from the same source from two or more wells or developed springs exceeding the limitation.

b. An appropriation of water for use by livestock if the maximum capacity of the impoundment or pit is less than 15 acre-feet and the appropriation is less than 30 acre-feet per year and is from a source other than a perennial flowing stream.

c. Temporary emergency appropriations as provided in 85-2-113(3), MCA.

2. Change in Use or Transfer of Water Rights Recognized Under State Law within the Reservation. The State may authorize a change in use or transfer of a water right Recognized Under State Law within the Reservation in accordance with state law, provided that, such change or transfer shall not Adversely Affect a use of the Tribal Water Right existing at the time of the application for change in use or transfer.

a. Prerequisite Administrative Procedure. The following procedure for determining whether a change in use or transfer of a water right Recognized Under State Law within the Reservation will have an Adverse Affect on an existing water right developed or authorized prior to the date of application for change of use or transfer under the Tribal Water Right shall be followed prior to seeking relief from the Compact Board:

(1). Application for a change in use or transfer of a water right Recognized Under State Law within the Reservation shall be made to DNRC.

(2). DNRC shall review the application and make a determination of whether the change in use or transfer of a water right Recognized Under State Law within the Reservation will have an Adverse Affect on a water right developed or authorized under the Tribal Water Right. Upon request by DNRC, TWRD shall provide information on developed and authorized Tribal Water Rights as recorded by TWRD to DNRC.

(3). If DNRC determines that the change in use or transfer of a water right Recognized Under State Law within the Reservation will have an Adverse Affect on a water right developed or authorized under the Tribal Water Right, DNRC shall deny the application. If DNRC determines that the change in use or transfer of a water right Recognized Under State Law within the Reservation will not have an Adverse Affect on a water right developed or authorized under the Tribal Water Right, DNRC shall forward the application with its determination to TWRD.

(4). If, based upon the evidence, TWRD agrees with DNRC's determination, TWRD shall notify DNRC. If, however, based upon the evidence, TWRD cannot agree with DNRC's determination, TWRD shall publish notice of the application once in a newspaper of general circulation in the area of the source and shall serve notice by first-class mail on any Tribal Water Right holder who, according to the records of TWRD, has a water right developed or authorized before the application date and may be affected by the proposed change in use or transfer of a water right Recognized Under State Law within the Reservation. TWRD shall notify DNRC within ninety (90) days of TWRD's determination.

(5). TWRD and DNRC should attempt to resolve any disagreement on DNRC's determination of no Adverse Affect on a cooperative basis. If TWRD or a holder of a water right developed or authorized under the Tribal Water Right disagree with the determination of no Adverse Affect, TWRD or the Tribal Water Right holder may seek relief from the Compact Board.

E. Reporting Requirements.

1. On an annual basis DNRC shall provide the Tribe and the United States with a listing of all uses of surface flow, Groundwater, or storage for which a certificate of water right or permit has been issued or a change in use or transfer has been approved by DNRC within the Reservation, in the Ceded Strip, and in drainages affected by this Compact.

2. Within one (1) year after this Compact has been ratified by the Montana legislature, the TWRD and the United States shall provide the DNRC with a report listing all current uses of the Tribal Water Right, including uses by Tribal members, existing as of the date this Compact has been ratified by the Montana legislature. DNRC may request additional information from TWRD or the United States to assist in reviewing the report. DNRC must approve or disapprove of the listing of all current uses of the Tribal Water Right within six (6) months after receipt of the report.

3. On an annual basis TWRD shall provide the DNRC and the United States with a listing of all new development of the Tribal Water Right described in this Compact within the Reservation, in the Ceded Strip, and outside the Reservation, and of all Changes in Use or Transfers of water rights within and outside the reservation since the last report.

4. TWRD, DNRC, and the United States may agree to modify the reporting requirements set forth in Sections D.1. and D.3., of Article IV. Such modification is pursuant to, and shall not be deemed a modification of, this Compact.

5. All reporting to the United States under this subsection shall be made to the Billings Area Office of the Bureau of Indian Affairs.

F. Enforcement: Crow-Montana Compact Board.

1. Establishment of Board. There is hereby established the Crow-Montana Compact Board. The Board shall consist of three members: one member selected by the Governor of the State of Montana; one member appointed by the Crow Tribal Chairman; and one member selected by the other two members. All members shall be appointed within six (6) months of the Effective Date of this Compact and within thirty (30) days of the date any vacancy occurs. If an appointment is not timely made by the Governor, the Director of DNRC or his/her designee shall fill the State's position. If an appointment is not timely made by the Crow Tribal Chairman, the Director of TWRD or his/her designee shall fill the Tribe's position. Each member shall serve a five-year term and shall be eligible for reappointment. The initial term of each member shall be staggered with one member serving a five-year term, one a four-year term, and one a three-year term. The initial term of each member shall be chosen by lot. Expenses of the members appointed by the State and the Tribe shall be borne by the entity appointing the member. The expenses of the third member and all other expenses shall be borne equally by the Tribe and the State, subject to the availability of funds.

2. Membership. Should the two appointed members fail to agree on the selection of a third member within sixty (60) days of the date of appointment of the second member, or within thirty (30) days after any vacancy occurs, the following procedure shall be utilized:

a. Within five (5) days thereafter each member shall nominate three persons to serve as a member of the Board;

b. Within fifteen (15) days thereafter each member shall reject two of the persons nominated by the other member;

c. Within five (5) days thereafter, the remaining two nominees shall be submitted to the Dean of the University of Montana School of Law who shall select the third member from the two nominees.

3. Quorum and Vote Required. Two members of the Board shall constitute a quorum if reasonable notice of the time, place, and purpose of the meeting, hearing, or other proceeding has been provided in advance to the absent member. All Board decisions shall be by a majority of the Board, shall be in writing and, together with any dissenting opinions, shall be served on all parties in the proceeding before the Board, and on the Parties to this Compact.

4. Jurisdiction of the Board. The Crow-Montana Compact Board shall have jurisdiction to resolve controversies over the right to the use of water as between the Parties or holders of water rights developed or authorized under the Tribal Water Right and holders of water rights Recognized Under State Law. Such controversies shall include, but shall not be limited to, disputes as to the meaning of this Compact.

5. Prerequisite Administrative Procedures.

a. Any holder of a water right Recognized Under State Law concerned that a new development, Change in Use, or Transfer of the Tribal Water Right is inconsistent with the Compact shall first contact the Billings Regional Office of DNRC. If DNRC and TWRD are unable to resolve the issue in a manner acceptable to the water right holder within a reasonable time through discussion, DNRC or the water right holder may seek relief through the Compact Board. The Tribe agrees to allow DNRC reasonable access onto Tribal land or to assist DNRC in obtaining reasonable access onto the land of the Tribal Water Right holder to observe the challenged new development, Change in Use, or Transfer.

b. Any Tribal Water Right holder concerned that a new development, change in use, or transfer of water by a holder of a water right Recognized Under State Law is inconsistent with the Compact shall first contact TWRD. If TWRD and DNRC are unable to resolve the issue in a manner acceptable to the Tribal Water Right holder within a reasonable time through discussion, TWRD or the Tribal Water Right holder may seek relief through the Compact Board. DNRC agrees to assist TWRD in obtaining reasonable access onto the land of the holder of the water right Recognized Under State Law to observe the challenged development, change in use, or transfer.

c. TWRD and DNRC may jointly develop supplemental procedures as necessary or appropriate. Such supplemental procedures are pursuant to, and shall not be deemed a modification of, this Compact.

6. Powers and Duties. The Board shall hold hearings upon notice in proceedings before it and shall have the power to administer oaths, take evidence and issue subpoenas to compel attendance of witnesses or production of documents or other evidence, and to appoint technical experts. The Tribe and the State shall enforce the Board's subpoenas in the same manner as prescribed by the laws of the Tribe and the State for enforcing a subpoena issued by the courts of each respective sovereign in a civil action. The parties to the controversy may present evidence and cross examine any witnesses. The Board shall determine the controversy and grant any appropriate relief, including a temporary order; provided that, the Board shall have no power to award money damages, costs, or attorneys' fees. All decisions of the Board shall be by majority vote and in writing. The Board shall adopt necessary rules and regulations to carry out its responsibilities within six (6) months after its first meeting. All records of the Board shall be open to public inspection, except as otherwise ordered by the Board.

7. Review and Enforcement of Board Decisions.

a. Decisions by the Board shall be effective immediately, unless stayed by the Board. Unless otherwise provided by Congress, only the United States and parties to the proceedings before the Board may appeal any final decision by the Board to a court of competent jurisdiction within thirty (30) days of such decision. The hearing on appeal shall be a trial de novo. The notice of appeal shall be filed with the Board and served personally or by registered mail upon all parties to the proceeding before the Board.

b. Unless an appeal is filed within thirty (30) days of a final decision of the Board, as provided in Section F.7.a., of Article IV, any decision of the Board shall be recognized and enforced by any court of competent jurisdiction on petition of the Board, or any party before the Board in the proceeding in which the decision was made.

c. A court of competent jurisdiction in which a timely appeal is filed pursuant to Section F.7.a., of Article IV, or in which a petition to confirm or enforce is filed pursuant to Section F.7.b., of Article IV, may order such temporary or permanent relief as it considers just and proper.

d. An appeal may be taken from any decision of the court in which a timely appeal is filed pursuant to Section f.7.a., of Article IV, or in which a petition to confirm or enforce is filed pursuant to Section F.7.b., of Article IV, in the manner and to the same extent as from orders or judgments of the court in a civil action.

e. In any appeal or petition to confirm or enforce the Board's decision, the Board shall file with the court the record of the proceedings before the Board within sixty (60) days of filing of a notice of appeal.

8. Waiver of Immunity. The Tribe and the State hereby waive their respective immunities from suit, including any defense the State shall have under the Eleventh Amendment of the Constitution of the United States, in order to permit the resolution of disputes under this Compact by the Crow-Montana Compact Board, and the appeal or judicial enforcement of Board decisions as provided herein, except that such waivers of sovereign immunity by the Tribe or the State shall not extend to any action for money damages, costs, or attorneys' fees. The Parties agree that only Congress can waive the immunity of the United States. The participation of the United States in the proceedings of the Compact Board shall be as provided by Congress.

ARTICLE V - DISCLAIMERS AND RESERVATIONS

A. No Effect on Other Tribal Rights or Other Federal Reserved Water Rights.

1. Except as provided in Sections A.1.b.(2). and D.7., of Article III, the relationship between the Tribal Water Right described herein and any rights to water of any other Indian Tribe or its members, or of the United States on behalf of such Tribe or its members shall be determined by the rule of priority.

2. Nothing in this Compact may be construed or interpreted as a precedent to establish the nature, extent, or manner of administration of the rights to water of any other Indian tribes or their members outside of the Crow Reservation.

3. Nothing in this Compact is otherwise intended to affect or abrogate a right or claim of an Indian Tribe other than the Crow Tribe.

4. Except as otherwise provided herein and authorized by Congress, nothing in this Compact may be construed or interpreted in any manner to establish the nature, extent, or manner of administration of the reserved rights to water of any other federal agency or of any other federal lands. Such reserved rights will be subject to the rule of priority in their use.

B. General Disclaimer. Nothing in this Compact shall be so construed or interpreted:

1. As a precedent for the litigation of reserved water rights or the interpretation or administration of future compacts between the United States and the State, or the United States and any other state;

2. To preclude the acquisition or exercise of a right Recognized Under State Law to the use of water by any member of the Tribe outside the Reservation by purchase of such right or by acquisition of land, or by application to the State;

3. To determine the relative rights inter sese of Persons using water under the authority of the State or the Tribe;

4. To limit in any way the rights of the Parties or any other person to litigate any issues or questions not resolved by this Compact;

5. To authorize the taking of a water right which is vested under state or federal law;

6. To create or deny substantive rights through headings or captions used in this Compact;

7. To address or prejudge whether or how, in any interstate apportionment, the Tribe's water right shall be counted as part of the waters apportioned to the State;

8. To prohibit the Tribe, or the United States on behalf of the Tribe, from objecting in any general stream adjudication in Montana Water Court to any claims to water rights;

9. To constitute a waiver of sovereign immunity by the Tribe, State, or United States, except as is expressly set forth in this Compact;

10. Unless otherwise provided by Congress, to prevent the United States, as trustee for the Tribe or Tribal members, or the Tribe itself, from filing an action in any court of competent jurisdiction, to prevent any party from interfering with the enjoyment of the Tribal Water Right;

11. To impair, amend, or alter rights under existing state or federal law;

12. To affect or determine the applicability of any state or federal law, including, without limitation, environmental and public safety laws, on activities of the Tribe or Tribal members within the Reservation or in connection with Tribal Interests in the Ceded Strip;

13. To alter or amend any provision or to adopt or preclude any interpretation of the Yellowstone River Compact, Act of October 10, 1951, ch. 629, 65 Stat. 663 (1951);

14. To alter or abridge any right reserved to the Crow Tribe of Indians under Article 4 of the May 7, 1868 Treaty of Fort Laramie; or

15. To prejudice any right that Tribal members may have to secure a portion of the Tribal Water Right from the Tribe.

C. Rights Reserved. The Parties expressly reserve all rights not granted, recognized or relinquished in this Compact.

D. Obligations of United States Contingent.

1. Notwithstanding any other language in this Compact, except as authorized under other provisions of federal law, the obligations of the United States under this Compact shall be contingent on authorization by Congress.

2. The State and the Tribe recognize that this Compact has not been reviewed and approved by the United States or any agency thereof and ratification by the Montana legislature or ratification by the Tribal Council in no manner binds or restricts the discretion of the United States in the negotiation of all related matters, including but not limited to, coal severance tax, Section 2 of the Crow Allotment Act (41 Stat. 751), water rights, and State and Federal contribution or cost share.

E. Expenditures of Money Contingent. The expenditure or advance of any money or the performance of any work by the United States or the Tribe pursuant to this Compact which may require appropriation of money by Congress or allotment of funds shall be contingent on such appropriation or allotment being made.

ARTICLE VI - CONTRIBUTIONS TO SETTLEMENT

A. State Contribution to Settlement.

1. The State agrees to contribute the sum of $15 million, in equal annual installments for a period of no more than fifteen years beginning July 1, 1999, to a fund for the use and benefit of the Tribe.

2. Payment of the State's contributions for the benefit of the Tribe is contingent on the final approval of this Compact by the Tribe and Congress, the final inclusion of the rights set forth in the Compact in decrees by the Montana Water Court and the expiration of the time for appeal from all orders effecting such inclusion or the affirmance of the decrees or orders on appeal, the provision of releases of claims as provided in Section A.4., of Article VI, and the fulfillment of any other conditions to the effectiveness of the Compact.

3. Until all conditions for payment are fulfilled, the State and the Tribe agree that any payments due shall be paid into an interest-bearing escrow account, to be held without distribution of principal or interest until all conditions for payment to the Tribe are satisfied*, except that the State and the Tribe may agree in writing that some portion of the interest earned on the funds in the escrow account may be disbursed to the Tribe before all conditions for payment are satisfied*.

4. The Tribe agrees that the State's contribution will be dedicated to economic development and water and sewer infrastructure within the Crow Reservation. The Tribe further agrees that the State's contributions as set forth in Section A.1., of Article VI and any other agreements that may be set forth in a separate coal severance tax settlement agreement between the State and Tribe should be considered as fully satisfying any cost-share obligation on the part of the State for this Compact. The Tribe further agrees that the State's contributions and agreements herein are full and adequate consideration for the Tribe's agreements as set forth in this Compact, and that the State's contributions, together with any other agreements that may be set forth in a separate coal severance tax settlement agreement between the State and the Tribe, are full and adequate consideration for the release of all claims by the Tribe and the United States in the civil action captioned Crow Tribe of Indians v. State of Montana, Cause No. CV-78-110-BLG-JDS (D. Mont.). The Tribe further agrees that in consideration of the State's contributions and other agreements set forth in a separate coal severance tax settlement agreement, the Tribe will provide releases of all claims, including any pleadings or proposed orders necessary to implement or otherwise give effect to the releases, in that action in a form acceptable to the Attorney General of the State.

B. Federal Legislation. The Tribe and the State agree to support federal legislation ratifying this Compact that will accomplish the following:

1. Bighorn Lake Water Supply. The State and the Tribe agree to support federal legislation that will provide an allocation of storage water in Bighorn Lake, as described in Section A.1.b., of Article III and which will reallocate the water in Bighorn Lake as set forth in Section A.1.b.(1).(b).(i)., of Article III. The priority date for the allocation shall be the date of the water right held by the Bureau of Reclamation as decreed or to be decreed by the Montana Water Court pursuant to 85-2-234, MCA. This allocation shall be held in trust for the Tribe by the United States and will be part of the Tribal Water Right.

2. Right to Participate in Future Projects to Import Water. The Tribe shall have the right to initiate or participate in any project to augment the water supply in the Basins listed in Sections B., C., D. and E., of Article III, by

transferring water from another drainage, and to have any such augmentation project deliver any entitlement of the Tribe to water to a point within the Reservation designated by the Tribe.

3. Federal Court Jurisdiction. That the federal courts shall have jurisdiction to enforce the provisions of this Compact and to hear appeals from and enforce decisions of the Compact Board in accordance with Section F.7., of Article IV.

C. Federal Contributions to Settlement. Federal contributions to settlement shall be as provided by Congress.

ARTICLE VII - FINALITY, SETTLEMENT OF CLAIMS, EFFECTIVENESS OF COMPACT, AND WAIVER OF CLAIMS

A. Ratification and Effectiveness of Compact.

1. This Compact shall become Effective on the date it is ratified by the Tribe, by the State, and by the Congress of the United States, whichever date is latest. Upon ratification of this Compact by the Tribe and by the State, whichever is later, the terms of this Compact may not be altered, voided, or modified in any respect without the consent of both the Tribe and the State. Once ratified by Congress, the Tribe, and the State, the Compact may not be modified without the consent of the Tribe, the State, and the United States.

2. Notwithstanding any other provision in this Compact, the Tribe reserves the right to withdraw as a Party to this Compact:

a. If Congress has not ratified this Compact within four (4) years from the date the Compact is ratified by the State;

b. If appropriations are not authorized by Congress within four (4) years of the date the Compact is ratified by the Tribe;

c. If the Tribe and the United States do not reach agreement on the federal contribution to settlement;

d. If appropriations are not made in the manner contemplated by the federal legislation ratifying the Compact; or

e. If the Tribe and the United States do not reach agreement on settlement of issues regarding Section 2 of the Crow Allotment Act (41 Stat.751).

3. The Tribe may exercise its right to withdraw by sending to the Governor of the State of Montana and to the Secretary of the Interior by certified mail a resolution of the Crow Tribal Council stating the Tribe's intent to withdraw and specifying a withdrawal date not sooner than thirty (30) days from the date of the resolution. On the date designated in the resolution for Tribal withdrawal, this Compact shall become null and void without further action by any Party, and the Parties agree to resume negotiation in good faith for quantification of the water rights of the Crow Tribe and entry of a decree in a court of competent jurisdiction.

4. Notwithstanding any other provision in this Compact, the State reserves the right to withdraw as a Party to this Compact:

a. If the Tribe and Congress have not ratified this Compact within five (5) years from the date the Compact is ratified by the State;

b. If Congress requires a state contribution to settlement that exceeds the contributions described in Section A., of Article VI;

c. If Congress resolves issues under Section 2 of the Crow Allotment Act (41 Stat. 751) in a manner Adversely Affecting water rights Recognized Under State Law;

d. If a streamflow and lake level management plan pursuant to Section A.7., of Article III is not agreed to within one (1) year after this Compact has been ratified by the Montana legislature or any extended deadline agreed to by the State, or if federal legislation is inconsistent with the streamflow and lake level management plan; or

e. If the Department of Natural Resources and Conservation does not approve the list of current uses of the Tribal Water Right pursuant to Section E.2., of Article IV.

5. The State may exercise its right to withdraw by sending to the Crow Tribal Chairman and to the Secretary of the Interior a letter delivered by certified mail from the Governor of the State of Montana stating the State's intent to withdraw and specifying a withdrawal date not sooner than thirty (30) days from the date of the letter. On the date designated in the letter for State withdrawal, this Compact shall become null and void without further action by any Party, and the Parties agree to resume negotiation in good faith for quantification of the water rights of the Crow Tribe and entry of a decree in a court of competent jurisdiction.

6. Notwithstanding any other provision in this Compact, the Department of the Interior reserves the right to refuse to support federal legislation ratifying this Compact.

7. The Parties understand and accept that federal financial contributions to the Compact may not be budgeted until October of the year following the year of enactment of the Compact.

B. Incorporation Into Decrees and Disposition of Federal Suit.

1. The Tribe, the State, and the United States agree to defend the provisions and purposes of this Compact including the quantification set forth in Article III, from all challenges and attacks in all proceedings pursuant to this Section B., of Article VII.

2. Within one hundred eighty (180) days of the date this Compact is ratified by the Crow Tribal Council, the State of Montana, and Congress, whichever is latest, the Tribe, the State, or the United States shall file, in the general stream adjudication initiated by the State of Montana, pursuant to the provisions of 85-2-702(3), MCA, a motion for entry of the proposed decree set forth in Appendix 1 as the decree of the water rights held by the United States in trust for the Crow Tribe. If the Montana Water Court does not approve the proposed decree submitted with the motion within three years following the filing of the motion, the Compact shall be voidable by agreement of the State and the Tribe. If the Montana Water Court approves the proposed decree within three years, but the decree is subsequently set aside by the Montana Water Court or on appeal, the Compact shall be voidable by agreement of the State and the Tribe. Any effect of the failure of approval or setting aside of the decree on the approval, ratification, and confirmation by the United States shall be as provided by Congress. The Parties understand and agree that the submission of this Compact to a state court or courts, as provided for in this Compact, is solely to comply with the provisions of 85-2-702(3), MCA, and does not expand the jurisdiction of the state court or expand in any manner the waiver of sovereign immunity of the United States in the McCarran Amendment, 43 U.S.C. 666, or other provision of federal law.

3. Consistent with 3-7-224, MCA, setting forth the jurisdiction of the chief water judge, for the purposes of 85-2-702(3), MCA, the review by the Montana Water Court shall be limited to Article III, and Appendix 1, and may extend to

other sections of the Compact only to the extent that they relate to the determination of existing water rights. The final decree shall consist of Article III as displayed in Appendix 1, and such other information as may be required by 85-2-234, MCA. Nevertheless, pursuant to 85-2-702(3), MCA, the terms of the entire Compact must be included in the preliminary decree without alteration for the purpose of notice.

4. Upon the issuance of a final decree by the Montana Water Court, or its successor, and the completion of any direct appeals therefrom, or upon the expiration of the time for filing any such appeal, the United States, the Tribe, and the State shall execute and file joint motions pursuant to Rule 41(a), Fed. R. Civ. P., to dismiss the Tribe's claims, and any claims made by the United States as trustee for the Tribe, in U.S. v. Big Horn Low Line Canal Company, et al., No. CIV-75-34-BLG (filed April 17, 1975) (hereinafter referred to as "Low Line Canal") and such claims may only be refiled if the Tribe exercises its option to withdraw as a Party to the Compact pursuant to Section A.3., of Article VII. This Compact shall be filed as a consent decree in Low Line Canal only if, prior to the dismissal of Low Line Canal as provided in Section B., of Article VII, it is finally determined in a judgment binding upon the State of Montana that the state courts lack jurisdiction over, or that the state court proceedings are inadequate to adjudicate, some or all of the water rights asserted in Low Line Canal.

C. Settlement of Water Right Claims. The water rights and other rights confirmed to the Tribe in this Compact are in full and final satisfaction of the water right claims of the Tribe and the United States on behalf of the Tribe and its members, including federal reserved water rights claims based on Winters v. United States, 207 U.S. 564 (1908). In consideration of the rights confirmed to the Tribe in this Compact, and of performance by the State of Montana and the United States of all actions required by this Compact, including entry of a final order issuing the decree of the reserved water rights of the Tribe held in trust by the United States as quantified in the Compact and displayed in Appendix 1, the Tribe and the United States as trustee for the Tribe and Tribal members hereby waive, release, and relinquish any and all claims to water rights or to the use of water within the State of Montana existing on the date this Compact is ratified by the State, the Tribe, and Congress and conditional upon a final decree, whichever date is later.

D. Binding Effect. After the Effective Date of this Compact, its terms shall be binding:

1. Upon the State and any person or entity of any nature whatsoever using, claiming or in any manner asserting any right under the authority of the State to the use of water in the State of Montana; provided that, the validity of consent, ratification, or authorization by the State is to be determined by Montana law;

2. Upon the Tribe, Tribal members, and any person or entity of any nature whatsoever using, claiming or in any manner asserting any right to the use of the Tribe's water right, or any right arising under any doctrine of reserved or aboriginal water rights for the Tribe or a Tribal member, or any right arising under tribal law; provided that, the validity of consent, ratification or authorization by the Tribe is to be determined by tribal law; and

3. Upon the United States and any person or entity of any nature whatsoever using, claiming or in any manner asserting any right under the authority of the United States to the use of water in the State of Montana; provided that, the

validity of consent, ratification or authorization by the United States is to be determined by federal law.

E. Waiver of Claims or Objections.

1. After the Effective Date of this Compact, the Tribe, any individual claiming a right to use water based on or derived from the Tribe, and the United States on behalf of the Tribe or a Tribal member, shall be prohibited from objecting to, or bringing a claim against, the claim or holder of a right to use water based on the laws of the State of Montana, and any carriage, storage, or delivery facilities and rights of way associated therewith, based on the assertion that such right is invalid because 85-2-301(4), MCA, is invalid as applied to such right, or that such right is inconsistent with or otherwise impairs any right reserved by the Tribe under Article 4 of the May 7, 1868 Treaty of Fort Laramie. If and to the extent necessary to effectuate the intent of this paragraph the Tribe, any individual claiming a right to use water based on or derived from the Tribe, and the United States on behalf of the Tribe shall be deemed to have waived and relinquished any claims or objections they may have against a holder of a right to use water based on the laws of the State of Montana, and any carriage, storage, or delivery facilities and rights of way associated therewith, based on the aforementioned law and Treaty.

2. Waiver of claims by the Tribe against the United States shall be as provided by Congress.

ARTICLE VIII - LEGISLATION

The State and Tribe agree to seek enactment of any legislation necessary to effectuate the provisions and purposes of this Compact, and to defend the provisions and purposes of this Compact from all challenges and attacks; provided that, no provision of the Compact shall be modified as to substance except as may be provided herein.

IN WITNESS WHEREOF the representatives of the State of Montana, the Crow Tribe, and the United States have signed this Compact on the ____ day of____, 19____."

Section 2. Section 85-20-904, MCA, is amended to read:

"85-20-904. Payment of settlement funds into escrow — requirements for escrow agreement — notice from attorney general. (1) The department shall enter into an agreement with the Crow Tribe and, if necessary under federal or tribal law, the United States, selecting an escrow agent to hold any funds paid by the state prior to the time they become payable to the Crow Tribe under this section. When an escrow agent has been selected, the department shall negotiate the terms of an escrow agreement *and any changes to the agreement authorized by law* with the Crow Tribe, the escrow agent, and if necessary under federal or tribal law, the United States. The terms of the agreement must govern the holding of the funds paid pursuant to the settlement. The escrow agreement must provide that any costs and fees payable for the management of the escrow fund will be borne by the fund, that the funds placed in the escrow account will be invested and held at interest in trust for the Crow Tribe, and that*, except as provided in subsection (4),* the contents of the fund will become payable to the order of the Crow Tribe only upon the occurrence of all of the following conditions:

(a) the compact has been approved by the Congress of the United States in a form satisfactory to the commission;

(b) the compact has been approved by the Crow Tribe in the manner provided by federal and tribal law, including approval of any tribal referendum presently or later required by federal or tribal law;

(c) the compact has been approved by the Montana water court for inclusion in the final decrees in all affected basins, and the order of approval has been affirmed on appeal or the time for appeal from the water court's approval has expired; and

(d) the Crow Tribe and the United States have furnished releases, pleadings, and proposed orders, in forms acceptable to the attorney general, with respect to all claims, including but not limited to claims for costs and attorney fees, asserted in the civil action captioned Crow Tribe of Indians v. State of Montana et al., Cause No. CV-78-110-BLG-JDS (D. Mont.), or any appeal pending in that action.

(2) Within 20 days after all conditions set forth in subsections (1)(a) through (1)(d) have been satisfied, the attorney general shall provide written notice of the satisfaction of the conditions to the escrow agent. The escrow agreement must provide that upon receipt of the written notice provided in this section, the escrow agent shall pay the funds in escrow to the order of the Crow Tribe. This section does not preclude the Crow Tribe from entering into an agreement with the escrow agent or any other entity for the holding of the funds in trust for the Crow Tribe for a period in excess of that provided in this section.

(3) The escrow agreement must provide that in the event the conditions set forth in subsection (1) do not occur within any time limits set in the compact, as those limits may be extended pursuant to the compact by agreement of the parties and the approval of the legislature, or if any party to the compact terminates the compact as provided in the compact prior to payment of the funds to the Crow Tribe as provided in subsection (2), the ~~contents of the escrow fund, including funds paid into the escrow fund by the state and any interest earned on~~ *principal and any interest remaining in* the escrow fund~~,~~ will revert to the state.

(4) The escrow agreement must provide that interest earned on the escrow fund for each fiscal year, up to a maximum of $650,000 in any fiscal year, must be paid to the Crow Tribe for its use for the purposes set forth in section VI.A.4 of the compact. Any interest in excess of $650,000 in any fiscal year must remain in the escrow account to be managed as provided in subsection (1) and dispersed as provided in subsection (2) or (3)."

Section 3. Effective dates. (1) Except as provided in subsection (2), [this act] is effective on passage and approval.

(2) [Section 1] is effective upon signature of the parties as provided in 85-20-901.

Section 4. Retroactive applicability. [Section 2] applies retroactively, within the meaning of 1-2-109, to interest earned on or after July 1, 2008.

Approved March 20, 2009

CHAPTER NO. 45

[SB 215]

AN ACT REMOVING FROM THE ENUMERATION OF COUNTY CHARGES THE REFERENCE TO THE COUNTY'S RESPONSIBILITY FOR ONE-HALF

OF A COUNTY ATTORNEY'S SALARY; AND AMENDING SECTION 7-6-2426, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-6-2426, MCA, is amended to read:

"7-6-2426. Enumeration of county charges. (1) The following are county charges:

(a) charges incurred against the county by virtue of any provision of this title;

(b) ~~one-half of the salary of the county attorney and~~ all expenses necessarily incurred by the county attorney in criminal cases arising within the county, except as provided in subsection (2);

(c) the salary and actual expenses for traveling, when on official duty, allowed by law to sheriffs and the compensation allowed by law to constables for executing process on persons charged with criminal offenses;

(d) the board of prisoners confined in jail;

(e) the accounts of the coroner of the county for services that are provided by law;

(f) all charges and accounts for services rendered by any justice of the peace for services in the examination or trial of persons charged with crime as provided for by law;

(g) the necessary expenses incurred in the support of county hospitals and poorfarms and in the support of the indigent sick and the otherwise dependent poor whose support is chargeable to the county;

(h) the contingent expenses necessarily incurred for the use and benefit of the county;

(i) every other sum directed by law to be raised for any county purpose under the direction of the board of county commissioners or declared to be a county charge.

(2) The costs of subsection (1)(b) arising from the criminal prosecution of escape or of an offense committed in the state prison must be paid as provided in 53-30-110."

Approved March 20, 2009

CHAPTER NO. 46

[SB 252]

AN ACT REVISING THE CAPITOL COMPLEX MASTER PLAN ACT SO THAT THE STATE BUILDING NAMING PROVISIONS AND OTHER RESTRICTIONS DO NOT APPLY TO THE CLASSROOM BUILDING ON THE MONTANA LAW ENFORCEMENT ACADEMY CAMPUS IN HELENA; AMENDING SECTIONS 2-17-807 AND 2-17-808, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, Karl Ohs served the State of Montana honorably as a member of the Montana House of Representatives in 1995, 1997, and 1999 and as Lieutenant Governor from 2001 through 2004; and

WHEREAS, Karl Ohs is widely regarded for the role that he played in negotiating a peaceful resolution to a standoff with the Montana Freemen in 1996.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-17-807, MCA, is amended to read:

"2-17-807. Approval for displays and naming buildings, spaces, and rooms. (1) A state building, space, or room in the capitol complex may not be named after an individual or a bust, plaque, statue, memorial, monument, or art display may not be displayed on a long-term basis in the capitol complex or on the capitol complex grounds unless the building, space, or room name or display is approved by the legislature and complies with this part. The capitol building, including any future additions and expansions, may not be named after any person, as defined in 2-4-102.

(2) (a) Except as provided in subsections (2)(b) ~~and (2)(c),~~ *through (2)(d),* a state building, space, or room in the capitol complex may not be named after an individual or a bust, plaque, statue, memorial, monument, or art display commemorating an individual may not be displayed on a long-term basis in the capitol complex unless the individual has been deceased for at least 10 years.

(b) The statue of Mike and Maureen Mansfield authorized in 2-17-808(1)(d)(iii) and the plaque commemorating President George H. W. Bush authorized in 2-17-808(2)(b)(ii) may continue to be displayed in the capitol complex.

(c) A public building within the capitol complex constructed with private funds after April 17, 2007, or a space or room constructed with private funds after April 17, 2007, in a public building, other than the capitol building, may bear a name designated by the benefactor of the building, space, or room if:

(i) the building, space, or room is to be owned by or used exclusively or primarily by the Montana historical society to store or display artifacts or other property owned by the Montana historical society; and

(ii) the building, space, or room and the designated name are approved by the council and by the board of the historical society, provided for in 2-15-1512.

(d) The classroom building authorized in May 2007 to be built at the Montana law enforcement academy may be named after Karl Ohs, and a plaque and the Lou Peters award commemorating Karl Ohs may be displayed there.

(3) A bust, plaque, statue, memorial, monument, or art display commemorating an event, including a military event, may not be displayed on a long-term basis in the capitol complex until 10 years after the end of the event.

(4) All busts, plaques, statues, memorials, monuments, or art displays authorized, but not installed within 5 years of authorization, must be reauthorized.

(5) The department of administration may review and approve the temporary display of a bust, plaque, statue, memorial, monument, or art display for up to 1 year in the capitol complex or on the capitol complex grounds."

Section 2. Section 2-17-808, MCA, is amended to read:

"2-17-808. Placement of certain busts, plaques, statues, memorials, monuments, and art displays. (1) The following busts, plaques, statues, memorials, monuments, and art displays are to be placed for up to 50 years, subject to renewal, in the capitol:

(a) the busts of Thomas J. Walsh, Burton K. Wheeler, and Joseph Dixon;

(b) the plaques commemorating Theodore Brantley, Fred Whiteside, the first Montana volunteers who fought in the Spanish-American War, the

construction of the capitol from 1899 to 1902, the 1972 Montana constitutional convention, and the women legislators' centennial;

(c) the murals by Edgar S. Paxson, Ralph E. DeCamp, Charles M. Russell, Amedee Joullin, and F. Pedretti and sons;

(d) the statues of:

(i) Wilbur Fiske Sanders;

(ii) Jeannette Rankin; and

(iii) Mike and Maureen Mansfield;

(e) the Montana statehood centennial bell;

(f) the gallery of outstanding Montanans;

(g) the Montana constitutional exhibit; and

(h) the biographical descriptions of Montana's governors, to be placed near the portraits of the governors.

(2) The following busts, plaques, statues, memorials, monuments, and art displays are to be placed for up to 50 years, subject to renewal, on the grounds of the capitol:

(a) the statues of Thomas Francis Meagher and Lady Liberty;

(b) the plaques commemorating:

(i) Donald Nutter;

(ii) President George H. W. Bush; and

(iii) American prisoners of war and personnel of the United States armed services missing in action;

(c) two benches with plaques recognizing contributors to the 1997-2000 capitol restoration, repair, and renovation project;

(d) the Montana centennial square; and

(e) the monument of the ten commandments.

(3) The following busts, plaques, statues, memorials, monuments, and art displays are to be placed for up to 50 years, subject to renewal, on the capitol complex grounds:

(a) the statue by Robert Scriver entitled "symbol of the pros";

(b) the monuments to the liberty bell, the veterans' and pioneer memorial building—landscape beautification project, Montana veterans, and Pearl Harbor survivors and the peace pole;

(c) the sculptures of the herd bull and the eagle;

(d) the plaques commemorating the Montana national guard and Lewis and Clark; and

(e) the arrastra.

(4) The following busts, plaques, statues, memorials, monuments, and art displays are to be placed for up to 50 years, subject to renewal, in state buildings on the capitol complex:

(a) the paintings of Dr. W. F. Cogswell and the paintings entitled "burning bush", "dryland farmer", "farm girl", "the river rat", "top of the world", "angus #68", "the source", "the Bozeman trail", and "the Mullan road";

(b) the art displays known as "Montana workers—mining, ranching, and building", "copper city rodeo", "dancing cascade", "save a piece of the sky", and "night light";

(c) the plaque commemorating Walt Sullivan, the plaque of the Sam W. Mitchell building, and the plaque commemorating the original headquarters of the Montana highway patrol; ~~and~~

(d) the busts of Lee Metcalf and Sam W. Mitchell~~.~~*; and*

(e) the plaque and Lou Peters award commemorating Karl Ohs.

(5) The senate sculpture depicting the Lewis and Clark expedition is to be placed for up to 50 years, subject to renewal, on the west wall in the senate chambers.

(6) The council shall determine the specific placement of the items identified in subsections (1) through (4)."

Section 3. Effective date. [This act] is effective on passage and approval.

Approved March 20, 2009

CHAPTER NO. 47

[HB 61]

AN ACT REVISING CERTAIN PROVISIONS OF THE INFORMATION ACCESS MONTANA ACT; REPLACING THE INTERLIBRARY LOAN REIMBURSEMENT PROGRAM WITH A STATEWIDE INTERLIBRARY RESOURCE-SHARING PROGRAM; REPLACING THE STATE MULTILIBRARY CARD WITH A STATEWIDE LIBRARY ACCESS PROGRAM; AMENDING SECTIONS 22-1-301, 22-1-328, 22-1-329, AND 22-1-330, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 22-1-301, MCA, is amended to read:

"22-1-301. Definitions. Unless otherwise provided, the following definitions apply in this part:

(1) "City" means city or town.

(2) "Commission" means the state library commission.

(3) "Public library" means a library created under*:*

(a) 22-1-303 through 22-1-317 that provides library services to the public by means of central facilities, branch facilities, or bookmobiles*; or*

(b) Title 7.

~~(4) "State multilibrary card" means a card that is issued to a Montana resident by a public library created under Title 7 or under 22-1-303 and that may be used for library services in every public library in the state.~~"

Section 2. Section 22-1-328, MCA, is amended to read:

"22-1-328. ~~State~~ *Statewide* interlibrary ~~loan~~ *resource-sharing* program — reimbursement — eligibility. ~~(1) Each Montana library eligible for reimbursement under this section for participation in the statewide interlibrary loan program must be reimbursed according to the rules adopted by the commission.~~

~~(2) Libraries eligible for interlibrary loan reimbursement under this section include~~ *The commission shall establish a statewide interlibrary resource-sharing program. The purpose of the program is to administer funds appropriated by the legislature to support and facilitate resource-sharing among libraries in Montana, including but not limited to* public libraries, *public library*

districts, libraries operated by public schools or school districts, libraries operated by public colleges or universities, *tribal libraries,* libraries operated by public agencies for institutionalized persons, and libraries operated by nonprofit, private medical, educational, or research institutions.

~~(3) Notwithstanding subsections (1) and (2), the following types of interlibrary loans are not eligible for reimbursement:~~

~~(a) a loan between public school libraries located within the same public school district;~~

~~(b) a loan between an elementary school library and a high school library located within school districts with overlapping school district boundaries;~~

~~(c) a loan between libraries administered by a public or private, nonprofit college or university; and~~

~~(d) a loan between libraries administered by a public library.~~"

Section 3. Section 22-1-329, MCA, is amended to read:

"22-1-329. ~~State multilibrary card~~ *Statewide library access program.* The commission shall develop a *voluntary statewide library access* program ~~to allow Montana libraries to issue to residents a state multilibrary card as defined in 22-1-301~~ *whereby a participating library may allow access to the library's materials and services by patrons registered and in good standing with another library*."

Section 4. Section 22-1-330, MCA, is amended to read:

"22-1-330. Commission rulemaking authority. The commission may adopt rules and procedures for:

(1) the distribution of state aid to public libraries and public library districts on a per capita and per square mile basis*, as provided in 22-1-327*;

(2) ~~issuance of state multilibrary cards~~ *the statewide library access program provided for in 22-1-329*;

(3) ~~reimbursement for interlibrary loan lending~~ *the statewide interlibrary resource-sharing program provided for in 22-1-328*;

(4) distribution of base grants provided for in 22-1-331; and

(5) the composition of the library federation board of trustees, as provided in 22-1-404."

Section 5. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

Section 6. Effective date. [This act] is effective July 1, 2009.

Approved March 23, 2009

CHAPTER NO. 48

[HB 120]

AN ACT ALLOWING THE MONTANA TRANSPORTATION COMMISSION TO ACCEPT ELECTRONIC BID BONDS AS SECURITY FOR BIDS ON HIGHWAY CONSTRUCTION PROJECTS; AMENDING SECTIONS 18-2-303 AND 60-2-113, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 18-2-303, MCA, is amended to read:

"18-2-303. Construction bids — minimum requirements — effect of failure to comply. (1) Each bid communicated to a state agency for the construction of a building must contain or be accompanied by the following items that may not be waived by the state agency:

(a) bid security, as required by 18-2-302;

(b) the unit price for each item required to be bid by unit price; and

(c) the signature*, including an electronic signature allowed under 60-2-113,* of an individual authorized to submit the bid and authorized by that submission to agree to perform the contract if the bid is accepted. If the request for bid or other specifications provided by the state agency specify the individual required to submit the bid, the bid must comply with that requirement.

(2) The unit price must be expressly stated in the bid and may not have to be calculated by the state agency by dividing the total of the unit prices by the number of units specified or required.

(3) A bid that does not include the items required by subsection (1) as part of or along with the bid may not be accepted by the state agency.

(4) The following definitions apply to this section:

(a) "Building" has the meaning provided in 18-2-101.

(b) "Construction" has the meaning provided in 18-2-101.

(c) "State agency" means a department, board, commission, authority, or office of a branch of state government, including the board of regents and the Montana university system.

(d) "Unit price" means the price of lumber, concrete, earth, pipe, or other construction item, activity, or material for which the price is required by the request for bids to be bid on the basis of that item, a linear foot, square foot, square yard, cubic yard, activity an hour or other measurement of time, or other standard unit of measurement for that material, item, or activity."

Section 2. Section 60-2-113, MCA, is amended to read:

"60-2-113. Bidder's security — contractor's bond. (1) *(a)* ~~Whenever~~ *Subject to subsection (1)(b), whenever* the commission calls for competitive bidding, each bidder shall meet all requirements of Title 18, chapter 1, part 2.

(b) The commission may accept electronic bid bonds signed electronically or otherwise verified by the bidder and the surety.

(2) ~~Every~~ *Each* contractor awarded a contract by the commission shall meet all requirements set forth in Title 18, chapter 2, part 2. ~~For the purposes of those sections with relation to contracts with the commission, a~~ *A* contract ~~shall~~ *is* not *considered to* be completed until the commission, while formally convened, affirmatively accepts all of the work ~~thereunder~~ *specified in the contract*."

Section 3. Effective date. [This act] is effective on passage and approval.

Approved March 23, 2009

CHAPTER NO. 49

[HB 121]

AN ACT ADOPTING THE MOST RECENT APPLICABLE FEDERAL MILITARY LAWS AND REGULATIONS, FORMS, PRECEDENTS, AND USAGES, INCLUDING THE UNIFORM CODE OF MILITARY JUSTICE,

FOR USE IN THE MONTANA NATIONAL GUARD; AMENDING SECTION 10-1-104, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 10-1-104, MCA, is amended to read:

"10-1-104. Federal regulations to govern. (1) Federal laws and regulations, forms, precedents, and usages relating to and governing the armed forces of the United States and the national guard, as in effect on October 1, ~~2007~~ *2009*, insofar as they are applicable and not inconsistent with the constitution and laws of this state or with a rule or regulation adopted pursuant to 10-1-105, apply to and govern the national guard of this state, including all members on active duty within the state as active duty guard/reserve (AGR) personnel under Title 32 of the United States Code.

(2) The Uniform Code of Military Justice, as in effect on October 1, ~~2007~~ *2009*, including the regulations, manuals, forms, precedents, and usages implementing, interpreting, and complementing the code, is adopted for use by the national guard of this state and applies, insofar as the code is not otherwise inconsistent with the constitution and laws of this state, including the regulations, manuals, forms, precedents, and usages implementing, interpreting, and complementing the constitution and laws of this state, or with a rule or regulation adopted pursuant to 10-1-105, to the greatest extent practicable to govern the national guard of this state, including all members on active duty within the state as active duty guard/reserve (AGR) personnel under Title 32 of the United States Code when the members are serving other than in a federal capacity under Title 10 of the United States Code."

Section 2. Applicability. [This act] applies to events that occur and proceedings begun on and after October 1, 2009.

Approved March 23, 2009

CHAPTER NO. 50

[HB 159]

AN ACT CREATING THE PROPERTY AND CASUALTY ACTUARIAL OPINION ACT; REQUIRING CASUALTY AND PROPERTY INSURERS TO ANNUALLY SUBMIT AN ACTUARIAL OPINION SUMMARY; PROVIDING THAT THE STATEMENT OF ACTUARIAL OPINION IS A PUBLIC DOCUMENT; PROVIDING THAT ACTUARIAL REPORTS, WORK PAPERS, AND ACTUARIAL OPINION SUMMARIES RETAINED BY THE COMMISSIONER ARE TRADE SECRETS AND ARE PRIVILEGED AND MUST BE GIVEN CONFIDENTIAL TREATMENT; AND PROVIDING A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Short title. [Sections 1 through 3] may be cited as the "Property and Casualty Actuarial Opinion Act".

Section 2. Actuarial opinion of reserves and supporting documentation. (1) Every property and casualty insurer doing business in this state, unless otherwise exempted by its domiciliary commissioner, shall annually submit the opinion of an appointed actuary entitled "Statement of Actuarial Opinion". The insurer shall file this opinion in accordance with the appropriate NAIC property and casualty annual statement instructions.

(2) (a) Every property and casualty resident domestic insurer that is required to submit a statement of actuarial opinion shall annually submit an actuarial opinion summary written by the insurer's appointed actuary. This actuarial opinion summary must be filed in accordance with the appropriate NAIC property and casualty annual statement instructions and is considered to be a document supporting the actuarial opinion required in subsection (1).

(b) A foreign or alien authorized insurer shall provide to the commissioner the actuarial opinion summary upon request.

(3) (a) An actuarial report and its underlying work papers as required by the appropriate NAIC property and casualty annual statement instructions must be prepared to support each actuarial opinion.

(b) If the insurer fails to provide a supporting actuarial report or work papers at the request of the commissioner or the commissioner determines that the supporting actuarial report or work papers provided by the insurer are otherwise unacceptable to the commissioner, the commissioner may engage a qualified actuary at the expense of the insurer to review the opinion and basis for the opinion and prepare a supporting actuarial report or work papers.

(4) The appointed actuary is not liable for damages to any person, other than the insurer and the commissioner, for any act, error, omission, decision, or conduct with respect to the actuary's opinion except in cases of fraud or willful misconduct on the part of the appointed actuary.

(5) For the purposes of [sections 1 through 3], "actuarial report" means a document or presentation prepared as a formal means of conveying the actuary's professional conclusions and recommendations and communicating the methods and procedures used to reach the conclusions and recommendations, including any supporting documents.

Section 3. Confidentiality. (1) The statement of actuarial opinion must be provided with the annual statement in accordance with the appropriate NAIC property and casualty annual statement instructions and is a public writing, within the meaning of 2-6-101.

(2) (a) Actuarial reports, work papers, and actuarial opinion summaries retained by the commissioner are trade secrets and are privileged. The materials must be given confidential treatment, are not subject to subpoena, and are not subject to discovery, and the materials are not admissible in evidence in any private civil litigation.

(b) Subsection (2)(a) does not limit the commissioner's authority to release the documents to the actuarial board for counseling and discipline if the material is required for the board's professional disciplinary proceedings and if the board establishes procedures satisfactory to the commissioner to preserve the confidentiality of the documents.

(3) This section does not limit the commissioner's authority to use the actuarial reports, work papers, actuarial opinion summaries, or other information in furtherance of any regulatory or legal action brought as part of the commissioner's official duties.

(4) The commissioner and any person who receives actuarial reports, work papers, actuarial opinion summaries, or other information while acting under the authority of the commissioner may not testify in any private civil action concerning the documents or information subject to the provisions of subsection (2).

(5) To assist in the performance of the commissioner's duties, the commissioner may provide and receive documents and information pursuant to 33-1-311.

(6) A waiver of privilege or claim of confidentiality in the actuarial reports, work papers, or actuarial opinion summaries does not result from disclosure to the commissioner under this section or result from the exchange of documents and information authorized in subsections (2)(b) and (5).

Section 4. Codification instruction. [Sections 1 through 3] are intended to be codified as an integral part of Title 33, chapter 1, and the provisions of Title 33, chapter 1, apply to [sections 1 through 3].

Section 5. Effective date. [This act] is effective January 1, 2010.

Approved March 23, 2009

CHAPTER NO. 51

[HB 205]

AN ACT RELATING TO PETITIONS FOR POSTCONVICTION RELIEF; PROVIDING THAT NOTICE OF A PETITION MAY BE SENT TO THE ATTORNEY GENERAL AND COUNTY ATTORNEY RATHER THAN SERVED UPON THEM; SPECIFYING THAT THE ATTORNEY GENERAL DETERMINES THE RESPONSE TO A PETITION; AMENDING SECTION 46-21-201, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-21-201, MCA, is amended to read:

"46-21-201. Proceedings on petition. (1) (a) Unless the petition and the files and records of the case conclusively show that the petitioner is not entitled to relief, the court shall cause notice of the petition to be ~~served upon~~ *sent to* the county attorney in the county in which the conviction took place and ~~upon~~ *to* the attorney general and order ~~them to file~~ *that* a responsive pleading ~~to the petition~~ *be filed. The attorney general shall determine whether the attorney general will respond to the petition and, if so, whether the attorney general will respond in addition to or in place of the county attorney.* Following its review of the responsive pleading, the court may dismiss the petition as a matter of law for failure to state a claim for relief or it may proceed to determine the issue.

(b) If the death sentence has been imposed, upon receipt of the response or responses to the petition, the court shall promptly hold a conference to determine a schedule for the expeditious resolution of the proceeding. The court shall issue a decision within 90 days after the hearing on the petition or, if there is no hearing, within 90 days after the filing of briefs as allowed by rule or by court order. If the decision is not issued during that period, a party may petition the supreme court for a writ of mandate or other appropriate writ or relief to compel the issuance of a decision.

(c) To the extent that they are applicable and are not inconsistent with this chapter, the rules of procedure governing civil proceedings apply to the proceeding.

(2) If the death sentence has not been imposed and a hearing is required or if the interests of justice require, the court shall order the office of state public defender, provided for in 47-1-201, to assign counsel for a petitioner who

qualifies for the assignment of counsel under Title 46, chapter 8, part 1, and the Montana Public Defender Act, Title 47, chapter 1.

(3) (a) Within 30 days after a conviction for which a death sentence was imposed becomes final, the sentencing court shall notify the sentenced person that if the person is indigent, as defined in 47-1-103, and wishes to file a petition under this chapter, the court will order the office of state public defender, provided for in 47-1-201, to assign counsel who meets the Montana supreme court's standards and the office of state public defender's standards for competency of assigned counsel in proceedings under this chapter for an indigent person sentenced to death.

(b) Within 75 days after a conviction for which a death sentence was imposed upon a person who wishes to file a petition under this chapter becomes final, the sentencing court shall:

(i) order the office of state public defender to assign counsel to represent the person pending a determination by the office of state public defender that the person is indigent, as defined in 47-1-103, and that the person either has accepted the offer of assigned counsel or is unable to competently decide whether to accept the offer of assigned counsel;

(ii) if the offer of assigned counsel is rejected by a person who understands the legal consequences of the rejection, enter findings of fact after a hearing, if the court determines that a hearing is necessary, stating that the person rejected the offer with an understanding of the legal consequences of the rejection; or

(iii) if the petitioner is determined not to be indigent, deny or rescind any order requiring the assignment of counsel.

(c) The office of state public defender may not assign counsel who has previously represented the person at any stage in the case unless the person and the counsel expressly agree to the assignment.

(d) If a petitioner entitled to counsel under this subsection (3) is determined not to be indigent but becomes indigent at any subsequent stage of the proceedings, the court shall order the assignment of counsel as provided in subsection (3)(b)(i).

(e) The expenses of counsel assigned pursuant to this subsection (3) must be paid by the office of state public defender.

(f) Violation of this subsection (3) is not a basis for a claim or relief under this chapter.

(4) The court, for good cause, may grant leave to either party to use the discovery procedures available in criminal or civil proceedings. Discovery procedures may be used only to the extent and in the manner that the court has ordered or to which the parties have agreed.

(5) The court may receive proof of affidavits, depositions, oral testimony, or other evidence. In its discretion, the court may order the petitioner brought before the court for the hearing.

(6) If the court finds in favor of the petitioner, it shall enter an appropriate order with respect to the judgment or sentence in the former proceedings and any supplementary orders as to reassignment, retrial, custody, bail, or discharge that may be necessary and proper. If the court finds for the prosecution, the petition must be dismissed."

Section 2. Applicability. [This act] applies to a petition for postconviction relief filed on or after October 1, 2009.

Approved March 23, 2009

CHAPTER NO. 52

[HB 242]

AN ACT REVISING LAWS RELATING TO JURORS AND JUROR FEES; REMOVING THE DUTY OF THE CLERK OF THE DISTRICT COURT TO KEEP A BOOK OF JURORS' WARRANTS; PROVIDING THAT JURORS ARE PAID BY COUNTY WARRANT; PROVIDING FOR THE PAYMENT OF JUROR MILEAGE FROM THE PLACE OF RESIDENCE TO THE COURT IN COURTS OF RECORD; AMENDING SECTIONS 3-5-510, 3-15-201, AND 3-15-204, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 3-5-510, MCA, is amended to read:

"3-5-510. Duties relating to jurors and witnesses. The clerk of the district court shall *keep a*:

~~(1) keep a book called "Book of Jurors' Warrants", which must contain blank warrants as provided in 3-15-204;~~

~~(2)~~*(1)* ~~keep a~~ "Witness Book", which must contain blank warrants as provided in 3-5-511; *and*

~~(3)~~*(2)* ~~keep a~~ record of the attendance of all jurors and witnesses in criminal actions and compute the amount due them for mileage. The distance from any point to the ~~county seat~~ *court* must be determined by the shortest traveled route."

Section 2. Section 3-15-201, MCA, is amended to read:

"3-15-201. Fees in courts of record. (1) A grand or trial jury panel member must receive $12 per day for attendance before any court of record and a mileage allowance, as provided in 2-18-503, for traveling each way between the member's residence and the ~~county seat~~ *court*. Those jurors selected from the panel for a case must receive an additional $13 a day while serving.

(2) A juror who is excused from attendance upon the juror's own motion on the first day of appearance in obedience to a notice or who has been summoned as a special juror and not sworn in the trial of the case ~~shall forfeit~~ *forfeits* per diem and mileage."

Section 3. Section 3-15-204, MCA, is amended to read:

"3-15-204. (Temporary) **Duties of clerk as to jurors.** (1) The clerk shall keep a record of the attendance of jurors and compute the amount due for mileage. The distance from any point to the ~~county seat~~ *court* must be determined by the shortest traveled route.

(2) ~~The clerk shall give to each~~ *A* juror~~, at the time that the juror is excused from further service, a~~ *must receive payment by a* county warrant ~~signed by the clerk, in which must be stated~~ *that lists* the name of the juror, the number of days' attendance, the number of miles traveled, and the amount due.

(3) The state shall reimburse the clerk for the amount specified in the warrant as provided in 3-5-901 and 3-5-902.

3-15-204. (Effective on occurrence of contingency) **Duties of clerk as to jurors.** (1) The clerk shall keep a record of the attendance of jurors and compute the amount due for mileage. The distance from any point to the ~~county seat~~ *court* must be determined by the shortest traveled route.

(2) ~~The clerk shall give to each~~ *A* juror~~, at the time that the juror is excused from further service, a~~ *must receive payment by a* county warrant ~~signed by the clerk, in which must be stated~~ *that lists* the name of the juror, the number of days' attendance, the number of miles traveled, and the amount due.

(3) The state shall reimburse the clerk for the amount specified in the warrant as provided in 3-5-901 and 3-5-902.

(4) The clerk of court for the county in which an asbestos-related claim is tried shall perform the functions required in subsections (1) through (3). The payment of costs incurred under this section must be made from the asbestos claims administration fund provided for in 3-20-104."

Section 4. Effective date. [This act] is effective July 1, 2009.

Approved March 23, 2009

CHAPTER NO. 53

[SB 35]

AN ACT REQUIRING THAT A SHERIFF DELIVERING A DEFENDANT TO A PLACE OF CONFINEMENT, COMMITMENT, OR EXECUTION SHALL ALSO DELIVER ALL INFORMATION IN THE SHERIFF'S POSSESSION REGARDING THE MENTAL AND PHYSICAL HEALTH OF THE DEFENDANT, INCLUDING HEALTH INFORMATION CONTAINED IN A PRESENTENCE INVESTIGATION REPORT; AND AMENDING SECTIONS 46-18-112 AND 46-19-101, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-18-112, MCA, is amended to read:

"46-18-112. Content of presentence investigation report. (1) Whenever an investigation is required, the probation officer shall promptly inquire into and report upon:

(a) the defendant's characteristics, circumstances, needs, and potentialities;

(b) the defendant's criminal record and social history;

(c) the circumstances of the offense;

(d) the time of the defendant's detention for the offenses charged;

(e) the harm caused, as a result of the offense, to the victim, the victim's immediate family, and the community; and

(f) the victim's pecuniary loss, if any. The officer shall make a reasonable effort to confer with the victim to ascertain whether the victim has sustained a pecuniary loss. If the victim is not available or declines to confer, the officer shall record that information in the report.

(2) All local and state mental and correctional institutions, courts, and law enforcement agencies shall furnish, upon request of the officer preparing a presentence investigation, the defendant's criminal record and other relevant information.

(3) The court may, in its discretion, require that the presentence investigation report include a physical and mental examination of the defendant.

(4) Upon sentencing, the court shall forward to the sheriff all information contained in the presentence investigation report concerning the physical and mental health of the defendant, and the information must be delivered with the defendant as required in 46-19-101."

Section 2. Section 46-19-101, MCA, is amended to read:

"46-19-101. Commitment of defendant — *transfer of information in possession of sheriff.* *(1)* Upon oral pronouncement of a sentence imposing punishment of imprisonment, commitment to the department of corrections, placement in a prerelease center, community corrections facility, or other place of confinement, or death, the court shall commit the defendant to the custody of the sheriff, who shall deliver the defendant to the place of confinement, commitment, or execution and give that place an order, which must be signed by the sentencing judge on the date of oral pronouncement of sentence, stating that the defendant is sentenced to that place for imprisonment, commitment, placement, or execution, as the case may be. The order is authority for that place to hold the defendant pending receipt by that place of a copy of the written judgment.

(2) When a sheriff delivers the defendant to the place of confinement, commitment, or execution, the sheriff shall deliver at the same time all information in the possession of the sheriff regarding the physical and mental health of the defendant, including health information contained in a presentence investigation report."

Approved March 20, 2009

CHAPTER NO. 54

[SB 256]

AN ACT PERMITTING ACCESS TO YOUTH COURT RECORDS FOR PURPOSES OF CONDUCTING EVALUATIONS OF OUT-OF-HOME PLACEMENTS, PROGRAMS, AND SERVICES; AMENDING SECTIONS 41-5-215 AND 41-5-216, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 41-5-215, MCA, is amended to read:

"41-5-215. Youth court and department records — notification of school. (1) Formal youth court records, including reports of preliminary inquiries, petitions, motions, other filed pleadings, court findings, verdicts, and orders and decrees on file with the clerk of court are public records and are open to public inspection until the records are sealed under 41-5-216.

(2) Social, medical, and psychological records, youth assessment materials, predispositional studies, and supervision records of probationers are open only to the following:

(a) the youth court and its professional staff;

(b) representatives of any agency providing supervision and having legal custody of a youth;

(c) any other person, by order of the court, having a legitimate interest in the case or in the work of the court;

(d) any court and its probation and other professional staff or the attorney for a convicted party who had been a party to proceedings in the youth court when considering the sentence to be imposed upon the party;

(e) the county attorney;

(f) the youth who is the subject of the report or record, after emancipation or reaching the age of majority;

(g) a member of a county interdisciplinary child information team formed under 52-2-211 who is not listed in this subsection (2);

(h) members of a local interagency staffing group provided for in 52-2-203;

(i) persons allowed access to the reports referred to under 45-5-624(7); ~~and~~

(j) persons allowed access under 42-3-203*; and*

(k) persons conducting evaluations as required in 41-5-2003.

(3) (a) Notwithstanding the requirements of 20-5-321(1)(d) or (1)(e) and subject to the provisions of subsection (3)(b) of this section, the youth court shall notify the school district that the youth presently attends or the school district that the youth has applied to attend of a youth's suspected drug use or criminal activity if after an investigation has been completed:

(i) the youth has admitted the allegation or a petition has been filed with the youth court; and

(ii) a juvenile probation officer has reason to believe that a youth is currently involved with drug use or other criminal activity that has a bearing on the safety of children.

(b) Notification under subsection (3)(a) may not be given for status offenses.

(c) A school district may not refuse to accept the student if refusal violates the federal Individuals With Disabilities Education Act or the federal Americans With Disabilities Act of 1990.

(d) The administrative officials of the school district may enforce school disciplinary procedures that existed at the time of the admission or adjudication. The information may not be further disclosed and may not be made part of the student's permanent records.

(4) In all cases, a victim is entitled to all information concerning the identity and disposition of the youth, as provided in 41-5-1416.

(5) The school district may disclose, without consent, personally identifiable information from an education record of a pupil to the youth court and law enforcement authorities pertaining to violations of the Montana Youth Court Act or criminal laws by the pupil. The youth court or law enforcement authorities receiving the information shall certify in writing to the school district that the information will not be disclosed to any other party except as provided under state law without the prior consent of the parent or guardian of the pupil.

(6) Any part of records information secured from records listed in subsection (2), when presented to and used by the court in a proceeding under this chapter, must also be made available to the counsel for the parties to the proceedings."

Section 2. Section 41-5-216, MCA, is amended to read:

"41-5-216. Disposition of youth court, law enforcement, and department records — *sharing and access to records.* (1) Formal youth court records, law enforcement records, and department records that are not exempt from sealing under subsections (4) and (6) and that pertain to a youth

covered by this chapter must be physically sealed on the youth's 18th birthday. In those cases in which jurisdiction of the court or any agency is extended beyond the youth's 18th birthday, the records must be physically sealed upon termination of the extended jurisdiction.

(2) Except as provided in subsection (6), when the records pertaining to a youth pursuant to this section are sealed, an agency, other than the department, that has in its possession copies of the sealed records shall destroy the copies of the records. Anyone violating the provisions of this subsection is subject to contempt of court.

(3) Except as provided in subsection (6), this section does not prohibit the destruction of records with the consent of the youth court judge or county attorney after 10 years from the date of sealing.

(4) The requirements for sealed records in this section do not apply to medical records, fingerprints, DNA records, photographs, youth traffic records, records in any case in which the youth did not fulfill all requirements of the court's judgment or disposition, records referred to in 42-3-203, reports referred to in 45-5-624(7), or the information referred to in 46-23-508, in any instance in which the youth was required to register as a sexual offender pursuant to Title 46, chapter 23, part 5.

(5) After formal youth court records, law enforcement records, and department records are sealed, they are not open to inspection except, upon order of the youth court, for good cause, including when a youth commits a new offense, to:

(a) those persons and agencies listed in 41-5-215(2); and

(b) adult probation professional staff preparing a presentence report on a youth who has reached the age of majority.

(6) (a) When formal youth court records, law enforcement records, and department records are sealed under subsection (1), the electronic records of the management information system maintained by the department of public health and human services and by the department relating to the youth whose records are being sealed must be preserved for the express purpose of research and program evaluation as provided in subsection (6)(b).

(b) The department of public health and human services and the department shall disassociate the offense and disposition information from the name of the youth in the respective management information system. The offense and disposition information must be maintained separately and may be used only:

(i) for research and program evaluation authorized by the department of public health and human services or by the department and subject to any applicable laws; and

(ii) as provided in Title 5, chapter 13.

(7) (a) Informal youth court records for a youth for whom formal proceedings have been filed must be physically sealed on the youth's 18th birthday or, in those cases in which jurisdiction of the court or any agency is extended beyond the youth's 18th birthday, upon termination of the extended jurisdiction and may be inspected only pursuant to subsection (5).

(b) The informal youth court records may be maintained and inspected only by youth court personnel upon a new offense prior to the youth's 18th birthday.

(c) Except as provided in subsection (7)(a), when a youth becomes 18 years of age or when extended supervision ends and the youth was involved only in informal proceedings, informal youth court records that are in hard-copy form must be destroyed and any electronic records in the youth court management information system must disassociate the offense and disposition information from the name of the youth and may be used only for the following purposes:

(i) for research and program evaluation authorized by the office of the court administrator and subject to any applicable laws; and

(ii) as provided in Title 5, chapter 13.

(8) Nothing in this section prohibits the intra-agency use or information sharing of formal or informal youth court records within the juvenile probation management information system. Electronic records of the youth court may not be shared except as provided in 41-5-1524. If a person authorized under 41-5-215 is in need of a copy of a record that is in electronic form, the juvenile probation officer shall make only a physical copy of the record that is authorized and the person receiving the record shall destroy the record after it has fulfilled its purpose or as provided in subsection (2) of this section.

(9) This section does not prohibit the intra-agency use or information sharing of formal or informal youth court records within the department's youth management information system. Electronic records of the department's youth management information system may not be shared except as provided in subsection (5). If a person authorized under 41-5-215 is in need of a copy of a record that is in electronic form, the department shall make only a physical copy of the record that is authorized and the person receiving the record shall destroy the record after it has fulfilled its purpose or as provided in subsection (2) of this section.

(10) This section does not prohibit the sharing of formal or informal youth court records with a short-term detention center, a youth care facility, a youth assessment center, or a youth detention facility upon placement of a youth within the facility.

(11) This section does not prohibit access to formal or informal youth court records, including electronic records, for purposes of conducting evaluations as required by 41-5-2003."

Section 3. Effective date. [This act] is effective on passage and approval.

Approved March 23, 2009

CHAPTER NO. 55

[HB 27]

AN ACT ELIMINATING THE TERMINATION DATE FOR THE UNIVERSAL SYSTEM BENEFITS CHARGE RATES; CLARIFYING THE ENERGY AND TELECOMMUNICATIONS INTERIM COMMITTEE'S OVERSIGHT AUTHORITY OVER UNIVERSAL SYSTEM BENEFITS PROGRAMS; AMENDING SECTION 69-8-402, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-8-402, MCA, is amended to read:

"69-8-402. Universal system benefits programs. (1) Universal system benefits programs are established for the state of Montana to ensure continued

funding of and new expenditures for energy conservation, renewable resource projects and applications, and low-income energy assistance.

(2) Beginning January 1, 1999, 2.4% of each utility's annual retail sales revenue in Montana for the calendar year ending December 31, 1995, is established as the initial funding level for universal system benefits programs. To collect this amount of funds on an annualized basis in 1999, the commission shall establish rates for utilities subject to its jurisdiction and the governing boards of cooperatives shall establish rates for the cooperatives. ~~These universal system benefits charge rates must remain in effect through December 31, 2009.~~

(a) The recovery of all universal system benefits programs costs imposed pursuant to this section is authorized through the imposition of a universal system benefits charge assessed at the meter for each local utility system customer as provided in this section.

(b) A utility must receive credit toward annual funding requirements for the utility's internal programs or activities that qualify as universal system benefits programs, including those amortized or nonamortized portions of expenditures for the purchase of power that are for the acquisition or support of renewable energy, conservation-related activities, or low-income energy assistance, and for large customers' programs or activities as provided in subsection (7). The department of revenue shall review claimed credits of the utilities and large customers pursuant to 69-8-414.

(c) A utility at which the sale of power for final end use occurs is the utility that receives credit for the universal system benefits programs expenditure.

(d) A customer's utility shall collect universal system benefits funds less any allowable credits.

(e) For a utility to receive credit for low-income-related expenditures, the activity must have taken place in Montana.

(f) If a utility's or a large customer's credit for internal activities does not satisfy the annual funding provisions of subsection (2), then the utility shall make a payment to the universal system benefits fund established in 69-8-412 for any difference.

(3) Cooperative utilities may collectively pool their statewide credits to satisfy their annual funding requirements for universal system benefits programs and low-income energy assistance.

(4) A utility's transition plan must describe how the utility proposes to provide for universal system benefits programs, including the methodologies, such as cost-effectiveness and need determination, used to measure the utility's level of contribution to each program.

(5) A utility's minimum annual funding requirement for low-income energy and weatherization assistance is established at 17% of the utility's annual universal system benefits funding level and is inclusive within the overall universal system benefits funding level.

(a) A utility must receive credit toward the utility's low-income energy assistance annual funding requirement for the utility's internal low-income energy assistance programs or activities.

(b) If a utility's credit for internal activities does not satisfy its annual funding requirement, then the utility shall make a payment for any difference to the universal low-income energy assistance fund established in 69-8-412.

(6) An individual customer may not bear a disproportionate share of the local utility's funding requirements, and a sliding scale must be implemented to provide a more equitable distribution of program costs.

(7) (a) A large customer:

(i) shall pay a universal system benefits programs charge with respect to the large customer's qualifying load equal to the lesser of:

(A) $500,000, less the large customer credits provided for in this subsection (7); or

(B) the product of 0.9 mills per kilowatt hour multiplied by the large customer's total kilowatt hour purchases, less large customer credits with respect to that qualifying load provided for in this subsection (7);

(ii) must receive credit toward that large customer's universal system benefits charge for internal expenditures and activities that qualify as a universal system benefits programs expenditure, and these internal expenditures must include but not be limited to:

(A) expenditures that result in a reduction in the consumption of electrical energy in the large customer's facility; and

(B) those amortized or nonamortized portions of expenditures for the purchase of power at retail or wholesale that are for the acquisition or support of renewable energy or conservation-related activities.

(b) Large customers making these expenditures must receive a credit against the large customer's universal system benefits charge, except that any of those amounts expended in a calendar year that exceed that large customer's universal system benefits charge for the calendar year must be used as a credit against those charges in future years until the total amount of those expenditures has been credited against that large customer's universal system benefits charges.

(8) *(a)* A public utility shall prepare and submit an annual summary report of the public utility's activities relating to all universal system benefits programs to the commission, the department of revenue, and the energy and telecommunications interim committee provided for in 5-5-230. A cooperative utility shall prepare and submit annual summary reports of activities to the cooperative utility's respective local governing body, the statewide cooperative utility office, and the energy and telecommunications interim committee. The statewide cooperative utility office shall prepare and submit an annual summary report of the activities of individual cooperative utilities, including a summary of the pooling of statewide credits, as provided in subsection (3), to the department of revenue and the energy and telecommunications interim committee. The annual report of a public utility or of the statewide cooperative utility office must include but is not limited to:

~~(a)~~*(i)* the types of internal utility and customer programs being used to satisfy the provisions of this chapter;

~~(b)~~*(ii)* the level of funding for those programs relative to the annual funding requirements prescribed in subsection (2); and

~~(c)~~*(iii)* any payments made to the statewide funds in the event that internal funding was below the prescribed annual funding requirements.

(b) Before September 15 of the year preceding a legislative session, the energy and telecommunications interim committee shall review the universal system

benefits programs and, if necessary, submit recommendations regarding these programs to the legislature.

(9) A utility or large customer filing for a credit shall develop and maintain appropriate documentation to support the utility's or the large customer's claim for the credit.

(10) (a) A large customer claiming credits for a calendar year shall submit an annual summary report of its universal system benefits programs activities and expenditures to the department of revenue and to the large customer's utility. The annual report of a large customer must identify each qualifying project or expenditure for which it has claimed a credit and the amount of the credit. Prior approval by the department of revenue or the utility is not required, except as provided in subsection (10)(b).

(b) If a large customer claims a credit that the department of revenue disallows in whole or in part, the large customer is financially responsible for the disallowance. A large customer and the large customer's utility may mutually agree that credits claimed by the large customer be first approved by the utility. If the utility approves the large customer credit, the utility may be financially responsible for any subsequent disallowance."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 25, 2009

CHAPTER NO. 56

[HB 37]

AN ACT GENDER NEUTRALIZING AND CONFORMING TITLES 10 THROUGH 90 OF THE MONTANA CODE ANNOTATED TO CURRENT BILL DRAFTING STANDARDS; AND AMENDING SECTIONS 10-1-201, 10-1-202, 10-1-206, 10-1-302, 10-1-405, 10-1-503, 10-1-601, 10-1-611, 10-1-804, 10-1-805, 10-1-806, 10-2-103, 10-2-105, 10-2-107, 10-3-101, 10-3-102, 10-3-112, 10-3-204, 10-3-302, 10-3-303, 10-3-313, 10-3-314, 10-3-501, 10-3-503, 10-3-505, 10-3-605, 10-3-607, 10-3-702, 10-3-1106, 13-1-114, 13-1-201, 13-2-112, 13-2-206, 13-2-221, 13-3-102, 13-3-103, 13-3-201, 13-3-211, 13-10-203, 13-10-305, 13-10-325, 13-10-501, 13-10-507, 13-10-602, 13-12-210, 13-13-118, 13-13-120, 13-13-225, 13-13-227, 13-13-602, 13-14-111, 13-14-211, 13-14-212, 13-15-201, 13-15-204, 13-15-205, 13-15-403, 13-15-404, 13-15-502, 13-15-504, 13-15-505, 13-15-506, 13-16-101, 13-16-201, 13-16-203, 13-16-204, 13-16-211, 13-16-301, 13-16-302, 13-16-307, 13-16-415, 13-16-416, 13-16-417, 13-16-418, 13-16-419, 13-19-101, 13-19-203, 13-19-301, 13-19-302, 13-19-304, 13-19-305, 13-19-306, 13-19-307, 13-19-308, 13-19-310, 13-27-305, 13-27-306, 13-27-308, 13-27-404, 13-27-405, 13-27-503, 13-35-106, 13-35-201, 13-35-204, 13-35-209, 13-35-214, 13-35-215, 13-35-217, 13-35-218, 13-35-221, 13-35-301, 13-36-101, 13-36-102, 13-36-103, 13-36-104, 13-36-201, 13-36-202, 13-36-204, 13-36-205, 13-36-206, 13-36-207, 13-36-208, 13-36-209, 13-36-210, 13-36-211, 13-37-104, 13-37-105, 13-37-116, 13-37-119, 13-37-122, 13-37-125, 13-37-201, 13-37-202, 13-37-203, 13-37-204, 13-37-205, 13-37-206, 13-37-207, 13-37-208, 13-37-215, 13-37-217, 13-37-225, 13-37-228, 13-37-231, 13-38-101, 13-38-201, 13-38-202, 13-38-203, 13-38-205, 15-1-104, 15-1-204, 15-1-601, 15-1-603, 15-1-702, 15-1-705, 15-1-707, 15-2-101, 15-2-103, 15-2-104, 15-2-304, 15-6-225, 15-8-501, 15-8-502, 15-16-503, 15-17-318, 15-24-1101, 15-24-1201, 15-24-1206, 15-24-2403, 15-30-113, 15-30-129, 15-30-132, 15-30-134, 15-30-135, 15-30-143, 15-30-156, 15-30-173, 15-30-205, 15-30-206, 15-30-302, 15-30-307, 15-30-314, 15-30-331, 15-31-521,

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Be it enacted by the Legislature of the State of Montana:

Section 1. Section 10-1-201, MCA, is amended to read:

"10-1-201. Officers. (1) The governor shall appoint all officers of the militia.

(2) Officers must be citizens of the United States.

(3) Before a person can be appointed an officer by the governor, ~~he shall~~ *the person must* be examined and adjudged qualified to be an officer by an examining board. The composition, appointment, and examination procedure of the board and the nature and scope of examinations ~~shall~~ *must* be prescribed by federal law or regulation or state regulations.

(4) Each officer shall hold office under ~~his~~ *the* appointment until ~~he~~ *the officer* is regularly appointed to another grade or office or until ~~he~~ *the officer* is regularly retired, discharged, dismissed, or placed in the reserve."

Section 2. Section 10-1-202, MCA, is amended to read:

"10-1-202. Oath of office. (1) Except when a comparable oath is subscribed to under federal law or regulation, every officer shall take and subscribe to the following oath of office:

"I, ..., do solemnly swear that I will support and defend the constitution of the United States and the constitution of the state of Montana against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; and that I will obey the orders of the president of the United States and the governor of the state of Montana; that I make this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office of .... in the .... upon which I am about to enter, so help me God."

(2) If an officer refuses or neglects to take the oath, ~~he shall be~~ *the officer is* considered to have resigned the office and a new appointment ~~shall~~ *must* be made."

Section 3. Section 10-1-206, MCA, is amended to read:

"10-1-206. Examination as to fitness — board of examination. (1) The governor, when ~~he~~ *the governor* considers it necessary, may order an officer to appear before a board of examination. The board of examination ~~shall consist~~ *consists* of three officers, senior in rank to the officer whose fitness for service is under examination. The board may:

(a) inquire into the fitness for military service due to physical disability of an officer under 10-1-203(1)(b);

(b) inquire into the moral character, capacity, and professional fitness of an officer in order to make a recommendation under 10-1-205(2)(e).

(2) The board, under 10-1-203(1)(b), may recommend the retention of the officer being examined or ~~his~~ *recommend the officer's* retirement because of a physical inability to perform active service.

(3) The board, under 10-1-205(2)(e), may recommend the discharge and the vacating of ~~his~~ *the officer's* commission or warrant.

(4) The findings of the board become effective only upon the approval of the governor."

Section 4. Section 10-1-302, MCA, is amended to read:

"10-1-302. Oath of enlistment. (1) Except when a comparable oath of enlistment is subscribed to under federal law or regulation, every person who enlists or reenlists shall take and subscribe to the following oath of enlistment:

"I hereby acknowledge to have voluntarily enlisted this .... day of .... in the .... of the United States and the state of Montana for a period of .... years under the conditions prescribed by law, unless sooner discharged by proper authority. And I do solemnly swear that I will bear true faith and allegiance to the United States of America and to the state of Montana, and that I will serve them

honestly and faithfully against all their enemies, and that I will obey the orders of the president of the United States, the governor of the state of Montana, and the officers appointed over me."

(2) Any officer of the organized militia or any officer of the armed forces of the United States, detailed to duty with any component of the organized militia of this state, may administer the oath of enlistment to enlisted ~~men~~ *personnel*."

Section 5. Section 10-1-405, MCA, is amended to read:

"10-1-405. Confinement of persons committed by military court. The keepers of a municipal or county jail shall receive a person committed to them by a military court and shall confine ~~him~~ *the person* in accordance with the direction of the court."

Section 6. Section 10-1-503, MCA, is amended to read:

"10-1-503. Allowances for incidental expenses. Each commanding officer may receive an allowance for the incidental expenses of ~~his~~ *the* command."

Section 7. Section 10-1-601, MCA, is amended to read:

"10-1-601. Actions against militia members — ~~attorney's~~ *attorney* fees. When an action is commenced in a court against a member of the organized militia for an act done in ~~his~~ *an* official capacity in the discharge of ~~his~~ *the member's* duty or for an alleged omission to do an act ~~which~~ *that* it was ~~his~~ *the member's* duty to perform, the defendant ~~shall~~ *must* be defended by the attorney general at the expense of this state, but private counsel may be employed by the defendant."

Section 8. Section 10-1-611, MCA, is amended to read:

"10-1-611. Authority of commanding officer to arrest. The commanding officer at any drill, parade, encampment, or other duty may order those under ~~his~~ *the commanding officer's* command to perform any military duty ~~he~~ *the commanding officer* requires. The commanding officer may arrest, for the time of the drill, parade, encampment, or other duty, an officer or enlisted ~~man~~ *person* who disobeys the orders of ~~his~~ *a* superior officer."

Section 9. Section 10-1-804, MCA, is amended to read:

"10-1-804. Bonus. A member is entitled to receive a bonus payment for each year of service for which ~~he~~ *the member* extends or reenlists. The bonus ~~shall~~ *must* be paid to each eligible member within 60 days following the successful completion of a year of service for which ~~he~~ *the member* extended or reenlisted. The secretary shall set the amount of the bonus based on the appropriation for that purpose."

Section 10. Section 10-1-805, MCA, is amended to read:

"10-1-805. Eligibility. The bonus must be granted to a person who:

(1) extends ~~his~~ *the person's* original enlistment or reenlists in the Montana national guard;

(2) holds a rank commensurate with a unit vacancy in accordance with the national guard bureau's policy;

(3) does not have 20 years of total service;

(4) is not a civil service employee in a full-time capacity with the national guard, including but not limited to active duty for training or full-time training duty;

(5) is not eligible for any federally funded national guard bonus for the reenlistment or extension covered by this part; and

(6) attends 90% of the scheduled drills and annual training in the year for which the benefit is to be paid."

Section 11. Section 10-1-806, MCA, is amended to read:

"10-1-806. Administration. (1) The secretary shall administer this part. ~~He~~ *The secretary* shall maintain records and make rules necessary for its administration.

(2) ~~He~~ *The secretary* shall determine the eligibility of members to receive the bonus and disburse a bonus payment upon a determination of eligibility."

Section 12. Section 10-2-103, MCA, is amended to read:

"10-2-103. Seal — acknowledgments — officers. (1) The board may provide for a seal.

(2) The members and employees of the board may take acknowledgments, depositions, and administer oaths and affirmations in any matters connected with the affairs of the board or with the official duties of the members or employees of the board.

(3) The board shall select from its membership a ~~chairman~~ *presiding officer*, a ~~vice-chairman~~ *vice presiding officer*, and a secretary."

Section 13. Section 10-2-105, MCA, is amended to read:

"10-2-105. Extra compensation for service forbidden. A member or employee of the board may not accept, receive, or charge any money or thing of value for the performance of any service rendered to any veteran or ~~his or her~~ *the veteran's* dependents, at any time or in any manner, other than the compensation allowed by law. A person who violates this section is guilty of a misdemeanor."

Section 14. Section 10-2-107, MCA, is amended to read:

"10-2-107. Contracts for federal reimbursement funds. The governor of this state and the ~~chairman~~ *presiding officer* and secretary of the board may sign contracts with the federal government or any agency ~~thereof~~ *of the federal government* for the reimbursement of the board for any work ~~which~~ *that* the board may do for which any federal statute provides reimbursement to the states."

Section 15. Section 10-3-101, MCA, is amended to read:

"10-3-101. Declaration of policy. Because of the existing and increasing possibility of the occurrence of disasters or emergencies of unprecedented size and destructiveness resulting from enemy attack, sabotage, or other hostile action and natural disasters and in order to provide for prompt and timely reaction to an emergency or disaster, to ~~insure~~ *ensure* that preparation of this state will be adequate to deal with disasters or emergencies, and generally to provide for the common defense and to protect the public peace, health, and safety and to preserve the lives and property of the people of this state, it is declared to be necessary to:

(1) authorize the creation of local or interjurisdictional organizations for disaster and emergency services in the political subdivisions of this state;

(2) reduce vulnerability of people and communities of this state to damage, injury, and loss of life and property resulting from natural or ~~man-made~~ *human-caused* disasters;

(3) provide a setting conducive to the rapid and orderly start of restoration and rehabilitation of persons and property affected by disasters;

(4) clarify and strengthen the roles of the governor, state agencies, and local governments in prevention of, preparation for, response to, and recovery from emergencies and disasters;

(5) authorize and provide for cooperation in disaster prevention, preparedness, response, and recovery;

(6) authorize and provide for coordination of activities relating to disaster prevention, preparedness, response, and recovery by agencies and officers of this state and similar state-local, interstate, federal-state, and foreign activities in which the state and its political subdivisions may participate;

(7) provide an emergency and disaster management system embodying all aspects of emergency or disaster prevention, preparedness, response, and recovery;

(8) assist in prevention of disasters caused or aggravated by inadequate planning for public and private facilities and land use;

(9) supplement, without in any way limiting, authority conferred by previous statutes of this state and increase the capability of the state, local, and interjurisdictional disaster and emergency services agencies to perform disaster and emergency services; and

(10) authorize the payment of extraordinary costs and the temporary hiring, with statutorily appropriated funds under 10-3-312, of professional and technical personnel to meet the state's responsibilities in providing assistance in the response to, recovery from, and mitigation of disasters in either state or federal emergency or disaster declarations."

Section 16. Section 10-3-102, MCA, is amended to read:

"10-3-102. Limitations. ~~Nothing in parts~~ *Parts* 1 through 4 of this chapter may *not* be construed to give any state, local, or interjurisdictional agency or public official authority to:

(1) interfere with the course or conduct of a labor dispute, except that actions otherwise authorized by parts 1 through 4 of this chapter or other laws may be taken when necessary to forestall or mitigate imminent or existing danger to public health or safety;

(2) interfere with dissemination of news or comment on public affairs~~;~~. ~~but~~ *However,* any communications facility or organization, ~~(~~including but not limited to radio and television stations, wire services, and newspapers~~)~~, may be required to transmit or print public service messages furnishing information or instructions in connection with an emergency or disaster~~;~~.

(3) affect the jurisdiction or responsibilities of police forces, firefighting forces, units of the armed forces of the United States, or ~~of~~ any personnel ~~thereof,~~ *of those entities* when on active duty~~;~~, but state, local, and interjurisdictional disaster and emergency plans ~~shall~~ *must* place reliance upon the forces available for performance of functions related to emergencies and disasters; or

(4) limit, modify, or abridge the authority of the governor to proclaim martial law or exercise any other powers vested in ~~him~~ *the governor* under the constitution, statutes, or common law of this state independent of or in conjunction with any provisions of parts 1 through 4 of this chapter."

Section 17. Section 10-3-112, MCA, is amended to read:

"10-3-112. Employment requirements for personnel — political involvement of organizations prohibited. (1) A person may not be employed in any disaster and emergency services organization established under parts 1 through 4 of this chapter who advocates a change by force or violence in the constitutional form of the government of the United States or in this state or the overthrow of any government in the United States by force or violence or who has been convicted of or is under indictment or information charging any subversive act against the United States. Each person who is appointed to serve in an organization for disaster and emergency services shall, before entering upon ~~his~~ *the person's* duties, take an oath, in writing, before a person authorized to administer oaths in this state, ~~which oath shall be~~ *that is* substantially as follows:

"I ...., swear (or affirm) that I will support and defend The Constitution of the United States and The Constitution of the State of Montana against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me, God."

(2) An organization for disaster and emergency services established under this chapter may not participate in any form of political activity, nor may it be employed directly or indirectly for political purposes."

Section 18. Section 10-3-204, MCA, is amended to read:

"10-3-204. Intergovernmental arrangements. (1) This state enacts into law and enters into the interstate mutual aid compact with all states, as defined ~~therein~~ *in the compact*, ~~which states~~ *that* have enacted or ~~shall hereafter~~ enact the compact in the form substantially contained in 10-3-207.

(2) The governor may enter into the compact with any state if ~~he~~ *the governor* finds that joint action with the state is desirable in meeting common intergovernmental problems of emergency and disaster planning, prevention, response, and recovery.

(3) ~~Nothing in subsections~~ *Subsections* (1) and (2) may *not* be construed to limit previous or future entry of this state into the interstate mutual aid compact.

(4) All interstate mutual aid compacts and other interstate agreements dealing with disaster and emergency services ~~shall~~ *must* be reviewed and made current at intervals not to exceed 4 years.

(5) If a person holds a license, certificate, or other permit issued by any state or political subdivision ~~thereof~~ *of a state* evidencing the meeting of qualifications for professional, mechanical, or other skills, the person may render aid involving that skill in this state to meet an emergency or disaster and this state shall give due recognition to the license, certificate, or other permit.

(6) When considered of mutual benefit, the governor may, subject to limitations of law, enter into intergovernmental arrangements with neighboring provinces of Canada for the purpose of exchanging disaster and emergency services."

Section 19. Section 10-3-302, MCA, is amended to read:

"10-3-302. Declaration of emergency — effect and termination. (1) A state of emergency may be declared by the governor when ~~he~~ *the governor* determines that an emergency as defined in 10-3-103 exists.

(2) An executive order or proclamation of a state of emergency ~~shall activate~~ *activates* the emergency response and disaster preparation aspects of the state disaster and emergency plan and program applicable to the political subdivision or area and ~~be~~ *is* authority for the deployment and use of any forces to which the plans apply and for the distribution and use of any supplies, equipment, and materials and facilities assembled, stockpiled, or arranged to be made available pursuant to parts 1 through 4 of this chapter or any other provision of law pertaining to disasters and disaster-related emergencies.

(3) A state of emergency may not continue for longer than 20 days unless continuing conditions of the state of emergency exist, which ~~shall~~ *must* be determined by a declaration of an emergency by the president of the United States or by a declaration of the legislature by joint resolution of continuing conditions of the state of emergency."

Section 20. Section 10-3-303, MCA, is amended to read:

"10-3-303. Declaration of disaster — effect and termination. (1) A state of disaster may be declared by the governor when ~~he~~ *the governor* determines that a disaster has occurred.

(2) An executive order or proclamation of a state of disaster ~~shall activate~~ *activates* the disaster response and recovery aspects of the state disaster and emergency plan and program applicable to the political subdivision or area and ~~be~~ *is* authority for the deployment and use of any forces to which the plans apply and for the distribution and use of any supplies, equipment, and materials and facilities assembled, stockpiled, or arranged to be made available pursuant to parts 1 through 4 of this chapter or any other provision of law pertaining to disaster and disaster-related emergencies.

(3) A state of disaster may not continue for longer than 30 days unless continuing conditions of the state of disaster exist, which ~~shall~~ *must* be determined by a declaration of a major disaster by the president of the United States or by the declaration of the legislature by joint resolution of continuing conditions of the state of disaster.

(4) The governor shall terminate a state of emergency or disaster when:

(a) the emergency or disaster has passed;

(b) the emergency or disaster has been dealt with to the extent that emergency or disaster conditions no longer exist; or

(c) at any time the legislature terminates the state of emergency or disaster by joint resolution. However, after termination of the state of emergency or disaster, disaster and emergency services required as a result of the emergency or disaster may continue."

Section 21. Section 10-3-313, MCA, is amended to read:

"10-3-313. Temporary housing for disaster victims — site acquisition and preparation. (1) Whenever the governor has declared a state of emergency or state of disaster or the president has declared an emergency or a major disaster to exist in this state, the governor is authorized:

(a) to enter into purchase, lease, or other arrangements with any agency of the United States for temporary housing units to be occupied by emergency or disaster victims and to make ~~such~~ *the* units available to any political subdivision of the state;

(b) to assist any political subdivision of this state ~~which~~ *that* is the locus of temporary housing for emergency or disaster victims to acquire sites necessary

for ~~such~~ temporary housing and to do all things required to prepare ~~such~~ *the* site to receive and utilize temporary housing units by:

(i) advancing or lending funds available to the governor from any appropriation made for those purposes by the legislature or from any other source;

(ii) "passing through" funds made available for those purposes by any agency, public or private; or

(iii) becoming a copartner with the political subdivision for the execution and performance of any temporary housing project for emergency or disaster victims;

(c) under ~~such~~ regulations ~~as he shall prescribe~~ *that the governor prescribes*, to temporarily suspend or modify for not to exceed 60 days any *state laws or regulations relating to* public health, safety, zoning, or transportation, ~~(~~within or across the state~~)~~, ~~laws or regulations within this state~~ when by proclamation ~~he~~ *the governor* declares ~~such~~ *the* suspension or modification essential to provide temporary housing for emergency or disaster victims.

(2) Any political subdivision of this state is expressly authorized to acquire, temporarily or permanently, by purchase, lease, or otherwise, sites required for installation of temporary housing units for emergency or disaster victims and to enter into whatever arrangements, including purchase of temporary housing units and payment of transportation charges, ~~which~~ *that* are necessary to prepare or equip ~~such~~ *the* sites to utilize the housing units.

(3) ~~Nothing contained in parts~~ *Parts* 1 through 4 of this chapter ~~shall~~ *may not* be construed to limit the governor's authority to apply for, administer, and expend any grants, gifts, or payments in aid of emergency or disaster prevention, preparedness, response, or recovery."

Section 22. Section 10-3-314, MCA, is amended to read:

"10-3-314. Community disaster loans. Whenever, at the request of the governor, the president has declared a major disaster to exist in this state, the governor is authorized:

(1) upon ~~his~~ *the governor's* determination that a political subdivision of the state will suffer a substantial loss of tax and other ~~revenues~~ *revenue* from an emergency or disaster and has demonstrated a need for financial assistance to perform its governmental functions, to apply to the federal government, on behalf of the political subdivision, for a loan. The proceeds are statutorily appropriated, as provided in 17-7-502, to the governor, who may receive and disburse the proceeds of any approved loan to any applicant political subdivision.

(2) to determine the amount needed by any applicant political subdivision to restore or resume its governmental functions and to certify the same to the federal government. However, ~~no~~ *the* application amount may *not* exceed 25% of the annual operating budget of the applicant for the fiscal year in which the emergency or disaster occurs.

(3) to recommend to the federal government, based upon ~~his~~ *the governor's* review, the cancellation of all or any part of repayment when, in the first 3 full fiscal years following the emergency or disaster, the ~~revenues~~ *revenue* of the political subdivision ~~are~~ *is* insufficient to meet its operating expenses, including additional ~~emergency-~~ *emergency-related* or disaster-related expenses of ~~a~~ *the* political subdivision ~~operation character~~."

Section 23. Section 10-3-501, MCA, is amended to read:

"10-3-501. Policy of state. (1) The legislature recognizes that an enemy attack upon the United States is a possibility; that such an attack might be of unprecedented size and destructiveness; that a considerable period of time may elapse after an enemy attack before federal operational control over the management of resources can be instituted; and that federal planning and activities with respect to postattack recovery and rehabilitation are predicated on the ability of the states and their political subdivisions to prepare for and respond promptly to the problems created by an enemy attack. Therefore, it is necessary to confer upon the governor and upon the executive heads of governing bodies of political subdivisions of this state the emergency powers provided for in this part.

(2) It is the purpose of this part and the policy of this state that all resource management functions of this state be coordinated to the maximum extent with the comparable functions of the federal government, of other states and localities, and of private agencies to the end that the most effective preparation and use may be made of available ~~manpower~~ *personnel*, resources, and facilities in an emergency."

Section 24. Section 10-3-503, MCA, is amended to read:

"10-3-503. Governor's powers and duties. (1) The governor has general direction and control of the emergency resources management within this state and all officers, boards, agencies, individuals, or groups established under the emergency resources management plan.

(2) In performing ~~his~~ duties under this part, the governor may cooperate with the federal government, with other states, and with private agencies in all matters pertaining to the emergency management of resources.

(3) In performing ~~his~~ duties under this part and to effect its policies and purpose, the governor may make, amend, and rescind the necessary orders and rules to carry out this part within the limits of authority conferred upon ~~him~~ *the governor*, with due consideration of the emergency resources management plans of the federal government."

Section 25. Section 10-3-505, MCA, is amended to read:

"10-3-505. Proclamation of emergency — effect and termination. (1) Following an attack, ~~the governor,~~ if ~~he~~ *the governor* finds ~~such~~ *that* action *is* necessary to deal with the danger to the public safety caused ~~thereby~~ *by the attack* or to aid in the postattack recovery or rehabilitation of the United States or any part ~~thereof~~ *of the United States*, *the governor* shall declare by proclamation the existence of a postattack recovery and rehabilitation emergency. ~~Any such~~ *A* proclamation ~~shall be~~ *is* ineffectual unless the legislature is then in session or the governor simultaneously issues an order convening the legislature in special session within 45 days.

(2) During the period when the proclamation issued under subsection (1) ~~of this section~~ is in force or during the continuance of any emergency declared by the president of the United States or the congress calling for postattack recovery and rehabilitation activities, subject to the limitations set forth in this part and in a manner consistent with any rules or orders and policy guidance issued by the federal government, the governor may issue, amend, and enforce rules and orders to:

(a) control, restrict, and regulate, by rationing, freezing, use of quotas, prohibitions on shipments, price fixing, allocation, or other means, the use, sale, or distribution of food, feed, fuel, clothing and other commodities, materials, goods, or services;

(b) prescribe and direct activities in connection with but not limited to use, conservation, salvage, and prevention of waste of materials, services, and facilities, including production, transportation, power, and communication facilities, training and supply of labor, utilization of industrial plants, health and medical care, nutrition, housing, including the use of existing and private facilities, rehabilitation, education, welfare, child care, recreation, consumer protection, and other essential civil needs; and

(c) take ~~such~~ other action ~~as~~ *that* may be necessary for the management of resources following an attack.

(3) All rules and orders issued under authority conferred by this part have the effect of law during the continuance of a proclamation or declaration of emergency as contemplated by this section when a copy of the rule or order is filed in the office of the secretary of state or, if issued by a local or area official, when filed in the office or offices of the county clerk and recorder. If, by reason of destruction or disruption attendant upon or resulting from attack, the filing requirements of this subsection cannot be met, public notice by ~~such~~ means ~~as~~ *that* may be available ~~shall~~ *must* be considered a complete and sufficient substitute. All existing laws, ordinances, rules, and orders inconsistent with the provisions of this part or any rule or order issued under the authority ~~thereof shall be~~ *of this part is* inoperative during the period of time and to the extent ~~such~~ *that* inconsistency exists.

(4) Any authority exercised under a proclamation of emergency contemplated by this section may be exercised with respect to the entire territory over which the governor or other official, as the case may be, has jurisdiction or to any specified part ~~thereof~~ *of the territory*.

(5) The governor's power and authority to issue a proclamation following an attack ~~shall~~ *must* be terminated by the passage of a joint resolution of the legislature or by declaration of the termination of the emergency by the president or by the congress~~;~~. ~~however~~ *However*, the proclamation ~~shall~~ *must* terminate automatically 6 months after issuance and a similar proclamation may not be issued unless concurrence is given ~~thereto~~ by a joint resolution of the legislature."

Section 26. Section 10-3-605, MCA, is amended to read:

"10-3-605. Filling vacancy for city or town executive. ~~In the event that~~ *If* the executive head of any city or town is unavailable following an enemy attack to exercise the powers and discharge the duties of ~~his~~ office, then those members of the city or town council or commission available shall, by majority vote, choose a successor to act as the executive head of ~~such~~ *the* city or town."

Section 27. Section 10-3-607, MCA, is amended to read:

"10-3-607. Relocating seat of state government. If the seat of state government at Helena is rendered unsuitable for use in that capacity, the seat of state government may be moved to an alternate location within the boundaries of the state of Montana by proclamation of the governor. ~~He~~ *The governor* shall consider other Montana cities in order of their population in the last federal census, giving consideration to available communications, office space, and ~~such~~ other factors ~~as may seem to him~~ *considered* pertinent. ~~Such~~ *The* move of the seat of government ~~shall be~~ *is* effective until it is again moved by proclamation of the governor or action by the legislature."

Section 28. Section 10-3-702, MCA, is amended to read:

"10-3-702. Definitions. As used in this part, the following definitions apply:

(1) "Jurisdiction" means the jurisdiction of any law enforcement agency within Montana.

(2) "Tactical incident" means any situation in which it is reasonable to expect the possibility of the loss of life or the taking of a hostage unless extraordinary steps are taken. These situations may include but are not limited to:

(a) a barricaded ~~gunman~~ *person with a gun*;

(b) a person taken hostage;

(c) arrests in extraordinary circumstances;

(d) civil disorder;

(e) terrorist activity;

(f) protection of a dignitary; and

(g) courtroom security in extraordinary circumstances.

(3) "Tactical team" means a small group of highly disciplined law enforcement officers trained to provide a quick and ready response to ~~high risk~~ *high-risk* conditions and situations that go beyond the capabilities of normally trained and equipped officers. With specialized training, tactics, and equipment, this small group of officers provides a greater expectation of resolving incidents without loss of property, injury, or loss of life."

Section 29. Section 10-3-1106, MCA, is amended to read:

"10-3-1106. Submission of agreement to attorney general. (1) As a condition precedent to an agreement becoming effective under this part, the agreement must be submitted to and receive the approval of the state attorney general.

(2) The attorney general shall approve an agreement submitted ~~to him~~ under this part unless ~~he~~ *the attorney general* finds that it is not in proper form, does not meet the requirements set forth in this part, or otherwise does not conform to the laws of Montana. If ~~he disapproves~~ an agreement, ~~he~~ *is disapproved, the attorney general* shall provide a detailed, written statement to the appropriate governing bodies of the fire protection services, emergency medical care providers, and local government subdivisions.

(3) If the attorney general does not disapprove an agreement within 60 days after its submission ~~to him~~, it is considered approved."

Section 30. Section 13-1-114, MCA, is amended to read:

"13-1-114. Computation of elector's age and term of residence. An elector's age and the term of ~~his~~ *an elector's* residence must be computed by including the day of election."

Section 31. Section 13-1-201, MCA, is amended to read:

"13-1-201. Chief election officer. The secretary of state is the chief election officer of this state, and it is ~~his~~ *the secretary of state's* responsibility to obtain and maintain uniformity in the application, operation, and interpretation of the election laws other than those in *Title 13,* chapters 35, 36, or 37 ~~of this title~~."

Section 32. Section 13-2-112, MCA, is amended to read:

"13-2-112. Register of electors to be kept. Each election administrator shall keep an official register of electors in the manner ~~he~~ *that the administrator* considers most efficient. The original signed registration form for each elector ~~shall~~ *must* be filed alphabetically in a separate file for each precinct. Additional files and records may be established for convenience. The information recorded in the official register of electors and the design of the registration forms ~~shall~~ *must* be prescribed by the secretary of state."

Section 33. Section 13-2-206, MCA, is amended to read:

"13-2-206. Citizenship requirements. A person ~~shall~~ *may* not be permitted to register until ~~he~~ *the person* attains United States citizenship."

Section 34. Section 13-2-221, MCA, is amended to read:

"13-2-221. Agency-based registration. (1) Qualified individuals must be given the opportunity to register to vote when applying for or receiving services or assistance:

(a) at an agency that provides public assistance;

(b) at or through an agency that provides state-funded programs primarily engaged in providing services to persons with disabilities; or

(c) at another agency designated by the secretary of state with the consent of the agency.

(2) Agency-based registration sites must:

(a) distribute application for voter registration forms with each application for services or assistance; and

(b) assist an applicant in completing an application for voter registration form~~,~~ unless the applicant refuses assistance.

(3) The completed application for voter registration form must be transmitted by the agency to the election administrator of the county of the elector's residence within the time period specified by 42 U.S.C. 1973gg, et seq.

(4) As used in this section, ~~the following definitions apply:~~

~~(a) "Agency"~~ *"agency"* means a state agency as defined in 2-4-102(2)(a) or an office of a ~~political subdivision.~~

~~(b) "Political subdivision" means a~~ city, county, consolidated city-county government, or town."

Section 35. Section 13-3-102, MCA, is amended to read:

"13-3-102. Change of precinct boundaries. (1) The county governing body may change the boundaries of precincts, but not within 100 days before any primary or between a general election and the primary for that election. When the changes are required to make precinct boundaries conform to legislative district boundaries following the adoption of a districting and apportionment plan under Article V, section 14, of the ~~1972~~ Montana constitution or other district boundaries changed by the districting and apportionment plan, the changing of precinct boundaries must be accomplished within 45 days of the filing of the final plan.

(2) All changes must be certified to the election administrator 3 days or less after the change is made.

(3) The officials responsible for preparing a districting and apportionment plan shall consider the problems of conforming present precinct boundaries to the new districts as well as existing boundaries of wards, school districts, and

other districts. The election administrator of counties involved in the plan ~~shall~~ *must* be consulted before adoption of the final plan."

Section 36. Section 13-3-103, MCA, is amended to read:

"13-3-103. Certification of boundary changes. (1) Not more than 10 days after an order of the governing body has established or changed the boundaries of an election precinct, the governing body shall ~~cause to be prepared and delivered to the election administrator~~ *ensure that* a written legal description and a map showing the borders of all precincts and districts in which elections are held within the county *are prepared and delivered to the election administrator*.

(2) Not more than 10 days after school district or other election district boundaries have been changed, the governing body making the change shall certify any changes or alterations in the boundaries to the election administrator and deliver a written legal description and a map showing boundaries of the wards, school districts, or other election districts. The map must be sufficiently detailed to clearly identify the wards or districts and the territory included in each."

Section 37. Section 13-3-201, MCA, is amended to read:

"13-3-201. Purpose. The purpose of this part is to promote the fundamental right to vote by improving access *to polling places* for individuals with disabilities and elderly individuals ~~to polling places~~. The provisions of this part acknowledge that, in certain cases, it may not be possible to locate a polling place that meets the standards for accessibility, either because an accessible polling place does not exist or, if it does, its location in the precinct would require undue travel for a majority of the electors. In those cases when an accessible polling place is not available, this part provides voters with disabilities and elderly voters an alternative means for casting a ballot on election day."

Section 38. Section 13-3-211, MCA, is amended to read:

"13-3-211. Emergency exemption. (1) The secretary of state shall exempt a polling place from the requirements of this part if an emergency occurs within 10 days prior to an election. An emergency is considered to exist if a polling place becomes unavailable by reason of loss of lease, fire, snow, or natural disaster.

(2) If an emergency occurs, the election administrator in the county shall designate a new polling place in accordance with the procedure provided in 13-3-105. The new polling place ~~must be~~ *is* considered temporary and ~~must be~~ *is* exempt from the survey procedures established under 13-3-206. However, ~~such~~ *the* polling place may not be used in a subsequent election unless it is surveyed as required in 13-3-206."

Section 39. Section 13-10-203, MCA, is amended to read:

"13-10-203. Indigent candidates. If an individual is unable to pay a filing fee, the filing officer shall accept the following documents in lieu of a filing fee:

(1) from a successful write-in candidate, a verified statement that ~~he~~ *the candidate* is unable to pay the filing fee;

(2) from a candidate for nomination, a verified statement that ~~he~~ *the candidate* is unable to pay the filing fee and a written petition for nomination as a candidate that meets the following requirements:

(a) *the petition* contains the name of the office to be filled and the candidate's name and residence address;

(b) *the petition* contains signatures numbering 5% or more of the total vote cast for the successful candidate for the same office at the last general election;

(c) the signatures are those of electors residing within the political subdivision of the state in which the candidate petitions for nomination; and

(d) the signatures have been certified by the appropriate election administrator by the procedure provided in 13-27-303 and 13-27-304."

Section 40. Section 13-10-305, MCA, is amended to read:

"13-10-305. Independent forfeits place on ballot. An individual who has filed as an independent candidate forfeits ~~his~~ *the individual's* place on the general election ballot as an independent candidate if ~~he~~ *the individual* accepts a write-in nomination for an office as provided in 13-10-204."

Section 41. Section 13-10-325, MCA, is amended to read:

"13-10-325. Withdrawal from nomination. (1) A candidate for nomination or candidate for election to an office may withdraw from the election by sending a statement of withdrawal to the officer with whom ~~his~~ *the candidate's* declaration, petition, or acceptance of nomination was filed. The statement must contain all information necessary to identify the candidate and the office sought and the reason for withdrawal. ~~It shall~~ *The statement must* be sworn or affirmed before an officer empowered to administer oaths. A candidate may not withdraw later than 85 days before a general election or 75 days before a primary election.

(2) Filing fees paid by the candidate may not be refunded."

Section 42. Section 13-10-501, MCA, is amended to read:

"13-10-501. Petition for nomination by independent candidates or political parties not eligible to participate in primary election. (1) Except as provided in 13-10-504, nominations for public office by an independent candidate or a political party ~~which~~ *that* does not meet the requirements of 13-10-601 may be made by a petition for nomination.

(2) The petition must contain the same information and the oath of the candidate required for a declaration for nomination.

(3) If a petition is filed by a political party, it must contain the party name and, in five words or less, the principle ~~which such~~ *that the* body represents.

(4) The form of the petition ~~shall~~ *must* be prescribed by the secretary of state, and ~~he~~ *the secretary of state* shall furnish sample copies to the election administrators and on request to any individual.

(5) Each sheet of a petition must contain signatures of electors residing in only one county."

Section 43. Section 13-10-507, MCA, is amended to read:

"13-10-507. Independent candidates — association with political parties not allowed. (1) A person seeking office as an independent candidate may not be associated with a political party for 1 year prior to the submission of ~~his~~ *the person's* nomination petition.

(2) For the purposes of subsection (1), "associated with a political party" means having run for office as a partisan candidate or having held an office with a political party designation."

Section 44. Section 13-10-602, MCA, is amended to read:

"13-10-602. Use of party name. (1) ~~Every~~ *A* political party and its regularly nominated candidates, members, and officers have the sole and

exclusive right to the use of the party name. ~~No~~ *A* candidate for office may *not* use any word of the name of any other political party or organization other than that by which ~~he~~ *the candidate* is nominated.

(2) An independent or nonpartisan candidate ~~shall~~ *may* not use any word of the name of any existing political party or organization in ~~his~~ *the* candidacy."

Section 45. Section 13-12-210, MCA, is amended to read:

"13-12-210. Number of ballots to be provided for each precinct. (1) The election administrator shall provide each election precinct with sufficient ballots for the electors registered, plus an extra supply to cover spoiled ballots.

(2) The election administrator shall keep a record in ~~his~~ *the administrator's* office showing the exact number of ballots that are delivered to the election judges of each precinct."

Section 46. Section 13-13-118, MCA, is amended to read:

"13-13-118. Taking ballot to disabled elector. (1) The chief election judge may appoint two election judges who represent different political parties to take a ballot to an elector able to come to the premises where a polling place is located but unable to enter the polling place because of a disability. The elector may request assistance in marking ~~his~~ *the* ballot as provided in 13-13-119.

(2) The judges shall have the elector sign an oath form stating ~~he~~ *that the elector* is entitled to vote and shall write in the precinct register by the elector's name "voted on the premises by oath" and sign their names.

(3) When the ballot or ballots are marked and folded, the judges shall immediately take them into the polling place and give them to the judge at the ballot box. The judge receiving the voted ballots shall distinctly announce ~~he~~ *that the judge* has "a ballot offered by ..... (name), an elector physically unable to enter the room. Does anyone object to the reception of the ballot?" If ~~no~~ *an* objection is *not* heard, the judge shall remove the stub and place the ballot and stub in the proper boxes. Any challenge to the elector's right to vote ~~shall~~ *must* be resolved as provided in Title 13, chapter 13, part 3."

Section 47. Section 13-13-120, MCA, is amended to read:

"13-13-120. Poll watchers — announcement of elector's name. The election judges shall permit one poll watcher from each political party to ~~station himself~~ *be stationed* close to the poll lists in a location that does not interfere with the election procedures. At the time when each elector signs ~~his~~ *the elector's* name, one of the election judges shall pronounce the name loud enough to be heard by the poll watchers. A poll watcher who does not understand the pronunciation has the right to request that the judge repeat the name. Poll watchers ~~shall~~ *must* also be permitted to observe all of the vote counting procedures of the judges after the closing of the polls and all entries of the results of the elections."

Section 48. Section 13-13-225, MCA, is amended to read:

"13-13-225. Special absentee election boards — members — appointment. (1) The election administrator shall designate and appoint a number of special absentee election boards as needed to serve in various places to deliver ballots to electors who are entitled to vote by absentee ballot as provided in 13-13-229.

(2) In a partisan election, each special absentee election board must consist of two members, one from each of the two political parties receiving the highest

number of votes in the state during the last preceding general election. Board members shall reside in the county in which they serve.

(3) A member of a special absentee election board may not be a candidate or a spouse, ascendant, descendant, brother, or sister of a candidate or of a candidate's spouse or the spouse of any one of these if the candidate's name appears on a ballot in the county."

Section 49. Section 13-13-227, MCA, is amended to read:

"13-13-227. Oath of board members. Before assuming any of ~~his~~ *the* responsibilities under this part, each member of a special absentee election board ~~must~~ *shall* take and subscribe the official oath in the same manner as prescribed for an election judge in 13-4-105."

Section 50. Section 13-13-602, MCA, is amended to read:

"13-13-602. Fail-safe and provisional voting by mail. (1) To ensure the election administrator has information sufficient to determine the elector's eligibility to vote, an elector voting by mail may enclose in the outer return envelope, together with the voted ballot in the secrecy envelope, a copy of a current and valid photo identification with the elector's name or a copy of a current utility bill, bank statement, paycheck, notice of confirmation of voter registration issued pursuant to 13-2-207, government check, or other government document that shows the elector's name and current address.

(2) ~~If~~ *The elector's ballot must be handled as a provisional ballot under 13-15-107 if:*

(a) a provisionally registered elector voting by mail does not enclose with the ballot the information described in subsection (1)~~,~~*;*

(b) ~~if~~ the information provided under subsection (1) is invalid or insufficient to verify the elector's eligibility~~,~~*;* or

(c) ~~if~~ the elector's name does not appear on the precinct register~~, the elector's ballot must be handled as a provisional ballot under 13-15-107~~."

Section 51. Section 13-14-111, MCA, is amended to read:

"13-14-111. Application of general laws. ~~Candidates~~ *Except as otherwise provided in this chapter, candidates* for nonpartisan offices, including judicial offices, ~~shall~~ *must* be nominated and elected according to the provisions of this title ~~except as otherwise provided in this chapter~~."

Section 52. Section 13-14-211, MCA, is amended to read:

"13-14-211. Judicial offices separate and independent offices for election purposes. (1) Each vacancy for justice of the supreme court is a separate and independent office for election purposes. The chief justice of the supreme court shall assign an individual number to the justices and certify these numbers to the office of the secretary of state.

(2) Each vacancy for judicial office in a district ~~which~~ *that* has more than one district judge is a separate and independent office for election purposes.

(3) Each vacancy for office in a county ~~which~~ *that* has more than one justice of the peace is a separate and independent office for election purposes."

Section 53. Section 13-14-212, MCA, is amended to read:

"13-14-212. Form of ballot on retention of certain incumbent judicial officers. *(1)* If ~~there is no candidate other than~~ the incumbent *is the only candidate* for the office of chief justice, supreme court justice, district court

judge, or justice of the peace, the name of the incumbent must be placed on the official ballot for the general election as follows:

Shall (insert title of officer) (insert name of the incumbent officer) of the (insert title of the court) of the state of Montana be retained in office for another term?

(2) Following the question, provision must be made, subject to rules adopted pursuant to 13-12-202, for a voter to indicate a "yes" or "no" vote."

Section 54. Section 13-15-201, MCA, is amended to read:

"13-15-201. Preparation for count. (1) Subject to 13-10-311, to prepare for a manual or automatic count of ballots, the counting board or, if appointed, the absentee counting board shall take ballots out of the box to determine whether each ballot is single.

(2) An absentee ballot must be rejected and handled as provided in 13-15-108 if ~~in~~ the envelope ~~there is~~ *contains* more than one voted ballot for each election.

(3) The board shall count all ballots to ensure that the total number of ballots corresponds with the total number of names in the pollbook.

(4) If the board cannot reconcile the total number of ballots with the pollbook, the board shall submit to the election administrator a written report stating how many ballots were missing or in excess and any reason of which they are aware for the discrepancy. Each judge on the board shall sign the report.

(5) A ballot that is not marked as official is void and may not be counted unless all judges on the board agree that the marking is missing because of an error by election officials, in which case the ballot must be marked "unmarked by error" on the back and must be initialed by all judges.

(6) If two or more ballots are folded or stuck together to look like a single ballot, they must be laid aside until the count is complete. The counting board shall compare the count with the pollbooks, and if a majority believes that the ballots folded together were voted by one elector, the ballots must be rejected and handled as provided in 13-15-108, otherwise they must be counted."

Section 55. Section 13-15-204, MCA, is amended to read:

"13-15-204. Signing and certifying pollbook. Immediately after the votes are counted and the ballots sealed ~~up~~, the pollbook ~~shall~~ *must* be signed and certified to by the election judges in a form prescribed by the secretary of state."

Section 56. Section 13-15-205, MCA, is amended to read:

"13-15-205. Items to be delivered to election administrator by election judges — disposition of other items. (1) Before they adjourn, the election judges shall enclose in a strong envelope or package, securely fastened:

(a) the precinct register;

(b) the list of individuals challenged;

(c) the pollbook;

(d) both of the tally sheets.

(2) The election judges shall enclose in a separate package or envelope, securely sealed, all unused ballots with the numbered stubs attached.

(3) The election judges shall enclose in a separate package or envelope, securely sealed, all ballots voted, including those not counted or allowed, and

detached stubs from all counted or rejected absentee ballots. This envelope ~~shall~~ *must* be endorsed on the outside "ballots voted". At the primary election the unvoted party ballots ~~shall~~ *must* be enclosed in a separate package or envelope, securely sealed, and marked on the outside "unvoted ballots".

(4) Each election judge shall write ~~his~~ *the judge's* name across all seals.

(5) The return form provided for in 13-15-101 ~~shall~~ *must* be returned with the items provided for in this section but may not be sealed in any of the packages.

(6) The envelopes or packages required by this section ~~shall~~ *must* be delivered to the election administrator by the chief election judge or another judge appointed by the chief judge in the manner ordered by the election administrator.

(7) The election administrator shall instruct the chief election judge in writing on the proper disposition of all other election materials and supplies."

Section 57. Section 13-15-403, MCA, is amended to read:

"13-15-403. Canvass to be public — nonessentials to be disregarded — petition for recount. (1) The canvass ~~shall~~ *must* be public. It ~~shall~~ *must* proceed by opening the returns, auditing the tally books or other records of votes cast, determining the vote for each individual and for and against each ballot issue from each precinct, compiling totals, and declaring or certifying the results.

(2) The board shall record all write-in votes shown in the returns from each precinct.

(3) The returns may not be rejected because of failure to show who administered the oath to the election judges, failure to complete all the certificates in a pollbook, or ~~because of~~ failure of any other act making up the returns that is not essential to determine for whom the votes were cast.

(4) If during a canvass the board finds an error in a precinct or precincts affecting the accuracy of vote totals, the board immediately may petition for a recount of the votes cast in the precinct or precincts, as provided in 13-16-201, or for an inspection of ballots, as provided in 13-16-420."

Section 58. Section 13-15-404, MCA, is amended to read:

"13-15-404. Information to be entered on record. (1) The secretary of the board shall prepare and file in the official records of ~~his~~ *the secretary's* office a report of the canvass ~~which~~ *that* lists:

(a) the total number of electors voting in each precinct, district, or portion of a district in the county and the total in the county;

(b) the name of each individual receiving votes and the office for which the votes were received;

(c) the number and title of each ballot issue;

(d) the votes by precinct, district, or portion of a district within the county for each individual and for and against each ballot issue;

(e) the total votes in the county for each individual and for and against each ballot issue; and

(f) for municipal elections, the total number of electors voting in each municipality and the votes by municipality for each individual and for and against each ballot issue.

(2) Write-in votes for an individual ~~shall~~ *must* be entered in the report in the same place as the votes for other individuals for the same office but ~~shall~~ *must* be identified as write-in votes."

Section 59. Section 13-15-502, MCA, is amended to read:

"13-15-502. Composition and meeting of board of state canvassers. Within 20 days after the election, or sooner if the returns are all received, the state auditor, superintendent of public instruction, and attorney general shall meet as a board of state canvassers in the office of the secretary of state and determine the vote. The secretary of state shall serve as secretary of the board, keep minutes of the meeting of the board, and file them in the official records of ~~his~~ *the secretary of state's* office."

Section 60. Section 13-15-504, MCA, is amended to read:

"13-15-504. Governor to issue commissions. Upon receipt of the statements required by 13-15-507 and 13-37-127, the governor shall issue commissions to the individuals elected. If the governor has been elected to ~~succeed himself~~ *an additional term*, the secretary of state shall issue the commission."

Section 61. Section 13-15-505, MCA, is amended to read:

"13-15-505. Canvass to be public — procedure. (1) The canvass ~~shall~~ *must* be public. It ~~shall~~ *must* proceed by opening the returns from each county, auditing the records from each county for errors, determining the vote for each individual and for and against each ballot issue in each county, compiling totals, and declaring and certifying the results.

(2) The board shall record all write-in votes shown in the returns received from each county."

Section 62. Section 13-15-506, MCA, is amended to read:

"13-15-506. Report of the canvass. (1) The secretary of the board shall prepare and file in the official records of ~~his~~ *the secretary of state's* office a report of the canvass ~~which~~ *that* lists:

(a) the total number of electors voting in each county and in each legislative house district and the total in the state;

(b) the name of each individual receiving votes and the office for which the votes were received;

(c) the number and title of each ballot issue; and

(d) the votes by county and legislative house district and the total votes for each individual and for and against each ballot issue.

(2) Write-in votes for an individual ~~shall~~ *must* be entered in the report in the same place as votes of other individuals for the same office but ~~shall~~ *must* be identified as write-in votes."

Section 63. Section 13-16-101, MCA, is amended to read:

"13-16-101. County governing body as county recount board. (1) The county recount board ~~shall~~ *must* consist of three members.

(2) Three members of the governing body ~~shall~~ *must* be appointed by the ~~chairman~~ *presiding officer* if there are more than three members of the governing body.

(3) If three members of the governing body cannot attend when the board meets, any vacant ~~place shall~~ *position must* be filled by one or more county officers chosen by the remaining members of the governing body.

(4) If a member of the recount board is a candidate for an office or nomination for which votes are to be recounted, ~~he shall~~ *the member must* be disqualified.

(5) The election administrator is secretary of the recount board, and the board may hire any additional clerks as needed.

(6) The board may appoint county employees or hire clerks to assist as needed."

Section 64. Section 13-16-201, MCA, is amended to read:

"13-16-201. Conditions under which recount to be conducted. (1) A recount must be conducted if:

(a) a candidate for *a precinct office or for* a county, municipal, or district office voted for in only one county, other than a legislator or a judge of the district court, ~~or a precinct office~~ is defeated by a margin not exceeding 1/4 of 1% of the total votes cast or by a margin not exceeding 10 votes, whichever is greater, and the defeated candidate, within 5 days after the official canvass, files with the election administrator a verified petition stating that the candidate believes that a recount will change the result and that a recount of the votes for the office or nomination should be conducted;

(b) a candidate for a congressional office, a state or district office voted on in more than one county, the legislature, or judge of the district court is defeated by a margin not exceeding 1/4 of 1% of the total votes cast for all candidates for the same position~~,~~ and the defeated candidate, within 5 days after the official canvass, files a petition with the secretary of state as set forth in subsection (1)(a). The secretary of state shall immediately notify by certified mail each election administrator whose county includes any precincts that voted for the office, and a recount must be conducted in those precincts.

(c) a question submitted to the vote of the people of a county, municipality, or district within a county is decided by a margin not exceeding 1/4 of 1% of the total votes cast for and against the question and a petition as set forth in subsection (1)(a) is filed with the election administrator. This petition must be signed by not less than 10 electors of the jurisdiction and must be filed within 5 days after the official canvass.

(d) a question submitted to the vote of the people of the state is decided by a margin not exceeding 1/4 of 1% of the total votes cast for and against the question and a petition as set forth in subsection (1)(a) is filed with the secretary of state. This petition must be signed by not less than 100 electors of the state, representing at least five counties of the state, and must be filed within 5 days after the official canvass.

(e) a question submitted to the vote of the people of a multicounty district is decided by a margin not exceeding 1/4 of 1% of the total votes cast for and against the question and a petition as set forth in subsection (1)(a) is filed with the secretary of state. This petition must be signed by not less than 25 electors of the district, representing at least two counties, and must be filed within 5 days after the official canvass.

(f) if a canvassing board petitions for a recount as provided in 13-15-403.

(2) When a recount is required under subsection (1)(b), (1)(d), or (1)(e), the secretary of state shall immediately notify each election administrator by certified mail of the filing of the petition, and a recount must be conducted in all precincts in each affected county."

Section 65. Section 13-16-203, MCA, is amended to read:

"13-16-203. Recount for tie votes. When a tie has been certified to the election administrator, as provided in 13-15-405(4), or the secretary of state, ~~he~~ *the administrator or the secretary of state* shall proceed as if a petition for a recount has been filed. If a tie exists after the recount, the tie ~~shall~~ *must* be resolved as provided by law."

Section 66. Section 13-16-204, MCA, is amended to read:

"13-16-204. Meeting of recount board when recount requested. (1) Immediately upon receiving a petition for a recount or a notice from the secretary of state that a petition has been filed ~~with him,~~ as provided in 13-16-201, the election administrator shall notify the members of the county recount board.

(2) The board shall convene at the usual meeting place of the governing body without undue delay but not later than 5 days after receiving notice from the election administrator."

Section 67. Section 13-16-211, MCA, is amended to read:

"13-16-211. Recounts allowed if bond posted to cover all costs. (1) If a candidate for a public office is defeated by a margin exceeding 1/4 of 1% but not exceeding 1/2 of 1% of the total votes cast for all candidates for the same position, ~~he~~ *the candidate* may, within 5 days after the official canvass, file with the officer with whom ~~his~~ *the candidate's* declaration or petition for nomination was filed a petition stating that ~~he~~ *the candidate* believes a recount will change the result of the election.

(2) The unsuccessful candidate shall post a bond with the clerk and recorder of the county in which ~~he~~ *the candidate* resides. The bond must be in an amount set by the clerk and recorder sufficient to cover all costs of the recount incurred by each county in which a recount is sought, including loss of time of regular employees caused by absence from their regular duties.

(3) Upon the filing of a petition and posting of a bond under this section, the board of county canvassers in each county affected shall meet and recount the ballots specified in the petition."

Section 68. Section 13-16-301, MCA, is amended to read:

"13-16-301. Application and court order for recount. (1) (a) Within 5 days after the canvass of election returns, an unsuccessful candidate for any public office at an election may apply to the district court of the county where the election was held for an order directing the county recount board to make a recount of the votes cast in any or all of the precincts. If the election was held in more than one county, the application ~~shall~~ *must* be made to the district court of the county where the candidate resides.

(b) Within 5 days after the canvass of election returns, an elector who was eligible to vote on the issue and who believes that there are grounds for a recount of the votes cast for and against a ballot issue may apply to the district court of the county where ~~he~~ *the elector* resides for an order directing the appropriate county recount board to make a recount of the votes cast in any or all of the precincts.

(2) The application ~~shall~~ *must* specify the grounds for a recount, and *it must* be verified by the applicant that the matters contained in it are true to the best of the applicant's knowledge, information, and belief.

(3) Within 5 days after filing of the application, the judge shall hear the application and determine its sufficiency.

(4) If the judge finds there is probable cause to believe that the votes cast for the applicant or the ballot issue were not correctly counted, ~~he~~ *the judge* shall order the appropriate county recount board to assemble within 5 days after the order is issued at a time and place fixed by the order. The board shall meet and recount the ballots as specified in the order."

Section 69. Section 13-16-302, MCA, is amended to read:

"13-16-302. Service of copy of application — hearing. The candidate found to be elected as a result of the original or first canvass ~~shall~~ *must* be served with a copy of the application for recount. ~~He shall~~ *The candidate must* be given an opportunity to be heard and ~~shall~~ *must* be permitted to be present and to be represented at any recount ~~ordered~~."

Section 70. Section 13-16-307, MCA, is amended to read:

"13-16-307. Expenses of court-ordered recount. (1) The court shall in its order determine the probable expense of making the recount, and the applicant or applicants asking for the recount shall deposit with the board the amount determined, in cash.

(2) If the recount shows that an applicant has been elected to office, the deposit of the applicant ~~shall~~ *must* be returned to ~~him~~ *the applicant*.

(3) If the recount shows that an applicant has not been elected and the expense of the recount is greater than the estimated cost, the applicant shall pay the excess; ~~but~~ *however,* if the expense is less than the cost, the difference ~~shall~~ *must* be refunded to the applicant.

(4) If the recount reverses the results of a ballot issue election, the deposit of the applicant ~~shall~~ *must* be returned to ~~him~~ *the applicant*.

(5) If the recount does not reverse the results of a ballot issue election and the expense of the recount is greater than the estimated cost, the applicant shall pay the excess; ~~but~~ *however,* if the expense is less than the cost, the difference ~~shall~~ *must* be refunded to the applicant."

Section 71. Section 13-16-415, MCA, is amended to read:

"13-16-415. Recount totals. After a recount is completed, tally sheets ~~shall~~ *must* be compared and the correctness of all reports of votes cast *must be* ascertained. The totals for each candidate or on each issue ~~shall~~ *must* be compiled and checked for accuracy."

Section 72. Section 13-16-416, MCA, is amended to read:

"13-16-416. Report of recount. (1) If the recount shows the votes for any candidate or on any ballot issue are more or less than the number shown upon the official returns, the secretary of the recount board shall prepare a corrected report ~~which~~ *that* states the number of votes ascertained by the recount.

(2) The recount board shall direct the secretary to enter the result of the election as determined by the recount in the board records."

Section 73. Section 13-16-417, MCA, is amended to read:

"13-16-417. Sealing ballots and voting systems. (1) When a recount of paper ballots that was conducted using a voting system ~~has been~~ *is* finished, each ballot must again be sealed in the same package or envelope in the presence of the election administrator and the county recount board and must be delivered to the election administrator for custody.

(2) All voting systems must be secured as provided in rules adopted under 13-17-211.

(3) All other materials used in the recount that are required to be sealed must be resealed in the same manner and delivered to the election administrator for custody."

Section 74. Section 13-16-418, MCA, is amended to read:

"13-16-418. Certification after recount. (1) Immediately after the recount, the county recount board shall certify the result.

(2) At least two members of the board shall sign the certificate, and it ~~shall~~ *must* be attested to under seal by the election administrator.

(3) The certificate ~~shall~~ *must* set forth in substance the proceedings of the board and the appearance of any candidates or representatives. The certificate ~~shall~~ *must* adequately designate*:*

(a) each precinct recounted;

(b) the vote of each precinct according to the official canvass previously made;

(c) the nomination, position, or question involved; and

(d) the correct vote of each precinct as determined by the recount.

(4) When the certificate relates to a recount for a congressional office, a state or district office voted on in more than one county, a legislative office, or an office of judge of the district court or a ballot issue voted on in more than one county, the certificate ~~shall~~ *must* be made in duplicate. One copy ~~shall~~ *must* be transmitted immediately to the secretary of state by certified mail.

(5) (a) If the recount relates to a county, municipal, or district office voted for in only one county, other than that of a legislator or a judge of the district court, or a precinct office or a ballot issue voted on in only one county, the county recount board shall immediately recanvass the returns as corrected by the certificate showing the result of the recount and make a corrected abstract of the votes.

(b) If the corrected abstract shows no change in the result, no further action ~~need be taken~~ *is needed*.

(c) If there is a change in the result, a new certificate of election or nomination ~~shall~~ *must* be issued to each candidate found to be elected or nominated and the first certificate is void. The individual receiving the second certificate ~~shall~~ *must* be elected or nominated to the office."

Section 75. Section 13-16-419, MCA, is amended to read:

"13-16-419. Recount by board of state canvassers. (1) When the secretary of state receives certificates from all county recount boards, ~~he~~ *the secretary of state* shall file them, *shall* fix a time and place, as soon as possible, for reconvening the board of state canvassers, and shall notify the members.

(2) The board of state canvassers shall recanvass the official returns on the office, nomination, position, or question~~,~~ as corrected by the certificates~~,~~ and make a new and corrected abstract of the votes cast.

(3) (a) If the corrected abstract shows no change in the results, ~~no~~ further action ~~shall~~ *may not* be taken.

(b) If there is a change in the results, a new certificate of election or nomination ~~shall~~ *must* be issued in the same manner as the certificate of election or nomination was previously issued to each candidate elected or nominated."

Section 76. Section 13-19-101, MCA, is amended to read:

"13-19-101. Statement of purpose. The purpose of this chapter is to provide the option of *and procedures for* conducting certain specified elections ~~using a procedure called a "mail ballot election" and to provide the procedures therefor~~ *as mail ballot elections*. The provisions of this chapter recognize that sound public policy concerning the conduct of elections often requires the balancing of various elements of the public interest that are sometimes in conflict. Among these factors are the public's interest in fair and accurate elections, the election of those who will govern or represent, and cost-effective administration of all functions of government, including the conduct of elections. The provisions of this chapter further recognize that when these and other factors are balanced, the conduct of elections by mail ballot is potentially the most desirable of the available options in certain circumstances."

Section 77. Section 13-19-203, MCA, is amended to read:

"13-19-203. Initiation by election administrator. (1) Even if ~~no~~ *a* request has *not* been received from the governing body concerned, the election administrator may conduct any election authorized by 13-19-104 under this chapter if~~, in his discretion,~~ *the election administrator determines* that ~~would be~~ *a mail ballot election is* the most economically and administratively feasible way of conducting the election in question.

(2) If ~~he~~ *the election administrataor* decides to conduct an election pursuant to subsection (1), the election administrator shall prepare a written plan as provided in 13-19-205 and forward a copy to the governing body concerned, together with a written statement informing ~~it~~ *the governing body* of ~~his~~ *the* decision to conduct the election by mail ballot*,* ~~and~~ the reasons ~~therefor~~ *for the decision,* and the right of the governing body to object under 13-19-204."

Section 78. Section 13-19-301, MCA, is amended to read:

"13-19-301. Voting mail ballots. (1) Upon receipt of ~~his~~ *a* ballot, the elector may vote by:

(a) marking the ballot in the manner specified;

(b) placing the marked ballot in the secrecy envelope, free of any identifying marks;

(c) placing the secrecy envelope containing a single ballot in the return/verification envelope;

(d) executing the affidavit printed on the return/verification envelope; and

(e) returning the return/verification envelope with the secrecy envelope containing the ballot enclosed, as provided in 13-19-306.

(2) For the purpose of this chapter, an official ballot is voted when, after the requirements of 13-19-310 and 13-19-311 have been satisfied, the return/verification envelope has been opened by election officials and the secrecy envelope containing the ballot has been deposited in the official ballot box."

Section 79. Section 13-19-302, MCA, is amended to read:

"13-19-302. Proportional voting. The election administrator shall provide a method for proportional voting in ~~his~~ *the administrator's* written plan for an election conducted under this chapter that requires votes to be cast in proportion to ownership or any factor other than one vote per person."

Section 80. Section 13-19-304, MCA, is amended to read:

"13-19-304. Voting by nonregistered electors. (1) For any election being conducted under this chapter by a political subdivision that allows individuals

to vote who are not registered electors, ~~such an~~ *the* individual may vote by appearing in person at the election administrator's office and demonstrating that ~~he~~ *the individual* possesses the qualifications ~~which~~ *that* entitle ~~him~~ *the individual* to vote.

(2) An individual complying with subsection (1) before official ballots are available may leave a card with the election administrator containing ~~his~~ *the individual's* signature and the address to which ~~his~~ *a* ballot is to be mailed. The signature provided must ~~then~~ be used for verification when the mail ballot is returned.

(3) An individual complying with subsection (1) after official ballots are available and before the close of the polls on election day must be permitted to vote at that time."

Section 81. Section 13-19-305, MCA, is amended to read:

"13-19-305. Replacement ballots — procedures. (1) An elector may obtain a replacement ballot as provided in this section if ~~his~~ *the original* ballot is destroyed, spoiled, lost, or not received by the elector.

(2) An elector seeking *or receiving* a replacement ballot shall sign a sworn statement stating that the *original* ballot was either destroyed, spoiled, lost, or not received and shall present the statement to the election administrator no later than 8 p.m. on election day.

(3) Upon receiving the sworn statement, the election administrator shall issue a replacement ballot to the elector. Each spoiled ballot must be returned before ~~a new one~~ *another ballot* may be issued.

(4) The election administrator shall designate ~~his~~ *the election administrator's* office or a central location in the political subdivision in which the election is conducted as the single location for obtaining a replacement ballot.

(5) A replacement ballot may also be issued pursuant to 13-19-313.

(6) The election administrator shall keep a record of each replacement ballot issued. If ~~he~~ *the election administrator* later determines that any elector to whom a replacement ballot has been issued has attempted to vote more than once, ~~he~~ *the election administrator* shall immediately notify the county attorney and the secretary of state of each instance."

Section 82. Section 13-19-306, MCA, is amended to read:

"13-19-306. Returning marked ballots — when — where. (1) After complying with 13-19-301, an elector or ~~his~~ *the elector's* designee may return ~~his~~ *the elector's* ballot on or before election day by either:

(a) depositing the return/verification envelope in the United States mail, with sufficient postage affixed; or

(b) returning it to any place of deposit designated by the election administrator pursuant to 13-19-307.

(2) In order to have ~~his~~ *the* ballot counted, each elector ~~must~~ *shall* return it ~~in such a manner~~ *so* that it is received prior to 8 p.m. on election day."

Section 83. Section 13-19-307, MCA, is amended to read:

"13-19-307. Places of deposit. (1) The election administrator shall designate ~~his~~ *the administrator's* office and may designate one or more places in the political subdivision in which the election is being conducted as places of deposit where ballots may be returned in person by the elector.

(2) Prior to election day, ballots may be returned to any designated place of deposit only during regular business hours.

(3) On election day, each location designated as a place of deposit must be open as provided in 13-1-106, and ballots may be returned during those hours.

(4) The election administrator may designate certain locations as election day places of deposit, and any *designated* location ~~so designated shall function~~ *functions* as a place of deposit only on election day.

(5) The election administrator shall provide each designated place of deposit with an official ballot transport box secured as provided by law."

Section 84. Section 13-19-308, MCA, is amended to read:

"13-19-308. Disposition of ballots returned in person. Ballots returned by the elector in person must be processed as follows:

(1) If returned to the election administrator's office directly, the ballot must be processed in the same manner provided for ballots returned by mail except that, while the elector is present, officials shall:

(a) verify the signature pursuant to 13-19-310;

(b) resolve any questions as to the validity of the ballot; and

(c) deposit the unopened secrecy envelope containing the ballot in the official ballot box.

(2) If returned to a place of deposit other than the election administrator's office, the election official on location shall:

(a) keep a log of the names of all electors from whom ~~he~~ *the official* receives ballots and the names of the people who deliver the ballots;

(b) deposit the unopened return/verification envelope in the sealed ballot transport box provided for that purpose; and

(c) securely retain all ballots until they are transported to the election administrator's office. The transport boxes must then be opened and the ballots disposed of in the same manner provided for ballots returned by mail."

Section 85. Section 13-19-310, MCA, is amended to read:

"13-19-310. Signature verification — procedures. (1) The election administrator shall verify the signature of each elector by comparing the affidavit printed on the return/verification envelope to the signature on that elector's registration card or signature card provided under 13-19-304.

(2) If the election administrator is convinced that the individual signing the affidavit is the same as the one whose name appears on the registration card, ~~he~~ *the administrator* shall proceed to validate the ballot.

(3) If the election administrator is not convinced that the individual signing the return/verification envelope is the same as the one whose name appears on the registration card, ~~he~~ *the administrator* may not validate the ballot but instead shall:

(a) give notice to the elector as provided in 13-19-313; and

(b) if the discrepancy is not rectified to the election administrator's satisfaction, present the unopened envelope and the registration card to the canvassing board for a determination."

Section 86. Section 13-27-305, MCA, is amended to read:

"13-27-305. Retention of copies by county official. The county official certifying the sheets or sections of a petition shall keep a copy of the sheets or

sections certified in the official files of ~~his~~ *the official's* office. The copies may be destroyed 3 months after the date of the election specified in the petition unless a court action is pending on the sufficiency of the petition."

Section 87. Section 13-27-306, MCA, is amended to read:

"13-27-306. Challenge to signatures by elector of county. A registered elector of a county having reason to believe that signatures on a petition that were not among those actually compared with signatures in the registration records of the county are not genuine may file a sworn statement or affirmation of ~~his~~ *the elector's* belief and *a* request for comparison of those signatures ~~he~~ *that the elector* believes are not genuine with the county official certifying the sheet or section of the petition. If any of the challenged signatures are not genuine, the county official ~~must~~ *shall* compare all signatures on that sheet or section and issue an amended certificate to the secretary of state, giving the correct number of valid signatures, on or before the deadline, as provided for in 13-27-104, for filing in the office of the secretary of state."

Section 88. Section 13-27-308, MCA, is amended to read:

"13-27-308. Certification of petition to governor. When sheets or sections of a petition for referendum, initiative, constitutional convention, or constitutional amendment containing a sufficient number of signatures have been filed with the secretary of state within the time required by the constitution or by law, ~~he~~ *the secretary of state* shall immediately certify to the governor that the completed petition has been officially filed."

Section 89. Section 13-27-404, MCA, is amended to read:

"13-27-404. Committee ~~chairman~~ *presiding officer.* The appointee of the president of the senate is the ~~chairman~~ *presiding officer* of any committee to which that officer makes an appointment. The appointing authority for other committees shall name a ~~chairman~~ *presiding officer* at the time the appointments are made."

Section 90. Section 13-27-405, MCA, is amended to read:

"13-27-405. Committee expenses. Each committee is entitled to receive funds for the preparation of arguments and expenses of members not to exceed $100 for a three-member committee and $200 for a five-member committee. Itemized claims for actual expenses incurred, approved by a majority of the committee, ~~shall~~ *must* be submitted to the secretary of state for payment from funds appropriated for that purpose."

Section 91. Section 13-27-503, MCA, is amended to read:

"13-27-503. Determination of result of election. The votes on ballot issues ~~shall~~ *must* be counted, canvassed, and returned by the regular boards of judges, clerks, and officers *in the same manner* as votes for candidates are counted, canvassed, and returned. The abstract of votes on ballot issues ~~shall~~ *must* be prepared and returned to the secretary of state in the manner provided by 13-15-501 for abstract of votes for state officers. The board of state canvassers shall proceed within 20 days after the election at which ~~such~~ ballot issues are voted upon and, at the same time as the votes for state officers are canvassed, canvass the votes given for each ballot issue. The secretary of state, as secretary of the board of state canvassers, shall prepare and file in ~~his~~ *the secretary of state's* office a statement of the canvass, giving the number and title of each issue, the whole number of votes cast in the state for and against each ballot issue, and the effective date of each ballot issue approved by a majority of those voting on the issue. The secretary of state shall transmit a certified copy of the statement of the canvass to the governor."

Section 92. Section 13-35-106, MCA, is amended to read:

"13-35-106. Ineligibility to hold office because of conviction. In addition to all other penalties prescribed by law:

(1) a candidate who is convicted of violating any provision of this title, except 13-35-207(9), is ineligible to be a candidate for any public office in the state of Montana until ~~his~~ final discharge from state supervision;

(2) a campaign treasurer who is convicted of violating any provision of this title, except 13-35-207(9), is ineligible to be a candidate for any public office or to hold the position of campaign treasurer in any campaign in the state of Montana until ~~his~~ final discharge from state supervision;

(3) if an elected official or a candidate is adjudicated to have violated any provision of this title, except 13-35-207(9), ~~he shall~~ *the individual must* be removed from nomination or office, as the case may be, even though ~~he~~ *the individual* was regularly nominated or elected."

Section 93. Section 13-35-201, MCA, is amended to read:

"13-35-201. Electors and ballots. (1) An elector may not show the contents of ~~his~~ *the elector's* ballot to anyone after it is marked. ~~No~~ *An* elector may *not* place any mark upon the ballot by which it may be identified as the one voted by ~~him~~ *the elector*.

(2) An elector may not receive a ballot from any person other than an election judge and may not vote any ballot except one received from an election judge. ~~No~~ *A* person other than an election judge may *not* deliver a ballot to an elector.

(3) ~~No~~ *A* person may *not* solicit an elector to show ~~his~~ *the elector's* ballot after it is marked.

(4) An elector who does not vote a ballot delivered to ~~him~~ *the elector* shall, before leaving the polling place, return the ballot to an election judge."

Section 94. Section 13-35-204, MCA, is amended to read:

"13-35-204. Official misconduct. A person charged with performance of any duty under the provisions of the election laws of this state is guilty of official misconduct and is punishable as provided in 45-7-401 whenever the person:

(1) knowingly neglects or refuses to perform that duty; or

(2) knowingly and fraudulently acts, in ~~his~~ *the person's* official capacity, in contravention or violation of any provision of the election laws."

Section 95. Section 13-35-209, MCA, is amended to read:

"13-35-209. Fraudulent registration. (1) ~~No~~ *A* person may *not* knowingly cause, procure, or allow ~~himself~~ *the person* to be registered in the official register of any election district of any county knowing ~~himself~~ *that the person is* not ~~to be~~ entitled to ~~such~~ *the* registration.

(2) ~~No~~ *A* person may ~~falsely personate~~ *not impersonate* another and cause the *impersonated* person ~~so personated~~ to be registered.

(3) When, on the trial of the person charged with any offense under the provisions of this section, it appears in evidence that the accused stands registered in the register of any county without being qualified for ~~such~~ registration, the court shall order ~~such~~ *the* registration canceled."

Section 96. Section 13-35-214, MCA, is amended to read:

"13-35-214. Illegal influence of voters. ~~No~~ *A* person *may not*, directly or indirectly, ~~by himself~~ *individually* or ~~by~~ *through* any other person ~~on his behalf~~,

for any election, ~~to or for any person on behalf of any elector or to or for any person,~~ in order to induce any elector to vote or refrain from voting or to vote for or against any particular candidate, political party ticket, or ballot issue~~, may~~:

(1) give, lend, agree to give or lend, offer, or promise any money, liquor, or valuable consideration or promise or endeavor to procure any money, liquor, or valuable consideration;

(2) promise to appoint another person or promise to secure or aid in securing the appointment, nomination, or election of another person to a public or private position or employment or to a position of honor, trust, or emolument~~,~~ in order to aid or promote ~~his~~ *the candidate's* nomination or election, except that ~~he~~ *the candidate* may publicly announce or define ~~what is his~~ *the candidate's* choice or purpose in relation to an election in which ~~he~~ *the candidate* may be called to take part~~,~~ if elected."

Section 97. Section 13-35-215, MCA, is amended to read:

"13-35-215. Illegal consideration for voting. ~~No~~ *A* person, directly or indirectly, ~~by himself~~ *individually* or ~~by~~ *through* any other person ~~in his behalf~~, may *not*:

(1) before or during any election, for voting or agreeing to vote or for refraining or agreeing to refrain from voting at the election or for inducing another to do so:

(a) receive, agree, or contract for any money, gift, loan, liquor, valuable consideration, office, place, or employment for ~~himself~~ *the person* or any other person; or

(b) approach any candidate or agent or person representing or acting on behalf of any candidate and ask for or offer to agree or contract for any money, gift, loan, liquor, valuable consideration, office, place, or employment for ~~himself~~ *the person* or any other person;

(2) after an election, for having voted or refrained from voting or having induced any other person to vote or refrain from voting at the election:

(a) receive any money, gift, loan, valuable consideration, office, place, or employment; or

(b) approach any candidate or any agent or person representing or acting on behalf of any candidate and ask for or offer to receive any money, gift, loan, liquor, valuable consideration, office, place, or employment for ~~himself~~ *the person* or any other person."

Section 98. Section 13-35-217, MCA, is amended to read:

"13-35-217. Officers not to influence voter. ~~No~~ *An* officer, while acting in ~~his~~ *an* official capacity, may *not*, by menace, reward, or promise of reward, induce or attempt to induce any elector to cast a vote contrary to ~~his~~ *the elector's* original intention or desire."

Section 99. Section 13-35-218, MCA, is amended to read:

"13-35-218. Coercion or undue influence of voters. (1) ~~No~~ *A* person, directly or indirectly, ~~by himself~~ *individually* or *through* any other person ~~in his behalf~~, in order to induce or compel a person to vote or refrain from voting for any candidate, the ticket of any political party, or any ballot issue before the people, may *not*:

(a) use or threaten to use any force, coercion, violence, restraint, or undue influence against any person; or

(b) inflict or threaten to inflict, ~~by himself~~ *individually* or *with* any other person, any temporal or spiritual injury, damage, harm, or loss upon or against any person.

(2) ~~No~~ *A* person who is a minister, preacher, priest, or other church officer or who is an officer of any corporation or organization, religious or otherwise, may *not*, other than by public speech or print, urge, persuade, or command any voter to vote or refrain from voting for or against any candidate, political party ticket, or ballot issue submitted to the people because of ~~his~~ *the person's* religious duty or the interest of any corporation, church, or other organization.

(3) ~~No~~ *A* person may *not*, by abduction, duress, or any fraudulent contrivance, impede or prevent the free exercise of the franchise by any voter at any election or ~~thereby~~ compel, induce, or prevail upon any elector to give or to refrain from giving ~~his~~ *the elector's* vote at any election.

(4) ~~No~~ *A* person may *not*, in any manner, interfere with a voter lawfully exercising ~~his~~ *the* right to vote at an election ~~so as~~ *in order* to prevent the election from being fairly held and lawfully conducted.

(5) ~~No~~ *A* person on election day may *not* obstruct the doors or entries of any polling place or engage in any solicitation of a voter within the room where votes are being cast or elsewhere in any manner ~~which~~ *that* in any way interferes with the election process or obstructs the access of voters to or from the polling place."

Section 100. Section 13-35-221, MCA, is amended to read:

"13-35-221. Improper nominations. (1) ~~No~~ *A* person may *not* pay or promise valuable consideration to another, in any manner or form, for the purpose of inducing ~~him~~ *the other person* to be or to refrain from or to cease being a candidate, and ~~no~~ *a* person may *not* solicit or receive any payment or promise from another for ~~such~~ *that* purpose.

(2) ~~No~~ *A* person, in consideration of any gift, loan, offer, promise, or agreement, as mentioned in subsection (1), may *not*:

(a) ~~allow himself to~~ be nominated or refuse to ~~allow himself to~~ be nominated as a candidate at an election;

(b) become, ~~by himself~~ *individually* or in combination with any other person or persons, a candidate for the purpose of defeating the nomination or election of any other person, without a bona fide intent to obtain the office; or

(c) withdraw if ~~he~~ *the person* has been ~~so~~ nominated.

(3) Upon complaint made to any district court, the judge shall issue a writ of injunction restraining the officer whose duty it is to prepare official ballots for a nominating election from placing the name of a person ~~thereon~~ *on the ballot* as a candidate for nomination to any office if the judge is convinced that:

(a) the person has sought the nomination or seeks to have ~~his~~ *the person's* name presented to the voters as a candidate for nomination by any political party for any mercenary or venal consideration or motive; and

(b) ~~his~~ *the person's* candidacy for the nomination is not in good faith."

Section 101. Section 13-35-301, MCA, is amended to read:

"13-35-301. Adoption of code of fair campaign practices. The following code of fair campaign practices is adopted by Montana:

"There are basic principles of decency, honesty, and fair play that every candidate for public office in the United States has a moral obligation to observe and uphold, in order that, after vigorously contested but fairly conducted

campaigns, our citizens may exercise their constitutional right to a free and untrammeled choice and the will of the people may be fully and clearly expressed on the issues before the country. Therefore:

I will conduct my campaign in the best American tradition, discussing the issues as I see them, presenting my record and policies with sincerity and frankness, and criticizing without fear or favor the record and policies of my opponent and ~~his~~ *my opponent's* party ~~which~~ *that* merit such criticism.

I will defend and uphold the right of every qualified American voter to full and equal participation in the electoral process.

I will conduct my campaign without the use of personal vilification, character defamation, whispering campaigns, libel, slander, or scurrilous attacks on my opposition or ~~his~~ *my opposition's* personal or family life.

I will not use campaign material of any sort ~~which~~ *that* misrepresents, distorts, or otherwise falsifies the facts, nor will I use malicious or unfounded accusations ~~which~~ *that* aim at creating or exploiting doubts, without justification, as to the loyalty and patriotism of my opposition.

I will not make any appeal to prejudice based on race, sex, creed, or national origin.

I will not undertake or condone any dishonest or unethical practice ~~which~~ *that* tends to corrupt or undermine our American system of free elections or ~~which~~ *that* hampers or prevents the full and free expression of the will of the voters.

Insofar as is possible, I will immediately and publicly repudiate support deriving from any individual or group ~~which~~ *that* resorts, on behalf of my candidacy or in opposition to that of my opponent, to the methods and tactics that I have pledged not to use or condone.""

Section 102. Section 13-36-101, MCA, is amended to read:

"13-36-101. Grounds for contest of nomination or election to public office. An elector may contest the right of any person to any nomination or election to public office for which the elector has the right to vote~~, for any of the following causes~~ *if the elector believes that*:

(1) ~~on the ground of~~ a deliberate, serious, and material violation of any provision of the law relating to nominations or elections *has occurred*;

(2) ~~whenever~~ the person ~~whose right is contested~~ was not, at the time of the election, eligible to ~~such~~ *be a candidate for the* office;

(3) ~~on account of illegal~~ votes *were cast illegally* or *were counted or canvassed in* an erroneous or fraudulent ~~count or canvass of votes~~ *manner*."

Section 103. Section 13-36-102, MCA, is amended to read:

"13-36-102. Time for commencing contest. (1) Five days or less after a candidate has been certified as nominated, a person wishing to contest the nomination to any public office shall give notice in writing to the candidate whose nomination ~~he~~ *the person* intends to contest, briefly stating the cause for the contest. The contestant shall make application to the district court in the county where the contest is to be had. The judge shall then set the time for the hearing. The contestant shall serve notice 3 days before the hearing is scheduled. The notice ~~shall~~ *must* state the time and place of the hearing.

(2) Any action to contest the right of a candidate to be declared elected to an office or to annul and set aside ~~such~~ *the* election or to remove from or deprive any person of an office of which ~~he~~ *the person* is the incumbent for any offense

mentioned in this title must, unless a different time is stated, be commenced within 1 year after the day of election at which ~~such~~ *the* offense was committed."

Section 104. Section 13-36-103, MCA, is amended to read:

"13-36-103. Court having jurisdiction of proceedings. An application for filing a statement, payment of a claim, or correction of an error or false recital in a filed statement or an action or proceeding to annul and set aside the election of any person declared elected to an office or to remove or deprive any person of ~~his~~ *the person's* office for an offense mentioned in this title or any petition to excuse any person or candidate in accordance with the power of the court to excuse, as provided in 13-36-209, must be made or filed in the district court of the county in which the certificate, declaration, or acceptance of ~~his~~ *the person's* nomination as a candidate for the office to which ~~he~~ *the person* is declared nominated or elected is filed or in which the incumbent resides."

Section 105. Section 13-36-104, MCA, is amended to read:

"13-36-104. Nomination contests. In the case of nomination contests, the judge of the district court shall hear and determine the case and make all necessary orders for the trial of the case and carrying ~~his~~ *the* judgment into effect. The order of the judge ~~shall~~ *must* express the will of a majority of the legal voters of the political party, as indicated by their votes, disregarding technicalities or errors in spelling. Each party is entitled to subpoenas. The registrar shall issue a certificate to the person declared nominated by the court. The certificate ~~shall be~~ *is* conclusive evidence of the right of the person to hold the nomination."

Section 106. Section 13-36-201, MCA, is amended to read:

"13-36-201. Contents of contest petition. Any petition contesting the right of any person to a nomination or election ~~shall~~ *must* set forth the name of every person whose election is contested and the grounds of the contest. The petition ~~shall~~ *may* not ~~thereafter~~ be amended~~, except by leave of the~~ *unless the amendment is authorized by a* court."

Section 107. Section 13-36-202, MCA, is amended to read:

"13-36-202. Reception of illegal votes — allegations and evidence. When the reception of illegal votes is alleged as a cause of contest, it ~~shall be~~ *is* sufficient to state generally that in one or more specified voting precincts illegal votes were given to the candidate whose nomination or election is contested ~~which~~ *that*, if taken from ~~him~~ *the candidate*, will reduce the number of ~~his~~ *the candidate's* legal votes below the number of legal votes given to some other candidate for the same office. ~~No testimony shall~~ *Testimony may not* be received of any illegal votes unless the party contesting ~~such~~ *the* election delivers to the opposite party, at least 3 days before ~~such~~ trial, a written list of the number of illegal votes ~~(~~and by whom given~~)~~ ~~which he~~ *that the party* intends to prove ~~on such~~ *at* trial. This provision ~~shall~~ *may* not prevent the contestant from offering evidence of illegal votes not included in ~~such~~ *the* statement if ~~he~~ *the contestant* did not know and by reasonable diligence was unable to learn of ~~such~~ *the* additional illegal votes ~~(~~and by whom they were given~~)~~ before delivering ~~such~~ *the* written list."

Section 108. Section 13-36-204, MCA, is amended to read:

"13-36-204. Bond required. Before any proceeding on the petition, the petitioner shall give bond to the state in ~~such~~ *a* sum ~~as~~ *that* the court may order, not exceeding $2,000, with not less than two sureties, who shall justify in the manner required of sureties on bail bonds, conditioned to pay all costs,

disbursements, and ~~attorney's~~ *attorney* fees that may be awarded against ~~him~~ *the petitioner* if ~~he shall~~ *the petitioner does* not prevail."

Section 109. Section 13-36-205, MCA, is amended to read:

"13-36-205. Recovery of costs. In any contest, the prevailing party may recover ~~his~~ *the party's* costs, disbursements, and reasonable ~~attorney's~~ *attorney* fees. Costs, disbursements, and ~~attorney's~~ *attorney* fees in all ~~such~~ cases ~~shall~~ *must* be in the discretion of the court. ~~In case~~ *If* judgment is rendered against the petitioner, it ~~shall~~ *must* also be rendered against the sureties on the bond."

Section 110. Section 13-36-206, MCA, is amended to read:

"13-36-206. Notice of filing — prompt hearing. On the filing of ~~any such~~ *a* petition *under this part*, the clerk shall immediately notify the judge of the court and issue a citation to the person whose nomination or office is contested, citing ~~him~~ *the person* to appear and answer not less than 3 or more than 7 days after the date of filing the petition. The court shall hear ~~said~~ *the* cause, and ~~every such~~ *the* contest ~~shall~~ *must* take precedence over all other business on the court docket and ~~shall~~ *must* be tried and disposed of with all convenient dispatch. The court ~~shall~~ *is* always *considered to* be ~~deemed~~ in session for the trial of ~~such~~ *contest* cases."

Section 111. Section 13-36-207, MCA, is amended to read:

"13-36-207. Hearing of contest. The petitioner (contestant) and the contestee may appear and produce evidence at the hearing, but no person other than the petitioner and contestee may be made a party to the proceedings on ~~such~~ *the* petition and no person other than the parties and their attorneys may be heard ~~thereon~~ except by order of the court. If more than one petition is pending or the election of more than one person is contested, the court may in its discretion order the cases to be heard together and may apportion the costs, disbursements, and ~~attorney's~~ *attorney* fees between ~~them~~ *the parties* and shall finally determine all questions of law and fact, except that the judge may ~~in his discretion~~ impanel a jury to decide on questions of fact. In the case of nominations or elections other than for federal congressional offices, the court shall immediately certify its decision to the governing body or official issuing certificates of nomination or election and the governing body or official shall ~~thereupon~~ issue certificates of nomination or election to the person or persons entitled ~~thereto~~ *to the certificates* by the court's decision. If judgment of ouster against a defendant is rendered, the nomination or office ~~shall~~ *must* be ~~by the judgment~~ declared vacant *by the judgment*, except as provided in 13-36-212, and ~~shall thereupon~~ *must* be filled by a new election or by appointment as may be provided by law regarding vacancies in ~~such~~ *the* nomination or office."

Section 112. Section 13-36-208, MCA, is amended to read:

"13-36-208. Advancement of cases — dismissal — privileges of witnesses. Proceedings under this title ~~shall~~ *must* be advanced on the docket upon request of either party for speedy trial, but the court may postpone or continue the trial if necessary, and in case of ~~such~~ *a* continuance or postponement, the court may impose costs in its discretion as a condition ~~thereof~~ *of the continuance or postponement*. ~~No~~ *A* petition may *not* be dismissed without the consent of the county attorney unless the ~~same~~ *the petition* is dismissed by the court. ~~No~~ *A* person may *not* be excused from testifying or producing papers or documents on the ground that ~~his~~ *the person's* testimony or the production of papers or documents will tend to ~~criminate him; but no~~ *incriminate the person. However, an* admission, evidence, or paper made or advanced or produced by ~~such~~ *the* person or any evidence that is the direct result of ~~such~~ *the* evidence or

information that ~~he~~ *the person* may have ~~so~~ given may *not* be offered or used against ~~him~~ *the person* in any civil or criminal prosecution~~,~~ except in a prosecution for perjury committed in ~~such~~ *the* testimony."

Section 113. Section 13-36-209, MCA, is amended to read:

"13-36-209. Forfeiture of nomination or office for violation of law — when inappropriate. ~~If, upon~~ *Upon* the trial of any action or proceeding under the provisions of this title to contest the right of any person to be declared nominated or elected to any office or to annul or set aside ~~such~~ *a* nomination or election or to remove a person from ~~his~~ office, *the nomination or election of the candidate is not by reason of the offense or omission complained of void and the candidate may not be removed from or deprived of office if under the circumstances it seems to the court to be unjust that the candidate forfeit a nomination or office or be deprived of any office of which the candidate is the incumbent. The decision of the court must be based upon the following:*

(1) it appears from the evidence that the offense complained of was not committed by the candidate or with ~~his~~ *the candidate's* knowledge or consent or was committed without ~~his~~ *the candidate's* sanction or connivance and that all reasonable means for preventing the commission of ~~such~~ *the* offense at ~~such~~ *the* election were taken by and on behalf of the candidate;

(2) ~~that~~ the offense or offenses complained of were trivial, unimportant, and limited in character and ~~that~~ in all other respects ~~his~~ *the candidate's* participation in the election was free from ~~such~~ offenses or illegal acts; or

(3) ~~that~~ any act or omission of the candidate arose from inadvertence or from accidental miscalculation or from some other reasonable cause of a like nature and in any case did not arise from any ~~want~~ *lack* of good faith~~; and under the circumstances it seems to the court to be unjust that the candidate forfeit his nomination or office or be deprived of any office of which he is the incumbent, then the nomination or election of the candidate is not by reason of such offense or omission complained of void, nor may the candidate be removed from or deprived of his office~~."

Section 114. Section 13-36-210, MCA, is amended to read:

"13-36-210. Punishment. If, upon the trial of any action or proceeding under the provisions of this title to contest the right of any person to be declared to be nominated to an office or elected to an office or to annul and set aside ~~such~~ *the* election or to remove any person from ~~his~~ office, it appears that ~~such~~ *the* person was guilty of any corrupt practice, illegal act, or undue influence in or about ~~such~~ *the* nomination or election, ~~he shall~~ *the person must* be punished by being deprived of the nomination or office~~, as the case may be,~~ and the vacancy ~~therein shall~~ *must* be filled in the manner provided by law. The only exceptions to this judgment ~~shall be~~ *are* those provided in 13-36-209. ~~Such~~ *The* judgment does not prevent the candidate or officer from being proceeded against by indictment or criminal information for any ~~such~~ act or acts."

Section 115. Section 13-36-211, MCA, is amended to read:

"13-36-211. When nomination or election not to be vacated. ~~Nothing in the~~ *The* ground of contest specified in 13-36-101(3) ~~is to~~ *may not* be ~~so~~ construed ~~as~~ to authorize a nomination or election to be set aside on account of illegal votes~~,~~ unless it ~~appear either~~ *appears*:

(1) that the candidate or nominee whose right is contested had knowledge of or connived ~~at such~~ *in the* illegal votes; or

(2) that the number of illegal votes given to the person whose right to the nomination or office is contested, if taken from ~~him~~ *the person*, would reduce the number of ~~his~~ legal votes *for the person* below the number of votes given to some other person for the same nomination or office, after deducting ~~therefrom~~ the illegal votes ~~which~~ *that* may be shown to have been given to ~~such~~ *the* other person."

Section 116. Section 13-37-104, MCA, is amended to read:

"13-37-104. Vacancy. (1) If for any reason a vacancy occurs in the position of commissioner, a successor ~~shall~~ *must* be appointed within 30 days as provided in 13-37-102(1) to serve out the unexpired term. ~~Every~~ *Each* nomination ~~shall~~ *must* be confirmed by the senate, but a nomination made while the senate is not in session ~~shall be~~ *is* effective as an appointment until the end of the next session.

(2) An individual who is selected to serve out the unexpired term of a preceding commissioner and who has served 3 years or more of an unexpired term is not eligible for reappointment.

(3) An individual who is selected to serve out the unexpired term of a preceding commissioner and who has served less than 3 years may be reappointed for a 6-year term as provided in 13-37-102(1)."

Section 117. Section 13-37-105, MCA, is amended to read:

"13-37-105. Impeachment and prosecution of commissioner. The commissioner may be removed from office by impeachment as provided in Title 5, chapter 5, part 4. ~~He~~ *The commissioner* may also be prosecuted by the appropriate county attorney for official misconduct as specified in 45-7-401."

Section 118. Section 13-37-116, MCA, is amended to read:

"13-37-116. Exercise of powers. The commissioner may exercise all of the powers conferred upon ~~him~~ *the commissioner* by law in any jurisdiction or political subdivision of the state."

Section 119. Section 13-37-119, MCA, is amended to read:

"13-37-119. Availability of information. (1) The commissioner shall make statements and other information filed with ~~his~~ *the commissioner's* office available for public inspection and copying during regular office hours and make copying facilities available free of charge or at a charge not to exceed *the* actual cost.

(2) The commissioner shall preserve statements and other information filed with ~~his~~ *the commissioner's* office for a period of 10 years from *the* date of receipt.

(3) The commissioner shall prepare and publish summaries of the statements received and ~~such~~ other reports ~~as he~~ *that the commissioner* considers appropriate.

(4) The commissioner shall provide for wide public dissemination of summaries and reports."

Section 120. Section 13-37-122, MCA, is amended to read:

"13-37-122. Judicial review of orders of noncompliance. A candidate or political treasurer ~~aggrieved by the issuance~~ *who is the subject* of an order of noncompliance may seek judicial review in the district court of the county in which the candidate resides or the county in which the political committee has its headquarters. All petitions for judicial review filed pursuant to this section ~~shall~~ *must* be expeditiously reviewed by the appropriate district court."

Section 121. Section 13-37-125, MCA, is amended to read:

"13-37-125. Powers of county attorney to investigate. (1) Nothing in chapter 35 of this title or this chapter prevents a county attorney from inspecting any records, accounts, or books ~~which~~ *that* must be kept pursuant to the provisions of chapter 35 of this title or this chapter that are held by a political committee or candidate involved in an election to be held within the county. However, the inspections must be conducted during reasonable office hours.

(2) A county attorney may:

(a) administer oaths and affirmations;

(b) subpoena witnesses and compel their attendance;

(c) take evidence; and

(d) require the production of any books, correspondence, memoranda, bank account statements of a political committee or candidate, or other records ~~which~~ *that* are relevant or material for the purpose of conducting any investigation pursuant to the provisions of chapter 35 of this title or this chapter."

Section 122. Section 13-37-201, MCA, is amended to read:

"13-37-201. Campaign treasurer. Except as provided in 13-37-206, each candidate and each political committee shall appoint one campaign treasurer and certify the full name and complete address of the campaign treasurer pursuant to this section. A candidate shall file the certification within 5 days after becoming a candidate. A political committee shall file the certification, which ~~shall~~ *must* include an organizational statement and ~~set forth~~ the name and address of all ~~other~~ officers, if any, within 5 days after it makes an expenditure or authorizes another person to make an expenditure on its behalf, whichever occurs first. The certification of a candidate or political committee ~~shall~~ *must* be filed with the commissioner and the appropriate election administrator as specified for the filing of reports in 13-37-225."

Section 123. Section 13-37-202, MCA, is amended to read:

"13-37-202. Deputy campaign treasurers. (1) A campaign treasurer may appoint deputy campaign treasurers, but not more than one in each county in which the campaign is conducted. Each candidate and political committee shall certify the full name and complete address of the campaign treasurer and all deputy campaign treasurers with the office with whom the candidate or the political committee is required to file reports.

(2) Deputy campaign treasurers may exercise any of the powers and duties of a campaign treasurer as set forth in this chapter when specifically authorized in writing to do so by the campaign treasurer and the candidate, in the case of a candidate, or the campaign treasurer and the ~~chairman~~ *presiding officer* of the political committee, in the case of a political committee. The written authorization ~~shall~~ *must* be maintained as a part of the records required to be kept by the treasurer, as specified in 13-37-208."

Section 124. Section 13-37-203, MCA, is amended to read:

"13-37-203. Qualifications of campaign and deputy campaign treasurers. Any campaign or deputy campaign treasurer appointed pursuant to 13-37-201 and 13-37-202 ~~shall~~ *must* be a registered voter in this state. An individual may be appointed and serve as a campaign treasurer of a candidate and a political committee or two or more candidates and political committees. A candidate may ~~appoint himself as his~~ *serve as the candidate's* own campaign or deputy campaign treasurer. ~~No~~ *An* individual may *not* serve as a campaign or

deputy campaign treasurer or perform any duty required of a campaign or deputy campaign treasurer of a candidate or political committee until ~~he~~ *the individual* has been designated and ~~his~~ *the individual's* name certified by the candidate or political committee."

Section 125. Section 13-37-204, MCA, is amended to read:

"13-37-204. Removal of campaign and deputy campaign treasurers. A candidate or political committee may remove ~~his~~ *the candidate's* or ~~its~~ *committee's* campaign or deputy campaign treasurer. The removal of any treasurer or deputy treasurer ~~shall~~ *must* immediately be reported to the officer with whom the name of the campaign treasurer was originally filed. In case of death, resignation, or removal of ~~his~~ *the candidate's* or ~~its~~ *committee's* campaign treasurer before compliance with any obligation of a campaign treasurer under this chapter, the candidate or political committee shall appoint a successor and certify the name and address of the successor as specified in 13-37-201."

Section 126. Section 13-37-205, MCA, is amended to read:

"13-37-205. Campaign depositories. Except as provided in 13-37-206, each candidate and each political committee shall designate one primary campaign depository for the purpose of depositing all contributions received and disbursing all expenditures made by the candidate or political committee. The candidate or political committee may also designate one secondary depository in each county in which an election is held and in which the candidate or committee participates. Deputy campaign treasurers may make deposits in and expenditures from secondary depositories when authorized to do so as provided in 13-37-202(2). Only a bank, credit union, savings and loan association, or building and loan association authorized to transact business in Montana may be designated as a campaign depository. The candidate or political committee shall file the name and address of each *designated* primary and secondary depository ~~so designated~~ at the same time and with the same officer with whom the candidate or committee files the name of ~~his~~ *the candidate's* or ~~its~~ *committee's* campaign treasurer pursuant to 13-37-201. ~~Nothing in this~~ *This* section ~~shall~~ *does not* prevent a political committee or candidate from having more than one campaign account in the same depository, but a candidate may not utilize ~~his~~ *the candidate's* regular or personal account in the depository as a campaign account."

Section 127. Section 13-37-206, MCA, is amended to read:

"13-37-206. Exception for certain school districts and certain special districts. (1) The provisions of this part, except 13-37-217, do not apply to candidates for the office of trustee of a school district, their political campaigns, and political committees organized to support or oppose a school district issue when the school district is:

(a) a first-class district located in a county having a population of less than 15,000;

(b) a second- or third-class district; or

(c) a county high school district having a student enrollment of less than 2,000.

(2) The provisions of this part, except 13-37-217, do not apply to candidates*, their political campaigns, and political committees organized to support or oppose an issue if the candidate is running for or the committee's issue involves* ~~for certain special district offices, their political campaigns, and political committees organized to support or oppose a special district issue.~~

~~(3) As used in this section, "special district" means~~ a unit of local government authorized by law to perform a single function or a limited number of functions~~. The term includes~~ *including* but ~~is~~ not limited to a conservation district, a weed management district, a fire district, a community college district, a hospital district, an irrigation district, a sewer district, a transportation district, ~~or~~ a water district~~. The term also includes~~ *or* any district or other entity formed by interlocal agreement."

Section 128. Section 13-37-207, MCA, is amended to read:

"13-37-207. Deposit of contributions — statement of campaign treasurer. (1) All funds received by the campaign treasurer or any deputy campaign treasurer of any candidate or political committee ~~shall~~ *must* be deposited prior to the end of the fifth business day following their receipt, ~~(~~Sundays and holidays excluded~~)~~, in a checking account, share draft account, share checking account, or negotiable order of withdrawal account in a campaign depository designated pursuant to 13-37-205.

(2) A statement showing the amount received from or provided by each person and the account in which the funds are deposited ~~shall~~ *must* be prepared by the campaign treasurer at the time the deposit is made. This statement along with the receipt form for cash contributions deposited at the same time and a deposit slip for the deposit ~~shall~~ *must* be kept by the treasurer as a part of ~~his~~ *the treasurer's* records."

Section 129. Section 13-37-208, MCA, is amended to read:

"13-37-208. Treasurer to keep records. (1) *(a)* ~~The~~ *Except as provided in subsection (1)(b), the* campaign treasurer of each candidate and each political committee shall keep detailed accounts ~~(current within not more than 10 days after the date of receiving a contribution or making an expenditure, except that accounts shall be current as of the 5th day before the date of filing of a report as specified in 13-37-226)~~ of all contributions received and all expenditures made by or on behalf of the candidate or political committee that are required to be set forth in a report filed under this chapter. *The accounts must be current within not more than 10 days after the date of receiving a contribution or making an expenditure.*

(b) The accounts described in subsection (1)(a) must be current as of the 5th day before the date of filing of a report as specified in 13-37-226.

(2) Accounts of a deputy campaign treasurer ~~shall~~ *must* be transferred to the treasurer of a candidate or political committee before the candidate or political committee finally closes its books or when the position of a deputy campaign treasurer becomes vacant and no successor is appointed.

(3) Accounts kept by a campaign treasurer of a candidate or political committee ~~shall~~ *must* be preserved by the campaign treasurer for a period coinciding with the term of office for which the person was a candidate or for a period of 4 years, whichever is longer."

Section 130. Section 13-37-215, MCA, is amended to read:

"13-37-215. Petty cash funds allowed. (1) The campaign treasurer for each candidate or political committee is authorized to withdraw the following amount each week from the primary depository for the purpose of providing a petty cash fund for the candidate or political committee:

(a) for all statewide candidates and political committees filing reports pursuant to 13-37-226(1), $100 per week; and

(b) for all other candidates and political committees, $25 per week.

(2) The petty cash fund may be spent for office supplies, transportation expenses, postage stamps, and other necessities in an amount of less than $25. Petty cash ~~shall~~ *may* not be used for the purchase of time, space, or services from any communications medium."

Section 131. Section 13-37-217, MCA, is amended to read:

"13-37-217. Contributions in name of undisclosed principal. ~~No~~ *A* person may *not* make a contribution of ~~his~~ *the person's* own money or of another person's money to any other person in connection with any election in any other name than that of the person who in truth supplies ~~such~~ *the* money. ~~No~~ *A* person may *not* knowingly receive ~~such~~ a contribution or enter or cause the ~~same~~ *contribution* to be entered in ~~his~~ *the person's* accounts or records in another name than that of the person by whom it was actually furnished."

Section 132. Section 13-37-225, MCA, is amended to read:

"13-37-225. Reports of contributions and expenditures required. (1) Except as provided in 13-37-206, each candidate and political committee shall file periodic reports of contributions and expenditures made by or on the behalf of a candidate or political committee. All reports required by this chapter ~~shall~~ *must* be filed with the commissioner and with the election administrator of the county in which a candidate is a resident or the political committee has its headquarters. However, where residency within a district, county, city, or town is not a prerequisite for being a candidate, copies of all reports ~~shall~~ *must* be filed with the election administrator of the county in which the election is to be held or, if the election is to be held in more than one county, with the election administrator in the county that the commissioner specifies.

(2) In lieu of all contribution and expenditure reports required by this chapter, the commissioner shall accept copies of the reports filed by candidates for congress and president of the United States and their political committees pursuant to the requirements of federal law."

Section 133. Section 13-37-228, MCA, is amended to read:

"13-37-228. Time periods covered by reports. Reports filed under 13-37-225 and 13-37-226 must be filed to cover the following time periods even though no contributions or expenditures may have been received or made during the period:

(1) The initial report must cover all contributions received or expenditures made by a candidate or political committee prior to the time that a person became a candidate or a political committee as defined in 13-1-101 until the fifth day before the date of filing of the appropriate initial report pursuant to ~~subsections (1) through (5) of~~ 13-37-226*(1) through (5)*. Reports filed by political committees organized to support or oppose a statewide ballot issue must disclose all contributions received and expenditures made prior to the time an issue becomes a ballot issue by transmission of the petition to the proponent of the ballot issue or referral by the secretary of state, even if the issue subsequently fails to garner sufficient signatures to qualify for the ballot.

(2) Subsequent periodic reports must cover the period of time from the closing of the previous report to 5 days before the date of filing of a report pursuant to 13-37-226(1) through (5).

(3) Closing reports must cover the period of time from the last periodic report to the final closing of the books of the candidate or political committee. A candidate or political committee shall file a closing report following an election in which the candidate or political committee participates whenever all debts

and obligations are ~~extinguished~~ *satisfied* and ~~no~~ further contributions or expenditures will *not* be received or made ~~which~~ *that* relate to the campaign~~,~~ unless the election is a primary election and the candidate or political committee will participate in the general election."

Section 134. Section 13-37-231, MCA, is amended to read:

"13-37-231. Reports to be certified as true and correct. (1) A report required by this chapter to be filed by a candidate or political committee ~~shall~~ *must* be verified as true and correct by the oath or affirmation of the individual filing the report. The individual filing the report ~~shall~~ *must* be the candidate or an officer of a political committee who is on file as an officer of the committee with the commissioner.

(2) A copy of a report or statement filed by a candidate or political committee ~~shall~~ *must* be preserved by the individual filing it for a period coinciding with the term of office for which the person was a candidate or for a period of 4 years, whichever is longer."

Section 135. Section 13-38-101, MCA, is amended to read:

"13-38-101. Powers of parties. Each political party ~~shall have power to~~ *may*:

(1) make its own rules;

(2) provide for and select its own offices;

(3) call conventions and provide for the number and qualification of delegates;

(4) adopt platforms;

(5) provide for selection of delegates to national conventions;

(6) provide for the nomination of presidential electors;

(7) provide for the selection of national ~~committeemen and women~~ *committee representatives*;

(8) make nominations to fill vacancies occurring among its candidates nominated for offices to be filled by the state at large or by any district consisting of more than one county where ~~such~~ *the* vacancies are caused by death, resignation, or removal from the electoral district;

(9) perform all other functions inherent in ~~such an~~ *a party* organization."

Section 136. Section 13-38-201, MCA, is amended to read:

"13-38-201. Election of ~~committeemen~~ *committee representatives* at primary. (1) Except as provided in subsection (4), each political party shall elect at each primary election one person of each sex to serve as ~~committeemen~~ *committee representatives* for each election precinct. The ~~committeemen~~ *committee representatives* must be residents and registered voters of the precinct.

(2) An elector may be placed in nomination for ~~committeeman~~ *committee representative* by a written statement, signed by the elector, notarized, and filed in the office of the registrar within the time for filing declarations naming candidates for nomination at the regular biennial primary election.

(3) Except as provided in subsection (4), the names of candidates for precinct ~~committeeman~~ *committee representative* of each political party must appear on the party ticket in the same manner as other candidates and are voted for in the same manner as other candidates.

(4) If only one person of each sex has been nominated to fill a precinct's positions, the election administrator may decline to include that precinct's election in the primary election. If a precinct's election is not held during the primary election pursuant to this subsection, the county governing body shall declare elected by acclamation the candidates nominated for that precinct's ~~committeemen~~ *committee representative* positions."

Section 137. Section 13-38-202, MCA, is amended to read:

"13-38-202. ~~Committeemen~~ *Committee representatives* as party representatives — county and city central committees. (1) Each ~~committeeman~~ *committee representative* shall represent ~~his~~ *the representative's* political party for the precinct in all ward or subdivision committees formed.

(2) The ~~committeemen~~ *committee representatives* in each precinct ~~shall~~ constitute the county central committee of the respective political parties.

(3) ~~Committeemen~~ *Committee representatives* who reside within the limits of a city are ex officio the city central committee of their respective political parties and have the power to make their own rules not inconsistent with those of the county central committee. However, the county central committee has the power to fill vacancies in the city central committee.

(4) Each precinct ~~committeeman~~ *committee representative* ~~has~~ *serves* a term of 2 years from the date of ~~his~~ election.

(5) If a vacancy occurs, the remaining members of the county committee may select a precinct resident to fill the vacancy."

Section 138. Section 13-38-203, MCA, is amended to read:

"13-38-203. Powers of county and city central committees — role of state central committee where no county central committee exists. (1) The county and city central committee may:

(a) make rules for the government of its political party in each county not inconsistent with any of the provisions of the election laws of this state or the rules of its state political party;

(b) elect two county members of the state central committee, one of ~~whom shall be a man and one of whom shall be a woman~~ *each gender*, elect the members of the congressional committee, and fill all vacancies and make rules in their jurisdiction.

(2) If there is no county central committee, the state central committee shall appoint a county central committee."

Section 139. Section 13-38-205, MCA, is amended to read:

"13-38-205. Organization and operation of committee. (1) The committee shall meet prior to the state convention of its political party and organize by electing a ~~chairman~~ *presiding officer* and one or more ~~vice-chairmen~~ *vice presiding officers*. The ~~chairman~~ *gender of the presiding officer* ~~or first vice-chairman shall~~ *and the vice presiding officer may not* be ~~a woman~~ *the same*. The committee shall elect a secretary and other officers as ~~are proper~~ *necessary*. It is not necessary for the officers to be precinct ~~committeemen~~ *committee representatives*.

(2) The committee may select managing or executive committees and authorize subcommittees to exercise all powers conferred upon the county, city, state, and congressional central committees by the election laws of this state.

(3) The ~~chairman~~ *presiding officer* of the county central committee shall call the central committee meeting and not less than 4 days before the date of the

central committee meeting shall publish the call in a newspaper published at the county seat and mail a copy of the call to each precinct ~~committeeman~~ *committee representative*. If party rules permit the use of a proxy, ~~no~~ *a* proxy may *not* be recognized unless *it is* held by an elector of the precinct of the ~~committeeman~~ *committee representative* executing it.

(4) The county ~~chairman~~ *presiding officer* of the party shall preside at the county convention. No person other than a duly elected or appointed ~~committeeman~~ *committee representative* or officer of the committee is entitled to participate in the proceedings of the committee.

(5) If a ~~committeeman~~ *committee representative* is absent, the convention may fill the vacancy by appointing some qualified elector of the party, resident in the precinct, to represent the precinct in the convention.

(6) The county convention shall elect delegates and alternate delegates to the state convention under rules of the state party. The ~~chairman~~ *presiding officer* and secretary of the county convention shall issue and sign certificates of election of the delegates."

Section 140. Section 15-1-104, MCA, is amended to read:

"15-1-104. Treasurers to destroy certain tax records. The treasurer of each county, city, or town in the state of Montana may destroy all tax records in ~~his~~ *the treasurer's* possession more than 30 years old."

Section 141. Section 15-1-204, MCA, is amended to read:

"15-1-204. Consultation with governor. The department shall consult and confer with the governor of the state upon the subject of taxation, the administration of the laws relating thereto, and the progress of the work of the department and furnish the governor ~~such~~ *with* assistance ~~as he~~ *that the governor* may require."

Section 142. Section 15-1-601, MCA, is amended to read:

"15-1-601. Compact adopted — text. The Multistate Tax Compact is ~~hereby~~ enacted into law and entered into with all jurisdictions legally joining ~~therein~~ *in the compact*, in the form substantially as set forth ~~herein below~~ *in this section*. Article VIII of the Multistate Tax Compact relating to interstate audits is specifically adopted.

Article I. Purposes

The purposes of this compact are to:

(1) facilitate proper determination of state and local tax liability of multistate taxpayers, including the equitable apportionment of tax bases and settlement of apportionment disputes;

(2) promote uniformity or compatibility in significant components of tax systems;

(3) facilitate taxpayer convenience and compliance in the filing of tax returns and in other phases of tax administration;

(4) avoid duplicative taxation.

Article II. Definitions

As used in this compact:

(1) "state" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States;

(2) "subdivision" means any government unit or special district of a state;

(3) "taxpayer" means any corporation, partnership, firm, association, governmental unit or agency, or person acting as a business entity in more than one state;

(4) "income tax" means a tax imposed on or measured by net income including any tax imposed on or measured by an amount arrived at by deducting expenses from gross income, one or more forms of which expenses are not specifically and directly related to particular transactions;

(5) "capital stock tax" means a tax measured in any way by the capital of a corporation considered in its entirety;

(6) "gross receipts tax" means a tax, other than a sales tax, which is imposed on or measured by the gross volume of business, in terms of gross receipts or in other terms, and in the determination of which no deduction is allowed which would constitute the tax an income tax;

(7) "sales tax" means a tax imposed with respect to the transfer for a consideration of ownership, possession, or custody of tangible personal property or the rendering of services measured by the price of the tangible personal property transferred or services rendered and which is required by state or local law to be separately stated from the sales price by the seller or which is customarily separately stated from the sales price but does not include a tax imposed exclusively on the sale of a specifically identified commodity or article or class of commodities or articles;

(8) "use tax" means a nonrecurring tax, other than a sales tax, which:

(a) is imposed on or with respect to the exercise or enjoyment of any right or power over tangible personal property incident to the ownership, possession, or custody of that property or the leasing of that property from another including any consumption, keeping, retention, or other use of tangible personal property; and

(b) is complementary to a sales tax;

(9) "tax" means an income tax, capital stock tax, gross receipts tax, sales tax, use tax, and any other tax which has a multistate impact, except that the provisions of Articles III, IV, and V of this compact shall apply only to the taxes specifically designated therein and the provisions of Article IX of this compact shall apply only in respect to determinations pursuant to Article IV.

Article III. Elements Of Income Tax Laws
Taxpayer Option, State and Local Taxes

(1) Any taxpayer subject to an income tax whose income is subject to apportionment and allocation for tax purposes pursuant to the laws of a party state or pursuant to the laws of subdivisions in two or more party states may elect to apportion and allocate ~~his~~ *the taxpayer's* income in the manner provided by the laws of such state or by the laws of such states and subdivisions without reference to this compact or may elect to apportion and allocate in accordance with Article IV. This election for any tax year may be made in all party states or subdivisions thereof or in any one or more of the party states or subdivisions thereof without reference to the election made in the others. For the purposes of this subsection, taxes imposed by subdivisions shall be considered separately from state taxes and the apportionment and allocation also may be applied to the entire tax base. In no instance wherein Article IV is employed for all subdivisions of a state may the sum of all apportionments and allocations to subdivisions within a state be greater than the apportionment and allocation

that would be assignable to that state if the apportionment or allocation were being made with respect to a state income tax.

Taxpayer Option, Short Form

(2) Each party state or any subdivision thereof which imposes an income tax shall provide by law that any taxpayer required to file a return whose only activities within the taxing jurisdiction consist of sales and do not include owning or renting real estate or tangible personal property and whose dollar volume of gross sales made during the tax year within the state or subdivision, as the case may be, is not in excess of $100,000 may elect to report and pay any tax due on the basis of a percentage of such volume and shall adopt rates which shall produce a tax which reasonably approximates the tax otherwise due. The multistate tax commission, not more than once in 5 years, may adjust the $100,000 figure in order to reflect such changes as may occur in the real value of the dollar, and such adjusted figure, upon adoption by the commission, shall replace the $100,000 figure specifically provided herein. Each party state and subdivision thereof may make the same election available to taxpayers additional to those specified in this subsection.

Coverage

(3) Nothing in this article relates to the reporting or payment of any tax other than an income tax.

Article IV. Division Of Income

(1) As used in this article, unless the context otherwise requires:

(a) "business income" means income arising from transactions and activity in the regular course of the taxpayer's trade or business and includes income from tangible and intangible property if the acquisition, management, and disposition of the property constitute integral parts of the taxpayer's regular trade or business operations;

(b) "commercial domicile" means the principal place from which the trade or business of the taxpayer is directed or managed;

(c) "compensation" means wages, salaries, commissions, and any other form of remuneration paid to employees for personal services;

(d) "financial organization" means any bank, trust company, savings bank, industrial bank, land bank, safe deposit company, private banker, savings and loan association, credit union, cooperative bank, small loan company, sales finance company, investment company, or any type of insurance company;

(e) "nonbusiness income" means all income other than business income;

(f) "public utility" means any business entity:

(i) which owns or operates any plant, equipment, property, franchise, or license for the transmission of communications, transportation of goods or persons, except by pipeline, or the production, transmission, sale, delivery, or furnishing of electricity, water, or steam; and

(ii) whose rates of charges for goods or services have been established or approved by a federal, state, or local government or governmental agency;

(g) "sales" means all gross receipts of the taxpayer not allocated under subsections of this article;

(h) "state" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country or political subdivision thereof;

(i) "this state" means the state in which the relevant tax return is filed or, in the case of application of this article to the apportionment and allocation of income for local tax purposes, the subdivision or local taxing district in which the relevant tax return is filed.

(2) Any taxpayer having income from business activity which is taxable both within and without this state, other than activity as a financial organization or public utility or the rendering of purely personal services by an individual, shall allocate and apportion ~~his~~ *the taxpayer's* net income as provided in this article. If a taxpayer has income from business activity as a public utility but derives the greater percentage of ~~his~~ *the taxpayer's* income from activities subject to this article, the taxpayer may elect to allocate and apportion ~~his~~ *the taxpayer's* entire net income as provided in this article.

(3) For purposes of allocation and apportionment of income under this article, a taxpayer is taxable in another state if:

(a) in that state ~~he~~ *the taxpayer* is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax; or

(b) that state has jurisdiction to subject the taxpayer to a net income tax regardless of whether, in fact, the state does or does not.

(4) Rents and royalties from real or tangible personal property, capital gains, interest, dividends, or patent or copyright royalties, to the extent that they constitute nonbusiness income, shall be allocated as provided in subsections (5) through (8) of this article.

(5) (a) Net rents and royalties from real property located in this state are allocable to this state.

(b) Net rents and royalties from tangible personal property are allocable to this state:

(i) if and to the extent that the property is utilized in this state; or

(ii) in their entirety if the taxpayer's commercial domicile is in this state and the taxpayer is not organized under the laws of or taxable in the state in which the property is utilized.

(c) The extent of utilization of tangible personal property in a state is determined by multiplying the rents and royalties by a fraction, the numerator of which is the number of days of physical location of the property in the state during the rental or royalty period in the taxable year and the denominator of which is the number of days of physical location of the property everywhere during all rental or royalty periods in the taxable year. If the physical location of the property during the rental or royalty period is unknown or unascertainable by the taxpayer, tangible personal property is utilized in the state in which the property was located at the time the rental or royalty payer obtained possession.

(6) (a) Capital gains and losses from sales of real property located in this state are allocable to this state.

(b) Capital gains and losses from sales of tangible personal property are allocable to this state if:

(i) the property had a situs in this state at the time of the sale; or

(ii) the taxpayer's commercial domicile is in this state and the taxpayer is not taxable in the state in which the property had a situs.

(c) Capital gains and losses from sales of intangible personal property are allocable to this state if the taxpayer's commercial domicile is in this state.

(7) Interest and dividends are allocable to this state if the taxpayer's commercial domicile is in this state.

(8) (a) Patent and copyright royalties are allocable to this state:

(i) if and to the extent that the patent or copyright is utilized by the payer in this state; or

(ii) if and to the extent that the patent or copyright is utilized by the payer in a state in which the taxpayer is not taxable and the taxpayer's commercial domicile is in this state.

(b) A patent is utilized in a state to the extent that it is employed in production, fabrication, manufacturing, or other processing in the state or to the extent that a patented product is produced in the state. If the basis of receipts from patent royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the patent is utilized in the state in which the taxpayer's commercial domicile is located.

(c) A copyright is utilized in a state to the extent that printing or other publication originates in the state. If the basis of receipts from copyright royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the copyright is utilized in the state in which the taxpayer's commercial domicile is located.

(9) All business income shall be apportioned to this state by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus the sales factor and the denominator of which is 3.

(10) The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in this state during the tax period and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used during the tax period.

(11) Property owned by the taxpayer is valued at its original cost. Property rented by the taxpayer is valued at eight times the net annual rental rate. Net annual rental rate is the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from subrentals.

(12) The average value of property shall be determined by averaging the values at the beginning and ending of the tax period, but the tax administrator may require the averaging of monthly values during the tax period if reasonably required to reflect properly the average value of the taxpayer's property.

(13) The payroll factor is a fraction, the numerator of which is the total amount paid in this state during the tax period by the taxpayer for compensation and the denominator of which is the total compensation paid everywhere during the tax period.

(14) Compensation is paid in this state if:

(a) the individual's service is performed entirely within the state;

(b) the individual's service is performed both within and without the state, but the service performed without the state is incidental to the individual's service within the state; or

(c) some of the service is performed in the state and:

(i) the base of operations or, if there is no base of operations, the place from which the service is directed or controlled is in the state; or

(ii) the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state.

(15) The sales factor is a fraction, the numerator of which is the total sales of the taxpayer in this state during the tax period and the denominator of which is the total sales of the taxpayer everywhere during the tax period.

(16) Sales of tangible personal property are in this state if:

(a) the property is delivered or shipped to a purchaser, other than the United States government, within this state regardless of the f.o.b. point or other conditions of the sale; or

(b) the property is shipped from an office, store, warehouse, factory, or other place of storage in this state and:

(i) the purchaser is the United States government; or

(ii) the taxpayer is not taxable in the state of the purchaser.

(17) Sales, other than sales of tangible personal property, are in this state if:

(a) the income-producing activity is performed in this state; or

(b) the income-producing activity is performed both in and outside this state and a greater proportion of the income-producing activity is performed in this state than in any other state, based on costs of performance.

(18) If the allocation and apportionment provisions of this article do not fairly represent the extent of the taxpayer's business activity in this state, the taxpayer may petition for or the tax administrator may require, in respect to all or any part of the taxpayer's business activity, if reasonable:

(a) separate accounting;

(b) the exclusion of any one or more of the factors;

(c) the inclusion of one or more additional factors which will fairly represent the taxpayer's business activity in this state; or

(d) the employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

Article V. Elements Of Sales And Use Tax Laws Tax Credit

(1) Each purchaser liable for a use tax on tangible personal property shall be entitled to full credit for the combined amount or amounts of legally imposed sales or use taxes paid by ~~him~~ *the purchaser* with respect to the same property to another state and any subdivision thereof. The credit shall be applied first against the amount of any use tax due the state, and any unused portion of the credit shall then be applied against the amount of any use tax due a subdivision.

Exemption Certificates — Vendors May Rely

(2) Whenever a vendor receives and accepts in good faith from a purchaser a resale or other exemption certificate or other written evidence of exemption authorized by the appropriate state or subdivision taxing authority, the vendor shall be relieved of liability for a sales or use tax with respect to the transaction.

Article VI. The CommissionOrganization and Management

(1) (a) The Multistate Tax Commission is hereby established. It shall be composed of one member from each party state who shall be the head of the state agency charged with the administration of the types of taxes to which this compact applies. If there is more than one such agency, the state shall provide by law for the selection of the commission member from the heads of the relevant

agencies. State law may provide that a member of the commission be represented by an alternate, but only if there is on file with the commission written notification of the designation and identity of the alternate. The attorney general of each party state or ~~his~~ *the attorney general's* designee or other counsel if the laws of the party state specifically provide, shall be entitled to attend the meetings of the commission but shall not vote. Such attorneys general, designees, or other counsel shall receive all notices of meetings required under subsection (1)(e) of this article.

(b) Each party state shall provide by law for the selection of representatives from its subdivisions affected by this compact to consult with the commission member from that state.

(c) Each member shall be entitled to one vote. The commission shall not act unless a majority of the members are present, and no action shall be binding unless approved by a majority of the total number of members.

(d) The commission shall adopt an official seal to be used as it may provide.

(e) The commission shall hold an annual meeting and such other regular meetings as its bylaws may provide and such special meetings as its executive committee may determine. The commission bylaws shall specify the dates of the annual and any other regular meetings and shall provide for the giving of notice of annual, regular, and special meetings. Notice of special meetings shall include the reasons therefor and an agenda of the items to be considered.

(f) The commission shall elect annually, from among its members, a ~~chairman~~ *presiding officer*, a ~~vice-chairman~~ *vice presiding officer*, and a treasurer. The commission shall appoint an executive director who shall serve at its pleasure, and it shall fix ~~his~~ *the executive director's* duties and compensation. The executive director shall be secretary of the commission. The commission shall make provision for the bonding of such of its officers and employees as it may deem appropriate.

(g) Irrespective of the civil service, personnel, or other merit system laws of any party state, the executive director shall appoint or discharge such personnel as may be necessary for the performance of the functions of the commission and shall fix their duties and compensation. The commission bylaws shall provide for personnel policies and programs.

(h) The commission may borrow, accept, or contract for the services of personnel from any state, the United States, or any other governmental entity.

(i) The commission may accept for any of its purposes and functions any and all donations and grants of money, equipment, supplies, materials, and services, conditional or otherwise, from any governmental entity and may utilize and dispose of the same.

(j) The commission may establish one or more offices for the transacting of its business.

(k) The commission shall adopt bylaws for the conduct of its business. The commission shall publish its bylaws in convenient form and shall file a copy of the bylaws and any amendments thereto with the appropriate agency or officer in each of the party states.

(l) The commission annually shall make to the governor and legislature of each party state a report covering its activities for the preceding year. Any donation or grant accepted by the commission or services borrowed shall be reported in the annual report of the commission and shall include the nature, amount, and conditions, if any, of the donation, gift, grant, or services borrowed

and the identity of the donor or lender. The commission may make additional reports as it may deem desirable.

Committees

(2) (a) To assist in the conduct of its business when the full commission is not meeting, the commission shall have an executive committee of seven members, including the ~~chairman~~ *presiding officer*, ~~vice-chairman~~ *vice presiding officer*, treasurer, and four other members elected annually by the commission. The executive committee, subject to the provisions of this compact and consistent with the policies of the commission, shall function as provided in the bylaws of the commission.

(b) The commission may establish advisory and technical committees, membership on which may include private persons and public officials, in furthering any of its activities. Such committees may consider any matter of concern to the commission, including problems of special interest to any party state and problems dealing with particular types of taxes.

(c) The commission may establish such additional committees as its bylaws may provide.

Powers

(3) In addition to powers conferred elsewhere in this compact, the commission shall have power to:

(a) study state and local tax systems and particular types of state and local taxes;

(b) develop and recommend proposals for an increase in uniformity or compatibility of state and local tax laws with a view toward encouraging the simplification and improvement of state and local tax law and administration;

(c) compile and publish information as in its judgment would assist the party states in implementation of the compact and taxpayers in complying with state and local tax laws;

(d) do all things necessary and incidental to the administration of its functions pursuant to this compact.

Finance

(4) (a) The commission shall submit to the governor or designated officer or officers of each party state a budget of its estimated expenditures for such period as may be required by the laws of that state for presentation to the legislature thereof.

(b) Each of the commission's budgets of estimated expenditures shall contain specific recommendations of the amounts to be appropriated by each of the party states. The total amount of appropriations requested under any such budget shall be apportioned among the party states as follows: one-tenth in equal shares and the remainder in proportion to the amount of revenue collected by each party state and its subdivisions from income taxes, capital stock taxes, gross receipts taxes, sales and use taxes. In determining such amounts, the commission shall employ such available public sources of information as, in its judgment, present the most equitable and accurate comparisons among the party states. Each of the commission's budgets of estimated expenditures and requests for appropriations shall indicate the sources used in obtaining information employed in applying the formula contained in this subsection.

(c) The commission shall not pledge the credit of any party state. The commission may meet any of its obligations in whole or in part with funds

available to it under subsection (1)(i) of this article, provided that the commission takes specific action setting aside such funds prior to incurring any obligation to be met in whole or in part in such manner. Except where the commission makes use of funds available to it under subsection (1)(i), the commission shall not incur any obligation prior to the allotment of funds by the party states adequate to meet the same.

(d) The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission shall be subject to the audit and accounting procedures established under its bylaws. All receipts and disbursements of funds handled by the commission shall be audited yearly by a certified or licensed public accountant, and the report of the audit shall be included in and become part of the annual report of the commission.

(e) The accounts of the commission shall be open at any reasonable time for inspection by duly constituted officers of the party states and by any person authorized by the commission.

(f) Nothing contained in this article shall be construed to prevent commission compliance with laws relating to audit or inspection of accounts by or on behalf of any government contributing to the support of the commission.

Article VII. Uniform Regulations And Forms

(1) Whenever any two or more party states or subdivisions of party states have uniform or similar provisions of law relating to an income tax, capital stock tax, gross receipts tax, sales or use tax, the commission may adopt uniform regulations for any phase of the administration of such law, including assertion of jurisdiction to tax or prescribing uniform tax forms. The commission may also act with respect to the provisions of Article IV of this compact.

(2) Prior to the adoption of any regulation, the commission shall:

(a) as provided in its bylaws, hold at least one public hearing on due notice to all affected party states and subdivisions thereof and to all taxpayers and other persons who have made timely request of the commission for advance notice of its regulation-making proceedings;

(b) afford all affected party states and subdivisions and interested persons an opportunity to submit relevant written data and views, which shall be considered fully by the commission.

(3) The commission shall submit any regulations adopted by it to the appropriate officials of all party states and subdivisions to which they might apply. Each such state and subdivision shall consider any such regulation for adoption in accordance with its own laws and procedures.

Article VIII. Interstate Audits

(1) This article shall be in force only in those party states that specifically provide therefor by statute.

(2) Any party state or subdivision thereof desiring to make or participate in an audit of any accounts, books, papers, records, or other documents may request the commission to perform the audit on its behalf. In responding to the request, the commission shall have access to and may examine, at any reasonable time, such accounts, books, papers, records, and other documents and any relevant property or stock of merchandise. The commission may enter into agreements with party states or their subdivisions for assistance in performance of the audit. The commission shall make charges, to be paid by the state or local government or governments for which it performs the service, for

any audits performed by it in order to reimburse itself for the actual costs incurred in making the audit.

(3) The commission may require the attendance of any person within the state where it is conducting an audit or part thereof at a time and place fixed by it within such state for the purpose of giving testimony with respect to any account, book, paper, document, other record, property, or stock of merchandise being examined in connection with the audit. If the person is not within the jurisdiction, ~~he~~ *the person* may be required to attend for such purpose at any time and place fixed by the commission within the state of which ~~he~~ *the person* is a resident, provided that such state has adopted this article.

(4) The commission may apply to any court having power to issue compulsory process for orders in aid of its powers and responsibilities pursuant to this article, and any and all such courts shall have jurisdiction to issue such orders. Failure of any person to obey any such order shall be punishable as contempt of the issuing court. If the party or subject matter on account of which the commission seeks an order is within the jurisdiction of the court to which application is made, such application may be to a court in the state or subdivision on behalf of which the audit is being made or a court in the state in which the object of the order being sought is situated. The provisions of this subsection apply only to courts in a state that has adopted this article.

(5) The commission may decline to perform any audit requested if it finds that its available personnel or other resources are insufficient for the purpose or that, in the terms requested, the audit is impracticable of satisfactory performance. If the commission, on the basis of its experience, has reason to believe that an audit of a particular taxpayer, either at a particular time or on a particular schedule, would be of interest to a number of party states or their subdivisions, it may offer to make the audit or audits, the offer to be contingent on sufficient participation therein as determined by the commission.

(6) Information obtained by any audit pursuant to this article shall be confidential and available only for tax purposes to party states, their subdivisions, or the United States. Availability of information shall be in accordance with the laws of the states or subdivisions on whose account the commission performs the audit and only through the appropriate agencies or officers of such states or subdivisions. Nothing in this article shall be construed to require any taxpayer to keep records for any period not otherwise required by law.

(7) Other arrangements made or authorized pursuant to law for cooperative audit by or on behalf of the party states or any of their subdivisions are not superseded or invalidated by this article.

(8) In no event shall the commission make any charge against a taxpayer for an audit.

(9) As used in this article, "tax", in addition to the meaning ascribed to it in Article II, means any tax or license fee imposed in whole or in part for revenue purposes.

Article IX. Arbitration

(1) Whenever the commission finds a need for settling disputes concerning apportionments and allocations by arbitration, it may adopt a regulation placing this article in effect, notwithstanding the provisions of Article VII.

(2) The commission shall select and maintain an arbitration panel composed of officers and employees of state and local governments and private persons

who shall be knowledgeable and experienced in matters of tax law and administration.

(3) Whenever a taxpayer who has elected to employ Article IV or whenever the laws of the party state or subdivision thereof are substantially identical with the relevant provisions of Article IV, the taxpayer, by written notice to the commission and to each party state or subdivision thereof that would be affected, may secure arbitration of an apportionment or allocation if ~~he~~ *the taxpayer* is dissatisfied with the final administrative determination of the tax agency of the state or subdivision with respect thereto on the ground that it would subject ~~him~~ *the taxpayer* to double or multiple taxation by two or more party states or subdivisions thereof. Each party state and subdivision thereof hereby consents to the arbitration as provided herein and agrees to be bound thereby.

(4) The arbitration board shall be composed of one person selected by the taxpayer, one by the agency or agencies involved, and one member of the commission's arbitration panel. If the agencies involved are unable to agree on the person to be selected by them, such person shall be selected by lot from the total membership of the arbitration panel. The two persons selected for the board in the manner provided by the foregoing provisions of this subsection shall jointly select the third member of the board. If they are unable to agree on the selection, the third member shall be selected by lot from among the total membership of the arbitration panel. No member of a board selected by lot shall be qualified to serve if he is an officer or employee or is otherwise affiliated with any party to the arbitration proceeding. Residents within the jurisdiction of a party to the arbitration proceeding shall not constitute affiliation within the meaning of this subsection.

(5) The board may sit in any state or subdivision party to the proceeding, in the state of the taxpayer's incorporation, residence, or domicile, in any state where the taxpayer does business, or in any place that it finds most appropriate for gaining access to evidence relevant to the matter before it.

(6) The board shall give due notice of the times and places of its hearings. The parties shall be entitled to be heard, to present evidence, and to examine and cross-examine witnesses. The board shall act by majority vote.

(7) The board shall have power to administer oaths, take testimony, subpoena and require the attendance of witnesses and the production of accounts, books, papers, records, and other documents, and issue commissions to take testimony. Subpoenas may be signed by any member of the board. In case of failure to obey a subpoena and upon application by the board, any judge of a court of competent jurisdiction of the state in which the board is sitting or in which the person to whom the subpoena is directed may be found may make an order requiring compliance with the subpoenas, and the court may punish failure to obey the order as a contempt. The provisions of this subsection apply only in states that have adopted this article.

(8) Unless the parties otherwise agree, the expenses and other costs of the arbitration shall be assessed and allocated among the parties by the board in such manner as it may determine. The commission shall fix a schedule of compensation for members of arbitration boards and of other allowable expenses and costs. No officer or employee of a state or local government who serves as a member of a board shall be entitled to compensation therefor unless ~~he~~ *the member* is required on account of ~~his~~ *the* service to forego the regular compensation attaching to ~~his~~ *the member's* public employment, but any such board member shall be entitled to expenses.

(9) The board shall determine the disputed apportionment or allocation and any matters necessary thereto. The determinations of the board shall be final for purposes of making the apportionment or allocation, but for no other purpose.

(10) The board shall file with the commission and with each tax agency represented in the proceeding: the determination of the board, the board's written statement of its reasons therefor, the record of the board's proceedings, and any other documents required by the arbitration rules of the commission to be filed.

(11) The commission shall publish the determinations of boards, together with the statements of the reasons therefor.

(12) The commission shall adopt and publish rules of procedure and practice and shall file a copy of such rules and of any amendment thereto with the appropriate agency or officer in each of the party states.

(13) Nothing contained herein shall prevent at any time a written compromise of any matter or matters in dispute, if otherwise lawful, by the parties to the arbitration proceedings.

Article X. Entry Into Force And Withdrawal

(1) This compact shall enter into force when enacted into law by any seven states. Thereafter, this compact shall become effective as to any other state upon its enactment thereof. The commission shall arrange for notification of all party states whenever there is a new enactment of the compact.

(2) Any party state may withdraw from this compact by enacting a statute repealing the same. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal.

(3) No proceeding commenced before an arbitration board prior to the withdrawal of a state and to which the withdrawing state or any subdivision thereof is a party shall be discontinued or terminated by the withdrawal, nor shall the board thereby lose jurisdiction over any of the parties to the proceeding necessary to make a binding determination therein.

Article XI. Effect On Other Laws And Jurisdiction

Nothing in this compact shall be construed to:

(1) affect the power of any state or subdivision thereof to fix rates of taxation, except that a party state shall be obligated to implement Article III, subsection (2), of this compact;

(2) apply to any tax or fixed fee imposed for the registration of a motor vehicle or any tax on motor fuel, other than a sales tax; provided that the definition of "tax" in Article VIII, subsection (9), may apply for the purposes of that article and the commission's powers of study and recommendation pursuant to Article VI, subsection (3), may apply;

(3) withdraw or limit the jurisdiction of any state or local court or administrative officer or body with respect to any person, corporation, or other entity or subject matter, except to the extent that such jurisdiction is expressly conferred by or pursuant to this compact upon another agency or body;

(4) supersede or limit the jurisdiction of any court of the United States.

Article XII. Construction And Severability

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable, and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the

constitution of any state or of the United States or if the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the state affected as to all severable matters."

Section 143. Section 15-1-603, MCA, is amended to read:

"15-1-603. Alternate. The member representing this state on the multistate tax commission may be represented ~~thereon~~ by an alternate designated by ~~him~~ *the member*."

Section 144. Section 15-1-702, MCA, is amended to read:

"15-1-702. Issuance of warrant. (1) If a tax administered and collected by the department is not paid within 30 days of the due date, the department may issue a notice to the taxpayer ~~notifying him~~ that unless payment is received within 30 days of the date of the notice a warrant for distraint may be issued. Thirty days after the date of the notice, the department may issue a warrant if payment is not received.

(2) Use of the procedure to issue a warrant under this section does not preclude use of the procedure under 15-1-703 if the department determines that it is appropriate to utilize 15-1-703."

Section 145. Section 15-1-705, MCA, is amended to read:

"15-1-705. Review. (1) Except as provided in 15-1-707, a taxpayer has the right to a review of the tax liability pursuant to 15-1-211 prior to execution on a filed warrant for distraint.

(2) The department must provide notice of the right to review to the taxpayer. This notice may be given prior to the notice referred to in 15-1-702. If the taxpayer notified the department that ~~he~~ *the taxpayer* disagrees with an assessment as provided in 15-1-211, the warrant may not be executed upon until after the review process and any appeals are completed."

Section 146. Section 15-1-707, MCA, is amended to read:

"15-1-707. Emergency execution upon warrant. (1) The department may execute upon a filed warrant for distraint without providing an opportunity for a hearing prior to execution if the department determines that the collection of the tax is jeopardized because of the delay imposed by the hearing requirement.

(2) When the provisions of this section are utilized, the department ~~must~~ *shall* notify the taxpayer and inform the taxpayer that ~~he~~ *the taxpayer* has a right to request a hearing to be held subsequent to execution. A hearing, if desired, must be requested in writing within 30 days of the date of the notice and, if requested, must be held as soon as possible. The commencement of a proceeding under 15-1-705 does not preclude the use of the provisions of this section if the department determines that ~~such~~ *the* action is appropriate."

Section 147. Section 15-2-101, MCA, is amended to read:

"15-2-101. State tax appeal board — appointment of members — term of office. ~~On July 1, 1973, there shall be created~~ *There is* a state tax appeal board ~~which shall be~~ composed of three members ~~to be~~ appointed by the governor for staggered terms ~~by and~~ with the advice and consent of the senate~~;~~. ~~provided, however~~ *However*, a member ~~so~~ appointed may serve until the next

regular session of the legislature without ~~such~~ *the* advice and consent *of the senate*. Each ~~succeeding~~ member shall hold ~~his~~ office for a term of 6 years and until ~~his~~ *a* successor shall be appointed and ~~shall have~~ qualified. ~~Any~~ *A* vacancy ~~shall~~ *must* be filled by the governor subject to confirmation by the senate during the next legislative session. Succeeding appointments, except when made to fill a vacancy, ~~shall~~ *must* be made on or before January 31 during the session of the legislature ~~next~~ preceding the commencement of the term for which the appointment is made."

Section 148. Section 15-2-103, MCA, is amended to read:

"15-2-103. Organization, quorum, sessions. The members of the state tax appeal board shall, without delay, meet at the state capital, and the governor shall designate one of their members as ~~chairman~~ *presiding officer*. A majority of ~~said~~ *the* board ~~shall constitute~~ *constitutes* a quorum. ~~It shall be~~ *The board is* in continuous session and *must be* open for the transaction of business every day except Saturdays, Sundays, and legal holidays; and the sessions of ~~said~~ *the* board ~~shall~~ *must* stand and be ~~deemed~~ *considered* to be adjourned from day to day without formal entry ~~thereof~~ upon its records. The board may hold sessions or conduct hearings and investigations at other places than the capital when ~~deemed~~ *considered* necessary to facilitate the performance of its duties or to accommodate parties in interest."

Section 149. Section 15-2-104, MCA, is amended to read:

"15-2-104. Employees — expenses — minutes — rules. The state tax appeal board may appoint a secretary and employ ~~such~~ other persons as experts, assistants, clerks, and stenographers as may be necessary to perform the duties that may be required of it. The total expenses of ~~such~~ *the* board ~~shall~~ *may* not exceed, in the aggregate during any fiscal year, the amount appropriated for the board for all purposes by the legislature for ~~such~~ *that* year. The secretary shall keep full and correct minutes of the transactions and proceedings of ~~said~~ *the* board~~, shall have authority to~~ *and may* administer oaths and perform ~~such~~ other duties as may be required ~~of him~~. The board may ~~make all needful~~ *adopt* rules for the orderly and methodical performance of its duties as a tax appeal board and for conducting hearings and other proceedings before it."

Section 150. Section 15-2-304, MCA, is amended to read:

"15-2-304. Petition for interlocutory adjudication. (1) (a) Either party, within 30 days of the filing of an answer to an appeal before the state tax appeal board, may file a petition for an interlocutory adjudication under 15-2-305. The petition may be filed with the district court:

(i) in the first judicial district;

(ii) in the county in which the taxable property is located; or

(iii) in cases not involving property taxes, in the county where the taxpayer resides or has ~~his~~ *the taxpayer's* principal place of business in the state.

(b) The petition may raise any question involving procedure, the admissibility of evidence, or a substantive question of law raised by the pleadings within 30 days of filing an answer to the appeal with the state tax appeal board.

(c) A nonpetitioning party shall respond to the petition within 30 days after service of the petition. The response may raise any question not raised in the petition involving procedure, the admissibility of evidence, or a substantive question of law.

(2) After the 30-day period specified in subsection (1)(b) but before arguments have been heard, the parties to the proceeding may jointly petition a district court to make an interlocutory adjudication as provided under 15-2-305. A petition for an adjudication must be signed by each party to the proceeding.

(3) In a petition under subsection (1) or (2), one party must be designated as the petitioner and every other party must be designated a respondent. The court may in its discretion grant a petition if it appears that the issues presented involve procedure, the admissibility of evidence, or a substantive question of law and do not require the determination of questions of fact and that the controversy would be more expeditiously resolved by an adjudication. If the court grants a petition, it shall rule on all issues presented in the petition and the response, regardless of whether a ruling on less than all of the issues is dispositive of the case."

Section 151. Section 15-6-225, MCA, is amended to read:

"15-6-225. Small electrical generation equipment exemption. (1) (a) Machinery and equipment used in a qualifying generation facility that has a nameplate capacity of less than 1 megawatt of electrical energy ~~is~~ *are* exempt from taxation for 5 years after the generation of electricity begins.

(b) To qualify for the exemption under this section, the generation facility must be powered by an alternative renewable energy source.

(2) For the purposes of this section:

(a) "alternative renewable energy source" means a form of energy or matter that is capable of being converted into forms of energy useful to ~~mankind~~ *humanity*, including electricity, and the technology necessary to make this conversion when the source is not exhaustible in terms of this planet and when the source or technology is not in general commercial use. The term includes but is not limited to:

(i) solar energy;

(ii) wind energy;

(iii) geothermal energy;

(iv) conversion of biomass;

(v) fuel cells that do not require hydrocarbon fuel;

(vi) small hydroelectric generators producing less than 1 megawatt; or

(vii) methane from solid waste.

(b) "generation facility" includes any combination of a generator or generators, associated prime movers, and other associated machinery and equipment that are normally operated together to produce electric power, but does not include the owner's business improvements and personal property."

Section 152. Section 15-8-501, MCA, is amended to read:

"15-8-501. Assessment of unknown or absent owners. (1) If the owner or claimant of any property not listed by another person is absent or unknown, the department ~~must~~ *shall* make an estimate of the value of ~~such~~ *the* property.

(2) If the name of the absent owner is known to the department, the property must be assessed in ~~his~~ *the owner's* name~~;~~ *and,* if unknown, the property must be assessed to unknown owners."

Section 153. Section 15-8-502, MCA, is amended to read:

"15-8-502. Representative status to be designated. When a person is assessed as agent, trustee, bailee, guardian, executor, or administrator, ~~his~~ *the person's* representative designation must be added to ~~his~~ *the person's* name and the assessment entered on a separate line from ~~his~~ *the person's* individual assessment."

Section 154. Section 15-16-503, MCA, is amended to read:

"15-16-503. Collection by suit of personal property taxes when taxpayer moves to another county. If any person ~~removes~~ *moves* from one county to another after being assessed on personal property, the treasurer of the county in which ~~he~~ *the person* was assessed may sue for and collect the ~~same~~ *the taxes* in the name of the county where the assessment was made."

Section 155. Section 15-17-318, MCA, is amended to read:

"15-17-318. Assignment of municipality's interest. (1) At any time after a parcel of land has been acquired by a municipality, as provided in 15-17-317, and has not been redeemed, the treasurer of the municipality shall assign all the rights of the municipality in the property to any person who pays:

(a) the purchase price paid by the municipality;

(b) the delinquent assessments;

(c) interest on the purchase price and delinquent assessments at the rate of 5/6 of 1% a month; and

(d) penalties and costs as provided by law.

(2) The treasurer of the municipality shall execute to ~~such~~ *the* person a certificate of sale for the parcel, which may be in substantially the form provided in 15-17-212 for the assignment of the interests of the county. If the certificate of sale becomes lost or accidentally destroyed by the assignee, the treasurer of the municipality shall issue a duplicate certificate to the assignee after the assignee delivers to the treasurer evidence satisfactory to ~~him~~ *the treasurer*, including an affidavit of the assignee, that the certificate has been lost or destroyed.

(3) An assignment by a municipality under this section discharges the trust created under 15-17-317. The municipality may also discharge the trust created under 15-17-317 by paying into the improvement fund the amount of the delinquent assessments and interest accrued ~~thereon~~ *on the assessments*."

Section 156. Section 15-24-1101, MCA, is amended to read:

"15-24-1101. Federal property held under contract by private person subject to taxation. Real ~~and/or~~ *or* personal property of the United States or any department or agency ~~thereof~~ *of the United States* held under contract of sale, lease, or other interest or estate ~~therein~~ *in the property* by any person for ~~his~~ *the person's* exclusive use ~~shall be~~ *is* subject to assessment for ad valorem property taxation as provided in this part~~;~~. ~~provided that~~ *However,* this part ~~shall~~ *does* not apply to real property held and in immediate use and occupation by this state or any county, municipal corporation, or political subdivision ~~therein~~ *in this state*."

Section 157. Section 15-24-1201, MCA, is amended to read:

"15-24-1201. State and other exempt property held under contract — when taxable. Property of the state of Montana or any department, agency, or subdivision ~~thereof~~ *of the state* or any other property not subject to ad valorem tax to the owner ~~thereof~~ *of the property* by reason of the legal status of the owner, held under contract of sale or lease with option to purchase with lease ~~moneys~~ *money* applicable to *the* purchase price by any person for ~~his~~ *the person's*

exclusive use, ~~shall be~~ *is* subject to assessment to *the* purchaser or lessee for ad valorem property taxation."

Section 158. Section 15-24-1206, MCA, is amended to read:

"15-24-1206. County suit for delinquent privilege tax. A tax due and unpaid under 15-24-1203 through 15-24-1205 ~~shall constitute~~ *constitutes* a debt due the county for and on behalf of the various taxing units concerned in the tax. If the tax imposed by 15-24-1203 through 15-24-1205 or any portion ~~thereof~~ *of the tax* is not paid at the time the ~~same~~ *tax* becomes delinquent, the county auditor may issue a warrant in the name of the county directed to the clerk of the district court in ~~his~~ *the clerk's* county, and ~~thereupon~~ the clerk shall enter in the judgment docket, in the column for judgment debtors, the name of the delinquent taxpayer mentioned in the warrant and, in the appropriate columns, the amount of tax, penalties, interest, and other costs for which the warrant is issued and the date when ~~such~~ *the* warrant is filed~~,~~. ~~and thereupon the~~ *The docketed* warrant ~~so docketed shall have~~ *has* the ~~force and~~ effect of a judgment ~~duly~~ rendered by a district court and docketed in the office of the clerk ~~thereof~~, and the county ~~shall have~~ *has* the same remedies against the possessor user as any other judgment docket."

Section 159. Section 15-24-2403, MCA, is amended to read:

"15-24-2403. Expanding industry taxable value decrease — application — approval — reports. (1) ~~After December 31, 1991, an~~ *An* existing industry with qualifying property that represents an expansion of the industry is entitled to receive a decrease in the tax rate for class eight property if the property results in the hiring of full-time qualifying employees for each year in which the taxable value decrease is in effect.

(2) A person, firm, or other group seeking to qualify its property for the taxable value decrease under subsection (1) shall apply to the department ~~of revenue~~ on a form provided by the department. The application must include:

(a) the description of the personal property that may qualify for the taxable value decrease;

(b) the date on which the qualifying property is intended to be operational;

(c) the rate of pay and number of existing employees and new employees to be used in the operation of the qualifying property;

(d) a statement that the new employees are in addition to the existing workforce of the industry and the specific responsibilities of each new employee; and

(e) a statement that all the applicant's taxes are paid in full.

(3) The department shall make an initial determination as to whether the industry qualifies for the taxable value decrease.

(4) (a) If the department determines that the property qualifies for a taxable value decrease, the governing body of the affected county, consolidated government, incorporated city or town, or school district shall give due notice as defined in 76-15-103 and hold a public hearing. Each governing body may either approve or disapprove the grant of taxable value decrease. A governing body may not grant approval for the project until all of the applicant's taxes have been paid in full. Taxes paid under protest do not preclude approval.

(b) The resolution provided for in subsection (4)(a) must include the document that grants approval of the application that was submitted to the department by the taxpayer seeking the taxable value decrease.

(5) The tax reduction described in subsection (1) applies to:

(a) the number of mills levied and assessed by each governing body approving the benefit over which the governing body has sole discretion; and

(b) statewide levies if the governing body approving the tax reduction is a county, consolidated government, or incorporated city or town.

(6) The number of new employees used by the department to calculate the taxable value decrease in subsection (7) must be determined by the wages paid to qualifying employees. A qualifying employee paid the amount of the average wage as determined by the quarterly statistical report published by the department of labor and industry is considered one new employee. Qualifying employees are considered equivalent new employees if they are paid three-quarters of the average wage or more. The qualifying employee is the equivalent of a new employee in the same fraction that ~~his~~ *the qualifying employee's* wages are to the average wage, but a qualifying employee may not be considered more than two new employees.

(7) (a) Qualifying property is entitled to a decrease in the taxable rate of class eight property based upon a percentage difference between a possible low rate of 3% and a high rate of the existing class eight property tax rate. The reduced taxable value rate is determined by calculating the inverse of the number of equivalent new employees divided by the number of existing employees and multiplying the product of that calculation by the decimal equivalent of the tax rate for class eight property.

(b) For each year that the taxable value decrease is in effect, the taxpayer shall report by March 1 to the department, on forms prescribed by the department, the wages of and the number of qualifying employees that are used in the operation of the qualifying property for which the taxable value decrease was granted."

Section 160. Section 15-30-113, MCA, is amended to read:

"15-30-113. General definition of dependent. (1) For purposes of 15-30-112, the term "dependent" means any of the following individuals over half of whose support, for the calendar year in which the ~~taxable~~ *tax* year of the taxpayer begins, was received from the taxpayer:

(a) a son or daughter of the taxpayer or a descendant of either;

(b) a stepson or stepdaughter of the taxpayer;

(c) a brother, sister, stepbrother, or stepsister of the taxpayer;

(d) the father or mother of the taxpayer or an ancestor of either;

(e) a stepfather or stepmother of the taxpayer;

(f) a son or daughter of a brother or sister of the taxpayer;

(g) a brother or sister of the father or mother of the taxpayer;

(h) a son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law of the taxpayer;

(i) an individual who, for the ~~taxable~~ *tax* year of the taxpayer, has as ~~his~~ *the individual's* principal place of abode the home of the taxpayer and is a member of the taxpayer's household; or

(j) an individual who:

(i) is a descendant of a brother or sister of the father or mother of the taxpayer;

(ii) for the ~~taxable~~ *tax* year of the taxpayer received institutional care required by reason of a physical or mental disability; and

(iii) before receiving ~~such~~ *the* institutional care, was a member of the same household as the taxpayer.

(2) For purposes of 15-30-112 and this section:

(a) the terms "brother" and "sister" include a brother or sister by the half blood;

(b) in determining whether any of the relationships specified in this section exist, a legally adopted child of an individual ~~shall~~ *must* be treated as a child of ~~such~~ *the* individual by blood."

Section 161. Section 15-30-129, MCA, is amended to read:

"15-30-129. Tax credit for providing disability insurance for employees. There is a credit against the taxes otherwise due under this chapter allowable to an employer for the amount of premiums for disability insurance paid by the employer for ~~his~~ *the employer's* employees. The tax credit must be computed in accordance with the provisions of 15-31-132."

Section 162. Section 15-30-132, MCA, is amended to read:

"15-30-132. Change from nonresident to resident or vice versa. If a taxpayer changes ~~his~~ status from that of resident to that of nonresident or from that of nonresident to that of resident during the ~~taxable~~ *tax* year, ~~he~~ *the taxpayer* shall file a return. If a resident obtains employment outside the state, income from ~~such~~ *the* employment is taxable in Montana."

Section 163. Section 15-30-134, MCA, is amended to read:

"15-30-134. Determination of marital status. For purposes of this chapter:

(1) the determination of whether an individual is married ~~shall~~ *must* be made as of the close of ~~his taxable~~ *the individual's tax* year, except that if ~~his~~ *the individual's* spouse dies during ~~his taxable~~ *the individual's tax* year, ~~such~~ *the* determination ~~shall~~ *must* be made as of the time of ~~such~~ death; and

(2) an individual legally separated from ~~his~~ *the individual's* spouse under a decree of divorce or of separate maintenance ~~shall~~ *may* not be considered as married."

Section 164. Section 15-30-135, MCA, is amended to read:

"15-30-135. Tax on beneficiaries or fiduciaries of estates or trusts. (1) A tax ~~shall~~ *must* be imposed upon either the fiduciaries or the beneficiaries of estates and trusts as ~~hereinafter~~ provided *in this section*, except to the extent ~~such~~ *that* estates and trusts ~~shall~~ *must* be held for educational, charitable, or religious purposes~~,~~. ~~which~~ *The* tax ~~shall~~ *must* be levied, collected, and paid annually with respect to the income of estates or of any kind of property held in trust, including:

(a) income received by estates of deceased persons during the period of administration or settlement of the estate;

(b) income accumulated in trust for the benefit of unborn or unascertained persons or persons with contingent interests;

(c) income held for future distribution under the terms of the will or trust; and

(d) income ~~which~~ *that* is to be distributed to the beneficiaries periodically, whether or not at regular intervals, and the income collected by a guardian of a minor, to be held or distributed as the court may direct.

(2) The fiduciary ~~shall be~~ *is* responsible for making the return of income for the estate or trust for which ~~he~~ *the fiduciary* acts, whether the fiduciary or the beneficiaries are taxable with reference to the income of ~~such~~ *the* estate or trust. In cases under subsections ~~(a) and (d) of subsection~~ (1)*(a) and (1)(d)*, the fiduciary shall include in the return a statement of each beneficiary's distributive share of net income, whether or not distributed before the close of the ~~taxable~~ *tax* year for which the return is made.

(3) In cases under subsections ~~(a), (b), and (c) of subsection (1)~~ *(1)(a), (1)(b), and (1)(c)*, the tax ~~shall~~ *must* be imposed upon the fiduciary of the estate or trust with respect to the net income of the estate or trust and ~~shall~~ *must* be paid by the fiduciary. If the taxpayer's net income for the ~~taxable~~ *tax* year of the estate or trust is computed upon the basis of a period different from that upon the basis of which the net income of the estate or trust is computed, then ~~his~~ *the taxpayer's* distributive share of the net income of the estate or trust for any accounting period of ~~such~~ *the* estate or trust ending within the fiscal or calendar year ~~shall~~ *must* be computed upon the basis on which ~~such~~ *the* beneficiary's net income is computed. In ~~such~~ *those* cases, a beneficiary *who is* not a resident ~~shall~~ *must* be taxable with respect to ~~his~~ *the beneficiary's* income derived through ~~such~~ *the* estate or trust only to the extent provided in 15-30-131 for individuals other than residents.

(4) The fiduciary of a trust created by an employer as a part of a stock bonus, pension, or profit-sharing plan for the exclusive benefit of some or all of ~~his~~ *the employer's* employees, to which contributions are made by ~~such~~ *the* employer or employees, or both, for the purpose of distributing to ~~such~~ *the* employees the earnings and principal of the fund accumulated by the trust in accordance with ~~such~~ *the* plan, ~~shall~~ *are* not ~~be~~ taxable under this section, but any amount contributed to ~~such~~ *the* fund by the employer and all earnings of ~~such~~ *the* fund ~~shall~~ *must* be included in computing the income of the distributee in the year in which distributed or made available to ~~him~~ *the distributee*.

(5) Where any part of the income of a trust other than a testamentary trust is or may be applied to the payment of premiums upon policies of insurance on the life of the grantor, ~~(~~except policies of insurance irrevocably payable for the purposes and in the manner specified relating to the so-called "charitable contribution" deduction~~)~~, or to the payment of premiums upon policies of life insurance under which the grantor is the beneficiary, ~~such~~ *the* part of the income of the trust ~~shall~~ *must* be included in computing the net income of the grantor."

Section 165. Section 15-30-143, MCA, is amended to read:

"15-30-143. Return of fiduciary. Every fiduciary, ~~(~~except receivers appointed by authority of law in possession of only part of the property of a taxpayer~~)~~, shall make a return for the individual or estate or trust from whom ~~he~~ *the fiduciary* acts. Fiduciaries required to make returns under this section ~~shall be~~ *are* subject to all the provisions of this chapter ~~which~~ *that* apply to taxpayers."

Section 166. Section 15-30-156, MCA, is amended to read:

"15-30-156. Deduction for contributions to child abuse and neglect prevention program. A taxpayer filing an individual income tax return who does not elect to take the standard deduction provided for in 15-30-122 may, in

computing net income, claim a deduction for the payment of a contribution to the child abuse and neglect prevention program as follows:

(1) If the taxpayer paid a contribution in the ~~taxable~~ *tax* year for which the return is filed, ~~he~~ *the taxpayer* may deduct the amount of the contribution paid during that year, unless the amount was deducted as provided in subsection (2).

(2) If the taxpayer encloses a check or other order to pay money as a contribution with the timely filing of a tax return, in accordance with 15-30-144, ~~he~~ *the taxpayer* may elect to take a deduction for the amount of the contribution and apply the deduction in the ~~taxable~~ *tax* year for which ~~he~~ *the taxpayer* is filing the return."

Section 167. Section 15-30-173, MCA, is amended to read:

"15-30-173. Residential property tax credit for elderly — disallowance or adjustment of certain claims. (1) A claim is disallowed if the department finds that the claimant received title to ~~his~~ *the individual's* homestead primarily for the purpose of receiving benefits under 15-30-171 through 15-30-179.

(2) When the landlord and tenant have not dealt at arm's length and the department judges the gross rent charged to be excessive, the department may adjust the gross rent to a reasonable amount."

Section 168. Section 15-30-205, MCA, is amended to read:

"15-30-205. Amount withheld considered as tax collected. All amounts deducted and withheld ~~shall~~ *must* be considered as a tax collected under the provisions of 15-30-201 through 15-30-209, and ~~no~~ *an* employee ~~shall~~ *does not* have any right of action against ~~his~~ *the* employer in respect to any ~~moneys so~~ *money* deducted and withheld from ~~his~~ *the employee's* wages and paid to the state in compliance or intended compliance with 15-30-201 through 15-30-209."

Section 169. Section 15-30-206, MCA, is amended to read:

"15-30-206. Annual withholding statement. Every employer shall, prior to January 31 in each year, furnish to each employee a written statement showing the total wages paid by the employer to the employee during the preceding calendar year and showing the amount of the federal income tax deducted and withheld from ~~such~~ *the* wages and the amount of the tax deducted and withheld ~~therefrom~~ under the provisions of 15-30-201 through 15-30-209. ~~Said~~ *The* statement ~~shall~~ *must* contain ~~such~~ additional information and ~~shall~~ *must* be in ~~such~~ *the* form ~~as~~ *that* the department ~~shall prescribe~~ *prescribes*, and a duplicate ~~thereof shall~~ *of the statement must* be filed by the employee with ~~his~~ *the employee's* state income tax return."

Section 170. Section 15-30-302, MCA, is amended to read:

"15-30-302. Oaths administered by director of revenue and designated employees. The director and each employee designated by ~~him~~ *the director* may administer an oath to any person or take the acknowledgment of any person in respect to any report or return required by or pursuant to this chapter or by the rules of the department."

Section 171. Section 15-30-307, MCA, is amended to read:

"15-30-307. Closing agreements. (1) The director of revenue or any person authorized in writing by ~~him~~ *the director* is authorized to enter into an agreement with any person relating to the liability of ~~such~~ *the* person in respect to the tax imposed by this chapter for any ~~taxable~~ *tax* period.

(2) ~~Any such~~ *An* agreement ~~shall be~~ *described in subsection (1) is* final and conclusive and, except upon a showing of fraud or malfeasance or misrepresentation of a material fact:

(a) the case may not be reopened as to matters agreed upon or the agreement modified by any officer, employee, or agent of this state; and

(b) in any suit, action, or proceeding under ~~such~~ *the* agreement or any determination, assessment, collection, payment, abatement, refund, or credit made in accordance ~~therewith~~ *with the agreement*, the agreement may not be annulled, modified, set aside, or disregarded."

Section 172. Section 15-30-314, MCA, is amended to read:

"15-30-314. Stay of enforcement against military personnel. (1) ~~Any such~~ *A* person *described in 15-30-313* may, during ~~his~~ *the person's* period of military service or within 6 months thereafter, apply to a court for relief in respect of any tax obligation or any tax liability incurred by ~~such~~ *the* person prior to ~~his~~ *the person's* period of military service or in respect of any ~~such~~ *tax* obligation or liability, whether falling due prior to or during ~~his~~ *the person's* period of military service. Any district court of the state after appropriate notice and hearing, unless in its opinion the ability of the applicant to comply with the terms of ~~such~~ *the* obligation or liability or to pay ~~such~~ *the* tax or assessment has not been materially affected by reason of ~~his~~ *the person's* military service, may grant a stay of ~~the~~ enforcement ~~thereof~~ during the applicant's period of military service and from the date of termination of ~~such~~ *the* period of military service or from the date of application, if made after ~~such~~ *the* service, for a period of time equal to the period of military service of the applicant or any part of ~~such~~ *that* period~~,~~. *The stay is* subject to payment of the balance of principal and accumulated interest due and unpaid at the date of termination of ~~such~~ *the* period of military service or from the date of application, as the case may be, in equal periodic installments during ~~such~~ *the* extended period at ~~such~~ *the* rate of interest ~~as~~ *that* may be prescribed for ~~such~~ *the* tax obligation or tax liability or assessment if paid when due and subject to ~~such~~ other terms ~~as~~ *that* may be just.

(2) When ~~any~~ *a* court has granted a stay as provided in this section, ~~no~~ *a* fine or penalty ~~shall~~ *may not* accrue during the period the terms and conditions of ~~such~~ *the* stay are complied with by reason of the failure to comply with the terms or conditions of the tax obligation, tax liability, or assessment in respect of which ~~such~~ *the* stay was granted."

Section 173. Section 15-30-331, MCA, is amended to read:

"15-30-331. Certified copies of tax returns to taxpayer — fee. (1) Certified copies of returns filed for income tax under 15-30-144 may be furnished by the department ~~of revenue~~ to the taxpayer or ~~his~~ *the taxpayer's* ~~duly~~ authorized representative upon payment of 50 cents for each page.

(2) All ~~moneys~~ *money* collected under this section ~~shall~~ *must* be required to reimburse the department for costs involved in the preparation of the copies. All ~~such moneys~~ *money* collected ~~shall go into~~ *must be deposited in* the general fund.

(3) The provisions of this section ~~shall~~ apply to all returns on file and all returns to be filed ~~hereafter~~."

Section 174. Section 15-31-521, MCA, is amended to read:

"15-31-521. Closing agreements. (1) The director of revenue or any person authorized in writing by ~~him~~ *the director* is authorized to enter into an agreement with any taxpayer relating to the liability of ~~such~~ *the* taxpayer in respect to the tax imposed by this chapter for any taxable period.

(2) Any ~~such~~ agreement is final and conclusive, and except upon a showing of fraud or malfeasance or misrepresentation of a material fact:

(a) the case may not be reopened as to matters agreed upon or the agreement modified by any officer, employee, or agent of this state; and

(b) in any suit, action, or proceeding under ~~such~~ *the* agreement or any determination, assessment, collection, payment, abatement, refund, or credit made in accordance ~~therewith~~ *with the agreement*, the agreement may not be annulled, modified, set aside, or disregarded."

Section 175. Section 15-31-523, MCA, is amended to read:

"15-31-523. Suspension or forfeiture on delinquency. (1) If a tax computed and levied ~~hereunder~~ *under this chapter* is not paid or if a return is not filed before 5 p.m. on the last day of the 11th month after the date of delinquency, the corporate powers, rights, and privileges of the delinquent taxpayer, if it ~~be~~ *is* a domestic corporation, ~~shall~~ *must* be suspended, and if the delinquent taxpayer ~~be~~ *is* a foreign corporation, it shall ~~thereupon~~ forfeit its rights to do intrastate business in this state. ~~Provided that if any~~ *If a* domestic corporation ~~shall fail~~ *fails* for a period of 5 consecutive years ~~to~~ either *to* file a return or to pay the corporation license tax, the department ~~of revenue~~ shall notify ~~such~~ *the* corporation by mail addressed to the latest address on file in its office that ~~such~~ *the* corporation will become dissolved if it fails to file all delinquent reports and pay all delinquent corporation license taxes within a period of 60 days ~~from and~~ after the mailing of ~~such~~ *the* notice. If ~~such~~ *the* delinquent reports are not made and all delinquent corporation licenses are not paid before the expiration of ~~said~~ *the* 60-day period, the department shall certify this fact to the secretary of state, and upon receipt of ~~such~~ *the* certificate, the corporation ~~shall~~ *must* be dissolved and the secretary of state shall indicate, by ~~his~~ *the secretary of state's* records, ~~such~~ *the* dissolution.

(2) The department shall transmit the name of each ~~such~~ corporation *described in subsection (1)* to the secretary of state, who shall immediately record the ~~same~~ *transmission* in ~~such~~ *a* manner that ~~it may be~~ *is* available to the public. The suspension, forfeiture, or dissolution ~~herein~~ provided for ~~shall~~ *in this section* ~~become~~ *becomes* effective immediately when ~~such~~ *the* record is made, and the certificate of the secretary of state ~~shall be~~ *is* conclusive evidence of ~~such~~ *the* suspension, forfeiture, or dissolution."

Section 176. Section 15-31-524, MCA, is amended to read:

"15-31-524. Reviver of corporation after suspension or forfeiture. ~~Any~~ *A* corporation ~~which~~ *that* has suffered the suspension or forfeiture referred to in ~~the preceding section~~ *15-31-523* may be relieved ~~therefrom~~ upon making application ~~therefor~~ in writing supported by a certificate from the department ~~of revenue~~ showing that the required return has been made and filed ~~and/or~~ *and* that the tax and interest and penalties have been paid, for which the suspension or forfeiture occurred. Application for reviver may be made by any stockholder or creditor of the corporation or by a majority of the surviving trustees or directors~~;~~. ~~and the same shall~~ *The application must* be filed with the secretary of state~~, for which he shall receive~~ *and must be accompanied by* a filing and recording fee of $15. ~~In case~~ *If* the application is made more than 1 year ~~from~~ *after* the date the suspension or forfeiture occurred, the applicant shall pay twice the amount of the tax and penalties due the state for the ~~taxable~~ *tax* year with respect to which the suspension or forfeiture occurred. Upon ~~such~~ payment, the secretary of state shall issue a certificate of reviver for which ~~he~~ *the secretary of state* shall collect a fee of $15*,* and ~~thereupon~~ *upon issuance of the*

certificate, the applicant ~~shall be~~ *is* revived. The reviver ~~shall be~~ *is* without prejudice to any action, defense, or right ~~which~~ *that* has accrued by reason of the original suspension or forfeiture. The certificate of reviver ~~shall be~~ *is* prima facie evidence of the reviver. ~~Any~~ *A* certificate of reviver provided for in this section may be recorded in the office of the county clerk and recorder in any county of this state."

Section 177. Section 15-31-551, MCA, is amended to read:

"15-31-551. Certified copies of corporation license tax returns to taxpayer — fee. Certified copies of returns filed for corporation license tax under 15-31-111 may be furnished by the department ~~of revenue~~ to the taxpayer or ~~his~~ *the taxpayer's* ~~duly~~ authorized representative upon payment of 50 cents for each page."

Section 178. Section 15-32-101, MCA, is amended to read:

"15-32-101. Purpose. The purpose of this part is to encourage the use of alternative energy sources and the conservation of energy through incentive programs. ~~Such~~ *The* incentives are to be made available to the energy user on a basis ~~which~~ *that* requires ~~him~~ *the energy user* to take the initiative in obtaining a particular incentive. This part allows but does not require a public utility to extend credit for energy conservation investments."

Section 179. Section 15-32-103, MCA, is amended to read:

"15-32-103. Deduction for energy-conserving investments. (1) In addition to all other deductions from gross corporate income allowed in computing net income under chapter 31, part 1, a taxpayer may deduct a portion of ~~his~~ *the taxpayer's* expenditure for a capital investment in a building for an energy conservation purpose, in accordance with the following schedule:

If the installation or investment is made in a residential building:	If the installation or investment is made in a building not used as a residence:
100% of first $1,000 expended	100% of first $2,000 expended
50% of next $1,000 expended	50% of next $2,000 expended
20% of next $1,000 expended	20% of next $2,000 expended
10% of next $1,000 expended	10% of next $2,000 expended

(2) This tax treatment is subject to approval of the department, as provided in 15-32-106, and may not be claimed for so much of the expenditure and capital investment as is financed by a state, federal, or private grant for energy conservation."

Section 180. Section 15-33-104, MCA, is amended to read:

"15-33-104. Reporting — recordkeeping by the department. The ~~chairman~~ *presiding officer* or president of each small business investment company shall report on a form established by the department on a monthly basis the name of each investor, the amount of the investment made, and the date of investment."

Section 181. Section 15-35-104, MCA, is amended to read:

"15-35-104. Quarterly statement and payment of tax. Each coal mine operator shall compute the severance tax due on each quarter-year's worth of production on forms prescribed by the department. The statement ~~shall~~ *must* indicate the tonnage produced, the average Btu value of the production, the contract sales price received for the production, and ~~such~~ other information ~~as~~ *that* the department may require. Each coal mine operator shall provide a

statement of the tons of coal sold to each purchaser for the quarter. The completed form in duplicate, with the tax payment, ~~shall~~ *must* be delivered to the department not later than 30 days following the close of the quarter. The form ~~shall~~ *must* be signed by the operator if the operator is an individual or by an officer of the coal mine operator if the operator is a business entity. A person operating more than one coal mine in this state may include all of ~~his~~ *the person's* mines in one statement. The department may grant a reasonable extension of time for filing statements and payment of taxes due upon good cause shown ~~therefor~~."

Section 182. Section 15-44-102, MCA, is amended to read:

"15-44-102. Definitions. For the purposes of this part, unless the context requires otherwise, the following definitions apply:

(1) "Culmination of mean annual increment" means the point of optimum net wood production on an acre of forest land.

(2) "Cultivated Christmas trees" means Christmas trees that are grown on land prepared by intensive cultivation and tilling, such as by plowing or turning over the soil, and on which all unwanted plant growth is controlled for the exclusive purpose of raising Christmas trees.

(3) "Department" means the department of revenue.

(4) "Forest" means forest land and the timber on the land.

(5) "Forest land" means contiguous land of 15 acres or more in one ownership that is capable of producing timber that can be harvested in commercial quantity and is producing timber unless the trees have been removed ~~by man~~ through harvest, including clearcuts, or by natural disaster, including but not limited to fire. Forest land includes land:

(a) that has not been converted to another use; and

(b) on which the annual net wood production equals or exceeds 25 cubic feet an acre at the culmination of mean annual increment.

(6) "Forest productivity value" means the value of forest land for assessment purposes, which value is determined only on the basis of its potential to produce timber, other forest products, and associated agricultural products through an income approach provided for in 15-44-103.

(7) "Harvest" means an activity related to the cutting or removal of timber for use or sale as a forest product.

(8) "Landowner" means an individual, corporation, association, company, firm, joint venture, syndicate, or trust.

(9) "Mean annual net wood production" means the average net usable volume of wood that 1 acre of forest land will grow in 1 year under average current and actual forest conditions and under current and reasonable management practices for each forest valuation zone established under 15-44-103.

(10) "Stumpage value" means the amount that timber would sell for under an arm's-length transaction made in the ordinary course of business, expressed in terms of dollars per unit of measure.

(11) *(a)* "Timber" means all wood growth on privately owned land, mature or immature, alive or dead, standing or down, that is capable of furnishing raw material used in the manufacture of lumber or other forest products.

(b) The term does not include cultivated Christmas trees."

Section 183. Section 15-59-105, MCA, is amended to read:

"15-59-105. Quarterly statement and payment of tax. (1) Each person ~~must~~ *shall*, within 30 days after the end of each quarter, make out on forms prescribed by the department of revenue~~,~~ and deliver to the department a statement showing the total number of tons of cement or gypsum produced by ~~such~~ *the* person or used by ~~him~~ *the person* in the manufacture of the respective articles or products enumerated in 15-59-101(2) and 15-59-102 or imported by ~~such~~ *the* person into the state of Montana for sale or use during each month of ~~such~~ *the* quarter and during the whole quarter and ~~such~~ other information ~~as~~ *that* the department may require, together with the total amount due to the state as license taxes for ~~such~~ *the* quarter.

(2) ~~Such~~ *The* annual license tax as imposed by 15-59-102 ~~shall~~ *must* be paid in quarterly installments for the quarters ending~~, respectively,~~ March 31, June 30, September 30, and December 31 of each year, and the amount of ~~such~~ *the* license tax due for each ~~such~~ quarter ~~shall~~ *must* be paid to the department within 30 days after the end of each ~~such~~ quarter and at the same time ~~such~~ *the* statement is delivered to the department.

(3) Any ~~such~~ person engaged in carrying on ~~such~~ *a cement production* business at more than one place or operating more than one factory or plant in this state may include all ~~thereof~~ *locations* in one statement.

(4) The department may grant a reasonable extension of time for filing statements and payment of taxes due upon good cause shown ~~therefor~~."

Section 184. Section 15-60-207, MCA, is amended to read:

"15-60-207. *(Temporary)* **Closing agreements.** (1) The director of the department or any person authorized in writing by ~~him~~ *the director* is authorized to enter into an agreement with any facility relating to the liability of the facility in respect to the fees imposed by this chapter for any period.

(2) An agreement under this section is final and conclusive, and except upon a showing of fraud or malfeasance or misrepresentation of a material fact:

(a) the case may not be reopened as to matters agreed upon or the agreement modified by any officer, employee, or agent of this state; and

(b) in any suit, action, or proceeding under the agreement or any determination, assessment, collection, payment, abatement, refund, or credit made in accordance with the agreement, the agreement may not be annulled, modified, set aside, or disregarded. *(Void on occurrence of contingency—sec. 18, Ch. 746, L. 1991—see chapter compiler's comment.)*"

Section 185. Section 15-70-232, MCA, is amended to read:

"15-70-232. Penalties. Any distributor or other person who fails, neglects, or refuses to make and file the statements required by this part in the manner or within the time provided or who ~~shall be~~ *is* delinquent in the payment of any license tax imposed by this part or who ~~shall make~~ *makes* any false statement with reference to ~~his~~ *the distributor's or person's* business or who ~~shall make~~ *makes* any false statement on any claim for refund or who violates any provision of the part ~~shall~~ *is*, in addition to any other penalties imposed, ~~be deemed~~ guilty of a misdemeanor and upon conviction shall be fined in any amount not exceeding $1,000 or *be* imprisoned in the county jail for not to exceed 6 months, or ~~shall be punished by the imposition of~~ both ~~such fine and imprisonment~~."

Section 186. Section 16-1-203, MCA, is amended to read:

"16-1-203. Health professions exemption. A physician, dentist, veterinarian, or pharmacist, acting within the scope of ~~his~~ *the individual's* professional responsibility and license to practice, who prescribes, prepares, or administers alcohol or substances containing alcohol and sells or charges a fee does not violate the prohibitions of this code."

Section 187. Section 16-1-204, MCA, is amended to read:

"16-1-204. Licensed hospital or health care facility. Any person in charge of an institution regularly conducted as a licensed hospital or health care facility may administer alcoholic beverages purchased by ~~him~~ *the person* to any patient or inmate of the institution and may charge for the alcoholic beverages ~~so administered~~."

Section 188. Section 16-3-105, MCA, is amended to read:

"16-3-105. Restrictions on alcoholic beverages in hotels. Except in the case of alcoholic beverages kept or consumed in premises for which a license has been granted under the law and ~~which~~ *that* form a part of a hotel, ~~no~~ *a* person ~~shall~~ *may not*:

(1) keep or consume alcoholic beverages in any part of a hotel other than a private guest room;

(2) keep or have any alcoholic beverage in any room in a hotel unless ~~he~~ *the person* is a bona fide guest of the hotel and is ~~duly~~ registered in the office of the hotel as an occupant of that room."

Section 189. Section 16-3-212, MCA, is amended to read:

"16-3-212. Brewers' or beer importers' sales to wholesalers lawful. ~~It shall be lawful for any~~ *A* licensed brewer ~~to~~ *may* sell or deliver beer manufactured by ~~him~~ *the brewer* to any licensed wholesaler. ~~It shall be lawful for any~~ *A* licensed beer importer ~~to~~ *may* sell or deliver beer imported by ~~him~~ *the importer* to any licensed wholesaler."

Section 190. Section 16-3-223, MCA, is amended to read:

"16-3-223. Transfer of wholesaler's interest in business. A wholesaler ~~shall have the right to~~ *may* sell or transfer ~~his~~ *the* business or an interest in ~~his~~ *the* business to any person or to one or more members of ~~his~~ *the wholesaler's* family or heirs or legatees, whether the wholesaler operates as an individual, a partnership, or corporation. ~~Provided, however~~ *However*, the consent of the brewer or beer importer in writing is required for ~~such~~ *the* transferee to continue as a wholesaler of ~~said~~ *the* brewer or beer importer~~;~~. ~~which~~ *The* consent ~~shall~~ *must* consider the personal, financial, and managerial responsibilities and capabilities of ~~such~~ *the* transferee, and ~~which~~ *the* consent ~~shall~~ *may* not unreasonably be withheld."

Section 191. Section 16-3-231, MCA, is amended to read:

"16-3-231. Monthly report of wholesaler. Every wholesaler licensed to do business in this state shall, on or before the 15th day of each month, in the manner and form ~~as shall be~~ prescribed by the department, make an exact return to the department of the amount of beer manufactured in this state sold and delivered by ~~him~~ *the wholesaler* and also of the amount of beer manufactured in places outside of the state sold and delivered by ~~him~~ *the wholesaler* during the previous month and of ~~his~~ *the wholesaler's* inventory. The department ~~shall have the right~~ *may* at any time ~~to~~ make an examination of the wholesaler's books and ~~of his~~ premises and otherwise check the accuracy of ~~such~~ *the* return or ~~to~~ check the alcoholic content of beer ~~which he may have~~ on hand."

Section 192. Section 16-3-232, MCA, is amended to read:

"16-3-232. Beer sales by wholesaler. ~~It shall be lawful for any~~ *A* wholesaler ~~to~~ *may* sell and deliver beer purchased or acquired by ~~him~~ *the wholesaler* to a wholesaler, retailer, or ~~to a~~ common carrier~~, holding and having a license~~ *licensed* under this code."

Section 193. Section 16-3-233, MCA, is amended to read:

"16-3-233. Sales to public by wholesaler unlawful. ~~It shall be unlawful for any~~ *A* wholesaler ~~to~~ *may not* give, sell, deliver, or distribute any beer purchased or acquired by ~~him~~ *the wholesaler* to the public."

Section 194. Section 16-3-242, MCA, is amended to read:

"16-3-242. Financial interest in retailers prohibited. ~~No~~ *A* brewer, beer importer, or wholesaler ~~shall~~ *may not* advance or loan money to or furnish money for or pay for or on behalf of any retailer any license or tax ~~which~~ *that* may be required to be paid for any retailer~~;~~. ~~and no~~ *A* brewer, beer importer, or wholesaler ~~shall~~ *may not* be financially interested, either directly or indirectly, in the conduct or operation of the business of a retailer. A brewer, beer importer, or wholesaler ~~shall be deemed~~ *is considered* to have ~~such~~ a financial interest within the meaning of this section if:

(1) ~~such~~ *the* brewer, beer importer, or wholesaler owns or holds any interest in or a lien or mortgage against the retailer or ~~his~~ *the retailer's* premises;

(2) ~~such~~ *the* brewer, beer importer, or wholesaler is under any contract with a retailer concerning future purchases ~~and/or~~ *or the* sale of merchandise by one from or to the other; *or*

(3) any retailer holds an interest, as a stockholder or otherwise, in the business of the wholesaler."

Section 195. Section 16-3-302, MCA, is amended to read:

"16-3-302. Sale by retailer for consumption on premises. (1) It is lawful for a licensed retailer to sell and serve beer, either on draught or in containers, to the public to be consumed on the premises of the retailer.

(2) It is lawful for a licensee who has an all-beverages license that ~~he~~ *the licensee* uses at a golf course to sell alcoholic beverages and for a licensee who has a golf course beer and wine license issued under 16-4-109 to sell beer and wine:

(a) in the building or other structural premises constituting the clubhouse or primary indoor recreational quarters of the golf course; and

(b) at any place within the boundaries of the golf course, from a portable satellite vehicle or other movable satellite device that is moved from place to place, whether inside or outside of a building or other structure.

(3) It is lawful to consume alcoholic beverages sold as provided in subsection (2) at any place within the boundaries of the golf course, whether inside or outside of a building or other structure."

Section 196. Section 16-3-306, MCA, is amended to read:

"16-3-306. Proximity to churches and schools restricted. (1) Except as provided in subsections (2) through (4), ~~no~~ *a* retail license may *not* be issued pursuant to this code to any business or enterprise whose premises are within 600 feet of and on the same street as a building used exclusively as a church, synagogue, or other place of worship or as a school other than a commercially operated or postsecondary school. This distance ~~shall~~ *must* be measured in a

straight line from the center of the nearest entrance of the place of worship or school to the nearest entrance of the licensee's premises. This section is a limitation upon the department's licensing authority.

(2) However, the department may renew a license for any establishment located in violation of this section if the licensee does not relocate ~~his entrances~~ *an entrance* any closer than the existing entrances and if the establishment:

(a) was located on the site before the place of worship or school opened; or

(b) was located in a bona fide hotel, restaurant, or fraternal organization building at the site since January 1, 1937.

(3) Subsection (1) does not apply to licenses for the sale of beer, table wine, or both in the original package for off-premises consumption.

(4) Subsection (1) does not apply within the applicable jurisdiction of a local government that has supplanted the provisions of subsection (1) as provided in 16-3-309."

Section 197. Section 16-3-406, MCA, is amended to read:

"16-3-406. Financial interest in retailers prohibited. (1) ~~No~~ *A* winery or table wine distributor ~~shall~~ *may not* advance or loan money to, or furnish money for, or pay for or on behalf of any retailer~~,~~ any license or tax ~~which~~ *that* may be required to be paid by any retailer, and ~~no~~ *a* winery or table wine distributor ~~shall~~ *may not* be financially interested, either directly or indirectly, in the conduct or operation of the business of a retailer.

(2) A winery or table wine distributor ~~shall be deemed~~ *is considered* to have ~~such~~ a financial interest if:

(a) ~~such~~ *the* winery or table wine distributor owns or holds any interest in or a lien or mortgage against the retailer or ~~his~~ *the retailer's* premises; or

(b) ~~such~~ *the* winery or table wine distributor is under any contract with a retailer concerning future purchases ~~and/or~~ *or the* sale of merchandise by one from or to the other; or

(c) ~~such~~ *the* table wine distributor extends more than 7 days' credit to a retail licensee or furnishes to any retail licensee any furniture, fixtures, or equipment to be used in the dispensation or sale of table wine; or

(d) any retailer holds an interest as a stockholder, or otherwise, in the business of the table wine distributor."

Section 198. Section 16-4-104, MCA, is amended to read:

"16-4-104. Beer retailer's license — application and issuance — check of alcoholic content by department. (1) Any person desiring to possess and have beer for *the purpose of retail* sale under the provisions of this code ~~for the purpose of selling it at retail~~ shall first apply to the department for a permit to do so and ~~tender~~ *submit* with ~~such~~ *the* application the license fee ~~provided for~~.

(2) Upon being satisfied, from ~~such~~ *the* application or otherwise, that the applicant is qualified ~~as provided~~, the department shall issue a license to ~~such~~ *the* person~~,~~. ~~which~~ *The* license ~~shall~~ *must* at all times be prominently displayed in the place of business of the ~~applicant~~ *person*.

(3) If the department ~~shall find~~ *finds* that the applicant is not qualified, ~~no~~ *a* license ~~shall~~ *may not* be granted and the license fee ~~tendered shall~~ *must* be returned by the department.

(4) The department ~~shall have the right and is hereby given authority to make~~ *may*, at any time, ~~an examination of~~ *examine* the books of account *and the premises* of any ~~such~~ *licensed* retailer ~~and of his premises~~ and otherwise check ~~his~~ *the retailer's* methods of conducting business and the alcoholic content of the beer kept ~~by him~~ for sale.

(5) A person may not sell beer at retail without a valid license issued under this code."

Section 199. Section 16-4-108, MCA, is amended to read:

"16-4-108. Table wine distributor's license. (1) Any person desiring to sell and distribute table wine at wholesale to retailers under the provisions of this code shall apply to the department of revenue for a license to do so and shall ~~tender~~ *submit* with ~~his~~ *the* application the annual license fee of $400. ~~and the~~ *The* department may issue licenses to qualified applicants in accordance with the provisions of this code.

(2) All table wine distributors' licenses issued in any year expire on June 30 *of that year* at midnight ~~of such year~~.

(3) ~~No~~ *A* license fee may *not* be imposed upon table wine distributors by a municipality or any other political subdivision of the state.

(4) The license ~~shall~~ *must* be at all times prominently displayed in the place of business of ~~such~~ *the* table wine distributor.

(5) An applicant ~~shall~~ *must* have a fixed place of business, sufficient capital, the facilities, storehouse, and receiving house or warehouse for the receiving, storage, handling, and moving of table wine in large and jobbing quantities for distribution and sale in original packages to other licensed table wine distributors or licensed retailers. Each table wine distributor is entitled to only one wholesale table wine license, which ~~license shall~~ *must* be issued for ~~his~~ *the distributor's* principal place of business in Montana. A duplicate license may be issued for one subwarehouse only in Montana for each table wine distributor's license. The duplicate license ~~shall~~ *must* at all times be prominently displayed at ~~said~~ *the* subwarehouse. A table wine distributor may also hold a license to sell beer at wholesale but ~~shall~~ *may* not hold or have any interest, direct or indirect, in any license to sell beer, table wine, or liquor at retail.

(6) If the applicant is a foreign corporation, the corporation must be authorized to do business in Montana.

(7) As used in subsection (1), "distribute" has the meaning ~~given to it~~ *provided* in 16-3-218."

Section 200. Section 16-4-110, MCA, is amended to read:

"16-4-110. Beer license for tribal alcoholic beverages licensee or enlisted ~~men's~~ *personnel*, noncommissioned officers', or officers' club. (1) Upon application and qualification, the department shall issue a license to sell beer for consumption on the premises to:

(a) a tribal alcoholic beverages licensee who operates ~~such~~ *the* business within the exterior boundaries of a Montana Indian reservation under a tribal license issued prior to January 1, 1985;

(b) an enlisted ~~men's~~ *personnel*, noncommissioned officers', or officers' club located on a state or federal military reservation in Montana on May 13, 1985.

(2) A license issued under the provisions of subsection (1) is not subject to the quota limitations of 16-4-105.

(3) Upon application and approval by the department, a license issued under subsection (1)(a) may be transferred to another qualified applicant, but only to a location within the quota area and the exterior boundaries of the Montana Indian reservation for which the license was originally issued.

(4) A license issued under this section is subject to all statutes and rules governing licenses to sell beer at retail for on-premises consumption."

Section 201. Section 16-4-201, MCA, is amended to read:

"16-4-201. All-beverages license quota. (1) Except as otherwise provided by law, a license to sell liquor, beer, and table wine at retail, an all-beverages license, in accordance with the provisions of this code and the rules of the department, may be issued to any person who is approved by the department as a fit and proper person to sell alcoholic beverages, except that the number of all-beverages licenses that the department may issue for premises situated within incorporated cities and incorporated towns and within a distance of 5 miles from the corporate limits of those cities and towns must be determined on the basis of population prescribed in 16-4-502 as follows:

(a) in incorporated towns of 500 inhabitants or less and within a distance of 5 miles from the corporate limits of the towns, not more than two retail licenses;

(b) in incorporated cities or incorporated towns of more than 500 inhabitants and not over 3,000 inhabitants and within a distance of 5 miles from the corporate limits of the cities and towns, three retail licenses for the first 1,000 inhabitants and one retail license for each additional 1,000 inhabitants;

(c) in incorporated cities of over 3,000 inhabitants and within a distance of 5 miles from the corporate limits of the cities, five retail licenses for the first 3,000 inhabitants and one retail license for each additional 1,500 inhabitants.

(2) The number of the inhabitants in cities and towns, exclusive of the number of inhabitants residing within a distance of 5 miles from the corporate limits of the cities or towns, governs the number of retail licenses that may be issued for use within the cities and towns and within a distance of 5 miles from the corporate limits of the cities or towns. If two or more incorporated municipalities are situated within a distance of 5 miles from each other, the total number of retail licenses that may be issued for use in both of the municipalities and within a distance of 5 miles from their respective corporate limits must be determined on the basis of the combined populations of both of the municipalities and may not exceed the limitations in subsection (1) or this subsection. The distance of 5 miles from the corporate limits of any incorporated city or incorporated town must be measured in a straight line from the nearest entrance of the premises proposed for licensing to the nearest corporate boundary of the city or town.

(3) Retail all-beverages licenses of issue on March 7, 1947, and all-beverages licenses issued under 16-4-209~~, which~~ *that* are in excess of the limitations in subsections (1) and (2) ~~must be~~ *are* renewable, but new licenses may not be issued in violation of the limitations.

(4) The limitations in subsections (1) and (2) do not prevent the issuance of a nontransferable and nonassignable, ~~(~~as to ownership only~~)~~, retail license to an enlisted ~~men's~~ *personnel*, noncommissioned officers', or officers' club located on a state or federal military reservation on May 13, 1985, or to any post of a nationally chartered veterans' organization or any lodge of a recognized national fraternal organization if the veterans' or fraternal organization has been in existence for a period of 5 years or more prior to January 1, 1949.

(5) The number of retail all-beverages licenses that the department may issue for use at premises situated outside of any incorporated city or incorporated town and outside of the area within a distance of 5 miles from the corporate limits of a city or town may not be more than one license for each 750 population of the county after excluding the population of incorporated cities and incorporated towns in the county.

(6) An all-beverages license issued under subsection (5) that becomes located within 5 miles of an incorporated city or town because of annexation after April 15, 2005, may not be transferred to another location within the city quota area for 5 years from the date of annexation."

Section 202. Section 16-4-209, MCA, is amended to read:

"16-4-209. All-beverages license for tribal alcoholic beverages licensee or enlisted ~~men's~~ *personnel*, noncommissioned officers', or officers' club. (1) Upon application and qualification, the department shall issue an all-beverages license to:

(a) a tribal alcoholic beverages licensee who operates ~~such~~ *the* business within the exterior boundaries of a Montana Indian reservation under a tribal license issued prior to January 1, 1985;

(b) an enlisted ~~men's~~ *personnel*, noncommissioned officers', or officers' club located on a state or federal military reservation in Montana on May 13, 1985.

(2) A license issued under the provisions of subsection (1) is not subject to the quota limitations of 16-4-201.

(3) Upon application and approval by the department, a license issued under subsection (1)(a) may be transferred to another qualified applicant, but ~~such~~ *the* license may ~~only~~ be transferred *only* to a location within the quota area and the exterior boundaries of the Montana Indian reservation for which the license was originally issued.

(4) A license issued under this section is subject to all statutes and rules governing all-beverages licenses."

Section 203. Section 16-6-105, MCA, is amended to read:

"16-6-105. Seizure and forfeiture of alcoholic beverage and conveyance. Whenever an investigator or any peace officer in making or attempting to make a search under and in pursuance of authority of law ~~shall find~~ *finds* in any motor vehicle, vessel, boat, canoe, or conveyance of any description an alcoholic beverage ~~which~~ *that* is unlawfully kept or had or kept or held for unlawful purposes contrary to the provisions of this code, ~~he~~ *the investigator or peace officer* may ~~forthwith~~ seize the alcoholic beverage and packages in which the ~~same is~~ *alcoholic beverage is* contained and the motor vehicle, vessel, boat, canoe, or conveyance in which the alcoholic beverage is found. Upon the conviction of the occupant or person in charge of the motor vehicle, vessel, boat, canoe, or conveyance, or of any other person, for having or keeping ~~such~~ *the* alcoholic beverages contrary to any of the provisions of this code in any ~~such~~ vehicle, vessel, boat, canoe, or conveyance, the court in which the ~~conviction of any such~~ person is ~~had~~ *convicted* may, in addition to the sentence imposed under authority of law, declare the alcoholic beverage or any part ~~thereof so~~ seized and the package in which the ~~same~~ *alcoholic beverage* is contained to be forfeited to the state of Montana. The court may in and by decree further declare the motor vehicle, vessel, boat, canoe, or conveyance seized to be forfeited to the state of Montana."

Section 204. Section 16-6-205, MCA, is amended to read:

"16-6-205. Sufficiency of evidence. In any prosecution under this code for the sale or keeping for sale or other disposal of alcoholic beverages or the having, keeping, giving, purchasing, or consuming of alcoholic beverages, it ~~shall~~ *is* not ~~be~~ necessary that any witness ~~should depose~~ *testify* to the precise description or quantity of the alcoholic beverages sold, disposed of, kept, had, given, purchased, or consumed or the precise consideration, ~~(~~if any~~)~~, received ~~therefor~~ *for the alcoholic beverages.* ~~or to~~ *It is also unnecessary to testify to* the fact of the sale or other disposal having taken place with ~~his~~ *the witness's* participation or to ~~his~~ *the witness's* own personal or certain knowledge~~;~~. ~~but~~ *However, a* conviction may be based upon circumstantial evidence reasonably tending to establish the guilt of the accused beyond a reasonable doubt."

Section 205. Section 16-6-207, MCA, is amended to read:

"16-6-207. Analyst's report as prima facie evidence of contents. In any prosecution under this code or the rules ~~made thereunder~~ *adopted to implement this code*, production by a police officer, ~~policeman,~~ constable, inspector, or peace officer of a certificate or report signed or purporting to be signed by a United States or state analyst as to the analysis or ingredients of any alcoholic beverage or other fluid or any preparation, compound, or substance, ~~such~~ *the* certificate or report ~~shall be~~ *is* prima facie evidence of the facts stated in ~~such~~ *the* certificate or report and of the authority of the person giving or making the ~~same~~ *certificate or report* without any proof of appointment or signature."

Section 206. Section 16-6-209, MCA, is amended to read:

"16-6-209. Inferences of fact from evidence found. Upon the hearing of any charge of selling or purchasing an alcoholic beverage or of unlawfully having or keeping an alcoholic beverage contrary to any of the provisions of this code, the court trying the case ~~shall have the right to~~ *may* draw inferences of fact from the kind and quantity of alcoholic beverage found in the possession of the person accused or in any building, premises, vehicle, motorcar, automobile, vessel, boat, canoe, conveyance, or place occupied or controlled by ~~him~~ *the accused* and from the frequency with which the alcoholic beverage is received ~~thereat~~ *at* or ~~therein~~ *in* or is removed ~~therefrom~~ *from the location* and from the circumstances under which ~~it is~~ *the alcoholic beverage is* kept or dealt with."

Section 207. Section 16-6-309, MCA, is amended to read:

"16-6-309. Alcoholic beverages administered to institution inmates. ~~No~~ *An* alcoholic beverage ~~shall~~ *may not* be administered by any person under 16-1-204 except to bona fide patients or inmates of the institution of which ~~he~~ *the person* is in charge, and every person in charge of an institution who administers alcoholic beverages in evasion or violation of this code ~~shall be~~ *is* guilty of an offense against this code."

Section 208. Section 16-6-313, MCA, is amended to read:

"16-6-313. Injunction actions. An action to enjoin any nuisance defined in this code may be brought in the name of the state of Montana by the attorney general of the state or by any county attorney. ~~Such~~ *The* action ~~shall~~ *must* be brought and tried as an action in equity and may be brought in any court having jurisdiction to hear and determine equity cases. If it ~~is made to appear~~ *appears*, by affidavits or otherwise, to the satisfaction of the ~~court or~~ judge ~~in vacation~~ that ~~such~~ *the* nuisance exists, a temporary writ of injunction ~~shall forthwith issue~~ *must be issued* restraining the defendant from conducting or permitting the continuance of ~~such~~ *the* nuisance until the conclusion of the trial. If a temporary injunction is ~~prayed for~~ *sought*, the court may issue an order restraining the defendant and all other persons from removing or in any way

interfering with the fixtures or other things used in connection with the violation of this code constituting ~~such~~ *the* nuisance. ~~No~~ *A* bond ~~shall~~ *may not* be required in instituting ~~such~~ *the* proceedings. ~~It shall not be necessary for the~~ *The* court *is not required* to find *that* the property involved was being unlawfully used at the time of the hearing, but on finding that the material allegations of the petition are true, the court shall order that ~~no~~ alcoholic beverages ~~shall~~ *may not* be manufactured, sold, or bartered in ~~such~~ *the* room, house, building, boat, vehicle, structure, or place or any part ~~thereof~~ *of those locations*. Upon judgment of the court ordering ~~such~~ *the* nuisance to be abated, the court may order that the room, house, building, ~~structure,~~ boat, vehicle, *structure,* or place ~~shall~~ *may* not be occupied or used for 1 year ~~thereafter~~. The court may~~, in its discretion,~~ permit ~~it~~ *the location* to be occupied or used if the owner, lessee, tenant, or occupant ~~thereof shall give~~ *gives a* bond with sufficient surety, to be approved by the court making the order, in the ~~penal and liquidated~~ sum of not less than $500 or more than $1,000, payable to the state of Montana and conditioned that alcoholic beverages will not ~~thereafter~~ be manufactured, sold, or bartered ~~therein or thereon~~ *at the location* and that ~~he~~ *the person* will pay all fines, cost~~s~~, and damages that may be assessed for any violations of this code upon ~~said~~ *the* property."

Section 209. Section 16-10-203, MCA, is amended to read:

"16-10-203. Sales to meet competition permitted. (1) (a) ~~Any~~ *A* retailer may advertise, offer to sell, or sell cigarettes at a price made in good faith to meet the price of a competitor who is selling the same article at cost to ~~him~~ *the competitor* as a retailer as prescribed in this chapter.

(b) Any wholesaler may advertise, offer to sell, or sell cigarettes at a price made in good faith to meet the price of a competitor who is rendering the same type of service and is selling the same article at cost to ~~him~~ *the competitor* as a wholesaler as prescribed in this chapter.

(c) The price of cigarettes advertised, offered for sale, or sold under the exceptions specified in 16-10-304 ~~shall~~ *may* not be considered the price of a competitor and ~~shall~~ *may* not be used as a basis for establishing prices below cost, ~~nor shall~~ *and* the price established at a ~~bankrupt~~ *bankruptcy* sale *may not* be considered the price of a competitor within the purview of this section.

(2) In the absence of proof of the "price of a competitor" under this section, the "lowest cost to the retailer" or the "lowest cost to the wholesaler", ~~as the case may be,~~ determined by any "cost survey" made pursuant to 16-10-303, may be considered to be the "price of a competitor" within the meaning of this section."

Section 210. Section 16-11-134, MCA, is amended to read:

"16-11-134. Forged license stamp or insignia. ~~Every~~ *A* person who ~~shall make, alter, forge, or counterfeit~~ *makes, alters, forges, or counterfeits* any license stamp or insignia provided for in this law*,* ~~or~~ who ~~shall assist or be~~ *assists or is* concerned ~~therein~~ *in the creation of the stamp or insignia,* or who ~~shall have~~ *has* in ~~his~~ *the person's* possession any altered, forged, counterfeit, or spurious stamp, license, or insignia with intent to defraud the state is guilty of forgery."

Section 211. Section 17-1-103, MCA, is amended to read:

"17-1-103. Assistance to legislature. (1) The department shall make all reports and submit all information and data the legislature requests and, when requested, attend all meetings of the appropriations committee of the house of representatives and of the finance and claims committee of the senate.

(2) The department shall, during the consideration of appropriation measures by the house and senate, devote ~~so~~ *as* much of its time as may be required by the ~~above-named~~ committees, under the direction of the ~~respective chairmen~~ *presiding officers* of the committees."

Section 212. Section 17-1-112, MCA, is amended to read:

"17-1-112. Access to offices. The state treasurer ~~shall have~~ *has* full access to all offices of the state for inspection of ~~such~~ books, papers, and accounts ~~thereof as~~ *that* concern ~~his~~ *the state treasurer's* duties."

Section 213. Section 17-1-131, MCA, is amended to read:

"17-1-131. General duties of budget director. (1) The budget director in addition to the duties set forth in *Title 17,* chapter 7*,* ~~of this title~~ shall perform ~~such~~ other duties ~~as~~ *that* the governor as chief budget officer of the state may direct.

(2) ~~He~~ *The budget director* shall, as often as requested by the governor, prepare and furnish reports to the governor concerning appropriations made by the legislature and the receipts and disbursements made by any department, office, or institution of the state.

(3) The budget director ~~shall~~ *must* be available to all standing committees of the house of representatives and the senate concerned with appropriations, revenue, finance, and claims and shall furnish to ~~such~~ *the* committees any information required while ~~said~~ *the* committees are considering the budget."

Section 214. Section 17-5-715, MCA, is amended to read:

"17-5-715. Signatures of board members. ~~In case~~ *If* any member of the board of examiners whose signature appears on bonds, notes, or coupons issued under this part ceases to be a member before the delivery of the bonds or notes, ~~his~~ *the member's* signature is ~~nevertheless~~ valid and sufficient for all purposes, the same as if the member had remained in office until delivery."

Section 215. Section 17-5-927, MCA, is amended to read:

"17-5-927. Signatures of board members. ~~In case~~ *If* any member of the board whose signature appears on bonds or coupons issued under this part ceases to be a member before the delivery of the bonds, ~~his~~ *the member's* signature is ~~nevertheless~~ valid and sufficient for all purposes as if the member had remained in office until delivery."

Section 216. Section 17-5-1516, MCA, is amended to read:

"17-5-1516. Maintenance of capital reserve account. (1) In order to ~~assure~~ *ensure* the maintenance of the capital reserve account, the ~~chairman~~ *presiding officer* of the board shall, on or before September 1 in each year preceding the convening of the legislature, deliver to the governor a certificate stating the sum, if any, required to restore the capital reserve account to the minimum capital reserve requirement. The governor shall include in the executive budget submitted to the legislature the sum required to restore the capital reserve account to the sum of minimum capital reserve requirement. All sums appropriated by the legislature ~~shall~~ *must* be deposited in the capital reserve account.

(2) All amounts appropriated to the board under this section constitute advances to the board and, subject to the rights of the holders of any bonds or notes of the board, must be repaid to the state general fund without interest from available operating ~~revenues~~ *revenue* of the board in excess of amounts

required for the payment of bonds, notes, or other obligations of the board, for maintenance of the capital reserve account, and for operating expenses."

Section 217. Section 17-6-204, MCA, is amended to read:

"17-6-204. Investment of local government funds. (1) The governing body of any city, county, school district, or other local government unit or political subdivision ~~having~~ *that has* funds ~~which~~ *that* are available for investment and are not required by law or by any covenant or agreement with bondholders or others to be segregated and invested in a different manner may direct its treasurer to remit ~~such~~ *the* funds to the state treasurer for investment under the direction of the board of investments as part of the pooled investment fund.

(2) A separate account, designated by name and number for each ~~such~~ participant in the fund, ~~shall~~ *must* be kept to record individual transactions and totals of all investments belonging to each participant. A monthly report ~~shall~~ *must* be furnished to each participant having a beneficial interest in the pooled investment fund, showing the changes in investments made during the preceding month. Details of any investment transaction ~~shall~~ *must* be furnished to any participant upon request.

(3) The principal and accrued income, and any part ~~thereof~~ *of that amount*, of each ~~and every~~ account maintained for a participant in the pooled investment fund ~~shall be~~ *is* subject to payment at any time from the fund upon request. Accumulated income ~~shall~~ *must* be remitted to each participant at least annually.

(4) ~~No~~ *An* order or warrant ~~shall~~ *may not* be issued upon any account for a larger amount than the principal and accrued income of the account to which it applies~~, and if~~. *If* any ~~such~~ order or warrant is issued, the participant receiving it shall reimburse the excess amount to the fund from any funds not otherwise appropriated~~, and the~~. *The* state treasurer ~~shall be~~ *is* liable under ~~his~~ *the treasurer's* official bond for any amount not ~~so~~ reimbursed."

Section 218. Section 17-6-213, MCA, is amended to read:

"17-6-213. Redemption of bonds before maturity. (1) The board of investments shall permit any school district, town, city, or county to pay and redeem one or more of its bonds held by the state for the credit of any fund under the investment administration of the board of investments at any time before maturity.

(2) In calculating the unpaid interest accrued on any bond or bonds at the time of payment and redemption, interest for a fractional month ~~shall~~ *must* be calculated and collected for a full month.

(3) Payment and redemption of bonds ~~shall~~ *must* be made at the office of the state treasurer unless the bonds by their own terms and provisions are made payable at some other place and payment at ~~his~~ *that* office would be disadvantageous to the redemptioner. When bonds have been ~~so~~ paid and redeemed, the state treasurer shall effectually cancel the bonds and the attached coupons by perforation or otherwise and mail *them* to the proper treasurer together with ~~his~~ *the state treasurer's* receipt.

(4) This section does not authorize or permit any school district, town, city, or county to issue refunding bonds for the purpose of paying and redeeming any bond or bonds held by the state before the optional or redeemable date ~~therein stated~~ *of the bonds* or to grant the right to pay any ~~bond or~~ bonds held by the

state before the optional or redeemable date from the proceeds of refunding bonds."

Section 219. Section 17-7-113, MCA, is amended to read:

"17-7-113. Inquiries and investigations by budget director. The budget director or ~~his~~ *the budget director's* designated representative shall make ~~such~~ further inquiries and investigations ~~as he~~ *that the budget director* considers necessary as to any item included in the report and estimates furnished by any department, agency, or institution. In making ~~such~~ *the* investigations, ~~he shall~~ *the budget director* ~~be~~ *is* allowed ~~his~~ travel expenses*,* as provided for in 2-18-501 through 2-18-503, ~~as amended,~~ in visiting any institution or department in the state."

Section 220. Section 17-8-104, MCA, is amended to read:

"17-8-104. Civil penalties and remedies for violation. (1) (a) Any authority or member of a board of trustees or any person, officer, or employee violating the provisions of 17-8-103(1) is personally liable and the surety or sureties on ~~his~~ *that individual's* bond ~~shall~~ *is* also ~~be~~ liable to the state for the amount of the excess ~~thus~~ unlawfully expended. An action under this subsection (1)(a) may be brought upon complaint of the attorney general, of the legislature by joint resolution, of the legislative finance committee, or of any taxpayer, filed in a district court of this state.

(b) Any authority or member of a board of trustees or any person, officer, or employee violating the provisions of 17-8-103(1) is guilty of misfeasance in office and ~~shall be~~ guilty of wrongdoing and ~~shall be~~ *is* subject to removal from office or from ~~such~~ employment. An action under this subsection (1)(b) may be brought upon complaint of the attorney general, the legislature by joint resolution, or any taxpayer, filed in a district court of this state.

(2) Complaints under subsections (1)(a) and (1)(b) may be combined in a single action.

(3) Remedies and penalties provided by this section may be pursued singly or in any combination."

Section 221. Section 17-8-308, MCA, is amended to read:

"17-8-308. Payment of interest — land grant warrants. The interest on all land grant warrants ~~shall be~~ *is* payable on July 1 ~~next succeeding~~ *following* the date of issue and annually ~~thereafter~~ *after that date*. Whenever there is sufficient money in any of the land grant funds to pay outstanding warrants or interest ~~thereon~~ *on the warrants*, the treasurer shall cause to be published a brief notice that ~~said~~ *the* warrants or the interest on particular warrants on which interest would be payable on July 1, describing them by numbers and names of funds, will be ~~forthwith~~ payable~~;~~. ~~and on~~ *Upon* the presentation of any ~~such~~ warrants on or at any time after July 1, the treasurer shall pay the interest ~~thereon~~ *on the warrants*, endorsing the date of payment and amount paid of each warrant, *and* returning the ~~same~~ *warrant* to the holder~~, and he~~. *The treasurer* shall keep a register showing the dates and amounts of each interest payment on each warrant in each fund. If any warrants are called for payment, interest ~~thereon shall cease~~ *on the warrants ceases* on the date fixed in ~~said~~ *the* notice."

Section 222. Section 18-1-402, MCA, is amended to read:

"18-1-402. Administrative procedures — exhaustion — time limitations. Whenever any contracting agency of the state of Montana provides a procedure for the settlement of any question or dispute arising between the contractor and ~~said~~ *the* agency, the contractor, before proceeding to

bring an action in court under the provisions of this part, ~~must~~ *shall* resort to ~~such~~ *the* procedure within the time specified in ~~his~~ *the* contract or, if ~~no~~ *a* time is *not* specified, within 90 days after the question or dispute has arisen, provided:

(1) in ~~the~~ *a* case ~~where~~ *in which* a settlement procedure is provided by ~~said~~ *the* contracting agency, all actions authorized ~~hereunder~~ *under this section* must be commenced within 1 year after a final decision has been rendered pursuant to ~~such~~ *the* settlement procedure; and

(2) in ~~the~~ *a* case ~~where no~~ *in which a* settlement procedure is *not* provided by ~~said~~ *the* contracting agency, the action must be commenced by the contractor within 1 year after the cause of action has arisen."

Section 223. Section 18-1-403, MCA, is amended to read:

"18-1-403. Stipulations restricting enforcement void. Every stipulation or condition in a contract by which any party ~~thereto~~ is restricted from enforcing ~~his~~ *the party's* rights under the provisions of this part is void."

Section 224. Section 18-2-204, MCA, is amended to read:

"18-2-204. Right of action on security — notice. (1) All persons mentioned in 18-2-201 have a right of action in their own name or names on any security furnished under the terms of this part for work done by the laborers or mechanics and for ~~provender~~ *food*, materials, supplies, provisions, or goods supplied and furnished in the work or the making of the improvements. The persons do not have any right of action on the security unless within 90 days after the completion of the contract with an acceptance of the work by the affirmative action of the board, council, commission, trustees, officer, or body acting for the state, county, or municipality or other public body, city, town, or district, the laborer, mechanic or subcontractor, or ~~materialman~~ *material supplier* or person claiming to have supplied ~~provender~~ *food*, materials, provisions, or goods for the ~~prosecution~~ *performance* of the work or the making of the improvement presents to and files with the board, council, commission, trustees, or body acting for the state, county, or municipality or other public body, city, town, or district a notice in writing in substance as follows:

"TO (here insert the name of the state, county, or municipality or other public body, city, town, or district):

NOTICE IS HEREBY GIVEN that the undersigned (here insert the name of the laborer, mechanic or subcontractor, or ~~materialman~~ *material supplier* or person claiming to have furnished labor, materials, or provisions for the contract or work) has a claim in the sum of .... dollars (here insert the amount) against the security taken from .... (here insert the name of the principal and name of the person providing the security) for the work of .... (here insert a brief mention or description of the work concerning which the security was taken). (Here to be signed) ...."

(2) The notice must be signed by the person or corporation making the claim or giving the notice. After being presented and filed, the notice is a public record open to inspection by any person."

Section 225. Section 18-2-424, MCA, is amended to read:

"18-2-424. Enforcement. If a contractor or a subcontractor refuses to submit payroll records requested by the department pursuant to 18-2-423, the commissioner or ~~his~~ *the commissioner's* authorized representative may issue subpoenas compelling the production of those records."

Section 226. Section 18-5-204, MCA, is amended to read:

"18-5-204. Department director — delegating powers. The director of the department may delegate to any employees of the state agency for surplus property ~~such~~ *the* power and authority ~~as he deems~~ *that the director considers* reasonable and proper for the effective administration of this part."

Section 227. Section 18-5-411, MCA, is amended to read:

"18-5-411. Administration of vending facilities — state properties. (1) The department of administration or any other department of state government that administers state property subject to this part shall transfer to the department the management and control of any vending facility that the department has determined is an appropriate facility for the purposes of this part and that the department has determined is needed for the purposes of this part.

~~(2) A lease or contract for the operation of a vending facility entered into prior to October 1, 1981, is not subject to this part while the lease or contract remains in effect. In addition, this part may not be interpreted to require or authorize the failure to renew any contract for a vending facility on state property in effect on October 1, 1981, if the contract contains a provision permitting the renewal of the contract for a specific term at the option of the vendor or the state or both. In any case where the department determines that a private vendor operating a vending facility on state property on October 1, 1981, who but for this part could reasonably be expected to renew his contract for the vending facility, would be subjected to economic hardship should the contract be allowed to expire at the end of its term, the department may agree to a one-time renewal of that vendor's contract for the vending facility for a period not to exceed 4 years.~~

~~(3)~~*(2)* The department of administration or any other department of state government that administers state property subject to this part shall give reasonable notice to the department of the expiration or termination of any lease or contract in effect for a vending facility.

~~(4)~~*(3)* Upon receipt of the notice, the department shall give reasonable notice to the department of administration or other department of state government that sent the notice required in subsection ~~(3)~~ *(2)* stating that the department has determined that the vending facility is either appropriate and needed for the purposes of this part or that it is not.

~~(5)~~*(4)* A state agency administering state property shall consult with the department when planning for a new state building, planning for remodeling of or addition to an existing state building, or negotiating the lease of a building for state use~~,~~ to determine what vending facilities might be appropriate for the site and plan for ~~such~~ *the* vending facilities.

~~(6)~~*(5)* The department shall administer those vending facilities ~~which~~ *that* are determined to be appropriate and necessary."

Section 228. Section 18-11-105, MCA, is amended to read:

"18-11-105. Submission of agreement to attorney general. (1) As a condition precedent to an agreement made under this chapter becoming effective, it must have the approval of the attorney general of Montana.

(2) The attorney general shall approve an agreement submitted ~~to him~~ under this chapter unless ~~he~~ *the attorney general* finds ~~it~~ *that the agreement* is not in proper form, ~~or~~ does not meet the requirements set forth in this chapter, or otherwise does not conform to the laws of Montana. If ~~he~~ *the attorney general* disapproves an agreement, ~~he~~ *the attorney general* shall provide a detailed,

written statement to the governing bodies of the public agency and tribal government concerned, specifying the reasons for ~~his~~ disapproval.

(3) If the attorney general does not disapprove the agreement within 30 days after its submission ~~to him~~, it ~~shall~~ *must* be considered approved ~~by him~~."

Section 229. Section 19-1-301, MCA, is amended to read:

"19-1-301. Authorization of referendum by governor. With respect to members of the public employees', highway patrol officers', judges', and game wardens' and peace officers' retirement systems, the governor is empowered to authorize a referendum, and with respect to the employees of any political subdivision, ~~he~~ *the governor* shall authorize a referendum upon the request of the governing body of the subdivision."

Section 230. Section 19-1-702, MCA, is amended to read:

"19-1-702. Contributions by state employees. (1) Every employee of the state whose services are covered by an agreement entered into under 19-1-401 and 19-1-402 ~~shall~~ *must* be required to pay, for the period of ~~such~~ coverage, contributions with respect to wages ~~(as defined in 19-1-102)~~ equal to the amount of employee tax ~~which~~ *that* would be imposed by the Federal Insurance Contributions Act if ~~such~~ *the* services constituted employment within the meaning of that act. ~~Such~~ *The* liability ~~shall arise~~ *arises* in consideration of the employee's retention in the service of the state~~,~~ or ~~his~~ entry ~~upon such~~ *into* service~~, after February 20, 1953~~.

(2) The contribution imposed by this section ~~shall~~ *must* be collected by deducting the amount of the contribution from wages ~~as and when~~ paid, but failure to make ~~such~~ *the* deduction ~~shall~~ *does* not relieve the employee from liability for ~~such~~ *the* contribution.

(3) If more or less than the correct amount of the contribution imposed by this section is paid or deducted with respect to any remuneration, proper adjustments or *a* refund if adjustment is impracticable ~~shall~~ *must* be made, without interest, in ~~such~~ *the* manner and at ~~such~~ times ~~as~~ *that* the state agency ~~shall prescribe~~ *prescribes*."

Section 231. Section 19-1-705, MCA, is amended to read:

"19-1-705. Deduction of employee contribution by political subdivision. (1) Each political subdivision required to make payment under 19-1-704 shall, in consideration of the employee's retention in or entry ~~upon~~ *into* employment ~~after February 20, 1953,~~ impose upon each of its employees, as to services ~~which~~ *that* are covered by an approved plan, a contribution with respect to ~~his~~ wages ~~(as defined in 19-1-102)~~, not exceeding the amount of the employee tax ~~which~~ *that* would be imposed by the Federal Insurance Contributions Act if ~~such~~ *the* services constituted employment within the meaning of that act and shall deduct the amount of ~~such~~ *the* contributions from ~~his~~ wages ~~as and when~~ paid.

(2) Contributions ~~so~~ collected partially discharge the liability of the political subdivision or instrumentality under 19-1-704. Failure to deduct the contribution does not relieve the employee or employer of liability ~~therefor~~ *for the contributions*."

Section 232. Section 19-2-904, MCA, is amended to read:

"19-2-904. Withholding of group insurance premium from retirement benefit. A retiree who is a participant in an employee group insurance plan ~~which~~ *that* permits participation in the group plan following retirement may elect to have the monthly premium for ~~such~~ group insurance

withheld by the retirement system and paid directly by the system to the insurance carrier. In order to qualify for this withholding, a retiree must be a participant in a group insurance plan available to the employees of ~~his~~ *the* former employer. ~~No withholding~~ *Withholding* may *not* be made for any retiree covered by an individual insurance policy."

Section 233. Section 19-3-202, MCA, is amended to read:

"19-3-202. Request by individual employee for employer to participate. Any employee who has ~~continuously been~~, for a *continuous* period of at least 2 years, *been* an employee of a municipal corporation, county, or other public agency of this state ~~which~~ *that* is not a contracting employer may advise the legislative body of ~~his~~ *the* employer, in writing, that ~~he~~ *the employee* wishes to participate in the retirement system. Within 30 days after receipt of ~~such~~ *the* written request, the legislative body shall ~~thereupon~~ adopt the resolution of intention and take ~~such~~ action as provided for in 19-3-201."

Section 234. Section 19-9-302, MCA, is amended to read:

"19-9-302. Ineligibility for other retirement plans. ~~No~~ *An* active member is *not* eligible to be covered under any other mandatory retirement plan for police service to which an employer is required to contribute on ~~his~~ *the member's* behalf, except the Social Security Act, while ~~he~~ *the member* is eligible to be covered by this plan."

Section 235. Section 19-17-406, MCA, is amended to read:

"19-17-406. Termination of pension when no surviving spouse or child. If a deceased volunteer firefighter leaves neither a surviving spouse nor a child under ~~the age of~~ 18 *years of age*, ~~his~~ *the firefighter's* pension ~~shall~~ *must* terminate at the end of the month prior to the month in which ~~his~~ *the* death occurs."

Section 236. Section 19-18-106, MCA, is amended to read:

"19-18-106. Transfer of money into fund by city treasurer. Whenever a fire department relief association has been formed and the treasurer of the association has furnished the bond required by 19-18-202, the city treasurer shall pay to the treasurer of the association all money held by the city treasurer to the credit of the disability and pension fund, taking a proper receipt ~~therefor~~ *for the payment*. ~~Thereafter, the~~ *The* city treasurer shall, as ~~moneys are~~ *money is* received ~~by him~~ for the credit of the fund or association, turn the ~~same~~ *money* over to the treasurer of the association, taking proper receipts ~~therefor~~ *for the payments*."

Section 237. Section 19-18-202, MCA, is amended to read:

"19-18-202. Treasurer's bond. ~~No~~ *The* treasurer of an association may *not* enter upon ~~his~~ *the* duties *of office* until ~~he~~ *the treasurer* has given the association a sufficient bond of not less than 50% of the amount of the cash funds and securities of the association for the faithful performance of ~~his~~ *the treasurer's* duties according to law. The amount of the bond ~~shall~~ *must* be approved by the association and may not exceed $25,000. The bond ~~shall~~ *must* be paid for by the association. If the city or town treasurer has been elected ex officio treasurer of the association, ~~his~~ *the* official bond will cover the faithful discharge of ~~his~~ duties as ~~such~~ *the treasurer of the association*."

Section 238. Section 19-18-502, MCA, is amended to read:

"19-18-502. Refund of firefighter's contribution. A firefighter is entitled to a refund, in a lump sum and without interest, of all ~~his~~ monthly contributions to the fund, within 60 days after ~~his~~ permanent separation from

service in the fire department, except for separation by reason of retirement, death, or disability ~~which~~ *that* would otherwise qualify ~~him~~ *the firefighter* or ~~his~~ *the firefighter's* surviving spouse or children to receive benefits or an allowance from the association. A firefighter who is eligible to receive a partial service pension under 19-18-603 may either elect to take the refund provided for in this section or elect to receive the partial pension."

Section 239. Section 19-18-511, MCA, is amended to read:

"19-18-511. Annual report of clerks of cities having fire departments. On or before April 1 annually, the clerk of every city having an organized fire department or a partly paid or volunteer department shall file with the commissioner of insurance of this state ~~his~~ *a* certificate stating ~~such~~ *that* fact~~,~~. ~~the~~ *The certificate must include the* system of water supply in use in ~~such~~ *the* fire department, the number of its organized companies, steam, hand, or other engines, hook-and-ladder trucks, hose-carts, and feet of hose in actual use, and ~~such~~ other facts ~~as~~ *that* the commissioner may require."

Section 240. Section 19-18-514, MCA, is amended to read:

"19-18-514. State treasurer to pay warrants. The state treasurer ~~is hereby authorized and directed~~ *shall*, upon the presentation ~~to him~~ of a warrant drawn pursuant to this chapter, ~~to~~ pay to the treasurer of the city or town, out of ~~moneys~~ *money* in the state special revenue fund dedicated for ~~such~~ *that* purpose, the amount of ~~such~~ *the* warrant ~~specified~~, which amount ~~shall~~ *must* be paid by ~~said~~ *the* city treasurer to ~~said~~ *the* fire department relief association."

Section 241. Section 19-18-603, MCA, is amended to read:

"19-18-603. Partial service pension. (1) A member of a fire department relief association is eligible to receive a partial service pension if ~~he~~ *the member*:

(a) has completed at least 10 years of active duty as a fully paid member of a fire department but has not both completed 20 years of service and ~~attained age 50~~ *reached 50 years of age* as an active firefighter;

(b) is permanently separated from service ~~on or after July 1, 1977~~;

(c) does not qualify for a disability pension under 19-18-604; and

(d) does not receive a refund of ~~his~~ *the member's* contributions under 19-18-502.

(2) The right to receive the pension vests upon the firefighter's permanent separation from service, but the payments may not commence until the date ~~he~~ *the firefighter* would have both reached ~~his 50th birthday~~ *50 years of age* and completed 20 years of service as a member of a fire department had ~~his~~ *the member's* active duty not been terminated.

(3) The pension ~~shall~~ *must* be paid out of the disability and pension fund and ~~shall~~ *must* consist of monthly payments in an amount equal to the number of years of the firefighter's service divided by the number of years of service the firefighter would have had if ~~he~~ *the firefighter* had remained in active duty as a member of a fire department until the date ~~he~~ *the firefighter* would have both ~~attained age 50~~ *reached 50 years of age* and completed 20 years of service, multiplied by one-half of the sum last received by the firefighter as a monthly compensation, excluding overtime and payments in lieu of sick leave and annual leave, for ~~his~~ services as an active member of the fire department.

(4) If the firefighter dies after ~~he~~ *the firefighter* is permanently separated from service and before ~~he~~ *the firefighter* both reaches ~~the age of~~ 50 years *of age* and would have completed 20 years of service as an active member of a fire

department, the payments prescribed in subsection (3) ~~shall~~ *must* be made to the surviving spouse commencing on the date the firefighter would have both reached ~~his 50th birthday~~ *50 years of age* and completed 20 years of service as an active member of a fire department and terminating upon the surviving spouse's death or remarriage. If there is no surviving spouse or the surviving spouse dies or remarries and if the firefighter leaves one or more children who have not reached ~~the age of~~ 18 years *of age*, the children ~~shall~~ *must* receive the payments until the youngest reaches ~~the age of~~ 18 years *of age*.

(5) If the firefighter dies after ~~he~~ both ~~reaches the age of~~ *reaching* 50 years *of age* and *the date the firefighter* would have completed 20 years of service as an active member of a fire department, the payments ~~shall~~ *must* be made to the surviving spouse or children as provided in subsection (4).

(6) The pension escalation provisions of 19-18-602 do not apply to pensions received under this section."

Section 242. Section 19-18-604, MCA, is amended to read:

"19-18-604. Disability pension. (1) Each association shall pay a disability pension, out of its disability and pension fund, to each of its members who has become disabled by reason of sickness or injury. The pension ~~shall~~ *must* be equal to one-half of the sum last received by the member as a monthly compensation, excluding overtime and payments in lieu of sick leave and annual leave, for ~~his~~ *the member's* services to the fire department of the city or town in which the association was formed.

(2) ~~Effective July 1, 1974, a~~ *A* member who completes 20 years of service and elects to serve additional years ~~shall~~ *must* receive the pension provided for in subsection (1) increased at the rate of 1% per year for each additional year of service completed, up to a maximum of 60% of the sum last received by the member as a monthly compensation, excluding overtime and payments in lieu of sick leave and annual leave, for ~~his~~ services as an active member of the fire department.

(3) The monthly pension paid to members ~~retiring on or after July 1, 1973,~~ must be at least one-half the regular monthly salary paid to a confirmed active firefighter of that city, as provided each year in the budget of that city. The monthly pension paid to a member retiring prior to July 1, 1974, must be at least $200. In the case of volunteer firefighters, the disability pension may not exceed $125 a month."

Section 243. Section 19-18-605, MCA, is amended to read:

"19-18-605. Pensions to surviving spouses and children. (1) Each association shall pay, out of its disability and pension fund, a monthly pension to the surviving spouse or children of a deceased member of the association who on the date of ~~his~~ death was an active member of the fire department in the city or town in which the association was formed, who had elected to retire from active service in the fire department and receive a service pension as provided for by 19-18-602, or who, prior to death, had suffered a sickness or injury and was receiving or was qualified to receive a disability pension as provided by 19-18-604. The pension ~~shall~~ *must* be equal to one-half of the last month's salary received as a monthly compensation, excluding overtime and payments in lieu of sick leave and annual leave, by the deceased member for services rendered as an active member of the fire department in the city or town in which the association was formed.

(2) ~~Effective July 1, 1974, if~~ *If* the deceased member ~~had~~ completed 20 years of service and ~~had~~ elected to serve additional years, the pension provided for in

subsection (1) ~~shall~~ *must* be increased at the rate of 1% per year for each additional year of service completed, up to a maximum of 60% of the last month's salary received as a monthly compensation, excluding overtime and payments in lieu of sick leave and annual leave, by the deceased member for ~~his~~ services as an active member of the fire department.

(3) The monthly pension paid to the surviving spouse or children of an active member ~~who dies after July 1, 1973,~~ or an active member who elects to retire ~~after July 1, 1973,~~ must be at least one-half the regular monthly salary paid to a confirmed active firefighter of that city, as provided each year in the budget of that city. The monthly pension paid to the surviving spouse or children of an active member who died prior to July 1, 1974, or who elected to retire before July 1, 1974, must be at least $200. In the case of a volunteer firefighter, the pension paid to a surviving spouse or children may not exceed the amount provided for a service pension for a volunteer firefighter under 19-18-602(3).

(4) A pension may be paid to the surviving spouse only ~~so~~ *as* long as ~~such~~ *the* spouse remains unmarried. A surviving spouse is not entitled to a pension under this section if the marriage was entered into after the firefighter ~~had~~ elected to retire from active service and ~~had begun~~ *began* to receive a service pension as provided for by 19-18-602 or if the marriage was entered into after the firefighter ~~had~~ qualified for and had begun to receive a disability pension as provided for by 19-18-604. The pension provided for in this section may not be paid to the children of deceased firefighters after they have attained ~~the age of~~ 18 *years of age*."

Section 244. Section 19-18-607, MCA, is amended to read:

"19-18-607. Payment of death benefits in absence of spouse or child. If a firefighter dies without leaving a surviving spouse or child, the association shall compute the total contributions made to the fund by the deceased member, and if the deceased member ~~had~~ designated a beneficiary in writing to the association, the association shall issue a warrant for the amount of the total contributions payable to that beneficiary. If the deceased member ~~had~~ *did* not ~~nominated~~ *nominate* a beneficiary, the contributions ~~shall~~ *must* be paid to ~~his~~ *the member's* estate."

Section 245. Section 19-19-302, MCA, is amended to read:

"19-19-302. Officer's contribution deducted from salary. The treasurer of an incorporated city ~~which~~ *that* has a police retirement fund shall retain from the monthly salary of each police officer on the active list a sum equal to 6% of ~~his~~ *the officer's* monthly compensation for ~~his~~ services as a police officer, exclusive of overtime and payments made in lieu of sick leave and annual leave. The monthly deduction from the salaries of police officers must be paid into the city's police retirement fund for the purpose of paying the salaries of police officers on the retired list."

Section 246. Section 19-19-303, MCA, is amended to read:

"19-19-303. Refund of officer's contribution. A police officer whose service with the city has been discontinued by other than death or placement upon the retired list ~~shall~~ *must* be entitled to the return ~~to him~~ of the amounts paid to the fund through deductions from ~~his~~ *the officer's* salary. If ~~he~~ *the officer* has 10 years or more of service, the amount paid ~~shall~~ *must* include regular interest on ~~such~~ *the* amounts. If ~~he~~ *the officer* has less than 10 years of service, ~~he shall~~ *the officer must* receive only the amount paid through ~~such~~ salary deductions, without interest."

Section 247. Section 19-19-401, MCA, is amended to read:

"19-19-401. Eligibility for service retirement. The following persons are eligible for the police retired list of a city and ~~shall~~ *may* retire as provided in this section:

(1) A person who is employed by any city as a police officer on July 1, 1975, is eligible for the police retired list when ~~he~~ *the person* has completed 20 years or more in the aggregate as a probationary officer, a regular officer, or a special officer of the police department, in any capacity or rank.

(2) A person who is first employed by a city as a police officer after July 1, 1975, is eligible for the police retired list when ~~he~~ *the person* has reached the age of 50 and has completed 20 years or more in the aggregate as a probationary officer, a regular officer, or a special officer of the police department, in any capacity or rank."

Section 248. Section 19-19-402, MCA, is amended to read:

"19-19-402. Eligibility for disability retirement. When a police officer receives injuries or disabilities in the active discharge of ~~his~~ duties as a police officer~~, which~~ *and the* injuries or disabilities are, in the opinion of the board of police commissioners or city council of the city or town, of ~~such~~ *a* character ~~as to impair his~~ *that impairs the officer's* ability to discharge ~~his~~ *the* duties ~~as~~ *of* an active police officer, ~~he shall~~ *the officer must* be placed on the retired list of the city or town."

Section 249. Section 19-19-403, MCA, is amended to read:

"19-19-403. Option of officer to remain on active list. (1) A police officer who is eligible for the retired list under ~~subsection (1) or (2) of~~ 19-19-401*(1) or (2)* may transfer, as of the time ~~he~~ *the officer* becomes eligible, to the retired list or may elect to serve an additional 1 to 10 years as an active police officer.

(2) A police officer whose eligibility depends on 19-19-401(2) and who completes 20 years of service before reaching ~~the age of~~ 50 *years of age* is considered to have elected to serve an additional year for each year between the completion of ~~his~~ *the officer's* 20th year of service and ~~his~~ 50th birthday, and ~~he shall~~ *the officer must* be paid the additional 1% for each ~~such year~~ *of those years*."

Section 250. Section 19-19-404, MCA, is amended to read:

"19-19-404. Reinstatement to retired list. An applicant for reinstatement under the provisions of 7-32-4110 may be reinstated and ~~passed into the~~ *added to the* retired list of police officers ~~so as to~~ *and may* enjoy all the benefits, pensions, and rights ~~which~~ *that* accrue to police officers placed on the retired list in ~~said~~ *the* city or town. The pension benefits to be allowed to ~~such~~ *a* reinstated officer ~~shall~~ *must* be computed upon the basis of ~~his~~ *the officer's* last full year of active service on ~~said~~ *the* police force."

Section 251. Section 19-19-405, MCA, is amended to read:

"19-19-405. Credit for military service. A police officer serving in the United States military in time of war or national emergency ~~shall~~ *must* be given credit in ~~his~~ *the officer's* police record for ~~such~~ *the military* service in the same manner as though ~~he~~ *the officer* were on active police duty."

Section 252. Section 19-19-406, MCA, is amended to read:

"19-19-406. Election to qualify previous military service. (1) A member with 15 years or more of service as a police officer may, at any time prior to ~~his~~ retirement, make a written election with the board to qualify all or any portion of ~~his~~ *the member's* active service in the armed forces of the United States for the purpose of calculating retirement benefits, up to a maximum of 5

years, if ~~he~~ *the member* is not otherwise eligible to receive credit. To qualify this service, ~~he must~~ *the member shall* contribute to the account the actuarial cost of granting the service to be determined by the board based on ~~his~~ *the member's* compensation and normal contribution rate as of ~~his~~ *the member's* 16th year and as many succeeding years as are required to qualify this service, with interest from the date ~~he becomes eligible~~ *of eligibility* for this benefit to the date ~~he contributes~~ *of contribution*. ~~He~~ *The member* may not qualify more ~~of his~~ military service than ~~he has~~ *the* service as a police officer in excess of 15 years. Military service purchased under this section may not be used in the determination of eligibility for a service retirement requiring a minimum of 20 years service.

(2) If a member has retired from active duty in the armed forces of the United States with normal service retirement benefits, ~~he~~ *the member* may not qualify ~~his~~ military service under subsection (1). However, a member who is serving or has served in the military reserves with the expectation of receiving a military service pension may qualify ~~his~~ *the member's* active military service under subsection (1) if ~~his~~ *the* active duty in the armed forces of the United States is not more than 25% of the total of all ~~his~~ years of military service, including reserve and active duty time."

Section 253. Section 19-19-501, MCA, is amended to read:

"19-19-501. Service retirement allowance. When a police officer is transferred from the active list to the retired list of a city, ~~he shall thereafter~~ *the officer must* receive monthly payments from the city's police retirement fund, as follows:

(1) A police officer who is eligible under 19-19-401(1) or (2) and does not elect to serve any additional years as an active police officer ~~shall~~ *must* receive a sum equal to one-half the base salary, excluding overtime and payments in lieu of sick leave and annual leave, ~~he~~ *that the officer* was receiving as an active officer computed on the highest salary received in any ~~one~~ *1* month during ~~his~~ *the* last year of active service.

(2) A police officer who is eligible after 20 years of service and who elects to serve additional years ~~shall~~ *must* receive the payment provided for in subsection (1) plus an additional 1% of ~~such~~ *the* payment ~~per~~ *for each* year of additional service, up to a maximum of 60% of the base salary, excluding overtime and payments in lieu of sick leave and annual leave, ~~he~~ *that the officer* was receiving as an active officer computed on the highest salary received in any ~~one~~ *1* month during ~~his~~ *the* last year of active service."

Section 254. Section 19-19-502, MCA, is amended to read:

"19-19-502. Disability retirement allowance. When a police officer is transferred from the active list to the retired list of a city, ~~he shall thereafter~~ *the officer must* receive monthly payments from the city's police retirement fund, as follows:

(1) A police officer who is eligible under 19-19-402 before completing 20 years of service ~~shall~~ *must* receive a sum equal to one-half the base salary, excluding overtime and payments in lieu of sick leave and annual leave, ~~he~~ *that the officer* was receiving as an active officer computed on the highest salary received in any ~~one~~ *1* month during ~~his~~ *the* last year of active service.

(2) A police officer who is placed on the retired list under 19-19-402 and who, at the time of ~~his~~ injury or disability, was eligible at ~~his~~ *the officer's* option to be placed on the retired list under 19-19-401(1) or (2) but had elected to serve additional years and was then serving ~~such~~ *the* additional years ~~shall~~ *must* be

paid for the additional years over ~~his~~ *the officer's* original eligibility at the rate prescribed in 19-19-501(2)."

Section 255. Section 19-19-503, MCA, is amended to read:

"19-19-503. Death benefits. (1) Upon the death of a police officer on the active list or retired list of a city, ~~his~~ *the officer's* surviving spouse, if there is one, ~~shall~~ *must*, as long as ~~such~~ *the* spouse remains the surviving spouse, be paid from the city's police retirement fund a sum equal to one-half the base salary, excluding overtime and payments in lieu of sick leave and annual leave, ~~he~~ *that the officer* was receiving as an active officer computed on the highest salary received in any ~~one~~ *1* month during ~~his~~ *the* last year of active service.

(2) If the officer leaves one or more dependent minor children, upon ~~his~~ *the officer's* death if ~~he leaves~~ *there is* no surviving spouse or upon the death or remarriage of the surviving spouse, ~~his~~ *the* surviving dependent minor children, collectively if there is more than one, ~~shall~~ *must* receive the same monthly payments as a surviving spouse would receive, until they reach ~~the age of~~ 18 years *of age* or are married. The payments ~~shall~~ *must* be made to their duly appointed, qualified, and acting guardian for their use. If there is more than one ~~such~~ child, upon each child reaching ~~the age of~~ 18 *years of age* or marrying, the pro rata payments to that child ~~shall~~ *must* cease and ~~shall~~ *must* be made to the remaining children~~,~~ until all the children have either reached ~~the age of~~ 18 *years of age* or are married."

Section 256. Section 19-19-505, MCA, is amended to read:

"19-19-505. Withholding of group insurance premium from retirement benefit. A retiree who is a participant in an employee group insurance plan ~~which~~ *that* permits participation in the group plan following retirement may elect to have the monthly premium for ~~such~~ group insurance withheld by the department of administration and paid directly by the department to the insurance carrier. In order to qualify for this withholding, a retiree must be a participant in a group insurance plan available to the employees of ~~his~~ *the* former employer. ~~No withholding~~ *Withholding* may *not* be made for any retiree covered by an individual insurance policy."

Section 257. Section 19-20-103, MCA, is amended to read:

"19-20-103. Implied consent of employee. A person who accepts employment for which membership is required is considered to have consented to membership and to the withholding of contributions from ~~his~~ *the person's* compensation."

Section 258. Section 19-20-301, MCA, is amended to read:

"19-20-301. Membership application. Whenever a person becomes a member of the retirement system as required by 19-20-302, ~~he~~ *the person* shall complete an application form prescribed by the retirement board."

Section 259. Section 19-20-303, MCA, is amended to read:

"19-20-303. Inactive membership. Any person's active membership in the retirement system ~~shall terminate~~ *terminates*, but ~~he shall be~~ *the person is* an inactive member, when *the person*:

(1) ~~he~~ ceases to be employed in a capacity that allows ~~his~~ membership and ~~he~~ *the person* has 5 or more years of creditable service in the retirement system;

(2) ~~he~~ ceases to be employed in a capacity that allows ~~his~~ membership and ~~he~~ *the person* has less than 5 years of creditable service in the retirement system, but ~~his~~ *the* loss of capacity to be a member was caused by a personal illness

determined by the retirement board to be a disability or was caused by service in the armed forces of the United States, which includes the army, navy, marine corps, air force, and coast guard, or by service in the American red cross or merchant marine during time of war; or

(3) ~~he~~ has 5 or more years *of* creditable service and ~~he~~ becomes a member of any other retirement or pension system supported wholly or in part by ~~moneys~~ *the money* of another government agency, except the federal social security retirement system, and the membership in the other retirement system would allow credit for the same employment service in two retirement systems. However, ~~no~~ *a* person ~~shall~~ *may not* be excluded from active membership solely because ~~he~~ *the person* is receiving or is eligible to receive retirement benefits from another retirement system."

Section 260. Section 19-20-304, MCA, is amended to read:

"19-20-304. Membership termination. The active or inactive membership in the retirement system of any person terminates when *the person*:

(1) ~~he~~ retires on a retirement allowance of the retirement system;

(2) ~~he~~ dies;

(3) ~~he~~ withdraws ~~his~~ *the person's* accumulated contributions to the retirement system under the provisions of 19-20-603; or

(4) ~~he~~ ceases to be employed in a capacity that allows ~~his~~ membership, ~~he~~ has less than 5 years of creditable service in the retirement system, and ~~he~~ cannot qualify under the provisions of 19-20-303(2)."

Section 261. Section 19-20-406, MCA, is amended to read:

"19-20-406. Creditable service for prior service. A member who is retiring with at least 5 years of creditable service and who has been an active member for at least 5 consecutive school fiscal years may request creditable service for any employment service ~~he~~ rendered prior to September 1, 1937, for which ~~he~~ *the member* has not received a prior service certificate. In order to receive the creditable service, ~~he must~~ *the member shall* apply for it and provide certification of the prior service. The retirement board shall determine the amount of creditable service to be awarded, if any, and issue a prior service certificate."

Section 262. Section 19-21-211, MCA, is amended to read:

"19-21-211. Payment of benefits. ~~No~~ *A* retirement, death, or other benefit may *not* be paid by the state or the board of regents under the optional retirement program. Benefits are payable to a participant and ~~his~~ *the participant's* beneficiaries only by the designated company or companies in accordance with the terms of the contracts."

Section 263. Section 20-1-201, MCA, is amended to read:

"20-1-201. School officers not to act as agents. The superintendent of public instruction or members of ~~his~~ *the superintendent's* staff, county superintendent or members of ~~his~~ *the superintendent's* staff, trustee, or district employee ~~shall~~ *may* not act as an agent or solicitor in the sale or supply of goods or services to a district. ~~No such~~ *An enumerated* person ~~shall~~ *may not* assist or receive a reward from an agent or solicitor of goods or services for a district. Any ~~such~~ person violating this section ~~shall be deemed~~ *is* guilty of a misdemeanor and, if convicted by a court of competent jurisdiction, shall be fined not less than $50 or more than $200 and shall be liable to removal from ~~his~~ *the person's*

position. The penalties provided by this section ~~shall~~ *may* not be applicable if the charge and conviction are made under the provisions of 20-7-608."

Section 264. Section 20-1-202, MCA, is amended to read:

"20-1-202. Oath of office. Any person elected or appointed to any public office authorized by this title shall take the oath of office before qualifying for and assuming the office. ~~In case~~ *If* an officer has a written appointment or commission, ~~his~~ *the officer's* oath ~~shall~~ *must* be endorsed ~~thereon~~ *on the appointment or commission*, otherwise ~~it~~ *the oath* may be taken orally, and, in either case, it may, without charge or fee, be sworn to before an officer authorized to administer oaths for ~~such~~ *the* public office."

Section 265. Section 20-1-203, MCA, is amended to read:

"20-1-203. Delivering items to successor. Whenever any member of the trustees, superintendent, principal, or clerk of the district is replaced by election or otherwise, ~~he~~ *the person* shall immediately deliver all books, papers, and ~~moneys~~ *money* pertaining to the position to ~~his~~ *the person's* successor. Any ~~such~~ person who ~~shall refuse~~ *refuses* to do so or who ~~shall willfully destroy~~ *knowingly destroys* any ~~such~~ material or ~~misappropriate~~ *misappropriates* any ~~moneys~~ *money* entrusted to ~~him~~ *the person* ~~shall be~~ *is* guilty of a misdemeanor and, if convicted by a court of competent jurisdiction, shall be fined not more than $100."

Section 266. Section 20-1-211, MCA, is amended to read:

"20-1-211. Expenses of officers or employees attending conventions — educational associations. (1) ~~After July 1, 1921, no~~ *A* school district officer or employee of any school district ~~shall~~ *may not* receive payment from any public funds for traveling expenses or other expenses of any sort or kind for attendance ~~upon~~ *at* any convention, meeting, or other gathering of public officers except for attendance ~~upon such~~ *at a* convention, meeting, or other gatherings ~~as said~~ *that the* officer or employee may by virtue of ~~his~~ *the* office *or employment* find it necessary to attend.

(2) The board of trustees of any county or district high school or of any school district may by resolution adopted by a majority of the entire board make their district a member of any state association of school districts or school district trustees or any other strictly educational association and authorize the payment of dues to ~~such~~ *the* association and the necessary traveling expenses of employees or members of ~~said~~ *the* board to attend meetings of ~~such~~ *the* association or other meetings called for the express purpose of considering educational matters."

Section 267. Section 20-2-111, MCA, is amended to read:

"20-2-111. Officers of boards — quorum. (1) The board of public education and the board of regents may each select a ~~chairman~~ *presiding officer* from among their appointed members.

(2) The executive secretary shall serve as secretary to the board of public education, and the commissioner of higher education serves as secretary to the board of regents.

(3) A majority of the appointed members of each board constitutes a quorum for the transaction of business.

(4) The executive secretary shall serve as a liaison between the board of public education and the superintendent of public instruction and shall carry out other ~~such~~ duties as assigned by the board of public education."

Section 268. Section 20-2-112, MCA, is amended to read:

"20-2-112. Quarterly meetings of boards — called meetings — notice of meetings. (1) The board of public education and the board of regents shall meet at least quarterly.

(2) Other meetings of either board may be called by the governor, by the ~~chairman~~ *presiding officer*, by the secretary, or by four appointed members.

(3) The secretary to each board shall mail notice to each member at least 7 days in advance of all meetings of the respective board."

Section 269. Section 20-2-131, MCA, is amended to read:

"20-2-131. Commissioner of higher education — duties — compensation — staff. (1) The board of regents shall prescribe the duties of the commissioner of higher education and shall set ~~his~~ *the commissioner's* compensation.

(2) The board of regents shall provide sufficient staff and office space to the commissioner for ~~him to carry~~ *carrying* out ~~his~~ *the commissioner's* duties."

Section 270. Section 20-3-101, MCA, is amended to read:

"20-3-101. Election and qualifications. (1) A superintendent of public instruction for the state of Montana ~~shall~~ *must* be elected by the qualified electors of the state at the general election preceding the expiration of the term of office of the incumbent.

(2) ~~Any~~ *A* person ~~shall be~~ *is* qualified to assume the office of superintendent of public instruction who:

(a) is 25 years of age or older at the time of ~~his~~ election;

(b) has resided within the state for the 2 years ~~next~~ preceding ~~his~~ *the* election;

(c) holds at least a bachelor's degree from any unit of the Montana university system or from an institution recognized as equivalent by the board of public education for teacher certification purposes; and

(d) otherwise possesses the qualifications for ~~such~~ office ~~which~~ *that* are required by The Constitution of the State of Montana."

Section 271. Section 20-3-102, MCA, is amended to read:

"20-3-102. Term, oath, and vacancy. (1) The superintendent of public instruction shall hold office at the seat of government for ~~the~~ *a* term of 4 years. ~~He~~ *The superintendent* shall assume office on the first Monday of January following ~~his~~ election and shall hold the office until ~~his~~ *a* successor has been elected and qualified. Any person elected as the superintendent of public instruction shall take the oath of a civil officer.

(2) If the office of superintendent of public instruction becomes vacant, it ~~shall~~ *must* be filled in the manner prescribed by The Constitution of the State of Montana."

Section 272. Section 20-3-105, MCA, is amended to read:

"20-3-105. Administrative powers and duties. In administering the affairs of ~~his~~ *the* office, the superintendent of public instruction ~~shall have~~ *has* the power and it ~~shall be his~~ *is the superintendent's* duty to:

(1) keep a record of ~~his~~ official acts and all documents applicable to the administration of the office, preserve all official reports submitted to ~~him~~ *the superintendent* for the period required by law, and surrender them to ~~his~~ *the superintendent's* successor at the expiration of ~~his~~ *the* term;

(2) preserve all books, educational media, instructional equipment, and any other articles of educational interest and value ~~which~~ *that* come into ~~his~~ *the superintendent's* possession and surrender them to ~~his~~ *the superintendent's* successor at the expiration of ~~his~~ *the* term;

(3) cause the printing and distribution of all reports and forms necessary for the proper conduct of business by a district or school in the manner prescribed by the provisions of this title;

(4) provide and keep an official seal of the superintendent of public instruction by which ~~his~~ official acts ~~shall~~ *must* be authenticated;

(5) if ~~he deems~~ *considered* necessary, cause the printing of a complete and updated volume of the school laws of the state, which ~~shall~~ *must* be offered and sold at cost of the printing and shipping to any school official or other person;

(6) whenever a replacement volume is not printed under the provisions of subsection (5), cause the printing of a cumulative supplement to the most recent volume of school laws immediately after the conclusion of any session of the legislature at which new school laws or amendments to the school laws were adopted. It ~~shall~~ *must* be offered and sold at cost of the printing and shipping to any school official or other person.

(7) if ~~deemed~~ *considered* necessary, publish a biennial report of the superintendent of public instruction;

(8) counsel with and advise county superintendents on matters involving the welfare of the schools and, when requested, give a county superintendent a written answer to any question concerning school law;

(9) call an annual meeting of the county superintendents when ~~he deems it~~ *considered* advisable;

(10) as far as ~~he shall find it~~ practicable, address public assemblies on subjects pertaining to education in Montana; and

(11) faithfully work in all practical and possible ways for the welfare of the public schools of the state."

Section 273. Section 20-3-202, MCA, is amended to read:

"20-3-202. Term, oath, and vacancy. (1) The county superintendent shall hold office for a term of 4 years. ~~He~~ *The county superintendent* shall assume office on the first Monday of January following ~~his~~ election and shall hold the office until ~~his~~ *a* successor has been elected and qualified.

(2) Any person elected as the county superintendent shall take the oath or affirmation of office and shall give an official bond, as required by law.

(3) If the office of county superintendent becomes vacant, the board of county commissioners shall appoint a replacement to fill the vacancy. ~~Such~~ *The* replacement shall serve until the next regular general election, when a person ~~shall~~ *must* be elected to serve the remainder of the initial term, if there ~~be~~ *is* any remaining term."

Section 274. Section 20-3-203, MCA, is amended to read:

"20-3-203. Office costs and staff. (1) The board of county commissioners shall supply the county superintendent with suitable office space and office supplies. The county superintendent ~~shall~~ *must* be paid from the county general fund all necessary traveling expenses ~~that he~~ actually ~~incurs~~ *incurred* in discharging ~~his~~ duties, after ~~such~~ *the* expenses have been audited by the board of county commissioners.

(2) Upon the county superintendent's recommendation of a candidate, the board of county commissioners may appoint ~~such~~ *the* candidate to the position of chief deputy county superintendent. The commissioners also may appoint deputies and assistants for the county superintendent. The commissioners shall fix the salaries of the personnel prescribed by this section at 90% or less of the salary of the county superintendent."

Section 275. Section 20-3-206, MCA, is amended to read:

"20-3-206. Additional positions. In the capacity as county superintendent, the county superintendent shall also serve as:

(1) the ~~chairman~~ *presiding officer* of the county transportation committee, as prescribed by 20-10-131;

(2) an attendance officer for a district under the conditions prescribed by 20-5-104; and

(3) the clerk of a joint board of trustees under the conditions prescribed by 20-3-361."

Section 276. Section 20-3-208, MCA, is amended to read:

"20-3-208. Authority to request, accept, and disburse money. (1) A county superintendent may, with the advice and consent of the appropriate school boards, request and accept money made available from federal, state, or private sources for purposes of public education.

(2) Subject to applicable federal and state guidelines and, in the case of money received from private sources, subject to any guidelines fixed by the donor, a county superintendent may~~, in his discretion,~~ disburse money received under this section to one or more public elementary or high school districts according to their needs. The county superintendent shall supervise the ~~utilization~~ *use* of ~~such~~ *the* money with the approval of the appropriate school boards.

(3) The county superintendent may establish a fund, for which the county treasurer shall maintain a separate accounting, for the deposit of money received under this section."

Section 277. Section 20-3-211, MCA, is amended to read:

"20-3-211. Disqualification of county superintendent. A county superintendent may not hear or decide matters of controversy pursuant to 20-3-210 when:

(1) ~~he~~ *the county superintendent* is a party to or has an interest in the controversy;

(2) ~~he~~ *the county superintendent* is related to either party in the controversy by consanguinity or affinity within the sixth degree, computed according to the rules of law;

(3) either party to the controversy makes and files with the county superintendent of schools an affidavit that ~~he~~ *the party* has reason to believe and does believe that ~~he~~ *the party* cannot have a fair and impartial hearing before the county superintendent by reason of the bias or prejudice of the county superintendent; or

(4) the controversy involves the education or possible identification of a child with a disability."

Section 278. Section 20-3-308, MCA, is amended to read:

"20-3-308. Vacancy of trustee position. (1) ~~Any~~ *An* elected trustee position ~~shall be~~ *is* vacant whenever the incumbent:

(a) dies;

(b) resigns;

(c) moves ~~his~~ *the trustee's* residence from the applicable district or from the nominating district in the case of an additional trustee in a high school district;

(d) is no longer a registered elector of the district under the provisions of 20-20-301;

(e) is absent from the district for 60 consecutive days;

(f) fails to attend three consecutive meetings of the trustees without a good excuse;

(g) has been removed under the provisions of 20-3-310; or

(h) ceases to have the capacity to hold office under any other provision of law.

(2) A trustee position *is* also ~~shall be~~ vacant when an elected candidate fails to qualify under the provisions of 20-3-307."

Section 279. Section 20-3-309, MCA, is amended to read:

"20-3-309. Filling vacated trustee position — appointee qualification and term of office. (1) Whenever a trustee position becomes vacant in any district, the remaining members of the trustees shall declare ~~such~~ *the* position vacant and they shall appoint, in writing within 60 days, a competent person as a successor. The trustees shall notify the appointee and the county superintendent of ~~such~~ *the* appointment. If the trustees do not make the appointment within ~~such~~ *the* 60-day period, the county superintendent shall appoint, in writing, a competent person as a successor and notify ~~such~~ *the* person of ~~his~~ *the* appointment.

(2) ~~Any~~ *A* person who has been appointed to a trustee position shall qualify by completing and filing an oath of office with the county superintendent within 15 days after receiving notice of ~~his~~ appointment. Failure to file the oath of office ~~shall constitute~~ *constitutes* a continuation of the trustee position vacancy ~~which shall~~ *that must* be filled under the provisions of this section.

(3) ~~Any~~ *A* person assuming a trustee position under the provisions of this section shall serve until the next regular school election and ~~his~~ *until a* successor has qualified."

Section 280. Section 20-3-310, MCA, is amended to read:

"20-3-310. Trustee removal. Any trustee may be removed from ~~his~~ *the* trustee position by a court of competent jurisdiction under the law providing for the removal of elected civil officials. When charges are ~~preferred~~ *brought* against a trustee and good cause is shown, the board of county commissioners may suspend ~~such~~ *the* trustee from ~~his~~ *the* trustee position until the charges can be heard in the court of competent jurisdiction."

Section 281. Section 20-3-311, MCA, is amended to read:

"20-3-311. Trustee travel reimbursement and compensation of secretary for joint board. The members of the trustees of any district ~~shall~~ *may* not receive compensation for their services as trustees, except that the secretary of the trustees of a high school district operating a county high school or the secretary of a joint board of trustees may be compensated for ~~his~~ services as the secretary. The members of the trustees who reside over 3 miles from the trustees' meeting place ~~shall~~ *must* be reimbursed at the rate as provided in 2-18-503~~,~~ for every mile necessarily traveled between their residence and the meeting place and return in attending the regular and special meetings of the

trustees, and all trustees ~~shall~~ *must* be similarly reimbursed for meetings called by the county superintendent. The travel reimbursement may be accumulated during the school fiscal year and paid at the end of the fiscal year, at the discretion of each trustee."

Section 282. Section 20-3-344, MCA, is amended to read:

"20-3-344. Nomination of candidates by petition in first-class elementary district. Except as provided in 20-3-338, any 20 electors, qualified under the provisions of 20-20-301, of any first-class elementary district may nominate by petition as many trustee candidates as there are trustee positions subject to election at the ensuing election. The name of each person nominated for candidacy ~~shall~~ *must* be submitted to the clerk of the district not less than 40 days before the regular school election day at which ~~he~~ *the person* is to be a candidate. If there are different terms to be filled, the term for which each candidate is nominated ~~shall~~ *must* also be indicated. The election ~~shall~~ *must* be conducted with the ballot as specified in 20-3-306."

Section 283. Section 20-3-353, MCA, is amended to read:

"20-3-353. Establishment and purpose of trustee nominating districts. (1) After the county superintendent has determined the number of additional trustee positions, ~~he~~ *the county superintendent* shall establish trustee nominating districts in that portion of the high school district without representation on the high school trustees. There ~~shall~~ *must* be one trustee nominating district for each additional trustee position, except the additional trustee-at-large. Unless it is impossible, the trustee nominating district boundaries ~~shall~~ *must* be coterminous with elementary district boundaries.

(2) The purpose of the trustee nominating district ~~shall be~~ *is* to establish a representative district for the nomination and election of a resident of ~~such~~ *the* district to be an additional member of the trustees of a high school district. The electors qualified to vote in the high school district under the provisions of 20-20-301 and who reside in the trustee nominating district ~~shall be~~ *are* the only electors who may vote for the additional trustee representing ~~such~~ *the* district. They *must* also ~~shall~~ be permitted to vote for a trustee position at large, if there is one, but *not* for ~~no~~ *any* other high school trustee position.

(3) Any additional trustee position established under the provisions of this section ~~shall~~ *must* be filled in a manner prescribed under the provisions of 20-3-309. Each additional trustee position filled by appointment under this section ~~shall be~~ *is* subject to election at the next regular school election."

Section 284. Section 20-3-354, MCA, is amended to read:

"20-3-354. Redetermination of additional trustee positions and subsequent adjustments. Whenever there is a revision of the taxable valuation of the high school district or the elementary districts within ~~it~~ *the high school district* or there is a reclassification of the elementary district ~~which~~ *that* has its trustees placed on the high school district board of trustees, the county superintendent shall redetermine the number of additional trustee positions for the high school district in accordance with 20-3-352. If there is a change in the allowable number of additional trustee positions, the county superintendent shall reestablish the trustee nominating districts in accordance with 20-3-353. If the number of additional trustee positions is less than the previous number of positions, the county superintendent shall designate which present additional positions are to terminate upon ~~his~~ *the* order reestablishing the trustee nominating districts. If the number of additional trustee positions is more than the previous number of positions, ~~such~~ *the* additional trustee positions ~~shall~~

must be filled in the manner prescribed under the provisions of 20-3-309. Each additional trustee position filled by appointment under this section ~~shall be~~ *is* subject to election at the next regular school election."

Section 285. Section 20-3-361, MCA, is amended to read:

"20-3-361. Joint board of trustees organization and voting membership. (1) The board of trustees of two or more school districts may form a joint board of trustees for the purpose of coordinating any educational program or support service of the districts. A joint board of trustees may coordinate only those programs and services agreed to by the participating boards of trustees.

(2) When a joint board of trustees is formed, all of the members of the districts' trustees ~~shall~~ *must* be members of the joint board of trustees and each member ~~shall~~ *must* have the right to participate in the meetings, but voting on matters considered by the joint board ~~shall be~~ *is* limited by the provisions of this section.

(3) At the first meeting of the joint board of trustees, ~~there shall be~~ a ~~chairman~~ *presiding officer* of the joint board of trustees *must be* selected from among the membership. A secretary of the joint board ~~shall~~ *must* be selected from the membership. The ~~chairman~~ *presiding officer*, when selected as a voting member, ~~shall~~ *may* not be disqualified from voting because of ~~his~~ *the* position ~~of chairman of the board~~. The secretary ~~shall~~ *may* not be a voting member except that ~~he~~ *the secretary* shall cast the deciding vote when three successive ballots have resulted in a tie vote of the joint board of trustees.

(4) The voting membership of the joint board of trustees ~~shall~~ *must* be equalized among the trustee membership of the participating districts. After the selection of the ~~chairman~~ *presiding officer* and the secretary, if necessary, the voting membership ~~shall be~~ *is*:

(a) all of the membership of the board of trustees of the smallest class of district, according to 20-6-201 or 20-6-301, unless one of its members is selected as secretary, in which case ~~such~~ *that* member ~~shall~~ *may* not be a voting member; and

(b) the members of the board of trustees of the other district or districts who are selected by ~~such~~ *the* trustees as voting members of the joint board in a number equal to the number of voting members of the district as established under subsection (4)(a) ~~above~~. The names of the voting membership selected by the trustees ~~shall~~ *must* be submitted in writing to the secretary of the board and ~~shall be~~ *are* the only members of ~~such~~ *the* district's trustees eligible to vote on joint board matters unless ~~such~~ *the* list is revised in writing by the trustees.

(5) Each voting member ~~shall be~~ *is* entitled to cast one vote, individually, upon every matter submitted to the joint board for a vote.

(6) A joint board ~~must~~ *shall* remain in existence for at least 1 school year and may not be dissolved until the end of a school year."

Section 286. Section 20-4-101, MCA, is amended to read:

"20-4-101. System and definitions of teacher and specialist certification — student teacher exception. (1) In order to establish a uniform system of quality education and to ensure the maintenance of professional standards, a system of teacher and specialist certification ~~shall~~ *must* be established and maintained under the provisions of this title and ~~no~~ *a* person ~~shall~~ *may not* be permitted to teach in the public schools of the state until ~~he~~ *the person* has obtained a teacher ~~certificate~~ or specialist certificate or the district has obtained an emergency authorization of employment from the state.

(2) As used in this part, "teacher or specialist certificate" means a certificate issued or applied for under 20-4-106. The term "teacher or specialist" refers to a person certified under 20-4-106.

(3) The ~~above~~ certification requirement ~~shall~~ *does* not apply to a student teacher who is ~~hereby defined as~~ a student enrolled in an institution of higher learning approved by the board of regents of higher education for teacher training and who is jointly assigned by ~~such~~ *the* institution of higher learning and the governing board of a district or a public institution to perform practice teaching in a nonsalaried status under the direction of a regularly employed and certificated teacher.

(4) A student teacher, while serving ~~such~~ *a* nonsalaried internship under the supervision of a certificated teacher, ~~shall~~ *must* be accorded the same protection of the laws as that accorded a certificated teacher and shall, while acting as ~~such~~ *a* student teacher, comply with all rules of the governing board of the district or public institution and the applicable provisions of 20-4-301 relating to the duties of teachers."

Section 287. Section 20-4-104, MCA, is amended to read:

"20-4-104. Qualifications. (1) A person may be certified as a teacher when ~~he~~ *the person* satisfies the following qualifications. *The person*:

(a) ~~He~~ is 18 years of age or older~~.~~*;*

(b) ~~He~~ is of good moral and professional character~~.~~*;*

(c) ~~He~~ has completed the teacher education program of a unit of the Montana university system or an essentially equivalent program at an accredited institution of equal rank and standing as that of any unit of the Montana university system, and ~~his~~ *the* training is evidenced by at least a bachelor's degree and a certification of the completion of the teacher education program, except as provided for in 20-4-106(1)(d)~~.~~*; and*

(d) ~~He~~ has subscribed to the following oath or affirmation before an officer authorized by law to administer oaths:

"I solemnly swear (or affirm) that I will support The Constitution of the United States of America and The Constitution of the State of Montana."

(2) Any person may be certified as a specialist when ~~he~~ *the person* satisfies the requirements of subsections (1)(a) and (1)(b) and the requirement for a specialist certificate provided in 20-4-106(2)."

Section 288. Section 20-4-106, MCA, is amended to read:

"20-4-106. Classifications of teacher and specialist certificates. (1) The superintendent of public instruction shall issue teacher certificates and the board of public education shall adopt teacher certification policies on the basis of the following classifications of teacher certificates:

(a) The class 1 professional certificate may be issued to an otherwise qualified applicant who has completed a teacher education program ~~which~~ *that* includes a bachelor's degree and a minimum of 1 year of study beyond ~~such~~ *the* degree in a unit of the Montana university system or an equivalent institution. The professional certificate may be endorsed for elementary instruction, *for* secondary instruction, or both, and for specified subject fields on the basis of the applicant's academic and professional training and according to the board of public education policy for teacher certification endorsement.

(b) The class 2 standard certificate may be issued to an otherwise qualified applicant who has completed a 4-year teacher education program and who has

been awarded a bachelor's degree by a unit of the Montana university system or an equivalent institution. The standard certificate may be endorsed for elementary instruction, *for* secondary instruction, or both, and for specified subject fields on the basis of the applicant's academic and professional training and according to the board of public education policy for teacher certification endorsement.

(c) The class 3 administrative and supervisory certificate may be issued to an otherwise qualified applicant who is eligible for a teacher certificate endorsed for teaching in the school or schools in which ~~he~~ *the applicant* would be an administrator or ~~he~~ would supervise. The applicant ~~also shall~~ *must also* possess the training and experience required by the policies of the board of public education for an endorsement as superintendent, principal, or supervisor.

(d) The class 4 vocational, recreational, or adult education certificate may be issued to an otherwise qualified applicant who has the qualifications of training and experience required by the United States office of education or the qualifications required by the special needs of the several vocational, recreational, or adult education fields and who can qualify under the policy of the board of public education for the issuance of this classification of teacher certification.

(e) The class 5 provisional certificate may be issued to an otherwise qualified applicant who can provide satisfactory evidence of ~~his~~ *the* intent to qualify in the future for a class 1 or a class 2 certificate and who has completed a 4-year college program or its equivalent and holds a bachelor's degree from a unit of the Montana university system or its equivalent. The provisional certificate may be endorsed for elementary instruction, *for* secondary instruction, or both, and for special subject fields on the basis of the applicant's academic and professional training and according to the board of public education policy for teacher or specialist certification endorsement.

(2) The superintendent of public instruction shall issue specialist certificates, and the board of public education shall adopt specialist certification policies. The specialist certificate may be issued to an otherwise qualified applicant who has the training, experience, and license required under the standards of the board of public education for the certification of a profession other than the teaching profession.

(3) For purposes of evaluating the qualifications of applicants for either teacher or specialist certificates, a year means the instructional period consisting of three quarters or two semesters or other terms ~~which~~ *that* are recognized as an academic year by any unit of the Montana university system or equivalent institution."

Section 289. Section 20-4-121, MCA, is amended to read:

"20-4-121. Interstate agreement on qualification of educational personnel. The interstate agreement on qualification of educational personnel is enacted into law and entered into with all jurisdictions legally joining therein in the form substantially as follows:

Article I. Purpose — Findings — Policy

(1) The states party to this agreement, desiring by common action to improve their respective school systems by utilizing the teacher or other professional educational person wherever educated, declare that it is the policy of each of them, on the basis of cooperation with one another, to take advantage of the preparation and experience of such persons wherever gained, thereby serving the best interests of society, of education, and of the teaching profession.

It is the purpose of this agreement to provide for the development and execution of such programs of cooperation as will facilitate the movement of teachers and other professional educational personnel among the states party to it and to authorize specific interstate educational personnel contracts to achieve that end.

(2) The party states find that included in the large movement of population among all sections of the nation are many qualified educational personnel who move for family and other personal reasons but who are hindered in using their professional skill and experience in their new locations. Variations from state to state in requirements for qualifying educational personnel discourage such personnel from taking the steps necessary to qualify in other states. As a consequence, a significant number of professionally prepared and experienced educators are lost to our school systems. Facilitating the employment of qualified educational personnel, without reference to their states of origin, can increase the available educational resources. Participation in this compact can increase the availability of educational ~~manpower~~ *personnel*.

Article II. Definitions

As used in this agreement and contracts made pursuant to it, unless the context clearly requires otherwise, the following definitions apply:

(1) "Educational personnel" means persons who must meet requirements pursuant to state law as a condition of employment in educational programs.

(2) "Designated state official" means the educational official of a state selected by that state to negotiate and enter into, on behalf of ~~his~~ *the official's* state, contracts pursuant to this agreement.

(3) "Accept" or any variant thereof means to recognize and give effect to one or more determinations of another state relating to the qualifications of educational personnel in lieu of making or requiring a like determination that would otherwise be required by or pursuant to the laws of a receiving state.

(4) "State" means a state, territory, or possession of the United States, the District of Columbia, or the commonwealth of Puerto Rico.

(5) "Originating state" means a state (and the subdivisions thereof, if any) whose determination that certain educational personnel are qualified to be employed for specific duties in schools is acceptable in accordance with the terms of a contract made pursuant to Article III.

(6) "Receiving state" means a state (and the subdivisions thereof) which accept educational personnel in accordance with the terms of a contract made pursuant to Article III.

Article III. Interstate Educational Personnel Contracts

(1) The designated state official of a party state may make one or more contracts on behalf of ~~his~~ *the designated state official's* state with one or more other party states providing for the acceptance of educational personnel. Any such contract for the period of its duration shall be applicable to and binding on the states whose designated state officials enter into it and the subdivisions of those states with the same force and effect as if incorporated in this agreement. A designated state official may enter into a contract pursuant to this article only with states in which ~~he~~ *the designated state official* finds that there are programs of education, certification standards, or other acceptable qualifications that assure preparation or qualification of educational personnel on a basis sufficiently comparable even though not identical to that prevailing in ~~his~~ *the designated state official's* own state.

(2) Any such contract shall provide for:

(a) its duration;

(b) the criteria to be applied by an originating state in qualifying educational personnel for acceptance by a receiving state;

(c) such waivers, substitutions, and conditional acceptance as shall aid the practical effectuation of the contract without sacrifice of basic educational standards; and

(d) any other necessary matters.

(3) No contract made pursuant to this agreement shall be for a term longer than 5 years, but any such contract may be renewed for like or lesser periods.

(4) Any contract dealing with acceptance of educational personnel on the basis of their having completed an educational program shall specify the earliest date or dates on which originating state approval of the program or programs involved can have occurred. No contract made pursuant to this agreement shall require acceptance by a receiving state of any persons qualified because of successful completion of a program prior to January 1, 1954.

(5) The certification or other acceptance of a person who has been accepted pursuant to the terms of a contract shall not be revoked or otherwise impaired because the contract has expired or been terminated. However, any certificate or other qualifying document may be revoked or suspended on any ground which would be sufficient for revocation or suspension of a certificate or other qualifying document initially granted or approved in the receiving state.

(6) A contract committee composed of the designated state officials of the contracting states or their representatives shall keep the contract under continuous review, study means of improving its administration, and report not less than once a year to the heads of the appropriate education agencies of the contracting states.

Article IV. Approved and Accepted Programs

(1) Nothing in this agreement shall be construed to repeal or otherwise modify any law or regulation of a party state relating to the approval of programs of educational preparation having effect solely on the qualification of educational personnel within that state.

(2) To the extent that contracts made pursuant to this agreement deal with the educational requirements for the proper qualification of educational personnel, acceptance of a program of educational preparation shall be in accordance with such procedures and requirements as may be provided in the applicable contract.

Article V. Interstate Cooperation

The party states agree that:

(1) they will, so far as practicable, prefer the making of multilateral contracts pursuant to Article III of this agreement; and

(2) they will facilitate and strengthen cooperation in interstate certification and other elements of educational personnel qualification and for this purpose shall cooperate with agencies, organizations, and associations interested in certification and other elements of educational personnel qualification.

Article VI. Agreement Evaluation

The designated state officials of any party states may meet from time to time as a group to evaluate progress under the agreement and to formulate recommendations for changes.

Article VII. Other Arrangements

Nothing in this agreement shall be construed to prevent or inhibit other arrangements or practices of any party state or states to facilitate the interchange of educational personnel.

Article VIII. Effect — Withdrawal

(1) This agreement shall become effective when enacted into law by two states. Thereafter it shall become effective as to any state upon its enactment of this agreement.

(2) Any party state may withdraw from this agreement by enacting a statute repealing the same, but no such withdrawal shall take effect until 1 year after the governor of the withdrawing state has given notice in writing of the withdrawal to the governors of all other party states.

(3) No withdrawal shall relieve the withdrawing state of any obligation imposed upon it by a contract to which it is a party. The duration of contracts and the methods and conditions of withdrawal therefrom shall be those specified in their terms.

Article IX. Construction — Severability

This agreement shall be liberally construed so as to effectuate the purpose thereof. The provisions of this agreement shall be severable and if any phrase, clause, sentence, or provision of this agreement is declared to be contrary to the constitution of any state or of the United States or the application thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this agreement and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this agreement is held to be contrary to the constitution of any state participating therein, the agreement shall remain in full force and effect as to the state affected as to all severable matters."

Section 290. Section 20-4-132, MCA, is amended to read:

"20-4-132. Meetings — assistance. (1) The council shall meet quarterly and at other times as may be required for the proper conduct of the business of the council at the call of the ~~chairman~~ *presiding officer*.

(2) The council may adopt rules for the conduct of its business.

(3) The council shall keep a record of its proceedings.

(4) The council may request research, administrative, and clerical staff assistance from the board of public education.

(5) The council shall select a ~~chairman~~ *presiding officer* and a ~~vice-chairman~~ *vice presiding officer* from its appointed members.

(6) A quorum for a meeting is not less than four council members.

(7) Council members are entitled to travel expenses incurred for each day of attendance at council meetings or in the performance of any duty or service as a council member in accordance with 2-18-501 through 2-18-503."

Section 291. Section 20-4-202, MCA, is amended to read:

"20-4-202. Teacher and specialist certification registration. (1) Any person employed as a teacher, specialist, principal, or district superintendent shall register ~~his~~ *the person's* certificate or the district shall register its emergency authorization of employment for a teacher with the county superintendent of the county ~~wherein he~~ *in which the person* is employed in order to validate ~~his~~ *the person's* employment status and permit payment under

~~his~~ *the* employment contract. If a teacher or specialist does not register ~~his~~ *the person's* certificate with the county superintendent within 60 calendar days after ~~he~~ *the person* begins to perform ~~his~~ services, ~~he shall~~ *the person is* not ~~be~~ eligible to receive any further compensation under ~~his~~ *the* contract of employment until ~~he~~ *the person* has registered ~~his~~ *the* certificate. After the schools of a district have been open for 60 calendar days in the current school fiscal year, the county superintendent shall notify each district of the county of each teacher or specialist who has registered ~~his~~ *a* current valid certificate, and the district ~~shall~~ *may* not pay any teacher who has not registered ~~his~~ *the person's* certificate until the county superintendent does notify the district of ~~such~~ *the* registration.

(2) A teacher or specialist employed by a joint district shall register ~~his~~ *the person's* certificate with the county superintendent of the county in which ~~he~~ *the person* is working. A teacher or specialist employed by a special education cooperative shall register ~~his~~ *the person's* certificate with the county superintendent of the county in which the special education cooperative is based."

Section 292. Section 20-4-304, MCA, is amended to read:

"20-4-304. Attendance at instructional and professional development meetings. The trustees of a school district shall close the schools of the district for the annual instructional and professional development meetings of teachers' organizations. A teacher may attend instructional and professional development meetings without loss of salary or attend other appropriate inservice training~~, as~~ *that* may be prescribed by the trustees~~,~~ without loss of salary. If a teacher does ~~neither~~ *not attend*, ~~he must~~ *the teacher may* not be paid."

Section 293. Section 20-5-102, MCA, is amended to read:

"20-5-102. Compulsory enrollment and excuses. (1) Except as provided in subsection (2), any parent, guardian, or other person who is responsible for the care of any child who is 7 years of age or older prior to the first day of school in any school fiscal year shall cause the child to be instructed in the program prescribed by the board of public education pursuant to 20-7-111 until the later of the following dates:

(a) the child's 16th birthday; *or*

(b) the date of completion of the work of the 8th grade.

(2) A parent, guardian, or other person shall enroll the child in the school assigned by the trustees of the district within the first week of the school term or when ~~he~~ *the parent, guardian, or person* establishes residence in the district unless the child is:

(a) enrolled in a school of another district or state under any of the tuition provisions of this title;

(b) provided with supervised correspondence study or supervised home study under the transportation provisions of this title;

(c) excused from compulsory school attendance upon a determination by a district judge that attendance is not in the best interest of the child;

(d) excused by the board of trustees upon a determination that attendance by a child who has attained the age of 16 is not in the best interest of the child and the school; or

(e) enrolled in a nonpublic or home school that complies with the provisions of 20-5-109. For the purposes of this subsection *(2)*(e), a home school is the instruction by a parent of ~~his~~ *the parent's* child, stepchild, or ward in ~~his~~ *the parent's* residence and a nonpublic school includes a parochial, church, religious, or private school."

Section 294. Section 20-5-103, MCA, is amended to read:

"20-5-103. Compulsory attendance and excuses. (1) Except as provided in subsection (2), any parent, guardian, or other person who is responsible for the care of any child who is 7 years of age or older prior to the first day of school in any school fiscal year shall cause the child to attend the school in which ~~he~~ *the child* is enrolled for the school term and each school day ~~therein~~ *in the term* prescribed by the trustees of the district until the later of the following dates:

(a) the child's 16th birthday; *or*

(b) the date of completion of the work of the 8th grade.

(2) The provisions of subsection (1) do not apply in the following cases:

(a) The child has been excused under one of the conditions specified in 20-5-102.

(b) The child is absent because of illness, bereavement, or other reason prescribed by the policies of the trustees.

(c) The child has been suspended or expelled under the provisions of 20-5-202."

Section 295. Section 20-5-105, MCA, is amended to read:

"20-5-105. Attendance officer — powers and duties. The attendance officer of ~~any~~ *a* district ~~shall~~:

(1) *must* be vested with police powers, the authority to serve warrants, and the authority to enter places of employment of children in order to enforce the compulsory attendance provisions of this title;

(2) *shall* take into custody any child subject to compulsory attendance who is not excused under the provisions of this title and conduct ~~him~~ *the child* to the school in which ~~he~~ *the child* is or should be enrolled;

(3) *shall* do whatever else is required to investigate and enforce the compulsory attendance provisions of this title and the pupil attendance policies of the trustees;

(4) *shall* institute proceedings against any parent, guardian, or other person violating the compulsory attendance provisions of this title;

(5) *shall* keep a record of ~~his~~ transactions for the inspection and information of the trustees and make reports in the manner and to whomever the trustees designate; and

(6) *shall* perform any other duties prescribed by the trustees to preserve the morals and secure good conduct of the pupils of the district."

Section 296. Section 20-5-106, MCA, is amended to read:

"20-5-106. Truancy. (1) Whenever the attendance officer discovers a child truant from school or a child subject to compulsory attendance who is not enrolled in a school providing the required instruction and has not been excused under the provisions of this title, ~~he~~ *the officer* shall notify in writing the parent, guardian, or other person responsible for the care of the child that the continued truancy or nonenrollment of ~~his~~ *the* child ~~shall~~ *will* result in ~~his~~ *the person's* prosecution under the provisions of this section. If the child is not enrolled and in

attendance at a school or excused from school within 2 days after the receipt of the notice, the attendance officer shall file a complaint against ~~such~~ *the* person in a court of competent jurisdiction.

(2) If convicted, ~~such~~ *the* person shall be fined not less than $5 or more than $20. In the alternative, ~~he~~ *the person* may be required to give bond in the penal sum of $100, with sureties, conditioned upon ~~his~~ *the person's* agreement to cause the enrollment of ~~his~~ *the* child within 2 days ~~thereafter~~ in a school providing the courses of instruction required by this title and to cause the child to attend that school for the remainder of the current school term. If a person refuses to pay a fine and costs or to give a bond as ordered by the court, ~~he~~ *the person* shall be imprisoned in the county jail for a term of not less than 10 days or more than 30 days."

Section 297. Section 20-5-107, MCA, is amended to read:

"20-5-107. Incapacitated and indigent child attendance. In lieu of the provisions of 20-5-106 and when an attendance officer is satisfied that a pupil or a child subject to compulsory attendance is not able to attend school because ~~he~~ *the child* does not have the physical capacity or ~~he~~ *the child* is absolutely required to work at home or elsewhere in order to *provide* support ~~himself~~ *for the child* or ~~his~~ *the child's* family, the attendance officer shall report the case to the authorities charged with the relief of the poor. ~~It shall be the duty of such~~ *The* welfare authorities ~~to~~ *shall* offer ~~such~~ relief ~~as~~ *that* will enable the child to attend school. If the parent, guardian, or other person who is responsible for the care of the child denies or neglects the assistance offered to enable the child to attend school, the child ~~shall~~ *must* be committed to a state institution, at the discretion of the court."

Section 298. Section 20-5-111, MCA, is amended to read:

"20-5-111. Responsibilities and rights of parent who provides home school. Subject to the provisions of 20-5-109, a parent has the authority to instruct ~~his~~ *the parent's* child, stepchild, or ward in a home school and is solely responsible for:

(1) the educational philosophy of the home school;

(2) the selection of instructional materials, curriculum, and textbooks;

(3) the time, place, and method of instruction; and

(4) the evaluation of the home school instruction."

Section 299. Section 20-5-405, MCA, is amended to read:

"20-5-405. Medical or religious exemption. (1) When a parent, guardian, or adult who has the responsibility for the care and custody of a minor seeking to attend school or the person seeking to attend school, if an adult, signs and files with the governing authority, prior to the commencement of attendance each school year, a notarized affidavit on a form prescribed by the department stating that immunization is contrary to the religious tenets and practices of the signer, immunization of the person seeking to attend the school may not be required prior to attendance at the school. The statement must be maintained as part of the person's immunization records. A person who falsely claims a religious exemption is subject to the penalty for false swearing provided in 45-7-202.

(2) When a parent, guardian, or adult who has the responsibility for the care and custody of a minor seeking to attend school~~,~~ or the person seeking to attend school, if an adult, files with the governing authority a written statement signed by a physician licensed to practice medicine in any jurisdiction of the United

States or Canada stating that the physical condition of the person seeking to attend school or medical circumstances relating to ~~him~~ *the person* indicate that some or all of the required immunizations are not considered safe and indicating the specific nature and probable duration of the medical condition or circumstances ~~which~~ *that* contraindicate immunization, ~~he~~ *the person* is exempt from the requirements of this part to the extent indicated by the physician's statement. The statement must be maintained as part of the person's immunization records.

(3) Whenever there is good cause to believe that a person for whom an exemption has been filed under this section has a disease or has been exposed to a disease listed in 20-5-403 or will as the result of school attendance be exposed to ~~such~~ *the* disease, the person may be excluded from the school by the local health officer or the department until the excluding authority is satisfied that the person no longer risks contracting or transmitting that disease."

Section 300. Section 20-5-406, MCA, is amended to read:

"20-5-406. Immunization record. The governing authority of each school shall require written evidence of each pupil's immunization against the diseases listed in 20-5-403 and shall record the immunization of each pupil as part of ~~his~~ *the pupil's* permanent school record on a form prescribed by the department."

Section 301. Section 20-6-103, MCA, is amended to read:

"20-6-103. Permanent record of district boundaries. (1) The board of county commissioners shall maintain a permanent record ~~which~~ *that* plainly and definitely describes the boundaries of each district within the county. The county superintendent shall keep a transcript of the record in ~~his~~ *the superintendent's* office and ~~shall be~~ *is* responsible for keeping the record current.

(2) If the county superintendent determines that the boundaries of any elementary district or high school district are in conflict or are incorrectly described, ~~he~~ *the superintendent* shall change, harmonize, and describe ~~them~~ *the boundaries* accurately~~,~~ and ~~he~~ shall make a report of ~~such~~ *the* boundary adjustments to the board of county commissioners. When the board of county commissioners approves a district boundary report submitted by the county superintendent, ~~such~~ *the* boundaries ~~shall be~~ *are* the legal boundaries and description of the district within the county. Whenever district boundaries are clarified under this section, the county superintendent shall supply the trustees of the district with the legal descriptions of the boundaries of their district."

Section 302. Section 20-6-605, MCA, is amended to read:

"20-6-605. Land acquired by conditional deed or at will or sufferance. Whenever~~, after March 17, 1939,~~ the trustees acquire land by deed conditioned upon the use of the land for the conduct of school or related activities or whenever land has been used by the trustees at the will or sufferance of the land's owner or claimant and the district has constructed buildings or made other improvements on the land, the owner or claimant may repossess the land if it ceases to be used as specified by deed or, if not specified, for the conduct of school or related activities. However, the owner or claimant shall first notify the trustees in writing of ~~his~~ *the* intent to repossess the land, and the trustees shall ~~thereafter~~ have 1 year *after receipt* to remove any buildings or improvements placed ~~there~~ *upon the land* by the district. The trustees' failure to remove the buildings or improvements within that time ~~shall constitute~~ *constitutes* a forfeiture of ~~such~~ *the* buildings or improvements. Before the owner or claimant ~~shall have~~ *has* the right to give notice of repossession, the district's intention to

permanently cease using the land ~~shall~~ *must* have been established by resolution of the trustees and *a* vote of the district's electors."

Section 303. Section 20-7-113, MCA, is amended to read:

"20-7-113. Maintenance of curriculum guide file and publishing curriculum guides by superintendent of public instruction. The superintendent of public instruction shall collect and maintain a file of curriculum guides to be made available to districts for the use of schools in planning courses of instruction. ~~He~~ *The superintendent* may prepare, publish, and distribute curriculum guides for the use of schools in planning courses of instruction. ~~He~~ *The superintendent* may solicit the assistance of educators and other qualified persons in the preparation of curriculum guides."

Section 304. Section 20-7-116, MCA, is amended to read:

"20-7-116. Supervised correspondence study. The trustees of ~~any~~ *a* district may provide supervised correspondence study for a pupil when it is impossible for ~~him~~ *the pupil* to attend a school ~~due to~~ *because of* the isolation of ~~his~~ *the pupil's* residence or ~~his~~ *the pupils's* mental or physical incapacity. Supervision of the correspondence course ~~shall~~ *must* be provided by the district superintendent or the county superintendent if there is no district superintendent."

Section 305. Section 20-7-462, MCA, is amended to read:

"20-7-462. Responsibilities of surrogate parent. A person assigned as a surrogate parent shall represent the child with a disability in all decisionmaking processes concerning the child's education by:

(1) becoming thoroughly acquainted with the child's history and other information contained in school and other pertinent files, records, and reports relating to that child's educational needs;

(2) complying with state and federal law as to the confidentiality of all records and information to which ~~he~~ *the person* is privy pertaining to that child and using discretion in the necessary sharing of the information with appropriate people for the purpose of furthering the interests of the child;

(3) becoming familiar with the educational evaluation and placement for the child and by giving ~~his~~ approval or disapproval for the evaluation and placement and reviewing and evaluating special education programs pertaining to the child and ~~such~~ other programs ~~as~~ *that* may be available; and

(4) initiating any mediation, hearing, or appeal procedures necessary and seeking qualified legal assistance whenever ~~such~~ *the* assistance is in the best interest of the child."

Section 306. Section 20-7-463, MCA, is amended to read:

"20-7-463. Surrogate parent — immunity from liability — reimbursement. (1) A person appointed as a surrogate parent is exempt from liability for any act or omission performed by ~~him~~ *the person* in ~~his~~ *the* capacity as a surrogate parent except an act or omission ~~which~~ *that* is found to have been committed in a grossly negligent or malicious manner.

(2) A surrogate parent has the same protection and immunity in professional communications as a teacher.

(3) A surrogate parent must be reimbursed by the school district for all reasonable and necessary expenses incurred in the pursuit of ~~his~~ *the surrogate parent's* duties, as prescribed by rules adopted by the superintendent of public instruction."

Section 307. Section 20-7-606, MCA, is amended to read:

"20-7-606. Doing business without textbook dealer's license — penalty. ~~Any~~ *A* textbook dealer who ~~shall sell~~ *sells* or ~~offer~~ *offers* for sale or adoption a textbook to any district or county superintendent without first obtaining a textbook license from the superintendent of public instruction shall be guilty of a misdemeanor. Upon conviction of ~~such~~ *the* misdemeanor, ~~he~~ *the person* shall be fined not less than $500 or more than $2,000."

Section 308. Section 20-7-607, MCA, is amended to read:

"20-7-607. Restricting competition — penalty. At any time a licensed textbook dealer enters into any understanding, agreement, or combination to control textbook prices or otherwise restrict competition in the sale of textbooks, ~~he~~ *the dealer* shall forfeit ~~his~~ *the dealer's* surety bond and ~~textbook dealer's~~ license. The attorney general shall institute and prosecute legal proceedings for the forfeiture of the surety bond of ~~such~~ *the* licensed textbook dealer and for revocation of ~~his~~ *the* ~~textbook~~ dealer's license."

Section 309. Section 20-7-608, MCA, is amended to read:

"20-7-608. Offer or acceptance of emoluments or other inducements — penalty. (1) ~~No~~ *A* textbook dealer or ~~his~~ *the dealer's* agent ~~shall~~ *may not* offer any emolument or other inducement to any trustee or school employee to influence the selection, adoption, or purchase of textbooks.

(2) ~~No~~ *A* trustee, county superintendent, or school employee ~~shall~~ *may not* accept any emolument or other inducement from a textbook dealer or agent of ~~such~~ *the* dealer for the use of ~~his~~ *the official's or employee's* influence in the selection, adoption, or purchase of textbooks.

(3) The violation of any provisions of this section ~~shall constitute~~ *is* a misdemeanor. In addition, any trustee, county superintendent, or school employee convicted of ~~such~~ *the* misdemeanor ~~shall~~ *must* be removed from ~~his~~ *the officer's or employee's* position.

(4) ~~Nothing in this~~ *This* section ~~shall~~ *may not* be construed to prevent the supplying of a necessary number of sample textbooks for the purpose of examination by school officials or school employees."

Section 310. Section 20-8-108, MCA, is amended to read:

"20-8-108. Provisions for indigent students. ~~In all cases where~~ *If* a person to be sent to ~~said school~~ *the Montana school for the deaf and blind* is too poor to pay for necessary clothing and transportation, the judge of the district court of the district where ~~such~~ *the* person resides, upon application of any relative or friend or of any officer of the county where ~~said~~ *the* person resides, shall, if ~~he deem~~ *the judge considers* the person a proper subject, make an order to that effect. ~~which shall~~ *The order must* be certified by the clerk of the court to the superintendent of ~~said~~ *the* school, who shall then provide the necessary clothing and transportation at the expense of the county, and~~,~~ upon ~~his~~ *the superintendent* rendering ~~his~~ proper accounts ~~therefor~~ *for the expenditures* quarter-annually, the county commissioners shall allow and pay the ~~same~~ *the accounts* out of the county treasury."

Section 311. Section 20-8-120, MCA, is amended to read:

"20-8-120. Communications skills required of certain employees. (1) Each permanent employee of the school who works with deaf children or works for or with a fellow employee who is deaf ~~must~~ *shall* acquire acceptable total communications skills as prescribed by the board of public education by the end of ~~his~~ *the* first year of employment.

(2) Upon request to the board of public education by the superintendent, an exception to this requirement may be made for an employee not working directly with deaf children."

Section 312. Section 20-9-207, MCA, is amended to read:

"20-9-207. Documentation of expenditures. (1) The expenditure of district ~~moneys~~ *money*, other than employee contract payments, may be authorized by the trustees when:

(a) payee-signed claims, ~~wherein~~ *in which* the payee attests to the accuracy of the claim and that ~~he~~ *the payee* has not received the claimed amount, have been issued to the district; or

(b) the payee has provided the district with an invoice or other document identifying the quantity and total cost per item included on the invoice.

(2) The intention of this section is to provide sufficient documentation for each expenditure of district ~~moneys~~ *money*."

Section 313. Section 20-9-424, MCA, is amended to read:

"20-9-424. Validation of petition — election administrator's certificate. (1) The petitioners for a school district bond election shall submit their petition to the county election administrator of the county where the school district is located for validation of the signatures on the petition. The county election administrator shall examine the petition and attach or endorse ~~thereon~~ *on the petition* a certificate ~~which shall~~ *that must* state:

(a) the total number of electors of the school district who are, at the time, qualified to vote under the provisions of 20-20-301;

(b) which and how many of the individuals whose names are subscribed to the petition possess the qualifications to vote on a bond proposition; and

(c) whether the number of qualified signers established in subsection (1)(b) is more or less than 20% of the total number of registered electors established in subsection (1)(a).

(2) After completing the examination, the county election administrator shall immediately send the petition and ~~his~~ certificate to the school district. The county election administrator ~~shall~~ *may* not receive compensation for the examination of school district bond petitions."

Section 314. Section 20-9-436, MCA, is amended to read:

"20-9-436. County attorney to assist in ~~the~~ proceedings. The trustees of ~~any~~ *a* school district conducting bond proceedings shall prepare and maintain a transcript of their bond proceedings. It is a part of the official duties of the county attorney of every county of this state to advise and assist the trustees of each school district of ~~his~~ *the* county in its bond proceedings. Before any transcript of school district bond proceedings is sent to the board of investments, ~~he~~ *the county attorney* shall carefully examine ~~such~~ *the* transcript, and the transcript may not be sent until ~~he~~ *the county attorney* has attached ~~his~~ *an* opinion to the transcript that the proceedings are in full compliance with law. ~~The~~ *However, the* trustees of any school district~~, however,~~ may, upon consent of the county attorney, employ any attorney licensed in Montana to assist the county attorney in the performance of ~~his~~ *these* duties."

Section 315. Section 20-9-441, MCA, is amended to read:

"20-9-441. Redemption of bonds — investment of debt service fund ~~moneys~~ *money*. (1) Whenever there is a sufficient amount of money in any school district debt service fund available to pay and redeem one or more bonds

of ~~such~~ *the* school district held by the state of Montana, the county treasurer shall apply ~~such~~ *the* money in payment of as many of ~~such~~ *the* bonds as can be paid and redeemed. The county treasurer shall give notice not less than 30 days before the next interest due date to the board of investments that ~~on such interest due date such~~ *the* bonds will be paid *on the interest due date*. Before ~~such~~ *the* interest due date, the county treasurer shall remit to the state treasurer the amount of money that is necessary to pay the bonds that are being redeemed and the interest due on ~~such~~ *the* bonds. When the state treasurer receives ~~such~~ *the* payment, ~~he~~ *the treasurer* shall cancel ~~such~~ *the* bonds and any unpaid coupons of ~~such~~ *the* bonds and return the canceled bonds and coupons to the county treasurer.

(2) Whenever there is a sufficient amount of money in any school district debt service fund available to pay and redeem one or more optional bonds of ~~such~~ *the* school district not held by the state of Montana, not yet due but then redeemable or becoming redeemable on the next interest due date, the county treasurer shall apply ~~such~~ *the* available money in payment of as many of ~~such~~ *the* bonds as can be paid and redeemed. The county treasurer shall give notice to the holder of the bonds, if known ~~to him~~, or to any bank or financial institution at which the bonds are payable, at least 30 days before the next interest due date, that the bonds will be paid and redeemed on ~~such~~ *that* date. If the bonds are payable at some bank or financial institution, the county treasurer shall remit to the bank or financial institution, before ~~such~~ *the* interest due date, an amount sufficient to pay and redeem the bonds. If the bonds are not presented for payment and redemption on ~~such~~ *the* interest due date, the accrual of interest ~~shall cease~~ *ceases* on ~~such~~ *the* interest due date.

(3) Whenever there is money available in any school district debt service fund sufficient to pay and redeem one or more outstanding bonds not yet due or redeemable and not held by the state of Montana, the trustees of ~~such~~ *the* school district may direct the county treasurer to purchase ~~such~~ *the* bonds of the district if this can be done at not more than par and accrued interest or at ~~such~~ *a* reasonable premium ~~as~~ *that* the trustees may feel justified in paying, but ~~in no case~~ *not* exceeding 6%.

(4) Whenever the trustees cannot purchase outstanding bonds of the school district at a reasonable price, the available debt service fund money ~~shall~~ *must* be invested by the trustees under the provisions of 20-9-213(4). ~~Such~~ *The* investments ~~shall~~ *must* be sold in ample time before the debt service fund money is required for the payment of the bonds of the school district."

Section 316. Section 20-9-442, MCA, is amended to read:

"20-9-442. Entries of payments and notification of school district. The county treasurer shall make the necessary entries of all payments of interest and principal on ~~his~~ *the treasurer's* bond registration record and shall promptly notify the clerk of the school district when ~~such~~ *the* payments are made. The county treasurer also shall deliver the canceled coupons and bonds to the county clerk at the end of each month. The county clerk shall file ~~such~~ *the* canceled coupons and bonds in ~~his~~ *the clerk's* office."

Section 317. Section 20-10-112, MCA, is amended to read:

"20-10-112. Duties of superintendent of public instruction. In order to have a uniform and equal provision of transportation by all districts in the state of Montana, the superintendent of public instruction shall:

(1) prescribe rules and forms for the implementation and administration of the transportation policies adopted by the board of public education;

(2) prescribe rules for the approval of school bus routing by the county transportation committee;

(3) prescribe the format of the contract for individual transportation and supply each county superintendent with a sufficient number of ~~such~~ contracts;

(4) prescribe rules for the approval of individual transportation contracts, including the increases of the schedule rates ~~due to~~ *because of* isolation under the policy of the board of public education, and provide a degree-of-isolation chart to school district trustees to serve as a guide;

(5) approve, disapprove, or adjust all school bus routing submitted by the county superintendent;

(6) approve, disapprove, or adjust all individual transportation contracts submitted by the county superintendent;

(7) prescribe rules for the consideration of controversies appealed to ~~him~~ *the superintendent* and rule on ~~such~~ *the* controversies; and

(8) disburse the state transportation reimbursement in accordance with the provisions of law and the transportation policies of the board of public education."

Section 318. Section 20-10-121, MCA, is amended to read:

"20-10-121. Duty of trustees to provide transportation — types of transportation — bus riding time limitation. (1) The trustees of ~~any~~ *a* district may furnish transportation to an eligible transportee who attends a school of the district or has been granted permission to attend a school outside of the district. Whenever the trustees of a district provide transportation for ~~any~~ *an* eligible transportee, the trustees ~~must~~ *shall* provide all eligible transportees of the district with transportation. The trustees shall furnish transportation when directed to do so by the county transportation committee and ~~such~~ *when that* direction is upheld by the superintendent of public instruction.

(2) The tendering of a contract to the parent or guardian ~~whereby~~ *under which* the district would pay the parent or guardian for individually transporting the pupil or pupils ~~shall fulfill~~ *fulfills* the district's obligation to furnish transportation for an eligible transportee. The parent or guardian of an eligible transportee may~~, at his discretion,~~ provide transportation or arrange for transportation for ~~his~~ *the parent's or guardian's* child at ~~his~~ *the parent's or guardian's* own expense to any district willing to accept ~~his~~ *the* child.

(3) The type of transportation provided by a district may be:

(a) by a school bus; or

(b) by ~~such~~ individual transportation ~~as~~:

(i) paying the parent or guardian for individually transporting the pupil;

(ii) paying board and room reimbursements;

(iii) providing supervised correspondence study; or

(iv) providing supervised home study.

(4) When the parent or guardian of an elementary pupil consents to a trip of over 1 hour, the trustees may require ~~such~~ *the* eligible transportee to ride a school bus for more than 1 hour ~~per~~ *each* trip."

Section 319. Section 20-10-122, MCA, is amended to read:

"20-10-122. Discretionary provision of transportation and payment for this transportation. (1) The trustees of ~~any~~ *a* district ~~also~~ may provide

school bus transportation to any pupil of a public school who is not an eligible transportee of the district:

(a) on a school bus conveying eligible transportees when the ineligible transportee will not displace an eligible transportee from ~~such~~ *the* school bus because of the lack of seating capacity;

(b) on a school bus operated by the district for the sole purpose of providing transportation for ineligible transportees. ~~Such~~ *The* school bus ~~shall~~ *must* service those children living the greatest distance from the school to be attended.

(c) on a school bus operated for the purpose of relieving congestion in a school building or to avoid the necessity of erecting a new building or for any other reasons of economy or convenience.

(2) When the trustees of a district provide school bus transportation to an ineligible transportee under the conditions of subsection (1)(a) or (1)(b), the district may charge each ineligible transportee ~~his~~ *a* proportionate share, as determined by the trustees, of the cost of operating ~~such~~ *the* school bus. Money realized from ~~such~~ *the* payments ~~shall~~ *must* be deposited to the credit of the transportation fund."

Section 320. Section 20-10-123, MCA, is amended to read:

"20-10-123. Provision of transportation for nonpublic school children. Any child attending a nonpublic school may ride a school bus when a permit to ride ~~such~~ *the* school bus is secured from the operating district by the parent or guardian of ~~such~~ *the* nonpublic school child and when there is seating capacity available on ~~such~~ *the* school bus. When a nonpublic school child rides a school bus, the operating district may charge ~~such~~ *the* child ~~his~~ *a* proportionate share, as determined by the trustees, of the cost of operating ~~such~~ *the* school bus. Money realized from ~~such~~ *the* payments ~~shall~~ *must* be deposited to the credit of the transportation fund."

Section 321. Section 20-15-209, MCA, is amended to read:

"20-15-209. Determination of approval or disapproval of proposition — subsequent procedures if approved. (1) To carry, the proposal to organize the community college district must receive a majority of the total number of votes cast ~~thereon~~, and the coordinator of community college districts, from the results ~~so~~ certified and attested, shall determine whether the proposal has received the majority of the votes cast ~~thereon~~ for each county within the proposed district and shall certify the results to the regents. Approval for the organization of a new community college district ~~shall~~ *must* be granted at the discretion of the legislature acting upon the recommendation of the regents. ~~Should~~ *If* the certificate of the coordinator of community college districts ~~show~~ *shows* that the proposition to organize ~~such~~ *the* community college district has received a majority of the votes cast ~~thereon~~ in each county within the proposed district, the regents may make an order declaring the community college district organized and cause a copy ~~thereof~~ *of the order* to be recorded in the office of the county clerk and recorder in each county in which a portion of ~~such~~ *the* new district is located. If the proposition carries, the regents ~~also~~ shall determine which candidates have been elected trustees. ~~Should~~ *If* the proposition to organize the community college district ~~fail~~ *fails* to receive a majority of the votes cast ~~thereon~~, ~~no~~ *a* tabulation ~~shall~~ *may not* be made to determine the candidates elected trustees.

(2) Within 30 days of the date of the organization order, the regents shall set a date and call an organization meeting for the board of trustees of the

community college district and shall notify the ~~duly~~ elected trustees of their membership and of the organization meeting. ~~Such~~ *The* notification ~~shall~~ *must* designate a temporary ~~chairman~~ *presiding officer* and secretary for the purposes of organization."

Section 322. Section 20-15-219, MCA, is amended to read:

"20-15-219. Qualifications for office of trustee — nominating petitions. (1) Any person who is qualified to vote in a community college district under the provisions of 20-20-301 is eligible for the office of community college trustee.

(2) Any five electors of a community college district qualified under the provisions of 20-20-301 may nominate as many trustee candidates as there are trustee positions subject to election at the ensuing election. A nominating petition containing the signatures of the five electors and the name of each person nominated for candidacy must be submitted to the election clerk designated by the board of trustees no less than 30 days before the regular school election day at which ~~he~~ *the person* is to be a candidate. If there are different terms to be filled, the term for which each candidate is nominated must also be indicated."

Section 323. Section 20-15-222, MCA, is amended to read:

"20-15-222. Results of election — qualifying oath — term of office. (1) When the board of trustees of the community college district has received all the certified results of the election from the component elementary districts, the then-qualified members of the board of trustees of ~~such~~ *the* community college district shall tabulate the results ~~so~~ received, shall declare and certify the candidate or candidates receiving the greatest number of votes to be elected to the position or positions to be filled, and shall declare and certify the results of the votes cast on any proposition presented at ~~such~~ *the* election.

(2) (a) ~~No~~ *A* person who receives a certificate of election as a community college trustee may *not* assume the trustee position until ~~he~~ *the person* has qualified by taking an oath of office prescribed by the constitution of Montana at the next regularly scheduled meeting of the board of trustees after receipt of the certificate of election.

(b) If the elected person does not qualify in accordance with this requirement, another person must be appointed in a manner provided by 20-15-223 and shall serve until the next regular election.

(3) After a person has qualified for a trustee position, ~~he~~ *the person* shall hold ~~such~~ *the* position for the term of the position and until ~~his~~ *a* successor has been elected or appointed and has been qualified."

Section 324. Section 20-15-224, MCA, is amended to read:

"20-15-224. Board of trustees — organization, meetings, quorum, mileage, and seal. (1) (a) The trustees of each community college district shall annually organize as a governing board of the community college district at the next regularly scheduled meeting after the regular election day and after the issuance of the election certificate to the newly elected trustees.

(b) In order to organize, the trustees of the community college district ~~shall~~ *must* be given notice by the coordinator of the time and place where the organization meeting will be held, and at ~~such~~ *the* meeting they shall choose one of their members as ~~chairman~~ *presiding officer* and as secretary. In addition, the trustees may employ or appoint a competent person who is not a member of the trustees as the clerk of the community college district.

(c) The ~~chairman~~ *presiding officer* and secretary of the trustees of the community college district shall serve until the next organization meeting. The ~~chairman~~ *presiding officer* shall preside at all meetings of the trustees in accordance with the customary rules of order. ~~He~~ *The presiding officer* shall perform the duties prescribed by this title and any other duties that normally pertain to ~~such~~ *the* office.

(2) The board of trustees of the community college shall hold monthly meetings within the community college district on ~~such~~ *the* day of the month the trustees may set. The ~~president~~ *presiding officer* and secretary of the board or a majority of the board may also call special meetings of the board of trustees at any time and place within the community college district if in ~~their~~ *its* judgment necessity requires ~~it.~~ *the meeting*. The secretary of the board shall give each member a 48-hour written notice of all special meetings.

(3) A majority of the board of trustees ~~shall constitute~~ *constitutes* a quorum for the transaction of business, except that ~~no~~ *a* contract ~~shall~~ *may not* be let, teacher employed or dismissed, or bill approved unless a majority of the total board membership ~~shall vote~~ *votes* in favor of ~~such~~ *the* action.

(4) A member of the board of trustees ~~shall~~ *must* receive mileage, as provided for in 2-18-503, for the distance necessarily traveled in going to and returning from the place of the meeting and ~~his~~ *the member's* place of residence each day that ~~such~~ *the* trip is actually made.

(5) The board shall keep a common seal with which to attest its official acts."

Section 325. Section 20-15-227, MCA, is amended to read:

"20-15-227. Trustee removal procedure. (1) Any person may seek the removal of a community college trustee by filing a complaint with the board of county commissioners, containing charges based on one or more of the grounds cited in 20-15-228.

(2) If upon receiving ~~such~~ a complaint it appears that there is probable cause for removal, the board of county commissioners shall suspend ~~such~~ *the* trustee from ~~his~~ *the* trustee position until charges can be heard in the appropriate district court. The board of county commissioners shall then transmit the complaint, together with a statement of suspension, to the district court."

Section 326. Section 20-15-228, MCA, is amended to read:

"20-15-228. Grounds for removal. A community college trustee may be removed ~~whenever he~~ *if the trustee*:

(1) moves ~~his~~ *the trustee's* residence from the applicable community college district;

(2) is no longer a registered elector of the community college district under the provisions of 20-20-301;

(3) is absent from the district 60 consecutive days;

(4) fails to attend three consecutive meetings of the trustees without reasonable cause;

(5) fails to perform responsibilities in accordance with 20-15-226; or

(6) ceases to have the capacity to hold office."

Section 327. Section 20-20-201, MCA, is amended to read:

"20-20-201. Calling of school election. (1) At least 40 days before any school election, the trustees of ~~any~~ *a* district shall call ~~such~~ *the* school election by

resolution, stating the date and purpose of ~~such~~ *the* election, and shall conduct it in accordance with the procedures required by law~~,~~ when:

(a) an election must be held on the regular school election day;

(b) in their discretion, the trustees order an election for a purpose authorized by law;

(c) the county superintendent orders an election in accordance with the law authorizing ~~such~~ an order;

(d) the board of public education orders an election in accordance with the law authorizing ~~such~~ an order;

(e) the county commissioners order an election in accordance with the law authorizing ~~such~~ an order;

(f) the board of trustees of a community college district orders an election in accordance with the law authorizing ~~such~~ an order*,* ~~(~~in which case the community college district shall bear its share of the cost of ~~such~~ *the* election~~)~~; or

(g) a school election is required by law under any other circumstances.

(2) The resolution calling any school election ~~shall~~ *must* be transmitted to the county election administrator no later than 35 days before the election in order to enable ~~him~~ *the administrator* to close the registration and prepare the lists of registered electors as required by school election laws."

Section 328. Section 20-20-301, MCA, is amended to read:

"20-20-301. Qualifications of elector. An individual is entitled to vote at school elections if ~~he~~ *the individual* has the qualifications set forth in 13-1-111 and is a resident of the school district or, in a school district that has been apportioned into single-member trustee districts according to 20-3-337, a resident of the trustee district."

Section 329. Section 20-20-411, MCA, is amended to read:

"20-20-411. Conduct of election. Election judges shall conduct school elections in a manner that ensures a fair and unbiased determination of the matters put before the electorate and see that each elector has an adequate opportunity to cast ~~his~~ *the elector's* vote."

Section 330. Section 20-20-417, MCA, is amended to read:

"20-20-417. Request for county election administrator to conduct election. (1) By June 1 of each year, the trustees of ~~any~~ *a* district may request the county election administrator to conduct certain school elections during the ensuing school fiscal year.

(2) Whenever the county election administrator agrees to conduct a school election, ~~he~~ *the administrator* shall:

(a) perform the duties imposed on the trustees and the clerk of the district for school elections in 20-20-203, 20-20-313, and 20-20-401;

(b) conduct the election in accordance with the provisions of Title 13, chapters 13 and 15; and

(c) deliver to the trustees, for the purpose of canvassing the vote, the certified tally sheets and other items as provided in 13-15-301.

(3) Whenever the trustees request the county election administrator to conduct a school election, the school district shall pay the costs of the election as provided in 13-1-302."

Section 331. Section 20-25-101, MCA, is amended to read:

"20-25-101. Antidiscrimination. The Montana university system shall instruct ~~men and women~~ *all individuals* on equal terms."

Section 332. Section 20-25-226, MCA, is amended to read:

"20-25-226. Assents to acts of congress. (1) (a) The state of Montana assents to the provisions of an act of congress entitled "An Act to Provide for an Increased Annual Appropriation for Agricultural Experiment Stations and Regulating the Expenditure Thereof", approved March 16, 1906, and consents to receive the benefits ~~thereof~~ *of the act* in the manner and for the purposes intended and provided in the act.

(b) The agricultural experiment station ~~shall~~ *must* be the beneficiary of the funds in the act and shall use the funds only for the purposes ~~therein~~ provided *in the act*.

(c) The treasurer of Montana state university-Bozeman may receive all ~~moneys~~ *money* appropriated by the act, to be expended under the supervision of the regents in the manner designated in the act, and ~~shall~~ *must* receive~~,~~ *and shall* hold~~,~~ and account for the funds and make reports to the secretary of agriculture as required by the act.

(2) (a) The state accepts and assents to the terms and provisions of the act of congress approved May 8, 1914, entitled "An Act to Provide for Cooperative Agricultural Extension Work Between the Agricultural Colleges in the Several States Receiving the Benefits of an Act of Congress Approved July Second, Eighteen Hundred and Sixty-two, and of Acts Supplementary Thereto, and the United States Department of Agriculture".

(b) The president of Montana state university-Bozeman may enter into all necessary agreements with the secretary of agriculture of the United States for the receipt and expenditure of all money paid under the provisions of ~~said~~ *the* act.

(c) ~~He~~ *The president* may receive and expend ~~such~~ *the* money in accordance with the provisions of ~~said~~ *the* act and any agreements ~~so~~ made *pursuant to the act*."

Section 333. Section 20-25-242, MCA, is amended to read:

"20-25-242. Purpose of station. (1) It is the purpose of ~~this~~ *the Montana forest and conservation experiment* station to:

(a) study the forest and forest land resources of the state to the end that the state and its citizens may attain the highest economic and social benefits from the forest soils within the state and the influences and products flowing ~~therefrom~~ *from forests*;

(b) study the growth and the utilization of timber with special reference to their improvement and the widening of the markets available to the state;

(c) determine:

(i) the relationship between the forest and water conservation and waterflow regulation;

(ii) the relationship between the forest and pasturage for domestic livestock and wildlife;

(iii) the relationship between the forest and recreation; and

(iv) those other direct and indirect benefits that may be secured by the maintenance of or the establishment of forests or woodlands;

(d) study and develop the establishment of windbreaks, shelterbelts, and woodlots on the farms of the state that moisture may be conserved ~~thereby~~ *by windbreaks, shelterbelts, and woodlots* for the best production of agricultural crops and forage, for the prevention of soil wastage and erosion, to make the farm home more comfortable, and to produce forest material for the use of the farmer and the ~~stockman~~ *livestock producer*;

(e) study the findings of other agencies *so* that the information ~~thus obtained~~ may be used to improve the growth, management, and utilization of the timber within the state and to protect it against damage by fire, insects, disease, and other harmful agencies;

(f) collect, compile, and publish statistics relative to Montana forests and forestry and the influences flowing ~~therefrom~~ *from forests and forestry*;

(g) prepare and publish bulletins and reports, *along* with the necessary illustrations and maps, *so* that the information collected by the station in forestry and in conservation may be made available for use~~;~~ and distribute this information or material in ~~such~~ other ways ~~as~~ *that* the board of regents may direct;

~~(g)~~*(h)* collect a library and bibliography of literature pertaining to or useful for the purpose of 20-25-241 through 20-25-245;

~~(h)~~*(i)* study logging, lumbering, and milling operations and other operations dealing with the products of forest soils with special reference to their improvement;

(j) investigate and make tests of forest products produced or that may be produced within the state *so* that markets may be improved ~~thereby~~;

~~(i)~~*(k)* consider ~~such~~ other scientific and economic problems ~~as~~ *that*, in the judgment of the board of regents, are of value to the people of the state;

~~(j)~~*(l)* cooperate with the other departments of the university of Montana-Missoula, *with* the departments of the state government when mutually beneficial, and with private individuals and agencies and cooperate with the United States government and its branches as a land-grant institution or otherwise in accordance with their regulations; *and*

~~(k)~~*(m)* establish ~~such~~ field experiment stations ~~as~~ *that,* in the judgment of the board of regents*,* may be necessary.

(2) The board of regents may accept, for and in behalf of the state of Montana, ~~such~~ gifts of land or other donations ~~as~~ *that* may be made to the state for the purposes of 20-25-241 through 20-25-245."

Section 334. Section 20-25-306, MCA, is amended to read:

"20-25-306. Designation of holidays by board of regents. (1) The board of regents of higher education may designate the following business days as holidays for all employees of the university system in exchange for the same number of legal holidays enumerated in 1-1-216:

(a) the Friday following Thanksgiving;

(b) the Monday before Christmas Day or New Year's Day if either holiday falls on Tuesday; and

(c) the Friday after Christmas Day or New Year's Day if either holiday falls on Thursday.

(2) A full-time employee who is scheduled for a day off on a day that is designated as a holiday under subsection (1) is entitled to receive another day off

with pay during the same pay period of the designated holiday or as scheduled by the employee and ~~his~~ *the employee's* supervisor in addition to the employee's regularly scheduled days off ~~provided~~ *if* the employee is in a pay status on ~~his~~ *the* last regularly scheduled working day immediately before the holiday or on ~~his~~ *the* first regularly scheduled working day immediately after the holiday. Part-time employees receive pay for the designated holiday on a prorated basis according to rules adopted by the department of administration or appropriate administrative officer under 2-18-604."

Section 335. Section 20-25-322, MCA, is amended to read:

"20-25-322. Traffic citations — agreements with city or county. The president of each unit may ~~in his discretion~~ enter into an agreement with the city or county in which ~~his~~ *the* unit is located to authorize members of the unit's security department to issue citations for parking or moving traffic violations as defined by state or municipal laws ~~which~~ *that* occur within the boundaries of the campus or on streets or alleys contiguous ~~thereto~~ *to the campus*. All ~~such~~ citations ~~shall~~ *must* be considered within the jurisdiction of the appropriate local authority and ~~shall~~ *must* be handled in the same manner as citations issued by peace officers of ~~such~~ *the* local authority."

Section 336. Section 20-25-323, MCA, is amended to read:

"20-25-323. Control and direction of security department. The president of each unit ~~shall have~~ *has* general control and direction of the security department of ~~his~~ *the* unit."

Section 337. Section 20-25-504, MCA, is amended to read:

"20-25-504. Evidence as to domiciliary intent — changes in status. (1) To determine the domicile of a person, the units of the system shall apply the following rules:

(a) Nonpayment of Montana income tax by a person whose income is sufficient to be taxed is highly persuasive evidence of non-Montana domicile.

(b) A person ~~must~~ *shall* intend to establish a domicile in Montana.

(2) After registration, a student's classification for tuition and fee purposes remains unchanged in the absence of evidence to the contrary. A written statement of the evidence ~~shall~~ *must* be filed with the registering authority of the unit. Changes in classification ~~shall~~ *must* be in writing signed by the registering authority and ~~shall~~ take effect at the student's next registration.

(3) A minor shall qualify for a change in status only if ~~his~~ *the minor's* parents or the parent having legal custody or, if neither parent has legal custody, the parent with whom ~~he~~ *the minor* customarily resides or legal guardian or person having legal custody completes the requirements for establishing domicile ~~heretofore set forth~~.

(4) It is presumed a minor or adult registered as a full-time student at any unit is not qualified for a change in ~~his or his~~ *the person's* dependent's classification for tuition and fee purposes unless ~~he~~ *the person* completes 12 continuous months of residence while not attending a unit of the system or other institution of higher learning or while serving in the armed forces.

(5) Any student whose request for classification as a resident student is denied has the right of appeal to the executive secretary of the Montana university system. Immediately upon rejection and at the request of the student, the registering authority shall forward a copy of ~~his~~ *the authority's* decision and a complete file on the student to the executive secretary. The executive secretary may accept other evidence of residence from either the

student, the registering authority, or other interested persons. Within 30 days of the receipt of the decision of the registering authority, the executive secretary shall determine the resident status of the student and shall notify the student and the registering authority of ~~his~~ *the* decision. The executive secretary's decision may be appealed to the regents if the regents agree to entertain ~~such~~ an appeal."

Section 338. Section 20-25-511, MCA, is amended to read:

"20-25-511. Student's right of privacy — legislative intent. It is the legislature's intent that an institution of the university system of Montana is obligated to respect a student's right of privacy. This obligation must be observed by establishing procedures to safeguard the institution's activities ~~which~~ *that* are necessary to protect the health, safety, and privacy of a person's residence and the privacy of ~~his~~ *the person's* records. Intrusions by peace officers and other officials exercising responsibility for law enforcement must be governed by standards and procedures no less stringent than those applicable to intrusions on private quarters outside the institutions. ~~Further, a~~ *A* student may not be subjected to discrimination ~~in the manner~~ *by the use* of covert records."

Section 339. Section 20-25-512, MCA, is amended to read:

"20-25-512. Contracts waiving right to privacy prohibited. A university or college facility may not require a student to sign any contract ~~which~~ *that* would waive ~~his or her~~ *the student's* right to privacy and due process of law."

Section 340. Section 20-25-513, MCA, is amended to read:

"20-25-513. Written notice required for entry to student's room — emergency. An authorized official of the university or college may not enter the room of a student located at ~~such~~ *an* institution unless ~~he~~ *the official* has given the student a notice in writing. An emergency such as a fire or a call for help or ~~where~~ *when* there is probable cause to believe the occupant needs assistance is the only exception to the written notice requirement. In ~~such~~ an emergency, evidence of *a* crime obtained as a result of ~~such~~ *the* emergency entry ~~shall~~ *may* not be admissible in any court of law unless due process of law has been satisfied in obtaining ~~such~~ *the* evidence."

Section 341. Section 20-25-516, MCA, is amended to read:

"20-25-516. Academic records to be kept separate — student's right to examine records. (1) Academic records ~~shall~~ *must* be kept separate from disciplinary and all other records. Academic transcripts ~~shall~~ *may* contain only information of *an* academic nature.

(2) A student ~~shall have~~ *has* the right to examine all written summaries, descriptions, statements, or reports of *an* academic or disciplinary nature ~~which~~ *that* may have been compiled upon ~~him or her~~ *the student*."

Section 342. Section 20-25-603, MCA, is amended to read:

"20-25-603. Teacher instruction — course required of education students. All units of the Montana university system and all private colleges and universities in Montana that offer any degree in education shall require that any person who receives any degree in education from that unit, private college, or private university ~~after December 31, 1972,~~ must have successfully completed a course in health education to include drug and alcohol education and abuse prior to being awarded ~~his~~ *the* degree."

Section 343. Section 20-25-703, MCA, is amended to read:

"20-25-703. Limitation on use of funds. ~~No less than~~ *At least* 70% of the funds allocated to the program ~~shall~~ *must* be used to provide job opportunities for students with demonstrated financial need. The remainder of the funds allocated to this program may be used to provide job opportunities on a basis other than financial need. ~~Such~~ *The* other bases include but are not limited to:

(1) laboratory, teaching, and tutorial assistantships requiring particular skills; and

(2) cases in which a student's family cannot demonstrate financial need but in which the student has a desire to contribute toward ~~his~~ *the student's* education through employment."

Section 344. Section 20-25-801, MCA, is amended to read:

"20-25-801. Western Regional Higher Education Compact approved. The legislature of the state of Montana ~~hereby~~ approves, ratifies, and adopts the Western Regional Higher Education Compact approved by the western governors conference meeting at Denver, Colorado, on November 10, 1950, which compact is as follows:

WESTERN REGIONAL HIGHER EDUCATION COMPACT

ARTICLE I

(1) WHEREAS, the future of this nation and of the western states is dependent upon the quality of the education of its youth; and

(2) WHEREAS, many of the western states individually do not have sufficient numbers of potential students to warrant the establishment and maintenance within their borders of adequate facilities in all of the essential fields of technical, professional, and graduate training, nor do all of the states have the financial ability to furnish within their borders institutions capable of providing acceptable standards of training in all of the fields mentioned above; and

(3) WHEREAS, it is believed that the western states, or groups of such states within the region, cooperatively can provide acceptable and efficient educational facilities to meet the needs of the region and of the students thereof;

(4) NOW, THEREFORE, the states of Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming and the territories of Alaska and Hawaii do hereby covenant and agree as follows:

ARTICLE II

Each of the compacting states and territories pledges to each of the other compacting states and territories faithful cooperation in carrying out all the purposes of this compact.

ARTICLE III

The compacting states and territories hereby create the western interstate commission for higher education, hereinafter called the commission. Said commission shall be a body corporate of each compacting state and territory and an agency thereof. The commission shall have all the powers and duties set forth herein, including the power to sue and be sued and such additional powers as may be conferred upon it by subsequent action of the respective legislatures of the compacting states and territories.

ARTICLE IV

(1) The commission shall consist of three resident members from each compacting state or territory. At all times one commissioner from each

compacting state or territory shall be an educator engaged in the field of higher education in the state or territory from which ~~he~~ *the educator* is appointed.

(2) The commissioners from each state and territory shall be appointed by the governor thereof as provided by law in such state or territory. Any commissioner may be removed or suspended from office as provided by the law of the state or territory from which ~~he shall have been~~ *the commissioner is* appointed.

(3) The terms of each commissioner shall be 4 years; provided, however, that the first three commissioners shall be appointed as follows: one for 2 years, one for 3 years, and one for 4 years. Each commissioner shall hold office until ~~his~~ *a* successor shall be appointed and qualified. If any office becomes vacant for any reason, the governor shall appoint a commissioner to fill the office for the remainder of the unexpired term.

ARTICLE V

(1) Any business transacted at any meeting of the commission must be by affirmative vote of a majority of the whole number of compacting states and territories.

(2) One or more commissioners from a majority of the compacting states and territories shall constitute a quorum for the transaction of business.

(3) Each compacting state and territory represented at any meeting of the commission is entitled to one vote.

ARTICLE VI

(1) The commission shall elect from its number a ~~chairman~~ *presiding officer* and a ~~vice-chairman~~ *vice presiding officer* and may appoint and, at its pleasure, dismiss or remove such officers, agents, and employees as may be required to carry out the purpose of this compact and shall fix and determine their duties, qualifications, and compensation, having due regard for the importance of the responsibilities involved.

(2) The commissioners shall serve without compensation but shall be reimbursed for their actual and necessary expenses from the funds of the commission.

ARTICLE VII

(1) The commission shall adopt a seal and bylaws and shall adopt and promulgate rules and regulations for its management and control.

(2) The commission may elect such committees as it deems necessary for the carrying out of its functions.

(3) The commission shall establish and maintain an office within one of the compacting states for the transaction of its business and may meet at any time but in any event must meet at least once a year. The ~~chairman~~ *presiding officer* may call such additional meetings and upon the request of a majority of the commissioners of three or more compacting states or territories shall call additional meetings.

(4) The commission shall submit a budget to the governor of each compacting state and territory at such time and for such period as may be required.

(5) The commission shall, after negotiations with interested institutions, determine the cost of providing the facilities for graduate and professional education for use in its contractual agreements throughout the region.

(6) On or before January 15 of each year, the commission shall submit to the governors and legislatures of the compacting states and territories a report of its activities for the preceding calendar year.

(7) The commission shall keep accurate books of account, showing in full its receipts and disbursements, and said books of account shall be open at any reasonable time for inspection by the governor of any compacting state or territory or ~~his~~ *the governor's* designated representative. The commission shall not be subject to the audit and accounting procedure of any of the compacting states or territories. The commission shall provide for an independent annual audit.

ARTICLE VIII

(1) It shall be the duty of the commission to enter into such contractual agreements with any institutions in the region offering graduate or professional education and with any of the compacting states or territories as may be required in the judgment of the commission to provide adequate service and facilities of graduate and professional education for the citizens of the respective compacting states or territories. The commission shall first endeavor to provide adequate services and facilities in the fields of dentistry, medicine, public health, and veterinary medicine and may undertake similar activities in other professional and graduate fields.

(2) For this purpose the commission may enter into contractual agreements:

(a) with the governing authority of any educational institution in the region or with any compacting state or territory to provide such graduate or professional educational services upon terms and conditions to be agreed upon between contracting parties; and

(b) with the governing authority of any educational institution in the region or with any compacting state or territory to assist in the placement of graduate or professional students in educational institutions in the region providing the desired services and facilities, upon such terms and conditions as the commission may prescribe.

(3) It shall be the duty of the commission to undertake studies of needs for professional and graduate educational facilities in the region, the resources for meeting such needs, and the long-range effects of the compact on higher education and from time to time to prepare comprehensive reports on such research for presentation to the western governors' conference and to the legislatures of the compacting states and territories. In conducting such studies, the commission may confer with any national or regional planning body which may be established. The commission shall draft and recommend to the governors of the various compacting states and territories uniform legislation dealing with problems of higher education in the region.

(4) For the purpose of this compact the word "region" shall be construed to mean the geographical limits of the several compacting states and territories.

ARTICLE IX

The operating costs of the commission shall be apportioned equally among the compacting states and territories.

ARTICLE X

This compact shall become operative and binding immediately as to those states and territories adopting it whenever five or more of the states or territories of Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, Wyoming, Alaska, and Hawaii have duly

adopted it prior to July 1, 1953. This compact shall become effective as to any additional states or territories adopting thereafter at the time of such adoption.

ARTICLE XI

This compact may be terminated at any time by consent of a majority of the compacting states or territories. Consent shall be manifested by passage and signature in the usual manner of legislation expressing such consent by the legislature and governor of such terminating state. Any state or territory may at any time withdraw from this compact by means of appropriate legislation to that end. Such withdrawal shall not become effective until 2 years after written notice thereof by the governor of the withdrawing state or territory, accompanied by a certified copy of the requisite legislative action, is received by the commission. Such withdrawal shall not relieve the withdrawing state or territory from its obligations hereunder accruing prior to the effective date of withdrawal. The withdrawing state or territory may rescind its action of withdrawal at any time within the 2-year period. Thereafter, the withdrawing state or territory may be reinstated by application to and the approval by a majority vote of the commission.

ARTICLE XII

(1) If any compacting state or territory shall at any time default in the performance of any of its obligations assumed or imposed in accordance with the provisions of this compact, all rights, privileges, and benefits conferred by this compact or agreements hereunder shall be suspended from the effective date of such default as fixed by the commission.

(2) Unless such default shall be remedied within a period of 2 years following the effective date of such default, this compact may be terminated with respect to such defaulting state or territory by affirmative vote of three-fourths of the other member states or territories.

(3) Any such defaulting state may be reinstated by:

(a) performing all acts and obligations upon which it has heretofore defaulted; and

(b) application to and the approval by a majority vote of the commission."

Section 345. Section 20-25-806, MCA, is amended to read:

"20-25-806. Appointment of commissioners to the western interstate commission for higher education. (1) In making the appointments of commissioners provided for in 20-25-801, the governor shall appoint three members as follows:

(a) one member who is an educator engaged in the field of higher education in Montana;

(b) one member who is engaged in a professional occupation; and

(c) one member who is a legislator.

(2) The term of each commissioner is 4 years as provided in the compact. The legislator appointed shall serve until the expiration of ~~his~~ *the term of* appointment, even though ~~his~~ *the* legislative term may have ended."

Section 346. Section 20-31-301, MCA, is amended to read:

"20-31-301. Organization — procedural rules — compensation of members. (1) The members of the fire services advisory council shall elect a ~~chairman~~ *presiding officer*, a ~~vice-chairman~~ *vice presiding officer*, and ~~such~~

other officers considered advisable by the council. The terms of the officers ~~shall~~ *must* be established by the council.

(2) The council shall adopt rules governing its procedures, subject to approval of the board of regents.

(3) Members of the council ~~shall~~ *must* receive compensation under 2-18-501 through 2-18-503."

Section 347. Section 22-1-101, MCA, is amended to read:

"22-1-101. State library commission established. (1) There is a state library commission.

(2) This commission is composed of the following members:

(a) the state superintendent of public instruction or ~~his~~ *the superintendent's* designee;

(b) five persons appointed by the governor, who shall serve staggered terms of 3 years; and

(c) a librarian appointed by the commissioner of higher education from one of the six units of the Montana university system, who shall serve a term of 3 years.

(3) The commission shall annually elect a ~~chairman~~ *presiding officer* from its membership.

(4) The members of ~~said~~ *the* commission ~~shall~~ *must* be compensated and receive travel expenses as provided for in 2-15-124."

Section 348. Section 22-1-308, MCA, is amended to read:

"22-1-308. Public library — board of trustees. (1) Upon the establishment of a public library under the provisions of this part, the mayor, with the advice and consent of the city council or city commissioners, shall appoint a board of trustees for the city library and the ~~chairman~~ *presiding officer* of the board of county commissioners, with the advice and consent of ~~said~~ *the* board, shall appoint a board of trustees for the county library.

(2) The library board ~~shall~~ *must* consist of five trustees. Not more than one member of the governing body ~~shall~~ *may* be, at any one time, a member of ~~such~~ *the* board.

(3) Trustees shall serve without compensation, but their actual and necessary expenses incurred in the performance of their official duties may be paid from library funds.

(4) Trustees shall hold their office for 5 years from the date of appointment and until their successors are appointed. Initially, appointments ~~shall~~ *must* be made for 1-, 2-, 3-, 4-, and 5-year terms. Annually thereafter, there ~~shall~~ *must* be appointed before July 1 of each year, in the same manner as the original appointments for a 5-year term, a trustee to take the place of the retiring trustee. Trustees ~~shall~~ *may not* serve ~~no~~ more than two full terms in succession.

(5) Following ~~such~~ *the* appointments, in July of each year, the trustees shall meet and elect a ~~chairman~~ *presiding officer* and ~~such~~ other officers ~~as~~ *that* they ~~deem~~ *consider* necessary, for 1-year terms. Vacancies in the board of trustees ~~shall~~ *must* be filled for the unexpired term in the same manner as original appointments."

Section 349. Section 22-1-317, MCA, is amended to read:

"22-1-317. City-county library — board of trustees. (1) A joint city-county library ~~shall~~ *must* be governed by a board of trustees composed of

five members chosen as specified in the contract, with terms not to exceed 5 years.

(2) Trustees ~~shall~~ *may not* serve ~~no~~ more than two full terms in succession.

(3) Trustees shall serve without compensation, but their actual and necessary expenses incurred in the performance of their official duties may be paid from library funds.

(4) Trustees shall meet and elect a ~~chairman~~ *a presiding officer* and ~~such~~ other officers ~~as~~ *that* they consider necessary, for 1-year terms.

(5) The board of trustees ~~shall have~~ *has* the same powers and duties as the board of trustees of a city library or a county library."

Section 350. Section 22-1-506, MCA, is amended to read:

"22-1-506. Liability for injury to books or failure to return. ~~Every~~ *A* person who defaces, tears, or otherwise injures any book or other work or who fails to return any book taken by ~~him~~ *the person* is liable to the state in three times the value *of the book* ~~thereof~~ if ~~such~~ *the* book is not replaced by a new one or another book of identical title, in good order and condition~~;~~. ~~and no~~ *A* statute of limitations ~~shall~~ *may not* ever be effective against the claim of the state under this section."

Section 351. Section 22-1-601, MCA, is amended to read:

"22-1-601. Library compact. The Interstate Library Compact is ~~hereby~~ approved, enacted into law, and entered into by the state of Montana~~;~~. ~~which~~ *The* compact is in full as follows:

INTERSTATE LIBRARY COMPACT

Article I. Policy and Purpose

Because the desire for the services provided by libraries transcends governmental boundaries and can most effectively be satisfied by giving such services to communities and people regardless of jurisdictional lines, it is the policy of the states party to this compact to cooperate and share their responsibilities; to authorize cooperation and sharing with respect to those types of library facilities and services which can be more economically or efficiently developed and maintained on a cooperative basis; and to authorize cooperation and sharing among localities, states, and others in providing joint or cooperative library services in areas where the distribution of population or of existing and potential library resources make the provision of library service on an interstate basis the most effective way of providing adequate and efficient service.

Article II. Definitions

As used in this compact:

(1) "public library agency" means any unit or agency of local or state government operating or having power to operate a library;

(2) "private library agency" means any nongovernmental entity which operates or assumes a legal obligation to operate a library;

(3) "library agreement" means a contract establishing an interstate library district pursuant to this compact or providing for the joint or cooperative furnishing of library services.

Article III. Interstate Library Districts

(1) Any one or more public library agencies in a party state in cooperation with any public library agency or agencies in one or more other party states may

establish and maintain an interstate library district. Subject to the provisions of this compact and any other laws of the party states which pursuant hereto remain applicable, such district may establish, maintain, and operate some or all of the library facilities and services for the area concerned in accordance with the terms of a library agreement therefor. Any private library agency or agencies within an interstate library district may cooperate therewith, assume duties, responsibilities, and obligations thereto, and receive benefits therefrom as provided in any library agreement to which such agency or agencies become party.

(2) Within an interstate library district, and as provided by a library agreement, the performance of library functions may be undertaken on a joint or cooperative basis or may be undertaken by means of one or more arrangements between or among public or private library agencies for the extension of library privileges to the use of facilities or services operated or rendered by one or more of the individual library agencies.

(3) If a library agreement provides for joint establishment, maintenance, or operation of library facilities or services by an interstate library district, such district shall have power to do any one or more of the following in accordance with such library agreement:

(a) undertake, administer, and participate in programs or arrangements for:

(i) securing, lending, or servicing books and other publications, any other materials suitable to be kept or made available by libraries, or library equipment; or

(ii) for the dissemination of information about libraries, the value and significance of particular items therein, and the use thereof;

(b) accept for any of its purposes under this compact any and all donations and grants of money, equipment, supplies, materials, and services (conditional or otherwise) from any state or the United States or any subdivision or agency thereof or interstate agency or from any institution, person, firm, or corporation and receive, utilize, and dispose of the same;

(c) operate mobile library units or equipment for the purpose of rendering bookmobile service within the district;

(d) employ professional, technical, clerical, and other personnel and fix terms of employment, compensation, and other appropriate benefits; and where desirable, provide for the in-service training of such personnel;

(e) sue and be sued in any court of competent jurisdiction;

(f) acquire, hold, and dispose of any real or personal property or any interest or interests therein as may be appropriate to the rendering of library service;

(g) construct, maintain, and operate a library, including any appropriate branches thereof;

(h) do such other things as may be incidental to or appropriate for the carrying out of any of the foregoing powers.

Article IV. Interstate Library Districts, Governing Board

(1) An interstate library district which establishes, maintains, or operates any facilities or services in its own right shall have a governing board which shall direct the affairs of the district and act for it in all matters relating to its business. Each participating public library agency in the district shall be represented on the governing board which shall be organized and conduct its

business in accordance with provision therefor in the library agreement. But in no event shall a governing board meet less often than twice a year.

(2) Any private library agency or agencies party to a library agreement establishing an interstate library district may be represented on or advise with the governing board of the district in such manner as the library agreement may provide.

Article V. State Library Agency Cooperation

Any two or more state library agencies of two or more of the party states may undertake and conduct joint or cooperative library programs, render joint or cooperative library services, and enter into and perform arrangements for the cooperative or joint acquisition, use, housing, and disposition of items or collections of materials which, by reason of expense, rarity, specialized nature, or infrequency of demand therefor would be appropriate for central collection and shared use. Any such programs, services, or arrangements may include provision for the exercise on a cooperative or joint basis of any power exercisable by an interstate library district, and an agreement embodying any such program, service, or arrangement shall contain provisions covering the subjects detailed in Article VI of this compact for interstate library agreements.

Article VI. Library Agreements

(1) In order to provide for any joint or cooperative undertaking pursuant to this compact, public and private library agencies may enter into library agreements. Any agreement executed pursuant to the provisions of this compact shall, as among the parties to the agreement:

(a) detail the specific nature of the services, programs, facilities, arrangements, or properties to which it is applicable;

(b) provide for the allocation of costs and other financial responsibilities;

(c) specify the respective rights, duties, obligations, and liabilities of the parties;

(d) set forth the terms and conditions for duration, renewal, termination, abrogation, disposal of joint or common property, if any, and all other matters which may be appropriate to the proper effectuation and performance of the agreement.

(2) No public or private library agency shall undertake to exercise, itself or jointly with any other library agency, by means of a library agreement, any power prohibited to such agency by the constitution or statutes of its state.

(3) No library agreement shall become effective until filed with the compact administrator of each state involved and approved in accordance with Article VII of this compact.

Article VII. Approval of Library Agreements

(1) Every library agreement made pursuant to this compact shall, prior to and as a condition precedent to its entry into force, be submitted to the attorney general of each state in which a public library agency party thereto is situated, who shall determine whether the agreement is in proper form and compatible with the laws of ~~his~~ *that* state. The attorneys general shall approve any agreement submitted to them unless they shall find that it does not meet the conditions set forth herein and shall detail in writing addressed to the governing bodies of the public library agencies concerned the specific respects in which the proposed agreement fails to meet the requirements of law. Failure to disapprove an agreement submitted hereunder within 90 days of its submission shall constitute approval thereof.

(2) In the event that a library agreement made pursuant to this compact shall deal in whole or in part with the provision of services or facilities with regard to which an officer or agency of the state government has constitutional or statutory powers of control, the agreement shall, as a condition precedent to its entry into force, be submitted to the state officer or agency having such power of control and shall be approved or disapproved by ~~him~~ *the officer* or it as to all matters within ~~his~~ *the officer's* or its jurisdiction in the same manner and subject to the same requirements governing the action of the attorneys general pursuant to paragraph (1) of this article. This requirement of submission and approval shall be in addition to and not in substitution for the requirement of submission to and approval by the attorneys general.

Article VIII. Other Laws Applicable

Nothing in this compact or in any library agreement shall be construed to supersede, alter, or otherwise impair any obligation imposed on any library by otherwise applicable law nor to authorize the transfer or disposition of any property held in trust by a library agency in a manner contrary to the terms of such trust.

Article IX. Appropriations and Aid

(1) Any public library agency party to a library agreement may appropriate funds to the interstate library district established thereby in the same manner and to the same extent as to a library wholly maintained by it and, subject to the laws of the state in which such public library agency is situated, may pledge its credit in support of an interstate library district established by the agreement.

(2) Subject to the provisions of the library agreement pursuant to which it functions and the laws of the states in which such district is situated, an interstate library district may claim and receive any state and federal aid which may be available to library agencies.

Article X. Compact Administrator

Each state shall designate a compact administrator with whom copies of all library agreements to which ~~his~~ *the administrator's* state or any public library agency thereof is party shall be filed. The administrator shall have such other powers as may be conferred upon ~~him~~ *the administrator* by the laws of ~~his~~ *that* state and may consult and cooperate with the compact administrators of other party states and take such steps as may effectuate the purposes of this compact. If the laws of a party state so provide, such state may designate one or more deputy compact administrators in addition to its compact administrator.

Article XI. Entry into Force and Withdrawal

(1) This compact shall enter into force and effect immediately upon its enactment into law by any two states. Thereafter, it shall enter into force and effect as to any other state upon the enactment thereof by such state.

(2) This compact shall continue in force with respect to a party state and remain binding upon such state until 6 months after such state has given notice to each other party state of the repeal thereof. Such withdrawal shall not be construed to relieve any party to a library agreement entered into pursuant to this compact from any obligation of that agreement prior to the end of its duration as provided therein.

Article XII. Construction and Severability

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable, and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the

constitution of any party state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters."

Section 352. Section 22-2-103, MCA, is amended to read:

"22-2-103. Council membership — tenure — compensation. The term of office of each member is 5 years. The governor shall designate a ~~chairman~~ *presiding officer* and a ~~vice-chairman~~ *vice presiding officer* from the members of the council to serve in those capacities at the pleasure of the governor. The ~~chairman~~ *presiding officer* is the chief executive officer of the council. Each vacancy must be filled for the balance of the unexpired term in the same manner as the original appointment. The members of the council must be compensated and receive travel expenses as provided for in 2-15-124."

Section 353. Section 22-2-403, MCA, is amended to read:

"22-2-403. Definitions. As used in this part, the following definitions apply:

(1) *(a)* "Artist" means a practitioner in the visual arts generally recognized by ~~his~~ *the practitioner's* peers or critics as a professional who produces works of art.

(b) The term does not include the project architect, or any member of ~~his~~ *the architect's* firm, of a new state building that is to have works of art under the provisions of this part.

(2) "New state building" means any structure to be built, remodeled, or renovated with money appropriated by the legislature that is, in the opinion of the architecture and engineering division of the department of administration, appropriate for the inclusion of works of art.

(3) *(a)* "Work of art" means any work of visual art, including but not limited to a drawing, painting, mural, fresco, sculpture, mosaic, photograph, work of calligraphy, work of graphic art (including an etching, lithograph, offset print, or silk screen), craft (including crafts in clay, textile, fiber, wood, metal, plastic, or glass), or mixed media (including a collage, assemblage, or any combination of art media).

(b) The term does not include environmental landscaping."

Section 354. Section 22-2-406, MCA, is amended to read:

"22-2-406. Administration — selection of works of art. (1) The Montana arts council is primarily responsible for the administration of this part. The council ~~must~~ *shall*:

(a) submit its recommendations to the architecture and engineering division of the department of administration for inclusion in the report required by Title 17, chapter 7, part 2, concerning the appropriateness of any ~~such~~ building for the inclusion of works of art, a description of the types of works of art suggested for inclusion in the building, and the anticipated costs of acquisition, maintenance, and administrative expenses associated with the suggested works of art~~.~~*;*

(b) appoint a three-member screening committee for each new state building to recommend artists to be commissioned or completed works of art to be purchased. The committee ~~must consist~~ *consists* of the project architect or ~~his~~

the architect's designee, a professional artist, and a representative from the user agency who is a resident of the community in which the new state building is to be constructed.

(c) select~~;~~, commission the artist for~~;~~, review the design, execution, and placement of~~;~~, and finally accept all works of art. The Montana arts council ~~must~~ *shall* consult with the screening committee in fulfilling the requirements of this subsection (1)(c).

(d) assist in contract negotiations with artists who are selected;

(e) ensure that works of art acquired for display under the provisions of this part are displayed in ~~such~~ a manner that they are in public view;

(f) ensure that each work of art is properly maintained and may use the funds provided for in 22-2-404 or any other funds available for ~~such~~ maintenance; and

(g) maintain a close working relationship with the artist throughout each project.

(2) ~~No~~ *A* payment may *not* be made to any artist for works of art under this part without prior authorization of the Montana arts council."

Section 355. Section 22-3-431, MCA, is amended to read:

"22-3-431. Registration of heritage properties. (1) Any citizen of Montana may submit to the historic preservation officer for ~~his~~ consideration the necessary forms to nominate heritage properties to the register.

(2) (a) For private properties, the historic preservation officer shall notify the owner of the property and allow ~~him~~ *the owner* a reasonable period of time to concur or object to the nomination of the property for registration. If the owner of the property, or a majority of owners if the property has more than one owner, objects to registration, the historic preservation officer may not nominate the property unless the objection is withdrawn. If there are no ~~such~~ objections, the historic preservation officer may, upon approval by the preservation review board, nominate heritage properties to the register.

(b) The historic preservation officer and the preservation review board may review the nomination of property that was not nominated ~~due to~~ *because of* owner objection to determine whether the property is eligible for registration. If the historic preservation officer and the preservation review board determine that the property is eligible for registration, the preservation officer shall provide for the register information about the property for determination of registration eligibility.

(c) The historic preservation officer shall follow the procedures mandated by 36 CFR 60.6 relating to seeking property owner concurrence or objection to registration.

(3) For lands owned by the state, a county, or a municipality, the historic preservation officer may, upon approval by the preservation review board, nominate heritage properties to the register. The historic preservation officer shall notify the appropriate governmental agency and give public notice when any ~~such~~ governmental property is being considered for nomination. Unless agency or public objections are submitted in writing within 30 days after notification, the historic preservation officer shall complete the nominations. When an agency or any citizen of Montana submits written objections, the historic preservation officer shall consider the objections and may conduct a public hearing. If a hearing is held, it ~~shall~~ *must* be commenced within 30 days after the final date for submission of written objections. Within 60 days after

submission of the objections or after the public hearing, the historic preservation officer shall make a final decision on the proposed registration and prepare a statement responsive to the objections submitted."

Section 356. Section 22-3-432, MCA, is amended to read:

"22-3-432. Antiquities permits. (1) ~~No~~ *A* person may *not* excavate, remove, or restore any heritage property or paleontological remains on lands owned by the state without first obtaining an antiquities permit from the historic preservation officer.

(2) Antiquities permits are to be granted only after careful consideration of the application for a permit and after consultation with the appropriate state agency. Permits are subject to strict compliance with the following guidelines:

(a) Antiquities permits may be granted only for work to be undertaken by reputable museums, universities, colleges, or other historical, scientific, or educational institutions, societies, or persons with a view toward dissemination of knowledge about cultural properties, provided ~~no such~~ *a* permit may *not* be granted unless the historic preservation officer is satisfied that the applicant possesses the necessary qualifications to guarantee the proper excavation of those sites and objects that may add substantially to ~~man's~~ knowledge about Montana and its antiquities.

(b) The antiquities permit must specify that a summary report of ~~such~~ *the* investigations, containing relevant maps, documents, drawings, and photographs, *must* be submitted to the historic preservation officer. The historic preservation officer shall determine the appropriate time period allowable between all work undertaken and submission of the summary report.

(3) All heritage property and paleontological remains collected under an antiquities permit are the permanent property of the state and must be deposited in museums or other institutions within the state or loaned to qualified institutions outside the state, unless otherwise provided for in the antiquities permit.

(4) An antiquities permit is not a substitution for any other type of permit that a state agency may require for other purposes."

Section 357. Section 22-3-701, MCA, is amended to read:

"22-3-701. Creation of law enforcement officers' memorial. The memorial in the Montana law enforcement museum, located in the old Montana state prison, Deer Lodge, Montana, which is dedicated to the ~~men and women~~ *individuals* who have served their communities and the state of Montana as law enforcement officers and have been killed or died in the line of duty, is designated as this state's official law enforcement officers' memorial."

Section 358. Section 22-3-805, MCA, is amended to read:

"22-3-805. Discovery — reporting requirements — field review. (1) A person who by archaeological excavation or by agricultural, mining, construction, or other ground-disturbing activity discovers human skeletal remains, a burial site, or burial material shall immediately notify the county coroner. Failure to notify the county coroner subjects a person to the penalty provided in 22-3-808.

(2) Upon discovery of human skeletal remains, a burial site, or burial material, excavation or further disturbance must cease until the coroner has determined whether the remains are subject to the provisions of Title 46, chapter 4, or any other related provisions of law concerning the investigation of the circumstances, manner, and cause of death or whether a forensic

examination of the human skeletal remains, burial site, or burial material is necessary. The coroner shall make ~~his~~ *a* determination within 2 working days from the time the person responsible for the excavation notifies ~~him~~ *the coroner* of the discovery or recognition of the remains. If the coroner cannot make the determination within 2 working days, ~~he~~ *the coroner* shall notify a member of the board of the reason for and the approximate length of the delay. The coroner shall take all reasonable steps to make ~~his~~ *a* determination without removing or causing further disturbance of the remains.

(3) If a forensic examination, action under Title 46, chapter 4, or action under any other related provisions of law concerning the investigation of the circumstances, manner, and cause of death is necessary and yields evidence of criminal activity, the evidence may be seized by the coroner or law enforcement agency with jurisdiction for use in a criminal proceeding as provided by law.

(4) If the coroner determines that the remains are not subject to the provisions of Title 46, chapter 4, or any other provisions of law concerning the investigation of the circumstances, manner, and cause of death and that a forensic examination is not necessary, ~~he~~ *the coroner* shall telephone the state historic preservation officer within 24 hours. Within 24 hours of notification, the state historic preservation officer shall contact either the landowner and the board or the landowner and the board member representing the nearest reservation and notify them of the discovery of human skeletal remains, a burial site, or burial material.

(5) If the state historic preservation officer cannot be contacted, the coroner shall notify a member of the board or the law enforcement agency of the nearest reservation within 24 hours. The board or the agency shall immediately notify the landowner and the board member representing that reservation.

(6) Within 36 hours after the board receives notification of a discovery of human skeletal remains, a burial site, or burial material, the board shall designate representatives to conduct, with the permission of the landowner, an initial field review. If the field review cannot be completed within the next 36 hours, the board's representatives shall negotiate with the landowner or ~~his~~ *the landowner's* representative for a reasonable time extension to complete the review. The field review must include:

(a) a determination of whether the site can be preserved;

(b) negotiation with the landowner concerning onsite reburial or disinterment and reburial; and

(c) a recommendation, including a timeframe, concerning final treatment or disposition of the human skeletal remains or burial material.

(7) If the board's representatives fail to make a recommendation or if the landowner and the board cannot agree and mediation fails to provide, within 40 days after notification to the board, a resolution acceptable to the landowner and the board, the human skeletal remains and burial materials must be removed and control is vested in the board. The board shall give control of the remains or materials in the following priority to:

(a) the descendants, if identifiable;

(b) the tribe or other cultural group that has the closest cultural affiliation with the human skeletal remains or burial materials;

(c) the tribe or other cultural group recognized as having aboriginally or historically occupied the area where the remains or materials were discovered

if, upon notification by the board, the tribe or cultural group states a claim for the remains or materials; or

(d) if unclaimed by any tribe or cultural group, the board, which shall determine the appropriate disposition and oversee the reinterment of the remains and materials.

(8) For purposes of this section, "cultural group" means a present-day group or organization that has a relationship of shared group identity ~~which~~ *that* can be reasonably traced historically or prehistorically to an identifiable earlier group or organization."

Section 359. Section 22-3-806, MCA, is amended to read:

"22-3-806. Scientific analysis — permit required. (1) Although onsite reburial is preferred, the board may, upon petition by a person seeking permission to perform scientific analysis, grant a permit for the scientific removal and analysis of human skeletal remains and burial material upon proof and determination by the board that the analysis is scientifically justifiable. A petition for a permit must include:

(a) payment of the nonrefundable application fee provided for in 22-3-804; and

(b) a brief narrative describing the methodology to be used, the timeframe needed to complete the scientific study, and any other information specifically requested by the board relating to the proposed study.

(2) The methodology proposed must be reviewed by the state historic preservation officer or ~~his~~ *the officer's* designated representative and the physical anthropologist on the board, and a recommendation must be made to the full board. Once approved by the board, any change in methodology or in the timeframe must be approved by the board before the original timeframe expires. The timeframe for scientific study may not exceed 12 months from the date of issuance of the permit.

(3) A permit for scientific analysis issued by the board is subject to terms, conditions, and procedures prescribed by the board and must include the condition that a permittee shall pay all costs of excavation, study, and disposition.

(4) The board shall either issue or deny a permit within 30 working days from the date of the permit petition. If the board denies a permit upon a finding that scientific analysis is not justifiable, the board shall provide the applicant with a written statement outlining the grounds for its finding. The applicant may appeal the decision of the board under the provisions of Title 2, chapter 4, part 6, of the Montana Administrative Procedure Act.

(5) The board may suspend or revoke a permit pursuant to the Montana Administrative Procedure Act upon a finding that the permittee has violated any provision of this part or any term, condition, or procedure of a permit issued by the board.

(6) The provisions of this section do not apply to a forensic examination by the county coroner, action under Title 46, chapter 4, or action under any other related provisions of law concerning the investigation of the circumstances, manner, and cause of death."

Section 360. Section 23-2-301, MCA, is amended to read:

"23-2-301. Definitions. For purposes of this part, the following definitions apply:

(1) "Barrier" means an artificial obstruction located in or over a water body, restricting passage on or through the water, ~~which~~ *that* totally or effectively obstructs the recreational use of the surface water at the time of use. A barrier may include but is not limited to a bridge or fence or any other ~~manmade~~ *artificial* obstacle to the natural flow of water.

(2) "Class I waters" means surface waters, other than lakes, that:

(a) lie within the officially recorded federal government survey meander lines ~~thereof~~ *of the waters*;

(b) flow over lands that have been judicially determined to be owned by the state by reason of application of the federal navigability test for state streambed ownership;

(c) are or have been capable of supporting the following commercial activities: log floating, transportation of furs and skins, shipping, commercial guiding using multiperson watercraft, public transportation, or the transportation of merchandise, as these activities have been defined by published judicial opinion as of April 19, 1985; or

(d) are or have been capable of supporting commercial activity within the meaning of the federal navigability test for state streambed ownership.

(3) "Class II waters" means all surface waters that are not class I waters, except lakes.

(4) "Commission" means the fish, wildlife, and parks commission provided for in 2-15-3402.

(5) "Department" means the department of fish, wildlife, and parks provided for in 2-15-3401.

(6) "Diverted away from a natural water body" means a diversion of surface water through a ~~manmade~~ *constructed* water conveyance system, including but not limited to:

(a) an irrigation or drainage canal or ditch;

(b) an industrial, municipal, or domestic water system, excluding the lake, stream, or reservoir from which the system obtains water;

(c) a flood control channel; or

(d) a hydropower inlet and discharge facility.

(7) "Lake" means a body of water where the surface water is retained by either natural or artificial means and the natural flow of water is substantially impeded.

(8) "Occupied dwelling" means a building used for a human dwelling at least once a year.

(9) "Ordinary high-water mark" means the line that water impresses on land by covering it for sufficient periods to cause physical characteristics that distinguish the area below the line from the area above it. Characteristics of the area below the line include, when appropriate, but are not limited to deprivation of the soil of substantially all terrestrial vegetation and destruction of its agricultural vegetative value. A flood plain adjacent to surface waters is not considered to lie within the surface waters' high-water marks.

(10) "Recreational use" means with respect to surface waters: fishing, hunting, swimming, floating in small craft or other flotation devices, boating in motorized craft unless otherwise prohibited or regulated by law, or craft

propelled by oar or paddle, other water-related pleasure activities, and related unavoidable or incidental uses.

(11) "Supervisors" means the board of supervisors of a soil conservation district, the directors of a grazing district, or the board of county commissioners if a request pursuant to 23-2-311(3)(b) is not within the boundaries of a conservation district or if the request is refused by the board of supervisors of a soil conservation district or the directors of a grazing district.

(12) "Surface water" means, for the purpose of determining the public's access for recreational use, a natural water body, its bed, and its banks up to the ordinary high-water mark."

Section 361. Section 23-2-311, MCA, is amended to read:

"23-2-311. Right to portage — establishment of portage route. (1) A member of the public making recreational use of surface waters may, above the ordinary high-water mark, portage around barriers in the least intrusive manner possible, avoiding damage to the landowner's land and violation of ~~his~~ *the landowner's* rights.

(2) A landowner may create barriers across streams for purposes of land or water management or to establish land ownership as otherwise provided by law. If a landowner erects a structure ~~which~~ *that* does not interfere with the public's use of the surface waters, the public may not go above the ordinary high-water mark to portage around the structure.

(3) (a) A portage route around or over a barrier may be established to avoid damage to the landowner's land and violation of ~~his~~ *the landowner's* rights, as well as to provide a reasonable and safe route for the recreational user of the surface waters.

(b) A portage route may be established when either a landowner or a member of the recreating public submits a request to the supervisors that ~~such~~ a route be established.

(c) Within 45 days of the receipt of a request, the supervisors shall, in consultation with the landowner and a representative of the department, examine and investigate the barrier and the adjoining land to determine a reasonable and safe portage route.

(d) Within 45 days of the examination of the site, the supervisors shall make a written finding of the most appropriate portage route.

(e) The cost of establishing the portage route around artificial barriers must be borne by the involved landowner, except for the construction of notification signs of ~~such~~ *the* route, which is the responsibility of the department. The cost of establishing a portage route around artificial barriers not owned by the landowner on whose land the portage route will be placed must be borne by the department.

(f) Once the route is established, the department has the exclusive responsibility ~~thereafter~~ to maintain the portage route at reasonable times agreeable to the landowner. The department shall post notices on the stream of the existence of the portage route and the public's obligation to use it as the exclusive means around a barrier.

(g) If either the landowner or *the* recreationist disagrees with the route described in subsection (3)(e), ~~he~~ *the person* may petition the district court to name a three-member arbitration panel. The panel must consist of an affected landowner, a member of an affected recreational group, and a member selected

by the two other members of the arbitration panel. The arbitration panel may accept, reject, or modify the supervisors' finding under subsection (3)(d).

(h) The determination of the arbitration panel is binding upon the landowner and upon all parties that use the water for which the portage is provided. Costs of the arbitration panel, computed as for jurors' fees under 3-15-201, ~~shall~~ *must* be borne by the contesting party or parties~~:~~. ~~all~~ *All* other parties shall bear their own costs.

(i) The determination of the arbitration panel may be appealed within 30 days to the district court.

(j) Once a portage route is established, the public shall use the portage route as the exclusive means to portage around or over the barrier.

(4) ~~Nothing contained in this~~ *This* part ~~addresses~~ *does not address* the issue of natural barriers or portage around ~~said~~ *the* barriers, and ~~nothing contained in~~ this part ~~makes such~~ *does not make the* portage lawful or unlawful."

Section 362. Section 23-2-321, MCA, is amended to read:

"23-2-321. Restriction on liability of landowner and supervisor. (1) A person who makes recreational use of surface waters flowing over or through land in the possession or under the control of another, pursuant to 23-2-302, or land while portaging around or over barriers or while portaging or using portage routes, pursuant to 23-2-311, is owed no duty by a landowner, ~~his~~ *the landowner's* agent, or ~~his~~ *the landowner's* tenant other than that provided in subsection (2).

(2) A landowner, ~~his~~ *the landowner's* agent, or tenant is liable to a person making recreational use of waters or land described in subsection (1) only for an act or omission that constitutes willful or wanton misconduct.

(3) ~~No~~ *A* supervisor or any member of the arbitration panel who participates in a decision regarding the placement of a portage route is *not* liable to ~~any~~ *a* person who is injured or whose property is damaged because of placement or use of the portage route except for an act or omission that constitutes willful and wanton misconduct."

Section 363. Section 23-2-402, MCA, is amended to read:

"23-2-402. Purpose — intent. (1) The purpose of this part is to:

(a) provide continued recreational and commercial use and enjoyment of the Smith River waterway, consistent with the river's capacity;

(b) seek ways to minimize conflicts between river users and private landowners; and

(c) protect the integrity of the river's water and canyon resources for future generations.

(2) The intent of this part is to interpret and implement this part in a manner consistent with the statement of purpose for the state park system in 23-1-101.

(3) ~~Nothing in this~~ *This* part may *not* be construed in any way to restrict a landowner's access to or use of ~~his~~ *the landowner's* land, improvements, water rights, or adjacent waterways."

Section 364. Section 23-2-503, MCA, is amended to read:

"23-2-503. Boat liveries. (1) The owner of a boat livery shall cause to be kept a record of the name and address of the person or persons hiring any vessel ~~which~~ *that* is permitted by ~~him~~ *the owner* to be operated, the identification

number of ~~such~~ *the* vessel, the departure date and time, and the expected time of return. The record ~~shall~~ *must* be preserved for at least 6 months.

(2) ~~Neither the~~ *The* owner of a boat livery ~~nor his~~ *or the owner's* agent or employee ~~shall~~ *may not* permit any motorboat or any vessel permitted by ~~him~~ *the owner* to be operated as a motorboat or vessel to depart from ~~his~~ *the owner's* premises unless it ~~shall have~~ *has* been provided, either by owner or renter, with the equipment required pursuant to 23-2-521 and any rules made pursuant ~~thereto~~ *to that section*."

Section 365. Section 23-2-505, MCA, is amended to read:

"23-2-505. Owner's civil liability. The owner of a vessel ~~shall be~~ *is* liable for any injury or damage occasioned by the negligent operation of ~~such~~ *the* vessel, whether ~~such~~ *the* negligence consists of a violation of the provisions of the statutes of this state or neglecting to observe ~~such~~ ordinary care and ~~such~~ operation ~~as~~ *that* the rules of the common law require. ~~The~~ *However, the* owner ~~shall~~ *is* not ~~be~~ liable~~, however,~~ unless ~~such~~ *the* vessel is being used with ~~his or her~~ *the owner's* express or implied consent. It ~~shall~~ *must* be presumed that ~~such~~ *the* vessel is being operated with the knowledge and consent of the owner if, at the time of the injury or damage, it is under the control of ~~his or her~~ *the owner's* spouse, father, mother, brother, sister, son, daughter, or other immediate member of the owner's family. ~~Nothing contained herein shall~~ *This section may not* be construed to relieve any other person from any liability ~~which he~~ *that the person* would otherwise have~~,~~. ~~but nothing contained herein shall~~ *However, this section may not* be construed to authorize or permit any recovery in excess of injury or damage actually incurred."

Section 366. Section 23-2-527, MCA, is amended to read:

"23-2-527. Collisions, accidents, and casualties. (1) The operator of a vessel involved in a collision, accident, or other casualty, so far as ~~he~~ *the operator* can do so without serious danger to ~~his~~ *the operator's* own vessel, crew, and passengers ~~(if any)~~, shall render to other persons affected by the collision, accident, or other casualty ~~such~~ assistance ~~as~~ *that* may be practicable and ~~as~~ *that* may be necessary in order to save them from or minimize any danger caused by the collision, accident, or other casualty. ~~and~~ *The operator shall* give ~~his~~ *the operator's* name, address, and identification of ~~his~~ *the operator's* vessel in writing to any person injured and to the owner or person in control of any property damaged in the collision, accident, or other casualty.

(2) The department shall prepare and distribute to each sheriff's office and each game warden of this state a standardized accident report form. ~~Any~~ *A* person involved in a collision, accident, or other casualty involving a death, disappearance, personal injury, or property damage in excess of $100 shall immediately report ~~such~~ *the* collision, accident, or other casualty to the sheriff's office or game warden of the county in which the collision, accident, or casualty occurred and fill out a standardized accident report form.

(3) A sheriff advised of a collision, accident, or other casualty reported under this part shall:

(a) conduct an appropriate investigation of ~~such~~ *the* collision, accident, or other casualty; and

(b) prepare and submit a report of the results of the investigation, together with the completed standardized accident report forms, to the department."

Section 367. Section 23-2-535, MCA, is amended to read:

"23-2-535. Alcohol concentration standards — evidence admissible — administration of tests. (1) The inferences contained in 61-8-401(4) apply to any criminal action or proceeding arising out of acts alleged to have been committed in violation of 23-2-523(2).

(2) Evidence of any measured amount or detected presence of alcohol in a person at the time of the act alleged, as shown by analysis of the person's blood, breath, or urine, and any other competent evidence bearing on the question of whether the person was under the influence of alcohol, drugs, or a combination of the two at the time of the act alleged is admissible in any criminal action or proceeding arising out of acts alleged to have been committed in violation of 23-2-523(2).

(3) If a person charged with violation of 23-2-523(2) refuses to submit to a test of ~~his~~ *the person's* blood, breath, or urine for the purpose of determining any measured amount or detected presence of alcohol, none will be given, but proof of refusal is admissible in any criminal action or proceeding arising out of acts alleged to have been committed in violation of 23-2-523(2).

(4) The provisions relating to administration of tests provided in 61-8-405 and the definition of alcohol concentration provided in 61-8-407 apply to any testing done to a person charged with violation of 23-2-523(2).

(5) As used in 23-2-523(2), the term "under the influence" ~~shall have~~ *has* the meaning provided in 61-8-401(3)."

Section 368. Section 23-5-131, MCA, is amended to read:

"23-5-131. Losses at illegal gambling may be recovered in civil action. A person, or ~~his~~ *the person's* dependent or guardian, who, by playing or betting at an illegal gambling device or illegal gambling enterprise, loses money, property, or any other thing of value and pays and delivers it to another person connected with the operation or conduct of the illegal gambling device or illegal gambling enterprise, within 1 year following ~~his~~ *the person's* loss, may:

(1) bring a civil action in a court of competent jurisdiction to recover the loss;

(2) recover the costs of the civil action and exemplary damages of no less than $500 and no more than $5,000; and

(3) join as a defendant any person having an interest in the illegal gambling device or illegal gambling enterprise."

Section 369. Section 23-5-135, MCA, is amended to read:

"23-5-135. Discharge of defendant. (1) A person against whom a civil action is brought, as provided in 23-5-131, may move to have the action against ~~him~~ *the person* dismissed if ~~he~~ *the person* has repaid to the person who suffered the loss or ~~his~~ *that person's* dependent the gambling loss, the costs of bringing the civil action, and the exemplary damages agreed upon by the parties or assessed by the court.

(2) A civil action brought to recover gambling losses does not bar or interfere with another proceeding or action, whether criminal, civil, or administrative, that may be brought under the laws of the state."

Section 370. Section 23-5-155, MCA, is amended to read:

"23-5-155. Counterfeiting or defacing documents — penalty. (1) A person commits the offense of counterfeiting or defacing a document when ~~he~~ *the person* purposely or knowingly counterfeits, alters, or wrongfully displays a seal, decal, license, identification number or device, or other document issued by the department.

(2) A person convicted of the offense of counterfeiting or defacing a document is guilty of a felony and must be punished in accordance with 23-5-162."

Section 371. Section 23-5-221, MCA, is amended to read:

"23-5-221. Definition. As used in this part, "Calcutta pool" means a form of auction pool conducted by an organization authorized by the department. The Calcutta pool must be an auction pool in which:

(1) a person's wager is equal to ~~his~~ *the person's* bid;

(2) the proceeds from the pool, minus administrative costs and prizes paid, are contributed to a charitable or nonprofit corporation, association, or cause;

(3) the rules of the pool are publicly posted;

(4) no more than one wager for each competitor is allowed;

(5) at least 50% of the total pool is paid out in prizes;

(6) persons may not bid or wager money on any elementary school or high school sports event; and

(7) the underlying event has more than two entrants."

Section 372. Section 23-5-409, MCA, is amended to read:

"23-5-409. Bingo and keno tax — records — distribution — statement and payment. (1) A licensee who has received a permit to operate bingo or keno games shall pay to the department a tax of 1% of the gross proceeds from the operation of each live bingo and keno game operated on ~~his~~ *the licensee's* premises.

(2) A licensee shall keep a record of gross proceeds in the form the department requires. At all times during the business hours of the licensee, the records must be available for inspection by the department.

(3) A licensee shall annually complete and deliver to the department a statement showing the total gross proceeds for each live keno or bingo game operated by ~~him~~ *the licensee* and the total amount due as live bingo or keno tax for the preceding year. This statement must contain any other relevant information required by the department.

(4) The department shall forward the tax collected under subsection (3) to the treasurer of the county or the clerk, finance officer, or treasurer of the city or town in which the licensed game is located for deposit to the county or municipal treasury. A county is not entitled to proceeds from taxes on live bingo or keno games located in incorporated cities and towns within the county. The tax collected under subsection (3) is statutorily appropriated to the department, as provided in 17-7-502, for deposit to the county or municipal treasury."

Section 373. Section 23-5-622, MCA, is amended to read:

"23-5-622. Tampering with video gambling machine — penalty. (1) A person commits the offense of tampering with a video gambling machine if ~~he~~ *the person* purposely or knowingly manipulates or attempts or conspires to manipulate the outcome or payoff of a video gambling machine by physical tampering or other interference with the proper functioning of the machine.

(2) A violation of this section is a felony and must be punished in accordance with 23-5-162."

Section 374. Section 23-7-212, MCA, is amended to read:

"23-7-212. Assistant director for security — qualifications — duties — compensation. (1) The director shall appoint an assistant director for security, who serves at the pleasure of the director.

(2) The assistant director for security must be qualified by training and experience, have at least 5 years of law enforcement experience, and be knowledgeable and experienced in computer security.

(3) The assistant director for security ~~shall~~:

(a) *must* be responsible for a security division to ~~assure~~ *ensure* security, honesty, fairness, and integrity in the operation and administration of the lottery, including but not limited to an examination of the background of all prospective employees, ticket or chance sales agents, lottery vendors, and lottery contractors. The security division is designated a law enforcement agency for the purpose of administering this chapter.

(b) *shall* in conjunction with the director, confer with the attorney general or ~~his~~ *the attorney general's* designee to promote and ensure security, honesty, fairness, and integrity of the operation and administration of the lottery; and

(c) *shall,* in conjunction with the director, report any alleged violation of law to the attorney general, the legislative auditor, and any other appropriate law enforcement authority for further investigation and action.

(4) The salary of the assistant director for security is equal to 90% of the salary of the director of the lottery."

Section 375. Section 23-7-302, MCA, is amended to read:

"23-7-302. Sales restrictions. (1) The price of each lottery game ticket or chance must be clearly stated ~~thereon~~ *on the ticket or chance*. The price of a lottery game chance vended by a machine or electronic device must be clearly stated on the machine or device.

(2) Tickets and chances may not be sold to or purchased by persons under 18 years of age.

(3) Tickets and chances may be purchased only with cash or a check and may not be purchased on credit.

(4) Tickets and chances may not be sold to or purchased by commissioners, the director, ~~his~~ *the director's* staff, gaming suppliers doing business with the state lottery, suppliers' officers and employees, employees of any firm auditing or investigating the state lottery, governmental employees auditing or investigating the state lottery, or members of their households.

(5) The names of elected officials may not appear on any ticket or chance."

Section 376. Section 23-7-307, MCA, is amended to read:

"23-7-307. Conflict of interest. ~~No~~ *A* commissioner, director, assistant director, state lottery employee, licensed ticket or chance sales agent, or member of ~~his~~ *a listed person's* household may *not* have a financial interest in any gaming supplier or any contract between the state lottery and a gaming supplier or accept any gift or thing of value from a gaming supplier."

Section 377. Section 23-7-401, MCA, is amended to read:

"23-7-401. State lottery fund. There is a fund of the enterprise fund type, as defined in 17-2-102, to be known as the state lottery fund. The gross revenue from the state lottery, consisting of money from the sale of lottery tickets and chances, ticket or chance sales agent license fees, unclaimed prizes, or any other source, must be deposited in the fund, except that, at the discretion of the

director, money for prizes paid immediately by a sales agent and money equaling the sales agent's commission may be drawn by a sales agent from ~~his~~ *the agent's* gross revenue before depositing ~~his~~ *the* gross revenue with the state lottery."

Section 378. Section 25-1-401, MCA, is amended to read:

"25-1-401. Deposit of money in lieu of undertaking. In all cases ~~where~~ *in which* an undertaking or bond with sureties is required by the provisions of this code, the plaintiff or defendant may deposit with the clerk of the court, ~~or~~ justice of the peace, or city judge, as ~~the case may be~~ *appropriate*, a sum of money equal to the amount required by the undertaking or bond, which ~~shall~~ *must* be taken as security in the place ~~thereof~~ *of the undertaking or bond*. At any time, ~~such~~ *the* deposit may be withdrawn by the party making it upon giving the undertaking with sufficient sureties as required by law, approved by the clerk, ~~or~~ justice, or judge, upon notice to the adverse party or ~~his~~ *the adverse party's* attorney, who may object to the sufficiency of the sureties in the same manner as though the undertaking were filed in the first instance."

Section 379. Section 25-1-402, MCA, is amended to read:

"25-1-402. Governmental entities not required to give security. In any civil action or proceeding ~~wherein~~ *in which* the state, a county, or a municipal corporation or any officer in ~~his~~ *the officer's* official capacity on behalf of the state or a county, city, or town is a party plaintiff or defendant, ~~no~~ *a* bond, undertaking, or security ~~can~~ *may not* be required of the state, county, municipal corporation, or town or any officer ~~thereof~~ *of those entities*; ~~but~~ *however,* on complying with the other provisions of this code, the state, county, municipal corporation, or town or any officer ~~thereof~~ acting in ~~his~~ *the officer's* official capacity has the same rights, remedies, and benefits as if the bond, undertaking, or security were given and approved as required by this code. The board of trustees of any school district is entitled to the benefit of this section."

Section 380. Section 25-1-1102, MCA, is amended to read:

"25-1-1102. Contents of registration certificate. The certificate of registration of a process server must contain the following statements:

(1) the name, age, address, and telephone number of the registrant;

(2) that the registrant has not been convicted of a felony;

(3) that the registrant has been a resident of this state for a period of 1 year immediately preceding the filing of the certificate; and

(4) that the registrant will perform ~~his~~ *the* duties as a process server in compliance with the provisions of law governing the service of process in this state."

Section 381. Section 25-2-125, MCA, is amended to read:

"25-2-125. Against public officers or their agents. The proper place of trial for an action against a public officer or person specially appointed to execute ~~his~~ *the officer's* duties for an act done by ~~him~~ *the officer or person* in virtue of ~~his~~ *the* office or against a person who, by ~~his~~ *the officer's or person's* command or in ~~his~~ *the officer's or person's* aid, does anything ~~touching~~ *relating to* the duties of ~~such~~ *the* officer is the county where the cause or some part ~~thereof~~ *of the cause of action* arose."

Section 382. Section 25-2-206, MCA, is amended to read:

"25-2-206. Judgment affecting real property to be transmitted. When an action or proceeding affecting the title to or possession of real estate has been

brought in or transferred to any court of a county other than the county in which the real estate or some portion of ~~it~~ *the real estate* is situated, the clerk of ~~such~~ *the* court ~~must~~ *shall*, after final judgment ~~therein~~ *in the action*, certify under ~~his~~ *the clerk's* seal of office and transmit to the corresponding court of the county in which the real estate affected by the action is situated a copy of the judgment. The clerk receiving ~~such~~ *the* copy ~~must~~ *shall* file, docket, and record the judgment in the record of the court, briefly designating it as a judgment transferred from .... court (naming the proper court)."

Section 383. Section 25-3-206, MCA, is amended to read:

"25-3-206. Execution by elisor. (1) Process or orders in an action or proceeding may be executed by a person residing in the county, designated by the court or a judge ~~thereof~~, and denominated an elisor~~,~~ in the following cases:

(a) The sheriff and coroner are both parties.

(b) Either of these officers is a party, and the process is against the other.

(c) Either of these officers is a party, and there is a vacancy in the office of the other.

(d) It appears by affidavit to the satisfaction of the court in which the proceeding is pending or the judge ~~thereof~~ that both of these officers are disqualified or, by reason of any bias, prejudice, or other cause, would not act promptly or impartially.

(2) When process is delivered to an elisor, ~~he must~~ *the elisor shall* execute and return ~~it~~ *the process* in the same manner ~~as~~ *that* the sheriff is required to execute similar process. The court or judge may at any time on ~~its~~ *the court's or judge's* own motion appoint an elisor."

Section 384. Section 25-3-401, MCA, is amended to read:

"25-3-401. Notice requirements after appearance of defendant. A defendant appears in an action when ~~he~~ *the defendant* answers, files a motion, or gives the plaintiff written notice of ~~his~~ appearance or when an attorney gives notice of appearance for ~~him~~ *the defendant* or has ~~such~~ *the* appearance entered in open court. After appearance, a defendant or ~~his~~ *the defendant's* attorney is entitled to notice of all subsequent proceedings of which notice is required to be given."

Section 385. Section 25-3-402, MCA, is amended to read:

"25-3-402. Persons to be served. Subject to the provisions of Rule 5(b), M.R.Civ.P., whenever a plaintiff or a defendant who has appeared resides out of this state and has no attorney in the action or proceeding, service may be made on the clerk of court for ~~him~~ *that party*. ~~But~~ *However,* in all cases ~~where~~ *in which* a party has an attorney in the action or proceeding, the service of papers, when required, must be upon the attorney instead of the party, except of subpoenas, writs, and other process issued in the suit and papers to bring ~~him~~ *the party* into contempt, unless the court orders otherwise."

Section 386. Section 25-3-501, MCA, is amended to read:

"25-3-501. Service of ~~telephonic~~ *telegraphic* or ~~telegraphic~~ *telephonic* copy. (1) Any summons, writ, or order in ~~any~~ *a* civil action or proceeding and all other papers requiring service may be transmitted by telegraph or telephone for ~~such~~ service in any place~~;~~. ~~and the~~ *The* telegraphic or telephonic copy of ~~such~~ *the* writ, order, or paper ~~so~~ transmitted may be served or executed by the officer or person to whom it is sent for that purpose and returned by ~~him~~ *the officer or person*, if any return ~~be requisite~~ *is required*, in the same

manner and with the same ~~force and~~ effect in all respects as the original ~~thereof~~ might be delivered to ~~him; and~~ the officer or person. *The officer or person* serving or executing the ~~same~~ *writ, order, or paper* has the same authority and is subject to the same liabilities as if the copy were the original.

(2) The original, when a writ or order, must also be filed in the court from which it was issued, and a certified copy ~~thereof~~ *of the writ or order* must be preserved in the telegraph or telephone office from which it is sent. In sending ~~it~~ *the writ or order*, either the original or certified copy may be used by the operator for that purpose. Whenever any document to be sent by telegraph or telephone bears a seal, either private or official, it is not necessary for the operator, in sending the ~~same~~ *document*, to telegraph or telephone a description of the seal or any words or device ~~thereon~~ *on the seal*, but the ~~same~~ *seal* may be expressed in the telegraphic or telephonic copy by the letters "L.S." or by the word "seal"."

Section 387. Section 25-3-602, MCA, is amended to read:

"25-3-602. Operation of vehicle considered consent to service on secretary of state. The acceptance by a nonresident of the rights and privileges conferred by the laws of this state to use the highways, roads, and streets of the state and its political subdivisions, as evidenced by ~~his~~ *the nonresident* operating a motor vehicle ~~thereon~~ *on the highways, roads, and streets*, ~~shall be deemed~~ *is considered* equivalent to and construed to be an appointment by ~~such~~ *the* nonresident of the secretary of state of the state of Montana to be ~~his~~ *the nonresident's* true and lawful attorney upon whom may be served all lawful summonses and processes against ~~him~~ *the nonresident* growing out of any accident, collision, or liability in which ~~said~~ *the* nonresident may be involved while operating a motor vehicle upon ~~such~~ *the* highways, roads, and streets~~;~~. ~~and said~~ *The* acceptance or operation ~~shall be~~ *is* a signification of ~~his~~ *the nonresident's* agreement that any summons or process against ~~him which~~ *the nonresident that* is ~~so~~ served ~~shall be~~ *on the secretary of state is* of the same legal force and validity as if served on ~~him~~ *the nonresident* personally within the state of Montana."

Section 388. Section 25-3-603, MCA, is amended to read:

"25-3-603. Operation of vehicle by agent. The operation by any person, ~~by himself~~ *individually* or ~~his~~ *by the person's* agent, of any motor vehicle, whether registered or unregistered and with or without a license to operate, on any public way in this state ~~shall be deemed~~ *is considered* equivalent to an appointment by ~~such~~ *the* person of the secretary of state ~~or his successor in office~~ to be ~~his~~ *the person's* true and lawful attorney upon whom may be served all lawful processes in any action or proceeding against ~~him~~ *the person* growing out of an accident or collision in which ~~he~~ *the person* or ~~his~~ *the person's* agent may be involved while operating a motor vehicle on any public way in this state~~;~~. ~~and such~~ *The* operation ~~shall be~~ *is* a signification of an agreement by ~~such~~ *the* person that any ~~such~~ process against ~~him which~~ *the person that* is served upon the secretary of state ~~or his successor in office shall be~~ *is* of the same force and validity as if served upon ~~him~~ *the person* personally. This section ~~shall~~ *does* not apply in case of any cause of action, for the service of process in which provision is made by 25-3-602, ~~nor shall~~ *and* it *does not* authorize service of process upon any person who may with due diligence be found and personally served with process within the state of Montana."

Section 389. Section 25-4-101, MCA, is amended to read:

"25-4-101. Motions and orders — where made. (1) Motions must be made in the county in which the action is brought or in any adjoining county in

the same district. In ~~case of~~ the absence of the judge of the district from ~~his~~ *the* district or in an action pending in which ~~such~~ *the* judge is disqualified to act, ~~such~~ *a* motion may be made before the judge of any adjoining district unless there is another judge in the same district who is not disqualified to act~~,~~. ~~in which~~ *In that* case*,* ~~such~~ *a* motion ~~shall~~ *must* be made before another judge in the same district.

(2) Orders made out of court may be made by the judge of the court in any part of the state."

Section 390. Section 25-4-102, MCA, is amended to read:

"25-4-102. Transfer when judge unable to hear motion or return of order. When a notice of motion is given or an order to show cause is made returnable before a judge out of court and, at the time fixed for the motion or on the return day of the order, the judge is unable to hear the parties, the matter may be transferred by ~~his~~ *the judge's* order to some other judge."

Section 391. Section 25-4-203, MCA, is amended to read:

"25-4-203. Verification of pleadings. (1) In any case in which an affidavit of verification is required, except as otherwise specifically provided, ~~such~~ *the* affidavit of verification must be to the effect that the pleading is true to the knowledge of the deponent, except as to the matters ~~therein~~ stated *in the affidavit* on information and belief, and that as to those ~~he~~ *the deponent* believes it to be true. ~~Such~~ *The* verification must be made by the party or, if there are several parties united in interest or pleading, by one at least of ~~such~~ *the* parties acquainted with the facts if ~~such~~ *the* party is in the county and capable of making the affidavit. The verification may also be made by the agent or attorney of the party if the party is absent from the county where the attorney resides or is from any other cause unable to verify the pleading, and in ~~such~~ *that* case*,* the verification must state that the deponent is the agent or attorney of the party, the reason why ~~such~~ *the* verification is made by ~~such~~ *the* agent or attorney, and that the matters stated in the pleadings are true to the best knowledge, information, and belief of ~~such~~ *the* agent or attorney.

(2) When a corporation is a party, the verification may be made by any officer ~~thereof~~ *of the corporation* and must state what *the office of the* officer ~~he~~ is and that the matters stated ~~therein~~ *in the verification* are true to the best knowledge, information, and belief of ~~such~~ *the* officer. If there is no officer of the corporation within the county, the verification may be made by ~~its~~ *the corporation's* attorney."

Section 392. Section 25-4-302, MCA, is amended to read:

"25-4-302. Pleading an account. It is not necessary for a party to set forth in a pleading the items of an account ~~therein~~ alleged *in the pleading*, but ~~he~~ *the party* ~~must~~ *shall* deliver to the adverse party, within 5 days or ~~such further~~ *additional* time ~~as~~ *that* the court may allow or may be agreed to by the parties, after a demand ~~thereof~~ in writing, a copy of the account or be precluded from giving evidence ~~thereof~~ *of the account*. The court or judge ~~thereof~~ may order a further account when the one delivered is too general or is defective in any particular."

Section 393. Section 25-4-401, MCA, is amended to read:

"25-4-401. Counterclaim by person sued in representative capacity. In an action against an executor*,* ~~or~~ administrator*,* or other person sued in a representative capacity, the defendant may set forth as a counterclaim a demand belonging to the decedent or other person whom ~~he~~ *the executor,*

administrator, or person represents ~~where~~ *when* the person so represented would have been entitled to set forth the ~~same~~ *counterclaim* in an action against ~~him~~ *the person*."

Section 394. Section 25-4-402, MCA, is amended to read:

"25-4-402. Counterclaim against person suing in representative capacity. In an action brought by an executor or administrator in ~~his~~ *a* representative capacity, a demand against the decedent belonging at the time of ~~his~~ *the decedent's* death to the defendant may be set forth by the defendant as a counterclaim as if the action had been brought by the decedent in ~~his~~ *the decedent's* lifetime~~,~~. ~~and if~~ *If* a balance is found to be due *to* the defendant, judgment must be rendered ~~therefor~~ *for the balance* against the plaintiff in ~~his~~ *the* representative capacity. Execution can be issued upon ~~such a~~ *the* judgment only in a case ~~where~~ *in which* it could be issued upon a judgment in an action against the executor or administrator."

Section 395. Section 25-4-403, MCA, is amended to read:

"25-4-403. Counterclaim in action on contract. A counterclaim on a contract is subject to the following rules:

(1) Except as otherwise provided by the Uniform Commercial Code, if the action is founded upon a contract ~~which~~ *that* has been assigned by the party ~~thereto~~ *to the contract*, a demand existing against the party ~~thereto~~ *to the contract* or an assignee of the contract at the time of the assignment ~~thereof~~ and belonging to the defendant, in good faith, before notice of the assignment must be allowed as a counterclaim to the amount of the plaintiff's demand if it might have been ~~so~~ allowed against the party or the assignee while the contract belonged to ~~him~~ *the party or the assignee*.

(2) If the plaintiff is a trustee for another or if the action is in the name of the plaintiff who has no actual interest in the contract upon which it is founded, a demand against the plaintiff ~~shall~~ *may* not be allowed as a counterclaim, but so much of a demand existing against the person whom ~~he~~ *the plaintiff* represents or for whose benefit the action is brought as will satisfy the plaintiff's demand must be allowed as a counterclaim if it might have been ~~so~~ allowed in an action brought by the person beneficially interested."

Section 396. Section 25-4-404, MCA, is amended to read:

"25-4-404. Cross-claim to be asserted in answer. ~~Where~~ *When* the judgment may determine the ultimate rights of two or more defendants as between themselves, a defendant who requires ~~such~~ a determination ~~must~~ *shall* demand it in ~~his~~ *the* answer. The controversy between the defendants ~~must~~ *may* not delay a judgment to which the plaintiff is entitled unless the court otherwise directs."

Section 397. Section 25-4-502, MCA, is amended to read:

"25-4-502. No postponement when expected evidence admitted. The court may also require the moving party to state, upon affidavit, the evidence ~~which he~~ *that the party* expects to obtain, and if the adverse party ~~thereupon~~ admits that ~~such~~ *the* evidence would be given and that it be considered as actually given on the trial or offered and overruled as improper, the trial ~~shall~~ *may* not be postponed."

Section 398. Section 25-4-601, MCA, is amended to read:

"25-4-601. Procedure when answer admits part of plaintiff's claim. ~~Where~~ *When* the answer of the defendant, expressly or by not denying, admits a part of the plaintiff's claim to be just, the court, upon the plaintiff's motion, may,

in its discretion, order that the action be severed, that a judgment be entered for the plaintiff for the part ~~so~~ admitted, and, if the plaintiff ~~so~~ elects, that the action be continued with like effect ~~as~~ *with regard* to the subsequent proceedings as if it had been originally brought for the remainder of the claim. The order must prescribe the time and manner of the plaintiff's election. If the plaintiff elects to continue the action, ~~his~~ *the plaintiff's* right to costs upon the judgment is the same as if it were taken in an action brought for only that part of the claim. If the plaintiff does not elect to continue the action, costs must be awarded as upon final judgment in any other case."

Section 399. Section 25-4-602, MCA, is amended to read:

"25-4-602. Judgment for excess when plaintiff admits counterclaim. In an action upon contract ~~where~~ *when* the complaint demands judgment for a sum of money only, if the defendant by ~~his~~ *the* answer does not deny the plaintiff's claim but sets up a counterclaim amounting to less than the plaintiff's claim, the plaintiff, upon filing with the clerk an admission of the counterclaim, may take judgment for the excess, as upon a default for want of an answer."

Section 400. Section 25-5-103, MCA, is amended to read:

"25-5-103. Suing ~~a~~ party by ~~a~~ fictitious name. When the plaintiff ~~is ignorant of~~ *does not know* the name of the defendant, ~~such~~ *the* defendant may be designated in any pleading or proceeding by any name~~;~~. ~~and when his~~ *When the defendant's* true name is discovered, the pleadings or proceedings may be amended accordingly."

Section 401. Section 25-5-202, MCA, is amended to read:

"25-5-202. Who may defend when spouse sued. If a husband and wife ~~be~~ *are* sued together, each spouse may defend for ~~his or her~~ *the spouse's* own right, and if the other spouse ~~neglect~~ *fails* to defend, the spouse who does choose to defend may defend for the other spouse's right also."

Section 402. Section 25-5-203, MCA, is amended to read:

"25-5-203. Defendants — adverse claims to real property. In an action brought by a person out of possession of real property to determine an adverse claim of an interest or estate ~~therein~~ *in the property*, the person making ~~such~~ *the* adverse claim and the persons in possession may be joined as defendants, and if the judgment ~~be~~ *is* for the plaintiff, ~~he~~ *the plaintiff* may have a writ for the possession of the premises as against the defendants in the action against whom the judgment has passed."

Section 403. Section 25-5-301, MCA, is amended to read:

"25-5-301. Appointment of guardian. When a guardian ad litem is appointed by the court, ~~he~~ *the guardian ad litem* must be appointed as follows:

(1) when the minor is plaintiff, upon the application of the minor if ~~he be of the age of~~ *the minor is* 14 years *of age* or, if under that age, upon the application of a relative or friend of the minor;

(2) when the minor is defendant, upon the application of the minor if ~~he be of the age of~~ *the minor is* 14 years *of age* and ~~apply~~ *applies* within 10 days after the service of the summons or, if under that age or if ~~he~~ *the minor* neglects ~~so~~ to apply, upon the application of a relative or friend of the minor or of any other party to the action;

(3) when an insane or incompetent person is party to an action or proceeding, upon the application of a relative or friend of ~~such~~ *the* insane or incompetent person or of any other party to the action or proceeding."

Section 404. Section 25-7-206, MCA, is amended to read:

"25-7-206. Procedure when insufficient number attend. (1) If a sufficient number of jurors ~~duly~~ drawn and notified do not attend to form a jury, the judge or the jury commissioner, pursuant to an order of the court to be entered in the minutes, shall, in the presence of two witnesses, draw a sufficient number of ballots from the box to complete the jury. The sheriff shall notify the persons thus drawn to attend immediately or at a time fixed by court. If for any reason a sufficient number of jurors to try the issue is not obtained from the persons notified, the court may make or order further drawings until a sufficient number is obtained.

(2) Each person ~~so~~ notified ~~must~~ *shall* attend at the time required by the notice and, unless excused by the court or set aside, ~~must~~ *shall* serve as a juror upon the trial. For a neglect or refusal to do so, ~~he~~ *the person* may be fined in the same manner as any other trial juror regularly drawn and notified. ~~He~~ *The person* is subject to the same exceptions and challenges as any other trial juror."

Section 405. Section 25-7-209, MCA, is amended to read:

"25-7-209. Ballots of jurors not sworn. The ballot with the name of a juror who is absent when ~~his~~ *the juror's* name is drawn or called or is set aside or excused from serving on that trial must be again returned to the box containing the undrawn ballots as soon as the jury is sworn."

Section 406. Section 25-7-223, MCA, is amended to read:

"25-7-223. Challenges to jurors for cause. Challenges for cause may be taken on one or more of the following grounds:

(1) a want of any of the qualifications prescribed by this code to render a person competent as a juror;

(2) being the spouse of or related to a party by consanguinity or affinity within the sixth degree;

(3) standing in the relation of guardian and ward, debtor and creditor, employer and employee, or principal and agent to either party or being a partner in business with either party or surety on any bond or obligation for either party. However, a challenge for cause may not be taken because of debtor and creditor relation when the same arises solely:

(a) by reason of current bills of gas, water, electricity, or telephone; or

(b) because a prospective juror is a depositor of funds with a bank, savings and loan institution, credit union, or similar financial institution.

(4) having served as a juror or been a witness on a previous trial between the same parties for the same cause of action;

(5) interest on the part of the juror in the event of the action or in the main question involved in the action, except ~~his~~ *the juror's* interest as a member or citizen of a municipal corporation;

(6) having an unqualified opinion or belief as to the merits of the action;

(7) the existence of a state of mind in the juror evincing enmity against or bias in favor of either party."

Section 407. Section 25-7-301, MCA, is amended to read:

"25-7-301. Order of trial. When the jury has been sworn, the trial ~~shall~~ *must* proceed in the following order unless the court, for good cause and special reason, otherwise directs:

(1) The party who has the burden of proof may briefly state ~~his~~ *the party's* case and the evidence by which ~~he~~ *the party* expects to sustain it.

(2) The adverse party may then, or at the opening of ~~his~~ *the adverse party's* case, briefly state ~~his~~ *the* defense and the evidence ~~he~~ *that the adverse party* expects to offer in support of it.

(3) The party who has the burden of proof shall first produce ~~his~~ *the party's* evidence~~;~~*, and* the adverse party ~~will~~ *shall* then produce ~~his~~ *the adverse party's* evidence.

(4) The parties ~~will~~ *shall* then be confined to rebutting evidence unless the court, for good reasons in furtherance of justice, permits them to offer evidence in their original case.

(5) When the instructions have been passed upon and settled by the court and before the arguments of counsel to the jury have begun, the court shall charge the jury in writing, giving in ~~such~~ *the* charge only ~~such~~ *the* instructions ~~as~~ *that* are passed upon and settled at ~~such~~ *the* settlement. In charging the jury, the court shall give to ~~it~~ *the jury* all matters of law ~~which~~ *that* the court thinks necessary for the jury's information in rendering a verdict.

(6) When the jury has been charged, unless the case is submitted to the jury on either side or on both sides without argument, the party upon whom rests the burden of proof ~~must~~ *shall* commence and may conclude the argument. If several defendants having several defenses appear by different counsel, the court ~~must~~ *shall* determine their relative order in the evidence and argument. Counsel, in arguing the case to the jury, may argue and comment upon the law of the case as given in the instructions of the court, as well as upon the evidence in the case."

Section 408. Section 25-7-304, MCA, is amended to read:

"25-7-304. Procedure when a juror becomes sick. If, after the impaneling of the jury and before verdict, a juror becomes sick ~~so as to be~~ *and is* unable to perform ~~his~~ *the juror's* duty, the court may order ~~him~~ *the juror* to be discharged. In that case, subject to the provisions of Rule 47(c), M.R.Civ.P., the trial may proceed with the other jurors or another juror may be sworn and the trial may begin anew or the jury may be discharged and a new jury ~~then or afterward~~ impaneled."

Section 409. Section 25-7-403, MCA, is amended to read:

"25-7-403. Conduct of jury after case submitted to it. When the case is finally submitted to the jury, it may decide in court or retire for deliberation. If the jurors retire, they must be kept together in some convenient place, under charge of an officer, until at least two-thirds of them agree upon a verdict or are discharged by the court. Unless by order of the court, the officer having ~~them~~ *the jurors* under ~~his~~ *the officer's* charge ~~must~~ *may* not ~~suffer~~ *allow* any communication to be made to ~~them~~ *the jurors* ~~or~~ *and the officer may not* make any ~~himself~~ *communication*, except to ask ~~them~~ *the jurors* if they or two-thirds of them are agreed upon a verdict~~;~~. ~~and he must~~ *The officer may* not, before ~~their~~ *the jurors'* verdict is rendered, communicate to any person the state of their deliberations or the verdict agreed upon."

Section 410. Section 25-7-501, MCA, is amended to read:

"25-7-501. Return of verdict — polling ~~the~~ jury. (1) When the jurors or two-thirds of them have agreed upon a verdict, they must be conducted into court, their names *must be* called by the clerk, and the verdict *must be* rendered by ~~their foreman~~ *the lead juror*. The verdict must be in writing and signed by the

~~foreman~~ *lead juror* and must be read by the clerk to the jury, and the inquiry made whether it is ~~their~~ *the jury's* verdict.

(2) Either party may require the jury to be polled, which is done by the court or clerk asking each juror if it is ~~his~~ *the juror's* verdict. If upon ~~such~~ *the* inquiry or polling more than one-third of the jurors disagree ~~thereto~~ *to the verdict*, the jury must be sent out again, but if ~~no such~~ disagreement ~~be~~ *is not* expressed, the verdict is complete and the jury discharged from the case."

Section 411. Section 25-7-503, MCA, is amended to read:

"25-7-503. Content of verdict — action for recovery of personal property. In an action for the recovery of specific personal property, if the property has not been delivered to the plaintiff or *if* the defendant, by ~~his~~ *the defendant's* answer, ~~claim~~ *claims* a return ~~thereof~~ *of the property*, the jury, if ~~its~~ *the* verdict ~~be~~ *is* in favor of the plaintiff or if~~, being~~ *the verdict is* in favor of the defendant~~, it~~ *and the jury* also finds that ~~he~~ *the defendant* is entitled to a return ~~thereof~~ *of the property*, shall find the value of the property. ~~(but~~ *However,* failure to find all the facts mentioned in this section ~~shall~~ *may* not invalidate the verdict~~)~~. ~~and~~ *The jury* may at the same time assess the damages, if ~~they~~ *damages* are claimed in the complaint or answer, ~~which~~ *that* the prevailing party has sustained by reason of the taking or detention of ~~such~~ *the* property."

Section 412. Section 25-7-701, MCA, is amended to read:

"25-7-701. Oath of referee. ~~Every~~ *Each* referee, before acting ~~as such~~, shall take and subscribe an oath or affirmation before some authorized officer, which ~~shall~~ *must* be filed with the clerk of the court ~~by which he is~~ *that* appointed *the referee*, that ~~he~~ *the referee* will honestly, impartially, and faithfully perform the duties of referee in the action or matter referred to ~~him~~ *the referee*, as required by law, to the best of ~~his~~ *the referee's* knowledge and ability."

Section 413. Section 25-7-702, MCA, is amended to read:

"25-7-702. Grounds for objection to appointment of referee. Either party may object to the appointment of any person as referee on the same grounds that ~~he~~ *the party* might object to ~~him~~ *the person* as a trial juror, as provided in 25-7-223."

Section 414. Section 25-8-101, MCA, is amended to read:

"25-8-101. When court may order deposit or delivery. When it is admitted by the pleading or shown upon the examination of a party that ~~he~~ *the party* has in ~~his~~ *the party's* possession or under ~~his~~ *the party's* control any money or other thing capable of delivery ~~which~~ *that*, being the subject of the litigation, is held by ~~him~~ *the party* as trustee for another party or ~~which~~ *that* belongs or is due to another party, the court may order the ~~same~~ *money or thing*, upon motion, to be deposited in court or delivered to ~~such~~ *the* party upon ~~such~~ conditions ~~as~~ *that* may be just, subject to the further direction of the court."

Section 415. Section 25-8-103, MCA, is amended to read:

"25-8-103. With whom money deposited. (1) Whenever ~~moneys are~~ *money is* paid into or deposited in court, the ~~same shall~~ *money must* be delivered to the clerk in person or to ~~such of his~~ *the clerk's* deputies ~~as shall be~~ *who are* specially authorized by ~~his~~ *the deputy's* appointment in writing to receive the ~~same~~ *money*. ~~He must~~ *The clerk or deputy shall*, unless otherwise directed by law, deposit ~~it~~ *the money* with the county treasurer to be held by ~~him~~ *the treasurer* subject to the order of the court.

(2) ~~Such~~ *The* appointment ~~shall~~ *must* be filed with the county treasurer, who shall exhibit it and give to each person ~~applying~~ *asking* for the

~~same~~ *appointment* a certified copy of the ~~same~~ *appointment*. ~~It shall~~ *The appointment is* ~~be~~ in force until a revocation in writing is filed with the county treasurer, who shall ~~thereupon~~ *upon receipt* write "revoked" in ink across the face of the appointment."

Section 416. Section 25-8-104, MCA, is amended to read:

"25-8-104. Safekeeping of deposit by county treasurer. The treasurer shall keep each fund distinct and open an account ~~with each~~ *for each fund*. For the safekeeping of the money deposited with the treasurer, ~~his~~ *the treasurer's* official bond ~~shall be~~ *is* security."

Section 417. Section 25-9-103, MCA, is amended to read:

"25-9-103. Death of party after verdict~~,~~ — no lien. If a party ~~die~~ *dies* after a verdict or decision upon any issue of fact and before judgment, the court may nevertheless render judgment ~~thereon~~. ~~Such a~~ *The* judgment is not a lien on the real property of the deceased party but is payable in the course of administration on ~~his~~ *the deceased party's* estate."

Section 418. Section 25-9-104, MCA, is amended to read:

"25-9-104. Procedure after judgment on ~~an~~ issue of law. On a judgment for the plaintiff upon an issue of law, ~~he~~ *the plaintiff* may proceed in the manner prescribed by Rule 55(a) and (b), M.R.Civ.P., upon the failure of the defendant to answer. If judgment ~~be~~ *is* for the defendant upon an issue of law and the taking of an account or the proof of any fact ~~be~~ *is* necessary to enable the court to complete the judgment, a reference may be ordered, as provided in Rule 55(b)."

Section 419. Section 25-9-204, MCA, is amended to read:

"25-9-204. Clerk to include interest in judgment. The clerk ~~must~~ *shall* include in the judgment entered up by ~~him~~ *the clerk* any interest on the verdict or decision of the court, from the time it was rendered or made."

Section 420. Section 25-9-311, MCA, is amended to read:

"25-9-311. Entry of satisfaction of judgment in docket. Satisfaction of a judgment may be entered in the clerk's docket upon an execution returned satisfied or upon an acknowledgment of satisfaction filed with the clerk, made in the manner of an acknowledgment of a conveyance of real property by the judgment creditor or by ~~his~~ *the judgment creditor's* endorsement on the face or on the margin of the record of the judgment or by ~~his~~ *the judgment creditor's* attorney unless a revocation of ~~his~~ *the attorney's* authority is filed. Whenever a judgment is satisfied in fact otherwise than upon an execution, the party or attorney ~~must~~ *shall* give ~~such~~ *the* acknowledgment or make ~~such~~ *the* endorsement, and upon motion, the court may compel ~~it~~ *the acknowledgment or endorsement* or may order the entry of satisfaction to be made without ~~it~~ *the acknowledgment or endorsement*."

Section 421. Section 25-9-404, MCA, is amended to read:

"25-9-404. Payment of attorney fees. A judgment must order payment of attorney fees and litigation expenses separately from an order for periodic payments of future damages. The attorney fees and expenses must be paid either in a lump sum or by periodic payments pursuant to an agreement entered into between the claimant and ~~his~~ *the claimant's* attorney. An agreement for the immediate lump-sum payment of that portion of the attorney fees incurred to recover future damages to be paid by periodic payments must be calculated on the basis of the present value of the future damages."

Section 422. Section 25-9-504, MCA, is amended to read:

"25-9-504. Notice of filing. (1) At the time of the filing of the foreign judgment, the judgment creditor or ~~his~~ *the judgment creditor's* attorney shall file with the clerk of the court an affidavit setting forth the name and last-known post-office address of the judgment debtor and the judgment creditor. The affidavit must also include a statement that the foreign judgment is valid and enforceable~~,~~ and the extent to which it has been satisfied.

(2) Promptly upon filing the foreign judgment and affidavit, the judgment creditor or someone on ~~his~~ *the judgment creditor's* behalf shall mail notice of the filing of the judgment and affidavit, attaching a copy of each to the notice, to the judgment debtor and to ~~his~~ *the judgment debtor's* attorney of record, if any, each at ~~his~~ *the person's* last-known address, by certified mail, return receipt requested. The notice must include the name and post-office address of the judgment creditor and the judgment creditor's attorney, if any, in this state. The judgment creditor shall file with the clerk of the court an affidavit setting forth the date upon which the notice was mailed.

(3) The proceeds of an execution may not be distributed to the judgment creditor earlier than 30 days after the date of mailing the notice of filing."

Section 423. Section 25-9-507, MCA, is amended to read:

"25-9-507. Optional procedure. The right of a judgment creditor to bring an action to enforce ~~his~~ *the judgment creditor's* judgment instead of proceeding under this part remains unimpaired."

Section 424. Section 25-10-101, MCA, is amended to read:

"25-10-101. When costs allowed, of course, to plaintiff. Costs are allowed, of course, to the plaintiff upon a judgment in ~~his~~ *the plaintiff's* favor in the following cases:

(1) in an action for the recovery of real property or damages ~~thereto~~ *to real property*;

(2) in an action to recover the possession of personal property ~~where~~ *when* the value of the property exceeds $50~~; such~~*, with the* value ~~shall be~~ determined by the jury, court, or referee by whom the action is tried;

(3) in an action for the recovery of money or damages, exclusive of interest, when plaintiff recovers over $50;

(4) in a special proceeding;

(5) in an action ~~which~~ *that* involves the title or possession or right of possession of real estate; ~~or~~

(6) in an action that involves the legality of any tax, impost, assessment, toll, or municipal fine; ~~or~~

(7) in quo warranto proceedings;

~~(6)~~*(8)* in an action to foreclose a lien or pledge, to prevent or abate a nuisance, or for an injunction; or

~~(7)~~*(9)* in an action for property damage arising out of the ownership, maintenance, or use of a motor vehicle if ~~he~~ *the plaintiff* is entitled to ~~attorney's~~ *attorney* fees under 25-10-303."

Section 425. Section 25-10-102, MCA, is amended to read:

"25-10-102. When costs allowed, of course, to defendant. Costs must be allowed, of course, to the defendant upon a judgment in ~~his~~ *the defendant's* favor in the actions mentioned in 25-10-101."

Section 426. Section 25-10-104, MCA, is amended to read:

"25-10-104. When costs of appeal discretionary. (1) In the following cases, the costs of appeal are in the discretion of the court:

(a) when a new trial is ordered;

(b) when a judgment is modified.

(2) In all other cases, the successful party shall recover from the other party ~~his~~ *the successful party's* costs."

Section 427. Section 25-10-107, MCA, is amended to read:

"25-10-107. Costs when tender was made before commencement of action. When, in an action for the recovery of money only, the defendant alleges in ~~his~~ *the* answer that before the commencement of the action ~~he~~ *the defendant* tendered to the plaintiff the full amount to which ~~he~~ *the plaintiff* was entitled and ~~thereupon~~ deposits in court for *the* plaintiff the amount ~~so~~ tendered and the allegation ~~be~~ *is* found to be true, the plaintiff cannot recover costs but ~~must~~ *shall* pay costs to the defendant."

Section 428. Section 25-10-108, MCA, is amended to read:

"25-10-108. Imposing costs on party acting as representative. In an action prosecuted or defended by an executor, administrator, trustee of an express trust, or person expressly authorized by statute, costs may be recovered as in an action by and against a person prosecuting or defending in ~~his~~ *the person's* own right~~;~~. ~~but such~~ *However, the* costs must, by the judgment, be made chargeable only upon the estate, fund, or party represented unless the court directs the ~~same~~ *costs* to be paid by the plaintiff or defendant personally for mismanagement or bad faith in the action or defense."

Section 429. Section 25-10-201, MCA, is amended to read:

"25-10-201. Costs generally allowable. A party to whom costs are awarded in an action is entitled to include in ~~his~~ *the party's* bill of costs ~~his~~ *the party's* necessary disbursements, as follows:

(1) the legal fees of witnesses, including mileage, or referees and other officers;

(2) the expenses of taking depositions;

(3) the legal fees for publication when publication is directed;

(4) the legal fees paid for filing and recording papers and certified copies ~~thereof~~ *of papers* necessarily used in the action or on the trial;

(5) the legal fees paid stenographers for per diem or for copies;

(6) the reasonable expenses of printing papers for a hearing when required by a rule of court;

(7) the reasonable expenses of making transcript for the supreme court;

(8) the reasonable expenses for making a map or maps if required and necessary to be used on trial or hearing; and

(9) ~~such~~ other reasonable and necessary expenses ~~as~~ *that* are taxable according to the course and practice of the court or by express provision of law."

Section 430. Section 25-10-303, MCA, is amended to read:

"25-10-303. ~~Attorney's~~ *Attorney* fees — motor vehicle claim. In an action involving solely the recovery of property damages arising out of the ownership, maintenance, or use of a motor vehicle, in which the plaintiff secures a judgment equal to or greater than the amount of damages claimed by the

plaintiff in ~~his~~ *the plaintiff's* last written offer to the defendant or ~~his~~ *the defendant's* agent prior to the filing of the cause of action, the court shall allow plaintiff's reasonable ~~attorney's fee~~ *attorney fees*, which ~~shall~~ *must* be fixed by the court, not withstanding any agreement between the parties to the contrary. If the defendant or ~~his~~ *the defendant's* agent fails to make any offer within 15 days of the date requested to do so by the plaintiff, the plaintiff may file the cause of action and, if successful in the action, ~~shall be~~ *is* entitled to ~~his~~ reasonable ~~attorney's fee~~ *attorney fees* under this ~~provision~~ *section*."

Section 431. Section 25-10-402, MCA, is amended to read:

"25-10-402. No charge for copies furnished by party. In all cases ~~where~~ *in which* copies of pleadings, affidavits, or other papers are to be served, ~~neither~~ the sheriff ~~nor~~ *or* clerk ~~shall~~ *may not* charge or receive a fee for making ~~such~~ *the* copies when the ~~same~~ *copies* are furnished to ~~such officer~~ *the sheriff or clerk* by the party to the action or ~~his~~ *the party's* attorney."

Section 432. Section 25-10-501, MCA, is amended to read:

"25-10-501. Bill of costs. The party in whose favor judgment is rendered and who claims ~~his~~ *the party's* costs ~~must~~ *shall* deliver to the clerk and serve upon the adverse party, within 5 days after the verdict or notice of the decision of the court or referee or, if the entry of the judgment on the verdict or decision ~~be~~ *is* stayed, then before ~~such~~ *the* entry is made, a memorandum of the items of ~~his~~ *the party's* costs and necessary disbursements in the action or proceeding~~;~~. ~~which~~ *The* memorandum must be verified by the oath of the party, ~~his~~ *the party's* attorney or agent, or the clerk of ~~his~~ *the party's* attorney, stating that to the best of ~~his~~ *the person's* knowledge and belief, the items are correct and that the disbursements have been necessarily incurred in the action or proceeding."

Section 433. Section 25-10-503, MCA, is amended to read:

"25-10-503. How costs on appeal claimed. Whenever costs are awarded to a party by an appellate court, if ~~he~~ *the party* claims ~~such~~ *the* costs, ~~he must~~ *the party shall*, within 30 days after the remittitur is filed with the clerk ~~below~~ *in the original proceeding*, deliver to ~~such~~ *the* clerk a memorandum of ~~his~~ *the party's* costs, verified as prescribed in 25-10-501, and ~~thereafter he~~ *then the party* may have an execution ~~therefor~~ *for the costs* as upon a judgment."

Section 434. Section 25-10-504, MCA, is amended to read:

"25-10-504. Clerk to include costs in judgment. The clerk ~~must~~ *shall* include in the judgment entered ~~up~~ by ~~him~~ *the clerk* the costs, if the ~~same~~ *costs* have been taxed or ascertained~~;~~. ~~and he must~~ *The clerk shall*, within 2 days after the ~~same~~ *costs* are taxed or ascertained, if not included in the judgment, insert the ~~same~~ *costs* in a blank left in the judgment for that purpose and ~~must~~ *shall* make a similar insertion of the costs in the copies and docket of the judgment."

Section 435. Section 25-10-711, MCA, is amended to read:

"25-10-711. Award of costs against governmental entity when suit or defense is frivolous or pursued in bad faith. (1) In any civil action brought by or against the state, a political subdivision, or an agency of the state or a political subdivision, the opposing party, whether plaintiff or defendant, is entitled to the costs enumerated in 25-10-201 and reasonable ~~attorney's~~ *attorney* fees as determined by the court if:

(a) ~~he~~ *the opposing party* prevails against the state, political subdivision, or agency; and

(b) the court finds that the claim or defense of the state, political subdivision, or agency that brought or defended the action was frivolous or pursued in bad faith.

(2) Costs may be granted pursuant to subsection (1) notwithstanding any other provision of the law to the contrary."

Section 436. Section 25-11-102, MCA, is amended to read:

"25-11-102. Grounds for new trial. The former verdict or other decision may be vacated and a new trial granted on the application of the party aggrieved for any of the following causes materially affecting the substantial rights of ~~such~~ *the* party:

(1) irregularity in the proceedings of the court, jury, or adverse party or any order of the court or abuse of discretion by which either party was prevented from having a fair trial;

(2) misconduct of the jury. Whenever any one or more of the jurors have been induced to assent to any general or special verdict or to a finding on any question submitted to them by the court by a resort to the determination of chance, ~~such~~ *the* misconduct may be proved by the affidavit of any one of the jurors.

(3) accident or surprise ~~which~~ *that* ordinary prudence could not have guarded against;

(4) newly discovered evidence material for the party making the application ~~which he~~ *that the party* could not, with reasonable diligence, have discovered and produced at the trial;

(5) excessive damages appearing to have been given under the influence of passion or prejudice;

(6) insufficiency of the evidence to justify the verdict or other decision or that it is against law;

(7) error in law occurring at the trial and excepted to by the party making the application."

Section 437. Section 25-13-103, MCA, is amended to read:

"25-13-103. Execution after death of ~~a~~ party. Notwithstanding the death of a party after the judgment, execution ~~thereon~~ *on the judgment* may be issued or it may be enforced as follows:

(1) In case of the death of the judgment creditor, it may be enforced upon the application of ~~his~~ *the creditor's* executor*,* ~~or~~ administrator*,* or successor in interest.

(2) In case of the death of the judgment debtor, if the judgment ~~be~~ *is* for the recovery of real or personal property or the enforcement of a lien ~~thereon~~ *on the property*, execution may be issued with the same effect as if ~~he~~ *the debtor* were still living."

Section 438. Section 25-13-104, MCA, is amended to read:

"25-13-104. Compelling contribution or repayment — joint debtor~~,~~ — surety. (1) When property liable to an execution against several persons is sold ~~thereon~~ *upon execution* and more than a due proportion of the judgment is satisfied out of the proceeds of the sale of property of one of them or one of them pays, without a sale, more than ~~his~~ *the person's* proportion, ~~he~~ *the person* may compel contribution from the others~~;~~. ~~and when~~ *When* a judgment is against several *persons* and is upon an obligation of one of them as surety for another and the surety pays the amount or any part ~~thereof~~ *of the amount*, either by sale

of ~~his~~ *the surety's* property or before sale, ~~he~~ *the surety* may compel repayment from the principal.

(2) In ~~such~~ *the* case *described in subsection (1)*, the person ~~so~~ paying or contributing is entitled to the benefit of the judgment to enforce contribution or repayment if, within 10 days after ~~his~~ *the person's* payment, ~~he file~~ *the person files* with the clerk of the court where judgment was rendered notice of ~~his~~ payment and *a* claim to contribution or repayment. Upon the filing of ~~such~~ *the* notice, the clerk ~~must~~ *shall* make an entry ~~thereof~~ *of the notice* in the margin of the docket."

Section 439. Section 25-13-105, MCA, is amended to read:

"25-13-105. Compelling repayment — surety on appeal. Whenever any surety on an undertaking on appeal, executed to stay proceedings upon a money judgment, pays the judgment, either with or without action, after its affirmation by the appellate court, ~~he~~ *the surety* is substituted to the rights of the judgment creditor and is entitled to control, enforce, and satisfy ~~such~~ *the* judgment in all respects as if ~~he~~ *the surety* had recovered the ~~same~~ *judgment*."

Section 440. Section 25-13-201, MCA, is amended to read:

"25-13-201. Judgments for money or ~~the~~ possession of property. When the judgment is for money or the possession of real or personal property, the ~~same~~ *judgment* may be enforced by a writ of execution~~;~~. ~~and if~~ *If* the judgment ~~direct~~ *directs* that the defendant be arrested, the execution may issue against the person of the judgment debtor after the return of an execution against ~~his~~ *the judgment debtor's* property unsatisfied in whole or in part."

Section 441. Section 25-13-205, MCA, is amended to read:

"25-13-205. Judgments against county or county officer. When a judgment is rendered against the county or against any county officer in an action prosecuted against ~~him~~ *the officer* in ~~his~~ *the officer's* name of office, when the ~~same~~ *judgment* is to be paid by the county, ~~no~~ execution ~~must~~ *may not* issue upon the judgment, but the ~~same~~ *judgment* must be paid *in the same manner* as other county charges. When ~~so~~ collected, the ~~same~~ *judgment* must be paid by the county treasurer to the proper person to whom the ~~same~~ *judgment* is ~~adjudged~~ *issued*, upon the delivery of a proper voucher ~~therefor~~ *for payment*."

Section 442. Section 25-13-302, MCA, is amended to read:

"25-13-302. Execution against principal debtor before surety. Upon the rendition of any judgment, if it ~~shall be~~ *is* shown that one or more of the defendants against whom the judgment is to be rendered are principal debtors and others of the ~~said~~ defendants are sureties of ~~such~~ *the* principal debtor, the court may order the judgment ~~so~~ to state~~,~~ *that fact.* ~~and upon~~ *Upon* the issuance of an execution upon ~~such~~ *the* judgment, ~~it shall~~ *the execution must* direct the sheriff or levying officer to make the amount due ~~thereon~~ *on the judgment* out of the goods and chattels, lands, and tenements of the principal debtor or debtors or, if sufficient ~~thereof~~ *amount* cannot be found within ~~his~~ *the principal judgment debtor's* county to satisfy the ~~same~~ *judgment*, to levy and make the ~~same~~ *execution* out of the property, personal or real, of the judgment debtor who was surety."

Section 443. Section 25-13-304, MCA, is amended to read:

"25-13-304. Execution against property of judgment debtor. If the writ ~~be~~ *is* against the property of the judgment debtor, ~~it shall~~ *the writ must* require the sheriff or levying officer to satisfy the judgment, with interest, out of

the personal property of ~~such~~ *the* debtor and, if sufficient personal property cannot be found, out of ~~his~~ *the debtor's* real property as provided in 25-13-305."

Section 444. Section 25-13-308, MCA, is amended to read:

"25-13-308. Execution against person of judgment debtor. If the writ ~~be~~ *is* against the person of the judgment debtor, it must require the sheriff to arrest ~~such~~ *the* debtor and commit ~~him~~ *the debtor* to the jail of the county until ~~he pay~~ *the debtor pays* the judgment, with interest, or ~~be~~ *is* discharged, according to law."

Section 445. Section 25-13-405, MCA, is amended to read:

"25-13-405. Clerk to record returned execution when levy on real property. If any real estate ~~be~~ *is* levied upon, the clerk ~~must~~ *shall* record the execution and the return ~~thereto~~ *of the execution* at large and certify the ~~same~~ *execution and return* ~~under his hand~~ as true copies in a book to be called the "execution book", which must be indexed, with the names of the plaintiffs and defendants in execution alphabetically arranged, and kept open at all times during office hours for the inspection of the public, without charge. It is evidence of the contents of the originals whenever they or any part ~~thereof~~ *of the originals* may be destroyed or mutilated."

Section 446. Section 25-13-502, MCA, is amended to read:

"25-13-502. Debts owed to judgment debtor. After the issuing of an execution against property and before its return, ~~any~~ *a* person indebted to the judgment debtor may pay to the sheriff the amount of ~~his~~ *the person's* debt or ~~so~~ *as* much ~~thereof~~ *of the debt* as ~~may be~~ *is* necessary to satisfy the execution~~;~~. ~~and the~~ *The* sheriff's receipt is sufficient discharge for the amount ~~so~~ paid."

Section 447. Section 25-13-506, MCA, is amended to read:

"25-13-506. Duty of secured party. (1) The secured party under any security agreement of record ~~shall~~ *is required*, upon 15 days' notice in writing served upon ~~him~~ *the party* in person by any creditor of the debtor seeking to satisfy a judgment of ~~such~~ *the* creditor against the debtor, ~~be required~~ to make and file in the office of the county clerk and recorder or other filing officer with whom the financing statement covering the security agreement is filed an affidavit showing the amount of the indebtedness then actually due and owing to the secured party~~;~~. ~~and such~~ *The* affidavit ~~shall~~ *must* state the amount of the original obligation for which the security agreement was given as security, all additional advancement of money or property on the principal obligation since the date of the execution of the security agreement, all payments ~~of whatsoever kind~~, whether on principal or interest, made by the debtor to the date of the execution of ~~such~~ *the* affidavit by the secured party, and the balance then remaining due and unpaid to the secured party. If within 15 days from the service of any ~~such~~ demand in writing on the secured party by any creditor of the debtor~~,~~ the secured party ~~shall fail~~ *fails*, ~~refuse~~ *refuses*, or ~~neglect~~ *neglects* to file the affidavit ~~herein required~~, the security agreement ~~shall be~~ *is* of no ~~force or~~ effect as against ~~such~~ *the* creditor upon the seizure of any ~~such~~ personal property on execution.

(2) ~~In the event~~ *If* the amount shown to be due is paid to the county treasurer*,* ~~or~~ to a filing officer, ~~as aforesaid,~~ or to the secured party in satisfaction of the security agreement by any execution creditor against the debtor, the secured party ~~shall be~~ *is* required to surrender to the county treasurer or ~~such~~ *the* filing officer the security agreement and any note or other evidence of indebtedness secured ~~thereby,~~ *by the agreement note, or other evidence of indebtedness.* ~~which~~ *The* security agreement or other evidence of

indebtedness ~~shall~~ *must* be delivered by the secured party, county treasurer, or filing officer to the execution creditor."

Section 448. Section 25-13-610, MCA, is amended to read:

"25-13-610. Tracing exempt personal property. (1) If money or other property exempt under 25-13-608 and 25-13-609 has been sold or has been lost, damaged, or destroyed and the judgment debtor has been indemnified for ~~it~~ *the property*, ~~he~~ *the debtor* is entitled for 6 months to an exemption of proceeds that are traceable*,* ~~(for example,~~ *such as* in a bank or savings account~~)~~.

(2) Earnings exempt under 25-13-614 remain exempt for 45 days after receipt by and while in the possession of the judgment debtor in a form into which the exempt earnings are traceable ~~(for example, in a bank or savings account)~~.

(3) Proceeds are traceable under this section by application of the principles of first-in first-out, last-in first-out, or any other reasonable basis for tracing selected by the judgment debtor."

Section 449. Section 25-13-614, MCA, is amended to read:

"25-13-614. Earnings of judgment debtor. (1) Earnings of a judgment debtor that are not subject to garnishment*,* as provided in this section*,* are exempt.

(2) Except as provided in subsections (3) and (4), the maximum part of the aggregate disposable earnings of a judgment debtor for any workweek that is subjected to garnishment may not exceed the lesser of:

(a) the amount by which ~~his~~ *the debtor's* disposable earnings for the week exceed 30 times the federal minimum hourly wage in effect at the time the earnings are payable; or

(b) 25% of ~~his~~ *the debtor's* disposable earnings for that week.

(3) The restrictions of subsection (2) do not apply in the case of an order or judgment for the maintenance or support of any person, issued by a court of competent jurisdiction or pursuant to an administrative procedure that is established by state law, affords substantial due process, and is subject to judicial review.

(4) (a) The maximum part of the aggregate disposable earnings of a judgment debtor for any workweek that is subject to garnishment to enforce an order described in subsection (3) may not exceed:

(i) 50% of the judgment debtor's disposable earnings for that week if ~~he~~ *the debtor* is supporting ~~his~~ *the debtor's* spouse or dependent child*,* ~~(~~other than a spouse or child for whom the order is issued~~)~~; or

(ii) 60% of the judgment debtor's disposable earnings for that week if ~~he~~ *the debtor* is not supporting a spouse or dependent child described in subsection (4)(a)(i).

(b) However, the amount stated in subsection (4)(a)(i) may be 55% and the amount stated in subsection (4)(a)(ii) may be 65% if ~~such~~ *the* earnings are being garnished to enforce an order for maintenance or support for a period prior to the 12-week period that ends with the beginning of ~~such~~ *the* workweek.

(5) For the purposes of this section, the definitions of earnings, disposable earnings, and garnishment are as set forth in 15 U.S.C. 1672."

Section 450. Section 25-13-702, MCA, is amended to read:

"25-13-702. Penalty for selling without notice or destruction of notice. An officer selling without the notice prescribed by 25-13-701 forfeits $500 to the aggrieved party in addition to ~~his~~ *the party's* actual damages~~;~~. ~~and a~~ *A* person willfully taking down or defacing the notice posted, if done before the sale or satisfaction of the judgment, ~~(~~if the judgment ~~be~~ *is* satisfied before sale~~)~~, forfeits $500."

Section 451. Section 25-13-704, MCA, is amended to read:

"25-13-704. Conduct of sale. (1) All sales of property under execution must be made at auction to the highest bidder, between the hours of 9 a.m. and 5 p.m. After sufficient property has been sold to satisfy the execution, no more *property* ~~can~~ *may* be sold. ~~Neither the~~ *The* officer holding the execution ~~nor his~~ *or the officer's* deputy ~~can~~ *may not* become a purchaser or be interested in any purchase at ~~such~~ *the* sale.

(2) When the sale is of personal property capable of manual delivery, it must be within view of those who attend the sale and *must* be sold in ~~such~~ parcels ~~as~~ *that* are likely to bring the highest price~~;~~. ~~and when~~ *When* the sale is of real property consisting of several known lots or parcels, ~~they~~ *the lots or parcels* must be sold separately, or when a portion of ~~such~~ *the* real property is claimed by a third person and ~~he~~ *the person* requires it to be sold separately, ~~such~~ *that* portion must be ~~thus~~ sold *separately*. The judgment debtor, if present at the sale, may also direct the order in which property, real or personal, ~~shall~~ *must* be sold when ~~such~~ *the* property consists of several known lots or parcels or of articles ~~which~~ *that* can be sold to advantage separately, and the sheriff ~~must~~ *shall* follow ~~such~~ *the* directions."

Section 452. Section 25-13-705, MCA, is amended to read:

"25-13-705. Procedure when purchaser refuses to pay. If a purchaser refuses to pay the amount bid by ~~him~~ *the purchaser* for the property ~~struck off~~ *sold* to ~~him~~ *the purchaser* at a sale under execution, the officer may again sell the property at any time to the highest bidder, and if any loss ~~be~~ *is* occasioned ~~thereby~~ *by the subsequent sale*, the officer may recover the amount of ~~such~~ *the* loss, with costs, from the bidder ~~so~~ refusing *to pay*, in any court of competent jurisdiction~~;~~. ~~and the~~ *The* person refusing to pay the costs ~~which~~ *that* have accrued by reason of ~~his~~ *the unpaid* bid ~~shall be deemed~~ *is* guilty of contempt of court and *may be* punished accordingly."

Section 453. Section 25-13-706, MCA, is amended to read:

"25-13-706. Rejection of subsequent bids after refusal to pay. When a purchaser refuses to pay, the officer may~~, in his discretion, thereafter~~ reject any subsequent bid of ~~such~~ *that* purchaser."

Section 454. Section 25-13-713, MCA, is amended to read:

"25-13-713. Procedure when sale invalidated~~,~~ — revival of judgment. (1) If the purchaser of real property sold on execution or ~~his~~ *the purchaser's* successor in interest ~~be~~ *is* evicted ~~therefrom in consequence~~ *from the property because* of irregularities in the proceedings concerning the sale or of the reversal or discharge of the judgment, ~~he~~ *the purchaser* may recover the price paid, with interest, from the judgment creditor.

(2) If the purchaser of property at *a* sheriff's sale or ~~his~~ *the purchaser's* successor in interest ~~fail~~ *fails* to recover possession ~~in consequence~~ *because* of irregularity in the proceedings concerning the sale or because the property sold was not subject to execution and sale, the court having jurisdiction ~~thereof~~ shall, on petition of ~~such~~ *the* party in interest or ~~his~~ *the party's* attorney, revive the

original judgment for the amount paid by ~~such~~ *the* purchaser at the sale, with interest ~~thereon~~ *on the judgment* from the time of payment at the same rate that the original judgment bore. When ~~so~~ revived, the ~~said~~ judgment ~~shall have~~ *has* the same effect as an original judgment of the ~~said~~ court of that date, bearing interest as ~~aforesaid; and any~~ *provided in this subsection. Any* other or after-acquired property, rents, issues, or profits of the ~~said~~ debtor ~~shall be liable~~ *is subject* to levy and sale under execution in satisfaction of ~~such~~ *the* debt~~,~~. ~~but no~~ *However,* property of ~~such~~ *the* debtor sold bona fide before the filing of ~~such~~ *the* petition ~~shall be~~ *is not* subject to the lien of ~~said~~ *the* judgment. The notice of the filing of ~~such~~ *the* petition ~~shall~~ *must* be made by filing a notice ~~thereof~~ in the office of the county clerk where ~~such~~ *the* property ~~may be~~ *is* situated, and ~~said~~ *the* judgment ~~shall~~ *must* be revived in the name of the original plaintiff or plaintiffs for the use of ~~said~~ *the* petitioner, the party in interest."

Section 455. Section 25-13-801, MCA, is amended to read:

"25-13-801. Who may redeem — *definition.* (1) Property sold subject to redemption, as provided by 25-13-710, or any part sold separately may be redeemed in the manner ~~hereinafter~~ provided *in this part* by the following persons or their successors in interest:

(a) the judgment debtor, the judgment debtor's spouse, or ~~his~~ *the judgment debtor's* successor in interest in the whole or any part of the property and, if the judgment debtor or successor ~~be~~ *is* a corporation, a stockholder ~~thereof~~ *of the corporation*;

(b) a creditor having a lien by judgment, mortgage, or attachment on the property sold or on some share or part ~~thereof~~ *of the property* subsequent to that on which the property is sold. If a corporation ~~be such~~ *is the* creditor, then any stockholder ~~thereof~~ *of the corporation* may redeem.

(2) The persons mentioned in subsection (1)(b) ~~of this section~~ are, in this part, termed "redemptioners"."

Section 456. Section 25-13-802, MCA, is amended to read:

"25-13-802. Time for redemption — amount to be paid. The judgment debtor or redemptioner may redeem the property from the purchaser any time within 1 year after the sale on paying the purchaser:

(1) the amount of ~~his~~ *the* purchase with interest at a rate established by the judgment in the action that led to the execution sale, up to the time of redemption;

(2) the amount of any assessment or taxes ~~which~~ *that* the purchaser may have paid ~~thereon~~ *on the property* after purchase and interest on ~~such~~ *that* amount;

(3) the amount of any repairs, maintenance expenses, or other expenditures that the purchaser may reasonably have made after purchase for the maintenance of the property, with interest on the amounts from the date of expenditure; and

(4) if the purchaser is also a creditor having a prior lien to that of the redemptioner other than the judgment under which ~~such~~ *the* purchase was made, the amount of ~~such~~ *the* lien with interest."

Section 457. Section 25-13-803, MCA, is amended to read:

"25-13-803. Subsequent redemptions — when permitted~~,~~ — amount paid. (1) If property ~~be so~~ *is* redeemed by a redemptioner, another redemptioner may, within 60 days after the last redemption, again redeem ~~it~~ *the property* from

the last redemptioner on paying the sum on ~~such~~ *the* last redemption with interest ~~thereon~~ at the rate established by the judgment in the action that led to the execution sale, the amount of any assessment or taxes ~~which~~ *that* the last redemptioner may have paid ~~thereon~~ *on the property* after the redemption by ~~him~~ *the last redemptioner* with ~~like~~ interest *at the same rate* on ~~such~~ *that* amount, and the amount of any liens held by the ~~said~~ last redemptioner prior to ~~his~~ *the last redemptioner's* own *lien*, with interest~~;~~. ~~but~~ *However,* the judgment under which the property was ~~so~~ sold need not be ~~so~~ paid as a lien. The property may be again, and as often as any redemptioner is ~~so~~ disposed, redeemed from any previous redemptioner, within 60 days after the last redemption, ~~on~~ *by* paying the sum paid on the last previous redemption with interest ~~thereon~~ *on the sum* at the rate established by the judgment in the action that led to the execution sale, the amount of any assessment or taxes ~~which~~ *that* the last previous redemptioner paid after the redemption by ~~him~~ *the last previous redemptioner* with ~~like~~ interest ~~thereon~~ *at the same rate*, and the amount of any liens, other than the judgment under which the property was sold, held by the last redemptioner previous to ~~his~~ *the last redemptioner's* own *lien*, with ~~like~~ interest *at the same rate*.

(2) If the judgment debtor or the judgment debtor's spouse redeem, the judgment debtor or the spouse ~~must~~ *shall* make the same payments ~~as~~ *that* are required to effect a redemption by a redemptioner."

Section 458. Section 25-13-804, MCA, is amended to read:

"25-13-804. Redemption by stockholder or corporation. (1) If a stockholder of a corporation redeems, the corporation, within 1 year after the date of sale, may redeem by paying to the redemptioner or the sheriff for ~~his~~ *the stockholder's* benefit the amount paid to effect the redemption, with interest ~~thereon~~ *on that amount* at the rate established by the judgment in the action that led to the execution sale from the date of redemption until the date of ~~such~~ payment, together with any taxes or assessments that may have been paid by the redemptioner, with ~~like~~ interest ~~thereon~~ *at the same rate on the amount of the payment*.

(2) When a stockholder redeems, any other stockholder or stockholders may, at any time after ~~such~~ *the* redemption and within 60 days after the expiration of 1 year from the date of sale, contribute to the redemption by paying to the redeeming stockholder or depositing with the sheriff for ~~his~~ *the redeeming stockholder's* benefit a sum ~~which~~ *that* bears the same proportion to the amount necessary to redeem ~~which~~ *that* the number of shares owned by ~~such~~ *the* contributing stockholder or stockholders bears to the number of shares of ~~such~~ *the* corporation outstanding, with interest on ~~such~~ *the* sum from the date of redemption until the date of contribution at the rate established by the judgment in the action that led to the execution sale, together with a ~~like~~ *similar* proportion of the taxes or assessments paid by ~~such~~ *the* redeeming stockholder, with ~~like~~ interest ~~thereon;~~ *at the same rate.* ~~and if~~ *If* the corporation does not redeem the property within the time and in the manner and form as ~~aforesaid~~ *described in this section*, the ~~said~~ redeeming and contributing stockholders ~~shall be~~ *are* entitled to receive a sheriff's deed for ~~such~~ *the* property ~~so~~ redeemed and shall succeed to the ~~said~~ property as tenants in common in ~~such~~ *the* proportions, respectively, ~~as~~ *that* they shall respectively pay or contribute to ~~such~~ *the* redemption ~~as aforesaid~~. The redeeming or contributing stockholder shall, in all cases when applying to redeem or contribute ~~as aforesaid~~, present an affidavit setting forth the number of shares of stock owned by ~~him~~ *the stockholder* and, to

the best of ~~his~~ *the stockholder's* knowledge, the number of shares of stock of the corporation outstanding."

Section 459. Section 25-13-806, MCA, is amended to read:

"25-13-806. Notice of redemption, liens, and taxes and assessments paid. Written notice of redemption must be given to the sheriff and a duplicate filed with the county clerk, and if any taxes or assessments are paid by the redemptioner or if ~~he~~ *the redemptioner* has or acquired any liens other than that upon which the redemption was made, notice ~~thereof~~ must in ~~like~~ *the same* manner be given to the sheriff and filed with the county clerk~~,~~. ~~and if such~~ *If the* notice ~~be~~ *is* not filed, the property may be redeemed without paying ~~such~~ *the* tax, assessments, or lien."

Section 460. Section 25-13-807, MCA, is amended to read:

"25-13-807. Papers redemptioner must produce. A redemptioner ~~must~~ *shall* produce, to the officer or person from whom ~~he~~ *the redemptioner* seeks to redeem, and serve with ~~his~~ *the* notice to the sheriff:

(1) *(a)* a copy of the docket of the judgment under which ~~he~~ *the redemptioner* claims the right to redeem, certified by the clerk of the court or by the clerk of the district court in the county where the judgment is docketed;

(b) ~~or~~ if ~~he redeem~~ upon a mortgage or other lien, a note of the record ~~thereof~~ *of the mortgage or lien*, certified by the county clerk; or

(c) if upon an attachment, a copy of the affidavit of attachment, certified by the clerk of the district court;

(2) a copy of any assignment necessary to establish ~~his~~ *the redemptioner's* claim, verified by the affidavit of ~~himself~~ *the redemptioner* or of a subscribing witness ~~thereto~~;

(3) an affidavit by ~~himself~~ *the redemptioner* or ~~his~~ *the redemptioner's* agent showing the amount then actually due upon the lien."

Section 461. Section 25-13-808, MCA, is amended to read:

"25-13-808. To whom redemption money paid. The payment mentioned in 25-13-802 through 25-13-806 may be made to the purchaser or redemptioner, as the case may be, or for ~~him~~ *the petitioner or redemptioner* to the officer who made the sale or, ~~in case his~~ *if the officer's* term of office has expired, to ~~his~~ *the* successor in office."

Section 462. Section 25-13-809, MCA, is amended to read:

"25-13-809. Effect of redemption by debtor or debtor's spouse — certificate of redemption. (1) If the debtor ~~redeem~~ *redeems*, the effect of the sale is terminated and the debtor is restored to ~~his~~ *the debtor's* own estate. If the spouse ~~redeem~~ *redeems*, ~~such~~ *the* spouse ~~shall~~ *must* become the owner of the debtor spouse's interest, subject to any liens ~~thereon~~ *on the property* at the time of the execution sale.

(2) Upon a redemption by a debtor or the debtor's spouse, the person to whom the payment was made ~~must~~ *shall* execute and deliver to ~~him~~ *the debtor* or ~~her~~ *the judgment debtor's spouse* a certificate of redemption, acknowledged or proved before an officer authorized to take acknowledgments of conveyances of real property. ~~Such~~ *The* certificate must be filed and recorded in the office of the county clerk of the county in which the property is situated, and the county clerk ~~must~~ *shall* note the record ~~thereof~~ *of the certificate of redemption* in the margin of the record of the certificate of sale."

Section 463. Section 25-13-810, MCA, is amended to read:

"25-13-810. When purchaser entitled to conveyance. If ~~no~~ *a* redemption ~~be~~ *is not* made within 1 year after the sale, the purchaser or ~~his~~ *the purchaser's* assignee is entitled to a conveyance~~;~~. ~~or if so~~ *If* redeemed, whenever 60 days have elapsed and no other redemption has been made and notice ~~thereof~~ *of redemption is* given and the time for redemption has expired, the last redemptioner or ~~his~~ *the redemptioner's* assignee is entitled to a sheriff's deed~~;~~. ~~but in~~ *In* all cases, the judgment debtor ~~shall have~~ *has* the entire period of 1 year from the date of the sale to redeem the property."

Section 464. Section 25-13-811, MCA, is amended to read:

"25-13-811. Who to execute conveyance. In all cases when, under the provisions of this chapter, a purchaser of property at execution sale ~~shall be~~ *is* entitled to a conveyance of the ~~same~~ *property*, ~~such~~ *the* conveyance ~~shall~~ *must* be executed to ~~him~~ *the purchaser* by the officer who made the sale if ~~he~~ *the officer is* still ~~be~~ in office, but ~~in the case~~ *if* the officer who made ~~such~~ *the* sale is not in office at the time the purchaser may be entitled to ~~such~~ *the* conveyance, then the conveyance ~~shall~~ *must* be executed by ~~his~~ *the officer's* successor in office."

Section 465. Section 25-13-821, MCA, is amended to read:

"25-13-821. Possession of lands during redemption period. The purchaser of ~~lands~~ *land* at execution sales is not entitled to the possession ~~thereof~~ *of the land* as against the execution debtor during the period of redemption allowed by law while ~~said~~ *the* execution debtor personally occupies the land as a home for ~~himself~~ *the debtor* and ~~his~~ *the debtor's* family. The intention ~~hereof being~~ *of this section is* to ~~insure~~ *ensure* to ~~such~~ *the* debtor the possession of ~~his~~ *the debtor's* land during the year of redemption."

Section 466. Section 25-13-822, MCA, is amended to read:

"25-13-822. Rents and profits during redemption period~~,~~ — accounting. (1) The purchaser, from the time of the sale until a redemption, and a redemptioner, from the time of ~~his~~ *the redemptioner's* redemption until another redemption, are entitled to receive from the tenant in possession the rents of the property sold or the value of the use and occupation ~~thereof~~ *of the property*. ~~But~~ *However,* when any rents or profits have been received by the judgment creditor or purchaser or ~~his~~ *the creditor's* or ~~their~~ *purchaser's* assigns from the property ~~thus~~ sold preceding ~~such~~ *the* redemption, the amount of ~~such~~ *the* rents and profits ~~shall~~ *must* be a credit upon the redemption money to be paid. Any payments made under 25-13-802(2) and (3) must be subtracted from the credit for rents and profits.

(2) If the redemptioner or judgment debtor, before the expiration of the time allowed for ~~such~~ redemption, demands in writing of ~~such~~ *the* purchaser or creditor or ~~his~~ *the purchaser's or creditor's* assigns a written and verified statement of the amount of ~~such~~ *the* rents and profits ~~thus~~ received, the period for redemption is extended 5 days after ~~such~~ *the* sworn statement is given by ~~such~~ *the* purchaser or ~~his~~ *the purchaser's* assigns to ~~such~~ *the* redemptioner or debtor. If ~~such~~ *the* purchaser or ~~his~~ *the purchaser's* assigns ~~shall~~, for a period of 1 month from and after ~~such~~ *the* demand, ~~fail~~ *fails* or ~~refuse~~ *refuses* to give ~~such~~ *the* statement, ~~such~~ *the* redemptioner or debtor may bring an action in any court of competent jurisdiction to compel an accounting and disclosure of ~~such~~ *the* rents and profits, and until 15 days from and after the final determination of ~~such~~ *the* action, the right of redemption is extended to ~~such~~ *the* redemptioner or debtor."

Section 467. Section 25-13-823, MCA, is amended to read:

"25-13-823. Restraint of waste during redemption period. Until the expiration of the time allowed for redemption, the court may restrain the commission of waste on the property, by order granted with or without notice, on the application of the purchaser or the judgment creditor. ~~But~~ *However,* it is not waste for the person in possession of the property at the time of sale or entitled to possession afterward, during the period allowed for redemption, to continue to use ~~it~~ *the property* in the same manner in which it was previously used, to use it in the ordinary course of husbandry, to make the necessary repairs of buildings ~~thereon~~ *on the property*, or to use wood or timber on the property ~~therefor~~ *for the repair of buildings on the property,* ~~or~~ for the repair of fences*,* or for fuel for ~~his~~ *the person's* family while ~~he~~ *the person* occupies the property."

Section 468. Section 25-13-825, MCA, is amended to read:

"25-13-825. Damages for injury to property after sale and before conveyance. When real property has been sold on execution, the purchaser ~~thereof~~ or any person who may have succeeded to ~~his~~ *the purchaser's* interest may, after ~~his~~ *the purchaser's* estate becomes absolute, recover damages for injury to the property by the tenant in possession after sale and before possession is delivered under the conveyance."

Section 469. Section 25-14-102, MCA, is amended to read:

"25-14-102. Procedure when debtor withholding property from execution, — arrest. (1) After the issuing of an execution against property and upon proof, by affidavit of a party or otherwise, to the satisfaction of a judge of the court that any judgment debtor has property ~~which he~~ *that the judgment debtor* unjustly refuses to apply toward the satisfaction of the judgment, ~~such~~ *the* judge may, by an order, require the judgment debtor to appear at a specified time and place before ~~such~~ *the* judge or a referee appointed by ~~him~~ *the judge* to answer concerning the ~~same;~~ *refusal.* ~~and such proceedings~~ *Proceedings* may ~~thereupon~~ be had for the application of the property of the judgment debtor toward the satisfaction of the judgment ~~as~~ *that* are provided *for* upon the return of an execution.

(2) Instead of the order requiring the attendance of the judgment debtor, the judge may, upon affidavit of the judgment creditor or ~~his~~ *the judgment creditor's* agent or attorney, if it ~~appear~~ *appears* to ~~him~~ *the judge* that there is danger of the debtor absconding, order the sheriff to arrest the debtor and bring ~~him~~ *the debtor* before ~~such~~ *the* judge. Upon being brought before the judge, ~~he~~ *the judgement debtor* may be ordered to enter into an undertaking with sufficient surety that ~~he~~ *the judgment debtor* will attend from time to time before the judge or referee, as may be directed during the pendency of proceedings and until the final determination ~~thereof~~ *of the proceedings*, and will not in the meantime dispose of any portion of ~~his~~ *the judgment debtor's* property *that is* not exempt from execution. In default of entering into ~~such~~ *the* undertaking, ~~he~~ *the judgment debtor* may be committed to prison."

Section 470. Section 25-14-103, MCA, is amended to read:

"25-14-103. Debtors of judgment debtor and those holding ~~his~~ *debtor's* property to answer. After the issuing or return of an execution against property of the judgment debtor or of any one of several debtors in the same judgment~~,~~ or upon proof, by affidavit or otherwise, to the satisfaction of the judge that any person or corporation has property of ~~such~~ *the* judgment debtor or is indebted to ~~him~~ *the judgment debtor* in an amount exceeding $50, the judge may, by an order, require ~~such~~ *the* person or corporation or any officer or member ~~thereof~~ *of the corporation* to appear at a specified time and place before

~~him~~ *the judge* or a referee appointed by ~~him~~ *the judge* and answer concerning the ~~same~~ *debt*."

Section 471. Section 25-14-104, MCA, is amended to read:

"25-14-104. Procedure when debt to or ownership of judgment debtor denied. If it ~~appear~~ *appears* that a person or corporation alleged to have property of the judgment debtor or to be indebted to ~~him~~ *the judgment debtor* claims an interest in the property adverse to ~~him~~ *the judgment debtor* or denies the debt, the court or judge may authorize, by an order made to that effect, the judgment creditor to institute an action against ~~such~~ *the* person or corporation for the recovery of ~~such~~ *the* interest or debt~~;~~. ~~and the~~ *The* court or judge may, by order, forbid a transfer or other disposition of ~~such~~ *the* interest or debt until an action can be commenced and prosecuted to judgment. ~~Such~~ *The* order may be modified or vacated by the judge granting the ~~same~~ *order* or the court in which the action is brought, at any time, upon ~~such~~ terms ~~as~~ *that* ~~may be~~ *are* just."

Section 472. Section 25-14-106, MCA, is amended to read:

"25-14-106. Immunity of witnesses to criminal proceedings. A party or witness examined in proceedings authorized by parts 1 and 2 of this chapter is not excused from answering a question on the ground that ~~his~~ *the party's or witness's* examination will tend to convict ~~him~~ *the party or witness* of the commission of a fraud or to prove that ~~he~~ *the party or witness* has been a party or privy to or knowing of a conveyance, assignment, transfer, or other disposition of property for any purpose or that ~~he~~ *the party or witness* or any other person claims to be entitled, as against the judgment creditor or a receiver appointed or to be appointed in the proceedings, to hold property derived from or through the judgment debtor or to be discharged from the payment of a debt ~~which~~ *that* was due to the judgment debtor or to a person in ~~his~~ *the judgment debtor's* behalf. ~~But~~ *However,* an answer cannot be used as evidence against the person ~~so~~ answering in a criminal action or criminal proceeding."

Section 473. Section 25-14-108, MCA, is amended to read:

"25-14-108. Contempt to disobey referee's orders. If any person, party, or witness ~~disobey~~ *disobeys* an order of the referee, properly made in the proceedings before ~~him~~ *the referee* under parts 1 and 2 of this chapter, ~~he~~ *the person, party, or witness* may be punished by the court or judge ordering the reference for a contempt."

Section 474. Section 25-14-201, MCA, is amended to read:

"25-14-201. Appointment of receiver — notice. At any time after making an order requiring the judgment debtor or any other person to attend and be examined, as prescribed in parts 1 and 2 of this chapter, the judge may make an order appointing a receiver of the property of the judgment debtor. At least 2 days' notice of the application for the order appointing a receiver must be given personally to the judgment debtor unless the judge is satisfied that ~~he~~ *the judgment debtor* cannot, with reasonable diligence, be found within the state, in which case the order must recite that fact and may dispense with notice or direct notice to be given in any manner ~~which~~ *that* the judge thinks proper. ~~But~~ *However,* ~~where~~ *when* the order to attend and be examined has been served upon the judgment debtor, a receiver may be appointed upon the return day ~~thereof~~ *of the service* or at the close of the examination without further notice to ~~him~~ *the judgment debtor*."

Section 475. Section 25-14-204, MCA, is amended to read:

"25-14-204. When property vests in receiver. The property of the judgment debtor is vested in a receiver who has ~~duly~~ qualified from the time of filing the order appointing ~~him~~ *the receiver*, subject to the following exceptions:

(1) Real property is vested in the receiver only from the time when the order is filed with the clerk of the court or a certified copy ~~thereof~~ *of the order*, as the case may be, is filed with the clerk of the county where it is situated.

(2) ~~Where~~ *When* the judgment debtor, at the time when the order is filed, resides in another county of the state, ~~his~~ *the judgment debtor's* personal property is vested in the receiver only from the time when a copy of the order, certified by the clerk in whose office it is filed, is filed with the clerk of the district court of the county where ~~he~~ *the judgment debtor* resides."

Section 476. Section 25-14-205, MCA, is amended to read:

"25-14-205. Relation back of receiver's title. (1) ~~Where~~ *When* the receiver's title to personal property has become vested, as prescribed in 25-14-204, it also extends back by relation for the benefit of the judgment creditor in whose behalf the proceedings were instituted, as follows:

(a) ~~Where~~ *When* an order requiring the judgment debtor to attend and be examined has been served before the appointment of a receiver or the judgment debtor has been brought before the judge on arrest, the receiver's title extends back so as to include the personal property of the judgment debtor at the time of the service of the order or ~~his~~ *the judgment debtor's* arrest.

(b) ~~Where~~ *When* an order has not been served or ~~no~~ *an* arrest *has not been made*, as specified in subsection (1)(a), but an order has been made requiring a person to attend and be examined concerning property belonging or a debt due to the judgment debtor, the receiver's title extends to the personal property belonging to the judgment debtor ~~which~~ *that* was in the hands or under the control of the person or corporation ~~thus~~ required to attend at the time of the service of the order and to a debt then due ~~him~~ *the judgment debtor* from that person or corporation.

(c) In every other case, ~~where~~ *when* notice of the application for the appointment of the receiver was given to the judgment debtor, the receiver's title extends to the personal property of the judgment debtor at the time when the notice was served, either personally or by complying with the requirements of an order prescribing a substitute for personal service.

(2) ~~Where~~ *When* the case is within two or more of subsections (1)(a) through (1)(c) ~~of this section~~, the rule most favorable to the judgment creditor must be adopted.

(3) ~~But this~~ *This* section does not affect the title of a purchaser in good faith, without notice, and for a valuable consideration or the payment of a debt in good faith and without notice."

Section 477. Section 25-14-302, MCA, is amended to read:

"25-14-302. Notice of application for discharge. ~~Such~~ *A* person*, referred to in 25-14-301,* ~~must~~ *shall* cause a *written* notice ~~in writing~~ to be given to the plaintiff or ~~his~~ *the plaintiff's* agent or attorney that at a certain time and place ~~he~~ *the person* will apply to a judge of the district court of the county in which ~~such~~ *the* person may be confined for the purpose of obtaining a discharge from ~~his~~ imprisonment."

Section 478. Section 25-14-303, MCA, is amended to read:

"25-14-303. Service of notice. ~~Such~~ *The* notice *specified in 25-14-302* must be served upon the plaintiff or ~~his~~ *the plaintiff's* agent or attorney ~~1 day~~ at least *1 day* before the hearing of the application. If the plaintiff ~~be~~ *is* not a resident of the county and *does not* have ~~no~~ *an* agent or attorney in the county, ~~no such~~ *the* notice will *not* be served."

Section 479. Section 25-14-304, MCA, is amended to read:

"25-14-304. Hearing on application. At the time and place specified in the notice *described in 25-14-302*, ~~such~~ *the* person must be taken before the judge, who ~~must~~ *shall* examine ~~him~~ *the person* under oath concerning ~~his~~ *the person's* estate*,* ~~and~~ property*,* and effects, the disposal ~~thereof~~ *of the estate, property, and effects*, and ~~his~~ *the person's* ability to pay the judgment for which ~~he~~ *the person* is committed~~; and such~~. *The* judge may also hear any other legal or pertinent evidence that may be produced by the debtor or the creditor."

Section 480. Section 25-14-306, MCA, is amended to read:

"25-14-306. Prisoner to take oath. If, upon the examination, the judge is satisfied that the prisoner is entitled to ~~his~~ discharge, ~~he~~ *the judge* ~~must~~ *shall* administer to ~~him~~ *the prisoner* the following oath: "I, ..., do solemnly swear that I have not any ~~estate~~ *property*, real or personal, ~~to~~ *in* the amount of $50, except ~~such as~~ *property that* is by law exempted from being taken in execution~~;~~*,* and that I have not any other ~~estate~~ *property* now conveyed or concealed or in any way disposed of with design to secure the ~~same~~ *property* to my use or to hinder, delay, or defraud my creditors; so help me God.""

Section 481. Section 25-14-307, MCA, is amended to read:

"25-14-307. Order of discharge. After administering the oath *in 25-14-306*, the judge ~~must~~ *shall* issue an order that the prisoner be discharged from custody, and the officer, upon the service of ~~such~~ *the* order, ~~must~~ *shall* discharge the prisoner ~~forthwith~~ if ~~he be~~ *the prisoner is not* imprisoned for ~~no other~~ *another* cause."

Section 482. Section 25-14-308, MCA, is amended to read:

"25-14-308. Reapplication for discharge. If ~~such~~ *the* judge does not discharge the prisoner, ~~he~~ *the prisoner* may apply for ~~his~~ discharge at the end of every succeeding 10 days in the same manner as ~~above~~ provided *in this part*, and the same proceedings must ~~thereupon~~ be had *upon the application*."

Section 483. Section 25-14-309, MCA, is amended to read:

"25-14-309. Effect of discharge. The prisoner, after being ~~so~~ discharged, is forever exempt from arrest or imprisonment for the same debt unless ~~he be~~ *the prisoner is* convicted of having willfully sworn falsely upon ~~his~~ examination before the judge or in taking the oath ~~before~~ prescribed *in 25-14-306*."

Section 484. Section 25-14-310, MCA, is amended to read:

"25-14-310. Judgment unaffected. The judgment against ~~any~~ *a* prisoner who is discharged remains in full force against any estate ~~which~~ *that* may then or at any time afterward belong to ~~him~~ *the prisoner*, and the plaintiff may take out a new execution against the goods and estate of the prisoner in ~~like~~ *the same* manner as if ~~he~~ *the prisoner* had never been committed."

Section 485. Section 25-14-311, MCA, is amended to read:

"25-14-311. Discharge at instance of plaintiff. The plaintiff in the action may at any time order the prisoner to be discharged, and ~~he~~ *the prisoner* is not ~~thereafter~~ liable to imprisonment for the same cause of action."

Section 486. Section 25-14-312, MCA, is amended to read:

"25-14-312. Discharge upon failure of plaintiff to advance money for support of prisoner. Whenever a prisoner is committed to jail on an execution issued on a judgment recovered in a civil action, the creditor or ~~his~~ *the creditor's* agent or attorney ~~must~~ *shall* advance to the jailer, on ~~such~~ *the* commitment, sufficient money for the support of the prisoner for 1 week and ~~must~~ *shall* make the ~~like~~ *same* advance for every successive week of ~~his~~ imprisonment, and in case of failure to do so, the jailer ~~must forthwith~~ *shall* discharge ~~such~~ *the* prisoner from custody, and ~~such~~ *the* discharge has the same effect as if made by order of the creditor."

Section 487. Section 25-15-102, MCA, is amended to read:

"25-15-102. Content and service of summons. The summons, as provided in 25-15-101, must describe the judgment and require the person summoned to show cause why ~~he~~ *the person* should not be bound by it and must be served in the same manner and returnable within the same time as the original summons."

Section 488. Section 25-15-103, MCA, is amended to read:

"25-15-103. Affidavit to accompany summons — new complaint unnecessary. The summons must be accompanied by an affidavit of the plaintiff or ~~his~~ *the plaintiff's* agent, representative, or attorney that the judgment or some part ~~thereof~~ *of the judgment* remains unsatisfied and must specify the amount due ~~thereon~~. It is not necessary to file a new complaint."

Section 489. Section 25-15-104, MCA, is amended to read:

"25-15-104. Answer — time for filing~~,~~ — contents. Upon ~~such~~ *the* summons, the defendant may answer within the time specified ~~therein~~ *in the summons*, denying the judgment or setting up any defense ~~which~~ *that* may have arisen subsequently~~;~~*,* or ~~he~~ *the defendant* may deny ~~his~~ liability on the obligation upon which the judgment was recovered, except a discharge from ~~such~~ liability ~~by~~ *because of* the statute of limitations."

Section 490. Section 25-15-105, MCA, is amended to read:

"25-15-105. What constitute ~~the~~ pleadings. If the defendant in ~~his~~ *the* answer ~~deny~~ *denies* the judgment or ~~set up~~ *provides* any defense ~~which~~ *that* may have arisen subsequently, the summons, with the affidavit ~~annexed~~ *attached*, and the answer constitute the written allegations in the case~~;~~. ~~if he deny his~~ *If the defendant denies* liability on the obligation upon which the judgment was recovered, a copy of the original complaint and judgment, the summons, with the affidavit ~~annexed~~ *attached*, and the answer constitute ~~such~~ *the* written allegations."

Section 491. Section 25-15-106, MCA, is amended to read:

"25-15-106. Trial of issues — limit on verdict. The issues formed may be tried as in other cases~~; but~~. *However,* when the defendant denies in ~~his~~ *the* answer any liability on the obligation upon which the judgment was rendered, if a verdict ~~be~~ *is* found against ~~him~~ *the defendant*, ~~it must~~ *the judgment may not* be ~~for not exceeding~~ *in excess of* the amount remaining unsatisfied on ~~such~~ *the* original judgment, with interest ~~thereon~~ *on that amount*."

Section 492. Section 25-15-201, MCA, is amended to read:

"25-15-201. Discharge of one joint debtor. Any joint debtor, including a partner, may compromise with a creditor, and a discharge to ~~him~~ *the joint debtor* by ~~such~~ *the* creditor is as effectual as if made to all debtors, but ~~such~~ *the* discharge does not relieve the other joint debtors. Any creditor can release a

judgment in ~~his~~ *the creditor's* favor against any one or more joint debtors, and ~~such~~ *the* release does not discharge the others."

Section 493. Section 25-15-202, MCA, is amended to read:

"25-15-202. Effect of discharge — right of contribution. Except as provided in 27-1-703, the discharge of a joint debtor operates as a payment to the creditor equal to the proportionate interest of the debtor discharged, but the discharge of ~~such~~ *the* debtor does not prevent ~~his~~ *the* codebtors from enforcing the right of contribution ~~in case~~ *if* they are compelled to pay the whole of the debt."

Section 494. Section 25-31-102, MCA, is amended to read:

"25-31-102. Transfer to district court — dismissal. (1) If it appears from the answer of the defendant, verified by ~~his~~ oath, that the determination of the action will necessarily involve the question of title or possession to real property or the legality of any tax, impost, assessment, toll, or municipal fine, the justice ~~must~~ *shall* suspend all further proceedings in the action and certify the pleadings and, if any of the pleadings are oral, a transcript of the ~~same~~ *pleadings* from ~~his~~ *the* docket to the clerk of the district court of the county. From the time of the certification of ~~such~~ *the* pleadings or transcript to the clerk, the district court ~~shall have over the action~~ *has* the same jurisdiction *over the action* as if it had been commenced ~~therein~~ *in the district court*. When the action is certified to the district court, upon the answer of the defendant, ~~he must~~ *the defendant shall* file an undertaking, to be approved by the justice, to the effect that ~~he~~ *the defendant* will pay all costs that may be awarded against ~~him~~ *the defendant* on the trial in the district court.

(2) If it appears at any point in the proceedings in a justice's court that the determination of the action will involve the question of the state's liability to make a payment of money, the justice shall sever that issue and dismiss the action as to ~~it~~ *that issue*. If the issue is not severable, the justice shall dismiss the entire action."

Section 495. Section 25-31-405, MCA, is amended to read:

"25-31-405. Designating unknown person as defendant. ~~Where~~ *When* the plaintiff is ignorant of the name or part of the name of a defendant, that defendant may be designated in the summons and in any other process or proceeding in the action by a fictitious name or by ~~so~~ *as* much of ~~his~~ *the defendant's* name as is known, adding a description identifying the person intended. The person ~~so~~ designated must ~~thereupon~~ be regarded as a defendant in the action and as sufficiently described ~~therein~~ *in the action* for all purposes. When ~~his~~ *the defendant's* name or the remainder of ~~his~~ *the defendant's* name is known or becomes known, the justice before whom the action is pending ~~must~~ *shall* amend the proceedings already taken by the insertion of the true or full name in place of the fictitious name or part of a name, and all subsequent proceedings must be taken under the name ~~so~~ inserted."

Section 496. Section 25-31-406, MCA, is amended to read:

"25-31-406. Time for answer or appearance. The time specified in the summons for the appearance of the defendant must be as follows:

(1) if an order of arrest is endorsed upon the summons, immediately;

(2) in all other cases, the summons must provide that the defendant shall answer in writing, file the answer, and serve a copy upon the plaintiff or ~~his~~ *the plaintiff's* attorney within 20 days after service of the summons, exclusive of the day of service, and in case of ~~his~~ *the defendant's* failure to appear or answer,

judgment will be taken against ~~him~~ *the defendant* by default for the relief demanded in the complaint."

Section 497. Section 25-31-512, MCA, is amended to read:

"25-31-512. Admission of genuineness of signatures. If the plaintiff ~~annex~~ *attaches* to ~~his~~ *the* complaint or ~~file~~ *files* with the justice at the time of issuing the summons a copy of the promissory note, bill of exchange, other obligation for the payment of money, or other instrument upon which the action is brought, the defendant ~~shall be deemed~~ *is considered* to admit the genuineness of all the signatures ~~thereto~~ *to the instrument* unless ~~he~~ *the defendant* specifically ~~deny the same~~ *denies the genuineness* in ~~his~~ *the* answer under oath. In case of a counterclaim, the same rule applies to the plaintiff."

Section 498. Section 25-31-523, MCA, is amended to read:

"25-31-523. Variance. A variance between the proof on the trial and the allegations in pleading ~~shall~~ *must* be disregarded as immaterial unless the court ~~be~~ *is* satisfied that the adverse party has been misled to ~~his~~ *the party's* prejudice ~~thereby~~ *by the variance*."

Section 499. Section 25-31-705, MCA, is amended to read:

"25-31-705. Postponement upon application of a party — proof required. The trial may be postponed upon the application of either party for a period not exceeding 4 months. The party making the application ~~must~~ *shall* prove, by ~~his~~ *the party's* own oath or otherwise, that ~~he~~ *the party* cannot, for want of material testimony ~~which he~~ *that the party* expects to procure, safely proceed to trial and ~~must~~ *shall* show in what respect the testimony expected is material and that ~~he~~ *the party* has used due diligence to procure ~~it~~ *the testimony* and has been unable to do so."

Section 500. Section 25-31-706, MCA, is amended to read:

"25-31-706. No postponement when expected evidence admitted. The court may require the party making the application to state, upon affidavit, the evidence ~~which he~~ *that the party* expects to obtain~~;~~, and if the adverse party ~~thereupon admit~~ *admits* that ~~such~~ *the* evidence would be given and that it ~~be~~ *is* considered as actually given ~~on~~ *at* the trial or offered and overruled as improper, the trial ~~must~~ *may* not be postponed."

Section 501. Section 25-31-707, MCA, is amended to read:

"25-31-707. Procedure when defendant under arrest. (1) If the application is on the part of the plaintiff and the defendant is under arrest, a postponement for more than 3 hours discharges the defendant from custody~~;~~. ~~but~~ *However,* the action may proceed, ~~notwithstanding,~~ and the defendant is subject to arrest on execution in the same manner as if ~~he~~ *the defendant* had not been discharged.

(2) If the application is on the part of a defendant under arrest, before it can be granted, ~~he must~~ *the defendant shall* execute an undertaking, with two or more sufficient sureties to be approved by and in a sum to be fixed by the justice, to the effect that ~~he~~ *the defendant* will ~~render himself~~ *be* amenable to the process of the court during the pendency of the action and to ~~such as~~ *the process that* may be issued to enforce the judgment ~~therein~~ *in the action*~~,~~ or that the sureties will pay to the plaintiff the amount of any judgment ~~which he~~ *that the plaintiff* may recover in the action, not exceeding the amount specified in the undertaking. On filing the undertaking specified in this subsection, the justice may order the defendant discharged from custody."

Section 502. Section 25-31-1002, MCA, is amended to read:

"25-31-1002. How costs taxed. In a justice's or city court, ~~no~~ *a* cost bill ~~need~~ *is not required to* be filed, but the justice or judge ~~must~~ *shall* tax the ~~same~~ *costs* and make an itemized statement of all the costs incurred by each party in ~~his~~ *the* docket."

Section 503. Section 25-31-1111, MCA, is amended to read:

"25-31-1111. Collection of judgment against county or county officer. When a judgment is rendered against the county or against any county officer in an action prosecuted against ~~him~~ *the officer* in ~~his~~ *the* name of *the* office, when the ~~same~~ *judgment* is to be paid by the county, ~~no~~ *an* execution ~~must~~ *may not* issue upon the judgment, but the ~~same~~ *judgment* must be paid *in the same manner* as other county charges. When ~~so~~ collected, the ~~same~~ *judgment* must be paid by the county treasurer to the proper person to whom the ~~same~~ *judgment* is adjudged~~,~~ upon the delivery of a proper voucher ~~therefor~~ *for payment*."

Section 504. Section 25-33-103, MCA, is amended to read:

"25-33-103. How appeal taken. The appeal is taken by serving a copy of the notice of appeal on the adverse party or ~~his~~ *the adverse party's* attorney and by filing the original notice of appeal with the justice or judge. The order of serving and filing is immaterial."

Section 505. Section 25-33-104, MCA, is amended to read:

"25-33-104. Papers to be transmitted. Upon the filing of the notice of appeal and the undertaking when required by 25-33-201, 25-33-203, and 25-33-205, the justice or judge ~~must~~ *shall*, within 10 days, upon the payment of the fees ~~therefor~~ *for filing*, transmit to the clerk of the district court a certified copy of ~~his~~ *the* docket, the pleadings, all notices, motions, and other papers filed in the cause, the notice of appeal, and the undertaking~~; and the~~. *The* justice or judge may be compelled by the district court, by an order entered upon motion, to transmit ~~such~~ *the* papers and may be fined for neglect or refusal to transmit the ~~same~~ *papers*. A certified copy of ~~such~~ *the* order may be served on the justice or judge by the party or ~~his~~ *the party's* attorney."

Section 506. Section 25-33-201, MCA, is amended to read:

"25-33-201. Undertaking on appeal. (1) Except as provided in subsection (4), an appeal from a justice's or city court is not effectual for any purpose unless an undertaking ~~be~~ *is* filed, with two or more sureties, in a sum equal to twice the amount of the judgment, including costs, when the judgment is for the payment of money. The undertaking must be conditioned, when the action is for the recovery of money, that the appellant will pay the amount of the judgment appealed from and all costs if the appeal ~~be~~ *is* withdrawn or dismissed or the amount of any judgment and all costs that may be recovered against ~~him~~ *the appellant* in the action in the district court.

(2) Except as provided in subsection (4), an appeal from a justice's or city court is not effectual for any purpose unless an undertaking ~~be~~ *is* filed, with two or more sureties, in a sum equal to twice the value of the property, including costs, when the judgment is for the recovery of specific personal property. When the action is for the recovery of specific personal property, the undertaking must be conditioned that the appellant will pay the judgment and costs appealed from and obey the order of the court made ~~therein~~ *in the action* if the appeal ~~be~~ *is* withdrawn or dismissed or pay any judgment and costs that may be recovered against ~~him~~ *the appellant* in ~~said~~ *the* action in the district court and obey any order made by the court ~~therein~~ *in the action*.

(3) Except as provided in subsection (4), when the judgment appealed from directs the delivery of possession of real property, the execution of the ~~same~~ *judgment* cannot be stayed unless a written undertaking ~~be~~ *is* executed on the part of the appellant, with two or more sureties, to the effect that:

(a) during the possession of ~~such~~ *the* property by the appellant, ~~he~~ *the appellant* will not commit or suffer to be committed any waste ~~thereon~~ *on the property*; and

(b) if the appeal ~~be~~ *is* dismissed or withdrawn or the judgment *is* affirmed or judgment ~~be~~ *is* recovered against ~~him~~ *the appellant* in the action in the district court, ~~he~~ *the appellant* will pay the value of the use and occupation of the property from the time of the appeal until the delivery of possession ~~thereof~~ *of the property* or ~~he~~ *the appellant* will pay any judgment and costs that may be recovered against ~~him~~ *the appellant* in ~~said~~ *the* action in the district court, not exceeding a sum to be fixed by the justice or judge of the court from which the appeal is to be taken, which sum must be specified in the undertaking.

(4) When the appealing party is determined by the court to be indigent, the district court shall waive the undertaking requirements of this section."

Section 507. Section 25-33-202, MCA, is amended to read:

"25-33-202. Undertaking when prevailing party appeals. If the party in whose favor the judgment is rendered appeals, the undertaking must be in the sum of $100 and conditioned that ~~he~~ *the party* will pay all costs that may be awarded against ~~him~~ *the party* and obey any order of court made in the action."

Section 508. Section 25-33-204, MCA, is amended to read:

"25-33-204. Stay of execution when undertaking filed. If an execution ~~be~~ *is* issued, on the filing of the undertaking, the justice or judge ~~must~~ *shall* direct the officer to stay all proceedings on the ~~same~~ *execution*. ~~Such~~ *The* officer ~~must~~ *shall*, upon the payment of ~~his~~ *the officer's* fees for services rendered on the execution, ~~thereupon~~ relinquish all property levied upon and deliver the ~~same~~ *property* to the judgment debtor, together with all ~~moneys~~ *money* collected from sales or otherwise. If ~~his~~ *the officer's* fees on the execution ~~be~~ *are* not paid, the officer may retain ~~so~~ *as* much of the property or proceeds ~~thereof as~~ *of the property as* may be necessary to pay the ~~same~~ *fees*."

Section 509. Section 25-33-305, MCA, is amended to read:

"25-33-305. Costs when appeal unsuccessful. If the party appealing fails to reduce the judgment against ~~him~~ *the party* or to enlarge the judgment in ~~his~~ *the party's* favor appealed from $10 or more or reverse the ~~same~~ *judgment* in the district court, ~~he shall~~ *the party may* not recover any costs of appeal."

Section 510. Section 25-35-601, MCA, is amended to read:

"25-35-601. Commencement of action — assistance to claimant. (1) A small claims action is commenced whenever any person appears before a justice of the peace or ~~his~~ *the justice's* clerk and executes a sworn small claims complaint in substantially the same form as set forth in 25-35-602.

(2) The justice shall assist any claimant in preparing ~~his~~ *the* complaint or instruct ~~his~~ *the* clerk to provide ~~such~~ *the* assistance. The attorney general shall prepare a pamphlet explaining in plain language the procedures for prosecuting and defending a claim in small claims court and distribute copies of the pamphlet to each small claims court. The justice or ~~his~~ *the justice's* clerk shall give the plaintiff a copy when the plaintiff appears to execute ~~his~~ *a* complaint, and a copy must be attached to the order of the court/notice to defendant."

Section 511. Section 25-35-603, MCA, is amended to read:

"25-35-603. Hearing date. The date for the appearance of the defendant to be set forth in the order ~~shall~~ *must* be determined by the justice of the peace or by ~~his~~ *the justice's* clerk and may not be more than 40 or less than 10 days from the date of the order. Service of the order and a copy of the sworn complaint ~~shall~~ *must* be made upon the defendant not less than 5 days prior to the date set for ~~his~~ *the defendant's* appearance by the order. If the order is not timely served, the plaintiff may have a new appearance date set by the justice of the peace or ~~his~~ *the justice's* clerk and a new order issued and delivered to the sheriff, constable, or other process server. If necessary, repeated orders may be issued at any time within 1 year after the commencement of the action."

Section 512. Section 25-35-604, MCA, is amended to read:

"25-35-604. Service on defendant — return. (1) The original of the order and notice ~~shall~~ *must* be shown to the defendant, and a copy of ~~it~~ *the order and notice* along with a copy of the sworn complaint ~~shall~~ *must* be served upon the defendant by the sheriff, constable, or other process server in the same manner provided by law for service of process in civil actions in justice's court. The provisions of law relating to sheriff's fees are applicable to this section.

(2) The sheriff, constable, or other process server shall, after effecting service, return the original order to the justice of the peace or ~~his~~ *the justice's* clerk."

Section 513. Section 25-35-605, MCA, is amended to read:

"25-35-605. Removal to justice's court — effect of failure to remove. (1) Any action commenced in small claims court may be removed to justice's court by a defendant upon the filing of a notice of removal with the justice within 10 days of the service of the complaint and order. From the time of filing of the notice of removal, the court to which the action is removed has and exercises the same jurisdiction over it as though the action had been originally commenced in ~~such~~ *justice's* court.

(2) Upon the filing of a notice of removal, the court shall give notice of that fact to all other parties to the action. All rules and statutes governing proceedings originally commenced in justice's court, except rules of pleading but including rules and statutes governing appeals from justice's court, are applicable to proceedings removed to justice's court, except that a plaintiff is not required to replead unless the court so orders, and ~~no~~ *a* fee ~~shall~~ *may not* be required of a plaintiff for the filing of a complaint if a fee for filing was paid in small claims court.

(3) Failure to request removal within the time provided in subsection (1) constitutes a waiver by the defendant of ~~his~~ *the* right to a trial by jury and representation by an attorney, and the justice shall inform the defendant of ~~such~~ *that* fact prior to commencement of the hearing."

Section 514. Section 25-35-608, MCA, is amended to read:

"25-35-608. Fees. (1) The clerk of the justice's court shall collect a fee of:

(a) $10 from the plaintiff upon the filing of the sworn complaint; and

(b) $5 from the defendant upon ~~his~~ *the defendant's* appearance and contesting of the complaint or execution of a counterclaim.

(2) The laws relating to paupers' affidavits apply to actions before the small claims court."

Section 515. Section 25-35-702, MCA, is amended to read:

"25-35-702. Witnesses — evidence — subpoena power. The plaintiff and the defendant may offer evidence in their behalf by witnesses appearing at ~~such~~ *the* hearing in the same manner as in other cases arising in justice's court or by written evidence, and the judge may direct the production of evidence ~~as he~~ *that the judge* considers appropriate. The small claims court has the subpoena power granted to justices' courts in all civil cases."

Section 516. Section 25-35-801, MCA, is amended to read:

"25-35-801. Entry of judgment. Upon the conclusion of the case tried to the court, the justice shall make ~~his~~ findings and enter judgment."

Section 517. Section 25-35-802, MCA, is amended to read:

"25-35-802. Costs. The prevailing party in an action before the small claims court is entitled to ~~his~~ *the party's* costs."

Section 518. Section 25-35-803, MCA, is amended to read:

"25-35-803. Appeal to district court — commencement and scope. (1) If either party is dissatisfied with the judgment of the small claims court, ~~he~~ *the party* may appeal to the district court of the county where the judgment was rendered. An appeal ~~shall~~ *must* be commenced by giving written notice to the small claims court and serving a copy of the notice of appeal on the adverse party within 10 days after entry of judgment.

(2) There may not be a trial de novo in the district court. The appeal ~~shall~~ *must* be limited to questions of law."

Section 519. Section 25-35-804, MCA, is amended to read:

"25-35-804. Record on appeal. (1) Within 30 days of the notice, the entire record of the small claims court proceedings ~~shall~~ *must* be transmitted to the district court or the appeal ~~shall~~ *must* be dismissed. It is the duty of the appealing party to perfect the appeal.

(2) When notice of appeal is filed, the justice shall forward the electronic recording or transcript of the stenographic record of the proceedings to the district court, together with the original papers filed, certified by ~~him~~ *the justice* to be accurate and complete. When the record is transferred to the clerk of the district court, the justice shall notify the parties in writing."

Section 520. Section 25-35-806, MCA, is amended to read:

"25-35-806. ~~Attorney's~~ *Attorney* fees upon appeal or removal. (1) If the parties are represented by counsel on appeal, the court may grant the prevailing party ~~his~~ reasonable ~~attorney's~~ *attorney* fees~~,~~ in addition to costs.

(2) If a defendant removes a matter to justice's court under the provisions of 25-35-605(1) but does not prevail in justice's court, the court may grant the plaintiff ~~his~~ reasonable ~~attorney's~~ *attorney* fees, if any."

Section 521. Section 26-1-106, MCA, is amended to read:

"26-1-106. Explanation of alterations in a writing. The party producing a writing as genuine ~~which~~ *that* has been altered or appears to have been altered after its execution in a part material to the question in dispute ~~must~~ *shall* account for the appearance or alteration. ~~He~~ *The party* may show that the alteration was made by another without ~~his~~ *the party's* concurrence, was made with the consent of the parties affected by ~~it~~ *the alteration*, or was otherwise properly or innocently made or that the alteration did not change the meaning or language of the instrument. If ~~he~~ *the party* does that, ~~he~~ *the party* may give the writing in evidence, but not otherwise."

Section 522. Section 26-1-302, MCA, is amended to read:

"26-1-302. Witness presumed to speak the truth — how presumption rebutted. A witness is presumed to speak the truth. The jury or the court in the absence of a jury is the exclusive judge of ~~his~~ *a witness's* credibility. This presumption may be controverted and overcome by any matter that has a tendency to disprove the truthfulness of a witness's testimony;. ~~such~~ *The* matters include but are not limited to:

(1) the demeanor or manner of the witness while testifying;

(2) the character of the witness's testimony;

(3) bias of the witness for or against any party involved in the case;

(4) interest of the witness in the outcome of the litigation or other motive to testify falsely;

(5) the witness's character for truth, honesty, or integrity;

(6) the extent of the witness's capacity and opportunity to perceive or capacity to recollect or to communicate any matter about which ~~he~~ *the witness* testifies;

(7) inconsistent statements of the witness;

(8) an admission of untruthfulness by the witness;

(9) other evidence contradicting the witness's testimony."

Section 523. Section 26-1-303, MCA, is amended to read:

"26-1-303. Instructions to jury on how to evaluate evidence. The jury is to be instructed by the court on all proper occasions that:

(1) their power of judging the effect of evidence is not arbitrary but to be exercised with legal discretion and in subordination to the rules of evidence;

(2) they are not bound to decide in conformity with the declarations of any number of witnesses ~~which~~ *that* do not produce conviction in their minds, against a less number or against a presumption or other evidence satisfying their minds;

(3) a witness false in one part of ~~his~~ *the witness's* testimony is to be distrusted in others;

(4) the testimony of a person legally accountable for the acts of the accused ought to be viewed with distrust;

(5) if weaker and less satisfactory evidence is offered and it appears that it is within the power of the party to offer stronger and more satisfactory evidence, the evidence offered should be viewed with distrust."

Section 524. Section 26-1-401, MCA, is amended to read:

"26-1-401. Who has ~~the~~ burden of producing evidence. The initial burden of producing evidence as to a particular fact is on the party who would be defeated if no evidence were given on either side. Thereafter, the burden of producing evidence is on the party who would suffer a finding against ~~him~~ *that party* in the absence of further evidence."

Section 525. Section 26-1-402, MCA, is amended to read:

"26-1-402. Who has ~~the~~ burden of persuasion. Except as otherwise provided by law, a party has the burden of persuasion as to each fact the existence or nonexistence of which is essential to the claim for relief or defense ~~he~~ *the party* is asserting."

Section 526. Section 26-1-502, MCA, is amended to read:

"26-1-502. When an inference arises. An inference must be founded:

(1) on a fact legally proved; and

(2) on ~~such~~ a deduction from that fact ~~as~~ *that* is warranted by a consideration of the usual propensities or passions of ~~men~~ *people*, the particular propensities or passions of the person whose act is in question, the course of business, or the course of nature."

Section 527. Section 26-1-601, MCA, is amended to read:

"26-1-601. List of conclusive presumptions. The following presumptions are conclusive:

(1) the truth of a declaration, act, or omission of a party, as against that party in any litigation arising out of ~~such~~ *the* declaration, act, or omission, whenever ~~he~~ *the party* has, by ~~such~~ *the* declaration, act, or omission, intentionally led another to believe a particular thing true and to act upon ~~such~~ *that* belief;

(2) that a tenant is not permitted to deny the title of ~~his~~ *the* landlord at the time of the commencement of the relation;

(3) the judgment or order of a court, which is declared by statute to be conclusive;

(4) any other presumption ~~which~~ *that*, by statute, is expressly made conclusive."

Section 528. Section 26-1-605, MCA, is amended to read:

"26-1-605. Entries in official books and records prima facie evidence. Entries in public or other official books or records made in the performance of ~~his~~ *the officer's* duty by a public officer of this state or any other person in the performance of a duty specially enjoined by law are prima facie evidence of the facts stated ~~therein~~ *in the book or record*."

Section 529. Section 26-1-623, MCA, is amended to read:

"26-1-623. Presumption of authenticity of finding, report, or record. For the purposes of 26-1-622, any finding, report, or record or ~~duly~~ certified copy ~~thereof~~ *of a finding, report, or record* purporting to have been signed by ~~such~~ an officer or employee of the United States as ~~is~~ described in that section ~~shall~~ *is* prima facie ~~be deemed~~ *considered* to have been signed and issued by ~~such an~~ *the* officer or employee pursuant to law, and the person signing ~~same~~ *the finding, report, or record* ~~shall~~ *is* prima facie ~~be deemed~~ *considered* to have acted within the scope of ~~his~~ *the officer's or employee's* authority. If a copy purports to have been certified by a person authorized by law to certify the ~~same~~ *finding, report, or record*, ~~such~~ *the* certified copy ~~shall~~ *must* be prima facie evidence of ~~his~~ *the person's* authority ~~so~~ to certify."

Section 530. Section 26-1-701, MCA, is amended to read:

"26-1-701. Legislative policy. The legislature ~~hereby~~ declares that the health, welfare, and safety of the people of the state of Montana would be enhanced by the expeditious handling of liability claims. The legislature further declares that the handling of ~~such~~ *liability* claims would be expedited if voluntary payment by or on behalf of one person to or on behalf of a person who has sustained injury to ~~his~~ *that* person or damage to ~~his~~ *that person's* property could not be construed as an admission of fault or liability as to any claim arising out of the occurrence ~~which~~ *that* gave rise to ~~such~~ *the* injury or damage."

Section 531. Section 26-1-803, MCA, is amended to read:

"26-1-803. Attorney-client privilege. (1) An attorney cannot, without the consent of ~~his~~ *the* client, be examined as to any communication made by the client to ~~him~~ *the attorney* or ~~his~~ *the* advice given to the client in the course of professional employment.

(2) A client cannot, except voluntarily, be examined as to any communication made by ~~him~~ *the client* to ~~his~~ *the client's* attorney or the advice given to ~~him~~ *the client* by ~~his~~ *the* attorney in the course of the attorney's professional employment."

Section 532. Section 26-1-804, MCA, is amended to read:

"26-1-804. Confessions made to member of clergy. A ~~clergyman~~ *member of the clergy* or priest ~~cannot~~ *may not*, without the consent of the person making the confession, be examined as to any confession made to ~~him~~ *the individual* in ~~his~~ *the individual's* professional character in the course of discipline enjoined by the church to which ~~he~~ *the individual* belongs."

Section 533. Section 26-1-805, MCA, is amended to read:

"26-1-805. Doctor-patient privilege. Except as provided in Rule 35, Montana Rules of Civil Procedure, a licensed physician, surgeon, or dentist ~~cannot~~ *may not*, without the consent of ~~his~~ *the* patient, be examined in a civil action as to any information acquired in attending the patient ~~which~~ *that* was necessary to enable ~~him~~ *the physician, surgeon, or dentist* to prescribe or act for the patient."

Section 534. Section 26-1-806, MCA, is amended to read:

"26-1-806. Speech-language pathologist, audiologist-client privilege. A speech-language pathologist or audiologist ~~cannot~~ *may not*, without the consent of ~~his~~ *the* client, be examined in a civil action as to any communication made by the client to ~~him~~ *the pathologist or audiologist*."

Section 535. Section 26-1-807, MCA, is amended to read:

"26-1-807. Psychologist-client privilege. The confidential relations and communications between a psychologist and ~~his~~ *a* client ~~shall~~ *must* be placed on the same basis as provided by law for those between an attorney and ~~his~~ *a* client. Nothing in any act of the legislature ~~shall~~ *may* be construed to require ~~such~~ *the* privileged communications to be disclosed."

Section 536. Section 26-1-809, MCA, is amended to read:

"26-1-809. Confidential communications by student to employee of educational institution. A counselor, psychologist, nurse, or teacher employed by ~~any~~ *an* educational institution ~~cannot~~ *may not* be examined as to communications made to ~~him~~ *the individual* in confidence by a ~~duly~~ registered student of ~~such~~ *the* institution. However, this provision ~~shall~~ *does* not apply ~~where~~ *when* consent has been given by the student, if not a minor, or, if ~~he~~ *the student* is a minor, by the student and ~~his~~ *the student's* parent or legal guardian."

Section 537. Section 26-1-810, MCA, is amended to read:

"26-1-810. Confidential communications made to public officer. A public officer ~~cannot~~ *may not* be examined as to communications made to ~~him~~ *the officer* in official confidence when the public interests would suffer by the disclosure."

Section 538. Section 26-1-902, MCA, is amended to read:

"26-1-902. Extent of privilege. (1) Without ~~his or its~~ *a person's* consent, ~~no~~ *a* person, including any newspaper, magazine, press association, news agency,

news service, radio station, television station, or community antenna television service or any person connected with or employed by any of these for the purpose of gathering, writing, editing, or disseminating news may *not* be examined as to or may *not* be required to disclose any information obtained or prepared or the source of that information in any legal proceeding if the information was gathered, received, or processed in the course of ~~his~~ *the person's* employment or ~~its~~ business.

(2) A person described in subsection (1) may not be adjudged in contempt by a judicial, legislative, administrative, or any other body having the power to issue subpoenas for refusing to disclose or produce the source of any information or for refusing to disclose any information obtained or prepared in gathering, receiving, or processing information in the course of ~~his or its~~ *the person's* business."

Section 539. Section 26-1-903, MCA, is amended to read:

"26-1-903. Waiver of privilege. (1) Except as provided in subsection (2), dissemination in whole or in part does not constitute a waiver of provisions of 26-1-902.

(2) If the person claiming the privilege testifies, with or without having been subpoenaed or ordered to testify or produce the source, before a judicial, legislative, administrative, or other body having the power to issue subpoenas or judicially enforceable orders, ~~he~~ *the person* does not waive the provisions of 26-1-902 unless the person voluntarily agrees to waive the privilege or voluntarily discloses the source in the course of ~~his~~ *the person's* testimony. Except as provided in this subsection, the provisions of 26-1-902 may not be waived."

Section 540. Section 26-1-1011, MCA, is amended to read:

"26-1-1011. Affidavit of printer or publisher as evidence of publication. Evidence of the publication of a document or notice required by law or by an order of a court or judge to be published in a newspaper may be given by the affidavit of the printer or publisher of the newspaper or ~~his foreman~~ *the printer's or publisher's supervisor* or principal clerk, annexed to a copy of the document or notice, specifying the times when and the paper in which the publication was made."

Section 541. Section 26-2-101, MCA, is amended to read:

"26-2-101. Subpoena defined. The process by which the attendance of a witness is required is by a subpoena. ~~It~~ *A subpoena* is a writ or order directed to a person and requiring ~~his~~ *the person's* attendance at a particular time and place to testify as a witness. ~~It~~ *The subpoena* may also require ~~him~~ *the person* to bring with ~~him~~ *the person* any books, documents, or other things under ~~his~~ *the person's* control~~, which he~~ *that the person* is bound by law to produce in evidence."

Section 542. Section 26-2-102, MCA, is amended to read:

"26-2-102. Issuance of subpoena. The subpoena is issued as follows:

(1) To require attendance before a court or at the trial of an issue ~~therein~~ *in a court*, it is issued under the seal of the court before which the attendance is required or in which the issue is pending.

(2) To require attendance out of the court before a judge, justice, or other officer authorized to administer oaths or take testimony in any matter under the laws of this state, it is issued by the judge, justice, or other officer before whom the attendance is required.

(3) To require attendance before a commissioner appointed to take testimony by a court of a foreign country, of the United States, of any other state in the United States, or of any other district or county within this state or before any officer ~~or officers~~ empowered by the laws of the United States to take testimony, it may be issued by any judge or justice of the peace in places within ~~his~~ *the judge's or justice's* respective jurisdiction, with ~~like~~ *the same* power to enforce attendance and, upon certificate of contumacy to ~~said~~ *the* court, to punish contempt of ~~his~~ process ~~as such~~ *that the* judge or justice could exercise if the subpoena directed the attendance of the witness before ~~his~~ *the judge's or justice's* court in a matter pending ~~therein~~ *in that court*."

Section 543. Section 26-2-103, MCA, is amended to read:

"26-2-103. Service of subpoena on concealed witness. If a witness is concealed in a building or vessel so as to prevent the service of a subpoena upon ~~him~~ *the witness*, any court*,* ~~or~~ judge*,* or any officer issuing a subpoena may, upon proof by affidavit of the concealment and of the materiality of the witness, make an order that the sheriff of the county serve the subpoena*,* and the sheriff ~~must~~ *shall* serve it accordingly and, for that purpose, may break into the building or vessel where the witness is concealed."

Section 544. Section 26-2-104, MCA, is amended to read:

"26-2-104. Disobedience — how punished. Disobedience to a subpoena or a refusal to be sworn or to answer as a witness or to subscribe an affidavit or deposition, when required, may be punished as a contempt by the court issuing the subpoena or requiring the witness to be ~~so~~ sworn, to ~~so~~ answer, or to ~~so~~ subscribe~~;~~. ~~and if~~ *If* the witness ~~be~~ *is* a party, ~~his~~ *the party's* complaint or answer may be stricken out."

Section 545. Section 26-2-105, MCA, is amended to read:

"26-2-105. Disobedience — civil damages. A witness disobeying a subpoena also forfeits to the party aggrieved the sum of $100 and all damages ~~which he~~ *that the person* may sustain by the failure of the witness to attend~~;~~. ~~which~~ *The* forfeiture and damages may be recovered in a civil action."

Section 546. Section 26-2-106, MCA, is amended to read:

"26-2-106. Warrant to arrest and bring in disobedient witness. In case of a failure of a witness to attend, the court or officer issuing the subpoena, upon proof of the service ~~thereof~~ and of the failure of the witness, may issue a warrant to the sheriff of the county to arrest the witness and bring ~~him~~ *the witness* before the court or officer where ~~his~~ attendance was required."

Section 547. Section 26-2-107, MCA, is amended to read:

"26-2-107. Contents of warrant — execution. ~~Every~~ *Each* warrant of commitment issued by a court or officer pursuant to this part must specify ~~therein~~, particularly, the cause of the commitment~~;~~. ~~and if it be~~ *If the warrant is issued* for refusing to answer a question, ~~such~~ *the* question must be stated in the warrant. ~~Every~~ *Each* warrant to arrest or commit a witness pursuant to this part must be directed to the sheriff of the county where the witness may be and must be executed by ~~him~~ *the sheriff* in the same manner as process by the district court."

Section 548. Section 26-2-201, MCA, is amended to read:

"26-2-201. Court order to obtain deposition or attendance of prisoner. If the witness ~~be~~ *is* a prisoner confined in a jail or prison within this state, an order for ~~his~~ *the witness's* examination in the *jail or* prison upon

deposition or for ~~his~~ *the witness's* temporary removal and production before a court or officer for the purpose of being orally examined may be made as follows:

(1) by the court itself in which the action or special proceeding is pending unless it ~~be~~ *is* a justice's court;

(2) by a justice of the supreme court or a judge of the district court of the county where the action or proceeding is pending if pending before a justice's court or before a judge or other person out of court."

Section 549. Section 26-2-203, MCA, is amended to read:

"26-2-203. When production of witness may be required. If the witness ~~be~~ *is* imprisoned in the county where the action or proceeding is pending, ~~his~~ *the witness's* production may be required. In all other cases, ~~his~~ *the witness's* examination, when allowed, must be taken upon deposition."

Section 550. Section 26-2-301, MCA, is amended to read:

"26-2-301. Witness required to attend when subpoenaed. A witness served with a subpoena ~~must~~ *shall* attend at the time appointed, with any papers under ~~his~~ *the witness's* control required by the subpoena, and answer all pertinent and legal questions and, unless sooner discharged, ~~must~~ *shall* remain until the testimony is closed."

Section 551. Section 26-2-302, MCA, is amended to read:

"26-2-302. Witness required to answer questions. A witness ~~must~~ *shall* answer questions legal and pertinent to the matter in issue though ~~his~~ *the* answer may establish a claim against ~~himself,~~ *the witness.* ~~but he need~~ *However, the witness is* not *required to* give an answer ~~which~~ *that* will have a tendency to subject ~~him~~ *the witness* to punishment for a felony~~, nor need he~~ *or to* give an answer ~~which~~ *that* will have a direct tendency to degrade ~~his~~ *the witness's* character unless ~~it be~~ *the answer is* to the very fact in issue or to a fact from which the fact in issue would be presumed."

Section 552. Section 26-2-303, MCA, is amended to read:

"26-2-303. Person present required to testify. A person present in court or before a judicial officer may be required to testify in the same manner as if ~~he~~ *the person* were in attendance upon a subpoena issued by ~~such~~ *the* court or officer."

Section 553. Section 26-2-403, MCA, is amended to read:

"26-2-403. Arrest void — punishment and liability. The arrest of a witness contrary to 26-2-402 is void and, when willfully made, is a contempt of the court~~;~~. ~~and the~~ *The* person making ~~it~~ *the arrest* is responsible to the witness arrested for double the amount of the damages ~~which~~ *that* may be assessed against ~~him~~ *the person* and is also liable to an action at the suit of the party serving the witness with a subpoena for the damages sustained by ~~him~~ *the party serving the witness* in consequence of the arrest."

Section 554. Section 26-2-404, MCA, is amended to read:

"26-2-404. Affidavit of arrested witness — exoneration of arresting officer. (1) An officer is not liable for making the arrest in ignorance of the facts creating the exoneration but is liable for any subsequent detention of the witness if ~~such~~ *the* witness claims the exemption and makes an affidavit stating that *the witness*:

(a) ~~he~~ has been served with a subpoena to attend as a witness before a court, officer, or other person, specifying the ~~same~~ *court, officer, or person*, the place of attendance, and the action or proceeding in which the subpoena was issued;

(b) ~~he~~ has not thus been served by ~~his~~ *the witness's* own procurement with the intention of avoiding arrest; and

(c) ~~he~~ is at the time going to the place of attendance, returning ~~therefrom~~ *from the place of attendance*, or remaining there in obedience to the subpoena.

(2) The affidavit may be taken by the officer and exonerates ~~him~~ *the officer* from liability for discharging the witness when arrested."

Section 555. Section 26-2-507, MCA, is amended to read:

"26-2-507. Demand for advance payment of witness fees in civil action. ~~No~~ *A* witness ~~shall~~ *is not* ~~be~~ obliged to attend court or *appear* before a referee, officer authorized to take depositions, or commissioner, when subpoenaed, unless ~~his~~ *the witness's* mileage and fees for 1 day's attendance are tendered or paid to ~~him~~ *the witness* on ~~his demanding the same~~ *demand* or unless ~~his~~ *the* fees for attendance ~~thereafter~~ for each *succeeding* day are tendered or paid to ~~him~~ *the witness* on demand. The fees of witnesses paid may be taxed as costs against the losing party."

Section 556. Section 26-2-509, MCA, is amended to read:

"26-2-509. Certificate of clerk to witness to obtain payment. The clerk of any court before which ~~any~~ *a* witness ~~shall have~~ *has* attended on behalf of the state or county in ~~any~~ *a* civil action ~~must~~ *shall* give to ~~such~~ *the* witness a certificate under seal of travel and attendance~~, which shall entitle him~~ *that entitles the witness* to receive the amount ~~therein~~ stated *in the certificate* from the state or county treasurer."

Section 557. Section 26-3-104, MCA, is amended to read:

"26-3-104. Principal bound when surety bound. Whenever, pursuant to 26-3-102, 26-3-103, 26-3-201, and 26-3-202, a party is bound by a record and ~~such~~ *the* party stands in the relation of a surety for another, the ~~latter~~ *other person* is also bound from the time that ~~he~~ *the person* has notice of the action or proceeding and an opportunity at the surety's request to join in the defense."

Section 558. Section 26-3-203, MCA, is amended to read:

"26-3-203. Effect of judicial record of another state. The effect of a judicial record of ~~a sister~~ *another* state is the same in this state as in the state where it was made, except that it ~~can only~~ *may* be enforced ~~here~~ *in this state only* by an action or special proceeding. ~~and except that~~ *However,* the authority of a guardian*,* ~~or~~ committee*,* ~~or of an~~ executor*,* or administrator does not extend beyond the jurisdiction of the government under which ~~he~~ *the guardian, committee, executor, or administrator* was invested with ~~his~~ authority."

Section 559. Section 27-1-204, MCA, is amended to read:

"27-1-204. Nominal damages when no appreciable detriment. When a breach of duty has caused no appreciable detriment to the party affected, ~~he~~ *the party* may ~~yet~~ recover nominal damages."

Section 560. Section 27-1-210, MCA, is amended to read:

"27-1-210. Interest on torts. (1) Subject to subsection (2), in an action for recovery on an injury as defined in 27-1-106, a prevailing claimant is entitled to interest at a rate of 10% on any claim for damages awarded that are capable of being made certain by calculation, beginning from the date 30 days after the claimant presented a written statement to the opposing party or ~~his~~ *the party's* agent stating the claim and how the specific sum was calculated.

(2) The interest provisions of subsection (1) do not apply to damages not capable of being made certain by calculation, including but not limited to future damages until ~~such~~ *the* damages are incurred and damages for:

(a) pain and suffering;

(b) injury to credit, reputation, or financial standing;

(c) mental anguish or suffering;

(d) exemplary or punitive damages;

(e) loss of established way of life;

(f) loss of consortium; and

(g) attorney fees.

(3) The jury is to be advised by the court that the court will determine the amount of prejudgment interest due, if any, on any judgment rendered.

(4) Any payment by a party of ~~any~~ *a* claim or interest ~~thereon~~ *on a claim* as set forth in subsection (1) ~~shall~~ *is* not ~~be~~ an admission of liability and ~~shall~~ *may* not be made known to the jury."

Section 561. Section 27-1-211, MCA, is amended to read:

"27-1-211. Right to interest. ~~Every~~ *Each* person who is entitled to recover damages certain or capable of being made certain by calculation and the right to recover ~~which~~ *that* is vested in ~~him~~ *the person* upon a particular day is entitled also to recover interest ~~thereon~~ *on the damages* from that day except during ~~such~~ *the* time ~~as~~ *that* the debtor is prevented by law or by the act of the creditor from paying the debt."

Section 562. Section 27-1-223, MCA, is amended to read:

"27-1-223. Damages for injuries or death inflicted in a duel. If ~~any~~ *a* person slays or permanently disables another person in a duel in this state, ~~he must~~ *the person shall* provide for the maintenance of the spouse and minor children of the person slain or permanently disabled in ~~such~~ *a* manner and at ~~such~~ *a* cost, either by aggregate compensation in damages to each or by a monthly, quarterly, or annual allowance, ~~as~~ *that* is determined by the court and ~~he~~ *the party* is liable for and ~~must~~ *shall* pay all debts of the person slain or permanently disabled."

Section 563. Section 27-1-303, MCA, is amended to read:

"27-1-303. Limitation of damages for breach of obligation. ~~No~~ *A* person ~~can~~ *may not* recover a greater amount in damages for the breach of an obligation than ~~he~~ *the person* could have gained by the full performance ~~thereof~~ *of the obligation* on both sides unless a greater recovery is specified by statute."

Section 564. Section 27-1-308, MCA, is amended to read:

"27-1-308. Collateral source reductions in actions arising from bodily injury or death — subrogation rights. (1) In an action arising from bodily injury or death when the total award against all defendants is in excess of $50,000 and the plaintiff will be fully compensated for ~~his~~ *the plaintiff's* damages, exclusive of court costs and attorney fees, a plaintiff's recovery must be reduced by any amount paid or payable from a collateral source that does not have a subrogation right.

(2) Before an insurance policy payment is used to reduce an award under subsection (1), the following amounts must be deducted from the amount of the insurance policy payment:

(a) the amount the plaintiff paid for the 5 years prior to the date of injury;

(b) the amount the plaintiff paid from *the* date of injury to *the* date of judgment; and

(c) the present value of the amount the plaintiff is ~~thereafter~~ obligated to pay to keep the policy in force for the period for which any reduction of an award is made pursuant to subsection (3).

(3) The jury shall determine its award without consideration of any collateral sources. After the jury determines its award, reduction of the award must be made by the trial judge at a hearing and upon a separate submission of evidence relevant to the existence and amount of collateral sources. Evidence is admissible at the hearing to show that the plaintiff has been or may be reimbursed from a collateral source that does not have a subrogation right. If the trial judge finds that, at the time of hearing, it is not reasonably determinable whether or in what amount a benefit from ~~such~~ a collateral source will be payable, ~~he~~ *the judge* shall:

(a) order any person against whom an award was rendered and who claims a deduction under this section to make a deposit into court of the disputed amount, at interest; and

(b) reduce the award by the amount deposited. The amount deposited and any interest ~~thereon~~ *on that amount* are subject to the further order of the court, pursuant to the requirements of this section.

(4) Except for subrogation rights specifically granted by state or federal law, there is no right to subrogation for any amount paid or payable to a plaintiff from a collateral source if an award is reduced by that amount under subsection (1)."

Section 565. Section 27-1-313, MCA, is amended to read:

"27-1-313. Breach of warranty of agent's authority. The detriment caused by the breach of a warranty of an agent's authority is ~~deemed~~ *considered* to be the amount ~~which~~ *that* could have been recovered and collected from ~~his~~ *the* principal if the warranty had been complied with and the reasonable expenses of legal proceedings taken in good faith to enforce the act of the agent against ~~his~~ *the* principal."

Section 566. Section 27-1-315, MCA, is amended to read:

"27-1-315. Breach of agreement to buy real property. The detriment caused by the breach of an agreement to purchase an estate in real property is ~~deemed~~ *considered* to be the excess, if any, of the amount ~~which~~ *that* would have been due to the seller under the contract over the value of the property to ~~him~~ *the seller*."

Section 567. Section 27-1-316, MCA, is amended to read:

"27-1-316. Breach of covenants in grants of estates in real property. (1) The detriment caused by the breach of a covenant of seisin, of right to convey, of warranty, or of quiet enjoyment in a grant of an estate in real property is ~~deemed~~ *considered* to be:

(a) the price paid to the grantor or, if the breach is partial only, ~~such~~ *the* proportion of the price ~~as~~ *that* the value of the property affected by the breach bore at the time of the grant to the value of the whole property;

(b) interest ~~thereon~~ *on the portion of the price* for the time during which the grantee derived no benefit from the property, not exceeding 5 years; *and*

(c) any expenses properly incurred by the covenantee in defending ~~his~~ possession.

(2) The detriment caused by the breach of a covenant against encumbrances in a grant of an estate in real property is ~~deemed~~ *considered* to be the amount ~~which~~ *that* has been actually expended by the covenantee in extinguishing either the principal or interest ~~thereof~~ *of the amount*, not exceeding in the former case a proportion of the price paid to the grantor equivalent to the relative value at the time of the grant of the property affected by the breach as compared with the whole or, in the latter case, interest on a like amount."

Section 568. Section 27-1-320, MCA, is amended to read:

"27-1-320. Conversion of personal property. (1) The detriment caused by the wrongful conversion of personal property is presumed to be:

(a) the value of the property at the time of its conversion with the interest from that time or, when the action has been prosecuted with reasonable diligence, the highest market value of the property at any time between the conversion and the verdict without interest, at the option of the injured party; and

(b) a fair compensation for the time and money properly expended in pursuit of the property.

(2) The presumption declared by subsection (1) cannot be ~~repelled~~ *rebutted* in favor of one whose possession was wrongful from the beginning by ~~his~~ *that person's* subsequent application of the property to the benefit of the owner without ~~such~~ *the* owner's consent."

Section 569. Section 27-1-321, MCA, is amended to read:

"27-1-321. Conversion of personal property — damages of lienholder. ~~One~~ *A person* having a mere lien on personal property cannot recover greater damages for ~~its~~ *the property's* conversion, from ~~one~~ *a person* having a right ~~thereto~~ *to the property* superior to ~~his~~ *the person holding the lien* after ~~his~~ *the* lien is discharged, than the amount secured by the lien and the compensation allowed by 27-1-320(1) for the loss of time and expenses."

Section 570. Section 27-1-402, MCA, is amended to read:

"27-1-402. How specific relief given. Specific relief is given by:

(1) taking possession of a thing and delivering it to a claimant;

(2) compelling the party ~~himself~~ to do that which ought to be done; or

(3) declaring and determining the rights of parties otherwise than by an award of damages."

Section 571. Section 27-1-415, MCA, is amended to read:

"27-1-415. Parties who cannot be compelled to perform. Specific performance cannot be enforced against a party to a contract in any of the following cases:

(1) if ~~he~~ *the party* has not received an adequate consideration for the contract;

(2) if it is not, as to ~~him~~ *the party*, just and reasonable;

(3) if ~~his~~ *the party's* assent was obtained by the misrepresentations, concealment, circumvention, or unfair practices of any party to whom performance would become due under the contract or by any promise of ~~such~~ *the* party ~~which~~ *that* has not been substantially fulfilled; or

(4) if ~~his~~ *the party's* assent was given under the influence of mistake, misapprehension, or surprise, except that ~~where~~ *when* the contract provides for compensation in case of mistake, a mistake within the scope of ~~such~~ *the*

provision may be compensated for and the contract specifically enforced in other respects if proper to be so enforced."

Section 572. Section 27-1-416, MCA, is amended to read:

"27-1-416. Parties who cannot obtain specific performance. Specific performance cannot be enforced in favor of a party who has not fully and fairly performed all the conditions precedent on ~~his~~ *that party's* part to the obligation of the other party except ~~where his~~ *when the nonperforming party's* failure to perform is only partial and either entirely immaterial or capable of being fully compensated, in which case specific performance may be compelled upon full compensation being made for the default."

Section 573. Section 27-1-417, MCA, is amended to read:

"27-1-417. Specific performance by party who signed when other party did not sign contract. A party who has signed a written contract may be compelled specifically to perform ~~it~~ *the contract*, *even* though the other party has not signed ~~it~~ *the contract*, if the latter has performed or offers to perform ~~it~~ *the contract* ~~on his part~~ and the case is otherwise proper for enforcing specific performance."

Section 574. Section 27-1-421, MCA, is amended to read:

"27-1-421. Compelling performance of successor in interest in title — obligations respecting real property. Whenever an obligation in respect to real property would be specifically enforced against a particular person, ~~it~~ *the obligation* may be in ~~like~~ *the same* manner enforced against any other person claiming under ~~him~~ *the particular person* by a title created subsequently to the obligation except a purchaser or encumbrancer in good faith and for value~~,~~ and except that any ~~such~~ *other* person may ~~exonerate himself~~ *be exonerated* by conveying all ~~his~~ *of that person's* estate to the person entitled to enforce the obligation."

Section 575. Section 27-1-432, MCA, is amended to read:

"27-1-432. Judgment for delivery of personal property. A person entitled to the immediate possession of specific personal property may recover the ~~same~~ *property* in the manner provided by this code. ~~Any~~ *A* person having the possession or control of a particular article of personal property of which ~~he~~ *the person* is not the owner may be compelled specifically to deliver it to the person entitled to its immediate possession."

Section 576. Section 27-1-433, MCA, is amended to read:

"27-1-433. Cancellation of written instrument. (1) A written instrument in respect to which there is a reasonable apprehension that if left outstanding it may cause serious injury to a person against whom it is void or voidable may, upon ~~his~~ *that person's* application, be ~~so~~ adjudged and ordered to be delivered up or canceled.

(2) An instrument the invalidity of which is apparent upon its face or upon the face of another instrument ~~which~~ *that* is necessary to the use of the former *instrument* in evidence is not to be ~~deemed~~ *considered* capable of causing injury within the provisions of subsection (1).

(3) ~~Where~~ *When* an instrument is evidence of different rights or obligations, it may be canceled in part and allowed to stand for the residue."

Section 577. Section 27-1-501, MCA, is amended to read:

"27-1-501. Survival of cause of action or defense — death or disability or transfer of interest. (1) An action, cause of action, or defense

does not abate because of the death or disability of a party or the transfer of any interest ~~therein~~ *in the action or defense*, but whenever the cause of action or defense arose in favor of ~~such~~ *the* party prior to ~~his~~ *the party's* death or disability or transfer of interest ~~therein~~, ~~it~~ *the action or defense* survives and may be maintained by ~~his~~ *the party's* representatives or successors in interest. If the action has not been begun or defense interposed, the action may be begun or defense interposed in the name of ~~his~~ *the party's* representatives or successors in interest. If the action has been begun or defense interposed, the action or proceeding may be continued as provided in Rule 25, M.R.Civ.P.

(2) Actions brought under ~~this section and~~ 27-1-513 *and this section* must be combined in one legal action, and any element of damages may be recovered only once."

Section 578. Section 27-1-511, MCA, is amended to read:

"27-1-511. Right of minor to bring civil action or other proceeding. A minor may enforce ~~his~~ *the minor's* rights by civil action or other legal proceedings in the same manner as a person of full age except that a guardian ~~must~~ *shall* conduct the ~~same~~ *the action or proceedings*."

Section 579. Section 27-1-512, MCA, is amended to read:

"27-1-512. Action by parent or guardian for injury to child or ward. Either parent may maintain an action for the injury to a minor child and a guardian for injury to a ward when ~~such~~ *the* injury is caused by the wrongful act or neglect of another. ~~Such~~ *The* action may be maintained against the person causing the injury or, if ~~such~~ *the* person ~~be~~ *is* employed by another person who is responsible for ~~his~~ *the causing person's* conduct, also against ~~such~~ *the* other *responsible* person."

Section 580. Section 27-1-513, MCA, is amended to read:

"27-1-513. Action for wrongful death. When injuries to and the death of one person are caused by the wrongful act or neglect of another, the personal representative of the decedent's estate may maintain an action for damages against the person causing the death or, if ~~such~~ *the* person ~~be~~ *is* employed by another person who is responsible for ~~his~~ *the causing person's* conduct, then also against ~~such~~ *the* other *responsible* person."

Section 581. Section 27-1-514, MCA, is amended to read:

"27-1-514. Who may sue for whose seduction. (1) The rights of personal relations forbid the seduction of a spouse, child, orphan, or servant.

(2) Either parent may prosecute as plaintiff for the seduction of the child and the guardian for the seduction of the ward, though the child or ward ~~be~~ *is* not living with or in the service of the plaintiff at the time of the seduction or afterwards and there ~~be~~ *is* no loss of service.

(3) An unmarried person may prosecute as plaintiff an action for ~~his or her~~ *the person's* own seduction and may recover ~~therein such~~ damages, pecuniary or exemplary, ~~as~~ *that* are assessed in ~~such~~ *the* person's favor."

Section 582. Section 27-1-515, MCA, is amended to read:

"27-1-515. Protection of personal relations — abduction. The rights of personal relations forbid:

(1) the abduction of a parent from a child;

(2) the abduction or enticement of a wife from ~~her~~ *the wife's* husband or a husband from ~~his~~ *the husband's* wife, of a child from a parent or from a guardian entitled to ~~its~~ *the child's* custody, or of a servant from a master."

Section 583. Section 27-1-701, MCA, is amended to read:

"27-1-701. Liability for negligence as well as willful acts. Except as otherwise provided by law, ~~everyone~~ *each person* is responsible not only for the results of ~~his~~ *the person's* willful acts but also for an injury occasioned to another by ~~his~~ *the person's* want of ordinary care or skill in the management of ~~his~~ *the person's* property or person except so far as the ~~latter~~ *person* has willfully or by want of ordinary care brought the injury upon ~~himself~~ *the person*."

Section 584. Section 27-1-711, MCA, is amended to read:

"27-1-711. Liability of minor or person of unsound mind for own torts — exemplary damages. A minor or person of unsound mind is civilly liable for a wrong done by ~~him~~ *that person* but is not liable in exemplary damages unless at the time of the act ~~he~~ *the person* was capable of knowing that it was wrongful."

Section 585. Section 27-1-712, MCA, is amended to read:

"27-1-712. Liability for damages for deceit. (1) One who willfully deceives another with intent to induce ~~him~~ *that person* to alter ~~his~~ *the person's* position to ~~his~~ *the person's* injury or risk is liable for any damage ~~which he thereby~~ *that the person* suffers.

(2) A deceit, within the meaning of subsection (1), is either:

(a) the suggestion as a fact of that which is not true by one who does not believe it to be true;

(b) the assertion as a fact of that which is not true by one who has no reasonable ground for believing it to be true;

(c) the suppression of a fact by one who is bound to disclose it or who gives information of other facts ~~which~~ *that* are likely to mislead for want of communication of that fact; or

(d) a promise made without any intention of performing it.

(3) One who practices a deceit with intent to defraud the public or a particular class of persons is ~~deemed~~ *considered* to have intended to defraud every individual in that class who is actually misled by the deceit."

Section 586. Section 27-1-713, MCA, is amended to read:

"27-1-713. Duty to restore thing wrongfully acquired or retained. One who obtains a thing without the consent of its owner, by a consent ~~afterwards~~ *later* rescinded, or by an unlawful exaction ~~which~~ *that* the owner could not at the time prudently refuse ~~must~~ *shall* restore ~~it~~ *the thing* to the person from whom it was ~~thus~~ obtained unless ~~he~~ *the person* has acquired a title ~~thereto~~ *to the thing* superior to that of ~~such~~ *the* other person or unless the transaction was corrupt and unlawful on both sides. The restoration required by this section must be made without demand except where a thing is obtained by mutual mistake, in which case the party obtaining the thing is not bound to return it until ~~he~~ *the party* has notice of the mistake."

Section 587. Section 27-1-714, MCA, is amended to read:

"27-1-714. Limits on liability for emergency care rendered at scene of accident or emergency. (1) Any person licensed as a physician and surgeon under the laws of the state of Montana, any volunteer firefighter or officer of any nonprofit volunteer fire company, or any other person who in good faith renders emergency care or assistance without compensation except as provided in subsection (2) at the scene of an emergency or accident is not liable for any civil damages for acts or omissions other than damages occasioned by gross

negligence or by willful or wanton acts or omissions by ~~such~~ *the* person in rendering ~~such~~ *the* emergency care or assistance.

(2) Subsection (1) includes a person properly trained under the laws of this state who operates an ambulance to and from the scene of an emergency or renders emergency medical treatment on a volunteer basis so long as the total reimbursement received for ~~such~~ *the* volunteer services does not exceed 25% of ~~his~~ *the person's* gross annual income or $3,000 a calendar year, whichever is greater.

(3) If a nonprofit subscription fire company refuses to fight a fire on nonsubscriber property, ~~such~~ *the* refusal does not constitute gross negligence or a willful or wanton act or omission."

Section 588. Section 27-1-715, MCA, is amended to read:

"27-1-715. Liability of owner of vicious dog. (1) The owner of ~~any~~ *a* dog ~~which shall~~ *that* without provocation ~~bite any~~ *bites a* person while ~~such~~ *the* person is on or in a public place or lawfully on or in a private place, including the property of the owner of ~~such~~ *the* dog, located within an incorporated city or town ~~shall be~~ *is* liable for ~~such~~ damages ~~as~~ *that* may be suffered by the person bitten regardless of the former viciousness of ~~such~~ *the* dog or the owner's knowledge of ~~such~~ *the* viciousness.

(2) A person is lawfully upon the private property of ~~such~~ *the* owner within the meaning of this section when ~~he~~ *the person* is on ~~such~~ *the* property in the performance of any duty imposed upon ~~him~~ *the person* by the laws of this state or by the laws or postal regulations of the United States of America or when ~~he~~ *the person* is on ~~such~~ *the* property as an invitee or licensee of the person lawfully in possession of the property."

Section 589. Section 27-1-719, MCA, is amended to read:

"27-1-719. (Temporary) **Liability of seller of product for physical harm to user or consumer.** (1) As used in this section, "seller" means a manufacturer, wholesaler, or retailer.

(2) A person who sells a product in a defective condition unreasonably dangerous to a user or consumer or to the property of a user or consumer is liable for physical harm caused by the product to the ultimate user or consumer or to ~~his~~ *the user's or consumer's* property if:

(a) the seller is engaged in the business of selling ~~such a~~ *the* product; and

(b) the product is expected to and does reach the user or consumer without substantial change in the condition in which it is sold.

(3) The provisions of subsection (2) apply even if:

(a) the seller exercised all possible care in the preparation and sale of ~~his~~ *the* product; and

(b) the user or consumer did not buy the product from or enter into any contractual relation with the seller.

(4) Subsection (2)(b) does not apply to a claim for relief based upon improper product design.

(5) Except as provided in this subsection, contributory negligence is not a defense to the liability of a seller, based on strict liability in tort, for personal injury or property damage caused by a defectively manufactured or defectively designed product. A seller named as a defendant in an action based on strict liability in tort for damages to person or property caused by a defectively designed or defectively manufactured product may assert the following

affirmative defenses against the user or consumer, the legal representative of the user or consumer, or any person claiming damages by reason of injury to the user or consumer:

(a) The user or consumer of the product discovered the defect or the defect was open and obvious and the user or consumer unreasonably made use of the product and was injured by it.

(b) The product was unreasonably misused by the user or consumer and ~~such~~ *the* misuse caused or contributed to the injury.

(6) The affirmative defenses referred to in subsection (5) mitigate or bar recovery and must be applied in accordance with the principles of comparative negligence set forth in 27-1-702. (Terminates on occurrence of contingency—sec. 11(2), Ch. 429, L. 1997.)

27-1-719. (Effective on occurrence of contingency) **Liability of seller of product for physical harm to user or consumer.** (1) As used in this section, "seller" means a manufacturer, wholesaler, or retailer.

(2) A person who sells a product in a defective condition unreasonably dangerous to a user or consumer or to the property of a user or consumer is liable for physical harm caused by the product to the ultimate user or consumer or to the user's or consumer's property if:

(a) the seller is engaged in the business of selling ~~such a~~ *the* product; and

(b) the product is expected to and does reach the user or consumer without substantial change in the condition in which it is sold.

(3) The provisions of subsection (2) apply even if:

(a) the seller exercised all possible care in the preparation and sale of the product; and

(b) the user or consumer did not buy the product from or enter into any contractual relation with the seller.

(4) Subsection (2)(b) does not apply to a claim for relief based upon improper product design.

(5) Contributory fault is a defense to the liability of a seller, based on strict liability in tort, for personal injury or property damage caused by a defectively manufactured or defectively designed product. A seller named as a defendant in an action based on strict liability in tort for damages to a person or property caused by a defectively designed or defectively manufactured product may assert the following affirmative defenses against the user or consumer, the legal representative of the user or consumer, or any person claiming damages by reason of injury to the user or consumer:

(a) The user or consumer of the product discovered the defect or the defect was open and obvious and the user or consumer unreasonably made use of the product and was injured by it.

(b) The product was unreasonably misused by the user or consumer and the misuse caused or contributed to the injury.

(6) The affirmative defenses referred to in subsection (5) mitigate or bar recovery and must be applied in accordance with the principles of comparative fault set forth in 27-1-702 and 27-1-705."

Section 590. Section 27-1-731, MCA, is amended to read:

"27-1-731. Individual immunity for and indemnification of ditch company employees — *definitions.* (1) As used in this section:

(a) "ditch company" means a private, not-for-profit irrigation ditch or water user cooperative, corporation, association, or organization;

(b) "employee" means a director, officer, or employee of a ditch company.

(2) An employee of a ditch company is not individually liable for actions and omissions within the course and scope of ~~his~~ *the employee's* employment or position, except as provided in subsection (6). The immunity granted by this subsection does not apply to the liability of a not-for-profit cooperative, corporation, association, or organization.

(3) Upon receiving service of a summons and complaint in an action against ~~him~~ *the employee*, the employee shall give written notice to ~~his~~ *the employee's* supervisor requesting that a defense to the action be provided by the ditch company. If the employee ~~has no~~ *does not have a* supervisor, ~~he~~ *the employee* shall give notice of the action to the attorney of the ditch company defending legal actions of that type. Except as provided in subsection (6), the ditch company shall offer a defense to the action on behalf of the employee. The defense may consist of a defense provided directly by the ditch company. The ditch company shall notify the employee, within 15 days after receipt of notice, whether a direct defense will be provided. If the ditch company refuses or is unable to provide a direct defense, the employee may retain other counsel. Except as provided in subsection (6), the ditch company shall pay all expenses relating to the retained defense and pay any judgment for damages entered in the action that may otherwise be payable under this section.

(4) The employee must be indemnified by the ditch company for any money judgments or legal expenses, including attorney fees either incurred by the employee or awarded to the claimant, or both, to which the employee may be subject as a result of the suit unless the employee's conduct falls within the exclusions provided in subsection (6).

(5) Recovery against a ditch company is a complete bar to any action or recovery of damages by the claimant, by reason of the same subject matter, against the employee whose negligence or wrongful act, error, or omission or other actionable conduct gave rise to the claim. In an action against a ditch company, the employee whose conduct gave rise to the suit is immune from liability by reasons of the same subject matter if the ditch company acknowledges or is bound by a judicial determination that the conduct upon which the claim is brought arises out of the course and scope of the employee's employment unless the claim constitutes an exclusion provided in subsections (6)(b) through (6)(d).

(6) The employee may not be defended or indemnified by the ditch company for any money judgments or legal expenses, including attorney fees, to which the employee may be subject as a result of the suit if a judicial determination is made that:

(a) the conduct upon which the claim is based constitutes oppression, fraud, or malice or for any other reason does not arise out of the course and scope of the employee's employment or position;

(b) the conduct of the employee is a criminal offense as defined in Title 45, chapters 4 through 7;

(c) the employee compromised or settled the claim without the consent of the ditch company; or

(d) the employee failed or refused to cooperate reasonably in the defense of the case.

(7) If ~~no~~ *a* judicial determination has *not* been made applying the exclusions provided in subsection (6), the ditch company may determine whether those exclusions apply. However, if there is a dispute as to whether the exclusions of subsection (6) apply and the ditch company concludes it should clarify its obligation to the employee arising under this section by commencing a declaratory judgment action or other legal action, the ditch company is obligated to provide a defense or assume the cost of the defense of the employee until a final judgment is rendered in ~~such~~ *the* action holding that the ditch company had no obligation to defend the employee. The ditch company has no obligation to provide a defense to the employee in a declaratory judgment action or other legal action brought against the employee by the ditch company under this subsection."

Section 591. Section 27-1-733, MCA, is amended to read:

"27-1-733. Liability of nonprofit organizations and their employees for injuries suffered in sponsored rodeo and similar events. (1) ~~No~~ *A* nonprofit organization sponsoring a rodeo, cowboy polo, cutting horse, O-Mok-See, trail riding, horse packing, horse show, or jackpot roping event, or employee of the organization, is *not* liable for injuries suffered by a contestant as a result of ~~his~~ *the contestant's* voluntary participation in the event except for injuries caused by a willful or wanton act of the sponsoring organization or its employees.

(2) For purposes of this section, a minor is considered to be in voluntary participation in an event if:

(a) ~~he~~ *the minor* has provided written consent to participate in the event; and

(b) the consent is approved by one of the minor's parents or by ~~his~~ *the minor's* legal guardian."

Section 592. Section 27-1-802, MCA, is amended to read:

"27-1-802. Libel defined. Libel is a false and unprivileged publication by writing, printing, picture, effigy, or other fixed representation ~~to the eye which~~ *that* exposes any person to hatred, contempt, ridicule, or obloquy or ~~which~~ causes ~~him~~ *a person* to be shunned or avoided or ~~which~~ *that* has a tendency to injure ~~him~~ *a person* in ~~his~~ *the person's* occupation."

Section 593. Section 27-1-803, MCA, is amended to read:

"27-1-803. Slander defined. Slander is a false and unprivileged publication other than libel ~~which~~ *that*:

(1) charges any person with crime or with having been indicted, convicted, or punished for crime;

(2) imputes in ~~him~~ *a person* the present existence of an infectious, contagious, or loathsome disease;

(3) tends directly to injure ~~him~~ *a person* in respect to ~~his~~ *the person's* office, profession, trade, or business, either by imputing to ~~him~~ *the person* general disqualification in those respects ~~which~~ *that* the office or other occupation peculiarly requires or by imputing something with reference to ~~his~~ *the person's* office, profession, trade, or business that has a natural tendency to lessen its profit;

(4) imputes to ~~him~~ *a person* impotence or want of chastity; or

(5) by natural consequence causes actual damage."

Section 594. Section 27-1-813, MCA, is amended to read:

"27-1-813. Liability of person broadcasting — liability of owner for broadcast prepared by station. Nothing in 27-1-811 or 27-1-812 may be construed to relieve any person broadcasting over a radio station from liability under the law of defamation or to relieve any person, firm, or corporation owning or operating a radio broadcasting station from liability under the law of defamation on account of any broadcast prepared or made by ~~such~~ *a* person, firm, or corporation or by any officer or employee ~~thereof~~ *of a radio station* in the course of ~~his~~ employment. Whenever ~~such~~ an owner or operator *of a radio station* is liable on account of a broadcast and two or more broadcasting stations were connected simultaneously or by transcription, film, metal tape, or other approved or adapted use for joint operation in the making of the broadcast, liability is limited solely to the person, firm, or corporation owning or operating the radio station ~~which~~ *that* originated the broadcast."

Section 595. Section 27-1-820, MCA, is amended to read:

"27-1-820. Content of correction. To the extent that the true facts are, with reasonable diligence, ascertainable with definiteness and certainty, only a retraction constitutes a correction; otherwise the publication or broadcast of the defamed person's statement of the true facts or so much ~~thereof as~~ *of the statement that* is not defamatory of another, scurrilous, or otherwise improper for publication or broadcast, published or broadcast as ~~his~~ *the defamed person's* statement, constitutes a correction within the meaning of 27-1-818 through 27-1-821."

Section 596. Section 27-1-1102, MCA, is amended to read:

"27-1-1102. Duty to warn of violent behavior. A mental health professional has a duty to warn of or take reasonable precautions to provide protection from violent behavior only if the patient has communicated to the mental health professional an actual threat of physical violence by specific means against a clearly identified or reasonably identifiable victim. The duty is discharged by a mental health professional if ~~he~~ *the mental health professional* has:

(1) made reasonable efforts to communicate the threat to the victim and notify the law enforcement agency closest to the patient's or the victim's residence of the threat of violence; and

(2) supplied a requesting law enforcement agency with any information ~~he~~ *the mental health professional* has concerning the threat of violence."

Section 597. Section 27-1-1103, MCA, is amended to read:

"27-1-1103. Immunity from liability. (1) No monetary liability and no cause of action may arise against any mental health professional for failing to predict, warn of, or take precautions to provide protection from a patient's threatened violent behavior unless ~~he~~ *the mental health professional* has a duty to warn of violent behavior, as provided in 27-1-1102.

(2) No monetary liability and no cause of action may arise against any mental health professional for disclosing confidential or privileged information in an effort to discharge a duty arising under 27-1-1102."

Section 598. Section 27-2-210, MCA, is amended to read:

"27-2-210. Actions arising from the seizure or sale of property for taxes. (1) Within 1 year is the period prescribed for the commencement of an action against an officer or officer de facto:

(a) to recover any goods, wares, merchandise, or other property seized by ~~any such~~ *the* officer in ~~his~~ *the officer's* official capacity as tax collector;

(b) to recover the price or value of any goods, wares, merchandise, or other personal property ~~so~~ seized;

(c) for damages for the seizure, detention, or sale of or injury to any goods, wares, merchandise, or other personal property seized; or

(d) for damages done to any person or property in making ~~any such~~ *a* seizure.

(2) The period prescribed for the commencement of an action to recover stock sold for a delinquent assessment is within 6 months.

(3) (a) An action against a county to recover a royalty interest in land acquired by the county by tax deed must be brought within 3 years after the commencement of commercial production of oil, gas, or other minerals from the land.

(b) Nothing contained in subsection (3)(a) ~~shall change~~ *changes* the nature of a royalty interest prior to actual production. The purpose of subsection (3)(a) is to place a limitation on actions seeking royalty interests reserved by the county, once production has commenced, without in any way affecting the validity of any claims a county may have prior to the commencement of production."

Section 599. Section 27-2-213, MCA, is amended to read:

"27-2-213. Actions against banks. (1) Except as provided in subsection (2), there are no time limitations on the commencement of actions to recover money or other property deposited with any bank, banker, trust company, or savings and loan corporation, association, or society.

(2) Any action to obtain, set aside, or question in any manner any stated or settled account between any bank, banker, trust company, or savings and loan corporation, association, or society and any depositor with ~~such~~ *the* bank, banker, trust company, or savings and loan corporation, association, or society must be commenced within 5 years from the date of the statement of ~~such~~ *the* account. Any action based upon or arising from the payment by any bank, banker, trust company, or savings and loan corporation, association, or society of a forged, raised, or otherwise altered check, order, or promissory note out of the deposit, money, or property of the plaintiff must be commenced within 3 years from the day on which the plaintiff or ~~his~~ *the plaintiff's* agent, assignee, or personal representative was notified of ~~such~~ payment or received ~~such~~ *the* check, order, or note marked "paid"."

Section 600. Section 27-2-402, MCA, is amended to read:

"27-2-402. When defendant is out of state. When the cause of action accrues against a person who is out of the state and cannot be served with process, the action may be commenced within the term ~~herein~~ limited *under this part* after ~~his~~ *the person's* return to the state~~;~~. ~~and if~~ *If,* after the cause of action accrues*,* ~~he~~ *the person* departs from the state and cannot be served with process, the time of ~~his~~ *the person's* absence is not part of the time limited for the commencement of the action."

Section 601. Section 27-2-405, MCA, is amended to read:

"27-2-405. When controversy submitted to arbitration. ~~Where~~ *When* the persons who might be adverse parties in an action have entered into a written agreement to submit to arbitration or to refer the cause of action or a controversy in which it might be available or have entered into a written submission ~~thereof~~ *of the cause or controversy* to arbitrators and, before an award or other determination ~~thereupon~~, the agreement or submission is revoked, so as to render it ineffectual, by the death of either party ~~thereto~~ or by the act of the person against whom the action might have been brought or the

execution ~~thereof~~ or the remedy upon an award or other determination ~~thereunder~~ is stayed by injunction or other order procured ~~by him~~ from a competent court or judge, the time ~~which~~ *that* has elapsed between the entering into the written submission or agreement and the revocation ~~thereof~~ *of the submission or agreement* or the expiration of the stay is not a part of the time limited for the commencement of the action."

Section 602. Section 27-2-407, MCA, is amended to read:

"27-2-407. When action terminated or judgment reversed. If an action is commenced within the time limited ~~therefor~~ *for the action* and a judgment ~~therein~~ is reversed on appeal without awarding a new trial or the action is terminated in any other manner than by a voluntary discontinuance, a dismissal of the complaint for neglect to prosecute the action, or a final judgment upon the merits, the plaintiff or, if ~~he~~ *the plaintiff* dies and the cause of action survives, ~~his~~ *the plaintiff's* representative may commence a new action for the same cause after the expiration of the time ~~so~~ limited and within 1 year after ~~such~~ a reversal or termination."

Section 603. Section 27-2-408, MCA, is amended to read:

"27-2-408. Assertion of counterclaim. (1) A defendant is entitled to assert against a plaintiff, by pleading or amendment, any counterclaim arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against ~~him~~ *the defendant*.

(2) The time period between the commencement and termination of an action is not part of the time limit for the commencement of an action by a defendant to recover for a counterclaim or to interpose it in that action or another action by the same plaintiff or a successor arising out of the same transaction or occurrence."

Section 604. Section 27-5-211, MCA, is amended to read:

"27-5-211. Appointment of arbitrators. If the arbitration agreement provides a method of appointment of arbitrators, this method ~~shall~~ *must* be followed. If ~~no~~ *a* method is *not* provided, the agreed method fails or for any reason cannot be followed, or an appointed arbitrator fails or is unable to act and ~~his~~ *the arbitrator's* successor has not been duly appointed, the district court on application of a party shall appoint one or more arbitrators. An arbitrator so appointed has all the powers of one specifically named in the agreement."

Section 605. Section 27-5-216, MCA, is amended to read:

"27-5-216. Award. (1) The award must be in writing and signed by the arbitrators joining in the award. The arbitrators shall deliver a copy to each party personally by certified mail or as provided in the agreement.

(2) An award must be made within the time fixed by the agreement or, if no time is fixed, within ~~such~~ *the* time ~~as~~ *that* the district court orders on application of a party. The parties may extend the time, in writing, either before or after the expiration ~~thereof~~ *of the time*. A party waives the objection that an award was not made within the time required unless ~~he~~ *the party* notifies the arbitrators of ~~his~~ *the party's* objection prior to the delivery of the award to ~~him~~ *that party*."

Section 606. Section 27-5-217, MCA, is amended to read:

"27-5-217. Change of award by arbitrators. On the application of a party or, if an application to the court is pending under 27-5-311, 27-5-312, or 27-5-313, on submission to the arbitrators by the court under ~~such~~ conditions ~~as~~ *that* the court may order, the arbitrators may modify or correct the award upon the grounds stated in 27-5-313(1)(a) and (1)(c) or for the purpose of clarifying the

award. The application must be made within 20 days after delivery of the award to the applicant. Written notice ~~thereof shall~~ *must* be given immediately to the opposing party, stating that ~~he~~ *the opposing party* must serve ~~his~~ *the party's* objections ~~thereto~~ *to the award*, if any, within 10 days from the notice. A modified or corrected award is subject to the provisions of 27-5-311 through 27-5-313."

Section 607. Section 27-5-323, MCA, is amended to read:

"27-5-323. Venue. An initial application must be made to the court of the county in which the agreement provides the arbitration hearing must be held or, if the hearing has been held, in the county in which it was held. Otherwise, the application must be made in the county where the adverse party resides or has a place of business or, if ~~he has no~~ *the adverse party does not have a* residence or place of business in this state, to the court of any county. All subsequent applications must be made to the court hearing the initial application unless the court otherwise directs. ~~No~~ *An* agreement concerning venue involving a resident of this state is *not* valid unless the agreement requires that arbitration occur within the state of Montana. This requirement may only be waived upon the advice of counsel as evidenced by counsel's signature ~~thereto~~ *on the agreement*."

Section 608. Section 27-6-202, MCA, is amended to read:

"27-6-202. Employment of staff and maintenance of offices. (1) The director, subject to the approval of the chief justice, may employ and fix the compensation for clerical and other assistants ~~as he~~ *that the director* considers necessary.

(2) The panel shall maintain adequate offices, in which its records ~~shall~~ *must* be kept and its official business transacted."

Section 609. Section 27-6-203, MCA, is amended to read:

"27-6-203. Compensation of panel and staff. (1) All members of the panel ~~shall~~ *must* be paid a salary in the amount of $40 an hour, under guidelines promulgated by the Montana supreme court.

(2) All members of the panel, the director, and ~~his~~ *the director's* staff are entitled to travel expenses incurred while on the business of the panel, as provided in 2-18-501 through 2-18-503, but ~~such~~ *the* expenses ~~shall~~ *must* be approved by the director before payment is made."

Section 610. Section 27-6-301, MCA, is amended to read:

"27-6-301. How cases submitted. Claimants shall submit a case for the consideration of the panel prior to filing a complaint in any district court or other court sitting in Montana by addressing an application, in writing, signed by the claimant or ~~his~~ *the claimant's* attorney, to the director of the panel."

Section 611. Section 27-6-305, MCA, is amended to read:

"27-6-305. Service on health care provider. Upon receipt of an application for review, the director or ~~his~~ *the director's* delegate shall cause to be served a true copy of the application on the health care providers involved. Service ~~shall~~ *must* be effected by mailing a certified copy of the application to the health care provider at the provider's last-known address, postage prepaid, by certified mail, return receipt requested."

Section 612. Section 27-6-404, MCA, is amended to read:

"27-6-404. Disqualification of panel member. (1) ~~Any~~ *A* member ~~shall disqualify himself~~ *must be disqualified* from consideration of ~~any~~ *a* case in which, by virtue of ~~his~~ *the member's* circumstances, ~~he feels his presence~~ *the*

member believes that serving on the panel would be inappropriate, considering the purpose of the panel. The director may excuse a proposed panelist from serving.

(2) Whenever a party makes and files an affidavit that a panel member selected pursuant to this part cannot, according to the belief of the party making the affidavit, sit in review of the application with impartiality, that panel member may proceed no further. Another panel member must be selected by the health care provider's professional association or state licensing board or the state bar, as ~~the case may be~~ *appropriate*. A party may not disqualify more than three panel members in this manner in any single malpractice claim, and the affidavit must be filed within 15 days of the transmittal by the director, under 27-6-402, of the names of the panel members selected."

Section 613. Section 27-6-502, MCA, is amended to read:

"27-6-502. Conduct of hearing. (1) At the time set for hearing, the claimant submitting the case for review ~~shall~~ *must* be present and shall make a brief introduction of ~~his~~ *the* case, including a resume of the facts constituting the alleged professional malpractice ~~which he~~ *that the claimant* is prepared to prove. The health care provider against whom the claim is brought and ~~his~~ *the health care provider's* attorney may be present and may make an introductory statement of ~~his~~ *the health care provider's* case.

(2) Both parties may call witnesses to testify before the panel, ~~which~~ *and the* witnesses ~~shall~~ *must* be sworn. Medical texts, journals, studies, and other documentary evidence relied upon by either party may be offered and admitted if relevant. Written statements of facts by treating health care providers may be reviewed.

(3) The hearing ~~will~~ *must* be informal, and ~~no~~ *an* official transcript may *not* be made."

Section 614. Section 27-6-503, MCA, is amended to read:

"27-6-503. Conclusion of hearing — supplemental hearing. (1) At the conclusion of the hearing, the panel may take the case under advisement or may request that additional facts, records, witnesses, or other information be obtained and presented to it at a supplemental hearing, which ~~shall~~ *must* be set for a date and time certain, not longer than 30 days from the date of the original hearing unless the claimant or ~~his~~ *the claimant's* attorney consents in writing to a longer period.

(2) Any supplemental hearing ~~shall~~ *must* be held in the same manner as the original hearing, and the parties concerned and their attorneys may be present."

Section 615. Section 27-6-601, MCA, is amended to read:

"27-6-601. Selection of ~~chairman~~ *presiding officer*. At or prior to the time set for the hearing, the attorney members of the panel shall select a ~~chairman~~ *presiding officer* who ~~shall~~ *must* be an attorney and who shall preside over the panel deliberations."

Section 616. Section 27-6-604, MCA, is amended to read:

"27-6-604. Form and content of decision. The decision must in every case be signed for the panel by the ~~chairman~~ *presiding officer*, must contain only the conclusions reached by a majority of its members, and must list the number of members, if any, dissenting from the opinion. Upon request of any party, the majority shall briefly explain the reasoning and basis for the decision and the dissenters shall explain the reasoning and basis for disagreement. Each party

must be informed by the panel of the right to nonbinding mediation under 27-6-606."

Section 617. Section 27-6-702, MCA, is amended to read:

"27-6-702. Tolling of statute of limitations. The running of the applicable limitation period related to a malpractice claim is tolled upon receipt by the director of the application for review as to all health care providers named in the application as parties to the panel proceeding and as to all other persons or entities named in the application as necessary or proper parties for any court action that might subsequently arise out of the same factual circumstances set forth in the application. The running of the applicable limitation period does not begin again until 30 days after either an order of dismissal, with or without prejudice against refiling, is issued from the panel ~~chairman~~ *presiding officer*, or from the director upon the consent of the parties to the claim, or after the panel's final decision, whichever occurs first, is entered in the permanent files of the panel and a copy is served upon the complainant or the complainant's attorney if represented by counsel, by certified mail."

Section 618. Section 27-9-102, MCA, is amended to read:

"27-9-102. Requirement of signed, verified statement by defendant. A statement in writing must be made, signed by the defendant, and verified by ~~his~~ *the defendant's* oath to the following effect:

(1) It must authorize the entry of judgment for a specified sum.

(2) If it ~~be~~ *is* for money due or to become due, it must state concisely the facts out of which it arose and show that the sum confessed ~~therefor~~ is justly due or to become due.

(3) If it ~~be~~ *is* for the purpose of securing the plaintiff against contingent liability, it must state concisely the facts constituting the liability and show that the sum confessed ~~therefor~~ does not exceed the ~~same~~ *contingent liability*."

Section 619. Section 27-9-104, MCA, is amended to read:

"27-9-104. Filing and costs — justice's court. In a justice's court ~~which~~ *that* has authority to enter the judgment, the statement may be filed with the justice, who shall ~~thereupon~~ enter in ~~his~~ *the* docket a judgment of ~~his~~ *the justice's* court for the amount confessed, with costs. If a transcript of ~~such~~ *the* judgment is filed with the clerk of the district court, a copy of the statement must be filed with it."

Section 620. Section 27-12-103, MCA, is amended to read:

"27-12-103. Definitions. As used in this chapter, the following definitions apply:

(1) "Chiropractic physician" means:

(a) for purposes of the annual assessment under 27-12-206, a person licensed to practice chiropractic under Title 37, chapter 12, who at the time of the assessment:

(i) has ~~his~~ *the individual's* principal residence or place of chiropractic practice in the state of Montana;

(ii) is not employed full time by any federal agency or entity; and

(iii) is not fully retired from the practice of chiropractic; or

(b) for all other purposes, a person licensed to practice chiropractic under Title 37, chapter 12, who at the time of the occurrence of the incident giving rise to a malpractice claim:

(i) had ~~his~~ *the individual's* principal residence or place of chiropractic practice in the state of Montana and was not employed full time by any federal agency or entity; or

(ii) was a professional service corporation, partnership, or other business entity organized under the laws of a state to render chiropractic services and each of whose shareholders, partners, or owners were chiropractic physicians licensed to practice chiropractic under Title 37, chapter 12.

(2) "Director" means the director of the Montana chiropractic legal panel.

(3) "Malpractice claim" means any claim or potential claim against a chiropractic physician for chiropractic treatment, lack of chiropractic treatment, or alleged departure from accepted standards of chiropractic health care that proximately results in damage to the claimant~~,~~ and includes but is not limited to a tort or contract claim or potential claim.

(4) "Panel" means the Montana chiropractic legal panel created in 27-12-104."

Section 621. Section 27-12-202, MCA, is amended to read:

"27-12-202. Employment of staff and maintenance of offices. (1) The director, subject to the approval of the chief justice, may employ and fix the compensation for clerical and other assistants ~~as he~~ *that the director* considers necessary.

(2) The panel shall maintain adequate offices, in which its records must be kept and official business transacted."

Section 622. Section 27-12-203, MCA, is amended to read:

"27-12-203. Compensation of panel members and staff. (1) Each member of the panel must be paid a salary of $40 an hour, under guidelines promulgated by the Montana supreme court.

(2) Each member of the panel, the director, and ~~his~~ *the director's* staff are entitled to travel expenses incurred while on the business of the panel, as provided in 2-18-501 through 2-18-503. The director shall approve ~~such~~ *the* expenses before payment is made."

Section 623. Section 27-12-301, MCA, is amended to read:

"27-12-301. How cases submitted — no court action before application. A claimant shall submit a case for the consideration of the panel before filing a complaint in a court sitting in Montana by addressing an application in writing, signed by the claimant or ~~his~~ *the claimant's* attorney, to the director of the panel."

Section 624. Section 27-12-305, MCA, is amended to read:

"27-12-305. Service on chiropractic physician. Upon receipt of an application, the director or ~~his~~ *the director's* delegate shall serve a copy of the application on the chiropractic physician whose alleged malpractice caused the application to be filed. Service must be by mailing a certified copy of the application to the chiropractic physician at ~~his~~ *the chiropractic physician's* last-known address, postage prepaid, by certified mail, return receipt requested."

Section 625. Section 27-12-404, MCA, is amended to read:

"27-12-404. Disqualification of panel member. (1) A panel member or proposed member ~~shall disqualify himself~~ *must be disqualified* from consideration of a case in which, by virtue of ~~his~~ *the member's* circumstances,

~~he~~ *the member* believes ~~his presence~~ *that serving* on the panel would be inappropriate, considering the purpose of the panel. The director may excuse a panel member or proposed member from serving.

(2) If a party files an affidavit stating that ~~he~~ *the party* believes a panel member cannot impartially sit in review of the application, that panel member is disqualified from consideration of the case. The affidavit must be filed within 15 days of the transmittal by the director, under 27-12-402, of the names of the panel members selected. A party may not disqualify more than three panel members. The entity that chose the disqualified member shall select another panel member."

Section 626. Section 27-12-503, MCA, is amended to read:

"27-12-503. Conclusion of hearing — supplemental hearing. (1) At the conclusion of the hearing, the panel may take the case under advisement or may request that additional facts, records, witnesses, or other information be obtained and presented to it at a supplemental hearing. The supplemental hearing must be held at a date and time no more than 30 days from the date of the original hearing, unless the claimant or ~~his~~ *the claimant's* attorney consents in writing to a longer period.

(2) A supplemental hearing must be held in the same manner as the original hearing, and the parties and their attorneys may be present."

Section 627. Section 27-12-601, MCA, is amended to read:

"27-12-601. Selection of ~~chairman~~ *presiding officer*. At or prior to the time set for the hearing, the attorney members of the panel shall select a ~~chairman~~ *presiding officer*, who must be an attorney."

Section 628. Section 27-12-604, MCA, is amended to read:

"27-12-604. Form and content of decision. (1) The decision must:

(a) be in writing and signed by the ~~chairman~~ *presiding officer*;

(b) contain only the conclusions reached by a majority of the panel; and

(c) list the number of dissenting members, if any.

(2) The majority may briefly explain the reasoning and the basis for its decision, and the dissenters may likewise explain the reasons for disagreement."

Section 629. Section 27-12-701, MCA, is amended to read:

"27-12-701. Tolling of statute of limitations. (1) Upon receipt of an application by the director, the running of an applicable limitation period in a malpractice claim is tolled as to each chiropractic physician named as a party and as to each other person or entity named as a necessary or proper party for a court action that might subsequently arise out of the factual circumstances set forth in the application.

(2) The running of the applicable limitation period in a malpractice claim does not begin again until:

(a) 30 days after an order of dismissal, with or without prejudice against refiling, is issued; or

(b) after the panel's final decision is entered in the permanent files of the panel and a copy is served upon the complainant or ~~his~~ *the complainant's* attorney."

Section 630. Section 27-15-101, MCA, is amended to read:

"27-15-101. When plaintiff may be required to elect among arrest, injunction, and attachment. ~~Where~~ *When* an application for an order of arrest, injunction order, and writ of attachment or two of them is made in the same action against the same defendant and it satisfactorily appears that, under the particular circumstances of the case, two or all of them are not necessary for the plaintiff's security, the court or judge may, in ~~its~~ *the court's* or ~~his~~ *judge's* discretion, require the plaintiff to elect between them."

Section 631. Section 27-15-102, MCA, is amended to read:

"27-15-102. Availability of provisional remedies to defendant interposing counterclaim. Whenever the defendant interposes a counterclaim and ~~thereupon~~ demands an affirmative judgment against the plaintiff, ~~his~~ *the defendant's* right to a provisional remedy is the same as it would be in an action brought by ~~him~~ *the defendant* against the plaintiff for the cause of action stated in the counterclaim and demanding the same judgment. For the purpose of applying ~~to such a case~~ the provisions of ~~chapters 15 through 20 of this title and chapter 8 of~~ Title 25, *chapter 8, and Title 27, chapters 15 through 20, to a case involving a counterclaim,* the defendant is considered the plaintiff, the plaintiff is considered the defendant, and the counterclaim ~~so~~ set forth in the answer is considered the complaint."

Section 632. Section 27-16-102, MCA, is amended to read:

"27-16-102. When defendant may be arrested. The defendant may be arrested in the following cases:

(1) in an action for the recovery of money or damages on a cause of action arising upon contract, express or implied, when the defendant is about to depart from the state with intent to defraud ~~his~~ *the defendant's* creditors;

(2) in an action for willful injury to person or character or to property ~~which~~ *that* the defendant knew belonged to another;

(3) in an action*:*

(a) for a fine or penalty or for money or property fraudulently misapplied or converted to ~~his~~ *the defendant's* own use by a public officer, an officer of a corporation, or an attorney, factor, broker, agent, or clerk, in the course of ~~his~~ employment ~~as such~~, or by any other person in a fiduciary capacity;

(b) for misconduct or neglect in office or in a professional employment; or

(c) for a willful violation of duty;

(4) in an action to recover possession of personal property unjustly obtained, when the property or any part thereof has been concealed, removed, or disposed of so that it cannot be found or taken by the sheriff;

(5) when the defendant has been guilty of fraud in contracting the debt or incurring the obligation for which the action is brought or in concealing or disposing of the property for the taking, detention, or conversion of which the action is brought;

(6) when the defendant has removed or disposed of ~~his~~ *the defendant's* property or is about to do so with intent to defraud ~~his~~ *the defendant's* creditors."

Section 633. Section 27-16-204, MCA, is amended to read:

"27-16-204. Plaintiff's undertaking. Before making the order, the judge ~~must~~ *shall* require a written undertaking on the part of the plaintiff, with at least two sufficient sureties, to the effect that, if the defendant ~~recover~~ *recovers* judgment or if the court ~~shall~~ finally ~~decide~~ *decides* that the plaintiff was not entitled to an order of arrest, the plaintiff will pay all costs and charges that may

be awarded to the defendant and all damages ~~which he~~ *that the defendant* may sustain by reason of the arrest, if the ~~same be~~ *arrest is* wrongful or without sufficient cause, not exceeding the sum specified in the undertaking, which ~~shall~~ *must* be at least $500."

Section 634. Section 27-16-205, MCA, is amended to read:

"27-16-205. Affidavits of sureties — filing of undertaking. Each of the sureties ~~must~~ *shall* annex to the undertaking an affidavit that ~~he~~ *the surety* is a resident and householder or freeholder within the state and worth double the sum specified in the undertaking, over and above all ~~his~~ *the surety's* debts and liabilities, exclusive of property exempt from execution. The undertaking must be filed with the clerk of the court."

Section 635. Section 27-16-206, MCA, is amended to read:

"27-16-206. Directions to sheriff in order. The order must require the sheriff of the county where the defendant may be found ~~forthwith~~ to arrest ~~him~~ *the defendant* and hold ~~him~~ *the defendant* to bail in a specified sum and to return the order at a time ~~therein mentioned~~ *specified in the order* to the clerk of the court in which the action is pending."

Section 636. Section 27-16-207, MCA, is amended to read:

"27-16-207. Service of order and affidavit. The order of arrest, with a copy of the affidavit upon which it is made, must be delivered to the sheriff~~,~~ who, upon arresting the defendant, shall deliver ~~him~~ *the defendant* a copy of the affidavit and also, if *the* defendant desires, a copy of the order of arrest."

Section 637. Section 27-16-208, MCA, is amended to read:

"27-16-208. Execution of order — prepayment of expense by plaintiff. The sheriff ~~must~~ *shall* execute the order by arresting the defendant and keeping ~~him~~ *the defendant* in custody until discharged by law. ~~But~~ *However,* the sheriff is not bound to keep ~~such person~~ *the defendant* under arrest more than 24 hours unless the plaintiff ~~advance~~ *advances* each day the expense of keeping ~~such person,~~ *the defendant.* ~~which expense shall~~ *The expenses must* be taxed as costs in the action and ~~in no case shall~~ *may not* be a charge against the county."

Section 638. Section 27-16-209, MCA, is amended to read:

"27-16-209. Liability of sheriff for escape or rescue. If after being arrested the defendant ~~escape~~ *escapes* or ~~be~~ *is* rescued, the sheriff is liable as bail, but ~~he~~ *the sheriff* may ~~discharge himself~~ *be discharged* from ~~such~~ liability by the giving ~~and~~ justification of bail at any time before judgment."

Section 639. Section 27-16-210, MCA, is amended to read:

"27-16-210. Recovery on sheriff's official bond. If a judgment ~~be~~ *is* recovered against the sheriff upon ~~his~~ *the sheriff's* liability as bail and an execution ~~thereon be~~ *is* returned unsatisfied in whole or in part, the same proceeding may be had on ~~his~~ *the sheriff's* official bond for the recovery of the whole or any deficiency as in other cases of delinquency."

Section 640. Section 27-16-402, MCA, is amended to read:

"27-16-402. Form of undertaking for bail. The defendant may give bail by causing a written undertaking to be executed by two or more sufficient sureties, stating their places of residence and occupations, to the effect that they are bound in the amount mentioned in the order of arrest, that the defendant ~~shall~~ *must* at all times ~~render himself~~ *be* amenable to the process of the court during the pendency of the action and to ~~such as~~ *the orders that* may be issued to

enforce the judgment ~~therein~~ *in the action* or that they will pay to the plaintiff the amount of any judgment ~~which~~ *that* may be recovered in the action."

Section 641. Section 27-16-403, MCA, is amended to read:

"27-16-403. Qualifications of sureties. The qualifications of bail ~~shall~~ *must* be as follows:

(1) Each of them must be a resident and householder or freeholder within the county.

(2) Each must be worth the amount specified in the order of arrest or the amount to which the order is reduced, as provided in this chapter, over and above all ~~his~~ *the bail's* debts and liabilities, exclusive of property exempt from execution~~;~~. ~~but~~ *However,* the judge or clerk, on justification, may allow more than two sureties to justify severally, in amounts less than that expressed in the order, if the whole justification ~~be~~ *is* equivalent to that of two sufficient bail."

Section 642. Section 27-16-404, MCA, is amended to read:

"27-16-404. Filing of order with return and undertaking — plaintiff's notice of nonacceptance. (1) Within the time limited for that purpose, the sheriff ~~must~~ *shall* file the order of arrest in the office of the clerk of the court in which the action is pending, with ~~his~~ *the* return endorsed ~~thereon~~ *on the order*, together with a copy of the undertaking of the bail. The *sheriff shall retain the* original undertaking ~~he must retain~~ in ~~his~~ *the sheriff's* possession until filed, as ~~herein~~ provided *in this section*.

(2) The plaintiff, within 10 days ~~thereafter~~ *after filing*, may serve upon the sheriff a notice that ~~he~~ *the plaintiff* does not accept the bail, or ~~he shall be deemed~~ *the plaintiff is considered* to have accepted ~~them~~ *the bail* and the sheriff ~~shall be~~ *is* exonerated from liability. If ~~no~~ notice ~~be~~ *has not been* served within 10 days, the original undertaking must be filed with the clerk of the court."

Section 643. Section 27-16-405, MCA, is amended to read:

"27-16-405. Notice of justification of sureties — new undertaking. Within 5 days after receipt of notice, the sheriff or defendant may give to the plaintiff or ~~his~~ *the plaintiff's* attorney notice of the justification of the same or other bail, ~~(~~specifying the place of residence and occupation of the ~~latter)~~ *attorney,* before a judge of the court or clerk ~~thereof~~ *of the court*, at a specified time and place, ~~the time~~ not to be less than 5 or more than 10 days ~~thereafter~~ *after the notice of the justification*, except ~~by~~ *with* consent of parties. ~~In case~~ *If* other bail is given, there ~~shall~~ *must* be a new undertaking."

Section 644. Section 27-16-406, MCA, is amended to read:

"27-16-406. Procedure for justification. For the purpose of justification, each of the bail ~~must~~ *shall* attend before the judge or clerk at the time and place ~~mentioned~~ *specified* in the notice and may be examined on oath, on the part of the plaintiff, touching ~~his~~ *the bail's* sufficiency, in ~~such~~ *a* manner ~~as~~ *that* the judge or clerk, in ~~his~~ *the judge's or clerk's* discretion, may think proper. The examination ~~shall~~ *must* be reduced to writing and subscribed by the bail if required by the plaintiff."

Section 645. Section 27-16-407, MCA, is amended to read:

"27-16-407. Acceptance of sufficiency of sureties by judge or clerk. If the judge or clerk ~~shall find~~ *finds* the bail sufficient, ~~he must~~ *the judge or clerk shall* annex the examination to the undertaking, endorse ~~his~~ *the* allowance ~~thereon~~ *on the examination*, and cause them to be filed, and the sheriff ~~shall thereupon be~~ *is then* exonerated from liability."

Section 646. Section 27-16-501, MCA, is amended to read:

"27-16-501. Surrender of defendant. At any time before judgment or within 10 days ~~thereafter~~ *after the judgment*, the bail may surrender the defendant in their exoneration or ~~he~~ *the defendant* may surrender ~~himself~~ to the sheriff of the county where ~~he~~ *the defendant* was arrested."

Section 647. Section 27-16-502, MCA, is amended to read:

"27-16-502. Manner and time of surrender. For the purpose of surrendering the defendant, the bail, at any time or place before they are finally charged, may ~~themselves~~ arrest ~~him~~ *the defendant* or, by a written authority endorsed on a certified copy of the undertaking, may empower the sheriff to ~~do so~~ *arrest the defendant*."

Section 648. Section 27-16-503, MCA, is amended to read:

"27-16-503. Exoneration of sureties. Upon arrest of the defendant by the sheriff or upon ~~his~~ *the defendant's* delivery to the sheriff by the bail or upon ~~his~~ *the defendant's* own surrender, the bail ~~shall~~ *must* be exonerated~~, provided such~~ *if the* arrest, delivery, or surrender take place before the expiration of 10 days after judgment~~;~~. ~~but~~ *However,* if ~~such~~ *the* arrest, delivery, or surrender ~~be~~ *is* not made within 10 days after the judgment, the bail ~~shall~~ *must* be finally charged on their undertaking and be bound to pay the amount of the judgment within 10 days ~~thereafter~~ *after the judgment*."

Section 649. Section 27-16-505, MCA, is amended to read:

"27-16-505. Other circumstances in which sureties exonerated. The bail must also be exonerated by the death of the defendant, ~~his~~ *the defendant's* imprisonment in the state ~~penitentiary or~~ prison, or ~~his~~ *the defendant's* legal discharge from the obligation to render ~~himself~~ *the defendant* amenable to the process."

Section 650. Section 27-16-601, MCA, is amended to read:

"27-16-601. Deposit of money by defendant with sheriff. The defendant may, at the time of ~~his~~ arrest, instead of giving bail, deposit with the sheriff the amount mentioned in the order. ~~In case~~ *If* the amount of bail ~~be~~ *is* reduced, as provided in this chapter, the defendant may deposit ~~such~~ *the* amount instead of giving bail. In either case, the sheriff shall give the defendant a certificate of the deposit made, and the defendant ~~shall~~ *must* be discharged from custody."

Section 651. Section 27-16-602, MCA, is amended to read:

"27-16-602. Sheriff to pay money into court — certificates of payment. The sheriff ~~must~~ *shall*, immediately after the deposit, pay the ~~same~~ *amount* into court and take from the clerk receiving the ~~same~~ *amount* two certificates of ~~such~~ payment, one of which ~~he must~~ *the sheriff shall* deliver or transmit to the plaintiff or ~~his~~ *the plaintiff's* attorney and the other to the defendant. For any default in making ~~such~~ *the* payment, the same proceedings may be had on the official bond of the sheriff to collect the sum deposited as in other cases of delinquency."

Section 652. Section 27-16-604, MCA, is amended to read:

"27-16-604. Disposition of deposited money after judgment. ~~Where~~ *If* money ~~shall have~~ *has* been deposited~~, if~~ *and* it remains on deposit at the time of recovery of a judgment in favor of the plaintiff, the clerk ~~must~~ *shall*, under direction of the court, apply the ~~same~~ *money* in satisfaction ~~thereof~~ *of the judgment* and, after satisfying the judgment, refund the surplus, if any, to the

defendant. If the judgment ~~be~~ *is* in favor of the defendant, the clerk ~~must~~ *shall*, under the direction of the court, refund ~~him~~ the whole sum deposited and remaining unapplied *to the defendant*."

Section 653. Section 27-16-1002, MCA, is amended to read:

"27-16-1002. Plaintiff's affidavit and undertaking. Before an order of arrest can be made, the party applying ~~must~~ *shall* prove to the satisfaction of the justice, by the affidavit of ~~himself~~ *the party* or some other person, the facts upon which the application is founded. The plaintiff ~~must~~ *shall* also execute and deliver to the justice a written undertaking in the sum of $300, with sufficient sureties, to the effect that the plaintiff will pay all costs that may be adjudged to the defendant and all damages ~~which he~~ *that the defendant* may sustain by reason of the arrest, if the ~~same be~~ *arrest is* wrongful or without sufficient cause, not exceeding the sum specified in the undertaking."

Section 654. Section 27-16-1003, MCA, is amended to read:

"27-16-1003. Defendant to be taken before justice immediately. The defendant, immediately upon being arrested, must be taken to the office of the justice who made the order~~;~~. ~~and if he~~ *If the justice* is absent or unable to try the action or if it appears to ~~him~~ *the justice* by the affidavit of defendant that ~~he~~ *the justice* is a material witness in the action, the officer ~~must~~ *shall* immediately take the defendant before another justice of the county, if there is another, and if not, then before a justice of an adjoining county, who ~~must~~ *shall* take jurisdiction of the action and proceed ~~thereon~~ as if the summons had been issued and the order of arrest made by ~~him~~ *that justice*."

Section 655. Section 27-16-1004, MCA, is amended to read:

"27-16-1004. Notice to plaintiff of arrest — officer's certificate. The officer making the arrest ~~must~~ *shall* immediately give notice ~~thereof~~ *of the arrest* to the plaintiff or ~~his~~ *the plaintiff's* attorney or agent and endorse on the summons and subscribe a certificate, stating the time of serving the ~~same~~ *summons* and the time of arrest and of ~~his~~ *the officer* giving notice to the plaintiff."

Section 656. Section 27-16-1005, MCA, is amended to read:

"27-16-1005. Officer to detain defendant — expenses. The officer making the arrest ~~must~~ *shall* keep the defendant in custody until ~~he~~ *the defendant* is discharged by order of the justice. The officer ~~shall~~ *may* not be bound to keep ~~such person~~ *the defendant* under arrest more than 24 hours unless the plaintiff ~~advance~~ *pays* each day the expenses of keeping ~~such person~~ *the defendant*, which expense ~~shall~~ *must* be taxed as costs in the action and ~~in no case shall~~ *may not* be a charge against the county."

Section 657. Section 27-16-1006, MCA, is amended to read:

"27-16-1006. Defense against order of arrest. The defendant may file an answer, under oath, putting in issue the facts stated in the affidavit for the order of arrest, which may be tried by the court unless a jury is demanded; and the plaintiff ~~shall~~ *must* be held to establish ~~such~~ *the* facts~~;~~. ~~and if he fail to do so~~ *If the plaintiff fails to establish the facts*, the order of arrest ~~shall~~ *must* be dismissed and the defendant may proceed upon the undertaking of the plaintiff for ~~his~~ damages occasioned by the arrest. The defendant may apply to the court to be discharged from arrest upon the ground of the insufficiency of the papers on which the order of arrest was granted."

Section 658. Section 27-17-101, MCA, is amended to read:

"27-17-101. When plaintiff may claim delivery. The plaintiff in an action to recover possession of personal property may, at the time of issuing summons or at any time ~~thereafter~~ *after issuing summons and* before answer, claim the delivery of ~~such~~ *the* property ~~to him~~, as provided in this chapter."

Section 659. Section 27-17-102, MCA, is amended to read:

"27-17-102. Claim and delivery in justice's court. Parts 2, 3, and 4 of this chapter and Rule 55(b)(2), M.R.Civ.P., are applicable to ~~such~~ *a* claim *to recover personal property* when made in justices' courts, *and* the powers ~~therein~~ given *in those statutes and rules* and *the* duties imposed on sheriffs ~~being~~ *are* extended to constables and the word "justice" *is* substituted for "judge"~~, and the~~. *The* justice, instead of the plaintiff or ~~his~~ *the plaintiff's* attorney, may, ~~in his discretion,~~ by an endorsement in writing upon the affidavit, order the sheriff or constable to take the property mentioned in the affidavit."

Section 660. Section 27-17-201, MCA, is amended to read:

"27-17-201. Plaintiff's affidavit. When a delivery is claimed, an affidavit must be made by the person claiming the property or someone ~~in his~~ *on the person's* behalf, stating:

(1) facts ~~which~~ *that* establish reasonable belief that the person claiming the property is the owner or is lawfully entitled to possession and that the seizure is necessary to prevent the removal or destruction of the property;

(2) that the property is wrongfully detained by the defendant;

(3) that the ~~same~~ *property* has not been taken for a tax, assessment, or fine, pursuant to statute, or seized under an execution or an attachment against the property of the person claiming the property or, if ~~so~~ seized, that it is by statute exempt from seizure; and

(4) a particular description of the property and the actual value of the property."

Section 661. Section 27-17-203, MCA, is amended to read:

"27-17-203. Order from judge. The sheriff ~~shall~~ *may not* make ~~no~~ *a* seizure unless an order from a judge of the court having jurisdiction of the cause is attached to the affidavit. The judge may sign ~~such~~ an order if ~~he~~ *the judge* is satisfied *of either of the following*:

(1) that the party seeking possession of the property has made a prima facie showing of ~~his~~ *the* right to possession and the necessity for seizure at a show cause hearing before ~~him~~ *the judge* with at least 3 days' notice to the person in possession of the property~~;~~. ~~if such~~ *If the* person cannot be found for personal service, notice posted on the property and in three public places in the county where the property is located is sufficient service for this purpose~~; or~~.

(2) that the delay caused by notice and a hearing would seriously impair the remedy sought by the party seeking possession. Evidence of ~~such~~ impairment must be presented in open court, and the court ~~must~~ *shall* set forth with specificity the reasons why ~~such~~ *the* delay would seriously impair the remedy sought by the person seeking possession."

Section 662. Section 27-17-204, MCA, is amended to read:

"27-17-204. Endorsement requiring sheriff to take property. The plaintiff or ~~his~~ *the plaintiff's* attorney may ~~thereupon~~, by an endorsement in writing upon the affidavit, require the sheriff of the county where the property claimed may be to take the ~~same~~ *property* from the defendant."

Section 663. Section 27-17-205, MCA, is amended to read:

"27-17-205. Plaintiff's undertaking — service and execution by sheriff. Upon receipt of the affidavit and notice with a written undertaking, executed by two or more sufficient sureties approved by the sheriff, to the effect that they are bound to the defendant in double the value of the property, as stated in the affidavit for the prosecution of the action, and for the return of the property to the defendant, if return ~~thereof be~~ *of the property is* adjudged, and for the payment to ~~him~~ *the defendant* of ~~such~~ *the* sum ~~as~~ *that* may from any cause be recovered against the plaintiff, the sheriff ~~must forthwith~~ *shall* take the property described in the affidavit, if it ~~be~~ *is* in the possession of the defendant or ~~his~~ *the defendant's* agent, and retain it in ~~his~~ *the sheriff's* custody. ~~He must~~ *The sheriff shall* also, without delay, serve on the defendant a copy of the affidavit, notice, and undertaking by delivering the ~~same~~ *papers* to ~~him~~ *the defendant* personally, if ~~he~~ *the defendant* can be found, or to ~~his~~ *the defendant's* agent from whose possession the property is taken or, if neither can be found, by leaving ~~them~~ *the papers* at the usual place of abode of either with some person of suitable age and discretion or, if neither have any known place of abode, by putting ~~them~~ *the papers* in the nearest post office, directed to the defendant."

Section 664. Section 27-17-206, MCA, is amended to read:

"27-17-206. Manner of seizure of concealed property. If the property or any part ~~thereof be~~ *of the property is* concealed in a building or enclosure, the sheriff shall publicly demand its delivery~~;~~. ~~if it be~~ *If the property is* not delivered, ~~he~~ *the sheriff* shall cause the building or enclosure to be broken open and take the property into ~~his~~ *the sheriff's* possession and, if necessary, ~~he~~ *the sheriff* may call to ~~his~~ *the sheriff's* aid the power of the county."

Section 665. Section 27-17-301, MCA, is amended to read:

"27-17-301. Duty of sheriff to keep and deliver property. When the sheriff ~~shall have~~ *has* taken property, as *provided* in this chapter ~~provided~~, ~~he~~ *the sheriff* shall keep ~~it~~ *the property* in a secure place and deliver it to the party entitled ~~thereto~~ *to the property* upon receiving ~~his~~ *the sheriff's* lawful fees for taking and ~~his~~ *the* necessary expenses for keeping the ~~same~~ *property*."

Section 666. Section 27-17-302, MCA, is amended to read:

"27-17-302. Sheriff's return of execution. The sheriff shall file the notice, undertaking, and affidavit, with ~~his~~ *the sheriff's* proceedings thereon, with the clerk of the court in which the action is pending within 20 days after taking the property mentioned ~~therein~~ *in the notice, undertaking, and affidavit*."

Section 667. Section 27-17-303, MCA, is amended to read:

"27-17-303. Exception to plaintiff's sureties — justification — liability of sheriff. The defendant may, within 2 days after service of a copy of the affidavit and undertaking, give notice to the sheriff that ~~he excepts~~ *the defendant takes exception* to the sufficiency of the sureties. If ~~he~~ *the defendant* fails to do so, ~~he shall be deemed~~ *the defendant is considered* to have waived all objections to ~~them~~ *the sureties*. When the defendant ~~excepts~~ *takes exception*, the sureties must justify on notice in like manner as upon bail on arrest~~;~~ and the sheriff is responsible for the sufficiency of the sureties until the objection to them is waived, as ~~above~~ provided *in this section*, or until they justify. If the defendant ~~except~~ *takes exception* to the sureties, ~~he~~ *the defendant* cannot claim the property, as provided in 27-17-304."

Section 668. Section 27-17-304, MCA, is amended to read:

"27-17-304. When defendant may require return of property — ~~his~~ undertaking. At any time before the delivery of the property to the plaintiff, the defendant may, if ~~he~~ *the defendant* does not ~~except~~ *take exception* to the sureties of the plaintiff, require the return ~~thereof~~ *of the property* upon giving to the sheriff a written undertaking, executed by two or more sufficient sureties, to the effect that they are bound in double the value of the property, as stated in the affidavit of the plaintiff, for the delivery ~~thereof~~ *of the property* to the plaintiff, if ~~such~~ *the* delivery ~~be~~ *is* adjudged, and for the payment to ~~him~~ *the plaintiff* of ~~such~~ *the* sum ~~as~~ *that* may, for any cause, be recovered against the defendant."

Section 669. Section 27-17-306, MCA, is amended to read:

"27-17-306. Justification of defendant's sureties — liability of sheriff. The defendant's sureties, upon notice to the plaintiff of not less than 2 or more than 5 days, shall justify before the judge or clerk in the same manner as upon bail on arrest, and upon ~~such~~ *the* justification the sheriff ~~must~~ *shall* deliver the property to the defendant. The sheriff ~~shall~~ *must* be responsible for the defendant's sureties until they justify or until the justification is completed or expressly waived and may retain the property until that time~~;~~. ~~but~~ *However,* if ~~they~~ *the sureties* or others in their place fail to justify at the time or place appointed, ~~he~~ *the sheriff* shall deliver the property to the plaintiff."

Section 670. Section 27-17-309, MCA, is amended to read:

"27-17-309. Claim of property by third person — plaintiff to indemnify sheriff. If the property taken ~~be~~ *is* claimed by any ~~other~~ person *other* than the defendant or ~~his~~ *the defendant's* agent and ~~such~~ *the other* person ~~make~~ *makes an* affidavit of ~~his~~ *the person's* title ~~thereto~~ *to the property* or right of the possession ~~thereof~~ *of the property*, stating the grounds of ~~such~~ *the* right or title, and ~~serve~~ *serves* the ~~same~~ *affidavit* upon the sheriff, the sheriff ~~shall~~ *is* not ~~be~~ bound to keep the property or deliver it to the plaintiff unless the plaintiff, on demand of ~~him~~ *the plaintiff* or ~~his~~ *the plaintiff's* agent, ~~indemnify~~ *indemnifies* the sheriff against ~~such~~ *the* claim by an undertaking by two sufficient sureties, accompanied by their affidavits that they are each worth double the value of the property, as specified in the affidavit of the plaintiff, over and above their debts and liabilities, exclusive of property exempt from execution, and are freeholders or householders in the county~~;~~. ~~and no~~ *A* claim to ~~such~~ *the* property by any ~~other~~ person *other* than the defendant or ~~his~~ *the defendant's* agent ~~shall be~~ *is not* valid against the sheriff unless ~~so~~ made *as provided in this section*."

Section 671. Section 27-17-310, MCA, is amended to read:

"27-17-310. Answer of defendant claiming third person entitled to property. The defendant may, by answer, defend on the ground that a third person was entitled to the property, without connecting ~~himself~~ *the defendant* with the ~~latter's~~ *third party's* title."

Section 672. Section 27-17-402, MCA, is amended to read:

"27-17-402. Duty to return property in good condition. In all cases when a judgment is rendered, in an action to recover the possession of personal property, for the return ~~thereof,~~ *of personal property* or its value ~~in case~~ *if* a return cannot be had, it is the duty of the party against whom ~~such~~ *the* judgment ~~shall be~~ *is* rendered to return the ~~same~~ *property* in as good condition as the ~~same~~ *property* was when possession ~~thereof~~ was taken by ~~him~~ *the party*."

Section 673. Section 27-18-102, MCA, is amended to read:

"27-18-102. What property subject to attachment. (1) Except as provided in subsection (2), the rights or shares ~~which~~ *that* the defendant has in

the stock of any corporation or company, together with the interest and profits ~~thereon~~ *on the stock*, all debts due the defendant, and all other property in this state of the defendant not exempt from execution may be attached and, if judgment is recovered, sold to satisfy the judgment and execution. Property exempt from execution is exempt from attachment.

(2) In any action in which the amount sued for is $10 or less, the wages and earnings of the debtor or defendant for ~~his~~ personal services rendered at any time within 30 days before the commencement of the action are exempt from attachment."

Section 674. Section 27-18-112, MCA, is amended to read:

"27-18-112. Attachment book to be kept by county clerk. There must be kept in the office of the county clerk of each county a book called "attachment book", in which must be entered by ~~such~~ *the* clerk, in alphabetical order, the names of all persons against whom any writ or notice of attachment has been filed in ~~his~~ *the clerk's* office. There must also be entered in ~~said~~ *the* book the time ~~such~~ *the* writ or notice was filed. ~~Such~~ *The* entry must be made under an appropriate ~~head~~ *heading* for that purpose."

Section 675. Section 27-18-202, MCA, is amended to read:

"27-18-202. Plaintiff's affidavit. When attachment of a defendant's property is sought, an affidavit must be made by the plaintiff or someone ~~in his~~ *on the plaintiff's* behalf stating:

(1) facts ~~which~~ *that* show *that* the defendant is indebted to the plaintiff in the manner specified in 27-18-101(1);

(2) that the attachment is not sought to hinder, delay, or defraud any creditor of the defendant;

(3) facts creating a reasonable belief that the defendant:

(a) is leaving or about to leave this state taking with ~~him~~ *the defendant* property, money, or other effects ~~which~~ *that* might be subjected to payment of the debt;

(b) is disposing or about to dispose of ~~his~~ *the defendant's* property ~~which~~ *that* would be subject to execution;

(c) has the power to dispose of or conceal or remove from the state property ~~which~~ *that* would be subject to execution; or

(d) is likely to suffer liens or encumbrances on ~~his~~ *the defendant's* property ~~which~~ *that* would be subject to execution;

(4) a particular description and the actual value of the property to be attached."

Section 676. Section 27-18-203, MCA, is amended to read:

"27-18-203. Affidavit requirements when debt not yet due. Actions may be commenced and writs of attachment issued upon any debt for the payment of money or specific property before the ~~same shall have~~ *debt has* become due when it ~~shall appear~~ *appears* by the affidavit, in addition to what is required in 27-18-202:

(1) that the defendant is leaving or is about to leave this state, taking with ~~him~~ *the defendant* property, ~~moneys~~ *money*, or other effects ~~which~~ *that* might be subjected to the payment of the debt, for the purpose of defrauding ~~his~~ *the defendant's* creditors; or

(2) that the defendant is disposing of ~~his~~ property or is about to dispose of ~~his~~ property, subject to execution, for the purpose of defrauding ~~his~~ *the defendant's* creditors."

Section 677. Section 27-18-204, MCA, is amended to read:

"27-18-204. Plaintiff's undertaking. Before issuing the writ, the court ~~must~~ *shall* require a written undertaking on the part of the plaintiff, with two or more sufficient sureties to be approved by the court, in a sum not less than double the amount claimed by the plaintiff if ~~such~~ *the* amount ~~be~~ *is* $1,000 or ~~under~~ *less* or, ~~in case~~ *if* the amount ~~so~~ claimed by plaintiff ~~shall exceed~~ *exceeds* $1,000, then in a sum equal to ~~such~~ *the* amount. ~~In no case shall an~~ *An* undertaking *may not* be required ~~exceeding~~ in *an* amount *exceeding* the sum of $20,000. The condition of ~~such~~ *the* undertaking ~~shall~~ *must* be to the effect that if the defendant recovers judgment or if the court finally decides that the plaintiff was not entitled to an attachment, the plaintiff ~~will~~ *shall* pay all costs that may be awarded to the defendant and all damages ~~he~~ *the defendant* may sustain by reason of the issuing of the attachment, not exceeding the sum specified in the undertaking."

Section 678. Section 27-18-205, MCA, is amended to read:

"27-18-205. When judge may issue writ — notice. A judge of a court having jurisdiction of the cause may issue a writ of attachment when:

(1) ~~he~~ *the judge* has received the affidavit described in 27-18-202;

(2) ~~he~~ *the judge* has approved the undertaking required in 27-18-204; and

(3) the party seeking attachment has made a prima facie showing:

(a) in the case of real property, of ~~his~~ *the* right to attachment and the necessity for seizure;

(b) in the case of personal property:

(i) of ~~his~~ *the* right to attachment and the necessity for seizure at a show cause hearing before the court with at least 3 days' notice to the defendant; if the defendant cannot be found for personal service, notice ~~shall~~ *must* be posted on the property and in three public places in the county where the property is located; or

(ii) of ~~his~~ *the* right to attachment and the necessity for seizure and that the delay caused by notice and a hearing would seriously impair the remedy sought by the party seeking possession. Evidence of ~~such~~ *the* impairment must be presented in open court, and the court ~~must~~ *shall* set forth with specificity the reasons why ~~such~~ *the* delay would seriously impair the remedy sought by the person seeking attachment."

Section 679. Section 27-18-207, MCA, is amended to read:

"27-18-207. Alias writs. Whenever a writ of attachment has been lost or whenever it ~~shall appear~~ *appears* from the sheriff's return ~~thereof~~ *of the writ* that no property of the party or parties defendant has been levied upon or that the levy made is insufficient to satisfy the full amount of the plaintiff's demand or if, for any reason, the levy of the original writ is void or ineffective, the clerk of the court, upon written demand of the plaintiff or ~~his~~ *the plaintiff's* attorney, shall issue an alias writ in the same form as the original~~,~~. ~~but no such~~ *However, an* alias writ ~~shall~~ *may not* be issued in an action after the commencement of the trial ~~thereof~~. ~~No~~ *A* new or additional affidavit or undertaking on attachment ~~shall~~ *may not* be required for the issuance of an alias writ. Alias writs of attachment may be issued to the sheriffs of different counties."

Section 680. Section 27-18-301, MCA, is amended to read:

"27-18-301. Form and content of writ — defendant's undertaking to prevent levy. (1) The writ must be directed to the sheriff of any county in which property of ~~such~~ *the* defendant may be *located* and must require ~~him~~ *the sheriff* to:

(a) attach and safely keep all the property of ~~such~~ *the* defendant within ~~his~~ *the sheriff's* county, not exempt from attachment, or ~~so~~ *as* much ~~thereof~~ *of the property* as may be sufficient to satisfy the plaintiff's demand, the amount of which must be stated in conformity with the complaint; or

(b) if the defendant gives ~~him~~ *the sheriff* security by the undertaking of at least two sufficient sureties, in an amount sufficient to satisfy ~~such~~ *the* demand, besides costs, or in an amount equal to the value of the property ~~which~~ *that* has been or is about to be attached, take ~~such~~ *the* undertaking.

(2) The undertaking must be to the plaintiff in the action and must be approved in writing on the back ~~thereof~~ *of the undertaking* by the plaintiff or ~~his~~ *the plaintiff's* attorney or, upon their refusal, by the judge of the district court of the same county as the residence of the sheriff."

Section 681. Section 27-18-303, MCA, is amended to read:

"27-18-303. Order of execution when several writs against same defendant. The sheriff ~~must~~ *shall* endorse upon each writ of attachment received by ~~him~~ *the sheriff* the time when the ~~same~~ *writ* was received, specifying the day, hour, and minute. The writ of attachment first placed in the hands of the sheriff must be executed first, and when there are several writs against the same defendant, they must be executed in the order in which they were received by the sheriff."

Section 682. Section 27-18-306, MCA, is amended to read:

"27-18-306. Sheriff's duty to execute. The sheriff to whom the writ is directed and delivered ~~must~~ *shall* execute the ~~same~~ *writ* without delay and, if the undertaking mentioned in 27-18-301 ~~be~~ *is* not given, as provided in part 4. ~~He~~ *The sheriff* may levy, from time to time and as often as is necessary, until the amount for which ~~it~~ *the writ* was issued has been secured. ~~In no case shall the~~ *The* sheriff *may not* attach more property than appears necessary to satisfy the plaintiff's demand."

Section 683. Section 27-18-401, MCA, is amended to read:

"27-18-401. Sheriff to take custody of books and evidences of title. The sheriff ~~must~~ *shall* take into ~~his~~ custody all books of account, vouchers, and other papers relating to the personal property attached and all evidences of the defendant's title to the real property attached, which ~~he must~~ *the sheriff shall* safely keep."

Section 684. Section 27-18-403, MCA, is amended to read:

"27-18-403. Real property in another's name. Real property or an interest ~~therein~~ *in real property* belonging to the defendant and held by any other person or standing on the records of the county in the name of any other person must be attached by filing with the county clerk a copy of the writ, together with a description of the property and a notice that ~~such~~ *the* real property and any interest of the defendant ~~therein~~ *in the real property*, held by or standing in the name of ~~such~~ *the* other person, ~~(~~naming ~~him)~~ *the person*, are attached. The county clerk ~~must~~ *shall* index ~~such~~ *the* attachment when filed in the names both of the defendant and of the person by whom the property is held or in whose name it stands on the record."

Section 685. Section 27-18-405, MCA, is amended to read:

"27-18-405. Debts, credits, and personal property in control of third person or not capable of manual delivery. (1) Debts or credits and personal property not capable of manual delivery and personal property in the possession of a third person must be attached by leaving with the person owing ~~such~~ *the* debt or having in ~~his~~ *the person's* possession or under ~~his~~ *the person's* control ~~such~~ *the* credits and personal property or with ~~his~~ *the person's* agent a copy of the writ and a notice that the debts owing by ~~him~~ *the person* to the defendant or the credits and other personal property in ~~his~~ *the person's* possession or under ~~his~~ *the person's* control, belonging to the defendant, are attached in pursuance of ~~such~~ *the* writ.

(2) Upon receiving information in writing from the plaintiff or ~~his~~ *the plaintiff's* attorney that any person has in ~~his~~ *the person's* possession or under ~~his~~ *the person's* control any credits or other personal property belonging to the defendant or is owing any debt to the defendant, the sheriff ~~must~~ *shall* serve upon ~~such~~ *that* person a copy of the writ and a notice that ~~such~~ *the* credits or other property or debts~~, as the case may be,~~ are attached in pursuance of ~~said~~ *the* writ.

(3) Debts and credits attached may be collected by the sheriff if the ~~same~~ *collection* can be done without suit. The sheriff's receipt is a sufficient discharge for the amount paid."

Section 686. Section 27-18-406, MCA, is amended to read:

"27-18-406. Money, credits, or other property in control of public officer or board. Money, credits, or other property belonging to or due and owing to another, in the possession of or under the control of a public officer or board, including all officers or boards of a county, municipal corporation, and school district or state board or state government, may be attached or garnished while in ~~such~~ possession or under ~~such~~ control by making service, as provided in this part, upon the clerk of the county or ~~chairman~~ *presiding officer* of the board of county commissioners, the city clerk or mayor of a municipal corporation, or the clerk of the board of school trustees or ~~chairman~~ *presiding officer* of ~~such~~ *the* board~~, as the case may be~~ *of trustees*."

Section 687. Section 27-18-407, MCA, is amended to read:

"27-18-407. Liability of third persons controlling property or debts and served by sheriff. All persons having in their possession or under their control any credits or other personal property belonging to the defendant or owing any debts to the defendant at the time of service upon them of a copy of the writ and notice ~~shall~~ *must* be, unless ~~such~~ *the* property ~~be~~ *is* delivered ~~up~~ or transferred or ~~such~~ *the* debts ~~be~~ *are* paid to the sheriff, liable to the plaintiff for the amount of ~~such~~ *the* credits, property, or debts until the attachment ~~be~~ *is* discharged or any judgment recovered by ~~him be~~ *the plaintiff is* satisfied."

Section 688. Section 27-18-410, MCA, is amended to read:

"27-18-410. Corporate stock — service on secretary of state. In addition to the method prescribed in 27-18-409 for attaching stock or shares or interest ~~therein~~ *in the stock* of any corporation or company, if the president or other head of the ~~same~~ *corporation or company* or the secretary, cashier, or other managing agent ~~thereof~~ *of the corporation or company* does not live *in* or cannot be found in Montana and an affidavit is filed in the office of the clerk of the court in which the action is pending setting forth that ~~such~~ *the* officer or agent does not live *in* or cannot be found in Montana, the clerk shall make an order directing the writ to be served upon the secretary of state of Montana or, in ~~his~~ *the*

secretary of state's absence ~~from his office~~, upon the deputy secretary of state. When ~~such~~ *the* order has been made, the writ of attachment ~~shall~~ *must* be served upon the secretary of state or deputy secretary of state by leaving with ~~him~~ *the secretary or the deputy* a copy of the writ and a notice that the stock or shares or interest ~~therein~~ *in the stock or shares* of ~~such~~ *the* corporation or company belonging to the defendant is attached in pursuance of the writ."

Section 689. Section 27-18-412, MCA, is amended to read:

"27-18-412. Interest of defendant in decedent's estate. The interest of a defendant in personal property belonging to the estate of a decedent, whether as heir, legatee, or devisee, may be attached by serving the personal representative of the decedent with a copy of the writ and a notice that ~~said~~ *the* interest is attached. ~~Such~~ *The* attachment ~~shall~~ *may* not impair the powers of the representative over the property for the purposes of administration. A copy of ~~said~~ *the* writ of attachment and of ~~said~~ *the* notice ~~shall~~ *must* also be filed in the office of the clerk of the court in which ~~said~~ *the* estate is being administered, and the personal representative shall report ~~such~~ *the* attachment to the court when any petition for distribution is filed~~;~~. ~~and in~~ *In* the decree made upon ~~such~~ *the* petition, distribution ~~shall~~ *must* be ordered to ~~such~~ *the* heir, legatee, or devisee, but delivery of ~~such~~ *the* property ~~shall~~ *must* be ordered to the officer making the levy, subject to the claim of ~~such~~ *the* heir, legatee, or devisee or any person claiming under ~~him~~ *the heir, legatee, or devisee*. The property ~~shall~~ *may* not be delivered to the officer making the levy until the decree distributing ~~such~~ *the* interest has become final."

Section 690. Section 27-18-414, MCA, is amended to read:

"27-18-414. Duty of secured party. (1) The secured party under any security agreement of record ~~shall~~, upon 15 days' notice in writing served upon ~~him~~ *the party* in person by any creditor of the debtor seeking to satisfy a demand of ~~such~~ *the* creditor against the debtor, *must* be required to make and file in the office of the county clerk and recorder or other filing officer with whom the financing statement covering the security agreement is filed an affidavit showing the amount of the indebtedness then actually due and owing to the secured party~~;~~. ~~and such~~ *The* affidavit ~~shall~~ *must* state the amount of the original obligation for which the security agreement was given as security, all additional advancement of money or property on the principal obligation since the date of the execution of the security agreement, all payments of ~~whatsoever~~ *any* kind, whether on principal or interest, made by the debtor to the date of the execution of ~~such~~ *the* affidavit by the secured party, and the balance then remaining due and unpaid to the secured party. If, within 15 days from the service of any ~~such~~ demand in writing on the secured party by any creditor of the debtor, the secured party ~~shall fail~~ *fails*, ~~refuse~~ *refuses*, or ~~neglect~~ *neglects* to file the affidavit ~~herein~~ required *in this section*, the security agreement ~~shall be~~ *is* of no force or effect as against ~~such~~ *the* creditor upon the seizure of any ~~such~~ personal property on attachment.

(2) ~~In the event~~ *If* the amount shown to be due is paid to the county treasurer*,* ~~or~~ to a filing officer, ~~as aforesaid,~~ or to the secured party in satisfaction of the security agreement by any attaching creditor against the debtor, the secured party ~~shall~~ *must* be required to surrender to the county treasurer or ~~such~~ *the* filing officer the security agreement and any note or other evidence of indebtedness secured ~~thereby~~ *by the security agreement*, ~~which~~ *and the* security agreement or other evidence of indebtedness ~~shall~~ *must* be delivered by the secured party, county treasurer, or filing officer to the attaching creditor."

Section 691. Section 27-18-501, MCA, is amended to read:

"27-18-501. Examination under oath of defendant or person controlling property or debts — order that property be delivered. Any person owing debts to the defendant or having in ~~his~~ *the person's* possession or under ~~his~~ *the person's* control any credits or other personal property belonging to the defendant may be required to attend before the court or judge or referee appointed by the court or judge and be examined on oath respecting the same. The defendant may also be required to attend for the purpose of giving information respecting ~~his~~ *the defendant's* property and may be examined on oath. The court or judge may, after ~~such~~ *the* examination, order personal property capable of manual delivery in the hands or under the control of ~~such~~ *the* person or of the defendant to be delivered to the sheriff on ~~such~~ terms ~~as~~ *that* may be just, having reference to any liens ~~thereon~~ *on* or claims against the ~~same~~ *property*, and a memorandum ~~to~~ *must* be given of all other personal property, containing the amount and description ~~thereof~~ *of the property*."

Section 692. Section 27-18-502, MCA, is amended to read:

"27-18-502. Person holding property to give sheriff certificate of defendant's interest. Upon the application of a sheriff holding a writ of attachment, the president or other head of an association or corporation or the secretary, cashier, or managing agent ~~thereof~~ *of the association or corporation* or a debtor of the defendant or a person holding property, including a bond, promissory note, or other instrument for the payment of money, belonging to the defendant ~~must~~ *shall* furnish to the sheriff a certificate, under ~~his~~ *the person's* hand, specifying ~~his~~ *the person's* right to a number of shares of the defendant in the stock of the association or corporation, with all dividends declared or encumbrances ~~thereon~~ *on the stock*, or the amount, nature, and description of the property held for the benefit of the defendant or of the defendant's interest in property ~~so~~ held or of the debt or demand owing to the defendant, as the case requires."

Section 693. Section 27-18-503, MCA, is amended to read:

"27-18-503. Order to person holding property to submit to examination under oath. If a person to whom application is made, as prescribed in 27-18-502, refuses to give ~~such~~ *a* certificate or if it is made to appear, by affidavit, to the satisfaction of the court or a judge ~~thereof~~, that there is reason to suspect that a certificate given by ~~him~~ *the person* is untrue or that it failed fully to set forth the facts required to be shown ~~thereby~~, the court or judge may make an order directing ~~him~~ *the person* to attend, at a specified time and at a place within the county to which the writ is issued, and submit to an examination under oath concerning the same. The order may, in the discretion of the court or judge, direct an appearance before a referee named ~~therein~~ *in the order*."

Section 694. Section 27-18-601, MCA, is amended to read:

"27-18-601. Sheriff to retain nonperishable attached property and proceeds of sales. The proceeds and other property attached by the sheriff must be retained by ~~him~~ *the sheriff* to answer any judgment that may be recovered in the action unless sooner subjected to execution upon another judgment recovered previous to the issuing of the attachment."

Section 695. Section 27-18-602, MCA, is amended to read:

"27-18-602. Claim of attached property by third person — plaintiff to indemnify sheriff. If personal property attached ~~be~~ *is* claimed by a third person, ~~he~~ *the person* shall give notice ~~thereof~~ to the sheriff and deliver to ~~him~~

the sheriff an affidavit, stating ~~his~~ *the person's* claim, ownership, and a description of the property~~;~~. ~~and unless~~ *Unless* the plaintiff, within 10 days after receiving notice ~~thereof~~, ~~give~~ *gives* the sheriff a good and sufficient bond to indemnify ~~him~~ *the sheriff* against loss or damage by reason of ~~such~~ retaining ~~said~~ *the* property, the sheriff shall deliver the ~~same~~ *property* to ~~such~~ *the* person *making the claim*."

Section 696. Section 27-18-603, MCA, is amended to read:

"27-18-603. Sheriff's inventory of attached property — cooperation of persons controlling credits or debts. (1) The sheriff ~~must~~ *shall* make a full inventory of the property attached and return the ~~same~~ *inventory* with the writ. When the sheriff has levied several writs of attachment on the same property, only one inventory must be made.

(2) To enable ~~him~~ *the sheriff* to make ~~such~~ *the* return as to debts and credits attached, ~~he must~~ *the sheriff shall* request, at the time of service, the person owing the debt or having the credit to give ~~him~~ *the sheriff* the memorandum, stating the amount and description of each *debt or credit*~~;~~. ~~and if such~~ *If the* memorandum ~~be~~ *is* refused, the sheriff may apply upon 1 day's notice to the court or judge for an order to compel ~~such~~ *the* memorandum to be given. If the order ~~be~~ *is* granted, it ~~shall~~ *must* also direct the payment of costs of the motion by the person refusing."

Section 697. Section 27-18-604, MCA, is amended to read:

"27-18-604. Sheriff's return of writ. The sheriff ~~must~~ *shall* return the writ of attachment with the summons if issued at the same time, otherwise, within 20 days after ~~its~~ *the writ's* receipt, with a certificate of ~~his~~ *the sheriff's* proceedings endorsed ~~thereon~~ *on* or attached ~~thereto~~ *to the writ*."

Section 698. Section 27-18-702, MCA, is amended to read:

"27-18-702. When writ quashed. At ~~such~~ *the* hearing the defendant may challenge the merit of the underlying action, the need for the prejudgment seizure of property, or both. The writ ~~shall~~ *must* be quashed if the court makes a preliminary finding that:

(1) the plaintiff cannot establish the prima facie validity of ~~his~~ *the plaintiff's* claim; or

(2) the plaintiff cannot establish by a preponderance of the evidence the need for the continued attachment of the defendant's property."

Section 699. Section 27-18-713, MCA, is amended to read:

"27-18-713. Decision of court. If upon ~~such~~ application it satisfactorily appears that the writ of attachment was improperly or irregularly issued, it must be discharged. But the court or judge may allow the plaintiff to amend ~~his~~ *the plaintiff's* affidavit or undertaking."

Section 700. Section 27-18-715, MCA, is amended to read:

"27-18-715. Exception to plaintiff's sureties. At any time within 30 days after the service of summons, the defendant may ~~except~~ *take exception* to the sufficiency of the sureties. If ~~he~~ *the defendant* fails to do so, ~~he is deemed~~ *the defendant is considered* to have waived all objections to ~~them~~ *the sureties*."

Section 701. Section 27-18-721, MCA, is amended to read:

"27-18-721. Proceedings to release attachment. Whenever the defendant has appeared in the action, ~~he~~ *the defendant* may, upon reasonable notice to the plaintiff, apply to the court in which the action is pending or to the judge ~~thereof~~ for an order to discharge the attachment, wholly or in part~~;~~. ~~and~~

~~upon~~ *Upon* the execution of the undertaking mentioned in 27-18-722, an order may be made releasing from the operation of the attachment any or all of the property attached~~;~~. ~~and all~~ *All* of the property ~~so~~ released and all of the proceeds of the sale ~~thereof~~ *of the property* must be delivered to the defendant upon the justification of the sureties on the undertaking, if required by the plaintiff."

Section 702. Section 27-18-725, MCA, is amended to read:

"27-18-725. Motion to vacate or modify writ or increase security. The defendant or a person who has acquired a lien upon or interest in ~~his~~ *the defendant's* property after it was attached may, at any time before the actual application of the attached property or the proceeds ~~thereof~~ *of the property* to the payment of a judgment recovered in the action, apply to vacate or modify the writ of attachment or to increase the security given by the plaintiff or for one or more of those forms of release together or in the alternative."

Section 703. Section 27-18-726, MCA, is amended to read:

"27-18-726. Proceedings on motion. An application specified in 27-18-725 may be founded only upon:

(1) the papers upon which the writ was granted, in which case it must be made to the court or judge, with or without notice as the court or judge ~~deems~~ *considers* proper; or

(2) proof by affidavits on the part of the defendant or a person who has acquired a lien upon or interest in ~~his~~ *the defendant's* property after it was attached, in which case it must be made to the court or judge upon notice and may be opposed by new proof, by affidavit or other evidence on the part of the plaintiff, tending to sustain any grounds of attachment."

Section 704. Section 27-18-803, MCA, is amended to read:

"27-18-803. Notice of application for order to sell. Application for the order ~~shall~~ *must* be upon ~~such~~ notice to the adverse party or ~~his~~ *the party's* attorney ~~as~~ *that* the court or judge, considering the nature and condition of the property, may direct. If it ~~shall appear~~ *appears* to the court or judge that the delay necessary to give notice would cause a material depreciation in the value of property, the order may be made without notice."

Section 705. Section 27-18-902, MCA, is amended to read:

"27-18-902. Procedure when defendant recovers judgment. If the defendant ~~recover~~ *recovers* judgment against the plaintiff, any undertaking received in the action, all of the proceeds of sales and money collected by the sheriff, and all the property attached remaining in the sheriff's hands must be delivered to the defendant or ~~his~~ *the defendant's* agent~~;~~. ~~the~~ *The* order of attachment ~~shall~~ *must* be discharged and the property released ~~therefrom~~ *from attachment*."

Section 706. Section 27-18-903, MCA, is amended to read:

"27-18-903. Judgment for plaintiff — disposition of attached property and proceeds of sales. If judgment ~~be~~ *is* recovered by *the* plaintiff, the sheriff ~~must~~ *shall* satisfy the ~~same~~ *judgment* out of the property attached by ~~him which~~ *the sheriff that* has not been delivered to the defendant or claimant, as ~~hereinbefore~~ provided *in this part*, or subjected to execution on another judgment recovered ~~previous~~ *prior* to the issuing of the attachment, if it ~~be~~ *is* sufficient for that purpose:

(1) by paying to the plaintiff the proceeds of all sales of perishable property or property ordered by the court or judge to be sold by ~~him~~ *the sheriff*, or of any

debts or credits collected by ~~him~~ *the sheriff*, or ~~so~~ *as* much ~~thereof as shall be~~ *of the proceeds, debts, or credits that is* necessary to satisfy the judgment;

(2) if any balance ~~remain~~ *remains* due and an execution ~~shall have~~ *has* been issued on the judgment, by selling under the execution ~~so~~ *as* much of the property, real or personal, ~~as~~ *that* may be necessary to satisfy the balance, if *the sheriff retains* enough *property* for that purpose ~~remain in his hands~~. Notices of the sales must be given and the sales *must be* conducted as in other cases of sales on execution."

Section 707. Section 27-18-904, MCA, is amended to read:

"27-18-904. Delivery of excess property and proceeds to defendant. Whenever the judgment ~~shall have~~ *has* been paid, the sheriff, upon reasonable demand, ~~must~~ *shall* deliver ~~over~~ to the defendant the attached property remaining in ~~his hands~~ *the sheriff's possession* and any proceeds of property attached ~~unapplied~~ *that are not applied* on the judgment."

Section 708. Section 27-18-905, MCA, is amended to read:

"27-18-905. Execution of balance due on judgment. If, after selling all property attached by ~~him~~ *the sheriff* remaining in ~~his hands~~ *the sheriff's possession* and applying the proceeds, together with the proceeds of any debt or credit collected by ~~him~~ *sheriff*, deducting ~~his~~ *the sheriff's* fee, to the payment of the judgment, any balance ~~shall~~ *must* remain due, *and* the sheriff ~~must~~ *shall* proceed to collect ~~such~~ *the* balance *in the same manner* as upon an execution in other cases."

Section 709. Section 27-18-906, MCA, is amended to read:

"27-18-906. Procedure when execution returned unsatisfied. If the execution is returned unsatisfied, in whole or in part, the plaintiff may prosecute any undertaking given pursuant to 27-18-301 or 27-18-722 or ~~he~~ *the plaintiff* may proceed, as in other cases, upon the return of an execution."

Section 710. Section 27-18-1502, MCA, is amended to read:

"27-18-1502. Plaintiff's undertaking. Before issuing the writ, the justice ~~must~~ *shall* require a written undertaking in due form on the part of the plaintiff, with two or more sureties, in a sum of not less than $50 or more than $300, to the effect that if *the* defendant ~~recover~~ *recovers* judgment, the plaintiff will pay all costs that may be awarded to *the* defendant and all damages ~~which he~~ *that the defendant* may sustain by reason of the attachment, not exceeding the sum specified in the undertaking."

Section 711. Section 27-18-1503, MCA, is amended to read:

"27-18-1503. Exception to sureties — justification. Within 2 days after or at any time before the service of the writ of attachment upon *the* defendant, ~~he~~ *the defendant* may ~~except~~ *take exception* to the sufficiency of the sureties, and if ~~he~~ *the defendant* fails to do so, ~~he is deemed~~ *the defendant is considered* to have waived all objections to ~~them~~ *the sureties*. When ~~excepted to~~ *an exception is taken*, the sureties ~~must~~ *shall*, within 3 days after notice by the defendant of not less than 1 day, justify before the justice, and upon failure to justify or if others in their place fail to justify at the time and place appointed, the justice shall make an order vacating the writ of attachment."

Section 712. Section 27-18-1504, MCA, is amended to read:

"27-18-1504. Form and content of writ — defendant's undertaking to prevent levy. (1) The writ may be directed to the sheriff or any constable of the

county or the sheriff of any other county and must require ~~him~~ *the sheriff or constable* to:

(a) attach and safely keep all the property of the defendant in ~~his~~ *the* county, not exempt from attachment, or ~~so~~ *as* much ~~thereof~~ *of the property* as may be sufficient to satisfy the plaintiff's demand, the amount of which must be stated in conformity with the complaint; or

(b) if the defendant gives ~~him~~ security by the undertaking of two sufficient sureties in an amount sufficient to satisfy ~~such~~ *the* demand, besides costs, take ~~such~~ *the* undertaking.

(2) The undertaking must be to the plaintiff and must be approved in writing on the back ~~thereof~~ *of the undertaking* by the plaintiff or ~~his~~ *the plaintiff's* attorney or, upon their refusal, by the justice issuing the writ."

Section 713. Section 27-19-203, MCA, is amended to read:

"27-19-203. Preliminary injunction pending action by public service commission. When the public service commission is conducting an adjudicatory proceeding or formal investigation relating to continuation or interruption of service upon the motion of the consumer counsel or the interested person or ~~his~~ *the interested person's* legal representative, a district court may, upon the application of the consumer counsel or the interested person or ~~his~~ *the interested person's* legal representative, enter a restraining order against any person respondent in the adjudicatory proceeding or investigation. ~~Such a~~ *The* restraining order may prohibit the respondent and ~~his~~ *the respondent's* agents, employees, licensees, and assignees from acting in the manner complained of in the proceeding before the commission until the commission has rendered its decision in the matter. The restraining order may include an order to show cause why the order should not become an injunction for the duration of the proceeding before the commission."

Section 714. Section 27-19-315, MCA, is amended to read:

"27-19-315. When restraining order may be granted without notice. A temporary restraining order may be granted without written or oral notice to the adverse party or ~~his~~ *the party's* attorney only if:

(1) it clearly appears from specific facts shown by affidavit or by the verified complaint that a delay would cause immediate and irreparable injury to the applicant before the adverse party or ~~his~~ *the party's* attorney could be heard in opposition; and

(2) the applicant or the applicant's attorney certifies to the court in writing the efforts, if any, ~~which~~ *that* have been made to give notice and the reasons supporting ~~his~~ *the applicant's* claim that notice should not be required."

Section 715. Section 27-19-318, MCA, is amended to read:

"27-19-318. Application for injunction to be heard without delay. Whenever a temporary restraining order is granted without notice, the application for an injunction must be set for hearing at the earliest possible time and takes precedence over all matters except older matters of the same character. At the hearing the party who obtained the temporary restraining order shall proceed with the application for an injunction, or if ~~he~~ *the party* does not do so, the court or judge shall dissolve the temporary restraining order."

Section 716. Section 27-20-102, MCA, is amended to read:

"27-20-102. When and by whom receiver appointed. A receiver may be appointed by the court in which an action is pending ~~or by the judge thereof~~ *when the action is*:

(1) ~~in an action~~ by a vendor to vacate a fraudulent purchase of property~~,~~*;*

(2) by a creditor to subject any property or fund to ~~his~~ *the creditor's* claim~~,~~*;* ~~or~~

(3) between partners or others jointly owning or interested in any property or fund, on the application of the plaintiff or of any party whose right to or interest in the property or fund or the proceeds ~~thereof~~ *of the property or fund* is probable~~,~~ and ~~where~~ *when* it is shown that the property or fund is in danger of being lost, removed, or materially injured;

~~(2)~~*(4)* ~~in an action~~ by a mortgagee for the foreclosure of ~~his~~ *the mortgagee's* mortgage and sale of the mortgaged property~~, where~~ *and when* it ~~appears~~ *is shown* that the mortgaged property is in danger of being lost, removed, or materially injured or that the condition of the mortgage has not been performed and the property is probably insufficient to discharge the mortgage debt;

~~(3)~~*(5)* after judgment, to carry the judgment into effect;

~~(4)~~*(6)* after judgment, to dispose of the property according to the judgment or to preserve it during the pendency of an appeal; or

(7) ~~in~~ *for* proceedings in aid of execution, when an execution has been returned unsatisfied or when the judgment debtor refuses to apply ~~his~~ *the judgment debtor's* property in satisfaction of the judgment~~;~~

~~(5) in all other cases where, before February 1, 1864, receivers have been appointed by the usages of courts of equity~~."

Section 717. Section 27-20-201, MCA, is amended to read:

"27-20-201. Notice of application for appointment before judgment. Notice of an application for the appointment of a receiver in an action before judgment ~~therein~~ *in the action* must be given to the adverse party unless ~~he~~ *the party* has failed to appear in the action and the time limited for ~~his~~ *the party's* appearance has expired or unless it ~~shall appear~~ *appears* to the court that there is immediate danger that the property or fund will be removed beyond the jurisdiction of the court or lost, materially injured, destroyed, or unlawfully disposed of."

Section 718. Section 27-20-203, MCA, is amended to read:

"27-20-203. Security to cover damages caused by appointment upon ex parte application. If a receiver ~~be~~ *is* appointed upon an ex parte application, the court, before making the order, may require from the applicant an undertaking, with sufficient sureties, in an amount to be fixed by the court, to the effect that the applicant will pay to the defendant all damages ~~he~~ *the defendant* may sustain by reason of the appointment of ~~such~~ *the* receiver and the entry by ~~him~~ *the receiver* upon ~~his~~ *the receiver's* duties, ~~in case~~ *if* the applicant ~~shall have~~ procured ~~such~~ *the* appointment wrongfully, maliciously, or without sufficient cause~~;~~. ~~and the~~ *The* court may~~, in its discretion~~, at any time after ~~said~~ *the* appointment, require an additional undertaking."

Section 719. Section 27-20-301, MCA, is amended to read:

"27-20-301. Oath and undertaking to faithfully discharge duties. Before ~~entering upon his~~ *beginning the* duties *as receiver*, the receiver must be sworn to perform ~~them~~ *the duties* faithfully and shall execute an undertaking, with one or more sureties approved by the court or judge, to ~~such~~ *the* person and in ~~such sum as~~ *an amount that* the court or judge may direct, to the effect that ~~he~~ *the receiver* will faithfully discharge the duties of receiver in the action and obey the orders of the court ~~therein~~ *in the action*. The court may at any time direct ~~him~~ *the receiver* to give new bonds with new sureties with the ~~like~~ *same* effect."

Section 720. Section 27-20-302, MCA, is amended to read:

"27-20-302. Powers of receiver. The receiver has, under the control of the court, *the* power to:

(1) bring and defend actions in ~~his~~ *the receiver's* own name, as receiver;

(2) take and keep possession of the property;

(3) receive rents, collect debts, and compound for and compromise the ~~same~~ *rents and debts*;

(4) make transfers; and

(5) generally do ~~such~~ acts respecting the property ~~as~~ *that* the court may authorize."

Section 721. Section 27-26-203, MCA, is amended to read:

"27-26-203. Form and content of writ. The writ may be either alternative or peremptory. The alternative writ must state generally the allegation against the party to whom it is directed and command ~~such~~ *the* party, immediately after the receipt of the writ or at some other specified time, to do the act required to be performed or to show cause before the court, at a specified time and place, why ~~he~~ *the party* has not done so. The peremptory writ must be in a similar form, except that the words requiring the party to show cause why ~~he~~ *the party* has not done as commanded must be omitted and a return day inserted."

Section 722. Section 27-26-303, MCA, is amended to read:

"27-26-303. Jury trial. (1) If an answer is made ~~which~~ *that* raises a question as to a matter of fact essential to the determination of the motion and affecting the substantial rights of the parties, and upon the supposed truth of the allegation of which the application for the writ is based, the court or judge may~~, in its or his discretion,~~ order the question to be tried before a jury and postpone the argument until the trial can be had. The question to be tried must be distinctly stated in the order for trial. The order may also direct the jury to assess any damages ~~which~~ *that* the applicant may have sustained if ~~it~~ *the jury* finds for ~~him~~ *the applicant*.

(2) If the proceeding is in the district court or before a district judge, the trial must take place as in other cases. If a jury is required in the supreme court, a jury must be drawn and selected from the jury box of Lewis and Clark County and the clerk of the district court of that county shall place the box in the custody of the clerk of the supreme court for that purpose. The conduct of the trial must be the same as in the district court, and the clerk of the supreme court has the same authority to issue process and enter orders and judgments as the district court clerk has in ~~like~~ *similar* cases."

Section 723. Section 27-26-402, MCA, is amended to read:

"27-26-402. Judgment for applicant. If judgment is given for the applicant:

(1) ~~he~~ *the applicant* may recover the damages ~~which he~~ *that the applicant* has sustained, as found by the jury or as determined by the court or referees, if a reference was ordered, together with costs;

(2) an execution may issue for ~~such~~ *the* damages and costs; and

(3) a peremptory mandate must be awarded without delay."

Section 724. Section 27-27-103, MCA, is amended to read:

"27-27-103. Form and content of writ. The writ must be either alternative or peremptory. The alternative writ must state generally the

allegation against the party to whom it is directed and command ~~such~~ *the* party to desist or refrain from further proceedings in the action or matter specified ~~therein~~ *in the writ* until the further order of the court or judge from which it is issued and to show cause before ~~such~~ *the* court or judge, at a specified time and place, why ~~such~~ *the* party should not be absolutely restrained from any further proceedings in ~~such~~ *the* action or matter. The peremptory writ must be in a similar form, except that the words requiring the party to show cause why ~~he~~ *the party* should not be absolutely restrained, etc., must be omitted and a return day inserted."

Section 725. Section 27-28-101, MCA, is amended to read:

"27-28-101. When proceeding may be instituted for unlawful assertion of authority. A civil action may be brought in the name of the state against:

(1) a person who usurps, intrudes into, or unlawfully holds or exercises a public office, civil or military, or a franchise within this state or an office in a corporation created by the authority of this state;

(2) a public officer, civil or military, who does or suffers an act ~~which~~ *that*, by the provisions of law, works a forfeiture of ~~his~~ office;

(3) an association of persons who act as a corporation within this state without being legally incorporated."

Section 726. Section 27-28-103, MCA, is amended to read:

"27-28-103. When attorney general required to commence an action. The attorney general shall commence an action:

(1) when directed by the governor; and

(2) when, upon complaint or otherwise, ~~he~~ *the attorney general* has good reason to believe that any case specified in 27-28-102 can be established by proof."

Section 727. Section 27-28-104, MCA, is amended to read:

"27-28-104. Upon whose relation action brought — security for costs. ~~Such~~ *The* officer may, upon ~~his~~ *the officer's* own relation, bring any ~~such~~ action, or ~~he~~ *the officer* may, on leave of the court or a judge ~~thereof~~ in vacation, bring the action upon the relation of another person~~;~~. ~~and if~~ *If* the action ~~be~~ *is* brought under 27-28-101(1), ~~he may require~~ security for costs *may be required*, to be given as in other cases."

Section 728. Section 27-28-205, MCA, is amended to read:

"27-28-205. Judgment — unlawful assertion of authority. When a defendant is found guilty of usurping, intruding into, or unlawfully holding or exercising an office, franchise, or privilege, judgment ~~shall~~ *must* be rendered that ~~such~~ *the* defendant be ousted and altogether excluded ~~therefrom~~ *from the office, franchise, or privilege* and that the relator recover ~~his~~ costs."

Section 729. Section 27-28-301, MCA, is amended to read:

"27-28-301. When action may be commenced — undertaking for security. A person claiming to be entitled to a public office unlawfully held and exercised by another, ~~by himself~~ *individually* or by an attorney ~~and counselor at law~~, may bring an action ~~therefor~~ *for the office* in the name of the state, as provided in this chapter. On filing the complaint, ~~such~~ *the* person shall enter into an undertaking, with two sufficient sureties to be approved by the judge or any judge of the court in which the action is brought, conditioned that ~~such~~ *the* person will pay any judgment for costs or damages recovered against ~~him~~ *the*

person and all costs and expenses incurred in the prosecution of the action~~,~~. ~~which~~ *The* undertaking ~~shall~~ *must* be filed with the clerk of the court."

Section 730. Section 27-28-302, MCA, is amended to read:

"27-28-302. Contents of complaint. When the action is against a person for usurping an office, the complaint ~~shall~~ *must* set forth the name of the person who claims to be entitled ~~thereto~~ *to the office*, with ~~an averment~~ *a statement* of ~~his~~ *the person's* right ~~thereto~~ *to the office*."

Section 731. Section 27-28-306, MCA, is amended to read:

"27-28-306. Rights of prevailing party to take office and demand books and papers. If judgment ~~be~~ *is* rendered in favor of the person ~~averred~~ *alleged* to be entitled to an office, ~~he~~ *the person* may, after taking the oath of office and executing any official bond required by law, take upon ~~him~~ *the person* the execution of the office and ~~he~~ *the person* shall immediately ~~thereafter~~ *upon taking the office* demand of the defendant all the books and papers in ~~his~~ *the defendant's* custody or within ~~his~~ *the defendant's* power ~~appertaining~~ *pertaining* to the office from which ~~he~~ *the defendant* has been ousted."

Section 732. Section 27-28-307, MCA, is amended to read:

"27-28-307. Refusal to turn over books and papers punishable as contempt. If ~~such~~ *the* defendant ~~refuse~~ *refuses* or ~~neglect~~ *neglects* to deliver ~~over~~ any ~~such~~ book or paper pursuant to ~~such~~ *the* demand *in 27-28-306*, ~~he shall be deemed~~ *the defendant is considered* guilty of a contempt of court and shall be fined ~~in any sum~~ *an amount* not exceeding $10,000 and imprisoned in the jail of the county until ~~he~~ *the defendant* complies with the order of the court or is otherwise discharged by due course of law."

Section 733. Section 27-28-308, MCA, is amended to read:

"27-28-308. Subsequent action for damages for usurpation. The person in whose favor judgment is rendered *under this part* may, at any time within 1 year after the date of ~~such~~ *the* judgment, bring an action against the party ousted and recover the damages ~~he~~ sustained by reason of ~~such~~ *the* usurpation."

Section 734. Section 27-28-401, MCA, is amended to read:

"27-28-401. When judgment of ouster rendered. When the action is against a director of a corporation and the court finds that at ~~his~~ *the director's* election either illegal votes were received or legal votes were rejected, or both, sufficient to change the result, judgment may be rendered that the defendant be ousted and of induction in favor of the person who was entitled to be declared elected at ~~such~~ *the* election."

Section 735. Section 27-28-506, MCA, is amended to read:

"27-28-506. Refusal to deliver assets or papers to trustees — punishment for contempt~~,~~ — liability. An officer of ~~such~~ *the* corporation who refuses or neglects to deliver over any ~~such~~ money or other things pursuant to ~~such~~ *the* demand ~~shall be deemed~~ *is considered* guilty of a contempt of court and shall be fined *an amount* not exceeding $10,000 and imprisoned in the jail of the proper county until ~~he~~ *the officer* complies with the order of the court or is otherwise discharged by due course of law~~,~~. ~~and he shall be~~ *The officer is* liable to the trustees for the value of all money or other things ~~so~~ refused or neglected to be surrendered, together with all damages that have been sustained by the stockholders and creditors of the corporation, or any of them, in consequence of ~~such~~ *the* neglect or refusal."

Section 736. Section 27-30-203, MCA, is amended to read:

"27-30-203. When private person may maintain action for public nuisance. A private person may maintain an action for a public nuisance if it is specially injurious to ~~himself~~ *that person*, but not otherwise."

Section 737. Section 27-30-204, MCA, is amended to read:

"27-30-204. Abatement of public nuisance by public body or officer or injured party. A public nuisance may be abated by any public body or officer authorized ~~thereto~~ by law. ~~Any~~ *A* person may abate a public nuisance ~~which~~ *that* is specially injurious to ~~him~~ *that person* by removing or, if necessary, destroying the thing that constitutes the ~~same~~ *nuisance* without committing a breach of the peace or doing unnecessary injury."

Section 738. Section 27-30-302, MCA, is amended to read:

"27-30-302. Abatement of private nuisance by injured party. A person injured by a private nuisance may abate it by removing or, if necessary, destroying the thing ~~which~~ *that* constitutes the nuisance without committing a breach of the peace or doing unnecessary injury. ~~Where~~ *When* a private nuisance results from a mere omission of the wrongdoer and cannot be abated without entering upon ~~his~~ *the wrongdoer's* land, reasonable notice must be given to ~~him~~ *the wrongdoer* before entering to abate ~~it~~ *the nuisance*."

Section 739. Section 27-31-101, MCA, is amended to read:

"27-31-101. Petition for change of name of natural person. All applications for change of names must be made to the district court of the county where the person whose name is proposed to be changed resides, by petition signed by ~~such~~ *the* person and, if ~~such~~ *the* person is under 18 years of age, by one of the *person's* parents, if living, or if both ~~be~~ *are* dead, then by the *person's* guardian, and if there ~~be~~ *is* no guardian, then by some near relative or friend. The petition must specify the place of birth and residence of ~~such~~ *the* person, ~~his or her~~ *the person's* present name, the name proposed, and the reason for ~~such~~ *the* change of name and must, if neither parent of ~~such~~ *the* person ~~be~~ *is* living, name as far as known to the petitioner the near relatives of ~~such~~ *the* person and their place of residence."

Section 740. Section 27-32-101, MCA, is amended to read:

"27-32-101. Who may petition — where petition filed. For the purpose of having a judicial determination of the date of birth, any citizen of the United States, either natural born or naturalized, may file *a petition* with the clerk of the district court of the county of ~~his~~ *the citizen's* residence ~~a petition~~."

Section 741. Section 27-32-102, MCA, is amended to read:

"27-32-102. Contents of petition. *(1)* The petition must be duly verified by the petitioner. ~~and must contain the following:~~

~~(1)~~ The petition must state:

(a) that the petitioner is a citizen of the United States;

(b) that ~~he~~ *the petitioner* has resided in the state of Montana for 1 year ~~last past~~ *preceding the commencement of the action* and in the county in which the action is brought for at least 90 days immediately preceding the commencement of the action;

(c) the place of ~~his~~ *the petitioner's* birth;

(d) the names of ~~his~~ *the petitioner's* parents, together with the place of the birth of each ~~of his parents~~ *parent* and their address, if they are living;

(e) the name and address of each of ~~his~~ *the petitioner's* brothers and sisters;

(f) if the address of either of the parents or of any of the brothers or sisters is not known, then their ~~last known~~ *last-known* place of address.

(2) If the petitioner was born outside of the United States, then the petition must state:

(a) whether ~~his~~ *the petitioner's* parents came to the United States and, if so, where they came and where they resided or reside;

(b) whether ~~they~~ *the petitioner's parents* or either of them were naturalized within the United States and, if so, when and where ~~such~~ *the* naturalization took place."

Section 742. Section 27-32-301, MCA, is amended to read:

"27-32-301. Judgment. If the court ~~shall be~~ *is* satisfied by competent evidence of the sufficiency of the petition that the applicant is a citizen of the United States, that ~~he~~ *the applicant* has been a citizen of the state of Montana for 1 year ~~last past~~ *preceding the filing of the petition* and of the county for more than 90 days preceding the filing of the petition, and that the applicant's date of birth is proven, then the court shall render judgment accordingly and that judgment ~~shall~~ *must* constitute conclusive evidence of the date of the birth of the applicant."

Section 743. Section 28-1-104, MCA, is amended to read:

"28-1-104. Relief from forfeiture. Whenever by the terms of an obligation a party ~~thereto~~ *to the obligation* incurs a forfeiture or a loss in the nature of a forfeiture by reason of ~~his~~ *the party's* failure to comply with its provisions, ~~he~~ *the party* may be relieved ~~therefrom~~ *from the obligation* upon making full compensation to the other party, except in case of a grossly negligent, willful, or fraudulent breach of duty."

Section 744. Section 28-1-201, MCA, is amended to read:

"28-1-201. General duty of care. Every person is bound, without contract, to abstain from injuring the person or property of another or infringing upon any of ~~his~~ *another person's* rights."

Section 745. Section 28-1-202, MCA, is amended to read:

"28-1-202. Obligation of one who unilaterally decides to render service. ~~One~~ *A person* who officiously and without the consent of the real or apparent owner of a thing takes it into ~~his~~ *the person's* possession for the purpose of rendering service about it must complete ~~such~~ *the* service and use ordinary care, diligence, and reasonable skill about the ~~same~~ *service*. ~~He~~ *The person* is not entitled to any compensation for ~~his~~ *the* service or expenses, except that ~~he~~ *the person* may deduct actual and necessary expenses incurred by ~~him~~ *the person* about ~~such~~ *the* service from any profits ~~which his~~ *that the* service has caused the thing to acquire for its owner and ~~must~~ *shall* account to the owner for the residue."

Section 746. Section 28-1-303, MCA, is amended to read:

"28-1-303. Right to contribution from joint debtors. Except as provided in 27-1-703, a party to a joint or joint and several obligation who satisfies more than ~~his~~ *that party's* share of the claim against all may require a proportionate contribution from all the parties joined with ~~him~~ *that party*."

Section 747. Section 28-1-405, MCA, is amended to read:

"28-1-405. Condition subsequent defined. A condition subsequent is one referring to a future event upon the happening of which the obligation becomes no longer binding upon the other party if ~~he~~ *the other party* chooses to ~~avail himself~~ *take advantage* of the condition."

Section 748. Section 28-1-406, MCA, is amended to read:

"28-1-406. What conditions must be performed before requiring performance by another. Before ~~any~~ *a* party to an obligation can require another party to perform any act under it, ~~he must~~ *the party shall* fulfill all conditions precedent ~~thereto~~ *to the act* imposed upon ~~himself~~ *that party* and must be able and offer to fulfill all *concurrent* conditions ~~concurrent so~~ imposed upon ~~him~~ *that party* on the like fulfillment by the other party, except as provided by 28-1-407."

Section 749. Section 28-1-407, MCA, is amended to read:

"28-1-407. When prior performance of conditions excused. If a party to an obligation gives notice to another, before the latter is in default, that ~~he~~ *the party* will not perform the ~~same upon his part~~ *obligation* and does not retract ~~such~~ *the* notice before the time at which performance upon ~~his~~ *that party's* part is due, ~~such~~ *the* other party is entitled to enforce the obligation without previously performing or offering to perform any conditions upon ~~his~~ *the other party's* part in favor of the ~~former~~ *party giving notice*."

Section 750. Section 28-1-502, MCA, is amended to read:

"28-1-502. How right of selection lost. If the party having the right of selection between alternative acts does not give notice of ~~his~~ *the* selection to the other party within the time, if any, fixed by the obligation for that purpose or, if ~~none~~ *a time* is ~~so~~ *not* fixed, before the time at which the obligation ought to be performed, the right of selection passes to the other party."

Section 751. Section 28-1-1101, MCA, is amended to read:

"28-1-1101. Extinction of obligation by full performance. Full performance of an obligation by the party whose duty it is to perform it or by any other person on ~~his~~ *that party's* behalf and with ~~his~~ *that party's* assent, if accepted by the creditor, extinguishes it."

Section 752. Section 28-1-1104, MCA, is amended to read:

"28-1-1104. Extinction when directions of creditor followed. If a creditor or any one of two or more joint creditors at any time directs the debtor to perform ~~his~~ *the debtor's* obligations in a particular manner, the obligation is extinguished by performance in that manner even though the creditor does not receive the benefit of ~~such~~ *the* performance."

Section 753. Section 28-1-1105, MCA, is amended to read:

"28-1-1105. When partial performance extinguishes part of obligation. Partial performance of an indivisible obligation extinguishes a corresponding proportion ~~thereof~~ *of the obligation* if the benefit of ~~such~~ *the* performance is voluntarily retained by the creditor, but not otherwise. If ~~such~~ *the* partial performance is of such a nature that the creditor cannot avoid retaining it without injuring ~~his~~ *the creditor's* own property, ~~his~~ *the* retention ~~thereof~~ is not presumed to be voluntary."

Section 754. Section 28-1-1106, MCA, is amended to read:

"28-1-1106. Application of performance when there are several obligations. Whenever a debtor under several obligations to another does an act by way of performance, in whole or in part, ~~which~~ *that* is equally applicable to

two or more of ~~such~~ *the* obligations, ~~such~~ *the* performance must be applied as follows:

(1) If, at the time of performance, the intention or desire of the debtor that ~~such~~ *the* performance should be applied to the extinction of any particular obligation is manifested to the creditor, it must be so applied.

(2) If no ~~such~~ intention or desire is then manifested, the creditor, within a reasonable time after ~~such~~ performance, may apply it toward the extinction of any obligation *the* performance of which was due to ~~him~~ *the creditor* from the debtor at the time of ~~such~~ *the* performance, except that if similar obligations were due to ~~him~~ *the creditor*, both individually and as a trustee, ~~he must~~ *the creditor shall*, unless otherwise directed by the debtor, apply the performance to the extinction of all ~~such~~ obligations in equal proportion. An application once made by the creditor cannot be rescinded without the consent of the debtor.

(3) If application is not made as prescribed in subsection (1) or (2) within the time prescribed, the performance must be applied to the extinction of obligations in the following order and, if there is more than one obligation of a particular class, to the extinction of all in that class, ratably:

(a) first—interest due at the time of the performance;

(b) second—principal due at that time;

(c) third—the obligation earliest in date of maturity;

(d) fourth—an obligation not secured by a lien or collateral undertaking;

(e) fifth—an obligation secured by a lien or collateral undertaking."

Section 755. Section 28-1-1112, MCA, is amended to read:

"28-1-1112. Objections to tender — waiver. The person to whom a tender is made ~~must~~ *shall* at the time specify any objection ~~he~~ *the person* may have to the money, instrument, or property or ~~he~~ *the person* must be ~~deemed~~ *considered* to have waived ~~it~~ *the objection*~~;~~. ~~and if~~ *If* the objections ~~be~~ *are* to the amount of money, the terms of the instrument, or the amount or kind of property, ~~he must~~ *the person shall* specify the amount, terms, or kind ~~which he~~ *that the person* requires or be precluded from objecting afterward."

Section 756. Section 28-1-1113, MCA, is amended to read:

"28-1-1113. Creditor's retention of thing ~~which he~~ *that creditor* refuses to accept. If anything is given to a creditor by way of performance~~,~~ ~~which he~~ *that the creditor* refuses to accept as ~~such~~ *performance*, ~~he~~ *the creditor* is not bound to return it without demand but, if ~~he~~ *the creditor* retains it, ~~he~~ *the creditor* is a gratuitous depositary ~~thereof~~ *of the thing*."

Section 757. Section 28-1-1204, MCA, is amended to read:

"28-1-1204. Who must make offer of performance. An offer of performance must be made by the debtor or by some person on ~~his~~ *the debtor's* behalf and with ~~his~~ *the debtor's* assent."

Section 758. Section 28-1-1206, MCA, is amended to read:

"28-1-1206. Where offer may be made. In the absence of an express provision to the contrary, an offer of performance may be made, at the option of the debtor:

(1) at any place appointed by the creditor;

(2) wherever the person to whom the offer ought to be made can be found;

(3) if ~~such~~ *the* person cannot, with reasonable diligence, be found within the state and within a reasonable distance from ~~his~~ *the person's* residence or place of business or if ~~he~~ *the person* evades the debtor, then at ~~his~~ *the person's* residence or place of business if the ~~same~~ *residence or business* can, with reasonable diligence, be found within the state; or

(4) if this cannot be done, then at any place within this state."

Section 759. Section 28-1-1211, MCA, is amended to read:

"28-1-1211. When offer may be conditional. (1) An offer of performance must be free from any conditions ~~which~~ *that* the creditor is not bound~~, on his part,~~ to perform.

(2) When a debtor is entitled to the performance of a condition precedent to or concurrent with performance on ~~his~~ *the debtor's* part, ~~he~~ *the debtor* may make ~~his~~ *the* offer depend upon the due performance of ~~such~~ *the* condition."

Section 760. Section 28-1-1212, MCA, is amended to read:

"28-1-1212. Objections to mode of offer — waiver. All objections to the mode of an offer of performance ~~which~~ *that* the creditor has an opportunity to state at the time to the person making the offer and ~~which~~ *that* could then be ~~obviated~~ *made unnecessary* by ~~such~~ *the* person are waived by the creditor if not then stated. If the objection is to the amount of money, the terms of the instrument, or the amount or kind of property offered, the creditor ~~must~~ *shall* specify the amount, terms, or kind ~~which he~~ *that the creditor* requires."

Section 761. Section 28-1-1221, MCA, is amended to read:

"28-1-1221. Title to thing offered. The title to a thing duly offered in performance of an obligation passes to the creditor if the debtor at the time signifies ~~his~~ *the debtor's* intention to that effect."

Section 762. Section 28-1-1224, MCA, is amended to read:

"28-1-1224. Custody of thing other than money. The person offering a thing other than money by way of performance ~~must~~ *shall*, if ~~he~~ *the person* means to treat it as belonging to the creditor, retain it as a depositary for hire until the creditor accepts it or until ~~he~~ *the person* has given reasonable notice to the creditor that ~~he~~ *the person* will retain it no longer and, if with reasonable diligence ~~he~~ *the person* can find a suitable depositary ~~therefor~~ *for the thing*, until ~~he~~ *the person* has deposited it with ~~such person~~ *the suitable depositary*."

Section 763. Section 28-1-1302, MCA, is amended to read:

"28-1-1302. Effect when performance prevented by creditor. If the performance of an obligation ~~be~~ *is* prevented by the creditor, the debtor is entitled to all the benefits ~~which he~~ *that the debtor* would have obtained if ~~it~~ *the obligation* had been performed by both parties."

Section 764. Section 28-1-1303, MCA, is amended to read:

"28-1-1303. Effect when performance prevented by other causes. If full performance of an obligation is prevented by any cause excusing performance other than the act of the creditor, the debtor is entitled to a ratable proportion of the consideration to which ~~he~~ *the debtor* would have been entitled upon full performance, according to the benefit ~~which~~ *that* the creditor receives from the actual performance."

Section 765. Section 28-1-1304, MCA, is amended to read:

"28-1-1304. Effect of refusal to accept performance before offer. A refusal by a creditor to accept performance, made before an offer ~~thereof~~ *of*

performance, is equivalent to an offer and refusal unless, before performance is actually due, ~~he~~ *the creditor* gives notice to the debtor of ~~his~~ *the creditor's* willingness to accept ~~it~~ *performance*."

Section 766. Section 28-1-1504, MCA, is amended to read:

"28-1-1504. When acceptance of novation may be rescinded. When the obligation of a third person or an order upon ~~such~~ *the third* person is accepted in satisfaction, the creditor may rescind ~~such~~ *the* acceptance if:

(1) the debtor prevents ~~such~~ *the third* person from complying with the order or from fulfilling the obligation;

(2) at the time the obligation or order is received, ~~such~~ *the third* person is insolvent and the fact is unknown to the creditor; or

(3) before the creditor can, with reasonable diligence, present the order to the *third* person upon whom it is given, ~~he~~ *the third person* becomes insolvent."

Section 767. Section 28-1-1602, MCA, is amended to read:

"28-1-1602. What claims survive general release. A general release does not extend to claims ~~which~~ *that* the creditor does not know or suspect to exist in ~~his~~ *the creditor's* favor at the time of executing the release, which, if known by ~~him~~ *the creditor*, must have materially affected ~~his~~ *the creditor's* settlement with the debtor."

Section 768. Section 28-1-1603, MCA, is amended to read:

"28-1-1603. Effect of release of some but not all joint debtors. A release of one of two or more joint debtors does not extinguish the obligation of any of the others unless they are mere guarantors, nor does it affect their rights to contribution from ~~him~~ *the released debtor*."

Section 769. Section 28-2-202, MCA, is amended to read:

"28-2-202. Contracts of persons entirely without understanding. A person entirely without understanding has no power to make a contract of any kind, but ~~he~~ *the person* is liable for the reasonable value of things furnished to ~~him~~ *the person* necessary for ~~his~~ *the* support *of the person* or the ~~support of his~~ *person's* family."

Section 770. Section 28-2-203, MCA, is amended to read:

"28-2-203. Contracts of persons with limited understanding. A conveyance or other contract of a person of unsound mind but not entirely without understanding, made before ~~his~~ *the person's* incapacity has been judicially determined, is subject to rescission as provided in part 17 of this chapter."

Section 771. Section 28-2-204, MCA, is amended to read:

"28-2-204. When person of unsound mind cannot disaffirm contract. A person of unsound mind cannot disaffirm a contract, otherwise valid, to pay the reasonable value of things necessary for ~~his~~ *the person's* support or that of ~~his~~ *the person's* family, entered into by ~~him~~ *the person* when not under the care of a parent or guardian able to provide for ~~him~~ *the person* or ~~them~~ *the person's family*."

Section 772. Section 28-2-205, MCA, is amended to read:

"28-2-205. When contract for benefit of third person may be enforced by ~~him~~ *third person.* A contract made expressly for the benefit of a third person may be enforced by ~~him~~ *the third person* at any time before the parties ~~thereto~~ *to the contract* rescind ~~it~~ *the contract*."

Section 773. Section 28-2-206, MCA, is amended to read:

"28-2-206. Assignment of nonnegotiable written contract. A nonnegotiable written contract for the payment of money or the delivery of personal property may be transferred by endorsement the same as a negotiable instrument. ~~Such~~ *The* endorsement transfers all the rights of the assignor under the contract to the assignee, subject to all equities and defenses existing in favor of the maker at the time of the endorsement or arising before notice of the assignment is received by ~~him~~ *the maker*."

Section 774. Section 28-2-405, MCA, is amended to read:

"28-2-405. What constitutes actual fraud. Actual fraud, within the meaning of this part, consists in any of the following acts committed by a party to the contract or with ~~his~~ *the party's* connivance with intent to deceive another party ~~thereto~~ *to the contract* or to induce ~~him~~ *the other party* to enter into the contract:

(1) the suggestion as a fact of that which is not true by one who does not believe it to be true;

(2) the positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though ~~he~~ *the person* believes it to be true;

(3) the suppression of that which is true by one having knowledge or belief of the fact;

(4) a promise made without any intention of performing it; or

(5) any other act fitted to deceive."

Section 775. Section 28-2-406, MCA, is amended to read:

"28-2-406. What constitutes constructive fraud. Constructive fraud consists ~~in~~ *of*:

(1) any breach of duty ~~which~~ *that*, without an actually fraudulent intent, gains an advantage to the person in fault or anyone claiming under ~~him~~ *the person in fault* by misleading another *person* to ~~his~~ *that person's* prejudice or to the prejudice of anyone claiming under ~~him~~ *that person*; or

(2) any ~~such~~ act or omission ~~as~~ *that* the law especially declares to be fraudulent, without respect to actual fraud."

Section 776. Section 28-2-407, MCA, is amended to read:

"28-2-407. What constitutes undue influence. Undue influence consists ~~in~~ *of*:

(1) the use by one in whom a confidence is reposed by another *person* or who holds a real or apparent authority over ~~him~~ *the other person* of ~~such~~ *the* confidence or authority for the purpose of obtaining an unfair advantage over ~~him~~ *the other person*;

(2) taking an unfair advantage of ~~another's~~ *another person's* weakness of mind; or

(3) taking a grossly oppressive and unfair advantage of ~~another's~~ *another person's* necessities or distress."

Section 777. Section 28-2-501, MCA, is amended to read:

"28-2-501. How consent is communicated. (1) Consent can be communicated with effect only by some act or omission of the party contracting

by which ~~he~~ *the party* intends to communicate it or ~~which~~ *that* necessarily tends to ~~such~~ *the* communication.

(2) If a proposal prescribes any conditions concerning the communication of its acceptance, the proposer is not bound unless ~~they~~ *the conditions* are conformed to~~;~~. ~~but~~ *However,* in other cases, any reasonable and usual mode in conformity with subsection (1) may be adopted."

Section 778. Section 28-2-502, MCA, is amended to read:

"28-2-502. When consent is considered fully communicated. Consent is considered to be fully communicated between the parties as soon as the party accepting a proposal has put ~~his~~ *that party's* acceptance in the course of transmission to the proposer in conformity with 28-2-501."

Section 779. Section 28-2-512, MCA, is amended to read:

"28-2-512. How proposal revoked. A proposal is revoked by:

(1) the communication of notice of revocation by the proposer to the other party in the manner prescribed by 28-2-501 and 28-2-502 before ~~his~~ *the other party's* acceptance has been communicated to the ~~former~~ *proposer*;

(2) the lapse of the time prescribed in ~~such~~ *the* proposal for its acceptance or, if no time is ~~so~~ prescribed, the lapse of a reasonable time without communication of the acceptance;

(3) the failure of the acceptor to fulfill a condition precedent to acceptance; or

(4) the death or serious mental illness of the proposer."

Section 780. Section 28-2-702, MCA, is amended to read:

"28-2-702. Contracts ~~which~~ *that* violate policy of ~~the~~ law — exemption from responsibility. All contracts ~~which~~ *that* have for their object, directly or indirectly, to exempt anyone from responsibility for ~~his~~ *the person's* own fraud, for willful injury to the person or property of another, or for violation of law, whether willful or negligent, are against the policy of the law."

Section 781. Section 28-2-704, MCA, is amended to read:

"28-2-704. Exception — sale of goodwill of business. (1) ~~One~~ *A person* who sells the goodwill of a business may agree with the buyer to refrain from carrying on a similar business within the areas provided in subsection (2) so long as the buyer or any person deriving title to the goodwill from ~~him~~ *the buyer* carries on a like business ~~therein~~ *in the described areas*.

(2) The agreement authorized in subsection (1) may apply in:

(a) the city where the principal office of the business is located;

(b) the county where the principal office of the business is located;

(c) a city in any county adjacent to the county in which the principal office of the business is located;

(d) any county adjacent to the county in which the principal office of the business is located; or

(e) any combination of the ~~foregoing~~ *areas in subsections (2)(a) through (2)(d)*."

Section 782. Section 28-2-708, MCA, is amended to read:

"28-2-708. Restraints upon legal proceedings void. Every stipulation or condition in a contract by which any party ~~thereto~~ *to the contract* is restricted from enforcing ~~his~~ *the party's* rights under the contract by the usual proceedings in the ordinary tribunals or ~~which~~ *that* limits the time within which ~~he~~ *the party*

may ~~thus~~ enforce ~~his~~ *the party's* rights is void. This section does not affect the validity of an agreement enforceable under Title 27, chapter 5."

Section 783. Section 28-2-709, MCA, is amended to read:

"28-2-709. Illegality of agreement to allow another person to confess judgment, accept service of process, or accept default. (1) ~~No~~ *A* contract in writing by which any promise to pay money is created ~~shall~~ *may not* contain any provision either empowering any person to enter judgment by confession against any party to the contract or empowering any person as the agent of any party to the contract to either confess judgment, accept service of process, or consent on behalf of ~~such~~ *the* party to the entry of ~~his~~ *the party's* default in any proceeding in court upon ~~such~~ *the* contract. ~~Every such~~ *The described* provision in ~~any such~~ *a* contract ~~shall be~~ *is* illegal and void and ~~shall be~~ *is* unenforceable in the courts of this state against any party to ~~such~~ *the* contract.

(2) The term "contract", as used in this section, ~~shall include~~ *includes* all writings executed contemporaneously with and constituting a part of the same transaction, whether ~~such~~ *the* writings ~~be~~ *are* negotiable or nonnegotiable in form."

Section 784. Section 28-2-801, MCA, is amended to read:

"28-2-801. What constitutes good consideration. Any benefit conferred or agreed to be conferred upon the promisor by any other person, to which the promisor is not lawfully entitled, or any prejudice suffered or agreed to be suffered by ~~such~~ *the* person, other than ~~such as he~~ *prejudice that the person* is at the time of consent lawfully bound to suffer, as an inducement to the promisor is a good consideration for a promise."

Section 785. Section 28-2-902, MCA, is amended to read:

"28-2-902. Enforcement of contract not in writing through fraud. Where a contract ~~which~~ *that* is required by law to be in writing is prevented from being put into writing by the fraud of a party ~~thereto~~ *to the contract*, any other party who is by ~~such~~ *the* fraud led to believe that ~~it~~ *the contract* is in writing and acts upon ~~such~~ *that* belief to ~~his~~ *the party's* prejudice may enforce it against the fraudulent party."

Section 786. Section 28-2-903, MCA, is amended to read:

"28-2-903. What contracts must be in writing. (1) The following agreements are invalid unless the ~~same~~ *agreement* or some note or memorandum ~~thereof~~ *of the agreement* is in writing and subscribed by the party to be charged or ~~his~~ *the party's* agent:

(a) an agreement that by its terms is not to be performed within a year from the making ~~thereof~~ *of the agreement*;

(b) a special promise to answer for the debt, default, or miscarriage of another, except in the cases provided for in 28-11-105;

(c) an agreement made upon consideration of marriage other than a mutual promise to marry;

(d) an agreement for the leasing for a longer period than 1 year or for the sale of real property or of an interest ~~therein~~ *in real property*. ~~Such~~ *The* agreement, if made by an agent of the party sought to be charged, is invalid unless the authority of the agent is in writing and subscribed by the party sought to be charged.

(e) an agreement authorizing or employing an agent or broker to purchase or sell real estate for compensation or a commission.

(2) Evidence of an agreement described in subsections (1)(a) through (1)(d) is not admissible without the writing or secondary evidence of ~~its~~ *the writing's* contents.

(3) ~~No evidence~~ *Evidence* is *not* admissible to charge a person upon a representation as to the credit of a third person unless ~~such~~ *the* representation or some memorandum ~~thereof~~ *of the representation* is in writing and either subscribed by or in the handwriting of the party to be charged.

(4) Subsections (1) and (2) do not apply to agreements subject to the Uniform Commercial Code."

Section 787. Section 28-2-906, MCA, is amended to read:

"28-2-906. When written contract takes effect. A contract in writing takes effect upon its delivery to the party in whose favor it is made or to ~~his~~ *the party's* agent."

Section 788. Section 28-2-1703, MCA, is amended to read:

"28-2-1703. Extinction of executory obligations of contract by destruction, cancellation, or alteration. (1) The intentional destruction, cancellation, or material alteration of a written contract by a party entitled to any benefit under ~~it~~ *the contract* or with ~~his~~ *the party's* consent extinguishes all the executory obligations of the contract in ~~his~~ *that party's* favor against parties who do not consent to the act.

(2) ~~Where~~ *When* a contract is executed in duplicate, an alteration or destruction of one copy while the other exists is not within the provisions of subsection (1)."

Section 789. Section 28-2-1711, MCA, is amended to read:

"28-2-1711. When party may rescind. A party to a contract may rescind the ~~same~~ *contract* in the following cases only:

(1) if the consent of the party rescinding or of any party jointly contracting with ~~him~~ *the party rescinding* was given by mistake or obtained through duress, menace, fraud, or undue influence exercised by or with the connivance of the party as to whom ~~he~~ *the party* rescinds or of any other party to the contract jointly interested with ~~such~~ *the* party;

(2) if, through the fault of the party as to whom ~~he~~ *the other party* rescinds, the consideration for ~~his~~ *the* obligation *of the party at fault* fails in whole or in part;

(3) if ~~such~~ *the* consideration becomes entirely void from any cause;

(4) if ~~such~~ *the* consideration, before it is rendered to ~~him~~ *rescinding party*, fails in a material respect from any cause; or

(5) if all the other parties consent."

Section 790. Section 28-2-1713, MCA, is amended to read:

"28-2-1713. How rescission accomplished. Rescission, when not effected by consent, can be accomplished only by the use on the part of the party rescinding of reasonable diligence to comply with the following rules:

(1) ~~He must~~ *The rescinding party shall* rescind promptly upon discovering the facts ~~which~~ *that* entitle ~~him~~ *the party* to rescind if ~~he~~ *the party* is free from duress, menace, undue influence, or disability and is aware of ~~his~~ *the* right to rescind.

(2) ~~He must~~ *The rescinding party shall* restore to the other party everything of value ~~which he~~ *that the rescinding party* has received from ~~him~~ *the other party*

under the contract or ~~must~~ *shall* offer to restore ~~the same~~ *everything of value*, upon condition that ~~such~~ *the other* party shall do likewise, unless the ~~latter~~ *other party* is unable or positively refuses to do so."

Section 791. Section 28-3-306, MCA, is amended to read:

"28-3-306. Interpretation of terms that are ambiguous or ~~were~~ intended in ~~a~~ different sense by different parties. (1) If the terms of a promise are in any respect ambiguous or uncertain, ~~it~~ *the promise* must be interpreted in the sense in which the promisor believed, at the time of making it, that the promisee understood it.

(2) When the terms of an agreement have been intended in a different sense by different parties to ~~it~~ *the agreement*, that sense is to prevail against either party in which ~~he~~ *the party* supposed the other *party* understood it~~;~~. ~~and when~~ *If* different constructions of a provision are otherwise equally proper, that *construction* is to be taken ~~which~~ *that* is most favorable to the party in whose favor the provision was made."

Section 792. Section 28-3-704, MCA, is amended to read:

"28-3-704. Contractual right to attorney fees treated as reciprocal. Whenever, by virtue of the provisions of any contract or obligation in the nature of a contract made and entered into at any time after July 1, 1971, one party to ~~such~~ *the* contract or obligation has an express right to recover attorney fees from any other party to the contract or obligation in the event the party having that right ~~shall bring~~ *brings* an action upon the contract or obligation, then in any action on ~~such~~ *the* contract or obligation all parties to the contract or obligation ~~shall be deemed~~ *are considered* to have the same right to recover attorney fees and the prevailing party in any ~~such~~ action, whether by virtue of the express contractual right or by virtue of this section, ~~shall be~~ *is* entitled to recover ~~his~~ reasonable attorney fees from the losing party or parties."

Section 793. Section 28-10-105, MCA, is amended to read:

"28-10-105. What acts agent may perform. (1) An agent may be authorized to do any acts ~~which his~~ *that the* principal might do, except those to which the ~~latter~~ *principal* is bound to give ~~his~~ personal attention.

(2) Every act ~~which~~ *that*, according to this code, may be done by or to any person may be done by or to the agent of ~~such~~ *the* person for that purpose unless a contrary intention clearly appears."

Section 794. Section 28-10-301, MCA, is amended to read:

"28-10-301. Agent not to exceed actual authority. An agent ~~must~~ *may* not exceed the limits of ~~his~~ *the agent's* actual authority as defined by ~~this chapter and parts 5 and 6 of chapter 11 of~~ Title 30*, chapter 11, parts 5 and 6, and this chapter*."

Section 795. Section 28-10-302, MCA, is amended to read:

"28-10-302. Duty to keep principal informed. An agent ~~must~~ *shall* use ordinary diligence to keep ~~his~~ *the agent's* principal informed of ~~his~~ *the agent's* acts in the course of the agency."

Section 796. Section 28-10-401, MCA, is amended to read:

"28-10-401. What authority agent has. An agent has ~~such~~ *the* authority ~~as~~ *that* the principal actually or ostensibly confers upon ~~him~~ *the agent*."

Section 797. Section 28-10-402, MCA, is amended to read:

"28-10-402. Actual authority defined. Actual authority is ~~such as~~ *authority that* the principal intentionally confers upon the agent or intentionally or by want of ordinary care allows the agent to believe ~~himself to possess~~ *that the agent possesses*."

Section 798. Section 28-10-404, MCA, is amended to read:

"28-10-404. When and as to whom agent's authority restricted. Every agent has ~~actually such~~ *the* authority as ~~is defined~~ *described* by ~~this chapter and parts 5 and 6 of chapter 11 of~~ Title 30*, chapter 11, parts 5 and 6, and this chapter* unless specially deprived ~~thereof~~ *of that authority* by ~~his~~ *the agent's* principal and has even then ~~such~~ *the statutorily described* authority ostensibly except as to persons who have actual or constructive notice of the restriction upon ~~his~~ *the agent's* authority."

Section 799. Section 28-10-405, MCA, is amended to read:

"28-10-405. Implied powers of agent. An agent has authority to:

(1) do everything necessary and proper and usual, in the ordinary course of business, for effecting the purpose of ~~his~~ *the* agency; and

(2) make a representation respecting any matter of fact, except the terms of ~~his~~ *the agent's* authority, upon which ~~his~~ *the* right to use ~~his~~ *the agent's* authority depends and the truth of which cannot be determined by the use of reasonable diligence on the part of the person to whom the representation is made."

Section 800. Section 28-10-407, MCA, is amended to read:

"28-10-407. Statutory exceptions to general authority. An authority expressed in general terms, however broad, does not authorize an agent to:

(1) act in ~~his~~ *the agent's* own name unless it is the usual course of business to do so;

(2) define the scope of ~~his~~ *the* agency; or

(3) do any act ~~which~~ *that* a trustee is forbidden to do by Title 72, chapter 34."

Section 801. Section 28-10-408, MCA, is amended to read:

"28-10-408. When agent may disobey instructions. An agent has power to disobey instructions in dealing with the subject of the agency in cases ~~where~~ *in which* it is clearly for the interest of ~~his~~ *the agent's* principal that ~~he~~ *the agent* should do so and there is ~~not~~ *insufficient* time to communicate with the principal."

Section 802. Section 28-10-409, MCA, is amended to read:

"28-10-409. No authority to defraud principal. An agent can never have authority, either actual or ostensible, to do an act ~~which~~ *that* is and is known or suspected by the person with whom ~~he~~ *the agent* deals to be a fraud upon the principal."

Section 803. Section 28-10-501, MCA, is amended to read:

"28-10-501. When agent may delegate powers. An agent, unless specially forbidden by ~~his~~ *the* principal to do so, can delegate ~~his~~ *the agent's* powers to another person in any of the following cases and in no others:

(1) when the act to be done is purely mechanical;

(2) when ~~it is such as~~ the agent cannot ~~himself~~ and the subagent can lawfully perform *the act*;

(3) when it is the usage of the place to delegate ~~such~~ *the* powers; or

(4) when ~~such~~ *the* delegation is specially authorized by the principal."

Section 804. Section 28-10-502, MCA, is amended to read:

"28-10-502. Effect of unauthorized employment of subagent. If an agent employs a subagent without authority, the ~~former~~ *agent* is a principal and the ~~latter his~~ *subagent is the agent's* agent and the principal of the ~~former~~ *agent* has no connection with the ~~latter~~ *subagent*. A mere agent of an agent is not responsible as such to the principal of the ~~latter~~ *agent*."

Section 805. Section 28-10-601, MCA, is amended to read:

"28-10-601. Accrual of rights and liabilities to principal. An agent represents ~~his~~ *the agent's* principal for all purposes within the scope of ~~his~~ *the agent's* actual or ostensible authority, and all the rights and liabilities ~~which~~ *that* would accrue to the agent from transactions within ~~such~~ *that* limit, if ~~they~~ *the transactions* had been entered into on ~~his~~ *the agent's* own account, accrue to the principal."

Section 806. Section 28-10-602, MCA, is amended to read:

"28-10-602. Principal's responsibility for agent's negligence, omissions, and wrongs. (1) Unless required by or under the authority of law to employ that particular agent, a principal is responsible to third persons for the negligence of ~~his~~ *the principal's* agent in the transaction of the business of the agency, including wrongful acts committed by ~~such~~ *the* agent in and as a part of the transaction of ~~such~~ business, and for ~~his~~ *the agent's* willful omission to fulfill the obligations of the principal.

(2) A principal is *not* responsible for ~~no~~ other wrongs committed by ~~his~~ *the principal's* agent ~~than~~ *except* those mentioned in subsection (1) unless ~~he~~ *the principal* has authorized or ratified ~~them~~ *the acts*, even though they are committed while the agent is engaged in ~~his~~ *the principal's* service."

Section 807. Section 28-10-603, MCA, is amended to read:

"28-10-603. When instrument binds principal. An instrument within the scope of ~~his~~ *an agent's* authority by which an agent intends to bind ~~his~~ *the agent's* principal does bind ~~him~~ *the principal* if ~~such~~ *that* intent is plainly inferable from the instrument itself."

Section 808. Section 28-10-605, MCA, is amended to read:

"28-10-605. Extent to which principal bound when agent exceeds authority. When an agent exceeds ~~his~~ *the agent's* authority, ~~his~~ *the agent's* principal is bound by ~~his~~ *the agent's* authorized acts only so far as ~~they~~ *the authorized acts* can be plainly separated from those ~~which~~ *that* are unauthorized."

Section 809. Section 28-10-606, MCA, is amended to read:

"28-10-606. Extent to which principal bound by acts under ostensible authority. A principal is bound by acts of ~~his~~ *the principal's* agent under a merely ostensible authority to those persons only who have in good faith and without ordinary negligence incurred a liability or parted with value upon the faith ~~thereof~~ *of the authority*."

Section 810. Section 28-10-608, MCA, is amended to read:

"28-10-608. Rights of person who deals with agent without knowledge of agency. ~~One~~ *A person* who deals with an agent without knowing or having reason to believe that the agent acts as ~~such~~ *an agent* in the transaction may set off against any claim of the principal arising out of the ~~same~~ *transaction* all claims ~~which he~~ *that the person* might have set off against the agent before notice of the agency."

Section 811. Section 28-10-609, MCA, is amended to read:

"28-10-609. Principal's liability when agent given exclusive credit. If exclusive credit is given to an agent by the person dealing with ~~him~~ *the agent*, ~~his~~ *the agent's* principal is exonerated by payment or other satisfaction made by ~~him~~ *the principal* to ~~his~~ *the* agent in good faith before receiving notice of the creditor's election to hold ~~him~~ *the principal* responsible."

Section 812. Section 28-10-701, MCA, is amended to read:

"28-10-701. Warranty of authority. ~~One~~ *A person* who assumes to act as an agent ~~thereby~~ warrants to all who deal with ~~him~~ *the person* in that capacity that ~~he~~ *the person* has the authority ~~which he~~ *that the person* assumes."

Section 813. Section 28-10-702, MCA, is amended to read:

"28-10-702. When agent responsible to third persons as ~~a~~ principal. ~~One~~ *A person* who assumes to act as an agent is responsible to third persons as a principal for ~~his~~ acts in the course of ~~his~~ *the* agency in any of the following cases and in no other:

(1) when, with ~~his~~ *the agent's* consent, credit is given to ~~him~~ *agent* personally in a transaction;

(2) when ~~he~~ *the agent* enters into a written contract in the name of ~~his~~ *the* principal without believing in good faith that ~~he~~ *the agent* has authority to do so; or

(3) when ~~his~~ *the agent's* acts are wrongful in their nature."

Section 814. Section 28-10-703, MCA, is amended to read:

"28-10-703. Responsibility of agent when third person claims property received for principal. If an agent receives anything for the benefit of ~~his~~ *the agent's* principal ~~to the possession of which~~ *that* another person is entitled *to possess*, ~~he must~~ *the agent shall*, on demand, surrender it to ~~such~~ *the* person, or so much of it as ~~he~~ *the agent* has under ~~his~~ *the agent's* control at the time of demand, on being indemnified for any advance ~~which he~~ *that the agent* has made to ~~his~~ *the* principal, in good faith, on account of the ~~same~~ *advance*. ~~He~~ *The agent* is responsible ~~therefor~~ *for the thing of benefit* if, after ~~such~~ demand, ~~he~~ *the agent* delivers it to ~~his~~ *the* principal."

Section 815. Section 28-10-801, MCA, is amended to read:

"28-10-801. Circumstances ~~which~~ *that* terminate ~~any~~ agency. An agency is terminated as to every person having notice ~~thereof~~ *of the termination* by:

(1) the expiration of ~~its~~ *the agency's* term;

(2) the extinction of ~~its~~ *the agency'* subject;

(3) the death of the agent;

(4) ~~his~~ *the agent's* renunciation of the agency; or

(5) the incapacity of the agent to act as ~~such~~ *an agent*."

Section 816. Section 28-10-802, MCA, is amended to read:

"28-10-802. Circumstances ~~which~~ *that* terminate agency not coupled with ~~an~~ interest. Unless the power of the agent is coupled with an interest in the subject of the agency, ~~it~~ *the agency* is terminated as to every person having notice ~~thereof~~ *of the termination* by:

(1) its revocation by the principal;

(2) ~~his~~ *the principal's* death; or

(3) ~~his~~ *the principal's* incapacity to contract."

Section 817. Section 28-11-103, MCA, is amended to read:

"28-11-103. When separate consideration required. ~~Where~~ *When* a guaranty is entered into at the same time with the original obligation or with the acceptance of the ~~latter~~ *original obligation* by the ~~guarantee~~ *person making the guaranty* and forms with that *original* obligation a part of the consideration to ~~him~~ *the person*, no other consideration need exist. In all other cases, there must be a consideration distinct from that of the original obligation."

Section 818. Section 28-11-105, MCA, is amended to read:

"28-11-105. When guaranty considered original obligation and need not be in writing. A promise to answer for the obligation of another in any of the following cases is ~~deemed~~ *considered* an original obligation of the promisor and need not be in writing:

(1) ~~where~~ *when* the promise is made by one who has received property of another upon an undertaking to apply ~~it~~ *the property* pursuant to ~~such~~ *the* promise or by one who has received a discharge from an obligation, in whole or in part, in consideration of ~~such~~ *the* promise;

(2) ~~where~~ *when* the creditor parts with value or enters into an obligation in consideration of the obligation in respect to which the promise is made, in terms or under circumstances ~~such as to~~ *that* render the party making the promise the principal debtor and the person in whose behalf ~~it~~ *the promise* is made ~~his~~ *the party's* surety;

(3) ~~where~~ *when* the promise, being for an antecedent obligation of another, is made upon a consideration:

(a) that the party receiving ~~it~~ *the promise* cancels the antecedent obligation, accepting the new promise as a substitute ~~therefor~~ *for the antecedent obligation*;

(b) that the party receiving ~~it~~ *the promise* releases the property of another from a levy; or

(c) beneficial to the promisor, whether moving from either party to the antecedent obligation or from another person;

(4) ~~where~~ *when* a factor undertakes to sell merchandise for a commission and guarantee the sale;

(5) ~~where~~ *when* the holder of an instrument for the payment of money upon which a third person is or may become liable to ~~him~~ *the holder* transfers ~~it~~ *the instrument* in payment of a precedent debt of ~~his~~ *the holder's* own or for a new consideration and in connection with ~~such~~ *the* transfer enters into a promise respecting ~~such~~ *the* instrument."

Section 819. Section 28-11-108, MCA, is amended to read:

"28-11-108. Continuing guaranty — definition~~,~~ — revocation. (1) A guaranty relating to a future liability of the principal under successive transactions ~~which~~ *that* either continue ~~his~~ *the principal's* liability or from time to time renew it after it has been satisfied is called a continuing guaranty.

(2) A continuing guaranty may be revoked at any time by the guarantor in respect to future transactions unless there is a continuing consideration as to ~~such~~ *the* transactions ~~which he~~ *that the guarantor* does not renounce."

Section 820. Section 28-11-202, MCA, is amended to read:

"28-11-202. Liability under guaranty of incomplete contract. In a guaranty of a contract the terms of which are not then settled, it is implied that

~~its~~ *the guaranty's* terms ~~shall be such as~~ will not expose the guarantor to greater risks than ~~he~~ *the guarantor* would incur under those terms ~~which~~ *that* are most common in similar contracts at the place where the principal contract is to be performed."

Section 821. Section 28-11-203, MCA, is amended to read:

"28-11-203. Liability under guaranty of illegal contract or contract void against principal. A guarantor is not liable if the contract of the principal is unlawful, but ~~he~~ *the guarantor* is liable notwithstanding any mere personal disability of the principal, *even* though the disability ~~be such as to~~ *would* make the contract void against the principal."

Section 822. Section 28-11-206, MCA, is amended to read:

"28-11-206. Liability upon guaranty of conditional obligation — notice of default. ~~Where one~~ *If a person* guarantees a conditional obligation, ~~his~~ *the person's* liability is commensurate with that of the principal and ~~he~~ *the person* is not entitled to notice of the default of the principal unless ~~he~~ *the person* is unable, by the exercise of reasonable diligence, to acquire information of ~~such~~ *the* default and the creditor has actual notice ~~thereof~~ *of the default*."

Section 823. Section 28-11-211, MCA, is amended to read:

"28-11-211. When guarantor exonerated. (1) A guarantor is exonerated, except so far as ~~he~~ *the guarantor* may be indemnified by the principal, if by any act of the creditor without the consent of the guarantor the original obligation of the principal is altered in any respect or the remedies or rights of the creditor against the principal in respect ~~thereto~~ *to the original obligation* are in any way impaired or suspended.

(2) A promise by a creditor ~~which~~ *that* for any cause is void or voidable by ~~him~~ *the creditor* at ~~his~~ *the creditor's* option does not alter the obligation or suspend or impair the remedy within the meaning of subsection (1)."

Section 824. Section 28-11-214, MCA, is amended to read:

"28-11-214. Guarantor not exonerated by discharge of principal. A guarantor is not exonerated by the discharge of ~~his~~ *the guarantor's* principal by operation of law without the intervention or omission of the creditor."

Section 825. Section 28-11-304, MCA, is amended to read:

"28-11-304. Indemnity extended to acts of agents. An agreement to indemnify against the acts of a certain person applies not only to ~~his~~ *the person's* acts and their consequences but also to those of ~~his~~ *the person's* agents."

Section 826. Section 28-11-312, MCA, is amended to read:

"28-11-312. When person indemnifying entitled to reimbursement. ~~Where one~~ *If a person* at the request of another engages to answer in damages, whether liquidated or unliquidated, for any violation of duty on the part of the latter, ~~he~~ *the person* is entitled to be reimbursed in the same manner as a surety for whatever ~~he~~ *the person* may pay."

Section 827. Section 28-11-316, MCA, is amended to read:

"28-11-316. Duty of person indemnifying to defend. The person indemnifying is bound, on request of the person indemnified, to defend actions or proceedings brought against the ~~latter~~ *person indemnified* in respect to the matters embraced by the indemnity, but the person indemnified has the right to conduct ~~such~~ defenses if ~~he~~ *the person indemnified* chooses to do so. If, after request, the person indemnifying neglects to defend the person indemnified, a recovery against the ~~latter~~ *person indemnified* suffered by ~~him~~ *the person*

indemnified in good faith is conclusive in ~~his~~ favor *of the person indemnified* against the ~~former~~ *person indemnifying*."

Section 828. Section 28-11-317, MCA, is amended to read:

"28-11-317. When judgment not conclusive against person indemnifying. (1) If the person indemnifying, whether ~~he~~ *the person* is a principal or a surety in the agreement, does not have reasonable notice of the action or proceeding against the person indemnified or is not allowed to control ~~his~~ *the person indemnified's* defense, judgment against the ~~latter~~ *person indemnified* is only presumptive evidence against the ~~former~~ *person indemnifying*.

(2) A stipulation that a judgment against the person indemnified ~~shall be~~ *is* conclusive upon the person indemnifying is inapplicable if ~~he~~ *the person indemnifying* had a good defense upon the merits ~~which~~ *that* by want of ordinary care ~~he~~ *the person indemnified* failed to establish in the action."

Section 829. Section 28-11-401, MCA, is amended to read:

"28-11-401. Surety defined. A surety is one who, at the request of another *person* and for the purpose of securing to ~~him~~ *the other person* a benefit, becomes responsible for the performance by the ~~latter~~ *other person* of some act in favor of a third person or ~~hypothecates~~ *pledges* property as security ~~therefor~~ *for the performance*."

Section 830. Section 28-11-402, MCA, is amended to read:

"28-11-402. When apparent principal may show ~~he is a~~ surety. ~~One~~ *A person* who appears to be a principal, whether by the terms of a written instrument or otherwise, may show that ~~he~~ *the person* is in fact a surety except as against persons who have acted on the faith of ~~his~~ *the person's* apparent character of principal."

Section 831. Section 28-11-411, MCA, is amended to read:

"28-11-411. Extent of surety's liability. A surety cannot be held beyond the express terms of ~~his~~ *the surety's* contract, and if ~~such~~ *the* contract prescribes a penalty for ~~its~~ breach, ~~he~~ *the surety* cannot in any case be liable for more than the penalty."

Section 832. Section 28-11-412, MCA, is amended to read:

"28-11-412. Exoneration of surety. A surety is exonerated:

(1) in like manner with a guarantor;

(2) to the extent to which ~~he~~ *the surety* is prejudiced by any act of the creditor ~~which~~ *that* would naturally prove injurious to the remedies of the surety or inconsistent with ~~his~~ *the surety's* rights or ~~which~~ *that* lessens ~~his~~ *the surety's* security; or

(3) to the extent to which ~~he~~ *the surety* is prejudiced by an omission of the creditor, when required by the surety, to do anything ~~which~~ *that* it is the creditor's duty to do."

Section 833. Section 28-11-414, MCA, is amended to read:

"28-11-414. Application to surety of rights of guarantor. A surety has all the right of a guarantor, whether ~~he~~ *the surety* becomes personally responsible or not."

Section 834. Section 28-11-415, MCA, is amended to read:

"28-11-415. Power of surety to compel principal to perform. A surety may compel ~~his~~ *the surety's* principal to perform the obligations when due."

Section 835. Section 28-11-416, MCA, is amended to read:

"28-11-416. When surety may require creditor to pursue remedy. A surety may require ~~his~~ *the surety's* creditor to proceed against the principal or to pursue any other remedy in ~~his~~ *the surety's* power ~~which~~ *that* the surety cannot ~~himself~~ pursue and ~~which~~ *that* would lighten ~~his~~ *the surety's* burden, and if ~~in such case~~ the creditor neglects to do so, the surety is exonerated to the extent to which ~~he~~ *the surety* is ~~thereby~~ prejudiced."

Section 836. Section 28-11-417, MCA, is amended to read:

"28-11-417. Surety's right to reimbursement and contribution. (1) If a surety satisfies the principal obligation or any part ~~thereof~~ *of the principal obligation*, whether with or without legal proceedings, the principal is bound to reimburse what the surety has disbursed, including necessary costs and expenses, but the surety ~~has no~~ *does not have a* claim for reimbursement against other persons, *even* though they may have been benefited by ~~his~~ *the surety's* act, except as prescribed by subsection (2).

(2) A surety, upon satisfying the obligation of the principal, is entitled to enforce every remedy ~~which~~ *that* the creditor then has against the principal to the extent of reimbursing what the surety has expended and also to require all ~~his~~ cosureties to contribute ~~thereto~~ *to the reimbursement* without regard to the order of time in which they became ~~such~~ *cosureties*."

Section 837. Section 28-11-418, MCA, is amended to read:

"28-11-418. Surety entitled to benefit of security held by creditor or cosurety. A surety is entitled to the benefit of every security for the performance of the principal obligation held by the creditor or by a cosurety at the time of entering into the contract of suretyship or acquired by ~~him~~ *the creditor or cosurety* afterwards, whether the surety was aware of the security or not."

Section 838. Section 30-2-201, MCA, is amended to read:

"30-2-201. Formal requirements — statute of frauds. (1) Except as otherwise provided in this section a contract for the sale of goods for the price of $500 or more is not enforceable by way of action or defense unless there is some writing sufficient to indicate that a contract for sale has been made between the parties and signed by the party against whom enforcement is sought or by ~~his~~ *the party's* authorized agent or broker. A writing is not insufficient because it omits or incorrectly states a term agreed upon but the contract is not enforceable under this ~~paragraph~~ *subsection* beyond the quantity of goods shown in ~~such~~ *the* writing.

(2) Between merchants if within a reasonable time a writing in confirmation of the contract and sufficient against the sender is received and the party receiving it has reason to know its contents, it satisfies the requirements of subsection (1) against ~~such~~ *the* party unless written notice of objection to its contents is given within 10 days after it is received.

(3) A contract which does not satisfy the requirements of subsection (1) but which is valid in other respects is enforceable:

(a) if the goods are to be specially manufactured for the buyer and are not suitable for sale to others in the ordinary course of the seller's business and the seller, before notice of repudiation is received and under circumstances which reasonably indicate that the goods are for the buyer, has made either a substantial beginning of their manufacture or commitments for their procurement; or

(b) if the party against whom enforcement is sought admits in ~~his~~ *the party's* pleading, testimony, or otherwise in court that a contract for sale was made, but the contract is not enforceable under this provision beyond the quantity of goods admitted; or

(c) with respect to goods for which payment has been made and accepted or which have been received and accepted (30-2-606)."

Section 839. Section 30-2-304, MCA, is amended to read:

"30-2-304. Price payable in money, goods, realty, or otherwise. (1) The price can be made payable in money or otherwise. If it is payable in whole or in part in goods each party is a seller of the goods which ~~he~~ *that party* is to transfer.

(2) Even though all or part of the price is payable in an interest in realty the transfer of the goods and the seller's obligations with reference to them are subject to this chapter, but not the transfer of the interest in realty or the transferor's obligations in connection ~~therewith~~ *with the transfer*."

Section 840. Section 30-2-305, MCA, is amended to read:

"30-2-305. Open price term. (1) The parties if they so intend can conclude a contract for sale even though the price is not settled. In such a case the price is a reasonable price at the time for delivery if:

(a) nothing is said as to price; or

(b) the price is left to be agreed by the parties and they fail to agree; or

(c) the price is to be fixed in terms of some agreed market or other standard as set or recorded by a third person or agency and it is not so set or recorded.

(2) A price to be fixed by the seller or by the buyer means a price ~~for him to fix~~ *to be fixed* in good faith.

(3) When a price left to be fixed otherwise than by agreement of the parties fails to be fixed through fault of one party the other may at ~~his~~ *the party's* option treat the contract as canceled or ~~himself~~ *the party may* fix a reasonable price.

(4) Where, however, the parties intend not to be bound unless the price be fixed or agreed and it is not fixed or agreed there is no contract. In such a case the buyer must return any goods already received or if unable so to do must pay their reasonable value at the time of delivery and the seller must return any portion of the price paid on account."

Section 841. Section 30-2-308, MCA, is amended to read:

"30-2-308. Absence of specified place for delivery. Unless otherwise agreed:

(a) the place for delivery of goods is the seller's place of business or if ~~he has~~ none, ~~his~~ *the seller's* residence; but

(b) in a contract for sale of identified goods which to the knowledge of the parties at the time of contracting are in some other place, that place is the place for their delivery; and

(c) documents of title may be delivered through customary banking channels."

Section 842. Section 30-2-311, MCA, is amended to read:

"30-2-311. Options and cooperation respecting performance. (1) An agreement for sale which is otherwise sufficiently definite (subsection (3) of 30-2-204) to be a contract is not made invalid by the fact that it leaves

particulars of performance to be specified by one of the parties. Any such specification must be made in good faith and within limits set by commercial reasonableness.

(2) Unless otherwise agreed specifications relating to assortment of the goods are at the buyer's option and except as otherwise provided in subsections (1)(c) and (3) of 30-2-319 specifications or arrangements relating to shipment are at the seller's option.

(3) Where ~~such~~ *the* specification would materially affect the other party's performance but is not seasonably made or where one party's cooperation is necessary to the agreed performance of the other but is not seasonably forthcoming, the other party in addition to all other remedies:

(a) is excused for any resulting delay in ~~his~~ *that party's* own performance; and

(b) may also either proceed to perform in any reasonable manner or after the time for a material part of ~~his~~ *that party's* own performance treat the failure to specify or to cooperate as a breach by failure to deliver or accept the goods."

Section 843. Section 30-2-312, MCA, is amended to read:

"30-2-312. Warranty of title and against infringement — buyer's obligation against infringement. (1) Subject to subsection (2) there is in a contract for sale a warranty by the seller that:

(a) the title conveyed shall be good, and its transfer rightful; and

(b) the goods shall be delivered free from any security interest or other lien or encumbrance of which the buyer at the time of contracting has no knowledge.

(2) A warranty under subsection (1) will be excluded or modified only by specific language or by circumstances which give the buyer reason to know that the person selling does not claim title ~~in himself~~ or that ~~he~~ *the seller* is purporting to sell only ~~such~~ *the* right or title as ~~he~~ *the seller* or a third person may have.

(3) Unless otherwise agreed a seller who is a merchant regularly dealing in goods of the kind warrants that the goods shall be delivered free of the rightful claim of any third person by way of infringement or the like but a buyer who furnishes specifications to the seller must hold the seller harmless against any such claim which arises out of compliance with the specifications."

Section 844. Section 30-2-313, MCA, is amended to read:

"30-2-313. Express warranties by affirmation, promise, description, sample. (1) Express warranties by the seller are created as follows:

(a) Any affirmation of fact or promise made by the seller to the buyer which relates to the goods and becomes part of the basis of the bargain creates an express warranty that the goods shall conform to the affirmation or promise.

(b) Any description of the goods which is made part of the basis of the bargain creates an express warranty that the goods shall conform to the description.

(c) Any sample or model which is made part of the basis of the bargain creates an express warranty that the whole of the goods shall conform to the sample or model.

(2) It is not necessary to the creation of an express warranty that the seller use formal words such as "warrant" or "guarantee" or that ~~he~~ *the seller* have a specific intention to make a warranty, but an affirmation merely of the value of

the goods or a statement purporting to be merely the seller's opinion or commendation of the goods does not create a warranty."

Section 845. Section 30-2-316, MCA, is amended to read:

"30-2-316. Exclusion or modification of warranties. (1) Words or conduct relevant to the creation of an express warranty and words or conduct tending to negate or limit warranty shall be construed wherever reasonable as consistent with each other; but subject to the provisions of this chapter on parol or extrinsic evidence (30-2-202) negation or limitation is inoperative to the extent that such construction is unreasonable.

(2) Subject to subsection (3), to exclude or modify the implied warranty of merchantability or any part of it the language must mention merchantability and in case of a writing must be conspicuous, and to exclude or modify any implied warranty of fitness the exclusion must be by a writing and conspicuous. Language to exclude all implied warranties of fitness is sufficient if it states, for example, that "There are no warranties which extend beyond the description on the face hereof."

(3) Notwithstanding subsection (2):

(a) unless the circumstances indicate otherwise, all implied warranties are excluded by expressions like "as is", "with all faults" or other language which in common understanding calls the buyer's attention to the exclusion of warranties and makes plain that there is no implied warranty;

(b) when the buyer before entering into the contract has examined the goods or the sample or model as fully as ~~he~~ desired or has refused to examine the goods there is no implied warranty with regard to defects which an examination ought in the circumstances to have revealed to ~~him~~ *the buyer*;

(c) an implied warranty can also be excluded or modified by course of dealing or course of performance or usage of trade;

(d) in sales of cattle, hogs, sheep, or horses, there are no implied warranties, as defined in this chapter, that the cattle, hogs, sheep, or horses are free from sickness or disease; and

(e) in sales of any seed for planting (including both botanical and vegetative types of seed, whether certified or not), there are no implied warranties, as defined in this chapter, that the seeds are free from disease, virus, or any kind of pathogenic organisms.

(4) Remedies for breach of warranty can be limited in accordance with the provisions of this chapter on liquidation or limitation of damages and on contractual modification of remedy (30-2-718 and 30-2-719)."

Section 846. Section 30-2-318, MCA, is amended to read:

"30-2-318. Third-party beneficiaries of warranties express or implied. A seller's warranty whether express or implied extends to any natural person who is in the family or household of ~~his~~ *the* buyer or who is a guest in ~~his~~ *the buyer's* home if it is reasonable to expect that ~~such~~ *the* person may use, consume or be affected by the goods and who is injured in person by breach of the warranty. A seller may not exclude or limit the operation of this section."

Section 847. Section 30-2-319, MCA, is amended to read:

"30-2-319. F.O.B. and F.A.S. terms. (1) Unless otherwise agreed the term F.O.B. (which means "free on board") at a named place, even though used only in connection with the stated price, is a delivery term under which:

(a) when the term is F.O.B. the place of shipment, the seller must at that place ship the goods in the manner provided in this chapter (30-2-504) and bear the expense and risk of putting them into the possession of the carrier; or

(b) when the term is F.O.B. the place of destination, the seller must at ~~his~~ *the seller's* own expense and risk transport the goods to that place and there tender delivery of them in the manner provided in this chapter (30-2-503);

(c) when under either subsection (1)(a) or (1)(b) the term is also F.O.B. vessel, car or other vehicle, the seller must in addition at ~~his~~ *the seller's* own expense and risk load the goods on board. If the term is F.O.B. vessel the buyer must name the vessel and in an appropriate case the seller must comply with the provisions of this chapter on the form of bill of lading (30-2-323).

(2) Unless otherwise agreed the term F.A.S. vessel (which means "free alongside") at a named port, even though used only in connection with the stated price, is a delivery term under which the seller must:

(a) at ~~his~~ *the seller's* own expense and risk deliver the goods alongside the vessel in the manner usual in that port or on a dock designated and provided by the buyer; and

(b) obtain and tender a receipt for the goods in exchange for which the carrier is under a duty to issue a bill of lading.

(3) Unless otherwise agreed in any case falling within subsection (1)(a) or (1)(c) or subsection (2) the buyer must seasonably give any needed instructions for making delivery, including when the term is F.A.S. or F.O.B. the loading berth of the vessel and in an appropriate case its name and sailing date. The seller may treat the failure of needed instructions as a failure of cooperation under this chapter (30-2-311). ~~He~~ *The seller* may also at ~~his~~ *the seller's* option move the goods in any reasonable manner preparatory to delivery or shipment.

(4) Under the term F.O.B. vessel or F.A.S. unless otherwise agreed the buyer must make payment against tender of the required documents and the seller may not tender nor the buyer demand delivery of the goods in substitution for the documents."

Section 848. Section 30-2-320, MCA, is amended to read:

"30-2-320. C.I.F. and C.&F. terms. (1) The term C.I.F. means that the price includes in a lump sum the cost of the goods and the insurance and freight to the named destination. The term C.&F. or C.F. means that the price ~~so~~ includes cost and freight to the named destination.

(2) Unless otherwise agreed and even though used only in connection with the stated price and destination, the term C.I.F. destination or its equivalent requires the seller at ~~his~~ *the seller's* own expense and risk to:

(a) put the goods into the possession of a carrier at the port for shipment and obtain a negotiable bill or bills of lading covering the entire transportation to the named destination; and

(b) load the goods and obtain a receipt from the carrier, ~~(~~which may be contained in the bill of lading~~)~~, showing that the freight has been paid or provided for; and

(c) obtain a policy or certificate of insurance, including any war risk insurance, of a kind and on terms then current at the port of shipment in the usual amount, in the currency of the contract, shown to cover the same goods covered by the bill of lading and providing for payment of loss to the order of the

buyer or for the account of whom it may concern; but the seller may add to the price the amount of the premium for any such war risk insurance; and

(d) prepare an invoice of the goods and procure any other documents required to effect shipment or to comply with the contract; and

(e) forward and tender with commercial promptness all the documents in due form and with any endorsement necessary to perfect the buyer's rights.

(3) Unless otherwise agreed the term C.&F. or its equivalent has the same effect and imposes upon the seller the same obligations and risks as a C.I.F. term except the obligation as to insurance.

(4) Under the term C.I.F. or C.&F. unless otherwise agreed the buyer must make payment against tender of the required documents and the seller may not tender nor the buyer demand delivery of the goods in substitution for the documents."

Section 849. Section 30-2-324, MCA, is amended to read:

"30-2-324. "No arrival, no sale" term. Under a term "no arrival, no sale" or terms of like meaning, unless otherwise agreed:

(a) the seller must properly ship conforming goods and if they arrive by any means ~~he~~ *the seller* must tender them on arrival but ~~he~~ *the seller* assumes no obligation that the goods will arrive unless ~~he~~ *the seller* has caused the nonarrival; and

(b) where without fault of the seller the goods are in part lost or have so deteriorated as no longer to conform to the contract or arrive after the contract time, the buyer may proceed as if there has been casualty to identified goods (30-2-613)."

Section 850. Section 30-2-325, MCA, is amended to read:

"30-2-325. "Letter of credit" term — "confirmed credit". (1) Failure of the buyer seasonably to furnish an agreed letter of credit is a breach of the contract for sale.

(2) The delivery to *the* seller of a proper letter of credit suspends the buyer's obligation to pay. If the letter of credit is dishonored, the seller may on seasonable notification to the buyer require payment directly from ~~him~~ *the buyer*.

(3) Unless otherwise agreed the term "letter of credit" or "banker's credit" in a contract for sale means an irrevocable credit issued by a financing agency of good repute and, where the shipment is overseas, of good international repute. The term "confirmed credit" means that the credit must also carry the direct obligation of such an agency which does business in the seller's financial market."

Section 851. Section 30-2-401, MCA, is amended to read:

"30-2-401. Passing of title — reservation for security — limited application of this section. Each provision of this chapter with regard to the rights, obligations and remedies of the seller, the buyer, purchasers or other third parties applies irrespective of title to the goods except where the provision refers to such title. Insofar as situations are not covered by the other provisions of this chapter and matters concerning title become material the following rules apply:

(1) Title to goods cannot pass under a contract for sale prior to their identification to the contract (30-2-501), and unless otherwise explicitly agreed the buyer acquires by their identification a special property as limited by this

code. Any retention or reservation by the seller of the title (property) in goods shipped or delivered to the buyer is limited in effect to a reservation of a security interest. Subject to these provisions and to the provisions of the Chapter on Secured Transactions (Chapter 9A), title to goods passes from the seller to the buyer in any manner and on any conditions explicitly agreed on by the parties.

(2) Unless otherwise explicitly agreed title passes to the buyer at the time and place at which the seller completes performance with reference to the delivery of the goods, despite any reservation of a security interest and even though a document of title is to be delivered at a different time or place; and in particular and despite any reservation of a security interest by the bill of lading:

(a) if the contract requires or authorizes the seller to send the goods to the buyer but does not require the seller to deliver them at destination, title passes to the buyer at the time and place of shipment; but

(b) if the contract requires delivery at destination, title passes on tender there.

(3) Unless otherwise explicitly agreed where delivery is to be made without moving the goods,

(a) if the seller is to deliver a tangible document of title, title passes at the time when and the place where the seller delivers such documents and if the seller is to deliver an electronic document of title, title passes when the seller delivers the document; or

(b) if the goods are at the time of contracting already identified and no documents of title are to be delivered, title passes at the time and place of contracting.

(4) For transactions involving interstate shipment of cattle or cattle being released from auction yards for interstate shipment the seller may issue a regular title or bill of sale, or give a conditional transfer of title or bill of sale. The conditional transfer of title or bill of sale is fully validated and the title passes when the following conditions are met:

(a) the bank on which the buyer's warrant, check, or draft was drawn notifies the seller, or ~~his~~ *the seller's* designated bank, that the instrument of payment has cleared the bank for payment; and

(b) a copy of the notification from the buyer's bank is attached to the conditional transfer of title or bill of sale.

(5) A rejection or other refusal by the buyer to receive or retain the goods, whether or not justified, or a justified revocation of acceptance revests title to the goods in the seller. Such revesting occurs by operation of law and is not a "sale"."

Section 852. Section 30-2-402, MCA, is amended to read:

"30-2-402. Rights of seller's creditors against sold goods. (1) Except as provided in subsections (2) and (3), rights of unsecured creditors of the seller with respect to goods which have been identified to a contract for sale are subject to the buyer's rights to recover the goods under this chapter (30-2-502 and 30-2-716).

(2) A creditor of the seller may treat a sale or an identification of goods to a contract for sale as void if as against ~~him~~ *the creditor* a retention of possession by the seller is fraudulent under any rule of law of the state where the goods are situated, except that retention of possession in good faith and current course of

trade by a merchant-seller for a commercially reasonable time after a sale or identification is not fraudulent.

(3) Nothing in this chapter shall be deemed to impair the rights of creditors of the seller:

(a) under the provisions of the Chapter on Secured Transactions (Chapter 9A); or

(b) where identification to the contract or delivery is made not in current course of trade but in satisfaction of or as security for a preexisting claim for money, security or the like and is made under circumstances which under any rule of law of the state where the goods are situated would apart from this chapter constitute the transaction a fraudulent transfer or voidable preference."

Section 853. Section 30-2-403, MCA, is amended to read:

"30-2-403. Power to transfer — good faith purchase of goods — "entrusting". (1) A purchaser of goods acquires all title which ~~his~~ *the purchaser's* transferor had or had power to transfer except that a purchaser of a limited interest acquires rights only to the extent of the interest purchased. A person with voidable title has power to transfer a good title to a good faith purchaser for value. When goods have been delivered under a transaction of purchase the purchaser has ~~such~~ *the* power even though:

(a) the transferor was deceived as to the identity of the purchaser;

(b) the delivery was in exchange for a check which is later dishonored;

(c) it was agreed that the transaction was to be a "cash sale"; or

(d) the delivery was procured through fraud punishable as theft under the criminal law.

(2) Any entrusting of possession of goods to a merchant who deals in goods of that kind gives ~~him~~ *the merchant* power to transfer all rights of the entruster to a buyer in ordinary course of business.

(3) "Entrusting" includes any delivery and any acquiescence in retention of possession regardless of any condition expressed between the parties to the delivery or acquiescence and regardless of whether the procurement of the entrusting or the possessor's disposition of the goods has been such as to constitute theft under the criminal law.

(4) The rights of other purchasers of goods and of lien creditors are governed by the chapters on secured transactions (chapter 9A) and documents of title (chapter 7)."

Section 854. Section 30-2-501, MCA, is amended to read:

"30-2-501. Insurable interest in goods — manner of identification of goods. (1) The buyer obtains a special property and an insurable interest in goods by identification of existing goods as goods to which the contract refers even though the goods so identified are nonconforming and ~~he~~ *the buyer* has an option to return or reject them. Such identification can be made at any time and in any manner explicitly agreed to by the parties. In the absence of explicit agreement identification occurs:

(a) when the contract is made if it is for the sale of goods already existing and identified;

(b) if the contract is for the sale of future goods other than those described in ~~paragraph (c)~~ *subsection (1)(c)*, when goods are shipped, marked or otherwise designated by the seller as goods to which the contract refers;

(c) when the crops are planted or otherwise become growing crops or the young are conceived if the contract is for the sale of unborn young to be born within 12 months after contracting or for the sale of crops to be harvested within 12 months or the next normal harvest season after contracting whichever is longer.

(2) The seller retains an insurable interest in goods so long as title to or any security interest in the goods remains in ~~him~~ *the seller* and where the identification is by the seller alone ~~he~~ *the seller* may until default or insolvency or notification to the buyer that the identification is final substitute other goods for those identified.

(3) Nothing in this section impairs any insurable interest recognized under any other statute or rule of law."

Section 855. Section 30-2-504, MCA, is amended to read:

"30-2-504. Shipment by seller. Where the seller is required or authorized to send the goods to the buyer and the contract does not require ~~him~~ *the seller* to deliver them at a particular destination, then unless otherwise agreed ~~he~~ *the seller* must:

~~(a)~~*(1)* put the goods in the possession of such a carrier and make such a contract for their transportation as may be reasonable having regard to the nature of the goods and other circumstances of the case; and

~~(b)~~*(2)* obtain and promptly deliver or tender in due form any document necessary to enable the buyer to obtain possession of the goods or otherwise required by the agreement or by usage of trade; and

~~(c)~~*(3)* promptly notify the buyer of the shipment. Failure to notify the buyer under ~~paragraph (c)~~ *this subsection* or to make a proper contract under ~~paragraph (a)~~ *subsection (1)* is a ground for rejection only if material delay or loss ensues."

Section 856. Section 30-2-505, MCA, is amended to read:

"30-2-505. Seller's shipment under reservation. (1) Where the seller has identified goods to the contract by or before shipment:

(a) ~~his~~ *the seller's* procurement of a negotiable bill of lading to ~~his~~ *the seller's* own order or otherwise reserves in ~~him~~ *the seller* a security interest in the goods. ~~His~~ *The seller's* procurement of the bill to the order of a financing agency or of the buyer indicates in addition only the seller's expectation of transferring that interest to the person named.

(b) a nonnegotiable bill of lading to ~~himself~~ *the seller* or ~~his~~ *the seller's* nominee reserves possession of the goods as security but except in a case of conditional delivery (subsection (2) of 30-2-507) a nonnegotiable bill of lading naming the buyer as consignee reserves no security interest even though the seller retains possession of the bill of lading.

(2) When shipment by the seller with reservation of a security interest is in violation of the contract for sale it constitutes an improper contract for transportation within the preceding section but impairs neither the rights given to the buyer by shipment and identification of the goods to the contract nor the seller's powers as a holder of a negotiable document."

Section 857. Section 30-2-507, MCA, is amended to read:

"30-2-507. Effect of seller's tender — delivery on condition. (1) Tender of delivery is a condition to the buyer's duty to accept the goods and, unless

otherwise agreed, to ~~his~~ *the buyer's* duty to pay for them. Tender entitles the seller to acceptance of the goods and to payment according to the contract.

(2) Where payment is due and demanded on the delivery to the buyer of goods or documents of title, ~~his~~ *the buyer's* right as against the seller to retain or dispose of them is conditional upon ~~his~~ *the buyer* making the payment due."

Section 858. Section 30-2-508, MCA, is amended to read:

"30-2-508. Cure by seller of improper tender or delivery — replacement. (1) Where any tender or delivery by the seller is rejected because nonconforming and the time for performance has not yet expired, the seller may seasonably notify the buyer of ~~his~~ *the seller's* intention to cure and may then within the contract time make a conforming delivery.

(2) Where the buyer rejects a nonconforming tender which the seller had reasonable grounds to believe would be acceptable with or without money allowance the seller may if ~~he~~ *the seller* seasonably notifies the buyer have a further reasonable time to substitute a conforming tender."

Section 859. Section 30-2-509, MCA, is amended to read:

"30-2-509. Risk of loss in the absence of breach. (1) Where the contract requires or authorizes the seller to ship the goods by carrier:

(a) if it does not require the seller to deliver them at a particular destination, the risk of loss passes to the buyer when the goods are delivered to the carrier even though the shipment is under reservation (30-2-505); but

(b) if it does require the seller to deliver them at a particular destination and the goods are there tendered while in the possession of the carrier, the risk of loss passes to the buyer when the goods are there so tendered as to enable the buyer to take delivery.

(2) Where the goods are held by a bailee to be delivered without being moved, the risk of loss passes to the buyer:

(a) on the buyer's receipt of possession or control of a negotiable document of title covering the goods; or

(b) on acknowledgment by the bailee of the buyer's right to possession of the goods; or

(c) after ~~his~~ *the buyer's* receipt of possession or control of a nonnegotiable document of title or other direction to deliver in a record, as provided in ~~subsection (4)(b) of~~ 30-2-503*(4)(b)*.

(3) In any case not within subsection (1) or (2), the risk of loss passes to the buyer on the buyer's receipt of the goods if the seller is a merchant; otherwise the risk passes to the buyer on tender of delivery.

(4) The provisions of this section are subject to contrary agreement of the parties and to the provisions of this chapter on sale on approval (30-2-327) and on effect of breach on risk of loss (30-2-510)."

Section 860. Section 30-2-510, MCA, is amended to read:

"30-2-510. Effect of breach on risk of loss. (1) Where a tender or delivery of goods so fails to conform to the contract as to give a right of rejection the risk of their loss remains on the seller until cure or acceptance.

(2) Where the buyer rightfully revokes acceptance ~~he~~ *the buyer* may to the extent of any deficiency in ~~his~~ *the buyer's* effective insurance coverage treat the risk of loss as having rested on the seller from the beginning.

(3) Where the buyer as to conforming goods already identified to the contract for sale repudiates or is otherwise in breach before risk of their loss has passed to ~~him~~ *the buyer*, the seller may to the extent of any deficiency in ~~his~~ *the seller's* effective insurance coverage treat the risk of loss as resting on the buyer for a commercially reasonable time."

Section 861. Section 30-2-602, MCA, is amended to read:

"30-2-602. Manner and effect of rightful rejection. (1) Rejection of goods must be within a reasonable time after their delivery or tender. It is ineffective unless the buyer seasonably notifies the seller.

(2) Subject to the provisions of the two following sections on rejected goods (30-2-603 and 30-2-604):

(a) after rejection any exercise of ownership by the buyer with respect to any commercial unit is wrongful as against the seller; and

(b) if the buyer has before rejection taken physical possession of goods in which ~~he~~ *the buyer* does not have a security interest under the provisions of this chapter (subsection (3) of 30-2-711), ~~he~~ *the buyer* is under a duty after rejection to hold them with reasonable care at the seller's disposition for a time sufficient to permit the seller to remove them; but

(c) the buyer has no further obligations with regard to goods rightfully rejected.

(3) The seller's rights with respect to goods wrongfully rejected are governed by the provisions of this chapter on seller's remedies in general (30-2-703)."

Section 862. Section 30-2-603, MCA, is amended to read:

"30-2-603. Merchant buyer's duties as to rightfully rejected goods. (1) Subject to any security interest in the buyer (subsection (3) of 30-2-711), when the seller has no agent or place of business at the market of rejection a merchant buyer is under a duty after rejection of goods in ~~his~~ *the buyer's* possession or control to follow any reasonable instructions received from the seller with respect to the goods and in the absence of such instructions to make reasonable efforts to sell them for the seller's account if they are perishable or threaten to decline in value speedily. Instructions are not reasonable if on demand indemnity for expenses is not forthcoming.

(2) When the buyer sells goods under subsection (1), ~~he~~ *the buyer* is entitled to reimbursement from the seller or out of the proceeds for reasonable expenses of caring for and selling them, and if the expenses include no selling commission then to such commission as is usual in the trade or if there is none to a reasonable sum not exceeding 10% on the gross proceeds.

(3) In complying with this section the buyer is held only to good faith and good faith conduct hereunder is neither acceptance nor conversion nor the basis of an action for damages."

Section 863. Section 30-2-604, MCA, is amended to read:

"30-2-604. Buyer's options as to salvage of rightfully rejected goods. Subject to the provisions of ~~the immediately preceding section~~ *30-2-603* on perishables if the seller gives no instruction within a reasonable time after notification of rejection the buyer may store the rejected goods for the seller's account or reship them to ~~him~~ *the seller* or resell them for the seller's account with reimbursement as provided in ~~the preceding section~~ *30-2-603*. ~~Such~~ *The* action is not acceptance or conversion."

Section 864. Section 30-2-606, MCA, is amended to read:

"30-2-606. What constitutes acceptance of goods. (1) Acceptance of goods occurs when the buyer:

(a) after a reasonable opportunity to inspect the goods signifies to the seller that the goods are conforming or that ~~he~~ *the buyer* will take or retain them in spite of their nonconformity; or

(b) fails to make an effective rejection (subsection (1) of 30-2-602), but such acceptance does not occur until the buyer has had a reasonable opportunity to inspect them; or

(c) does any act inconsistent with the seller's ownership; but if such act is wrongful as against the seller it is an acceptance only if ratified by ~~him~~ *the seller*.

(2) Acceptance of a part of any commercial unit is acceptance of that entire unit."

Section 865. Section 30-2-607, MCA, is amended to read:

"30-2-607. Effect of acceptance — notice of breach — burden of establishing breach after acceptance — notice of claim or litigation to person answerable over. (1) The buyer must pay at the contract rate for any goods accepted.

(2) Acceptance of goods by the buyer precludes rejection of the goods accepted and if made with knowledge of a nonconformity cannot be revoked because of it unless the acceptance was on the reasonable assumption that the nonconformity would be seasonably cured but acceptance does not of itself impair any other remedy provided by this chapter for nonconformity.

(3) Where a tender has been accepted:

(a) the buyer must within a reasonable time after ~~he~~ *the buyer* discovers or should have discovered any breach notify the seller of breach or be barred from any remedy; and

(b) if the claim is one for infringement or the like (subsection (3) of 30-2-312) and the buyer is sued as a result of such a breach ~~he~~ *the buyer* must so notify the seller within a reasonable time after ~~he~~ *the buyer* receives notice of the litigation or be barred from any remedy over for liability established by the litigation.

(4) The burden is on the buyer to establish any breach with respect to the goods accepted.

(5) Where the buyer is sued for breach of a warranty or other obligation for which ~~his seller~~ *another party* is answerable over:

(a) ~~he~~ *the buyer* may give ~~his seller~~ *the other party* written notice of the litigation. If the notice states that the seller may come in and defend and that if the seller does not do so ~~he~~ *the other party* will be bound in any action against ~~him~~ *the other party* by ~~his~~ *the* buyer by any determination of fact common to the two litigations, then unless the ~~seller~~ *other party* after seasonable receipt of the notice does come in and defend ~~he~~ *the other party* is so bound.

(b) if the claim is one for infringement or the like (subsection (3) of 30-2-312) the original seller may demand in writing that ~~his~~ *its* buyer turn over to ~~him~~ *it* control of the litigation including settlement or else be barred from any remedy over and if ~~he~~ *it* also agrees to bear all expense and to satisfy any adverse judgment, then unless the buyer after seasonable receipt of the demand does turn over control the buyer is so barred.

(6) The provisions of subsections (3), (4) and (5) apply to any obligation of a buyer to hold the seller harmless against infringement or the like (subsection (3) of 30-2-312)."

Section 866. Section 30-2-608, MCA, is amended to read:

"30-2-608. Revocation of acceptance in whole or in part. (1) The buyer may revoke ~~his~~ acceptance of a lot or commercial unit whose nonconformity substantially impairs its value to ~~him~~ *the buyer* if ~~he~~ *the buyer* has accepted it:

(a) on the reasonable assumption that its nonconformity would be cured and it has not been seasonably cured; or

(b) without discovery of such nonconformity if ~~his~~ *the buyer's* acceptance was reasonably induced either by the difficulty of discovery before acceptance or by the seller's assurances.

(2) Revocation of acceptance must occur within a reasonable time after the buyer discovers or should have discovered the ground for it and before any substantial change in condition of the goods which is not caused by their own defects. It is not effective until the buyer notifies the seller of it.

(3) A buyer who so revokes has the same rights and duties with regard to the goods involved as if ~~he~~ *the buyer* had rejected them."

Section 867. Section 30-2-609, MCA, is amended to read:

"30-2-609. Right to adequate assurance of performance. (1) A contract for sale imposes an obligation on each party that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party the other may in writing demand adequate assurance of due performance and until ~~he~~ *the party* receives such assurance may if commercially reasonable suspend any performance for which ~~he~~ *the party* has not already received the agreed return.

(2) Between merchants the reasonableness of grounds for insecurity and the adequacy of any assurance offered shall be determined according to commercial standards.

(3) Acceptance of any improper delivery or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance.

(4) After receipt of a justified demand failure to provide within a reasonable time not exceeding 30 days such assurance of due performance as is adequate under the circumstances of the particular case is a repudiation of the contract."

Section 868. Section 30-2-610, MCA, is amended to read:

"30-2-610. Anticipatory repudiation. When either party repudiates the contract with respect to a performance not yet due the loss of which will substantially impair the value of the contract to the other, the aggrieved party may:

~~(a)~~*(1)* for a commercially reasonable time await performance by the repudiating party; or

~~(b)~~*(2)* resort to any remedy for breach (30-2-703 or 30-2-711), even though ~~he~~ *the aggrieved party* has notified the repudiating party that ~~he~~ *it* would await the latter's performance and has urged retraction; and

~~(c)~~*(3)* in either case suspend ~~his own~~ performance or proceed in accordance with the provisions of this chapter on the seller's right to identify goods to the contract notwithstanding breach or to salvage unfinished goods (30-2-704)."

Section 869. Section 30-2-611, MCA, is amended to read:

"30-2-611. Retraction of anticipatory repudiation. (1) Until the repudiating party's next performance is due ~~he~~ *that party* can retract ~~his~~ *the* repudiation unless the aggrieved party has since the repudiation canceled or

materially changed ~~his~~ position or otherwise indicated that ~~he considers~~ the repudiation *is* final.

(2) Retraction may be by any method which clearly indicates to the aggrieved party that the repudiating party intends to perform, but must include any assurance justifiably demanded under the provisions of this chapter (30-2-609).

(3) Retraction reinstates the repudiating party's rights under the contract with due excuse and allowance to the aggrieved party for any delay occasioned by the repudiation."

Section 870. Section 30-2-612, MCA, is amended to read:

"30-2-612. "Installment contract" — breach. (1) An "installment contract" is one which requires or authorizes the delivery of goods in separate lots to be separately accepted, even though the contract contains a clause "each delivery is a separate contract" or its equivalent.

(2) The buyer may reject any installment which is nonconforming if the nonconformity substantially impairs the value of that installment and cannot be cured or if the nonconformity is a defect in the required documents; but if the nonconformity does not fall within subsection (3) and the seller gives adequate assurance of its cure the buyer must accept that installment.

(3) Whenever nonconformity or default with respect to one or more installments substantially impairs the value of the whole contract there is a breach of the whole. But the aggrieved party reinstates the contract if ~~he~~ *the party* accepts a nonconforming installment without seasonably notifying of cancellation or if ~~he~~ *the party* brings an action with respect only to past installments or demands performance as to future installments."

Section 871. Section 30-2-613, MCA, is amended to read:

"30-2-613. Casualty to identified goods. Where the contract requires for its performance goods identified when the contract is made, and the goods suffer casualty without fault of either party before the risk of loss passes to the buyer, or in a proper case under a "no arrival, no sale" term (30-2-324) then:

(a) if the loss is total the contract is avoided; and

(b) if the loss is partial or the goods have so deteriorated as no longer to conform to the contract the buyer may nevertheless demand inspection and at ~~his~~ *the buyer's* option either treat the contract as avoided or accept the goods with due allowance from the contract price for the deterioration or the deficiency in quantity but without further right against the seller."

Section 872. Section 30-2-615, MCA, is amended to read:

"30-2-615. Excuse by failure of presupposed conditions. Except so far as a seller may have assumed a greater obligation and subject to the preceding section on substituted performance:

~~(a)~~*(1)* Delay in delivery or nondelivery in whole or in part by a seller who complies with ~~paragraphs (b) and (c)~~ *subsections (2) and (3)* is not a breach of ~~his~~ *the seller's* duty under a contract for sale if performance as agreed has been made impracticable by the occurrence of a contingency the nonoccurrence of which was a basic assumption on which the contract was made or by compliance in good faith with any applicable foreign or domestic governmental regulation or order whether or not it later proves to be invalid.

~~(b)~~*(2)* Where the causes mentioned in ~~paragraph (a)~~ *subsection (1)* affect only a part of the seller's capacity to perform, ~~he~~ *the seller* must allocate

production and deliveries among ~~his~~ *its* customers but may at ~~his~~ *its* option include regular customers not then under contract as well as ~~his~~ *its* own requirements for further manufacture. ~~He~~ *The seller* may so allocate in any manner which is fair and reasonable.

~~(c)~~*(3)* The seller must notify the buyer seasonably that there will be delay or nondelivery and, when allocation is required under ~~paragraph (b)~~ *subsection (2)*, of the estimated quota thus made available for the buyer."

Section 873. Section 30-2-616, MCA, is amended to read:

"30-2-616. Procedure on notice claiming excuse. (1) Where the buyer receives notification of a material or indefinite delay or an allocation justified under the preceding section ~~he~~ *it* may by written notification to the seller as to any delivery concerned, and where the prospective deficiency substantially impairs the value of the whole contract under the provisions of this chapter relating to breach of installment contracts (30-2-612), then also as to the whole:

(a) terminate and thereby discharge any unexecuted portion of the contract; or

(b) modify the contract by agreeing to take ~~his~~ *its* available quota in substitution.

(2) If after receipt of such notification from the seller the buyer fails so to modify the contract within a reasonable time not exceeding 30 days the contract lapses with respect to any deliveries affected.

(3) The provisions of this section may not be negated by agreement except insofar as the seller has assumed a greater obligation under the preceding section."

Section 874. Section 30-2-702, MCA, is amended to read:

"30-2-702. Seller's remedies on discovery of buyer's insolvency. (1) Where the seller discovers the buyer to be insolvent ~~he~~ *the seller* may refuse delivery except for cash including payment for all goods theretofore delivered under the contract, and stop delivery under this chapter (30-2-705).

(2) Where the seller discovers that the buyer has received goods on credit while insolvent ~~he~~ *the seller* may reclaim the goods upon demand made within 10 days after the receipt, but if misrepresentation of solvency has been made to the particular seller in writing within 3 months before delivery the 10-day limitation does not apply. Except as provided in this subsection the seller may not base a right to reclaim goods on the buyer's fraudulent or innocent misrepresentation of solvency or of intent to pay.

(3) The seller's right to reclaim under subsection (2) is subject to the rights of a buyer in ordinary course or other good faith purchaser under this chapter (30-2-403). Successful reclamation of goods excludes all other remedies with respect to them."

Section 875. Section 30-2-704, MCA, is amended to read:

"30-2-704. Seller's right to identify goods to the contract notwithstanding breach or to salvage unfinished goods. (1) An aggrieved seller under the preceding section may:

(a) identify to the contract conforming goods not already identified if at the time ~~he~~ *the seller* learned of the breach they are in ~~his~~ *the seller's* possession or control;

(b) treat as the subject of resale goods which have demonstrably been intended for the particular contract even though those goods are unfinished.

(2) Where the goods are unfinished an aggrieved seller may in the exercise of reasonable commercial judgment for the purposes of avoiding loss and of effective realization either complete the manufacture and wholly identify the goods to the contract or cease manufacture and resell for scrap or salvage value or proceed in any other reasonable manner."

Section 876. Section 30-2-706, MCA, is amended to read:

"30-2-706. Seller's resale including contract for resale. (1) Under the conditions stated in 30-2-703 on seller's remedies, the seller may resell the goods concerned or the undelivered balance thereof. Where the resale is made in good faith and in a commercially reasonable manner the seller may recover the difference between the resale price and the contract price together with any incidental damages allowed under the provisions of this chapter (30-2-710), but less expenses saved in consequence of the buyer's breach.

(2) Except as otherwise provided in subsection (3) or unless otherwise agreed resale may be at public or private sale including sale by way of one or more contracts to sell or of identification to an existing contract of the seller. Sale may be as a unit or in parcels and at any time and place and on any terms but every aspect of the sale including the method, manner, time, place and terms must be commercially reasonable. The resale must be reasonably identified as referring to the broken contract, but it is not necessary that the goods be in existence or that any or all of them have been identified to the contract before the breach.

(3) Where the resale is at private sale the seller must give the buyer reasonable notification of ~~his~~ *an* intention to resell.

(4) Where the resale is at public sale:

(a) only identified goods can be sold except where there is a recognized market for a public sale of futures in goods of the kind; and

(b) it must be made at a usual place or market for public sale if one is reasonably available and except in the case of goods which are perishable or threaten to decline in value speedily the seller must give the buyer reasonable notice of the time and place of the resale; and

(c) if the goods are not to be within the view of those attending the sale the notification of sale must state the place where the goods are located and provide for their reasonable inspection by prospective bidders; and

(d) the seller may buy.

(5) A purchaser who buys in good faith at a resale takes the goods free of any rights of the original buyer even though the seller fails to comply with one or more of the requirements of this section.

(6) The seller is not accountable to the buyer for any profit made on any resale. A person in the position of a seller (30-2-707) or a buyer who has rightfully rejected or justifiably revoked acceptance must account for any excess over the amount of ~~his~~ *the buyer's* security interest, as hereinafter defined (subsection (3) of 30-2-711)."

Section 877. Section 30-2-707, MCA, is amended to read:

"30-2-707. "Person in the position of a seller". (1) A "person in the position of a seller" includes as against a principal an agent who has paid or become responsible for the price of goods on behalf of ~~his~~ *the* principal or anyone who otherwise holds a security interest or other right in goods similar to that of a seller.

(2) A person in the position of a seller may as provided in this chapter withhold or stop delivery (30-2-705) and resell (30-2-706) and recover incidental damages (30-2-710)."

Section 878. Section 30-2-709, MCA, is amended to read:

"30-2-709. Action for the price. (1) When the buyer fails to pay the price as it becomes due the seller may recover, together with any incidental damages under the next section, the price:

(a) of goods accepted or of conforming goods lost or damaged within a commercially reasonable time after risk of their loss has passed to the buyer; and

(b) of goods identified to the contract if the seller is unable after reasonable effort to resell them at a reasonable price or the circumstances reasonably indicate that such effort will be unavailing.

(2) Where the seller sues for the price ~~he~~ *the seller* must hold for the buyer any goods which have been identified to the contract and are still in ~~his~~ *the seller's* control except that if resale becomes possible ~~he~~ *the seller* may resell them at any time prior to the collection of the judgment. The net proceeds of any such resale must be credited to the buyer and payment of the judgment entitles ~~him~~ *the buyer* to any goods not resold.

(3) After the buyer has wrongfully rejected or revoked acceptance of the goods or has failed to make a payment due or has repudiated (30-2-610), a seller who is held not entitled to the price under this section shall nevertheless be awarded damages for nonacceptance under the preceding section."

Section 879. Section 30-2-711, MCA, is amended to read:

"30-2-711. Buyer's remedies in general — buyer's security interest in rejected goods. (1) Where the seller fails to make delivery or repudiates or the buyer rightfully rejects or justifiably revokes acceptance then with respect to any goods involved, and with respect to the whole if the breach goes to the whole contract (30-2-612), the buyer may cancel and whether or not ~~he~~ *the buyer* has done so may in addition to recovering so much of the price as has been paid:

(a) "cover" and have damages under the next section as to all the goods affected whether or not they have been identified to the contract; or

(b) recover damages for nondelivery as provided in this chapter (30-2-713).

(2) Where the seller fails to deliver or repudiates the buyer may also:

(a) if the goods have been identified recover them as provided in this chapter (30-2-502); or

(b) in a proper case obtain specific performance or recover the goods as provided in this chapter (30-2-716).

(3) On rightful rejection or justifiable revocation of acceptance a buyer has a security interest in goods in ~~his~~ *the buyer's* possession or control for any payments made on their price and any expenses reasonably incurred in their inspection, receipt, transportation, care and custody and may hold such goods and resell them in like manner as an aggrieved seller (30-2-706)."

Section 880. Section 30-2-712, MCA, is amended to read:

"30-2-712. "Cover" — buyer's procurement of substitute goods. (1) After a breach within the preceding section the buyer may "cover" by making in good faith and without unreasonable delay any reasonable purchase of or contract to purchase goods in substitution for those due from the seller.

(2) The buyer may recover from the seller as damages the difference between the cost of cover and the contract price together with any incidental or consequential damages as hereinafter defined (30-2-715), but less expenses saved in consequence of the seller's breach.

(3) Failure of the buyer to effect cover within this section does not bar ~~him~~ *the buyer* from any other remedy."

Section 881. Section 30-2-714, MCA, is amended to read:

"30-2-714. Buyer's damages for breach in regard to accepted goods. (1) Where the buyer has accepted goods and given notification (subsection (3) of 30-2-607) ~~he~~ *the buyer* may recover as damages for any nonconformity of tender the loss resulting in the ordinary course of events from the seller's breach as determined in any manner which is reasonable.

(2) The measure of damages for breach of warranty is the difference at the time and place of acceptance between the value of the goods accepted and the value they would have had if they had been as warranted, unless special circumstances show proximate damages of a different amount.

(3) In a proper case any incidental and consequential damages under the next section may also be recovered."

Section 882. Section 30-2-717, MCA, is amended to read:

"30-2-717. Deduction of damages from the price. The buyer on notifying the seller of ~~his~~ *an* intention to do so may deduct all or any part of the damages resulting from any breach of contract from any part of the price still due under the same contract."

Section 883. Section 30-2-718, MCA, is amended to read:

"30-2-718. Liquidation or limitation of damages — deposits. (1) Damages for breach by either party may be liquidated in the agreement but only at an amount which is reasonable in the light of the anticipated or actual harm caused by the breach, the difficulties of proof of loss, and the inconvenience or nonfeasibility of otherwise obtaining an adequate remedy. A term fixing unreasonably large liquidated damages is void as a penalty.

(2) Where the seller justifiably withholds delivery of goods because of the buyer's breach, the buyer is entitled to restitution of any amount by which the sum of ~~his~~ *the buyer's* payments exceeds:

(a) the amount to which the seller is entitled by virtue of terms liquidating the seller's damages in accordance with subsection (1)~~,~~*;* or

(b) in the absence of such terms, 20% of the value of the total performance for which the buyer is obligated under the contract or $500, whichever is smaller.

(3) The buyer's right to restitution under subsection (2) is subject to offset to the extent that the seller establishes:

(a) a right to recover damages under the provisions of this chapter other than subsection (1)~~,~~*;* and

(b) the amount or value of any benefits received by the buyer directly or indirectly by reason of the contract.

(4) Where a seller has received payment in goods their reasonable value or the proceeds of their resale shall be treated as payments for the purposes of subsection (2); but if the seller has notice of the buyer's breach before reselling goods received in part performance, ~~his~~ *the* resale is subject to the conditions laid down in this chapter on resale by an aggrieved seller (30-2-706)."

Section 884. Section 30-2-722, MCA, is amended to read:

"30-2-722. Who can sue third parties for injury to goods. Where a third party so deals with goods which have been identified to a contract for sale as to cause actionable injury to a party to that contract:

(a) a right of action against the third party is in either party to the contract for sale who has title to or a security interest or a special property or an insurable interest in the goods; and if the goods have been destroyed or converted a right of action is also in the party who either bore the risk of loss under the contract for sale or has since the injury assumed that risk as against the other;

(b) if at the time of the injury the party plaintiff did not bear the risk of loss as against the other party to the contract for sale and there is no arrangement between them for disposition of the recovery, ~~his~~ *the party plaintiff's* suit or settlement is, subject to ~~his~~ *its* own interest, as a fiduciary for the other party to the contract;

(c) either party may with the consent of the other sue for the benefit of whom it may concern."

Section 885. Section 30-2-723, MCA, is amended to read:

"30-2-723. Proof of market price — time and place. (1) If an action based on anticipatory repudiation comes to trial before the time for performance with respect to some or all of the goods, any damages based on market price (30-2-708 or 30-2-713) shall be determined according to the price of such goods prevailing at the time when the aggrieved party learned of the repudiation.

(2) If evidence of a price prevailing at the times or places described in this chapter is not readily available the price prevailing within any reasonable time before or after the time described or at any other place which in commercial judgment or under usage of trade would serve as a reasonable substitute for the one described may be used, making any proper allowance for the cost of transporting the goods to or from such other place.

(3) Evidence of a relevant price prevailing at a time or place other than the one described in this chapter offered by one party is not admissible unless and until ~~he~~ *that party* has given the other party such notice as the court finds sufficient to prevent unfair surprise."

Section 886. Section 30-2A-103, MCA, is amended to read:

"30-2A-103. Definitions and index of definitions. (1) In this chapter, unless the context otherwise requires, the following definitions apply:

(a) "Buyer in ordinary course of business" means a person, who in good faith and without knowledge that the sale to the buyer is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods, buys in ordinary course from a person in the business of selling goods of that kind, but the term does not include a pawnbroker. "Buying" may be for cash or by exchange of other property or on secured or unsecured credit and includes acquiring goods or documents of title under a preexisting contract for sale but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(b) "Cancellation" occurs when either party puts an end to the lease contract for default by the other party.

(c) "Commercial unit" means such a unit of goods as by commercial usage is a single whole for purposes of lease and division of which materially impairs its

character or value on the market or in use. A commercial unit may be a single article, as a machine; a set of articles, as a suite of furniture or a line of machinery; a quantity, as a gross or carload; or any other unit treated in use or in the relevant market as a single whole.

(d) "Conforming" goods or performance under a lease contract means goods or performance that is in accordance with the obligations under the lease contract.

(e) "Consumer lease" means a lease that a lessor regularly engaged in the business of leasing or selling makes to a lessee who is an individual and who takes under the lease primarily for a personal, family, or household purpose if the total payments to be made under the lease contract, excluding payments for options to renew or buy, do not exceed $25,000.

(f) "Fault" means wrongful act, omission, breach, or default.

(g) "Finance lease" means a lease with respect to which:

(i) the lessor does not select, manufacture, or supply the goods;

(ii) the lessor acquires the goods or the right to possession and use of the goods in connection with the lease; and

(iii) one of the following occurs:

(A) the lessee receives a copy of the contract by which the lessor acquired the goods or the right to possession and use of the goods before signing the lease contract;

(B) the lessee's approval of the contract by which the lessor acquired the goods or the right to possession and use of the goods is a condition to effectiveness of the lease contract;

(C) the lessee, before signing the lease contract, receives an accurate and complete statement designating the promises and warranties, and any disclaimers of warranties, limitations or modifications of remedies, or liquidated damages, including those of a third party, such as the manufacturer of the goods, provided to the lessor by the person supplying the goods in connection with or as part of the contract by which the lessor acquired the goods or the right to possession and use of the goods; or

(D) if the lease is not a consumer lease, the lessor, before the lessee signs the lease contract, informs the lessee in writing:

(I) of the identity of the person supplying the goods to the lessor, unless the lessee has selected that person and directed the lessor to acquire the goods or the right to possession and use of the goods from that person;

(II) that the lessee is entitled under this chapter to the promises and warranties, including those of any third party, provided to the lessor by the person supplying the goods in connection with or as part of the contract by which the lessor acquired the goods or the right to possession and use of the goods; and

(III) that the lessee may communicate with the person supplying the goods to the lessor and receive an accurate and complete statement of those promises and warranties, including any disclaimers and limitations of them or of remedies.

(h) "Goods" means all things that are movable at the time of identification to the lease contract, or are fixtures (30-2A-309), but the term does not include money, documents, instruments, accounts, chattel paper, general intangibles, or minerals or the like, including oil and gas, before extraction. The term also includes the unborn young of animals.

(i) "Installment lease contract" means a lease contract that authorizes or requires the delivery of goods in separate lots to be separately accepted, even though the lease contract contains a clause "each delivery is a separate lease" or its equivalent.

(j) "Lease" means a transfer of the right to possession and use of goods for a term in return for consideration, but a sale, including a sale on approval or a sale or return, or retention or creation of a security interest is not a lease. Unless the context clearly indicates otherwise, the term includes a sublease.

(k) "Lease agreement" means the bargain, with respect to the lease, of the lessor and the lessee in fact as found in their language or by implication from other circumstances, including course of dealing or usage of trade or course of performance as provided in this chapter. Unless the context clearly indicates otherwise, the term includes a sublease agreement.

(l) "Lease contract" means the total legal obligation that results from the lease agreement as affected by this chapter and any other applicable rules of law. Unless the context clearly indicates otherwise, the term includes a sublease contract.

(m) "Leasehold interest" means the interest of the lessor or the lessee under a lease contract.

(n) "Lessee" means a person who acquires the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes a sublease.

(o) "Lessee in ordinary course of business" means a person, who in good faith and without knowledge that the lease to ~~him~~ *the person* is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods, leases in ordinary course from a person in the business of selling or leasing goods of that kind, but the term does not include a pawnbroker. "Leasing" may be for cash or by exchange of other property or on secured or unsecured credit and includes acquiring goods or documents of title under a preexisting lease contract but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(p) "Lessor" means a person who transfers the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes a sublessor.

(q) "Lessor's residual interest" means the lessor's interest in the goods after expiration, termination, or cancellation of the lease contract.

(r) "Lien" means a charge against or interest in goods to secure payment of a debt or performance of an obligation, but the term does not include a security interest.

(s) "Lot" means a parcel or a single article that is the subject matter of a separate lease or delivery, whether or not it is sufficient to perform the lease contract.

(t) "Merchant lessee" means a lessee that is a merchant with respect to goods of the kind subject to the lease.

(u) "Present value" means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain. The discount is determined by the interest rate specified by the parties if the rate was not manifestly unreasonable at the time the transaction was entered into; otherwise, the discount is determined by a commercially reasonable rate that

takes into account the facts and circumstances of each case at the time the transaction was entered into.

(v) "Purchase" includes taking by sale, lease, mortgage, security interest, pledge, gift, or any other voluntary transaction creating an interest in goods.

(w) "Sublease" means a lease of goods the right to possession and use of which was acquired by the lessor as a lessee under an existing lease.

(x) "Supplier" means a person from whom a lessor buys or leases goods to be leased under a finance lease.

(y) "Supply contract" means a contract under which a lessor buys or leases goods to be leased.

(z) "Termination" occurs when either party pursuant to a power created by agreement or law puts an end to the lease contract otherwise than for default.

(2) Other definitions applying to this chapter and the sections in which they appear are:

(a) "Accessions". 30-2A-310(1).

(b) "Construction mortgage". 30-2A-309(1)(d).

(c) "Encumbrance". 30-2A-309(1)(e).

(d) "Fixtures". 30-2A-309(1)(a).

(e) "Fixture filing". 30-2A-309(1)(b).

(f) "Purchase money lease". 30-2A-309(1)(c).

(3) The following definitions in other chapters apply to this chapter:

(a) "Account". 30-9A-102(1)(b).

(b) "Between merchants". 30-2-104(3).

(c) "Buyer". 30-2-103(1)(a).

(d) "Chattel paper". 30-9A-102(1)(k).

(e) "Consumer goods". 30-9A-102(1)(w).

(f) "Document". 30-9A-102(1)(dd).

(g) "Entrusting". 30-2-403(3).

(h) "General intangible". 30-9A-102(1)(pp).

(i) "Good faith". 30-2-103(1)(b).

(j) "Instrument". 30-9A-102(1)(uu).

(k) "Merchant". 30-2-104(1).

(l) "Mortgage". 30-9A-102(1)(ccc).

(m) "Pursuant to commitment". 30-9A-102(1)(ppp).

(n) "Receipt". 30-2-103(1)(c).

(o) "Sale". 30-2-106(1).

(p) "Sale on approval". 30-2-326.

(q) "Sale or return". 30-2-326.

(r) "Seller". 30-2-103(1)(d).

(4) In addition, Title 30, chapter 1, contains general definitions and principles of construction and interpretation applicable throughout this chapter."

Section 887. Section 30-2A-108, MCA, is amended to read:

"30-2A-108. Unconscionability. (1) If the court as a matter of law finds a lease contract or any clause of a lease contract to have been unconscionable at the time it was made, the court may refuse to enforce the lease contract, it may enforce the remainder of the lease contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result.

(2) With respect to a consumer lease, if the court as a matter of law finds that a lease contract or any clause of a lease contract has been induced by unconscionable conduct or that unconscionable conduct has occurred in the collection of a claim arising from a lease contract, the court may grant appropriate relief.

(3) Before making a finding of unconscionability under subsection (1) or (2), the court, on its own motion or that of a party, shall afford the parties a reasonable opportunity to present evidence as to the setting, purpose, and effect of the lease contract or clause thereof or of the conduct.

(4) In an action in which the lessee claims unconscionability with respect to a consumer lease:

(a) if the court finds unconscionability under subsection (1) or (2), the court shall award reasonable attorney fees to the lessee;

(b) if the court does not find unconscionability and the lessee claiming unconscionability has brought or maintained an action ~~he~~ *the lessee* knew to be groundless, the court shall award reasonable attorney fees to the party against whom the claim is made;

(c) in determining attorney fees, the amount of the recovery on behalf of the claimant under subsections (1) and (2) is not controlling."

Section 888. Section 30-2A-109, MCA, is amended to read:

"30-2A-109. Option to accelerate at will. (1) A term providing that one party or ~~his~~ *the party's* successor in interest may accelerate payment of performance or require collateral or additional collateral "at will" or "when ~~he~~ *the party* deems ~~himself~~ *itself* insecure" or in words of similar import must be construed to mean that ~~he~~ *the party* has power to do so only if ~~he~~ *the party* in good faith believes that the prospect of payment or performance is impaired.

(2) With respect to a consumer lease, the burden of establishing good faith under subsection (1) is on the party who exercised the power; otherwise the burden of establishing lack of good faith is on the party against whom the power has been exercised."

Section 889. Section 30-2A-220, MCA, is amended to read:

"30-2A-220. Effect of default on risk of loss. (1) When risk of loss is to pass to the lessee and the time of passage is not stated:

(a) if a tender or delivery of goods so fails to conform to the lease contract as to give a right of rejection, the risk of their loss remains with the lessor or, in the case of a finance lease, the supplier until cure or acceptance.

(b) if the lessee rightfully revokes acceptance, ~~he~~ *the lessee*, to the extent of any deficiency in ~~his~~ *its* effective insurance coverage, may treat the risk of loss as having remained with the lessor from the beginning.

(2) Whether or not risk of loss is to pass to the lessee, if the lessee as to conforming goods already identified to a lease contract repudiates or is otherwise in default under the lease contract, the lessor or, in the case of a finance lease, the supplier, to the extent of any deficiency in ~~his~~ *its* effective

insurance coverage, may treat the risk of loss as resting on the lessee for a commercially reasonable time."

Section 890. Section 30-2A-221, MCA, is amended to read:

"30-2A-221. Casualty to identified goods. If a lease contract requires goods identified when the lease contract is made and the goods suffer casualty without fault of the lessee, the lessor, or the supplier before delivery or if the goods suffer casualty before risk of loss passes to the lessee pursuant to the lease agreement or 30-2A-219, then:

(1) if the loss is total, the lease contract is avoided; and

(2) if the loss is partial or the goods have so deteriorated as to no longer conform to the lease contract, the lessee may nevertheless demand inspection and at ~~his~~ *the lessee's* option either treat the lease contract as avoided or, except in a finance lease that is not a consumer lease, accept the goods with due allowance from the rent payable for the balance of the lease term for the deterioration or the deficiency in quantity but without further right against the lessor."

Section 891. Section 30-2A-310, MCA, is amended to read:

"30-2A-310. Lessor's and lessee's rights when goods become accessions. (1) Goods are "accessions" when they are installed in or affixed to other goods.

(2) The interest of a lessor or a lessee under a lease contract entered into before the goods became accessions is superior to all interests in the whole except as stated in subsection (4).

(3) The interest of a lessor or a lessee under a lease contract entered into at the time or after the goods became accessions is superior to all subsequently acquired interests in the whole except as stated in subsection (4) but is subordinate to interests in the whole existing at the time the lease contract was made unless the holders of such interests in the whole have in writing consented to the lease or disclaimed an interest in the goods as part of the whole.

(4) The interest of a lessor or a lessee under a lease contract described in subsection (2) or (3) is subordinate to the interest of:

(a) a buyer in the ordinary course of business or a lessee in the ordinary course of business of any interest in the whole acquired after the goods became accessions; or

(b) a creditor with a security interest in the whole perfected before the lease contract was made to the extent that the creditor makes subsequent advances without knowledge of the lease contract.

(5) When under subsections (2) and (4) or (3) and (4) a lessor or a lessee of accessions holds an interest that is superior to all interests in the whole, the lessor or the lessee may, on default, expiration, termination, or cancellation of the lease contract by the other party but subject to the provisions of the lease contract and this chapter or if necessary to enforce ~~his~~ *the lessor's or lessee's* other rights and remedies under this chapter, remove the goods from the whole, free and clear of all interests in the whole, but ~~he~~ *the lessor or lessee* must reimburse any holder of an interest in the whole who is not the lessee and who has not otherwise agreed to the cost of repair of any physical injury but not for any diminution in value of the whole caused by the absence of the goods removed or by any necessity for replacing them. A person entitled to reimbursement may refuse permission to remove until the party seeking removal gives adequate security for the performance of this obligation."

Section 892. Section 30-2A-401, MCA, is amended to read:

"30-2A-401. Insecurity — adequate assurance of performance. (1) A lease contract imposes an obligation on each party that the other's expectation of receiving due performance will not be impaired.

(2) If reasonable grounds for insecurity arise with respect to the performance of either party, the insecure party may demand in writing adequate assurance of due performance. Until the insecure party receives that assurance, if commercially reasonable, the insecure party may suspend any performance for which ~~he~~ *the insecure party* has not already received the agreed return.

(3) A repudiation of the lease contract occurs if assurance of due performance adequate under the circumstances of the particular case is not provided to the insecure party within a reasonable time, not to exceed 30 days after receipt of a demand by the other party.

(4) Between merchants, the reasonableness of grounds for insecurity and the adequacy of any assurance offered must be determined according to commercial standards.

(5) Acceptance of any nonconforming delivery or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance."

Section 893. Section 30-2A-405, MCA, is amended to read:

"30-2A-405. Excused performance. Subject to 30-2A-404 on substituted performance, the following rules apply:

(1) Delay in delivery or nondelivery in whole or in part by a lessor or a supplier who complies with subsections (2) and (3) is not a default under the lease contract if performance as agreed has been made impracticable by the occurrence of a contingency the nonoccurrence of which was a basic assumption on which the lease contract was made or by compliance in good faith with any applicable foreign or domestic governmental regulation or order, whether or not the regulation or order later proves to be invalid.

(2) If the causes mentioned in subsection (1) affect only part of the lessor's or the supplier's capacity to perform, ~~he~~ *the lessor or supplier* shall allocate production and deliveries among ~~his~~ customers but at ~~his~~ *the lessor's or supplier's* option may include regular customers not then under contract for sale or lease as well as ~~his~~ *the lessor's or supplier's* own requirements for further manufacture. ~~He~~ *The lessor or supplier* may so allocate in any manner that is fair and reasonable.

(3) The lessor seasonably shall notify the lessee and, in the case of a finance lease, the supplier seasonably shall notify the lessor and the lessee, if known, that there will be delay or nondelivery and, if allocation is required under subsection (2), of the estimated quota thus made available for the lessee."

Section 894. Section 30-2A-504, MCA, is amended to read:

"30-2A-504. Liquidation of damages. (1) Damages payable by either party for default or any other act or omission, including indemnity for loss or diminution of anticipated tax benefits or loss or damage to a lessor's residual interest, may be liquidated in the lease agreement but only at an amount or by a formula that is reasonable in light of the then anticipated harm caused by the default or other act or omission.

(2) If the lease agreement provides for liquidation of damages and such provision does not comply with subsection (1) or if such provision is an exclusive or limited remedy that circumstances cause to fail of its essential purpose, remedy may be had as provided in this chapter.

(3) If the lessor justifiably withholds or stops delivery of goods because of the lessee's default or insolvency (30-2A-525 or 30-2A-526), the lessee is entitled to restitution of any amount by which the sum of ~~his~~ *the lessee's* payments exceeds:

(a) the amount to which the lessor is entitled by virtue of terms liquidating the lessor's damages in accordance with subsection (1); or

(b) in the absence of those terms, 20% of the then present value of the total rent the lessee was obligated to pay for the balance of the lease term or, in the case of a consumer lease, the lesser of such amount or $500.

(4) A lessee's right to restitution under subsection (3) is subject to offset to the extent the lessor establishes:

(a) a right to recover damages under the provisions of this chapter other than subsection (1) of this section; and

(b) the amount or value of any benefits received by the lessee directly or indirectly by reason of the lease contract."

Section 895. Section 30-2A-507, MCA, is amended to read:

"30-2A-507. Proof of market rent — time and place. (1) Damages based on market rent (30-2A-519 or 30-2A-528) are determined according to the rent for the use of the goods concerned for a lease term identical to the remaining lease term of the original lease agreement and prevailing at the time of the default.

(2) If evidence of rent for the use of the goods concerned for a lease term identical to the remaining lease term of the original lease agreement and prevailing at the times or places described in this chapter is not readily available, the rent prevailing within any reasonable time before or after the time described or at any other place or for a different lease term that in commercial judgment or under usage of trade would serve as a reasonable substitute for the one described may be used, making any proper allowance for the difference, including the cost of transporting the goods to or from the other place.

(3) Evidence of a relevant rent prevailing at a time or place or for a lease term other than the one described in this chapter offered by one party is not admissible unless and until ~~he~~ *the party* has given the other party notice the court finds sufficient to prevent unfair surprise.

(4) If the prevailing rent or value of any goods regularly leased in any established market is in issue, reports in official publications or trade journals or in newspapers or periodicals of general circulation published as the reports of that market are admissible in evidence. The circumstances of the preparation of the report may be shown to affect its weight but not its admissibility."

Section 896. Section 30-2A-511, MCA, is amended to read:

"30-2A-511. Merchant lessee's duties as to rightfully rejected goods. (1) Subject to any security interest of a lessee (30-2A-508(5)), if a lessor or a supplier has no agent or place of business at the market of rejection, a merchant lessee, after rejection of goods in ~~his~~ *the lessee's* possession or control, shall follow any reasonable instructions received from the lessor or the supplier with respect to the goods. In the absence of those instructions, a merchant lessee shall

make reasonable efforts to sell, lease, or otherwise dispose of the goods for the lessor's account if they threaten to decline in value speedily. Instructions are not reasonable if on demand indemnity for expenses is not forthcoming.

(2) If a merchant lessee (subsection (1) of this section) or any other lessee (30-2A-512) disposes of goods, ~~he~~ *the lessee* is entitled to reimbursement either from the lessor or the supplier or out of the proceeds for reasonable expenses of caring for and disposing of the goods and, if the expenses include no disposition commission, to such commission as is usual in the trade or, if there is none, to a reasonable sum not exceeding 10% of the gross proceeds.

(3) In complying with 30-2A-512 or this section, the lessee is held only to good faith. Good faith conduct hereunder is neither acceptance or conversion nor the basis of an action for damages.

(4) A purchaser who purchases in good faith from a lessee pursuant to 30-2A-512 or this section takes the goods free of any rights of the lessor and the supplier even though the lessee fails to comply with one or more of the requirements of this chapter."

Section 897. Section 30-2A-513, MCA, is amended to read:

"30-2A-513. Cure by lessor of improper tender or delivery — replacement. (1) If any tender or delivery by the lessor or the supplier is rejected because it is nonconforming and the time for performance has not yet expired, the lessor or the supplier may seasonably notify the lessee of the lessor's or the supplier's intention to cure and may then make a conforming delivery within the time provided in the lease contract.

(2) If the lessee rejects a nonconforming tender that the lessor or the supplier had reasonable grounds to believe would be acceptable with or without money allowance, the lessor or the supplier may have a further reasonable time to substitute a conforming tender if ~~he~~ *the lessor or supplier* seasonably notifies the lessee."

Section 898. Section 30-2A-531, MCA, is amended to read:

"30-2A-531. Standing to sue third parties for injury to goods. (1) If a third party so deals with goods that have been identified to a lease contract as to cause actionable injury to a party to the lease contract:

(a) the lessor has a right of action against the third party; and

(b) the lessee also has a right of action against the third party if the lessee:

(i) has a security interest in the goods;

(ii) has an insurable interest in the goods; or

(iii) bears the risk of loss under the lease contract or has since the injury assumed that risk as against the lessor and the goods have been converted or destroyed.

(2) If at the time of the injury the party plaintiff did not bear the risk of loss as against the other party to the lease contract and there is no arrangement between them for disposition of the recovery, ~~his~~ *the party plaintiff's* suit or settlement, subject to ~~his~~ *the party plaintiff's* own interest, is as a fiduciary for the other party to the lease contract.

(3) Either party with the consent of the other may sue for the benefit of whom it may concern."

Section 899. Section 30-7-302, MCA, is amended to read:

"30-7-302. Through bills of lading and similar documents of title. (1) The issuer of a through bill of lading or other document of title embodying an undertaking to be performed in part by persons acting as its agents or by a performing carrier is liable to any person entitled to recover on the document for any breach by the other person or the performing carrier of its obligation under the document. However, to the extent that the bill covers an undertaking to be performed overseas or in territory not contiguous to the continental United States or an undertaking including matters other than transportation, this liability for breach by the other person or the performing carrier may be varied by agreement of the parties.

(2) Where goods covered by a through bill of lading or other document embodying an undertaking to be performed in part by persons other than the issuer are received by ~~any such~~ *that* person, ~~he~~ *the person* is subject with respect to ~~his~~ *its* own performance while the goods are in ~~his~~ *its* possession to the obligation of the issuer. ~~His~~ *The person's* obligation is discharged by delivery of the goods to another ~~such~~ person pursuant to the document~~,~~ and does not include liability for breach by any other ~~such persons~~ *person* or by the issuer.

(3) The issuer of a through bill of lading or other document of title described in subsection (1) is entitled to recover from the performing carrier, or other person in possession of the goods when the breach of the obligation under the document occurred:

(a) the amount it may be required to pay to any person entitled to recover on the document for the breach, as may be evidenced by any receipt, judgment, or transcript of judgment; and

(b) the amount of any expense reasonably incurred by the issuer in defending any action commenced by any person entitled to recover on the document for the breach."

Section 900. Section 30-10-204, MCA, is amended to read:

"30-10-204. Registration by coordination. (1) Any security for which a registration statement has been filed under the Securities Act of 1933 or any securities for which filings have been made pursuant to regulation A or regulation E, and amendments ~~thereto~~ *to those regulations*, of the general rules and regulations of the United States securities and exchange commission, adopted pursuant to ~~subsection (b)~~ of section 3*(b)* of ~~said~~ *the* Securities Act of 1933, in connection with the same offering, may be registered by coordination. A registration statement under this section ~~shall~~ *must* contain the following information and be accompanied by the following documents, in addition to payment of the registration fee prescribed in 30-10-209:

(a) one copy of the prospectus or offering circular and letter of notification filed under the Securities Act of 1933 or the general rules and regulations ~~thereunder~~ *under that act*, together with all amendments ~~thereto~~ *to that act*;

(b) the amount of securities to be offered in this state;

(c) the states in which a registration statement or similar document in connection with the offering has been or is expected to be filed;

(d) any adverse order, judgment, or decree previously entered in connection with the offering by any court or the securities and exchange commission;

(e) if the commissioner by rule or otherwise requires, a copy of the articles of incorporation and bylaws ~~(~~or their substantial equivalents~~)~~ currently in effect, a copy of any agreements with or among underwriters, a copy of any indenture or

other instrument governing the issuance of the security to be registered, and a specimen or copy of the security;

(f) if the commissioner requests, any other information~~,~~ or copies of any other documents~~,~~ filed under the Securities Act of 1933;

(g) an undertaking to forward promptly all amendments to the federal registration statement or offering circular and letter of notification, other than an amendment ~~which~~ *that* merely delays the effective date;

(h) a consent to service of process meeting the requirements of 30-10-208; and

(i) ~~such~~ other information ~~as~~ *that* the commissioner may require.

(2) A registration statement by coordination under this section automatically becomes effective at the moment the federal registration statement or other filing becomes effective if all the following conditions are satisfied:

(a) no stop order is in effect and no proceeding is pending under 30-10-207;

(b) the registration statement has been on file with the commissioner for at least 10 business days; and

(c) a statement of the maximum and minimum proposed offering prices and the maximum underwriting discounts and commissions has been on file for 2 business days or ~~such~~ *a* shorter period ~~as~~ *that* the commissioner permits by rule or otherwise and the offering is made within those limitations.

(3) The registrant shall promptly notify the commissioner of the date and time when the federal registration statement or other filings became effective and the content of the price amendment, if any, and shall promptly file a posteffective amendment containing the information and documents in the price amendment. "Price amendment" means the final federal amendment ~~which~~ *that* includes a statement of the offering price, underwriting and selling discounts or commissions, amount of proceeds, conversion rates, call prices, and other matters dependent upon the offering price.

(4) Upon failure to receive the required notification and posteffective amendment with respect to the price amendment referred to in subsection (3) ~~of this section~~, the commissioner may enter a denial order, without notice or hearing, retroactively denying effectiveness to the registration statement or suspending its effectiveness until compliance with subsections (2) and (3) ~~of this section~~, if ~~he~~ *the commissioner* promptly notifies the registrant of the issuance of the order. If the registrant proves compliance with the requirements as to notice and posteffective amendment, the denial order is void as of the time of its entry. The commissioner may by rule or otherwise waive either or both of the conditions specified in subsections (2)(b) and (2)(c) ~~of this section~~. If the federal registration statement or other filing becomes effective before all these conditions are satisfied and they are not waived, the registration statement automatically becomes effective as soon as all conditions are satisfied. If the registrant advises the commissioner of the date when the federal registration statement or other filing is expected to become effective, the commissioner shall promptly advise the registrant whether all the conditions are satisfied and whether ~~he then~~ *the commissioner* contemplates the institution of a proceeding under 30-10-207~~;~~. ~~but~~ *However,* this advice by the commissioner does not preclude the institution of ~~such~~ a proceeding at any time."

Section 901. Section 30-10-205, MCA, is amended to read:

"30-10-205. Registration by qualification. (1) Any security may be registered by qualification. A registration statement under this section ~~shall~~ *must* contain the following information and be accompanied by the following documents, in addition to payment of the registration fee prescribed in 30-10-209:

(a) with respect to the issuer and any significant subsidiary: its name, address, form of organization, the state or foreign jurisdiction and date of its organization, the general character and location of its business, and a description of its physical properties and equipment;

(b) with respect to every director and officer of the issuer or person occupying a similar status or performing similar functions: ~~his~~ *the person's* name, address, and principal occupation for the past 5 years, the amount of securities of the issuer held by ~~him~~ *the person* as of a specified date within 90 days of the filing of the registration statement, the remuneration paid to all ~~such~~ *listed* persons in the aggregate during the past 12 months and estimated to be paid during the next 12 months, directly or indirectly, by the issuer, ~~(~~together with all predecessors, parents, and subsidiaries~~)~~;

(c) with respect to any person not named in subsection (1)(b) ~~of this section~~ owning of record, or beneficially if known, 10% or more of the outstanding shares of any class of equity security of the issuer: the information specified in subsection (1)(b) ~~of this section~~ other than ~~his~~ *the person's* occupation;

(d) with respect to every promoter not named in subsection (1)(b) ~~of this section~~, if the issuer was organized within the past 3 years: the information specified in subsection (1)(b) ~~of this section~~, any amount paid to ~~him~~ *the promoter* by the issuer within that period or intended to be paid to ~~him~~ *the promoter*, and the consideration for any ~~such~~ payment;

(e) the capitalization and long-term debt, ~~(~~on both a current and a pro forma basis~~)~~, of the issuer and any significant subsidiary, including a description of each security outstanding or being registered or otherwise offered, and a statement of the amount and kind of consideration, ~~(~~whether in the form of cash, physical assets, services, patents, goodwill, or anything else~~)~~, for which the issuer or any subsidiary has issued any of its securities within the past 2 years or is obligated to issue any of its securities;

(f) the kind and amount of securities to be offered; the amount to be offered in this state; the proposed offering price and any variation ~~therefrom~~ *from the offering price* at which any portion of the offering is to be made to any persons except as underwriting and selling discounts and commissions; the estimated aggregate underwriting and selling discounts, commissions, and other promotional fees, ~~(~~including separately cash, securities, or anything else of value to accrue to the underwriters in connection with the offering~~)~~; the estimated amounts of other selling expenses, and legal, engineering, and accounting expenses to be incurred by the issuer in connection with the offering; the name and address of every underwriter and every recipient of a promotional fee; a copy of any underwriting or selling group agreement pursuant to which the distribution is to be made, or the proposed form of any ~~such~~ agreement whose terms have not yet been determined; and a description of the plan of distribution of any securities ~~which~~ *that* are to be offered otherwise than through an underwriter;

(g) the estimated cash proceeds to be received by the issuer from the offering, the purposes for which the proceeds are to be used by the issuer, the amount to be used for each purpose, the amounts of any funds to be raised from other

sources to achieve the purposes stated and the sources of ~~any such~~ *the additional* funds, and, if any part of the proceeds is to be used to acquire any property, ~~(~~including goodwill~~)~~, otherwise than in the ordinary course of business, the names and addresses of the vendors and the purchase price;

(h) a description of any stock options or other security options outstanding or to be created in connection with the offering, together with the amount of any ~~such~~ options held or to be held by every person required to be named in subsection (1)(b), (1)(c), (1)(d), (1)(e), or (1)(g) and by any person who holds or will hold 10% or more in the aggregate of any ~~such~~ options;

(i) the states in which a registration statement or similar document in connection with the offering has been or is expected to be filed;

(j) any adverse order, judgment, or decree previously entered in connection with the offering by any court or the securities and exchange commission, a description of any pending litigation or proceeding to which the issuer is a party and ~~which~~ *that* materially affects its business or assets, ~~(~~including any ~~such~~ litigation or proceeding known to be contemplated by governmental authorities~~)~~;

(k) a copy of any prospectus or circular intended as of the effective date to be used in connection with the offering;

(l) a specimen or copy of the security being registered, a copy of the issuer's articles of incorporation and bylaws as currently in effect, and a copy of any indenture or other instrument covering the security to be registered;

(m) a signed or conformed copy of an opinion of counsel, if available, as to the legality of the security being registered;

(n) a balance sheet of the issuer as of a date within 4 months prior to the filing of the registration statement, a profit and loss statement and analysis of surplus for each of the 3 fiscal years preceding the date of the balance sheet and for any period between the close of the last fiscal year and the date of the balance sheet or for the period of the issuer's and any predecessor's existence if less than 3 years, and, if any part of the proceeds of the offering is to be applied to the purchase of any business, the same financial statements ~~which~~ *that* would be required if that business were the registrant;

(o) a consent to service of process meeting the requirements of 30-10-208; and

(p) ~~such~~ other information ~~as~~ *that* the commissioner may require.

(2) In the case of a nonissuer distribution, information may not be required under this section unless it is known to the person filing the registration statement or to the persons on whose behalf the distribution is to be made or can be furnished by them without unreasonable effort or expense.

(3) A registration statement by qualification under this section becomes effective when the commissioner so orders. The commissioner may require as a condition of registration under this section that a prospectus containing any designated part of the information specified in this section be sent or given to each person to whom an offer is made before or concurrently with:

(a) the first written offer made to ~~him (otherwise than~~ *the person,* by means ~~of~~ *other than* a public advertisement~~)~~, by or for the account of the issuer or any other person on whose behalf the offering is being made or by any underwriter or broker-dealer who is offering part of an unsold allotment or subscription taken by ~~him~~ *the underwriter or broker-dealer* as a participant in the distribution;

(b) the confirmation of any sale made by or for the account of any such person;

(c) payment pursuant to any such sale; or

(d) delivery of the security pursuant to any such sale, whichever first occurs, but the commissioner shall accept for use under ~~any such~~ *the* requirement a current prospectus or offering circular regarding the same securities filed under the Securities Act of 1933 or regulations ~~thereunder~~ *implementing that act*."

Section 902. Section 30-10-208, MCA, is amended to read:

"30-10-208. Consent to service of process — manner of service. (1) Every applicant for registration as a broker-dealer, investment adviser, salesperson, or investment adviser representative under parts 1 through 3 of this chapter and every issuer ~~which~~ *that* proposes to register and offer a security in this state through any person acting on an agency basis in the common-law sense shall file with the commissioner, in ~~such~~ *a* form ~~as he~~ *that the commissioner* prescribes, an irrevocable consent appointing the commissioner and ~~his~~ *the commissioner's* successors in office to be the attorney of the applicant to receive service of any lawful process in any noncriminal suit, action, or proceeding against the applicant or ~~its or his~~ *the applicant's* successor, executor, or administrator ~~which~~ *that* arises under parts 1 through 3 of this chapter or any rule or order ~~hereunder~~ *under parts 1 through 3 of this chapter* after the consent has been filed, with the same force and validity as if served personally on the person filing the consent.

(2) Service may be made by leaving a copy of the process in the office of the commissioner, but it is not effective unless:

(a) the plaintiff, who may be the commissioner, in a suit, action, or proceeding instituted by ~~him~~ *the plaintiff*, ~~forthwith~~ sends *timely* notice of the service and a copy of the process by certified or registered mail to the defendant or respondent at ~~its or his~~ *the defendant's or respondent's* last address on file with the commissioner; and

(b) the plaintiff's affidavit of compliance with this section is filed in the case on or before the return day of the process, if any, or within ~~such~~ *any* further time ~~as~~ *that* the court allows."

Section 903. Section 30-10-306, MCA, is amended to read:

"30-10-306. Criminal liabilities. (1) Any person who willfully violates any provision of parts 1 through 3 of this chapter except 30-10-302, who willfully violates any rule or order under parts 1 through 3 of this chapter, or who willfully violates 30-10-302 knowing the statement made to be false or misleading in any material respect shall upon conviction be fined not more than $5,000 or imprisoned not more than 10 years, or both~~;~~. ~~however~~ *However*, ~~in the event~~ *if* the person ~~so~~ convicted has been previously convicted of a felony in any way involving securities, imprisonment ~~hereunder~~ for not less than 1 year ~~shall be~~ *is* mandatory. ~~No~~ *An* indictment or information may *not* be returned under parts 1 through 3 of this chapter more than 8 years after the alleged violation~~;~~. ~~however~~ *However*, the time limitation period may be extended allowing commencement of a prosecution within 1 year after the date the commissioner or other prosecuting officer becomes aware of the violation.

(2) The commissioner may refer ~~such~~ evidence ~~as~~ *that* may be available concerning violations of parts 1 through 3 of this chapter or of any rule or order ~~hereunder~~ *under parts 1 through 3 of this chapter* to the attorney general or the proper prosecuting attorney, who may in ~~his~~ *the prosecutor's* discretion, with or

without ~~such~~ a reference, institute the appropriate criminal proceedings under parts 1 through 3 of this chapter.

(3) ~~Nothing in parts~~ *Parts* 1 through 3 of this chapter ~~limits~~ *do not limit* the power of the state to punish any person for any conduct ~~which~~ *that* constitutes a crime."

Section 904. Section 30-10-307, MCA, is amended to read:

"30-10-307. Civil liabilities — limitations on actions. (1) Any person who offers or sells a security in violation of 30-10-202 or offers or sells a security by means of fraud or misrepresentation is liable to the person buying the security from ~~him~~ *the offeror or seller*, who may sue either at law or in equity to recover the consideration paid for the security, together with interest at 10% ~~per annum~~ *a year* from the date of payment, costs, and reasonable attorneys' fees, less the amount of any income received on the security, upon the tender of the security, or for damages if ~~he~~ *the buyer* no longer owns the security. Damages are the amount that would be recoverable upon a tender less:

(a) the value of the security when the buyer disposed of it; and

(b) interest at 10% ~~per annum~~ *a year* from the date of disposition.

(2) Every person who directly or indirectly controls a seller liable under subsection (1), every partner, officer, or director (or person occupying a similar status or performing similar functions) or employee of ~~such a~~ *the* seller, and every broker-dealer or salesperson who participates or materially aids in the sale is liable jointly and severally with and to the same extent as the seller if the nonseller knew, or in the exercise of reasonable care could have known, of the existence of the facts by reason of which the liability is alleged to exist. There ~~shall~~ *must* be contribution among the several *liable* persons ~~so liable~~.

(3) Any tender specified in this section may be made at any time before entry of judgment. A cause of action under this statute survives the death of any person who might have been a plaintiff or a defendant. ~~No~~ *A* person may *not* sue under this section *if*:

(a) ~~if~~ the buyer has received a written offer, at a time when ~~he~~ *the buyer* owned the security, to refund the consideration paid, together with interest at 10% ~~per annum~~ *a year* from the date of payment, less the amount of any income received on the security and ~~he~~ *the buyer* failed to accept the offer within 30 days of its receipt; or

(b) ~~if~~ the buyer has received a written offer at a time when ~~he~~ *the buyer* did not own the security in the amount that would be recoverable under subsection (1) upon a tender less:

(i) the value of the security when the buyer disposed of it; and

(ii) interest at 10% ~~per annum~~ *a year* from the date of disposition.

(4) ~~No~~ *A* person who has made or engaged in the performance of any contract in violation of any provision of parts 1 through 3 of this chapter or any rule or order ~~hereunder~~ *under parts 1 through 3 of this chapter* or who has acquired any purported right under ~~any such~~ *the* contract with knowledge of the facts by reason of which its making or performance was in violation may *not* base any suit on the contract. Any condition, stipulation, or provision binding any person acquiring any security to waive compliance with any provision of parts 1 through 3 of this chapter or any rule or order ~~hereunder~~ *adopted under parts 1 through 3 of this chapter* is void as against public policy and in the public interest.

(5) (a) ~~No~~ *An* action may *not* be maintained under this section to enforce any liability founded on a violation of 30-10-202 unless it is brought within 2 years after the violation occurs.

(b) ~~No~~ *An* action may *not* be maintained under this section to enforce any liability founded on fraud or misrepresentation unless it is brought within 2 years after discovery of the fraud or misrepresentation on which the liability is founded or after ~~such~~ *the* discovery should have been made by the exercise of reasonable diligence.

(c) ~~In no event may an~~ *An* action *may not* be maintained under this section to enforce any liability founded on fraud or misrepresentation unless it is brought within 5 years after the transaction on which the action is based."

Section 905. Section 30-11-106, MCA, is amended to read:

"30-11-106. Agreement to sell and buy. An agreement to sell and buy is a contract by which ~~one~~ *a person* engages to transfer the title to a certain thing to another, who engages to accept the ~~same~~ *thing* from ~~him~~ *the seller* and to pay a price ~~therefor~~ *for the thing*."

Section 906. Section 30-11-109, MCA, is amended to read:

"30-11-109. ~~Usual~~ *When usual* common-law covenants required by ~~such~~ contracts~~, when~~. An agreement on the part of a seller of real property to give the usual covenants binds ~~him~~ *the seller* to insert in the grant covenants of "seisin", "quiet enjoyment", "further assurance", "general warranty", and "against encumbrances"."

Section 907. Section 30-11-110, MCA, is amended to read:

"30-11-110. Form of covenants. The covenants mentioned in 30-11-109 must be in substance as follows:

"The party of the first part covenants with the party of the second part that the ~~former~~ *party of the first part* is now seized in fee simple of the property granted; that the ~~latter~~ *party of the second part* shall enjoy the ~~same~~ *property* without any lawful disturbance; that the ~~same~~ *property* is free from all encumbrances; that the party of the first part and all persons acquiring any interest in the ~~same~~ *property* through or for ~~him~~ *the party of the first part* will, on demand, execute and deliver to the party of the second part, at the expense of the ~~latter~~ *party of the second part*, any further assurance of the ~~same~~ *property* that may be reasonably required; and that the party of the first part will warrant to the party of the second part all the ~~said~~ property against every person lawfully claiming the ~~same~~ *property*.""

Section 908. Section 30-11-111, MCA, is amended to read:

"30-11-111. Contract for sale of real property. ~~No~~ *An* agreement for the sale of real property or of any interest ~~therein~~ *in real property* is *not* valid unless the ~~same~~ *agreement*, or some note or memorandum ~~thereof~~ *of the agreement*, ~~be~~ *is* in writing and subscribed by the party to be charged or ~~his~~ *the party's* agent ~~thereunto~~ authorized in writing~~;~~. ~~but~~ *However,* this does not abridge the power of any court to compel the specific performance of any agreement for the sale of real property in case of part performance ~~thereof~~ *of the agreement*."

Section 909. Section 30-11-113, MCA, is amended to read:

"30-11-113. Sale equivalent to exchange. The provisions of the sections on sale apply to exchanges. Each party has the rights and obligations of a seller as to the thing ~~which he~~ *that the party* gives and of a buyer as to that which ~~he~~ *the party* takes."

Section 910. Section 30-11-114, MCA, is amended to read:

"30-11-114. Warranty of money. On an exchange of money, each party ~~thereby~~ warrants the genuineness of the money given by ~~him~~ *the party*."

Section 911. Section 30-11-201, MCA, is amended to read:

"30-11-201. When a seller must act as a depositary. After personal property has been sold and until the delivery is completed, the seller has the rights and obligations of a depositary for hire, except that ~~he must~~ *the seller shall* keep the property, without charge, until the buyer has had a reasonable opportunity to remove it."

Section 912. Section 30-11-202, MCA, is amended to read:

"30-11-202. When seller may resell. If a buyer of personal property does not pay for it according to contract and it remains in the possession of the seller after payment is due, the seller may rescind the sale~~,~~ or may enforce ~~his~~ *the seller's* lien for the price~~,~~ in the manner prescribed by the law on liens."

Section 913. Section 30-11-203, MCA, is amended to read:

"30-11-203. Delivery on demand. ~~One~~ *A person* who sells personal property, whether it was in ~~his~~ *the person's* possession at the time of sale or not, ~~must~~ *shall* put it into a condition fit for delivery and deliver it to the buyer within a reasonable time after demand, unless ~~he~~ *the person* has a lien ~~thereon~~ *on the property*."

Section 914. Section 30-11-205, MCA, is amended to read:

"30-11-205. Expense of transportation. ~~One~~ *A person* who sells personal property ~~must~~ *shall* bring it to ~~his~~ *the person's* own door or ~~other~~ *another* convenient place for its acceptance by the buyer, but further transportation is at the risk and expense of the buyer."

Section 915. Section 30-11-206, MCA, is amended to read:

"30-11-206. Notice of election as to delivery. When either party to a contract of sale has an option as to the time, place, or manner of delivery, ~~he must~~ *the party shall* give the other party reasonable notice of ~~his~~ *the party's* choice~~;~~. ~~and if he~~ *If the party* does not give ~~such~~ notice within a reasonable time, ~~his~~ *the* right of option is waived."

Section 916. Section 30-11-207, MCA, is amended to read:

"30-11-207. Transportation. If a seller agrees to send the thing sold to the buyer, ~~he must~~ *the seller shall* follow the directions of the ~~latter~~ *buyer* as to the manner of sending or it will be at ~~his~~ *the seller's* own risk during its transportation. If ~~he~~ *the seller* follows ~~such~~ *the* directions or if, in the absence of special directions, ~~he~~ *the seller* uses ordinary care in forwarding the thing, it is at the risk of the buyer."

Section 917. Section 30-11-211, MCA, is amended to read:

"30-11-211. Warranty of title to personal property. ~~One~~ *A person* who sells or agrees to sell personal property as ~~his~~ *the person's* own ~~thereby~~ warrants that ~~he~~ *the person* has a good and unencumbered title ~~thereto~~ *to the property*."

Section 918. Section 30-11-213, MCA, is amended to read:

"30-11-213. Warranty when seller knows that buyer relies on ~~his~~ *seller's* statements. ~~One~~ *A person* who sells or agrees to sell personal property knowing that the buyer relies upon ~~his~~ *the person's* advice or judgment ~~thereby~~ warrants to the buyer that neither the seller nor any agent employed by ~~him~~ *the seller* in the transaction knows the existence of any fact concerning the thing

sold ~~which~~ *that* would, to ~~his~~ *the seller's* knowledge, destroy the buyer's inducement to buy."

Section 919. Section 30-11-215, MCA, is amended to read:

"30-11-215. Manufacturer's warranty against latent defects. ~~One~~ *A person* who sells or agrees to sell an article of ~~his~~ *the person's* own manufacture ~~thereby~~ warrants ~~it~~ *the article* to be free from any latent defect, not disclosed to the buyer, arising from the process of manufacture and also that ~~neither he nor his~~ *the person or the person's* agent in ~~such~~ *the* manufacture has *not* knowingly used improper materials ~~therein~~ *in the manufacture*."

Section 920. Section 30-11-220, MCA, is amended to read:

"30-11-220. Warranty on sale of written instrument. ~~One~~ *A person* who sells or agrees to sell an instrument purporting to bind anyone to the performance of any act ~~thereby~~ warrants that ~~he has no~~ *the person does not have* knowledge of any facts ~~which~~ *that* tend to prove ~~it~~ *the instrument* worthless, such as the insolvency of any of the parties ~~thereto where~~ *when* that is material, the extinction of its obligations, or its invalidity for any cause."

Section 921. Section 30-11-221, MCA, is amended to read:

"30-11-221. Warranty on sale of goodwill. ~~One~~ *A person* who sells the goodwill of a business ~~thereby~~ warrants that ~~he~~ *the person* will not endeavor to draw off any of the customers."

Section 922. Section 30-11-223, MCA, is amended to read:

"30-11-223. Effect of general warranty. A general warranty does not extend to defects inconsistent ~~therewith~~ *with the warranty* of which the buyer was ~~then~~ aware or ~~which~~ *that* were ~~then~~ easily discernible by ~~him~~ *the buyer* without the exercise of peculiar skill, but ~~it~~ *the warranty* extends to all other defects."

Section 923. Section 30-11-302, MCA, is amended to read:

"30-11-302. Obligation to keep merchandise in full view. Any merchant ~~shall have~~ *has* the right to request any individual on ~~his~~ *the merchant's* premises to place or keep in full view any merchandise ~~such~~ *that the* individual may have removed, or ~~which~~ *that* the merchant has reason to believe ~~he~~ *the individual* may have removed, from its place of display or elsewhere, whether for examination, purchase, or for any other purpose. ~~No~~ *A* merchant ~~shall~~ *may not* be criminally or civilly liable for slander, false arrest, or otherwise on account of having made such a request."

Section 924. Section 30-11-502, MCA, is amended to read:

"30-11-502. Sale by auction. (1) In a sale by auction of goods by lot, each lot is the subject of a separate sale.

(2) A sale by auction is complete when the auctioneer ~~so~~ announces *the sale* by the fall of the hammer or other customary manner. ~~Where~~ *When* a bid is made while the hammer is falling in acceptance of a prior bid, the auctioneer may ~~in his discretion~~ reopen the bidding or declare the goods sold under the bid on which the hammer was falling.

(3) ~~Such a~~ *An auction* sale is with reserve unless the goods are in explicit terms put up without reserve. In an auction with reserve, the auctioneer may withdraw the goods at any time until ~~he~~ *the auctioneer* announces completion of the sale. In an auction without reserve, after the auctioneer calls for bids on an article or lot, that article or lot cannot be withdrawn unless ~~no~~ *a* bid is *not* made within a reasonable time. In either case a bidder may retract ~~his~~ *a* bid until the

auctioneer's announcement of completion of the sale, but a bidder's retraction does not revive any previous bid.

(4) If the auctioneer knowingly receives a bid on the seller's behalf or the seller makes or procures ~~such~~ a bid and notice has not been given that liberty for ~~such~~ *the* bidding is reserved, the buyer may ~~at his option~~ avoid the sale or take the goods at the price of the last good faith bid prior to the completion of the sale. This subsection does not apply to any bid at a forced sale."

Section 925. Section 30-11-503, MCA, is amended to read:

"30-11-503. Sale under written conditions. When a sale by auction is made upon written or printed conditions, those conditions cannot be modified by any oral declaration of the auctioneer except those for ~~his~~ *the auctioneer's* own protection."

Section 926. Section 30-11-504, MCA, is amended to read:

"30-11-504. Auctioneer's memorandum of sale. When property is sold by auction, an entry made by the auctioneer in ~~his~~ *the* sale book at the time of the sale specifying the name of the person for whom ~~he~~ *the auctioneer* sells, the thing sold, the price, the terms of sale, and the name of the buyer binds both the parties in the same manner as if made by ~~themselves~~ *the parties*."

Section 927. Section 30-11-508, MCA, is amended to read:

"30-11-508. Auctioneer — authority and bond. ~~Any~~ *A* citizen of this state may become an auctioneer and be authorized to sell real or personal property at public auction in any county in this state after giving a bond in accordance with the provisions of this part for the faithful performance of ~~his~~ *the citizen's* duties."

Section 928. Section 30-11-510, MCA, is amended to read:

"30-11-510. Bond and sureties — approval — filing. (1) Bond must be payable to the state, with one or more sureties, in the sum of $5,000 and approved by the county clerk of the county in which the auctioneer resides and filed in ~~his~~ *the clerk's* office.

(2) If the auctioneer is not a resident, the bond ~~shall~~ *must* be filed with the county clerk of the county of this state in which ~~he~~ *the auctioneer* carries on ~~his~~ *the auctioneer's* principal auction business."

Section 929. Section 30-11-511, MCA, is amended to read:

"30-11-511. Auctioneers ex officio. (1) In any county without an auctioneer, the sheriff or a constable ~~thereof~~ is ex officio auctioneer and is permitted to sell any property at public auction.

(2) ~~He~~ *The sheriff or constable* is liable on ~~his~~ *the sheriff's or constable's* official bond for any delinquency as the ex officio auctioneer."

Section 930. Section 30-11-512, MCA, is amended to read:

"30-11-512. Assistant — who may act and when. (1) An auctioneer, in the event of inability to attend an auction by reason of sickness, the performance of a duty imposed ~~upon him~~ by law, or during a temporary absence from the city or county within which ~~he~~ *the individual* is auctioneer, may employ an agent or employee to hold the auction in ~~his~~ *the auctioneer's* name and behalf.

(2) The employee shall file with the county clerk of the county an affidavit swearing to faithfully perform the duties of auctioneer.

(3) An auctioneer may employ a crier at any sale, for whose acts ~~he shall be~~ *the auctioneer is* responsible."

Section 931. Section 30-11-513, MCA, is amended to read:

"30-11-513. Auctioneers to designate one place of business — partners. (1) An auctioneer shall designate in writing with the county clerk one place at which ~~he~~ *the auctioneer* will conduct auctions within any city.

(2) ~~He~~ *The auctioneer* shall designate in the same document ~~his~~ *any* partners~~, if any,~~ in the business.

(3) ~~He~~ *The auctioneer* may not offer goods for sale at a place other than that designated unless the goods are in their original packages, are bulky and usually sold in warehouses, or are usually sold on public streets."

Section 932. Section 30-11-514, MCA, is amended to read:

"30-11-514. Penalty. A person convicted of violating a provision of this part shall be fined no more than $500 or imprisoned in the county jail for a term not to exceed 6 months, or both. In addition ~~he~~ *the person* shall be liable for damages incurred by any aggrieved party by reason of ~~such~~ *the* violation."

Section 933. Section 30-11-601, MCA, is amended to read:

"30-11-601. Factor defined. A factor is an agent who, in the pursuit of an independent calling, is employed by another *person* to sell property for ~~him~~ *that person* and is vested by the ~~latter~~ *person* with the possession or control of the property or authorized to receive payment ~~therefor~~ *for the property* from the purchaser."

Section 934. Section 30-11-602, MCA, is amended to read:

"30-11-602. Obedience required from factor. A factor ~~must~~ *shall* obey the instructions of ~~his~~ *the factor's* principal to the same extent as any other employee, notwithstanding any advances ~~he~~ *the factor* may have made to ~~his~~ *the* principal upon the property consigned to ~~him~~ *the factor*, except that if the principal forbids ~~him~~ *the factor* to sell at the market price, ~~he~~ *the factor* may, nevertheless, sell for ~~his~~ *the factor's* reimbursement, after giving to ~~his~~ *the* principal reasonable notice of ~~his~~ *the factor's* intention to do so and of the time and place of sale, and proceeding in all respects as a pledgee."

Section 935. Section 30-11-603, MCA, is amended to read:

"30-11-603. Sales on credit. A factor may sell property consigned to ~~him~~ *the factor* on ~~such~~ credit ~~as~~ *that* is usual but, having once agreed with the purchaser upon the terms of credit, may not extend ~~it~~ *the terms*."

Section 936. Section 30-11-604, MCA, is amended to read:

"30-11-604. Liability of factor under guaranty commission. A factor who charges ~~his~~ *the* principal with a guaranty commission upon a sale ~~thereby~~ assumes absolutely to pay the price when it falls due as if it were a debt of ~~his~~ *the factor's* own and not as a mere guarantor for the purchaser. ~~He~~ *The factor* does not ~~thereby~~ assume any additional responsibility for the safety of ~~his~~ *the* remittance of the proceeds."

Section 937. Section 30-11-605, MCA, is amended to read:

"30-11-605. Principal's consent needed to relieve factor from liability. A factor who receives property for sale under a general agreement or usage to guarantee the sales or the remittance of the proceeds cannot ~~relieve himself~~ *be relieved* from responsibility ~~therefor~~ *from the sale or remittance* without the consent of ~~his~~ *the factor's* principal."

Section 938. Section 30-11-606, MCA, is amended to read:

"30-11-606. Authority of factor. In addition to the authority of agents in general, a factor has actual authority for ~~his~~ *the* principal, unless specially restricted, to:

(1) insure property consigned to ~~him~~ *the factor* uninsured;

(2) sell on credit anything entrusted to ~~him~~ *the factor* for sale, except ~~such~~ things ~~as~~ *that* it is contrary to usage to sell on credit, but not to pledge, mortgage, or barter the ~~same~~ *things*; and

(3) delegate ~~his~~ *the factor's* authority to ~~his~~ *the factor's* partner or servant but not to any person in an independent employment."

Section 939. Section 30-11-607, MCA, is amended to read:

"30-11-607. Ostensible authority. A factor has ostensible authority to deal with the property of ~~his~~ *the* principal as ~~his~~ *the factor's* own in transactions with persons not having notice of the actual ownership."

Section 940. Section 30-11-703, MCA, is amended to read:

"30-11-703. Excepted inventory. The following inventory is not subject to the repurchase requirements of 30-11-702:

(1) any repair part that has a limited storage life or is otherwise subject to deterioration, such as rubber items, gaskets, or wet-charge batteries;

(2) any repair part that is in a broken or damaged package;

(3) any single repair part that is priced as a set of two or more items;

(4) any repair part that because of its condition is not resalable as a new part without repackaging or reconditioning;

(5) any inventory for which the retailer is unable to furnish evidence satisfactory to the wholesaler, manufacturer, or distributor of title, free and clear of all claims, liens, and encumbrances;

(6) any inventory the retailer desires to keep, if ~~he~~ *the retailer* has a contractual right to do so;

(7) any inventory item other than a repair part that is not in essentially new, unused, undamaged, and complete condition;

(8) any repair part that is not in new, unused, or undamaged condition;

(9) any inventory item, other than a repair part, that has been stocked for 36 months or more prior to notice of termination of the contract;

(10) any inventory that was ordered by the retailer after the date of notification of termination of the contract; and

(11) any inventory that was acquired from any source other than the wholesaler, manufacturer, or distributor."

Section 941. Section 30-11-713, MCA, is amended to read:

"30-11-713. Remedy as supplemental. (1) The provisions of this part are supplemental to any agreement between:

(a) the retailer and wholesaler, manufacturer, or distributor governing the inventory; or

(b) the wholesaler and manufacturer or distributor governing the inventory.

(2) The retailer or wholesaler may elect to pursue either ~~his~~ contract remedies or the remedy provided in 30-11-702. An election to pursue ~~his~~ contract remedies does not bar the retailer's or wholesaler's right to the remedy provided in 30-11-702 ~~as~~ *with regard* to any inventory not covered by contract."

Section 942. Section 30-11-806, MCA, is amended to read:

"30-11-806. Procedure to determine right to succeed. (1) A designated family member or designated successor who receives notice of the grantor's refusal to honor ~~his~~ *the family member's or successor's* succession to the ownership and operation of the dealership may, within the 60-day period provided for in 30-11-805, file with the department a verified complaint for a hearing and determination by the department on whether good cause exists for refusal and discontinuance.

(2) The grantor shall establish good cause for refusal to honor the succession to ownership.

(3) The franchise agreement must continue in effect until the final determination of the issues raised in the complaint.

(4) If the grantor prevails, the department shall include in its order approving the termination of the franchise agreement reasonable conditions affording the complainant an opportunity to receive fair and reasonable compensation for the value of the dealership.

(5) Any decision by the department may be reviewed pursuant to Title 2, chapter 4, part 7."

Section 943. Section 30-11-807, MCA, is amended to read:

"30-11-807. Written designation of succession unaffected. Sections 30-11-804 through 30-11-809 do not preclude a dealer from designating any person as ~~his~~ *the dealer's* successor by written instrument filed with the grantor."

Section 944. Section 30-12-202, MCA, is amended to read:

"30-12-202. Specific powers and duties of department — rules. (1) The department shall adopt from time to time reasonable rules for the enforcement of parts 1 through 5, ~~which~~ *and the* rules have the effect of law. These rules may include:

(a) schedules of fees for testing and certification;

(b) standards of net weight, measure, or count and reasonable standards of fill for any commodity in package form;

(c) rules governing the technical and reporting procedures to be followed and the report and record forms and marks of approval and rejection to be used by the department in the discharge of its official duties;

(d) exemptions from the sealing or marking requirements of 30-12-209 with respect to weights and measures of a character or size that sealing or marking would be inappropriate, impracticable, or damaging to the apparatus involved; and

(e) rules governing the voluntary registration of ~~servicemen~~ *service providers* and service agencies.

(2) ~~These~~ *The* rules ~~shall~~ *described in subsection (1) must* include specifications, tolerances, and other technical requirements for weights and measures subject to inspection and testing under 30-12-205, designed to eliminate from use, without prejudice to apparatus that conforms as closely as practicable to the official standards, those:

(a) that are not accurate;

(b) that are not reasonably permanent in their adjustment or will not repeat their indications correctly; or

(c) that facilitate the perpetration of fraud.

(3) The specifications, tolerances, and other technical requirements for commercial weighing and measuring devices, together with amendments ~~thereto~~ *to the specifications*, as recommended by the national institute of standards and technology and published in national institute of standards and technology Handbook 44 and supplements ~~thereto,~~ *to that handbook* or in any publication revising or superseding Handbook 44, are the specifications, tolerances, and other technical requirements for commercial weighing and measuring devices of this state, except ~~insofar~~ as specifically modified, amended, or rejected by a rule issued by the department.

(4) An apparatus is considered to be "correct" when it conforms to all applicable requirements adopted as specified in this section. Other apparatus are considered to be "incorrect"."

Section 945. Section 30-12-205, MCA, is amended to read:

"30-12-205. General testing. (1) When not otherwise provided by law, the department may inspect and test ~~to ascertain if they are correct~~ all weights and measures kept, offered, or exposed for sale *to determine if they are correct*.

(2) The department, within a 12-month period or less frequently if in accordance with a schedule issued by it, and as often as it considers necessary, shall inspect and test, to ascertain if they are correct, all weights and measures commercially used:

(a) in determining the weight, measurement, or count of commodities or things sold or offered or exposed for sale on the basis of weight, measure, or ~~of~~ count; or

(b) in computing the basic charge or payment for services rendered on the basis of weight, measure, or ~~of~~ count.

(3) With respect to single-service devices designed to be used commercially only once and to be then discarded and with respect to devices uniformly mass-produced, as by means of a mold or die, and not susceptible of individual adjustment, tests may be made on representative samples of the devices. The lots of which the samples are representative ~~shall~~ *must* be held to be correct or incorrect upon the basis of the results of the inspections and tests on the samples.

(4) An itinerant peddler or hawker using weights and measures shall register ~~his~~ *the peddler's or hawker's* name and address with the department~~, in order~~ *so* that ~~his~~ *the peddler's or hawker's* equipment can be tested in accordance with the provisions of this law."

Section 946. Section 30-12-211, MCA, is amended to read:

"30-12-211. Duty of owners of incorrect apparatus. (1) Weights and measures that have been rejected under the authority of the department ~~shall~~ remain subject to the control of the department until suitable repair or disposition of them has been made as required by this section.

(2) The owner of rejected weights and measures shall correct them within 30 days or a longer period ~~as~~ *that* may be authorized by the department.

(3) ~~In place of this~~ *Instead of correction*, the owner may dispose of ~~them~~ *the weights and measures*, but only in a manner specifically authorized by the department.

(4) Weights and measures that have been rejected may not again be used commercially until they have been officially reexamined and found to be correct,

~~or~~ until specific written permission for that use is issued by the department, or until the rejection tag has been removed and the rejected device *has been* repaired and placed in service by a person properly registered to perform those acts under a rule issued by the department for the registration of weights and measures ~~servicemen~~ *service providers* and service agencies."

Section 947. Section 30-12-406, MCA, is amended to read:

"30-12-406. Bulk deliveries sold in terms of weight and delivered by vehicle. (1) When a vehicle delivers to an individual purchaser a commodity in bulk and the commodity is sold in terms of weight units, the delivery ~~shall~~ *must* be accompanied by a duplicate delivery ticket with the following information clearly stated in ink or by means of other indelible marking equipment and in clarity equal to type or printing:

(a) the name and address of the vendor;

(b) the name and address of the purchaser; and

(c) the net weight of the delivery expressed in pounds.

(2) If the net weight is derived from determinations of gross and tare weights, the gross and tare weights *must* also ~~shall~~ be stated in terms of pounds. One of these tickets ~~shall~~ *must* be retained by the vendor, and the other ~~shall~~ *must* be delivered to the purchaser at the time of delivery of the commodity or ~~shall~~ *must* be surrendered on demand to the department. If the department desires to retain it as evidence, it shall issue a weight slip in place of the ticket for delivery to the purchaser. If the purchaser ~~himself~~ carries away ~~his~~ *the* purchase, the vendor ~~shall be~~ *is only* required ~~only~~ to give to the purchaser at the time of sale a delivery ticket stating the number of pounds of commodity delivered to ~~him~~ *the purchaser*."

Section 948. Section 30-12-504, MCA, is amended to read:

"30-12-504. Offenses and penalties. (1) A person may not:

(a) use or possess for the purpose of using for a commercial purpose specified in 30-12-205, sell, offer or expose for sale or hire, or possess for the purpose of selling or hiring an incorrect weight or measure or any device or instrument used to or calculated to falsify any weight or measure;

(b) use or possess for the purpose of current use for a commercial purpose specified in 30-12-205 a weight or measure that does not bear a seal or mark specified in 30-12-209~~,~~ unless that weight or measure has been exempted from testing by 30-12-205 or by a rule of the department issued under 30-12-202 or unless the device has been placed in service as provided by a rule of the department issued under 30-12-202. A person using weighing or measuring devices subject to parts 1 through 5 ~~must~~ *shall* report to the department, in writing, the number and location of the weighing or measuring device and ~~must~~ *shall* promptly report the installation of any new weighing or measuring device.

(c) dispose of a rejected or condemned weight or measure in a manner contrary to law or rule;

(d) remove from a weight or measure, contrary to law or rule, any tag, seal, or mark placed on it by the appropriate authority;

(e) sell or offer or expose for sale less than the quantity ~~he~~ *the person* represents of a commodity, thing, or service;

(f) take more than the quantity ~~he~~ *the person* represents of a commodity, thing, or service when, as buyer, ~~he~~ *the person* furnishes the weight or measure by means of which the amount of the commodity, thing, or service is determined;

(g) keep for the purpose of sale, advertise or offer or expose for sale, or sell a commodity, thing, or service in a condition or manner contrary to law or rule;

(h) use in retail trade, except in the preparation of packages put up in advance of sale and of medical prescriptions, a weight or measure that is not so positioned that its indications may be accurately read and the weighing or measuring operation observed from some position ~~which~~ *that* may reasonably be assumed by a customer;

(i) violate a provision of parts 1 through 5 or of the rules adopted under parts 1 through 5 for which a specific penalty is not prescribed.

(2) A person who violates~~,~~ or who knowingly allows an employee or agent to violate~~,~~ this section is guilty of a misdemeanor and upon a first conviction shall be fined not less than $20 or more than $200 or imprisoned for not more than 3 months or both fined and imprisoned. Upon a second or subsequent conviction, ~~he~~ *the person* shall be fined not less than $50 or more than $500 or imprisoned for not more than 1 year or both fined and imprisoned."

Section 949. Section 30-13-131, MCA, is amended to read:

"30-13-131. Product of the mind — ownership. The author of any product of the mind, whether it is an invention, a composition in letters or art, or a design, with or without delineation or other graphical representation, has an exclusive ownership ~~therein~~ *of the product* and in the representation or expression ~~thereof which~~ *of the product that* continues ~~so~~ *as* long as the product and the representations or expressions ~~thereof~~ *of the product* made by ~~him~~ *the author* remain in ~~his~~ *the author's* possession."

Section 950. Section 30-13-133, MCA, is amended to read:

"30-13-133. Transfer. The owner of any product of the mind or of any representation or expression ~~thereof~~ *of a product of the mind* may transfer ~~his~~ *the owner's* interest in the ~~same~~ *product*."

Section 951. Section 30-13-135, MCA, is amended to read:

"30-13-135. Subsequent inventor or author. If the owner of a product of the mind does not make ~~it~~ *the product* public, any other person subsequently and originally producing the same thing has the same right ~~therein~~ *in the product* as the prior author, which is exclusive to the same extent against all persons except the prior author or those claiming under ~~him~~ *the prior author*."

Section 952. Section 30-13-216, MCA, is amended to read:

"30-13-216. Evidentiary effect of certificates and documents of secretary of state. All certificates issued by the secretary of state in accordance with the provisions of this part and all copies of documents filed in ~~his~~ *the secretary of state's* office in accordance with the provisions of this part when certified by ~~him shall~~ *the secretary of state must* be taken and received in all courts, public offices, and official bodies as prima facie evidence of the facts stated ~~therein~~ *in the certificate or document*."

Section 953. Section 30-13-218, MCA, is amended to read:

"30-13-218. Execution constituting affirmation — penalty — warning. (1) The execution of any document required to be filed with the secretary of state under this part constitutes an affirmation, under the penalties of false swearing, by each person executing the document that the facts stated ~~therein~~ *in the document* are true.

(2) The secretary of state shall provide for the printing of a warning to this effect on each form prescribed by ~~him~~ *the secretary of state* under this part."

Section 954. Section 30-14-112, MCA, is amended to read:

"30-14-112. Assurance of compliance. In the administration of this part, the department may accept an assurance of voluntary compliance with respect to any method, act, or practice considered to be ~~violative~~ *in violation* of this part from any person who has engaged or was about to engage in any ~~such~~ method, act, or practice. Any ~~such~~ assurance ~~shall~~ *must* be in writing and be filed with and subject to the approval of the district court of the county in which the alleged violator resides or has ~~his~~ *a* principal place of business or the district court of Lewis and Clark County. Assurance of voluntary compliance is not an admission of violation for any purpose. Matters ~~thus~~ closed may at any time be reopened by the department for further proceedings in the public interest, pursuant to 30-14-111."

Section 955. Section 30-14-113, MCA, is amended to read:

"30-14-113. Investigative demand. (1) When it appears to the department that the person has engaged in, is engaging in, or is about to engage in any act or practice declared to be unlawful by this part or when the department believes it to be in the public interest that an investigation should be made to ascertain whether a person in fact has engaged in, is engaging in, or is about to engage in any act or practice declared to be unlawful by this part, the department may execute in writing and cause to be served upon any person who is believed to have information, documentary material, or physical evidence relevant to the alleged or suspected violation an investigative demand. ~~requiring~~

The demand requires ~~such~~ *the* person to furnish, under oath or otherwise, a report in writing setting forth the relevant facts and circumstances of which ~~he~~ *the person* has knowledge or to appear and testify or *to* produce relevant documentary material or physical evidence for examination, at ~~such~~ *a* reasonable time and place as may be stated in the investigative demand, concerning the advertisement, sale, or offering for sale of any goods or services or the conduct of any trade or commerce that is the subject matter of the investigation.

(2) At any time before the return date specified in an investigative demand or within 20 days after the demand has been served, whichever period is shorter, a petition to extend the return date or to modify or set aside the demand, stating good cause, may be filed in the district court of the county in which the person served with the demand resides or has ~~his~~ *a* principal place of business or in the district court of Lewis and Clark County."

Section 956. Section 30-14-114, MCA, is amended to read:

"30-14-114. Department authority. To accomplish the objectives and to carry out the duties prescribed by this part, the department, in addition to other powers conferred upon it by this part, may issue subpoenas to any person, administer an oath or affirmation to any person, conduct hearings in aid of any investigation or inquiry, prescribe forms, and ~~promulgate~~ *adopt* rules as may be necessary~~, which rules shall~~ *that* have the force of law~~;~~. ~~provided that none of~~ *However,* the powers conferred by this part may *not* be used for the purpose of compelling any natural person to furnish testimony or evidence ~~which~~ *that* might tend to incriminate ~~him~~ *the person* or subject ~~him~~ *the person* to a penalty or forfeiture. Information obtained pursuant to the powers conferred by this part ~~shall~~ *may* not be made public or disclosed by the department or its employees beyond the extent necessary for law enforcement purposes in the public interest."

Section 957. Section 30-14-132, MCA, is amended to read:

"30-14-132. Powers of receiver — proof of damages — jurisdiction. (1) When a receiver is appointed by the court pursuant to this part, ~~he~~ *the receiver* has the power to sue for, collect, receive, and take into ~~his~~ possession all goods and chattels, rights and credits, moneys and effects, lands and tenements, books, records, documents, papers, choses in action, bills, notes, and property of every description derived by means of any practice declared to be illegal and prohibited by this part, including property with which ~~such~~ *the* property has been mingled if it cannot be identified in kind because of ~~such~~ *the* commingling, and to sell, convey, and assign the same and hold and dispose of the proceeds ~~thereof~~ *of the property* under the direction of the court.

(2) Any person who has suffered damages as a result of the use or employment of any unlawful practice and submits proof to the satisfaction of the court that ~~he~~ *the person* has in fact been damaged may participate with general creditors in the distribution of the assets to the extent ~~he~~ *the person* has sustained out-of-pocket losses.

(3) In the case of a partnership or business entity, the receiver shall settle the estate and distribute the assets under the direction of the court.

(4) The court has jurisdiction of all questions arising in the proceedings and may make orders and judgments as may be required."

Section 958. Section 30-14-203, MCA, is amended to read:

"30-14-203. Persons responsible. Any person who, either as director, officer, or agent of any business or as agent of any person, assists or aids, directly or indirectly, in a violation of this part is responsible ~~therefor~~ *for the violation* equally with the person or business for whom or *for* which ~~he~~ *the person* acts."

Section 959. Section 30-14-204, MCA, is amended to read:

"30-14-204. Proof of intent. In an injunction proceeding or in the prosecution of a person acting as an officer, director, or agent, it is sufficient to allege and prove the unlawful intent of the person or business for whom or *for* which ~~he~~ *the person* acts."

Section 960. Section 30-14-213, MCA, is amended to read:

"30-14-213. Sales excepted. Sections 30-14-209, 30-14-210, and 30-14-212 do not apply to any sale made:

(1) in closing out in good faith the owner's stock or any part ~~thereof~~ *of the stock* for the purpose of discontinuing ~~his~~ *the owner's* trade in any article of commerce;

(2) of seasonal goods;

(3) in good faith of perishable goods to prevent loss to the vendor by spoilage or depreciation, provided notice is given to the public ~~thereof~~;

(4) when the goods are damaged or deteriorated in quality and notice is given to the public ~~thereof~~;

(5) by an officer acting under the orders of any court;

(6) in a good faith endeavor to meet the legal prices of a competitor selling the same article of commerce in the same locality or trade area; or

(7) to the state of Montana or any of its institutions."

Section 961. Section 30-14-221, MCA, is amended to read:

"30-14-221. Investigations. (1) The department, for the purpose of conducting hearings and investigations ~~which~~ *that* in the opinion of the department are necessary and proper for the exercise of the powers vested in ~~it~~ *the department* by this part, shall at all reasonable times have access to any evidence concerning a person being investigated or proceeded against that relates to any matter under investigation or in question and the right to copy ~~such~~ *the* evidence. The department may issue subpoenas requiring the attendance and testimony of witnesses and the production of any evidence that relates to any matter under investigation or in question before the department or before its duly authorized agent conducting the investigation. An agent, duly authorized by the department for those purposes, may administer oaths and affirmations, examine witnesses, and receive evidence. The attendance of witnesses and the production of evidence may be required from any place in this state at any designated place of hearing.

(2) Upon application by the department in a case of ~~contumacy or~~ refusal to obey a subpoena issued to a person, a district court of this state, within the district where the inquiry is carried on or where a person guilty of ~~contumacy or~~ refusal to obey is found, resides, or transacts business, has jurisdiction to issue to that person an order requiring ~~him~~ *the person* to appear before the department or its duly authorized agent and to produce evidence if so ordered or to give testimony regarding the matter under investigation. Failure to obey the order of the court may be punished by the court as a contempt.

(3) A person may not be excused from attending and testifying or from producing books, records, correspondence, documents, or other evidence in obedience to the subpoena of the department on the ground that the testimony or evidence required of ~~him~~ *the person* may tend to incriminate ~~him~~ *the person* or subject ~~him~~ *the person* to a penalty or forfeiture~~;~~. ~~but no~~ *However,* compelled testimony or evidence or any information directly or indirectly derived from ~~such~~ testimony or evidence may *not* be used against the witness in any criminal prosecution. ~~Nothing in this~~ *This* section ~~prohibits~~ *does not prohibit* the department from granting immunity from prosecution for or on account of any transaction, matter, or thing concerning which a witness is compelled to testify if the department determines, in its sole discretion, that the ends of justice would be served ~~thereby~~ *by granting immunity*. Immunity may not extend to prosecution or punishment for false statements given pursuant to the subpoena."

Section 962. Section 30-14-303, MCA, is amended to read:

"30-14-303. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Blind bidding" means bidding, negotiating, offering terms, making an invitation to bid, or agreeing to terms for the purpose of entering into a license agreement prior to a trade screening of the motion picture that is the subject of the agreement.

(2) "Distributor" means any person engaged in the business of renting, selling, or licensing motion pictures to exhibitors.

(3) "Exhibitor" means any person engaged in the business of operating a theater in this state.

(4) "License agreement" means any contract between a distributor and an exhibitor for the exhibition of a motion picture by the exhibitor in this state.

(5) "Market area" means either a city in Montana or a city in any of the 11 western states that prohibits blind bidding.

(6) "Theater" means any establishment in which motion pictures are exhibited regularly to the public for a charge.

(7) "Trade screening" means the showing of a motion picture by a distributor in the market area. ~~Such~~ *The* showing ~~shall~~ *must* be open to any exhibitor interested in exhibiting the motion picture, and ~~such~~ *the* exhibitor or ~~his~~ *the exhibitor's* buying agency ~~will~~ *must* be notified of ~~such~~ *the* trade screening."

Section 963. Section 30-14-402, MCA, is amended to read:

"30-14-402. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Improper means" includes theft, bribery, misrepresentation, breach or inducement of a breach of a duty to maintain secrecy, or espionage through electronic or other means.

(2) "Misappropriation" means:

(a) acquisition of a trade secret of another by a person who knows or has reason to know that the trade secret was acquired by improper means; or

(b) disclosure or use of a trade secret of another without express or implied consent by a person who:

(i) used improper means to acquire knowledge of the trade secret;

(ii) at the time of disclosure or use, knew or had reason to know that ~~his~~ *the person's* knowledge of the trade secret was:

(A) derived from or through a person who had ~~utilized~~ *used* improper means to acquire it;

(B) acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or

(C) derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use; or

(iii) before a material change of ~~his~~ *the person's* position, knew or had reason to know that it was a trade secret and that knowledge of it had been acquired by accident or mistake.

(3) "Person" means a natural person, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or any other legal or commercial entity.

(4) "Trade secret" means information or computer software, including a formula, pattern, compilation, program, device, method, technique, or process, that:

(a) derives independent economic value, actual or potential, from not being generally known to~~,~~ and not being readily ascertainable by proper means by~~,~~ other persons who can obtain economic value from its disclosure or use; and

(b) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy."

Section 964. Section 30-14-504, MCA, is amended to read:

"30-14-504. Buyer's right to cancel — time allowed — notice — return of goods. (1) Except as provided in subsection (5), in addition to any right otherwise to revoke an offer, the buyer or any other person obligated for any part of the purchase price may cancel a personal solicitation sale until midnight of the third business day after the day on which the buyer has signed an agreement or offer to purchase relating to ~~such~~ *the* sale, provided that in the

case of a personal solicitation sale made by telephone, the buyer may cancel at any time prior to ~~his~~ *the buyer's* signing of an agreement or offer to purchase relating to ~~such~~ *the* sale.

(2) Cancellation occurs when written notice of cancellation is given to the seller.

(3) Notice of cancellation, if given by mail, is considered given when deposited in a mailbox properly addressed and postage prepaid.

(4) Notice of cancellation need not take the form prescribed and ~~shall be~~ *is* sufficient if it indicates the intention of the buyer not to be bound.

(5) A personal solicitation sale may not be canceled if, in the case of goods, the goods cannot be returned to the seller in substantially the same condition as when received by the buyer."

Section 965. Section 30-14-505, MCA, is amended to read:

"30-14-505. Notice of right to cancel. (1) The seller shall furnish the buyer a notice ~~which~~ *that* contains the statement set forth in subsection (1)(a) or a statement as prescribed by federal trade commission rule governing door-to-door sales and printed in capital and lowercase letters of not less than 10-point boldfaced type with the seller's name and business address and the statement set forth in subsection (1)(b):

(a) YOU MAY CANCEL THIS SALE WITHIN THREE BUSINESS DAYS.

If you decide within 3 days that you want to cancel the sale, tear off and mail the bottom of this card. To cancel, the card must be mailed BY CERTIFIED MAIL within 3 days after you sign the contract.

(date)

(b) CONTRACT CANCELED

I hereby cancel this sale.

(Buyer's signature)

(2) Until the seller has complied with this section, the buyer or any other person obligated for any part of the purchase price may cancel the personal solicitation sale by notifying the seller in any manner and by any means of ~~his~~ *the* intention to cancel~~;~~. ~~provided, however~~ *However*, ~~that~~ failure to mail the cancellation by certified mail does not nullify the cancellation as long as the cancellation is mailed within the prescribed time period. The period prescribed by 30-14-504 ~~shall begin~~ *begins* to run from the time the seller complies with this section."

Section 966. Section 30-14-507, MCA, is amended to read:

"30-14-507. Redelivery of goods. (1) Except as provided by 30-14-506(4), within a reasonable time after a personal solicitation sale has been canceled or an offer to purchase revoked, the buyer upon demand shall tender to the seller any goods delivered by the seller pursuant to the sale but need not tender at any place other than ~~his~~ *the buyer's* residence. If the seller fails to demand possession of ~~such~~ *the* goods within a reasonable time after cancellation or revocation, the goods ~~shall~~ become the property of the buyer without obligation to pay for them. For the purpose of this section, 40 days ~~shall be~~ *is* presumed to be a reasonable time.

(2) The buyer shall take reasonable care of the goods in ~~his~~ *the buyer's* possession both before cancellation or revocation and for a reasonable time ~~thereafter~~ *after cancellation or revocation*, during which time the goods are

otherwise at the seller's risk, and ~~such~~ *the* goods must be returned in substantially the same condition as received."

Section 967. Section 30-14-1112, MCA, is amended to read:

"30-14-1112. Limitations on remedies. (1) A consumer may not bring an action under 30-14-1111 after the date on which ~~his~~ *the consumer's* obligations in connection with the agreement are scheduled to be finally performed.

(2) ~~No~~ *A* seller, lessor, or lender is *not* liable under 30-14-1111 if a good faith attempt is made to comply with requirements of 30-14-1103.

(3) Noncompliance with the requirements of 30-14-1103 does not make a consumer transaction void or voidable if it is otherwise legal, nor may a consumer raise noncompliance as a defense to an obligation to perform in connection with the transaction.

(4) In a class action brought under 30-14-1111, the seller, lessor, or lender is liable under 30-14-1111 for not more than $10,000 plus actual damages.

(5) In any individual transaction, if there is more than one consumer who is party to a single-consumer contract, only one award of statutory damages may be made for that transaction.

(6) ~~No~~ *A* consumer may *not* bring an action under this part on a contract if the consumer was represented at the signing of the contract by an attorney.

(7) Punitive damages may not be assessed in an action brought under this part."

Section 968. Section 31-1-101, MCA, is amended to read:

"31-1-101. Loan of money — what constitutes. A loan of money is a contract by which ~~one~~ *a person* delivers a sum of money to another *person* and the ~~latter~~ *other person* agrees to return at a future time a sum equivalent to that which ~~he~~ *the other person* borrowed. A loan for mere use is governed by the law on loan for use."

Section 969. Section 31-1-108, MCA, is amended to read:

"31-1-108. Penalty for usury — action to recover excessive interest. (1) The taking, receiving, reserving, or charging a rate of interest greater than is allowed by 31-1-107 ~~shall~~ *must* be ~~deemed~~ *considered* a forfeiture of a sum double the amount of interest ~~which~~ *that* the note, bill, or other evidence of debt carries or ~~which~~ *that* has been agreed to be paid ~~thereon~~ *on the note, bill, or other evidence of debt*.

(2) When a greater rate of interest has been paid, the person by whom it has been paid, ~~his~~ *the person's* heirs, assigns, executors, or administrators may recover from the person, firm, or corporation taking, receiving, reserving, or charging ~~same~~ *interest* a sum double the amount of interest ~~so~~ paid, provided that ~~such~~ *the* action ~~shall~~ *must* be brought within 2 years after the payment of ~~said~~ *the* interest, and provided that, before any suit may be brought to recover ~~such~~ *the* usurious interest, the party bringing suit ~~must make~~ *makes* written demand for return of ~~said~~ *the* interest ~~so~~ paid."

Section 970. Section 31-1-212, MCA, is amended to read:

"31-1-212. Investigations and complaints. (1) The department may make those investigations it considers necessary, and to the extent necessary for this purpose, it may examine a licensee or any other person and may compel the production of relevant books, records, accounts, and documents.

(2) A retail buyer having reason to believe that this part relating to ~~his~~ *the buyer's* retail installment contract has been violated may file with the department a written complaint setting forth the details of the alleged violation, and the department, upon receipt of the complaint, may inspect the pertinent books, records, letters, and contracts of the licensee and retail seller involved."

Section 971. Section 31-1-222, MCA, is amended to read:

"31-1-222. Denial, suspension, or revocation of licenses. (1) Renewal of a license originally granted under 31-1-221 may be denied or a license may be suspended or revoked by the department on the following grounds:

(a) material misstatement of fact in the application for license;

(b) willful failure to comply with any provision of this part relating to retail installment contracts;

(c) defrauding any retail buyer to the buyer's damage;

(d) fraudulent misrepresentation, circumvention, or concealment by the licensee through subterfuge or device of any of the material particulars or the nature ~~thereof~~ *of those particulars* required to be stated or furnished to the retail buyer under this part.

(2) If a licensee is a partnership, association, or corporation, it is sufficient cause for the suspension or revocation of a license that any officer, director, or trustee of a licensed association or corporation or any member of a licensed partnership has acted or failed to act so as to provide cause for suspending or revoking a license to that party as an individual. Each licensee is responsible for the acts of ~~his~~ *the licensee's* employees while acting as ~~his~~ *the licensee's* agent~~,~~ if the licensee after actual knowledge of the acts retained the benefits, proceeds, profits, or advantage accruing from the acts or otherwise ratified the acts.

(3) (a) A license may not be denied, suspended, or revoked except after hearing. The department shall give the licensee at least 10 days' written notice, in the form of an order to show cause, of the time and place of the hearing by certified mail addressed to the licensee's principal place of business in this state. The notice ~~shall~~ *must* contain the grounds of complaint against the licensee.

(b) An order suspending or revoking a license ~~shall~~ *must* recite the grounds upon which it is based. The order ~~shall~~ *must* be entered upon the records of the department and is not effective until 30 days after written notice has been forwarded by certified mail to the licensee at ~~his~~ *the licensee's* principal place of business.

(c) ~~No~~ *A* revocation, suspension, or surrender of a license ~~impairs~~ *does not impair* or ~~affects~~ *affect* the obligation of a lawful retail installment contract acquired previously by the licensee."

Section 972. Section 31-1-231, MCA, is amended to read:

"31-1-231. Requirements of retail installment contracts. (1) Each retail installment contract ~~shall~~ *must* be in writing, signed by both the buyer and the seller, and completed as to all essential provisions prior to the signing of the contract by the buyer. However, if a retail installment transaction is a sale of goods other than a motor vehicle where ~~no~~ title, lien, or other security interest is *not* retained or taken by the seller, then the retail installment contract ~~need~~ *is* not *required to* be contained in a single document. In ~~such~~ *that* case, if the contract is contained in more than one document, then one ~~such~~ document may be an original document executed by the retail buyer applicable to purchases of goods or services to be made by the retail buyer from time to time, and in ~~such~~ *that* case ~~such~~ *the* document, together with the sales slip, account book, or

other written statement relating to each purchase, ~~shall~~ *must* set forth all of the information required by this section and ~~shall constitute~~ *constitutes* the retail installment contract for each ~~such~~ purchase.

(2) The printed portion of the contract, other than instructions for completion, ~~shall~~ *must* be in at least 8-point type. The contract ~~shall~~ *must* contain the following notice in a size equal to at least 10-point bold type:

"1. Notice to the buyer. Do not sign this contract before you read it or if it contains any blank spaces.

2. You are entitled to an exact copy of the contract you sign.

3. Under the law, you have the right to pay off in advance the full amount due and to obtain a partial refund of the finance charge."

(3) If the contract covers the sale of a motor vehicle, it ~~shall~~ *must* also contain, in a size equal to at least 10-point bold type, a specific statement that liability insurance coverage for bodily injury and property damage caused to others is not included if that is the case.

(4) The contract ~~shall~~ *must* contain the names of the seller and the buyer, the place of business of the seller, the residence or place of business of the buyer as specified by the buyer, and a description of the goods sold or services furnished or to be furnished and ~~shall~~ *must* clearly state and describe any collateral security taken for the buyer's obligation.

(5) The contract ~~shall~~ *must* contain the following items:

(a) the cash sale price of the goods or services;

(b) the amount of the buyer's downpayment and whether made in money or goods or partly in money and partly in goods, including a brief description of the goods traded in;

(c) the difference between items *in subsections* (5)(a) and (5)(b);

(d) the amount, if any, included for insurance and other benefits if a separate charge is made ~~therefor~~ *for insurance and other benefits*, specifying the types of coverage and benefits;

(e) the amount of official fees;

(f) the principal balance*,* which is the sum of items *in subsections* (5)(c) through (5)(e);

(g) the amount of the finance charge;

(h) the total amount of the time balance, stated as one sum in dollars and cents, which is the sum of items *in subsections* (5)(f) and (5)(g), payable in installments by the buyer to the seller;

(i) the number of installments;

(j) the amount of each installment; and

(k) the due date or period of installments.

(6) The items in subsection (5) need not be stated in the sequence or order set forth, and additional items may be included to explain the computations made in determining the amount to be paid by the buyer.

(7) ~~No~~ *A* retail installment contract may *not* be signed by any party ~~thereto~~ when it contains blank spaces to be filled in after it has been signed, except that if delivery of the goods is not made at the time of the execution of the contract, the identifying numbers or marks of the goods or similar information and the due date of the first installment may be inserted in the contract after its

execution. The buyer's written acknowledgment, conforming to the requirements of 31-1-232, of delivery of a copy of a contract ~~shall~~ *must*, in any action or proceeding by or against a holder of the contract without knowledge to the contrary when ~~he~~ *the holder* purchases the contract, be conclusive proof:

(a) of ~~such~~ *the* delivery;

(b) that the contract when signed did not contain any blank spaces except as ~~herein~~ provided *in this subsection (7)*; and

(c) of compliance with 31-1-231 through 31-1-236.

(8) If a retail installment transaction is subject to the federal Truth in Lending Act, ~~(~~15 U.S.C. 1601-1667e~~)~~, the seller may, instead of complying with the requirements of subsections (2) through (7), comply with all ~~such~~ requirements of the federal law. A seller who complies with the federal requirements is subject only to the provisions of subsection (1) of this section."

Section 973. Section 31-1-232, MCA, is amended to read:

"31-1-232. Buyer's right of rescission. The seller shall deliver to the buyer or mail to ~~him~~ *the buyer* at ~~his~~ *the* address shown in the contract a copy of the contract, signed by the seller. Until the seller ~~does so~~ *delivers or mails the contract*, a buyer who has not received delivery of the goods or been furnished the services ~~shall have~~ *has* the right to rescind ~~his~~ *the* agreement and to receive a refund of all payments made and return of all goods traded in to the seller on account of or in contemplation of the contract or, if ~~such~~ *the* goods cannot be returned, the value ~~thereof~~ *of the goods*. Any acknowledgment by the buyer of delivery of a copy of the contract ~~shall~~ *must* be in a size equal to at least 10-point bold type and, if contained in the contract, ~~shall~~ *must* appear directly above the buyer's signature."

Section 974. Section 31-1-234, MCA, is amended to read:

"31-1-234. Transfer of equity — fee. A buyer may transfer ~~his~~ *the buyer's* equity in the goods at any time to another person upon agreement by the holder, but ~~in such event~~ the holder of the contract ~~shall be~~ *is* entitled to a transfer of equity fee ~~which shall~~ *that may* not exceed $50."

Section 975. Section 31-1-236, MCA, is amended to read:

"31-1-236. Notice and receipt of payment. (1) Upon written request from the buyer, the holder of a retail installment contract shall give or forward to the buyer a written statement of the dates and amounts of payments and the total amount unpaid under ~~such~~ *the* contract. A buyer ~~shall~~ *must* be given a written receipt for any payment when made in cash.

(2) After payment of all sums for which the buyer is obligated under a contract and upon written demand made by the buyer, the holder shall deliver or mail to the buyer, at ~~his last known~~ *the buyer's last-known* address, one or more good and sufficient instruments to acknowledge payment in full and shall release all security in the goods or in any collateral security."

Section 976. Section 31-1-243, MCA, is amended to read:

"31-1-243. Refinancing retail installment contract. The holder of a contract, upon request by the buyer, may extend the scheduled due date of all or any part of any installment or installments or defer payment or payments or renew or restate the unpaid time balance of ~~such~~ *the* contract, the amount of the installments, and the time schedule ~~therefor~~ *for the installments* and may collect for ~~such~~ *the* extension, deferment, renewal, or restatement a refinance charge. The holder may compute the refinance charge on the unpaid time

balance to be extended, deferred, renewed, or restated by adding to ~~such~~ *the* unpaid time balance the cost for any insurance and other benefits incidental to the refinancing plus any accrued delinquency and collection charges, after deducting any refund ~~which~~ *that* may be due the buyer as for a prepayment pursuant to 31-1-242 at the rate of the finance charge specified in 31-1-241. If all unpaid installments are deferred for not more than 2 months, the holder may ~~at his election~~ charge and collect for ~~such~~ *the* deferment an amount equal to the difference between the refund required for prepayment in full under 31-1-242 as of the scheduled due date of the first deferred installment and the refund required for prepayment in full as of 1 month prior to ~~said~~ *the* date, times the number of months in which ~~no~~ *a* scheduled payment is *not* made."

Section 977. Section 31-1-304, MCA, is amended to read:

"31-1-304. Restrictions upon assignment of wages or salary. ~~No~~ *An* assignment of ~~his or her~~ wages or salary by any employee or wage earner to any wage broker for ~~his or her~~ *the employee's or wage earner's* benefit ~~shall be~~ *is not* valid or enforceable, ~~nor shall any~~ *and an* employer or debtor *may not* recognize or honor ~~such~~ *the* assignment for any purpose whatever~~,~~ unless ~~it be~~ *the assignment is* for a fixed and definite part or all of the wages or salary ~~theretofore~~ earned."

Section 978. Section 31-1-305, MCA, is amended to read:

"31-1-305. Interest on loans — amount and computation. ~~No~~ *A* wage broker ~~shall~~ *may not* ask, demand, or receive, either as compensation or interest or in any other manner, directly or indirectly, any compensation or interest for the use of money advanced or loaned by ~~him~~ *the wage broker* to any employee or wage earner in excess of 12% ~~per annum~~ *a year*. ~~Said~~ *The* compensation or rate of interest ~~shall~~ *must* be computed upon the amount actually advanced to and received by the employee or wage earner and ~~shall~~ *must* include all commissions or compensation whatsoever to the wage broker or any other person for making or procuring ~~said~~ *the* loan."

Section 979. Section 31-1-402, MCA, is amended to read:

"31-1-402. Pawnbroker to keep register. (1) Every pawnbroker or junk dealer ~~must~~ *shall* keep a register, in which must be entered a description of every article pawned to ~~him~~ or purchased by ~~him~~ *the pawnbroker or junk dealer*, with:

(a) the date of the pawning or purchasing;

(b) date when the article must be redeemed;

(c) the name of the person by whom the ~~same~~ *article* was pawned or by whom purchased; and

(d) the amount loaned ~~thereon~~ *on* or paid ~~therefor~~ *for the article*.

(2) In case of the sale of any article pawned or pledged, the pawnbroker or junk dealer ~~must~~ *shall* enter upon ~~said~~ *the* register:

(a) the name of the purchaser;

(b) the time of the sale; and

(c) the price paid ~~therefor~~ *for the article*.

(3) The register must always be open to inspection and examination of any peace officer or other persons."

Section 980. Section 31-1-502, MCA, is amended to read:

"31-1-502. Periodic statement to be furnished to debtor. (1) A seller may charge the late payment charge provided for in 31-1-501 only if ~~he~~ *the seller* promptly supplies the buyer with a statement as of the end of each monthly period~~,~~ or other regular period agreed upon by the seller and the buyer~~,~~ in which there is any unpaid balance. ~~Such~~ *The* statement ~~shall~~ *must* recite the following:

(a) the percentage amount of the late payment charge that will be charged beginning 30 days after the obligation is incurred;

(b) the unpaid balance at the beginning or end of the period;

(c) an identification of any amounts debited to the buyer's account during the period;

(d) the payments made by the buyer to the seller during the period;

(e) the amount of the late payment charge and also the percentage annual simple interest equivalent of ~~such~~ *the* amount; and

(f) a legend to the effect that the buyer may at any time pay the total unpaid balance.

(2) The items need not be stated in the sequence or order set forth in subsection (1). Additional items may be included to explain the computations made in determining the amount to be paid by the buyer."

Section 981. Section 31-2-102, MCA, is amended to read:

"31-2-102. Creditor defined. A creditor is ~~one~~ *a person* in whose favor an obligation exists, by reason of which ~~he~~ *the person* is or may become entitled to the payment of money."

Section 982. Section 31-2-103, MCA, is amended to read:

"31-2-103. Contracts of debtor are valid. In the absence of fraud, every contract of a debtor is valid against all ~~his~~ *the debtor's* creditors, existing or subsequent, who have not acquired a lien on the property affected by ~~such~~ *the* contract."

Section 983. Section 31-2-104, MCA, is amended to read:

"31-2-104. Payments in preference. A debtor may pay one creditor in preference to another or may give to one creditor security for the payment of ~~his~~ *the creditor's* demand in preference to another."

Section 984. Section 31-2-105, MCA, is amended to read:

"31-2-105. Relative rights of different creditors. ~~Where~~ *When* a creditor is entitled to resort to each of several funds for the satisfaction of ~~his~~ *the creditor's* claim and another person has an interest in or is entitled as a creditor to resort to some but not all of ~~them~~ *the funds*, the ~~latter~~ *the other person* may require the ~~former~~ *creditor* to seek satisfaction from those funds to which the ~~latter has no such~~ *other person does not have a* claim~~,~~ so far as it can be done without impairing the right of the ~~former~~ *creditor* to complete satisfaction and without doing injustice to third persons."

Section 985. Section 31-2-201, MCA, is amended to read:

"31-2-201. When debtor may execute assignment. An insolvent debtor may, in good faith, execute an assignment of property to one or more assignees in trust for the satisfaction of ~~his~~ *the debtor's* creditors, in conformity ~~to~~ *with* the provisions of this part, subject~~, however,~~ to the provisions of this code relative to trusts and fraudulent transfers and to the restrictions imposed by law upon assignments by special partnerships, corporations, or other specific classes or persons."

Section 986. Section 31-2-202, MCA, is amended to read:

"31-2-202. Insolvency — what constitutes. A debtor is insolvent, within the meaning of this part, when ~~he~~ *the debtor* is unable to pay ~~his~~ *the debtor's* debts from ~~his~~ *the debtor's* own means as they become due."

Section 987. Section 31-2-203, MCA, is amended to read:

"31-2-203. Certain transfers not affected. The provisions of this part do not prevent a person residing in another state or country from making there, in good faith and without intent to evade the laws of this state, a transfer of property situated within ~~it;~~ *the other state or territory.* ~~nor do they~~ *This part does not* affect the power of a person, although insolvent and within this state, to transfer property to a particular creditor for the purpose of paying or securing the whole or a part of a debt owing to ~~such~~ *the* creditor, whether in ~~his~~ *the person's* own right or otherwise."

Section 988. Section 31-2-204, MCA, is amended to read:

"31-2-204. What debts may be secured. An assignment for the benefit of creditors may provide for any subsisting liability of the assignor ~~which he~~ *that the assignor* might lawfully pay, whether absolute or contingent."

Section 989. Section 31-2-205, MCA, is amended to read:

"31-2-205. Preference given for wages. In all assignments of property made by any person, association, partnership, chartered company, or corporation to trustees or assignees on account of inability of the assignor at the time of the assignment to pay ~~his~~ *the assignor's* debts or in proceedings in insolvency, the wages of the miners, mechanics, ~~salesmen~~ *salespersons*, servants, clerks, or laborers employed by ~~such~~ *the* assignor for services rendered within 4 months immediately previous to ~~such~~ *the* assignment, not to exceed the actual amount owed for each person, are preferred claims and must be paid by ~~such~~ *the* trustees or assignees before any other creditor of ~~such~~ *the* assignor."

Section 990. Section 31-2-209, MCA, is amended to read:

"31-2-209. Assignment — when void. An assignment for the benefit of creditors is void against any creditor of the assignor not assenting ~~thereto~~ *to the assignment* in the following cases:

(1) if ~~it~~ *the assignment* gives a preference dependent upon any condition or contingency or with any power of revocation reserved;

(2) if ~~it~~ *the assignment* tends to coerce any creditor to release or compromise ~~his~~ *the creditor's* demand;

(3) if ~~it~~ *the assignment* provides for the payment of any claim known by the assignor to be false or fraudulent or for the payment of more upon any claim than is known to be justly due from the assignor;

(4) if ~~it~~ *the assignment* reserves any interest in the assigned property or in any part ~~thereof~~ *of the property* to the assignor or for ~~his~~ *the assignor's* benefit~~,~~ before all existing debts are paid;

(5) if ~~it~~ *the assignment* confers upon the assignee any power ~~which~~ *that*, if exercised, might prevent or delay the immediate conversion of the assigned property to the purposes of the trust;

(6) if ~~it~~ *the assignment* exempts ~~him~~ *the assignor* from liability for neglect of duty or misconduct;

(7) if ~~it~~ *the assignment* violates 72-34-105."

Section 991. Section 31-2-210, MCA, is amended to read:

"31-2-210. The instrument of assignment. (1) An assignment for the benefit of creditors must be in writing and subscribed by the assignor or by ~~his~~ *the assignor's* agent ~~thereto~~ authorized by writing.

(2) ~~It~~ *The assignment* must be acknowledged or proved and certified in the mode prescribed by the law on recording transfers of real property and recorded as required by 31-2-215 and 31-2-216, but recording in one county constitutes a compliance with ~~the last-mentioned sections~~ *31-2-215 and 31-2-216*.

(3) The assignment must be accompanied by the affidavit of the assignor and assignee that ~~such~~ *the* assignment is made in good faith, for the benefit of the creditors of the assignor, and without any design to hinder, delay, or defraud ~~such~~ *the* creditors.

(4) The assent of the assignee, subscribed and acknowledged by ~~him~~ *the assignee*, must appear in writing ~~embraced~~ *contained* in or at the end of or endorsed upon the assignment before the ~~same~~ *assignment* is recorded and, if separate from the assignment, must be duly acknowledged."

Section 992. Section 31-2-212, MCA, is amended to read:

"31-2-212. Assignee takes subject to rights of third parties. An assignee for the benefit of creditors is not to be regarded as a purchaser for value and has no greater rights than ~~his~~ *the* assignor has in respect to things in action transferred by the assignment."

Section 993. Section 31-2-214, MCA, is amended to read:

"31-2-214. Verification of inventory — when assignee required to file — inspection of assignor's books and papers. (1) An affidavit must be made by every person executing an assignment for the benefit of creditors, to be annexed to and filed with the inventory mentioned in 31-2-213, to the effect that the ~~same~~ *affidavit* is in all respects just and true~~,~~ according to the best of ~~such~~ *the* assignor's knowledge and belief.

(2) (a) ~~In case such~~ *If the* assignor ~~shall omit~~ *omits*, ~~neglect~~ *neglects*, or ~~refuse~~ *refuses* to make and deliver ~~such~~ *the* inventory within the *required* 20 days ~~required~~, the assignee named in ~~such~~ *the* assignment shall, within 30 days after the *required* date ~~thereof~~, cause to be made and delivered to the judge of the district court of the county where ~~such~~ *the* assignment is recorded ~~such~~ *the* inventory as ~~above required~~ *described in subsection (1)*, insofar as ~~he~~ *the assignee* can.

(b) For ~~such~~ *the* purpose *of subsection (2)(a)*, ~~said~~ *the* judge shall, at any time upon the application of ~~such~~ *the* assignee, compel by order ~~such~~ *the* delinquent assignor and any other person to appear before ~~him~~ *the judge* and disclose, upon oath, any knowledge or information ~~he~~ *the assignor or person* may possess necessary to the proper making of ~~such~~ *the* inventory.

(c) The assignee shall verify the inventory ~~so~~ made by ~~him~~ *the assignee* to the effect that the ~~same~~ *inventory* is in all respects just and true to the best of ~~his~~ *the assignee's* knowledge and belief.

(3) ~~In case~~ *If* the assignee ~~shall be~~ *is* unable to make and file ~~such~~ *the* inventory within 30 days, the district judge may, upon application upon oath showing ~~such~~ *the* inability, allow ~~him such~~ *the assignee* further time as ~~shall be~~ necessary, not exceeding 60 days.

(4) If the assignee fails to make and file ~~such~~ *the* inventory within ~~said~~ 30 days or ~~such~~ *the* further time ~~as~~ *that* may be allowed, the district judge shall require, by order, the assignee ~~forthwith~~ to appear before ~~him~~ *the judge* and

show cause why ~~he~~ *the assignee* should not be removed. Any person interested in the trust estate may apply for ~~such~~ *the* order and demand ~~such~~ *the* removal.

(5) The books and papers of ~~such~~ *the* delinquent assignor ~~shall~~ *must* at all times be subject to the inspection and examination of any creditor. The district judge is authorized by order to require ~~such~~ *the* debtor or assignee to allow ~~such~~ *the* inspection or examination. Disobedience to ~~such~~ *an inspection* order is a contempt, and obedience to ~~such~~ *the* order may be enforced by attachment.

(6) The inventory ~~shall~~ *must* be filed by ~~said~~ *the* district judge in the office of the clerk of ~~said~~ *the* county in which ~~said~~ *the* assignment is recorded."

Section 994. Section 31-2-215, MCA, is amended to read:

"31-2-215. Recording assignment and filing inventory. An assignment for the benefit of creditors must be recorded and the inventory required by 31-2-213 *must be* filed with the county clerk of the county in which the assignor resided at the date of the assignment or, if ~~he~~ *the assignor* did not ~~then~~ reside in this state *at that time*, with the clerk of the county in which ~~his~~ *the assignor's* principal place of business was ~~then~~ situated or, if ~~he~~ *the assignor* ~~had~~ *did* not ~~then~~ *have* a residence or place of business in this state, with the clerk of the county in which the principal part of the assigned property was ~~then~~ situated *at the time of the assignment*."

Section 995. Section 31-2-220, MCA, is amended to read:

"31-2-220. Management, disposal, and conversion of estate. (1) Until the inventory and affidavit required by 31-2-213 and 31-2-214 have been made and filed and the assignee has given bond as required by 31-2-219, the assignee for the benefit of creditors has no authority to dispose of the estate or convert it to the purposes of the trust.

(2) ~~But in case~~ *However, if* the assignor ~~shall fail~~ *fails* to present ~~such~~ *the* inventory within the *required* 20 days ~~required~~, then the assignee, before the 10 days ~~shall~~ have elapsed, may apply to ~~said~~ *the* district judge by verified petition for leave to file a provisional bond until ~~such~~ *the* time ~~as he~~ *that the assignor* may be able to present the inventory as ~~herein~~ provided *in this section*.

(3) The district judge shall, in the case ~~provided~~ *described* in 31-2-214, and may also at any time on the petition of one or more creditors showing misconduct or incompetency of the assignee or on petition of the assignee ~~himself~~, showing sufficient reason ~~therefor~~, and after due notice of not less than 5 days to the assignor, assignee, surety, and ~~such~~ other persons ~~as such~~ *that the* judge may prescribe:

(a) remove or discharge the assignee and appoint one or more *assignees* in ~~his~~ *the former assignee's* place; *and*

(b) order an accounting of the assignee ~~so~~ removed or discharged.

(4) The district judge may:

(a) enjoin ~~said~~ *the* assignee from interfering with the assignor's estate and make provision by order for the safe custody of the ~~same~~ *estate*; and

(b) enforce obedience to ~~such~~ *the* injunction and orders by attachment.

(5) Upon ~~his~~ discharge, upon ~~his own~~ *the former assignee's* application, ~~such~~ *the former* assignee's bond ~~shall~~ *must* be canceled and discharged.

(6) The new assignee shall give a bond, ~~to~~ *which must* be approved as required.

(7) The district judge ~~shall have~~ *has* power by order to:

(a) require or allow any inventory or schedule filed to be corrected or amended;

(b) require and compel, from time to time, supplemental inventories or schedules to be made and filed within ~~such~~ *the* time ~~as he shall prescribe~~ *that the judge prescribes*; and

(c) enforce obedience to ~~such~~ *the* orders by attachment."

Section 996. Section 31-2-221, MCA, is amended to read:

"31-2-221. Notice to creditors to present claims. (1) The judge may, upon the petition of the assignee, authorize ~~him~~ *the assignee* to advertise for creditors to present to ~~him~~ *the assignee* their claims, with the vouchers ~~therefor~~ *for the claims*, duly verified, on or before a day to be specified in ~~such~~ *the* advertisement, not less than 10 days from the publication ~~thereof~~*.* ~~which~~ *The* advertisement or notice ~~shall~~ *must* be published in one newspaper, to be designated by the judge as most likely to give notice to the persons to be served, at least once and ~~such~~ *any* additional times ~~as~~ *that* the judge may direct. The last publication ~~shall~~ *must* be at least 1 week prior to the date specified.

(2) ~~Said~~ *The* verified claims of creditors ~~shall~~ *must* set forth whether any and, if so, what securities are held for ~~such~~ *the* claims and whether any and, if so, what payments have been made ~~thereon~~ *on the claims*."

Section 997. Section 31-2-224, MCA, is amended to read:

"31-2-224. Power of court. The court ~~shall have~~ *has* power to:

(1) authorize the business of the assignor to be conducted for a limited period by assignee, if necessary in the best interests of the estate, and allow additional compensation for ~~such~~ *the* services;

(2) reopen estates when it appears they were closed before being fully administered and for that purpose to appoint another assignee who will take title to the property not administered;

(3) direct upon the final settlement of the estate that the assignee pay to the lawful creditors their proportionate dividend, notwithstanding *that* their claim has not been presented in accordance with the notice sent out by the assignee, provided that 4 months have not elapsed since the first publication of notice to creditors;

(4) approve the final report and discharge the assignee and ~~his~~ *the assignee's* surety from all further liabilities upon matters included in the accounting to creditors appearing and to creditors not having appeared after due citation or not having presented their claims after due advertisement."

Section 998. Section 31-2-225, MCA, is amended to read:

"31-2-225. When further security required. The district judge may, upon ~~his~~ *the judge's* own motion or upon the application of any party in interest and on ~~such~~ notice ~~as he~~ *that the judge* may direct to be given to the assignor, assignee, and surety, require further security to be given whenever, in ~~his~~ *the judge's* judgment, the security afforded by the bond on file is not adequate."

Section 999. Section 31-2-229, MCA, is amended to read:

"31-2-229. Assignees protected for acts done in good faith. An assignee for the benefit of creditors ~~is~~ *may* not ~~to~~ be held liable for ~~his~~ acts~~,~~ done in good faith in the execution of the trust~~,~~ merely for the reason that the assignment is afterwards adjudged void."

Section 1000. Section 31-2-329, MCA, is amended to read:

"31-2-329. Insolvency. (1) A debtor is insolvent if the sum of the debtor's debts is greater than all of the debtor's property at a fair valuation and the debtor is generally not paying ~~his~~ *the debtor's* debts as they become due.

(2) Property under this section does not include property that has been transferred, concealed, or removed with intent to hinder, delay, or defraud creditors or that has been transferred in a manner making the transfer voidable under this part."

Section 1001. Section 31-2-333, MCA, is amended to read:

"31-2-333. Transfers fraudulent as to present and future creditors. (1) A transfer made or obligation incurred by a debtor is fraudulent as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation:

(a) with actual intent to hinder, delay, or defraud any creditor of the debtor; or

(b) without receiving a reasonably equivalent value in exchange for the transfer or obligation and the debtor:

(i) was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or

(ii) intended to incur, or believed or reasonably should have believed that ~~he~~ *the debtor* would incur, debts beyond ~~his~~ *the debtor's* ability to pay as they became due.

(2) In determining actual intent under subsection (1)(a), consideration may be given, among other factors, to whether:

(a) the transfer or obligation was to an insider;

(b) the debtor retained possession or control of the property transferred after the transfer;

(c) the transfer or obligation was disclosed or concealed;

(d) before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit;

(e) the transfer was of substantially all the debtor's assets;

(f) the debtor absconded;

(g) the debtor removed or concealed assets;

(h) the value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred;

(i) the debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred;

(j) the transfer occurred shortly before or shortly after a substantial debt was incurred; or

(k) the debtor transferred the essential assets of the business to a lienor who transferred the assets to an insider of the debtor."

Section 1002. Section 31-3-102, MCA, is amended to read:

"31-3-102. Definitions and rules of construction. (1) Definitions and rules of construction set forth in this section are applicable for the purposes of this part.

(2) The term "consumer" means an individual.

(3) (a) The term "consumer report" means any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living ~~which~~ *that* is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for:

(i) credit or insurance to be used primarily for personal, family, or household purposes;

(ii) employment purposes; or

(iii) other purposes authorized under 31-3-111.

(b) The term does not include:

(i) any report containing information solely as to transactions or experiences between the consumer and the person making the report;

(ii) any authorization or approval of a specific extension of credit, directly or indirectly, by the issuer of a credit card or similar device; or

(iii) any report in which a person who has been requested by a third party to make a specific extension of credit, directly or indirectly, to a consumer conveys ~~his~~ *the consumer's* decision with respect to ~~such~~ *the* request~~,~~ if the third party advises the consumer of the name and address of the person to whom the request was made and ~~such~~ *that* person makes the disclosures to the consumer required under 31-3-131.

(4) The term "consumer reporting agency" means any person ~~which~~ *that*, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties.

(5) The term "employment purposes", when used in connection with a consumer report, means a report used for the purpose of evaluating a consumer for employment, promotion, reassignment, or retention as an employee.

(6) The term "file", when used in connection with information on any consumer, means all of the information on that consumer recorded and retained by a consumer reporting agency regardless of how the information is stored.

(7) The term "investigative consumer report" means a consumer report or portion ~~thereof~~ *of a consumer report* in which information on a consumer's character, general reputation, personal characteristics, or mode of living is obtained through personal interviews with neighbors, friends, or associates of the consumer reported on or with others with whom ~~he~~ *the consumer* is acquainted or who may have knowledge concerning any ~~such~~ items of information. However, ~~such~~ *the* information ~~shall~~ *may* not include specific factual information on a consumer's credit record obtained directly from a creditor of the consumer or from a consumer reporting agency when ~~such~~ *the* information was obtained directly from a creditor of the consumer or from the consumer.

(8) The term "medical information" means information or records obtained, with the consent of the individual to whom it relates, from licensed physicians or medical practitioners, hospitals, clinics, or other medical or medically related facilities.

(9) The term "person" means any individual, partnership, corporation, trust, estate, cooperative, association, government or governmental subdivision or agency, or other entity."

Section 1003. Section 31-3-113, MCA, is amended to read:

"31-3-113. Disclosure of investigative consumer reports. (1) A person may not procure or cause to be prepared or distribute an investigative consumer report on any consumer unless:

(a) it is clearly and accurately disclosed to the consumer that an investigative consumer report, including information as to ~~his~~ *the consumer's* character, general reputation, personal characteristics, and mode of living, whichever are applicable, may be made and ~~such~~ *the* disclosure is made in a writing mailed or otherwise delivered to the consumer not later than 3 days after the date on which the report was first requested and includes a statement informing the consumer of ~~his~~ *the* right to request the additional disclosures provided for under subsection (2) ~~of this section~~; or

(b) the report is to be used for employment purposes for which the consumer applied.

(2) Any person who procures or causes to be prepared an investigative consumer report on any consumer shall, upon written request made by the consumer within a reasonable period of time after the receipt by ~~him~~ *the person* of the disclosure required by subsection (1)(a), make a complete and accurate disclosure of the nature, scope, and substance of the investigation requested. This disclosure ~~shall~~ *must* be made in a writing *and must be* mailed or otherwise delivered to the consumer not later than 5 days after the date on which the request for ~~such~~ *the* disclosure was received from the consumer or ~~such~~ *the* report was first requested, whichever is ~~the latter~~ *later*.

(3) ~~No~~ *A* person may *not* be held liable for any violation of subsection (1) or (2) ~~of this section~~ if ~~he~~ *the person* shows by a preponderance of the evidence that at the time of the violation ~~he~~ *the person* maintained reasonable procedures to ~~assure~~ *ensure* compliance with subsection (1) or (2)."

Section 1004. Section 31-3-114, MCA, is amended to read:

"31-3-114. Compliance procedures. (1) Every consumer reporting agency shall maintain reasonable procedures designed to avoid violations of 31-3-112 and 31-3-113 and to limit the furnishing of consumer reports to the purposes listed under 31-3-111. These procedures ~~shall~~ *must* require that prospective users of the information identify themselves, certify the purposes for which the information is sought, and certify that the information will be used for no other purpose. Every consumer reporting agency shall make a reasonable effort to verify the identity of a new prospective user and the uses certified by ~~such~~ *the* prospective user prior to furnishing ~~such~~ *the* user a consumer report. ~~No~~ *A* consumer reporting agency may *not* furnish a consumer report to any person if it has reasonable grounds for believing that the consumer report will not be used for a purpose listed in 31-3-111.

(2) Whenever a consumer reporting agency prepares a consumer report, it shall follow reasonable procedures to assure maximum possible accuracy of the information concerning the individual about whom the report relates, and it shall maintain a record of all persons using the information and the source of each piece of information.

(3) When gathering information, a consumer reporting agency shall notify any person who furnishes information that ~~he~~ *the person* is liable to suit if the

information is false or furnished with malice or willful intent to injure the consumer."

Section 1005. Section 31-3-121, MCA, is amended to read:

"31-3-121. Disclosures to governmental agencies. Notwithstanding the provisions of 31-3-111, a consumer reporting agency may furnish identifying information respecting any consumer, limited to ~~his~~ *the consumer's* name, address, former addresses, places of employment, or former places of employment, to a governmental agency."

Section 1006. Section 31-3-123, MCA, is amended to read:

"31-3-123. Conditions of disclosure to consumer. (1) A consumer reporting agency shall make the disclosures required under 31-3-122 during normal business hours and on reasonable notice.

(2) The disclosures required under 31-3-122 ~~shall~~ *must* be made to the consumer:

(a) in person if ~~he~~ *the consumer* appears in person and furnishes proper identification; or

(b) by telephone if ~~he~~ *the consumer* has made a written request, with proper identification for telephone disclosure, and the toll charge, if any, for the telephone call is prepaid by or charged directly to the consumer.

(3) Any consumer reporting agency shall provide trained personnel to explain to the consumer any information furnished to ~~him~~ *the consumer* pursuant to 31-3-122.

(4) The consumer ~~shall~~ *must* be permitted to be accompanied by one other person of ~~his~~ *the consumer's* choosing, who shall furnish reasonable identification. A consumer reporting agency may require the consumer to furnish a written statement granting permission to the consumer reporting agency to discuss the consumer's file in ~~such~~ *the other* person's presence."

Section 1007. Section 31-3-131, MCA, is amended to read:

"31-3-131. Requirements on users of consumer reports. (1) Whenever credit or insurance for personal, family, or household purposes or employment involving a consumer is denied or the charge for ~~such~~ *the* credit or insurance is increased either wholly or partly because of information contained in a consumer report from a consumer reporting agency, the user of the consumer report shall ~~so~~ advise the consumer against whom ~~such~~ *the* adverse action has been taken and supply the name and address of the consumer reporting agency making the report.

(2) Whenever credit for personal, family, or household purposes involving a consumer is denied or the charge for ~~such~~ *the* credit is increased either wholly or partly because of information obtained from a person other than a consumer reporting agency bearing upon the consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living, the user of ~~such~~ *the* information shall, within a reasonable period of time, upon the consumer's written request for the reasons for ~~such~~ *the* adverse action received within 60 days after the consumer learned of ~~such~~ *the* adverse action, disclose the nature of the information to the consumer. The user of ~~such~~ *the* information shall clearly and accurately disclose to the consumer ~~his~~ *the* right to make ~~such~~ *the* written request at the time ~~such~~ *the* adverse action is communicated to the consumer.

(3) ~~No~~ *A* person may *not* be held liable for any violation of this section if ~~he~~ *the person* shows by a preponderance of the evidence that at the time of the alleged violation ~~he~~ *the person* maintained reasonable procedures to ~~assure~~ *ensure* compliance with the provisions of subsections (1) and (2)."

Section 1008. Section 32-1-206, MCA, is amended to read:

"32-1-206. Disqualification of board member — when. ~~Any~~ *A* board member ~~shall disqualify himself~~ *must be disqualified* from acting upon any matter in which ~~he~~ *the member* or any bank or financial institution in which ~~he~~ *the member* has a direct or indirect interest is involved, competitively or otherwise."

Section 1009. Section 32-1-403, MCA, is amended to read:

"32-1-403. Penalty for transacting business without certificate. (1) A person, firm, company, partnership, or corporation, domestic or foreign, advertising that ~~he~~ *the person* or ~~it~~ *entity* is receiving or accepting money or savings and issuing notes or certificates of deposit for them or advertising that ~~he~~ *the person* or ~~it~~ *entity* is transacting the business of a bank, savings bank, or trust company or making use of an office sign at the place where the business is transacted, having on it an artificial or corporate name or other words indicating that the place or office is the place or office of a bank, savings bank, or trust company or that deposits are received there or payments made on check or that interest is paid on deposits or that certificates of deposit, either with or without interest, are being issued or that any other form of banking business is transacted, and a person, firm, company, partnership, or corporation, domestic or foreign, using or circulating any letterheads, billheads, blank notes, blank receipts, certificates, or circulars or any written or printed or partly written and partly printed paper whatever, having on it an artificial or corporate name or advertising that the business is the business of a bank, savings bank, or trust company, must have the proper capital stock paid in and set aside for the purpose of transacting that business and must have received from the department, as provided for in this chapter, a certificate to do a banking business.

(2) A person, firm, company, partnership, or corporation, domestic or foreign, violating any provision of this section shall forfeit to the state $100 a day for every day or part of a day during which the violation continues.

(3) Upon action brought by the department, the court may issue an injunction restraining a person, firm, company, partnership, or corporation from further violating any provision of this section and may enter a further order or decree as equity and justice require.

(4) A person, firm, company, partnership, or corporation doing any of the things or transacting any of the business defined in this section ~~must~~ *shall* transact that business according to the provisions of the Bank Act, and the department may examine the accounts, books, papers, cash, and credits of that person, firm, company, partnership, or corporation, domestic or foreign, in order to ascertain whether that person, firm, company, partnership, or corporation has violated or is violating any provisions of this section."

Section 1010. Section 32-1-421, MCA, is amended to read:

"32-1-421. Investment of capital of savings banks. (1) The term "savings bank" as used in this section means any bank organized to do the business specified in 32-1-106.

(2) (a) At least one-half of the paid-in capital of a savings bank and one-half of the whole amount deposited in the savings bank must be invested in bonds or other securities of the United States or any of the states of the United States or any county, city, town, or school district of this state on which interest is regularly payable or federal land bank bonds or loaned on unencumbered real estate worth at least double the amount to be secured.

(b) The remainder may be invested in bonds or securities listed in subsection (2)(a) or in approved personal securities. However, a loan may not be made on personal securities of less than two responsible persons or collateral security to be approved by the directors, and a loan upon personal security may not be made to any person or partnership to an amount exceeding $10,000.

(c) Investments in United States government obligations permitted under subsection (2)(a) or (2)(b) may be made either directly or in the form of securities of or other interests in an open-end or closed-end management type investment company or investment trust registered under the Investment Company Act of 1940, ~~(~~15 U.S.C. 80a-1 through 80a-64~~)~~, ~~as amended,~~ if:

(i) the portfolio of the investment company or investment trust is limited to United States government obligations and repurchase agreements fully collateralized by United States government obligations; and

(ii) the investment company or investment trust takes delivery of the collateral for any repurchase agreement, either directly or through an authorized custodian.

(3) A president, vice president, director, or other officer or ~~servant~~ *employee* of a savings bank may not directly or indirectly borrow any of the funds of the bank or of its deposits or in any manner use the ~~same~~ *funds or deposits* in ~~his~~ *the person's* private affairs or business. A director may not receive any pay, salary, or emolument until the interest ~~as~~ *that* the directors have determined to allow depositors has been provided for in accordance with the regulations of the corporation.

(4) The real estate that the corporation may lawfully purchase, hold, and convey is the real estate that is:

(a) necessary for the proper transaction of its business, not exceeding in value $50,000;

(b) mortgaged to it in good faith for money loaned pursuant to this chapter or given as security for money loaned or advanced;

(c) purchased at the sale on judgment or decree obtained or rendered on money loaned or advanced.

(5) Savings banks organized under the provisions of this chapter may not purchase, hold, or convey real estate in any other case or for any other purpose than is specified in subsection (4) and may not buy or sell any personal property, except ~~such as~~ *personal property that* may be necessary for the proper transaction of its business or ~~as~~ *that* may have been pledged, mortgaged, or assigned to it to secure money loaned or advanced."

Section 1011. Section 32-1-451, MCA, is amended to read:

"32-1-451. Statement of capital, resources, and liabilities. ~~No~~ *A* bank or officer ~~thereof shall~~ *of a bank may not* advertise in any manner or publish any statement of the capital authorized or subscribed unless ~~it~~ *the bank* or ~~he~~ *officer* advertises and publishes in connection ~~therewith~~ *with the advertisement* the amount of capital actually paid up. ~~No~~ *A* bank ~~shall~~ *may not* publish a statement of its resources or liabilities in connection with those of any other bank~~,~~ unless

~~such~~ *the* statement ~~shall show~~ *shows* the resources and liabilities of each bank separately."

Section 1012. Section 32-1-463, MCA, is amended to read:

"32-1-463. Sale of securities by officer to bank. (1) ~~No~~ *A* director, officer, employee, or controlling stockholder of any bank ~~shall~~ *may not*, directly or indirectly, for ~~his own~~ *the person's* account, for ~~himself~~ *the person*, or as the partner or agent of others sell or transfer or cause to be sold or transferred to the bank of which ~~he~~ *the person* is a director, officer, employee, or controlling stockholder any note or bond secured by any mortgage or trust deed on real estate or any contract arising from the sale of real estate, in which ~~such~~ *the* director, officer, employee, or controlling stockholder is personally or financially interested, without a vote of the majority of the board of ~~such~~ *the* bank, duly noted upon the minutes of the meeting at which ~~such~~ *the* transaction is decided upon~~,~~. ~~which~~ *The* minutes ~~shall~~ *must* be signed by a majority of the board.

(2) Any director, officer, employee, or controlling stockholder of any bank who knowingly violates or consents to the violation of this provision ~~shall be~~ *is* guilty of a felony."

Section 1013. Section 32-1-466, MCA, is amended to read:

"32-1-466. Purchase of obligation of bank by officer. ~~No~~ *A* director, officer, agent, or other employee of any bank ~~shall~~ *may not*, directly or indirectly, for ~~his~~ *the person's* own personal benefit, purchase*,* ~~or~~ sell*,* or be interested in the purchase or sale of any obligation of ~~said~~ *the* bank or of any of the assets of ~~said~~ *the* bank for a sum less than ~~shall appear~~ *the amount that appears* upon the face of the obligation or obligations ~~so~~ purchased or sold. Every person violating the provisions of this section shall, in addition to the general penalties of this chapter, forfeit to the state twice the nominal amount or face value of ~~such~~ *the* obligations or assets ~~so~~ purchased or sold."

Section 1014. Section 32-1-471, MCA, is amended to read:

"32-1-471. Penalty for unlawful hypothecation of property received. Any officer or employee of any bank doing business in this state who, except in the manner authorized by law or the contract of the parties, ~~hypothecates,~~ pledges~~,~~ or in any way alienates any notes, stocks, bonds, mortgages, securities, or any other property coming into ~~his~~ *the officer's or employee's* hands or into the possession of the bank as collateral, for safekeeping or in any other manner, and to which the bank has not acquired full title, is guilty of theft and upon conviction ~~thereof~~ shall be punished as for other felonies."

Section 1015. Section 32-1-474, MCA, is amended to read:

"32-1-474. False statement to obtain loan. ~~Whoever shall make any~~ *A person who makes a* statement, knowing it to be false, for the purpose of obtaining for ~~himself~~ *for that person* or for any other person, firm, corporation, or association a loan of money from any bank or for the purpose of gaining an extension of time ~~of~~ *for the* payment of any debt due ~~such~~ *the* bank shall be punished by a fine of not more than $1,000 or by imprisonment in the county jail for not more than 1 year, or both."

Section 1016. Section 32-1-506, MCA, is amended to read:

"32-1-506. Assessment on capital stock to make good impairment. (1) When the department determines that an impairment of capital exists in a bank, it may~~, in its discretion,~~ notify the board of directors of the bank by written notice that the impairment exists, stating the amount ~~thereof~~ *of the impairment*

in dollars and percentage of the capital stock, and it may~~, in its discretion,~~ order the board to make good the impairment within 90 days from date of the notice.

(2) The board of directors shall, upon receipt of notice, convene and pass a resolution reciting the receipt of the notice of impairment and calling a special meeting of the stockholders of the bank in the manner provided in their bylaws.

(3) The stockholders at the meeting shall pass a resolution reciting the facts of receipt of notice from the department, notice of impairment, and notice of meeting and assessing themselves by assessing the stock of record~~,~~. ~~payment~~ *Payment* of ~~which~~ *the* assessment must be made within the time limit specified by the department ~~as provided~~ in notice of impairment.

(4) If there is any stock remaining on which the assessment is not paid as provided in this section, ~~it~~ *the stock* or a part of ~~it as~~ *the stock that* is necessary to pay the assessment ~~shall~~ *must* be sold by the board of directors, acting through the cashier or secretary of the bank, at public or private sale, as appears best for all concerned, not less than 30 days after the day fixed for payment of assessment. Notice of the time and place of the sale ~~shall~~ *must* be given by certified ~~or registered~~ mail to the stockholders by the board through its cashier or secretary at least 10 days prior to the sale. A sale of stock as provided in this section causes an absolute cancellation of the outstanding certificate or certificates evidencing the stock ~~so~~ sold and makes them void in the hands of the stockholder or ~~his~~ *the stockholder's* assigns or pledgees. A new certificate ~~shall~~ *must* be issued by the bank to the purchaser for the number of shares purchased, and a new certificate *must be* issued to the stockholder of record and delivered to ~~him~~ *the stockholder* or any pledgee or assignee of the stock for the remaining shares, if any. The record of the original certificate sold ~~shall~~ *must* be marked canceled on the books of the bank, and that record is prima facie evidence of the regularity of the proceedings for the sale of the stock.

(5) If a bank fails to make good its capital impairment upon demand of the department, as provided in this section, the department may immediately take charge of that bank and proceed to liquidate it as in *the* case of insolvency.

(6) If the stock does not sell for enough to pay the assessment on it, the board of directors may sue in the name of the corporation to collect the deficiency from the stockholder of record whose stock has been sold for the assessment."

Section 1017. Section 32-1-510, MCA, is amended to read:

"32-1-510. Penalty for maliciously declaring bank insolvent. If, as a result of malice or for personal gain, an employee or agent of the department declares a bank insolvent, ~~he~~ *the employee or agent* is subject to a fine not exceeding $1,000 or imprisonment in the county jail not exceeding 1 year, or both, and shall forfeit ~~his~~ *the employee's or agent's* office."

Section 1018. Section 32-1-535, MCA, is amended to read:

"32-1-535. Claims — partial payments — assignments. (1) The department need not await the expiration of the time allowed for filing claims, as fixed in the notice to the creditors, for the payment of dividends. ~~It~~ *The department* may, ~~in its discretion and~~ if under the circumstances of the particular case it considers it expedient and safe, at any time after taking possession of the bank and prior to the expiration of the period fixed for filing of claims~~,~~ *and* if it has on hand in cash sufficient funds ~~over and above~~ *in excess of* the expenses of liquidation, make pro rata distribution to any class of creditors ~~next~~ entitled to distribution~~,~~ in the order of priority fixed in this chapter~~,~~. ~~making that~~ *The department shall make a* payment to the creditors as they appear on the books and records of the bank and *after* determining the priority

and basing its apportionment on the amount shown to be due by the books and records.

(2) At any time after the expiration of the date fixed for the presentation of claims against the bank and from time to time ~~thereafter~~ *after that date* when, in its discretion, there are sufficient funds available, the department shall, after making proper provisions for the payment of expenses of liquidation, declare and pay dividends to all creditors of the bank pro rata in the order of their priority. If, after the time fixed for presentation of claims against the bank has expired, it appears that a person, prior to the expiration of the period or at any other time, has been paid more than the pro rata amount due ~~him~~ *the person* as compared with the amounts ~~then~~ paid *to* other creditors, nothing more may be paid *to* that creditor until the payment made *to* other creditors places them on equal footing.

(3) In calculating dividends, all disputed claims and deposits ~~shall~~ *must* be taken into account and the amount of dividends upon the disputed claims or deposits ~~shall~~ *must* be held by the department until the validity of those claims or deposits has been finally determined.

(4) Claims against a bank in process of liquidation may be assigned in whole or in part subject to the approval of the department. Assignments of claims are binding upon the department only after they have been filed and allowed by the department and are subject to the payment of the assignor's liabilities to the bank. An assignment ~~shall~~ *must* be made by filing written notice, signed by the original claimant, with the department or person in charge of the bank. ~~No assigned~~ *Assigned* claims may *not* be offset against obligations due the bank. A check or draft drawn against a bank closed or taken possession of by the department, whether issued before or after closing, may not be recognized as a claim against the bank or as an assignment of any amount, whether protested or not protested."

Section 1019. Section 32-1-807, MCA, is amended to read:

"32-1-807. Transfer of fiduciary relationships from affiliated banks to subsidiary trust companies. (1) Upon any subsidiary trust company being duly authorized to commence the business for which it is organized, ~~such~~ *the* subsidiary trust company may file its verified application in the district court of the county in which its main office is located requesting that it be substituted, except as may be expressly excluded in ~~such~~ *the* application, in every fiduciary capacity for each of its affiliated banks specified in the application, and each ~~such~~ specified affiliated bank shall join in ~~such~~ *the* application. ~~Such~~ *The* application ~~shall~~ *must* indicate the county ~~wherein~~ *in which* the main office of each affiliated bank joining in the application is located and ~~shall~~ *must* designate each fiduciary account existing at the date ~~thereof~~ *of the application* with respect to which ~~such~~ *the* subsidiary trust company requests substitution, but fiduciary capacities in other cases need not be listed. ~~Such~~ *The* application ~~shall~~ *must* additionally set forth, with regard to each existing fiduciary account designated ~~therein~~ *in the application*, the name and address last known to the applicant of each person entitled to mailed notice of hearing ~~thereon~~ *on the application*, ~~to wit~~ *including*:

(a) in the case of an existing fiduciary account ~~which~~ *that* may be revoked, terminated, or amended, each person who, alone or together with others, is empowered to revoke, terminate, or amend the ~~same~~ *account*;

(b) in the case of an existing fiduciary account with respect to which any person other than a court has the power to remove the corporate fiduciary, each

person who, alone or together with others, is empowered to remove the corporate fiduciary;

(c) in the case of an existing fiduciary account ~~which~~ *that* is an estate of a deceased person or ~~which~~ *that* is a guardianship or conservatorship, to the clerk of the court in which ~~such~~ *the* estate, guardianship, or conservatorship matter is pending;

(d) in the case of an existing fiduciary account not described in ~~any of the foregoing~~ subsections *(1)(a) through (1)(c)*, to each income beneficiary of ~~such~~ *the* account and to each beneficiary who, ~~were such~~ *if the* account terminated at the date of the application respecting ~~such~~ *the* account, would be entitled to share in distributions of income or principal ~~thereof~~ *of the account*; and

(e) in the case of any existing fiduciary account ~~wherein~~ *for which* an affiliated bank specified in the application is acting with a cofiduciary, to each ~~such~~ cofiduciary at ~~his last known~~ *the cofiduciary's last-known* address.

(2) When ~~any such~~ *an* application ~~shall have~~ *has* been filed, the clerk of the court where *the application is* filed shall make an order fixing a date and time for hearing ~~thereon~~ *on the application* and give notice ~~thereof~~ *of the hearing* as ~~hereinafter~~ provided *in this section*. The clerk of court shall cause a copy of ~~such~~ *the* notice to be published at least once a week for 3 successive weeks preceding the hearing date~~,~~. ~~the~~ *The* first ~~such~~ publication ~~to~~ *must* be at least 25 days preceding the hearing date~~, such publication to be~~ in a newspaper of general circulation published in each county in which the main office of an affiliated bank specified in the application is located or, if ~~in any case there be no such~~ *a general circulation* newspaper *is not published in that county*, then in a newspaper of general circulation published in a contiguous county. In addition, at least 25 days preceding the hearing date, the clerk of the court shall cause a copy of ~~such~~ *the* notice to be mailed by first-class mail to each person identified in the application as being entitled to mailed notice under the provisions of this part, at ~~his~~ *the person's* address last known to the applicant as set forth in the application.

(3) The notice to be published and mailed with respect to each ~~such~~ application ~~shall~~ *must* state the time and place of the hearing ~~thereon~~ *on the application*, the name of the subsidiary trust company ~~which~~ *that* has filed the application, the name of each affiliated bank ~~which~~ *that* has joined in ~~such~~ *the* application, that the application requests that the subsidiary trust company be substituted in every fiduciary capacity for each of its affiliated banks specified in the application, and that any person beneficially interested in any affected fiduciary account may appear on or before the date of hearing and file ~~his~~ *the person's* written objection to ~~such~~ *the* substitution ~~as to such~~ *for the* affected fiduciary account, and ~~such~~ *the* notice ~~shall~~ *must* refer to ~~such~~ *the* application for further particulars.

(4) On or before the date and time of hearing ~~any such~~ *on the* application, any person beneficially interested in any fiduciary account ~~as to~~ *for* which substitution of the subsidiary trust company is requested may appear and file *an* objection to substitution and ~~shall be~~ *is* entitled to be heard with respect to ~~such~~ *the* objection.

(5) On ~~such~~ *the* date of hearing, upon finding that due notice has been given as required by this part and upon finding that the subsidiary trust company has been duly authorized to commence the business for which it is organized by the department or the comptroller of the currency if the subsidiary trust company is a national banking association, the district court shall enter an order

substituting the subsidiary trust company in every fiduciary capacity for each of its specified affiliated banks~~, excepting~~ *except* as may be otherwise specified in the application and ~~excepting~~ *except for* fiduciary capacities in any account with respect to which an objection has been filed pursuant to this section. Upon entry of ~~such~~ *the* order, the subsidiary trust company ~~shall~~ *must*, without further act, be substituted in every ~~such~~ fiduciary capacity. ~~Such~~ *The* substitution may be made a matter of record in any county of this state by filing a certified copy of the order of substitution in the office of the clerk of any district court in this state or by filing a certified copy of ~~such~~ *the* order in the office of the clerk and recorder of any county in this state. ~~to be by such officer recorded and indexed in like~~ *The clerk and recorder shall record and index the order in the same* manner and with ~~like~~ *the same* effect as other orders and decrees of court are recorded and indexed.

(6) Each designation, in a will or other instrument ~~heretofore or hereafter executed~~, of a bank as fiduciary ~~shall be deemed~~ *is considered* a designation of the subsidiary trust company substituted for ~~such~~ *the* bank pursuant to this section except ~~where such~~ *when the* will or other instrument is executed after ~~such~~ *the* substitution and expressly negates the application of this section. Any grant in ~~any such~~ *a* will or other instrument of any discretionary power ~~shall be deemed~~ *is considered* conferred upon the subsidiary trust company ~~deemed~~ designated as the fiduciary pursuant to this section.

(7) A bank shall account jointly with the subsidiary trust company ~~which~~ *that* has been substituted as fiduciary for ~~such~~ *the* bank pursuant to this section for the accounting period during which the subsidiary trust company is initially ~~so~~ substituted. Upon substitution pursuant to this section, the bank shall deliver to the subsidiary trust company all assets held by the bank as fiduciary, ~~(~~except assets held for accounts with respect to which there has been no substitution pursuant to this section~~)~~, and upon ~~such~~ *the* substitution, all ~~such~~ *of the* assets ~~shall~~ become the property of the subsidiary trust company without the necessity of any instrument of transfer or conveyance."

Section 1020. Section 32-1-808, MCA, is amended to read:

"32-1-808. Transfer of fiduciary relationships between affiliated banks. (1) Any bank ~~which~~ *that* has received approval pursuant to 32-1-806 to maintain a trust office in the same building with the main office of any affiliated bank may file its verified application in the district court of the county in which its main office is located requesting that it be substituted, except as may be expressly excluded in ~~such~~ *the* application, in every fiduciary capacity for ~~such~~ *the* affiliated bank, and ~~such~~ *the* affiliated bank shall join in ~~such~~ *the* application. ~~Such~~ *The* application ~~shall~~ *must* indicate the county ~~wherein~~ *in which* the main office of ~~such~~ *the* affiliated bank is located and ~~shall~~ *must* designate each fiduciary account existing at the date ~~thereof~~ *of application* with respect to which the applicant bank requests substitution, but fiduciary capacities in other cases need not be listed. ~~Such~~ *The* application ~~shall~~ *must* additionally set forth, with regard to each existing fiduciary account designated ~~therein~~ *in the application*, the name and address last known to the applicant of each person entitled to mailed notice of hearing ~~thereon~~ *on the application*, who ~~shall~~ *must* be those persons specified in ~~subsections (1)(a) through (1)(e) of~~ 32-1-807*(1)(a) through (1)(e)*.

(2) When ~~any such~~ *an* application has been filed, the clerk of the court where *the application is* filed shall make an order fixing a date and time for hearing ~~thereon~~ *on the application* and shall cause notice ~~thereof~~ *of the hearing* to be given by publication and mailing in the manner required by 32-1-807.

(3) The notice to be published and mailed ~~with respect to~~ *for* each application ~~shall~~ *must* state the time and place of the hearing ~~thereon~~ *on the application*, the name of the bank ~~which~~ *that* has filed the application, the name of the affiliated bank ~~which~~ *that* has joined in ~~such~~ *the* application, that the application requests that the applicant bank *to* be substituted in every fiduciary capacity for the affiliated bank specified in the application, and that any person beneficially interested in any affected fiduciary account may appear on or before the date of hearing and file ~~his~~ *a* written objection to ~~such~~ *the* substitution ~~as to such~~ *for the* affected fiduciary account, and ~~such~~ *the* notice ~~shall~~ *must* refer to ~~such~~ *the* application for further particulars.

(4) On or before the date and time of hearing ~~any such~~ *on the* application, any person beneficially interested in any fiduciary account ~~as to~~ *for* which substitution of the applicant bank is requested may appear and file objection to *the* substitution and ~~shall be~~ *is* entitled to be heard with respect to ~~such~~ *the* objection.

(5) On ~~such~~ *the* date of hearing, upon finding that ~~due~~ notice has been given as required by this part and upon finding that the applicant bank has received the requisite approval from the department or the comptroller of the currency if the applicant bank is a national banking association, the district court shall enter an order substituting the applicant bank in every fiduciary capacity for the affiliated bank designated in the application~~, excepting~~ *except* as may be otherwise specified in the application and ~~excepting~~ *except for* fiduciary capacities in any account with respect to which an objection has been filed pursuant to this section. Upon entry of ~~such~~ *the* order, the applicant bank ~~shall~~ *must*, without further act, be substituted in every ~~such~~ fiduciary capacity. ~~Such~~ *The* substitution may be made a matter of record in any county of this state by filing a certified copy of the order of substitution in the office of the clerk of any district court in this state or by filing a certified copy of ~~such~~ *the* order in the office of the clerk and recorder of any county in this state. ~~to be by such officer recorded and indexed in like~~ *The appropriate clerk shall record and index the order in the same* manner and with ~~like~~ *the same* effect as other orders and decrees of court are recorded and indexed.

(6) Each designation, in a will or other instrument ~~heretofore or hereafter executed~~, of a bank as fiduciary ~~shall be deemed~~ *is considered* a designation of the applicant bank substituted for ~~such~~ *the* bank pursuant to this section except ~~where such~~ *when the* will or other instrument is executed after ~~such~~ *the* substitution and expressly negates the application of this section. Any grant in ~~any such~~ *a* will or other ~~such~~ instrument of any discretionary power ~~shall be deemed~~ *is considered* conferred upon the applicant bank ~~deemed~~ designated as the fiduciary pursuant to this section.

(7) A bank shall account jointly with the applicant bank ~~which~~ *that* has been substituted as fiduciary for ~~such~~ *the* bank pursuant to this section for the accounting period during which the applicant bank is initially ~~so~~ substituted. Upon substitution pursuant to this section, the affiliated bank for which substitution has been made shall deliver to ~~such~~ *the* applicant bank all assets held by ~~such~~ *the* affiliated bank as fiduciary, ~~(~~except assets held for accounts with respect of which there has been no substitution pursuant to this section~~)~~, and upon ~~such~~ *the* substitution, all ~~such~~ *of the* assets ~~shall~~ become the property of ~~such~~ *the* applicant bank without the necessity of any instrument of transfer or conveyance."

Section 1021. Section 32-1-903, MCA, is amended to read:

"32-1-903. Informal conferences — time for application. Within 15 days after service of the notice of charges, either the institution or department may request an informal conference to discuss the charges and the possible disposition of ~~them~~ *the charges* without a formal hearing process. The conference ~~shall~~ *must* be carried out in accordance with the provisions of 2-4-603. Upon a proper showing, the director ~~in his discretion~~ may withdraw charges and proceedings for a cease and desist order."

Section 1022. Section 32-1-905, MCA, is amended to read:

"32-1-905. Notice of intention to remove board member or officer or to prohibit participation — suspension. (1) The director may serve upon a board member or officer of an institution a written notice of intention to remove ~~him~~ *the member or officer* from office whenever the director has reasonable cause to believe *that*:

(a) the board member or officer has:

(i) committed any violation of law involving dishonesty or breach of trust;

(ii) violated a cease and desist order ~~which~~ *that* has become final;

(iii) engaged or participated in any unsafe or unsound practice in connection with the institution; or

(iv) committed or engaged in any act, omission, or practice ~~which~~ *that* constitutes a breach of ~~his~~ *the member's or officer's* fiduciary duty as a board member or officer of the institution; and

(b) the institution has suffered or will probably suffer substantial financial loss or other damage or the interest of its depositors could be seriously prejudiced by reason of the violation, practice, or breach of fiduciary duty involving personal dishonesty on the part of ~~such~~ *the* board member or officer.

(2) Whenever in the opinion of the director any board member or officer of an institution has, by conduct or practice with respect to another institution or business organization ~~which~~ *that* has resulted in substantial financial loss or other damage to that institution or business organization, evidenced ~~his~~ *the member's or officer's* personal disability and unfitness to continue as a board member or officer of the institution~~,~~ and whenever the director has reasonable cause to believe that any other person participating in the conduct of the affairs of an institution has, by conduct or practice with respect to ~~such~~ *the* institution, another institution, or other business organization ~~which~~ *that* has resulted in substantial financial loss or other damage to the institution or business organization, evidenced ~~his~~ *the person's* personal disability and unfitness to participate in the conduct of the affairs of ~~such~~ *the* institution, the director may serve upon the board member, officer, or other person a written notice of intention to remove ~~such~~ *the* person from office or to prohibit ~~his~~ *the person's* further participation in any manner in the conduct of the affairs of the institution.

(3) A notice of intention to remove a board member, officer, or other person from office or to prohibit ~~his~~ *the member's, officer's, or person's* participation in the conduct of the affairs of an institution ~~shall~~ *must* contain a statement of the facts constituting grounds ~~therefor~~ *for the removal or prohibition*~~,~~ and ~~shall~~ *must* fix a time and place at which a hearing will be held ~~thereon~~ *on the removal or prohibition*. The hearing ~~shall~~ *must* be held not earlier than 30 days or later than 60 days after the date of service of the notice~~,~~ unless an earlier or later date is set by the director at the request of the board member, officer, or other person and for good cause shown.

(4) Unless the board member, officer, or other person appears at the hearing in person or by a duly authorized representative, ~~he shall~~ *the member, officer, or person must* be considered to have consented to the issuance of an order of removal or prohibition. In the event of consent or if upon the record made at the hearing the director finds that any of the grounds specified in the notice have been established by the preponderance of the evidence, the director may issue ~~such~~ orders of suspension, removal from office, or prohibition from participation in the conduct of the affairs of the institution as ~~he~~ *the director* considers appropriate. The order becomes effective 30 days after service upon the institution and the board member, officer, or other person concerned, except in the case of an order issued upon consent, which becomes effective at the time specified ~~therein~~ *in the order*. The order remains effective and enforceable until it is stayed, modified, terminated, or set aside by action of the director or a reviewing court."

Section 1023. Section 32-1-906, MCA, is amended to read:

"32-1-906. Informal conferences — time for application. Within 15 days after service of the notice of charges, either the board member, officer, or other person may request an informal conference to discuss the charges and the possible disposition of ~~them~~ *the charges* without *a* formal hearing process. The conference ~~shall~~ *must* be carried out in accordance with the provisions of 2-4-603. Upon a proper showing, the director ~~in his discretion~~ may withdraw charges and proceedings for a cease and desist order."

Section 1024. Section 32-1-907, MCA, is amended to read:

"32-1-907. Suspension or prohibition effective upon service — stay. (1) With respect to any board member or officer of an institution or any other person to whom notice is sent pursuant to 32-1-905, if the director considers it necessary for the protection of the institution or the interests of its depositors that the board member, officer, or other person be suspended from office or prohibited from further participation in any manner in the conduct of the affairs of the institution, the director may serve upon ~~such~~ *the* board member, officer, or other person a written notice suspending ~~him~~ *the member, officer, or person* from office or prohibiting ~~him~~ *the member, officer, or person* from further participation in any manner in the conduct of the affairs of the institution. The notice ~~shall~~ *must* contain a statement of the facts constituting grounds for the order and ~~shall~~ *must* fix a time, not later than 10 days from the date of the service of the notice, at which a hearing will be held to afford the board member, ~~or~~ officer, *or other person* the opportunity to respond. The suspension or prohibition is effective upon service of the notice and unless stayed by a court in proceedings authorized by subsection (2) ~~of this section shall remain~~ *remains* in effect until the completion of the administrative proceedings pursuant to the notice served under 32-1-904, until ~~such~~ *the* time ~~as~~ *that* the director dismisses the charges specified in ~~such~~ *the* notice, or until the order of removal or prohibition ~~which~~ *that* is issued against the board member, officer, or other person becomes effective. Copies of the notice ~~shall~~ *must* also be served upon the institution of which the person is a director or officer or in the conduct of whose affairs ~~he~~ *the person* has participated.

(2) Within 10 days after the hearing provided for in subsection (1) ~~of this section~~, the board member, officer, or other person may apply to the district court for the county in which the home office of the institution is located for a stay of the suspension or prohibition pending the completion of the administrative proceedings pursuant to the notice served upon the board

member, officer, or other person under 32-1-904. The court has jurisdiction to stay the suspension or prohibition."

Section 1025. Section 32-1-908, MCA, is amended to read:

"32-1-908. Felony charges — suspension or prohibition. (1) Whenever any board member or officer of an institution or other person participating in the conduct of the affairs of an institution is charged in any information, indictment, warrant, or complaint authorized by a county, state, or federal authority with the commission of or participation in a felony involving dishonesty or breach of trust, the director by written notice served upon the board member, officer, or other person may suspend ~~him~~ *that individual* from office or prohibit ~~him~~ *that individual* from further participation in any manner in the conduct of the affairs of the institution. Suspension is effective upon service upon the individual. The notice ~~shall~~ *must* contain a statement of the facts constituting grounds for the order and ~~shall~~ *must* fix a place and time, not later than 10 days from the date of the notice, at which a hearing will be held to afford the board member, ~~or~~ officer, *or other person* the opportunity to respond. A copy of the notice ~~shall~~ *must* also be served upon the institution. The suspension or prohibition remains in effect until the information, indictment, warrant, or complaint is finally disposed of or until terminated by the director.

(2) Within 10 days after the hearing provided for in subsection (1) ~~of this section~~, the board member, officer, or other person may apply to the district court for the county in which the home office of the institution is located for a stay of the suspension or prohibition pending the completion of the criminal proceedings initiated by the information, indictment, warrant, or complaint. The court has jurisdiction to stay the suspension or prohibition.

(3) If a judgment of conviction with respect to the offense is entered against the board member, officer, or other person and at ~~such~~ *the* time ~~as~~ *that* the judgment is not subject to further appellate review, the director may issue and serve upon the board member, officer, or other person an order removing ~~him~~ *that individual* from office or prohibiting ~~him~~ *that individual* from further participation in any manner in the conduct of the affairs of the institution except with the consent of the director. A copy of the order ~~shall~~ *must* also be served upon the institution, ~~whereupon~~ *and upon receipt* the board member or officer ~~shall cease~~ *ceases* to be a board member or officer of the institution. A finding of not guilty or other disposition of the charge does not preclude the director from ~~thereafter~~ instituting proceedings to suspend or remove the board member, officer, or other person from office or to prohibit further participation in the affairs of the institution pursuant to 32-1-905 or 32-1-906."

Section 1026. Section 32-1-910, MCA, is amended to read:

"32-1-910. Hearings — decision — review, modification, termination or stay of orders. (1) ~~Any~~ *A* hearing provided for in this part ~~shall~~ *must* be conducted in accordance with the provisions of the Montana Administrative Procedure Act. The hearing ~~shall~~ *must* be private unless the director, after fully considering the views of the party afforded the hearing, determines that a public hearing is necessary to protect the public interest. After the hearing and within 90 days after the director has notified the parties that the case has been submitted ~~to him~~ for final decision, ~~he~~ *the director* shall render ~~his~~ *a* decision, which ~~shall~~ *must* include findings of fact upon which ~~his~~ *the* decision is ~~predicated~~ *based*, and shall issue and serve upon each party to the proceeding an order consistent with the provisions of this section.

(2) Any party to the hearing or any person required by an order issued under this part to cease and desist from any of the violations or practices stated ~~therein~~ *in the order* or any person suspended, removed, or prohibited from participation in the conduct of the affairs of an institution may obtain a review of any order, other than a consent order~~,~~. ~~which~~ *The* review ~~shall~~ *must* be pursuant to the Montana Administrative Procedure Act. Unless a petition for review is timely filed as provided in the Montana Administrative Procedure Act, the director, at any time, upon ~~such~~ notice and in ~~such~~ *a* manner ~~as he~~ *that the director* considers proper, may modify, terminate, or set aside the order. Upon the timely filing of a petition for review, the director may modify, terminate, or set aside the order with the permission of the court."

Section 1027. Section 32-2-108, MCA, is amended to read:

"32-2-108. Purchase of obligations of association by officer. ~~No~~ *A* director, officer, agent, or other employee of any building and loan association ~~shall~~ *may not*, directly or indirectly, for ~~his~~ *the person's* own personal benefit, purchase or be interested in the purchase of any obligation of ~~said~~ *the* association for a ~~less~~ *lesser* sum than ~~shall appear~~ *appears* upon the books of ~~such~~ *the* association to be the value ~~thereof~~ *of the obligation*. Every person violating the provisions of this section shall for each offense forfeit to the state three times the face value of any ~~such~~ obligation ~~so~~ purchased."

Section 1028. Section 32-2-109, MCA, is amended to read:

"32-2-109. Purchase of assets of association by officer. ~~No~~ *An* officer, director, agent, or other employee of any association ~~shall~~ *may not*, directly or indirectly, for ~~his~~ *the person's* own personal benefit, purchase or be interested in the purchase of any of the assets of any building and loan association for a ~~less~~ *lesser* sum than the book value ~~thereof~~ *of the assets*. Every person violating any provision of this section shall for each offense forfeit to the state twice the nominal value of any ~~such~~ assets ~~so~~ purchased."

Section 1029. Section 32-2-209, MCA, is amended to read:

"32-2-209. Notice of meetings. (1) At least 30 days prior to any annual or special meeting of any association, a notice stating the time and place of the meeting ~~shall~~ *must* be deposited in the post office at the principal place of business of ~~such~~ *the* association, directed to each member or stockholder at ~~his~~ *the member's or stockholder's* address~~,~~ as the ~~same~~ *address* appears at the time on the books of the association~~,~~ and, when ~~so~~ deposited, postage prepaid, ~~shall be deemed~~ *is considered* a legal and sufficient notice of any meeting.

(2) In addition ~~thereto~~ *to the notice in subsection (1),* notice may be given by four consecutive weekly publications in a newspaper published in the county where the association has its principal place of business. ~~Such~~ *The* publication ~~shall be~~ *is* complete on the day of the fourth publication.

(3) In notices of special meetings there ~~shall~~ *must* be attached to and accompanying ~~such~~ *the* notice a statement of any matter or matters to be considered at ~~said~~ *the* meeting.

(4) All members or stockholders of the association ~~shall be~~ *are* entitled to vote at the meetings in person or by proxy."

Section 1030. Section 32-2-210, MCA, is amended to read:

"32-2-210. Proxies. At least once every year the board of directors of every building and loan association shall, by resolution, cause the secretary of ~~such~~ *the* association to mail to every member or stockholder of ~~such~~ *the* association a blank form of proxy, and the member or stockholder may withdraw ~~his~~ *a* former

proxy and substitute ~~another in its stead~~ *a new proxy for the former proxy*. ~~Every~~ *A* proxy ~~shall continue~~ *continues* in force and ~~be~~ *is* binding upon the member or stockholder until ~~such~~ *the* proxy is revoked or another *proxy is* substituted."

Section 1031. Section 32-2-212, MCA, is amended to read:

"32-2-212. Requirements of transfer in certain cases. When a certificate of stock or a savings account in a building and loan association is owned by persons residing out of the state or is lost, the president, secretary, or directors of ~~such~~ *the* association, before entering any transfer of ~~such~~ *the* stock or account on its books or before issuing a new certificate ~~therefor~~ to the transferee or owner, may require from the attorney or agent of the owner or from the person claiming under the transfer an affidavit or other evidence that the owner was alive at the date of the transfer or that the original certificate is lost and has not been assigned or transferred. ~~and~~ *The president, secretary, or directors* may also require from the attorney, agent, or claimant a bond of indemnity, with a surety or sureties satisfactory to the officers of ~~such~~ *the* association, to protect ~~such~~ *the* association against any liability to the owner, assignee, or transferee of ~~such~~ *the* shares or account or the legal representatives of the owners of ~~such~~ *the* shares or account, in case of ~~his or her~~ *the owner's* death before the transfer, and also to protect the association against any liability accruing or resulting by reason of ~~said~~ *the* lost or original certificate being ~~thereafter~~ presented to it. If the affidavit or other evidence or bond is not furnished when required as ~~herein~~ provided *in this section*, neither the association nor any officer ~~thereof shall be~~ *of the association is* liable for refusing to enter the transfer on the books of the association."

Section 1032. Section 32-2-232, MCA, is amended to read:

"32-2-232. Organization of mutual associations. The incorporators of a mutual association shall appoint one of their number as ~~chairman~~ *presiding officer* of the incorporators, and ~~he~~ *the presiding officer* shall procure from a surety company or other surety acceptable to the department a surety bond in an amount no less than the sum of the amount subscribed by the incorporators and the amount of the expense fund described in 32-2-233. The bond ~~shall~~ *must* name the department as obligee and ~~shall~~ *must* be delivered to ~~it~~ *the department*. The bond ~~shall~~ *must* ~~assure~~ *ensure* the safekeeping of the funds described and their delivery to the association after the issuance of a certificate of incorporation and after bonding of the officers of the corporation. In the event of failure to complete organization, the bond ~~shall assure~~ *must ensure* the return of the amounts collected to the respective subscribers or their assigns, less reasonable expenses, which ~~shall~~ *must* be deducted from the expense fund. The incorporators, before a certificate of incorporation is issued, shall pay to the ~~chairman~~ *presiding officer* in cash, labor, or services actually performed an aggregate amount of at least $500,000, including that part of the original subscription paid by the ~~chairman~~ *presiding officer*, as subscriptions to the savings accounts of the proposed association."

Section 1033. Section 32-2-233, MCA, is amended to read:

"32-2-233. Expense fund for mutual association. (1) In addition to their subscriptions to savings accounts, the incorporators shall create an expense fund of not less than one-half of the minimum amount of savings account subscriptions required to be paid ~~in~~ under this chapter. The expense fund ~~shall~~ *must* be used to pay the expenses of organizing the association, and its operating expenses may be paid from the fund until ~~such~~ *the* time ~~as~~ *that* its net

income is sufficient to pay ~~such~~ *the* earnings ~~as~~ *that* may be declared and paid or credited to its savings account holders from sources available for payment of earnings. Before a certificate of incorporation is issued, the incorporators shall deposit to the credit of the ~~chairman~~ *presiding officer* of the incorporators the amount of the expense fund, in cash. The amounts contributed to the expense fund by the incorporators ~~shall~~ *may* not constitute a liability of the association except as otherwise provided.

(2) Contributions made by the incorporators and others to the expense fund may be repaid pro rata from the net income of the association after provision for statutory reserves and declaration of earnings of not less than 2% on savings accounts. If the association is liquidated before contributions to the expense fund have been repaid, any contributions to the expense fund remaining unexpended ~~shall~~ *must* be repaid to the contributors pro rata~~,~~ after the payment of the expenses of liquidation, creditors, and withdrawal value of all savings accounts. The books of the association ~~shall~~ *must* reflect the expense fund. The contributors to the expense fund ~~shall~~ *must* be paid earnings on the amounts paid in by them at the times earnings are regularly distributed to savings account holders; and for this purpose, the contributions ~~shall~~ *must* in all respects be considered as savings accounts of the association."

Section 1034. Section 32-2-241, MCA, is amended to read:

"32-2-241. Organization of capital stock associations. The incorporators of a capital stock association shall appoint one of their number as ~~chairman~~ *presiding officer* of the incorporators, and the ~~chairman~~ *presiding officer* shall procure from a surety company or other surety acceptable to the department a surety bond in an amount at least equal to the sum of the amount of capital stock contributions and the additional amounts described in 32-2-242. The bond ~~shall~~ *must* name the department as obligee and ~~shall~~ *must* be delivered to ~~it~~ *the department*. The bond ~~shall assure~~ *must ensure* the safekeeping of the funds described and their delivery to the association after the issuance of the certificate of incorporation and the bonding of the officers. In the event of the failure to complete organization, the bond ~~shall assure~~ *must ensure* the return of the amounts collected to the respective subscribers or their assigns, less reasonable expenses, which ~~shall~~ *must* be deducted from the paid-in surplus. Before a certificate of incorporation is issued, the subscribers shall pay to the ~~chairman~~ *presiding officer*, in cash, labor, or services actually performed, the capital of ~~such~~ *the* association. The capital ~~shall~~ *must* be the sum of the par or initially stated value of all shares of voting capital stock. Each share of capital stock ~~shall entitle~~ *entitles* the holder of the share to one vote. The minimum required capital is $500,000."

Section 1035. Section 32-2-245, MCA, is amended to read:

"32-2-245. Purchase of stock of deceased stockholder. An association may purchase its capital stock from the personal representative of a deceased stockholder upon the written approval of the department. Upon obtaining written approval, an association may contract with a living stockholder for a purchase of ~~his~~ *the* stock upon ~~his~~ *the stockholder's* death. ~~Any such~~ *The* purchase ~~shall~~ *must* be for a price and upon ~~such~~ terms and conditions ~~as~~ *that* may be agreed upon by the association and the stockholder or personal representative. The purchase of a deceased stockholder's stock may not reduce the net worth accounts of the association to an amount less than required by law or by any approved insurer of the association's savings accounts. An association agreeing with a stockholder to purchase ~~his~~ *the* capital stock upon ~~his~~ *the stockholder's* death may purchase insurance on the life of the stockholder to

fund or partially fund ~~such~~ *the* purchase. Any stock purchased under this section may be resold by the association at a price and upon ~~such~~ terms and conditions ~~as~~ *that* the board of directors may approve, or may be retired. If the stock is to be resold, the association shall file notice with the department disclosing the price, terms, and conditions of the proposed resale."

Section 1036. Section 32-2-254, MCA, is amended to read:

"32-2-254. Conversion of mutual to capital stock association — mandatory plan requirements. The following requirements are mandatory in any plan of conversion from the mutual form to a capital stock form of organization:

(1) Each savings account holder ~~shall~~ *must* receive a withdrawable account of the same general class in the converted association equal in amount and time tenure to ~~his~~ *the holder's* withdrawable account in the converting association. ~~No~~ *A* payment may *not* be required from the account holder for this change of accounts.

(2) The plan ~~shall~~ *must* specify the aggregate dollar amount of voting capital stock and the total number of shares to be issued to accomplish the conversion. The distribution of the stock ~~shall~~ *must* be in accordance with subsection (3).

(3) All voting capital stock issued by the association to accomplish a conversion ~~shall~~ *must* be subscribed and fully paid for in cash, labor, or services actually performed in the conversion process and may not be eligible, either directly or indirectly, as security for a loan or other credit advance to facilitate its own purchase. Each account holder ~~must have~~ *has* the right for a period of 60 days to purchase a proportionate share of the stock at a price equal to the initial stated value ~~thereof~~ *of the stock*. Any stock remaining unsubscribed ~~shall~~ *must*, during the succeeding 60-day period, be offered for sale to those savings account holders of record who have purchased their proportionate share during the initial period. Any stock remaining unsubscribed may be offered for sale to others or transferred to others in consideration for labor or services actually performed in the conversion process.

(4) The record date for determining savings account holders' rights to distribution under subsection (3) ~~shall~~ *must* be set by the converting association's board of directors but may not be less than 120 days prior to the date of approval of the conversion plan by the directors.

(5) The conversion plan ~~shall~~ *must* make specific provision with respect to the surplus, reserves, undivided profits, and capital stock of the converted association, specifying types of accounts, amounts, priorities, any voting rights, and how ~~such~~ *the* accounts are to be disposed of or retained.

(6) The plan ~~shall~~ *must* contain ~~such~~ other information and be in the form *that is* required by the department to enable it to make a determination of whether:

(a) the plan is fair and equitable;

(b) the interests of the applicant, members or stockholders, savings account holders, and the public are adequately protected; and

(c) the converting applicant has complied with the requirements of 32-2-251 through 32-2-257."

Section 1037. Section 32-2-255, MCA, is amended to read:

"32-2-255. Conversion of capital stock to mutual association — mandatory plan requirements. The following requirements are mandatory

in any plan of conversion from the capital stock form to a mutual form of association:

(1) Each savings account holder ~~shall~~ *must* receive a withdrawable account of the same general class in the converted association equal in amount and time tenure to ~~his~~ *the holder's* withdrawable account in the converting association. ~~No~~ *A* payment may *not* be required from the account holder for this change of accounts.

(2) The conversion plan ~~shall~~ *must* specify how and in what amount the return of capital to each class of stockholder in the form of an exchange of stock for savings accounts ~~shall~~ *will* be effectuated.

(3) The plan ~~shall~~ *must* provide for the allocation of voting rights to the holders of savings accounts and the manner in which ~~such~~ *the* rights may be exercised.

(4) The plan ~~shall~~ *must* make specific provision with respect to the surplus, reserves, undivided profits, and capital stock of the converted association, specifying types of accounts, amounts, priorities, any voting rights, and how ~~such~~ *the* accounts ~~shall~~ *will* be disposed of or retained.

(5) The plan ~~shall~~ *must* contain ~~such~~ other information and be in the form *that is* required by the department to enable it to make a determination of whether:

(a) the plan is fair and equitable;

(b) the interests of the applicant, members or stockholders, savings account holders, and the public are adequately protected; and

(c) the converting applicant has complied with the requirements of 32-2-251 through 32-2-257."

Section 1038. Section 32-2-307, MCA, is amended to read:

"32-2-307. Reports and examinations by department confidential. (1) An employee or agent of the department who fails to keep secret the facts and information obtained in the course of an examination or by reason of ~~his~~ *the employee's or agent's* official position, except when the public duty of that officer requires ~~him~~ *the officer* to report upon or take official action regarding the affairs of the association ~~so~~ examined, or *who* willfully makes a false official report as to the conditions of the association ~~shall~~ *must* be removed from office and shall be fined not more than $500 or imprisoned in the penitentiary not less than 2 years or more than 5 years, or both.

(2) ~~Nothing in this~~ *This* section ~~prevents~~ *does not prevent* the proper exchange of information relating to building and loan associations and their business with the representatives of building and loan departments of other states, but in ~~no case shall~~ the private business or affairs of an individual, association, or company *may not* be disclosed."

Section 1039. Section 32-2-401, MCA, is amended to read:

"32-2-401. Powers and duties of building and loan associations. A building and loan association may:

(1) have continual succession by its corporate name;

(2) sue and be sued in any court;

(3) make and use a common seal and alter it at pleasure;

(4) appoint those officers or agents the business of the corporation requires and pay them suitable compensation;

(5) enter into obligations or contracts essential to the transaction of its ordinary affairs or for the purposes of the corporation;

(6) issue stock to stockholders and savings certificates to members on the terms and conditions the articles of incorporation and bylaws provide;

(7) assess and collect from members interest on loans at the times and in the amount provided for in the articles of incorporation and bylaws;

(8) permit members to withdraw all or part of their savings at the times and upon the terms as the articles of incorporation and bylaws may provide;

(9) cancel savings certificates upon which all credits have been withdrawn or upon which loans have been canceled or savings upon which ~~no~~ payments have *not* been made for a period of 6 months, by returning to the members all credits, if any, and reissue the certificates as new savings certificates;

(10) issue savings certificates to minors and permit them to be withdrawn as other savings certificates. The receipt by the minor is a valid acquittance if ~~his~~ *the minor's* rights have been fully secured to ~~him~~ *the minor*.

(11) acquire, hold, encumber, and convey ~~that~~ real estate and personal property *that is* necessary for the transaction of its business or necessary to enforce or protect its securities;

(12) borrow money, only when necessary and not exceeding 20% of its assets, except when borrowing from the federal home loan bank as provided in 32-2-405, and issue its promissory note for the loan;

(13) make loans to members on the security of the savings accounts of the association and also on their notes secured by first mortgages on improved real estate, including suburban homes or farm lands but not on mining property, for not to exceed 75% of the actual value of the real estate and upon the terms and conditions ~~which~~ *that* may be provided in the articles of incorporation and bylaws;

(14) cancel those loans and release the securities on those terms *that* the board of directors may provide;

(15) invest the money of the association in accordance with 32-2-406;

(16) loan money to other building and loan associations;

(17) make distribution of all interest and dividends earned after payment of expenses and setting aside a sum for the contingent funds as provided in this chapter;

(18) amend its articles of incorporation by changing the name, place of business, ~~the~~ *or* number of directors~~, and increase or decrease~~ *or by increasing or decreasing* the capital stock~~,~~ and provide for its own continual succession by a majority vote of its directors. However, those amendments are of no effect until approved by the department.

(19) dissolve the corporation in accordance with the provisions of this chapter;

(20) provide, by articles of incorporation and bylaws adopted or amended by its board of directors, for the proper exercise of the powers granted in this section and the conduct and management of its affairs;

(21) exercise those other powers ~~which~~ *that* are necessary and proper to enable the corporation to carry out the purpose of its organization."

Section 1040. Section 32-2-403, MCA, is amended to read:

"32-2-403. Statement of interest rates — canceling loans. (1) ~~Where~~ *When* the promissory note or other written evidence of the loan made by a building and loan association requires the payment of the loan or total aggregate sum of principal and interest in periodic installments, the promissory note or other written evidence of debt ~~shall~~ *must* specifically state the actual interest rate charged the borrower upon the unpaid balance of the principal amount at each periodic payment. When the note or other evidence of debt does not require the payment of the loan in periodic installments, the note or other evidence of debt ~~shall~~ *must* specifically state the actual rate of interest charged the borrower.

(2) A borrower may have ~~his~~ *a* loan canceled by paying all the interest up to *the* date of cancellation and the sum actually borrowed, less payments on principal, dues paid in, and the dividends credited."

Section 1041. Section 32-2-404, MCA, is amended to read:

"32-2-404. Savings account withdrawal. (1) ~~No~~ *A* charge or fee, except as provided in this section, may *not* be made against a member who withdraws ~~his~~ *the member's* savings~~,~~ after having given 30 days' notice of the withdrawal. ~~No~~ *A* fine of any description may *not* be made upon the value of that savings account because of the withdrawal. A member who withdraws ~~his~~ *the member's* savings or whose savings account is matured is entitled to receive all sums paid in and all interest declared, less interest, if any, as provided in 32-2-402, less a reasonable membership fee not exceeding 2% of the amount of ~~his~~ *the member's* deposit, and less a pro rata share of all losses, if any, ~~which~~ *that* have occurred. ~~No other fine~~ *Other fines* or assessments may *not* be made against the savings.

(2) Applications for withdrawal ~~shall~~ *must* be registered on the books of the association in the order received, and one-half of all cash collections not required to meet outstanding contracts must be used for the payment of the matured savings and of the withdrawals in the order registered. The other half of those collections each month may be used for the payment of withdrawals other than in the order registered, but ~~no~~ *a* member may *not* receive more than $100 in any ~~one~~ *1* month other than by payment of an application for withdrawal in the order registered. The term "outstanding contracts" includes the costs and expenses of operation, completion of loans, payment of taxes and assessments and necessary remodeling and repairs on properties owned by or mortgaged to the association, repayment of all borrowed money, and all fixed charges."

Section 1042. Section 32-2-408, MCA, is amended to read:

"32-2-408. Bonds of officers, agents, and employees. The board of directors of ~~every~~ *a* building and loan association shall require that all officers, agents, and employees of *the* building and loan ~~associations~~ *association* whose duties include the handling of ~~moneys~~ *money*, notes, bonds, credits, and cash items and whose duties include bookkeeping or the making of entries in relation to the business of the building and loan association and its customers be bonded. The board of directors shall by an order entered upon the minute books of the board designate all the officers, agents, and employees to be ~~so~~ bonded and the amount of bonds to be given by each. The action as to the personnel and amount and the surety company or sureties ~~shall be~~ *is* subject to approval by the department. The bonds ~~shall~~ *must* be in a form ~~which shall~~ *that must* be provided and approved by the department, ~~and~~ the bonds ~~shall~~ *must* be approved by the president of the building and loan association, and ~~his~~ *the president's* action *must be* reported to the board of directors. All bonds required by this section ~~shall~~ *must* be kept in the custody of the building and loan

association subject to inspection by the department. As far as possible, a bond may not be placed in the custody of the officer, agent, or employee for whom it is given."

Section 1043. Section 32-2-409, MCA, is amended to read:

"32-2-409. Employment of agents — licenses and revocation thereof. (1) It is unlawful for a building and loan association doing business in this state to employ an agent for the purpose of soliciting loans or the sale of stock in that association unless ~~he~~ *the agent* is first licensed by the department. An agent representing an association, foreign or domestic, doing business in this state may not solicit loans or the sale of stock of any association unless ~~he~~ *the agent* is first licensed by the department.

(2) A license may not be issued to an applicant for an agent's license until the applicant has first filed with the department a written request from the building and loan association desiring to employ ~~him~~ *the applicant* as agent and has filed an application upon a form prescribed and furnished by the department. The application must show the applicant's name, *the* business and residence address, *the* community or district in which ~~he~~ *the applicant* wishes to act as agent, the name of the company to be represented, ~~his~~ *the applicant's* occupation for the last 12 months, and other information *that* the department may require. If the department is satisfied that the applicant is a fit and proper person to engage in the solicitation of loans or the sale of stock, it shall issue the license. The department, upon 10 days' notice to an agent and after a hearing, may revoke the license of an agent upon the following grounds:

(a) misrepresentation;

(b) conviction in any court for violation of the criminal statutes;

(c) evidence sufficient to convince the department that the agent is not a fit and proper person to sell building and loan association stock.

(3) The department shall revoke the license of an agent upon the request of the association employing the agent.

(4) Each license provided for in this section expires on December 31 of each year, and for issuance or renewal the department shall require a fee of $2."

Section 1044. Section 32-3-406, MCA, is amended to read:

"32-3-406. Compensation of officials. ~~No~~ *An* officer, director, or committee member, other than the treasurer, a credit manager, or a loan officer may *not* be compensated for ~~his~~ service ~~as such~~ *in that position*, but reasonable life, health, accident, and similar insurance protection for a director or committee member ~~shall~~ *may* not be considered compensation. Directors and committee members, while on official business of the credit union, may be reimbursed for necessary expenses incidental to the performance of the business."

Section 1045. Section 32-3-407, MCA, is amended to read:

"32-3-407. Conflicts of interest. ~~No~~ *A* director, committee member, officer, agent, or employee of the credit union ~~shall~~ *may not* in any manner, directly or indirectly, participate in the deliberation upon or the determination of any question affecting ~~his~~ *the person's* pecuniary interest or the pecuniary interest of any corporation, partnership, or association*,* ~~(~~other than the credit union~~)~~*,* in which ~~he~~ *the person* is directly or indirectly interested."

Section 1046. Section 32-3-416, MCA, is amended to read:

"32-3-416. Credit manager. The credit committee may be dispensed with and a credit manager *may be* empowered to approve or disapprove loans under conditions prescribed by the board of directors. ~~In the event~~ *If* the credit committee is dispensed with, the procedures prescribed in 32-3-413 through 32-3-415 do not apply~~,~~ and ~~no~~ loans ~~shall~~ *may not* be made unless approved by the credit manager, except the credit manager may appoint one or more loan officers with the power to approve loans, subject to ~~such~~ limitations or conditions ~~as he~~ *that the credit manager* prescribes."

Section 1047. Section 32-3-418, MCA, is amended to read:

"32-3-418. Suspension and removal of officials. (1) The supervisory committee by a unanimous vote may suspend any member of the credit committee and shall report ~~such~~ *the* action to the board of directors for appropriate action.

(2) The supervisory committee by a unanimous vote may suspend any officer or member of the board of directors until the next members' meeting, which ~~shall~~ *must* be held not less than 7 or more than 21 days after ~~such~~ *the* suspension. At ~~such~~ *the* meeting*,* the suspension ~~shall~~ *must* be acted upon by the members.

(3) Any member of the supervisory committee may be removed by the board of directors for failure to perform ~~his~~ *the member's* duties in accordance with this chapter, the articles of incorporation, or the bylaws."

Section 1048. Section 32-3-507, MCA, is amended to read:

"32-3-507. Liens. The credit union ~~shall have~~ *has* a lien on the shares and accumulated dividends or interest of a member in ~~his~~ *the member's* individual, joint, or trust account for any sum past due the credit union from ~~said~~ *the* member or for any loan endorsed by ~~him~~ *the member*."

Section 1049. Section 32-3-605, MCA, is amended to read:

"32-3-605. Installments. A member may receive a loan in installments or in one sum and may pay the whole or any part of ~~his~~ *the* loan on any day on which the office of the credit union is open for business."

Section 1050. Section 32-4-203, MCA, is amended to read:

"32-4-203. Certificate of incorporation. Before the articles of incorporation ~~shall~~ *may* become effective, the secretary of state ~~must~~ *shall* issue a certificate that *verifies that* a copy of the articles containing the required statement of facts has been filed in ~~his~~ *the secretary of state's* office. ~~Thereupon~~ *Upon issuance of the certificate*, the persons signing the articles*,* ~~and~~ their associates*,* and their successors and assigns ~~shall~~ become a body politic and corporate, by the name specified in the articles of incorporation, subject to amendment and dissolution as provided in this chapter. The incorporators ~~shall~~ have the authority *to* and shall perform ~~such~~ *the* acts and things as required by the provisions of this chapter, as set forth in 32-4-201."

Section 1051. Section 32-4-205, MCA, is amended to read:

"32-4-205. Amendment of articles of incorporation. (1) The articles of incorporation may be amended by vote of the stockholders of the corporation, and ~~such~~ *the* amendments ~~shall~~ require approval by the affirmative vote of two-thirds of the stockholders, provided:

(a) that ~~no~~ *an* amendment ~~which~~ *that* is inconsistent with the general purposes expressed ~~herein~~ *in this chapter* or ~~which~~ *that* eliminates or curtails

the obligation of the corporation to make reports as provided in 32-4-306 ~~shall~~ *may not* be made without amendment of this chapter; and

(b) that ~~no~~ *an* amendment of the articles of incorporation ~~which~~ *that* increases the obligation of a member to make loans to the corporation~~;~~*,* makes any change in the principal amount, interest rate, maturity date, or in the security or credit position of any outstanding loan of a member to the corporation~~;~~*,* or affects a member's right to withdraw from membership as provided in 32-4-303 ~~shall~~ *may not* be made without the consent of each member affected by ~~such~~ *the* amendment.

(2) Within 30 days after any meeting at which amendment of the articles of incorporation has been adopted, articles of amendment signed and sworn to by the president, treasurer, and a majority of the directors, setting forth ~~such~~ *the* amendment and the due adoption ~~thereof~~ *of the amendment*, ~~shall~~ *must* so far as consistent with this chapter be submitted, as prescribed in Title 35, to the secretary of state who shall examine ~~them~~ *the articles*. If ~~he~~ *the secretary of state* finds that ~~they~~ *the articles* conform to the requirements of this chapter, ~~he~~ *the secretary of state* shall so certify and endorse ~~his~~ approval ~~thereon~~ *on the amended articles*. ~~Thereupon~~ *Upon certification and approval*, the amended articles of incorporation ~~shall~~ *must* be filed in the office of the secretary of state, and ~~no such~~ *an* amendment ~~shall~~ *may not* take effect until ~~such~~ *the* amended articles of incorporation ~~shall~~ have been filed as ~~aforesaid~~ *provided in this subsection*."

Section 1052. Section 32-4-301, MCA, is amended to read:

"32-4-301. Powers of stockholders. (1) The stockholders of the corporation ~~shall~~ have the following powers of the corporation:

(a) to determine the number of and elect directors as provided in 32-4-206;

(b) to make, amend, and repeal bylaws;

(c) to amend the articles of incorporation as provided in 32-4-205;

(d) to exercise ~~such~~ other ~~of the~~ powers of the corporation as may be conferred on the stockholders by the bylaws.

(2) As to all matters requiring action by the stockholders of the corporation~~,~~ and except as otherwise ~~herein~~ provided *in this chapter*, ~~such~~ *the* matters ~~shall~~ require the affirmative vote of a majority of the votes to which the stockholders present or represented at the meeting ~~shall be~~ *are* entitled.

(3) Each stockholder ~~shall have~~ *has* one vote, in person or by proxy, for each share of capital stock held by ~~him~~ *the stockholder*."

Section 1053. Section 32-5-304, MCA, is amended to read:

"32-5-304. Receipts — return of note. Every licensee shall:

(1) give to the borrower a plain and complete receipt in a form approved by the department for every payment made in cash on account of any loan at the time ~~such~~ *the* payment is made;

(2) endorse indelibly on a loan ledger or card, which ~~shall~~ *must* be kept by the licensee, the amount and date of each payment made by the borrower. Subject to the prior written approval of the department, mechanical data processing methods may be used. The department may approve any ~~such~~ system containing information *that is* equivalent to that required on a loan ledger or card.

(3) upon repayment of the loan in full, mark indelibly every obligation and security signed by the borrower with the word "paid" or "canceled" and release

any mortgage, restore any pledge, and cancel and return to the borrower any note and any assignment given to the licensee within 10 days after ~~such~~ *the* repayment. ~~Such~~ *The* canceled notes and canceled assignments ~~shall~~ *must* be mailed to the borrower at ~~his last known~~ *the borrower's last-known* address unless returned to the borrower in person."

Section 1054. Section 32-6-106, MCA, is amended to read:

"32-6-106. Unauthorized disclosure of electronic funds transfer records. (1) A person commits the offense of unauthorized disclosure of electronic funds transfer records if ~~he~~ *the person* has lawful access to ~~such~~ *the* records by virtue of office or employment *and*:

(a) ~~and~~ permits another, who lacks lawful access to ~~such~~ *the* records, to inspect, copy, or read ~~such~~ *the* records; or

(b) transfers ~~such~~ *the* records to another who lacks lawful access ~~thereto~~ *to the records*.

(2) A person convicted of the offense of unauthorized disclosure of electronic funds transfer records shall be imprisoned in the state prison for any term not to exceed 1 year, be fined not more than $5,000, or be punished by both ~~such~~ imprisonment and fine."

Section 1055. Section 32-6-302, MCA, is amended to read:

"32-6-302. Verification of statement — procedure for discrepancies. (1) If, upon receipt of a periodic statement of account, a customer of a financial institution believes the statement contains an error with respect to an electronic funds transfer, the customer shall notify the institution within 60 days after the day the institution delivered the statement. In this notification, the customer ~~shall identify himself~~ *must be identified* and *shall set forth* the foundation of ~~his~~ *the customer's* belief regarding the error.

(2) Within 10 days after a customer has notified a financial institution of a possible error under subsection (1), the institution shall either:

(a) correct the account in question, giving the customer a description of the correction *and* ~~(~~if the correction is not in the exact amount of the alleged error, the description ~~shall~~ *must* explain the difference~~)~~; or

(b) after investigating the matter, give the customer an explanation of the reasons the institution believes the statement to be correct. If requested in writing by the customer, a written explanation, documented by the institution's record of the transaction in question, ~~shall~~ *must* be furnished *to* the customer.

(3) A financial institution receiving notice under subsection (1) may not close the account concerning which the dispute exists or restrict transactions in ~~such~~ *the* account affecting the portion not in dispute until it complies with subsection (2). A financial institution ~~which~~ *that* has once complied with subsection (2) with respect to an alleged error is not required to respond under subsection (2) to repeated allegations of the same error."

Section 1056. Section 32-6-303, MCA, is amended to read:

"32-6-303. Unauthorized transactions — liability. (1) A customer whose account is debited by an electronic funds transfer without ~~his~~ *the customer's* authorization is not liable for the amount of ~~such~~ *the* transaction, and the amount must be recredited to ~~his~~ *the customer's* account as provided under 32-6-302~~,~~ unless:

(a) the financial institution has provided the customer *with* a unique identification device for initiating electronic funds transfer requests and

transactions are made as a result of the theft or loss of that device, in which case the customer is liable for the first $50 of any consequent transactions made prior to the time the financial institution is notified of the loss or theft; or

(b) the financial institution has provided the customer *with* a unique identification device for initiating, in conjunction with a personal identification number separate from the device, electronic funds transfer requests and the customer attaches the personal identification number to the device by writing or otherwise or in any way makes the number readily available for discovery in connection with the theft or loss of the device and transactions are made as a result of the theft or loss of the device, in which case the customer is liable for one-half the value of all consequent transactions made until the financial institution is notified of the theft or loss.

(2) A customer who willingly gives ~~his~~ *the customer's* unique identification device and personal identification number to another is presumed to have authorized any electronic funds transfers requested by the other person.

(3) A merchant who makes electronic funds transfer services available on ~~his~~ *the merchant's* premises is liable for the amount of an unauthorized electronic funds transfer requested from ~~his~~ *the* premises only if *the merchant*:

(a) ~~he~~ or ~~his~~ *the merchant's* agent is negligent in requiring a user of electronic funds transfer services to furnish adequate self-identification;

(b) ~~he~~ fails to retain a physical record of the transaction for 1 year following the transaction; or

(c) ~~he~~ breaches the warranty required by subsection (4).

(4) A merchant operating a point-of-sale terminal shall warrant to the financial institution or the department that an order for an electronic funds transfer emanating from the terminal is part of a commercial transaction in which the customer receives goods or services of commensurate value.

(5) The liability for any unauthorized or erroneous electronic funds transfer that does not fall upon a customer or a merchant under this section falls upon the financial institution that carries out the transfer."

Section 1057. Section 32-7-103, MCA, is amended to read:

"32-7-103. Exemptions. (1) The provisions of this part do not apply to the following:

(a) a person licensed by this state pursuant to Title 37, chapter 61, as an attorney at law who is not actively engaged in the escrow business;

(b) a person licensed by this state pursuant to Title 37, chapter 50, as a public accountant who is not actively engaged in the escrow business;

(c) a person whose principal business is that of preparing abstracts or making searches of title that are used as a basis for the issuance of any title insurance policy by a company doing business under the laws of this state relating to insurance companies and the person is regulated by the commissioner of insurance;

(d) a financial institution, as defined in 32-6-103, that has its escrow accounts regularly audited or examined. The financial institution ~~must~~ *shall* supply a copy of the most recently prepared audit or examination to the director upon ~~his~~ *the director's* request.

(e) except as provided in subsection (2), any broker licensed by the Montana board of realty regulation if ~~he~~ *the broker* is performing an act:

(i) in the course of or incidental to a single real estate transaction; and

(ii) for which a real estate license is required; and

(f) any person furnishing escrow services under the order of a court.

(2) A trust account of a broker licensed by the Montana board of realty regulation is not an escrow account within the meaning of this part."

Section 1058. Section 32-7-108, MCA, is amended to read:

"32-7-108. Director — powers and duties. (1) The director shall exercise general supervision and control over persons doing escrow business in this state.

(2) In addition to the other duties imposed upon ~~him~~ *the director* by law, the director shall:

(a) adopt reasonable rules necessary to effectuate the purposes of this part;

(b) conduct examinations and investigations that may be necessary to determine whether a person has engaged or is about to engage in any act or practice constituting a violation of any provisions of this part;

(c) conduct examinations, investigations, and hearings necessary and proper for the efficient administration of this part; and

(d) establish fees commensurate with the costs of issuing the license and examining an escrow business."

Section 1059. Section 33-1-211, MCA, is amended to read:

"33-1-211. Surety insurance. Surety insurance includes:

(1) fidelity insurance, which is insurance guaranteeing the fidelity of persons holding positions of public or private trust;

(2) insurance guaranteeing the performance of contracts, other than insurance policies, and guaranteeing and executing bonds, undertakings, and contracts of suretyship;

(3) insurance indemnifying banks, bankers, brokers, or financial or moneyed corporations or associations:

(a) against check forgery or alteration or against loss resulting from any cause of bills of exchange, notes, bonds, securities, evidences of debt, deeds, mortgages, warehouse receipts, or other valuable papers, documents, money, precious metals and articles made ~~therefrom~~ *from precious metals*, jewelry, watches, necklaces, bracelets, gems, or precious and semiprecious stones, including any loss while being transported in armored motor vehicles, by mail, or by messenger but not including any other risks of transportation or navigation;

(b) against loss or damage to the insured's premises or to ~~his~~ *the insured's* furnishings, fixtures, equipment, safes, and vaults ~~therein~~ *on the premises* caused by burglary, robbery, theft, or criminal mischief or any attempt ~~thereat~~ *of those crimes*."

Section 1060. Section 33-1-228, MCA, is amended to read:

"33-1-228. Commercial property. Risks generally covered by commercial property floaters covering property pertaining to a business, profession, or occupation may be covered by marine, inland marine, and transportation policies. This category includes:

(1) radium floaters;

(2) physicians' and surgeons' instrument floaters. ~~Such~~ *The* policies may include coverage of ~~such~~ furniture, fixtures, and tenant assured's interest in ~~such~~ *the* improvements of buildings ~~as~~ *that* are located in that portion of the premises occupied by the assured in the practice of ~~his~~ *the assured's* profession.

(3) pattern and die floaters;

(4) theatrical floaters, excluding buildings and improvements, furniture, and fixtures that do not travel ~~about~~ with theatrical troupes;

(5) film floaters, including a builders' risk during the production and coverage on completed negatives, positives, and sound records;

(6) ~~salesmen's~~ *salesperson's* samples floaters;

(7) exhibition policies on property while it is on exhibition and in transit to or from ~~such~~ exhibitions;

(8) live animal floaters;

(9) builders' risks and installation risks policies covering the interest of owner, seller, or contractor against loss or damage to machinery, equipment, building materials, or supplies being used with and during the course of installation, testing, building, renovating, or repairing. These policies may cover property at points or places where work is being performed, while in transit, and during temporary storage or deposit of property designated for an awaiting specific installation, building, renovating, or repairing. ~~Such~~ *The* coverage is limited to builders' risks or installation risks ~~where~~ *when* perils in addition to fire and extended coverage are to be insured. If written for the account of the owner, the coverage ceases upon completion of work and acceptance ~~thereof~~; *of the work,* or if written for the account of a seller or contractor, the coverage terminates when the interest of the seller or contractor terminates.

(10) mobile articles, machinery, and equipment floaters, ~~(~~excluding motor vehicles designed for highway use and motor homes, trailers, and semitrailers except when hauled by tractors not designed for highway use, and snowplows constructed exclusively for highway use~~)~~, covering identified property of a mobile or floating nature, not on sale or consignment or in the course of manufacture, that has come into custody or control of parties who intend to use ~~such~~ *the* property for which it was manufactured or created. ~~Such~~ *The* policies may not cover furniture and fixtures not customarily used away from premises where ~~such~~ *the* property is usually kept.

(11) property in transit to or from and in the custody of bailees, ~~(~~not owned, controlled, or operated by the bailor~~)~~, but ~~such~~ *the* policies may not cover the bailee's property at ~~his~~ *the bailee's* premises;

(12) installment sales and leased property policies covering property sold under conditional contract of sale, partial payment contract or installment sales contract or leased, but excluding motor vehicles designed for highway use. These policies must cover property in transit but may not extend beyond the termination of the seller's or lessor's interest. This subsection does not include machinery and equipment under certain "lease-back" contracts.

(13) garment contracts' floaters;

(14) furriers' or fur storers' customer's policies, which are policies under which certificates or receipts are issued by furriers or fur storers, covering specified articles that are the property of customers;

(15) accounts receivable policies and valuable papers and records policies;

(16) floor plan policies, covering property for sale while in possession of dealers under a floor plan or any similar plan under which the dealer borrows money from a bank or lending institution to pay the manufacturer~~,~~ if:

(a) the merchandise is specifically identifiable as encumbered to the bank or lending institution;

(b) the dealer's right to sell or otherwise dispose of the merchandise is conditioned upon its being released from encumbrance by the bank or lending institution; and

(c) the policies cover property in transit and do not extend beyond the termination of the dealer's interest;

(17) sign and street clock policies, including neon signs, automatic or mechanical signs, and street clocks, while in use as ~~such~~ *intended*;

(18) fine arts policies covering paintings, etchings, pictures, tapestries, art glass windows, and other bona fide works of art of rarity, historical value, or artistic merit, for account of museums, galleries, universities, businesses, municipalities, and other similar interests;

(19) policies covering personal property, which may include coverage of money in locked safes or vaults on the assured's premises and may also include coverage of furniture, fixtures, tools, machinery, patterns, molds, dies, and a tenant insured's interest in improvements of buildings, which when sold to the ultimate purchaser may be covered specifically by the owner under inland marine policies*,* including:

(a) musical instrument dealers' policies, covering property consisting principally of musical instruments and their accessories, but radios, televisions, record players, and combinations of them are not musical instruments for the purposes of this subsection;

(b) camera dealers' policies covering property consisting principally of cameras and their accessories;

(c) furrier dealers' policies covering property consisting principally of furs and fur garments;

(d) equipment dealers' policies covering mobile equipment consisting of binders, reapers, tractors, harvesters, harrows, tedders, and other similar agricultural equipment and accessories ~~therefor;~~ *for the equipment and covering* construction equipment consisting of bulldozers, road scrapers, tractors, compressors, pneumatic tools, and similar equipment and accessories ~~therefor~~ *for the equipment*, but excluding motor vehicles designed for highway use;

(e) stamp and coin dealers' policies covering property of philatelic and numismatic nature;

(f) jewelers' block policies; and

(g) fine arts dealers' policies;

(20) wool growers' floaters;

(21) domestic bulk liquids policies covering tanks and domestic bulk liquids stored ~~therein~~ *in the tanks*;

(22) "difference in conditions" coverage, excluding fire and extended coverage perils; and

(23) electronic data processing policies."

Section 1061. Section 33-1-302, MCA, is amended to read:

"33-1-302. Commissioner's seal. (1) The commissioner ~~shall~~ *must* have a seal of office consisting of the same symbolic design within the inner circle as the great seal of the state of Montana, encircled by the words "Commissioner of Insurance, State of Montana".

(2) All certificates and licenses issued by the commissioner ~~shall~~ *must* bear ~~his~~ *the* seal, except that the commissioner may~~, in his discretion,~~ omit the seal ~~as to~~ *for* licenses."

Section 1062. Section 33-1-304, MCA, is amended to read:

"33-1-304. Delegation of authority — responsibility. (1) The commissioner may delegate to any deputy, assistant, examiner, or employee of ~~his~~ *the commissioner's* department the exercise or discharge in the commissioner's name of any power, duty, or function, whether ministerial or discretionary, vested by this code in the commissioner.

(2) The commissioner ~~shall be~~ *is* responsible for the official acts of ~~his~~ *the commissioner's* deputy, assistant, examiner, or employee acting in the commissioner's name and by ~~his~~ *the commissioner's* authority."

Section 1063. Section 33-1-312, MCA, is amended to read:

"33-1-312. Records and certificates. (1) The commissioner shall enter in permanent form records of ~~his~~ *the commissioner's* official transactions, examinations, investigations, and proceedings and keep ~~such~~ *the* records in ~~his~~ *the commissioner's* office. ~~Such~~ *The* records and insurance filings in ~~his~~ *the commissioner's* office ~~shall~~ *must* be open to public inspection except as otherwise provided in this code with respect to particular records or filings.

(2) When required, the commissioner shall furnish ~~his~~ *a* certificate as to the authority of any person to transact insurance, and ~~such~~ *the* certificate ~~shall~~ *must* be evidence of the facts set forth ~~therein~~ *in the certificate*.

(3) Copies of records or documents in ~~his~~ *the commissioner's* office certified to by the commissioner ~~shall~~ *must* be received in evidence in all courts as if they were the originals."

Section 1064. Section 33-1-402, MCA, is amended to read:

"33-1-402. Examination of insurance producers, managers, and promoters. For the purpose of ascertaining compliance with this code, the commissioner may, as often as ~~he~~ *the commissioner* considers advisable, examine the accounts, records, documents, and transactions pertaining to or affecting its insurance affairs or proposed insurance affairs of:

(1) an insurance producer, surplus lines insurance producer, general insurance producer, or adjuster;

(2) a person having a contract under which ~~he~~ *the person* enjoys in fact the exclusive or dominant right to manage or control an insurer;

(3) a person holding the shares of voting stock or policyholder proxies of a domestic insurer, for the purpose of controlling the management of the domestic insurer, as voting trustee or otherwise;

(4) a person engaged in or proposing to be engaged in or assisting in the promotion or formation of a domestic insurer or insurance holding corporation or corporation to finance a domestic insurer or the production of its business."

Section 1065. Section 33-1-502, MCA, is amended to read:

"33-1-502. Grounds for disapproval. The commissioner shall disapprove any form filed under 33-1-501 or withdraw any previous approval ~~thereof~~ *of a form* only if the form:

(1) is in any respect in violation of or does not comply with this code;

(2) contains or incorporates by reference, where ~~such~~ *the* incorporation is otherwise permissible, any inconsistent, ambiguous, or misleading clauses or exceptions and conditions ~~which~~ *that* deceptively affect the risk purported to be assumed in the general coverage of the contract, including a provision in a casualty insurance form permitting defense costs within limits, except as permitted by the commissioner ~~in his discretion~~;

(3) has any title, heading, or other indication of its provisions ~~which~~ *that* is misleading;

(4) is printed or otherwise reproduced in ~~such~~ *a* manner ~~as to render~~ *that renders* any provision of the form substantially illegible;

(5) contains any provision that violates the provisions of 49-2-309."

Section 1066. Section 33-1-602, MCA, is amended to read:

"33-1-602. Service of process — foreign, alien, or domestic. Service of ~~such~~ process against a foreign or alien insurer ~~shall~~ *may* be made only by service of process upon the commissioner or upon a deputy or other person in charge of ~~his~~ *the commissioner's* office during ~~his~~ *the commissioner's* absence. Service of process against a domestic insurer may be made either upon the commissioner or upon the insurer corporation in the manner provided by laws applying to corporations generally or upon the insurer's attorney-in-fact if a domestic reciprocal insurer."

Section 1067. Section 33-1-603, MCA, is amended to read:

"33-1-603. Serving process — time to plead. (1) Duplicate copies of legal process against an insurer for whom the commissioner is *the* attorney, pursuant to 33-1-601, ~~shall~~ *must* be served upon the commissioner or upon ~~his~~ *the commissioner's* deputy or other person in charge of ~~his~~ *the* office during ~~his~~ *the commissioner's* absence. At the time of service, the plaintiff shall pay to the commissioner $10, taxable as costs in the action. Upon receiving ~~such~~ *the* service, the commissioner shall promptly forward a copy ~~thereof~~ by certified ~~or registered~~ mail to the person last ~~so~~ designated by the insurer to receive the ~~same~~ *service*.

(2) ~~Where~~ *When* process is served upon the commissioner as an insurer's attorney, the insurer ~~shall have~~ *has* 30 days within which to appear, answer, or plead after *the* date of mailing of the copy ~~thereof~~ by the commissioner, exclusive of *the* date of mailing, as provided by subsection (1).

(3) Process served upon the commissioner and *a* copy ~~thereof~~ *of the process* forwarded as *provided* in this section ~~provided shall constitute~~ *constitutes* service ~~thereof~~ *of the process* upon the insurer."

Section 1068. Section 33-1-612, MCA, is amended to read:

"33-1-612. Commissioner — process agent for unauthorized insurer doing business in state. Delivery, effectuation, or solicitation of any insurance contract, by mail or otherwise, within this state by an unauthorized insurer~~,~~ or the performance within this state of any other service or transaction connected with ~~such~~ *the* insurance by or on behalf of ~~such~~ *the* insurer~~, shall be deemed~~ *must be considered* to constitute an appointment by ~~such~~ *the* insurer of the commissioner and ~~his~~ *the commissioner's* successors in office as its attorney, upon whom may be served all lawful process issued within this state in any action or proceeding against ~~such~~ *the* insurer arising out of any ~~such~~ contract or transaction~~,~~ and ~~shall be deemed~~ *must be considered* to signify the insurer's

agreement that any ~~such~~ service of process ~~shall have~~ *has* the same legal effect and validity as personal service of process upon it in this state."

Section 1069. Section 33-1-613, MCA, is amended to read:

"33-1-613. Service of process — criteria mandating designation of commissioner. (1) Service of process upon any ~~such~~ insurer pursuant to 33-1-612 ~~shall~~ *must* be made by delivering to and leaving with the commissioner or some person in apparent charge of ~~his~~ *the commissioner's* office two copies ~~thereof~~ *of the process* and the payment to ~~him~~ *the commissioner* of ~~such~~ fees ~~as~~ *that* may be prescribed by law. The commissioner shall ~~forthwith~~ mail by ~~registered or~~ certified mail one of the copies of ~~such~~ *the* process to the defendant at its principal place of business last known to the commissioner and shall keep a record of ~~all~~ *any* process ~~so~~ served upon ~~him~~ *the commissioner*. ~~Such~~ *The* service of process is sufficient~~, provided~~ *if* notice of ~~such~~ *the* service and a copy of the process are sent within 10 days ~~thereafter~~ by ~~registered or~~ certified mail by *the* plaintiff's attorney to the defendant at its ~~last known~~ *last-known* principal place of business and the defendant's receipt or receipt issued by the post office with which the letter is registered, showing the name of the sender of the letter and the name and address of the person to whom the letter is addressed, and the affidavit of the plaintiff's attorney showing a compliance ~~herewith~~ *with this section* are filed with the clerk of the court in which ~~such~~ *the* action is pending on or before the date the defendant is required to appear or within ~~such~~ further time ~~as~~ *that* the court may allow.

(2) Service of process in any ~~such~~ action, suit, or proceeding ~~shall~~ *must* in addition to the manner provided in subsection (1) ~~of this section~~ be valid if:

(a) served upon any person within this state who in this state on behalf of ~~such~~ *the* insurer is:

(i) soliciting insurance;

(ii) making any contract of insurance or issuing or delivering any policies or written contracts of insurance; or

(iii) collecting or receiving any premium for insurance;

(b) a copy of ~~such~~ *the* process is sent within 10 days ~~thereafter~~ by ~~registered or~~ certified mail by the plaintiff's attorney to the defendant at the ~~last known~~ *last-known* principal place of business of the defendant; and

(c) the defendant's receipt or the receipt issued by the post office with which the letter is registered, showing the name of the sender of the letter and the name and address of the person to whom the letter is addressed, and the affidavit of the plaintiff's attorney showing a compliance ~~herewith~~ *with this section* are filed with the clerk of the court in which ~~such~~ *the* action is pending on or before the date the defendant is required to appear or within ~~such~~ further time ~~as~~ *that* the court may allow.

(3) ~~No~~ *A* plaintiff or complainant ~~shall~~ *may not* be entitled to a judgment by default under this section until the expiration of 30 days from the date of the filing of the affidavit of compliance.

(4) ~~Nothing in this~~ *This* section ~~contained shall~~ *does not* limit or abridge the right to serve any process, notice, or demand upon any insurer in any other manner now or ~~hereafter~~ *later* permitted by law."

Section 1070. Section 33-2-111, MCA, is amended to read:

"33-2-111. Deposit requirement. (1) An insurer ~~shall~~ *may* not be authorized to transact insurance in this state unless it makes and ~~thereafter~~

maintains in trust in this state through the commissioner for the protection of all its policyholders or of all its policyholders and creditors a deposit of cash or securities eligible for deposit under 33-2-603 in an amount not less than the minimum paid-in capital stock, ~~(~~if a stock insurer~~)~~, or minimum surplus, ~~(~~if a mutual or reciprocal insurer~~)~~, other than special surplus, required to be maintained for authority to transact the kinds of insurance to be transacted, except as to:

(a) title insurers, the deposit ~~shall~~ *must* be in the amount of $100,000;

(b) foreign insurers, in lieu of ~~such~~ *the* deposit or part ~~thereof~~ *of the deposit* in this state, the commissioner shall accept the certificate in proper form of the public official having supervision over insurers in any other state to the effect that a like deposit or part ~~thereof~~ *of a deposit* by ~~such~~ *the* insurer is being maintained in public custody ~~therein~~ *in that state* in trust for the purpose, among other reasonable purposes of protection of policyholders ~~and/or~~ *or* creditors, *or both,* of the protection of all its policyholders or ~~policyholders and~~ creditors*, or both,* in Montana;

(c) alien insurers, in lieu of ~~such~~ *the* deposit or part ~~thereof~~ *of the deposit* in this state, the commissioner shall accept evidence satisfactory to ~~him~~ *the commissioner* that the insurer maintains within the United States by way of trust deposits with public depositaries or in trust institutions approved by the commissioner assets available for discharge of its United States insurance obligations. ~~which~~ *The* assets ~~shall~~ *must* be in *an* amount not less than the outstanding liabilities of the insurer arising out of its insurance transactions in the United States, together with the larger of the following sums:

(i) the largest deposit required by this code to be made by foreign insurers transacting like kinds of insurance; or

(ii) $300,000.

(2) Deposits of foreign or alien insurers in another state ~~shall~~ *must* be in cash ~~and/or~~ *or* securities*, or both,* of substantially the same quality as those eligible for deposit in this state under 33-2-603.

(3) Deposits of reserves by domestic life insurers ~~shall~~ *must* be made as provided in 33-2-531.

(4) Deposits made in this state ~~shall further be~~ *are* subject to the provisions of part 6 of this chapter."

Section 1071. Section 33-2-112, MCA, is amended to read:

"33-2-112. Management qualifications and affiliations. The commissioner ~~shall~~ *may* not grant or continue authority to transact insurance in this state as to any insurer the principal management personnel of which is found by ~~him~~ *the commissioner* to be untrustworthy or not of good character or so lacking in insurance company managerial experience as to make the proposed operation hazardous to the insurance-buying public or to its stockholders or ~~which he~~ *that the commissioner* has good reason to believe is affiliated directly or indirectly through ownership, control, management, reinsurance transactions, or other insurance or business relations with any person or persons whose business operations, to the detriment of insurers, stockholders, or creditors, are or have been marked by manipulation of assets, accounts, or reinsurance or by bad faith."

Section 1072. Section 33-2-116, MCA, is amended to read:

"33-2-116. Issuance or refusal of certificate of authority — state ownership of certificate. (1) If upon completion of its application the

commissioner finds that the insurer has met the requirements for and is entitled ~~thereto~~ under this code, ~~he~~ *the commissioner* shall issue to the insurer a proper certificate of authority. If ~~he~~ *the commissioner* does not so find, the commissioner shall issue ~~his~~ *an* order refusing ~~such~~ *the* certificate. The commissioner shall act upon an application for a certificate of authority within 180 days after its completion.

(2) The certificate, if issued, ~~shall~~ *must* specify the kind or kinds of insurance the insurer is authorized to transact in Montana. At the insurer's request, the commissioner may issue a certificate of authority limited to particular types of insurance or insurance coverages within the scope of a kind of insurance as defined in 33-1-205 through 33-1-212.

(3) Although issued to the insurer, the certificate of authority is at all times the property of the state of Montana. Upon any expiration, suspension, or termination ~~thereof~~ *of the certificate*, the insurer shall promptly deliver the certificate of authority to the commissioner."

Section 1073. Section 33-2-120, MCA, is amended to read:

"33-2-120. Notice of suspension or revocation — effect upon producer's authority. (1) Upon suspending or revoking an insurer's certificate of authority, the commissioner shall ~~forthwith~~ give notice ~~thereof~~ to the insurer and to its insurance producers in this state of record in the commissioner's office.

(2) ~~Such~~ *The* suspension or revocation ~~shall likewise~~ *must* automatically suspend or revoke, as the case may be, the authority of all ~~such~~ insurance producers to act as insurance producers of the insurer in this state, and the commissioner shall ~~so~~ state *that requirement* in the notice to insurance producers provided for in subsection (1).

(3) ~~In his discretion the~~ *The* commissioner may also publish notice of ~~such~~ revocation in one or more newspapers of general circulation published in this state."

Section 1074. Section 33-2-121, MCA, is amended to read:

"33-2-121. Duration of suspension — insurer's obligations — reinstatement. (1) Suspension of an insurer's certificate of authority ~~shall~~ *must* be for ~~such~~ *a* period ~~as is~~ fixed by the commissioner in the order of suspension and ~~shall~~ *must* continue until rescinded or otherwise removed by the commissioner. During the suspension, the commissioner may shorten the period ~~thereof~~ by ~~his~~ further order.

(2) During the period of the suspension the insurer shall file its annual statement and pay fees, licenses, and taxes as required under this code as if the certificate had continued in full force.

(3) If within ~~such~~ *the* period of suspension the certificate of authority has not been terminated, the insurer's certificate of authority may be reinstated if the commissioner finds that the causes of the suspension have been removed or that the insurer is otherwise in compliance with the requirements of this code.

(4) Upon reinstatement of the insurer's certificate of authority, the authority of its insurance producers in this state to represent the insurer ~~shall likewise reinstate~~ *are reinstated*.

(5) The commissioner shall forthwith notify both the insurer and its insurance producers in this state, as shown by ~~his~~ *the commissioner's* records, of ~~such~~ *the* reinstatement."

Section 1075. Section 33-2-127, MCA, is amended to read:

"33-2-127. Effects of transfer of domicile. The certificate of authority, producers' appointments and licenses, policy forms, rates, and other items that the commissioner allows~~, in his discretion,~~ that are in existence at the time an insurer admitted to transact insurance in this state transfers its corporate domicile to this or any other state continue in ~~full force and~~ effect upon transfer if the insurer remains qualified to transact insurance in this state. All rates and outstanding policies of a transferring insurer remain in ~~full force and~~ effect, and policies need not be endorsed as to the new name of the company or its domicile unless required by the commissioner. A transferring insurer either shall file new policy forms for use in this state with the commissioner on or before the effective date of the transfer or may use existing policy forms with the appropriate endorsements~~,~~ as allowed by the commissioner. A transferring insurer shall notify the commissioner of the proposed transfer and shall promptly file any resulting amendments to corporate documents required to be filed with the commissioner."

Section 1076. Section 33-2-205, MCA, is amended to read:

"33-2-205. Trust agreement — approval. (1) The deposit referred to in 33-2-202 ~~shall~~ *must* be made under a written trust agreement between the insurer and the trustee, consistent with the provisions of this part, and ~~shall~~ *must* be authenticated in ~~such~~ *the* form and manner ~~as~~ *that* the commissioner may designate or approve.

(2) The agreement ~~shall~~ *may* not be effective until filed with and approved in writing by the commissioner. The commissioner ~~shall~~ *may* not approve any trust agreement found by ~~him~~ *the commissioner* not to be in compliance with law or the terms of which do not in fact provide reasonably adequate protection for the insurer's policyholders ~~or policyholders and~~ *or* creditors*, or both,* in the United States."

Section 1077. Section 33-2-208, MCA, is amended to read:

"33-2-208. Withdrawal of approval. The commissioner's approval of any trust agreement or of any amendment ~~thereof~~ *of a trust agreement* may be withdrawn by the commissioner if ~~he~~ *the commissioner* finds upon hearing, after notice ~~thereof~~ to the insurer and the trustee or trustees, that the requisites for ~~such~~ approval, as provided in this part, no longer exist."

Section 1078. Section 33-2-211, MCA, is amended to read:

"33-2-211. Statement of trustee. (1) The trustee of trusteed assets shall, from time to time, file with the commissioner statements, in ~~such~~ *the* form ~~as he~~ *that the commissioner* may designate and request in writing, certifying the character of ~~such~~ *the* assets and the amounts ~~thereof~~ *of the assets*.

(2) If the trustee fails to file any ~~such~~ statement *described in subsection (1)* after *a* request ~~therefor~~ *for the statement* and expiration of a reasonable time ~~thereafter~~, the commissioner may suspend or revoke the certificate of authority of the insurer."

Section 1079. Section 33-2-214, MCA, is amended to read:

"33-2-214. Substitution of trustee. (1) A new trustee or new trustees may be substituted for the original trustee or trustees of trusteed assets in the event of a vacancy or for other proper cause. Any ~~such~~ substitution ~~shall be~~ *is* subject to the commissioner's approval.

(2) If the trustees of any trusteed assets ~~heretofore created~~ are individuals and if the number of ~~such~~ trustees is reduced to less than three by death,

resignation, or otherwise, the commissioner shall require that there be substituted for ~~such~~ *the* trustees a bank or trust company in this state approved by ~~him~~ *the commissioner*."

Section 1080. Section 33-2-306, MCA, is amended to read:

"33-2-306. Surplus lines insurance producer's authority under license — acceptance of business from other insurance producers. (1) Under a surplus lines insurance producer's license, the licensee may place surplus lines insurance, in compliance with The Surplus Lines Insurance Law, with a foreign or alien insurer not authorized to transact insurance in this state and may act as a surplus lines insurance producer in this state for the insurer.

(2) The surplus lines insurance producer may accept surplus lines insurance from a licensed insurance producer of an authorized insurer or, if the commissioner agrees in advance, through an individual, partnership, or corporation that has not been appointed as an insurance producer in this state and may ~~compensate him therefor~~ *provide compensation for the insurance*.

(3) A surplus lines insurance producer who places or renews surplus lines insurance in accordance with subsection (1) may collect an inspection fee for the actual costs of inspecting the risk to be covered."

Section 1081. Section 33-2-308, MCA, is amended to read:

"33-2-308. Evidence of insurance — changes — penalty. (1) Upon placing surplus lines insurance, the surplus lines insurance producer shall promptly issue or deliver to the insured or the producing insurance producer evidence of the insurance, consisting either of the policy as issued by the insurer or, if the policy is not then available, a cover note or certificate of insurance signed or countersigned by the insurance producer. The cover note or certificate must show the subject, coverage, conditions, and term of the insurance, the premium charged and taxes collected from the insured, and the name and address of the insurer. If a direct risk is assumed by more than one insurer, the cover note or certificate must state the name and address and proportion of the entire direct risk assumed by each insurer.

(2) If after the issuance and delivery of any cover note or certificate there is a change as to the identity of the insurers or the proportion of the direct risk assumed by the insurer as stated in the original cover note or certificate or in any other material respect as to the insurance coverage evidenced by the cover note or certificate, the surplus lines insurance producer shall promptly issue or deliver to the insured a substitute cover note or certificate accurately showing the current status of the coverage and the insurers responsible under the coverage.

(3) If a policy issued by the insurer is not available upon placement of the insurance and the surplus lines insurance producer has issued and delivered a cover note or certificate as provided in subsection (2), upon request ~~therefor~~ by the insured, the surplus lines insurance producer shall as soon as reasonably possible procure from the insurer its policy evidencing the insurance and deliver the policy to the insured in replacement of the cover note or certificate previously issued.

(4) A surplus lines insurance producer who knowingly or negligently issues or delivers a false cover note or certificate of insurance or fails promptly to notify the insured of a material change with respect to the insurance by delivery to the insured of a substitute cover note or certificate as provided in subsection (2) is guilty of a violation of this code and upon conviction is subject to the penalties

provided by 33-1-104 or to any greater applicable penalty otherwise provided by law.

(5) A surplus lines insurance producer may not issue or deliver an evidence of insurance or purport to insure or represent that insurance will be or has been written by an eligible surplus lines insurer unless ~~he~~ *the surplus lines insurance producer* has authority from the insurer to cause the risk to be insured or has received information from the insurer in the regular course of business that the insurance has been granted."

Section 1082. Section 33-2-309, MCA, is amended to read:

"33-2-309. Liability of insurer as to losses and unearned premiums. (1) As to a surplus lines risk that has been assumed by an unauthorized insurer pursuant to The Surplus Lines Insurance Law and if the premium on the surplus lines risk has been received by the surplus lines insurance producer who placed the insurance, in all questions ~~thereafter~~ arising under the coverage as between the insurer and the insured, the insurer is considered to have received the premium due to it for the coverage. The insurer is liable to the insured ~~as to~~ *for* losses covered by the insurance and for unearned premiums that may become payable to the insured upon cancellation of the insurance, whether or not in fact the surplus lines insurance producer is indebted to the insurer with respect to the insurance or for any other cause. This provision does not affect rights as between the insurer and the surplus lines insurance producer.

(2) A payment of premium to a surplus lines insurance producer acting for a person other than ~~himself~~ *individually* in negotiating, continuing, or reviewing a policy of insurance under this part is considered to be payment to the insurer, notwithstanding any conditions or stipulations that may be inserted in the policy or contract.

(3) Each unauthorized insurer assuming a surplus lines direct risk under The Surplus Lines Insurance Law is considered to have subjected itself to the terms of this section."

Section 1083. Section 33-2-310, MCA, is amended to read:

"33-2-310. Records and annual statement — affidavit. (1) Each surplus lines insurance producer shall keep a separate record and account of all business transacted under ~~his~~ *the producer's* license, including a copy of each daily report, if any, or of each policy, certificate of insurance, cover note, or other evidence of insurance issued or delivered by ~~him~~ *the producer*. The records must be available for examination by the commissioner at any reasonable time within 5 years after the issuance of the surplus lines insurance to which it relates.

(2) Prior to April 1 of each year*,* the surplus lines insurance producer shall file with the commissioner a statement for the preceding calendar year~~,~~ showing:

(a) name and address of each insured for whom surplus lines insurance was procured;

(b) name and home office address of each insurer providing the surplus lines insurance;

(c) amount of each surplus lines insurance policy, the premium rate, and the gross premium charged for the policy;

(d) date and term of the policy;

(e) amount of premium returned on each policy canceled or not taken;

(f) amount of tax and other sums to be collected from the insured;

(g) identity of the producing insurance producer; and

(h) ~~such~~ additional information ~~as~~ *that* the commissioner may reasonably require.

(3) Each producing insurance producer shall execute and each surplus lines insurance producer shall file an affidavit, on a standardized form furnished by the commissioner, as to the diligent efforts to place the coverage with authorized insurers and the results of ~~such~~ *the* efforts. An affidavit filed under this subsection is subject to public inspection unless the commissioner determines that the public interest requires otherwise. The producing insurance producer shall state in the affidavit that ~~he~~ *the producer* has expressly advised the insured prior to placing the insurance that:

(a) the surplus lines insurer with whom the insurance is placed is not authorized in this state and is not subject to the same supervision as an authorized insurer; and

(b) in the event of the insolvency of the surplus lines insurer, the property and casualty guaranty fund of the state will not pay losses under the surplus lines coverage."

Section 1084. Section 33-2-311, MCA, is amended to read:

"33-2-311. Tax on surplus lines. There is imposed upon premiums collected for surplus lines insurance transacted in this state a tax at the same rate and computed in the same manner as provided in 33-2-705 as to premiums of authorized insurers, except that amounts collected from the insured specifically for applicable state and federal taxes, and in excess of the premium otherwise required, are not considered to be part of the premium for the purposes of ~~such~~ *the* computation. Upon filing of the annual statement referred to in 33-2-310(2), the surplus lines insurance producer shall pay to the commissioner the amount of tax owing as to surplus lines insurance business transacted by ~~him~~ *the surplus lines insurance producer* during the preceding calendar year. If a surplus lines insurance policy covers risks or exposures only partially in this state, the tax payable must be computed upon the proportion of the premium ~~which~~ *that* is properly allocable to the risks or exposures located in this state."

Section 1085. Section 33-2-503, MCA, is amended to read:

"33-2-503. Treatment of assets. Assets may be allowed as deductions from corresponding liabilities, ~~and~~ liabilities may be charged as deductions from assets, and deductions from assets may be charged as liabilities, in accordance with the form of annual statement applicable to the insurer as prescribed by the commissioner~~, or otherwise in his discretion~~."

Section 1086. Section 33-2-605, MCA, is amended to read:

"33-2-605. Record of deposits — liability of commissioner and state. (1) The commissioner shall give to the depositing insurer vouchers as to all assets and securities deposited by it in this state through the commissioner as provided in this code.

(2) The commissioner shall keep a record of the assets and securities comprising each deposit, showing as far as practical the amount and market value of each item, and all ~~his~~ transactions relative ~~thereto~~ *to the deposits*.

(3) The commissioner and the state of Montana ~~shall~~ *do not* have ~~no~~ liability as to the safekeeping of any ~~such~~ deposit by the depositary or custodian ~~thereof~~ *of the deposit*."

Section 1087. Section 33-2-606, MCA, is amended to read:

"33-2-606. Assignment or conveyance of assets or securities. All securities not negotiable by delivery and deposited under this code ~~shall~~ *must* be duly assigned to the commissioner and ~~his~~ *the commissioner's* successors in office. In the case of securities held under custodial arrangements outside this state pursuant to 33-2-604(3), the custodian's receipt for ~~such~~ *the* securities ~~shall~~ *must* be ~~so~~ delivered, if negotiable, or assigned to the commissioner if ~~thereby~~ legal title to ~~such~~ *the* securities is vested in the commissioner. The insurer shall transfer or convey to the commissioner and ~~his~~ *the commissioner's* successors in office all other assets ~~so~~ deposited. Upon release to the insurer of any ~~such~~ asset or security, the commissioner shall reassign or transfer or reconvey the ~~same~~ *asset or security* to the insurer."

Section 1088. Section 33-2-607, MCA, is amended to read:

"33-2-607. Appraisal. The commissioner may, ~~in his discretion,~~ prior to acceptance for deposit of any particular asset or security or at any *later* time ~~thereafter~~ while ~~so~~ deposited, have the ~~same~~ *asset or security* appraised or valued by competent appraisers. The reasonable costs of any ~~such~~ appraisal or valuation ~~shall~~ *must* be borne by the insurer."

Section 1089. Section 33-2-612, MCA, is amended to read:

"33-2-612. Duration and release of deposit. (1) Every deposit made in this state by an insurer pursuant to this code, including assets and securities held in another state under custodial arrangements permitted by 33-2-604(3), ~~shall~~ *must* be held as long as there is outstanding any liability of the insurer as to which the deposit was so required, or if a deposit *was* required under the retaliatory law, 33-2-709, the deposit ~~shall~~ *must* be held for ~~so~~ *as* long as the basis of ~~such~~ *the* retaliation exists.

(2) Upon the request of a domestic insurer, the commissioner shall return to the insurer the whole or any portion of the assets and securities of the insurer held on deposit when the commissioner is satisfied that the assets and securities ~~so~~ to be returned are *not* subject to ~~no~~ liability and are not required to be ~~longer~~ held by any provision of law or purposes of the original deposit. If the insurer has reinsured all its outstanding risks in another insurer or insurers authorized to transact insurance in this state, then the commissioner shall deliver ~~such~~ *the* assets and securities to ~~such~~ *the* insurer or insurers ~~so~~ assuming ~~such~~ *the* risks~~,~~ upon:

(a) written notice to ~~him~~ *the commissioner* by ~~such~~ *the* domestic insurer that ~~such~~ *the* assets and securities have been ~~duly~~ assigned, transferred, and set over to ~~such~~ *the* reinsuring insurer or insurers, ~~which notice shall be~~ accompanied by a ~~duly~~ verified copy of ~~such~~ *the* assignment, transfer, or conveyance; and

(b) in the case of deposits of the reserves of domestic life insurers under 33-2-531, proof satisfactory to the commissioner that the reinsuring insurer or insurers have deposited or will deposit and will maintain on deposit in public custody through the insurance supervisory official of its state of domicile assets and securities of like quality in *an* amount not less than the reserves ~~then and thereafter~~ of the policies and contracts ~~so~~ reinsured, in addition to any other deposit of ~~such~~ *the* insurer required or permitted by law, and, unless the insurer is required ~~so~~ to deposit and maintain on deposit all of its reserves, that ~~such~~ *the* deposit of ~~such~~ *the* reserves will be ~~so~~ deposited and held on deposit for the special benefit and protection of the holders of the life insurance policies and annuity contracts ~~so~~ reinsured.

(3) The commissioner shall return to a foreign insurer any deposit made in this state by ~~such~~ *the* insurer when ~~such~~ *the* insurer has ceased transacting insurance in this state or in the United States, and the insurer is not subject to any liability in this state on account of which the deposit was held.

(4) If the insurer is subject to delinquency proceedings, as defined in part 13 of this chapter, upon the order of a court of competent jurisdiction, the commissioner shall yield the assets and securities held on deposit to the receiver, conservator, rehabilitator, or liquidator of the insurer or to any other properly designated official or officials who succeed to the management and control of the insurer's assets.

(5) ~~No~~ *A* release of deposited assets ~~shall~~ *may not* be made except upon application to and the written order of the commissioner. The commissioner ~~shall~~ *does not* have ~~no~~ personal liability for ~~any~~ release of any ~~such~~ deposit or part ~~thereof so~~ *of a deposit* made ~~by him~~ in good faith."

Section 1090. Section 33-2-1104, MCA, is amended to read:

"33-2-1104. Acquisition of control of or merger with domestic insurer — filing requisites. (1) ~~No~~ *A* person other than the issuer ~~shall~~ *may not* make a tender offer for or a request or invitation for tenders of or enter into any agreement to exchange securities for, seek to acquire, or acquire, in the open market or otherwise, any voting security of a domestic insurer if, after the consummation ~~thereof~~ *of the transaction*, ~~such~~ *the* person would, directly or indirectly ~~(~~or by conversion or by exercise of any right to acquire~~)~~, be in control of ~~such~~ *the* insurer~~;~~. ~~and no~~ *A* person ~~shall~~ *may not* enter into an agreement to merge with or otherwise to acquire control of a domestic insurer unless, at the time any ~~such~~ offer, request, or invitation is made or any ~~such~~ agreement is entered into or prior to the acquisition of ~~such~~ *the* securities if ~~no~~ *an* offer or agreement is *not* involved, ~~such~~ *the* person has filed with the commissioner and has sent to ~~such~~ *the* insurer, and ~~such~~ *the* insurer has sent to its shareholders, a statement containing the information required by this section and ~~such~~ *the* offer, request, invitation, agreement, or acquisition has been approved by the commissioner in the manner ~~hereinafter~~ prescribed *in this section*. For purposes of this section, a domestic insurer ~~shall include~~ *includes* any other person controlling a domestic insurer unless ~~such~~ *the* other person is either directly or through its affiliates primarily engaged in business other than the business of insurance.

(2) The statement to be filed with the commissioner ~~hereunder shall~~ *must* be made under oath or affirmation and ~~shall~~ *must* contain the following information:

(a) the name and address of each person by whom or on whose behalf the merger or other acquisition of control referred to in subsection (1) is to be effected, ~~(hereinafter~~ *who is* called *the* "acquiring party"~~)~~:

(i) if ~~such~~ *the* person is an individual, ~~his~~ *the* principal occupation and all offices and positions held during the past 5 years and any conviction of crimes other than minor traffic violations during the past 10 years;

(ii) if ~~such~~ *the* person is not an individual~~,~~*:*

(A) a report of the nature of its business operations during the past 5 years or for ~~such~~ *a* lesser period ~~as such~~ *that the* person and any predecessors ~~thereof shall~~ have been in existence;

(B) an informative description of the business intended to be done by ~~such~~ *the* person and ~~such~~ *the* person's subsidiaries; and

(C) a list of all individuals who are or who have been selected to become directors or executive officers of ~~such~~ *the* person or who perform or will perform functions appropriate to ~~such~~ *the* positions. ~~Such~~ *The* list ~~shall~~ *must* include for each ~~such~~ individual the information required by subsection (2)(a)(i).

(b) the source, nature, and amount of the consideration used or to be used in effecting the merger or other acquisition of control, a description of any transaction ~~wherein~~ *in which* funds were or are to be obtained for any ~~such~~ purpose, and the identity of persons furnishing ~~such~~ *the* consideration, provided~~, however,~~ that ~~where~~ *when* a source of ~~such~~ consideration is a loan made in the lender's ordinary course of business, the identity of the lender ~~shall~~ *must* remain confidential if the person filing ~~such~~ *the* statement ~~so~~ requests;

(c) fully audited financial information as to the earnings and financial condition of each acquiring party for the preceding 5 fiscal years of each ~~such~~ acquiring party*,* ~~(~~or for ~~such~~ *a* lesser period ~~as such~~ *that the* acquiring party and any predecessors ~~thereof shall~~ have been in existence~~)~~*,* and similar unaudited information as of a date not earlier than 90 days prior to the filing of the statement;

(d) any plans or proposals ~~which~~ *that* each acquiring party may have to liquidate ~~such~~ *the* insurer, to sell its assets or merge or consolidate it with any person, or to make any other material change in its business or corporate structure or management;

(e) the number of shares of any security referred to in subsection (1) ~~which~~ *that* each acquiring party proposes to acquire and the terms of the offer, request, invitation, agreement, or acquisition referred to in subsection (1) and a statement as to the method by which the fairness of the proposal was arrived at;

(f) the amount of each class of any security referred to in subsection (1) ~~which~~ *that* is beneficially owned or concerning which there is a right to acquire beneficial ownership by each acquiring party;

(g) a full description of any contracts, arrangements, or understandings with respect to any security referred to in subsection (1) in which any acquiring party is involved, including but not limited to transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss or guarantees of profits, division of losses or profits, or the giving or withholding of proxies. ~~Such~~ *The* description ~~shall~~ *must* identify the persons with whom ~~such~~ *the* contracts, arrangements, or understandings have been entered into.

(h) a description of the purchase of any security referred to in subsection (1) *by an acquiring party* during the 12 calendar months preceding the filing of the statement~~, by an acquiring party~~, including the dates of purchase, names of the purchasers, and consideration paid or agreed to be paid ~~therefor~~ *for the security*;

(i) a description of any recommendations to purchase any security referred to in subsection (1) ~~made~~ during the 12 calendar months preceding the filing of the statement~~,~~ *made* by any acquiring party or by anyone based upon interviews or at the suggestion of ~~such~~ *the* acquiring party;

(j) copies of all tender offers for, requests or invitations for tenders of, exchange offers for, and agreements to acquire or exchange any securities referred to in subsection (1) and, ~~(~~if distributed~~)~~*,* of additional soliciting material relating ~~thereto~~ *to the offers or agreements*;

(k) the terms of any agreement, contract, or understanding made with any broker-dealer as to solicitation of securities referred to in subsection (1) for

tender and the amount of any fees, commissions, or other compensation to be paid to broker-dealers with regard ~~thereto~~ *to the solicitation*;

(l) ~~such~~ additional information ~~as~~ *that* the commissioner may by rule prescribe as necessary or appropriate for the protection of policyholders and securityholders of the insurer or in the public interest.

(3) If the person required to file the statement referred to in subsection (1) is a partnership, limited partnership, syndicate, or other group, the commissioner may require that the information called for by subsection (2) ~~shall~~ *must* be given with respect to each partner of ~~such~~ *the* partnership or limited partnership, each member of ~~such~~ *the* syndicate or group, and each person who controls ~~such~~ *the* partner or member. If any ~~such~~ partner, member, or person is a corporation or the person required to file the statement referred to in subsection (1) is a corporation, the commissioner may require that the information ~~called for~~ *required* by subsection (2) ~~shall~~ be given with respect to ~~such~~ *the* corporation, each officer and director of ~~such~~ *the* corporation, and each person who is directly or indirectly the beneficial owner of more than 10% of the outstanding voting securities of ~~such~~ *the* corporation.

(4) If any material change occurs in the facts set forth in the statement filed with the commissioner and sent to ~~such~~ *the* insurer pursuant to this section, an amendment setting forth ~~such~~ *the* change, together with copies of all documents and other material relevant to ~~such~~ *the* change, ~~shall~~ *must* be filed with the commissioner and sent to ~~such~~ *the* insurer within 2 business days after the person learns of ~~such~~ *the* change. ~~Such~~ *The* insurer shall send ~~such~~ *the* amendment to its shareholders.

(5) If any offer, request, invitation, agreement, or acquisition referred to in subsection (1) is proposed to be made by means of a registration statement under the Securities Act of 1933 or in circumstances requiring the disclosure of similar information under the Securities Exchange Act of 1934 or under a state law requiring similar registration or disclosure, the person required to file the statement referred to in subsection (1) may ~~utilize such~~ *use the* documents in furnishing the information called for by that statement."

Section 1091. Section 33-2-1105, MCA, is amended to read:

"33-2-1105. Approval by commissioner — hearings — notice. (1) The commissioner shall approve any merger or other acquisition of control referred to in 33-2-1104(1) unless, after a public hearing ~~thereon~~, ~~he~~ *the commissioner* finds that:

(a) after the change of control the domestic insurer referred to in 33-2-1104(1) would not be able to satisfy the requirements for the issuance of a license to write the line or lines of insurance for which it is presently licensed;

(b) the effect of the merger or other acquisition of control would be substantially to lessen competition in insurance in this state or tend to create a monopoly ~~therein~~;

(c) the financial condition of any acquiring party might jeopardize the financial stability of the insurer or prejudice the interest of its policyholders or the interests of any remaining securityholders who are unaffiliated with the acquiring party;

(d) the terms of the offer, request, invitation, agreement, or acquisition referred to in 33-2-1104(1) are unfair and unreasonable to the securityholders of the insurer;

(e) the plans or proposals ~~which~~ *that* the acquiring party has to liquidate the insurer, *to* sell its assets or consolidate or merge it with any person, or to make any other material change in its business or corporate structure or management are unfair and unreasonable to policyholders of the insurer and not in the public interest;

(f) the competence, experience, and integrity of those persons who would control the operation of the insurer are ~~such~~ *of the nature* that it would not be in the interest of policyholders of the insurer and of the public to permit the merger or other acquisition of control.

(2) The public hearing referred to in subsection (1) must be held within 30 days after the statement required by 33-2-1104(1) is filed, and at least 20 ~~days~~ *days'* notice ~~thereof~~ *of the hearing* must be given by the commissioner to the person filing the statement. Not less than 7 days' notice of the public hearing must be given by the person filing the statement to the insurer and to other persons as may be designated by the commissioner. The insurer shall give notice to its securityholders. The commissioner shall make a determination within 30 days after the conclusion of the hearing. At the hearing, the person filing the statement, the insurer, any person to whom notice of hearing was sent, and any other person whose interests may be affected ~~thereby~~ has the right to present evidence, examine and cross-examine witnesses, and offer oral and written arguments and ~~in connection therewith is entitled~~ to conduct discovery proceedings in the same manner ~~as~~ *that* is presently allowed in the district court of this state. All discovery proceedings must be concluded not later than 3 days prior to the commencement of the public hearing.

(3) All statements, amendments, or other material filed pursuant to ~~subsections (1) through (4) of~~ 33-2-1104*(1) through (4)* and all notices of public hearings held pursuant to subsection (1) *of this section* must be mailed by the insurer to its shareholders within 5 business days after the insurer has received the statements, amendments, other material, or notices. The expenses of mailing must be borne by the person making the filing. As security for the payment of the expenses, the person shall file with the commissioner an acceptable bond or other deposit in an amount to be determined by the commissioner.

(4) The commissioner may retain at the acquiring party's expense any attorneys, actuaries, accountants, and other experts not otherwise a part of the commissioner's staff as may be reasonably necessary to assist the commissioner in reviewing the proposed acquisition of control."

Section 1092. Section 33-2-1106, MCA, is amended to read:

"33-2-1106. Exemptions — violations — jurisdiction. (1) The provisions of 33-2-1104, 33-2-1105, and this section do not apply to an offer, request, invitation, agreement, or acquisition ~~which~~ *that* the commissioner by order ~~shall exempt therefrom~~ *exempts from those sections* as:

(a) not having been made or entered into for the purpose and not having the effect of changing or influencing the control of a domestic insurer; or

(b) otherwise not comprehended within the purposes of 33-2-1104 and 33-2-1105.

(2) The following are violations of 33-2-1104, 33-2-1105, and this section:

(a) the failure to file any statement, amendment, or other material required to be filed pursuant to ~~subsections (1) through (4) of~~ 33-2-1104*(1) through (4)*;

(b) the effectuation or any attempt to effectuate an acquisition of control of or merger with a domestic insurer unless the commissioner has given ~~his~~ approval ~~thereto~~.

(3) The courts of this state are ~~hereby~~ vested with jurisdiction over every person not resident, domiciled, or authorized to do business in this state who files a statement with the commissioner under 33-2-1104 and over all actions involving the person arising out of violations of 33-2-1104, 33-2-1105, and this section, and each ~~such~~ person is considered to have performed acts equivalent to and constituting an appointment by ~~such a~~ *the* person of the commissioner to be ~~his true and lawful~~ *the person's* attorney upon whom may be served all lawful process in any action, suit, or proceeding arising out of violations of this section. Copies of all ~~such~~ lawful process must be served on the commissioner and transmitted by certified mail by the commissioner to the person at ~~his~~ *the person's* last-known address."

Section 1093. Section 33-2-1120, MCA, is amended to read:

"33-2-1120. Criminal or civil proceedings — penalties. (1) An insurer failing without just cause to file a registration statement as required in 33-2-1111 shall, after notice and hearing, pay a penalty of $100 for each day of delinquency. The maximum penalty under this subsection is $25,000. The commissioner may reduce the penalty if the insurer demonstrates to the commissioner that the imposition of the penalty would constitute a financial hardship to the insurer.

(2) A director or an officer of an insurance holding company system who knowingly violates, participates in, or assents to a transaction or who knowingly permits an officer or insurance producer of the insurer to engage in a transaction or make an investment that has not been properly reported or submitted pursuant to 33-2-1111 or 33-2-1113 or that violates any other provision of Title 33, chapter 2, part 11, shall, after notice and hearing, pay, in ~~his~~ *the director's or officer's* individual capacity, a fine of not more than $5,000 for each violation. To determine the amount of the fine, the commissioner shall consider the appropriateness of the fine with respect to the gravity of the violation, the history of previous violations, and ~~such~~ other matters ~~as~~ *that* justice may require.

(3) If the commissioner determines that an insurer subject to Title 33, chapter 2, part 11, or a director, officer, employee, or insurance producer of the insurer has engaged in a transaction or entered into a contract that is subject to 33-2-1113 and that would not have been approved had approval been requested, the commissioner may order the insurer to cease and desist immediately any further activity under that transaction or contract. After notice and hearing, the commissioner may also order the insurer to void the contract and restore the status quo if ~~such~~ *that* action is in the best interest of policyholders, creditors, or the public.

(4) Whenever it appears to the commissioner that any insurer or any director, officer, employee, or insurance producer ~~thereof~~ *of the insurer* has committed a willful violation of this part, the commissioner may cause criminal proceedings to be instituted by the district court for the county in which the principal office of the insurer is located or if ~~such~~ *the* insurer ~~has no such~~ *does not have an* office in the state, then by the district court for Lewis and Clark County against ~~such~~ *the* insurer or the responsible director, officer, employee, or insurance producer ~~thereof~~ *of the insurer*.

(5) Any insurer ~~which~~ *that* willfully violates this part may be fined not more than $25,000.

(6) Any individual who willfully violates this part may be fined not more than $5,000 or, if ~~such~~ *the* willful violation involves the deliberate perpetration of a fraud upon the commissioner, imprisoned *for* not more than 2 years, or both."

Section 1094. Section 33-2-1122, MCA, is amended to read:

"33-2-1122. Revocation, suspension, or nonrenewal of insurer's license. Whenever it appears to the commissioner that any person has committed a violation of this part ~~which~~ *that* makes the continued operation of an insurer contrary to the interests of policyholders or the public, the commissioner may, after giving notice and an opportunity to be heard, determine to suspend, revoke, or refuse to renew ~~such~~ *the* insurer's license or authority to do business in this state for ~~such~~ *a* period ~~as he~~ *that the commissioner* finds is required for the protection of policyholders or the public. Any ~~such~~ determination ~~shall~~ *must* be accompanied by specific findings of fact and conclusions of law."

Section 1095. Section 33-2-1206, MCA, is amended to read:

"33-2-1206. Bulk reinsurance — foreign or alien insurers. (1) A foreign or alien insurer may reinsure all or substantially all of its insurance in force in Montana or a major class ~~thereof~~ *of insurance* with an agreement of bulk reinsurance, but ~~no such~~ *the* agreement may *not* become effective unless filed with the commissioner and approved by ~~him~~ *the commissioner* in writing. The commissioner may ~~in his discretion~~ hold a hearing before approving or disapproving an agreement of bulk reinsurance. Factors to be considered on bulk reinsurance agreements include but are not limited to:

(a) whether the agreement would be inequitable to Montana policyholders;

(b) whether the agreement would substantially reduce security of Montana policyholders; and

(c) whether the agreement would substantially reduce the service to be rendered to Montana policyholders.

(2) The commissioner shall approve or disapprove the agreement within a reasonable time after filing the proposed agreement or, when applicable, after a hearing.

(3) The commissioner may require a foreign or alien insurer to establish a trust account in this state, not to exceed the aggregate reserves of the policies contained in the bulk reinsurance agreement, prior to granting approval."

Section 1096. Section 33-2-1211, MCA, is amended to read:

"33-2-1211. Bulk reinsurance — stock insurers. (1) A domestic stock insurer may reinsure all or substantially all of its insurance in force or a major class ~~thereof~~ *of insurance* with another insurer by an agreement of bulk reinsurance, but ~~no such~~ *the* agreement ~~shall~~ *may not* become effective unless filed with the commissioner and approved by ~~him~~ *the commissioner* in writing after a hearing ~~thereon~~ *on the agreement*.

(2) The commissioner shall approve ~~such~~ *an* agreement within a reasonable time after ~~such~~ filing unless ~~he~~ *the commissioner* finds that it is inequitable to the stockholders of the domestic insurer or would substantially reduce the protection or service to its policyholders. If the commissioner does not approve

the agreement, ~~he~~ *the commissioner* shall ~~so~~ notify the insurer in writing specifying ~~his~~ *the* reasons ~~therefor~~ *for disapproval*."

Section 1097. Section 33-2-1212, MCA, is amended to read:

"33-2-1212. Bulk reinsurance — mutual insurers. (1) A domestic mutual insurer may reinsure all or substantially all its business in force, or all or substantially all of a major class ~~thereof~~ *of its business*, with another insurer, stock or mutual, by an agreement of bulk reinsurance after compliance with this section. ~~No such~~ *An* agreement ~~shall~~ *may not* become effective unless filed with the commissioner and approved by ~~him~~ *the commissioner* in writing after a hearing ~~thereon~~ *on the agreement*.

(2) The commissioner shall approve ~~such~~ *an* agreement within a reasonable time after filing if ~~he~~ *the commissioner* finds it to be fair and equitable to each domestic insurer involved and that ~~such~~ *the* reinsurance if effectuated would not substantially reduce the protection or service to its policyholders. If the commissioner does not ~~so~~ approve *the agreement*, ~~he~~ *the commissioner* shall ~~so~~ notify each insurer involved in writing specifying ~~his~~ *the* reasons ~~therefor~~ *for disapproval*.

(3) The plan and agreement for ~~such~~ reinsurance must be approved by vote of not less than two-thirds of each domestic mutual insurer's members voting ~~thereon~~ *on the plan and agreement* at meetings of members called for the purpose, pursuant to ~~such~~ reasonable notice and procedure ~~as~~ *that* the commissioner may approve. If *the insurer is* a life insurer, *the* right to vote may be limited to members whose policies are other than term or group policies and have been in effect for more than 1 year.

(4) If *the agreement is* for reinsurance of a mutual insurer in a stock insurer, the agreement must provide for payment in cash to each member of the insurer entitled ~~thereto as~~ *to a payment* upon conversion of ~~such~~ *the* insurer, pursuant to 33-3-216, of ~~his~~ *the member's* equity in the business reinsured as determined under a fair formula approved by the commissioner~~,~~. ~~which~~ *The* equity ~~shall~~ *must* be based upon ~~such~~ *the* member's equity in the reserves, assets, ~~(~~whether or not "admitted" assets~~)~~, and surplus, if any, of the mutual insurer to be taken over by the stock insurer."

Section 1098. Section 33-2-1310, MCA, is amended to read:

"33-2-1310. Cooperation of officers, owners, and employees. (1) ~~Any~~ *A* officer, manager, director, trustee, owner, employee, or insurance producer of any insurer or any other persons with authority over or in charge of any segment of the insurer's affairs shall cooperate with the commissioner in any proceeding under this part or any investigation preliminary to the proceeding.

(2) (a) The term "person" as used in this section includes any person who exercises control directly or indirectly over activities of an insurer through any holding company or other affiliate of the insurer.

(b) "To cooperate" includes but is not limited to the following:

~~(a)~~*(i)* replying promptly in writing to any inquiry from the commissioner requesting ~~such~~ a reply; and

~~(b)~~*(ii)* making available to the commissioner any books, accounts, documents, or other records or information or property of or pertaining to the insurer and in ~~his~~ *the insurer's* possession, custody, or control.

~~(2)~~*(3)* ~~No~~ *A* person may *not* obstruct or interfere with the commissioner in the conduct of any delinquency proceeding or any investigation preliminary or incidental ~~thereto~~ *to the proceeding*.

~~(3)~~*(4)* This section ~~shall~~ *may* not be construed to abridge otherwise existing legal rights, including the right to resist a petition for liquidation or other delinquency proceedings or other orders.

~~(4)~~*(5)* Any person included within subsection (1) who fails to cooperate with the commissioner or any person who obstructs or interferes with the commissioner in the conduct of any delinquency proceeding or any investigation preliminary or incidental ~~thereto~~ *to the proceeding* or who violates any order the commissioner issued validly under this part may:

(a) be sentenced to pay a fine not exceeding $10,000 or to undergo imprisonment for a term of not more than 1 year, or both; or

(b) after a hearing, be subject to the imposition by the commissioner of a civil penalty not to exceed $10,000 and to the revocation or suspension of any insurance licenses issued by the commissioner."

Section 1099. Section 33-2-1321, MCA, is amended to read:

"33-2-1321. Commissioner's summary orders and supervision proceedings. (1) ~~Whenever~~ *If* the commissioner determines, after a hearing held under subsection (5), that any domestic insurer has committed or engaged in or is about to commit or engage in any act, practice, or transaction that would subject it to delinquency proceedings under this part, ~~he~~ *the commissioner* may make and serve upon the insurer and any other persons involved ~~such~~ orders ~~as~~ *that* are reasonably necessary to correct or eliminate ~~such~~ *the* conduct.

(2) If upon examination or at any other time the commissioner determines that any domestic insurer is in ~~such~~ *a* condition ~~as to render~~ *that renders* the continuance of its business hazardous to the public or to holders of its policies or certificates of insurance or if ~~such~~ *the* domestic insurer gives its consent, then the commissioner shall notify the insurer of ~~his~~ *the commissioner's* determination and furnish to the insurer a written list of the commissioner's requirements to abate ~~his~~ *the* determination.

(3) If the commissioner makes a determination to supervise an insurer subject to an order under subsection (1) or (2), ~~he~~ *the commissioner* shall notify the insurer that it is under the supervision of the commissioner. During the period of supervision, the commissioner may appoint a supervisor to supervise ~~such~~ *the* insurer. The order appointing a supervisor shall direct the supervisor to enforce orders issued under subsections (1) and (2) and may also require that the insurer may not do any of the following things during the period of supervision without the prior approval of the commissioner or the supervisor:

(a) dispose of, convey, or encumber any of its assets or its business in force;

(b) withdraw from any of its bank accounts;

(c) lend any of its funds;

(d) invest any of its funds;

(e) incur any debt, obligation, or liability;

(f) merge or consolidate with another company; or

(g) enter into any new reinsurance contract or treaty.

(4) Any insurer subject to an order under this section shall comply with the lawful requirements of the commissioner and, if placed under supervision, has 60 days from the date the supervision order is served within which to comply with the requirements of the commissioner. If the insurer fails to comply within that time, the commissioner may institute proceedings under 33-2-1331 or

33-2-1341 to have a rehabilitator or liquidator appointed or extend the period of supervision.

(5) The notice of hearing under subsection (1) and any order issued pursuant to ~~such~~ subsection ~~shall~~ *(1) must* be served upon the insurer pursuant to the applicable rules of civil or administrative procedure. The notice of hearing ~~shall~~ *must* state the time and place of hearing and the conduct, condition, or ground upon which the commissioner would base ~~his~~ *an* order. Unless mutually agreed between the commissioner and the insurer, the hearing ~~shall~~ *must* occur not less than 10 days or more than 30 days after notice is served and ~~shall~~ *must* be either in Lewis and Clark County or in some other place convenient to the parties to be designated by the commissioner. The commissioner shall hold all hearings under subsection (1) privately unless the insurer requests a public hearing, in which case the hearing ~~shall~~ *must* be public.

(6) (a) Any insurer subject to an order under subsection (2) may request a hearing to review that order. ~~Such a~~ *The* hearing ~~shall~~ *must* be held as provided in subsection (5), but the request for a hearing ~~shall~~ *may* not stay the effect of the order.

(b) If the commissioner issues an order under subsection (2), the insurer may, at any time, waive a commissioner's hearing and apply for immediate judicial relief by means of any remedy afforded by law without first exhausting administrative remedies. Subsequent to a hearing, any party to the proceedings whose interests are substantially affected ~~shall be~~ *is* entitled to judicial review of any order issued by the commissioner.

(7) During the period of supervision the insurer may request the commissioner to review an action taken or proposed to be taken by the supervisor, specifying ~~wherein~~ *the reason why* the action complained of is believed not to be in the best interest of the insurer.

(8) If any person has violated any supervision order issued under this section ~~which as to him~~ *that* was ~~then~~ still in effect *for that person*, ~~he~~ *the person* is subject to a civil penalty imposed by the district court not to exceed $10,000.

(9) The commissioner may apply for and any court of general jurisdiction may grant ~~such~~ restraining orders, preliminary and permanent injunctions, and other orders ~~as~~ *that* may be necessary to enforce a supervision order.

(10) If any person subject to the provisions of this part, including any person described in 33-2-1310(1), knowingly violates any valid order of the commissioner issued under the provisions of this section and, as a result of ~~such~~ *the* violation, the net worth of the insurer is reduced or the insurer suffers loss it would not otherwise have suffered, ~~said~~ *the* person is personally liable to the insurer for the amount of any ~~such~~ reduction or loss. The commissioner or supervisor is authorized to bring an action on behalf of the insurer in the district court to recover the amount of the reduction or loss together with any costs."

Section 1100. Section 33-2-1323, MCA, is amended to read:

"33-2-1323. Confidentiality of proceedings. In all proceedings and judicial reviews under 33-2-1321 and 33-2-1322, all records of the insurer, other documents, and all files and court records and papers of the commissioner, so far as they pertain to or are a part of the record of the proceedings, remain confidential except as necessary to obtain compliance ~~therewith~~ *with the records, documents, files, or papers*, unless the district court, after hearing arguments from the parties in chambers, orders otherwise or unless the insurer requests that the matter be made public. Until ~~such~~ *the* court order, all papers

filed with the clerk of the district court ~~shall~~ *must* be held ~~by him~~ in a confidential file."

Section 1101. Section 33-2-1333, MCA, is amended to read:

"33-2-1333. Powers and duties of the rehabilitator. (1) The commissioner as rehabilitator may appoint one or more special deputies, who ~~shall~~ have all the powers and responsibilities of the rehabilitator granted under this section, and the commissioner may employ counsel, clerks, and assistants. The compensation of the special deputy, counsel, clerks, and assistants and all expenses of taking possession of the insurer and of conducting the proceedings ~~shall~~ *must* be fixed by the commissioner with the approval of the court and ~~shall~~ *must* be paid out of the funds or assets of the insurer. The persons appointed under this section shall serve at the pleasure of the commissioner. If the property of the insurer does not contain sufficient cash or liquid assets to defray the costs incurred, the commissioner may advance the costs ~~so~~ incurred out of any appropriation for the maintenance of ~~his~~ *the commissioner's* office. Any amounts ~~so~~ advanced for expenses of administration ~~shall~~ *must* be repaid to the commissioner for the use of ~~his~~ *the commissioner's* office out of the first available money of the insurer.

(2) The rehabilitator may take ~~such~~ action as necessary to reform and revitalize the insurer. ~~He~~ *The rehabilitator* shall have all the powers of the directors, officers, and managers, whose authority ~~shall~~ *must* be suspended, except as they are redelegated by the rehabilitator. ~~He shall have~~ *The rehabilitator has* full power to direct and manage, to hire and discharge employees subject to any contract rights they may have, and to deal with the property and business of the insurer.

(3) If it appears to the rehabilitator that there has been criminal or tortious conduct or breach of any contractual or fiduciary obligation detrimental to the insurer by any officer, manager, insurance producer, broker, employee, or other person, ~~he~~ *the rehabilitator* may pursue all appropriate legal remedies on behalf of the insurer.

(4) If the rehabilitator determines that reorganization, consolidation, conversion, reinsurance, merger, or other transformation of the insurer is appropriate, ~~he~~ *the rehabilitator* shall prepare a plan to effect ~~such~~ *the* changes. Upon application of the rehabilitator for approval of the plan and after ~~such~~ notice and hearings ~~as~~ *that* the court may prescribe, the court may either approve or disapprove the plan proposed or may modify it and approve it as modified. Any plan approved under this section must be, in the judgment of the court, fair and equitable to all parties concerned. If the plan is approved, the rehabilitator shall carry out the plan. In the case of a life insurer, the plan proposed may include the imposition of liens upon the policies of the company if all rights of shareholders are first relinquished. A plan for a life insurer may also propose imposition of a moratorium upon loan and cash surrender rights under policies for ~~such~~ *the* period and to ~~such an~~ *the* extent as may be necessary.

(5) The rehabilitator ~~shall have~~ *has* the power under 33-2-1351 and 33-2-1352 to avoid fraudulent transfers."

Section 1102. Section 33-2-1334, MCA, is amended to read:

"33-2-1334. Effect of proceedings on pending and potential litigation. (1) Any court in this state before which any action or proceeding in which the insurer is a party or is obligated to defend a party is pending when a rehabilitation order against the insurer is entered shall stay the action or proceeding for 90 days and ~~such~~ *an* additional time ~~as~~ *that* is necessary for the

rehabilitator to obtain proper representation and prepare for further proceedings. The rehabilitator shall take ~~such~~ action respecting the pending litigation ~~as he~~ *that the rehabilitator* considers necessary in the interests of justice and for the protection of creditors, policyholders, and the public. The rehabilitator shall immediately consider all litigation pending outside this state and shall petition the courts having jurisdiction over that litigation for stays whenever necessary to protect the estate of the insurer.

(2) ~~No~~ *A* statute of limitations or defense of laches ~~shall~~ *may not* run with respect to any action by or against an insurer between the filing of a petition for appointment of a rehabilitator for that insurer and the order granting or denying that petition. Any action by or against the insurer that might have been commenced when the petition was filed may be commenced for at least 60 days after the order of rehabilitation is entered or the petition is denied."

Section 1103. Section 33-2-1341, MCA, is amended to read:

"33-2-1341. Grounds for liquidation. The commissioner may petition the district court for an order directing ~~him~~ *the commissioner* to liquidate a domestic insurer or an alien insurer domiciled in this state on the basis:

(1) of any ground for an order of rehabilitation as specified in 33-2-1331, whether or not there has been a prior order directing the rehabilitation of the insurer;

(2) that the insurer is insolvent; or

(3) that the insurer is in ~~such~~ *a* condition that the further transaction of business would be hazardous, financially or otherwise, to its policyholders, its creditors, or the public."

Section 1104. Section 33-2-1344, MCA, is amended to read:

"33-2-1344. Dissolution of insurer. The commissioner may petition for an order dissolving the corporate existence of a domestic insurer or the United States branch of an alien insurer domiciled in this state at the time ~~he~~ *the commissioner* applies for a liquidation order. The court shall order dissolution of the corporation upon petition by the commissioner upon or after the granting of a liquidation order. If the dissolution has not previously been ordered, it ~~shall~~ *must* be effected by operation of law upon the discharge of the liquidator if the insurer is insolvent but may be ordered by the court upon the discharge of the liquidator if the insurer is under a liquidation order for some other reason."

Section 1105. Section 33-2-1345, MCA, is amended to read:

"33-2-1345. Powers of liquidator. (1) The liquidator may:

(a) appoint a special deputy to act for ~~him~~ *the liquidator* under this part and determine ~~his~~ *the deputy's* reasonable compensation. The special deputy has all powers of the liquidator granted by this section. The special deputy ~~shall serve~~ *serves* at the pleasure of the liquidator.

(b) employ insurance producers, legal counsel, actuaries, accountants, appraisers, consultants, and other personnel necessary to assist in the liquidation;

(c) fix the reasonable compensation of employees and insurance producers, legal counsel, actuaries, accountants, appraisers, and consultants with the approval of the court;

(d) pay reasonable compensation to persons appointed and defray from the funds or assets of the insurer all expenses of taking possession of, conserving, conducting, liquidating, disposing of, or otherwise dealing with the business and

property of the insurer. If the property of the insurer does not contain sufficient cash or liquid assets to defray the costs incurred, the commissioner may advance the costs ~~so~~ incurred out of any appropriation for the maintenance of the commissioner's office. Any amounts ~~so~~ advanced for expenses of administration ~~shall~~ *must* be repaid to the commissioner for the use of ~~his~~ *the commissioner's* office out of the first available money of the insurer.

(e) hold hearings, subpoena witnesses to compel their attendance, administer oaths, examine any person under oath, and compel any person to subscribe to ~~his~~ *the person's* testimony after it has been correctly reduced to writing and in connection ~~therewith~~ *with the hearings* require the production of any books, papers, records, or other documents ~~which he~~ *that the liquidator* considers relevant to the inquiry;

(f) collect all debts and money due and claims belonging to the insurer, wherever located, and for this purpose:

(i) institute timely action in other jurisdictions in order to forestall garnishment and attachment proceedings against ~~such~~ *the* debts;

(ii) do ~~such~~ other acts ~~as~~ *that* are necessary to collect, conserve, or protect its assets or property, including selling, compounding, compromising, or assigning debts for collection purposes on ~~such~~ terms and conditions ~~as he~~ *that the liquidator* considers best; and

(iii) pursue any creditor's remedies available to enforce ~~his~~ *the liquidator's* claims;

(g) conduct public and private sales of the property of the insurer;

(h) use assets of the estate of an insurer under a liquidation order to transfer policy obligations to a solvent assuming insurer if the transfer can be arranged without prejudice to applicable priorities under 33-2-1371;

(i) acquire, encumber, lease, improve, sell, or transfer any property of the insurer at its market value or upon ~~such~~ terms and conditions ~~as~~ *that* are fair and reasonable. ~~He shall~~ *The liquidator* also ~~have~~ *has the* power to execute, acknowledge, and deliver any and all deeds, assignments, releases, and other instruments necessary or proper to effectuate any sale of property or other transaction in connection with the liquidation.

(j) borrow money on the security of the insurer's assets or without security and execute and deliver all documents necessary to that transaction for the purpose of facilitating the liquidation;

(k) enter into ~~such~~ contracts ~~as~~ *that* are necessary to carry out the order to liquidate and affirm or disavow any contracts to which the insurer is a party;

(l) continue to prosecute and institute in the name of the insurer or in ~~his~~ *the liquidator's* own name any and all suits and other legal proceedings, in this state or elsewhere, and abandon the prosecution of claims ~~he~~ *that the liquidator* considers unprofitable to pursue further. If the insurer is dissolved under 33-2-1344, ~~he shall have~~ *the liquidator has* the power to apply to any court in this state or elsewhere for leave to substitute ~~himself~~ for the insurer as plaintiff.

(m) prosecute any action ~~which~~ *that* may exist in behalf of the creditors, members, policyholders, or shareholders of the insurer against any officer of the insurer or any other person;

(n) remove any or all records and property of the insurer to the offices of the commissioner or to ~~such other~~ *another* place ~~as~~ *that* may be convenient for the purposes of efficient and orderly execution of the liquidation. Guaranty

associations and foreign guaranty associations ~~shall~~ *must* have ~~such~~ reasonable access to the records of the insurer ~~as~~ *that* is necessary for them to carry out their statutory obligations.

(o) deposit in one or more banks in this state ~~such~~ sums ~~as~~ *that* are required for meeting current administration expenses and dividend distributions;

(p) invest all sums not currently needed, unless the court orders otherwise;

(q) file any necessary documents for record in the office of any county clerk and recorder in this state or elsewhere where property of the insurer is located;

(r) assert all defenses available to the insurer as against third persons, including statutes of limitation, statutes of frauds, and the defense of usury. A waiver of any defense by the insurer after a petition in liquidation has been filed ~~shall~~ *may* not bind the liquidator. Whenever a guaranty association or foreign guaranty association has an obligation to defend any suit, the liquidator shall give precedence to ~~such~~ *the* obligation and may defend only in the absence of a defense by ~~such~~ *the* guaranty associations.

(s) exercise and enforce all the rights, remedies, and powers of any creditor, shareholder, policyholder, or member, including any power to avoid any transfer or lien that may be given by the general law and that is not included with 33-2-1351 through 33-2-1357;

(t) intervene in any proceeding wherever instituted that might lead to the appointment of a receiver or trustee and act as the receiver or trustee whenever the appointment is offered;

(u) enter into agreements with any receiver or commissioner of any other state relating to the rehabilitation, liquidation, conservation, or dissolution of an insurer doing business in both states;

(v) exercise all powers now held or ~~hereafter~~ conferred upon receivers by the laws of this state not inconsistent with the provisions of this part.

(2) The enumeration in this section of the powers and authority of the liquidator ~~shall~~ *may* not be construed as a limitation upon ~~him~~ *the liquidator*~~, nor shall it~~ *or* exclude in any manner ~~his~~ *the* right to do ~~such~~ other acts not ~~herein~~ specifically enumerated or otherwise provided for ~~as~~ *that* may be necessary for the accomplishment of or in aid of the purpose of liquidation."

Section 1106. Section 33-2-1347, MCA, is amended to read:

"33-2-1347. Duty of insurance producers to give notice. (1) Every person who receives notice in the form prescribed in 33-2-1346 that an insurer ~~which he~~ *that the person* represents as an insurance producer is the subject of a liquidation order shall within 15 days of ~~such~~ *the* notice give notice of the liquidation order. The notice ~~shall~~ *must* be sent by first-class mail to the last address contained in the insurance producer's records to each policyholder or other person named in any policy issued through the insurance producer by the insurer if ~~he~~ *the producer* has a record of the address of the policyholder or other person. A policy ~~shall~~ *must* be considered issued through an insurance producer if the insurance producer has a property interest in the expiration of the policy or if the insurance producer has had in ~~his~~ *the producer's* possession a copy of the declarations of the policy at any time during the life of the policy, except where the ownership of the expiration of the policy has been transferred to another. The written notice ~~shall~~ *must* include the name and address of the insurer, the name and address of the insurance producer, identification of the policy impaired, and the nature of the impairment, including termination of coverage as described in 33-2-1343. Notice by a general insurance producer satisfies the

notice requirement for any insurance producers under contract to ~~him~~ *the producer*. Each insurance producer obligated to give notice under this section shall file a report of compliance with the liquidator.

(2) Any insurance producer failing to give notice or file a report of compliance as required in subsection (1) may be subject to payment of a penalty of not more than $1,000 and may have ~~his~~ *the producer's* license suspended~~,~~ after a hearing held by the commissioner.

(3) The liquidator may waive the duties imposed by this section if ~~he~~ *the liquidator* determines that other notice to the policyholders of the insurer under liquidation is adequate."

Section 1107. Section 33-2-1348, MCA, is amended to read:

"33-2-1348. Effect of proceedings on pending and potential litigation — actions by liquidator. (1) Upon issuance of an order appointing a liquidator of a domestic insurer or of an alien insurer domiciled in this state, ~~no~~ *an* action at law or equity may *not* be brought against the insurer or liquidator, whether in this state or elsewhere~~,~~. ~~nor shall any such~~ *Any* existing actions *may not* be maintained or further presented after issuance of ~~such~~ *the* order. The courts of this state shall give full faith and credit to injunctions against the liquidator or the company or the continuation of existing actions against the liquidator or the company when ~~such~~ *the* injunctions are included in an order to liquidate an insurer issued pursuant to corresponding provisions in other states. Whenever in the liquidator's judgment protection of the estate of the insurer necessitates intervention in an action against the insurer that is pending outside this state, ~~he~~ *the liquidator* may intervene in the action. The liquidator may defend any action in which ~~he~~ *the liquidator* intervenes under this section at the expense of the estate of the insurer.

(2) The liquidator may, upon or after an order for liquidation, within 2 years or ~~such~~ *a* time in addition to 2 years ~~as~~ *that* applicable law may permit, institute an action or proceeding on behalf of the estate of the insurer upon any cause of action against which the period of limitation fixed by applicable law has not expired at the time of the filing of the petition upon which ~~such~~ *the* order is entered. When, by any agreement, a period of limitation is fixed for instituting a suit or proceeding upon any claim or for filing any claim, proof of claim, proof of loss, demand, notice, or the like or when in any proceeding, judicial or otherwise, a period of limitation is fixed, either in the proceeding or by applicable law, for taking any action, filing any claim or pleading, or doing any act and when in any ~~such~~ case the period had not expired at the date of the filing of the petition, the liquidator may, for the benefit of the estate, take any ~~such~~ action or do any ~~such~~ act required of or permitted to the insurer within a period of 180 days subsequent to the entry of an order for liquidation or within ~~such~~ *a* further period ~~as~~ *that* is shown to the satisfaction of the court not to be unfairly prejudicial to the other party.

(3) ~~No~~ *A* statute of limitations or defense of laches ~~shall~~ *may not* run with respect to any action against an insurer between the filing of a petition for liquidation against an insurer and the denial of the petition. Any action against the insurer that might have been commenced when the petition was filed may be commenced for at least 60 days after the petition is denied."

Section 1108. Section 33-2-1352, MCA, is amended to read:

"33-2-1352. Fraudulent transfer after petition. (1) After a petition for rehabilitation or liquidation has been filed, a transfer of any of the real property of the insurer made to a person acting in good faith is valid against the receiver if

made for a present fair equivalent value or, if not made for a present fair equivalent value, then to the extent of the present consideration actually paid ~~therefor~~, for which amount the transferee ~~shall~~ *must* have a lien on the property ~~so~~ transferred. The commencement of a proceeding in rehabilitation or liquidation is constructive notice upon the recording of a copy of the petition for or order of rehabilitation or liquidation with the county clerk and recorder in the county where any real property in question is located. The exercise by a court of the United States or any state or jurisdiction to authorize or effect a judicial sale of real property of the insurer within any county in any state ~~shall~~ *may* not be impaired by the pendency of ~~such~~ a *rehabilitation or liquidation* proceeding unless the copy is recorded in the county prior to the consummation of the judicial sale.

(2) After a petition for rehabilitation or liquidation has been filed and before either the receiver takes possession of the property of the insurer or an order of rehabilitation or liquidation is granted:

(a) a transfer of any of the property of the insurer, other than real property, made to a person acting in good faith is valid against the receiver if made for a present fair equivalent value or, if not made for a present fair equivalent value, then to the extent of the present consideration actually paid ~~therefor~~, for which amount the transferee ~~shall~~ *must* have a lien on the property ~~so~~ transferred;

(b) a person indebted to the insurer or holding property of the insurer may, if acting in good faith, pay the indebtedness or deliver the property or any part ~~thereof~~ *of the property* to the insurer or upon ~~his~~ *the person's* order, with the same effect as if the petition were not pending;

(c) a person having actual knowledge of the pending rehabilitation or liquidation is considered not acting in good faith;

(d) a person asserting the validity of a transfer under this section has the burden of proof. Except as ~~elsewhere~~ *otherwise* provided in this section, ~~no~~ *a* transfer by or on behalf of the insurer after the date of the petition for liquidation by any person other than the liquidator ~~shall be~~ *is not* valid against the liquidator.

(3) ~~Nothing in this~~ *This* part ~~impairs~~ *does not impair* the negotiability of currency or negotiable instruments."

Section 1109. Section 33-2-1353, MCA, is amended to read:

"33-2-1353. Voidable preferences and liens. (1) (a) A preference is a transfer of any of the property of an insurer to or for the benefit of a creditor, for or on account of an antecedent debt, made or suffered by the insurer within 1 year before the filing of a successful petition for liquidation under this part, the effect of which transfer may be to enable the creditor to obtain a greater percentage of this debt than another creditor of the same class would receive. If a liquidation order is entered while the insurer is already subject to a rehabilitation order, then ~~such~~ *the* transfers ~~shall~~ *must* be considered preferences if made or ~~suffered~~ *allowed* within 1 year before the filing of the successful petition for rehabilitation or within 2 years before the filing of the successful petition for liquidation, whichever time is shorter.

(b) Any preference may be avoided by the liquidator if:

(i) the insurer was insolvent at the time of the transfer;

(ii) the transfer was made within 4 months before the filing of the petition;

(iii) the creditor receiving it or to be benefited ~~thereby~~ *by it* or ~~his~~ *the creditor's* agent acting with reference ~~thereto~~ *to the transfer* had, at the time

when the transfer was made, reasonable cause to believe that the insurer was insolvent or was about to become insolvent; or

(iv) the creditor receiving it was an officer or any employee or attorney or other person who was in fact in a position of comparable influence in the insurer to an officer, whether or not ~~he~~ *the creditor* held ~~such~~ *the* position, or any shareholder holding directly or indirectly more than 5% of any class of any equity security issued by the insurer or any other person, firm, corporation, association, or aggregation of persons with whom the insurer did not deal at arm's length.

(c) When the preference is voidable, the liquidator may recover the property or, if it has been converted, its value from any person who has received or converted the property, except ~~where~~ *when* a bona fide purchaser or lienor has given less than fair equivalent value, ~~he shall have~~ *the purchaser or lienor has* a lien upon the property to the extent of the consideration actually given by ~~him~~ *the purchaser or lienor*. When a preference by way of lien or security title is voidable, the court may on due notice order the lien or title to be preserved for the benefit of the estate, in which event the lien or title passes to the liquidator.

(2) (a) A transfer of property other than real property is considered to be made or ~~suffered~~ *allowed* when it becomes so far perfected that ~~no~~ *a* subsequent lien *is not* obtainable by legal or equitable proceedings on a simple contract *that* could become superior to the rights of the transferee.

(b) A transfer of real property is considered to be made or ~~suffered~~ *allowed* when it becomes so far perfected that ~~no~~ *a* subsequent bona fide purchaser from the insurer could *not* obtain rights superior to the rights of the transferee.

(c) A transfer ~~which~~ *that* creates an equitable lien is not considered to be perfected if there are available means by which a legal lien could be created.

(d) A transfer not perfected prior to the filing of a petition for liquidation is considered to be made immediately before the filing of the successful petition.

(e) The provisions of this subsection apply whether or not there are or were creditors who might have obtained liens or persons who might have become bona fide purchasers.

(3) (a) A lien obtainable by legal or equitable proceedings upon a simple contract is one arising in the ordinary course of ~~such~~ *the* proceedings upon the entry or docketing of a judgment or decree or upon attachment, garnishment, execution, or like process, whether before, upon, or after judgment or decree and whether before or upon levy. It does not include liens ~~which~~ *that* under applicable law are given a special priority over other liens ~~which~~ *that* are prior in time.

(b) A lien obtainable by legal or equitable proceedings could become superior to the rights of a transferee or a purchaser could obtain rights superior to the rights of a transferee, within the meaning of subsection (2), if ~~such~~ *the* consequences would follow only from the lien or purchase itself or from the lien or purchase followed by any step wholly within the control of the respective lienholder or purchaser, with or without the aid of ministerial action by public officials. ~~Such~~ *However,* a lien could not~~, however,~~ become superior and ~~such~~ a purchase could not create superior rights for the purpose of subsection (2) through any acts subsequent to the obtaining of ~~such~~ a lien or subsequent to ~~such~~ a purchase ~~which~~ *that* require the agreement or concurrence of any third party or ~~which~~ *that* require any further judicial action or ruling.

(4) A transfer of property for or on account of a new and contemporaneous consideration ~~which~~ *that* is considered under subsection (2) to be made or suffered after the transfer because of delay in perfecting it does not ~~thereby~~ become a transfer for or on account of an antecedent debt if any acts required by the applicable law to be performed in order to perfect the transfer as against liens or bona fide purchasers' rights are performed within 21 days or any period expressly allowed by the law, whichever is less. A transfer to secure a future loan, if ~~such~~ a loan is actually made, or a transfer ~~which~~ *that* becomes security for a future loan ~~shall~~ *must* have the same effect as a transfer for or on account of a new and contemporaneous consideration.

(5) If any lien considered voidable under subsection (1)(b) has been dissolved by the furnishing of a bond or other obligation, the surety on which has been indemnified directly or indirectly by the transfer of or the creation of a lien upon any property of an insurer before the filing of a petition under this part ~~which~~ *that* results in a liquidation order, the indemnifying transfer or lien ~~shall~~ *must* also be considered voidable.

(6) The property affected by any lien considered voidable under subsections (1) and (5) ~~shall~~ *must* be discharged from ~~such~~ *the* lien, and that property and any of the indemnifying property transferred to or for the benefit of a surety ~~shall~~ *must* pass to the liquidator, except that the court may on due notice order any ~~such~~ lien to be preserved for the benefit of the estate and the court may direct that ~~such~~ *the* conveyance be executed as may be proper or adequate to evidence the title of the liquidator."

Section 1110. Section 33-2-1355, MCA, is amended to read:

"33-2-1355. Set off for further credit given in good faith. If a creditor has been preferred and afterward in good faith gives the insurer further credit without security of any kind for property ~~which~~ *that* becomes a part of the insurer's estate, the amount of the new credit remaining unpaid at the time of the petition may be set off against the preference ~~which~~ *that* would otherwise be recoverable from ~~him~~ *the insurer*."

Section 1111. Section 33-2-1357, MCA, is amended to read:

"33-2-1357. Personal liability. (1) Every officer, manager, employee, shareholder, member, subscriber, attorney, or any other person acting on behalf of the insurer who knowingly participates in giving any preference when ~~he~~ *the individual* has reasonable cause to believe the insurer is or is about to become insolvent at the time of the preference is personally liable to the liquidator for the amount of the preference. It is permissible to infer that there is reasonable cause to so believe if the transfer was made within 4 months before the date of filing of ~~this~~ *a* successful petition for liquidation.

(2) Every person receiving any property from the insurer or the benefit ~~thereof~~ *of the property* as a preference voidable under 33-2-1353(1) is personally liable ~~therefor~~ and is bound to account to the liquidator.

(3) ~~Nothing in this section prejudices~~ *This section does not prejudice* any other claim by the liquidator against any person."

Section 1112. Section 33-2-1358, MCA, is amended to read:

"33-2-1358. Claims of holders of void or voidable rights. (1) ~~No~~ *The* claims of a creditor who has received or acquired a preference, lien, conveyance, transfer, assignment, or encumbrance voidable under this part ~~shall~~ *may not* be allowed unless ~~he~~ *the creditor* surrenders the preference, lien, conveyance, transfer, assignment, or encumbrance. If the avoidance is effected by a

proceeding in which a final judgment has been entered, the claim may not be allowed unless the money is paid or the property is delivered to the liquidator within 30 days from the date of the entering of the final judgment, except that the court having jurisdiction over the liquidation may allow further time if there is an appeal or other continuation of the proceeding.

(2) A claim allowable under subsection (1) by reason of the avoidance, whether voluntary or involuntary, or a preference, lien, conveyance, transfer, assignment, or encumbrance may be filed as an excused late filing under 33-2-1364 if filed within 30 days from the date of the avoidance or within the further time allowed by the court under subsection (1)."

Section 1113. Section 33-2-1360, MCA, is amended to read:

"33-2-1360. Assessments against members of insurer. (1) As soon as practicable but not more than 2 years from the date of an order of liquidation under 33-2-1342 of an insurer issuing assessable policies, the liquidator shall make a report to the court setting forth:

(a) the reasonable value of the assets of the insurer;

(b) the insurer's probable total liabilities;

(c) the probable aggregate amount of the assessment necessary to pay all claims of creditors and expenses in full, including expenses of administration and costs of collecting the assessment; and

(d) a recommendation as to whether or not an assessment should be made and in what amount.

(2) (a) Upon the basis of the report provided *for* in subsection (1), including any supplements and amendments ~~thereto~~, the district court may levy one or more assessments against all members of the insurer who are subject to assessment.

(b) Subject to any applicable legal limits on assessability, the aggregate assessment ~~shall~~ *must* be for the amount that the sum of the probable liabilities, the expenses of administration, and the estimated cost of collection of the assessment exceeds the value of existing assets, with due regard being given to assessments that cannot be collected economically.

(3) After levy of assessment under subsection (2), the liquidator shall issue an order directing each member who has not paid the assessment pursuant to the order to show cause why the liquidator should not pursue a judgment ~~therefor~~ *for the assessment*.

(4) The liquidator shall give notice of the order to show cause by publication and by first-class mail to each member liable ~~thereunder~~ *for the assessment* mailed to ~~his~~ *the member's* last-known address as it appears on the insurer's records at least 20 days before the return day of the order to show cause.

(5) (a) If a member does not appear and serve duly verified objections upon the liquidator on or before the return day of the order to show cause under subsection (3), the court shall make an order adjudging the member liable for the amount of the assessment against ~~him~~ *the member*, pursuant to subsection (3), together with costs, and the liquidator ~~shall have~~ *has* a judgment against the member ~~therefor~~ *for that amount*.

(b) If on or before ~~such~~ *the* return day the member appears and serves duly verified objections upon the liquidator, the commissioner may hear and determine the matter or may appoint a referee to hear it and make ~~such~~ *an* order ~~as~~ *that* the facts warrant. If the commissioner determines that ~~such~~ *the*

objections do not warrant relief from assessment, the member may request the court to review the matter and vacate the order to show cause.

(6) The liquidator may enforce any order or collect any judgment under subsection (5) by any lawful means."

Section 1114. Section 33-2-1362, MCA, is amended to read:

"33-2-1362. Recovery of premiums owed. (1) (a) An insurance producer or any other person responsible for the payment of a premium, other than the insured, ~~shall be~~ *is* obligated to pay any unpaid premium for the full policy term due the insurer at the time of the declaration of insolvency, whether earned or unearned, as shown on the records of the insurer. The liquidator may recover from ~~such~~ *the* person any part of an unearned premium that represents *a* commission of ~~such~~ *the* person. Credits or setoffs or both may not be allowed to an insurance producer for any amounts advanced to the insurer by the insurance producer on behalf of but in the absence of a payment by the insured.

(b) An insured shall pay any unpaid earned premium due the insurer at the time of the declaration of insolvency, as shown on the records of the insurer.

(2) Upon satisfactory evidence of a violation of this section, the commissioner may pursue either one or both of the following courses of action:

(a) suspend, ~~or~~ revoke, or refuse to renew the licenses of any offending party;

(b) impose a penalty of not more than $1,000 for each act in violation of this section by ~~such~~ *the* party.

(3) Before the commissioner may take any action as set forth in subsection (2), ~~he~~ *the commissioner* shall give written notice to the person, company, association, or exchange accused of violating the law, stating specifically the nature of the alleged violation and fixing a time and place, at least 10 days ~~thereafter~~ *after the notice*, when a hearing on the matter ~~shall~~ *will* be held. After ~~such~~ *the* hearing or upon failure of the accused to appear at ~~such~~ *the* hearing, the commissioner, if ~~he finds~~ a violation *is found*, shall impose ~~such~~ penalties under subsection (2) ~~as he~~ *that the commissioner* considers advisable.

(4) When the commissioner takes action in any of the ways set out in subsection (2), the party aggrieved may appeal from the action to the district court."

Section 1115. Section 33-2-1364, MCA, is amended to read:

"33-2-1364. Filing of claims. (1) Proof of all claims ~~shall~~ *must* be filed with the liquidator in the form required by 33-2-1365 on or before the last day for filing specified in the notice required under 33-2-1346, except that proof of claims for cash surrender values or other investment values in life insurance and annuities ~~need~~ *are* not *required to* be filed unless the liquidator requires.

(2) The liquidator may permit a claimant making a late filing to share in distributions, whether past or future, as if ~~he~~ *the claimant* were not late, to the extent that any ~~such~~ payment will not prejudice the orderly administration of the liquidation, under the following circumstances:

(a) the existence of the claim was not known to the claimant, and ~~his~~ *the* claim was filed as promptly after learning of it as reasonably possible;

(b) a transfer to a creditor was avoided under 33-2-1351 through 33-2-1357 or was voluntarily surrendered under 33-2-1358, and the filing satisfies the conditions of 33-2-1358; and

(c) the valuation under 33-2-1370 of security held by a secured creditor shows a deficiency, which is filed within 30 days after the valuation.

(3) The liquidator shall permit late filing claims to share in distributions, whether past or future, as if they were not late if ~~such~~ *the* claims are claims of a guaranty association or foreign guaranty association for reimbursement of covered claims paid or expenses incurred, or both, subsequent to the last day for filing where ~~such~~ *the* payments were made and expenses incurred as provided by law.

(4) The liquidator may consider any claim filed late ~~which~~ *that* is not covered by subsection (2) and permit it to receive distributions ~~which~~ *that* are subsequently declared on any claims of the same or lower priority if the payment does not prejudice the orderly administration of the liquidation. The late-filing claimant shall receive, at each distribution, the same percentage of the amount allowed on ~~his~~ *that* claim ~~as~~ *that* is ~~then~~ being paid to claimants of any lower priority. This ~~shall~~ *distribution must* continue until ~~his~~ *the* claim has been paid in full."

Section 1116. Section 33-2-1365, MCA, is amended to read:

"33-2-1365. Proof of claim. (1) Proof of claim ~~shall consist~~ *consists* of a statement signed by the claimant that includes all of the following that are applicable:

(a) the particulars of the claim, including the consideration given for it;

(b) the identity and amount of the security on the claim;

(c) the payments made on the debt, if any;

(d) that the sum claimed is justly owing and that there is no setoff, counterclaim, or defense to the claim;

(e) any right of priority of payment or other specific right asserted by the claimants;

(f) a copy of the written instrument ~~which~~ *that* is the foundation of the claim;

(g) the name and address of the claimant and the attorney who represents ~~him~~ *the claimant*, if any.

(2) ~~No~~ *A* claim ~~need~~ *is not required to* be considered or allowed if it does not contain all the information in subsection (1) ~~which~~ *that* may be applicable. The liquidator may require that a prescribed form be used and may require that other information and documents be included.

(3) At any time, the liquidator may request the claimant to present information or evidence supplementary to that required under subsection (1) and may take testimony under oath, require production of affidavits or depositions, or otherwise obtain additional information or evidence.

(4) ~~No~~ *A* judgment or order against an insured or the insurer entered after the date of filing of a successful petition for liquidation and ~~no~~ *a* judgment or order against an insured or the insurer entered at any time by default or by collusion ~~need~~ *are not required to* be considered as evidence of liability or of quantum of damages. ~~No~~ *A* judgment or order against an insured or the insurer entered within 4 months before the filing of the petition ~~need~~ *is not required to* be considered as evidence of liability or of the quantum of damages.

(5) All claims of a guaranty association or foreign guaranty association ~~shall~~ *must* be in ~~such~~ *the* form and contain ~~such~~ *the* substantiation ~~as~~ *that* may be agreed to by the association and the liquidator."

Section 1117. Section 33-2-1366, MCA, is amended to read:

"33-2-1366. Special claims. (1) The claim of a third party ~~which~~ *that* is contingent ~~only~~ on ~~his~~ *the third party* first obtaining a judgment against the insured ~~shall~~ *must* be considered and allowed as if there were no ~~such~~ contingency.

(2) A claim may be allowed, even if contingent, if it is filed in accordance with 33-2-1364. It may be allowed and may participate in all distributions declared after it is filed to the extent that it does not prejudice the orderly administration of the liquidation.

(3) Claims that are due except for the passage of time ~~shall~~ *must* be treated as absolute claims are treated, except that ~~such~~ *the* claims may be discounted at the legal rate of interest.

(4) Claims made under employment contracts by directors, principal officers, or persons in fact performing similar functions or having similar powers are limited to payment for services rendered prior to the issuance of any order of rehabilitation or liquidation under 33-2-1332 or 33-2-1342."

Section 1118. Section 33-2-1367, MCA, is amended to read:

"33-2-1367. Claims of insureds or claimants against insureds. (1) Whenever any third party asserts a cause of action against an insured of an insurer in liquidation, the third party may file a claim with the liquidator.

(2) Whether or not the third party files a claim, the insured may file a claim on ~~his~~ *the insured's* own behalf in the liquidation. If the insured fails to file a claim by the date for filing claims specified in the order of liquidation or within 60 days after mailing of the notice required by 33-2-1346, whichever is later, ~~he~~ *the insured* is an unexcused late filer.

(3) The liquidator shall make ~~his~~ recommendations to the court under 33-2-1371 for the allowance of an insured's claim under subsection (2)~~,~~ after consideration of the probable outcome of any pending action against the insured on which the claim is based, the probable damages recoverable in the action, and the probable costs and expenses of defense. After allowance by the court, the liquidator shall withhold any dividends payable on the claim, pending the outcome of litigation and negotiation with the insured. Whenever it seems appropriate, ~~he~~ *the liquidator* shall reconsider the claim on the bases of additional information and amend ~~his~~ *the* recommendations to the court. The insured ~~shall~~ *must* be afforded the same notice and opportunity to be heard on all changes in the recommendation as in its initial determination. The court may amend its allowance as it ~~thinks~~ *determines* appropriate. As claims against the insured are settled or barred, the insured ~~shall~~ *must* be paid, from the amount withheld, the same percentage dividend as was paid on other claims of ~~like~~ *similar* property, based on the lesser of the amount actually recovered from the insured by action or paid by agreement, plus the reasonable costs and expenses of defense, or the amount allowed on the claims by the court. After all claims are settled or barred, any sum remaining from the amount withheld ~~shall~~ *must* revert to the undistributed assets of the insurer. Delay in final payment under this subsection ~~shall~~ *may* not be a reason for unreasonable delay of final distribution and discharge of the liquidator.

(4) If several claims founded upon one policy are filed, whether by third parties or as claims by the insured under this section and the aggregate allowed amount of the claims to which the same limit of liability in the policy is applicable exceeds that limit, each claim as allowed ~~shall~~ *must* be reduced in the same proportion so that the total equals the policy limit. Claims by the insured ~~shall~~ *must* be evaluated as *provided* in subsection (3). If any insured's claim is

subsequently reduced under subsection (3), the amount ~~thus~~ freed ~~shall~~ *must* be apportioned ratably among the claims ~~which~~ *that* have been reduced under this subsection.

(5) ~~No~~ *A* claim may *not* be presented under this section if it is or may be covered by any guaranty association or foreign guaranty association."

Section 1119. Section 33-2-1368, MCA, is amended to read:

"33-2-1368. Disputed claims. (1) When a claim is denied in whole or in part by the liquidator, written notice of the determination ~~shall~~ *must* be given to the claimant or ~~his~~ *the claimant's* attorney by first-class mail at the address shown in the proof of claim. Within 60 days from the mailing of the notice, the claimant may file ~~his~~ objections with the liquidator. If ~~no such~~ *a* filing is *not* made, the claimant may not further object to the determination.

(2) Whenever objections are filed with the liquidator and the liquidator does not alter ~~his~~ *the* denial of the claim as a result of the objections, the liquidator shall ask the court for a hearing as soon as practicable and give notice of the hearing by first-class mail to the claimant or ~~his~~ *the claimant's* attorney and to any other persons directly affected not less than 10 or more than 30 days before the date of the hearing. The matter may be heard by the court or by a court-appointed referee who shall submit findings of fact along with ~~his~~ *a* recommendation."

Section 1120. Section 33-2-1369, MCA, is amended to read:

"33-2-1369. Claims of sureties. (1) Whenever a creditor whose claim against an insurer is secured, in whole or in part, by the undertaking of another person fails to prove and file that claim, the other person may do so in the creditor's name and ~~shall~~ *must* be subrogated to the rights of the creditor, whether the claim has been filed by the creditor or by the other person in the creditor's name, to the extent that ~~he~~ *the other person* discharges the undertaking. However, in the absence of an agreement with the creditor to the contrary, the other person ~~shall~~ *is* not ~~be~~ entitled to any distribution until the amount paid to the creditor on the undertaking plus the distributions paid on the claim from the insurer's estate to the creditor equals the amount of the entire claim of the creditor. Any excess received by the creditor ~~shall~~ *must* be held by ~~him~~ *the creditor* in trust for ~~such~~ *the* other person.

(2) The term "other person", as used in this section, is not intended to apply to a guaranty association or foreign guaranty association."

Section 1121. Section 33-2-1370, MCA, is amended to read:

"33-2-1370. Claims of secured creditors. (1) The value of any security held by a secured creditor ~~shall~~ *must* be determined in one of the following ways, as the court may direct:

(a) by converting the ~~same~~ *security* into money according to the terms of the agreement pursuant to which the security was delivered to ~~such~~ *the* creditors; or

(b) by agreement, arbitration, compromise, or litigation between the creditor and the liquidator.

(2) The determination ~~shall~~ *must* be under the supervision and control of the court with due regard for the recommendation of the liquidator. The amount ~~so~~ determined ~~shall~~ *must* be credited upon the secured claim, and any deficiency ~~shall~~ *must* be treated as an unsecured claim. If the claimant surrenders ~~his~~ *the claimant's* security to the liquidator, the entire claim ~~shall~~ *must* be allowed as if unsecured."

Section 1122. Section 33-2-1372, MCA, is amended to read:

"33-2-1372. Liquidator's recommendations to the court concerning claims. (1) The liquidator shall review all claims duly filed in the liquidation and make ~~such~~ further investigation ~~as he~~ *that the liquidator* considers necessary. ~~He~~ *The liquidator* may compound, compromise, or in any other manner negotiate the amount for which claims will be recommended to the court except ~~where~~ *when* the liquidator is required by law to accept claims as settled by any person or organization, including any guaranty association or foreign guaranty association. Unresolved disputes ~~shall~~ *must* be determined under 33-2-1368. As soon as practicable, ~~he~~ *the liquidator* shall present to the court a report of the claims against the insurer with ~~his~~ *the liquidator's* recommendations. The report ~~shall~~ *must* include the name and address of each claimant and the amount of the claim finally recommended, if any. If the insurer has issued annuities or life insurance policies, the liquidator shall report the persons to whom, according to the records of the insurer, amounts are owed as cash surrender values or other investment value and the amounts owed.

(2) The court may approve, disapprove, or modify the report on claims by the liquidator. Reports not modified by the court within a period of 60 days following submission by the liquidator ~~shall~~ *must* be treated by the liquidator as allowed claims, subject to later modification or to rulings made by the court pursuant to 33-2-1368. ~~No~~ *A* claim under a policy of insurance ~~shall~~ *may not* be allowed for an amount in excess of the applicable policy limits."

Section 1123. Section 33-2-1374, MCA, is amended to read:

"33-2-1374. Unclaimed and withheld funds. (1) All unclaimed funds subject to distribution remaining in the liquidator's hands when ~~he~~ *the liquidator* is ready to apply to the court for discharge, including the amount distributable to any creditor, shareholder, member, or other person who is unknown or cannot be found, ~~shall~~ *must* be deposited with the state treasurer and ~~shall~~ *must* be paid without interest except in accordance with 33-2-1371 to the person entitled ~~thereto~~ *to the funds* or ~~his~~ *the person's* legal representative upon proof satisfactory to the state treasurer of ~~his~~ *the person's* right ~~thereto~~ *to the funds*. Any amount on deposit not claimed within 6 years from the discharge of the liquidator ~~shall~~ *must* be considered to have been abandoned and ~~shall~~ *must* be escheated without formal escheat proceedings and be deposited in the general fund.

(2) All funds withheld under 33-2-1366 and not distributed ~~shall~~ *must* upon discharge of the liquidator be deposited with the state treasurer and paid ~~by him~~ in accordance with 33-2-1371. Any sums remaining ~~which~~ *that* under 33-2-1371 would revert to the undistributed assets of the insurer ~~shall~~ *must* be transferred to the state treasurer and become the property of the state under subsection (1) unless the commissioner ~~in his discretion~~ petitions the court to reopen the liquidation under 33-2-1376."

Section 1124. Section 33-2-1377, MCA, is amended to read:

"33-2-1377. Disposition of records during and after liquidation. When it appears to the commissioner that the records of any insurer in *the* process of liquidation or completely liquidated are no longer useful, ~~he~~ *the commissioner* may recommend to the court and the court shall direct ~~what~~ *which* records should be retained for future reference and ~~what~~ *which* should be destroyed."

Section 1125. Section 33-2-1379, MCA, is amended to read:

"33-2-1379. Conservation of property of foreign or alien insurers. (1) If a domiciliary liquidator has not been appointed, the commissioner may apply to the district court by verified petition for an order directing ~~him~~ *the commissioner* to act as conservator to conserve the property of an alien insurer not domiciled in this state or a foreign insurer on any one or more of the following grounds:

(a) any of the grounds in 33-2-1331;

(b) that any of its property has been sequestered by official action in its domiciliary state or in any other state;

(c) that enough of its property has been sequestered in a foreign country to give reasonable cause to fear that the insurer is or may become insolvent;

(d) that its certificate of authority to do business in this state has been revoked or that none was ever issued;

(e) that there are residents of this state with outstanding claims or outstanding policies.

(2) When an order is sought under subsection (1), the court shall cause the insurer to be given ~~such~~ notice and *a* time to respond ~~thereto as~~ *that* is reasonable under the circumstances.

(3) The court may issue the order in whatever terms it considers appropriate. The filing or recording of the order with the clerk of the district court or the clerk and recorder of the county in which the principal business of the company is located or the county in which its principal office or place of business is located ~~shall~~ *must* impart the same notice as a deed, bill of sale, or other evidence of title ~~duly~~ filed or recorded with that clerk and recorder would have imparted.

(4) The conservator may at any time petition for and the court may grant an order under 33-2-1380 to liquidate assets of a foreign or alien insurer under conservation or, if appropriate, for an order under 33-2-1382 to be appointed ancillary receiver.

(5) The conservator may at any time petition the court for an order terminating conservation of an insurer. If the court finds that the conservation is no longer necessary, it shall order the insurer to be restored to possession of its property and the control of its business. The court may also make ~~such~~ *a* finding and issue ~~such~~ *an* order at any time upon motion of any interested party, but if ~~such~~ *the* motion is denied, all costs ~~shall~~ *must* be assessed against ~~such~~ *the* party."

Section 1126. Section 33-2-1380, MCA, is amended to read:

"33-2-1380. Liquidation of assets of foreign or alien insurers. (1) If ~~no~~ *a* domiciliary receiver has *not* been appointed, the commissioner may apply to the district court by verified petition for an order directing ~~him~~ *the commissioner* to liquidate the assets found in this state of a foreign insurer or an alien insurer not domiciled in this state~~,~~ on any of the following grounds:

(a) any of the grounds in 33-2-1331 or 33-2-1341; or

(b) any of the grounds specified in ~~subsections (1)(b) through (1)(d) of~~ 33-2-1379*(1)(b) through (1)(d)*.

(2) When an order is sought under subsection (1), the court shall cause the insurer to be given notice and time to respond ~~thereto as~~ *that is* reasonable under the circumstances.

(3) If it appears to the court that the best interests of creditors, policyholders, and the public require, the court may issue an order to liquidate in whatever terms it considers appropriate. The filing or recording of the order with the clerk of the district court or the clerk and recorder of the county in which the principal business of the company is located or the county in which its principal office or place of business is located shall impart the same notice as a deed, bill of sale, or other evidence of title duly filed or recorded with that clerk and recorder would have imparted.

(4) If a domiciliary liquidator is appointed in a reciprocal state while a liquidation is proceeding under this section, the liquidator under this section shall ~~thereafter~~ act as ancillary receiver under 33-2-1382. If a domiciliary liquidator is appointed in a nonreciprocal state while a liquidation is proceeding under this section, the liquidator under this section may petition the court for permission to act as ancillary receiver under 33-2-1382.

(5) On the same grounds as specified in subsection (1), the commissioner may petition any appropriate federal district court to be appointed receiver to liquidate that portion of the insurer's assets and business over which the court will exercise jurisdiction or any lesser part ~~thereof~~ *of the assets and business* that the commissioner considers desirable for the protection of the policyholders and creditors in this state.

(6) The court may order the commissioner, when ~~he~~ *the commissioner* has liquidated the assets of a foreign or alien insurer under this section, to pay claims of residents of this state against the insurer under ~~such~~ rules ~~as~~ *that relate* to the liquidation of insurers under this part ~~as~~ *and that* are otherwise compatible with the provisions of this section."

Section 1127. Section 33-2-1381, MCA, is amended to read:

"33-2-1381. Domiciliary liquidators in other states. (1) The domiciliary liquidator of an insurer domiciled in a reciprocal state ~~shall~~ *is*, except as to special deposits and security on secured claims under 33-2-1382(3), ~~be~~ vested by operation of law with the title to all of the assets, property, contracts, and rights of action, insurance producers' balances, and all of the books, accounts, and other records of the insurer located in this state. The date of vesting ~~shall~~ *must* be the date of the filing of the petition if that date is specified by the domiciliary law for the vesting of property in the domiciliary state. Otherwise, the date of vesting ~~shall be~~ *is* the date of entry of the order directing possession to be taken. The domiciliary liquidator has the immediate right to recover balances due from insurance producers and to obtain possession of the books, accounts, and other records of the insurer located in this state. ~~He~~ *The domiciliary liquidator* also has the right to recover all other assets of the insurer located in this state, subject to 33-2-1382.

(2) If a domiciliary liquidator is appointed for an insurer not domiciled in a reciprocal state, the commissioner of this state is vested by operation of law with the title to all of the property, contracts, and rights of action and all of the books, accounts, and other records of the insurer located in this state, at the same time that the domiciliary liquidator is vested with title in the domicile. The commissioner of this state may petition for a conservation or liquidation order under 33-2-1379 or 33-2-1380 or for an ancillary receivership under 33-2-1382 or, after approval by the district court, may transfer title to the domiciliary liquidator~~, as~~ *that* the interests of justice and the equitable distribution of the assets require.

(3) Claimants residing in this state may file claims with the liquidator or ancillary receiver, if any, in this state or with the domiciliary liquidator~~,~~ if the domiciliary law permits. The claims must be filed on or before the last date fixed for the filing of claims in the domiciliary liquidation proceedings."

Section 1128. Section 33-2-1382, MCA, is amended to read:

"33-2-1382. Ancillary formal proceedings. (1) If a domiciliary liquidator has been appointed for an insurer not domiciled in this state, the commissioner may file a petition with the district court requesting appointment as ancillary receiver in this state:

(a) if ~~he~~ *the commissioner* finds that there are sufficient assets of the insurer located in this state to justify the appointment of an ancillary receiver;

(b) if the protection of creditors or policyholders in this state ~~so~~ requires.

(2) The court may issue an order appointing an ancillary receiver in whatever terms it considers appropriate. The filing or recording of the order with the county clerk and recorder imparts the same notice as a deed, bill of sale, or other evidence of title duly filed or recorded.

(3) When a domiciliary liquidator has been appointed in a reciprocal state, then the ancillary receiver appointed in this state may, whenever necessary, aid and assist the domiciliary liquidator in recovering assets of the insurer located in this state. The ancillary receiver shall, as soon as practicable, liquidate from ~~their~~ respective securities those special deposit claims and secured claims ~~which~~ *that* are proved and allowed in the ancillary proceedings in this state and shall pay the necessary expenses of the proceedings. ~~He~~ *The ancillary receiver* shall promptly transfer all remaining assets, books, accounts, and records to the domiciliary liquidator. Subject to this section, the ancillary receiver and ~~his~~ *the ancillary receiver's* deputies ~~shall~~ have the same powers and ~~be~~ *are* subject to the same duties with respect to the administration of assets as a liquidator of an insurer domiciled in this state.

(4) When a domiciliary liquidator has been appointed in this state, ancillary receivers appointed in reciprocal states ~~shall~~ have, as to assets and books, accounts, and other records in their respective states, corresponding rights, duties, and powers to those provided in subsection (3) for ancillary receivers appointed in this state."

Section 1129. Section 33-2-1383, MCA, is amended to read:

"33-2-1383. Ancillary summary proceedings. The commissioner ~~in his sole discretion~~ may institute proceedings under 33-2-1321 through 33-2-1323 at the request of the commissioner or other appropriate insurance official of the domiciliary state of any foreign or alien insurer having property located in this state."

Section 1130. Section 33-2-1385, MCA, is amended to read:

"33-2-1385. Claims of residents against insurers domiciled in reciprocal states. (1) In a liquidation proceeding in a reciprocal state against an insurer domiciled in that state, claimants against the insurer who reside within this state may file claims either with the ancillary receiver, if any, in this state or with the domiciliary liquidator. Claims must be filed on or before the last dates fixed for the filing of claims in the domiciliary liquidation proceeding.

(2) Claims belonging to claimants residing in this state may be proved either in the domiciliary state under the law of that state or in ancillary proceedings, if any, in this state. If a claimant elects to prove ~~his~~ *a* claim in this state, ~~he~~ *the claimant* shall file ~~his~~ *the* claim with the liquidator in the manner provided in

33-2-1364 and 33-2-1365. The ancillary receiver shall make ~~his~~ *a* recommendation to the court ~~as under~~ *in the same manner provided in* 33-2-1372. ~~He~~ *The ancillary receiver* shall also arrange a date for hearing*,* if necessary*,* under 33-2-1368 and shall give notice to the liquidator in the domiciliary state, either by certified mail or by personal service, at least 40 days prior to the date set for hearing. If the domiciliary liquidator, within 30 days after the giving of ~~such~~ *the* notice, gives notice in writing to the ancillary receiver and to the claimant, either by certified mail or by personal service, of ~~his~~ *the ancillary receiver's* intention to contest the claim, ~~he shall be~~ *the ancillary receiver is* entitled to appear or to be represented in any proceeding in this state involving the adjudication of the claim.

(3) The final allowance of the claim by the courts of this state ~~shall~~ *must* be accepted as conclusive as to amount and as to priority against special deposits or other security located in this state."

Section 1131. Section 33-2-1387, MCA, is amended to read:

"33-2-1387. Interstate priorities. (1) In a liquidation proceeding in this state involving one or more reciprocal states, the order of distribution of the domiciliary state ~~shall~~ *must* control as to all claims of residents of this and reciprocal states. All claims of residents of reciprocal states ~~shall~~ *must* be given equal priority of payment from general assets regardless of where ~~such~~ *the* assets are located.

(2) The owners of special deposit claims against an insurer for which a liquidator is appointed in this or any other state is given priority against the special deposits in accordance with the statutes governing the creation and maintenance of the deposits. If there is a deficiency in any deposit so that the claims secured by it are not fully discharged from it, the claimants may share in the general assets, but the sharing ~~shall~~ *must* be deferred until general creditors, and also claimants against other special deposits who have received smaller percentages from their respective special deposits, have been paid percentages of their claims equal to the percentage paid from the special deposit.

(3) The owner of a secured claim against an insurer for which a liquidator has been appointed in this or any other state may surrender ~~his~~ *the* security and file ~~his~~ *the* claim as a general creditor, or the claim may be discharged by resort to the security in accordance with 33-2-1370, in which case the deficiency, if any, ~~shall~~ *must* be treated as a claim against the general assets of the insurer on the same basis as claims of unsecured creditors."

Section 1132. Section 33-3-216, MCA, is amended to read:

"33-3-216. Converting mutual insurer to stock insurer. (1) A mutual insurer may become a stock insurer under ~~such~~ *a* plan and procedure as may be approved by the commissioner after a hearing ~~thereon~~.

(2) The commissioner ~~shall~~ *may* not approve any ~~such~~ plan or procedure unless:

(a) it is equitable to the insurer's members;

(b) it is subject to approval by vote of not less than three-fourths of the insurer's current members voting ~~thereon~~ *on the plan or procedure* in person, by proxy, or by mail at a meeting of members called for the purpose pursuant to ~~such~~ reasonable notice and procedure ~~as~~ *that* may be approved by the commissioner. If *the insurer is* a life insurer, *the* right to vote may be limited to

members who hold policies other than term or group policies and whose policies have been in force for not less than 1 year.

(c) the equity of each policyholder in the insurer is determinable under a fair formula approved by the commissioner, which ~~such~~ equity ~~shall~~ *must* be based upon not less than the insurer's entire surplus, after deducting contributed or borrowed surplus funds, plus a reasonable present equity in its reserves and in all nonadmitted assets;

(d) the policyholders entitled to participate in the purchase of stock or distribution of assets ~~shall~~ *must* include all current policyholders and all existing persons who had been policyholders of the insurer within 3 years prior to the date ~~such~~ *the* plan was submitted to the commissioner;

(e) the plan gives to each policyholder of the insurer, as specified in subsection (2)(d), a preemptive right to acquire ~~his~~ *the policyholder's* proportionate part of all of the proposed capital stock of the insurer, within a designated reasonable period, and to apply upon the purchase ~~thereof~~ *of the stock* the amount of ~~his~~ *the policyholder's* equity in the insurer as determined under subsection (2)(c);

(f) shares are ~~so~~ offered to policyholders at a price not greater than *the price* to be ~~thereafter~~ offered to others but at not more than double the par value of ~~such~~ *the* shares;

(g) the plan provides for payment to each policyholder not electing to apply ~~his~~ *the policyholder's* equity in the insurer for or upon the purchase price of stock to which preemptively entitled of cash in the amount of not less than 50% of the amount of ~~his~~ *the* equity not ~~so~~ used for the purchase of stock, and which cash payment together with stock ~~so~~ purchased, if any, ~~shall constitute~~ *constitutes* full payment and discharge of the policyholder's equity as an owner of ~~such~~ *the* mutual insurer; and

(h) the plan, when completed, would provide for the converted insurer paid-in capital stock in an amount not less than the minimum paid-in capital required of a domestic stock insurer transacting like kinds of insurance, together with surplus funds in amount not less than one-half of ~~such~~ *the* required capital."

Section 1133. Section 33-3-217, MCA, is amended to read:

"33-3-217. Mergers and consolidations of stock insurers. (1) A domestic stock insurer may merge or consolidate with one or more domestic or foreign stock corporations authorized to transact business in this state by complying with the applicable provisions of the statutes of this state governing the merger or consolidation of stock corporations formed for profit but subject to subsections (2) and (3) ~~below~~.

(2) ~~No such~~ *A* merger or consolidation may *not* be effectuated unless in advance ~~thereof~~ *of the merger or consolidation* the plan and agreement ~~therefor~~ *for the merger or consolidation* have been filed with the commissioner and approved in writing by ~~him~~ *the commissioner* after a hearing ~~thereon~~. The commissioner shall give ~~such~~ approval within a reasonable time after ~~such~~ *the* filing unless ~~he~~ *the commissioner* finds ~~such~~ *that the* plan or agreement:

(a) is contrary to law;

(b) *is* inequitable to the stockholders of any domestic insurer involved; or

(c) would substantially reduce the security of and service to be rendered to policyholders of the domestic insurer in this state or elsewhere.

(3) ~~No~~ *A* director, officer, insurance producer, or employee of any insurer *that is* party to ~~such~~ *the* merger or consolidation may *not* receive any fee, commission, compensation, or other valuable consideration ~~whatsoever~~ for in any manner aiding, promoting, or assisting ~~therein~~ *in the merger or consolidation* except as set forth in ~~such~~ *the* plan or agreement.

(4) If the commissioner does not approve any ~~such~~ plan or agreement*,* ~~he~~ *the commissioner* shall ~~so~~ notify the insurer in writing specifying ~~his~~ *the* reasons ~~therefor~~ *for disapproval*.

(5) If any domestic insurer involved in the proposed merger or consolidation is authorized to transact insurance ~~also~~ in other states, the commissioner may request the insurance commissioner, director of insurance, superintendent of insurance, or other similar public insurance supervisory official of the two other ~~such~~ states in which ~~such~~ *the* insurer has in force the larger amounts of insurance to participate in the hearing provided for under subsection (2) ~~above~~, with full right to examine all witnesses and evidence and to offer to the commissioner ~~such~~ pertinent information and suggestions ~~as~~ *that* they may ~~deem~~ *consider* proper.

(6) Any plan or proposal through which a stock insurer proposes to acquire a controlling stock interest in another stock insurer through an exchange of stock of the first insurer, issued by the insurer for the purpose, for ~~such~~ *the* controlling stock of the second insurer is ~~deemed~~ *considered* to be a plan or proposal of merger of the second insurer into the first insurer for the purposes of this section and is subject to the applicable provisions ~~hereof~~ *of this section*.

(7) Upon merger or consolidation of a domestic insurer with another insurer under this chapter, the corporate charter of ~~such~~ *the* merged or consolidated domestic insurer ~~shall thereby~~ *must* automatically be extinguished and nullified."

Section 1134. Section 33-3-218, MCA, is amended to read:

"33-3-218. Mergers and consolidations of mutual insurers. (1) A domestic mutual insurer ~~shall~~ *may* not merge or consolidate with a stock insurer.

(2) A domestic mutual insurer may merge or consolidate with another mutual insurer under the applicable procedures prescribed by the statutes of this state applying to corporations formed for profit, except as ~~hereinbelow~~ provided *in this section*.

(3) The plan and agreement for merger or consolidation ~~shall~~ *must* be submitted to and approved by at least two-thirds of the members of each mutual insurer involved *by* voting ~~thereon~~ *on the issue* at meetings called for the purpose pursuant to ~~such~~ reasonable notice and procedure ~~as~~ *that* has been approved by the commissioner. If *the insurer is* a life insurer, *the* right to vote may be limited to members whose policies are other than term and group policies and have been in effect for more than 1 year.

(4) ~~No such~~ *An* merger or consolidation ~~shall~~ *may not* be effectuated unless in advance ~~thereof~~ *of the merger or consolidation* the plan and agreement ~~therefor~~ *for the merger or consolidation* have been filed with the commissioner and approved by ~~him in writing~~ *the commissioner* after a hearing ~~thereon~~. The commissioner shall give ~~such~~ approval within a reasonable time after ~~such~~ *the* filing unless ~~he~~ *the commissioner* finds ~~such~~ *that the* plan or agreement:

(a) *is* inequitable to the policyholders of any domestic insurer involved; or

(b) would substantially reduce the security of and service to be rendered to policyholders of the domestic insurer in this state and elsewhere.

(5) If the commissioner does not approve ~~such~~ *the* plan or agreement*,* ~~he~~ *the commissioner* shall ~~so~~ notify the insurers in writing specifying ~~his~~ *the* reasons ~~therefor~~ *for disapproval*.

(6) Section 33-3-217(5) ~~shall~~ also ~~apply as~~ *applies* to mergers and consolidations of ~~such~~ mutual insurers.

(7) Upon merger or consolidation of a domestic insurer with another insurer under this chapter, the corporate charter of ~~such~~ *the* merged or consolidated domestic insurer ~~shall thereby~~ *must* automatically be extinguished and nullified."

Section 1135. Section 33-3-301, MCA, is amended to read:

"33-3-301. Bylaws of mutual. (1) A domestic mutual insurer ~~shall~~ *must* have bylaws for the governing of its affairs. The initial board of directors of the insurer shall adopt original bylaws, subject to the approval of the insurer's members at the next ~~succeeding~~ meeting. The members ~~shall~~ have *the* power to make, modify, and revoke bylaws.

(2) The bylaws ~~shall~~ *must* provide:

(a) that each member is entitled to one vote upon each matter coming to a vote at meetings of members~~;~~ or to more votes in accordance with a reasonable classification of members as set forth in the bylaws and based upon the amount of insurance in force, *upon the* number of policies held or ~~upon~~ the amount of the premiums paid by ~~such~~ *the* member, or upon other reasonable factors. A member ~~shall have~~ *has* the right to vote in person or by ~~his~~ written proxy. ~~No such~~ *A* proxy ~~shall~~ *may not* be ~~made~~ irrevocable or for longer than a reasonable period of time.

(b) for election of directors by the members and the number, qualifications, terms of office, and powers of directors;

(c) the time, notice, quorum, and conduct of annual and special meetings of members and voting ~~thereat~~ *at the meetings*. The bylaws may provide that the annual meeting ~~shall~~ *must* be held at a place, date, and time to be set forth in the policy and without giving other notice of ~~such~~ *the* meeting.

(d) the number, designation, election, terms, and powers and duties of the respective corporate officers;

(e) for deposit, custody, disbursement, and accounting as to corporate funds;

(f) for any other reasonable provisions customary, necessary, or convenient for the management or regulation of its corporate affairs.

(3) ~~No~~ *A* provision in the bylaws for determining a quorum of members at any meeting ~~thereof~~ of less than a majority of all the insurer's members ~~shall be~~ *is not* effective unless approved by the commissioner. This subsection ~~shall~~ *may* not affect any other provision of law requiring *the* vote of a larger percentage of members for a specified purpose.

(4) The insurer shall promptly file with the commissioner a copy, certified by the insurer's secretary, of its bylaws and of every modification ~~thereof~~ *of* or addition ~~thereto~~ *to the bylaws*. The commissioner shall disapprove any bylaw provision ~~deemed by him to be~~ *that the commissioner considers* unlawful, unreasonable, inadequate, unfair, or detrimental to the proper interests or protection of the insurer's members or any class ~~thereof~~ *of members*. The insurer ~~shall~~ *may* not, after receiving written notice of ~~such~~ *the* disapproval and during

the existence ~~thereof~~ *of the disapproval*, effectuate any bylaw provision ~~so~~ disapproved."

Section 1136. Section 33-3-308, MCA, is amended to read:

"33-3-308. Prohibited pecuniary interest of officials. (1) Any officer or director or any member of any committee or an employee of a domestic insurer who is charged with the duty of investing or handling the insurer's funds ~~shall~~ *may* not*:*

(a) deposit or invest ~~such~~ *the* funds except in the insurer's corporate name;

(b) ~~shall not~~ borrow the funds of ~~such~~ *the* insurer;

(c) ~~shall not~~ be pecuniarily interested in any loan, pledge of deposit, security, investment, sale, purchase, exchange, reinsurance, or other similar transaction or property of ~~such~~ *the* insurer except as a stockholder or member;

(d) ~~shall not~~ take or receive to ~~his~~ *the individual's* own use any fee, brokerage, commission, gift, or other consideration for or on account of any ~~such~~ transaction made by or on behalf of ~~such~~ *the* insurer.

(2) ~~No~~ *An* insurer ~~shall~~ *may not* guarantee any financial obligation of any of its officers or directors.

(3) This section ~~shall~~ *may* not prohibit ~~such~~ a director or officer or member of a committee or employee from becoming a policyholder of the insurer and enjoying the usual rights ~~so~~ provided for its policyholders.

(4) The commissioner may, by regulations from time to time, define and permit additional exceptions to the prohibition contained in subsection (1) ~~of this section~~ solely to enable payment of reasonable compensation to a director who is not otherwise an officer or employee of the insurer or to a corporation or firm in which a director is interested for necessary services performed or sales or purchases made to or for the insurer in the ordinary course of the insurer's business and in the usual private professional or business capacity of ~~such~~ *the* director or ~~such~~ *the* corporation or firm."

Section 1137. Section 33-3-309, MCA, is amended to read:

"33-3-309. Management and exclusive agency contracts. (1) ~~No~~ *A* domestic insurer ~~shall~~ *may not* make any contract ~~whereby~~ *under which* any person is granted or is to enjoy in fact the management of the insurer to the substantial exclusion of its board of directors or to have the controlling or preemptive right to produce substantially all insurance business for the insurer unless the contract is filed with and approved by the commissioner. The contract ~~shall~~ *must* be ~~deemed~~ *considered* approved unless disapproved by the commissioner within 20 days after date of filing, subject to ~~such~~ *a* reasonable extension of time ~~as~~ *that* the commissioner may require by notice given within ~~such~~ 20 days. Any disapproval ~~shall~~ *must* be delivered to the insurer in writing, stating the grounds ~~therefor~~ *for disapproval*.

(2) The commissioner shall disapprove any ~~such~~ contract if ~~he~~ *the commissioner* finds that it:

(a) subjects the insurer to excessive charges;

(b) is to extend for an unreasonable length of time;

(c) does not contain fair and adequate standards of performance; or

(d) contains other inequitable provision or provisions ~~which~~ *that* impair the proper interests of stockholders or members of the insurer."

Section 1138. Section 33-3-411, MCA, is amended to read:

"33-3-411. Contingent liability of mutual members. (1) Each member of a domestic mutual insurer shall, except as otherwise ~~hereinafter~~ provided *in this part* with respect to nonassessable policies, have a contingent liability, pro rata and not one for another, for the discharge of its obligations~~.~~ ~~which~~ *The* contingent liability ~~shall~~ *must* be expressed in the policy and *must* be in ~~such~~ *a* maximum amount ~~as is~~ specified in the insurer's articles of incorporation.

(2) Termination of the policy of any ~~such~~ member ~~shall~~ *may* not relieve the member of contingent liability for ~~his~~ *the member's* proportion, if any, of the obligations of the insurer ~~which~~ *that* accrued while the policy was in force.

(3) Unrealized contingent liability of members does not constitute an asset of the insurer in any determination of its financial condition."

Section 1139. Section 33-3-412, MCA, is amended to read:

"33-3-412. Levy of contingent liability. (1) If at any time the assets of a domestic mutual insurer are less than its liabilities and the minimum amount of surplus required to be maintained by it by this code for authority to transact the kinds of insurance being transacted and the deficiency is not cured from other sources, its directors shall levy an assessment only upon its members who held policies providing for contingent liability at any time within the 12 months preceding the date notice of ~~such~~ *the* assessment was mailed to them, and ~~such~~ *the* members ~~shall be~~ *are* liable to the insurer for the amount ~~so~~ assessed.

(2) The assessment ~~shall~~ *must* be for ~~such~~ an amount ~~as~~ *that* is required to cure ~~such~~ *the* deficiency and to provide a reasonable amount of working funds ~~above such~~ *in excess of the* minimum amount of surplus, but ~~such~~ *the* working funds ~~so~~ provided ~~shall~~ *may* not exceed 5% of the insurer's liabilities as of the date ~~as of which~~ *that* the amount of ~~such~~ *the* deficiency was determined.

(3) In levying an assessment upon a policy providing for contingent liability, the assessment ~~shall~~ *must* be computed on the basis of the premiums earned on ~~such~~ *the* policy during the period to which the assessment relates.

(4) ~~No~~ *A* member ~~shall~~ *may not* have an offset against any assessment for which ~~he~~ *the member* is liable on account of any claim for unearned premium or loss payable.

(5) As to life insurance, any part of ~~such~~ an assessment upon a member ~~which~~ *that* remains unpaid following notice of assessment, demand for payment, and lapse of a reasonable waiting period as specified in ~~such~~ *the* notice may, if approved by the commissioner as being in the best interests of the insurer and its members, be secured by placing a lien upon the cash surrender values and accumulated dividends held by the insurer to the credit of ~~such~~ *the* member."

Section 1140. Section 33-3-433, MCA, is amended to read:

"33-3-433. Assessment of stockholders or members. (1) Any insurer receiving the commissioner's notice mentioned in 33-3-432(1):

(a) if a stock insurer, by resolution of its board of directors and subject to any limitations upon assessment contained in its articles of incorporation, may assess its stockholders for amounts necessary to cure the deficiency and provide the insurer with a reasonable amount of surplus in addition. If ~~any~~ *a* stockholder fails to pay a lawful assessment after notice given to ~~him~~ *the stockholder* in person or by advertisement in ~~such~~ *a* time and manner ~~as~~ approved by the commissioner, the insurer may require the return of the original certificate of stock held by the stockholder and in cancellation and in lieu ~~thereof~~ *of the original certificate* issue a new certificate for ~~such~~ *the* number of shares ~~as~~ *that*

the stockholder may then be entitled to, upon the basis of the stockholder's proportionate interest in the amount of the insurer's capital stock as determined by the commissioner to be remaining at the time of determination of *the* amount of impairment under 33-3-432, after deducting from ~~such~~ *the* proportionate interest the amount of ~~such~~ *the* unpaid assessment. The insurer may pay for or reissue fractional shares under this subsection.

(b) if a mutual insurer, shall levy such an assessment upon members as is provided for under 33-3-412.

(2) Neither ~~this section nor~~ 33-3-432 *nor this section* ~~shall~~ *may* be ~~deemed~~ *considered* to prohibit the insurer from curing any ~~such~~ deficiency through any lawful means other than those referred to in ~~such sections~~ *33-3-432 or this section*."

Section 1141. Section 33-3-436, MCA, is amended to read:

"33-3-436. Mutual member's share of assets on liquidation. (1) Upon any liquidation of a domestic mutual insurer, its assets remaining after discharge of its indebtedness, policy obligations, repayment of contributed or borrowed surplus, if any, and expenses of administration ~~shall~~ *must* be distributed to existing persons who were its members at any time within 36 months ~~next~~ preceding the date ~~such~~ *that* liquidation was authorized or ordered or *the* date of last termination of the insurer's certificate of authority, whichever date is the earlier.

(2) The distributive share of each ~~such~~ member ~~shall~~ *under subsection (1) must* be in the proportion that the aggregate premiums earned by the insurer on the policies of the member during the combined periods of ~~his~~ membership bear to the aggregate of all premiums ~~so~~ earned on the policies of all ~~such~~ members. The insurer may, and if *the insurer is* a life insurer shall, make a reasonable classification of its policies ~~so~~ held by ~~such~~ members~~,~~ and a formula based upon ~~such~~ *the* classification~~,~~ for determining the equitable distributive share of each ~~such~~ member. ~~Such~~ *The* classification and formula ~~shall be~~ *are* subject to the approval of the commissioner."

Section 1142. Section 33-3-442, MCA, is amended to read:

"33-3-442. Inside trading of securities — profit inures to company — limitation of action to recover — rules. (1) For the purpose of preventing the unfair use of information ~~which~~ *that* may have been obtained by ~~such~~ *the* beneficial owner, director, or officer by reason of ~~his~~ *the individual's* relationship to ~~such~~ *the* company, any profit realized by ~~him~~ *the individual* from any purchase and sale, or any sale and purchase, of any equity security of ~~such~~ *the* company within any period of less than 6 months, unless ~~such~~ *the* security was acquired in good faith in connection with a debt previously contracted, ~~shall inure to~~ *must benefit* and be recoverable by the company, irrespective of any intention on the part of ~~such~~ *the* beneficial owner, director, or officer in entering into ~~such~~ *the* transaction of holding the security purchased or of not repurchasing the security sold for a period exceeding 6 months.

(2) Suit to recover ~~such~~ *the* profit *described in subsection (1)* may be instituted at law or in equity in any court of competent jurisdiction by the company or by the owner of any security of the company in the name and in behalf of the company if the company ~~shall fail~~ *fails* or ~~refuse~~ *refuses* to bring ~~such~~ suit within 60 days after request or ~~shall fail diligently~~ *fails* to *diligently* prosecute the ~~same thereafter,~~ *suit.* ~~but no such~~ *However, the* suit ~~shall~~ *may not* be brought more than 2 years after the date ~~such~~ *the* profit was realized.

(3) This section ~~shall~~ *may* not be construed to cover any transaction ~~where such~~ *in which the* beneficial owner was not ~~such~~ *the beneficial owner* both at the time of the purchase and sale, or the sale and purchase, of the security involved or any transaction or transactions ~~which~~ *that* the commissioner ~~by rules~~ may exempt *by rule* as not comprehended within the purpose of this section."

Section 1143. Section 33-3-443, MCA, is amended to read:

"33-3-443. Short sales of equity securities prohibited — time for delivery after sale. (1) It ~~shall be~~ *is* unlawful for any ~~such~~ beneficial owner, director, or officer, directly or indirectly, to sell any equity security of ~~such~~ *the* company if the person selling the security or ~~his~~ *the person's* principal:

(a) does not own the security sold; or

(b) if ~~owning~~ *the person owns* the security, does not deliver it against ~~such~~ *the* sale within 20 days ~~thereafter~~ or does not within 5 days after ~~such~~ *the* sale deposit it in the ~~mails~~ *mail* or other usual channels of transportation.

(2) ~~No~~ *A* person ~~shall be deemed~~ *may not be considered* to have violated this section if ~~he~~ *the person* proves that notwithstanding the exercise of good faith ~~he~~ *the person* was unable to make ~~such~~ *the* delivery or deposit within ~~such~~ *that* time or that to do so would cause undue inconvenience or expense."

Section 1144. Section 33-3-444, MCA, is amended to read:

"33-3-444. Exemptions — securities held in an investment account — primary or secondary market — rules. (1) The provisions of 33-3-442 ~~shall~~ *do* not apply to any purchase and sale, or sale and purchase, and the provisions of 33-3-443 ~~shall~~ *do* not apply to any sale of an equity security of a domestic stock insurance company not then or ~~theretofore~~ *later* held by ~~him~~ *a person* in an investment account by a broker-dealer in the ordinary course of ~~his~~ business and incident to the establishment or maintenance by ~~him~~ *the broker-dealer* of a primary or secondary market*,* ~~(otherwise than~~ *except* on an exchange as defined in the Securities Exchange Act of 1934~~)~~*,* for ~~such~~ *the* security.

(2) The commissioner may, by ~~such~~ rules ~~as he deems~~ *that the commissioner considers* necessary or appropriate in the public interest, define and prescribe terms and conditions with respect to securities held in an investment account and transactions made in the ordinary course of business and incident to the establishment or maintenance of a primary or secondary market."

Section 1145. Section 33-3-447, MCA, is amended to read:

"33-3-447. Rules of commissioner — classifications — effect. (1) The commissioner may make ~~such~~ *adopt* rules ~~as~~ *that* may be necessary for the execution of the functions vested in ~~him~~ *the commissioner* by 33-3-441 through 33-3-446 and may ~~for such purpose~~ classify domestic stock insurance companies, securities, and other persons or matters within ~~his~~ *the commissioner's* jurisdiction.

(2) ~~No~~ *A* provision of 33-3-441 through 33-3-443 imposing any liability ~~shall~~ *does not* apply to any act done or omitted in good faith in conformity with any rule of the commissioner, notwithstanding that ~~such~~ *the* rule may, after ~~such~~ *the* act or omission, be amended or rescinded or determined by judicial or other authority to be invalid for any reason."

Section 1146. Section 33-3-502, MCA, is amended to read:

"33-3-502. Solicitations in other states. (1) ~~No~~ *A* domestic insurer ~~shall~~ *may not* knowingly solicit insurance business in any reciprocating state in which it is not then licensed as an authorized insurer.

(2) This section ~~shall~~ *does* not prohibit advertising through publication and radio, television, and other broadcasts originating outside ~~such~~ *the* reciprocating state~~,~~ if the insurer is licensed in a majority of the states in which ~~such~~ *the* advertising is disseminated and if ~~such~~ *the* advertising is not specifically directed to residents of ~~such~~ *the* reciprocating state.

(3) This section ~~shall~~ *does* not prohibit insurance, covering persons or risks located in a reciprocating state, under contracts solicited and issued in states in which the insurer is then licensed. ~~It shall~~ *This section does* not prohibit insurance effectuated by the insurer as an unauthorized insurer in accordance with the laws of the reciprocating state.

(4) A reciprocating state, as used ~~herein~~ *in this section*, is one under the laws of which a similar prohibition is imposed upon and enforced against insurers domiciled in that state.

(5) The commissioner shall suspend or revoke the certificate of authority of a domestic insurer found by ~~him~~ *the commissioner*, after a hearing, to have violated this section."

Section 1147. Section 33-3-602, MCA, is amended to read:

"33-3-602. Conversion to involuntary liquidation. An insurer may at any time during liquidation under 35-1-931 and 35-1-932 apply to the commissioner to have the liquidation continued under ~~his~~ *the commissioner's* supervision~~;~~. ~~thereupon~~ *Upon receipt of the application*, the commissioner shall apply to the court for liquidation under 33-2-1341."

Section 1148. Section 33-3-604, MCA, is amended to read:

"33-3-604. Distribution of assets of ~~a~~ mutual insurer. The maximum amount that a mutual insurer may pay to a policyholder upon dissolution, in addition to the benefits promised in the insurance policy, is the total of the premium payments made by the policyholder with interest at the legal rate compounded annually. Any excess over ~~such~~ *the* amounts must be deposited with the state treasurer to the credit of the state general fund. A person may participate in the distribution of assets of a mutual insurer only if ~~he~~ *the person* has a policy in effect 180 days before the insurer files its plan for dissolution with the commissioner. The amount that a person eligible to participate in the distribution of assets of a mutual insurer may receive must be in the proportion that the premiums paid by the policyholder bear to the total premiums paid to the mutual insurer by all policyholders who had policies in effect 180 days before the insurer filed its plan for dissolution with the commissioner."

Section 1149. Section 33-4-302, MCA, is amended to read:

"33-4-302. Bylaws — contents. (1) The bylaws of a farm mutual insurer ~~shall~~ *must* provide:

(a) ~~as to~~ *for* the liability of each member for payment of the expenses and losses of the insurer and *for* what obligations ~~shall~~ *must* be given ~~therefor~~ *for the expenses and losses* when a person applies for insurance;

(b) ~~as to~~ *for* the time when obligations of members for losses and expenses become due;

(c) for *the* limitation of liability of members for the payment of expenses and losses of the insurer;

(d) *for* the terms of office of the directors. At least part of the directors ~~shall~~ *must* be elected at each annual meeting of members. The term of any director ~~shall~~ *may* not be longer than 3 years.

(e) the date of the annual meeting of the members, at which vacancies existing or occurring on the board of directors are to be filled by election by the members. Each member ~~shall~~ *must* be permitted to cast at least one vote, either in person or, if ~~so~~ authorized in the bylaws, by proxy, for each director to be elected and may cumulate ~~his~~ *the member's* votes for one or more directors, not exceeding the number to be elected.

(f) how directors are to be elected in case ~~no~~ *an* election ~~occurs~~ *does not occur* at the annual meeting or in event of resignation, disability, or death of a director;

(g) the manner and time of giving notice of annual and special meetings of members.

(2) The bylaws may provide:

(a) the character of property to be insured and under what restrictions and limitations;

(b) restrictions and limitations as to membership and the powers, duties, and obligations of the members other than as to obligations covered under subsection (1)(a) ~~above~~;

(c) the manner of making and collecting assessments;

(d) the manner of the suspension and expulsion of members;

(e) the form of application and the form of policy;

(f) the manner of making proof, adjustment, and payment of losses;

(g) ~~as to~~ *for* who is authorized to adjust losses for the insurer;

(h) for arbitration as provided in 33-4-411, in event the insurer's adjuster and any claimant cannot agree as to the amount of any insured damage or loss;

(i) the duties and compensation of the officers and the bonds to be required of them;

(j) the books and records to be kept by the insurer, reports required of the officers, and the manner of examining and auditing their accounts;

(k) what ~~shall~~ *must* be contained on the corporate seal and when the seal ~~shall be~~ *is* required to be used;

(l) ~~such~~ other matters as may be ~~deemed~~ *considered* necessary or convenient for the management of the affairs of the insurer."

Section 1150. Section 33-4-316, MCA, is amended to read:

"33-4-316. Records — inspections. (1) A farm mutual insurer, through its president and secretary, shall keep or cause to be kept accurate records and accounts of its transactions. The books, files, and records of the insurer ~~shall~~ *must* be located at its principal place of business or, in the case of a county mutual insurer, at ~~such~~ *a* place within the county of its principal place of business as may be designated by the insurer's board of directors and shown in the minutes of the board.

(2) The books, files, and records of the insurer ~~shall~~ *must* be available for inspection by the insurer's directors and officers and by the commissioner or ~~his~~ *the commissioner's* duly constituted examiner at all reasonable times."

Section 1151. Section 33-4-402, MCA, is amended to read:

"33-4-402. Members' liability — limitation. All liability of the members of a farm mutual insurer ~~shall~~ *must* be as limited in the insurer's bylaws. ~~As to~~ *For* insurers transacting business on the cash premium plan, the limitation ~~shall~~ *must* comply with 33-4-504(4). ~~No~~ *A* member ~~shall~~ *may not* be required to pay more than the full amount of ~~his~~ *the member's* obligation given to the insurer or of ~~his~~ *the member's* liability as provided for in the bylaws."

Section 1152. Section 33-4-411, MCA, is amended to read:

"33-4-411. Arbitration — committee — compensation. (1) If any insurer's adjuster and a claimant fail to agree as to the amount of the insured loss or damage sustained by the claimant and if ~~so~~ provided for in the insurer's bylaws, the matter ~~shall~~ *must* be submitted to three persons as a committee of reference~~,~~. ~~one of whom shall~~ *One member must* be selected by the claimant, one by the insurer, and the third by ~~such~~ *the other* two ~~persons~~ *members*, all of whom ~~shall~~ *must* be sworn to a faithful and impartial investigation and award.

(2) The committee of reference ~~shall have~~ *has* authority to examine witnesses and determine all matters in dispute. The decision or award of the committee ~~shall~~ *must* be made in writing to the secretary of the insurer. If it relates to any claimed loss or damage to a crop, the decision or award ~~shall~~ *may* not be made until after maturity of ~~such~~ *the* crop. The decision or award of the committee ~~shall be~~ *is* final and binding upon all parties~~,~~ unless an interested party appeals to the court within 30 days ~~thereafter~~ *after the decision or award*.

(3) The compensation of each member of any ~~such~~ committee ~~shall~~ *must* be at the rate of $10 per day for each day of service in the discharge of ~~his~~ duties. ~~Such~~ *The* compensation ~~shall~~ *must* be paid by the claimant~~,~~ unless the award of the committee exceeds the sum ~~theretofore~~ offered by the insurer in settlement of the claim*,* ~~and~~ in which case the compensation ~~shall~~ *must* be paid by the insurer."

Section 1153. Section 33-4-506, MCA, is amended to read:

"33-4-506. Members — minimum membership. (1) ~~No~~ *A* person may *not* become a member of a farm mutual insurer except by insuring ~~therein~~ property owned by ~~him so~~ *the person* insurable under this chapter.

(2) The membership of ~~such~~ an insurer ~~shall consist~~ *consists* of the persons lawfully insuring ~~therein~~ *in the insurer*.

(3) The total membership of the insurer ~~shall~~ *must* at all times be not less than the number of persons required by 33-4-201 to incorporate ~~such~~ an insurer."

Section 1154. Section 33-4-507, MCA, is amended to read:

"33-4-507. Withdrawal of member — cancellation by insurer. (1) ~~Any~~ *A* member of an insurer may withdraw ~~therefrom~~ by surrendering ~~his~~ *the member's* policy to the insurer for cancellation and paying all obligations then ~~owing~~ *owned* by ~~him~~ *the member* to the insurer.

(2) The insurer ~~has power to~~ *may* cancel the policy of any member for any cause ~~deemed~~ *considered* adequate by the insurer and upon not less than 10 days' written notice in advance of cancellation delivered to the member or mailed to ~~his~~ *the member's last* address ~~last~~ of record *on file* with the insurer."

Section 1155. Section 33-4-508, MCA, is amended to read:

"33-4-508. Application for insurance. ~~All persons~~ *A person* desiring insurance shall make written application ~~therefor~~ to the insurer. If the insurer is transacting business on the assessment plan, the applicant shall at the time of

application give ~~his~~ *the applicant's* obligation to the insurer for the payment of losses and expenses as provided in the insurer's bylaws and make ~~such~~ advance payment in cash as *the* insurer may require."

Section 1156. Section 33-4-509, MCA, is amended to read:

"33-4-509. Application and policy forms filed with commissioner. All forms of application for insurance and of policies proposed to be used by an insurer ~~shall~~ *must* be filed with the commissioner at least 30 days in advance of any ~~such~~ use. The commissioner shall disapprove any ~~such~~ form found by ~~him~~ *the commissioner* to be unlawful, illegible, or misleading. An insurer ~~shall~~ *may* not use any ~~such~~ form after it has received the commissioner's notice of disapproval setting forth the reasons ~~therefor~~ *for disapproval*."

Section 1157. Section 33-5-202, MCA, is amended to read:

"33-5-202. Merger or conversion. (1) A domestic reciprocal insurer, upon affirmative vote of not less than two-thirds of its subscribers who vote on ~~such~~ *a* merger pursuant to due notice and the approval of the commissioner of the terms ~~therefor~~, may merge with another reciprocal insurer or be converted to a stock or mutual insurer.

(2) ~~Such a~~ *A* stock or mutual insurer ~~shall be~~ *is* subject to the same capital or surplus requirements and ~~shall have~~ *has* the same rights as a ~~like~~ *similar* domestic insurer transacting ~~like~~ *the same* kinds of insurance.

(3) The commissioner ~~shall~~ *may* not approve any plan for ~~such~~ merger or conversion ~~which~~ *that* is inequitable to subscribers or ~~which~~ *that*, if for conversion to a stock insurer, does not give each subscriber *a* preferential right to acquire stock of the proposed insurer proportionate to ~~his~~ *the subscriber's* interest in the reciprocal insurer as determined in accordance with 33-5-411 and a reasonable length of time within which to exercise ~~such~~ *the* right."

Section 1158. Section 33-5-303, MCA, is amended to read:

"33-5-303. Attorney's bond. (1) Concurrently with the filing of the declaration provided for in 33-5-201, the attorney of a domestic reciprocal insurer shall file with the commissioner a bond in favor of this state for the benefit of all persons damaged as a result of breach by the attorney of the conditions of ~~his~~ *the attorney's* bond as set forth in subsection (2) ~~hereof~~. The bond ~~shall~~ *must* be executed by the attorney and by an authorized corporate surety and ~~shall~~ *must* be subject to the commissioner's approval.

(2) The bond ~~shall~~ *must* be in the penal sum of $25,000, aggregate in form, conditioned that the attorney will faithfully account for all ~~moneys~~ *money* and other property of the insurer coming into ~~his hands~~ *the attorney's possession* and that ~~he~~ *the attorney* will not withdraw or appropriate to ~~his~~ *the attorney's* own use from the funds of the insurer any ~~moneys~~ *money* or property to which ~~he~~ *the attorney* is not entitled under the power of attorney.

(3) The bond ~~shall~~ *must* provide that it is not subject to cancellation unless 30 days' advance notice in writing of cancellation is given *to* both the attorney and the commissioner."

Section 1159. Section 33-5-403, MCA, is amended to read:

"33-5-403. Financial condition — method of determining. In determining the financial condition of a reciprocal insurer the commissioner shall apply the following rules:

(1) ~~He~~ *The commissioner* shall charge as liabilities the same reserves ~~as~~ *that* are required of incorporated insurers issuing nonassessable policies on a reserve basis.

(2) The surplus deposits of subscribers ~~shall~~ *must* be allowed as assets, except that any premium deposits delinquent for 90 days ~~shall~~ *must* first be charged against ~~such~~ *the* surplus deposit.

(3) The surplus deposits of subscribers ~~shall~~ *may* not be charged as a liability.

(4) All premium deposits *that are* delinquent *for* less than 90 days ~~shall~~ *must* be allowed as assets.

(5) An assessment levied upon subscribers and not collected ~~shall~~ *may* not be allowed as an asset.

(6) The contingent liability of subscribers ~~shall~~ *may* not be allowed as an asset.

(7) The computation of reserves ~~shall~~ *must* be based upon premium deposits other than membership fees and without any deduction for expenses and the compensation of the attorney."

Section 1160. Section 33-5-404, MCA, is amended to read:

"33-5-404. Subscribers' liability. (1) The liability of each subscriber, other than as to a nonassessable policy, for the obligations of the reciprocal insurer ~~shall~~ *must* be an individual, several, and proportionate liability, and not joint *liability*.

(2) Except as to a nonassessable policy, each subscriber ~~shall~~ *must* have a contingent assessment liability, in the amount provided for in the power of attorney or in the subscribers' agreement, for payment of actual losses and expenses incurred while ~~his~~ *the subscriber's* policy was in force. ~~Such~~ *The* contingent liability may be at the rate of not less than 1 or more than 10 times the premium or premium deposit stated in the policy, and the maximum aggregate ~~thereof shall~~ *contingent liability must* be computed in the manner set forth in 33-5-406.

(3) Each assessable policy issued by the insurer ~~shall~~ *must* contain a statement of the contingent liability."

Section 1161. Section 33-5-405, MCA, is amended to read:

"33-5-405. Subscribers' liability on judgment. (1) ~~No~~ *An* action ~~shall~~ *may not* lie against any subscriber upon any obligation claimed against the insurer until a final judgment has been obtained against the insurer and remains unsatisfied for 30 days.

(2) Any ~~such~~ judgment ~~shall be~~ *described in subsection (1) is* binding upon each subscriber only in ~~such~~ *the* proportion ~~as his~~ *that the subscriber's* interests may appear and in *an* amount not exceeding ~~his~~ *the subscriber's* contingent liability, if any."

Section 1162. Section 33-5-406, MCA, is amended to read:

"33-5-406. Assessments. (1) Assessments may from time to time be levied upon subscribers of a domestic reciprocal insurer liable ~~therefor~~ *for the assessment* under the terms of their policies by the attorney upon approval in advance by the subscribers' advisory committee and the commissioner or by the commissioner in liquidation of the insurer.

(2) Each subscriber's share of a deficiency for which an assessment is made, but not exceeding in any event ~~his~~ *the subscriber's* aggregate contingent liability as stated in accordance with 33-5-404, ~~shall~~ *must* be computed by applying to the premium earned on the subscriber's policy or policies during the period to be covered by the assessment the ratio of the total deficiency to the total premiums earned during ~~such~~ *the* period upon all policies subject to the assessment.

(3) In computing the earned premiums for the purposes of this section, the gross premium received by the insurer for the policy ~~shall~~ *must* be used as a base, deducting ~~therefrom solely~~ *only* charges not recurring upon the renewal or extension of the policy.

(4) ~~No~~ *A* subscriber ~~shall~~ *may not* have an offset against any assessment for which ~~he~~ *the subscriber* is liable on account of any claim for unearned premium or losses payable."

Section 1163. Section 33-5-407, MCA, is amended to read:

"33-5-407. Time limit for assessments. Every subscriber of a domestic reciprocal insurer having contingent liability ~~shall~~ *must* be liable for and shall pay ~~his~~ *the subscriber's* share of any assessment, as computed and limited in accordance with this chapter, if:

(1) while ~~his~~ *the subscriber's* policy is in force or within 1 year after its termination, ~~he~~ *the subscriber* is notified by either the attorney or the commissioner of ~~his intentions~~ *the intention* to levy ~~such~~ *an* assessment; or

(2) an order to show cause why a receiver, conservator, rehabilitator, or liquidator of the insurer should not be appointed is issued while ~~his~~ *the subscriber's* policy is in force or within 1 year after its termination."

Section 1164. Section 33-5-409, MCA, is amended to read:

"33-5-409. Nonassessable policies. (1) If a reciprocal insurer has a surplus of assets over all liabilities at least equal to the minimum capital stock required of a domestic stock insurer authorized to transact ~~like~~ *similar* kinds of insurance, upon application of the attorney and as approved by the subscribers' advisory committee, the commissioner shall issue ~~his~~ *a* certificate authorizing the insurer to extinguish the contingent liability of subscribers under its policies then in force in this state and to omit provisions imposing contingent liability in all policies delivered or issued for delivery in this state for ~~so~~ *as* long as all ~~such~~ *the* surplus remains unimpaired.

(2) Upon impairment of ~~such~~ *the* surplus, the commissioner shall ~~forthwith~~ revoke the certificate. ~~Such~~ *The* revocation ~~shall~~ *may* not ~~render~~ *make a policy* subject to contingent liability ~~any~~ *if the* policy *is* then in force and for the remainder of the period for which the premium has ~~theretofore~~ been paid~~;~~. ~~but~~ *However,* after ~~such~~ *the* revocation, ~~no~~ *a* policy ~~shall~~ *may not* be issued or renewed without providing for contingent assessment liability of the subscriber.

(3) The commissioner ~~shall~~ *may* not authorize a domestic reciprocal insurer ~~so~~ to extinguish the contingent liability of any of its subscribers or in any of its policies to be issued unless it qualifies to and does extinguish ~~such~~ *the* liability of all its subscribers and in all ~~such~~ policies for all kinds of insurance transacted by it~~;~~. ~~except that~~ *However,* if required by the laws of another state in which the insurer is transacting insurance as an authorized insurer, the insurer may issue policies providing for the contingent liability of ~~such~~ *those* of its subscribers ~~as~~ *that* may acquire ~~such~~ *the* policies in ~~such~~ *that* state and need not extinguish the contingent liability applicable to policies ~~theretofore~~ *previously* in force in ~~such~~ *that* state."

Section 1165. Section 33-5-412, MCA, is amended to read:

"33-5-412. Impaired reciprocals. (1) If the assets of a reciprocal insurer are at any time insufficient to discharge its liabilities, other than any liability on account of funds contributed by the attorney or others, and to maintain the required surplus, its attorney shall ~~forthwith~~ make up the deficiency or levy an assessment upon the subscribers for the amount needed to make up the deficiency, but subject to the limitation set forth in the power of attorney or policy.

(2) If the attorney fails to make up ~~such~~ *the* deficiency or to make the assessment within 30 days after the commissioner orders ~~him~~ *the attorney* to do so~~,~~ or if the deficiency is not fully made up within 60 days after the date the assessment was made, the insurer ~~shall be deemed~~ *is considered* insolvent and ~~shall~~ *must* be proceeded against as authorized by this code.

(3) If liquidation of ~~such~~ an insurer is ordered, an assessment ~~shall~~ *must* be levied upon the subscriber for ~~such~~ an amount, subject to limits as provided by this chapter, ~~as~~ *that* the commissioner determines to be necessary to discharge all liabilities of the insurer, exclusive of any funds contributed by the attorney or other persons but including the reasonable cost of the liquidation."

Section 1166. Section 33-6-102, MCA, is amended to read:

"33-6-102. Definitions. (1) (a) ~~Any~~ *An entity is considered a "benevolent association" for the purposes of this chapter if the entity:*

(i) is a corporation, association, or society, or by whatever name called, ~~which~~ *that* issues any certificate, policy, *or* membership agreement~~,~~ or makes any promise or agreement with its members ~~whereby~~ *under which*, upon ~~decease~~ *the death* of a member, any money or other benefit, charity, aid, or relief is to be paid, provided, or rendered by ~~such~~ *the* corporation, association, or society to ~~his~~ *the deceased's* legal representatives or to the beneficiary designated by ~~him~~ *the deceased*~~, which~~ *and the* money, benefit, charity, aid, or relief is derived from voluntary donations or from admission fees, dues, or assessments or any of ~~them~~ *those items* collected or to be collected from the members ~~thereof~~ *of the entity* or members of a class ~~therein~~ *of the entity* or interest or ~~accretions thereon~~ *gains on the items* or accumulations ~~thereof~~ *of the items*; and

(ii) ~~wherein~~ *uses* the money or other benefit, charity, aid, or relief ~~so realized is applied to or accumulated~~ for the uses and purposes ~~herein~~ specified *in this chapter,* ~~and/or~~ the uses of ~~such~~ *the* corporation, association, or society*,* ~~and/or~~ *or* the expenses of management and prosecution of its business~~, shall be deemed to be a "benevolent association" for the purposes of this chapter~~.

(b) The definition of benevolent association in subsection (1)(a) ~~above~~ is not applicable to:

(i) burial or death benefits, annuities, endowments, or any other benefit payments of any legal reserve life or disability insurer or of any labor union, railroad brotherhood, or lodge having as a primary business the improvement of working conditions;

(ii) any auxiliaries to any labor union, railroad brotherhood, or lodge referred to in subsection (1)(b)(i); or

(iii) the benevolent plans within fraternal orders if limited to members and if the plan is not the principal object for the formation or continuance of the fraternal order.

(2) ~~A "member"~~ *"Member"* or "member in good standing" is an individual who must contribute to a benevolent association upon notice of assessment.

(3) (a) "Membership contract" is any certificate, policy, membership agreement, by whatever name called, or any promise or agreement of a benevolent association with any or all of its members~~, whereby~~ *under which* any money or other benefit, charity, aid, or relief is to be paid, provided, or rendered by ~~such~~ *the* association upon the ~~decease~~ *death* of a member to ~~his~~ *the member's* legal representatives or to the beneficiary or beneficiaries designated by ~~him~~ *the member*.

(b) There ~~shall~~ *must* be one contributing member for each membership contract, but a membership contract may cover more than one individual.

(4) "Officer" is any of the individuals having supervision and control of a benevolent association and engaging in the management and the prosecution of the business ~~thereof~~ *of the association*, whether designated as officers, trustees, comptrollers, managers, or by whatever name called."

Section 1167. Section 33-6-401, MCA, is amended to read:

"33-6-401. Continuous certificate of authority — fee — evidence. (1) A benevolent association may not insure a risk in this state unless it ~~then~~ holds a subsisting certificate of authority issued to it by the commissioner.

(2) A benevolent association's certificate of authority continues in force as long as the benevolent association is entitled to it under this chapter and until suspended, revoked, or otherwise terminated~~;~~. ~~subject, however~~ *However*, *the certificate is subject* to continuance of the certificate by the benevolent association each year by payment before May 15 of the continuation fee of $25, to be deposited by the commissioner with the state treasurer to the credit of the state general fund.

(3) If a benevolent association does not continue its certificate of authority in accordance with subsection (2), its certificate of authority expires at midnight on May 31 ~~next~~ following its failure to continue it in force. The commissioner shall promptly notify a benevolent association that has not continued its certificate of authority of the impending expiration of its certificate of authority.

(4) The commissioner may ~~in his discretion~~ reinstate a certificate of authority that a benevolent association has inadvertently permitted to expire~~,~~ after the benevolent association has fully cured all failures that resulted in the expiration and upon payment by the benevolent association of a $25 fee for reinstatement in addition to the current continuation fee as provided in subsection (2). If a certificate is not reinstated, the commissioner may grant a benevolent association another certificate of authority only after the benevolent association files an application for a certificate of authority and meets all other requirements for an original certificate of authority in this state.

(5) The commissioner may amend a certificate of authority at any time to accord with changes in the benevolent association's charter of insuring powers.

(6) A duly certified copy or duplicate of ~~such~~ *the* license ~~shall be~~ *is* prima facie evidence that the licensee is a benevolent association within the meaning of this chapter."

Section 1168. Section 33-7-119, MCA, is amended to read:

"33-7-119. Examination of societies. (1) The commissioner of insurance or any person ~~he may appoint~~ *appointed by the commissioner* may examine any domestic, foreign, or alien society transacting or applying for admission to transact business in this state in the same manner as authorized for

examination of domestic, foreign, or alien insurers. Requirements of notice and an opportunity to respond before findings are made public, as provided in the laws regulating insurers, are applicable to the examination of societies.

(2) The expense of each examination and of each valuation, including compensation and actual expenses of examiners, must be paid by the society examined or whose certificates are valued, upon statements furnished by the commissioner."

Section 1169. Section 33-7-120, MCA, is amended to read:

"33-7-120. Injunction — liquidation — receivership of domestic society. (1) The commissioner of insurance shall notify a domestic society of a deficiency or deficiencies and state in writing the reasons for ~~his~~ *the* dissatisfaction, whenever the commissioner, upon investigation, finds that the society:

(a) has exceeded its powers;

(b) has failed to comply with any provision of this chapter;

(c) is not fulfilling its contracts in good faith;

(d) has a membership of less than 400 after an existence of 1 year or more; or

(e) is conducting business fraudulently or in a manner hazardous to its members, creditors, the public, or the business.

(2) Whenever a deficiency or deficiencies are found, the commissioner shall issue to the society a written notice that requires the deficiency or deficiencies to be corrected. The society shall within 30 days comply with the commissioner's request for correction. If the society fails to comply, the commissioner shall notify the society of the noncompliance and require the society to show cause by a stated date why it should not be enjoined from transacting business until the violation complained of is corrected or why an action in quo warranto should not be commenced against the society.

(3) If the society does not present sufficient reasons why it should not be enjoined from transacting business or why the quo warranto action should not be commenced, the commissioner may present the facts relating to ~~his~~ *the commissioner's* determination to the attorney general who shall, if ~~he~~ *the attorney general* finds that the circumstances warrant, commence an action to enjoin the society from transacting business or an action in quo warranto.

(4) The court shall notify the officers of the society of a hearing. If after a hearing it appears that the society should be enjoined or liquidated or that a receiver should be appointed, the court shall enter the necessary order. A society enjoined from transacting business may not do business until:

(a) the commissioner finds that the violation complained of has been corrected;

(b) the costs of the action have been paid by the society if the court finds that the society was in default as charged;

(c) the court has dissolved its injunction; and

(d) the commissioner has reinstated the certificate of authority.

(5) If the court orders the society liquidated, it is enjoined from transacting any further business. The receiver of the society shall proceed at once to take possession of the books, papers, money, and other assets of the society and, under the direction of the court, proceed to close the affairs of the society and distribute its funds to those entitled to the funds.

(6) An action under this section may not be recognized in any court of this state unless brought by the attorney general upon request of the commissioner. The court shall appoint the commissioner as the receiver for a domestic society.

(7) The provisions of this section relating to hearing by the commissioner, action by the attorney general at the request of the commissioner, hearing by the court, injunction, and receivership apply to a society that voluntarily decides to discontinue business."

Section 1170. Section 33-7-121, MCA, is amended to read:

"33-7-121. Suspension, revocation, or refusal of license of foreign or alien society. (1) The commissioner of insurance shall notify a foreign or alien society of a deficiency or deficiencies and state in writing the reasons for ~~his~~ *the commissioner's* dissatisfaction~~,~~ whenever the commissioner, upon investigation, finds that the society transacting or applying to transact business in this state:

(a) has exceeded its powers;

(b) has failed to comply with any of the provisions of this chapter;

(c) is not fulfilling its contracts in good faith; or

(d) is conducting its business fraudulently or in a manner hazardous to its members, creditors, or the public.

(2) Whenever a deficiency or deficiencies are found, the commissioner shall issue to the society a written notice that requires the deficiency or deficiencies to be corrected. The society shall within 30 days comply with the commissioner's request for correction. If the society fails to comply, the commissioner shall notify the society of the noncompliance and require the society to show cause by a stated date why its authority to do business in this state should not be suspended, revoked, or refused.

(3) If the society does not present sufficient reason why its authority to do business in this state should not be suspended, revoked, or refused, the commissioner may:

(a) suspend or refuse the authority of the society to do business in this state until satisfactory evidence is furnished to the commissioner that the suspension or refusal should be withdrawn; or

(b) revoke the authority of the society to do business in this state.

(4) ~~Nothing in this~~ *This* section may *not* be construed as preventing any society from continuing in good faith all contracts made in this state during the time the society was legally authorized to transact business in this state."

Section 1171. Section 33-7-208, MCA, is amended to read:

"33-7-208. Organization. A domestic society organized on or after January 1, 1992, must be formed as follows:

(1) Ten or more citizens of the United States, a majority of whom are residents of this state, who desire to form a fraternal benefit society, may make, sign, and acknowledge before a notary public~~,~~ an application for articles of incorporation that states:

(a) the proposed corporate name of the society, which may not so closely resemble the name of any society or insurance company as to be misleading or confusing;

(b) the purposes for which it is being formed and the mode in which its corporate powers are to be exercised. The purposes may not include more liberal powers than are granted by this chapter.

(c) the names and residences of the incorporators and the names, residences, and official titles of all the officers, trustees, directors, or other persons who are to have and exercise the general control of the management of the affairs and funds of the society for the first year or until the ensuing election at which all officers are elected by the supreme governing body. The election must be held not later than 1 year from the date of issuance of the permanent certificate of authority.

(2) The application for articles of incorporation, certified copies of the society's bylaws and rules, copies of all proposed forms of certificates, applications for certificates, and circulars to be issued by the society, and a bond conditioned upon the return to applicants of the advanced payments if the organization is not completed within 1 year must be filed with the commissioner, who may require further information considered necessary. The bond, with sureties approved by the commissioner, must be in an amount, not less than $300,000 or more than $1,500,000, required by the commissioner. All documents filed must be in English. If the purposes of the society conform to the requirements of this chapter and all provisions of law have been complied with, the commissioner shall certify, retain, and file the articles of incorporation and furnish to the incorporators a preliminary certificate of authority authorizing the society to solicit members.

(3) A preliminary certificate of authority granted under the provisions of this section is not valid after 1 year from its date of issuance or after an extended period, not exceeding 1 year, as may be authorized by the commissioner upon good cause shown, unless the 500 applicants required under subsection (4) have been secured and the organization has been completed. The charter and all other proceedings under the charter are void 1 year from the date of issuance of the preliminary certificate of authority or at the expiration of the extended period~~,~~ unless the society has completed its organization and received a certificate of authority to do business.

(4) Upon receipt of a preliminary certificate of authority from the commissioner, the society may solicit members for the purpose of completing its organization, shall collect from each applicant the amount of not less than one regular monthly premium in accordance with its table of rates, and shall issue to each applicant a receipt for the amount collected. A society may not incur a liability other than for the return of an advance premium, issue any certificate, or pay, allow, offer, or promise to pay or allow any benefit to a person until:

(a) actual applications for benefits have been secured, aggregating at least $500,000, on not less than 500 applicants~~,~~ and any necessary evidence of insurability has been furnished to and approved by the society;

(b) at least 10 subordinate lodges have been established into which the 500 applicants have been admitted;

(c) there has been submitted to the commissioner, under oath of the president, secretary, or corresponding officer of the society, a list of the applicants, giving their names, addresses, date each was admitted, name and number of the subordinate lodge of which each applicant is a member, amount of benefits to be granted, and premiums for benefits; and

(d) it has been shown to the commissioner, by sworn statement of the treasurer or the corresponding officer of the society, that at least 500 applicants

have each paid in cash at least one regular monthly premium. The aggregate premiums must amount to at least $150,000. The advance premiums must be held in trust during the period of organization. If the society has not qualified for a certificate of authority within 1 year, unless extended as provided in subsection (3), the premiums must be returned to the applicants.

(5) The commissioner may ~~in his discretion~~ require and examine additional information ~~he~~ *that the commissioner* considers advisable. Upon presentation of satisfactory evidence that the society has complied with all the provisions of law, the commissioner shall issue a certificate of authority to the society, authorizing it to transact business pursuant to the provisions of this chapter. The certificate of authority is prima facie evidence of the existence of the society at the date of the certificate. The commissioner shall record the certificate of authority.

(6) A society authorized to transact business in this state on January 1, 1992, is not required to reincorporate.

(7) An unincorporated or voluntary association may not transact business in this state as a society. Every voluntary association incorporated as provided in section 629(2), Chapter 286, Laws of 1959, may incur the obligations and enjoy the benefits of a society as if it were originally incorporated, and the corporation is considered a continuation of the original voluntary association. The officers must be elected and serve as provided in its articles of incorporation. Incorporation of a voluntary association does not affect existing suits, claims, or contracts."

Section 1172. Section 33-7-209, MCA, is amended to read:

"33-7-209. Amendments to laws. (1) A domestic society may amend its laws in accordance with the provisions of its laws by action of its supreme governing body at any regular or special meeting or, if its laws provide, by referendum. The referendum may be held in accordance with the provisions of its laws by a vote of the voting members of the society, by a vote of delegates or representatives of voting members, or by a vote of local lodges. A society may provide for voting by mail. An amendment submitted by referendum may not be adopted unless, within 6 months from the date of submission, a majority of the members voting have signified their consent to the amendment.

(2) An amendment to the laws of a domestic society does not take effect unless approved by the commissioner of insurance, who shall approve the amendment if ~~he~~ *the commissioner* finds that it has been adopted and is not inconsistent with any requirement of the laws of this state or with the character, objectives, and purposes of the society. Unless the commissioner disapproves an amendment within 60 days after its filing, the amendment is considered approved. The approval or disapproval of the commissioner must be in writing and mailed to the secretary or corresponding officer of the society at its principal office. If the commissioner disapproves an amendment, the reasons for the disapproval must be stated in the written notice.

(3) Within 90 days of approval by the commissioner, all amendments or a synopsis of the amendments must be furnished to all members of the society, either by mail or by publication in full in the official publication of the society.

(4) A foreign or alien society authorized to do business in this state shall file with the commissioner a certified copy of all amendments of or additions to its laws within 90 days after their enactment.

(5) Printed copies of the laws, as amended, that are certified by the secretary or a corresponding officer of the society are prima facie evidence of their legal adoption."

Section 1173. Section 33-7-216, MCA, is amended to read:

"33-7-216. Conversion of ~~a~~ society into ~~a~~ mutual life insurance company. A domestic society may be converted and licensed as a mutual life insurance company by compliance with all the applicable requirements of Title 33 if the plan of conversion has been approved by the commissioner of insurance. The board of directors shall prepare a written plan of conversion that sets forth in full the terms and conditions of conversion. An affirmative vote of two-thirds of all members of the supreme governing body at a regular or special meeting is necessary for the approval of the plan. A conversion may not take effect unless approved by the commissioner, who may approve the conversion if ~~he~~ *the commissioner* finds that the proposed change is in conformity with the requirements of law and not prejudicial to the certificate holders of the society."

Section 1174. Section 33-7-307, MCA, is amended to read:

"33-7-307. No personal liability. (1) The officers and members of the supreme governing body or any subordinate body of a society are not personally liable for any benefits provided by a society.

(2) A person may be indemnified and reimbursed by a society for expenses reasonably incurred by and liabilities imposed upon ~~him~~ *the person* in connection with or arising out of an action, suit, or proceeding, ~~(~~whether civil, criminal, administrative, or investigative~~)~~, or threat ~~thereof~~ *of a proceeding* in which the person may be involved by reason of the fact that ~~he~~ *the person* is or was a director, officer, employee, or agent of the society or of a firm, corporation, or organization that ~~he~~ *the person* served in any capacity at the request of the society.

(3) (a) A person may not be indemnified or reimbursed in relation to any matter in an action, suit, or proceeding:

(i) in which ~~he~~ *the person* is finally found to be guilty of breach of a duty as a director, officer, employee, or agent of the society; or

(ii) that is the subject of a compromise settlement.

(b) A person may be indemnified or reimbursed if ~~he~~ *the person* acted in good faith for a purpose ~~he~~ *that the person* reasonably believed to be in, or not opposed to, the best interests of the society and, in a criminal action or proceeding, in addition, ~~had no~~ *did not have* reasonable cause to believe that ~~his~~ *the* conduct was unlawful.

(4) The determination of whether the person's conduct met the standard required in order to justify indemnification or reimbursement in relation to any matter described in subsection (3) may be made only by the supreme governing body or board of directors by a majority vote of a quorum consisting of persons who were not parties to the action, suit, or proceeding or by a court of competent jurisdiction. The termination of an action, suit, or proceeding by a judgment, order, settlement, or conviction or upon a plea of no contest, does not create a conclusive presumption that the person did not meet the standard of conduct required in order to justify indemnification or reimbursement. The right of indemnification or reimbursement is not exclusive of other rights to which the person may be entitled as a matter of law, and the right inures to the benefit of ~~his~~ *the person's* heirs, executors, and administrators.

(5) A director, officer, employee, member, or volunteer of a society who serves without compensation may not be held liable~~,~~ *for* and a cause of action may not be brought~~,~~ for damages resulting from the exercise of judgment or

discretion in connection with the person's duties or responsibilities for the society unless the act or omission involved willful or wanton misconduct.

(6) A society may purchase and maintain liability insurance for acts incurred in the course and scope of the position for a person who is or was a director, officer, employee, or agent of the society or who is or was serving at the request of the society as a director, officer, employee, or agent of any other firm, corporation, or organization."

Section 1175. Section 33-7-411, MCA, is amended to read:

"33-7-411. Valuation. (1) Standards of valuation for certificates issued prior to July 1, 1993, must be those provided by the laws applicable immediately prior to July 1, 1992.

(2) (a) The minimum standards of valuation for certificates issued on or after July 1, 1993, must be based on the following tables:

(i) for certificates of life insurance—the commissioner of insurance's 1941 standard ordinary mortality table, the commissioner's 1941 standard industrial mortality table, the commissioner's 1958 standard ordinary mortality table, the commissioner's 1980 standard ordinary mortality table, or any more recent table made applicable to life insurers;

(ii) for annuity and pure endowment certificates, for total and permanent disability benefits, for accidental death benefits and for noncancelable accident and health benefits—the tables authorized for use by life insurers in this state.

(b) All of the certificates must be valued under valuation methods and standards, including interest assumptions, that are in accordance with the laws of this state applicable to life insurers that issue policies containing similar benefits.

(3) The commissioner may accept other standards for valuation if ~~he~~ *the commissioner* finds that the reserves produced by the valuation will not be less in the aggregate than reserves computed in accordance with the minimum valuation standard prescribed in this section. The commissioner may vary the standards of mortality applicable to all benefit contracts on substandard lives or other extrahazardous lives by a society authorized to do business in this state.

(4) A society, with the consent of the commissioner of insurance of the state of domicile of the society and under conditions, if any, that the commissioner may impose, may establish and maintain reserves on its certificates in excess of required reserves, but the contractual rights of a benefit member may not be affected by the excess reserves."

Section 1176. Section 33-9-102, MCA, is amended to read:

"33-9-102. Professionals as members, stockholders, or subscribers of mutual, stock, or reciprocal insurers. A health care provider or other professional may be a member of a mutual insurer, a stockholder of a stock insurer, or a subscriber of a reciprocal insurer, whether ~~such~~ *the* mutual, stock, or reciprocal insurer is domestic, foreign, or alien, for the purpose of protecting ~~himself~~ *the provider or professional* by insurance against loss, damage, or expense incident to a claim arising out of a breach of contract, pecuniary or personal injury to or death of any person, or other loss as the result of negligence in rendering professional services by any health care provider or other professional."

Section 1177. Section 33-10-108, MCA, is amended to read:

"33-10-108. Prevention of insolvencies — directors' and commissioner's action. (1) It ~~shall be~~ *is* the duty of the board of directors, upon majority vote, to notify the commissioner of any information indicating *that* any member insurer may be insolvent or in a financial condition hazardous to the policyholders or the public.

(2) The board of directors may, upon majority vote, request that the commissioner order an examination of any member insurer ~~which~~ *that* the board in good faith believes may be in a financial condition hazardous to the policyholders or the public. Within 30 days of the receipt of ~~such~~ *the* request, the commissioner shall begin ~~such~~ *the* examination. The examination may be conducted as a national association of insurance commissioners examination or may be conducted by ~~such~~ persons ~~as~~ *that* the commissioner designates. The cost of ~~such~~ *the* examination ~~shall~~ *must* be paid by the association, and the examination report ~~shall~~ *must* be treated as are other examination reports. ~~In no event shall such~~ *The* examination report *may not* be released to the board of directors prior to its release to the public, but this ~~shall~~ *does* not preclude the commissioner from complying with subsection (3). The commissioner shall notify the board of directors when the examination is completed. The request for an examination ~~shall~~ *must* be kept on file by the commissioner, but it ~~shall~~ *may* not be open to public inspection prior to the release of the examination report to the public.

(3) It ~~shall be~~ *is* the duty of the commissioner to report to the board of directors when ~~he~~ *the commissioner* has reasonable cause to believe that any member insurer examined or being examined at the request of the board of directors may be insolvent or in a financial condition hazardous to the policyholders or the public.

(4) The board of directors may, upon majority vote, make reports and recommendations to the commissioner upon any matter germane to the solvency, liquidation, rehabilitation, or supervision of any member insurer. ~~Such~~ *The* reports and recommendations ~~shall~~ *may* not be considered public documents.

(5) The board of directors may, upon majority vote, make recommendations to the commissioner for the detection and prevention of insurer insolvencies.

(6) The board of directors shall, at the conclusion of any insurer insolvency in which the association was obligated to pay covered claims, prepare a report on the history and causes of ~~such~~ *the* insolvency, based on the information available to the association, and submit ~~such~~ *the* report to the commissioner."

Section 1178. Section 33-10-109, MCA, is amended to read:

"33-10-109. Notice of insolvencies — suspension — other powers and duties of commissioner. (1) The commissioner shall:

(a) notify the association of the existence of an insolvent insurer not later than 3 days after ~~he~~ *the commissioner* receives notice of the determination of the insolvency;

(b) upon request of the board of directors, provide the association with a statement of the net direct written premiums of each member insurer.

(2) The commissioner may:

(a) require that the association notify the insureds of the insolvent insurer and any other interested parties of the determination of insolvency and of their rights under this part. ~~Such~~ *The* notification ~~shall~~ *must* be by mail at their ~~last known address~~ *last-known addresses*, where available, but if sufficient

information for notification by mail is not available, notice by publication in a newspaper of general circulation ~~shall be~~ *is* sufficient.

(b) suspend or revoke, after notice and hearing, the certificate of authority to transact insurance in this state of any member insurer ~~which~~ *that* fails to pay an assessment when due or fails to comply with the plan of operation. As an alternative, the commissioner may levy a fine on any member insurer ~~which~~ *that* fails to pay an assessment when due. ~~Such~~ *The* fine ~~shall~~ *may* not exceed 5% of the unpaid assessment ~~per~~ *a* month, except that ~~no~~ *a* fine ~~shall~~ *may not* be less than $100 ~~per~~ *a* month.

(c) revoke the designation of any servicing facility if ~~he~~ *the commissioner* finds claims are being handled unsatisfactorily.

(3) Any final action or order of the commissioner under this part ~~shall~~ *must* be subject to judicial review in a court of competent jurisdiction."

Section 1179. Section 33-10-115, MCA, is amended to read:

"33-10-115. Recovery — sequence — nonduplication. (1) Any person having a claim against an insurer under any provision in an insurance policy other than a policy of an insolvent insurer ~~which~~ *that* is also a covered claim ~~shall~~ *must* be required to exhaust ~~first his~~ *the person's* right under ~~such~~ *the* policy. Any amount payable on a covered claim under this part ~~shall~~ *must* be reduced by the amount of any recovery under ~~such~~ *the* insurance policy.

(2) Any person having a claim ~~which~~ *that* may be recovered under more than one insurance guaranty association or its equivalent shall seek recovery first from the association of the place of residence of the insured, except that if it is a first party claim for damage to property with a permanent location, ~~he~~ *the person* shall seek recovery first from the association of the location of the property, and if it is a workers' compensation claim, ~~he~~ *the person* shall seek recovery first from the association of the residence of the claimant. Any recovery under this part ~~shall~~ *must* be reduced by the amount of recovery from any other insurance guaranty association or its equivalent."

Section 1180. Section 33-14-203, MCA, is amended to read:

"33-14-203. License revocation — suspension. The commissioner may revoke or suspend the license of a premium finance company when and if after investigation it appears to the commissioner that:

(1) a license issued to the company was obtained by fraud;

(2) there was misrepresentation in the application for the license;

(3) the holder of the license has otherwise *been* shown ~~himself~~ untrustworthy or incompetent to act as a premium finance company; or

(4) the company has violated any provisions of this chapter."

Section 1181. Section 33-14-204, MCA, is amended to read:

"33-14-204. Records required of licensees — form — inspection. (1) Every premium finance company shall maintain records of its premium finance transactions, and the records ~~shall~~ *must* be open to examination and investigation by the commissioner. The commissioner may at any time require the company to bring ~~such~~ records ~~as he~~ *that the commissioner* may direct to the commissioner's office for examination.

(2) Every premium finance company shall preserve its records of premium finance transactions for at least 3 years after making the final entry in respect to any premium finance agreement. The records may be preserved in photographic form."

Section 1182. Section 33-14-301, MCA, is amended to read:

"33-14-301. Premium finance agreements — contents — form — delivery. (1) A premium finance agreement ~~shall~~ *must*:

(a) be dated~~,~~ *and* signed by the insured or by any person authorized in writing to act in behalf of the insured, and the printed portion ~~thereof shall~~ *of the agreement must* be in at least 8-point type;

(b) contain the name and place of business of the insurance producer negotiating the related insurance policy, the name and residence or the place of business of the insured as specified by ~~him~~ *the insured*, the name and place of business of the premium finance company to which payments are to be made, and a description of the insurance policies involved and the amount of the premium ~~therefor~~ *for the policies*; and

(c) set forth when applicable:

(i) the total amount of the premiums;

(ii) the amount of the downpayment;

(iii) the principal balance*,* ~~(~~*which is* the difference between the items enumerated in subsections (1)(c)(i) and (1)(c)(ii)~~)~~;

(iv) the amount of the finance charge;

(v) the balance payable by the insured*,* ~~(~~*which is* the sum of the items enumerated in subsections (1)(c)(iii) and (1)(c)(iv)~~)~~; and

(vi) the number of installments required, the amount of each installment expressed in dollars, and the due date or period ~~thereof~~ *of the installments*.

(2) The items set out in subsection (1)(c) ~~need~~ *are* not *required to* be stated in the sequence or order in which they appear in that subsection, and additional items may be included to explain the computations made in determining the amount to be paid by the insured.

(3) The information required by subsection (1) may only be required in the initial agreement *only* if the premium finance company and the insured enter into an open-end credit transaction, which is defined as a plan prescribing the terms of credit transactions that may be made ~~thereunder~~ *under the plan* from time to time and under the terms of which a finance charge may be computed on the outstanding unpaid balance from time to time ~~thereunder~~ *under the plan*.

(4) The premium finance company or the insurance producer shall deliver to the insured or mail to ~~him~~ *the insured* at ~~his~~ *the* address shown in the agreement a complete copy of the agreement."

Section 1183. Section 33-14-302, MCA, is amended to read:

"33-14-302. Charges for premium financing regulated — method of computation. (1) A premium finance company may not charge, contract for, receive, or collect a finance charge other than as permitted by this chapter.

(2) The finance charge must be computed on the balance of the premiums due*,* ~~(~~after subtracting the downpayment made by the insured in accordance with the premium finance agreement~~)~~*,* from the effective date of the insurance coverage for which the premiums are being advanced to and including the date when the final payment of the premium finance agreement is payable.

(3) Notwithstanding any other provision of law, the finance charge may not exceed interest at the annual rate of 21%, plus a service charge of $12.50 per premium finance agreement. The service charge of $12.50 ~~need~~ *is* not *required to* be refunded upon cancellation or prepayment.

(4) An insured may prepay ~~his~~ *the* premium finance agreement in full at any time prior to the due date of the final payment*,* and ~~in such event~~ *upon payment* the unearned finance charge ~~shall~~ *must* be refunded."

Section 1184. Section 33-15-103, MCA, is amended to read:

"33-15-103. Power to contract — purchase of insurance by minors. (1) Any person of competent legal capacity may contract for insurance.

(2) Any minor ~~of the age of~~ 15 years *of age* or ~~more~~ *older*, as determined by the nearest birthday, may~~, notwithstanding his minority,~~ contract for annuities and for insurance upon ~~his~~ *the minor's* own life, body, health, property, liabilities, or other interests or on the person of another in whom the minor has an insurable interest. ~~Such a~~ *The* minor ~~shall, notwithstanding such minority, be deemed~~ *must be considered* competent to exercise all rights and powers with respect to or under any contract for annuity or for insurance upon ~~his~~ *the minor's* own life, body, or health or any contract ~~such~~ *the* minor effected upon ~~his~~ *the minor's* own property, liabilities, or other interests or on the person of another~~,~~ as might be exercised by a person of full legal age~~,~~ and may at any time surrender ~~his~~ *minor's* interest in any ~~such~~ contracts and give valid discharge for any benefit accruing or money payable ~~thereunder~~ *under the contracts*. ~~Such a~~ *The* minor ~~shall~~ *may* not, by reason of ~~his~~ minority, be entitled to rescind, avoid, or repudiate the contract or to rescind, avoid, or repudiate any exercise of a right or privilege ~~thereunder~~ *under the contract*, except that ~~such a~~ *the* minor, not otherwise emancipated, ~~shall~~ *may* not be bound by any unperformed agreement to pay by promissory note or otherwise any premium on any ~~such~~ annuity or insurance contract.

(3) If any minor mentioned in subsection (2) ~~above~~ is possessed of an estate that is being administered by a guardian, ~~no such~~ *the* contract ~~shall be~~ *is not* binding upon the estate as to payment of premiums except ~~as and~~ when consented to by the guardian and approved by the district court of the county in which the administration of the estate is pending, and ~~such~~ *the* consent and approval ~~shall be~~ *is* required ~~as to~~ *for* each annual premium payment.

(4) Any annuity contract or policy of life or disability insurance procured by or for a minor under subsection (2) ~~above shall~~ *must* be made payable either to the minor*,* ~~or his~~ *to the minor's* estate*,* or to a person having an insurable interest in the life of the minor under 33-15-201."

Section 1185. Section 33-15-201, MCA, is amended to read:

"33-15-201. Restrictions on contracting for personal insurance — insurable interests — violation. (1) Any individual of competent legal capacity may procure or effect an insurance contract upon ~~his~~ *the individual's* own life or body for the benefit of any person. ~~But no~~ *However, a* person ~~shall~~ *may not* procure or cause to be procured any insurance contract upon the life or body of another individual unless the benefits under ~~such~~ *the* contract are payable to the individual insured*,* ~~or his~~ *to the individual's* personal representatives*,* or to a person having, at the time when ~~such~~ *the* contract was made, an insurable interest in the individual insured.

(2) If the beneficiary, assignee, or other payee under any contract made in violation of this section receives from the insurer any benefits ~~thereunder~~ *under the contract* accruing upon the death, disablement, or injury of the individual insured, the individual insured or ~~his~~ *the individual's* personal representative may maintain an action to recover ~~such~~ *the* benefits from the person ~~so~~ receiving them.

(3) "Insurable interest" with reference to personal insurance includes only interests as follows:

(a) in the case of individuals related closely by blood or by law, a substantial interest engendered by love and affection;

(b) in the case of other persons, a lawful and substantial economic interest in having the life, health, or bodily safety of the individual insured continue, as distinguished from an interest ~~which~~ *that* would arise only by or would be enhanced in value by the death, disablement, or injury of the individual insured.

(4) An individual ~~heretofore or hereafter~~ *who is a* party to a contract or option for the purchase or sale of an interest in a business partnership or firm or of shares of stock of a closed corporation or of an interest in ~~such~~ *the* shares has an insurable interest in the life of each individual party to ~~such~~ *the* contract and for the purposes of ~~such~~ *the* contract only~~,~~ in addition to any insurable interest ~~which~~ *that* may otherwise exist as to the life of ~~such~~ *the* individual.

(5) A charitable institution has an insurable interest in an individual if:

(a) the individual authorizes the charitable institution to purchase insurance naming the charitable institution as an irrevocable beneficiary; and

(b) the insurance is purchased with contributions made by the individual."

Section 1186. Section 33-15-206, MCA, is amended to read:

"33-15-206. Interest of named insured — change of interest on death — transfer. (1) When the name of the person insured is specified in a policy insuring property, the insurance can be applied only to ~~his~~ *the person's* own proper interest.

(2) A change of interest, by will or succession, on the death of the insured does not avoid an insurance of property, and the insurance passes to the person taking ~~his~~ *the insured's* interest in the thing insured.

(3) A transfer of interest by one of several partners, joint owners, or owners in common, who are jointly insured, to the others does not avoid an insurance of property even though it has been agreed that the insurance ~~shall~~ *must* cease upon an alienation of the thing insured."

Section 1187. Section 33-15-327, MCA, is amended to read:

"33-15-327. Powers of the commissioner. The commissioner may authorize a lower score than the Flesch reading ease score required in 33-15-325(1)(a) whenever, in ~~his~~ *in the commissioner's* sole discretion, ~~he~~ *the commissioner* finds that a lower score:

(1) will provide a more accurate reflection of the readability of a policy form;

(2) is warranted by the nature of a particular policy form or type or class of policy forms; or

(3) is caused by certain policy language ~~which~~ *that* is drafted to conform to the requirements of any state law, regulation, or agency interpretation."

Section 1188. Section 33-15-329, MCA, is amended to read:

"33-15-329. Applicability schedule. (1) Except as provided in 33-15-324, *the provisions of* 33-15-321 through 33-15-329 apply to all policy forms filed on or after July 1, 1983. ~~No~~ *A* policy form may *not* be delivered or issued for delivery in this state on or after July 1, 1986, unless approved by the commissioner or permitted to be issued under 33-15-321 through 33-15-329. Any policy form that has been approved or permitted to be issued prior to July 1, 1986, and that meets the standards set by 33-15-321 through 33-15-329 ~~need~~ *is* not *required to* be

refiled for approval but may continue to be lawfully delivered or issued for delivery in this state upon the filing with the commissioner of a list of ~~such~~ *the* forms identified by form number and accompanied by a certificate as to each ~~such~~ form in the manner provided in 33-15-325(4).

(2) The commissioner may~~, in his sole discretion,~~ extend the dates in subsection (1)."

Section 1189. Section 33-15-402, MCA, is amended to read:

"33-15-402. Application as evidence — copy to insured — alteration. (1) ~~No~~ *An* application for the issuance of any life or disability insurance policy or annuity contract ~~shall~~ *may not* be admissible in evidence in any action relative to ~~such~~ *the* policy or contract unless a true copy of the application was attached to or otherwise made a part of the policy or contract when issued. This provision ~~shall~~ *does* not apply to industrial life insurance policies.

(2) If any policy of life or disability insurance delivered in this state is reinstated or renewed and the insured or the beneficiary or assignee of the policy makes written request to the insurer for a copy of the application, if any, for ~~such~~ reinstatement or renewal, the insurer shall, within 30 days after receipt of ~~such~~ *the* request at its home office or at any of its branch offices, deliver or mail to the person making ~~such~~ *the* request a copy of ~~such~~ *the* application. If ~~such~~ *the* copy is not ~~so~~ delivered or mailed after having been ~~so~~ requested, the insurer ~~shall be~~ *is* precluded from introducing the application in evidence in any action or proceeding based upon or involving the policy or its reinstatement or renewal. In the case of ~~such~~ *a* request from a beneficiary, the time within which the insurer is required to furnish a copy of ~~such~~ *the* application ~~shall~~ *may* not begin to run until after receipt of evidence satisfactory to the insurer of the beneficiary's vested interest in the policy or contract.

(3) As to kinds of insurance other than life or disability insurance, ~~no~~ *an* application for insurance signed by or on behalf of the insured ~~shall~~ *may not* be admissible in evidence in any action between the insured and the insurer arising out of the policy ~~so~~ applied for if the insurer has failed, at expiration of 30 days after receipt by the insurer of written demand ~~therefor~~ by or on behalf of the insured, to furnish to the insured a copy of ~~such~~ *the* application reproduced by any legible means.

(4) ~~No~~ *An* alteration of any written application for any life or disability insurance policy ~~shall~~ *may not* be made by any person other than the applicant without ~~his~~ *the applicant's* written consent, except that insertions may be made by the insurer, for administrative purposes only, in ~~such~~ *a* manner ~~as to indicate~~ *that* clearly *indicates* that ~~such~~ *the* insertions are not to be ascribed to the applicant."

Section 1190. Section 33-15-511, MCA, is amended to read:

"33-15-511. Exemption from execution of life insurance proceeds. (1) If a policy of insurance~~, whether heretofore or hereafter issued,~~ is effected by any person on ~~his~~ *the person's* own life or on another life in favor of a person other than ~~himself~~ *the applicant* or, except in cases of transfer with intent to defraud creditors, if a policy of life insurance is assigned or in any way made payable to any ~~such~~ person, the lawful beneficiary or assignee ~~thereof~~ *of the policy*, other than the insured or the person ~~so~~ effecting ~~such~~ *the* insurance or executors or administrators of ~~such~~ *the* insured or the person ~~so~~ effecting ~~such~~ *the* insurance, ~~shall be~~ *is* entitled to its proceeds and avails against the creditors and representatives of the insured and of the person effecting the ~~same,~~ *policy* whether or not the right to change the beneficiary is reserved or permitted and

whether or not the policy is made payable to the person whose life is insured if the beneficiary or assignee ~~shall~~ predecease ~~such~~ *that* person~~;~~. ~~except that~~ *However*, subject to the statute of limitations, the amount of any premiums for ~~such~~ *the* insurance paid with intent to defraud creditors with interest ~~thereon shall enure~~ *on the premiums accrues* to ~~their~~ *the creditor's* benefit from the proceeds of the policy, but the insurer issuing the policy ~~shall~~ *must* be discharged of all liability ~~thereof~~ by payment of its proceeds in accordance with its terms~~,~~ unless before ~~such~~ *the* payment the insurer ~~shall have~~ received written notice at its home office, by or in behalf of a creditor, of a claim to recover for transfer made or premiums paid with intent to defraud creditors, with specifications of the amount ~~so~~ claimed.

(2) For the purposes of subsection (1) ~~above~~, a policy ~~shall~~ *must* also be ~~deemed~~ *considered* to be payable to a person other than the insured if and to the extent that a facility-of-payment clause or similar clause in the policy permits the insurer to discharge its obligation after the death of the individual insured by paying the death benefits to a person as permitted by ~~such~~ *the* clause."

Section 1191. Section 33-15-512, MCA, is amended to read:

"33-15-512. Exemption from execution of proceeds of group life — exception. (1) A policy of group life insurance or the proceeds ~~thereof~~ *of the policy* payable to the individual insured or to the beneficiary ~~thereunder shall~~ *under the policy may* not be liable, either before or after payment, to be applied by any legal or equitable process to pay any debt or liability of ~~such~~ *the* insured individual, ~~or his~~ *of the individual's* beneficiary, or of any other person having a right under the policy. The proceeds ~~thereof~~ *of the policy*, when not made payable to a named beneficiary or to a third person pursuant to a facility-of-payment clause, ~~shall~~ *may* not constitute a part of the estate of the individual insured for the payment of ~~his~~ *the individual's* debts.

(2) This section ~~shall~~ *does* not apply to group life insurance issued pursuant to *Title 33, chapter 20,* parts 10, 11, and 12*,* ~~of chapter 20~~ to a creditor covering ~~his~~ *the creditor's* debtors~~,~~ to the extent that ~~such~~ *the* proceeds are applied to payment of the obligation for the purpose of which the insurance was ~~so~~ issued."

Section 1192. Section 33-15-513, MCA, is amended to read:

"33-15-513. Exemption from execution of proceeds of disability insurance. The proceeds or ~~avails~~ *other payments* of all contracts of disability insurance and of provisions providing benefits on account of the insured's disability ~~which~~ *that* are supplemental to life insurance or annuity contracts ~~heretofore or hereafter effected shall be~~ *are* exempt from all liability for any debt of the insured and from any debt of the beneficiary existing at the time the proceeds are made available for ~~his~~ *the insured's* use."

Section 1193. Section 33-15-514, MCA, is amended to read:

"33-15-514. Exemption from execution of proceeds of annuity contracts — assignability of rights. (1) The benefits, rights, privileges, and options ~~which~~ *that* under any annuity contract ~~heretofore or hereafter issued~~ are due or prospectively due the annuitant ~~shall~~ *may* not be subject to execution, ~~nor shall~~ the annuitant *may not* be compelled to exercise any ~~such~~ rights, powers, or options, ~~nor shall~~ *and* creditors *may not* be allowed to interfere with or terminate the contract, except:

(a) as to amounts paid for or as premium on any ~~such~~ annuity with intent to defraud creditors, with interest ~~thereon~~, and of which the creditor has given the insurer written notice at its home office prior to the making of the payments to the annuitant out of which the creditor seeks to recover. ~~Any such~~ *The* notice

~~shall~~ *must* specify the amount claimed or ~~such~~ *the* facts ~~as~~ *that* will enable the insurer to ascertain ~~such~~ *the* amount and ~~shall~~ *must* set forth ~~such~~ *the* facts ~~as~~ *that* will enable the insurer to ascertain the annuity contract, the annuitant, and the payments sought to be avoided on the ground of fraud.

(b) the total exemption of benefits presently due and payable to any annuitant periodically or at stated times under all annuity contracts under which ~~he~~ *the person* is an annuitant ~~shall~~ *may* not at any time exceed $250 ~~per~~ *a* month for the length of time represented by ~~such~~ *the* installments and ~~that such~~ *the* periodic payments in excess of $350 ~~per~~ *a* month ~~shall~~ *must* be subject to garnishee execution;

(c) if the total benefits presently due and payable to any annuitant under all annuity contracts under which ~~he~~ *the person* is an annuitant ~~shall~~ at any time exceed payment at the rate of $350 ~~per~~ *a* month, then the court may order ~~such~~ *the* annuitant to pay to a judgment creditor or apply on the judgment, in installments, ~~such~~ *the* portion of ~~such~~ *the* excess benefits ~~as to the court may~~ *that* appear *to the court to be* just and proper, after due regard for the reasonable requirements of the judgment debtor and ~~his~~ *the debtor's* family, if dependent upon ~~him~~ *the debtor*, as well as any payments required to be made by the annuitant to other creditors under prior court orders.

(2) If the contract ~~so~~ provides, the benefits, rights, privileges, or options accruing under ~~such~~ *the* contract to a beneficiary or assignee ~~shall~~ *may* not be transferable or subject to commutation, and if the benefits are payable periodically or at stated times, the same exemptions contained ~~herein~~ *in this section* for the annuitant ~~shall~~ apply with respect to ~~such~~ *the* beneficiary or assignee.

(3) An annuity contract within the meaning of this section ~~shall be~~ *is* any obligation to pay certain sums at stated times during life or lives or for a specified term or terms, issued for a valuable consideration, regardless of whether or not ~~such~~ *the* sums are payable to one or more persons, jointly or otherwise, but does not include payments under life insurance contracts at stated times during life or lives or for a specified term or terms."

Section 1194. Section 33-16-111, MCA, is amended to read:

"33-16-111. Issuance of order — suspension or revocation of certificate of authority or license. If, after a hearing pursuant to 33-16-206, the commissioner finds:

(1) that an insurer, *a* rating organization, *an* advisory organization, or a group, association, or other organization of insurers ~~which~~ *that* engages in joint underwriting or joint reinsurance is in violation of the provisions of this chapter applicable to it, other than the provisions dealing with rates, rating plans, or rating systems, ~~he~~ *the commissioner* may issue an order to ~~such~~ *the* insurer, organization, group, or association ~~which~~ *that* has been the subject of the hearing, specifying in what respects ~~such~~ *the* violation exists and requiring compliance within a reasonable time ~~thereafter~~;

(2) that the violation of any of the provisions of this chapter applicable to it by any insurer or rating organization ~~which~~ *that* has been the subject of hearing was willful, ~~he~~ *the commissioner* may suspend or revoke, in whole or in part, the certificate of authority of ~~such~~ *the* insurer or the license of ~~such~~ *the* rating organization with respect to the class of insurance ~~which~~ *that* has been the subject matter of the hearing;

(3) that any rating organization has willfully engaged in any fraudulent or dishonest act or practices, ~~he~~ *the commissioner* may suspend or revoke, in whole

or in part, the license of ~~such~~ *the* organization, in addition to any other penalty provided in this chapter."

Section 1195. Section 33-16-112, MCA, is amended to read:

"33-16-112. Failure to comply with order — suspension or revocation of license or certificate. In addition to other penalties provided in this code, the commissioner may suspend or revoke, in whole or in part, the license of any rating organization or the certificate of authority of any insurer with respect to the class or classes of insurance specified in ~~such~~ *the* order ~~which~~ *that* fails to comply within the time limited by ~~such~~ *the* order or any extension ~~thereof which~~ *of the order that* the commissioner may grant, with an order of the commissioner lawfully made ~~by him~~ pursuant to 33-16-111 and 33-16-211 and effective pursuant to 33-16-113."

Section 1196. Section 33-16-113, MCA, is amended to read:

"33-16-113. Appeal from order or decision of commissioner. Any person, insurer, or rating organization aggrieved by any order or decision made by the commissioner under this chapter may appeal ~~therefrom~~ to the district court of the county where the aggrieved party may reside or has ~~his~~ *a* principal place of business in this state or to the district court of Lewis and Clark County, Montana. The appeal ~~shall~~ *must* be taken within 30 days from the making and filing of the order or decision by filing in the office of the commissioner a notice of the appeal in writing. The commissioner shall, within 20 days after filing of the notice, make and return to the district court a full and complete certified transcript of the finding and order appealed from and of all parts relative ~~thereto~~ *to the finding and order* on file in ~~his~~ *the commissioner's* office, including the notice of appeal. Upon filing of the certified transcript, all matters involved ~~therein shall~~ *in the appeal must* be brought on for trial upon the merits at the next term of the court after the filing of the transcript unless otherwise ordered by the court. Upon the trial, the findings of fact on which the order is based ~~shall~~ *must* be prima facie evidence of the matters ~~therein~~ stated. During the pendency of the proceedings upon review, the order of the commissioner ~~shall be~~ *is* suspended, but in the event of a final determination against any insurer, any overcharge by the insurer during review ~~shall~~ *must* be refunded to the persons entitled ~~thereto~~ *to the refund*."

Section 1197. Section 33-16-114, MCA, is amended to read:

"33-16-114. Penalty. (1) ~~Any~~ *A* person, insurer, organization, group, or association ~~who~~ *that* fails to comply with a final order of the commissioner under this chapter ~~shall be~~ *is* liable to the state in an amount not exceeding $50. If ~~such~~ *the* failure ~~be~~ *is* willful, ~~he~~ *the person* or ~~it shall be~~ *entity is* liable to the state in an amount not exceeding $5,000 for ~~such~~ *the* failure. The commissioner shall collect the amount ~~so~~ payable and may bring an action in the name of the people of the state of Montana to enforce collection. ~~Such~~ *The* penalties may be in addition to any other penalties provided by law.

(2) A willful violation of the provisions of this chapter by any person is a misdemeanor."

Section 1198. Section 33-16-204, MCA, is amended to read:

"33-16-204. Review of rates on request by aggrieved person. (1) ~~Any~~ *A* person aggrieved by any rate charged, rating plan, rating system, or underwriting rule followed or adopted by an insurer or rating organization may request the insurer or rating organization to review the manner in which the rate, plan, system, or rule has been applied with respect to insurance afforded

~~him~~ *the person*. ~~Such~~ *The* request may be made by ~~his~~ *the person's* authorized representative and ~~shall~~ *must* be written.

(2) If the request is not granted within 30 days after it is made, the requester may treat it as rejected.

(3) Any person aggrieved by the action of an insurer or rating organization in refusing the review requested or in failing or refusing to grant all or part of the relief requested may file a written complaint and request for hearing with the commissioner, specifying the grounds relied upon. If the commissioner has information concerning a similar complaint, ~~he~~ *the commissioner* may deny the hearing. If ~~he~~ *the commissioner* believes that probable cause for the complaint does not exist or that the complaint is not made in good faith, ~~he~~ *the commissioner* shall deny the hearing. Otherwise, and if ~~he~~ *the commissioner* finds that the complaint charges a violation of this chapter and that the complainant would be aggrieved if the violation is proven, ~~he~~ *the commissioner* shall proceed as provided in 33-16-205."

Section 1199. Section 33-16-206, MCA, is amended to read:

"33-16-206. Hearings — notice — subject of hearing. (1) If the commissioner has good cause to believe ~~such~~ *the* noncompliance to be willful or if within the period prescribed by the commissioner in the notice required by 33-16-205 the insurer, organization, group, or association does not make ~~such~~ changes ~~as~~ *that* may be necessary to correct the noncompliance specified by the commissioner or establish to the satisfaction of the commissioner that ~~such~~ *the* specified noncompliance does not exist, then the commissioner may hold a public hearing in connection ~~therewith~~ *with the noncompliance*, provided that within a reasonable period of time, which ~~shall~~ *may not* be ~~not~~ less than 10 days before the date of ~~such~~ hearing, ~~he shall mail~~ *the commissioner mails* written notice specifying the matters to be considered at ~~such~~ *the* hearing to ~~such~~ *the* insurer, organization, group, or association. If ~~no~~ notice has *not* been given as provided in 33-16-205, ~~such~~ *the* notice ~~shall~~ *must* state ~~therein~~ in what manner and to what extent noncompliance is alleged to exist.

(2) The hearing ~~shall~~ *may* not include any additional subjects not specified in the notices required by 33-16-205 or this section."

Section 1200. Section 33-16-211, MCA, is amended to read:

"33-16-211. Order prohibiting use of rate or rating system. If, after a hearing pursuant to 33-16-206, the commissioner finds that any rate, rating plan, or rating system violates the provisions of this chapter applicable to it, ~~he~~ *the commissioner* may issue an order to the insurer or rating organization ~~which~~ *that* has been the subject of the hearing, specifying in what respects ~~such~~ *the* violation exists and stating when, within a reasonable period of time, the further use of ~~such~~ *the* rate or rating system by ~~such~~ *the* insurer or rating organization in contracts of insurance made ~~thereafter shall be~~ *after that time is* prohibited."

Section 1201. Section 33-16-223, MCA, is amended to read:

"33-16-223. Effective period of reduction. (1) The premium reduction required by 33-16-222 is effective for an insured for a 2-year period after successful completion of the approved course. Each person shall take an approved course every 2 years in order to continue to be eligible for the reduction in premium required by 33-16-222.

(2) An insurer may require, as a condition of maintaining the discount, any or all of the following:

(a) that the insured not be involved in an accident in which ~~he~~ *the insured* is at fault;

(b) that the insured not be convicted of or plead guilty or nolo contendere to a moving traffic violation; or

(c) that the insured not have forfeited bail or collateral for a moving traffic violation."

Section 1202. Section 33-16-224, MCA, is amended to read:

"33-16-224. Certificate. The organization offering the approved course shall issue a certificate to each person who successfully completes the course~~,~~ ~~which~~ *that* qualifies ~~him~~ *the person* for the premium discount required by 33-16-222."

Section 1203. Section 33-16-305, MCA, is amended to read:

"33-16-305. Agreements for apportionment of casualty insurance — approval of commissioner — review of practices of adherents — revocation of approval. (1) Agreements may be made among admitted insurers with respect to the equitable apportionment among them of casualty insurance ~~which~~ *that* may be afforded applicants who are in good faith entitled to but who are unable to procure ~~such~~ *the* insurance through ordinary methods and with respect to the use of reasonable rate modifications for ~~such~~ *the* insurance~~,~~. ~~such~~ *The* agreements ~~to be~~ *are* subject to the approval of the commissioner.

(2) All ~~such~~ agreements ~~shall~~ *must* be submitted in writing to the commissioner for ~~his~~ consideration and approval, together with ~~such~~ information ~~as he~~ *that the commissioner* may reasonably require. The commissioner shall approve only ~~such~~ agreements ~~as~~ *that* are found ~~by him~~ to contemplate:

(a) the use of rates ~~which~~ *that* meet the standards prescribed by this chapter; and

(b) activities and practices that are not unfair, unreasonable, or otherwise inconsistent with the provisions of this chapter.

(3) At any time after ~~such~~ *the* agreements are in effect, the commissioner may review the practices and activities of the ~~adherents~~ *parties* to ~~such~~ *the* agreements and if, after a hearing upon not less than 10 days' notice to ~~such adherents~~ *the parties*, ~~he~~ *the commissioner* finds that any ~~such~~ practice or activity is unfair or unreasonable or is otherwise inconsistent with the provisions of this chapter, ~~he~~ *the commissioner* may issue a written order to the parties to any ~~such~~ agreement, specifying in what respects ~~such~~ *the* act or practice is unfair or unreasonable or otherwise inconsistent with the provisions of this chapter and requiring the discontinuance of ~~such~~ *the* activity or practice. For good cause and after hearing upon not less than 10 days' notice to the ~~adherents thereto~~ *the parties*, the commissioner may revoke approval of any ~~such~~ agreement *referred to in this section*."

Section 1204. Section 33-17-411, MCA, is amended to read:

"33-17-411. Penalty. A nonresident insurance producer who violates a condition of ~~his~~ *the producer's* Montana license or a provision of this part is subject to a fine by the commissioner of up to $50,000 for each violation and may, at the discretion of the commissioner, have ~~his~~ *the* Montana nonresident license revoked or suspended for a period of up to 5 years."

Section 1205. Section 33-17-513, MCA, is amended to read:

"33-17-513. Restrictions on insurers recommended by licensee. A person licensed as an insurance consultant under this part may not recommend or encourage the purchase of insurance, annuities, or securities from an authorized insurer in which ~~he~~ *the person* or any member of ~~his~~ *the person's* immediate family holds an executive position or holds a substantial interest."

Section 1206. Section 33-18-201, MCA, is amended to read:

"33-18-201. Unfair claim settlement practices prohibited. ~~No~~ *A* person may *not*, with such frequency as to indicate a general business practice, do any of the following:

(1) misrepresent pertinent facts or insurance policy provisions relating to coverages at issue;

(2) fail to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies;

(3) fail to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies;

(4) refuse to pay claims without conducting a reasonable investigation based upon all available information;

(5) fail to affirm or deny coverage of claims within a reasonable time after proof of loss statements have been completed;

(6) neglect to attempt in good faith to effectuate prompt, fair, and equitable settlements of claims in which liability has become reasonably clear;

(7) compel insureds to institute litigation to recover amounts due under an insurance policy by offering substantially less than the amounts ultimately recovered in actions brought by ~~such~~ *the* insureds;

(8) attempt to settle a claim for less than the amount to which a reasonable ~~man~~ *person* would have believed ~~he~~ *the person was* was entitled by reference to written or printed advertising material accompanying or made part of an application;

(9) attempt to settle claims on the basis of an application ~~which~~ *that* was altered without notice to or knowledge or consent of the insured;

(10) make claims payments to insureds or beneficiaries not accompanied by statements setting forth the coverage under which the payments are being made;

(11) make known to insureds or claimants a policy of appealing from arbitration awards in favor of insureds or claimants for the purpose of compelling them to accept settlements or compromises less than the amount awarded in arbitration;

(12) delay the investigation or payment of claims by requiring an insured, claimant, or physician of either to submit a preliminary claim report and then requiring the subsequent submission of formal proof of loss forms, both of which submissions contain substantially the same information;

(13) fail to promptly settle claims, if liability has become reasonably clear, under one portion of the insurance policy coverage in order to influence settlements under other portions of the insurance policy coverage; or

(14) fail to promptly provide a reasonable explanation of the basis in the insurance policy in relation to the facts or applicable law for denial of a claim or for the offer of a compromise settlement."

Section 1207. Section 33-18-203, MCA, is amended to read:

"33-18-203. False or deceptive advertising prohibited. ~~No~~ *A* person ~~shall~~ *may not* make, publish, disseminate, circulate, or place before the public, or cause, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine, or other publication or in the form of a notice, circular, pamphlet, letter, or poster or over any radio or television station or in any other way, an advertisement, announcement, or statement containing any assertion, representation, or statement with respect to the business of insurance or with respect to any person in the conduct of ~~his~~ *the person's* insurance business~~, which~~ *that* is untrue, deceptive, or misleading."

Section 1208. Section 33-18-1003, MCA, is amended to read:

"33-18-1003. Undefined unfair practices — procedures for determining and restraining. (1) If the commissioner believes that any person engaged in the insurance business is engaging in this state in any method of competition or in any act or practice in the conduct of ~~such~~ *the* business ~~which~~ *that* is not defined in this chapter but that ~~such~~ *the* method of competition is unfair or that ~~such~~ *the* act or practice is unfair or deceptive and that a proceeding by ~~him~~ *the commissioner* in respect ~~thereto~~ *to the act or practice* would be in the public interest, ~~he~~ *the commissioner* shall, after a hearing of which notice of the hearing and of the charges against ~~him~~ *the person* are given ~~such~~ *to the* person, make a written report of ~~his~~ *the* findings of fact relative to ~~such~~ *the* charges and serve a copy ~~thereof~~ *of the report* upon ~~such~~ *the* person and any intervenor at the hearing.

(2) If ~~such~~ *the* report charges a violation of this chapter and if ~~such~~ *the* method of competition, act, or practice has not been discontinued, the commissioner may, through the attorney general of this state, at any time after the service of ~~such~~ *the* report cause an action to be instituted to enjoin and restrain ~~such~~ *the* person from engaging in ~~such~~ *the* method, act, or practice. In ~~such~~ *the* action, the court may grant a restraining order or injunction upon ~~such~~ terms ~~as~~ *that* may be just, but the people of this state ~~shall~~ *may* not be required to give security before the issuance of any ~~such~~ order or injunction. If a stenographic record of the proceedings in the hearing before the commissioner was made, a certified transcript ~~thereof~~, including all evidence taken and the report and findings, ~~shall~~ *must* be received in evidence in ~~such~~ *the* action.

(3) If the commissioner's report made under subsection (1) ~~above~~ or order on hearing made under 33-18-1004 does not charge a violation of this chapter, then any intervenor in the proceedings may appeal ~~therefrom~~ *from the report or order on hearing* within the time and in the manner provided in this code for appeals from the commissioner generally."

Section 1209. Section 33-18-1004, MCA, is amended to read:

"33-18-1004. Desist orders for prohibited practices. (1) If, after a hearing ~~thereon~~ *of the charges* of which notice of ~~such~~ *the* hearing and of the charges against ~~him~~ *the person* ~~were~~ *was* given ~~such~~ *to the* person, the commissioner finds that ~~any~~ *a* person in this state has engaged or is engaging in any act or practice defined in or prohibited under this chapter, the commissioner shall order ~~such~~ *the* person to desist from ~~such~~ *the* acts or practices.

(2) ~~Such~~ *The* desist order ~~shall become~~ *becomes* final upon expiration of the time allowed for appeals from the commissioner's orders if ~~no such~~ *an* appeal is *not* taken or, in event of ~~such~~ an appeal, upon final decision of the court if the court affirms the commissioner's order or dismisses the appeal. An intervenor in ~~such~~ *the* hearing ~~shall have~~ *has* the right to appeal as provided in 33-18-1003(3).

(3) In event of ~~such~~ an appeal, to the extent that the commissioner's order is affirmed, the court shall issue its own order commanding obedience to the terms of the commissioner's order.

(4) ~~No~~ *An* order of the commissioner pursuant to this section or order of court to enforce it ~~shall~~ *does not* in any way relieve or absolve ~~any~~ *a* person affected by ~~such~~ *the* order from any other liability, penalty, or forfeiture under law.

(5) This section ~~shall~~ *may* not be ~~deemed~~ *considered* to affect or prevent the imposition of any penalty provided by this code or by other law for violation of any other provision of this chapter, whether or not ~~any such~~ *the* hearing is called or held or ~~such~~ *the* desist order *is* issued."

Section 1210. Section 33-19-205, MCA, is amended to read:

"33-19-205. Investigative consumer reports. (1) An insurance institution, insurance producer, or insurance-support organization may not prepare or request an investigative consumer report about an individual in connection with an insurance transaction involving an application for insurance, a policy renewal, a policy reinstatement, or a change in insurance benefits unless the insurance institution or insurance producer informs the individual:

(a) that ~~he~~ *the individual* may request to be interviewed in connection with the preparation of the investigative consumer report; and

(b) that upon a request pursuant to 33-19-301, ~~he~~ *the individual* is entitled to receive a copy of the investigative consumer report.

(2) If an investigative consumer report is to be prepared by an insurance institution or insurance producer, the insurance institution or insurance producer shall institute reasonable procedures to conduct a personal interview requested by an individual.

(3) If an investigative consumer report is to be prepared by an insurance-support organization, the insurance institution or insurance producer desiring ~~such~~ *the* report shall inform the insurance-support organization *as to* whether a personal interview has been requested by the individual. The insurance-support organization shall institute reasonable procedures to conduct ~~such~~ *the* interview, if requested."

Section 1211. Section 33-20-117, MCA, is amended to read:

"33-20-117. Nonforfeiture rights — policies issued before operative date. (1) This section ~~shall apply~~ *applies* only to policies of life insurance issued prior to the operative date of 33-20-213.

(2) In *the* event of default in payment of any premium due on any policy, ~~provided~~ *if* not less than ~~three~~ *3* full years' premiums ~~shall~~ have been paid, there ~~shall~~ *must* be secured to the insured, without action on ~~his~~ *the insured's* part, either paid-up or extended insurance as specified in the policy, the net value of which ~~shall~~ *must* be at least equal to the entire net reserve held by the insurer of ~~such~~ *the* policy, less 2 1/2% of the amount insured by the policy and dividend additions, if any, and less any outstanding indebtedness to the insurer on the policy at *the* time of default. There ~~shall~~ *must* be secured to the insured the right to surrender the policy to the insurer at its home office within 1 month after *the* date of default for cash value otherwise available for the purchase of the paid-up or extended insurance ~~as aforesaid~~."

Section 1212. Section 33-20-1002, MCA, is amended to read:

"33-20-1002. Employee life insurance defined. "Employee life insurance" is that plan of life insurance, other than salary savings life insurance or pension trust insurance and annuities, under which individual policies are issued to the employees of any employer and ~~where such~~ *when the* policies are issued on the lives of not less than five employees at date of issue. Premiums for ~~such~~ *the* policies ~~shall~~ *must* be paid by the employer or the trustee of a fund established by the employer either wholly from the employer's funds or funds contributed by ~~him~~ *the employer* or partly from ~~such~~ *those* funds and partly from funds contributed by the insured employees."

Section 1213. Section 33-20-1103, MCA, is amended to read:

"33-20-1103. Employer and labor union combinations — trustee groups. The lives of a group of individuals may be insured under a policy issued to the trustees of a fund established by two or more employers or by one or more labor unions or by one or more employers and one or more labor unions, which trustees ~~shall be deemed~~ *must be considered* the policyholder, to insure employees of the employers or members of the unions for the benefit of persons other than the employers or the unions, subject to the following requirements:

(1) The persons eligible for insurance ~~shall~~ *must* be all of the employees of the employers or all of the members of the unions or all of any class or classes ~~thereof~~ *of the employees or members* determined by conditions pertaining to their employment or to membership in the unions, or to both. The policy may provide that the term "employees" ~~shall include~~ *includes* retired employees and the individual proprietor or partners if an employer is an individual proprietor or a partnership. ~~No~~ *A* director of a corporate employer ~~shall~~ *may not* be eligible for insurance under the policy unless ~~such~~ *the* person is otherwise eligible as a bona fide employee of the corporation by performing services other than usual duties of a director. ~~No~~ *An* individual proprietor or partner ~~shall~~ *may not* be eligible for insurance under the policy unless ~~he~~ *the proprietor or partner* is actively engaged in and devotes a substantial part of ~~his~~ *the individual's* time to the conduct of the business of the proprietor or partnership. The policy may provide that the term "employees" ~~shall include~~ *includes* the trustees or their employees, or both, if their duties are principally connected with ~~such~~ *the* trusteeship.

(2) The premium for the policy ~~shall~~ *must* be paid by the trustees wholly from funds contributed by the employer or employers of the insured persons or by the union or unions, or by both, or partly from ~~such~~ *the* funds and partly from funds contributed by the insured persons. ~~No~~ *A* policy may *not* be issued on which the entire premium is to be derived from funds contributed by the insured persons specifically for their insurance. A policy on which part of the premium is to be derived from funds contributed by the insured persons specifically for their insurance may be placed in force only if at least 75% of the then eligible persons, excluding any as to whom evidence of individual insurability is not satisfactory to the insurer, elect to make the required contributions. A policy on which no part of the premium is to be derived from funds contributed by the insured persons specifically for their insurance must insure all eligible persons or all except any ~~as to~~ *person for* whom evidence of individual insurability is not satisfactory to the insurer.

(3) The policy must cover at date of issue at least 100 persons and not less than an average of 5 persons per employer unit~~;~~*,* and if the fund is established by the members of an association of employers the policy may be issued if:

(a) either:

(i) the participating employers constitute at date of issue at least 60% of those employer members whose employees are not already covered for group life insurance; or

(ii) the total number of persons covered at date of issue exceeds 600; and

(b) the policy ~~shall~~ *does* not require that, if a participating employer discontinues membership in the association, the insurance of ~~his~~ *the employer's* employees shall cease solely by reason of ~~such~~ *the* discontinuance.

(4) The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the insured persons or by the policyholder, employers, or unions."

Section 1214. Section 33-20-1105, MCA, is amended to read:

"33-20-1105. Debtor groups. The lives of a group of individuals may be insured under a policy issued to a creditor, who ~~shall be deemed~~ *is considered* the policyholder, to insure the debtors of the creditor, subject to the following requirements:

(1) The debtors eligible for insurance under the policy ~~shall~~ *must* be all of the debtors of the creditor or all of any class or classes ~~thereof~~ *of those debtors* determined by conditions pertaining to the indebtedness or the purchase giving rise to the indebtedness. The policy may provide that the term "debtors" ~~shall include~~ *includes* the debtors of one or more subsidiary corporations and the debtors of one or more affiliated corporations, proprietors, or partnerships if the business of the policyholder and of ~~such~~ *the* affiliated corporations, proprietors, or partnerships is under common control.

(2) The premium for the policy ~~shall~~ *must* be paid by the policyholder~~, either~~ from the creditor's funds, ~~or~~ from charges collected from the insured debtors, or from both. A policy on which part or all of the premium is to be derived from the collection from the insured debtors of identifiable charges not required of uninsured debtors ~~shall~~ *may* not include, in the class or classes of debtors eligible for insurance, debtors under obligations outstanding at its date of issue without evidence of individual insurability unless at least 75% of the then eligible debtors elect to pay the required charges. A policy on which no part of the premium is to be derived from the collection of ~~such~~ identifiable charges must insure all eligible debtors or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

(3) The policy may be issued only if the group of eligible debtors is then receiving new entrants at the rate of at least 100 persons yearly or may reasonably be expected to receive at least 100 new entrants during the first policy year and only if the policy reserves to the insurer the right to require evidence of individual insurability if less than 75% of the new entrants become insured. The policy may exclude from the classes eligible for insurance classes of debtors determined by age.

(4) The amount of insurance on the life of any debtor ~~shall~~ *may not* at ~~no~~ *any* time exceed the amount owed by ~~him~~ *the debtor* to the creditor.

(5) The insurance ~~shall~~ *must* be payable to the policyholder. Each payment ~~shall~~ *must* reduce or extinguish the unpaid indebtedness of the debtor to the extent of ~~such~~ *the* payment."

Section 1215. Section 33-20-1208, MCA, is amended to read:

"33-20-1208. Certificate. The group life insurance policy ~~shall~~ *must* contain a provision that the insurer will issue to the policyholder for delivery to each person insured an individual certificate setting forth a statement as to the

insurance protection to which ~~he~~ *the person* is entitled, to whom the insurance benefits are payable, and the rights and conditions set forth in 33-20-1209 through 33-20-1211."

Section 1216. Section 33-21-104, MCA, is amended to read:

"33-21-104. Existing insurance — choice of insurer. When credit life insurance or credit disability insurance is required as additional security for an indebtedness, the debtor, upon request to the creditor, has the option of furnishing the required amount of insurance through existing policies of insurance owned or controlled by ~~him~~ *the debtor* or of procuring and furnishing the required coverage through an insurer authorized to transact insurance within Montana."

Section 1217. Section 33-21-111, MCA, is amended to read:

"33-21-111. Rules — enforcement of chapter. The commissioner may, after notice and hearing, ~~issue such~~ *adopt* rules ~~as he deems~~ *that the commissioner considers* appropriate for the supervision of this chapter. Whenever the commissioner finds that there has been a violation of this chapter or any rules ~~issued~~ *adopted* pursuant ~~thereto~~ *to this chapter* and after written notice ~~thereof~~ and hearing given to the insurer or other person authorized or licensed by the commissioner, ~~he~~ *the commissioner* shall set forth the details of ~~his~~ *the commissioner's* findings together with an order for compliance by a specified date. ~~Such~~ *The* order ~~shall be~~ *is* binding on the insurer and other person authorized or licensed by the commissioner on the date specified unless ~~sooner~~ withdrawn by the commissioner or *unless* a stay ~~thereof~~ has been ordered by a court of competent jurisdiction."

Section 1218. Section 33-21-113, MCA, is amended to read:

"33-21-113. Penalties. In addition to any penalty provided by law, a person who violates an order of the commissioner after it has become final and while the order is in effect shall, upon proof ~~thereof~~ *of the violation* to the satisfaction of the court, forfeit and pay to the state of Montana a sum not to exceed $250*,* which may be recovered in a civil action, except that if the violation is found to be willful, the amount of the penalty is a sum not to exceed $1,000. The commissioner~~, in his discretion,~~ may revoke or suspend the license or certificate of authority of the person, partnership, or corporation guilty of ~~such~~ *the* violation. The order for suspension or revocation is subject to judicial review as provided in 33-1-711."

Section 1219. Section 33-21-204, MCA, is amended to read:

"33-21-204. Policy or certificate delivered — time of delivery — provisions. (1) All credit life insurance and credit disability insurance sold must be evidenced by an individual policy or, in the case of group insurance, by a certificate of insurance~~,~~. ~~which~~ *The* individual policy or group certificate of insurance must be delivered to the debtor at the time the indebtedness is incurred except as ~~hereinafter~~ provided *in this section*.

(2) If the individual policy or group certificate of insurance is not delivered to the debtor at the time the indebtedness is incurred, a copy of the application for the policy or a notice of proposed insurance, signed by the debtor and setting forth the name and home office address of the insurer, the name of each debtor, the premium or amount of payment, if any, by the debtor separately in connection with credit life insurance and credit disability insurance coverage, the amount, term, and a brief description of the coverage provided or to be provided, must be delivered to the debtor at the time ~~such~~ *the* indebtedness is incurred. The copy of the application for or notice of proposed insurance must

also refer exclusively to insurance coverage and must be separate and apart from the loan, sale, or other credit statement of account, instrument, or agreement unless the information required by this section is prominently set forth ~~therein~~ *in the statement of account, instrument, or agreement*. Upon approval by the insurer of the application for insurance or acceptance of the insurance by the insurer and within 30 days of the date upon which the indebtedness is incurred, the insurer shall deliver the individual policy or group certificate of insurance to the debtor. The application or notice of proposed insurance must state that, upon acceptance by the insurer, the insurance becomes effective as of the date the indebtedness is incurred. If the named insurer does not accept the risk, the debtor must receive a policy or certificate of insurance setting forth the name and home office address of the substituted insurer and the amount of the premium to be charged. If the amount of premium is less than that set forth in the notice of proposed insurance, the insurer shall make an appropriate refund.

(3) Each individual policy or group certificate of credit life insurance and credit disability insurance must, in addition to other requirements of law, set forth the name and home office address of the insurer, the name of each debtor or, in the case of a group certificate of insurance, the identity by name or otherwise of the debtor, the rate or amount of payment, if any, by the debtor separately in connection with credit life insurance and credit disability insurance, *and* a description of the coverages, including the amount and term ~~thereof~~ *of the coverages* and any exceptions, limitations, or restrictions, and must state that the benefits must be paid to the creditor to reduce or extinguish the unpaid indebtedness and, wherever the amount of insurance may exceed the unpaid indebtedness, that any ~~such~~ excess must be payable to a beneficiary, other than the creditor, named by the debtor or to ~~his~~ *the debtor's* estate. If the term of the insurance is less than the term of the loan, that fact must be stated on the face of the individual policy or group certificate in not less than 10-point boldface type.

(4) For the purposes of subsections (1) and (2), an individual policy or group certificate of insurance delivered in connection with an open-end credit agreement is considered to be delivered at the time the indebtedness is incurred if delivery occurs on or before the date the indebtedness is incurred."

Section 1220. Section 33-22-112, MCA, is amended to read:

"33-22-112. Disability insurance coverage of services of state institutions — provision void — rate of payment. (1) ~~From and after February 14, 1973, it shall be~~ *It is* unlawful for any insurance company issuing disability insurance policies in Montana to exclude from coverage in a disability insurance policy services rendered the insured while a resident in a Montana state institution~~, provided~~ *if* the services to the insured would be covered by the disability insurance policy if rendered to ~~him~~ *the insured* outside a Montana state institution.

(2) A disability insurance policy is considered issued in Montana if the insured purchasing the disability insurance policy is, at the time of the purchase, residing in the state of Montana.

(3) If the exclusion prohibited by this section ~~should appear~~ *appears* in a disability insurance policy issued in Montana after February 14, 1973, the provision is void and the disability insurance policy will be considered to cover services rendered the insured in a Montana state institution if the services

would have been covered if rendered to an insured outside ~~of~~ a Montana state institution.

(4) Payment for services rendered in a Montana state institution ~~shall~~ *must* be to the same extent and at the same rates, according to the provisions of the disability policy, ~~which~~ *that* would be paid for the services if rendered outside a Montana state institution."

Section 1221. Section 33-22-125, MCA, is amended to read:

"33-22-125. Independent chiropractic physical examination or review of records. (1) If a patient's attending health care professional is a licensed chiropractor, the following provisions govern the conduct of a utilization review of the health care services rendered to the patient by the chiropractor:

(a) If an independent physical examination is required by the insurer, it must be conducted by a chiropractor engaged in the practice of chiropractic in Montana.

(b) If a review of the patient's or the chiropractor's records is required by the insurer in the course of an appeal or a redetermination of an adverse determination of medical necessity or appropriateness made pursuant to an insurer's review, the review must be conducted by a person trained in the field of chiropractic. During an appeal or redetermination, the patient may, at ~~his~~ *the patient's* expense, request an independent review of the patient's or the chiropractor's records by a chiropractor engaged in the practice of chiropractic in Montana and may require that review to be considered by the insurer in reaching its decision. If the initial adverse determination of medical necessity or appropriateness is reversed, the insurer shall bear the expense of the independent review.

(2) ~~Nothing in this section prevents~~ *This section does not prevent* a health care insurer from requesting additional medical review of a patient's condition or treatment by another chiropractor or medical provider.

(3) The provisions of this section do not apply to routine claim administration or determination by an insurer.

(4) As used in this section, "health care insurer" means:

(a) an insurer who provides disability insurance as defined in 33-1-207;

(b) a health service corporation as defined in 33-30-101;

(c) a health maintenance organization as defined in 33-31-102;

(d) a fraternal benefit society as defined in 33-7-108;

(e) an administrator as defined in 33-17-102; and

(f) any other entity regulated by the commissioner that provides health care coverage."

Section 1222. Section 33-22-206, MCA, is amended to read:

"33-22-206. Grace period. (1) There ~~shall~~ *must* be a provision as follows:

"Grace Period: A grace period of .... (insert a number not less than 7 for weekly premium policies, 10 for monthly premium policies, and 31 for all other policies) days will be granted for the payment of each premium falling due after the first premium, during which grace period the policy ~~shall~~ *must* continue in force."

(2) A policy in which the insurer reserves the right to refuse renewal ~~shall~~ *must* have, at the beginning of the ~~above~~ provision *contained in subsection (1)*:

"Unless not less than 30 days prior to the premium due date the insurer has delivered to the insured or has mailed to ~~his~~ *the insured's* last address as shown by the records of the insurer written notice of its intention not to renew this policy beyond the period for which the premium has been accepted.""

Section 1223. Section 33-22-208, MCA, is amended to read:

"33-22-208. Notice of claim. (1) ~~There shall be~~ *A policy must contain* a provision as follows:

"Notice of Claim: Written notice of claim must be given to the insurer within 6 months after the occurrence or commencement of any loss covered by the policy or as soon ~~thereafter~~ *after that date* as is reasonably possible. Notice given by or on behalf of the insured or the beneficiary to the insurer at .... (insert the location of ~~such~~ *the* office ~~as~~ *that* the insurer may designate for the purpose) or to any authorized insurance producer of the insurer, with information sufficient to identify the insured, ~~shall be deemed~~ *is considered* notice to the insurer."

(2) In a policy providing a loss-of-time benefit ~~which~~ *that* may be payable for at least 2 years, an insurer may at its option insert the following between the first and second sentences of the ~~above~~ provision *in subsection (1)*:

"Subject to the qualifications set forth below, if the insured suffers loss of time on account of disability for which indemnity may be payable for at least 2 years, ~~he~~ *the insured* shall, at least once in every 6 months after having given notice of the claim, give to the insurer notice of continuance of the disability, except in the event of legal incapacity. The period of 6 months following any filing of proof by the insured or any payment by the insurer on account of ~~such~~ *the* claim or any denial of liability in whole or in part by the insurer ~~shall~~ *must* be excluded in applying this provision. Delay in ~~the~~ giving ~~of such~~ *the* notice ~~shall~~ *may* not impair the insured's right to any indemnity ~~which~~ *that* would otherwise have accrued during the period of 6 months preceding the date on which ~~such~~ *the* notice is actually given.""

Section 1224. Section 33-22-222, MCA, is amended to read:

"33-22-222. Change of occupation. There may be a provision as follows:

"Change of Occupation: If the insured ~~be~~ *is* injured or ~~contract~~ *contracts* sickness after having changed ~~his~~ *the insured's* occupation to one classified by the insurer as more hazardous than that stated in this policy or while doing for compensation anything pertaining to ~~an~~ *a classified* occupation ~~so classified~~, the insurer will pay only ~~such~~ *the* portion of the indemnities provided in this policy ~~as~~ *that* the premium paid would have purchased at the rates and within the limits fixed by the insurer for ~~such~~ *the* more hazardous occupation. If the insured changes ~~his~~ *the insured's* occupation to one classified by the insurer as less hazardous than that stated in this policy, the insurer, upon receipt of proof of ~~such~~ *the* change of occupation, will reduce the premium rate accordingly and will return the excess pro rata unearned premium from the date of change of occupation or from the policy anniversary date immediately preceding receipt of ~~such~~ *the* proof, whichever is the more recent. In applying this provision, the classification of occupational risk and the premium rates ~~shall~~ *must* be ~~such~~ ~~as~~ *those that* have been last filed by the insurer prior to the occurrence of the loss for which the insurer is liable or prior to date of proof of change in occupation with the state official having supervision of insurance in the state where the insured resided at the time this policy was issued~~;~~. ~~but~~ *However,* if ~~such~~ *the* filing

was not required, then the classification of occupational risk and the premium rates ~~shall~~ *must* be those last made effective by the insurer in ~~such~~ *that* state prior to the occurrence of the loss or prior to the date of proof of change in occupation.""

Section 1225. Section 33-22-224, MCA, is amended to read:

"33-22-224. Other insurance in this insurer. (1) There may be a provision as follows:

"Other Insurance in This Insurer: If an accident or sickness or accident and sickness policy or policies previously issued by the insurer to the insured ~~be~~ *are* in force concurrently ~~herewith~~ *with this policy*, making the aggregate indemnity for .... (insert type of coverage or coverages) in excess of $.... (insert maximum limit of indemnity or indemnities), the excess insurance ~~shall be~~ *is* void and all premiums paid for ~~such~~ *the* excess ~~shall~~ *must* be returned to the insured or to ~~his~~ *the insured's* estate."

(2) ~~Or, in lieu thereof~~ *Instead of the provision in subsection (1), there may be the following*:

"Insurance effective at any one time on the insured under a ~~like~~ *similar* policy or policies in this insurer is limited to the one ~~such~~ policy elected by the insured, ~~his~~ *the insured's* beneficiary, or ~~his~~ *the insured's* estate, as ~~the case may be~~ *appropriate*, and the insurer will return all premiums paid for all other ~~such~~ policies.""

Section 1226. Section 33-22-227, MCA, is amended to read:

"33-22-227. Relation of earnings to insurance. (1) There may be a provision as follows:

"Relation of Earnings to Insurance: If the total monthly amount of loss-of-time benefits promised for the same loss under all valid loss-of-time coverage upon the insured, whether payable on a weekly or monthly basis, ~~shall exceed~~ *exceeds* the monthly earnings of the insured at the time disability commenced or ~~his~~ *the insured's* average monthly earnings for the period of 2 years immediately preceding a disability for which claim is made, whichever is the greater, the insurer will be liable only for ~~such~~ *the* proportionate amount of ~~such~~ benefits under this policy ~~as~~ *that* the amount of ~~such~~ *the* monthly earnings or ~~such~~ *the* average monthly earnings of the insured bears to the total amount of monthly benefits for the same loss under all ~~such~~ coverage upon the insured at the time ~~such~~ *the* disability commences and for the return of ~~such~~ *the* part of the premiums paid during ~~such~~ *the* 2 years ~~as shall~~ *that* exceed the pro rata amount of the premiums for the benefits actually paid ~~hereunder;~~ *under this policy*. ~~but~~ *However,* this ~~shall~~ *may* not operate to reduce the total monthly amount of benefits payable under all ~~such~~ coverage upon the insured below the sum of $200 or the sum of the monthly benefits specified in ~~such~~ *the* coverages, whichever is the lesser, ~~nor shall it~~ *and may not* operate to reduce benefits other than those payable for loss of time."

(2) The ~~foregoing~~ policy provision *in subsection (1)* may be inserted only in a policy ~~which~~ *that* the insured has the right to continue in force subject to its terms by the timely payment of premiums until at least age 50~~,~~ or, in the case of a policy issued after age 44, for at least 5 years from its date of issue. The insurer may, at its option, include in this provision a definition of "valid loss of time coverage", approved as to form by the commissioner~~,~~. ~~which~~ *The* definition ~~shall~~ *must* be limited in subject matter to coverage provided by governmental agencies or by organizations subject to regulation by insurance law or by insurance authorities of this or any other state of the United States or any

province of Canada or to any other coverage the inclusion of which may be approved by the commissioner or any combination of ~~such~~ coverages. In the absence of ~~such~~ *a* definition*,* ~~such~~ *the* term ~~shall~~ *may* not include any coverage provided for ~~such~~ *the* insured pursuant to any compulsory benefit statute, including any workers' compensation or employer's liability statute, or benefits provided by union welfare plans or by employer or employee benefit organizations."

Section 1227. Section 33-22-502, MCA, is amended to read:

"33-22-502. Required provisions of group policies. Each group disability insurance policy delivered or issued for delivery in this state must contain in substance the following provisions:

(1) a provision that, in the absence of fraud, all statements made by applicants or the policyholder or by an insured person ~~shall~~ *must* be ~~deemed~~ *considered* representations and not warranties and that ~~no~~ *a* statement made for the purpose of effecting insurance ~~shall~~ *may not* avoid ~~such~~ *the* insurance or reduce benefits unless contained in a written instrument signed by the policyholder or the insured person, a copy of which has been furnished to ~~such~~ *the* policyholder or to ~~such~~ *the insured* person or ~~his~~ *the insured person's* beneficiary;

(2) a provision that the insurer will furnish to the policyholder for delivery to each employee or member of the insured group a statement in summary form of the essential features of the insurance coverage of ~~such~~ *the* employee or member and to whom benefits ~~thereunder~~ are payable. If dependents are included in the coverage, only one certificate ~~need~~ *is required* be issued for each family unit.

(3) a provision that to the group originally insured may be added from time to time eligible new employees or members or dependents, as the case may be, in accordance with the terms of the policy;

(4) a provision or the equivalent ~~thereto~~ that reads:

"Conformity with Montana statutes. The provisions of this policy conform to the minimum requirements of Montana law and control over any conflicting statutes of any state in which the insured resides on or after the effective date of this policy.""

Section 1228. Section 33-22-507, MCA, is amended to read:

"33-22-507. Continuing group coverage after reduction of work schedule. A person covered by a group disability insurance policy issued or renewed after October 1, 1981, under 33-22-501(1) may, for a period of 1 year, with the consent of the employer or the trustees, continue coverage under group disability policy during ~~his~~ *the person's* employment notwithstanding any reduction of ~~his~~ *the person's* regular work schedule to less than the minimum time required to qualify for membership in the group, and the premium charged ~~him shall~~ *the person must* be equal to that charged other members of the group of the same risk class."

Section 1229. Section 33-22-510, MCA, is amended to read:

"33-22-510. Insured's family — conversion entitlement. Subject to the conditions set forth in this section, the conversion privilege is also available:

(1) to the surviving spouse, if any, at the death of the employee or member, with respect to the spouse and ~~such~~ children whose coverage under the group policy terminates by reason of ~~such~~ *the* death, otherwise to each surviving child whose coverage under the group policy terminates by reason of ~~such~~ *the* death,

or if the group policy provides for continuation of dependent's coverage following the employee's or member's death, at the end of ~~such~~ *the* continuation;

(2) to the spouse of the employee or member upon termination of coverage of the spouse, by reason of ceasing to be a qualified family member under the group policy, while the employee or member remains under the group policy, including ~~such~~ children whose coverage under the group policy terminates at the same time; or

(3) to a child solely with respect to ~~himself~~ *the child* upon termination of ~~his~~ *child's* coverage by reason of ceasing to be a qualified family member under the group policy~~,~~ if a conversion privilege is not otherwise provided ~~above~~ *in this section* with respect to ~~such~~ *the* termination."

Section 1230. Section 33-22-604, MCA, is amended to read:

"33-22-604. Payment of claims — discharge. (1) *(a)* ~~All~~ *Subject to subsection (1)(b), all* benefits under ~~any~~ *a* blanket disability policy ~~shall~~ *must* be payable to*:*

(i) the person insured or to ~~his~~ *the person's* designated beneficiary or beneficiaries or to ~~his~~ *the person's* estate~~;~~*,* except that if the person insured ~~be~~ *is* a minor or ~~mental~~ *is mentally* incompetent, ~~such~~ *the* benefits may be made payable to ~~his~~ *the* parent, guardian, or other person actually supporting ~~him~~ *the person*; or

(ii) the employer, if the entire cost of the insurance has been borne by the employer ~~such benefits may be made payable to the employer~~.

(b) ~~Provided, however, that the~~ *The* policy may provide that all or any portion of any indemnities provided by ~~such~~ *the* policy on account of hospital, nursing, medical, or surgical services may, at the insurer's option, be paid directly to the hospital or person rendering ~~such~~ *the* services~~;~~*,* but the policy may not require that the service be rendered by a particular hospital or person.

(2) Payment ~~so~~ made ~~shall discharge~~ *as provided in subsection (1) discharges* the insurer's obligation with respect to the amount of insurance ~~so~~ paid."

Section 1231. Section 33-22-1001, MCA, is amended to read:

"33-22-1001. Definition of home health care. "Home health care" means services provided by a licensed home health agency to an insured in ~~his~~ *the insured's* place of residence that is prescribed by the insured's attending physician as part of a written plan of care. Services provided by home health care include:

(1) nursing;

(2) home health aide services;

(3) physical therapy;

(4) occupational therapy;

(5) speech therapy;

(6) hospice service;

(7) medical supplies and equipment suitable for use in the home; and

(8) medically necessary personal hygiene, grooming, and dietary assistance."

Section 1232. Section 33-22-1602, MCA, is amended to read:

"33-22-1602. Notice — shared costs of third-party action — limitation. (1) If an insured intends to institute an action for damages against a third party, the insured shall give the insurer reasonable notice of ~~his~~ *the* intention to institute the action.

(2) The insured may request that the insurer pay a proportionate share of the reasonable costs of the third-party action, including attorney fees.

(3) An insurer may elect not to participate in the cost of the action. If ~~such~~ an election is made, the insurer waives 50% of any subrogation rights granted to it by 33-22-1601.

(4) The insurer's right of subrogation granted in 33-22-1601 may not be enforced until the injured insured has been fully compensated for ~~his~~ *the insured's* injuries."

Section 1233. Section 33-23-201, MCA, is amended to read:

"33-23-201. Motor vehicle liability policies to include uninsured motorist coverage — rejection by insured. (1) ~~No~~ *A* motor vehicle liability policy insuring against loss resulting from liability imposed by law for bodily injury or death suffered by any person arising out of the ownership, maintenance, or use of a motor vehicle may *not* be delivered or issued for delivery in this state, with respect to any motor vehicle registered and principally garaged in this state, unless coverage is provided ~~therein~~ *in the policy* or supplemental ~~thereto~~ *to the policy*, in limits for bodily injury or death set forth in 61-6-103, under provisions filed with and approved by the commissioner, for the protection of persons insured ~~thereunder~~ *under the policy* who are legally entitled to recover damages from owners or operators of uninsured motor vehicles because of bodily injury, sickness, or disease, including death, resulting ~~therefrom~~ *from the injury, sickness, or disease*, caused by an accident arising out of the operation or use of ~~such~~ *the motor* vehicle. An uninsured motor vehicle is a land motor vehicle, the ownership, the maintenance, or the use of which is not insured or bonded for bodily injury liability at the time of the accident.

(2) The named insured ~~shall have~~ *has* the right to reject ~~such~~ *the* coverage. Unless the named insured requests ~~such~~ *the* coverage in writing, ~~such~~ *the* coverage need not be provided in or supplemental to a renewal policy ~~where~~ *when* the named insured had rejected the coverage in connection with the policy previously issued to ~~him~~ *the named insured* by the same insurer."

Section 1234. Section 33-23-213, MCA, is amended to read:

"33-23-213. Notice to insured of ground for cancellation — commissioner to ensure compliance. Whenever an insurer gives notice of cancellation of a motor vehicle liability policy, upon request of the insured, the insurer, within 15 days of receipt of the request, shall furnish to the insured a statement setting forth the ground or grounds upon which the notice of cancellation is based. If the insurer fails to comply with the provisions of this section, the insured may apply to the commissioner for a certificate of the facts or information desired. The commissioner shall exercise any power conferred upon ~~him~~ *the commissioner* by law ~~as~~ *that* may be necessary to ensure compliance with this section."

Section 1235. Section 33-23-216, MCA, is amended to read:

"33-23-216. Retention and proof of notice. (1) A notice of cancellation or of intention not to renew or of reasons for cancellation of insurance issued under terms of this chapter must be retained for a period of 3 years by the insurer or ~~his~~

the insurer's insurance producer within this state and must be made available within this state for examination or inspection by the commissioner or ~~his~~ *the insurer's* insurance producers at any time within ~~such~~ *the* 3-year period upon reasonable notice.

(2) Proof of mailing of notice of cancellation or of intention not to renew or of reasons for cancellation to the named insured at the address shown in the policy or to the named insured's ~~latest known~~ *last-known* address is sufficient proof of notice."

Section 1236. Section 33-24-102, MCA, is amended to read:

"33-24-102. Insuring improvements — insurance equal to true value. Whenever any policy of insurance ~~shall be~~ *is* written to insure any improvements upon real property in this state against loss or damage and the property insured is considered to be a total loss, without criminal fault on the part of the insured or ~~his~~ *the insured's* assigns, the amount of insurance written in ~~such~~ *the* policy ~~shall~~ *must* be taken conclusively to be the true value of the property insured and the true amount of loss and measure of damages. The payment of money as a premium for insurance ~~shall~~ *must* be prima facie evidence that the party paying ~~such~~ *the* insurance premium is the owner of the property insured~~;~~. ~~provided~~ *However*, ~~that~~ any insurance company may ~~set up~~ *assert* fraud in obtaining the policy as a defense to a suit ~~thereon~~ *on the policy*."

Section 1237. Section 33-25-216, MCA, is amended to read:

"33-25-216. Notice of issuance of mortgagee policy. (1) A title insurer or title insurance producer that issues a mortgagee's policy of title insurance on a loan made simultaneous to the purchase of all or part of the property securing the loan, when ~~no~~ *an* owner's policy has *not* been ordered, ~~must~~ *shall* inform the borrower in writing that the mortgagee's policy is to be issued, that the mortgagee's policy does not protect the borrower, and that the borrower may obtain an owner's title insurance policy for ~~his~~ *the borrower's* protection. This notice must be provided, on a form prescribed by the commissioner, before issuance of the mortgagee's policy.

(2) If the borrower elects not to purchase an owner's title insurance policy, the title insurer or title insurance producer ~~must~~ *shall* obtain from ~~him~~ *the borrower* a statement in writing that the notice has been received and that the borrower waives the right to purchase an owner's title insurance policy. If the buyer refuses to provide the statement and waiver, the title insurer or title insurance producer ~~must so note~~ *shall indicate the refusal* in the file. The statement and waiver must be on a form prescribed by the commissioner and must be retained by the title insurer or title insurance producer for at least 5 years after receipt."

Section 1238. Section 33-25-302, MCA, is amended to read:

"33-25-302. Disapproval of agency contracts. (1) The commissioner may disapprove a title agency contract between a title insurance producer and title insurer, upon appropriate notice to the parties to the contract, if ~~he~~ *the commissioner* finds that the contract, together with all amendments and related documents:

(a) does not provide for adequate monitoring of the insurance producer's financial transactions; or

(b) provides for inadequate, unreasonable, or excessive amounts to be paid to or retained by the title insurance producer. Factors the commissioner may consider in this determination include but are not limited to the insurance

producer's duties under the contract and the general level of amounts paid to or retained by other title insurance producers in the state performing or assuming comparable duties.

(2) A person may not act as a title insurance producer under an agency contract that has been disapproved by the commissioner."

Section 1239. Section 33-25-401, MCA, is amended to read:

"33-25-401. Prohibited practices — referrals — splitting charges — exemptions. (1) Except as provided in subsection (2), a person may not:

(a) give or accept a fee, rebate, or thing of value pursuant to an agreement or understanding that title insurance business will be referred to a title insurance producer; or

(b) give or accept a portion, split, or percentage of a charge made or received for title insurance business in connection with a transaction involving real property in this state, other than for services actually performed.

(2) (a) A person may pay a return on an investment, based on a percentage of an ownership interest in a title insurance agency, if:

(i) at or prior to the time of a referral, a disclosure of the existence of the arrangement is made to the person being referred and, in connection with the referral, the person is provided a written estimate of the charge or range of charges generally made by the title insurance producer to which the person is referred; and

(ii) the person is not required to use a particular insurance producer.

(b) The following arrangements are not a violation of subsection (2)(a)(ii):

(i) an arrangement that requires a buyer, borrower, or seller to pay for the services of an attorney, credit reporting agency, or real estate appraiser chosen by a lender to represent the lender's interest in a real estate transaction; or

(ii) an arrangement by which an attorney or law firm represents a client in a real estate transaction and issues or arranges for the issuance of a policy of title insurance in the transaction directly as insurance producer or through a separate corporate title insurance agency that may be established by that attorney or law firm and operated as an adjunct to ~~his~~ *the attorney's* or ~~its~~ *firm's* law practice.

(c) Failure to disclose a controlled business relationship is not a violation of subsection (2)(a)(i) if the failure was not intentional and resulted from a bona fide error, proven by a preponderance of the evidence.

(3) This section does not prohibit:

(a) the payment of a fee to an attorney for services actually rendered or by a title insurance producer for services actually performed in the issuance of a title insurance policy; or

(b) payment of a bona fide salary, compensation, or other payment for goods or facilities actually furnished or for services actually performed."

Section 1240. Section 33-26-101, MCA, is amended to read:

"33-26-101. Corporations as sureties. (1) In all cases where an undertaking or bond, with any number of sureties, is authorized or required by any law of this state, any corporation with a paid-up capital of not less than $100,000, incorporated under the laws of this state for the purpose of making, guaranteeing, or becoming a surety upon bonds or undertakings required or authorized by law, may become and ~~shall~~ *must* be accepted as security or as a

sole and sufficient security upon ~~such~~ *the* undertaking or bond, and ~~such~~ *the* corporate surety ~~shall~~ *must* be subject to all liabilities and entitled to all the rights of natural persons as ~~such~~ sureties.

(2) Whenever the liabilities of any ~~such~~ corporation ~~shall~~ *described in subsection (1)* exceed its assets, the state auditor shall require the deficiency to be paid up in 60 days, and if it is not ~~so~~ paid up, then ~~he~~ *the state auditor* shall issue a certificate showing the extent of ~~such~~ *the* deficiency~~,~~ and ~~he~~ shall publish the ~~same~~ *certificate* once a week for 3 weeks in a daily paper published in the town or city ~~wherein~~ *in which* the principal office of ~~such~~ *the* corporation is~~, and until~~ *located until* ~~such~~ *the* deficiency is paid up, ~~such~~ *the* company ~~shall~~ *may* not be accepted as a surety on any undertaking or bond. In estimating the condition of ~~any such~~ *a* company, the state auditor shall allow as assets only ~~such as~~ *assets that* are allowed under existing laws at the time and shall charge as liabilities, in addition to 80% of the capital stock, all outstanding indebtedness of the company and the premium reserved equal to 50% of the premiums charged by ~~said~~ *the* company on all risks then in force."

Section 1241. Section 33-26-107, MCA, is amended to read:

"33-26-107. Deposit of money in bank for safekeeping by executors and other fiduciaries on agreement with surety. It ~~shall be~~ *is* lawful for any executor, administrator, guardian, receiver, trustee, or other party of whom a bond, undertaking, or other obligation is required to agree with ~~his~~ *the entity's* surety or sureties for the deposit of any or all ~~moneys~~ *money* and assets for which ~~he~~ *the entity* and ~~his~~ *the* surety or sureties are or may be held responsible with a bank, savings bank, safe-deposit, or trust company, authorized by law to do business ~~as such~~, or with ~~other~~ *another* depository approved by the court or a judge ~~thereof~~, if ~~such~~ *the* deposit is otherwise proper, for ~~the~~ safekeeping ~~thereof~~, and in ~~such~~ *a* manner ~~as to prevent~~ *that prevents* the withdrawal of ~~such~~ *the* money or assets or any part ~~thereof~~ *of the money or assets* without the written consent of ~~such~~ *the* surety or sureties or an order of court or a judge ~~thereof~~ made on ~~such~~ notice to ~~such~~ *the* surety or sureties ~~as such~~ *that the* court or judge may direct. ~~Such~~ *The* agreement ~~shall~~ *may* not in any manner release from or change the liability of the principal or sureties as established by the terms of the bond."

Section 1242. Section 33-30-105, MCA, is amended to read:

"33-30-105. Examination of ~~a~~ health service corporation. (1) If the commissioner believes a health service corporation is unable or potentially unable to fulfill its contractual obligations to its members, the commissioner may conduct an examination of that corporation.

(2) In addition to the examination authorized in subsection (1), at least once every 4 years, the commissioner shall conduct an examination of each health service corporation to determine if the corporation is fulfilling its contractual obligations by prompt satisfaction of claims at the highest monetary level consistent with reasonable dues or fees~~,~~ and that the corporation's management exercises appropriate fiscal controls, operations, and personnel policies to ~~assure~~ *ensure* that efficient and economic administration restrains overhead costs for the benefit of its members.

(3) Each health service corporation examined~~,~~ *and* its officers, employees, and insurance producers~~,~~ shall produce and make available to the commissioner or ~~his~~ *the commissioner's* examiners the accounts, records, documents, files, information, assets, and matters in its possession or control relating to the subject of the examination.

(4) The commissioner or ~~his~~ *the commissioner's* examiner shall make a verified report of the examination.

(5) The report ~~shall~~ *must* comprise only facts appearing from the books, papers, records, or documents of the corporation examined or ascertained from the testimony, under oath, of individuals concerning its affairs and conclusions and recommendations as warranted by those facts.

(6) The commissioner shall furnish a copy of the proposed report to the corporation examined not less than 20 days prior to its filing in ~~his~~ *the commissioner's* office. If the corporation requests a hearing, in writing, within the 20-day period, the commissioner shall grant ~~one~~ *a hearing* with respect to the report and ~~shall~~ *may* not file the report until after the hearing and after modifications, if any, *that* the commissioner ~~deems~~ *considers* proper.

(7) The health service corporation shall pay for each examination conducted pursuant to subsections (1) and (2) in accordance with 33-1-413."

Section 1243. Section 33-30-303, MCA, is amended to read:

"33-30-303. Grievance procedure for members. Any individual member of a corporation, subject to the provisions of this chapter, who believes ~~himself to be~~ *that the member is* aggrieved by any act or omission of the corporation or its officers, directors, or employees may file a statement in writing of ~~his~~ *the* grievance in the office of the commissioner, and the commissioner may investigate the grievance. ~~No~~ *An* investigation by the commissioner ~~shall~~ *may not* act as a bar to any suit in a court of competent jurisdiction instituted by an aggrieved member or as a bar to any defense by the involved corporation."

Section 1244. Section 33-30-1002, MCA, is amended to read:

"33-30-1002. Disability coverage of services received in state institutions — coverage of persons eligible for public medical assistance. (1) ~~From and after February 14, 1973, it shall be~~ *It is* unlawful for any health service corporation issuing membership contracts in Montana to exclude from coverage in a membership contract services rendered the insured while a resident in a Montana state institution~~, provided~~ *if* the services to the insured would be covered by the membership contract if rendered to ~~him~~ *the insured* outside a Montana state institution.

(2) A membership contract is considered issued in Montana if the insured purchasing the membership contract is, at the time of ~~such~~ purchase, residing in the state of Montana.

(3) If the exclusion prohibited by this section ~~should appear~~ *appears* in a membership contract issued in Montana after February 14, 1973, the provision is void and the membership contract will be considered to cover services rendered the insured in a Montana state institution if the services would have been covered if rendered to an insured outside ~~of~~ a Montana state institution.

(4) Payment for services rendered in a Montana state institution ~~shall~~ *must* be to the same extent and at the same rates, according to the provisions of the membership contract, ~~which~~ *that* would be paid for the services if rendered outside a Montana state institution.

(5) ~~No~~ *A* membership contract issued by a health service corporation on or after July 1, 1979, may *not* deny or reduce benefits to any member on the ground that the person insured is eligible for or receiving public medical assistance provided under Title 53, chapter 2."

Section 1245. Section 33-30-1005, MCA, is amended to read:

"33-30-1005. Right of rescission. Each membership contract, other than a group contract, issued for delivery in this state on or after January 1, 1980, ~~shall~~ *must* contain a notice stating in substance that if the person to whom the contract is issued is not satisfied for any reason, ~~he~~ *the person* is permitted to return the contract within 10 days of its delivery~~,~~ or ~~such~~ *a* longer period ~~as~~ *that* the contract may provide~~,~~ and to have refunded the amount of the premium paid. A contract returned pursuant to this section is void from the beginning."

Section 1246. Section 33-30-1006, MCA, is amended to read:

"33-30-1006. Continuing group coverage after termination. A person covered by a group hospital or medical service plan contract, issued or renewed by a health service corporation after October 1, 1981, may, for a period of 1 year with the consent of the employer or the trustees, continue coverage under the group contract during ~~his~~ *the person's* employment notwithstanding any reduction of ~~his~~ *the person's* regular work schedule to less than the minimum time required to qualify for membership in the group, and the premium charged ~~him shall~~ *must* be equal to that charged the members of the group."

Section 1247. Section 33-30-1009, MCA, is amended to read:

"33-30-1009. Insured's family — conversion entitlement. Subject to the conditions set forth in this section, the conversion privilege is also available:

(1) to the surviving spouse, if any, at the death of the employee or member, with respect to the spouse and ~~such~~ children whose coverage under the group policy terminates by reason of ~~such~~ *the* death, otherwise to each surviving child whose coverage under the group policy terminates by reason of ~~such~~ *the* death, or if the group policy provides for continuation of dependent's coverage following the employee's or member's death, at the end of ~~such~~ *the* continuation;

(2) to the spouse of the employee or member upon termination of coverage of the spouse, by reason of ceasing to be a qualified family member under the group policy, while the employee or member remains under the group policy, including ~~such~~ children whose coverage under the group policy terminates at the same time; or

(3) to a child solely with respect to ~~himself~~ *the child* upon termination of ~~his~~ *the child's* coverage by reason of ceasing to be a qualified family member under the group policy~~,~~ if a conversion privilege is not otherwise provided ~~above~~ *in this section* with respect to ~~such~~ *the* termination."

Section 1248. Section 33-30-1102, MCA, is amended to read:

"33-30-1102. Notice — shared costs of third-party action — limitation. (1) If an insured intends to institute an action for damages against a third party, the insured shall give the health service corporation reasonable notice of ~~his~~ *the* intention to institute the action.

(2) The insured may request that the health service corporation pay a proportionate share of the reasonable costs of the third-party action, including attorney fees.

(3) A health service corporation may elect not to participate in the cost of the action. If ~~such an~~ *that* election is made, the health service corporation waives 50% of any subrogation rights granted to it by 33-30-1101.

(4) The health service corporation's right of subrogation granted in 33-30-1101 may not be enforced until the injured insured has been fully compensated for ~~his~~ *the insured's* injuries."

Section 1249. Section 33-31-201, MCA, is amended to read:

"33-31-201. Establishment of health maintenance organizations. (1) Notwithstanding any law of this state to the contrary, a person may apply to the commissioner for and obtain a certificate of authority to establish and operate a health maintenance organization in compliance with this chapter. A person may not establish or operate a health maintenance organization in this state except as authorized by a subsisting certificate of authority issued to it by the commissioner. A foreign person may qualify for a certificate of authority if it first obtains from the secretary of state a certificate of authority to transact business in this state as a foreign corporation under 35-1-1028.

~~(2) Each health maintenance organization operating in this state as of October 1, 1987, shall submit an application for a certificate of authority under subsection (3) within 30 days after the effective date of rules adopted by the commissioner as provided in 33-31-103. Each such applicant may continue to operate in this state until the commissioner acts upon the application. If an application is denied under 33-31-202, the applicant must be treated as a health maintenance organization whose certificate of authority has been revoked.~~

~~(3)~~*(2)* Each application of a health maintenance organization, whether separately licensed or not, for a certificate of authority must:

(a) be verified by an officer or authorized representative of the applicant;

(b) be in a form prescribed by the commissioner;

(c) contain:

(i) the applicant's name;

(ii) the location of the applicant's home office or principal office in the United States, ~~(~~if a foreign person~~)~~;

(iii) the date of organization or incorporation;

(iv) the form of organization, ~~(~~including whether the providers affiliated with the health maintenance organization will be salaried employees or group or individual contractors~~)~~;

(v) the state or country of domicile; and

(vi) any additional information *that* the commissioner may reasonably require; and

(d) set forth the following information or be accompanied by the following documents, as applicable:

(i) a copy of the applicant's organizational documents, such as its corporate charters or articles of incorporation, articles of association, partnership agreement, trust agreement, or other applicable documents, and all amendments ~~thereto~~ *to those documents*, certified by the public officer with whom the originals were filed in the state or country of domicile;

(ii) a copy of the bylaws, rules, and regulations, or similar document, if any, regulating the conduct of the applicant's internal affairs, certified by its secretary or other officer having custody ~~thereof~~ *of the documents*;

(iii) a list of the names, addresses, and official positions of the persons responsible for the conduct of the applicant's affairs, including all members of the board of directors, board of trustees, executive committee, or other governing board or committee; the principal officers in the case of a corporation; and the partners or members in the case of a partnership or association;

(iv) a copy of any contract made or to be made between:

(A) any provider and the applicant; or

(B) any person listed in subsection ~~(3)(d)(iii)~~ *(2)(d)(iii)* and the applicant. The applicant may file a list of providers executing a standard contract and a copy of the contract instead of copies of each executed contract.

(v) the extent to which any of the following will be included in provider contracts and the form of any provisions that:

(A) limit a provider's ability to seek reimbursement for basic health care services or health care services from an enrollee;

(B) permit or require a provider to assume a financial risk in the health maintenance organization, including any provisions for assessing the provider, adjusting capitation or fee-for-service rates, or sharing in the earnings or losses; and

(C) govern amending or terminating an agreement with a provider;

(vi) a financial statement showing the applicant's assets, liabilities, and sources of financial support. If the applicant's financial affairs are audited by independent certified public accountants, a copy of the applicant's most recent certified financial statement satisfies this requirement unless the commissioner directs that additional or more recent financial information is required for the proper administration of this chapter.

(vii) a description of the proposed method of marketing, a financial plan that includes a projection of operating results anticipated until the organization has had net income for at least 1 year, and a statement as to the sources of working capital as well as any other source of funding;

(viii) a power of attorney executed by the applicant, on a form prescribed by the commissioner, appointing the commissioner, ~~his~~ *the commissioner's* successors in office, and ~~his~~ *the commissioner's* authorized deputies as the applicant's attorney to receive service of legal process issued against it in this state;

(ix) a statement reasonably describing the geographic service area or areas to be served, by county, including:

(A) a chart showing the number of primary and specialty care providers, with locations and service areas by county;

(B) the method of handling emergency care, with the location of each emergency care facility; and

(C) the method of handling out-of-area services;

(x) a description of the way in which the health maintenance organization provides services to enrollees in each geographic service area, including the extent to which a provider under contract with the health maintenance organization provides primary care to those enrollees;

(xi) a description of the complaint procedures to be used as required under 33-31-303;

(xii) a description of the mechanism by which enrollees will be afforded an opportunity to participate in matters of policy and operation under 33-31-222;

(xiii) a summary of the way in which administrative services will be provided, including the size and qualifications of the administrative staff and the projected cost of administration in relation to premium income. If the health maintenance organization delegates management authority for a major corporate function to a person outside the organization, the health maintenance organization shall include a copy of the contract in its application for a certificate of authority. Contracts for delegated management authority must be

filed with the commissioner in accordance with the filing provisions of 33-31-301(2)~~;~~. ~~however~~ *However*, ~~nothing in~~ this subsection ~~deprives~~ *does not deprive* the health maintenance organization of its right to confidentiality of any proprietary information, and the commissioner may not disclose that proprietary information to any other person. All contracts must include:

(A) the services to be provided;

(B) the standards of performance for the manager;

(C) the method of payment, including any provisions for the administrator to participate in the profits or losses of the plan;

(D) the duration of the contract; and

(E) any provisions for modifying, terminating, or renewing the contract.

(xiv) a summary of all financial guaranties by providers, sponsors, affiliates, or parents within a holding company system or any other guaranties that are intended to ensure the financial success of the plan, including hold harmless agreements by providers, insolvency insurance, reinsurance, or other guaranties;

(xv) a summary of benefits to be offered enrollees, including any limitations and exclusions and the renewability of all contracts to be written;

(xvi) evidence that it can meet the requirement of 33-31-216(10); and

(xvii) any other information that the commissioner may reasonably require to make the determinations required in 33-31-202.

~~(4)~~*(3)* Each health maintenance organization shall file each substantial change, alteration, or amendment to the information submitted under subsection ~~(3)~~ *(2)* with the commissioner at least 30 days prior to its effective date, including changes in articles of incorporation and bylaws, organization type, geographic service area, provider contracts, provider availability, plan administration, financial projections and guaranties, and any other change that might affect the financial solvency of the plan. The commissioner may, after notice and hearing, disapprove any proposed change, alteration, or amendment to the business plan. The commissioner may ~~make~~ *adopt* reasonable rules exempting from the filing requirements of this subsection those items ~~he~~ *that the commissioner* considers unnecessary.

~~(5)~~*(4)* An applicant or a health maintenance organization holding a certificate of authority shall file with the commissioner all contracts of reinsurance and any modifications ~~thereto~~ *to the contracts*. An agreement between a health maintenance organization and an insurer is subject to Title 33, chapter 2, part 12. A reinsurance agreement must remain in full force and effect for at least 90 days following written notice of cancellation by either party by certified mail to the commissioner.

~~(6)~~*(5)* Each health maintenance organization shall maintain, at its administrative office~~,~~ and make available to the commissioner upon request executed copies of all provider contracts.

~~(7)~~*(6)* The commissioner may ~~make~~ *adopt* reasonable rules exempting an insurer or health service corporation operating a health maintenance organization as a plan from the filing requirements of this section if information requested in the application has been submitted to the commissioner under other laws and rules administered by the commissioner."

Section 1250. Section 33-31-221, MCA, is amended to read:

"33-31-221. Powers of health maintenance organizations. (1) The powers of a health maintenance organization include but are not limited to the following:

(a) the purchase, lease, construction, renovation, operation, or maintenance of a hospital, a medical facility, or both, its ancillary equipment, and ~~such~~ property ~~as~~ *that* may reasonably be required for its principal office or for ~~such~~ purposes ~~as~~ *that* may be necessary in the transaction of the business of the organization;

(b) the making of loans to a medical group under contract with it in furtherance of its program or the making of loans to a corporation under its control for the purpose of acquiring or constructing a medical facility or hospital or in furtherance of a program providing health care services to enrollees;

(c) the furnishing of health care services through a provider who is under contract with or employed by the health maintenance organization;

(d) the contracting with a person for the performance on its behalf of certain functions, such as marketing, enrollment, and administration;

(e) the contracting with an insurer authorized to transact insurance in this state, or with a health service corporation authorized to do business in this state, for the provision of insurance, indemnity, or reimbursement against the cost of health care services provided by the health maintenance organization; and

(f) the offering of other health care services in addition to basic health care services.

(2) A health maintenance organization shall file notice, with adequate supporting information, with the commissioner before exercising a power granted in subsection (1)(a), (1)(b), or (1)(d). The commissioner may, after notice and hearing, within 60 days disapprove the exercise of a power under subsection (1)(a), (1)(b), or (1)(d) only if, in ~~his~~ *the commissioner's* opinion, it would substantially and adversely affect the financial soundness of the health maintenance organization and endanger its ability to meet its obligations. The commissioner may make reasonable rules exempting from the filing requirement of this subsection those activities having a de minimis effect. The commissioner may exempt certain contracts from the filing requirement whenever exercise of the authority granted in this section would have little or no effect on the health maintenance organization's financial condition and ability to meet obligations.

(3) ~~Nothing in this~~ *This* section ~~exempts~~ *does not exempt* the activities of a health maintenance organization from any applicable certificate of need requirements under Title 50, chapter 5, parts 1 and 3."

Section 1251. Section 33-31-312, MCA, is amended to read:

"33-31-312. Prohibited practices. (1) A health maintenance organization~~,~~ or representative ~~thereof,~~ *of a health maintenance organization* may not cause or knowingly permit the use of advertising that is untrue or misleading, solicitation that is untrue or misleading, or any form of evidence of coverage that is deceptive. For purposes of this chapter:

(a) a statement or item of information is considered to be misleading, whether or not it may be literally untrue~~,~~ if, in the total context in which the statement is made or the item of information is communicated, a reasonable person not possessing special knowledge regarding health care coverage may reasonably understand the statement or item of information as indicating a benefit or advantage or the absence of an exclusion, limitation, or disadvantage

of possible significance to an enrollee of or person considering enrollment in a health maintenance organization if the benefit or advantage or absence of limitation, exclusion, or disadvantage does not in fact exist; and

(b) an evidence of coverage is considered to be deceptive if, when taken as a whole and with consideration given to typography, format, and language, it can cause a reasonable person not possessing special knowledge regarding health maintenance organizations to expect benefits, services, charges, or other advantages that the evidence of coverage does not provide or ~~which~~ *that* the health maintenance organization issuing the evidence of coverage does not regularly make available to enrollees covered under the evidence of coverage.

(2) Title 33, chapter 18, applies to health maintenance organizations and evidences of coverage issued by a health maintenance organization, except to the extent that the commissioner determines that the nature of health maintenance organizations and evidences of coverage render the chapter clearly inappropriate.

(3) A health maintenance organization shall clearly disclose in the evidence of coverage the circumstances under which it may disenroll, cancel, or refuse to renew an enrollee. A health maintenance organization may disenroll, cancel, or refuse to renew an enrollee only if the enrollee:

(a) has failed to pay required premiums by the end of the grace period;

(b) has committed acts of physical or verbal abuse that pose a threat to providers or other enrollees of the health maintenance organization;

(c) has allowed a nonenrollee to use the health maintenance organization's certification card to obtain services or has knowingly provided fraudulent information in applying for coverage;

(d) has moved outside of the geographical service area of the health maintenance organization;

(e) has violated rules of the health maintenance organization stated in the evidence of coverage;

(f) has violated rules adopted by the commissioner for enrollment in a health maintenance organization; or

(g) is unable to establish or maintain a satisfactory physician-patient relationship with the physician responsible for the enrollee's care. Disenrollment of an enrollee for this reason must be permitted only if the health maintenance organization can demonstrate that it provided the enrollee with the opportunity to select an alternate primary care physician, made a reasonable effort to assist the enrollee in establishing a satisfactory physician-patient relationship, and informed the enrollee that ~~he~~ *the enrollee* may file a grievance on this matter.

(4) A health maintenance organization may not disenroll an enrollee under subsection (3) for reasons related to the physical or mental condition of the enrollee or for any of the following reasons:

(a) failure of the enrollee to follow a prescribed course of treatment; or

(b) administrative actions, such as failure to keep an appointment.

(5) (a) A health maintenance organization that disenrolls a group certificate holder for any reason not listed in subsection (3) or provided in rules adopted by the commissioner shall make arrangements to provide similar alternate insurance coverage to enrollees. The insurance coverage must be continued until the disenrolled group certificate holder finds its own coverage or a period of

12 months elapses, whichever comes first. The premium on the individual coverage must be at the then-customary rate applicable to the individual coverage offered by the insurer, health service corporation, or health maintenance organization that provides the alternate insurance coverage.

(b) If a health maintenance organization disenrolls an enrollee covered on an individual basis for any reason not listed in subsection (3) or provided in rules adopted by the commissioner, coverage must be continued until the anniversary date of the policy or for 1 year, whichever is earlier. A health maintenance organization that disenrolls an individual enrollee for failure to pay a required premium or for fraudulent statements on the enrollment form need not provide alternate insurance coverage to that enrollee.

(6) A health maintenance organization may not refer to itself as an insurer unless licensed as an insurer or use a name deceptively similar to the name or description of an insurer authorized to transact insurance in this state.

(7) A person may not refer to itself as a health maintenance organization or HMO unless it holds a valid certificate of authority issued by the commissioner."

Section 1252. Section 33-31-402, MCA, is amended to read:

"33-31-402. Suspension or revocation of certificate of authority. (1) The commissioner may ~~in his discretion~~ suspend or revoke any certificate of authority issued to a health maintenance organization under this chapter if ~~he~~ *the commissioner* finds that any of the following conditions exist:

(a) The health maintenance organization is operating in contravention of its basic organizational document or in a manner contrary to that described in any other information submitted under 33-31-201 and ~~provided that such~~ *the* operation adversely affects the health maintenance organization's ability to provide benefits and operate under the application approved by the commissioner, unless amendments to ~~such~~ *the* submissions have been filed with and approved by the commissioner.

(b) The health maintenance organization issues evidences of coverage or uses a schedule of charges for health care services that do not comply with the requirements of 33-31-301.

(c) The health maintenance organization does not provide or arrange for basic health care services.

(d) The health maintenance organization is no longer financially responsible and may reasonably be expected to be unable to meet its obligations to enrollees or prospective enrollees.

(e) The health maintenance organization has failed to implement a mechanism affording the enrollees an opportunity to participate in matters of policy and operation under 33-31-222.

(f) The health maintenance organization has failed to implement the complaint system required by 33-31-303 to resolve valid complaints in a reasonable manner.

(g) The health maintenance organization~~,~~ or any person on its behalf~~,~~ has advertised or merchandised its services in an untrue, misrepresentative, misleading, deceptive, or unfair manner.

(h) The continued operation of the health maintenance organization would be hazardous to its enrollees.

(i) The health maintenance organization has otherwise failed to substantially comply with this chapter.

(2) The commissioner may ~~in his discretion~~ suspend or revoke a certificate of authority only if ~~he~~ *the commissioner* complies with the requirements of 33-31-404.

(3) When the certificate of authority of a health maintenance organization is suspended, the health maintenance organization may not, during the period of ~~such~~ suspension, enroll any additional enrollees except newborn infants or other newly acquired dependents of existing enrollees and may not engage in any advertising or solicitation.

(4) If the commissioner revokes the certificate of authority of a health maintenance organization, the health maintenance organization shall proceed, immediately following the effective date of the order of revocation, to wind up its affairs and may not transact further business except as may be essential to the orderly conclusion of its affairs. It may not engage in further advertising or solicitation following the effective date of the order of revocation. The commissioner may by written order permit further operation of the health maintenance organization if ~~he~~ *the commissioner* finds further operation to be in the best interest of enrollees to the extent that enrollees will be afforded the greatest practical opportunity to obtain continuing health care coverage."

Section 1253. Section 33-31-403, MCA, is amended to read:

"33-31-403. Supervision, rehabilitation, or liquidation of ~~a~~ health maintenance organization. (1) The supervision, rehabilitation, or liquidation of a health maintenance organization is considered to be the supervision, rehabilitation, or liquidation of an insurer and must be conducted under the supervision of the commissioner pursuant to chapter 2, part 13. The commissioner may apply for an order directing ~~him~~ *the commissioner* to supervise, rehabilitate, or liquidate a health maintenance organization upon any one or more grounds set out in 33-2-1321, 33-2-1331, or 33-2-1341 or when in ~~his~~ *the commissioner's* opinion the continued operation of the health maintenance organization would be hazardous either to the enrollees or to the people of this state. Enrollees ~~shall~~ have the same priority in the event of liquidation or rehabilitation as the law provides to policyholders of an insurer.

(2) A claim by a health care provider for an uncovered expenditure has the same priority as a claim by an enrollee if the provider of services agrees not to assert the claim against any enrollee of the health maintenance organization."

Section 1254. Section 33-31-404, MCA, is amended to read:

"33-31-404. Administrative procedures. (1) When the commissioner has cause to believe that grounds for the denial of an application for a certificate of authority exist or that grounds for the suspension or revocation of a certificate of authority exist, ~~he~~ *the commissioner* shall give written notice to the health maintenance organization specifically stating the grounds for denial, suspension, or revocation and fixing a time of at least 30 days after the notice for a hearing on the matter.

(2) After the hearing~~,~~ or upon the failure of the health maintenance organization to appear at the hearing, the commissioner shall make written findings and act as ~~he~~ *the commissioner* considers advisable. The commissioner shall mail the written findings to the health maintenance organization. The action of the commissioner is subject to review by the district court having jurisdiction. The court may, in disposing of the issue before it, modify, affirm, or reverse the order of the commissioner in whole or in part.

(3) ~~Where~~ *When* notice and hearing are required with regard to actions taken by the commissioner under this chapter, the requirements of 33-1-314

through 33-1-316 and Title 33, chapter 1, part 7, apply, except that the formal rules of pleading and evidence must be observed. To the extent that 33-1-314 through 33-1-316 and Title 33, chapter 1, part 7, do not address the notice and hearing requirements of this chapter, the provisions of Title 2, chapter 4, parts 6 and 7, apply."

Section 1255. Section 33-31-405, MCA, is amended to read:

"33-31-405. Penalties and enforcement. (1) The commissioner may, in addition to suspension or revocation of a certificate of authority under 33-31-402, after notice and hearing, impose an administrative penalty in an amount not less than $500 or more than $10,000 if ~~he~~ *the commissioner* gives reasonable notice in writing of the intent to levy the penalty and the health maintenance organization has a reasonable time within which to remedy the defect in its operations that gave rise to the penalty citation.

(2) If the commissioner has cause to believe that a violation of this chapter has occurred or is threatened, the commissioner may:

(a) give notice to the health maintenance organization and to the representatives or other persons who appear to be involved in the suspected violation;

(b) arrange a conference with the alleged violators or their authorized representatives to attempt to ascertain the facts relating to the suspected violation; and

(c) if it appears that a violation has occurred or is threatened, arrive at an adequate and effective means of correcting or preventing the violation.

(3) (a) The commissioner may issue an order directing a health maintenance organization or its representative to cease and desist from engaging in an act or practice in violation of this chapter.

(b) Within 15 days after service of the cease and desist order, the respondent may request a hearing to determine whether acts or practices in violation of this chapter have occurred. The hearing must be conducted pursuant to Title 2, chapter 4, part 6, and judicial review must be available as provided by Title 2, chapter 4, part 7.

(4) If a health maintenance organization violates a provision of this chapter and the commissioner elects not to issue a cease and desist order or if the respondent does not comply with a cease and desist order issued pursuant to subsection (3), the commissioner may institute a proceeding to obtain injunctive or other appropriate relief in the district court of Lewis and Clark County."

Section 1256. Section 35-1-418, MCA, is amended to read:

"35-1-418. General standards for directors. (1) A director shall discharge ~~his~~ *the* duties as a director, including the director's duties as a member of a committee:

(a) in good faith;

(b) with the care an ordinarily prudent person in a similar position would exercise under similar circumstances; and

(c) in a manner *that* the director reasonably believes to be in the best interests of the corporation.

(2) In discharging duties, a director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

(a) one or more officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the matters presented;

(b) attorneys, public accountants, or other persons with regard to matters *that* the director reasonably believes are within the person's professional or expert competence; or

(c) a committee of the board of directors of which the director is not a member if the director reasonably believes the committee merits confidence.

(3) A director is not acting in good faith if the director has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (2) unwarranted.

(4) A director is not liable for any action taken as a director or for any failure to take any action if ~~he~~ *the director* performed the duties of the director's office in compliance with this section."

Section 1257. Section 35-1-421, MCA, is amended to read:

"35-1-421. Terms of directors generally. (1) The terms of the initial directors of a corporation expire at the first shareholders' meeting at which directors are elected.

(2) The terms of all other directors expire at the next annual shareholders' meeting following their election unless their terms are staggered under 35-1-422.

(3) A decrease in the number of directors does not shorten an incumbent director's term.

(4) A director elected or appointed to fill a vacancy is elected or appointed for the unexpired term of ~~his~~ *the director's* predecessor in office.

(5) Despite the expiration of a director's term, the director continues to serve until the director's successor is elected and qualifies or until there is a decrease in the number of directors."

Section 1258. Section 35-1-423, MCA, is amended to read:

"35-1-423. Resignation of directors. (1) A director may resign at any time by delivering written notice to the board of directors, *to* its ~~chairman~~ *presiding officer*, or to the corporation.

(2) A resignation is effective when the notice is delivered unless the notice specified a later effective date."

Section 1259. Section 35-1-424, MCA, is amended to read:

"35-1-424. Removal of directors. (1) The shareholders may remove one or more directors with or without cause unless the articles of incorporation provide that directors may be removed only for cause.

(2) If a director is elected by a voting group of shareholders, only the shareholders of that voting group may participate in the vote to remove the director.

(3) Any director or the entire board of directors may be removed only by a vote of the holders of two-thirds of the shares entitled to vote at an election of directors unless otherwise provided by the articles of incorporation or bylaws. If the shareholders have the right to cumulate their votes when electing directors and if less than the entire board is to be removed, a director may not be removed if the votes cast against the director's removal would be sufficient to elect ~~him~~ *the director* if cumulatively voted at an election of the entire board of directors or, if there are classes of directors, at an election of the class of directors of which

the director is a part. If the corporation has fewer than 100 shareholders, the entire board of directors may be removed only by a vote of a majority of the shares then entitled to vote.

(4) A director may be removed by the shareholders only at a meeting called for the purpose of removing the director. The meeting notice must state that the purpose, or one of the purposes, of the meeting is removal of the director."

Section 1260. Section 35-1-428, MCA, is amended to read:

"35-1-428. Penalty for signing false document. (1) The execution of any document required to be filed with the secretary of state under this chapter constitutes an affirmation, under the penalties of false swearing, by each person executing the document that the facts stated ~~therein~~ *in the document* are true.

(2) The secretary of state shall provide for the printing of a warning to this effect on each form prescribed by ~~him~~ *the secretary of state* under this chapter."

Section 1261. Section 35-1-435, MCA, is amended to read:

"35-1-435. Quorum — voting. (1) Unless the articles of incorporation or bylaws require a greater number, a quorum of a board of directors consists of:

(a) a majority of the fixed number of directors if the corporation has a fixed board size; or

(b) a majority of the number of directors prescribed or, if ~~no~~ *a* number is *not* prescribed, the number in office immediately before the meeting begins~~,~~ if the corporation has a variable-range size board.

(2) The articles of incorporation or bylaws may authorize a quorum of a board of directors to consist of no fewer than one-third of the fixed or prescribed number of directors.

(3) If a quorum is present when a vote is taken, the affirmative vote of a majority of directors present is the act of the board of directors unless the articles of incorporation or bylaws require the vote of a greater number of directors.

(4) A director who is present at a meeting of the board of directors or a committee of the board of directors when corporate action is taken is considered to have assented to the action taken unless:

(a) the director objects at the beginning of the meeting or promptly upon the director's arrival to holding the meeting or transacting business at the meeting and delivers written notice of the director's objection to the presiding officer before its adjournment or to the corporation immediately after adjournment of the meeting;

(b) the director's dissent or abstention from the action taken is entered in the minutes of the meeting; or

(c) the director delivers written notice of ~~his~~ *the* dissent or abstention to the presiding officer of the meeting before its adjournment or to the corporation immediately after adjournment of the meeting.

(5) The right of dissent or abstention is not available to a director who votes in favor of the action taken."

Section 1262. Section 35-1-443, MCA, is amended to read:

"35-1-443. Standards of conduct for officers. (1) An officer with discretionary authority shall discharge ~~his~~ duties under that authority:

(a) in good faith;

(b) with the care *that* an ordinarily prudent person in a similar position would exercise under similar circumstances; and

(c) in a manner the officer reasonably believes to be in the best interests of the corporation.

(2) In discharging ~~his~~ *an officer's* duties, an officer is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

(a) one or more officers or employees of the corporation whom the officer reasonably believes to be reliable and competent in the matters presented; or

(b) attorneys, public accountants, or other persons as to matters the officer reasonably believes are within the person's professional or expert competence.

(3) An officer is not acting in good faith if the officer has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (2) unwarranted.

(4) An officer is not liable for any action taken as an officer or for any failure to take any action if the officer performed the duties of ~~his~~ office in compliance with this section."

Section 1263. Section 35-1-451, MCA, is amended to read:

"35-1-451. Definitions. As used in 35-1-451 through 35-1-459, the following definitions apply:

(1) "Corporation" includes any domestic or foreign predecessor entity of a corporation in a merger or other transaction in which the predecessor's existence ceased upon consummation of the transaction.

(2) (a) "Director" means an individual who is or was a director of a corporation or an individual who, while a director of a corporation, is or was serving at the corporation's request as a director, officer, partner, trustee, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust, employee benefit plan, or other enterprise. A director is considered to be serving an employee benefit plan at the corporation's request if the director's duties to the corporation include duties or services by ~~him~~ *the director* to the plan or to participants in or beneficiaries of the plan.

(b) ~~Director~~ *The term* includes, unless the context requires otherwise, the estate or personal representative of a director.

(3) "Expenses" include attorney fees.

(4) "Liability" means the obligation to pay a judgment, settlement, penalty, or fine, including an excise tax assessed with respect to an employee benefit plan, or to pay reasonable expenses incurred with respect to a proceeding.

(5) (a) "Official capacity" means:

(i) when used with respect to a director, the office of director in a corporation; or

(ii) when used with respect to an individual other than a director, as contemplated in 35-1-457, the office in a corporation held by the officer or the employment or agency relationship undertaken by the employee or agent on behalf of the corporation.

(b) ~~Official capacity~~ *The term* does not include service for any other foreign or domestic corporation or any partnership, joint venture, trust, employee benefit plan, or other enterprise.

(6) "Party" includes an individual who was, is, or is threatened to be made a named defendant or respondent in a proceeding.

(7) "Proceeding" means any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative and whether formal or informal."

Section 1264. Section 35-1-452, MCA, is amended to read:

"35-1-452. Authority to indemnify. (1) Except as provided in subsection (4), an individual made a party to a proceeding because ~~he~~ *the individual* is or was a director may be indemnified against liability incurred in the proceeding if:

(a) ~~he conducted himself~~ *the individual engaged* in good faith *conduct*;

(b) ~~he~~ *the individual* reasonably believed:

(i) in the case of conduct in ~~his~~ *an* official capacity with the corporation, that ~~his~~ *the individual's* conduct was in the corporation's best interests; and

(ii) in all other cases, that ~~his~~ *the individual's* conduct was at least not opposed to the corporation's best interests; and

(c) in the case of any criminal proceeding, ~~he had no~~ *the individual did not have* reasonable cause to believe ~~his~~ *the* conduct was unlawful.

(2) A director's conduct with respect to an employee benefit plan for a purpose the director reasonably believed to be in the interests of the participants in and beneficiaries of the plan is conduct that satisfies the requirement of subsection (1)(b)(ii).

(3) The termination of a proceeding by judgment, order, settlement, *or* conviction~~,~~ or upon a plea of nolo contendere or its equivalent is not, of itself, a determination that the director did not meet the standard of conduct described in this section.

(4) A corporation may not indemnify a director under this section:

(a) in connection with a proceeding by or in the right of the corporation in which the director was adjudged liable to the corporation; or

(b) in connection with any other proceeding charging improper personal benefit to the director, whether or not involving action in the director's official capacity, in which the director was adjudged liable on the basis that personal benefit was improperly received by the director.

(5) Indemnification permitted under this section in connection with a proceeding by or in the right of the corporation is limited to reasonable expenses incurred in connection with the proceeding."

Section 1265. Section 35-1-453, MCA, is amended to read:

"35-1-453. Mandatory indemnification. Unless limited by its articles of incorporation, a corporation shall indemnify a director who was wholly successful, on the merits or otherwise, in the defense of any proceeding to which the director was a party because ~~he~~ *the individual* is or was a director of the corporation, against reasonable expenses incurred by the director in connection with the proceeding."

Section 1266. Section 35-1-458, MCA, is amended to read:

"35-1-458. Insurance. A corporation may purchase and maintain insurance on behalf of an individual who is or was a director, officer, employee, or agent of the corporation or who, while a director, officer, employee, or agent of the corporation, is or was serving at the request of the corporation as a director, officer, partner, trustee, employee, or agent of another foreign or domestic

corporation, partnership, joint venture, trust, employee benefit plan, or other enterprise, against liability asserted against or incurred by ~~him~~ *the individual* in that capacity or arising from ~~his~~ *the individual's* status as a director, officer, employee, or agent, whether or not the corporation would have power to indemnify ~~him~~ *the individual* against the same liability under 35-1-452 or 35-1-453."

Section 1267. Section 35-1-461, MCA, is amended to read:

"35-1-461. Definitions. As used in 35-1-461 through 35-1-464, the following definitions apply:

(1) "Conflicting interest" with respect to a corporation means the interest a director of the corporation has respecting a transaction effected or proposed to be effected by the corporation or by a subsidiary of the corporation or any other entity in which the corporation has a controlling interest if:

(a) regardless of whether the transaction is brought before the board of directors of the corporation for action, the director knows at the time of commitment that ~~he~~ *the director* or a related person is a party to the transaction or has a beneficial financial interest in or is so closely linked to the transaction and the transaction is of such financial significance to the director or a related person that the interest would reasonably be expected to exert an influence on the director's judgment if the director were called upon to vote on the transaction; or

(b) the transaction is brought, or is of a character and significance to the corporation that it would in the normal course be brought, before the board of directors of the corporation for action and the director knows at the time of commitment that any of the following persons is either a party to the transaction or has a beneficial financial interest in or is so closely linked to the transaction and the transaction is of such financial significance to the person that the interest would reasonably be expected to exert an influence on the director's judgment if the director were called upon to vote on the transaction:

(i) an entity, other than the corporation, of which the director is a director, general partner, agent, or employee;

(ii) a person who controls one or more of the entities specified in subsection (1)(b)(i) or an entity that is controlled by, or is under common control with, one or more of the entities specified in subsection (1)(b)(i); or

(iii) an individual who is a general partner, principal, or employer of the director.

(2) "Director's conflicting interest transaction", with respect to a corporation, means a transaction effected or proposed to be effected by the corporation or by a subsidiary of the corporation or any other entity in which the corporation has a controlling interest in which transaction a director of the corporation has a conflicting interest.

(3) "Related person" means:

(a) the spouse or a parent or sibling of a spouse of the director;

(b) a child, grandchild, sibling, parent or spouse of any child, grandchild, sibling, or parent of the director;

(c) an individual having the same residence as the director;

(d) a trust or estate of which an individual specified in this subsection (3) is a substantial beneficiary; or

(e) a trust, estate, incompetent person, conservatee, or minor for whom the director is a fiduciary.

(4) "Required disclosure" means disclosure by a director, who has a conflicting interest, of:

(a) the existence and nature of ~~his~~ *the* conflicting interest; and

(b) all facts known to the director respecting the subject matter of the transaction that an ordinarily prudent person would reasonably believe to be material to a judgment about whether or not to proceed with the transaction.

(5) "Time of commitment" respecting a transaction means the time when the transaction is consummated or, if made pursuant to contract, the time when the corporation or its subsidiary or the entity in which it has a controlling interest becomes contractually obligated so that its unilateral withdrawal from the transaction would entail significant loss, liability, or other damage."

Section 1268. Section 35-1-464, MCA, is amended to read:

"35-1-464. Shareholders' action. (1) Shareholders' action respecting a transaction is effective for purposes of 35-1-462(2)(b) if a majority of the votes entitled to be cast by the holders of all qualified shares were cast in favor of the transaction after:

(a) notice to shareholders describing the director's conflicting interest transaction;

(b) provision of the information referred to in subsection (3); and

(c) required disclosure to the shareholders who voted on the transaction, to the extent the information was not known by them.

(2) A majority of the votes entitled to be cast by the holders of all qualified shares constitutes a quorum for purposes of action that complies with this section. Subject to the provisions of subsections (3) and (4), shareholders' action that otherwise complies with this section is not affected by the presence of ~~shareholders, or the voting,~~ *holders* of shares that are not qualified shares *or the voting of those shares*.

(3) For purposes of compliance with subsection (1), a director who has a conflicting interest respecting the transaction shall, before the shareholders' vote, inform the secretary or other office or agent of the corporation authorized to tabulate votes of the number of all shares and the identity of persons holding or controlling the vote of all shares that the director knows are beneficially owned by or the voting of which is controlled by the director or by a related person of the director, or both.

(4) If a shareholders' vote does not comply with subsection (1) solely because of a failure of a director to comply with subsection (3) and if the director establishes that ~~his~~ *the* failure did not determine and was not intended by ~~him~~ *the director* to influence the outcome of the vote, the court may, with or without further proceedings respecting 35-1-462(2)(c), take action respecting the transaction and the director and give effect, if any, to the shareholders' vote as it considers appropriate in the circumstances.

(5) For purposes of this section, "qualified shares" means any shares entitled to be voted with respect to the director's conflicting interest transaction except shares that, to the knowledge, before the vote, of the secretary or other officer or agent of the corporation authorized to tabulate votes, are beneficially owned by or the voting of which is controlled by a director who has a conflicting interest respecting the transaction or by a related person of the director, or both."

Section 1269. Section 35-1-535, MCA, is amended to read:

"35-1-535. Shareholders' preemptive rights. (1) The shareholders of a corporation do not have a preemptive right to acquire the corporation's unissued shares except to the extent provided in the articles of incorporation.

(2) A statement included in the articles of incorporation that "the corporation elects to have preemptive rights", or similar words, means that all of the following principles apply except to the extent the articles of incorporation expressly provide otherwise:

(a) The shareholders of the corporation have a preemptive right, granted on uniform terms and conditions prescribed by the board of directors to provide a fair and reasonable opportunity to exercise the right, to acquire proportional amounts of the corporation's unissued shares upon the decision of the board of directors to issue them and to acquire proportional amounts of the corporation's issued shares acquired by the corporation pursuant to 35-1-630 upon the decision of the board of directors to convey them.

(b) A shareholder may waive ~~his~~ *the shareholder's* preemptive right. A waiver evidenced by a writing is irrevocable even though it is not supported by consideration.

(c) Shareholders of a corporation *do not* have ~~no~~ *a* preemptive right to acquire proportional amounts of shares with respect to:

(i) shares issued as compensation to directors, officers, agents, or employees of the corporation, its subsidiaries, or its affiliates;

(ii) shares issued to satisfy conversion or option rights created to provide compensation to directors, officers, agents, or employees of the corporation, its subsidiaries, or its affiliates;

(iii) shares authorized in articles of incorporation that are issued within 6 months from the effective date of incorporation; or

(iv) shares sold otherwise than for money.

(d) Holders of shares of any class without general voting rights but with preferential rights to distributions or assets *do not* have ~~no~~ preemptive rights with respect to shares of any class.

(e) Holders of shares of any class with general voting rights but without preferential rights to distributions or assets *do not* have ~~no~~ preemptive rights with respect to shares of any class with preferential rights to distributions or assets unless the shares with preferential rights are convertible into or carry a right to subscribe for or acquire shares without preferential rights.

(f) Shares subject to preemptive rights that are not acquired by shareholders may be issued to any person for a period of 1 year after being offered to shareholders at a consideration set by the board of directors that is not lower than the consideration set for the exercise of preemptive rights. An offer at a lower consideration or after the expiration of 1 year is subject to the shareholders' preemptive rights.

(g) Shares acquired by the corporation pursuant to 35-1-630 *do not* have ~~no~~ preemptive rights as long as they are owned by the corporation.

(3) For purposes of this section, "shares" includes a security convertible into or carrying a right to subscribe for or acquire shares."

Section 1270. Section 35-1-828, MCA, is amended to read:

"35-1-828. Dissent by nominees and beneficial owners. (1) A record shareholder may assert dissenters' rights as to fewer than all the shares registered in ~~his~~ *the shareholder's* name only if ~~he~~ *the shareholder* dissents with respect to all shares beneficially owned by any one person and notifies the corporation in writing of the name and address of each person on whose behalf ~~he~~ *the shareholder* asserts dissenters' rights. The rights of a partial dissenter under this subsection are determined as if the shares as to which ~~he~~ *the shareholder* dissents and ~~his~~ *the shareholder's* other shares were registered in the names of different shareholders.

(2) A beneficial shareholder may assert dissenters' rights as to shares held on ~~his~~ *the beneficial shareholder's* behalf only if *the beneficial shareholder*:

(a) ~~he~~ submits to the corporation the record shareholder's written consent to the dissent not later than the time the beneficial shareholder asserts dissenters' rights; and

(b) ~~he~~ does so with respect to all shares of which ~~he~~ *the beneficial shareholder* is the beneficial shareholder or over which ~~he~~ *the beneficial shareholder* has power to direct the vote."

Section 1271. Section 35-1-830, MCA, is amended to read:

"35-1-830. Notice of intent to demand payment. (1) If proposed corporate action creating dissenters' rights under 35-1-827 is submitted to a vote at a shareholders' meeting, a shareholder who wishes to assert dissenters' rights:

(a) shall deliver to the corporation before the vote is taken written notice of ~~his~~ *the* intent to demand payment for ~~his~~ *the shareholder's* shares if the proposed action is effectuated; and

(b) may not vote ~~his~~ *the shareholder's* shares in favor of the proposed action.

(2) A shareholder who does not satisfy the requirements of subsection (1)(a) is not entitled to payment for ~~his~~ *the shareholder's* shares under 35-1-826 through 35-1-839."

Section 1272. Section 35-1-831, MCA, is amended to read:

"35-1-831. Dissenters' notice. (1) If proposed corporate action creating dissenters' rights under 35-1-827 is authorized at a shareholders' meeting, the corporation shall deliver a written dissenters' notice to all shareholders who satisfied the requirements of 35-1-830.

(2) The dissenters' notice must be sent no later than 10 days after the corporate action was taken and must:

(a) state where the payment demand must be sent and where and when certificates for certified shares must be deposited;

(b) inform shareholders of uncertificated shares to what extent transfer of the shares will be restricted after the payment is received;

(c) supply a form for demanding payment that includes the date of the first announcement to news media or to shareholders of the terms of the proposed corporate action and that requires the person asserting dissenters' rights to certify whether or not ~~he~~ *the person* acquired beneficial ownership of the shares before that date;

(d) set a date by which the corporation must receive the payment demand, which may not be fewer than 30 nor more than 60 days after the date the required notice under subsection (1) is delivered; and

(e) be accompanied by a copy of 35-1-826 through 35-1-839."

Section 1273. Section 35-1-832, MCA, is amended to read:

"35-1-832. Duty to demand payment. (1) A shareholder sent a dissenters' notice described in 35-1-831 shall demand payment, certify whether the shareholder acquired beneficial ownership of the shares before the date required to be set forth in the dissenters' notice pursuant to 35-1-831(2)(c), and deposit ~~his~~ *the shareholder's* certificates in accordance with the terms of the notice.

(2) The shareholder who demands payment and deposits ~~his~~ *the shareholder's* certificates under subsection (1) retains all other rights of a shareholder until these rights are canceled or modified by the taking of the proposed corporate action.

(3) A shareholder who does not demand payment or deposit ~~his~~ *the shareholder's* certificates ~~where~~ *when* required, each by the date set in the dissenters' notice, is not entitled to payment for ~~his~~ *the shareholder's* shares under 35-1-826 through 35-1-839."

Section 1274. Section 35-1-836, MCA, is amended to read:

"35-1-836. After-acquired shares. (1) A corporation may elect to withhold payment required by 35-1-834 from a dissenter unless the dissenter was the beneficial owner of the shares before the date set forth in the dissenters' notice as the date of the first announcement to news media or to shareholders of the terms of the proposed corporate action.

(2) To the extent the corporation elects to withhold payment under subsection (1), after taking the proposed corporate action, the corporation shall estimate the fair value of the shares plus accrued interest and shall pay this amount to each dissenter who agrees to accept it in full satisfaction of ~~his~~ *the dissenter's* demand. The corporation shall send with its offer a statement of its estimate of the fair value of the shares, an explanation of how the interest was calculated, and a statement of the dissenter's right to demand payment under 35-1-837."

Section 1275. Section 35-1-837, MCA, is amended to read:

"35-1-837. Procedure if shareholder dissatisfied with payment or offer. (1) A dissenter may notify the corporation in writing of the dissenter's own estimate of the fair value of the dissenter's shares and the amount of interest due and may demand payment of the dissenter's estimate, less any payment under 35-1-834, or reject the corporation's offer under 35-1-836 and demand payment of the fair value of the dissenter's shares and the interest due if:

(a) the dissenter believes that the amount paid under 35-1-834 or offered under 35-1-836 is less than the fair value of the dissenter's shares or that the interest due is incorrectly calculated;

(b) the corporation fails to make payment under 35-1-834 within 60 days after the date set for demanding payment; or

(c) the corporation, having failed to take the proposed action, does not return the deposited certificates or release the transfer restrictions imposed on uncertificated shares within 60 days after the date set for demanding payment.

(2) A dissenter waives the right to demand payment under this section unless ~~he~~ *the dissenter* notifies the corporation of ~~his~~ *the* demand in writing

under subsection (1) within 30 days after the corporation made or offered payment for ~~his~~ *the dissenter's* shares."

Section 1276. Section 35-1-941, MCA, is amended to read:

"35-1-941. Receivership or custodianship. (1) A court in a judicial proceeding brought to dissolve a corporation may appoint one or more receivers to wind up and liquidate, or one or more custodians to manage, the business and affairs of the corporation. The court shall hold a hearing, after notifying all parties to the proceeding and any interested persons designated by the court, before appointing a receiver or custodian. The court appointing a receiver or custodian has exclusive jurisdiction over the corporation and all its property wherever located.

(2) The court may appoint an individual or a domestic or foreign corporation, authorized to transact business in this state, as a receiver or custodian. The court may require the receiver or custodian to post bond, with or without sureties, in an amount the court directs.

(3) The court shall describe the powers and duties of the receiver or custodian in its appointing order, which may be amended from time to time. Among other powers:

(a) the receiver may dispose of all or any part of the assets of the corporation wherever located, at a public or private sale, if authorized by the court and may sue and defend in the receiver's own name as receiver of the corporation in all courts of this state; and

(b) the custodian may exercise all of the powers of the corporation through or in place of its board of directors or officers to the extent necessary to manage the affairs of the corporation in the best interests of its shareholders and creditors.

(4) The court during a receivership may redesignate the receiver a custodian and during a custodianship may redesignate the custodian a receiver if doing so is in the best interests of the corporation and its shareholders and creditors.

(5) The court from time to time during the receivership or custodianship may order compensation paid and expense disbursements or reimbursements made to the receiver or custodian and ~~his~~ *the receiver's or custodian's* counsel from the assets of the corporation or proceeds from the sale of the assets."

Section 1277. Section 35-1-943, MCA, is amended to read:

"35-1-943. Deposit with state treasurer. Assets of a dissolved corporation that should be transferred to a creditor, claimant, or shareholder of the corporation who cannot be found or who is not competent to receive them must be reduced to cash and deposited with the state treasurer or other appropriate state official for safekeeping. When the creditor, claimant, or shareholder furnishes satisfactory proof of entitlement to the amount deposited, the state treasurer or other appropriate state official shall pay ~~him~~ *the creditor, claimant, or shareholder* or ~~his~~ *the creditor's, claimant's, or shareholder's* representative that amount."

Section 1278. Section 35-1-1310, MCA, is amended to read:

"35-1-1310. Appeal from secretary of state's refusal to file document. (1) If the secretary of state refuses to file a document delivered to the secretary of state's office for filing, the domestic or foreign corporation may appeal the refusal to the district court for the first judicial district. The appeal is begun by petitioning the court to compel the filing of the document and by attaching to the petition the document and the secretary of state's explanation of ~~his~~ *the* refusal to file.

(2) The court may summarily order the secretary of state to file the document or take other action the court considers appropriate.

(3) The court's final decision may be appealed as in other civil proceedings."

Section 1279. Section 35-2-416, MCA, is amended to read:

"35-2-416. General standards for directors. (1) A director shall discharge ~~his~~ *the* duties as a director, including ~~his~~ *the director's* duties as a member of a committee:

(a) in good faith;

(b) with the care an ordinarily prudent person in a similar position would exercise under similar circumstances; and

(c) in a manner the director reasonably believes to be in the best interests of the corporation.

(2) In discharging ~~his~~ *the* duties, a director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data~~,~~ if prepared or presented by:

(a) one or more officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the matters presented;

(b) attorneys, public accountants, or other persons with regard to matters *that* the director reasonably believes are within the person's professional or expert competence;

(c) a committee of the board of which the director is not a member, as to matters within its jurisdiction, if the director reasonably believes the committee merits confidence; or

(d) in the case of religious corporations, religious authorities, ministers, priests, rabbis, or other persons whose position or duties in the religious organization the director believes justify reliance and confidence and whom the director believes to be reliable and competent in the matters presented.

(3) A director is not acting in good faith if the director has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (2) unwarranted.

(4) A director is not liable to the corporation, any member, or any other person for any action taken or not taken as a director if the director acted in compliance with this section.

(5) A director may not be a trustee with respect to the corporation or with respect to any property held or administered by the corporation, including but not limited to property that may be subject to restrictions imposed by the donor or transferor of the property.

(6) This chapter does not modify any limitation of liability of directors provided by Title 27."

Section 1280. Section 35-2-441, MCA, is amended to read:

"35-2-441. Standards of conduct for officers. (1) An officer with discretionary authority shall discharge ~~his~~ *the* duties under that authority:

(a) in good faith;

(b) with the care an ordinarily prudent person in a similar position would exercise under similar circumstances; and

(c) in a manner the officer reasonably believes to be in the best interests of the corporation and its members, if any.

(2) In discharging ~~his~~ *the* duties, an officer is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

(a) one or more officers or employees of the corporation who the officer reasonably believes to be reliable and competent in the matters presented;

(b) attorneys, public accountants, or other persons as to matters *that* the officer reasonably believes are within the person's professional or expert competence; or

(c) in the case of religious corporations, religious authorities, ministers, priests, rabbis, or other persons whose position or duties in the religious organization the officer believes justify reliance and confidence and who the officer believes to be reliable and competent in the matters presented.

(3) An officer is not acting in good faith if the officer has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (2) unwarranted.

(4) An officer is not liable to the corporation, any member, or any other person for an action taken or not taken as an officer if the officer acted in compliance with this section.

(5) This part does not modify any limitation of liability of officers provided by Title 27."

Section 1281. Section 35-2-447, MCA, is amended to read:

"35-2-447. Authority to indemnify. (1) Except as provided in subsection (4), an individual made a party to a proceeding because the individual is or was a director may be indemnified against liability incurred in the proceeding if the individual:

(a) ~~conducted himself~~ *engaged* in good faith *conduct*;

(b) reasonably believed:

(i) in the case of conduct in ~~his~~ *the individual's* official capacity with the corporation, that ~~his~~ *the* conduct was in its best interests; and

(ii) in all other cases, that ~~his~~ *the* conduct was at least not opposed to its best interests; and

(c) in the case of any criminal proceeding, had no reasonable cause to believe ~~his~~ *the* conduct was unlawful.

(2) A director's conduct with respect to an employee benefit plan for a purpose the director reasonably believed to be in the interests of the participants in and beneficiaries of the plan is conduct that satisfies the requirements of subsection (1)(b)(ii).

(3) The termination of a proceeding by judgment, order, settlement, *or* conviction~~,~~ or upon a plea of nolo contendere or its equivalent is not, of itself, a determination that the director did not meet the standard of conduct described in this section.

(4) A corporation may not indemnify a director under this section:

(a) in connection with a proceeding by or in the right of the corporation in which the director was adjudged liable to the corporation; or

(b) in connection with any other proceeding that charges improper personal benefit to the director, whether or not involving action in ~~his~~ *the director's* official capacity, in which the director was adjudged liable on the basis that personal benefit was improperly received by the director.

(5) Indemnification permitted under this section in connection with a proceeding by or in the right of the corporation is limited to reasonable expenses incurred in connection with the proceeding."

Section 1282. Section 35-2-448, MCA, is amended to read:

"35-2-448. Mandatory indemnification. Unless limited by its articles of incorporation, a corporation shall indemnify a director who was wholly successful, on the merits or otherwise, in the defense of any proceeding to which the director was a party because ~~he~~ *the individual* is or was a director of the corporation, against reasonable expenses actually incurred by the director in connection with the proceeding."

Section 1283. Section 35-2-449, MCA, is amended to read:

"35-2-449. Advance for expenses. (1) A corporation may pay for or reimburse the reasonable expenses incurred by a director who is a party to a proceeding in advance of final disposition of the proceeding if:

(a) the director furnishes the corporation *with* a written affirmation of ~~his~~ *the director's* good faith belief that ~~he~~ *the director* has met the standard of conduct described in 35-2-447;

(b) the director furnishes the corporation *with* a written undertaking, executed personally or on the director's behalf, to repay the advance if it is ultimately determined that the director did not meet the standard of conduct; and

(c) a determination is made that the facts then known to those making the determination would not preclude indemnification under 35-2-446 through 35-2-454.

(2) The undertaking required by subsection (1)(b) must be an unlimited general obligation of the director but need not be secured and may be accepted without reference to financial ability to make repayment.

(3) Determinations and authorizations of payments under this section must be made in the manner specified in 35-2-451."

Section 1284. Section 35-2-453, MCA, is amended to read:

"35-2-453. Insurance. A corporation may purchase and maintain insurance on behalf of an individual who is or was a director, officer, employee, or agent of the corporation or who, while a director, officer, employee, or agent of the corporation, is or was serving at the request of the corporation as a director, officer, partner, trustee, employee, or agent of another foreign or domestic business or nonprofit corporation, partnership, joint venture, trust, employee benefit plan, or other enterprise~~,~~ against liability asserted against or incurred by ~~him~~ *the individual* in that capacity or arising from ~~his~~ *the individual's* status as a director, officer, employee, or agent, whether or not the corporation would have power to indemnify the ~~person~~ *individual* against the same liability under 35-2-447 or 35-2-448."

Section 1285. Section 35-2-510, MCA, is amended to read:

"35-2-510. Admission. (1) The articles or bylaws may establish criteria or procedures for admission of members.

(2) A person may not be admitted as a member without ~~his~~ *the person's* consent."

Section 1286. Section 35-2-722, MCA, is amended to read:

"35-2-722. Notices to ~~the~~ attorney general. (1) Except as provided in subsection (4), a public benefit corporation or religious corporation shall give the attorney general written notice that it intends to dissolve at or before the time it delivers articles of dissolution to the secretary of state. The notice must include a copy or summary of the plan of dissolution.

(2) Assets may not be transferred or conveyed by a public benefit corporation or religious corporation as part of the dissolution process until 20 days after it has given the written notice required by subsection (1) to the attorney general or until the attorney general has consented in writing to the dissolution or indicated in writing that ~~he~~ *the attorney general* will not take action in respect to the transfer or conveyance, whichever is earlier.

(3) When all or substantially all of the assets of a public benefit corporation have been transferred or conveyed following approval of dissolution, the board shall deliver to the attorney general a list showing those, other than creditors, to whom the assets were transferred or conveyed. The list must indicate the address of each person, other than creditors, who received assets and indicate what assets each received.

(4) A public benefit corporation or religious corporation that is considered a nonprofit health entity, as defined in 50-4-701, is subject to the provisions of Title 50, chapter 4, part 7."

Section 1287. Section 35-2-727, MCA, is amended to read:

"35-2-727. Unknown claims against dissolved corporations. (1) The dissolution of a corporation, including by the expiration of its term, does not take away or impair any remedy available to or against the corporation~~,~~ *or* its officers, directors, or members for any claim or right, whether or not the claim or right existed or accrued prior to the dissolution. Any action or proceeding by or against the corporation referred to in this subsection may be prosecuted or defended by the corporation in its corporate name. Members, directors, and officers may take corporate or other action as is appropriate to protect a remedy, right, or claim.

(2) A claim may be enforced under ~~this section or~~ 35-2-726 *or this section*:

(a) against the dissolved corporation~~,~~ to the extent of its undistributed assets; or

(b) if the assets have been distributed in liquidation, against a member of the dissolved corporation to the extent of the member's pro rata share of the claim or the corporate assets distributed to ~~him~~ *the member* in liquidation, whichever is less. However, a member's total liability for all claims under this section may not exceed the total amount of assets distributed to the member.

(3) Subsections (1) and (2) apply to a foreign corporation transacting business in this state, and its members, for any claims otherwise arising or accruing under Montana law."

Section 1288. Section 35-2-732, MCA, is amended to read:

"35-2-732. Deposit with state treasurer. Assets of a dissolved corporation that should be transferred to a creditor, claimant, or member of the corporation who cannot be found or who is not competent to receive them must be reduced to cash, subject to known trust restrictions, and deposited with the state treasurer for safekeeping. However, in the state treasurer's discretion, property may be received and held in kind. When the creditor, claimant, or member furnishes satisfactory proof of entitlement to the amount deposited or property held in kind, the state treasurer shall deliver to the creditor, claimant,

member, or other person as ~~his~~ *the creditor's, claimant's, or member's* representative that amount or property."

Section 1289. Section 35-2-831, MCA, is amended to read:

"35-2-831. Withdrawal of foreign corporation. (1) A foreign corporation authorized to transact business in this state may not withdraw from this state until it obtains a certificate of withdrawal from the secretary of state.

(2) A foreign corporation authorized to transact business in this state may apply for a certificate of withdrawal by delivering an application to the secretary of state for filing. The application must set forth:

(a) the name of the foreign corporation and the name of the state or country under whose law it is incorporated;

(b) the fact that it is not transacting business in this state and that it surrenders its authority to transact business in this state;

(c) the fact that it revokes the authority of its registered agent to accept service on its behalf and appoints the secretary of state as its agent for service of process in any proceeding based on a cause of action arising during the time it was authorized to do business in this state;

(d) a mailing address to which the secretary of state may mail a copy of any process served on ~~him~~ *the secretary of state* under subsection (2)(c); and

(e) a commitment to notify the secretary of state, in the future, of any change in the mailing address."

Section 1290. Section 35-3-205, MCA, is amended to read:

"35-3-205. Powers of corporation sole. Every corporation sole organized under the provisions of this chapter, for the purpose of the trust ~~hereinafter mentioned~~ *described in this section*, ~~shall have~~ *has* power:

(1) to continue to exist perpetually by its corporate name unless a limited period of duration is stated in its articles of incorporation;

(2) to sue and be sued, complain*,* and defend~~,~~ in its corporate name;

(3) to have a corporate seal ~~which~~ *that* may be altered at pleasure and to use the ~~same~~ *seal* by causing it or a facsimile ~~thereof~~ to be impressed or affixed or in any other manner reproduced;

(4) to purchase, take, receive, lease, take by gift, devise, or bequest or otherwise acquire, own, hold, improve, use, and otherwise deal in and with real or personal property or any interest ~~therein~~ *in real or personal property*, wherever situated, provided that all ~~such~~ property ~~shall~~ *must* be in trust for the use, purpose, and benefit of ~~such~~ *the* religious denomination, society, or church for which and in whose behalf ~~such~~ *the* corporation sole is organized;

(5) to sell, convey, mortgage, pledge, lease, exchange, transfer, and otherwise dispose of all or any part of its property and assets;

(6) to lend money to its employees other than its officers and otherwise assist its employees and officers;

(7) to purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, lend, pledge, or otherwise dispose of and otherwise use and deal in and with shares or other interests in or obligations of other domestic or foreign corporations, whether for profit or not for profit, associations, partnerships, or individuals or direct or indirect obligations of the United States or of any other government, state, territory, governmental

district, or municipality or of any instrumentality ~~thereof~~ *of a governmental entity*;

(8) to make contracts and incur liabilities, borrow money at ~~such~~ rates of interest ~~as~~ *that* the corporation may determine, issue its notes, bonds, and other obligations, and secure any of its obligations by mortgage or pledge of all or any of its property, franchises, and income;

(9) to lend money for its corporate purposes, invest and reinvest its funds, and take and hold real and personal property as security for the payment of funds ~~so~~ loaned or invested;

(10) to conduct its affairs, carry on its operations, and have offices and exercise the powers granted by this chapter in any state, territory, district, or possession of the United States or in any foreign country;

(11) to elect or appoint officers and agents of the corporation, including attorneys-in-fact, and to define their duties and fix their compensation;

(12) to make and alter bylaws, not inconsistent with its articles of incorporation or with the laws of this state, for the administration and regulation of the affairs of the corporation;

(13) unless otherwise provided in the articles of incorporation, to make donations for the public welfare or for charitable, religious, scientific, or educational purposes;

(14) to indemnify any officer or agent or any person who may have served at its request as an officer or agent or as a director or officer of another corporation in which it owns shares of capital stock or of which it is a creditor against claims, liabilities, expenses, and costs necessarily incurred by ~~him~~ *the person* in connection with the defense, compromise, or settlement of any action, suit, or proceeding, civil or criminal, in which ~~he~~ *the person* is made a party by reason of being or having been ~~such~~ *a* director or officer, except in relation to matters as to which ~~he shall be~~ *the person is* adjudged in ~~such~~ *the* action, suit, or proceeding to be liable for negligence or misconduct in the performance of duty to the corporation~~;~~*,* and to make any other indemnification that ~~shall be~~ *is* authorized by the articles of incorporation or by any bylaw or resolution promulgated by the incorporator or ~~his~~ *the incorporator's* successor;

(15) to pay pensions and retirement benefits and establish pension plans, pension trusts, insurance plans, and incentive plans for all or any of its officers and employees;

(16) to cease its corporate activities and surrender its corporate franchise;

(17) to have and exercise all powers necessary or convenient to effect any or all of the purposes for which the corporation is organized."

Section 1291. Section 35-3-206, MCA, is amended to read:

"35-3-206. Amendment of articles of incorporation. (1) Whenever any bishop, chief priest, or presiding elder ~~shall have~~ *has* filed in the office of the secretary of state articles of incorporation, under the provisions of an act entitled "An Act Authorizing and Regulating the Incorporation of Sole Corporations and Defining Their Powers", approved February 27, 1899, or amendments ~~thereto~~ *to that act* or under this chapter, ~~such~~ *the* corporation sole may amend its articles of incorporation from time to time in any and as many respects as may be desired~~, so~~ *as* long as its articles of incorporation as amended contain only ~~such~~ provisions ~~as~~ *that* are lawful under this chapter.

(2) ~~Such~~ *The* articles of amendment ~~shall~~ *must* be promulgated by the incorporator or ~~his~~ *a* successor by setting forth a statement of the facts authorizing ~~such~~ *the* amendment and the date upon which ~~said~~ *the* amendment was promulgated, and ~~his~~ *the incorporator's or successor's* affidavit that the ~~same~~ *amendment* is a true copy or translation ~~thereof shall be deemed~~ *of the amendment is considered* a sufficient attestation ~~thereof~~."

Section 1292. Section 35-3-207, MCA, is amended to read:

"35-3-207. Succession. (1) In the event of the death or resignation from office of any bishop, chief priest, or presiding elder or of ~~his~~ *that individual's* transfer or removal ~~therefrom~~ *from office* by the person or body having the authority to remove ~~him~~ *that individual*, ~~his~~ *the individual's* successor in office ~~shall succeed~~ *succeeds* to the powers, rights, and obligations of the office and ~~shall become~~ *becomes* vested with the title to the property with like power and authority over the ~~same~~ *property* and subject to all the legal liabilities and obligations with reference ~~thereto~~ *to the property*.

(2) Succession ~~shall be~~ *is* effected when the successor ~~shall file~~ *files* in the office of the secretary of state the original or a copy or translation of ~~his~~ *the successor's* commission, certificate, or letters of appointment as ~~such~~ bishop, chief priest, or presiding elder, duly attested, and ~~his~~ *the successor's* affidavit that the ~~same~~ *document* is a true copy or translation ~~shall be deemed~~ *is considered* sufficient attestation ~~thereof~~ *of the document*."

Section 1293. Section 35-4-403, MCA, is amended to read:

"35-4-403. Rendering services. A professional corporation, domestic or foreign, may render professional services in this state only through natural persons permitted to render ~~such~~ *the* services in this state~~;~~. ~~however~~ *However*, nothing in this chapter requires any person employed by a professional corporation to be licensed to perform services for which ~~no~~ *a* license is *not* otherwise required or prohibits the rendering of professional services by a licensed natural person acting in ~~his~~ *an* individual capacity, even if ~~such~~ *the* person is a shareholder, director, officer, employee, or agent of a professional corporation, domestic or foreign."

Section 1294. Section 35-4-404, MCA, is amended to read:

"35-4-404. Responsibility for services. (1) An individual who renders professional services as an employee of a domestic or foreign professional corporation is liable for any negligent or wrongful act or omission in which ~~he~~ *the individual* personally participates to the same extent as if ~~he~~ *the individual* had rendered ~~such~~ *the* services as a sole practitioner. An employee of a professional corporation is not liable for the conduct of other employees unless ~~he~~ *the employee* is at fault in appointing, supervising, or cooperating with them.

(2) A domestic or foreign professional corporation whose employee performs professional services within the scope of ~~his~~ *the employee's* employment or apparent authority to act for the corporation is liable to the same extent as that employee.

(3) Except as otherwise provided by statute, the personal liability of a shareholder of a domestic or foreign professional corporation is no greater in any respect than that of a shareholder of a corporation organized under the Montana Business Corporation Act."

Section 1295. Section 35-9-201, MCA, is amended to read:

"35-9-201. Notice of statutory close corporation status on issued shares. (1) The following statement must appear conspicuously on each share certificate issued by a statutory close corporation:

The rights of shareholders in a statutory close corporation may differ materially from the rights of shareholders in other corporations. Copies of the articles of incorporation and bylaws, shareholders' agreements, and other documents, any of which may restrict transfers and affect voting and other rights, may be obtained by a shareholder on written request to the corporation.

(2) Within a reasonable time after the issuance or transfer of uncertificated shares, the corporation shall send to the shareholders a written notice containing the information required by subsection (1).

(3) The notice required by this section satisfies all requirements ~~of this chapter and~~ of 35-1-628 *and of this chapter* that notice of share transfer restrictions be given.

(4) A person claiming an interest in shares of a statutory close corporation that has complied with the notice requirement of this section is bound by the documents referred to in the notice. A person claiming an interest in shares of a statutory close corporation that has not complied with the notice requirement of this section is bound by any documents of which ~~he~~ *the person* or ~~a~~ *another* person through whom ~~he~~ *the person* claims has knowledge or notice.

(5) A corporation shall provide to any shareholder upon ~~his~~ *the shareholder's* written request and without charge copies of provisions that restrict transfer or affect voting or other rights of shareholders appearing in articles of incorporation, bylaws, or shareholders' or voting trust agreements filed with the corporation."

Section 1296. Section 35-9-202, MCA, is amended to read:

"35-9-202. Share transfer prohibition. (1) An interest in shares of a statutory close corporation may not be voluntarily or involuntarily transferred, by operation of law or otherwise, except to the extent permitted by the articles of incorporation or under 35-9-203.

(2) Except to the extent the articles of incorporation provide otherwise, this section does not apply to a transfer:

(a) to the corporation or to any other holder of the same class or series of shares;

(b) to members of the shareholder's immediate family or to a trust, all of whose beneficiaries are members of the shareholder's immediate family, which immediate family consists of ~~his~~ *the shareholder's* spouse, parents, lineal descendants including adopted children and stepchildren and the spouse of any lineal descendant, and brothers and sisters;

(c) that has been approved in writing by all of the holders of the corporation's shares having general voting rights;

(d) to an executor or administrator upon the death of a shareholder or to a trustee or receiver as the result of a bankruptcy, insolvency, dissolution, or similar proceeding brought by or against a shareholder;

(e) by merger or share exchange under Title 35, chapter 1, part 8, or an exchange of existing shares for other shares of a different class or series in the corporation;

(f) by a pledge as collateral for a loan that does not grant the pledgee any voting rights possessed by the pledgor; and

(g) made after termination of the corporation's status as a statutory close corporation."

Section 1297. Section 35-9-203, MCA, is amended to read:

"35-9-203. Share transfer after first refusal by corporation. (1) A person desiring to transfer shares of a statutory close corporation subject to the transfer prohibition of 35-9-202 ~~must~~ *shall* first offer them to the corporation by obtaining an offer to purchase the shares for cash from a third person who is eligible to purchase the shares under subsection (2). The offer by the third person must be in writing and state the offeror's name and address, the number and class or series of shares offered, the offering price per share, and the other terms of the offer.

(2) A third person is eligible to purchase the shares if:

(a) ~~he~~ *the third person* is eligible to become a qualified shareholder under any federal or state tax statute the corporation has adopted and ~~he~~ agrees in writing not to terminate ~~his~~ *that* qualification without the approval of the remaining shareholders; and

(b) ~~his~~ *the* purchase of the shares will not impose a personal holding company tax or similar federal or state penalty tax on the corporation.

(3) The person desiring to transfer shares shall deliver the offer to the corporation and by doing so offers to sell the shares to the corporation on the terms of the offer. Within 20 days after the corporation receives the offer, the corporation shall call a special shareholders' meeting, to be held not more than 40 days after the call, to decide whether the corporation should purchase all but not less than all of the offered shares. The offer must be approved by the affirmative vote of the holders of a majority of votes entitled to be cast at the meeting, excluding votes in respect of the shares covered by the offer.

(4) The corporation ~~must~~ *shall* deliver to the offering shareholder written notice of acceptance within 75 days after receiving the offer or the offer is rejected. If the corporation makes a counteroffer, the shareholder ~~must~~ *shall* deliver to the corporation written notice of acceptance within 15 days after receiving the counteroffer or the counteroffer is rejected. If the corporation accepts the original offer or the shareholder accepts the corporation's counteroffer, the shareholder shall deliver to the corporation duly endorsed certificates for the shares, or instruct the corporation in writing to transfer the shares if uncertificated, within 20 days after the effective date of the notice of acceptance. The corporation may specifically enforce the shareholder's delivery or instruction obligation under this subsection.

(5) A corporation accepting an offer to purchase shares under this section may allocate some or all of the shares to one or more of its shareholders or to other persons if all the shareholders voting in favor of the purchase approve the allocation. However, if the corporation has more than one class or series of shares, the remaining holders of the class or series of shares being purchased are entitled to a first option to purchase the shares not purchased by the corporation in proportion to their shareholdings or in some other proportion agreed to by all the shareholders participating in the purchase.

(6) If an offer to purchase shares under this section is rejected, the offering shareholder, for a period of 120 days after the corporation received ~~his~~ *the* offer, is entitled to transfer to the third-person offeror all but not less than all of the offered shares in accordance with the terms of ~~his~~ *the* offer to the corporation."

Section 1298. Section 35-9-204, MCA, is amended to read:

"35-9-204. Attempted share transfer in breach of prohibition. (1) An attempt to transfer shares in a statutory close corporation in violation of a prohibition against transfer binding on the transferee is ineffective.

(2) An attempt to transfer shares in a statutory close corporation in violation of a prohibition against transfer that is not binding on the transferee, either because the notice required by 35-9-201 was not given or because the prohibition is held unenforceable by a court, gives the corporation an option to purchase the shares from the transferee for the same price and on the same terms that ~~he~~ *the transferee* purchased them. To exercise its option, the corporation ~~must~~ *shall* give the transferee written notice within 30 days after the shares are presented for registration in the transferee's name. The corporation may specifically enforce the transferee's sale obligation upon exercise of its purchase option."

Section 1299. Section 35-9-205, MCA, is amended to read:

"35-9-205. Compulsory purchase of shares after death of shareholder. (1) ~~This section and~~ *Sections* 35-9-206 through 35-9-208 *and this section* apply to a statutory close corporation only if so provided in its articles of incorporation. If these sections apply, the executor or administrator of the estate of a deceased shareholder may require the corporation to purchase or cause to be purchased all but not less than all of the decedent's shares or to be dissolved.

(2) The provisions of 35-9-206 through 35-9-208 may be modified only if the modification is set forth or referred to in the articles of incorporation.

(3) An amendment to the articles of incorporation to provide for application of 35-9-206 through 35-9-208 or to modify or delete the provisions of these sections must be approved by the holders of at least two-thirds of the votes of each class or series of shares of the statutory close corporation, voting as separate voting groups, whether or not otherwise entitled to vote on amendments. If the corporation has no shareholders when the amendment is proposed, it must be approved by at least two-thirds of the subscribers for shares, if any, or if none, by all of the incorporators.

(4) A shareholder who votes against an amendment to modify or delete the provisions of 35-9-206 through 35-9-208 is entitled to dissenters' rights under 35-1-826 through 35-1-839 if the amendment upon adoption terminates or substantially alters ~~his~~ *the shareholder's* existing rights under these sections to have ~~his~~ *the shareholder's* shares purchased.

(5) A shareholder may waive ~~his~~ *the shareholder's* and ~~his~~ *the shareholder's* estate's rights under 35-9-206 through 35-9-208 by a signed writing.

(6) Sections 35-9-206 through 35-9-208 do not prohibit any other agreement providing for the purchase of shares upon a shareholder's death, nor do they prevent a shareholder from enforcing any remedy ~~he~~ *that the shareholder* has independently of 35-9-206 through 35-9-208."

Section 1300. Section 35-9-302, MCA, is amended to read:

"35-9-302. Elimination of board of directors. (1) A statutory close corporation may operate without a board of directors if its articles of incorporation contain a statement to that effect.

(2) An amendment to articles of incorporation eliminating a board of directors must be approved by:

(a) all the shareholders of the corporation, whether or not otherwise entitled to vote on amendments;

(b) if no shares have been issued, by all the subscribers for shares, if any; or

(c) if there are no subscribers, by all the incorporators.

(3) While a corporation is operating without a board of directors as authorized by subsection (1):

(a) all corporate powers must be exercised by or under the authority of and the business and affairs of the corporation managed under the direction of the shareholders;

(b) unless the articles of incorporation provide otherwise:

(i) action requiring director approval or both director and shareholder approval is authorized if approved by the shareholders; and

(ii) action requiring a majority or greater percentage vote of the board of directors is authorized if approved by the majority or greater percentage of the votes of shareholders entitled to vote on the action;

(c) a shareholder is not liable for ~~his~~ *the shareholder's* act or omission, even though a director would be, unless the shareholder was entitled to vote on the action;

(d) a requirement by a state or the United States that a document delivered for filing contain a statement that specified action has been taken by the board of directors is satisfied by a statement that the corporation is a statutory close corporation without a board of directors and that the action was approved by the shareholders; and

(e) the shareholders may by resolution appoint one or more shareholders to sign documents as designated directors.

(4) An amendment to articles of incorporation deleting the statement eliminating a board of directors must be approved by the holders of at least two-thirds of the votes of each class or series of shares of the corporation, voting as separate voting groups, whether or not otherwise entitled to vote on amendments. The amendment must also specify the number, names, and addresses of the corporation's directors or describe who will perform the duties of a board under 35-1-416."

Section 1301. Section 35-9-503, MCA, is amended to read:

"35-9-503. Extraordinary relief — share purchase. (1) If the court finds that the ordinary relief described in 35-9-502(1) is or would be inadequate or inappropriate, it may order the corporation dissolved under 35-9-504 unless the corporation or one or more of its shareholders purchases all the shares of the shareholder for their fair value and on terms determined under subsection (2).

(2) If the court orders a share purchase, it shall:

(a) determine the fair value of the shares, considering among other relevant evidence:

(i) the going concern value of the corporation;

(ii) any agreement among some or all of the shareholders fixing the price or specifying a formula for determining share value for any purpose;

(iii) the recommendations of appraisers, if any, appointed by the court; and

(iv) any legal constraints on the corporation's ability to purchase the shares;

(b) specify the terms of the purchase, including if appropriate:

(i) terms for installment payments;

(ii) subordination of the purchase obligation to the rights of the corporation's other creditors;

(iii) security for a deferred purchase price; and

(iv) a covenant not to compete or other restriction on the seller;

(c) require the seller to deliver all ~~his~~ *the seller's* shares to the purchaser upon receipt of the purchase price or the first installment of the purchase price;

(d) provide that after the seller delivers ~~his~~ *the* shares*,* ~~he~~ *the seller* has no further claim against the corporation~~,~~ *or* its directors, officers, or shareholders~~,~~ other than a claim to any unpaid balance of the purchase price and a claim under any agreement with the corporation or the remaining shareholders that is not terminated by the court; and

(e) provide that if the purchase is not completed in accordance with the specified terms, the corporation is to be dissolved under 35-9-504.

(3) After the purchase order is entered, any party may petition the court to modify the terms of the purchase and the court may do so if it finds that changes in the financial or legal ability of the corporation or other purchaser to complete the purchase justify a modification.

(4) If the corporation is dissolved because the share purchase was not completed in accordance with the court's order, the selling shareholder has the same rights and priorities in the corporation's assets as if the sale had not been ordered."

Section 1302. Section 35-10-506, MCA, is amended to read:

"35-10-506. Partner's application to discharge attachment — undertaking. (1) If a writ of attachment is levied upon the interest in a partnership of one or more of the partners, the other partners who are not defendants in the action or any of them may, at any time before final judgment, apply to the judge who granted the writ or to the court, upon an affidavit showing the facts, for an order to discharge the attachment as to that interest.

(2) Upon ~~such~~ an application, the applicant shall give an undertaking, with at least two sufficient sureties, to the effect that they will pay to the sheriff, on demand, the amount of any judgment ~~which~~ *that* may be recovered against the partner who is defendant in the action or ~~which~~ *that* may be recovered against ~~him~~ *that partner* in any other action in which the other partners are not defendants and in which a writ of attachment or an execution may come into the sheriff's hands at any time before the writ of attachment ~~which~~ *that* was ~~so~~ levied is vacated and annulled, not exceeding the sum specified in the undertaking, which may not be less than the value of the interest of the defendant in the partnership as fixed by the court or judge. If, in the opinion of the court or judge, the value is uncertain, the sum must be ~~such as~~ *an amount that* the court or judge determines. For the purpose of fixing the sum or to determine the sufficiency of its sureties, the court or judge may receive affidavits or oral testimony or may direct a reference."

Section 1303. Section 35-11-201, MCA, is amended to read:

"35-11-201. Register of names to be kept by county clerk. ~~Every~~ *Each* county clerk ~~must~~ *shall* keep a register of the names of firms and persons mentioned in the certificates filed with ~~him~~ *the clerk*, pursuant to 35-11-101 through 35-11-103 prior to repeal by section 18, Chapter 260, Laws of 1979, entering in alphabetical order the name of every ~~such~~ partnership and of each partner ~~therein~~ *in the partnership*."

Section 1304. Section 35-11-202, MCA, is amended to read:

"35-11-202. Certified copies of register and proof of publication to be evidence. Copies of the entries of a county clerk, when certified by ~~him~~ *the clerk,* and affidavits of publication pursuant to 35-11-101 through 35-11-103 prior to repeal by section 18, Chapter 260, Laws of 1979, made by the printer, publisher, or chief clerk of a newspaper are presumptive evidence of the facts ~~therein~~ stated *in the certificate or affidavits*."

Section 1305. Section 35-12-504, MCA, is amended to read:

"35-12-504. Definitions. In this chapter, the following definitions apply:

(1) "Certificate of limited partnership" means the certificate referred to in 35-12-601, as that certificate is amended or restated from time to time.

(2) "Contribution" means any cash, property, or services rendered or a promissory note or other binding obligation to contribute cash or property or to perform services~~, which~~ *that* a partner contributes to a limited partnership in ~~his~~ *the* capacity as a partner.

(3) "Event of withdrawal of a general partner" means an event that causes a person to cease to be a general partner as provided in 35-12-802.

(4) "Foreign limited partnership" means a partnership formed under the laws of any state other than this state and having as partners one or more general partners and one or more limited partners.

(5) "General partner" means a person who has been admitted to a limited partnership as a general partner in accordance with the partnership agreement and who is named in the certificate of limited partnership as a general partner.

(6) "Limited partner" means a person who has been admitted to a limited partnership as a limited partner in accordance with the partnership agreement.

(7) "Limited partnership" and "domestic limited partnership" mean a partnership formed by two or more persons under the laws of this state and having one or more general partners and one or more limited partners.

(8) "Partner" means any limited partner or general partner.

(9) "Partnership agreement" means the agreement, written or, to the extent not prohibited by law, oral, or both, of the partners as to the affairs of a limited partnership and the conduct of its business.

(10) "Partnership interest" has the meaning specified in 35-12-1101.

(11) "Person" means a natural person, partnership, limited partnership (domestic or foreign), trust, estate, association, or corporation.

(12) "State" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico."

Section 1306. Section 35-12-506, MCA, is amended to read:

"35-12-506. Reservation of name. (1) The exclusive right to the use of a name may be reserved by:

(a) any person intending to organize a limited partnership under this chapter and to adopt that name;

(b) any domestic limited partnership or any foreign limited partnership registered in this state ~~which~~ *that*, in either case, intends to adopt that name;

(c) any foreign limited partnership intending to register in this state and to adopt that name; and

(d) any person intending to organize a foreign limited partnership and intending to have it registered in this state and to adopt that name.

(2) The reservation must be made by filing with the secretary of state an application, executed by the applicant, to reserve a specified name. If the secretary of state finds that the name is available for use by a domestic or foreign limited partnership, ~~he~~ *the secretary of state* shall reserve the name for the exclusive use of the applicant for a period of 120 days. Once having reserved a name, the applicant may not again reserve the name until more than 60 days after the expiration of the last 120-day period for which that applicant had reserved that name. The right to the exclusive use of a name so reserved may be transferred to any other person by filing in the office of the secretary of state a notice of the transfer, executed by the applicant for whom the name was reserved and specifying the name and address of the transferee."

Section 1307. Section 35-12-804, MCA, is amended to read:

"35-12-804. Contributions by ~~a~~ general partner. A general partner may make contributions to a limited partnership and share in the profits and losses of and in distributions from the limited partnership as a general partner. A general partner may also make contributions to and share in profits, losses, and distributions as a limited partner. A person who is both a general partner and a limited partner has all the rights and powers and is subject to all the restrictions and liabilities of a general partner and also has, except as otherwise provided in the partnership agreement, all powers and is subject to the restrictions of a limited partner to the extent ~~he~~ *the person* is participating in the partnership as a limited partner."

Section 1308. Section 35-12-1002, MCA, is amended to read:

"35-12-1002. Withdrawal of general partner. A general partner may withdraw from a limited partnership at any time by giving written notice to the other partners, but if the withdrawal violates the partnership agreement, the limited partnership may recover from the withdrawing general partner damages for breach of the partnership agreement and offset the damages against the amount otherwise distributable to ~~him~~ *the withdrawing partner*."

Section 1309. Section 35-12-1006, MCA, is amended to read:

"35-12-1006. Right to distributions. At the time a partner becomes entitled to receive a distribution, ~~he~~ *the partner* has the status of and is entitled to all of the remedies available to a creditor of the limited partnership with respect to the distribution."

Section 1310. Section 35-12-1102, MCA, is amended to read:

"35-12-1102. Assignment of partnership interest. Except as otherwise provided in the partnership agreement, a partnership interest is assignable in whole or in part. An assignment of a partnership interest does not dissolve a limited partnership or entitle the assignee to become a partner or to exercise any of the rights ~~thereof~~ *of a partner*. An assignment only entitles the assignee to receive, to the extent assigned, any distributions to which the assignor would be entitled. Except as otherwise provided in the partnership agreement, a partner ceases to be a partner upon assignment of all ~~his~~ *the partner's* partnership interest."

Section 1311. Section 35-12-1103, MCA, is amended to read:

"35-12-1103. Rights of creditors. On due application to a court of competent jurisdiction by any judgment creditor of a partner, the court may charge the partnership interest of the partner with payment of the unsatisfied amount of the judgment debt, with interest ~~thereon~~. To the extent ~~so~~ charged, the judgment creditor has only the rights of an assignee of the partnership

interest. This chapter does not deprive any partner of the benefit of any exemption laws applicable to ~~his~~ *the partner's* partnership interest."

Section 1312. Section 35-12-1105, MCA, is amended to read:

"35-12-1105. Power of estate of deceased or incompetent partner. If a partner who is a natural person dies or a court of competent jurisdiction adjudges ~~him~~ *that partner* to be incompetent to manage ~~his~~ *the partner's* person or ~~his~~ property, the partner's personal representative, guardian, conservator, or other legal representative may exercise all of the partner's rights for the purpose of settling ~~his~~ *the partner's* estate or administering ~~his~~ *the partner's* property, including any power the partner had to give an assignee the right to become a limited partner. If a partner that is a corporation, trust, or other entity other than a natural person is dissolved or terminated, those powers may be exercised by the legal representative or successor of the partner."

Section 1313. Section 35-12-1203, MCA, is amended to read:

"35-12-1203. Winding up. Unless otherwise provided in the partnership agreement, the general partners who have not wrongfully dissolved the limited partnership or, if none, the limited partners may wind up the limited partnership's affairs~~;~~. ~~but~~ *However,* any partner, ~~his~~ *a partner's* legal representative, or ~~his~~ *a partner's* assignee, upon cause shown, may obtain winding up by the district court."

Section 1314. Section 35-12-1404, MCA, is amended to read:

"35-12-1404. Expenses. If a derivative action is successful, in whole or in part, or anything is received by the plaintiff as a result of a judgment, compromise, or settlement of an action or claim, the court may award the plaintiff reasonable expenses, including reasonable ~~attorney's~~ *attorney* fees, and shall direct ~~him~~ *the plaintiff* to account to the limited partnership for the remainder of the proceeds ~~so~~ received by ~~him~~ *the plaintiff*."

Section 1315. Section 35-13-204, MCA, is amended to read:

"35-13-204. Profits and losses — how shared. A member of a mining partnership shares in the profits and losses ~~thereof~~ *of the partnership* in the proportion ~~which~~ *that* the interest or share ~~he~~ *the member* owns in the mine bears to the whole partnership capital or whole number of shares."

Section 1316. Section 35-13-205, MCA, is amended to read:

"35-13-205. Lien of partner for debts due creditors. Each member of a mining partnership has a lien on the partnership property for the debts due the creditors ~~thereof~~ *of the partnership* and for money advanced by ~~him~~ *the member* for its uses. This lien exists notwithstanding ~~there is~~ an agreement among the partners that it ~~must~~ *may* not *exist*."

Section 1317. Section 35-13-206, MCA, is amended to read:

"35-13-206. Partnership not dissolved by sale of interest — purchaser becomes partner. One of the partners in a mining partnership may convey ~~his~~ *the partner's* interest in the mine and business without dissolving the partnership. The purchaser from the date of ~~his~~ purchase becomes a member of the partnership."

Section 1318. Section 35-13-207, MCA, is amended to read:

"35-13-207. Purchaser takes subject to liens — exception for good faith purchaser. A purchaser of an interest in the mining ground of a mining partnership takes it subject to the liens existing in favor of the partners for debts due all creditors ~~thereof~~ *of the partnership* or advances made for the benefit of

the partnership unless ~~he~~ *the purchaser* purchased in good faith for a valuable consideration without notice of ~~such~~ *the* lien."

Section 1319. Section 35-15-303, MCA, is amended to read:

"35-15-303. Stockholder voting by mail. At any regularly called general or special meeting of the stockholders of cooperative associations, a written vote received by mail from any absent stockholder and signed by ~~him~~ *the stockholder* may be read in ~~such~~ *the* meeting and ~~shall~~ *must* be equivalent to a vote of each of the *signing* stockholders ~~so signing~~, provided ~~he~~ *the stockholder* has been previously notified in writing of the exact motion or resolution upon which ~~such~~ *the* vote is taken and a copy of the ~~same~~ *motion or resolution* is forwarded with and attached to the *mailed* vote ~~so mailed by him~~."

Section 1320. Section 35-15-403, MCA, is amended to read:

"35-15-403. Assignment of stock. ~~No~~ *An* assignment of stock ~~shall~~ *may not* be made to any person who already owns stock, except by the consent of the board of directors, but stock may be assigned to the association at any time with the consent of the directors. On ~~no~~ *a* question ~~shall~~ a stockholder *may not* have more than one vote. Every assignment of stock on which there remains any portion unpaid ~~shall~~ *must* be recorded in the books of the association, and each stockholder ~~shall be~~ *is* jointly and severally liable with the association for the debts of the association to the extent of the amount ~~which shall be~~ *that is* unpaid upon the share held by ~~him~~ *the stockholder*. ~~No~~ *An* assignor ~~shall~~ *may not* be released from ~~any such~~ *the* indebtedness by reason of any assignment of ~~his~~ *the assignor's* share but ~~shall remain~~ *remains* jointly liable ~~therefor~~ with the assignee."

Section 1321. Section 35-15-404, MCA, is amended to read:

"35-15-404. Share exempt from attachment and execution — sale upon death of member. (1) The share, not exceeding the par value of $500, of each member ~~shall be~~ *is* exempt from seizure on attachment or sale under execution.

(2) Upon ~~his~~ *a member's* death, the share ~~shall~~ *must* be sold by the association and the proceeds, after deducting all liabilities to the association, ~~shall~~ *must* be delivered to ~~his~~ *the deceased member's* heirs."

Section 1322. Section 35-15-505, MCA, is amended to read:

"35-15-505. Effect of merger or consolidation — rights and obligations — rights of creditors not impaired. (1) After the effective date, the associations ~~which~~ *that* are parties to the plan become a single association. In the case of a merger, the surviving association is that association ~~so~~ designated in the plan. In the case of a consolidation, the new association is the association provided for in the plan. The separate existence of all associations ~~which~~ *that* are parties to the plan, except the surviving or new association, then ceases.

(2) The surviving or new association possesses all the rights and all the property of each of the individual associations and is responsible for all their obligations. Title to any property is vested in the surviving or new association with no reversion or impairment ~~thereof~~ *of the title* caused by the merger or consolidation. ~~No~~ *The* right of any creditor may *not* be impaired by the merger or consolidation without ~~his~~ *the creditor's* consent.

(3) ~~Nothing in this~~ *This* part ~~shall~~ *may not* be construed to impair the obligation of any contract to which any of ~~such~~ *the* constituents was a party at the date of ~~said~~ consolidation."

Section 1323. Section 35-16-210, MCA, is amended to read:

"35-16-210. Existing associations — reorganization under ~~this~~ chapter. (1) Any cooperative or other corporation, association, society, or group of individuals on or before March 5, 1921, associated together for purposes and objects similar to those contemplated by the provisions ~~hereof~~ *of this chapter* desiring to come within the provisions ~~hereof~~ *of this chapter* may, by resolution of their board of directors, direct written notice to be given to each stockholder or member of their corporation or group of individuals of the proposal to organize a corporation or district under the provisions ~~hereof~~ *of this chapter* and request 10 or more of their members qualified as ~~herein~~ provided ~~for~~ *in this chapter* to prepare and file, in ~~such~~ *the* county ~~as~~ *that* they ~~shall~~ select to make their principal place of business, a petition in accordance with the provisions of 35-16-202. If ~~thereafter~~ *after petitioning* not less than two-thirds of the stockholders or members ~~as such~~ of ~~such~~ *the* cooperative or other corporation, association, society, or group of individuals ~~shall~~ either file with the corporation or district their written consent to ~~such~~ *the* reorganization or petition to become members ~~thereof~~, in accordance with the provisions ~~hereof~~ *of this chapter*, or both, the board of directors or other governing board of ~~such~~ *the* existing cooperative or other corporation, association, society, or group of individuals ~~shall~~ *must* be authorized to*,* through proper officers*,* transfer to ~~such~~ *the* new corporation or district, when organized, their corporate assets, real, personal, and mixed.

(2) Any stockholder or member of any cooperative or other corporation or society reorganized under the provisions ~~hereof~~ *of this section*, consenting to ~~such~~ *the* reorganization but not including lands ~~therein~~ *in the reorganized corporation or district*, ~~shall be~~ *is* entitled to a certificate or shares of stock or other evidence of membership in ~~such~~ *the* reorganized corporation or district of the par value equal to the value of ~~his~~ *the stockholder's or member's* certificate or shares of stock or membership right in the previous existing cooperative or other corporation or society's assets at the time of ~~such~~ *the* reorganization and ~~shall be~~ *is* to this extent a stockholder or member~~;~~. ~~provided~~ *However,* any stockholder or member of the corporation or group of individuals that are reorganizing ~~shall~~ *may* not be considered as increasing the stock of the new corporation so as to require consent of a majority of its members or stockholders to their admission."

Section 1324. Section 35-16-211, MCA, is amended to read:

"35-16-211. Stockholders dissenting from reorganization of existing association — appraisal remedy. ~~In the event~~ *If* any stockholder or member of ~~such~~ *an* existing cooperative or other corporation, association, society, or group of individuals ~~shall decline~~ *declines* to consent to ~~such~~ *the* transfer or ~~refuse~~ *refuses* to become a member of ~~such~~ *the* new organization, ~~he must~~ *the stockholder or member shall*, within 30 days ~~from and~~ after receiving written notice of the transfer of ~~said~~ assets to the new corporation or district, serve upon the officers of the newly created corporation or district and file in the district court of the county of its principal place of business ~~his~~ *a* petition praying for the net value of ~~his~~ *the stockholder's or member's* equity ~~as a stockholder or member~~ in ~~said~~ *the* cooperative or other corporation, association, society, or group of individuals in its assets, determined and valued as of the date when the ~~said~~ *the* property was transferred by the directors or executive officers to the new corporation or district. Upon a failure to, within the time and in the manner specified ~~herein~~ *in this section*, file ~~such~~ *a* claim for appraisal and settlement, it ~~shall be forever~~ *is* barred."

Section 1325. Section 35-16-212, MCA, is amended to read:

"35-16-212. Association operating two or more enterprises in different parts of state — control by delegates. (1) ~~Any~~ *An agricultural association or company*, either cooperative stock or nonprofit nonstock, ~~agricultural association or company~~ existing on July 1, 1921, or ~~thereafter~~ organized under the laws of Montana *after that date* may own and operate two or more cooperative enterprises in different parts of the state and may exercise and possess the following powers by providing in their articles of incorporation or in their bylaws that:

(a) all powers of the association members or stockholders ~~shall~~ *must* be exercised by duly elected delegates at any meeting of ~~such~~ delegates ~~which~~ *that* may be called. They shall elect ~~such~~ officers and transact ~~such~~ business in the same manner ~~as~~ *that* the association members or stockholders are empowered to do. ~~Such~~ *The* officers and board of directors ~~as~~ *that* the delegates may elect ~~shall~~ *must* be known as "general officers" or "general board of directors".

(b) stockholders or members of ~~such~~ *the* cooperative stock or nonprofit nonstock agricultural associations or companies ~~shall~~ *must* be grouped into locals in ~~such~~ *the* districts ~~as~~ *that* the general board of directors may from time to time direct;

(c) each local, with territorial limits as determined by the general board of directors, shall elect from among its stockholders or members one delegate and one alternate to represent the local at any meeting of the association or company. ~~Such~~ *The* delegate and alternate shall serve for 1 year. The alternate shall serve as delegate at all meetings where the delegate may not be in attendance.

(d) each delegate may have only one vote, regardless of the number of stockholders or members ~~which he~~ *that the delegate* represents.

(2) Nothing in this section limits the powers of the board of directors of any corporation."

Section 1326. Section 35-16-302, MCA, is amended to read:

"35-16-302. Procedure for receiving other members. (1) Whenever any corporation or district has been formed under the provisions ~~hereof~~ *of this chapter*, it is authorized and directed to permit other holders of title or evidence of title of similar or like agricultural, horticultural, or farm ~~lands~~ *land* within this state to become members ~~thereof~~, upon ~~such~~ *the* holder of title or evidence of title, in manner and form ~~as~~ *that* may be required by the laws of Montana and the rules of ~~such~~ *the* corporation or district or its bylaws, applying for membership ~~therein~~ to the officers ~~thereof~~ *of the corporation or district* by written application, duly acknowledged:

(a) containing a full, true, and correct description of the ~~lands~~ *land* owned by ~~him~~ *the applicant* and proposed to be contained in ~~said~~ *the* corporation or district;

(b) containing a statement of ~~his~~ *the applicant's* desire to become a member ~~thereof~~ and ~~his~~ *the applicant's* consent to submit ~~his lands~~ *the applicant's land* to the provisions ~~hereof~~ *of this chapter* and to the administration of ~~said~~ *the* corporation or district and its bylaws and to its objects and purposes; and

(c) accompanied by a map of the ~~lands so~~ *land* owned by ~~him~~ *the applicant* and proposed to be submitted to ~~said~~ *the* corporation or district, its objects and purposes.

(2) If ~~said~~ *the* application ~~shall be~~ *is* in proper form and the applicant ~~be~~ *is* the holder of title or evidence of title to the ~~lands~~ *land* described and the uses of ~~said~~

the land as represented in ~~said~~ *the* petition ~~be~~ *are* similar to the uses of ~~lands~~ *land* already included in ~~said~~ *the* corporation or district, a full, true, and correct copy of ~~his~~ *the* application ~~shall~~ *must* be made and filed in the office of principal place of business of the corporation or district and ~~his~~ *the* original application ~~shall~~ *must* be filed and recorded in the office of the county clerk and recorder of the county in which the ~~lands~~ *land* or the greater portion ~~thereof~~ *of the land* is ~~situate~~ *located*. ~~He shall thereupon be~~ *Upon filing, the applicant is* entitled to evidence of temporary membership, in shares or units of membership, in *a* similar manner as *the* original members ~~thereof~~ and the ~~lands~~ *land* described in the petition ~~shall thereafter~~ *must* be construed to be a part of ~~said~~ *the* corporation or district to all intents and purposes as though originally incorporated ~~therein~~ *in the corporation or district*. Upon the consent of a majority of the members or stockholders given in the annual meeting or at a special meeting called as provided by law for that purpose, ~~such~~ *the* new member or stockholder ~~shall be~~ *is* entitled to full membership in ~~such~~ *the* corporation or district."

Section 1327. Section 35-16-303, MCA, is amended to read:

"35-16-303. Withdrawal of membership ~~lands~~ *land* — procedure. Any person holding title or evidence of title to membership ~~lands~~ *land* included in a corporation or district organized under the provisions ~~hereof subsequently~~ *of this chapter* desiring to withdraw ~~his lands~~ *the person's land* from ~~such~~ *the* corporation or district may do so upon presenting to the board of directors ~~his~~ *a* verified petition stating that ~~he~~ *the person* is the holder of title or evidence of title to membership ~~lands~~ *land* included ~~therein~~ *in the corporation or district*, particularly describing the ~~same~~ *land* with a map or plat ~~thereof~~, that ~~he~~ *the person* ~~is desirous of withdrawing~~ *wishes to withdraw* from ~~such~~ *the* corporation or district, and tendering to ~~said~~ *the* board the pro rata amount of liability of ~~his lands~~ *the person's land* for all of the corporation's lawfully created and existing lien liabilities together with ~~his~~ *the person's* pro rata amount of interest due and to become due upon any ~~such~~ liabilities to the maturity of the ~~same~~ *liabilities*. If the matters and things set forth in ~~said~~ *the* petition ~~shall be~~ *are* true and ~~said~~ *the* petitioner ~~shall deposit~~ *deposits* with the board ~~his~~ *the petitioner's* pro rata amount of the liabilities ~~as before herein set out~~ or ~~furnish~~ *furnishes* a receipt for ~~such~~ *the* amount from the mortgage or lien holders holding liens against ~~such~~ *the* lands, the proper officers of the corporation or district shall make, execute, acknowledge, and deliver a release of ~~said~~ *the* lands from ~~incorporation~~ *the corporation* or district and its liabilities. Upon presentation of ~~such~~ *the* release to the mortgage *holder* or ~~lien holder~~ *lienholder* claiming a right against ~~said~~ *the* membership lands, they shall furnish their release ~~thereof~~, which ~~said release or releases~~ may be filed and recorded in any county or counties in which ~~said lands may be situated~~ *the land is located*. The board of directors and corporate assets of the corporation ~~shall~~ *must* be responsible to any mortgage or ~~lien holder~~ *lienholder* and the withdrawee for the payments of ~~such~~ funds on their debt or liability."

Section 1328. Section 35-16-304, MCA, is amended to read:

"35-16-304. Withdrawal — application to court for order. ~~In the event~~ *If* the board of directors ~~shall refuse~~ *refuses* or ~~fail~~ *fails* for a period of 30 days to act upon ~~such~~ *a* petition of withdrawal, the petitioner ~~shall be~~ *is* entitled to apply to the district court in the county ~~wherein said~~ *in which the* ~~lands~~ *land* or the larger proportion of the ~~same shall be~~ *land is* situated for an order of withdrawal, and upon ~~his~~ payment to the clerk of the court for the use and benefit of the holders of mortgages or other liens against ~~said~~ *the* corporation or

its membership ~~lands~~ *land* of the pro rata amount of ~~his~~ *the petitioner's* land's liabilities ~~therefor~~, ~~he shall be~~ *the petitioner is* entitled to an order of withdrawal and release of ~~his~~ *the petitioner's land* ~~lands from said court~~. The filing with the clerk and recorder of a duly certified copy of ~~such~~ *the* order permitting withdrawal ~~shall operate~~ *operates* to release the membership ~~lands~~ *land* described ~~therein~~ *in the order* from any liens of the corporation under the provisions ~~hereof~~ *of this chapter*."

Section 1329. Section 35-16-311, MCA, is amended to read:

"35-16-311. Meetings — voting — proxies. At the organization meeting or any meeting of the stockholders or members of a corporation or district organized under the provisions ~~hereof~~ *of this chapter*, each member and each unit of membership in acres, production, or other evidence of membership ~~shall be~~ *is* entitled to vote in person or by proxy. Corporate action at ~~such~~ *a* meeting ~~shall~~ *must* be determined by a majority of the membership and a majority of the acres, production, or units of membership, as may have been adopted. Any group of members of a subdivision or subdistrict of the corporation or district as may be defined and designated by the board of directors or *the* bylaws shall, at a subdivision or subdistrict meeting called for the purpose, elect a delegate or proxy to represent all of the membership in the subdivision or subdistrict at any ~~such~~ *organization* meeting *or meeting of the stockholders or members*. ~~Where~~ *If* any subdivision or subdistrict fails to elect ~~such~~ *a* delegate, any individual member may give *a* proxy~~;~~. ~~provided no~~ *However, a* person ~~shall be~~ *who is not a member of the corporation or district and a resident agricultural or horticultural freeholder in the state of Montana for at least 3 years immediately preceding the meeting is not* entitled to act as proxy ~~who is not himself a member of the corporation or district and a resident agricultural or horticultural freeholder in the state of Montana for not less than 3 years immediately preceding such meeting~~."

Section 1330. Section 35-16-314, MCA, is amended to read:

"35-16-314. Qualifications of directors — quorum — vacancies. (1) ~~No~~ *A* person ~~shall be~~ *is not* eligible to be a director of any corporation or district organized under the provisions ~~hereof who is not himself~~ *of this chapter unless the person is* a member of the corporation or district and a resident agricultural freeholder in the state of Montana.

(2) A quorum of the board of directors ~~shall at all times be~~ *is* necessary for the transaction of business~~;~~. ~~provided~~ *However*, if the bylaws or board of directors ~~shall~~ provide for an executive committee, a quorum of ~~such~~ *that* committee ~~shall have authority to~~ *may* carry on business.

(3) Whenever a vacancy occurs in the office of a director, unless the bylaws ~~shall otherwise~~ provide *otherwise*, ~~such~~ *the* vacancy may be filled by appointment by the board of directors."

Section 1331. Section 35-17-206, MCA, is amended to read:

"35-17-206. Bylaws. (1) Each association incorporated under this chapter ~~must~~ *shall*, within 30 days after its incorporation, adopt for its government and management a code of bylaws, not inconsistent with the powers granted by this chapter. A majority vote of the members or stockholders or their written assent is necessary to adopt ~~such~~ *the* bylaws. The bylaws may be amended at any regular or special meeting if approved by a majority vote of the stockholders ~~voting thereon~~.

(2) Each association under its bylaws may also provide for any or all of the following matters:

(a) the time, place, and manner of calling and conducting its meetings;

(b) the number of stockholders or members constituting a quorum;

(c) the right of members or stockholders to vote by proxy or by mail or by both and the conditions, manner, form, and effects of ~~such~~ *those* votes;

(d) the number of directors constituting a quorum;

(e) the qualifications, compensation, duties, and term of office of directors and officers, *the* time of their election, and the mode and manner of giving notice ~~thereof~~ *of these matters*;

(f) penalties for violations of the bylaws;

(g) the amount of entrance, organization, and membership fees, if any, the manner and method of collection of the ~~same~~ *fees*, and the purposes for which they may be used;

(h) the amount ~~which~~ *that* each member or stockholder ~~shall be~~ *is* required to pay annually or from time to time, if at all, to carry on the business of the association, the charge, if any, to be paid by each member or stockholder for services rendered by the association to ~~him~~ *the stockholder or member* and the time of payment and the manner of collection, and the marketing contract between the association and its members or stockholders which every member or stockholder may be required to sign;

(i) the number and qualifications of members or stockholders of the association and the conditions precedent to membership or ownership of common stock~~;~~*,* the method, time, and manner of permitting members to withdraw or the holders of common stock to transfer their stock~~;~~*,* the manner of assignment and transfer of the interest of members and the shares of common stock~~;~~*, and* the conditions upon which and the time when membership of any member ~~shall cease~~ *ceases*;

(j) the automatic suspension of the rights of a member when ~~he~~ *the member* ceases to be eligible ~~to~~ *for* membership in the association and the mode, manner, and effect of the expulsion of a member;

(k) the manner of determining the value of a member's interest and provision for its purchase by the association upon the death or withdrawal of a member or stockholder or upon the expulsion of a member or forfeiture of ~~his~~ membership or, at the option of the association, by conclusive appraisal by the board of directors."

Section 1332. Section 35-17-303, MCA, is amended to read:

"35-17-303. Limited liability of members. Except for debts lawfully contracted between ~~him~~ *a member* and the association, ~~no~~ *a* member ~~shall be~~ *is not* liable for the debts of the association ~~to~~ *for* an amount exceeding the sum remaining unpaid on ~~his~~ *the member's* membership fee or ~~his~~ subscription to the capital stock, including any unpaid balance on any promissory notes given in payment ~~thereof~~ *of the subscription*."

Section 1333. Section 35-17-311, MCA, is amended to read:

"35-17-311. Directors — election — compensation — interest in contracts — vacancies. (1) The affairs of the association ~~shall~~ *must* be managed by a board of not less than five directors elected by the members or stockholders from their own number. The bylaws may provide that the territory in which the association has members ~~shall~~ *must* be divided into districts and that the directors ~~shall~~ *must* be elected according to ~~such~~ *the* districts. In ~~such a~~ *that* case*,* the bylaws ~~shall~~ *must* specify the number of directors to be elected by

each district, the manner and method of reapportioning the directors, and *the manner and method* of redistricting the territory covered by the association. The bylaws may provide that primary elections ~~should~~ *must* be held in each district to elect the directors apportioned to ~~such~~ *the* districts, and the result of all ~~such~~ primary elections must be ratified by the next regular meeting of the association.

(2) An association may provide a fair remuneration for the time actually spent by its officers and directors in its service.

(3) ~~No~~ *A* director during the term of ~~his~~ office ~~shall~~ *may not* be a party to a contract for profit with the association differing in any way from the business relations accorded regular members or holders of common stock of the association or to any other kind of contract differing from terms generally current in that district.

(4) When a vacancy on the board of directors occurs, other than by expiration of *a* term, the remaining members of the board by a majority vote shall fill the vacancy unless the bylaws ~~provided~~ *provide* for an election of directors by district. In ~~such a~~ *that* case, the board of directors shall immediately call a special meeting of the members or stockholders in that district to fill the vacancy."

Section 1334. Section 35-17-313, MCA, is amended to read:

"35-17-313. Removal of officer or director. (1) Any member may bring charges against an officer or director by filing them in writing with the secretary of the association, together with a petition signed by 10% of the members, requesting the removal of the officer or director in question. The removal ~~shall~~ *must* be voted upon at the next regular or special meeting of the association, and by a vote of a majority of the members, the association may remove the officer or director and fill the vacancy. The director or officer against whom ~~such~~ charges have been brought ~~shall~~ *must* be informed in writing of the charges previous to the meeting and ~~shall~~ *must* have an opportunity at the meeting to be heard in person or by counsel and to present witnesses, and the person or persons bringing the charges against ~~him~~ *the director or officer* ~~shall~~ *must* have the same opportunity.

(2) ~~In case~~ *If* the bylaws provide for election of directors by districts with primary elections in each district, then the petition for removal of a director must be signed by 12% of the members residing in the district from which ~~he~~ *the director* was elected. The board of directors ~~must~~ *shall* call a special meeting of the members residing in that district to consider the removal of the director. By a vote of the majority of the members of that district, the director in question ~~shall be~~ *is* removed from office."

Section 1335. Section 35-17-401, MCA, is amended to read:

"35-17-401. Marketing contracts. (1) The association and its members may make and execute marketing contracts requiring the members to sell, for any period of time not over 10 years, all or any specified part of their agricultural products or specified commodities exclusively to or through the association or any facilities to be created by the association. The contract may provide that the association may sell or resell the products of its members with or without taking title ~~thereto~~ *to the products* and pay over to its members the resale price after deducting all necessary selling, overhead, and other costs and expenses.

(2) The bylaws and the marketing contract may fix, as liquidated damages, specific sums to be paid by the member or stockholder to the association upon the breach by ~~him~~ *the member or stockholder* of any provisions of the marketing

contract regarding the sale or delivery or withholding of products and may further provide that the member *or stockholder* will pay all costs, premiums for bonds, expenses, and fees in case any action is brought upon the contract by the association, and ~~any such~~ *these* provisions ~~shall be~~ *are* valid and enforceable in the courts of this state.

(3) In the event of any ~~such~~ breach or threatened breach of ~~such~~ *a* marketing contract by a member, the association ~~shall be~~ *is* entitled to an injunction to prevent the further breach of the contract and to a decree of specific performance ~~thereof~~. Pending the adjudication of ~~such~~ an action and upon filing a verified complaint showing the breach or threatened breach and upon filing a sufficient bond, the association ~~shall be~~ *is* entitled to a temporary restraining order and preliminary injunction against the member *or stockholder*."

Section 1336. Section 35-17-505, MCA, is amended to read:

"35-17-505. Effect of merger or consolidation — rights and obligations — rights of creditors not impaired. (1) On the effective date, the associations ~~which~~ *that* are parties to a plan adopted pursuant to this part become a single association. In the case of a merger, the surviving association is that association ~~so~~ designated in the plan. The articles and bylaws of the surviving association are amended to the extent provided in the documents setting forth the plan of merger. In the case of a consolidation, the new association is the association provided for in the plan. The separate existence of all associations ~~which~~ *that* are parties to the plan, except the surviving or new association, then ceases.

(2) The surviving or new association possesses all the rights and all the property of each of the individual associations and is responsible for all their obligations. Title to any property is vested in the surviving or new association with no reversion or impairment ~~thereof~~ *of title* caused by the merger or consolidation.

(3) ~~No~~ *The* right of any creditor may *not* be impaired by the merger or consolidation without ~~his~~ *the creditor's* consent."

Section 1337. Section 35-18-312, MCA, is amended to read:

"35-18-312. Trustees — term — quorum — powers. (1) The trustees of a cooperative named in any articles of incorporation, consolidation, merger, or conversion~~, as the case may be, shall~~ hold office until the next ~~following~~ annual meeting of the members or until their successors ~~shall~~ have been elected and qualified. At each annual meeting or, in case of failure to hold the annual meeting as specified in the bylaws, at a special meeting called for that purpose, the members shall elect trustees who may serve for 1-, 2-, or 3-year terms. Each trustee shall ~~hold~~ *holds* office for the term for which ~~he~~ *the trustee* is elected or until ~~his~~ *a* successor ~~shall have been~~ *is* elected and qualified.

(2) A majority of the board of trustees ~~shall constitute~~ *constitutes* a quorum.

(3) The board of trustees may exercise all of the powers of a cooperative, except ~~such as~~ *powers that* are conferred upon the members by this chapter or its articles of incorporation or bylaws."

Section 1338. Section 35-18-314, MCA, is amended to read:

"35-18-314. Officers. The officers of a cooperative ~~shall~~ consist of a president, ~~vice-president~~ *vice president*, secretary, and treasurer who ~~shall~~ *must* be elected annually by and from the board of trustees. ~~No~~ *A* person ~~shall~~ *may not* continue to hold any ~~of the above offices~~ *office* after ~~he shall have ceased~~ *the person ceases* to be a trustee. The offices of secretary and of treasurer may be

held by the same person. The board of trustees may also elect or appoint ~~such~~ other officers, agents, or employees ~~as~~ *that* it ~~shall deem~~ *considers* necessary or advisable and shall prescribe the powers and duties ~~thereof~~ *of those offices*. Any officer may be removed from office and ~~his~~ *a* successor elected in the manner prescribed in the bylaws."

Section 1339. Section 35-18-405, MCA, is amended to read:

"35-18-405. Dissolution and winding up of cooperative ~~which~~ *that* has commenced business. A cooperative ~~which~~ *that* has commenced business may dissolve voluntarily and wind up its affairs in the following manner:

(1) The board of trustees shall first recommend that the cooperative be dissolved voluntarily, and ~~thereafter~~ *then* the proposition that the cooperative be dissolved ~~shall~~ *must* be submitted to the members of the cooperative at any annual or special meeting, the notice of which ~~shall~~ *must* set forth ~~such~~ *the* proposition. The proposed voluntary dissolution ~~shall~~ *must* be ~~deemed~~ *considered* to be approved upon the affirmative vote of not less than two-thirds of all of the members of the cooperative.

(2) Upon ~~such~~ approval, a certificate of election to dissolve, ~~hereinafter~~ designated the "certificate", ~~shall~~ *must* be executed on behalf of the cooperative by its president or ~~vice-president~~ *vice president* and its corporate seal ~~shall~~ *must* be affixed ~~thereto~~ *to the certificate* and attested by its secretary or assistant secretary. The certificate ~~shall~~ *must* state the name of the cooperative, the address of its principal office, the names and addresses of its trustees, and the total number of members who voted for and against the voluntary dissolution of the cooperative. The president or ~~vice-president~~ *vice president* executing the certificate shall also make and ~~annex thereto~~ *attach to the certificate* an affidavit stating that the provisions of this subsection were ~~duly~~ complied with. ~~Such~~ *The* certificate and affidavit ~~shall~~ *must* be submitted to the secretary of state for filing as provided in this chapter.

(3) Upon the filing of the certificate and affidavit by the secretary of state, the cooperative ~~shall~~ *must* cease to carry on its business except ~~insofar as may be~~ *to the extent* necessary for the winding up ~~thereof~~ *of the cooperative*, but its corporate existence ~~shall continue~~ *continues* until articles of dissolution have been filed by the secretary of state.

(4) After the filing of the certificate and affidavit by the secretary of state, the board of trustees shall immediately cause notice of the winding up proceedings to be mailed to each known creditor and claimant and to be published once a week for 2 successive weeks in a newspaper of general circulation in the county in which the principal office of the cooperative is located.

(5) The board of trustees ~~shall have~~ *has* full power to wind up and settle the affairs of the cooperative and shall proceed to collect the debts owing to the cooperative, convey and dispose of its property and assets, pay, satisfy, and discharge its debts, obligations, and liabilities, and do all other things required to liquidate its business and affairs and after paying or adequately providing for the payment of all its debts, obligations, and liabilities shall distribute the remainder of its property and assets among its members in proportion to the aggregate patronage of each ~~such~~ member during the 7 years ~~next~~ preceding the date of ~~such~~ filing of the certificate or, if the cooperative ~~shall~~ *has* not ~~have~~ been in existence for ~~such period~~ *7 years*, during the period of its existence.

(6) When all debts, liabilities, and obligations of the cooperative have been paid and discharged or adequate provision ~~shall have~~ *has* been made ~~therefor~~

for payment or discharge and all of the remaining property and assets of the cooperative ~~shall~~ have been distributed to the members pursuant to the provisions of this section, the board of trustees shall authorize the execution of articles of dissolution, which ~~shall thereupon~~ *must* be executed on behalf of the cooperative by its president or ~~vice-president~~ *vice president* and its corporate seal ~~shall~~ *must* be affixed ~~thereto~~ *to the articles* and attested by its secretary. ~~Such~~ *The* articles of dissolution ~~shall~~ *must* recite in the caption that they are executed pursuant to this chapter and ~~shall~~ *must* state:

(a) the name of the cooperative;

(b) the address of the principal office of the cooperative;

(c) that the cooperative has ~~heretofore~~ *previously* delivered to the secretary of state a certificate of election to dissolve and the date on which the certificate was filed by the secretary of state in the records of ~~his~~ *that* office;

(d) that all debts, obligations, and liabilities of the cooperative have been paid and discharged or that adequate provision has been made ~~therefor~~ *for payment or discharge*;

(e) that all the remaining property and assets of the cooperative have been distributed among the members in accordance with the provisions of this section; and

(f) that there are no actions or suits pending against the cooperative. The president or ~~vice-president~~ *vice president* executing the articles of dissolution shall also make and ~~annex thereto~~ *attach to the articles* an affidavit stating that the provisions of this subsection *(6)* were ~~duly~~ complied with. ~~Such~~ *The* articles of dissolution and affidavit, accompanied by proof of the publication required in this subsection *(6)*, ~~shall~~ *must* be submitted to the secretary of state for filing as provided in this chapter."

Section 1340. Section 35-18-501, MCA, is amended to read:

"35-18-501. Filings relative to incorporation, amendment, conversion, merger, consolidation, and dissolution — effect of filing — transmittal to county clerk. (1) Articles of incorporation, amendment, consolidation, merger, conversion, *or* dissolution, ~~as the case may be,~~ when executed and accompanied by ~~such~~ affidavits ~~as~~ *that* may be required by applicable provisions of this chapter, ~~shall~~ *must* be presented to the secretary of state for filing ~~in the records of his office~~. If the secretary of state ~~shall find~~ *finds* that the articles presented conform to the requirements of this chapter, ~~he~~ *the secretary of state* shall upon the payment of the fees as *provided* in this chapter ~~provided~~ file the articles ~~so presented in the records of his office~~, and upon ~~such~~ filing, the incorporation, amendment, consolidation, merger, conversion, or dissolution ~~provided for therein shall be~~ *is* in effect.

(2) The secretary of state, immediately upon the filing ~~in his office~~ of any articles pursuant to this chapter, shall transmit a certified copy ~~thereof~~ to the county clerk of the county in which the principal office of each cooperative or corporation affected by ~~such~~ *the* incorporation, amendment, consolidation, merger, conversion, or dissolution ~~shall be~~ *is* located. The clerk of any county, upon receipt of any ~~such~~ certified copy, shall file and index the ~~same~~ *copy* in the records of ~~his~~ *that* office, but the failure of the secretary of state or of a clerk of a county to comply with the provisions of this section ~~shall~~ *does* not invalidate ~~such~~ *the* articles.

(3) The provisions of this section ~~shall also~~ apply to certificates of election to dissolve and affidavits of compliance executed pursuant to 35-18-405(2)."

Section 1341. Section 35-20-101, MCA, is amended to read:

"35-20-101. Permissible purposes for association — first meeting — election of trustees. ~~Any number~~ *A group* of *seven* persons *or more* residing in any county in the state of Montana~~, not less than seven,~~ who desire to form an association for the purpose of procuring and holding lands to be used exclusively for a cemetery or place of burial of the dead~~,~~ may meet at ~~such~~ *a* time and place ~~as~~ *that* they or a majority of them agree upon and appoint a ~~chairman~~ *presiding officer* and secretary by a vote of the majority of the persons present at the meeting and may proceed to form an association by agreeing upon a corporate name by which the association ~~shall~~ *must* be known and by determining upon the number of trustees to manage the affairs of the association~~,~~. ~~which~~ *The* number ~~shall~~ *of trustees may* not be less than three or more than nine. ~~Thereupon~~ *Upon determining the number of trustees* they may proceed to elect ~~by ballot the number of~~ *the* trustees ~~so determined upon~~ *by ballot*."

Section 1342. Section 35-20-102, MCA, is amended to read:

"35-20-102. Classification of trustees — staggered terms. The ~~chairman~~ *presiding officer* and secretary of ~~such~~ *the* meeting *described in 35-20-101* shall immediately after ~~such~~ *the* election divide the trustees by lot into three classes, those in the first class to hold their office for 1 year~~;~~*,* those in the second class~~,~~ *for* 2 years~~;~~*,* and those in the third class~~,~~ *for* 3 years~~;~~. ~~but~~ *However,* the trustees of each class may be reelected if they possess the qualifications ~~hereinafter~~ mentioned *in this part*. ~~Such~~ *The* meeting ~~shall~~ *must* also determine on what day in each year the future annual election of trustees ~~shall~~ *will* be held."

Section 1343. Section 35-20-103, MCA, is amended to read:

"35-20-103. Document of incorporation — contents — filing. (1) The ~~chairman~~ *presiding officer* and secretary of ~~such~~ *the* meeting *described in 35-20-101* shall within 5 days after the holding of the ~~same~~ *meeting* make a written certificate, which ~~shall~~ *must* state:

(a) the names of the associates who attended ~~such~~ *the* meeting;

(b) the corporate name of the association determined ~~upon~~ by a majority of the persons who met;

(c) the number of persons ~~fixed~~ *agreed* upon to manage the concerns of the association;

(d) the names of the trustees chosen at the meeting and their classification;

(e) the day of the year ~~fixed upon~~ *identified* for the annual election of trustees and the manner of their election.

(2) In addition to provisions required in subsection (1), the document of incorporation may also contain provisions not inconsistent with law regarding liability as set forth in 35-1-216(2)(d).

(3) ~~Such~~ *The* certificate ~~shall~~ *must* be signed by the ~~chairman~~ *presiding officer* and secretary and acknowledged by them before some person authorized to take acknowledgments within the state of Montana. They shall cause ~~such~~ *the acknowledged* certificate ~~so acknowledged~~ to be recorded in the office of the county clerk and recorder of the county in which ~~said~~ *the* meeting was held, and a certified copy of ~~such~~ *the recorded* certificate ~~so recorded shall~~ *must* be filed with the secretary of state of the state of Montana, who shall ~~thereupon~~ issue ~~his~~ *a* certificate ~~therefor~~ *of filing* without charge."

Section 1344. Section 35-20-208, MCA, is amended to read:

"35-20-208. Trustees to manage — quorum — officers — bond of treasurer. (1) The affairs and property of the association ~~shall~~ *must* be managed by the trustees, a majority of whom is a quorum for the transaction of business.

(2) The trustees shall annually appoint from among their number a president, ~~vice-president~~ *vice president*, secretary, and treasurer who shall hold their offices ~~during~~ *at* the pleasure of the board of trustees. The trustees may require the treasurer to give security for the faithful performance of the duties of ~~his~~ *that* office."

Section 1345. Section 35-20-209, MCA, is amended to read:

"35-20-209. Duties of secretary — record of interments. The secretary shall perform all the duties of a secretary of a corporation and shall, in addition, keep a record of interments in which ~~he~~ *the secretary* shall enter as correctly and carefully as may be the name, age, sex, ~~nativity~~ *place of birth*, and cause of death with date of burial of every person interred in ~~such~~ *the* cemetery~~;~~. ~~which facts he~~ *The secretary* shall procure *these facts* from ~~such~~ friends or relatives of the deceased or *the* undertaker ~~as~~ *that* ~~give~~ *gives the* order for ~~such~~ interment at ~~the~~ *that* time ~~thereof~~ or, ~~in case~~ *if the* deceased is a pauper, a stranger, or criminal, from the coroner, ~~county~~ physician, ~~overseer of the poor,~~ or other public officer directing the burial of the ~~same~~ *deceased*."

Section 1346. Section 35-20-216, MCA, is amended to read:

"35-20-216. Inalienability of lots. (1) Whenever the ~~lands~~ *land* of ~~such~~ an association ~~are~~ *is* laid out in lots and the lots or any of them are transferred to individual proprietors and there has been an interment in a *transferred* lot ~~so transferred~~, that lot from the time of ~~such~~ interment ~~shall forever be~~ *is* inalienable and ~~shall~~ *must*, upon the death of the proprietor, descend to ~~his~~ *to the proprietor's* heirs. However, any one or more of those heirs may release to any other of the heirs ~~his~~ *that individual's* or their interest in the lot. A copy of the release ~~shall~~ *must* be filed with the secretary of the association or with the county clerk and recorder of the county within which the lot is situated. Except by consent of all persons having an interest in the lot, the body of a deceased person may not be interred in that lot unless it is the body of:

(a) a person having an interest in that lot at the time of ~~his decease~~ *that person's death*;

(b) a relative of some person having ~~such~~ *an* interest;

(c) the wife or husband of ~~such~~ a person *having an interest*; or

(d) a relative of ~~such~~ *the* husband or wife.

(2) However, the person or persons in whom the title to ~~such~~ *the* lot or lots or part ~~thereof~~ *of the lot or lots* is vested may at any time sell, convey, and release the *lot or* lots or parts ~~thereof~~ *of the lot or lots* to the cemetery association maintaining the cemetery in which the lots are situated. A copy of the instruments of ~~such~~ conveyance ~~shall~~ *must* be filed in the same manner provided for release from one heir to another. The cemetery association may use any funds under its control for ~~such~~ *filing* purposes and ~~shall hold~~ *holds* and may convey ~~such~~ *the lot or* lots or parts ~~thereof~~ *of the lot or lots* to other purchasers in the same manner and with the same effect as it holds and conveys any other of its cemetery lots. This ~~proviso~~ *subsection* does not allow or authorize the conveyance to the cemetery association of a piece of ground in which the body of a deceased person lawfully interred actually remains interred at the time of the attempted conveyance."

Section 1347. Section 35-20-302, MCA, is amended to read:

"35-20-302. Trustees of fund — appointment by district court — qualifications — powers. (1) Whenever ~~moneys to the amount of~~ *at least* $100 ~~shall have~~ *has* been received by ~~such~~ *a cemetery* corporation or association, ~~formed, before or after February 16, 1905,~~ either from the sale of lots or from direct payments of ~~such~~ *the* corporation or association toward ~~such~~ a fund by lot owners or otherwise, the trustees of ~~such~~ *that* association shall immediately make application to the judge of the district court for the judicial district in which the cemetery for which ~~such~~ *the* trust fund exists for the appointment of a trustee or of a board of trustees of ~~such~~ *the* fund. The judge ~~of such court~~ shall ~~thereupon~~ appoint a trustee or a board of trustees from a list submitted ~~to him~~ by the trustees of ~~such~~ *the* association. ~~Such~~ *The trust fund* trustee or ~~such~~ board ~~shall~~ *must* consist of not less than one or more than five persons, the exact number to rest in the discretion of the trustees of ~~said~~ *the* association.

(2) ~~Such~~ *The* trustee or the members of ~~such~~ *the* board of trustees of ~~such~~ *the trust* funds must be citizens and freeholders of the state of Montana during all the time they exercise the powers of ~~such~~ *the* trust. Upon the election, appointment, and qualification ~~as hereinafter provided~~ of the trustees of ~~such~~ *the* fund, all of the title to the funds included in ~~said~~ *the* trust and all of the rights, powers, authorities, franchises, and trusts ~~of whatsoever thereunto appertaining shall at once~~ *relating to the trust* vest in ~~him~~ *the trustee* or ~~them; *board*. or~~ *However*, ~~in case of the failure of~~ *if* any of those ~~so~~ chosen and appointed *as trustees fail* to qualify within 30 days after their appointment, the ~~same shall~~ *rights, powers, authorities, franchises, and trusts* vest in ~~the one or more~~ *those* who ~~shall~~ qualify. ~~In case of the failure of~~ *If* any of those ~~so~~ chosen and appointed ~~so~~ *fail* to qualify within ~~such time~~ *30 days*, a vacancy ~~shall exist~~ *exists* and the judge of ~~said~~ *the* district court shall ~~forthwith~~ appoint *a trustee to fill the vacancy* from a list submitted ~~to him~~ by the trustees of ~~such~~ *the* association ~~some person possessing the above qualifications to fill vacancy or vacancies in said board of trustees of such fund;. provided, however, that trustees of such fund heretofore appointed by such cemetery associations or district courts shall continue to hold their office as such trustees until terminated in one of the manners in this chapter provided.~~

(3) The board of trustees ~~shall also have the power and authority to~~ *of the association may* nominate any bank ~~which~~ *that* is authorized to act as a trust company in Montana under state or federal law to be trustee of ~~such~~ *the* trust fund. ~~And in that event~~ *In that case,* the district court shall ~~make appointment of such~~ *appoint the* nominee ~~which~~ *that* shall serve ~~in such capacity~~ without bond but ~~shall be~~ *is* required to make all reports and discharge all the duties and obligations required of individual trustees."

Section 1348. Section 35-20-304, MCA, is amended to read:

"35-20-304. Trustees of fund — bond required — renewal of bond — deposit with county treasurer. (1) Before exercising or having any of the powers, duties, rights, titles, authorities, or franchises appertaining to ~~such~~ *the* trust or to ~~such~~ trusteeship, each person chosen to be a trustee of ~~such~~ *the* fund shall give to the cemetery association for which the trust is maintained a bond in a sum equaling at least 1 1/3 times the value of the property on hand at the time of giving ~~such~~ *the* bond, with good and sufficient sureties ~~thereto~~, who shall justify in the aggregate in at least double the amount of ~~such~~ *the* bond~~;. the same to~~ *. The bond must* be conditioned for the due and faithful performance of ~~his~~ *the trustee's* trust until July 1 of the next even-numbered year after the year in

which ~~such~~ *the* bond ~~shall be~~ *is* given and until ~~such~~ *the* trustee ~~shall give~~ *gives* a new bond ~~as hereinafter provided~~.

(2) Upon July 1 in each even-numbered year, each trustee shall give a new bond conditioned in the same way, the amount ~~thereof~~ to be determined by the same rule, and with sureties as ~~above~~ provided *in subsection (1)*.

(3) Any failure ~~so~~ to renew bonds within 30 days after the time ~~hereinbefore~~ provided ~~shall be~~ *is* a sufficient ground for removal of any trustee within the discretion of the district court. ~~Such~~ *The* bonds ~~shall~~ *must* all be approved by a judge of the district court for the judicial district in which the cemetery for ~~such~~ *the* trust exists or some part ~~thereof shall be situated~~ *of the cemetery is located* and ~~shall~~ *must* be filed with the clerk of the district court of the county in which ~~such~~ *the* cemetery is located.

(4) The value of the property on hand may be reduced for the purpose of fixing the amount of the bond in an amount equal to the value of the money, bonds, and securities ~~which~~ *that* the trustee or trustees of the permanent care and improvement fund may elect to and do deposit with the county treasurer as ~~hereinafter~~ provided *in subsection (5)*.

(5) The trustee or trustees of ~~such~~ *the* fund may deposit ~~such~~ money, bonds, and securities as ~~he or they~~ *the trustee or trustees* see fit with the county treasurer of the county in which ~~said~~ *the* cemetery or some part ~~thereof~~ *of the cemetery* is ~~situated~~ *located* for safekeeping, and it is the duty of the county treasurer to receive and safely keep all ~~such moneys~~ *money*, bonds, and securities and pay them out or deliver them ~~up~~, or any part ~~thereof~~ *of them*, upon the order of ~~such~~ *the* trustee or a majority of the trustees, when countersigned by a judge of ~~said~~ *the* judicial district ~~and not otherwise~~, and to keep an account with ~~such~~ *the* trustee or trustees of all ~~such~~ transactions. For the safekeeping and payment and delivery of all ~~such moneys~~ *money*, bonds, and securities ~~as herein provided~~, the treasurer and ~~his~~ *the treasurer's* sureties are liable upon ~~his~~ *the treasurer's* official bond."

Section 1349. Section 37-1-205, MCA, is amended to read:

"37-1-205. Licensure on completion of supervision. Completion of probation or parole supervision without any subsequent criminal conviction ~~shall be~~ *is* evidence of rehabilitation~~;~~. ~~provided, however~~ *However*, ~~that~~ the facts surrounding the situation that led to the probation or parole supervision may be considered as they relate to the occupation for which a license is sought, and ~~provided that nothing herein shall~~ *this chapter may not* be construed to prohibit licensure of a person while ~~he~~ *the person* is under state supervision if the licensing agency finds insufficient evidence to preclude ~~such~~ licensure."

Section 1350. Section 37-2-102, MCA, is amended to read:

"37-2-102. Practices declared unlawful between drug companies and medical practitioners. It ~~shall be~~ *is* unlawful:

(1) for a drug company to give or sell to a medical practitioner any legal or beneficial interest in the company or in the income ~~thereof~~ *of the company* with the intent or for the purpose of inducing ~~such~~ *the* medical practitioner to prescribe to ~~his~~ patients the drugs of the company. The giving or selling of ~~such~~ *an* interest by the company to a medical practitioner without ~~such~~ *the* interest first having been publicly offered to the general public ~~shall be~~ *is* prima facie evidence of ~~such~~ *the* intent or purpose.

(2) for a medical practitioner to acquire or own a legal or beneficial interest in any drug company, provided it ~~shall~~ *is* not ~~be~~ unlawful for a medical

practitioner to acquire or own ~~such~~ an interest solely for investment~~;~~*,* and the acquisition of an interest ~~which~~ *that* is publicly offered to the general public ~~shall be~~ *is* prima facie evidence of its acquisition solely for investment;

(3) for a medical practitioner to solicit or to knowingly receive from a drug company or for a drug company to pay or to promise to pay to a medical practitioner any rebate, refund, discount, commission, or other valuable consideration for, on account of, or based upon the volume of wholesale or retail sales, at any place, of drugs manufactured, processed, packaged, or distributed by the company."

Section 1351. Section 37-2-103, MCA, is amended to read:

"37-2-103. Practices declared unlawful between medical practitioners and pharmacies. (1) It ~~shall be~~ *is* unlawful for a medical practitioner to own, directly or indirectly, a community pharmacy. ~~Nothing in this~~ *This* subsection ~~shall~~ *does not* prohibit a medical practitioner from dispensing a drug ~~which he~~ *that the medical practitioner* is permitted to dispense under 37-2-104.

(2) It ~~shall be~~ *is* unlawful for a medical practitioner*,* directly or indirectly*,* to solicit or to knowingly receive from a community pharmacy or for a community pharmacy knowingly to pay or promise to pay to a medical practitioner any rebate, refund, discount, commission, or other valuable consideration for, on account of, or based upon income received or resulting from the sale or furnishing by ~~such~~ *the* community pharmacy of drugs to patients of ~~any~~ *a* medical practitioner."

Section 1352. Section 37-2-106, MCA, is amended to read:

"37-2-106. Existing ownership of pharmacy. The provisions of 37-2-103(1) ~~shall~~ *do* not apply to a medical practitioner ~~as~~ *with respect* to any interest ~~which he~~ *that the medical practitioner* owns ~~as set forth in said subsection~~ on July 1, 1971~~,~~. ~~provided that~~ *However,* transfer of this interest to another person ~~shall result~~ *results* in immediate termination of ~~such~~ *the* exemption."

Section 1353. Section 37-2-201, MCA, is amended to read:

"37-2-201. Nonliability — evidential privilege — application to nonprofit corporations. (1) ~~No~~ *A* member of a utilization review or medical ethics review committee of a hospital or long-term care facility or of a professional utilization committee, peer review committee, medical ethics review committee, or professional standards review committee of a society composed of persons licensed to practice a health care profession is *not* liable in damages to any person for any action taken or recommendation made within the scope of the functions of the committee if the committee member acts without malice and in the reasonable belief that the action or recommendation is warranted by the facts known to ~~him~~ *the member* after reasonable effort to obtain the facts of the matter for which the action is taken or a recommendation is made.

(2) The proceedings and records of professional utilization, peer review, medical ethics review, and professional standards review committees are not subject to discovery or introduction into evidence in any proceeding. However, information otherwise discoverable or admissible from an original source is not to be construed as immune from discovery or use in any proceeding merely because it was presented during proceedings before the committee, nor is a member of the committee or other person appearing before it to be prevented from testifying as to matters within ~~his~~ *the individual's* knowledge, but ~~he~~ *the*

individual ~~cannot~~ *may not* be questioned about ~~his~~ *the individual's* testimony or other proceedings before the committee or about opinions or other actions of the committee or any member ~~thereof~~ *of the committee*.

(3) This section also applies to any member, agent, or employee of a nonprofit corporation engaged in performing the functions of a peer review, medical ethics review, or professional standards review committee."

Section 1354. Section 37-2-303, MCA, is amended to read:

"37-2-303. Immunity from liability. A physician or other person reporting pursuant to 37-2-302 ~~shall be~~ *is* presumed to be acting in good faith and in ~~so doing shall be~~ *reporting is* immune from any liability, civil or criminal, unless ~~he~~ *the individual* acted in bad faith or with malicious purpose."

Section 1355. Section 37-2-311, MCA, is amended to read:

"37-2-311. Report to department of justice by physician. (1) Any physician who diagnoses a physical or mental condition that, in the physician's judgment, will significantly impair a person's ability to safely operate a motor vehicle may voluntarily report the person's name and other information relevant to ~~his~~ *the person's* condition to the department of justice. The department, upon receiving the report, shall require the person ~~so~~ reported to be examined or investigated as provided for in 61-5-207.

(2) (a) The physician's report may be introduced as evidence in any proceeding involving the granting, suspension, or revocation of the person's driver's license, driving privilege, or commercial driver's license before the department or a court.

(b) The physician's report may not be utilized in a criminal proceeding or in a civil proceeding, other than as provided in this subsection *(2)*, without the consent of the patient."

Section 1356. Section 37-2-312, MCA, is amended to read:

"37-2-312. Physician's immunity from liability. ~~Any~~ *A* physician reporting in good faith is immune from any liability, civil or criminal, that otherwise might result by reason of ~~his~~ *the physician's* actions pursuant to 37-2-311 except for damages occasioned by gross negligence. ~~No~~ *An* action may *not* be brought against a physician for not making a report pursuant to 37-2-311."

Section 1357. Section 37-3-310, MCA, is amended to read:

"37-3-310. Notice of change of address or name — applicants — licensees. When a person applies for a license of any type to practice medicine in this state, the person shall designate in ~~his~~ *the* application ~~his~~ *the person's* correct and official address to which the department shall send communications, notices, orders, citations, or other process, if any, affecting ~~him~~ *the person*. A person licensed to practice medicine in this state shall keep the department advised at all times of ~~his~~ *the person's* correct mailing address and of ~~his~~ *the person's* correct name. If the person changes ~~his~~ *the person's* address or when the name of a licensee is changed by marriage or otherwise, the person shall within 30 days notify the department in writing of ~~his~~ *the* old and new address or of the former name and new name. This information ~~shall~~ *must* be entered promptly by the department in the official records of the department."

Section 1358. Section 37-3-321, MCA, is amended to read:

"37-3-321. Refusal of license. If the board determines that an applicant for a license to practice medicine does not possess the qualifications or character

required by this chapter or that ~~he~~ *the applicant* has committed unprofessional conduct, it shall refrain from authorizing the department to issue a license. The department shall mail to the applicant, at ~~his~~ *the applicant's* last address of record with the department, written notification of the board's decision, together with notice of a time and place of a hearing before the board. If the applicant without cause fails to appear at the hearing or if after *the* hearing the board determines ~~he~~ *that the applicant* is not entitled to a license, the board shall refuse to grant the license."

Section 1359. Section 37-3-325, MCA, is amended to read:

"37-3-325. Violations — penalties. (1) A person practicing medicine in this state without complying with parts 1 through 3 of this chapter or an association or corporation, ~~(~~except a professional service corporation under Title 35, chapter 4~~)~~, practicing medicine in this state or a person, association, or corporation violating parts 1 through 3 of this chapter or an officer or director of an association or corporation violating parts 1 through 3 of this chapter is guilty of a misdemeanor and on conviction shall be fined not less than $250 or more than $1,000 or *be* imprisoned in the county jail for not less than 90 days or more than 1 year, or both. Each daily failure to comply with or each daily violation of parts 1 through 3 of this chapter constitutes a separate offense.

(2) A person presenting or attempting to file as ~~his~~ *the person's* own the diploma, license, certificate, or credentials of another or who gives false or forged evidence to the board, a member of the board, or the department in connection with an application for a license to practice medicine or who practices medicine under a false or assumed name or who falsely impersonates another licensee is guilty of a felony and on conviction shall be imprisoned in the state penitentiary for a term of not less than 1 year or more than 10 years."

Section 1360. Section 37-3-326, MCA, is amended to read:

"37-3-326. Injunctive relief — manner of charging violation. Notwithstanding any other provision in this chapter, the board may maintain an action to enjoin a person from engaging in the practice of medicine until a license to practice medicine is procured. A person who has been enjoined and who violates the injunction is punishable for contempt of court. The injunction does not relieve the person practicing medicine without a license from a criminal prosecution. The remedy by injunction is in addition to remedies provided for the criminal prosecution of the offender. In charging a person in a complaint for injunction or in an affidavit, information, or indictment with a violation of this law by practicing medicine without a license, it is sufficient to charge that ~~he~~ *the person* did, on a certain day and in a certain county, engage in the practice of medicine not having a license to do so, without averring further or more particular facts concerning the violation."

Section 1361. Section 37-3-328, MCA, is amended to read:

"37-3-328. Failure to appear or testify. ~~Any~~ *A* person subpoenaed in the manner provided in 37-3-327 who fails or refuses to appear and testify ~~shall~~ *must* be dealt with by the district court from which ~~such~~ *the* subpoena was issued in the same manner and to the same effect as though the subpoena had commanded ~~him~~ *the person* to appear and testify in a cause on trial in ~~said~~ *that* court."

Section 1362. Section 37-4-322, MCA, is amended to read:

"37-4-322. When publishing professional cards not unprofessional conduct. (1) It ~~shall~~ *is* not ~~be~~ considered unprofessional for a dentist to place in any newspaper or publication, subject to the limitations stated ~~hereafter~~ *in this*

section, a card bearing ~~his~~ *the dentist's* name only, together with ~~his~~ *the dentist's* degree or the word "dentist" and giving office location, hours, and telephone numbers. If ~~he~~ *the dentist* limits ~~his~~ *the dentist's* practice to a specialty, ~~he~~ *the dentist* may ~~so~~ announce it or ~~he~~ *the dentist* may announce ~~his~~ *an* absence from or ~~his~~ *a* return to practice in the same manner.

(2) A dentist may publish a list of ~~his~~ fees, but ~~such~~ *the* listing must include full and complete information stating if the published fee is minimum, maximum, or usual and whether or not any additional charges may be made for the services published. All announcements or publications must be done in a professional manner that will in no way coerce or confuse the public."

Section 1363. Section 37-4-325, MCA, is amended to read:

"37-4-325. Witness fees and mileage. (1) Each witness who ~~shall appear~~ *appears* by order of the board or any member ~~thereof shall be~~ *of the board is* entitled to receive, if demanded, for ~~his~~ attendance the same fees and mileage allowed by law to a witness in civil cases in the district court~~,~~. ~~which~~ *The* amount ~~shall~~ *must* be paid by the party at whose request ~~such~~ *the* witness is subpoenaed unless otherwise ordered by the board. When any witness who has not been required to attend at the request of any party is subpoenaed by the board, ~~his~~ *the witness's* fees and mileage may be paid from the funds of the board in the same manner as other expenses of the board are paid.

(2) Any witness subpoenaed, except one whose fees and mileage may be paid from the funds of the board, may at the time of service demand the fee to which ~~he~~ *the witness* is entitled for travel to and from the place at which ~~he~~ *the witness* is required to appear and 1 day's attendance. If ~~such~~ *the* witness demands ~~such~~ *the* fees at the time of service and they are not at that time paid or tendered, ~~he shall~~ *the witness may* not be required to attend before the board, ~~or~~ a member ~~thereof~~ *of the board,* or *a* referee as directed in the subpoena."

Section 1364. Section 37-4-501, MCA, is amended to read:

"37-4-501. Work order for construction or repair of appliances. (1) A licensed dentist who employs or engages the services of a person, firm, or corporation to construct, reproduce, make, alter, or repair bridges, crowns, dentures, other prosthetic appliances, surgical appliances, or orthodontic appliances shall furnish the person, firm, or corporation with a written work authorization on forms prescribed by the board ~~which shall~~ *that must* contain:

(a) the name and address of the person, firm, or corporation to which the work authorization is directed;

(b) the patient's name or identification number, but if only a number is used, the patient's name ~~shall~~ *must* be written on the duplicate copy of the work authorization retained by the dentist;

(c) the date on which the work authorization was written;

(d) a description of the work to be done, including diagrams if necessary;

(e) a specification of the type and quality of the materials to be used; and

(f) the signature of the dentist and the number of ~~his~~ *the dentist's* license to practice dentistry.

(2) The person, firm, or corporation receiving a work authorization from a licensed dentist shall retain the original work authorization, and the dentist shall retain the duplicate copy for inspection at a reasonable time by the board for a period of 2 years from date of issuance."

Section 1365. Section 37-4-511, MCA, is amended to read:

"37-4-511. Limitations on ~~the~~ administration of general anesthetics and practices involving general anesthesia. (1) ~~No~~ *A* person engaged in the practice of dentistry or oral surgery may *not* perform any dental or surgical procedure upon another person if a general anesthetic is administered unless ~~such~~ *the* anesthetic is administered and monitored by:

(a) an anesthesiologist licensed to practice medicine by the state board of medical examiners;

(b) a nurse anesthetist recognized in that specialty by the state board of nursing; or

(c) another health professional who has received at least 1 year of postgraduate training in the administration of general anesthesia.

(2) ~~No~~ *A* person engaged in the practice of dentistry or oral surgery may *not* conduct any dental or surgical procedure upon another person under full general anesthesia unless the vital signs of the patient are continually monitored by another health professional who meets the qualifications for an anesthesiologist, nurse anesthetist, or other trained health professional as provided for in subsection (1).

(3) ~~No~~ *A* person engaged in the practice of dentistry or oral surgery may *not* conduct any dental or surgical procedure upon another person under light general anesthesia unless the vital signs of the patient are continually monitored by another person who has been examined by the board or its agent in life support skills and *who has* demonstrated a satisfactory level of proficiency as established by the board.

(4) ~~No~~ *A* person engaged in the practice of dentistry or oral surgery may *not* administer a general anesthetic to any other person unless ~~he~~ *the administering person* satisfies the requirements for a person qualified to administer a general anesthetic, as provided in subsection (1), and meets any additional standards established by the board of dentistry for training in the administration of general anesthesia and in the treatment of the complications ~~thereof~~ *of general anesthesia*. This subsection does not affect the requirements for monitoring of vital signs by another health professional under subsection (2) or (3).

(5) The facility in which general anesthesia is to be administered as part of a dental or surgical procedure must be equipped with proper drugs and equipment to safely administer anesthetic agents, to monitor the well-being of the patient under general anesthesia, and to treat the complications that may arise from general anesthesia."

Section 1366. Section 37-6-103, MCA, is amended to read:

"37-6-103. Application of chapter. This chapter ~~shall~~ *does* not apply to any physician licensed to practice ~~his~~ *the* profession in this state or to surgeons of the United States army, navy, ~~and/or~~ *or* public health service when in actual performance of their duties."

Section 1367. Section 37-6-301, MCA, is amended to read:

"37-6-301. License required for practice. ~~It~~ *Except as otherwise provided in this chapter, it* is unlawful for a person to profess to be a podiatrist, to practice or assume the duties incident to podiatry, or to advertise in any form or hold ~~himself~~ out to the public ~~as~~ *that the person is* a podiatrist~~,~~ or in a sign or advertisement to use the word "podiatrist" or "foot correctionist" or any other term, terms, or letters indicating to the public that ~~he~~ *the person* is holding ~~himself~~ out ~~as~~ *to the public that the person is* a podiatrist or foot correctionist in

any manner~~,~~ without first obtaining from the board a license authorizing the practice of podiatry in this state~~, except under this chapter~~."

Section 1368. Section 37-7-506, MCA, is amended to read:

"37-7-506. Notice to purchaser. (1) A pharmacist who selects a drug product, as provided in 37-7-505, shall notify the person presenting the prescription that ~~he~~ *the person* may refuse the product selection as provided in 37-7-505.

(2) Each pharmacy shall display in a prominent place that is in clear and unobstructed public view, at or near the place where prescriptions are dispensed, a sign stating: "This pharmacy may be able to select a less expensive drug product ~~which~~ *that* is equivalent to the one prescribed by your physician unless you or your physician request otherwise." The printing on the sign ~~shall~~ *must* be in block letters not less than 1 inch in height."

Section 1369. Section 37-7-509, MCA, is amended to read:

"37-7-509. Limitations on liability. (1) A pharmacist making a product selection under the provisions of this part assumes no greater responsibility for selecting the dispensed drug product than ~~he~~ *the pharmacist* would incur in filling a prescription for a drug product prescribed by a generic name.

(2) When a pharmacist selects a drug product, the prescriber may not be held liable in an action for loss, damage, injury, or death to a person caused by the use of the selected drug product, except that if the original drug product was incorrectly prescribed, the prescriber is not relieved of liability."

Section 1370. Section 37-9-201, MCA, is amended to read:

"37-9-201. Organization and compensation of board. (1) The board shall elect from its membership a ~~chairman~~ *presiding officer*, ~~vice-chairman~~ *vice presiding officer*, and secretary-treasurer and shall adopt rules to govern its proceedings.

(2) Each board member ~~shall~~ *must* receive compensation and travel expenses as provided for in 37-1-133."

Section 1371. Section 37-9-301, MCA, is amended to read:

"37-9-301. Qualifications for licensure — examination. (1) The department shall register and issue licenses to qualified persons as nursing home administrators, and the board shall establish qualification criteria for nursing home administrators. ~~No~~ *A* registration or license ~~shall~~ *may not* be issued to a person as a nursing home administrator unless ~~he~~ *the person*:

(a) is of good character, *is* of sound physical and mental health, *and* has received a high school diploma or its equivalent; and

(b) (i) has satisfactorily completed a course of instruction and training prescribed by the board, which ~~shall~~ *must* be designed and administered to present sufficient knowledge of the needs properly served by long-term care facilities, laws governing the operation of long-term care facilities and the protection of the interests of patients, and the elements of good nursing home administration; or

(ii) has presented evidence satisfactory to the board of sufficient education, training, or experience, or a combination of education, training, and experience, in the fields referred to in subsection (1)(b)(i) to administer, supervise, and manage a long-term care facility; and

(c) has passed an examination designed to test for competence in the subject matters referred to in subsection (1)(b)(i).

(2) The minimum standards for qualification ~~shall~~ *must* comply with the requirements, if any, set forth in ~~Title XIX of the Social Security Act, Public Law 90-248, as amended~~ *42 U.S.C. 1396g*."

Section 1372. Section 37-9-312, MCA, is amended to read:

"37-9-312. Violation. It ~~shall be~~ *is* unlawful for any person to act or serve in the capacity of a nursing home administrator unless ~~he~~ *the person* is the holder of a registration and license as a nursing home administrator, issued in accordance with the provisions of this chapter. A person who violates the provisions of this chapter ~~shall be~~ *is* guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than $500 or by imprisonment for not more than 6 months, or ~~by~~ both ~~such fine and imprisonment~~."

Section 1373. Section 37-11-311, MCA, is amended to read:

"37-11-311. Display of license. Each licensee shall display ~~his~~ *the licensee's* original license or an official duplicate issued by the department and a renewal certificate in a conspicuous place in the principal office where ~~he~~ *the licensee* practices physical therapy. A reproduction displayed in lieu of the ~~above~~ *original or official duplicate* is not authorized unless the reproduction is signed and notarized by a notary public."

Section 1374. Section 37-12-324, MCA, is amended to read:

"37-12-324. Penalty for violation. ~~Any~~ *A* person who ~~shall practice~~ *practices* or ~~attempt~~ *attempts* to practice chiropractic or ~~any~~ *a* person who ~~shall buy~~ *buys*, ~~sell~~ *sells*, or fraudulently ~~obtain~~ *obtains* any diploma or license to practice chiropractic, whether recorded or not, or who ~~shall use~~ *uses* the title "chiropractor", "D.C.", "Ph.C.", or any word title to influence belief that ~~he~~ *the person* is engaged in the practice of chiropractic without first complying with the provisions of this chapter or ~~any~~ *a* person who ~~shall violate~~ *violates* any of the provisions of this chapter ~~shall be~~ *is* guilty of a misdemeanor and upon conviction ~~thereof~~ shall be punished by a fine of not less than $100 or more than $700 or by imprisonment in a county jail for not less than 30 days or more than 7 months, or ~~by~~ both ~~such fine and imprisonment~~. Prosecutions for the violation of this chapter ~~shall~~ *must* be instituted in the district courts."

Section 1375. Section 37-13-315, MCA, is amended to read:

"37-13-315. Enjoining unlawful practice. The practice of acupuncture in any way other than as defined in this chapter may be enjoined by the district court on petition by the board. In ~~any such~~ *the* proceeding, it ~~shall~~ *is* not ~~be~~ necessary to show that any person is individually injured by the actions complained of. If the respondent is found to have ~~so~~ practiced *improperly*, the court shall enjoin ~~him~~ *the respondent* from ~~so~~ practicing ~~unless and~~ until ~~he~~ *the respondent* has been ~~duly~~ licensed. Procedure in ~~such~~ *these* cases ~~shall be~~ *is* the same as in any other injunction suit. The remedy by injunction is in addition to criminal prosecution and punishment."

Section 1376. Section 37-14-307, MCA, is amended to read:

"37-14-307. Duty to carry, *or* display license or permit. Each radiologic technologist or limited permit technician shall carry or display ~~his~~ *the person's* license or permit while at work. The license or permit ~~shall~~ *must* be displayed on request."

Section 1377. Section 37-15-301, MCA, is amended to read:

"37-15-301. License required. (1) A license ~~shall~~ *must* be issued to qualified persons either in speech-language pathology or audiology. A person may be licensed in both areas if ~~he~~ *the person* meets the respective

qualifications, and in ~~such~~ *those* instances, the license fee ~~shall~~ *must* be as though for one license.

(2) ~~No~~ *A* person may *not* practice or represent ~~himself as~~ *to the public that the person is* a speech-language pathologist or audiologist in this state unless ~~he~~ *the person* is licensed in accordance with the provisions of this chapter."

Section 1378. Section 37-16-103, MCA, is amended to read:

"37-16-103. Exemptions. (1) This chapter does not apply to a person who is a physician licensed to practice by the state board of medical examiners.

(2) This chapter does not apply to a person while ~~he~~ *the person* is engaged in the practice of fitting hearing aids if ~~his~~ *the person's* practice is part of the academic curriculum of an accredited institution of higher education or part of a program conducted by a public agency."

Section 1379. Section 37-16-402, MCA, is amended to read:

"37-16-402. Application — qualifications — fee. An applicant for a license shall pay a fee fixed by the board and commensurate with the costs of processing and administering ~~his~~ *the* application and related functions of the board and shall show to the satisfaction of the board that ~~he~~ *the applicant*:

(1) is a person of good moral character;

(2) has an education equivalent to a 4-year course in an accredited high school or holds a current license as an audiologist under Title 37, chapter 15; and

(3) is free of contagious or infectious disease."

Section 1380. Section 37-17-301, MCA, is amended to read:

"37-17-301. License required. A person may not represent ~~himself to be~~ *to the public that the person is* a psychologist or engage in the practice of psychology unless ~~he~~ *the person* is licensed under this chapter."

Section 1381. Section 37-17-313, MCA, is amended to read:

"37-17-313. Injunction for unlawful practice. The practice of psychology in any way other than as defined in this chapter may be enjoined by the district court on petition by the board. In ~~any such~~ *the* proceeding, it ~~shall~~ *is* not ~~be~~ necessary to show that any person is individually injured by the actions complained of. If the respondent is found to have ~~so~~ practiced *improperly*, the court shall enjoin ~~him~~ *the respondent* from ~~so~~ practicing unless and until ~~he~~ *the respondent* has been ~~duly~~ licensed. Procedure in ~~such~~ *these* cases ~~shall be~~ *is* the same as in any other injunction suit. The remedy by injunction ~~hereby given~~ is in addition to criminal prosecution and punishment."

Section 1382. Section 37-18-102, MCA, is amended to read:

"37-18-102. Veterinary medicine defined. (1) A person is considered practicing veterinary medicine when ~~he~~ *the person* does any of the following:

(a) represents ~~himself as~~ *to the public that the person is a veterinarian* or is engaged in the practice of veterinary medicine in any of its branches, either directly or indirectly;

(b) uses words, titles, or letters in this connection or on a display or advertisement or under circumstances so as to induce the belief the person using them is engaged in the practice of veterinary medicine. This use is prima facie evidence of the intention to represent oneself as engaged in the practice of veterinary medicine in any of its branches.

(c) diagnoses, prescribes, or administers a drug, medicine, appliance, application, or treatment of whatever nature or performs a surgical operation or

manipulation for the prevention, cure, or relief of a pain, deformity, wound, fracture, bodily injury, physical condition, or disease of animals;

(d) instructs, demonstrates, or solicits by a notice, sign, or other indication, with contract either express or implied, or otherwise, with or without the necessary instruments, for the administration of biologics or medicines or animal disease cures for the prevention and treatment of disease of animals and remedies for the treatment of internal parasites in animals;

(e) performs a manual or laboratory procedure on livestock for the diagnosis of pregnancy, sterility, or infertility for remuneration or hire;

(f) performs acupuncture, ova or embryo transfer, or dentistry on animals;

(g) instructs others, except those covered under the provisions of 37-18-104(4), for compensation, in any manner how to perform any acts ~~which~~ *that* constitute the practice of veterinary medicine.

(2) ~~Nothing in subsection~~ *Subsection* (1)(e) ~~of this section~~ ~~shall~~ *may not* in any way be construed to prohibit the pregnancy testing by any person of ~~his~~ *the person's* own farm animals or by ~~his~~ *the person's* employees regularly employed in the conduct of ~~his~~ *the person's* business or by other persons whose services are rendered gratuitously.

(3) ~~Nothing in this~~ *This* section ~~shall~~ *may not* be construed as modifying, amending, altering, or repealing any part of 37-18-104."

Section 1383. Section 37-18-313, MCA, is amended to read:

"37-18-313. Municipal license fee prohibited. ~~No~~ *A* license fee or license tax may *not* be imposed upon a person who practices veterinary medicine, as a condition to the practice of ~~his~~ *the* profession, by any municipality or other political subdivision of the state, including a local government with self-governing powers."

Section 1384. Section 37-18-501, MCA, is amended to read:

"37-18-501. Penalty. A person practicing veterinary medicine within this state, as defined in this chapter, without first having obtained a license to practice and being registered as required by this chapter or after ~~his~~ *the person's* license to practice has been suspended or revoked or contrary to the provisions of this chapter in any manner is guilty of a misdemeanor for each violation of the provisions of this chapter or for each act relating to the practice of veterinary medicine in this state. ~~and upon~~ *Upon* conviction*, the person* shall be punished by a fine of not less than $200 or more than $500~~,~~ or by imprisonment in the county jail for not less than 30 days or more than 6 months, or ~~by~~ both ~~such fine and imprisonment~~. ~~Any~~ *A* person convicted a second time for any violation of this chapter shall be punished by both ~~such~~ fine and imprisonment. The district court has jurisdiction of all prosecutions brought ~~hereunder~~ *under this section*."

Section 1385. Section 37-18-502, MCA, is amended to read:

"37-18-502. Injunction. The board or any person may bring an action in the district court to enjoin ~~any~~ *a* person who is not licensed from engaging in the practice of veterinary medicine unless otherwise exempted under 37-18-104(4). If the court finds that the defendant is violating or threatening to violate any provision of Title 37, chapter 18, it shall enter an order restraining ~~him~~ *the defendant* from the violation, without regard to any criminal provisions of Title 37, chapter 18."

Section 1386. Section 37-19-201, MCA, is amended to read:

"37-19-201. Organization — compensation and expenses of members. The board shall elect a ~~chairman~~ *presiding officer*, secretary-treasurer, and other necessary officers. Board members are entitled to receive compensation and travel expenses as provided for in 37-1-133."

Section 1387. Section 37-21-301, MCA, is amended to read:

"37-21-301. Dietitian — qualifications. ~~No~~ *A* person may *not* use, in connection with ~~his~~ *the person's* name or place of business, the term "dietitian" or represent in any way that ~~he~~ *the person* is a dietitian unless ~~he~~ *the person*:

(1) has been granted, prior to October 1, 1983, the right to use the term "dietitian" by an authorized agency; or

(2) (a) is 18 years of age or older;

(b) has satisfactorily completed appropriate academic requirements for the field of dietetics and related disciplines;

(c) has received a baccalaureate or higher degree in dietetics or a related field from a college or university accredited by the Northwestern association of schools and colleges; and

(d) has satisfactorily completed a program of supervised clinical experience of not less than 6 months in length that is designed to train entry-level dietitians through instruction and assignments in a clinical setting. The program must meet minimum requirements established by the department."

Section 1388. Section 37-22-401, MCA, is amended to read:

"37-22-401. Privileged communications — exceptions. A licensee may not disclose any information ~~he~~ *the licensee* acquires from clients consulting ~~him~~ *the licensee* in ~~his~~ *a* professional capacity except:

(1) with the written consent of the client or, in the case of the client's death or mental incapacity, with the written consent of the client's personal representative or guardian;

(2) that ~~he~~ *the licensee* need not treat as confidential a communication otherwise confidential that reveals the contemplation of a crime by the client or any other person or that in ~~his~~ *the licensee's* professional opinion reveals a threat of imminent harm to the client or others;

(3) that if the client is a minor and information acquired by the licensee indicates that the client was the victim of a crime, the licensee may be required to testify fully in relation ~~thereto~~ *to the information* in any investigation, trial, or other legal proceeding in which the commission of ~~such~~ *that* crime is the subject of inquiry;

(4) that if the client or ~~his~~ *the client's* personal representative or guardian brings an action against a licensee for a claim arising out of the social worker-client relationship, the client is considered to have waived any privilege;

(5) to the extent that the privilege is otherwise waived by the client; and

(6) as may otherwise be required by law."

Section 1389. Section 37-22-411, MCA, is amended to read:

"37-22-411. Violations — penalties. (1) It is a misdemeanor for a person to:

(a) represent ~~himself as~~ *to the public that the person is* a licensed social worker without being licensed under this chapter;

(b) obtain or attempt to obtain a license or license renewal by bribery or fraudulent representation; or

(c) knowingly make a false statement on any form used by the board to implement this chapter or the rules adopted under this chapter.

(2) A person convicted under this section shall be imprisoned in the county jail for a period not exceeding 6 months or *be* fined not more than $500, or both. A person convicted of a second offense under this section shall be punished by both ~~such~~ fine and imprisonment."

Section 1390. Section 37-23-301, MCA, is amended to read:

"37-23-301. Privileged communications — exceptions. A licensee may not disclose any information ~~he~~ *the licensee* acquires from clients consulting ~~him~~ *the licensee* in ~~his~~ *a* professional capacity except:

(1) with the written consent of the client or, in the case of the client's death or mental incapacity, with the written consent of the client's personal representative or guardian;

(2) that ~~he~~ *the licensee* need not treat as confidential a communication otherwise confidential that reveals the contemplation of a crime by the client or any other person or that in ~~his~~ *the licensee's* professional opinion reveals a threat of imminent harm to the client or others;

(3) that if the client is a minor and information acquired by the licensee indicates that the client was the victim of a crime, the licensee may be required to testify fully in relation ~~thereto~~ *to the information* in any investigation, trial, or other legal proceeding in which the commission of ~~such~~ *that* crime is the subject of inquiry;

(4) that if the client or ~~his~~ *the client's* personal representative or guardian brings an action against a licensee for a claim arising out of the counselor-client relationship, the client is considered to have waived any privilege;

(5) to the extent that the privilege is otherwise waived by the client; and

(6) as may otherwise be required by law."

Section 1391. Section 37-24-301, MCA, is amended to read:

"37-24-301. License required. (1) (a) ~~No~~ *A* person may *not* hold ~~himself~~ out ~~as~~ *to the public that the person is* an occupational therapist or ~~as being~~ *is* able to practice occupational therapy or able to render occupational therapy services in this state unless ~~he~~ *the person* is licensed as an occupational therapist under the provisions of this chapter.

(b) ~~No~~ *A* person may *not* practice or hold ~~himself~~ out ~~as~~ *to the public that the person is* an occupational therapy assistant in this state unless ~~he~~ *the person* is licensed as an occupational therapist or as an occupational therapy assistant.

(2) Only an individual may be licensed under this chapter."

Section 1392. Section 37-25-302, MCA, is amended to read:

"37-25-302. Licensing requirements. (1) An applicant for licensure as a licensed nutritionist shall file a written application with the board and demonstrate to the board that ~~he~~ *the person* is registered by the commission.

(2) An applicant shall pay an application fee~~,~~ set by the board."

Section 1393. Section 37-25-304, MCA, is amended to read:

"37-25-304. Exemptions from licensure requirements. This chapter does not prevent:

(1) a student or intern in an approved academic program or a paraprofessional with approved dietetic-nutrition training from engaging in the practice of dietetics-nutrition if a licensed nutritionist is available for direct supervision and if the student, intern, or paraprofessional does not represent ~~himself~~ to the public ~~as~~ *that the individual is* a nutritionist;

(2) a licensed physician or nurse from engaging in the practice of dietetics-nutrition when it is incidental to the practice of ~~his~~ *that* profession;

(3) a person licensed under any other law from engaging in the profession or business for which ~~he~~ *the person* is licensed if ~~he~~ *the person* does not represent ~~himself~~ to the public ~~as~~ *that the person is* a nutritionist;

(4) an educator or ~~advisor~~ *adviser* employed by a nonprofit agency acceptable to the board or by an accredited degree-granting institution or an accredited elementary or secondary school from engaging in an activity within the scope of ~~his~~ *the individual's* salaried position;

(5) a person employed by or under contract with an agency of the state or federal government from discharging ~~his~~ *an* official duty if ~~he~~ *the person* does not represent ~~himself~~ to the public ~~as~~ *that the person is* a nutritionist;

(6) a person from furnishing general nutritional information, including dissemination of literature, as to the use of food, food materials, or dietary supplements or from engaging in the explanation as to the use of foods or food products, including dietary supplements, in connection with the marketing and distribution of those products if ~~he~~ *the person* does not represent ~~himself~~ to the public ~~as~~ *that the person is* a nutritionist;

(7) a person from furnishing general nutrition information or disseminating literature if ~~he~~ *the person* does not represent ~~himself~~ to the public ~~as~~ *that the person is* a dietitian or a nutritionist; or

(8) a person from fulfilling state or federal regulations governing the delivery or provision of nutritional health services to hospitals or long-term care facilities if ~~he~~ *the person* does not represent ~~himself~~ to the public ~~as~~ *that the person is* a nutritionist."

Section 1394. Section 37-26-401, MCA, is amended to read:

"37-26-401. License required — titles restricted — enjoining unlawful practice. (1) Except as provided in 37-26-302, a person may not practice naturopathy without a valid and current license issued by the board as provided in this chapter.

(2) (a) A naturopathic physician licensed under this chapter may use the prefix "Dr." or "doctor" as a title.

(b) Only a naturopathic physician licensed under this chapter may use any ~~or all~~ of the following titles or terms:

(i) "doctor of naturopathy", "doctor of naturopathic medicine", "naturopath", "naturopathic physician", and the abbreviation "N.D." when used to imply any of these titles; or

(ii) "naturopathic medicine", "naturopathic health care", "naturopathic", and "naturopathy".

(c) The titles and terms in subsection (2)(b) identify naturopathic physicians and are restricted to describing and identifying licensed practitioners and their practice. A person who uses these titles and terms to represent ~~himself~~ *the person* or ~~his~~ *the person's* practice to the public without being licensed pursuant to this chapter is in violation of this chapter.

(3) A violation of this chapter may be enjoined by the district court on petition by the board."

Section 1395. Section 37-26-402, MCA, is amended to read:

"37-26-402. Qualifications for licensure. A person is qualified to be licensed to practice naturopathic medicine in Montana if ~~he~~ *the person*:

(1) is of good moral character as determined by the board;

(2) is a graduate of an approved naturopathic medical college; and

(3) has passed an examination prescribed or endorsed by the board for the licensure of naturopathic physicians."

Section 1396. Section 37-29-405, MCA, is amended to read:

"37-29-405. Advertising restrictions. ~~No~~ *A* person may *not* represent or hold ~~himself~~ out to the public ~~as~~ *that the person is* a denturist or ~~as~~ *is* practicing denturitry unless licensed under this chapter."

Section 1397. Section 37-40-102, MCA, is amended to read:

"37-40-102. Exemptions. Persons exempt from the requirements of this chapter are:

(1) any person teaching, lecturing, or engaging in research in environmental sanitation, but only insofar as ~~such~~ *the* activities are performed as part of an academic position in a college or university;

(2) any person who is a registered professional engineer or engineer intern;

(3) any public health officer employed pursuant to 50-2-116;

(4) any person employed by a federal governmental agency, but only at ~~such~~ times ~~as~~ *that* the person is carrying out the functions of ~~his~~ *the* employment;

(5) a state employee unless expressly required by statute, regulation, or position description to be registered as a sanitarian; or

(6) any person not employed by a governmental entity or not under contract with a governmental entity for the performance of an official regulatory function."

Section 1398. Section 37-40-301, MCA, is amended to read:

"37-40-301. License required. A person may not practice or offer to practice the profession of sanitarian as defined in this chapter or hold ~~himself~~ out *to the public* in any manner ~~to be~~ *that the person is* a licensed sanitarian unless the person is licensed and registered under the provisions of this chapter."

Section 1399. Section 37-40-312, MCA, is amended to read:

"37-40-312. Penalty. (1) A person who offers ~~his~~ *the person's* services as a sanitarian or uses, assumes, or advertises in any way any title or description tending to convey the impression that ~~he~~ *the person* is a registered sanitarian who does not hold the license specified by this chapter is guilty of a misdemeanor and is punishable by a fine not to exceed $500 or *by* imprisonment for not longer than 6 months, or both.

(2) The board may enforce the provisions of this chapter by injunction or any other appropriate proceeding."

Section 1400. Section 37-42-201, MCA, is amended to read:

"37-42-201. Meetings — compensation of members — expenses. (1) Annually, when new members are appointed to the council, a ~~chairman shall~~ *presiding officer must* be elected at the next council meeting.

(2) Meetings may be called by the ~~chairman~~ *presiding officer* or on written request of four members of the council when necessary to carry out its function to advise the department under this chapter. Four members constitute a quorum.

(3) Members of the council are entitled to be reimbursed and compensated as are members of advisory councils in 2-15-122(5)."

Section 1401. Section 37-42-305, MCA, is amended to read:

"37-42-305. Certification without examination. The department may consider for certification the holder of a certificate issued by a governmental agency or equivalent certification board of another state on presentation to the department of satisfactory evidence that the applicant is in responsible charge of works located in this state requiring a certified operator and that ~~he~~ *the applicant* has successfully passed an examination at least equivalent to that required under 37-42-202(2)."

Section 1402. Section 37-43-102, MCA, is amended to read:

"37-43-102. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Apprentice water well driller" means an individual who is learning the trade of water well drilling and performs labor and services for a licensed water well contractor and whose duties are directly related to well drilling or drilling rig operation.

(2) "Board" means the board of water well contractors provided for in 2-15-3307.

(3) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(4) "Geotechnical boring" means a hole intended solely to determine the composition, stability, density, movement, pressure, stratigraphy, or other physical properties of soil or rock.

(5) *(a)* "Monitoring well" means a well that is used for pollutant recovery or monitoring ground water quality, ground water levels, or flow direction, but whose primary purpose is not the withdrawal or acquisition of ground water.

(b) ~~Monitoring well~~ *The term* does not include geotechnical borings, perk test holes, and ground water exploration holes that are used to determine suitability of onsite sewage disposal by septic tank drain fields or lagoons.

(6) "Monitoring well constructor" means a natural person who installs monitoring wells.

(7) *(a)* "Water well" means an excavation that is drilled, cored, bored, washed, driven, dug, jetted, or otherwise constructed and intended for the location, diversion, artificial recharge, or acquisition of ground water.

(b) The term does not include*:*

(i) spring development or excavations, by backhoe or otherwise, for recovery and use of surface waters or for the purpose of stock watering or irrigation ~~where~~ *when* the depth is 25 feet or less~~.~~*; or*

(ii) ~~The term does not include~~ an excavation made for the purpose of obtaining or prospecting for oil, natural gas, minerals, or products of mining or quarrying or for inserting media to repressure oil- or natural-gas-bearing formations or for storing petroleum, natural gas, or other products.

(8) "Water well contractor" or "contractor" means a natural person who contracts on behalf of a firm, corporation, partnership, or other business entity to construct, alter, or rehabilitate a water well on lands other than ~~his~~ *the person's* own for compensation.

(9) "Water well driller" or "driller" means any person, other than an apprentice, at a drilling site causing a water well to be drilled, altered, or rehabilitated."

Section 1403. Section 37-43-201, MCA, is amended to read:

"37-43-201. Organization — seal — compensation of members. (1) The board shall annually elect a ~~chairman~~ *presiding officer* and ~~vice-chairman~~ *vice presiding officer*.

(2) The board ~~shall~~ *must* have a seal with the words ~~engraved thereon,~~ "Board of Water Well Contractors" *engraved on the seal*, and ~~such~~ *the* seal ~~shall~~ *must* be affixed to all writs, authentication of records, and other official proceedings of the board. The courts of this state shall take judicial notice of ~~such~~ *the* seal.

(3) Each appointed member of the board who is not a government employee ~~shall~~ *must* receive as compensation for ~~his~~ *the member's* services ~~the sum of~~ $50 ~~per~~ *a* day for each day actually engaged in the performance of the duties of ~~his~~ *the* office, including time of travel between ~~his~~ *the member's* home and the places at which ~~he shall perform such~~ *the member performs* duties, together with mileage and per diem expenses as provided for in 2-18-501 through 2-18-503. The members who are employees of the state of Montana ~~shall~~ *may not* receive ~~no~~ extra compensation for their services as members of the board."

Section 1404. Section 37-43-302, MCA, is amended to read:

"37-43-302. License required. (1) The drilling, making, or construction of water wells and monitoring wells is declared to be a business and activity affecting the public interest~~,~~ *and* requiring reasonable standards of competence. Except as provided in subsection (2), it is unlawful for any water well contractor, water well driller, or monitoring well constructor ~~as defined in this chapter~~ to construct, alter, or rehabilitate a water well or a monitoring well without first having obtained a valid license therefor as provided for in this chapter. An individual who is licensed as a water well contractor is not required to have a separate water well driller's license to perform the actual construction work on the well or a separate license to install monitoring wells.

(2) A license is not required for:

(a) a person who drills, alters, or rehabilitates a water or monitoring well on land that is owned or leased by ~~him~~ *the person*~~, provided~~ *if*:

(i) the land is used by ~~him~~ *the person* for farming, ranching, or agricultural purposes or as ~~his~~ *the person's* residence;

(ii) the person obtains a permit from the board; and

(iii) the construction of the well conforms to the minimum construction standards for water or monitoring wells set by board rule; or

(b) an apprentice water well driller who performs labor or services for a licensed water well contractor or driller in connection with the drilling of a water well at the direction and under the personal supervision of a licensed water well contractor or driller.

(3) (a) To obtain a permit under subsection (2)(a), a person shall file with the department an application containing the applicant's name~~,~~ *and* mailing

address, the location of the proposed well, the nature of the applicant's ownership interest in the property on which the well is to be located, the construction or installation method to be used, and the use for the proposed well.

(b) The board shall promptly issue a permit if it finds that:

(i) the well is located on land that the applicant owns or leases and that ~~he~~ *the applicant* uses for farming, ranching, or agricultural purposes or as ~~his~~ *the applicant's* residence; and

(ii) the construction or installation method to be used meets the minimum standards for water wells or monitoring wells set by board rule."

Section 1405. Section 37-43-305, MCA, is amended to read:

"37-43-305. Examination and qualifications. (1) Under board rules pertaining to the business of drilling and contracting for drilling of water wells and monitoring wells, the department shall inquire by examination or otherwise into the qualifications of applicants for licenses. Examinations may be oral, written, or both.

(2) The qualifications for a water well contractor's license are:

(a) familiar knowledge of ground water laws of this state and sanitary standards for water well drilling and construction of water wells;

(b) knowledge of types of water well construction;

(c) knowledge of types of drilling tools and their uses;

(d) knowledge of geology in its relation to well construction;

(e) possession of adequate equipment by the applicant to complete satisfactory water wells under the standards of the board;

(f) financial responsibility of the applicant;

(g) successful completion of an examination given by the department; and

(h) completion of an apprenticeship of 1 year or more under the direct supervision of a licensed water well contractor or equivalent education, experience, or both, as determined by the board.

(3) The qualifications for a water well driller's license are:

(a) familiar knowledge of ground water laws of this state and sanitary standards for water well drilling and water well construction;

(b) knowledge of types of water well construction;

(c) knowledge of types of drilling tools and their uses;

(d) knowledge of geology in its relation to well construction;

(e) employment by a licensed water well contractor;

(f) completion of an apprenticeship of 1 year or more under the direct supervision of a licensed water well contractor or driller or equivalent education, experience, or both, as determined by the board; and

(g) successful completion of an examination given by the department.

(4) The qualifications for a license to construct monitoring wells are:

(a) familiar knowledge of ground water laws of this state and sanitary standards for drilling and construction of monitoring wells;

(b) knowledge of types of monitoring well construction;

(c) knowledge of types of drilling tools used for monitoring wells and their uses;

(d) knowledge of geology;

(e) financial responsibility of the applicant;

(f) 1 or more years of experience in drilling monitoring wells under the direct supervision of a licensed monitoring well constructor or equivalent education, experience, or both, as determined by the board; and

(g) successful completion of an examination related specifically to drilling of monitoring wells given by the department.

(5) The department shall give examinations at times and places the board determines. Failure of an applicant to successfully complete the examination disqualifies ~~him~~ *the applicant* from making further application for a period of 3 months. The board shall act within a reasonable time on applications for licenses. An application ~~shall~~ *must* be accompanied by the initial fee, and failure to successfully meet the requirements of the board does not entitle the applicant to a refund of the fee."

Section 1406. Section 37-43-306, MCA, is amended to read:

"37-43-306. Bond to be required. (1) The department, on issuance of a water well contractor's or monitoring well constructor's license under this chapter, shall require, before the person commences operations in this state, a good and sufficient surety bond or its equivalent in a certificate of deposit, cashier's check, bank draft, or certified check, to be approved by the board, in the sum of $4,000, conditioned that the licensee will comply with the rules of the board.

(2) A person who is licensed in more than one category need supply only one surety bond or its equivalent in a certificate of deposit, cashier's check, bank draft, or certified check, to be approved by the board, for $4,000.

(3) A state or federal employee who is bonded by the state or federal government is not required to supply a bond during the course of ~~his~~ employment with the state or federal government. A bond is required if the person ceases government employment.

(4) In lieu of the requirements of subsections (1) through (3), a firm, corporation, or partnership having more than two licensed water well contractors or monitoring well constructors may submit one bond in the amount of $10,000 for the entire firm, corporation, or partnership."

Section 1407. Section 37-43-308, MCA, is amended to read:

"37-43-308. Reciprocity. If a person holding a license entitling ~~him~~ *the person* to drill water wells or monitoring wells in another state applies for a Montana water well contractor's, water well driller's, or monitoring well constructor's license, the board may waive the apprenticeship requirements and examination requirements if it finds that the standards and requirements of the state in which the applicant is licensed are equal to or exceed those of Montana. However, the board may require the applicant to successfully complete an examination based on Montana statutes and rules relating to the drilling of water wells or monitoring wells in this state."

Section 1408. Section 37-50-403, MCA, is amended to read:

"37-50-403. Nonliability — evidential privilege — application to nonprofit corporations. (1) A member of a peer review, professional standards review, or ethics review committee of a society composed of persons licensed to practice the accounting profession is not liable in damages to any person for any action taken or recommendation made within the scope of the

functions of the committee if the committee member acts without malice and in the reasonable belief that the action or recommendation is warranted by the facts known to ~~him~~ *the member* after reasonable effort to obtain the facts.

(2) The proceedings and records of peer review, professional standards review, and ethics review committees are not subject to discovery or introduction into evidence in any proceeding. However, information otherwise discoverable or admissible from an original source is not to be construed as immune from discovery or use in any proceeding merely because it was presented during proceedings before the committee, nor is a member of the committee or other person appearing before it to be prevented from testifying as to matters within ~~his~~ *that person's* knowledge~~;~~. ~~however~~ *However*, ~~he~~ *the person* may not be questioned about ~~his~~ *the person's* testimony or other proceedings before the committee or about opinions or other actions of the committee or any member of the committee.

(3) This section also applies to ~~any~~ *a* member, agent, or employee of a nonprofit corporation engaged in performing the functions of a peer review, professional standards review, or ethics review committee with respect to the profession of accounting."

Section 1409. Section 37-51-201, MCA, is amended to read:

"37-51-201. ~~Chairman~~ *Presiding officer* — seal — records — prohibition on membership in real estate associations. (1) The members of the board shall elect a ~~chairman~~ *presiding officer* from among their number.

(2) The board shall adopt a seal of a design ~~as~~ *that* it ~~shall prescribe~~ *prescribes*. Copies of records and papers kept by the department, certified by the ~~chairman~~ *presiding officer,* and authenticated by the seal of the board~~,~~ ~~shall~~ *must* be received in evidence in courts with ~~like~~ *the same* effect as the original. Records of the board are open to public inspection under rules it prescribes.

(3) The department*:*

(a) shall keep a record of proceedings, transactions, communications, and official acts of the board;

(b) ~~be~~ *is* custodian of the records of the board; and

(c) ~~cause to be performed~~ *shall perform* other duties ~~as~~ *that* the board, on the written request of two or more members of the board or at other times ~~as~~ *that* the ~~chairman in his discretion~~ *presiding officer*, considers necessary.

(4) ~~Neither the chairman nor~~ *The presiding officer or* an employee of the department hired to provide services to the board may *not* be an officer or paid employee of any real estate association or group of real estate dealers or brokers."

Section 1410. Section 37-51-323, MCA, is amended to read:

"37-51-323. Penalties — criminal — civil. (1) ~~Any~~ *An* individual acting as a broker or salesperson without a license or while ~~his~~ *the individual's* license is suspended or revoked or ~~any~~ *a* person who violates any provision of this chapter ~~shall be~~ *is* guilty of a misdemeanor and upon conviction ~~thereof~~ by a district court of this state shall be ~~punishable~~ *punished* by a fine of not less than $100 or more than $500 or by imprisonment for a term not to exceed 90 days, or both. Upon conviction of a second or subsequent violation, the person shall be ~~punishable~~ *punished* by a fine of not less than $500 or more than $2,000 or by imprisonment for a term not to exceed 6 months, or both.

(2) In case ~~any~~ *a* person in a civil action is found guilty of having received any money or the equivalent ~~thereof~~ *of money* as a fee, commission, compensation, or profit by or in consequence of a violation of any provision of this chapter, ~~he~~ *the person* shall in addition be liable to a penalty of not less than the amount of the sum of money ~~so~~ received and not more than three times the sum ~~so~~ received, as may be determined by the court~~,~~. ~~which~~ *The monetary* penalty may be recovered in any court of competent jurisdiction by any person aggrieved."

Section 1411. Section 37-51-503, MCA, is amended to read:

"37-51-503. Claims against fund — orders for payment. (1) Whenever a person obtains a final judgment in any court of competent jurisdiction against ~~any~~ *a* person licensed under this chapter for the conversion of trust funds or arising directly out of any act or transaction ~~occurring on or after July 1, 1985,~~ for which a license is required under this chapter, ~~he~~ *the person* may after executing on ~~such~~ *the* final judgment file an application, in accordance with ~~this section and~~ 37-51-504 *and this section*, with the board for an order directing payment out of the account for any actual and direct loss unpaid on the judgment.

(2) ~~No~~ *An* application or order for payment from the account may *not* be made for:

(a) a judgment ~~which~~ *that* has been satisfied;

(b) any amount in excess of $25,000 for any one licensee, regardless of the number of persons injured by acts of the licensee or number of parcels of real estate involved in the transaction or transactions;

(c) attorney fees and exemplary or punitive damages; or

(d) amounts remaining unpaid on any final judgment entered more than 2 years prior to the date of application.

(3) The application must be:

(a) served by certified mail, return receipt requested, upon the board, the licensee, and any other party to the transaction referred to in the application; and

(b) filed with the board along with an affidavit of service."

Section 1412. Section 37-51-504, MCA, is amended to read:

"37-51-504. Form of application. The person making application for payment from the account ~~must~~ *shall* show in the application:

(1) that ~~he~~ *the person* is not the spouse of the judgment debtor or the personal representative of ~~such~~ *the* spouse;

(2) that ~~he~~ *the person* has obtained a judgment ~~which~~ *that* satisfies the requirements of 37-51-503, stating the amount of the judgment and the amount unpaid on the date of the application;

(3) that ~~he~~ *the person* has, on the dates and at the times shown by the applicant, diligently pursued the remedies of execution and proceedings in aid of execution provided in Title 25, chapters 13 and 14~~, respectively~~;

(4) the amount of any money obtained as a result of the proceedings required to be shown in subsection (3) and the balance of the judgment remaining unpaid for which application is made; and

(5) that ~~he~~ *the person* has diligently pursued ~~his~~ *the* remedies of execution and proceedings in aid of execution against any other person against whom ~~he~~

the person has a judgment as a result of the transaction for which ~~he~~ *the person* seeks recovery from the account."

Section 1413. Section 37-51-511, MCA, is amended to read:

"37-51-511. Subrogation rights of board. Upon payment of money from the account, the board is subrogated to all of the rights of the judgment creditor to the extent of the amount ~~so~~ paid and the judgment creditor is considered to have assigned to the board all of ~~his~~ *the creditor's* right, title, and interest in the judgment to the extent of the amount paid from the account. Any amount and interest recovered by the board on the judgment must be deposited in the account."

Section 1414. Section 37-53-102, MCA, is amended to read:

"37-53-102. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Advertisement" means a written, printed, audio, or visual communication that is published in whole or in part to sell, offer to sell, or solicit an offer for a timeshare.

(2) "Affiliate" means a person who controls, is controlled by, or is under the control of a developer.

(3) "Association" or "owners' association" means the association of owners created by the timeshare instruments for purposes of managing and maintaining the project for the benefit of all timeshare owners.

(4) "Board" means the board of realty regulation provided for in 2-15-1757.

(5) "Developer" means:

(a) a person creating timeshares or engaged in the business of selling ~~his~~ *the person's* own timeshares;

(b) a person who controls, is controlled by, or is in common control with the person engaged in creating or selling timeshares; or

(c) any successor or assignee of a person referred to in subsection (5)(a) or (5)(b).

(6) "Managing entity" means a person hired by the timeshare association or developer to manage the timeshare plan or the timeshare property.

(7) "Offer" or "offering" means an inducement, solicitation, or attempt to encourage a person to acquire a timeshare. An offer is made in this state if the offer originates in this state or if the principal timeshare property is located in this state.

(8) "Person" means a natural person, corporation, business trust, estate, trust, partnership, association, joint venture, or other legal or commercial entity.

(9) "Prize and gift promotional offer" means advertising material stating that a prospective purchaser may receive goods or services other than the timeshare plan itself, either free or at a discount, including but not limited to the use of a prize, gift, award, premium, or lodging or vacation certificate.

(10) "Project" means the real property or real estate, ~~that~~ *which* must contain more than one unit, in which timeshares are created by a single instrument or set of instruments.

(11) "Promoter" means any person who initiates the inducement, solicitation, or encouragement of another person, by any means, of the review or acquisition of a timeshare interval.

(12) "Purchaser" means a person, other than a developer, who by means of a voluntary transfer acquires a legal or equitable interest in a timeshare, other than as security for an obligation.

(13) "Real estate" means real estate as defined in 37-51-102.

(14) "Sale" or "sell" includes each contract of sale of, contract to sell, or disposition of a timeshare for value.

(15) "Timeshare broker" means a natural person who supervises a timeshare sales operation and one or more timeshare salespersons.

(16) *(a)* "Timeshare expenses" means expenditures, fees, charges, or liabilities:

~~(a)~~*(i)* incurred with respect to the timeshares by or on behalf of all timeshare owners in one timeshare property; and

~~(b)~~*(ii)* imposed on the timeshare by the entity governing a project of which the timeshare is a part, together with any allocations to reserve.

(b) The term does not include purchase money payable for timeshares.

(17) "Timeshare instrument" means one or more documents, by whatever name denominated, creating or regulating timeshares.

(18) "Timeshare interval" or "timeshare interest" means the right, however evidenced or documented, to use and occupy one or more timeshare units on a periodic basis according to an arrangement allocating ~~such~~ *the* use and occupancy rights between similar users.

(19) "Timeshare owner" means a person, other than a developer, who is an owner or co-owner of a timeshare. If title to a timeshare is held in trust, timeshare owner means the beneficiary of the trust.

(20) "Timeshare salesperson" means a person who for a salary, commission, or compensation of any kind is associated, either directly or indirectly, regularly or occasionally, with a timeshare broker to sell, purchase, or negotiate for sale, purchase, lease, or exchange of the timeshare interests in real estate and who, on behalf of a developer, sells or offers to sell a timeshare to a purchaser.

(21) "Timeshare unit" or "unit" means the real property or portion ~~thereof~~ *of real property* in which the timeshare exists and that is designated for separate use, including campgrounds, campsites, and outdoor recreation sites with spaces designed or promoted for the purpose of locating a trailer, tent, tent trailer, camper, or similar device for land-based portable housing."

Section 1415. Section 37-53-301, MCA, is amended to read:

"37-53-301. Licensure of timeshare brokers and timeshare salespersons. (1) (a) A person offering timeshare units for ~~his~~ *the person's* own account or for the account of others must be licensed as a timeshare salesperson or timeshare broker unless the offering is exempt under 37-53-205. Licensure may be obtained:

(i) upon completion of an application and personal disclosure statement and passage of an examination prescribed by the board demonstrating knowledge of the timeshare industry and this chapter; and

(ii) upon successful completion of a course of education related to the timeshare industry that has been approved by the board.

(b) ~~The~~ *Upon compliance with the requirements of subsection (1)(a), the* board shall ~~then~~ issue a certificate of completion to the applicant.

(2) A person licensed as a real estate broker or salesperson under Title 37, chapter 51, may act as a timeshare salesperson or timeshare broker upon successful completion of a course of education related to the timeshare industry that has been approved by the board. ~~The~~ *Upon completion, the* board shall ~~then~~ issue a certificate of completion to the applicant. ~~No~~ *Another* license other than that issued pursuant to Title 37, chapter 51, is *not* required."

Section 1416. Section 37-53-305, MCA, is amended to read:

"37-53-305. Transfer of developer's interest. A developer may not sell, lease, assign, or otherwise transfer ~~his~~ *the developer's* interest in a project unless the transferee agrees in writing to honor the purchaser's right to use and occupy the timeshare unit, to honor the purchaser's right to cancel, and to comply with this chapter. Each purchaser whose contract may be affected must be given written notice of a transfer immediately after the transfer is made."

Section 1417. Section 37-53-403, MCA, is amended to read:

"37-53-403. Awarding of gifts and prizes. (1) Any prize, gift, or other item offered pursuant to a prize and gift promotional offer must be delivered to the prospective purchaser on the day ~~he~~ *the prospective purchaser* appears to claim it, whether or not ~~he~~ *the prospective purchaser* purchases a timeshare interval. If the prize is not available, it must be presented or mailed at the developer's expense, postage prepaid, within 30 days ~~thereafter~~ *after the date on which the prospective purchaser appears*.

(2) All prizes, gifts, or other items represented by the developer to be awarded in connection with any prize and gift promotional offer must be awarded by the date referenced in the advertising material used in connection with ~~such~~ *the* offer."

Section 1418. Section 37-54-412, MCA, is amended to read:

"37-54-412. Collection of appraisal fees. A person who performs independent appraisal services as a licensed or certified real estate appraiser in this state may not bring an action in any court in this state to collect compensation for the performance of those services unless ~~he~~ *the person* alleges and proves that ~~he~~ *the person* held a valid license or certificate at all times during the performance of those services."

Section 1419. Section 37-54-415, MCA, is amended to read:

"37-54-415. Place of business. (1) A resident licensed or certified real estate appraiser shall maintain a principal place of business in this state. If the appraiser changes ~~his~~ *the* principal place of business, ~~he~~ *the appraiser* shall promptly notify the board in writing of the change. Upon receipt of notice of the change, the board shall issue a new license or certificate for the unexpired term, stating the principal place of business.

(2) A nonresident licensee is not required to maintain a place of business in this state if ~~he~~ *the licensee* maintains a principal place of business in ~~his~~ *the licensee's* domicile state."

Section 1420. Section 37-54-416, MCA, is amended to read:

"37-54-416. Retention of records. (1) A licensed or certified real estate appraiser shall retain for 5 years from the date of submission of an appraisal report to a client:

(a) an original or true copy of any written contract engaging ~~his~~ *the person's* services as an appraiser;

(b) an appraisal report prepared or signed by the licensed or certified real estate appraiser; and

(c) all supporting data assembled and formulated by the licensed or certified real estate appraiser in preparing the appraisal report.

(2) If a licensed or certified real estate appraiser is notified within this 5-year period that the appraisal report is involved in litigation, the appraiser shall retain the appraisal report for 5 years from the final date of disposition of the litigation.

(3) The licensed or certified real estate appraiser shall make available to the board at reasonable times, for inspection and copying, any appraisal report ~~he~~ *the appraiser* is required to maintain under the provisions of this section."

Section 1421. Section 37-60-104, MCA, is amended to read:

"37-60-104. Restrictions on contract security company and proprietary security organization. ~~No~~ *An* employee of a contract security company or proprietary security organization may *not* make any investigation or investigations except those that are incidental to the theft, loss, embezzlement, misappropriation, or concealment of any property or any other thing ~~which he~~ *that the employee* has been hired or engaged to protect, guard, or watch."

Section 1422. Section 37-60-401, MCA, is amended to read:

"37-60-401. Responsibility of licensee for conduct of employees. A licensee ~~shall~~ *is* at all times ~~be~~ legally responsible for the good conduct in the business of each employee, including ~~his~~ *the* manager."

Section 1423. Section 37-60-404, MCA, is amended to read:

"37-60-404. Duty to maintain employee records. Each employer shall maintain a record containing ~~such~~ information relative to ~~his~~ *the employer's* employees ~~as~~ *that* may be prescribed by the board."

Section 1424. Section 37-61-201, MCA, is amended to read:

"37-61-201. Who considered to be practicing law. Any person who ~~shall hold himself~~ *holds* out *to the public* or ~~advertise~~ *advertises* as an attorney ~~or counselor at law~~ or who ~~shall appear~~ *appears* in any court of record or before a judicial body, referee, commissioner, or other officer appointed to determine any question of law or fact by a court or who ~~shall engage~~ *engages* in the business and duties and ~~perform such~~ *performs* acts, matters, and things ~~as~~ *that* are usually done or performed by an attorney at law in the practice of ~~his~~ *that* profession for the purposes of parts 1 through 3 of this chapter ~~shall be deemed~~ *is considered to be* practicing law."

Section 1425. Section 37-61-203, MCA, is amended to read:

"37-61-203. Clerk, sheriff, or coroner may not practice law. The clerk, deputy clerk, sheriff, undersheriff, deputy sheriff, or coroner ~~must~~ *may* not, during ~~his~~ *the* continuance in office, practice as attorney ~~and counselor~~ in any court."

Section 1426. Section 37-61-207, MCA, is amended to read:

"37-61-207. Oath. Every person on ~~his~~ admission ~~must~~ *shall* take an oath to support the Constitution of the United States and The Constitution of the State of Montana and to faithfully discharge the duties of an attorney ~~and counselor at law~~ with fidelity to the best of ~~his~~ *the person's* knowledge and ability. A certificate of ~~such~~ *the* oath must be endorsed upon the license and a duplicate filed with the clerk."

Section 1427. Section 37-61-210, MCA, is amended to read:

"37-61-210. Penalty for practicing without license. If any person practices law in any court, except a justice's court or a city court, without having received a license as attorney ~~and counselor~~, ~~he~~ *the person* is guilty of a contempt of court."

Section 1428. Section 37-61-214, MCA, is amended to read:

"37-61-214. Penalty for practicing without certificate indicating payment of tax. ~~No~~ *An* attorney ~~shall~~ *may not* practice or be permitted to practice ~~his profession~~ in any of the courts of record in this state until ~~he shall have~~ *the attorney has* paid ~~such~~ *a* license tax for the current fiscal year and procured a certificate, as ~~hereinabove~~ provided *in 37-61-211*, and any attorney violating this section ~~shall be~~ *is* guilty of a misdemeanor and, upon conviction ~~thereof~~, shall be punished by a fine of not less than $25."

Section 1429. Section 37-61-301, MCA, is amended to read:

"37-61-301. Disbarment. (1) The supreme court of the state ~~shall have~~ *has* exclusive jurisdiction to remove or suspend attorneys ~~and counselors~~ at law.

(2) An attorney ~~and counselor~~ may be removed or suspended for any of the following causes arising after ~~his~~ admission to practice:

(a) ~~his~~ conviction of a felony or misdemeanor involving moral turpitude, in which case the record of conviction is conclusive evidence;

(b) willful disobedience or violation of an order of the court requiring ~~him~~ *the individual* to do or forbear an act connected with or in the course of ~~his~~ *the legal* profession ~~which he~~ *that the individual* ought in good faith to do or forbear and any violation of the oath taken by ~~him~~ *the individual* or of ~~his~~ *the* duties as ~~such~~ *an* attorney ~~and counselor~~;

(c) corruptly or willfully and without authority appearing as attorney for a party to an action or proceeding;

(d) lending ~~his~~ *the attorney's* name to be used as attorney ~~and counselor~~ by another person who is not an attorney ~~and counselor~~;

(e) being guilty of deceit, malpractice, crime, or misdemeanor involving moral turpitude."

Section 1430. Section 37-61-309, MCA, is amended to read:

"37-61-309. Judgment. Upon conviction, in cases arising under 37-61-301(2)(a), the judgment of the court must be that the name of the party be stricken from the roll of attorneys ~~and counselors~~ of the court and that ~~he~~ *the party* be precluded from practicing as ~~such~~ *an* attorney ~~or counselor~~ in all the courts of this state. Upon conviction in cases under the other subsections of that section, the judgment of the court may be, according to the gravity of the offense charged, deprivation of the right to practice as attorney ~~or counselor~~ in the courts of this state permanently or for a limited period."

Section 1431. Section 37-61-401, MCA, is amended to read:

"37-61-401. Authority of attorney. (1) An attorney ~~and counselor~~ has authority to:

(a) bind ~~his~~ *the attorney's* client in any steps of an action or proceeding by ~~his~~ agreement filed with the clerk or entered upon the minutes of the court and not otherwise;

(b) receive money claimed by ~~his~~ *the attorney's* client in an action or proceeding during the pendency ~~thereof~~ *of an action or proceeding* or after

judgment unless a revocation of ~~his~~ authority is filed and, upon the payment ~~thereof~~ *of the money* and not otherwise, to discharge the claim or acknowledge satisfaction of the judgment.

(2) The death of a party to an action or proceeding does not revoke the authority of ~~his~~ *the party's* attorney of record in ~~said~~ *the* action or proceeding, but the authority of the attorney is continued in all respects the same and with like effect as it was prior to the death of ~~such~~ *the* party until ~~such~~ *the* attorney ~~shall withdraw his~~ *withdraws the attorney's* appearance in ~~said~~ *the* action or proceeding or some other attorney ~~shall be~~ *is* substituted ~~for him~~ or ~~his~~ *the original attorney's* authority ~~shall be~~ *is* otherwise terminated and entry ~~thereof~~ *of the substitution or termination is* made ~~to appear~~ in the record of ~~such~~ *the* action or proceeding."

Section 1432. Section 37-61-402, MCA, is amended to read:

"37-61-402. Production of proof of authority to court. The court or judge, on motion of either party, may require the attorney of the adverse party to produce and prove the authority under which ~~he~~ *the attorney* appears and may stay all proceedings until ~~such~~ *the authority* is shown and may at any time summarily relieve a party from the consequences of the acts of an unauthorized attorney."

Section 1433. Section 37-61-404, MCA, is amended to read:

"37-61-404. Notice of change. When an attorney is changed as provided in 37-61-403, written notice of the change and the substitution of a new attorney or of the appearance of the party in person must be given to the adverse party. Until then, ~~he~~ *the adverse party* ~~must~~ *shall* recognize the former attorney."

Section 1434. Section 37-61-405, MCA, is amended to read:

"37-61-405. Death or removal of attorney. When an attorney dies or is removed or suspended or ceases to act as ~~such~~ *an attorney*, a party to an action for whom ~~he~~ *the attorney* was acting as attorney must, before any further proceedings are had against ~~him~~ *the party*, be required by the adverse party, by written notice, to appoint another attorney or appear in person."

Section 1435. Section 37-61-406, MCA, is amended to read:

"37-61-406. Penalty for deceit. An attorney ~~or counselor~~ who is guilty of any deceit or collusion or consents to any deceit or collusion with intent to deceive the court or a party forfeits to the party injured by ~~his~~ *the* deceit or collusion treble damages. ~~He~~ *The attorney* is also guilty of a misdemeanor."

Section 1436. Section 37-61-407, MCA, is amended to read:

"37-61-407. Penalty for delay. An attorney ~~and counselor~~ who willfully delays ~~his~~ *a* client's cause with a view to ~~his~~ *the attorney's* own gain or willfully receives money or an allowance for or on account of money ~~which he~~ *that the attorney* has not laid out or become answerable for forfeits to the party injured treble damages."

Section 1437. Section 37-61-408, MCA, is amended to read:

"37-61-408. Attorney prohibited from buying claim or demand for purpose of bringing action. (1) An attorney ~~and counselor~~ ~~must~~ *may* not directly or indirectly buy or be in any manner interested in buying a bond, promissory note, bill of exchange, book debt, or other thing in action with the intent and for the purpose of bringing an action ~~thereon~~ *on that instrument or thing*.

(2) An attorney ~~and counselor must~~ *may* not, ~~by himself~~ *individually* or by or in the name of another person, either before or after *an* action *is* brought, promise or give or procure to be promised or given a valuable consideration to any person as an inducement to placing or in consideration of having placed in ~~his~~ *the person's* hands or in the hands of another person a demand of any kind for the purpose of bringing an action ~~thereon~~. This subsection does not apply to an agreement between attorneys ~~and counselors, or either,~~ to divide between themselves the compensation to be received."

Section 1438. Section 37-61-412, MCA, is amended to read:

"37-61-412. Partner of public prosecutor not to defend. An attorney ~~and counselor must~~ *may* not*:*

(1) directly or indirectly advise concerning, aid, or take any part in the defense of an action or special proceeding, civil or criminal, brought, carried on, aided, advocated, or prosecuted, as attorney general, county attorney, or other public prosecutor, by a person with whom ~~he~~ *the attorney* is interested or connected, either directly or indirectly, as a law partner; or

(2) take or receive, directly or indirectly, from a defendant ~~therein~~ *in a case described in subsection (1)* or other person a fee, gratuity, or reward for or upon any cause, consideration, pretense, understanding, or agreement ~~whatever~~, express or implied, having relation ~~thereto~~ *to a case described in subsection (1)* or to the prosecution or defense ~~thereof~~ *of a case described in subsection (1)*."

Section 1439. Section 37-61-416, MCA, is amended to read:

"37-61-416. Party may appear in person or by attorney. A party to a civil action who is of ~~full~~ *legal* age may prosecute or defend the ~~same~~ *action* in person or by attorney at ~~his~~ *the party's* election unless ~~he~~ *the party* has been judicially declared to be incompetent to manage ~~his~~ *the party's* affairs. Each provision of this part relating to the conduct of an action ~~wherein~~ *in which* the attorney for the party is mentioned includes a party prosecuting or defending in person unless otherwise specially prescribed ~~therein~~ or unless that construction is manifestly repugnant to the context. If a party has an attorney in the action, ~~he~~ *the party* ~~cannot~~ *may not* appear or act in person ~~where~~ *when* an attorney may appear or act either by special provisions of law or by the course and practice of the court."

Section 1440. Section 37-61-417, MCA, is amended to read:

"37-61-417. Attorney may defend in person. This part does not prohibit an attorney ~~or counselor~~ from ~~defending himself in person~~ *defending in person* if prosecuted either civilly or criminally."

Section 1441. Section 37-61-418, MCA, is amended to read:

"37-61-418. Attorney may see prisoner. All public officers, sheriffs, coroners, jailers, constables, or other officers or persons having in custody any person committed, imprisoned, or restrained of ~~his~~ *the person's* liberty for any alleged cause ~~whatever must~~ *shall* admit any practicing attorney ~~and counselor at law~~ in this state whom ~~such~~ *the* person restrained of ~~his~~ liberty may desire to see or consult, to see and consult ~~such~~ *the imprisoned* person ~~so imprisoned~~, alone and in private, at the jail or other place of custody. Any officer violating this provision shall forfeit and pay $100 to the person aggrieved, to be recovered by action of debt in any court of competent jurisdiction."

Section 1442. Section 37-61-420, MCA, is amended to read:

"37-61-420. Judgment lien for compensation. (1) The compensation of an attorney and counselor for ~~his~~ services is governed by agreement, express or implied, which is not restrained by law.

(2) From the commencement of an action or the service of an answer containing a counterclaim, the attorney who appears for a party has a lien upon ~~his~~ *the* client's cause of action or counterclaim ~~which~~ *that* attaches to a verdict, report, decision, or judgment in ~~his~~ *the* client's favor and the proceeds ~~thereof in whose hands they may come~~ *of the action or counterclaim*. ~~Such~~ *The* lien cannot be affected by any settlement between the parties before or after judgment."

Section 1443. Section 37-65-103, MCA, is amended to read:

"37-65-103. Exemptions. (1) ~~Nothing contained in this chapter shall prevent draftsmen~~ *This chapter does not prevent drafters*, students, clerks of work, superintendents, and other employees of those lawfully practicing as architects under the provisions of this chapter from acting under the instruction, control, or supervision of their employers or to prevent the employment of superintendents of the construction, enlargement, or structural alteration of buildings or any appurtenance ~~thereto~~ *to buildings*.

(2) ~~Nothing contained in this~~ *This* chapter ~~shall~~ *may not* be construed to:

(a) apply to alterations to any building ~~which~~ *that* do not involve changes affecting the structural safety ~~thereof~~ *of a building* or the public health;

(b) prevent the preparation of details and shop drawings by persons other than architects for use in connection with the execution of their work; or

(c) prevent the preparation of drawings or details for fixtures, cabinetwork, furniture, or other interior appliances or equipment or for any work necessary to provide for ~~their~~ installation unless the ~~same~~ *drawings or installation* involves public health or safety.

(3) ~~None of the~~ *The* acts enumerated in subsections (1) and (2) ~~shall~~ *may not* be interpreted or construed as the practice of architecture.

(4) ~~Nothing in this~~ *This* chapter ~~shall~~ *may not* be construed to affect or prevent the following, provided that ~~no~~ words, letters, figures, or other device ~~shall~~ *may not* be used in ~~such~~ *a* manner ~~as to tend~~ *that tends* to convey the impression that the person rendering ~~such~~ *the* service is an architect ~~duly~~ registered under this chapter:

(a) consultants, officers, and employees of the United States while engaged solely in the practice of architecture for ~~said government~~ *the United States*;

(b) professional engineers from performing architectural services ~~which~~ *that* are purely incidental to their engineering practice;

(c) any person from planning, designing, altering, repairing, supervising, or engaging in residential construction consisting of less than eight living units regardless of size or cost or farm buildings ~~which~~ *that* are not intended for use or used as a public building;

(d) the planning, design, alteration, construction, repair, or supervision of construction of a building by its owner if the building is not intended for use or used as a public building."

Section 1444. Section 37-65-301, MCA, is amended to read:

"37-65-301. License required. Except as provided in this chapter, ~~no~~ *a* person may *not* practice architecture in this state or use the title "architect" or "licensed architect" or any words, letters, figures, or other device indicating or

intending to imply that ~~he~~ *the person* is an architect, without having qualified under this chapter."

Section 1445. Section 37-66-104, MCA, is amended to read:

"37-66-104. Acts declared unlawful. It ~~shall be~~ *is* unlawful for ~~any~~ *a* person to:

(1) offer to practice or hold ~~himself~~ out ~~as~~ *to the public that the person is* entitled to practice landscape architecture unless ~~duly~~ licensed and registered under this chapter;

(2) present as ~~his~~ *the person's* own the license of another;

(3) give false or forged evidence to the board or any *board* member ~~thereof~~ in obtaining a license;

(4) falsely impersonate any other practitioner of like or different name;

(5) otherwise violate any of the provisions of this chapter."

Section 1446. Section 37-66-105, MCA, is amended to read:

"37-66-105. Exemptions. (1) ~~None of the~~ *The* provisions of this chapter *do not* prevent employees of those lawfully practicing as landscape architects from acting under the instruction, control, or supervision of their employers.

(2) ~~None of the~~ *The* provisions of this chapter *do not* apply to any business conducted in this state by ~~any~~ *a* horticulturist, ~~nurseryman~~ *nursery operator*, ~~or~~ landscape ~~nurseryman~~ *nursery operator*, ~~plantsman,~~ gardener, landscape gardener, landscape designer, landscape artist, landscape contractor, or land use planner, as these terms are generally used. However, ~~no such~~ *an unlicensed* person ~~shall~~ *may not* use the title "landscape architect", "landscape architecture", or any description tending to convey the impression that ~~he~~ *the person* is a licensed landscape architect unless ~~he~~ *the person* is licensed as provided in this chapter.

(3) This chapter does not apply to architects, professional engineers, and professional land surveyors licensed to practice their respective professions.

(4) ~~None of the provisions of this~~ *This* chapter ~~shall~~ *does not* apply to ~~any~~ *a* person performing any of the services mentioned in this chapter upon ~~his~~ *the person's* own property.

(5) ~~None of the provisions of this~~ *This* chapter ~~shall~~ *does not* require the hiring of a landscape architect."

Section 1447. Section 37-66-302, MCA, is amended to read:

"37-66-302. Illegal use of title. ~~No~~ *A* person may *not* use the designation "landscape architect" or "landscape architecture" or advertise any title or description tending to convey the impression that ~~he~~ *the person* is a landscape architect or practicing landscape architecture unless ~~such~~ *the* person is a landscape architect licensed with the board."

Section 1448. Section 37-66-303, MCA, is amended to read:

"37-66-303. Licensing restricted to individuals — partnerships — local business licensing. (1) Certificates of licensing may be issued to natural persons only, but ~~nothing contained in~~ this chapter ~~prevents~~ *does not prevent* a ~~duly~~ licensed landscape architect from performing ~~his~~ services for a corporation, firm, partnership, or association.

(2) Each partner in a partnership of landscape architects ~~shall~~ *must* be licensed to practice landscape architecture. Subject to this requirement, a

partnership of landscape architects may use a partnership name if the name consists of:

(a) the names of two or more landscape architects; or

(b) the names of one or more landscape architects and one or more professional engineers, architects, or planners.

(3) A person applying to the licensing official of any county or city for a business license to practice landscape architecture shall, at the time of application, exhibit to the licensing official satisfactory evidence under the seal of the board and the hand of its secretary that the applicant possesses a current registration with the board. The license may not be granted until ~~such~~ *the* evidence is presented."

Section 1449. Section 37-66-308, MCA, is amended to read:

"37-66-308. Display of license — seal of landscape architect. (1) Each holder of a license shall display it in ~~his~~ *the licensee's* principal office, place of business, or place of employment.

(2) Each landscape architect ~~shall~~ *must* have a seal approved by the board~~,~~ ~~which shall~~ *that must* contain the name of the landscape architect and the words "Licensed Landscape Architect, State of Montana" and ~~such~~ other words or figures ~~as~~ *that* the board considers necessary. All drawings and title pages of specifications prepared by ~~such~~ *a* landscape architect or under the supervision of ~~such~~ *a* landscape architect ~~shall~~ *must* be stamped with ~~his~~ *the landscape architect's* seal. ~~Nothing contained herein shall~~ *This section may not* be construed to permit the seal of a landscape architect to serve as a substitute for the seal of a licensed architect, a licensed professional engineer, or a licensed professional land surveyor."

Section 1450. Section 37-68-103, MCA, is amended to read:

"37-68-103. Exemptions. (1) ~~Nothing in this chapter shall be deemed to~~ *This chapter does not* apply to the installation, alteration, or repair of electrical signal or communications equipment owned or operated by a public utility or a city. For purposes of this exemption, "communications equipment" includes telephone wire inside a customer's premises. ~~Nothing in this chapter prohibits~~ *This chapter does not prohibit* a public utility from doing inside wiring to install, alter, repair, or maintain electrical equipment, installations, or facilities in buildings owned by the public utility if the work is accomplished by an employee who is a licensed electrician. If the building owned by the public utility is open to the public and the inside wiring constitutes major renovation or construction, the installation, alteration, repair, or maintenance of electrical equipment, installations, or facilities is subject to permits and inspections required by law.

(2) The licensing or inspection provisions of this chapter do not apply to regularly employed maintenance electricians doing maintenance work on the business premises of their employer, nor do they apply to line work on the business premises of the employer when ordinary and customary in-plant or onsite installations, modifications, additions, or repairs are performed.

(3) ~~Nothing in this chapter shall~~ *This chapter may not* be construed to require an individual to hold a license while or for doing electrical work on ~~his~~ *the individual's* own property or residence ~~provided that said~~ *if the* property or residence is maintained for ~~his~~ *the individual's* own use.

(4) An individual, firm, partnership, or corporation may engage in business as an electrical contractor without an electrician's license if all electrical work performed by ~~such~~ *the* individual, firm, partnership, or corporation is under the

direction, control, and supervision of a licensed master electrician or under the direction, control, and supervision of a journeyman electrician for residential construction consisting of less than five living units in a single structure.

(5) ~~Any~~ *A* person who plugs in an electrical appliance where an approved electrical outlet is already installed ~~shall~~ *may* not be considered ~~as~~ an installer.

(6) ~~No provisions of this chapter shall~~ *This chapter may not* in any manner interfere with, hamper, preclude, or prohibit ~~any~~ *a* vendor of any electrical appliance from selling, delivering, and connecting any electrical appliance if the connection does not necessitate the installation of electrical wiring of the structure ~~where~~ *in which* the appliance is to be connected."

Section 1451. Section 37-68-303, MCA, is amended to read:

"37-68-303. Apprentice may work under licensed electrician — record of apprentices. This chapter does not prohibit a person from working as an apprentice in the trade of electrician with an electrician licensed under this chapter and under rules ~~made~~ *adopted* by the board. The name and residence of each apprentice and the name and residence of ~~his~~ *the apprentice's* employer ~~shall~~ *must* be filed with the department, and a record ~~shall~~ *must* be kept by the department showing the name and residence of each apprentice."

Section 1452. Section 37-68-314, MCA, is amended to read:

"37-68-314. Qualifications for licensing examination — when no discretion in board. A person applying for a license as a journeyman electrician or a residential electrician must be allowed by the ~~state electrical~~ board to take the required examination and be granted a license upon passing the examination if *the person has*:

(1) ~~he has~~ completed an appropriate training program conducted by a bona fide union;

(2) ~~he has~~ completed the appropriate required apprenticeship; or

(3) ~~he has~~ worked in the electrical field for 10 years and is considered by ~~his~~ *the person's* employer, as shown by a written statement of the employer, to be capable and qualified to take the examination for the license for which ~~he~~ *the person* is applying."

Section 1453. Section 37-69-103, MCA, is amended to read:

"37-69-103. No penalty for hiring unlicensed plumber. This chapter may not be construed as imposing ~~any~~ *a* penalty on any unlicensed person for hiring or contracting with an unlicensed person to do work in the field of plumbing. However, ~~any~~ *a* person who ~~himself~~ engages in the field of plumbing at a time when ~~he~~ *the person* is not ~~duly~~ licensed is subject to the penalties imposed by this chapter."

Section 1454. Section 37-69-303, MCA, is amended to read:

"37-69-303. Application — contents — requirements. A person, firm, or corporation desiring to engage in or work in the field of plumbing in this state, either as a master plumber or as a journeyman plumber, shall make application to the department by filing a written application stating ~~his~~ *the applicant's* place of residence, age, *and* experience~~,~~ and the place where ~~he~~ *the applicant* has acquired ~~his~~ experience and ~~shall~~ *must* at a time and place designated by the board be examined as to ~~his~~ *the* qualifications for a license."

Section 1455. Section 37-69-324, MCA, is amended to read:

"37-69-324. Penalty. A person who works at the field of plumbing or maintains or conducts a plumbing business or an individual who connects or

disconnects plumbing from a public water or sewer system in violation of any provisions of this chapter or at a time when ~~he~~ *the person* is not exempt from the provisions of this chapter pursuant to the provisions of ~~a duly~~ *an* enacted and subsisting ordinance of a city or town is guilty of a misdemeanor ~~and, upon conviction thereof in any court of competent jurisdiction, is guilty of a misdemeanor~~. However, this chapter may not be construed to apply to or affect plumbing or pipefitting as indicated in the 37-69-102 exceptions."

Section 1456. Section 37-72-203, MCA, is amended to read:

"37-72-203. Revocation, suspension, or refusal to renew license — grounds — procedure. (1) The department may reprimand or revoke, suspend, or refuse to renew the license of a person found guilty of:

(a) fraud or deceit in obtaining a license;

(b) gross negligence, incompetency, or misconduct in the practice of construction blasting;

(c) a felony involving the use of explosives; or

(d) violation of the rules of the department.

(2) A person may make charges under subsection (1) against a licensee. The charges must be made by affidavit, subscribed and sworn to by the person making them, and filed with the department. The charges must be investigated by the department. Unless the department, after investigation, dismisses the charges as unfounded or trivial, it shall within 6 months after the date on which the charges were made give notice by mail to the licensee of its intent to reprimand ~~him~~ *the licensee* or to revoke, suspend, or refuse to renew ~~his~~ *the* license. The notice must contain those matters required by the Montana Administrative Procedure Act.

(3) The department may require a licensee to take a written or oral examination, or both, in a proceeding to reprimand or to revoke, suspend, or refuse to renew a license."

Section 1457. Section 37-72-301, MCA, is amended to read:

"37-72-301. General qualifications. A person making initial application to the department for a license as a construction blaster shall:

(1) pay an application fee to the department; and

(2) furnish proof under oath, on a form provided by the department, that ~~he~~ *the person*:

(a) is at least 18 years ~~old~~ *of age*;

(b) is of good moral character;

(c) has not been convicted of a felony or misdemeanor involving the use of explosives;

(d) is not addicted to narcotic drugs or intemperate in the use of alcohol; and

(e) has satisfied the requirements for training and experience in construction blasting established by 37-72-302 and the rules of the department."

Section 1458. Section 39-1-103, MCA, is amended to read:

"39-1-103. Powers of department. (1) In discharging the duties imposed upon the department, the commissioner or ~~his~~ *the commissioner's* authorized representatives may administer oaths, examine witnesses under oath, take depositions or cause ~~same~~ *depositions* to be taken, deputize any citizen 18 years of age or older to serve subpoenas upon witnesses, and issue subpoenas for the

attendance of witnesses before ~~him~~ *the commissioner* in the same manner as for attendance before district courts.

(2) The commissioner may likewise cause to be inspected any mine, factory, workshop, smelter, mill, warehouse, elevator, foundry, machine shop, or other industrial establishment.

(3) ~~Nothing in this~~ *This* chapter ~~applies~~ *does not apply* to labor violations preempted by federal law or regulation."

Section 1459. Section 39-2-102, MCA, is amended to read:

"39-2-102. What belongs to employer. Everything ~~which~~ *that* an employee acquires by virtue of ~~his~~ employment, except the compensation, if any, ~~which~~ *that* is due ~~to him~~ from ~~his~~ *the employee's* employer, belongs to the ~~latter~~ *employer*, whether acquired lawfully or unlawfully or during or after the expiration of the term of ~~his~~ *the employee's* employment."

Section 1460. Section 39-2-303, MCA, is amended to read:

"39-2-303. Deception as to character of employment, conditions of work, or existence of labor dispute prohibited. (1) ~~No one~~ *A person or an entity* doing business in this state ~~shall~~ *may not* induce, influence, persuade, or engage ~~workmen~~ *workers* to change from one place to another in this state through or by means of deception, misrepresentation, or false advertising concerning the kind or character of the work, the sanitary or other conditions of employment, or as to the existence of a strike or other trouble pending between the employer and the employees at the time of or immediately prior to ~~such~~ *the* engagement. Failure to state in any advertisement, proposal, or contract for the employment of ~~workmen~~ *workers* that there is a strike, lockout, or other labor trouble at the place of the proposed employment when in fact ~~such~~ *a* strike, lockout, or other trouble ~~then~~ actually exists at ~~such~~ *that* place ~~shall be deemed~~ *is considered* a false advertisement and misrepresentation for the purpose of this section.

(2) ~~Any~~ ~~workman~~ *A worker* influenced, induced, persuaded, or engaged through or by means of any of the things prohibited by subsection (1) ~~of this section~~ has a right of action for recovery of all damages that ~~he had~~ *the worker* sustained in consequence of the deception, misrepresentation, or false advertising used to induce ~~him~~ *the worker* to change ~~his~~ *the worker's* place of employment against anyone directly or indirectly procuring ~~such~~ *the* change, and in addition ~~thereto~~, ~~he~~ *the worker* shall recover reasonable ~~attorneys'~~ *attorney* fees to be fixed by the court and taxed as costs in any judgment recovered."

Section 1461. Section 39-2-401, MCA, is amended to read:

"39-2-401. Duties of gratuitous employee. (1) One who without consideration undertakes to do a service for another is not bound to perform the ~~same~~ *service*, but if ~~he~~ *the person* actually enters upon its performance, ~~he~~ *the person* ~~must~~ *shall* use at least slight care and diligence ~~therein~~ *in performing the service*.

(2) One who by ~~his~~ *the person's* own special request induces another to entrust ~~him~~ *the person* with the performance of a service ~~must~~ *shall* perform the same fully. In other cases, one who undertakes a gratuitous service may relinquish it at any time.

(3) A gratuitous employee who accepts a written power of attorney ~~must~~ *shall* act under it ~~so~~ *as* long as it remains in force or until ~~he~~ *the gratuitous*

employee gives notice to ~~his~~ *the* employer that ~~he~~ *the employee* will not ~~do so~~ *act under the power of attorney*."

Section 1462. Section 39-2-402, MCA, is amended to read:

"39-2-402. Duties of employee for reward. One who for a good consideration agrees to serve another ~~must~~ *shall* perform the service and ~~must~~ *shall* use ordinary care and diligence ~~therein so~~ *in performing the service as* long as ~~he~~ *the person* is ~~thus~~ employed."

Section 1463. Section 39-2-403, MCA, is amended to read:

"39-2-403. Duties of employee for ~~his~~ own benefit. One who is employed at ~~his~~ *the individual's* own request to do that which is more for ~~his~~ *the individual's* own advantage than for that of ~~his~~ *the* employer ~~must~~ *shall* use great care and diligence ~~therein~~ to protect the interest of the ~~latter~~ *employer*."

Section 1464. Section 39-2-404, MCA, is amended to read:

"39-2-404. Employee ~~must~~ *shall* obey employer. An employee ~~must~~ substantially comply with all the directions of ~~his~~ *the* employer concerning the service on which ~~he~~ *the employee* is engaged, except ~~where such~~ *when* obedience is impossible or unlawful or would impose new and unreasonable burdens upon the employee."

Section 1465. Section 39-2-405, MCA, is amended to read:

"39-2-405. Employee ~~must~~ *shall* conform to usage. An employee ~~must~~ *shall* perform ~~his~~ service in conformity to the usage of the place of performance unless otherwise directed by ~~his~~ *the* employer or unless it is impracticable or manifestly injurious to ~~his~~ *the* employer to do so."

Section 1466. Section 39-2-406, MCA, is amended to read:

"39-2-406. Degree of skill required. (1) An employee is bound to exercise a reasonable degree of skill unless ~~his~~ *the* employer has notice before employing ~~him~~ *the employee* of ~~his~~ *the employee's* want of skill.

(2) An employee is always bound to use ~~such~~ *the* skill ~~as he~~ *that the employee* possesses, ~~so far as~~ *to the extent that* the ~~same~~ *skill* is required, for the service specified."

Section 1467. Section 39-2-407, MCA, is amended to read:

"39-2-407. Duty to account. An employee ~~must~~ *shall*, on demand, render to ~~his~~ *the* employer as often as may be reasonable just accounts of all ~~his~~ *the employee's* transactions in the course of ~~his~~ service and ~~must~~ *shall*, without demand, give prompt notice to ~~his~~ *the* employer of everything ~~which he~~ *that the employee* receives for ~~his~~ *the employer's* account."

Section 1468. Section 39-2-408, MCA, is amended to read:

"39-2-408. Duty of employee regarding items received on account of ~~his~~ employer. An employee who receives anything on account of ~~his~~ *the* employer in any capacity other than that of a mere servant is not bound to deliver it to ~~him~~ *the employer* until demanded and is not at liberty to send it to ~~him~~ *the employer* from a distance, without demand, in any mode involving greater risk than its retention by the employee ~~himself~~."

Section 1469. Section 39-2-409, MCA, is amended to read:

"39-2-409. Preference to be given to employer's business. An employee who has any business to transact on ~~his~~ *the employee's* own account similar to that entrusted to ~~him~~ *the employee* by ~~his~~ *the employee's* employer ~~must~~ *shall* always give the ~~latter~~ *employer's business* the preference."

Section 1470. Section 39-2-410, MCA, is amended to read:

"39-2-410. Responsibility of employee for substitute. An employee who is expressly authorized to employ a substitute is liable to ~~his~~ *the* principal only for want of ordinary care in ~~his~~ *the substitute's* selection. The substitute is directly responsible to the principal."

Section 1471. Section 39-2-411, MCA, is amended to read:

"39-2-411. Surviving employee. ~~Where~~ *When* service is to be rendered by two or more persons jointly and one of them dies, the survivor ~~must~~ *shall* act alone if the service to be rendered is ~~such as he~~ *of a type that the survivor* can rightly perform without the aid of the deceased person, but not otherwise."

Section 1472. Section 39-2-501, MCA, is amended to read:

"39-2-501. Termination of employment generally. ~~Every~~ *An* employment is terminated by:

(1) the expiration of its appointed term;

(2) the extinction of its subject;

(3) the death of the employee; or

(4) ~~his~~ *the employee's* legal incapacity to act as ~~such~~ *an employee*."

Section 1473. Section 39-2-502, MCA, is amended to read:

"39-2-502. Termination by death or incapacity of employer. (1) ~~Every~~ *An* employment in which the power of the employee is not coupled with an interest in its subject is terminated by notice to ~~him~~ *the employee* of:

(a) the death of the employer; or

(b) ~~his~~ *the employer's* legal incapacity to contract.

(2) An employee, unless the term of ~~his~~ service has expired or unless ~~he~~ *the employee* has a right to discontinue it at any time without notice, ~~must~~ *shall* continue ~~his~~ service after notice of the death or incapacity of ~~his~~ *the* employer, ~~so far as is~~ *to the extent* necessary to protect from serious injury the interests of the employer's successor in interest, until a reasonable time after notice of the facts has been communicated to ~~such~~ *the* successor. The successor ~~must~~ *shall* compensate the employee for ~~such~~ *the* service according to the terms of the contract of employment."

Section 1474. Section 39-2-601, MCA, is amended to read:

"39-2-601. Servant defined. A servant is one who is employed to render personal service to ~~his~~ *the* employer otherwise than in the pursuit of an independent calling and who in ~~such~~ *that* service remains entirely under the control and direction of the ~~latter~~ *employer*, who is called ~~his~~ *the servant's* master."

Section 1475. Section 39-2-605, MCA, is amended to read:

"39-2-605. Servant to pay over without demand. A servant ~~must~~ *shall* deliver to ~~his~~ *the servant's* master without demand, as soon as with reasonable diligence ~~he can find him~~ *the master can be found*, everything that ~~he~~ *the servant* receives for ~~his~~ *the master's* account, but ~~he~~ *the servant* is not bound without orders from ~~his~~ *the* master to send anything to ~~him~~ *the master* through another person."

Section 1476. Section 39-2-606, MCA, is amended to read:

"39-2-606. When servant may be discharged. A master may discharge any servant, other than an apprentice, whether engaged for a fixed term or not:

(1) if ~~he~~ *the servant* is guilty of misconduct in the course of ~~his~~ *the servant's* service or of gross immorality, though unconnected with the ~~same~~ *service*; or

(2) if, being employed about the person of ~~his~~ *the* master or in a confidential position, the master discovers that ~~he~~ *the servant* has been guilty of misconduct before or after the commencement of ~~his~~ service of ~~such~~ a nature that, if the master had known or contemplated it, ~~he~~ *the master* would not have ~~so~~ employed ~~him~~ *the servant*."

Section 1477. Section 39-2-701, MCA, is amended to read:

"39-2-701. Indemnification of employee. (1) An employer ~~must~~ *shall* indemnify ~~his~~ *an* employee, except as prescribed in subsection (2) ~~of this section~~, for all that ~~he~~ *the employee* necessarily expends or loses in direct consequence of the discharge of ~~his~~ duties as ~~such~~ *an employee* or of ~~his~~ *the employee's* obedience to the directions of the employer, even though unlawful, unless the employee at the time of obeying ~~such~~ *the* directions believed them to be unlawful.

(2) An employer is not bound to indemnify ~~his~~ *an* employee for losses suffered by the ~~latter~~ *employee* in consequence of the ordinary risks of the business in which ~~he~~ *the employee* is employed.

(3) An employer ~~must~~ *shall* in all cases indemnify ~~his~~ *an* employee for losses caused by the ~~former's~~ *employer's* want of ordinary care."

Section 1478. Section 39-2-702, MCA, is amended to read:

"39-2-702. Liability of employee for negligence. An employee who is guilty of a culpable degree of negligence is liable to ~~his~~ *the* employer for the damage ~~thereby~~ caused *by the negligence* to the ~~latter~~ *employer*, and the employer is liable to ~~him~~ *the employee* for the value of ~~such~~ *the* services only ~~as~~ *that* are properly rendered if the service is not gratuitous."

Section 1479. Section 39-2-703, MCA, is amended to read:

"39-2-703. Liability of railway corporation for negligence of fellow servants. (1) ~~Every~~ *A* person or corporation operating a railway or railroad in this state is liable for all damages sustained by any employee of ~~such~~ *the* person or corporation in consequence of the neglect of any other employee ~~thereof~~ *of the person or corporation* or by the mismanagement of any other employee ~~thereof~~ and in consequence of the willful wrongs, whether of commission or omission, of any other employee ~~thereof~~ *of the person or corporation* when ~~such~~ *the* neglect, mismanagement, or wrongs are in any manner connected with the use and operation of ~~any~~ *a* railway or railroad on or about which ~~he~~ *the employee* is employed. ~~No~~ *A* contract ~~which~~ *that* restricts ~~such~~ *the* liability is *not* legal or binding.

(2) ~~In case of~~ *If* the death of ~~any~~ ~~such~~ *an* employee ~~in consequence of~~ *described in subsection (1) results from* any injury or damage ~~so~~ sustained, the right of action provided by subsection (1) ~~shall survive~~ *survives* and may be prosecuted and maintained by ~~his~~ *the deceased employee's* heirs or personal representatives.

(3) ~~Every~~ *A* railway corporation doing business in this state, including electric railway corporations, is liable for damages sustained by an employee ~~thereof~~ within this state, subject to the provisions of 27-1-702, when ~~such~~ *the* damages are caused by the negligence of any train dispatcher, telegraph operator, superintendent, master mechanic, yardmaster, conductor, engineer, ~~motorman~~ *motor operator*, or any other employee who has superintendence of any stationary or hand signal.

(4) ~~No~~ *A* contract of insurance, relief, benefit, or indemnity in case of injury or death or any other contract entered into, either before or after the injury, between the person injured and any of the employers named in subsection (3) is *not* a bar or defense to any cause of action brought under the provisions of this section, except as otherwise provided in the Workers' Compensation Act."

Section 1480. Section 39-2-704, MCA, is amended to read:

"39-2-704. Liability of mining company for negligence of fellow servants. (1) ~~Every~~ *A* company, corporation, or individual operating any mine, smelter, or mill for the refining of ores is liable for damages sustained by any employee ~~thereof~~ within this state, subject to the provisions of 27-1-702, when ~~such~~ *the* damage is caused by the negligence of any superintendent, ~~foreman~~ *supervisor*, shift boss, hoisting or other engineer, or ~~craneman~~ *crane operator*.

(2) ~~No~~ *A* contract of insurance, relief, benefit, or indemnity in case of injury or death or any other contract entered into before the injury between the person injured and any of the employers named in this section is *not* a bar or defense to any cause of action brought under the provisions of this section, except as otherwise provided in the Workers' Compensation Act.

(3) ~~In case of~~ *If* the death of ~~any such~~ *an* employee ~~in consequence of~~ *results from* any injury or damages ~~so~~ sustained, the right of action survives and may be prosecuted and maintained by ~~his~~ *the deceased employee's* heirs or personal representatives."

Section 1481. Section 39-2-802, MCA, is amended to read:

"39-2-802. Protection of discharged employees. If ~~any~~ *a* person, after having discharged an employee from ~~his~~ service, prevents or attempts to prevent, by word or writing of any kind, ~~such~~ *the* discharged employee from obtaining employment with any other person, ~~such~~ *the discharging* person is punishable as provided in 39-2-804 and is liable in punitive damages to ~~such~~ *the* discharged person, to be recovered by civil action. ~~No~~ *A* person is *not* prohibited from informing by word or writing any person to whom ~~such~~ *the* discharged person or employee has applied for employment a truthful statement of the reason for ~~such~~ discharge."

Section 1482. Section 39-2-803, MCA, is amended to read:

"39-2-803. Blacklisting prohibited. If ~~any~~ *a* company or corporation in this state authorizes or allows any of its agents to blacklist or ~~any~~ *if a* person does blacklist any discharged employee or attempts by word or writing or any other means ~~whatever~~ to prevent any discharged employee or any employee who may have voluntarily left the company's service from obtaining employment with another person, except as provided for in 39-2-802, ~~such~~ *the* company, ~~or~~ corporation, or person is liable in punitive damages to ~~such~~ *the* employee ~~so~~ prevented from obtaining employment, to be recovered ~~by him~~ in a civil action, and is also punishable as provided in 39-2-804."

Section 1483. Section 39-3-102, MCA, is amended to read:

"39-3-102. Compensation of employee dismissed for cause. An employee dismissed by ~~his~~ *the* employer for good cause is not entitled to any compensation for services rendered since the last day upon which a payment became due to ~~him~~ *the employee* under the contract."

Section 1484. Section 39-3-103, MCA, is amended to read:

"39-3-103. Compensation of employee leaving for cause. An employee who quits the service of ~~his~~ *an* employer for good cause is entitled to ~~such~~ *the* proportion of the compensation ~~which~~ *that* would become due in case of full

performance as the services ~~which he~~ *that the employee* has already rendered bear to the services ~~which he~~ *that the employee* was to render as full performance."

Section 1485. Section 39-3-209, MCA, is amended to read:

"39-3-209. Commissioner of labor to investigate violations and institute actions for unpaid wages. ~~It shall be the duty of the~~ *The* commissioner of labor ~~to~~ *shall* inquire diligently for any violations of this part and ~~to~~ institute actions for the collection of unpaid wages and for the penalties provided for ~~herein~~ *in this part* in ~~such~~ cases ~~as he may deem~~ *that the commissioner of labor considers* proper and ~~to~~ enforce generally the provisions of this part."

Section 1486. Section 39-3-210, MCA, is amended to read:

"39-3-210. Investigative powers of commissioner *of labor*. (1) The commissioner *of labor* or ~~his~~ *the commissioner of labor's* authorized representatives are empowered to enter and inspect ~~such~~ places, question ~~such~~ employees, and investigate ~~such~~ facts, conditions, or matters ~~which~~ *that* they may consider appropriate to determine whether any person has violated any provision of this part or any rule ~~issued hereunder~~ *adopted under this part* or ~~which~~ *that* may aid in the enforcement of the provisions of this part.

(2) ~~The~~ *In any proceeding before the commissioner of labor, the* commissioner *of labor* or ~~his~~ *the commissioner of labor's* authorized representatives may*:*

(a) administer oaths and examine witnesses under oath;

(b) issue subpoenas;

(c) compel the attendance of witnesses and the production of papers, books, accounts, records, payrolls, documents, and testimony; and

(d) take depositions and affidavits ~~in any proceeding before the commissioner~~."

Section 1487. Section 39-3-211, MCA, is amended to read:

"39-3-211. Commissioner *of labor* to take wage assignments. Whenever the commissioner *of labor* determines that one or more employees have claims for unpaid wages, ~~he~~ *the commissioner of labor* shall, upon the written request of the employee, take an assignment of the claim in trust for ~~such~~ *the* employee and may maintain any proceeding appropriate to enforce the claim, including liquidated damages pursuant to this part. With the written consent of the assignor, the commissioner *of labor* may settle or adjust any claim assigned pursuant to this section."

Section 1488. Section 39-3-214, MCA, is amended to read:

"39-3-214. Court costs and ~~attorneys'~~ *attorney* fees. (1) Whenever it is necessary for the employee to enter or maintain a suit at law for the recovery or collection of wages due as provided for by this part, a resulting judgment must include a reasonable ~~attorney's~~ *attorney* fee in favor of the successful party, to be taxed as part of the costs in the case.

(2) ~~Any~~ *A* judgment for the plaintiff in a proceeding pursuant to this part must include all costs reasonably incurred in connection with the proceeding, including ~~attorneys'~~ *attorneys* fees.

(3) If the proceeding is maintained by the commissioner *of labor*, ~~no~~ court costs or fees are *not* required of ~~him~~ *the commissioner of labor* nor is ~~he~~ *the commissioner of labor* required to furnish any bond or other security that might otherwise be required in connection with any phase of the proceeding."

Section 1489. Section 39-3-215, MCA, is amended to read:

"39-3-215. Authority of county attorney. ~~Nothing herein contained shall~~ *This part may not* be construed to limit the authority of the county attorney of any county of the state to prosecute actions, both civil and criminal, for ~~such~~ violations of this part ~~as may come to his knowledge~~ or to enforce the provisions ~~hereof~~ *of this part* independently and without specific direction of the commissioner of labor."

Section 1490. Section 39-3-404, MCA, is amended to read:

"39-3-404. Minimum wage. (1) Except as otherwise provided in this part and except for farm workers as provided in subsection (2), ~~every~~ *an* employer shall pay to each ~~of his employees~~ *employee* a wage of not less than the applicable minimum wage as determined by the commissioner in accordance with 39-3-409.

(2) In the case of a farm worker employed for a part of a calendar year ~~which~~ *that* includes periods requiring working hours in excess of 8 hours ~~per~~ *a* day and other seasonal periods requiring working hours substantially less than 8 hours ~~per~~ *a* day, the employer may pay the worker at a fixed rate of compensation during the term of employment. The employer may elect to:

(a) keep a record of the total number of hours worked by the worker during the part of the year during which the worker was employed by ~~him (~~*the employer, but* the total wages paid by ~~such~~ *the* employer to ~~such~~ *the* employee for that part of the year during which ~~said~~ *the* employee was employed by ~~him shall~~ *the employer may* not be less than the applicable minimum wage rate multiplied by the total number of hours ~~so~~ worked~~)~~; or

(b) in lieu of the minimum wage set forth ~~herein~~ *in this part*, pay the farm worker a wage as ~~herein~~ defined *in this section* on a monthly basis. This monthly compensation ~~shall~~ *must* constitute a minimum wage and ~~shall~~ *may* not be less than $635 a month beginning January 1, 1990."

Section 1491. Section 39-3-503, MCA, is amended to read:

"39-3-503. Report of violations to county attorney by commissioner. Whenever it ~~shall appear~~ *appears* from reliable information satisfactory to the commissioner of labor and industry that ~~any~~ *a* person, firm, partnership, or corporation engaged in the business mentioned in 39-3-501 and not exempt from the effect of this part ~~shall have~~ *has* failed to pay any wages or salaries due ~~his~~ *the entity's* employees as required by part 2 of this chapter, ~~he shall have the right to~~ *the commissioner may* deliver ~~such~~ *the* information to the county attorney of the county ~~wherein~~ *in which* the operations of the employer are being carried on and to request ~~such~~ *the* county attorney to file a complaint in the district court of ~~said~~ *the* county in accordance with the provisions of ~~this part and~~ part 2 of this chapter *and this part*."

Section 1492. Section 39-3-506, MCA, is amended to read:

"39-3-506. County attorney to file complaint in district court on belief of violation. If a county attorney believes after receiving information that the provisions of ~~this part or~~ part 2 of this chapter *or this part* have been violated and that ~~such~~ *the* violation was willful or that the financial condition of the employer ~~is such as to endanger~~ *endangers* employees in receiving prompt payment or collection of wages, ~~he~~ *the county attorney* shall file a complaint in district court. All proceedings upon ~~such~~ *the* complaint must be promptly prosecuted."

Section 1493. Section 39-3-507, MCA, is amended to read:

"39-3-507. Prayer for relief. ~~Should such~~ *If the* complaint ~~be~~ *described in 39-3-506 is* filed by the county attorney upon ~~his~~ *the county attorney's* own motion or at ~~said~~ *the* request of ~~said~~ *the* commissioner of labor and industry, the ~~same shall pray~~ *complaint must request* that relief be had against the employer for ~~the~~ greater security for the payment of salaries and wages of the employees."

Section 1494. Section 39-3-508, MCA, is amended to read:

"39-3-508. Summons — service of process. (1) Upon the filing of ~~such~~ *the* complaint *described in 39-3-506*, summons ~~shall~~ *must* issue ~~thereon~~ and a copy of ~~such~~ *the* complaint and a copy of the summons ~~shall~~ *must* be served upon the employer, who ~~shall have~~ *has* 10 days after ~~such~~ service to appear and defend ~~such~~ *the* action.

(2) All orders and other process provided for in this part ~~shall~~ *must* be served by the sheriff upon the employer in the same manner as a summons in a civil suit is served. Service upon ~~any~~ *a* partner or member of any firm ~~shall be~~ *is* considered service upon each partner and each member of the firm. ~~In the event that~~ *If* the employer is a nonresident or a corporation without officers or directors within the county ~~who~~ *and* cannot conveniently and promptly be found for service, then service upon the manager, superintendent, or ~~foreman~~ *supervisor* in charge of the work or, ~~there being none such~~ *if there are none of these individuals*, then posting a copy of the order or other process ~~provided to be served herein~~ in a conspicuous place at or near the entrance to the principal workings ~~shall be deemed~~ *is considered* sufficient service."

Section 1495. Section 39-3-509, MCA, is amended to read:

"39-3-509. Hearing on complaint — court order to pay wages due or appear and show cause why bond should not be required. Upon the conclusion of the hearing upon ~~such~~ *the* complaint *described in 39-3-506*, the judge of the district court may make findings and shall issue an order to the employer in default to pay within 5 days all wages and salaries found by the court to be due and unpaid or an order to appear before the court within 10 days and show cause why a judgment and order should not issue requiring ~~said~~ *the* employer to give bond for the payment of all wages and salaries then due and ~~thereafter to~~ *that* accrue to ~~his~~ *the employer's* employees within ~~said~~ *that* county. Service of ~~such~~ *the* order ~~shall~~ *must* be made at least 5 days before the date set for hearing or the date to which ~~such~~ *the* hearing may be continued by the court upon good cause shown."

Section 1496. Section 39-3-511, MCA, is amended to read:

"39-3-511. Bond requirements. (1) ~~Said~~ *The* bond *referred to in 39-3-510* may be that of a surety company licensed and authorized to do business within the state or of two owners of real estate ~~situate~~ *located* in ~~said~~ *the* county and who can and do justify as sureties in the same manner as sureties justify on appeal bonds or bail bonds.

(2) ~~Said~~ *The* bond ~~shall~~ *must* be in the sum of not less than $500 for each unit of five ~~men~~ *individuals* or less employed by ~~such~~ *the* person, firm, partnership, or corporation.

(3) ~~Said~~ *The* bond ~~shall~~ *must* continue in force for 1 year.

(4) ~~Said~~ *The* bond ~~shall~~ *must* run in the name of the state of Montana and ~~shall~~ *must* be examined and approved by the judge of the district court, ~~said~~ *with* approval ~~to be~~ endorsed ~~thereon~~ *on the bond*."

Section 1497. Section 39-3-512, MCA, is amended to read:

"39-3-512. Enjoining further operations ~~in event~~ *if* bond not filed. (1) ~~In the event that~~ *If* the bond ordered by the district court is not executed and filed with the county treasurer within the time fixed by the court, the court may, if it ~~deems~~ *considers* the persons working for ~~such~~ *the* employer to be insecure in the prompt payment or collection of their wages or salaries, enjoin any ~~and all~~ further operations of ~~said~~ *the* employer within the state for a period of 1 year at any mine or reduction works or oil well or until the order, judgment, or decree of the court ~~shall have~~ *has* been fully complied with.

(2) The county attorney of the county ~~wherein such~~ *in which the* proceedings are had or the attorney general of the state ~~shall, at his or their discretion,~~ *may* file ~~such~~ *the* action and prosecute the ~~same~~ *action*."

Section 1498. Section 39-3-513, MCA, is amended to read:

"39-3-513. Costs of proceeding. The ~~said~~ district court shall include in any order, judgment, or decree against the employer all costs of the proceeding, which ~~shall~~ *must* be taxed against the employer and paid ~~into~~ *to* the clerk of the court to be ~~by him~~ deposited with the county treasurer to the credit of the general fund of the county."

Section 1499. Section 39-3-516, MCA, is amended to read:

"39-3-516. Review of court order by supreme court. ~~In event any~~ *If an* employer against whom an order to furnish the bond described in this part feels aggrieved by any order or injunction of the district court, ~~he shall be~~ *the employer is* entitled, upon payment for the transcript of record, to have ~~his~~ *the employer's* objections and exceptions reviewed and determined by the supreme court as upon a writ of certiorari."

Section 1500. Section 39-3-517, MCA, is amended to read:

"39-3-517. Suit on bond. ~~Any~~ *A* person whose wages or salary has remained unpaid for 15 days or more after due ~~shall have~~ *has* a right to sue upon ~~said~~ *the* bond *described in this part* for the recovery of ~~his~~ *the person's* wages or salary."

Section 1501. Section 39-3-519, MCA, is amended to read:

"39-3-519. Clarification as to construction and applicability of part. (1) ~~Nothing contained in this part shall~~ *This part may not* be considered as requiring any person, firm, partnership, or corporation to file a bond or bonds if ~~he~~ *the person* or ~~it~~ *entity* pays for all labor in full each day or ~~where such~~ *if the* labor has been performed upon a written building or construction contract to furnish material or other consideration as well as labor.

(2) ~~Nothing herein shall~~ *This part does not* prohibit the making or entering into of any wage or working agreement, such as grubstake agreements ~~and/or~~ *or* similar agreements, ~~provided such~~ *if the* employer or contractor keeps in force proper workers' compensation insurance."

Section 1502. Section 39-4-101, MCA, is amended to read:

"39-4-101. Hoisting engineers. (1) It ~~shall be~~ *is* unlawful for ~~any~~ *a* person or persons, company, or corporation to operate or handle or to induce, persuade, or prevail upon any person or persons to operate or handle for more than 8 hours in 24 hours of each day any hoisting engine at or in any mine.

(2) This section ~~shall apply~~ *applies* only to ~~such~~ plants ~~as~~ *that* are in continuous operation or are operated 16 or more hours in 24 hours of each day or at or in any mine ~~where said~~ *in which the* hoisting engine develops 15 or more horsepower or at or in any mine ~~wherein there are~~ *in which* 15 or more ~~men~~

individuals are employed underground in 24 hours of each day. However, the provisions of this section ~~shall~~ *do* not apply to ~~any~~ *a* person or persons operating any hoisting engine more than 8 hours in each 24 hours for the purpose of relieving another employee in case of sickness or other unforeseen cause or causes.

(3) ~~Any~~ *A* person or persons, company, or corporation ~~who~~ *that* ~~shall violate~~ *violates* any of the provisions of this section shall upon conviction be punished by a fine of not less than $10 or more than $100. Each ~~and every~~ day that ~~such~~ *the* person or persons, company, or corporation ~~may continue~~ *continues* to violate any of the provisions of this section ~~shall be~~ *is* considered a separate and distinct offense and ~~shall be~~ *is* punishable as ~~such~~ *a separate and distinct offense*."

Section 1503. Section 39-4-102, MCA, is amended to read:

"39-4-102. Drivers and attendants of motor buses. (1) Drivers or attendants of motor buses employed in the state may not be employed for more than 8 hours in any 24-hour period. Drivers or attendants of motor buses must be allowed a rest of at least 12 hours between the completion of their services in any 24-hour period and the beginning of their services in the succeeding 24-hour period. In computing the number of hours of employment made by the provisions of this section, evidence may be introduced showing that part of ~~such~~ *the* time is consumed prior to entry within the state.

(2) The provisions of this section do not apply to drivers or attendants employed by a city, town, county, or political subdivision ~~thereof~~ *of a city, town, or county*.

(3) The provisions of this section do not apply*:*

(a) when life is in danger or property is in imminent danger of destruction; ~~or~~

(b) in case of delay ~~due to~~ *because of* accident or impassable roads, abnormal road conditions, or snow blockades; or

(c) when ~~mails~~ *mail* for the drivers or attendants ~~are~~ *is* delayed.

(4) "Attendant", for the purpose of this section, is defined as any employee engaged for a portion of a day driving or repairing a motor bus and who is required to remain on the vehicle as a relief driver or mechanic for time in excess of the 8-hour period for which ~~he~~ *the individual* is rightly employed.

(5) ~~Any~~ *An* employer or supervisor in charge of employees who requires a driver or attendant ~~as above defined~~ to labor contrary to the provisions of this section is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than $100 or more than $600 or by imprisonment of not less than 30 days or more than 7 months*,* or both ~~such fine and imprisonment~~.

(6) All motor bus companies operating lines in this state are liable in damage for all injuries to the person resulting from the violation of the provisions of this section."

Section 1504. Section 39-4-103, MCA, is amended to read:

"39-4-103. Underground miners and ~~smeltermen~~ *smelter workers.* (1) The period of employment of workers in all underground mines or workings, including railroad or other tunnels, is 8 hours ~~per~~ *a* day, except in cases of emergency when life and property are in imminent danger.

(2) The period of employment of workers in smelters, stamp mills, sampling works, concentrators, and all other institutions for the reduction of ores and refining of ores or metals is 8 hours ~~per~~ *a* day, except in cases of emergency ~~where~~ *when* life or property is in imminent danger.

(3) ~~Any~~ *A* person, corporation, agent, manager, or employer who violates any of the provisions of this section is guilty of a misdemeanor and upon conviction ~~thereof~~ for each offense is subject to a fine of not less than $100 or more than $600 or by imprisonment in the county jail for a period of not less than 1 month or more than 7 months, or ~~by~~ both ~~such fine and imprisonment~~."

Section 1505. Section 39-4-107, MCA, is amended to read:

"39-4-107. State and municipal governments, school districts, mines, mills, and smelters. (1) A period of 8 hours constitutes a day's work in all works and undertakings carried on or aided by any municipal or county government, the state government, or a first-class school district, ~~and~~ on all contracts let by them, and for all janitors (except in courthouses of sixth- and seventh-class counties), engineers, firefighters, caretakers, custodians, and laborers employed in or about any buildings, works, or grounds used or occupied for any purpose by ~~such~~ *a* municipal, county, or state government or first-class school district. A period of 8 hours constitutes a day's work in mills and smelters for the treatment of ores, in underground mines, and in the washing, reducing, and treatment of coal. This subsection does not apply in the event of an emergency when life or property is in imminent danger or to the situations specified in subsections (3) and (4).

(2) The provisions of subsection (1) do not apply to firefighters who are working a work period established in a collective bargaining agreement entered into between a public employer and a firefighters' organization or its exclusive representative.

(3) In counties where regular road and bridge departments are maintained, the county commissioners may, with the approval of the employees or their ~~duly~~ constituted representative, establish a 40-hour workweek consisting of 4 consecutive 10-hour days. ~~No~~ *An* employee may *not* be required to work in excess of 8 hours in any one workday if ~~he~~ *the employee* prefers not to.

(4) In municipal and county governments, the employer and employee may agree to a workday of more than 8 hours and to a 7-day, 40-hour work period:

(a) through a collective bargaining agreement when a collective bargaining unit represents the employee; or

(b) by the mutual agreement of the employer and employee when ~~no~~ *a* bargaining unit is *not* recognized."

Section 1506. Section 39-4-110, MCA, is amended to read:

"39-4-110. Sugar refineries. (1) A period of not to exceed 8 hours constitutes a day's work for all persons employed in or about sugar refineries, except in a case of emergency when life or property is in danger.

(2) The provisions of this section do not apply to beet receiving station employees or superintendents, master mechanics, or beet-end, sugar-end, and Steffan house ~~foremen~~ *supervisors*.

(3) ~~Any~~ *A* person, corporation, agent, manager, or employer who violates the provisions of this section is guilty of a misdemeanor and upon conviction ~~thereof~~ is punishable by a fine of not less than $50 or more than $600 or by imprisonment in the county jail for not less than 30 days or more than 7 months, or ~~by~~ both ~~such fine and imprisonment~~."

Section 1507. Section 39-4-112, MCA, is amended to read:

"39-4-112. Persons employed about public amusements. (1) A period of not to exceed 8 hours ~~shall constitute~~ *constitutes* a day's work and a period of

not to exceed 48 hours shall ~~constitute~~ *constitutes* a week's work for persons employed or working in or participating in and about any carnival, circus, derby show, walkathon, marathon dance, marathon race, marathon walk, or other endurance contest by whatever name it may be called within the state. The hours of work must be so arranged that persons employed in or participating or contesting in ~~such~~ an exhibition, show, or contest ~~shall~~ *may* not be on duty more than 8 hours in the aggregate of any 12 consecutive hours. ~~Such~~ *The* persons ~~shall~~ *must* have at least 12 consecutive hours off duty.

(2) The provisions of this section ~~shall~~ *do* not apply to ~~any~~ *a* traveling circus or carnival ~~which~~ *that* does not remain in any one county of the state for a period of more than 3 days and ~~shall~~ *does* not apply to ~~any~~ *a* person ~~or persons~~ working more than 8 hours in each 12 hours for the purpose of relieving another employee in case of sickness or ~~where~~ *when* a breakdown in machinery occurs or ~~where~~ *when* life or property is in imminent danger.

(3) ~~Any~~ *A* person, corporation, agent, manager, employer, employee, contestant, or participant who ~~shall violate~~ *violates* the provisions of this section shall be guilty of a misdemeanor and upon conviction ~~thereof~~ shall be punished for the first offense by a fine of not less than $50. For a second offense, ~~he~~ *the person or entity* shall be punished by a fine of not less than $100 or more than $500 or by imprisonment in the county jail for not less than 90 days or more than 6 months, or ~~by~~ both ~~such fine and imprisonment~~. For a third or subsequent offense, ~~he~~ *the person or entity* shall be punished by a fine of $500 and *by* imprisonment in the county jail for a term of 6 months. Each day's violation of this section ~~shall constitute~~ *constitutes* a separate offense within the meaning of this section."

Section 1508. Section 39-29-111, MCA, is amended to read:

"39-29-111. Retention during reduction in force. (1) Subject to the restrictions in subsections (2) and (3), during a reduction in force, a public employer shall retain in a position:

(a) a veteran, disabled veteran, or eligible relative whose performance has not been rated unacceptable under a performance appraisal system over other employees with similar job duties and qualifications and same length of service; and

(b) a disabled veteran with a service-connected disability of 30% or more whose performance has not been rated unacceptable under a performance appraisal system over other veterans, disabled veterans, and eligible relatives with similar job duties and qualifications and same length of service.

(2) An employee is not entitled to preference in retention under subsection (1) unless ~~he~~ *the employee* is a United States citizen.

(3) The preference in retention under subsection (1) does not apply to a position covered by a collective bargaining agreement."

Section 1509. Section 39-30-206, MCA, is amended to read:

"39-30-206. Notice and claim of preference. (1) A public employer shall, by posting or on the application form, give notice of the preferences that this chapter provides in public employment.

(2) A job applicant who believes ~~he~~ *that the applicant* has an employment preference shall claim the preference in writing before the time for filing applications for the position involved has passed. Failure to make a timely employment preference claim for a position is a complete defense to an action in regard to that position under 39-30-207.

(3) If an applicant for a position makes a timely written employment preference claim, the public employer shall give written notice of its hiring decision to each applicant claiming preference."

Section 1510. Section 39-30-207, MCA, is amended to read:

"39-30-207. Enforcement of preference. (1) An applicant who believes ~~he~~ *that the applicant* has not been accorded ~~his~~ *the applicant's* rights under this chapter may, within 30 days of receipt of the notice of the hiring decision provided for in 39-30-206, submit to the public employer a written request for an explanation of the public employer's hiring decision. Within 15 days of receipt of the request, the public employer shall give the applicant a written explanation.

(2) The applicant may, within 90 days after receipt of notice of the hiring decision, file a petition in the district court in the county in which ~~his~~ *the applicant's* application was received by the public employer. The petition must state facts that on their face entitle the applicant to an employment preference.

(3) (a) Upon filing of the petition, the court shall order the public employer to appear in court at a specified time not less than 10 or more than 30 days after the day the petition was filed and show cause why the applicant was not hired for the position. At the hearing, the public employer has the burden of proving by a preponderance of the evidence that the employer made a reasonable determination pursuant to 39-30-103(7), and the applicant has the burden of proving by a preponderance of the evidence that ~~he~~ *the applicant* is a preference-eligible applicant.

(b) The time to appear provided in subsection (3)(a) may be waived by stipulation of the parties. If a time to appear has been specified pursuant to subsection (3)(a), the court may, on motion of one of the parties or on stipulation of all of the parties, grant a continuance.

(c) If the public employer does not carry its burden of proof under subsection (3)(a) and the court finds that the applicant is a preference-eligible applicant, the court shall order the public employer to reopen the selection process for the position involved and shall grant the applicant reasonable attorney fees and court costs. The remedy provided by this section is the only remedy for a violation of this chapter, and a court may not grant any other relief in an action for violation of this chapter.

(4) Failure of an applicant to file a petition under subsection (2) within 90 days bars the filing of a petition. If a public employer fails to provide an explanation under subsection (1) within 15 days and a petition is filed under subsection (2), the court shall order the public employer to reopen the selection process.

(5) The Montana Rules of Civil Procedure apply to a proceeding under this section to the extent that they do not conflict with this section."

Section 1511. Section 39-31-204, MCA, is amended to read:

"39-31-204. Right of nonassociation with labor organization on religious grounds — requirements and procedure for assertion of right. (1) ~~No~~ *A* public employee who is a member of a bona fide religious sect or division ~~thereof~~ *of a sect*, the established and traditional tenets or teachings of which oppose a requirement that a member of ~~such~~ *the* sect or division join or financially support a particular or any labor organization, may *not* be required to join or financially support that particular labor organization or any labor organization if the tenets or teachings oppose a requirement that any labor organization be joined or supported as a condition of employment. ~~if such~~

However, the public employee ~~pays~~ *shall pay* in lieu of periodic union dues, initiation fees, and assessments, at the same time or times ~~such~~ *the* periodic union dues, initiation fees, and assessments would otherwise be payable, a sum of money equivalent to ~~such~~ *the* periodic union dues, initiation fees, and assessments to a nonreligious, nonunion charity designated by the labor organization. ~~Such~~ *The* public employee shall furnish to ~~such~~ *the* labor organization written receipts evidencing ~~such~~ *the* payments, and failure to make ~~such~~ *the* payments or furnish ~~such~~ *the* receipts ~~shall subject~~ *subjects* the employee to the same sanctions as would nonpayment of dues, initiation fees, or assessments under the applicable collective bargaining agreement.

(2) A public employee desiring to ~~avail himself or herself to~~ *exercise* the right of nonassociation with a labor organization as provided in this section shall make written application to the ~~chairman~~ *presiding officer* of the board of personnel appeals. Within 10 days of the date of receipt of ~~such~~ *an* application, the ~~chairman~~ *presiding officer* shall appoint a committee of three~~,~~ consisting of a ~~clergyman~~ *member of the clergy* not connected with the sect in question, a labor union official not directly connected with the labor organization in question, and a member of the public at large who ~~shall be~~ *is* the ~~chairman~~ *presiding officer*. The committee shall within 10 days of the date of its appointment meet at the locale of either the employee's residence or place of employment and, after receiving written or oral presentations from all interested parties, determine by a majority vote whether or not ~~such~~ *the* public employee qualifies for the right of nonassociation with ~~such~~ *the* labor organization. The committee's decision ~~shall~~ *must* be made in writing within 3 days of the meeting date, and a copy ~~thereof shall~~ *of the decision must* be ~~forthwith~~ mailed to ~~such~~ *the* public employee, labor organization, and ~~the~~ ~~chairman~~ *presiding officer* of the board of personnel appeals."

Section 1512. Section 39-31-305, MCA, is amended to read:

"39-31-305. Duty to bargain collectively — good faith. (1) The public employer and the exclusive representative, through appropriate officials or their representatives, ~~shall~~ have the authority and the duty to bargain collectively. This duty extends to the obligation to bargain collectively in good faith as set forth in subsection (2) ~~of this section~~.

(2) For the purpose of this chapter, to bargain collectively is the performance of the mutual obligation of the public employer or ~~his~~ *the public employer's* designated representatives and the representatives of the exclusive representative to meet at reasonable times and negotiate in good faith with respect to wages, hours, fringe benefits, and other conditions of employment or the negotiation of an agreement or any question arising ~~thereunder~~ *under an agreement* and the execution of a written contract incorporating any agreement reached. ~~Such~~ *The* obligation does not compel either party to agree to a proposal or require the making of a concession.

(3) For purposes of state government only, the requirement of negotiating in good faith may be met by the submission of a negotiated settlement to the legislature in the executive budget or by bill or joint resolution. The failure to reach a negotiated settlement for submission is not, by itself, prima facie evidence of a failure to negotiate in good faith."

Section 1513. Section 39-31-311, MCA, is amended to read:

"39-31-311. Training of fact finders and arbitrators. The board of personnel appeals shall establish a course of education for the training of fact finders and arbitrators. ~~No~~ *A* person may *not* serve as a fact finder or as an

arbitrator under this chapter until ~~he~~ *the person* has successfully completed the course or equivalent education."

Section 1514. Section 39-31-401, MCA, is amended to read:

"39-31-401. Unfair labor practices of public employer. It is an unfair labor practice for a public employer to:

(1) interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in 39-31-201;

(2) dominate, interfere, or assist in the formation or administration of any labor organization~~;~~. ~~however~~ *However*, subject to rules adopted by the board under 39-31-104, an employer is not prohibited from permitting employees to confer with ~~him~~ *the employer* during working hours without loss of time or pay~~;~~.

(3) discriminate in regard to hire or tenure of employment or any term or condition of employment in order to encourage or discourage membership in any labor organization~~;~~. ~~however~~ *However*, nothing in this chapter or in any other statute of this state precludes a public employer from making an agreement with an exclusive representative to require, as a condition of employment, that an employee who is not or does not become a union member~~,~~ must have an amount equal to the union initiation fee and monthly dues deducted from ~~his~~ *the employee's* wages in the same manner as checkoff of union dues~~;~~.

(4) discharge or otherwise discriminate against an employee because ~~he~~ *the employee* has signed or filed an affidavit, petition, or complaint or given any information or testimony under this chapter; or

(5) refuse to bargain collectively in good faith with an exclusive representative."

Section 1515. Section 39-31-402, MCA, is amended to read:

"39-31-402. Unfair labor practices of labor organization. It is an unfair labor practice for a labor organization or its agents to:

(1) restrain or coerce*:*

(a) employees in the exercise of the right guaranteed in 39-31-201*;* or

(b) a public employer in the selection of ~~his~~ *a* representative for the purpose of collective bargaining or the adjustment of grievances;

(2) refuse to bargain collectively in good faith with a public employer if it has been designated as the exclusive representative of employees;

(3) use agency shop fees for contributions to political candidates or parties at state or local levels."

Section 1516. Section 39-31-404, MCA, is amended to read:

"39-31-404. Six-month limitation on unfair labor practice complaint — exception. ~~No~~ *A* notice of hearing ~~shall~~ *may not* be issued based upon any unfair labor practice more than 6 months before the filing of the charge with the board unless the person aggrieved ~~thereby~~ was prevented from filing the charge by reason of service in the armed forces, in which event the 6-month period ~~shall~~ *must* be computed from the day of ~~his~~ discharge."

Section 1517. Section 39-31-406, MCA, is amended to read:

"39-31-406. Hearing on complaint — findings — order. (1) The complainant and the person charged ~~shall~~ *must* be parties and shall appear in person or otherwise give testimony at the place and time fixed in the notice of hearing. In the discretion of the board or its agent conducting the hearing, any

other person may be allowed to intervene in the proceeding and present testimony.

(2) In ~~any~~ *a* hearing, the board is not bound by the rules of evidence prevailing in the courts.

(3) The testimony taken by the board or its agent ~~shall~~ *must* be reduced to writing and filed with the board. Thereafter, in its discretion, the board upon notice may take further testimony or hear argument.

(4) If, upon the preponderance of the testimony taken, the board is of the opinion that any person named in the complaint has engaged in or is engaging in an unfair labor practice, it shall state its findings of fact and shall issue and cause to be served on the person an order requiring ~~him~~ *the person* to cease and desist from the unfair labor practice and to take ~~such~~ affirmative action, including reinstatement of employees with or without backpay, ~~as~~ *that* will effectuate the policies of this chapter. The order may further require the person to make reports from time to time showing the extent to which ~~he~~ *the person* has complied with the order. ~~No~~ *An* order of the board ~~shall~~ *may not* require the reinstatement of ~~any~~ *an* individual as an employee who has been suspended or discharged or the payment to ~~him~~ *the employee* of any backpay if it is found that the individual was suspended or discharged for cause.

(5) If, upon the preponderance of the testimony taken, the board is not of the opinion that the person named in the complaint has engaged in or is engaging in the unfair labor practice, then the board shall state its findings of fact and shall issue an order dismissing the complaint.

(6) If the evidence is presented before a member of the board or before an examiner, the member or the examiner~~, as the case may be,~~ shall issue and cause to be served on the parties to the proceeding a proposed decision, together with a recommended order, which ~~shall~~ *must* be filed with the board, and if ~~no~~ exceptions are *not* filed within 20 days after service ~~thereof~~ *of the proposed decision and recommended order* upon the parties or within ~~such~~ *a* further period ~~as~~ *that* the board may authorize, the recommended order ~~shall become~~ *becomes* the order of the board. The board shall issue a final order within 5 months after final briefs are submitted to the hearings officer. If briefs are to be submitted~~,~~ but either or both of the parties fail to submit their brief on the date set by the ~~hearing~~ *hearings* examiner at the close of the hearing on the matter, then the board shall issue a final order within 5 months after the date the last brief was ordered to be submitted. If no briefs are to be submitted, the board shall issue a final order within 5 months after the hearing."

Section 1518. Section 39-32-102, MCA, is amended to read:

"39-32-102. Definitions. As used in this chapter, unless the context clearly requires otherwise, the following definitions apply:

(1) "Appropriate unit" means a homogenous group of employees ~~(as herein defined)~~ of a health care facility having similar duties and qualifications determined pursuant to 39-32-106.

(2) "Board" means the board of personnel appeals provided for in 2-15-1705.

(3) "Employee" means a registered professional or licensed practical nurse performing services for compensation for a health care facility, but does not include a member of a religious order assigned to a health care facility by the order as a part of ~~her~~ *the member's* obligation to the order.

(4) "Health care facility" means a hospital or nursing home or other agency or establishment employing employees ~~as defined in this chapter~~, whether

operated publicly or privately, having as one of its principal purposes the preservation of health, ~~or~~ the care of sick or infirm individuals, or both.

(5) "Strike" ~~shall mean~~ *means* any work stoppage caused by the employees of a health care facility~~, as defined in subsection (4) of this section,~~ that interferes with the operation of the health care facility or affects the care of patients in the health care facility."

Section 1519. Section 39-32-109, MCA, is amended to read:

"39-32-109. Unfair labor practices. (1) It is an unfair labor practice for a health care facility to do one or more of the following:

(a) interfere with or restrain or coerce employees in any manner in the exercise of their right of self-organization;

(b) initiate, create, dominate, contribute to, or interfere with the formation or administration of any employee organization that has collective bargaining as one of its principal functions;

(c) discriminate in regard to hire terms or conditions of employment when a purpose ~~of such~~ is to discourage membership in an employee organization that has collective bargaining as one of its principal functions;

(d) refuse to meet and bargain in good faith with the ~~duly~~ designated representatives of an appropriate bargaining unit of its employees. For the purpose of this subsection *(1)(d)*, it is a requirement of bargaining in good faith that the parties be willing to reduce ~~in~~ *to* writing and have their representative sign any agreement arrived at through negotiations and discussion.

(e) unilaterally exclude from work or prevent from working or discharge any one or more employees when the purpose of ~~such~~ *the* action is in whole or in part to interfere with or coerce or intimidate an employee in the exercise of rights ~~assured~~ *ensured* in this law.

(2) It is an unfair labor practice for a labor organization or its agents to:

(a) restrain or coerce employees in the exercise of the right to:

(i) form, join, or assist any labor organization;

(ii) bargain collectively through representatives of their own choosing; or

(iii) engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection;

(b) restrain or coerce an employer in the selection of ~~his~~ *a* representative for the purpose of collective bargaining or the adjustment of grievances;

(c) refuse to bargain collectively in good faith with an employer if it has been designated as the exclusive representative of employees;

(d) use agency shop fees for contributions to political candidates or parties."

Section 1520. Section 39-33-101, MCA, is amended to read:

"39-33-101. Intent of part. It is the intent of this part that a sole proprietor or a member of a partnership consisting of not more than two partners who own a retail or amusement establishment and the members of ~~his~~ *the proprietor's or partner's* immediate family ~~shall have the right to~~ *may* do any work in ~~his~~ *the* place of business without interference by any union or any member ~~thereof~~ *of the union*."

Section 1521. Section 39-33-102, MCA, is amended to read:

"39-33-102. Immediate family defined. "Immediate family" ~~shall include~~ *includes* the owner, ~~his~~ *the owner's* spouse, and any children under the age of 18 years."

Section 1522. Section 39-33-103, MCA, is amended to read:

"39-33-103. Unfair labor practice. Any union or member ~~thereof~~ *of a union* who ~~shall infringe or interfere~~ *infringes or interferes* with the right of an owner and the members of ~~his~~ *the owner's* immediate family to do any work in ~~his~~ *the owner's* place of business ~~shall be~~ *is* guilty of an unfair labor practice."

Section 1523. Section 39-33-202, MCA, is amended to read:

"39-33-202. Professional strikebreakers prohibited. (1) An employer involved in a labor dispute may not employ in the place of an employee involved in ~~such~~ *the* dispute a professional strikebreaker who customarily and repeatedly offers ~~himself for employment~~ *to be employed* in the place of employees involved in labor disputes.

(2) A professional strikebreaker who customarily and repeatedly offers ~~himself for employment~~ *to be employed* in place of employees involved in labor disputes may not take or offer to take the place in employment of an employee involved in a labor dispute within the state."

Section 1524. Section 39-34-103, MCA, is amended to read:

"39-34-103. Powers and duties of arbitrator for firefighters and public employers. (1) The arbitrator shall establish dates and a place for hearings and may subpoena witnesses and require the submission of evidence necessary to resolve the impasse.

(2) Prior to making a determination on any issue relating to the impasse, the arbitrator may refer the issues back to the parties for further negotiation.

(3) At the conclusion of the hearings, the arbitrator shall require the parties to submit their respective final position on matters in dispute.

(4) The arbitrator shall make a just and reasonable determination of which final position on matters in dispute will be adopted within 30 days of the commencement of the arbitration proceedings. The arbitrator shall notify the board of personnel appeals and the parties, in writing, of ~~his~~ *the* determination.

(5) In arriving at a determination, the arbitrator shall consider any relevant circumstances, including:

(a) comparison of hours, wages, and conditions of employment of the employees involved with employees performing similar services and with other services generally;

(b) the interests and welfare of the public and the financial ability of the public employer to pay;

(c) appropriate cost-of-living indices;

(d) any other factors traditionally considered in the determination of hours, wages, and conditions of employment.

(6) The determination of the arbitrator is final and binding and is not subject to the approval of any governing body."

Section 1525. Section 39-51-102, MCA, is amended to read:

"39-51-102. Declaration of state public policy. As a guide to the interpretation and application of this chapter, the public policy of this state is declared to be as follows:

(1) Economic insecurity ~~due to~~ *because of* unemployment is a serious menace to the health, morals, and welfare of the people of this state.

(2) Involuntary unemployment is, therefore, a subject of general interest and concern ~~which~~ *that* requires appropriate action by the legislature to prevent its spread and to lighten its burden ~~which~~ *that* now so often falls with crushing force upon the unemployed worker and ~~his~~ *the worker's* family. The achievement of social security requires protection against this greatest hazard of our economic life. This can be provided by encouraging employers to provide more stable employment and by the systematic accumulation of funds during periods of employment to provide benefits for periods of unemployment, thus maintaining purchasing power and limiting the serious social consequences of poor relief assistance.

(3) The legislature, therefore, declares that in its considered judgment the public good and the general welfare of the citizens of this state require the enactment of this ~~measure~~ *chapter* under the police powers of the state for the compulsory setting aside of unemployment reserves to be used for the benefit of persons unemployed through no fault of their own."

Section 1526. Section 39-51-206, MCA, is amended to read:

"39-51-206. Agricultural labor — who treated as employer of member of ~~a~~ crew furnished by ~~a~~ crew leader. (1) For the purposes of 39-51-203, any individual who is a member of a crew furnished by a crew leader to perform service in agricultural labor for any other person ~~shall~~ *must* be treated as an employee of ~~such~~ *the* crew leader if:

(a) ~~such~~ *the* crew leader holds a valid certificate of registration under the Migrant and Seasonal Agricultural Worker Protection Act, as amended, ~~(~~29 U.S.C. 1801, et seq.~~)~~; or

(b) (i) substantially all the members of ~~such~~ *the* crew operate or maintain tractors, mechanized harvesting or cropdusting equipment, or any other mechanized equipment ~~which~~ *that* is provided by ~~such~~ *the* crew leader; and

(ii) ~~such~~ *the* individual is not an employee of ~~such~~ *the* other person for whom services in agricultural labor are performed.

(2) In the case of any individual who is furnished by a crew leader to perform service in agricultural labor for any other person and who is not treated as an employee of ~~such~~ *the* crew leader under subsection (1):

(a) ~~such~~ *the* other person and not the crew leader ~~shall~~ *must* be treated as the employer of ~~such~~ *the* individual; and

(b) ~~such~~ *the* other person ~~shall~~ *must* be treated as having paid cash remuneration to ~~such~~ *the* individual in an amount equal to the amount of cash remuneration paid to ~~such~~ *the* individual by the crew leader, either on ~~his~~ *the crew leader's* own behalf or on behalf of ~~such~~ *the* other person, for the service in agricultural labor performed for ~~such~~ *the* other person.

(3) The term "crew leader" means an individual who:

(a) furnishes individuals to perform service in agricultural labor for any other person;

(b) pays, either on ~~his~~ *the crew leader's* own behalf or on behalf of ~~such~~ *the* other person, the individuals ~~so~~ furnished by ~~him~~ *the crew leader* for the service in agricultural labor performed by them; and

(c) has not entered into a written agreement with ~~such~~ *the* other person under which ~~such~~ *the* individual is designated as an employee of ~~such~~ *the* other person."

Section 1527. Section 39-51-305, MCA, is amended to read:

"39-51-305. Department to appoint appeals referees. To hear and decide disputed claims, the department shall appoint ~~such~~ impartial salaried appeals referees ~~as~~ *who* are necessary for the proper administration of this chapter in accordance with 39-51-304. ~~No~~ *A* person ~~shall~~ *may not* participate on behalf of the department in any case in which ~~he~~ *the person* is an interested party. The department may designate alternates to serve in the absence or disqualification of an appeals referee."

Section 1528. Section 39-51-309, MCA, is amended to read:

"39-51-309. Representation of department and state in court. (1) In any civil action to enforce the provisions of this chapter, the department and the state may be represented by any qualified attorney who is employed by the department and is designated by it for this purpose or, at the department's or board's request, by the attorney general.

(2) All criminal actions for violation of any provision of this chapter or of any rules issued pursuant ~~thereto shall~~ *to this chapter must* be prosecuted by the attorney general of the state or, at ~~his~~ *the attorney general's* request and under ~~his~~ *the attorney general's* direction, by the county attorney of the county ~~wherein~~ *in which* the crime was committed."

Section 1529. Section 39-51-601, MCA, is amended to read:

"39-51-601. Department to maintain wage record. The department shall maintain a record of the wages paid to an individual in accordance with wages earned by ~~him~~ *the individual* for employment by employers during each quarter."

Section 1530. Section 39-51-1215, MCA, is amended to read:

"39-51-1215. Maintenance of experience rating records. An experience rating record ~~shall~~ *must* be maintained for each covered employer. The record is credited with all contributions ~~which~~ *that* the covered employer has paid since October 1, 1981. The record ~~is~~ *must* also *be* charged with the amount of benefits paid ~~which~~ *that* are chargeable to the covered employer's account since October 1, 1981. ~~Nothing in this~~ *This* section ~~grants~~ *does not grant* any covered employer or individual in ~~his~~ *the covered employer's* service a priority with respect to any claim or right because of amounts paid by the covered employer into the employment security fund."

Section 1531. Section 39-51-1216, MCA, is amended to read:

"39-51-1216. Experience rating record voided when account inactive. Whenever an employer whose coverage has been terminated because ~~he~~ *the employer* has ceased to do business or because ~~he~~ *the employer* has not covered employment for a period of 3 years becomes a covered employer, ~~he~~ *the employer* is considered a new employer and ~~he is~~ *may* not to be credited with ~~his~~ previous experience for the purpose of computing any future "experience factor"."

Section 1532. Section 39-51-1302, MCA, is amended to read:

"39-51-1302. Summary or jeopardy assessment of unpaid taxes. (1) If ~~any~~ *an* employer fails to file a report or return as required under this chapter or the regulations of the department adopted ~~thereunder~~ *to implement this chapter*

within the time specified or if the employer's records are inaccurate or are incomplete when an employer has already filed a quarterly wage report for the period in question, the department may make a summary or jeopardy assessment of the amount due by making up ~~such~~ *the* report and determining the amount of taxes due and owing to the fund upon the basis of ~~such~~ information ~~as~~ *that* the department may be able to obtain, and ~~thereupon the same shall~~ *the taxes must* be collected the same as other reports and taxes due, with penalty and interest as provided in this chapter.

(2) Upon making ~~such~~ *a* summary or jeopardy assessment, the department shall immediately notify the employer in writing by personal service or by certified mail in the usual course at the ~~last known~~ *last-known* principal place of business operated by the employer. ~~Such~~ *The* assessment ~~shall be~~ *is* final unless the employer ~~shall protest such~~ *protests the* assessment in writing within 15 days after service of the notice or, within the same period of time, the employer ~~shall file~~ *files* a correct, signed, and sworn report and statement as provided by the chapter and the regulations of the department.

(3) Upon written protest being filed as ~~above set forth~~ *provided in subsection (2)*, a day certain for the hearing ~~thereof shall~~ *of the protest must* be fixed by the department and notice ~~thereof~~ *of the hearing date* mailed to the employer. At ~~such~~ *the* hearing, the facts ascertained by the department ~~shall be~~ *are* conclusive and the department may upon the basis of ~~such~~ *the* facts ascertained assess the amount due, modify, set aside, or revise the prior assessment, and require the employer to pay the amount due with penalty and interest as provided for in this chapter. A copy of the decision of the department and the assessment of the amount due ~~shall~~ *must* be mailed to the employer at ~~his~~ *the employer's* ~~last known~~ *last-known* principal place of business and ~~thereupon become~~ *upon mailing becomes* final."

Section 1533. Section 39-51-1306, MCA, is amended to read:

"39-51-1306. Reciprocity with other states for collection of unpaid taxes. (1) The courts of this state shall recognize and enforce liabilities for unemployment taxes and any other special assessments imposed by other states ~~which~~ *that* extend a like comity to this state.

(2) The department ~~is hereby empowered to~~ *may* sue in the courts of any other jurisdiction ~~which~~ *that* extends ~~such~~ comity to collect unemployment taxes, penalties, and interest due this state. The officials of other states ~~which~~ *that* by statute or otherwise extend a like comity to this state may sue in the courts of this state to collect ~~for such~~ *the* taxes and any other special assessments and interest and penalties, if any, due ~~such~~ *that* state. In any ~~such~~ case *brought for another state,* the administrator may through ~~his~~ *the administrator's* attorney ~~or attorneys~~ institute and conduct ~~such~~ *the* suit for ~~such~~ *the* other state.

(3) Venue of ~~such~~ proceedings ~~shall~~ *under this section must* be the same as for actions to collect delinquent taxes, penalties, and interest due under this chapter.

(4) A certificate by the secretary of any ~~such~~ state under the great seal of ~~such~~ *that* state attesting the authority of ~~such~~ *the* official ~~or officials~~ to collect unemployment insurance taxes and any other special assessments, penalties, and interest ~~shall be~~ *is* conclusive evidence of ~~such~~ *that* authority."

Section 1534. Section 39-51-2107, MCA, is amended to read:

"39-51-2107. Services for remuneration to be performed during benefit year as condition for receiving benefits in second benefit year — amount required. An individual who received benefits during a benefit

year ~~must~~ *shall* perform services for remuneration following the initial separation from employment in the previous benefit year as a condition for receiving benefits in a second benefit year. The service must constitute employment as defined in 39-51-203 and 39-51-204. However, the individual must have earned the lesser of three-thirteenths of ~~his~~ *the individual's* high quarter of ~~his~~ *the individual's* second benefit year or ~~6~~ *six* times ~~his~~ *the individual's* weekly benefit amount of that same year."

Section 1535. Section 39-51-2305, MCA, is amended to read:

"39-51-2305. Disqualification when unemployment ~~due to~~ *because of* strike. (1) An individual ~~shall~~ *must* be disqualified for benefits for any week with respect to which the department finds that ~~his~~ *the individual's* total unemployment is due to a strike ~~which~~ *that* exists because of a labor dispute at the factory, establishment, or other premises at which ~~he~~ *the individual* is or was last employed~~,~~. ~~provided that~~ *However,* this subsection ~~shall~~ *does* not apply if it is shown to the satisfaction of the department that *the individual*:

(a) ~~he~~ is not participating in or financing or directly interested in the labor dispute ~~which~~ *that* caused the strike; and

(b) ~~he~~ does not belong to a grade or class of workers of which, immediately before the commencement of the strike, there were members employed at the premises at which the strike occurs, any of whom are participating in or financing or directly interested in the dispute.

(2) If in any case separate branches of work ~~which~~ *that* are commonly conducted as separate businesses in separate premises are conducted in separate departments of the same premises, each ~~such~~ department ~~shall~~ *must*, for the purpose of this section, be ~~deemed~~ *considered* to be a separate factory, establishment, or other premises.

(3) If the department, upon investigation, ~~shall find~~ *finds* that ~~such~~ *the* labor dispute is caused by the failure or refusal of any employer to conform to the provisions of any law of the state ~~wherein~~ *in which* the labor dispute occurs or of the United States pertaining to collective bargaining, hours, wages, or other conditions of work, ~~such~~ *the* labor dispute ~~shall~~ *may* not render the workers ineligible for benefits."

Section 1536. Section 39-51-2401, MCA, is amended to read:

"39-51-2401. Claims to be made in accordance with ~~regulations~~ *rules* — employers to post and make available copies of ~~such regulations~~ *rules.* Claims for benefits ~~shall~~ *must* be made in accordance with ~~such regulations as~~ *rules that* the department may prescribe. Each employer shall post and maintain printed statements of ~~such regulations~~ *the rules* in places readily accessible to individuals in ~~his~~ *the employer's* service and shall make available to each ~~such~~ individual at the time ~~he~~ *the individual* becomes unemployed a printed statement of ~~such regulations~~ *the rules*. ~~Such~~ *The* printed statements ~~shall~~ *must* be supplied by the department to each employer without cost to ~~him~~ *the employer*."

Section 1537. Section 39-51-2509, MCA, is amended to read:

"39-51-2509. Weekly extended benefit amount. The weekly extended benefit amount payable to an individual for a week of total unemployment in ~~his~~ *the individual's* eligibility period ~~shall~~ *must* be an amount equal to the weekly benefit amount payable to ~~him~~ *the individual* during ~~his~~ *the individual's* applicable benefit year."

Section 1538. Section 39-51-3101, MCA, is amended to read:

"39-51-3101. Protection against self-incrimination. ~~No~~ *A* person ~~shall~~ *may not* be excused from attending and testifying or from producing books, papers, correspondence, memoranda, and other records before the department or board, the ~~chairman~~ *presiding officer* of an appeal tribunal, or any ~~duly~~ authorized representative of either of them or in obedience to the subpoena of the department or board or any member ~~thereof~~ *of the board* or any ~~duly~~ authorized representative of the department in any cause or proceeding before the department or board on the ground that the testimony or evidence, documentary or otherwise, required of ~~him~~ *the person* may tend to incriminate ~~him~~ *the person* or subject ~~him~~ *the person* to a penalty or forfeiture~~,~~. ~~but no~~ *However, an* individual ~~shall~~ *may not* be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which ~~he~~ *the individual* is compelled, after having claimed ~~his~~ *the* privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that ~~such~~ *the* individual ~~so~~ testifying ~~shall~~ *is* not ~~be~~ exempt from prosecution and punishment for perjury committed in ~~so~~ testifying."

Section 1539. Section 39-51-3102, MCA, is amended to read:

"39-51-3102. Certain agreements in violation of chapter void. (1) Any agreement by an individual to waive, release, or commute ~~his~~ *the individual's* rights to benefits or any other rights under this chapter ~~shall be~~ *is* void.

(2) Any agreement by ~~any~~ *an* individual in the employ of any person or concern to pay all or any portion of an employer's contributions required under this chapter from ~~such~~ *the* employer ~~shall be~~ *is* void."

Section 1540. Section 39-51-3103, MCA, is amended to read:

"39-51-3103. Employer prohibited from making, requiring, or accepting deduction from wages or requiring or accepting waiver of rights under chapter — penalty for violation. (1) ~~No~~ *An* employer ~~shall~~ *may not,* directly or indirectly*,* make*,* ~~or~~ require*,* or accept any deduction from wages to finance the employer's contributions required from ~~him~~ *the employer* or require or accept ~~any~~ *a* waiver of any right ~~hereunder~~ *under this chapter* by an individual in ~~his~~ *the employer's* employ.

(2) ~~Any~~ *An* employer or officer or agent of an employer who violates any provision of ~~this section or~~ 39-51-3102 *or this section* shall, for each offense, be fined not more than $1,000 or be imprisoned for not more than 6 months*,* or both."

Section 1541. Section 39-51-3104, MCA, is amended to read:

"39-51-3104. Limitation of fees in claim for benefits — penalty for violation. (1) ~~No~~ *An* individual claiming benefits ~~shall~~ *may not* be charged fees of any kind in ~~any~~ *a* proceeding under this chapter by the department or its representatives or by any court or any officer ~~thereof~~ *of the court*.

(2) ~~Any~~ *An* individual claiming benefits in ~~any~~ *a* proceeding before the ~~chairman~~ *presiding officer* of an appeal tribunal or the department or its representatives, the board, or a court may be represented by counsel or other ~~duly~~ authorized agent, but ~~no such~~ *the* counsel or agents ~~shall~~ *may not* either charge or receive for ~~such~~ *the* services more than an amount approved by the department or board.

(3) ~~Any~~ *A* person who violates any provision of this section shall, for each ~~such~~ offense, be fined not more than $500 or *be* imprisoned for not more than 6 months*,* or both."

Section 1542. Section 39-51-3203, MCA, is amended to read:

"39-51-3203. Obtaining benefits through deception or other fraudulent means — criminal penalty. A person who, through deception or other fraudulent means, obtains benefits ~~which he~~ *that the person* is not entitled to under this chapter or under an employment security law of any other state or territory or the federal government or a person legally accountable for ~~such~~ *that* conduct under 45-2-302 is guilty of a crime under 45-6-301, and a county attorney may initiate criminal proceedings against ~~him~~ *the person*."

Section 1543. Section 39-71-411, MCA, is amended to read:

"39-71-411. Provisions of chapter exclusive remedy — nonliability of insured employer. For all employments covered under the Workers' Compensation Act or for which an election has been made for coverage under this chapter, the provisions of this chapter are exclusive. Except as provided in part 5 of this chapter for uninsured employers and except as otherwise provided in the Workers' Compensation Act, an employer is not subject to any liability whatever for the death of or personal injury to an employee covered by the Workers' Compensation Act or for any claims for contribution or indemnity asserted by a third person from whom damages are sought on account of ~~such~~ *the* injuries or death. The Workers' Compensation Act binds the employee ~~himself,~~ and, in case of death, binds ~~his~~ *the employee's* personal representative and all persons having any right or claim to compensation for ~~his~~ *the employee's* injury or death, as well as the employer and the servants and employees of ~~such~~ *the* employer and those conducting ~~his~~ *the employer's* business during liquidation, bankruptcy, or insolvency."

Section 1544. Section 39-71-412, MCA, is amended to read:

"39-71-412. Liability of third party other than employer or fellow employee — additional cause of action. The right to compensation and medical benefits as provided by this chapter is not affected by the fact that the injury, occupational disease, or death is caused by the negligence of a third party other than the employer or the servants or employees of the employer. Whenever ~~such event~~ *injury, occupational disease, or death* occurs to an employee while performing the duties of ~~his~~ employment and ~~such~~ *the* event is caused by the act or omission of some persons or corporations other than ~~his~~ *the employee's* employer or the servants or employees of ~~his~~ *the employee's* employer, the employee or in case of ~~his~~ death ~~his~~ *the employee's* heirs or personal representative ~~shall~~, in addition to the right to receive compensation under this chapter, ~~have~~ *has* a right to prosecute any cause of action ~~he~~ *that the employee or heirs* may have for damages against ~~such~~ *the* persons or corporations."

Section 1545. Section 39-71-509, MCA, is amended to read:

"39-71-509. Action against uninsured employer — limitation of employer's defenses. If an injured employee or the employee's beneficiaries bring an action to recover damages for personal injuries sustained or for death resulting from personal injuries ~~so~~ sustained, it is not a defense for the employer that the:

(1) employee was negligent unless ~~such~~ *the* negligence was willful;

(2) injury was caused by the negligence of a fellow employee; or

(3) employee had assumed the risks inherent in, incident to, or arising out of ~~his~~ *the employee's* employment or arising from the failure of the employer to provide and maintain a reasonably safe place to work or reasonably safe tools or appliances."

Section 1546. Section 39-71-515, MCA, is amended to read:

"39-71-515. Independent cause of action. (1) An injured employee or the employee's beneficiaries have an independent cause of action against an uninsured employer for failure to be enrolled in a compensation plan as required by this chapter.

(2) In ~~such~~ an action *described in subsection (1)*, prima facie liability of the uninsured employer exists if the claimant proves, by a preponderance of the evidence, that:

(a) the employer was required by law to be enrolled under compensation plan No. 1, 2, or 3 with respect to the claimant; and

(b) the employer was not ~~so~~ enrolled on the date of the injury or death.

(3) It is not a defense to ~~such~~ an action that the employee had knowledge of or consented to the employer's failure to carry insurance or that the employee was negligent in permitting ~~such~~ *the* failure to exist.

(4) The amount of recoverable damages in ~~such~~ an action is the amount of compensation that the employee would have received had the employer been properly enrolled under compensation plan No. 1, 2, or 3.

(5) A plaintiff who prevails in an action brought under this section is entitled to recover reasonable costs and attorney fees incurred in the action, in addition to ~~his~~ damages."

Section 1547. Section 39-71-518, MCA, is amended to read:

"39-71-518. Setoffs against remaining liability. Any actual monetary compensation received by judgment or settlement by the injured employee or the employee's beneficiaries under 39-71-509 or 39-71-515 may be offset by the uninsured employer against ~~his~~ *the employer's* remaining liability under those sections."

Section 1548. Section 39-71-726, MCA, is amended to read:

"39-71-726. No compensation after death ~~where~~ *when* death not result of injury. If the employee ~~shall die~~ *dies* from some cause other than the injury, there ~~shall be~~ *is* no liability for compensation after ~~his~~ *the* death."

Section 1549. Section 39-71-2102, MCA, is amended to read:

"39-71-2102. Proof of solvency to be filed. ~~Every~~ *Each* employer who has elected to be bound by compensation plan No. 1 shall file proof of ~~his~~ solvency within the time and in the form ~~as may be~~ prescribed by the rules or orders of the department."

Section 1550. Section 39-71-2401, MCA, is amended to read:

"39-71-2401. Disputes — jurisdiction — settlement requirements — mediation. (1) A dispute concerning benefits arising under this chapter, other than the disputes described in subsection (2), must be brought before a department mediator as provided in this part. If a dispute still exists after the parties satisfy the mediation requirements in this part, either party may petition the workers' compensation court for a resolution.

(2) A dispute arising under this chapter that does not concern benefits or a dispute for which a specific provision of this chapter gives the department jurisdiction must be brought before the department.

(3) An appeal from a department order may be made to the workers' compensation court.

(4) Except as otherwise provided in this chapter, before a party may bring a dispute concerning benefits before a mediator, the parties shall attempt to settle as follows:

(a) The party making a demand shall present the other party with a specific written demand that contains sufficient explanation and documentary evidence to enable the other party to thoroughly evaluate the demand.

(b) The party receiving the demand shall respond in writing within 15 working days of receipt. If the demand is denied in whole or in part, the response ~~shall~~ *must* state the basis of the denial.

(c) Upon motion of a party or upon the mediator's own motion, the mediator has the authority to dismiss a petition if ~~he~~ *the mediator* finds that either party did not comply with this subsection *(4)*. A decision dismissing a petition under this subsection *(4)(c)* must be in writing and must state in detail the grounds for dismissal. The mediator's decision may be reviewed by the workers' compensation court upon motion of a party.

(d) ~~Nothing in this~~ *This* subsection ~~relieves~~ *(4) does not relieve* a party of an obligation otherwise contained in this chapter."

Section 1551. Section 39-71-2910, MCA, is amended to read:

"39-71-2910. Stay pending posttrial motions and appeal. (1) Upon the filing of a judgment or order of the workers' compensation judge, a party may apply to the workers' compensation judge, upon notice or ex parte, for a stay of execution of the judgment or order. The stay may be for a period of time and be under conditions ~~as~~ *that* the judge considers proper. A stay of execution under this subsection may not extend for more than 30 days following the judge's disposition of posttrial motions.

(2) The appellant may request of the workers' compensation judge or the supreme court, upon service of a notice of appeal, a stay of execution of the judgment or order pending resolution of the appeal. The appellant may request a stay by presenting a supersedeas bond to the workers' compensation judge and obtaining ~~his~~ *the* approval of the bond. The bond must have two sufficient sureties or a corporate surety as authorized by law. A court granting a stay may waive the bond requirement. The procedure for requesting a stay and posting a supersedeas bond must be the same as the procedure in Rule 22, Montana Rules of Appellate Procedure."

Section 1552. Section 39-71-2914, MCA, is amended to read:

"39-71-2914. Signing of petitions, pleadings, motions, and other papers — requirements — sanctions. (1) Every petition, pleading, motion, or other paper of a party appearing before the workers' compensation court and represented by an attorney must be signed by at least one attorney of record in ~~his~~ *the attorney's* individual name. The signer's address also must be stated.

(2) A party who is not represented by an attorney shall sign ~~his~~ *the party's* petition, pleading, motion, or other paper and state ~~his~~ *the party's* address.

(3) The signature of an attorney or party constitutes a certificate by ~~him~~ *the attorney or party* that:

(a) ~~he~~ *the attorney or party* has read the petition, pleading, motion, or other paper;

(b) to the best of ~~his~~ *the attorney's or party's* knowledge, information, and belief formed after reasonable inquiry, it is well grounded in fact;

(c) it is warranted by existing law or by a good faith argument for the extension, modification, or reversal of existing law; and

(d) it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

(4) If a petition, pleading, motion, or other paper is signed in violation of this section, the court, upon motion or upon its own initiative, shall impose an appropriate sanction upon the person who signed it, a represented party, or both. The sanction may include an order to pay to the other party or parties the amount of the reasonable expense incurred because of the filing of the petition, pleading, motion, or other paper, including reasonable attorney fees."

Section 1553. Section 39-73-102, MCA, is amended to read:

"39-73-102. Administration — duties of department. The department of labor and industry shall administer this chapter. The department shall:

(1) formulate a plan and adopt rules for the operation of this chapter;

(2) cooperate with the federal government in all matters of immediate concern pertaining to silicosis;

(3) designate the procedure to be followed in securing a competent medical examination for the purposes of determining silicosis in each individual applicant;

(4) designate suitable physicians or physician, well qualified to examine applicants for aid under this chapter;

(5) pay the actual transportation expenses of any applicant from the *applicant's* place of ~~his~~ residence in the state to the place of examination and return, from funds appropriated to the department for that purpose;

(6) develop and cooperate with other agencies in developing measures for the prevention of silicosis."

Section 1554. Section 39-73-105, MCA, is amended to read:

"39-73-105. Application for payment. Application for payment under this chapter ~~shall~~ *must* be made by the person seeking ~~such~~ *the* payment to the department of labor and industry. The application ~~shall~~ *must* be in writing or reduced to writing in the manner and upon the form prescribed by the department. The application form may be filled in and written by a person authorized by the department. If the applicant is unable to sign ~~his or her~~ *the applicant's* name on the application, a ~~duly~~ witnessed mark may be used."

Section 1555. Section 39-73-108, MCA, is amended to read:

"39-73-108. Payment of benefits ~~where~~ *when* person entitled is in institution. If ~~any~~ *a* person who is entitled to benefits under this chapter ~~shall be~~ *is* an inmate in any Montana state institution, benefits ~~shall~~ *may* not be paid to ~~him~~ *the person* but ~~shall~~ *must* be paid ~~his~~ *to the person's* beneficiary, if any, as defined in 39-71-116."

Section 1556. Section 39-73-111, MCA, is amended to read:

"39-73-111. Representative payee — appointment — duties. (1) The department of labor and industry may appoint a representative payee to apply for and receive payment of silicosis benefits on behalf of a person eligible for ~~such~~ *the* payments or ~~his~~ *the person's* beneficiary if the department determines that ~~such~~ *the* appointment is in the best interests of the person or ~~his~~ *the person's* beneficiary. The representative payee may be a person, a corporation, a

government agency, or an institution, including a nursing home or extended care facility providing care for the person or ~~his~~ *the person's* beneficiary.

(2) To determine the best interests of the eligible person or ~~his~~ *the person's* beneficiary for appointment of a representative payee, the department may consider:

(a) a court determination of incompetence;

(b) medical evidence;

(c) relevant information from any person, corporation, government agency, or institution; and

(d) other relevant information.

(3) The department shall:

(a) determine the circumstances in which a representative payee may be appointed;

(b) establish procedures for ~~his~~ *the* appointment; and

(c) establish the representative payee's responsibilities.

(4) The representative payee shall:

(a) act as a trustee to the person eligible for silicosis payments or ~~his~~ *the person's* beneficiary in handling payments received; and

(b) maintain and expend ~~such~~ *the* funds for the benefit and best interests of the eligible person or ~~his~~ *the person's* beneficiary.

(5) The department's obligation under this chapter is fully discharged upon payment of benefits to the representative payee."

Section 1557. Section 40-1-201, MCA, is amended to read:

"40-1-201. License application. (1) ~~No~~ *A* Montana resident may *not* be joined in marriage within this state until a license has been obtained for that purpose from a clerk of the district court.

(2) A license ~~so issued shall authorize~~ *authorizes* a marriage ceremony to be performed in ~~the county where the license is issued or in~~ any ~~other~~ county of this state.

(3) If both parties are nonresidents of the state, the license may be obtained from the clerk of the district court of the county where the marriage ceremony is to be performed. If one of the persons is a nonresident of the county where the license is to issue, ~~his~~ *the nonresident's* part of the application may be completed and sworn to or affirmed before the person authorized to accept ~~such~~ *license* applications in the county and state in which ~~he~~ *that person* resides."

Section 1558. Section 40-1-207, MCA, is amended to read:

"40-1-207. Examination by health officer. ~~Any~~ *An* applicant for a marriage license may~~, if he so chooses,~~ be examined free of charge by the county physician or county health officer."

Section 1559. Section 40-1-312, MCA, is amended to read:

"40-1-312. Persons who may draft declaration of marriage. It ~~shall be~~ *is* unlawful for any person other than the parties to ~~such~~ *the* written declaration to draw any ~~such~~ declaration of marriage unless ~~he shall have been~~ *the person is* ~~duly~~ licensed to practice law in the state of Montana."

Section 1560. Section 40-1-404, MCA, is amended to read:

"40-1-404. Putative spouse. ~~Any~~ *A* person who has cohabited with another to whom ~~he~~ *the person* is not legally married in the good faith belief that ~~he~~ *the person* was married to that person is a putative spouse until knowledge of the fact that ~~he~~ *the person* is not legally married terminates ~~his~~ *that* status and prevents acquisition of further rights. A putative spouse acquires the rights conferred upon a legal spouse, including the right to maintenance following termination of ~~his~~ *that* status, whether or not the marriage is prohibited*,* ~~(~~*as provided in* 40-1-401~~)~~*,* or declared invalid*,* ~~(~~*as provided in* 40-1-402~~)~~. If there is a legal spouse or other putative spouses, rights acquired by a putative spouse do not supersede the rights of the legal spouse or those acquired by other putative spouses, but the court shall apportion property, maintenance, and support rights among the claimants as appropriate in the circumstances and in the interests of justice."

Section 1561. Section 40-2-103, MCA, is amended to read:

"40-2-103. Support of spouse. If a married person who is able neglects to make adequate provision for the financial support of ~~his~~ *the person's* spouse, except in the cases mentioned in 40-2-104, any other person may in good faith supply the spouse with articles necessary for support and recover the reasonable value ~~thereof~~ *of the articles* from the married person who has failed to provide ~~such~~ support."

Section 1562. Section 40-2-104, MCA, is amended to read:

"40-2-104. Liability of married person when abandoned by spouse. A married person abandoned by ~~his~~ *a* spouse is not liable for the spouse's support until the spouse offers to return, unless the spouse was justified by the person's misconduct in abandoning ~~him~~ *that person*, nor is a married person liable for support of a spouse who is living separate from ~~him~~ *the person* by agreement, unless ~~such~~ support is stipulated in the agreement."

Section 1563. Section 40-2-107, MCA, is amended to read:

"40-2-107. May sue and be sued. A married person may sue and be sued in the same manner as if ~~he~~ *the person* were ~~sole~~ *single*."

Section 1564. Section 40-2-108, MCA, is amended to read:

"40-2-108. Married person as personal representative, guardian, conservator, or trustee. A married person may be a personal representative, guardian, conservator, or trustee and may *personally bound and may* bind ~~himself and~~ the estate ~~he~~ *the person* represents without any act or assent on the part of the person's spouse."

Section 1565. Section 40-2-109, MCA, is amended to read:

"40-2-109. Right of person to sue spouse for intentional tort. A person has a cause of action against ~~his~~ *the person's* spouse for damages caused by the spouse's intentional tort against ~~such~~ *the* person, and the ~~common law~~ *common-law* doctrine of interspousal tort immunity is, to that extent, abolished."

Section 1566. Section 40-2-202, MCA, is amended to read:

"40-2-202. Individual property of married person. All the property of a married person owned before marriage and that acquired afterwards is ~~his~~ *that person's* individual property. The married person may, without consent, agreement, and signature of ~~his~~ *the person's* spouse, convey and transfer ~~his~~ *the person's* individual property, real or personal, including the fee simple title to real property, or execute a power of attorney for the conveyance and transfer ~~thereof~~ *of property*."

Section 1567. Section 40-2-203, MCA, is amended to read:

"40-2-203. Inventory of individual personal property of married person. A married person's title to and ownership of ~~his~~ *the person's* individual property may be proved or demonstrated in the same manner that a single person's ownership of or title to ~~his~~ *a single person's* individual property may be proved. ~~Provided, however~~ *However*, ~~that~~ if a married person chooses, ~~he~~ *the person* may make out and sign an inventory of ~~his~~ *the person's* individual personal property, which ~~inventory shall~~ *must* be acknowledged or proved in the same manner required by law for the acknowledgment or proof of a grant of real property and recorded in the office of the county clerk of the county in which the person lives."

Section 1568. Section 40-2-205, MCA, is amended to read:

"40-2-205. Earnings and accumulations of married person. The earnings and accumulations of a married person are not liable for the debts of that person's spouse except for debts incurred for necessary articles procured for the use and benefit of the married person, ~~his~~ *the person's* spouse, or minor children."

Section 1569. Section 40-2-206, MCA, is amended to read:

"40-2-206. ~~Same~~ *Earnings and accumulations* — when separated. The earnings and accumulations of a married person and of ~~his~~ *the person's* minor children living with ~~him~~ *the person* or in ~~his~~ *the person's* custody, while ~~he~~ *the person* is living separate from ~~his~~ *the person's* spouse, are the individual property of ~~such~~ *that* person except that, to the extent that a mutual duty of support between the husband and wife as established by 40-2-102 still exists, ~~such~~ *the* earnings and accumulations are liable for debts incurred for necessary articles procured for the use and benefit of the married person, ~~his~~ *the person's* spouse, or minor children."

Section 1570. Section 40-2-207, MCA, is amended to read:

"40-2-207. Work and labor of married person. All work and labor performed by a married person for a person other than ~~his~~ *the married person's* spouse and children ~~shall~~ *must*, unless there is a written agreement on ~~his~~ *the person's* part to the contrary, be presumed to be performed on ~~his~~ *the person's* separate account. This section does not affect the liability of earnings for debts incurred for necessary articles procured for the use and benefit of the married person, ~~his~~ *the person's* spouse, or minor children, as established by 40-2-205, 40-2-206, 40-2-209, and 40-2-210."

Section 1571. Section 40-2-210, MCA, is amended to read:

"40-2-210. Necessity determined by standard of living. For purposes of determining whether a married person's earnings or individual property ~~are~~ *is* exempt from the debts incurred by the person's spouse, the phrase "necessary articles" includes all ~~such~~ goods and services ~~as~~ *that* are reasonably required to provide for the health, welfare, comfort, and education of the married person, ~~his~~ *the person's* spouse, and minor children, taking into consideration the earnings, resources, and general standard of living of ~~such~~ *the* persons."

Section 1572. Section 40-2-302, MCA, is amended to read:

"40-2-302. Liability of spouse. The contracts made by a married person ~~in~~ *with* respect to ~~his~~ *the person's* individual property, labor, or services ~~shall not be~~ *are not* binding upon the person's spouse ~~nor~~ *and do not* render ~~him~~ *the spouse* or ~~his~~ *the spouse's* property liable ~~therefor; but~~ *for the contracts. However,* the

contracting person and that person's individual property ~~shall be~~ *are* liable on ~~such~~ *the* contracts in the same manner as if ~~such~~ *the* person were ~~sole~~ *single*."

Section 1573. Section 40-3-113, MCA, is amended to read:

"40-3-113. Transfer of cases. Another district judge may be called in by the judge of the conciliation court to act as judge of the conciliation court during any period when the judge of the conciliation court is on vacation, absent, or for any reason unable to perform ~~his~~ *the judge's* duties. ~~Any~~ *An appointed* judge ~~so appointed shall have~~ *has* all of the powers and authority of a judge of the conciliation court in cases under this chapter."

Section 1574. Section 40-3-116, MCA, is amended to read:

"40-3-116. Privacy of hearings. (1) All district court hearings or conferences in proceedings under this chapter ~~shall~~ *must* be held in private, and the court shall exclude all persons except the officers of the court, the parties, their counsel, and witnesses. Conferences may be held with each party and ~~his~~ *that party's* counsel separately. In the discretion of the judge or counselor conducting the conference or hearing, all counsel may be excluded. All communications, verbal or written, from parties to the judge or counselor in a proceeding under this chapter ~~shall be deemed~~ *are considered* made to ~~such~~ *the* officer in official confidence.

(2) The files of the conciliation court ~~shall~~ *must* be closed. The petition, supporting affidavit, reconciliation agreement, and any court order made in the matter may be opened to inspection by any party or ~~his~~ *the party's* counsel upon the written authority of the judge of the conciliation court."

Section 1575. Section 40-3-124, MCA, is amended to read:

"40-3-124. Manner of conciliation. (1) The judge of the conciliation court may hear all matters invoked under this chapter~~,~~ or ~~he~~ may refer ~~such~~ *the* matters to a pastor or director of any religious denomination to which the parties may belong, psychiatrist, physician, attorney, social worker, or other person who is competent and qualified by training and experience in personal counseling. ~~Such~~ *The* person ~~shall be~~ *is* referred to ~~herein~~ *in this section* as the conciliation counselor.

(2) The conciliation counselor shall:

(a) hold conciliation conferences with parties to, and hearings in, proceedings under this chapter and make recommendations concerning ~~such~~ *the* proceedings to the judge of the conciliation court;

(b) cause ~~such~~ reports to be made, ~~such~~ statistics to be compiled, and ~~such~~ records to be kept ~~as~~ *that* the judge of the conciliation court may direct."

Section 1576. Section 40-3-125, MCA, is amended to read:

"40-3-125. Hearings. (1) The court shall fix a reasonable time and place for hearing on the petition and shall cause ~~such~~ *the* notice of the filing of the petition and the time and place of the hearing as it considers necessary to be given to the respondents. The court may, when it considers it necessary, issue a citation to any respondent requiring ~~him~~ *the respondent* to appear at the time and place stated in the citation and may require the attendance of witnesses as in other civil cases.

(2) For the purpose of conducting hearings pursuant to this chapter, the conciliation court may be convened at any time and place within the district and the hearing may be had in chambers or otherwise, except that the time and place for hearing may not be different from the time and place provided by law for the

trial of civil actions if any party, prior to the hearing, objects to any different time or place.

(3) The hearing ~~shall~~ *must* be conducted informally as a conference or series of conferences to effect a reconciliation of the spouses or an amicable adjustment or settlement of the issues of the controversy. To facilitate and promote the purposes of this chapter, the court may, with the consent of both of the parties to the proceeding, recommend or invoke the aid of physicians, psychiatrists, other specialists or scientific experts, or the pastor or director of any religious denomination to which the parties may belong. ~~Such aid, however, shall~~ *However, the aid may* not be at the expense of the court or of the county, unless the county commissioners of the county specifically provide and authorize ~~such~~ *the* aid."

Section 1577. Section 40-4-131, MCA, is amended to read:

"40-4-131. Joint petition — filing — form — contents. (1) A proceeding for summary dissolution of marriage is commenced by filing in the district court a joint petition in the form prescribed by the court.

(2) The petition must:

(a) be signed under oath by both parties;

(b) state that, as of the date of the filing of the joint petition, each condition set forth in 40-4-130 has been met;

(c) state the mailing address of both parties; and

(d) state whether or not the wife elects to have ~~her~~ *the wife's* maiden or former name restored and, if so, state the name to be restored."

Section 1578. Section 40-4-203, MCA, is amended to read:

"40-4-203. Maintenance. (1) In a proceeding for dissolution of marriage or legal separation or a proceeding for maintenance following dissolution of the marriage by a court ~~which~~ *that* lacked personal jurisdiction over the absent spouse, the court may grant a maintenance order for either spouse only if it finds that the spouse seeking maintenance:

(a) lacks sufficient property to provide for ~~his~~ *the spouse's* reasonable needs; and

(b) is unable to ~~support himself~~ *be self-supporting* through appropriate employment or is the custodian of a child whose condition or circumstances make it appropriate that the custodian not be required to seek employment outside the home.

(2) The maintenance order ~~shall~~ *must* be in ~~such~~ amounts and for ~~such~~ periods of time ~~as~~ *that* the court ~~deems~~ *considers* just, without regard to marital misconduct, and after considering all relevant facts*,* including:

(a) the financial resources of the party seeking maintenance, including marital property apportioned to ~~him~~ *that party*, and ~~his~~ *the party's* ability to meet ~~his~~ *the party's* needs independently, including the extent to which a provision for support of a child living with the party includes a sum for that party as custodian;

(b) the time necessary to acquire sufficient education or training to enable the party seeking maintenance to find appropriate employment;

(c) the standard of living established during the marriage;

(d) the duration of the marriage;

(e) the age and the physical and emotional condition of the spouse seeking maintenance; and

(f) the ability of the spouse from whom maintenance is sought to meet ~~his~~ *the spouse's own* needs while meeting those of the spouse seeking maintenance."

Section 1579. Section 40-4-207, MCA, is amended to read:

"40-4-207. Assignments. The court may order the person obligated to pay support or maintenance to make an assignment of a part of ~~his~~ *the person's* periodic earnings or trust income to the person entitled to receive the payments. The assignment is binding on the employer, trustee, or other payor of the funds 2 weeks after service upon ~~him~~ *the payor* of notice that ~~it~~ *the assignment* has been made. The payor shall withhold from the earnings or trust income payable to the person obligated to support the amount specified in the assignment and shall transmit the payments to the person specified in the order. The payor may deduct from each payment a sum not exceeding $1 as reimbursement for costs. An employer ~~shall~~ *may* not discharge or otherwise discipline an employee as a result of a wage or salary assignment authorized by this section."

Section 1580. Section 40-5-214, MCA, is amended to read:

"40-5-214. Scale of suggested minimum contributions. (1) The department shall establish a scale of suggested minimum contributions to assist counties and courts in determining the amount that a parent should be expected to contribute toward the support of ~~his~~ *a* child under this part. The scale must be based on the uniform child support guidelines adopted by the department under 40-5-209.

(2) Copies of the scale must be made available to courts, county offices, *and* county attorneys~~,~~ and, upon request, to any other state or county officer or agency engaged in the administration or enforcement of this part. Attorneys admitted to practice in Montana may have access to the scale."

Section 1581. Section 40-6-104, MCA, is amended to read:

"40-6-104. How parent and child relationship established. The parent and child relationship between a child and:

(1) the natural mother may be established by proof of ~~her~~ *the mother* having given birth to the child or under this part;

(2) the natural father may be established under this part;

(3) an adoptive parent may be established by proof of adoption."

Section 1582. Section 40-6-114, MCA, is amended to read:

"40-6-114. Pretrial recommendations. (1) On the basis of the information produced at the pretrial hearing, the judge or referee conducting the hearing shall evaluate the probability of determining the existence or nonexistence of the father and child relationship in a trial and whether a judicial declaration of the relationship would be in the best interest of the child. On the basis of the evaluation, an appropriate recommendation for settlement ~~shall~~ *must* be made to the parties, which may include any of the following:

(a) that the action be dismissed with or without prejudice;

(b) that the matter be compromised by an agreement among the alleged father, the mother, and the child, in which the father and child relationship is not determined but in which a defined economic obligation is undertaken by the alleged father in favor of the child and, if appropriate, in favor of the mother, subject to approval by the judge or referee conducting the hearing. In reviewing the obligation undertaken by the alleged father in a compromise agreement, the

judge or referee conducting the hearing shall consider the best interest of the child in the light of the factors enumerated in 40-6-116(5), discounted by the improbability, as it appears to ~~him~~ *the judge or referee*, of establishing the alleged father's paternity or nonpaternity of the child in a trial of the action. In the best interest of the child, the court may order that the alleged father's identity be kept confidential. In that case, the court may designate a person or agency to receive from the alleged father and disburse on behalf of the child all amounts paid by the alleged father in fulfillment of obligations imposed on ~~him~~ *the alleged father*.

(c) that the alleged father voluntarily acknowledge ~~his~~ paternity of the child.

(2) If the parties accept a recommendation made in accordance with subsection (1), judgment ~~shall~~ *must* be entered accordingly.

(3) If a party refuses to accept a recommendation made under subsection (1) and blood tests have not been taken, the court shall require the parties to submit to blood tests, if practicable. Thereafter, the judge or referee shall make an appropriate final recommendation. If a party refuses to accept the final recommendation, the action ~~shall~~ *must* be set for trial.

(4) If the scientific evidence resulting from the blood tests conclusively shows that the defendant could not have been the father, then the ~~instant~~ action ~~shall~~ *must* be dismissed.

(5) The guardian ad litem may accept or refuse to accept a recommendation under this section.

(6) The informal hearing may be terminated and the action set for trial if the judge or referee conducting the hearing finds unlikely that all parties would accept a recommendation ~~he might make~~ *made* under subsection (1) or (3)."

Section 1583. Section 40-6-202, MCA, is amended to read:

"40-6-202. Legitimacy of children born after dissolution of marriage. All children of a woman who has been married, born within 10 months after the dissolution of ~~her~~ *the woman's* marriage, are presumed to be legitimate children of that marriage."

Section 1584. Section 40-6-214, MCA, is amended to read:

"40-6-214. Reciprocal duties of parents and children in maintaining each other. It is the duty of the father, the mother, and the children of any poor person who is unable to ~~maintain himself~~ *provide self-maintenance* by work to maintain ~~such~~ *that* person to the extent of their ability. The promise of an adult child to pay for necessaries previously furnished to ~~such~~ *that* parent is binding."

Section 1585. Section 40-6-217, MCA, is amended to read:

"40-6-217. Married person not bound for support of spouse's children by former marriage. A married person is not bound to support ~~his~~ *a* spouse's children by a former marriage~~;~~. ~~but~~ *However,* if ~~he~~ *the person* receives ~~them~~ *the spouse's children* into ~~his~~ *the* family and supports them, it is presumed that ~~he~~ *the person* does so as a parent, and~~, where such is the~~ *in that* case, ~~they~~ *the children* are not liable to ~~him~~ *the person* for their support ~~nor he to them~~ *and the person is not liable to the children* for their services."

Section 1586. Section 40-6-235, MCA, is amended to read:

"40-6-235. Parent may relinquish services and custody of child. The parent, whether solvent or insolvent, may relinquish to the child the right of controlling ~~him~~ *the child* and receiving ~~his~~ *the child's* earnings. Abandonment by the parent is presumptive evidence of ~~such~~ relinquishment."

Section 1587. Section 40-6-236, MCA, is amended to read:

"40-6-236. Wages of minors. The wages of a minor employed in service may be paid ~~him~~ *to the minor* until the parent or guardian entitled ~~thereto~~ *to the wages* gives the employer notice that ~~he~~ *the parent or guardian* claims ~~such~~ *the* wages."

Section 1588. Section 41-1-201, MCA, is amended to read:

"41-1-201. Liability of minors for wrongs — exemplary damages. A minor is civilly liable for a wrong done by ~~him~~ *the minor,* but is not liable ~~in~~ *for* exemplary damages unless at the time of the act*,* ~~he~~ *the minor* was capable of knowing that it was wrongful."

Section 1589. Section 41-1-202, MCA, is amended to read:

"41-1-202. Enforcement of minor's rights. A minor may enforce ~~his~~ *the minor's* rights by civil action or other legal proceedings in the same manner as a person of full age, except that a guardian ~~must~~ *shall* conduct the ~~same~~ *the action or proceedings*."

Section 1590. Section 41-1-302, MCA, is amended to read:

"41-1-302. Contracts of minors — disaffirmance. A minor may make a conveyance or other contract in the same manner as any other person, subject only to ~~his~~ *the minor's* power of disaffirmance under the provisions of this chapter and to the provisions of Title 40, chapter 1."

Section 1591. Section 41-1-303, MCA, is amended to read:

"41-1-303. Capacity of minors to borrow money for education. ~~Any person who, being a~~ *A* minor *who*~~,~~ contracts to borrow money to defray the expenses of attending any college or university or other institution of higher education beyond high school ~~shall have~~ *has* full legal capacity to act ~~in his~~ *on the minor's* own behalf and ~~shall have~~ *has* all the rights, powers, and privileges and ~~be~~ *is* subject to the obligations of persons of full age with respect to ~~any such~~ *those* contracts."

Section 1592. Section 41-1-305, MCA, is amended to read:

"41-1-305. Minor ~~cannot~~ *may not* disaffirm contract for necessaries. A minor ~~cannot~~ *may not* disaffirm a contract, otherwise valid, to pay the reasonable value of things necessary for ~~his~~ *the minor's* support or that of ~~his~~ *the minor's* family, entered into by ~~him~~ *the minor* when not under the care of a parent or guardian able to provide for ~~him~~ *the minor* or ~~them~~ *the minor's family*."

Section 1593. Section 41-1-306, MCA, is amended to read:

"41-1-306. Minor ~~cannot~~ *may not* disaffirm certain obligations. A minor ~~cannot~~ *may not* disaffirm an obligation, otherwise valid, entered into by ~~him~~ *the minor* under the express authority or direction of a statute or when ~~he~~ *the minor* has been granted limited emancipation, including a specific right to enter into contracts, under 41-1-501 and 41-3-438."

Section 1594. Section 41-1-406, MCA, is amended to read:

"41-1-406. Psychiatric or psychological counseling under urgent circumstances. When executed by a minor, the consent to the providing of psychiatric or psychological counseling by a physician or psychologist licensed to practice in this state, under circumstances when the need for ~~such~~ *the* counseling is urgent in the opinion of the physician or psychologist involved because of danger to the life, safety, or property of a minor or of ~~other~~ *another* person or persons and the consent of the spouse, parent, custodian, or guardian of the minor cannot be obtained within a reasonable time to offset the danger to

life or safety, ~~shall be~~ *is* as valid and binding as if the minor had achieved majority. ~~That is, such~~ *The* minor has the same legal capacity to act and the same legal obligations with regard to the giving of ~~such~~ consent as a person of full legal age and capacity, and ~~such~~ *the* consent ~~may~~ *is* not ~~be~~ subject to ~~later~~ disaffirmance by reason of ~~such~~ minority. The consent of ~~no other~~ *another* person, ~~or persons (~~including but not limited to a spouse, parent, custodian, or guardian~~)~~, is *not* necessary in order to authorize the psychiatric or psychological counseling of ~~such~~ *the* minor. However, ~~no~~ *a* parent may *not* be obligated for the cost of ~~such~~ *the* counseling without ~~his~~ *the parent's* consent."

Section 1595. Section 41-1-407, MCA, is amended to read:

"41-1-407. Immunity and responsibility of psychologist, physician, or health care facility. (1) ~~No~~ *A* physician, surgeon, dentist, or health or mental health care facility may *not* be compelled against ~~their~~ *the entity's* best judgment to treat a minor on ~~his~~ *the minor's* own consent.

(2) ~~Nothing contained in this~~ *This* section ~~shall~~ *may not* be construed to relieve any physician, surgeon, dentist, or health or mental health care facility from liability for negligence in the diagnosis and treatment rendered ~~such~~ *a* minor.

(3) In any case arising under the provisions of 41-1-406, the physician or licensed psychologist who provides the psychiatric or psychological counseling services ~~shall~~ *may not* incur ~~no~~ civil or criminal liability by reason of having provided the counseling services, but ~~such~~ *the* immunity ~~shall~~ *does* not apply to any negligent acts or omissions."

Section 1596. Section 41-4-101, MCA, is amended to read:

"41-4-101. Enactment — provisions. The Interstate Compact on the Placement of Children is hereby enacted into law and entered into with all other jurisdictions legally joining ~~therein~~ *in the compact* in the form substantially as follows:

Article I. Purpose and Policy

It is the purpose and policy of the party states to cooperate with each other in the interstate placement of children to the end that:

(1) each child requiring placement shall receive the maximum opportunity to be placed in a suitable environment and with persons or institutions having appropriate qualifications and facilities to provide a necessary and desirable degree and type of care;

(2) the appropriate authorities in a state where a child is to be placed may have full opportunity to ascertain the circumstances of the proposed placement, thereby promoting full compliance with applicable requirements for the protection of the child;

(3) the proper authorities of the state from which the placement is made may obtain the most complete information on the basis of which to evaluate a projected placement before it is made;

(4) appropriate jurisdictional arrangements for the care of children will be promoted.

Article II. Definitions

As used in this compact:

(1) "child" means a person who, by reason of minority, is legally subject to parental, guardianship, or similar control;

(2) "sending agency" means a party state, officer or employee thereof; a subdivision of a party state or officer or employee thereof; a court of a party state; a person, corporation, association, charitable agency, or other entity which sends, brings, or causes to be sent or brought any child to another party state;

(3) "receiving state" means the state to which a child is sent, brought, or caused to be sent or brought, whether by public authorities or private persons or agencies and whether for placement with state or local public authorities or for placement with private agencies or persons;

(4) "placement" means the arrangement for the care of a child in a family free or boarding home or in a child-caring agency or institution but does not include any institution caring for the mentally ill, mentally defective, or epileptic or any institution primarily educational in character and any hospital or other medical facility.

Article III. Conditions for Placement

(1) No sending agency shall send, bring, or cause to be sent or brought into any other party state any child for placement in foster care or as a preliminary to a possible adoption unless the sending agency shall comply with each and every requirement set forth in this article and with the applicable laws of the receiving state governing the placement of children therein.

(2) Prior to sending, bringing, or causing any child to be sent or brought into a receiving state for placement in foster care or as a preliminary to a possible adoption, the sending agency shall furnish the appropriate public authorities in the receiving state written notice of the intention to send, bring, or place the child in the receiving state. The notice shall contain:

(a) the name, date, and place of birth of the child;

(b) the identity and address or addresses of the parents or legal guardian;

(c) the name and address of the person, agency, or institution to or with which the sending agency proposes to send, bring, or place the child;

(d) a full statement of the reasons for such proposed action and evidence of the authority pursuant to which the placement is proposed to be made.

(3) Any public officer or agency in a receiving state which is in receipt of a notice pursuant to (2) of this article may request of the sending agency or any other appropriate officer or agency of or in the sending agency's state and shall be entitled to receive therefrom such supporting or additional information as it may deem necessary under the circumstances to carry out the purpose and policy of this compact.

(4) The child shall not be sent, brought, or caused to be sent or brought into the receiving state until the appropriate public authorities in the receiving state shall notify the sending agency, in writing, to the effect that the proposed placement does not appear to be contrary to the interests of the child.

Article IV. Penalty for Illegal Placement

The sending, bringing, or causing to be sent or brought into any receiving state of a child in violation of the terms of this compact shall constitute a violation of the laws respecting the placement of children of both the state in which the sending agency is located or from which it sends or brings the child and of the receiving state. Such violation may be punished or subjected to penalty in either jurisdiction in accordance with its laws. In addition to liability for any such punishment or penalty, any such violation shall constitute full and sufficient grounds for the suspension or revocation of any license, permit, or

other legal authorization held by the sending agency which empowers or allows it to place or care for children.

Article V. Retention of Jurisdiction

(1) The sending agency shall retain jurisdiction over the child sufficient to determine all matters in relation to the custody, supervision, care, treatment, and disposition of the child which it would have had if the child had remained in the sending agency's state, until the child is adopted, reaches majority, becomes self-supporting, or is discharged with the concurrence of the appropriate authority in the receiving state. Such jurisdiction shall also include the power to effect or cause the return of the child or ~~his~~ *the child's* transfer to another location and custody pursuant to law. The sending agency shall continue to have financial responsibility for support and maintenance of the child during the period of the placement. Nothing contained herein shall defeat a claim of jurisdiction by receiving state sufficient to deal with an act of delinquency or crime committed therein.

(2) When the sending agency is a public agency, it may enter into an agreement with an authorized public or private agency in the receiving state providing for the performance of one or more services in respect of such case by the latter as agent for the sending agency.

(3) Nothing in this compact shall be construed to prevent a private charitable agency authorized to place children in the receiving state from performing services or acting as agent in that state for a private charitable agency of the sending state, nor to prevent the agency in the receiving state from discharging financial responsibility for the support and maintenance of a child who has been placed on behalf of the sending agency without relieving the responsibility set forth in (1) hereof.

Article VI. Institutional Care of Delinquent Children

A child adjudicated delinquent may be placed in an institution in another party jurisdiction pursuant to this compact, but no such placement shall be made unless the child is given a court hearing on notice to the parent or guardian with opportunity to be heard prior to ~~his~~ *the parent's or guardian's child* being sent to such other party jurisdiction for institutional care and the court finds that:

(1) equivalent facilities for the child are not available in the sending agency's jurisdiction; and

(2) institutional care in the other jurisdiction is in the best interest of the child and will not produce undue hardship.

Article VII. Compact Administrator

The executive head of each jurisdiction party to this compact shall designate an officer who shall be general coordinator of activities under this compact in ~~his~~ *the officer's* jurisdiction and who, acting jointly with like officers of other party jurisdictions, shall have power to promulgate rules to carry out more effectively the terms and provisions of this compact.

Article VIII. Limitations

This compact shall not apply to:

(1) the sending or bringing of a child into a receiving state by ~~his~~ *the child's* parent, stepparent, grandparent, adult brother or sister, adult uncle or aunt, or his guardian and leaving the child with any such relative or nonagency guardian in the receiving state;

(2) any placement, sending, or bringing of a child into a receiving state pursuant to any other interstate compact to which both the state from which the child is sent or brought and the receiving state are party or to any other agreement between said states which has the force of law.

Article IX. Enactment and Withdrawal

This compact shall be open to joinder by any state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and with the consent of congress, the government of Canada or any province thereof. It shall become effective with respect to any such jurisdiction when such jurisdiction has enacted the same into law. Withdrawal from this compact shall be by the enactment of a statute repealing the same, but shall not take effect until 2 years after the effective date of such statute and until written notice of the withdrawal has been given by the withdrawing state to the governor of each other party jurisdiction. Withdrawal of a party state shall not affect the rights, duties, and obligations under this compact of any sending agency therein with respect to a placement made prior to the effective date of withdrawal.

Article X. Construction and Severability

The provisions of this compact shall be liberally construed to effectuate the purposes thereof. The provisions of this compact shall be severable, and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters."

Section 1597. Section 41-5-105, MCA, is amended to read:

"41-5-105. Youth court committee. In every county of the state, the judge having jurisdiction may appoint a committee, willing to act without compensation, composed of not less than three or more than seven reputable citizens, including youth representatives. The committee must be designated as a youth court committee. This committee shall meet subject to the call of the judge to confer with ~~him~~ *the judge* on all matters pertaining to the youth department of the court, including the appointment of probation officers, and shall act as a supervisory committee of youth detention facilities."

Section 1598. Section 41-5-1404, MCA, is amended to read:

"41-5-1404. Service of summons. (1) ~~Any~~ *A* youth who is the subject of a proceeding under this chapter must be personally served with summons at least 5 days before the time stated for appearance.

(2) Service of summons on all other persons designated in 41-5-1403(1) ~~shall~~ *must* be made in accordance with Rule 4D of the Montana Rules of Civil Procedure, except that in all cases, service ~~shall~~ *must* be completed at least 5 days before the time stated for appearance.

(3) If a party referred to in subsection (2) ~~herein~~ is not personally served before a hearing and has not *been* secluded ~~himself with~~ *in* an attempt to delay or disrupt any proceeding, ~~such~~ *the* party may appear within a reasonable time subsequent to the hearing and, on motion to the court, request a rehearing. The

motion may be granted at the discretion of the judge if a rehearing would be in the best interest of the youth.

(4) The court may authorize payment from county funds of costs of service and necessary travel expenses incurred by persons summoned or otherwise required to appear at the hearing.

(5) An actual abandonment of a youth by ~~his~~ *the youth's* parent or parents ~~shall constitute~~ *constitutes* a waiver of summons and notice requirements by the parent or parents. A return endorsed upon the summons showing inability to serve summons constitutes prima facie evidence of actual abandonment.

(6) The youth court may, in the interests of justice, shorten the notice requirements contained ~~herein~~ *in this section*, and ~~such~~ notice of shortened time ~~shall~~ *must* be endorsed on the summons.

(7) A party, other than the youth, may waive service of summons on ~~himself~~ *that party* by written stipulation or by voluntary appearance at the hearing. If the youth is present at the hearing, ~~his~~ *the youth's* counsel may waive service of summons ~~in his~~ *on* behalf *of the youth*."

Section 1599. Section 41-5-1411, MCA, is amended to read:

"41-5-1411. Appointment of guardian ad litem. The court at any stage of a proceeding on a petition under this chapter may appoint a guardian ad litem for a youth if the youth ~~has no~~ *does not have a* parent or guardian appearing ~~in his~~ *on the youth's* behalf or if ~~their~~ *the parent's or guardian's* interests conflict with those of the youth. A party to the proceeding or an employee or representative of a party may not be appointed as guardian ad litem."

Section 1600. Section 41-5-1901, MCA, is amended to read:

"41-5-1901. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Attendant care" means the direct supervision of youth by a trained attendant in a physically unrestricting setting.

(2) "Board" means the board of crime control provided for in 2-15-2006.

(3) "County" means a county, city-county consolidated government, or a youth detention region created pursuant to 41-5-1805.

(4) "Home detention" means the use of a youth's home for the purpose of ensuring the continued custody of the youth pending adjudication or final disposition of ~~his~~ *the youth's* case.

(5) "Plan" means a county plan for providing youth detention services as required in 41-5-1903.

(6) "Secure detention" means the detention of youth in a physically restricting facility designed to prevent a youth from departing at will.

(7) "Youth detention service" means service for the detention of youth in facilities separate from adult jails. The term includes the services described in 41-5-1902."

Section 1601. Section 41-6-106, MCA, is amended to read:

"41-6-106. Additional procedures not precluded. In addition to any procedure provided in Articles IV and VI of the compact for the return of ~~any~~ *a* runaway juvenile, the particular states, the juvenile or ~~his~~ *the juvenile's* parents, the courts, or other legal custodian involved may agree upon and adopt any other plan or procedure legally authorized under the laws of this state and the other respective party states for the return of ~~any such~~ *a* runaway juvenile."

Section 1602. Section 42-2-216, MCA, is amended to read:

"42-2-216. Storage of data. The department shall store the registry's data in a manner so that the data is accessible through:

(1) the putative father's name;

(2) the mother's name, including ~~her~~ *the mother's* maiden name, if known;

(3) the date of birth of the putative father, the mother, and the child, if known;

(4) the child's name, if known; and

(5) the social security number for the putative father, the mother, and the child, if known."

Section 1603. Section 44-1-104, MCA, is amended to read:

"44-1-104. Duty to furnish governor with transportation. The department of justice shall furnish the governor with automobile transportation upon ~~his~~ *the governor's* request, provided that ~~such~~ *the* transportation ~~shall~~ *must* be limited to travel and transportation of the governor while on official business of the state."

Section 1604. Section 44-1-201, MCA, is amended to read:

"44-1-201. Appointment and tenure. The attorney general shall select a highway patrol chief who ~~shall~~ *must* have the rank of colonel and shall hold ~~his~~ office until ~~his~~ *the* appointment has terminated for cause, as ~~hereinafter~~ set forth *in parts 7 through 9 of this chapter*."

Section 1605. Section 44-1-303, MCA, is amended to read:

"44-1-303. Duties. The chief, with the approval of the attorney general and within the limits of any appropriation made available for ~~such~~ *the following* purposes, ~~shall~~:

(1) *shall* designate the authority and responsibility in each rank, grade, and position;

(2) *shall* formulate standards, policies, and qualifications in the selection of recruit patrol officers;

(3) *shall* prescribe the official uniform of the Montana highway patrol;

(4) *shall* station employees in ~~such~~ localities ~~as he shall deem~~ *that the chief considers* advisable for the enforcement of the traffic laws of this state;

(5) *shall* charge against each employee the value of property of the state lost or destroyed through the carelessness or neglect of ~~such~~ *the* employee;

(6) *shall* discharge, demote, or temporarily suspend after hearing, as provided in parts 7 and 8 of this chapter, any patrol officer of the department;

(7) *must* have purchased or otherwise acquired by the purchasing department of the state motor *vehicle* equipment and all other equipment and commodities ~~deemed by him~~ *that the chief considers* essential to the efficient operation of the Montana highway patrol."

Section 1606. Section 44-1-503, MCA, is amended to read:

"44-1-503. Salary upon permanent appointment. ~~In the event that~~ *If* a probationary patrol officer is appointed permanently, ~~he~~ *the officer* ~~shall~~ *must*, at the time of ~~such~~ appointment, receive the base salary of a patrol officer."

Section 1607. Section 44-1-512, MCA, is amended to read:

"44-1-512. Determination of eligibility for salary benefit. (1) The highway patrol chief shall determine whether an injury incurred by an officer was incurred in the performance of ~~his~~ *the officer's* duties and whether an injury ~~so~~ incurred resulted in a disability.

(2) In determining the nature and extent of an officer's injuries and the extent of any recovery, the chief shall seek and consider the medical opinion of a qualified physician who has examined the injured officer. The chief may seek a second medical opinion ~~in his discretion~~."

Section 1608. Section 44-1-513, MCA, is amended to read:

"44-1-513. Periodic medical examinations — waiver of right to salary benefit. (1) The chief may appoint a physician to examine ~~the~~ *an injured* officer from time to time. If, in the physician's opinion, the injured officer has sufficiently recovered to perform light duties or ~~his~~ regular duties, the physician shall certify that fact.

(2) An injured officer who unreasonably refuses to accept medical treatment or hospital care or to permit a medical examination under ~~subsection (1) or~~ 44-1-512(2) *or subsection (1) of this section* waives any salary benefit to which ~~he~~ *the officer* might otherwise be entitled under 44-1-511."

Section 1609. Section 44-1-516, MCA, is amended to read:

"44-1-516. Effect on probationary status. If the injured officer is on probationary status at the time ~~he~~ *the officer* becomes injured, the balance of ~~his~~ *the officer's* probationary time ~~shall~~ *must* be suspended until ~~he~~ *the officer* returns to regular duty or is discharged for cause."

Section 1610. Section 44-1-611, MCA, is amended to read:

"44-1-611. Tenure. ~~Every~~ *Each* person employed or appointed and designated as a chief, captain, lieutenant, sergeant, patrol officer, or any other rank under and pursuant to the provisions of this chapter, except as provided in 44-1-601 and 44-1-602, shall continue in service and hold ~~his~~ *the* position without demotion until suspended, demoted, or discharged in the manner ~~hereinafter~~ provided *in parts 7 through 9 of this chapter* for one or more of the causes specified in 44-1-612."

Section 1611. Section 44-1-801, MCA, is amended to read:

"44-1-801. Notice of hearing. (1) The department of justice shall, at least 10 days before the time appointed for a hearing, serve written notice on the accused patrol officer, specifying the charge or charges filed and stating the name of the person or persons making the charge or charges.

(2) If the accused patrol officer is located within the state and ~~his~~ *the officer's* whereabouts is known, the service required by subsection (1) ~~shall~~ *must* be made personally. If the accused patrol officer is located outside the state and ~~his~~ *the officer's* whereabouts is known, service may be made by mailing the written notice to ~~his~~ *the officer's* place of residence. If, at the time, the whereabouts of the accused patrol officer is unknown, service may be made upon ~~him~~ *the officer* by mailing the written notice to ~~him~~ *the officer* at ~~his~~ *the officer's* last-known place of residence in Montana."

Section 1612. Section 44-1-803, MCA, is amended to read:

"44-1-803. Rights of accused. The accused patrol officer ~~shall be~~ *is* entitled to be confronted with the witnesses against ~~him~~ *the officer* and *to* have an opportunity to cross-examine the ~~same~~ *witnesses* and to introduce at ~~such~~ *the disciplinary* hearing testimony in ~~his~~ *the officer's* own behalf. ~~He shall be~~ *The*

officer is entitled to be represented by counsel, at ~~his~~ *the officer's* own expense, at ~~such~~ *the* hearing."

Section 1613. Section 44-1-805, MCA, is amended to read:

"44-1-805. Reinstatement and backpay upon exoneration. If after the hearing the department of justice finds that the charge or charges made against the patrol officer are not true, the department shall reinstate the accused patrol officer to ~~his~~ *the officer's* position and rank and shall order the payment of any salary withheld pending the determination of the charge or charges."

Section 1614. Section 44-1-808, MCA, is amended to read:

"44-1-808. Demotion pay status. In cases of disciplinary action resulting in demotion, the member ~~shall~~ *must* receive the pay of the rank to which ~~he~~ *the member* is demoted."

Section 1615. Section 44-1-903, MCA, is amended to read:

"44-1-903. Reinstatement and backpay upon reversal or modification. If the decision or determination of the department of justice is finally reversed or modified, the accused patrol officer must be reinstated in ~~his~~ *the officer's* position. Upon reinstatement, the department shall pay to the patrol officer any salary or wages withheld from ~~him~~ *the officer* pending the determination of the charge or charges or take ~~such~~ action ~~as~~ *that* may be directed by resolution of the grievance procedure or the court."

Section 1616. Section 44-1-910, MCA, is amended to read:

"44-1-910. Waiver. A patrol officer may waive, in writing, ~~his~~ *the officer's* rights under ~~Title 44, chapter 1,~~ parts 7 and 8 *of this chapter*~~,~~ and accept discipline considered appropriate by the department of justice."

Section 1617. Section 44-1-1103, MCA, is amended to read:

"44-1-1103. Check in lieu of cash. (1) In the case of traffic violations, bond may be made by personal check in lieu of cash. Highway patrol officers or other authorized agents receiving bonds on behalf of the court may accept a personal check in lieu of cash ~~provided that~~ *if*:

(a) the check is drawn on a bank domiciled in the state of Montana; and

(b) the person who writes the check in lieu of cash bond has two documents ~~identifying him~~ *of identification*.

(2) If a check is offered in lieu of cash, the highway patrol officer or other authorized agent who accepts the check is not liable in the case of nonpayment.

(3) A person who writes a check in lieu of cash bond ~~which~~ *that* is returned for insufficient funds is subject to prosecution under 45-6-316, and obtaining bond constitutes securing services for the purposes of that section."

Section 1618. Section 44-2-301, MCA, is amended to read:

"44-2-301. Establishment — inclusion of other state agencies. The attorney general is ~~hereby~~ authorized to establish a permanent law enforcement ~~teletypewriter~~ communications system for the purpose of connecting federal, state, county, and city law enforcement agencies ~~by teletype~~. ~~He is further authorized to~~ *The attorney general may* bring into the network, ~~should he and they so~~ *if the parties* desire, any department of Montana state government or its subdivisions outside of law enforcement activities when, in the opinion of the attorney general and the state department or subdivision, ~~such~~ *the* inclusion will materially aid the law enforcement agencies of the state of Montana or its subdivisions in the fight against crime."

Section 1619. Section 44-2-313, MCA, is amended to read:

"44-2-313. Payment of charge. ~~Such~~ *The* charge ~~shall~~ *authorized in 44-2-312 must* be billed monthly to the agencies. Payments made as a result of the billing ~~shall~~ *must* be remitted to the attorney general and deposited ~~by him~~ in a special *revenue* account in the state treasury."

Section 1620. Section 44-2-402, MCA, is amended to read:

"44-2-402. Dental examination — records — report. (1) If the coroner cannot identify a body, ~~he~~ *the coroner* or the state medical examiner ~~shall~~ *must* have a dentist examine the body, and if the body cannot be identified from the dental examination, the coroner or state medical examiner ~~must~~ *shall* send the dental examination results to the department of justice on a form supplied by the department.

(2) The department is a repository for dental examination records filed with it under this section. The department shall compare ~~such~~ *the* records with dental records filed with it pursuant to 44-2-401 in an attempt to identify the body and ~~must~~ *shall* submit any findings to the coroner or state medical examiner."

Section 1621. Section 44-3-213, MCA, is amended to read:

"44-3-213. Report to county attorney. When the cause of death has been established within reasonable medical certainty by the state medical examiner or ~~his~~ *an* associate, whether by review of a coroner's report or by personal examination, the state medical examiner shall make available in writing to the county attorney ~~his~~ *the state medical examiner's* determination as to the cause of death."

Section 1622. Section 44-3-404, MCA, is amended to read:

"44-3-404. Criminal penalty. A person is guilty of a misdemeanor and may be fined not more than $500 or *be* imprisoned in the county jail for not more than 1 year, or both, if ~~he~~ *the person*:

(1) purposely fails to report or conceals a death, including a fetal death;

(2) refuses to make available prior medical or other information in a death investigation;

(3) without an order from the coroner or state medical examiner, purposely touches, removes, or disturbs a corpse, its clothing, or anything near the corpse; or

(4) knowingly or purposely disobeys a cessation order of a coroner."

Section 1623. Section 44-4-111, MCA, is amended to read:

"44-4-111. Request for special counsel services. (1) Except as provided in subsection (2), the training coordinator may act as special counsel upon request of the county attorney with the approval of the governing body of a county.

(2) If a case involves the prosecution of a member of the governing body of a county or a person related to ~~him~~ *a member* by consanguinity within the fourth degree or affinity within the second degree, the coordinator may, with the consent of the attorney general, act as special counsel upon request of the county attorney without approval of the governing body of the county."

Section 1624. Section 44-4-206, MCA, is amended to read:

"44-4-206. Revocation. ~~Such registrations~~ *Registrations under this part* may be revoked at any time by the attorney general ~~at his discretion~~. On

delivery of notice of revocation, the registrant shall, within 24 hours, deliver ~~such~~ *the* license plates and certificate of registration to the attorney general or ~~his~~ *an* ~~duly~~ appointed agent."

Section 1625. Section 44-4-903, MCA, is amended to read:

"44-4-903. Limitations on special peace officer. A person appointed and sworn as a special peace officer ~~shall~~ *must* when on duty have the power and authority of a peace officer but may exercise ~~such~~ *the* power and authority only in the protection of the property of the class I railroad corporation employing ~~him~~ *the person*."

Section 1626. Section 44-4-904, MCA, is amended to read:

"44-4-904. Responsibility of corporation. The class I railroad corporation employing a special peace officer is solely responsible for the compensation of the special peace officer and is civilly liable for any action of the officer arising out of ~~his~~ *the officer's* actions as a special peace officer. The class I railroad corporation employing a special peace officer shall hold the state, its subdivisions, and the officers and employees ~~thereof~~ *of the state and its subdivisions* harmless and indemnify them from any claim or liability, including costs and attorney fees, arising out of any action of a special peace officer or the certification of the special peace officer by the state."

Section 1627. Section 44-5-215, MCA, is amended to read:

"44-5-215. Challenge and correction. (1) After inspection of criminal history record information, an individual may contest the accuracy or completeness, or both, of the information about ~~himself~~ *that individual*.

(2) If the agency maintaining the criminal history record information does not correct it to the individual's satisfaction, the individual may request review and correction by the executive head of the agency.

(3) If the requested correction is denied by the head of the agency, the individual may present a challenge to the department of justice.

(4) If the agency in charge of the record in question can verify the accuracy of its record by communication with the originating criminal justice agency, it shall do so. If accuracy or completeness cannot be verified and the agency primarily originating the information containing the alleged error or omission is in the state, the individual shall address ~~his~~ *the* challenge to that agency. If information necessary to verify the accuracy or completeness of the record cannot be obtained by the originating agency, it may rely on verified written documents or include the individual's allegation in its records in dissemination until there is a final disposition of the challenge.

(5) If the challenge is successful, the agency shall:

(a) supply to the individual, if requested, a list of those noncriminal justice agencies ~~which~~ *that* have received copies of the criminal history record information about the individual; and

(b) immediately correct its records and notify all criminal justice agencies to which it has given erroneous or incomplete information of these changes."

Section 1628. Section 44-11-102, MCA, is amended to read:

"44-11-102. Liability of assisted entity for obligation resulting from assistance. A law enforcement entity requesting assistance under 44-11-101 shall indemnify the assisting peace officer, ~~his~~ *the officer's* legal representative in case of death, or the furnishing law enforcement entity for any liability or

obligation to indemnify created by 2-9-305 that may result from the assistance furnished."

Section 1629. Section 44-11-201, MCA, is amended to read:

"44-11-201. Retention of rights of employment. A peace officer rendering assistance under 44-11-101 is entitled to the same wage, salary, pension, workers' compensation, and all other service rights for ~~such~~ service *rendered under that section* as for service rendered within the law enforcement entity in which ~~he~~ *the officer* is normally employed."

Section 1630. Section 44-11-304, MCA, is amended to read:

"44-11-304. Authorization to enter agreement — general content — authority of peace officer. (1) Any one or more law enforcement agencies of this state may enter into a mutual aid agreement with any one or more law enforcement agencies of any other state or the United States to provide the law enforcement or emergency services that all of the parties are authorized by law to perform. If required by applicable law, the agreement must be authorized and approved by the governing body of each party to the agreement.

(2) The agreement must fully set forth the powers, rights, and obligations of the parties to the agreement.

(3) Subject to 44-11-308, a mutual aid agreement may grant a peace officer of any party law enforcement agency acting within the territorial jurisdiction of any other party law enforcement agency authority to act as if ~~he~~ *the officer* were ~~a duly~~ *an* appointed and qualified peace officer of the law enforcement agency ~~he~~ *the officer* is assisting."

Section 1631. Section 44-12-102, MCA, is amended to read:

"44-12-102. Things subject to forfeiture. (1) The following are subject to forfeiture:

(a) all controlled substances that have been manufactured, distributed, prepared, cultivated, compounded, processed, or possessed in violation of Title 45, chapter 9;

(b) all money, raw materials, products, and equipment of any kind that are used or intended for use in manufacturing, preparing, cultivating, compounding, processing, delivering, importing, or exporting any controlled substance in violation of Title 45, chapter 9, except items used or intended for use in connection with quantities of marijuana in amounts less than 60 grams;

(c) except as provided in subsection (2)(d), all property that is used or intended for use as a container for anything enumerated in subsection (1)(a) or (1)(b);

(d) except as provided in subsection (2), all conveyances, including aircraft, vehicles, and vessels, that are used or intended for use in any manner to facilitate the commission of a violation of Title 45, chapter 9;

(e) all books, records, and research products and materials, including formulas, microfilm, tapes, and data, that are used or intended for use in violation of Title 45, chapter 9;

(f) all drug paraphernalia as defined in 45-10-101;

(g) everything of value furnished or intended to be furnished in exchange for a controlled substance in violation of Title 45, chapter 9~~;~~*,* all proceeds traceable to ~~such~~ an exchange~~;~~*,* and all money, negotiable instruments, and securities used or intended to be used to facilitate a violation of Title 45, chapter 9;

(h) any personal property constituting or derived from proceeds obtained directly or indirectly from a violation of Title 45, chapter 9, that is punishable by more than 5 years in prison; and

(i) real property, including any right, title, and interest in any lot or tract of land and any appurtenances or improvements, that is directly used or intended to be used in any manner or part to commit or facilitate the commission of or that is derived from or maintained by the proceeds resulting from a violation of Title 45, chapter 9, that is punishable by more than 5 years in prison. An owner's interest in real property is not subject to forfeit by reason of any act or omission unless it is proved that the act or omission was the owner's or was with ~~his~~ *the owner's* actual knowledge or express consent.

(2) (a) A conveyance used by a person as a common carrier in the transaction of business as a common carrier is not subject to forfeiture under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of Title 45, chapter 9.

(b) A conveyance is not subject to forfeiture under this section because of any act or omission established by the owner of the conveyance to have been committed or omitted without ~~his~~ *the owner's* knowledge or consent.

(c) A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if ~~he~~ *the secured party* neither had knowledge of nor consented to any violation of Title 45, chapter 9.

(d) ~~No~~ *A* conveyance or container is *not* subject to forfeiture under this section if it was used or intended for use in transporting less than 60 grams of marijuana."

Section 1632. Section 44-12-103, MCA, is amended to read:

"44-12-103. When property may be seized. (1) A peace officer who has probable cause to make an arrest for a violation of Title 45, chapter 9, probable cause to believe that a conveyance has been used or is intended to be used to unlawfully transport a controlled substance, or probable cause to believe that a conveyance has been used to keep, deposit, or conceal a controlled substance shall seize the conveyance ~~so~~ used or intended to be used or any conveyance in which a controlled substance is unlawfully possessed by an occupant. ~~He~~ *A peace officer* shall immediately deliver a conveyance that ~~he~~ *the officer* seizes to the offices of ~~his~~ *the officer's* law enforcement agency, to be held as evidence until forfeiture is declared or release ordered.

(2) All property subject to forfeiture under 44-12-102 may be seized by a peace officer under a search warrant issued by a district court having jurisdiction over the property. Seizure without a warrant may be made if:

(a) the seizure is incident to an arrest or a search under a search warrant issued for another purpose or an inspection under an administrative inspection warrant;

(b) the property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal proceeding or a forfeiture proceeding based on this chapter;

(c) the peace officer has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

(d) the peace officer has probable cause to believe that the property was used or is intended to be used in violation of Title 45, chapter 9, or in violation of Title 45, chapter 10, part 1."

Section 1633. Section 44-12-204, MCA, is amended to read:

"44-12-204. Proof required or permitted at hearing. In order to rebut the presumption of forfeiture:

(1) an owner of property who has a verified answer on file ~~must~~ *shall* prove that the property was not used for the purpose charged;

(2) an owner of property listed in 44-12-102(1)(g) who has a verified answer on file may prove in the alternative that the use of the property occurred without ~~his~~ *the owner's* knowledge or consent;

(3) a claimant of a security interest in the property who has a verified answer on file ~~must~~ *shall* prove that ~~his~~ *the claimant's* security interest is bona fide and that it was created after a reasonable investigation of the moral responsibility, character, and reputation of the purchaser and without knowledge that the property was being or was to be used for the purpose charged. However, ~~no~~ *a* person who has a lien dependent upon possession for compensation to which ~~he~~ *the person* is legally entitled for making repairs or performing labor upon, furnishing supplies or materials for, or providing storage, repair, or safekeeping of any property and ~~no~~ *a* person doing business under any law of this state or the United States relating to financial institutions, as defined in 32-6-103, loan companies, or licensed pawnbrokers or regularly engaged in the business of selling the property or of purchasing conditional sales contracts for the property may *not* be required to prove that ~~his~~ *the person's* security interest was created after a reasonable investigation of the moral responsibility, character, and reputation of the owner, purchaser, or person in possession of the property when it was brought to ~~such~~ *the* person."

Section 1634. Section 44-12-205, MCA, is amended to read:

"44-12-205. Disposition of property following hearing. (1) If the court finds that the property was not used for the purpose charged or that the property listed in 44-12-102(1)(g) was used without the knowledge or consent of the owner, it shall order the property released to the owner of record as of the date of the seizure.

(2) If the court finds that the property was used for the purpose charged and that the property listed in 44-12-102(1)(g) was used with the knowledge or consent of the owner, the property ~~shall~~ *must* be disposed of as follows:

(a) If proper proof of ~~his~~ *a* claim is presented at the hearing by the holder of a security interest, the court shall order the property released to the holder of the security interest if the amount due ~~him~~ *to the holder* is equal to or in excess of the value of the property as of the date of seizure~~, it being~~ *because* the purpose of this chapter *is* to forfeit only the right, title, or interest of the owner. If the amount due the holder of the security interest is less than the value of the property, the property, if it is sold, must be sold at public auction by the law enforcement agency that seized the property in the same manner provided by law for the sale of property under execution or the law enforcement agency may return the property to the holder of the security interest without proceeding with an auction. The property may not be sold to an officer or employee of the law enforcement agency that seized the property or to a person related to an officer or employee by blood or marriage.

(b) If ~~no~~ *a* claimant ~~exists~~ *does not exist* and the confiscating agency wishes to retain the property for its official use, it may do so. If ~~such~~ *the* property is not to be retained, it must be sold as provided in subsection (2)(a).

(c) If a claimant who has presented proper proof of ~~his~~ *a* claim exists and the confiscating agency wishes to retain the property for its official use, it may do so ~~provided~~ *if* it compensates the claimant in the amount of the security interest outstanding at the time of the seizure.

(3) In making a disposition of property under this chapter, the court may take any action to protect the rights of innocent persons."

Section 1635. Section 45-2-202, MCA, is amended to read:

"45-2-202. Voluntary act. A material element of every offense is a voluntary act, which includes an omission to perform a duty ~~which~~ *that* the law imposes on the offender and ~~which he~~ *that the offender* is physically capable of performing, except for deliberate homicide under 45-5-102(1)(b) for which there must be a voluntary act only as to the underlying felony. Possession is a voluntary act if the offender knowingly procured or received the thing possessed or was aware of ~~his~~ *the offender's* control ~~thereof~~ *of the thing* for a sufficient time to have been able to terminate ~~his~~ control."

Section 1636. Section 45-2-203, MCA, is amended to read:

"45-2-203. Responsibility — intoxicated condition. A person who is in an intoxicated condition is criminally responsible for ~~his~~ *the person's* conduct, and an intoxicated condition is not a defense to any offense and may not be taken into consideration in determining the existence of a mental state ~~which~~ *that* is an element of the offense unless the defendant proves that ~~he~~ *the defendant* did not know that it was an intoxicating substance when ~~he~~ *the defendant* consumed, smoked, sniffed, injected, or otherwise ingested the substance causing the condition."

Section 1637. Section 45-2-212, MCA, is amended to read:

"45-2-212. Compulsion. A person is not guilty of an offense, other than an offense punishable with death, by reason of conduct ~~which he~~ *that the person* performs under the compulsion of threat or menace of the imminent infliction of death or serious bodily harm if ~~he~~ *the person* reasonably believes that death or serious bodily harm will be inflicted upon ~~him~~ *the person* if ~~he~~ *the person* does not perform ~~such~~ *the* conduct."

Section 1638. Section 45-2-213, MCA, is amended to read:

"45-2-213. Entrapment. A person is not guilty of an offense if ~~his~~ *the person's* conduct is incited or induced by a public servant or ~~his~~ *a public servant's* agent for the purpose of obtaining evidence for the prosecution of ~~such~~ *the* person. However, this section is inapplicable if a public servant or ~~his~~ *a public servant's* agent merely affords to ~~such~~ *the* person the opportunity or facility for committing an offense in furtherance of criminal purpose ~~which such~~ *that the* person has originated."

Section 1639. Section 45-2-301, MCA, is amended to read:

"45-2-301. Accountability for conduct of another. A person is responsible for conduct ~~which~~ *that* is an element of an offense if the conduct is either that of the person ~~himself~~ or that of another and ~~he~~ *the person* is legally accountable for ~~such~~ *the* conduct as provided in 45-2-302, or both."

Section 1640. Section 45-2-302, MCA, is amended to read:

"45-2-302. When accountability exists. A person is legally accountable for the conduct of another when:

(1) having a mental state described by the statute defining the offense, ~~he~~ *the person* causes another to perform the conduct, regardless of the legal capacity or mental state of the other person;

(2) the statute defining the offense makes ~~him so~~ *the person* accountable; or

(3) either before or during the commission of an offense with the purpose to promote or facilitate ~~such~~ *the* commission, ~~he~~ *the person* solicits, aids, abets, agrees, or attempts to aid ~~such~~ *the* other person in the planning or commission of the offense. However, a person is not ~~so~~ accountable if:

(a) ~~he~~ *the person* is a victim of the offense committed, unless the statute defining the offense provides otherwise; or

(b) before the commission of the offense, ~~he~~ *the person* terminates ~~his~~ *the person's* effort to promote or facilitate ~~such~~ *the* commission and does one of the following:

(i) wholly deprives ~~his~~ *the person's* prior efforts of effectiveness in ~~such~~ *the* commission;

(ii) gives timely warning to the proper law enforcement authorities; or

(iii) otherwise makes proper effort to prevent the commission of the offense."

Section 1641. Section 45-2-303, MCA, is amended to read:

"45-2-303. Separate conviction of person accountable. A person who is legally accountable for the conduct of another ~~which~~ *that* is an element of an offense may be convicted upon proof that the offense was committed and that ~~he~~ *the person* was ~~so~~ accountable although the other person claimed to have committed the offense has not been prosecuted or convicted, has been convicted of a different offense, is not amenable to justice, or has been acquitted."

Section 1642. Section 45-2-312, MCA, is amended to read:

"45-2-312. Accountability for conduct of corporation. (1) A person is legally accountable for conduct ~~which~~ *that* is an element of an offense and ~~which~~ *that*, in the name or in behalf of a corporation, ~~he~~ *the person* performs or causes to be performed to the same extent as if the conduct were performed in ~~his~~ *the person's* own name or behalf.

(2) An individual who has been convicted of an offense by reason of ~~his~~ legal accountability for the conduct of a corporation is subject to the punishment authorized by law for an individual upon conviction of ~~such~~ *the* offense although only a lesser or different punishment is authorized for the corporation."

Section 1643. Section 45-3-102, MCA, is amended to read:

"45-3-102. Use of force in defense of person. A person is justified in the use of force or threat to use force against another when and to the extent that ~~he~~ *the person* reasonably believes that ~~such~~ *the* conduct is necessary ~~to defend himself~~ *for self-defense* or *the defense of* another against ~~such other's~~ *the other person's* imminent use of unlawful force. However, ~~he~~ *the person* is justified in the use of force likely to cause death or serious bodily harm only if ~~he~~ *the person* reasonably believes that ~~such~~ *the* force is necessary to prevent imminent death or serious bodily harm to ~~himself~~ *the person* or another or to prevent the commission of a forcible felony."

Section 1644. Section 45-3-103, MCA, is amended to read:

"45-3-103. Use of force in defense of occupied structure. A person is justified in the use of force or threat to use force against another when and to the extent that ~~he~~ *the person* reasonably believes that ~~such~~ *the* conduct is necessary

to prevent or terminate ~~such other's~~ *the other person's* unlawful entry into or attack upon an occupied structure. However, ~~he~~ *the person* is justified in the use of force likely to cause death or serious bodily harm only if:

(1) the entry is made or attempted in violent, riotous, or tumultuous manner and ~~he~~ *the person* reasonably believes that ~~such~~ *the* force is necessary to prevent an assault upon or offer of personal violence to ~~him~~ *the person* or another then in the occupied structure; or

(2) ~~he~~ *the person* reasonably believes that ~~such~~ *the* force is necessary to prevent the commission of a forcible felony in the occupied structure."

Section 1645. Section 45-3-104, MCA, is amended to read:

"45-3-104. Use of force in defense of other property. A person is justified in the use of force or threat to use force against another when and to the extent that ~~he~~ *the person* reasonably believes that ~~such~~ *the* conduct is necessary to prevent or terminate ~~such other's~~ *the other person's* trespass on or other tortious or criminal interference with either real property, ~~(~~other than an occupied structure~~)~~, or personal property lawfully in ~~his~~ *the person's* possession or in the possession of another who is a member of ~~his~~ *the person's* immediate family or household or of a person whose property ~~he~~ *the person* has a legal duty to protect. However, ~~he~~ *the person* is justified in the use of force likely to cause death or serious bodily harm only if ~~he~~ *the person* reasonably believes that ~~such~~ *the* force is necessary to prevent the commission of a forcible felony."

Section 1646. Section 45-3-105, MCA, is amended to read:

"45-3-105. Use of force by aggressor. The justification described in 45-3-102 through 45-3-104 is not available to a person who:

(1) is attempting to commit, committing, or escaping after the commission of a forcible felony; or

(2) purposely or knowingly provokes the use of force against ~~himself~~ *the person*, unless:

(a) ~~such~~ *the* force is so great that ~~he~~ *the person* reasonably believes that ~~he~~ *the person* is in imminent danger of death or serious bodily harm and that ~~he~~ *the person* has exhausted every reasonable means to escape ~~such~~ *the* danger other than the use of force ~~which~~ *that* is likely to cause death or serious bodily harm to the assailant; or

(b) in good faith, ~~he~~ *the person* withdraws from physical contact with the assailant and indicates clearly to the assailant that ~~he~~ *the person* desires to withdraw and terminate the use of force, but the assailant continues or resumes the use of force."

Section 1647. Section 45-3-106, MCA, is amended to read:

"45-3-106. Use of force to prevent escape. (1) A peace officer or other person who has an arrested person in ~~his~~ custody is justified in the use of ~~such~~ force to prevent the escape of the arrested person from custody ~~as he~~ *that the officer or other person* would be justified in using if ~~he~~ *the officer or other person* were arresting ~~such~~ *the* person.

(2) A guard or other peace officer is justified in the use of force, including force likely to cause death or serious bodily harm, ~~which he~~ *that the guard or officer* reasonably believes to be necessary to prevent the escape from a correctional institution of a person whom the *guard or* officer reasonably believes to be lawfully detained in ~~such~~ *the* institution under sentence for an offense or awaiting trial or commitment for an offense."

Section 1648. Section 45-3-107, MCA, is amended to read:

"45-3-107. Use of force by parent, guardian, or teacher. A parent or an authorized agent of ~~any~~ *a* parent or a guardian, master, or teacher is justified in the use of ~~such~~ force ~~as~~ *that* is reasonable and necessary to restrain or correct ~~his~~ *the person's* child, ward, apprentice, or pupil."

Section 1649. Section 45-3-108, MCA, is amended to read:

"45-3-108. Use of force in resisting arrest. A person is not authorized to use force to resist an arrest ~~which he~~ *that the person* knows is being made either by a peace officer or by a private person summoned and directed by a peace officer to make the arrest, even if ~~he~~ *the person* believes that the arrest is unlawful and the arrest in fact is unlawful."

Section 1650. Section 45-3-109, MCA, is amended to read:

"45-3-109. Execution of death sentence. A person who puts a person to death pursuant to a sentence of a court of competent jurisdiction is justified if ~~he~~ *the person* acts in accordance with the sentence pronounced and the law prescribing the procedure for execution of a death sentence."

Section 1651. Section 45-4-101, MCA, is amended to read:

"45-4-101. Solicitation. (1) A person commits the offense of solicitation when, with the purpose that an offense be committed, ~~he~~ *the person* commands, encourages, or facilitates the commission of that offense.

(2) A person convicted of solicitation shall be punished not to exceed the maximum provided for the offense solicited."

Section 1652. Section 45-4-102, MCA, is amended to read:

"45-4-102. Conspiracy. (1) A person commits the offense of conspiracy when, with the purpose that an offense be committed, ~~he~~ *the person* agrees with another to the commission of that offense. ~~No~~ *A* person may *not* be convicted of conspiracy to commit an offense unless an act in furtherance of ~~such~~ *the* agreement has been committed by ~~him~~ *the person* or by a coconspirator.

(2) It ~~shall~~ *is* not ~~be~~ a defense to conspiracy that the person or persons with whom the accused has conspired:

(a) has not been prosecuted or convicted;

(b) has been convicted of a different offense;

(c) is not amenable to justice;

(d) has been acquitted; or

(e) lacked the capacity to commit the offense.

(3) A person convicted of the offense of conspiracy shall be punished not to exceed the maximum sentence provided for the offense ~~which~~ *that* is the object of the conspiracy."

Section 1653. Section 45-4-103, MCA, is amended to read:

"45-4-103. Attempt. (1) A person commits the offense of attempt when, with the purpose to commit a specific offense, ~~he~~ *the person* does any act toward the commission of ~~such~~ *the* offense.

(2) It ~~shall~~ *is* not ~~be~~ a defense to a charge of attempt that because of a misapprehension of the circumstances, it would have been impossible for the accused to commit the offense attempted.

(3) A person convicted of the offense of attempt shall be punished not to exceed the maximum provided for the offense attempted.

(4) A person ~~shall~~ *is* not ~~be~~ liable under this section if, under circumstances manifesting a voluntary and complete renunciation of ~~his~~ criminal purpose, ~~he~~ *the person* avoided the commission of the offense attempted by abandoning ~~his~~ *the person's* criminal effort.

(5) Proof of the completed offense does not bar conviction for the attempt."

Section 1654. Section 45-5-203, MCA, is amended to read:

"45-5-203. Intimidation. (1) A person commits the offense of intimidation when, with the purpose to cause another to perform or to omit the performance of any act, ~~he~~ *the person* communicates to another, under circumstances ~~which~~ *that* reasonably tend to produce a fear that it will be carried out, a threat to perform without lawful authority any of the following acts:

(a) inflict physical harm on the person threatened or any other person;

(b) subject any person to physical confinement or restraint; or

(c) commit any felony.

(2) A person commits the offense of intimidation if ~~he~~ *the person* knowingly communicates a threat or false report of a pending fire, explosion, or disaster ~~which~~ *that* would endanger life or property.

(3) A person convicted of the offense of intimidation shall be imprisoned in the state prison for any term not to exceed 10 years or be fined an amount not to exceed $50,000, or both."

Section 1655. Section 45-5-204, MCA, is amended to read:

"45-5-204. Mistreating prisoners. (1) A person commits the offense of mistreating prisoners if, being responsible for the care or custody of a prisoner, ~~he~~ *the person* purposely or knowingly:

(a) assaults or otherwise injures a prisoner;

(b) intimidates, threatens, endangers, or withholds reasonable necessities from the prisoner with the purpose to obtain a confession from ~~him~~ *the prisoner* or for any other purpose; or

(c) violates any civil right of a prisoner.

(2) A person convicted of the offense of mistreating prisoners shall be removed from office or employment and shall be imprisoned in the state prison for a term not to exceed 10 years or be fined an amount not to exceed $50,000, or both."

Section 1656. Section 45-5-221, MCA, is amended to read:

"45-5-221. Malicious intimidation or harassment relating to civil or human rights — penalty. (1) A person commits the offense of malicious intimidation or harassment when, because of another person's race, creed, religion, color, national origin, or involvement in civil rights or human rights activities, ~~he~~ *the person* purposely or knowingly, with the intent to terrify, intimidate, threaten, harass, annoy, or offend:

(a) causes bodily injury to another;

(b) causes reasonable apprehension of bodily injury in another; or

(c) damages, destroys, or defaces any property of another or any public property.

(2) For purposes of this section, "deface" includes but is not limited to cross burning or the placing of any word or symbol commonly associated with racial,

religious, or ethnic identity or activities on the property of another person without ~~his or her~~ *the other person's* permission.

(3) A person convicted of the offense of malicious intimidation or harassment shall be imprisoned in the state prison for a term not to exceed 5 years or be fined an amount not to exceed $5,000, or both."

Section 1657. Section 45-5-301, MCA, is amended to read:

"45-5-301. Unlawful restraint. (1) A person commits the offense of unlawful restraint if ~~he~~ *the person* knowingly or purposely and without lawful authority restrains another so as to interfere substantially with ~~his~~ *the other person's* liberty.

(2) A person convicted of the offense of unlawful restraint shall be fined not to exceed $500 or *be* imprisoned in the county jail for any term not to exceed 6 months, or both."

Section 1658. Section 45-5-511, MCA, is amended to read:

"45-5-511. Provisions generally applicable to sexual crimes. (1) When criminality depends on the victim being less than 16 years old, it is a defense for the offender to prove that ~~he~~ *the offender* reasonably believed the child to be above that age. ~~Such~~ *The* belief ~~shall~~ *may* not be ~~deemed~~ *considered* reasonable if the child is less than 14 years old.

(2) ~~No evidence~~ *Evidence* concerning the sexual conduct of the victim is ~~admissible~~ *inadmissible* in prosecutions under this part except evidence of the victim's past sexual conduct with the offender or evidence of specific instances of the victim's sexual activity to show the origin of semen, pregnancy, or disease ~~which~~ *that* is at issue in the prosecution.

(3) If the defendant proposes for any purpose to offer evidence described in subsection (2), the trial judge shall order a hearing out of the presence of the jury to determine whether the proposed evidence is admissible under subsection (2).

(4) Evidence of failure to make a timely complaint or immediate outcry does not raise any presumption as to the credibility of the victim.

(5) Resistance by the victim is not required to show lack of consent. Force, fear, or threat is sufficient alone to show lack of consent."

Section 1659. Section 45-5-604, MCA, is amended to read:

"45-5-604. Evidence in cases of promotion. (1) On the issue *of* whether a place is a house of prostitution, the following, in addition to all other admissible evidence, ~~shall~~ *must* be admissible:

(a) its general repute;

(b) the repute of the persons who reside in or frequent the place; or

(c) the frequency, timing, and duration of visits by nonresidents.

(2) Testimony of a person against ~~his~~ *the person's* spouse ~~shall~~ *must* be admissible under 45-5-602, 45-5-603, and this section."

Section 1660. Section 45-5-611, MCA, is amended to read:

"45-5-611. Bigamy. (1) A person commits the offense of bigamy if, while married, ~~he~~ *the person* knowingly contracts or purports to contract another marriage unless at the time of the subsequent marriage:

(a) the offender believes on reasonable grounds that the prior spouse is dead;

(b) the offender and the prior spouse have been living apart for 5 consecutive years throughout which the prior spouse was not known by the offender to be alive;

(c) a court has entered a judgment purporting to terminate or annul any prior disqualifying marriage and the offender does not know that judgment to be invalid; or

(d) the offender reasonably believes that ~~he~~ *the offender* is legally eligible to remarry.

(2) A person convicted of bigamy shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both."

Section 1661. Section 45-5-612, MCA, is amended to read:

"45-5-612. Marrying a bigamist. (1) A person commits the offense of marrying a bigamist if ~~he~~ *the person* contracts or purports to contract a marriage with another knowing that the other is ~~thereby~~ committing bigamy.

(2) A person convicted of the offense of marrying a bigamist shall be fined not to exceed $500 or be imprisoned in the county jail for any period not to exceed 6 months, or both."

Section 1662. Section 45-6-102, MCA, is amended to read:

"45-6-102. Negligent arson. (1) A person commits the offense of negligent arson if ~~he~~ *the person* purposely or knowingly starts a fire or causes an explosion, whether on ~~his~~ *the person's* own property or property of another, and thereby negligently:

(a) places another person in danger of death or bodily injury, including a firefighter responding to or at the scene of a fire or explosion; or

(b) places property of another in danger of damage or destruction.

(2) A person convicted of the offense of negligent arson shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both. If the offender places another person in danger of death or bodily injury, ~~he~~ *the offender* shall be fined not to exceed $50,000 or be imprisoned in the state prison for any term not to exceed 10 years, or both."

Section 1663. Section 45-6-201, MCA, is amended to read:

"45-6-201. Definition of enter or remain unlawfully. (1) A person enters or remains unlawfully in or upon any vehicle, occupied structure, or premises when ~~he~~ *the person* is not licensed, invited, or otherwise privileged to do so. Privilege to enter or remain upon land is extended either by the explicit permission of the landowner or other authorized person or by the failure of the landowner or other authorized person to post notice denying entry onto private land. The privilege may be revoked at any time by personal communication of notice by the landowner or other authorized person to the entering person.

(2) To provide for effective posting of private land through which the public has no right-of-way, the notice provided for in subsection (1) must satisfy the following requirements:

(a) notice must be placed on a post, structure, or natural object by marking it with written notice or with not less than 50 square inches of fluorescent orange paint, except that when metal fenceposts are used, the entire post must be painted; and

(b) the notice described in subsection (2)(a) must be placed at each outer gate and normal point of access to the property, including both sides of a water body crossing the property wherever the water body intersects an outer boundary line.

(3) To provide for effective posting of private land through which or along which the public has an unfenced right-of-way by means of a public road, a landowner shall:

(a) place a conspicuous sign no closer than 30 feet of the centerline of the roadway where it enters the private land, stating words substantially similar to "PRIVATE PROPERTY, NO TRESPASSING OFF ROAD NEXT ___ MILES"; or

(b) place notice, as described in subsection (2)(a), no closer than 30 feet of the centerline of the roadway at regular intervals of not less than one-fourth mile along the roadway where it borders unfenced private land, except that orange markings may not be placed on posts where the public roadway enters the private land.

(4) If property has been posted in substantial compliance with subsection (2) or (3), it is considered closed to public access unless explicit permission to enter is given by the landowner or ~~his~~ *the landowner's* authorized agent.

(5) The department of fish, wildlife, and parks shall attempt to educate and inform all persons holding hunting, fishing, or trapping licenses or permits by including on any publication concerning the licenses or permits, in condensed form, the provisions of this section concerning entry on private land. The department shall use public media, as well as its own publications, in attempting to educate and inform other recreational users of the provisions of this section. In the interests of providing the public with clear information regarding the public nature of certain unfenced rural rights-of-way, the department may develop and distribute posting signs that satisfy the requirements of subsection (3).

(6) For purposes of this section, "land" means land as defined in 70-15-102.

(7) ~~In no event may civil~~ *Civil* liability *may not* be imposed upon the owner or occupier of premises by reason of any privilege created by this section."

Section 1664. Section 45-6-202, MCA, is amended to read:

"45-6-202. Criminal trespass to vehicles. (1) A person commits the offense of criminal trespass to vehicles when ~~he~~ *the person* purposely or knowingly and without authority enters any vehicle or any part ~~thereof~~ *of a vehicle*.

(2) A person convicted of the offense of criminal trespass to vehicles shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both."

Section 1665. Section 45-6-204, MCA, is amended to read:

"45-6-204. Burglary. (1) A person commits the offense of burglary if ~~he~~ *the person* knowingly enters or remains unlawfully in an occupied structure with the purpose to commit an offense ~~therein~~ *in the occupied structure*.

(2) A person commits the offense of aggravated burglary if ~~he~~ *the person* knowingly enters or remains unlawfully in an occupied structure with the purpose to commit an offense ~~therein~~ *in the occupied structure* and:

(a) in effecting entry or in the course of committing the offense or in immediate flight ~~thereafter~~ *after effecting entry or committing the offense*, ~~he~~ *the person* or another participant in the offense is armed with explosives or a weapon; or

(b) in effecting entry or in the course of committing the offense or in immediate flight ~~thereafter~~ *after effecting entry or committing the offense*, ~~he~~ *the*

person purposely, knowingly, or negligently inflicts or attempts to inflict bodily injury upon anyone.

(3) A person convicted of the offense of burglary shall be imprisoned in the state prison for any term not to exceed 20 years or be fined an amount not to exceed $50,000, or both. A person convicted of the offense of aggravated burglary shall be imprisoned in the state prison for any term not to exceed 40 years or be fined an amount not to exceed $50,000, or both."

Section 1666. Section 45-6-205, MCA, is amended to read:

"45-6-205. Possession of burglary tools. (1) A person commits the offense of possession of burglary tools when ~~he~~ *the person* knowingly possesses any key, tool, instrument, device, or explosive suitable for breaking into an occupied structure, ~~or~~ *a* vehicle, or any depository designed for the safekeeping of property or any part ~~thereof~~ *of the occupied structure, vehicle, or depository* with the purpose to commit an offense ~~therewith~~.

(2) A person convicted of possession of burglary tools shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both."

Section 1667. Section 45-6-302, MCA, is amended to read:

"45-6-302. Theft of lost or mislaid property. (1) A person who obtains control over lost or mislaid property commits the offense of theft when ~~he~~ *the person*:

(a) knows or learns the identity of the owner or knows, is aware of, or learns of a reasonable method of identifying the owner;

(b) fails to take reasonable measures to restore the property to the owner; and

(c) has the purpose of depriving the owner permanently of the use or benefit of the property.

(2) A person convicted of theft of lost or mislaid property shall be fined not to exceed $500 or be imprisoned in the county jail for a period not to exceed 6 months."

Section 1668. Section 45-6-305, MCA, is amended to read:

"45-6-305. Theft of labor or services or use of property. (1) A person commits the offense of theft when ~~he~~ *the person* obtains the temporary use of property, labor, or services of another ~~which~~ *that* are available only for hire, by means of threat or deception or knowing that ~~such~~ *the* use is without the consent of the person providing the property, labor, or services.

(2) A person convicted of theft of labor or services or use of property shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both."

Section 1669. Section 45-6-308, MCA, is amended to read:

"45-6-308. Unauthorized use of motor vehicles. (1) A person commits the offense of unauthorized use of motor vehicles if ~~he~~ *the person* knowingly operates the automobile, airplane, motorcycle, quadricycle, motorboat, or other motor-propelled vehicle of another without ~~his~~ *the other's* consent.

(2) A person convicted of unauthorized use of motor vehicles shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both. It is an affirmative defense that the offender reasonably

believed that the owner would have consented to the operation had ~~he~~ *the owner* known of it."

Section 1670. Section 45-6-314, MCA, is amended to read:

"45-6-314. Theft by disposal of stolen property. A pawnbroker or dealer who buys and sells secondhand merchandise and allows stolen property to be sold, bartered, or otherwise disposed of after a peace officer has requested ~~him~~ *the pawnbroker or dealer* to hold the property for 30 days, as provided in 46-5-212, commits the offense of theft as defined in 45-6-301."

Section 1671. Section 45-6-315, MCA, is amended to read:

"45-6-315. Defrauding creditors. (1) A person commits the offense of defrauding secured creditors if ~~he~~ *the person* destroys, conceals, encumbers, transfers, removes from the state, or otherwise deals with property subject to a security interest with the purpose to hinder enforcement of that interest.

(2) "Security interest" means an interest in personal property or fixtures as defined in the Uniform Commercial Code*,* ~~(~~30-1-201(2)(jj)~~)~~.

(3) A person convicted of the offense of defrauding secured creditors shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

(4) A person who destroys, conceals, encumbers, transfers, removes from the state, or otherwise deals with property subject to a security interest with the purpose of depriving the owner of the property or of the proceeds and value ~~therefrom~~ *from the property* may be prosecuted under 45-6-301."

Section 1672. Section 45-6-318, MCA, is amended to read:

"45-6-318. Deceptive business practices. (1) A person commits the offense of deceptive business practices if in the course of engaging in a business, occupation, or profession*,* ~~he~~ *the person* purposely or knowingly:

(a) uses or possesses for use a false weight or measure or any other device for falsely determining or recording any quality or quantity;

(b) sells, offers, exposes for sale, or delivers less than the represented quantity of any commodity or service;

(c) takes or attempts to take more than the represented quantity of any commodity or service when as buyer ~~he~~ *the person* furnished the weight or measure;

(d) sells, offers, or exposes for sale adulterated commodities;

(e) sells, offers, or exposes for sale mislabeled commodities; or

(f) makes a deceptive statement regarding the quantity or price of goods in any advertisement addressed to the public.

(2) "Adulterated" means varying from the standard of composition or quality prescribed by statute or lawfully promulgated administrative regulation or, if none, as set by established commercial usage.

(3) "Mislabeled" means:

(a) varying from the standard of truth or disclosure in labeling prescribed by statute or lawfully promulgated administrative regulation or, if none, as set by established commercial usage; or

(b) represented as being another person's produce though otherwise labeled accurately as to quality and quantity.

(4) A person convicted of the offense of deceptive business practices shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both."

Section 1673. Section 45-6-319, MCA, is amended to read:

"45-6-319. Chain distributor schemes. (1) As used in this section, the following definitions apply:

(a) "Chain distributor scheme" means a sales device whereby a person, under a condition that ~~he~~ *the person* make an investment, is granted a license or right to recruit for consideration one or more additional persons who are also granted ~~such~~ *a* license or right upon condition of making an investment and may further perpetuate the chain of persons who are granted ~~such~~ *a* license or right upon ~~such~~ *the* condition.

(b) "Person" means a natural person, corporation, partnership, trust, or other entity~~;~~ and, in the case of an entity, ~~it shall include~~ *includes* any other entity ~~which~~ *that* has a majority interest in ~~such~~ *the* entity or effectively controls ~~such~~ *the* other entity as well as the individual officers, directors, and other persons in act of control of the activities of each entity.

(2) It is unlawful for ~~any~~ *a* person to promote, sell, or encourage participation in any chain distributor scheme.

(3) ~~Any~~ *A* person violating the provisions of this section shall, upon conviction, be imprisoned in the state prison for a period not to exceed 1 year or *be* fined not to exceed $1,000, or both.

(4) ~~Any~~ *A* person convicted of a second offense under this section shall be imprisoned in the state prison for a period not to exceed 5 years or *be* fined not to exceed $5,000, or both."

Section 1674. Section 45-6-326, MCA, is amended to read:

"45-6-326. Obscuring ~~the~~ identity of ~~a~~ machine. (1) A person commits the offense of obscuring the identity of a machine if ~~he~~ *the person*:

(a) removes, defaces, covers, alters, destroys, or otherwise obscures the manufacturer's serial number or any other distinguishing identification number or mark upon any machine, vehicle, electrical device, or firearm with the purpose to conceal, misrepresent, or transfer any ~~such~~ machine, vehicle, electrical device, or firearm; or

(b) possesses with the purpose to conceal, misrepresent, or transfer any machine, vehicle, device, or firearm knowing that the serial number or other identification number or mark has been removed or otherwise obscured.

(2) A person convicted of obscuring the identity of a machine shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

(3) The fact of possession or transfer of any ~~such~~ machine, vehicle, electrical device, or firearm *described in subsection (1)* creates a presumption that the person knew the serial number or other identification number or mark had been removed or otherwise obscured."

Section 1675. Section 45-6-327, MCA, is amended to read:

"45-6-327. Illegal branding or altering or obscuring ~~a~~ brand. (1) A person commits the offense of illegal branding or altering or obscuring a brand if ~~he~~ *the person* marks or brands any commonly domesticated hoofed animal or removes, covers, alters, or defaces ~~any~~ *an* existing mark or brand on any commonly domesticated hoofed animal with the purpose to obtain or exert

unauthorized control over ~~said~~ *the* animal or with the purpose to conceal, misrepresent, transfer, or prevent identification of ~~said~~ *the* animal.

(2) A person convicted of the offense of illegal branding or altering or obscuring a brand shall be imprisoned in the state prison for any term not to exceed 10 years or be fined an amount not to exceed $50,000, or both."

Section 1676. Section 45-7-101, MCA, is amended to read:

"45-7-101. Bribery in official and political matters. (1) A person commits the offense of bribery if ~~he~~ *the person* purposely or knowingly offers, confers, or agrees to confer upon another or solicits, accepts, or agrees to accept from another:

(a) any pecuniary benefit as a consideration for the recipient's decision, opinion, recommendation, vote, or other exercise of discretion as a public servant, party official, or voter;

(b) any benefit as consideration for the recipient's decision, vote, recommendation, or other exercise of official discretion in a judicial or administrative proceeding; or

(c) any benefit as consideration for a violation of a known duty as a public servant or party official.

(2) It is no defense to prosecution under this section that a person whom the offender sought to influence was not qualified to act in the desired way whether because ~~he~~ *the person* had not yet assumed office or lacked jurisdiction or for any other reason.

(3) A person convicted of the offense of bribery shall be imprisoned in the state prison for any term not to exceed 10 years or be fined an amount not to exceed $50,000, or both, and shall forever be disqualified from holding any public office in this state."

Section 1677. Section 45-7-103, MCA, is amended to read:

"45-7-103. Compensation for past official behavior. (1) A person commits an offense under this section if ~~he~~ *the person* knowingly solicits, accepts, or agrees to accept any pecuniary benefit as compensation for having, as a public servant, given a decision, opinion, recommendation, or vote favorable to another, for having otherwise exercised a discretion in another's favor, or for having violated ~~his~~ *the person's* duty. A person commits an offense under this section if ~~he~~ *the person* knowingly offers, confers, or agrees to confer compensation ~~which~~ *that* is prohibited by this section.

(2) A person convicted under this section shall be fined not to exceed $500 or imprisoned in the county jail for any term not to exceed 6 months, or both."

Section 1678. Section 45-7-104, MCA, is amended to read:

"45-7-104. Gifts to public servants by persons subject to their jurisdiction. (1) ~~No~~ *A* public servant in any department or agency exercising regulatory function, conducting inspections or investigations, carrying on a civil or criminal litigation on behalf of the government, or having custody of prisoners ~~shall~~ *may not* solicit, accept, or agree to accept any pecuniary benefit from a person known to be subject to ~~such~~ *the* regulation, inspection, investigation, or custody or against whom ~~such~~ litigation is known to be pending or contemplated.

(2) ~~No~~ *A* public servant having any discretionary function to perform in connection with contracts, purchases, payments, claims, or other pecuniary transactions of the government ~~shall~~ *may not* solicit, accept, or agree to accept

any pecuniary benefit from any person known to be interested in or likely to become interested in any ~~such~~ contract, purchase, payment, claim, or transaction.

(3) ~~No~~ *A* public servant having judicial or administrative authority and ~~no~~ *a* public servant employed by or in a court or other tribunal having ~~such~~ *judicial or administrative* authority or participating in the enforcement of its decision ~~shall~~ *may not* solicit, accept, or agree to accept any pecuniary benefit from a person known to be interested in or likely to become interested in any matter before ~~such~~ *the* public servant or tribunal with which ~~he~~ *the public servant or tribunal* is associated.

(4) ~~No~~ *A* legislator or public servant employed by the legislature or by any committee or agency ~~thereof shall~~ *of the legislature may not* solicit, accept, or agree to accept any pecuniary benefit from a person known to be interested in or likely to become interested in any matter before the legislature or any committee or agency ~~thereof~~ *of the legislature*.

(5) This section ~~shall~~ *does* not apply to:

(a) fees prescribed by law to be received by a public servant or any other benefit for which the recipient gives legitimate consideration or to which ~~he~~ *the public servant* is otherwise entitled; or

(b) trivial benefits incidental to personal, professional, or business contacts and involving no substantial risk of undermining official impartiality.

(6) ~~No~~ *A* person ~~shall~~ *may not* knowingly confer or offer or agree to confer any benefit prohibited by subsections (1) through (5).

(7) A person convicted of an offense under this section shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both."

Section 1679. Section 45-7-201, MCA, is amended to read:

"45-7-201. Perjury. (1) A person commits the offense of perjury if in any official proceeding ~~he~~ *the person* knowingly makes a false statement under oath or equivalent affirmation or swears or affirms the truth of a statement previously made~~,~~ when the statement is material.

(2) A person convicted of perjury shall be punished by imprisonment in the state prison for any term not to exceed 10 years or ~~shall~~ be punished by a fine of not more than $50,000, or ~~by~~ both ~~such fine and imprisonment~~.

(3) Falsification is material, regardless of the admissibility of the statement under rules of evidence, if it could have affected the course or outcome of the proceeding. It is no defense that the declarant mistakenly believed the falsification to be immaterial. Whether a falsification is material in a given factual situation is a question of law.

(4) It is not a defense to prosecution under this section that the oath or affirmation was administered or taken in an irregular manner or that the declarant was not competent to make the statement. A document purporting to be made upon oath or affirmation at any time when the offender presents it as being so verified ~~shall~~ *must* be ~~deemed~~ *considered* to have been ~~duly~~ sworn or affirmed.

(5) ~~No~~ *A* person ~~shall~~ *may not* be guilty of an offense under this section if ~~he~~ *the person* retracted the falsification in the course of the proceeding in which it was made before it became manifest that the falsification was or would be exposed and before the falsification substantially affected the proceeding.

(6) ~~Where~~ *When* the defendant made inconsistent statements under oath or equivalent affirmation, both having been made within the period of the statute of limitations, the prosecution may proceed by setting forth the inconsistent statements in a single count alleging in the alternative that one or the other was false and not believed by the defendant. In ~~such~~ *that* case, it ~~shall~~ *is* not ~~be~~ necessary for the prosecution to prove which statement was false but only that one or the other was false and not believed by the defendant to be true.

(7) ~~No~~ *A* person ~~shall~~ *may not* be convicted of an offense under this section ~~where~~ *when* proof of falsity rests solely upon the testimony of a single person other than the defendant."

Section 1680. Section 45-7-203, MCA, is amended to read:

"45-7-203. Unsworn falsification to authorities. (1) A person commits an offense under this section if, with *the* purpose to mislead a public servant in performing ~~his~~ *an* official function, ~~he~~ *the person*:

(a) makes any written false statement ~~which he~~ *that the person* does not believe to be true;

(b) purposely creates a false impression in a written application for any pecuniary or other benefit by omitting information necessary to prevent statements ~~therein~~ from being misleading;

(c) submits or invites reliance on any writing ~~which he~~ *that the person* knows to be forged, altered, or otherwise lacking in authenticity; or

(d) submits or invites reliance on any sample, specimen, map, boundary mark, or other object ~~which he~~ *that the person* knows to be false.

(2) A person convicted of an offense under this section shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both."

Section 1681. Section 45-7-204, MCA, is amended to read:

"45-7-204. False alarms to agencies of public safety. (1) A person commits an offense under this section if ~~he~~ *the person* knowingly causes a false alarm of fire or other emergency to be transmitted to or within any organization, official or volunteer, ~~which~~ *that* deals with emergencies involving danger to life or property.

(2) A person convicted of an offense under this section shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both."

Section 1682. Section 45-7-205, MCA, is amended to read:

"45-7-205. False reports to law enforcement authorities. (1) A person commits an offense under this section if ~~he~~ *the person* knowingly:

(a) gives false information to any law enforcement officer with the purpose to implicate another;

(b) reports to law enforcement authorities an offense or other incident within their concern knowing that it did not occur; or

(c) pretends to furnish ~~such~~ *law enforcement* authorities with information relating to an offense or incident when ~~he~~ *the person* knows ~~he~~ *that the person* has no information relating to ~~such~~ *the* offense or incident.

(2) A person convicted under this section shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both."

Section 1683. Section 45-7-206, MCA, is amended to read:

"45-7-206. Tampering with witnesses and informants. (1) A person commits the offense of tampering with witnesses and informants if, believing that an official proceeding or investigation is pending or about to be instituted, ~~he~~ *the person* purposely or knowingly attempts to induce or otherwise cause a witness or informant to:

(a) testify or inform falsely;

(b) withhold any testimony, information, document, or thing;

(c) elude legal process summoning ~~him~~ *the witness or informant* to testify or supply evidence; or

(d) ~~absent himself from~~ *not appear at* any proceeding or investigation to which ~~he~~ *the witness or informant* has been summoned.

(2) A person convicted of tampering with witnesses or informants shall be imprisoned in the state prison for any term not to exceed 10 years or be fined an amount not to exceed $50,000, or both."

Section 1684. Section 45-7-207, MCA, is amended to read:

"45-7-207. Tampering with or fabricating physical evidence. (1) A person commits the offense of tampering with or fabricating physical evidence if, believing that an official proceeding or investigation is pending or about to be instituted, ~~he~~ *the person*:

(a) alters, destroys, conceals, or removes any record, document, or thing with purpose to impair its verity or availability in ~~such~~ *the* proceeding or investigation; or

(b) makes, presents, or uses any record, document, or thing knowing it to be false and with purpose to mislead any person who is or may be engaged in ~~such~~ *the* proceeding or investigation.

(2) A person convicted of tampering with or fabricating physical evidence shall be imprisoned in the state prison for a term not to exceed 10 years or be fined an amount not to exceed $50,000, or both."

Section 1685. Section 45-7-301, MCA, is amended to read:

"45-7-301. Resisting arrest. (1) A person commits the offense of resisting arrest if ~~he~~ *the person* knowingly prevents or attempts to prevent a peace officer from effecting an arrest by:

(a) using or threatening to use physical force or violence against the peace officer or another; or

(b) using any other means ~~which~~ *that* creates a risk of causing physical injury to the peace officer or another.

(2) It is no defense to a prosecution under this section that the arrest was unlawful, ~~provided~~ *if* the peace officer was acting under color of ~~his~~ *the officer's* official authority.

(3) A person convicted of the offense of resisting arrest shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both."

Section 1686. Section 45-7-303, MCA, is amended to read:

"45-7-303. Obstructing justice. (1) For the purpose of this section "an offender" means a person who has been or is liable to be arrested, charged, convicted, or punished for a public offense.

(2) A person commits the offense of obstructing justice if, knowing ~~a~~ *another* person is an offender, ~~he~~ *the person* purposely:

(a) harbors or conceals an offender;

(b) warns an offender of impending discovery or apprehension, except this does not apply to a warning given in connection with an effort to bring an offender into compliance with the law;

(c) provides an offender with money, transportation, weapon, disguise, or other means of avoiding discovery or apprehension;

(d) prevents or obstructs by means of force, deception, or intimidation anyone from performing an act that might aid in the discovery or apprehension of an offender;

(e) suppresses by act of concealment, alteration, or destruction any physical evidence that might aid in the discovery or apprehension of an offender; or

(f) aids an offender who is subject to official detention to escape from ~~such~~ official detention.

(3) A person convicted of obstructing justice shall be:

(a) imprisoned in the state prison for a term not to exceed 10 years if the offender has been or is liable to be charged with a felony; or

(b) fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both, if the offender has been or is liable to be charged with a misdemeanor."

Section 1687. Section 45-7-304, MCA, is amended to read:

"45-7-304. Failure to aid ~~a~~ peace officer. (1) A peace officer may order a person to cooperate ~~where~~ *when* it is reasonable for the peace officer to enlist the cooperation of ~~such~~ *that* person in:

(a) effectuating or securing an arrest of another pursuant to 46-6-402; or

(b) preventing the commission by another of an offense.

(2) A person commits the offense of failure to aid a peace officer if ~~he~~ *the person* knowingly refuses to obey ~~such~~ an order *described in subsection (1)*.

(3) A person convicted of the offense of failure to aid a peace officer shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both."

Section 1688. Section 45-7-305, MCA, is amended to read:

"45-7-305. Compounding ~~a~~ *of* felony. (1) A person commits the offense of compounding a felony if ~~he~~ *the person* knowingly accepts or agrees to accept any pecuniary benefit in consideration for:

(a) refraining from seeking prosecution of a felony; or

(b) refraining from reporting to law enforcement authorities the commission or suspected commission of any felony or information relating to a felony.

(2) A person convicted of compounding a felony shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both."

Section 1689. Section 45-7-308, MCA, is amended to read:

"45-7-308. Bail-jumping. (1) A person commits the offense of bail-jumping if, having been set at liberty by court order, with or without security, upon condition that ~~he~~ *the person* will subsequently appear at a specified time and

place, ~~he~~ *the person* purposely fails without lawful excuse to appear at that time and place.

(2) This section ~~shall~~ *may* not interfere with the exercise by any court of its power to punish for contempt.

(3) This section ~~shall~~ *does* not apply to a person set at liberty by court order upon condition that ~~he~~ *the person* will appear in connection with a charge of having committed a misdemeanor, except *that* it ~~shall apply where~~ *applies when* the judge has released the defendant on ~~his~~ *the defendant's* own recognizance.

(4) A person convicted of bail-jumping in connection with a felony shall be imprisoned in the state prison for a term not to exceed 10 years. In all other cases, ~~he~~ *the person* shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both."

Section 1690. Section 45-7-309, MCA, is amended to read:

"45-7-309. Criminal contempt. (1) A person commits the offense of criminal contempt when ~~he~~ *the person* knowingly engages in any of the following conduct:

(a) disorderly, contemptuous, or insolent behavior committed during the sitting of a court in its immediate view and presence and directly tending to interrupt its proceedings or to impair the respect due to its authority;

(b) breach of the peace, noise, or other disturbance directly tending to interrupt a court's proceeding;

(c) purposely disobeying or refusing any lawful process or other mandate of a court;

(d) unlawfully refusing to be sworn as a witness in any court proceeding or, after being sworn, refusing to answer any legal and proper interrogatory;

(e) purposely publishing a false or grossly inaccurate report of a court's proceeding; or

(f) purposely failing to obey any mandate, process, or notice relative to juries issued pursuant to Title 3, chapter 15.

(2) A person convicted of the offense of criminal contempt shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both."

Section 1691. Section 45-7-401, MCA, is amended to read:

"45-7-401. Official misconduct. (1) A public servant commits the offense of official misconduct when in ~~his~~ *an* official capacity ~~he~~ *the public servant* commits any of the following acts:

(a) purposely or negligently fails to perform any mandatory duty as required by law or by a court of competent jurisdiction;

(b) knowingly performs an act in ~~his~~ *an* official capacity ~~which he~~ *that the public servant* knows is forbidden by law;

(c) with the purpose to obtain *a personal* advantage *or an advantage* for ~~himself or~~ another, performs an act in excess of ~~his~~ *the public servant's* lawful authority;

(d) solicits or knowingly accepts for the performance of any act a fee or reward ~~which he~~ *that the public servant* knows is not authorized by law; or

(e) knowingly conducts a meeting of a public agency in violation of 2-3-203.

(2) A public servant convicted of the offense of official misconduct shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

(3) The district court ~~shall have~~ *has* exclusive jurisdiction in prosecutions under this section. Any action for official misconduct must be commenced by an information filed after leave to file has been granted by the district court or after a grand jury indictment has been found.

(4) A public servant who has been charged as provided in subsection (3) may be suspended from ~~his~~ office without pay pending final judgment. Upon final judgment of conviction, ~~he~~ *the public servant* shall permanently forfeit ~~his~~ *the public servant's* office. Upon acquittal, ~~he shall~~ *the public servant must* be reinstated in ~~his~~ office and ~~shall~~ *must* receive all backpay.

(5) This section does not affect any power conferred by law to impeach or remove any public servant or any proceeding authorized by law to carry into effect ~~such~~ *an* impeachment or removal."

Section 1692. Section 45-7-501, MCA, is amended to read:

"45-7-501. Employer misconduct. (1) A person who is an employer, as defined in 39-71-117, commits the offense of employer misconduct if ~~he~~ *the person* knowingly or purposely:

(a) avoids ~~his~~ *the person's* responsibility to provide coverage for ~~his~~ *the person's* employees as required by 39-71-401;

(b) misrepresents or falsifies employment records or information, including but not limited to understating the amount of payroll or the number of ~~his~~ *the person's* employees; or

(c) refuses to pay premiums that ~~he~~ *the person* is obligated to pay under compensation plan No. 2, as provided in Title 39, chapter 71, part 22, or compensation plan No. 3, as provided in Title 39, chapter 71, part 23.

(2) A person convicted of the offense of employer misconduct shall be fined an amount not to exceed $50,000 or *be* imprisoned in the state prison for any term not to exceed 10 years, or both."

Section 1693. Section 45-8-101, MCA, is amended to read:

"45-8-101. Disorderly conduct. (1) A person commits the offense of disorderly conduct if ~~he~~ *the person* knowingly disturbs the peace by:

(a) quarreling, challenging to fight, or fighting;

(b) making loud or unusual noises;

(c) using threatening, profane, or abusive language;

(d) discharging firearms, except at a shooting range during established hours of operation;

(e) rendering vehicular or pedestrian traffic impassable;

(f) rendering the free ingress or egress to public or private places impassable;

(g) disturbing or disrupting any lawful assembly or public meeting;

(h) transmitting a false report or warning of a fire or other catastrophe in ~~such~~ a place ~~that~~ *where* its occurrence would endanger human life;

(i) creating a hazardous or physically offensive condition by any act that serves no legitimate purpose; or

(j) transmitting a false report or warning of an impending explosion in ~~such~~ a place ~~that~~ *where* its occurrence would endanger human life.

(2) Except as provided in subsection (3), a person convicted of the offense of disorderly conduct shall be fined not to exceed $100 or be imprisoned in the county jail for a term not to exceed 10 days, or both.

(3) A person convicted of a violation of subsection (1)(j) shall be fined not to exceed $1,000 or be imprisoned in the county jail for a term not to exceed 1 year, or both."

Section 1694. Section 45-8-103, MCA, is amended to read:

"45-8-103. Riot. (1) A person commits the offense of riot if ~~he~~ *the person* purposely and knowingly disturbs the peace by engaging in an act of violence or threat to commit an act of violence as part of an assemblage of five or more persons~~, which~~ *and the* act or threat presents a clear and present danger of or results in damage to property or injury to persons.

(2) Except as provided in subsection (3), a person convicted of the offense of riot shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

(3) A person who commits the offense of riot by engaging in an act of violence while incarcerated at any state adult correctional facility or city or county jail shall be imprisoned for not less than 1 year or more than 5 years."

Section 1695. Section 45-8-104, MCA, is amended to read:

"45-8-104. Incitement to riot. (1) A person commits the offense of incitement to riot if ~~he~~ *the person* purposely and knowingly commits an act or engages in conduct that urges other persons to riot. ~~Such~~ *The* act or conduct ~~shall~~ *may* not include the mere oral or written advocacy of ideas or expression of belief ~~which advocacy or expression~~ *that* does not urge the commission of an act of immediate violence.

(2) Except as provided in subsection (3), a person convicted of the offense of incitement to riot shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

(3) A person who commits the offense of incitement to riot while incarcerated at any state adult correctional facility shall be imprisoned for not less than 1 year or more than 5 years."

Section 1696. Section 45-8-106, MCA, is amended to read:

"45-8-106. Bringing armed ~~men~~ *individuals* into ~~the~~ state. (1) A person commits the offense of bringing armed ~~men~~ *individuals* into the state when ~~he~~ *the person* knowingly brings or aids in bringing into this state an armed ~~person~~ *individual* or armed body of ~~men~~ *individuals* for the purpose of engaging in criminal or socially disruptive activities or to usurp the powers of law enforcement authorities.

(2) A person convicted of the offense of bringing armed ~~men~~ *individuals* into the state shall be imprisoned in the state prison for a term not to exceed 10 years or be fined an amount not to exceed $50,000, or both."

Section 1697. Section 45-8-111, MCA, is amended to read:

"45-8-111. Public nuisance. (1) "Public nuisance" means:

(a) a condition ~~which~~ *that* endangers safety or health, is offensive to the senses, or obstructs the free use of property so as to interfere with the

comfortable enjoyment of life or property by an entire community or neighborhood or by any considerable number of persons;

(b) any premises where persons gather for the purpose of engaging in unlawful conduct; or

(c) a condition ~~which~~ *that* renders dangerous for passage any public highway or right-of-way or waters used by the public.

(2) A person commits the offense of maintaining a public nuisance if ~~he~~ *the person* knowingly creates, conducts, or maintains a public nuisance.

(3) Any act ~~which~~ *that* affects an entire community or neighborhood or any considerable number of persons*,* ~~(~~as specified in subsection (1)(a)~~)~~*,* is no less a nuisance because the extent of the annoyance or damage inflicted upon individuals is unequal.

(4) ~~No~~ *An* agricultural or farming operation, *a* place, *an* establishment, or *a* facility or any of its appurtenances or the operation ~~thereof~~ *of those things* is *not* or ~~becomes~~ *does not become* a public nuisance because of ~~the~~ *its* normal operation ~~thereof~~ as a result of changed residential or commercial conditions in or around its locality if the agricultural or farming operation, place, establishment, or facility has been in operation longer than the complaining resident has been in possession or commercial establishment has been in operation.

(5) Noises resulting from the shooting activities at a shooting range during established hours of operation are not considered a public nuisance.

(6) A person convicted of maintaining a public nuisance shall be fined not to exceed $500 or *be* imprisoned in the county jail for a term not to exceed 6 months, or both. Each day of ~~such~~ *the* conduct constitutes a separate offense."

Section 1698. Section 45-8-112, MCA, is amended to read:

"45-8-112. Action to abate ~~a~~ public nuisance. (1) ~~Every~~ *A* public nuisance may be abated and the persons maintaining ~~such~~ *the* nuisance and the possessor of the premises who permits the ~~same~~ *nuisance* to be maintained may be enjoined from ~~such~~ *the* conduct by an action in equity in the name of the state of Montana by the county attorney or any resident of the state.

(2) Upon the filing of the complaint in ~~such~~ *the* action, the judge may issue a temporary injunction.

(3) In ~~such~~ *an* action*,* evidence of the general reputation of the premises is admissible for the purpose of proving the existence of the nuisance.

(4) If the existence of the nuisance is established, an order of abatement ~~shall~~ *must* be entered as part of the judgment in the case. The judge issuing the order may~~, in his discretion~~:

(a) confiscate all fixtures used on the premises to maintain the nuisance and either sell them and transmit the proceeds to the county general fund, destroy them, or return them to their rightful ownership;

(b) close the premises for any period not to exceed 1 year, during which period the premises ~~shall~~ *must* remain in the custody of the court;

(c) allow the premises to be opened upon posting bond sufficient in amount to ~~assure~~ *ensure* compliance with the order of abatement. The bond ~~shall~~ *must* be forfeited if the nuisance is continued or resumed. The procedure for forfeiture or discharge of the bond ~~shall be~~ *is* as provided in 46-9-502 and 46-9-503~~; or~~.

(d) *impose* any combination of ~~the above~~ *subsections (4)(a) through (4)(c)*."

Section 1699. Section 45-8-113, MCA, is amended to read:

"45-8-113. Creating ~~a~~ hazard. (1) A person commits the offense of creating a hazard if ~~he~~ *the person* knowingly:

(a) discards in any place where it might attract children a container having a compartment of more than 1 1/2 cubic feet capacity and a door or lid that locks or fastens automatically when closed and cannot easily be opened from the inside and fails to remove the door, lid, or locking or fastening device;

(b) being the owner or otherwise having possession of property upon which there is a well, cistern, cesspool, mine shaft, or other hole of a depth of 4 feet or more and a top width of 12 inches or more, fails to cover or fence it with a suitable protective construction;

(c) tampers with an aircraft without the consent of the owner;

(d) being the owner or otherwise having possession of property upon which there is a steam engine or steam boiler, continues to use a steam engine or steam boiler ~~which~~ *that* is in an unsafe condition;

(e) being a person in the act of game hunting, acts in a negligent manner or knowingly fails to give all reasonable assistance to any person whom ~~he~~ *the person* has injured; or

(f) deposits any hard substance upon or between any railroad tracks ~~which~~ *that* will tend to derail railroad cars or other vehicles.

(2) A person convicted of the offense of creating a hazard shall be fined not to exceed $500 or *be* imprisoned in the county jail for a term not to exceed 6 months, or both."

Section 1700. Section 45-8-114, MCA, is amended to read:

"45-8-114. Failure to yield party line. (1) Any person who fails to relinquish a telephone party line or public pay telephone after ~~he~~ *the person* has been requested to do so to permit another to place an emergency call to a fire department or police department or for medical aid or ambulance service shall be imprisoned for a term not to exceed 10 days or *be* fined not to exceed $25, or both.

(2) It is a defense to prosecution under subsection (1) that the accused did not know or did not have reason to know of the emergency in question or that the accused was ~~himself~~ using the telephone party line or public pay telephone for ~~such~~ an emergency call.

(3) Any person who requests another to relinquish a telephone party line or public pay telephone on the pretext that ~~he~~ *the person* ~~must~~ *needs to* place an emergency call, knowing ~~such~~ *the* pretext to be false, shall be imprisoned for a term not to exceed 10 days or *be* fined not to exceed $25, or both.

(4) ~~Every~~ *Each* telephone company doing business in this state shall print a copy of subsections (1), (2), and (3) ~~of this section~~ in each telephone directory published by it ~~after January 1, 1974~~."

Section 1701. Section 45-8-115, MCA, is amended to read:

"45-8-115. Illegal posting of state and federal land. (1) A person commits the offense of illegal posting of state or federal land if, without authorization, ~~he~~ *the person* knowingly posts land that is under the ownership or control of the state or federal government to restrict access or use of state or federal land.

(2) A person convicted of illegal posting of state or federal land shall be fined an amount not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both."

Section 1702. Section 45-8-201, MCA, is amended to read:

"45-8-201. Obscenity. (1) A person commits the offense of obscenity when, with knowledge of the obscene nature ~~thereof~~ *of the material*, ~~he~~ *the person* purposely or knowingly:

(a) sells, delivers, or provides or offers or agrees to sell, deliver, or provide any obscene writing, picture, record, or other representation or embodiment of the obscene to anyone under ~~the age of~~ 18 *years of age*;

(b) presents or directs an obscene play, dance, or other performance, or participates in that portion ~~thereof which~~ *of the performance that* makes it obscene, to anyone under ~~the age of~~ 18 *years of age*;

(c) publishes, exhibits, or otherwise makes available anything obscene to anyone under ~~the age of~~ 18 *years of age*;

(d) performs an obscene act or otherwise presents an obscene exhibition of ~~his~~ *the person's* body to anyone under ~~the age of~~ 18 *years of age*;

(e) creates, buys, procures, or possesses obscene matter or material with the purpose to disseminate it to anyone under ~~the age of~~ 18 *years of age*; or

(f) advertises or otherwise promotes the sale of obscene material or materials represented or held out by ~~him~~ *the person* to be obscene.

(2) A thing is obscene if:

(a) (i) it is a representation or description of perverted ultimate sexual acts, actual or simulated;

(ii) it is a patently offensive representation or description of normal ultimate sexual acts, actual or simulated; or

(iii) it is a patently offensive representation or description of masturbation, excretory functions, or lewd exhibition of the genitals; and

(b) taken as a whole the material:

(i) applying contemporary community standards, appeals to the prurient interest in sex;

(ii) portrays conduct described in subsection (2)(a)(i), (2)(a)(ii), or (2)(a)(iii) in a patently offensive way; and

(iii) lacks serious literary, artistic, political, or scientific value.

(3) In any prosecution for an offense under this section, evidence ~~shall be~~ *is* admissible to show:

(a) the predominant appeal of the material and what effect, if any, it would probably have on the behavior of people;

(b) the artistic, literary, scientific, educational, or other merits of the material;

(c) the degree of public acceptance of the material in the community;

(d) *the* appeal to prurient interest or absence ~~thereof~~ *of that appeal* in advertising or other promotion of the material; or

(e) *the* purpose of the author, creator, publisher, or disseminator.

(4) A person convicted of obscenity shall be fined at least $500 but not more than $1,000 or *be* imprisoned in the county jail for a term not to exceed 6 months, or both.

(5) Cities, towns, or counties may adopt ordinances or resolutions ~~which~~ *that* are more restrictive as to obscenity than the provisions of 45-8-206 and this section."

Section 1703. Section 45-8-203, MCA, is amended to read:

"45-8-203. Certain motion picture theater employees not liable for prosecution. (1) *(a)* As used in this section, "employee" means any person regularly employed by the owner or operator of a motion picture theater if ~~he~~ *the person* has no financial interest other than salary or wages in the ownership or operation of the motion picture theater, has no financial interest in or control over the selection of the motion pictures shown in the theater, and is working within the motion picture theater where ~~he~~ *the person* is regularly employed.

(b) ~~"Employee"~~ *The term* does not include a manager of the motion picture theater.

(2) ~~No~~ *An* employee is *not* liable to prosecution under 45-8-201 and 45-8-206 or under any city or county ordinance for exhibiting or possessing with intent to exhibit any obscene motion picture provided the employee is acting within the scope of ~~his~~ regular employment at a showing open to the public."

Section 1704. Section 45-8-207, MCA, is amended to read:

"45-8-207. Notice of violation. Before a county attorney may prosecute a person for a continuing violation of 45-8-206, ~~he~~ *the county attorney* shall determine that the material or performance is obscene to minors, give the alleged violator actual notice of the determination and notice that ~~he~~ *the person* will be prosecuted if ~~he~~ *the person* does not desist, and determine that the violation continued for at least 3 days after notice was received. The person may seek a declaratory judgment on the question *of* whether the material or performance is obscene to minors. The statute of limitations for the offense is tolled while the declaratory judgment or an appeal from it is pending."

Section 1705. Section 45-8-210, MCA, is amended to read:

"45-8-210. Causing animals to fight — owners, trainers, and spectators — penalties — exception — definition. (1) A person commits the offense of causing animals to fight if ~~he~~ *the person*:

(a) owns, possesses, keeps, or trains any animal with the intent that ~~such~~ *the* animal fight or be engaged in an exhibition of fighting with another animal;

(b) allows or causes any animal to fight with another animal or causes any animal to menace or injure another animal for the purpose of sport, amusement, or gain;

(c) knowingly permits any act in violation of subsection (1)(a) or (1)(b) to take place on any premises under ~~his~~ *the person's* charge or control~~,~~ or aids or abets any ~~such~~ act *described in subsection (1)(a) or (1)(b)*;

(d) participates in any exhibition in which animals are fighting for the purpose of sport, amusement, or gain.

(2) A person convicted of violating this section is guilty of a felony and shall be fined an amount not to exceed $5,000 or *be* imprisoned in the state prison for a term of not less than 1 year or more than 5 years, or both ~~such fine and imprisonment~~.

(3) Nothing in this section prohibits the following:

(a) accepted husbandry practices used in the raising of livestock or poultry;

(b) the use of animals in the normal and usual course of rodeo events; or

(c) the use of animals in hunting and training as permitted by law.

(4) For purposes of this section, "animal" means any cock, bird, dog, or mammal except ~~man~~ *a human*."

Section 1706. Section 45-8-214, MCA, is amended to read:

"45-8-214. Bribery in contests. (1) A person commits the offense of bribery in contests if ~~he~~ *the person* purposely or knowingly offers, confers, or agrees to confer upon another or solicits, accepts, or agrees to accept from another:

(a) any pecuniary benefit as a consideration for the recipient's failure to use ~~his~~ *the recipient's* best efforts in connection with any professional or amateur athletic contest, sporting event, or exhibition; or

(b) any benefit as consideration for a violation of a known duty as a person participating in, officiating, or connected with any professional or amateur athletic contest, sporting event, or exhibition.

(2) A person convicted of the offense of bribery in contests shall be fined not to exceed $5,000 or be imprisoned in the state prison for a term not to exceed 10 years, or both."

Section 1707. Section 45-8-215, MCA, is amended to read:

"45-8-215. Desecration of flags. (1) In this section*, the term* "flag" means anything ~~which~~ *that* is or purports to be the official flag of the United States, the United States shield, the United States coat of arms, the Montana state flag, or a copy, picture, or representation of any of ~~them~~ *the described articles*.

(2) A person commits the offense of desecration of flags if ~~he~~ *the person* purposely or knowingly:

(a) publicly mutilates, defiles, or casts contempt upon the flag;

(b) places on or attaches to the flag any work, mark, design, or advertisement not properly a part of ~~such~~ *the* flag or exposes to public view a flag so altered;

(c) manufactures or exposes to public view an article of merchandise or a wrapper or receptacle for merchandise upon which the flag is depicted; or

(d) uses the flag for commercial advertising purposes.

(3) A person convicted of the offense of desecration of flags shall be imprisoned in the state prison for any term not to exceed 10 years or be fined an amount not to exceed $50,000, or both.

(4) This section does not apply to flags depicted on written or printed documents or periodicals or on stationery, ornaments, pictures, or jewelry~~,~~ ~~provided~~ *if* there are not unauthorized words or designs on ~~such~~ *the* flags and ~~provided~~ *if* the flag is not connected with any advertisement."

Section 1708. Section 45-8-316, MCA, is amended to read:

"45-8-316. Carrying concealed weapons. (1) ~~Every~~ *A* person who carries or bears concealed upon ~~his~~ *the individual's* person a dirk, dagger, pistol, revolver, slingshot, sword cane, billy, knuckles made of any metal or hard substance, knife having a blade 4 inches long or longer, razor, not including a safety razor, or other deadly weapon shall be punished by a fine not exceeding $500 or *be* imprisonment in the county jail for a period not exceeding 6 months, or both.

(2) A person who has previously been convicted of an offense, committed on a different occasion than the offense under this section, in this state or any other jurisdiction for which a sentence to a term of imprisonment in excess of 1 year could have been imposed and who carries or bears concealed upon ~~his~~ *the individual's* person any of the weapons described in subsection (1) shall be punished by a fine not exceeding $1,000 or *be* imprisoned in the state prison for a period not exceeding 5 years, or both."

Section 1709. Section 45-8-325, MCA, is amended to read:

"45-8-325. Permittee change of county of residence — notification to sheriffs and chief of police. A person with a permit to carry a concealed weapon who changes ~~his~~ *the person's* county of residence shall within 10 days of the change inform the sheriffs of both the old and new counties of residence of ~~his~~ *the* change of residence and that ~~he~~ *the person* holds the permit. If ~~his~~ *the person's* residence changes either from or to a city or town with a police force, ~~he~~ *the person* shall also inform the chief of police in each of those cities or towns that has a police force."

Section 1710. Section 45-8-327, MCA, is amended to read:

"45-8-327. Carrying a concealed weapon while under ~~the~~ influence. A person commits the offense of carrying a concealed weapon while under the influence if ~~he~~ *the person* purposely or knowingly carries a concealed weapon while under the influence of an intoxicating substance. It is not a defense that the person had a valid permit to carry a concealed weapon. A person convicted of the offense shall be imprisoned in the county jail for a term not to exceed 6 months or *be* fined an amount not to exceed $500, or both."

Section 1711. Section 45-8-331, MCA, is amended to read:

"45-8-331. Switchblade knives. (1) ~~Every~~ *A* person who carries or bears upon ~~his~~ *the individual's* person, who carries or bears within or on any motor vehicle or other means of conveyance owned or operated by ~~him~~ *the person*, or who owns, possesses, uses, stores, gives away, sells, or offers for sale a switchblade knife shall be punished by a fine not exceeding $500 or by imprisonment in the county jail for a period not exceeding 6 months, or ~~by~~ both ~~such fine and imprisonment~~.

(2) A bona fide collector whose collection is registered with the sheriff of the county in which ~~said~~ *the* collection is located is ~~hereby~~ exempted from the provisions of this section.

(3) For the purpose of this section, a switchblade knife is defined as any knife ~~which~~ *that* has a blade 1 1/2 inches long or longer ~~which~~ *that* opens automatically by hand pressure applied to a button, spring, or other device in the handle of the knife."

Section 1712. Section 45-8-333, MCA, is amended to read:

"45-8-333. Reckless or malicious use of explosives. ~~Every~~ *A* person who ~~shall~~ recklessly or maliciously ~~use~~ *uses*, ~~handle~~ *handles*, or ~~have~~ *has* in ~~his or her~~ *the person's* possession any blasting powder, giant or Hercules powder, giant caps, or other highly explosive substance ~~whereby~~ *through which* any human being is intimidated, terrified, or endangered ~~shall be~~ *is* guilty of a misdemeanor."

Section 1713. Section 45-8-334, MCA, is amended to read:

"45-8-334. Possession of ~~a~~ destructive device. (1) A person who, with the purpose to commit a felony, has in ~~his~~ *the person's* possession any destructive device on a public street or highway, in or near any theater, hall,

school, college, church, hotel, other public building, or private habitation, in, on, or near any aircraft, railway passenger train, car, vessel engaged in carrying passengers for hire, or other public place ordinarily passed by human beings is guilty of the offense of possession of a destructive device.

(2) A person convicted of the offense of possession of a destructive device shall be imprisoned in the state prison for a period of not more than 10 years or be fined an amount of not more than $50,000, or both."

Section 1714. Section 45-8-335, MCA, is amended to read:

"45-8-335. Possession of explosives. (1) A person commits the offense of possession of explosives if ~~he~~ *the person* possesses, manufactures, transports, buys, or sells an explosive compound, flammable material, or timing, detonating, or similar device for use with an explosive compound or incendiary device and:

(a) has the purpose to use ~~such~~ *the* explosive, material, or device to commit an offense; or

(b) knows that another has the purpose to use ~~such~~ *the* explosive, material, or device to commit an offense.

(2) A person convicted of the offense of possession of explosives shall be imprisoned in the state prison for any term not to exceed 20 years or be fined an amount not to exceed $50,000, or both."

Section 1715. Section 45-8-336, MCA, is amended to read:

"45-8-336. Possession of ~~a~~ silencer. (1) A person commits the offense of possession of a silencer if ~~he~~ *the person* possesses, manufactures, transports, buys, or sells a silencer and has the purpose to use it to commit an offense or knows that another person has such a purpose.

(2) A person convicted of the offense of possession of a silencer is punishable by imprisonment in the state prison for a term of not less than 5 years or more than 30 years or *by* a fine of not less than $1,000 or more than $20,000 or ~~by~~ both ~~such fine and imprisonment~~."

Section 1716. Section 45-8-339, MCA, is amended to read:

"45-8-339. Carrying firearms on train — penalty. (1) Except as authorized by the management of a railroad, it is unlawful for a person not authorized to carry a weapon in the course of ~~his~~ *the person's* official duties to knowingly or purposely carry or transport firearms on a train in this state unless, prior to boarding, the person has delivered all firearms and ammunition, if any, to the operator of the train.

(2) A person violating this section shall be punished by a fine not exceeding $500 or *by* imprisonment in the county jail for a period not exceeding 6 months, or both."

Section 1717. Section 45-8-340, MCA, is amended to read:

"45-8-340. Sawed-off firearm — penalty. (1) A person commits the offense of possession of a sawed-off firearm if ~~he~~ *the person* knowingly possesses a rifle or shotgun that when originally manufactured had a barrel length of:

(a) 16 inches or more and an overall length of 26 inches or more in the case of a rifle; or

(b) 18 inches or more and an overall length of 26 inches or more in the case of a shotgun; and

(c) the firearm has been modified in a manner so that the barrel length, overall length, or both, are less than specified in subsection (1)(a) or (1)(b).

(2) The barrel length is the distance from the muzzle to the rear-most point of the chamber.

(3) This section does not apply to firearms possessed:

(a) by a peace officer of this state or one of its political subdivisions;

(b) by an officer of the United States government authorized to carry weapons;

(c) by a person in actual service as a *member of the* national ~~guardsman~~ *guard*;

(d) by a person called to the aid of one of the persons named in subsections (3)(a) through (3)(c);

(e) for educational or scientific purposes in which the firearms are incapable of being fired;

(f) by a person who has a valid federal tax stamp for the firearm, issued by the bureau of alcohol, tobacco, and firearms; or

(g) by a bona fide collector of firearms if the firearm is a muzzleloading, sawed-off firearm manufactured before 1900.

(4) A person convicted of the offense of possession of a sawed-off firearm ~~must~~ *shall* be fined not less than $200 or more than $500 or *be* imprisoned in the county jail for not less than 5 days or more than 6 months, or both, upon a first conviction. If a person has one or more prior convictions under this section or one or more prior felony convictions under a law of this state, another state, or the United States, ~~he must~~ *the person shall* be fined an amount not to exceed $1,000 or *be* imprisoned in the state prison for a term not to exceed 5 years, or both."

Section 1718. Section 45-8-405, MCA, is amended to read:

"45-8-405. Pattern of criminal street gang activity. (1) For purposes of this part, "pattern of criminal street gang activity" means the commission, solicitation, conspiracy, *or* attempt~~;~~*, the* adjudication as a delinquent youth for the commission, attempt, or solicitation~~;~~*,* or *the* conviction of two or more of the offenses listed in subsection (2) within a 3-year period, ~~and that the~~ *which* offenses were committed on separate occasions.

(2) The offenses that form a pattern of criminal street gang activity include:

(a) deliberate homicide, as defined in 45-5-102;

(b) assault with a weapon, as defined in 45-5-213;

(c) intimidation, as defined in 45-5-203;

(d) kidnapping, as defined in 45-5-302;

(e) aggravated kidnapping, as defined in 45-5-303;

(f) robbery, as defined in 45-5-401;

(g) sexual intercourse without consent, as defined in 45-5-503;

(h) aggravated promotion of prostitution, as defined in 45-5-603;

(i) criminal mischief, as defined in 45-6-101;

(j) arson, as defined in 45-6-103;

(k) burglary, as defined in 45-6-204;

(l) theft, as defined in 45-6-301;

(m) forgery, as defined in 45-6-325;

(n) tampering with witnesses and informants, as defined in 45-7-206;

(o) bringing armed ~~men~~ *individuals* into the state, as defined in 45-8-106;

(p) unlawful possession of a firearm by a convicted person, as defined in 45-8-313;

(q) carrying a concealed weapon, as defined in 45-8-316;

(r) possession of a deadly weapon by a prisoner, as defined in 45-8-318;

(s) possession of a destructive device, as defined in 45-8-334;

(t) possession of explosives, as defined in 45-8-335;

(u) possession of a sawed-off firearm, as defined in 45-8-340;

(v) the sale, possession for sale, transportation, manufacture, offer for sale, offer to manufacture, or other offense involving a dangerous drug as prohibited by Title 45, chapter 9;

(w) use of threat to coerce criminal street gang membership or use of violence to coerce criminal street gang membership provided in 45-8-403."

Section 1719. Section 45-9-104, MCA, is amended to read:

"45-9-104. Fraudulently obtaining dangerous drugs. A person commits the offense of fraudulently obtaining dangerous drugs if ~~he~~ *the person* obtains or attempts to obtain a dangerous drug, as defined in 50-32-101, by:

(1) fraud, deceit, misrepresentation, or subterfuge;

(2) falsely assuming the title of or representing ~~himself to be~~ *that the person is* a manufacturer, wholesaler, practitioner, pharmacist, owner of a pharmacy, or other person authorized to possess dangerous drugs;

(3) the use of a forged, altered, or fictitious prescription;

(4) the use of a false name or a false address on a prescription; or

(5) the concealment of a material fact."

Section 1720. Section 45-9-105, MCA, is amended to read:

"45-9-105. Altering labels on dangerous drugs. A person commits the offense of altering labels on dangerous drugs if ~~he~~ *the person* affixes a false, forged, or altered label to or otherwise misrepresents a package or receptacle containing a dangerous drug, as defined in 50-32-101."

Section 1721. Section 45-9-106, MCA, is amended to read:

"45-9-106. Penalty for fraudulently obtaining dangerous drugs or altering ~~the~~ labels of dangerous drugs. (1) A person convicted of altering labels on dangerous drugs shall be imprisoned in the county jail for a term not to exceed 6 months.

(2) A person convicted of fraudulently obtaining dangerous drugs included in Schedule I, Schedule II, Schedule III, Schedule IV, or Schedule V in 50-32-222, 50-32-224, 50-32-226, 50-32-229, or 50-32-232 shall:

(a) upon ~~his~~ *a* first conviction be imprisoned in the state prison for a term of not less than 1 year or not more than 5 years or *be* fined an amount not to exceed $50,000, or both;

(b) upon ~~his~~ *a* second conviction be imprisoned in the state prison for a term of not less than 5 years or not more than 10 years or *be* fined an amount not to exceed $50,000, or both."

Section 1722. Section 45-9-114, MCA, is amended to read:

"45-9-114. Criminal advertisement of imitation dangerous drug — penalty. (1) A person commits the offense of criminal advertisement of an imitation dangerous drug if ~~he~~ *the person* knowingly or purposely places in any newspaper, magazine, handbill, or other publication or posts or distributes any advertisement or solicitation to promote the manufacture, sale, exchange, or distribution of an imitation dangerous drug.

(2) A person convicted of criminal advertisement of an imitation dangerous drug under this section is punishable by a fine not to exceed $100,000 or by imprisonment in the state prison for a term of not more than 10 years, or ~~by~~ both ~~such fine and imprisonment~~."

Section 1723. Section 45-9-115, MCA, is amended to read:

"45-9-115. Criminal manufacture of imitation dangerous drug — penalty. (1) A person commits the offense of criminal manufacture of an imitation dangerous drug if ~~he~~ *the person* knowingly or purposely manufactures, prepares, or cultivates any imitation dangerous drug.

(2) A person convicted of criminal manufacture of an imitation dangerous drug ~~under this section~~ is punishable by a fine not to exceed $100,000 or by imprisonment in the state prison for a term of not more than 10 years, or ~~by~~ both ~~such fine and imprisonment~~."

Section 1724. Section 45-9-121, MCA, is amended to read:

"45-9-121. Criminal possession of toxic substances — penalty. (1) A person commits the offense of criminal possession of a toxic substance if ~~he~~ *the person* inhales or ingests or possesses with the purpose to inhale or ingest, for the purpose of altering ~~his~~ *the person's* mental or physical state, any substance with toxic effects that is not manufactured for human consumption or inhalation, including but not limited to glue, fingernail polish, paint and paint thinners, petroleum products, aerosol propellants, and chemical solvents.

(2) The provisions of subsection (1) do not apply to a bona fide institution of higher education conducting research with human volunteers pursuant to guidelines adopted by the institution or any federal or state agency.

(3) A person convicted under this section shall be imprisoned in the county jail for a term not to exceed 6 months or be fined an amount not to exceed $500, or both.

(4) The youth court has jurisdiction of any violation of subsection (1) by a person under 18 years of age."

Section 1725. Section 45-9-127, MCA, is amended to read:

"45-9-127. Carrying dangerous drugs on train — penalty. (1) Except as provided in Title 50, chapter 46, a person commits the offense of carrying dangerous drugs on a train in this state if ~~he~~ *the person* is knowingly or purposely in criminal possession of a dangerous drug and boards any train.

(2) A person convicted of carrying dangerous drugs on a train in this state is subject to the penalties provided in 45-9-102."

Section 1726. Section 45-10-102, MCA, is amended to read:

"45-10-102. Determination of what constitutes paraphernalia. In determining whether an object is drug paraphernalia, a court or other authority should consider, in addition to all other logically relevant factors, the following:

(1) statements by an owner or by anyone in control of the object concerning its use;

(2) prior convictions, if any, of an owner or of anyone in control of the object~~,~~ under any state or federal law relating to any controlled substance or dangerous drug;

(3) the proximity of the object~~,~~ in time and space~~,~~ to a direct violation of this part;

(4) the proximity of the object to dangerous drugs;

(5) the existence of any residue of dangerous drugs on the object;

(6) direct or circumstantial evidence of the intent of an owner or of anyone in control of the object to deliver it to persons whom ~~he~~ *the person* knows~~,~~ or should reasonably know~~,~~ intend to use the object to facilitate a violation of 45-10-103 through 45-10-106. The innocence of an owner or of anyone in control of the object as to a direct violation of 45-10-103 through 45-10-106 does not prevent a finding that the object is intended for use or designed for use as drug paraphernalia.

(7) instructions, oral or written, provided with the object concerning its use;

(8) descriptive materials accompanying the object ~~which~~ *that* explain or depict its use;

(9) national and local advertising concerning its use;

(10) the manner in which the object is displayed for sale;

(11) whether the owner or anyone in control of the object is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products;

(12) direct or circumstantial evidence of the ratio of sales of the object to the total sales of the business enterprise;

(13) the existence and scope of legitimate uses for the object in the community;

(14) expert testimony concerning its use."

Section 1727. Section 45-10-105, MCA, is amended to read:

"45-10-105. Delivery of drug paraphernalia to a minor. Any person 18 years of age or ~~over~~ *older* who violates 45-10-104 by delivering drug paraphernalia to a person under 18 years of age who is at least 3 years ~~his junior~~ *younger* is guilty of a misdemeanor and upon conviction shall be imprisoned in the county jail for not more than 1 year~~,~~ *or be* fined not more than $1,000, or both."

Section 1728. Section 46-2-101, MCA, is amended to read:

"46-2-101. State criminal jurisdiction. (1) A person is subject to prosecution in this state for an offense ~~which he~~ *that the person* commits while either within or outside the state by ~~his~~ *the person's* own conduct or that of another for which ~~he~~ *the person* is legally accountable if:

(a) the offense is committed either wholly or partly within the state;

(b) the conduct outside the state constitutes an attempt to commit an offense within the state and an act in furtherance of the offense occurs in the state; or

(c) the conduct within the state constitutes an attempt, solicitation, or conspiracy to commit in another jurisdiction an offense under the laws of this state and ~~such~~ *the* other jurisdiction.

(2) An offense is committed partly within this state if either the conduct ~~which~~ *that* is an element of the offense or the result ~~which~~ *that* is an element

occurs within the state. In homicide, the "result" is either the physical contact ~~which~~ *that* causes death or the death itself~~, and if~~. *If* the body of a homicide victim is found within the state, the death is presumed to have occurred within the state.

(3) An offense ~~which~~ *that* is based on an omission to perform a duty imposed by the law of this state is committed within the state~~,~~ regardless of the location of the offender at the time of the omission.

(4) This state includes the land and water and the air space above ~~such~~ *the* land and water with respect to which the state has legislative jurisdiction."

Section 1729. Section 46-4-101, MCA, is amended to read:

"46-4-101. Jurisdiction — death and cause of death in different counties. (1) The coroner of the county where a dead human body is found has jurisdiction if:

(a) the place of death is unknown;

(b) the dead human body was shipped into the county without proper permits; or

(c) the death occurred while the deceased was in transit in the state.

(2) When death occurs as a direct result of acts or events that occurred in another county, the coroner of the county where the acts or events causing death occurred has jurisdiction. If a coroner that has jurisdiction of a death fails to act, the state medical examiner has jurisdiction.

(3) A county coroner has primary jurisdiction in the county in which ~~he~~ *the coroner* is appointed or elected to serve~~;~~. ~~however~~ *However*, a qualified coroner may serve in another county upon the request of the coroner or county attorney of that county. A coroner may travel to another county to inquire into a death pursuant to 46-4-122."

Section 1730. Section 46-4-110, MCA, is amended to read:

"46-4-110. Powers of coroner. In the performance of ~~his~~ duties under this chapter, the coroner may:

(1) pronounce the fact of death of any human being under circumstances in which ~~he~~ *the coroner* has a duty to inquire pursuant to 46-4-122;

(2) certify and amend death certificates as considered necessary in circumstances under which ~~he~~ *the coroner* has a duty to inquire pursuant to 46-4-122;

(3) issue subpoenas pursuant to 46-4-112;

(4) order autopsies as provided in 46-4-103;

(5) conduct examinations and tests as considered necessary to determine the cause, manner, and circumstances of death and identification of a dead human body as provided in 46-4-101 and 46-4-113;

(6) order a dead human body to be disinterred or removed from its place of disposition, with or without the consent of the next of kin, under circumstances in which ~~he~~ *the coroner* has a duty to inquire pursuant to 46-4-122;

(7) conduct inquests pursuant to 46-4-201; and

(8) order cessation of any activity by any person or agency, other than the law enforcement agency having jurisdiction, that may obstruct or hinder the orderly conduct of an inquiry or the collection of information or evidence needed for an inquiry."

Section 1731. Section 46-4-111, MCA, is amended to read:

"46-4-111. Coroner's authority to seize and preserve evidence. (1) A county coroner may enter any room, dwelling, building, or other place in which ~~he~~ *the coroner* has probable cause to believe that a dead human body or evidence of the circumstances of a death that requires investigation may be found. If refused entry, a coroner who is investigating a death pursuant to ~~his~~ *the coroner's* authority may apply to a judge authorized to issue search warrants for a warrant to enter the premises and to search for and seize evidence of the cause of a death, including a dead human body.

(2) The application for a search warrant must:

(a) state facts sufficient to show probable cause that a human body or evidence of the circumstances of death is present in the place to be searched;

(b) particularly describe the place to be searched; and

(c) particularly describe the things to be seized.

(3) To preserve evidence of the cause of death, a coroner may:

(a) place under ~~his~~ *the coroner's* custody and control any dwelling, building, item, vehicle, aircraft, railroad engine or train, vessel, enclosure, or open area for a period of not more than 10 days; and

(b) forbid entrance by an unauthorized person into any area specified in subsection (3)(a).

(4) A person may not enter an area that is restricted pursuant to subsection (3) without the permission of the coroner or the law enforcement agency having jurisdiction if there is also a criminal investigation in progress."

Section 1732. Section 46-4-113, MCA, is amended to read:

"46-4-113. Examinations and tests. The coroner may direct a properly qualified expert to conduct any test or examination that ~~he~~ *the coroner* reasonably believes is necessary to determine the cause, manner, and circumstances of a death or to identify a dead human body. The coroner may also require examination by the next of kin or any other person when necessary to identify a dead human body."

Section 1733. Section 46-4-202, MCA, is amended to read:

"46-4-202. Summoning and swearing in of jurors — instructions. (1) ~~For~~ *When* holding an inquest, the coroner shall summon a jury of at least 6 but not more than 12 persons qualified by law to serve as jurors and selected at random from a list of eligible jurors that is furnished to the coroner annually by the county clerk of court.

(2) The jury selected by the coroner must be sworn by the coroner to inquire who the person was and when, where, and by what means ~~he came to his death~~ *the person died* and into the circumstances attending ~~his~~ *the person's* death and to render a true verdict on the death according to the evidence offered to them or arising from the inspection of the body.

(3) The coroner shall instruct the jurors as to their duties."

Section 1734. Section 46-4-205, MCA, is amended to read:

"46-4-205. Verdict of jury — form. The jury may view the body, and the county attorney may require the jury to view the body. The jury shall review the death scene and may do so by videotape, photographs, or slide transparencies. After viewing the body and the death scene and hearing the testimony, the jury

shall render its verdict, which must be by majority vote, and certify the ~~same~~ *the verdict* in writing signed by each juror. The verdict must set forth:

(1) who the deceased person is;

(2) when and where ~~he~~ *the deceased* ~~came to his death~~ *died*;

(3) if ~~he~~ *the deceased* ~~came to his death~~ *died* by criminal means; and

(4) if ~~he~~ *the deceased* was killed or ~~his~~ *the deceased's* death was occasioned by the act of another by criminal means, who committed the act, if known. If the jury finds that the death was not by criminal means, that fact must be stated on the verdict form."

Section 1735. Section 46-4-207, MCA, is amended to read:

"46-4-207. Coroner's register. The county coroner shall keep an official register, in which ~~he must~~ *the coroner shall* enter the date of holding all inquests, the cause and circumstances of death, if known, and the name of the deceased, when known, and, when not, ~~such~~ *a* description of the deceased ~~as~~ *that* may be sufficient for identification."

Section 1736. Section 46-6-412, MCA, is amended to read:

"46-6-412. Arrest by officer of ~~the~~ United States customs service or immigration and naturalization service. An officer of the United States customs service or immigration and naturalization service may make an arrest without a warrant if the officer is on duty and one or more of the following situations exist:

(1) A person commits or attempts to commit an offense in the officer's presence.

(2) The officer believes on reasonable grounds that the person is committing an offense or that the person committed an offense and the circumstances require ~~his~~ *the person's* immediate arrest.

(3) The officer believes on reasonable grounds that a warrant for the person's arrest has been issued in this state.

(4) The officer believes on reasonable grounds that a felony warrant for the person's arrest has been issued in another jurisdiction."

Section 1737. Section 46-7-101, MCA, is amended to read:

"46-7-101. Appearance of arrested person — use of two-way electronic audio-video communication. (1) A person arrested, whether with or without a warrant, must be taken without unnecessary delay before the nearest and most accessible judge for an initial appearance.

(2) A defendant's initial appearance before a judge may, in the discretion of the court, be satisfied either by the defendant's physical appearance before the court or by two-way electronic audio-video communication. The audio-video communication must operate so that the defendant and the judge can see each other simultaneously and converse with each other and so that the defendant and ~~his~~ *the defendant's* counsel, if any, can communicate privately. A judge may order a defendant's physical appearance in court for an initial appearance hearing."

Section 1738. Section 46-9-111, MCA, is amended to read:

"46-9-111. Release on own recognizance. Any person in custody, if otherwise eligible for bail, may be released on ~~his~~ *the person's* personal recognizance subject to ~~such~~ conditions ~~as~~ *that* the court may reasonably prescribe to ~~assure his~~ *ensure the person's* appearance when required. Any

person released as ~~herein~~ provided ~~shall~~ *in this section must* be fully apprised by the court of the penalty provided for failure to comply with the terms of ~~his~~ *the person's* recognizance."

Section 1739. Section 46-9-203, MCA, is amended to read:

"46-9-203. Report to county attorney concerning drug users. A city judge, judge of a municipal court, or justice of the peace shall report immediately to the county attorney of the county ~~wherein his~~ *in which the judge's or justice's* court is located any knowledge or information acquired by ~~him~~ *the judge or justice* in a trial of a cause or hearing before ~~him~~ *the judge or justice*~~,~~ ~~which knowledge or information~~ *that* shows or tends to show that any person is a drug user or drug addict. If ~~such~~ *the* person is under arrest or liberated on bail at the time the knowledge or information is acquired, ~~such~~ *the* person may not be liberated, if under arrest, or the bail discharged by the judge or justice of the peace until the report is made to the county attorney."

Section 1740. Section 46-9-206, MCA, is amended to read:

"46-9-206. Setting bail — appearance or use of two-way electronic audio-video communication. The requirement that a defendant be taken before a judge for setting of bail may, in the discretion of the court, be satisfied either by the defendant's physical appearance before the court or by two-way electronic audio-video communication. The audio-video communication must operate so that the defendant and the judge can see each other simultaneously and converse with each other, so that the defendant and ~~his~~ *the defendant's* counsel, if any, can communicate privately, and so that the defendant and ~~his~~ *the defendant's* counsel are both physically present in the same place during the two-way electronic audio-video communication. The defendant may waive the requirement that ~~his~~ *the defendant's* counsel be in the defendant's physical presence during the two-way electronic audio-video communication. A judge may order a defendant's physical appearance in court for the hearing of an application for admission to bail."

Section 1741. Section 46-9-301, MCA, is amended to read:

"46-9-301. Determining the amount of bail. In all cases ~~that~~ *in which* bail is determined to be necessary, bail must be reasonable in amount and the amount ~~shall~~ *must* be:

(1) sufficient to ensure the presence of the defendant in a pending criminal proceeding;

(2) sufficient to ~~assure~~ *ensure* compliance with the conditions set forth in the bail;

(3) sufficient to protect any person from bodily injury;

(4) not oppressive;

(5) commensurate with the nature of the offense charged;

(6) considerate of the financial ability of the accused;

(7) considerate of the defendant's prior record;

(8) considerate of the length of time the defendant has resided in the community and of ~~his~~ *the defendant's* ties to the community;

(9) considerate of the defendant's family relationships and ties;

(10) considerate of the defendant's employment status; and

(11) sufficient to include the charge imposed in 46-18-236."

Section 1742. Section 46-9-502, MCA, is amended to read:

"46-9-502. Conditions performed — bail discharged. When the conditions of bail have been performed and the accused has been discharged from ~~his~~ *the accused's* obligations in the cause, the court shall return to ~~him~~ *the accused* or ~~his~~ *the accused's* sureties the deposit of any cash, stocks, or bonds. If the bail is real estate, the court shall notify in writing the county clerk and recorder and the lien of the bail bond on the real estate ~~shall~~ *must* be discharged. If the bail is a written undertaking or a commercial surety bond, it ~~shall~~ *must* be discharged and the sureties exonerated."

Section 1743. Section 46-11-301, MCA, is amended to read:

"46-11-301. Summoning grand jury. (1) A grand jury may only be drawn and summoned when the district judge, in ~~his~~ *the judge's* discretion, considers a grand jury to be in the public interest and orders the grand jury to be drawn or summoned. The composition and drawing of a grand jury must be in accordance with the provisions of Title 3, chapter 15, part 6.

(2) The district judge may direct the selection of one or more alternate jurors, who shall sit as regular jurors before an indictment is found or a grand jury investigation is concluded. A member of the jury who becomes unable to perform the juror's duty may be replaced by an alternate."

Section 1744. Section 46-11-303, MCA, is amended to read:

"46-11-303. ~~Foreman~~ *Lead juror*. The district court shall appoint one of the jurors to be ~~foreman~~ *lead juror*. The ~~foreman~~ *lead juror* has the power to administer oaths or affirmations and shall sign all indictments. The ~~foreman~~ *lead juror* or another juror designated by the ~~foreman~~ *lead juror* shall keep a record of the number of jurors concurring in the finding of every indictment and shall file the record with the clerk of court, but the record may not be made public except on order of the district court."

Section 1745. Section 46-11-313, MCA, is amended to read:

"46-11-313. Subpoena of witnesses. (1) A subpoena requiring the attendance of a witness before the grand jury may be signed and issued by the county attorney, by the ~~foreman~~ *lead juror* of the grand jury, or by the judge of the district court.

(2) The fees and mileage of witnesses subpoenaed pursuant to this section must be the same as those for witnesses in criminal actions.

(3) All provisions relating to subpoenas in criminal actions apply to subpoenas issued pursuant to this section, including the provisions of Title 46, chapter 15, part 1."

Section 1746. Section 46-11-331, MCA, is amended to read:

"46-11-331. Finding ~~an~~ indictment. (1) The grand jury shall find an indictment when all the evidence before it taken together would in its judgment warrant a conviction by a trial jury. An indictment may be found only upon the concurrence of at least eight grand jurors.

(2) If a complaint or information is pending against the defendant and eight jurors do not concur in finding an indictment, the ~~foreman~~ *lead juror* shall report the decision to the district court judge."

Section 1747. Section 46-11-332, MCA, is amended to read:

"46-11-332. Presenting the indictment. (1) An indictment, when found by the grand jury, must be signed by and presented by the ~~foreman~~ *lead juror* to the district court in the presence of the grand jury and must be filed with the

clerk. The district court shall then issue an arrest warrant or summons for the defendant.

(2) If a complaint or information is pending against the defendant and eight jurors do not concur in finding an indictment, the ~~foreman~~ *lead juror* shall report the decision to the district court judge."

Section 1748. Section 46-11-401, MCA, is amended to read:

"46-11-401. Form of charge. (1) The charge must be in writing and in the name of the state or the appropriate county or municipality and must specify the court in which the charge is filed. The charge must be a plain, concise, and definite statement of the offense charged, including the name of the offense, whether the offense is a misdemeanor or felony, the name of the person charged, and the time and place of the offense as definitely as can be determined. The charge must state for each count the official or customary citation of the statute, rule, regulation, or other provision of law that the defendant is alleged to have violated.

(2) If the charge is by information or indictment, it must include endorsed on the information or indictment the names of the witnesses for the prosecution, if known.

(3) If the charge is by complaint, it must be signed by a sworn peace officer, under oath by a person having knowledge of the facts, or by the prosecutor.

(4) If the charge is by information, it must be signed by the prosecutor. If the charge is by indictment, it must be signed by the ~~foreman~~ *lead juror* of the grand jury.

(5) The court, on motion of the defendant, may strike surplusage from an indictment or information.

(6) A charge may not be dismissed because of a formal defect that does not tend to prejudice a substantial right of the defendant."

Section 1749. Section 46-12-104, MCA, is amended to read:

"46-12-104. Bringing defendant into court. The court may direct any official who has custody of the defendant to bring ~~him~~ *the defendant* before the court to be arraigned."

Section 1750. Section 46-12-203, MCA, is amended to read:

"46-12-203. Time allowed to answer. If on the arraignment the defendant requires it, ~~he~~ *the defendant* must be allowed a reasonable time, not less than 1 day, to answer or otherwise plead to the indictment, information, or complaint. The answer may include appropriate pretrial motions."

Section 1751. Section 46-16-603, MCA, is amended to read:

"46-16-603. Form of verdict. (1) The jury shall return a verdict as instructed by the court. The verdict must be unanimous in all criminal actions. The verdict must be signed by the ~~foreman~~ *lead juror* and returned by the jury to the judge in open court.

(2) If there are two or more defendants, the jury, at any time during its deliberations, may return a verdict or verdicts with respect to a defendant or defendants as to whom it has agreed. If the jury cannot agree with respect to all, the defendant or defendants as to whom it does not agree may be tried again."

Section 1752. Section 46-16-606, MCA, is amended to read:

"46-16-606. Reasonable doubt as to which offense convicts only of least offense. When it appears beyond a reasonable doubt that the defendant

has committed an offense but there is reasonable doubt as to whether ~~he~~ *the defendant* is guilty of a given offense or one or more lesser included offenses, ~~he~~ *the defendant* may only be convicted of the greatest included offense about which there is no reasonable doubt."

Section 1753. Section 46-17-302, MCA, is amended to read:

"46-17-302. Execution of judgment. (1) The judgment must be executed by the sheriff, constable, marshal, or ~~policeman~~ *police officer* of the jurisdiction in which the conviction was had.

(2) When a judgment of imprisonment is entered, a certified copy ~~thereof~~ *of the judgment* must be delivered to the sheriff or other officer, which is a sufficient warrant for its execution.

(3) If a judgment is rendered imposing a fine only without imprisonment for nonpayment and the defendant is not detained for any other legal cause, ~~he~~ *the defendant* must be discharged as soon as the judgment is given.

(4) A judgment that the defendant pay a fine may also direct that ~~he~~ *the defendant* be imprisoned until the fine ~~be~~ *is* satisfied in the proportion of 1 day's imprisonment for every $25 of the fine. When the judgment is rendered, the defendant must be held in custody the time specified in the judgment unless the fine is paid.

(5) Any officer charged with the collection of fines under the provisions of this chapter ~~must~~ *shall* return the execution to the judge within 30 days from its delivery to ~~him~~ *the officer* and pay over to the judge the money collected, deducting ~~his~~ *the officer's* fees for the collection."

Section 1754. Section 46-18-232, MCA, is amended to read:

"46-18-232. Payment of costs by defendant. (1) A court may require a convicted defendant in a felony or misdemeanor case to pay costs, as defined in 25-10-201, plus costs of jury service as a part of ~~his~~ *the* sentence. ~~Such~~ *The* costs ~~shall~~ *must* be limited to expenses specifically incurred by the prosecution in connection with the proceedings against the defendant.

(2) The court may not sentence a defendant to pay costs unless the defendant is or will be able to pay them. In determining the amount and method of payment of costs, the court shall take into account the financial resources of the defendant and the nature of the burden that payment of costs will impose.

(3) A defendant who has been sentenced to pay costs and who is not in default in the payment ~~thereof~~ may at any time petition the court that sentenced ~~him~~ *the defendant* for remission of the payment of costs or of any unpaid portion ~~thereof~~ *of the costs*. If it appears to the satisfaction of the court that payment of the amount due will impose manifest hardship on the defendant or ~~his~~ *the defendant's* immediate family, the court may remit all or part of the amount due in costs or modify the method of payment."

Section 1755. Section 46-18-233, MCA, is amended to read:

"46-18-233. Fine or costs as ~~a~~ condition on suspended or deferred sentence. (1) Whenever a defendant is sentenced to pay a fine or costs under 46-18-231 or 46-18-232 and the imposition or execution of the rest of ~~his~~ *the defendant's* sentence is deferred or suspended, the court may make payment of the fine or costs a condition for probation.

(2) A suspended or deferred sentence may not be revoked if the defendant defaults on the payment of the fine and the default is not attributable to an

intentional refusal to obey the order of the court or a failure to make a good faith effort to make the payment."

Section 1756. Section 46-18-702, MCA, is amended to read:

"46-18-702. Disposition of prisoner's earnings. The earnings of the prisoner ~~shall~~ *must* be collected by the sheriff. From ~~such~~ *those* earnings, the sheriff shall pay the prisoner's board and personal expenses both inside and outside the jail and, to the extent directed by the court, pay the support of ~~his~~ *the prisoner's* dependents, if any. Any balance ~~shall~~ *must* be retained until ~~his~~ *the prisoner's* discharge."

Section 1757. Section 46-18-703, MCA, is amended to read:

"46-18-703. Transfer to another county. The court may by order authorize the sheriff of the sentencing county to arrange with a sheriff of any other county within the state of Montana to have the convicted person transferred to the other county where it appears the convicted person can continue ~~his~~ *the person's* regular employment in the latter county. When ~~such~~ *the* transfer has been made to another county, the sheriff of the sentencing county shall still collect all ~~moneys~~ *money* earned by the convicted person and shall dispose of ~~said moneys~~ *the money* as provided by 46-18-702."

Section 1758. Section 46-18-705, MCA, is amended to read:

"46-18-705. Effect of violation of conditions. In cases ~~where~~ *in which* the convicted person violates the conditions of ~~said~~ *a* sentence, ~~he shall~~ *the person must* be returned to the court. The court may then require that the balance of ~~his~~ *the person's* sentence be spent in full confinement, and further, the court may cancel any diminution of sentence granted under this part."

Section 1759. Section 46-19-203, MCA, is amended to read:

"46-19-203. Procedure for determining if woman is pregnant. If there is good reason to suppose *that* a woman against whom a judgment of death is rendered is pregnant, the sheriff of the county, with the concurrence of the judge of the court by which the judgment was rendered, ~~must~~ *shall* summon a jury of three physicians to inquire into the supposed pregnancy. Immediate notice of this inquiry must be given to the county attorney of the county who must attend the inquiry and may produce ~~his own~~ witnesses."

Section 1760. Section 46-19-204, MCA, is amended to read:

"46-19-204. Proceedings following determination regarding pregnancy. If it is found by the inquiry *referred to in 46-19-203* that the woman is not pregnant, the warden of the Montana state prison shall execute the judgment. If it is found that the woman is pregnant, the warden shall suspend the execution of judgment and transmit the inquisition to the governor. When the governor is satisfied that the woman is no longer pregnant, ~~he~~ *the governor* may issue a death warrant appointing a day for the execution of the judgment. The warrant must recite the conviction, the judgment, the method of execution, that execution of judgment was suspended due to pregnancy, that the governor is satisfied that the woman is no longer pregnant, the appointed date for the execution, and the duration of the warrant."

Section 1761. Section 46-19-301, MCA, is amended to read:

"46-19-301. Western Interstate Corrections Compact — contents. The Western Interstate Corrections Compact as contained herein is hereby enacted into law and entered into on behalf of this state with any and all other states legally joining therein in a form substantially as follows:

WESTERN INTERSTATE CORRECTIONS COMPACT

Article I. Purpose and Policy

The party states, desiring by common action to improve their institutional facilities and provide programs of sufficiently high quality for the confinement, treatment, and rehabilitation of various types of offenders, declare that it is the policy of each of the party states to provide such facilities and programs on the basis of cooperation with one another, thereby serving the best interests of such offenders and of society. The purpose of this compact is to provide for the development and execution of such programs of cooperation for the confinement, treatment, and rehabilitation of offenders.

Article II. Definitions

As used in this compact, unless the context clearly requires otherwise:

(1) "state" means a state of the United States or, subject to the limitation contained in Article VII, Guam;

(2) "sending state" means a state party to this compact in which conviction was had;

(3) "receiving state" means a state party to this compact to which an inmate is sent for confinement other than a state in which conviction was had;

(4) "inmate" means a male or female offender who is under sentence to or confined in a prison or other correctional institution;

(5) "institution" means any prison, reformatory, or other correctional facility (including but not limited to a facility for the mentally ill or mentally defective) in which inmates may lawfully be confined.

Article III. Contracts

(1) Each party state may make one or more contracts with any one or more of the other party states for the confinement of inmates on behalf of a sending state in institutions situated within receiving states. Any such contract shall provide for:

(a) its duration;

(b) payments to be made to the receiving state by the sending state for inmate maintenance, extraordinary medical and dental expenses, and any participation in or receipt by inmates of rehabilitative or correctional services, facilities, programs, or treatment not reasonably included as part of normal maintenance;

(c) participation in programs of inmate employment, if any; the disposition or crediting of any payments received by inmates on account thereof; and the crediting of proceeds from or disposal of any products resulting therefrom;

(d) delivery and retaking of inmates;

(e) such other matters as may be necessary and appropriate to fix the obligations, responsibilities, and rights of the sending and receiving states.

(2) Prior to the construction or completion of construction of any institution or addition thereto by a party state, any other party state or states may contract therewith for the enlargement of the planned capacity of the institution or addition thereto, or for the inclusion therein of particular equipment or structures, and for the reservation of a specific ~~per centum~~ *percent* of the capacity of the institution to be kept available for use by inmates of the sending state or states so contracting. Any sending state so contracting may, to the extent that moneys are legally available therefor, pay to the receiving state a

reasonable sum as consideration for such enlargement of capacity or provision of equipment or structures and reservation of capacity. Such payment may be in a lump sum or in installments as provided in the contract.

(3) The terms and provisions of this compact shall be a part of any contract entered into by the authority of or pursuant thereto, and nothing in any such contract shall be inconsistent therewith.

Article IV. Procedures and Rights

(1) Whenever the duly constituted judicial or administrative authorities in a state party to this compact, and which has entered into a contract pursuant to Article III, shall decide that confinement in or transfer of an inmate to an institution within the territory of another party state is necessary in order to provide adequate quarters and care or desirable in order to provide an appropriate program of rehabilitation or treatment, said officials may direct that the confinement be within an institution within the territory of said other party state, the receiving state to act in that regard solely as agent for the sending state.

(2) The appropriate officials of any state party to this compact shall have access at all reasonable times to any institution in which it has a contractual right to confine inmates for the purpose of inspecting the facilities thereof and visiting such of its inmates as may be confined in the institution.

(3) Inmates confined in an institution pursuant to the terms of this compact shall at all times be subject to the jurisdiction of the sending state and may at any time be removed therefrom for transfer to a prison or other institution within the sending state, for transfer to another institution in which the sending state may have a contractual or other right to confine inmates, for release on probation or parole, for discharge, or for any other purpose permitted by the laws of the sending state; provided that the sending state shall continue to be obligated to such payments as may be required pursuant to the terms of any contract entered into under the terms of Article III.

(4) Each receiving state shall provide regular reports to each sending state on the inmates of that sending state in institutions pursuant to this compact including a conduct record of each inmate and certify said record to the official designated by the sending state in order that each inmate may have the benefit of ~~his or her~~ *the inmate's* record in determining and altering the disposition of said inmate in accordance with the law which may obtain in the sending state and in order that the same may be a source of information for the sending state.

(5) All inmates who may be confined in an institution pursuant to the provisions of this compact shall be treated in a reasonable and humane manner and shall be cared for and treated equally with such similar inmates of the receiving state as may be confined in the same institution. The fact of confinement in a receiving state shall not deprive any inmate so confined of any legal rights which said inmate would have had if confined in an appropriate institution of the sending state.

(6) Any hearing or hearings to which an inmate confined pursuant to this compact may be entitled by the laws of the sending state may be had before the appropriate authorities of the sending state or of the receiving state if authorized by the sending state. The receiving state shall provide adequate facilities for such hearings as may be conducted by the appropriate officials of a sending state. In the event such hearing or hearings are had before officials of the receiving state, the governing law shall be that of the sending state and a record of the hearing or hearings as prescribed by the sending state shall be

made. Said record together with any recommendations of the hearing officials shall be transmitted forthwith to the official or officials before whom the hearing would have been had if it had taken place in the sending state. In any and all proceedings had pursuant to the provisions of this subdivision, the officials of the receiving state shall act solely as agents of the sending state and no final determination shall be made in any matter except by the appropriate officials of the sending state. Costs of records made pursuant to this subsection shall be borne by the sending state.

(7) Any inmate confined pursuant to this compact shall be released within the territory of the sending state unless the inmate and the sending and receiving states shall agree upon release in some other place. The sending state shall bear the cost of such return to its territory.

(8) Any inmate confined pursuant to the terms of this compact shall have any and all rights to participate in and derive any benefits, incur or be relieved of any obligations, or have such obligations modified or ~~his~~ *the inmate's* status changed on account of any action or proceeding in which ~~he~~ *the inmate* could have participated if confined in any appropriate institution of the sending state located within such state.

(9) The parent, guardian, trustee, or other person or persons entitled under the laws of the sending state to act for, advise, or otherwise function with respect to any inmate shall not be deprived of or restricted in ~~his~~ *the person's* exercise of any power in respect of any inmate confined pursuant to the terms of this compact.

Article V. Acts Not Reviewable in Receiving State — Extradition

(1) Any decision of the sending state in respect of any matter over which it retains jurisdiction pursuant to this compact shall be conclusive upon and not reviewable within the receiving state, but if at the time the sending state seeks to remove an inmate from an institution in the receiving state there is pending against the inmate within such state any criminal charge or if the inmate is suspected of having committed within such state a criminal offense, the inmate shall not be returned without the consent of the receiving state until discharged from prosecution or other form of proceeding, imprisonment, or detention for such offense. The duly accredited officers of the sending state shall be permitted to transport inmates pursuant to this compact through any and all states party to this compact without interference.

(2) An inmate who escapes from an institution in which ~~he~~ *the inmate* is confined pursuant to this compact shall be deemed a fugitive from the sending state and from the state in which the institution is situated. In the case of an escape to a jurisdiction other than the sending or receiving state, the responsibility for institution of extradition proceedings shall be that of the sending state, but nothing contained herein shall be construed to prevent or affect the activities of officers and agencies of any jurisdiction directed toward the apprehension and return of an escapee.

Article VI. Federal Aid

Any state party to this compact may accept federal aid for use in connection with any institution or program, the use of which is or may be affected by this compact or any contract pursuant hereto, and any inmate in a receiving state pursuant to this compact may participate in any such federally aided program or activity for which the sending and receiving states have made contractual provision, provided that, if such program or activity is not part of the customary

correctional regimen, the express consent of the appropriate official of the sending state shall be required therefor.

Article VII. Entry into Force

This compact shall enter into force and become effective and binding upon the states so acting when it has been enacted into law by any two contiguous states from among the states of Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nebraska, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming. For the purposes of this article, Alaska and Hawaii shall be deemed contiguous to each other; to any and all of the states of California, Oregon, and Washington; and to Guam. Thereafter, this compact shall enter into force and become effective and binding as to any other of said states or any other state contiguous to at least one party state upon similar action by such state. Guam may become party to this compact by taking action similar to that provided for joinder by any other eligible party state and upon the consent of congress to such joinder. For the purposes of this article, Guam shall be deemed contiguous to Alaska, Hawaii, California, Oregon, and Washington.

Article VIII. Withdrawal and Termination

This compact shall continue in force and remain binding upon a party state until it shall have enacted a statute repealing the same and providing for the sending of formal written notice of withdrawal from the compact to the appropriate officials of all other party states. An actual withdrawal shall not take effect until 2 years after the notices provided in said statute have been sent. Such withdrawal shall not relieve the withdrawing state from its obligations assumed hereunder prior to the effective date of withdrawal. Before the effective date of withdrawal, a withdrawing state shall remove to its territory, at its own expense, such inmates as it may have confined pursuant to the provisions of this compact.

Article IX. Other Arrangements Unaffected

Nothing contained in this compact shall be construed to abrogate or impair any agreement or other arrangement which a party state may have with a nonparty state for the confinement, rehabilitation, or treatment of inmates or to repeal any other laws of a party state authorizing the making of cooperative institutional arrangements.

Article X. Construction and Severability

The provisions of this compact shall be liberally construed and shall be severable. If any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters."

Section 1762. Section 46-19-401, MCA, is amended to read:

"46-19-401. Compact adopted — text. The Interstate Corrections Compact is entered into by this state with any and all other states legally joining therein in the form substantially as follows:

INTERSTATE CORRECTIONS COMPACT

Article I. Purpose and Policy

The party states, desiring by common action to fully utilize and improve their institutional facilities and provide adequate programs for the confinement, treatment and rehabilitation of various types of offenders, declare that it is the policy of each of the party states to provide such facilities and programs on a basis of cooperation with one another, thereby serving the best interests of such offenders and of society and effecting economies in capital expenditures and operational costs. The purpose of this compact is to provide for the mutual development and execution of such programs of cooperation for the confinement, treatment and rehabilitation of offenders with the most economical use of human and material resources.

Article II. Definitions

As used in this compact, unless the context requires otherwise:

(a) "State" means a state of the United States; the United States of America; a territory or possession of the United States; the District of Columbia; the Commonwealth of Puerto Rico.

(b) "Sending state" means a state party to this compact in which conviction or court commitment was had.

(c) "Receiving state" means a state party to this compact to which an inmate is sent for confinement other than a state in which conviction or court commitment was had.

(d) "Inmate" means a male or female offender who is committed under sentence to or confined in a penal or correctional institution.

(e) "Institution" means any penal or correctional facility, including but not limited to a facility for the mentally ill or mentally defective, in which inmates may lawfully be confined.

Article III. Contracts

(a) Each party state may make one or more contracts with any one or more of the other party states for the confinement of inmates on behalf of a sending state in institutions situated within receiving states. Any such contract shall provide for:

1. Its duration.

2. Payments to be made to the receiving state by the sending state for inmate maintenance, extraordinary medical and dental expenses, and any participation in or receipt by inmates of rehabilitative or correctional services, facilities, programs or treatment not reasonably included as part of normal maintenance.

3. Participation in programs of inmate employment, if any; the disposition or crediting of any payments received by inmates on account thereof; and the crediting of proceeds from or disposal of any products resulting therefrom.

4. Delivery and retaking of inmates.

5. Such other matters as may be necessary and appropriate to fix the obligations, responsibilities and rights of the sending and receiving states.

(b) The terms and provisions of this compact shall be a part of any contract entered into by the authority of or pursuant thereto, and nothing in any such contract shall be inconsistent therewith.

Article IV. Procedures and Rights

(a) Whenever the duly constituted authorities in a state party to this compact, and which has entered into a contract pursuant to Article III, shall decide that confinement in, or transfer of an inmate to, an institution within the territory of another party state is necessary or desirable in order to provide adequate quarters and care or an appropriate program of rehabilitation or treatment, said officials may direct that the confinement be within an institution within the territory of said other party state, the receiving state to act in that regard solely as agent for the sending state.

(b) The appropriate officials of any state party to this compact shall have access, at all reasonable times, to any institution in which it has a contractual right to confine inmates for the purpose of inspecting the facilities thereof and visiting such of its inmates as may be confined in the institution.

(c) Inmates confined in an institution pursuant to the terms of this compact shall at all times be subject to the jurisdiction of the sending state and may at any time be removed therefrom for transfer to a prison or other institution within the sending state. For transfer to another institution in which the sending state may have a contractual or other right to confine inmates, for release on probation or parole, for discharge, or for any other purpose permitted by the laws of the sending state; provided that the sending state shall continue to be obligated to such payments as may be required pursuant to the terms of any contract entered into under the terms of Article III.

(d) Each receiving state shall provide regular reports to each sending state on the inmates of that sending state in institutions pursuant to this compact including a conduct record of each inmate and certify said record to the official designated by the sending state, in order that each inmate may have official review of ~~his or her~~ *the inmate's* record in determining and altering the disposition of said inmate in accordance with the law which may obtain in the sending state and in order that the same may be a source of information for the sending state.

(e) All inmates who may be confined in an institution pursuant to the provisions of this compact shall be treated in a reasonable and humane manner and shall be treated equally with such similar inmates of the receiving state as may be confined in the same institution. The fact of confinement in a receiving state shall not deprive any inmate so confined of any legal rights which said inmate would have had if confined in an appropriate institution of the sending state.

(f) Any hearing or hearings to which an inmate confined pursuant to this compact may be entitled by the laws of the sending state may be had before the appropriate authorities of the sending state, or of the receiving state if authorized by the sending state. The receiving state shall provide adequate facilities for such hearings as may be conducted by the appropriate officials of a sending state. In the event such hearing or hearings are had before officials of the receiving state, the governing law shall be that of the sending state and a record of the hearing or hearings as prescribed by the sending state shall be made. Said record together with any recommendations of the hearing officials shall be transmitted forthwith to the official or officials before whom the hearing would have been had if it had taken place in the sending state. In any and all proceedings had pursuant to the provisions of this subsection, the officials of the receiving state shall act solely as agents of the sending state and no final

determination shall be made in any matter except by the appropriate officials of the sending state.

(g) Any inmate confined pursuant to this compact shall be released within the territory of the sending state unless the inmate, and the sending and receiving states, shall agree upon release in some other place. The sending state shall bear the cost of such return to its territory.

(h) Any inmate confined pursuant to the terms of this compact shall have any and all rights to participate in and derive any benefits or incur or be relieved of any obligations or have such obligations modified or ~~his~~ *the inmate's* status changed on account of any action or proceeding in which ~~he~~ *the inmate* could have participated if confined in any appropriate institution of the sending state located within such state.

(i) The parent, guardian, trustee, or other person or persons entitled under the laws of the sending state to act for, advise, or otherwise function with respect to any inmate shall not be deprived of or restricted in ~~his~~ *the inmate's* exercise of any power in respect of any inmate confined pursuant to the terms of this compact.

Article V. Acts Not Reviewable in Receiving State — Extradition

(a) Any decision of the sending state in respect of any matter over which it retains jurisdiction pursuant to this compact shall be conclusive upon and not reviewable within the receiving state, but if at the time the sending state seeks to remove an inmate from an institution in the receiving state there is pending against the inmate within such state any criminal charge or if the inmate is formally accused of having committed within such state a criminal offense, the inmate shall not be returned without the consent of the receiving state until discharged from prosecution or other form of proceeding, imprisonment or detention for such offense. The duly accredited officers of the sending state shall be permitted to transport inmates pursuant to this compact through any and all states party to this compact without interference.

(b) An inmate who escapes from an institution in which ~~he~~ *the inmate* is confined pursuant to this compact shall be deemed a fugitive from the sending state and from the state in which the institution is situated. In the case of an escape to a jurisdiction other than the sending or receiving state, the responsibility for institution of extradition or rendition proceedings shall be that of the sending state, but nothing contained herein shall be construed to prevent or affect the activities of officers and agencies of any jurisdiction directed toward the apprehension and return of an escapee.

Article VI. Federal Aid

Any state party to this compact may accept federal aid for use in connection with any institution or program, the use of which is or may be affected by this compact or any contract pursuant hereto and any inmate in a receiving state pursuant to this compact may participate in any such federally aided program or activity for which the sending and receiving states have made contractual provision, provided that if such program or activity is not part of the customary correctional regimen, the express consent of the appropriate official of the sending state shall be required therefor.

Article VII. Entry Into Force

This compact shall enter into force and become effective and binding upon the states so acting when it has been enacted into law by any two states.

Thereafter, this compact shall enter into force and become effective and binding as to any other of said states upon similar action by such state.

Article VIII. Withdrawal and Termination

This compact shall continue in force and remain binding upon a party state until it shall have enacted a statute repealing the same and providing for the sending of formal written notice of withdrawal from the compact to the appropriate officials of all other party states. An actual withdrawal shall not take effect until one year after the notices provided in said statute have been sent. Such withdrawal shall not relieve the withdrawing state from its obligations assumed hereunder prior to the effective date of withdrawal. Before the effective date of withdrawal, a withdrawing state shall remove to its territory, at its own expense, such inmates as it may have confined pursuant to the provisions of this compact.

Article IX. Other Arrangements Unaffected

Nothing contained in this compact shall be construed to abrogate or impair any agreement or other arrangement which a party state may have with a nonparty state for the confinement, rehabilitation or treatment of inmates nor to repeal any other laws of a party state authorizing the making of cooperative institutional arrangements.

Article X. Construction and Severability

The provisions of this compact shall be liberally construed and shall be severable. If any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters."

Section 1763. Section 46-20-204, MCA, is amended to read:

"46-20-204. Stay of execution and relief pending appeal. (1) If an appeal is taken, a sentence of death ~~shall~~ *must* be stayed by order of the trial court until final order by the supreme court.

(2) If an appeal is taken and the defendant is admitted to bail, a sentence of imprisonment ~~shall~~ *must* be stayed by the trial court.

(3) If an appeal is taken, a sentence to pay a fine or a fine and costs ~~shall~~ *must* be stayed by the trial court or by the reviewing court.

(4) If an appeal is taken and the accused was admitted to probation, ~~he~~ *the accused* shall remain on probation or post bail."

Section 1764. Section 46-20-707, MCA, is amended to read:

"46-20-707. Discharge of defendant on reversal of judgment. If a judgment against the defendant is reversed without ordering a new trial, the appellate court ~~must~~ *shall*:

(1) if ~~he~~ *the defendant* is in custody, direct ~~him~~ *the defendant* to be discharged ~~therefrom~~ *from custody*;

(2) if ~~he~~ *the defendant* is on bail, direct that ~~his~~ *the defendant's* bail be exonerated; or

(3) if money was deposited instead of bail, direct that it be refunded to the defendant."

Section 1765. Section 46-22-103, MCA, is amended to read:

"46-22-103. Writ for purpose of bail. When a person is imprisoned or detained in custody on any criminal charge for want of bail, ~~such~~ *the* person is entitled to a writ of habeas corpus for the purpose of giving bail upon averring that fact in ~~his~~ *the person's* petition, without alleging that ~~he~~ *the person* is illegally confined."

Section 1766. Section 46-23-207, MCA, is amended to read:

"46-23-207. Penalty for disobedience. Any person who ~~shall~~ without just cause ~~fail~~ *fails* or ~~refuse~~ *refuses* to attend and testify, to answer any lawful inquiry, or to produce records, books, papers, and other documents if it is in ~~his~~ *the person's* power to do so in obedience to a subpoena of the board or any member ~~thereof~~ *of the board* shall be punished by a fine of not more than $200, ~~or~~ by imprisonment for not longer than 60 days, or by both ~~such fine and imprisonment~~. Each day ~~such~~ *that a* violation continues ~~shall be deemed~~ *is considered* to be a separate offense."

Section 1767. Section 46-23-316, MCA, is amended to read:

"46-23-316. Governor's report to legislature. The governor shall, as provided in 5-11-210, report to the legislature each case of remission of fine or forfeiture, respite, commutation, or pardon granted since the ~~last~~ previous report, stating the name of the convict, the crime of which ~~he~~ *the convict* was convicted, the sentence and its date, the date of remission, commutation, pardon, or respite, with the reason for granting the same, and the objection, if any, of any of the members of the board made ~~thereto~~ *to the action*."

Section 1768. Section 46-23-1022, MCA, is amended to read:

"46-23-1022. Parole services. (1) To assist parolees the department may, in addition to other services, provide the following:

(a) employment counseling, job placement, and assistance in residential placement;

(b) family and individual counseling and treatment placement;

(c) financial counseling;

(d) vocational and educational counseling and placement; and

(e) referral services to any other state or local agencies.

(2) The department may purchase necessary services for a parolee if they are otherwise unavailable and the parolee is unable to pay for them. It may assess all or part of the costs of such services to a parolee in accordance with ~~his~~ *the parolee's* ability to pay for them."

Section 1769. Section 46-24-204, MCA, is amended to read:

"46-24-204. Scheduling changes. (1) As soon as practicable, the prosecuting attorney shall notify a victim or witness of any scheduling changes that may affect the appearance of the victim or witness at a criminal justice proceeding that ~~he~~ *the victim or witness* is scheduled to attend.

(2) For the purpose of providing notification, the prosecuting attorney shall have available a system for promptly alerting a victim or witness that a scheduling change has been made."

Section 1770. Section 46-30-101, MCA, is amended to read:

"46-30-101. Definitions. ~~Where appearing~~ *As used* in this chapter, the term:

(1) "executive authority" includes the governor and any person performing the functions of governor in a state other than this state or the ~~chairman~~ *presiding officer* of a recognized Indian tribe within the state of Montana;

(2) "governor" includes any person performing the functions of governor by authority of the law of this state;

(3) "state", referring to a state other than this state, includes any other state or territory, organized or unorganized, of the United States of America or an Indian reservation within the state of Montana."

Section 1771. Section 46-30-202, MCA, is amended to read:

"46-30-202. Prosecution pending in this state at time of requisition. If a criminal prosecution has been instituted against ~~such~~ *a* person under the laws of this state and is still pending, the governor~~, in his discretion, either~~ may surrender ~~him~~ *the person* on demand of the executive authority of another state or hold ~~him~~ *the person* until ~~he~~ *the person* has been tried and discharged or convicted and punished in this state."

Section 1772. Section 46-30-211, MCA, is amended to read:

"46-30-211. Demand — form. (1) ~~No~~ *A* demand for the extradition of a person charged with *a* crime in another state ~~shall~~ *may not* be recognized by the governor unless *it is* in writing alleging that the accused was present in the demanding state at the time of the commission of the alleged crime and that ~~thereafter he~~ *after the crime the person* fled from the state, except in cases arising under 46-30-204, and accompanied by:

(a) a copy of an indictment found or information supported by *an* affidavit in the state having jurisdiction of the crime;

(b) a copy of an affidavit made before a magistrate ~~there~~ *in that state*, together with a copy of any warrant ~~which~~ *that* was issued ~~thereon~~; or

(c) a copy of a judgment of conviction or of a sentence imposed in execution ~~thereof~~ *of the judgment or sentence*, together with a statement by the executive authority of the demanding state that the person claimed has escaped from confinement or has broken the terms of ~~his~~ *the person's* bail, probation, or parole.

(2) The indictment, information, or affidavit made before the magistrate must substantially charge the person demanded with having committed a crime under the law of that state. The copy of the indictment, information, affidavit, judgment of conviction, or sentence must be authenticated by the executive authority making the demand."

Section 1773. Section 46-30-212, MCA, is amended to read:

"46-30-212. Investigation by governor. When a demand ~~shall be~~ *is* made upon the governor of this state by the executive authority of another state for the surrender of a person ~~so~~ charged with crime, the governor may call upon the attorney general or any prosecuting officer in this state to investigate or assist in investigating the demand and to report to ~~him~~ *the governor* the situation and circumstances of the person ~~so~~ demanded and whether ~~he~~ *the person* ought to be surrendered."

Section 1774. Section 46-30-213, MCA, is amended to read:

"46-30-213. Issuance of arrest warrant by governor. If the governor decides that the demand should be complied with, ~~he~~ *the governor* shall sign a

warrant of arrest, which ~~shall~~ *must* be sealed with the state seal and be directed to any peace officer or other person whom ~~he~~ *the governor* may think fit to entrust with the execution ~~thereof~~ *of the warrant*. The warrant must substantially recite the facts necessary to the validity of its issuance."

Section 1775. Section 46-30-214, MCA, is amended to read:

"46-30-214. Recall of warrant or alias warrant. The governor may recall ~~his~~ *the governor's* warrant of arrest or may issue another warrant whenever ~~he deems~~ *the governor considers it* proper."

Section 1776. Section 46-30-215, MCA, is amended to read:

"46-30-215. Execution of warrant. ~~Such~~ *The* warrant ~~shall~~ *must* authorize the peace officer or other person to whom *it is* directed to arrest the accused at any time and any place where ~~he~~ *the accused* may be found within the state, to command the aid of all peace officers or other persons in the execution of the warrant, and to deliver the accused, subject to the provisions of this chapter, to the duly authorized agent of the demanding state."

Section 1777. Section 46-30-217, MCA, is amended to read:

"46-30-217. Rights of accused persons — habeas corpus. (1) ~~No~~ *A* person arrested upon ~~such~~ *a* warrant *pursuant to this chapter* may *not* be delivered over to the agent whom the executive authority demanding ~~him~~ *the person* has appointed to receive ~~him~~ *the person* unless ~~he~~ *the person* is first taken without delay before a judge of a court of record in this state, who shall inform ~~him~~ *the person* of the demand made for ~~his~~ *the person's* surrender and of the crime with which ~~he~~ *the person* is charged and that ~~he~~ *the person* has the right to demand and procure legal counsel.

(2) If the prisoner or ~~his~~ *the prisoner's* counsel states that ~~he~~ *the prisoner* or ~~they~~ *the prisoner and counsel* desire to test the legality of ~~his~~ *the prisoner's* arrest, the judge of the court of record shall fix a reasonable time to be allowed ~~him~~ *the prisoner* within which to apply for a writ of habeas corpus. When the writ is applied for, notice ~~thereof~~ *of the writ* and of the time and place of hearing ~~thereon shall~~ *on the writ must* be given to the prosecuting officer of the county in which the arrest was made and in which the accused is in custody and to the agent of the demanding state."

Section 1778. Section 46-30-218, MCA, is amended to read:

"46-30-218. Penalty for violating accused's rights. ~~Any~~ *An* officer who ~~shall deliver~~ *delivers* to the agent for extradition of the demanding state a person in ~~his~~ custody under the governor's warrant in willful disobedience of 46-30-217 shall be guilty of a misdemeanor and on conviction shall be fined not more than $1,000 or be imprisoned not more than 6 months, or both."

Section 1779. Section 46-30-225, MCA, is amended to read:

"46-30-225. Guilt or innocence of accused, when inquired into. The guilt or innocence of the accused as to the crime of which ~~he~~ *the accused* is charged may not be inquired into by the governor or in any proceeding after the demand for extradition provided for in 46-30-211 has been presented to the governor except as it may be involved in identifying the person held as the person charged with the crime."

Section 1780. Section 46-30-226, MCA, is amended to read:

"46-30-226. Confinement of accused in jail on route. (1) The officer or persons executing the governor's warrant of arrest or the agent of the demanding state to whom the prisoner may have been delivered may, when

necessary, confine the prisoner in the jail of any county or city through which ~~he~~ *the prisoner* may pass. The keeper of ~~such~~ *the* jail ~~must~~ *shall* receive and safely keep the prisoner until the officer or person having charge of ~~him~~ *the prisoner* is ready to proceed on ~~his~~ *the* route~~,~~. ~~such~~ *However, the* officer or person~~, however, being~~ *is* chargeable with the expense of keeping *the prisoner*.

(2) The officer or agent of a demanding state to whom a prisoner may have been delivered following extradition proceedings in another state or to whom a prisoner may have been delivered after waiving extradition in ~~such~~ *the* other state and who is passing through this state with ~~such~~ a prisoner for the purpose of immediately returning ~~such~~ *the* prisoner to the demanding state may, when necessary, confine the prisoner in the jail of any county or city through which ~~he~~ *the officer or agent* may pass. The keeper of ~~such~~ *the* jail ~~must~~ *shall* receive and safely keep the prisoner until the officer or agent having charge of ~~him~~ *the prisoner* is ready to proceed on ~~his~~ *the* route~~,~~. ~~such~~ *However, the* officer or agent~~, however, being~~ *is* chargeable with the expense of keeping~~; provided, however~~ *the prisoner. However*, ~~that such~~ *the* officer or agent shall produce and show to the keeper of ~~such~~ *the* jail satisfactory written evidence of the fact that ~~he~~ *the officer or agent* is actually transporting ~~such~~ *the* prisoner to the demanding state after a requisition by the executive authority of ~~such~~ *the* demanding state. ~~Such~~ *The* prisoner ~~shall~~ *is* not ~~be~~ entitled to demand a new requisition while in this state."

Section 1781. Section 46-30-227, MCA, is amended to read:

"46-30-227. Arrest of accused before making of requisition. (1) A judge or magistrate of this state shall issue a warrant directed to any peace officer commanding the officer to apprehend the person named ~~therein~~ *in the warrant* wherever the person may be found in this state and to bring the person before the ~~same~~ *issuer* or any other judge, magistrate, or court ~~who or which~~ *that* may be available in or convenient of access to the place where the arrest is made to answer the charge or complaint and affidavit whenever:

(a) a person within this state is charged on the oath of a credible person before the judge or magistrate with the commission of a crime in another state and, except in cases arising under 46-30-204, with having fled from justice or with having been convicted of a crime in that state and having escaped from confinement or having broken the terms of ~~his~~ *the person's* bail, probation, or parole; or

(b) a complaint is made before the judge or magistrate setting forth on the affidavit of a credible person in another state that a crime has been committed in the other state and that the accused is believed to be in this state and has been charged in the other state with:

(i) the commission of the crime and, except in cases arising under 46-30-204, having fled from justice; or

(ii) having been convicted of a crime in that state and having escaped from bail, probation, or parole.

(2) A certified copy of the sworn charge or complaint and affidavit upon which the warrant is issued ~~shall~~ *must* be attached to the warrant."

Section 1782. Section 46-30-228, MCA, is amended to read:

"46-30-228. Written waiver of extradition proceedings. (1) Any person of this state charged with having committed any crime in another state or alleged to have escaped from confinement or broken the terms of ~~his~~ *the person's* bail, probation, or parole may waive the issuance and service of the warrant provided for in 46-30-213 and 46-30-215 and all other procedures incidental to

extradition proceedings by executing or subscribing in the presence of a judge of any court of record within this state a writing which states that ~~he~~ *the person* consents to return to the demanding state. Before ~~such~~ *a* waiver ~~shall be~~ *is* executed or subscribed by ~~such~~ *the* person, it ~~shall be~~ *is* the duty of ~~such~~ *the* judge to inform ~~such~~ *the* person of ~~his~~ *the person's* rights to the issuance and service of a warrant of extradition and to obtain a writ of habeas corpus as provided for in 46-30-217.

(2) If and when ~~such~~ consent has been duly executed, it ~~shall forthwith~~ *must, without delay,* be forwarded to the office of the governor of this state and filed ~~therein~~ *in the governor's office*. The judge shall direct the officer having ~~such~~ *the* person in custody to deliver ~~forthwith such~~*, without delay, the* person to the duly accredited agent or agents of the demanding state and shall deliver or cause to be delivered to ~~such~~ *the* agent or agents a copy of ~~such~~ *the* consent.

(3) ~~Nothing in this~~ *This* section ~~shall be deemed to~~ *does not* limit the rights of the accused person to return voluntarily and without formality to the demanding state, nor ~~shall~~ *may* this waiver procedure be ~~deemed~~ *considered* to be an exclusive procedure or to limit the powers, rights, or duties of the officers of the demanding state or of this state."

Section 1783. Section 46-30-229, MCA, is amended to read:

"46-30-229. Prior waiver of extradition. (1) A person who is alleged to have violated the terms of ~~his~~ *the person's* bail, probation, parole, or any other conditional release from another state and who is held in this state may be released to the duly authorized agent of that other state without the warrant provided for in 46-30-213 if the following has occurred:

(a) a district court in this state has held a hearing at which the state has presented:

(i) a certified copy of an agreement to waive extradition, signed by the person~~,~~ or an order from the other state releasing the person on the condition that ~~he~~ *the person* waive extradition;

(ii) a certified copy of the warrant or order from the other state directing the return of the person for violating the terms of ~~his~~ *the person's* release; and

(iii) evidence that the person is the same person named in the warrant or order; and

(b) the district court has found that there is probable cause to believe that the person is the same person charged in the warrant or order. Whenever a district court makes this finding, it shall, except as provided in subsection (2), order that the person be remanded to custody and delivered to agents of the other state. The court shall also advise the person of ~~his~~ *the* right to contest the order by filing a writ of habeas corpus.

(2) If the person wishes to test the validity of the order issued pursuant to subsection (1)(b), the court shall fix a reasonable time for ~~him~~ *the person* to apply for a writ of habeas corpus before ~~he~~ *the person* may be released to agents from the other state."

Section 1784. Section 46-30-301, MCA, is amended to read:

"46-30-301. Arrest of accused without warrant. The arrest of a person may *also* be lawfully made ~~also~~ by any peace officer or a private person without a warrant upon reasonable information that the accused stands charged in the courts of a state with a crime punishable by death or imprisonment for a term of 1 year or more. When arrested under this section, the accused must be taken before a judge or magistrate with all practicable speed and complaint must be

made against ~~him~~ *the accused* under oath setting forth the ground for the arrest as *provided* in 46-30-227. After the complaint is made, ~~his~~ *the accused's* answer must be heard as if ~~he~~ *the accused* had been arrested on a warrant."

Section 1785. Section 46-30-302, MCA, is amended to read:

"46-30-302. Commitment to await requisition. If from the examination before the judge or magistrate it appears that the person held is the person charged with having committed the crime alleged and, except in cases arising under 46-30-204, that ~~he~~ *the person* has fled from justice, the judge or magistrate ~~must~~ *shall* by a warrant reciting the accusation commit ~~him~~ *the person* to the county jail for ~~such~~ a time not exceeding 30 days and specified in the warrant ~~as~~ *that* will enable the arrest of the accused to be made under a warrant of the governor on a requisition of the executive authority of the state having jurisdiction of the offense~~,~~ unless the accused ~~give~~ *posts* bail as provided in 46-30-303 or until ~~he shall be~~ *the accused is* legally discharged."

Section 1786. Section 46-30-303, MCA, is amended to read:

"46-30-303. Bail while awaiting requisition. Unless the offense with which the prisoner is charged is shown to be an offense punishable by death or life imprisonment under the laws of the state in which it was committed, a judge or magistrate in this state may admit the person arrested to bail by bond or undertaking with sufficient sureties and in ~~such~~ *a* sum ~~as he deems~~ *that the judge or magistrate considers* proper, conditioned for ~~his~~ *the prisoner's* appearance before ~~him~~ *the judge or magistrate* at a time specified in ~~such~~ *the* bond or undertaking and for ~~his~~ *the prisoner's* surrender to be arrested upon the warrant of the governor of this state."

Section 1787. Section 46-30-304, MCA, is amended to read:

"46-30-304. Extension of time of commitment or bail. If the accused is not arrested under the warrant of the governor by the expiration of the time specified in the warrant, bond, or undertaking, a judge or magistrate may discharge ~~him~~ *the accused* or may recommit ~~him~~ *the accused* for a further period of 60 days or a supreme court justice or district court judge may again take bail for ~~his~~ *the accused's* appearance and surrender, as provided in 46-30-303, for a period not to exceed 60 days after the date of the new bond or undertaking."

Section 1788. Section 46-30-305, MCA, is amended to read:

"46-30-305. Forfeiture of bail. If the prisoner is admitted to bail and fails to appear and surrender ~~himself~~ according to the conditions of ~~his~~ *the prisoner's* bond, the judge or magistrate by proper order shall declare the bond forfeited and order ~~his~~ *the prisoner's* immediate arrest without warrant if ~~he be~~ *the prisoner is* within this state. Recovery may be had on ~~such~~ *the* bond in the name of the state as in the case of other bonds or undertakings given by the accused in criminal proceedings within this state."

Section 1789. Section 46-30-402, MCA, is amended to read:

"46-30-402. Requisition by governor. Whenever the governor of this state ~~shall demand~~ *demands* a person charged with crime or with escaping from confinement or breaking the terms of ~~his~~ *the person's* bail, probation, or parole in this state from the chief executive of any other state or from the chief justice or an associate justice of the supreme court of the District of Columbia authorized to receive ~~such~~ *a* demand under the laws of the United States, ~~he~~ *the governor* shall issue a warrant under the seal of this state to some agent commanding ~~him~~ *the agent* to receive the person ~~so~~ charged if delivered to ~~him~~ *the agent* and

convey ~~him~~ *the person* to the proper officer of the county in this state in which the offense was committed."

Section 1790. Section 46-30-403, MCA, is amended to read:

"46-30-403. Extradition of persons held in another state. When it is desired to have returned to this state a person charged in this state with a crime and ~~such~~ *the* person is imprisoned or is held under criminal proceedings then pending against ~~him~~ *the person* in another state, the governor of this state may agree with the executive authority of ~~such~~ *the* other state for the extradition of ~~such~~ *the* person before the conclusion of ~~such~~ *the* proceedings or ~~his~~ *the person's* term of sentence in ~~such~~ *the* other state, upon condition that ~~such~~ *the* person be returned to ~~such~~ *the* other state at the expense of this state as soon as the prosecution in this state is terminated."

Section 1791. Section 46-30-404, MCA, is amended to read:

"46-30-404. Immunity from service of civil process. A person brought into this state on or after waiver of extradition based on a criminal charge ~~shall~~ *is* not ~~be~~ subject to service of personal process in civil actions arising out of the same facts as the criminal proceeding ~~to answer which he~~ *that the person* is being or has been returned *to answer* until ~~he~~ *the person* has been convicted in the criminal proceedings or, if acquitted, until ~~he~~ *the person* has had reasonable opportunity to return to the state from which ~~he~~ *the person* was extradited."

Section 1792. Section 46-30-405, MCA, is amended to read:

"46-30-405. No immunity from other criminal prosecutions. After a person has been brought back to this state by extradition proceedings, ~~he~~ *the person* may be tried in this state for other crimes ~~which he~~ *that the person* may be charged with having committed here as well as that specified in the requisition for ~~his~~ *the person's* extradition."

Section 1793. Section 46-30-412, MCA, is amended to read:

"46-30-412. Restrictions on compensation for assisting return of fugitive. No compensation, fee, or reward of any kind may be paid to or received by a public officer of this state or other person for a service rendered in procuring from the governor the demand mentioned in 46-30-411(1), for the surrender of the fugitive, or for conveying ~~him~~ *the fugitive* to this state or detaining ~~him therein~~ *the fugitive in this state*~~,~~ except as provided in 46-30-411."

Section 1794. Section 46-31-101, MCA, is amended to read:

"46-31-101. Agreement on detainers — enactment and text. The agreement on detainers is hereby enacted into law and entered into by this state with all other jurisdictions legally joining therein in the form substantially as follows:

The contracting states solemnly agree that:

Article I

The party states find that charges outstanding against a prisoner, detainers based on untried indictments, informations, or complaints, and difficulties in securing speedy trial of persons already incarcerated in other jurisdictions produce uncertainties which obstruct programs of prisoner treatment and rehabilitation. Accordingly, it is the policy of the party states and the purpose of this agreement to encourage the expeditious and orderly disposition of such charges and determination of the proper status of any and all detainers based on untried indictments, informations, or complaints. The party states also find that proceedings with reference to such charges and detainers, when emanating

from another jurisdiction, cannot properly be had in the absence of cooperative procedures. It is the further purpose of this agreement to provide such cooperative procedures.

Article II

As used in this agreement:

(1) "state" shall mean a state of the United States, the United States of America, a territory or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico;

(2) "sending state" shall mean a state in which a prisoner is incarcerated at the time that ~~he~~ *the prisoner* initiates a request for final disposition pursuant to Article III hereof or at the time that a request for custody or availability is initiated pursuant to Article IV hereof;

(3) "receiving state" shall mean the state in which trial is to be had on an indictment, information, or complaint pursuant to Article III or Article IV hereof.

Article III

(1) Whenever a person has entered upon a term of imprisonment in a penal or correctional institution of a party state and whenever during the continuance of the term of imprisonment there is pending in any other party state any untried indictment, information, or complaint on the basis of which a detainer has been lodged against the prisoner, ~~he~~ *the prisoner* shall be brought to trial within 180 days after ~~he~~ *the prisoner* shall have caused to be delivered to the prosecuting officer and the appropriate court of the prosecuting officer's jurisdiction written notice of the place of ~~his~~ imprisonment and ~~his~~ *the prisoner's* request for a final disposition to be made of the indictment, information, or complaint; provided that for good cause shown in open court, the prisoner or ~~his~~ *the prisoner's* counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance. The request of the prisoner shall be accompanied by a certificate of the appropriate official having custody of the prisoner, stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the state parole agency relating to the prisoner.

(2) The written notice and request for final disposition referred to in subsection (1) hereof shall be given or sent by the prisoner to the warden, commissioner of corrections, or other official having custody of ~~him~~ *the prisoner*, who shall promptly forward it together with the certificate to the appropriate prosecuting official and court by registered or certified mail, return receipt requested.

(3) The warden, commissioner of corrections, or other official having custody of the prisoner shall promptly inform ~~him~~ *the prisoner* of the source and contents of any detainer lodged against ~~him~~ *the prisoner* and shall also inform ~~him~~ *the prisoner* of ~~his~~ *the* right to make a request for final disposition of the indictment, information, or complaint on which the detainer is based.

(4) Any request for final disposition made by a prisoner pursuant to subsection (1) hereof shall operate as a request for final disposition of all untried indictments, informations, or complaints on the basis of which detainers have been lodged against the prisoner from the state to whose prosecuting official the request for final disposition is specifically directed. The warden, commissioner of corrections, or other official having custody of the prisoner shall forthwith

notify all appropriate prosecuting officers and courts in the several jurisdictions within the state to which the prisoner's request for final disposition is being sent of the proceeding being initiated by the prisoner. Any notification sent pursuant to this subsection shall be accompanied by copies of the prisoner's written notice, request, and the certificate. If trial is not had on any indictment, information, or complaint contemplated hereby prior to the return of the prisoner to the original place of imprisonment, such indictment, information, or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

(5) Any request for final disposition made by a prisoner pursuant to subsection (1) hereof shall also be deemed to be a waiver of extradition with respect to any charge or proceeding contemplated thereby or included therein by reason of subsection (4) hereof and a waiver of extradition to the receiving state to serve any sentence there imposed upon ~~him~~ *the prisoner* after completion of ~~his~~ *the prisoner's* term of imprisonment in the sending state. The request for final disposition shall also constitute a consent by the prisoner to the production of ~~his~~ *the prisoner's* body in any court where ~~his~~ *the prisoner's* presence may be required in order to effectuate the purposes of this agreement and a further consent voluntarily to be returned to the original place of imprisonment in accordance with the provisions of this agreement. Nothing in this paragraph shall prevent the imposition of a concurrent sentence if otherwise permitted by law.

(6) Escape from custody by the prisoner subsequent to ~~his~~ *the prisoner's* execution of the request for final disposition referred to in subsection (1) hereof shall void the request.

Article IV

(1) The appropriate officer of the jurisdiction in which an untried indictment, information, or complaint is pending shall be entitled to have a prisoner against whom ~~he~~ *the officer* has lodged a detainer and who is serving a term of imprisonment in any party state made available in accordance with Article V(1) hereof upon presentation of a written request for temporary custody or availability to the appropriate authorities of the state in which the prisoner is incarcerated; provided that the court having jurisdiction of such indictment, information, or complaint shall have duly approved, recorded, and transmitted the request; and provided further that there shall be a period of 30 days after receipt by the appropriate authorities before the request be honored, within which period the governor of the sending state may disapprove the request for temporary custody or availability either upon ~~his~~ *the governor's* own motion or upon motion of the prisoner.

(2) Upon receipt of the officer's written request as provided in subsection (1) hereof, the appropriate authorities having the prisoner in custody shall furnish the officer with a certificate stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the state parole agency relating to the prisoner. Said authorities simultaneously shall furnish all other officers and appropriate courts in the receiving state who have lodged detainers against the prisoner with similar certificates and with notices informing them of the request for custody or availability and of the reasons therefor.

(3) In respect of any proceeding made possible by this article, trial shall be commenced within 120 days of the arrival of the prisoner in the receiving state,

but for good cause shown in open court, the prisoner or ~~his~~ *the prisoner's* counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance.

(4) Nothing contained in this article shall be construed to deprive any prisoner of any right which ~~he~~ *the prisoner* may have to contest the legality of ~~his~~ *the prisoner's* delivery as provided in subsection (1), but such delivery may not be opposed or denied on the ground that the executive authority of the sending state has not affirmatively consented to or ordered such delivery.

(5) If trial is not had on any indictment, information, or complaint contemplated hereby prior to the prisoner's being returned to the original place of imprisonment pursuant to Article V(5) hereof, such indictment, information, or complaint shall not be of any further force or effect and the court shall enter an order dismissing the same with prejudice.

Article V

(1) In response to a request made under Article III or Article IV hereof, the appropriate authority in a sending state shall offer to deliver temporary custody of such prisoner to the appropriate authority in the state where such indictment, information, or complaint is pending against such person in order that speedy and efficient prosecution may be had. If the request for final disposition is made by the prisoner, the offer of temporary custody shall accompany the written notice provided for in Article III of this agreement. In the case of a federal prisoner, the appropriate authority in the receiving state shall be entitled to temporary custody as provided by this agreement or to the prisoner's presence in federal custody at the place for trial, whichever custodial arrangement may be approved by the custodian.

(2) The officer or other representative of a state accepting an offer of temporary custody shall present the following upon demand:

(a) proper identification and evidence of ~~his~~ *the officer's or representative's* authority to act for the state into whose temporary custody the prisoner is to be given;

(b) a duly certified copy of the indictment, information, or complaint on the basis of which the detainer has been lodged and on the basis of which the request for temporary custody of the prisoner has been made.

(3) If the appropriate authority shall refuse or fail to accept temporary custody of said person or in the event that an action on the indictment, information, or complaint on the basis of which the detainer has been lodged is not brought to trial within the periods provided by this chapter, the appropriate court of the jurisdiction where the indictment, information, or complaint has been pending shall enter an order dismissing the same with prejudice and any detainer based thereon shall cease to be of any force or effect.

(4) The temporary custody referred to in this agreement shall be only for the purpose of permitting prosecution on the charge or charges contained in one or more untried indictments, informations, or complaints which form the basis of the detainer or detainers or for prosecution on any other charge or charges arising out of the same transaction. Except for ~~his~~ *the prisoner's* attendance at court and while being transported to or from any place at which ~~his~~ *the prisoner's* presence may be required, the prisoner shall be held in a suitable jail or other facility regularly used for persons awaiting prosecution.

(5) At the earliest practicable time consonant with the purposes of this agreement, the prisoner shall be returned to the sending state.

(6) During the continuance of temporary custody or while the prisoner is otherwise being made available for trial as required by this agreement, time being served on the sentence shall continue to run, but good time shall be earned by the prisoner only if, and to the extent that, the law and practice of the jurisdiction which imposed the sentence may allow.

(7) For all purposes other than that for which temporary custody as provided in this agreement is exercised, the prisoner shall be deemed to remain in the custody of and subject to the jurisdiction of the sending state and any escape from temporary custody may be dealt with in the same manner as an escape from the original place of imprisonment or in any other manner permitted by law.

(8) From the time that a party state receives custody of a prisoner pursuant to this agreement until such prisoner is returned to the territory and custody of the sending state, the state in which the one or more untried indictments, informations, or complaints are pending or in which trial is being had shall be responsible for the prisoner and shall also pay all costs of transporting, caring for, keeping, and returning the prisoner. The provisions of this subsection shall govern unless the states concerned shall have entered into a supplementary agreement providing for a different allocation of costs and responsibilities as between or among themselves. Nothing herein contained shall be construed to alter or affect any internal relationship among the departments, agencies, and officers of and in the government of a party state or between a party state and its subdivisions as to the payment of costs or responsibilities therefor.

Article VI

(1) In determining the duration and expiration dates of the time periods provided in Articles III and IV of this agreement, the running of said time periods shall be tolled whenever and for as long as the prisoner is unable to stand trial, as determined by the court having jurisdiction of the matter.

(2) No provision of this agreement and no remedy made available by this agreement shall apply to any person who is adjudged to be mentally ill.

Article VII

Each state party to this agreement shall designate an officer who, acting jointly with like officers of other party states, shall promulgate rules and regulations to carry out more effectively the terms and provisions of this agreement and who shall provide within and without the state information necessary to the effective operation of this agreement.

Article VIII

This agreement shall enter into full force and effect as to a party state when such state has enacted the same into law. A state party to this agreement may withdraw herefrom by enacting a statute repealing the same. However, the withdrawal of any state shall not affect the status of any proceedings already initiated by inmates or by state officers at the time such withdrawal takes effect, nor shall it affect their rights in respect thereof.

Article IX

This agreement shall be liberally construed so as to effectuate its purposes. The provisions of this agreement shall be severable, and if any phrase, clause, sentence, or provision of this agreement is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person, or circumstances is held invalid, the validity of the remainder of this agreement and the applicability thereof to any

government, agency, person, or circumstance shall not be affected thereby. If this agreement shall be held contrary to the constitution of any state party hereto, the agreement shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters."

Section 1795. Section 46-31-204, MCA, is amended to read:

"46-31-204. Penalty for escape from custody on detainer. Every prisoner confined in state prison for a term less than for life who has been lawfully delivered into the temporary custody of appropriate officers of a party state for trial on a charge or detainer based on an untried indictment, information, or complaint and who escapes ~~therefrom~~ is punishable by a fine in an amount not to exceed $50,000~~,~~ or by imprisonment in the state prison for a term of not less than 1 year or more than 10 years, or ~~by~~ both~~,~~. ~~said~~ *The* second term of imprisonment ~~to~~ *must* commence from the time ~~he~~ *the prisoner* would otherwise have been discharged from ~~said~~ prison."

Section 1796. Section 49-1-101, MCA, is amended to read:

"49-1-101. Right of protection from personal injury. Besides the personal rights mentioned or recognized in other statutes and subject to the qualifications and restrictions provided by law, every person has the right of protection from bodily restraint or harm, personal insult, defamation, and injury to ~~his~~ *the person's* personal relations."

Section 1797. Section 49-1-202, MCA, is amended to read:

"49-1-202. Right to hold elected office. Every elector is eligible to the office for which ~~he~~ *the elector* is an elector~~,~~ except where otherwise specially provided."

Section 1798. Section 49-2-202, MCA, is amended to read:

"49-2-202. Authority to require posted notice. The commission may require any employer, employment agency, labor union, educational institution, or financial institution or the owner, lessee, manager, agent, or employee of any public accommodation or housing accommodation subject to this chapter to post, in a conspicuous place on ~~his~~ *the* premises or in the accommodation, a notice to be prepared or approved by the commission containing relevant information that the commission considers necessary to explain this chapter. Any person or institution subject to this section who refuses to comply with an order of the commission respecting the posting of a notice is guilty of a misdemeanor and ~~punishable~~ *shall be punished* by a fine of not more than $50."

Section 1799. Section 49-2-301, MCA, is amended to read:

"49-2-301. Retaliation prohibited. It is an unlawful discriminatory practice for a person, educational institution, financial institution, or governmental entity or agency to discharge, expel, blacklist, or otherwise discriminate against an individual because ~~he~~ *the individual* has opposed any practices forbidden under this chapter or because ~~he~~ *the individual* has filed a complaint, testified, assisted, or participated in any manner in an investigation or proceeding under this chapter."

Section 1800. Section 49-2-310, MCA, is amended to read:

"49-2-310. Maternity leave — unlawful acts of employers. It ~~shall be~~ *is* unlawful for an employer or ~~his~~ *an employer's* agent to:

(1) terminate a woman's employment because of ~~her~~ *the woman's* pregnancy;

(2) refuse to grant to the employee a reasonable leave of absence for ~~such~~ *the* pregnancy;

(3) deny to the employee who is disabled as a result of pregnancy any compensation to which ~~she~~ *the employee* is entitled as a result of the accumulation of disability or leave benefits accrued pursuant to plans maintained by ~~her~~ *the* employer, provided that the employer may require disability as a result of pregnancy to be verified by medical certification that the employee is not able to perform ~~her~~ employment duties; or

(4) require that an employee take a mandatory maternity leave for an unreasonable length of time."

Section 1801. Section 49-2-311, MCA, is amended to read:

"49-2-311. Reinstatement to job following pregnancy-related leave of absence. Upon signifying ~~her~~ *an* intent to return at the end of ~~her~~ *a pregnancy-related* leave of absence, ~~such~~ *the* employee ~~shall~~ *must* be reinstated to ~~her~~ *the employee's* original job or to an equivalent position with equivalent pay and accumulated seniority, retirement, fringe benefits, and other service credits unless, in the case of a private employer, the employer's circumstances have so changed as to make it impossible or unreasonable to do so."

Section 1802. Section 49-3-209, MCA, is amended to read:

"49-3-209. Retaliation prohibited. It is an unlawful discriminatory practice for a state or local governmental agency to discharge, expel, blacklist, or otherwise discriminate against an individual because ~~he~~ *the individual* has opposed any practices forbidden under this chapter or because ~~he~~ *the individual* has filed a complaint, testified, assisted, or participated in any manner in an investigation or proceeding under this chapter."

Section 1803. Section 49-4-102, MCA, is amended to read:

"49-4-102. Penalty and civil remedy. A person who practices discrimination in violation of 49-4-101 commits a misdemeanor and is also liable in a district court action for civil damages and ~~attorney's~~ *attorney* fees by the person discriminated against. ~~Should~~ *If* the person who allegedly practiced discrimination ~~prevail~~ *prevails* in the civil action, ~~he shall be~~ *the person is* entitled to recover reasonable ~~attorney's~~ *attorney* fees from the person who alleged the discrimination."

Section 1804. Section 49-4-502, MCA, is amended to read:

"49-4-502. Definitions. As used in this part, the following definitions apply:

(1) "Appointing authority" means the presiding judge or justice of any court, the ~~chairman~~ *presiding officer* of any board, commission, or authority, the director or commissioner of any department or agency, or any other person presiding at any hearing or other proceeding in which a qualified interpreter is required pursuant to this part.

(2) "Deaf person" means a person whose hearing is totally impaired or whose hearing is so seriously impaired as to prohibit the person from understanding oral communications. The term further includes~~,~~ but is not limited to~~,~~ a person who, because of loss of hearing, cannot communicate spoken language.

(3) "Intermediary interpreter" means a knowledgeable deaf person who, because of the person's intimate acquaintance with deaf persons who use mainly natural gestures for communicating, can be used as an intermediary between the deaf person and a qualified interpreter.

(4) "Principal party in interest" means a person who is a named party in any proceeding or who will be directly affected by the decision or action ~~which~~ *that* may be made or taken.

(5) "Qualified interpreter" means an interpreter listed by the department of public health and human services as provided in 49-4-507."

Section 1805. Section 49-4-503, MCA, is amended to read:

"49-4-503. Deaf person as participant in judicial or administrative proceeding — interpreter to be used. A qualified interpreter ~~shall~~ *must* be appointed as follows:

(1) In any case before any court or a grand jury in which a deaf person is a party, either as a complainant, defendant, or witness, the court shall appoint a qualified interpreter to interpret the proceedings to the deaf person and interpret ~~his~~ *the deaf person's* testimony or statements and to assist in preparation with counsel.

(2) At all stages in any proceeding of a judicial or quasi-judicial nature before any agency of the state or governing body or agency of a local government in which a deaf person is a principal party in interest, either as a complainant, defendant, witness, or supplicant, the agency or governing body shall appoint a qualified interpreter to interpret the proceedings to the deaf person and to interpret ~~his~~ *the deaf person's* testimony or statements.

(3) (a) In any proceedings in which a deaf person may be subjected to confinement or criminal sanction or in any proceeding preliminary ~~thereto~~, including a coroner's inquest, grand jury proceedings, and proceedings relating to mental health commitments, the presiding judicial officer shall appoint a qualified interpreter to assist the deaf person throughout the proceedings.

(b) Upon arresting a deaf person for an alleged violation of a criminal law and prior to interrogating or taking a statement of the deaf person, the arresting law enforcement official shall make available to the person, at the earliest possible time, a qualified interpreter to assist the person throughout ~~such~~ *the* interrogation or taking of a statement.

(c) ~~No~~ *A* statement, written or oral, made by a person who is deaf in reply to a question of a law enforcement officer or any other person having a prosecutorial function in any criminal or quasi-criminal proceeding may *not* be used against that deaf person unless either the statement was made or elicited through a qualified interpreter and was made knowingly, voluntarily, and intelligently or, in the case of waiver, the court makes a special finding that any statement made by the deaf person was made knowingly, voluntarily, and intelligently.

(d) This subsection (3) does not apply to apprehensions, arrests, or statements involving a violation of the traffic laws of Montana."

Section 1806. Section 49-4-504, MCA, is amended to read:

"49-4-504. Preliminary determination. The appointing authority may not appoint a qualified interpreter in any case until ~~he~~ *the appointing authority* makes a preliminary determination that the qualified interpreter is able to accurately communicate with and translate information to and from the deaf person in the case."

Section 1807. Section 49-4-505, MCA, is amended to read:

"49-4-505. Intermediary interpreter to be used. If a qualified interpreter states that ~~he~~ *the interpreter* is unable to render a satisfactory interpretation and that an intermediary interpreter will improve the quality of

interpretation, the appointing authority shall appoint an intermediary interpreter to assist the qualified interpreter subject to the same provisions that govern a qualified interpreter under this part."

Section 1808. Section 49-4-508, MCA, is amended to read:

"49-4-508. Oath of interpreter. ~~Every~~ *An* interpreter appointed to interpret for a deaf person, before entering upon ~~his~~ *the interpreter's* duties, shall take an oath that ~~he~~ *the interpreter* will make a true interpretation in an understandable manner to the person for whom ~~he~~ *the interpreter* is appointed and that ~~he~~ *the interpreter* will repeat the statements of ~~such~~ *the* person in the English language to the best of ~~his~~ *the interpreter's* skill and judgment."

Section 1809. Section 49-4-509, MCA, is amended to read:

"49-4-509. Compensation. An interpreter appointed to interpret for the deaf is entitled to receive a reasonable fee for ~~his~~ *the interpreter's* services, together with ~~his~~ actual expenses for travel and transportation. The appointing authority shall set the fee. When the interpreter is appointed in a criminal proceeding, the fee ~~shall~~ *must* be paid out of the county general fund~~;~~, and when the interpreter is otherwise appointed, the fees ~~shall~~ *must* be paid out of funds available to the appointing authority."

Section 1810. Section 50-2-120, MCA, is amended to read:

"50-2-120. Assistance from law enforcement officials. A state or local health officer may request a sheriff, constable, or other peace officer to assist ~~him~~ *the health officer* in carrying out the provisions of this chapter. If the officer does not render the service, ~~he~~ *the officer* is guilty of a misdemeanor and may be removed from office."

Section 1811. Section 50-2-121, MCA, is amended to read:

"50-2-121. Removal of diseased prisoner from jail by local health officer. (1) On written order of a local health officer, a diseased prisoner who is held in a jail and who is considered dangerous to the health of other prisoners may be removed to a hospital or other place of safety.

(2) If the prisoner was committed to jail by order of *a* court, the order for removal and treatment ~~shall~~ *must* be signed by the local health officer and filed with the court.

(3) When the prisoner recovers from the disease, ~~he shall~~ *the prisoner must* be returned to the jail.

(4) A prisoner removed to a hospital or clinic for treatment ~~shall~~ *may* not be considered to have committed an escape."

Section 1812. Section 50-2-122, MCA, is amended to read:

"50-2-122. Obstructing local health officer in the performance of ~~his~~ duties unlawful. It is unlawful to:

(1) hinder a local health officer in the performance of ~~his~~ duties under this chapter;

(2) remove or deface any placard or notice posted by the local health officer; or

(3) violate a quarantine regulation."

Section 1813. Section 50-2-124, MCA, is amended to read:

"50-2-124. Penalties for violations. (1) A person who does not comply with rules adopted by a local board is guilty of a misdemeanor. On conviction, ~~he~~ *the person* shall be fined not less than $10 or more than $200.

(2) Except as provided in *50-2-123 and* subsection (1) of this section ~~and 50-2-123~~, a person who violates the provisions of this chapter or rules adopted by the department under the provisions of this chapter is guilty of a misdemeanor. On conviction, ~~he~~ *the person* shall be fined not less than $10 or more than $500~~,~~ *or be* imprisoned for not more than 90 days, or both.

(3) Each day of violation constitutes a separate offense.

(4) Fines, except justice's court fines, ~~shall~~ *must* be paid to the county treasurer of the county in which the violation occurs."

Section 1814. Section 50-5-212, MCA, is amended to read:

"50-5-212. Organ procurement program required. The administrator of a hospital licensed under this chapter shall as a condition of licensure under 50-5-201:

(1) establish a written protocol for the identification of potential organ donors that:

(a) ~~assures~~ *ensures* that families of potential organ donors are made aware of the option of organ or tissue donation and their option to decline;

(b) encourages discretion and sensitivity with respect to the circumstances, views, and beliefs of families of potential organ donors; and

(c) requires that a qualified organ procurement agency be notified of potential organ donors;

(2) designate and train a person or persons to represent ~~him~~ *the administrator* for purposes of requesting an anatomical gift as provided in 72-17-213; and

(3) make known to the public that the hospital has an organ procurement program as described in subsection (1)."

Section 1815. Section 50-5-1105, MCA, is amended to read:

"50-5-1105. Long-term care facility to adopt and post residents' rights. (1) The administrator of each long-term care facility shall:

(a) adopt a written statement of rights applicable to all residents of its facility, including as a minimum the rights listed in 50-5-1104;

(b) provide each resident, at the time of ~~his~~ admission to the facility, a copy of the facility's statement of residents' rights, receipt of which the resident or ~~his~~ *the resident's* authorized representative shall acknowledge in writing;

(c) provide each resident with a written statement of any change in residents' rights at the time the change is implemented, receipt of which the resident or ~~his~~ *the resident's* authorized representative shall acknowledge in writing; and

(d) train and involve staff members in the implementation of residents' rights as expressed in the statement adopted by the facility.

(2) Each staff member shall affirm in writing that ~~he~~ *the member* has read and understands the facility's statement of residents' rights.

(3) The administrator of the facility shall post in a conspicuous place visible to the public a copy of the facility's statement of residents' rights, presented in a format that can be read easily by the residents and by the public."

Section 1816. Section 50-5-1106, MCA, is amended to read:

"50-5-1106. Resident's rights devolve to authorized representative. The rights and responsibilities listed in 50-5-1104 and 50-5-1105 devolve to the resident's authorized representative when the resident:

(1) exhibits a communication barrier;

(2) has been found by ~~his~~ *the resident's* physician to be medically incapable of understanding these rights; or

(3) has been adjudicated incompetent by a district court."

Section 1817. Section 50-6-313, MCA, is amended to read:

"50-6-313. Inspections. (1) The department shall make necessary investigations and inspections for enforcement of this part.

(2) The department shall make regular inspections as the rules of the department may direct and special inspections ~~which~~ *that* it considers necessary.

(3) The department has free access at all reasonable hours to the place of business of any person operating an emergency medical service in order to make necessary inspections. These inspections may include the inspection of any equipment or records pertaining to the activities of the emergency medical service.

(4) A person may not refuse entry or access to an authorized representative of the department who presents appropriate credentials and requests entry for the purpose of conducting an inspection necessitated under this section. A person may not obstruct, hamper, or interfere with an inspection that is properly conducted pursuant to this section.

(5) Upon request, the owner or operator of an emergency medical service must receive a report stating all facts that relate to ~~his~~ *the owner's or operator's* compliance with the provisions of this part as determined by the department, based upon its inspection."

Section 1818. Section 50-6-317, MCA, is amended to read:

"50-6-317. Liability protection. (1) A physician or registered nurse licensed under the laws of this state who gives instructions for medical care to a member of an emergency medical service without compensation or for compensation not exceeding $5,000 in any 12-month period and whose professional practice is not primarily in an emergency or trauma room or ward is not liable for civil damages for an injury resulting from the instructions, except damages for an injury resulting from the gross negligence of the physician or nurse, if the instructions given by the physician or nurse are:

(a) consistent with the protocols and the medical control plan approved by the department in licensing the emergency medical service; and

(b) consistent with the level of certification or licensure of the emergency medical services personnel instructed by the physician or nurse.

(2) An offline medical director is not liable for civil damages for an injury resulting from the performance of ~~his~~ *the director's* duties, except damages for an injury resulting from the gross negligence of the director."

Section 1819. Section 50-9-103, MCA, is amended to read:

"50-9-103. Declaration relating to use of life-sustaining treatment — designee. (1) An individual of sound mind and 18 years of age or older may execute at any time a declaration governing the withholding or withdrawal of life-sustaining treatment. The declarant may designate another individual of

sound mind and 18 years of age or older to make decisions governing the withholding or withdrawal of life-sustaining treatment. The declaration must be signed by the declarant or another at the declarant's direction and must be witnessed by two individuals. A health care provider may presume, in the absence of actual notice to the contrary, that the declaration complies with this chapter and is valid.

(2) A declaration directing a physician or advanced practice registered nurse to withhold or withdraw life-sustaining treatment may~~,~~ but need not~~,~~ be in the following form:

DECLARATION

If I should have an incurable or irreversible condition that, without the administration of life-sustaining treatment, will, in the opinion of my attending physician or attending advanced practice registered nurse, cause my death within a relatively short time and I am no longer able to make decisions regarding my medical treatment, I direct my attending physician or attending advanced practice registered nurse, pursuant to the Montana Rights of the Terminally Ill Act, to withhold or withdraw treatment that only prolongs the process of dying and is not necessary to my comfort or to alleviate pain.

Signed this ____ day of _____, ____.

Signature _____

City, County, and State of Residence _____

The declarant voluntarily signed this document in my presence.

Witness _____

Address _____

Witness _____

Address _____

(3) A declaration that designates another individual to make decisions governing the withholding or withdrawal of life-sustaining treatment may~~,~~ but need not~~,~~ be in the following form:

DECLARATION

If I should have an incurable and irreversible condition that, without the administration of life-sustaining treatment, will, in the opinion of my attending physician or attending advanced practice registered nurse, cause my death within a relatively short time and I am no longer able to make decisions regarding my medical treatment, I appoint _____ or, if ~~he or she~~ *that person* is not reasonably available or is unwilling to serve, _____, to make decisions on my behalf regarding withholding or withdrawal of treatment that only prolongs the process of dying and is not necessary for my comfort or to alleviate pain, pursuant to the Montana Rights of the Terminally Ill Act.

If the individual I have appointed is not reasonably available or is unwilling to serve, I direct my attending physician or attending advanced practice registered nurse, pursuant to the Montana Rights of the Terminally Ill Act, to withhold or withdraw treatment that only prolongs the process of dying and is not necessary for my comfort or to alleviate pain.

Signed this ____ day of _____, ____.

Signature _____

City, County, and State of Residence_____

The declarant voluntarily signed this document in my presence.

Witness _____

Address _____

Witness _____

Address _____

Name and address of designee.

Name _____

Address _____

(4) If the designation of an attorney-in-fact pursuant to 72-5-501 and 72-5-502~~,~~ or the judicial appointment of an individual~~,~~ contains written authorization to make decisions regarding the withholding or withdrawal of life-sustaining treatment, that designation or appointment constitutes, for the purposes of this part, a declaration designating another individual to act for the declarant pursuant to subsection (1).

(5) A health care provider who is furnished a copy of the declaration shall make it a part of the declarant's medical record and, if unwilling to comply with the declaration, shall advise the declarant and any individual designated to act for the declarant promptly."

Section 1820. Section 50-15-108, MCA, is amended to read:

"50-15-108. Duty to furnish information. (1) ~~Any~~ *A* person having knowledge of the fact shall furnish information ~~he~~ *that the person* possesses about a birth, death, fetal death, marriage, dissolution of marriage, or invalid marriage upon demand of the department.

(2) The person in charge of any institution or facility for the care of persons shall record and report all data required by this chapter relating to inmates or patients of the institution or facility."

Section 1821. Section 50-15-114, MCA, is amended to read:

"50-15-114. Unlawful acts and penalties. (1) It is unlawful to disclose data in the vital statistics records of the department, local registrars, or county clerk and recorder unless disclosure is authorized by law.

(2) A person shall be fined not more than $1,000~~,~~ *or be* imprisoned *for* not more than 1 year, or both, if:

(a) ~~he~~ *the person* willfully and knowingly makes any false statement in a report, record, or certificate required to be filed by law or in an application for an amendment ~~thereof~~ *of a report, record, or certificate* or willfully and knowingly supplies false information intending that the information be used in the preparation of any report, record, or certificate or amendment;

(b) without lawful authority and with the intent to deceive, ~~he~~ *the person* makes, alters, amends, or mutilates any report, record, or certificate required to be filed under law or a certified copy of the report, record, or certificate;

(c) ~~he~~ *the person* willfully and knowingly uses or attempts to use or furnish to another for use, for any purpose of deception, any certificate, record, report, or certified copy made, altered, amended, or mutilated;

(d) with the intention to deceive, ~~he~~ *the person* willfully uses or attempts to use any birth certificate or certified copy of a birth record knowing that ~~such~~ *the* certificate or certified copy was issued upon a record ~~which~~ *that* is false in whole or in part or ~~which~~ *that* relates to the birth of another person;

(e) ~~he~~ *the person* willfully and knowingly furnishes a birth certificate or certified copy of a birth record with the intention that it be used by a person other than the person to whom the birth record relates.

(3) A person shall be fined not less than $25 or more than $500, imprisoned for not more than 30 days, or both, if *the person*:

(a) ~~he~~ knowingly transports or accepts for transportation, interment, or other disposition a dead body without an accompanying permit as provided by law;

(b) ~~he~~ refuses to provide information required by law;

(c) ~~he~~ willfully neglects or violates any of the provisions of law or refuses to perform any of the duties imposed upon him by law."

Section 1822. Section 50-15-302, MCA, is amended to read:

"50-15-302. Clerk to report decree of dissolution or declaration of invalidity of marriage. (1) At the same time a decree of dissolution or declaration of invalidity of marriage is filed, the clerk of court shall prepare a report to the department on the form prescribed by the department. Parties to the action or their attorneys shall supply the clerk with necessary information.

(2) The report ~~shall~~ *must* include the:

(a) name, age, birthplace, residence, race or color, and occupation of each party;

(b) number, date, and place of any previous marriage of either party;

(c) number of children under 18 years of age in custody of either party and residing with ~~him~~ *the party*;

(d) grounds for the action;

(e) number of the cause of action;

(f) county and judicial district where the action is filed; and

(g) date of judgment and the party ~~which~~ *that* was granted it."

Section 1823. Section 50-15-402, MCA, is amended to read:

"50-15-402. Copy to be forwarded to deceased's county of residence. If a state resident dies outside the county of ~~his~~ residence, the clerk and recorder shall send a certified copy of the death certificate to the clerk and recorder of the deceased's county of residence. The copy ~~shall~~ *must* be considered the same as the original."

Section 1824. Section 50-16-522, MCA, is amended to read:

"50-16-522. Representative of deceased patient. A personal representative of a deceased patient may exercise all of the deceased patient's rights under this part. If there is no personal representative or upon discharge of the personal representative, a deceased patient's rights under this part may be exercised by the surviving spouse, a parent, an adult child, an adult sibling, or any other person who is authorized by law to act for ~~him~~ *the deceased patient*."

Section 1825. Section 50-16-543, MCA, is amended to read:

"50-16-543. Request for correction or amendment. (1) For purposes of accuracy or completeness, a patient may request in writing that a health care provider correct or amend its record of the patient's health care information to which ~~he~~ *the provider* has access under 50-16-541.

(2) As promptly as required under the circumstances but no later than 10 days after receiving a request from a patient to correct or amend its record of the patient's health care information, the health care provider shall:

(a) make the requested correction or amendment and inform the patient of the action and of the patient's right to have the correction or amendment sent to previous recipients of the health care information in question;

(b) inform the patient if the record no longer exists or cannot be found;

(c) if the health care provider does not maintain the record, inform the patient and provide ~~him~~ *the patient* with the name and address, if known, of the person who maintains the record;

(d) if the record is in use or unusual circumstances have delayed the handling of the correction or amendment request, inform the patient and specify in writing the earliest date, not later than 21 days after receiving the request, when the correction or amendment will be made or when the request will otherwise be disposed of; or

(e) inform the patient in writing of the provider's refusal to correct or amend the record as requested, the reason for the refusal, and the patient's right to add a statement of disagreement and to have that statement sent to previous recipients of the disputed health care information."

Section 1826. Section 50-16-544, MCA, is amended to read:

"50-16-544. Procedure for adding correction, amendment, or statement of disagreement. (1) In making a correction or amendment, the health care provider shall:

(a) add the amending information as a part of the health record; and

(b) mark the challenged entries as corrected or amended entries and indicate the place in the record where the corrected or amended information is located, in a manner practicable under the circumstances.

(2) If the health care provider maintaining the record of the patient's health care information refuses to make the patient's proposed correction or amendment, the provider shall:

(a) permit the patient to file as a part of the record of ~~his~~ *the patient's* health care information a concise statement of the correction or amendment requested and the reasons ~~therefor~~ *for the correction or amendment*; and

(b) mark the challenged entry to indicate that the patient claims the entry is inaccurate or incomplete and indicate the place in the record where the statement of disagreement is located, in a manner practicable under the circumstances."

Section 1827. Section 50-16-553, MCA, is amended to read:

"50-16-553. Civil remedies. (1) A person aggrieved by a violation of this part may maintain an action for relief as provided in this section.

(2) The court may order the health care provider or other person to comply with this part and may order any other appropriate relief.

(3) A health care provider who relies in good faith upon a certification pursuant to 50-16-536(2) is not liable for disclosures made in reliance on that certification.

(4) ~~No~~ *A* disciplinary or punitive action may *not* be taken against a health care provider or ~~his~~ *the provider's* employee or agent who brings evidence of a violation of this part to the attention of the patient or an appropriate authority.

(5) In an action by a patient alleging that health care information was improperly withheld under 50-16-541 and 50-16-542, the burden of proof is on the health care provider to establish that the information was properly withheld.

(6) If the court determines that there is a violation of this part, the aggrieved person is entitled to recover damages for pecuniary losses sustained as a result of the violation and, in addition, if the violation results from willful or grossly negligent conduct, the aggrieved person may recover not in excess of $5,000, exclusive of any pecuniary loss.

(7) If a plaintiff prevails, the court may assess reasonable attorney fees and all other expenses reasonably incurred in the litigation.

(8) An action under this part is barred unless the action is commenced within 3 years after the cause of action accrues."

Section 1828. Section 50-17-112, MCA, is amended to read:

"50-17-112. Procedure to obtain release from commitment. (1) One hundred and eighty days or more after the date of ~~his~~ commitment, a person committed under 50-17-107 or 50-17-108 may apply to the court that ordered ~~his~~ *the person's* commitment for a release.

(2) Not fewer than 3 or more than 7 days after receipt of the request, the court shall hold a hearing.

(3) Following the hearing, the court shall:

(a) order ~~his~~ *the person's* discharge if it finds ~~he~~ *that the person* has completed an approved course of treatment or does not have tuberculosis; or

(b) dismiss the request if it finds ~~he~~ *that the person* still has tuberculosis or ~~he~~ *that the person* has refused to submit to an examination to determine whether ~~he~~ *the person* has tuberculosis or has not yet completed an approved course of treatment."

Section 1829. Section 50-18-106, MCA, is amended to read:

"50-18-106. Duty to report cases. If a physician or other person knows or has reason to suspect that a person who has a sexually transmitted disease is ~~conducting himself~~ *behaving* in a way ~~which~~ *that* might expose another to infection, ~~he~~ *the physician or person* shall immediately notify the local health officer of the name and address of the diseased person and the essential facts in the case."

Section 1830. Section 50-20-106, MCA, is amended to read:

"50-20-106. Informed consent. (1) An abortion may not be performed without the informed consent of the woman upon whom the abortion is to be performed. The informed consent must be received at least 24 hours prior to the abortion and certified prior to or at the time of the abortion.

(2) Informed consent must be certified by a written statement in a form prescribed by the department and signed by the physician and the woman upon whom the abortion is to be performed in which the physician certifies that the physician has made the full disclosure provided in 50-20-104(5) and in which the woman upon whom the abortion is to be performed acknowledges that the disclosures have been made to the woman and that the woman voluntarily consents to the abortion.

(3) If a woman chooses to review the written materials described in 50-20-304, the materials must be provided to ~~her~~ *the woman* at least 24 hours

before the abortion or be mailed to the woman by certified mail, with delivery restricted to the addressee, at least 72 hours before the abortion.

(4) The information required in 50-20-104(5)(a) may be provided by telephone without conducting a physical examination or tests of the patient. The information may be based on facts supplied to the physician by the woman and other relevant information that is reasonably available to the physician. The information may not be provided by a tape recording but must be provided during a consultation in which the physician is able to ask questions of the woman and the woman is able to ask questions of the physician. If a physical examination, tests, or the availability of other information subsequently indicates, in the medical judgment of the physician, a revision of information previously provided to the patient, the revised information may be communicated to the patient at any time prior to the performance of the abortion.

(5) The information required in 50-20-104(5)(b) may be provided by a tape recording if provision is made to record or otherwise register specifically whether the woman does or does not choose to review the printed materials.

(6) The informed consent or consent provided for in this section is not required if a licensed physician certifies that the abortion is necessary because of a medical emergency as defined in 50-20-303.

(7) An executive officer, administrative agency, or public employee of the state or of any local governmental body may not issue any order requiring an abortion or coerce any woman to have an abortion. A person may not coerce any woman to have an abortion.

(8) ~~Violation~~ *A violation* of subsections (1) through (7) is a misdemeanor."

Section 1831. Section 50-20-108, MCA, is amended to read:

"50-20-108. Protection of premature infants born alive. (1) A person commits an offense, as defined in 45-5-102 through 45-5-104, if ~~he~~ *the person* purposely, knowingly, or negligently causes the death of a premature infant born alive, if ~~such~~ *the* infant is viable.

(2) Whenever a premature infant ~~which~~ *that* is the subject of abortion is born alive and is viable, it becomes a dependent and neglected child subject to the provisions of state law, unless:

(a) the termination of the pregnancy is necessary to preserve the life of the mother; or

(b) the mother and ~~her~~ *the mother's* spouse or either of them have agreed in writing in advance of the abortion or within 72 hours thereafter to accept the parental rights and responsibilities of the premature infant if it survives the abortion procedure.

(3) ~~No~~ *A* person may *not* use any premature infant born alive for any type of scientific research or other kind of experimentation except as necessary to protect or preserve the life and health of ~~such~~ *the* premature infant born alive.

(4) ~~Violation~~ *A violation* of subsection (3) ~~of this section~~ is a felony."

Section 1832. Section 50-21-104, MCA, is amended to read:

"50-21-104. Autopsies. All autopsies of a human body ~~shall~~ *must* be performed by a physician legally authorized to practice medicine in this state. Upon completion, the physician shall send a written report of ~~his~~ *the physician's* findings, including the cause of death if determined, to the*:*

(1) physician attending the person at the time of death if other than the physician performing the autopsy;

(2) ~~upon the request of any such hospital or skilled nursing facility, to the~~ hospital or skilled nursing facility*, upon request,* where the person died or where ~~he~~ *the person* was confined during ~~his~~ *the person's* last illness to be retained as part of the permanent record of the hospital or skilled nursing facility;

(3) to the next of kin of the decedent or the representative of the decedent's estate upon request~~,~~ and to ~~such~~ *any* other person lawfully requesting the report."

Section 1833. Section 50-21-106, MCA, is amended to read:

"50-21-106. Penalty for unauthorized postmortem examinations. Unless authorized by law, any person who performs an autopsy, dissection, or other postmortem examination or causes it to be made is guilty of a misdemeanor. Upon conviction*,* ~~he~~ *the person* shall be punished by a fine not exceeding $500."

Section 1834. Section 50-23-102, MCA, is amended to read:

"50-23-102. Prohibition of possession of wild animals — exceptions. ~~No~~ *A* person may *not* possess a wild animal unless ~~he~~ *the person* possessed it for at least 6 months prior to January 1, 1982, or it is used in a fur-bearing enterprise, contained in a zoological exhibition in ~~such~~ a manner that it may not come in physical contact with members of the public, or acquired by an educational institution for scientific research."

Section 1835. Section 50-30-107, MCA, is amended to read:

"50-30-107. Powers and duties of department's agents. (1) For enforcement of this chapter, officers or employees duly designated by the department, upon presenting appropriate credentials to the owner, operator, or agent in charge, are authorized to:

(a) enter at reasonable times a factory, warehouse, or establishment in which hazardous substances are manufactured, processed, packed, or held for introduction into commerce or are held after ~~such~~ introduction;

(b) enter a vehicle being used to transport or hold hazardous substances in commerce;

(c) inspect at reasonable times, within reasonable limits, and in a reasonable manner a factory, warehouse, establishment, or vehicle and all pertinent equipment, finished and unfinished materials, and labeling ~~therein~~ *in the factory, warehouse, establishment, or vehicle*; and

(d) obtain samples of materials or packages or labeling ~~thereof~~.

(2) If the officer or employee obtains a sample, prior to leaving the premises ~~he~~ *the officer or employee* shall pay or offer to pay the owner, operator, or agent in charge for the sample and give a receipt describing the samples obtained."

Section 1836. Section 50-30-204, MCA, is amended to read:

"50-30-204. Toxic defined. "Toxic" means a substance*,* ~~(~~other than a radioactive substance~~)~~*,* ~~which~~ *that* has the capacity to produce personal injury or illness to ~~man~~ *humans* through ingestion, inhalation, or absorption through any body surface."

Section 1837. Section 50-30-205, MCA, is amended to read:

"50-30-205. Highly toxic defined. (1) "Highly toxic" means a substance ~~which~~ *that* falls within any of the following categories:

(a) produces death within 14 days in one-half or more of a group of 10 or more laboratory white rats each weighing between 200 and 300 grams at a single dose of 50 milligrams or less per kilogram of body weight when orally administered;

(b) produces death within 14 days in one-half or more of a group of 10 or more laboratory white rats each weighing between 200 and 300 grams when inhaled continuously for a period of 1 hour or less at an atmosphere concentration of 200 parts per million or less by volume of gas or vapor or 2 milligrams per liter or less by volume of mist or dust if that concentration is likely to be encountered by ~~man~~ *humans* when the substance is used in a reasonably foreseeable manner; or

(c) produces death within 14 days in one-half or more of a group of 10 or more rabbits tested in a dosage of 200 milligrams or less per kilogram of body weight when administered by continuous contact with the bare skin for 24 hours or less.

(2) If the department finds that available data on human experience with a substance indicates results different from those obtained on animals in the ~~above-named~~ dosages or concentrations *described in subsection (1)*, the human data ~~shall~~ *must* take precedence."

Section 1838. Section 50-30-301, MCA, is amended to read:

"50-30-301. Prohibited acts. The following acts and ~~the~~ causing ~~thereof~~ *the following acts* are prohibited:

(1) the introduction or delivery for introduction into commerce of any misbranded hazardous substance or banned hazardous substance;

(2) the alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the label of or the doing of any other act with respect to a hazardous substance if ~~such~~ *the* act is done while the substance is in commerce or while the substance is held for sale, ~~(~~whether or not the first sale~~)~~, after shipment in commerce and results in the hazardous substance being a misbranded hazardous substance or a banned hazardous substance;

(3) the receipt in commerce of any misbranded hazardous substance or banned hazardous substance and the delivery or proffered delivery ~~thereof~~ *of the substance* for pay or otherwise;

(4) the giving of a guarantee or undertaking referred to in 50-30-305(2), ~~which guarantee or undertaking~~ *that* is false, except by a person who relies upon a guarantee or undertaking to the same effect signed by and containing the name and address of the person residing in the United States from whom ~~he~~ *the person* received in good faith the hazardous substance;

(5) the failure to permit entry or inspection as authorized by 50-30-107(1) or to permit access to any copying of any record as authorized by 50-30-108;

(6) the introduction or delivery for introduction into commerce or the receipt in commerce and subsequent delivery or proffered delivery for pay or otherwise of a hazardous substance in a reused food, drug, or cosmetic container or in a container ~~which~~ *that*, though not a reused container, is identifiable as a food, drug, or cosmetic container by its labeling or by other identification;

(7) the use by any person to ~~his~~ *the person's* own advantage or revealing other than to the department or officers or employees of the agency or to the courts when relevant in any judicial proceeding under this chapter of any information acquired under authority of 50-30-106 and 50-30-107 concerning any method or process ~~which~~ *that* as a trade secret is entitled to protection."

Section 1839. Section 50-30-302, MCA, is amended to read:

"50-30-302. Notice and hearing required prior to prosecution. Before a violation of this chapter is reported to a county attorney for the institution of a criminal proceeding, the person against whom the proceeding is contemplated ~~shall~~ *must* be given appropriate notice and an opportunity to present ~~his~~ *the person's* views before the department, either orally or in writing and either in person or by attorney, with regard to the contemplated proceeding."

Section 1840. Section 50-30-305, MCA, is amended to read:

"50-30-305. Exceptions to penalty. ~~No~~ *A* person is *not* subject to the penalties of 50-30-304:

(1) for having violated 50-30-301(3) if the receipt, delivery, or proffered delivery of the hazardous substance was made in good faith unless ~~he~~ *the person* refuses to furnish on request of an officer or employee duly designated by the department the name and address of the person from whom ~~he~~ *the person* purchased or received the hazardous substance and copies of all documents pertaining to the delivery of the hazardous substance to ~~him~~ *the person*; or

(2) for having violated 50-30-301(1) if ~~he~~ *the person* establishes a guarantee or undertaking signed by and containing the name and address of the person residing in the United States from whom ~~he~~ *the person* received in good faith the hazardous substance to the effect that the hazardous substance is not a misbranded or banned hazardous substance within the meaning of those terms in this chapter."

Section 1841. Section 50-30-307, MCA, is amended to read:

"50-30-307. Detainer of misbranded or banned hazardous substance. (1) If a duly authorized agent of the department finds or has probable cause to believe that a hazardous substance is misbranded or is a banned hazardous substance within the meaning of this chapter, ~~he~~ *the agent* shall affix to the article a tag or other appropriate marking giving notice that the article is or is suspected of being misbranded or is a banned hazardous substance and has been detained or embargoed and warning all persons not to remove or dispose of the article by sale or otherwise until permission for removal or disposal is given by the agent or the court. It is unlawful for a person to remove or dispose of a detained or embargoed article by sale or otherwise without permission.

(2) If an article detained or embargoed under subsection (1) is found by the agent to be misbranded or a banned hazardous substance, ~~he~~ *the agent* shall petition the judge of the city, justice's, or district court in whose jurisdiction the article is detained or embargoed for an order of condemnation of the article. If the agent finds that an article ~~so~~ detained or embargoed is not misbranded or a banned hazardous substance, ~~he~~ *the agent* shall remove the tag or other marking.

(3) (a) If the court finds that a detained or embargoed article is misbranded or a banned hazardous substance, the article ~~shall~~ *must*, after entry of the decree, be destroyed at the expense of the claimant ~~thereof~~ *of the article* under supervision of the agent~~,~~ and all court costs and fees and storage and other proper expenses are to be taxed against the claimant of the article or ~~his~~ *the claimant's* agent.

(b) If the misbranding can be corrected by proper labeling of the article, the court, after entry of the decree and after the costs, fees, and expenses have been paid and a good and sufficient bond, conditioned that the article will be ~~so~~ *properly* labeled, has been executed, may by order direct that the article be delivered to the claimant ~~thereof~~ *of the article* for the labeling under the

supervision of an agent of the department. The expense of the supervision ~~shall~~ *must* be paid by the claimant. The article ~~shall~~ *must* be returned to the claimant on the representation to the court by the department that the article is no longer in violation of this chapter and that the expenses of the supervision have been paid."

Section 1842. Section 50-31-108, MCA, is amended to read:

"50-31-108. Regulations concerning additives. (1) The department, upon its own motion or upon the petition of any interested party requesting that ~~such~~ a ~~regulation~~ *rule* be established, whenever public health or other considerations in the state ~~so~~ require, is authorized to adopt, amend, or repeal ~~regulations~~ *rules*, whether or not in accordance with regulations promulgated under the federal act, prescribing tolerances for any added poisonous or deleterious substances for food additives, for pesticide chemicals in or on raw agricultural commodities, or for color additives, including but not limited to zero tolerances and exemptions from tolerances in the case of pesticide chemicals in or on raw agricultural commodities, and prescribing the conditions under which a food additive or a color additive may be safely used and exemptions ~~where such~~ *when the* food additive or color additive is to be used solely for investigational or experimental purposes.

(2) ~~It shall be incumbent upon such~~ *A* petitioner ~~to~~ *shall* establish by data submitted to the department that a necessity exists for ~~such regulation~~ *the rule* and that its effect will not be detrimental to the public health. If the data furnished by the petitioner is not sufficient to allow the department to determine whether ~~such~~ *the* regulation should be promulgated, the department may require additional data to be submitted and failure to comply with the request ~~shall be~~ *is* sufficient grounds to deny the request.

(3) In adopting, amending, or repealing ~~regulations~~ *rules* relating to ~~such~~ *the* substances, the department shall consider among other relevant factors the following, which the petitioner, if any, shall furnish:

(a) the name and all pertinent information concerning ~~such~~ *the* substance, including, ~~where~~ *when* available~~,~~*:*

(i) its chemical identity and composition~~,~~*;*

(ii) a statement of the conditions of the proposed use, including directions, recommendations, and suggestions and including specimens of proposed labeling~~,~~*; and*

(iii) all relevant data bearing on the physical or other technical effect and the quantity required to produce ~~such~~ *the* effect;

(b) the probable composition of or other relevant exposure from the article and of any substance formed in or on a food, drug, or cosmetic resulting from the use of ~~such~~ *the* substance;

(c) the probable consumption of ~~such~~ *the* substance in the diet of ~~man~~ *humans* and animals taking into account any chemically or pharmacologically related substance in ~~such~~ *the* diet;

(d) safety factors ~~which~~ *that*, in the opinion of experts qualified by scientific training and experience to evaluate the safety of ~~such~~ *the* substances for the use or uses for which they are proposed to be used, are generally recognized as appropriate for the use of animal experimentation data;

(e) the availability of any needed practicable methods of analysis for determining the identity and quantity of:

(i) ~~such~~ *the* substance in or on an article;

(ii) any substance formed in or on ~~such~~ *the* article because of the use of ~~such~~ *the* substance; and

(iii) the pure substance and all intermediates and impurities; and

(f) facts supporting a contention that the proposed use of ~~such~~ *the* substance will serve a useful purpose."

Section 1843. Section 50-31-504, MCA, is amended to read:

"50-31-504. Notice and hearing required prior to prosecution. Before a violation of this chapter is reported to a state or county attorney for the institution of a criminal proceeding, the person against whom the proceeding is contemplated ~~shall~~ *must* be given appropriate notice and an opportunity to present ~~his~~ *the person's* views before the department or its designated agent, either orally or in writing and either in person or by attorney, with regard to the contemplated proceeding."

Section 1844. Section 50-31-507, MCA, is amended to read:

"50-31-507. Exceptions to penalties. (1) ~~No~~ *A* person ~~shall be~~ *is not* subject to the penalties of 50-31-506 for having violated ~~subsection (1) or (3) of~~ 50-31-501*(1) or (3)* if ~~he~~ *the person* establishes a guaranty or undertaking signed by and containing the name and address of the person residing in the state of Montana from whom ~~he~~ *the person* received in good faith the article to the effect that ~~such~~ *the* article is not adulterated or misbranded within the meaning of this chapter, designating this chapter.

(2) ~~No~~ *The* publisher, radiobroadcast licensee, or agency or medium for the dissemination of an advertisement, except the manufacturer, packer, distributor, or seller of the article to which a false advertisement relates, ~~shall be~~ *is not* liable under 50-31-506 by reason of the dissemination by ~~him~~ *the person* of ~~such~~ *the* false advertisement, unless ~~he~~ *the person* has refused, on the request of the department, to furnish the department the name and post-office address of the manufacturer, packer, distributor, seller, or advertising agency residing in the state of Montana who causes ~~him~~ *the person* to disseminate ~~such~~ *the* advertisement."

Section 1845. Section 50-31-509, MCA, is amended to read:

"50-31-509. Detainer of adulterated or misbranded articles. (1) If an agent of the department finds or has probable cause to believe that any food, drug, device, or cosmetic is adulterated or so misbranded as to be dangerous or fraudulent within the meaning of this chapter, ~~he~~ *the agent* shall affix to the article a tag or other appropriate marking giving notice that the article is or is suspected of being adulterated or misbranded and has been detained or embargoed and warning all persons not to remove or dispose of the article by sale or otherwise until permission for removal or disposal is given by the agent or the court. It is unlawful for a person to remove or dispose of a detained or embargoed article by sale or otherwise without permission. The owner of an embargoed article or another authorized person and the department may enter into a disposal agreement providing for the disposal, reconditioning, or other disposition of the embargoed article. If ~~such~~ an agreement is executed or if the embargo is otherwise removed by the department or the court, neither the department nor the state may be held liable for damages caused by ~~such~~ *the* embargo provided that probable cause existed for its imposition.

(2) If an article detained or embargoed under subsection (1) is found by the agent to be adulterated or misbranded and a disposal agreement is not executed

as provided in subsection (1), the agent shall petition the justice of *the* peace, city judge, or district court in whose jurisdiction the article is detained or embargoed for an order for condemnation of the article. If the agent finds that an article ~~so~~ detained or embargoed is not adulterated or misbranded, ~~he~~ *the agent* shall remove the tag or other marking.

(3) If the court finds that a detained or embargoed article is adulterated or misbranded, the article ~~shall~~ *must*, after entry of the decree, be destroyed at the expense of the claimant ~~thereof~~ *of the article* under the supervision of the agent and all court costs and fees and storage and other proper expenses ~~shall~~ *must* be taxed against the claimant of the article or ~~his~~ *the claimant's* agent.

(4) If the adulteration or misbranding can be corrected by proper labeling or processing of the article, the court, after entry of the decree and after the costs, fees, and expenses have been paid and a good and sufficient bond, conditioned that the article will be ~~so~~ labeled or processed, has been executed, may by order direct that the article be delivered to the claimant ~~thereof~~ *of the article* for the labeling or processing under the supervision of an agent of the department. The expense of the supervision ~~shall~~ *must* be paid by claimant. The article ~~shall~~ *must* be returned to the claimant on the representation to the court by the department that the article is no longer in violation of this chapter and that the expenses of the supervision have been paid."

Section 1846. Section 50-32-302, MCA, is amended to read:

"50-32-302. Exceptions to registration requirement. The following persons need not register and may lawfully possess dangerous drugs under this chapter:

(1) an agent or employee of any registered manufacturer, distributor, or dispenser of any dangerous drug if ~~he~~ *the agent or employee* is acting in the usual course of ~~his~~ business or employment;

(2) a common or contract carrier or ~~warehouseman~~ *warehouse operator* or an employee ~~thereof~~ *of the carrier or warehouse operator*, whose possession of any dangerous drug is in the usual course of business or employment;

(3) an ultimate user or a person in possession of any dangerous drug pursuant to a lawful order of a practitioner or in lawful possession of a Schedule V drug;

(4) officers and employees of the state, or a political subdivision of the state~~,~~ while acting in the course of their official duties."

Section 1847. Section 50-32-311, MCA, is amended to read:

"50-32-311. Revocation or suspension of registration. (1) A registration under 50-32-301 to manufacture, distribute, or dispense a dangerous drug may be suspended or revoked by the board upon a finding that the registrant has:

(a) furnished false or fraudulent material information in any application filed under this chapter;

(b) been convicted of a felony under any state or federal law relating to any dangerous drug or controlled substance; or

(c) had ~~his~~ *the registrant's* federal registration suspended or revoked to manufacture, distribute, or dispense controlled substances.

(2) The board may limit revocation or suspension of a registration to the particular dangerous drug with respect to which grounds for revocation or suspension exist.

(3) If the board suspends or revokes a registration, all dangerous drugs owned or possessed by the registrant at the time of suspension or the effective date of the revocation order may be placed under seal. ~~No~~ *A* disposition may *not* be made of drugs under seal until the time for taking an appeal has elapsed or until all appeals have been concluded unless a court, upon application ~~therefor~~, orders the sale of perishable drugs and the deposit of the proceeds of the sale with the court. Upon a revocation order becoming final, all dangerous drugs may be forfeited to the state.

(4) The board shall promptly cause the bureau to be notified of all orders suspending or revoking registration and all forfeitures of dangerous drugs."

Section 1848. Section 50-32-401, MCA, is amended to read:

"50-32-401. Report required for precursor to controlled substance. (1) A manufacturer, wholesaler, retailer, or other person who sells, transfers, or otherwise furnishes any of the following substances to a person in this state ~~must~~ *shall* submit a report to the department of justice detailing all ~~such~~ transactions:

(a) phenyl-2-propanone;

(b) methylamine;

(c) d-lysergic acid;

(d) ergotamine tartrate;

(e) diethyl malonate;

(f) malonic acid;

(g) ethyl malonate;

(h) barbituric acid; and

(i) piperidine.

(2) The department of justice may adopt, amend, or repeal rules in accordance with the Montana Administrative Procedure Act that add or delete substances ~~to~~ *on* the list of regulated substances ~~detailed~~ in subsection (1)~~,~~ if the substance is a precursor to a dangerous drug as defined in 50-32-101.

(3) This section does not apply to any of the following:

(a) a pharmacist or other authorized person who sells or furnishes the substance upon the prescription of a physician, dentist, podiatrist, or veterinarian;

(b) a physician, dentist, podiatrist, or veterinarian who administers or furnishes the substance to ~~his~~ patients;

(c) a manufacturer or wholesaler licensed by the board of pharmacy who sells, transfers, or otherwise furnishes the substance to a licensed pharmacist, physician, dentist, podiatrist, or veterinarian;

(d) transfers of the substances listed in subsection (1) within any college or university to an employee or student of the college or university for the purpose of teaching or research authorized by the college or university."

Section 1849. Section 50-41-105, MCA, is amended to read:

"50-41-105. Physician not subject to disciplinary action. A physician may not be subjected to disciplinary action by the board of medical examiners for prescribing or administering laetrile to a patient under ~~his~~ *the physician's* care as an adjunct to recognized, customary, or accepted modes of therapy in the treatment of any malignancy, disease, illness, or physical condition."

Section 1850. Section 50-42-105, MCA, is amended to read:

"50-42-105. Physician not subject to disciplinary action. A physician may not be subjected to disciplinary action by the board of medical examiners for prescribing or administering DMSO to a patient under ~~his~~ *the physician's* care as an adjunct to recognized, customary, or accepted modes of therapy in the treatment of any malignancy, disease, illness, or physical condition."

Section 1851. Section 50-43-106, MCA, is amended to read:

"50-43-106. Physician not subject to disciplinary action. A physician may not be disciplined by the board of medical examiners for prescribing or administering calcium-EAP, harnosal, or phosetamin to a patient under ~~his~~ *the physician's* care in the treatment of any malignancy, disease, illness, or physical condition."

Section 1852. Section 50-50-215, MCA, is amended to read:

"50-50-215. Refusal by local health officer — appeal to board. (1) The local health officer may ~~only~~ refuse to validate a license issued under this chapter~~,~~ *only* upon a finding that the requirements of this chapter and any rules implementing it are not satisfied. If the local health officer refuses to validate the license, ~~he~~ *the officer* shall notify the applicant and the department in writing stating ~~his~~ *the officer's* reasons.

(2) The applicant or any person aggrieved by the decision of the local health officer not to validate a license may appeal the decision to the local board of health within 30 days after receiving written notice of the local health officer's decision.

(3) The hearing before the local board of health ~~shall~~ *must* be held pursuant to the contested case provisions of the Montana Administrative Procedure Act."

Section 1853. Section 50-50-304, MCA, is amended to read:

"50-50-304. Discovery of food capable of causing food-borne illness. If a state or local health officer, sanitarian, or other authorized person finds food that is capable of causing food-borne illness, ~~he~~ *that person* shall issue a report in writing recommending that the food be withheld from sale to the public. A duplicate copy of the report, properly authenticated, is admissible in evidence in any action or proceeding where the condition of the food at the time of the inspection is material."

Section 1854. Section 50-50-402, MCA, is amended to read:

"50-50-402. Plant owner not responsible for violation of game laws. A person who owns or operates a frozen food plant ~~which~~ *that* offers individual compartments to the public is not responsible for violation of game laws by persons who rent locker space from ~~him~~ *the owner or operator*."

Section 1855. Section 50-50-403, MCA, is amended to read:

"50-50-403. Liability of frozen food plant operators restricted. The liability for loss of food by the owner or operator of a frozen food plant ~~which~~ *that* offers individual compartments to the public is limited to negligence in operation or negligence of ~~his~~ *the owner's or operator's* employees."

Section 1856. Section 50-51-107, MCA, is amended to read:

"50-51-107. Provision of nursing services or personal-care services by the facility prohibited. (1) Hotels, motels, boardinghouses, roominghouses, or similar accommodations may not provide professional nursing services or personal-care services. A resident of a hotel, motel, boardinghouse, roominghouse, or similar accommodation may have

personal-care, medical, or nursing-related services provided for ~~him~~ *the resident* in ~~such~~ *the* facility by a third-party provider.

(2) Whenever a complaint is filed with the department that a person in need of professional nursing services is residing in a roominghouse or other similar accommodation not licensed to provide ~~such~~ *that* service, the department shall investigate and may require appropriate care or placement of ~~such~~ *the* person if it is found that professional nursing services are needed."

Section 1857. Section 50-51-204, MCA, is amended to read:

"50-51-204. License fee — late fee. (1) There ~~shall~~ *must* be paid to the department with each application for ~~such~~ *a* license or for renewal of ~~such~~ *a* license an annual license fee of $40. The department shall deposit 85% of the fees collected under this section into the local board inspection fund account created in 50-2-108, 11.25% of the fees into the general fund, and 3.75% of the fees into the account provided for in 50-51-110.

(2) In addition to the license fee required under subsection (1), the department shall collect a late fee from any licensee who has failed to submit a license renewal fee prior to the expiration of ~~his~~ *the licensee's* current license and who operates an establishment governed by this part in the next licensing year. The late fee is $25 and must be deposited in the account provided for in 50-51-110."

Section 1858. Section 50-51-215, MCA, is amended to read:

"50-51-215. Refusal by local health officer — appeal to board. (1) The local health officer may ~~only~~ refuse to validate a license issued under this chapter~~,~~ *only* upon a finding that the requirements of this chapter and any rules implementing it are not satisfied. If the local health officer refuses to validate the license, ~~he~~ *the officer* shall notify the applicant and the department in writing stating ~~his~~ *the officer's* reasons.

(2) The applicant or any person aggrieved by the decision of the local health officer not to validate a license may appeal the decision to the local board of health within 30 days after receiving written notice of the local health officer's decision.

(3) The hearing before the local board of health ~~shall~~ *must* be held pursuant to the contested case provisions of the Montana Administrative Procedure Act."

Section 1859. Section 50-52-202, MCA, is amended to read:

"50-52-202. License fee — late fee. (1) Each application ~~shall~~ *must* be accompanied by a fee of $40.

(2) The department shall deposit 85% of the fees collected under subsection (1) into the local board inspection fund account created in 50-2-108, 11.25% of the fees into the general fund, and 3.75% of the fees ~~collected under subsection (1)~~ into the account provided for in 50-52-210.

(3) In addition to the license fee required under subsection (1), the department shall collect a late fee from any licensee who has failed to submit a license renewal fee prior to the expiration of ~~his~~ *the licensee's* current license and who operates an establishment governed by this part in the next licensing year. The late fee is $25 and must be deposited in the account provided for in 50-52-210."

Section 1860. Section 50-52-209, MCA, is amended to read:

"50-52-209. Refusal by local health officer — appeal to board. (1) The local health officer may ~~only~~ refuse to validate a license issued under this

chapter~~,~~ *only* upon a finding that the requirements of this chapter and any rules implementing it are not satisfied. If the local health officer refuses to validate the license, ~~he~~ *the officer* shall notify the applicant and the department in writing stating ~~his~~ *the officer's* reasons.

(2) The applicant or any person aggrieved by the decision of the local health officer not to validate a license may appeal the decision to the local board of health within 30 days after receiving written notice of the local health officer's decision.

(3) The hearing before the local board of health ~~shall~~ *must* be held pursuant to the contested case provisions of the Montana Administrative Procedure Act."

Section 1861. Section 50-60-502, MCA, is amended to read:

"50-60-502. No penalties for hiring unlicensed plumbers. This part ~~shall~~ *may* not be construed as imposing any penalty on ~~any~~ *a* person for hiring or contracting with an unlicensed person to do work in the field of plumbing. However, ~~any~~ *a* person who ~~shall himself engage~~ *engages* in the field of plumbing at a time when ~~he~~ *the person* is not duly licensed ~~shall be~~ *is* subject to the penalties imposed by this part and Title 37, chapter 69."

Section 1862. Section 50-60-515, MCA, is amended to read:

"50-60-515. Penalty for violations — exceptions. A person who works ~~at~~ *in* the field of plumbing or maintains or conducts a plumbing business or an individual who connects or disconnects plumbing from a public water or sewer system in violation of any provisions of this part or at a time when ~~he~~ *the person* is not exempt from the provisions of this part pursuant to the provisions of a duly enacted and subsisting ordinance of a city or town is guilty of a misdemeanor and, upon conviction ~~thereof~~ in any court of competent jurisdiction, shall be punished by a fine of not less than $10 and not more than $100 for each separate offense. However, this part ~~shall~~ *may* not be construed to apply to or affect plumbing or pipefitting as indicated in the *exceptions under* 37-69-102 and 50-60-503 ~~exceptions~~."

Section 1863. Section 50-61-116, MCA, is amended to read:

"50-61-116. Lessee who corrects violations entitled to reimbursement. The occupant or lessee of any building who is required to erect fire escapes under the provisions of this chapter is entitled to ~~reimburse himself~~ *reimbursement* for the cost and expense of erecting the fire escapes out of the rent or lease money of the premises, and the reimbursement is not a breach of any existing lease, contract, or covenant ~~thereof~~ or grounds for any action or damage ouster."

Section 1864. Section 50-62-104, MCA, is amended to read:

"50-62-104. Answer of owner or occupant. (1) The owner of any building ~~so~~ condemned or any occupant or lessee upon whom ~~such~~ *the condemnation* notice or order ~~shall be~~ *is* served, within 20 days from the date of ~~such~~ service, may file with the clerk of the district court and serve upon the department of justice or any officer mentioned in 50-62-101 written objections to ~~said~~ *the* order in the form of a verified answer denying the existence of any of the facts ~~therein~~ cited ~~which he~~ *in the notice or order that the person* desires to ~~controvert~~ *contest*.

(2) If an answer ~~be~~ *is* filed and served, the court shall hear and determine the issues ~~so~~ raised and give judgment ~~thereon~~."

Section 1865. Section 50-62-110, MCA, is amended to read:

"50-62-110. Appeal to department of justice. If the owner or occupant ~~deems himself~~ *feels* aggrieved by an order of an officer under this chapter, ~~he~~ *the owner or occupant* may appeal to the department of justice within 24 hours and the cause of the complaint ~~shall at once~~ *must* be investigated*, in a timely manner,* by direction of the department. Unless ~~such~~ *the* order is revoked by the department, it ~~shall remain~~ *remains* in force and ~~forthwith~~ *must* be complied with by ~~such~~ *the* owner or occupant."

Section 1866. Section 50-63-403, MCA, is amended to read:

"50-63-403. Agencies to keep information confidential. The insured's right of individual privacy requires agencies and agency personnel receiving information furnished pursuant to 50-63-401 and 50-63-402 to hold the information in confidence unless:

(1) the insured waives ~~his~~ *the* right of individual privacy; or

(2) release of the information is required pursuant to a criminal or civil proceeding."

Section 1867. Section 50-70-107, MCA, is amended to read:

"50-70-107. Duty of physicians and others to report occupational disease. (1) Before the 11th day after discovery, ~~every~~ *a* physician, person in charge of a hospital or clinic, or state employee shall report an occupational disease to the department.

(2) The report ~~shall~~ *must* be on forms prescribed by the department and include:

(a) name and address of the diseased person;

(b) name and business address of the employer;

(c) business of the employer;

(d) place of the person's employment;

(e) length of time the person was employed at the place where ~~he~~ *the person* became ill;

(f) nature of the disease;

(g) other information required by the department.

(3) Reports made under this section are neither public records nor open to public inspection. They are not admissible as evidence in any legal action or at a hearing under workers' compensation laws of this state."

Section 1868. Section 50-70-115, MCA, is amended to read:

"50-70-115. Inspection. (1) The department may enter and inspect at a reasonable time property, premises, or a place, except a private residence, where a person is or will be employed to ascertain the state of compliance with this chapter and rules adopted under it.

(2) A person may not refuse entry or access to the department when it requests entry for purposes of inspection. A person may not obstruct, hamper, or interfere with an inspection.

(3) ~~At his~~ *Upon* request, the owner or operator of the premises ~~shall receive~~ *must be given* a report setting forth facts found ~~which~~ *that* relate to compliance status."

Section 1869. Section 50-71-201, MCA, is amended to read:

"50-71-201. Employer to provide safe workplace and to purchase, furnish, and require use of health and safety items — safe practices. Each employer shall:

(1) furnish a place of employment that is safe for each of ~~his~~ *the employer's* employees;

(2) with the exception of footwear, purchase, furnish, and require the use of health and safety devices, safeguards, protective safety clothing, or other health and safety items, including but not limited to air masks, hardhats, and protective gloves, that may be required by state or federal law, the employer, or the terms of an employment contract~~,~~ unless the terms of a collective bargaining agreement provide otherwise;

(3) adopt and use practices, means, methods, operations, and processes that are reasonably adequate to render the place of employment safe; and

(4) do any other thing reasonably necessary to protect the life, health, and safety of ~~his~~ *the employer's* employees."

Section 1870. Section 50-71-203, MCA, is amended to read:

"50-71-203. Removal of or refusal to use health and safety items prohibited. A person may not:

(1) remove, displace, damage, destroy, carry off, or refuse to use any health and safety device, safeguard, protective clothing, or other health and safety item furnished for ~~his~~ use by ~~his~~ *the person's* employer;

(2) interfere with the use of any required health and safety device, safeguard, protective clothing, or other health and safety item by any other person;

(3) interfere with the use of a method or process adopted for the protection of an employee in the place of employment; or

(4) fail to do any other thing reasonably necessary to protect the life, health, and safety of employees."

Section 1871. Section 50-71-303, MCA, is amended to read:

"50-71-303. Procedure to compel testimony or production of evidence. (1) The department or any member ~~thereof~~ *of the department* before whom testimony is to be given or produced, in the case of refusal of any witness to attend or testify or produce any papers required by ~~such~~ *a* subpoena, may in applying to the district court in and for the county in which the proceeding is pending show that the witness has been subpoenaed in the manner prescribed and the witness has failed or refused to attend or produce the papers required by the subpoena or has refused to answer questions ~~propounded~~ *directed* to ~~him~~ *the witness* in the course of ~~such~~ *the* proceeding and ask the court to compel the witness to attend and testify or produce ~~such~~ *the* papers before the department.

(2) The court, upon ~~such~~ application, shall enter an order directing the witness to appear before the court at a time and place to be fixed by the court ~~then and there~~ to show cause why the witness has not attended and testified or produced the papers before the department or any member ~~thereof~~ *of the department*.

(3) A copy of the order ~~shall~~ *must* be served upon the witness.

(4) If it is apparent to the court that the subpoena was regularly issued by the department or member ~~thereof~~ *of the department*, the court ~~thereupon~~ shall enter an order that the witness appear before the department or member ~~thereof~~ *of the department* at a time and place to be fixed in ~~such~~ *the* order and

testify and produce the required papers, and upon failure to obey the order, the witness ~~shall~~ *must* be dealt with as for contempt of court."

Section 1872. Section 50-71-325, MCA, is amended to read:

"50-71-325. Department authorized to prohibit further use of equipment constituting violation. (1) The department, upon finding any violation of any duly adopted safety code, order, or rule involving failure to install or maintain any safety appliance, device, or safeguard required by ~~such~~ *the* safety order, code, or rule, may prohibit the further use of the machine, equipment, or apparatus constituting ~~such~~ *the* violation. ~~and, when such~~ *If the* use is prohibited, *the department* shall post notice in an appropriate place in plain view of any person likely to use the ~~same~~ *machine, equipment, or apparatus* calling attention to the unsafe condition, defect, or lack of safeguard and the fact that the further use ~~thereof~~ is prohibited.

(2) The notice required by subsection (1) ~~of this section shall~~ *may* not be removed until the required safety appliance, device, or safeguard complies with the requirement of the safety order or safety code.

(3) ~~Every~~ *A* person who, after the notice required by subsection (1) ~~of this section~~ is posted as provided in that subsection, uses or operates any place of employment, machine, device, apparatus, or equipment referred to in subsection (1) ~~of this section~~ before it is made safe and the required safeguards or safety appliances or devices are provided or who defaces or destroys or removes any notice required by subsection (1) ~~of this section~~ without the authority of the department or who fails or refuses to file a report of accident as required by 39-71-307(1) is guilty of a misdemeanor and, in addition to the punishment provided for misdemeanors, is subject to a civil penalty in an amount of not more than $1,000. This civil penalty may be imposed and collected by the department in an action brought in the name of the state in the county in which the employer resides or in which ~~he~~ *the employer* employs workers. Any penalty collected under this subsection ~~shall~~ *must* be paid into the department's state special revenue account.

(4) ~~Any~~ *A* person aggrieved by an order prohibiting the use of the machine, equipment, apparatus, or place of employment as provided for in this section may request a hearing before the department within 20 days after entry of ~~such~~ *the* order. The department shall ~~then~~ affirm, modify, or revoke the order, and all procedures of this chapter ~~relative~~ *related* to entry of orders, rehearing, and appeal ~~shall~~ apply."

Section 1873. Section 50-71-334, MCA, is amended to read:

"50-71-334. Judicial review. (1) The orders of the department, its rules, findings, and decisions made and entered under the provisions of this chapter may be reviewed by the courts within the time and in the manner specified in this section and not otherwise.

(2) Within 30 days after an application for rehearing is denied or, if the application is granted, within 30 days after rendition of the decision on the rehearing, any *affected* party ~~affected thereby~~ may appeal to the district court for the county in which ~~is situated~~ the place of employment ~~complained of~~ *is located* for the purpose of having the lawfulness of the original order or decision or the order or decision on rehearing inquired into and determined.

(3) To give the district court jurisdiction, it is sufficient that a notice be filed with the clerk of the court to the effect that an appeal is taken to the district court from the order or decision of the department and describing the order or decision sufficiently for purposes of identification. The notice ~~shall~~ *must* be

signed by the party appealing or ~~his~~ *the party's* attorney, and a copy ~~thereof shall~~ *must* be served by certified mail upon the department.

(4) Within 10 days after the receipt of the notice, the department shall file with the clerk of court the record of proceedings before the department, including a transcript of all the evidence ~~adduced upon~~ *introduced at* the hearing and any rehearing before the department. The district court, on application for good cause shown, may extend the time within which the department shall file the record, transcript, and evidence.

(5) The cause ~~shall~~ *must* be tried in the same manner as a civil action, provided that ~~no~~ new or additional evidence may *not* be introduced in the court, but the cause ~~shall~~ *must* be heard on the record to the court as certified to it by the department.

(6) The appeal ~~shall~~ *may* not be extended further than to determine whether or not:

(a) the department acted without or in excess of its powers or in violation of the law;

(b) the order or decision was procured by fraud;

(c) the order, decision, or rule is unreasonable;

(d) if findings of fact are made, the finding of fact supports the order or decision under review.

(7) An appeal may be taken from the decree of the district court to the supreme court as in all other civil cases."

Section 1874. Section 50-72-204, MCA, is amended to read:

"50-72-204. Debarment of persons from mine when death or serious injury likely. If, upon any inspection of a mine ~~which~~ *that* is subject to this chapter, authorized representatives of the department find that the conditions or practices in the mine are such that a danger exists ~~which~~ *that* could reasonably be expected to cause death or serious physical harm immediately or before the ~~imminence~~ *threat* of ~~such~~ *the* danger can be eliminated, ~~such~~ *the* representatives shall determine the extent of the area of ~~such~~ *the* mine throughout which the danger exists. ~~and thereupon~~ *Upon that determination, the representatives of the department shall* issue an order requiring the operator of ~~such~~ *the* mine to cause all persons to be withdrawn from and to be ~~debarred~~ *barred* from entering ~~such~~ *the* area, except ~~the~~ persons ~~designated below~~ whose presence in ~~such~~ *the* area is necessary to eliminate the danger described in ~~such~~ order *as follows*:

(1) any person whose presence in ~~such~~ *the* area is necessary in the judgment of the operator of the mine to eliminate the danger described in the order;

(2) any public official whose official duties require ~~him~~ *the official* to enter ~~such~~ *the* area;

(3) any legal or technical consultant or any representative of the employees of the mine who is a person qualified to make mine examinations or is accompanied by ~~such~~ a *qualified* person and whose presence in ~~such~~ *the* area is necessary, in the judgment of the operator of the mine, for the proper investigation of the conditions described in the order."

Section 1875. Section 50-72-205, MCA, is amended to read:

"50-72-205. Procedure when noncompliance not likely to cause death or serious injury. (1) If, upon any inspection or investigation, an authorized representative finds that there has been a failure to comply with a

mandatory standard ~~which~~ *that* is applicable to ~~such~~ *a* mine, but that ~~such~~ *the* failure to comply has not created a danger that could reasonably be expected to cause death or serious physical harm in ~~such~~ *the* mine immediately or before the ~~imminence~~ *threat* of ~~such~~ *the* danger can be eliminated, ~~he~~ *the representative* shall ~~find~~ *determine* what would be a reasonable period of time within which ~~such~~ *the* violation should be totally abated and ~~thereupon~~ issue a notice fixing a reasonable time for the abatement of the violation.

(2) If, upon the expiration of ~~such~~ *the* period of time as originally fixed or extended, the authorized representative finds that ~~such~~ *the* violation has not been totally abated and if ~~he~~ *the representative* also finds that ~~such~~ *the* period of time should not be further extended, ~~he~~ *the representative* shall also ~~find~~ *determine* the extent of the area ~~which~~ *that* is affected by ~~such~~ *the* violation. ~~Thereupon~~ *After the determination*, the department shall make an order requiring the operator of ~~such~~ *the* mine to cause all persons in ~~such~~ *that* area to be withdrawn from and to be ~~debarred~~ *barred* from entering ~~such~~ *the* area, ~~excepting~~ *except for* the following persons whose presence in ~~such~~ *the* area is necessary to abate the violation described in the order:

(a) any person whose presence in ~~such~~ *the* area is necessary in the judgment of the operator of the mine to abate the violation described in the order;

(b) any public official whose official duties require ~~him~~ *the official* to enter ~~such~~ *the* area;

(c) any legal or technical consultant or any representative of the employees of the mine who is a person qualified to make examinations or is accompanied by ~~such~~ a *qualified* person and whose presence in ~~such~~ *the* area is necessary, in the judgment of the operator of the mine, for the proper investigation of the conditions described in the order."

Section 1876. Section 50-73-102, MCA, is amended to read:

"50-73-102. Definitions. As used in this chapter, the following definitions apply:

(1) "Department" means the department of labor and industry and the state coal mine inspectors employed by the department.

(2) "Excavations" and "workings" mean all parts of a mine excavated or being excavated, including shafts, slopes, tunnels, entries, rooms, and working places, whether abandoned or in use.

(3) "Gassy mine" means a mine is considered to be potentially gassy. The department may further define this term in its rules.

(4) "Mine" and "coal mine" mean all parts of the property of a mining plant under one management ~~which~~ *that* contribute, directly or indirectly, to the mining or handling of coal.

(5) "Mine examiner" means a person charged with the examination of the condition of the mine before the miners are permitted to enter it and who is commonly known as the "fire boss".

(6) "Mine ~~foreman~~ *supervisor*" means a person who is charged with the general direction of the underground work or both the underground work and the outside work of a coal mine and who is commonly known and designated as "mine boss".

(7) "Operator", as applied to the party in control of a mine under this chapter, means the person, firm, or body corporate ~~which~~ *that* is the immediate

proprietor as owner or lessee of the plant and, as such, is responsible for the condition and management ~~thereof~~ *of the mine*.

(8) "Shaft" means any vertical opening through the strata ~~which~~ *that* is or may be used for the purpose of ventilation or escape or for hoisting or lowering of ~~men~~ *people* or material in connection with the mining of coal.

(9) "Slope" and "drift" mean respectively an incline or horizontal way, opening, or tunnel to a seam of coal to be used for the same purpose as a shaft."

Section 1877. Section 50-73-205, MCA, is amended to read:

"50-73-205. Copies of maps for department. The original or true copies of all maps ~~shall~~ *must* be kept in the office at the mine, and true copies ~~shall~~ *must* also be furnished the department within 30 days after their completion. The maps delivered to the department ~~shall~~ become the property of the state. ~~They shall~~ *The maps must* be kept at the office of the department and ~~be~~ *are* open to inspection by all persons interested in them. An examination ~~shall~~ *may* only be made in the presence of a department inspector, and ~~he shall~~ *the inspector may* not permit any copies of ~~them~~ *the maps* to be made without the written consent of the operator or owner of the property, under penalty of removal from office."

Section 1878. Section 50-73-207, MCA, is amended to read:

"50-73-207. Annual surveys in mines having only five ~~men~~ *people* on shift. The department shall require an extension of the last preceding survey once every 12 months of every mine in active operation in which five ~~men~~ *people* or less are employed on any one shift."

Section 1879. Section 50-73-305, MCA, is amended to read:

"50-73-305. Specific prohibitions and safety precautions. (1) A person may not enter a mine ~~which~~ *that* is generating firedamp in great enough quantities to be detected by a safety lamp until the mine examiners make a report to the department.

(2) A person, unless accompanied by the mine examiner, may not go beyond a danger signal until all standing gas discovered has been removed or diluted and rendered harmless by a current of air. A person ordered to withdraw by the mine ~~foreman~~ *supervisor* or mine examiner from the mine on account of the interruption of the ventilation may not reenter the mine until given permission to do so by the mine ~~foreman~~ *supervisor*.

(3) A person other than the mine examiner may not remove any caution board or danger signal placed at the entrance to any working place or at the entrance to any old workings in a mine.

(4) A person may not erase or change a mark of reference or monument made in connection with a measurement, change marks or dates on any caution board, erase or change the dates at room or entry face when made by the mine examiner, take for ~~his~~ *the person's* use a life check not issued to ~~him~~ *the person* under rules adopted by the department, change the checks on cars, wrongfully check a car, or do any act with intent to defraud.

(5) A person may not take anything containing fire into an underground mine, except as provided for in rules adopted by the department.

(6) A person may not place refuse in or obstruct an airway or breakthrough used as an airway. A worker or other person may not damage or alter a water gauge, barometer, aircourse, brattice equipment, machinery, or livestock, obstruct or throw open any airway, handle or disturb any part of the machinery of the hoisting engine of a mine, open a door of a mine and neglect to close it,

endanger the miners or those working ~~therein~~ *in the mine*, disobey an order given in pursuance of law, or do a willful act endangering the lives or health of persons working there or the security of a mine or machinery."

Section 1880. Section 50-73-307, MCA, is amended to read:

"50-73-307. Operator to make and preserve ~~a~~ record of all injuries. ~~Every~~ *An* operator of a coal mine or ~~his~~ *the operator's* agent shall make and preserve for the information of the department, upon uniform blanks furnished by the department, a record of all injuries sustained by any employees on the premises."

Section 1881. Section 50-73-401, MCA, is amended to read:

"50-73-401. Coal mine inspector. (1) The department shall employ an adequate number of qualified coal mine inspectors for the enforcement of this chapter and shall prescribe their duties.

(2) A person is not eligible to be a state coal mine inspector unless ~~he~~ *the person* is a citizen of the United States, *is* a resident of this state, and has been actually employed in coal mining *for* 5 years before ~~his~~ *the* appointment.

(3) A state coal mine inspector may not act as *the* agent for a corporation, superintendent, or manager of a mine and ~~shall in no manner~~ *may not* be in the employ of mining companies~~, nor shall he be~~ *or* interested in any way in coal mining operations, either as owner, lessee, or otherwise."

Section 1882. Section 50-73-404, MCA, is amended to read:

"50-73-404. Right of employees' representative and mine owner to accompany department during inspection. The employees' representative has the right to accompany the department in making an official mine inspection. The owner or operator has the right to personally accompany the department while inspecting ~~his~~ *the owner's or operator's* property or to designate someone to accompany the department."

Section 1883. Section 50-73-410, MCA, is amended to read:

"50-73-410. Department inspection upon advisement of accident, injury, or fatality. (1) When advised by an operator of any accident in a coal mine involving loss of life or serious personal injury, the department shall, if it considers it necessary from the facts reported and in all cases of loss of life, immediately have an inspector go to the scene of the accident within 48 hours of notification.

(2) The department may also make any original or supplementary investigation ~~which~~ *that* it considers necessary as to the nature and cause of an accident and shall make a record of the circumstances and of the result of the investigations for its files.

(3) The inspection team ~~shall~~ *must* include a department coal mine inspector, the employer or ~~his~~ *the employer's* designee, and a representative of the employees."

Section 1884. Section 50-73-411, MCA, is amended to read:

"50-73-411. Miners' organization authorized to investigate fatal accident. The representative of the miners' organization or some person delegated by ~~him~~ *the representative* may enter any coal mine for the purpose of investigating the causes of a fatal accident."

Section 1885. Section 50-73-412, MCA, is amended to read:

"50-73-412. Debarment of persons from mine when death or serious injury likely. If, upon an inspection of a mine, the department finds that the conditions or practices in the mine ~~are such that~~ *create* a danger ~~exists which~~ *that* could reasonably be expected to cause death or serious physical harm immediately or before the danger can be eliminated, the department shall determine the extent of the area of the mine throughout which the danger exists and order the operator of the mine to have all persons withdrawn from and excluded from entering the area, except the persons ~~designated below~~ whose presence in the area is necessary to eliminate the danger described in the order *as follows*:

(1) a person whose presence in the area is necessary in the judgment of the operator of the mine to eliminate the danger;

(2) a public official whose official duties require ~~him~~ *the official* to enter the area;

(3) a legal or technical consultant or a representative of the employees of the mine who is a person qualified to make mine examinations or is accompanied by ~~such~~ a *qualified* person and whose presence in the area is necessary, in the judgment of the operator of the mine, for the proper investigation of the conditions in the area."

Section 1886. Section 50-73-413, MCA, is amended to read:

"50-73-413. Procedure when noncompliance not likely to cause death or serious injury. If upon an inspection or investigation the department finds that there has been a failure to comply with a mandatory standard ~~which~~ *that* is applicable to the mine, but that the failure to comply has not created a danger that could reasonably be expected to cause death or serious physical harm in the mine immediately or before the ~~imminence~~ *threat* of the danger can be eliminated, it shall determine what would be a reasonable period of time within which the violation should be totally abated and issue a notice fixing a reasonable time for the abatement of the violation. If, upon the expiration of the period of time as originally fixed or extended, the department finds that the violation has not been totally abated and if it also finds that the period of time should not be further extended, it shall also find the extent of the area ~~which~~ *that* is affected by the violation. The department shall order the operator of the mine to have all persons in the area to be withdrawn from and excluded from entering the area, excepting the following persons whose presence in the area is necessary to abate the violation described in the order:

(1) a person whose presence in the area is necessary in the judgment of the operator of the mine to abate the violation;

(2) a public official whose official duties require ~~him~~ *the official* to enter the area;

(3) a legal or technical consultant or a representative of the employees of the mine who is a person qualified to make examinations or is accompanied by ~~such~~ a *qualified* person and whose presence in the area is necessary, in the judgment of the operator of the mine, for the proper investigation of the conditions in the area."

Section 1887. Section 50-74-203, MCA, is amended to read:

"50-74-203. Qualifications of boiler inspectors. ~~No~~ *A* person is *not* eligible to hold the office of inspector of boilers and steam engines who has not had at least 10 years of actual experience in the operation of steam engines, steam boilers, and steam machinery and who has not held for at least 3 years

immediately preceding ~~his~~ *the person's* appointment a first-class stationary engineer's license of the state of Montana or who is directly or indirectly interested in the manufacture or sale of boilers or steam machinery or any patented article required to be sold relating ~~thereto~~ *boilers or steam machinery*."

Section 1888. Section 50-74-214, MCA, is amended to read:

"50-74-214. Engineer to assist in inspection. It ~~shall be~~ *is* the duty of the engineer operating any boiler or boilers to assist the inspectors in their examination of the ~~same~~ *boilers* and point out any defects known to ~~him~~ *the engineer* in the boilers or machinery under ~~his~~ *the engineer's* charge. ~~Any~~ *If an* engineer *does* not ~~complying~~ *comply* with this section, ~~shall have~~ ~~his~~ *the engineer's* license *must be* revoked or suspended."

Section 1889. Section 50-74-215, MCA, is amended to read:

"50-74-215. Interior and exterior examination of boiler. (1) The inspector must ~~satisfy himself~~ *be satisfied* by a thorough interior and exterior examination that the*:*

(a) boilers are well-made and of good and suitable material;

(b) ~~that the~~ openings for the passage of water and steam, respectively, and all pipes and tubes exposed to heat are of the proper dimensions and free from obstructions;

(c) ~~that the~~ flues are circular in shape;

(d) ~~that the~~ fire line of the furnace is at least 2 inches below prescribed minimum waterline of the boilers;

(e) ~~that the~~ arrangements for delivering the feed water are such that the boilers cannot be injured ~~thereby~~ *by the feed water*; and

(f) ~~that such~~ boilers and the steam connections may be safely employed without danger to life.

(2) ~~No~~ *A* boiler or steam pipe or any of the connections ~~thereto which~~ *to a boiler or steam pipe that* are made in whole or in part of bad material or are unsafe from any cause ~~shall~~ *may not* be approved. Nothing ~~herein shall~~ *in this section may* be construed to prevent the use of any boiler or steam generator, ~~which may~~ *that is* not ~~be~~ constructed of riveted iron or steel plates, when the inspector has satisfactory evidence that ~~such~~ *the* boiler or steam generator is equal in strength to and as safe from explosion as boilers of the best quality, constructed of iron or steel plates."

Section 1890. Section 50-74-217, MCA, is amended to read:

"50-74-217. Other inspection requirements. The inspector must ~~satisfy himself~~ *be satisfied* that:

(1) the safety valves are of suitable relieving capacity ratings, sufficient in number and area, and properly arranged and ~~are~~ properly adjusted so as not to allow a greater pressure in a boiler than the amount prescribed by the inspection certificate;

(2) there are a sufficient number of gauge cocks properly inserted to indicate the amount of water and suitable gauges that will correctly record the pressure of steam; and

(3) adequate and certain provisions for an ample supply of water to feed the boiler at all times and suitable means for blowing out are provided so as to thoroughly remove mud and sediment from all parts of the boiler when it is under pressure of steam."

Section 1891. Section 50-74-311, MCA, is amended to read:

"50-74-311. Waiting period before reexamination permitted. In case of the failure of any applicant to successfully pass an examination, 45 days must elapse before ~~he~~ *the applicant* ~~can~~ *may* again be examined for license."

Section 1892. Section 50-76-101, MCA, is amended to read:

"50-76-101. ~~Where~~ *When* chapter not to apply. (1) This chapter ~~shall~~ *does* not apply to hoisting engines, air compressors, or elevators under federal control or to operating elevators in completed private or public buildings.

(2) The provisions of this chapter ~~shall~~ *do* not apply to forklifts and front-end and rear-end loaders or line trucks and bucket trucks.

(3) For the purposes of this section, "line trucks" are hoisting and digging devices mounted on a standard manufacturer's truck chassis with an all-weather cab capable of transporting a driver and two or more ~~crewmen~~ *crew members*. Line trucks are equipped with a hydraulically operated, telescoping boom ~~which~~ *that* uses a nonmetallic cable for hoisting. Line trucks may be equipped with a rotary digging device and are capable of attaining maximum allowable highway speeds. "Bucket trucks" are personnel-lifting devices designed to lift personnel to work stations above ground. Bucket trucks are not designed for the purposes intended for a line truck."

Section 1893. Section 50-76-108, MCA, is amended to read:

"50-76-108. Renewal of application by rejected candidate. ~~Any~~ *A* person who has applied for a license under this chapter and has been rejected may renew ~~his~~ *the* application for a license within the time and in the manner prescribed in 50-74-312."

Section 1894. Section 50-77-102, MCA, is amended to read:

"50-77-102. Temporary floors for protection of ~~workmen~~ *workers*. (1) It ~~shall be~~ *is* the duty of ~~every~~ *an* owner, person, or corporation ~~who shall have~~ *that has* the direct and immediate supervision or control of the construction or remodeling of any building having more than three framed floors, whether some or all of ~~said~~ *the* floors are above or below the established street grade, to provide and lay upon the upper side of the joists or girders, or both, of the first floor below the riveters and structural steel setters a plank floor, which ~~shall~~ *must* be laid to form a good substantial temporary floor for the protection of employees and all persons engaged above or below or on ~~such~~ *the* temporary floor in ~~such~~ *the* building.

(2) ~~Where~~ *If* the permanent floor is in place on the floor ~~herein~~ required to be planked, a temporary protective floor ~~shall~~ *may* not be required.

(3) If the floor or permanent floor of the second floor, any other floor above the second *floor*, or *the* roof is being placed previous to the permanent floor immediately below the floor ~~which~~ *that* is being arched or planked, a good substantial temporary floor ~~shall~~ *must* be laid on the joists and girders of the next lower floor.

(4) For the purpose of this section, the lowest framed floor in the building ~~shall be~~ *is* considered the first floor."

Section 1895. Section 50-78-204, MCA, is amended to read:

"50-78-204. Employee rights. (1) An employee who may be exposed to hazardous chemicals must be informed of the potential or actual exposure and must be provided access to the workplace chemical list and to the material safety data sheet for each hazardous chemical. An employer who does not provide an

employee with information on a hazardous chemical within 5 working days of the request for information, as required by this chapter, may not require the employee to work with the hazardous chemical until the information is made available.

(2) Each employee must receive training from ~~his~~ *the* employer, as provided in 50-78-305 or in the OSHA standard, on the hazards of workplace chemicals and on protective measures for handling those chemicals.

(3) Each employee required to work with a hazardous chemical must be provided with appropriate personal protective equipment.

(4) ~~No~~ *An* employer ~~shall~~ *may not* discharge, cause to be discharged, discipline, discriminate against, or initiate any adverse personnel action against any employee who exercises ~~his~~ *the employee's* rights, testifies, or assists others in exercising their rights or duties under this chapter.

(5) A waiver by an employee of the benefits, rights, or requirements of this chapter is against public policy and is void. An employer's request or requirement that an employee waive any rights under this chapter as a condition of employment is a violation of this chapter.

(6) A designated representative may act on behalf of an employee in pursuing any right or enforcement remedy under this chapter."

Section 1896. Section 50-78-305, MCA, is amended to read:

"50-78-305. Employee education program. (1) Each employer shall provide, at least annually, an education and training program for all ~~his~~ *of the employer's* employees using or handling hazardous chemicals. Additional instruction must be provided whenever the potential for exposure to hazardous chemicals is altered or whenever new and significant information is received by the employer concerning the hazards of a chemical. New or newly assigned employees must be provided training before working with or in a work area containing a hazardous chemical.

(2) The programs must provide instruction in:

(a) interpreting labels and material safety data sheets and the relationship between these two methods of hazard communication;

(b) the location and acute and chronic effects of hazardous chemicals used by the employees; and

(c) the safe handling, protective equipment, first-aid treatment, and cleanup and disposal procedures for hazardous chemicals.

(3) The employer shall keep a record of the dates of training sessions given to employees and the names of the employees attending."

Section 1897. Section 50-78-402, MCA, is amended to read:

"50-78-402. Complaints, investigation, and penalties. (1) An employee in a workplace covered by the OSHA standard who believes ~~his~~ *the* employer is not complying with the provisions of the OSHA standard may report the alleged violation to the federal occupational safety and health administration.

(2) An employee who believes an employer is not complying with the provisions of this chapter may submit a written complaint to the local health officer, as defined and described in Title 50, chapter 2, part 1.

(3) If the local health officer chooses to act on the complaint, ~~he~~ *the officer* shall:

(a) within 5 working days of receipt of the complaint, investigate the complaint and, in the event of an apparent violation, seek a corrective response from the employer;

(b) within 10 working days of receipt of a complaint, complete a report that details the findings of the investigation and the response of the employer;

(c) upon completion of the report, submit copies to the employee requesting the investigation, the county attorney, and the employer; and

(d) if the evidence suggests that the employer has violated the provisions of this chapter and the health officer does not receive a corrective response within 10 days of notifying the employer of the violation, file a complaint in the appropriate court or request appropriate action by the county attorney to prosecute the alleged violation.

(4) An employee may submit a written complaint to the county attorney.

(5) The county attorney shall investigate any complaint received and, if a violation appears to have occurred and the county attorney does not receive a corrective response within 10 days of notifying the employer of the violation, initiate appropriate court proceedings to prosecute the violation.

(6) A person found to be knowingly in violation of this chapter is guilty of a misdemeanor. Each day of violation is a separate offense."

Section 1898. Section 50-79-501, MCA, is amended to read:

"50-79-501. Northwest Interstate Compact on Low-Level Radioactive Waste Management. The legislature of the state of Montana approves and ratifies the compact designated as the "Northwest Interstate Compact on Low-Level Radioactive Waste Management", which compact is as follows:

NORTHWEST INTERSTATE COMPACT ON
LOW-LEVEL RADIOACTIVE WASTE MANAGEMENT

ARTICLE I — Policy and Purpose

The party states recognize that low-level radioactive wastes are generated by essential activities and services that benefit the citizens of the states. It is further recognized that the protection of the health and safety of the citizens of the party states and the most economical management of low-level radioactive wastes can be accomplished through cooperation of the states in minimizing the amount of handling and transportation required to dispose of such wastes and through the cooperation of the states in providing facilities that serve the region. It is the policy of the party states to undertake the necessary cooperation to protect the health and safety of the citizens of the party states and to provide for the most economical management of low-level radioactive wastes on a continuing basis. It is the purpose of this compact to provide the means for such a cooperative effort among the party states so that the protection of the citizens of the states and the maintenance of the viability of the states' economies will be enhanced while sharing the responsibilities of radioactive low-level waste management.

ARTICLE II — Definitions

As used in this compact:

(1) "Facility" means any site, location, structure, or property, excluding federal waste facilities, used or to be used for the storage, treatment, or disposal of low-level waste.

(2) "Low-level waste" means waste material which contains radioactive nuclides emitting primarily beta or gamma radiation, or both, in concentrations or quantities which exceed applicable federal or state standards for unrestricted release. Low-level waste does not include waste containing more than 10 nanocuries of transuranic contaminants per gram of material, spent reactor fuel, or material classified as either high-level waste or waste which is unsuited for disposal by near-surface burial under any applicable federal regulations.

(3) "Generator" means any person, partnership, association, corporation, or any other entity whatsoever which, as a part of its activities, produces low-level radioactive waste.

(4) "Host state" means a state in which a facility is located.

ARTICLE III — Regulatory Practices

Each party state hereby agrees to adopt practices which will require low-level waste shipments originating within its borders and destined for a facility within another party state to conform to the applicable packaging and transportation requirements and regulations of the host state. Such practices shall include:

(1) maintaining an inventory of all generators within the state that have shipped or expect to ship low-level waste to facilities in another party state;

(2) periodic unannounced inspection of the premises of such generators and the waste management activities thereon;

(3) authorization of the containers in which such waste may be shipped and a requirement that generators use only that type of container authorized by the state;

(4) assurance that inspections of the carriers which transport such waste are conducted by proper authorities and appropriate enforcement action is taken for violations;

(5) after receiving notification from a host state that a generator within the party state is in violation of applicable packaging or transportation standards, taking appropriate action to assure that such violations do not recur. Such action may include inspection of every individual low-level waste shipment by that generator.

Each party state may impose fees upon generators and shippers to recover the cost of the inspections and other practices under this article. Nothing in this article shall be construed to limit any party state's authority to impose additional or more stringent standards on generators or carriers than those required under this article.

ARTICLE IV — Regional Facilities

(1) Facilities located in any party state, other than facilities established or maintained by individual low-level waste generators for the management of their own low-level waste, shall accept low-level waste generated in any party state if such waste has been packaged and transported according to applicable laws and regulations.

(2) No facility located in any party state may accept low-level waste generated outside the region comprising the party states, except as provided in Article V.

(3) Until such time as paragraph (2) of this article takes effect as provided in Article VI, facilities located in any party state may accept low-level waste generated outside of any of the party states only if such waste is accompanied by

a certificate of compliance issued by an official of the state in which such waste shipment originated. Such certificate must be in such form as may be required by the host state and shall contain at least the following:

(a) the generator's name and address;

(b) a description of the contents of the low-level waste container;

(c) a statement that the low-level waste being shipped has been inspected by the official who issued the certificate or by ~~his~~ *the official's* agent or by a representative of the United States Nuclear Regulatory Commission and was found to have been packaged in compliance with applicable federal regulations and such additional requirements as may be imposed by the host state;

(d) a binding agreement by the state of origin to reimburse any party state for any liability or expense incurred as a result of an accidental release of such waste during shipment or after such waste reaches the facility.

(4) Each party state shall cooperate with the other party states in determining the appropriate site of any facility that might be required within the region comprising the party states in order to maximize public health and safety while minimizing the use of any one party state as the host of such facilities on a permanent basis. Each party state further agrees that decisions regarding low-level waste management facilities in its region will be reached through a good faith process which takes into account the burdens borne by each of the party states as well as the benefits each has received.

(5) The party states recognize that the issue of hazardous chemical waste management is similar in many respects to that of low-level waste management. Therefore, in consideration of the state of Washington allowing access to its low-level waste disposal facility by generators in other party states, party states such as Oregon and Idaho, which host hazardous chemical waste disposal facilities, will allow access to such facilities by generators within other party states. Nothing in this compact may be construed to prevent any party state from limiting the nature and type of hazardous chemical or low-level wastes to be accepted at facilities within its borders or from ordering the closure of such facilities, so long as such action by a host state is applied equally to all generators within the region composed of the party states.

(6) Any host state may establish a schedule of fees and requirements related to its facilities to assure that closure, perpetual care, and maintenance and contingency requirements are met, including adequate bonding.

ARTICLE V — Northwest Low-Level Waste Compact Committee

The Governor of each party state shall designate one official of that state as the person responsible for administration of this compact. The officials so designated shall together comprise the Northwest Low-Level Waste Compact Committee. The committee shall meet as required to consider matters arising under this compact. The parties shall inform the committee of existing regulations concerning low-level waste management in their states and shall afford all parties a reasonable opportunity to review and comment upon any proposed modifications in such regulations. Notwithstanding any provision of Article IV to the contrary, the committee may enter into arrangements with states, provinces, individual generators, or regional compact entities outside the region comprising the party states for access to facilities on such terms and conditions as the committee may deem appropriate. However, it shall require a two-thirds vote of all such members, including the affirmative vote of the member of any party state in which a facility affected by such arrangement is located, for the committee to enter into such arrangement.

ARTICLE VI — Eligible Parties and Effective Date

(1) Each of the following states is eligible to become a party to this compact: Alaska, Hawaii, Idaho, Montana, Oregon, Utah, Washington, and Wyoming. As to any eligible party, this compact shall become effective upon enactment into law by that party, but it shall not become initially effective until enacted into law by two states. Any party state may withdraw from this compact by enacting a statute repealing its approval.

(2) After the compact has initially taken effect pursuant to paragraph (1) of this article, any eligible party state may become a party to this compact by the execution of an executive order by the Governor of the state. Any state which becomes a party in this manner shall cease to be a party upon the final adjournment of the next general or regular session of its Legislature or July 1, 1983, whichever occurs first, unless the compact has by then been enacted as a statute by that state.

(3) Paragraph (2) of Article IV of this compact shall take effect on July 1, 1983, if consent is given by Congress. As provided in Public Law 96-573, Congress may withdraw its consent to the compact after every 5-year period.

ARTICLE VII — Severability

If any provision of this compact or its application to any person or circumstance is held to be invalid, all other provisions of this compact and the application of all of its provisions to all other persons and circumstances shall remain valid, and to this end the provisions of this compact are severable."

Section 1899. Section 52-2-723, MCA, is amended to read:

"52-2-723. Requirements for licensure. (1) The department shall include in the minimum standards for day-care centers the following requirements:

(a) The applicant, ~~his~~ *the applicant's* employees, and all those persons who will come in direct contact with the children are of good character.

(b) The staff of the day-care facility is sufficient in number as provided by rule to provide adequate supervision and care of the children in the facility.

(c) Essential programs and practices carried on by the facility staff are developed and carried out with due regard for the protection of the health, safety, development, and well-being of the children.

(d) Applicant and staff are qualified by practical experience or education or training to give good care and treatment to the children.

(e) Intake records are kept on each child admitted for care.

(f) The applicant and staff limit admissions to the maximum number indicated on the current license.

(g) The applicant will arrange for the necessary precautions to guard against communicable diseases.

(h) Public liability insurance and fire insurance are currently in force for the protection of the operator, ~~his~~ *the* staff, and the facility.

(i) ~~Specify the~~ *The* ages and numbers of children that may be cared for in a day-care facility *are specified*.

(2) It is the duty of the department or its authorized representative to assist applicants in meeting the minimum requirements."

Section 1900. Section 52-3-602, MCA, is amended to read:

"52-3-602. Definitions. In this part, the following definitions apply:

(1) "Local ombudsman" means a person officially designated by the long-term care ombudsman to act as ~~his~~ *the long-term care ombudsman's* local representative.

(2) "Long-term care facility" means a facility or part ~~thereof~~ *of a facility* that provides skilled nursing care, intermediate nursing care, or personal care, as these terms are defined in 50-5-101.

(3) "Long-term care ombudsman" means the individual appointed under 42 U.S.C. 3027(a)(12) to fulfill the federal requirement that the state provide an advocate for residents of long-term care facilities."

Section 1901. Section 52-5-105, MCA, is amended to read:

"52-5-105. Superintendents to manage facilities. Each facility provided for in 52-5-101 is under the immediate management and control of a superintendent. If the parent or legal guardian of a resident of a facility cannot be located, the superintendent or ~~his~~ *the superintendent's* designee may consent to necessary medical treatment for the resident of the facility under ~~his~~ *the superintendent's* management and control."

Section 1902. Section 52-5-114, MCA, is amended to read:

"52-5-114. Penalty for aiding resident in leaving or not returning to ~~a~~ youth correctional facility. (1) A person is guilty of an offense if ~~he~~ *the person* purposely or knowingly:

(a) permits or assists a resident of a youth correctional facility to leave a facility without permission;

(b) permits or assists a resident's failure to return to a youth correctional facility from which ~~he~~ *the resident* had permission to leave;

(c) furnishes or attempts to furnish to ~~such~~ a resident a tool, weapon, or other article with the intent of aiding ~~him~~ *the resident* to leave without permission or to not return; or

(d) harbors or conceals a resident who has left without permission.

(2) Upon conviction of a violation of subsection (1), a person shall be punished by imprisonment for a term of not less than 6 months or more than 2 years or by a fine not exceeding $1,000, or ~~by~~ both ~~such fine and imprisonment~~."

Section 1903. Section 53-2-107, MCA, is amended to read:

"53-2-107. Fraudulent obtaining of public assistance treated as theft. Whoever knowingly obtains by means of a willfully false statement, representation, or impersonation or other fraudulent device public assistance to which ~~he~~ *the person* is not entitled is guilty of theft as provided in 45-6-301."

Section 1904. Section 53-5-901, MCA, is amended to read:

"53-5-901. Medicare assignments — notice required. (1) A health care provider shall give notice to a medicare patient as to whether or not the provider accepts payment for services on the basis of an assignment, pursuant to section 1842(b)(3)(B)(ii) of the federal Social Security Act, ~~(~~42 U.S.C. 1395u(b)(3)(B)(ii)~~)~~, the terms of which provide that the full charge for services is the amount of the ~~medicare-approved~~ *medicare-approved* rate for payment of the applicable service plus any deductible, coinsurance, or copayment required to be paid by the patient.

(2) The notice required under subsection (1) must be posted by each health care provider in a conspicuous area in ~~his~~ *the provider's* place of business.

(3) For purposes of this section, "health care provider" means a person, firm, corporation, association, or institution that provides goods or services subject to reimbursement under the federal medicare program in accordance with Title XVIII of the federal Social Security Act, ~~(~~42 U.S.C. 1395, et seq.~~)~~."

Section 1905. Section 53-19-106, MCA, is amended to read:

"53-19-106. Eligibility for services. (1) The department, in its discretion and in accordance with this part and Title VII of the federal Rehabilitation Act of 1973, ~~(~~29 U.S.C. 796, et seq.~~)~~, as may be amended, may determine eligibility of persons for services under this part.

(2) To be eligible for services under this part, a person must have a disability of such severity that, to secure and maintain employment or to function independently, ~~he~~ *the person* requires intensive vocational or comprehensive rehabilitation services.

(3) A person with severe disabilities not receiving other vocational and rehabilitation services provided by the department has priority for services provided under this part."

Section 1906. Section 53-19-110, MCA, is amended to read:

"53-19-110. Eligibility for residential services in ~~a~~ community home for persons with severe disabilities. (1) The department, in its discretion and in accordance with this part, may determine eligibility for residential services in a community home for persons with severe disabilities, based on the residential needs of the person and on the availability of residential services. Any person with a severe disability, as defined in 52-4-202, may be considered for placement in a community home, regardless of the source of funding for ~~his~~ *the person's* residential services.

(2) A person who has a primary diagnosis of mental illness or who receives mental health services under Title 53, chapter 21, is not eligible for placement in a community home for persons with severe disabilities unless ~~he~~ *the person* is eligible for and receiving services under this part and Title VII of the federal Rehabilitation Act of 1973, ~~(~~29 U.S.C. 796, et seq.~~)~~, as may be amended, or Title XIX of the Social Security Act, ~~(~~42 U.S.C. 1396, et seq.~~)~~, as may be amended."

Section 1907. Section 53-20-131, MCA, is amended to read:

"53-20-131. Placement in nonstate facility. (1) Consistent with other provisions of this part, a person admitted to a residential facility under this part for a period of more than 30 days may be committed by the court to the custody of friends or next of kin residing outside the state or transferred to an out-of-state facility for the habilitation of persons who are persons with developmental disabilities if the out-of-state facility agrees to receive the person. ~~Such a~~ *The* commitment or transfer may not be for a longer period of time than is permitted within Montana. If the person is indigent, the expense of supporting ~~him~~ *the person* in an out-of-state facility and the expense of transportation must be borne by the state of Montana.

(2) The transfer of persons admitted to a residential facility ~~out~~ *outside* of Montana under the provisions of this part or into Montana under the laws of another jurisdiction must be governed by the provisions of the Interstate Compact on Mental Health."

Section 1908. Section 53-20-145, MCA, is amended to read:

"53-20-145. Right to be free from unnecessary or excessive medication. Residents have a right to be free from unnecessary or excessive medication. Medication may not be administered unless at the written order of a

physician. The individual treatment planning team and the attending physician are responsible for all medication given or administered to a resident. The use of medication may not exceed standards of use that are advocated by the United States food and drug administration. Notation of each individual's medication must be kept in ~~his~~ *the individual's* medical records. A pharmacist or a registered nurse shall review monthly the record of each resident on medication for potential adverse reactions, allergies, interactions, contraindications, rationality, and laboratory test modifications and shall advise the physician of any problems. Medications must be reviewed quarterly by the attending or staff physician. At least monthly, an attending physician shall review the drug regimen of each patient on psychotropic medication. All prescriptions must be written with a termination date that may not exceed 90 days. Medication for newly admitted residents must be reviewed and reordered as necessary upon admission and then every 30 days for the first 90 days. Medications may not be used as punishment, for the convenience of staff, as a substitute for a habilitation program, or in quantities that interfere with the resident's treatment program. ~~Nothing in this~~ *This* section may *not* be interpreted to relieve a physician or other professional or medical staff person from any obligation to adequately monitor the medication of a resident, with due consideration to the nature of the medication, the purpose for which it is given, and the condition of the resident."

Section 1909. Section 53-20-164, MCA, is amended to read:

"53-20-164. Resident labor. The following rules govern resident labor:

(1) A resident may not be required to perform labor that involves the operation and maintenance of the facility or for which the facility is under contract with an outside organization. Privileges or release from the facility may not be conditioned upon the performance of labor covered by this provision. Residents may voluntarily engage in ~~such~~ *the* labor *described in this subsection* if the labor is compensated in accordance with the minimum wage laws of the Fair Labor Standards Act of 1938, 29 U.S.C. 206, as amended.

(2) A resident may not be involved in the ~~care (~~feeding, clothing, bathing~~)~~, training, or supervision of other residents unless ~~he~~ *the resident*:

(a) has volunteered;

(b) has been specifically trained in the necessary skills;

(c) has the humane judgment required for ~~such~~ *the* activities;

(d) is adequately supervised; and

(e) is reimbursed in accordance with the minimum wage laws of the Fair Labor Standards Act of 1938, 29 U.S.C. 206, as amended.

(3) Residents may be required to perform vocational training tasks that do not involve the operation and maintenance of the facility, subject to a presumption that an assignment of longer than 3 months to any task is not a training task, provided *that* the specific task or any change in task assignment is:

(a) an integrated part of the resident's habilitation plan and approved as a habilitation activity by the qualified mental retardation professional and the individual treatment planning team responsible for supervising the resident's habilitation; and

(b) supervised by a staff member to oversee the habilitation aspects of the activity.

(4) Residents may voluntarily engage in habilitative labor at nonprogram hours for which the facility would otherwise have to pay an employee~~, provided~~ *if* the specific labor or any change in labor is:

(a) an integrated part of the resident's habilitation plan and approved as a habilitation activity by the qualified mental retardation professional and the individual treatment planning team responsible for supervising the resident's habilitation;

(b) supervised by a staff member to oversee the habilitation aspects of the activity; and

(c) compensated in accordance with the minimum wage laws of the Fair Labor Standards Act of 1938, 29 U.S.C. 206, as amended.

(5) If a resident performs habilitative labor that involves the operation and maintenance of a facility but due to physical or mental disability is unable to perform the labor as efficiently as a person not so physically or mentally disabled, then the resident may be compensated at a rate that bears the same approximate relation to the statutory minimum wage as ~~his~~ *the resident's* ability to perform that particular job bears to the ability of a person not so afflicted.

(6) Residents may be required to perform tasks of a personal housekeeping nature, such as the making of one's own bed.

(7) Deductions or payments for care and other charges may not deprive a resident of a reasonable amount of the compensation received pursuant to this section for personal and incidental purchases and expenses.

(8) Staffing must be sufficient so that the facility is not dependent upon the use of residents or volunteers for the care, maintenance, or habilitation of other residents or for income-producing services. The facility shall formulate a written policy to protect the residents from exploitation when they are engaged in productive work."

Section 1910. Section 53-20-209, MCA, is amended to read:

"53-20-209. Eligibility for services. (1) ~~Any~~ *A* person suspected of *having* a developmental disability ~~shall be~~ *is* eligible for an evaluation to determine whether the person is a person with developmental disabilities.

(2) If the department determines through a screening process that a person with developmental disabilities is in need of available services and those services can be provided to ~~him~~ *the person*, the department may provide services available under ~~this part and~~ Title 53, chapter 20, part 3*, and this part*."

Section 1911. Section 53-21-105, MCA, is amended to read:

"53-21-105. Certification of professional persons required. ~~No~~ *A* person may *not* act in a professional capacity as provided for in this part unless ~~he~~ *the person* is a professional person as defined in 53-21-102."

Section 1912. Section 53-21-114, MCA, is amended to read:

"53-21-114. Notice of rights to be given. (1) Whenever a person is involuntarily detained pursuant to 53-21-121 through 53-21-126, the person ~~shall~~ *must* at the time of detention be informed of ~~his~~ *the person's* constitutional rights and ~~his~~ *the person's* rights under this part. Within 3 days of ~~such~~ detention, ~~he~~ *the person* must also be informed in writing by the county attorney of ~~such~~ *the enumerated* rights.

(2) ~~Every~~ *A* respondent *who is* subject to an order for short-term treatment or long-term care and treatment ~~shall~~ *must* be advised in writing of ~~his~~ *the* right

to appeal the order by the court at the conclusion of any hearing the result of which ~~such~~ an order may be entered."

Section 1913. Section 53-21-117, MCA, is amended to read:

"53-21-117. Right to representation by own attorney. The respondent or the friend of respondent appointed by the court may secure an attorney of ~~his~~ *the person's* own choice and at ~~his~~ *the person's* own expense to represent the respondent."

Section 1914. Section 53-21-118, MCA, is amended to read:

"53-21-118. Right to examination by professional person of own choosing. (1) The respondent, ~~his~~ *the respondent's* attorney, or the friend of respondent appointed by the court may secure a professional person of ~~his~~ *the individual's* own choice to examine the respondent and to testify at the hearing before the court or jury as to the results of ~~his~~ *the professional person's* examination.

(2) If the person wishing to secure the testimony of a professional person is unable to do so because of financial reasons and if the respondent joins in the request for the examination, the court shall appoint a professional person other than the professional person requesting the commitment to perform the examination. Whenever possible, the court shall allow the respondent a reasonable choice of an available professional person qualified to perform the requested examination who will be compensated from the public funds of the county where the respondent resides."

Section 1915. Section 53-21-119, MCA, is amended to read:

"53-21-119. Waiver of rights. (1) A person may waive ~~his~~ *the person's* rights, or if the person is not capable of making an intentional and knowing decision, these rights may be waived by ~~his~~ *the person's* counsel and friend of respondent acting together if a record is made of the reasons for the waiver. The right to counsel may not be waived. The right to treatment provided for in this part may not be waived.

(2) The right of the respondent to be physically present at a hearing may also be waived by ~~his~~ *the respondent's* attorney and the friend of respondent with the concurrence of the professional person and the judge upon a finding supported by facts that:

(a) the presence of the respondent at the hearing would be likely to seriously adversely affect ~~his~~ *the respondent's* mental condition; and

(b) an alternative location for the hearing in surroundings familiar to the respondent would not prevent ~~such~~ *the* adverse effects on ~~his~~ *the respondent's* mental condition.

(3) (a) In the case of a minor, provided that a record is made of the reasons for the waiver, ~~his~~ *the minor's* rights may be waived by the mutual consent of ~~his~~ *the minor's* counsel and parents or guardian or guardian ad litem if there are no parents or guardian.

(b) If there is an apparent conflict of interest between a minor and ~~his~~ *the minor's* parents or guardian, the court shall appoint a guardian ad litem for ~~him~~ *the minor*."

Section 1916. Section 53-21-125, MCA, is amended to read:

"53-21-125. Request for jury trial. At any time prior to the date set for hearing, the respondent, through ~~his~~ counsel, may request a jury trial, ~~whereupon~~ *and upon the request,* the time set for hearing ~~shall~~ *must* be vacated

and the matter set on the court's jury calendar at the earliest date possible, the matter taking precedence over all other matters. If there is not a jury in attendance, a jury ~~shall~~ *must* be selected in the manner provided in 3-15-506 and a date *must be* set for trial by *a* jury ~~not later than~~ *within* 7 days, exclusive of Saturdays, Sundays, and holidays."

Section 1917. Section 53-21-133, MCA, is amended to read:

"53-21-133. Transfer to nonstate facilities. (1) If a person is committed under the provisions of this part and is eligible for hospital care or treatment by an agency of the United States and if a certificate of notification from ~~such~~ *the* agency showing that facilities are available and that the person is eligible for care or treatment ~~therein~~ is received, the court may order the person to be placed in the custody of the agency for hospitalization. The chief officer of any hospital or institution operated by ~~such~~ an agency and in which a person is ~~so~~ hospitalized ~~shall be~~ *is* vested with the same powers as the superintendent of the state hospital with respect to detention, custody, transfer, conditional release, or discharge of the person. Jurisdiction ~~shall~~ *must* be retained in the appropriate courts of this state to inquire into the mental condition of persons ~~so~~ hospitalized *under this section* and to determine the necessity for continuance of their hospitalization.

(2) Consistent with other provisions of this part, a person committed under this part for a period of 3 months or longer may be committed by the court to the custody of friends or next of kin residing outside the state or to a mental health facility located outside the state if the out-of-state facility agrees to receive the patient. ~~No such~~ *The* commitment ~~shall~~ *may not* be for a longer period of time than is permitted within the state. If the patient is indigent, the expense of supporting ~~him~~ *the patient* in an out-of-state facility and the expense of transportation ~~shall~~ *must* be borne by the state of Montana.

(3) The transfer out of Montana of persons committed under the provisions of this part or into Montana under the laws of another jurisdiction ~~shall~~ *must* be governed by the provisions of the Interstate Compact on Mental Health."

Section 1918. Section 53-21-141, MCA, is amended to read:

"53-21-141. Civil and legal rights of person committed. (1) Unless specifically stated in an order by the court, a person involuntarily committed to a facility for a period of evaluation or treatment does not forfeit any legal right or suffer any legal disability by reason of the provisions of this part except ~~insofar~~ as it may be necessary to detain the person for treatment, evaluation, or care. All communication between an alleged mentally ill person and a professional person is privileged under normal privileged communication rules unless it is clearly explained to the person in advance that the purpose of an interview is for evaluation and not treatment.

(2) Whenever a person is committed to a mental health facility for a period of 3 months or longer, the court ordering the commitment may make an order stating specifically any legal rights ~~which~~ *that* are denied the respondent and any legal disabilities ~~which~~ *that* are imposed on ~~him~~ *the respondent*. As part of its order, the court may appoint a person to act as conservator of the respondent's property. Any conservatorship created pursuant to this section terminates upon the conclusion of the involuntary commitment if not sooner terminated by the court. A conservatorship or guardianship extending beyond the period of involuntary commitment may not be created except according to the procedures set forth under Montana law for the appointment of conservators and guardians generally. In the case of a person admitted to a program or

facility for the purpose of receiving mental health services, an individual employed by or receiving remuneration from the program or facility may not act as the person's guardian or representative unless the program or facility can demonstrate that no other person is available or willing to act as the person's guardian or representative.

(3) A person who has been committed to a mental health facility pursuant to this part is automatically restored upon the termination of the commitment to all of ~~his~~ *the person's* civil and legal rights ~~which~~ *that* may have been lost when ~~he~~ *the person* was committed. ~~This~~ *However, this* subsection does not affect~~,~~ ~~however,~~ a guardianship or conservatorship created independently of the commitment proceedings according to the provisions of Montana law relating to the appointment of conservators and guardians generally. A person who leaves a mental health facility following a period of evaluation and treatment ~~shall~~ *must* be given a written statement setting forth the substance of this subsection.

(4) A person committed to a mental health facility prior to July 1, 1975, enjoys all the rights and privileges of a person committed after that date."

Section 1919. Section 53-21-142, MCA, is amended to read:

"53-21-142. Rights of persons admitted to facility. Patients admitted to a mental health facility, whether voluntarily or involuntarily, ~~shall~~ have the following rights:

(1) Patients have a right to privacy and dignity.

(2) Patients have a right to the least restrictive conditions necessary to achieve the purposes of commitment. Patients must be accorded the right to appropriate treatment and related services in a setting and under conditions that:

(a) are the most supportive of the patient's personal liberty; and

(b) restrict the patient's liberty only to the extent necessary and consistent with the patient's treatment need, applicable requirements of law, and judicial orders.

(3) Patients ~~shall~~ have ~~the same~~ rights to visitation and reasonable access to telephone communications, including the right to converse with others privately, except to the extent that the professional person responsible for formulation of a particular patient's treatment plan writes an order imposing special restrictions. The written order must be renewed after each periodic review of the treatment plan if any restrictions are to be continued. Patients ~~shall~~ have an unrestricted right to visitation with attorneys, with spiritual counselors, and with private physicians and other professional persons.

(4) Patients ~~shall~~ have an unrestricted right to send sealed mail. Patients ~~shall~~ have an unrestricted right to receive sealed mail from their attorneys, private physicians and other professional persons, the mental disabilities board of visitors, courts, and government officials. Patients ~~shall~~ have a right to receive sealed mail from others except to the extent that a professional person responsible for formulation of a particular patient's treatment plan writes an order imposing special restrictions on receipt of sealed mail. The written order must be renewed after each periodic review of the treatment plan if any restrictions are to be continued.

(5) Patients have an unrestricted right to have access to letter-writing materials, including postage, and have a right to have staff members of the facility assist persons who are unable to write, prepare, and mail correspondence.

(6) Patients have a right to wear their own clothes and to keep and use their own personal possessions, including toilet articles, except ~~insofar as such~~ *to the extent that* clothes or personal possessions may be determined by a professional person in charge of the patient's treatment plan to be dangerous or otherwise inappropriate to the treatment regimen. The facility has an obligation to supply an adequate allowance of clothing to any patients who do not have suitable clothing of their own. Patients ~~shall~~ *must* have the opportunity to select from various types of neat, clean, and seasonable clothing. ~~Such~~ *The* clothing ~~shall~~ *must* be considered the patient's throughout ~~his~~ *the patient's* stay at the facility. The facility shall make provision for the laundering of patient clothing.

(7) Patients have the right to keep and be allowed to spend a reasonable sum of their own money.

(8) Patients have the right to religious worship. Provisions for ~~such~~ worship ~~shall~~ *must* be made available to all patients on a nondiscriminatory basis. ~~No~~ *An* individual ~~shall~~ *may not* be required to engage in any religious activities.

(9) Patients have a right to regular physical exercise several times a week. ~~Moreover, it shall be the duty of the~~ *The* facility ~~to~~ *shall* provide facilities and equipment for ~~such~~ *physical* exercise. Patients have a right to be outdoors at regular and frequent intervals in the absence of contrary medical considerations.

(10) Patients have the right to be provided, with adequate supervision, suitable opportunities for interaction with members of the opposite sex except to the extent that a professional person in charge of the patient's treatment plan writes an order stating that ~~such~~ *the* interaction is inappropriate to the treatment regimen.

(11) Patients have a right to receive prompt and adequate medical treatment for any physical ailments. In providing medical care, the mental health facility shall take advantage of whatever community-based facilities are appropriate and available and shall coordinate the patient's treatment for mental illness with ~~his~~ *the patient's* medical treatment.

(12) Patients have a right to a diet that will provide at a minimum the recommended daily dietary allowances as developed by the national academy of sciences. Provisions ~~shall~~ *must* be made for special therapeutic diets and for substitutes at the request of the patient or the friend of respondent in accordance with the religious requirements of any patient's faith. Denial of a nutritionally adequate diet ~~shall~~ *may* not be used as punishment.

(13) Patients have a right to a humane psychological and physical environment within the mental health facilities. These facilities ~~shall~~ *must* be designed to afford patients with comfort and safety, promote dignity, and ensure privacy. The facilities ~~shall~~ *must* be designed to make a positive contribution to the efficient attainment of the treatment goals set for the patient. In order to ~~assure~~ *ensure* the accomplishment of this goal:

(a) regular housekeeping and maintenance procedures ~~which~~ *that* will ensure that the facility is maintained in a safe, clean, and attractive condition ~~shall~~ *must* be developed and implemented;

(b) there must be special provision made for geriatric and other nonambulatory patients to ~~assure~~ *ensure* their safety and comfort, including special fittings on toilets and wheelchairs. Appropriate provision ~~shall~~ *must* be made to permit nonambulatory patients to communicate their needs to the facility staff.

(c) pursuant to an established routine maintenance and repair program, the physical plant of ~~every~~ *each* facility ~~shall~~ *must* be kept in a continuous state of good repair and operation in accordance with the needs of the health, comfort, safety, and well-being of the patients;

(d) ~~every~~ *each* facility must meet all fire and safety standards established by the state and locality. In addition, any hospital ~~shall~~ *must* meet ~~such~~ *the* provisions of the life safety code of the national fire protection association ~~as~~ *that* are applicable to hospitals. ~~Any~~ *A* hospital ~~shall~~ *must* meet all standards established by the state for general hospitals ~~insofar as~~ *to the extent that* they are relevant to psychiatric facilities.

(14) A patient at a facility has the right:

(a) to be informed of the rights described in this section at the time of ~~his~~ admission and periodically ~~thereafter~~ *after admission*~~,~~ in language and terms appropriate to the patient's condition and ability to understand;

(b) to assert grievances with respect to infringement of the rights described in this section, including the right to have a grievance considered in a fair and timely manner according to an impartial grievance procedure that must be provided for by the facility; and

(c) to exercise the rights described in this section without reprisal and may not be denied admission to the facility as reprisal for the exercise of the rights described in this section.

(15) In order to assist a person admitted to a program or facility in the exercise or protection of the patient's rights, the patient's attorney, advocate, or legal representatives ~~shall have~~ *must be given* reasonable access to:

(a) the patient;

(b) the program or facility areas where the patient has received treatment or has resided or the areas to which ~~he~~ *the patient* has had access; and

(c) pursuant to the written authorization of the patient, records and information pertaining to the patient's diagnosis, treatment, and related services.

(16) A person admitted to a facility ~~shall have~~ *must be given* access to any available individual or service that provides advocacy for the protection of the person's rights and that assists the person in understanding, exercising, and protecting ~~his~~ *the person's* rights as described in this section.

(17) This section may not:

(a) obligate a professional person to administer treatment contrary to the professional's clinical judgment;

(b) prevent a facility from discharging a patient for whom appropriate treatment, consistent with the clinical judgment of a professional person responsible for the patient's treatment, is or has become impossible to administer because of the patient's refusal to consent to the treatment;

(c) require a facility to admit a person who has, on prior occasions, repeatedly withheld consent to appropriate treatment; or

(d) obligate a facility to treat a person admitted to the facility solely for diagnostic evaluation."

Section 1920. Section 53-21-146, MCA, is amended to read:

"53-21-146. Right to be free from physical restraint and isolation. Patients have a right to be free from physical restraint and isolation. Except for

emergency situations in which it is likely that patients could harm themselves or others and in which less restrictive means of restraint are not feasible, patients may be physically restrained or placed in isolation only on a professional person's written order ~~which~~ *that* explains the rationale for ~~such~~ *the* action. The written order may be entered only after the professional person has personally seen the patient concerned and evaluated ~~whatever~~ *the* episode or situation *that* is ~~said~~ *alleged* to call for restraint or isolation. Emergency use of restraints or isolation ~~shall~~ *may not* be for ~~no~~ more than 1 hour, by which time a professional person ~~shall~~ *must* have been consulted and ~~shall~~ *must* have entered an appropriate order in writing. ~~Such~~ *The* written order ~~shall be~~ *is* effective for no more than 24 hours and must be renewed if restraint and isolation are to be continued. Whenever a patient is subject to restraint or isolation, adequate care ~~shall~~ *must* be taken to monitor ~~his~~ *the patient's* physical and psychiatric condition and to provide for ~~his~~ *the patient's* physical needs and comfort. Physical restraint may not be used as punishment, for the convenience of the staff, or as a substitute for a treatment program."

Section 1921. Section 53-21-148, MCA, is amended to read:

"53-21-148. Right not to be subjected to hazardous treatment. Patients have a right not to be subjected to treatment procedures such as lobotomy, adversive reinforcement conditioning, or other unusual or hazardous treatment procedures without their express and informed consent after consultation with counsel, the legal guardian, if any, the friend of respondent appointed by the court, and any other interested party of the patient's choice. At least one of those consulted ~~must~~ *shall* consent to the treatment, along with the patient's counsel. If there is no friend of respondent or if the friend of respondent appointed by the court is no longer available, then a friend of respondent who is in no way connected with the facility or with the department ~~shall~~ *must* be appointed before any ~~such~~ *enumerated* treatment procedure can be employed. At least 10 days prior to the commencement of the extraordinary treatment program, the facility shall send notice of intent to employ extraordinary treatment procedures to the patient, ~~his~~ *the patient's* next of kin, if known, the legal guardian, if any, the attorney who most recently represented ~~him~~ *the patient*, and the friend of respondent appointed by the court."

Section 1922. Section 53-21-163, MCA, is amended to read:

"53-21-163. Examination following commitment. ~~No later than~~ *Within* 30 days after a patient is committed to a mental health facility, the professional person in charge of the facility or ~~his~~ *the professional person's* appointed, professionally qualified agent shall reexamine the committed patient and shall determine whether ~~he~~ *the patient* continues to require commitment to the facility and whether a treatment plan complying with this part has been implemented. If the patient no longer requires commitment to the facility in accordance with the standards for commitment, ~~he~~ *the patient* must be released immediately unless ~~he~~ *the patient* agrees to continue with treatment on a voluntary basis. If for sound professional reasons a treatment plan has not been implemented, this fact ~~shall~~ *must* be reported immediately to the professional person in charge of the facility, the director of the department, the mental disabilities board of visitors, and the patient's counsel."

Section 1923. Section 53-21-167, MCA, is amended to read:

"53-21-167. Patient labor. The following rules ~~shall~~ govern patient labor:

(1) ~~No~~ *A* patient ~~shall~~ *may not* be required to perform labor ~~which~~ *that* involves the operation and maintenance of a facility or for which the facility is

under contract with an outside organization. Privileges or release from the facility ~~shall~~ *may* not be conditioned upon the performance of labor covered by this provision. Patients may voluntarily engage in ~~such~~ *the* labor if the labor is compensated in accordance with the minimum wage laws of the Fair Labor Standards Act of 1938, 29 U.S.C. 206, as amended.

(2) (a) Patients may be required to perform therapeutic tasks ~~which~~ *that* do not involve the operation and maintenance of the facility~~, provided~~ *if* the specific task or any change in assignment is:

(i) an integrated part of the patient's treatment plan and approved as a therapeutic activity by a professional person responsible for supervising the patient's treatment; and

(ii) supervised by a staff member to oversee the therapeutic aspects of the activity.

(b) Patients may voluntarily engage in therapeutic labor for which the facility would otherwise have to pay an employee~~, provided~~ *if* the specific labor or any change in labor assignment is:

(i) an integrated part of the patient's treatment plan and approved as a therapeutic activity by a professional person responsible for supervising the patient's treatment;

(ii) supervised by a staff member to oversee the therapeutic aspects of the activity; and

(iii) compensated in accordance with the minimum wage laws of the Fair Labor Standards Act of 1938, 29 U.S.C. 206, as amended.

(3) If any patient performs therapeutic labor ~~which~~ *that* involves the operation and maintenance of a facility but due to physical or mental disability is unable to perform the labor as efficiently as a person not so physically or mentally disabled, then the patient may be compensated at a rate ~~which~~ *that* bears the same approximate relation to the statutory minimum wage as ~~his~~ *the patient's* ability to perform that particular job bears to the ability of a person not so afflicted.

(4) Patients may be required to perform tasks of a personal housekeeping nature, such as the making of one's own bed.

(5) Deductions or payments for care and other charges ~~shall~~ *may* not deprive a patient of a reasonable amount of the compensation received pursuant to this section for personal and incidental purchases and expenses."

Section 1924. Section 53-21-168, MCA, is amended to read:

"53-21-168. Statement of rights to be furnished and posted. Each patient shall promptly upon ~~his~~ admission receive in language ~~he~~ *the patient* understands a written statement of all of ~~his~~ *the patient's* rights under this part, including the right to treatment, the right to the development of a treatment plan, the right to and the availability of legal counsel, and the rules for patient labor. In addition, a copy of the ~~foregoing~~ statement ~~shall~~ *of rights must* be posted in each ward."

Section 1925. Section 53-21-183, MCA, is amended to read:

"53-21-183. Release conditioned on receipt of outpatient care. (1) When, in the opinion of the professional person in charge of a mental health facility providing involuntary treatment, the committed person can be appropriately served by outpatient care prior to the expiration of the period of commitment, then outpatient care may be required as a condition for early

release for a period ~~which~~ *that*, when added to the inpatient treatment period, except as provided in 53-21-198, may not exceed the period of commitment. If the mental health facility designated to provide outpatient care is other than the facility providing involuntary treatment, the *designated* outpatient facility ~~so designated must~~ *shall* agree in writing to assume ~~such~~ *the* responsibility.

(2) The mental health facility designated to provide outpatient care or the professional person in charge of the patient's case may modify the conditions for continued release when the modification is in the best interest of the patient. This includes the authorization to transfer the patient to another mental health facility designated to provide outpatient care, ~~provided~~ *if* the transfer is in the best interest of the patient and the *designated* outpatient facility ~~so designated~~ agrees in writing to assume responsibility. Notice of an intended transfer ~~shall~~ *must* be given to the professional person in charge of the mental health facility that provided the involuntary treatment.

(3) Notice in writing to the court ~~which~~ *that* committed the patient for treatment and the county attorney who initiated the action ~~shall~~ *must* be provided by the professional person in charge of ~~him~~ *the patient* at least 5 days prior to ~~his~~ *the patient's* release from commitment or outpatient care.

(4) ~~This section and~~ *Sections* 53-21-195 through 53-21-198 *and this section* do not apply to a temporary release, certified ~~as such~~ by the professional person in charge of the mental health facility, from the facility for the purposes of a home visit not exceeding 30 days."

Section 1926. Section 53-21-187, MCA, is amended to read:

"53-21-187. Clothing for patients discharged or conditionally released. A patient may not be discharged or conditionally released from a mental health facility without suitable clothing adapted to the season in which ~~he~~ *the patient* is discharged."

Section 1927. Section 53-22-101, MCA, is amended to read:

"53-22-101. Enactment of compact. The Interstate Compact on Mental Health as contained ~~herein~~ *in this section* is hereby enacted into law and entered into by this state with all other jurisdictions legally joining therein in the form substantially as follows:

The contracting states solemnly agree that:

Article I

The party states find that the proper and expeditious treatment of the mentally ill and mentally deficient can be facilitated by cooperative action, to the benefit of the patients, their families, and society as a whole. Further, the party states find that the necessity of and desirability for furnishing such care and treatment bears no primary relation to the residence or citizenship of the patient but that, on the contrary, the controlling factors of community safety and humanitarianism require that facilities and services be made available for all who are in need of them. Consequently, it is the purpose of this compact and of the party states to provide the necessary legal basis for the institutionalization or other appropriate care and treatment of the mentally ill and mentally deficient under a system that recognizes the paramount importance of patient welfare and to establish the responsibilities of the party states in terms of such welfare.

Article II

As used in this compact:

(1) "sending state" means a party state from which a patient is transported pursuant to the provisions of the compact or from which it is contemplated that a patient may be so sent;

(2) "receiving state" means a party state to which a patient is transported pursuant to the provisions of the compact or to which it is contemplated that a patient may be so sent;

(3) "institution" means any hospital or other facility maintained by a party state or political subdivision thereof for the care and treatment of mental illness or mental deficiency;

(4) "patient" means any person subject to or eligible, as determined by the laws of the sending state, for institutionalization or other care, treatment, or supervision pursuant to the provisions of this compact;

(5) "aftercare" means care, treatment, and services provided a patient, as defined herein, on convalescent status or conditional release;

(6) "mental illness" means mental disease to such extent that a person so afflicted requires care and treatment for ~~his~~ *the person's* own welfare, the welfare of others, or of the community;

(7) "mental deficiency" means mental deficiency as defined by appropriate clinical authorities to such extent that a person so afflicted is incapable of managing ~~himself~~ *the person* and ~~his~~ *the person's* affairs but shall not include mental illness as defined herein; and

(8) "state" means any state, territory, or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

Article III

(1) Whenever a person physically present in any party state shall be in need of institutionalization by reason of mental illness or mental deficiency, ~~he~~ *the person* shall be eligible for care and treatment in an institution in that state irrespective of ~~his~~ *the person's* residence, settlement, or citizenship qualifications.

(2) The provisions of subsection (1) of this article to the contrary notwithstanding, any patient may be transferred to an institution in another state whenever there are factors based upon clinical determinations indicating that the care and treatment of said patient would be facilitated or improved thereby. Any such institutionalization may be for the entire period of care and treatment or for any portion or portions thereof. The factors referred to in this subsection shall include the patient's full record with due regard for the location of the patient's family, character of the illness and probable duration thereof, and such other factors as shall be considered appropriate.

(3) No state shall be obliged to receive any patient pursuant to the provisions of subsection (2) of this article unless the sending state gives advance notice of its intention to send the patient, furnishes all available medical and other pertinent records concerning the patient, gives the qualified medical or other appropriate clinical authorities of the receiving state an opportunity to examine the patient if said authorities so wish, and unless the receiving state agrees to accept the patient.

(4) In the event that the laws of the receiving state establish a system of priorities for the admission of patients, an interstate patient under this compact shall receive the same priority as a local patient and shall be taken in the same order and at the same time that ~~he~~ *the patient* would be taken if ~~he~~ *the patient* were a local patient.

(5) Pursuant to this compact, the determination as to the suitable place of institutionalization for a patient may be reviewed at any time and such further transfer of the patient may be made as seems likely to be in the best interest of the patient.

Article IV

(1) Whenever, pursuant to the laws of the state in which a patient is physically present, it shall be determined that the patient should receive aftercare or supervision, such care or supervision may be provided in a receiving state. If the medical or other appropriate clinical authorities having responsibility for the care and treatment of the patient in the sending state shall have reason to believe that aftercare in another state would be in the best interest of the patient and would not jeopardize the public safety, they shall request the appropriate authorities in the receiving state to investigate the desirability of affording the patient such aftercare in said receiving state, and such investigation shall be made with all reasonable speed. The request for investigation shall be accompanied by complete information concerning the patient's intended place of residence and the identity of the person in whose charge it is proposed to place the patient, the complete medical history of the patient, and such other documents as may be pertinent.

(2) If the medical or other appropriate clinical authorities having responsibility for the care and treatment of the patient in the sending state and the appropriate authorities in the receiving state find that the best interest of the patient would be served thereby and if the public safety would not be jeopardized thereby, the patient may receive aftercare or supervision in the receiving state.

(3) In supervising, treating, or caring for a patient on aftercare pursuant to the terms of this article, a receiving state shall employ the same standards of visitation, examination, care, and treatment that it employs for similar local patients.

Article V

Whenever a dangerous or potentially dangerous patient escapes from an institution in any party state, that state shall promptly notify all appropriate authorities within and without the jurisdiction of the escapee in a manner reasonably calculated to facilitate the speedy apprehension of the escapee. Immediately upon the apprehension and identification of any such dangerous or potentially dangerous patient, ~~he~~ *the patient* shall be detained in the state where found pending disposition in accordance with law.

Article VI

The duly accredited officers of any state party to this compact, upon the establishment of their authority and the identity of the patient, shall be permitted to transport any patient being moved pursuant to this compact through any and all states party to this compact without interference.

Article VII

(1) No person shall be deemed a patient of more than one institution at any given time. Completion of transfer of any patient to an institution in a receiving state shall have the effect of making the person a patient of the institution in the receiving state.

(2) The sending state shall pay all costs of and incidental to the transportation of any patient pursuant to this compact, but any two or more

party states may, by making a specific arrangement for that purpose, arrange for a different allocation of costs as among themselves.

(3) No provision of this compact shall be construed to alter or affect any internal relationships among the departments, agencies, and officers of and in the government of a party state or between a party state and its subdivisions as to the payment of costs or responsibilities therefor.

(4) Nothing in this compact shall be construed to prevent any party state or subdivision thereof from asserting any right against any person, agency, or other entity in regard to costs for which such party state or subdivision thereof may be responsible pursuant to any provision of this compact.

(5) Nothing in this compact shall be construed to invalidate any reciprocal agreement between a party state and a nonparty state relating to institutionalization, care, or treatment of the mentally ill or mentally deficient or any statutory authority pursuant to which such agreements may be made.

Article VIII

(1) Nothing in this compact shall be construed to abridge, diminish, or in any way impair the rights, duties, and responsibilities of any patient's guardian on ~~his~~ *the guardian's* own behalf or in respect of any patient for whom ~~he~~ *the guardian* may serve, except that, where the transfer of any patient to another jurisdiction makes advisable the appointment of a supplemental or substitute guardian, any court of competent jurisdiction in the receiving state may make such supplemental or substitute appointment and the court which appointed the previous guardian shall, upon being duly advised of the new appointment and upon the satisfactory completion of such accounting and other acts as such court may by law require, relieve the previous guardian of power and responsibility to whatever extent shall be appropriate in the circumstances. In the case of any patient having settlement in the sending state, the court of competent jurisdiction in the sending state shall have the sole discretion to relieve a guardian appointed by it or continue ~~his~~ *the guardian's* power and responsibility, whichever it shall deem advisable. The court in the receiving state may, in its discretion, confirm or reappoint the person or persons previously serving as guardian in the sending state in lieu of making a supplemental or substitute appointment.

(2) The term "guardian" as used in subsection (1) of this article shall include any guardian, trustee, legal committee, conservator, or other person or agency however denominated who is charged by law with power to act for or responsibility for the person or property of a patient.

Article IX

(1) No provisions of this compact except Article V shall apply to any person institutionalized while under sentence in a penal or correctional institution or while subject to trial on a criminal charge or whose institutionalization is due to the commission of an offense for which, in the absence of mental illness or mental deficiency, said person would be subject to incarceration in a penal or correctional institution.

(2) To every extent possible it shall be the policy of states party to this compact that no patient shall be placed or detained in any prison, jail, or lockup, but such patient shall with all expedition be taken to a suitable institutional facility for mental illness or mental deficiency.

Article X

(1) Each party state shall appoint a compact administrator who, on behalf of ~~his~~ *the administrator's* state, shall act as general coordinator of activities under the compact in ~~his~~ *that* state and who shall receive copies of all reports, correspondence, and other documents relating to any patient processed under the compact by ~~his~~ *that* state either in the capacity of a sending or receiving state. The compact administrator or ~~his~~ *the administrator's* duly designated representative shall be the official with whom other party states shall deal in any matter relating to the compact or any patient processed thereunder.

(2) The compact administrators of the respective party states shall have power to promulgate reasonable rules to carry out more effectively the terms and provisions of this compact.

Article XI

The duly constituted administrative authorities of any two or more party states may enter into supplementary agreements for the provision of any service or facility or for the maintenance of any institution on a joint or cooperative basis whenever the states concerned find that such agreements will improve services, facilities, or institutional care and treatment in the fields of mental illness or mental deficiency. No such supplementary agreement shall be construed so as to relieve any party state of any obligation which it otherwise would have under other provisions of this compact.

Article XII

This compact shall enter into full force and effect as to any state when enacted by it into law, and such state shall thereafter be a party thereto with any and all states legally joining therein.

Article XIII

(1) A state party to this compact may withdraw therefrom by enacting a statute repealing the same. Such withdrawal shall take effect 1 year after notice thereof has been communicated officially and in writing to the governors and compact administrators of all other party states. However, the withdrawal of any state shall not change the status of any patient who has been sent to said state or sent out of said state pursuant to the provisions of the compact.

(2) Withdrawal from any agreement permitted by Article VII(2) as to costs or from any supplementary agreement made pursuant to Article XI shall be in accordance with the terms of such agreement.

Article XIV

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable, and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters."

Section 1928. Section 53-22-105, MCA, is amended to read:

"53-22-105. Court review. The compact administrator is ~~hereby~~ directed to consult with the immediate family of any proposed transferee and, in the case

of a proposed transferee from an institution in this state to an institution in another party state, to *not* make ~~no~~ *a* transfer out of the state without approval of the district or probate court. Before granting ~~such~~ approval, the court shall hold ~~such~~ hearings ~~as~~ *that* it considers appropriate. In addition, the court shall designate some appropriate person to deliver written notice of the proposed transferee's right to a hearing to the proposed transferee and ~~his~~ *the transferee's* guardian ad litem. The person serving ~~such~~ *the* notices shall make a written return to the court that ~~such~~ *service* has been ~~done~~ *made*. At the conclusion of ~~such~~ *the* hearing, if any, the court may approve the proposed transfer, order the release of the proposed transferee, or enter any other suitable order."

Section 1929. Section 53-30-104, MCA, is amended to read:

"53-30-104. Punishment of inmates. ~~No barbarous~~ *Barbarous* punishments may *not* be prescribed for an inmate of the state prison, ~~nor shall~~ *and* an inmate, as punishment, *may not* be deprived of ~~his~~ *the inmate's* normal provision of food while being compelled to work the usual number of hours per day."

Section 1930. Section 53-30-142, MCA, is amended to read:

"53-30-142. Escape from extended confinement. Purposeful or knowing failure of an inmate to remain within the extended limits of ~~his~~ confinement or to return within the time prescribed by prison officials to the place of confinement designated by the department is an escape punishable as provided in 45-7-306."

Section 1931. Section 60-4-205, MCA, is amended to read:

"60-4-205. Private sale if no bid or offer. (1) If, after proper notice is published, the department ~~receives neither~~ *does not receive a* bid at public sale ~~nor~~ *or an* offer from the original owner or ~~his~~ *the owner's* successor in interest, it may at any time ~~thereafter~~ sell the interest at private sale. At the sale, the department may accept as the purchase price an amount of money not less than 90% of the appraised value.

(2) Title to an interest may not pass from the state until the purchaser has paid the full amount of the purchase price into the state treasury to the credit of the department."

Section 1932. Section 60-5-111, MCA, is amended to read:

"60-5-111. Violations — penalties. (1) On any controlled-access highway or facility, it is unlawful for any person to construct, operate, or maintain any road or private driveway connecting with the highway or facility without first obtaining permission in writing from the highway authority having jurisdiction and, with the exception of an interstate highway, from the local governing body.

(2) ~~Any~~ *A* person who violates any of the provisions of this section is guilty of a misdemeanor. Upon arrest and conviction ~~therefor~~, ~~he~~ *the person* shall be punished by a fine of not less than $5 or more than $100 or by imprisonment in the city or county jail for not less than 5 days or more than 90 days, or ~~by~~ both ~~fine and imprisonment~~."

Section 1933. Section 60-7-204, MCA, is amended to read:

"60-7-204. ~~Flagmen~~ *Flag* escorts — prohibitions against nighttime herding on public highways. A person who owns, controls, or possesses livestock may not herd or drive ~~a herd of livestock numbering~~ more than 10 *livestock* on an interstate or state primary highway ~~designated as such by the transportation commission~~ unless the livestock is preceded and followed by ~~flagmen~~ *flag person* escorts for the purpose of warning other highway users.

Livestock may not be herded or driven on an interstate or state primary highway during nighttime, as that term is defined in 1-1-301, except in a case of emergency. In the case of an emergency during the nighttime, the ~~flagmen~~ *flag person* escorts shall use adequate warning lights, such as but not limited to portable lamps, lanterns, or rotating beacons. This section does not apply during daytime at posted livestock crossings on highways."

Section 1934. Section 60-11-201, MCA, is amended to read:

"60-11-201. Agreements for rail passenger service application. The governor or ~~his~~ *the governor's* authorized representative may negotiate with the proper authority representing any other state to establish an agreement to enable Montana, in concert with other states, to submit an application to the rail passenger corporation for institution of rail passenger service under the provisions of the Rail Passenger Service Act, ~~(~~45 U.S.C. 563(b)~~)~~, or any interstate or federal proposal for the purpose of maintaining or augmenting rail passenger service in the state. The governor may not participate in the submission of an application until the base agreement and any application have been approved by the legislature. However, the governor or ~~his~~ *the governor's* authorized representative may enter into agreements to expand Amtrak rail passenger service under 45 U.S.C. 563(b), as that statute reads on July 1, 1985, subject to appropriation by the legislature."

Section 1935. Section 61-2-105, MCA, is amended to read:

"61-2-105. Local programs. Except as provided in this part, all highway traffic safety programs of political subdivisions must be approved by the governor and ~~no~~ funds may *not* be spent unless ~~his~~ *the governor's* approval is obtained. All local and state officials shall cooperate with the governor and department to accomplish the purposes of this part. The governor shall administer the highway traffic safety programs of this state and its political subdivisions in accordance with this part and federal rules."

Section 1936. Section 61-2-106, MCA, is amended to read:

"61-2-106. County drinking and driving prevention program. (1) The governing body of a county may appoint a task force to study the problem of alcohol-related traffic accidents and recommend a program designed to:

(a) prevent driving while under the influence of alcohol;

(b) reduce alcohol-related traffic accidents; and

(c) educate the public on the dangers of driving after consuming alcoholic beverages or other chemical substances that impair judgment or motor functions.

(2) A task force appointed under subsection (1) shall conduct its study and submit its recommendations within 6 months from the date it was appointed. Task force meetings are open to the public. The task force shall give notice by publication in the community meeting announcement section of a newspaper of general circulation in the county.

(3) The county governing body may by resolution adopt the recommendations of the task force appointed under subsection (1). The proposed program must be approved by the governor as provided in 61-2-105.

(4) The ~~chairman~~ *presiding officer* of the task force shall submit to the county governing body:

(a) a budget and a financial report for each fiscal year; and

(b) an annual report containing but not limited to:

(i) an evaluation of the effectiveness of the program;

(ii) the number of arrests and convictions in the county for driving under the influence of alcohol and the sentences imposed for these convictions;

(iii) the number of alcohol-related traffic accidents in the county; and

(iv) any other information requested by the county governing body or considered appropriate by the task force.

(5) A copy of the annual report may be submitted to the department."

Section 1937. Section 61-2-201, MCA, is amended to read:

"61-2-201. Vehicle Equipment Safety Compact. This part shall be known and may be cited as the "Vehicle Equipment Safety Compact".

Article I. Findings and Purposes

(1) The party states find that:

(a) accidents and deaths on their streets and highways present a very serious human and economic problem with a major deleterious effect on the public welfare;

(b) there is a vital need for the development of greater interjurisdictional cooperation to achieve the necessary uniformity in the laws, rules, regulations, and codes relating to vehicle equipment, and to accomplish this by such means as will minimize the time between the development of demonstrably and scientifically sound safety features and their incorporation into vehicles.

(2) The purposes of this compact are to:

(a) promote uniformity in regulation of and standards for equipment;

(b) secure uniformity of law and administrative practice in vehicular regulation and related safety standards to permit incorporation of desirable equipment changes in vehicles in the interest of greater traffic safety;

(c) provide means for the encouragement and utilization of research which will facilitate the achievement of the foregoing purposes, with due regard for the findings set forth in subsection (1) of this article.

(3) It is the intent of this compact to emphasize performance requirements and not to determine the specific detail of engineering in the manufacture of vehicles or equipment except to the extent necessary for the meeting of such performance requirements.

Article II. Definitions

As used in this compact:

(1) "Vehicle" means every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, excepting devices moved by human power or used exclusively upon stationary rails or tracks.

(2) "State" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

(3) "Equipment" means any part of a vehicle or any accessory for use thereon which affects the safety of operation of such vehicle or the safety of the occupants.

Article III. The Commission

(1) There is hereby created an agency of the party states to be known as the "Vehicle Equipment Safety Commission", hereinafter called the commission. The commission shall be composed of one commissioner from each party state who shall be appointed, serve, and be subject to removal in accordance with the

laws of the state which ~~he~~ *the commissioner* represents. If authorized by the laws of ~~his~~ *the commissioner's* party state, a commissioner may provide for the discharge of ~~his~~ *the commissioner's* duties and the performance of ~~his~~ *the commissioner's* functions on the commission, either for the duration of ~~his~~ *the commissioner's* membership or for any lesser period of time, by an alternate. No such alternate shall be entitled to serve unless notification of ~~his~~ *the alternate's* identity and appointment shall have been given to the commission in such form as the commission may require. Each commissioner, and each alternate when serving in the place and stead of a commissioner, shall be entitled to be reimbursed by the commission for expenses actually incurred in attending commission meetings or while engaged in the business of the commission.

(2) The commissioners shall be entitled to one vote each on the commission. No action of the commission shall be binding unless taken at a meeting at which a majority of the total number of votes on the commission are cast in favor thereof. Action of the commission shall be only at a meeting at which a majority of the commissioners, or their alternates, are present.

(3) The commission shall have a seal.

(4) The commission shall elect annually, from among its members, a ~~chairman~~ *presiding officer*, a ~~vice-chairman~~ *vice presiding officer*, and a treasurer. The commission may appoint an executive director and fix ~~his~~ *the director's* duties and compensation. Such executive director shall serve at the pleasure of the commission, and together with the treasurer shall be bonded in such amount as the commission shall determine. The executive director also shall serve as secretary. If there be no executive director, the commission shall elect a secretary in addition to the other officers provided by this subdivision.

(5) Irrespective of the civil service, personnel, or other merit system laws of any of the party states, the executive director with the approval of the commission, or the commission if there be no executive director, shall appoint, remove, or discharge such personnel as may be necessary for the performance of the commission's functions, and shall fix the duties and compensation of such personnel.

(6) The commission may establish and maintain independently or in conjunction with any one or more of the party states a suitable retirement system for its full time employees. Employees of the commission shall be eligible for social security coverage in respect of old age and survivor's insurance provided that the commission takes such steps as may be necessary pursuant to the laws of the United States to participate in such program of insurance as a governmental agency or unit. The commission may establish and maintain or participate in such additional programs of employee benefits as may be appropriate.

(7) The commission may borrow, accept, or contract for the services of personnel from any party state, the United States, or any subdivision or agency of the aforementioned governments, or from any agency of two or more of the party states or their subdivisions.

(8) The commission may accept for any of its purposes and functions under this compact any and all donations and grants of money, equipment, supplies, materials, and services, conditional or otherwise, from any state, the United States, or any other governmental agency and may receive, utilize, and dispose of the same.

(9) The commission may establish and maintain such facilities as may be necessary for the transacting of its business. The commission may acquire, hold, and convey real and personal property and any interest therein.

(10) The commission shall adopt bylaws for the conduct of its business and shall have the power to amend and rescind these bylaws. The commission shall publish its bylaws in convenient form and shall file a copy thereof and a copy of any amendment thereto with the appropriate agency or officer in each of the party states. The bylaws shall provide for appropriate notice to the commissioners of all commission meetings and hearings and the business to be transacted at such meetings or hearings. Such notice shall also be given to such agencies or officers of each party state as the laws of such party state may provide.

(11) The commission annually shall make to the governor and legislature of each party state a report covering the activities of the commission for the preceding year, and embodying such recommendations as may have been issued by the commission. The commission may make such additional reports as it may deem desirable.

Article IV. Research and Testing

The commission shall have power to:

(1) collect, correlate, analyze, and evaluate information resulting or derivable from research and testing activities in equipment and related fields;

(2) recommend and encourage the undertaking of research and testing in any aspect of equipment or related matters when, in its judgment, appropriate or sufficient research or testing has not been undertaken;

(3) contract for such equipment research and testing as one or more governmental agencies may agree to have contracted for by the commission, provided that such governmental agency or agencies shall make available the funds necessary for such research and testing;

(4) recommend to the party states changes in law or policy with emphasis on uniformity of laws and administrative rules, regulations, or codes which would promote effective governmental action or coordination in the prevention of equipment-related highway accidents or the mitigation of equipment-related highway safety problems.

Article V. Vehicular Equipment

(1) In the interest of vehicular and public safety, the commission may study the need for or desirability of the establishment of or changes in performance requirements or restrictions for any item of equipment. As a result of such study, the commission may publish a report relating to any item or items of equipment, and the issuance of such a report shall be a condition precedent to any proceedings or other action provided or authorized by this article. No less than 60 days after the publication of a report containing the results of such study, the commission upon due notice shall hold a hearing or hearings at such place or places as it may determine.

(2) Following the hearing or hearings provided for in subsection (1) of this article, and with due regard for standards recommended by appropriate professional and technical associations and agencies, the commission may issue rules, regulations, or codes embodying performance requirements or restrictions for any item or items of equipment covered in the report, which in the opinion of the commission will be fair and equitable and effectuate the purposes of this compact.

(3) Each party state obligates itself to give due consideration to any and all rules, regulations, and codes issued by the commission and hereby declares its policy and intent to be the promotion of uniformity in the laws of the several party states relating to equipment.

(4) The commission shall send prompt notice of its action in issuing any rule, regulation, or code pursuant to this article to the appropriate motor vehicle agency of each party state and such notice shall contain the complete text of the rule, regulation, or code.

(5) If the constitution of a party state requires, or if its statutes provide, the approval of the legislature by appropriate resolution or act may be made a condition precedent to the taking effect in such party state of any rule, regulation, or code. In such event, the commissioner of such party state shall submit any commission rule, regulation, or code to the legislature as promptly as may be in lieu of administrative acceptance or rejection thereof by the party state.

(6) Except as otherwise specifically provided in or pursuant to subsections (5) and (7) of this article, the appropriate motor vehicle agency of a party state shall in accordance with its constitution or procedural laws adopt the rule, regulation, or code within 6 months of the sending of the notice and, upon such adoption, the rule, regulation, or code shall have the force and effect of law therein.

(7) The appropriate motor vehicle agency of a party state may decline to adopt a rule, regulation, or code issued by the commission pursuant to this article if such agency specifically finds, after public hearing on due notice, that a variation from the commission's rule, regulation, or code is necessary to the public safety, and incorporates in such finding the reasons upon which it is based. Any such finding shall be subject to review by such procedure for review of administrative determinations as may be applicable pursuant to the laws of the party state. Upon request, the commission shall be furnished with a copy of the transcript of any hearings held pursuant to this subsection.

Article VI. Finance

(1) The commission shall submit to the executive head or designated officer or officers of each party state a budget of its estimated expenditures for such period as may be required by the laws of that party state for presentation to the legislature thereof.

(2) Each of the commission's budgets of estimated expenditures shall contain specific recommendations of the amount or amounts to be appropriated by each of the party states. The total amount of appropriations under any such budget shall be apportioned among the party states as follows: one-third in equal shares and the remainder in proportion to the number of motor vehicles registered in each party state. In determining the number of such registrations, the commission may employ such source or sources of information as in its judgment present the most equitable and accurate comparisons among the party states. Each of the commission's budgets of estimated expenditures and requests for appropriations shall indicate the source or sources used in obtaining information concerning vehicular registrations.

(3) The commission shall not pledge the credit of any party state. The commission may meet any of its obligations in whole or in part with funds available to it under Article III(8) of this compact, provided that the commission takes specific action setting aside such funds prior to incurring any obligation to be met in whole or in part in such manner. Except where the commission makes

use of funds available to it under Article III(8) hereof, the commission shall not incur any obligation prior to the allotment of funds by the party states adequate to meet the same.

(4) The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission shall be subject to the audit and accounting procedures established under its rules. However, all receipts and disbursements of funds handled by the commission shall be audited yearly by a qualified public accountant and the report of the audit shall be included in and become part of the annual reports of the commission.

(5) The accounts of the commission shall be open at any reasonable time for inspection by duly constituted officers of the party states and by any persons authorized by the commission.

(6) Nothing contained herein shall be construed to prevent commission compliance with laws relating to audit or inspection of accounts by or on behalf of any government contributing to the support of the commission.

Article VII. Conflict of Interest

(1) The commission shall adopt rules and regulations with respect to conflict of interest for the commissioners of the party states, and their alternates, if any, and for the staff of the commission and contractors with the commission to the end that no member or employee or contractor shall have a pecuniary or other incompatible interest in the manufacture, sale, or distribution of motor vehicles or vehicular equipment or in any facility or enterprise employed by the commission or on its behalf for testing, conduct of investigations, or research. In addition to any penalty for violation of such rules and regulations as may be applicable under the laws of the violator's jurisdiction of residence, employment, or business, any violation of a commission rule or regulation adopted pursuant to this article shall require the immediate discharge of any violating employee and the immediate vacating of membership, or relinquishing of status as a member on the commission by any commissioner or alternate. In the case of a contractor, any violation of any such rule or regulation shall make any contract of the violator with the commission subject to cancellation by the commission.

(2) Nothing contained in this article shall be deemed to prevent a contractor for the commission from using any facilities subject to ~~his~~ *the contractor's* control in the performance of the contract even though such facilities are not devoted solely to work of or done on behalf of the commission, or to prevent such a contractor from receiving remuneration or profit from the use of such facilities.

Article VIII. Advisory and Technical Committees

The commission may establish such advisory and technical committees as it may deem necessary, membership on which may include private citizens and public officials, and may cooperate with and use the services of any such committees and the organizations which the members represent in furthering any of its activities.

Article IX. Entry Into Force and Withdrawal

(1) This compact shall enter into force when enacted into law by any six or more states. Thereafter, this compact shall become effective as to any other state upon its enactment thereof.

(2) Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until 1 year after the executive head of the withdrawing state has given notice in writing of the

withdrawal to the executive heads of all other party states. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal.

Article X. Construction and Severability

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating herein, the compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the state affected as to all severable matters."

Section 1938. Section 61-2-204, MCA, is amended to read:

"61-2-204. State commissioner on vehicle equipment safety commission. Notwithstanding section 1, Chapter 272, Laws of 1971, the commissioner of this state on the vehicle equipment safety commission is the highway patrol chief who shall serve during ~~his~~ *the* continuance as ~~such officer~~ *highway patrol chief*. The commissioner appointed pursuant to this section may designate an alternate from among the officers and employees of ~~his agency~~ *the highway patrol* to serve in ~~his~~ *the commissioner's* place on the vehicle equipment safety commission. Subject to the provisions of the compact and bylaws of the vehicle equipment safety commission, the authority and responsibilities of the alternate are as determined by the commissioner ~~designating him~~."

Section 1939. Section 61-2-207, MCA, is amended to read:

"61-2-207. Documents filed and notices given by equipment safety commission. Filing of documents as required by Article III(10) of the compact ~~shall~~ *must* be with the department. ~~Any and all~~ *All* notices required by commission bylaws to be given pursuant to Article III(10) of the compact ~~shall~~ *must* be given to the commissioner of this state and ~~his~~ *the commissioner's* alternate."

Section 1940. Section 61-4-106, MCA, is amended to read:

"61-4-106. Transfer of license. A registered dealer or wholesaler who sells or disposes of ~~his~~ *the dealer's or wholesaler's* entire business to another person may have ~~his~~ *the dealer's or wholesaler's* certificate of registration transferred to the purchaser upon filing with the department a statement containing the name of the registered dealer or wholesaler, the number under which the business is registered, the name of the purchaser, and the location of the place of business ~~so~~ sold. Upon the filing of the statement, accompanied by a filing fee of $2, the department shall note upon the registration record of the dealer or wholesaler the change of ownership. A certificate of registration may not be transferred unless the entire business of the dealer or wholesaler holding the certificate of registration is sold and disposed of, and a certificate of registration may not be transferred to any person other than the purchasers of the business."

Section 1941. Section 61-4-132, MCA, is amended to read:

"61-4-132. Right of designated family member to succeed in dealership ownership. (1) Any designated family member of a deceased or incapacitated dealer may succeed the dealer in the ownership or operation of the dealership under the existing franchise or distribution agreement ~~provided~~

~~he~~ *if the family member* gives the manufacturer, factory branch, distributor, or importer of new motor vehicles written notice of ~~his~~ *the* intention to do so within 120 days of the dealer's death or incapacity and unless there exists good cause for refusal to honor ~~such~~ *the* succession on the part of the manufacturer, factory branch, distributor, or importer.

(2) The manufacturer, factory branch, distributor, or importer may request, and the designated family member shall provide, upon request, personal and financial data that is reasonably necessary to determine whether the succession should be honored."

Section 1942. Section 61-4-209, MCA, is amended to read:

"61-4-209. Cease and desist orders. When the department has reasonable cause to believe, from information furnished to or from an investigation made by it, that any person is engaged in any business regulated by this part without being licensed as required, it shall immediately issue and serve upon ~~such~~ *the* person, by certified mail, a cease and desist order, requiring ~~him~~ *the person* to cease and desist from further engaging in that business. Upon failure of that person to comply with the order, the department shall file an action in the district court of Lewis and Clark County to restrain and enjoin the person from engaging in the business. The court in the action shall proceed as in other actions for injunctions."

Section 1943. Section 61-4-406, MCA, is amended to read:

"61-4-406. Suit for injury to business or property. In addition to the criminal and civil penalties ~~herein~~ provided *in this part*, any person who ~~shall be~~ *is* injured in ~~his~~ *the person's* business or property by any other person or corporation or association or partnership by reason of anything forbidden or declared to be unlawful by this part may sue ~~therefor~~ *for damages* in any court having jurisdiction ~~thereof~~ in the county where the defendant resides or is found or any agent resides or is found or where service may be obtained, without respect to the amount in controversy, and recover ~~twofold~~ *twice* the *amount of* damages ~~by him~~ sustained and the costs of suit. Whenever it ~~shall appear~~ *appears* to the court before which any proceedings under this part may be pending that the ends of justice require that other parties ~~shall~~ *must* be brought before the court, the court may cause them to be made parties defendant and summoned, whether *or not* they reside in the county where ~~such~~ *the* action is pending ~~or not~~."

Section 1944. Section 61-5-116, MCA, is amended to read:

"61-5-116. License to be carried and exhibited on demand. ~~Every~~ *A* licensee ~~shall~~ *must* have ~~his~~ *the licensee's* driver's license in ~~his~~ *the licensee's* immediate possession at all times when operating a motor vehicle and shall display the ~~same~~ *license* upon demand of a justice of the peace, a city or municipal judge, a peace officer, a highway patrol officer, or a field deputy or inspector of the department. However, ~~no~~ *a* person charged with violating this section ~~shall~~ *may not* be convicted if ~~he~~ *the person* produces in court or the office of the arresting officer a driver's license ~~theretofore~~ issued to ~~him~~ *person* and valid at the time of ~~his~~ *the person's* arrest."

Section 1945. Section 61-5-304, MCA, is amended to read:

"61-5-304. Permitting unauthorized minor to drive. ~~No~~ *A* person ~~shall~~ *may not* cause or knowingly permit ~~his~~ *the person's* child or ward under ~~the age of~~ 18 years *of age* to drive a motor vehicle upon any highway when ~~such~~ *the* minor is not authorized ~~hereunder~~ *to drive* or in violation of any of the provisions of parts 1 through 3 of this chapter."

Section 1946. Section 61-5-401, MCA, is amended to read:

"61-5-401. Driver License Compact. This part shall be known and may be cited as the "Driver License Compact".

Article I. Findings and Declaration of Policy

(1) The party states find that:

(a) the safety of their streets and highways is materially affected by the degree of compliance with state laws and local ordinances relating to the operation of motor vehicles;

(b) violation of such a law or ordinance is evidence that the violator engages in conduct which is likely to endanger the safety of persons and property;

(c) the continuance in force of a license to drive is predicated upon compliance with laws and ordinances relating to the operation of motor vehicles in whichever jurisdiction the vehicle is operated.

(2) It is the policy of each of the party states to:

(a) promote compliance with the laws, ordinances, and administrative rules relating to the operation of motor vehicles by their operators in each of the jurisdictions where such operators drive motor vehicles;

(b) make the reciprocal recognition of licenses to drive and eligibility therefor more just and equitable by considering the overall compliance with motor vehicle laws, ordinances, and administrative rules as a condition precedent to the continuance or issuance of any license by reason of which the licensee is authorized or permitted to operate a motor vehicle in any of the party states.

Article II. Definitions

As used in this compact:

(1) "state" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico;

(2) "home state" means the state which has issued and has the power to suspend or revoke the use of the license or permit to operate a motor vehicle;

(3) "conviction" means a conviction of any offense related to the use or operation of a motor vehicle which is prohibited by state law, municipal ordinance, or administrative rule, or a forfeiture of bail, bond, or other security deposited to secure appearance by a person charged with having committed any such offense, and which conviction or forfeiture is required to be reported to the licensing authority.

Article III. Reports of Conviction

The licensing authority of a party state shall report each conviction of a person from another party state occurring within its jurisdiction to the licensing authority of the home state of the licensee. Such report shall clearly identify the person convicted; describe the violation specifying the section of the statute, code, or ordinance violated; identify the court in which action was taken; indicate whether a plea of guilty or not guilty was entered or the conviction was a result of the forfeiture of bail, bond, or other security; and include any special findings made in connection therewith.

Article IV. Effect of Conviction

(1) The licensing authority in the home state, for the purposes of suspension, revocation, or limitation of the license to operate a motor vehicle, shall give the same effect to the conduct reported, pursuant to Article III of this compact, as it

would if such conduct had occurred in the home state, in the case of convictions for:

(a) manslaughter or negligent homicide resulting from the operation of a motor vehicle;

(b) driving a motor vehicle while under the influence of intoxicating liquor or a narcotic drug, or under the influence of any other drug to a degree which renders the driver incapable of safely driving a motor vehicle;

(c) any felony in the commission of which a motor vehicle is used;

(d) failure to stop and render aid in the event of a motor vehicle accident resulting in the death or personal injury of another.

(2) As to other convictions, reported pursuant to Article III, the licensing authority in the home state shall give such effect to the conduct as is provided by the laws of the home state.

(3) If the laws of a party state do not provide for offenses or violations denominated or described in precisely the words employed in subdivision (1) of this article, such party state shall construe the denominations and descriptions appearing in subdivision (1) hereof as being applicable to and identifying those offenses or violations of a substantially similar nature, and the laws of such party state shall contain such provisions as may be necessary to ensure that full force and effect is given to this article.

Article V. Applications for New Licenses

Upon application for a license to drive, the licensing authority in a party state shall ascertain whether the applicant has ever held, or is the holder of a license to drive issued by any other party state. The licensing authority in the state where application is made shall not issue a license to drive to the applicant if:

(1) the applicant has held such a license, but the same has been suspended by reason, in whole or in part, of a violation and if such suspension period has not terminated;

(2) the applicant has held such a license, but the same has been revoked by reason, in whole or in part, of a violation and if such revocation has not terminated, except that after the expiration of 1 year from the date the license was revoked, such person may make application for a new license if permitted by law. The licensing authority may refuse to issue a license to any such applicant if, after investigation, the licensing authority determines that it will not be safe to grant to such person the privilege of driving a motor vehicle on the public highways.

(3) the applicant is the holder of a license to drive issued by another party state and currently in force unless the applicant surrenders such license.

Article VI. Applicability of Other Laws

Except as expressly required by provisions of this compact, nothing contained herein shall be construed to affect the right of any party state to apply any of its other laws relating to licenses to drive to any person or circumstance or to invalidate or prevent any driver license agreement or other cooperative arrangement between a party state and a nonparty state.

Article VII. Compact Administrator and Interchange of Information

(1) The head of the licensing authority of each party state shall be the administrator of this compact for ~~his~~ *the administrator's* state. The

administrators, acting jointly, shall have the power to formulate all necessary and proper procedures for the exchange of information under this compact.

(2) The administrator of each party state shall furnish to the administrator of each other party state any information or documents reasonably necessary to facilitate the administration of this compact.

Article VIII. Entry Into Force and Withdrawal

(1) This compact shall enter into force and become effective as to any state when it has enacted the same into law.

(2) Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until 6 months after the executive head of the withdrawing state has given notice of the withdrawal to the executive heads of all other party states. No withdrawal shall affect the validity or applicability by the licensing authorities of states remaining party to the compact of any report of conviction occurring prior to the withdrawal.

Article IX. Construction and Severability

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters."

Section 1947. Section 61-5-403, MCA, is amended to read:

"61-5-403. Reimbursement of compact administrator. The compact administrator provided for in Article VII of the compact ~~shall~~ *is* not ~~be~~ entitled to any additional compensation on account of ~~his~~ *the* service as ~~such~~ administrator but ~~shall be~~ *is* entitled to expenses incurred in connection with ~~his~~ duties and responsibilities as ~~such~~ administrator in the same manner as for expenses incurred in connection with any other duties or responsibilities of ~~his~~ *the administrator's* office or employment."

Section 1948. Section 61-6-103, MCA, is amended to read:

"61-6-103. Motor vehicle liability policy defined. (1) A "motor vehicle liability policy", as the term is used in this part, means an owner's or operator's policy of liability insurance, certified as provided in 61-6-133 or 61-6-134 as proof of financial responsibility and issued, except as otherwise provided in 61-6-134, by an insurance carrier duly authorized to transact business in this state, to or for the benefit of the person named ~~therein~~ *in the policy* as insured.

(2) The owner's policy of liability insurance must:

(a) designate by explicit description or by appropriate reference all motor vehicles with respect to which coverage is ~~thereby~~ to be granted *by the policy*; and

(b) insure the person named ~~therein~~ *in the policy* and any other person, as insured, using any motor vehicle or motor vehicles with the express or implied permission of the named insured, against loss from the liability imposed by law for damages arising out of the ownership, maintenance, or use of the motor

vehicle or motor vehicles within the United States of America or ~~the Dominion of~~ Canada, subject to limits exclusive of interest and costs, with respect to each motor vehicle, as follows:

(i) $25,000 because of bodily injury to or death of one person in any one accident and subject to ~~said~~ *that* limit for one person;

(ii) $50,000 because of bodily injury to or death of two or more persons in any one accident; and

(iii) $10,000 because of injury to or destruction of property of others in any one accident.

(3) An operator's policy of liability insurance must insure the person named as insured ~~therein~~ *in the policy* against loss from the liability imposed upon ~~him~~ *the insured* by law for damages arising out of the use by ~~him~~ *the insured* of any motor vehicle not owned by ~~him~~ *the insured*, within the same territorial limits and subject to the same limits of liability ~~as~~ *that* are set forth ~~above~~ *in subsection (2)* with respect to the operator's policy of liability insurance.

(4) A motor vehicle liability policy must state the name and address of the named insured, the coverage afforded by the policy, the premium charged ~~therefor~~, the policy period, and the limits of liability and contain an agreement or be endorsed that insurance is provided ~~thereunder~~ *under the policy* in accordance with the coverage defined in this part ~~as respects~~ *with respect to* bodily injury and death or property damage, or both, and is subject to all the provisions of this part.

(5) A motor vehicle liability policy need not insure any liability under any workers' compensation law or any liability on account of bodily injury to or death of an employee of the insured while engaged in the employment, other than domestic, of the insured or while engaged in the operation, maintenance, or repair of a motor vehicle or any liability for damage to property owned by, rented to, in charge of, or transported by the insured.

(6) A motor vehicle liability policy is subject to the following provisions, which need not be contained ~~therein~~ *in the policy*:

(a) The liability of the insurance carrier with respect to the insurance required by this part becomes absolute whenever injury or damage covered by the motor vehicle liability policy occurs. The policy may not be canceled or annulled as to the liability by any agreement between the insurance carrier and the insured after the occurrence of the injury or damage. ~~No~~ *A* statement made by the insured or on ~~his~~ *the insured's* behalf and ~~no~~ *a* violation of the policy may *not* defeat or void the policy.

(b) The satisfaction by the insured of a judgment for the injury or damage may not be a condition precedent to the right or duty of the insurance carrier to make payment on account of the injury or damage.

(c) The insurance carrier has the right to settle any claim covered by the policy, and if the settlement is made in good faith, the amount is deductible from the limits of liability specified in subsection (2)(b).

(d) The policy, the written application ~~therefor~~ *for the policy*, if any, and any rider or endorsement ~~which~~ *that* does not conflict with the provisions of this part constitute the entire contract between the parties.

(7) A motor vehicle policy is not subject to cancellation, termination, nonrenewal, or premium increase due to injury or damage incurred by the insured or operator unless the insured or operator is found to have violated a traffic law or ordinance of the state or a city, is found negligent or contributorily

negligent in a court of law or by the arbitration proceedings contained in chapter 5 of Title 27, or pays damages to another party, whether by settlement or otherwise. ~~In no event may a~~ *A* premium *may not* be increased during the term of the policy unless there is a change in exposure.

(8) Any policy ~~which~~ *that* grants the coverage required for a motor vehicle liability policy may also grant any lawful coverage in excess of or in addition to the coverage specified for a motor vehicle liability policy, and the excess or additional coverage is not subject to the provisions of this part. With respect to a policy ~~which~~ *that* grants the excess or additional coverage, the term "motor vehicle liability policy" applies only to that part of the coverage ~~which~~ *that* is required by this section.

(9) Any motor vehicle liability policy may provide that the insured shall reimburse the insurance carrier for any payment the insurance carrier would not have been obligated to make under the terms of the policy except for the provisions of this part.

(10) Any motor vehicle liability policy may provide for the prorating of the insurance ~~thereunder~~ *under the policy* with other valid and collectible insurance.

(11) The requirements for a motor vehicle liability policy may be fulfilled by the policies of one or more insurance carriers, which policies together meet ~~such~~ *the* requirements.

(12) Any binder issued pending the issuance of a motor vehicle liability policy fulfills the requirements for ~~such~~ a policy.

(13) A reduced limits endorsement may not be issued by any company to be attached to any policy issued in compliance with this section."

Section 1949. Section 61-6-121, MCA, is amended to read:

"61-6-121. Courts to report nonpayment of judgments. (1) Whenever ~~any~~ *a* person fails within 60 days to satisfy ~~any~~ *a* judgment, upon the written request of the judgment creditor or ~~his~~ *the creditor's* attorney, ~~it shall be the duty of~~ the clerk of the court, or of the judge of a court ~~which has no~~ *that does not have a* clerk, in which any ~~such~~ judgment is rendered within this state ~~to~~ *shall* forward to the department immediately after the expiration of ~~said~~ *the* 60 days a certified copy of ~~such~~ *the* judgment.

(2) If the defendant named in any certified copy of a judgment reported to the department is a nonresident, the department shall transmit a certified copy of the judgment to the official in charge of the issuance of licenses and registration certificates of the state of which the defendant is a resident."

Section 1950. Section 61-6-131, MCA, is amended to read:

"61-6-131. When proof of financial responsibility required. (1) Whenever the department under any of the laws of this state revokes the license of any person, ~~such~~ *the* license ~~shall~~ *must* remain revoked and ~~shall~~ *may* not ~~at any time thereafter~~ be renewed ~~nor shall any~~ *and a* license *may not* be ~~thereafter~~ issued to ~~such~~ *the* person until permitted under the motor vehicle laws of this state and not then unless and until ~~he shall give~~ *the person* ~~and thereafter maintain~~ *maintains* proof of financial responsibility.

(2) If a person is not licensed, but by the final order or judgment is convicted of or forfeits any bail or collateral deposited to secure an appearance for trial for any offense requiring the revocation of a license, ~~no~~ *a* license ~~shall~~ *may not* be ~~thereafter~~ issued to ~~such~~ *the* person until ~~he shall give~~ *the person gives* and ~~thereafter maintain~~ *maintains* proof of financial responsibility.

(3) Whenever the department revokes a nonresident's operating privilege by reason of a conviction or forfeiture of bail, ~~such~~ *the* privilege ~~shall remain so~~ *remains* revoked unless ~~such~~ *the* person ~~shall have~~ *has* previously given or ~~shall~~ immediately ~~give~~ *gives* and ~~thereafter maintain~~ *maintains* proof of financial responsibility."

Section 1951. Section 61-6-132, MCA, is amended to read:

"61-6-132. Alternate methods of giving proof. (1) Proof of financial responsibility when required under this part with respect to a motor vehicle or with respect to a person who is not the owner of a motor vehicle may be given by filing:

(a) a certificate of insurance as provided in 61-6-133 or 61-6-134;

(b) a bond as provided in 61-6-137;

(c) a certificate or deposit of money or securities as provided in 61-6-138; or

(d) a certificate of self-insurance, as provided in 61-6-143, supplemented by an agreement by the self-insurer that, with respect to accidents occurring while the certificate is in force, ~~he~~ *the self-insurer* will pay the same judgments and in the same amounts that an insurer would have been obligated to pay under an owner's motor vehicle liability policy if it had issued ~~such~~ a policy to ~~said~~ *the* self-insurer.

(2) ~~No~~ *A* motor vehicle ~~shall~~ *may not* be or continue to be registered in the name of any person required to file proof of financial responsibility unless ~~such~~ *the* proof ~~shall be~~ *is* furnished for ~~such~~ *the* motor vehicle."

Section 1952. Section 61-6-136, MCA, is amended to read:

"61-6-136. Other policies not affected. (1) This part ~~shall not be held to~~ *does not* apply to or affect policies of automobile insurance against liability ~~which may now or hereafter be~~ *that are* required by any other law of this state, and ~~such~~ *those* policies, if they contain an agreement or are endorsed to conform to the requirements of this part, may be certified as proof of financial responsibility under this part.

(2) This part ~~shall not be held to~~ *does not* apply to or affect policies insuring solely the insured named in the policy against liability resulting from the maintenance or use by persons in the insured's employ or on ~~his~~ *the insured's* behalf of motor vehicles not owned by the insured."

Section 1953. Section 61-6-137, MCA, is amended to read:

"61-6-137. Bond as proof of responsibility. (1) Proof of financial responsibility may be furnished by filing with the department the bond of a surety company ~~duly~~ authorized to transact business in the state or a bond with at least two individual sureties each owning real estate within this state and together having equities equal in value to at least twice the amount of ~~such~~ *the* bond~~,~~. ~~which~~ *The* real estate ~~shall~~ *must* be scheduled in the bond approved by a judge of a court of record. The bond ~~shall~~ *must* be conditioned for payments in amounts and under the same circumstances ~~as~~ *that* would be required in a motor vehicle liability policy and ~~shall~~ *may* not be cancelable except after 10 days' written notice to the department. Upon the filing of notice to this effect by the department in the office of the county clerk and recorder of the county ~~wherein such~~ *in which the* real estate is located, the bond ~~shall constitute~~ *constitutes* a lien in favor of the state upon the *scheduled* real estate ~~so scheduled~~ of any surety~~,~~. ~~which~~ *The* lien ~~shall exist~~ *exists* in favor of any holder of a judgment against the person who has filed the bond.

(2) The person in whose favor the lien exists may, for ~~his~~ *the person's* own use and benefit and at ~~his~~ *the person's* sole expense, bring an action or actions in the name of the state against the company or persons executing the bond, including an action or proceeding to foreclose any lien that may exist upon the real estate of any person who has executed ~~such~~ *the* bond. The provisions of the Montana Rules of Civil Procedure, except ~~insofar as~~ *to the extent that* they are inconsistent with the provisions of this part, are applicable to and constitute the rules of practice in the foreclosure actions or proceedings. The provisions of the Montana Rules of Civil Procedure relative to new trials and appeals, except ~~insofar as~~ *to the extent that* they are inconsistent with the provisions of this part, apply to the actions or proceedings."

Section 1954. Section 61-6-138, MCA, is amended to read:

"61-6-138. Money or securities as proof of responsibility. (1) Proof of financial responsibility may be evidenced by the certificate of the state treasurer that the person named ~~therein~~ *in the certificate* has deposited with ~~him~~ *the treasurer* $55,000 in cash, or securities ~~such as~~ *that* may legally be purchased by savings banks or for trust funds of a market value of $55,000. The state treasurer ~~shall~~ *may* not accept any ~~such~~ deposit and issue a certificate ~~therefor~~ and the department ~~shall~~ *may* not accept ~~such~~ *the* certificate unless accompanied by evidence that there are no unsatisfied judgments of any character against the depositor in the county where the depositor resides.

(2) ~~Such~~ *The* deposit ~~shall~~ *must* be held by the state treasurer to satisfy, in accordance with the provisions of this part, any execution on a judgment issued against ~~such~~ *the* person making the deposit~~,~~ for damages, including damages for care and loss of services, because of bodily injury to or death of any person, or for damages because of injury to or destruction of property, including the loss of use ~~thereof~~ *of property*, resulting from the ownership, maintenance, use, or operation of a motor vehicle after ~~such~~ *the* deposit was made. Money or securities ~~so~~ deposited ~~shall~~ *may* not be subject to attachment or execution unless ~~such~~ *the* attachment or execution ~~shall arise~~ *arises* out of a suit for damages as ~~aforesaid~~ *described in this subsection*."

Section 1955. Section 61-6-142, MCA, is amended to read:

"61-6-142. Duration of proof — when money or securities may be canceled or returned. (1) The department shall direct and the state treasurer shall return to the person entitled ~~thereto~~ any money or securities deposited pursuant to this part as proof of financial responsibility, or the department shall waive the requirement of filing proof under this part, in any of the following events:

(a) at any time after 3 years from the date ~~such~~ *the* proof was required when during the 3-year period preceding the request the department has not received record of a conviction or a forfeiture of bail ~~which~~ *that* would require or permit the suspension or revocation of the license or nonresident's operating privilege of the person by or for whom ~~such~~ *the* proof was furnished;

(b) in the event of the death of the person on whose behalf ~~such~~ *the* proof was filed or the permanent incapacity of ~~such~~ *the* person to operate a motor vehicle; or

(c) in the event the person who has given proof surrenders ~~his~~ *the person's* license to the department.

(2) However, the department ~~shall~~ *may* not consent to the return of any money or securities ~~in the event~~ *if* any action for damages upon a liability covered by ~~such~~ *the* proof is then pending or any judgment upon any ~~such~~

liability is then unsatisfied~~,~~ or ~~in the event~~ *if* the person who has deposited ~~such~~ *the* money or securities has, within 1 year immediately preceding ~~such~~ *the* request, been involved as an operator or owner in any motor vehicle accident resulting in injury or damage to the person or property of others. An affidavit of the applicant as to the nonexistence of ~~such~~ *the* facts~~,~~ or that ~~he~~ *the applicant* has been released from all ~~of his~~ liability~~,~~ or has been finally adjudicated not to be liable for ~~such~~ *the* injury or damage~~, shall be~~ *is* sufficient evidence ~~thereof~~ in the absence of evidence to the contrary in the records of the department.

(3) Whenever any person whose proof has been canceled or returned under subsection (1)(c) ~~of this section~~ applies for a license within a period of 3 years from the date proof was originally required, ~~any such~~ *the* application ~~shall~~ *must* be refused unless the applicant complies with the insurance or bond requirements under 61-6-301 and 61-6-302."

Section 1956. Section 61-6-201, MCA, is amended to read:

"61-6-201. Liability of owner for negligence of employee driver. The owner of ~~every~~ *a* vehicle running or traveling upon any highway or road for the conveyance of passengers is liable for all damage to person or property done by any person in ~~his~~ *the owner's* employment as a driver while driving ~~such~~ *the* vehicle, whether done willfully or negligently or otherwise, in the same manner ~~as such~~ *that* driver would be liable."

Section 1957. Section 61-6-303, MCA, is amended to read:

"61-6-303. Exempt vehicles. The following vehicles and their drivers are exempt from the provisions of 61-6-301:

(1) a vehicle owned by the United States government or any state or political subdivision;

(2) a vehicle for which cash, securities, or a bond has been deposited or filed with the department upon ~~such~~ terms and conditions providing the same benefits available under a required motor vehicle liability insurance policy;

(3) a vehicle owned by a self-insurer certified as provided in 61-6-143;

(4) an implement of husbandry or special mobile equipment that is only incidentally operated on a highway or property open to use by the public;

(5) a vehicle operated upon a highway only for the purpose of crossing ~~such~~ *the* highway from one property to another;

(6) a commercial vehicle registered or proportionally registered in this and any other jurisdiction~~, provided that~~ *if the* vehicle is covered by a motor vehicle liability insurance policy complying with the laws of another jurisdiction in which it is registered;

(7) a motorcycle or quadricycle;

(8) a vehicle moved solely by human or animal power;

(9) a vehicle owned by a nonresident if it is currently registered in the owner's resident jurisdiction and ~~he~~ *the owner* is in compliance with the motor vehicle liability insurance requirements, if any, of that jurisdiction."

Section 1958. Section 61-7-104, MCA, is amended to read:

"61-7-104. Accident involving damage to vehicle. (1) The driver of any vehicle involved in an accident resulting only in damage to a vehicle ~~which~~ *that* is driven or attended by any person shall immediately stop ~~such~~ *the* vehicle at the scene of ~~such~~ *the* accident or as close ~~thereto~~ *to the scene* as possible and shall ~~forthwith~~ return to and ~~in every event shall~~ remain at the scene of ~~such~~ *the*

accident until ~~he~~ *the person* has fulfilled the requirements of 61-7-105. ~~Every such~~ *The* stop ~~shall~~ *must* be made without obstructing traffic more than is necessary.

(2) Any person failing to stop or comply with ~~said~~ *the* requirements ~~under such circumstances~~ *of subsection (1) is* ~~shall be~~ guilty of a misdemeanor."

Section 1959. Section 61-7-105, MCA, is amended to read:

"61-7-105. Duty to give information and render aid. The driver of any vehicle involved in an accident resulting in injury to or death of any person or damage to any vehicle ~~which~~ *that* is driven or attended by any person shall give ~~his~~ *the driver's* name, address, and the registration number of the vehicle ~~he~~ *the driver* is driving and shall upon request and if available ~~exhibit his~~ *show a* driver's license to the person struck or the driver or occupant of or person attending any vehicle collided with. ~~and~~ *The driver* shall render to any person injured in ~~such~~ *the* accident reasonable assistance, including the ~~carrying~~ *transporting*, or the making of arrangements for the ~~carrying~~ *transporting*~~,~~ of ~~such~~ *the* person to a physician, surgeon, or hospital for medical or surgical treatment if it is apparent that ~~such~~ *the* treatment is necessary or if ~~such carrying~~ *transportation* is requested by the injured person."

Section 1960. Section 61-7-107, MCA, is amended to read:

"61-7-107. Duty upon striking fixtures or other property upon a highway. The driver of any vehicle involved in an accident resulting only in damage to fixtures or other property legally upon or adjacent to a highway shall take reasonable steps to locate and notify the owner or person in charge of ~~such~~ *the* property of ~~such fact~~ *the accident,* ~~and~~ of ~~his~~ *the driver's* name and address, and of the registration number of the vehicle ~~he is~~ *being* driving and shall upon request and if available exhibit ~~his~~ *a* driver's license and shall ~~make~~ report ~~of such~~ *the* accident when and as required in 61-7-109."

Section 1961. Section 61-7-112, MCA, is amended to read:

"61-7-112. Coroners and medical examiners to report. Each coroner, medical examiner, or other official performing ~~like~~ *similar* functions shall, on or before the 10th day of each month, report in writing to the department the deaths of all persons within ~~his~~ *the official's* respective jurisdiction during the preceding calendar month as the result of traffic accidents, giving the time and place of each accident and the circumstances relating ~~thereto~~ *to the accident*."

Section 1962. Section 61-8-107, MCA, is amended to read:

"61-8-107. Police vehicles and authorized emergency vehicles. (1) The driver of a police vehicle or authorized emergency vehicle, when responding to an emergency call or when in the pursuit of an actual or suspected violator of the law or when responding to but not upon returning from a fire alarm, may exercise the privileges set forth in this section, but subject to the conditions ~~herein stated~~ *in this section*.

(2) The driver of a police vehicle or authorized emergency vehicle may:

(a) park or stand, irrespective of the provisions of this chapter;

(b) proceed past a red or stop signal or stop sign, but only after slowing down as may be necessary for safe operation;

(c) exceed the speed limits ~~so~~ *as* long as ~~he~~ *the driver* does not endanger life or property;

(d) disregard regulations governing direction of movement or turning in specified directions.

(3) The exemptions granted to a police vehicle or authorized emergency vehicle apply only when the vehicle is making use of an audible or visual signal, or both, meeting the requirements of 61-9-402.

(4) The ~~foregoing~~ provisions ~~shall~~ *of this section do* not relieve the driver of a police vehicle or authorized emergency vehicle from the duty to drive with due regard for the safety of all persons, ~~nor shall such~~ *and the* provisions *do not* protect the driver from the consequences of ~~his~~ *the driver's* reckless disregard for the safety of others."

Section 1963. Section 61-8-408, MCA, is amended to read:

"61-8-408. Multiple convictions prohibited. When the same acts may establish the commission of an offense under both 61-8-401 and 61-8-406, a person charged with ~~such~~ *the* conduct may be prosecuted for a violation of both 61-8-401 and 61-8-406. However, ~~he~~ *the person* may only be convicted of an offense under either 61-8-401 or 61-8-406."

Section 1964. Section 61-8-604, MCA, is amended to read:

"61-8-604. Clinging to vehicles. ~~No~~ *A* person riding upon any bicycle, coaster, roller skates, sled, or toy vehicle ~~shall~~ *may not* attach the ~~same~~ *conveyance* or ~~himself~~ *be attached* to any vehicle upon a roadway, but a bicycle trailer or bicycle semitrailer may be attached to a bicycle if that trailer or semitrailer has been designed for ~~such~~ attachment."

Section 1965. Section 61-8-703, MCA, is amended to read:

"61-8-703. Arrest without ~~a~~ warrant in radar cases. (1) The driver of ~~any such~~ *a* motor vehicle may be arrested without a warrant under this section ~~provided~~ *if* the arresting officer is in uniform or displays ~~his~~ *the officer's* badge of authority and has either:

(a) observed the recording of the speed of the vehicle by radio microwaves or other electrical device; or

(b) received, from the officer who has observed the speed of the vehicle recorded by the radio microwaves or other electrical device, a radio message giving the license number or other sufficient identification of the vehicle and the recorded speed, dispatched immediately after the speed of the vehicle was recorded.

(2) The arrest without a warrant of any ~~such~~ driver must be made immediately after ~~such~~ *the* observation or radio message and as the result of uninterrupted pursuit."

Section 1966. Section 61-8-723, MCA, is amended to read:

"61-8-723. Offenses committed by persons under ~~the~~ *18 years of* age ~~of eighteen~~. A person under 18 years of age who is convicted of an offense under this title ~~shall~~ *may* not be punished by incarceration, but shall be punished by:

(1) a fine not to exceed the fine that could be imposed on ~~him~~ *the person* if ~~he~~ *the person* were an adult, provided that ~~such~~ *the* person may not be imprisoned for failure to pay ~~such~~ *the* fine;

(2) revocation of ~~his~~ *the person's* driver's license by the court or suspension of the license for a period set by the court;

(3) impoundment by a law enforcement officer designated by the court of the motor vehicle operated by the person for a period of time not exceeding 60 days if the court finds that ~~he~~ *the person* either owns the vehicle or is the only person who uses the vehicle; or

(4) any combination of subsections (1) through (3)."

Section 1967. Section 61-12-202, MCA, is amended to read:

"61-12-202. Training of department peace officers — rules. (1) The department shall provide ~~such~~ training as required to qualify ~~those~~ employees to competently perform their duties under this part and shall adopt ~~such~~ rules ~~as~~ *that* are required and necessary for qualification of those employees as peace officers.

(2) An employee may not make arrests until ~~he~~ *the employee* has successfully completed ~~such~~ *the* training as required by the department."

Section 1968. Section 61-12-301, MCA, is amended to read:

"61-12-301. Terms defined. ~~The following words and phrases, when~~ *As* used in this part, ~~shall for the purpose of this part have the meanings respectively ascribed to them in this section, except in those instances where~~ *unless* the context ~~of the part clearly indicates that they shall have a different meaning~~ *requires otherwise, the following definitions apply*:

(1) "Agent" means ~~whoever~~ *a person who* solicits the purchase of service contracts~~, as herein defined,~~ or transmits for another ~~any such~~ *a service* contract or application ~~therefor~~ *for a service contract* to or from the company~~,~~ or *who* acts or aids in any manner in the delivery or negotiation of any ~~such~~ *service* contract~~,~~ or of the renewal or continuance ~~thereof~~ *of a service contract*.

(2) "Bail bond service" means any act or acts by a company, ~~as herein defined,~~ the purpose of which is to furnish or procure for any person accused of violation of any law of this state a cash deposit, bond, or other undertaking required by law in order that the accused might enjoy ~~his~~ *the accused's* personal freedom pending trial.

(3) "Buying and selling service" means any act or acts of a company~~, as herein defined,~~ whereby the holder of a service contract with ~~any~~ ~~such~~ *the* company is aided in any way in the purchase or sale of an automobile.

(4) "Commissioner" means the commissioner of insurance of the state of Montana or ~~his~~ *the commissioner's* assistants or deputies or other persons authorized to act for ~~him~~ *the commissioner*.

(5) "Company" means any person, firm, partnership, company, association, or corporation engaged in selling, furnishing, or procuring, either as principal or agent, for a consideration, motor club service ~~as herein defined~~.

(6) "Discount service" means any act or acts by a company~~, as herein defined,~~ resulting in the giving of special discounts, rebates, or reductions of price on gasoline, oil, repairs, insurance, parts, accessories, or service for motor vehicles to holders of service contracts with ~~any~~ ~~such~~ *the* company.

(7) "Emergency road service" means any act or acts by a company~~, as herein defined,~~ consisting of the adjustment, repair, or replacement of the equipment, tires, or mechanical parts of any automobile so as to permit it to be operated under its own power.

(8) "Financial service" means any act or acts by a company~~, as herein defined,~~ whereby loans or other advances of money, with or without security, are made to holders of service contracts with ~~any~~ ~~such~~ *the* company.

(9) "Legal service" means any act or acts by a company~~, as herein defined,~~ consisting of the hiring, retaining, engaging, or appointing of an attorney or other person to give professional advice to or represent holders of service contracts with ~~any~~ ~~such~~ *the* company in ~~any~~ court~~,~~ as the result of liability

incurred by the right of action accruing to the holder of a service contract as a result of the ownership, operation, use, or maintenance of a motor vehicle.

(10) "Map service" means any act or acts by a company~~, as herein defined,~~ by which road maps are furnished without cost to holders of service contracts with ~~any such~~ *the* company.

(11) "Motor club service" means the rendering, furnishing, or procuring of towing service, emergency road service, insurance service, bail bond service, legal service, discount service, financial service, buying and selling service, theft service, map service, and touring service, or any three or more ~~thereof, as herein defined,~~ *enumerated services* to any person or persons in connection with the ownership, operation, use, or maintenance of a motor vehicle by ~~such~~ *the* other person or persons in consideration of ~~such~~ *the* other person or persons being or becoming a member or members of any company rendering, procuring, or furnishing the ~~same~~ *services*, ~~or~~ being or becoming in any manner affiliated ~~therewith~~ *with the company*, or being or becoming entitled to receive membership or other motor club service ~~therefrom~~ *from the company* by virtue of any agreement or understanding with ~~any such~~ *the* company.

(12) "Service contract" means any agreement or understanding whereby any company~~, as herein defined,~~ for a consideration promises to render, furnish, or procure for any other person or persons, whether they be members of ~~such~~ *the* company or otherwise, motor club service~~, as herein defined~~.

(13) "Theft service" means any act or acts by a company~~, as herein defined,~~ the purpose of which is to locate, identify, or recover a motor vehicle owned or controlled by the holder of a service contract with ~~any such~~ *the* company ~~which~~ *that* has been or may be stolen or to detect or apprehend the person guilty of ~~such~~ *the* theft.

(14) "Touring service" means any act or acts by a company, ~~as herein defined,~~ by which touring information is furnished without cost to holders of service contracts with ~~any such~~ *the* company.

(15) "Towing service" means any act or acts by a company~~, as herein defined,~~ consisting of the drafting or moving of a motor vehicle from one place to another under other than its own power."

Section 1969. Section 61-12-306, MCA, is amended to read:

"61-12-306. Revocation of license. If the commissioner ~~shall,~~ at any time for cause shown and after a hearing~~, determine~~ *determines* that a company has violated any provision ~~or provisions~~ of this part*,* ~~or~~ that it is insolvent or that its assets are less than its liabilities*,* ~~or~~ that it or its officers refuse to submit to an examination*,* ~~or~~ that it is transacting business fraudulently*,* or that its management or business methods are improper or hazardous to the holders of its service contracts, ~~he~~ *the commissioner* shall ~~thereupon~~ revoke or suspend its license and shall give notice ~~thereof~~ *of the suspension or revocation* to the public in ~~such~~ *a* manner ~~as he may deem~~ *that the commissioner considers* proper."

Section 1970. Section 61-12-307, MCA, is amended to read:

"61-12-307. Financial statement to be filed. ~~Every~~ *A* company shall annually, on or before February 1 of each year, file with the commissioner a financial statement in ~~such~~ *the* form and detail ~~as he~~ *that the commissioner* may prescribe, executed on oath by its president or other principal officer, showing its financial condition on December 31 of the preceding year."

Section 1971. Section 61-12-308, MCA, is amended to read:

"61-12-308. Service contract to be filed with commissioner. ~~No~~ *A* service contract ~~shall~~ *may not* be executed, issued, or delivered in this state until a copy of the form ~~thereof~~ *of the contract* has been on file for 30 days with the commissioner, unless before the expiration of ~~said~~ 30 days ~~he shall have~~ *the commissioner has* approved the form in writing~~;~~. ~~nor shall any~~ *A* service contract *may not* be executed, issued, or delivered at any time in this state if the commissioner notified the company in writing within ~~said 30 days~~ *the 30-day period* that in ~~his~~ *the commissioner's* opinion the form of the contract does not comply with the laws of this state, specifying the reasons ~~therefor~~ *for the opinion*."

Section 1972. Section 61-12-314, MCA, is amended to read:

"61-12-314. Applicability. ~~Nothing in this~~ *This* part ~~shall~~ *does not* apply to a duly authorized attorney at law acting in the usual course of ~~his~~ *the* profession or to any insurance company, bonding company, or surety company~~, now or hereafter duly and regularly~~ licensed and doing business as ~~such~~ *the licensed company* under the laws of the state."

Section 1973. Section 61-12-407, MCA, is amended to read:

"61-12-407. Transmitting return of sale and balance of proceeds. (1) When any vehicle is sold as provided in 61-12-404, the sheriff or the city police shall transmit to the department and to the county treasurer or to the city treasurer, respectively, a return of sale setting forth a description of the vehicle, the purchase price, the name and address of the purchaser, the costs incurred in the sale, and the costs and expenses incurred in the removal, storage, and custody of the vehicle.

(2) With the return of sale, the sheriff shall transmit to the county treasurer or the city police shall transmit to the city treasurer the balance of the proceeds of the sale after deducting the costs incurred in the sale and the costs and expenses incurred in the removal, storage, and custody of the vehicle.

(3) Upon receipt of the return of sale and ~~such~~ *the* balance from:

(a) the county sheriff, the county treasurer shall file the return in ~~his~~ *the treasurer's* office and deposit the balance in the county road fund on all vehicles seized by the sheriff or highway patrol; or

(b) the city police, the city treasurer shall file the return in ~~his~~ *the treasurer's* office and deposit the balance in the city street fund on all vehicles seized by the city police."

Section 1974. Section 67-1-211, MCA, is amended to read:

"67-1-211. Alcohol concentration standards — evidence admissible — administration of tests. (1) If a person acting or attempting to act as a crewmember of an aircraft has an alcohol concentration of 0.04% by weight or more as defined in 61-8-407, it may be inferred that the person is under the influence of alcohol and is in violation of 67-1-204.

(2) Evidence of any measured amount or detected presence of alcohol in the person at the time of the act alleged under subsection (1) and any other competent evidence bearing on the question of whether the person was under the influence of alcohol, drugs, or a combination of the two at the time of the act alleged is admissible in any criminal action or proceeding arising out of acts alleged to have been committed in violation of 67-1-204.

(3) In any criminal action or proceeding arising out of acts alleged to have been committed in violation of 67-1-204, the court or jury may consider federal regulations governing aeronautics.

(4) A person who operates an aircraft over the lands and waters of this state is considered to have given consent to a test of ~~his~~ *the person's* blood, breath, or urine for the purpose of determining any measured amount or detected presence of alcohol in ~~his~~ *the person's* body if arrested by a peace officer for operating, attempting to operate, or being in actual physical control of an aircraft while under the influence of alcohol, drugs, or a combination of the two. The test must be administered at the direction of a peace officer who has reasonable grounds to believe the person was operating, attempting to operate, or in actual physical control of an aircraft while under the influence of alcohol, drugs, or a combination of the two. The arresting officer may designate which of the ~~aforesaid~~ tests must be administered. A person who is unconscious or who is otherwise in a condition rendering ~~him~~ *the person* incapable of refusal is considered not to have withdrawn the consent provided by this subsection.

(5) If a person charged with *a* violation of 67-1-204 refuses to submit to a test of ~~his~~ *the person's* blood, breath, or urine for the purpose of determining any measured amount or detected presence of alcohol in ~~his~~ *the person's* body, ~~none~~ *a test* will *not* be given, but proof of refusal is admissible in any criminal action or proceeding arising out of acts alleged to have been committed in violation of 67-1-204.

(6) The provisions relating to administration of tests provided in 61-8-405 and the definition of alcohol concentration provided in 61-8-407 apply to any testing done to determine any measured amount or detected presence of alcohol in a person and the alcohol concentration of a person charged with violation of 67-1-204."

Section 1975. Section 67-2-503, MCA, is amended to read:

"67-2-503. Use of reports. The reports of investigations or hearings may not be admitted in evidence or used for any purpose in any suit, action, or proceedings growing out of a matter referred to in the investigation, hearing, or report, except in case of criminal or other proceedings instituted in behalf of the department or this state under this title and other laws of this state relating to aeronautics. An officer or employee of the department may not be required to testify to any facts ascertained in or information gained by reason of ~~his~~ *the officer's or employee's* official capacity or be required to testify as an expert witness in a suit, action, or proceeding involving an aircraft. The department may, in its discretion, make available to appropriate federal and state agencies information and material developed in the course of its hearings and investigations."

Section 1976. Section 67-3-102, MCA, is amended to read:

"67-3-102. Exceptions. The provisions of ~~subsections (2) and (3) of~~ 67-3-101*(2) and (3)* do not apply to:

(1) an aircraft ~~which~~ *that* has been licensed by a foreign country with which the United States has a reciprocal agreement covering the operations of that licensed aircraft;

(2) an aircraft ~~which~~ *that* is owned by a nonresident of this state who is lawfully entitled to operate the aircraft in the state of ~~his~~ residence;

(3) an aircraft engaged principally in commercial flying constituting an act of interstate or foreign commerce;

(4) an aircrew operating military or public aircraft or an aircraft licensed by a foreign country with which the United States has a reciprocal agreement covering the operation of that licensed aircraft;

(5) a person operating model aircraft or a person piloting an aircraft ~~which~~ *that* is equipped with fully functioning dual controls when a licensed instructor is in full charge of one set of the controls and the flight is solely for instruction or for the demonstration of the aircraft to a prospective purchaser;

(6) a nonresident operating aircraft in this state who is lawfully entitled to operate aircraft in the state of residence;

(7) an aircrew while operating or taking part in the operation of an aircraft engaged principally in commercial flying constituting an act of interstate or foreign commerce."

Section 1977. Section 67-3-201, MCA, is amended to read:

"67-3-201. Aircraft registration and licensing required. (1) Except as provided in 67-3-102 and in subsection (6) of this section, a person may not operate or cause or authorize to be operated a civil aircraft within this state unless the aircraft has an appropriate effective registration, license, certificate, or permit issued or approved by the United States government ~~which~~ *that* has been registered with the department and the registration with the department is in force.

(2) Aircraft customarily kept in this state must be registered on or before March 1 of each year with the department, which ~~must~~ *shall* charge a fee ~~therefor~~ *for registration* according to the fee schedule in 67-3-206. The registration must be renewed annually on or before March 1 *of* each year.

(3) Section 67-3-202 and subsections (2) and (4) through (6) of this section do not apply to:

(a) aircraft owned and operated by the federal government, the state, or any political subdivision ~~thereof~~ *of the state*;

(b) aircraft owned and held by an aircraft dealer solely for the purpose of resale;

(c) aircraft operated by an airline company and regularly scheduled for the primary purpose of carrying persons or property for hire in interstate or international transportation; or

(d) dismantled or otherwise nonflyable aircraft.

(4) An aircraft must be registered in a particular county of the state. This county must be the county of the owner's principal residence~~,~~ if the owner is a natural person~~,~~ or the owner's principal place of doing business in the state~~,~~ if the owner is not a natural person. However, if the owner declares by affidavit that the aircraft is customarily kept at a landing facility in another county within the state, ~~he~~ *the owner* may register the aircraft as property within ~~such~~ *the* other county.

(5) Aircraft not registered in the state but entering the state to engage in commercial operations ~~shall~~ *must* be registered prior to commencing operation.

(6) Owners of ultralight aircraft for which no appropriate effective license, certificate, or permit is issued by the United States government shall pay the fee required in 67-3-206 and file with the department an appropriate registration recognized and approved by the United States government."

Section 1978. Section 67-11-104, MCA, is amended to read:

"67-11-104. Commissioners. (1) The powers of each authority ~~shall be~~ *are* vested in the commissioners ~~thereof~~ *of the authority*. A majority of the commissioners of an authority ~~shall~~ constitute a quorum for the purpose of conducting business of the authority and exercising its powers and for all other

purposes. Action may be taken by the authority upon a vote of not less than a majority of the commissioners present.

(2) There ~~shall~~ *must* be elected a ~~chairman~~ *presiding officer* and ~~vice-chairman~~ *vice presiding officer* from among the commissioners. An authority may employ an executive director, secretary, technical experts, and ~~such~~ other officers, agents, and employees, permanent and temporary, ~~as~~ *that* it may require and shall determine their qualifications, duties, and compensation. An authority may delegate to one or more of its agents or employees ~~such~~ powers or duties ~~as~~ *that* it ~~may deem~~ *considers* proper.

(3) A commissioner of an authority ~~shall be~~ *is* entitled to the necessary ~~expense~~ *expenses*, including travel expenses, as provided for in 2-18-501 through 2-18-503, incurred in the discharge of ~~his~~ duties. Each commissioner shall hold office until ~~his~~ *a* successor has been appointed and has qualified. The certificates of the appointment and reappointment of commissioners ~~shall~~ *must* be filed with the authority."

Section 1979. Section 69-1-106, MCA, is amended to read:

"69-1-106. Vacancies. Any vacancy occurring in the commission ~~shall~~ *must* be filled by appointment by the governor. ~~Such~~ *The* appointee shall hold office until the next general election and until ~~his~~ *a* successor is elected and qualified. At the biennial election following the occurrence of any vacancy in the commission, there ~~shall~~ *must* be elected one member to fill out the unexpired term for which ~~such~~ *the* vacancy exists."

Section 1980. Section 69-1-107, MCA, is amended to read:

"69-1-107. ~~Chairman~~ *Presiding officer* of commission. A ~~chairman shall~~ *presiding officer must* be selected by the commission from its membership at the first meeting of each year after a general election."

Section 1981. Section 69-1-108, MCA, is amended to read:

"69-1-108. Secretary of commission. (1) The commission shall, immediately after its members have qualified, appoint a secretary to serve ~~during~~ *at* the pleasure of the commission. The secretary ~~shall~~ *must* be a qualified elector of the state.

(2) The secretary ~~shall~~:

(a) *shall* keep a full and complete record of all proceedings of the commission;

(b) ~~be~~ *is* the custodian of its records and file and *shall* preserve at the office of the commission all books, maps, documents, and papers entrusted to ~~his~~ *the secretary's* care and ~~be~~ *is* responsible to the commission for the ~~same~~ *books, maps, documents, and papers*; and

(c) *shall* perform ~~such~~ other duties ~~as~~ *that* the commission may prescribe."

Section 1982. Section 69-1-111, MCA, is amended to read:

"69-1-111. Reimbursement for expenses. The commission, secretary, and ~~such~~ clerks, experts, and persons ~~as~~ *that* may be employed ~~shall be~~ *are* entitled to receive from the state their expenses while traveling on the business of the commission, as provided for in 2-18-501 through 2-18-503. ~~Such~~ *The* expenditure ~~shall~~ *must* be sworn to by the person who incurred the expenses and be approved by the ~~chairman~~ *presiding officer* of the commission or ~~his~~ *the presiding officer's* designee."

Section 1983. Section 69-1-113, MCA, is amended to read:

"69-1-113. Removal or suspension of commissioner. If ~~any~~ *a* commissioner fails to perform ~~his~~ *the commissioner's* duties as provided in this title, ~~he~~ *the commissioner* may be removed from office as provided by 45-7-401. Upon complaint made and good cause shown, the governor may suspend any commissioner, and if, in ~~his~~ *the governor's* judgment the exigencies of the case require, the governor may appoint temporarily some competent person to perform the duties of the suspended commissioner during the period of the suspension."

Section 1984. Section 69-1-222, MCA, is amended to read:

"69-1-222. Annual report. The consumer counsel shall prepare and submit a yearly report and ~~such~~ other interim reports ~~he~~ *that the consumer counsel* determines advisable concerning ~~his~~ *the consumer counsel's* activities during the year and may recommend appropriate remedial legislation to the committee."

Section 1985. Section 69-2-102, MCA, is amended to read:

"69-2-102. Role of commission when consumer counsel protests. In any case involving an application by a regulated entity to the commission for authority to increase its rates ~~which~~ *that* is actively contested by the consumer counsel, the commission shall leave representation of the interests of consumers to the consumer counsel when ~~he~~ *the consumer counsel* timely petitions to become a party to ~~such~~ *the* case. ~~Nothing contained herein prohibits~~ *This section does not prohibit* the commission or its staff from investigating and interrogating in any hearing to clarify the case or present an issue. Evidence may be introduced by the commission on an issue that has not been adequately addressed by any party if the commission first requests counsel of record to address ~~such~~ *the* issue and ~~such~~ counsel fails to introduce sufficient or adequate evidence."

Section 1986. Section 69-2-203, MCA, is amended to read:

"69-2-203. Investigatory powers of counsel. (1) The consumer counsel has all the investigatory powers necessary to perform ~~his~~ *the counsel's* duties as provided ~~herein~~ *in this section* and all discovery powers sanctioned by the Montana Rules of Civil Procedure and the Montana Administrative Procedure Act. It is the specific intent of this section to provide the authority and availability of the process of discovery to the consumer counsel in administrative contested-case procedure. Violations of discovery procedure ~~shall~~ *must* be heard and administered by the district court. In the event of an appeal to district court for enforcement of discovery procedures, the time limits imposed by 69-3-302 and 69-3-303 ~~shall be~~ *are* suspended pending order of the district court.

(2) The consumer counsel may examine in any commission proceedings, under oath, any officer, director, manager, or employee of any regulated company and *may* inspect the business and corporate records of any regulated company in accordance with the law to aid in the exercise of ~~his~~ *the consumer counsel's* duties."

Section 1987. Section 69-2-204, MCA, is amended to read:

"69-2-204. Representation of consuming public. (1) The consumer counsel shall meet and confer with members or representatives of the consuming public at ~~such~~ times and places ~~as he~~ *that the consumer counsel* determines appropriate.

(2) The consumer counsel has ~~such~~ other powers necessary to fully represent the interests of the consuming public before the commission as may be granted and promulgated by the committee~~,~~ in accordance with the provisions of the Montana Administrative Procedure Act."

Section 1988. Section 69-3-106, MCA, is amended to read:

"69-3-106. Supervision of management of public utilities. (1) The commission ~~shall have~~ *has the* authority to inquire into the management of the business of all public utilities, shall keep itself informed as to the manner and method in which the ~~same~~ *business* is conducted, and ~~shall have~~ *has* the right to obtain from any public utility all necessary information to enable the commission to perform its duties.

(2) The commission, any commissioner, or any person or persons employed by the commission for that purpose ~~shall~~, upon demand, ~~have~~ *has* the right to inspect the books, accounts, papers, records, and memoranda of any public utility and to examine, under oath, any officer, agent, or employee of ~~such~~ *the* public utility in relation to its business and affairs. Any person, other than one of ~~said~~ *the* commissioners, who ~~shall make such~~ *makes the* demand shall produce ~~his~~ *the person's* authority to make ~~such~~ *the* inspection.

(3) The commission may require by order or subpoena, to be served on any public utility in the same manner that a summons is served in a civil action in the district court, the production, within this state and at ~~such~~ *a* time and place ~~as~~ *that* it may designate, of any books, accounts, papers, or records kept by ~~such~~ *a* public utility in any office or place ~~without~~ *outside of* the state or verified copies in lieu ~~thereof~~ *of the books, accounts, papers, or records*, if the commission ~~shall so order~~ *orders*, ~~in order~~ *so that* that an examination ~~thereof~~ *of the books, accounts, papers, or records* may be made by the commission or under its direction. Any public utility failing or refusing to comply with any ~~such~~ *an* order or subpoena ~~shall be~~ *is* subject to the liability ~~named~~ *provided for* in 69-3-206."

Section 1989. Section 69-3-208, MCA, is amended to read:

"69-3-208. Effect of failure by utility to cooperate with commission. ~~Any~~ *An* officer, agent, or employee of any public utility ~~shall be~~ *is* subject to the penalty prescribed in 69-3-206 whenever the officer, agent, or employee ~~shall~~:

(1) willfully ~~fail~~ *fails* or ~~refuse~~ *refuses* to fill out and return any blanks as required by this chapter;

(2) willfully ~~fail~~ *fails* or ~~refuse~~ *refuses* to answer any questions ~~therein propounded~~ *contained in blanks as provided in this chapter*;

(3) knowingly or willfully ~~give~~ *gives* a false answer to any ~~such~~ questions or ~~evade~~ *evades* the answer to ~~such~~ *the* questions, where the fact inquired of is within ~~his~~ *the officer's, agent's, or employee's* knowledge; or

(4) upon proper demand, willfully ~~fail~~ *fails* or ~~refuse~~ *refuses* to exhibit to any commission or any commissioners or any person also authorized to examine the same, any book, paper, or account of ~~such~~ *the* public utility ~~which~~ *that* is in ~~his~~ *the officer's, agent's, or employee's* possession or under ~~his~~ *the officer's, agent's, or employee's* control."

Section 1990. Section 69-3-326, MCA, is amended to read:

"69-3-326. Conduct of hearing. At the hearing, both the complainant and the public utility ~~shall~~ have the right to appear by counsel or otherwise and *to* be fully heard. Either party ~~shall be~~ *is* entitled to an order by the commission for the appearance of witnesses or the production of books, papers, and documents containing material testimony. Witnesses appearing upon the order of the

commission ~~shall be~~ *are* entitled to the same fees and mileage as witnesses in civil cases in the courts of the state, and the ~~same shall~~ *fees and mileage must* be paid out of the state treasury in the same manner as other claims against the state are paid. ~~No fees~~ *Fees* or mileage ~~shall~~ *may not* be allowed unless the ~~chairman~~ *presiding officer* of the commission ~~shall certify~~ *certifies* to the correctness of the claim."

Section 1991. Section 69-3-329, MCA, is amended to read:

"69-3-329. Immunity for witnesses. (1) ~~No~~ *A* person ~~shall~~ *may not* be excused from testifying or from producing books and papers in any proceedings based upon or growing out of any alleged violation of the provisions of this chapter on the ground of or for the reason that the testimony or evidence, documentary or otherwise, required of ~~him~~ *the person* may tend to incriminate or subject ~~him~~ *the person* to penalty or forfeiture. Except as provided in subsection (2), ~~no~~ *a* person having ~~so~~ testified ~~shall~~ *may not* be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which ~~he~~ *the person* may have testified or produced any documentary evidence.

(2) ~~No~~ *A* person ~~so~~ testifying ~~shall be exempted~~ *is not exempt* from prosecution or punishment for perjury ~~in so testifying~~."

Section 1992. Section 69-3-703, MCA, is amended to read:

"69-3-703. Utility investment in or purchase of conservation — approval by commission. (1) A utility may:

(a) purchase conservation from a person or private firm; or

(b) directly engage in conservation investments.

(2) The conservation purchases or investments provided for in subsection (1) are subject to approval by the commission.

(3) Cost-effective conservation measures approved by the commission may, at the customer's discretion, be installed by ~~either~~:

(a) a person or a private firm;

(b) the customer ~~himself~~; or

(c) the utility."

Section 1993. Section 69-4-203, MCA, is amended to read:

"69-4-203. Scope of law. Section 69-4-201 ~~shall~~ *does* not apply to:

(1) interstate railroad electrification construction except where the wires of the railroad cross or are crossed by wires belonging to others; ~~and~~ *or*

(2) any electrical construction of any person using the construction for power wires ~~where~~ *if*:

(a) the construction and wires and the power plant furnishing electricity ~~therefor~~ *to the wires* are wholly owned by this person and the electricity conducted ~~thereby~~ is produced and used solely by this person on ~~his~~ *the person's* own premises and not sold or delivered to any other person off ~~his~~ *the person's* premises;

(b) the wires or construction are not over or across any highway or public place or the property of others; and

(c) these wires have a potential of less than 450 volts between any phases."

Section 1994. Section 69-4-353, MCA, is amended to read:

"69-4-353. Conversion of facilities on public property — notice to landowners. (1) Upon completion of the conversion of the overhead electric or communication facilities on public lands and right-of-way to underground, the public utility shall file a verified statement of the costs of ~~such~~ *the* conversion with the governing body.

(2) The governing body shall mail to each landowner and purchaser of property under contract for deed a notice stating that:

(a) service from the underground facilities is available;

(b) the landowner has 60 days after the date of the mailing of ~~such~~ *the* notice to convert all overhead electric or communication facilities providing service to any structure or improvement located on ~~his~~ *the landowner's* lot or parcel to underground service facilities; and

(c) after the 60-day period following the date of the mailing of the notice, the governing body will order the public utility to disconnect and remove all overhead electric and communication facilities providing service to any structure or improvement within the area."

Section 1995. Section 69-4-355, MCA, is amended to read:

"69-4-355. Procedure upon failure to effect conversion on private property. If the owner of any structure or improvement served from the overhead electric or communication service facilities within an underground assessment district does not grant the utility a permit or easement referred to in 69-4-354 or if ~~such~~ an owner fails to convert to underground service facilities within 60 days after the mailing to ~~him~~ *the owner* of the notice provided by 69-4-353, the governing body shall order the public utility to complete the conversion and to disconnect and remove all overhead facilities, including service facilities, providing service to ~~such~~ *the* structure or improvement."

Section 1996. Section 69-4-1103, MCA, is amended to read:

"69-4-1103. Liability for bypass or tampering. (1) A person who bypasses or tampers, either for ~~his~~ *the person's* own benefit or the benefit of another, is liable to the affected utility as provided in 69-4-1104 for services actually provided by the utility. Collection under subsection (2) precludes collection under this subsection.

(2) A person who receives utility services, knowing that the measurement of ~~such~~ *the* services is being affected by bypassing or tampering, is liable to the affected utility as provided in 69-4-1104 for services actually provided by the utility. Collection under subsection (1) precludes collection under this subsection."

Section 1997. Section 69-11-101, MCA, is amended to read:

"69-11-101. Definitions. (1) ~~Everyone~~ *A person* who offers to the public to carry persons, property, or messages, excepting only telegraphic or telephonic messages, is a "common carrier" of whatever ~~he thus~~ *the person* offers to carry.

(2) The "contract of carriage" is a contract for the conveyance of property, persons, or messages from one place to another."

Section 1998. Section 69-11-103, MCA, is amended to read:

"69-11-103. Time schedules to be followed. A common carrier ~~must~~ *shall* start at ~~such~~ *the* time and place ~~as he~~ *that the carrier* announces to the public unless detained by accident or the elements or in order to connect with carriers on other lines of travel."

Section 1999. Section 69-11-104, MCA, is amended to read:

"69-11-104. Right to compensation. A common carrier is entitled to a reasonable compensation, and no more, which ~~he~~ *the carrier* may require to be paid in advance. If payment ~~thereof~~ is refused, ~~he~~ *the carrier* may refuse to carry."

Section 2000. Section 69-11-105, MCA, is amended to read:

"69-11-105. Effect of agreements on rights and obligations of carrier and other parties. (1) The obligations of a common carrier cannot be limited by general notice on ~~his~~ *the carrier's* part, but may be limited by special contract.

(2) A common carrier cannot be exonerated, by any agreement made in anticipation ~~thereof~~ *of liability*, from liability for the gross negligence, fraud, or willful wrong of ~~himself~~ *the carrier* or ~~his~~ *the carrier's* servants.

(3) A passenger, consignor, or consignee, by accepting a ticket, bill of lading, or written contract for carriage~~,~~ with a knowledge of its terms, assents to the rate of hire and the time, place, and manner of delivery ~~therein~~ stated *in the document*, but ~~his~~ *the passenger's, consignor's, or consignee's* assent to any other modification of the carrier's rights or obligations contained in ~~such~~ *the* instrument can be manifested only by ~~his~~ *the passenger's, consignor's, or consignee's* signature to the ~~same~~ *instrument*, except as otherwise provided in the Uniform Commercial Code."

Section 2001. Section 69-11-106, MCA, is amended to read:

"69-11-106. Gratuitous carriers. (1) Carriers without reward are subject to the same rules as employees without reward, except as is otherwise provided by this chapter.

(2) A carrier without reward who has begun to perform ~~his~~ *the carrier's* undertaking ~~must~~ *shall* complete it in ~~like~~ *the same* manner as if ~~he~~ *the carrier* had received a reward unless ~~he~~ *the carrier* restores the person or thing carried to as favorable a position as before ~~he commenced his~~ *the* carriage *was commenced*.

(3) A carrier of persons without reward ~~must~~ *shall* use ordinary care and diligence for their safe carriage. A carrier of property without reward ~~must~~ *shall* use at least slight care and diligence."

Section 2002. Section 69-11-107, MCA, is amended to read:

"69-11-107. General duty of care of carriers for reward. (1) A carrier of persons for reward ~~must~~ *shall* use the utmost care and diligence for their safe carriage, ~~must~~ *shall* provide everything necessary for that purpose, and ~~must~~ *shall* exercise to that end a reasonable degree of skill.

(2) A carrier of property for reward ~~must~~ *shall* use at least ordinary care and diligence in the performance of all ~~his~~ *the carrier's* duties.

(3) A carrier of messages for reward ~~must~~ *shall* use great care and diligence in the transmission and delivery of messages."

Section 2003. Section 69-11-108, MCA, is amended to read:

"69-11-108. Prohibition on confiscation of fuel. (1) It ~~shall be~~ *is* unlawful for any person, railway company, or common carrier to confiscate or take for ~~his~~ *the person's* or its own use or for the use of another any coal or other fuel in transit except when ~~such~~ *the* coal or other fuel is necessary for the preservation of life or property or is required for the moving of trains of ~~such~~ *the* common carrier. In a suit under this section to recover the penalty and damages, the burden of proof ~~shall be~~ *is* on the person, railroad company, or common carrier confiscating the coal or other fuel to show that ~~such~~ *the* coal or other fuel

was necessary for the preservation of life or property or was required for the moving of trains of ~~such~~ *the* common carrier.

(2) Any person, railroad company, or common carrier who ~~shall confiscate~~ *confiscates* or ~~take~~ *takes* any coal or fuel, either for ~~his~~ *the person's* or its own use or for the use of another, ~~shall be~~ *is* liable to the consignee or owner of ~~such~~ *the* coal or fuel in double the value of ~~such~~ *the* coal or fuel at the point of shipment and ~~such~~ other damages ~~as~~ *that* may be caused by the confiscation of ~~such~~ *the* coal *or fuel*. ~~Such~~ *The* liability ~~shall be~~ *is* exclusive of and in addition to any and all charges for the transportation of ~~such~~ *the* coal or fuel, which charges for the transportation ~~shall~~ *must* be paid by the party confiscating ~~such~~ *the* coal or fuel. In every case ~~wherein~~ *in which* coal or other fuel is taken or used by any ~~such~~ person, railroad company, or common carrier, it ~~shall be~~ *is* the duty of ~~such~~ *the* person, railroad company, or common carrier to notify the consignee by telegram or letter, immediately, of the taking of ~~such~~ *the* coal *or fuel* and to pay and compensate ~~him therefor~~ *the consignee* within 30 days from the time of the taking.

(3) Any person, corporation, or common carrier who ~~shall violate~~ *violates* the provisions of this section ~~shall be~~ *is* guilty of a misdemeanor and upon conviction ~~thereof~~ shall be fined not less than $50 or more than $200."

Section 2004. Section 69-11-109, MCA, is amended to read:

"69-11-109. Provision for transportation of passengers and property for free or reduced rates. (1) *(a)* ~~No provisions~~ *A provision* of the laws of this state *may not* prevent any person, association, company, or corporation engaged as a common carrier of persons or property in this state from carrying, storing, or handling ~~property~~ *at* free or at reduced rates*:*

(i) property for the United States, for state or municipal governments, or for charitable institutions;

(ii) property ~~which~~ *that* is being transported to or from fairs and expositions for exhibit ~~thereat~~ *at fairs or expositions*; or

(iii) cars used by the government of the United States or the state for the transportation of fish and ~~from carrying free or at reduced rates~~ agents and employees employed in ~~such~~ *that* transportation~~;~~.

(b) ~~and nothing therein contained prevents such~~ *The laws of this state may not prevent any* person, association, company, or corporation from issuing free transportation or selling tickets at reduced rates to the classes of persons listed in 69-11-208.

(2) When free transportation or a ticket at a reduced rate is issued to any officer or any president or member of the faculty of any educational institution referred to in 69-11-208(1)(q), it ~~shall~~ *may* ~~only~~ be issued *only* upon the application of the secretary of state and the transportation or ticket ~~shall~~ *must* be delivered to the secretary of state for delivery to the person or persons applying ~~therefor~~ *for the free or reduced ticket*. The secretary of state shall keep record of all transportation and tickets at reduced rates ~~so~~ received and delivered by ~~him~~ *the secretary of state*. The state officer and the president and faculty of the state educational institutions, when traveling upon any free transportation, may not charge any mileage against the state, or if traveling upon a ticket sold at reduced fare, they may not charge mileage in excess of the cost of the ticket.

(3) The carrying free or at reduced rates of property or persons in any of the classes ~~above~~ specified ~~shall~~ *in this section must* be held to be a reasonable

classification by common carriers for ~~such~~ *those* purposes and not to be unjust discrimination. The carriage and transportation by any common carrier at free or reduced rates in any of the cases ~~above~~ specified *in this section* is not a violation of any of the provisions of the laws of Montana and does not subject the common carrier to any penalty ~~therefor~~."

Section 2005. Section 69-11-121, MCA, is amended to read:

"69-11-121. Detriment caused by carrier. (1) The detriment caused by the breach of a carrier's obligation to accept freight, messages, or passengers is ~~deemed~~ *considered* to be the difference between the amount ~~which he~~ *that the carrier* had a right to charge for the carriage and the amount ~~which~~ *that* it would be necessary to pay for the same service when it ought to be performed.

(2) The detriment caused by the breach of a carrier's obligation to deliver freight ~~where~~ ~~he~~ *when the carrier* has not converted ~~it~~ *the freight* to ~~his~~ *the carrier's* own use is ~~deemed~~ *considered* to be the value ~~thereof~~ *of the freight* at the place and on the day at which it should have been delivered, deducting the freightage to which ~~he~~ *the carrier* would have been entitled if ~~he~~ *the carrier* had completed the delivery.

(3) The detriment caused by a carrier's delay in the delivery of freight is ~~deemed~~ *considered* to be the depreciation in the intrinsic value of the freight during the delay and also the depreciation, if any, in the market value ~~thereof~~ *of the freight*, ~~otherwise~~ *other* than by reason of a depreciation in ~~its~~ *the freight's* intrinsic value, at the place where it ought to have been delivered and between the day at which it ought to have been delivered and the day of its actual delivery.

(4) The damages prescribed by this section are exclusive of exemplary damages and interest except ~~where~~ *when* those are expressly mentioned. Notwithstanding the provisions of this section, ~~no~~ *a* person ~~can~~ *may not* recover a greater amount in damages for the breach of an obligation than ~~he~~ *the person* could have gained by the full performance ~~thereof~~ *of the obligation* on both sides, except as provided in 27-1-303."

Section 2006. Section 69-11-201, MCA, is amended to read:

"69-11-201. Requirements for carriers of persons for reward. (1) A carrier of persons for reward is bound to provide vehicles safe and fit for the purposes to which they are put and is not excused for default in this respect by any degree of care.

(2) A carrier of persons for reward ~~must~~ *may* not overcrowd or overload ~~his~~ *the carrier's* vehicle.

(3) A carrier of persons for reward ~~must~~ *shall* give to passengers all ~~such~~ accommodations ~~as~~ *that* are usual and reasonable, ~~must~~ *shall* treat them with civility, and *shall* give them a reasonable degree of attention.

(4) A carrier of persons for reward ~~must~~ *shall* travel at a reasonable rate of speed, without any unreasonable delay or deviation from ~~his~~ *the carrier's* proper route."

Section 2007. Section 69-11-203, MCA, is amended to read:

"69-11-203. Transport of passengers. (1) A common carrier of persons ~~must~~ *shall* provide a sufficient number of vehicles to accommodate all the passengers who can be reasonably expected to require carriage at any one time.

(2) A common carrier of persons ~~must~~ *shall* provide every passenger with a seat. ~~He must~~ *The carrier may* not overload ~~his~~ *the carrier's* vehicle by receiving and carrying more passengers than its rated capacity allows.

(3) A common carrier of persons may make rules for the conduct of ~~his~~ *the carrier's* business and may require passengers to conform to ~~them~~ *the rules* if they are lawful, public, uniform in their application, and reasonable."

Section 2008. Section 69-11-204, MCA, is amended to read:

"69-11-204. Carriage of baggage by carriers of persons. (1) Baggage may consist of any articles intended for the use of a passenger while traveling or for ~~his~~ *the passenger's* personal equipment.

(2) A common carrier of persons, unless ~~his~~ *the carrier's* vehicle is fitted for the reception of persons exclusively, ~~must~~ *shall* receive and carry a reasonable amount of baggage for each passenger without charge, except for an excess of weight over 100 pounds ~~to a~~ *per* passenger~~;~~. ~~but~~ *However,* if ~~such~~ *the* carrier is a proprietor of a stage line, ~~he~~ *the carrier* may not receive and carry for each passenger by ~~such~~ *the* stage line, without charge, more than 60 pounds of baggage.

(3) The liability of a carrier for baggage received by ~~him~~ *the carrier* with a passenger is the same as that of a common carrier of property.

(4) A common carrier ~~must~~ *shall* deliver ~~every~~ *a* passenger's baggage, whether within the prescribed weight or not, immediately upon the arrival of the passenger at ~~his~~ *the passenger's* destination and, unless the vehicle would be overcrowded or overloaded ~~thereby~~, ~~must~~ *shall* carry ~~it~~ *the baggage* on the same vehicle ~~by which he carries~~ *carrying* the passenger to whom it ~~belonged;~~ *belongs.* ~~except~~ *However*, ~~that where~~ *when* baggage is transported by rail, it must be checked and carried in a regular baggage car*,* and whenever passengers neglect or refuse to have their baggage ~~so~~ checked and transported, it is carried at their risk."

Section 2009. Section 69-11-206, MCA, is amended to read:

"69-11-206. Lien for payment of fare. A common carrier has a lien upon the baggage of a passenger for the payment of ~~such~~ *the* fare ~~as he~~ *that the carrier* is entitled to from ~~him~~ *the passenger*. This lien is ~~regulated~~ *governed* by the law on liens."

Section 2010. Section 69-11-208, MCA, is amended to read:

"69-11-208. Classes of persons who may receive free transportation. (1) The persons to whom free tickets, free passes, free transportation, and discriminating reduced rates may be issued, furnished, or given are the following:

(a) the officers, agents, employees, attorneys, physicians, and surgeons of ~~such~~ *the* common carriers of passengers and the officers and employees of other common carriers upon the exchange of passes or tickets;

(b) the families of the persons included in subsection (1)(a);

(c) the general officers of any ~~such~~ common carriers;

(d) employees of sleeping car and express car companies and linemen of telegraph and telephone companies, railway mail service employees, post-office inspectors, customs inspectors, ~~and~~ immigration inspectors, ~~newsboys and newsgirls~~ *news salespersons* on trains, and baggage agents;

(e) persons injured in wrecks and physicians and nurses attending ~~such~~ *the* persons;

(f) passengers traveling with the object of providing relief in cases of railroad accident, general epidemic, pestilence, or other ~~calamitous visitation~~ *calamity*;

(g) necessary caretakers of livestock, vegetables, and fruit, including return transportation to forwarding stations;

(h) the officers, agents, or regularly accredited representatives of labor organizations composed wholly of employees of railway companies;

(i) inmates of homes for the reform or rescue of the disadvantaged, including those about to enter and those returning home after discharge, and boards of managers, including officers and superintendents, of ~~such~~ *the* homes;

(j) superannuated and pensioned employees and members of their families and surviving spouses of ~~such~~ *the* members;

(k) employees crippled and disabled in the service of the common carrier of passengers;

(l) ~~policemen~~ *police officers* and firefighters of any city, wearing the insignia of their office, within the limits of ~~such~~ *the* city;

(m) ministers of religion, newspaper employees in exchange for advertising, traveling secretaries of ~~Young Men's Christian Associations and Young Women's Christian Associations~~ *a YMCA or YWCA*, inmates of hospitals and charitable and eleemosynary institutions, and persons exclusively engaged in charitable and eleemosynary work;

(n) indigent, destitute, and homeless persons~~,~~ while being transported by charitable societies or hospitals~~,~~ and necessary agents and employees in ~~such~~ *the* transportation;

(o) school children~~,~~ *going* to and from public or parochial schools;

(p) military personnel going to or coming from institutions for their keeping;

(q) executive, judicial, or legislative officers of this state, including the members of the faculty of the different educational institutions of this state;

(r) the furloughed employees of common carriers authorized by 69-11-207 to issue free transportation and members of their families;

(s) persons who have become disabled or infirm in the service of a common carrier or members of families of persons who have become disabled or infirm in the service of any ~~such~~ common carrier;

(t) families of persons killed and surviving spouses who have not remarried and minor children during minority of persons who died while in the service of any ~~such~~ common carrier;

(u) witnesses attending any legal investigation in which ~~such~~ *the* carrier is interested;

(v) the remains of persons who died while in the employment of a common carrier; and

(w) ~~ex-employees~~ *former employees* traveling for the purpose of entering the service of any ~~such~~ common carrier.

(2) The provisions of ~~this section and~~ 69-11-207 ~~shall~~ *and this section may* not be construed to prohibit the interchange of passes for the persons to whom free tickets, free passes, or free transportation may be furnished or given under the provisions of this section. ~~Nothing in this~~ *The provisions of* ~~section or~~ 69-11-207 ~~shall~~ *or this section may not* be construed to invalidate any existing contract between a street railway company and a city ~~where~~ *when* a condition of

a franchise grant requires the furnishing of transportation to ~~policemen~~ *police officers*, firefighters, and officers while in the performance of official duties."

Section 2011. Section 69-11-209, MCA, is amended to read:

"69-11-209. Ejection of passengers. (1) A passenger who refuses to pay ~~his~~ *the* fare or conform to any lawful regulation of the carrier may be ejected from the vehicle by the carrier. This must be done with as little violence as possible and at any usual stopping place or near some dwelling house.

(2) After having ejected a passenger, a carrier has no right to require the payment of any part of ~~his~~ *the passenger's* fare."

Section 2012. Section 69-11-301, MCA, is amended to read:

"69-11-301. Requirements for carriers of messages for reward. (1) A carrier of messages for reward, other than by telegraph or telephone, ~~must~~ *shall* deliver them at the place to which they are addressed or to the person for whom they are intended.

(2) ~~Such~~ *the* carrier by telegraph or telephone ~~must~~ *shall* deliver ~~them~~ *the messages* at ~~such~~ *the* place and to ~~such~~ *the* person provided the place of address or the person for whom they are intended is within a distance of 2 miles from the main office of the carrier in the city or town to which the messages are transmitted. The carrier is not required, in making the delivery, to pay on ~~his~~ *the carrier's* route toll or ferriage, but for any distance beyond 1 mile from ~~such~~ *the* office, compensation may be charged for a messenger employed by the carrier."

Section 2013. Section 69-11-302, MCA, is amended to read:

"69-11-302. Order of transmission of messages. (1) A carrier of messages by telegraph or telephone ~~must~~ *shall*, if it is practicable, transmit every ~~such~~ message immediately upon its receipt. If this is not practicable and several messages accumulate ~~upon his hands~~, ~~he must~~ *the carrier shall* transmit them in the following order:

(a) messages from public agents of the United States or of this state on public business;

(b) messages giving information relating to the sickness or death of any person;

(c) messages intended in good faith for immediate publication in newspapers and not for any secret use;

(d) other messages in the order in which they were received.

(2) A common carrier of messages, otherwise than by telegraph or telephone, ~~must~~ *shall* transmit them in the order in which ~~he~~ *the carrier* receives them, except messages from agents of the United States or of this state on public business, to which ~~he must~~ *the carrier shall* always give priority."

Section 2014. Section 69-11-303, MCA, is amended to read:

"69-11-303. Damages for refused or delayed message. ~~Every~~ *A* person whose message is refused or postponed contrary to the provisions of this chapter is entitled to recover from the carrier ~~his~~ *the person's* actual damages and *an additional* $50 ~~in addition thereto~~."

Section 2015. Section 69-11-304, MCA, is amended to read:

"69-11-304. Loss of valuable letters. A common carrier is not responsible for loss or miscarriage of a letter or package having the form of a letter containing money or notes, bills of exchange, or other papers of value unless ~~he~~ *the carrier* is informed at the time of its receipt of the value of its contents."

Section 2016. Section 69-11-402, MCA, is amended to read:

"69-11-402. Relationship of carrier to consignor and consignee. (1) A carrier ~~must~~ *shall* comply with the directions of the consignor or consignee to the same extent as an employee is bound to comply with those of ~~his~~ *the employee's* employer.

(2) When the directions of a consignor and consignee are conflicting, the carrier ~~must~~ *shall* comply with those of the consignor in respect to all matters except the delivery of the freight, as to which ~~he~~ *the carrier* ~~must~~ *shall* comply with the directions of the consignee, unless the consignor has specially forbidden the carrier to receive orders from the consignee inconsistent with ~~his~~ *the consigner's* own."

Section 2017. Section 69-11-403, MCA, is amended to read:

"69-11-403. Acceptance of freight. A common carrier ~~must~~ *shall*, if able to do so, accept and carry whatever is offered to ~~him~~ *the carrier*, at a reasonable time and place, of a kind that ~~he~~ *the carrier* undertakes or is accustomed to carry."

Section 2018. Section 69-11-404, MCA, is amended to read:

"69-11-404. Delivery of freight. (1) A carrier of property ~~must~~ *shall* deliver ~~it~~ *the property* to the consignee at the place to which it is addressed and in the manner usual at that place.

(2) If there is no usage to the contrary at the place of delivery, freight must be delivered as follows:

(a) If carried on a railway owned or managed by the carrier, it may be delivered at the station nearest to the place to which it is addressed.

(b) If carried by water, it may be delivered at a wharf or other suitable landing, at or within a reasonable distance from the place of address.

(c) In other cases, it must be delivered to the consignee or ~~his~~ *the consignee's* agent, personally, if either can be found with reasonable diligence.

(3) If, for any reason, a carrier does not deliver freight to the consignee or ~~his~~ *the consignee's* agent personally, ~~he must~~ *the carrier shall* give notice to the consignee of its arrival and keep the ~~same~~ *freight* in safety, upon ~~his~~ *the carrier's* responsibility as a ~~warehouseman~~ *warehouse agent*, until the consignee has had a reasonable time to remove it. If the place of residence or business of the consignee ~~be~~ *is* unknown to the carrier, ~~he~~ *the carrier* may give the notice by letter ~~dropped in~~ *mailed at* the nearest post office."

Section 2019. Section 69-11-405, MCA, is amended to read:

"69-11-405. Procedure to terminate carrier's liability. If a consignee does not accept and remove freight within a reasonable time after the carrier has fulfilled ~~his~~ *the carrier's* obligation to deliver or duly offered to fulfill the ~~same~~ *obligation*, the carrier may ~~exonerate himself~~ *be exonerated* from further liability by placing the freight in a suitable warehouse on storage, on account of the consignee, and giving notice ~~thereof~~ *of that action* to ~~him~~ *the consignee*."

Section 2020. Section 69-11-406, MCA, is amended to read:

"69-11-406. Payment of freightage. (1) A carrier may require ~~his~~ freightage to be paid upon ~~his receiving~~ *receipt of* the freight, but if ~~he~~ *the carrier* does not demand it then, ~~he~~ *the carrier* ~~cannot~~ *may not require the payment* until ~~he~~ *the carrier* is ready to deliver the freight to the consignee.

(2) The consignor of freight is presumed to be liable for the freightage, but if the contract between ~~him~~ *the consignor* and the carrier provides that the consignee shall pay ~~it~~ *the freightage* and the carrier allows the consignee to take the freight, ~~he~~ *the carrier may not* ~~cannot~~ afterwards recover the freightage from the consignor.

(3) The consignee of freight is liable for the freightage if ~~he~~ *the consignee* accepts the freight with notice of the intention of the consignor that ~~he~~ *the consignee* should pay it."

Section 2021. Section 69-11-408, MCA, is amended to read:

"69-11-408. Apportionment of freightage by contract. (1) If freightage is apportioned by a bill of lading or other contract made between a consignor and carrier, the carrier is entitled to payment, according to the apportionment, for ~~so~~ *as* much as ~~he~~ *the carrier* delivers.

(2) If a part of the freight is accepted by a consignee without a specific objection that the rest is not delivered, the freightage must be apportioned and paid as to that part, though not apportioned in the original contract."

Section 2022. Section 69-11-409, MCA, is amended to read:

"69-11-409. Adjustment of freightage for change in time or place of delivery. (1) If a consignee voluntarily receives freight at a place short of the ~~one~~ *place* appointed for delivery, the carrier is entitled to a just proportion of the freightage according to distance. If the carrier~~, being~~ *is* ready and willing~~,~~ *and* offers to complete the transit, ~~he~~ *the carrier* is entitled to the full freightage. If ~~he~~ *the carrier* does not ~~thus~~ offer completion and the consignee ~~receive~~ *receives* the freight only from necessity, the carrier is not entitled to any freightage.

(2) If freight is carried further or more expeditiously than was agreed upon by the parties, the carrier is not entitled to additional compensation and cannot refuse to deliver ~~it~~ *the freight*, on demand of the consignee, at the place and time of its arrival."

Section 2023. Section 69-11-411, MCA, is amended to read:

"69-11-411. Sale of perishable property for freightage. If, from any cause other than want of ordinary care and diligence on ~~his~~ *the carrier's* part, a common carrier is unable to deliver perishable property transported by ~~him~~ *the carrier* and collect ~~his~~ *the carrier's* charges ~~thereon~~, ~~he~~ *the carrier* may cause the property to be sold in open market to satisfy ~~his~~ *the carrier's* lien for freightage."

Section 2024. Section 69-11-421, MCA, is amended to read:

"69-11-421. Liability of inland carriers for loss. (1) Any common carrier, railroad, or transportation company subject to the provisions of 69-11-421 through 69-11-427, receiving property for transportation from a point in Montana to any other point in Montana, shall issue a receipt or bill of lading ~~therefor~~ *for the property* and ~~shall be~~ *is* liable to the lawful holder ~~thereof~~ *of the bill of lading* for any loss, damage, or injury to ~~such~~ *the* property caused by it or by any common carrier, railroad, or transportation company to which ~~such~~ *the* property may be delivered or over whose line or lines ~~such~~ *the* property may pass within the state when transported on a through bill of lading. ~~No~~ *A* contract, receipt, rule, or other limitation of any character ~~whatsoever shall~~ *may not* exempt ~~such~~ *the* common carrier, railroad, or transportation company from the liability ~~hereby~~ imposed *by this section*.

(2) Except as provided in 69-11-422, ~~any~~ *a* common carrier, railroad, or transportation company receiving property for transportation from a point in Montana to a point in Montana or any common carrier, railroad, or

transportation company delivering property so received and transported is liable to the lawful holder of ~~said~~ *the* receipt or bill of lading or to any party entitled to recover ~~thereon~~ *on the receipt or bill of lading*, whether ~~such~~ *the* receipt or bill of lading has been issued or not, for the full actual loss, damage, or injury to ~~such~~ *the* property caused by it or by any common carrier, railroad, or transportation company to which ~~such~~ *the* property may be delivered or over whose line or lines ~~such~~ *the* property may pass within the state when transported on a through bill of lading, notwithstanding any limitation of liability or limitation of the amount of recovery or representation or agreement as to value in any ~~such~~ receipt or bill of lading or in any contract or rule or in any tariff filed with the public service commission. Any ~~such~~ limitation, without respect to the manner or form in which it is sought to be made, is unlawful and void, except:

(a) an inherent defect, vice, or weakness or a spontaneous action of the property itself;

(b) the act of a public enemy of the United States or of this state;

(c) the act of the law;

(d) an irresistible superhuman cause;

(e) the act or default of the shipper or owner; or

(f) for natural shrinkage.

(3) Nothing in 69-11-421 through 69-11-426 deprives any holder of ~~such~~ *a* receipt or bill of lading of any remedy or right of action.

(4) The liability imposed by this section also applies in the case of property reconsigned or diverted in accordance with the applicable tariffs filed as provided in this part.

(5) A common carrier is liable, even in the cases excepted by subsection (2), if ~~his~~ *the carrier's* ordinary negligence exposes the property to the cause of the loss."

Section 2025. Section 69-11-424, MCA, is amended to read:

"69-11-424. Examination of shipment. (1) ~~The consignee within~~ *Within* 15 days after delivery, ~~must~~ *the consignee shall* ask for an inspection of any damaged shipment, and the carrier ~~must~~ *shall* make an inspection within 5 working days ~~thereafter~~ *after being asked*.

(2) The consignee ~~shall have~~ *must be given* the opportunity to examine the condition of the package in which the goods are shipped prior to signing the delivery receipt.

(3) The consignee may detain the driver at *the* consignee's expense, not to exceed a minimum charge to be fixed by the commission, while ~~he~~ *the consignee* examines the shipment for possible concealed damage. During ~~such~~ *the* examination, the freight bill may still be noted as to the extent of the damage or loss, if any. If examination discloses damage, the examination charge may be included in the consignee's claim for damage in proportion to the amount of the claim."

Section 2026. Section 69-11-428, MCA, is amended to read:

"69-11-428. Liability for delay. A common carrier is liable for delay only when it is caused by ~~his~~ *the carrier's* want of ordinary care and diligence."

Section 2027. Section 69-11-429, MCA, is amended to read:

"69-11-429. Liability for valuable cargo. *(1)* ~~A common carrier~~ *Unless a common carrier has knowledge of the nature of the freight upon its receipt by mark upon the package or otherwise, a common carrier is not liable for more than $50 upon the loss or injury of any one package* of*:*

(a) gold, silver, platina, or precious stones or of imitations ~~thereof~~ *of those items* in a manufactured or unmanufactured state;

(b) ~~of~~ timepieces of any description;

(c) ~~of~~ negotiable paper or other valuable writings;

(d) ~~of~~ pictures, glass, or chinaware;

(e) ~~of~~ statuary, silk, or laces; or

(f) ~~of~~ plated ware of any kind ~~is not liable for more than $50 upon the loss or injury of any one package of such articles unless he has notice upon his receipt thereof by mark upon the package or otherwise of the nature of the freight;~~.

(2) ~~nor is such~~ *A common* carrier *is not* liable ~~upon~~ *with regard to* any package carried for more than the value of the articles named in the receipt or the bill of lading."

Section 2028. Section 69-12-203, MCA, is amended to read:

"69-12-203. Supervisor of motor carriers. (1) The commission shall appoint a supervisor of motor carriers who ~~shall have~~ *has* general responsibility to the commission for enforcement of the provisions of this chapter. The supervisor ~~shall~~ *must* be either an attorney admitted to practice law in Montana or a person qualified by at least 5 years of suitable experience and training in appropriate phases of the motor carrier industry. ~~He~~ *the supervisor* shall serve at the pleasure of the commission and at an annual salary to be set by the commission.

(2) The supervisor shall direct all enforcement activities ~~in~~ *on* behalf of the commission, including the investigation and prosecution of violations of this chapter~~, as amended,~~ or the rules or orders prescribed ~~thereunder~~ *under this chapter* by the commission.

(3) The supervisor and whatever field inspectors may be employed by the commission to assist ~~him shall be deemed~~ *the supervisor are considered* peace officers for the purpose of making arrests in connection with violations of this chapter~~, as amended,~~ and issuing summonses, accepting bail, and serving warrants of arrest. The supervisor and field inspectors are empowered to make reasonable inspections of cargoes carried by commercial motor vehicles and require production of manifests, bills of lading, leases, and other documents relating to the cargo, driver, routing, or ownership of ~~such~~ *the* vehicles. The scope of the inspections is limited to the enforcement of the provisions of Title 69, chapter 12."

Section 2029. Section 69-12-401, MCA, is amended to read:

"69-12-401. Compliance with state law. It ~~shall be~~ *is* unlawful for any corporation or person~~,~~ ~~its~~ or ~~his~~ *the corporation's or person's* officers, agents, employees, or servants~~,~~ to operate any motor vehicle for the transportation of persons ~~and/or~~ *or* property for hire on any public highway in this state except in accordance with the provisions of this chapter."

Section 2030. Section 69-14-113, MCA, is amended to read:

"69-14-113. Attendance and examination of witnesses. (1) ~~The commission in~~ *In* making any examination or investigation provided for in this chapter*, the commission* may issue subpoenas for the attendance of witnesses *as*

prescribed by ~~such~~ rules ~~as~~ *that* it may ~~prescribe~~ *adopt*. Witness fees ~~shall~~ *must* be the same as those provided for witnesses in civil actions before the district court, as provided in 26-2-501. However, ~~no~~ *a* witness furnished with free transportation may *not* receive mileage for the distance ~~he may have~~ *the witness* traveled on ~~such~~ *the* free transportation. ~~No~~ *A* person may *not* be excused from attending or testifying or producing any books, papers, documents, or any *other* thing ~~or things~~ before any court*,* ~~or~~ magistrate*,* ~~or~~ commissioner*,* or board upon any investigation, proceeding, or trial under the provisions of this chapter or for any violation of any of ~~them~~ *the provisions of this chapter* upon the ground or for the reason that the testimony or evidence, documentary or otherwise, required of ~~him~~ *the person* may tend to convict ~~him~~ *the person* of a crime or subject ~~him~~ *the person* to a penalty or forfeiture. ~~No~~ *A* person ~~shall~~ *may not* be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which ~~he~~ *the person* may ~~so~~ testify or produce evidence, and ~~no~~ testimony or evidence ~~so~~ given or produced ~~shall~~ *may not* be received against ~~him~~ *the person* upon any civil or criminal proceeding, action, or investigation.

(2) (a) The process issued by the commission ~~shall~~ *must* be under seal and extend to all parts of the state. The commission ~~shall have power to~~ *may* issue process in ~~like~~ *the same* manner as courts of record. ~~Such~~ *The* process may be served by any person authorized to serve process of courts of record or by any person appointed by the commission for ~~such~~ *that* purpose.

(b) ~~In the event~~ *If* the process issued by the commission is a subpoena for the attendance of a witness and ~~he~~ *the witness* fails, neglects, or refuses to obey the ~~same~~ *subpoena*, the commission ~~is hereby authorized to~~ *may* file a petition with any district court in the state, setting ~~up~~ *forth* the facts and the necessity of having the witness appear in the trial. The court shall ~~thereupon~~ summarily direct that a subpoena be issued out of the court requiring the attendance of any person as a witness before the court. The commission may ~~thereupon~~ examine ~~such~~ *the* witness before the court, under oath, respecting any inquiry or investigation being made by the commission pursuant to the provisions of this chapter. The court shall likewise, when any petition is filed stating the necessity ~~therefor~~ *for production*, order the production by any person or corporation, for examination in the court, of any books, papers, records, or files necessary or pertinent to any inquiry or investigation then being made by the commission."

Section 2031. Section 69-14-131, MCA, is amended to read:

"69-14-131. Enforcement duties of commission. The commission shall see that the provisions of this chapter and all laws of this state concerning railroads are enforced and obeyed and that violations ~~thereof~~ *of those laws* are promptly prosecuted and penalties due the state ~~therefor~~ *are* recovered and collected. The commission shall report all ~~such~~ violations, with the facts in its possession, to the attorney general or other officer charged with the enforcement of the laws and request ~~him~~ *the officer* to institute the proper proceedings. All suits between the state and any railroad ~~shall~~ *must* have precedence in all courts over all civil causes, *except for* criminal business and original proceedings in the supreme court ~~excepted~~."

Section 2032. Section 69-14-132, MCA, is amended to read:

"69-14-132. Legal assistance for commission. The attorney general is the attorney of the commission, and the county attorney of ~~every~~ *each* county in the state shall, on the request and at the direction of the attorney general, assist in all cases, proceedings, and investigations undertaken by the commission

under this chapter in ~~his~~ *the county attorney's* own county. However, the commission may employ special counsel, with the approval of the attorney general, to assist in any case, matter, proceeding, or investigation instituted under this chapter. The attorney general, upon direction of the commission, and the county attorney of each county in this state, upon direction of the attorney general, shall institute and prosecute and appear and defend any action or proceeding arising under this chapter. All suits and proceedings filed in any court of this state under this chapter ~~shall~~ *must* have precedence over all other business in the court except criminal business and original proceedings in the supreme court."

Section 2033. Section 69-14-134, MCA, is amended to read:

"69-14-134. Court enforcement of commission actions. (1) The district court has jurisdiction to enforce, by proper decree, injunction, or order, the rates, classifications, rulings, orders, and regulations made or established by the commission under the provisions of this chapter. The proceeding ~~therefor~~ ~~shall~~ *must* be by equitable action in the name of the state and ~~shall~~ *must* be instituted by the attorney general or county attorney~~,~~ whenever advised by the commission that any railroad, railway, or common carrier is violating or refusing to comply with any ~~such~~ rule, order, rate, classification, or regulation made by the commission and applicable to ~~such~~ *the* railroad, railway, or common carrier. ~~Such~~ *The* proceedings ~~shall~~ *must* have precedence over all other business in ~~such~~ *the* courts except criminal business.

(2) In any action, the burden of proof ~~shall rest~~ *rests* upon the defendant, who ~~must~~ *shall* show by clear and satisfactory evidence that the rule, order, regulation, rate, or classification involved is unreasonable and unjust as to ~~it~~ *the defendant*. If, in ~~such~~ *the* action, it is the decision of the court that the rule, regulation, order, rate, or classification is not unreasonable or unjust and that in refusing compliance ~~therewith~~ the railroad, railway, or common carrier is ~~thereby~~ failing or omitting the performance of any duty, debt, or obligation, the court shall decree a mandatory and perpetual injunction compelling obedience to and compliance with the rule, regulation, order, rate, or classification by the defendant and its officers, agents, servants, and employees and may grant ~~such~~ other relief ~~as~~ *that* is just and proper. Any violation of ~~such~~ *the* decree renders the defendant and any officer, agent, servant, or employee of the defendant who is in any manner instrumental in ~~such~~ *the* violation guilty of contempt, punishable by a fine not exceeding $1,000 for each offense or by imprisonment of the person guilty of contempt until ~~he~~ *the person* sufficiently purges ~~himself~~ ~~therefrom~~ *the contempt*. ~~Such~~ *The* decree remains in effect until the rule, regulation, order, rate, or classification ~~shall be~~ *is* modified or vacated by the commission. ~~Nothing contained herein shall~~ *This section may not* be construed to deprive either party to ~~such~~ *the* proceedings of the right to trial by jury as provided by the seventh amendment to the constitution of the United States or as provided by the constitution of this state.

(3) An appeal ~~shall lie~~ *may be made* to the supreme court from the decree in ~~such~~ *the* action, and the cause ~~shall~~ *must* have precedence over all other civil actions of a different nature pending in the supreme court except original proceedings in the supreme court."

Section 2034. Section 69-14-207, MCA, is amended to read:

"69-14-207. Expulsion of passengers refusing to pay fare. If ~~any~~ *a* passenger refuses to pay ~~his~~ *the passenger's* fare or to exhibit or surrender ~~his~~ *the passenger's* ticket when reasonably requested to do so, the conductor and

employees of the corporation may put ~~him~~ *the passenger* and ~~his~~ *the passenger's* baggage out of the cars~~,~~ *without* using ~~no~~ unnecessary force~~,~~ at any usual stopping place or near any dwelling house~~,~~ on stopping the train."

Section 2035. Section 69-14-208, MCA, is amended to read:

"69-14-208. Officers and employees of corporation to wear badges. (1) ~~Every~~ *A* conductor, baggage master, engineer, ~~brakeman~~ *brake tender*, or other employee of any railroad corporation employed on a passenger train or at stations for passengers ~~must~~ *shall* wear, upon ~~his~~ *the person's* hat or cap or in some conspicuous place on the breast of ~~his~~ *the person's* coat, a badge indicating ~~his~~ *the person's* office or station and the initial letters of the name of the corporation by which ~~he~~ *the person* is employed.

(2) ~~No~~ *A* collector or conductor without ~~such~~ *a* badge is *not* authorized to demand or to receive from any passenger any fare, toll, or ticket or exercise any of the powers of ~~his~~ *the person's* office or station, and ~~no~~ *any* other officer or employee without ~~such~~ *a* badge ~~has~~ *does not have* any authority to meddle or interfere with any passenger or property."

Section 2036. Section 69-14-210, MCA, is amended to read:

"69-14-210. Baggage checks. A check must be affixed to every package or parcel of baggage when taken for transportation by ~~any~~ *an* agent or employee of ~~such~~ *a* railroad corporation, and a duplicate ~~thereof~~ *check must be* given to the passenger or person delivering the ~~same~~ *package or parcel* in ~~his~~ *the passenger's* behalf. If ~~such~~ *the* check is refused on demand, the railroad corporation ~~must~~ *shall* pay to ~~such~~ *the* passenger the sum of $20, to be recovered in an action for damages, and ~~no~~ *a* fare or toll ~~must~~ *may not* be collected or received from ~~such~~ *the* passenger, and if ~~such~~ *the* passenger has paid ~~his~~ *the* fare, the ~~same~~ *fare* must be returned by the conductor in charge of the train. On producing the check, if ~~his~~ *the* baggage is not delivered to ~~him~~ *the person* by the agent or employee of the railroad corporation, ~~he~~ *the person* may recover the value ~~thereof~~ *of the baggage* from the corporation."

Section 2037. Section 69-14-211, MCA, is amended to read:

"69-14-211. Certificate of authority for ticket agents. (1) It ~~shall be~~ *is* the duty of the owners of any railroad or steamboat for the transportation of passengers to provide each agent who may be authorized to sell, within the state, tickets or other evidence entitling the holder ~~thereof~~ to travel upon their railroad or steamboat with a certificate setting forth the authority of ~~such~~ *the* agent to make ~~such~~ sales. The certificate ~~shall~~ *must* be duly attested by the corporate seal of any corporate owner of ~~such~~ *the* railroad or steamboat and ~~shall~~, for the information of travelers, *must* be kept posted in a conspicuous place in the office of ~~such~~ *the* agent.

(2) It ~~shall be~~ *is* the duty of ~~every~~ *an* agent residing or acting within this state who ~~shall be~~ *is* authorized to sell ~~therein~~ tickets or other evidence of the holder's title to travel upon any railroad or steamboat to exhibit to any person desiring to purchase a ticket or to any officer of the law who may request ~~him~~ *the agent* to do so ~~such~~ *the* certificate of ~~his~~ authority ~~thus~~ to sell."

Section 2038. Section 69-14-215, MCA, is amended to read:

"69-14-215. Issuance of bills of lading by railroad station agents — penalty. (1) All railway companies operating in the state ~~which~~ *that* do not permit bills of lading to be issued by employees other than agents ~~shall be~~ *are* required to have bills of lading issued by the station agent at the nearest station where a station agent is regularly maintained in the direction toward which the

shipment is destined. The conductor of the train ~~which~~ *that* receives the shipment at its point of origin shall deliver to the agent at the nearest station at which an agent is maintained through which the shipment moves, immediately upon the arrival of the train carrying the shipment at the agency station, all data necessary for the issuance of a bill of lading for the shipment. The agent shall immediately issue the bill of lading and shall deliver the ~~same~~ *bill of lading* to the shipper or ~~his~~ *the shipper's* agent or shall, within 24 hours after the receipt of the data from the conductor, for shipment of 20,000 pounds or ~~over~~ *more*, deposit the bill of lading in a United States post office, addressed and ~~registered or~~ certified to the consignor of the shipment or ~~his~~ *the consignor's* agent or attorney ~~to his~~ *at the consignor's, agent's, or attorney's* proper post-office address. A bill of lading for shipments of less than 20,000 pounds may be mailed without the use of ~~registered or~~ certified mail.

(2) ~~Any~~ *A* railway company operating in Montana ~~violating~~ *that violates* any provisions of this section is guilty of a misdemeanor and liable ~~to~~ *for* a fine of not less than $50 or more than $1,000."

Section 2039. Section 69-14-238, MCA, is amended to read:

"69-14-238. Equipment for track motor cars. (1) ~~Every~~ *A* person, firm, or corporation operating or controlling ~~any~~ *a* railroad running through or within this state as a common carrier shall:

(a) equip each of its track motor cars with:

(i) a windshield of safety glass and a device for wiping rain, snow, and other moisture ~~therefrom; such~~ *from the windshield, and the* device ~~shall~~ *must* be maintained in good order and ~~so~~ *must be* constructed ~~as~~ to be controlled by the operator of ~~said~~ *the* track motor car; and

(ii) upon request of the ~~foreman~~ *lead supervisor*, a canopy or top of ~~such construction as to~~ *constructed so that it* adequately ~~protect~~ *protects* the occupants ~~thereof~~ *of the track motor car* from the rays of the sun, rain, snow, or other inclement weather;

(b) equip each of its track motor cars used during the period from 30 minutes before sunset to 30 minutes after sunrise with:

(i) an electric headlight ~~of such construction~~ *constructed* and with sufficient candlepower to be plainly visible at a distance of not less than 300 feet in advance of ~~such~~ *the* track motor car, any track obstruction, landmark, warning sign, or grade crossing; and

(ii) a red rear electric light of sufficient candlepower to be plainly visible at a distance of not less than 300 feet.

(2) ~~Every~~ *Each* violation of this section is a misdemeanor."

Section 2040. Section 69-14-502, MCA, is amended to read:

"69-14-502. Organization of board of directors. (1) A majority of ~~said~~ directors shall form a board and ~~be~~ *is* competent to fill vacancies ~~therein~~ *on the board*, make bylaws, and transact all business of the corporation. The directors elected at any election shall, ~~so~~ *as* soon ~~thereafter~~ as may be convenient, choose one of their number to be president and shall appoint a secretary and a treasurer of the corporation. The directors, before entering upon their duties, shall each take an oath or affirmation faithfully to discharge ~~his~~ *their* duties. They may from time to time make ~~such~~ dividends of the actual net profits of ~~said~~ *the* corporation ~~as~~ *that* they ~~may think~~ *determine* proper and shall hold their offices until their successors are elected and qualified.

(2) A new election ~~shall~~ *must* be *held* annually ~~held~~ for directors~~,~~ at ~~such~~ *a* time and place ~~as~~ *that* the stockholders at their first meeting ~~shall~~ determine or ~~as~~ *that* the bylaws of the corporation may require."

Section 2041. Section 69-14-505, MCA, is amended to read:

"69-14-505. Procedure in case of delinquency in payment of installments. (1) If any installment of stock ~~shall remain~~ *remains* unpaid for 60 days after the time specified for payment ~~thereof~~, whether ~~such~~ *the* stock is held by the original subscriber or ~~his~~ *the subscriber's* assignee, trustee, or successor in interest, the directors may sell the stock ~~so unpaid~~ at public auction for the installment then due ~~thereon, first~~ *after* giving 30 days' public notice of the time and place of sale in some newspaper of general circulation in this state and by written notice sent by mail within 5 days after default ~~made~~ to each stockholder who is in default and whose name appears upon the books of the corporation~~,~~ ~~directed~~. *The written notice must be sent* to ~~him~~ *the stockholder* at ~~his~~ *the stockholder's* place of residence or if that is not known to the secretary, then to ~~his~~ *the stockholder's* address as last reported by the secretary of the corporation. ~~Where~~ *If* any stock ~~shall have~~ belonged to a *deceased* person ~~deceased~~, the claim for installments ~~shall~~ *is* not ~~be~~ liable to sale ~~hereunder until~~ *unless there is* a failure by the personal representative of the deceased owner to pay the installments due in *the* regular course of administration.

(2) If any ~~residue of~~ money ~~shall remain~~ *remains* after paying the amount due on ~~said~~ *the* stock, the ~~same shall~~ *money must*, on demand, be paid over to the owner.

(3) After the first election of directors, ~~no~~ *a* person ~~save~~ *other than* the personal representatives of deceased persons, ~~as aforesaid, shall~~ *may not* vote on any share on which any installment is in default by reason of the nonpayment ~~thereof~~, after the expiration of the 30 days' notice of sale ~~hereinbefore provided for~~."

Section 2042. Section 69-14-709, MCA, is amended to read:

"69-14-709. Allowance of ~~attorney's fee~~ *attorney fees.* (1) Except as provided in subsection (2), whenever any of the livestock referred to in this part ~~shall be~~ *are* injured or killed ~~as therein recited~~ and the owner ~~thereof shall thereafter institute~~ *brings* an action for the recovery of the loss or damage ~~so~~ sustained ~~by him~~, the court in which ~~such~~ *the* action ~~shall be~~ *is* brought shall ~~tax~~ *impose*, as a part of the costs ~~therein~~, a reasonable sum to be fixed by the court as a fee to the attorney of the prevailing or successful party for conducting ~~such~~ *the* action. ~~Said~~ *The* fee ~~so fixed and allowed shall~~ *must* be collected in ~~like~~ *the same* manner as other costs.

(2) ~~No such~~ *A* fee ~~shall~~ *may not* be allowed by the court or collected from the defendant when it ~~shall appear~~ *appears* from the pleadings or proof in ~~any such~~ *an* action that the defendant prior to the institution of ~~such~~ *the* action offered or agreed to pay to the plaintiff ~~therein~~, in settlement of the loss or damages claimed, a sum equal to or in excess of the amount recovered as damages in ~~said~~ *the* action or unless the plaintiff, at least 40 days prior to the commencement of the action, ~~shall have~~ *has* made *a* demand, in writing, upon the defendant, ~~his~~ *the defendant's* agent, or *the defendant's* attorney for the ~~sum of~~ money claimed as indemnity for the killing of ~~said~~ *the* livestock."

Section 2043. Section 69-14-710, MCA, is amended to read:

"69-14-710. Tender or deposit of value of animal. If a corporation, association, company, or person ~~so~~ owning, controlling, or operating a railroad or branch ~~thereof~~ *of a railroad* kills or injures an animal as ~~aforesaid~~ *described*

in 69-14-707 and tenders to the owner ~~thereof~~ or to ~~his~~ *the owner's* agent ~~in that behalf~~ the amount ~~which they consider~~ *that the corporation, association, company, or person considers* to be the value ~~thereof~~ *of the animal* or the damage ~~thereto~~ *to the animal*, ~~as the case may be~~ or if the railroad, corporation, association, company, or person deposits with the department of livestock ~~such~~ *that* amount for the owner ~~thereof~~ *of the animal* and the owner or ~~his~~ *the owner's* agent refuses to accept the amount in settlement ~~thereof~~, then the owner shall pay all costs incurred in any action instituted, after the tender or deposit, to recover the value or damage unless ~~he~~ *the owner* recovers in the action more than the amount ~~so~~ tendered."

Section 2044. Section 69-14-711, MCA, is amended to read:

"69-14-711. Payment of damages to department of livestock. (1) If livestock are killed by railroad corporations in violation of 69-14-701 and if the owner of the livestock does not claim or assert a claim against the railroad or railroad corporation for the value of the livestock killed within 6 months from the date the animal is killed, the department of livestock shall demand from the railroad or railroad corporation payment in damages for livestock. The department shall institute and prosecute, in the name of the state, actions against the railroad or railroad companies in a court of competent jurisdiction to recover damages if the railroad fails, neglects, or refuses to make payment of the amount of the claim filed by the department.

(2) The money recovered ~~shall~~ *must* be paid to the department and ~~shall~~ *must* be held by the department for a period of 2 years after the date of its receipt. If the lawful owner of the animal killed does not present and prove ~~his~~ *the owner's* claim to the net proceeds received from the animal killed within the 2 years, the money ~~shall~~ *must* be paid to the state treasurer and credited to the stock estray fund. If the owner of the animal killed proves ~~his~~ *the owner's* claim within the 2 years, the department may pay the claimant the amount of money to which ~~he~~ *the claimant* is entitled for the animal killed by the railroad or railroad company, the damages for which have been collected by the department.

(3) In actions prosecuted *under this section* for the recovery of the value of livestock killed ~~under this section~~, the prevailing or successful party shall recover all costs. If the owner of an animal killed has not presented ~~his~~ *a* claim against the railroad or railroad company ~~which~~ *that* caused it to be killed, a settlement made by the department constitutes a bar against an action by the owner of the animal."

Section 2045. Section 69-14-901, MCA, is amended to read:

"69-14-901. Authorization to locate and erect grain warehouse or elevator on railroad right-of-way. (1) Any person, firm, or corporation desirous of erecting and operating at or contiguous to any railway station or siding a warehouse or elevator for the purchase, sale, shipment, or storage of grain, ~~(~~including flaxseed~~)~~, for the public for hire may make application in writing, containing a description of that portion of the right-of-way of ~~said~~ *the* railroad on which ~~such~~ *the* person, firm, or corporation desires to erect a warehouse or elevator, the size and capacity of the warehouse or elevator proposed to be erected, and the time for which it is desired to maintain ~~such~~ *the* warehouse or elevator~~,~~. *The application must be made* to the person, firm, or corporation owning, leasing, or operating the railroad at ~~such~~ *the* station or siding, for the right, privilege, and easement of erecting and maintaining for the time stated in ~~such~~ *the* application and for reasonable compensation for ~~such~~ *the*

warehouse or elevator~~, as aforesaid,~~ upon the right-of-way pertaining to ~~such~~ *the* railway at ~~such~~ *the* siding or station and within and between the outside switches of the yard of ~~such~~ *the* railway station or siding~~,~~. ~~and upon~~ *Upon* paying or securing in the manner ~~hereinafter~~ prescribed *in this section* reasonable compensation for the right, privilege, and easement ~~aforesaid~~, ~~shall~~ *the person, firm, or corporation is* absolutely and unconditionally ~~be~~ entitled to the ~~same~~ *right, privilege, and easement*.

(2) The application ~~shall~~ *must* also state the amount the applicant ~~deems~~ *considers* reasonable compensation for the right, privilege, and easement ~~he~~ *the applicant* desires to acquire, and ~~said~~ *the* applicant shall tender and pay to ~~such~~ *the* person, firm, or corporation from whom ~~such~~ *the* easement is sought the sum stated in ~~such~~ *the* application.

(3) If the person, firm, or corporation owning, leasing, or operating the railroad is not willing *to allow* ~~that~~ the portion of the right-of-way selected by the applicant ~~should~~ *to* be appropriated for ~~such~~ *the stated* purpose and the parties cannot agree as to the quantity and location of the land upon which ~~such~~ *the* grain warehouse or grain elevator ~~shall~~ *is to* be erected, the matter ~~shall~~ *must* be determined by the district court in the same manner and by the same proceeding for determining the amount of compensation to be paid ~~where~~ *when* the parties cannot agree as to the amount."

Section 2046. Section 69-14-924, MCA, is amended to read:

"69-14-924. Liability of railroad for repairs. ~~Any~~ *A* person making the repairs upon or cleaning or coopering the cars of any railroad or railway company as ~~herein~~ provided *in this part* may recover the amounts expended ~~therefor~~ in an action at law upon the refusal of the railroad or railway company to reimburse ~~him~~ *the person*."

Section 2047. Section 69-14-932, MCA, is amended to read:

"69-14-932. First right to purchase or match offer — lease preference — negotiation process — exception. (1) A person or entity that has a leasehold site between a point 8.5 feet from the centerline of the track nearest the edge of the right-of-way and 300 feet from the track centerline and that uses the leasehold for transporting grain, seed, or related agricultural input commodities, regardless of the status of train operations, has a right of first refusal to purchase the land ~~in the event~~ *if* the owner seeks to sell the land or transfer the leasehold estate.

(2) The leaseholder of a leasehold site described in subsection (1) must be given the opportunity to match a competing lease offer upon expiration of an existing lease. If the leaseholder matches the new lease offer, the lease must be given to the leaseholder. When a person other than the current leaseholder becomes the lessee of a leasehold site described in subsection (1) or the lease is terminated by the lessor for reasons other than nonpayment or other material breach of the lease, the lessor or new lessee shall compensate the former leaseholder for the fair market value of improvements made by the former leaseholder.

(3) The owner of the land may not sell or offer for sale an interest in the leased land or dispossess the leaseholder for reasons other than nonpayment or other material breach of the lease unless ~~he~~ *the owner* first extends to the leaseholder a written offer to sell the leased land to the leaseholder at fair market value. The leaseholder shall respond to the offer within 60 days of receipt of the offer.

(4) The owner shall negotiate in good faith with the leaseholder for a period not to exceed 90 days following the leaseholder's response to the written offer provided for in subsection (3). The land may not be sold or transferred during the response and negotiation periods.

(5) (a) If the owner and the leaseholder cannot agree on the fair market value, they shall appoint a certified appraiser to establish the fair market value.

(b) ~~In the event that~~ *If* the owner and leaseholder cannot agree on an appraiser, each shall appoint a certified appraiser who shall make an independent appraisal. If the appraisals are within 5% of each other, the average of the two appraisals ~~must constitute~~ *constitutes* the fair market value.

(c) If the two appraisals differ by more than 5%, the two appraisers ~~must~~ *shall* appoint a third certified appraiser whose appraisal ~~must establish~~ *establishes* the fair market value.

(d) If the leaseholder fails to close the purchase of the leasehold estate for any reason within 45 days after the fair market value of the land has been established by the appraisal process provided for in this section, the right of first refusal is extinguished and the owner is free to transfer the property to a person or entity other than the leaseholder.

(e) The owner may transfer a title under this section by quitclaim deed rather than warranty deed.

(6) This section does not apply to the sale of an entire operating railroad line by one operating railroad to another entity for the purpose of operating a railroad."

Section 2048. Section 69-14-1002, MCA, is amended to read:

"69-14-1002. Compensation of employees on removal of railroad division point or terminal. (1) Except as provided in subsection (2), when any railroad or railway company operating its line of road in, into, or through the state ~~shall move~~ *moves* any of its division points or terminals, it ~~shall be~~ *is* liable to any employee of ~~such~~ *the* railroad or railway company for any damage sustained by ~~such~~ *the* employee by reason of any decrease in value of any real property actually occupied by ~~such~~ *the* employee as ~~his~~ *the employee's* place of residence~~, which decrease in value shall be~~ *that is* caused by ~~reason of~~ the removal of ~~such~~ *the* division point or terminal~~;~~. ~~provided~~ *However*, ~~such~~ *the* employee ~~shall~~ *must* have *a freehold estate* in ~~such~~ *the* property ~~so damaged an estate of freehold~~. ~~Such~~ *The* damages ~~shall be~~ *are* collectible in any court of competent jurisdiction.

(2) When any railroad or railway company in good faith determines upon a change or removal of any division point or terminal and in good faith posts prominently ~~about~~ *at* its station house, shops, and yards a statement of its intention to do so~~,~~ in ~~such~~ *a* manner ~~as to give~~ *that gives* reasonable notice ~~thereof~~ to ~~such~~ *the* employee, it ~~shall~~ *is* not ~~be~~ liable, as ~~hereinbefore~~ provided *in subsection (1)*, for any decrease in value of any interest in any property purchased after the time of ~~such~~ *the* posting ~~provided that such~~ *if the* division point or terminal ~~shall be~~ *is* changed or removed within 6 months after the date of ~~such~~ *the* posting."

Section 2049. Section 69-14-1003, MCA, is amended to read:

"69-14-1003. Railroad personnel as law officers. ~~Every~~ *A* conductor, engineer, or other person in charge of the operation of cars, trains, or locomotives upon any railroad is, while ~~so~~ engaged or employed, ~~constituted~~ a public executive officer of the class of peace officers and of the grade of constable

in each county ~~wherein his~~ *in which the* train, cars, or locomotives ~~may from time to time happen to be~~ *are located* and has the same authority as other peace officers to, with or without a warrant, arrest and prosecute persons trespassing or illegally obtaining passage on the railroad. The railroad personnel mentioned ~~herein shall~~ *in this section are* not ~~be~~ entitled to receive fees for any arrest or prosecution ~~which~~ *that* may be made or prosecuted under this section. None of the railroad personnel ~~herein named shall be~~ *mentioned in this section are* authorized to hold ~~said~~ *the* office or exercise its functions unless at the time they are citizens of the United States and have been citizens of this state for at least 1 year preceding their exercising the functions ~~thereof~~ *of the office*."

Section 2050. Section 69-14-1005, MCA, is amended to read:

"69-14-1005. Medical aid for injured trainmen. (1) ~~In case any~~ *If a* railroad ~~trainman~~ *train operator* or employee of any railroad doing business in this state ~~shall be~~ *is* injured during ~~his~~ *the operator's or employee's* regular course of employment, any employee of ~~said~~ *the* railroad is ~~hereby~~ empowered and authorized to call upon and retain the services of the nearest practicing physician or surgeon to care for and treat ~~any such~~ *the* injured ~~trainman~~ *train operator* or employee~~,~~ during and until ~~such~~ *the* time ~~as~~ *that* one of the regularly employed and paid physicians or surgeons of ~~such~~ *the* railroad corporation is able to render ~~such~~ service.

(2) ~~In cases where~~ *If* the services of any physician or surgeon other than the regularly employed physician or surgeon of the railroad corporation are retained and hired~~,~~ as provided in this section, ~~such~~ *the* physician or surgeon ~~shall~~ *must* be compensated and paid a reasonable fee for ~~such~~ *the* services performed ~~by him~~.

(3) If ~~any~~ *a* railroad corporation refuses or neglects to pay for the services of ~~any such~~ *a* physician as ~~hereinbefore~~ provided ~~for~~ *in subsection (2)* within a reasonable time after ~~such~~ *the* physician or surgeon has rendered the services ~~therefor~~, ~~such~~ *the* railroad corporation ~~shall be~~ *is* guilty of a misdemeanor."

Section 2051. Section 69-14-1006, MCA, is amended to read:

"69-14-1006. Liability for death or injury to railroad employees. (1) ~~Every~~ *A* person or corporation operating a railroad in this state ~~shall be~~ *is* liable in damages to any person suffering injury while ~~he~~ *the person* is employed by ~~such~~ *the* person or corporation ~~so~~ operating ~~any such~~ *the* railroad or, in case of the death of ~~such~~ *an* employee, instantaneously or otherwise, to ~~his or her~~ *the employee's* personal representative, for the benefit of the surviving ~~widow or husband~~ *spouse* and children of ~~such~~ *the* employee and, if none, then of ~~such~~ *the* employee's parents and, if none, then of the next of kin dependent upon ~~such~~ *the* employee~~,~~. *The damages must be* for ~~such~~ *an* injury or death resulting in whole or in part from the negligence of any of the officers, agents, or employees of ~~such~~ *the* person or corporation ~~so~~ operating ~~such~~ *the* railroad, in or about the handling, movement, or operation of any train, engine, or car on or over ~~such~~ *the* railroad or by reason of any defect or insufficiency, due to its negligence, in its cars, engines, appliances, machinery, track, roadbed, works, boats, wharves, or other equipment.

(2) (a) In all actions brought against any ~~such~~ person or corporation ~~so~~ operating ~~such~~ *the* railroad, under or by virtue of any of the provisions of this section, the fact that the employee may have been guilty of contributory negligence ~~shall~~ *may* not bar a recovery, but the damages ~~shall~~ *must* be diminished by the jury in proportion to the amount of negligence attributable to ~~such~~ *the* employee~~;~~. ~~provided~~ *However*, ~~that no such~~ *an* employee who ~~may be~~ *is*

injured or killed ~~shall~~ *may not* be held to have been guilty of contributory negligence in any case ~~where~~ *in which* the violation by ~~such~~ *the* person or corporation~~, so~~ operating ~~such~~ *the* railroad~~,~~ of any statute enacted for the safety of employees contributed to the injury or death of ~~such~~ *the* employee.

(b) An employee of ~~any~~ ~~such~~ *a* person or corporation ~~so~~ operating ~~such~~ *the* railroad ~~shall~~ *may* not be ~~deemed~~ *considered* to have assumed any risk incident to ~~his~~ *the employee's* employment when ~~such~~ *the* risk arises by reason of the negligence of ~~his~~ *the* employer or of any person in the service of ~~such~~ *the* employer.

(3) ~~Any~~ *A* contract, rule, or device ~~whatsoever~~, the purpose or intent of which ~~shall be~~ *is* to enable ~~any~~ ~~such~~ *a* person or corporation ~~so~~ operating ~~such~~ *a* railroad to exempt itself from any liability created by this section, ~~shall~~ *is*, to that extent, ~~be~~ void. In ~~any~~ *an* action brought against ~~any~~ ~~such~~ *a* person or corporation ~~so~~ operating ~~such~~ *a* railroad~~,~~ under or by virtue of any of the provisions of this section, ~~such~~ *the* person or corporation may set off ~~therein~~ any sum it has contributed or paid to any insurance, relief benefit, or indemnity that may have been paid to the injured employee or the person entitled ~~thereto~~ *to the payment* on account of the injury or death for which ~~said~~ *the* action is brought."

Section 2052. Section 70-1-109, MCA, is amended to read:

"70-1-109. Choice of law as to personal property. If there is no law to the contrary in the place where personal property is situated, it is ~~deemed~~ *considered* to follow the person of its owner and is governed by the law of ~~his~~ *the owner's* domicile."

Section 2053. Section 70-1-303, MCA, is amended to read:

"70-1-303. When ownership absolute. The ownership of property is absolute when a single person has the absolute dominion over it and may use it or dispose of it according to ~~his~~ *the person's* pleasure, subject only to general laws."

Section 2054. Section 70-1-310, MCA, is amended to read:

"70-1-310. Action by or against joint tenants or tenants in common. All persons holding as tenants in common, joint tenants, or any number less than all may jointly or severally commence or defend any civil action or proceeding for the enforcement or protection of the rights of ~~such~~ *that* party. In all cases, one tenant in common or *one* joint tenant ~~can~~ *may* sue ~~his~~ *a* cotenant."

Section 2055. Section 70-1-510, MCA, is amended to read:

"70-1-510. Delivery to grantee necessarily absolute. A grant cannot be delivered to the grantee conditionally. Delivery to ~~him~~ *the grantee* or to ~~his~~ *the grantee's* agent ~~as such~~ is necessarily absolute, and the instrument takes effect ~~thereupon~~ *upon delivery*, discharged of any condition on which the delivery is made."

Section 2056. Section 70-1-512, MCA, is amended to read:

"70-1-512. Constructive delivery. Though a grant ~~be~~ *is* not actually delivered into the possession of the grantee, it is ~~yet to be deemed~~ *considered* constructively delivered in the following cases:

(1) ~~where~~ *when* the instrument is, by the agreement of the parties at the time of execution, understood to be delivered and under ~~such~~ circumstances that the grantee is entitled to immediate delivery; or

(2) ~~where~~ *when* it is delivered to a stranger for the benefit of the grantee, and ~~his~~ *the grantee's* assent is shown or may be presumed."

Section 2057. Section 70-1-518, MCA, is amended to read:

"70-1-518. Meaning of heirs and issue in certain remainders. ~~Where~~ *When* a future interest is limited by a grant to take effect on the death of any person without heirs or heirs of ~~his~~ *the person's* body or without issue or in equivalent words, ~~such~~ *the* words must be taken to mean successors or issue living at the death of the person named as ancestor."

Section 2058. Section 70-1-704, MCA, is amended to read:

"70-1-704. Creation or exercise of a power to appoint to ~~an~~ estate. A person may be given a power to appoint a legal or equitable interest in property to ~~his~~ *the person's* own estate by will or deed. The donee of ~~such a~~ *the* power is considered to have a general power of appointment exercisable in favor of any person. Permissible exercise of the power as created may include but is not limited to:

(1) direction to the personal representative of the donee to administer the interest as if it were an interest in the property of the donee;

(2) direction to the personal representative to use the interest to satisfy the donee's devises or claims for debts and taxes; or

(3) appointment of the interest to any person to whom the donee might give or devise ~~his~~ *the donee's* own property."

Section 2059. Section 70-2-102, MCA, is amended to read:

"70-2-102. Transfer and succession. A thing in action arising out of the violation of a right of property or out of an obligation may be transferred by the owner. Upon the death of the owner, it passes to ~~his~~ *the owner's* personal representatives except ~~where~~ *when* in the cases provided in this ~~code~~ *title* it passes to ~~his~~ *the owner's* devisees or successor in office."

Section 2060. Section 70-3-104, MCA, is amended to read:

"70-3-104. Unsolicited goods considered gift. Unless otherwise agreed, ~~where~~ *when* unsolicited goods are delivered to a person, ~~he~~ *the person* may refuse delivery of the goods, or if the goods are delivered, the person is not bound to return the goods to the sender. If unsolicited goods are either addressed to or intended for the recipient, they ~~shall~~ *must* be ~~deemed~~ *considered* a gift, and the recipient may use or dispose of them in any manner without obligation to the sender."

Section 2061. Section 70-3-202, MCA, is amended to read:

"70-3-202. When gift presumed to be in view of death. A gift made during the last illness of the giver or under circumstances ~~which~~ *that* would impress ~~him~~ *the giver* with an expectation of speedy death is presumed to be a gift in view of death."

Section 2062. Section 70-3-203, MCA, is amended to read:

"70-3-203. Revocation. A gift in view of death may be revoked by the giver at any time and is revoked by ~~his~~ *the giver's* recovery from the illness or escape from the peril under the presence of ~~which~~ *that* it was made or by the occurrence of any event which would operate as a revocation of a will made at the same time."

Section 2063. Section 70-4-102, MCA, is amended to read:

"70-4-102. Uniting several things — to whom whole belongs. When things belonging to different owners have been united so as to form a single thing and cannot be separated without injury, the whole belongs to the owner of

the thing ~~which~~ *that* forms the principal part~~,~~. ~~who must, however~~ *However*, *that person shall* reimburse the value of the residue to the other owner or surrender the whole to ~~him~~ *the other owner*."

Section 2064. Section 70-4-103, MCA, is amended to read:

"70-4-103. Rules for determination of principal part. (1) That part is ~~deemed~~ *considered* to be the principal to which the other has been united only for the use, ornament, or completion of the ~~former~~ *principal part* unless the ~~latter~~ *other* is the more valuable and has been united without the knowledge of its owner, who may, in ~~the latter~~ *that* case, require it to be separated and returned to ~~him~~ *the owner* although some injury ~~should result~~ *results* to the thing to which it has been united.

(2) If neither part can be considered the principal within the rule prescribed by subsection (1), the more valuable or, if the values are nearly equal, the most considerable in bulk is to be ~~deemed~~ *considered* the principal part."

Section 2065. Section 70-4-202, MCA, is amended to read:

"70-4-202. Uniting of materials of maker and other. Where ~~one~~ *When a person* has made use of materials ~~which~~ *that* in part belong to ~~him~~ *the person* and in part to another in order to form a thing of a new description~~,~~ without having destroyed any of the materials but in ~~such~~ a way that they cannot be separated without inconvenience, the thing formed is common to both proprietors in proportion, as respects the one, of the materials belonging to ~~him~~ *the person* and, as respects the other, of the materials belonging to ~~him~~ *the other* and the price of ~~his~~ *the other's* workmanship."

Section 2066. Section 70-4-203, MCA, is amended to read:

"70-4-203. Uniting of materials of several owners. When a thing has been formed by the ~~admixture~~ *combination* of several materials of different owners and ~~neither~~ *none of the materials* can be considered the principal substance, an owner without whose consent the ~~admixture~~ *combination* was made may require a separation if the materials can be separated without inconvenience. If they cannot be ~~thus~~ separated, the owners acquire the thing in common, in proportion to the quantity, quality, and value of their materials, but if the materials of one were far superior to those of the others, both in quantity and value, ~~he~~ *the person* may claim the thing on reimbursing to the others the value of their materials."

Section 2067. Section 70-4-204, MCA, is amended to read:

"70-4-204. Use of materials without consent — owner prevails. ~~The foregoing sections of this chapter~~ *Title 70, chapter 4, part 1, and 70-4-201 through 70-4-203* are not applicable to cases in which one willfully uses the materials of another without ~~his~~ *the other's* consent, but in ~~such~~ *those* cases, the product belongs to the owner of material if its identity can be traced."

Section 2068. Section 70-4-205, MCA, is amended to read:

"70-4-205. Owner of materials wrongfully used — election of remedies. ~~In all cases where one~~ *If a person* whose material has been used without ~~his~~ *the person's* knowledge in order to form a product of a different description can claim an interest in ~~such~~ *the* product, ~~he~~ *the person* has an option to demand either restitution of ~~his~~ *the person's* material in kind, in the same quantity, weight, measure, and quality, or the value ~~thereof~~ *of the material* or, ~~where he~~ *if the person* is entitled to the product, the value ~~thereof~~ *of the product* in place of the product."

Section 2069. Section 70-4-206, MCA, is amended to read:

"70-4-206. Wrongdoer liable in damages. One who wrongfully employs materials belonging to another is liable to ~~him~~ *the other* in damages as well as under the ~~foregoing~~ provisions of ~~this chapter~~ *Title 70, chapter 4, part 1, and 70-4-201 through 70-4-205*."

Section 2070. Section 70-5-102, MCA, is amended to read:

"70-5-102. Finder not bound to take charge — status as depositary. ~~One~~ *A person* who finds a thing lost is not bound to take charge of it, but if ~~he~~ *the person* does ~~so~~, ~~he~~ *the person* is ~~thenceforth~~ a depositary for the owner, with the rights and obligations of a depositary for hire."

Section 2071. Section 70-5-103, MCA, is amended to read:

"70-5-103. Duty to inform owner when known. If ~~any~~ *a* person finds ~~any~~ money, goods, things in action, or other personal property or saves ~~any~~ *a* domestic animal from drowning or starvation when the property is of a value of $10 or more and ~~he~~ *the person* knows or suspects who the owner is, ~~he must~~ *the person shall* use reasonable diligence to inform the owner ~~thereof~~ and make restitution without compensation, further than a reasonable charge for saving and taking care ~~thereof~~ *of the property*. If ~~he~~ *the person* fails to do so, ~~he~~ *the person* is liable in damages to the owner and ~~has no~~ *does not have a* claim to any reward offered by the owner for the recovery of the thing or to any compensation for ~~his~~ *the person's* trouble or expenses."

Section 2072. Section 70-5-105, MCA, is amended to read:

"70-5-105. Compensation of finder. The finder of a thing is entitled to compensation for all expenses necessarily incurred by ~~him~~ *the finder* in its preservation and for any other service necessarily performed by ~~him~~ *the finder* about it and to a reasonable reward for keeping it."

Section 2073. Section 70-5-106, MCA, is amended to read:

"70-5-106. Exoneration of finder by storage of thing found. The finder of a thing may ~~exonerate himself~~ *be exonerated* from liability at any time by placing it ~~on~~ *in* storage with any responsible person of good character at a reasonable expense."

Section 2074. Section 70-5-107, MCA, is amended to read:

"70-5-107. Exoneration of owner by surrender of thing to finder. The owner of a thing found may ~~exonerate himself~~ *be exonerated* from the claims of the finder by surrendering it to ~~him~~ *the finder* in satisfaction ~~thereof~~ *of the claims*."

Section 2075. Section 70-6-102, MCA, is amended to read:

"70-6-102. Voluntary deposit — how made. A voluntary deposit is made by one giving to another, with ~~his~~ *the other's* consent, the possession of personal property to keep for the benefit of the former or of a third party. The person giving is called the depositor and the person receiving the depositary."

Section 2076. Section 70-6-108, MCA, is amended to read:

"70-6-108. Deposit for exchange — title passes. A deposit for exchange transfers to the depositary the title to the thing deposited and creates between ~~him~~ *the depositary* and the depositor the relation of debtor and creditor ~~merely~~."

Section 2077. Section 70-6-201, MCA, is amended to read:

"70-6-201. Depositary not to use or open thing deposited. A depositary may not use the thing deposited or permit it to be used for any purpose without the consent of the depositor. ~~He~~ *A depositary* may not, if it is purposely fastened

by the depositor, open it without the consent of the ~~latter~~ *depositor*, except in case of necessity."

Section 2078. Section 70-6-202, MCA, is amended to read:

"70-6-202. Liability for damage from wrongful use. A depositary is liable for any damage happening to the thing deposited during ~~his~~ *the depositary's* wrongful use ~~thereof~~ *of the thing* unless ~~such~~ *the* damage ~~must~~ inevitably *would* have happened ~~though~~ *if* the property had not been used."

Section 2079. Section 70-6-203, MCA, is amended to read:

"70-6-203. Loss or injury of thing deposited. If a thing is lost during its deposit and the depositary refuses to inform the depositor of the circumstances under which the loss or injury occurred so far as ~~he~~ *the depositary* has information concerning them or willfully misrepresents the circumstances to ~~him~~ *the depositor*, the depositary is presumed to have willfully or by gross negligence permitted the loss or injury to occur."

Section 2080. Section 70-6-204, MCA, is amended to read:

"70-6-204. Extent of depositary's liability for negligence. The liability of a depositary for negligence cannot exceed the amount ~~which~~ ~~he~~ *that the depositary* is informed by the depositor or has reason to suppose the thing deposited to be worth."

Section 2081. Section 70-6-205, MCA, is amended to read:

"70-6-205. Sale of thing in danger of perishing. If a thing deposited is in actual danger of perishing before instructions can be obtained from the depositor, the depositary may sell it for the best price obtainable and retain the proceeds as a deposit, giving immediate notice of ~~his~~ *the* proceedings to the depositor."

Section 2082. Section 70-6-207, MCA, is amended to read:

"70-6-207. Service rendered by depositary. So far as any service is rendered by a depositary or required from ~~him~~ *a depositary*, ~~his~~ *the depositary's* duties and liabilities are prescribed by the law on employment and service."

Section 2083. Section 70-6-208, MCA, is amended to read:

"70-6-208. Notice to owner of adverse claim. A depositary ~~must~~ *shall* give prompt notice to the person for whose benefit the deposit was made of any proceedings taken adversely to ~~his~~ *the person's* interest in the thing deposited ~~which~~ *that* may tend to excuse the depositary from delivering the thing to ~~him~~ *the person*."

Section 2084. Section 70-6-209, MCA, is amended to read:

"70-6-209. Notice to true owner of thing wrongfully detained. A depositary, who believes that a thing deposited with ~~him~~ *the depositary* is wrongfully detained from its true owner, may give ~~him~~ *the owner* notice of the deposit, and if within a reasonable time afterwards ~~he~~ *the owner* does not claim it and sufficiently establish ~~his~~ *a* right ~~thereto~~ *to the thing* and indemnify the depositary against the claim of the depositor, the depositary is exonerated from liability to the person to whom ~~he~~ *the depositary* gave the notice upon returning the thing to the depositor or assuming, in good faith, a new obligation changing ~~his~~ *the depositary's* position in respect to the thing to ~~his~~ *the depositary's* prejudice."

Section 2085. Section 70-6-210, MCA, is amended to read:

"70-6-210. Depositor to indemnify depositary — damage — expenses. A depositor ~~must~~ *shall* indemnify the depositary for:

(1) all damage caused to ~~him~~ *the depositary* by the defects or vices of the thing deposited; and

(2) all expenses necessarily incurred by ~~him~~ *the depositary* about the thing, other than ~~such as are~~ *expenses* involved in the nature of the undertaking."

Section 2086. Section 70-6-211, MCA, is amended to read:

"70-6-211. Depositary to deliver on demand. A depositary ~~must~~ *shall* deliver the thing to the person for whose benefit it was deposited, on demand, whether the deposit was made for a specified time or not, unless ~~he~~ *the depositary* has a lien upon the thing deposited or has been forbidden or prevented from doing so by the real owner ~~thereof~~ *of the thing* or by the act of the law and has given the notice required by 70-6-208."

Section 2087. Section 70-6-213, MCA, is amended to read:

"70-6-213. Place of delivery. A depositary ~~must~~ *shall* deliver the thing deposited at ~~his~~ *the depositary's* residence or place of business as may be most convenient for ~~him~~ *the depositary*."

Section 2088. Section 70-6-214, MCA, is amended to read:

"70-6-214. Delivery of thing owned jointly. If a thing deposited is owned jointly or in common by persons who cannot agree upon the manner of its delivery, the depositary may deliver to each ~~his~~ *person a* proper share ~~thereof~~ *of the thing* if it can be done without injury to the thing."

Section 2089. Section 70-6-303, MCA, is amended to read:

"70-6-303. When duties of gratuitous depositary cease. The duties of a gratuitous depositary cease upon ~~his~~ *the depositary's*:

(1) restoring the thing deposited to its owner; or

(2) giving reasonable notice to the owner to remove it and the owner failing to do so within a reasonable time. ~~But~~ *However,* an involuntary depositary under 70-6-103(2) ~~cannot~~ *may not* give ~~such~~ notice until the emergency ~~which~~ *that* gave rise to the deposit is past."

Section 2090. Section 70-6-412, MCA, is amended to read:

"70-6-412. Application of proceeds of sale. (1) After paying the expenses of sale, including the publication of notice, the storage or commission merchant or the carrier ~~shall be~~ *is* authorized, out of the proceeds arising from the sale of the property, to retain the amount due ~~him~~ *the merchant or carrier* for storage or freight ~~money~~, or both, due upon any ~~such~~ property, and the excess, if any, must be paid over to the person entitled to the proceeds ~~thereof~~.

(2) All sales under this part ~~shall~~ vest the title to the property sold in the purchaser ~~thereof~~ *of the property*."

Section 2091. Section 70-6-420, MCA, is amended to read:

"70-6-420. Default in payment of storage space rental fees — notice — sale of contents. (1) A person who rents storage space to another may sell at public auction the contents of the storage space if the owner of the contents is more than 30 days in default in paying rental fees on the space.

(2) At the expiration of the period of default provided for in subsection (1), the person renting the storage space shall send written notice by certified mail to the last-known address of the owner of the contents *stating* that ~~he~~ *the owner* has 30 days from the date of the certified letter to pay the past due rental fees

and to claim the contents of the storage space or the contents will be sold at public auction. The notice must contain the date, time, and place of the auction if the ~~past due~~ *past-due* rental fees are not paid. If the certified notice is returned undelivered, notice must be given as provided in Rule 4 of the Montana Rules of Civil Procedure.

(3) Prior to an auction provided for in subsection (1), notice of the date, time, place, terms, and description of the property must be published in a newspaper in the county in which the property to be sold is located. The notice must be published once a week for 2 weeks prior to the day of the sale. If there is no newspaper published in the county in which the property to be sold is located, then the notice may be published in a newspaper of general circulation in the county.

(4) (a) Proceeds of the auction must first be applied to the costs of the sale, then to the unpaid storage rental fees, and the excess, if any, must be paid to the owner. If the owner or the person entitled to the proceeds cannot be located, the proceeds escheat to the state as provided in Title 72, chapter 14.

(b) All sales under this section vest title to the property sold in the purchaser of the property."

Section 2092. Section 70-6-501, MCA, is amended to read:

"70-6-501. Innkeeper's liability as to property of guests — dollar limitation. (1) An innkeeper is liable for all losses of or injuries to personal property placed by ~~his~~ *the* guests under ~~his~~ *the innkeeper's* care unless occasioned by an irresistible superhuman cause, by a public enemy, by the negligence of the owner, or by the act of someone whom ~~he~~ *the innkeeper* brought into the inn.

(2) The liability provided for in subsection (1) may not exceed $500 for all personal property of each registered guest unless the innkeeper consents in writing with the guest to assume a greater liability. An innkeeper whose liability is ~~so~~ limited shall notify the guest at the time of registration, in writing, that this limitation applies."

Section 2093. Section 70-6-502, MCA, is amended to read:

"70-6-502. No liability without negligence. ~~No~~ *A* hotelkeeper or innkeeper ~~shall be~~ *is not* liable to any guest for the loss of wearing apparel, goods, or personal effects ~~where~~ *when* it ~~shall appear~~ *appears* that ~~such~~ *the* loss occurred without the fault or negligence of ~~such~~ *the* hotelkeeper or ~~his~~ *the innkeeper or the hotelkeeper's or innkeeper's* employees."

Section 2094. Section 70-6-504, MCA, is amended to read:

"70-6-504. How exempted from liability — safe. If an innkeeper keeps a fireproof safe and gives notice to a guest, either personally or by placing a printed notice in a prominent place in the room occupied by the guest, that ~~he~~ *the innkeeper* keeps ~~such~~ a *fireproof* safe and will not be liable for *any loss of or injury to* money, jewelry, documents, or other articles of value and small ~~compass~~ *size* unless placed ~~therein~~ *in the safe*, ~~he~~ *the innkeeper* is not liable, except so far as ~~his~~ *the innkeeper's* own acts contribute ~~thereto, for any~~ *to the* loss of or injury to ~~such~~ *the* articles not deposited with ~~him~~ *the innkeeper* and not required by the guest for present use."

Section 2095. Section 70-6-505, MCA, is amended to read:

"70-6-505. Storage of property in outbuilding — nonliability. ~~No~~ *An* innkeeper ~~shall be~~ *is not* liable for the loss or destruction by fire of the property received by ~~him~~ *the innkeeper* from a guest~~,~~ *that is* stored or ~~being~~ *kept*~~,~~ with the

knowledge of ~~such~~ *the* guest~~,~~ in a barn or other outbuilding~~, where~~ *if* it ~~shall appear~~ *appears* that ~~such~~ *the* loss or destruction is the work of an incendiary and occurred without the fault or negligence of ~~such~~ *the* innkeeper or ~~his~~ *the innkeeper's* servants."

Section 2096. Section 70-7-101, MCA, is amended to read:

"70-7-101. Optional loan — use or exchange — applicability of entire chapter. A loan ~~which~~ *that* the borrower is allowed by the lender to treat as a loan for use or for exchange, at ~~his~~ *the borrower's* option, is subject to all of the provisions of this chapter."

Section 2097. Section 70-7-102, MCA, is amended to read:

"70-7-102. Loan for use defined. A loan for use is a contract by which one gives to another the temporary use and possession of personal property~~,~~ and the latter agrees to return the same thing to ~~him~~ *the loaning person* at a future time~~,~~ without reward for its use."

Section 2098. Section 70-7-106, MCA, is amended to read:

"70-7-106. Skill required of borrower. A borrower for use is bound to have and to exercise ~~such~~ skill in the care of the thing lent ~~as he~~ *that the borrower* causes the lender to believe ~~him~~ *that the borrower possesses* ~~to possess~~."

Section 2099. Section 70-7-107, MCA, is amended to read:

"70-7-107. Borrower to repair injuries. A borrower for use ~~must~~ *shall* repair all deteriorations or injuries to the thing lent ~~which~~ *that* are occasioned by ~~his~~ *the borrower's* negligence, however slight."

Section 2100. Section 70-7-110, MCA, is amended to read:

"70-7-110. Who to bear expenses. The borrower of a thing for use ~~must~~ *shall* bear all its expenses during the loan~~,~~ except ~~such as~~ *those that* are necessarily incurred by ~~him~~ *the borrower* to preserve it from unexpected and unusual injury. ~~For such expenses he~~ *The borrower* is entitled to compensation *for those expenses* from the lender, who may, however, ~~exonerate himself~~ *be exonerated* by surrendering the thing to the borrower."

Section 2101. Section 70-7-111, MCA, is amended to read:

"70-7-111. Lender liable for concealed defects. The lender of a thing for use ~~must~~ *shall* indemnify the borrower for damage caused by defects or vices in ~~it which he~~ *the thing that the lender* knew at the time of lending and concealed from the borrower."

Section 2102. Section 70-7-112, MCA, is amended to read:

"70-7-112. Right of lender to require return — indemnification of borrower. The lender of a thing for use may at any time require its return, even though ~~he~~ *the lender* lent it for a specified time or purpose. ~~But~~ *However,* if on the faith of ~~such~~ an agreement the borrower has made ~~such~~ arrangements that a return of the thing before the period agreed upon would cause ~~him~~ *the borrower* loss exceeding the benefit derived by ~~him~~ *the borrower* from the loan, the lender ~~must~~ *shall* indemnify ~~him~~ *the borrower* for ~~such~~ *the* loss if ~~he~~ *the lender* compels ~~such~~ *a* return~~,~~ *and* the borrower ~~not having~~ *has not* in any manner violated ~~his~~ *the borrower's* duty."

Section 2103. Section 70-7-203, MCA, is amended to read:

"70-7-203. Title to property lent — expenses — increase. ~~By a loan for exchange, the~~ *The* title to the thing lent *by a loan for exchange* is transferred to

the borrower, and ~~he must bear~~ *the borrower shall bear* all its expenses and is entitled to all its increase."

Section 2104. Section 70-7-204, MCA, is amended to read:

"70-7-204. Contract not to be modified by lender. A lender for exchange cannot require the borrower to fulfill ~~his~~ *the borrower's* obligations at a time or in a manner different from that which was originally agreed upon."

Section 2105. Section 70-8-201, MCA, is amended to read:

"70-8-201. Contract for letting of ship. The contract by which a ship is let is termed a charter party. ~~By it~~ *As part of the contract,* the owner may either let the capacity or burden of the ship, continuing the employment of the owner's master, crew, and equipments, or may surrender the entire ship to the charterer, who then provides them ~~himself~~. The master or part owner may be a charterer."

Section 2106. Section 70-9-402, MCA, is amended to read:

"70-9-402. Storage of unclaimed property. When ~~any~~ goods, merchandise, or other property has been received by ~~any~~ *a* railroad or express company or other common carrier, commission merchants, or ~~warehousemen~~ *warehouse operator* for transportation or safekeeping and ~~are~~ *is* not delivered to the owner, consignee, or other authorized person, the carrier, commission merchant, or ~~warehouseman~~ *warehouse operator* may hold or store the ~~same~~ *goods, merchandise, or property* with some responsible person until the freight and all just and reasonable charges are paid."

Section 2107. Section 70-9-403, MCA, is amended to read:

"70-9-403. Property unclaimed within 90 days to be sold — notice — surplus. (1) If ~~no person calls~~ *a person does not call* for the property within 90 days from the receipt ~~thereof~~ *of the property* and ~~pays~~ *pay* freight and charges ~~thereon~~ *on the property*, the carrier, commission merchant, or ~~warehouseman~~ *warehouse operator* may sell ~~such~~ *the* property or ~~so~~ *as* much ~~thereof~~ *of the property*, at auction to the highest bidder, as will pay freight and charges~~, first having given~~ *after giving* 20 days' notice of the time and place of sale to the owner, consignee, or consignor, when known, and by advertisement in a daily paper *for* 10 days ~~(~~or ~~if~~ in a weekly paper~~,~~ *for* 4 weeks~~)~~, published where ~~such~~ *the* sale is to take place.

(2) If any surplus is left after paying freight, storage, cost of advertising, and other reasonable charges, the ~~same~~ *surplus* must be paid ~~over~~ to the owner of ~~such~~ *the* property at any time ~~thereafter,~~ upon demand being made ~~therefor~~ or within 60 days after the sale."

Section 2108. Section 70-9-404, MCA, is amended to read:

"70-9-404. Surplus proceeds unclaimed — disposition. If the owner or ~~his~~ *the owner's* agent fails to demand ~~such~~ *the* surplus within 60 days of the time of ~~such~~ sale, then it must be paid into the county treasury, subject to the order of the owner."

Section 2109. Section 70-9-405, MCA, is amended to read:

"70-9-405. Responsibility of carrier and bailee after storage. After the storage of goods, merchandise, or property as provided in this part, the responsibility of the carrier ceases~~, nor is~~ *and* the person with whom the ~~same~~ *goods, merchandise, or property* is stored *is not* liable for any loss or damage on account ~~thereof~~ *of the storage* unless the ~~same~~ *loss or damage* results from ~~his~~ *the person's* negligence or want of proper care."

Section 2110. Section 70-9-406, MCA, is amended to read:

"70-9-406. Sale of property upon which advances are due. When ~~any~~ *a* commission merchant or ~~warehouseman~~ *warehouse operator* receives on consignment produce, merchandise, or other property and makes advances ~~thereon~~ *on the produce, merchandise, or property*, either to the owner or for freight and charges, ~~he~~ *the person* may, if the ~~same is~~ *freight and charges are* not paid ~~to him~~ within 90 days from the date of ~~such~~ *the* advances, cause the produce, merchandise, or property on which the advances were made to be advertised and sold as provided in this part."

Section 2111. Section 70-9-502, MCA, is amended to read:

"70-9-502. Disposition of surplus proceeds. ~~In case~~ *If* any balance arising from ~~such~~ *the* sale ~~shall~~ *is* not ~~be~~ claimed by the rightful owner within 1 week from the day of ~~said~~ *the* sale, the ~~same shall~~ *balance must* be paid into the treasury of the county in which ~~such~~ *the* sale took place, and if the ~~same be~~ *the balance is* not claimed by the owner ~~thereof~~ or ~~his~~ *the owner's* legal representatives within 1 year ~~thereafter~~ *after the sale*, the ~~same shall~~ *balance must* be paid into the general fund of ~~said~~ *the* county."

Section 2112. Section 70-15-205, MCA, is amended to read:

"70-15-205. Remainder limited upon fee tail valid — vesting. ~~Where~~ *When* a remainder in fee is limited upon any estate ~~which~~ *that* would by the common law be adjudged a fee tail, ~~such~~ *the* remainder is valid as a contingent limitation upon a fee and vests in possession on the death of the first taker without issue living at the time of ~~his~~ *the first taker's* death."

Section 2113. Section 70-15-210, MCA, is amended to read:

"70-15-210. Reversion. A reversion is the residue of an estate left by operation of law in the grantor or ~~his~~ *the grantor's* successors or in the successors of a testator, commencing in possession on the determination of a particular estate granted or devised."

Section 2114. Section 70-15-301, MCA, is amended to read:

"70-15-301. Power defined. A "power", as the term is used in this part, is an authority to do some act in relation to real property or to the creation or revocation of an estate ~~therein~~ *in* or a charge ~~thereon~~ *on the real property*~~,~~ ~~which~~ *that* the owner granting or reserving ~~such~~ *the* power might ~~himself~~ *personally* perform for any purpose."

Section 2115. Section 70-15-303, MCA, is amended to read:

"70-15-303. Married persons — execution. ~~(1)~~ A married person may execute a power during marriage without the concurrence of the spouse unless otherwise prescribed by the terms of the power.

~~(2) No power can be executed by a married woman before she attains her majority which could not be executed by a married man before he attains his majority.~~"

Section 2116. Section 70-16-102, MCA, is amended to read:

"70-16-102. Rights of life tenant. The owner of a life estate may use the land in the same manner as the owner of a fee simple, except that ~~he must do no~~ *the owner of the life estate may not do an* act to the injury of the inheritance."

Section 2117. Section 70-16-104, MCA, is amended to read:

"70-16-104. Rights of tenant for years or at will. (1) A tenant for years or at will, unless ~~he~~ *the tenant* is a wrongdoer by holding over, may occupy the

buildings, take the annual products of the soil, and work mines and quarries open at the commencement of ~~his~~ *the* tenancy~~;~~. ~~and a~~ *A* tenant at will or for an indefinite term may cultivate and harvest the crops growing at the end of ~~his~~ *the* tenancy.

(2) A tenant for years or at will has no other rights to the property than those given to ~~him~~ *the tenant* by the agreement or instrument by which ~~his~~ *the* tenancy is acquired or by subsection (1).

(3) Subsection (2) does not apply to arrangements governed by *Title 70,* chapter 24 ~~of this title~~."

Section 2118. Section 70-16-105, MCA, is amended to read:

"70-16-105. Remedy of ~~remainderman or reversioner~~ *person having remainder or reversion.* A person having an estate in fee~~,~~ in remainder or reversion~~,~~ may maintain an action for any injury done to the inheritance, notwithstanding an intervening estate for life or years and although, after its commission, ~~his~~ *the person's* estate is transferred and ~~he has no~~ *the person does not have an* interest in the property at the commencement of the action."

Section 2119. Section 70-16-106, MCA, is amended to read:

"70-16-106. Action for waste — treble damages. If a guardian, tenant for life or years, joint tenant, or tenant in common of real property commits waste ~~thereon~~ *of the property*, any person aggrieved by the waste may bring an action against ~~him therefor,~~ *that person.* ~~in which action there may be~~ *The* judgment *in the action may be* for treble damages."

Section 2120. Section 70-16-203, MCA, is amended to read:

"70-16-203. Adjoining owner's right to lateral and subjacent support — excavations. Each coterminous owner is entitled to the lateral and subjacent support ~~which~~ ~~his~~ *that the owner's* land receives from the adjoining land, subject to the right of the owner of the adjoining land to make proper and usual excavations on the ~~same~~ *adjoining land* for the purposes of construction, on using ordinary care and skill and taking reasonable precautions to sustain the land of the other and giving previous reasonable notice to the other of ~~his~~ *the* intention to make ~~such~~ *the* excavations."

Section 2121. Section 70-16-204, MCA, is amended to read:

"70-16-204. Trees on or near boundary. (1) Trees whose trunks stand partly on the land of two or more coterminous owners belong to them in common.

(2) Trees whose trunks stand wholly upon the land of one owner belong exclusively to ~~him~~ *that landowner*, although their roots grow into the land of another."

Section 2122. Section 70-16-205, MCA, is amended to read:

"70-16-205. Monuments and fences — mutual obligation of adjoining owners. (1) Coterminous owners are mutually bound equally to maintain:

(a) the boundaries and monuments between them;

(b) the fences between them, unless one of them chooses to let ~~his~~ *that owner's* land lie without fencing, in which case if ~~he~~ *that owner* afterwards encloses it, ~~he~~ *that owner* ~~must~~ *shall* refund to the other *owner* a just proportion of the value, at that time, of any division fence made by the ~~latter~~ *other owner*. However, using land for grazing or pasturage of any kind ~~whatsoever~~ must be considered a usage of the land, and the land ~~must~~ *may* not be considered as lying idle under the provisions of this section.

(2) Except as provided by prescription, custom, or agreement between coterminous owners, each coterminous owner shall maintain all fencing to the right of the midpoint of the common boundary line as viewed from ~~his~~ *the owner's* land. If the land of one owner is entirely surrounded by the land of another, each owner shall maintain all fencing to the right, as viewed from ~~his~~ *the owner's* land, of the northeastern corner of the surrounded land or, if there is more than one northeastern corner, then from the northernmost northeastern corner to a point midway around the surrounded land. If there is a substantial difference in terrain or topographical features of the land between the coterminous owners, responsibility for maintaining the fence must be determined by mutual agreement with consideration given to factors such as cost and time."

Section 2123. Section 70-16-207, MCA, is amended to read:

"70-16-207. Occupant of land adjoining enclosure of another — when required to share expense of partition fence. If any occupant of land adjoining the enclosure of another ~~enclose~~ *encloses* the ~~same~~ *land*, upon the enclosure of ~~such~~ *the* other person, ~~he must~~ *the occupant shall* within 3 months ~~thereafter~~ build ~~his~~ *the occupant's* proportion of ~~such~~ *the* partition fence or refund to the owner ~~thereof~~ *of the fence* an equal proportion of the value, at that time, of any partition fence of ~~such~~ *the* adjoining occupant."

Section 2124. Section 70-16-208, MCA, is amended to read:

"70-16-208. Partition fence when common occupancy ceases. Whenever any lands belonging to different persons in severalty have been enclosed and occupied in common or without a partition fence between them and one of ~~such~~ *the* occupants desires to occupy ~~his~~ *that occupant's* part in severalty, the other occupant ~~must~~ *shall*, within 6 months after being notified in writing, build and maintain ~~his~~ *the other occupant's* proportion of ~~such~~ *the* partition fence as may be necessary for that purpose, and in case of neglect or refusal so to do, the person giving ~~such~~ *the* notice may build ~~such~~ *the* fence at the expense of the person ~~so~~ neglecting or refusing~~,~~. ~~the~~ *The* amount expended ~~to~~ *may* be recovered in an action, together with all damages ~~he~~ *that person* may sustain on account of ~~such~~ *the* neglect or refusal."

Section 2125. Section 70-16-209, MCA, is amended to read:

"70-16-209. Repair or rebuilding of partition fences. ~~In case any~~ *If a* person neglects or refuses to repair or rebuild any partition fence ~~which~~ *that* by law ~~he~~ *the person* ought to build or maintain, the occupant of the adjoining land may, after giving 60 days' notice that a new fence should be erected or 5 days' notice in writing that the repairing of ~~such~~ *the* fence is necessary, build or repair ~~such~~ *the* fence at the expense of the party ~~so~~ neglecting or refusing~~,~~. ~~the~~ *The* amount ~~so~~ expended ~~to~~ *may* be recovered from ~~him; and~~ the *neglecting or refusing* party ~~so neglecting or refusing,~~ after receipt ~~by him~~ of the notice ~~above provided~~, *and the neglecting or refusing party* is liable to the party injured for all damages ~~he may sustain thereby~~ *sustained by the neglect or refusal*."

Section 2126. Section 70-16-210, MCA, is amended to read:

"70-16-210. Removal of partition fence. If the occupants of adjoining lands build their respective portions of a partition fence and either of them at any time desires to ~~suffer~~ *let* the land occupied by ~~him~~ *that person* ~~to~~ lie open, ~~he~~ *that person* may, after having given to the occupants of the adjoining land at least 6 months' notice of ~~his~~ *the* intention so to do, remove ~~his~~ *that person's* proportion of the partition fence unless ~~such~~ *the* adjoining occupant pays or tenders to ~~him~~ *that person* the value ~~thereof~~ *of the fence*. If ~~such~~ *the* fence ~~be~~ *is*

removed without notice or after payment or tender of the value ~~as aforesaid~~, the person removing the ~~same~~ *fence* is liable to the person injured for all damages ~~he~~ *the injured person* may sustain ~~thereby~~."

Section 2127. Section 70-17-205, MCA, is amended to read:

"70-17-205. Nonliability for prior or subsequent breach. ~~No one~~ *A person*, merely by reason of having acquired an estate subject to a covenant running with the land, is *not* liable for a breach of the covenant before ~~he~~ *the person* acquired the estate or after ~~he~~ *the person* has parted with ~~it~~ *the estate* or ceased to enjoy its benefits."

Section 2128. Section 70-18-101, MCA, is amended to read:

"70-18-101. Fixture attached by other — accession by owner. When a person affixes ~~his~~ *the person's* property to the land of another, without an agreement permitting ~~him~~ *the person* to remove it, the thing affixed, except as provided in 70-18-102 and in the Uniform Commercial Code, belongs to the owner of the land unless ~~he~~ *the owner of the land* chooses to require the ~~former~~ *person* to remove it."

Section 2129. Section 70-18-102, MCA, is amended to read:

"70-18-102. Removal of fixture by tenant. A tenant may remove from the demised premises, any time during the continuance of ~~his~~ *the tenant's* term, anything affixed ~~thereto~~ *to the premises* for purposes of trade, manufacture, ornament, or domestic use if the removal can be effected without injury to the premises unless the thing has, by the manner in which it is affixed, become an integral part of the premises."

Section 2130. Section 70-19-102, MCA, is amended to read:

"70-19-102. Action affecting title or possession — filing as constructive notice. (1) In an action affecting the title or right of possession of real property or in an action between husband and wife, the plaintiff, at the time of filing the complaint, and the defendant, at the time of filing ~~his~~ *the* answer, when affirmative relief is claimed in ~~such~~ *the* answer, or at any time afterward may file in the office of the clerk and recorder of the county in which the property is situated a notice of the pendency of the action containing the names of the parties and the object of the action or defense and a description of the property in that county affected ~~thereby~~ *by the action or defense*.

(2) From the time of filing of ~~such~~ *the* notice only ~~shall~~ *is* a purchaser or encumbrancer of the property affected ~~thereby~~ ~~be deemed~~ *considered* to have constructive notice of the pendency of the action and only of its pendency against parties designated by their real names."

Section 2131. Section 70-19-202, MCA, is amended to read:

"70-19-202. Abuse of property held jointly or in common — action — mining property. If ~~any~~ *a* person ~~shall assume and exercise~~ *assumes and exercises* exclusive ownership over or ~~take~~ *takes* away, ~~destroy~~ *destroys*, ~~lessen~~ *lessens* in value, or otherwise ~~injure~~ *injures* or ~~abuse~~ *abuses* any property held in joint tenancy or tenancy in common, the party aggrieved ~~shall have his~~ *has* action for the injury in the same manner as ~~he~~ *the aggrieved party* would have if ~~such~~ *the* joint tenancy or tenancy in common did not exist~~;~~. ~~provided that nothing herein contained shall~~ *However, this section does not* prevent one cotenant or joint tenant or any number of cotenants or joint tenants acting together ~~less than all~~ from entering on the common property at any point or points not then in the actual occupancy of the nonjoining cotenants or joint tenants and enjoying all rights of occupancy of the property, without waste and,

in the case of mining property, from mining the ~~same~~ *property* in a minerlike manner and extracting, milling, and disposing of the ore from the common property, paying its or their own expenses and subject to accounting to the nonjoining cotenant or joint tenant for the net profits of ~~such~~ *the* mining operations~~,~~. ~~if any made, and all~~ *All* liens for labor and materials incurred in ~~such~~ *the* mining ~~shall~~ attach only to the undivided interest or interests of the working cotenants or joint tenants, but nothing ~~herein shall prevent~~ *in this section prevents* or ~~preclude~~ *precludes* the cotenant or joint tenant, not joining in the operation of ~~such~~ *the* mining property, from receiving ~~his, its, or their~~ *the cotenant's or joint tenant's* proportionate share of all ore or ores on the dump upon payment or tendering payment of the actual cost of mining the ~~same~~ *property*."

Section 2132. Section 70-19-204, MCA, is amended to read:

"70-19-204. Order for inspection or survey. (1) Whenever ~~any~~ *a* person ~~shall have~~ *has* any right to or interest in any lead, lode, or mining claim ~~which~~ *that* is in the possession of another person and it ~~shall be~~ *is* necessary for the ascertainment, enforcement, or protection of ~~such~~ *that* right or interest that an inspection, examination, or survey of ~~such~~ *the* lead, mine, lode, or mining claim should be ~~had or~~ made or whenever any inspection, examination, or survey of ~~any such~~ *the lead, mine,* lode*,* or mining claim ~~shall be~~ *is* necessary to protect, ascertain, or enforce the right or interest of any person in another *lead,* mine, lode, or mining claim and the person in possession of the ~~same shall refuse~~ *other lead, mine, lode, or mining claim refuses* for a period of 3 days after demand ~~therefor~~ in writing to allow ~~such~~ *the* inspection, examination, or survey to be had or made, the *demanding* party ~~so desiring the same~~ may present to the district court ~~or a judge thereof~~ of the county ~~wherein~~ *in which* the *lead,* mine, ~~lead,~~ lode, or mining claim is ~~situated~~ *located* a petition under oath setting out ~~his~~ *the party's* interest in the premises, describing the ~~same~~ *premises*, *setting out* that the premises are in the possession of a party, naming ~~him~~ *the party*, *setting out* the reason why ~~such~~ *the* examination, inspection, or survey is necessary, *setting out* the demand made on the person in possession ~~so~~ to permit ~~such~~ *the* examination, inspection, or survey~~,~~ and ~~his~~ *the person's* refusal ~~so to do~~.

(2) The court or judge shall ~~thereupon~~ appoint a time and place for hearing ~~such~~ *a* petition and shall order notice ~~thereof~~ to be served upon the adverse party~~,~~. ~~which~~ *The* notice ~~shall~~ *must* be served at least 1 day before the day of hearing. ~~On~~ *At* the hearing*,* either party may read affidavits or produce oral testimony, and if the ~~court or~~ judge is satisfied that the facts stated in the petition are true, ~~he~~ *the judge* shall make an order for an inspection, examination, or survey of the *lead, mine,* lode*,* or mining claim in question in ~~such~~ *a* manner, at ~~such~~ *a* time, and by ~~such~~ persons ~~as~~ *that* are mentioned in the order. ~~Such~~ *Upon the order the* person shall ~~thereupon~~ have free access to ~~such~~ *the lead,* mine, ~~lead,~~ lode, or mining claim for the purpose of making ~~such~~ *the* inspection, examination, or survey, and any interference with ~~such~~ *the* person while acting under ~~such~~ *the* order ~~shall be~~ *is* contempt of court.

(3) If the order of the court is made while an action is pending between the parties to the order, the costs of obtaining the order ~~shall abide~~ *must await* the result of the action, but all costs of making ~~such~~ *the* examination or survey ~~shall~~ *must* be paid by the petitioner."

Section 2133. Section 70-19-301, MCA, is amended to read:

"70-19-301. Application to lands conveyed by state. The provisions of parts 3 and 4 ~~shall~~ apply to all lands sold and conveyed before July 1, 1955, by

the state of Montana for which a valid consideration was received by the state~~;~~, provided that the state, at the time of ~~any such~~ *the* sale or conveyance, was not precluded by the constitution of Montana or by the terms of the grant of ~~such~~ *the* lands by the United States from selling and disposing of the ~~same;~~ *land*. ~~and provided further, that no~~ *An* occupant of a public way or other ground dedicated or appropriated by the state to public use and not subject to sale ~~shall~~ *may not* acquire by reason of ~~his~~ *the* occupancy any title ~~thereto~~ *to the public way or ground*."

Section 2134. Section 70-19-303, MCA, is amended to read:

"70-19-303. Statute of limitations for actions by grantee — joinder of state. (1) ~~No~~ *An* action ~~can~~ *may not* be brought for or in respect to real property by any person claiming under letters patent or grants from this state unless the plaintiff~~,~~ ~~his~~ *or the plaintiff's* ancestor, predecessor, or grantor was seized or possessed of the property in question within 10 years before the commencement of the action.

(2) In ~~any such~~ *an* action *described in subsection (1),* the state of Montana may be made a party defendant and ~~shall have~~ *has* only the defenses ~~thereto as~~ *that* are available to other parties defendant to the action, provided that ~~no~~ *a* judgment in any ~~such~~ action ~~shall~~ *may not* include damages, attorney fees, or court costs against the state of Montana."

Section 2135. Section 70-19-304, MCA, is amended to read:

"70-19-304. Statute of limitations for action for recovery of property under void conveyance from state. When letters patent or grants of real property issued or made by the state are declared void by the determination of a competent court, an action for the recovery of the property ~~so~~ conveyed may be brought, either by the state or by any subsequent patentee or grantee of the property~~,~~ ~~his~~ *or the patentee's or grantee's* heirs, or assigns~~,~~ *only* within 10 years after ~~such~~ *the* determination~~, but not after that period~~."

Section 2136. Section 70-19-305, MCA, is amended to read:

"70-19-305. Certificate of purchase from state or United States prima facie evidence of ownership. A certificate of purchase or of location of any lands in this state issued or made in pursuance of any law of the United States or of this state is prima facie evidence that the holder or assignee of ~~such~~ *the* certificate is the owner of the land described ~~therein~~ *in the certificate*, but this evidence may be overcome by proof that at the time of the location or time of filing a preemption claim on which the certificate may have been issued, the land was in the adverse possession of the adverse party or those under whom ~~he~~ *the adverse party* claims or that the adverse party is holding the land for mining purposes."

Section 2137. Section 70-19-401, MCA, is amended to read:

"70-19-401. Action for recovery — possession within 5 years required. ~~No~~ *An* action for the recovery of real property or for the possession ~~thereof can~~ *of real property may not* be maintained unless it ~~appear~~ *appears* that the plaintiff~~,~~ ~~his~~ *or the plaintiff's* ancestor, predecessor, or grantor was seized or possessed of the property in question within 5 years before the commencement of the action."

Section 2138. Section 70-19-407, MCA, is amended to read:

"70-19-407. Occupancy under claim founded on instrument or judgment — when considered adverse. When it appears that the occupant or those under whom ~~he~~ *the occupant* claims entered into the possession of the

property under claim of title, exclusive of other right, founding ~~such~~ *the* claim upon a written instrument as being a conveyance of the property in question or upon the decree or judgment of a competent court and that there has been a continued occupation and possession of the property included in ~~such~~ *the* instrument, decree, or judgment or of some part of the property under ~~such~~ *the* claim for 5 years, the property ~~so~~ included is ~~deemed~~ *considered* to have been held adversely, except that when ~~it~~ *the property* consists of a tract divided into lots, the possession of one lot is not ~~deemed~~ *considered* a possession of any other lot of the same tract."

Section 2139. Section 70-19-412, MCA, is amended to read:

"70-19-412. Relation of landlord and tenant as affecting adverse possession. When the relation of landlord and tenant has existed between any persons, the possession of the tenant is ~~deemed~~ *considered* the possession of the landlord until the expiration of 5 years from the termination of the tenancy or, ~~where~~ *when* there has been no written lease, until the expiration of 5 years from the time of the last payment of rent, notwithstanding ~~such~~ *that the* tenant may have acquired another title or may have claimed to hold adversely to ~~his~~ *the* landlord. ~~But such~~ *However, the enumerated* presumptions ~~cannot~~ *may not* be made after the periods prescribed in this section."

Section 2140. Section 70-20-101, MCA, is amended to read:

"70-20-101. Transfer to be in writing — statute of frauds. ~~No~~ *An* estate or interest in real property, other than an estate at will or for a term not exceeding 1 year, ~~can~~ *may not* be created, granted, assigned, surrendered, or declared otherwise than by operation of law or a conveyance or other instrument in writing, subscribed by the party creating, granting, assigning, surrendering, or declaring it or by ~~his~~ *the party's* lawful agent ~~thereunto~~ authorized by writing."

Section 2141. Section 70-20-102, MCA, is amended to read:

"70-20-102. Exceptions to statute of frauds. Section 70-20-101 ~~must~~ *may* not be construed to:

(1) affect the power of a testator in the disposition of ~~his~~ *the testator's* real property by a last will and testament;

(2) prevent any trust from arising or being extinguished by implication or operation of law; or

(3) abridge the power of any court to compel the specific performance of an agreement, in case of ~~part~~ *partial* performance ~~thereof~~ *of the agreement*."

Section 2142. Section 70-20-105, MCA, is amended to read:

"70-20-105. Joint tenancy — how created. (1) A joint tenancy as to any interest in real property may be established by the owner ~~thereof~~ *of the interest* by designating in the instrument of conveyance or transfer the names of ~~such~~ *the* joint tenants, including ~~his~~ *the person's* own, without the necessity of any transfer or conveyance to or through a third person.

(2) All joint tenancies created in this manner prior to July 1, 1963, are sufficient in law to create a joint tenancy."

Section 2143. Section 70-20-108, MCA, is amended to read:

"70-20-108. Attorney-in-fact — how ~~must~~ *to* execute for principal. When an attorney-in-fact executes an instrument transferring an estate in real property, ~~he must~~ *the attorney-in-fact shall* subscribe the name of ~~his~~ *the* principal to it and ~~his~~ *the attorney-in-fact's* own name as attorney-in-fact."

Section 2144. Section 70-20-109, MCA, is amended to read:

"70-20-109. Change of owner's name after acquisition — later conveyance to include former name. ~~Any~~ *A* person in whom the title of real estate is vested, who ~~shall~~ afterwards from any cause ~~have his or her~~ *has the person's* name changed, shall, in any conveyances of ~~said~~ *the* real estate ~~so held~~, set forth the name in which ~~he or she~~ *the person* derived title to ~~said~~ *the* real estate, and a failure to comply with the provisions of this section ~~shall subject any such~~ *subjects the* person to a penalty of $50, to be collected by the county attorney of the county in which the real estate is situated and ~~by him~~ paid *by the person* into the treasury of ~~said~~ *the* county for the benefit of the common schools ~~thereof~~ *of the county*."

Section 2145. Section 70-20-113, MCA, is amended to read:

"70-20-113. Definitions — notice of presence of smoke detectors upon sale of dwelling. (1) In this section, the following definitions apply:

(a) "Dwelling" means a building or portion of a building, including a mobile home or housetrailer, that contains not more than two dwelling units.

(b) "Dwelling unit" means a building or portion of a building that contains living facilities with provision for sleeping, eating, cooking, and sanitation for not more than one family.

(c) "Smoke detector" means a device that detects visible or invisible particles or combustion.

(2) Upon the sale or transfer of ownership of a dwelling not otherwise required to have a smoke detector, the seller shall provide a written notice to the buyer in a buy-sell agreement or at the time of the sale to the buyer that the dwelling is equipped or is not equipped with smoke detectors or other fire detection devices.

(3) Neither the seller nor ~~his~~ *the seller's* agent is liable in a civil action for failure to comply with~~,~~ or negligence in complying with~~,~~ the requirements of this section. Evidence of failure to comply with~~,~~ or negligence in complying with~~,~~ this section is not admissible in a civil action."

Section 2146. Section 70-20-302, MCA, is amended to read:

"70-20-302. After-acquired title to pass by operation of law. ~~Where~~ *When* a person purports by proper instrument to grant real property in fee simple and subsequently acquires any title or claim of title ~~thereto~~ *to the real property*, the ~~same~~ *real property* passes by operation of law to the grantee or ~~his~~ *the grantee's* successors."

Section 2147. Section 70-20-303, MCA, is amended to read:

"70-20-303. Grant conclusive — exception for good faith purchaser. ~~Every~~ *A* grant of an estate in real property is conclusive against the grantor~~, also~~ *and* against every one subsequently claiming under ~~him~~ *the grantor*~~,~~ except a purchaser or encumbrancer who in good faith and for a valuable consideration acquires a title or lien by an instrument that is first duly recorded."

Section 2148. Section 70-20-304, MCA, is amended to read:

"70-20-304. Implied covenants — free from encumbrance. (1) ~~From the~~ *The* use of the word "grant" in any conveyance by which an estate of inheritance or fee simple or possessory title is to be passed~~,~~ *implies only* the following covenants and none other on the part of the grantor for ~~himself~~ *the grantor* and ~~his~~ *the grantor's* heirs to the grantee~~, his~~ *and the grantee's* heirs~~,~~

and assigns ~~are implied~~ unless restrained by express terms contained in ~~such~~ *the* conveyance:

(a) that ~~previous~~ *prior* to the time of the execution of ~~such~~ *the* conveyance the grantor has not conveyed the same estate or any right, title, or interest ~~therein~~ *in that estate* to any person other than the grantee; *and*

(b) that ~~such~~ *the* estate is at the time of the execution of ~~such~~ *the* conveyance free from encumbrances done, made, or suffered by the grantor or any person claiming under ~~him~~ *the grantor*.

(2) ~~Such~~ *The enumerated* covenants may be sued upon in the same manner as if they had been expressly inserted in the conveyance."

Section 2149. Section 70-20-311, MCA, is amended to read:

"70-20-311. Grant on condition subsequent. When a grant is made upon condition subsequent and is subsequently defeated by the nonperformance of the condition, the person otherwise entitled to hold under the grant ~~must~~ *shall* reconvey the property to the grantor or ~~his~~ *the grantor's* successors by grant duly acknowledged for *the* record."

Section 2150. Section 70-20-313, MCA, is amended to read:

"70-20-313. Grant by owner for life or years. A grant made by an owner of an estate for life or years, purporting to transfer a greater estate than ~~he~~ *the owner* could lawfully transfer, does not work a forfeiture of ~~his~~ *the owner's* estate but passes to the grantee all the estate ~~which~~ *that* the grantor could lawfully transfer."

Section 2151. Section 70-20-314, MCA, is amended to read:

"70-20-314. Grant of property occupied by tenant. When real property is occupied by a tenant, a grant of any estate ~~therein~~ *in the property* by ~~his~~ *the tenant's* landlord is valid without an ~~attornment of~~ *agreement to continue the tenancy by* the tenant to the grantee~~;~~. ~~but~~ *However,* the payment of rent to ~~such~~ *the* grantor by ~~his~~ *the* tenant before notice of the grant is binding upon the grantee, and the tenant is not liable to the grantee for any breach of the condition of the lease until ~~he~~ *the tenant* has had notice of the grant."

Section 2152. Section 70-20-316, MCA, is amended to read:

"70-20-316. Deeds made prior to 1900 — presumption grantor had no wife. When a deed to real property has been made, executed, and acknowledged prior to the year 1900 by a grantor without recital in the body of the deed or acknowledgment as to whether or not the grantor is married or single and the wife of ~~such~~ *the* grantor, if any, not joining in the conveyance or otherwise releasing or conveying ~~her~~ *the wife's* dower, the presumption ~~shall be~~ *is* that the person conveying ~~such~~ *the* land had no wife living at the date of ~~such~~ conveyance and that ~~such~~ *the* land was conveyed free of all right of dower, inchoate or vested."

Section 2153. Section 70-20-402, MCA, is amended to read:

"70-20-402. Instrument not void as to purchaser with notice — exception. ~~No~~ *An* instrument is *not* to be avoided under 70-20-401 in favor of a subsequent purchaser or encumbrancer having notice ~~thereof~~ at the time ~~his~~ *the* purchase was made or ~~his~~ *the* lien *was* acquired unless the person in whose favor the instrument was made was a privy to the fraud intended."

Section 2154. Section 70-20-403, MCA, is amended to read:

"70-20-403. Grant by person with power to revoke — power executed. (1) ~~Where~~ *When* a power to revoke or modify an instrument affecting

the title to or enjoyment of an estate in real property is reserved to the grantor or given to any other person, a subsequent grant of or charge upon the estate by the person having the power of revocation in favor of a purchaser or encumbrancer for value operates as a revocation of the original instrument, to the extent of the power, in favor of ~~such~~ *the* purchaser or encumbrancer.

(2) ~~Where~~ *When* a person having a power of revocation within the provisions of subsection (1) is not entitled to execute it until after the time at which ~~he~~ *the person* makes ~~such a~~ *the* grant or charge as described in that subsection, the power is ~~deemed~~ *considered* to be executed as soon as ~~he~~ *the person* is entitled to execute it."

Section 2155. Section 70-21-210, MCA, is amended to read:

"70-21-210. Clerk to endorse fee. The county clerk ~~must~~ *shall* in all cases endorse the amount of ~~his~~ *the* fee for recording on the instrument recorded."

Section 2156. Section 70-21-307, MCA, is amended to read:

"70-21-307. Effect of conveyance to grantee as trustee when no trust conditions provided. Any conveyance of real property ~~hereafter~~ placed of record in any office of ~~any~~ *a* county clerk and recorder in which the name of the grantee is followed by the word "trustee", "as trustee", or some similar fiduciary term and in which ~~no~~ terms and conditions of ~~such~~ *the* purported trust or any limitation on the power of the grantee to convey ~~shall be~~ *is not* set forth so that any person dealing with ~~such~~ *the* real property could learn ~~therefrom~~ *from the conveyance* what, if any, limitation exists upon the authority of the grantee with regard to the reconveyance or encumbrance of ~~such~~ *the* property ~~shall~~ *must* be considered as though ~~such~~ *the* property had been conveyed to ~~such~~ *the* grantee without any limitation upon ~~his~~ *the grantee's* authority to reconvey or encumber as fully as though the word "trustee", "as trustee", or any equivalent fiduciary expression had not been used in connection with ~~his~~ *the grantee's* name~~;~~. ~~and the~~ *The* use of the word "trustee" or "as trustee" or any equivalent fiduciary expression purporting a trust contained in ~~such~~ *the* conveyance ~~shall~~ *does not* have ~~no~~ force or effect in charging any purchaser or encumbrancer ~~thereof~~ with notice of any limitation of power on the part of the person ~~so~~ named as trustee to deal with ~~such~~ *the* lands as ~~his~~ *the person's* own."

Section 2157. Section 70-22-104, MCA, is amended to read:

"70-22-104. Filing of corner record required. A surveyor shall complete, sign, stamp with ~~his~~ *the surveyor's* seal, and file with the county clerk and recorder of the county where the corner is situated a written record of corner establishment or restoration to be known as a "corner record" for every public land survey corner and accessory to ~~such~~ *the* corner ~~which~~ *that* is established, reestablished, monumented, remonumented, restored, rehabilitated, perpetuated, or used as control in any survey by ~~such~~ *the* surveyor and within 90 days ~~thereafter~~ *after the establishment* unless the corner and its accessories are substantially as described in an existing corner record filed in accordance with the provisions of this part."

Section 2158. Section 70-22-108, MCA, is amended to read:

"70-22-108. Corner records to be certified. ~~No~~ *A* corner record ~~shall~~ *may not* be filed unless the ~~same~~ *the record* is signed by a registered surveyor and stamped with ~~his~~ *the surveyor's* seal, or in the case of an agency of the United States government or the state of Montana, the certificate may be signed by the survey party chief making the survey and approved, signed, and sealed by the registered surveyor in responsible charge of the agency."

Section 2159. Section 70-22-110, MCA, is amended to read:

"70-22-110. Surveyor to rehabilitate monument. ~~In every case where~~ *If* a corner record of a public land survey corner is required to be filed under the provisions of this part, the surveyor ~~must~~ *shall* reconstruct or rehabilitate the monument of ~~such~~ *the* corner and accessories to ~~such~~ *the* corner so that the ~~same shall be~~ *monument is* left by ~~him~~ *the surveyor* in ~~such~~ *a* physical condition *so* that it remains as permanent a monument as is reasonably possible and so that the ~~same~~ *monument* may be reasonably expected to be located with facility at all times in the future."

Section 2160. Section 70-23-402, MCA, is amended to read:

"70-23-402. Exclusive ownership and possession of unit — joint ownership. (1) Each unit owner ~~shall be~~ *is* entitled to the exclusive ownership and possession of ~~his~~ *the owner's* unit.

(2) A unit may be jointly or commonly owned by more than one person."

Section 2161. Section 70-23-502, MCA, is amended to read:

"70-23-502. Certain work on unit by owner prohibited. A unit owner ~~shall~~ *may not* make ~~no~~ *a* repair or alteration or perform any other work on ~~his~~ *the owner's* unit ~~which~~ *that* would jeopardize the soundness or safety of the property, reduce the value ~~thereof~~ *of the property*, or impair any easement or hereditament unless the consent of all the other unit owners affected is first obtained."

Section 2162. Section 70-23-505, MCA, is amended to read:

"70-23-505. Abandonment or waiver of use not to effect exemption. ~~No~~ *A* unit owner may ~~exempt himself~~ *not be exempted* from liability for ~~his~~ *the owner's* contribution towards the common expenses by waiver of the use or enjoyment of any of the common elements or by abandonment of ~~his~~ *the owner's* unit."

Section 2163. Section 70-23-506, MCA, is amended to read:

"70-23-506. Compliance with bylaws, rules, and covenants required — action. Each unit owner shall comply with the bylaws and with the administrative rules adopted pursuant ~~thereto~~ *to the bylaws* and with the covenants, conditions, and restrictions in the declaration or in the deed to ~~his~~ *the owner's* unit. Failure to comply ~~therewith shall be~~ *with the bylaws, rules, covenants, conditions, and restrictions is* grounds for an action maintainable by the association of unit owners or by an aggrieved unit owner."

Section 2164. Section 70-23-604, MCA, is amended to read:

"70-23-604. Construction ~~or materialman's~~ lien — no effect on nonconsenting owner — exception. ~~No labor~~ *Labor* performed or materials furnished with the consent or at the request of a unit owner~~, his~~ *or the owner's* agent, contractor, or subcontractor ~~shall~~ *may not* be the basis for the filing of a construction ~~or materialman's~~ lien against the unit of any other unit owner not consenting to or requesting the labor to be performed or the materials to be furnished, except that consent ~~shall~~ *must* be considered given by the owner of any unit in the case of emergency repairs ~~thereto~~ performed or furnished with the consent or at the request of the manager."

Section 2165. Section 70-23-605, MCA, is amended to read:

"70-23-605. Lien effective against two or more units — release from. If a lien becomes effective against two or more units, the owner of each unit subject to ~~such a~~ *the* lien ~~shall have~~ *has* the right to have ~~his~~ *the owner's* unit

released from the lien by payment of the amount of the lien attributable to ~~his~~ *the owner's* unit. The amount of the lien attributable to a unit and the payment required to satisfy ~~such~~ a lien, in the absence of agreement, ~~shall~~ *must* be determined by application of the percentage established in the declaration. ~~Such~~ *A* partial payment, satisfaction, or discharge ~~shall~~ *may* not prevent the lienor from proceeding to enforce ~~his~~ *the lienor's* rights against any unit and the undivided interest in the common element ~~appertaining thereto~~ *pertaining to a unit* not ~~so~~ released by *a* payment, satisfaction, or discharge."

Section 2166. Section 70-23-610, MCA, is amended to read:

"70-23-610. Purchaser at foreclosure sale not totally liable for prior common expenses. ~~Where~~ *When* the purchaser of a unit obtains title to the unit as a result of foreclosure of the first mortgage or trust indenture, ~~such~~ *the* purchaser~~,~~ ~~his~~ *and the purchaser's* successors~~,~~ and assigns ~~shall~~ *are* not ~~be~~ liable for any of the common expenses chargeable to ~~such~~ *the* unit ~~which~~ *that* became due prior to the acquisition of title to ~~such~~ *the* unit by ~~such~~ *the* purchaser. ~~Such~~ *The* unpaid share of common expenses ~~shall be~~ *is* a common expense of all the unit owners, including ~~such~~ *the* purchaser~~,~~ ~~his~~ *and the purchaser's* successors~~,~~ and assigns."

Section 2167. Section 70-23-611, MCA, is amended to read:

"70-23-611. Joint liability of grantor and grantee for unpaid common expenses. In a voluntary conveyance of a unit, the grantee is jointly and severally liable with the grantor for all unpaid charges against the ~~latter~~ *grantor* for ~~his~~ *the grantor's* proportionate share of the common expenses up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee ~~therefor~~ *for the common expenses*. However, upon request of a prospective purchaser, the manager shall make and deliver a statement of the unpaid charges against the prospective grantor, and the grantee in that case is not liable for nor is the unit when conveyed subject to a lien filed ~~thereafter~~ for any unpaid charges against the grantor in excess of the amount ~~therein~~ set forth *in the statement*."

Section 2168. Section 70-23-612, MCA, is amended to read:

"70-23-612. Insurance of building — premiums as common expenses. (1) The manager as trustee for the unit owners shall, if required by the declaration, *by* the bylaws, or by a majority of the unit owners, insure the building against loss or damage by fire and ~~such~~ other hazards as ~~shall be~~ required, without prejudice to the right of each unit owner to insure ~~his~~ *the owner's* own unit for ~~his~~ *the owner's* own benefit.

(2) The premiums for ~~such~~ insurance on the building are common expenses."

Section 2169. Section 70-23-613, MCA, is amended to read:

"70-23-613. Disclosure by seller — seller to furnish documents — delay period. (1) Whenever a person, corporation, or other legal entity constitutes a majority of the unit owners, the seller or ~~his~~ *the sellers's* agent, prior to signing any buy-sell agreement, shall give to any person purchasing or expressing a desire to purchase one of the project units notice that:

(a) the seller or other person constitutes a majority of the unit owners;

(b) any bylaws and administrative regulations governing the operation of the development and the association, as adopted by the association, have been adopted by the seller or other person acting as a majority of the unit owners; and

(c) any change in the bylaws or administrative regulations occurring while the seller or other person constitutes a majority of the unit owners may be made

only with the approval of the seller or other person constituting a majority of unit owners.

(2) Upon the request of any person purchasing or expressing a desire to purchase one of the project units, the seller or ~~his~~ *the seller's* agent shall furnish to that buyer or prospective buyer, prior to signing any buy-sell agreement, a copy of the Unit Ownership Act, the bylaws of the association, and any administrative regulations governing the operation of the project or the association.

(3) Any buy-sell agreement ~~shall~~ *must* provide that it is not effective until 72 hours after the prospective purchaser has received the documents required in subsection (2), and during that delay, the prospective purchaser may withdraw ~~his~~ *the* offer without penalty."

Section 2170. Section 70-23-902, MCA, is amended to read:

"70-23-902. Change of agent for service of process. If the association of unit owners wishes to designate a person other than the one named in the declaration to receive service of process in the cases provided in 70-23-901, it shall record an amendment to the declaration. The amendment ~~shall~~ *must* be certified by the presiding officer and the secretary of the association of unit owners and ~~shall~~ *must* state the name of the successor with ~~his~~ *the successor's* residence or place of business as required by 70-23-301(7) and that the person named in the amendment was designated by resolution duly adopted by the association of unit owners."

Section 2171. Section 70-24-204, MCA, is amended to read:

"70-24-204. Effect of unsigned or undelivered rental agreement. (1) If the landlord does not sign and deliver a written rental agreement signed and delivered to ~~him~~ *the landlord* by the tenant, acceptance of rent without reservation by the landlord gives the rental agreement the same effect as if it had been signed and delivered by the landlord.

(2) If the tenant does not sign and deliver a written rental agreement signed and delivered to ~~him~~ *the tenant* by the landlord, acceptance of possession and payment of rent without reservation gives the rental agreement the same effect as if it had been signed and delivered by the tenant.

(3) If a rental agreement given effect by the operation of this section provides for a term longer than 1 year, it is effective for only 1 year."

Section 2172. Section 70-24-301, MCA, is amended to read:

"70-24-301. Duty to disclose name of person responsible. (1) A landlord or a person authorized to enter into a rental agreement on ~~his~~ *the landlord's* behalf shall disclose to the tenant in writing at or before the commencement of the tenancy the name and address of:

(a) the person authorized to manage the premises; and

(b) the owner of the premises or a person authorized to act for the owner for the purpose of service of process and receiving notices and demands.

(2) The information required to be furnished by this section ~~shall~~ *must* be kept current and in writing, and this section extends to and is enforceable against any successor landlord, owner, or manager.

(3) A person who fails to comply with subsection (1) becomes an agent of each person who is a landlord for the purpose of:

(a) service of process and receiving notices and demands; and

(b) performing the obligations of the landlord under this chapter and under the rental agreement and expending or making available for that purpose all rent collected from the premises."

Section 2173. Section 70-24-304, MCA, is amended to read:

"70-24-304. Transfer of premises or termination of management — relief from liability. (1) Unless otherwise agreed, a landlord who conveys, in a good faith sale to a bona fide purchaser, premises that include a dwelling unit subject to a rental agreement is relieved of liability under the rental agreement and this chapter as to events occurring after written notice to the tenant of the conveyance. ~~He~~ *The landlord* remains liable to the tenant for all security recoverable by the tenant pursuant to *Title 70,* chapter 25*,* ~~of this title~~ and all prepaid rent.

(2) Unless otherwise agreed, a manager of premises that include a dwelling unit is relieved of liability under the rental agreement and this chapter as to events occurring after written notice to the tenant of the termination of ~~his~~ *the manager's* management."

Section 2174. Section 70-24-312, MCA, is amended to read:

"70-24-312. Access to premises by landlord. (1) A tenant may not unreasonably withhold consent to the landlord or the landlord's agent to enter into the dwelling unit in order to inspect the premises, make necessary or agreed repairs, decorations, alterations, or improvements, supply necessary or agreed services, or exhibit the dwelling unit to prospective or actual purchasers, mortgagees, tenants, ~~workmen~~ *workers*, or contractors.

(2) A landlord may enter the dwelling unit without consent of the tenant in *the* case of *an* emergency.

(3) A landlord may not abuse the right of access or use it to harass the tenant. Except in *the* case of *an* emergency or unless it is impracticable to do so, the landlord shall give the tenant at least 24 hours' notice of the intent to enter and may enter only at reasonable times.

(4) A landlord has no other right of access except:

(a) pursuant to court order;

(b) as permitted by 70-24-425 and 70-24-426(2); or

(c) when the tenant has abandoned or surrendered the premises.

(5) A tenant may not remove a lock or replace or add a lock not supplied by the landlord to the premises without the written permission of the landlord. If a tenant removes a lock or replaces or adds a lock not supplied by the landlord to the premises, the tenant shall provide the landlord with a key to ensure that the landlord will have the right of access as provided by this chapter."

Section 2175. Section 70-24-322, MCA, is amended to read:

"70-24-322. Tenant to occupy as dwelling unit only — extended absence. (1) Unless otherwise agreed, a tenant shall occupy ~~his~~ *the tenant's* dwelling unit only as a dwelling unit.

(2) The rental agreement may require that the tenant notify the landlord of an anticipated extended absence from the premises in excess of 7 days no later than the first day of the extended absence."

Section 2176. Section 70-24-403, MCA, is amended to read:

"70-24-403. Prohibited provision in rental agreement — unenforceability — damages. (1) A provision prohibited by 70-24-202 *that is* included in a rental agreement is unenforceable.

(2) If a party purposefully uses a rental agreement containing provisions known by ~~him~~ *the party* to be prohibited, the other party may recover, in addition to ~~his~~ *the other party's* actual damages, an amount up to 3 months' periodic rent."

Section 2177. Section 70-24-405, MCA, is amended to read:

"70-24-405. Failure of landlord to deliver possession — tenant's remedies. (1) If the landlord fails to deliver possession of the dwelling unit to the tenant as provided in 70-24-302, rent abates until possession is delivered and the tenant may:

(a) terminate the rental agreement upon at least 5 days' written notice to the landlord, and~~,~~ upon termination, the landlord shall return all prepaid rent and security; or

(b) demand performance of the rental agreement by the landlord and, if the tenant elects, maintain an action for possession of the dwelling unit against the landlord or a person wrongfully in possession and recover the actual damages sustained by ~~him~~ *the tenant*.

(2) If a person's failure to deliver possession is purposeful and not in good faith, an aggrieved party may recover from that person an amount not more than 3 months' periodic rent or treble damages, whichever is greater."

Section 2178. Section 70-24-408, MCA, is amended to read:

"70-24-408. Purposeful or negligent failure to provide essential services — tenant's remedies. (1) If contrary to the rental agreement or 70-24-303 the landlord purposefully or negligently fails to supply heat, running water, hot water, electric, gas, or other essential services, the tenant may give written notice to the landlord specifying the breach and may:

(a) procure reasonable amounts of heat, hot water, running water, electricity, gas, and other essential services during the period of the landlord's noncompliance and deduct their actual and reasonable cost from the rent;

(b) recover damages based upon the diminution in the fair rental value of the dwelling unit; or

(c) procure reasonable substitute housing during the period of the landlord's noncompliance, in which case the tenant is excused from paying rent for the period of the landlord's noncompliance.

(2) If the tenant proceeds under this section, ~~he~~ *the tenant* may not proceed under 70-24-406 or 70-24-407 as to that breach.

(3) Rights of the tenant under this section do not arise until ~~he~~ *the tenant* has given notice to the landlord and the landlord has had a reasonable opportunity to correct the conditions or if the conditions were caused by the act or omission of the tenant, a member of ~~his~~ *the tenant's* family, or *any* other person on the premises with ~~his~~ *the tenant's* consent."

Section 2179. Section 70-24-409, MCA, is amended to read:

"70-24-409. Fire or casualty damage — rights of tenant. (1) If the dwelling unit or premises are damaged or destroyed by fire or casualty to an extent that enjoyment of the dwelling unit is substantially impaired, the tenant may:

(a) immediately vacate the premises and notify the landlord in writing within 14 days ~~thereafter~~ of ~~his~~ *the tenant's* intention to terminate the rental agreement, in which case the rental agreement terminates as of the date of vacating; or

(b) if continued occupancy is lawful, vacate any part of the dwelling unit rendered unusable by the fire or casualty, in which case the tenant's liability for rent is reduced in proportion to the diminution in the fair rental value of the dwelling unit.

(2) This section does not apply when the fire and casualty damage was caused by the purposeful or negligent act of the tenant~~,~~ *or* the tenant's family~~,~~ or guests.

(3) If the rental agreement is terminated, the landlord shall return all security recoverable pursuant to *Title 70,* chapter 25*,* ~~of this title~~ and all prepaid rent. Accounting for rent in the event of termination or apportionment ~~shall~~ *must* be made as of the date of the fire or casualty."

Section 2180. Section 70-24-421, MCA, is amended to read:

"70-24-421. Action for nonpayment of rent — tenant's counterclaim. (1) In an action for possession based upon nonpayment of the rent or in an action for rent when the tenant is in possession, the tenant may counterclaim for any amount ~~he~~ *the tenant* may recover under the rental agreement or this chapter. The court from time to time may order the tenant to pay into court all or part of the rent accrued and thereafter accruing and shall determine the amount due to each party. The party to whom a net amount is owed ~~shall~~ *must* be paid first from the money paid into court and the balance by the other party. The court may at any time release money paid into the court to either party if the parties so agree or if the court finds a party entitled to the sums released. If no rent remains due after application of this section, judgment ~~shall~~ *must* be entered for the tenant in the action for possession.

(2) In an action for rent when the tenant is not in possession, ~~he~~ *the tenant* may counterclaim as provided in subsection (1) ~~of this section~~ but is not required to pay any rent into court."

Section 2181. Section 70-25-101, MCA, is amended to read:

"70-25-101. Definitions. As used in this chapter, the following definitions apply:

(1) "Cleaning expenses" means the actual and necessary cost of cleaning done by an owner or ~~his~~ *the owner's* selected representative for cleaning needs not attributable to normal wear brought about by the tenant's failure to bring the premises to the condition it was at the time of renting.

(2) "Damage" means any and all tangible loss, injury, or deterioration of a leasehold premises caused by the willful or accidental acts of the tenant occupying ~~same~~ *the leasehold premises* or by the tenant's family, licensees, or invitees, as well as any and all tangible loss, injury, or deterioration resulting from the tenant's omissions or failure to perform any duty imposed upon the tenant by law with respect to the leasehold.

(3) "Leasehold premises" means the premises occupied by the tenant together with all common areas, recreational facilities, parking areas, and storage facilities to which the tenant has access, as well as all personal property owned or controlled by the landlord the use of which is permitted to the tenant.

(4) "Security deposit" means value given, in money or its equivalent, to secure the payment of rent by the tenant under a leasehold agreement or to

secure payment for damage to and cleaning of the leasehold premises. If a leasehold agreement or an agreement incident ~~thereto~~ *to a leasehold agreement* requires the tenant or prospective tenant to provide or maintain in effect any deposit to the landlord for part or all of the term of the leasehold agreement, the deposit ~~shall~~ *must* be presumed to be a security deposit. A fee or charge for cleaning and damages, no matter how designated, is presumed to be a security deposit."

Section 2182. Section 70-26-101, MCA, is amended to read:

"70-26-101. Letting of parts of rooms prohibited. ~~One~~ *A person* who hires part of a room for a dwelling is entitled to the whole of the room, notwithstanding any agreement to the contrary, and if a landlord lets a room as a dwelling for more than one family, the person to whom ~~he~~ *the landlord* first lets any part of it is entitled to the possession of the whole room for the term agreed upon, and every tenant in the building under the same landlord is relieved from all obligation to pay rent to ~~him~~ *the landlord* while ~~such~~ *the* double letting of any room continues."

Section 2183. Section 70-26-102, MCA, is amended to read:

"70-26-102. Transferee of rental property to have same rights as transferor. A person to whom any real property is transferred or devised, upon which rent has been reserved, or to whom any ~~such~~ rent is transferred is entitled to the same remedies for recovery of rent, for nonperformance of any of the terms of the lease, or of any waste or cause of forfeiture as ~~his~~ *the person's* grantor or devisor might have had."

Section 2184. Section 70-26-104, MCA, is amended to read:

"70-26-104. Notice of action by third person served on tenant — duty to inform landlord. ~~Every~~ *A* tenant who receives notice of ~~any~~ *a* proceeding to recover the real property occupied by ~~him~~ *the tenant* or the possession ~~thereof must~~ *of the real property shall* immediately inform ~~his~~ *the* landlord of the ~~same~~ *notice* and *shall* also deliver to the landlord the notice, if in writing, and is responsible to the landlord for all damages ~~which he~~ *that the landlord* may sustain by reason of any omission to inform ~~him~~ *the landlord* of the notice or to deliver it to ~~him~~ *the landlord* if in writing."

Section 2185. Section 70-26-105, MCA, is amended to read:

"70-26-105. Assignee of lessee — remedies of lessor against. Whatever remedies the lessor of any real property has against ~~his~~ *the lessor's* immediate lessee for the breach of any agreement in the lease or for recovery of the possession, ~~he~~ *the lessor* has against the assignees of the lessee for any cause of action accruing while they are ~~such~~ assignees, except ~~where~~ *when* the assignment is made by way of security for a loan and is not accompanied by possession of the premises."

Section 2186. Section 70-26-106, MCA, is amended to read:

"70-26-106. Rights of lessee and ~~his~~ assignees against lessor and ~~his~~ assignees. Whatever remedies the lessee of any real property may have against ~~his~~ *the lessee's* immediate lessor for the breach of any agreement in the lease, ~~he~~ *the lessee* may have against the assigns of the lessor and the assigns of the lessee may have against the lessor and ~~his~~ *the lessor's* assigns, except upon covenants against encumbrances or relating to the title or possession of the premises."

Section 2187. Section 70-26-108, MCA, is amended to read:

"70-26-108. Rent dependent on life — recovery. Rent dependent on the life of a person may be recovered after as well as before ~~his~~ *the person's* death."

Section 2188. Section 70-26-203, MCA, is amended to read:

"70-26-203. Failure of lessor to repair — lessee's remedies. (1) If within a reasonable time after notice to the lessor of dilapidations ~~which he~~ *that the lessor* ought to repair, ~~he~~ *the lessor* neglects to do so~~,~~ and if the cost of ~~such~~ *the* repairs does not require an expenditure greater than 1 month's rent of the premises, the lessee may perform ~~such~~ *the* repairs ~~himself~~ and deduct the expenses of ~~such~~ *the* repairs from the rent~~,~~ or the lessee may vacate the premises, in which case ~~he~~ *the lessee* is discharged from further payment of rent or performance of other conditions.

(2) Subsection (1) does not apply to real property leased under an arrangement governed by *Title 70,* chapter 24 ~~of this title~~."

Section 2189. Section 70-26-204, MCA, is amended to read:

"70-26-204. Renewal of lease by lessee's continued possession. If a lessee of real property leased under an arrangement not governed by *Title 70,* chapter 24*,* ~~of this title~~ remains in possession ~~thereof~~ *of the property* after the expiration of the hiring and the lessor accepts ~~a~~ rent from ~~him~~ *the lessee*, the parties are presumed to have renewed the hiring on the same terms and for the same time, not exceeding 1 month when the rent is payable monthly, or in any case 1 year."

Section 2190. Section 70-26-205, MCA, is amended to read:

"70-26-205. Notice required to terminate lease. (1) A hiring of real property for a term not specified by the parties is presumed to be renewed as stated in 70-26-204 at the end of the term implied by law unless one of the parties gives notice to the other of ~~his~~ *the* intention to terminate the hiring at least as long before the expiration ~~thereof~~ *of the hiring* as the term of the hiring itself, not exceeding 1 month.

(2) Subsection (1) does not apply to real property leased under an arrangement governed by *Title 70,* chapter 24 ~~of this title~~."

Section 2191. Section 70-26-206, MCA, is amended to read:

"70-26-206. Rights of tenant for years or at will. (1) A tenant for years or at will, unless ~~he~~ *the tenant* is a wrongdoer by holding over, may occupy the buildings, take the annual products of the soil, and work mines and quarries open at the commencement of ~~his~~ *the* tenancy~~;~~ and ~~a tenant at will or for an indefinite term~~ may cultivate and harvest the crops growing at the end of ~~his~~ *the* tenancy.

(2) A tenant for years or at will has no other rights to the property than those given to ~~him~~ *the tenant* by the agreement or instrument by which ~~his~~ *the* tenancy is acquired or by subsection (1).

(3) Subsection (2) does not apply to arrangements governed by *Title 70,* chapter 24 ~~of this title~~."

Section 2192. Section 70-27-108, MCA, is amended to read:

"70-27-108. Unlawful detainer defined. A tenant of real property or mining claim, for a term less than life, is guilty of unlawful detainer:

(1) when ~~he~~ *the tenant* continues in possession, in person or by subtenant, of the property or any part ~~thereof~~ *of the property* after the expiration of the term for which it is let to ~~him~~ *the tenant* without the permission of the landlord or the successor in estate of ~~his~~ *the* landlord, if any ~~there be~~, but in case of a tenancy at will, it must first be terminated by notice, as prescribed in 70-27-104;

(2) ~~where he~~ *when the tenant* continues in possession, in person or by subtenant, without permission of ~~his~~ *the* landlord or the successor in estate of ~~his~~ *the* landlord, if any ~~there be~~, after default in the payment of rent, pursuant to the lease or agreement under which the property is held, and 3 days' notice in writing requiring its payment, stating the amount ~~which~~ *that* is due, or possession of the property ~~shall have~~ *has* been served upon ~~him~~ *the tenant* and, if there ~~be~~ *is* a subtenant in actual occupation of the premises, also upon ~~such~~ *the* subtenant. ~~Such~~ *The* notice may be served at any time within 1 year after the rent becomes due. In all cases of tenancy upon agricultural lands ~~where~~ *when* the tenant has held over and retained possession for more than 60 days after the expiration of ~~his~~ *the* term without any demand of possession or notice to quit by the landlord or the successor in estate of ~~his~~ *the* landlord, if any ~~there be, he shall be deemed~~ *the tenant is considered* to be holding by permission of the landlord or the successor in estate of ~~his~~ *the* landlord and ~~shall be~~ *is* entitled to hold under the terms of the lease for another full year and ~~shall~~ *may* not be guilty of an unlawful detainer during ~~said~~ *the* year, and ~~such~~ *the* holding over ~~for the period aforesaid shall~~ *must* be taken and construed as a consent on the part of a tenant to hold for another year~~;~~.

(3) when ~~he~~ *the tenant* continues in possession, in person or by subtenant, after a neglect or failure to perform other conditions or covenants of the lease or agreement under which the property is held, including any covenant not to assign or sublet, *other* than ~~the one~~ for the payment of rent, and 3 days' notice in writing~~,~~ requiring the performance of ~~such~~ conditions or covenants or the possession of the property~~, shall have~~ *has* been served upon ~~him~~ *the tenant* and, if there ~~be~~ *is* a subtenant in actual occupation of the premises, also upon ~~such~~ *the* subtenant. Within 3 days after the serving of the notice, the tenant or any subtenant in actual occupation of the premises or any mortgagee of the term or other person interested in its continuance may perform the conditions or covenants of the lease or pay the stipulated rent, as the case may be, and ~~thereby~~ save the lease from forfeiture. If the covenants and conditions of the lease violated by the lessee cannot afterward be performed, then ~~no~~ notice, as ~~last~~ prescribed ~~herein~~ *in this subsection*, need *not* be given to ~~said~~ *the* lessee or ~~his~~ *the* subtenant demanding the performance of the violated covenant or conditions of the lease. A tenant may take proceedings similar to those prescribed in this chapter to obtain possession of the premises let to an undertenant in case of ~~his~~ *the undertenant's* unlawful detention of the premises ~~underlet to him~~. Any tenant or subtenant assigning or subletting or committing waste upon the demised premises contrary to the covenants of ~~his~~ *the* lease thereby terminates the lease, and the landlord or ~~his~~ *the landlord's* successor in estate ~~shall~~, upon service of 3 days' notice to quit upon the person or persons in possession, ~~be~~ *is* entitled to restitution of possession of ~~such~~ *the* demised premises under the provisions of this chapter."

Section 2193. Section 70-27-110, MCA, is amended to read:

"70-27-110. Service of notice — how made. (1) The notices required by 70-27-108 may be served~~,~~ either:

(a) by delivering a copy to the tenant personally;

(b) if ~~he be~~ *the tenant is* absent from ~~his~~ *the tenant's* place of residence and from ~~his~~ *the tenant's* usual place of business, by leaving a copy with some person of suitable age and discretion at either place and sending a copy through the mail addressed to the tenant at ~~his~~ *the tenant's* place of residence; or

(c) if ~~such~~ *the* place of residence and business cannot be ascertained or a person of suitable age or discretion ~~there~~ cannot be found *there*, then by affixing a copy in a conspicuous place on the property and also delivering a copy to a person *residing* there ~~residing~~ if ~~such~~ *a* person can be found and also sending a copy through the mail addressed to the tenant at the place where the property is situated.

(2) Service upon a subtenant may be made in the same manner."

Section 2194. Section 70-27-111, MCA, is amended to read:

"70-27-111. Parties defendant. (1) ~~No~~ *A* person other than the tenant of the premises and subtenant, if there ~~be~~ *is* one, in the actual occupation of the premises when the complaint is filed need be made parties defendant in the proceeding, nor shall any proceeding abate or the plaintiff be nonsuited for the nonjoinder of any person who might have been made *a* party defendant~~;~~. ~~but~~ *However,* when it appears that any of the parties served with process or appearing in the proceeding is guilty of the offense charged, judgment must be rendered against ~~such~~ *that* party.

(2) ~~In case~~ *If* a defendant has become a subtenant of the premises in controversy after the service of the notice provided for by 70-27-108(2) upon the tenant of the premises, the fact that ~~such~~ *the* notice was not served on each subtenant ~~shall~~ *does not* constitute ~~no~~ *a* defense to the action.

(3) ~~In case~~ *If* a married person is a tenant or subtenant, failure to join ~~such~~ *the* person's spouse ~~shall~~ *does not* constitute ~~no~~ *a* defense~~;~~. ~~but in case~~ *However, if* the spouse is not joined, an execution issued upon a personal judgment against the tenant or subtenant ~~can only~~ *may* be enforced *only* against property on the premises at the commencement of the action or against property that is owned solely by the tenant or subtenant and not by ~~his~~ *the tenant's or subtenant's* spouse.

(4) All persons who enter the premises under the tenant after the commencement of the action ~~shall be~~ *are* bound by the judgment the same as if ~~he or~~ they had been made party to the action."

Section 2195. Section 70-27-203, MCA, is amended to read:

"70-27-203. Showings required on trial. On the trial of any proceeding for any forcible entry or forcible detainer, the plaintiff ~~shall~~ *is* only ~~be~~ required to show, in addition to the forcible entry or forcible detainer complained of, that ~~he~~ *the plaintiff* was peaceably in the actual possession at the time of the forcible entry or was entitled to the possession at the time of the forcible detainer. The defendant may show in ~~his~~ defense that ~~he~~ *the defendant* or ~~his~~ *the defendant's* ancestors or those whose interest in ~~such~~ *the* premises ~~he~~ *the defendant* claims have been in the quiet possession ~~thereof~~ *of the premises* for the space of 1 whole year ~~together next~~ before the commencement of the proceedings and that ~~his~~ *the defendant's* interest ~~therein~~ *in the premises* is not then ended or determined, and ~~such~~ *the* showing is a bar to the proceedings."

Section 2196. Section 70-27-205, MCA, is amended to read:

"70-27-205. Verdict, judgment, and execution. (1) If upon the trial the verdict of the jury or, if the case ~~be~~ *is* tried without a jury, the finding of the court ~~be~~ *is* in favor of the plaintiff and against the defendant, judgment ~~shall~~ *must* be entered for the restitution of the premises~~;~~. ~~and if~~ *If* the proceeding ~~be~~ *is* for an unlawful detainer after neglect or failure to perform the conditions or covenants of the lease or agreement under which the property is held or after default in the

payment of rent, the judgment ~~shall~~ *must* also declare the forfeiture of ~~such~~ *the* lease or agreement.

(2) The jury, or the court if the proceeding ~~be~~ *is* tried without a jury, shall also assess the damages occasioned to the plaintiff by any forcible entry or by any forcible or unlawful detainer alleged in the complaint and proved on the trial and find the amount of any rent due if the alleged unlawful detainer ~~be~~ *is* after default in the payment of rent~~;~~. ~~and the~~ *The* judgment ~~shall~~ *must* be rendered against the defendant, guilty of the forcible entry or forcible or unlawful detainer, for three times the amount of the damages ~~thus~~ assessed and of the rent found due.

(3) When the proceeding is for an unlawful detainer after default in the payment of the rent and the lease or agreement under which the rent is payable has not by its terms expired, execution upon the judgment ~~shall~~ *may* not be issued until the expiration of 5 days after the entry of the judgment, within which time the tenant or any subtenant or any mortgagee of the term or other party interested in its continuance may pay into court for the landlord the amount found due as rent with interest ~~thereon~~ and the amount of damages found by the jury or the court for the unlawful detainer and the costs of the proceeding, and ~~thereupon~~ *upon the payment,* the judgment ~~shall be~~ *is* satisfied and the tenant *must* be restored to ~~his~~ *the tenant's* estate~~;~~. ~~but~~ *However,* if *the* payment~~, as here provided, be~~ *is* not made within ~~the~~ 5 days, the judgment may be enforced for its full amount and for the possession of the premises. In all other cases the judgment may be enforced immediately."

Section 2197. Section 70-27-207, MCA, is amended to read:

"70-27-207. Holdover or collusion after notice — treble rent. If any tenant or any person in collusion with the tenant holds over any lands or tenements after demand made and 1 month's notice *given* in writing ~~given,~~ requiring the possession ~~thereof~~ *of the land or tenement*, ~~such~~ *the* person holding over ~~must~~ *shall* pay to the landlord treble rent during the time ~~he~~ *the person* continues in possession after ~~such~~ *the* notice."

Section 2198. Section 70-27-208, MCA, is amended to read:

"70-27-208. Holdover after tenant's notice to quit — treble rent. If any tenant gives notice of ~~his~~ *the* intention to quit the premises and does not deliver up the possession at the time specified in the notice, ~~he must~~ *the tenant shall* pay to the landlord treble rent during the time ~~he~~ *the tenant* continues in possession after ~~such~~ *the* notice."

Section 2199. Section 70-27-210, MCA, is amended to read:

"70-27-210. Relief against forfeiture of lease in case of hardship. (1) The court may relieve a tenant against a forfeiture of a lease and restore ~~him~~ *the tenant* to ~~his~~ *the tenant's* former estate in *the* case of hardship ~~where~~ *when* application for ~~such~~ relief is made within 30 days after the forfeiture is declared by the judgment of the court, as provided in 70-27-205.

(2) The application may be made by a tenant or subtenant or mortgagee of the term or any person interested in the continuance of the term. It must be made upon petition, setting forth the facts upon which relief is sought, and *must* be verified by the applicant.

(3) Notice of the application with a copy of the petition must be served on the plaintiff in the judgment, who may appear and contest the application.

(4) ~~In no case shall the~~ *The* application *may not* be granted except on condition that full payment of rent due or full performance of conditions or covenants stipulated, ~~so~~ *as* far as ~~the same~~ is practicable, ~~be~~ *is* made."

Section 2200. Section 70-28-104, MCA, is amended to read:

"70-28-104. Parties defendant — unknown claimants. (1) In any action brought under 70-28-101 and 70-28-103, the plaintiff may join as defendants any or all persons, known or unknown, claiming or who might claim any right, title, estate, or interest in or lien or encumbrance upon the real property described in the complaint adverse to plaintiff's ownership or any cloud upon plaintiff's title, whether ~~such~~ *the* claim or possible claim be present or contingent, including the person or persons in possession if the plaintiff is not in possession.

(2) If the plaintiff ~~shall desire~~ *desires* to obtain a complete adjudication of the title to the real estate described in the complaint, ~~he~~ *the plaintiff* may name as defendants all known persons who assert or who might assert any claim as ~~in this section above~~ specified *in subsection (1)* and may join as defendants all persons unknown who might make any ~~such~~ claim by adding in the caption of the complaint in ~~such~~ *the* action the words "and all other persons, unknown, claiming or who might claim any right, title, estate, or interest in or lien or encumbrance upon the real property described in the complaint adverse to plaintiff's ownership or any cloud upon plaintiff's title ~~thereto~~, whether ~~such~~ *the* claim or possible claim ~~be~~ *is* present or contingent"."

Section 2201. Section 70-28-106, MCA, is amended to read:

"70-28-106. Notice of action to be filed with clerk and recorder. Before any order for the publication of summons is granted as provided in Rule 4, M.R.Civ.P., the plaintiff shall file, in the office of the clerk and recorder of each county in which any of the property involved in ~~such~~ *the* action is situated, a notice of the pendency of ~~such~~ *the* action, signed by the plaintiff or ~~his~~ *the plaintiff's* attorney~~,~~. ~~which~~ *The* notice ~~shall~~ *must* contain:

(1) the title of the court in which ~~such~~ *the* action is filed;

(2) the full caption of the cause;

(3) a complete description of all the property involved in ~~such~~ *the* action; and

(4) a statement of the relief sought by *the* plaintiff."

Section 2202. Section 70-28-108, MCA, is amended to read:

"70-28-108. Prerequisites to decree against defendant not present. Before *the* plaintiff ~~shall be~~ *is* entitled to a decree in ~~such~~ *an* action against any defendant who ~~shall~~ *does* not appear ~~therein~~ *in the action*, ~~he must~~ *the plaintiff shall* produce evidence sufficient to prima facie entitle ~~him~~ *the plaintiff* to relief~~,~~. ~~and~~ *The* relief ~~shall~~ *may* be granted only to the extent to which ~~such~~ *the* evidence ~~shall~~ prima facie ~~prove him~~ *proves the plaintiff* to be entitled to the ~~same;~~ *relief*. ~~but~~ *However,* this provision ~~shall~~ *may* not affect the procedure in or manner of trial of ~~such~~ *the* actions as between the plaintiff and any defendant who ~~shall appear~~ *appears* in ~~such~~ *the* action."

Section 2203. Section 70-28-110, MCA, is amended to read:

"70-28-110. When value of improvements may be allowed as setoff. When damages are claimed for withholding the property recovered upon which permanent improvements have been made by a defendant or those under whom ~~he~~ *the defendant* claims, holding under color of title adversely to the claim of

plaintiff, in good faith, the value of ~~such~~ *the* improvements must be allowed as setoff against ~~such~~ *the* damage."

Section 2204. Section 70-28-111, MCA, is amended to read:

"70-28-111. Termination of plaintiff's right during action — damages for withholding. In an action for the recovery of real property ~~where~~ *when* the plaintiff shows a right to recover at the time the action was commenced but it appears that ~~his~~ *the plaintiff's* right has terminated during the pendency of the action, the verdict and judgment must be according to the fact and the plaintiff may recover damages for withholding the property."

Section 2205. Section 70-28-112, MCA, is amended to read:

"70-28-112. Costs. If the defendant in ~~such~~ *a quiet title* action ~~disclaim~~ *disclaims* in ~~his~~ *the* answer any interest or estate in the property or ~~suffer~~ *allows* judgment to be taken against ~~him~~ *the defendant* without answer, the plaintiff ~~shall~~ *may* not recover costs. ~~But~~ *However,* in actions ~~which~~ *that* the plaintiff has brought under ~~section 2326 of the Revised Statutes of the United States~~ *30 U.S.C. 30* to determine an adverse claim, the plaintiff shall recover costs if the defendant does not relinquish in the proper United States land office or disclaim in writing any interest or estate in the property within 20 days from the filing of ~~said~~ *the* adverse claim in ~~such~~ *the* land office."

Section 2206. Section 70-28-113, MCA, is amended to read:

"70-28-113. Order for survey or measurement. (1) The court in which an action is pending for the recovery of real property or mining claims or for damages for an injury or to quiet title or to determine adverse claims ~~thereto~~ *to real property or mining claims* or a judge ~~thereof~~ *in the action* may on motion, upon notice by either party, for good cause shown, grant an order allowing to ~~such~~ *the* party the right to enter into or upon the property or mining claim and make survey or measurement ~~thereof~~ *of the property or claim* or of any tunnels, shafts, or drifts ~~therein~~ *in the property or claim* for the purpose of the action even though entry for ~~such~~ *that* purpose has to be made through other lands or mining claims belonging to parties to the action.

(2) The order must describe the property, and a copy ~~thereof~~ *of the order* must be served on the owner or occupant, ~~and thereupon such~~. *Upon service, the* party may enter the property, with necessary surveyors and assistants~~,~~ and make ~~such~~ *the* survey and measurement~~;~~. ~~but~~ *However,* if unnecessary damage ~~be~~ *is* done to the property, ~~he~~ *the party* is liable ~~therefor~~ *for the damage*."

Section 2207. Section 70-28-201, MCA, is amended to read:

"70-28-201. Action authorized. Whenever the government of the United States has granted lands in the state of Montana to the heirs of a deceased entryman, any person who claims an estate of inheritance or interest in ~~such~~ *the* lands may bring and maintain an action in rem against all the world in the district court for the county in which ~~such~~ *the* real property is situated to establish ~~his~~ *the person's* title to ~~such~~ *the* property and to determine all adverse claims ~~thereto~~ *to the title*. Any number of separate parcels of land claimed by the plaintiff may be included in the same action."

Section 2208. Section 70-28-206, MCA, is amended to read:

"70-28-206. Affidavit to accompany complaint. (1) At the time of filing the complaint, the plaintiff shall file with the ~~same his~~ *complaint the plaintiff's* affidavit fully and explicitly setting forth and showing:

(a) the character of ~~his~~ *the plaintiff's* estate, right, title, interest, or claim in the property;

(b) whether or not ~~he~~ *the plaintiff* has ever made any conveyance of ~~his~~ *the plaintiff's* interest in ~~said~~ *the* property or any part ~~thereof~~ *of the property* and, if so, when and to whom~~;~~ *the conveyance was made and* also a statement of ~~any and~~ all existing mortgages, deeds of trust, judgments, or other liens ~~thereon~~ *on the property*;

(c) when and where the deceased entryman of ~~said~~ *the* property died;

(d) what kin or relationship the claimant bore to the entryman at the time of ~~his~~ *the entryman's* death; and

(e) the names and residences of any other persons who are next of kin or entitled to succeed to any portion of the lands, the subject of ~~said~~ *the* action, and the names of and residences of all persons who have liens upon the property or any part ~~thereof~~ *of the property* adversely to the plaintiff if ~~he~~ *the plaintiff* knows or has been informed or has been able to discover any ~~such~~ *adverse* person.

(2) If the plaintiff is unable to state any one or more of the matters ~~herein~~ required *in subsection (1)*, ~~he~~ *the plaintiff* shall set forth and show fully and explicitly the reasons for ~~such~~ *the* inability.

(3) ~~Such~~ *The* affidavit ~~shall constitute~~ *constitutes* a part of the judicial record.

(4) If the plaintiff ~~be~~ *is* a person under guardianship, the affidavit ~~shall~~ *must* be made by ~~his~~ *the* guardian."

Section 2209. Section 70-28-209, MCA, is amended to read:

"70-28-209. Personal service of summons — service by mail. (1) If the affidavit discloses the name of any person next of kin or relationship to the deceased entryman or entitled to succeed to any part of ~~said~~ *the* property or the name of a person who claims or may claim an interest by mortgage, trust deed, judgment, or other lien, the summons ~~shall~~ *must* also be personally served upon ~~such~~ *that* person, if ~~he~~ *the person* can be found within the state, together with a copy of the complaint and a copy of ~~said~~ *the* affidavit, during the period of the publication of the summons, and *there must be attached* to the copy of the summons delivered to ~~any such~~ *the* person ~~there shall be appended~~ a copy of the memorandum provided in 70-28-208.

(2) If ~~such~~ *the* person resides out of the state, a copy of the summons, memorandum, complaint, and affidavit ~~shall~~ *must* be, within 10 days after the first publication of the summons, deposited in the United States post office, enclosed in a sealed envelope, postage prepaid, addressed to ~~such~~ *the* person at the address given in the affidavit or, if ~~no~~ *an* address ~~be~~ *is not* given ~~therein~~ *in the affidavit*, then at the county seat of the county in which the action was brought. If ~~such~~ *the* person resides within the state and could not with due diligence be found within the state within the period of the publication of the summons, then ~~said~~ *the* notice ~~aforesaid shall~~ *described in this subsection must* be mailed to ~~him~~ *the person*, as ~~above~~ provided *in this subsection*, ~~forthwith~~ upon the expiration of ~~said~~ *the* period of ~~said~~ publication."

Section 2210. Section 70-28-212, MCA, is amended to read:

"70-28-212. Time for appearance by defendant — answer. At any time within the first 60 days from the first publication of the summons or within ~~such~~ *a* further time, not exceeding 30 days, ~~as~~ *that* the court may for good cause grant, any person having or claiming any estate, right, title, or interest in or to or lien upon ~~said~~ *the* property or any part ~~thereof~~ *of the property* may appear and ~~make himself~~ *become* a party to the action by pleading to the complaint. All answers

must be verified and set forth specifically the kin or relationship of the deceased entryman and the estate, right, title, interest, or lien ~~so~~ claimed."

Section 2211. Section 70-28-213, MCA, is amended to read:

"70-28-213. Recording of notice by plaintiff and defendant. (1) The plaintiff ~~must~~ *shall*, at the time of filing the complaint, and every defendant to claim or claiming any affirmative relief ~~must~~ *shall*, at the time of filing ~~his~~ *an* answer, record in the office of the county clerk and recorder of the county in which the property is situated a notice of the pendency of the action containing the object of the action or the defense and a particular description of the property affected ~~thereby~~ *by the action*.

(2) The clerk and recorder shall record the ~~same~~ *filing* in a book of the miscellaneous records of ~~his~~ *the clerk's* office and *shall* make a reference as to the date and time of the filing of ~~such~~ *the* notice and, when recorded, to the book and page record ~~thereof~~."

Section 2212. Section 70-28-215, MCA, is amended to read:

"70-28-215. Judgment — nature and effect — recording. (1) The judgment ~~shall~~ *must* ascertain and determine the heirship of ~~said~~ *the* deceased entryman and all estates, rights, titles, interests, and claims in and to ~~said~~ *the* property and every part ~~thereof~~ *of the property*, whether the ~~same be~~ *estates, rights, titles, interests, and claims are* legal or equitable, present or future, vested or contingent, or whether the ~~same~~ *estates, rights, titles, interests, and claims* ~~consists~~ *consist* of mortgages or liens of any description~~,~~. ~~and shall~~ *The judgment must* be binding and conclusive upon every person who, at the time of the commencement of the action, had or claimed to have any estate, right, title, or interest in or to ~~said~~ *the* property or any part ~~thereof~~ *of the property* and upon every person claiming under ~~him~~ *the person* by title subsequent to the commencement of the action.

(2) A certified copy of the judgment in ~~such~~ *the* action ~~shall~~ *must* be recorded in the office of the clerk and recorder of the county in which ~~said~~ *the* action was commenced, and any party or the successor in interest of any party to ~~said~~ *the* action may ~~at his option~~ file for record in the office of the clerk and recorder of ~~such~~ *the* county the entire judicial record in ~~said~~ *the* action."

Section 2213. Section 70-28-303, MCA, is amended to read:

"70-28-303. Notice requirements. Upon petition by a claimant for a deed to a lot on entry townsite land, the claimant shall provide published notice of ~~his~~ *the* claim, notice filed with the county clerk and recorder, and personal service as may be required for quiet title actions under Title 70, chapter 28, part 1."

Section 2214. Section 70-29-102, MCA, is amended to read:

"70-29-102. Action by minor. (1) An action for the partition of real property ~~shall~~ *may* not be brought by a minor, except by the written authority of the district judge of the county in which the property or a part ~~thereof~~ *of the property* is situated. The authority ~~shall~~ *may* not be given unless the district judge is satisfied, by affidavit or other competent evidence, that the interests of the minor will be promoted by bringing the action.

(2) A judgment for a partition ~~shall~~ *may* not be rendered in ~~such~~ an action unless the court is satisfied that the interests of the minor will be promoted ~~thereby~~ and that fact is expressly recited in the judgment.

(3) A guardian ad litem for a minor party, in an action for partition, ~~can~~ *may* be appointed only by the court or judge and ~~must~~ *shall* give an undertaking in a sum fixed by the judge for the faithful discharge of ~~his~~ *the guardian ad litem's*

trust~~,~~. ~~which~~ *The* undertaking must be approved by the judge and filed with the clerk."

Section 2215. Section 70-29-105, MCA, is amended to read:

"70-29-105. Who may be joined as defendants. (1) The plaintiff may~~, at his election,~~ make a tenant in dower, for life or for years, of the entire property or a creditor or other person having a lien or interest ~~which~~ *that* attaches to the entire property a defendant in the action. In that case the final judgment may either award to ~~such~~ a party ~~his or her~~ *the party's* entire right and interest or the proceeds ~~thereof~~ *of the right or interest* or may reserve and leave unaffected ~~his or her~~ *the party's* right or interest or any portion ~~thereof~~ *of the right or interest*.

(2) A person specified in this section who is not made a party is not affected by the judgment in the action."

Section 2216. Section 70-29-108, MCA, is amended to read:

"70-29-108. Lienholders of record to be notified. (1) The plaintiff ~~must~~ *shall* cause a notice to be served a reasonable time ~~previous~~ *prior* to the day for appearance before the referee appointed, as provided in 70-29-107, on each person having outstanding liens of record who is not a party to the action to appear before the referee at a specified time and place to make proof by ~~his~~ *the person's* own affidavit or otherwise of the amount due or to become due, contingently or absolutely, ~~thereon~~ *on the lien*.

(2) ~~In case such~~ *If the* person ~~be~~ *is* absent or ~~his~~ *the person's* residence ~~be~~ *is* unknown, service may be made by publication or notice to ~~his~~ *the person's* agents, under the direction of the court, in ~~such~~ *a proper* manner ~~as may be proper~~.

(3) The report of the referee ~~thereon~~ must be made to the court and must be confirmed, modified, or set aside and a new reference ordered, as the justice of the case may require."

Section 2217. Section 70-29-201, MCA, is amended to read:

"70-29-201. Trial of title or interest of parties. The right of the several parties, plaintiff as well as defendant, may be put in issue, tried, and determined in ~~such~~ *the partition* action. The title or interest of the plaintiff in the property, as stated in the complaint, may be controverted by the answer. The title or interest of any defendant in the property, as stated in the complaint, may also be controverted by ~~his~~ *the defendant's* answer or the answer of any other defendant, and the title or interest of any defendant, as stated in ~~his~~ *that defendant's* answer, may be controverted by the answer of any other defendant and the issues joined as prescribed in Title 25, which may be tried before a jury if the court ~~so direct~~ *directs*."

Section 2218. Section 70-29-208, MCA, is amended to read:

"70-29-208. Allotment of land to grantee of tenant in common. Whenever it ~~shall appear~~ *appears* in an action for the partition of lands that one or more of the tenants in common, being the owner of an undivided interest in the tract of land sought to be partitioned, has sold to another person a specific tract by metes and bounds out of the common land and executed to the purchaser a deed of conveyance~~,~~ purporting to convey the whole title to ~~such~~ *the* specific tract to the purchaser in fee and in severalty, the land described in ~~such~~ *the* deed ~~shall~~ *must* be allotted and set apart in partition to ~~such~~ *the* purchaser~~,~~ ~~his~~ *or the purchaser's* heirs~~,~~ or assigns or in ~~such other~~ *another* manner ~~as shall make such~~ *that makes the* deed effectual as a conveyance of the whole title to ~~such~~ *the* segregated parcel if ~~such~~ *the* tract or tracts of land can be ~~so~~ allotted or

set apart without material injury to the rights and interests of the other cotenants who may not have joined in ~~such~~ *the* conveyance."

Section 2219. Section 70-29-209, MCA, is amended to read:

"70-29-209. Compensation of one party by another in certain cases of partition. (1) When it appears that a partition cannot be made equal between the parties according to their respective rights without prejudice to the rights and interests of some of them and a partition ~~be~~ *is* ordered, the court may adjudge compensation to be made by one party to another on account of the inequality~~,~~. ~~but such~~ *However, the* compensation ~~shall~~ *may* not be required to be made to others by owners unknown or by a minor unless it appears that ~~such~~ *the* minor has personal property sufficient for that purpose and that ~~his~~ *the minor's* interest will be promoted ~~thereby~~.

(2) In all cases, the court ~~has power to~~ *may* make compensatory adjustment between the respective parties according to the ordinary principles of equity."

Section 2220. Section 70-29-212, MCA, is amended to read:

"70-29-212. Judgment upon confirmation of report — effect. (1) The court may confirm, change, modify, or set aside the report and if necessary appoint new referees.

(2) Upon the report being confirmed, judgment must be rendered that ~~such~~ *the* partition ~~be~~ *is* effectual forever~~,~~. ~~which~~ *The* judgment is binding and conclusive on all:

(a) persons named as parties to the action and their legal representatives, who have at the time any interest in the property divided or any part ~~thereof~~ *of the property*, as owners in fee or as tenants for life or for years or as entitled to the reversion, remainder, or the inheritance of ~~such~~ *the* property or any part ~~thereof~~ *of the property* after the determination of a particular estate ~~therein~~ *in the property*, and who by any contingency may be entitled to a beneficial interest in the property or who have an interest in any undivided share ~~thereof~~ *of the property*~~,~~ as tenants for years or for life;

(b) persons interested in the property, who may be unknown, to whom notice has been given of the action for partition by publication; *and*

(c) other persons claiming from ~~such~~ *the* parties or persons or either of them.

(3) ~~No~~ *A* judgment is *not* invalidated by reason of the death of any party before final judgment or decree, but ~~such~~ *the* judgment or decree is as conclusive against the heirs, legal representatives, or assigns of ~~such~~ *the* decedent as if it had been entered before ~~his~~ *the decedent's* death."

Section 2221. Section 70-29-216, MCA, is amended to read:

"70-29-216. Abstract of title — when cost of allowed — filing and inspection. (1) If it appears to the court that it was necessary to have made an abstract of the title to the property to be partitioned and ~~such~~ *the* abstract ~~shall have~~ *has* been procured by the plaintiff or if the plaintiff ~~shall have~~ *has* failed to have the ~~same~~ *abstract* made before the commencement of the action and any one of the defendants ~~shall have~~ *has* had ~~such~~ *the* abstract ~~afterward~~ made, the cost of the abstract, with interest ~~thereon~~ *on the cost* from the time the ~~same~~ *abstract* is subject to the inspection of the respective parties to the action, must be allowed and taxed.

(2) Whenever ~~such~~ *the* abstract is procured by the plaintiff, before the commencement of the action ~~he must~~ *the plaintiff shall* file with ~~his~~ *the* complaint a notice that an abstract of the title has been made and is subject to

the inspection and use of all the parties to the action, designating ~~therein~~ *in the notice* where the abstract will be kept for inspection. ~~But~~ *However,* if the plaintiff ~~shall have~~ *has* failed to procure ~~such~~ *the* abstract before commencing the action and any defendant ~~shall procure~~ *procures* the ~~same~~ *abstract* to be made, ~~he~~ *the defendant* shall, as soon as ~~he~~ *the defendant* has directed ~~it~~ *the abstract* to be made, file a notice ~~thereof~~ *of the procurement* in the action with the clerk of the court, stating who is making the ~~same~~ *abstract* and where it will be kept when finished.

(3) The court or judge ~~thereof~~ may direct, from time to time during the progress of the action, who ~~shall~~ *must* have the custody of the abstract."

Section 2222. Section 70-29-217, MCA, is amended to read:

"70-29-217. Abstract — how made and verified. The abstract mentioned in 70-29-216 may be made by any competent searcher of records and need not be certified by the county clerk and recorder or other officer, but instead ~~thereof~~ *of certification* it must be verified by the affidavit of the person making it to the effect that ~~he~~ *the person* believes it to be correct~~;~~. ~~but~~ *However,* the ~~same~~ *abstract* may be corrected from time to time, if found incorrect, under the direction of the court."

Section 2223. Section 70-29-219, MCA, is amended to read:

"70-29-219. Expenses of referees and surveyor. The expenses of the referees, including those of a surveyor and ~~his~~ *the surveyor's* assistants, when employed, must be ascertained and allowed by the court, and the amount ~~thereof~~ *of those expenses*, together with the fees allowed by the court in its discretion to the referees, must be apportioned among the different parties to the action equitably."

Section 2224. Section 70-29-221, MCA, is amended to read:

"70-29-221. Expenses of previous litigation. If it ~~appear~~ *appears* that other actions or proceedings have been necessarily prosecuted or defended by any one of the tenants in common for the protection, confirmation, or perfecting of the title or setting the boundaries or making a survey or surveys of the estate partitioned, the court shall allow to the parties to the action who have paid the expense of ~~such~~ *the* litigation or other proceedings all the expenses necessarily incurred ~~therein~~ *in the litigation or proceedings*, except counsel fees, ~~which shall~~ *that* have accrued to the common benefit of the other tenants in common, with interest ~~thereon~~ *on the expenses* from the date of making the expenditures, and the ~~same~~ *expenses* must be pleaded and allowed by the court and included in the final judgment and ~~shall be~~ *are* a lien upon the share of each tenant, respectively, in proportion to ~~his~~ *the tenant's* interest and ~~shall~~ *must* be enforced in the same manner ~~as~~ *that* taxable costs of partition are taxed and collected."

Section 2225. Section 70-29-304, MCA, is amended to read:

"70-29-304. Party or encumbrancer as purchaser. When a party entitled to a share of the property or an encumbrancer entitled to have ~~his~~ *a* lien paid out of the sale becomes a purchaser, the referees may take ~~his~~ *the purchaser's* receipt for ~~so~~ *as* much of the proceeds of the sale as belongs to ~~him~~ *the purchaser*."

Section 2226. Section 70-29-306, MCA, is amended to read:

"70-29-306. Security for sales on credit. The referees may take separate mortgages and other securities for the whole or convenient portions of the purchase money of ~~such~~ parts of the property ~~as~~ *that* are directed by the court to be sold on credit for the:

(1) shares of any known owner of full age, in the name of ~~such~~ *the* owner;

(2) shares of a minor, in the name of the guardian of ~~such~~ *the* minor; and

(3) other shares, in the name of the clerk of the court of the county and ~~his~~ *the clerk's* successors in office."

Section 2227. Section 70-29-307, MCA, is amended to read:

"70-29-307. Security taken and investment made in name of clerk. When the security of the proceeds of sale is taken or when an investment of any ~~such~~ proceeds is made, it must be done, except as ~~herein~~ otherwise provided *in this part*, in the name of the clerk of the court where the papers are filed and ~~his~~ *the clerk's* successors in office, who must hold the ~~same~~ *proceeds* for the use and benefit of the persons interested~~,~~ subject to the order of the court."

Section 2228. Section 70-29-326, MCA, is amended to read:

"70-29-326. Tenant for life or years — compensation upon sale. (1) The person entitled to a tenancy for life or years or who has a right or inchoate right of dower~~,~~ *and* whose estate has been sold~~,~~ is entitled to receive ~~such~~ *a* sum ~~as~~ *that* may be ~~deemed~~ *considered* a reasonable satisfaction for ~~such~~ *the* estate and ~~which~~ *that* the person ~~so~~ entitled may consent to accept instead ~~thereof~~ *of the right* by an instrument in writing filed with the clerk of the court. Upon the filing of ~~such~~ *the* consent, the clerk ~~must~~ *shall* enter the ~~same~~ *consent* in the minutes of the court.

(2) If ~~such~~ *the* consent ~~be~~ *is* not given, filed, and entered, as provided in subsection (1), at or before a judgment of sale is rendered, the court ~~must~~ *shall* ascertain and determine what proportion of the proceeds of the sale, after deducting expenses, will be a just and reasonable sum to be allowed on account of ~~such~~ *the* estate and ~~must~~ *shall* order the ~~same~~ *sum* to be paid to ~~such~~ *the* party or deposited in court for ~~him or her~~ *the party*, as the case may require.

(3) If the persons entitled to ~~such~~ *the* estate for life or years ~~be~~ *are* unknown, the court ~~must~~ *shall* provide for the protection of their rights in the same manner~~, as far as may be,~~ as if they were known and had appeared."

Section 2229. Section 70-29-327, MCA, is amended to read:

"70-29-327. Minor's share of proceeds — payment to guardian. When the share of a minor is sold, the proceeds of the sale may be paid by the referee making the sale to ~~his~~ *the minor's* general guardian or the special guardian appointed for ~~him~~ *the minor* in the action upon giving the security required by law or directed by order of the court."

Section 2230. Section 70-29-330, MCA, is amended to read:

"70-29-330. Duty of clerk as to security and investments. The clerk of court in whose name a security is taken or by whom an investment is made and ~~his~~ *the clerk's* successors in office ~~must~~:

(1) *must* receive the interest and principal as it becomes due and *shall* apply and invest the ~~same~~ *interest and principal* as the court may direct;

(2) *shall* deposit with the county treasurer all securities taken; and

(3) *shall* keep an account of investments and ~~moneys~~ *money* received ~~by~~ ~~him thereon~~ and the disposition ~~thereof~~ *of the investments and money* in a book provided and kept for that purpose in the clerk's office~~,~~ *that is* free for inspection by all persons."

Section 2231. Section 70-31-302, MCA, is amended to read:

"70-31-302. Reimbursement of closing costs and taxes incurred by owner. ~~Any~~ *An* agency acquiring real property for a program or project ~~(~~for which federal financial assistance will be available to pay all or any part of the cost of the program or project~~)~~ shall, as soon as practicable after the date of payment of the purchase price or the date of deposit into court of funds to satisfy the award of compensation in a condemnation proceeding to acquire real property, whichever is the earlier, reimburse the owner to the extent the acquiring agency ~~deems~~ *considers* fair and reasonable for:

(1) expenses ~~he~~ *the owner* necessarily incurred for recording fees, transfer taxes, and similar expenses incidental to conveying ~~such~~ *the* real property to the acquiring agency;

(2) penalty costs for prepayment for any preexisting recorded mortgage or deed of trust entered into in good faith encumbering ~~such~~ *the* real property; and

(3) the pro rata portion of real property taxes paid ~~which~~ *that* are allocable to a period subsequent to the date of vesting title in the acquiring agency or the effective date of possession of ~~such~~ *the* real property by the acquiring agency, whichever is ~~the~~ earlier."

Section 2232. Section 70-31-303, MCA, is amended to read:

"70-31-303. Inverse condemnation — reimbursement of expenses of proceeding. ~~Where~~ *When* an inverse condemnation proceeding is instituted by the owner of any right, title, or interest in real property because of the alleged taking of ~~his~~ *the owner's* property for any program or project ~~(~~for which federal financial assistance will be available to pay all or any part of the cost of the program or project~~)~~, the court rendering a judgment for the plaintiff in ~~such~~ *the* proceeding and awarding compensation for the taking of property or *the* attorney for the acquiring agency effecting a settlement of any ~~such~~ proceeding shall determine and award or allow to ~~such~~ *the* plaintiff as a part of ~~such~~ *the* judgment or settlement ~~such~~ *a* sum ~~as~~ *that* will, in the opinion of the court or ~~such~~ *the* attorney, reimburse ~~such~~ *the* plaintiff for ~~his~~ *the plaintiff's* reasonable costs, disbursements, and expenses including reasonable attorney, appraisal, and engineering fees actually incurred because of ~~such~~ *the* proceeding."

Section 2233. Section 70-31-304, MCA, is amended to read:

"70-31-304. Reimbursement of costs when condemnation proceedings dismissed or abandoned. ~~Where~~ *When* a condemnation proceeding is instituted by an agency to acquire real property for a program or project ~~(~~for which federal financial assistance is available~~)~~ and the final judgment is that the real property cannot be acquired by condemnation or that the proceeding is abandoned, the owner of any right, title, or interest in ~~such~~ *the* real property ~~shall~~ *must* be paid ~~such~~ *a* sum ~~as~~ *that* will, in the opinion of the court, reimburse ~~such~~ *the* owner for ~~his~~ *the owner's* reasonable attorney, appraisal, and engineering fees actually incurred because of the condemnation proceedings. The award of ~~such sums will~~ *the sum must* be paid by the agency ~~which~~ *that* sought to condemn the property."

Section 2234. Section 70-31-305, MCA, is amended to read:

"70-31-305. Acquisition of buildings and improvements affected. (1) ~~Where~~ *When* any interest in real property is acquired for a program or project ~~(~~for which federal assistance will be available to pay all or any part of the cost of the program or project~~)~~, the acquiring agency shall acquire an equal interest in all buildings, structures, or other improvements *that are* located upon the real property ~~so~~ acquired and ~~which~~ *that* are required to be removed from ~~such~~ *the*

real property or ~~which~~ *that* the acquiring agency determines will be adversely affected by the use to which ~~such~~ *the* real property will be put.

(2) For the purpose of determining the just compensation to be paid for any building, structure, or other improvement required to be acquired by subsection (1) ~~of this section~~, ~~such~~ *the* building, structure, or other improvement ~~shall be deemed~~ *is considered* to be a part of the real property to be acquired notwithstanding the right or obligation of a tenant, as against the owner of any other interest in the real property, to remove ~~such~~ *the* building, structure, or improvement at the expiration of ~~his~~ *the tenant's* term~~;~~. ~~and the~~ *The* fair market value ~~which such~~ *that the* building, structure, or improvement contributes to the fair market value of the real property to be acquired or the fair market value of ~~such~~ *the* building, structure, or improvement for removal from the real property, whichever is the greater, ~~shall~~ *must* be paid to the tenant ~~therefor~~.

(3) Payment for ~~such~~ buildings, structures, or improvements as set forth in subsection (2) ~~shall~~ *may* not result in duplication of any payments otherwise authorized by state law. ~~No such~~ *A* payment ~~shall~~ *may not* be made unless the owner of the land involved disclaims all interest in the improvements of the tenant. In consideration for any ~~such~~ payment, the tenant shall assign, transfer, and release all ~~his~~ *of the tenant's* right, title, and interest in and to ~~such~~ *the* improvements. ~~Nothing in this subsection or subsection~~ *Subsection* (2) ~~shall~~ *or this subsection may not* be construed to deprive the tenant of any rights to reject payment and to obtain payment for ~~such~~ *the* property interests in accordance with other laws of the state."

Section 2235. Section 70-32-103, MCA, is amended to read:

"70-32-103. From whose property homestead may be selected. If the claimant ~~be~~ *is* married, the homestead may be selected from the property of either spouse. When the claimant is not married, the homestead may be selected from any of ~~his or her~~ *the claimant's* property."

Section 2236. Section 70-32-209, MCA, is amended to read:

"70-32-209. Order dividing land — execution against remainder over exemption. If from the report it appears to the judge that the land claimed can be divided without material injury, ~~he must~~ *the judge shall* by an order direct the appraisers to set off to the claimant ~~so~~ *as* much of the land, including the residence, ~~as~~ *that* will amount in value to the homestead exemption, and the execution may be enforced against the remainder of the land."

Section 2237. Section 70-32-210, MCA, is amended to read:

"70-32-210. Sale when land cannot be divided. If from the report it appears to the judge that the land claimed exceeds in value the amount of the homestead exemption and that it cannot be divided, ~~he must~~ *the judge shall* make an order directing its sale under execution."

Section 2238. Section 71-1-113, MCA, is amended to read:

"71-1-113. Limit on the amount of funds on reserve. Except as provided in 71-1-114, if a lending institution requires a borrower under a mortgage or trust indenture of real property to include in ~~his~~ *the borrower's* regular payment additional payment into a reserve fund held by the lending institution for the future payment of property taxes, insurance premiums, and other expenses, the amount of funds on reserve may not exceed 110% of the projected amount needed to pay ~~such~~ *those* expenses."

Section 2239. Section 71-1-204, MCA, is amended to read:

"71-1-204. Form of mortgage. A mortgage of real property may be made in substantially the following form:

"This mortgage, made the .... day of ...., in the year ...., by A.B., of ...., mortgagor, to C.D., of ...., mortgagee, ~~witnesseth~~:

That the mortgagor mortgages to the mortgagee (here describe the property), as security for the payment to ~~him~~ *the mortgagor* of .... dollars, on (or before) the .... day of ...., in the year ...., with interest ~~thereon~~ *on that amount* (or as security for the payment of an obligation, describing it, etc.).

.....

A.B.""

Section 2240. Section 71-1-207, MCA, is amended to read:

"71-1-207. Recording of mortgages and assignments. (1) Mortgages of real property may be acknowledged or proved, certified, and recorded in ~~like~~ *the same* manner and with ~~like~~ *the same* effect as grants ~~thereof~~ *of real property*.

(2) An assignment of a real estate mortgage may be recorded in ~~like~~ *the same* manner as a real estate mortgage, and the record ~~thereof shall operate~~ *operates* as ~~due and~~ legal notice to the mortgagor and all persons subsequently deriving title to the mortgage from the assignor as well as to all other persons, including subsequent purchasers, encumbrancers, mortgagees, or other lienholders. ~~Any such~~ *An* assignment ~~shall~~ *must* contain the assignee's post-office address at ~~his~~ *the assignee's* place of residence and ~~shall~~ *may* not be ~~entitled to be~~ recorded or filed unless it contains ~~such~~ *the* post-office address."

Section 2241. Section 71-1-209, MCA, is amended to read:

"71-1-209. Recording defeasance necessary to affect grant. When a grant of real property purports to be an absolute conveyance but is intended to be defeasible on the performance of certain conditions, ~~such~~ *the* grant is not defeated or affected as against any person other than the grantee or ~~his~~ *the grantee's* heirs or devisees or persons having actual notice unless an instrument of defeasance, duly executed and acknowledged, ~~shall have~~ *has* been recorded in the office of the county clerk of the county where the property is situated."

Section 2242. Section 71-1-210, MCA, is amended to read:

"71-1-210. Period of mortgage — renewal. ~~Every~~ *A* mortgage of real property made, acknowledged, and recorded as provided by the laws of this state ~~shall be~~ *is* good ~~as~~ against all from the time it is ~~so~~ recorded until 8 years after the maturity of the entire debt or obligation secured ~~thereby~~ and no longer~~,~~ unless the mortgagee~~,~~ ~~his~~ *or the mortgagee's* heirs, executors, administrators, representatives, or assigns ~~shall~~, within 60 days after the expiration of ~~said~~ *the* 8 years, file in the office of the county clerk where ~~said~~ *the* mortgage is recorded an affidavit setting forth the date of ~~said~~ *the* mortgage, when and where recorded, the amount of the debt secured ~~thereby~~, and the amount remaining unpaid and that the mortgage is not renewed for the purpose of hindering, delaying, or defrauding creditors of the mortgagor or owner of the land~~,~~. ~~and upon~~ *Upon* the filing of ~~said~~ *the* affidavit, the mortgage ~~shall be~~ *is* valid against all persons for ~~a further period of~~ *an additional* 8 years."

Section 2243. Section 71-1-211, MCA, is amended to read:

"71-1-211. Satisfaction of mortgage — record thereof. (1) A mortgage ~~shall~~ *must* be discharged upon the record ~~thereof~~ by the county clerk in whose custody it ~~shall be~~ *is recorded* whenever there ~~shall be~~ *is* presented to ~~him~~ *the clerk* a certificate executed by the mortgagee, ~~his~~ *the mortgagee's* personal

representative or assignee, acknowledged or proved and certified as *prescribed* in this ~~code prescribed to entitle~~ *chapter that entitles* a conveyance to be recorded, specifying that ~~such~~ *the* mortgage has been paid or otherwise satisfied or discharged.

(2) Every ~~such~~ certificate and the proof and acknowledgment ~~thereof shall~~ *must* be recorded at full length, and a reference ~~shall~~ *must* be made to the book and page containing ~~such~~ *the* record in the mortgagor and mortgagee indexes as to the discharge of ~~such~~ *the* mortgage."

Section 2244. Section 71-1-213, MCA, is amended to read:

"71-1-213. Discharge or release by other than mortgagee. (1) If ~~the~~ *a* discharge or release is made by the personal representative of the mortgagee, it must be accompanied by a certified copy of ~~his~~ *the personal representative's* authority unless ~~such~~ *the* authority is already ~~of record~~ *recorded* in the office of the county clerk and recorder where the mortgage is recorded.

(2) If the discharge or release is made by an assignee, it must be accompanied by the assignment of the mortgage unless the assignment is already ~~of record~~ *recorded* in the office of the county clerk and recorder where the mortgage is recorded.

(3) If the discharge or release is executed by an ~~attorney in fact~~ *attorney-in-fact*, the discharge or release must have attached to it the power of attorney under which it is made unless the power of attorney is already ~~of record~~ *recorded* in the office of the county clerk and recorder where the mortgage is recorded.

(4) If the discharge or release is executed by the heir or heirs of the mortgagee, the discharge or release must be accompanied by a certified copy of an order or decree of a court of competent jurisdiction showing ~~such~~ *the* authority unless the order or decree is already ~~of record~~ *recorded* in the office of the county clerk and recorder where the mortgage is recorded.

(5) Foreign administrators and executors may discharge or release mortgages of record in Montana if the discharge or release of mortgages is accompanied by an authenticated copy of their letters of administration or letters testamentary, with the certificate of the clerk of the court in which the appointment was made that the ~~same~~ *the letters* have not been revoked and are in full force~~,~~. ~~which~~ *The* certificate and certified copy of letters ~~shall~~ *must* be recorded with the discharge or release of the mortgage. When presented and recorded, the discharge or release has the same effect as if the mortgage was discharged or released by the mortgagee."

Section 2245. Section 71-1-229, MCA, is amended to read:

"71-1-229. Possession of ~~lands~~ *land* prior to foreclosure upon default and during period of redemption. The purchaser of ~~lands~~ *land* at mortgage foreclosure is not entitled to the possession ~~thereof~~ *of the land* as against the execution debtor during the period of redemption allowed by law while the execution debtor personally occupies the land as a home for ~~himself~~ *the execution debtor* and ~~his~~ *the debtor's* family. It is unlawful to insert in any mortgage of real estate any provision intended to constitute a waiver by the owner of real estate personally occupying land as a home for ~~himself~~ *the owner* and *the owner's* family of the provision of this section or any provision intended to give the mortgagee possession of the land or premises prior to foreclosure upon default of tax, principal, or interest payments. The intention ~~hereof~~ *of this section* is to ~~insure~~ *ensure* to ~~such~~ *the* owner the possession of ~~his~~ *the* land prior to foreclosure and during the year of redemption."

Section 2246. Section 71-1-230, MCA, is amended to read:

"71-1-230. Action to redeem mortgage. An action to redeem a mortgage of real property, with or without an account of rents and profits, may be brought by the mortgagor or those claiming under ~~him~~ *the mortgagor* against the mortgagee in possession or those claiming under ~~him~~ *the mortgagee*~~,~~ unless ~~he~~ *the mortgagee in possession* or ~~they~~ *those claiming under the mortgagee* have continuously maintained an adverse possession of the mortgaged premises for 10 years after breach of some condition of the mortgage."

Section 2247. Section 71-1-231, MCA, is amended to read:

"71-1-231. Redemption by multiple mortgagors. If there is more than one ~~such~~ mortgagor or more than one person claiming under a mortgagor, some of whom are not entitled to maintain ~~such~~ an action under the provisions of 71-1-230 or Title 27, chapter 2, any one of them who is entitled to maintain ~~such~~ an action may redeem ~~therein~~ *in the action* a divided or undivided part of the mortgaged premises~~,~~ ~~according~~ as ~~his~~ *the person's* interest ~~may appear~~ *appears*, and have an accounting for a part of the rents and profits proportionate to ~~his~~ *the person's* interest in the mortgaged premises~~,~~ on payment of a part of the mortgage money bearing the same proportion to the whole of ~~such~~ *the* money as the value of ~~his~~ *person's* divided or undivided interest in the premises bears to the whole of ~~such~~ *the* premises."

Section 2248. Section 71-1-232, MCA, is amended to read:

"71-1-232. Deficiency judgment not allowed on foreclosure of purchase price mortgage. Upon the foreclosure of any mortgage, executed to any vendor of real property or to ~~his~~ *the vendor's* heirs, executors, administrators, or assigns for the balance of the purchase price of ~~such~~ *the* real property, the mortgagee ~~shall~~ *is* not ~~be~~ entitled to a deficiency judgment on account of ~~such~~ *the* mortgage or note or obligation secured by the ~~same~~ *the mortgage*."

Section 2249. Section 71-1-234, MCA, is amended to read:

"71-1-234. ~~Attorney's~~ *Attorney* fee — petition and notice. If the mortgagee ~~shall demand~~ *demands* ~~attorneys'~~ *attorney* fees in case of the sale of real estate under and by virtue of the power of sale contained in any mortgage or deed of trust in this state, except in case of the sale of real estate by virtue of a power of sale conferred upon a trustee under a trust indenture as defined in the Small Tract Financing Act of Montana, ~~he~~ *the mortgagee* shall petition the district court of the county in which ~~said~~ *the* real estate or any part ~~thereof may be~~ *of the real estate is* situated to fix the amount of ~~such~~ *the* ~~attorney's fee,~~ *attorney fees.* ~~and a~~ *A* copy of ~~such~~ *the* petition ~~shall~~ *must* be served upon all parties having or claiming an interest of record in the property to be sold or ~~such of them as~~ *those parties that* may be found within the state, ~~which copy of said petition must be served~~ at least 10 days before the day fixed for hearing~~,~~. ~~and notice~~ *Notice* of the time and place of ~~such~~ *the* hearing ~~shall~~ *must* be served at the same time as the copy of ~~said~~ *the* petition is served. ~~Such~~ *A* petition ~~shall~~ *must* be acted upon by the district court before the notice of sale by publication or posting, as ~~hereinbefore~~ provided for *in this part*, ~~shall be~~ *is* given."

Section 2250. Section 71-1-312, MCA, is amended to read:

"71-1-312. Discontinuance of foreclosure proceedings when entire amount of default paid. (1) Whenever all or a portion of any obligation secured by a trust indenture has, prior to the maturity date fixed in ~~such~~ *the* obligation, become due or been declared due by reason of a breach or default in the performance of any obligation secured by the trust indenture, including a

default in the payment of interest or of any installment of principal or by reason of failure of the grantor to pay, in accordance with the terms of ~~such~~ *the* trust indenture, taxes, assessments, premiums for insurance, or advances made by the beneficiary in accordance with the terms of ~~such~~ *the* obligation or of ~~such~~ *the* trust indenture, the grantor or ~~his~~ *the grantor's* successor in interest in the trust property or any part ~~thereof~~ *of the trust property* or any other person having a subordinate lien or encumbrance of record ~~thereon~~ *on the trust property* or any beneficiary under a subordinate trust indenture, at any time prior to the time fixed by the trustee for the trustee's sale if the power of sale is to be exercised, may pay to the beneficiary or ~~his~~ *the beneficiary's* successor in interest the entire amount then due under the terms of ~~such~~ *the* trust indenture and the obligation secured ~~thereby (~~*by the indenture,* including costs and expenses actually incurred and reasonable trustee's *fees* and ~~attorney's~~ *attorney* fees~~)~~, other than ~~such~~ *the* portion of the principal ~~as~~ *that* would not then be due ~~had no~~ *if a* default *had not* occurred and ~~thereby~~ cure the *existing* default ~~theretofore existing~~.

(2) ~~Thereupon~~ *Upon the payment described in subsection (1),* all *prior* proceedings ~~theretofore~~ had or instituted to foreclose the trust indenture ~~shall~~ *must* be canceled and the obligation and the trust indenture ~~shall~~ *must* be reinstated and ~~shall be and remain~~ *remains* in force and effect the same as if ~~no such~~ *an* acceleration had *not* occurred.

(3) If the default is cured and the obligation and the trust indenture reinstated in the manner ~~hereinabove~~ provided, the beneficiary or ~~his~~ *the beneficiary's* assignee shall, on demand of any person having an interest in the trust property, execute, acknowledge, and deliver to ~~him~~ *the person* a request that the trustee execute, acknowledge, and deliver a cancellation of the recorded notice of sale under ~~such~~ *the* trust indenture.

(4) Any beneficiary under a trust indenture or ~~his~~ *the beneficiary's* assignee who, for a period of 30 days after ~~such~~ *the* demand, refuses to request the trustee to execute, acknowledge, and deliver ~~such~~ *a* cancellation ~~shall be~~ *is* liable to the person entitled to ~~such~~ *the* request for all damages resulting from ~~such~~ *the* refusal.

(5) A cancellation of a recorded notice of sale ~~shall~~, when executed and acknowledged, ~~be~~ *is* entitled to be recorded and ~~shall be~~ *is* sufficient if it sets forth a reference to the trust indenture and the book and page where the ~~same~~ *indenture* is recorded, a reference to the notice of sale and to the book and page where the ~~same~~ *indenture* is recorded, and a statement that ~~such~~ *the* notice of sale is canceled."

Section 2251. Section 71-1-315, MCA, is amended to read:

"71-1-315. Notice — sale — payment. A trust deed may be foreclosed by advertisement and sale in the *following* manner ~~hereinafter provided~~:

(1) The trustee shall give notice of the sale in the following manner:

(a) At least 120 days before the date fixed for the trustee's sale, a copy of the recorded notice of sale ~~shall~~ *must* be mailed by ~~registered or~~ certified mail to:

(i) the grantor, at the grantor's address as set forth in the trust indenture or ~~(in the event no~~ *if the grantor's* address ~~of the grantor~~ is *not* set forth in the trust indenture~~)~~ at the grantor's ~~last known~~ *last-known* address;

(ii) each person designated in the trust indenture to receive notice of sale whose address is set forth ~~therein~~ *in the trust indenture*, at ~~such~~ *that* address;

(iii) each person who has filed for record a request for a copy of notice of sale within the time and in the manner ~~hereinafter~~ provided *in this section*, at the address of ~~such~~ *the* person as set forth in ~~such~~ *the* request;

(iv) any successor in interest to the grantor whose interest and address appear of record at the filing date and time of the notice of sale, at ~~such~~ *that* address;

(v) any person ~~having~~ *who has* a lien or interest subsequent to the interest of the trustee and whose lien or interest and address appear of record at the filing date and time of the notice of sale, at ~~such~~ *that* address.

(b) At least 20 days before the date fixed for the trustee's sale, a copy of the recorded notice of sale ~~shall~~ *must* be posted in some conspicuous place on the property to be sold. Upon request of the trustee, the notice of sale ~~shall~~ *must* be posted by a sheriff or constable of the county ~~wherein~~ *in which* the property to be sold is located.

(c) A copy of the notice of sale ~~shall~~ *must* be published in a newspaper of general circulation published in any county in which the property or some part ~~thereof~~ *of the property* is situated, at least once each week for 3 successive weeks. If there is no ~~such~~ newspaper *of general circulation published in the county*, then copies of the notice of sale ~~shall~~ *must* be posted in at least three public places in each county in which the property or some part ~~thereof~~ *of the property* is situated. The posting or the last publication ~~shall~~ *must* be made at least 20 days before the date fixed for the trustee's sale.

(2) On or before the date of sale, there ~~shall~~ *must* be recorded in the office of the clerk and recorder of each county where the property or some part ~~thereof~~ *of the property* is situated, affidavits of mailing, posting, and publication showing compliance with the requirements of this section.

(3) On the date and at the time and place designated in the notice of sale, the trustee or ~~his~~ *the trustee's* attorney shall sell the property at public auction to the highest bidder. The property may be sold in one parcel or in separate parcels, and any person, including the beneficiary under the trust indenture but excluding the trustee, may bid at the sale. The person making the sale may, for any cause ~~he deems~~ *the person considers* expedient, postpone the sale for a period not exceeding 15 days by public proclamation at the time and place fixed in the notice of sale. No other notice of the postponed sale need be given. ~~In the event~~ *If* a sale cannot be held at the scheduled time by reason of the automatic stay provision of the United States Bankruptcy Code, 11 U.S.C. 362, or of a stay order issued by any court of competent jurisdiction, the person making the sale may, as often as ~~he~~ *the person* considers expedient, postpone the sale. Each postponement may not exceed 30 days, and all postponements, in the aggregate, may not exceed 120 days. Each postponement must be effected by a public proclamation at the time and place fixed in the notice of sale or fixed by previous postponement. No other notice of the postponed sale need be given.

(4) The purchaser at the sale shall pay the price bid in cash, and upon receipt of payment, the trustee shall execute and deliver a trustee's deed to the purchaser. ~~In the event~~ *If* the purchaser refuses to pay the purchase price, the person conducting the sale ~~shall have~~ *has* the right to resell the property at any time to the highest bidder. The party refusing to pay ~~shall be~~ *is* liable for any loss occasioned ~~thereby~~ *by the refusal*, and the person making the sale may also~~, in his discretion, thereafter~~ reject any other bid of ~~such~~ *the refusing* person."

Section 2252. Section 71-1-317, MCA, is amended to read:

"71-1-317. Deficiency judgment not allowed. When a trust indenture executed in conformity with this part is foreclosed by advertisement and sale, ~~no~~ other or further action, suit, or proceedings ~~shall~~ *may not* be taken or judgment entered for any deficiency against the grantor or ~~his~~ *the grantor's* surety,

guarantor, or successor in interest, if any, on the note, bond, or other obligation secured by the trust indenture or against any other person obligated on ~~such~~ *the* note, bond, or other obligation."

Section 2253. Section 71-1-318, MCA, is amended to read:

"71-1-318. Trustee's deed. (1) The trustee's deed to the purchaser at the trustee's sale may contain, in addition to a description of the property conveyed, recitals of compliance with the requirements of this part relating to the exercise of the power of sale and the sale, including recitals of the facts concerning the default, the notice given, the conduct of the sale, and the receipt of the purchase money from the purchaser.

(2) When the trustee's deed is recorded in the deed records of the county or counties where the property described in the deed is situated, the recitals contained in the deed and in the affidavits required under 71-1-315(2) ~~shall be~~ *are* prima facie evidence in any court of the truth of the matters set forth ~~therein~~ *in the recitals*, except that the ~~same shall be~~ *the recitals are* conclusive evidence in favor of subsequent bona fide purchasers and encumbrancers for value and without notice.

(3) The trustee's deed ~~shall operate~~ *operates* to convey to the purchaser, without right of redemption, the trustee's title and all right, title, interest, and claim of the grantor and ~~his~~ *the grantor's* successors in interest and of all persons claiming by, through, or under them in and to the property sold, including all ~~such~~ right, title, interest, and claim in and to ~~such~~ *the* property acquired by the grantor or ~~his~~ *the grantor's* successors in interest subsequent to the execution of the trust indenture."

Section 2254. Section 71-2-101, MCA, is amended to read:

"71-2-101. Definitions. (1) "Pledge" is a deposit of personal property by way of security for the performance of another's act.

(2) A pledgor and pledgee may agree upon a third person with whom to deposit the property pledged, who, if ~~he~~ *the third person* accepts the deposit, is called a "pledge holder"."

Section 2255. Section 71-2-106, MCA, is amended to read:

"71-2-106. Obligations of pledge holder. (1) A pledge holder for reward ~~cannot exonerate himself~~ *may not be self-exonerated* from ~~his~~ *the pledge holder's* undertaking~~;~~. ~~and a~~ *A* gratuitous pledge holder ~~can do so~~ *may be self-exonerated* only by giving reasonable notice to the pledgor and pledgee to appoint a new pledge holder and, ~~in case of their failure~~ *if they* to agree, by depositing the property pledged with some impartial person, who will then be entitled to a reasonable compensation for ~~his~~ *that person's* care of the ~~same~~ *property*.

(2) A pledge holder ~~must~~ *shall* enforce all the rights of the pledgee unless authorized by ~~him~~ *the pledgee* to waive ~~them~~ *those rights*."

Section 2256. Section 71-2-107, MCA, is amended to read:

"71-2-107. Property pledged to extent of lien. ~~One~~ *A person* who has a lien upon property may pledge it to the extent of ~~his~~ *the person's* lien."

Section 2257. Section 71-2-108, MCA, is amended to read:

"71-2-108. When pledge may not be withdrawn. ~~One~~ *A person* who pledges property as security for the obligation of another cannot withdraw the property pledged ~~otherwise than as~~ *except in the manner that* a *personal* pledgor ~~for himself~~ might, and if ~~he~~ *the person* receives from the debtor a consideration

for the pledge, ~~he~~ *the person* ~~cannot~~ *may not* withdraw it without ~~his~~ *the debtor's* consent."

Section 2258. Section 71-2-109, MCA, is amended to read:

"71-2-109. When real owner cannot defeat pledge. ~~One~~ *A person* who has allowed another to assume the apparent ownership of property for the purpose of making any transfer of it ~~cannot~~ *may not* set up ~~his~~ *the person's* own title to defeat a pledge of the property made by the other to a pledgee who received the property in good faith in the ordinary course of business and for value."

Section 2259. Section 71-2-110, MCA, is amended to read:

"71-2-110. Debtor's misrepresentation of value of pledge. ~~Where~~ *When* a debtor has obtained credit or an extension of time by a fraudulent misrepresentation of the value of property pledged by or for ~~him~~ *the debtor*, the creditor may demand a further pledge to correspond with the value represented and in default ~~thereof~~ *of a further pledge* may recover ~~his~~ *the* debt immediately, though it ~~be~~ *is* not actually due."

Section 2260. Section 71-3-101, MCA, is amended to read:

"71-3-101. Definitions. *For purposes of this part, the following definitions apply:*

(1) A "general lien" is one which the holder ~~thereof~~ *of the lien* is entitled to enforce as a security for the performance of all the obligations or all of a particular class of obligations ~~which~~ *that* exist in ~~his~~ *the holder's* favor against the owner of the property.

(2) A "lien" is a charge imposed in some mode other than by a transfer in trust upon specific property by which it is made security for the performance of an act. Liens are either general or special.

(3) A "special lien" is one ~~which~~ *that* the holder ~~thereof~~ *of the lien* can enforce only as security for the performance of a particular act or obligation and of ~~such~~ *the* obligations ~~as~~ *that* may be incidental ~~thereto~~ *to the particular act or obligation*."

Section 2261. Section 71-3-107, MCA, is amended to read:

"71-3-107. Prior liens. ~~Where~~ *When* the holder of a special lien is compelled to satisfy a prior lien for ~~his~~ *the holder's* own protection, ~~he~~ *the holder* may enforce payment of the amount ~~so~~ paid ~~by him~~ as a part of the claim for which ~~his~~ *the holder's* own lien exists."

Section 2262. Section 71-3-112, MCA, is amended to read:

"71-3-112. Holder of lien not entitled to compensation. Except as otherwise provided by the Uniform Commercial Code, one who holds property by virtue of a lien ~~thereon~~ *on the property* is not entitled to compensation from the owner ~~thereof~~ *of the property* for any trouble or expense ~~which he~~ *that the person* incurs respecting ~~it~~ *the property*, except to the same extent as a borrower under 70-7-110 and 70-7-111."

Section 2263. Section 71-3-115, MCA, is amended to read:

"71-3-115. Order of resort to different funds. ~~Where one~~ *When a person* has a lien upon several things and other persons have subordinate liens upon or interests in some but not all of the same things, the person having the prior lien, if ~~he~~ *the prior lienor* can do so without risk of *personal* loss ~~to himself~~ or of injustice to other persons, ~~must~~ *shall* resort to the property in the following order, on the demand of any *interested* party ~~interested~~:

(1) to the things upon which ~~he~~ *the person* has an exclusive lien;

(2) to the things ~~which~~ *that* are subject to the fewest subordinate liens;

(3) in ~~like~~ *the same* manner inversely to the number of subordinate liens upon the same thing; and

(4) when several things are within one of the ~~foregoing~~ classes *described in subsections (2) and (3)* and subject to the same number of liens, resort must be had:

(a) first, to the things ~~which~~ *that* have not been transferred since the prior lien was created;

(b) second, to the things ~~which~~ *that* have been ~~so~~ transferred *since the prior lien was created* without a valuable consideration; and

(c) third, to the things ~~which~~ *that* have been ~~so~~ transferred for a valuable consideration in the inverse order of the transfer."

Section 2264. Section 71-3-117, MCA, is amended to read:

"71-3-117. Right to redeem. Except as otherwise provided by the Uniform Commercial Code, ~~every~~ *a* person having an interest in property subject to a lien has a right to redeem it from the lien at any time after the claim is due and before ~~his~~ *the person's* right of redemption is foreclosed."

Section 2265. Section 71-3-118, MCA, is amended to read:

"71-3-118. Rights of inferior lienor. ~~One~~ *A person* who has a lien inferior to another upon the same property has a right to:

(1) redeem the property in the same manner as its owner might from the superior lien; and

(2) be subrogated to all the benefits of the superior lien, when necessary for the protection of ~~his~~ *the person's* interests, upon satisfying the claim secured ~~thereby~~ *by the superior lien*."

Section 2266. Section 71-3-203, MCA, is amended to read:

"71-3-203. Execution of notices and certificates. Certification by the secretary of the treasury of the United States, ~~or his~~ *by the secretary's* delegate, or by any official or entity of the United States responsible for filing or certifying ~~of~~ notice of any lien, ~~of~~ notices of liens, certificates, or other notices affecting federal liens entitles them to be filed. No other attestation, certification, or acknowledgment is necessary."

Section 2267. Section 71-3-301, MCA, is amended to read:

"71-3-301. Priority when assignment of property made. In all assignments of property made by any person to trustees or assignees on account of the inability of the person, at the time of the assignment, to pay ~~his~~ *the person's* debts or in proceedings of insolvency, the wages of the miners, mechanics, ~~salesmen~~ *salespersons*, servants, clerks, or laborers employed by ~~such~~ *the* person, to the amount actually owed and for services rendered within the previous 4 months, are preferred claims and must be paid by ~~such~~ *the* trustees or assignees before any other creditor of the assignor."

Section 2268. Section 71-3-303, MCA, is amended to read:

"71-3-303. Priority in cases of execution or attachment. In case of executions, attachments, and writs of similar nature issued against any person, except for claims for labor done, any miners, mechanics, ~~salesmen~~ *salespersons*, servants, clerks, or laborers who have claims against the defendant for labor done may give notice of their claims and the amount ~~thereof~~ *of their claims*,

sworn to by the person making the claim, to the parties plaintiff and defendant to the action in which ~~such~~ *the* execution, attachment, or other writ has been issued and upon the officer executing the ~~same~~ *the attachment or writ*. Service of notice ~~herein~~ required *by this section* may be made upon the officer charged with the execution of ~~such~~ *the* writ in one or more cases that may be pending against ~~such~~ *the* person, who shall ~~forthwith~~ serve ~~such~~ *a copy of the* notice and claim~~, by copy,~~ upon the parties plaintiff and defendant~~,~~ if *they are* found in the county where ~~such~~ *the* action is pending~~,~~ or upon their respective attorneys employed in ~~such~~ *the* case or cases pending."

Section 2269. Section 71-3-304, MCA, is amended to read:

"71-3-304. Service of notice. (1) The officer serving ~~said~~ *the* notice and claim *described in 71-3-303* shall ~~forthwith~~, after service ~~of the same~~, make return ~~thereof~~ *of service* showing ~~such~~ *the* service~~,~~ *and* where and how *it was* made.

(2) Service may be made in any case at any time before the actual sale of the property levied upon in ~~such~~ *the* pending action, and unless ~~such~~ *the* claim is disputed by the debtor or a creditor or party plaintiff, ~~such~~ *the levying* officer ~~must~~ *shall* pay ~~such~~ *the* person out of the proceeds of the sale the amount ~~he~~ *the person* is entitled to receive for services rendered within the 4 months ~~next~~ preceding the levy of the writ, not exceeding the amount actually owed."

Section 2270. Section 71-3-305, MCA, is amended to read:

"71-3-305. Proceeding if claim disputed. (1) If any or all of the claims ~~so~~ presented and claiming preference under this part are disputed by either the debtor or a creditor, the person presenting the ~~same must~~ *the claim shall* commence an action within 10 days after notice of ~~such~~ *the* dispute is served upon ~~such~~ *the* claimant, as provided in subsection (2), for the recovery ~~thereof~~ *of the claim*. The officer ~~must~~ *shall* retain possession of ~~so~~ *as* much of the proceeds of the sale as may be necessary to satisfy ~~such~~ *the* claim and costs until the final determination of ~~such~~ *the* action. ~~In case~~ *If* judgment ~~be had~~ *is given*, the costs are a preferred claim, which may include ~~a~~ reasonable ~~attorney's fee~~ *attorney fees*.

(2) The debtor or creditor intending to dispute any claim presented under the provisions of 71-3-303 shall, within 10 days after receiving notice of ~~such~~ *the* claim, serve upon the claimant and officer holding ~~such~~ *the* execution, attachment, or other writ a statement in writing, verified by the oath of the debtor or person disputing ~~such~~ *the* claim for services, setting forth that no part of ~~said~~ *the* claim, not exceeding a sum specified, is justly due from the debtor to the claimant for services rendered within the 4 months ~~next~~ preceding the levy of the execution, attachment, or other writ~~, as the case may be~~.

(3) If the claimant brings suit on a claim ~~which~~ *that* is disputed in part only and fails to recover a sum exceeding that which was admitted to be due, ~~he shall~~ *the claimant may* not recover costs, but costs ~~shall~~ *must* be adjudged against ~~him~~ *the claimant*. ~~Where such~~ *If the* claimant fails to bring suit upon ~~his~~ *a* claim~~, which~~ *that* is disputed in part only, ~~he shall be deemed~~ *the claimant is considered* to have waived ~~that~~ *the disputed* portion of ~~his~~ *the* claim ~~disputed~~."

Section 2271. Section 71-3-401, MCA, is amended to read:

"71-3-401. Who may have lien — priority. (1) ~~Any~~ *A* person who performs services for another in the capacity of a farm or ranch laborer has a lien on all crops of every kind grown, raised, or harvested by the person for whom the services were performed during that time as security for the payment of any wages due or owing to ~~such persons~~ *the person* for services ~~so~~ performed.

(2) The lien has priority over all other liens, chattel mortgages, or encumbrances except feed sufficient for 3 months for 1 horse, 2 cows and their calves, 4 hogs, and 50 domestic fowls and seed grain and threshers' liens. The wages for which a lien may be claimed may not be in excess of $1,000 or for a period of time exceeding 60 days ~~next~~ preceding the date of filing the lien. ~~In case any such~~ *If a* person without cause quits ~~his~~ *the* employment before the expiration of the time for which ~~he~~ *the person* is employed, ~~he~~ *the person* is not entitled to a lien as ~~herein~~ provided *in this part*.

(3) If several persons have or obtain liens under the provisions of this part against property of the same employer, they have no priority among themselves but all must be paid pro rata from the proceeds of any foreclosure sale according to the provisions of this part."

Section 2272. Section 71-3-404, MCA, is amended to read:

"71-3-404. Notice to other lienholders. (1) A person intending to foreclose a lien secured under the provisions of this part shall give a written notice to the owner or the person against whom the lien is claimed and all chattel mortgagees, encumbrancers, and all other lienholders who appear on record in the office of the secretary of state that in not less than 10 days from the date of notice ~~he~~ *the person* will institute proceedings for the foreclosure of ~~his~~ *the person's* lien. Any other labor lienholder to whom notice is given may join in the foreclosure proceedings and is entitled to a pro rata share of the proceeds of the foreclosure sale~~,~~ as provided in this part. However, ~~if the~~ *a* notified labor lienholder *who* does not join in the proceedings, ~~he~~ is not entitled to share pro rata in the proceeds of the sale.

(2) The lien notice required ~~herein~~ *by this section* must be given by certified mail and directed to the last-known address of the owner or the person against whom the lien is claimed and to the addresses of the chattel mortgagees, encumbrancers, and all other lienholders as their addresses appear of record. The return of the foreclosure sale must be accompanied by proof of the giving of notice as required to be given in this section."

Section 2273. Section 71-3-523, MCA, is amended to read:

"71-3-523. Who may claim ~~a~~ construction lien — limitation. A person who furnishes services or materials pursuant to a real estate improvement contract may claim a construction lien, only to the extent provided in this part, to secure the payment of ~~his~~ *the person's* contract price."

Section 2274. Section 71-3-524, MCA, is amended to read:

"71-3-524. Limitation of lien for materials supplied. (1) A lien for furnishing materials arises only if:

(a) (i) the materials are supplied with the intent that they be used in the course of construction of or incorporated into the improvement in connection with which the lien arises; and

(ii) the intent described in subsection (1)(a)(i) ~~can~~ *may* be shown by a contract of sale, *by* a delivery order, *by* delivery to the site by the lien claimant or at ~~his~~ *the lien claimant's* direction, or by other evidence; and

(b) the materials are:

(i) incorporated in the improvement or consumed as normal wastage in construction operations;

(ii) specifically fabricated for incorporation into the improvement and not readily resalable in the ordinary course of the fabricator's business, even though the materials are not actually incorporated into the improvement;

(iii) used for the construction or operation of machinery or equipment used in the course of construction and not remaining in the improvement, subject to diminution by the salvage value of those materials; or

(iv) tools, appliances, or machinery used on the particular improvement. However, a lien for supplying tools, appliances, or machinery used on the improvement is limited as provided by subsection (3).

(2) The delivery of materials to the site of the improvement, whether by the lien claimant or by another, creates a presumption that they were used in the course of construction or were incorporated into the improvement.

(3) A lien arising for the supplying of tools, appliances, or machinery under subsection (1)(b)(iv) is limited as follows:

(a) if they are rented, the lien is for the reasonable rental value for the period of actual use, including any reasonable periods of nonuse provided for in the rental contract; and

(b) if they are purchased, the lien is for the price but arises only if they were purchased for use in the course of the particular improvement and have no substantial value after the completion of the improvement on which they were used."

Section 2275. Section 71-3-525, MCA, is amended to read:

"71-3-525. Extent of lien. (1) A construction lien extends to the interest of the contracting owner in the real estate, as the interest exists at the commencement of work or is ~~thereafter~~ *subsequently* acquired in the real estate, subject to the provisions of this section.

(2) (a) If an improvement is located wholly on one or more platted lots belonging to the contracting owner, the lien applies to the improvement and to the lots on which the improvement is located.

(b) If an improvement is not located wholly on one or more platted lots, the lien applies to the improvement and to the smallest identifiable tract or parcel of land on which the improvement is located.

(3) If the improvement is to leased premises, the lien attaches to the improvement and to the leasehold term. Except as provided in subsection (4), it does not attach to the lessor's interest unless ~~he~~ *the lessor* contracted for or agreed to the improvement before it was begun.

(4) (a) A construction lien is not impaired to the extent of the value of the work or improvement that is severable from the real estate if the improvement is to premises held by:

(i) a contracting owner who owns less than a fee simple interest; or

(ii) a lessee and the lease is forfeited by the lessee.

(b) If the work or improvement may be removed without harm to the rest of the real estate, the lienholder may have the value determined, the work or improvement sold separately, and the proceeds delivered to ~~him~~ *the lienholder* to satisfy the construction lien. The purchaser shall remove the work or improvement within 45 days of the sale.

(5) If a contracting owner contracts for improvements on real estate not owned by ~~him~~ *the contracting owner* as part of an improvement on ~~his~~ *the contracting owner's* real estate or for the purpose of directly benefiting ~~his~~ *the contracting owner's* real estate, there is a lien against the contracting owner's real estate being improved or directly benefited in favor of persons furnishing

services or materials to the same extent as if the improvement had been on the contracting owner's real estate."

Section 2276. Section 71-3-526, MCA, is amended to read:

"71-3-526. Amount of lien. (1) A person who has furnished services or materials pursuant to a real estate improvement contract is entitled to a lien for the unpaid part of ~~his~~ *the person's* contract price, subject to the provisions of 71-3-524.

(2) A person's lien is reduced by the sum of the liens of persons claiming construction liens through ~~him~~ *that person*."

Section 2277. Section 71-3-533, MCA, is amended to read:

"71-3-533. Notice of completion. (1) The contracting owner may file a notice of completion at any time after the completion of any work or improvement.

(2) The following acts or events constitute completion of any work or improvement for the purpose of filing a notice of completion:

(a) the written acceptance by the contracting owner, ~~his~~ *the contracting owner's* agent, or *the* representative of the building, improvement, or structure. The filing of a notice of completion ~~shall~~ *may* not be considered as an acceptance of the building, improvement, or other structure.

(b) the cessation from labor for 30 days upon any building, improvement, or structure~~,~~ or the alteration, addition to, or repair ~~thereof~~ *of the building, improvement, or structure*.

(3) The notice of completion*,* together with an affidavit of publication as ~~hereinafter~~ required ~~shall~~ *in this section, must* be filed in the office of the county clerk and recorder of the county where the property is situated*,* and the notice ~~shall~~ *must* set forth:

(a) the date when the work or improvement was completed or the date on which cessation from labor occurred first and the period of its duration;

(b) the contracting owner's name and address and the nature of the title, if any, of the person signing the notice;

(c) a description of the property sufficient for identification;

(d) the name of the contractor, if any.

(4) The notice ~~shall~~ *must* be verified by the contracting owner or ~~his~~ *the owner's* agent.

(5) A copy of the notice of completion ~~shall~~ *must* be published once each week for 3 successive weeks in a newspaper of general circulation in the county where the land on which the work or improvement was performed is situated.

(6) The contracting owner shall give a copy of the notice of completion to any person who has given the contracting owner a notice of a right to claim a lien."

Section 2278. Section 71-3-537, MCA, is amended to read:

"71-3-537. Acknowledgment of satisfaction of lien — penalty. Whenever any indebtedness ~~which~~ *that* is a lien upon any ~~such~~ real estate, structure, building, or other improvement is paid and satisfied, it is the duty of the creditors to acknowledge satisfaction ~~thereof as~~ *of the indebtedness* in ~~case of~~ *the same manner as* a mortgage~~;~~. ~~and if any~~ *If a* creditor fails to acknowledge satisfaction, ~~as aforesaid, he~~ *the creditor* is liable to any person injured by ~~such~~ *the* failure to the amount of ~~such~~ *the* injury and the costs of action."

Section 2279. Section 71-3-541, MCA, is amended to read:

"71-3-541. Priority among holders of construction liens. (1) There is equal priority between or among construction lien claimants who contribute to the same real estate improvement project, regardless of the date on which each lien claimant first contributed services or materials and regardless of the date on which ~~he~~ *the claimant* filed ~~his~~ *the* notice of lien. When the proceeds of a foreclosure sale are not sufficient to pay all construction lien claimants in full, each claimant ~~will~~ *must* receive a pro rata share of the proceeds based on the amount of ~~his~~ *the claimant's* respective lien.

(2) Construction liens attaching at different times have priority in the order of attachment."

Section 2280. Section 71-3-542, MCA, is amended to read:

"71-3-542. Priority of construction liens as against claims other than construction lien claims. (1) A construction lien arising under this part has priority over any other interest, lien, mortgage, or encumbrance that may attach to the building, structure, or improvement or on the real property on which the building, structure, or improvement is located and ~~which~~ *that* is filed after the construction lien attaches.

(2) An interest, lien, mortgage, or encumbrance that is filed before the construction lien attaches has priority over a construction lien arising under this part, except as provided in subsections (3) and (4).

(3) A construction lien has priority, to the extent of the value of the work or improvement that is severable, over an interest, lien, mortgage, or encumbrance that is filed before the construction lien attaches. If the work or improvement may be removed without harm to the rest of the real property, the lienholder may have the value determined, the work or improvement sold separately on foreclosure, and the proceeds delivered to ~~him~~ *the lienholder* to satisfy the construction lien.

(4) A construction lien has priority over any interest, lien, mortgage, or encumbrance that is filed before the construction lien attaches if that interest, lien, mortgage, or encumbrance was taken to secure advances made for the purpose of paying for the particular real estate improvement ~~being liened~~ *to which the lien was attached*."

Section 2281. Section 71-3-601, MCA, is amended to read:

"71-3-601. Definition of lumber — who may have lien. (1) The term "lumber", as used in this part, ~~shall be held and be construed to mean~~ *means* all logs or other timber sawed or split for use, including beams, joists, planks, boards, shingles, laths, staves, hoops, and every article of ~~whatsoever~~ *any* nature or description manufactured from sawlogs or other timber.

(2) ~~Every~~ *A* person, general partnership, limited partnership, corporation, or association performing labor *done* upon~~,~~ or ~~who shall assist~~ *that assists* in obtaining or securing sawlogs, piling, railroad ties, cordwood, or other timber, has a lien upon the ~~same~~ *product* and upon all other sawlogs, piling, railroad ties, cordwood, or other timber ~~which~~ *that*~~,~~ at the time of the filing of the claim or lien ~~hereinafter~~ provided *for in subsection (3)*~~,~~ belonged to the person or corporation for whom the labor was performed~~,~~ for the work or labor done upon or in obtaining or securing the particular sawlogs, piling, railroad ties, cordwood, or other timber *described* in ~~said~~ *the* claim or lien ~~described,~~. *The lien exists* whether ~~such~~ *the* work or labor was done at the ~~instance~~ *request* of the owner*,* ~~of the same or his~~ *the owner's* agent*,* ~~or~~ a contractor or subcontractor*,* or

any person ~~in~~ *on* behalf of ~~such~~ *the* owner or ~~his~~ *the owner's* agent or a contractor or subcontractor. The cook in a logging camp ~~shall~~ *must* be regarded as a person who assists in obtaining or securing any of the timber ~~herein~~ mentioned *in this subsection*.

(3) ~~Every~~ *A* person performing work or labor or assisting in manufacturing sawlogs and other timber into lumber and shingles has a lien upon ~~such~~ *the* lumber while the ~~same~~ *lumber* remains at the mill where it was manufactured or in the possession or under the control of the manufacturer, whether ~~such~~ *the* work or labor was done at the ~~instance~~ *request* of the owner of ~~such~~ *the* logs, ~~or~~ ~~his~~ *the owner's* agent, or any contractor or subcontractor of ~~such~~ *the* owner.

(4) ~~Any~~ *A* person who ~~shall permit~~ *permits* another to go upon ~~his~~ *the person's* timberland and cut ~~thereon~~ sawlogs, piling, railroad ties, cordwood, or other timber has a lien upon the ~~same~~ *sawlogs, piling, railroad ties, cordwood, or other timber* for the price agreed to be paid for ~~such~~ *the* privilege or for the price ~~such~~ *the* privilege would be reasonably worth ~~in case~~ *if* there was no express agreement fixing the price."

Section 2282. Section 71-3-605, MCA, is amended to read:

"71-3-605. How to obtain lien — form of claim. (1) ~~Every~~ *A* person, within 30 days after the close of the rendition of the services or after the close of the work or labor mentioned in 71-3-601, claiming the benefit ~~hereof must~~ *of this part shall* file for record with the county in which ~~such~~ *the* sawlogs, piling, railroad ties, cordwood, or other timber ~~were~~ *was* cut or in which ~~such~~ *the* lumber or shingles were manufactured a claim containing a statement of ~~his~~ *the person's* demand and the amount ~~thereof~~, after deducting as nearly as possible all just credits and offsets, with the name of the person by whom ~~he~~ *the person* was employed~~,~~ *and* with a statement of the terms and conditions of ~~his~~ *the person's* contract, if any. ~~In case~~ *If* there is no express contract, the claim ~~shall~~ *must* state what ~~such~~ *the* service, work, or labor is reasonably worth. It ~~shall~~ *must* also contain a description of the property to be charged with a lien sufficient for identification with reasonable certainty, ~~which~~ *and the* claim must be verified by the oath of ~~himself~~ *the person* or some other person to the effect that the affiant believes the ~~same~~ *claim* to be true.

(2) The claim ~~shall~~ *must* be substantially in the following form:

...., Claimant, vs. ....

Notice is hereby given that .... of .... County, state of Montana, claims a lien upon a .... of ...., being about .... in quantity, which were cut or manufactured in .... County, state of Montana, are marked ~~thus~~ ...., and are now lying in a .... for labor performed upon and assistance rendered in .... ~~said~~ *the* ....; that the name of the owner or reputed owner is ....; that .... employed ~~said~~ .... to perform ~~such~~ *the* labor and render ~~such~~ *the* assistance upon the following terms and conditions~~, to wit~~: The ~~said~~ .... agreed to pay the ~~said~~ .... for ~~such~~ *the* labor and assistance ....; that ~~said~~ *the* contract has been faithfully performed and fully complied with on the part of ~~said~~ ...., who performed labor upon and assisted in .... ~~said....~~ for a period of ....; that ~~said~~ *the* labor and assistance were ~~so~~ performed and rendered upon ~~said~~ .... between the .... day of .... and the .... day of ...., and the rendition of ~~said~~ *the* service was closed on the .... day of ...., and 30 days have not elapsed since that time; that the amount of *the* claimant's demand for ~~said~~ services is ....; that no part ~~thereof~~ *of the demand* has been paid except ...., and there is now due and remaining unpaid ~~thereon~~, after deducting all just credits and offsets, the sum of ...., in which amount ~~he~~ *the claimant* claims a lien upon ~~said~~ ....; that ~~said~~ *claimant* .... also claims a lien on all ~~said~~ .... now owned by ~~said~~

.... of ~~said~~ *the* county~~,~~ to secure payment for the work and labor performed in obtaining or securing the ~~said~~ logs, piling, railroad ties, cordwood, or other timber, lumber, or shingles ~~herein~~ described.

...., Claimant.

State of Montana,

County of ....

...., being first duly sworn, on oath says that ~~he~~ *the claimant* is .... named in the foregoing claim, has heard the ~~same~~ *claim* read, and knows the contents ~~thereof~~ *of the claim*, and believes the same to be true.

.....

Subscribed and sworn to before me this .... day of ....

....."

Section 2283. Section 71-3-608, MCA, is amended to read:

"71-3-608. Duties of county clerk. The county clerk ~~must~~ *shall* file any claim presented under the provisions of this part, endorse ~~thereon~~ *on the claim* the time of ~~receiving the same~~ *receipt*, ~~and~~ keep the ~~same~~ *claim* in ~~his~~ *the clerk's* office for the inspection of all persons*,* and ~~shall~~ enter in a book, properly ruled and kept for ~~such~~ *that* purpose, the names of all the parties, ~~such names to be~~ alphabetically arranged, the amount of the lien, and the time of filing the ~~same~~ *lien*."

Section 2284. Section 71-3-611, MCA, is amended to read:

"71-3-611. Enforcement of lien. (1) The liens provided for in this part ~~shall~~ *must* be enforced by a civil action in the district court of the county ~~wherein~~ *in which* the lien was filed and ~~shall~~ *must* be governed by the laws regulating the proceedings in civil actions ~~touching~~ *relating to* the mode and manner of trial and the proceedings and laws to secure property~~,~~ so as to hold it for the satisfaction of any lien that may be against it.

(2) ~~Any~~ *A* person who ~~shall bring~~ *brings* a civil action to enforce the lien ~~provided for~~, ~~any~~ *a* person having a lien ~~as provided for~~, or *a person* who ~~shall be~~ *is* made a party to any ~~such~~ civil action has the right to demand that ~~such~~ *the* lien be enforced against the whole or any part of the sawlogs, piling, railroad ties, cordwood, or other timber or manufactured lumber or shingles upon which ~~he~~ *the person* has performed labor*,* ~~or which he~~ *that the person* has assisted in securing or obtaining*,* or ~~which he~~ *that the person* has cut on ~~his~~ *the person's* timberland*, any of which occurred* during the 3 months ~~next~~ preceding the filing of ~~his~~ *the person's* lien, for all ~~his~~ *the person's* labor upon or for all ~~his~~ *the person's* assistance in obtaining or securing ~~said~~ *the* sawlogs, piling, railroad ties, cordwood, or other timber or in manufacturing ~~said~~ *the* lumber into shingles during the whole or any part of the 3 months mentioned in 71-3-603~~,~~ or for timber cut during the whole or any part of the 3 months ~~above mentioned~~.

(3) ~~Where~~ *When* proceedings are commenced against any lot of sawlogs, piling, railroad ties, cordwood*,* or other timber or lumber or shingles~~,~~ ~~as herein provided,~~ and some of the lienors claim liens against these specific sawlogs, piling, railroad ties, cordwood, or other timber or lumber or shingles proceeded against and others against the same generally to secure their claim for work and labor, the priority of the liens ~~shall~~ *must* be determined as ~~hereinbefore~~ provided *in this part*."

Section 2285. Section 71-3-612, MCA, is amended to read:

"71-3-612. Requirements to be bona fide purchaser. It ~~shall~~ *must* be conclusively presumed by the court that a party purchasing the property subject to the lien within the 30 days given ~~herein~~ *in this part* to claimants ~~wherein~~ *in which* to file their liens is not an innocent third party nor that ~~he~~ *the party* has become a bona fide owner of the property subject to the lien unless it ~~shall appear~~ *appears* that ~~he~~ *the party* has paid full value for the property and has seen that the purchase money of the property has been applied to the payment of ~~such~~ bona fide claims ~~as~~ *that* are entitled to liens upon the same property under the provisions of this part, according to the priorities ~~herein~~ established *in this part*."

Section 2286. Section 71-3-614, MCA, is amended to read:

"71-3-614. Judgment and execution. In each civil action, judgment must be rendered in favor of each person having a lien for the amount due to ~~him~~ *the person*, and the court shall order any property subject to the lien to be sold by the sheriff of the proper county in the same manner that personal property is sold on execution~~, and the~~. *The* court shall apportion the proceeds of ~~such~~ *the* sale to the payment of each judgment according to the priorities established in this part, pro rata in its class, according to the amount of ~~such~~ *each* judgment."

Section 2287. Section 71-3-616, MCA, is amended to read:

"71-3-616. Penalty for destroying means of identification of property. ~~Any~~ *A* person who ~~shall eloign~~ *removes*, ~~injure~~ *injures*, or ~~destroy~~ *destroys* or who ~~shall render~~ *renders* difficult, uncertain, or impossible of identification any sawlogs, piling, railroad ties, cordwood, shingles, or other timber upon which there is a lien as ~~herein~~ provided *in this part*~~,~~ without the express consent of the person entitled to ~~such~~ *the* lien~~,~~ ~~shall be~~ *is* liable to a lienholder for the damages to the amount secured by ~~his~~ *the lienholder's* lien~~,~~. ~~and~~ *If* ~~it being~~ *damage is* shown to the court in a civil action to enforce ~~said~~ *the* lien, ~~it shall be the duty of~~ the court ~~to~~ *shall* enter a personal judgment for the amount in ~~such~~ *the* action against the person, ~~provided he be~~ *if the person is* a party to ~~such~~ *the* action, or the damages may be recovered by a civil action against ~~such~~ *that* person."

Section 2288. Section 71-3-701, MCA, is amended to read:

"71-3-701. Lien for seed or grain. ~~Any~~ *A* person, company, association, or corporation ~~who~~ *that* furnishes to another seed to be sown or planted or funds or means with which to purchase seed to be sown or planted or to be used in the production or cultivation of a crop or crops on the lands owned or contracted to be purchased, used, leased, occupied, or rented by ~~him~~ *the other person* or held under government entry, upon filing the statement provided for in 71-3-703, has a lien not exceeding the purchase price of the seed or grain furnished upon the crop produced from the seed or grain furnished, or any part ~~thereof~~ *of the crop*, and upon the seed or grain threshed from the crop to secure the payment of the amount or the value of the seed or grain furnished or the funds or means advanced to purchase the seed or grain."

Section 2289. Section 71-3-703, MCA, is amended to read:

"71-3-703. How to obtain lien. ~~Any~~ *A* person, company, association, or corporation ~~who is~~ entitled to a lien under 71-3-701 shall, within 90 days after the seed or grain is furnished or the funds, means, or money *is* advanced for the seed or grain, file in the office of the secretary of state a statement of agricultural lien as provided in 71-3-125. Unless the person entitled to a lien files the lien statement within the time required, ~~he~~ *the person* is considered to have waived the right to a lien."

Section 2290. Section 71-3-712, MCA, is amended to read:

"71-3-712. How lien obtained. Any person, company, association, or corporation ~~who~~ is entitled to a lien under 71-3-711 shall, within 30 days after the insurance is issued, file in the office of the secretary of state a statement of agricultural lien as provided in 71-3-125. A mutual company may file a lien for the largest amount that may become due under its assessment power, and ~~in the event that~~ *if* the amount assessed is not as large as the amount of the lien claimed, the amount assessed and due is the amount the mutual insurance company is entitled to under this lien. Unless the person, company, association, or corporation entitled to a lien files the agricultural lien statement within the time required, ~~he~~ *the person* or ~~it~~ *entity* is considered to have waived the right to a lien."

Section 2291. Section 71-3-801, MCA, is amended to read:

"71-3-801. Who may have lien — amount. (1) All ~~threshermen~~ *threshers* or swathers owning or operating threshing or swathing machines and all owners of combine harvesters and threshers ~~shall~~ have a lien upon the grain and other crops swathed or threshed by ~~said~~ *the* threshing or swathing machine or cut and threshed by ~~said~~ *the* combine harvester and thresher for and on account of the services rendered and the labor performed by them on ~~said~~ *the* grain and crops *swathed or threshed.* ~~and which~~ *The* lien may be claimed by the owner of ~~said~~ *the* grain for the reasonable value of ~~such~~ *the* services if ~~same~~ *services* are performed by ~~him~~ *the owner*. Liens on grain and other crops ~~shall~~ *must* be charged for at the prevailing price for that particular locality in which ~~such~~ *the* grain or other crop is threshed, harvested, or combined~~, provided~~ *if* notices are given and *the* lien is filed within the time provided by this part.

(2) If the prevailing price for threshing, harvesting, or combining grain or other ~~crop~~ *crops* is disputed by the ~~thresherman~~ *thresher* or swather and the owner of the grain or other crop, the matter may be submitted to arbitration under the provisions of Title 27, chapter 5."

Section 2292. Section 71-3-802, MCA, is amended to read:

"71-3-802. How lien obtained. (1) A person entitled to a lien under 71-3-801 shall file with the office of the secretary of state a statement of agricultural lien, as provided in 71-3-125, within 30 days after the last service was rendered or labor performed in the threshing of grain or other crops or the cutting and harvesting and threshing by the combined harvester and thresher.

(2) If the grain or other crops cut, harvested, and threshed are being hauled from the machine or combine ~~direct~~ *directly* to the elevator or to any other purchaser, the ~~threshermen~~ *thresher*, swather, or owner of the combine desiring to claim a lien shall also serve written notices upon the ~~elevatorman~~ *elevator operator* or other private purchaser that ~~he~~ *the person* will claim and file a lien upon the grain or other crops for ~~his~~ *the person's* services or labor performed in threshing or combining and threshing the grain or crops. A copy of the statement of agricultural lien mailed by certified mail is sufficient notice to the ~~elevatorman~~ *elevator operator* or other private purchaser."

Section 2293. Section 71-3-1004, MCA, is amended to read:

"71-3-1004. How lien perfected. ~~Every~~ *A* person, corporation, or partnership claiming a lien under this part shall file with the county clerk of the county in which ~~such~~ *the* land, leasehold, or pipeline or some part ~~thereof~~ *of the land, leasehold, or pipeline* is situated a statement verified by affidavit setting forth the amount claimed and the items ~~thereof~~ *of the claim*, the dates on which labor was performed or material or services furnished, the name of the owner of

the leasehold or pipeline, if known, the name of the claimant and ~~his~~ *the claimant's* mailing address, a description of the leasehold or pipeline, and if the claimant ~~be~~ *is* a claimant under 71-3-1003, the name of the person for whom the labor was immediately performed or the material or services were immediately furnished. ~~Such~~ *The* statement must be filed within 6 months after the date upon which ~~said~~ *the* material or services were last furnished or labor *was* last performed under contract."

Section 2294. Section 71-3-1009, MCA, is amended to read:

"71-3-1009. Liability fixed. ~~Nothing in this~~ *This* part ~~shall~~ *may not* be construed to fix a greater liability against the owner of the land or leasehold interest ~~therein~~ *in the land* than the price or sum stipulated by ~~such~~ *the* owner to be paid for ~~such~~ *the* materials or services furnished or labor performed. However, the risk of all payments made to the original contractor ~~shall~~ *must* be upon ~~such~~ *the* owner if ~~such~~ *the* payments ~~be~~ *are* made after written notice from a person other than an original contractor is received by ~~such~~ *the* owner at ~~his~~ *the owner's* residence or principal place of business~~;~~. ~~which~~ *The* notice ~~shall~~ *must* set forth the name and address of the claimant and the amount and nature of ~~his~~ *the* claim. Payment by the owner to the original contractor of all or any part of the contract price~~,~~ prior to the receipt of ~~such~~ *the* notice~~,~~ ~~shall~~ *must* operate to discharge and satisfy all liens attaching to the property of ~~such~~ *the* owner by virtue of this part to the extent of ~~such~~ *the* payment. The owner ~~shall~~ *does* not have the right to offset obligations of the original contractor unless ~~such~~ *the* obligations arise out of the original contract."

Section 2295. Section 71-3-1011, MCA, is amended to read:

"71-3-1011. Notice to purchaser of oil and gas. ~~Anything~~ *Notwithstanding any other provision* in this part ~~to the contrary notwithstanding~~, any lien claimed by virtue of this part ~~insofar as it may extend~~ *that extends* to oil or gas or the proceeds of the sale of oil or gas ~~shall~~ *is* not ~~be~~ effective against any purchaser of ~~such~~ *the* oil or gas until written notice of ~~such~~ *the* claim has been delivered to ~~such~~ *the* purchaser at ~~his~~ *the purchaser's* residence or principal place of business. ~~Such~~ *The* notice ~~shall~~ *must* state the name of the claimant, ~~his~~ *the claimant's* address, the amount for which the lien is claimed, and a description of the interest upon which the lien is claimed. ~~Such~~ *The* notice ~~shall~~ *must* be delivered personally to the purchaser or by ~~registered or~~ certified letter deposited in the United States mail. Until ~~such~~ *a* notice is delivered ~~as above provided~~, ~~no such~~ *a* purchaser ~~shall be~~ *is not* liable to the claimant for any oil or gas produced from the interest upon which the lien is claimed or the proceeds ~~thereof~~ *of the oil and gas*, except to the extent of ~~such~~ *that* part of the purchase price of ~~such~~ *the* oil or gas or the proceeds ~~thereof as~~ *of the oil and gas that* may be owing by ~~such~~ *the* purchaser at the time of delivery of ~~such~~ *the* written notice. ~~Such~~ *The* purchaser shall withhold payments for ~~such~~ *the* oil or gas ~~runs~~ to the extent of the lien amount claimed until delivery of notice in writing that the claim has been paid."

Section 2296. Section 71-3-1203, MCA, is amended to read:

"71-3-1203. Enforcement of lien — sale. If payment for ~~such~~ work, labor, ~~feed,~~ or services *performed* or *feed or* material furnished is not made within 30 days after the performance ~~or furnishing~~ of the ~~same~~ *work, labor, or services or furnishing of the feed or material*, the person entitled to a lien under the provisions of this part may enforce ~~said~~ *the* lien in the following manner:

(1) ~~He~~ *The person* shall deliver to the sheriff or a constable of the county in which the property is located an affidavit of the amount of ~~his~~ *the person's* claim

against ~~said~~ *the* property, a description of the property, and the name of the owner ~~thereof~~ *of the property* or of the person at whose request the work, labor, or services were performed or the ~~materials~~ *feed or material was* furnished.

(2) Upon receipt of ~~such~~ *the* affidavit, the sheriff or constable shall proceed to advertise and sell at public auction ~~so~~ *as* much of the property covered by ~~said~~ *the* lien as will satisfy ~~same~~ *the lien*.

(3) ~~Such~~ *The* sale ~~shall~~ *must* be advertised, conducted, and held in the same manner as prescribed in 25-13-701(1)(b).

(4) Before the sheriff or constable sells the property at public auction, ~~he~~ *the sheriff or constable* shall give notice of the sale to the owner or person at whose request the work, labor, or services were performed or the ~~materials~~ *feed or material was* furnished.

(a) Notice to the owner must be given at least 10 days before the sale.

(b) The notice must state:

(i) the time and place of the sale;

(ii) the amount of the claim against the property;

(iii) a description of the property;

(iv) the name of the owner or person who contracted for the services or materials; and

(v) the name of the person claiming the lien.

(c) The notice may be given by personal service or by mailing by certified mail a copy of the notice to the last-known ~~post office~~ *post-office* address of the owner or person who contracted for the *work, labor, or* services *performed* or ~~materials~~ *the feed or material furnished*.

(d) If the sheriff or constable is not able to effect personal service or service by mail because the location and mailing address of the owner or *the contracting* person ~~who contracted for the services or materials~~ are unknown, the sheriff or constable may give notice by posting notice of the sale in three public places in the county in which the property is located.

(5) The *sheriff shall apply the* proceeds of the sale ~~shall be applied by the sheriff~~ to the discharge of the lien and the cost of the proceedings in selling the property and enforcing the lien, and the remainder, if any, or ~~such~~ *a* part ~~as~~ *that* is required to discharge the claims, ~~shall~~ *must* be turned over by the sheriff to the holders, in the order of their precedence, of the chattel mortgages or other lien claimants of record against ~~said~~ *the* property, and the balance of the proceeds ~~shall~~ *must* be turned over to the owner of the property.

(6) However, before ~~making seizure of~~ *seizing* any property under the provisions of this section, the sheriff may require an indemnity bond from the lienor that may not exceed double the amount of the claim against ~~said~~ *the* property~~.~~. ~~said~~ *The* bond and the surety or sureties ~~thereon to~~ *on the bond must* be approved by ~~said~~ *the* sheriff."

Section 2297. Section 71-3-1301, MCA, is amended to read:

"71-3-1301. Lien of seller of real property — waiver. (1) ~~One~~ *A person* who sells real property has a vendor's lien ~~thereon~~ *on the real property*, independent of possession, for ~~so~~ *as* much of the price as remains unpaid and unsecured ~~otherwise~~ *other* than by the personal obligation of the buyer.

(2) ~~Where~~ *When* a buyer of real property gives to the seller a written contract for payment of all or part of the price, an absolute transfer of ~~such~~ *the* contract by

the seller waives ~~his~~ *the seller's* lien to the extent of the sum payable under the contract~~;~~. ~~but~~ *However,* a transfer of ~~such~~ *the* contract in trust to pay debts and return the surplus is not a waiver of the lien."

Section 2298. Section 71-3-1302, MCA, is amended to read:

"71-3-1302. Purchaser's lien on real property. ~~One~~ *A person* who pays to the owner any part of the price of real property~~,~~ under an agreement for the sale ~~thereof~~ *of real property*~~,~~ has a special lien upon the property, independent of possession, for ~~such~~ *the* part of the amount paid ~~as he may be~~ *that the person is* entitled to recover ~~back,~~ in case of a failure of consideration."

Section 2299. Section 71-3-1401, MCA, is amended to read:

"71-3-1401. Lien of hotelkeepers. ~~Hotelmen~~ *Hotelkeepers* and boardinghouse and lodginghouse keepers ~~shall~~ have a lien upon the baggage and other property of value brought into ~~such~~ *the* hotel, inn, boardinghouse, or lodginghouse by ~~such~~ *a* guest*,* ~~or~~ boarder*,* or lodger for ~~his~~ *the guest's, boarder's, or lodger's* accommodation, board, or lodging and room rent and ~~such~~ extras ~~as~~ *that* are furnished at ~~his~~ *the guest's, boarder's, or lodger's* request, with the right of the possession of ~~such~~ *the* baggage or other property of value until all ~~such~~ charges are paid. ~~Nothing herein contained shall~~ *This section may not* be construed to give a lien upon property sold on the installment plan, title to which is to remain in the vendor until final payment."

Section 2300. Section 71-3-1402, MCA, is amended to read:

"71-3-1402. Enforcement of lien. Any hotelkeeper or innkeeper who ~~shall have~~ *has* a lien upon any of the goods, baggage, or other chattel property of ~~his~~ *the hotelkeeper's or innkeeper's* guests may, at the expiration of 6 months from the date of the departure of ~~such~~ *the* guest from ~~such~~ *the* hotel or inn, sell and dispose of the ~~same~~ *baggage or property* at public auction and to the highest bidder for cash or ~~so~~ *as* much ~~thereof as may be~~ *that is* necessary to pay the sum due ~~such~~ *the* hotelkeeper or innkeeper, together with the cost of storage, advertisement, and sale."

Section 2301. Section 71-3-1403, MCA, is amended to read:

"71-3-1403. Notice of sale. Before proceeding to the sale of the property of any guest, as provided in 71-3-1402, ~~such~~ *the* hotelkeeper or innkeeper shall cause a notice of ~~such~~ *the* sale, containing a description of the property to be sold and the time and place where ~~such~~ *the* property will be sold, to be published once each week for 2 successive weeks in a newspaper published in the city or town in which ~~such~~ *the* hotel or inn is situated ~~but~~ *or*, if ~~there be none~~ *a newspaper is not published in the city or town*, ~~then~~ in ~~some~~ *a* newspaper published nearest ~~such town or~~ *to the* city *or town.* ~~and in case~~ *If* any balance arising from ~~such~~ *the* sale ~~shall~~ *is* not ~~be~~ claimed by the rightful owner within 30 days from the day of ~~such~~ *the* sale, the ~~same shall~~ *balance must* be paid into the treasury of the county in which ~~such~~ *the* sale took place. If ~~such~~ *the* balance ~~be~~ *is* not claimed by the owner ~~thereof~~ or ~~his~~ *the owner's* legal representatives within 1 year ~~thereafter~~, the ~~same shall~~ *balance must* be paid into the school fund of ~~such~~ *the* county."

Section 2302. Section 71-3-1501, MCA, is amended to read:

"71-3-1501. Lien of factor. A factor has a general lien, dependent on possession, for all that is due to ~~him as such~~ *the factor*~~,~~ upon all articles of commercial value that are entrusted to ~~him~~ *the factor* by the same principal."

Section 2303. Section 71-3-1502, MCA, is amended to read:

"71-3-1502. Banker's lien. A banker has a general lien, dependent on possession, upon all property in ~~his~~ *the banker's* hands belonging to a customer~~,~~

for the balance due to ~~him~~ *the banker* from ~~such~~ *the* customer in the course of the business."

Section 2304. Section 71-3-1503, MCA, is amended to read:

"71-3-1503. Officer's lien. An officer who levies an attachment or execution upon personal property acquires a special lien, dependent on possession, upon ~~such~~ *that* property, which authorizes ~~him~~ *the officer* to hold it until the process is discharged or satisfied or a judicial sale of the property is had."

Section 2305. Section 71-3-1505, MCA, is amended to read:

"71-3-1505. Lien for rental on frozen food compartments. A person who operates a frozen food plant ~~which~~ *that* offers individual compartments to the public has a lien on the property in ~~his~~ *the person's* possession for rentals or other charges due. Liens may be foreclosed in the same way provided for chattel mortgages."

Section 2306. Section 72-1-111, MCA, is amended to read:

"72-1-111. Remedies for fraud — statute of limitations. (1) Whenever fraud has been perpetrated in connection with any proceeding or in any statement filed under this code or if fraud is used to avoid or circumvent the provisions or purposes of this code, ~~any~~ *a* person injured ~~thereby~~ *by the fraud* may obtain appropriate relief*,* including restitution against the perpetrator of the fraud or any person benefiting from the fraud, whether innocent or not*,* ~~(~~other than a bona fide purchaser for value and without notice~~)~~.

(2) Any proceeding must be commenced within 2 years after the discovery of the fraud, but ~~no~~ *a* proceeding may *not* be brought against one not a perpetrator of the fraud later than 5 years after the time of commission of the fraud.

(3) This section has no bearing on remedies relating to fraud practiced on a decedent during ~~his~~ *the decedent's* lifetime ~~which~~ *that* affects the succession of ~~his~~ *the decedent's* estate."

Section 2307. Section 72-1-301, MCA, is amended to read:

"72-1-301. Notice — method and time of giving. (1) If notice of a hearing on any petition is required and except for specific notice requirements as otherwise provided, the petitioner shall cause notice of the time and place of hearing of any petition to be given to any interested person or ~~his~~ *the person's* attorney if ~~he~~ *the person* has appeared by attorney or requested that notice be sent to ~~his~~ *the person's* attorney. Notice ~~shall~~ *must* be given:

(a) by mailing a copy ~~thereof~~ *of the notice* at least 14 days before the time set for the hearing by certified~~, registered,~~ *mail* or ordinary first-class mail addressed to the person being notified at the post-office address given in ~~his~~ *the person's* demand for notice, if any, or at ~~his~~ *the person's* office or place of residence, if known;

(b) by delivering a copy ~~thereof~~ *of the notice* to the person being notified personally at least 14 days before the time set for the hearing; or

(c) if the address or identity of any person is not known and cannot be ascertained with reasonable diligence, by publishing *the notice* in a weekly paper once a week for 3 consecutive weeks and, if in a newspaper published more often than once a week, by publishing on at least 3 different days of publication~~, and it shall~~. *There must* be ~~so published that there must be~~ at least 10 days from the first to the last day of publication, both the first and last day being included.

(2) The court for good cause shown may provide for a different method or time of giving notice for any hearing.

(3) Proof of the giving of notice ~~shall~~ *must* be made on or before the hearing and filed in the proceeding."

Section 2308. Section 72-1-302, MCA, is amended to read:

"72-1-302. Waiver of notice. A person, including a guardian ad litem, conservator, or other fiduciary, may waive notice by a writing signed by ~~him~~ *the person* or ~~his~~ *the person's* attorney and filed in the proceeding."

Section 2309. Section 72-1-303, MCA, is amended to read:

"72-1-303. Pleadings — when orders or notice binding one binds another — representation. In formal proceedings involving trusts or estates of decedents, minors, protected persons, or incapacitated persons and in judicially supervised settlements, the following apply:

(1) Interests to be affected ~~shall~~ *must* be described in pleadings ~~which~~ *that* give reasonable information to owners by name or class, by reference to the instrument creating the interests, or in other appropriate manner.

(2) Persons are bound by orders binding others in the following cases:

(a) Orders binding the sole holder or all coholders of a power of revocation or a presently exercisable general power of appointment, including one in the form of a power of amendment, bind other persons to the extent their interests, ~~(~~as objects, takers in default, or otherwise~~)~~, are subject to the power.

(b) *(i)* To the extent there is no conflict of interest between them or among persons represented, orders binding a*:*

(A) conservator bind the person whose estate ~~he~~ *the conservator* controls;

(B) ~~orders binding a~~ guardian bind the ward if ~~no~~ *a* conservator of ~~his~~ *the ward's* estate has *not* been appointed;

(C) ~~orders binding a~~ trustee bind beneficiaries of the trust in proceedings to probate a will establishing or adding to a trust, to review the acts or accounts of a prior fiduciary, and in proceedings involving creditors or other third parties; and

(D) ~~orders binding a~~ personal representative bind persons interested in the undistributed assets of a decedent's estate in actions or proceedings by or against the estate.

(ii) If there is no conflict of interest and ~~no~~ *a* conservator or guardian has *not* been appointed, a parent may represent ~~his~~ *the parent's* minor child.

(c) An unborn or unascertained person who is not otherwise represented is bound by an order to the extent ~~his~~ *the person's* interest is adequately represented by another party having a substantially identical interest in the proceeding.

(3) Notice is required as follows:

(a) Notice as prescribed by 72-1-301 ~~shall~~ *must* be given to every interested person or to one who can bind an interested person as described in *subsection* (2)(a) or (2)(b) ~~above~~. Notice may be given both to a person and to another who may bind ~~him~~ *the person*.

(b) Notice is given to unborn or unascertained persons, who are not represented under *subsection* (2)(a) or (2)(b) ~~above~~, by giving notice to all known persons whose interests in the proceedings are substantially identical to those of the unborn or unascertained persons.

(4) At any point in a proceeding, a court may appoint a guardian ad litem to represent the interest of a minor, an incapacitated, unborn, or unascertained person, or a person whose identity or address is unknown~~,~~ if the court determines that representation of the interest otherwise would be inadequate. If not precluded by conflict of interests, a guardian ad litem may be appointed to represent several persons or interests. The court shall set out its reasons for appointing a guardian ad litem as a part of the record of the proceeding."

Section 2310. Section 72-2-903, MCA, is amended to read:

"72-2-903. Requirements. (1) An international will must be made in writing. It need not be *personally* written by the testator ~~himself~~. It may be written in any language, by hand, or by any other means.

(2) The testator shall declare in the presence of two witnesses and of a person authorized to act in connection with international wills that the document is ~~his~~ *the testator's* will and that ~~he~~ *the testator* knows the contents of the will. The testator need not inform the witnesses or the authorized person of the contents of the will.

(3) In the presence of the witnesses and of the authorized person, the testator shall sign the will or, if ~~he~~ *the testator* has previously signed it, shall acknowledge ~~his~~ *the testator's* signature.

(4) If the testator is unable to sign, the absence of ~~his~~ *the testator's* signature does not affect the validity of the international will if the testator indicates the reason for ~~his~~ *the testator's* inability to sign and the authorized person makes note of the inability on the will. In that case, it is permissible for any other person present, including the authorized person or one of the witnesses, at the direction of the testator, to sign the testator's name for ~~him~~ *the testator* if the authorized person makes note of this on the will, but it is not required that any person sign the testator's name for ~~him~~ *the testator*.

(5) The witnesses and the authorized person shall there and then attest the will by signing in the presence of the testator."

Section 2311. Section 72-2-904, MCA, is amended to read:

"72-2-904. Other points of form. (1) The signatures must be placed at the end of the will. If the will consists of several sheets, each sheet must be signed by the testator or, if ~~he~~ *the testator* is unable to sign, by the person signing on ~~his~~ *the testator's* behalf or, if there is no such person, by the authorized person. In addition, each sheet must be numbered.

(2) The date of the will must be the date of its signature by the authorized person.

(3) The authorized person shall ask the testator whether ~~he~~ *the testator* wished to make a declaration concerning the safekeeping of ~~his~~ *the testator's* will. If so and at the express request of the testator, the place where ~~he~~ *the testator* intends to have ~~his~~ *the* will kept must be mentioned in the certificate provided for in 72-2-905.

(4) A will executed in compliance with 72-2-903 is not invalid merely because it does not comply with this section."

Section 2312. Section 72-2-905, MCA, is amended to read:

"72-2-905. Certificate. The authorized person shall attach to the will a certificate to be signed by ~~him~~ *the authorized person* establishing that the requirements of this part for valid execution of an international will have been fulfilled. The authorized person shall keep a copy of the certificate and deliver

another to the testator. The certificate must be substantially in the following form:

CERTIFICATE

(Convention of October 26, 1973)

I, _____ (name, address, and capacity), a person authorized to act in connection with international wills, certify that on _____ (date) at _____ (place) (testator) _____ (name, address, date, and place of birth) in my presence and that of the witnesses

(a) _____ (name, address, date, and place of birth)

(b) _____ (name, address, date, and place of birth) has declared that the attached document is ~~his~~ *the testator's* will and that ~~he~~ *the testator* knows the contents ~~thereof~~ *of the will*.

I furthermore certify that:

(a) in my presence and in that of the witnesses

(1) the testator has signed the will or has acknowledged ~~his~~ *the testator's* signature previously affixed;

(2) following a declaration of the testator stating that ~~he~~ *the testator* was unable to sign ~~his~~ *the* will for the following reason _____, I have mentioned this declaration on the will, and the signature has been affixed by _____ (name and address);

(b) the witnesses and I have signed the will;

*(c) each page of the will has been signed by _____ and numbered;

(d) I have satisfied myself as to the identity of the testator and of the witnesses as designated above;

(e) the witnesses met the conditions requisite to act as such according to the law under which I am acting;

*(f) the testator has requested me to include the following statement concerning the safekeeping of ~~his~~ *the* will:

PLACE OF EXECUTION

DATE

SIGNATURE and, if necessary, SEAL

* to be completed if appropriate"

Section 2313. Section 72-2-909, MCA, is amended to read:

"72-2-909. International will information registration. The secretary of state shall establish a registry system by which authorized persons may register in a central information center information regarding the execution of international wills, keeping that information in strictest confidence until the death of the maker and then making it available to any person desiring information about any will who presents a death certificate or other satisfactory evidence of the testator's death to the center. Information that may be received, preserved in confidence until death, and reported as indicated is limited to the name, social security or individual-identifying number established by law, address, and date and place of birth of the testator and the intended place of deposit or safekeeping of the instrument pending the death of the maker. The secretary of state, at the request of the authorized person, may cause the information ~~he~~ *that the secretary of state* receives about the execution of any international will to be transmitted to the registry system of another

jurisdiction as identified by the testator if that other registry system adheres to rules protecting the confidentiality of the information similar to those established in this state."

Section 2314. Section 72-3-101, MCA, is amended to read:

"72-3-101. Devolution of estate at death — restrictions. (1) The power of a person to leave property by will and the rights of creditors, devisees, and heirs to ~~his~~ *the person's* property are subject to the restrictions and limitations contained in this code to facilitate the prompt settlement of estates.

(2) Upon the death of a person, ~~his~~ *the decedent's* real and personal property devolves to the persons to whom it is devised by ~~his~~ *the decedent's* last will or to those indicated as substitutes for them in cases involving lapse, renunciation, or other circumstances affecting the devolution of testate estates or, in the absence of testamentary disposition, to ~~his~~ *the decedent's* heirs or to those indicated as substitutes for them in cases involving renunciation or other circumstances affecting devolution of intestate estates, subject to homestead allowance, exempt property, and family allowance, to rights of creditors, elective share of the surviving spouse, and to administration."

Section 2315. Section 72-3-106, MCA, is amended to read:

"72-3-106. Interested person's right to demand notice of order or filing. (1) ~~Any~~ *A* person desiring notice of ~~any~~ *an* order or filing pertaining to a decedent's estate in which ~~he~~ *the person* has a financial or property interest may file a demand for notice with the court at any time after the death of the decedent stating:

(a) the name of the decedent;

(b) the nature of ~~his~~ *the demandant's* interest in the estate; and

(c) the demandant's address or that of ~~his~~ *the demandant's* attorney.

(2) The clerk shall mail a copy of the demand to the personal representative if one has been appointed.

(3) After filing of a demand, ~~no~~ *an* order or filing to which the demand relates ~~shall~~ *may not* be made or accepted without notice as prescribed in 72-1-301 to the demandant or ~~his~~ *the demandant's* attorney. The validity of an order ~~which~~ *that* is issued or filing ~~which~~ *that* is accepted without compliance with this requirement ~~shall~~ *may* not be affected by the error, but the petitioner receiving the order or the person making the filing may be liable for any damage caused by the absence of notice.

(4) The requirement of notice arising from a demand under this provision may be waived in writing by the demandant and ~~shall~~ *must* cease upon the termination of ~~his~~ *the demandant's* interest in the estate."

Section 2316. Section 72-3-112, MCA, is amended to read:

"72-3-112. Venue for estate proceedings. (1) Venue for the first informal or formal testacy or appointment proceedings after a decedent's death is:

(a) in the county where the decedent had ~~his~~ *the decedent's* domicile at the time of ~~his~~ death; or

(b) if the decedent was not domiciled in this state, in any county where property of the decedent was located at the time of ~~his~~ death.

(2) Venue for all subsequent proceedings within the exclusive jurisdiction of the court is in the place where the initial proceeding occurred unless the initial

proceeding has been transferred as provided in 72-1-203 or subsection (3) of this section.

(3) If the first proceeding was informal, on application of an interested person and after notice to the proponent in the first proceeding, the court, upon finding that venue is elsewhere, may transfer the proceeding and the file to the other court."

Section 2317. Section 72-3-123, MCA, is amended to read:

"72-3-123. Statutes of limitation on decedent's cause of action — applicability. ~~No~~ *A* statute of limitation running on a cause of action belonging to a decedent, which had not been barred as of the date of ~~his~~ *the decedent's* death, ~~shall~~ *may not* apply to bar a cause of action surviving the decedent's death sooner than 4 months after death. A cause of action ~~which~~ *that*, but for this section, would have been barred less than 4 months after death is barred after 4 months unless tolled."

Section 2318. Section 72-3-201, MCA, is amended to read:

"72-3-201. Applications to be verified. Applications for informal probate or informal appointment ~~shall~~ *must* be directed to the clerk and verified by the applicant to be accurate and complete to the best of ~~his~~ *the applicant's* knowledge and belief as to the information required by 72-3-202 through 72-3-205."

Section 2319. Section 72-3-202, MCA, is amended to read:

"72-3-202. Required contents of application. Every application for informal probate of a will or for informal appointment of a personal representative, other than a special, ancillary, or successor representative, ~~shall~~ *must* contain the following:

(1) a statement of the interest of the applicant;

(2) the name and date of death of the decedent, ~~his~~ *the decedent's* age, and the county and state of ~~his~~ *the decedent's* domicile at the time of death and the names and addresses of the spouse, children, heirs, and devisees and the ages of any who are minors so far as known or ascertainable with reasonable diligence by the applicant;

(3) if the decedent was not domiciled in the state at the time of ~~his~~ death, a statement showing venue;

(4) a statement identifying and indicating the address of any personal representative of the decedent appointed in this state or elsewhere whose appointment has not been terminated;

(5) a statement indicating whether the applicant has received a demand for notice or is aware of any demand for notice of any probate or appointment proceeding concerning the decedent that may have been filed in this state or elsewhere."

Section 2320. Section 72-3-204, MCA, is amended to read:

"72-3-204. Appointment in intestacy — additional information required. An application for informal appointment of an administrator in intestacy ~~shall~~ *must* state in addition to the statements required by 72-3-202:

(1) that after the exercise of reasonable diligence, the applicant is unaware of any unrevoked testamentary instrument relating to property having a situs in this state under 72-1-201 or a statement why any ~~such~~ instrument of which ~~he~~ *the applicant* may be aware is not being probated;

(2) the priority of the person whose appointment is sought and the names of any other persons having a prior or equal right to the appointment under 72-3-501 through 72-3-508."

Section 2321. Section 72-3-211, MCA, is amended to read:

"72-3-211. Informal probate — notice requirements. (1) The moving party ~~must~~ *shall* give notice, as described by 72-1-301, of ~~his~~ *the* application for informal probate:

(a) to any person demanding it pursuant to 72-3-106; and

(b) to any personal representative of the decedent whose appointment has not been terminated.

(2) No other notice of informal probate is required."

Section 2322. Section 72-3-214, MCA, is amended to read:

"72-3-214. Power of clerk to deny informal probate — effect of denial. (1) If the clerk is not satisfied that a will is entitled to be probated in informal proceedings because of failure to meet the requirements of 72-3-212 and 72-3-213 or any other reason, ~~he~~ *the clerk* may decline the application.

(2) A declination of informal probate is not an adjudication and does not preclude formal probate proceedings."

Section 2323. Section 72-3-221, MCA, is amended to read:

"72-3-221. Informal appointment — notice requirements. (1) The moving party ~~must~~ *shall* give notice, as described by 72-1-301, of ~~his~~ *the party's* intention to seek an appointment informally:

(a) to any person demanding it pursuant to 72-3-106; and

(b) to any person having a prior or equal right to appointment not waived in writing and filed with the court.

(2) No other notice of an informal appointment proceeding is required."

Section 2324. Section 72-3-223, MCA, is amended to read:

"72-3-223. Rules for denial of informal appointment. (1) Unless 72-3-523 controls, the application must be denied if it indicates:

(a) that a personal representative who has not filed a written statement of resignation, as provided in 72-3-525, has been appointed in this or another county of this state;

(b) that, ~~(~~unless the applicant is the domiciliary personal representative or ~~his~~ *the domiciliary personal representative's* nominee~~)~~, the decedent was not domiciled in this state and that a personal representative whose appointment has not been terminated has been appointed by a court in the state of domicile; or

(c) that other requirements of 72-3-222 have not been met.

(2) If an application for informal appointment indicates the existence of a possible unrevoked testamentary instrument ~~which~~ *that* may relate to property subject to the laws of this state and ~~which~~ *that* is not filed for probate in this court, the clerk shall decline the application."

Section 2325. Section 72-3-224, MCA, is amended to read:

"72-3-224. Informal appointment — power of clerk to deny — effect of denial. (1) If the clerk is not satisfied that a requested informal appointment of a personal representative should be made because of failure to meet the

requirements of 72-3-222, 72-3-223, and 72-3-225 or for any other reason, ~~he~~ *the clerk* may decline the application.

(2) A declination of informal appointment is not an adjudication and does not preclude appointment in formal proceedings."

Section 2326. Section 72-3-225, MCA, is amended to read:

"72-3-225. Duty of clerk to make appointment — effect. (1) Upon receipt of an application for informal appointment of a personal representative other than a special administrator as provided in 72-3-701, if at least 120 hours have elapsed since the decedent's death, the clerk, after making the findings required by 72-3-222 and 72-3-223, shall appoint the applicant subject to qualification and acceptance~~,~~. ~~provided that~~ *However,* if the decedent was a nonresident, the clerk shall delay the order of appointment until 30 days have elapsed since death unless the personal representative appointed at the decedent's domicile is the applicant or unless the decedent's will directs that ~~his~~ *the decedent's* estate be subject to the laws of this state.

(2) The status of personal representative and the powers and duties pertaining to the office are fully established by informal appointment. An appointment and the office of personal representative created ~~thereby~~ *by the appointment* ~~is~~ *are* subject to termination, as provided in 72-3-521 through 72-3-526, but ~~is~~ *are* not subject to retroactive vacation."

Section 2327. Section 72-3-302, MCA, is amended to read:

"72-3-302. Formal testacy proceedings — nature — how and when commenced. (1) A formal testacy proceeding is litigation to determine whether a decedent left a valid will.

(2) A formal testacy proceeding may be commenced by an interested person filing a petition:

(a) as described in 72-3-301(1) in which ~~he~~ *the person* requests that the court, after notice and hearing, enter an order probating a will;

(b) to set aside an informal probate of a will or to prevent informal probate of a will ~~which~~ *that* is the subject of a pending application; or

(c) for an order that the decedent died intestate.

(3) A petition may seek formal probate of a will without regard to whether the ~~same~~ *will* or a conflicting will has been informally probated.

(4) A formal testacy proceeding may but need not involve a request for appointment of a personal representative."

Section 2328. Section 72-3-304, MCA, is amended to read:

"72-3-304. Effect of formal proceeding on power of informally appointed personal representative. Unless a petition in a formal testacy proceeding also requests confirmation of the previous informal appointment, a previously appointed personal representative, after receipt of notice of the commencement of a formal probate proceeding, ~~must~~ *shall* refrain from exercising ~~his~~ *the personal representative's* power to make any further distribution of the estate during the pendency of the formal proceeding. A petitioner who seeks the appointment of a different personal representative in a formal proceeding also may request an order restraining the acting personal representative from exercising any of the powers of ~~his~~ *that* office and requesting the appointment of a special administrator. In the absence of a request or if the request is denied, the commencement of a formal proceeding

has no effect on the powers and duties of a previously appointed personal representative other than those relating to distribution."

Section 2329. Section 72-3-306, MCA, is amended to read:

"72-3-306. Notice and procedure when fact of death in doubt. (1) If it appears by the petition or otherwise that the fact of the death of the alleged decedent may be in doubt or on the written demand of any interested person, a copy of the notice of the hearing on ~~said~~ *the* petition ~~shall~~ *must* be sent by ~~registered or~~ certified mail to the alleged decedent at ~~his~~ *the alleged decedent's* ~~last known~~ *last-known* address. The court shall direct the petitioner to report the results of or make and report back concerning a reasonably diligent search for the alleged decedent in any manner that may seem advisable, including any ~~or all~~ of the following methods:

(a) by inserting in one or more suitable periodicals a notice requesting information from any person having knowledge of the whereabouts of the alleged decedent;

(b) by notifying law enforcement officials and public welfare agencies in appropriate locations of the disappearance of the alleged decedent;

(c) by engaging the services of an investigator.

(2) The costs of any search ~~so directed shall~~ *must* be paid by the petitioner if there is no administration or by the estate of the decedent ~~in case~~ *if* there is administration."

Section 2330. Section 72-3-308, MCA, is amended to read:

"72-3-308. Written objections to probate. Any party to a formal proceeding who opposes the probate of a will for any reason shall state in ~~his~~ *the* pleadings ~~his~~ *the party's* objections to probate of the will."

Section 2331. Section 72-3-312, MCA, is amended to read:

"72-3-312. Effect of final order in another state. A final order of a court of another state determining testacy, the validity or construction of a will, made in a proceeding involving notice to and an opportunity for contest by all interested persons must be accepted as determinative by the courts of this state if it includes or is based upon a finding that the decedent was domiciled at ~~his~~ *the decedent's* death in the state where the order was made."

Section 2332. Section 72-3-313, MCA, is amended to read:

"72-3-313. Order for formal probate. (1) After the time required for any notice has expired, upon proof of notice, and after any hearing that may be necessary, if the court finds that the testator is dead, *that* venue is proper, and that the proceeding was commenced within the limitation prescribed by 72-3-122, it shall determine the decedent's domicile at death, ~~his~~ *the decedent's* heirs, and ~~his~~ *the decedent's* state of testacy. Any will found to be valid and unrevoked ~~shall~~ *must* be formally probated.

(2) Termination of any previous informal appointment of a personal representative, which may be appropriate in view of the relief requested and findings, is governed by 72-3-523.

(3) The petition ~~shall~~ *must* be dismissed or appropriate amendment allowed if the court is not satisfied that the alleged decedent is dead."

Section 2333. Section 72-3-403, MCA, is amended to read:

"72-3-403. Effect on other proceedings and previously appointed personal representative. (1) The pendency of a proceeding for supervised

administration of a decedent's estate stays action on any informal application then pending or ~~thereafter~~ filed *after the pending proceeding*.

(2) If a will has been previously probated in informal proceedings, the effect of the filing of a petition for supervised administration is as provided for formal testacy proceedings by 72-3-303 and 72-3-304.

(3) After ~~he~~ *a personal representative* has received notice of the filing of a petition for supervised administration, a personal representative who has been appointed previously ~~shall~~ *may* not exercise ~~his~~ *the* power to distribute any estate. The filing of the petition does not affect ~~his~~ *the personal representative's* other powers and duties unless the court restricts the exercise of any of them pending *a* full hearing on the petition."

Section 2334. Section 72-3-404, MCA, is amended to read:

"72-3-404. Powers and duties of personal representative. (1) A supervised personal representative is responsible to the court, as well as to the interested parties, and is subject to directions concerning the estate made by the court on its own motion or on the motion of any interested party.

(2) Except as otherwise provided in this part or as otherwise ordered by the court, a supervised personal representative has the same duties and powers as a personal representative who is not supervised.

(3) Unless restricted by the court, a supervised personal representative has, without interim orders approving exercise of a power, all powers of personal representatives under this code, but ~~he shall~~ *the personal representative may* not exercise ~~his~~ *the* power to make any distribution of the estate without prior order of the court. Any other restriction on the power of a personal representative ~~which~~ *that* may be ordered by the court must be endorsed on ~~his~~ *the personal representative's* letters of appointment and unless so endorsed is ineffective as to persons dealing in good faith with the personal representative."

Section 2335. Section 72-3-504, MCA, is amended to read:

"72-3-504. Renunciation — nomination of other — two or more persons sharing priority. (1) A person entitled to letters under ~~(2) through (6) of~~ 72-3-502*(2) through (6)* may nominate a qualified person to act as personal representative.

(2) Any person entitled to letters may renounce ~~his~~ *the person's* right to nominate or to an appointment by appropriate writing filed with the court.

(3) When two or more persons share a priority, those of them who do not renounce ~~must~~ *shall* concur in nominating another to act for them or in applying for appointment. If they are unable to concur in nominating another to act for them or in applying for appointment, the court may appoint any qualified person."

Section 2336. Section 72-3-511, MCA, is amended to read:

"72-3-511. Acceptance of appointment — consent to jurisdiction. By accepting appointment, a personal representative submits personally to the jurisdiction of the court in any proceeding relating to the estate that may be instituted by any interested person. Notice of any proceeding ~~shall~~ *must* be delivered to the personal representative or mailed to ~~him~~ *the personal representative* by ordinary first-class mail at ~~his~~ *the* address as listed in the application or petition for appointment or as ~~thereafter~~ reported to the court and to ~~his~~ *the personal representative's* address as then known to the petitioner."

Section 2337. Section 72-3-513, MCA, is amended to read:

"72-3-513. Bond — when required. (1) ~~No bond~~ *Bond* is *not* required of a personal representative appointed in informal proceedings, except:

(a) upon the appointment of a special administrator;

(b) when an executor or other personal representative is appointed to administer an estate under a will containing an express requirement of bond; or

(c) when bond is required under 72-3-514.

(2) Bond may be required by court order at the time of appointment of a personal representative appointed in any formal proceeding, except that bond is not required of a personal representative appointed in formal proceedings if the will relieves the personal representative of bond unless bond has been requested by an interested party and the court is satisfied that it is desirable. Bond required by any will may be dispensed with in formal proceedings upon determination by the court that it is not necessary.

(3) ~~No bond~~ *Bond* is *not* required of any personal representative who, pursuant to statute, has deposited cash or collateral with an agency of this state to secure performance of ~~his~~ *the personal representative's* duties."

Section 2338. Section 72-3-514, MCA, is amended to read:

"72-3-514. Demand for bond by interested person. (1) Any person apparently having an interest in the estate worth in excess of $1,000 or any creditor having a claim in excess of $1,000 may make a written demand that a personal representative give bond. The demand must be filed with the clerk and a copy mailed to the personal representative, if appointment and qualification have occurred. ~~Thereupon~~ *Upon filing of the demand*, bond is required, but the requirement ceases if the person demanding bond ceases to be interested in the estate or if bond is excused as provided in 72-3-513 or 72-3-515.

(2) After ~~he~~ *the personal representative* has received notice and until the filing of the bond or cessation of the requirement of bond, the personal representative shall refrain from exercising any powers of ~~his~~ *the personal representative's* office except as necessary to preserve the estate.

(3) Failure of the personal representative to meet a requirement of bond by giving suitable bond within 30 days after receipt of notice is cause for ~~his~~ removal and appointment of a successor personal representative."

Section 2339. Section 72-3-515, MCA, is amended to read:

"72-3-515. Bond amount — security — reduction. (1) If bond is required and the provisions of the will or order do not specify the amount, unless stated in ~~his~~ *the* application or petition, the person qualifying shall file a statement under oath with the clerk indicating ~~his~~ *the person's* best estimate of the value of the personal estate of the decedent and of the income expected from the personal and real estate during the next year, and ~~he~~ *the person* shall execute and file a bond with the clerk or give other suitable security in an amount not less than the estimate.

(2) The clerk shall determine that the bond is duly executed by a corporate surety or one or more individual sureties whose performance is secured by pledge of personal property, mortgage on real property, or other adequate security.

(3) The clerk may permit the amount of the bond to be reduced by the value of assets of the estate deposited with a domestic financial institution in a manner that prevents their unauthorized disposition. On petition of the personal representative or another interested person, the court may excuse a

requirement of bond, increase or reduce the amount of the bond, release sureties, or permit the substitution of another bond with the same or different sureties."

Section 2340. Section 72-3-516, MCA, is amended to read:

"72-3-516. Terms of bond — liability of surety. (1) The following requirements and provisions apply to any bond required by this part:

(a) Bonds ~~shall~~ *must* name the state as obligee for the benefit of the persons interested in the estate and ~~shall~~ *must* be conditioned upon the faithful discharge by the fiduciary of all duties according to law.

(b) Unless otherwise provided by the terms of the approved bond, sureties are jointly and severally liable with the personal representative and with each other. The address of sureties ~~shall~~ *must* be stated in the bond.

(c) By executing an approved bond of a personal representative, the surety consents to the jurisdiction of the probate court ~~which~~ *that* issued letters to the primary obligor in any proceedings pertaining to the fiduciary duties of the personal representative and naming the surety as a party. Notice of any proceeding ~~shall~~ *must* be delivered to the surety or mailed to ~~him~~ *the surety* by ~~registered or~~ certified mail at ~~his~~ *the surety's* address as listed with the court where the bond is filed and to ~~his~~ *the surety's* address as then known to the petitioner.

(d) On petition of a successor personal representative, any other personal representative of the same decedent, or any interested person, a proceeding in the court may be initiated against a surety for breach of the obligation of the bond of the personal representative.

(e) The bond of the personal representative is not void after the first recovery but may be proceeded against from time to time until the whole penalty is exhausted.

(2) No action or proceeding may be commenced against the surety on any matter as to which an action or proceeding against the primary obligor is barred by adjudication or limitation."

Section 2341. Section 72-3-521, MCA, is amended to read:

"72-3-521. Termination of appointment — general effect. Termination of appointment of a personal representative occurs as indicated in 72-3-522 through 72-3-526, inclusive. Termination ends the right and power pertaining to the office of personal representative as conferred by this code or any will, except that a personal representative, at any time prior to distribution or until restrained or enjoined by court order, may perform acts necessary to protect the estate and may deliver the assets to a successor representative. Termination does not discharge a personal representative from liability for transactions or omissions occurring before termination or relieve ~~him~~ *the personal representative* of the duty to preserve assets subject to ~~his~~ *the personal representative's* control, to account ~~therefor~~ *for the assets*, and to deliver the assets. Termination does not affect the jurisdiction of the court over the personal representative but terminates ~~his~~ *the personal representative's* authority to represent the estate in any pending or future proceeding."

Section 2342. Section 72-3-522, MCA, is amended to read:

"72-3-522. Termination of appointment — death or disability. (1) The death of a personal representative or the appointment of a conservator for the estate of a personal representative terminates ~~his~~ *the personal representative's* appointment.

(2) Until appointment and qualification of a successor or special representative to replace the deceased or protected representative, the representative of the estate of the deceased or protected personal representative, if any, has the duty to protect the estate possessed and being administered by ~~his~~ *the representative's* decedent or ward at the time ~~his~~ *the* appointment terminates, has the power to perform acts necessary for protection, and shall account for and deliver the estate assets to a successor or special personal representative upon ~~his~~ *that person's* appointment and qualification."

Section 2343. Section 72-3-523, MCA, is amended to read:

"72-3-523. Termination of appointment — change of testacy status. Except as otherwise ordered in formal proceedings, the probate of a will subsequent to the appointment of a personal representative in intestacy or under a will ~~which~~ *that* is superseded by formal probate of another will or the vacation of an informal probate of a will subsequent to the appointment of the personal representative ~~thereunder~~ *under the will* does not terminate the appointment of the personal representative although ~~his~~ *the personal representative's* powers may be reduced as provided in 72-3-304. Termination occurs upon appointment in informal or formal appointment proceedings of a person entitled to appointment under the later assumption concerning testacy. If ~~no~~ *a* request for new appointment is *not* made within 30 days after expiration of time for appeal from the order in formal testacy proceedings or from the informal probate changing the assumption concerning testacy, the previously appointed personal representative upon request may be appointed personal representative under the subsequently probated will or as in intestacy, as the case may be."

Section 2344. Section 72-3-525, MCA, is amended to read:

"72-3-525. Termination of appointment — voluntary. A personal representative may resign ~~his~~ *the* position by filing a written statement of resignation with the clerk after ~~he~~ *the personal representative* has given at least 15 days' written notice to the persons known to be interested in the estate. If no one applies or petitions for appointment of a successor representative within the time indicated in the notice, the filed statement of resignation is ineffective as a termination of appointment and in any event is effective only upon the appointment and qualification of a successor representative and delivery of the assets to ~~him~~ *the successor representative*."

Section 2345. Section 72-3-526, MCA, is amended to read:

"72-3-526. Termination of appointment — removal for cause. (1) A person interested in the estate may petition for removal of a personal representative for cause at any time. Upon filing of the petition, the court shall fix a time and place for hearing. Notice ~~shall~~ *must* be given by the petitioner to the personal representative and to other persons as the court may order. Except as otherwise ordered as provided in 72-3-617, after receipt of notice of removal proceedings, the personal representative ~~shall~~ *may* not act except to account, to correct maladministration, or preserve the estate. If removal is ordered, the court also shall direct by order the disposition of the assets remaining in the name of or under the control of the personal representative being removed.

(2) Cause for removal exists:

(a) when removal would be in the best interests of the estate; or

(b) if it is shown that a personal representative or the person seeking ~~his~~ *the personal representative's* appointment intentionally misrepresented material facts in the proceedings leading to ~~his~~ *the* appointment or that the personal

representative has disregarded an order of the court, has become incapable of discharging the duties of ~~his~~ *the* office, or has mismanaged the estate or failed to perform any duty pertaining to the office.

(3) Unless the decedent's will directs otherwise, a personal representative appointed at the decedent's domicile, incident to securing *self-appointment or* appointment of ~~himself or his~~ *the personal representative's* nominee as ancillary personal representative, may obtain removal of another who was appointed personal representative in this state to administer local assets."

Section 2346. Section 72-3-527, MCA, is amended to read:

"72-3-527. Successor personal representative. (1) Parts 2 and 3 of this chapter govern proceedings for appointment of a personal representative to succeed one whose appointment has been terminated.

(2) After appointment and qualification, a successor personal representative may be substituted in all actions and proceedings to which the former personal representative was a party, and ~~no~~ *a* notice, process, or claim ~~which~~ *that* was given or served upon the former personal representative ~~need~~ *is not required to* be given to or served upon the successor in order to preserve any position or right the person giving the notice or filing the claim may ~~thereby~~ have obtained or preserved with reference to the former personal representative.

(3) Except as otherwise ordered by the court, the successor personal representative has the powers and duties in respect to the continued administration ~~which~~ *that* the former personal representative would have had if ~~his~~ *the former personal representative's* appointment had not been terminated."

Section 2347. Section 72-3-601, MCA, is amended to read:

"72-3-601. Time of accrual of duties and powers — power of executor prior to appointment — ratification. (1) The duties and powers of a personal representative commence upon ~~his~~ appointment. The powers of a personal representative relate back in time to give acts by the person appointed ~~which~~ *that* are beneficial to the estate occurring prior to appointment the same effect as those occurring ~~thereafter~~ *after appointment*.

(2) Prior to appointment, a person named executor in a will may carry out written instructions of the decedent relating to ~~his~~ *the decedent's* body, funeral, and burial arrangements.

(3) A personal representative may ratify and accept acts on behalf of the estate done by others ~~where~~ *when* the acts would have been proper for a personal representative."

Section 2348. Section 72-3-602, MCA, is amended to read:

"72-3-602. Priority among different letters. A person to whom general letters are issued first has exclusive authority under the letters until ~~his~~ *the person's* appointment is terminated or modified. If, through error, general letters are afterwards issued to another, the first appointed representative may recover any property of the estate in the hands of the representative subsequently appointed, but the acts of the ~~latter~~ *subsequent representative* done in good faith before notice of the first letters are not void for want of validity of appointment."

Section 2349. Section 72-3-603, MCA, is amended to read:

"72-3-603. Notice of appointment to heirs and devisees. (1) Not later than 30 days after ~~his~~ appointment, every personal representative, except any

special administrator, shall give information of ~~his~~ *the* appointment to the heirs and devisees, including, if there has been no formal testacy proceeding and if the personal representative was appointed on the assumption that the decedent died intestate, the devisees in any will mentioned in the application for appointment of a personal representative. The information ~~shall~~ *must* be delivered or sent by ordinary mail to each of the heirs and devisees whose address is reasonably available to the personal representative. The duty does not extend to require information to persons who have been adjudicated in a prior formal testacy proceeding to have no interest in the estate.

(2) (a) The information must:

(i) include the name and address of the personal representative;

(ii) indicate that it is being sent to persons who have or may have some interest in the estate being administered;

(iii) indicate whether bond has been filed; and

(iv) describe the court where papers relating to the estate are on file.

(b) The information must state that the estate is being administered by the personal representative under the uniform probate code without supervision by the court but that recipients are entitled to information regarding the administration from the personal representative and may petition the court in any matter relating to the estate, including distribution of assets and expenses of administration.

(3) The personal representative's failure to give this information is a breach of ~~his~~ *the personal representative's* duty to the persons concerned but does not affect the validity of ~~his~~ *the personal representative's* appointment, ~~his~~ powers, or other duties.

(4) A personal representative may inform other persons of ~~his~~ *the* appointment by delivery or ordinary first-class mail."

Section 2350. Section 72-3-604, MCA, is amended to read:

"72-3-604. Standing to sue. Except as to proceedings ~~which~~ *that* do not survive the death of the decedent, a personal representative of a decedent domiciled in this state at ~~his~~ death has the same standing to sue and be sued in the courts of this state and the courts of any other jurisdiction as ~~his~~ *the* decedent had immediately prior to death."

Section 2351. Section 72-3-605, MCA, is amended to read:

"72-3-605. Personal representative to proceed without court order — power to invoke jurisdiction. A personal representative shall proceed expeditiously with the settlement and distribution of a decedent's estate and, except as otherwise specified under this code or ordered in regard to a supervised personal representative, do so without adjudication, order, or direction of the court, but ~~he~~ *the personal representative* may invoke the jurisdiction of the court, in proceedings authorized by this code, to resolve questions concerning the estate or its administration."

Section 2352. Section 72-3-606, MCA, is amended to read:

"72-3-606. Possession and protection of estate. (1) Except as otherwise provided by a decedent's will and subject to the provisions of *Title 72,* chapter 12, part 7, ~~every~~ *a* personal representative has a right to and shall take possession or control of the decedent's property, except that any real property or tangible personal property may be left with or surrendered to the person presumptively entitled ~~thereto~~ *to the property* unless or until, in the judgment of the personal

representative, possession of the property by ~~him~~ *the personal representative* will be necessary for purposes of administration. The request by a personal representative for delivery of ~~any~~ property possessed by an heir or devisee is conclusive evidence, in any action against the heir or devisee for possession ~~thereof~~ *of the property*, that the possession of the property by the personal representative is necessary for purposes of administration.

(2) The personal representative shall pay taxes on and take all steps reasonably necessary for the management, protection, and preservation of the estate in ~~his~~ *the personal representative's* possession. ~~He~~ *The personal representative* may maintain an action to recover possession of property or to determine the title ~~thereto~~ *to property*."

Section 2353. Section 72-3-610, MCA, is amended to read:

"72-3-610. General duties — fiduciary. A personal representative is a fiduciary who shall observe the standards of care applicable to trustees under the laws of the state of Montana. A personal representative is under a duty to settle and distribute the estate of the decedent in accordance with the terms of any probated and effective will and this code and as expeditiously and efficiently as is consistent with the best interests of the estate. ~~He~~ *The personal representative* shall use the authority conferred upon ~~him~~ *the personal representative* by this code, the terms of the will, if any, and any order in proceedings to which ~~he~~ *the personal representative* is party for the best interests of successors to the estate."

Section 2354. Section 72-3-611, MCA, is amended to read:

"72-3-611. No surcharge for authorized acts generally — limitation. (1) A personal representative ~~shall~~ *may* not be surcharged for acts of administration or distribution if the conduct in question was authorized at the time. Subject to other obligations of administration and of this code, an informally probated will is authority to administer and distribute the estate according to its terms. Subject to the provisions of this code, an order of appointment of a personal representative, whether issued in informal or formal proceedings, is authority to distribute apparently intestate assets to the heirs of the decedent if, at the time of distribution, the personal representative is not aware of a pending testacy proceeding, a proceeding to vacate an order entered in an earlier testacy proceeding, a formal proceeding questioning ~~his~~ *the personal representative's* appointment or fitness to continue, or a supervised administration proceeding.

(2) ~~Nothing in this~~ *This* section ~~affects~~ *does not affect* the duty of the personal representative to administer and distribute the estate in accordance with the rights of claimants, the surviving spouse, any minor and dependent children, and any pretermitted child of the decedent as described elsewhere in this code."

Section 2355. Section 72-3-612, MCA, is amended to read:

"72-3-612. No individual liability — exceptions — certain claims to be brought against personal representative. (1) Unless otherwise provided in the contract, a personal representative is not individually liable on a contract properly entered into in ~~his~~ *the personal representative's* fiduciary capacity in the course of administration of the estate unless ~~he~~ *the personal representative* fails to reveal ~~his~~ *the* representative capacity and identify the estate in the contract.

(2) A personal representative is individually liable for obligations arising from ownership or control of the estate or for torts committed in the course of

administration of the estate only if ~~he~~ *the personal representative* is personally at fault.

(3) Claims based on contracts entered into by a personal representative in ~~his~~ *a* fiduciary capacity, on obligations arising from ownership or control of the estate, or on torts committed in the course of estate administration may be asserted against the estate by proceeding against the personal representative in ~~his~~ *the personal representative's* fiduciary capacity, whether or not the personal representative is individually liable ~~therefor~~.

(4) Issues of liability as between the estate and the personal representative individually may be determined in a proceeding for accounting, surcharge, or indemnification or other appropriate proceeding."

Section 2356. Section 72-3-614, MCA, is amended to read:

"72-3-614. Power to recover property ~~which~~ *that* is subject of void or voidable transfer. The property liable for the payment of unsecured debts of a decedent includes all property transferred by ~~him~~ *the decedent* by any means ~~which~~ *that* is in law void or voidable as against ~~his~~ *the decedent's* creditors, and subject to prior liens, the right to recover this property, so far as necessary for the payment of unsecured debts of the decedent, is exclusively in the personal representative."

Section 2357. Section 72-3-615, MCA, is amended to read:

"72-3-615. Transaction involving conflict of interest — voidable — exceptions. Any sale or encumbrance to the personal representative, ~~his~~ *the personal representative's* spouse, agent, or attorney, or any corporation or trust in which ~~he~~ *the personal representative* has a substantial beneficial interest or any transaction ~~which~~ *that* is affected by a substantial conflict of interest on the part of the personal representative is voidable by any person interested in the estate except one who has consented after fair disclosure~~,~~ unless:

(1) the will or a contract entered into by the decedent expressly authorized the transaction; or

(2) the transaction is approved by the court after notice to interested persons."

Section 2358. Section 72-3-616, MCA, is amended to read:

"72-3-616. Improper exercise of power — breach of fiduciary duty. (1) If any exercise of power concerning the estate is improper, the personal representative is liable to interested persons for damage or loss resulting from breach of ~~his~~ *the personal representative's* fiduciary duty to the same extent as a trustee of an express trust.

(2) The rights of purchasers and others dealing with a personal representative ~~shall~~ *must* be determined as provided in 72-3-615 and 72-3-618."

Section 2359. Section 72-3-617, MCA, is amended to read:

"72-3-617. Order restraining personal representative. (1) On petition of any person who appears to have an interest in the estate, the court by temporary order may restrain a personal representative from performing specified acts of administration, disbursement, or distribution or exercise of any powers or discharge of any duties of ~~his~~ *the* office or make any other order to secure proper performance of ~~his~~ *the personal representative's* duty if it appears to the court that the personal representative otherwise may take some action ~~which~~ *that* would jeopardize unreasonably the interest of the applicant or of

some other interested person. Persons with whom the personal representative may transact business may be made parties.

(2) The matter ~~shall~~ *must* be set for hearing within 10 days unless the parties otherwise agree. Notice as the court directs ~~shall~~ *must* be given to the personal representative and ~~his~~ *the personal representative's* attorney of record, if any, and to any other parties named defendant in the petition."

Section 2360. Section 72-3-621, MCA, is amended to read:

"72-3-621. Powers and duties of successor personal representative. A successor personal representative has the same power and duty as the original personal representative to complete the administration and distribution of the estate as expeditiously as possible, but ~~he shall~~ *the successor personal representative may* not exercise any power expressly made personal to the executor named in the will."

Section 2361. Section 72-3-623, MCA, is amended to read:

"72-3-623. Persons dealing with single corepresentative — protection. Persons dealing with a corepresentative, if actually unaware that another has been appointed to serve with ~~him~~ *the corepresentative* or if advised by the personal representative with whom they deal that ~~he~~ *the personal representative* has authority to act alone for any of the reasons mentioned ~~herein~~ *in this part*, are as fully protected as if the person with whom they dealt had been the sole personal representative."

Section 2362. Section 72-3-632, MCA, is amended to read:

"72-3-632. Expenses of personal representative in estate litigation. If ~~any~~ *a* personal representative or person nominated as personal representative defends or prosecutes ~~any~~ *a* proceeding in good faith, whether successful or not, ~~he~~ *the personal representative* is entitled to receive from the estate ~~his~~ *the personal representative's* necessary expenses and disbursements, including reasonable ~~attorneys'~~ *attorney* fees incurred."

Section 2363. Section 72-3-634, MCA, is amended to read:

"72-3-634. Proceedings for review of employment of agents and compensation of personal representatives and employees. (1) Upon the filing of a motion for settlement of fees by the court filed by an interested person, the personal representative, or the person employed by the personal representative and after notice to all interested persons, the propriety of employment of any person by a personal representative, including any attorney, auditor, investment ~~advisor~~ *adviser*, or other specialized agent or assistant, the reasonableness of the compensation of any person ~~so~~ employed, or the reasonableness of the compensation determined by the personal representative for ~~his~~ *the personal representative's* own services ~~shall~~ *must* be reviewed and determined by the court.

(2) In ~~any~~ *a* dispute concerning fees, the court shall set the fee.

(3) ~~Any~~ *A* person who has received excessive compensation from an estate for services rendered may be ordered to make appropriate refunds."

Section 2364. Section 72-3-703, MCA, is amended to read:

"72-3-703. Special administrator appointed informally — powers and duties. A special administrator appointed by the clerk in informal proceedings pursuant to 72-3-701(1) has the duty to collect and manage the assets of the estate, to preserve them, to account ~~therefor~~ *for them*, and to deliver them to the general personal representative upon ~~his~~ *the personal*

representative's qualification. The special administrator has the power of a personal representative under the code necessary to perform ~~his~~ *the special administrator's* duties."

Section 2365. Section 72-3-801, MCA, is amended to read:

"72-3-801. Notice to creditors. (1) Unless notice has already been given under this section, a personal representative upon ~~his~~ appointment shall publish a notice once a week for 3 successive weeks in a newspaper of general circulation in the county announcing ~~his~~ *the personal representative's* appointment and address and notifying creditors of the estate to present their claims within 4 months after the date of the first publication of the notice or be forever barred.

(2) A personal representative may give written notice by mail or other delivery to any creditor, notifying the creditor to present ~~his~~ *the creditor's* claim within 4 months from the published notice if given as provided in subsection (1) or within 30 days from the mailing or other delivery of the notice, whichever is later, or be forever barred. Written notice must be the notice described in subsection (1) or a similar notice.

(3) The personal representative is not liable to any creditor or to any successor of the decedent for giving or failing to give notice under this section."

Section 2366. Section 72-3-803, MCA, is amended to read:

"72-3-803. Nonclaim — limitations on presentation of claims — exceptions. (1) All claims against a decedent's estate ~~which~~ *that* arose before the death of the decedent, including claims of the state and any subdivision ~~thereof~~ *of the state*, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis, if not barred earlier by other statute of limitations, are barred against the estate, the personal representative, and the heirs and devisees of the decedent~~,~~ unless presented within the earlier of the following time limitations:

(a) within 1 year after the decedent's death; or

(b) within the time provided by 72-3-801(2) for creditors who are given actual notice and within the time provided in 72-3-801(1) for all creditors barred by publication. However, claims barred by the nonclaim statute at the decedent's domicile before the giving of notice to creditors in this state are also barred in this state.

(2) All claims against a decedent's estate ~~which~~ *that* arise at or after the death of the decedent, including claims of the state and any subdivision ~~thereof~~ *of the state*, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis, are barred against the estate, the personal representative, and the heirs and devisees of the decedent unless presented as follows:

(a) a claim based on a contract with the personal representative, within 4 months after performance by the personal representative is due;

(b) any other claim, within the later of 4 months after it arises or the time specified in subsection (1)(a).

(3) ~~Nothing in this~~ *This* section ~~affects or prevents~~ *does not affect or prevent*:

(a) any proceeding to enforce any mortgage, pledge, or other lien upon property of the estate;

(b) to the limits of the insurance protection only, any proceeding to establish liability of the decedent or the personal representative for which ~~he~~ *the decedent or the personal representative* is protected by liability insurance; or

(c) collection of compensation for services rendered and reimbursement for expenses advanced by the personal representative or by the attorney or accountant for the personal representative of the estate."

Section 2367. Section 72-3-804, MCA, is amended to read:

"72-3-804. Manner of presentation of claims. Claims against a decedent's estate may be presented as follows:

(1) The claimant shall mail to the personal representative return receipt requested a written statement of the claim indicating its basis, the name and address of the claimant, and the amount claimed or may file a written statement of the claim, in the form prescribed by rule, with the clerk of the court. The claim is ~~deemed~~ *considered* presented on the first to occur of receipt of the written statement of claim by the personal representative or the filing of the claim with the court. If a claim is not yet due, the date when it will become due ~~shall~~ *must* be stated. If the claim is contingent or unliquidated, the nature of the uncertainty ~~shall~~ *must* be stated. If the claim is secured, the security ~~shall~~ *must* be described. Failure to describe correctly the security, the nature of any uncertainty, and the due date of a claim not yet due does not invalidate the presentation made.

(2) The claimant may commence a proceeding against the personal representative, in any court where the personal representative may be subjected to jurisdiction, to obtain payment of ~~his~~ *the* claim against the estate, but the commencement of the proceeding must occur within the time limited for presenting the claim. ~~No~~ *A* presentation of claim is *not* required in regard to matters claimed in proceedings against the decedent ~~which~~ *that* were pending at the time of ~~his~~ death.

(3) If a claim is presented under subsection (1), ~~no~~ *a* proceeding ~~thereon~~ *on the claim* may *not* be commenced more than 60 days after the personal representative has mailed a notice of disallowance, but in the case of a claim ~~which~~ *that* is not presently due or ~~which~~ *that* is contingent or unliquidated, the personal representative may consent to an extension of the 60-day period or, to avoid injustice, the court, on petition, may order an extension of the 60-day period, but ~~in no event shall~~ the extension *may not* run beyond the applicable statute of limitations."

Section 2368. Section 72-3-805, MCA, is amended to read:

"72-3-805. Allowance and disallowance of claims — interest on allowed claims. (1) As to claims presented in the manner described in 72-3-804 within the time limit prescribed in 72-3-803, the personal representative may mail a notice to any claimant stating that the claim has been disallowed. If, after allowing or disallowing a claim, the personal representative changes ~~his~~ *the* decision concerning the claim, ~~he~~ *the personal representative* shall notify the claimant. The personal representative may not change a disallowance of a claim after the time for the claimant to file a petition for allowance or to commence a proceeding on the claim has run and the claim has been barred. ~~Every~~ *A* claim ~~which~~ *that* is disallowed in whole or in part by the personal representative is barred so far as *it is* not allowed unless the claimant files a petition for allowance in the court or commences a proceeding against the personal representative not later than 60 days after the mailing of the notice of disallowance or partial allowance if the notice warns the claimant of the impending bar. Failure of the personal representative to mail notice to a claimant of action on ~~his~~ *the*

claimant's claim for 60 days after the time for original presentation of the claim has expired has the effect of a notice of allowance.

(2) After allowing or disallowing a claim, the personal representative may change the allowance or disallowance as provided in this section. The personal representative may change the allowance to a disallowance, in whole or in part, prior to payment, but not after allowance by a court order or judgment or an order directing payment of the claim. The personal representative shall notify the claimant of the change to disallowance, and the disallowed claim is then subject to bar as provided in subsection (1). The personal representative may change a disallowance to an allowance, in whole or in part, until it is barred under subsection (1). After it is barred, it may be allowed and paid only if the estate is solvent and all successors whose interests would be affected consent.

(3) Upon the petition of the personal representative or of a claimant in a proceeding for the purpose, the court may allow, in whole or in part, any claim or claims presented to the personal representative or filed with the clerk of the court in due time and not barred by subsection (1). Notice in this proceeding ~~shall~~ *must* be given to the claimant, the personal representative, and those other persons interested in the estate ~~as~~ *that* the court may direct by order entered at the time the proceeding is commenced.

(4) A judgment in a proceeding in another court against a personal representative to enforce a claim against a decedent's estate is an allowance of the claim.

(5) Unless otherwise provided in ~~any~~ *a* judgment in another court entered against the personal representative, an allowed claim bears interest at the legal rate for the period commencing 60 days after the time for original presentation of the claim has expired unless based on a contract making a provision for interest, in which case the claim bears interest in accordance with that provision."

Section 2369. Section 72-3-808, MCA, is amended to read:

"72-3-808. Payment of claims. (1) Upon the expiration of the earlier of the time limitations provided in 72-3-803 for the presentation of claims, the personal representative shall proceed to pay the claims allowed against the estate in the order of priority prescribed, after making provision for homestead, family, and support allowances, for claims already presented ~~which~~ *that* have not yet been allowed or whose allowance has been appealed~~,~~ and for unbarred claims ~~which~~ *that* may yet be presented, including costs and expenses of administration.

(2) By petition to the court in a proceeding for the purpose~~,~~ or by appropriate motion if the administration is supervised, a claimant whose claim has been allowed but not paid as provided ~~herein~~ *in this section* may secure an order directing the personal representative to pay the claim to the extent that funds of the estate are available for the payment.

(3) The personal representative at any time may pay any just claim ~~which~~ *that* has not been barred, with or without formal presentation, but ~~he~~ *the personal representative* is personally liable to any other claimant whose claim is allowed and who is injured by ~~such~~ *the* payment if:

(a) the payment was made before the expiration of the time limit stated in subsection (1) and the personal representative failed to require the payee to give adequate security for the refund of any of the payment necessary to pay other claimants; or

(b) the payment was made, due to the negligence or willful fault of the personal representative, in ~~such~~ *a* manner ~~as to deprive~~ *that deprives* the injured claimant of ~~his~~ *the claimant's* priority."

Section 2370. Section 72-3-811, MCA, is amended to read:

"72-3-811. Secured claims. Payment of a secured claim is upon the basis of the amount allowed if the creditor surrenders ~~his~~ *the creditor's* security~~;~~. ~~otherwise~~ *Otherwise,* payment is upon the basis of one of the following:

(1) if the creditor exhausts ~~his~~ *the creditor's* security before receiving payment, unless precluded by other law, upon the amount of the claim allowed less the fair value of the security; or

(2) if the creditor does not have the right to exhaust ~~his~~ *the creditor's* security or has not done so, upon the amount of the claim allowed less the value of the security determined by converting it into money according to the terms of the agreement pursuant to which the security was delivered to the creditor or by the creditor and personal representative by agreement, arbitration, compromise, or litigation."

Section 2371. Section 72-3-812, MCA, is amended to read:

"72-3-812. Encumbered assets. (1) If any assets of the estate are encumbered by mortgage, pledge, lien, or other security interest, the personal representative may pay the encumbrance or any part ~~thereof~~ *of the encumbrance*, renew or extend any obligation secured by the encumbrance, or convey or transfer the assets to the creditor in satisfaction of ~~his~~ *the* lien, in whole or in part, whether or not the holder of the encumbrance has filed a claim, if it appears to be for the best interest of the estate.

(2) Payment of an encumbrance does not increase the share of the distributee entitled to the encumbered assets unless the distributee is entitled to exoneration."

Section 2372. Section 72-3-814, MCA, is amended to read:

"72-3-814. Claims not due and contingent or unliquidated claims. (1) If a claim ~~which~~ *that* will become due at a future time or a contingent or unliquidated claim becomes due or certain before the distribution of the estate and if the claim has been allowed or established by a proceeding, it is paid in the same manner as presently due and absolute claims of the same class.

(2) In other cases the personal representative or, on petition of the personal representative or the claimant in a special proceeding for the purpose, the court may provide for payment as follows:

(a) If the claimant consents, ~~he~~ *the claimant* may be paid the present or agreed value of the claim, taking any uncertainty into account.

(b) Arrangement for future payment or possible payment on the happening of the contingency or on liquidation may be made by creating a trust, giving a mortgage, obtaining a bond or security from a distributee, or otherwise."

Section 2373. Section 72-3-821, MCA, is amended to read:

"72-3-821. Administration in more than one state — payment of claims. (1) All assets of estates being administered in this state are subject to all claims, allowances, and charges existing or established against the personal representative wherever appointed.

(2) If the estate either in this state or as a whole is insufficient to cover all family exemptions and allowances determined by the law of the decedent's domicile, prior charges and claims, after satisfaction of the exemptions,

allowances, and charges, each claimant whose claim has been allowed either in this state or elsewhere in administrations of which the personal representative is aware is entitled to receive payment of an equal proportion of ~~his~~ *the* claim. If a preference or security in regard to a claim is allowed in another jurisdiction but not in this state, the creditor ~~so~~ benefited is to receive dividends from local assets only upon the balance of ~~his~~ *the creditor's* claim after deducting the amount of the benefit.

(3) In case the family exemptions and allowances, prior charges, and claims of the entire estate exceed the total value of the portions of the estate being administered separately and this state is not the state of the decedent's last domicile, the claims allowed in this state ~~shall~~ *must* be paid their proportion if local assets are adequate for the purpose, and the balance of local assets ~~shall~~ *must* be transferred to the domiciliary personal representative. If local assets are not sufficient to pay all claims allowed in this state the amount to which they are entitled, local assets ~~shall~~ *must* be marshalled so that each claim allowed in this state is paid its proportion as far as possible, after taking into account all dividends on claims allowed in this state from assets in other jurisdictions."

Section 2374. Section 72-3-902, MCA, is amended to read:

"72-3-902. Distribution in kind preferred — method — valuation. Unless a contrary intention is indicated by the will, the distributable assets of a decedent's estate ~~shall~~ *must* be distributed in kind to the extent possible through application of the following provisions:

(1) A specific devisee is entitled to distribution of the thing devised to ~~him~~ *that devisee*, and a spouse or child who has selected particular assets of an estate as provided in 72-2-413 ~~shall~~ *must* receive the items selected.

(2) Any homestead or family allowance or devise of a stated sum of money may be satisfied in kind~~, provided~~ *if*:

(a) the person entitled to the payment has not demanded payment in cash;

(b) the property distributed in kind is valued at fair market value as of the date of its distribution; and

(c) no residuary devisee has requested that the asset in question remain a part of the residue of the estate.

(3) For the purpose of valuation under subsection (2), any security regularly traded on a recognized exchange, if distributed in kind, is valued at the price for the last sale of like securities traded on the business day prior to distribution or, if there was no sale on that day, at the median between amounts bid and asked at the close of that day. An asset consisting of a sum owed the decedent or the estate by a solvent debtor as to which there is no known dispute or defense is valued at the sum due with accrued interest or discounted to the date of distribution. For an asset ~~which~~ *that* has no readily ascertainable value, a valuation as of a date not more than 30 days prior to the date of distribution, if otherwise reasonable, controls. For purposes of facilitating distribution, the personal representative may ascertain the value of any asset as of the time of the proposed distribution in any reasonable way, including the employment of qualified appraisers, even if the asset may have been previously appraised.

(4) The residuary estate ~~shall~~ *must* be distributed in any equitable manner."

Section 2375. Section 72-3-903, MCA, is amended to read:

"72-3-903. Proposal for distribution — delivery — objection. (1) After the probable charges against the estate are known, the personal representative

may mail or deliver a proposal for distribution to all persons who have a right to object to the proposed distribution.

(2) The right of any distributee to object to the proposed distribution on the basis of the kind or value of asset ~~he~~ *the distributee* is to receive, if not waived earlier in writing, terminates if ~~he~~ *the distributee* fails to object in writing received by the personal representative within 30 days after mailing or delivery of the proposal."

Section 2376. Section 72-3-906, MCA, is amended to read:

"72-3-906. Improper distribution or payment — liability of distributee or payee. Unless the distribution or payment *can* no longer ~~can~~ be questioned because of adjudication, estoppel, or limitation, a distributee of property improperly distributed or paid or a claimant who was improperly paid is liable to return the property improperly received and its income since distribution if ~~he~~ *the claimant* has the property. If ~~he~~ *the claimant* does not have the property, then ~~he~~ *the claimant* is liable to return the value as of the date of disposition of the property improperly received and its income and gain received by ~~him~~ *the claimant*."

Section 2377. Section 72-3-907, MCA, is amended to read:

"72-3-907. Purchases from distributees protected. (1) If property distributed in kind or a security interest ~~therein~~ *in that property* is acquired for value by a purchaser from or lender to a distributee who has received an instrument or deed of distribution from the personal representative~~,~~ or is so acquired by a purchaser from or lender to a transferee from ~~such~~ *the* distributee, the purchaser or lender takes title free of rights of any interested person in the estate and incurs no personal liability to the estate or to any interested person, whether or not the distribution was proper or supported by court order or the authority of the personal representative was terminated before execution of the instrument or deed.

(2) This section protects a purchaser from or lender to a distributee who, as personal representative, has executed a deed of distribution to ~~himself~~ *the personal representative distributee*, as well as a purchaser from or lender to any other distributee or ~~his~~ *the distributee's* transferee. To be protected under this provision, a purchaser or lender need not inquire *as to* whether a personal representative acted properly in making the distribution in kind, even if the personal representative and the distributee are the same person, or whether the authority of the personal representative had terminated before the distribution. Any recorded instrument described in this section ~~shall be~~ *is* prima facie evidence that ~~such~~ *the* transfer was made for value.

(3) For purposes of this section, the term ~~purchaser~~ *"purchaser"* includes any lessee or other person acquiring any interest in the property for value."

Section 2378. Section 72-3-911, MCA, is amended to read:

"72-3-911. Successors' rights if no administration. (1) In the absence of administration, the heirs and devisees are entitled to the estate in accordance with the terms of a probated will or the laws of intestate succession.

(2) Devisees may establish title by the probated will to devised property. Persons entitled to property by homestead allowance, exemption, or intestacy may establish title ~~thereto~~ *to the property* by proof of the decedent's ownership, ~~his~~ death, and their relationship to the decedent.

(3) Successors take subject to all charges incident to administration, including the claims of creditors and allowances of surviving spouse and

dependent children and subject to the rights of others resulting from abatement, retainer, advancement, and ademption."

Section 2379. Section 72-3-912, MCA, is amended to read:

"72-3-912. Successor's indebtedness to estate offset against interest — defenses available. The amount of a noncontingent indebtedness of a successor to the estate if due~~,~~ or its present value if not due~~, shall~~ *must* be offset against the successor's interest~~;~~. ~~but~~ *However,* the successor has the benefit of any defense ~~which~~ *that* would be available to ~~him~~ *the successor* in a direct proceeding for recovery of the debt."

Section 2380. Section 72-3-915, MCA, is amended to read:

"72-3-915. Private agreements among successors as to distribution — testamentary trustee as successor. (1) Subject to the rights of creditors and taxing authorities, competent successors may agree among themselves to alter the interests, shares, or amounts to which they are entitled under the will of the decedent or under the laws of intestacy in any way that they provide in a written contract executed by all who are affected by its provisions. The personal representative shall abide by the terms of the agreement subject to ~~his~~ *the* obligation to administer the estate for the benefit of creditors, to pay all taxes and costs of administration, and to carry out the responsibilities of ~~his~~ *the personal representative's* office for the benefit of any successors of the decedent who are not parties.

(2) Personal representatives of decedents' estates are not required to see to the performance of trusts if the trustee ~~thereof~~ is another person who is willing to accept the trust. Accordingly, trustees of a testamentary trust are successors for the purposes of this section. ~~Nothing herein relieves~~ *This section does not relieve* trustees of any duties owed to beneficiaries of trusts."

Section 2381. Section 72-3-916, MCA, is amended to read:

"72-3-916. Distribution to trustee — registration — bond. (1) Before distributing to a trustee, the personal representative may require that the trust be registered, if the state in which it is to be administered provides for registration, and that the trustee inform in writing the current beneficiaries and, if possible, one or more persons who under 72-1-303 may represent beneficiaries with future interests of ~~his~~ *the trustee's* name and address and provide each with a copy of the terms of the trust ~~which~~ *that* describe or affect ~~his~~ *the* interest *of the beneficiaries* and with relevant information about the assets of the trust and the particulars relating to the administration.

(2) If the trust instrument does not excuse the trustee from giving bond, the personal representative may petition the appropriate court to require that the trustee post bond if ~~he~~ *the trustee* ~~apprehends~~ *believes* that distribution might jeopardize the interests of persons who are not able to protect themselves, and ~~he~~ *the trustee* may withhold distribution until the court has acted.

(3) ~~No inference~~ *An inference* of negligence on the part of the personal representative ~~shall~~ *may not* be drawn from ~~his~~ *the personal representative's* failure to exercise the authority conferred by subsections (1) and (2)."

Section 2382. Section 72-3-918, MCA, is amended to read:

"72-3-918. Disposition of unclaimed assets — escheat. (1) If an heir, devisee, or claimant cannot be found, the personal representative shall distribute the ~~share of the~~ missing ~~person~~ *person's share* to ~~his~~ *the person's* conservator, if any, otherwise to the department of revenue to be deposited in the state escheat fund as provided in *Title 72,* chapter 14~~, as amended~~.

(2) ~~Any~~ *A* person having any claim to a share deposited in the state escheat fund under the provisions of this code shall follow the procedures set out in *Title 72,* chapter 14, concerning escheated estates, to claim ~~such~~ *the* share."

Section 2383. Section 72-3-1003, MCA, is amended to read:

"72-3-1003. Formal proceedings terminating administration under informally probated will — settlement order construing will without adjudicating testacy. (1) A personal representative administering an estate under an informally probated will or any devisee under an informally probated will may petition for an order of settlement of the estate ~~which~~ *that* will not adjudicate the testacy status of the decedent. The personal representative may petition at any time and a devisee may petition after 1 year from the appointment of the original personal representative, except that ~~no~~ *a* petition under this section may *not* be entertained until the time for presenting claims ~~which~~ *that* arose prior to the death of the decedent has expired.

(2) The petition may request the court to consider the final account or compel or approve an accounting and distribution, to construe the will, and adjudicate final settlement and distribution of the estate. After notice to all devisees and the personal representative and hearing, the court may enter an order or orders, on appropriate conditions, determining the persons entitled to distribution of the estate under the will and, as circumstances require, approving settlement and directing or approving distribution of the estate and discharging the personal representative from further claim or demand of any devisee who is a party to the proceeding and those ~~he~~ *the devisee* represents. If it appears that a part of the estate is intestate, the proceedings ~~shall~~ *must* be dismissed or amendments *must be* made to meet the provisions of 72-3-1001 and 72-3-1002."

Section 2384. Section 72-3-1005, MCA, is amended to read:

"72-3-1005. Final accounting required to close estate. (1) Before an estate may be finally closed and the personal representative relieved of ~~his~~ duties and obligations, ~~he~~ *the personal representative* shall either file with the court or deliver to all interested persons an accounting under oath showing the amount of money received and expended by ~~him~~ *the personal representative*, the amount of all claims presented against the estate, and the names of the claimants and all other matters necessary to show the state of its affairs.

(2) Any interested person at any time during the course of the administration of an estate may for good cause shown require further accountings.

(3) If the personal representative is the sole residual beneficiary of the estate, ~~no~~ *an* accounting need *not* be made."

Section 2385. Section 72-3-1012, MCA, is amended to read:

"72-3-1012. Liability of distributees to claimants. (1) After assets of an estate have been distributed and subject to 72-3-1013, an undischarged claim *that is* not barred may be prosecuted in a proceeding against one or more distributees. ~~No~~ *A* distributee ~~shall be~~ *is not* liable to claimants for amounts in excess of the value of ~~his~~ *the distributee's* distribution as of the time of distribution.

(2) As between distributees, each shall bear the cost of satisfaction of unbarred claims as if the claim had been satisfied in the course of administration. Any distributee who ~~shall have~~ ~~failed~~ *fails* to notify other distributees of the demand made upon ~~him~~ *the distributee* by the claimant in sufficient time to permit them to join in any proceeding in which the claim was

asserted against ~~him~~ *the distributee* loses ~~his~~ *the* right of contribution against other distributees."

Section 2386. Section 72-3-1014, MCA, is amended to read:

"72-3-1014. Certificate discharging liens securing fiduciary performance. After ~~his~~ *the personal representative's* appointment has terminated, the personal representative, ~~his~~ *the personal representative's* sureties, or any successor of either, upon the filing of a verified application showing so far as is known by the applicant that ~~no~~ *an* action concerning the estate is *not* pending in any court, is entitled to receive a certificate from the clerk that the personal representative appears to have fully administered the estate in question. The certificate evidences discharge of any lien on any property given to secure the obligation of the personal representative in lieu of bond or any surety but does not preclude action against the personal representative or the surety."

Section 2387. Section 72-3-1015, MCA, is amended to read:

"72-3-1015. Estate to be closed within two years. (1) If an estate has not been closed within 2 years from the date of appointment of the personal representative, the supreme court administrator shall notify the district judge ~~thereof~~. The judge shall order the personal representative and ~~his~~ *the personal representative's* attorney to appear before the court and show cause why the estate has not been closed.

(2) If, after the show cause hearing, the judge determines that good cause does not exist for failure to close the estate, the judge may make an order directing that the estate be closed within 30 days and that the personal representative and ~~his~~ *the personal representative's* attorney *may not* receive ~~no~~ *a* fee or other compensation from the estate."

Section 2388. Section 72-3-1102, MCA, is amended to read:

"72-3-1102. Effect of affidavit. (1) The person paying, delivering, transferring, or issuing personal property or the evidence ~~thereof~~ *of personal property* pursuant to affidavit is discharged and released to the same extent as if ~~he~~ *the person* dealt with a personal representative of the decedent. ~~He~~ *The person* is not required to see to the application of the personal property or evidence ~~thereof~~ *of personal property* or to inquire into the truth of any statement in the affidavit.

(2) If any person to whom an affidavit is delivered refuses to pay, deliver, transfer, or issue any personal property or evidence ~~thereof~~ *of personal property*, it may be recovered or its payment, delivery, transfer, or issuance compelled upon proof of their right in a proceeding brought for the purpose by or on behalf of the persons entitled ~~thereto~~ *to the property*.

(3) ~~Any~~ *A* person to whom payment, delivery, transfer, or issuance is made is answerable and accountable ~~therefor~~ *for the property* to any person representative of the estate or to any other person having a superior right."

Section 2389. Section 72-4-201, MCA, is amended to read:

"72-4-201. Jurisdiction by act of foreign personal representative. (1) A foreign personal representative submits personally to the jurisdiction of the courts of this state in any proceeding relating to the estate by:

(a) filing authenticated copies of ~~his~~ *the foreign personal representative's* appointment as provided in 72-4-309;

(b) receiving payment of money or taking delivery of personal property under 72-4-306; or

(c) doing any act as a personal representative in this state that would have given the state jurisdiction over ~~him~~ *the foreign personal representative* as an individual.

(2) Jurisdiction under subsection (1)(b) is limited to the money or value of personal property collected."

Section 2390. Section 72-4-202, MCA, is amended to read:

"72-4-202. Jurisdiction by act of decedent. In addition to jurisdiction conferred by 72-4-201, a foreign personal representative is subject to the jurisdiction of the courts of this state to the same extent that ~~his~~ *the foreign personal representative's* decedent was subject to jurisdiction immediately prior to death."

Section 2391. Section 72-4-203, MCA, is amended to read:

"72-4-203. Service on foreign personal representative. (1) Service of process may be made upon the foreign personal representative by ~~registered or~~ certified mail addressed to ~~his~~ *the foreign personal representative's* last reasonably ascertainable address requesting a return receipt signed by addressee only. Notice by ordinary first-class mail is sufficient if ~~registered or~~ certified mail service to the addressee is unavailable. Service may be made upon a foreign personal representative in the manner in which service could have been made under other laws of this state on either the foreign personal representative or ~~his~~ *the foreign personal representative's* decedent immediately prior to death.

(2) If service is made upon a foreign personal representative as provided in subsection (1), ~~he shall~~ *the foreign personal representative must* be allowed at least 30 days within which to appear or respond."

Section 2392. Section 72-4-306, MCA, is amended to read:

"72-4-306. Payment of debt and delivery of property to foreign representative. At any time after the expiration of 60 days from the death of a nonresident decedent, ~~any~~ *a* person indebted to the estate of the nonresident decedent or having possession or control of personal property or of an instrument evidencing a debt, obligation, stock, or chose in action belonging to the estate of the nonresident decedent may pay the debt~~,~~ *or* deliver the personal property~~,~~ or the instrument evidencing the debt, obligation, stock, or chose in action to the domiciliary foreign personal representative of the nonresident decedent upon being presented with proof of ~~his~~ *the domiciliary foreign personal representative's* appointment and an affidavit made by or on behalf of the representative, stating:

(1) the date of the death of the nonresident decedent;

(2) that no local administration~~,~~ or application or petition ~~therefor~~ *for local administration*~~,~~ is pending in this state;

(3) that the domiciliary foreign personal representative is entitled to payment or delivery."

Section 2393. Section 72-4-309, MCA, is amended to read:

"72-4-309. Proof of authority — bond. If ~~no~~ *a* local administration or application or petition ~~therefor~~ *for local administration* is *not* pending in this state, a domiciliary foreign personal representative may file with a court in this state in a county in which property belonging to the decedent is located,

authenticated copies of ~~his~~ *the domiciliary foreign personal representative's* appointment and of any official bond ~~he~~ *that the domiciliary foreign personal representative* has given."

Section 2394. Section 72-4-311, MCA, is amended to read:

"72-4-311. Effect of local administration on foreign representative, third persons, and local representative. (1) The power of a domiciliary foreign personal representative under 72-4-306 or 72-4-310 ~~shall~~ *may* be exercised only if there is no administration or application ~~therefor~~ *for administration* pending in this state. An application or petition for local administration of the estate terminates the power of the foreign personal representative to act under 72-4-310, but the local court may allow the foreign personal representative to exercise limited powers to preserve the estate.

(2) ~~No~~ *A* person who, before receiving actual notice of a pending local administration, has changed ~~his~~ *the person's* position in reliance upon the powers of a foreign personal representative ~~shall~~ *may not* be prejudiced by reason of the application or petition for or grant of local administration. The local personal representative is subject to all duties and obligations ~~which~~ *that* have accrued by virtue of the exercise of the powers by the foreign personal representative and may be substituted for ~~him~~ *the foreign personal representative* in any action or proceedings in this state."

Section 2395. Section 72-4-402, MCA, is amended to read:

"72-4-402. Adjudication in other jurisdiction binding on local representative. An adjudication rendered in any jurisdiction in favor of or against any personal representative of the estate is as binding on the local personal representative as if ~~he~~ *the local personal representative* were a party to the adjudication."

Section 2396. Section 72-5-101, MCA, is amended to read:

"72-5-101. Definitions. Unless otherwise apparent from the context, in this code, the following definitions apply:

(1) "Incapacitated person" means ~~any~~ *a* person who is impaired by reason of mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, or other cause*,* ~~(~~except minority~~)~~*,* to the extent that ~~he~~ *the person* lacks sufficient understanding or capacity to make or communicate responsible decisions concerning ~~his~~ *the* person or which cause has so impaired the person's judgment that ~~he~~ *the person* is incapable of realizing and making a rational decision with respect to ~~his~~ *the person's* need for treatment.

(2) "Protected person" means a minor or other person for whom a conservator has been appointed or other protective order has been made.

(3) "Protective proceeding" means a proceeding under the provisions of 72-5-409 to determine that a person cannot effectively manage or apply ~~his~~ *the person's* estate to necessary ends, either because ~~he~~ *the person* lacks the ability or is otherwise inconvenienced or because ~~he~~ *the person* is a minor, and to secure administration of ~~his~~ *the person's* estate by a conservator or other appropriate relief.

(4) "Ward" means a person for whom a guardian has been appointed. A "minor ward" is a minor for whom a guardian has been appointed solely because of minority."

Section 2397. Section 72-5-104, MCA, is amended to read:

"72-5-104. Informal discharge of duty to pay or deliver property to minor. (1) ~~Any~~ *A* person under a duty to pay or deliver money or personal property to a minor may perform this duty, in amounts not exceeding $5,000 ~~per annum~~ *a year*, by paying or delivering the money or property to:

(a) the minor, if ~~he~~ *the minor* has attained ~~the age of~~ 18 years *of age* or is married;

(b) any person having the care and custody of the minor with whom the minor resides;

(c) a guardian of the minor; or

(d) a financial institution incident to a deposit in a federally insured savings account in the sole name of the minor and giving notice of the deposit to the minor.

(2) This section does not apply if the person making payment or delivery has actual knowledge that a conservator has been appointed or proceedings for appointment of a conservator of the estate of the minor are pending.

(3) The persons, other than the minor or any financial institution under *subsection* (1)(d) ~~above~~, receiving money or property for a minor are obligated to apply the money to the support and education of the minor but may not pay themselves except by way of reimbursement for out-of-pocket expenses for goods and services necessary for the minor's support. Any excess sums ~~shall~~ *must* be preserved for future support of the minor, and any balance not so used and any property received for the minor must be turned over to the minor when ~~he~~ *the minor* attains majority. Persons who pay or deliver in accordance with provisions of this section are not responsible for the proper application ~~thereof~~ *of the money or property*."

Section 2398. Section 72-5-202, MCA, is amended to read:

"72-5-202. Consent to jurisdiction by acceptance of appointment. (1) By accepting a testamentary or court appointment as guardian, a guardian submits personally to the jurisdiction of the court in any proceeding relating to the guardianship that may be instituted by any interested person.

(2) Notice of any proceeding ~~shall~~ *must* be delivered to the guardian or mailed to ~~him~~ *the guardian* by ordinary mail at ~~his~~ *the guardian's* address as listed in the court records and to ~~his~~ *the guardian's* address as then known to the petitioner."

Section 2399. Section 72-5-211, MCA, is amended to read:

"72-5-211. Testamentary appointment of guardian of minor — when effective — priorities — notice of appointment. (1) The parent of a minor may appoint by will a guardian of an unmarried minor. Subject to the right of the minor under 72-5-213, a testamentary appointment becomes effective upon filing the guardian's acceptance in the court in which the will is probated if before acceptance both parents are dead or the surviving parent is adjudged incapacitated. If both parents are dead, an effective appointment by the parent who died later has priority.

(2) Upon acceptance of *an* appointment, written notice of acceptance must be given by the guardian to the minor and to the person having ~~his~~ *the minor's* care or to ~~his~~ *the minor's* nearest adult relations."

Section 2400. Section 72-5-213, MCA, is amended to read:

"72-5-213. Objection by minor ~~fourteen~~ *14 years of age* or older to testamentary appointment. A minor ~~of~~ 14 ~~or more~~ years *of age or older* may

prevent an appointment of ~~his~~ *the minor's* testamentary guardian from becoming effective or may cause a previously accepted appointment to terminate by filing with the court in which the will is probated a written objection to the appointment before it is accepted or within 30 days after notice of its acceptance. An objection may be withdrawn. An objection does not preclude appointment by the court in a proper proceeding of the testamentary nominee or any other suitable person."

Section 2401. Section 72-5-301, MCA, is amended to read:

"72-5-301. Consent to jurisdiction by acceptance of appointment. (1) By accepting appointment, a guardian submits personally to the jurisdiction of the court in any proceeding relating to the guardianship that may be instituted by any interested person.

(2) Notice of any proceeding ~~shall~~ *must* be delivered to the guardian or mailed to ~~him~~ *the guardian* by ordinary mail at ~~his~~ *the guardian's* address as listed in the court records and to ~~his~~ *the guardian's* address as then known to the petitioner."

Section 2402. Section 72-5-312, MCA, is amended to read:

"72-5-312. Who may be guardian — priorities. (1) Any competent person or a suitable institution, association, or nonprofit corporation or any of its members may be appointed guardian of an incapacitated person.

(2) Persons who are not disqualified have priority for appointment as guardian in the following order:

(a) a person, association, or private, nonprofit corporation nominated by the incapacitated person~~,~~ if the court specifically finds that at the time of the nomination the incapacitated person had the capacity to make a reasonably intelligent choice;

(b) the spouse of the incapacitated person;

(c) an adult child of the incapacitated person;

(d) a parent of the incapacitated person, including a person nominated by will or other writing signed by a deceased parent;

(e) any relative of the incapacitated person with whom ~~he~~ *the incapacitated person* has resided for more than 6 months prior to the filing of the petition;

(f) a relative or friend who has demonstrated a sincere, longstanding interest in the welfare of the incapacitated person;

(g) a private association or nonprofit corporation with a guardianship program for incapacitated persons, a member of ~~such~~ *the* private association or nonprofit corporation approved by the association or corporation to act as a guardian for the incapacitated person, or a person included on an official list of ~~such~~ *the* association or organization as willing and suitable to act as guardian of incapacitated persons;

(h) a person nominated by the person who is caring for ~~him~~ *the incapacitated person* or paying benefits to ~~him~~ *the incapacitated person*.

(3) The priorities established in subsection (2) are not binding, and the court shall select the person, association, or nonprofit corporation that is best qualified and willing to serve.

(4) Except as provided in subsection (5), the court may not appoint a person, institution, association, or nonprofit corporation to be the guardian of an

incapacitated person if the person, institution, association, or nonprofit corporation:

(a) provides or is likely to provide during the guardianship substantial services to the incapacitated person in the professional or business capacity other than in the capacity of guardian;

(b) is or is likely to become during the guardianship period a creditor of the incapacitated person, other than in the capacity of guardian;

(c) has or is likely to have during the guardianship period interests that may conflict with those of the incapacitated person; or

(d) is employed by a person, institution, association, or nonprofit corporation ~~who or which~~ *that* would be disqualified under subsections (4)(a) through (4)(c).

(5) If the court determines that there is no qualified person willing and able to serve as guardian, the court may appoint an agency of the state or federal government that is authorized or required by statute to provide services to the person or to persons suffering from the kind of disability from which the incapacitated person is suffering or a designee of the agency, notwithstanding the provisions of subsection (4). Whenever an agency is appointed guardian, the court may also appoint a limited guardian to represent a specified interest of the incapacitated person. Whenever a limited guardian is appointed pursuant to this subsection, the specified interest of the incapacitated person is the sole responsibility of the limited guardian and is removed from the responsibility of the agency."

Section 2403. Section 72-5-314, MCA, is amended to read:

"72-5-314. Notices in guardianship proceedings. (1) In a proceeding for the appointment or removal of a guardian of an incapacitated person other than the appointment of a temporary guardian or temporary suspension of a guardian, notice of hearing ~~shall~~ *must* be given to each of the following:

(a) the ward or the person alleged to be incapacitated and ~~his~~ *the ward's or person's* spouse, parents, and adult children;

(b) any person who is serving as ~~his~~ *the ward's or person's* guardian~~,~~ *or* conservator~~,~~ or who has ~~his~~ *the ward's or person's* care and custody; and

(c) in case no other person is notified under ~~(a)~~ *subsection (1)(a)*, at least one of ~~his~~ *the ward's or person's* closest adult relatives, if any can be found.

(2) Notice ~~shall~~ *must* be served personally on the alleged incapacitated person and ~~his~~ *the person's* spouse and parents if they can be found within the state. Notice to the spouse and parents, if they cannot be found within the state, and to all other persons except the alleged incapacitated person ~~shall~~ *must* be given as provided in 72-1-301. Waiver of notice by the person alleged to be incapacitated is not effective unless ~~he~~ *the person* attends the hearing or ~~his~~ *the person's* waiver of notice is confirmed in an interview with the visitor. Representation of the alleged incapacitated person by a guardian ad litem is not necessary."

Section 2404. Section 72-5-316, MCA, is amended to read:

"72-5-316. Findings — order of appointment. (1) If the court is satisfied that the person for whom a guardianship is sought is incapacitated and that judicial intervention in ~~his~~ *the person's* personal freedom of action and decision is necessary to meet essential requirements for ~~his~~ *the person's* physical health or safety, it may appoint a full guardian having the powers described in 72-5-321 or a limited guardian having the powers described in the order. If the court is

satisfied that the allegedly incapacitated person could handle the essential requirements for physical health or safety if ~~his~~ *the person's* financial resources were managed by another, it shall order that the petition be treated as a petition for a protective order under *Title 72, chapter 5,* part 4 ~~of this chapter~~ and proceed accordingly. Alternatively, the court may dismiss the proceeding or enter any other appropriate order that is not inconsistent with the specific provisions of this part. In issuing its order, the court shall make specific findings of fact.

(2) The court may not invest a guardian with powers or duties beyond those sought in the petition and may, upon petition for a full guardianship, create a limited guardianship or conservatorship when the court determines that a limited guardianship or conservatorship is all that is required for the care and protection of the incapacitated person. The order ~~shall~~ *must* specify whether a full or limited guardianship is being created. In the case of a limited guardianship, the order ~~shall~~ *must* specify the particular powers and duties vested in the limited guardian and the period for which the limited guardianship is created.

(3) ~~No~~ *An* incapacitated person may *not* be limited in the exercise of any civil or political rights except those that are clearly inconsistent with the exercise of the powers granted to the guardian unless the court's order specifically provides for ~~such~~ *the* limitations. The order ~~shall~~ *must* state that all rights not specifically limited are retained by the incapacitated person."

Section 2405. Section 72-5-317, MCA, is amended to read:

"72-5-317. Temporary guardians. (1) If an incapacitated person has no guardian and an emergency exists, the court may exercise the power of a guardian pending notice and hearing.

(2) If an appointed guardian is not effectively performing ~~his~~ *the guardian's* duties or if there is no appointed guardian and the court further finds that the welfare of the incapacitated person requires immediate action, it may, with or without notice, appoint a temporary guardian for the incapacitated person for a specified period not to exceed 6 months. The court may appoint either a full or a limited temporary guardian~~,~~ depending on the needs and circumstances of the incapacitated person. The court may not invest a temporary guardian with more powers than are required by the circumstances necessitating the appointment. The order of appointment of a temporary guardian ~~shall~~ *must* state whether a full or limited temporary guardianship is being created and, in the case of a limited temporary guardian, the specific powers and duties of the limited temporary guardian.

(3) ~~In case~~ *If* there is no person available and willing to act as temporary guardian for an incapacitated person who is in need of a temporary guardian except a person or entity who is ineligible to act as guardian pursuant to the provisions of 72-5-312(4), the court may appoint as temporary guardian a person or entity who would otherwise be ineligible under that provision to act as guardian. This subsection does not permit the appointment of a person or entity who has an actual conflict of interest in regard to the purpose for which the temporary guardianship is sought. A temporary guardian who is otherwise ineligible shall serve until a person or entity who is not ineligible to serve as guardian and who is otherwise qualified to be guardian is appointed by the court to act as temporary guardian, but ~~in no case~~ *the temporary guardian* may ~~he~~ *may not* serve for longer than 6 months.

(4) A temporary full guardian is entitled to the care and custody of the ward, and the authority of any permanent guardian previously appointed by the court

is suspended ~~so~~ *as* long as a temporary guardian has authority. A temporary limited guardian is entitled to exercise ~~such~~ powers ~~as~~ *that* are specifically granted to ~~him~~ *the temporary guardian* in the order of appointment, and the power of any permanent guardian previously appointed by the court to exercise those powers is suspended so long as the temporary limited guardian has authority. The court by specific order may suspend all authority of the permanent guardian upon appointment of a temporary limited guardian. A temporary guardian may be removed at any time. A temporary guardian shall make any report the court requires. In other respects, the provisions of this code concerning guardians apply to temporary guardians."

Section 2406. Section 72-5-318, MCA, is amended to read:

"72-5-318. Request for notice — interested person. (1) ~~Any~~ *An* interested person who desires to be notified before any order is made in a guardianship proceeding may file with the clerk a request for notice upon payment of any fee required by statute or court rule. The clerk shall mail a copy of the demand to the guardian~~,~~ if one has been appointed.

(2) A request is not effective unless it contains a statement showing the interest of the person making it and ~~his~~ *the person's* address or that of ~~his~~ *the person's* attorney and is effective only as to matters occurring after the filing. Any governmental agency paying or planning to pay benefits to the alleged incapacitated person is an interested person in guardianship proceedings."

Section 2407. Section 72-5-319, MCA, is amended to read:

"72-5-319. Contents of petition for appointment of guardian. (1) The petition for appointment of a guardian ~~shall~~ *must* contain:

(a) the name, residence, and mailing address of the petitioner, ~~his~~ *the petitioner's* relationship to the alleged incapacitated person, and ~~his~~ *the petitioner's* interest in the matter;

(b) the name, residence, and mailing address of the alleged incapacitated person;

(c) the nature and degree of the alleged incapacity;

(d) if the petition in any way affects the management of the property of the alleged incapacitated person, the approximate value and description of ~~his~~ *the* property, including any compensation, pension, insurance, or allowance to which ~~he~~ *the person* may be entitled;

(e) whether there is, in any state, a full guardian or limited guardian for the person or estate of the incapacitated person or a conservator of ~~his~~ *the person's* property;

(f) the name, residence, and mailing address of the person whom the petitioner seeks to have appointed guardian;

(g) the names, residences, and nature of relationship, so far as is known or can reasonably be ascertained, of the persons most closely related by blood or marriage to the alleged incapacitated person;

(h) the name and residence of the person or institution having the care and custody of the alleged incapacitated person;

(i) the reasons why the appointment of a guardian is sought and whether a limited guardianship or full guardianship is requested;

(j) the facts supporting the allegations of incapacity and the need for a guardian;

(k) the specific areas of protection and assistance requested and the limitation of rights requested to be included in the order of appointment;

(l) in the case of a petition for limited guardianship, the particular powers and areas of authority that the petition seeks to have vested in the limited guardian as provided in 72-5-320 and the term for which the limited guardianship is requested;

(m) in the case of a petition for full guardianship, the length of time the guardianship is expected to last.

(2) The petition may also include a request for temporary guardianship as provided in 72-5-317 if the petitioner believes that the requisites of that section are met and that the appointment of a temporary guardian, pending the completion of guardianship proceedings, is necessary to protect the welfare of the alleged incapacitated person. The facts requiring appointment of a temporary guardian ~~shall~~ *must* be stated with specificity."

Section 2408. Section 72-5-320, MCA, is amended to read:

"72-5-320. Purposes for establishment of limited guardianship. A petition seeking the establishment of a limited guardianship ~~shall~~ *must* specify the particular powers that the limited guardian is proposed to exercise and the particular areas of protection and assistance required. The purposes for which a limited guardian may be appointed include:

(1) to care for and maintain the alleged incapacitated person;

(2) to assert and protect the rights and best interests of the alleged incapacitated person;

(3) to provide timely and informed consent to necessary medical procedures and procedures implemented in connection with habilitation and training programs;

(4) to assist in the acquisition of necessary training, habilitation, and education for the incapacitated person;

(5) to exercise any other powers, duties, or limitations in regard to the care of the incapacitated person or the management of ~~his~~ *the person's* property that the petition ~~shall~~ explicitly ~~specify and~~ *specifies,* which may *not* be ~~no~~ greater than the powers a full guardian ~~can~~ *may* exercise."

Section 2409. Section 72-5-401, MCA, is amended to read:

"72-5-401. Original petition for appointment or protective order — who may petition. The person to be protected, any person who is interested in ~~his~~ *that person's* estate, affairs, or welfare, including ~~his~~ *that person's* parent, guardian, or custodian, or any person who would be adversely affected by lack of effective management of ~~his~~ *the* property and affairs *of the person to be protected* may petition for the appointment of a conservator or for other appropriate protective order."

Section 2410. Section 72-5-402, MCA, is amended to read:

"72-5-402. Contents of petition. (1) The petition ~~shall~~ *must* set forth to the extent known:

(a) the interest of the petitioner;

(b) the name, age, residence, and address of the person to be protected;

(c) the name and address of ~~his~~ *that person's* guardian, if any;

(d) the name and address of ~~his~~ *that person's* nearest relative known to the petitioner;

(e) a general statement of ~~his~~ *that person's* property with an estimate of the value ~~thereof~~ *of the property*, including any compensation, insurance, pension, or allowance to which ~~he~~ *person* is entitled; and

(f) the reason why appointment of a conservator or other protective order is necessary.

(2) If the appointment of a conservator is requested, the petition also ~~shall~~ *must* set forth the name and address of the person whose appointment is sought and the basis of ~~his~~ *the person's* priority for appointment."

Section 2411. Section 72-5-403, MCA, is amended to read:

"72-5-403. Notice — waiver. (1) On a petition for appointment of a conservator or other protective order, the person to be protected and ~~his~~ *the person's* spouse or, if none, ~~his~~ *the person's* parents must be served personally with notice of the proceeding at least 14 days before the date of hearing if they can be found within the state, or if they cannot be found within the state, they must be given notice in accordance with 72-1-301. Waiver by the person to be protected is not effective unless ~~he~~ *the person* attends the hearing or, unless minority is the reason for the proceeding, waiver is confirmed in an interview with the visitor.

(2) Notice of a petition for appointment of a conservator or other initial protective order and of any subsequent hearing must be given to any person who has filed a request for notice under 72-5-404 and to interested persons and other persons as the court may direct. Except as otherwise provided in *subsection* (1), notice ~~shall~~ *must* be given in accordance with 72-1-301."

Section 2412. Section 72-5-404, MCA, is amended to read:

"72-5-404. Request for notice — interested person. (1) ~~Any~~ *An* interested person who desires to be notified before any order is made in a protective proceeding may file with the clerk a request for notice subsequent to payment of any fee required by statute or court rule. The clerk shall mail a copy of the demand to the conservator if one has been appointed.

(2) A request is not effective unless it contains a statement showing the interest of the person making it and ~~his~~ *the person's* address or that of ~~his~~ *the person's* attorney and is effective only as to matters occurring after the filing. Any governmental agency paying or planning to pay benefits to the person to be protected is an interested person in protective proceedings."

Section 2413. Section 72-5-405, MCA, is amended to read:

"72-5-405. Exclusive and concurrent jurisdiction of particular court after petition and notice. After the service of notice in a proceeding seeking the appointment of a conservator or other protective order and until termination of the proceeding, the court in which the petition is filed has:

(1) exclusive jurisdiction to determine the need for a conservator or other protective order until the proceedings are terminated;

(2) exclusive jurisdiction to determine how the estate of the protected person ~~which~~ *that* is subject to the laws of this state ~~shall be~~ *is* managed, expended, or distributed to or for the use of the protected person or any of ~~his~~ *the person's* dependents;

(3) concurrent jurisdiction to determine the validity of claims against the person or estate of the protected person and ~~his~~ *the person's* title to any property or claim."

Section 2414. Section 72-5-406, MCA, is amended to read:

"72-5-406. Consent to jurisdiction by acceptance of appointment as conservator. (1) By accepting appointment, a conservator submits personally to the jurisdiction of the court in any proceeding relating to the estate that may be instituted by any interested person.

(2) Notice of any proceeding ~~shall~~ *must* be delivered to the conservator or mailed to ~~him~~ *the conservator* by ~~registered or~~ certified mail at ~~his~~ *the conservator's* address as listed in the petition for appointment or as ~~thereafter~~ reported to the court and to ~~his~~ *the conservator's* address as then known to the petitioner."

Section 2415. Section 72-5-407, MCA, is amended to read:

"72-5-407. Venue. Venue for proceedings under this part is:

(1) in the place in this state where the person to be protected resides, whether or not a guardian has been appointed in another place; or

(2) if the person to be protected does not reside in this state, in any place where ~~he~~ *the person* has property."

Section 2416. Section 72-5-409, MCA, is amended to read:

"72-5-409. Cause for appointment of conservator or issuance of protective order. Upon petition and after notice and hearing in accordance with the provisions of this part, the court may appoint a conservator or make ~~other~~ *another* protective order for cause as follows:

(1) Appointment of a conservator or other protective order may be made in relation to the estate and affairs of a minor if the court determines that a minor owns money or property that requires management or protection ~~which~~ *that* cannot otherwise be provided, has or may have business affairs ~~which~~ *that* may be jeopardized or prevented by ~~his~~ *the person's* minority, or that funds are needed for ~~his~~ *the person's* support and education and that protection is necessary or desirable to obtain or provide funds.

(2) Appointment of a conservator or other protective order may be made in relation to the estate and affairs of a person if the court determines that:

(a) the person is unable to manage ~~his~~ *the person's* property and affairs effectively for reasons such as mental illness, mental deficiency, physical illness or disability, advanced age, chronic use of drugs, chronic intoxication, confinement, detention by a foreign power, or disappearance; and

(b) the person has property ~~which~~ *that* will be wasted or dissipated unless proper management is provided or that funds are needed for the support, care, and welfare of the person or those entitled to be supported by ~~him~~ *the person* and that protection is necessary or desirable to obtain or provide funds."

Section 2417. Section 72-5-410, MCA, is amended to read:

"72-5-410. Who may be appointed conservator — priorities. (1) The court may appoint an individual or a corporation with general power to serve as trustee as conservator of the estate of a protected person. The following are entitled to consideration for appointment in the order listed:

(a) a conservator, guardian of property, or other like fiduciary appointed or recognized by the appropriate court of any other jurisdiction in which the protected person resides;

(b) an individual or corporation nominated by the protected person if ~~he~~ *the person* is 14 ~~or more~~ years of age *or older* and has, in the opinion of the court, sufficient mental capacity to make an intelligent choice;

(c) the spouse of the protected person;

(d) an adult child of the protected person;

(e) a parent of the protected person or a person nominated by the will of a deceased parent;

(f) any relative of the protected person with whom ~~he~~ *the protected person* has resided for more than 6 months prior to the filing of the petition;

(g) a person nominated by the person who is caring for ~~him~~ *the person* or paying benefits to ~~him~~ *the person*;

(h) a conservator corporation organized under Title 35, chapter 2;

(i) the public administrator.

(2) A person in priorities ~~(a), (c), (d), (e), or (f)~~ *listed in subsections (1)(a) and (1)(c) through (1)(f)* may nominate in writing a person to serve in ~~his~~ *that person's* stead.

(3) With respect to persons having equal priority, the court is to select the one who is best qualified of those willing to serve. The court, for good cause, may pass over a person having priority and appoint a person having less priority or no priority."

Section 2418. Section 72-5-411, MCA, is amended to read:

"72-5-411. Bond — court may require — amount. (1) The court may require a conservator to furnish a bond conditioned upon faithful discharge of all duties of the trust according to law with sureties ~~as~~ *that* it ~~shall specify~~ *specifies*.

(2) Unless otherwise directed, the bond ~~shall~~ *must* be in the amount of the aggregate capital value of the property of the estate in ~~his~~ *the conservator's* control plus 1 year's estimated income minus the value of securities deposited under arrangements requiring an order of the court for their removal and the value of any land ~~which~~ *that* the fiduciary, by express limitation of power, lacks power to sell or convey without court authorization.

(3) The court, in lieu of sureties on a bond, may accept other security for the performance of the bond, including a pledge of securities or a mortgage of land."

Section 2419. Section 72-5-412, MCA, is amended to read:

"72-5-412. Terms and requirements of bond. (1) The following requirements and provisions apply to any bond required under 72-5-411:

(a) Unless otherwise provided by the terms of the approved bond, sureties are jointly and severally liable with the conservator and with each other.

(b) By executing an approved bond of a conservator, the surety consents to the jurisdiction of the court ~~which~~ *that* issued letters to the primary obligor in any proceeding pertaining to the fiduciary duties of the conservator and naming the surety as a party defendant. Notice of any proceeding ~~shall~~ *must* be delivered to the surety or mailed to ~~him~~ *the surety* by ~~registered or~~ certified mail at ~~his~~ *the surety's* address as listed with the court where the bond is filed and to ~~his~~ *the surety's* address as then known to the petitioner.

(c) On petition of a successor conservator or any interested person, a proceeding may be initiated against a surety for breach of the obligation of the bond of the conservator.

(d) The bond of the conservator is not void after the first recovery but may be proceeded against from time to time until the whole penalty is exhausted.

(2) ~~No~~ *A* proceeding may *not* be commenced against the surety on any matter as to which an action or proceeding against the primary obligor is barred by adjudication or limitation."

Section 2420. Section 72-5-413, MCA, is amended to read:

"72-5-413. Petitions for orders subsequent to appointment — interested persons. (1) ~~Any~~ *A* person interested in the welfare of a person for whom a conservator has been appointed may file a petition in the appointing court for an order:

(a) requiring bond or security or additional bond or security or reducing bond;

(b) requiring an accounting for the administration of the trust;

(c) directing distribution;

(d) removing the conservator and appointing a temporary or successor conservator; or

(e) granting other appropriate relief.

(2) A conservator may petition the appointing court for instructions concerning ~~his~~ *the conservator's* fiduciary responsibility.

(3) Upon notice and hearing, the court may give appropriate instructions or make any appropriate order.

(4) For purposes of this section, any person, institution, or agency ~~which~~ *that* is furnishing or supplying any money for support or care of a person for whom a conservator has been appointed is a person interested in the welfare of ~~such~~ *the* protected person."

Section 2421. Section 72-5-414, MCA, is amended to read:

"72-5-414. Resignation or removal of conservator for cause — successor conservator. The court may remove a conservator for good cause, upon notice and hearing, or *may* accept the resignation of a conservator. After ~~his~~ *the conservator's* death, resignation, or removal, the court may appoint another conservator. A conservator so appointed succeeds to the title and powers of ~~his~~ *the* predecessor."

Section 2422. Section 72-5-415, MCA, is amended to read:

"72-5-415. Public administrator as conservator when no other appropriate person. (1) Whenever a professional person, as defined in 53-21-102, has reason to believe that any person is in need of the appointment of a conservator for the effective management of ~~his~~ *the person's* property or affairs under this part and that the person has no relative, friend, or other appropriate person who is able and willing to serve as a conservator for the person, the professional person ~~must~~ *shall* notify the public administrator.

(2) Whenever the public administrator is notified under subsection (1) of the need for the appointment of a conservator and reasonable cause exists, ~~he must~~ *the public administrator shall* file a petition for appointment of the public administrator as conservator of the person."

Section 2423. Section 72-5-422, MCA, is amended to read:

"72-5-422. Power of court to authorize particular protective arrangements or transactions without appointing conservator. (1) If it is established in a proper proceeding that a basis exists as described in 72-5-409 for affecting the property and affairs of a person, the court without appointing a conservator may authorize, direct, or ratify any transaction necessary or

desirable to achieve any security, service, or care arrangement meeting the foreseeable needs of the protected person. Protective arrangements include but are not limited to:

(a) payment, delivery, deposit, or retention of funds or property;

(b) sale, mortgage, lease, or other transfer of property;

(c) entry into an annuity contract, a contract for life care, a deposit contract, or a contract for training and education; or

(d) addition to or establishment of a suitable trust.

(2) When it has been established in a proper proceeding that a basis exists as described in 72-5-409 for affecting the property and affairs of a person, the court without appointing a conservator may authorize, direct, or ratify any contract, trust, or other transaction relating to the protected person's financial affairs or involving ~~his~~ *the protected person's* estate if the court determines that the transaction is in the best interests of the protected person.

(3) Before approving a protective arrangement or other transaction under this section, the court shall consider the interests of creditors and dependents of the protected person and, in view of ~~his~~ *the protected person's* disability, whether the protected person needs the continuing protection of a conservator. The court may appoint a special conservator to assist in the accomplishment of any protective arrangement or other transaction authorized under this section who, upon appointment, has the authority conferred by the order and serves until discharged by order after report to the court of all matters done pursuant to the order of appointment."

Section 2424. Section 72-5-423, MCA, is amended to read:

"72-5-423. Fiduciary duty of conservator. In the exercise of ~~his~~ *a conservator's* powers, a conservator is to act as a fiduciary and shall observe the standards of care applicable to trustees."

Section 2425. Section 72-5-424, MCA, is amended to read:

"72-5-424. Inventory and records. (1) Within 90 days after ~~his~~ appointment, ~~every~~ *a* conservator shall prepare and file with the appointing court a complete inventory of the estate of the protected person, together with ~~his~~ *the conservator's* oath or affirmation that it is complete and accurate so far as ~~he~~ *the conservator* is informed. The conservator shall provide a copy ~~thereof~~ *of the inventory* to the protected person if ~~he~~ *the protected person* can be located, has attained ~~the age of~~ 14 years *of age*, and has sufficient mental capacity to understand these matters and to any parent or guardian with whom the protected person resides.

(2) The conservator shall keep suitable records of ~~his~~ *the conservator's* administration and exhibit the ~~same~~ *records* on request of any interested person."

Section 2426. Section 72-5-425, MCA, is amended to read:

"72-5-425. Title by appointment as conservator — appointment not transfer for certain purposes. (1) The appointment of a conservator vests in ~~him~~ *the conservator* title as trustee to all property of the protected person presently held or thereafter acquired, including title to any property ~~theretofore~~ *previously* held for the protected person by custodians or attorneys-in-fact.

(2) The appointment of a conservator is not a transfer or alienation within the meaning of general provisions of any federal or state statute or regulation, insurance policy, pension plan, contract, will, or trust instrument imposing

restrictions upon or penalties for transfer or alienation by the protected person of ~~his~~ *the protected person's* rights or interest, but this section does not restrict the ability of persons to make specific provision by contract or dispositive instrument relating to a conservator."

Section 2427. Section 72-5-426, MCA, is amended to read:

"72-5-426. Letters as evidence of transfer of assets — recording. (1) Letters of conservatorship are evidence of transfer of all assets of a protected person to the conservator. An order terminating a conservatorship is evidence of transfer of all assets of the estate from the conservator to the protected person or ~~his~~ *the protected person's* successors.

(2) Subject to the requirements of general statutes governing the filing or recordation of documents of title to land or other property, letters of conservatorship and orders terminating conservatorships may be filed or recorded to give record notice of title as between the conservator and the protected person."

Section 2428. Section 72-5-427, MCA, is amended to read:

"72-5-427. Powers of conservator in administration. (1) A conservator has all of the powers conferred ~~herein~~ *in this section* and any additional powers conferred by law on trustees in this state. In addition, a conservator of the estate of an unmarried minor under ~~the age of~~ 18 years *of age*, as to whom no one has parental rights, has the duties and powers of a guardian of a minor described in 72-5-231 until the minor attains ~~the age of~~ 18 *years of age* or marries, but the parental rights so conferred on a conservator do not preclude appointment of a guardian as provided by *Title 72, chapter 5,* part 2.

(2) A conservator has power, without court authorization or confirmation, to invest and reinvest funds of the estate as would a trustee.

(3) A conservator, acting reasonably in efforts to accomplish the purpose for which ~~he~~ *the conservator* was appointed, may act without court authorization or confirmation to:

(a) collect, hold, and retain assets of the estate, including land in another state, until in ~~his~~ *the conservator's* judgment disposition of the assets should be made, and the assets may be retained even though they include an asset in which ~~he~~ *the conservator* is personally interested;

(b) receive additions to the estate;

(c) continue or participate in the operation of any business or other enterprise;

(d) acquire an undivided interest in an estate asset in which the conservator in any fiduciary capacity holds an undivided interest;

(e) invest and reinvest estate assets in accordance with subsection (2);

(f) deposit estate funds in a bank, including a bank operated by the conservator;

(g) acquire or dispose of an estate asset, including land in another state, for cash or on credit at public or private sale~~;~~ and manage, develop, improve, exchange, partition, change the character of, or abandon an estate asset;

(h) make ordinary or extraordinary repairs or alterations in buildings or other structures, demolish any improvements, raze existing or erect new party walls or buildings;

(i) subdivide, develop, or dedicate land to public use; make or obtain the vacation of plats and adjust boundaries~~;~~*,* adjust differences in valuation on exchange or partition by giving or receiving considerations~~;~~*,* and dedicate easements to public use without consideration;

(j) enter for any purpose into a lease as lessor or lessee, with or without option to purchase or renew, for a term within or extending beyond the term of the conservatorship;

(k) enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement;

(l) grant an option involving disposition of an estate asset~~;~~ *or* take an option for the acquisition of any asset;

(m) vote a security in person or by general or limited proxy;

(n) pay calls, assessments, and any other sums chargeable or accruing against or on account of securities;

(o) sell or exercise stock subscription or conversion rights~~;~~ *or* consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise;

(p) hold a security in the name of a nominee or in other form without disclosure of the conservatorship so that title to the security may pass by delivery, but the conservator is liable for any act of the nominee in connection with the stock so held;

(q) insure the assets of the estate against damage or loss and the conservator against liability with respect to third persons;

(r) borrow money to be repaid from estate assets or otherwise~~;~~ *or* advance money for the protection of the estate or the protected person and for all expenses, losses, and liability sustained in the administration of the estate or because of the holding or ownership of any estate assets, and the conservator has a lien on the estate as against the protected person for advances ~~so~~ made;

(s) pay or contest any claim~~;~~ *or* settle a claim by or against the estate or the protected person by compromise, arbitration, or otherwise~~;~~ and release, in whole or in part, any claim belonging to the estate to the extent that the claim is uncollectible;

(t) pay taxes, assessments, compensation of the conservator, and other expenses incurred in the collection, care, administration, and protection of the estate;

(u) allocate items of income or expense to either estate income or principal, as provided by law, including creation of reserves out of income for depreciation, obsolescence, or amortization or for depletion in mineral or timber properties;

(v) pay any sum distributable to a protected person or a dependent of the person who is a minor or incompetent, without liability to the conservator, by paying the sum to the distributee or by paying the sum for the use of the distributee either to ~~his~~ *the person's* guardian or, if none, to a relative or other person with custody of ~~his~~ *the* person;

(w) employ persons, including attorneys, auditors, investment advisors, or agents, even though they are associated with the conservator, to advise or assist ~~him~~ *the conservator* in the performance of ~~his~~ administrative duties~~;~~*,* act upon their recommendation without independent investigation~~;~~*,* and instead of

acting personally, employ one or more agents to perform any act of administration, whether or not discretionary;

(x) prosecute or defend actions, claims, or proceedings in any jurisdiction for the protection of estate assets and of the conservator in the performance of ~~his~~ *the conservator's* duties; and

(y) execute and deliver all instruments ~~which~~ *that* will accomplish or facilitate the exercise of the powers vested in the conservator."

Section 2429. Section 72-5-428, MCA, is amended to read:

"72-5-428. Distributive powers and duties of conservator generally. (1) A conservator may expend or distribute income or principal of the estate without court authorization or confirmation for the support, education, care, or benefit of the protected person and ~~his~~ *the protected person's* dependents in accordance with the following principles:

(a) The conservator ~~is to~~ *shall* consider recommendations relating to the appropriate standard of support, education, and benefit for the protected person made by a parent or guardian, if any. ~~He~~ *The conservator* may not be surcharged for sums paid to persons or organizations actually furnishing support, education, or care to the protected person pursuant to the recommendations of a parent or guardian of the protected person unless ~~he~~ *the conservator* knows that the parent or guardian is deriving personal financial benefit ~~therefrom~~, including relief from any personal duty of support, or unless the recommendations are clearly not in the best interests of the protected person.

(b) The conservator ~~is to~~ *shall* expend or distribute sums reasonably necessary for the support, education, care, or benefit of the protected person with due regard to:

(i) the size of the estate, the probable duration of the conservatorship, and the likelihood that the protected person, at some future time, may be fully able to manage ~~his~~ *the person's* affairs and the estate ~~which~~ *that* has been conserved for ~~him~~ *the person*;

(ii) the accustomed standard of living of the protected person and members of ~~his~~ *the person's* household;

(iii) other funds or sources used for the support of the protected person.

(c) The conservator may expend funds of the estate for the support of persons legally dependent on the protected person and others who are members of the protected person's household who are unable to support themselves and who are in need of support.

(d) Funds expended under this subsection *(1)* may be paid by the conservator to any person, including the protected person, to reimburse *the person* for expenditures ~~which~~ *that* the conservator might have made or in advance for services to be rendered to the protected person when it is reasonable to expect that they will be performed and ~~where~~ *when* advance payments are customary or reasonably necessary under the circumstances.

(2) If the estate is ample to provide for the purposes implicit in the distributions authorized by the preceding subsections, a conservator for a protected person other than a minor has power to make gifts to charity and other objects as the protected person might have been expected to make in amounts ~~which~~ *that* do not exceed in total for any year 20% of the income from the estate."

Section 2430. Section 72-5-429, MCA, is amended to read:

"72-5-429. Distribution upon attainment of majority, termination of disability, or death of protected person. (1) When a minor who has not been adjudged disabled under 72-5-409(2) attains ~~his~~ majority, ~~his~~ *the minor's* conservator, after meeting all prior claims and expenses of administration, shall pay over and distribute all funds and properties to the former protected person as soon as possible.

(2) When the conservator is satisfied that a protected person's disability*,* ~~(~~other than minority~~)~~*,* has ceased, the conservator, after meeting all prior claims and expenses of administration, shall pay over and distribute all funds and properties to the former protected person as soon as possible.

(3) If a protected person dies, the conservator shall deliver to the court for safekeeping any will of the deceased protected person ~~which~~ *that* may have come into ~~his~~ *the conservator's* possession, inform the executor or a beneficiary named ~~therein~~ *in the will* that ~~he~~ *the conservator* has done so, and retain the estate for delivery to a duly appointed personal representative of the decedent or other persons entitled ~~thereto~~ *to the estate*. If after 40 days from the death of the protected person no other person has been appointed personal representative and no application or petition for appointment is before the court, the conservator may apply to exercise the powers and duties of a personal representative so that ~~he~~ *the conservator* may proceed to administer and distribute the decedent's estate without additional or further appointment. Upon application for an order granting the powers of a personal representative to a conservator~~,~~ *and* after notice to any person demanding notice under 72-3-106 and to any person nominated executor in any will of which the applicant is aware, the court may order the conferral of the power upon determining that there is no objection and endorse the letters of the conservator to note that the formerly protected person is deceased and that the conservator has acquired all of the powers and duties of a personal representative. The making and entry of an order under this section ~~shall have~~ *has* the effect of an order of appointment of a personal representative as provided in 72-3-222, 72-3-223(1), and parts 5 through 10 of chapter 3, except that the estate in the name of the conservator, after administration, may be distributed to the decedent's successors without prior retransfer to the conservator as personal representative."

Section 2431. Section 72-5-430, MCA, is amended to read:

"72-5-430. Enlargement or limitation of powers of conservator by court. (1) Subject to the restrictions in 72-5-421(4), the court may confer on a conservator at the time of appointment or later, in addition to the powers conferred on ~~him~~ *the conservator* by 72-5-427, 72-5-428, and 72-5-429, any power ~~which~~ *that* the court itself could exercise under ~~subsections (2) and (3) of~~ 72-5-421*(2) and (3)*.

(2) The court may, at the time of appointment or later, limit the powers of a conservator conferred by the court and may at any time relieve ~~him~~ *the conservator* of any limitation. If the court limits any power conferred on the conservator by 72-5-427, 72-5-428, or 72-5-429, the limitation ~~shall~~ *must* be endorsed upon ~~his~~ *the conservator's* letters of appointment."

Section 2432. Section 72-5-431, MCA, is amended to read:

"72-5-431. Preservation of estate plan — right to inspect will. In investing the estate and in selecting assets of the estate for distribution under 72-5-428~~,~~ *and* in utilizing powers of revocation or withdrawal available for the support of the protected person and exercisable by the conservator or the court,

the conservator and the court ~~should~~ *shall* take into account any known estate plan of the protected person, including ~~his~~ *the protected person's* will, any revocable trust of which ~~he~~ *the protected person* is settlor, and any contract, transfer, or joint ownership arrangement with provisions for payment or transfer of benefits or interests at ~~his~~ *the protected person's* death to another or others ~~which he~~ *that the protected person* may have originated. The conservator may examine the will of the protected person."

Section 2433. Section 72-5-433, MCA, is amended to read:

"72-5-433. Claims against protected person — presentment, allowance, and payment — priorities. (1) A conservator ~~must~~ *shall* pay from the estate all just claims against the estate and against the protected person arising before or after the conservatorship upon their presentation and allowance. A claim may be presented by either of the following methods:

(a) The claimant may deliver or mail to the conservator a written statement of the claim indicating its basis, the name and address of the claimant, and the amount claimed.

(b) The claimant may file a written statement of the claim, in the form prescribed by rule, with the clerk of the court and deliver or mail a copy of the statement to the conservator.

(2) A presented claim is allowed if it is not disallowed by written statement mailed by the conservator to the claimant within 60 days after its presentation. A claim is ~~deemed~~ *considered* presented on the first to occur of receipt of the written statement of claim by the conservator or the filing of the claim with the court. The presentation of a claim tolls any statute of limitation relating to the claim until 30 days after its disallowance.

(3) A claimant whose claim has not been paid may petition the court for determination of ~~his~~ *the* claim at any time before it is barred by the applicable statute of limitation and, upon due proof, procure an order for its allowance and payment from the estate. If a proceeding is pending against a protected person at the time of appointment of a conservator or is initiated against the protected person ~~thereafter~~ *after the appointment*, the moving party ~~must~~ *shall* give notice of the proceeding to the conservator if the outcome is to constitute a claim against the estate.

(4) If it appears that the estate in conservatorship is likely to be exhausted before all existing claims are paid, preference ~~is to~~ *must* be given to prior claims for the care, maintenance, and education of the protected person or ~~his~~ *the protected person's* dependents and existing claims for expenses of administration."

Section 2434. Section 72-5-434, MCA, is amended to read:

"72-5-434. Transaction involving conflict of interest — voidable — exceptions. Any sale or encumbrance to a conservator, ~~his~~ *to the conservator's* spouse, agent, or attorney, or *to* any corporation or trust in which ~~he~~ *the conservator* has a substantial beneficial interest or any transaction ~~which~~ *that* is affected by a substantial conflict of interest is voidable unless the transaction is approved by the court after notice to interested persons and others as directed by the court."

Section 2435. Section 72-5-435, MCA, is amended to read:

"72-5-435. Persons dealing with conservator — protection. (1) A person who in good faith either assists a conservator or deals with ~~him~~ *the conservator* for value in any transaction other than those requiring a court order

as provided in 72-5-421 is protected as if the conservator properly exercised the power. The fact that a person knowingly deals with a conservator does not alone require the person to inquire into the existence of a power or the propriety of its exercise, except that restrictions on powers of conservators ~~which~~ *that* are endorsed on letters as provided in 72-5-430 are effective as to third persons. A person is not bound to see to the proper application of estate assets paid or delivered to a conservator.

(2) The protection expressed in this section extends to any procedural irregularity or jurisdictional defect occurring in proceedings leading to the issuance of letters and is not a substitution for protection provided by comparable provisions of the law relating to commercial transactions or laws simplifying transfers of securities by fiduciaries.

(3) The protection ~~here expressed~~ *under this section* is not ~~by~~ *a* substitution for that provided by comparable provisions of the laws relating to commercial transactions and laws simplifying transfers of securities by fiduciaries."

Section 2436. Section 72-5-436, MCA, is amended to read:

"72-5-436. Claims arising during conservatorship — individual liability of conservator. (1) Unless otherwise provided in the contract, a conservator is not individually liable on a contract properly entered into in ~~his~~ *the conservator's* fiduciary capacity in the course of administration of the estate unless ~~he~~ *the conservator* fails to reveal ~~his~~ *the* representative capacity and identify the estate in the contract.

(2) The conservator is individually liable for obligations arising from ownership or control of property of the estate or for torts committed in the course of administration of the estate only if ~~he~~ *the conservator* is personally at fault.

(3) Claims based on contracts entered into by a conservator in ~~his~~ *a* fiduciary capacity on obligations arising from ownership or control of the estate or on torts committed in the course of administration of the estate may be asserted against the estate by proceeding against the conservator in ~~his~~ *the conservator's* fiduciary capacity, whether or not the conservator is individually liable ~~therefor~~.

(4) Any question of liability between the estate and the conservator individually may be determined in a proceeding for accounting, surcharge, or indemnification or other appropriate proceeding or action."

Section 2437. Section 72-5-437, MCA, is amended to read:

"72-5-437. Termination of conservatorship. The protected person, ~~his~~ *the protected person's* personal representative, the conservator, or any other interested person may petition the court to terminate the conservatorship. A protected person seeking termination is entitled to the same rights and procedures as in an original proceeding for a protective order. The court, upon determining after notice and hearing that the minority or disability of the protected person has ceased, may terminate the conservatorship. Upon termination, title to assets of the estate passes to the former protected person or to ~~his~~ *the former protected person's* successors, subject to provision in the order for expenses of administration or to conveyances from the conservator to the former protected ~~persons~~ *person* or ~~his~~ *the former protected person's* successors to evidence the transfer."

Section 2438. Section 72-5-439, MCA, is amended to read:

"72-5-439. Payment of debt and delivery of property to foreign conservator without local proceedings. (1) ~~Any~~ *A* person indebted to a protected person or having possession of property or of an instrument

evidencing a debt, stock, or chose in action belonging to a protected person may pay or deliver to a conservator, guardian of the estate, or other ~~like~~ fiduciary appointed by a court of the state or residence of the protected person upon being presented with proof of ~~his~~ *the conservator's, guardian's, or fiduciary's* appointment and an affidavit made by ~~him~~ *the conservator, guardian, or fiduciary* or on ~~his~~ *the conservator's, guardian's, or fiduciary's* behalf stating *that*:

(a) ~~that~~ no protective proceeding relating to the protected person is pending in this state; and

(b) ~~that~~ the foreign conservator is entitled to payment or to receive delivery.

(2) If the person to whom the affidavit is presented is not aware of any protective proceeding pending in this state, payment or delivery in response to the demand and affidavit discharges the debtor or possessor."

Section 2439. Section 72-5-501, MCA, is amended to read:

"72-5-501. When power of attorney not affected by disability. (1) A durable power of attorney is a power of attorney by which a principal designates another ~~his~~ *as the principal's* attorney-in-fact or agent in writing and the writing contains the words, "This power of attorney ~~shall~~ *is* not ~~be~~ affected by subsequent disability or incapacity of the principal or lapse of time" or "This power of attorney ~~shall become~~ *becomes* effective upon the disability or incapacity of the principal" or similar words showing the intent of the principal that the authority conferred ~~shall~~ *must* be exercisable notwithstanding the principal's subsequent disability or incapacity~~,~~ and, unless it states a time of termination, notwithstanding the lapse of time since the execution of the instrument. All acts done by the attorney-in-fact pursuant to a durable power of attorney during any period of disability or incapacity of the principal have the same effect and inure to the benefit of and bind the principal and ~~his~~ *the principal's* successors in interest as if the principal were alive, competent, and not disabled. Unless the instrument states a time of termination, the power is exercisable notwithstanding the lapse of time since the execution of the instrument.

(2) If a conservator ~~thereafter~~ is appointed for the principal, the attorney-in-fact or agent, during the continuance of the appointment, is accountable to the conservator as well as the principal. The conservator has the same power to revoke or amend the power of attorney that the principal would have had if ~~he~~ *the principal* were not disabled or incapacitated. A principal may nominate, by a durable power of attorney, the conservator of ~~his~~ *the principal's* estate or guardian of ~~his~~ *the principal's* person for consideration by the court if protective proceedings for the principal's person or estate are later commenced. The court shall make its appointment in accordance with the principal's most recent nomination in a durable power of attorney except for good cause or disqualification."

Section 2440. Section 72-5-502, MCA, is amended to read:

"72-5-502. Power of attorney not revoked until notice. (1) The death of a principal who has executed a written power of attorney, durable or otherwise, does not revoke or terminate the agency as to the attorney-in-fact, agent, or other person who, without actual knowledge of the death of the principal, acts in good faith under the power of attorney or agency. Any action ~~so~~ taken, unless otherwise invalid or unenforceable, binds the successors in interest of the principal.

(2) The disability or incapacity of a principal who has previously executed a power of attorney that is not a durable power does not revoke or terminate the agency as to the attorney-in-fact or other person who, without actual knowledge of the disability or incapacity of the principal, acts in good faith under the power. Any action ~~so~~ taken, unless otherwise invalid or unenforceable, binds the principal and ~~his~~ *the principal's* successors in interest.

(3) As to acts undertaken in good faith reliance ~~thereon~~ *on a power of attorney*, an affidavit executed by the attorney-in-fact or agent stating that ~~he~~ *the attorney-in-fact or agent* did not have, at the time of ~~exercise of~~ *exercising* the power, actual knowledge of the termination of the power by revocation or of the principal's death, disability, or incapacity is conclusive proof of the nonrevocation or nontermination of the power at that time. If the exercise of the power requires execution and delivery of any instrument ~~which~~ *that* is recordable, the affidavit when authenticated for record is likewise recordable.

(4) This section does not affect any provision in a power of attorney for its termination by expiration of time or occurrence of an event other than express revocation or a change in the principal's capacity."

Section 2441. Section 72-9-110, MCA, is amended to read:

"72-9-110. Purchaser for value or lender. (1) If a surviving spouse has apparent title to property to which this part applies, a purchaser for value or a lender taking a security interest in the property takes ~~his~~ *the purchaser's or lender's* interest in the property free of any rights of the personal representative or an heir or devisee, as those terms are defined in 72-1-103, of the decedent.

(2) If a personal representative or an heir or devisee of the decedent has apparent title to property to which this part applies, a purchaser for value or a lender taking a security interest in the property takes ~~his~~ *the purchaser's or lender's* interest in the property free of any rights of the surviving spouse.

(3) A purchaser for value or a lender need not inquire whether a vendor or borrower acted properly.

(4) The proceeds of a sale or creation of a security interest must be treated in the same manner as the property transferred to the purchaser for value or a lender."

Section 2442. Section 72-12-401, MCA, is amended to read:

"72-12-401. Petition for handwriting analysis. In ~~any~~ *a* proceeding involving the probate, either contested or uncontested, of a will in which the signature of the testator or of any witness is an issue, any party to the proceeding may file with the court a verified petition requesting that the original ~~will~~ be delivered to a handwriting expert residing and having ~~his~~ *a* place of business outside the state or outside the county for an examination of any of the signatures on the will."

Section 2443. Section 72-12-403, MCA, is amended to read:

"72-12-403. Clerk to mail will to expert — notice. If the court grants the petition for delivery of the original will to a qualified handwriting expert residing and having ~~his~~ *a* place of business outside the county or state, the clerk of court shall make at least two photocopies of the original will, which photocopies ~~shall~~ *must* remain in the custody of the clerk of court. The clerk shall mail the original will by ~~registered or~~ certified mail, return receipt requested, to the handwriting expert specified in the order and shall give notice of the mailing by mailing copies of the order to each of the parties to the proceeding and to the handwriting expert."

Section 2444. Section 72-12-404, MCA, is amended to read:

"72-12-404. Expert to return will to clerk. Upon completion of ~~his~~ *the* analysis, the handwriting expert shall return the original will to the clerk of court by ~~registered or~~ certified mail, return receipt requested."

Section 2445. Section 72-12-405, MCA, is amended to read:

"72-12-405. Expert to mail report to petitioner. Unless the court orders another disposition of the written report, the handwriting expert, upon completion of ~~his~~ *the* analysis, shall mail ~~his~~ *the expert's* written report to the party who requested it."

Section 2446. Section 72-12-407, MCA, is amended to read:

"72-12-407. Report property of petitioner unless interested party shares fees. Unless the court otherwise orders, the handwriting expert's written report ~~shall~~ *must* be the sole and exclusive property of the party requesting it. However, upon demand and the payment of ~~his~~ *a* pro rata share of the fees and costs of the handwriting expert, as ~~shall be~~ determined by the court, any interested party may obtain a certified copy of the written report."

Section 2447. Section 72-14-201, MCA, is amended to read:

"72-14-201. Discovery to determine existence of escheatable property. In order to ascertain if any person has knowledge of or is in possession of any escheatable property, it ~~shall be~~ *is* lawful for the attorney general or ~~his~~ *the attorney general's* assistant to obtain discovery on motion in the district court requiring any ~~such~~ person or persons to divulge any information they may have concerning the possession or location of any property subject to escheat or any other information pertinent to the recovery of ~~such~~ property by the state of Montana or ~~which~~ information *that* may lead to the discovery of ~~such~~ *the* escheatable property."

Section 2448. Section 72-14-202, MCA, is amended to read:

"72-14-202. Public administrator to deposit ~~moneys~~ *money* with county treasurer — disbursement for administration — accounts. (1) ~~It is the duty of every~~ *A* public administrator *shall*, as soon as ~~he~~ *the public administrator* receives the ~~same~~ *money*, ~~to~~ deposit with the county treasurer of the county in which probate proceedings are pending all ~~moneys~~ *money* of the estate~~,~~. ~~and such moneys~~ *The money* may be drawn upon the order of the public administrator, countersigned by a district judge, when required for the purposes of administration.

(2) ~~It is the duty of the~~ *The* county treasurer ~~to~~ *shall* receive and safely keep all ~~such moneys~~ *money* and pay ~~them~~ *the money* out upon the order of the public administrator, when countersigned by a district judge and not otherwise, and to keep an account with ~~such~~ *the* estate of all ~~moneys~~ *money* received and paid to ~~him;~~ *the county treasurer.* ~~and~~ *The treasurer and the treasurer's sureties are liable upon the treasurer's official bond* for the safekeeping and payment of all ~~such moneys,~~ *money* as ~~herein~~ provided~~, the treasurer and his sureties are liable upon his official bond~~ *in this section*."

Section 2449. Section 72-14-401, MCA, is amended to read:

"72-14-401. Fiduciary deposit of money when interested person under disability or similar circumstances — receipt as voucher. When property in the hands of a personal representative, trustee, or other fiduciary is assigned or distributed to any heir, legatee, devisee, creditor, beneficiary, or person interested in ~~any~~ *an* estate or trust who ~~has no~~ *does not have an* agent in this state or who cannot be found or who refuses to accept the ~~same~~ *property* or to

give a proper voucher ~~therefor~~ *for the property* or to a minor or incompetent person who ~~has no~~ *does not have a* legal guardian to receive the ~~same~~ *property* or person authorized to receipt ~~therefor~~ *for the property* and the ~~same~~ *property* or any part ~~thereof~~ *of the property* consists of money, the personal representative, trustee, or other fiduciary may deposit the money in a special fund in the name of the heir, legatee, devisee, creditor, beneficiary, or person interested with the county treasurer of the county in which the proceedings are pending or in which ~~such~~ *the* property is located~~,~~. ~~who~~ *The county treasurer* shall give a receipt for the ~~same~~ *money* and ~~be~~ *is* liable upon ~~his~~ *the treasurer"s* official bond ~~therefor;~~. ~~and said~~ *The* receipt ~~shall~~ *must* be ~~deemed~~ *considered* and received by the court or judge ~~thereof~~ as a voucher in favor of the personal representative, trustee, or other fiduciary with the same force and effect as if executed by ~~such~~ *the* heir, legatee, devisee, creditor, beneficiary, or person interested."

Section 2450. Section 72-14-402, MCA, is amended to read:

"72-14-402. Claim for money deposited in county treasury. When any person appears and claims the money paid into the county treasury, the district court of ~~such~~ *the* county ~~must~~ *shall* inquire into ~~such~~ *the* claim and, if satisfied of ~~his~~ *the person's* right ~~thereto~~ *to the money*, ~~must~~ *shall* make an order to that effect~~, and upon~~. *Upon* presentation of the order, the treasurer ~~must~~ *shall* draw ~~his~~ *a* warrant on the special fund for the amount to which *the* claimant is entitled."

Section 2451. Section 72-15-101, MCA, is amended to read:

"72-15-101. Other provisions to supplement chapter. When no direction is given in this chapter for the government or guidance of a public administrator in the discharge of ~~his~~ *the administrator's* duties or for the administration of an estate in ~~his~~ *the administrator's* hands, the provisions of this title ~~must~~ govern."

Section 2452. Section 72-15-102, MCA, is amended to read:

"72-15-102. When public administrator to take charge of estate. (1) ~~Every~~ *A* public administrator *who is* duly elected, commissioned, and qualified ~~must~~ *shall* take charge of estates of persons dying within ~~his~~ *the administrator's* county as follows:

(a) ~~of~~ estates of decedents for which no administrators are appointed and ~~which~~ *that*, in consequence ~~thereof~~ *of the lack of administration*, are being wasted, uncared for, or lost;

(b) ~~of~~ estates of decedents who have no known heirs;

(c) ~~of~~ estates ordered into ~~his~~ *the administrator's* hands by the court; and

(d) ~~of~~ estates upon which letters of administration have been issued to ~~him~~ *the administrator* by the court.

(2) However, it ~~shall be~~ *is* unlawful for ~~any~~ *a* public administrator of any county of the state of Montana to file ~~any~~ *a* petition for the issuance to ~~him~~ *the public administrator* as ~~such~~ public administrator of letters of administration of the estate of any decedent until at least 30 days have elapsed from the day of the death of ~~any such~~ *the* decedent~~,~~ unless it is affirmatively shown and made to appear in and by ~~any such~~ *the* petition for letters of administration that there are no known heirs of ~~such~~ *the* decedent or that all of the known heirs of ~~such~~ *the* decedent reside outside of the state of Montana and that the estate of ~~such~~ *the* decedent consists of property of ~~such~~ a nature that it will be lost, wasted, or depreciated in value unless cared for and administered upon at once."

Section 2453. Section 72-15-103, MCA, is amended to read:

"72-15-103. Requirement to procure letters of administration — bond and oath. (1) Whenever a public administrator takes charge of an estate under order of the court, ~~he must~~ *the administrator shall* with all convenient dispatch procure letters of administration ~~thereon~~ *on the estate*~~,~~ in ~~like~~ *the same* manner and ~~on like~~ *under the same* proceedings as letters of administration are issued to other persons.

(2) ~~His~~ *The public administrator's* official bond and oath are in lieu of a personal representative's bond and oath, but when real estate is ordered to be sold, another bond may be required by the court."

Section 2454. Section 72-15-105, MCA, is amended to read:

"72-15-105. Duty of persons in whose house stranger dies — notification to public administrator. Whenever a stranger or person without known heirs dies intestate in the house or premises of another, the possessor of ~~such~~ *the* premises or anyone knowing the facts ~~must~~ *shall* give immediate notice ~~thereof~~ to the public administrator of the county~~;~~. ~~in default of so doing~~ *If the possessor does not give the notice*, ~~he~~ *the possessor* is liable for any damage that may be sustained ~~thereby~~ *by the failure*, ~~to~~ *which must* be recovered by the public administrator or any person interested."

Section 2455. Section 72-15-107, MCA, is amended to read:

"72-15-107. Power to require persons controlling property to furnish statement describing property. Whenever ~~any~~ *a* person dies in any county of this state and ~~no~~ *an* administrator has *not* been appointed to take charge of ~~his~~ *the person's* estate, the public administrator of ~~such~~ *the* county, prior to the issuance of letters of administration ~~to him~~, ~~shall have~~ *has* authority to make a written demand upon any person, firm, bank, or corporation~~,~~ ~~which he~~ *that the public administrator* believes holds or has in its possession or control any money, evidence of indebtedness, or other personal property or ~~which~~ *that* owes to ~~such~~ *the* deceased person any money~~,~~ *requiring that entity* to furnish to ~~him~~ *the public administrator* a written statement, under oath, showing the amount of money or the evidence of indebtedness or personal property of ~~such~~ *the* deceased person held by it fully describing the ~~same~~ *evidence or property* and the total sums of money, if any, due from it to ~~such~~ *the* deceased person. Upon receipt of ~~such~~ *the* written demand, the person, firm, bank, or corporation receiving the ~~same~~ *demand* shall immediately furnish *the statement*, under oath, to ~~such~~ *the* public administrator ~~said statement~~."

Section 2456. Section 72-15-109, MCA, is amended to read:

"72-15-109. Order to examine person in possession or charged with misappropriation of estate. When the public administrator complains to the district court or a judge ~~thereof~~ *of the district court*, on oath, that any person has concealed, committed theft of, or disposed of or has in ~~his~~ *the person's* possession any money, goods, property, or effects ~~to~~ *that* the ~~possession of which such~~ administrator is entitled *to possess* in ~~his~~ *the administrator's* official capacity, the court or judge may cite ~~such~~ *the* person to appear and may examine ~~him~~ *the person* on oath ~~touching~~ *concerning* the matter of ~~such~~ *the* complaint."

Section 2457. Section 72-15-110, MCA, is amended to read:

"72-15-110. Refusal to be examined — civil contempt. All ~~such~~ interrogatories and answers must be reduced to writing and signed by the party examined and filed in the court. If the person ~~so~~ cited refuses to appear and submit to ~~such~~ *the* examination or to answer ~~such~~ *the* interrogatories as may be put to ~~him~~ *the party* touching the matter of ~~such~~ *the* complaint, the court or judge

may commit ~~him~~ *the party* to the county jail~~, there to remain in close custody~~ until ~~he~~ *the party* submits to the order of the court or judge."

Section 2458. Section 72-15-201, MCA, is amended to read:

"72-15-201. Duty to make out inventory, administer, and account. The public administrator ~~must~~ *shall* make out and return an inventory of all estates taken into ~~his~~ *the administrator's* possession and administer and account for the ~~same~~ *inventory* according to the provisions of this chapter, subject to the control and directions of the court."

Section 2459. Section 72-15-202, MCA, is amended to read:

"72-15-202. Duty to deliver up estate when letters granted to another. If at any time letters testamentary or of administration are regularly granted to any other person on the estate of which the public administrator has charge, ~~he must~~ *the public administrator shall*, under order of the court, account for, pay, and deliver to the executor or administrator ~~thus~~ appointed all the money, property, papers, and estate of every kind in ~~his~~ *the public administrator's* possession or under ~~his~~ *the public administrator's* control."

Section 2460. Section 72-15-203, MCA, is amended to read:

"72-15-203. Power of court to order account and delivery of estate at any time. The court or judge may, at any time, order the public administrator to account for and deliver all the money of an estate in ~~his~~ *the public administrator's* hands to the heirs or to the executors or administrators regularly appointed."

Section 2461. Section 72-15-204, MCA, is amended to read:

"72-15-204. Duty to keep register. It is the duty of the public administrator to keep a book to be labeled "Register of Public Administrator" in which ~~he must~~ *the public administrator shall* enter:

(1) the name of every deceased person on whose estate ~~he~~ *the public administrator* administers;

(2) the date of granting letters;

(3) money received;

(4) the property and its value;

(5) proceeds of all sales of property;

(6) the amount of ~~his~~ *the public administrator's* fees;

(7) the expenses of administration;

(8) the amount of the estate after all charges and expenses have been paid;

(9) the disposition of the property on distribution;

(10) the date of discharge of administrator; and

(11) ~~such~~ other matters ~~as~~ *that* may be necessary to give a full and complete history of each estate administered by ~~him~~ *the public administrator*."

Section 2462. Section 72-15-205, MCA, is amended to read:

"72-15-205. Deposit of ~~moneys~~ *money* with county treasurer — withdrawals for administrative costs — investment. (1) It is the duty of ~~every~~ *a* public administrator, as soon as ~~he~~ *the public administrator* receives ~~the same~~ *money*, to deposit with the county treasurer of the county in which probate proceedings are pending all ~~moneys~~ *money* of the estate, and ~~such moneys~~ *the money* may be drawn upon the order of the personal representative,

countersigned by a district judge~~,~~ when required for the purposes of administration.

(2) It is the duty of the county treasurer to receive and safely keep all ~~such moneys~~ *money* and pay ~~them~~ *it* out upon the order of the personal representative, when countersigned by a district judge and not otherwise, and to keep an account with ~~such~~ *the* estate of all ~~moneys~~ *money* received and paid to ~~him;~~ *the county treasurer*. ~~and~~ *The county treasurer and the sureties of the county treasurer are liable on the treasurer's official bond* for the safekeeping and payment of all ~~such moneys, as herein provided, the treasurer and his sureties are liable upon his official bond~~ *money*.

(3) The ~~moneys thus~~ *money* deposited *with the county treasurer* may, upon order of the court or judge, be invested pending the proceedings in securities of the United States or of this state when ~~such~~ *the* investment is for the best interests of the estate."

Section 2463. Section 72-15-206, MCA, is amended to read:

"72-15-206. Monthly settlement of accounts. The public administrator is required to account and to settle and adjust ~~his~~ *the public administrator's* accounts~~,~~ relating to the care and disbursement of money or property belonging to estates in ~~his~~ *the public administrator's* hands~~,~~ with the clerk of the district court on the first Monday of each month, and ~~he must~~ *the public administrator shall* pay to the county treasurer any money remaining in ~~his~~ *the public administrator's* hands of an estate unclaimed."

Section 2464. Section 72-15-207, MCA, is amended to read:

"72-15-207. Annual account of condition of all estates. (1) The public administrator ~~must~~ *shall* once each year make to the district court or a judge ~~thereof~~ *of the district court*, under oath, a return of all estates of decedents ~~which~~ *that* have come into ~~his~~ *the public administrator's* hands stating:

(a) the value of the ~~same~~ *estates*;

(b) the money ~~which~~ *that* has come into ~~his~~ *the public administrator's* hands from each estate;

(c) what ~~he~~ *the public administrator* has done with it;

(d) the amount of ~~his~~ fees and expenses incurred *by the public administrator*; *and*

(e) the balance, if any, remaining in ~~his~~ *the public administrator's* hands.

(2) ~~He must~~ *The public administrator shall* post a copy of the ~~same~~ *return* in the office of the clerk of the district court of the county."

Section 2465. Section 72-15-208, MCA, is amended to read:

"72-15-208. Power of court to require additional report or bond. The court or judge may, at any time, require the public administrator to report the amount of ~~moneys~~ *money* and property of any estate in ~~his~~ *the public administrator's* hands and may require ~~him~~ *the public administrator* at any time to file *an* additional bond or bonds."

Section 2466. Section 72-15-210, MCA, is amended to read:

"72-15-210. Fees — how paid. The fees of all officers chargeable to estates in the hands of public administrators must be paid out of the assets ~~thereof~~ *of the estates*~~,~~ as soon as the ~~same~~ *assets* come into ~~his~~ *the public administrator's* hands."

Section 2467. Section 72-15-211, MCA, is amended to read:

"72-15-211. Conflict of interest prohibited — affidavit. The public administrator ~~must~~ *may* not be interested in the expenditures of any kind made on account of any estate ~~he~~ *that the public administrator* administers~~;~~. ~~nor must he~~ *The public administrator may not* be associated, in business or otherwise, with anyone who is ~~so~~ interested~~;~~ *in expenditures made on account of an estate that the public administrator administers,* and ~~he must~~ *the public administrator shall* attach to ~~his~~ *the* report and publication, made in accordance with 72-15-207, ~~his~~ *the public administrator's* affidavit to that effect."

Section 2468. Section 72-15-213, MCA, is amended to read:

"72-15-213. Wrongful failure of public administrator to deposit ~~moneys~~ *money* — action on bond. When it appears from the returns made in pursuance of ~~the foregoing sections~~ *this part* that any money remains in the hands of the public administrator after final settlement of the estate unclaimed ~~which~~ *that* should be paid over to the county treasurer, the court or judge ~~must~~ *shall* order the ~~same~~ *money* paid over to the county treasurer~~;~~. ~~and on~~ *On the* failure of the public administrator to comply with the order within 10 days after the ~~same~~ *order* is made, the county attorney ~~must~~ *shall* immediately institute the requisite proceedings against the public administrator for a judgment against ~~him~~ *the public administrator* and the sureties on ~~his~~ *the public administrator's* official bond~~,~~ in the amount of the money ~~so~~ withheld and costs."

Section 2469. Section 72-15-302, MCA, is amended to read:

"72-15-302. Retiring public administrator may close pending estates. The public administrator, upon the expiration or termination of ~~his~~ *the* term of office, may continue to administer estates not closed by filing and presenting to the court a full and complete account pertaining to each estate not closed and securing ~~an~~ *a court* order ~~of court~~ granting ~~him~~ *the public administrator* letters of administration and qualifying ~~himself~~ *the public administrator* as a personal representative."

Section 2470. Section 72-15-303, MCA, is amended to read:

"72-15-303. Accounting and surrender of pending estates on retirement of public administrator. ~~Should said~~ *If the* public administrator, upon the expiration or termination of ~~his~~ *the public administrator's* office and within 60 days ~~thereafter~~ *after that date*, ~~fail~~ *fails* to qualify as general administrator of estates not yet closed, ~~he~~ *the public administrator* shall, upon demand of ~~his~~ *the* successor to ~~such~~ *the* office or voluntarily if ~~he~~ *the former public administrator* desires to be relieved from further performance of the trust, surrender to ~~said~~ *the* successor all estates not closed and property belonging to ~~such~~ *the* estates~~,~~ ~~having first filed and presented~~ *after filing and presenting* to the court for approval a full and complete account pertaining to ~~such~~ *each* estate not closed."

Section 2471. Section 72-15-304, MCA, is amended to read:

"72-15-304. Adjustment of compensation. The court shall determine and allow ~~such~~ *the* predecessor in office for ~~his~~ services rendered in connection with estates not closed a compensation based upon the commission prescribed and allowed by law in proportion to the services necessarily rendered and those necessary to be rendered by ~~such~~ *the* successor in closing up ~~such~~ estates. ~~Such~~ *The* successor ~~shall thereupon~~ *must* be allowed and paid the balance of ~~such~~ *the* commission allowed."

Section 2472. Section 72-16-501, MCA, is amended to read:

"72-16-501. Interest of decedent terminated upon death. The interest of the decedent in property held in joint tenancy terminates upon ~~his~~ death."

Section 2473. Section 72-16-608, MCA, is amended to read:

"72-16-608. Powers of personal representative in relation to satisfaction of tax liability. (1) The personal representative or other person in possession of the property of the decedent required to pay the tax may withhold from any property distributable to any person interested in the estate, upon its distribution to ~~him~~ *the person*, the amount of tax attributable to ~~his~~ *the person's* interest.

(2) If the property in possession of the personal representative or other person required to pay the tax and distributable to any person interested in the estate is insufficient to satisfy the proportionate amount of the tax determined to be due from the person, the personal representative or other person required to pay the tax may recover the deficiency from the person interested in the estate.

(3) If the property is not in the possession of the personal representative or the other person required to pay the tax, the personal representative or the other person required to pay the tax may recover from any person interested in the estate the amount of the tax apportioned to the person in accordance with this part."

Section 2474. Section 72-16-609, MCA, is amended to read:

"72-16-609. Penalties and interest charged to fiduciary when caused by ~~his~~ *fiduciary's* negligence. If the court finds that the assessment of penalties and interest assessed in relation to the tax is due to delay caused by the negligence of the fiduciary, the court may charge ~~him~~ *the fiduciary* with the amount of the assessed penalties and interest."

Section 2475. Section 72-31-101, MCA, is amended to read:

"72-31-101. Oath in behalf of corporation acting as fiduciary. In all matters ~~where~~ *in which* a corporation is authorized to act as trustee, guardian, executor, administrator, or in any fiduciary capacity and an oath of office is required, it ~~shall be~~ ~~competent~~ *is proper* for an officer of ~~such~~ *the* corporation to take the required oath for and on behalf of ~~his~~ *the officer's* corporation~~,~~ and ~~such~~ *the* corporation ~~shall thereby become amenable~~ *becomes subject* to the laws relating to individuals in ~~like~~ *similar* matters~~,~~ so far as ~~such~~ *those* laws may be applied to a corporation."

Section 2476. Section 72-31-102, MCA, is amended to read:

"72-31-102. Investment by fiduciaries in home owners' loan corporation bonds authorized. Notwithstanding any other provision of law, it ~~shall be~~ *is* lawful for any executor, administrator, guardian or conservator, trustee, or other fiduciary to invest the funds or ~~moneys~~ *money* in ~~his~~ *the person's* custody or possession, eligible for investment, in bonds of the home owners' loan corporation or debentures issued by the federal housing administrator, guaranteed as to principal and interest by the United States government."

Section 2477. Section 72-33-216, MCA, is amended to read:

"72-33-216. Resulting trust upon failure of trust. ~~Where~~ *When* the owner of property gratuitously transfers it and manifests in the trust instrument an intention that the transferee should hold the property in trust but the trust fails, the transferee holds the trust estate as a resulting trust for the transferor or ~~his~~ *the transferor's* estate~~,~~ unless:

(1) the transferor manifested in the trust instrument an intention that no resulting trust should arise; or

(2) the intended trust fails for illegality and the policy against unjust enrichment of the transferee is outweighed by the policy against giving relief to a person who has entered into an illegal transaction."

Section 2478. Section 72-33-217, MCA, is amended to read:

"72-33-217. Resulting trust upon full performance of trust. ~~Where~~ *When* the owner of property gratuitously transfers it subject to a trust ~~which~~ *that* is properly declared and ~~which~~ *that* is fully performed without exhausting the trust estate, the trustee holds the surplus as a resulting trust for the transferor or ~~his~~ *the transferor's* estate~~,~~ unless the transferor manifested in the trust instrument an intention that no resulting trust of the surplus should arise."

Section 2479. Section 72-33-219, MCA, is amended to read:

"72-33-219. Constructive trust. A constructive trust arises when a person holding title to property is subject to an equitable duty to convey it to another on the ground that the person holding title would be unjustly enriched if ~~he~~ *the holder* were permitted to retain it."

Section 2480. Section 72-33-306, MCA, is amended to read:

"72-33-306. Disclaimer not ~~a~~ transfer. A disclaimer or renunciation by a beneficiary of all or part of ~~his~~ *the beneficiary's* interest under a trust ~~shall~~ *may* not be considered a transfer under 72-33-301 or 72-33-302."

Section 2481. Section 72-33-503, MCA, is amended to read:

"72-33-503. Enforcement of ~~a~~ charitable trust. The attorney general, a cotrustee, or a person who has a special interest in the enforcement of the charitable trust ~~can~~ *may* maintain a suit for the enforcement of a charitable trust, but ~~not~~ persons who *do not* have ~~no~~ *a* special interest, ~~or~~ the trustor, or ~~his~~ *the trustor's* heirs or personal representative *may not maintain a suit for the enforcement of a charitable trust*."

Section 2482. Section 72-34-130, MCA, is amended to read:

"72-34-130. Standard for exercise of "absolute", "sole", or "uncontrolled" powers. (1) Subject to the additional requirements of subsection (2), if a trust instrument confers "absolute", "sole", or "uncontrolled" discretion on a trustee, the trustee shall act in accordance with fiduciary principles and may not act in disregard of the purposes of the trust.

(2) Notwithstanding the trustor's use of terms like "absolute", "sole", or "uncontrolled", a person who is a beneficiary of a trust and who, either individually or as trustee or cotrustee, holds a power to take or distribute income or principal to or for ~~the benefit of himself or herself~~ *person's own benefit* pursuant to a standard~~,~~ shall exercise that power reasonably and in accordance with the standard. In any case in which the standard governing the exercise of the power does not clearly indicate that a broader power is intended, the holder of the power may exercise it in ~~his or her~~ *the holder's* favor only for ~~his or her~~ *the holder's* health, education, support, or maintenance."

Section 2483. Section 72-34-514, MCA, is amended to read:

"72-34-514. Consent of beneficiary to relieve trustee of liability for breach of trust. (1) Except as provided in subsections (2) and (3), a beneficiary may not hold the trustee liable for an act or omission of the trustee as a breach of

trust if the beneficiary consented to the act or omission before or at the time of the act or omission.

(2) The consent of the beneficiary does not preclude the beneficiary from holding the trustee liable for a breach of trust in any of the following circumstances:

(a) whenever the beneficiary was under an incapacity at the time of the consent or of the act or omission;

(b) whenever the beneficiary at the time consent was given did not know of ~~his~~ *the beneficiary's* rights and of the material facts that the trustee knew or should have known and that the trustee did not reasonably believe that the beneficiary knew; or

(c) whenever the consent of the beneficiary was induced by improper conduct of the trustee.

(3) Whenever the trustee has an interest in the transaction adverse to the interest of the beneficiary, the consent of the beneficiary does not preclude the beneficiary from holding the trustee liable for a breach of trust under any of the circumstances described in subsection (2) or whenever the transaction to which the beneficiary consented was not fair and reasonable to the beneficiary."

Section 2484. Section 72-34-515, MCA, is amended to read:

"72-34-515. Discharge of trustee's liability by release or contract. (1) Except as provided in subsection (2), a beneficiary may be precluded from holding the trustee liable for a breach of trust by the beneficiary's release or contract effective to discharge the trustee's liability to the beneficiary for that breach.

(2) A release or contract is not effective to discharge the trustee's liability for a breach of trust in any of the following circumstances:

(a) whenever the beneficiary was under an incapacity at the time of making the release or contract;

(b) whenever the beneficiary did not know of ~~his~~ *the beneficiary's* rights and of the material facts:

(i) that the trustee knew or reasonably should have known; and

(ii) that the trustee did not reasonably believe that the beneficiary knew;

(c) whenever the release or contract of the beneficiary was induced by improper conduct of the trustee; or

(d) whenever the transaction involved a bargain with the trustee that was not fair and reasonable."

Section 2485. Section 72-34-516, MCA, is amended to read:

"72-34-516. Discharge of trustee's liability by subsequent affirmance. (1) Except as provided in subsection (2), if the trustee, in breach of trust, enters into a transaction that the beneficiary may at ~~his~~ *the beneficiary's* option reject or affirm, and the beneficiary affirms the transaction, the beneficiary may not ~~thereafter~~ reject it *after the affirmance* and hold the trustee liable for any loss occurring after the trustee entered into the transaction.

(2) The affirmance of a transaction by the beneficiary does not preclude the beneficiary from holding a trustee liable for a breach of trust if, at the time of the affirmance, any of the following circumstances existed:

(a) the beneficiary was under an incapacity;

(b) the beneficiary did not know of ~~his~~ *the beneficiary's* rights and of the material facts:

(i) that the trustee knew or reasonably should have known; and

(ii) that the trustee did not reasonably believe that the beneficiary knew;

(c) the affirmance was induced by improper conduct of the trustee; or

(d) the transaction involved a bargain with the trustee that was not fair and reasonable."

Section 2486. Section 72-35-313, MCA, is amended to read:

"72-35-313. Appointment of guardian ad litem. (1) The court may, on its own motion or on request of a trustee or other person interested in the trust, appoint a guardian ad litem at any stage of a proceeding concerning the trust to represent the interest of any of the following persons~~,~~ if the court determines that representation of the interest otherwise would be inadequate:

(a) a minor;

(b) an incapacitated person;

(c) an unborn person;

(d) an unascertained person;

(e) a person whose identity or address is unknown; or

(f) a designated class of persons who are not ascertained or are not in being.

(2) If not precluded by a conflict of interest, a guardian ad litem may be appointed to represent several persons or interests.

(3) The reasonable expenses of the guardian ad litem, including compensation and ~~attorney's~~ *attorney* fees, ~~shall~~ *must* be determined by the court and paid as the court orders, either out of trust property or by the petitioner.

(4) If ~~no~~ *a* guardian ad litem is *not* appointed, an unborn person or an unascertained person is bound by an order to the extent ~~his or her~~ *that the person's* interest is adequately represented by another party having a substantially identical interest in the proceeding."

Section 2487. Section 72-36-206, MCA, is amended to read:

"72-36-206. Effects on real property transactions. (1) This section relates only to conveyances of real property to or from a trust~~,~~ and supplements~~,~~ but does not modify other substantive provisions of *Title 72,* chapters 33 through 36*,* relating to the creation or validity of trusts.

(2) Except as otherwise provided in *Title 72,* chapters 33 through 36, a conveyance of real property to a trustee designated as such in the conveyance vests the whole estate conveyed in the trustee, subject only to the trustee's duties. The beneficiaries of the trust take no estate or interest in the real property, but may determine or enforce the terms of the trust as provided in chapters 33 through 36.

(3) An instrument creating or amending a trust need not be recorded, but may be *recorded* if properly acknowledged.

(4) If there is no clear reference to or designation of a grantee as trustee in a conveyance ~~(nor~~ *or* in a separately recorded instrument recorded in the same county as the conveyance and describing the same property as described in the conveyance~~)~~, the conveyance must be considered to be absolute to the grantee, in favor of purchasers or encumbrancers from the grantee, who were without

actual knowledge and who acted for a valuable consideration, despite any valid trust ~~which~~ *that* may exist.

(5) Unless limitations upon a trustee's power or authority are set forth in the recorded conveyance of real property to the trustee or in a separate trust instrument, ~~(or~~ portion ~~thereof~~ *of a separate trust instrument*, or abstract ~~thereof)~~ *of a separate trust instrument* recorded in the same county, there are no limitations upon the trustee's power or authority to convey or encumber the real property in favor of third persons who were without actual knowledge and who acted for a valuable consideration. A separate trust instrument incorporated by reference in a conveyance to a trustee ~~cannot~~ *may not* limit the trustee's power or authority to convey or encumber unless the limitations are set forth in the trust instrument, ~~(or~~ portion ~~thereof~~ *of a trust instrument,* or abstract ~~thereof)~~ ~~which~~ *of a trust instrument that* is also recorded in the county where the real property is located. An amendment to a recorded trust instrument may not affect the power or authority of a trustee to convey or encumber unless it is also recorded in the same place.

(6) A subsequent conveyance from a person designated in the original conveyance as trustee ~~(~~or from ~~his~~ *the* successor trustee~~)~~ conveys the whole estate vested in the trustee, except as limited by the terms of the conveyance. The identity of ~~any~~ *a* successor trustee may be established by a recorded affidavit of the successor trustee specifying the successor trustee's name and address and the date and circumstances of succession~~,~~ and confirming that the successor trustee is currently lawfully serving in that capacity.

(7) In an action or proceeding by a third person involving the real property granted to a trustee, the person designated as trustee in the original conveyance, or the successor trustee as established in subsection (6), or, if none, the person then actually serving as trustee, or, if none, any beneficiary designated by the court to represent the interests of the beneficiaries~~, shall be~~ *is* considered the only necessary representative of the trust and of all persons with an interest in the trust. A judgment is binding upon and conclusive against the trust and all persons interested in the trust as to all matters finally adjudicated in the judgment.

(8) The designation of the name of a trust in a recorded conveyance vests the estate in the trustee of the trust. A subsequent conveyance may be made by the trustee. The identity of a party serving as trustee may be established by a recorded affidavit of the party or by ~~other~~ *another* recorded instrument~~,~~ specifying the trustee's name and address and confirming that the party is currently serving as the trustee."

Section 2488. Section 75-1-312, MCA, is amended to read:

"75-1-312. Hearings — council subpoena power — contempt proceedings. In the discharge of its duties, the council ~~shall have authority to~~ *may* hold hearings, administer oaths, issue subpoenas, compel the attendance of witnesses and the production of any papers, books, accounts, documents, and testimony, and ~~to~~ cause depositions of witnesses to be taken in the manner prescribed by law for taking depositions in civil actions in the district court. In case of disobedience on the part of ~~any~~ *a* person to comply with ~~any~~ *a* subpoena issued on behalf of the council or ~~any~~ *a* committee ~~thereof~~ *of the council* or of the refusal of ~~any~~ *a* witness to testify on any matters regarding which ~~he~~ *the witness* may be lawfully interrogated, it ~~shall be~~ *is* the duty of the district court of any county or the judge ~~thereof~~ *of the district court*, on application of the council, to compel obedience by proceedings for contempt as in the case of disobedience of

the requirements of a subpoena issued from ~~such~~ *the* court on a refusal to testify ~~therein~~ *in the court*."

Section 2489. Section 75-2-122, MCA, is amended to read:

"75-2-122. ~~Chairman~~ *Presiding officer* — secretary. (1) A ~~chairman~~ ~~shall~~ *presiding officer must* be elected by the advisory council from among its number.

(2) The secretary of the advisory council ~~shall~~ *must* be a member of the staff of the department, designated by the director. The secretary shall keep all records of meetings of and actions taken by the council. ~~He~~ *The secretary* shall keep the advisory council advised as to actions taken by persons in response to recommendations and orders issued under this chapter and shall perform other duties as determined by the advisory council, not inconsistent with rules and policies adopted under this chapter or specific authority otherwise given the advisory council."

Section 2490. Section 75-2-123, MCA, is amended to read:

"75-2-123. Meetings. The advisory council shall hold at least two regular meetings each calendar year and shall keep a summary record of its proceedings ~~which~~ ~~shall~~ *that must* be open to the public for inspection. Special meetings may be called by the ~~chairman~~ *presiding officer* and must be called by ~~him~~ *the presiding officer* on receipt of a written request signed by two or more members of the advisory council. Notice of the time and place for meetings ~~shall~~ *must* be given in advance to each member of the advisory council by the secretary."

Section 2491. Section 75-2-212, MCA, is amended to read:

"75-2-212. Variances — renewals — filing fees. (1) A person who owns or is in control of a plant, building, structure, process, or equipment may apply to the board for an exemption or partial exemption from rules governing the quality, nature, duration, or extent of emissions of air pollutants. The application ~~shall~~ *must* be accompanied by ~~such~~ information and data ~~as~~ *that* the board may require. The board may grant an exemption or partial exemption if it finds that:

(a) the emissions occurring or proposed to occur do not constitute a danger to public health or safety; and

(b) compliance with the rules from which *an* exemption is sought would produce hardship without equal or greater benefits to the public.

(2) ~~No~~ *An* exemption or partial exemption may *not* be granted pursuant to this section except after public hearing on due notice and until the board has considered the relative interests of the applicant, other owners or property likely to be affected by the emissions, and the general public.

(3) The exemption or partial exemption may be renewed if ~~no~~ *a* complaint is *not* made to the board because of it or if, after the complaint has been made and duly considered at a public hearing held by the board on due notice, the board finds that renewal is justified. ~~No~~ *A* renewal may *not* be granted except on application ~~therefor~~. An application ~~shall~~ *must* be made at least 60 days before the expiration of the exemption or partial exemption. Immediately before application for renewal, the applicant shall give public notice of ~~his~~ *the* application in accordance with rules of the board. A renewal pursuant to this subsection ~~shall~~ *must* be on the same grounds and subject to the same limitations and requirements as provided in subsection (1).

(4) An exemption, partial exemption, or renewal ~~thereof~~ is not a right of the applicant or holder ~~thereof~~ but ~~shall~~ *may* be granted at the discretion of the

board. However, a person adversely affected by an exemption, partial exemption, or renewal granted by the board may obtain judicial review ~~thereof~~ as provided by 75-2-411.

(5) ~~Nothing in this~~ *This* section and ~~no~~ *an* exemption, partial exemption, or renewal granted pursuant to this section may *not* be construed to prevent or limit the application of the emergency provisions and procedures of 75-2-402 to a person or ~~his~~ *the person's* property.

(6) A person who owns or is in control of a plant, building, structure, process, or equipment*,* ~~(hereinafter~~ *which are* called ~~a facility)~~ *facilities,* who applies to the board for an exemption or partial exemption or a renewal of an exemption or partial exemption from a rule governing the quality, nature, duration, or extent of emissions of air pollutants shall submit with the application for variance a sum of not less than $500 or 2% of the cost of the equipment to bring the facility into compliance with the rule for which a variance is sought, whichever is greater, but not to exceed $80,000. The department shall prepare a statement of actual costs, and funds in excess of this ~~shall~~ *must* be returned to the applicant. The person requesting the variance shall describe the facility in sufficient detail, with accompanying estimates of cost and verifying materials, to permit the department to determine with reasonable accuracy the sum of the fee. For a renewal of an exemption or partial exemption, if ~~no~~ *a* public hearing, environmental impact statement, or appreciable investigation by the department is *not* necessary, the minimum filing fee ~~shall apply~~ *applies* or the fee may be waived by the department. The filing fee ~~shall~~ *must* be deposited in the state special revenue fund provided for in 17-2-102. It is the intent of the legislature that the ~~revenues~~ *revenue* derived from the filing fees ~~shall~~ *must* be used by the department to:

(a) compile the information required for rendering a decision on the request;

(b) compile the information necessary for any environmental impact statements;

(c) offset the costs of a public hearing, printing, or mailing; and

(d) carry out its other responsibilities under this chapter."

Section 2492. Section 75-2-411, MCA, is amended to read:

"75-2-411. Judicial review. (1) A person aggrieved by an order of the board or local control authority may apply for rehearing upon one or more of the following grounds and upon no other grounds:

(a) the board or local control authority acted without or in excess of its powers;

(b) the order was procured by fraud;

(c) the order is contrary to the evidence;

(d) the applicant has discovered new evidence, material to ~~him~~ *the applicant*, ~~which he~~ *that the applicant* could not with reasonable diligence have discovered and produced at the hearing; or

(e) competent evidence was excluded to the prejudice of the applicant.

(2) The petition must be in ~~such~~ *a* form and filed ~~in such~~ *at a* time ~~as~~ *that* the board ~~shall prescribe~~ *prescribes*.

(3) (a) Within 30 days after the application for rehearing is denied or, if the application is granted, within 30 days after the decision on the rehearing, ~~a~~ *an aggrieved* party ~~aggrieved thereby~~ may appeal to the district court of the judicial district of the state ~~which~~ *that* is the situs of property affected by the order.

(b) The appeal ~~shall~~ *must* be taken by serving a written notice of appeal upon the ~~chairman~~ *presiding officer* of the board~~,~~. ~~which service shall~~ *Service must* be made by the delivery of a copy of the notice to the ~~chairman~~ *presiding officer* and by filing the original with the clerk of the court to which the appeal is taken. Immediately after service upon the board, the board shall certify to the district court the entire record and proceedings, including all testimony and evidence taken by the board. Immediately upon receiving the certified record, the district court shall fix a day for filing of briefs and hearing arguments on the cause and shall cause a notice of the ~~same~~ *the dates* to be served upon the board and the appellant.

(c) The court shall hear and decide the cause upon the record of the board. The court shall determine whether or not the board regularly pursued its authority, whether or not the findings of the board were supported by substantial competent evidence, and whether or not the board made errors of law prejudicial to the appellant.

(4) Either the board or the person aggrieved may appeal from the decision of the district court to the supreme court. The proceedings before the supreme court ~~shall~~ *must* be limited to a review of the record of the hearing before the board and of the district court's review of that record."

Section 2493. Section 75-5-105, MCA, is amended to read:

"75-5-105. Confidentiality of records. Except as provided in 80-15-108, any information concerning sources of pollution ~~which~~ *that* is furnished to the board or department or ~~which~~ *that* is obtained by either of them is a matter of public record and open to public use. However, any information unique to the owner or operator of a source of pollution ~~which~~ *that* would, if disclosed, reveal methods or processes entitled to protection as trade secrets ~~shall~~ *must* be maintained as confidential if so determined by a court of competent jurisdiction. The owner or operator shall file a declaratory judgment action to establish the existence of a trade secret if ~~he~~ *the owner or operator* wishes ~~such~~ *the* information to ~~enjoy~~ *remain* confidential ~~status~~. The department ~~shall~~ *must* be served in ~~any such~~ *the* action and may intervene as a party ~~therein~~. Any information not intended to be public when submitted to the board or department ~~shall~~ *must* be submitted in writing and clearly marked as confidential. The data describing physical and chemical characteristics of a waste discharged to state waters ~~shall~~ *may* not be considered confidential. The board may use any information in compiling or publishing analyses or summaries relating to water pollution if ~~such~~ *the* analyses or summaries do not identify any owner or operator of a source of pollution or reveal any information ~~which~~ *that* is otherwise made confidential by this section."

Section 2494. Section 75-5-306, MCA, is amended to read:

"75-5-306. Purer than natural unnecessary — dams — *definition.* (1) It is not necessary that wastes be treated to a purer condition than the natural condition of the receiving stream as long as the minimum treatment requirements established under this chapter are met.

(2) "Natural" refers to conditions or material present from runoff or percolation over which ~~man has~~ *humans have* no control or from developed land where all reasonable land, soil, and water conservation practices have been applied. Conditions resulting from the reasonable operation of dams ~~at~~ *on* July 1, 1971, are natural."

Section 2495. Section 75-5-603, MCA, is amended to read:

"75-5-603. Power to inspect. The authorized representative of the department, upon presentation of ~~his~~ *the representative's* credentials, may at reasonable times enter upon any public or private property to:

(1) investigate conditions relating to pollution of state waters or violations of permit conditions;

(2) have access to and copy any records required under this chapter;

(3) inspect any monitoring equipment or method required under 75-5-602(3); and

(4) sample any effluents ~~which~~ *that* the owner or operator of ~~such~~ *the* source is required to sample under 75-5-602(4)."

Section 2496. Section 75-5-641, MCA, is amended to read:

"75-5-641. Appeals from board orders — review by district court. (1) An appeal of an order of the board ~~shall~~ *must* be in the district court of the county in which the alleged source of pollution is located.

(2) A person interested in the order may intervene, in the manner provided by the rules of civil procedure, if ~~he~~ *the person* shows good cause. An intervenor is a party for the purposes of this chapter.

(3) The attorney general shall represent the board if requested, or the department may appoint special counsel for the proceedings, subject to the approval of the attorney general.

(4) The initiation of an action for review or the taking of an appeal does not stay the effectiveness of any order of the board unless the court finds that there is probable cause to believe:

(a) that refusal to grant a stay will cause serious harm to the affected party; and

(b) that any violation found by the board will not continue or, if it does continue, any harmful effects on state waters will be remedied immediately on the cessation of the violation.

(5) If a court does not stay the effectiveness of an order of the board, it may enforce compliance with that order by issuing a temporary restraining order or an injunction at the request of the board."

Section 2497. Section 75-5-801, MCA, is amended to read:

"75-5-801. Definitions. For the purposes of this part, the following definitions apply:

(1) "Animal feeding operation" means a lot or facility where the following conditions are met:

(a) animals have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period; and

(b) crops, vegetation, forage growth, or postharvest residues are not sustained in the normal growing season over any portion of the lot or facility.

(2) "Concentrated animal feeding operation" means an animal feeding operation that is defined as a large concentrated animal feeding operation or as a medium concentrated animal feeding operation or that is designated as a concentrated animal feeding operation in accordance with 40 CFR, part 122. Two or more animal feeding operations under common ownership are considered to be a single animal feeding operation for the purposes of determining the number of animals at an operation if they adjoin each other or if they use a common area or system for the disposal of wastes.

(3) "Large concentrated animal feeding operation" means an animal feeding operation that stables or confines at a minimum:

(a) 700 mature dairy cows, whether milked or dry;

(b) 1,000 veal calves;

(c) 1,000 cattle other than mature dairy cows or veal calves;

(d) 2,500 swine each weighing 55 pounds or more;

(e) 10,000 swine each weighing less than 55 pounds;

(f) 500 horses;

(g) 10,000 sheep or lambs;

(h) 55,000 turkeys;

(i) 30,000 laying hens or broilers if the animal feeding operation uses a liquid manure-handling system;

(j) 125,000 chickens, other than laying hens, if the animal feeding operation uses other than a liquid manure-handling system;

(k) 82,000 laying hens if the animal feeding operation uses other than a liquid manure-handling system;

(l) 30,000 ducks if the animal feeding operation uses other than a liquid manure-handling system; or

(m) 5,000 ducks if the animal feeding operation uses a liquid manure-handling system.

(4) "Medium concentrated animal feeding operation" means an animal feeding operation with the type and number of animals that fall within any of the ranges listed in subsection (4)(a) and that has been defined or designated as a concentrated animal feeding operation. An animal feeding operation is defined as a medium concentrated animal feeding operation if:

(a) the type and number of animals that it stables or confines falls within any of the following ranges:

(i) 200-699 mature dairy cows, whether milked or dry;

(ii) 300-999 veal calves;

(iii) 300-999 cattle other than mature dairy cows or veal calves;

(iv) 750-2,499 swine each weighing 55 pounds or more;

(v) 3,000-9,999 swine each weighing less than 55 pounds;

(vi) 150-499 horses;

(vii) 3,000-9,999 sheep or lambs;

(viii) 16,500-54,999 turkeys;

(ix) 9,000-29,999 laying hens or broilers if the animal feeding operation uses a liquid manure-handling system;

(x) 37,500-124,999 chickens, other than laying hens, if the animal feeding operation uses other than a liquid manure-handling system;

(xi) 25,000-81,999 laying hens if the animal feeding operation uses other than a liquid manure-handling system;

(xii) 10,000-29,999 ducks if the animal feeding operation uses other than a liquid manure-handling system; or

(xiii) 1,500-4,999 ducks if the animal feeding operation uses a liquid manure-handling system; and

(b) either of the following conditions is met:

(i) pollutants are discharged into waters of the state through a ~~manmade~~ *constructed* ditch, flushing system, or other similar ~~manmade~~ *constructed* device; or

(ii) pollutants are discharged directly into waters of the state that originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation."

Section 2498. Section 75-7-205, MCA, is amended to read:

"75-7-205. Unauthorized work. A person who performs work in a lake ~~after May 1, 1975~~, without a permit for that work shall, if required by the local governing body or the district court, restore the lake to its condition before ~~he~~ *the person* disturbed it."

Section 2499. Section 75-10-212, MCA, is amended to read:

"75-10-212. Disposal in unauthorized area prohibited — exception. (1) ~~No~~ *A* person may *not* dispose of solid waste except as permitted under this part.

(2) It ~~shall be~~ *is* unlawful to dump or leave any garbage, dead animal, or other debris or refuse:

(a) in or upon any highway, road, street, or alley of this state;

(b) in or upon any public property, highway, street, or alley under the control of the state of Montana or any political subdivision ~~thereof~~ *of the state* or any officer or agent or department ~~thereof~~ *of the state or political subdivision of the state*;

(c) within 200 yards of ~~such~~ *a* public highway, road, street, or alley or public property;

(d) on privately owned property where hunting, fishing, or other recreation is permitted~~, provided~~*; however,* this subsection ~~shall~~ *does* not apply to the owner, ~~his~~ *the owner's* agents, or those disposing of debris or refuse with the owner's consent.

(3) ~~Any~~ *A* person in violation of this section is absolutely liable, as provided in 45-2-104, and is subject to the civil penalties provided in 75-10-233."

Section 2500. Section 75-10-214, MCA, is amended to read:

"75-10-214. Exclusions — exceptions to exclusions. (1) (a) This part may not be construed to prohibit a person from disposing of ~~his~~ *the person's* own solid waste that is generated in reasonable association with ~~his~~ *the person's* household or agricultural operations upon land owned or leased by that person or covered by easement or permit as long as the disposal does not create a nuisance or public health hazard or violate the laws governing the disposal of hazardous or deleterious substances.

(b) This part does not apply to the operation of an electric generating facility, to the drilling, production, or refining of natural gas or petroleum, or to the operation of a mine, mill, smelter, or electrolytic reduction facility.

(2) The exclusions contained in subsection (1) ~~of this section~~ do not apply to a division of land of 5 acres or less made after July 1, 1977, that falls within the definition of subdivision in Title 76, chapter 4, part 1, or the Montana Subdivision and Platting Act in Title 76, chapter 3."

Section 2501. Section 75-10-223, MCA, is amended to read:

"75-10-223. Refusal by local health officer — appeal to board. (1) The local health officer may ~~only~~ refuse to validate a license issued under this part *only* upon a finding that the requirements of this part and the rules implementing this part cannot be satisfied. If the local health officer refuses to validate the license, ~~he~~ *the local health officer* shall notify the applicant, the department, and any other interested person in writing.

(2) The applicant or any person aggrieved by the decision of the local health officer not to validate a license may appeal the decision to the board within 30 days after receiving written notice of the local health officer's decision.

(3) The hearing before the board ~~shall~~ *must* be held pursuant to the contested case provisions of the Montana Administrative Procedure Act."

Section 2502. Section 75-10-233, MCA, is amended to read:

"75-10-233. Dumping penalty — enforcement. (1) A person found guilty of a violation of 75-10-212 shall be fined in the sum not exceeding $100 or imprisoned in the county jail for a period not exceeding 30 days, or ~~be punished by~~ both ~~fine and imprisonment, in the discretion of the court~~.

(2) A person found absolutely liable under 75-10-212 is subject to a civil penalty not to exceed $5,000.

(3) The provisions of 75-10-212 ~~shall~~ *must* be enforced by all highway patrol officers, sheriffs, ~~policemen~~ *and police officers*~~,~~ and *by* all other enforcement agencies and officers of the state of Montana. In addition, game wardens have the right to enforce the provisions of 75-10-212 on public property and on private property where public recreation is permitted."

Section 2503. Section 75-10-501, MCA, is amended to read:

"75-10-501. Definitions. Unless the context requires otherwise, in this part, the following definitions apply:

(1) "Board" means the board of environmental review provided for in 2-15-3502.

(2) "Component part" means any identifiable part of a discarded, ruined, wrecked, or dismantled motor vehicle, including but not limited to fenders, doors, hoods, engine blocks, motor parts, transmissions, frames, axles, wheels, tires, and passenger compartment fixtures.

(3) "Department" means the department of environmental quality provided for in 2-15-3501.

(4) (a) "Junk vehicle" means a motor vehicle, including component parts:

(i) that is discarded, ruined, wrecked, or dismantled;

(ii) that, except as provided in subsection (4)(b), is not lawfully and validly licensed; and

(iii) that remains inoperative or incapable of being driven.

(b) If a vehicle is permanently registered under 61-3-562 and meets the criteria for a junk vehicle under subsection (4)(a), the vehicle is a junk vehicle.

(5) "Motor vehicle graveyard" means a collection point established by a county for junk motor vehicles prior to their disposal.

(6) *(a)* "Motor vehicle wrecking facility" means:

~~(a)~~*(i)* a facility buying, selling, or dealing in four or more vehicles ~~per~~ *a* year, of a type required to be licensed, for the purpose of wrecking, dismantling, disassembling, or substantially changing the form of the motor vehicle; or

~~(b)~~*(ii)* a facility that buys or sells component parts, in whole or in part, and deals in secondhand motor vehicle parts. A facility that buys or sells component parts of a motor vehicle, in whole or in part, is a motor vehicle wrecking facility whether or not the buying or selling price is based upon weight or any other type of classification.

(b) The term does not include a garage where wrecked or disabled motor vehicles are temporarily stored for a reasonable period of time for inspection, repairs, or subsequent removal to a junkyard.

(7) "Person" means any individual, firm, partnership, company, association, corporation, city, town, local governmental entity, or ~~any~~ other governmental or private entity, whether organized for profit or not.

(8) "Public view" means any point 6 feet above the surface of the center of a public road from which junk vehicles can be seen.

(9) "Shielding" means the construction or use of fencing or ~~manmade~~ *constructed* or natural barriers to conceal junk vehicles from public view."

Section 2504. Section 75-10-940, MCA, is amended to read:

"75-10-940. Enforcement by residents. (1) A person with knowledge that a requirement of 75-10-901 through 75-10-945 or a rule adopted under 75-10-901 through 75-10-945 is not being enforced by a public officer or employee whose duty it is to enforce the requirement or rule may bring the failure to enforce to the attention of the public officer or employee by a written statement under oath that states the specific facts of the failure to enforce the requirement or rule. Knowingly making false statements or charges in the statements subjects the person to the penalties prescribed for a violation of 45-7-202.

(2) If the public officer or employee neglects or refuses for an unreasonable time after receipt of the statement to enforce the requirement or rule, the person may bring an action of mandamus in the district court of the first judicial district of Montana. If the court finds that a requirement of 75-10-901 through 75-10-945 or a rule adopted under 75-10-901 through 75-10-945 is not being enforced, the court may order the public officer or employee whose duty it is to enforce the requirement or rule to perform those duties. If ~~he~~ *the public officer or employee* fails to do so, the public officer or employee must be held in contempt of court and is subject to the penalties provided by law."

Section 2505. Section 75-10-941, MCA, is amended to read:

"75-10-941. Action to recover damages to water supply. An owner of an interest in real property who obtains all or part of ~~his~~ *the owner's* supply of water for domestic, agricultural, industrial, or other legitimate use from a surface or underground source may sue a person to recover damages for contamination, diminution, or interruption of the water supply proximately resulting from the operation of a facility. The remedy provided in this section does not exclude the use of any other remedy that may be available under the laws of the state."

Section 2506. Section 75-16-104, MCA, is amended to read:

"75-16-104. Right to relief. A person who suffers or is threatened with injury to ~~his~~ *that person's* person or property in a reciprocating jurisdiction caused by pollution originating or that may originate in this state has the same rights to relief with respect to the injury or threatened injury and may enforce those rights in this state as if the injury or threatened injury occurred in this state."

Section 2507. Section 75-20-404, MCA, is amended to read:

"75-20-404. Enforcement of chapter by residents. (1) A resident of this state with knowledge that a requirement of this chapter or a rule adopted under it is not being enforced by a public officer or employee whose duty it is to enforce the requirement or rule may bring the failure to enforce to the attention of the public officer or employee by a written statement under oath that ~~shall~~ *must* state the specific facts of the failure to enforce the requirement or rule. Knowingly making false statements or charges in the affidavit subjects the affiant to penalties prescribed under the law of perjury.

(2) If the public officer or employee neglects or refuses for an unreasonable time after receipt of the statement to enforce the requirement or rule, the resident may bring an action of mandamus in the district court of the first judicial district of this state, in and for the county of Lewis and Clark. If the court finds that a requirement of this chapter or a rule adopted under it is not being enforced, the court may order the public officer or employee whose duty it is to enforce the requirement or rule to perform ~~his~~ *the officer's or employee's* duties. If ~~he~~ *the public officer or public employee* fails to do so, the public officer or employee ~~shall~~ *must* be held in contempt of court and is subject to the penalties provided by law."

Section 2508. Section 75-20-405, MCA, is amended to read:

"75-20-405. Action to recover damages to water supply. An owner of an interest in real property who obtains all or part of ~~his~~ *the owner's* supply of water for domestic, agricultural, industrial, or other legitimate use from a surface or underground source may sue a person to recover damages for contamination, diminution, or interruption of the water supply proximately resulting from the operation of a facility. The remedies enumerated in this section do not exclude the use of any other remedy ~~which~~ *that* may be available under the laws of the state."

Section 2509. Section 75-20-409, MCA, is amended to read:

"75-20-409. Optional annual installments for location of facility on landowner's property. A landowner upon whose land a facility is proposed to be located ~~shall have~~ *has* the option of receiving any negotiated settlement for use of ~~his~~ *the landowner's* land, if and when the land is used for a facility, by easement, right-of-way, or other legal conveyance in either a lump sum or in not more than five consecutive annual installments."

Section 2510. Section 75-20-411, MCA, is amended to read:

"75-20-411. Surety bond — other security. If an order of the board is stayed or suspended, the court may require a bond with good and sufficient surety conditioned that the party petitioning for review answer for all damages caused by the delay in enforcing the order of the board~~;~~ except that the cost of the bond is not chargeable to the applicant as part of the fee. If the party petitioning for review prevails upon final resolution of an appeal, ~~he~~ *the party* does not forfeit bond nor is ~~he~~ *the party* responsible for damages caused by delay."

Section 2511. Section 76-1-222, MCA, is amended to read:

"76-1-222. City council member of city planning board. (1) As soon as the city council has enacted an ordinance creating a city planning board, the city council shall select a member of its body to serve on the planning board. The term of the appointed member ~~shall~~ *must* be coextensive with the term of office to which ~~he~~ *the member* has been elected or appointed unless the council, on its first regular meeting of each year, appoints another to serve as its

representative or unless ~~his~~ *the member's* term is terminated as ~~hereinafter~~ provided *in this part*.

(2) The city council shall fill any vacancy occurring in its respective membership on the planning board."

Section 2512. Section 76-2-221, MCA, is amended to read:

"76-2-221. Board of adjustment. (1) The board of county commissioners shall provide for the appointment of a board of adjustment and in the regulations and restrictions adopted pursuant to the authority of this part shall provide that the board of adjustment may, in appropriate cases and subject to appropriate conditions and safeguards, make special exceptions to the terms of the zoning resolution in harmony with its general purposes and intent and in accordance with the general or specific rules of this part.

(2) The board of adjustment shall adopt rules in accordance with the provisions of any resolution adopted pursuant to this part. Meetings of the board of adjustment ~~shall~~ *must* be held at the call of the ~~chairman~~ *presiding officer* and at ~~such~~ times ~~as~~ *that* the board may determine. ~~Such chairman~~ *The presiding officer* or in ~~his~~ *the presiding officer's* absence the acting ~~chairman~~ *presiding officer* may administer oaths and compel the attendance of witnesses."

Section 2513. Section 76-2-226, MCA, is amended to read:

"76-2-226. Appeals to board of adjustment. (1) Appeals to the board of adjustment may be taken by ~~any~~ *a* person aggrieved or by ~~any~~ *an* officer, department, board, or bureau of the county affected by any decision of the administrative officer. ~~Such~~ *The* appeal ~~shall~~ *must* be taken within a reasonable time, as provided by the rules of the board, by filing with the officer from whom the appeal is taken and with the board of adjustment a notice of appeal specifying the grounds ~~thereof~~ *of the appeal*.

(2) The officer from whom the appeal is taken shall ~~forthwith~~ transmit to the board *in a timely manner* all papers constituting the record upon which the action appealed was taken.

(3) An appeal stays all proceedings in furtherance of the action appealed from unless the officer from whom the appeal is taken certifies to the board of adjustment after the notice of appeal ~~shall have~~ *has* been filed with ~~him~~ *the officer* that by reason of facts stated in the certificate a stay would, in ~~his~~ *the officer's* opinion, cause imminent peril to life or property. In ~~such~~ *that* case, proceedings ~~shall~~ *may* not be stayed ~~other than~~ *except* by a restraining order, which may be granted by the board of adjustment or by a court of record on application, on notice to the officer from whom the appeal is taken, and on due cause shown.

(4) The board of adjustment shall fix a reasonable time for the hearing of the appeal, give public notice ~~thereof~~ *of the hearing* as well as due notice to the parties in interest, and decide the ~~same~~ *the appeal* within a reasonable time.

(5) ~~Upon~~ *At* the hearing, ~~any~~ *a* party may appear in person or by ~~his~~ *the party's* attorney."

Section 2514. Section 76-2-227, MCA, is amended to read:

"76-2-227. Appeals from board to court of record. (1) Any person or persons, jointly or severally, aggrieved by ~~any~~ *a* decision of the board of adjustment or ~~any~~ *a* taxpayer or ~~any~~ *an* officer, department, board, or bureau of the county may present to a court of record a petition, duly verified, setting forth that ~~such~~ *the* decision is illegal, in whole or in part, *and* specifying the grounds of

the illegality. ~~Such~~ *the* petition ~~shall~~ *must* be presented to the court within 30 days after the filing of the decision in the office of the board.

(2) Upon presentation of ~~such~~ *a* petition, the court may allow a writ of certiorari directed to the board of adjustment to review ~~such~~ *the* decision of the board of adjustment and shall prescribe ~~therein~~ *in the writ* the time within which a return ~~thereto~~ must be made and served upon the relator's attorney, which ~~shall~~ *may* not be less than 10 days and may be extended by the court. The allowance of the writ ~~shall~~ *may* not stay proceedings upon the decision appealed from, but the court may, ~~(~~upon application, on notice to the board, and on due cause shown~~)~~, grant a restraining order. The board of adjustment ~~shall~~ *may* not be required to return the original papers acted upon by it, but it ~~shall be~~ *is* sufficient to return certified or sworn copies ~~thereof~~ *of the original papers* or of ~~such~~ portions ~~thereof as~~ *of the original papers that* may be called for by ~~such~~ *the* writ. The return ~~shall~~ *must* concisely set forth ~~such~~ other facts ~~as~~ *that* may be pertinent and material to show the grounds of the decision appealed from and ~~shall~~ *must* be verified.

(3) If, upon the hearing, it ~~shall appear~~ *appears* to the court that testimony is necessary for the proper disposition of the matter, the court may take evidence or appoint a referee to take ~~such~~ evidence as it may direct and report the ~~same~~ *evidence* to the court with ~~his~~ *the referee's* findings of fact and conclusions of law, which ~~shall~~ constitute a part of the proceedings upon which the determination of the court ~~shall~~ *must* be made.

(4) The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review."

Section 2515. Section 76-2-321, MCA, is amended to read:

"76-2-321. Board of adjustment. (1) ~~Such~~ *A* city or town council or other legislative body may provide for the appointment of a board of adjustment and in the regulations and restrictions adopted pursuant to the authority of this part may provide that the board of adjustment may, in appropriate cases and subject to appropriate conditions and safeguards, make special exceptions to the terms of the ordinance in harmony with its general purposes and intent and in accordance with the general or specific rules ~~therein~~ contained *in the ordinance*.

(2) An ordinance adopted pursuant to this section providing for a board of adjustment may restrict the authority of the board and provide that the city or town council or other legislative body reserves to itself the power to make certain exceptions to regulations, ordinances, or land use plans adopted pursuant to this part.

(3) The board shall adopt rules in accordance with the provisions of any ordinance adopted pursuant to this part. Meetings of the board ~~shall~~ *must* be held at the call of the ~~chairman~~ *presiding officer* and at ~~such~~ other times ~~as~~ *that* the board may determine. ~~Such chairman~~ *The presiding officer* or in ~~his~~ *the presiding officer's* absence the acting ~~chairman~~ *presiding officer* may administer oaths and compel the attendance of witnesses."

Section 2516. Section 76-2-326, MCA, is amended to read:

"76-2-326. Appeals to board of adjustment. (1) Appeals to the board of adjustment may be taken by ~~any~~ *a* person aggrieved or by ~~any~~ *an* officer, department, board, or bureau of the municipality affected by any decision of the administrative officer. ~~Such~~ *An* appeal ~~shall~~ *must* be taken within a reasonable time, as provided by the rules of the board, by filing with the officer from whom the appeal is taken and with the board of adjustment a notice of appeal specifying the grounds ~~thereof~~ *of the appeal*.

(2) The officer from whom the appeal is taken shall*, in a timely manner,* ~~forthwith~~ transmit to the board all papers constituting the record upon which the action appealed was taken.

(3) An appeal stays all proceedings in furtherance of the action appealed from unless the officer from whom the appeal is taken certifies to the board of adjustment after the notice of appeal ~~shall have~~ *has* been filed with ~~him~~ *the officer* that by reason of facts stated in the certificate a stay would, in ~~his~~ *the officer's* opinion, cause imminent peril to life or property. In ~~such~~ *that* case, proceedings ~~shall~~ *may* not be stayed ~~otherwise than~~ *except* by a restraining order, which may be granted by the board of adjustment or by a court of record on application, on notice to the officer from whom the appeal is taken, and on due cause shown.

(4) The board of adjustment shall fix a reasonable time for the hearing of the appeal, give public notice ~~thereof~~ *of the hearing* as well as due notice to the parties in interest, and decide the ~~same~~ *appeal* within a reasonable time.

(5) ~~Upon~~ *At* the hearing*,* any party may appear in person or by *the party's* attorney."

Section 2517. Section 76-2-327, MCA, is amended to read:

"76-2-327. Appeals from board to court of record. (1) Any person or persons, jointly or severally, aggrieved by any decision of the board of adjustment or any taxpayer or any officer, department, board, or bureau of the municipality may present to a court of record a petition, duly verified, setting forth that ~~such~~ *the* decision is illegal, in whole or in part, *and* specifying the grounds of the illegality. ~~Such~~ *The* petition ~~shall~~ *must* be presented to the court within 30 days after the filing of the decision in the office of the board.

(2) Upon the presentation of ~~such~~ *the* petition, the court may allow a writ of certiorari directed to the board of adjustment to review ~~such~~ *the* decision of the board of adjustment and shall prescribe ~~therein~~ *in the writ* the time within which a return ~~thereto~~ must be made and served upon the relator's attorney, which ~~shall~~ *may* not be less than 10 days and may be extended by the court. The allowance of the writ ~~shall~~ *does* not stay proceedings upon the decision appealed from, but the court may*,* ~~(~~on application, on notice to the board, and on due cause shown~~)~~*,* grant a restraining order. The board of adjustment ~~shall~~ *may* not be required to return the original papers acted upon by it, but it ~~shall be~~ *is* sufficient to return certified or sworn copies ~~thereof~~ *of the original papers* or of ~~such~~ portions ~~thereof as~~ *of the original papers that* may be called for by ~~such~~ *the* writ. The return ~~shall~~ *must* concisely set forth ~~such~~ other facts ~~as~~ *that* may be pertinent and material to show the grounds of the decision appealed from and ~~shall~~ *must* be verified.

(3) If, upon the hearing, it ~~shall appear~~ *appears* to the court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a referee to take ~~such~~ evidence ~~as~~ *that* it may direct and report the ~~same~~ *the evidence* to the court with ~~his~~ *the referee's* findings of fact and conclusions of law, which ~~shall~~ constitute a part of the proceedings upon which the determination of the court ~~shall~~ *must* be made.

(4) The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review."

Section 2518. Section 76-3-303, MCA, is amended to read:

"76-3-303. Contract for deed permitted if buyer protected. Notwithstanding the provisions of 76-3-301, after the preliminary plat of a

subdivision has been approved or conditionally approved, the subdivider may enter into contracts to sell lots in the proposed subdivision if all of the following conditions are met:

(1) ~~that~~ under the terms of the contracts, the purchasers of lots in the proposed subdivision make any payments to an escrow agent, which must be a bank or savings and loan association chartered to do business in the state of Montana;

(2) ~~that~~ under the terms of the contracts and the escrow agreement, the payments made by purchasers of lots in the proposed subdivision may not be distributed by the escrow agent to the subdivider until the final plat of the subdivision is filed with the county clerk and recorder;

(3) ~~that~~ the contracts and the escrow agreement provide that if the final plat of the proposed subdivision is not filed with the county clerk and recorder within 2 years of the preliminary plat approval, the escrow agent shall immediately refund to each purchaser any payments ~~he~~ *the purchaser* has made under the contract;

(4) ~~that~~ the county treasurer has certified that no real property taxes assessed and levied on the land to be divided are delinquent; and

(5) ~~that~~ the contracts contain the following language conspicuously set out ~~therein~~: "The real property ~~which~~ *that* is the subject ~~hereof~~ *of this contract* has not been finally platted, and until a final plat identifying the property has been filed with the county clerk and recorder, title to the property ~~cannot~~ *may not* be transferred in any manner."."

Section 2519. Section 76-3-405, MCA, is amended to read:

"76-3-405. Administration of oaths by registered land surveyor. (1) ~~Every~~ *A* registered land surveyor may administer and certify oaths when:

(a) it becomes necessary to take testimony for the identification of old corners or reestablishment of lost or obliterated corners;

(b) a corner or monument is found in a deteriorating condition and it is desirable that evidence concerning it be perpetuated;

(c) the importance of the survey makes it desirable to administer an oath to ~~his~~ *the surveyor's* assistants for the faithful performance of their duty.

(2) A record of oaths ~~shall~~ *must* be preserved as part of the field notes of the survey and noted on the certificate of survey filed under 76-3-404."

Section 2520. Section 76-4-110, MCA, is amended to read:

"76-4-110. Additional remedies available. This part does not abridge or alter rights of action or remedies in equity or under the common law or statutory law, criminal or civil, nor does any provision of this part or any act done by virtue of it estop the state, any municipality or other subdivision of the state, or any person in the exercise of ~~his~~ *the person's* rights in equity or under the common law or statutory law."

Section 2521. Section 76-13-108, MCA, is amended to read:

"76-13-108. Person responsible for performance of duties. (1) If the owner does not appear upon the public records as the holder of the legal title to the land or timber, ~~he~~ *the owner* is nevertheless primarily responsible for the performance of the acts and duties imposed upon ~~him~~ *the owner* by ~~this part and~~ part 2 *and this part*.

(2) ~~Where~~ *When* the owner of the timber is not the owner of the land, the primary responsibility for the performance of the acts and duties imposed by ~~this part and~~ part 2 *and this part* is upon the owner of the timber.

(3) ~~Where~~ *When* the state has title to forest lands within ~~any~~ *an* organized forest protection district, it ~~shall~~ *must* be considered as an owner and it shall list its lands and pay the assessments to the recognized agencies responsible for lands in ~~such~~ organized forest protection districts."

Section 2522. Section 76-13-413, MCA, is amended to read:

"76-13-413. Failure to submit withholding — remedy. (1) If a purchaser does not submit withheld money and required reports on or before the 15th day of the following month as provided in 76-13-409, ~~he~~ *the purchaser* must be notified by certified mail that ~~he~~ *the purchaser* is in noncompliance and be given 15 days to submit all money and reports then due. If ~~he~~ *the purchaser* fails to submit all money due within the required time, the department may initiate a lien upon the real property of the purchaser and may initiate proceedings to enjoin further processing of all wood products until all money due is paid in full and all required reports are submitted.

(2) If payment and reports are not received by the department within the 15-day period after notification as provided in subsection (1), a penalty of 5% of the payment amount due must be assessed. The department may abate the penalty if the purchaser establishes that the failure to submit the amount due or the reports as required was due to reasonable cause and was not due to neglect on ~~his~~ *the purchaser's* part. The department, in addition to the penalty, may impose interest at the rate of 10% a year on any balance remaining unpaid.

(3) All money withheld by a purchaser for the contractor's bond and for department fees is considered to be excise taxes withheld for the benefit of the state within the meaning of 11 U.S.C. 507."

Section 2523. Section 76-13-423, MCA, is amended to read:

"76-13-423. When additional notification required. (1) Except as provided in subsection (2), the department may require only one notification for each timber sale, even though multiple forest practices may be conducted.

(2) If an operator modifies ~~his~~ *the operator's* proposed forest practices in a manner that substantially alters the potential watershed disturbance, ~~he~~ *the operator* shall submit a revised notification to the department."

Section 2524. Section 76-14-105, MCA, is amended to read:

"76-14-105. Role of state coordinator. The state coordinator shall:

(1) serve as an advisor, counselor, and coordinator for and between persons and agencies involved in range management;

(2) strive to create understanding and compatibility between the many users of rangeland, including ~~sportsmen~~ *hunters, anglers*, recreationists, ranchers, and others;

(3) promote and coordinate the adoption and implementation of sound range management plans to minimize conflicts between governmental agencies and private landowners;

(4) participate in zoning and planning studies to ~~insure~~ *ensure* that native ranges are adequately represented at sessions for development of zoning and planning regulations;

(5) coordinate range management research to help prevent duplication and overlap of effort in this area."

Section 2525. Section 76-15-101, MCA, is amended to read:

"76-15-101. Legislative determinations. It is ~~hereby~~ declared, as a matter of legislative determination:

(1) that the farm and grazing lands of the state of Montana are among the basic assets of the state and that the preservation of these lands is necessary to protect and promote the health, safety, and general welfare of its people; that improper land use practices have caused and have contributed to and are now causing and contributing to a progressively more serious erosion of the farm and grazing lands of this state by wind and water; that the breaking of natural grass, plant, and forest cover has interfered with the natural factors of soil stabilization, causing loosening of soil and exhaustion of humus and developing a soil condition that favors erosion; that the topsoil is being blown and washed out of fields and pastures; that there has been an accelerated washing of sloping fields; that these processes of erosion by wind and water speed up with removal of absorptive topsoil, causing exposure of less absorptive and less protective but more erosive subsoil; that failure by any land occupier to conserve the soil and control erosion upon ~~his~~ *the occupier's* lands causes a washing and blowing of soil and water from ~~his~~ *the occupier's* lands onto other lands and makes the conservation of soil and control of erosion on ~~such~~ other lands difficult or impossible;

(2) that the consequences of ~~such~~ soil erosion in the form of soil blowing and soil washing are the silting and sedimentation of stream channels, reservoirs, dams, and ditches~~;~~*,* the loss of fertile soil material in dust storms~~;~~*,* the piling up of soil on lower slopes and its deposit over alluvial plains~~;~~*,* the reduction in productivity or outright ruin of rich bottom lands by overwash of poor subsoil material, sand, and gravel swept out of the hills~~;~~*,* *the* deterioration of soil and its fertility, *the* deterioration of crops and range cover grown ~~thereon~~ *on the land*, ~~and~~ declining acre yields despite development of scientific processes for increasing ~~such~~ yields~~;~~*,* *the* loss of soil and water ~~which~~ *that* causes destruction of food and cover for wildlife~~;~~*,* a blowing and washing of soil into streams ~~which~~ *that* silts over spawning beds and destroys water plants, diminishing the food supply of fish~~;~~*,* a diminishing of the underground water reserve, which causes water shortages, intensifies periods of drought, and causes crop and range vegetation cover failures~~;~~ ~~and~~*,* *an* increase in the speed and volume of rainfall runoff, causing severe and increasing floods ~~which~~ *that* bring suffering, disease, and death~~;~~*,* *the* impoverishment of families attempting to operate eroding and eroded lands~~;~~*,* damage to roads, highways, railways, farm buildings, and other property from floods and from dust storms~~;~~*,* and losses in municipal water supply, irrigation developments, farming, and grazing;

(3) that to conserve soil resources and control and prevent soil erosion and prevent floodwater and sediment damages and further the conservation, development, utilization, and disposal of water, it is necessary that land use practices contributing to soil wastage and soil erosion be discouraged and discontinued and appropriate soil-conserving land use practices and works of improvement for flood prevention and the conservation, development, utilization, and disposal of water be adopted and carried out; that among the procedures necessary for widespread adoption are the carrying on of engineering operations such as the construction of water spreaders, terraces, terrace outlets, check dams, desilting basins, floodwater retarding structures, channel improvements, floodways, land drainage, dikes, ponds, ditches, and the like; the utilization of strip cropping, lister furrowing, contour cultivating, and contour furrowing; land drainage; land irrigation; seeding and planting of

waste, sloping, abandoned, or eroded lands to water-conserving and erosion-preventing plants, trees, and grasses; forestation and reforestation; rotation of crops, restriction of number of livestock grazed, deferred grazing, rodent eradication; soil stabilization with trees, grasses, legumes, and other thick-growing, soil-holding crops; retardation of runoff by increasing absorption of rainfall; and retirement from cultivation of steep, highly erosive areas and areas now badly gullied or otherwise eroded."

Section 2526. Section 76-15-312, MCA, is amended to read:

"76-15-312. Term of office and vacancies. (1) The term of office of each supervisor ~~shall be~~ *is* 4 years, except that the supervisors who are first appointed by the department ~~shall~~ *must* be designated to serve for terms of 2 years from the date of their appointment. An elected supervisor ~~shall hold~~ *holds* office until ~~his~~ *a* successor has been elected and has qualified.

(2) A vacancy is created when any of the following events occurs before the expiration of the term of the incumbent:

(a) death;

(b) a determination pursuant to Title 53, chapter 21, part 1, that the incumbent is mentally ill;

(c) resignation;

(d) removal from office;

(e) unexcused absence from three consecutive regular meetings of the board of supervisors;

(f) ceasing to be a resident of the district;

(g) conviction of a felony or a violation of official duties; or

(h) the decision of a court declaring void the incumbent's election or appointment.

(3) For the purpose of subsection (2)(e), a majority vote of the board of supervisors may excuse a supervisor from attending a meeting.

(4) ~~Any~~ *A* vacancy occurring in the office of an elected supervisor ~~shall~~ *must* be filled by appointment by the remaining supervisors until the next regular election, when a successor ~~shall~~ *must* be elected to serve the unexpired term."

Section 2527. Section 76-15-313, MCA, is amended to read:

"76-15-313. Operation of supervisors. (1) The supervisors shall annually elect a ~~chairman~~ *presiding officer* from their members.

(2) A majority of the supervisors constitute a quorum, and except as otherwise specifically provided, the concurrence of a majority in any matter within their duties is required for its determination.

(3) Upon the unanimous approval of the board of supervisors, a supervisor may receive compensation for ~~his~~ *the supervisor's* services, including travel expenses as provided for in 2-18-501 through 2-18-503, incurred in the discharge of ~~his~~ *the supervisor's* duties. However, ~~no~~ *a* supervisor may *not* receive compensation for attendance at a regularly scheduled meeting of the board of supervisors."

Section 2528. Section 76-15-315, MCA, is amended to read:

"76-15-315. Administrative functions of ~~the~~ supervisors. (1) The supervisors may employ a secretary and ~~such~~ other officers, agents, and

employees, permanent and temporary, ~~as~~ *that* they may require and shall determine their qualifications, duties, and compensation.

(2) The supervisors may delegate to their ~~chairman~~ *presiding officer*, to one or more supervisors, or to one or more agents or employees ~~such~~ powers and duties ~~as~~ *that* they consider proper.

(3) The supervisors shall furnish to the department copies of ~~such~~ ordinances, rules, orders, contracts, forms, and other documents ~~as~~ *that* they adopt or employ and ~~such~~ other information concerning their activities ~~as~~ *that* may be required in the performance of their duties under this chapter.

(4) The supervisors shall*:*

(a) provide for the execution of surety bonds for all employees and officers who are entrusted with funds or property;

(b) ~~shall~~ provide for the keeping of a full and accurate record of all proceedings and of all resolutions, regulations, and orders issued or adopted; and

(c) ~~shall~~ provide for an annual audit of the accounts of receipts and disbursements."

Section 2529. Section 76-15-526, MCA, is amended to read:

"76-15-526. Treasurer's reports. The treasurer shall report in writing at each regular meeting of the supervisors and as often at other times as the supervisors may request the amount of money on hand and the receipts and disbursements since ~~his~~ *the treasurer's* last report. ~~Such~~ *The* report ~~shall~~ *must* be verified."

Section 2530. Section 76-15-604, MCA, is amended to read:

"76-15-604. Protest procedure. At any time within 15 days after the date of the last publication of the notice of the hearing on the petition, any owner of property liable to be assessed for the project may protest against the proposed project or the creation of the project area, or both. The protest must be in writing and be delivered to the secretary of the conservation district who shall endorse ~~thereon~~ *on the protest* the date of its receipt by ~~him~~ *the secretary*."

Section 2531. Section 76-15-606, MCA, is amended to read:

"76-15-606. Election procedure. (1) The question ~~shall~~ *must* be submitted to the electors by ballot on which the words "For creation of proposed project area" and "Against creation of proposed project area" ~~shall~~ *must* appear, with a square before each proposition and directions to insert an "X" mark in the square before one or the other of ~~said~~ *the* propositions as the voter may favor or oppose creation of the project area.

(2) ~~No~~ *A* person ~~shall be~~ *is not* entitled to vote at the election unless ~~such~~ *the* person possesses all the qualifications required of electors under Title 13 and resides within the boundaries of the proposed project area and the county in which ~~he~~ *the person* proposes to vote."

Section 2532. Section 76-15-710, MCA, is amended to read:

"76-15-710. Court procedure after petition is filed. (1) Upon the presentation of ~~such~~ *a* petition *as described in 76-15-709*, the court shall cause process to be issued against the defendant and shall hear the case. If it ~~shall appear~~ *appears* to the court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a referee to take ~~such~~ evidence ~~as~~ *that* it may direct and report the ~~same~~ *evidence* to the court with ~~his~~ *the referee's* findings of fact and conclusions of law, which ~~shall~~ *must* constitute a

part of the proceedings upon which the determination of the court ~~shall be~~ *is* made.

(2) In all cases ~~where~~ *in which* the person in possession of lands who ~~shall fail~~ *fails* to perform ~~such~~ work, operations, or avoidances ~~shall~~ *is* not ~~be~~ the owner, the owner of ~~such~~ *the* lands ~~shall~~ *must* be joined as party defendant.

(3) The court may dismiss the petition, or it may require the defendant to perform the work, operations, or avoidances and may provide that, upon the failure of the defendant to initiate ~~such~~ *the* performance within the time specified in the order of the court and to prosecute the ~~same~~ *performance* to completion with reasonable diligence, the supervisors may enter upon the lands involved and perform the work or operations or otherwise bring the condition of ~~such~~ *the* land into conformity with the requirements of the regulations and recover the costs and expenses ~~thereof~~ *of the work or operations*, with interest at the rate of 10% a year, from the defendant.

(4) The court shall retain jurisdiction of the case until after the work has been completed. Upon completion of ~~such~~ *the* work pursuant to ~~such~~ *the* order of the court, the supervisors may file a petition with the court, a copy of which ~~shall~~ *must* be served upon the defendant in the case, stating the costs and expenses sustained by them in the performance of the work and ~~praying~~ *asking* judgment ~~therefor~~ *for the costs and expenses* with interest. The court ~~shall have~~ *has* jurisdiction to enter judgment for the amount of ~~such~~ *the* costs and expenses, with interest at the rate of 10% a year until paid, together with the costs of suit, including ~~a~~ reasonable ~~attorney's fee~~ *attorney fees* to be fixed by the court."

Section 2533. Section 76-15-722, MCA, is amended to read:

"76-15-722. Operation of board of adjustment. (1) The board of adjustment shall adopt rules to govern its procedures~~,~~. ~~which~~ *The* rules ~~shall~~ *must* be in accordance with this chapter and with the ordinance establishing the board of adjustment.

(2) The board shall annually elect a ~~chairman~~ *presiding officer* from among its members. Meetings of the board ~~shall~~ *must* be held at the call of the ~~chairman~~ *presiding officer* and at ~~such~~ other times ~~as~~ *that* the board may determine. Any two members of the board constitute a quorum. The ~~chairman~~ *presiding officer* or in ~~his~~ *the presiding officer's* absence ~~such other~~ *another* member of the board ~~as he~~ *that the presiding officer* may designate to serve as acting ~~chairman~~ *presiding officer* may administer oaths and compel the attendance of witnesses.

(3) All meetings of the board ~~shall~~ *must* be open to the public. The board shall keep a full and accurate record of all proceedings, of all documents filed with it, and of all orders entered, which ~~shall~~ *must* be filed in the office of the board and ~~shall be~~ *are* a public record."

Section 2534. Section 76-15-723, MCA, is amended to read:

"76-15-723. Petition for ~~a~~ variance. (1) ~~Any~~ *A* qualified elector may file a petition with the board of adjustment alleging that there are great practical difficulties or unnecessary hardship in the way of ~~his~~ *the elector* carrying out upon ~~his~~ *the elector's* lands the strict letter of the land use regulations prescribed by ordinance approved by the supervisors and ~~praying~~ *asking* the board to authorize a variance from the terms of the land use regulations in the application of the regulations to the lands occupied by the petitioner.

(2) Copies of the petition ~~shall~~ *must* be served by the petitioner upon the ~~chairman~~ *presiding officer* of the supervisors of the district within which ~~his~~ *the petitioner's* lands are located and upon the department."

Section 2535. Section 77-1-104, MCA, is amended to read:

"77-1-104. Survey of lands. If the board considers it necessary that any of the lands mentioned in 77-1-102 be surveyed, it ~~shall~~ *must* have the lands surveyed by the county surveyor of the county in which the lands are located. If there is no county surveyor, if the county surveyor is unable to make the survey, or if the best interests of the state require, the board shall appoint a qualified surveyor to make the surveys. The county surveyor or other surveyor appointed shall make an actual survey ~~thereof~~ establishing four corners of every quarter section and connecting the same with a United States survey and within 30 days after ~~such~~ *the* survey file with the county clerk and recorder of that county a copy under oath of ~~his~~ *the surveyor's* field notes and plat and a ~~duly~~ certified copy of ~~his~~ *the* field notes and plat with the department. For the services required in connection with the survey, the county surveyor or other surveyor appointed is entitled to fees as prescribed in 7-4-2821. ~~Such~~ *The* fees ~~shall~~ *must* be paid in the same manner as other expenses of the department."

Section 2536. Section 77-1-111, MCA, is amended to read:

"77-1-111. Court actions. (1) All actions for the recovery of money due under this title or for the cancellation of leases or for the cancellation of certificates of purchase or patents or for the recovery of state lands, actions of forcible entry and detainer, actions for ejectment, and all other actions affecting any state lands ~~shall~~ *must* be controlled, as to venue, by the provisions of the rules of civil procedure relating to the place of trial of civil actions and ~~shall~~ *must* be conducted by the attorney general.

(2) When ~~so~~ requested by the attorney general, the county attorney of each county in the state shall represent the state in all foreclosure proceedings, collections of delinquent rentals, actions for trespass on state lands, and in all other state land matters that may arise in ~~his~~ *the county attorney's* county. The county attorney ~~shall not be~~ *is not* entitled to charge the state any compensation for ~~such~~ services beyond ~~his~~ *the county attorney's* regular salary."

Section 2537. Section 77-1-112, MCA, is amended to read:

"77-1-112. Violations classified. (1) Any officer, employee, or representative of the state who directly or indirectly accepts any money or any other valuable thing, except ~~his~~ *the officer's, employee's, or representative's* regular and lawful compensation, for performing or not performing an official act under the provisions of this title or for modifying the performance ~~thereof~~ *of an official act* is guilty of a felony and *is* punishable as provided in 77-1-115.

(2) Any officer, employee, or representative of the state who knowingly and willfully makes any false classification or appraisal of any state land or of any land offered the state for sale or offered as security for a loan from the state or who falsely classifies or scales any timber on state lands or from state lands or any timber in which the state is interested or who knowingly and willfully makes any false report of any ~~such~~ classification or appraisal or scaling is guilty of a felony and *is* punishable as provided in 77-1-115.

(3) (a) Any officer, employee, or representative of the state who otherwise violates any of the provisions of this title:

(i) is guilty of a felony if the violation results in a loss to the state of $1,000 or more; or

(ii) is guilty of a misdemeanor if the violation results in a loss to the state of less than $1,000 or in no pecuniary loss.

(b) The punishment shall be as provided in 77-1-115."

Section 2538. Section 77-1-114, MCA, is amended to read:

"77-1-114. Prosecutions. (1) Whenever an arrest ~~shall be~~ *is* made for any violation of the provisions of this title or whenever any information of ~~such violations shall be lodged with him,~~ *a violation is given to the* the county attorney of the county in which this act was committed*,* ~~must~~ *the county attorney shall* prosecute the offender or offenders if in ~~his~~ *the county attorney's* judgment the facts warrant the ~~same~~ *prosecution*.

(2) If ~~any~~ *a* county attorney ~~shall fail~~ *fails* to comply with the provisions of this section, ~~he shall be~~ *the county attorney is* guilty of a misdemeanor and, upon conviction, shall be fined not less than $100 or more than $1,000. Upon ~~his~~ *the county attorney's* conviction, the district court ~~wherein he~~ *in which the county attorney* is convicted shall ~~forthwith~~ declare ~~his~~ *the county attorney's* office vacant and notify the proper appointing power ~~thereof~~. Actions against the county attorney ~~shall~~ *must* be brought by the attorney general in the name of the state.

(3) The penalties of this section ~~shall~~ also apply to any magistrate with proper authority who refuses or neglects to cause the arrest and prosecution of any person when a complaint under oath of a violation of any of the provisions of this title has been lodged with ~~him~~ *the magistrate*."

Section 2539. Section 77-1-115, MCA, is amended to read:

"77-1-115. Punishments. (1) ~~Any~~ *An* officer, employee, or representative of the state who is found guilty of a felony as defined in 77-1-112 is punishable by imprisonment in the state penitentiary for not less than 1 or more than 10 years*,* ~~or~~ by a fine ~~which shall neither~~ *that may not* be less than $500 ~~nor~~ *or* less than twice the amount of the loss that resulted to the state through the crime of which ~~he~~ *the officer, employee, or representative* has been convicted*,* or by both ~~such imprisonment and fine~~.

(2) ~~Any~~ *An* officer, employee, or representative of the state who is found guilty of a misdemeanor as defined in 77-1-112 is punishable by imprisonment in a county jail not to exceed 1 year*,* ~~or~~ by a fine ~~which shall neither~~ *that may not* be less than $100 ~~nor~~ *or* less than twice the amount of the loss that resulted to the state through the crime of which ~~he~~ *the officer, employee, or representative* has been convicted*,* or by both ~~such imprisonment and fine~~."

Section 2540. Section 77-1-201, MCA, is amended to read:

"77-1-201. Board — meetings and officers. (1) The board shall hold regular meetings at least once each month and may hold special meetings whenever considered necessary upon call of the president or a majority of the members.

(2) Three members of the board constitute a quorum for the transaction of business. The governor is the president of the board~~;~~. ~~in his~~ *In the governor's* absence*,* the lieutenant governor shall preside*,* and in ~~his~~ *the lieutenant governor's* absence*,* the superintendent of public instruction shall preside."

Section 2541. Section 77-1-702, MCA, is amended to read:

"77-1-702. Transfer of records ~~held by secretary of state~~. ~~By November 1, 1987, the~~ *The* secretary of state shall transfer all ownership records on file in ~~his~~ *the secretary of state's* office to the department. The department shall ~~further~~ transfer the records of land held or administered by the department of transportation for highway rights-of-way and maintenance to the department of transportation and any remaining ownership records, other

than those of state lands, to the state agency administering the interest or property described in ~~such~~ *the* records."

Section 2542. Section 77-1-801, MCA, is amended to read:

"77-1-801. (Temporary) **Recreational use license required to use state lands for general recreational purposes — penalty — exemption.** (1) Except as provided in subsection (3), a person 12 years of age or older shall obtain an annual recreational use license pursuant to 77-1-802 to use state lands, as defined in 77-1-101, for general recreational purposes.

(2) Except as provided in subsection (3), a person shall, upon the request of a peace officer or fish and game warden, present for inspection the person's recreational use license.

(3) If the department and the department of fish, wildlife, and parks consent to and sign an agreement for hunting, fishing, and trapping purposes, as provided in 77-1-815, a person is not required to obtain a recreational use license for use of legally accessible state trust land for hunting, fishing, and trapping purposes.

(4) A violator of subsection (1) or (2) is guilty of a misdemeanor and shall be fined not less than $50 or more than $500~~,~~ *or be* imprisoned in the county jail for not more than 6 months, or both. (Void on occurrence of contingency—sec. 8, Ch. 596, L. 2003.)

77-1-801. (Effective on occurrence of contingency) **Recreational use license required to use state lands for general recreational purposes — penalty.** (1) A person 12 years of age or older shall obtain an annual recreational use license pursuant to 77-1-802 to use state lands, as defined in 77-1-101, for general recreational purposes.

(2) A person shall, upon the request of a peace officer or fish and game warden, present for inspection ~~his~~ *the person's* recreational use license.

(3) A violator of subsection (1) or (2) is guilty of a misdemeanor and shall be fined not less than $50 or more than $500~~,~~ *or be* imprisoned in the county jail for not more than 6 months, or both."

Section 2543. Section 77-1-805, MCA, is amended to read:

"77-1-805. Liability of state and lessee. (1) The provisions of 70-16-302 that limit the liability of a landowner or ~~his~~ *the landowner's* tenant for the recreational use of property apply to the state and any lessee of state lands used for general recreational purposes.

(2) The lessee is not responsible for the suppression of or for damages resulting from a fire on ~~his~~ *the* leased land caused by a general recreational user, except that a lessee who observes a fire caused by a general recreational user shall make reasonable efforts to suppress the fire or report it to the proper firefighting authority."

Section 2544. Section 77-1-806, MCA, is amended to read:

"77-1-806. Prior notification to lessee of recreational use — trespass — penalty. (1) If a lessee of state lands under this part desires to be notified prior to anyone entering upon ~~his~~ *the lessee's* leasehold, the lessee shall post, at customary access points, signs provided or authorized by the department. The signs must set forth the lessee's or ~~his~~ *the lessee's* agent's name, address, telephone number, and method of notification. The lessee or ~~his~~ *lessee's* agent ~~shall make himself~~ *must be* available to receive notice from recreational users or provide an alternative means for notice as prescribed by rule. When state land is

posted, recreational users shall contact and identify themselves to the lessee or ~~his~~ *the lessee's* agent for the purposes of minimizing impact upon the leasehold interest and learning the specific boundaries of adjacent unfenced private property.

(2) Each recreational user of state lands shall obtain permission of the lessee or ~~his~~ *the lessee's* agent before entering the adjacent private property owned by the lessee. Entry to private property from adjacent state lands without permission of the landowner or ~~his~~ *the lessee's* agent is an absolute liability offense. A violator of this subsection is guilty of a misdemeanor and shall be fined not less than $50 or more than $500~~,~~ *or* imprisoned in the county jail for not more than 6 months, or both.

(3) A person may be found guilty of the offense described in subsection (2) regardless of the absence of fencing or failure to post a notice in accordance with 45-6-201."

Section 2545. Section 77-2-105, MCA, is amended to read:

"77-2-105. Termination of easements. Whenever lands granted for any of the purposes mentioned in 77-2-101(2) ~~shall~~ cease to be used for ~~such~~ *those* purposes, ~~said~~ *the* easement ~~shall forthwith terminate~~ *terminates* upon notice to that effect to the person to whom ~~such~~ *the* grant was made, served at ~~his~~ *the person's* ~~last known~~ *last-known* post-office address."

Section 2546. Section 77-2-315, MCA, is amended to read:

"77-2-315. Participation in irrigation districts — lien status of land. (1) A purchaser of state lands is ~~hereby~~ authorized and empowered to sign any petition that ~~he~~ *the purchaser* may desire to sign for the creation of an irrigation district and the inclusion of the land purchased from the state in ~~such~~ *the* irrigation district and any other petition relating to irrigation districts affecting the land ~~so~~ purchased by ~~him~~ *the person* from the state. ~~Such~~ *The* petition or petitions ~~shall~~ have the effect of making all the interest that ~~he~~ *the person* then has in ~~such~~ *the* land purchased from the state and all interest ~~which he~~ *that the person* may subsequently acquire ~~therein~~ *in the land* subject to the same liens and charges as privately owned lands under ~~such~~ *the* irrigation district~~;~~. ~~and if~~ *If* for any reason ~~his~~ *the person's* certificate to ~~such~~ *the* state lands and ~~his~~ *the person's* rights ~~thereunder should be~~ *under the certificate are* canceled and ~~later such~~ *the* certificate ~~be~~ *is* reinstated or a new certificate *is* issued, ~~such~~ *the* liens and charges ~~shall stand~~ *are valid* against the interest in ~~such~~ *the* lands of the holder of ~~such~~ *the* certificate.

(2) The board for and on behalf of the state of Montana ~~is hereby empowered to~~ *may* sign a petition for the inclusion of any lands belonging to the state in an irrigation district organized or to be organized for the purpose of cooperating with the United States under the federal reclamation laws or any act of congress relating to reclamation projects and to sign any petition for the execution of a contract between ~~such~~ *the* district and the United States. The interest of the state in any lands within an irrigation district ~~shall~~ *are* not ~~be~~ subject to assessment or taxation for any purpose ~~whatever~~, ~~nor shall~~ *and* the state ~~be~~ *is not* liable for the payment of any costs or charges ~~whatever~~ arising from the fact that its lands are included within an irrigation district.

(3) The interest of a purchaser of state lands in the land purchased ~~shall be~~ *is* subject to the same liens as other real estate~~;~~. ~~provided, however~~ *However*, ~~that~~ in the case of sale, only the interest of the purchaser or of the assignee ~~shall~~ *may* be sold. In the case of any sale under the provisions of this section, including the sale for taxes, the purchaser shall succeed to all the rights of the purchaser from

the state under the certificate of purchase and a new certificate of purchase ~~shall~~ *must* be issued to the person entitled ~~thereto~~ *to the certificate* upon satisfactory proof being submitted to the board. In the case of sale under execution or *court* decree*,* ~~of court~~ ~~such~~ *the* new certificate of purchase ~~shall~~ *may* not be issued by the board until the period of redemption from ~~such~~ *the* sale has expired and the sheriff's deed has been issued. In the case of sale for taxes, the new certificate ~~shall~~ *may* not be issued until the tax deed has been issued."

Section 2547. Section 77-2-324, MCA, is amended to read:

"77-2-324. Preference to lessee of land. The lessee of the land need not make a higher bid than others, but ~~he shall have~~ *the lessee has* the option to match the high bid and must be given the preference. If the lessee matches the high bid, bidding must be reopened to all bidders, with the lessee retaining the right of preference to match the ultimate high bid and be awarded the sale."

Section 2548. Section 77-2-329, MCA, is amended to read:

"77-2-329. Terms of payment. (1) ~~Every~~ *A* purchaser of state land shall pay on the day of sale that portion of the purchase price ~~as he may desire~~ *that the purchaser desires*, but ~~in no case~~ *not* less than 10% of the total sales price. ~~In case~~ *If* the balance on the purchase price is not an exact multiple of $25, ~~then he~~ *the purchaser* shall pay ~~such~~ *the* additional sum ~~as~~ *that* is necessary to reduce the balance to an even multiple of $25.

(2) The purchaser shall pay the balance of the purchase price within 30 days. The department may extend this deadline up to 30 additional days for good cause."

Section 2549. Section 77-2-332, MCA, is amended to read:

"77-2-332. Procedure in case of default. (1) If ~~any~~ *a* purchaser or assignee of state land defaults for a period of 30 days or more in the payment of any of the installments due on ~~his~~ *the* certificate of purchase, the certificate is subject to cancellation. The department shall mail to ~~him~~ *the purchaser* at ~~his~~ *the purchaser's* ~~last known~~ *last-known* post-office address a notice of default and pending cancellation. The notice ~~shall~~ *must* give ~~him~~ *the purchaser* 60 additional days from the date of mailing the notice in which to make payment of the delinquent installment or installments with penalty interest.

(2) If ~~he~~ *the purchaser* fails to make the payment within 60 days, the certificate of purchase ~~shall~~ from that date and without further notice ~~be~~ *is* void, the duplicate of the certificate in the office of the department ~~shall~~ *must* be canceled, and the land under the certificate ~~shall revert~~ *reverts* to and ~~become~~ *becomes* the property of the state to the same extent as other state lands and ~~shall~~ *must* be open to lease and sale.

(3) All buildings, fences, and other improvements placed ~~thereon~~ *on the land* subsequent to the date of execution of the certificate of purchase ~~shall~~ *must* be and remain the property of the purchaser named in the certificate of purchase or of ~~his~~ *the purchaser's* heirs, assigns, or devisees and may be removed from the land at any time within 90 days after the date of the cancellation. If the buildings, fences, and other improvements are not removed prior to the expiration of the 90-day period, they become the property of the state.

(4) In case of cancellation of certificate of purchase or surrender of certificate of purchase and ~~where~~ *when* the land is again open to lease, the former lessee has the prior right to lease the tract at the existing rate or at the rate set by competitive bidding if ~~such~~ *bidding* occurs."

Section 2550. Section 77-2-333, MCA, is amended to read:

"77-2-333. Reinstatement of canceled certificates of purchase. (1) In all cases ~~where~~ *in which* a certificate of purchase of state lands has been canceled and annulled as provided by law and the lands under ~~such~~ *the* certificate have not been resold to another purchaser, the board may in its discretion reinstate the canceled certificate upon:

(a) proper application made in writing by the original purchaser or ~~his~~ *the original purchaser's* heirs, assigns, or devisees, filed within 1 year and 6 months from ~~such~~ *the* cancellation;

(b) payment of all delinquent installments of principal and interest on the certificate, together with penalty interest at the rate of 6% ~~per annum~~ *a year* upon all ~~such~~ delinquent installments from the date due until the date of actual payment; and

(c) the furnishing of proof from the county treasurer showing that there are no tax liens against the land.

(2) This reinstatement ~~shall~~ *does* not have the effect of canceling any lease that the state may have issued on the land or affecting any of the provisions of ~~said~~ *the* lease."

Section 2551. Section 77-2-334, MCA, is amended to read:

"77-2-334. Assignment of certificate. Certificates of purchase may be assigned to a citizen of the United States or to a person who has declared ~~his~~ *an* intention to become a citizen or to a corporation organized under the laws of this state. ~~Such~~ *These* assignments ~~shall~~ *must* be made on forms prescribed by the department, ~~shall~~ *must* be duly acknowledged as other conveyances of real estate, and ~~shall~~ *must* be executed in duplicate~~,~~ *with* one copy to be filed and retained in the office of the department and one copy to be retained by the assignee. A person is not qualified to receive an assignment if the lands ~~he~~ *that the person* has already purchased from the state, together with the lands included in the assignment, exceed one section. The assignee must in all respects possess the same qualifications as an original purchaser."

Section 2552. Section 77-2-335, MCA, is amended to read:

"77-2-335. Lost certificate. If a certificate of purchase to state ~~lands~~ *land* is lost or is wrongfully withheld by any person from the owner ~~thereof~~ *of the land*, the rightful owner may apply to the board for the issuance of a substitute certificate. This application ~~shall~~ *must* be accompanied by an affidavit from the owner of the certificate setting forth the facts in regard to the loss or unlawful withholding of the certificate and by a certificate from the county clerk and recorder of the county in which the land is located showing all instruments of record in ~~his~~ *the clerk and recorder's* office affecting the title to the land under the certificate. The board shall issue a substitute certificate of purchase to the applicant if in the judgment of the board the facts warrant its issue."

Section 2553. Section 77-2-336, MCA, is amended to read:

"77-2-336. Lien on improvements and crops for amount due state. (1) The state has a lien prior and superior to all other liens, except ~~threshermen's~~ *thresher's* liens and seed liens as specified in 71-3-701 and 71-3-801, ~~which~~ *that* have priority, but only for the aggregate amount of the indebtedness then existing, including any advances ~~theretofore~~ made, interest due, and other charges, as evidenced by the original loan contract and indebtedness ~~thereafter~~ accumulating on ~~such~~ *that* basis, exclusive of any other future advances originally contemplated. This lien is upon all buildings, structures, fences, and ~~all~~ other improvements upon the ~~lands so~~ *land* sold and upon all crops growing

upon any of ~~these lands~~ *the land* and also upon ~~such~~ crops after they have been separated from the ~~lands~~ *land* for all due and delinquent installments of principal and interest and penalty interest and taxes under the certificate of purchase and also for all installments becoming due during the calendar year in which the crop is harvested, and this lien is ~~hereby~~ expressly reserved.

(2) Any person purchasing or otherwise acquiring the improvements or crops or any part ~~thereof~~ *of the improvements or crops* takes them subject to the lien.

(3) Any representative of the department or the sheriff of the county in which the land is located or ~~his~~ *the sheriff's* deputy may demand of the purchaser or ~~his~~ *the purchaser's* agent payment of the amounts due the state, and if they are not paid upon demand, the officer making the demand or any representative of the department may immediately seize the improvements and crops~~,~~ and, upon giving 3 days' notice, sell and dispose of, either at private or public sale, sufficient of the crops or improvements or of both to pay the amounts due the state, together with cost and expenses of seizure and sale."

Section 2554. Section 77-3-102, MCA, is amended to read:

"77-3-102. Mining leases authorized. (1) The board may, in its discretion~~,~~ *and* subject to the other provisions of this part, lease state lands, including the beds of navigable streams and the beds of navigable bodies of water and the reserved mineral rights of the state in lands sold or leased by the state, to any person, association, or corporation~~,~~ for the purpose of prospecting for or mining metalliferous minerals or gems.

(2) These leases may be for a period of time determined by the board, subject to limitations contained in the grants by which the state has acquired title to lands or mineral rights so leased.

(3) Leases issued under this part ~~shall~~ *must* give the lessee, so long as ~~he~~ *the lessee* complies with the terms and conditions of the lease, the exclusive right of possession of the lands or mineral rights leased, subject to any reservations contained in the leases.

(4) ~~In short the~~ ~~board in~~ *In* making the leases*, the board* may exercise business discretion~~, so~~ *as* long as this part is not violated."

Section 2555. Section 77-3-104, MCA, is amended to read:

"77-3-104. Notice of ~~lease or permit~~ *permit or lease* approval. Upon the approval of an application for a prospecting permit or a mining lease under this part, the department shall promptly give written notice, by ordinary mail, to the ~~lessee or permittee~~ *permittee or lessee* and to any holder of an agricultural or grazing lease embracing the same land or to any holder of a certificate of purchase or patent embracing the same land. The notice ~~shall~~ *must* be addressed to the permittee, mining lessee, agricultural or grazing lessee, purchaser*,* or patentee at ~~his~~ *the person's* ~~last known~~ *last-known* post-office address."

Section 2556. Section 77-3-115, MCA, is amended to read:

"77-3-115. Lease provisions. (1) A lease may contain reasonable provisions for preliminary prospecting periods and ~~shall~~ *must* contain reasonable requirements for the prosecution of work during the prospecting period*,* ~~(~~if any~~)~~*,* and for the prosecution of mining after the prospecting period.

(2) ~~It~~ *The lease* may provide for the payment of rentals in conjunction with the work requirements or may prescribe cash rentals as an alternative or otherwise as the board considers best.

(3) ~~It shall~~ *The lease must* specify the term of the lease, the royalty to be paid, reasonable forfeiture provisions, and reasonable terms under which the lessee may, within a time limited in the lease, remove property placed upon the leased lands by ~~him~~ *the lessee* in the event of the termination of the lease by forfeiture or by lapse of time.

(4) ~~It~~ *The lease* may ~~also~~ contain other provisions *that* the board and the lessee agree upon~~,~~ *that are* not inconsistent with this part."

Section 2557. Section 77-3-307, MCA, is amended to read:

"77-3-307. Improvements of former lessee. (1) When a coal mining lease is applied for on land where mining operations have been carried on by a former lessee and there are surface or underground improvements on the land used at the former operations, disposition ~~shall~~ *must* be made of the improvements satisfactory to the board before a new lease is issued. If the owner of the improvements desires to sell the ~~same~~ *the improvements* to the new lessee, ~~then~~ the new lessee shall pay ~~him~~ *the owner* the reasonable value ~~thereof~~ *of the improvements* as far as they are suitable for the new mining operations. If they fail to agree on the value of ~~such~~ *the* improvements, ~~then~~ ~~such~~ *the* value ~~shall~~ *must* be ascertained and fixed as provided in 77-6-306.

(2) Before a new lease is issued, the applicant shall show to the satisfaction of the board that ~~he~~ *the applicant* has paid the owner for the improvements as agreed on between them or as fixed ~~by the aforesaid officers or officer~~ *under the provisions of 77-6-306,* ~~or~~ that ~~he~~ *the applicant* has tendered payment as ~~so~~ fixed*,* or that the owner desires to remove ~~his~~ *the owner's* improvements."

Section 2558. Section 77-3-409, MCA, is amended to read:

"77-3-409. Misconduct of officers in relation to oil and gas leases. (1) Any officer, employee, or representative of the state who directly or indirectly accepts any money or any other valuable thing, except ~~his~~ *the officer's, employee's, or representative's* regular and lawful compensation, for performing or not performing an official act under the provisions of this part or for modifying the performance ~~thereof~~ *of an official act* ~~shall be~~ *is* guilty of a felony.

(2) Any officer, employee, or representative of the state who knowingly and willfully makes any false classification or appraisal of any state land or interest of the state ~~therein~~ *in the land* or of any oil and gas deposits in which the state is interested or who knowingly and willfully makes any false report of any ~~such~~ classification or appraisal ~~shall be~~ *is* guilty of a felony."

Section 2559. Section 77-3-426, MCA, is amended to read:

"77-3-426. Lessee to prevent waste. Oil and gas leases issued under the provisions of this part ~~shall~~ *must* all be subject to the conditions that the lessee in conducting ~~his~~ explorations and mining or drilling operations shall use all reasonable precautions to prevent waste of oil or gas developed in the land or the entrance of water through wells drilled by ~~him~~ *the lessee* to the oil or gas sands or oil or gas bearing strata to the destruction or injury of the oil or gas deposits. Violations of any of these conditions ~~shall constitute~~ *constitutes* grounds for the forfeiture of the lease after *a* hearing ~~had thereon~~ *on the violations* before the board."

Section 2560. Section 77-4-108, MCA, is amended to read:

"77-4-108. Water rights in connection with geothermal development. If any geothermal development located on state land requires the utilization of water, the lessee may, at any time prior to 1 year before the expiration of ~~his~~ *the* lease, make application to the board for permission to

secure a water right to the land under ~~his~~ *the* lease. ~~Such~~ *The* application ~~shall~~ *must* be in writing, show the permanency of the water supply, and *give* the estimated cost of utilizing ~~such~~ *the* water resources. If the proposed plan meets with the approval of the board, permission ~~shall~~ *must* be granted to the lessee to secure the desired water right for the land. ~~Such~~ *The* right ~~shall~~ *must* be secured in accordance with Title 85, chapter 2, and ~~shall~~ *must* be filed in the name of the state. Existing water rights purchased by the geothermal lessee ~~shall be~~ *are* the property of the lessee."

Section 2561. Section 77-4-121, MCA, is amended to read:

"77-4-121. Provisions of the lease. (1) A lease issued by the board gives the lessee, so long as ~~he~~ *the lessee* complies with the terms and conditions of the lease, the exclusive right of possession of the lands or interests leased, subject to conditions contained in the lease.

(2) In ~~every~~ *a* geothermal resource lease granted there is reserved to this state the right to sell, lease, or otherwise dispose of the surface of the lands covered ~~thereby~~ *by the lease* subject to the rights and privileges granted the lessee under the terms of the lease.

(3) ~~Every~~ *A* lease ~~shall~~ *must* specify the rental and royalty to be paid, reasonable forfeiture provisions, and reasonable terms under which the lessee may, within a specified time, remove property placed on the leased lands upon the termination of the lease by forfeiture or by lapse of time.

(4) ~~Furthermore, the~~ *The* lease may contain other provisions *that* the board and the lessee agree upon~~, provided~~ that ~~the additional terms~~ are not inconsistent with this part."

Section 2562. Section 77-4-128, MCA, is amended to read:

"77-4-128. Permission for and disposition of improvements. (1) A geothermal lessee of state lands has the right to place upon the leased lands a reasonable amount of improvements, provided that ~~such~~ *the* improvements are directly related to the purpose of the lease.

(2) Whenever another person becomes the geothermal lessee, ~~he~~ *the person* shall pay the former lessee the reasonable value of ~~such~~ *the* improvements at the time the new lessee takes possession ~~thereof~~ *of the improvements*.

(3) In determining the value of these improvements, the original cost, the present condition, and the ~~suitableness~~ *suitability* of the improvements for the uses ordinarily made of geothermal resources ~~shall~~ *must* be considered.

(4) The former lessee may~~, however,~~ remove or dispose of the movable improvements from the land within 60 days from the expiration of ~~his~~ *the former lessee's* lease except for the well casing and other equipment necessary for the preservation of any geothermal well. If not removed within 60 days, improvements ~~shall~~ become the property of the state unless the board ~~shall grant~~ *grants* additional time for the removal ~~thereof~~ *of the improvements*. Before a lease is issued to the new lessee, ~~he~~ *the new lessee* shall show that ~~he~~ *the new lessee* has paid the former lessee the value of the improvements as agreed upon by them or as fixed and determined under 77-4-129, that ~~he~~ *the new lessee* has offered to pay the value of the improvements as ~~so~~ fixed and determined, or that the former lessee elects to remove the improvements."

Section 2563. Section 77-4-129, MCA, is amended to read:

"77-4-129. Procedure to fix value of improvements. (1) If the owner of any improvements on state lands of the type authorized by law at the time they were placed ~~thereon~~ *on the land* desires to sell these improvements to the new

lessee and they are unable to agree on the value ~~thereof~~ *of the improvements*, the value ~~shall~~ *must* be ascertained and fixed by three arbitrators, one of whom ~~shall~~ *must* be appointed by the owner of the improvements, one by the new lessee, and the third by the two arbitrators ~~so~~ appointed. The reasonable compensation that the arbitrators may fix ~~shall~~ *must* be paid in equal shares by the owner of the improvements and the new lessee. The value of the improvements ~~so~~ *as* ascertained and fixed is binding on both parties.

(2) If either party is dissatisfied with the valuation ~~so~~ *as* fixed, ~~he~~ *the party* may within 10 days appeal ~~from their~~ *the arbitrators'* decision to the department ~~which~~ *and the department* shall examine the improvements and make the final decision as to the value of the improvements. The department shall apportion the actual cost of the reexamination to the owner and the new lessee as justice may require. The value of the improvements ~~shall~~ *must* be ascertained and fixed as provided in 77-4-128."

Section 2564. Section 77-6-108, MCA, is amended to read:

"77-6-108. Who may lease. ~~No~~ *A* person may *not* lease state lands, except one who is the head of a family, unless ~~he~~ *the person* has attained ~~the age of~~ 18 years *of age*. ~~Any~~ ~~such~~ *An eligible* person and ~~any~~ *an* association, company, or corporation authorized to hold lands under lease may lease state lands and may hold more than one lease to state lands."

Section 2565. Section 77-6-112, MCA, is amended to read:

"77-6-112. Liens on crops and improvements. (1) The state has a lien upon all crops growing upon any of its ~~lands~~ *land* and upon the crops after they have been separated from the ~~lands~~ *land* for any rentals and penalties due or delinquent under the lease on the ~~lands~~ *land* or becoming due during the calendar year in which the crops are harvested, for any year or part of a year that the land has been held or used by the lessee. This lien applies to all buildings, structures, fences, and ~~all~~ other improvements and is prior and superior to all other liens, except ~~threshermen's~~ *thresher's* liens and seed liens specified in 71-3-701 and 71-3-801, which have priority, but only for the aggregate amount of the indebtedness then existing, including any advances ~~theretofore~~ made, interest due and other charges as evidenced by the original loan-contract, and indebtedness ~~thereafter~~ accumulating ~~on such basis~~, exclusive of any other future advances originally contemplated.

(2) Any person acquiring any of these crops or improvements takes them subject to this lien. The department or the sheriff of the county in which the land is located may demand of the lessee payment of the amounts due the state, and if they are not paid upon demand, the officer making the demand or the department may seize and sell, either at a private or public sale, upon giving notice for not less than 3 days of the sale, sufficient of those crops or improvements, or of both, to pay the amounts due the state, together with costs and expenses of seizure and sale. These provisions relating to liens on crops and improvements ~~shall~~ *must* be embodied in all leases for agricultural and grazing lands and for town, city, or other lots."

Section 2566. Section 77-6-115, MCA, is amended to read:

"77-6-115. Acquisition of water right by lessee. (1) The lessee of state lands may at any time prior to 1 year before the expiration of ~~his~~ *the* lease make application to the board for permission to secure a water right to the land under ~~his~~ *the* lease. ~~Such~~ *The* application ~~shall~~ *must* be in writing~~,~~ ~~shall~~ *and must* show how much of the land can be irrigated, the permanency of the water supply, and the probable cost of placing the land under irrigation. If the proposed plan meets

with the approval of the board, permission ~~shall~~ *must* be granted the lessee to secure the desired water right for the land and to place the ~~same~~ *land* under irrigation.

(2) If ~~such~~ *the* water right becomes a permanent and valuable improvement, then in case of the sale or lease of the ~~lands~~ *land* to other parties, the former lessee ~~shall be~~ *is* entitled to receive compensation in the amount of the reasonable value ~~thereof~~ *of the water right*, as in the case of other improvements, from the new lessee or the purchaser.

(3) These provisions ~~shall~~ *may* not be ~~so~~ construed ~~as~~ to make the state liable to the lessee for the payment of the cost or value of ~~such~~ *the* irrigation improvements."

Section 2567. Section 77-6-201, MCA, is amended to read:

"77-6-201. Appraisal of grazing lands. (1) The department shall appraise the grazing lands owned by the state as to their animal-unit-month carrying capacity and make and preserve records ~~thereof~~ *of carrying capacity* in its office and from time to time reexamine these lands as to their animal-unit-month carrying capacity ~~so as~~ *in order* to keep the records ~~thereof~~ in its office reasonably accurate.

(2) In appraising these grazing lands*,* the following factors ~~shall~~ *must* be taken into consideration:

(a) inventory of the forage resources~~—~~*, including* kind, amount, and location of vegetation;

(b) accessibility and usability of this forage resource as influenced by topography, availability of stock water, and season of usability;

(c) condition of soils~~—~~*, including* the erosion situation;

(d) other and related resources such as timber, game animals, *and* need for watershed protection;

(e) record of needed improvements and facilities~~—~~*, including* fuel and stock water, revegetation, rodent control, trails, fences, and the like;

(f) pertinent facts and figures submitted by ~~stockmen~~ *stockgrowers* living in the area and directors of state grazing districts including the land or in its vicinity;

(g) carrying capacity set for similar land in a state grazing district in which the land is situated."

Section 2568. Section 77-6-209, MCA, is amended to read:

"77-6-209. Change from grazing lease to agricultural lease. (1) When land is leased for grazing purposes and the lessee desires to cultivate any part of the land, ~~he~~ *the lessee* shall, before doing any ~~such~~ cultivation, make application to the department stating how much land ~~he~~ *the lessee* desires to cultivate and showing the location in the section of the land and agree that for the remainder of the term of the lease the annual rental ~~shall~~ *will* be at the rate of the original lease until ~~such~~ *the* time ~~as~~ *that* the first crop is harvested from the cultivated portion of the lease. At the time of the first harvest, the lease ~~shall~~ *must* be at the original rate for that portion remaining as grazing land plus the crop share rental for that portion cultivated. If any person cultivates lands leased for grazing purposes without first securing the right to do so under this section, the department shall either cancel the lease, subject to the appeal procedure provided in 77-6-211, or require the lessee to pay twice the regular agricultural rental on the land ~~so~~ cultivated in addition to the grazing rental.

(2) The provisions of this section ~~shall~~ *must* be incorporated in every lease."

Section 2569. Section 77-6-212, MCA, is amended to read:

"77-6-212. Loss of preference right — cancellation of lease — subleasing — pasturing agreements. (1) Except as provided in subsections (3) and (4), a lessee of state land classed as agricultural or grazing land may not exercise the preference right provided in 77-6-205 if ~~he~~ *the lessee* subleases the land for more than 2 years in the term of the lease.

(2) The department shall cancel a lease of state agricultural or grazing land if the lessee subleases the land for more than 3 years during the term of the lease~~,~~ unless the sublease is made between members of a family as provided in subsection (3).

(3) A lessee under subsection (1) or (2) may sublease the land for a period of not more than 5 years without losing the preference right or the lease to state land if, during the term of the lease, the land is subleased only to a spouse, son, daughter, adopted child, or sibling of the lessee.

(4) The lessee does not lose the preference right or right to lease because of subleasing as provided under this section if:

(a) the sublease is one-third or less acres of the lease; or

(b) the sublease is considered to be a pasturing agreement and is approved in writing by the department prior to the initiation of the agreement.

(5) For purposes of this section, a sublease may not be considered a pasturing agreement unless the lessee personally retains management and physical control of the land and livestock. "Management" ~~means~~ *includes* but is not limited to:

(a) providing all costs for improvements, land maintenance, and range renovation, if range renovation is approved by the department;

(b) making all decisions regarding rotation or other placement of livestock on state land;

(c) making all decisions regarding turn-in and turn-out dates of the livestock on state land; and

(d) making all decisions regarding proper range management, including placement of water, fencing, and salt.

(6) A lessee of state land classified as agricultural or grazing land ~~shall lose~~ *loses* the preference right provided in 77-6-205 upon conviction of a felony offense involving a dangerous drug, as defined in Title 50, chapter 32, and involving the planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, or concealing of a dangerous drug on any portion of the unit. When a state land lease is held by an association, company, or corporation, conviction of a member of the association, company, or corporation under this subsection does not result in loss of lease preference unless it appears that the operator, manager, or family in control of the association, company, or corporation is a consenting party or privy to the violation of this subsection."

Section 2570. Section 77-6-401, MCA, is amended to read:

"77-6-401. Pledge or mortgage of leasehold interest in state lands. Any lessee of a grazing or agricultural lease of state lands is ~~hereby~~ authorized to pledge ~~said~~ *the* lease or mortgage ~~his~~ *the* leasehold interest in ~~said lands~~ *the lands*."

Section 2571. Section 80-2-104, MCA, is amended to read:

"80-2-104. Powers of department — claims and obligations — property acquired at foreclosure. (1) The department may:

(a) collect, compromise, adjust, or cancel claims and obligations arising out of or administered under this part or under any mortgage, lease, contract, or agreement entered into or administered under this part and, if necessary, pursue them to final collection in any court having jurisdiction;

(b) bid for and purchase at any execution, foreclosure, or other sale or otherwise acquire property upon which the department has a lien by reason of a judgment or execution or ~~which~~ *that* is pledged, mortgaged, or conveyed or ~~which~~ *that* otherwise secures any loan or other indebtedness owing to or acquired by the department under this part;

(c) accept title to any property ~~so~~ purchased or acquired, operate or lease the property for a period necessary to protect the investment, and sell or otherwise dispose of the property in a manner consistent with this part.

(2) The authority granted to the department in this section may be delegated to the secretary of agriculture with respect to funds or assets authorized to be administered and used by ~~him~~ *the secretary of agriculture* under agreements entered into under 80-2-102."

Section 2572. Section 80-2-202, MCA, is amended to read:

"80-2-202. Compensation of ~~chairman~~ *presiding officer* and officers. (1) The appointed members of the board of hail insurance ~~shall~~ *must* receive a per diem of $25 for each day they are engaged in the transaction of official business.

(2) All board members and employees ~~shall~~ *must* be allowed expenses as provided in 2-18-501 through 2-18-503.

(3) All other public officials specified in this chapter shall perform the duties relative to hail insurance without other compensation than that allowed by law."

Section 2573. Section 80-2-241, MCA, is amended to read:

"80-2-241. Report of losses. All losses by hail to crops insured under this part ~~shall~~ *must* be reported within 14 days ~~thereafter~~ *after the loss* by the owner of ~~such~~ *the* crops~~,~~ ~~his~~ *or by the owner's* agent or attorney~~,~~ to the board of hail insurance~~,~~. ~~which~~ *The board* shall require the claimant to make a statement of the losses sustained, the cause ~~thereof~~ *of the losses*, and ~~such~~ other information ~~as~~ *that* the board may require on the forms to be provided for ~~such~~ *that* purpose. If a loss is reported more than 14 days after it occurs, the board shall charge the claimant for all costs incurred in making the adjustment."

Section 2574. Section 80-2-243, MCA, is amended to read:

"80-2-243. Disputed appraisal. (1) ~~In case~~ *If* the party that has sustained the loss is dissatisfied with and refuses to accept the adjustment made by the official appraiser, ~~then he shall have~~ *the party has* the right to appeal to the board of hail insurance. ~~He~~ *The party* shall make ~~such~~ *the* appeal by ~~registered or~~ certified mail within 10 days after receiving the adjustment offer of the board in writing. Also the board may require the posting of a cash bond of $25 with the request for reappraisal of the first adjustment. ~~In cases where~~ *If* the board requires the posting of the $25 bond, the board may retain it if ~~no~~ *an* increase is *not* allowed. If an increase is obtained, the board ~~will~~ *shall* return the bond to the claimant.

(2) ~~In case~~ *If* the adjuster who makes the second appraisal fails to secure an agreement, the claimant may ~~at his option~~ submit the matter to arbitration as ~~herein~~ provided *in this subsection* or sue the board in the district court of the county where the loss occurred, within 90 days from the date of receipt of written notice of the second appraisal. ~~Such~~ *The* actions ~~shall~~ *must* be trials de novo and the Montana Rules of Civil Procedure ~~shall~~ apply. ~~Where any~~ *If a* claimant demands arbitration, ~~he~~ *the claimant* shall, if required by the board, furnish a cash bond to the board in the sum of $50*,* which ~~shall~~ *must* accompany ~~his~~ *the* application. If there is not sufficient allowance made to any claimant after arbitration to cover the cost of arbitration without the use of the $50 bond, ~~then~~ the board may use a part or all of ~~said~~ *the* cash bond. ~~In cases where~~ *If* the claimant secures an increase, the bond ~~shall~~ *must* be promptly returned to the claimant. If the claimant elects to submit the matter to arbitration, ~~he~~ *the claimant* shall then appoint one disinterested person as appraiser*,* ~~and~~ the official appraiser shall appoint another person as appraiser*,* ~~and~~ the two shall select a third disinterested person*,* and the three shall then proceed to adjust the loss in the same manner as specified in 80-2-242. The judgment of the majority ~~shall be~~ *is* the judgment of ~~said~~ *the* appraisers and ~~shall be~~ *is* binding upon both parties as the final determination of ~~said~~ *the* loss.

(3) (a) If the insured does not recover a greater sum than allowed by the official appraiser in the first instance, ~~he~~ *the insured* shall pay the expenses of the three appraisers and their witnesses in making ~~said~~ *the* adjustment, but if ~~he~~ *the insured* is awarded a larger sum, ~~then~~ the ~~same shall~~ *expenses must* be paid by the board.

(b) If the insured ~~shall be~~ *is* required to pay the expenses of ~~such~~ *the* reappraisement as ~~above~~ provided *in subsection (3)(a)*, the board i~~s hereby authorized to~~ *may* deduct the amount of ~~such~~ *the* expenses from the amount allowed ~~said~~ *the* insured before making settlement for ~~said~~ *the* loss.

(4) The board shall examine all reports of appraisers and verify the ~~same~~ *reports* and adjust all losses and for ~~such~~ *those* purposes may order hearings, subpoena witnesses, conduct examinations, and do all things necessary to secure a fair and impartial appraisement of losses by hail."

Section 2575. Section 80-4-406, MCA, is amended to read:

"80-4-406. Appointment by nonresident licensee of agent to receive process. A nonresident applying for a license under this chapter shall file a written power of attorney, designating the secretary of state as ~~his~~ *the nonresident's* agent upon whom service of process may be had if legal action is brought against the nonresident. A nonresident who has ~~a duly~~ *an* appointed resident agent upon whom legal process may be served as provided by law is not required to designate the secretary of state as ~~his~~ *the nonresident's* agent for service of process. The department must be furnished a copy of the designation of the resident agent, ~~which~~ *and the* copy ~~shall~~ *must* be certified by the secretary of state."

Section 2576. Section 80-4-424, MCA, is amended to read:

"80-4-424. Director's authority — investigative hearing. The director may upon ~~his~~ *the director's* own motion, whenever ~~he~~ *the director* has reason to believe a violation has occurred or upon verified complaint of any person in writing, investigate the actions of any person and, if ~~he~~ *the director* finds probable cause, shall notify the person that ~~he must~~ *the person shall* appear for an investigative hearing before the director 20 days from receipt of written notice."

Section 2577. Section 80-4-428, MCA, is amended to read:

"80-4-428. Penalty for operating without a license — misrepresentation. (1) A person acting as a warehouse operator or a commodity dealer without a license or in any way representing by action or words that ~~he~~ *the person* is a warehouse operator or a commodity dealer when not ~~so~~ licensed violates the provisions of *Title 80, chapter 4,* parts 5 and 6 ~~of this chapter~~, is guilty of a felony~~,~~ and is punishable by imprisonment for not more than 10 years or by a fine of not more than $10,000, or both.

(2) A person who issues or aids in the issuance of a fraudulent receipt for any commodity is guilty of a felony and is punishable by imprisonment for not more than 10 years or by a fine of not more than $10,000, or both.

(3) A person who knowingly submits false information to or who knowingly withholds information from the department when that information is required to be submitted is guilty of a felony."

Section 2578. Section 80-4-430, MCA, is amended to read:

"80-4-430. Director's enforcement action. ~~Nothing in parts~~ *Title 80, chapter 4, parts* 4 through 7*,* ~~of this chapter~~ may *not* be construed to require the director or ~~his~~ *the director's* authorized representative to report for prosecution or for the institution of civil action a violation if ~~he~~ *the director or the representative* believes that the public interest will best be served by a suitable warning."

Section 2579. Section 80-4-504, MCA, is amended to read:

"80-4-504. Bond of applicant for license — additional bond — additional obligations. (1) Each applicant for a warehouse operator's license shall file a bond or its equivalent, as established by department rule, with the department. The bond must be in ~~such~~ *the* form and must contain ~~such~~ *the* terms and conditions ~~as~~ *that* the department may prescribe by rule to carry out the purpose of ~~this section and~~ 80-4-505 *and this section*.

(2) The department may demand an additional bond if the nature or volume of the business conducted by the warehouse operator warrants an increase.

(3) The warehouse operator may give a single bond to cover all warehouses operated by ~~him~~ *the operator*.

(4) Any changes in the capacity of a warehouse or installation of any new warehouse involving a change in the bond liability under 80-4-505 must be reported in writing to the director, and an appropriate bond must be filed prior to the operation ~~thereof~~ *of the warehouse or installation*."

Section 2580. Section 80-4-506, MCA, is amended to read:

"80-4-506. Net asset requirements. (1) Each licensee or applicant for a license shall maintain, above all exemptions and liabilities, total net assets liable for the payment of any indebtedness arising from the conduct of the warehouse or warehouses of at least 40 cents per hundredweight of all agricultural commodities that ~~his~~ *the licensee's or applicant's* warehouse or warehouses can accommodate.

(2) ~~No~~ *A* person may *not* be licensed as a warehouse operator unless ~~he~~ *the person* has and maintains allowable net assets of at least $10,000.

(3) Assets must be valued at original cost less depreciation, except that upon written request filed with the department, the director may allow asset valuations in accordance with a competent appraisal.

(4) In determining total net assets, credit may be given for insurable property, such as buildings, machinery, equipment, and merchandise inventory, only to the extent that ~~such~~ *the* property is protected by insurance against loss or damage by fire. The insurance must be in the form of lawful policies issued by one or more insurance companies authorized to do business and subject to service of process in suits brought in this state.

(5) If a warehouse operator is licensed or applies for licenses to operate two or more warehouses, the maximum number of hundredweight ~~which~~ *that* all ~~such~~ warehouses will accommodate must be considered in determining whether the warehouse operator meets the net asset requirements specified in this section."

Section 2581. Section 80-4-521, MCA, is amended to read:

"80-4-521. Duties of warehouse operator — content of records. (1) Each warehouse operator shall maintain in a safe place current and complete records at all times with respect to all agricultural commodities stored, conditioned, handled, or shipped by ~~him~~ *the operator*, including agricultural commodities owned by ~~him~~ *the operator*. ~~Such~~ *The* records must include but are not limited to a daily position record, showing the total quantity of each kind and class of agricultural commodity received and loaded out and the amount remaining in storage at the close of each business day and the warehouse operator's total storage obligations for each kind and class of agricultural commodity at the close of each business day.

(2) ~~Every~~ *Each* warehouse operator purchasing any agricultural commodity from a depositor ~~thereof~~ shall promptly make and keep for 5 years a correct record showing in detail the following information:

(a) the name and address of the depositor;

(b) the date purchased;

(c) the terms of the sale; and

(d) the quality and quantity purchased by the warehouse operator and, ~~where~~ *when* applicable, the dockage, tare, grade, size, and net weight."

Section 2582. Section 80-4-522, MCA, is amended to read:

"80-4-522. Schedule of charges — posting. (1) Before a license to conduct a warehouse is granted, the warehouse operator shall file with the director a copy of the schedule of charges for storage and other services. The schedule must be posted in a conspicuous place in ~~his~~ *the* warehouse.

(2) All charges made by ~~any~~ *a* warehouse operator for the handling and storage of agricultural commodities must be just and reasonable. However, the director may, upon the complaint of any person or upon ~~his~~ *the director's* own motion, hold a public hearing and may declare any existing charges for handling or storage of any agricultural commodity to be unreasonable or unjust. After the hearing, the director shall determine and order what is a just and reasonable charge to be imposed or enforced in place of that found to be unreasonable or unjust.

(3) Failure to file and post scheduled charges for the current year will keep in full force the most recently posted and filed schedule rates.

(4) In all cases, the producers ~~will~~ *must* receive the first 15 days of storage without charge."

Section 2583. Section 80-4-523, MCA, is amended to read:

"80-4-523. Required receipt of agricultural commodities according to capacity. A warehouse operator ~~shall~~ *must* receive for storage, conditioning, handling, or shipment without discrimination of any kind, so far as the capacity of ~~his~~ *the operator's* warehouse will permit, all agricultural commodities tendered ~~him~~ *to the operator* in the usual course of business in suitable condition for storage. However, a warehouse operator may not be compelled to accept and hold agricultural commodities for storage in ~~such~~ quantities ~~as to~~ *that* block ~~his~~ *the operator's* regular cash agricultural commodity business. A warehouse operator may not be required to accept agricultural commodities for storage in excess of working capacity. However, ~~his~~ *the operator's* appointment of space may be modified by rule upon proof that ~~such~~ *the* appointment operates to the disadvantage of either the public or the warehouse operator."

Section 2584. Section 80-4-524, MCA, is amended to read:

"80-4-524. Discrimination in charge by warehouse operator prohibited. A warehouse operator may not directly or indirectly, by a special charge, rebate, drawback, or other device, collect from any person a greater or lesser compensation for any service rendered in the storage, conditioning, handling, or shipment of agricultural commodities than ~~he~~ *the operator* collects from any other person for a similar circumstance or condition. A warehouse operator may not make or give any advantage to any person, company, or corporation or subject any person, company, or corporation to any undue or unreasonable prejudice or disadvantage."

Section 2585. Section 80-4-529, MCA, is amended to read:

"80-4-529. Partial withdrawal of agricultural commodities — adjustment or substitution of receipt — duties of warehouse operator. When partial withdrawal of ~~his~~ *a depositor's* agricultural commodity is made by a depositor, the warehouse operator shall make an appropriate notation ~~thereof~~ on the depositor's warehouse receipt or claim or shall cancel and replace it with a warehouse receipt showing the amount of the depositor's agricultural commodity remaining in the warehouse. The warehouse operator is liable for the redelivery of all agricultural commodities specified on all outstanding warehouse receipts."

Section 2586. Section 80-4-530, MCA, is amended to read:

"80-4-530. Shipment of stored grain to ~~a~~ terminal grain warehouse outside ~~the~~ state. (1) Warehouse receipts or signed agreements from the owners of grain, on a form approved by the department and in an amount equal to the number of bushels the warehouse operator has in a terminal grain warehouse outside the state, are required for all grain shipped out of state by a warehouse operator.

(2) Warehouse receipts covering grain in terminal grain warehouses outside the state must have the words "Owner waives redelivery at point of origin of grain represented by this receipt" printed or stamped on the back.

(3) Waivers or agreements to accept terminal warehouse receipts must be signed in triplicate by the owner of the grain or ~~his~~ *the owner's* agent and by ~~a duly~~ *an* authorized representative of the warehouse, with:

(a) the original to be mailed to the department;

(b) the duplicate copy to be retained by the warehouse operator; and

(c) the triplicate copy to be given to the holder of the warehouse receipt.

(4) All grain must be held in bonded and approved terminal warehouses, fully insured for the benefit of the holder of Montana warehouse receipts.

(5) ~~No grain~~ *Grain* held in terminal warehouses is *not* subject to any lien, mortgage, or encumbrance."

Section 2587. Section 80-4-537, MCA, is amended to read:

"80-4-537. Examination of stored agricultural commodities. A department inspector may examine at any reasonable time during ordinary business hours any stored agricultural commodity and all parts of any warehouse~~, provided~~ *if* the warehouse or the agricultural commodities stored ~~therein~~ *in the warehouse* are not endangered by ~~such~~ *the* inspections. ~~Every~~ *Each* warehouse operator or ~~his~~ *the operator's* agent shall furnish safe and reasonable access to facilities for ~~such~~ *the* examination."

Section 2588. Section 80-4-539, MCA, is amended to read:

"80-4-539. Inspection by ~~the~~ department. (1) The department may investigate any warehouse operator who has applied for or who had previously been issued a license and may inspect ~~his~~ *the operator's* warehouse for purposes of determining compliance with this part and rules of the department.

(2) The department may investigate any warehouse operator or inspect any warehouse that it has reasonable cause to believe is operating in violation of this part and rules of the department."

Section 2589. Section 80-4-605, MCA, is amended to read:

"80-4-605. Posting of license. The commodity dealer's license must be posted in a conspicuous location at ~~his~~ *the dealer's* place of business. A duplicate commodity dealer's license must be posted at each location at which records are maintained for transactions of the commodity dealer and also within each truck operated by ~~him~~ *the dealer* in the state."

Section 2590. Section 80-6-102, MCA, is amended to read:

"80-6-102. Registration. (1) A person who owns or possesses an apiary in the state shall, before April 1 each year, register the apiary. There are four classes of apiary registration. The conditions under which the department may issue certificates of registration for each class are specified in 80-6-111 through 80-6-115.

(2) Applications ~~shall~~ *must* be made to the department for registration application blanks.

(3) Registration application blanks ~~shall~~ *must* be furnished by the department. The applicant shall provide the following information:

(a) a statement of the name and place of residence;

(b) the number of colonies of bees, hives, and equipment in the apiary;

(c) the location of the apiary, setting forth specifically the location by sectional division to the nearest quarter section, and the township and range and, if within the corporate limits of a town or city, the number of the lot and block in the town or city;

(d) the name of the owner, renter, or occupant of the land on which the apiary is located and, when the application is for a new apiary being registered for the first time, the application must also show that the owner, renter, or occupant of the land has consented to the apiary being located on ~~his~~ *the owner's. renter's, or occupant's* land;

(e) the date when the apiary was first established;

(f) the class of apiary registration for which application is being made; and

(g) other information the department may require under rules adopted by it for the protection, safety, and welfare of the public and the beekeeping industry.

(4) Upon receipt of the application and payment of the fees prescribed, the department may issue a certificate of registration for an apiary, setting forth the name of the owner, the specific location, the number of colonies of bees or size of the apiary authorized under the registration, and the class of apiary authorized by the registration.

(5) In issuing certificates of registration for apiaries, if there is a conflict between applicants with respect to location, the department shall give preference to the applicant having the oldest continuous registered apiary.

(6) Certificates of registration may not be issued for new apiaries ~~which~~ *that* are within such close proximity to established registered apiaries that there is or may be danger of spread of disease or pests or that the proximity will or may interfere with the proper feeding and honey flow of established apiaries.

(7) Before registering new apiaries, the department shall give at least 10 days' notice by certified mail to all registered apiarists likely to be affected by the proposed new apiary so that any party affected may file written protests with the department against registering the new apiary. If a written protest is filed, the department may require a hearing. Notice of the time and place of the hearing ~~shall~~ *must* be given all parties interested by certified mail at least 10 days before the date set for the hearing.

(8) Suitable evidence of registration furnished by the department ~~shall~~ *must* be posted by the apiary registrant in a conspicuous place at or near the apiary. If an owner has more than one apiary, suitable evidence of registration furnished by the department ~~shall~~ *must* be posted at each apiary.

(9) A registration not applied for by April 1 of each year is a late registration and incurs an added penalty of 10% of the regular registration fee or $10, whichever is greater. Registrants who fail to apply for reregistration by April 1 of each year ~~shall~~ *must* be notified of their delinquency by the department. The notification ~~shall~~ *must* be by certified mail and is sufficient if deposited in a United States post office or mail box and addressed to the registrant at ~~his~~ *the registrant's* last address appearing in the apiary registration files of the department at least 10 days before May 1. The registration of an apiary for which application for reregistration is not made by May 1 of each year is forfeited, and all rights under the registration terminate.

(10) ~~Any~~ *A* person who owns or possesses any bees, hives, colonies, or beekeeping equipment in this state or who owns or possesses an apiary in this state and who fails or refuses to register the ~~same~~ *bees, hives, colonies, or beekeeping equipment* as provided in this part is guilty of a misdemeanor and upon conviction ~~thereof~~ is subject to the penalties set forth in 80-6-303.

(11) ~~Nothing contained in this section or in~~ *Sections* 80-6-111 through 80-6-115 ~~shall~~ *or this section may not* be construed as invalidating, canceling, amending, terminating, or extending any certificate of registration issued by the department prior to October 1, 1981. All such previously issued certificates of registration remain in effect for the period for which they were issued~~;~~, subject~~, however,~~ to forfeiture, lapse, abandonment, and termination in the manner provided by law."

Section 2591. Section 80-6-103, MCA, is amended to read:

"80-6-103. Changing locations — enlarging or selling apiaries. (1) An owner of an established registered apiary may not change the location of the

apiary without first receiving *authorization* from the department ~~authorization~~ to establish the new apiary. In making the application, ~~he~~ *the owner* shall specify the location of the apiary with the same particularity as in the application for original registration. If the new apiary is not used within 60 days after a new certificate of registration is issued, the certificate of registration lapses and all rights under the registration terminate. Registrations for new apiaries may not be issued for greater areas than the applicant can show are reasonably necessary for ~~his~~ *the applicant's* needs consistent with good beekeeping practice.

(2) A registered apiary may be sold or transferred to a purchaser subject to *Title 80, chapter 6,* parts 1 through 3*,* if all bees and equipment on the apiary are sold to the purchaser.

(3) ~~No~~ *A* person may *not* increase the number of hives on an apiary to exceed the number of hives authorized by ~~his~~ *the person's* certificate of registration for that apiary, except that a person may increase the number of hives on a general apiary beyond the number authorized by the certificate of registration in order to protect ~~his~~ *the person's* bees during adverse weather or crop conditions or to protect ~~his~~ *the person's* bees and hives from bears or other predators. A person may also enlarge a general apiary during the spring buildup and in the fall after the end of the honey season in order to gather ~~his~~ *the person's* bees for shipment out of the state or to winter ~~his~~ *the person's* bees on that apiary.

(4) A person enlarging an apiary ~~so as~~ *in order* to exceed the number of hives ~~herein~~ allowed *under this section* is guilty of a misdemeanor and is subject to the penalties set forth in 80-6-303."

Section 2592. Section 80-6-104, MCA, is amended to read:

"80-6-104. Apiaries — termination of rights — abandonment. (1) The registration of an apiary ~~which~~ *that* is not stocked with bees during at least part of the normal build-up or honey-producing season is forfeited*,* and all rights under the certificate of registration terminate.

(2) An apiary not regularly attended in accordance with good beekeeping practice, which comprises a hazard or threat to disease or pest control in the beekeeping industry or which by reason of its physical condition or construction cannot be inspected, or any apiary not registered in accordance with 80-6-102~~,~~ may be considered an abandoned apiary and may be seized by the department. Any pest-infected or diseased equipment or equipment ~~which~~ *that* by reason of its physical condition or construction cannot be inspected may be burned, and the remainder may be sold at public auction. Proceeds, after the cost of the sale is deducted, ~~shall~~ *must* be returned to the former owner or ~~his~~ *the former owner's* estate. Before burning or selling any equipment, the department shall give the owner or person in charge a written notice at least 5 days before the burning or sale. The notice ~~shall~~ *must* be given by certified mail or personal service upon the owner or person in charge of the property. If the owner or person in charge cannot be located, a certified letter sent to the owner's last address registered with the department is sufficient notice under this section."

Section 2593. Section 80-6-111, MCA, is amended to read:

"80-6-111. General apiary registrations. (1) In order to control, limit, and prevent the spread of bee diseases, pests, and other contagious or infectious diseases among bees, hives, and apiaries and to control, limit, and prevent interference with the proper feeding and honey flow of established apiaries, general apiaries registered to different persons on October 1, 1981, must be located 3 or more miles apart, except as otherwise provided in this part. The

department ~~shall~~ *may* not register or issue a certificate of registration for any general apiary that is located less than 3 miles from a general apiary registered to another person, except as otherwise provided in this section.

(2) A person may register a general apiary that is situated less than 3 miles from another general apiary ~~he~~ *that the person* has registered ~~so~~ *as* long as the location of the general apiary being applied for is 3 or more miles from general apiaries registered to other persons.

(3) A general apiary may be registered even though it is less than 3 miles from any registered pollination apiary, landowner apiary, or hobbyist apiary.

(4) A person with an existing apiary that is located less than 3 miles from an existing general apiary registered to another person may register ~~his~~ *the* apiary as a general apiary under the following conditions:

(a) ~~his~~ *the existing* apiary was established and registered with the department as a general apiary under the department's rules in effect prior to July 1, 1981;

(b) ~~his~~ *the existing* apiary is registered with the department as a general apiary as of July 1, 1981; and

(c) the registration of ~~his~~ *the existing* apiary has not been forfeited or abandoned under the provisions of 80-6-102(9) or 80-6-104."

Section 2594. Section 80-6-1105, MCA, is amended to read:

"80-6-1105. Alfalfa leaf-cutting bees — certification. (1) A person possessing or controlling alfalfa leaf-cutting bees in the state of Montana may annually certify all or part of ~~his~~ *the person's* bees as provided in this section.

(2) To certify bees, a person ~~must~~ *shall* file a completed application form provided by the department, together with a fee set by rule. The applicant ~~must~~ *shall* provide the following:

(a) name and place of residence;

(b) the general location and number of bees to be certified; and

(c) other relevant information as may be required by committee rule.

(3) After receipt of an application for certification, a sample of the total population of bees to be certified ~~shall~~ *must* be selected by the committee or its agent in a manner prescribed by the committee. The sample ~~shall~~ *must* be analyzed for pathogens, parasites, predators, nest destroyers, and live larvae count. If certification standards are met, the sample ~~shall~~ *must* be certified.

(4) All bees to be certified may be stored in containers ~~which~~ *that* can be officially sealed after sampling to maintain their certification identity.

(5) When the committee has in its possession a completed application form, an appropriate fee, and a report that the sample meets certification standards, it may issue a certificate for the bees.

(6) The committee shall by rule specify the date by which any applicant ~~must~~ *shall* apply for recertification the following year."

Section 2595. Section 80-7-505, MCA, is amended to read:

"80-7-505. Computation and collection of assessments on landowners. Each owner of cropland benefited under a cropland spraying program is liable for ~~such~~ *the* portion of the landowner's share of the program costs as ~~his~~ *the owner's* cropland is a portion of all cropland within the boundaries of the program. The county treasurer shall compute each landowner's liability and mail a special assessment ~~therefor~~ to each owner or

occupier of land within the boundaries of the program. Unless otherwise mutually agreed upon, this assessment is due and payable within 32 days of mailing or 30 days of receipt if receipt is shown to be more than 2 days after mailing. A delinquent assessment is a lien upon the land assessed."

Section 2596. Section 80-7-1104, MCA, is amended to read:

"80-7-1104. Vertebrate pest management advisory council. (1) The director of agriculture may appoint a vertebrate pest management advisory council to provide advice to the department concerning the administration of this part.

(2) If appointed, the council must be composed of eight members as follows:

(a) the director of agriculture, who shall serve as ~~chairman~~ *presiding officer*;

(b) one member representing agricultural interests from Montana west of the continental divide;

(c) one member representing agricultural interests from eastern Montana;

(d) one member representing agricultural interests from north central Montana;

(e) one member representing agricultural interests from south central Montana;

(f) one member from a ~~sportsmen's~~ *hunter's, angler's,* or wildlife group;

(g) one member from the rodenticide industry; and

(h) one member representing public land interests.

(3) Technical advisers in vertebrate pest control from the department, the extension service, the university system, or the industry may serve as ex officio members at the request of the director of agriculture."

Section 2597. Section 80-8-102, MCA, is amended to read:

"80-8-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Active ingredient" means:

(a) in the case of a pesticide, other than a plant regulator, defoliant, or desiccant, an ingredient that will prevent, destroy, repel, alter life processes, or mitigate insects, nematodes, fungi, rodents, weeds, or other pests;

(b) in the case of a plant regulator, an ingredient that acts upon the physiology to accelerate or retard the rate of growth or rate of maturation or otherwise alter the normal processes of ornamental or crop plants or their produce;

(c) in the case of a defoliant, an ingredient that will cause the leaves or foliage to drop from a plant;

(d) in the case of a desiccant, an ingredient that will artificially accelerate the drying of plant tissue.

(2) "Adulterated" applies to a pesticide if its strength of purity falls below the professed standard or quality as expressed on labeling or under which it is sold, if any substance has been substituted wholly or in part for the pesticide, or if any valuable constituent of the pesticide has been wholly or in part abstracted.

(3) "Antidote" means the most practical immediate treatment in case of poisoning and includes first-aid treatment.

(4) "Applicator" means a person who applies pesticides by any method.

(5) "Beneficial insects" means those insects that, in the course of their life cycle, carry, transmit, or spread pollen to and from vegetation, act as parasites and predators on other insects, or are otherwise beneficial.

(6) "Commercial applicator" means a person who by contract or for hire applies by aerial, ground, or hand equipment pesticides to land, plants, seed, animals, waters, structures, or vehicles.

(7) "Commercial operator" means a person who applies pesticides under the supervision of a commercial applicator.

(8) "Crop" means a food intended for human or animal consumption or a fiber product.

(9) "Dealer" means a person who sells, wholesales, offers or exposes for sale, exchanges, barters, or gives away within this state any pesticide except those pesticides that are to be used for home, yard, garden, home orchard, shade trees, ornamental trees, bushes, and lawn.

(10) "Defoliant" means a substance or mixture of substances for causing the leaves or foliage to drop from a plant, with or without causing abscission.

(11) "Desiccant" means a substance or mixture of substances for artificially accelerating the drying of plant tissue.

(12) *(a)* "Device" means any instrument or contrivance intended for destroying, controlling, repelling, or mitigating pests.

(b) The term does not include equipment used for the application of pesticides.

(13) "Environment" means the soil, air, water, plants, and animals.

(14) "Equipment" means equipment used in the actual application of pesticides, including aircraft, ground sprayers and dusters, hand-held applicators, and water surface equipment.

(15) "Farm applicator" means a person applying pesticides to the person's own crops or land.

(16) "Fungi" means all nonchlorophyll-bearing thallophytes (all nonchlorophyll-bearing plants of a lower order than mosses and liverworts), such as rusts, smuts, mildews, molds, yeasts, and bacteria, except those resident on or in living humans or other animals.

(17) "Fungicide" means a substance or mixture of substances for preventing, destroying, repelling, or mitigating any fungus.

(18) "Herbicide" means a substance or mixture of substances for preventing, destroying, repelling, or mitigating any weed.

(19) "Inert ingredient" means an ingredient that is not an active ingredient.

(20) "Ingredient statement" means either:

(a) a statement of the chemical name and common name and percentage of each active ingredient, together with the total percentage of the inert ingredients, in the pesticide; or

(b) a statement of the chemical name and common name of each active ingredient, together with the name of each and total percentage of the inert ingredients, if any, in the pesticide. However, subsection (20)(a) applies if the preparation is highly toxic to ~~man~~ *humans*, determined as provided in 80-8-105~~;~~*,* and if the pesticide contains arsenic in any form, the ingredient statement must also include a statement of the percentage of total and water-soluble arsenic, each calculated as elemental arsenic.

(21) "Insect" means any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class insecta, comprising six-legged, winged and wingless forms, such as beetles, bugs, wasps, flies, and keds, and to other classes of arthropods whose members are wingless and usually have more than six legs, such as spiders, mites, ticks, centipedes, and wood lice.

(22) "Insecticide" means any substance or mixture of substances for preventing, destroying, repelling, or mitigating any insects present in any environment.

(23) "Label" means the written, printed, or graphic matter on or attached to the pesticide or device or to its immediate container and any outside container or wrapper of any retail package of the pesticide or device.

(24) "Labeling" means all labels and other written, printed, or graphic matter:

(a) upon the pesticide or device or any of its containers or wrappers;

(b) accompanying the pesticide or device at any time;

(c) to which reference is made on the label or in literature accompanying the pesticide or device, except when accurate, nonmisleading reference is made to current official publications of:

(i) the United States environmental protection agency;

(ii) federal departments of agriculture, interior, or health and human services;

(iii) state experiment stations;

(iv) state agricultural colleges; or

(v) other similar federal institutions or official agencies of this state or other states authorized by law to conduct research in the field of pesticides.

(25) "Misbranded" applies:

(a) to a pesticide or device if its labeling bears any statement, design, or graphic representation relative to its ingredients that is false or misleading;

(b) to a pesticide if:

(i) it is an imitation of or is offered for sale under the name of another pesticide;

(ii) its labeling bears any reference to registration under this chapter;

(iii) the labeling accompanying it does not contain instructions for use necessary and, if complied with, adequate for the protection of the public;

(iv) the label does not contain a warning or caution statement necessary and, if complied with, adequate to prevent injury to living humans or undue hazard to the environment;

(v) the label of the retail package that is presented or displayed under customary conditions of purchase does not bear an ingredient statement on that part of the immediate container and on the outside or on a wrapper through which the ingredient statement on the immediate container cannot be clearly read;

(vi) any word, statement, or other information required to appear on the labeling is not prominently placed on the labeling with a conspicuousness (as compared with other words, statements, designs, or graphic matter in the

labeling) and in terms rendering it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(vii) in the case of an insecticide, nematocide, fungicide, or herbicide, when used as directed or in accordance with commonly recognized practice, it is injurious to living humans or other vertebrate animals or vegetation, except weeds, to which it is applied or to the person applying the pesticide;

(viii) in the case of a plant regulator, defoliant, or desiccant, when used as directed, it is injurious to humans or other vertebrate animals or vegetation to which it is applied or to the person applying the pesticide. Physical or physiological effects on plants or parts of plants are not injurious when this is the purpose for which the plant regulator, defoliant, or desiccant is applied in accordance with the label claims and recommendations.

(26) "Nematocide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating nematodes.

(27) "Nematodes", "nemas", or "eelworms" means invertebrate animals of the phylum nemathelminthes and class nematoda, that is, unsegmented round worms with elongated, fusiform, or sac-like bodies covered with cuticle and inhabiting soil, water, animals, plants, or plant parts.

(28) "Person" means any natural person, individual, firm, partnership, association, corporation, company, joint-stock association, body politic, or organized group of persons, whether incorporated or not, and any trustee, receiver, assignee, or similar representative.

(29) "Pest" includes any insect, rodent, nematode, snail, slug, *or* weed~~,~~ and any form of plant or animal life or virus, except a virus on or in living humans or other animals, that is normally considered a pest or that the department declares a pest.

(30) "Pesticide" means any:

(a) substance or mixture of substances, including any living organism or any product derived from a living organism, intended for preventing, destroying, controlling, repelling, altering life processes, or mitigating any insects, rodents, nematodes, fungi, weeds, and other forms of plant or animal life or viruses, except viruses on or in living humans or other animals, that may infect or be detrimental to persons, vegetation, crops, animals, structures, or households or be present in any environment or that the department declares a pest;

(b) substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant; and

(c) other substances intended for that use named by the department by a rule adopted by it.

(31) *(a)* "Plant regulator" means any substance or mixture of substances affecting the rate of growth or rate of maturation or for otherwise altering physiological condition of plants.

(b) The term does not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants, and soil amendments.

(32) "Public utility applicator" means a person applying pesticides to land and structures owned or leased by a public utility.

(33) "Registrant" means the person registering any pesticide or device under the provisions of this chapter.

(34) "Restricted-use pesticide" means any pesticide, including highly toxic pesticides, that the department has found and determined, subsequent to a hearing, to be injurious, when used in accordance with registration, label, directions, and cautions, to persons, beneficial insects, animals, crops, or the environment other than the pests it is intended to prevent, destroy, control, or mitigate.

(35) "Retailer" means ~~any~~ *a* person who sells, offers or exposes for sale, exchanges, barters, or gives away within this state any pesticide for home, yard, lawn, and garden use~~,~~ in quantities or concentrations as determined by the department ~~of agriculture~~.

(36) "Waste pesticide" means a pesticide *that*:

(a) ~~that~~ may not be used legally because the environmental protection agency or the department has canceled or suspended the pesticide's registration or has taken other administrative action to prohibit use of the pesticide;

(b) ~~that~~ will not be used for reasons including but not limited to product damage, toxicity, or obsolescence; or

(c) ~~that~~ cannot be disposed of in a legal or economically feasible manner.

(37) "Weed" means any plant or part of the plant that grows where *it is* not wanted."

Section 2598. Section 80-8-103, MCA, is amended to read:

"80-8-103. Purpose. The control of pesticides and their use is essential for the protection of ~~man~~ *humans* and ~~his~~ *the* environment. Pesticides are currently considered valuable and necessary to provide sufficient quantity of quality foods and for the protection of humans from vector-borne diseases. However, the protection of ~~man~~ *humans* and ~~his~~ *human's* essential needs—water, air, food, animals, vegetation, pollinating insects, and shelter from pesticides ~~which~~ *that* are potentially dangerous—is in the public interest now and in the future. Therefore, it is ~~deemed~~ necessary to provide for the control of pesticides."

Section 2599. Section 80-8-108, MCA, is amended to read:

"80-8-108. Advisory council. (1) The director of agriculture may appoint an advisory council to study and make recommendations on special pesticide problems in the state. The council ~~shall consist~~ *consists* of individuals representing, equally, controlled industry, agriculture, health, and wildlife. Governmental personnel, university personnel not included, may not be represented on the council. Governmental personnel shall meet with the council in an advisory capacity when requested by the council. The council may not exceed 12 members. The director of agriculture shall establish the time period in which the council shall exist. The time period may not exceed 2 years. The department of agriculture shall provide the necessary administrative, secretarial, and any other essential items to the council.

(2) Each member of the council ~~shall~~ *must* receive as compensation for ~~his~~ services the sum of $25 ~~per~~ *a* day for each day actually spent in the performance of ~~his~~ duties and ~~shall~~ *must* be reimbursed for travel expenses as provided for in 2-18-501 through 2-18-503.

(3) The council may request that the department hold a public hearing to assist it in gathering factual data and information on the special problems assigned it."

Section 2600. Section 80-8-202, MCA, is amended to read:

"80-8-202. Prohibited acts. (1) It is unlawful for ~~any~~ *a* person to distribute, sell, or offer for sale within this state or deliver for transportation or transport in intrastate commerce between points within this state any of the following:

(a) ~~any~~ *a* pesticide ~~which~~ *that* has not been registered pursuant to the provisions of 80-8-201 or any pesticide if any of the claims made for it or any of the directions for its use differ in substance from the representations made in connection with its registration or if the composition of a pesticide differs from its composition as represented in connection with its registration or if registration or reregistration has been refused, revoked, canceled, or suspended. The department ~~of agriculture~~ may allow a change in the labeling or formula of a pesticide within a registration period without requiring reregistration of the product when ~~such~~ *the* change does not adversely affect the product for its intended use and if proper application ~~therefor~~ *for the change* is made.

(b) ~~any~~ *a* pesticide unless it is in the registrant's or the manufacturer's unbroken immediate container and there is affixed to ~~such~~ *the* container and to the outside container or wrapper of the retail package, if there ~~be~~ *is* one, through which the required information on the immediate container cannot be clearly read, a label bearing:

(i) the name and address of the manufacturer, registrant, or person for whom manufactured;

(ii) the trade and chemical name, brand, or trademark under which ~~said~~ *the* article is sold;

(iii) the net weight or measure of the content, subject to ~~such~~ reasonable variations ~~as~~ *that* the department may permit;

(c) ~~any~~ *a* pesticide ~~which~~ *that* contains any substance or substances in quantities highly toxic to ~~man~~ *humans*, determined as provided in 80-8-105, unless the label ~~shall bear~~ *bears*, in addition to any other matter required by this chapter:

(i) the skull and crossbones;

(ii) the word "poison" prominently in red on a background of distinctly contrasting color;

(iii) a statement of an antidote for the pesticide;

(d) ~~the~~ pesticides commonly known as standard lead arsenate, basic lead arsenate, calcium arsenate, magnesium arsenate, zinc arsenate, zinc arsenite, sodium fluoride, sodium fluosilicate, and barium fluosilicate unless they have been distinctly colored or discolored, as provided by regulations issued in accordance with this chapter, or any other white powder pesticide ~~which~~ *that* the department, after investigation of and after public hearing on the necessity for ~~such~~ *the* action for the protection of the public health and the environment and the feasibility of ~~such~~ *the* coloration or discoloration, ~~shall~~ by regulations ~~require~~ *requires* to be distinctly colored or discolored, unless it has been so colored or discolored. The department may exempt any pesticide to the extent that it is intended for a particular use from the coloring or discoloring required or authorized by this section if it determines that ~~such~~ *the* coloring or discoloring for ~~such~~ *the* use is not necessary for the protection of the public health and the environment.

(e) ~~any~~ *a* pesticide ~~which~~ *that* is adulterated or misbranded~~,~~ or any device ~~which~~ *that* is misbranded.

(2) It is unlawful for ~~any~~ *a* person to:

(a) detach, alter, deface, or destroy, in whole or in part, any label or labeling provided for in this chapter or rules ~~promulgated hereunder~~ *adopted under this chapter* or to add any substance to or take any substance from a pesticide in a manner that may defeat the purpose of this chapter;

(b) use for ~~his~~ *the person's* own advantage or reveal, other than to the department or proper officials or employees of the state or the courts of this state in response to a subpoena, to physicians or to veterinarians or in emergencies to pharmacists and other qualified persons for use in the preparation of antidotes, any information relative to formulas of products acquired by authority of 80-8-201."

Section 2601. Section 80-8-206, MCA, is amended to read:

"80-8-206. Applicator's and operator's examination. (1) The department ~~of agriculture~~ shall publish and distribute or have available upon request ~~such~~ information ~~as~~ *that* may be helpful to persons engaged in the application of pesticides, including information that may be required or ~~which~~ *that* may appear upon any examination given to applicators and operators by the department.

(2) The department shall require an applicant for a license to show upon written examination that ~~he~~ *the person* possesses adequate knowledge concerning the proper use and application of pesticides under the classification for which ~~he~~ *the person* has applied, provided that the applicator and operator may not be required to take a reexamination upon renewal of licensing."

Section 2602. Section 80-8-208, MCA, is amended to read:

"80-8-208. Dealer's examination. Each applicant applying for a dealer's license ~~and/or his employee(s)~~ *and the applicant's employees* in charge of pesticide sales ~~shall~~ *must* be required to pass a reasonable examination administered by the department. Dealers applying for relicensing may not be required to take an additional examination if they have met the department's requirements."

Section 2603. Section 80-8-301, MCA, is amended to read:

"80-8-301. Report of loss or damage — effect of failure to report. (1) A person suffering loss or damage resulting from the use or application of any pesticide by any person shall, within 30 days from the time the occurrence of the loss became known to ~~him~~ *the person*, file with the department of agriculture a verified report of loss setting forth, so far as known to the claimant, the following:

(a) name and address of claimant;

(b) type, kind, and location of property alleged to be injured or damaged;

(c) date the alleged injury or damage occurred;

(d) name of person applying the pesticide and allegedly responsible for the loss or damage;

(e) name of the owner or occupant of the property for whom ~~such~~ *the* pesticide application was made.

(2) The filing of ~~such~~ a report or the failure to file ~~such~~ a report ~~shall~~ *may* not be alleged in any complaint ~~which~~ *that* might be filed in a court of law, and the failure to file ~~shall~~ *may* not of itself be considered any bar to the maintenance of ~~any~~ *a* criminal or civil action.

(3) The failure to file ~~such~~ a report ~~shall~~ *is* not ~~be~~ a violation of this chapter. However, if the person failing to file ~~such~~ *a* report is the only one injured from

~~such~~ *the* use or application of a pesticide by any person, the department may refuse to hold a hearing for the denial, suspension, or revocation of a license issued under this chapter until ~~such~~ *the* report is filed. The filing of ~~such~~ *a* report ~~shall~~ *does* not constitute institution of a civil or criminal suit in any court, state or federal."

Section 2604. Section 80-8-303, MCA, is amended to read:

"80-8-303. Embargo. (1) Whenever a duly authorized agent of the department of agriculture finds or has probable cause to believe that any pesticide or device is adulterated or misbranded, has not been registered under the provisions of 80-8-201(5), fails to bear on its label the information required by this chapter, or is a white powder pesticide and is not colored as required under this chapter, ~~he~~ *the agent* shall affix to ~~such~~ *the* article a tag or other appropriate marking giving notice ~~thereof~~ *of the failure* and stating that the article has been detained or embargoed and warning all persons not to remove or dispose of ~~such~~ *the* article by sale or otherwise until permission for removal or disposal is given by ~~such~~ *the* agent or the court. ~~Any~~ *A* person who removes or disposes of ~~such~~ *a* detained or embargoed article by sale or otherwise~~,~~ without prior permission~~,~~ or *who* removes or alters the tag or marking~~,~~ is guilty of a misdemeanor and may be charged accordingly or may be subjected to appropriate administrative proceedings, or both.

(2) When an article detained or embargoed under subsection (1) has been found by ~~such~~ *the* agent to be in violation *of subsection (1)*~~, if~~ *and* after 30 days the violation has not been resolved, ~~he~~ *the agent* may petition the district court in whose jurisdiction the article is detained or embargoed for a condemnation of ~~such~~ *the* article. When ~~such~~ *the* agent has found that an article ~~so~~ detained or embargoed is not adulterated or misbranded, ~~he~~ *the agent* shall remove the tag or other marking.

(3) If the court finds that a detained or embargoed article is in violation of this chapter or rules adopted ~~thereunder~~ *under this chapter*, ~~such~~ *the* article ~~shall~~ *must* after entry of the decree be destroyed at the expense of the claimant ~~thereof~~ *of the article*, under the supervision of ~~such~~ *the* agent, and all court costs and fees and storage and other proper expenses ~~shall~~ *must* be assessed against the claimant of ~~such~~ *the* pesticide or device or ~~his~~ *the claimant's* agent~~,~~. ~~provided that~~ *However,* when the adulteration or misbranding can be corrected by proper labeling or processing of the article, the court, after entry of the decree and after ~~such~~ costs, fees, and expenses have been paid and a good and sufficient bond has been executed, conditioned upon the proper labeling or processing of ~~such~~ *the* pesticide or device, may by order direct that ~~such~~ *the* article be delivered to the claimant ~~thereof~~ *of the article* for ~~such~~ labeling or processing under the supervision of an agent of the department. The expense of ~~such~~ supervision ~~shall~~ *must* be paid by *the* claimant. The article ~~shall~~ *must* be returned to the claimant of the pesticide or device on the representation to the court by the department that the article is no longer in violation of this chapter and that the expenses of ~~such~~ supervision have been paid."

Section 2605. Section 80-10-101, MCA, is amended to read:

"80-10-101. Definitions. As used in this chapter, the following definitions apply:

(1) "Brand" means a term, design, or trademark used in connection with one or several grades of commercial fertilizer.

(2) "Commercial fertilizer" includes any substance containing one or more recognized plant nutrients ~~which~~ *that* is used for its plant nutrient content and

~~which~~ *that* is designed for use or claimed to have value in promoting plant growth, yield, or quality of the crop.

(a) "Bulk fertilizer" ~~is~~ *means* commercial fertilizer, ~~(~~dry or liquid~~)~~*, that is* distributed in nonpackage form or in containers of greater than 1,000 pounds.

(b) "Fertilizer materials" ~~is~~ *means* a commercial fertilizer ~~which~~ *that* either:

(i) contains important quantities of not more than one of the primary plant nutrients*, including* ~~(~~nitrogen, phosphoric acid, and potash~~)~~;

(ii) has approximately 85% of its plant nutrient content present in the form of a single chemical compound; or

(iii) is derived from a plant or animal residue or byproduct or a natural material deposit ~~which~~ *that* has been processed in ~~such~~ a way that its content of primary plant nutrients has not been materially changed except by purification and concentration.

(c) "Mixed fertilizers" ~~is~~ *means* a commercial fertilizer, ~~(~~dry or liquid~~)~~, ~~containing~~ *that contains* any combination or mixture of fertilizer materials.

(d) "Packaged fertilizer" ~~is~~ *means* commercial fertilizer, ~~(~~dry or liquid~~)~~*, that is* distributed in sealed containers of 1,000 pounds or less.

(e) "Specialty fertilizer" ~~is~~ *means* a commercial fertilizer, ~~(~~dry or liquid~~)~~*, that is* distributed primarily for nonfarm use, such as home gardens, lawns, shrubbery, flowers, golf courses, municipal parks, cemeteries, greenhouses, and nurseries and includes commercial fertilizers used for research or experimental purposes.

(3) "Distribute" means to offer for sale, sell, barter, or otherwise supply commercial fertilizers.

(4) "Distributor" means ~~any~~ *a* person who distributes.

(5) "Grade" means the percentages of total nitrogen, available phosphorus or phosphoric acid, and soluble potassium or soluble potash stated in whole numbers in the same terms, order, and percentages as in the guaranteed analysis. However, fertilizer materials, bonemeal, manures, and similar raw materials may be guaranteed in fractional units.

(6) "Licensee" means ~~any~~ *a* person who has obtained a license from the department so ~~he~~ *that the person* may legally distribute commercial fertilizer other than specialty fertilizers or soil amendment in this state.

(7) "Manipulated manures" means substances composed primarily of excreta, plant remains, or mixtures of ~~such~~ substances ~~which~~ *that* have been processed in any manner, including the addition of plant nutrients, drying, grinding, and other means.

(8) "Manufacture" means the formulation, mixing, blending, or further processing of commercial fertilizers or soil amendments.

(9) "Manufacturer" ~~is~~ *means* a person who manufactures commercial fertilizer or soil amendments.

(10) "Official sample" means any sample of commercial fertilizer taken by the department and so designated by the department.

(11) "Percent or percentage" means the percentage by weight.

(12) "Person" means an individual, partnership, association, firm, or corporation.

(13) "Registrant" means the person who registers commercial fertilizer ~~and/or~~ *or* soil amendment.

(14) "Soil amendment" means any material not included under commercial fertilizer or those products subject to the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, ~~which~~ *that* is added to soil or to plants for purposes of influencing the growth, yield, or quality of the crop, soil flora or fauna, or other soil characteristics.

(15) "Ton" means a net weight of 2,000 pounds ~~avoirdupois~~."

Section 2606. Section 80-10-201, MCA, is amended to read:

"80-10-201. Registration. (1) Each brand and grade of fertilizer and each soil amendment except unmanipulated animal and vegetable manures must be registered by or on behalf of the manufacturer before distribution in this state. The application for registration must be submitted to the department on a form furnished or approved by the department and must be accompanied by a nonrefundable fee of $20 per grade for each fertilizer and for each soil amendment with exception of specialty fertilizers, which must be registered at a nonrefundable fee of $35 each. Upon approval, the department shall furnish a copy of the registration to the applicant. All registrations expire on December 31 of each year.

(2) (a) The application for registration must include:

(i) the brand and grade;

(ii) the guaranteed analysis;

(iii) the source of each plant food element guaranteed;

(iv) the name and address of the registrant;

(v) a copy or facsimile of each label and of promotional material when requested by the department; and

(vi) analytical information on nutrient ingredients and nonnutrient ingredients as required by rule.

(b) The department shall require the applicant to furnish replicated data, performed by a reputable investigator whose work is recognized as acceptable by the director of the agricultural experiment station or ~~his~~ *the director's* designee, verifying any claims for effectiveness or agricultural value of any fertilizer or soil amendment product that is not generally recognized as having the values claimed at the use rates recommended.

(3) A distributor may not be required to register any brand or grade of commercial fertilizer that is already registered under this section by another person.

(4) A manufacturer may not reregister a product until full payment of the assessment fees provided for in 80-10-103 and 80-10-207 has been received by the department."

Section 2607. Section 80-10-204, MCA, is amended to read:

"80-10-204. Labeling. (1) Any commercial fertilizer distributed in this state in packages ~~shall~~ *must* have affixed to or printed on the container a label setting forth in clearly legible and conspicuous form:

(a) the net weight;

(b) the name and address of the manufacturer or distributor guaranteeing the analysis;

(c) the brand and product name;

(d) the grade;

(e) the guaranteed analysis; and

(f) other requirements as established by rule.

(2) Any bin in the state in which commercial fertilizer is stored for distribution must have affixed to or printed on it a label setting forth in clearly legible and conspicuous form:

(a) the guaranteed analysis of the product in the bin; and

(b) other requirements established by rule.

(3) All commercial fertilizer delivered in this state in bulk, whether a manufactured grade or blended grade, ~~shall~~ *must* be accompanied by a clearly legible document ~~which shall~~ *that must* be supplied to the purchaser at the time of delivery and at the time ~~his~~ *the purchaser's* invoice is delivered. The document ~~shall~~ *must* show:

(a) net weight;

(b) name and address of the distributor or manufacturer guaranteeing the analysis;

(c) guaranteed analysis or, on blended fertilizer, the net weight and guaranteed analysis of each ingredient added; and

(d) other requirements as established by rule.

(4) When distributed in containers, soil amendments ~~shall~~ *must* have a label affixed to or printed on the container. When delivered in bulk, the label ~~shall~~ *must* be clearly legible and ~~shall~~ *must* accompany the delivery of the product. This label ~~shall~~ *must* be supplied to the purchaser at the time of delivery and at the time of invoicing. The label ~~shall~~ *must* contain the following information:

(a) net weight;

(b) name and address of the registrant or licensee who is responsible for the product;

(c) brand and product name;

(d) guaranteed analysis;

(e) other requirements, such as particle size, as established by rule."

Section 2608. Section 80-10-211, MCA, is amended to read:

"80-10-211. Cancellation or refusal of registration or licenses. (1) The department may cancel the registration of any commercial fertilizer or soil amendment and may refuse to register any commercial fertilizer or soil amendment upon satisfactory evidence that the registrant has used fraudulent or deceptive practices in the evasion or attempted evasion of this chapter or any rules adopted under it. However, ~~no~~ *a* registration may *not* be revoked or refused until the registrant is given the opportunity to amend ~~his~~ *the* application or correct other practices.

(2) The department may cancel any license or refuse to license any person when it has satisfactory evidence that the person has used fraudulent or deceptive practices in the evasion or attempted evasion of this chapter or any rules adopted under it. However, ~~no~~ *a* license may *not* be revoked or refused until the person involved is given the opportunity to appear for a hearing by the department."

Section 2609. Section 80-10-303, MCA, is amended to read:

"80-10-303. Violations — enforcement proceedings — judicial review. (1) If it appears from the examination of ~~any~~ commercial fertilizer or from the inspection of ~~any~~ *an* anhydrous ammonia facility that this chapter or the rules adopted under this chapter have been violated, the department shall give notice of the violations to the registrant, licensee, distributor, or possessor from whom the sample was taken. A person notified ~~shall~~ *must* be given an opportunity to be heard under rules of the department. If it appears after a hearing, either in the presence or absence of the person notified, that this chapter or rules issued under this chapter have been violated, the department may certify the facts to the proper prosecuting attorney.

(2) A person who violates this chapter or the rules adopted under this chapter or who obstructs, prevents, or attempts to prevent the department from performing its duty under this chapter is guilty of a misdemeanor and shall be fined not less than $300 or more than $500 for the first violation and not less than $300 or more than $1,000 for a subsequent violation. In all prosecutions under this chapter involving the composition of a lot of commercial fertilizer, a certified copy of the official analysis of the department is prima facie evidence of the composition.

(3) ~~Nothing in this~~ *This* chapter ~~requires~~ *does not require* the department to report for prosecution or for the beginning of seizure proceedings minor violations of this chapter when it believes that the public interest will be best served by a suitable notice of warning in writing.

(4) A prosecuting attorney to whom a violation is reported shall prosecute the violator in a court of competent jurisdiction without delay.

(5) The department may apply for and the court may grant a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this chapter or any rule adopted under the chapter notwithstanding the existence of other remedies at law. The injunction ~~shall~~ *must* be issued without bond.

(6) If a person adversely affected by an act, order, or ruling made by the department under this chapter is not entitled to a hearing before the department to determine ~~his~~ *the person's* rights, ~~he~~ *the person* may within 45 days sue in the district court of any county where the alleged violation giving rise to the department's act, order, or ruling occurred~~,~~ for *a* new trial of the issues bearing upon the act, order, or ruling. After the trial*,* the court may issue and enforce those orders, judgments, or decrees *that* it considers proper, just, and equitable."

Section 2610. Section 80-10-503, MCA, is amended to read:

"80-10-503. Rulemaking authority and requirements. (1) The department shall adopt rules for the design, construction, repair, alteration, location, installation, and operation of anhydrous ammonia facilities. ~~Such~~ *The* rules must be in substantial conformity with nationally recognized safety standards for the storage and handling of anhydrous ammonia. The rules ~~shall~~ *must* require the owner to place ~~his~~ *the owner's* name and phone number on ~~his~~ *the owner's* anhydrous ammonia tank or tanks. The department may adopt additional rules necessary for the protection and safety of persons employed in anhydrous ammonia facilities, persons using anhydrous ammonia, and the public.

(2) The rules must include a provision under which new or existing facilities may apply for a temporary or permanent variance from any requirement of the

rules. The rules must provide criteria for granting or denying a variance request and must provide for written notice and public hearing on any variance request.

(3) The department shall coordinate its rulemaking activities with other executive branch agencies and departments by providing them with timely information on the adoption of the rules, inviting and encouraging their participation, giving due weight and consideration to their comments and testimony, and coordinating interdepartmental meetings on matters pertaining to the adoption of the rules."

Section 2611. Section 80-11-204, MCA, is amended to read:

"80-11-204. Election of ~~chairman~~ *presiding officer* — time of meetings. At the first meeting of the administrative committee, it shall elect a ~~chairman~~ *a presiding officer* from among its members. The committee shall meet at least once every 3 months and at ~~such~~ other times as called by the ~~chairman~~ *presiding officer* or by any three members of the committee."

Section 2612. Section 80-11-305, MCA, is amended to read:

"80-11-305. Compensation — per diem. Each committee member is entitled to $25 compensation for each day ~~he~~ *that the member* is engaged in the transaction of official business, together with actual and necessary travel expenses, as provided for in 2-18-501 through 2-18-503."

Section 2613. Section 80-11-308, MCA, is amended to read:

"80-11-308. Payment of assessment. All assessments levied and imposed under 80-11-307 must be paid to the department of agriculture by the person, either grower or dealer, by whom the alfalfa seed is first handled in the primary channels of trade and must be paid at ~~such~~ times ~~as~~ *that* the department may by rule prescribe but not later than 60 days from the date on which the grower received payment for the alfalfa seed. If the party first handling the alfalfa seed in the primary channels of trade is a person other than the grower, ~~he~~ *that party* may charge against or recover from the grower of ~~such~~ *the* alfalfa seed the full amount of any assessment levied and imposed under 80-11-307."

Section 2614. Section 80-11-311, MCA, is amended to read:

"80-11-311. Records required. ~~Every~~ *Each* dealer shall maintain accurate records of all alfalfa seed handled, packed, shipped, or processed by ~~him~~ *the dealer*. The records ~~shall~~ *must* be in ~~such~~ *the* form and contain ~~such~~ *the* information ~~as~~ *that* the department may by rule prescribe, ~~shall~~ *must* be preserved for a period of 2 years, and are subject to inspection at any time upon request of the department or its agents."

Section 2615. Section 80-11-404, MCA, is amended to read:

"80-11-404. Compensation — per diem. Each committee member is entitled to $25 compensation for each day ~~he~~ *that the member* is engaged in the transaction of official business, together with actual and necessary travel expenses as provided for in 2-18-501 through 2-18-503."

Section 2616. Section 80-11-405, MCA, is amended to read:

"80-11-405. Election of ~~chairman~~ *presiding officer* — time of meetings. At the first meeting of the committee, it shall elect a ~~chairman~~ *presiding officer* from among its members. The committee shall meet at least once annually and at ~~such~~ other times as called by the ~~chairman~~ *presiding officer* or by any three members of the committee."

Section 2617. Section 80-11-416, MCA, is amended to read:

"80-11-416. Records required. ~~Every~~ *Each* first purchaser of mint oil shall maintain accurate records of all mint oil handled, packed, shipped, or processed by ~~him~~ *the purchaser*. The records must be in the form and contain the information the committee may by rule prescribe. The records must be preserved for 2 years and are subject to inspection at any time upon request of the committee or its agents."

Section 2618. Section 80-12-202, MCA, is amended to read:

"80-12-202. Immediate repayment. If an applicant who has obtained the approval of the authority for the issuance of a bond to fund ~~his~~ *the applicant's* loan for the acquisition of farm or ranch land sells the land for which the loan was made to any person, firm, or corporation other than ~~his~~ *the applicant's* spouse, children, or corporation wholly owned by them, the loan must be repaid in full."

Section 2619. Section 80-12-203, MCA, is amended to read:

"80-12-203. Qualifications of applicants. (1) To be eligible for a loan approved by the authority for issuance of a bond, an applicant ~~must~~:

(a) *shall* declare ~~his~~ *the* intention to maintain ~~his~~ *the applicant's* residence in Montana during the length of the loan;

(b) *must* have been approved by a financial institution; and

(c) *must* have a net worth not to exceed $250,000.

(2) Applications for loans to be approved by the authority for issuance of bonds may be submitted by individuals, partnerships, associations, or joint ventures. All persons involved in the application must meet the requirements of subsection (1). Corporations, as defined in 35-1-113, may not apply."

Section 2620. Section 80-12-211, MCA, is amended to read:

"80-12-211. Income tax deduction for land sale to beginning farmers. A landowner who sells land consisting of 80 acres or more to a beginning farmer at 9% or less interest on a long-term contract is entitled to a reduction in ~~his~~ *the landowner's* taxable income in an amount equal to 100% of any income or capital gain, or both, realized and otherwise subject to state income taxes from the sale, up to a maximum of $50,000, ~~provided~~ *if* the transaction is approved by the authority for this purpose."

Section 2621. Section 80-12-310, MCA, is amended to read:

"80-12-310. Continuing validity of authority members' signatures. If ~~any~~ *an* authority member whose signature appears on bonds or coupons ceases to be a member before the delivery of the bonds, ~~his~~ *the* signature continues to be valid and sufficient for all purposes."

Section 2622. Section 80-15-218, MCA, is amended to read:

"80-15-218. Notice to buyer. A person who sells agricultural land that is subject to the provisions of a specific agricultural chemical ground water management plan shall provide the buyer with written notice about ~~his~~ *the buyer's* obligations under the plan and shall forward a copy of the notice to the department. The department is not responsible for enforcement of this section."

Section 2623. Section 81-1-202, MCA, is amended to read:

"81-1-202. Duties. The stock inspectors and detectives shall arrest all persons who in their presence violate the stock laws of this state. ~~Every~~ *Each* stock inspector and detective, on information that a person has committed an offense against the laws of this state by engaging in illegal branding or theft of

stock or an offense against the laws of this state for the protection of the rights and interests of stock owners, ~~must~~ *shall* make the necessary affidavit for the arrest and examination of the person and on a warrant issued for the person immediately arrest the person and bring ~~him~~ *the person* before the proper officer and notify the department of ~~his~~ *the person's* acts."

Section 2624. Section 81-1-301, MCA, is amended to read:

"81-1-301. Administrator — appointment and qualifications. (1) The board shall appoint a person to be directly responsible to it for the administration of the laws relating to animal health.

(2) ~~He~~ *The person* must have a doctor of veterinary medicine degree from an accredited college or school~~,~~ and ~~he~~ must be licensed to practice veterinary medicine in this state."

Section 2625. Section 81-1-302, MCA, is amended to read:

"81-1-302. Duties of administrator. The administrator, subject to the rules of the board, may act for and perform the duties imposed by law on the board when the board is not in session, but any order or regulation promulgated by ~~him shall be~~ *the administrator is* subject to review, modification, or annulment by the board."

Section 2626. Section 81-2-101, MCA, is amended to read:

"81-2-101. Authority of department agents. In the performance of ~~his~~ official duties, an agent or officer of the department may enter on or in a lot, yard, land, building, room, premises, enclosure, car, wagon, boat, or other place or vehicle used for the treatment, storage, manufacture, display, or transportation of animals, meat, or dairy products intended for sale or disposal as food. The agent or officer may enter anywhere where ~~there may be found~~ livestock *may be found that are* affected with or ~~which~~ *that* ~~has~~ *have* been exposed to or ~~which~~ *that* the officer has reason to believe ~~is~~ *are* either affected with or ~~has~~ *have* been exposed to an infectious, contagious, communicable, or dangerous disease or disease-carrying insects."

Section 2627. Section 81-2-109, MCA, is amended to read:

"81-2-109. Expenses, how paid — lien and foreclosure. (1) If there is no violation of law or department rule, the expense of inspecting, testing, supervision of quarantine, supervision of dipping, supervision of disinfection, and supervision of other treatment of diseased or exposed livestock by the department and the sanitary inspection of dairies, packinghouses, meat depots, slaughterhouses, milk depots, and other premises ~~shall~~ *must* be paid for by the department. However, the owner of the livestock or property is liable for all expenses, except the salary of the designated supervising officer representing the department, when the owner, agent, or person in charge of the livestock or property has violated the law or rules of the department.

(2) The expenses for which an owner, agent, or person in charge is liable under subsection (1) include:

(a) all investigatory expenses, including travel, meals, and lodging of all investigating officers representing the department; and

(b) all other expenses, extraordinary or otherwise, that in the judgment of the department are reasonably necessary to ensure that there has been or will be compliance with all applicable laws and rules.

(3) The department, at the conclusion of an investigation of a violation, shall serve notice on the violator, informing ~~him~~ *the violator* of all expenses for which

~~he~~ *the violator* is liable. The notice must state that if a response is not sent within 30 days of receipt of the notice, the notice is prima facie evidence of the reasonableness of the expenses and of the violator's liability for them.

(4) A showing by the department that a response to the notice required by subsection (3) was not received within 30 days of receipt of the notice is prima facie evidence of the reasonableness of the expenses stated and of the liability of the violator for those expenses.

(5) These expenses are a lien on the livestock or other property, and the department may retain possession of the livestock until the charges and expenses are paid. The lien is not dependent on possession and may be foreclosed in the name of the agent of the department by sale at public auction of the stock or as many as may be necessary to pay the sum of the costs, after 10 days' notice by posting in three public places in the county. The lien may also be foreclosed by an action in a court of competent jurisdiction against the owner of the livestock to recover the amount of charges and expenses."

Section 2628. Section 81-2-112, MCA, is amended to read:

"81-2-112. Prohibition by governor on importation of animals from localities where disease exists — penalty. (1) Whenever the governor has good reason to believe that any disease dangerous or inimical to the livestock or poultry industry or dangerous to dogs or other animals has become epidemic in certain localities in any other state~~,~~ *or* territory, *the* District of Columbia, or *any* other country, ~~he~~ *the governor* shall issue a proclamation designating ~~such~~ *the* localities and prohibiting the importation ~~therefrom~~ *from those localities* into this state, except under ~~such~~ restrictions ~~as he~~ *that the governor* may ~~deem~~ *consider* proper, of any livestock, poultry, dogs, or other animals or articles or commodities likely to convey ~~such~~ *the* disease or diseases.

(2) ~~Any~~ *A* person who, after the publication of ~~such~~ *the* proclamation, knowingly receives any livestock, dog, fowl, or other animal or article or commodity designated in ~~such~~ *the* proclamation as likely to convey disease from any of the prohibited districts and transports or conveys the ~~same~~ *animal, article, or commodity* within the limits of this state is punishable by imprisonment in the county jail for not less than 60 days or more than 8 months ~~and by~~ *or* a fine of not less than $300 or more than $5,000, or ~~by~~ both, ~~such fine and imprisonment~~ and is further liable for any and all damages and loss that may be sustained by any person or persons by reason of the disobedience of ~~such~~ *the* proclamation."

Section 2629. Section 81-2-201, MCA, is amended to read:

"81-2-201. Classification of animals as to compensation for slaughter. Animals slaughtered under the direction of the department by order of the board are divided into two classes for the purposes of compensation:

(1) Animals determined by the department to be affected with an incurable disease~~,~~ ~~which~~ *that* are destroyed by order of the board~~,~~ are designated as animals of class 1, and unless otherwise provided, each of the animals ~~shall~~ *must* be paid for on the basis of 75% of its appraised value. The county in which the animal was owned at the time it was determined to be affected with an incurable disease is liable in part, as later provided, for an indemnity to be paid for the animal. The ownership and county are determined by an affidavit of the owner of the animal or ~~his~~ *the owner's* agent. Each animal directed to be destroyed ~~shall~~ *must* be appraised by a representative or an authorized agent of the department with the owner agreeing in writing as to the value of the animal. When appraised, due consideration ~~shall~~ *must* be given to its breeding value as well as

its dairy or meat value and the condition of the animal as to the disease and the present and probable effect of the disease on the animal. In the absence of an agreement, there ~~shall~~ *must* be appointed three competent, disinterested parties, one appointed by the department, one by the owner, and a third by the first two, to appraise each animal, taking into consideration its breeding value as well as its dairy or meat value and the condition of the animal as to the disease and the present probable effect of the disease on the animal. The judgment of the majority is the judgment of the appraisers and is binding on both parties as the final determination of indemnity to be paid for each animal. The total compensation of each group of appraisers is limited to $5 for the group appraisal, one-half of which ~~shall~~ *must* be paid by the department. The total amount of indemnity paid by the state and a county for an animal may not exceed the actual sound value of an animal of its class, and the total combined amount of indemnity paid for the animal by the state and a county may not exceed the sum of $100 for a registered purebred animal or the sum of $50 for a grade animal. Animals presented for appraisal as purebreds ~~shall~~ *must* be accompanied by their registration papers at the time of appraisal*,* or they ~~shall~~ *must* be appraised as grades. If purebreds are less than 3 years old and not registered, the department may grant a reasonable time for their registration and presentation of their registration papers to the appraiser. Registration papers ~~shall~~ *must* accompany the claim for indemnity.

(2) Animals of class 1 ~~shall~~ *must* be paid for on the basis of their full appraised value as determined in this section if no evidence of incurable disease is disclosed by autopsy, bacteriologic, serologic, microscopic, or other findings. The total combined amount of indemnity paid by the state and a county for an animal may not exceed the actual sound value of an animal of its class. The total combined amount of indemnity paid by the state and a county for the animal may not exceed $100 for a registered purebred animal or $50 for a grade animal.

(3) Animals ~~which~~ *that* are determined by the department to be affected with or exposed to foot-and-mouth disease, rinderpest, contagious pleura pneumonia, surra, or other infectious, contagious, communicable, or dangerous disease, which is not of its nature necessarily fatal, and *that* are destroyed by order of the department as a sanitary safeguard~~,~~ are designated as animals of class 2*,* and each animal ~~shall~~ *must* be paid for on the basis of its full appraised value. The appraised value ~~shall~~ *must* be determined in the manner set out in subsection (1) ~~of this section~~. The appraisal of the animals ~~shall~~ *must* be based on the meat, dairy, or breeding value of the animal, but ~~where~~ *when* appraisal is based on breeding value of the animal, ~~no~~ *an* appraisal may *not* exceed three times its meat or dairy value. The total amount of indemnity paid by the state for an animal may not exceed the actual sound value of an animal in its class. ~~No~~ *An* indemnity for a class 2 animal may *not* be paid by a county. In the case of destruction of an animal afflicted with brucellosis*, also known as* ~~(~~Bang's disease~~)~~, ~~no~~ *an* indemnity ~~shall~~ *may not* be paid for the animal unless the board, in its discretion, determines the best interests of this state will be served by payment of an indemnity. In this event, the board shall set out standards of indemnity by rules and may not pay in excess of $100 for a registered purebred animal or $50 for a grade animal. In all cases ~~where~~ *in which* the federal government or *an* agency other than the state compensates the owner in whole or in part for livestock destroyed as a sanitary safeguard, the amount of compensation from the state ~~shall~~ *must* be determined under 81-2-210.

(4) Animals ~~which~~ *that* are injured or killed while they are being inspected or tested under an order of the department or its agent~~, which~~ *and that* do not come

within either class 1 or class 2~~,~~ may be paid for at their full appraised value if the claim for the animal is recommended for payment at a meeting of the board. ~~Where~~ *When* it is shown that the injury or death of the animal was not proximately due to the negligence of the owner or ~~his~~ *the owner's* agent, the whole claim, when approved, ~~shall~~ *must* be paid out of department funds. The limit of indemnity for an animal paid for by the state may not exceed that fixed by this section for *class 2* animals ~~of class 2~~."

Section 2630. Section 81-2-204, MCA, is amended to read:

"81-2-204. Presentation of claims for indemnity. Claims against the state and county ~~which~~ *that* arise from the destruction of animals or property by order of the department ~~shall~~ *must* be made on forms provided by the department. They must contain an affidavit by the owner or ~~his~~ *the owner's* agent with knowledge of the animal or property, certifying to the ownership of the animal or property, the county in which they are owned, and that the animal or property has been destroyed under the law and the rules of the department. These claims must be accompanied by a certificate from the department that the animal or property was ordered destroyed. The claims ~~shall~~ *must* also be accompanied by a certificate of ~~appraisement~~ *appraisal* as appraisal is determined under 81-2-201, together with an account of sale showing the net proceeds from the sale of the animal, if any, paid to the owner of the animal."

Section 2631. Section 81-2-206, MCA, is amended to read:

"81-2-206. Verification and payment of claims. (1) All claims against the department must be verified by oath of the claimant or ~~his~~ *the claimant's* agent with knowledge of the facts.

(2) Claims against the state arising under this part, if found correct, ~~shall~~ *must* be processed and paid from funds of the department."

Section 2632. Section 81-2-208, MCA, is amended to read:

"81-2-208. Sale of condemned carcasses — disposition of proceeds. ~~Where~~ *When* the carcass of an animal ordered destroyed under this chapter is found on official postmortem inspection to be fit for human consumption, the owner ~~shall~~ *must* receive the net proceeds from the sale of the carcass. The proceeds ~~shall~~ *must* be deducted from ~~his~~ *the owner's* claim against the state and county for the slaughter. A representative of the department may, when considered advisable or necessary or when it is desired by the owner, sell the carcass on terms ~~he~~ *that the representative* considers to be in the best interests of this state, and the net proceeds obtained from the sale ~~shall~~ *must* be paid to the owner. This procedure does not invalidate the owner's claim for indemnity for any balance due ~~him~~ *the owner*."

Section 2633. Section 81-2-209, MCA, is amended to read:

"81-2-209. When no indemnity. (1) The owner of an animal or property destroyed under this chapter is entitled to indemnity, except in the following cases:

(a) animals belonging to the United States;

(b) animals brought into this state ~~which~~ *that* violate this chapter or rules of the department;

(c) animals ~~which~~ *that* the owner or claimant knew to be diseased or had notice of the disease at the time they came into ~~his~~ *the owner's or claimant's* possession;

(d) animals ~~which~~ *that* had the disease for which they were slaughtered or ~~which~~ *that* were destroyed because of exposure to the disease at the time of their arrival in this state. However, a class 2 animal shipped into this state under department rules and accompanied by the proper certificate of health from a recognized state or federal veterinarian may be paid for when payment is authorized by the department.

(e) animals ~~which~~ *that* have not been in this state for at least 120 days before the discovery of the disease.~~; however~~ *However*, class 2 animals ~~which~~ *that* have not been in the state *for* 120 days may be paid for when payment is authorized by the department~~;~~.

(f) when the owner or agent has not used reasonable diligence to prevent disease or exposure to disease;

(g) when the owner or agent has not complied with the rules of the department with respect to animals condemned;

(h) when animals condemned are not destroyed within 60 days after they are determined to be affected with or exposed to a disease ~~which~~ *that* requires them to be destroyed by order of the department.

(2) ~~No compensation~~ *Compensation* or indemnity will *not* be paid for the destruction of livestock affected with tuberculosis or other infectious, contagious, communicable, or dangerous disease unless the entire herd or band of affected livestock is under the supervision of the department for the eradication of the disease."

Section 2634. Section 81-2-303, MCA, is amended to read:

"81-2-303. Owner guilty of misdemeanor, when. A person in a disease control area who does not gather ~~his~~ *the person's* livestock after being notified by the department or its agent to have the livestock available or who refuses to have the livestock inspected, tested, treated, or vaccinated or *who* violates this part is guilty of a misdemeanor."

Section 2635. Section 81-2-502, MCA, is amended to read:

"81-2-502. Licenses. (1) It is unlawful to handle, prepare, cook, or otherwise treat garbage to feed to swine or other animals or to feed garbage to swine or other animals without first securing a license for that purpose from the department ~~of livestock~~. One license issued to the entrepreneur, corporation, or individual responsible for a particular garbage feeding enterprise covers all garbage feeders concerned with the enterprise. The license provided for in this section expires on December 31 of the year in which it is issued. The department shall establish a fee to be charged for all licenses issued under this part. All license fees collected ~~shall~~ *must* be paid into the state special revenue fund for the use of the department.

(2) This part does not apply to a person who feeds only ~~his~~ *the person's* own household garbage to swine or other animals."

Section 2636. Section 81-2-602, MCA, is amended to read:

"81-2-602. Report of sales or distribution. A person, firm, or corporation ~~which~~ *that* has secured permission from the department to sell or distribute tuberculin for animal use in this state shall, on the same day it sells, furnishes, or supplies tuberculin, report in writing to the department the name and address of the person and a statement of the amount of tuberculin supplied to ~~him~~ *the person*."

Section 2637. Section 81-2-703, MCA, is amended to read:

"81-2-703. Documents required for importation — exemptions. (1) Except as provided in subsection (6), ~~no~~ *an* animal, animal semen, or animal biologic may *not* be brought into the state without a permit and ~~also~~ a health certificate.

(2) The department shall issue a permit if no significant danger to the public health will ensue upon importation of the animal*, animal semen, or animal biologic* into the state. ~~No~~ *A* permit may *not* be issued for livestock infected with or exposed to brucellosis, tuberculosis, or any other infectious, contagious, or communicable animal disease, except that cattle with a positive reaction to a recognized test for brucellosis may be permitted entry when destined directly for slaughter at a slaughterhouse under *the supervision of the* United States department of agriculture ~~supervision~~.

(3) The department may waive the requirement for a health certificate or a permit as provided in subsection (7).

(4) The requirements of subsection (1) apply regardless of species, breed, sex, class, age, point of origin, place of destination, or purpose of movement.

(5) All required documents must be attached to the waybill or be in possession of the driver of the transporting vehicle or of the person in charge of the animals. When a single permit or health certificate is issued for animals being moved in more than one vehicle, the driver of each vehicle ~~shall~~ *must* have in ~~his~~ *the driver's* possession a copy of the permit and, ~~where~~ *when* applicable, a health certificate.

(6) Animals, animal semen, or animal biologics being moved through the state with no intent to unload or deliver in the state are exempted from this part. In an emergency situation, ~~such~~ transitory cargo may be unloaded in compliance with the quarantine rules promulgated by the department.

(7) A waiver of the requirement for a health certificate or a permit ~~shall~~ *must* be based upon evidence that there will be no significant danger to the public health if the exemption is granted."

Section 2638. Section 81-3-106, MCA, is amended to read:

"81-3-106. Publication of notice of rerecording brands. Between January 1 and June 30 in each rerecording year, the department shall publish, in at least one issue of at least one newspaper of general circulation in each county of this state in which a newspaper is published, a notice to the effect that the year is a year for rerecording marks and brands and that no mark or brand continues of record unless rerecorded. The department shall also mail to each person in whose name a mark or brand stands of record a similar notice addressed to the person at ~~his~~ *the person's* post-office address as shown by the records in the department."

Section 2639. Section 81-3-203, MCA, is amended to read:

"81-3-203. Duties of state stock inspectors and deputy stock inspectors. (1) State stock inspectors and deputy state stock inspectors, upon the application of the owner or the duly authorized agent of the owner of livestock, shall inspect the livestock ~~which~~ *that* is intended for sale, removal, shipment, or slaughter at a licensed slaughter plant and issue a certificate of inspection ~~therefor~~ if it appears with reasonable certainty that the applicant is the owner of the livestock or has the lawful right to the possession ~~thereof~~ *of the livestock*.

(2) The inspection ~~shall~~ *must* include an examination of the livestock and all marks and brands ~~thereon~~ *on the livestock* to identify ownership of the livestock.

The certificate of inspection ~~shall~~ *must* be made in triplicate and ~~shall~~ *must* specify the date of inspection, the place of origin and place of destination of the shipment, the name and address of the owner of the livestock or of the applicant for inspection and the purchaser or transferee, if applicable, the class of the animal, the marks and brands, if any, upon the animal, and any other information upon the form of certificate ~~as~~ *that* the department may from time to time require. One copy of the certificate ~~shall~~ *must* be retained by the inspector, one copy ~~shall~~ *must* be furnished by the inspector to the owner or shipper of the livestock, and one copy ~~shall~~ *must* be filed by the inspector with the department within 5 days.

(3) If it appears with reasonable certainty that the applicant is the owner of the livestock or has the lawful right to the possession ~~thereof~~ *of the livestock*, the state stock inspectors or deputy state stock inspectors, upon application of an owner or ~~his~~ *the owner's* agent of the livestock to be consigned and delivered directly to a licensed livestock market or licensed livestock slaughterhouse located in another county of the state or delivered directly to a shipping point duly approved by the department where a livestock inspector is available for inspection in an adjoining county, shall issue to the person a separate market consignment permit or transportation permit for each owner when the owner or owners or their duly authorized agents sign the permit certifying the brands, description, and destination of the livestock. The market consignment permit or transportation permit ~~shall~~ *must* be made in triplicate~~, shall~~ *and must* specify the date and time issued, the place of origin and place of destination of the shipment, the name and address of the owner of the livestock and the name and address of the person actually transporting the livestock if different than the owner, the kind of livestock, the marks and brands, if any, upon the livestock, a description of the vehicle or vehicles to be used to transport the livestock to include the license number of the vehicles, and any other information upon the form of permit ~~as~~ *that* the department may from time to time require. ~~Any~~ *A* permit ~~so~~ issued ~~shall~~ *must* be good for shipment within 36 hours from *the* date and time of issue~~;~~. ~~however~~ *However*, permits not used within this time limitation must be returned to the issuing officer to be canceled and to release the permittee from performance. One copy of the permit ~~shall~~ *must* be retained by the inspector, one copy ~~shall~~ *must* be filed by the inspector with the department within 5 days of the date of issue, and one copy ~~shall~~ *must* be furnished by the inspector to the owner or shipper of the livestock, which copy of the permit ~~shall~~ *must* accompany the shipment and be delivered to the state stock inspector at the livestock market or shipping point where the livestock ~~is~~ *are* delivered.

(4) Upon application of an owner or ~~his~~ *the owner's* agent, when it appears with reasonable certainty that the applicant is the owner of the livestock or has lawful right to the possession ~~thereof~~ *of the livestock*, a state stock inspector shall issue a transportation permit ~~which~~ *that* will allow the movement of the livestock into an adjoining county to land owned or controlled by the owner or ~~his~~ *the owner's* agent for purposes of grazing. The transportation permit ~~shall~~ *must* state the breed, description, marks and brands, if any, head count, and description of land to and from which the livestock will be moved. The permit is valid as provided in 81-3-211(6)(d). A state stock inspector may enter the premises where livestock ~~so~~ moved have been transported and inspect any livestock moved under the transportation permit or any livestock commingled ~~therewith~~ *with the transported livestock*.

(5) ~~Any~~ *A* person transporting strays or livestock not lawfully under ~~his~~ *the person's* control is guilty of a misdemeanor and punishable as provided in 81-3-231."

Section 2640. Section 81-3-204, MCA, is amended to read:

"81-3-204. Seizure of livestock — retention of livestock — sale — disposal of proceeds. (1) All state stock inspectors inspecting any livestock before or after shipment or removal from any county in this state, upon a change of ownership, or at the preslaughter inspection at a licensed slaughterhouse may inspect and seize either at the point of sale, shipment, destination, or slaughter or en route any livestock or proceeds ~~thereof which~~ *from livestock that* the inspector believes ~~is~~ *are* stolen or upon which brands have been altered or obliterated or ~~which~~ *that* does not conform to the description contained on the tally sheet furnished by the shipper ~~thereof~~ or to the description contained in any certificate of inspection or release issued before shipment or removal of the livestock.

(2) Upon taking possession of livestock under this section, a state stock inspector may retain the livestock in ~~his~~ *the inspector's* possession for 15 days to make further investigation relative to its ownership. A state stock inspector may either at once or at any time within 15 days sell the livestock at a licensed livestock market or in the open market for the best available price and remit the proceeds, less the cost of keeping and sale, to the department together with a full description of the livestock sold, giving marks and brands, if any, and a statement of the reason for the seizure and sale. The proceeds ~~shall~~ *must* be deposited by the department with the state treasurer and credited to the department fund, where it is subject to claim by the owner of the livestock in the same manner and for the same length of time as is provided by law for the making of claims for moneys arising from the sale of stray stock."

Section 2641. Section 81-3-205, MCA, is amended to read:

"81-3-205. Fees for inspection and livestock transportation permits. (1) For the service of inspection of all livestock except horses, mules, or asses before removal from a county or before change of ownership, the inspector making the inspections ~~shall~~ *must* receive a fee established by the department for each head inspected. For the issuance of a market consignment permit or transportation permit, ~~(~~other than a permanent permit~~)~~, before removal from a county for all livestock, the inspector issuing the permits ~~shall~~ *must* receive a fee established by the department for each permit issued and ~~shall~~ *must* receive in addition ~~his~~ *the inspector's* necessary actual expenses, to be paid by the owner or the person for whom the inspection is made or permit issued. For the issuance of a permanent horse transportation permit, the state stock inspector taking the application for permit shall receive a fee established by the department for each permit issued. All inspection and permit fees and expenses ~~shall~~ *must* be collected by the inspector at the time of inspection or issuance of permit, ~~and~~ all the fees and expenses collected by a deputy state stock inspector ~~shall~~ *must* be retained by ~~him~~ *the deputy*, and all ~~such~~ fees and expenses collected by a state stock inspector ~~shall~~ *must* be sent by ~~him~~ *the inspector* to the department for deposit in the state treasury to the credit of the state special revenue fund for the use of the department.

(2) For the service of inspection before any livestock except a horse, mule, or ass is sold or offered for sale at a licensed livestock market or slaughtered at a licensed slaughterhouse, a state stock inspector or deputy state stock inspector making the inspection ~~shall~~ *must* receive a fee established by the department for

each head inspected. All fees ~~shall~~ *must* be paid by the owner or by the person for whom the inspection is made. For releasing an animal so that it may be removed from the premises of a licensed livestock market, the state stock inspector making the release ~~shall~~ *must* receive a fee established by the department for each head inspected from the owner or the person for whom the release is made. All fees for inspection and release at the market ~~shall~~ *must* be collected at the time the inspection or release is made by the state stock inspector making the inspection or release and ~~shall~~ *must* be sent by ~~him~~ *the inspector* to the department for deposit in the state treasury to the credit of the state special revenue fund for the use of the department. All fees for preslaughter inspection made at a licensed slaughterhouse by the state stock inspector ~~shall~~ *must* be paid to the department for deposit in the state treasury to the credit of the state special revenue fund for the use of the department. Preslaughter inspection fees paid to a deputy state stock inspector ~~shall~~ *must* be retained by ~~him~~ *the deputy*.

(3) (a) For the service of inspection of horses, mules, or asses before removal from a county or before change of ownership, the inspector making the inspection ~~shall~~ *must* receive a fee established by the department for each head inspected and ~~shall~~ *must* receive in addition ~~his~~ *the inspector's* necessary actual expenses, to be paid by the owner or the person for whom the inspection is made. All fees and expenses collected by a state stock inspector must be sent by ~~him~~ *the inspector* to the department for deposit in the state treasury to the credit of the state special revenue fund for the use of the department.

(b) For the service of inspection before a horse, mule, or ass is sold or offered for sale at a licensed livestock market, a state stock inspector making the inspection ~~shall~~ *must* receive a fee established by the department for each head inspected. All fees ~~shall~~ *must* be paid by the owner or the person for whom the inspection is made to the state stock inspector.

(4) All inspection and release fees and expenses ~~shall~~ *must* be paid to the department for deposit in the state treasury to the credit of the state special revenue fund for the use of the department unless paid to a deputy state stock inspector. State stock inspectors ~~shall~~ *must* be paid for their services and receive their expenses as fixed by the department."

Section 2642. Section 81-3-214, MCA, is amended to read:

"81-3-214. Entry permit. A transportation permit for the entry of livestock into Montana must be obtained by the owner or ~~his~~ *the owner's* agent from a state stock inspector prior to the entry of the livestock into Montana. The department shall establish a fee for the permit, to be remitted by the department to the state treasury for credit to the state special revenue account of the department. The department shall provide by rule for the issuance and control of transportation permits authorized by this section."

Section 2643. Section 81-3-223, MCA, is amended to read:

"81-3-223. Action by dissatisfied owner — costs. ~~Should~~ *If* the owner of the animal ~~so~~ seized and killed ~~feel~~ *under this part is* dissatisfied with the valuation made, ~~he~~ *the owner* may maintain an action against the department or, if the animal is seized by a sheriff, against that sheriff's county, and ~~should he fail~~ *if the owner fails* to recover damages in any greater amount than that allowed under 81-3-222, ~~he~~ *the owner* shall bear all costs that may be incurred in the maintenance of the action."

Section 2644. Section 81-3-231, MCA, is amended to read:

"81-3-231. Penalties. (1) A person is guilty of a misdemeanor and is punishable as provided in subsection (5) ~~of this section~~ if ~~he~~ *the person* removes livestock or causes livestock to be removed from a county in this state:

(a) without having the livestock inspected before removal if an inspection is required by law;

(b) without obtaining a market consignment permit or transportation permit if the permits are required by law;

(c) ~~and does obtain~~ *after obtaining* a market consignment permit for livestock but does not deliver the livestock transported ~~thereunder~~ *under the permit* to the livestock market designated in the market consignment permit;

(d) ~~and does obtain~~ *after obtaining* a transportation permit for the livestock but does not deliver the livestock transported ~~thereunder~~ *under the permit* to the destination as shown on the transportation permit and fails to have the *transported* livestock ~~so transported~~ inspected at the point of destination.

(2) A person who sells livestock or offers livestock for sale at a livestock market without having the livestock inspected or *who* removes livestock or causes livestock to be removed from a livestock market without obtaining a release is guilty of a misdemeanor and is punishable as provided in subsection (5) ~~of this section~~.

(3) A person who has ~~in his~~ charge *of* livestock being removed from a county in the state for which an inspection certificate, a market consignment permit, a transportation permit, or a market release certificate has been issued and *who* fails to have in ~~his~~ *the person's* possession *when* accompanying the livestock the inspection certificate, market consignment permit, transportation permit, or market release certificate as issued for the livestock~~,~~ or who, having the certificate of inspection, market consignment permit, transportation permit, or market release certificate, fails to exhibit it to a sheriff, deputy sheriff, constable, highway patrol officer, state stock inspector, or deputy state stock inspector ~~at his~~ *upon* request is guilty of a misdemeanor and is punishable as provided in subsection (5) ~~of this section~~.

(4) Except as specifically otherwise provided, a person violating any of the provisions of this part is guilty of a misdemeanor and is punishable as provided in subsection (5) ~~of this section~~.

(5) Upon conviction under this section, a person, firm, association, or corporation shall be fined not less than $50 or more than $500 or imprisoned in the county jail for a period of not more than 6 months, or both ~~fined and imprisoned~~. Of all fines assessed and collected under this section, except those assessed and collected in a justice's court, 50% ~~shall~~ *must* be paid into the state treasury and credited to the state special revenue fund for the use of the department and 50% ~~shall~~ *must* be paid into the general fund of the county in which the conviction occurred."

Section 2645. Section 81-3-233, MCA, is amended to read:

"81-3-233. Penalty for removal of livestock from state without inspection — exception. ~~Any~~ *A* person, other than the owner or ~~his~~ *the owner's* agent or employee, who, without consent of the owner, removes or causes to be removed from this state any cow, ox, bull, stag, calf, steer, heifer, horse, mule, mare, colt, foal, or filly without having the ~~same~~ *animal* inspected ~~where such~~ *when* inspection is required by law is guilty of a felony and shall be punished by a fine of not more than $2,000, by imprisonment in the state prison for a term of not more than 3 years, or by both ~~such fine and imprisonment~~. The

provisions of this section do not apply to ~~any~~ *a* person who removes from this state ~~any~~ *an* animal specified by this section for the purpose of obtaining emergency treatment for ~~such~~ *the* animal by a licensed veterinarian."

Section 2646. Section 81-4-104, MCA, is amended to read:

"81-4-104. Barbed wire fences to be kept in repair. The owners of barbed wire fences ~~must~~ *shall* keep the same in repair, and ~~any~~ *a* person ~~receiving~~ *who receives* notice in writing that ~~his~~ *the person's* barbed wire fence or any part ~~thereof~~ *of the fence* is down or in such condition as to be likely to injure any livestock and *who* fails or refuses to repair ~~such~~ *the* fence is liable to pay damages in an amount equal to the value of any cattle, horses, mules, or other domestic animals ~~which~~ *that* may be injured by coming into contact with the fence."

Section 2647. Section 81-4-108, MCA, is amended to read:

"81-4-108. Disposal of proceeds of sale of wire after payment of expense. The proceeds of ~~such~~ *a* sale ~~shall~~ *under 81-4-107 must* be used to defray the cost of collecting and selling ~~said~~ *the* wire, and the balance, if any, ~~shall~~ *must* be placed by the county treasurer in a special fund and ~~shall~~ *must* be held ~~by him~~ subject to claim by any person establishing to the satisfaction of the board of county commissioners that ~~he~~ *the person* was the lawful owner of ~~said~~ *the* wire and entitled to the remaining proceeds of ~~such~~ *the* sale. If ~~no~~ *a* person ~~claims said~~ *does not claim the* money within 1 year of the date of sale, the ~~same shall~~ *money must* be deposited in the general fund of the county."

Section 2648. Section 81-4-207, MCA, is amended to read:

"81-4-207. Castration of animals running at large — notice to owner — expense and charges. (1) ~~Any~~ *A* person may take up and secure any ~~such~~ animal found running at large on the open range. After taking it up ~~he~~ *the person* shall, without unnecessary delay, post at the United States post office or as near as may be to the place where the animal was taken up a notice truly dated and subscribed by ~~him~~ *the person* or ~~his~~ *the person's* agent to the effect that the animal, describing it by marks and brands, ~~(~~if any~~)~~, color, and sex, was taken up on the day named while it was running at large on the open range in the county, ~~(~~naming the county~~)~~, and that, unless claimed and removed within 5 days ~~next~~ after the date of the posting, the animal will be castrated at the expense of the owner ~~thereof~~. ~~Should~~ *If* the owner, person, firm, corporation, or association having management or control of ~~such~~ *the* animal ~~be~~ *is* known to the person who took the animal up, personal service of ~~such~~ *the* notice upon the owner, person, firm, corporation, or association having management or control of the animal ~~shall be~~ *is* the equivalent to the posting. The notice, if personally served, may state that, unless the animal is claimed and removed within 2 days ~~next~~ after the date of the notice served personally, the animal will be castrated at the expense of the owner ~~thereof~~.

(2) If ~~such~~ *the* animal ~~so~~ taken up ~~be~~ *is* not claimed and removed within ~~said~~ 5 days or ~~said~~ 2 days, as the case may be, it may lawfully be castrated in the usual manner and doing no more harm than is necessary. The expense of castration ~~shall~~ *must* be paid by the owner. If ~~such~~ *the* animal ~~be~~ *is* claimed within the time ~~herein~~ prescribed, the claimant shall pay to the person who took the animal up the reasonable expense of ~~the~~ keeping and ~~feed thereof~~ *feeding the animal* since it was taken up and also the sum of $5 for the taking up and giving of the notice ~~aforementioned~~. Upon making ~~such~~ *the* payments, the claimant shall immediately remove and take away ~~said~~ *the* animal."

Section 2649. Section 81-4-208, MCA, is amended to read:

"81-4-208. Killing of animal running at large — notice — posting and service. (1) If ~~any such~~ *an* animal ~~so~~ running at large cannot, by reasonable effort, be captured, taken up, or corralled, it may lawfully be killed unless the owner or person having the management or control of it ~~shall take~~ *takes* the animal off the open range and ~~restrain~~ *restrains* it from running at large ~~thereon~~ within 10 days ~~next~~ after ~~the~~ giving ~~of~~ notice as ~~hereinafter~~ provided *in this section*. The notice ~~shall~~ *must* be signed by one or more taxpayers of the vicinity of the range ~~whereon such~~ *on which the* animal ~~be~~ *is* at large and *must* be substantially as follows:

"To whom it may concern:

Take notice, that a certain (stallion, ridgeling, unaltered male mule, or jackass, as the case may be) is running at large on the open range (identify the range by general description) in .... County, Montana. Unless ~~said~~ *the* animal ~~be~~ *is* removed ~~therefrom~~ *from the range* and restrained from running at large on open range~~,~~ within 10 days ~~next~~ after the date of this notice, it will be killed.

(Date) (Signature or signatures)"

(2) The notice ~~shall~~ *must* be posted at the post office nearest the place where the animal was last seen on the range and ~~like~~ *similar* notices *must be posted* in two other of the most public places in the vicinity of ~~said~~ *the* range, and ~~like~~ *the* notice ~~shall~~ *must* at once be mailed to the owner or person having management or control of the animal~~,~~ if ~~his~~ *the owner's or person's* name and address ~~be~~ *are* known."

Section 2650. Section 81-4-212, MCA, is amended to read:

"81-4-212. Castration of violating bulls. ~~Any~~ *A* bull found running at large on the open range or national forest reserve in violation of the provisions of 81-4-210 through 81-4-213 may be caught and castrated by any person finding ~~such a~~ *the* bull, provided *that* any purebred dairy bull found running at large may be taken up and the party holding the bull shall notify the owner in person~~,~~ ~~and if~~. *If* the owner of ~~such~~ *the purebred* bull does not take possession of ~~said~~ *the* bull within 24 hours after being notified, the party holding ~~such~~ *the* bull may castrate ~~him~~ *the bull*."

Section 2651. Section 81-4-220, MCA, is amended to read:

"81-4-220. Marking — right of action against trespassing stock. ~~No~~ *A* person owning or possessing agricultural or grazing land or patented or unpatented mining claims lying within ~~said~~ *the* national forest reserves of this state or on the public range lying adjoining to any ~~said~~ national forest reserve, the boundaries of which ~~said~~ lands are not marked as required by the provisions of 81-4-218 through 81-4-220, ~~shall~~ *may not* have any claim or cause of action or right of action against the owner of sheep, cattle, or other livestock under the charge of a herder for trespass committed by ~~such~~ *the* livestock upon ~~said~~ *that* land, and ~~such shall be~~ *this is* the rule regardless of whether the ~~said~~ *trespassing* livestock ~~so trespassing~~ strayed ~~thereon~~ *on the land* on their own inclination and without being driven or whether ~~said~~ *the* livestock were herded or driven on ~~said~~ *the* land~~,~~. ~~provided that no~~ *However, a* person or persons ~~can~~ *may not* claim exemption for trespassing under the provisions of this section ~~where such~~ *if the* person or persons ~~shall have~~ *have* actual knowledge of the boundary lines of ~~any~~ lands ~~herein~~ referred to *in this section*. ~~In no event shall damages~~ *Damages,* other than nominal damages*, may not* be assessed against ~~said~~ *the* trespass unless the landowner or ~~his~~ *the landowner's* duly authorized agent ~~shall~~, within 6 months after ~~said~~ *the* trespass has been committed, ~~give said~~ *gives the*

trespasser written notice demanding a sum certain for damages sustained by reason of ~~such~~ *the* trespass."

Section 2652. Section 81-4-308, MCA, is amended to read:

"81-4-308. Retrieval of impounded animals ~~a~~ — misdemeanor — penalty. ~~Any~~ *A* person who takes or rescues ~~any~~ *an* animal impounded as provided in 81-4-307 from the possession of the person ~~in whose~~ *with* custody ~~the same may be~~ *of the animal,* ~~,~~ without ~~his~~ *the possessor's* consent~~, shall be~~ *is* guilty of a misdemeanor and upon conviction ~~therefor~~ *shall* be ~~subject to a fine of~~ *fined* not less than $100 or more than $500 or ~~shall~~ be confined in the county jail *for* not more than 60 days*,* or both ~~such fine and imprisonment~~."

Section 2653. Section 81-4-322, MCA, is amended to read:

"81-4-322. Horse herd districts — size — location — petition — notice and hearing — abolishment. (1) Horse herd districts may be created in any county in the state of Montana upon the petition of owners or possessors of 55% of the land of ~~such~~ *the* district. ~~Such~~ *The* district ~~shall~~ *must* contain 12 square miles or more lying not less than 1 mile in width outside of incorporated cities or towns. ~~Such~~ *The* petition ~~shall~~ *must* designate the months of the year when horse herd district regulations are effective.

(2) Upon presentation and filing of a petition properly signed and reciting the outside boundaries and description of the proposed district, together with the post-office address of the signers ~~thereof~~, with the clerk and recorder in the county in which the ~~said~~ *the* district is being created, the county commissioners of ~~such~~ *the* county upon receipt ~~thereof~~ *of the petition* shall set a date for hearing protests and verification of signatures ~~thereto~~ and shall give not less than 20 days' notice of the ~~same~~ *hearing* by three publications in a newspaper of general circulation in the county of the proposed district. ~~Should~~ *If* it ~~appear~~ *appears* to ~~such~~ *the* county commissioners, after ~~such~~ *the* hearing, that the signatures attached to ~~such~~ *the* petition were genuine, they shall immediately make an order declaring ~~such~~ *the* horse herd district created and established, after which the county commissioners ~~must~~ *shall* give notice by two weekly publications in some newspaper in the county, nearest the district, stating the period when ~~such~~ *the* horse herd district will be in effect and when ~~such~~ *the* district ~~shall~~ *is* not ~~be~~ in effect. ~~Such~~ *The* order ~~shall~~ *may* not be effective until 30 days have expired after the order.

(3) ~~Such herd~~ *Herd* districts may be abolished at any time upon proceedings as ~~hereinbefore~~ set forth for the establishment of ~~such~~ *a* herd district.

(4) The estimated expense of all publications required by 81-4-321 through 81-4-328 ~~shall~~ *must* be paid by the petitioners, and no part ~~thereof shall~~ *of the expenses may* be paid by the county.

(5) Upon petition of ~~any~~ *an* owner or possessor of land lying contiguous and adjoining any *horse* herd district ~~heretofore created~~ and upon like hearing and notice as ~~hereinabove~~ provided ~~for~~ *in this section*, ~~such~~ *the* lands ~~shall~~ *must* be included in ~~such~~ *the horse* herd district and become a part ~~thereof~~ *of the district*.

(6) ~~Should~~ *If* the signature of a lessee ~~appear~~ *appears* on the petition creating or abolishing any *horse* herd district, the owner or owners of ~~said~~ *the* land may appear either in person or by agent and enter their protest, and the board of county commissioners shall remove the name of *the* lessee from ~~said~~ *the* petition, and ~~no~~ *a* person ~~shall~~ *may not* be permitted to withdraw ~~his~~ *the person's* name after the hour set for hearing ~~same~~ *the petition*."

Section 2654. Section 81-4-326, MCA, is amended to read:

"81-4-326. Retention and sale of horses for damages and care — procedure. (1) The owner or occupant of the land upon which ~~such~~ wrongful entry is made *under 81-4-325* may take into ~~his~~ *the owner's or occupant's* possession ~~such~~ *the* horse or horses and shall reasonably care for the ~~same~~ *horse or horses* while in ~~his~~ possession and may retain possession of ~~said~~ *the* horse or horses and ~~shall have~~ *has* a lien and claim ~~thereon~~ *on the horse or horses* as security for payment of ~~such~~ *the* damages and reasonable charges for the care of ~~said~~ *the* horse or horses while in ~~his~~ *the owner's or occupant's* possession. The person taking up ~~said~~ *the* horse or horses shall within 48 hours after taking possession ~~thereof~~ notify ~~said~~ *the* owner, owners, or persons in charge ~~thereof~~ *of the horse or horses* by a notice in writing, describing ~~said~~ *the* horse or horses taken up, including marks and brands, if any, the amount of damages claimed, ~~and~~ the charge per head per day for caring for and feeding the ~~same~~ *horse or horses*, and ~~describing~~, either by legal subdivisions or other general description, the location of the premises upon which ~~said~~ *the* horse or horses are held and requiring ~~him~~ *that person* within 48 hours after receiving ~~said~~ *the* notice to take the ~~said~~ horse or horses away after making full payment for all damages and costs of ~~said~~ *the* horse or horses. ~~Such~~ *The* notice ~~shall~~ *must* be given by personal service on the ~~said~~ owner, owners, or person in charge ~~thereof~~ *of the horse or horses* or by leaving ~~said~~ *the* notice at ~~his~~ *that person's* usual place of residence with some member of ~~his~~ *that person's* family over ~~the age of~~ 14 years *of age* or by sending ~~said~~ *the* notice by prepaid ~~registered or~~ certified mail addressed to ~~his~~ *that person's* ~~last known~~ *last-known* place of residence. ~~Said service~~ *Service* by ~~registered or~~ certified mail ~~shall be deemed~~ *is considered* complete upon the deposit of the notice in the post office.

(2) Upon demand, the owner or occupant of the land shall release and deliver possession of ~~such~~ *the* horse or horses to the owner or person entitled ~~thereto~~ upon payment of damages and charges, but ~~said~~ payment of damages and charges ~~shall~~ *may* not act as a bar to the prosecution of ~~said~~ *the* person, owner, or person in control of ~~such~~ *the* horse or horses~~,~~ as ~~hereinbefore~~ provided *in subsection (1)*. If the owner or claimant of ~~such~~ *the* horse or horses is not known to the person taking up ~~such~~ *the* horse or horses or the ~~said~~ owner or claimant ~~shall refuse~~ *refuses* to pay the amount of damages and charges ~~as herein provided~~, the ~~said~~ person taking up ~~such~~ *the* horse or horses shall, within 72 hours from the time ~~said~~ *the* horse or horses were ~~so~~ taken up, deliver to the sheriff or a constable of the county in which the horse or horses were ~~so~~ taken up a statement containing the information required to be given in the notice ~~hereinbefore set out, and in~~. *In* addition ~~thereto~~, ~~he~~ *the person* shall mail by prepaid ~~registered or~~ certified mail a copy of ~~said~~ *the* statement addressed to the nearest state livestock inspector. Upon receipt of ~~such~~ *the* statement, the sheriff or constable shall proceed to advertise and sell at public auction the horse or horses ~~so~~ taken up."

Section 2655. Section 81-4-327, MCA, is amended to read:

"81-4-327. Sale of horses — disposition of proceeds. (1) Prior to ~~such~~ *a* sale *as authorized by 81-4-326,* the sheriff shall have ~~said~~ *the* horses classified as follows:

(a) Class 1 ~~shall~~ *must* include:

(i) horses not bearing a registered brand and ~~which~~ *that* in the opinion of the stock inspector are of a value not to exceed $10 per head; and

(ii) horses bearing a registered brand but ~~which~~ *that* the owner has failed to redeem as ~~herein~~ provided *in this part*, after notice given, and ~~which~~ *that* in the opinion of the stock inspector are of a value not to exceed $10 per head.

(b) Class 2 ~~shall~~ *must* include horses bearing registered brands and ~~which~~ *that* in the opinion of the stock inspector are of a value in excess of $10 per head.

(2) Horses in class 1 ~~shall~~ *must* be sold on 10 days' notice posted at the courthouse of each county in which any portion of the district lies and posted in three other public places in ~~such~~ *the* county, one of which ~~shall~~ *must* be in that portion of the district included in the county.

(3) Horses in class 2 ~~shall~~ *must* be sold on notice posted for 21 days and otherwise as notices are required to be posted for the sale of horses in class 1, and ~~such~~ *the* notice ~~shall likewise~~ *must* be published once a week for 2 successive weeks before ~~said~~ *the* sale in some newspaper published in the county seat of each county ~~including~~ *that includes* any part of ~~said~~ *the* district, if there ~~be such~~ *is a* newspaper, and if there ~~be~~ *is* no newspaper published in any county comprising a part of ~~such~~ *the* district, ~~then such~~ *the* notice ~~shall~~ *must* be published in any newspaper of general circulation in the county or counties ~~including such~~ *that include the* district. The notice required to be published for the sale of horses in class 2 ~~shall~~ *must* describe each horse to be sold, giving the approximate age, description, and brands, if any. The proceeds of the sale ~~shall~~ *must* be applied by the sheriff to the discharge of the claim and the costs of the proceedings in selling the property and enforcing the claim, and the remainder, if any, ~~shall~~ *must* be deposited with the county treasurer who shall keep the same in a special fund to be designated as the "horse herd district fund", ~~(~~giving *the* number of district if *there is* more than one~~)~~ *district*.

(4) A separate fund~~, styled as above~~ *of the type* specified *in subsection (3)*~~,~~ ~~shall~~ *must* be kept by the county treasurer for each of ~~said~~ *the* districts created in ~~his~~ *that* county. The county treasurer shall make a record of the description of each horse, the amount received for ~~same~~ *the horse*, and the amount of deductions~~;~~. ~~which~~ *The* record ~~shall~~ *must* be open to public inspection~~;~~, and any person making claim of ownership of ~~such~~ *a* horse to the board of county commissioners at any time within 1 year from the date of sale and submitting proof of ownership to ~~such~~ *the* board with ~~such~~ *the* claim to the satisfaction of ~~such~~ *the* board ~~shall be~~ *is* entitled to receive ~~such~~ *the* excess received from the sale of ~~such~~ *that* horse. Any money received from the sale of ~~any such~~ *a* horse ~~which shall~~ *that is* not ~~be so~~ claimed within 1 year after ~~such~~ *the* sale ~~shall~~ *must* at the expiration of ~~said~~ *that* period be transferred to the general fund of the county."

Section 2656. Section 81-4-405, MCA, is amended to read:

"81-4-405. Service upon owner. If ~~such~~ *the* owner ~~be~~ *of livestock described in this part is* known and if ~~his~~ *the owner's* post-office address ~~shall be~~ *is* known ~~as hereinbefore specified~~, ~~such~~ *the* notice ~~shall~~ *must* be served upon ~~him or her~~ *the owner* personally."

Section 2657. Section 81-4-406, MCA, is amended to read:

"81-4-406. Service on department of livestock. If the owner *of livestock described in this part* is unknown or if the owner is known but ~~his~~ *the owner's* post-office address is unknown, the notice ~~shall~~ *must* be served on the department ~~of livestock~~."

Section 2658. Section 81-4-410, MCA, is amended to read:

"81-4-410. Provisions mandatory. The provisions ~~hereof~~ *of this part* are mandatory, and the owner of ~~such~~ livestock ~~will~~ *may* not lose title or right of possession to ~~his~~ *the owner's* stock unless the provisions ~~hereof~~ *of this part* are strictly complied with."

Section 2659. Section 81-4-505, MCA, is amended to read:

"81-4-505. Roundup ~~foreman~~ *supervisor* — duties — bond. (1) All roundups ~~shall~~ *must* be under the control and supervision of the board of county commissioners of the county in which the ~~same shall be~~ *roundup is* held. Roundup districts ~~shall~~ *must* be numbered in the order of their creation. Each roundup ~~shall~~ *must* be conducted by ~~some~~ *a* person designated by the board of county commissioners, whose official designation ~~shall~~ *must* be "roundup ~~foreman~~ *supervisor*, ... roundup district, ... County, state of Montana".

(2) ~~Such person~~ *The roundup supervisor* shall maintain ~~his~~ headquarters at the place designated by the board of county commissioners in its order as the headquarters of ~~such~~ *the* roundup. ~~Such~~ *The* roundup ~~foreman shall have~~ *supervisor has the* power to administer oaths and affirmations in all matters coming within the scope of ~~his~~ official duties.

(3) The board of county commissioners shall require from ~~such~~ *the* roundup ~~foreman~~ *supervisor* an official bond, in an amount not less than $2,500 and not to exceed $5,000~~,~~. ~~which~~ *The* bond ~~shall~~ *must* be conditioned as official bonds of county officers and ~~shall be~~ *is* subject to all provisions of law applicable to ~~such~~ *county officer* bonds."

Section 2660. Section 81-4-506, MCA, is amended to read:

"81-4-506. Sale of abandoned horses. All abandoned horses taken up in ~~any such~~ *a* roundup ~~shall~~ *must* be delivered to the roundup ~~foreman~~ *supervisor* in charge of ~~such~~ *the* roundup and ~~shall~~ *must* be ~~by him~~ offered *by the supervisor* for sale at public auction and sold to the highest bidder for cash, if there ~~be~~ *is* any bidder ~~or bidders therefor~~, and any ~~such~~ abandoned horses ~~so~~ offered for sale and for which no bid is made ~~shall~~ *must* be destroyed or otherwise disposed of in the discretion of the board of county commissioners~~,~~ unless reclaimed as ~~herein~~ provided *in this part*."

Section 2661. Section 81-4-507, MCA, is amended to read:

"81-4-507. Gathering horses in roundup district before roundup unlawful — rights of owner. It ~~shall be~~ *is* unlawful for ~~any~~ *a* person or persons to round up from the range any horse or horses in ~~any~~ *a* roundup district after ~~such~~ *the* districts have been designated by the county commissioners until after ~~such~~ *the* roundup. However, an owner of horses on which the taxes have been paid in this district may gather the ~~same~~ *horses* by notifying the roundup ~~foreman~~ *supervisor* and being accompanied by ~~such foreman~~ *the supervisor* or a representative of ~~such foreman~~ *the supervisor* in gathering ~~such~~ *the* horses."

Section 2662. Section 81-4-508, MCA, is amended to read:

"81-4-508. Claim of owner — cost of keeping and feeding horses. ~~Any~~ *A* person claiming to be the owner of ~~any such~~ *an* abandoned horse or horses may serve written notice upon the roundup ~~foreman~~ *supervisor* in charge of ~~such~~ *the* roundup of ~~his~~ *the* claim of ownership~~,~~ at any time before sale or other final disposition of ~~such~~ *the* horse or horses. ~~Such~~ *The* claim of ownership ~~shall~~ *must* be verified by the oath of the claimant or someone on ~~his~~ *the claimant's* behalf, and the sale or other final disposition of ~~such~~ *the* horse or horses ~~shall, as to such horse or horses,~~ *must* be postponed from time to time as may be necessary to enable the claimant to make proof of ~~his~~ *the* claim as ~~herein~~ provided *in 81-4-509*. ~~Such~~ *The* postponement ~~shall~~ *may* not be ~~had~~ *allowed* unless the claimant ~~shall pay~~ *pays* to the roundup ~~foreman~~ *supervisor* in charge of ~~such~~ *the* roundup or ~~deliver~~ *delivers* to ~~him~~ *the supervisor* satisfactory security for the estimated cost of keeping and feeding ~~such~~ *the* horse or horses until sale or other final disposition or delivery to the owner."

Section 2663. Section 81-4-509, MCA, is amended to read:

"81-4-509. Proof of ownership — payment of taxes and penalties — decision of commissioners on claim. ~~Any~~ *A* person claiming ~~any~~ *an* abandoned horse or horses as provided in 81-4-508 shall, within 5 days after serving the notice provided for in 81-4-508~~,~~ or within ~~such~~ *a* further time ~~as~~ *that* the board of county commissioners ~~shall allow~~ *allows*, upon good cause shown, submit to ~~such~~ *the* board proof of ~~his~~ ownership and shall deposit with ~~said~~ *the* board the amount of any unpaid taxes and penalties ~~which~~ *that* may be assessed against ~~such~~ *the* horse or horses, together with the sum of *a* $5 roundup fee. The board shall decide all ~~such~~ cases in preference to all other matters coming before it and at the earliest possible moment. If the claim ~~shall be~~ *is* allowed, the roundup ~~foreman~~ *supervisor* in charge of ~~such~~ *the* roundup ~~shall~~ *must* immediately be notified of ~~such~~ *the* decision and ~~he~~ *the supervisor* shall ~~forthwith~~ deliver ~~such~~ *the* horse or horses ~~as to which ownership shall be so proved~~ to the owner upon payment of any amount due from ~~such~~ *the* owner for the estimated cost of keeping and feeding ~~such~~ *the* horse or horses ~~as aforesaid~~. The deposit made by ~~such~~ *the* owner of taxes, penalties, and *the* roundup fee ~~shall~~ *must* be delivered by the board to the county treasurer. If ~~such~~ *the* board ~~shall deny~~ *denies* the claim of ownership, it shall ~~forthwith~~ notify the person in charge of ~~such~~ *the* roundup of its decision and ~~such~~ *the* horse or horses as to which ~~such~~ *the* claim ~~shall be~~ *is* denied ~~shall~~ *must* be offered for sale at the earliest convenient session of the sales being held under ~~such~~ *the* roundup~~, and if~~. *If the horses are* not sold, the ~~same shall~~ *they must* be destroyed or otherwise disposed of as though no claim had been presented."

Section 2664. Section 81-4-512, MCA, is amended to read:

"81-4-512. Disposition of proceeds — abandoned horse fund — use of fund. All ~~moneys~~ *money* paid by reclaiming owners of any ~~such~~ horse or horses ~~shall~~ *must* be paid to the county treasurer and ~~by him~~ kept in a fund to be designated as the "abandoned horse fund, roundup district No. .... (giving number of district in which ~~such~~ *the* horse or horses were rounded up)". A separate fund~~, styled as above specified, shall~~ *must* be kept by the county treasurer for each roundup district created in ~~his~~ *that* county. All ~~moneys~~ *money* received from the sale of ~~any such~~ horses ~~shall~~ *must* be paid to the county treasurer, and if ~~such~~ *the* sum received from the sale of any ~~such~~ horse ~~shall~~ *does* not exceed the taxes, *the* penalties, and the roundup fee, the whole ~~thereof shall~~ *amount must* be immediately deposited in the abandoned horse fund for the district in which ~~such~~ *the* horse or horses were rounded up. ~~But if~~ *If* the sum received from the sale of ~~any such~~ *a* horse ~~shall exceed such~~ *exceeds the* taxes, *the* penalties, and *the* roundup fee, the amount of ~~such~~ *the* taxes, *the* penalties, and *the* roundup fee ~~shall~~ *must* be ~~forthwith~~ deposited in the abandoned horse fund for ~~such~~ *the* district and the excess ~~shall~~ *must* be kept by the treasurer in a separate fund~~, and he~~. *The treasurer* shall make a record of the description of ~~such~~ *the* horse, the amount received for the ~~same~~ *horse*, and the amount of deductions for *the* taxes, *the* penalties, and *the* roundup fee~~,~~. ~~which~~ *The* record ~~shall~~ *must* be open to public inspection. ~~Any~~ *A* person making claim to the board of county commissioners, at any time within 6 months from the date of sale, of ownership of ~~such~~ *the* horse and submitting proof of ownership to ~~such~~ *the* board with ~~such~~ *the* claim, to the satisfaction of ~~such~~ *the* board, ~~shall be~~ *is* entitled to receive ~~such~~ *the* excess received from the sale of ~~such~~ *the* horse. Any money received from the sale of ~~any such~~ *a* horse in excess of *the* taxes, *the* penalties, and *the* roundup fee~~, which shall~~ *that is* not ~~be so~~ claimed within 6 months after ~~such~~ *the* sale, ~~shall~~ at the expiration of ~~said~~ *that* period, ~~become~~ *becomes* the

property of ~~such~~ *the* county and ~~shall~~ *must* be transferred to the abandoned horse fund for the district in which ~~any such~~ *the* horse was rounded up."

Section 2665. Section 81-4-513, MCA, is amended to read:

"81-4-513. Report of roundup ~~foreman~~ *supervisor* — disposition of copies. The roundup ~~foreman~~ *supervisor* in charge of the roundup shall keep an accurate record of all proceedings under the order for the roundup. Within 30 days after the roundup is completed, the ~~foreman~~ *supervisor* shall prepare in triplicate and verify by oath a full, true, and accurate report of all the proceedings under the order for the roundup. The report must include a complete financial statement, the number and description of horses impounded, and the manner of disposition of the horses. One copy of the report must be filed with the clerk of the board of county commissioners, and the filing is notice of the contents of the report and prima facie proof of the facts stated in the report. ~~One copy~~ *Copies* of the report must be filed with the department of revenue~~,~~ and ~~one copy must be filed~~ with the county treasurer~~,~~ for their information and appropriate action."

Section 2666. Section 81-4-603, MCA, is amended to read:

"81-4-603. Taking up and disposition of estrays — advertisement. (1) A stock inspector authorized by the department shall take into ~~his~~ possession an estray found in ~~his~~ *the inspector's* district and shall either ship or arrange for the shipment of the estray to a licensed livestock market for sale, or ~~he~~ *the inspector* may hold the estray ~~in his possession~~ and care for the estray in the cheapest and most practicable manner for a period of not less than 30 days or more than 60 days, during which time ~~he~~ *the inspector* shall advertise that ~~he~~ *the inspector* holds the estray and that, unless claimed by the owner, ~~he~~ *the inspector* will on a date ~~to be~~ specified in the notice sell the estray at a public auction to the highest bidder for cash.

(2) The notice ~~shall~~ *must* be published in the newspaper doing the county printing of the county in which the estray is found and in addition to that paper in a paper published in the town or city nearest the place in which the estray is held. This notice ~~shall~~ *must* be published at least once a week for 4 consecutive weeks and ~~shall~~ *must* contain a statement of the date of the sale, the place where the sale is to be held, and a general description of the estray, including the sex and the approximate age, together with an illustration of the brand and the position of the brand on the estray and a description of the place or locality where the estray was found or taken.

(3) The proceeds from the sale ~~shall~~ *must* be disposed of under 81-4-605 and 81-4-606.

(4) The owner of the estray may appear and claim it at any time before the sale or shipment, as provided in this part, upon payment to the department of the cost of caring for the estray as determined by the department."

Section 2667. Section 81-5-103, MCA, is amended to read:

"81-5-103. Abandonment of sheep — penalty. ~~Every~~ *A* person who~~,~~ ~~having~~ *has*, by virtue of ~~his~~ employment as herder, driver, or otherwise, the charge or custody of ~~any~~ sheep~~,~~ ~~shall~~ *and who* willfully ~~abandon~~ *abandons* the ~~same~~ *sheep* or ~~allow~~ *allows* them to stray from ~~his~~ *the person's* charge or custody shall, upon conviction, be punished by a fine of not less than $100*,* ~~or~~ by imprisonment of not less than 3 months or more than 1 year, or by both ~~such fine and imprisonment;~~. ~~provided, that~~ *However,* if the person ~~so in the~~ *who has* charge or custody of ~~such~~ *the* sheep ~~shall have given to~~ *gave* the owner of ~~such~~ *the* sheep~~,~~ or ~~his~~ *the owner's* authorized agent~~,~~ at least 5 days' notice of ~~his~~ *the*

intention to quit ~~his~~ employment, ~~he shall~~ *the person may* not be ~~deemed~~ *considered* to have abandoned ~~such~~ *the* sheep, within the meaning of this section, by leaving the ~~same~~ *sheep* after the expiration of ~~such~~ *the* period."

Section 2668. Section 81-6-102, MCA, is amended to read:

"81-6-102. Organization of committee — officers — meetings. ~~Said~~ *The* county livestock protective committee shall upon appointment and annually ~~thereafter~~ *after appointment* organize by election of a ~~chairman~~ *presiding officer* and a secretary. Meetings of the committee ~~shall~~ *must* be held at the call of the ~~chairman~~ *presiding officer* or any two members of the committee. Minutes of all meetings of the committee ~~shall~~ *must* be kept by the secretary. ~~Such~~ *The* minutes ~~shall~~ *must* be presented at the ensuing meeting of the committee and upon approval ~~thereof shall~~ *must* be signed by the ~~chairman~~ *presiding officer* and secretary and immediately ~~thereafter~~ deposited with the county clerk and recorder and kept available for public inspection."

Section 2669. Section 81-7-102, MCA, is amended to read:

"81-7-102. Department to supervise destruction of predatory animals — cooperation with other agencies — administration of money. (1) The department ~~of livestock~~ shall conduct the destruction and control of predatory animals capable of killing, destroying, maiming, or injuring domestic livestock or domestic poultry and the protection and safeguarding of livestock and poultry in this state against depredations from these animals. The department shall formulate the practical programs for accomplishing these objectives in this state and for carrying out the programs in an efficient and practical manner responsive to the need for control in each area of this state.

(2) The department shall adopt rules applicable to predatory animal control that are necessary and proper for the systematic destruction of the predatory animals by hunting, trapping, and poisoning operations and payments of bounties. The department shall make field, area, range, or other orders and instructions, including orders and instructions to hunter and trapper personnel and others, that are appropriate in the various areas at different seasons of the year, taking into consideration the habits, presence, migrations, or movements of the animals and their attacks on livestock and poultry, either singly or in packs or bands.

(3) The department shall cooperate with authorized representatives of the federal government, including the biological survey and the fish and wildlife service, the department of fish, wildlife, and parks, boards of county commissioners, voluntary associations of stockgrowers, sheepgrowers, ranchers, farmers, ~~and sportsmen~~ *hunters, and anglers*, and corporations and individuals, in the systematic destruction of predatory animals by hunting, trapping, and poisoning operations.

(4) Section 81-7-103 and this section do not interfere with or impair the power and duties of the department of fish, wildlife, and parks in the control of predatory animals by the department of fish, wildlife, and parks as authorized by law or the obligation of the department of fish, wildlife, and parks to expend its funds in cooperation with the department for predatory animal control as required by law. Funds of the department of fish, wildlife, and parks for the cooperative predatory animal control must be administered and expended by the department of fish, wildlife, and parks."

Section 2670. Section 81-7-115, MCA, is amended to read:

"81-7-115. Duty of county clerk. (1) The county clerk shall, on receipt of each certificate, file the certificate in the order in which it is received and safely

keep it until the arrival of the skin or skins mentioned in the certificate. On receipt of the skin or skins, ~~he~~ *the county clerk* shall call ~~to his assistance~~ *upon* either the county treasurer or, in ~~his~~ *the treasurer's* absence, the clerk of the district court who, with both present in order to prevent fraud, shall examine each scalp or mountain lion lower jaw skin. If the examination discloses that the scalps or lower jaw skins agree with the number and kind of scalps or lower jaw skins mentioned in the certificate, the county clerk shall, in the presence of the treasurer or clerk of the district court, destroy the scalps or lower jaw skins by fire.

(2) The county clerk shall then make out and deliver to the person named in that certificate a second certificate showing the statement of the facts contained in the certificate to the sheriff, undersheriff, or deputy sheriff, with the additional statement of the examination made by ~~him~~ *the clerk* and that ~~he~~ *the clerk* found the scalps or lower jaw skins to agree with the number and kind mentioned in the certificate of the sheriff, undersheriff, or deputy sheriff. ~~In no case may a~~ *A* bounty certificate *may not* be issued by the county clerk for more scalps or lower jaw skins than are actually received and counted ~~by him~~.

(3) ~~The county clerk shall receive, for~~ *For* each scalp or skin of a mountain lion lower jaw ~~which he accounts~~ *accounted* for, *the county clerk must receive* the sum of 5 cents to be paid quarterly by the state treasurer out of the bounty fund.

(4) The county clerk shall keep a record of all certificates received and issued, showing the date and description of the number and kind of hides and the names of the persons presenting the hides, and this record is an official record. County clerks are required to send a report and statement to the department on or before the 20th of each month."

Section 2671. Section 81-7-203, MCA, is amended to read:

"81-7-203. County bounty fund. The tax collected under this part ~~shall~~ *must* be credited by the county treasurer to a fund to be known as "county bounty fund" and ~~shall~~ *must* be paid out by ~~him~~ *the treasurer* upon properly drawn warrants issued ~~thereon~~ *on the fund* by the county clerk."

Section 2672. Section 81-7-204, MCA, is amended to read:

"81-7-204. Presentation of skins — affidavit. ~~Any~~ *A* person claiming bounty on ~~any~~ *a* predatory animal under this part shall present the green skin or pelt of ~~such~~ *the* animal, with all four feet attached ~~thereto~~, to ~~any~~ one of the bounty inspectors provided for in 81-7-202 and shall make an affidavit that ~~such~~ *the* animal was killed within the county where the bounty is claimed;. ~~which~~ *The* affidavit ~~shall~~ *must* be corroborated by at least two reputable stockowners of ~~such~~ *the* county to the effect that they know or have good cause to believe that ~~such~~ *the* animal was killed within ~~such~~ *that* county. For the purpose of this part, each bounty inspector provided for in this part ~~shall be~~ *is* empowered to administer oaths. The bounty inspector shall endorse upon ~~such~~ *the* affidavit ~~his~~ *the inspector's* approval or disapproval of ~~such~~ *the* claim and shall cut from ~~such~~ *the* skin or pelt the four feet. The person applying for ~~such~~ *the* bounty shall then present the affidavit, with the endorsements ~~thereon~~, to the county auditor or, in counties not having an auditor, to the county clerk, who shall attach the ~~same~~ *affidavit* to a claim against ~~said~~ *the* county bounty fund and present it to the board of county commissioners for action, the same as any other claim against the county."

Section 2673. Section 81-7-403, MCA, is amended to read:

"81-7-403. Dogging livestock. Any person who permits or directs any dog owned by ~~him~~ *the person* or in ~~his~~ *the person's* possession to chase or run any

cattle or other livestock of which ~~he~~ *the person* is not the owner or the person in charge upon the open range or government lands or away from any watering place upon the open range is guilty of a misdemeanor and ~~punishable~~ *shall be punished* by a fine of not more than $500."

Section 2674. Section 81-7-501, MCA, is amended to read:

"81-7-501. Aerial hunting prohibited — exceptions. (1) Except as provided in 81-7-505, ~~no~~ *a* person, except an employee of the state, its subdivisions, or the federal government~~,~~ *who is* acting within the scope of ~~his~~ *the person's* employment, may *not* engage in the aerial hunting of predatory animals, as defined in 81-7-101, without first obtaining a permit from the department of livestock. The permit must specify the species of predatory animals to be hunted and the geographic areas over which aerial hunting may take place.

(2) A person issued a permit as required by this section may not engage in aerial hunting of predatory animals in violation of the terms of ~~his~~ *the* permit, the rules promulgated by the board of livestock, or the terms of this part."

Section 2675. Section 81-8-215, MCA, is amended to read:

"81-8-215. Quarantine of diseased animals. If the livestock inspector at a sale finds any livestock afflicted with an infectious or contagious disease, ~~he~~ *the inspector* shall immediately take possession of the livestock and place ~~it~~ *the livestock* in quarantine, to be disposed of as directed by the department."

Section 2676. Section 81-8-232, MCA, is amended to read:

"81-8-232. Posting of certificate or license. ~~Every~~ *A* person *who is* certified or licensed under the provisions of this part shall conspicuously post at ~~his~~ *the person's* place of business for inspection by any other person the certificate or license issued by the department."

Section 2677. Section 81-8-235, MCA, is amended to read:

"81-8-235. Penalties for financial violations. (1) A person found, after notice and hearing, to be in violation of 81-8-234 shall be assessed a civil penalty by the department of not less than $100 or more than $5,000~~,~~ *or* have ~~his~~ *the person's* license or certificate suspended or revoked, or both.

(2) A person found, after notice and hearing, to have committed a subsequent violation of 81-8-234 after the department has assessed a penalty pursuant to subsection (1) shall be fined not less than $250 or more than $5,000 and have ~~his~~ *the person's* license or certificate suspended or revoked.

(3) A person, whether or not licensed under this part, who issues or delivers a check or other order upon a real or fictitious depository in payment for a livestock purchase knowing that it will not be paid by the depository is guilty of a felony and on conviction ~~may~~ *shall* be imprisoned for not more than 5 years or *be* fined not more than $10,000, or both. If the person has an account with the depository, failure to make good the check or other order within 5 days after written notice of nonpayment has been received by the issuer is prima facie evidence that ~~he~~ *the person* knew it would not be paid by the depository."

Section 2678. Section 81-8-251, MCA, is amended to read:

"81-8-251. Certificate to operate livestock market required — application. (1) A person may not operate a livestock market unless ~~he~~ *the person* first obtains from the department a certificate declaring that public convenience and necessity require the operation.

(2) The application for a certificate of public convenience ~~shall~~ *must* be in writing, verified by the applicant, and filed with the department. ~~It shall~~ *The application must* specify the following:

(a) the names of the persons applying for a certificate together with their permanent addresses. If the applicant is a firm, association, partnership, or corporation, the names of its directors, officers, and members, if applicable;

(b) the place where the applicant proposes to operate a livestock market;

(c) a complete description of the property and facilities proposed to be used for the livestock market;

(d) the commissions or charges the applicant proposes to impose on the consignors' livestock for services rendered ~~to them~~ by the applicant in the operation of the livestock market;

(e) the location of other livestock markets within a radius of 200 miles of the proposed livestock market and the names and addresses of the operators ~~thereof~~ *of those markets*;

(f) a detailed statement of the facts upon which the applicant relies to show public convenience and necessity for the livestock market, including the trade area to be served, the economic benefits to the livestock industry, the services to be offered, and the anticipated revenue from inspection that may be derived by the state;

(g) if the applicant is a foreign corporation, its principal place of business outside the state, the state in which it is incorporated, and a showing that it is in compliance with the laws relating to foreign corporations doing business in this state;

(h) a detailed financial statement showing that current assets exceed current liabilities and that long-term assets exceed long-term liabilities;

(i) any additional information the department may require."

Section 2679. Section 81-8-261, MCA, is amended to read:

"81-8-261. Inspection of public markets. Livestock inspectors, including stock inspectors of a county or district, the sheriff of a county, or a representative of the department of livestock, may enter upon the premises where livestock ~~is~~ *are* being held or sold and ~~shall~~ *must* be accorded every facility by the owners ~~thereof~~ *of the premises* in determining whether a violation of the law is being committed or is likely to be committed. The inspection may not unnecessarily interfere with the conduct of the sales. Livestock sold at the market may not be delivered to the purchaser until ~~he~~ *the purchaser* has first received an inspection certificate issued by one of the officers mentioned in this section, showing clearly and explicitly that the person making the inspection is satisfied as to the ownership of the livestock and the health of all livestock ~~so~~ sold."

Section 2680. Section 81-8-263, MCA, is amended to read:

"81-8-263. Duties when ownership in doubt. An operator of a livestock market shall, when notified by the authorized brand inspector that there is a question as to whether any designated livestock sold through the market ~~is~~ *are* lawfully owned by the consignor ~~thereof~~ *of the livestock*, hold the proceeds received from the sale of the livestock for a reasonable time, not to exceed 30 days, to permit the consignor to establish ownership. If at the expiration of that time the consignor fails to establish ~~his~~ lawful ownership of the livestock, the proceeds must be transmitted by the operator of the livestock market to the department. The department may dispose of the proceeds in accordance with

Title 81, chapter 4, part 6, ~~of Title 81,~~ relating to the distribution of estray money, and the department's receipt ~~therefor shall relieve~~ *for the proceeds relieves* the operator of the livestock market from further responsibility for the proceeds. Proof of ownership and account of all sales of livestock must be transmitted by the authorized brand inspector to the department."

Section 2681. Section 81-8-274, MCA, is amended to read:

"81-8-274. Suspension or revocation of license. (1) Whenever the department finds that ~~any~~ *a* livestock dealer has violated the provisions of this part or rules adopted under this part, the department may, by order, suspend the license of ~~such~~ *the* person for a period not to exceed 1 year, and if the violation is repeated, the department may, by order, after hearing, permanently revoke the license of ~~such~~ *the* person.

(2) Before ~~any~~ *a* license issued under this part may be suspended or revoked, the licensee ~~shall~~ *must* be furnished with a copy of the complaint ~~made against him~~ and a hearing ~~shall~~ *must* be ~~had~~ *held* before the department to determine whether the license should be suspended or revoked. The licensee ~~shall~~ *must* be given notice of the time and the place of ~~such~~ *the* hearing. The notice may be served by ~~registered or~~ certified mail at the post-office address listed in the application. The hearing must be held not less than 10 days or more than 30 days after the mailing of the notice. At the time and place set for the hearing, the department shall take and receive evidence, under oath, with respect to the complaint~~,~~ and, upon ~~such~~ *the* evidence received, shall promptly dismiss the proceedings or revoke or suspend the license."

Section 2682. Section 81-8-278, MCA, is amended to read:

"81-8-278. Records. A livestock dealer shall maintain records that disclose all purchases and sales of livestock. A livestock dealer shall, at all reasonable times, give the department access to and let the department copy any of the records relating to ~~his~~ *the dealer's* business."

Section 2683. Section 81-8-312, MCA, is amended to read:

"81-8-312. Possession under a mortgage — how acquired. ~~In all cases where~~ *If* it is necessary under the laws of this state for a party to any mortgage, assignment, bill of sale, or other contract, between November 1 and the ~~next~~ succeeding May 15, to take possession of any ~~such~~ cattle or horses in order to preserve ~~his~~ *the party's* rights under ~~any such~~ *a* mortgage, assignment, bill of sale, or other contract, it is sufficient for ~~such~~ *the* party to file a copy of the instrument under which ~~he~~ *the party* claims, with a notice of ~~such~~ *the* claim appended ~~thereto~~ *to the copy*, with the general recorder of marks and brands within 5 days after it becomes necessary for ~~him~~ *the party* to ~~so~~ take custody and possession of the ~~same~~ *cattle or horses*."

Section 2684. Section 81-8-315, MCA, is amended to read:

"81-8-315. Sale of property under supplementary writ. When an officer into whose hands a writ of execution is placed has served the ~~same~~ *writ* in accordance with 81-8-311~~,~~ and made ~~his~~ *a* return in accordance with the facts, at any time ~~thereafter~~ *after service and return*, within the time limited as ~~hereinbefore~~ provided *in 81-8-313* to hold the property taken or levied upon under ~~such~~ *the* writ, another writ of execution may be issued, which must be supplementary to the first writ, and in pursuance of which the officer or person charged with the service ~~thereof~~ *of the substitute writ* may sell the property held by the ~~said~~ first writ~~,~~ as ~~hereinbefore~~ provided *in this part*."

Section 2685. Section 81-8-702, MCA, is amended to read:

"81-8-702. Montana quality label. The department of livestock may make use of an outline map of the state of Montana and the word "Montana", printed, lithographed, inscribed, engraved, or otherwise impressed on the labels, tags, seals, or containers of agricultural or food products~~,~~ by a person who has ~~availed himself~~ *taken advantage* of the continuous official inspection service offered by the department of livestock~~,~~ as an indication that the product has been inspected by the officers, agents, or licensed inspectors of the department and that the products are of the quality and description as indicated on the label, tag, seal, or container. The outline map with the word "Montana", when made use of under this part, ~~shall be~~ *is* known as the "Montana quality label". When an authorized department, agent, or officer of the United States collaborates with the department of livestock in the inspection of a product, the Montana quality label may, with the consent of the appropriate department, agency, or officer of the United States, be superimposed on an outline map of the United States on the label, tag, seal or container, indicating inspectional collaboration between the department of livestock and the department, agency, or officer of the United States."

Section 2686. Section 81-8-704, MCA, is amended to read:

"81-8-704. Procurement and use of labels — information concerning — disposal of moneys. The department of livestock may make, print, or otherwise prepare a quantity of labels, tags, and seals with the Montana quality label printed, lithographed, inscribed, engraved, or impressed on them~~,~~ sufficient to supply the demand for them. The department may furnish labels, tags, and seals at reasonable prices to a producer, processor, packer, or dresser who has ~~availed himself of~~ *been granted* the continuous official inspection service. This part~~, however,~~ does not preclude the department from permitting, under its rules, a producer, processor, packer, or dresser to make, prepare, or cause to be made or prepared the labels, tags, or seals to be used on ~~his~~ *the person's* own product or to print, stamp, or otherwise place or cause to be placed the Montana quality label on products or containers ~~which~~ *that* have been subject to continuous inspection~~,~~ if the labels, tags, seals, stamps, or other devices are of a design ~~which~~ *that* the department prescribes. The department ~~of livestock~~ may, in cooperation with the United States department of agriculture or otherwise, make use of available and appropriate means to disseminate information concerning the Montana quality label and the products ~~which~~ *that* may lawfully bear it and to popularize its use. All ~~moneys~~ *money* derived from furnishing the labels, tags, and seals or from permitting the use of the Montana quality label ~~shall~~ *must* be deposited in the state treasury to the credit of the general fund."

Section 2687. Section 81-9-111, MCA, is amended to read:

"81-9-111. Hide certificates — inspection of hides before disposal — person slaughtering cattle to exhibit hides. (1) ~~Every~~ *A* person or persons, firm, corporation, or association slaughtering cattle for its own use ~~must~~ *shall* before selling, destroying, or otherwise disposing of the hide or hides from ~~such~~ *the* cattle have the ~~same~~ *hides* inspected by an officer authorized to make ~~such~~ *the* inspection and secure a certificate of inspection as ~~herein~~ provided for *in this part*.

(2) It ~~shall be~~ *is* unlawful for ~~any~~ *a* person or persons, firm, corporation, or association to sell, offer for sale, destroy, or otherwise dispose of any hide or hides from slaughtered cattle ~~which~~ *that* have not been inspected and identified by an authorized inspector.

(3) It ~~shall be~~ *is* the duty of ~~any~~ *a* person or persons, firm, corporation, or association slaughtering cattle~~,~~ for ~~his~~ *the person's, firm's, corporation's, or association's* own use or otherwise, upon demand of an authorized inspector, to exhibit the hide or hides of ~~such~~ *the* animal or animals for inspection*,* ~~or~~ *a* certificate issued by a hide buyer*,* or some evidence of inspection by an authorized inspector."

Section 2688. Section 81-9-112, MCA, is amended to read:

"81-9-112. Inspection and marking of hides and meat of slaughtered cattle — records — bill of sale — when inspection not necessary. (1) All slaughtering establishments required to be licensed under 81-9-201 shall maintain the hide of an animal in its entirety with tail and ears attached for each animal slaughtered until inspected by a state or deputy state stock inspector in the county where the animal was slaughtered. The inspector shall mark the hide in the manner prescribed by the department. This inspection may be waived for those animals inspected by a state or deputy state stock inspector on a preslaughter inspection.

(2) Each dressed carcass of ~~such~~ *an* animal ~~shall~~ *must* be stamped with an ink stamp in a manner specified by the department. The inspector shall keep a record and issue a certificate of inspection as specified by the department, giving the name and address of the establishment or person, the serial number of the inspection of the hide, the brand on the hide, the date of inspection, and the place where the inspection was made. The inspector shall forward a copy of the inspection certificate to the department and issue one copy to the person requesting the inspection.

(3) When ownership of the carcass and hide presented is claimed on a bill of sale, the officer making the inspection shall demand and *must* receive the original bill of sale, which ~~shall~~ *must* be attached to the inspector's certificate sent to the county clerk and recorder. When the bills of sale cover cattle not included in the inspection, the inspector shall issue to the owner of the bill of sale a receipt for the bill of sale. The receipt ~~shall~~ *must* describe the balance of the cattle covered by the original bill of sale.

(4) ~~Any~~ *A* person who kills beef or veal in good faith for ~~his~~ *the person's* own use ~~shall~~ *is* not ~~be~~ required to have ~~such~~ *the* meat inspected or stamped."

Section 2689. Section 81-9-114, MCA, is amended to read:

"81-9-114. Duty to report violations. A person required to be licensed under 81-9-201 shall report any violation of 81-9-112 to the department or the sheriff of the county where the violation occurred and of which the person has knowledge. Upon failure to do so, the ~~person shall suffer a revocation of his~~ *person's* license *must be revoked* and ~~no~~ *a* license ~~shall~~ *may not* again be issued to the person until the expiration of 1 year from the date of revocation."

Section 2690. Section 81-9-218, MCA, is amended to read:

"81-9-218. Exemptions. (1) The following persons are exempt from 81-9-201, 81-9-216 through 81-9-220, and 81-9-226 through 81-9-236:

(a) a person who slaughters livestock or poultry or prepares or processes livestock or poultry products for ~~his~~ *the person's* own personal or household use; and

(b) a person who transports dead, dying, or diseased animals or poultry for the purpose of treatment, burial, or disposal in a manner that would prevent the carcasses from being used as human food.

(2) A person engaged in the custom slaughtering of livestock or poultry delivered by the owner for custom slaughter or a person engaged in the preparation of the carcasses and parts and meat food products of ~~such~~ *the* livestock or poultry when slaughtered or prepared for exclusive use in the owner's household by the owner or members of ~~his~~ *the owner's* household or ~~his~~ *the owner's* nonpaying guests or employees is exempt from 81-9-216 through 81-9-220 and 81-9-226 through 81-9-236~~, provided~~ *if* the carcasses, parts, or meat food products or containers of ~~such~~ *the* articles are:

(a) kept separate from carcasses, parts, or meat food products prepared for sale;

(b) plainly marked "Not for Sale" immediately after being slaughtered or prepared and remain plainly marked until delivered to the owner; and

(c) prepared and packaged in a sanitary manner and in a sanitary facility."

Section 2691. Section 81-9-220, MCA, is amended to read:

"81-9-220. Rules. The board, upon the recommendation of the chief, shall adopt rules consistent with the requirements of the rules of the U.S. department of agriculture governing meat inspection. The rules must:

(1) require antemortem and postmortem inspections, quarantines, segregation, and reinspections with respect to the slaughter of livestock and poultry and the preparation of livestock and poultry products at all official establishments;

(2) require the identification of livestock and poultry and the marking and labeling of livestock or poultry products as "Montana Inspected and Passed" if they are found upon inspection not to be adulterated;

(3) require the destruction for food purposes of all livestock, poultry, livestock products, and poultry products that have been found to be adulterated;

(4) set standards for ingredients of livestock products, meat, and poultry products;

(5) set standards for labeling, marking, or branding of meat, livestock products, and poultry products;

(6) set standards for the weights or measures of meats, livestock products, and poultry products not inconsistent with standards established under Title 30, chapter 12;

(7) set standards for the filling of containers for meat, livestock products, and poultry products;

(8) regulate the false or fraudulent advertising of meat, livestock products, and poultry products;

(9) provide for periodic investigations of the sanitary conditions of each official establishment and withdraw or otherwise refuse to license and inspect those establishments where the sanitary conditions are such as to render adulterated any meat products prepared or handled ~~therein~~ *in that establishment*;

(10) prescribe sanitation requirements for all official establishments;

(11) require all persons subject to 81-9-216 through 81-9-220 and 81-9-226 through 81-9-236 to maintain full and complete records of all transactions involving meat, livestock products, or poultry products and to make the records available on request to the chief or ~~his~~ *the chief's* inspectors at any reasonable time;

(12) prescribe additional standards, methods, and procedures ~~as~~ *that* are necessary to effect the purposes of 81-9-216 through 81-9-220 and 81-9-226 through 81-9-236; and

(13) provide for the licensing and inspection of mobile slaughter facilities to ensure that the requirements of this part are met with respect to all operations conducted at mobile slaughter facilities."

Section 2692. Section 81-9-230, MCA, is amended to read:

"81-9-230. Antemortem and postmortem inspection required. (1) Official establishments must have an antemortem inspection. The inspector assigned to each establishment shall examine each animal immediately prior to slaughter for the purpose of eliminating all unfit animals and segregating for more thorough examination all animals suspected of being affected with a condition that might influence their disposition on postmortem inspection. The unfit animals may not enter the slaughtering facilities of the plant. The suspected animals ~~which~~ *that* after inspection are permitted to be slaughtered must be handled separately from the regular kill and given a special postmortem examination.

(2) Official establishments must have a postmortem inspection. The postmortem inspection must be made at the time the animals are slaughtered. The inspectors shall examine the cervical lymph glands, the skeletal lymph glands, the viscera and organs, with their lymph glands, and all exposed surfaces of the carcasses of all cattle, buffalo, sheep, swine, and goats. The examination must be conducted in the slaughtering facilities of the establishment during the slaughtering operations.

(3) The chief or any of ~~his~~ *the chief's* inspectors may have a laboratory designated by the board make pathogenic examination of animals or parts thereof for completion of antemortem or postmortem inspection."

Section 2693. Section 81-9-235, MCA, is amended to read:

"81-9-235. Suspension or revocation of inspection service or establishment number — hearing — appeal. (1) ~~Any~~ *A* license issued by the board or ~~any~~ *a* state meat inspection service or establishment number may be suspended or revoked by the board for noncompliance with 81-9-216 through 81-9-220 and 81-9-226 through 81-9-236 or any rule adopted pursuant to 81-9-216 through 81-9-220 and 81-9-226 through 81-9-236.

(2) State meat inspection service or establishment numbers may be suspended or revoked only after a hearing before the board upon reasonable notice. Notice must be given *to* the licensee by service of the complaint upon ~~him~~ *the licensee*.

(3) The decision of the board is final in any matter relating to renewal, suspension, or revocation of state meat inspection service or an establishment number unless the person aggrieved, within 10 days after the date of the decision, appeals to the district court of the district in which the licensed premises are located. The court shall hear and determine the matter within 10 days after the date of filing the appeal. After ~~such~~ *the* decision, the person aggrieved may~~, in compliance with the statutory provisions relating thereto,~~ appeal the decision of the district court to the supreme court of the state, but the suspension or revocation of state meat inspection service or an establishment number remains in effect pending the outcome of the appeal."

Section 2694. Section 81-9-313, MCA, is amended to read:

"81-9-313. Dead or fallen animal records. (1) When a licensed renderer or ~~his~~ *the renderer's* agent receives a dead or fallen animal, ~~he~~ *the renderer or agent* shall present a dead or fallen animal record to the person, corporation, or association ~~which~~ *that* has requested ~~him~~ *the renderer or agent* to remove the dead or fallen animal. The record ~~shall~~ *must* be on forms prescribed by the department and contain information the department may, by rule, require.

(2) The report ~~shall~~ *must* be executed in quadruplicate. The original copy ~~shall~~ *must* accompany the carcass and hide until the hide is officially inspected for marks and brands. The duplicate ~~shall~~ *must* be retained by the licensed renderer for the time ~~which~~ *that* the department in its discretion requires. The triplicate ~~shall~~ *must* be filed within 7 days after its execution and without cost in the office of the county clerk and recorder of the county in which the animal is received by the licensed renderer or ~~his~~ *the renderer's* agent. The quadruplicate ~~shall~~ *must* be retained by the person, corporation, or association ~~which~~ *that* requested removal of the dead or fallen animal."

Section 2695. Section 81-9-314, MCA, is amended to read:

"81-9-314. Animals to be tagged. At the time of the execution of the dead or fallen animal record~~,~~ provided for ~~above~~ *in 81-9-314*, the licensed renderer or ~~his~~ *the renderer's* agent who receives a dead or fallen animal shall tag ~~such~~ *the* animal with one of the serially numbered identification tags provided in 81-9-312 and shall at the same time record the number of ~~said~~ *the* tag in the proper space provided ~~therefor~~ on the dead or fallen animal record."

Section 2696. Section 81-9-315, MCA, is amended to read:

"81-9-315. Production of dead or fallen animal record on demand — animal not to be removed during transportation — investigation. (1) On demand of a livestock inspector, sheriff, undersheriff, deputy sheriff, or other peace officer, a licensed renderer or ~~his~~ *the renderer's* agent who has received a dead or fallen animal shall produce for inspection ~~of the officer~~ an executed dead or fallen animal record identifying each dead or fallen animal ~~which he~~ *that the renderer or agent* is transporting when the demand is made. Failure to produce the executed dead or fallen animal record on demand constitutes a misdemeanor punishable as provided in 81-9-317.

(2) Under no circumstances may a licensed renderer or ~~his~~ *the renderer's* agent endanger the public health by removing or being required to remove any dead or fallen animals from the vehicle in which they are being transported until the vehicle arrives at a licensed rendering plant where the dead or fallen animal ~~shall~~ *must* be handled and disposed of in conformity with the rules of the department.

(3) If a livestock inspector, sheriff, undersheriff, deputy sheriff, or other peace officer has probable cause to believe the dead or fallen animals being transported by a licensed renderer or ~~his~~ *the renderer's* agent were obtained by a commission of a felony, ~~he~~ *the officer* may take the licensed renderer or ~~his~~ *the renderer's* agent, as well as the vehicle, into custody and proceed with the licensed renderer or ~~his~~ *the renderer's* agent to the rendering plant of the licensed renderer, where inspection of marks and brands and immediate investigation ~~shall~~ *must* be made."

Section 2697. Section 81-9-316, MCA, is amended to read:

"81-9-316. Disposal of hides — inspection — filing of record. When a licensed renderer or ~~his~~ *the renderer's* agent disposes of the hides from dead or fallen animals, the hides ~~shall~~ *must* be handled and inspected for marks and brands in conformity with *Title 81, chapter 9,* part 4 ~~of this chapter~~. The sheriff,

deputy sheriff, person designated by the board of county commissioners, or ~~the~~ agent of the department who makes the inspection for marks and brands in conformity with *Title 81, chapter 9,* part 4*,* ~~of this chapter~~ shall complete the original dead or fallen animal record ~~which~~ *that* accompanies the hide by inserting ~~his~~ *the person's* inspector's tag number. ~~He~~ *The person* shall file the completed original dead or fallen animal record without cost in the office of the county clerk and recorder, together with the duplicate certificate of inspection required to be filed under *Title 81, chapter 9,* part 4 ~~of this chapter~~."

Section 2698. Section 81-9-402, MCA, is amended to read:

"81-9-402. Hide certificate — identification. (1) A seller of an animal hide shall obtain a hide certificate from the person receiving the hide. The department shall prescribe the form of the certificate, which ~~shall~~ *must* include the marks and brands on each hide. The party receiving the hide ~~must~~ *shall* designate where it will be kept for 30 days following delivery. The certificate must be signed by the seller or ~~his~~ *the seller's* agent and the person receiving the hide.

(2) The original certificate ~~shall~~ *must* be sent by the party receiving the hide to the department within 5 days after purchase. One copy ~~shall~~ *must* be retained by the seller~~;~~*,* and one*, must be retained* by the hide buyer. On reasonable notice, an inspector or other agent of the department or a peace officer may inspect the hide certificate copy of the seller or buyer.

(3) The department shall prescribe an identification tag to be affixed to each hide by the person receiving the hide when it is delivered. Hide certificates, tags, and glue ~~shall~~ *must* be furnished by the department at cost to any person requiring the certificates, tags, and glue. Only those certificates, tags, and glue distributed by the department may lawfully be used under this part."

Section 2699. Section 81-9-403, MCA, is amended to read:

"81-9-403. Seizure and sale of hides when ownership cannot be determined — disposition of proceeds. (1) A state stock inspector or other officer who has authority to make an inspection of a slaughtered beef, veal, or hide of a beef or veal may seize and hold the hide when on inspection the officer finds that the brand is so altered, obliterated, or defaced that the original brand cannot be determined by a reasonable inspection or when ~~he~~ *the inspector or officer* finds that ownership cannot be established by the brand or by other satisfactory proof.

(2) If, within 15 days after the seizure of the hide, proof of ownership cannot be established either by brand, bill of sale, or otherwise, the *inspector or* officer may sell the hide at the best available price and remit the proceeds, less the cost of processing, storing, and selling, to the department together with a full report of ~~his~~ *the* investigation. The report ~~shall~~ *must* contain a statement of the reason for the seizure and sale together with any tendered proof of ownership of any party. The proceeds ~~shall~~ *must* be deposited by the department with the state treasurer and credited to the stock estray fund, where it ~~shall be~~ *is* subject to claim by a party showing proper proof of ownership in the same manner as provided in 81-4-605."

Section 2700. Section 81-20-204, MCA, is amended to read:

"81-20-204. Certificate of candling or packing. ~~Every~~ *A* person buying eggs for resale at retail, except persons or firms who do not buy and sell more than 25 cases of eggs per month, shall candle all eggs offered to ~~him which~~ *the person that* have not been candled under supervision of a licensed egg grader and shall refuse to buy eggs unfit for human food as defined in 81-20-205.

~~"Rejects"~~ ~~shall~~ *Rejects must* be returned to the producer, if possible, or, if requested, the candling ~~shall~~ *must* be done in the presence of the producer. A certificate ~~shall~~ *must* be placed in or on every case of eggs, if candled and graded, in a manner ~~which~~ *that* permits its easy reading and ~~shall~~ *must* state *the* exact grade and size, *the* date of candling or other date approved by the department ~~of livestock~~, and *the* name and address of *the* packer. If *the eggs are* not candled or graded, the certificate should state "not candled or graded", the name of the dealer, and when packed. The certificate ~~shall~~ *must* be printed in letters large enough to be easily read."

Section 2701. Section 81-20-209, MCA, is amended to read:

"81-20-209. Revocation of license. A license issued by the department ~~of livestock~~ under this part may be revoked by the department when the holder of the license fails to comply with the laws of this state ~~which~~ *that* apply to the conduct of ~~his~~ *the* business under the license. If a firm, person, or corporation whose license has been revoked by the department continues to buy, sell, or deal in eggs without a license, ~~he~~ *the firm, person, or corporation* is guilty of a misdemeanor and is subject to the penalties provided for in 81-20-208."

Section 2702. Section 81-21-102, MCA, is amended to read:

"81-21-102. Licensing of milk plants and dairies selling milk or cream for public consumption. (1) It is unlawful for the following businesses to operate in this state without first obtaining a license from the department:

(a) a dairy selling milk or cream for public consumption in the form in which it is originally produced;

(b) a condensed, evaporated, or powdered milk plant;

(c) a fluid milk plant.

(2) A license expires on December 31 of the year issued. The department may, following the procedures in the Montana Administrative Procedure Act, deny, suspend, or revoke a license when it determines that a person to whom the license is issued has failed to comply with the rules of the department or has failed to conduct ~~his~~ *the person's* establishment in a sanitary manner. All license fees collected ~~shall~~ *must* be deposited into the general fund.

(3) The department may issue a restraining order prohibiting a dairy from selling or giving away milk or cream not produced or handled under the laws of this state or the rules of the department. It is unlawful for a dairy, while restrained, to sell or give away for public consumption milk or cream produced or handled by the dairy, and it is also unlawful for a dairy products manufacturing plant, milk plant, or cream station to purchase or use the cream or milk from a dairy while the dairy is restrained.

(4) The department shall establish license fees for the following facilities:

(a) *a* condensed, evaporated, or powdered milk factory;

(b) *a* fluid milk plant; and

(c) *a* dairy.

(5) A person violating this section is guilty of a misdemeanor."

Section 2703. Section 81-22-203, MCA, is amended to read:

"81-22-203. Renewal, suspension, or revocation of license — grounds — hearing — appeal to district court. (1) The department may *revoke,* deny renewal of, *or* suspend~~, or revoke~~ a license issued under this part or its rules for cause or failure to comply with this chapter or with the rules, testing

procedures, or methods adopted under this chapter or when the department has reason to believe that the licensee's products may be detrimental to or jeopardize the health and welfare of the public.

(2) Before revoking, denying renewal of, or suspending a license, the department shall give written notice of its intention to revoke, deny, or suspend the license and its reasons ~~therefor~~ *for the revocation, denial, or suspension*. The department shall give the licensee a time limit of 10 days from receipt of the notice during which the licensee may request a hearing to show cause why ~~his~~ *the* license should not be revoked, denied, or suspended. The notice ~~shall~~ *must* be sent by certified mail, or personal service may be made on the licensee by a representative of the department. Failure of the licensee to request a hearing within the time allowed by the department is considered as ~~his~~ *the licensee's* desire not to contest the department's reasons for ~~suspending,~~ *revoking,* denying, or ~~revoking~~ *suspending* the license.

(3) If the licensee ~~does request~~ *requests* a hearing, the department shall appoint a time and place for an administrative hearing in the county where the licensee is licensed.

(4) The date established for the hearing ~~must~~ *may* be not less than 10 days or more than 30 days after receipt of the licensee's request for the hearing. A request for a hearing ~~shall serve~~ *serves* as a bar to prosecution until a decision from the department becomes final. The licensee at the hearing may testify or present evidence having a bearing on the *revocation,* denial, *or* suspension~~, or revocation~~ of ~~his~~ *the* license, and after hearing all the evidence, the department shall make a determination. If a license is ~~suspended~~ *revoked*, denied, or ~~revoked~~ *suspended*, it may not be reinstated until examination or inspection by the department shows that the cause for ~~suspension~~ *revocation*, denial, or ~~revocation~~ *suspension* has been eliminated or corrected.

(5) It is unlawful for a licensee to carry on the business or operations for which ~~he~~ *the licensee* was licensed, during the term of suspension or revocation, and if ~~he~~ *the licensee* does so, the licensee is subject to the penalties provided in the chapter.

(6) A licensee who is aggrieved by the decision of the department in matters pertaining to ~~suspension~~ *revocation*, denial, or ~~revocation~~ *suspension* of a license may appeal, within 30 days after the date of determination by the department, to the district court of the county in which ~~he~~ *the licensee* was licensed, if in the state, or in the case of a business firm of any nature in the state, of the county of its principal place of business.

(7) If a license is revoked a new license must be obtained from the department, but a new license may be issued only when the cause for revocation has been corrected."

Section 2704. Section 81-22-205, MCA, is amended to read:

"81-22-205. Examination and licensing of persons engaged in testing. (1) A person may not operate a butterfat, protein, solids, or other component content test where milk or cream is bought and paid for on the basis of these values without first passing an appropriate examination and obtaining the license required by the department. A person desiring to operate these tests shall apply to the department for permission to take the butterfat, protein, solids, or other component content test operator's examination. The examination ~~shall~~ *must* be given to the applicant by the department. On passing the examination to the satisfaction of the department, the applicant ~~shall~~ *must* be issued a license authorizing ~~him~~ *the applicant* to conduct these tests in this

state. The department shall establish a fee to be paid for each license and for each renewal.

(2) Milk and cream tester's licenses may be revoked, suspended, or denied ~~where~~ *when* testing is not conducted under official test procedures or under department rules. If the tester regularly or habitually reports results below the actual values of the butterfat, protein, solids, or other compound component values, the licensee is subject to the penalties provided in this chapter. A person who alters the results of an official test is subject to the penalties provided in this chapter."

Section 2705. Section 81-22-207, MCA, is amended to read:

"81-22-207. License — issuance and penalty. (1) All licenses issued under this part are issued as a matter of privilege, rather than as a matter of right, and only after proper qualifications under the rules of the board.

(2) All licenses issued under this part are valid, unless ~~sooner~~ suspended or revoked for cause, from the date of issue through December 31 of the year in which issued. All licenses ~~shall~~ *must* be renewed by ~~the first~~ January 31 following the date of *the* license expiration on payment of the required fee.

(3) All licenses issued under this part ~~shall~~ *must* be posted in conspicuous view at the place of business.

(4) Licenses issued under this part are not transferable from place to place or person to person.

(5) Penalties of $5 per month or fraction of a month from January 31 of each year may be imposed by the department for a failure to apply for a license under this part. Regulatory action may not be taken against a ~~dairyman~~ *dairy producer* licensed under this part until 2 years following the adoption of rules under this chapter."

Section 2706. Section 81-22-402, MCA, is amended to read:

"81-22-402. Employment of grader, weigher, and sampler — revocation of operator's license. (1) Persons receiving or purchasing milk or cream and persons collecting milk or cream on milk or cream routes shall provide a licensed grader, weigher, and sampler at each receiving station or for each route.

(2) A person who knowingly employs an unlicensed person as a grader, weigher, and sampler or one whose license has been revoked or suspended is subject to revocation of ~~his~~ *that person's* own license to operate a manufactured dairy products plant or cream or milk receiving station or to the penalties prescribed in this chapter."

Section 2707. Section 81-22-415, MCA, is amended to read:

"81-22-415. Pasteurization labeling. It is unlawful for a person to sell, offer for sale, exchange, or ~~to~~ have in ~~his~~ *the person's* possession ~~for these purposes~~ milk, cream, or a manufactured dairy product in a container or package marked~~,~~ *or* labeled~~,~~ or in any way designating the contents of the container or package as "pasteurized"~~,~~ unless it has been treated by an approved process of pasteurization as required by the department."

Section 2708. Section 81-23-201, MCA, is amended to read:

"81-23-201. Licenses to producers, producer-distributors, distributors, and jobbers. In ~~any~~ *a* market where the provisions of this chapter apply, it is unlawful for a producer, producer-distributor, distributor, or jobber to produce, transport, process, store, handle, distribute, buy, or sell milk

unless the dealer is properly licensed as provided by this chapter. It is unlawful for a person to buy, sell, handle, process, or distribute milk ~~which he~~ *that the person* knows or has reason to believe has been previously dealt with or handled in violation of any provision of this chapter. The department may decline to grant a license or may suspend or revoke a license already granted~~,~~ upon due cause and after hearings."

Section 2709. Section 81-23-305, MCA, is amended to read:

"81-23-305. Financing prohibitions — producer and retailer. (1) A producer, producer-distributor, distributor, or jobber licensed under this chapter may not advance or loan money or credit to or furnish money or credit for or refinance or cosign or guarantee promissory notes, security agreements, conditional sales contracts, or other commercial paper for or on behalf of a retailer. A producer, producer-distributor, distributor, or jobber may not be financially interested, either directly or indirectly, in the conduct or operation of the business of a retailer. A producer-distributor, distributor, or jobber licensed under this chapter may not advance or loan money or credit to or furnish money or credit for or refinance or cosign or guarantee promissory notes, security agreements, conditional sales contracts, or other commercial paper for or on behalf of a producer. A producer-distributor, distributor, or jobber may not be financially interested, either directly or indirectly, in the conduct or operation of the business of a producer. This section does not prohibit a producer from belonging to, participating in, or patronizing a cooperative corporation or a producer, producer-distributor, distributor, or jobber from operating ~~his~~ *the person's* own ~~wholly-owned~~ *wholly owned* dairy products or other retail store or home-delivery retail routes.

(2) This section does not prohibit a producer from requesting and a distributor from granting an advance payment for milk before the regular date of payment for milk or limit in any way the right of a producer to assign part or all of ~~moneys which are~~ *money that is* or may become due to ~~him~~ *the producer* from a distributor."

Section 2710. Section 81-23-403, MCA, is amended to read:

"81-23-403. Disposition of fines. (1) All fines assessed by a court, other than a justice's court, for violation of this chapter ~~shall~~ *must* be paid by the court to the department.

(2) All fines received by the department ~~shall~~ *must* be deposited with the state treasurer and ~~shall~~ *must* be placed by ~~him~~ *the treasurer* in the state special revenue fund. Fines assessed for violations of this chapter are earmarked for the purposes of this chapter."

Section 2711. Section 82-1-105, MCA, is amended to read:

"82-1-105. Exploration permit. (1) Upon compliance with the provisions ~~herein contained~~ *of this section*, namely the filing of a notice of intention to engage in the exploration and a certificate ~~(~~or ~~photostatic~~ *a* copy ~~thereof)~~ *of the certificate* from the secretary of state certifying the name and address of the resident agent for service of process for the person, firm, or corporation desiring to engage in the exploration and certifying that the required surety bond has been filed with the secretary of state, the county clerk and recorder shall issue to the person, firm, or corporation a ~~"~~geophysical exploration permit~~"~~.

(2) The permit ~~shall~~ *must* show:

(a) the name of the person, firm, or corporation and *the* principal place of business;

(b) if a firm or corporation, the names and addresses of its officers;

(c) the name and address of the resident agent for service of process for the person, firm, or corporation;

(d) that a notice of intention to engage in geophysical exploration has been ~~duly~~ filed; and

(e) that a good and sufficient surety bond has been filed by the person, firm, or corporation, naming the surety company and giving its address.

(3) The permit ~~shall~~ *must* be signed by the county clerk and recorder or ~~his~~ *the clerk and recorder's* deputy and bear the official county seal. The permit ~~shall be~~ *is* valid and effective for all geophysical crews of the permittee during the calendar year in which it is issued.

(4) The cost of the permit ~~shall be~~ *is* $5 per calendar year or any portion ~~thereof~~ *of the calendar year* for which issued, and the ~~revenues~~ *revenue* realized ~~therefrom shall~~ *from the permit must* go to the county ~~so~~ issuing *the permit*. ~~Such~~ *The* funds a~~s are realized shall~~ *must* be applied toward payment of the cost of printing the permits, which ~~shall~~ *must* be printed at the county seat, and excesses ~~shall~~ *must* ~~go into~~ *be deposited in* the county's general fund.

(5) If printed forms are not available at the time any person, firm, or corporation desires the permit and qualifies for its issuance, *a* typewritten or other form of reproduction of the permit may be used, the fee of $5 ~~nevertheless shall~~ *must still* be paid for its issuance, and this fee ~~shall~~ *must* be disposed of in the same manner.

(6) The permit or a ~~photostatic~~ copy ~~thereof shall~~ *of the permit must* be carried by the person or by the agent of the firm or corporation at all times during the period of the geophysical exploration and ~~shall~~ *must* be exhibited upon demand of any county or state official."

Section 2712. Section 82-1-108, MCA, is amended to read:

"82-1-108. Filing record of work performed. (1) Within 3 months from the day *that* any firing of shotpoints in seismic exploration is done by ~~any~~ *a* person, firm, or corporation within this state, ~~such~~ *the* person, firm, or corporation shall file with the county clerk and recorder of the county in which the work was done a record showing each township and range within the county in which the work was performed and the approximate date on which the work was performed.

(2) ~~Such~~ *The* person, firm, or corporation shall file with the county clerk and recorder a record showing the location of each shotpoint and date fired within a maximum area of any square, 4-section area of land, upon written request of the county clerk and recorder. The request must be based upon the complaint of a property owner that physical damage to ~~his~~ *the owner's* property has resulted from the use of the seismograph and explosives in seismic operations at some location within the maximum 4-square mile area, and the request ~~shall~~ *must* designate the name and address of the complaining person and the approximate date and nature of the alleged damages. The required record of operations in response to the request of the county clerk and recorder ~~shall~~ *must* be supplied within 30 days from the date on which the request is received."

Section 2713. Section 82-1-202, MCA, is amended to read:

"82-1-202. Action to compel release — procedure without court action. (1) If the lessee or assignee ~~thereof~~ *of a lease* neglects or refuses to execute a release as provided by this part, the owner of the leased premises may sue in any court of competent jurisdiction to obtain the release, and in ~~such~~ *that*

action ~~he also~~ *the owner* may *also* recover from the lessee~~, his~~ *or the lessee's* successor~~,~~ or assigns the sum of $100 as damages, all costs, together with ~~a~~ reasonable attorney ~~fee~~ *fees* for preparing and prosecuting the suit, and any additional damages that the evidence in the case warrants. Writs of attachment may issue as in other cases. If in the action the plaintiff fails to establish the forfeiture of the lease, ~~an~~ attorney ~~fee~~ *fees* must be allowed to the lessee or assignee of the lease. Issues in regard to attorney fees ~~shall~~ *must* be determined in the same manner as other issues in ~~such~~ *those* actions.

(2) When, by its terms, an oil or gas lease has expired and is subject to forfeiture for nonperformance and more than 3 years have elapsed since the expiration, the owner of the leased premises, in addition to all other remedies, may serve a written notice on the lessee or on the assignee ~~thereof~~ *of the lease*, *and the* ~~which~~ notice ~~shall~~ *must* state:

(a) the names of the lessor, lessee, and assignee ~~thereof~~ *of the lease* if assigned;

(b) the date of the lease and the date of the expiration ~~thereof~~ *of the lease*;

(c) the description of the lands leased;

(d) the place, book, and page where the lease is recorded; and

(e) that if the lessee or assignee fails to execute a release of record of the lease or abstract of the lease, the lease ~~shall~~ *must* be terminated and *is* of no effect and ~~shall~~ *must* cease to be a lien upon the lands described ~~therein~~ *in the lease*, unless the lessee or the assignee ~~thereof~~ *of the lease*, within 60 days from the date of service of the notice, files, in the county clerk's office in the county where the lease or abstract of ~~such~~ *the* lease is recorded, an affidavit stating that the lease is in effect and delivers a copy ~~thereof~~ *of the lease* to the owner of the leased lands.

(3) If the lessee or the assignee ~~thereof~~ *of the lease* resides in the county where the lease or abstract of the lease is recorded, the notice ~~shall~~ *must* be personally served on that person. If the lessee or the assignee ~~thereof~~ *of the lease* does not reside in that county but ~~his~~ *the lessee's or assignee's* address appears on the records in that county clerk's office or is otherwise known, the notice ~~shall~~ *must* be mailed by certified mail to that person at that address, and in addition ~~thereto~~ the notice ~~shall~~ *must* be published once a week for 2 consecutive weeks in a newspaper of general circulation in the county in which the lands are situated. If the address of the lessee or assignee is unknown, the notice ~~shall~~ *must* be published in the manner provided ~~above~~ *in this subsection*. The date of service of the notice, if served personally, the date of mailing, if served by mail, and the first date of publication of the notice, if published, must be at least 60 days before the date of termination referred to in the notice.

(4) Upon the expiration of the time mentioned in the notice, if the affidavit of the lessee or assignee has not been filed as ~~herein~~ provided *in this section*, the owner of the leased lands shall file an affidavit of service of the notice in the county clerk's office of the county in which the lands are located, and the affidavit ~~shall~~ *must* be kept as a permanent file in ~~his~~ *the clerk's* office~~, and this~~. *This* proof of notice when ~~so~~ filed is prima facie evidence of the sufficiency of the notice, and from the filing ~~thereof~~ *of the notice* the lease is terminated and the lands *are* released from the lien ~~thereof~~ *of the lease*."

Section 2714. Section 82-1-203, MCA, is amended to read:

"82-1-203. Demand for release prior to action. At least 20 days before bringing the action provided for in this part, the owner of the leased land, either

~~by himself~~ *personally* or by ~~his~~ *the owner's* agent or attorney, shall demand of the holder of the lease, if ~~such~~ *the* demand by ordinary diligence can be made in this state, that ~~said~~ *the* lease or abstract of ~~such~~ *the* lease be released of record. ~~Such~~ *The* demand must be written. When written, a copy ~~thereof~~, when shown to be ~~such~~ *a copy*, may be used as evidence in any court with the same force and effect as the original."

Section 2715. Section 82-2-101, MCA, is amended to read:

"82-2-101. Manner of locating claim. ~~Any~~ *A* person who discovers upon the public domain of the United States, within the state of Montana, a vein, lode, or ledge of rock in place bearing gold, silver, cinnabar, lead, tin, copper, or other valuable deposits or a placer deposit of gold or other deposit of minerals having a commercial value ~~which~~ *that* is subject to entry and patent under the mining laws of the United States may, if qualified by the laws of the United States, locate a mining claim upon ~~such~~ *the* vein, lode, ledge, or deposit in the following manner:

(1) ~~He~~ *The person* shall post conspicuously at the point of discovery a written or printed notice of location containing the name of the claim, the name of the locator or locators, if there ~~be~~ *is* more than one, the date of the location, which ~~shall~~ *must* be the date of posting ~~such~~ *the* notice, and the approximate dimensions of *the* area of the claim intended to be appropriated.

(2) Within 30 days after posting the notice of location, ~~he~~ *the person* shall distinctly mark the location on the ground so that its boundaries can be readily traced. It ~~shall be~~ *is* prima facie evidence that the location is properly marked if the boundaries are defined by a monument at each corner or angle of the claim, consisting of any one of the following kinds:

(a) a tree at least 8 inches in diameter and blazed on four sides;

(b) a post at least 4 inches square by 4 feet 6 inches in length, set 1 foot in the ground, unless solid rock should occur at a less depth, in which case the post should be set upon ~~such~~ *the* rock and surrounded in all cases by a mound of earth or stone at least 4 feet in diameter by 2 feet in height. A squared stump of the requisite size, surrounded by ~~such~~ *a* mound, ~~shall~~ *must* be ~~deemed~~ *considered* the equivalent of a post and mound.

(c) a stone at least 6 inches square by 18 inches in length, set two-thirds of its length in the ground, with a mound of earth or stone alongside at least 4 feet in diameter by 2 feet in height; or

(d) a boulder at least 3 feet above the natural surface of the ground on the upper side. ~~Where~~ *When* other monuments or monuments of lesser dimensions than those ~~above~~ described *in subsections (2)(a) through (2)(c)* are used, it ~~shall be~~ *is* a question for the jury or for the court where the action is tried without a jury as to whether the location has been marked upon the ground so that its boundaries can be readily traced. Whatever monument is used, it must be marked with the name of the claim and the designation of the corner, either by number or cardinal point.

(3) Within 60 days after posting ~~such~~ notice, the locator shall comply with the United States mining laws."

Section 2716. Section 82-2-102, MCA, is amended to read:

"82-2-102. Record of certificate of location. (1) Within 60 days after posting the notice of location, the locator shall record ~~his~~ *the* location in the office of the county clerk of the county in which the mining claim is situated. The record ~~shall~~ *must* consist of a certificate of location for each claim containing:

(a) the name of the lode or claim and whether located as a lode or placer claim;

(b) the name of the locator or locators, if there ~~be~~ *is* more than one, together with the post-office address of ~~such~~ *the* locator or locators;

(c) the date of location and the description of the claim, with reference to some natural object or permanent monument, ~~as~~ *that* will identify the claim and the section, township, and range ~~wherein~~ *in which* the claim is situated by projected survey lines~~,~~ if located in unsurveyed country; *and*

(d) the directions and distances from the discovery point ~~which~~ *that* describe the claim.

(2) The certificate of location must be verified before ~~some~~ *an* officer authorized to administer oaths by the locator or one of the locators, if there ~~be~~ *is* more than one, or by *an* authorized agent. In the case of a corporation, the verification may be made by ~~any~~ *an* officer ~~thereof~~ *of the corporation* or by an authorized agent. When the verification is made by an agent, the fact of the agency ~~shall~~ *must* be stated in the affidavit. A *verified* certificate of location ~~so verified~~ or a certified copy ~~thereof~~ *of the certificate* is prima facie evidence of all facts properly recited ~~therein~~ *in the certificate*. Failure of the locator or locators to record a certificate of location as ~~herein~~ required ~~shall create~~ *in this section creates* a prima facie presumption of intent to abandon. However, recordation after the 60-day period but before the ground is located by another renews the location and saves the rights of the original locator. Nothing contained in 82-2-112 affects the prima facie presumption created by this section."

Section 2717. Section 82-2-103, MCA, is amended to read:

"82-2-103. Affidavit of performance of annual work. (1) The owner of a lode or placer claim who performs or causes to be performed the annual work or makes the improvements required by the laws of the United States, as permitted and defined by laws of the United States, in order to prevent the forfeiture of the ~~claim,~~ ~~must~~ *shall*, within 90 days after the expiration of the federal annual assessment work period, file in the office of the county clerk of the county in which ~~such~~ *the* claim or claims is situated ~~an~~ *the owner's* affidavit ~~of his own~~ or an affidavit of the person who performed ~~such~~ *the* work or made the improvements, showing:

(a) the name of the mining claim or claims;

(b) the location of the claim or claims by section, township, and range, by projected survey lines if located in unsurveyed country;

(c) the book and page numbers ~~wherein~~ *in which* the original or latest amended relocation for each claim is recorded;

(d) the number of ~~days'~~ *days of* work done and the character and value of the improvements placed ~~thereon~~ *on the claim* or the verified report required by United States mining law if geological, geophysical, or geochemical work or labor is being relied upon;

(e) the dates between which ~~such~~ *the* work or improvements were effected;

(f) at whose instance the work was done or the improvements *were* made; *and*

(g) the actual amount paid for work and improvements and by whom paid when the ~~same was~~ *work and improvements were* not done by the owner.

(2) Annual assessment work may be performed or caused to be performed at one or more points within a group of contiguous claims and may be utilized to

satisfy annual assessment work requirements upon the group of contiguous claims. ~~Said~~ *The* point or points of work may be performed upon a patented claim. If annual assessment work is performed or caused to be performed at one or more points within a group of contiguous claims, the affidavit of performance of assessment work must be filed for the group of claims. The affidavit, in addition to requirements established by this section for affidavits of performance of assessment work, must contain a description and location of the work done upon the group at a point or points within the group, the specific names of all the claims in the group for whose benefit the work was performed, and the total cost of the work performed.

(3) If group work is claimed for a group of claims crossing county lines, the affidavit required by this section ~~shall~~ *must* be filed for recording within the required time in each of the counties in which ~~such~~ *the* claims are located.

(4) An affidavit of performance of annual assessment work must be verified before some officer authorized to administer oaths by the locator or one of the locators, if there ~~be~~ *is* more than one, or by *an* authorized agent. In the case of a corporation, the verification may be made by ~~any~~ *an* officer ~~thereof~~ *of the corporation* or by an authorized agent. When the verification is made by an agent, the fact of the agency ~~shall~~ *must* be stated in the affidavit. ~~Such~~ *The* affidavit or a certified copy ~~thereof~~ *of the affidavit* is prima facie evidence of the facts ~~therein~~ stated *in the affidavit*. The failure to file ~~such~~ *the* affidavits within the period allowed ~~therefor shall be~~ *is* prima facie evidence that ~~such~~ *the* labor has not been performed and that the owner of the claim or claims has abandoned and surrendered ~~same~~ *the claim or claims*."

Section 2718. Section 82-2-105, MCA, is amended to read:

"82-2-105. Relocation of abandoned claim. The relocator of an abandoned or forfeited mining claim may adopt as ~~his~~ *the relocator's* discovery any shaft or other working existing upon ~~such~~ *the* claim at the date of the relocation in which the vein, lode, or deposit is disclosed, but in ~~such~~ *that* shaft or other working, ~~he~~ *the relocator* shall perform the same discovery work ~~as~~ *that* is required in the case of an original location."

Section 2719. Section 82-2-106, MCA, is amended to read:

"82-2-106. Rights of relocator. The rights of a relocator of any *relocated* abandoned or forfeited mining claim ~~hereafter relocated shall~~ date from the posting of ~~his~~ *the relocator's* notice of location ~~thereon~~ *on the claim*, and while ~~he~~ *the relocator* is ~~duly~~ performing the acts required by law to perfect ~~his~~ *the* location, ~~his~~ *the relocator's* rights ~~shall~~ *may* not be affected by any reentry or resumption of work by the former locator or claimant."

Section 2720. Section 82-2-107, MCA, is amended to read:

"82-2-107. Amended location. A locator or claimant may at any time amend ~~his~~ *the* location and make any change in the boundaries ~~which~~ *that* does not involve a change in the point of discovery as shown by the discovery shaft by marking the location as amended upon the ground and filing an amended certificate of location conforming to the requirements of an original certificate of location. A defect in a recorded certificate of location may be cured by filing an amended certificate."

Section 2721. Section 82-2-108, MCA, is amended to read:

"82-2-108. Relocation by owner. A locator or claimant may at any time relocate ~~his~~ *the locator's or claimant's* own claim for any purpose, except to avoid the performance of annual labor ~~thereon~~ *on the claim*, and, by ~~such~~ *the*

relocation, may change the boundaries of ~~his~~ *the* claim, ~~or~~ the point of discovery, or both~~;~~. ~~but such~~ *However, the* relocation must comply in all respects with the requirements of this ~~law~~ *part* as to an original location."

Section 2722. Section 82-2-109, MCA, is amended to read:

"82-2-109. Amendment or relocation not ~~a~~ waiver of acquired rights. ~~Where~~ *When* a locator or claimant amends or relocates ~~his~~ *the locator's or claimant's* own claim, ~~such~~ *the* amendment or relocation ~~shall~~ *may* not be construed as a waiver of any right or title acquired by ~~him~~ *the locator or claimant* by virtue of the previous location or record ~~thereof~~ *of that location*, except as to ~~such~~ portions of the previous location ~~as~~ *that* may be omitted from the boundaries of the claim as amended or relocated. As to the portion of ground included both in the original location and the location as amended or relocated, ~~he~~ *the locator or claimant* may rely either upon the original location or the location as amended or relocated or upon both~~;~~. ~~provided that nothing herein contained shall~~ *However, this section may not* be construed as permitting the locator or claimant to hold a tract ~~which~~ *that* does not include a valid discovery."

Section 2723. Section 82-2-112, MCA, is amended to read:

"82-2-112. Defective locations good against persons with notice. The period of time prescribed by this ~~law~~ *part* for the performance of any act ~~shall~~ *may* not be ~~deemed~~ *considered* mandatory ~~where~~ *if* the act is performed before the rights of third persons have intervened, and ~~no~~ *a* defect in the posted notice or recorded certificate ~~shall~~ *may not* be ~~deemed~~ *considered* material~~,~~ except as against one who has located the same ground or some portion ~~thereof~~ *of the same ground* in good faith and without notice. Notice to an agent who makes a location ~~in~~ *on* behalf of another ~~shall~~ *must* be ~~deemed~~ *considered* notice to ~~his~~ *the agent's* principal, and notice to one of several coclaimants ~~shall~~ *must* be ~~deemed~~ *considered* notice to all."

Section 2724. Section 82-2-114, MCA, is amended to read:

"82-2-114. Amended locations. If, at any time, the locator of ~~any~~ *a* mining claim ~~heretofore or hereafter located~~ or ~~his~~ *the locator's* successors or assigns ~~shall apprehend~~ *determine* that ~~his~~ *the* original declaratory statement was defective or erroneous, ~~or~~ *determine* that the requirements of law ~~had~~ *were* not ~~been~~ complied with, or ~~shall be desirous of changing his~~ *want to change the* boundaries or ~~taking~~ *take* in any part of an overlapping claim ~~which~~ *that* has been abandoned or ~~in case his~~ *if the* original declaratory statement was filed prior to the passage of this law and ~~he shall be desirous of securing~~ *the locator or the locator's successor's or assigns want* the benefit of this part, ~~such~~ *the* locator or ~~his~~ *the* successors or assigns may file an additional or amended declaratory statement subject to the provisions of this part~~;~~. ~~provided that such~~ *However, the* relocation or filing of the amended or additional declaratory statement ~~shall~~ *may* not interfere with the existing rights of others at the time of ~~such~~ *the* relocation or filing of the amended or additional declaratory statement, and ~~no such~~ *the* relocation or amended or additional declaratory statement or other record ~~thereof shall~~ *may not* preclude the claimant or claimants from proving any ~~such~~ title ~~as he or they~~ *that the claimant* may have held under the previous location and notice ~~thereof~~."

Section 2725. Section 82-2-115, MCA, is amended to read:

"82-2-115. Filing of false mining claims. ~~Every~~ *A* person who ~~shall offer~~ *offers* ~~any~~ *a* location certificate for a placer mining claim or lode claim or affidavit of assessment work to be filed in an office of a county clerk of this state on *the person's own* behalf ~~of himself~~ or for any other person or ~~any~~ *a* person who

~~shall procure~~ *procures* others to do so, knowing that ~~such~~ *the* claim, ~~or~~ certificate, or affidavit was not preceded by a proper location of the claim physically upon the ground by the establishment of a proper notice of claim and the designation of the surface boundaries of the claim by substantial posts or monuments as required by the laws of the state, shall be punished by imprisonment in the state ~~penitentiary~~ *prison* for not more than 5 years, ~~or~~ by a fine of not more than $5,000, or by both."

Section 2726. Section 82-2-203, MCA, is amended to read:

"82-2-203. Proceedings to obtain right-of-way. Whenever ~~such~~ *the* owner desires to work a mine or mining claim and it is necessary to enable ~~him~~ *the owner* to do so successfully and conveniently that ~~he~~ *the owner* should have a right-of-way for any of the purposes mentioned in ~~the foregoing sections~~ *85-2-201 and 85-2-202* and if ~~such~~ *the* right-of-way has not been acquired by agreement between ~~him~~ *the owner of the mining claim* and the owner of the land or claims over, under, across, and upon which ~~he~~ *the mining claim owner* seeks to establish ~~such~~ *the* right-of-way, it is lawful for ~~him~~ *the mining claim owner* to present to the judge of the district court a complaint asking that ~~such~~ *the* right-of-way be awarded ~~to him~~. The complaint must be verified and contain a particular description of the character and extent of the right sought, a description of the mine or mining claim of the owner, and the mining claim or claims and the ~~lands~~ *land* to be affected by ~~such~~ *the* right-of-way, with the names of the occupants or owners ~~thereof,~~ *of the affected land* and may also set forth any tender or offer ~~hereinafter mentioned~~."

Section 2727. Section 82-2-205, MCA, is amended to read:

"82-2-205. Court order and appointment of commissioners. Upon the return of the summons or upon any day to which the hearing is adjourned, the defendants may answer, ~~and~~ issue must be joined, and the judge ~~must~~ *shall* hear the allegations and proofs of the respective parties. If, upon ~~such~~ *the* hearing, the judge is satisfied that the claims of the plaintiff ~~can~~ *may* be worked conveniently only by means of the privilege asked for, ~~he must~~ *the judge shall* make an order adjudging and awarding to the plaintiff ~~such~~ *the* right-of-way and ~~must~~ *shall* appoint three commissioners who are disinterested persons and residents of the county to assess the damages to the lands or claims affected by ~~such~~ *the* order."

Section 2728. Section 82-2-401, MCA, is amended to read:

"82-2-401. Samplerooms required. ~~Any~~ *A* person, association, or corporation engaged in the business of buying or sampling or smelting for hire ores of gold, silver, copper, lead, zinc, iron, or other valuable metal shall maintain a ~~sampling room~~ *sampling room* or house to which the ore shippers~~,~~ *or* their agents~~,~~ or representatives ~~shall~~ *must* have access at all times during the sampling of ores or while the ~~same~~ *sampling* is being carried on and in which ~~shall~~ *must* be *maintained* samples of all ores ~~he or they~~ *that the person, association, or corporation* may buy or smelt."

Section 2729. Section 82-2-402, MCA, is amended to read:

"82-2-402. Samples of ~~fifty~~ *50* pounds per ton to be retained until settlement. A person, association, or corporation ~~which~~ *that* buys ~~any ores~~ *ore* upon an agreement to pay for ~~them~~ *if* in *an* amount dependent upon ~~their~~ *the* metallic contents or *that* smelts any ore shall retain from the pulp or crushed ore, as the ~~same~~ *ore* is sampled, a quantity of not less than 50 pounds out of each ton of ore~~,~~. ~~which~~ *The* quantity ~~shall~~ *must* be selected regularly and at equal intervals from any lot of ore ~~so~~ bought or to be smelted, and *the person,*

association, or corporation shall keep this quantity separate from any other ~~ores~~ *ore* or pulp for a period of 30 days or until full settlement is made and accepted by the shipper. Until full settlement is made and accepted, the ore shipper~~,~~ ~~his~~ *or the shipper's* agents~~,~~ or representatives may take *any part* from the quantity ~~so~~ retained ~~any part thereof~~ for the purpose of sampling or assaying that part~~;~~. ~~however~~ *However*, the value of any part ~~so~~ taken by the owner or shipper may be deducted from the total value of the ore delivered by ~~him~~ *the owner or shipper*."

Section 2730. Section 82-2-405, MCA, is amended to read:

"82-2-405. Notice of selection. Upon the selection of the umpire, who ~~shall~~ *must* be actively engaged in the assaying business in this state, the person, association, or corporation selecting ~~him~~ *the umpire* shall, within 10 days after the selection is made, post a notice of the selection in a conspicuous place within and ~~without~~ *outside* the room or house where the sampling of ~~ores~~ *ore* is carried on by the person, association, or corporation."

Section 2731. Section 82-2-421, MCA, is amended to read:

"82-2-421. Time for payment for ores. (1) ~~Every~~ *A* person, association, company, or corporation engaged within this state in purchasing ~~ores~~ *ore*, minerals, or metals from or in smelting, milling, or otherwise reducing or preparing the same for market for any other person or persons, association, company, or corporation shall, within 20 days after any ~~such ores~~ *ore*, minerals, or metals ~~shall~~ have arrived at ~~his, their,~~ *the person's* or ~~its~~ *entity's* smelter, mill, reduction works, yards, or other place for receiving ~~such ores~~ *ore*, minerals, or metals, make full settlement with and payment of the amount due to the consignor or consignors ~~thereof,~~ unless restrained or prevented from making ~~such~~ *the* settlement and payment by an order, writ, or process of a court of competent jurisdiction.

(2) ~~However, the~~ *The* provisions of this section ~~shall~~ *are* not ~~be~~ applicable to any ~~such ores~~ *ore*, minerals, or metals received pursuant to an existing written contract at *the* time of shipment between the consignor or consignors ~~thereof~~ and the person, association, company, or corporation receiving the same~~, where~~ *when* the time for settlement and payment is provided for in ~~such~~ *the* contract."

Section 2732. Section 82-4-142, MCA, is amended to read:

"82-4-142. Mandamus to compel enforcement. (1) A resident of this state~~, with~~ *who has* knowledge that a requirement of this part or a rule adopted under this part is not being enforced by a public officer or employee whose duty it is to enforce the requirement or rule~~,~~ may bring the failure to enforce to the attention of the public officer or employee by a written statement under oath that ~~shall~~ *must* state the specific facts of the failure to enforce the requirement or rule. Knowingly making false statements or charges in the affidavit subjects the affiant to penalties prescribed in 45-7-202.

(2) If the public officer or employee neglects or refuses for an unreasonable time after receipt of the statement to enforce the requirement or rule, the resident may bring an action of mandamus in the district court of the first judicial district of this state ~~in and for the county of Lewis and Clark~~ or in the district court of the county in which the land is located. If the court finds that a requirement of this part or a rule adopted under this part is not being enforced, it shall order the public officer or employee whose duty it is to enforce the requirement or rule to perform ~~his~~ *the* duties. If ~~he~~ *the officer or employee* fails to do so, the public officer or employee ~~shall~~ *must* be held in contempt of court and is subject to the penalties provided by law."

Section 2733. Section 82-4-238, MCA, is amended to read:

"82-4-238. Successor operator. ~~Where~~ *When* one operator succeeds another at an uncompleted operation, either by sale, assignment, lease, or otherwise, the department may release the first operator from all liability under this part as to that particular operation if both operators have been issued a permit and have otherwise complied with the requirements of this part, and the successor operator assumes, as part of ~~his~~ *the* obligation under this part, all liability for the reclamation of the area of land affected by the former operator."

Section 2734. Section 82-4-355, MCA, is amended to read:

"82-4-355. Action for damages to water supply — replacement. (1) An owner of an interest in real property who obtains all or part of ~~his~~ *the owner's* supply of water for beneficial uses, as defined in 85-2-102, from an underground source other than a subterranean stream having a permanent, distinct, and known channel may sue the operator engaged in an operation for which a license is required pursuant to 82-4-332 or for which a permit is required pursuant to 82-4-335 to recover damages for loss in quality or quantity of the water supply resulting from mining or exploration. The owner is required to exhaust the administrative remedy under subsection (2) prior to filing suit.

(2) (a) An owner described in subsection (1) may file a complaint with the department detailing the loss in quality or quantity of water. Upon receipt of a valid complaint, the department:

(i) shall investigate the statements and charges in the complaint~~,~~ using all available information, including monitoring data gathered at the exploration or mine site;

(ii) may require the operator, if necessary, to install monitoring wells or other practices that may be needed to determine the cause of water loss, if there is a loss, in terms of quantity and quality;

(iii) shall issue a written finding specifying the cause of the water loss, if there is a loss, in terms of quantity and quality;

(iv) shall, if it determines that the preponderance of evidence indicates that the loss is caused by an exploration or mining operation, order the operator, in compliance with Title 85, chapter 2, to provide the needed water immediately on a temporary basis and within a reasonable time replace the water in like quality, quantity, and duration. If the water is not replaced, the department shall order the suspension of the operator's exploration or operating permit until ~~such time as~~ the operator provides substitute water, except that nothing in this section preempts *the application of* Title 85, chapter 2. The operator may not be required to replace a junior right if the operator's withdrawal or dewatering is not in excess of ~~his~~ *the operator's* senior right.

(b) If the department determines that there is a great potential that surface or subsurface water quality and quantity may be adversely affected by a mining or exploration operation, the operator shall install a water quality monitoring program~~,~~ *or a* water quantity monitoring program, or both, which must be approved by the department prior to the commencement of exploration or mining."

Section 2735. Section 82-10-103, MCA, is amended to read:

"82-10-103. Obligation to pay royalties as essence of contract — interest. (1) The obligation arising under an oil and gas lease to pay oil or gas royalties to the royalty owner or ~~his~~ *the owner's* assignee, to deliver oil or gas to a purchaser to the credit of ~~such~~ *the* royalty owner or ~~his~~ *the owner's* assignee, or to

pay a portion of the proceeds of the sale of ~~such~~ *the* oil or gas to the royalty owner or ~~his~~ *the owner's* assignee is of the essence in the lease contract.

(2) If the operator under an oil and gas lease fails to pay oil or gas royalties to the royalty owner or ~~his~~ *the owner's* assignee within 120 days after the initial oil or gas produced under the lease is marketed and within 60 days for all oil and 90 days for all gas produced and marketed ~~thereafter~~, the unpaid royalties ~~will~~ *must* bear interest~~,~~ at the maximum rate of interest authorized under 31-1-107 from the date due until paid. The operator may remit semiannually to a person entitled to royalties the aggregate of 6 months' royalties whenever the aggregate amount is less than $50 and annually whenever the aggregate amount is less than $10.

(3) A royalty owner seeking a remedy for failure to make payments under the lease or seeking ~~such~~ payments under this section shall bring ~~his~~ *the* action in the district court for the county in which the oil or gas well is located, and that court has jurisdiction over any ~~such~~ actions brought under this section. The prevailing party in any proceeding brought under this section is entitled to recover ~~his~~ court costs and reasonable attorney fees.

(4) This section does not apply if a royalty owner or ~~his~~ *the owner's* assignee has elected to take ~~his~~ *the owner's or assignee's* proportionate share of production in kind or whenever there is a dispute as to the title of the minerals or entitlement to royalties, the outcome of which would affect distribution of royalty payments."

Section 2736. Section 82-10-401, MCA, is amended to read:

"82-10-401. Notice required before abandonment of well — owner's option. ~~No~~ *A* person ~~shall~~ *may not* plug and abandon an oil or gas well located within this state without first giving reasonable notice of ~~his~~ *the* intention to do so to the surface owner of record of the land on which ~~said~~ *the* well is located. Upon receipt of notice to plug and abandon, the surface owner may, by written notice given within 15 days ~~thereafter~~ *after notice*, direct that the well pipe for ~~said~~ *the* well ~~shall~~ *must* be buried to a depth of not less than 3 feet. The board of oil and gas conservation shall adopt regulations to implement this section."

Section 2737. Section 82-10-402, MCA, is amended to read:

"82-10-402. Inventory of abandoned wells and seismic operations — reclamation procedures. (1) The board of oil and gas conservation shall maintain a record of the abandoned oil or gas wells, injection wells, sumps, and seismographic shot holes in the state that disturb land, water, or wildlife resources to a degree not in compliance with plugging, pollution prevention, and reclamation rules of the board. This record must be compiled from petitions or written statements from the owners of surface rights or lessees.

(2) The board shall check the record compiled under subsection (1) against its drilling records and shall determine and list the name of the person who abandoned the well, sump, or hole, whenever this information is available. When a *listed* person ~~so listed~~ applies to the board for a new drilling permit, the board may issue the permit only after approving a plan by which the applicant will reclaim the land disturbed by ~~his~~ *the person's* abandoned wells, sumps, or holes within 3 years.

(3) When the person who abandoned a well, sump, or hole cannot be identified or located or when the person does not have sufficient financial resources to pay for complete reclamation, the board may then reclaim the disturbed land with funds available from the oil and gas production damage

mitigation account in a manner consistent with the requirements for the use of the account provided in 82-11-161 and 82-11-164.

(4) As used in subsection (3), "well" includes a class II injection well, as defined in 82-11-101, for which a drilling permit or a permit authorizing use of a well for that purpose was granted by the board after June 30, 1989, and water source wells used in connection with enhanced recovery projects."

Section 2738. Section 82-10-506, MCA, is amended to read:

"82-10-506. Notification of injury. To receive compensation under this part, a surface owner shall give written notice to the oil and gas developer or operator of the damages sustained by the surface owner within 2 years after the injury occurs or would become apparent to a reasonable ~~man~~ *person*."

Section 2739. Section 82-10-507, MCA, is amended to read:

"82-10-507. Agreement — offer of settlement. Unless both parties provide otherwise by written agreement, within 60 days after the oil and gas developer or operator receives notice of damages pursuant to 82-10-506, ~~he~~ *the developer or operator* shall make a written offer of settlement to the person seeking compensation for the damages. The surface owner seeking compensation may accept or reject any offer."

Section 2740. Section 82-11-103, MCA, is amended to read:

"82-11-103. Lands subject to law. This chapter applies to all lands in the state lawfully subject to its police powers, including all state-owned lands. It applies to lands of the United States or to lands subject to the jurisdiction of the United States only to the extent that control and supervision of conservation of oil and gas by the United States on its lands fails to effect the intent and purposes of this chapter and otherwise applies to those lands to the extent that any officer of the United States having jurisdiction or ~~his~~ *the officer's* duly authorized representative approves any of the provisions of this chapter or an order of the board that affects those lands. This chapter also applies to any lands committed to a unit agreement approved by the secretary of the interior or ~~his~~ *the secretary's* duly authorized representative, except that the board may, with respect to those unit agreements, suspend the application of this chapter or any part of this chapter so long as the conservation of oil and gas and the prevention of waste as provided in this chapter is accomplished under the unit agreements. The suspension does not relieve an operator or owner from making reports that may be required by the board with respect to operations and production under the unit agreement, and the suspension does not relieve an operator or owner from the payment of taxes on ~~his~~ oil and gas production or payment for permit fees as required by this chapter."

Section 2741. Section 82-11-117, MCA, is amended to read:

"82-11-117. Confidentiality of records. (1) Any information that is furnished to the board or the board's staff or that is obtained by either of them is a matter of public record and open to public use. However, any information unique to the owner or operator that would, if disclosed, reveal methods or processes entitled to protection as trade secrets must be maintained as confidential if so determined by the board.

(2) If an owner or operator disagrees with a determination by the board that certain material will not be maintained as confidential, the owner or operator may file a declaratory judgment action in a court of competent jurisdiction to establish the existence of a trade secret if ~~he~~ *the owner or operator* wishes ~~such~~

the information to enjoy confidential status. The department must be served in ~~any such~~ *the* action and may intervene as a party.

(3) Any information not intended to be public when submitted to the board or the board's staff must be submitted in writing and clearly marked as confidential.

(4) Data describing physical and chemical characteristics of a liquid, gaseous, solid, or other substance injected or discharged into state waters may not be considered confidential.

(5) The board may use any information in compiling or publishing analyses or summaries relating to water pollution if ~~such~~ *the* analyses or summaries do not identify the owner or operator or reveal any information that is otherwise made confidential by this section."

Section 2742. Section 82-11-141, MCA, is amended to read:

"82-11-141. Administrative procedure. (1) Unless otherwise provided, the Montana Administrative Procedure Act applies to this chapter.

(2) An order or amendment ~~thereof~~ *of an order*, except in an emergency, may not be made by the board without a public hearing upon at least 10 days' notice. The public hearing ~~shall~~ *must* be held at ~~such~~ *a* time and place as ~~may be~~ prescribed by the board, and any interested person is entitled to be heard.

(3) When an emergency requiring immediate action is found to exist, the board may issue an emergency order without advance notice or hearing ~~which shall be~~ *that is* effective upon promulgation. An emergency order may not remain in effect beyond the next regular meeting of the board.

(4) (a) If notice is required by the chapter and the Montana Administrative Procedure Act does not apply, the notice ~~shall~~ *must* be made by publication in one or more issues of a newspaper in general circulation in Helena and a newspaper of general circulation in the county where the land or some part ~~thereon~~ *of the land* is situated, and the board may also cause publication to be made in a trade journal or bulletin of general circulation in the oil and gas industry in the state.

(b) At least 20 days prior to the public hearing, a person who applies to establish a well spacing unit under 82-11-201 or who applies to pool all interests in a well spacing unit pursuant to 82-11-202 shall cause written notice of any hearing ~~thereon~~ *on the application* to be served upon the record owners of the oil and gas and leasehold interests sought to be spaced or pooled. Notice must be given by mailing the written notice, postage prepaid, to their addresses as shown by the record of the county clerk and recorder at the time the notice is given.

(5) If written notice is not possible, proof of service by publication under subsection (4) ~~shall~~ *must* be made by the affidavit of the printer or publisher of the newspaper, trade journal, or bulletin in which the notice is published or by a ~~foreman~~ *supervisor* or principal clerk of the newspaper, bulletin, or trade journal.

(6) Except as provided otherwise in this chapter, the board may act upon its own motion or upon the petition of an interested person. On the filing of a petition concerning a matter within the jurisdiction of the board, the board shall promptly fix a date for a hearing ~~thereon~~ *on the petition* and shall cause notice of the hearing to be given. The hearing ~~shall~~ *must* be held without undue delay after the filing of the petition. The board shall enter its order within 30 days after the hearing."

Section 2743. Section 82-11-142, MCA, is amended to read:

"82-11-142. Subpoena power — civil actions. (1) If the Montana Administrative Procedure Act does not apply, the board may subpoena witnesses, administer oaths, and require the production of records, books, and documents for examination at any hearing or investigation conducted by it. Witnesses subpoenaed under this subsection ~~shall~~ *must* be paid the same per diem and mileage as is provided to be paid to witnesses attending the district courts of this state.

(2) This chapter, a suit by or against the board, a violation charged or asserted against a person under this chapter, or a rule or order issued under this chapter does not impair, abridge, or delay a cause of action for damages or other civil remedy ~~which~~ *that* a person may have or assert against a person violating this chapter or a rule or order issued under it. A person ~~so~~ aggrieved by the violation may sue for and recover ~~such~~ damages or relief ~~as he~~ *that the person* otherwise may be entitled to receive.

(3) A person, association, corporation, or agency of the state or federal government may apply to the board protesting a violation or a threatened violation of this chapter. The board shall make an investigation and make a written report to the person, association, corporation, or agency that made the protest. If a violation is established by the investigation of the board, the board shall take appropriate enforcement action. If the board fails to take appropriate enforcement action or to bring suit to enjoin a threatened violation of this chapter or a rule or order of the board within 10 days after receipt of written request to do so by a person who is or will be adversely affected, the person making the request may bring the suit in ~~his~~ *the person's* own behalf to restrain the threatened violation in a court in which the board might have brought suit. The board ~~shall~~ *must* be made a party defendant in the suit in addition to the person threatening to violate this chapter or a rule or order of the board, and the action ~~shall~~ *must* proceed and injunctive relief may be granted without bond in the same manner as if suit had been brought by the board.

(4) If a person fails or refuses to comply with the subpoena issued by the board or if a witness refuses to testify as to any material matter regarding which ~~he~~ *the person* may be interrogated, any district court in the state, upon good cause shown by the application of the board, may issue a warrant of attachment for the person and, if after hearing the court finds ~~his~~ *the person's* failure or refusal to be unjustified, compel ~~him~~ *the person* to comply with the subpoena and to attend before the board and produce any subpoenaed records, books, and documents for examination and to give ~~his~~ testimony. The court may punish for contempt as in the case of disobedience to a like subpoena issued by the court or for refusal to testify ~~therein~~ *in the proceeding*."

Section 2744. Section 82-11-151, MCA, is amended to read:

"82-11-151. Emergencies — notice and hearing. (1) Notwithstanding any other provisions of this chapter, if the administrator or a board member finds that a person is committing or about to commit an act in violation of this chapter or any order or rule issued under it ~~which~~ *that*, if it occurs or continues, will cause substantial pollution, the administrator under order of the board or the board member is authorized to order the person to stop, avoid, or moderate the act, including immediate closure or shutdown of any well. This authority is limited to acts the harmful effects of which will not be remedied immediately after the commission or cessation of the act or will represent an immediate threat to public health, safety, or welfare.

(2) When any emergency requiring immediate action is found pursuant to subsection (1), the board is authorized to issue an emergency order without notice or hearing, which is effective upon issuance as provided in 82-11-141(3).

(3) The board may have written notice served, personally or by mail, on the alleged violator or ~~his~~ *the violator's* agent. The notice must state the provision alleged to be violated, the facts alleged to constitute the violation, the nature of corrective action the board requires, and the time within which the action is to be taken. For the purposes of this section, service by mail is complete on the date of mailing.

(4) The notice must indicate that the order is an emergency order.

(5) Pursuant to 82-11-141(3), the board may consider the emergency order at its next regular meeting, without compliance with the notice requirements of this chapter if they cannot be accomplished within the time available, and enter a second emergency order.

(6) Upon issuing an order under subsection (2), the board may fix a place and time for a hearing, not later than 5 days ~~thereafter~~ *after issuance* unless the person to whom the order is directed requests a later time. The board may deny a request for a later time if it finds that the person to whom the order is directed is not complying with the order. If the board considers it practicable, the hearing must be held in the county where the violation is alleged to have occurred. As soon as practicable after the hearing, the board shall affirm, modify, or set aside the order.

(7) If the order of the board is affirmed, it must be accompanied by a statement specifying the date or dates by which a violation must cease and may prescribe timetables for necessary action in preventing, abating, or controlling the pollution. An action for review of the order of the board may be initiated in the manner specified in 82-11-144. The initiation of ~~such~~ an action or taking of an appeal may not stay the effectiveness of the order unless the court finds that the board did not have reasonable cause to issue an order under this section."

Section 2745. Section 82-11-206, MCA, is amended to read:

"82-11-206. Terms and conditions of plan for unit operations. The order ~~shall~~ *under 82-11-205 must* be upon terms and conditions that are just and reasonable and ~~shall~~ *must* prescribe a plan for unit operations that ~~shall include~~ *includes*:

(1) a description of the pool or pools or parts ~~thereof~~ *of a pool or pools* to be ~~so~~ operated, termed the unit area, but only so much of a pool as has reasonably been defined and determined by drilling operations to be productive of oil or gas may be included within the unit area. If the unit is formed solely for production of gas, a spacing unit on which is located a well producing or capable of producing gas on March 1, 1971, may not be included in the unit area without the written consent of the majority in interest of the working interest owners of the spacing unit and well.

(2) a statement of the nature and purpose of the plan and operations contemplated, together with a copy of the proposed unit agreement and unit operating agreement;

(3) a plan for allocating to each tract in the unit area its fair share of the oil and gas produced from the unit area and not required or consumed in the conduct of the operation of the unit area or unavoidably lost. A plan may not be approved by the board until it has considered the relative value that the share of production bears to the relative value of all of the separately owned tracts in the

unit area, exclusive of physical equipment utilized in unit operations. In considering this relative value, the board shall weigh the economic value of the gas to all persons affected as compared to the economic value of the oil to all persons affected.

(4) a provision for the credits and charges to be made in the adjustment among the owners in the unit area for their respective investments in wells, tanks, pumps, machinery, materials, and equipment contributed to the unit operations;

(5) a provision providing how the costs of unit operations, including overhead and capital investments, ~~shall~~ *must* be determined and charged to the separately owned tracts, including a provision for carrying or otherwise financing any owner who has not executed the proposed unit operating agreement and who elects to be carried or otherwise financed, allowing an interest charge of the ~~then current~~ *then-current* prime rate plus 2% for the service. Recovery of the money advanced plus interest ~~shall~~ *must* be limited to and only ~~shall~~ be recoverable from the owners' share of production. The recovery ~~shall~~ *must* be as follows:

(a) *(i)* in the case of a field producing oil or oil and gas, during the period of depletion of the remaining estimated primary reserves from the unit, only from the production that is in excess of the owners' average actual rate of production during the 18 months immediately preceding the effective date of the unit;

(ii) during the period subsequent to the depletion of the remaining estimated primary reserves from the unit, from 100% of the owners' share of production;

(iii) for purposes of this subsection *(5)(a)*, the term "primary reserves" means the oil or gas ~~which~~ *that* would be produced from the unitized pool or pools as a result of the natural energy ~~therein~~ *in the pool or pools* and without the introduction of an enhanced recovery program;

(b) in the case of a field producing only gas, from 100% of the owners' share of production;

(c) in the case of any enhanced recovery program that is initiated subsequent to a secondary recovery program, the recovery ~~shall~~ *must* be from 75% of the owners' increased share of production from ~~such~~ *the* subsequent program;

(6) a provision for the supervision and conduct of the unit operations, in respect to which each owner ~~shall have~~ *has* a vote with a value corresponding to the percentage of the costs of unit operations chargeable against the interest of the owner;

(7) a provision ~~whereby~~ *by which* the unit operator, after having operated for a minimum period of 2 years, ~~can~~ *may* be challenged by any other owner in the unit, and the challenging owner may succeed to the unit operations upon a showing that:

(a) ~~he~~ *the challenging owner* can operate more efficiently and economically than the present operator;

(b) ~~he~~ *the challenging owner* is qualified and financially responsible;

(c) a majority of the other owners, both in number and in percentage and exclusive of the challenged operator, approved the challenging owner becoming unit operator; and

(d) the challenged operator does not initiate the conditions of operations of the challenging owner within 60 days of the challenged operator's receipt of the conditions of operations;

(8) the time when the unit operations ~~shall~~ *must* commence and the manner in which and the circumstances under which the unit operations ~~shall~~ *must* terminate; and

(9) ~~such~~ additional provisions that are found to be appropriate for carrying on unit operations and for the protection and adjustment of correlative rights."

Section 2746. Section 82-11-209, MCA, is amended to read:

"82-11-209. Units established by previous order. The board may provide by an order for the unit operation of a pool or pools or parts ~~thereof~~ *of a pool or pools* that embrace a unit established by an order of the board made prior to February 13, 1969. The order, in providing for the allocation of unit production, ~~shall~~ *must* first treat the unit area previously established as a single tract, and the portion of the unit production ~~so~~ allocated ~~thereto shall~~ *to that tract must* then be allocated among the tracts included in the previously established unit area in the same proportions as those specified in the previous order. ~~Any~~ *A* new owner whose interest by the order is added to the unit area and who becomes liable for ~~his~~ *the owner's* proportionate share of the costs of unit operations is not liable for any unit operating costs incurred prior to the person's entry in the unit. At the time the interest is included in the unit, an equipment inventory ~~shall~~ *must* be made in order to charge the newly committed interest with its proportionate share of capital investment at its ~~then~~ *current* value. An oil-in-storage inventory ~~shall~~ *must* be taken immediately prior to adding the newly committed interest."

Section 2747. Section 82-11-212, MCA, is amended to read:

"82-11-212. Property rights and operator's lien. That portion of the unit production allocated to any tract and the proceeds from the sale ~~thereof shall~~ *of that production must* be the property and income of the ~~several~~ persons to whom or to whose credit the ~~same~~ *proceeds* are allocated or payable under the order providing for unit operations, except that the operator of the unit shall, subject to 82-11-206(5)(a), have a first and prior lien upon each owner's oil and gas rights and ~~his~~ *the owner's* share of unitized production to secure the payment of ~~such~~ *that* owner's proportionate part of developing and operating the unit area. ~~Such~~ *The* lien may be perfected and enforced in the same manner as provided in Title 71, chapter 3, part 5~~, as amended~~. Upon demand by any owner of working interest in any tract to which gas has been allocated, the unit operator shall deliver ~~such~~ *the* allocated share of gas to the owner in kind~~;~~. ~~but~~ *However,* the operator and the other owners of interest ~~shall~~ *may* not be required to bear the cost of providing additional facilities for the delivery of ~~such~~ *the* gas."

Section 2748. Section 82-11-303, MCA, is amended to read:

"82-11-303. Extension of expiration date. The governor of Montana is further authorized and empowered, for and in the name of the state of Montana, to execute agreements for the further extension of the expiration date of the Interstate Compact To Conserve Oil and Gas and to determine if and when it ~~shall be~~ *is in* ~~for~~ the best interest of the state of Montana to withdraw from ~~said~~ *the* compact upon 60 days' notice as provided by its terms. ~~In the event he shall determine~~ *If the governor determines* that the state should withdraw from ~~said~~ *the* compact, ~~he shall have~~ *the governor has* full power and authority to give necessary notice and to take any and all steps necessary and proper to effect the withdrawal of the state of Montana from ~~said~~ *the* compact."

Section 2749. Section 82-11-304, MCA, is amended to read:

"82-11-304. Governor as member of interstate oil compact commission. The governor ~~shall be~~ *is* the official representative of the state of Montana on the interstate oil compact commission, provided for in the Interstate Compact To Conserve Oil and Gas, and shall exercise and perform for the state of Montana all the powers and duties as a member of the interstate oil compact commission~~;~~. ~~provided that he shall have the authority to~~ *However, the governor may* appoint an assistant representative who shall act in ~~his~~ *the governor's* stead as the official representative of the state of Montana as a member of ~~said~~ *the* commission. ~~Said~~ *The* assistant representative shall take the oath of office prescribed by The Constitution of the State of Montana, which ~~shall~~ *must* be filed with the secretary of state."

Section 2750. Section 82-11-305, MCA, is amended to read:

"82-11-305. Limitation on power of representative. ~~Nothing in this~~ *This* part ~~shall~~ *may not* be construed as granting any power to the representative of the state of Montana in ~~his~~ *the representative's* private or official capacity or to the interstate oil compact commission to prorate, allocate, regulate, or control oil or gas production or refined products ~~thereof~~ *of the production* within the state of Montana or the markets ~~therefor~~ *for the production* and ~~shall~~ *may* not have the effect or be construed as in any manner surrendering to the federal government any rights over or in the production, sale, or transportation of oil or gas or the refined products ~~thereof~~ *of oil or gas* in the state of Montana~~;~~. ~~nor shall anything in this~~ *This* part *may not* be ~~understood or~~ construed to bind or obligate the state of Montana to enact any new legislation or to amend or alter any laws ~~heretofore enacted and now in force~~ pertaining to the oil and gas industries in Montana."

Section 2751. Section 82-11-306, MCA, is amended to read:

"82-11-306. Expenses of representative. The representative or the assistant representative appointed by the governor of the state of Montana to the oil compact commission ~~shall~~ *must* be allowed and paid ~~his~~ *the person's* reasonable expenses while engaged in the performance of ~~his~~ official duties, and ~~his~~ *the person's* expenses and all other expense incurred in connection with the interstate oil compact and the interstate oil compact commission ~~shall~~ *must* be paid out of the board of oil and gas conservation revenue fund in accordance with the provisions of 82-11-135~~, as amended~~."

Section 2752. Section 82-15-204, MCA, is amended to read:

"82-15-204. Investigation of complaints — revocation of license. If *a* complaint ~~shall be~~ *is* made to the attorney general that ~~any~~ *a* person, firm, company, association, or corporation is guilty of discrimination as defined by this part, ~~he~~ *the attorney general* shall ~~forthwith~~ investigate ~~such~~ *the* complaint *in a timely manner*, and for that purpose ~~he~~ *the attorney general* shall subpoena witnesses, administer oaths, take testimony, and require the production of books or other documents, and if, in ~~his~~ *the attorney general's* opinion, sufficient grounds exist ~~therefor~~, ~~he~~ *the attorney general* shall prosecute an action in the name of the state in the proper court to annul the charter or revoke the permit or license of ~~such~~ *the* person, firm, company, association, or corporation, as the case may be, and to permanently enjoin ~~such~~ *the* person, firm, company, association, or corporation from doing business in this state. If in ~~such~~ *the* action the court ~~shall find~~ *finds* that ~~such~~ *the* person, firm, company, association, or corporation is guilty of discrimination as defined by this part, ~~such~~ *the* court shall annul the charter or revoke the permit or license of ~~such~~ *the* person, firm, company,

association, or corporation and may permanently enjoin it or them from transacting business in this state."

Section 2753. Section 82-15-205, MCA, is amended to read:

"82-15-205. County attorney to prosecute violations. If ~~any~~ *a* person ~~shall present~~ *presents* to the county attorney of any county ~~in the state of Montana,~~ in which ~~county such~~ *the* discriminatory acts of ~~any~~ *a* person, firm, company, association, or corporation ~~shall~~ have been committed, a sworn written statement of the price paid, the date, and the parties selling and buying and reasonably reliable information of the price demanded or collected by ~~such~~ *the* person, firm, company, association, or corporation for a corresponding or similar article of standard petroleum product sold or offered for sale in another part of the state of Montana or in the nearest adjoining state by ~~such~~ *the* person, firm, company, association, or corporation, ~~then it shall be the duty of such~~ *the* county attorney ~~to~~ *shall* promptly investigate and either commence and prosecute an action or furnish the informant with a written statement of ~~his~~ reasons for not commencing and prosecuting an action under this part."

Section 2754. Section 85-1-622, MCA, is amended to read:

"85-1-622. Penalty. ~~No~~ *A* member, officer, attorney, or other employee of the board or the department may *not*, directly or indirectly, be the beneficiary of or receive any fee, commission, gift, or other consideration for or in connection with any transaction or business under this part other than the salary, fee, or other compensation ~~as he~~ *that the person* may receive as a member, officer, attorney, or employee. A person convicted of violating any provision of this section shall be punished by a fine not to exceed $2,000 or be imprisoned for not to exceed 2 years, or both."

Section 2755. Section 85-2-132, MCA, is amended to read:

"85-2-132. Change of watercourse name — public notice. When ~~such~~ *a* petition *under 85-2-131* is filed in the district court, the court or the judge ~~thereof~~ shall designate some newspaper of general circulation in the county~~,~~ ~~such as~~ *that* is most likely to give all *interested* parties ~~interested~~ notice of the proceedings~~,~~ and shall order that notice be published ~~therein~~ *in that newspaper* as ~~hereinafter~~ provided~~,~~ *in this section.* ~~and in his discretion he~~ *The judge* may require any other ~~and further~~ notice that ~~to him may seem~~ *seems* reasonable and shall fix a time at which objections to the granting of the petition for the change of name ~~shall~~ *must* be heard. A copy of the petition, together with a notice of the time set for hearing objections ~~thereto~~, ~~shall~~ *must* be published in the newspaper designated by the court or judge for that purpose at least once a week for 4 successive weeks, and ~~such~~ other ~~and further~~ notice of the proceedings ~~shall~~ *must* be given ~~as~~ *that* the court or judge may ~~in his discretion~~ require."

Section 2756. Section 85-2-134, MCA, is amended to read:

"85-2-134. Change of watercourse name — judgment to be filed with county clerk. If the change of name ~~be~~ *of a watercourse is* ordered, a copy of the judgment, duly certified by the clerk of the court, ~~shall~~ *must* be filed with the county clerk and recorder of the county in which the watercourse or other natural source of water supply is situated, and the clerk of the court shall, annually, in ~~the month of~~ January, make a return to the office of the secretary of state of all changes of names made in the district court of ~~his~~ *the clerk's* county under this section."

Section 2757. Section 85-2-214, MCA, is amended to read:

"85-2-214. Commencement of action. (1) The action for the adjudication of all existing water rights under ~~this part, part 7, and~~ Title 3, chapter 7, *Title 85, chapter 2, part 7, and this part* is commenced with the issuing of the order by the Montana supreme court to file a statement of a claim of an existing water right as provided in 85-2-212. ~~As to~~ *For* each claim, the action is considered filed in the judicial district of the county in which the diversion is made or, if there is a claimed right with no diversion, in the judicial district of the county in which the use occurs.

(2) The water judge shall monitor the claim filing procedure for claims within ~~his~~ *the judge's* water division and make ~~any~~ orders necessary to ~~assure~~ *ensure* timely and accurate compliance with the claim filing procedure."

Section 2758. Section 85-2-218, MCA, is amended to read:

"85-2-218. Process and criteria for designating priority basins or subbasins. (1) The water judges and the department, in performing their functions in the adjudication process, shall give priority to basins or subbasins designated each biennium by the legislature. Basins or subbasins must be designated according to the following criteria:

(a) recurring water shortages within the basin or subbasin have resulted in urgent water rights controversies that require adjudication to determine relative rights;

(b) federal or Indian reserved rights are nearing determination, either by compact or adjudication, thus making adjudication of other rights in the basin or subbasin important for timely issuance of preliminary or final decrees;

(c) the basin or subbasin's location would help ensure efficient use of department and water court resources; and

(d) the adjudication process in the basin or subbasin is nearing the issuance of a decree.

(2) The water judge may designate a basin for priority adjudication upon petition of 100 or more persons who have filed claims within the basin~~,~~ or ~~he~~ may designate a subbasin for priority adjudication upon petition of a majority of persons who have filed claims within the subbasin. ~~The~~ *However, the* basin or subbasin ~~shall~~ *may* receive priority~~, however,~~ only if it meets one or more of the criteria in subsection (1).

(3) If adjudication work in one or more of the priority basins or subbasins has been completed or has been suspended for good cause, the water judge may select other basins or subbasins for priority adjudication~~,~~ based on the criteria in subsection (1)."

Section 2759. Section 85-2-224, MCA, is amended to read:

"85-2-224. Statement of claim. (1) The statement of claim for each right arising under the laws of the state and for each right reserved under the laws of the United States ~~which~~ *that* has been actually put to use ~~shall~~ *must* include substantially the following:

(a) the name and mailing address of the claimant;

(b) the name of the watercourse or water source from which the right to divert or make use of water is claimed, if available;

(c) the quantities of water and times of use claimed;

(d) the legal description, with reasonable certainty, of the point or points of diversion and places of use of waters;

(e) the purpose of use, including, if for irrigation, the number of acres irrigated;

(f) the approximate dates of first putting water to beneficial use for the various amounts and times claimed in subsection ~~(c)~~ *(1)(c)*; and

(g) the sworn statement that the claim set forth is true and correct to the best of claimant's knowledge and belief.

(2) ~~Any~~ *A* claimant filing a statement of claim under subsection (1) shall submit maps, plats, aerial photographs, decrees, ~~or~~ pertinent portions ~~thereof~~ *of those documents*, or other evidence in support of ~~his~~ *the* claim. All maps, plats, or aerial photographs should show as nearly as possible to scale the point of diversion, place of use, place of storage, and other pertinent conveyance facilities.

(3) Any statement of claim for rights reserved under the laws of the United States ~~which~~ *that* have not yet been put to use ~~shall~~ *must* include substantially the following:

(a) the name and mailing address of the claimant;

(b) the name of the watercourse or water source from which the right to divert or make use of water is claimed, if available;

(c) the quantities of water claimed;

(d) the priority date claimed;

(e) the laws of the United States on which the claim is based; and

(f) the sworn statement that the claim set forth is true and correct to the best of *the* claimant's knowledge and belief."

Section 2760. Section 85-2-234, MCA, is amended to read:

"85-2-234. Final decree. (1) The water judge shall, on the basis of the preliminary decree, on the basis of any hearing that may have been held, and on final resolution of all issue remarks, as defined in 85-2-250, enter a final decree affirming or modifying the preliminary decree.

(2) The terms of a compact negotiated and ratified under 85-2-702 must be included in the final decree without alteration unless an objection is sustained pursuant to 85-2-233~~;~~. ~~provided that~~ *However,* the court may not alter or amend any of the terms of a compact except with the prior written consent of the parties in accordance with applicable law.

(3) The final decree must establish the existing rights and priorities within the water judge's jurisdiction of persons who have filed a claim in accordance with 85-2-221, of persons required to file a declaration of existing rights in the Powder River basin pursuant to an order of the department or a district court issued under sections 8 and 9 of Chapter 452, Laws of 1973, and of any federal agency or Indian tribe possessing water rights arising under federal law, required by 85-2-702 to file claims.

(4) The final decree must establish, in a form determined to be appropriate by the water judge, one or more tabulations or lists of all water rights and their relative priorities.

(5) The final decree must state the findings of fact, along with any conclusions of law, upon which the existing rights and priorities of each person, federal agency, and Indian tribe named in the decree are based.

(6) For each person who is found to have an existing right arising under the laws of the state of Montana, the final decree must state:

(a) the name and post-office address of the owner of the right;

(b) the amount of water included in the right, as follows:

(i) by flow rate for direct flow rights, such as irrigation rights;

(ii) by volume for rights, such as stockpond and reservoir storage rights, and for rights that are not susceptible to measurement by flow rate; or

(iii) by flow rate and volume for rights that a water judge determines require both volume and flow rate to adequately administer the right;

(c) the date of priority of the right;

(d) the purpose for which the water included in the right is used;

(e) the place of use and a description of the land, if any, to which the right is appurtenant;

(f) the source of the water included in the right;

(g) the place and means of diversion;

(h) the inclusive dates during which the water is used each year;

(i) any other information necessary to fully define the nature and extent of the right.

(7) For each person, tribe, or federal agency possessing water rights arising under the laws of the United States, the final decree must state:

(a) the name and mailing address of the holder of the right;

(b) the source or sources of water included in the right;

(c) the quantity of water included in the right;

(d) the date of priority of the right;

(e) the purpose for which the water included in the right is currently used, if at all;

(f) the place of use and a description of the land, if any, to which the right is appurtenant;

(g) the place and means of diversion, if any; and

(h) any other information necessary to fully define the nature and extent of the right, including the terms of any compacts negotiated and ratified under 85-2-702.

(8) Clerical mistakes in a final decree may be corrected at any time on the initiative of the water judge or on the petition of any person who possesses a water right. The water judge shall order the notice of a correction proceeding ~~as he~~ *that the judge* determines to be appropriate to advise all persons who may be affected by the correction. An order of the water judge making or denying a clerical correction is subject to appellate review."

Section 2761. Section 85-2-405, MCA, is amended to read:

"85-2-405. Procedure for declaring appropriation rights abandoned. (1) When the department has reason to believe that an appropriator may have abandoned ~~his~~ *an* appropriation right under 85-2-404 or when another appropriator in the opinion of the department files a valid claim that ~~he~~ *the appropriator* has been or will be injured by the resumption of use of an appropriation right alleged to have been abandoned, the department shall petition the district court ~~which~~ *that* determined the existing rights in the source of the appropriation in question to hold a hearing to determine whether the appropriation right has been abandoned. Proceedings under this section

~~shall~~ *must* be conducted in accordance with the Montana Rules of Civil Procedure, and appeal ~~shall~~ *must* be taken in accordance with the Montana Rules of Appellate Procedure.

(2) At the hearing, the burden of proof ~~shall be~~ *is* on the department, which ~~must~~ *shall* establish by a preponderance of the evidence that the appropriation has been abandoned under 85-2-404.

(3) The determination of the court ~~shall~~ *must* be appended to the final decree. The department shall keep a copy of the determination in its office in Helena."

Section 2762. Section 85-2-412, MCA, is amended to read:

"85-2-412. Return of surplus water to stream. ~~In all cases where~~ *If*, by virtue of prior appropriation, ~~any~~ *a* person ~~may have~~ *has* diverted all the water of any stream or to ~~such~~ an extent that there ~~shall~~ *may* not be an amount sufficient left ~~therein~~ for those having a subsequent right to the waters of ~~such~~ *the* stream and there ~~shall~~ *is*, at any time, ~~be~~ a surplus of water so diverted, over and above what is actually and necessarily used by the prior appropriator, ~~such person shall~~ *the prior appropriator must* be required to turn and cause to flow back into the stream ~~such~~ *the* surplus water. Upon failure to do so within 24 hours after demand being made upon ~~him~~ *the prior appropriator* in writing, to ~~him~~ *the prior appropriator* in person or at ~~his~~ *the prior appropriator's* place of ~~abode~~ *residence*, by any person having a right to the use of ~~such~~ *the* surplus water, the person ~~so~~ diverting the ~~same shall be~~ *water is* liable to the person aggrieved for the damage resulting ~~therefrom~~ *from the diversion*~~,~~ in ~~such~~ *a* sum ~~as may be~~ determined by court."

Section 2763. Section 85-2-413, MCA, is amended to read:

"85-2-413. Diversion of natural flow of waters — when permitted. ~~Any~~ *A* person~~, owning~~ *who owns* or *is* in possession of lands susceptible of irrigation from any stream, the waters of which are so diminished by prior appropriations that a sufficient amount of water for the irrigation of ~~his~~ *the person's* lands cannot be obtained from the natural flow of the stream, *and* who ~~shall construct~~ *constructs* a reservoir or ~~shall purchase~~ *purchases* or ~~lease~~ *leases* water from a reservoir owned by the department or another or ~~shall~~ otherwise ~~acquire~~ *acquires* an interest in ~~such~~ *the* reservoir or in water stored ~~therein~~ *in the reservoir*, which is ~~so~~ located *so* that because of natural or other obstacles the water impounded ~~therein~~ *in the reservoir* cannot be conducted to the lands ~~which he~~ *that the person* desires to irrigate, may, ~~provided~~ *if* the stored water can be discharged into the stream in ~~such~~ a manner that it can be used beneficially by prior appropriators, divert the natural flow of the stream for the irrigation of ~~his~~ *the person's* lands in lieu of an equal amount of stored water~~;~~. ~~provided, however~~ *However*, ~~that such~~ *an* exchange ~~can~~ *of water under this section must* be made without injury to ~~said~~ prior appropriators."

Section 2764. Section 85-2-416, MCA, is amended to read:

"85-2-416. Duty of purchaser to dig ditches. ~~Any~~ *A* person desiring to ~~avail himself of the provisions of~~ *purchase surplus water pursuant to* 85-2-415 ~~must~~ *shall*, at ~~his~~ *the person's* own cost and expense, construct or dig the necessary flumes or ditches to receive and convey the surplus water ~~so~~ desired by ~~him~~ *the person* and pay or tender to the person having the right to the use, sale, or disposal ~~thereof~~ *of that water* an amount equal to the necessary cost and expense of tapping any gulch, stream, reservoir, ditch, flume, or aqueduct and putting in gates, gauges, or other proper and necessary appliances usual and

customary ~~in such cases~~, and until ~~the same shall be~~ *that work is* done, the delivery of the surplus water ~~shall~~ *may* not be required as provided in 85-2-415."

Section 2765. Section 85-2-418, MCA, is amended to read:

"85-2-418. Purchaser ~~cannot~~ *not to* sell surplus water. ~~Nothing in~~ *Sections* 85-2-415 through 85-2-417 ~~shall~~ *may not* be ~~so~~ construed ~~as~~ to give the person acquiring the right to the use of water, as ~~therein~~ provided *in those sections*, the right to sell or dispose of the ~~same~~ *water* after being ~~so~~ used by ~~him~~ *the person* or *to* prevent the original owner or proprietor from retaking, selling, and disposing of the ~~same~~ *water* in the usual and customary manner after it is ~~so~~ used as ~~aforesaid~~ *provided in those sections*."

Section 2766. Section 85-2-804, MCA, is amended to read:

"85-2-804. Application — notice — objections — hearing. (1) ~~Any~~ *An* appropriator proposing to divert from the basin water allocated to Montana under the terms of the compact or divert from the basin unallocated compact water within Montana shall file an application with the department. The application must state the name and address of the applicant and facts tending to show that:

(a) the diversion and ultimate use of the water in Montana is for a beneficial use of water;

(b) the diversion and ultimate use of water will not adversely affect the water rights of other persons;

(c) the proposed means of diversion, construction, and operation are adequate;

(d) the diversion and ultimate use will not interfere unreasonably with other planned uses or developments for which a water right has been established or a permit has been issued or for which water has been reserved;

(e) the diversion and ultimate use of the water will not exceed the allocated share under the compact of any of the signatory states;

(f) the diversion and ultimate use of the water are in the public interest of Montana; and

(g) the applicant intends to comply with the laws of the signatory states to the compact.

(2) ~~Any~~ *An* appropriator proposing to divert from the basin water allocated to North Dakota or Wyoming under the terms of the compact or divert from the basin unallocated compact water within North Dakota or Wyoming shall file an application with the department. The application must state the name and address of the applicant and facts tending to show that:

(a) the proposed means of diversion, construction, and operation are adequate;

(b) the diversion and ultimate use of the water will not exceed the allocated share under the compact of any of the signatory states; and

(c) the applicant intends to comply with the compact.

(3) Notice of the proposed diversion must be given by the department in the same manner as provided in ~~subsections (1) and (2) of~~ 85-2-307*(1) and (2)*.

(4) An objection to an application must be filed by the date specified by the department in the notice.

(5) The objector to an application under subsection (1) shall state ~~his~~ *the objector's* name and address and facts tending to show that:

(a) the diversion and ultimate use of the water in Montana are not for a beneficial use of water;

(b) the property, rights, or interests of the objector would be adversely affected by the proposed diversion or ultimate use of the water;

(c) the proposed means of diversion, construction, and operation are not adequate;

(d) the diversion and ultimate use will interfere unreasonably with the objector's planned uses or development for which the objector has a water right, a permit, or a reserved water right;

(e) the diversion and ultimate use of the water will exceed the allocated share under the compact of any signatory state; or

(f) the diversion and ultimate use of the water are not in the public interest of Montana.

(6) The objector to an application under subsection (2) shall state ~~his~~ *the objector's* name and address and facts tending to show that:

(a) the property, rights, or interests of the objector would be adversely affected by the proposed diversion or ultimate use of the water;

(b) the proposed means of diversion, construction, and operation are not adequate; or

(c) the diversion and ultimate use of the water will exceed the allocated share under the compact of any signatory state.

(7) If the department receives an objection to an application, it shall hold a hearing on the application within 60 days from the date set by the department for filing objections. Service of notice of the hearing must be made by certified mail upon the applicant and the objector.

(8) The hearing ~~shall~~ *must* be conducted under the contested case procedures of the Montana Administrative Procedure Act in Title 2, chapter 4, part 6."

Section 2767. Section 85-3-301, MCA, is amended to read:

"85-3-301. Records of operations maintained by licensees. ~~Every~~ *A* licensee shall keep and maintain a record of all operations conducted by ~~him~~ *the licensee* under ~~his~~ *the* license and each permit, showing:

(1) the method employed;

(2) type of equipment used;

(3) kinds and amounts of material used;

(4) times and places of operation of the equipment;

(5) names and addresses of all individuals participating or assisting in the operation;

(6) any other general information ~~as~~ *that* the department may require."

Section 2768. Section 85-3-411, MCA, is amended to read:

"85-3-411. Weather modification authority created by petition — expiration — reinstatement. (1) Upon receipt of a valid petition signed by at least 51% of the qualified electors of a county, as determined by the vote cast for the office of governor at the ~~last~~ preceding general election, a board of county commissioners may by resolution create a weather modification authority. The board of county commissioners shall appoint five residents of the county as weather modification authority commissioners from those names set forth in

the petition and designated by the petitioners to be appointed commissioners. If any of the five candidates named in the petition to be appointed commissioner is unable or refuses for any reason to accept appointment as commissioner or is disqualified by not meeting residence requirements as an elector in the county, the board of county commissioners shall name an appointee to fill the position. Each commissioner shall serve a 5-year term of office. If ~~any~~ *a* commissioner submits ~~his~~ *a* resignation in writing to the board of county commissioners or becomes unable or disqualified for any reason after accepting office, the board of county commissioners shall name an appointee to fill the vacancy. The board of county commissioners may remove any commissioner from office whenever it appears, by competent evidence and after hearing, that the commissioner has been guilty of misconduct, malfeasance, crime in office, or gross incompetency. A vacancy occurring otherwise than by expiration of *a* term of office must be filled for the unexpired term.

(2) ~~Any~~ *An* authority created pursuant to this section expires 5 years after the date of the initial appointment of the commissioners. Any unexpended funds remaining in the name of the authority after all proper bills and expenses have been paid must be transferred into the county general fund by the officers of the authority on or before the 5-year termination date provided by this section. However, all unexpended funds remaining in the name of the authority after all proper bills and expenses have been paid ~~shall~~ *must* remain in the name of the authority if the board of county commissioners of ~~such~~ *the* county by resolution creates a weather modification authority and all its powers in accordance with 85-3-414.

(3) Nothing in this section prevents renewal of an authority for another 5 years by petition of the qualified electors in the same manner as the initial authority was created.

(4) If more than one petition is filed with the board of county commissioners on or about the same time, the petition with the highest percentage of the qualified county electors voting for the office of governor at the ~~last~~ preceding general election must be selected by the board of county commissioners. However, the petition with the highest percentage must have the signatures of at least 40% of the qualified electors in the county, and the ~~sum~~ total of all qualified electors signing all petitions filed must equal at least 60% of the qualified electors in the county. If the name of the same elector appears on two or more petitions, the name must be stricken from both petitions."

Section 2769. Section 85-3-421, MCA, is amended to read:

"85-3-421. Commissioners — compensation — meetings — officers — disbursements. (1) A commissioner may *not* receive ~~no~~ compensation for ~~his~~ *the commissioner's* services. Certificates of appointment must be filed with the county clerk and recorder.

(2) The powers of each authority are vested in its commissioners. A majority of the commissioners constitutes a quorum for the purpose of conducting the business of the authority, but action may not be taken by the authority except by an affirmative vote of not less than a majority of all the commissioners. A ~~chairman~~ *presiding officer*, ~~vice-chairman~~ *vice presiding officer*, secretary, and treasurer must be elected from among the commissioners. An authority may delegate to one or more of its commissioners ~~such~~ powers or duties ~~as~~ *that* it considers proper.

(3) The secretary shall keep minutes of official meetings and shall include all official business, such as operations requested, and all authorizations for payment of weather modification authority funds.

(4) Disbursements authorized by the authority must be made by check signed by the ~~chairman~~ *presiding officer* and the treasurer of the authority. Official policies must be entered into the minutes. An annual report must disclose funds received and expended, and a copy of the report must be filed with the county clerk and recorder. The annual report must be presented at a public meeting called for ~~such~~ *that* purpose."

Section 2770. Section 85-5-102, MCA, is amended to read:

"85-5-102. Appointment of chief commissioner. When the judge of the district court ~~shall appoint~~ *appoints* two or more commissioners to admeasure and distribute the waters mentioned in ~~the preceding section~~ *85-5-101*, ~~he~~ *the judge* may appoint one of them *as* chief commissioner and empower ~~him~~ *the chief commissioner* to exercise direction and control over the other ~~or others~~ *commissioners* in the discharge of their duties. The judge may depose the ~~one~~ *person* appointed *as* chief commissioner from that position and appoint another ~~in his stead~~ *as chief commissioner* whenever it appears to the judge that better service may be given *to* the water users by making the change."

Section 2771. Section 85-5-103, MCA, is amended to read:

"85-5-103. Oath and bond. Each water commissioner ~~so~~ appointed by the court shall subscribe and file with the clerk of the district court an oath of office before commencing the discharge of ~~his~~ duties as commissioner and shall ~~likewise~~ file with ~~said~~ *the* clerk a bond executed by ~~himself~~ *the commissioner*, with two or more sureties, in ~~such~~ *a* sum ~~as~~ *that* the judge of ~~said~~ *the* court may designate, to ~~insure~~ *ensure* the faithful discharge of ~~his~~ *the commissioner's* duties."

Section 2772. Section 85-5-104, MCA, is amended to read:

"85-5-104. Term of office. ~~Every~~ *A* water commissioner ~~so appointed shall hold his~~ *holds* office for ~~such~~ *the* time during the irrigation season of each year ~~as~~ *that* may be designated by the judge in the order making ~~such~~ *the* appointment. The judge~~, in his discretion, shall~~ *may* fix the date of the commencement of ~~such~~ *the* term and may, in ~~his~~ *in the judge's* discretion or when requested in writing by at least three persons entitled to the use of ~~such~~ *the* waters, change the term for closing of the commissioner's service."

Section 2773. Section 85-5-105, MCA, is amended to read:

"85-5-105. Power and duty to distribute water. Upon the issuance of ~~such~~ *an* order, the water commissioner or commissioners ~~shall~~ have authority and it is ~~hereby made his or their~~ *the commissioner's or commissioners'* duty to admeasure and distribute to the users ~~thereof~~ *of water*, as their interests may appear and be required, the stored and supplemental ~~waters~~ *water* stored and as released by the department of natural resources and conservation under provisions of *Title 85,* chapter 1 ~~of this title~~, to be diverted into and through ~~said streams~~ *a stream*, ditch or extension of ditch, watercourse, spring, lake, reservoir, or other source of supply in the same manner and under the same rules as decreed water rights are admeasured and distributed. ~~Such~~ *The* water commissioner or commissioners and the owners and users of ~~such~~ *the* stored and supplemental ~~waters shall be~~ *water are* bound by and ~~be~~ *are* subject to the provisions of this chapter ~~and all acts amendatory thereof and supplemental thereto;~~. ~~provided~~ *However*, ~~that~~ the admeasurements and distribution of ~~such~~ *the* stored and supplemental ~~waters shall in no way~~ *water may not* interfere with

decreed water rights. The purpose of *Title 85, chapter 5,* parts 1 through 3*,* ~~of this chapter~~ is to provide a uniform, equitable, and economical distribution of adjudicated, stored, and supplemental waters."

Section 2774. Section 85-5-108, MCA, is amended to read:

"85-5-108. Authority and arrest power. For the purposes of carrying out the provisions of *Title 85, chapter 5,* parts 1 through 3 ~~of this chapter~~, each commissioner appointed by the court ~~shall have~~ *has the* authority to enter upon any ditch, canal, aqueduct, or other source for conveying the waters affected by the decree and to visit, inspect, and adjust all headgates or other means of distributing the waters and ~~shall have~~ *has* the same powers as a sheriff or constable to arrest any ~~and all persons~~ *person* interfering with the distribution made by ~~him~~ *the commissioner*, to be dealt with according to law."

Section 2775. Section 85-5-109, MCA, is amended to read:

"85-5-109. Failure to perform duty as ~~a~~ contempt of court. If ~~any~~ *a* commissioner ~~shall fail~~ *fails* to perform any of the duties imposed upon ~~him~~ *the commissioner* by the order of the judge of the district court, ~~he shall be deemed~~ *the commissioner is* guilty of ~~a~~ contempt of ~~said~~ court."

Section 2776. Section 85-5-110, MCA, is amended to read:

"85-5-110. Appointment of water mediators — duties. (1) The judge of the district court may appoint a water mediator to mediate a water controversy in a decreed or nondecreed basin under the following circumstances:

(a) upon request of the governor;

(b) upon petition by at least 15% of the owners of water rights in a decreed or nondecreed basin; or

(c) in the discretion of the district court having jurisdiction.

(2) A water mediator appointed under this section may:

(a) discuss proposed solutions to a water controversy with affected water right holders;

(b) review options related to scheduling and coordinating water use with affected water right holders;

(c) discuss water use and water needs with persons and entities affected by the existing water use;

(d) meet with principal parties to mediate differences over the use of water; and

(e) hold public meetings and conferences to discuss and negotiate potential solutions to controversies over use of water.

(3) If the governor requests or a state agency petitions for a water mediator, the governor or agency shall pay all or a majority of the costs of the water mediator~~,~~ as determined equitable by the district court having jurisdiction.

(4) The governor may use funds appropriated under 75-1-1101 to pay the costs of a water mediator.

(5) ~~Nothing in this~~ *This* section ~~allows~~ *does not allow* a water mediator to require any valid water right holder to compromise or reduce any of ~~his~~ *the holder's* existing water rights.

(6) If an appropriator voluntarily ceases to use all or part of ~~his~~ *an* appropriation right or voluntarily ceases to use ~~his~~ *an* appropriation right according to its terms and conditions as a result of the efforts of a mediator

appointed under this section, the appropriator may not be considered to have abandoned all or any portion of ~~his~~ *the* appropriation right."

Section 2777. Section 85-5-202, MCA, is amended to read:

"85-5-202. Repair expenses. The judge may ~~also~~ allow as a charge any expenses necessarily incurred by the water commissioner in the discharge of ~~his~~ duties in the employment of extra labor for the repair of dams, headgates, ditches, or flumes when immediate action is necessary to preserve the rights of the parties entitled to the waters of ~~such~~ *a* stream or when the judge has, in the order appointing the commissioner, required the commissioner to repair ditches and keep in repair necessary headgates, ditches, or flumes. The water commissioner shall report all ~~such~~ expenses, and the cost ~~thereof shall~~ *must* be taxed against the party or parties for whose benefit the ~~same~~ *expenses* were incurred. In the discretion of the court, ~~such~~ *the* costs or expenses may be assessed against the land upon which or for the benefit of which ~~such~~ *the* expense had been incurred."

Section 2778. Section 85-5-302, MCA, is amended to read:

"85-5-302. Maintenance of headgates and measuring devices. All persons using water from any stream or ditch ~~whereon~~ *for which* a water commissioner is appointed are required to have suitable headgates at the point where a ditch taps a stream and shall also, at some suitable place on the ditch and as near the head as practicable, place and maintain a proper measuring box, weir, or other appliance for the measurement of the waters flowing in the ditch. ~~In case~~ *If* ~~any~~ *a* person ~~or persons~~ ~~shall fail~~ *fails* to place or maintain a proper measuring appliance, it is the duty of the water commissioner not to apportion or distribute any water through the ditch. The commissioner shall notify all parties interested by certified mail or in person 1 week before making the annual repair or cleaning of ~~any~~ *a* stream or ditch or performing necessary labor or expenses to divert water to ~~any~~ *a* ditch. The sending of a certified letter to the last-known post-office address of any interested party is prima facie evidence of the fact that ~~he~~ *the party* was duly notified. Any work in the way of repairing a ditch made necessary by ~~any~~ *an* emergency may be done without ~~such~~ notice when injury would result from *a* delay."

Section 2779. Section 85-5-401, MCA, is amended to read:

"85-5-401. Determination of water rights between partners, tenants in common, and corporate stockholders. ~~Whenever~~ *If* a water ditch used for irrigating purposes is owned by a partnership, tenants in common, or corporation and there is any dispute between the respective owners, tenants in common, or stockholders respecting the use and division of the waters flowing in ~~said~~ *the* ditch, any partner, tenant in common, or stockholder may commence an action in any court of competent jurisdiction to determine the rights of the respective parties to the use of ~~said~~ *the* waters and may join in ~~his~~ *the* petition a ~~prayer~~ *request* for the appointment of a water commissioner to apportion and distribute the waters of ~~said~~ *the* ditch according to the rights of the respective owners, tenants in common, or stockholders during the pendency of the action."

Section 2780. Section 85-5-402, MCA, is amended to read:

"85-5-402. Appointment of commissioner prior to final decree. After the filing of the complaint in ~~such~~ *an* action *under 85-5-401*, the court may, upon 5 days' notice to the other parties to the action, appoint a commissioner to divide and distribute the waters of ~~said~~ *the* ditch to the respective parties, according to their respective rights, during the pendency of the action. The court may, upon good cause shown, appoint ~~such~~ *a* commissioner without notice, and when ~~such~~

a commissioner is appointed without notice, any party to the action may, on 5 days' notice to the plaintiff, move the court or judge to vacate ~~such~~ *the* appointment or to modify the order as to the distribution of the waters of ~~said~~ *the* ditch. The court or judge, on ~~such~~ hearing, ~~in his discretion,~~ may affirm, vacate, or modify the order previously made. Each water commissioner ~~so~~ appointed shall subscribe to an oath of office before commencing the discharge of ~~his~~ duties."

Section 2781. Section 85-5-405, MCA, is amended to read:

"85-5-405. Compensation and expenses. The court shall fix the compensation of ~~such~~ *the* commissioner and the term of ~~his~~ employment and shall make an order apportioning the amount of ~~such~~ compensation among the several owners, tenants in common, or stockholders of ~~said~~ *the* ditch, according to their respective rights and interest in ~~said~~ *the* ditch~~,~~. ~~which~~ *The* amounts ~~so~~ apportioned ~~shall~~ *must* be taxed as costs in the action against the respective parties."

Section 2782. Section 85-5-406, MCA, is amended to read:

"85-5-406. Interference with actions of commissioner. ~~Any~~ *A* person opening or closing a headgate after being set by ~~such~~ *the* commissioner or who in any manner interferes with ~~such~~ *the* commissioner in the discharge of ~~his~~ *the commissioner's* duties ~~shall be deemed~~ *is* guilty of contempt of court and may be proceeded against for contempt of court as provided in contempt cases."

Section 2783. Section 85-7-1504, MCA, is amended to read:

"85-7-1504. Bonds for commissioner and secretary. (1) ~~In all cases where~~ *When* the obligations of the district, either existing or proposed, total $250,000 or ~~over~~ *more*, the commissioners of an irrigation district shall each furnish a bond in the penal sum of $2,500, with corporate surety conditioned for the faithful performance of their duties under this chapter. The secretary shall furnish bond, with corporate surety, in the sum of $1,000, conditioned for the faithful performance of ~~his~~ *the secretary's* duties pursuant to this chapter and for the proper safekeeping of the records and documents of the district. In all other cases, the bond for the commissioners ~~shall be in the sum of~~ *is* $1,000.

(2) ~~In case~~ *If* ~~any~~ *a* district established under this chapter is appointed fiscal agent of the United States or is authorized by the United States to make collections of ~~moneys~~ *money* for and on behalf of the United States in connection with any federal reclamation project, each commissioner shall execute a further and additional official bond in ~~such~~ *a* sum ~~as~~ *that* the secretary of the interior may require, conditioned for the faithful discharge of the duties of ~~his~~ office and the faithful discharge by the district of its duties as fiscal or other agent of the United States under any ~~such~~ appointment or authorization, and ~~any such~~ *that* bond may be sued upon by the United States or by any person injured by the failure of the commissioner or the district to fully, promptly, and completely perform ~~their~~ respective duties."

Section 2784. Section 85-7-1506, MCA, is amended to read:

"85-7-1506. Liability of officers. For ~~any~~ *a* willful violation of ~~any~~ *an* express duty ~~hereunder~~ *under this part* on the part of any officer ~~herein~~ named *in this part*, ~~he shall be~~ *the officer is* liable upon ~~his~~ *the officer's* official bond and ~~be~~ *is* subject to removal from office by proceedings brought by ~~any~~ *a* tax or assessment payer of the district in the district court of the county ~~wherein~~ *in which* the office of the board of commissioners of the district is located."

Section 2785. Section 85-7-1507, MCA, is amended to read:

"85-7-1507. Conflict of interest — criminal penalty. ~~No~~ *A* commissioner or any other officer named in this chapter may *not* in any manner be interested, directly or indirectly, in ~~any~~ *a* contract awarded or to be awarded by the board or in the profits derived ~~therefrom~~ *from a contract*. For any violation of this provision, ~~such~~ *the* officer is guilty of a misdemeanor and ~~his~~ *upon* conviction ~~thereof shall work forfeiture of his~~ *forfeits* office and ~~he~~ *the officer* shall be punished as provided in 45-7-401."

Section 2786. Section 85-7-1508, MCA, is amended to read:

"85-7-1508. Compensation and duties of secretary. The member of the board acting as secretary or any person appointed by the board as secretary for the district ~~shall~~ *must* receive ~~such~~ compensation for ~~his~~ services as ~~may be~~ allowed by the board. It ~~shall be~~ *is* the duty of the secretary to keep the books and records of accounts, contracts, securities, and other records~~;~~*,* to perform ~~his~~ *the* duties promptly each month~~;~~*,* and to make a monthly reconcilement of ~~his~~ accounts with the county treasurer. It ~~shall be~~ *is* the duty of the county treasurer to make a monthly report to the secretary of all receipts, disbursements, and balances. A failure by the secretary to comply with the provisions of this section ~~shall cause~~ *causes* a forfeiture of ~~his~~ *the secretary's* salary, and ~~he shall~~ *the secretary must* be removed from office by the board."

Section 2787. Section 85-7-1615, MCA, is amended to read:

"85-7-1615. Manager of operations. The board of control ~~shall have the power to~~ *may* hire a manager to supervise and conduct the operations of the district or districts over which it presides or to hire a manager for each district under its supervision, whichever it ~~deems~~ *considers* advisable ~~in the premises~~. The manager or managers shall perform all duties ~~as~~ set out ~~for him or them~~ by the board of control."

Section 2788. Section 85-7-1618, MCA, is amended to read:

"85-7-1618. Custody and disbursement of funds. The county treasurer of the county ~~wherein~~ *in which* the office of the board is established ~~shall be~~ *is* the custodian of all funds made available for the use of the board, and ~~he~~ *the county treasurer* shall pay out ~~such~~ *the* funds upon the order of the board. ~~Such~~ *The* orders ~~shall~~ *must* be signed by the secretary or treasurer of the board of control and countersigned by the president or, in ~~his~~ *the president's* absence, by the ~~vice-president~~ *vice president* of the board of control. The board funds ~~shall~~ *must* be kept separate and distinct from all other county funds. The county treasurer to whom board funds are entrusted ~~shall be~~ *is* liable on ~~his~~ *the treasurer's* bond for the safekeeping of ~~said~~ *the* funds."

Section 2789. Section 85-7-1703, MCA, is amended to read:

"85-7-1703. Vacancies among commissioners. ~~In case of a~~ *If there is a* vacancy ~~in~~ *on* the board of commissioners~~,~~ from any cause, the vacancy must be filled until the next regular or special election by appointment by the board. The remaining commissioners ~~shall~~ constitute a quorum for the purpose of filling any vacancy. If a vacancy exists for every position on the board, the judge of the district court of the county in which the division or major portion of the division is situated shall make the appointments. The appointee must be an owner of irrigable land within the division of the district ~~he~~ *that the appointee* represents and must be a resident of the county in which the division of the district or some portion of the division is situated. A commissioner appointed under this section ~~shall hold~~ *holds* office until ~~his~~ *a* successor is elected and qualified."

Section 2790. Section 85-7-1811, MCA, is amended to read:

"85-7-1811. Procedure to correct errors and omissions in orders or decrees. (1) The district court ~~shall retain~~ *retains* jurisdiction of any petition presented to establish an irrigation district or to enlarge and increase its boundaries or to exclude land ~~therefrom~~ *from the district* for the purpose of correcting any omissions, defects, or errors in the proceedings of ~~said~~ *the* court. The court ~~shall have power to~~ *may* correct and, if necessary, ~~to~~ amend the order of the district court establishing the district, any order extending the boundaries ~~thereof~~ *of the district*, or any order excluding lands ~~therefrom~~ *from the district*, including the description of lands included or intended to be included in the district or excluded ~~therefrom~~ *from the district* or intended to be excluded, the boundaries of the divisions into which it is divided, and any other matter ~~which shall be~~ *that is* before the court on the application to create the district, to enlarge or extend its boundaries, or to exclude lands ~~therefrom~~ *from the district*. The court ~~shall have and is hereby granted power and authority~~ *may,* on application of the board of commissioners of the district*,* ~~to~~ correct and amend the terms of any order or judgment of ~~said~~ *the* court so that ~~the same shall conform~~ *it conforms* to the provisions of the statute under the authority of which ~~such~~ *the* order was made. The board of commissioners of any district may adopt a resolution directing its president and secretary to prepare, execute, and file with the clerk of the district court a petition ~~which shall set~~ *that sets* forth the following matters:

(a) the name of the district and a reference to the order in which the defect, error*,* ~~or~~ omission, errors in description of lands included or excluded, or departure from the statute occurred;

(b) a statement of the defects, errors, omissions, irregularities, errors in description of lands included or excluded, or variance from the statutory requirements; *and*

(c) a ~~prayer~~ *request* for an order correcting ~~said~~ *the* defects, errors, omissions, or irregularities.

(2) If the error, defect, omission, irregularity, or variance is in the description of any land or lands embraced in the district, the petition ~~shall~~ *must* set forth the correct description of ~~said~~ *the* lands, the names of the holders of title or evidence of title ~~thereto~~ *to the lands*, ascertained in the manner provided in 85-7-101 and 85-7-102, and if any holder is a nonresident of the county or counties in which the district lies, the post-office address of ~~such~~ *the* nonresident owner, if known. Upon the filing of ~~said~~ *the* petition, the court shall direct notice of the hearing ~~thereof~~ *of the petition* to be given in ~~such~~ *a* manner as ~~shall be deemed~~ *determined* necessary to protect the rights and interests of the parties and, after a hearing of any parties intervening, shall enter an order correcting the defects, errors, omissions, or irregularities. If the defects, errors, omissions, or irregularities are in the description of the lands embraced in the district, the district court or judge shall direct the clerk of ~~said~~ *the* court to publish, at least once a week for 2 successive ~~calendar~~ weeks, in some newspaper published in ~~said~~ *the* county where ~~said~~ *the* petition is filed, a copy of ~~said~~ *the* petition, together with a notice stating the time and place fixed by ~~said~~ *the* district court when and where a hearing on ~~said~~ *the* petition will be ~~had~~ *held*, and, if any portion of the lands within ~~said~~ *the* district lies within any other county or counties, ~~said~~ *the* petition and notice ~~shall~~ *must* be published as provided ~~above~~ *in this subsection* in a newspaper published in each ~~such other county~~ *of those counties*. If ~~there be no~~ *a* newspaper *is not* published in ~~such~~ *the* county, ~~such~~ *the* petition and notice may be published in an adjoining county. The first publication of ~~said~~ *the* petition and notice ~~shall~~ *must* be not less than 30 days

prior to the time mentioned in ~~said~~ *the* notice for ~~said~~ *the* hearing. If any holder of title or evidence of title to lands within the district is a nonresident of the county or counties in which the district lies, the clerk of ~~said~~ court shall, within 3 days after the first publication ~~aforesaid~~, mail a copy of ~~said~~ *the* petition and notice to each ~~such~~ nonresident whose post-office address is stated in ~~said~~ *the* petition. The certificate of the clerk of the district court, under the seal of the court, as to the facts of the publishing and mailing of ~~said~~ *the* petition and notice, affixed to a copy of ~~said~~ *the* notice, ~~shall be~~ *is* sufficient evidence of ~~such~~ *the* facts.

(3) At the time specified in the notice, the district court in which the petition ~~aforesaid~~ is filed shall hear the petition but may adjourn ~~such~~ *the* hearing from time to time and may continue the hearing for want of sufficient notice or other good cause. The court, upon application of the petitioners or any person or persons interested, shall permit the petition to be amended and may order further or additional notice to be given. Upon ~~such~~ *the* hearing, all persons interested may appear and contest the application for the order ~~prayed for~~ *requested* in the petition, and the contestants and petitioners may offer any competent evidence pertinent to the ~~prayer~~ *request* of the petition.

(4) The court may make ~~such~~ changes in the description of the lands embraced within the limits of the district ~~as~~ *that* may be ~~deemed~~ *considered* advisable or as fact, right, and justice may require but ~~shall~~ *may* not exclude from the district any lands described as a part of ~~said~~ *the* district in the order creating it after the district has issued bonds or entered into a contract with the United States under 85-7-1906. However, ~~such~~ lands may be excluded from a district ~~which~~ *that* has entered into a contract with the United States under ~~said section~~ *85-7-1906,* ~~provided~~ *if* the secretary of the interior ~~shall give his consent~~ *consents* to ~~such~~ *the* exclusion.

(5) If, on final hearing, it is found by the court that the petition does not substantially comply with the ~~foregoing~~ requirements of this section or that the facts ~~therein~~ stated *in the petition* are not sustained by the evidence, ~~then~~ the court shall dismiss the petition at the cost of the petitioners and shall make and enter an order to that effect. If it is found that ~~said~~ *the* petition substantially complies with ~~said~~ *the* requirements *of this section* and that the facts ~~therein~~ stated *in the petition* are sustained by the evidence, the court shall make and enter an order in accordance with the ~~prayers~~ *request* of the petition.

(6) All orders and findings of the district court made under the provisions of this section ~~shall be~~ *are* conclusive upon all owners of lands within the district and ~~shall be~~ *are* final unless appealed from to the supreme court within 60 days from the date of entry of ~~such~~ *the* order. A copy of ~~such~~ *the* order, ~~duly~~ certified to by the clerk of ~~said~~ court, ~~shall~~ *must* be filed for record within 30 days after ~~such~~ *the* order is made and entered with the county clerk and recorder of the county ~~wherein~~ *in which* the lands included within ~~such~~ *the* district are situated. There ~~shall~~ *must* be omitted from ~~such~~ *the* copy lands not situated in the county in which ~~such~~ *the* copy is filed."

Section 2791. Section 85-7-1901, MCA, is amended to read:

"85-7-1901. Board plan for acquisition and construction. (1) For the purpose of purchasing or constructing the necessary irrigation canals or works or acquiring the necessary property and rights ~~therefor~~ *for canals or works* and otherwise carrying out the provisions of this chapter, the board of commissioners of any irrigation district ~~must~~ *shall*, as soon as practicable after ~~such~~ *the* district has been organized, formulate a general plan for ~~such~~ *the* purchase, construction, and acquisition of ~~such~~ *the* property. The board shall

cause ~~such~~ surveys, examinations, and plans to be made ~~as shall~~ *that* demonstrate the practicability of ~~such~~ *the* plans, as well as of procuring water from other and different sources, *and* the amount of land that can be irrigated ~~thereunder~~ *under the plan*, and *shall* furnish the proper basis for an estimate of the cost of carrying out ~~such~~ *the* plan and the value of any canal, works, property, or system of irrigation proposed to be purchased.

(2) All ~~such~~ surveys, examinations, maps, plans, and estimates ~~shall~~ *must* be made by or under the direction and supervision of an irrigation engineer of well-known standing and competency, and all ~~such~~ necessary surveys, examinations, maps, plans, and estimates must be certified to by ~~him~~ *the engineer*. When ~~all such~~ *the surveys, examinations, maps, plans, and estimates* are completed, ~~he~~ *the engineer* shall submit them with all proper field notes to and file them with the board of commissioners, accompanied by ~~his~~ *the engineer's* report and recommendation ~~thereon~~. This report ~~shall~~ *must* include a discussion of ~~said~~ *the* plans submitted by ~~him~~ *the engineer* to ~~said~~ *the* board, of the question of water supply, of the sufficiency of the works proposed to accomplish the desired results, of the practicability of the proposed system from an engineering standpoint, *and* of the probability of being acquired or constructed within the estimate of the cost stated~~,~~ and ~~such~~ *a* general discussion and recommendation in regard to the engineering and financial features of the whole matter ~~as~~ *that* in the judgment of ~~such~~ *the* engineer ~~shall be~~ *is* desirable for the information of the people of the district. ~~Such~~ *The* report ~~shall~~ *must* be accompanied by a map~~,~~ when ~~such~~ *a map* is necessary for a proper explanation or understanding of the ~~same~~ *report and recommendation*.

(3) Upon receiving ~~such~~ *the* report, ~~said~~ *the* board of commissioners shall proceed to determine the amount of money necessary to be raised for the purchase or construction of ~~said~~ *the* proposed property, canals, or irrigation works and system and within 10 days after arriving at ~~such~~ *that* determination shall cause the secretary of ~~said~~ *the* board to notify all persons or corporations holding title or evidence of title to lands within ~~said~~ *the* district*,* ~~(ascertained~~ *determined* as provided in 85-7-101 and 85-7-102~~)~~*,* of the filing of ~~said~~ *the* report and their determination ~~thereon~~ *on the report*. ~~Said~~ *The* notices ~~shall~~ *must* be given through the United States mail by letter addressed to ~~such~~ *the* person or corporation at the ~~last known~~ *last-known* post-office address of each person or corporation ~~aforesaid~~. A certificate of the secretary of the board as to the fact of mailing ~~said~~ *the* notice, affixed to a copy of ~~said~~ *the* notice and recorded in the record book of ~~said~~ *the* board of commissioners, ~~shall be~~ *is* sufficient and conclusive evidence of ~~such fact~~ *mailing*."

Section 2792. Section 85-7-1912, MCA, is amended to read:

"85-7-1912. Exchange of water by board. (1) Whenever any canal constructed, owned, or controlled by the district crosses any creek, stream, water channel*,* or *water* course, the water of which is used to irrigate land lying below ~~such~~ *the* canal, the district ~~shall have the right to~~ *may* contract with the owner or owners of the right to the use of the water or waters in ~~any such~~ *the* stream, creek, water channel*,* or *water* course for an exchange of water and to supply ~~him~~ *the owner* with water from the district system. The contract ~~shall~~ *must* be in writing, signed and acknowledged by all the parties ~~thereto~~ before ~~some~~ *an* officer authorized to take acknowledgments, and ~~shall~~ *must* be filed and recorded in the office of the clerk and recorder of the county in which the creek, stream, water channel*,* or *water* course is situated. The acknowledgment ~~shall~~ *must* be certified by ~~such~~ *the* officer in the manner that deeds are ~~now~~ required to be certified to entitle them to be recorded. ~~Thereafter, such~~ *After recording,*

the district ~~shall have the right to~~ *may* supply ~~such~~ *the* land below the canal, whether ~~such~~ *the* land is included in the district or not, with water from the works of the district, and the owner or lessee of ~~such~~ *the* land ~~shall, in such case,~~ *must* be furnished with the same quantity of water as that to which ~~such~~ *the* owner or lessee would be entitled out of ~~such~~ *the* creek, stream, water channel, or *water* course ~~had~~ *if* the district works *had* not been built.

(2) The district ~~shall have the right to~~ *may* appropriate and take possession of the water ~~so~~ replaced and ~~shall have~~ *has* the same right to ~~such~~ *that* water as the owner or lessee of the land had~~, so~~ *as* long as ~~such~~ *the* water ~~shall be~~ *is* replaced by a like quantity of water from ~~such~~ *the* works. The appropriating and taking of ~~such~~ *the* water by the district ~~shall never~~ *may not* deprive ~~such~~ *the* owner or lessee of the right to retake and use the ~~same should such~~ *water if the* owner or lessee at any time ~~be~~ *is* prevented from having or using ~~a like~~ *the same* quantity of water from ~~such~~ *the* works. The district ~~shall~~ also ~~have~~ *has* the right to make appropriation and take possession of ~~such~~ *the* water at any point and to sell, lease, or use ~~such~~ *the* water on any land, either above or below the canal, and the appropriation of ~~such~~ *the* water at any point or selling, leasing, or using the ~~same shall~~ *water may* not prejudice the right of the district to the water and ~~shall~~ *may* not increase the rights of the owner or owners of any other water right on ~~such~~ *the* creek, stream, water channel, or *water* course.

(3) All water, the right to the use of which is acquired by the district under any contract with the United States, ~~shall~~ *must* be distributed and apportioned by the district in accordance with the acts of congress, the rules and regulations of the secretary of the interior, and the provisions of ~~said~~ *the* contract ~~in relation thereto~~."

Section 2793. Section 85-7-1924, MCA, is amended to read:

"85-7-1924. Interference with commissioners or distribution system — penalty. ~~Any~~ *A* person who in any manner interferes with the commissioners of an irrigation district or their lawful agent or employee in the carrying out of the powers conferred by 85-7-1921 through 85-7-1925 or who changes or tampers with any lock box, headgate, or other device for the apportionment or distribution of water installed by or under the authority of the commissioners or who in any manner obstructs or changes the flow of water in the distribution system of any irrigation district without authority of the commissioners of the district ~~shall~~ *is*, in the discretion of the commissioners, ~~be~~ subject to a forfeiture of ~~his~~ *the person's* right to the delivery of water through the distribution system of the district ~~so~~ *as* long as ~~such~~ *the* acts continue and is guilty of obstructing a public officer or criminal mischief, as appropriate, and is punishable as provided by ~~45-7-302 or~~ 45-6-101 *or 45-7-302*, as applicable."

Section 2794. Section 85-7-2017, MCA, is amended to read:

"85-7-2017. Hearing and procedure in the district court. (1) Upon the filing of ~~this~~ *a* petition in the district court, the court shall fix the time for the hearing of the petition, which may not be less than 15 days from the date of filing the petition in the court, and shall order the clerk of the court to give notice of the filing of the petition and the date of the hearing ~~thereon~~ by publication at least once a week for 2 ~~calendar~~ weeks in a newspaper published or of general circulation in the county where the office of the board of commissioners of the district is situated and also by posting a written or printed copy of ~~such~~ *the* notice in at least three public places in each division of the district~~,~~. ~~the~~ *The* first ~~of such publications~~ *publication* and ~~such~~ posting ~~to~~ *may* be not less than 15 days prior to the date fixed for the hearing.

(2) The notice ~~shall~~ *must* state the substance of the petition and the time and place fixed for the hearing ~~thereon~~ *on the petition* and that any person interested in or whose rights may be affected by the issuance or sale of the bonds, the levy of the special tax or assessment, or the proceedings had or to be had by the board of commissioners with respect to ~~such~~ *those* matters may, on or before the day fixed for the hearing of the petition, answer the petition and may appear at the hearing and contest the granting of the ~~prayer~~ *request* of the petition and the entry of any order of confirmation.

(3) The provisions of Title 25 respecting the answer to a verified complaint are applicable to an answer to the petition. The persons ~~so~~ answering the petition are the defendants in the proceeding, and the board of commissioners is the plaintiff. Every material statement of the petition not specifically controverted by the answer ~~shall~~ *must* be taken as true, and every holder of title or evidence of title to lands included in the district failing to answer the petition ~~shall be~~ *is* considered to admit as true all the material statements ~~thereof~~ *of the petition*. The procedure in ~~such~~ *the* action ~~shall be~~ *is* determined by Title 25.

(4) ~~Any~~ *A* person interested in or whose rights may be affected by the issuance or sale of the bonds, the levy of the special tax or assessment, or the proceedings had or to be had by the board of commissioners of the district in connection with ~~such~~ *the* matters and the entry of any order of confirmation may enter ~~his~~ *an* appearance in ~~such~~ *the* proceedings and answer the petition and contest the granting of the ~~prayer~~ *request* of the petition."

Section 2795. Section 85-7-2027, MCA, is amended to read:

"85-7-2027. Disposition of bond proceeds. The county treasurer shall place the proceeds of the sale to the credit of the district, and the proceeds ~~shall~~ *may* be paid out by the county treasurer only upon the written order of the board of commissioners, signed by the president and secretary under the seal of the district. The proceeds ~~shall~~ *may* be spent only for the purpose for which the bonds were issued. If any portion of the funds realized from the sale of bonds is not needed immediately for the purpose for which the bonds were issued, the board of commissioners may direct the investment of the funds and any other surplus funds of the district or any portion ~~thereof~~ *of the funds* in legal investments backed, insured, or guaranteed by the United States or the state of Montana, including federal and state agency obligations. The county treasurer shall transfer to the credit of the district and place to the credit of the fund or funds, as the board of commissioners may direct, all interest received upon investments of the district entrusted to ~~his~~ *the treasurer's* care."

Section 2796. Section 85-7-2114, MCA, is amended to read:

"85-7-2114. Apportionment of costs when bonds issued. (1) Whenever a petition for the issuance of bonds of any irrigation district established under the provisions of *Title 85, chapter 7,* part 1*,* has been filed as provided in 85-7-2012 through 85-7-2015, the board of commissioners of the district shall examine or cause to be examined each 40-acre tract or fractional lot as designated by United States public survey or platted lot, if land is subdivided in lots and blocks*,* ~~(~~or whenever land is owned in less than 40-acre tracts or in less than the platted lot, each ~~such~~ tract~~)~~ of land in the district or of land in a subdistrict if the bonds are to be issued on behalf of the subdistrict~~,~~ and cause a careful topographical survey and map to be made in the manner provided for in 85-7-2107. Upon the examination, the board shall determine the number of irrigable acres in each tract and shall apportion and distribute the cost of the works or improvements for which the bonds are to be issued over the tracts

within the district or subdistrict according to the irrigable area in each of the tracts or subdivisions~~,~~ so that each irrigable acre is required to bear the same burden of ~~such~~ *the* costs as each other irrigable acre in the district or subdistrict, except as otherwise provided by law. The special tax or assessment levied to meet the principal of and interest on the bonds is a lien upon the entire tract of which the irrigable area forms a part or portion as of January 1 of the year in which the special tax or assessment is levied, and the number of irrigable acres in each tract so determined may not be diminished but may be increased during the term for which the bonds are issued or until the bonds are liquidated in full.

(2) Whenever a proceeding for the determination, in whole or in part, of the irrigable area of the lands in the district or subdistrict has already been had or a topographical survey or maps ~~thereof~~ *of the lands* prepared or a court confirmation of prior proceedings ~~had~~, in part or in full, the board may, in its discretion, adopt all or portions of the prior proceedings and need not cause an additional survey or maps or examination of any of the tracts to be made or redetermine the irrigable area of any tract.

(3) The board shall make the determination after the hearing and shall fix the total acreage and the irrigable acreage and ~~shall~~ prepare a list of the irrigable area for filing, and the proceedings of the board in connection with the determination, including the hearing and notice of the hearing and order or resolution fixing the irrigable area and the preparation and filing of the list, ~~shall~~ *must* conform to the requirements set forth in 85-7-2107 through 85-7-2113. At the hearing, the board shall also determine the amount and rate per acre necessary to be levied against each irrigable acre in the district to meet the interest on and principal of the authorized bond issue. The tax levied is a lien upon the entire tract of which the irrigable area forms a part. If ~~any~~ *a* landowner in the district or subdistrict appears before the board at that time and pays in cash the amount fixed against ~~his~~ *the landowner's* land as its proportion of the amount found necessary for the purposes for which the bonds were authorized and are to be issued, ~~his~~ *that* land must be excluded from the lien of the bond issue and the amount of bonds intended to be issued ~~shall~~ *must* be reduced by the amount of the payment. ~~Any~~ *A* person interested who fails to appear before the board at the meeting may not ~~thereafter~~ contest the proceedings of the board or any part ~~thereof~~ *of the proceedings*~~,~~ except upon special application to the court in the proceedings for the confirmation of the bonds and a showing of reasonable excuse for failure to appear before the board."

Section 2797. Section 85-7-2115, MCA, is amended to read:

"85-7-2115. Objection by landowner. ~~In case~~ *If* ~~any~~ *a* landowner ~~makes objection~~ *objects* to the proceedings of the board in determining the irrigable area in ~~his~~ *the landowner's* own or any other tract of land or the amount or rate per acre of the special tax and assessment to be levied against each irrigable acre in the district or subdistrict for the purposes of the proposed bond issue and the objection is overruled by the board, the objection without further proceedings must be regarded as appealed to the district court and ~~shall~~ *must*, with the other proceedings of the board at the meeting, be heard at the proceedings to confirm the bonds, as provided in 85-7-2016 through 85-7-2018~~,~~. ~~and when~~ *When* confirmed, the order overruling the objection and confirming the order of the board determining the irrigable area of each tract of land and apportioning the cost of the improvement to each tract ~~shall become~~ *becomes* final, binding, and conclusive upon the landowner and upon the district~~,~~ unless appealed from as provided in 85-7-2018."

Section 2798. Section 85-7-2116, MCA, is amended to read:

"85-7-2116. Restrictions on reduction of taxable acreage. Whenever the irrigable area of the lands in ~~any~~ *an* irrigation district or subdistrict has been determined and confirmed, ~~no~~ *the* owner or holder of title or evidence of title to lands in the district or subdistrict, during the period when any bonds are issued and outstanding, may *not* have the taxable acreage of ~~his~~ *the owner's or title holder's* lands fixed or adjudicated in the manner provided by 85-7-1841 through 85-7-1845 in a manner or to an extent as to reduce the acreage subject to the payment of the bonds or interest or in a manner as to affect the security of the bonds or interest on the bonds."

Section 2799. Section 85-7-2133, MCA, is amended to read:

"85-7-2133. Role of ~~the~~ county officers in collection of tax or assessment. (1) A certified copy of ~~such~~ *the* resolution ~~shall~~ *authorizing the issuance of bonds under this chapter must* be filed with the clerk of the board of county commissioners of each county in which the lands of the irrigation district lie, and the special tax or assessment ~~therein~~ provided for ~~shall~~ *in the resolution must* be levied and collected as prescribed and when ~~so~~ collected ~~shall~~ *must*, by the county treasurer having custody of the funds of the district, be placed in a special fund and used solely for the payment of all bonds issued under the provisions of this chapter and interest ~~thereon so~~ *on the bonds as* long as any of the bonds or interest coupons remain outstanding and unpaid. Whenever the payments are made for amounts due or to become due to the United States under a contract between the district and the United States, accompanying ~~which~~ bonds of the district *that* have not been deposited with the United States as provided in 85-7-1906, the special fund ~~shall~~ *must* be known as the United States contract fund.

(2) The county treasurer of the county where the office of an irrigation district is located is the custodian of all funds belonging to the district, and ~~he~~ *the treasurer* shall pay out ~~such~~ *the* funds upon the order of the board of commissioners, except payments on bonds and interest for which ~~no~~ *an* order is *not* necessary. If any portion of the funds belonging to a district has been collected for the purpose of establishing a reserve fund, the county treasurer shall pay ~~such~~ *that* portion to the district on order of the district's board of commissioners who may invest the ~~same~~ *funds* in legal investments backed, insured, or guaranteed by the United States or the state of Montana, including federal and state agency obligations. ~~Where moneys~~ *If money* of a district in the United States contract fund established pursuant to subsection (1) ~~are~~ *is* in excess of ~~those~~ *the amount* needed to pay a district's next ~~succeeding~~ annual contract obligation or obligations to the United States, ~~such~~ *the* excess or any part ~~thereof~~ *of the excess* may, upon order of the district's board of commissioners and with the consent of the United States officer administering the contract for which the contract fund has been established, be paid to the district for use in meeting other obligations of the district. ~~Such~~ *The* orders of the board of commissioners ~~shall~~ *must* be signed by the president and secretary of the board and ~~shall~~ *must* bear the official seal of the district."

Section 2800. Section 85-7-2153, MCA, is amended to read:

"85-7-2153. Assignment of debenture certificates. The certificates provided for by ~~the preceding section hereof shall be~~ *85-2-2152 are* assignable and may be sold or negotiated by the board of commissioners of ~~said~~ *the* irrigation district and the proceeds ~~thereof~~ *of the sale* delivered to and deposited with the county treasurer of ~~said~~ *the* county for proper credit to the respective funds of ~~said~~ *the* irrigation district. Upon the sale, negotiation, or transfer ~~thereof, as provided for above~~ *of a certificate*, the lien of ~~said~~ *the* irrigation

district ~~shall vest~~ *vests* in the purchaser ~~thereof~~ *of the certificate* and is only divested by the payment to the purchaser or the county treasurer of ~~said~~ *the* county, for ~~his~~ *the purchaser's* use, of the sum for which ~~said~~ *the* certificate is issued and 1% additional for each month that ~~elapses~~ *passes* from the date of ~~such~~ *the* certificate until redeemed as ~~hereinafter~~ provided for *in 85-7-2154*."

Section 2801. Section 85-7-2166, MCA, is amended to read:

"85-7-2166. Liability of county treasurers. (1) The county treasurer to whom district funds or securities are entrusted ~~shall be~~ *is* liable on ~~his~~ *the treasurer's* bond for the safekeeping of ~~said~~ *the* funds and securities. ~~Such~~ *The* funds ~~shall~~ *must* be properly divided into the respective funds for which district taxes or assessments were levied~~; that is to say~~, *including a* United States contract fund~~;~~*,* bond principal and interest fund~~;~~*,* sinking fund to redeem bonds~~;~~*,* maintenance fund~~;~~*,* construction fund~~;~~*,* and general fund. The construction fund ~~shall~~ *must* be available for the payment of the purchase price of all works, water rights, or other property purchased by or for the district and all expenses incident ~~thereto~~ *to those purchases*, as well as for the payment of the cost of construction of works, including cost of engineering, superintendence, and other expenses incident ~~thereto~~ *to construction*. All warrants issued for preliminary and organization expenses and all administrative expenses ~~shall~~ *must* be paid from the general fund.

(2) The county treasurer is authorized to receive, in lieu of cash, matured bonds*,* ~~and/or~~ matured coupons*,* or interest coupons maturing within the year in payment of any tax or assessment levied for the payment of bonds or interest on bonds. The county treasurer at any time, upon the order of the board of commissioners of the district, shall turn over to ~~said~~ *the* board any bonds or securities held by ~~him~~ *the treasurer* and required to be delivered to ~~said~~ *the* board in accordance with the provisions of this chapter. All bonds and interest coupons ~~so~~ received or otherwise paid and all bonds of the district upon the payment ~~thereof shall~~ *must* be immediately canceled and retained by the county treasurer as vouchers."

Section 2802. Section 85-8-111, MCA, is amended to read:

"85-8-111. Notice of hearing. (1) On ~~such~~ *the filing of a* petition *under 85-8-101* ~~being filed~~, the court or judge ~~thereof~~ shall make an order fixing a time and place of hearing ~~thereon~~ *on the petition* and ordering notice. ~~Thereupon, the~~ *The* clerk of ~~said~~ court for the county in which the proceedings are instituted shall cause 20 days' notice of the filing of ~~such~~ *the* petition to be given:

(a) by posting notice ~~thereof~~ in at least five of the most public places in the proposed district in which ~~said~~ *the* work is to be done;

(b) by serving or causing to be served a copy of ~~such~~ *the* notice on each owner of land within ~~said~~ *the* proposed district residing in any county in which any lands in ~~said~~ *the* proposed district are situated, either personally or by leaving a copy ~~thereof~~ *of the notice* at ~~his~~ *the owner's* last usual place of ~~abode~~ *residence* with a person of suitable age and discretion, to whom its contents ~~shall~~ *must* be explained; and

(c) by publishing a copy ~~thereof~~ at least once a week for 3 successive weeks in some newspaper published in each county from which any part of the district is proposed to be taken. If there ~~be~~ *is* no newspaper in any ~~such~~ county, ~~such~~ *the* notice may be published in a newspaper published in an adjoining county.

(2) ~~Such~~ *The* notice ~~shall~~ *must*:

(a) state in what court ~~said~~ *the* petition is filed;

(b) state briefly the starting points, routes, and termini of ~~said~~ drains, ditches, and levees;

(c) give a general description of the proposed work;

(d) give the proposed boundaries of ~~said~~ *the* district ~~(~~or a general description of all the lands in ~~said~~ *the* proposed district~~)~~;

(e) give the name proposed for ~~said~~ *the* drainage district; and

(f) state the time and place fixed by the court when and where the petitioners will ~~ask~~ *request* a hearing on ~~said~~ *the* petition."

Section 2803. Section 85-8-115, MCA, is amended to read:

"85-8-115. Insufficient service. (1) If it ~~shall be~~ *is* found, before the hearing on a petition for the organization of a drainage district, that one or more owners of land in ~~said~~ *the proposed* district have not been ~~duly~~ served with notice of hearing on ~~said~~ *the* petition, the court or presiding judge ~~shall~~ *does* not ~~thereby~~ lose jurisdiction. The court or presiding judge in ~~such~~ *that* case shall adjourn the hearing, make an order directing the serving of ~~said~~ *the* notice upon ~~said~~ *the* landowner *or landowners*, and fix the time and manner of service of ~~such~~ *the* notice, which ~~notice shall~~ *must* notify ~~him~~ *the landowner or landowners* to appear at ~~said~~ *the* adjourned time and place and be heard on ~~said~~ *the* petition.

(2) ~~Said~~ *The* notice ~~shall~~ *must* be served personally or by leaving *the notice* at the last usual place of ~~abode~~ *residence* of ~~said~~ *the* unserved owners as provided in 85-8-111, not less than 8 days before ~~said~~ *the* adjourned hearing, or *must be* published, not less than 14 days before ~~said~~ *the* adjourned hearing, in some newspaper published in the county in which ~~said~~ *the* owners' lands lie or, if ~~no~~ *a* newspaper ~~be~~ *is not* published in ~~said~~ *that* county, then in some newspaper published in an adjoining county."

Section 2804. Section 85-8-119, MCA, is amended to read:

"85-8-119. Receiving affidavits on question of petition sufficiency. The affidavits of any 10 or more of the signers of the petition, stating that they have examined ~~it~~ *the petition* and are acquainted with the locality of the district and that the petition is signed by a sufficient number of owners of lands in the district to satisfy 85-8-101, may be taken by the court or judge as prima facie evidence of the facts ~~therein~~ stated *in the petition*. The affidavit of any petitioner or other landowner before the court or represented before the court asserting ~~his~~ *the petitioner's or landowner's* ownership of lands in the district, properly described, is sufficient evidence to the court of ~~such~~ *those* facts."

Section 2805. Section 85-8-121, MCA, is amended to read:

"85-8-121. Court determination. (1) If the court or presiding judge ~~thereof~~, after hearing any and all competent evidence that may be offered for and against the petition *for the creation of the district*, ~~shall find~~ *finds* that the ~~same~~ *petition* has not been signed as ~~herein~~ required *in this part*, the petition ~~shall~~ *must* be dismissed at the cost of the petitioners and judgment ~~shall~~ *must* be entered against ~~said~~ *the* petitioners for the amount of ~~said~~ *the* costs.

(2) If it ~~shall appear~~ *appears* that the petition has been ~~so~~ signed *as required in this part*, the court or judge shall so find and order any necessary amendments ~~thereto;~~ *to the petition,* shall divide the district into three divisions, as nearly equal in area as possible~~;~~*,* and shall appoint three suitable and competent persons as commissioners and fix their temporary bonds. ~~In making such appointments one~~ *One* commissioner ~~shall~~ *must* be appointed from each division, and each person ~~so~~ appointed ~~a commissioner~~ must be an actual landowner and resident of the county or counties in the division for which ~~he~~ *the*

person is appointed ~~such commissioner~~. If the district is situated in two or more counties, not more than two of ~~said~~ *the* commissioners ~~shall~~ *may* reside in one of ~~said~~ *the* counties. Ownership of land within the district ~~shall~~ *may* not disqualify a person from acting as a commissioner."

Section 2806. Section 85-8-307, MCA, is amended to read:

"85-8-307. Vacancies. If a vacancy occurs ~~in~~ *on* the board of commissioners, the remaining members of the board shall elect some qualified elector to fill ~~such~~ *the* vacancy, and the person ~~so~~ elected ~~shall hold~~ ~~such~~ *holds* office for the unexpired term and until ~~his~~ *a* successor is elected and qualified. The person ~~so~~ appointed must be appointed as a commissioner for the division in which ~~such~~ *the* vacancy exists. ~~In the event~~ *If* there is a vacancy or vacancies ~~in~~ *on* the board of commissioners by reason of no appointment being made, due to the failure of the remaining members of the board to act or on account of no election being held, ~~then, in that event,~~ the judge of the court having jurisdiction over ~~said~~ *the* drainage district shall, upon the receipt of a petition signed by 10% of the resident owners of land in ~~said~~ *the* district, appoint to ~~such~~ *the* vacancy or vacancies ~~such~~ *the* person ~~as~~ *that* the ~~aforesaid~~ petition may designate."

Section 2807. Section 85-8-308, MCA, is amended to read:

"85-8-308. Oath and bond of commissioners — quorum. (1) Before entering upon their duties, ~~such~~ *the* commissioners shall:

(a) take and subscribe an oath to support The Constitution of the United States and The Constitution of the State of Montana, to faithfully and impartially discharge their duties as ~~such~~ commissioners, and to render a true account of their doings to the court by which they are appointed~~,~~ whenever required by law or the order of the court; and

(b) execute a bond running to the clerk of ~~said~~ court and ~~his~~ *the clerk's* successors in office as obligees, to be filed with ~~said~~ *the* clerk for the benefit of the parties interested, in an amount to be fixed by the court or presiding judge and with sureties to be approved by the court or presiding judge, conditioned for the faithful discharge of their duties as ~~such~~ commissioners and the faithful accounting for and application of all ~~moneys which shall come~~ *money that comes* into their hands as ~~such~~ commissioners.

(2) A majority shall constitute a quorum, and a concurrence of a majority in any matter within their duties ~~shall be~~ *is* sufficient to its determination."

Section 2808. Section 85-8-312, MCA, is amended to read:

"85-8-312. Custody of funds. The county treasurer of the county ~~wherein~~ *in which* the court having jurisdiction of ~~such~~ *the* district is located ~~shall be~~ *is* the custodian of all funds belonging to the district, and ~~he~~ *the treasurer* shall pay out ~~such~~ *the* funds upon warrants drawn by the board of commissioners of ~~such~~ *the* district, except that the bonds of ~~said~~ *the* district and the interest coupons ~~thereon shall be~~ *on the bonds are* payable as they mature~~,~~ on presentation to ~~such~~ *the* treasurer."

Section 2809. Section 85-8-314, MCA, is amended to read:

"85-8-314. Court control and compensation of commissioners. (1) The commissioners ~~shall~~ *must* receive for their services ~~such~~ compensation ~~as~~ *that* the court or presiding judge ~~thereof~~ may determine. They ~~shall~~ *must* also receive their actual reasonable expenses. They ~~shall~~ *are* at all times ~~be~~ under the control or direction of the court or presiding judge and shall obey ~~its~~ *the court's* or ~~his~~ *judge's* directions~~;~~*, and* for failure to do so*,* they shall forfeit their compensation and be dealt with summarily as for contempt. Suit may also be

brought upon their bonds, in the name of the clerk of the court, and the amount recovered ~~shall~~ *must* be applied to the construction of the work or to the party injured~~,~~ as justice may require.

(2) The court may at any time require the commissioners to make a report on any matter or matters connected with their duties as commissioners and after ~~due~~ hearing may remove from office any or all of ~~said~~ *the* commissioners for neglect of duty, *for* malfeasance in office, or for other good cause. The court may at any time require the commissioners to give new bonds to the clerk of ~~the~~ court and may fix the amount ~~thereof~~ *of the bonds*. ~~Said~~ *The* bonds ~~shall~~ *must* be submitted to the court or the presiding judge ~~thereof~~ for approval."

Section 2810. Section 85-8-321, MCA, is amended to read:

"85-8-321. Organization, appointments, and preliminary report. (1) Within 10 days after ~~said~~ *the* commissioners ~~shall be~~ *are* appointed and qualified, they shall meet and organize by electing one ~~of their number~~ *member as* president and *by electing* a secretary, who may or may not be ~~one of their number~~ *a member of the board*.

(2) ~~They~~ *The commissioners* shall appoint one or more attorneys to assist in the establishment of the district~~;~~*,* advise with its officers, agents, and employees~~;~~*,* and prepare reports and other necessary documents. The court shall allow ~~such~~ *the* attorney or attorneys just compensation to be taxed in the case.

(3) ~~They~~ *The commissioners* shall ~~also~~ appoint a competent civil and drainage engineer, who may be an individual, a partnership, or a corporation, who may employ assistants and make surveys~~;~~*,* and who, with the approval of the court, may employ a consulting engineer or secure expert advice. The expense of the engineer, ~~his~~ *the engineer's* assistants, and the consulting engineer ~~shall~~ *must* be taxed as expenses under the petition. ~~As soon thereafter as may be, they~~ *The commissioners* shall personally examine the lands in ~~said~~ *the* district and make a preliminary report to the court~~, which report shall state~~ *that states*:

(a) whether ~~said~~ *the* proposed work is necessary or would be of ~~utility~~ *use* in carrying out the purposes of the petition;

(b) whether the proposed work would promote the public health;

(c) whether the proposed work would promote the public welfare;

(d) whether the total benefits from ~~said~~ *the* proposed work will exceed the cost ~~thereof~~ *of the work*, together with the damages resulting ~~therefrom~~ *from the work*, and in arriving at this, they shall include all benefits and all damages resulting ~~therefrom~~ *from the work* both within and ~~without said~~ *outside of the* district.

(4) ~~Said~~ *The* commissioners shall in ~~said~~ *the* report fix, as near as may be, and report to the court the boundaries of ~~said~~ *the* proposed drainage district. ~~Said~~ *The* boundaries ~~shall~~ *may* not be changed from those in the petition described so as to deprive the court of jurisdiction by reason of not having on the petition the required number of signers owning land within ~~said~~ *the* changed boundaries."

Section 2811. Section 85-8-345, MCA, is amended to read:

"85-8-345. Notice of hearing of report. (1) Upon the filing of ~~such~~ *the* report *under 85-8-341*, the court shall make an order fixing the time and place when and where all interested persons may appear and ~~remonstrate~~ *protest* against the confirmation ~~thereof~~ *of the petition*. The clerk of ~~such~~ court shall

~~cause notice to be given~~ *give notice* to all *interested* parties ~~interested~~ by publication ~~thereof~~ *of the order* for at least 3 successive weeks before the date of ~~such~~ *the* hearing in at least one newspaper in each county ~~wherein~~ *in which* lands located in ~~such~~ *the* district are ~~situate,~~ *situated.* ~~which~~ *The* notice ~~shall~~ *must* contain a statement of the time and place of the hearing of ~~said~~ *the* report and a brief statement of the substance ~~thereof~~ *of the report*.

(2) Upon a date not later than the date of the first publication of the notice referred to in ~~the last~~ subsection *(1)*, the clerk of ~~such~~ court shall also cause to be mailed to each of the persons or corporations recommended by ~~said~~ *the* report to be assessed or whose lands are recommended by ~~said~~ *the* report to be included in ~~said~~ *the* district, at ~~his~~ *the person's* or ~~its~~ *corporation's* ~~last known~~ *last-known* post-office address, a notice containing a brief description of the land or easement belonging to ~~such~~ *the* person or corporation benefited or damaged~~;~~*,* the net damage awarded to ~~such~~ *the* tract, parcel, easement, or corporation~~;~~*,* and the sum assessed against ~~such~~ *the* benefited parcel, tract, easement, or corporation."

Section 2812. Section 85-8-362, MCA, is amended to read:

"85-8-362. Interest of commissioners in contracts forbidden. The commissioners ~~shall~~ *may* not, during their term of office, be interested, directly or indirectly, in any contract for the construction of any drain, ditch, levee, or other work in ~~such~~ *the* drainage district~~;~~*,* in the sale of materials ~~therefor;~~ *for the drainage district,* or in the wages of or supplies for ~~men~~ *personnel* or teams employed on any ~~such~~ *construction* work in ~~said~~ *the* district."

Section 2813. Section 85-8-364, MCA, is amended to read:

"85-8-364. Payment or tender of damages. (1) The damages allowed to the owners of lands ~~shall~~ *must* be paid or tendered before the commissioners ~~shall be~~ *are* authorized to enter upon the lands (for damage to which the award is made) for the construction of any *proposed* drains, ditches, or levees ~~proposed thereon~~. If the owner is unknown*,* ~~or~~ *if* there ~~shall be~~ *is* a contest in regard to the ownership of the land*,* ~~or~~ *if* the owner will not receive payment*,* ~~or~~ *if* there exists a mortgage or other lien against the ~~same~~ *land,* or *if* the commissioners cannot for any other reason pay ~~him~~ *the owner*, they may deposit the ~~same~~ damages with the clerk of ~~the~~ court~~,~~ for the benefit of the owner or parties interested, to be paid or distributed as the court shall direct~~,~~ . ~~and such payment shall have~~ *The deposit has* the same effect as the tender to and acceptance of the damages awarded by the ~~true~~ owner of the land.

(2) This section ~~shall~~ *does* not~~, however,~~ prevent ~~said~~ *the* commissioners~~,~~ *or* their agents, servants, and employees *from* going upon ~~said~~ *the* lands to do any and all work found necessary prior to making their assessment of benefits and award of damages and the trial on their report ~~thereof~~ *of the benefits and damages*."

Section 2814. Section 85-8-402, MCA, is amended to read:

"85-8-402. Hearing — notice and service. Upon the filing of ~~such~~ *a* petition *under 85-8-401*, a judge of ~~said~~ *the* district court shall set the ~~same~~ *petition* for hearing and direct the clerk of ~~such~~ court to give notice ~~thereof~~ *of the hearing*. ~~Such~~ *The* notice ~~shall~~ *must* contain a concise statement of the proposed alteration ~~and/or~~ *or* addition and the estimated cost ~~thereof,~~ *of the alteration or addition.* ~~which~~ *The* notice must be served and published at least 20 days before the date fixed for ~~such~~ *the* hearing. Service of ~~such~~ *the* notice ~~shall~~ *must* be made by certified ~~or registered~~ mail, addressed to each landowner and corporation that may be liable for the payment of any portion of the cost of making ~~such~~ *the*

alteration ~~and/or~~ *or* addition, at ~~his~~ *the landowner's* or ~~its~~ *corporation's* post-office address, if the same can be ascertained by the exercise of due diligence. ~~Such~~ *The* notice ~~shall~~ *must* be published once a week for 20 days prior to ~~such~~ *the* date *of the hearing* in ~~some~~ *a* newspaper, to be designated in the order fixing the date for ~~such~~ *the* hearing, published in the county where ~~said~~ *the* court is held~~;~~. ~~provided, however~~ *However*, ~~that~~ if all interested landowners and corporations are ~~so~~ served, ~~such~~ *the* notice need not be published."

Section 2815. Section 85-8-403, MCA, is amended to read:

"85-8-403. Court order — dismissal of petition. (1) ~~Any~~ *A* ~~such~~ landowner or corporation may, at any time prior to 5 days before the date fixed for ~~such~~ *the* hearing *under 85-8-402*, file ~~his or its~~ objections to ~~such~~ *the* petition. A copy of ~~such~~ *the* objections ~~shall~~ *must* be delivered to the attorney for ~~said~~ *the* commissioners, if they have an attorney of record, or to the ~~chairman~~ *presiding officer* of the board of commissioners of ~~said~~ *the* district, if there ~~be~~ *is* no ~~such~~ attorney of record, prior to filing the original ~~thereof~~ *objections* with the clerk of ~~said~~ court.

(2) If objections are made and filed by the owners of at least 75% in area of the lands in ~~said~~ *the* district, ~~said~~ *the* petition ~~shall~~ *must* be dismissed and ~~no~~ further proceedings ~~had thereon~~ *may not be taken*. If the owners of less than 75% in area of the lands in ~~said~~ *the* district object to ~~such~~ *the* petition, then, on the date fixed for ~~such~~ hearing or upon any day to which ~~such~~ *the* hearing may be adjourned, the court having jurisdiction will hear testimony in support of ~~said~~ *and in opposition to the* petition ~~and in opposition thereto~~.

(3) After ~~such~~ *the* hearing, the court shall determine whether the proposed alteration ~~and/or~~ *or* addition is necessary~~,~~ *and* whether it will be beneficial to ~~said~~ *the* district and improve the drainage system ~~thereof~~ *of the district*~~,~~ and *shall* either approve or deny ~~such~~ *the* petition or modify and change the proposed alteration ~~and/or~~ *or* addition. If the court ~~shall approve such~~ *approves the* petition or ~~modify~~ *modifies* and ~~change~~ *changes* the alteration ~~and/or~~ *or* addition proposed, the court shall by order direct ~~said~~ *the* commissioners to proceed with ~~said~~ *the* work with all convenient speed.

(4) ~~So~~ *As* far as possible, ~~such~~ *the* hearing ~~shall~~ *must* be conducted as other hearings and trials in the district courts of the state of Montana, and the laws of the state of Montana with reference to hearings and trials, ~~so~~ *as* far as applicable, ~~shall~~ govern in the conduct of ~~such~~ *the* hearings."

Section 2816. Section 85-8-404, MCA, is amended to read:

"85-8-404. Appeals and assessments. ~~Any~~ *A* party interested in ~~such~~ *the* hearing *under 85-8-402*~~, deeming himself~~ *who is* aggrieved by the order of the court ~~thereon~~, may appeal from ~~such~~ *the* order to the supreme court of Montana within 30 days after the entry of ~~such~~ *the* order. If ~~no such~~ *an* appeal is *not* taken within the time limit, the order of the court made upon ~~such~~ *the* hearing ~~will be~~ *is* final and conclusive. If ~~any such~~ alterations ~~and/or~~ *or* additions are authorized by ~~such~~ *the* order, the ~~same shall~~ *alterations or additions must* be made by the commissioners of ~~said~~ *the* district and the cost ~~thereof~~ apportioned in accordance with the last assessment roll of ~~any such~~ *the* drain district or in accordance with the last assessments of ~~any such~~ *the* drainage district confirmed by the court."

Section 2817. Section 85-8-612, MCA, is amended to read:

"85-8-612. Lien of assessments — payment of assessments against state lands. (1) From the time of the entry of ~~said~~ *an* order *under 85-8-611*, assessments for construction of new work and additional assessments and interest ~~thereon shall be~~ *on the assessments are* a lien upon the lands assessed~~,~~

until paid. ~~Any~~ *An* owner of land or ~~any~~ *a* corporation assessed for construction may, at any time within 30 days after the confirmation of ~~said~~ *the* report, pay into court the amount of the assessment against ~~his~~ *the person's* land or any tract ~~thereof~~ *of land* or against ~~any~~ *the* ~~such~~ corporation. ~~Said payment shall relieve said~~ *Payment relieves the* lands from the lien of ~~said~~ *the* assessment and ~~said~~ *the* corporation from all liability on ~~said~~ *the* assessment.

(2) Upon presentation to the state treasurer of an order of the district court having jurisdiction of the drainage district, properly certified, the department of administration shall draw a warrant on the treasury on the ~~common school~~ *appropriate* fund in favor of the commissioners of the drainage district for the total amount that may be assessed against any *state* lands included in the district~~, the title to which is in the state of Montana~~. Upon payment of the warrant, the lands are relieved from the lien created for the costs of construction."

Section 2818. Section 85-9-103, MCA, is amended to read:

"85-9-103. Definitions. As used in this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Applicant" means ~~any~~ *a* person residing within the boundaries of the proposed district *and* making a request for a study of the feasibility of forming a conservancy district.

(2) "Board of supervisors" means the board of supervisors of the soil and water conservation district in which the largest portion of the taxable valuation of real property of the proposed district is located.

(3) "Cost of works" means the cost of construction, acquisition, improvement, extension, and development of works, including financing charges, interest, and professional services.

(4) "Court" means the district court of the judicial district in which the largest portion of the taxable valuation of real property of the proposed district is located and within the county in which the largest portion of the taxable valuation of real property of the proposed district is located within the judicial district.

(5) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(6) "Directors" means the board of directors of a conservancy district.

(7) "District" means a conservancy district.

(8) "Elector" means a person qualified to vote under 85-9-421.

(9) "Notice" means publication at least once each week for 3 consecutive weeks in a newspaper published in each county or, if ~~no~~ *a* newspaper is *not* published in a county, *in* a newspaper of general circulation in the county or counties in which a district is or will be located. The last published notice ~~shall~~ *must* appear not less than 5 days prior to any hearing or election held under this chapter.

(10) "Owners" ~~are~~ *means* the person or persons who appear as owners of record of the legal title to real property according to the county records, whether ~~such~~ *the* title is held beneficially or in a fiduciary capacity, except that a person holding a title for purposes of security is not an owner~~, nor~~ *and the owner for security* may ~~he~~ *not* affect the previous title for purposes of this chapter.

(11) "Person" means a natural person, firm, partnership, cooperative, association, public or private corporation, including the state of Montana or the

United States, foundation, state agency or institution, county, municipality, district or other political subdivision of the state, federal agency or bureau, or any other legal entity.

(12) "Taxable valuation" is the value as defined in 15-8-111 and does not mean assessed valuation.

(13) "Works" means all property, rights, easements, franchises, and other facilities, including but not limited to land, reservoirs, dams, canals, dikes, ditches, pumping units, mains, pipelines, waterworks systems, recreational facilities, facilities for fish and wildlife, and facilities to control and correct pollution."

Section 2819. Section 85-9-304, MCA, is amended to read:

"85-9-304. Appointment of receiver — assessments. (1) If ~~no~~ *a* plan is *not* presented on or before the date set by the court, the court shall appoint a receiver to terminate the affairs of the district under the supervision of the court.

(2) Upon the appointment of ~~any~~ *a* receiver, all ~~the~~ authority of the directors ~~shall cease~~ *ceases*. However, until dissolution, the receiver ~~shall have~~ *has* authority to levy assessments for:

(a) the payment of obligations of the district; *and*

(b) the costs of termination.

(3) The directors or, if there is a receiver, ~~then~~ the receiver, with the approval of the court, shall make assessments each year in an amount large enough to retire the obligations of the district.

(4) If a receiver has been appointed, ~~he~~ *the receiver* shall direct, under court supervision, the disposition of all assessments collected."

Section 2820. Section 85-9-401, MCA, is amended to read:

"85-9-401. District directors — appointment, term of office, vacancies, first meeting, and bond. If a district is organized, the court shall:

(1) establish by court order the number of persons who shall comprise the directors~~,~~ *and* appoint persons who are electors within the district to membership on the board of directors~~,~~ and fix their compensation. The number ~~shall~~ *may* not be less than 3 or more than 11 persons. In fixing the number and making the appointments, the court shall consider the interests and purposes to be served by the district. Upon a verified petition filed by a majority of the directors and for good cause shown, the court may enlarge or reduce the membership of the directors but not to be less than 3 or ~~to exceed~~ *more than* 11.

(2) fix the terms of office so that approximately one-third of the directors first appointed ~~shall~~ serve for 1 year, approximately one-third ~~shall~~ serve 2 years, and the remainder ~~shall~~ serve 3 years. All succeeding terms ~~shall~~ *must* be 3 years. Unless excused for good cause, a director who misses three consecutive regular meetings has vacated ~~his~~ *the* position.

(3) fill all vacancies on the board by appointment or reappointment;

(4) specify a date for the first annual meeting of the directors;

(5) specify the amount and form of a corporate surety bond ~~which~~ *that* each member of the directors shall furnish at the expense of the district, conditioned upon ~~his~~ *the* faithful performance of ~~his~~ duties as a director."

Section 2821. Section 85-9-402, MCA, is amended to read:

"85-9-402. Officers and meetings. (1) The directors shall select from among themselves a ~~chairman~~ *presiding officer*, ~~vice-chairman~~ *vice presiding officer*, secretary, and other necessary officers. The directors shall adopt bylaws and rules for the conduct of meetings. All official acts of the directors ~~shall~~ *must* be entered in a book of minutes to be kept by the secretary.

(2) The directors shall establish times for regular meetings and may hold special meetings upon the call of the ~~chairman~~ *presiding officer* or any two members and, ~~(~~except in case of emergency~~)~~, upon at least 3 days' notice of the time, place, and purpose of the meeting."

Section 2822. Section 85-9-421, MCA, is amended to read:

"85-9-421. Persons entitled to vote. (1) Only persons who are taxpayers upon and owners of real property located within the district and whose names appear upon the last-completed assessment roll of some county within the district for state, county, and school district taxes are electors and ~~shall be~~ *are* entitled to vote in elections, provided that:

(a) an elector need not reside within the district in order to vote;

(b) ~~where~~ *when* a corporation owns taxable real property within the boundaries of the conservancy district, the authorized agent of ~~such~~ *the* corporation ~~shall be~~ *is* entitled to cast a vote on behalf of the corporation;

(c) ~~where~~ *when* land is under contract of sale to a purchaser and the contract is recorded, only the purchaser ~~shall have~~ *has* the right to vote;

(d) guardians, executors, administrators, and trustees of real property within the district ~~shall be~~ *are* entitled to cast the vote for the owner of the land.

(2) When voting, an agent of a corporation or of co-owners or a guardian, executor, administrator, trustee, or purchaser under contract of sale may be required to show ~~his~~ *the person's* authority by the judges of the election."

Section 2823. Section 85-9-502, MCA, is amended to read:

"85-9-502. Annexation of property. *(1)* To annex real property to the district, the procedure is ~~the following~~ *as follows*:

~~(1)~~*(a)* The directors shall petition the court.

~~(2)~~*(b)* The petition ~~shall~~ *must*:

~~(a)~~*(i)* give a general description of the real property to be annexed sufficient to enable a person to determine if ~~his~~ *the person's* property is in the proposed annexation; *and*

~~(b)~~*(ii)* describe the benefits to accrue to the real property as a result of the annexation.

~~(3)~~*(2)* The court shall:

(a) give notice and hold a hearing on the petition; *and*

(b) upon good cause shown, order or deny the annexation."

Section 2824. Section 85-9-504, MCA, is amended to read:

"85-9-504. Procedure to exclude lands. Any territory included within ~~any~~ *a* district formed under the provisions of this chapter and not benefited in any manner by ~~such~~ *the* district or its inclusion ~~therein~~ *in the district* may be excluded ~~therefrom~~ *from the district*. The procedure for exclusion consists of the following:

(1) A petition for exclusion ~~shall~~ *must* be initiated by either the directors or the owner or owners of the land sought to be excluded.

(2) The petition ~~shall~~ *must:*

(a) give a description of the territory sought to be excluded sufficient to enable a person to determine if ~~his~~ *the person's* property is in the proposed exclusion;

(b) ~~shall~~ set forth that ~~such~~ *the* territory is not benefited in any manner by the district or its continued inclusion ~~therein~~ *in the district*; and

(c) ~~shall~~ request that ~~such~~ *the* territory be excluded from the district.

(3) When owners of property initiate the petition for exclusion, the petition ~~shall~~ *must* be filed with the secretary of the district and ~~shall~~ *must* be accompanied by a deposit of $100 to meet the costs incident to the process of exclusion. The unexpended balance of the deposit ~~shall~~ *must* be returned to the petitioner.

(4) Upon the filing of ~~such~~ *the* petition with the secretary of the district, the secretary shall ~~duly~~ call a meeting of the directors to consider the petition. The directors shall approve or disapprove of the merits of the petition. The secretary shall then file the petition, together with a copy of the action of the directors, with the court.

(5) The court shall give notice, hold a hearing, and issue an order either granting or denying the petition."

Section 2825. Section 85-9-628, MCA, is amended to read:

"85-9-628. Bond registration — copy to county. (1) When duly executed, all bonds issued under this chapter ~~shall~~ *must* be registered by the county treasurer of the county in which the largest portion of the taxable valuation of real property of the district is located. ~~They shall~~ *The bonds must* be registered in a book provided for that purpose before being delivered to the purchaser.

(2) The registration ~~shall~~ *must* show:

(a) the number and amount of each bond;

(b) the date of issue and date redeemable;

(c) the name of the purchaser;

(d) the amount and due date of all payments required on the bonds.

(3) The directors shall provide the county treasurer with an unsigned and canceled printed copy of each issue of bonds of the district. The copy ~~shall~~ *must* be preserved in ~~his~~ *the treasurer's* office."

Section 2826. Section 85-20-104, MCA, is amended to read:

"85-20-104. Filing written statement with department. (1) ~~Any~~ *A* person claiming an appropriative right to the use of any water of any interstate tributary~~, which right~~ *that* was acquired after January 1, 1950, shall, within 60 days after February 25, 1953, or before ~~he~~ *the person* diverts any water, file with the department at its office in Helena, Montana, a written statement containing the following information:

(a) the name of the claimant and ~~his~~ *the claimant's* address;

(b) *the* date of appropriation or the date when the water was first applied to a beneficial use;

(c) the quantity of water claimed;

(d) the name of the stream, river, or other source of water from which the diversion is made, if it has a name, and if it does not, a description identifying the ~~same~~ *stream, river, or source*;

(e) the purpose for which the water is claimed and the place of intended use;

(f) the means of diversion;

(g) whether or not a weir or other device for measuring the water intended to be diverted has been installed in ~~his~~ *the claimant's* ditch or other means of diversion;

(h) if a notice of appropriation was filed with the county clerk and recorder, the name of the county where it was filed;

(i) whether the appropriation was made from an adjudicated or nonadjudicated stream, river, or other source of water.

(2) The written statement ~~shall~~ *must* be verified by the affidavit of the claimant or someone in ~~his~~ *the claimant's* behalf. The affidavit must state that the matters and facts contained in the written statement are true."

Section 2827. Section 85-20-105, MCA, is amended to read:

"85-20-105. Duty to install measuring devices. ~~Any~~ *A* person claiming an appropriative right to use any waters of any interstate tributary of the Yellowstone River~~, which right~~ *that* was acquired ~~subsequently to~~ *after* January 1, 1950, shall, after February 25, 1953, and before ~~he~~ *the person* diverts any ~~such~~ water, install in ~~his~~ *the person's* ditch or other means of diversion a weir or other measuring device so that all of the water to be diverted by ~~him~~ *the person* can be accurately measured. The installation of a weir or other measuring device is subject to the approval of the department, and if in its judgment ~~such~~ *the* weir or other measuring device or the installation of the ~~same~~ *weir or device* is defective so that the water cannot be accurately measured, it may order the installation of an accurate measuring device. The claimant ~~shall~~ *may* not divert any water until ~~he~~ *the claimant* complies with ~~such~~ *the* order."

Section 2828. Section 85-20-106, MCA, is amended to read:

"85-20-106. Duty to measure water. Each claimant shall measure all the water being diverted by ~~him~~ *the claimant,* ~~and~~ keep accurate records ~~thereof~~ *of the diversion* on forms prescribed and furnished by the department, and, within 15 days after November 1 of each year, file the written records with the department at its office in Helena, Montana."

Section 2829. Section 87-1-204, MCA, is amended to read:

"87-1-204. Political activity of employees. While retaining the right to vote as ~~he may please~~ *the employee pleases* and to express ~~his~~ opinions on all political questions, ~~no~~ *an* employee of the department may *not* use ~~his~~ *the employee's* official authority or influence for the purpose of interfering with an election or affecting the results ~~thereof~~ *of an election* or for the purpose of coercing or influencing the political actions of any person or body."

Section 2830. Section 87-1-205, MCA, is amended to read:

"87-1-205. Grievance procedure. An employee of the department~~,~~ *who is* aggrieved by a serious matter of ~~his~~ employment based upon work conditions, supervision, or the result of an administrative action~~,~~ *and* who has exhausted all administrative remedies within the department~~,~~ is entitled to a hearing before the board of personnel appeals provided for in 2-15-1705 and subject to the provisions of 2-18-1011 through 2-18-1013. Any order of the board is binding upon the department."

Section 2831. Section 87-1-206, MCA, is amended to read:

"87-1-206. Bounty claims for wild animals. (1) The department ~~of fish, wildlife, and parks~~ shall pay bounty claims for wild animals ~~which~~ *that* have

been filed with and approved by the board of livestock. The department shall pay out of the state fish and game funds, other than those funds derived from license fees paid by hunters and ~~fishermen~~ *anglers*, bounties on predatory wild animals as the bounty claims are presented, not exceeding $7,500 ~~per~~ *for each* calendar year.

(2) The board of livestock shall, after approving the bounty claim, deliver the claim to the department ~~of fish, wildlife, and parks~~ for rejection or approval. If the claim or certificate is rejected, it ~~shall~~ *must* be returned by the department to the board of livestock. If approved, it ~~shall~~ *must* be delivered to the department of administration for allowance or disallowance. ~~Nothing in this~~ *This* section ~~takes~~ *does not take* from the department ~~of fish, wildlife, and parks~~ the exclusive power to administer the fish and game ~~moneys~~ *money* at its discretion.

(3) If the department of administration allows the claim, the department shall draw a warrant on the state fish and game money in the state special revenue fund for the amount approved in favor of the claimant~~,~~ in the order in which the claim is approved."

Section 2832. Section 87-1-207, MCA, is amended to read:

"87-1-207. Establishment of checking stations. The department is authorized to establish checking stations ~~where~~ *when* ~~deemed~~ *considered* necessary to inspect licenses of hunters and ~~fishermen~~ *anglers* and to inspect any game animals, fish, or fur-bearing animals in the possession of hunters and ~~fishermen~~ *anglers*."

Section 2833. Section 87-1-208, MCA, is amended to read:

"87-1-208. Inspection at checking station. ~~Every~~ *A* person, upon the request of the director*,* ~~or his~~ *the director's* authorized representative*,* or ~~of~~ any game warden, shall produce for inspection any current fish and game license ~~which~~ *that* has been issued to ~~such~~ *the* person and shall produce for inspection any game animals, birds, fish, or fur-bearing animals in ~~his~~ *the person's* possession. Hunters or ~~fishermen~~ *anglers* entering or leaving areas for which checking stations have been established ~~must~~ *shall* stop and report if a checking station is on the hunter's or ~~fishermen's~~ *angler's* route of travel to or from the hunting or fishing area. Failure to stop and report at a checking station when personnel are on duty ~~shall constitute~~ *constitutes* a misdemeanor."

Section 2834. Section 87-1-210, MCA, is amended to read:

"87-1-210. Research, training, and other projects. (1) The department may enter into cooperative agreements with educational institutions and state, federal, or other agencies to promote wildlife research and to train ~~men~~ *personnel* for wildlife management. It may enter into cooperative agreements with federal agencies, municipalities, corporations, organized groups of landowners, associations, and individuals for the development of game, bird, fish, or fur-bearing animal management and demonstration projects.

(2) It may establish and maintain an educational and biological program for the collection and diffusion of statistics and information germane to the purpose of this title."

Section 2835. Section 87-1-225, MCA, is amended to read:

"87-1-225. Regulation of wild animals damaging property — public hunting requirements. (1) Subject to the provisions of subsection (2), a landowner is eligible for game damage assistance under subsection (3) if ~~he~~ *the landowner*:

(a) allows public hunting during established hunting seasons; or

(b) does not significantly reduce public hunting through imposed restrictions.

(2) The department may provide game damage assistance when public hunting on a landowner's property has been denied because of unique or special circumstances that have rendered public hunting inappropriate.

(3) Within 48 hours after receiving a request or complaint from any landholder or person in possession and having charge of any land in the state that wild animals of the state, protected by the fish and game laws and regulations, are doing damage to the property or crops ~~thereon~~ *on the property*, the department shall investigate and arrange to study the situation with respect to damage and depredation. The department may then decide to open a special season on the game or, if the special season method ~~be~~ *is* not feasible, the department may destroy the animals causing the damage. The department may authorize and grant the holders of ~~said~~ *the* property permission to kill or destroy a specified number of the animals causing the damage. ~~No~~ *A* wild, ferocious animal damaging property or endangering life ~~shall be~~ *is not* covered by this section."

Section 2836. Section 87-1-302, MCA, is amended to read:

"87-1-302. Commission meetings. The members of the commission shall hold quarterly or other meetings for the transaction of business~~,~~ at times and places it considers necessary and proper. The meetings ~~shall~~ *must* be called by the ~~chairman~~ *presiding officer* or by a majority of the commission and ~~shall~~ *must* be held at the time and place specified in the call for the meeting. A majority of the members of the commission ~~shall~~ constitute a quorum for the transaction of any business ~~which~~ *that* may come before it. The commission shall keep a record of all the business transacted by it. The ~~chairman~~ *presiding officer* and secretary shall sign all orders, minutes, or documents for the commission."

Section 2837. Section 87-1-402, MCA, is amended to read:

"87-1-402. Oath of director. Before entering upon ~~his~~ official duties, the director shall take and subscribe the constitutional oath of office and shall in addition ~~thereto~~ swear or affirm that ~~he holds no other~~ *the director does not hold another* position or office or any position under any political committee or party. ~~Such~~ *The* oath or affirmation ~~shall~~ *must* be filed in the office of the secretary of state."

Section 2838. Section 87-1-501, MCA, is amended to read:

"87-1-501. Selection and oath of wardens. (1) Wardens ~~shall~~ *must* be selected from applicants who have passed ~~such~~ an examination ~~as~~ *that* may be required according to the rules adopted and promulgated by the department. ~~No~~ *A* person ~~shall~~ *may not* be appointed *as* a warden until a certificate ~~shall have~~ *has* been issued to ~~him~~ *the person* by the department to the effect that ~~he~~ *the person* has passed the required examination and is a fit and proper person to perform the duties of the office.

(2) Before entering upon their official duties, state fish and game wardens shall take and subscribe the constitutional oath of office and shall in addition ~~thereto~~ swear or affirm that they hold no other position or office or any position under any political committee or party. ~~Such~~ *The* oath or affirmation ~~shall~~ *must* be filed in the office of the secretary of state."

Section 2839. Section 87-1-511, MCA, is amended to read:

"87-1-511. Sale of confiscated birds and animals — disposition of seized grizzly bears. (1) Except as provided in 87-1-226(1), all birds, animals,

fish, heads, hides, teeth, or other parts of any animal other than grizzly bear seized by any officer or warden or otherwise acquired by a department employee in the scope of ~~his~~ employment may be sold, under the direction of the director or wardens, at a time, place, and manner so as to receive the highest price. The sale ~~shall~~ *must* be at public auction to the highest and best bidder. The director or ~~his~~ *the* wardens shall publish notice of the time and place of the sale, together with a description of the birds, fish, animals, or parts or portions of animals to be sold, in a newspaper of general circulation published in the county where the sale is to be held. The notice ~~shall~~ *must* be published at least once, and the sale ~~shall~~ *may* not be less than 5 or more than 30 days after the last publication. If the property seized is perishable, it may be sold by those officers without publishing notice of the sale. The property may be sold upon that public notice and under those terms and conditions ~~which~~ *that* in the discretion of the officers seem conducive to securing full value.

(2) All grizzly bears or heads, hides, teeth, claws, or other parts of grizzly bears seized by any officer or warden may be donated to museums, educational institutions, government agencies, or persons conducting scientific studies, as approved by the commission. If approved under federal law, parts may be sold at public auction if, after approval by the commission, a reasonable attempt has been made to dispose of the parts."

Section 2840. Section 87-1-701, MCA, is amended to read:

"87-1-701. Assent to Dingell-Johnson bill. ~~The congress of the United States having passed an act which was approved on August 9, 1950, and which is known as Public Law 681, 81st congress, chapter 658, 2nd session, wherein it is, among other things, provided that "no money apportioned under this act to any state, except as hereinafter provided, shall be expended therein until its legislature, or other state agency authorized by the state constitution to make laws governing the conservation of fish, shall have assented to the provisions of this act and shall have passed laws for the conservation of fish, which shall include prohibition against the diversion of license fees paid by fishermen for any other purpose than the administration of said fish, wildlife, and parks department, except that, until the final adjournment of the first regular session of the legislature held after passage of this act, the assent of the governor of the state shall be sufficient", and since the moneys referred to in the act of congress are collected in part from the fishermen of this state and will not be returned to the state of Montana except the state of Montana does assent to this act; now, therefore, the~~ *The* state of Montana ~~does assent~~ *assents* to the provisions of ~~said act of congress~~ *Public Law 681, 81st congress, chapter 658, 2nd session,* which is commonly known as the Dingell-Johnson bill, but ~~such~~ *the* assent is with the express reservations enumerated in 87-1-701 through 87-1-703. The state of Montana does not, by the passage of 87-1-701 through 87-1-703 or by the consent ~~herein~~ given *in this section*, surrender to the congress of the United States or any department of the government of the United States any of those rights ~~which~~ *that* are retained by the people of the state of Montana or the state of Montana and ~~which~~ *that* are guaranteed to them by the 9th and 10th amendments to the constitution of the United States, ~~nor shall~~ *and* 87-1-701 through 87-1-703 *may not* in any manner or at all be construed or held to be the state of Montana's consent to amending the constitution of the United States in any manner or at all relative to its rights. The title to all lands acquired under the provisions of 87-1-701 through 87-1-703 for fish restoration and management projects and projects constructed ~~thereon shall be~~ *on those lands are* and remain in the state"

Section 2841. Section 87-1-704, MCA, is amended to read:

"87-1-704. Federal fish-hatching operations. The government of the United States, the United States commissioner of fisheries, and ~~its~~ *the government's* or ~~his duly~~ *commissioner's* authorized ~~agent or~~ agents may conduct fish-hatching and all operations connected ~~therewith (~~ *with fish-hatching* in any manner and at any time that may be considered necessary and proper by them~~)~~, at any United States fish cultural station ~~that may be~~ established by the United States government in the state of Montana."

Section 2842. Section 87-2-112, MCA, is amended to read:

"87-2-112. Forfeiture of license or permit for littering. ~~Any~~ *A* holder of a Montana resident or nonresident fishing or hunting license or camping permit convicted of littering campgrounds, public or private lands, streams, or lakes while hunting, fishing, or camping shall forfeit ~~his~~ *the* license and privilege to hunt, fish, camp, or trap within Montana for a period of 1 year from the date of conviction."

Section 2843. Section 87-2-203, MCA, is amended to read:

"87-2-203. Unlawful sales of licenses. It ~~shall be~~ *is* unlawful for ~~any~~ *a* license agent to sell any hunting, fishing, or trapping license to ~~any~~ *a* person who does not present ~~his~~ *the person's* wildlife conservation license at the time of application for ~~such~~ *the* licenses."

Section 2844. Section 87-2-204, MCA, is amended to read:

"87-2-204. Disposition of wildlife conservation license fees. The fees from the wildlife conservation license ~~shall~~ *must* be delivered to the state treasurer and deposited by ~~him~~ *the treasurer* in the state special revenue fund to the credit of the department in accordance with the provisions of 87-1-601."

Section 2845. Section 87-2-602, MCA, is amended to read:

"87-2-602. Class C-1—landowner's trapping license. Except as otherwise provided in this chapter, any individual who owns land in this state or any tenant or member of the immediate family of ~~said~~ *the* owner or tenant, upon making application to the department and payment of the fee of $1, may receive a Class C-1 license ~~which shall entitle~~ *that entitles* the holder ~~thereof~~ to trap any fur-bearing animal and to hunt bobcat, wolverine, and lynx on land owned or leased by ~~him~~ *the individual* or ~~his~~ *the individual's* immediate family at ~~such~~ times and in ~~such~~ *a* manner ~~as may be~~ *that is* lawful ~~so to do~~ under the laws of the state and the regulations of the department and at ~~such~~ places ~~as~~ *that* may be designated in ~~said~~ *the* license."

Section 2846. Section 87-2-604, MCA, is amended to read:

"87-2-604. Permission of landowner required. ~~Every~~ *A* holder of a Class C-2 trapper's license shall obtain written permission from the landowner, *the* lessee, or ~~his~~ *the landowner's or lessee's* agent before trapping or snaring predatory animals or nongame wildlife on private property."

Section 2847. Section 87-2-1002, MCA, is amended to read:

"87-2-1002. Regulation of devices and equipment used under reciprocal privilege. The department may by regulation authorize *the* use of fishing devices and equipment by properly licensed ~~fishermen~~ *anglers* of both states *under the provisions of 87-2-1001*, unless otherwise prohibited by Montana law, in waters forming the subject of ~~such~~ *the* agreements."

Section 2848. Section 87-3-123, MCA, is amended to read:

"87-3-123. Use of silencers or mufflers on firearms forbidden. ~~No~~ *A* person may *not* take into a field or forest or have in ~~his~~ *the person's* possession while out hunting any device or mechanism devised to silence, muffle, or minimize the report of any firearms, whether ~~such~~ *the* device or mechanism ~~be~~ *is* operated from or attached to any firearm."

Section 2849. Section 87-3-206, MCA, is amended to read:

"87-3-206. Unlawful to use explosives or poisons in taking fish. (1) If ~~any~~ *a* person or persons ~~shall~~ use any carbide, lime, giant powder, dynamite, or other explosive compounds or any corrosive or narcotic poison or other deleterious substance or have any of the ~~same~~ *enumerated items* in ~~his~~ *the person's* possession within 100 feet of any stream where fish are found for the purpose of catching, stunning, or killing fish, ~~he shall be deemed~~ *the person is considered* guilty of a misdemeanor and upon conviction ~~thereof~~ shall be punished as provided by law.

(2) The provisions of this section ~~shall~~ *do* not apply to anyone ~~duly~~ authorized by the department to conduct lake or stream surveys or to control undesirable or overpopulated species of fish."

Section 2850. Section 87-3-221, MCA, is amended to read:

"87-3-221. Importation of salmonid fish or eggs unlawful — exception — certification — permit. (1) It is unlawful to bring live or dead salmonid fish or eggs into the state of Montana for any purpose unless the importations are shipped direct from the source to destination and a written certification that the source is free of all fish pathogens specified by the department as posing a threat to existing fisheries accompanies the shipment. Certification must be made by a fish pathologist approved by the director. Certification of the source may be by inspection conducted annually or at ~~such~~ other times ~~as~~ *that* the director may order.

(2) In addition to the certification required in subsection (1), all importations of live salmonid fish or eggs must be accompanied by a permit issued by the department. The department shall issue an import permit upon application to the department showing that the proposed importations *do not* present ~~no~~ *a* substantial threat to the health of state fisheries. The department may condition the permit as necessary to protect fisheries from the introduction and spread of pathogens. Import permits apply to all importations from specified and certified species and sources by a permittee until January 31 of the year succeeding the year of issuance, when the permit expires. However, a separate permit is required for importations by a permittee for species or from sources unspecified in ~~his~~ *the permittee's* other permit or permits. It is unlawful to import live salmonid fish or eggs into Montana without first obtaining the permit required by this subsection or to violate any conditions of the permit."

Section 2851. Section 87-3-405, MCA, is amended to read:

"87-3-405. Failure to tag turkey. It is unlawful for ~~any~~ *a* person who kills, captures, or possesses ~~any~~ *a* wild turkey by authority of any turkey tag or permit to fail or neglect to attach ~~his~~ *the* tag to the turkey or fail to validate ~~his~~ *the* tag by filling out or punch marking the tag as required and *to* fail to keep the tag attached while the ~~same~~ *turkey* is possessed by ~~him~~ *the person*."

Section 2852. Section 87-3-506, MCA, is amended to read:

"87-3-506. Wasting of fur-bearing animals. (1) A person who fails to pick up traps or snares at the end of the trapping season or attends ~~his~~ *the* traps or

snares so that fur-bearing animals are wasted is guilty of a misdemeanor and upon conviction shall be punished as provided by law.

(2) The department ~~of fish, wildlife, and parks~~ shall enforce the provisions of this section.

(3) Federal, state, and county predator control programs are exempt from this section."

Section 2853. Section 87-3-507, MCA, is amended to read:

"87-3-507. Unlawful to disturb traps or trapped animals belonging to another — exception. (1) ~~No~~ *A* person may *not* destroy, disturb, or remove any trap or snare belonging to another person or remove wildlife from a trap or snare belonging to another person without permission of the owner of the trap or snare, except that from March 1 to October 1 of each year a person may remove any snare from land owned or leased by ~~him~~ *the person* if ~~such~~ *the* snare would endanger livestock.

(2) This section does not apply to a law enforcement officer acting within the scope of ~~his~~ duty."

Section 2854. Section 87-4-301, MCA, is amended to read:

"87-4-301. Fur dealers defined. (1) ~~Any~~ *A* person or persons, firm, company, or corporation engaging in, carrying on, or conducting wholly or in part the business of buying or selling, trading, or dealing within the state of Montana in the skins or pelts of any animal or animals designated by the laws of Montana as fur-bearing or predatory animals ~~shall be deemed~~ *is considered* a fur dealer within the meaning of this part.

(2) If ~~such~~ *the* fur dealer resides in or if ~~his or its~~ *the fur dealer's* principal place of business is within the state of Montana, ~~he or it shall be deemed~~ *the fur dealer is considered* a resident fur dealer. All other fur dealers ~~shall be deemed~~ *are considered* nonresident fur dealers."

Section 2855. Section 87-4-303, MCA, is amended to read:

"87-4-303. Persons required to have fur dealer's license. A fur dealer shall, before buying, selling, or in any manner dealing in the skins or pelts of any fur-bearing or predatory animal within this state, secure a fur dealer's license from the director. ~~No~~ *A* license is *not* required for a hunter or trapper selling skins or pelts ~~which he~~ *that the hunter or trapper* has lawfully taken or for a person *who is* not a fur dealer who purchases skins or pelts exclusively for ~~his~~ *the person's* own use and not for sale."

Section 2856. Section 87-4-602, MCA, is amended to read:

"87-4-602. Seining licenses. The director shall keep a record of all licenses issued ~~by him~~ for the use of a net for the taking of fish, showing the name of the applicant, the date of ~~issue~~ *issuance*, the waters *that the netting is* to be used in, and the date of revocation if the license is revoked. The director shall pay all fees received for those licenses into the state treasury to the credit of the fish and game ~~moneys~~ *account* in the state special revenue fund. A license may not be issued to a person whose license has been revoked for cause."

Section 2857. Section 87-4-702, MCA, is amended to read:

"87-4-702. Possession of game by merchants, hotelkeepers, or restaurant keepers. (1) Except as provided in subsection (2), it is lawful for any merchant, hotelkeeper, or restaurant keeper to have in ~~his~~ *the person's* possession, offer for sale, or sell game birds and game~~, provided~~ *if* the game or game birds are not killed in Montana.

(2) ~~No~~ *A* merchant, hotelkeeper, or restaurant keeper may *not* offer for sale or sell any grizzly bear or any head, hide, teeth, claws, or other part of a grizzly bear."

Section 2858. Section 87-4-703, MCA, is amended to read:

"87-4-703. Evidence of lawful possession of game. Each merchant, hotelkeeper, or restaurant keeper~~,~~ ~~having in his possession~~ *who possesses* and ~~offering~~ *offers* for sale any game or game birds~~,~~ shall produce upon demand, for the inspection of any game warden, deputy game warden, or sheriff, the receipt or record and shipping and transportation receipts required in 87-4-704 to be kept by ~~him~~ *the person*. A failure or refusal to produce the ~~same~~ *receipts* upon demand, coupled with the possession and offering for sale of game or game birds, is prima facie evidence of the violation of this part."

Section 2859. Section 87-4-704, MCA, is amended to read:

"87-4-704. Record to be kept. It ~~shall be~~ *is* the duty of ~~every~~ *a* person ~~having~~ *who has* in ~~his~~ *the person's* possession and ~~offering~~ *offers* for sale any game or game birds to keep a record showing the amount and kind of game and game birds received by ~~him~~ *the person*, together with shipping and transportation receipts showing the true time and place of shipment of ~~said~~ *the* game and game birds and the name of the person shipping ~~same;~~ *the game and game birds.* ~~provided, however~~ *However*, ~~that~~ any merchant in Montana selling game or game birds to any ~~hotel or~~ *hotelkeeper,* restaurant keeper*,* or other person shall, in addition to the record and receipts ~~heretofore~~ required to be kept by ~~him~~ *the merchant*, keep a record of the date of sale, *the* kind and amount of game or game birds*,* and the name of the purchaser. ~~and provided, further, that in~~ *In* the case of ~~hotel and~~ *hotelkeepers,* restaurant keepers*,* or other persons buying game or game birds from a merchant within the state of Montana, a receipt from the ~~said~~ *the* merchant showing the date~~,~~ *and the kind and* amount ~~and kind~~ of game or game birds purchased ~~shall be~~ *is* sufficient evidence of compliance with the provisions of this part by ~~such~~ *the* ~~hotel or~~ *hotelkeeper,* restaurant keeper*,* or other person."

Section 2860. Section 87-4-705, MCA, is amended to read:

"87-4-705. Noncompliance with law. It is unlawful for ~~any~~ *a* person to have in ~~his~~ *the person's* possession and offer for sale or sell any game or game birds without having complied with the provisions of 87-4-704 relating to the keeping of a record and shipping and transportation receipts."

Section 2861. Section 87-4-903, MCA, is amended to read:

"87-4-903. Game bird farm license required. Except as provided in 87-4-902, ~~no~~ *a* person may *not* own, control, or propagate game birds unless ~~he~~ *the person* holds a current game bird farm license from the department."

Section 2862. Section 87-4-904, MCA, is amended to read:

"87-4-904. Application for game bird farm license — limitation on issuance. (1) A person desiring to obtain a game bird farm license shall make a written application to the department. The application must specify:

(a) the name of the applicant;

(b) ~~his~~ *the applicant's* address;

(c) the species of game bird and any plans to propagate them;

(d) the legal description of the lands to be included;

(e) the type of fence or enclosure that the applicant contemplates erecting;

(f) the source of game birds; and

(g) for a nonresident owner, the name and address of a local resident agent.

(2) (a) A game bird farm license ~~shall~~ *may* be issued only to a responsible applicant who owns or leases the premises on which the operations are to be conducted and who has properly fenced or otherwise enclosed the place where ~~such~~ *the* game bird farm is to be located.

(b) ~~Any~~ *A* game bird farm owned by a nonresident must have a resident agent who is responsible for the daily operation of the farm and who is authorized by the nonresident owner to receive service of process.

(3) Within 30 days of receiving the application, the department shall notify the applicant of its decision to approve or deny the application. If the required fencing or enclosure has not been completed, the department shall approve the application subject to the fencing or enclosure being completed. If the application is denied, the department shall specify the reasons for denial."

Section 2863. Section 87-4-915, MCA, is amended to read:

"87-4-915. Field trials — permits. (1) As used in this section, "field trial" means an examination to determine the ability of dogs to point, flush, or retrieve game birds.

(2) ~~No~~ *A* person may *not* conduct a field trial unless ~~he~~ *the person* has ~~received~~ a permit under this section. Applicants for a permit to conduct a field trial ~~must make application~~ *shall apply* to the director upon a form furnished by the department for that purpose. The application must be signed and sworn to by the applicant, stating the applicant's name and address, the name and address of any national affiliate, the place for the field trial clearly defined, the date or dates of the proposed field trial, whether live birds are to be used, and any other information required by the director to determine the advisability of granting permission for the proposed field trial. The application must state that if a permit is granted, the applicant will carefully flush all wild game birds from fields used for the field trial each day before the field trial begins and will not permit dogs to run free in fields that have not been carefully flushed. The application must be presented to the director not less than 20 days prior to the date proposed for the field trial.

(3) The director may refuse any application that ~~he~~ *the director* determines is not in the best interests of the protection, preservation, propagation, and conservation of game birds in this state. Any denial by the director of ~~such~~ *an* application must state the reasons ~~therefor~~ *for denial* and must be mailed to the applicant within 10 days of receipt of the application.

(4) ~~No~~ *An* applicant receiving a permit to conduct a field trial may *not* violate or authorize violation of any of the terms of the permit.

(5) All live game birds used in a field trial must be tagged before being planted or released and may be planted or released only in the presence of a representative of the department. If an untagged bird is shot during any field trial, the person to whom the permit was issued ~~must~~ *shall* immediately replace it with a live bird.

(6) (a) Dogs may be trained in open fields at any time without permission of the director only if:

(i) ~~no~~ live game birds are *not* killed or captured during training; and

(ii) the training is more than 1 mile from any bird nesting or management area or game preserve.

(b) A person may train dogs with a method that will kill birds acquired from a game bird farm only after receiving a written permit from the department and only in compliance with the terms of the permit."

Section 2864. Section 87-4-1002, MCA, is amended to read:

"87-4-1002. Fur farm license required — applicability. (1) Except as provided in subsection (2), ~~no~~ *a* person may *not* own, control, or propagate furbearers unless ~~he~~ *the person* holds a current fur farm license from the department.

(2) This part does not apply to the ownership, control, or propagation of furbearers if the ownership, control, or propagation is not for the sale or conveyance of furbearers or parts ~~thereof~~ *of furbearers*."

Section 2865. Section 87-4-1003, MCA, is amended to read:

"87-4-1003. Application for license. (1) ~~Any~~ *A* person desiring to obtain a fur farm license shall make a written application to the department. The application must specify:

(a) the name of the applicant;

(b) ~~his~~ *the applicant's* address;

(c) *the* species of furbearers and any plan to propagate them;

(d) the legal description of the lands to be included;

(e) the type of fence that the applicant contemplates erecting;

(f) the source of furbearers.

(2) (a) A fur farm license ~~shall~~ *may* be issued only to a responsible applicant who owns or leases the premises on which the operations are to be conducted and who has properly fenced the place where ~~such~~ *the* fur farm is to be located.

(b) Any fur farm owned by a nonresident must have a resident agent who is responsible for the daily operation of the fur farm and who is authorized by the nonresident owner to receive service of process.

(3) Within 30 days of receiving the application, the department shall notify the applicant of its decision to approve or deny the application. If required fencing has not been completed, the department shall approve the application subject to the fencing being completed. If the application is denied, the department shall specify the reasons for denial."

Section 2866. Section 87-5-108, MCA, is amended to read:

"87-5-108. Establishment of programs. (1) The director shall establish ~~such~~ programs, including acquisition of land or aquatic habitat, ~~as~~ *that* are ~~deemed~~ *considered* necessary for management of nongame and endangered wildlife. The department shall establish ~~such~~ policies ~~as~~ *that* are necessary to carry out the purpose of ~~this section and~~ 87-5-109 *and this section*.

(2) In carrying out programs authorized by this section, the department may enter into agreements with federal agencies, political subdivisions of the state, or with private persons for administration and management of any area established under ~~this section and~~ 87-5-109 *and this section* or ~~utilized~~ *used* for management of nongame or endangered wildlife.

(3) The governor shall review other programs administered by ~~him~~ *the governor* and, to the extent practicable, ~~utilize such~~ *use those* programs in furtherance of the purposes of ~~this section and~~ 87-5-109 *and this section*. The governor shall also encourage other state and federal agencies to ~~utilize~~ *use*

their authorities in furtherance of the purposes of ~~this section and~~ 87-5-109 *and this section*."

Section 2867. Section 90-2-1111, MCA, is amended to read:

"90-2-1111. State and local grants. (1) ~~Any~~ *A* department, agency, board, commission, or other division of state government or any city, county, or other political subdivision or tribal government within the state may apply, in accordance with the procedures established by the department, for a grant from the natural resources projects state special revenue account established in 15-38-302 for a project that is consistent with the policy and purpose of the reclamation and development grants program.

(2) The department shall evaluate applications under the eligibility criteria provided in 90-2-1112 and the evaluation criteria provided in 90-2-1113.

(3) The department shall solicit and consider in its evaluation of applications the views of interested persons and public agencies.

(4) Based on its evaluation of eligible applications, the department shall recommend to the governor projects to receive grants from the natural resources projects state special revenue account established in 15-38-302.

(5) The governor shall submit all proposals, with ~~his~~ *the governor's* recommended priorities, to the legislature by the first day of any regular legislative session. The legislature may approve by appropriation or other appropriate means grants for those projects it finds consistent with the policies and purposes of the reclamation and development grants program. The department shall administer and oversee the grants to approved projects and monitor the projects."

Section 2868. Section 90-4-305, MCA, is amended to read:

"90-4-305. Information obtainable by governor. (1) The governor may obtain information on a regular basis from energy resource producers, suppliers, public agencies, and consumers and from political subdivisions in this state that is necessary for the governor to determine the need for energy supply alert and emergency declarations. The information may include but is not limited to:

(a) sales volumes by customer classifications other than for petroleum products;

(b) forecasts of energy resource requirements for the particular type of energy involved for a period not to exceed 2 years; and

(c) inventory of energy resources and reserves available for use in meeting a shortage in a particular energy source.

(2) In order to help anticipate and mitigate the effects of shortages of petroleum products, the governor may monitor the supply of and demand for these products by obtaining the following monthly reports submitted no later than 20 days after the last day of the month, on forms prescribed by the governor, from the following persons:

(a) Each refiner shall submit Montana refinery processing data by fuel type in custody, including:

(i) inventory stocks at the beginning and end of the month;

(ii) receipts during the month;

(iii) inputs during the month;

(iv) production during the month;

(v) shipments, losses, and refinery fuel use during the month.

(b) Each prime petroleum supplier shall submit:

(i) 3-month projections of ~~his~~ *the supplier's* Montana supply and stock of petroleum products that the supplier anticipates supplying to Montana customers; and

(ii) the actual volume of petroleum products delivered in the state the previous month.

(c) Each petroleum pipeline company shall submit reports by fuel type of Montana pipeline terminal delivery, throughput, and export.

(d) Each bulk pipeline terminal operator shall submit end-of-month reports of inventory stock levels of finished petroleum products in custody in Montana by type of product and storage location.

(e) Each prime petroleum supplier shall submit quarterly reports of monthly marketing sales in Montana, by standard point locater index~~,~~ or other method prescribed by the governor, and fuel type of petroleum products designated by the governor.

(3) In obtaining information under subsections (1) and (2) during a state of energy emergency, the governor may*:*

(a) subpoena witnesses, material, and relevant books, papers, accounts, records, and memoranda;

(b) administer oaths; and

(c) cause the depositions of persons residing within or ~~without~~ *outside of* Montana to be taken in the manner prescribed for depositions in civil actions in district courts~~,~~ to obtain information relevant to energy resources that are the subject of the proclaimed emergency or associated disaster.

(4) In obtaining information under this section, the governor shall:

(a) avoid eliciting information already furnished by a person or political subdivision in this state to a federal, state, or local regulatory authority that is available for the governor's study; and

(b) cause reporting procedures, including forms, to conform to existing requirements of federal, state, and local regulatory authorities.

(5) Except as provided in subsection (2), this part does not require the disclosure by a distributor of confidential information, trade secrets, or other facts of a proprietary nature.

(6) (a) The information required under subsection (2) is subject to the following restrictions:

(i) Except in accordance with a proper judicial order, a public officer or employee charged by the governor with the custody of this information may not divulge or make known in any manner any information that is specific to a particular distributor.

(ii) The public officers and employees charged by the governor with the custody of the information provided for in subsection (2) may not be required to produce any of it or evidence of anything contained in it on behalf of any party to any action or proceeding under this part~~,~~ except when the information concerned is directly involved in the action or proceeding, in which case only that information directly pertinent to the action or proceeding may be admitted.

(b) This section does not preclude access to the information by the legislative auditor in carrying out the functions under Title 5, chapter 13."

Section 2869. Section 90-4-309, MCA, is amended to read:

"90-4-309. Energy supply alert. (1) The governor may, upon finding that an energy alert condition exists, declare ~~the same~~ *an energy alert* for a period of not longer than 90 days, setting forth the reasons ~~therefor~~ *for the alert*. ~~Such~~ *The* declaration may be renewed for 90-day periods ~~thereafter~~ upon a finding that the energy alert condition will continue for ~~such~~ *the* further period.

(2) Whenever the governor has declared an energy supply alert, ~~he~~ *the governor* may by executive order direct actions:

(a) reducing energy resource usage by state agencies and political subdivisions;

(b) promoting conservation, prevention of waste, and salvage of energy resources and the materials, services, and facilities derived ~~therefrom~~ *from energy resources* or dependent ~~thereon~~ *on energy resources*~~,~~ by state agencies and political subdivisions."

Section 2870. Section 90-4-314, MCA, is amended to read:

"90-4-314. Orders to distributors. The governor may order any distributor to take ~~such~~ action on ~~his~~ *the governor's* behalf as may be required to implement orders issued pursuant to 90-4-310, and ~~no~~ *a* distributor or person is *not* liable for actions taken in accordance with ~~such~~ *an* order."

Section 2871. Section 90-4-317, MCA, is amended to read:

"90-4-317. Disaster and emergency laws supplemented. The powers vested in the governor under this part are in addition to and not in lieu of emergency powers vested in ~~him~~ *the governor* under Title 10, chapter 3, or any other law of Montana."

Section 2872. Section 90-5-202, MCA, is amended to read:

"90-5-202. Board member appointed by governor — compensation. The governor shall appoint the board member. ~~He~~ *The member* shall report directly to the governor. The member, with the approval of the governor, may designate an alternate to represent the state when ~~he~~ *the member* is unable to do so. The member or ~~his~~ *the* alternate may *not* receive ~~no~~ compensation in addition to salary for ~~his~~ services as a member of the board but ~~shall~~ *must* be reimbursed for travel expenses, as provided for in 2-18-501 through 2-18-503, ~~as amended,~~ incurred in the performance of ~~his~~ duties."

Section 2873. Section 90-6-120, MCA, is amended to read:

"90-6-120. Maintenance of capital reserve account. (1) In order to ~~assure~~ *ensure* the maintenance of the capital reserve account, the ~~chairman~~ *presiding officer* of the board shall on or before September 1 in the year preceding the convening of the legislature deliver to the governor a certificate stating the sum, if any, required to restore the capital reserve account to the minimum capital reserve requirement. The governor shall include in the executive budget submitted to the legislature the sum required to restore the capital reserve account to the sum of minimum capital reserve requirements. All sums appropriated by the legislature ~~shall~~ *must* be deposited in the capital reserve account.

(2) All amounts appropriated to the board by the legislature under this section constitute advances to the board and, subject to the rights of the holders of any bonds or notes of the board, ~~shall~~ *must* be repaid to the state's general fund, without interest from available operating revenues of the board in excess of amounts required for the payment of bonds, notes, or other obligations of the

board, for maintenance of the capital reserve account, and for operating expenses."

Section 2874. Section 90-6-204, MCA, is amended to read:

"90-6-204. ~~Chairman~~ *Presiding officer*, meetings, compensation, and facilities. (1) The board shall elect a ~~chairman~~ *presiding officer* from among its members.

(2) The board shall meet quarterly and may meet at other times as called by the ~~chairman~~ *presiding officer* or a majority of the members.

(3) Members are entitled to compensation as provided for in 2-15-124(7).

(4) The department of commerce ~~will~~ *shall* provide suitable office facilities and the necessary staff for the coal board."

Section 2875. Section 90-6-303, MCA, is amended to read:

"90-6-303. ~~Chairman~~ *Presiding officer* — meetings — facilities — funding. (1) The board shall elect a ~~chairman~~ *presiding officer* from among its members.

(2) The board shall meet as necessary or as called by the ~~chairman~~ *presiding officer* or a majority of the members.

(3) The board is allocated to the department of commerce for administrative purposes only as provided in 2-15-121.

(4) The administrative and operating expenses of the board ~~shall~~ *must* be paid from revenue deposited to the credit of the hard-rock mining impact trust account from the license tax on metal mines imposed under Title 15, chapter 37."

Section 2876. Section 90-7-319, MCA, is amended to read:

"90-7-319. Maintenance of capital reserve account. (1) In order to ~~assure~~ *ensure* the maintenance of the capital reserve account, the ~~chairman~~ *presiding officer* of the authority shall, on or before September 1 in each year preceding the convening of the legislature, deliver to the governor a certificate stating the sum, if any, required to restore the capital reserve account to the sum of minimum capital reserve requirements. The governor shall include in the executive budget submitted to the legislature the sum required to restore the capital reserve account to the minimum capital reserve requirements. All funds appropriated by the legislature for maintenance of the capital reserve account must be deposited in the account~~,~~ as required in 90-7-317.

(2) All amounts appropriated to the authority under this section constitute advances to the authority and, subject to the rights of the holders of bonds or notes of the authority, must be repaid to the state general fund, without interest from available operating revenue of the authority in excess of amounts required for the payment of bonds, notes, or other obligations of the authority, for maintenance of the capital reserve account, and for operating expenses."

Approved March 25, 2009

CHAPTER NO. 57

[HB 38]

AN ACT REVISING LAWS TO REFLECT THE ENACTMENT OF THE 6-MILL LEVY FOR UNIVERSITY SYSTEM PURPOSES; AMENDING SECTIONS 7-1-2111, 15-1-402, 15-10-420, 15-24-1703, 15-36-331, 15-39-110, AND 90-6-309, MCA; REPEALING SECTION 20-25-423, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-1-2111, MCA, is amended to read:

"7-1-2111. Classification of counties. (1) For the purpose of regulating the compensation and salaries of all county officers not otherwise provided for and for fixing the penalties of officers' bonds, the counties of this state must be classified according to the taxable valuation of the property in the counties upon which the tax levy is made as follows:

(a) first class—all counties having a taxable valuation of $50 million or more;

(b) second class—all counties having a taxable valuation of $30 million or more and less than $50 million;

(c) third class—all counties having a taxable valuation of $20 million or more and less than $30 million;

(d) fourth class—all counties having a taxable valuation of $15 million or more and less than $20 million;

(e) fifth class—all counties having a taxable valuation of $10 million or more and less than $15 million;

(f) sixth class—all counties having a taxable valuation of $5 million or more and less than $10 million;

(g) seventh class—all counties having a taxable valuation of less than $5 million.

(2) As used in this section, "taxable valuation" means the taxable value of taxable property in the county as of the time of determination plus:

(a) that portion of the taxable value of the county on December 31, 1981, attributable to automobiles and trucks having a rated capacity of three-quarters of a ton or less;

(b) that portion of the taxable value of the county on December 31, 1989, attributable to automobiles and trucks having a manufacturer's rated capacity of more than three-quarters of a ton but less than or equal to 1 ton;

(c) that portion of the taxable value of the county on December 31, 1997, attributable to buses, trucks having a manufacturer's rated capacity of more than 1 ton, and truck tractors;

(d) that portion of the taxable value of the county on December 31, 1997, attributable to trailers, pole trailers, and semitrailers with a declared weight of less than 26,000 pounds;

(e) the value provided by the department of revenue under 15-36-332(7);

(f) 50% of the taxable value of the county on December 31, 1999, attributable to telecommunications property under 15-6-141;

(g) 50% of the taxable value in the county on December 31, 1999, attributable to electrical generation property under 15-6-141;

(h) the value provided by the department of revenue under 15-24-3001;

(i) 6% of the taxable value of the county on January 1 of each tax year;

(j) 45% of the contract sales price of the gross proceeds of coal in the county as provided in 15-23-703 and as reported under 15-23-702; and

(k) 33 1/3% of the value of bentonite produced during the previous year as provided in ~~15-39-110(14)~~ *15-39-110(12)* and as reported under 15-39-101."

Section 2. Section 15-1-402, MCA, is amended to read:

"15-1-402. Payment of property taxes or fees under protest. (1) (a) The person upon whom a property tax or fee is being imposed under this title may, before the property tax or fee becomes delinquent, pay under written protest that portion of the property tax or fee protested.

(b) The protested payment must:

(i) be made to the officer designated and authorized to collect it;

(ii) specify the grounds of protest; and

(iii) not exceed the difference between the payment for the immediately preceding tax year and the amount owing in the tax year protested unless a different amount results from the specified grounds of protest, which may include but are not limited to changes in assessment due to reappraisal under 15-7-111.

(c) If the protested property tax or fee is on property that is subject to central assessment pursuant to 15-23-101, the person shall report to the department the grounds of the protest and the amount of the protested payment for each county in which a protested payment was made. By November 1 of each year, the department shall mail a notice stating the requirements of this subsection (1)(c) to owners of property subject to central assessment under 15-23-101(1) and (2) who have filed a timely appeal under 15-1-211.

(2) A person appealing a property tax or fee pursuant to chapter 2 or 15, including a person appealing a property tax or fee on property that is subject to central assessment pursuant to 15-23-101(1) or (2), shall pay the tax or fee under protest when due in order to receive a refund. If the tax or fee is not paid under protest when due, the appeal may continue but a tax or fee may not be refunded as a result of the appeal.

(3) If a protested property tax or fee is payable in installments, a subsequent installment portion considered unlawful by the state tax appeal board need not be paid and an action or suit need not be commenced to recover the subsequent installment. The determination of the action or suit commenced to recover the first installment portion paid under protest determines the right of the party paying the subsequent installment to have it or any part of it refunded to the party or the right of the taxing authority to collect a subsequent installment not paid by the taxpayer plus interest from the date the subsequent installment was due.

(4) (a) Except as provided in subsection (4)(b), all property taxes and fees paid under protest to a county or municipality must be deposited by the treasurer of the county or municipality to the credit of a special fund to be designated as a protest fund and must be retained in the protest fund until the final determination of any action or suit to recover the taxes and fees unless they are released at the request of the county, municipality, or other local taxing jurisdiction pursuant to subsection (5). This section does not prohibit the investment of the money of this fund in the state unified investment program or

in any manner provided in Title 7, chapter 6. The provision creating the special protest fund does not apply to any payments made under protest directly to the state.

(b) (i) Property taxes that are levied by the state against property that is centrally assessed pursuant to 15-23-101 must be remitted by the county treasurer to the department.

(ii) The department shall deposit 50% of that portion of the funds levied for the university system pursuant to ~~15-10-107~~ *15-10-108* in the state special revenue fund to the credit of the university system, and the other 50% of the funds levied pursuant to ~~15-10-107~~ *15-10-108* must be deposited in a centrally assessed property tax state special revenue fund.

(iii) Fifty percent of the funds remaining after the deposit of university system funds must be deposited in the state general fund, and the other 50% must be deposited in a centrally assessed property tax state special revenue fund.

(5) (a) Except as provided in subsection (5)(b), the governing body of a taxing jurisdiction affected by the payment of taxes under protest in the second and subsequent years that a tax protest remains unresolved may demand that the treasurer of the county or municipality pay the requesting taxing jurisdiction all or a portion of the protest payments to which it is entitled, except the amount paid by the taxpayer in the first year of the protest. The decision in a previous year of a taxing jurisdiction to leave protested taxes in the protest fund does not preclude it from demanding in a subsequent year any or all of the payments to which it is entitled, except the first-year protest amount.

(b) The governing body of a taxing jurisdiction affected by the payment of taxes under protest on property that is centrally assessed pursuant to 15-23-101 in the first and subsequent years that a tax protest remains unresolved may demand that the treasurer of the county or municipality pay the requesting taxing jurisdiction all or a portion of the protest payments to which it is entitled. The decision in a previous year of a taxing jurisdiction to leave protested taxes of centrally assessed property in the protest fund does not preclude it from demanding in a subsequent year any or all of the payments to which it is entitled.

(6) (a) If action before the county tax appeal board, state tax appeal board, or district court is not commenced within the time specified or if the action is commenced and finally determined in favor of the department of revenue, county, municipality, or treasurer of the county or the municipality, the amount of the protested portions of the property tax or fee must be taken from the protest fund or the centrally assessed property tax state special revenue fund and deposited to the credit of the fund or funds to which the property tax belongs, less a pro rata deduction for the costs of administration of the protest fund and related expenses charged to the local government units.

(b) (i) If the action is finally determined adversely to the governmental entity levying the tax, then the treasurer of the municipality, county, or state entity levying the tax shall, upon receipt of a certified copy of the final judgment in the action and upon expiration of the time set forth for appeal of the final judgment, refund to the person in whose favor the judgment is rendered the amount of the protested portions of the property tax or fee that the person holding the judgment is entitled to recover, together with interest from the date of payment under protest.

(ii) The taxing jurisdiction shall pay interest at the rate of interest earned by the pooled investment fund provided for in 17-6-203 for the applicable period.

(c) If the amount retained in the protest fund is insufficient to pay all sums due the taxpayer, the treasurer shall apply the available amount first to tax repayment, then to interest owed, and lastly to costs.

(d) (i) If the protest action is decided adversely to a taxing jurisdiction and the amount retained in the protest fund is insufficient to refund the tax payments and costs to which the taxpayer is entitled and for which local government units are responsible, the treasurer shall bill and the taxing jurisdiction shall refund to the treasurer that portion of the taxpayer refund, including tax payments and costs, for which the taxing jurisdiction is proratably responsible. The treasurer is not responsible for the amount required to be refunded by the state treasurer as provided in subsection (6)(b).

(ii) For an adverse protest action against the state for centrally assessed property, the department shall refund from the centrally assessed property tax state special revenue fund the amount of protested taxes and from the state general fund the amount of interest as required in subsection (6)(b). The amount refunded for an adverse protested action from the centrally assessed property tax state special revenue fund may not exceed the amount of protested taxes or fees required to be deposited for that action pursuant to subsections (4)(b)(ii) and (4)(b)(iii) or, for taxes or fees protested prior to April 28, 2005, an equivalent amount of the money transferred to the fund pursuant to section 3, Chapter 536, Laws of 2005. If the amount available for the adverse protested action in the centrally assessed property tax state special revenue fund is insufficient to refund the tax payments to which the taxpayer is entitled and for which the state is responsible, the department shall pay the remainder of the refund proportionally from the state general fund and from money deposited in the state special revenue fund levied pursuant to ~~15-10-107~~ *15-10-108*.

(e) In satisfying the requirements of subsection (6)(d), the taxing jurisdiction, including the state, is allowed not more than 1 year from the beginning of the fiscal year following a final resolution of the protest. The taxpayer is entitled to interest on the unpaid balance at the rate referred to in subsection (6)(b) from the date of payment under protest until the date of final resolution of the protest and at the combined rate of the federal reserve discount rate quoted from the federal reserve bank in New York, New York, on the date of final resolution, plus 4 percentage points, from the date of final resolution of the protest until refund is made.

(7) A taxing jurisdiction, except the state, may satisfy the requirements of this section by use of funds from one or more of the following sources:

(a) imposition of a property tax to be collected by a special tax protest refund levy;

(b) the general fund or any other funds legally available to the governing body; and

(c) proceeds from the sale of bonds issued by a county, city, or school district for the purpose of deriving revenue for the repayment of tax protests lost by the taxing jurisdiction. The governing body of a county, city, or school district is authorized to issue the bonds pursuant to procedures established by law. The bonds may be issued without being submitted to an election. Property taxes may be levied to amortize the bonds.

(8) If the department revises an assessment that results in a refund of taxes of $5 or less, a refund is not owed."

Section 3. Section 15-10-420, MCA, is amended to read:

"15-10-420. Procedure for calculating levy. (1) (a) Subject to the provisions of this section, a governmental entity that is authorized to impose mills may impose a mill levy sufficient to generate the amount of property taxes actually assessed in the prior year plus one-half of the average rate of inflation for the prior 3 years. The maximum number of mills that a governmental entity may impose is established by calculating the number of mills required to generate the amount of property tax actually assessed in the governmental unit in the prior year based on the current year taxable value, less the current year's value of newly taxable property, plus one-half of the average rate of inflation for the prior 3 years.

(b) A governmental entity that does not impose the maximum number of mills authorized under subsection (1)(a) may carry forward the authority to impose the number of mills equal to the difference between the actual number of mills imposed and the maximum number of mills authorized to be imposed. The mill authority carried forward may be imposed in a subsequent tax year.

(c) For the purposes of subsection (1)(a), the department shall calculate one-half of the average rate of inflation for the prior 3 years by using the consumer price index, U.S. city average, all urban consumers, using the 1982-84 base of 100, as published by the bureau of labor statistics of the United States department of labor.

(2) A governmental entity may apply the levy calculated pursuant to subsection (1)(a) plus any additional levies authorized by the voters, as provided in 15-10-425, to all property in the governmental unit, including newly taxable property.

(3) (a) For purposes of this section, newly taxable property includes:

(i) annexation of real property and improvements into a taxing unit;

(ii) construction, expansion, or remodeling of improvements;

(iii) transfer of property into a taxing unit;

(iv) subdivision of real property; and

(v) transfer of property from tax-exempt to taxable status.

(b) Newly taxable property does not include an increase in value that arises because of an increase in the incremental value within a tax increment financing district.

(4) (a) For the purposes of subsection (1), the taxable value of newly taxable property includes the release of taxable value from the incremental taxable value of a tax increment financing district because of:

(i) a change in the boundary of a tax increment financing district;

(ii) an increase in the base value of the tax increment financing district pursuant to 7-15-4287; or

(iii) the termination of a tax increment financing district.

(b) If a tax increment financing district terminates prior to the certification of taxable values as required in 15-10-202, the increment value is reported as newly taxable property in the year in which the tax increment financing district terminates. If a tax increment financing district terminates after the certification of taxable values as required in 15-10-202, the increment value is reported as newly taxable property in the following tax year.

(c) For the purpose of subsection (3)(a)(iv), the subdivision of real property includes the first sale of real property that results in the property being taxable as class four property or as nonqualified agricultural land as described in 15-6-133(1)(c).

(5) Subject to subsection (8), subsection (1)(a) does not apply to:

(a) school district levies established in Title 20; or

(b) the portion of a governmental entity's property tax levy for premium contributions for group benefits excluded under 2-9-212 or 2-18-703.

(6) For purposes of subsection (1)(a), taxes imposed do not include net or gross proceeds taxes received under 15-6-131 and 15-6-132.

(7) In determining the maximum number of mills in subsection (1)(a), the governmental entity may increase the number of mills to account for a decrease in reimbursements.

(8) The department shall calculate, on a statewide basis, the number of mills to be imposed for purposes of ~~15-10-107~~ *15-10-108*, 20-9-331, 20-9-333, 20-9-360, ~~20-25-423,~~ and 20-25-439. However, the number of mills calculated by the department may not exceed the mill levy limits established in those sections. The mill calculation must be established in whole mills. If the mill levy calculation does not result in a whole number of mills, then the calculation must be rounded up to the nearest whole mill.

(9) (a) The provisions of subsection (1) do not prevent or restrict:

(i) a judgment levy under 2-9-316, 7-6-4015, or 7-7-2202;

(ii) a levy to repay taxes paid under protest as provided in 15-1-402;

(iii) an emergency levy authorized under 10-3-405, 20-9-168, or 20-15-326; or

(iv) a levy for the support of a study commission under 7-3-184.

(b) A levy authorized under subsection (9)(a) may not be included in the amount of property taxes actually assessed in a subsequent year.

(10) A governmental entity may levy mills for the support of airports as authorized in 67-10-402, 67-11-301, or 67-11-302 even though the governmental entity has not imposed a levy for the airport or the airport authority in either of the previous 2 years and the airport or airport authority has not been appropriated operating funds by a county or municipality during that time.

(11) The department may adopt rules to implement this section. The rules may include a method for calculating the percentage of change in valuation for purposes of determining the elimination of property, new improvements, or newly taxable property in a governmental unit."

Section 4. Section 15-24-1703, MCA, is amended to read:

"15-24-1703. Application of suspension or cancellation. The suspension or cancellation of delinquent property taxes pursuant to this part:

(1) applies to all mills levied in the county or otherwise required under state law, including levies or assessments required under Title 15, chapter 10, 20-9-331, *and* 20-9-333~~, and 20-25-423~~;

(2) does not apply to assessments made against property for the payment of bonds issued pursuant to Title 7, chapter 12."

Section 5. Section 15-36-331, MCA, is amended to read:

"15-36-331. Distribution of taxes. (1) (a) For each calendar quarter, the department shall determine the amount of tax, late payment interest, and penalties collected under this part.

(b) For the purposes of distribution of oil and natural gas production taxes to county and school district taxing units under 15-36-332 and to the state, the department shall determine the amount of oil and natural gas production taxes paid on production in the taxing unit.

(2) (a) The amount of oil and natural gas production taxes collected for the privilege and license tax pursuant to 82-11-131 must be deposited, in accordance with the provisions of 17-2-124, in the state special revenue fund for the purpose of paying expenses of the board, as provided in 82-11-135.

(b) The amount of the tax for the oil, gas, and coal natural resource account established in 90-6-1001 must be deposited in the account.

(3) (a) For each tax year, the amount of oil and natural gas production taxes determined under subsection (1)(b) is allocated to each county according to the following schedule:

Big Horn	45.05%
Blaine	58.39%
Carbon	48.27%
Chouteau	58.14%
Custer	69.53%
Daniels	50.81%
Dawson	47.79%
Fallon	41.78%
Fergus	69.18%
Garfield	45.96%
Glacier	58.83%
Golden Valley	58.37%
Hill	64.51%
Liberty	57.94%
McCone	49.92%
Musselshell	48.64%
Petroleum	48.04%
Phillips	54.02%
Pondera	54.26%
Powder River	60.9%
Prairie	40.38%
Richland	47.47%
Roosevelt	45.71%
Rosebud	39.33%
Sheridan	47.99%
Stillwater	53.51%
Sweet Grass	61.24%

Teton	46.1%
Toole	57.61%
Valley	51.43%
Wibaux	49.16%
Yellowstone	46.74%
All other counties	50.15%

(b) The oil and natural gas production taxes allocated to each county must be deposited in the state special revenue fund and transferred to each county for distribution, as provided in 15-36-332.

(4) The department shall, in accordance with the provisions of 17-2-124, distribute the state portion of oil and natural gas production taxes remaining after the distributions pursuant to subsections (2) and (3) as follows:

(a) for each fiscal year through the fiscal year ending June 30, 2011, to be distributed as follows:

(i) 1.23% to the coal bed methane protection account established in 76-15-904;

(ii) 1.45% to the natural resources projects state special revenue account established in 15-38-302;

(iii) 1.45% to the natural resources operations state special revenue account established in 15-38-301;

(iv) 2.99% to the orphan share account established in 75-10-743;

(v) 2.65% to the state special revenue fund to be appropriated to the Montana university system for the purposes of the state tax levy as provided in ~~20-25-423~~ *15-10-108*; and

(vi) all remaining proceeds to the state general fund;

(b) for fiscal years beginning after June 30, 2011, to be distributed as follows:

(i) 2.16% to the natural resources projects state special revenue account established in 15-38-302;

(ii) 2.02% to the natural resources operations state special revenue account established in 15-38-301;

(iii) 2.95% to the orphan share account established in 75-10-743;

(iv) 2.65% to the state special revenue fund to be appropriated to the Montana university system for the purposes of the state tax levy as provided in ~~20-25-423~~ *15-10-108*; and

(v) all remaining proceeds to the state general fund."

Section 6. Section 15-39-110, MCA, is amended to read:

"15-39-110. Distribution of taxes. (1) (a) For each semiannual period, the department shall determine the amount of tax, late payment interest, and penalties collected under this part from bentonite mines that produced bentonite before January 1, 2005. The tax is distributed as provided in subsections (2) through ~~(11)~~ *(9)*.

(b) For each semiannual period, the department shall determine the amount of tax, late payment interest, and penalties collected under this part from bentonite mines that first began producing bentonite after December 31, 2004. The tax is distributed as provided in subsection ~~(12)~~ *(10)*.

(2) The percentage of the tax determined under subsection (1)(a) and specified in subsections (3) through ~~(11)~~ *(9)* is allocated according to the following schedule:

(a) 2.33% to the state special revenue fund to be appropriated to the Montana university system for the purposes of the state tax levy as provided in ~~20-25-423~~ *15-10-108*;

(b) 18.14% to the state general fund to be appropriated for the purposes of the tax levies as provided in 20-9-331, 20-9-333, and 20-9-360;

(c) 3.35% to Carbon County to be distributed in proportion to current fiscal year mill levies in the taxing jurisdictions in which production occurs, except a distribution may not be made for county and state levies under *15-10-108,* 20-9-331, 20-9-333, *and* 20-9-360~~, and 20-25-423~~; and

(d) 76.18% to Carter County to be distributed in proportion to current fiscal year mill levies in the taxing jurisdictions in which production occurs, except a distribution may not be made for county and state levies under *15-10-108,* 20-9-331, 20-9-333, *and* 20-9-360~~, and 20-25-423~~.

~~(3) For the production of bentonite occurring after December 31, 2006, and before January 1, 2008, 80% of the tax determined under subsection (1)(a) must be distributed as provided in subsection (2) and 20% must be distributed as provided in subsection (12).~~

~~(4) For the production of bentonite occurring after December 31, 2007, and before January 1, 2009, 70% of the tax determined under subsection (1)(a) must be distributed as provided in subsection (2) and 30% must be distributed as provided in subsection (12).~~

~~(5)~~*(3)* For the production of bentonite occurring after December 31, 2008, and before January 1, 2010, 60% of the tax determined under subsection (1)(a) must be distributed as provided in subsection (2) and 40% must be distributed as provided in subsection ~~(12)~~ *(10)*.

~~(6)~~*(4)* For the production of bentonite occurring after December 31, 2009, and before January 1, 2011, 50% of the tax determined under subsection (1)(a) must be distributed as provided in subsection (2) and 50% must be distributed as provided in subsection ~~(12)~~ *(10)*.

~~(7)~~*(5)* For the production of bentonite occurring after December 31, 2010, and before January 1, 2012, 40% of the tax determined under subsection (1)(a) must be distributed as provided in subsection (2) and 60% must be distributed as provided in subsection ~~(12)~~ *(10)*.

~~(8)~~*(6)* For the production of bentonite occurring after December 31, 2011, and before January 1, 2013, 30% of the tax determined under subsection (1)(a) must be distributed as provided in subsection (2) and 70% must be distributed as provided in subsection ~~(12)~~ *(10)*.

~~(9)~~*(7)* For the production of bentonite occurring after December 31, 2012, and before January 1, 2014, 20% of the tax determined under subsection (1)(a) must be distributed as provided in subsection (2) and 80% must be distributed as provided in subsection ~~(12)~~ *(10)*.

~~(10)~~*(8)* For the production of bentonite occurring after December 31, 2013, and before January 1, 2015, 10% of the tax determined under subsection (1)(a) must be distributed as provided in subsection (2) and 90% must be distributed as provided in subsection ~~(12)~~ *(10)*.

~~(11)~~*(9)* For the production of bentonite occurring in tax years beginning after December 31, 2014, 100% of the tax determined under subsection (1)(a) must be distributed as provided in subsection ~~(12)~~ *(10)*.

~~(12)~~*(10)* For the production of bentonite, 100% of the tax determined under subsection (1)(b) and the distribution percentages determined under subsections (3) through ~~(11)~~ *(9)* are allocated according to the following schedule:

(a) 1.30% to the state special revenue fund to be appropriated to the Montana university system for the purposes of the state tax levy as provided in ~~20-25-423~~ *15-10-108*;

(b) 20.75% to the state general fund to be appropriated for the purposes of the tax levies as provided in 20-9-331, 20-9-333, and 20-9-360;

(c) 77.95% to the county in which production occurred to be distributed in proportion to current fiscal year mill levies in the taxing jurisdictions in which production occurs, except a distribution may not be made for county and state levies under ~~15-10-107,~~ *15-10-108,* 20-9-331, 20-9-333, *and* 20-9-360~~, and 20-25-423~~.

~~(13)~~*(11)* The department shall remit the amounts to be distributed in this section to the county treasurer by the following dates:

(a) On or before October 1 of each year, the department shall remit the county's share of bentonite production tax payments received for the semiannual period ending June 30 of the current year to the county treasurer.

(b) On or before April 1 of each year, the department shall remit the county's share of bentonite production tax payments received to the county treasurer for the semiannual period ending December 31 of the previous year.

~~(14)~~*(12)* (a) The department shall also provide to each county the amount of gross yield of value from bentonite, including royalties, for the previous calendar year. Thirty-three and one-third percent of the gross yield of value must be treated as taxable value for county classification purposes under 7-1-2111 and for determining school district debt limits under 20-9-406.

(b) The percentage amount of the gross yield of value determined under subsection ~~(14)(a)~~ *(12)(a)* must be treated as assessed value under 15-8-111 for the purposes of local government debt limits and other bonding provisions as provided by law.

~~(15)~~*(13)* The bentonite tax proceeds are statutorily appropriated, as provided in 17-7-502, to the department for distribution as provided in this section."

Section 7. Section 90-6-309, MCA, is amended to read:

"90-6-309. Tax prepayment — large-scale mineral development. (1) After permission to commence operation is granted by the appropriate governmental agency~~,~~ and upon request of the governing body of a county in which a facility is to be located, a person intending to construct or locate a large-scale mineral development in this state shall prepay property taxes as specified in the impact plan. This prepayment ~~shall~~ *must* exclude the 6-mill university levy established under ~~20-25-423~~ *15-10-108* and may exclude the mandatory county levies for the school BASE funding program established in 20-9-331 and 20-9-333.

(2) The person who is to prepay under this section is not obligated to prepay the entire amount established in subsection (1) at one time. Upon request of the

governing body of an affected local government unit, the person shall prepay the amount shown to be needed from time to time as determined by the board.

(3) The person who is to prepay shall guarantee to the hard-rock mining impact board, through an appropriate financial institution, as may be required by the board, that property tax prepayments will be paid as needed for expenditures created by the impacts of the large-scale mineral development.

(4) When the mineral development facilities are completed and assessed by the department of revenue, they are subject during the first 3 years and thereafter to taxation as all other property similarly situated, except that in each year after the start of production, the local government unit that received a property tax prepayment shall provide for repayment of prepaid property taxes in accordance with subsection (5).

(5) A local government unit that received all or a portion of the property tax prepayment under this section shall provide for tax crediting as specified in the impact plan. The tax credit allowed in any year may not, however, exceed the tax obligation of the developer for that year, and the time period for tax crediting is limited to the productive life of the mining operation."

Section 8. Repealer. Section 20-25-423, MCA, is repealed.

Section 9. Effective date. [This act] is effective on passage and approval.

Approved March 25, 2009

CHAPTER NO. 58

[HB 44]

AN ACT REVISING THE REQUIREMENTS FOR THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION'S PARTICIPATION IN FEDERAL FOREST MANAGEMENT PLANNING; AMENDING SECTION 76-13-702, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 76-13-702, MCA, is amended to read:

"76-13-702. Duties — authority. To implement the policy of 76-13-701, the department of natural resources and conservation:

(1) shall support sustainable forest management practices, including forest restoration, on public forests in Montana consistent with all applicable laws and administrative requirements;

(2) shall provide technical information and educational assistance to nonindustrial, private forest landowners;

(3) shall promote forest management activities within and adjacent to the wildland-urban interface and promote the implementation of community wildfire protection plans;

(4) shall promote a viable forest and wood products industry and other businesses and individual activities that rely on public forest lands;

(5) shall represent the state's interest in the federal forest management planning and policy process, including establishing cooperative agency status *and coordination* with federal agencies;

(6) may assist local government entities in establishing cooperative agency status and coordination with federal agencies;

~~(6)~~*(7)* shall promote the development of an independent, long-term sustained yield calculation on Montana's federal forests;

~~(7)~~*(8)* has the authority to intervene in litigation or appeals on federal forest management projects that comply with the policy in 76-13-701 and in which local and state interests are clearly involved;

~~(8)~~*(9)* has the authority to enter into agreements with federal agencies to participate in forest management activities on federal lands; and

~~(9)~~*(10)* shall participate in and facilitate collaboration between traditional forest interests in reaching consensus-based solutions on federal land management issues."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 25, 2009

CHAPTER NO. 59

[HB 46]

AN ACT CHANGING THE REPORTING PERIOD FOR ESTABLISHING EMPLOYMENT ELIGIBILITY FOR THE QUALITY EDUCATOR LOAN ASSISTANCE PROGRAM FROM THE PREVIOUS SCHOOL YEAR TO THE CURRENT SCHOOL YEAR; AMENDING SECTION 20-4-502, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-4-502, MCA, is amended to read:

"20-4-502. Definitions. For purposes of this part, unless the context requires otherwise, the following definitions apply:

(1) "Education cooperative" means a cooperative of Montana public schools as described in 20-7-451.

(2) "Educational loans" means all loans made pursuant to a federal loan program, except federal parent loans for undergraduate students (PLUS) loans, as provided in 20 U.S.C. 1078-2.

(3) "Federal loan program" means educational loans authorized by 20 U.S.C. 1071, et seq., 20 U.S.C. 1087a, et seq., and 20 U.S.C. 1087aa, et seq.

(4) (a) "Quality educator" means a full-time equivalent educator, as reported to the superintendent of public instruction for accreditation purposes in the ~~previous~~ *current* school year, who:

(i) holds a valid certificate under the provisions of 20-4-106 and is employed by an entity listed in subsection (4)(b) in a position that requires an educator license in accordance with administrative rules adopted by the board of public education; or

(ii) is a licensed professional under 37-8-405, 37-8-415, 37-11-301, 37-15-301, 37-17-302, 37-22-301, 37-23-201, 37-24-301, or 37-25-302 and is employed by an entity listed in subsection (4)(b) of this section to provide services to students.

(b) For purposes of subsection (4)(a), an entity means:

(i) a school district;

(ii) an education cooperative;

(iii) the Montana school for the deaf and blind, as described in 20-8-101;

(iv) the Montana youth challenge program; and

(v) a state youth correctional facility, as defined in 41-5-103.

(5) "School district" means a public school district, as provided in 20-6-101 and 20-6-701."

Section 2. Effective date. [This act] is effective July 1, 2009.

Approved March 25, 2009

CHAPTER NO. 60

[HB 57]

AN ACT CLARIFYING SCHOOL DISTRICT CONSOLIDATIONS AND ANNEXATIONS; AMENDING SECTIONS 20-3-312, 20-6-411, 20-6-414, 20-6-422, AND 20-6-704, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-3-312, MCA, is amended to read:

"20-3-312. Trustees of district affected by boundary change. The trustees of any district to which the territory of another district is attached as a result of annexation, abandonment, territory transfer, or any other method of changing district boundaries, except by the consolidation of ~~elementary~~ districts, continue to be the trustees of the district with the same powers, duties, and responsibilities and subject to the same limitations provided by law as if there had been no boundary change. In the case of ~~elementary~~ district consolidation, the appointed trustees of the resulting ~~elementary~~ district shall assume their trustee positions under the authority of 20-6-423."

Section 2. Section 20-6-411, MCA, is amended to read:

"20-6-411. Bonded indebtedness to remain with original territory except when assumed by election. Whenever district boundaries are changed in any manner prescribed in this title, the existing bonded indebtedness against any district or territory affected by a change of boundaries ~~shall remain~~ *remains* the indebtedness of the original territory against which ~~such~~ *the* bonds were issued and ~~shall~~ *must* be paid by levies on the original territory, except when ~~elementary~~ districts are consolidated with the mutual assumption of bonded indebtedness or when ~~an elementary~~ *a* district is annexed with a joint assumption of the annexing district's bonded indebtedness ~~with the annexing district~~. Any ~~moneys~~ *money* to the credit of the debt service fund of a district when its boundaries are changed ~~shall~~ *must* be used to pay the existing bond principal and interest of the original territory issuing ~~such~~ *the* bonds as it becomes due or for bond redemption under the bonding provisions of this title."

Section 3. Section 20-6-414, MCA, is amended to read:

"20-6-414. Cash disposition when districts consolidated. Whenever two or more districts are consolidated without the mutual assumption of bonded indebtedness, all cash and debts, other than cash credited to the debt service fund and debts for bonded indebtedness, ~~shall~~ *must* be credited or debited to the same types of funds of the consolidated district as the funds from which they were transferred by the county treasurer. In addition, when two or more ~~elementary~~ districts are consolidated with the mutual assumption of bonded indebtedness, the cash credited to the debt service fund and the bonded

indebtedness also ~~shall~~ *must* be transferred to a similar fund of the consolidated district."

Section 4. Section 20-6-422, MCA, is amended to read:

"20-6-422. District annexation. (1) As used in this section, the following definitions apply:

(a) "Annexing district" means the district to which another district is being attached through an annexation procedure.

(b) "District to be annexed" means the district that is being attached to another district through an annexation procedure.

(2) A district may be annexed to a contiguous district when one of the conditions of 20-6-421 is met in accordance with the following procedure:

(a) An annexation proposition may be introduced in the district to be annexed by either of the two following methods:

(i) the trustees may pass a resolution requesting the county superintendent of the county where the district is located to order an election to consider an annexation proposition for their district; or

(ii) not less than 20% of the electors of the district who are qualified to vote under the provisions of 20-20-301 may petition the county superintendent of the county where the district is located requesting an election to consider an annexation proposition for their district.

(b) The resolution or petition must state whether the annexation is to be made with or without the joint assumption of bonded indebtedness of the annexing district by the district to be annexed and the annexing district.

(3) Before ordering an election on the proposition, the county superintendent of the county where the district to be annexed is located must first receive from the trustees of the annexing district a resolution giving the county superintendent the authority to annex the district. The resolution must state whether the annexation is to be made with or without the joint assumption of bonded indebtedness of the annexing district by the district to be annexed and the annexing district. The resolution from the annexing district and the resolution or petition from the district to be annexed must agree on whether or not there will be joint assumption of bonded indebtedness. Without agreement, the annexation proposition may not be considered further.

(4) When the county superintendent of the county where the district to be annexed is located has received the resolution authorizing the annexation from the annexing district and the resolution or valid petition from the district to be annexed, the county superintendent shall, within 10 days and as provided by 20-20-201, order the trustees of the district to be annexed to call an annexation election.

(5) The district to be annexed shall call and conduct an election in the manner prescribed in this title for school elections and subject to subsections (6) and (7). Any elector qualified to vote under the provisions of 20-20-301 may vote.

(6) (a) If the district to be annexed is to jointly assume the bonded indebtedness of the annexing district, the ballots must read, after stating the annexation proposition, "FOR annexation with assumption of bonded indebtedness" and "AGAINST annexation with assumption of bonded indebtedness".

(b) When the trustees in ~~each~~ *the* district conducting ~~an~~ *the* election canvass the vote under the provisions of 20-20-415, they shall determine the number of votes "FOR" and "AGAINST" the proposition.

(c) The proposition is approved in the district if a majority of those voting approve the proposition.

(7) If the district to be annexed is not to jointly assume the bonded indebtedness of the annexing district, the ballots must read, after stating the annexation proposition, "FOR annexation without assumption of bonded indebtedness" and "AGAINST annexation without assumption of bonded indebtedness". The annexation proposition is approved by a district if a majority of those voting in a district approve the proposition.

(8) After the county superintendent of the county where the district to be annexed is located has received the election certification provided for in 20-20-416 from the trustees of the district conducting the annexation election and if the annexation proposition has been approved by the election, the county superintendent shall order the annexation of the territory of the district voting on the proposition to the district that has authorized the annexation to its territory effective July 1. The order must be issued within 10 days after the receipt of the election certificate. For annexation with joint assumption of bonded indebtedness, the order must specify that there will be joint assumption of *the* bonded indebtedness ~~between the~~ *of the annexing district by the* owners of all taxable real and personal property in the ~~annexed~~ territory ~~and in the annexing district~~ *of the district to be annexed*. The county superintendent of the county where the district to be annexed is located shall send a copy of the order to the board of county commissioners of each county involved in the annexation order and to the trustees of the districts involved in the annexation order.

(9) If the annexation proposition is disapproved in the district to be annexed, the annexation proposition fails and the county superintendent of the county where the district to be annexed is located shall notify each district of the disapproval of the annexation proposition."

Section 5. Section 20-6-704, MCA, is amended to read:

"20-6-704. Dissolution of K-12 school district. (1) Except as provided in subsection (2), in order to dissolve a K-12 district under the provisions of this section, the trustees of a district shall submit for approval to the electors of the K-12 district a proposition dissolving the K-12 district for the purpose of annexing or consolidating the K-12 district's elementary or high school program with a contiguous school district or districts in an ensuing school fiscal year under the provisions of 20-6-422 or 20-6-423.

(2) If the trustees of the school district determine that the creation or continuation of the K-12 district has resulted in or will result in the loss of federal funding for the elementary or high school programs and that it is in the best interest of the district to dissolve into the original elementary district and high school district that existed prior to the formation of the K-12 district, the trustees may dissolve the district under the following procedure:

(a) The trustees of the district shall pass a resolution requesting the county superintendent to order a dissolution of the district.

(b) When the county superintendent receives the resolution from the district, the county superintendent shall, within 10 days, order the dissolution of the K-12 district into the original elementary district and high school district, to take effect on July 1 of the ensuing school fiscal year. Within 30 days of the order, the county superintendent shall send a copy of the order to the board of

county commissioners, the trustees of the district, and the superintendent of public instruction.

(3) If the entire territory of the dissolving K-12 district will be annexed to or consolidated with a contiguous district or districts, the resolution or petition required in subsection (1) or (2) must contain a description of the manner in which the real and personal property and funds of the district are to be apportioned in the dissolution of the district and the subsequent annexation to or consolidation with one or more other districts. If a portion of the dissolving K-12 district will not be annexed or consolidated with another district or districts, the resolution or petition must contain a description of the manner in which the property, funds, and financial obligations, including bonded indebtedness, of the K-12 district are to be apportioned to the district or districts whose territory is not annexed to or consolidated with another district.

(4) After the county superintendent receives the certificate of election provided for in 20-20-416 from the trustees of the K-12 district and from each district included in a consolidation proposition, the county superintendent shall determine whether the dissolution and annexation or consolidation proposition or propositions have been approved. If the K-12 district has approved the dissolution proposition and each district involved in a consolidation has approved the consolidation proposition, the county superintendent shall, within 10 days after the receipt of the election certificate, order the dissolution of the K-12 district into the original elementary district and high school district, to take effect on July 1 of the ensuing school fiscal year. Within 30 days of the order, the county superintendent shall send a copy of the dissolution order to the board of county commissioners, the trustees of the district included in the dissolution order, and the superintendent of public instruction.

(5) Whenever a K-12 district is dissolved, the following provisions apply:

(a) The trustees of the ~~elementary~~ district whose territory is not annexed or consolidated upon dissolution of the K-12 district are responsible for the execution of remaining financial obligations of the K-12 district and for the apportionment between the elementary and high school programs of any obligations not identified in the resolution required under subsection (3).

(b) The provisions of 20-6-410 apply for tenure teachers in the dissolution of a K-12 district.

(c) For purposes of applying the budget limitation provisions of 20-9-308, the budget of a K-12 district during its last year of operations as a K-12 district will be prorated based on rules promulgated by the superintendent of public instruction."

Section 6. Effective date. [This act] is effective July 1, 2009.

Section 7. Applicability. [This act] applies to school district budgets for the school year beginning July 1, 2009.

Approved March 25, 2009

CHAPTER NO. 61

[HB 70]

AN ACT CLARIFYING EXCLUSIONS FROM DRUG SCHEDULES; AMENDING SECTION 50-32-205, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-32-205, MCA, is amended to read:

"50-32-205. Nonprescription drugs not to be scheduled. The board shall exclude any nonnarcotic drug from a schedule if the drug may, under the Federal Food, Drug, and Cosmetic Act ~~and 50-31-307(2)(b) of the Montana Food, Drug, and Cosmetic Act~~, be lawfully sold over the counter without a prescription."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 25, 2009

CHAPTER NO. 62

[HB 94]

AN ACT REVISING THE LAW GOVERNING SECURITY INTERESTS IN LIQUOR LICENSES; CLARIFYING THAT THE USE OF LOAN AND SECURITY DOCUMENTATION CONSISTENT WITH THAT USED BY THE REGULATED LENDER GENERALLY DOES NOT CONSTITUTE CONTROL OF THE OPERATION OF THE BUSINESS OR THE LICENSEE; AMENDING SECTION 16-4-801, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 16-4-801, MCA, is amended to read:

"16-4-801. Security interest in liquor license. (1) (a) A security interest in a liquor license is an interest in the liquor license that secures payment or performance of an obligation. A contract for the sale of a liquor license, including a provision allowing the seller to retain an ownership interest in the license solely for the purpose of guaranteeing payment for the license, may, for the purposes of this section, be treated as a security interest.

(b) For the purposes of this section:

(i) "default" means that:

(A) the defaulting party has acknowledged in writing pursuant to the terms of a written security agreement or contract for sale that the defaulting party no longer has any ownership interest or any other rights to possess or control the liquor license;

(B) a court of competent jurisdiction has made an order foreclosing all of the defaulting party's interests in the license; or

(C) there has been a nonjudicial sale by the secured party made pursuant to the Uniform Commercial Code and the secured party has provided written proof of the sale to the department; and

(ii) "liquor license" means a license issued under this chapter.

(2) The department, after review of the underlying documents creating the security interest, may approve a transfer of ownership of a liquor license subject to a security interest as provided in subsection (1). A person holding a security interest may not have any control in the operation of the business operated under a license subject to a security interest nor may that person share in the profits or the liabilities of the business other than the payment or performance of the licensee's obligation under a security agreement.

(3) (a) Within 7 days of a default by a licensee, the person holding the security interest shall give notice to the department of the licensee's default and either apply to have the license transferred to that person, subject to that person meeting the requirements of 16-4-401 and all other applicable provisions of this code, or the person shall place the license on nonuser status. Upon receipt of an application to transfer the license, the department may, pursuant to 16-4-404, grant the applicant temporary authority to operate the license. If the person holding the license places the license on nonuser status, the person shall transfer ownership of the license within 180 days from the date on which the notice of the default was given to the department. The operation of a business under a license by a person holding a security interest for more than 7 days after default of the licensee or without temporary authority issued by the department must be considered to be a violation of this code and constitutes grounds for the department to either deny an application for transfer of the license or for the revocation of the license pursuant to 16-4-406.

(b) If the person holding the security interest does not qualify for or cannot qualify for ownership of a liquor license under 16-4-401, the secured party shall transfer ownership of the liquor license within 180 days of the notice of the default of the licensee.

(c) The department, upon a showing of good cause, may in its discretion extend the time for sale of the license for an additional period of up to 180 days.

(4) A regulated lender, as defined in 31-1-111, may obtain a security interest in a liquor license in order to secure a loan or a guaranty of a loan. This section does not prohibit or limit the ability of a regulated lender to use loan and security documentation consistent with that used by the regulated lender generally, and the documentation does not constitute control of the operation of the business or the licensee operating the business that is subject to the security interest."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 25, 2009

CHAPTER NO. 63

[HB 114]

AN ACT PROVIDING FOR RECOGNITION OF LICENSURE AND FOR REGISTRATION OF OUT-OF-STATE VOLUNTEER PROFESSIONALS WHEN A DISASTER OR EMERGENCY IS IN EFFECT; ESTABLISHING ADMINISTRATIVE DISCIPLINARY SANCTIONS FOR VOLUNTEER PROFESSIONALS; PROVIDING RULEMAKING AUTHORITY; DEFINING "VOLUNTEER PROFESSIONAL"; PROVIDING IMMUNITY FOR THE ACTIONS OF VOLUNTEER PROFESSIONALS; AND AMENDING SECTIONS 10-3-103 AND 10-3-111, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Interstate licensure recognition — volunteer professionals. (1) (a) Subject to subsection (2), whenever a state of emergency or disaster is in effect, a volunteer professional who possesses an active, unrestricted license in another state may practice in Montana to the extent authorized by law as if the person had been licensed in Montana.

(b) A volunteer professional shall adhere to the scope and standards of practice set forth in licensing provisions, practice acts, or other laws or policies of Montana.

(2) (a) Prior to providing services in Montana, a volunteer professional who is licensed for professional services in another state shall register with the appropriate licensing agency in the state of Montana. The licensing agency shall verify the current licensure of the volunteer professional in the other state or states prior to registering the licensee.

(b) Based on available funding, the licensing agency may request and accept funds for the purpose of implementing the provisions of subsection (2)(a).

Section 2. Administrative disciplinary sanctions. (1) A licensing board or a licensing program in Montana:

(a) may impose administrative sanctions upon a volunteer professional for unprofessional conduct in response to an emergency or disaster that occurs in Montana; and

(b) shall report any administrative sanctions imposed upon a volunteer professional licensed in another state to the appropriate licensing board or disciplinary authority in any other state in which the practitioner is known to be licensed.

(2) In determining whether to impose administrative sanctions under subsection (1), a licensing board or other disciplinary authority in Montana shall consider any exigent circumstances in which the conduct took place in light of the emergency or disaster.

Section 3. Rulemaking authority. The department of labor and industry may adopt rules necessary to implement [sections 1 and 2] to recognize and register out-of-state volunteer professionals.

Section 4. Section 10-3-103, MCA, is amended to read:

"10-3-103. Definitions. As used in parts 1 through 4 of this chapter, the following definitions apply:

(1) "Civil defense" means the nuclear preparedness functions and responsibilities of disaster and emergency services.

(2) "Department" means the department of military affairs.

(3) "Disaster" means the occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or artificial cause, including tornadoes, windstorms, snowstorms, wind-driven water, high water, floods, wave action, earthquakes, landslides, mudslides, volcanic action, fires, explosions, air or water contamination requiring emergency action to avert danger or damage, blight, droughts, infestations, riots, sabotage, hostile military or paramilitary action, disruption of state services, accidents involving radiation byproducts or other hazardous materials, *outbreak of disease,* bioterrorism, or incidents involving weapons of mass destruction.

(4) "Disaster and emergency services" means the preparation for and the carrying out of disaster and emergency functions and responsibilities, other than those for which military forces or other state or federal agencies are primarily responsible, to mitigate, prepare for, respond to, and recover from injury and damage resulting from emergencies or disasters.

(5) "Division" means the division of disaster and emergency services of the department.

(6) "Emergency" means the imminent threat of a disaster causing immediate peril to life or property that timely action can avert or minimize.

(7) (a) "Incident" means an event or occurrence, caused by either an individual or by natural phenomena, requiring action by disaster and emergency services personnel to prevent or minimize loss of life or damage to property or natural resources. The term includes the imminent threat of an emergency.

(b) The term does not include a state of emergency or disaster declared by the governor pursuant to 10-3-302 or 10-3-303.

(8) "Political subdivision" means any county, city, town, or other legally constituted unit of local government in this state.

(9) "Principal executive officer" means the mayor, presiding officer of the county commissioners, or other chief executive officer of a political subdivision.

(10) "Temporary housing" means unoccupied habitable dwellings, suitable rental housing, mobile homes, or other readily fabricated dwellings.

(11) "Volunteer professional" means an individual with an active, unrestricted license to practice a profession under the provisions of Title 37, Title 50, or the laws of another state."

Section 5. Section 10-3-111, MCA, is amended to read:

"10-3-111. Personnel immune from liability. (1) The state, a political subdivision of the state, or the agents or representatives of the state or a political subdivision of the state are not liable for personal injury or property damage sustained by a person appointed or acting as a volunteer civilian defense worker*, a volunteer professional,* or *a* member of an agency engaged in civilian defense activity during an incident, disaster, or emergency. This section does not affect the right of a person to receive benefits or compensation to which the person might otherwise be entitled under the workers' compensation law or a pension law or an act of congress.

(2) The *following individuals or entities are not liable for the death or injury of individuals or for damage to property as a result of an act or omission specifically arising out of activities undertaken in response to an incident, disaster, or emergency and while complying with or reasonably attempting to comply with parts 1 through 4 and 12 of this chapter or [sections 1 through 3] or an order or rule promulgated under the provisions of parts 1 through 4 and 12 of this chapter or [sections 1 through 3]:*

(a) the state or a political subdivision of the state ~~or,~~*;*

(b) except in cases of willful misconduct, gross negligence, or bad faith~~,~~*:*

(i) the employees, agents, or representatives of the state or a political subdivision of the state*;* or

(ii) a volunteer or auxiliary civilian defense worker*,* ~~or~~ *a* member of an agency engaged in civilian defense activity*, a volunteer professional,* ~~during an incident, disaster, or emergency~~ or the owners of facilities used for civil defense shelters, pursuant to a fallout shelter license or privilege agreement ~~and while complying with or reasonably attempting to comply with parts 1 through 4 or 12 of this chapter or an order or rule promulgated under the provisions of parts 1 through 4 or 12 of this chapter~~ or pursuant to an ordinance relating to blackout or other precautionary measures enacted by a political subdivision of the state~~, are not liable for the death of or injury to persons or for damage to property as a result of any activity specified in this subsection~~."

Section 6. Codification instruction. [Sections 1 through 3] are intended to be codified as an integral part of Title 10, chapter 3, part 1, and the provisions of Title 10, chapter 3, part 1, apply to [sections 1 through 3].

Approved March 25, 2009

CHAPTER NO. 64

[HB 122]

AN ACT REVISING THE MONTANA FALSE CLAIMS ACT; LIMITING THE GOVERNMENT ATTORNEYS WHO MAY BRING AN ACTION UNDER THE FALSE CLAIMS ACT; EXTENDING THE TIME PERIOD FOR FILING A FALSE CLAIMS ACTION; REVISING DAMAGE AWARDS TO PRIVATE PLAINTIFFS; AMENDING SECTIONS 17-8-402, 17-8-403, 17-8-404, 17-8-405, 17-8-406, 17-8-407, 17-8-410, 17-8-411, AND 17-8-412, MCA; REPEALING SECTION 17-8-408, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-8-402, MCA, is amended to read:

"17-8-402. Definitions. As used in this part, the following definitions apply:

(1) "Claim" includes any request or demand for money, property, or services made to an employee, officer, or agent of a governmental entity or to a contractor, grantee, or other recipient, whether under contract or not, if any portion of the money, property, or services requested or demanded issued from~~,~~ or was provided by~~,~~ a governmental entity.

(2) "Government attorney" means:

~~(a) the chief attorney for a governmental entity; or~~

~~(b)~~ the attorney general ~~with respect to the state,~~ except *for complaints involving* a unit of the university system.

(3) "Governmental entity" means:

(a) the state;

(b) a city, town, county, school district, tax or assessment district, or other political subdivision of the state; or

(c) a unit of the Montana university system.

(4) *(a)* "Knowingly" means that a person, with respect to information, does any of the following:

~~(a)~~*(i)* has actual knowledge of the information;

~~(b)~~*(ii)* acts in deliberate ignorance of the truth or falsity of the information; or

~~(c)~~*(iii)* acts in reckless disregard of the truth or falsity of the information.

(b) A specific intent to defraud is not required.

(5) "Person" includes any natural person, corporation, firm, association, organization, partnership, limited liability company, business, ~~or~~ trust*, or other legal or business entity*."

Section 2. Section 17-8-403, MCA, is amended to read:

"17-8-403. False claims — procedures — penalties. (1) ~~A~~ *Except as provided in subsection (2), a* person ~~causing damages in excess of $500 to a~~

~~governmental entity~~ is liable~~, as provided in 17-8-410 and 17-8-411, for any of the following acts~~ *to a governmental entity for a civil penalty of not less than $5,000 and not more than $10,000 for each act specified in this section, plus three times the amount of damages that a governmental entity sustains because of the person's act, along with expenses, costs, and attorney fees, if the person*:

(a) knowingly ~~presenting or causing~~ *presents or causes* to be presented to an officer or employee of the governmental entity a false *or fraudulent* claim for payment or approval;

(b) knowingly ~~making, using, or causing~~ *makes, uses, or causes* to be made or used a false record or statement to get a false *or fraudulent* claim paid or approved by the governmental entity;

(c) ~~conspiring~~ *conspires* to defraud the governmental entity by getting a false *or fraudulent* claim allowed or paid by the governmental entity;

(d) ~~having~~ *has* possession, custody, or control of public property or money used or to be used by the governmental entity and ~~knowingly delivering or causing~~ *with the intent to defraud the governmental entity or to willfully conceal the property, delivers or causes* to be delivered less property or money than the amount for which the person receives a certificate or receipt;

(e) ~~being~~ *is* authorized to make or deliver a document certifying receipt of property used or to be used by the governmental entity and ~~knowingly making or delivering~~ *with the intent to defraud the governmental entity or to willfully conceal the property, makes or delivers* a receipt ~~that falsely represents the property used or to be used~~ *without knowing that the information on the receipt is true*;

(f) knowingly ~~buying or receiving~~ *buys or receives* as a pledge of an obligation or debt public property of the governmental entity from any person who may not lawfully sell or pledge the property;

(g) knowingly ~~making, using, or causing~~ *makes, uses, or causes* to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the governmental entity or its contractors; or

(h) as a beneficiary of an inadvertent submission of a false *or fraudulent* claim to the governmental entity, subsequently ~~discovering~~ *discovers* the falsity of the claim *or that the claim is fraudulent* and ~~failing~~ *fails* to disclose the false *or fraudulent* claim to the governmental entity within a reasonable time after discovery of the false *or fraudulent* claim.

(2) *(a)* In a civil action brought under 17-8-405 or 17-8-406, a court shall assess *a civil penalty of* not less than *$5,000 and not more than $10,000 for each act specified in this section, plus not less than* two times and not more than three times the amount of damages that a governmental entity sustains because of the person's act, ~~along with costs and attorney fees, and may impose a civil penalty of up to $10,000 for each act. The court may not assess a civil penalty~~ if the court finds all of the following:

~~(a)~~*(i)* The person committing the act furnished the government attorney with all information known to that person about the act within 30 days after the date on which the person first obtained the information.

~~(b)~~*(ii)* The person fully cooperated with any investigation of the act by the government attorney.

~~(c)~~*(iii)* At the time that the person furnished the government attorney with information about the act, a criminal prosecution, civil action, or administrative

action had not been commenced with respect to the act and the person did not have actual knowledge of the existence of an investigation into the act.

(b) A person who violates the provisions of this section is also liable to the governmental entity for the expenses, costs, and attorney fees of the civil action brought to recover the penalty or damages.

(3) Liability under this section is joint and several for any act committed by two or more persons.

(4) This section does not apply to claims, records, or statements made in relation to claims filed with the state compensation insurance fund under Title 39, chapter 71, or to claims, records, payments, or statements made under the tax laws contained in Title 15 or 16 or made to the department of natural resources and conservation under Title 77.

(5) A ~~private citizen~~ *person* may not file a complaint or civil action:

(a) against a governmental entity or an officer or employee of a governmental entity arising from conduct by the officer or employee within the scope of the officer's or employee's duties to the governmental entity;

(b) that is based upon allegations or transactions that are the subject of a civil suit or an administrative civil penalty proceeding in which an agency of the governmental entity is already a party;

(c) that is based upon the public disclosure of allegations or transactions in a criminal, civil, or administrative hearing or in an investigation, report, hearing, or audit conducted by or at the request of the senate or house of representatives, the state auditor or legislative auditor, the auditor or legislative body of a political subdivision, or the news media, unless the ~~private citizen~~ *person* has direct and independent knowledge of the information on which the allegations are based and, before filing the complaint or civil action, voluntarily provided the information to the agency of the governmental entity that is involved with the claim that is the basis for the complaint or civil action and unless the information provided the basis or catalyst for the investigation, report, hearing, or audit that led to the public disclosure; or

(d) that is based upon information discovered by a present or former employee of the governmental entity during the course of employment unless the employee first, in good faith, exhausted existing internal procedures for reporting and seeking recovery of the falsely claimed sums through official channels and the governmental entity failed to act on the information provided within a reasonable period of time."

Section 3. Section 17-8-404, MCA, is amended to read:

"17-8-404. Limitation of actions. *(1)* A complaint or civil action ~~may not be~~ filed under 17-8-405 or 17-8-406 *must be brought by the later of:*

(a) ~~more than~~ *6 years after the date on which the violation was committed; or*

(b) 3 years after the date ~~on which an~~ *when facts material to the right of action are known or reasonably should have been known by the* official of the governmental entity charged with responsibility to act in the circumstances. ~~discovers the act or~~

(2) In no event may an action brought pursuant to subsection (1)(b) be brought more than 10 years after the date on which the ~~act occurred, whichever occurs first~~ violation was committed."

Section 4. Section 17-8-405, MCA, is amended to read:

"17-8-405. Investigation and civil action by government attorney. ~~A~~ *The* government attorney ~~may~~ *shall* investigate an alleged violation of 17-8-403 and *may* file a civil action *against any person who has violated or is violating 17-8-403*."

Section 5. Section 17-8-406, MCA, is amended to read:

"17-8-406. Complaint by ~~private citizen~~ *person* — civil action. (1) ~~A private citizen may file with the government attorney a notice alleging a violation of 17-8-403 against a governmental entity of which the private citizen is a resident. The private citizen shall file a complaint with the government attorney that includes a written disclosure of material evidence and information alleging violations.~~ *A person may bring a civil action for a violation of 17-8-403 on behalf of the person and the governmental entity. The action must be brought in the name of the governmental entity. The action may be dismissed only if the court and the government attorney give written consent to the dismissal and provide their reasons for consenting to the dismissal.*

(2) A copy of the complaint and written disclosure of substantially all material evidence and information that the person possesses must be served on the government attorney pursuant to Rule 4D, Montana Rules of Civil Procedure. The complaint must be filed under seal and must remain under seal for at least 60 days. The complaint may not be served upon the defendant until the court orders that it be served.

~~(2)~~*(3)* Within 60 days after receiving ~~a notice and~~ *the* complaint~~,~~ *and the material evidence and information,* the government attorney may elect to ~~file a civil action and~~ *intervene and proceed with the action or to notify the court that the government attorney declines to take over the action. If the government attorney declines to intervene or take over the action, the person bringing the action has the right to conduct the action. The government attorney* may, for good cause shown, move the court for extensions of the time ~~for filing an action~~ *during which the complaint remains under seal*.

(4) The defendant may not be required to respond to any complaint until 20 days after the complaint is unsealed and served upon the defendant pursuant to Rule 4D, Montana Rules of Civil Procedure.

~~(3)~~*(5)* If the government attorney ~~files a civil action, the private citizen may enter the action as a coplaintiff, but the government attorney has control of the plaintiffs' strategy, tactics, and other decisionmaking. If the government attorney does not file a civil action within the time allowed under subsection (2), the private citizen may file a civil action~~ *proceeds with the action, the government attorney has the primary responsibility for prosecuting the action and is not bound by an act of the person bringing the action. The person bringing the action has the right to continue as a party to the action subject to the limitations set forth in this part*.

~~(4) The court shall permit the government attorney to intervene in an action that the government attorney declined to file under subsection (2) if the court determines that the interests of the governmental entity are not being adequately represented by the private citizen. If intervention is allowed, the private citizen retains principal responsibility for and control of the action and any damages, civil penalty, costs, and attorney fees must be awarded under 17-8-410 and 17-8-411 as if the government attorney had not intervened.~~

(6) If the government attorney elects not to proceed with the action and the person who initiated the action conducts it:

(a) the person who initiated the action shall, upon the government attorney's request, serve the governmental entity with copies of all pleadings filed in the action and shall supply the government attorney with copies of all deposition transcripts at the government attorney's expense;

(b) the court, without limiting the status and rights of the person initiating the action, may permit the government attorney to intervene at a later date upon a showing of good cause.

~~(5)~~*(7)* ~~After a private citizen~~ *When a person* files a civil action *pursuant to this section*, no ~~other private citizen may file a civil action~~ *person other than the government attorney may intervene or bring a related action* based on the facts underlying the pending action.

(8) Upon a showing by the government attorney that unrestricted participation during the course of the litigation by the person initiating the action would interfere with or unduly delay the government attorney's prosecution of the case or would be repetitious, irrelevant, or for purposes of harassment, the court may in its discretion impose limitations on the person's participation, including but not limited to:

(a) limiting the number of witnesses the person may call;

(b) limiting the length of testimony of witnesses called by the person;

(c) limiting the person's cross-examination of witnesses; or

(d) otherwise limiting the participation of the person in the litigation."

Section 6. Section 17-8-407, MCA, is amended to read:

"17-8-407. Dismissal of ~~private citizen's~~ civil action. On the motion of ~~a~~ *the* government attorney, the court may dismiss a ~~private citizen's~~ civil action ~~for good cause. If an intervening government attorney seeks dismissal of a private citizen's civil action, the private citizen must be notified by the government attorney~~ *notwithstanding the objection of the person who initiated the action if the government attorney has notified the person* of the filing of the motion to dismiss and ~~must be~~ *the court has* given *the person* an opportunity to oppose the motion and present evidence at a hearing."

Section 7. Section 17-8-410, MCA, is amended to read:

"17-8-410. Distribution of damages and civil penalty. (1) ~~If an action is settled or the governmental entity or private citizen prevails in an action:~~

~~(a) filed by a governmental entity under 17-8-406(2) and the private citizen elected not to enter the action as a coplaintiff, except as provided in subsection (1)(c), the private citizen is entitled to between 10% and 15%, as determined by the court, of any damages and civil penalty awarded the governmental entity in the settlement or judgment;~~

~~(b) filed by a private citizen either as plaintiff or as coplaintiff, except as provided in subsection (1)(c), the private citizen is entitled to between 15% and 50%, as determined by the court, of any damages and civil penalty awarded the governmental entity in the settlement or judgment;~~

~~(c) and if a private citizen referred to in subsection (1)(a) or (1)(b) participated in the act or acts found to be in violation of 17-8-403, an award of damages and civil penalty to the private citizen are at the discretion of the court;~~ *Except as provided in subsection (2), if the government attorney proceeds with an action brought by a person pursuant to 17-8-406, the person must receive at least 15% but not more than 25% of the proceeds recovered and collected in the action*

or in settlement of the claim, depending on the extent to which the person substantially contributed to the prosecution of the action.

(2) (a) The court may award an amount it considers appropriate but in no case more than 10% of the proceeds in an action that the court finds to be based primarily on disclosures of specific information, other than information provided by the person bringing the action, relating to allegations or transactions disclosed through:

(i) a criminal, civil, or administrative hearing;

(ii) a legislative, administrative, auditor, or inspector general report, hearing, audit, or investigation; or

(iii) the news media.

(b) In determining the award, the court shall take into account the significance of the information and the role of the person bringing the action in advancing the case to litigation.

(3) Any payment to a person bringing an action pursuant to this part may be made only from the proceeds recovered and collected in the action or in settlement of the claim. The person must also receive an amount for reasonable expenses that the court finds to have been necessarily incurred, plus reasonable attorney fees and costs. The expenses, fees, and costs must be awarded against the defendant.

(4) If the government attorney does not proceed with an action pursuant to 17-8-406, the person bringing the action or settling the claim must receive an amount that the court decides is reasonable for collecting the civil penalty and damages on behalf of the government attorney or governmental entity. The amount may not be less than 25% or more than 30% of the proceeds recovered and collected in the action or settlement of the claim and must be paid out of the proceeds. The person must also receive an amount for reasonable expenses that the court finds were necessarily incurred, plus reasonable attorney fees and costs. All expenses, fees, and costs must be awarded against the defendant.

(5) Whether or not the government attorney proceeds with the action, if the court finds that the action was brought by a person who planned, initiated, or knowingly participated in the violation of 17-8-403, the court may, to the extent the court considers appropriate, reduce or eliminate the share of the proceeds of the action that the person would otherwise receive pursuant to subsections (1) through (4) of this section, taking into account the role of the person in advancing the case to litigation and any relevant circumstances pertaining to the violation. If the person bringing the action is convicted of criminal conduct arising from the person's role in the violation of this part, the person must be dismissed from the civil action and may not receive any share of the proceeds of the action. The dismissal does not prejudice the right of the government attorney to continue the action.

~~(d)~~*(6)* ~~the~~ *The* governmental entity is entitled to any damages and civil penalty not awarded to ~~a private citizen~~ *the person,* and the damages and civil penalty must be deposited in the general fund of the governmental entity, except that if a trust fund of the governmental entity suffered a loss as a result of the defendant's actions, the trust fund must first be fully reimbursed for the loss and the remainder of the damages and any civil penalty must be deposited in the general fund of the governmental entity.

~~(2)~~*(7)* Unless otherwise provided, the remedies or penalties provided by this part are cumulative to each other and to the remedies or penalties available under all other laws of the state."

Section 8. Section 17-8-411, MCA, is amended to read:

"17-8-411. Costs and attorney fees. ~~A governmental entity in an action in which its~~ *The* ~~government~~ *governmental* ~~attorney~~ *entity that* filed a civil action or intervened is entitled to ~~its~~ reasonable costs and attorney fees if the action is settled favorably for the governmental entity or the governmental entity prevails. In an action in which outside counsel ~~represents a governmental entity~~ *is engaged by a government attorney*, the costs and attorney fees awarded ~~to a governmental entity~~ *to that counsel* must equal the outside counsel's charges reasonably incurred ~~by the governmental entity~~ for costs and attorney fees in prosecuting the action. In any other actions in which costs and attorney fees are awarded to ~~a governmental entity~~ *the governmental entity*, they must be calculated by reference to the hourly rate charged by the department of justice agency legal services bureau for the provision of legal services to state agencies, multiplied by the number of attorney hours devoted to the prosecution of the action, plus the actual cost of any expenses reasonably incurred in the prosecution of the action. A ~~private citizen~~ *person* who is a plaintiff or coplaintiff is entitled to *an amount or reasonable expenses that the court finds to have been necessarily incurred, plus* reasonable costs and attorney fees, if the action is settled favorably for the governmental entity or the governmental entity prevails in the action. A ~~person who is the subject of a civil action and~~ *defendant in a civil action brought pursuant to this part* who prevails in an action that is not settled and that the court finds was clearly frivolous or brought solely for harassment purposes is entitled to the ~~person's~~ *defendant's* reasonable costs and attorney fees, which must be equitably apportioned against the ~~private citizen~~ *person who brought the action* and *the* governmental entity if a ~~private citizen~~ *person* and a governmental entity were coplaintiffs."

Section 9. Section 17-8-412, MCA, is amended to read:

"17-8-412. Prohibitions on employers — employee remedies. (1) A governmental entity *or private entity* may not adopt or enforce a rule, regulation, or policy preventing an employee from disclosing information to a government or law enforcement agency with regard to or from acting in furtherance of an investigation of a violation of 17-8-403 or an action brought pursuant to 17-8-405 or 17-8-406.

(2) A governmental entity *or private entity* may not discharge, demote, suspend, threaten, harass, or deny promotion to or in any other manner discriminate against an employee in the terms and conditions of employment because of the employee's disclosure of information to a government or law enforcement agency pertaining to a violation of 17-8-403.

(3) (a) A governmental entity *or private entity* that violates the provisions of subsection (2) is liable for:

(i) reinstatement to the same position with the same seniority status, salary, benefits, and other conditions of employment that the employee would have had but for the discrimination;

(ii) back pay plus interest on the back pay;

(iii) compensation for any special damages sustained as a result of the discrimination; and

(iv) reasonable court or administrative proceeding costs and reasonable attorney fees.

(b) An employee may file an action for the relief provided in this subsection (3)."

Section 10. Settlement by government attorney. The government attorney may settle the case with the defendant notwithstanding the objections of the persons who initiated the action if the court determines, after a hearing, that the settlement is fair, adequate, and reasonable under the circumstances. Upon a showing of good cause, the hearing may be held in camera.

Section 11. Repealer. Section 17-8-408, MCA, is repealed.

Section 12. Codification instruction. [Section 10] is intended to be codified as an integral part of Title 17, chapter 8, part 4, and the provisions of Title 17, chapter 8, part 4, apply to [section 10].

Section 13. Effective date. [This act] is effective July 1, 2009.

Approved March 25, 2009

CHAPTER NO. 65

[HB 136]

AN ACT AUTHORIZING THE GOVERNOR TO APPOINT SUBSTITUTE MEMBERS TO THE BOARD OF PERSONNEL APPEALS WHEN A BOARD MEMBER IS UNABLE TO PARTICIPATE IN A PROCEEDING; AMENDING SECTION 2-15-1705, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-1705, MCA, is amended to read:

"2-15-1705. Board of personnel appeals — allocation — composition — vote necessary for decision — quasi-judicial. (1) There is a board of personnel appeals.

(2) The board is allocated to the department of labor and industry for administrative purposes only as prescribed in 2-15-121.

(3) (a) The board consists of five members *and three substitute members* appointed by the governor as follows:

(i) two members who are full-time management employees in organizations with collective bargaining units or who represent management in collective bargaining activities *and a substitute member with the same qualifications as the other two members who is to serve in place of an absent member and to participate only in the decisions of the proceeding that the substitute member is attending*;

(ii) two members who are full-time employees or elected officials of a labor union or an association recognized by the board *and a substitute member with the same qualifications as the other two members who is to serve in place of an absent member and to participate only in the decisions of the proceeding that the substitute member is attending*; and

(iii) one other member having general labor-management experience, who is the presiding officer*, and a substitute member with the same qualifications as the other member who is to serve in place of an absent member and to participate only in the decisions of the proceeding that the substitute member is attending*.

(b) All members of the board shall serve as impartial decisionmakers and are not appointed to serve the interests of the organizations they represent.

(c) A substitute board member is entitled to the same compensation and per diem when serving as the other members of the board.

~~(4) When the presiding officer is unable to participate in a proceeding before the board, the remaining members of the board shall select an individual who qualifies under subsection (3)(a)(iii) to serve in the place of the presiding officer in that proceeding. The individual selected shall participate in the decisions in that proceeding. There may be only one presiding officer replacement appointed and serving at any one time. The individual selected is entitled to the same compensation and per diem that members of the board receive.~~

~~(5) When a board member other than the presiding officer is unable to participate in a proceeding before the board, the remaining members of the board shall select a substitute member who possesses the qualifications described in subsection (3)(a)(i) or (3)(a)(ii), depending on the qualifications of the absent board member. The substitute member shall serve in place of the absent board member and participate in the decisions in that proceeding. A substitute board member is entitled to the same compensation and per diem that members of the board receive.~~

~~(6)~~*(4)* In all proceedings before the board, a favorable vote of at least a majority of a quorum is sufficient to adopt any resolution, motion, or other decision.

~~(7)~~*(5)* The board is designated a quasi-judicial board for purposes of 2-15-124."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 25, 2009

CHAPTER NO. 66

[HB 149]

AN ACT REVISING THE COLLECTION OF RESTITUTION AND SUPERVISORY FEES BY THE DEPARTMENT OF CORRECTIONS FROM AN INDIVIDUAL CONVICTED OF A CRIMINAL OFFENSE; AMENDING SECTIONS 46-18-241, 46-18-246, AND 46-23-1031, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-18-241, MCA, is amended to read:

"46-18-241. Condition of restitution. (1) As provided in 46-18-201, a sentencing court shall, as part of the sentence, require an offender to make full restitution to any victim who has sustained *a* pecuniary loss, including a person suffering an economic loss. The duty to pay full restitution under the sentence remains with the offender or the offender's estate until full restitution is paid ~~and~~*, whether or not the offender is under state supervision. If the offender is under state supervision, payment of restitution* is a condition of any probation or parole.

(2) (a) The ~~court shall require the~~ offender ~~to~~ *shall* pay the cost of supervising the payment of restitution, as provided in 46-18-245, ~~if the offender is able to pay,~~ by paying an amount equal to 10% of the amount of restitution ordered, but not less than $5.

(b) A felony offender shall pay the restitution and cost of supervising the payment of restitution to the department of corrections until the offender has fully paid the restitution and the cost of supervising the payment of restitution. The department shall pay the restitution to the person or entity to whom the court ordered restitution to be paid. The department may contract with a government agency or private entity for the collection of the payments for restitution and the cost of collecting the payments for restitution during the period following state supervision or state custody of the offender. The department shall adopt rules to implement this subsection (2)(b).

(c) In a misdemeanor case, payment of restitution and of the cost of supervising the payment of restitution must be made to the court until the offender has fully paid the restitution and the cost of supervising the payment of restitution. The court shall disburse the money to the entity employing the person ordered to supervise restitution under 46-18-245, which shall disburse the restitution to the person or entity to whom the court ordered restitution to be paid.

(3) If at any time the court finds that, because of circumstances beyond the offender's control, the offender is not able to pay any restitution, the court may order the offender to perform community service during the time that the offender is unable to pay. The offender must be given a credit against restitution due at the rate of the hours of community service times the state minimum wage in effect at the time that the community service is performed."

Section 2. Section 46-18-246, MCA, is amended to read:

"46-18-246. Waiver or modification of payment. An offender may at any time petition the sentencing court to adjust or otherwise waive payment of any part of any ordered restitution *or amount to be paid pursuant to 46-18-241(2)(a).* The court shall schedule a hearing and give a victim to whom restitution was ordered notice of the hearing date, place, and time and inform the victim that the victim will have an opportunity to be heard. If the court finds that the circumstances upon which it based the imposition of restitution, amount of the victim's pecuniary loss, or method or time of payment no longer exist or that it otherwise would be unjust to require payment as imposed, the court may adjust or waive unpaid restitution *or the amount to be paid pursuant to 46-18-241(2)(a)* or modify the time or method of making restitution. The court may extend the restitution schedule."

Section 3. Section 46-23-1031, MCA, is amended to read:

"46-23-1031. Supervisory fees — account established. (1) (a) Except as provided in subsection (1)(c), a probationer, parolee, or person committed to the department who is supervised by the department:

(i) ~~under intensive supervision or conditional release~~ shall pay to the department a supervisory fee of no less than $120 a year and no more than $360 a year, prorated at no less than $10 a month for the number of months under supervision; or

(ii) under continuous satellite-based monitoring shall pay to the department a supervisory fee of no more than $4,000 a year as established by rules adopted by the department under 46-23-1010.

(b) A person allowed to transfer supervision to another state shall pay a fee of $50 to cover the cost of processing the transfer. The interstate transfer fees required by this subsection must be collected by the department.

(c) The court, department, or board may reduce or waive a fee required by subsection (1)(a) or (1)(b) or suspend the monthly payment of the supervisory fee if it determines that the payment would cause the person a significant financial hardship.

(2) (a) There is an account in the state special revenue fund for the supervisory fees collected under the provisions of this section.

(b) The department shall deposit the total supervisory fees collected pursuant to subsection (1) into the state special revenue account established in subsection (2)(a)."

Section 4. Effective date. [This act] is effective on passage and approval.

Approved March 25, 2009

CHAPTER NO. 67

[HB 151]

AN ACT CLARIFYING INSURANCE COVERAGE FOR RECONSTRUCTIVE BREAST SURGERY AFTER A MASTECTOMY; AMENDING SECTION 33-22-135, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-22-135, MCA, is amended to read:

"33-22-135. Coverage for reconstructive breast surgery after mastectomy — *benefits and conditions.* (1) Each group and individual disability policy, certificate of insurance, or membership contract that is delivered, issued for delivery, renewed, extended, or modified in this state must provide coverage ~~for reconstructive breast surgery resulting from a mastectomy that resulted from breast cancer~~ *for:*

(a) all stages of reconstruction of the breast on which a mastectomy has been performed;

(b) surgery and reconstruction of the other breast to produce a symmetrical appearance; and

(c) prostheses and physical complications of a mastectomy, including lymphedemas.

(2) The treatment covered under subsection (1) must be determined in consultation with the attending physician and the patient.

(3) The coverage required under this section may be subject to annual deductibles and coinsurance provisions consistent with those established for other benefits under an insurance policy, membership contract, or a certificate of insurance.

~~(2) Each group and individual disability policy, certificate of insurance, or membership contract that is delivered, issued for delivery, renewed, extended, or modified in this state must provide coverage for all stages of one reconstructive breast surgery on the nondiseased breast to establish symmetry with the diseased breast after definitive reconstructive breast surgery on the diseased breast has been performed.~~

~~(3)~~*(4)* For the purposes of this section:

(a) "mastectomy" means the surgical removal of all or part of a breast ~~as a result of breast cancer~~;

(b) "reconstructive breast surgery" means surgery performed as a result of a mastectomy to reestablish symmetry between the breasts. The term includes *but is not limited to* augmentation mammoplasty, reduction mammoplasty, and mastopexy.

~~(4)~~*(5)* Benefits for reconstructive breast surgery ~~include but are not limited to the costs of prostheses and,~~ under any contract providing outpatient x-ray or radiation therapy~~,~~ *include* benefits for outpatient chemotherapy following surgical procedures in connection with the treatment of breast cancer that must be included as a part of the outpatient x-ray or radiation therapy benefit.

(6) An insurer shall provide written notice in compliance with the model language of the Women's Health and Cancer Rights Act of 1998 to a covered person of the availability of benefits with respect to the Women's Health and Cancer Rights Act of 1998 upon enrollment and subsequently on an annual basis.

(7) (a) An insurer may not deny to an individual eligibility or continued eligibility to enroll or to renew coverage under the terms of a plan solely for the purpose of avoiding the requirements of this section.

(b) An insurer may not penalize or otherwise reduce or limit the reimbursement of an attending health care provider or provide incentives to an attending health care provider to induce the health care provider to provide care for a covered person in a manner that is inconsistent with this section."

Section 2. Effective date. [This act] is effective July 1, 2009.

Approved March 25, 2009

CHAPTER NO. 68

[HB 172]

AN ACT CREATING A PROVISIONAL HUNTER SAFETY AND EDUCATION CERTIFICATE FOR PERSONS WITH CERTAIN DEVELOPMENTAL DISABILITIES; ESTABLISHING CONDITIONS OF LICENSURE FOR PERSONS WHO USE A PROVISIONAL CERTIFICATE WHEN OBTAINING A HUNTING LICENSE; AMENDING SECTION 87-2-105, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Provisional hunter safety and education certificate for person with developmental disability — conditions of licensure — definition. (1) A person with a diagnosed developmental disability who satisfactorily completes the classroom portion and field course of the firearms safety course but who is unable to pass the written or an alternate-format exam portion of the course because of a developmental disability may be issued a provisional hunter safety and education certificate. The certificate is valid only when used according to this section.

(2) A person with a developmental disability may obtain a hunting license with a provisional hunter safety and education certificate.

(3) Each person who uses a provisional hunter safety and education certificate must be in the company of and assisted by the person's parent or guardian or by an adult designated by the person or by the person's parent or guardian when hunting and shall conduct all hunting within the terms and

conditions of the license issued. A person who is accompanying and assisting a person with a disability :

(a) must have successfully completed a hunter safety and education course pursuant to 87-2-105(1);

(b) must have as the sole priority the direct supervision of the person with a disability at all times;

(c) may only be actively engaged in hunting a game animal that may be taken with the license of the person with a disability; and

(d) must be able to immediately intervene and control the firearm of the person with a disability at any time.

(4) (a) This section does not entitle a person to possess a firearm if the person is otherwise prohibited from possessing a firearm under state or federal law or a court order.

(b) A person may not knowingly authorize or permit a person with a developmental disability who is incapable of safely possessing a firearm to possess a firearm for hunting in this state.

(5) As used in this section, "developmental disability" means a developmental disability as defined in 53-20-102.

Section 2. Section 87-2-105, MCA, is amended to read:

"87-2-105. Safety instruction required. (1) Except for a youth who qualifies for a license pursuant to 87-2-805(4), a hunting license may not be issued to a person who is born after January 1, 1985, unless the person authorized to issue the license determines proof of completion of:

(a) a Montana hunter safety and education course established in subsection (4) or (6); ~~or~~

(b) a hunter safety course in any other state or province*; or*

(c) a Montana hunter safety and education course that qualifies the person for a provisional certificate as provided in [section 1].

(2) A hunting license may not be issued to a member of the regular armed forces of the United States or to a member of the armed forces of a foreign government attached to the armed forces of the United States who is assigned to active duty in Montana and who is otherwise considered a resident under 87-2-102(1) or to a member's dependents, as defined in 15-30-113, who reside in the member's Montana household, unless the person authorized to issue the license determines proof of completion of a hunter safety course approved by the department or a hunter safety course in any state or province.

(3) A bow and arrow license may not be issued to a resident or nonresident unless the person authorized to issue the license receives an archery license issued for a prior hunting season or determines proof of completion of a bowhunter education course from the national bowhunter education foundation or any other bowhunter education program approved by the department. Neither the department nor the license agent is required to provide records of past archery license purchases. As part of the department's bow and arrow licensing procedures, the department shall notify the public regarding bowhunter education requirements.

(4) The department shall provide for a hunter safety and education course that includes instruction in the safe handling of firearms and for that purpose may cooperate with any reputable organization having as one of its objectives the promotion of hunter safety and education. The department may designate

as an instructor any person it finds to be competent to give instructions in hunter safety and education, including the handling of firearms. A person appointed shall give the course of instruction and shall issue a certificate of completion from Montana's hunter safety and education course to a person successfully completing the course.

(5) The department shall provide for a course of instruction from the national bowhunter education foundation or any other bowhunter education program approved by the department and for that purpose may cooperate with any reputable organization having as one of its objectives the promotion of safety in the handling of bow hunting tackle. The department may designate as an instructor any person it finds to be competent to give bowhunter education instruction. A person appointed shall give the course of instruction and shall issue a certificate of completion to any person successfully completing the course.

(6) The department may develop an adult hunter safety and education course.

(7) The department may adopt rules regarding how a person authorized to issue a license determines proof of completion of a required course."

Section 3. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 87, chapter 2, part 1, and the provisions of Title 87, chapter 2, part 1, apply to [section 1].

Section 4. Effective date. [This act] is effective March 1, 2010.

Approved March 25, 2009

CHAPTER NO. 69

[HB 245]

AN ACT AUTHORIZING A BOARD OF COUNTY COMMISSIONERS TO ESTABLISH A COMPENSATED ABSENCE LIABILITY FUND TO PAY ACCUMULATED SICK AND VACATION LEAVE WHEN AN EMPLOYEE TERMINATES EMPLOYMENT; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Compensated absence liability fund. (1) A board of county commissioners may establish a compensated absence liability fund for the purpose of paying for any accumulated amount of:

(a) sick leave that a county employee is entitled to upon termination of employment with the county in accordance with the provisions of 2-18-618; and

(b) vacation leave that an employee is entitled to upon termination of employment with the county.

(2) The compensated absence liability fund may be used only for the purpose provided in this section.

(3) The compensated absence liability fund may receive money from any source, including funds that have been allocated in any year but have not been expended or encumbered by the end of the fiscal year.

(4) The maximum amount in the fund may not exceed the amount necessary to pay for accumulated sick leave and accumulated vacation leave of county employees on June 30 of the prior fiscal year.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 7, chapter 5, part 21, and the provisions of Title 7, chapter 5, part 21, apply to [section 1].

Section 3. Effective date. [This act] is effective on passage and approval.

Approved March 25, 2009

CHAPTER NO. 70

[HB 247]

AN ACT CLARIFYING THAT TO QUALIFY AS MONTANA-CERTIFIED NATURAL BEEF CATTLE, THE BEEF CATTLE MUST BE RAISED WITHOUT ANY ANTIBIOTICS; AMENDING SECTION 80-11-801, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 80-11-801, MCA, is amended to read:

"80-11-801. Montana-certified natural beef cattle marketing program. (1) The department and the department of livestock shall administer a program to qualify and market beef cattle from Montana that have been certified as natural.

(2) To qualify as Montana-certified natural beef cattle, the beef cattle must have been born and raised in Montana and finished following naturally raised protocols. The beef cattle must be:

(a) raised in an environmentally prudent manner that is consistent with Montana's best grazing standards;

(b) raised pursuant to beef quality assurance standards or similar guidelines;

(c) raised without ~~subtherapeutic~~ antibiotics, synthetic hormones, synthetic growth promotants, and ionophores; and

(d) fed only natural feeds that contain no drugs, chemicals, or animal byproducts.

(3) To qualify as Montana-certified natural grass-fed beef cattle, the beef cattle must meet the requirements of subsection (2) and must also have been finished on grass.

(4) A producer who desires natural beef cattle certification shall maintain records of the birth of the beef cattle by month and keep health records for the beef cattle, including vaccine lot numbers, the vaccine manufacturer, and dates of vaccination.

(5) To ensure compliance, the department and the department of livestock shall jointly adopt rules requiring at least one inspection of the ranch of origin of the beef cattle as well as development of the necessary protocols for recordkeeping and verification for the certification of natural and natural grass-fed beef cattle.

(6) The department shall include the promotion of Montana-certified natural beef cattle in its agricultural product marketing programs."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 25, 2009

CHAPTER NO. 71

[HB 273]

AN ACT GENERALLY REVISING SEARCH AND RESCUE FUNDING; INCREASING THE MAXIMUM AMOUNT THAT SEARCH AND RESCUE UNITS OF A COUNTY SHERIFF'S OFFICE ARE ABLE TO BE REIMBURSED; AND AMENDING SECTION 10-3-801, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 10-3-801, MCA, is amended to read:

"10-3-801. Account created for funding search and rescue operations — rules. (1) There is an account in the state special revenue fund established in 17-2-102. The account must be administered by the disaster and emergency services division of the department exclusively for the purposes of search and rescue as provided in this section. The department may retain up to 5% of the money in the account to pay its costs of administering this section.

(2) There must be deposited in the account:

(a) fund transfers pursuant to 15-1-122(3)(f);

(b) fund transfers pursuant to 87-1-601(9). These funds may be used only as provided in 87-1-601(9).

(c) all money received by the department in the form of gifts, grants, reimbursements, or appropriations from any source intended to be used for search and rescue operations.

(3) (a) Not less than 50% of the money in the account must be used by the department to defray costs of:

(i) local search and rescue units for search and rescue missions conducted through a county sheriff's office at a maximum of ~~$3,000~~ *$6,000* for each rescue mission, regardless of the number of counties or county search and rescue organizations involved. To fulfill the purposes of this subsection (3)(a)(i), the department shall transmit reimbursement money to the county treasurer, who shall deposit the funds in a separate search and rescue fund accessible by the local search and rescue unit that requested the reimbursement. The county treasurer shall notify the reimbursed local search and rescue unit by mail when the deposit occurs.

(ii) a county sheriff's office at a maximum of ~~$3,000~~ *$6,000* for each rescue mission, regardless of the number of counties or county search and rescue organizations involved.

(b) The remaining money in the account may be used by the department:

(i) to match local funds for the purchase of equipment for use by local search and rescue units at a maximum of ~~$2,000~~ *$6,000* for each unit in a calendar year. The cost-sharing match must be 35% local funds to 65% from the account.

(ii) for reimbursement of expenses related to the training of search and rescue volunteers.

(4) The department may adopt rules to implement the proper administration of the account. The rules may include:

(a) a method of reimbursing local search and rescue units or a county sheriff's office, on a case-by-case basis, for authorized search and rescue operations conducted pursuant to subsection (3)(a), including verification of search missions, claims procedures, fiscal accountability, and the number and

circumstances of search missions involving persons engaged in hunting, fishing, and trapping in a fiscal year;

(b) methods for processing requests for equipment matching funds and training funds made pursuant to subsection (3)(b), including any verification and accounting necessary to ensure that the provisions of subsection (3)(b) are met, and determining the percentage of all search missions involving persons engaged in hunting, fishing, or trapping in a fiscal year;

(c) a system involving input from representatives of county sheriff organizations and state and local search and rescue organizations for assistance in verifying and processing claims for reimbursement, equipment, and training; and

(d) a method for compiling and keeping current a contact list of all search and rescue units in Montana and in neighboring states and provinces in order to ensure collaboration, communication, and cooperation between the various county search and rescue units and between the department and the county units and dedication of a page on the department's website for posting the contact list and other relevant search and rescue information."

Approved March 25, 2009

CHAPTER NO. 72

[HB 278]

AN ACT PROVIDING THAT LIMITED VEGETATIVE COVER OF WATER MANAGEMENT FACILITIES AND OTHER SUPPORT FACILITIES IN A STRIP MINE OPERATION IS ELIGIBLE FOR EARLY BOND RELEASE IF THE VEGETATIVE COVER MEETS RECLAMATION STANDARDS; AND AMENDING SECTION 82-4-235, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 82-4-235, MCA, is amended to read:

"82-4-235. Determination of successful revegetation — final bond release. (1) Success of revegetation must be judged on the effectiveness of the vegetation for the approved postmining land use, the extent of cover compared to the cover occurring in the natural vegetation, and the requirements of 82-4-233. Standards for success are:

(a) for areas reclaimed for use as cropland, crop production must be at least equal to that achieved prior to mining based on comparison with historical data, comparable reference areas, or United States department of agriculture publications applicable to the area of the operation, as referenced in rules adopted by the board;

(b) for areas reclaimed for use as pastureland or grazing land, the ground cover and production of living plants on the revegetated area must be at least equal to that of a reference area or other standard approved by the department as appropriate for the postmining land use;

(c) for areas reclaimed for use as fish and wildlife habitat, forestry, or recreation, success of revegetation must be determined on the basis of approved tree density standards or shrub density standards, or both, and vegetative ground cover required to achieve the postmining land use;

(d) reestablished vegetation is considered effective if the postmining land use is achieved and erosion is controlled;

(e) reestablished vegetation is considered permanent if it is diverse and effective at the end of the 10-year responsibility period specified under subsection (2); and

(f) plant species composing the reestablished vegetation are considered to have the same seasonal characteristics of growth as the original vegetation, to be capable of regeneration and plant succession, and to be compatible with the plant and animal species of the area if those plant species are native to the area or are introduced species approved by the department as desirable and necessary to achieve the postmining land use.

(2) Inspection and evaluation of reclaimed vegetative cover must be made as soon as possible following an application for final bond release to determine if a satisfactory stand has been established. If the department determines that a satisfactory vegetative cover has been established, it shall release the remaining bond held on the area reclaimed after public notice and an opportunity for hearing as provided in 82-4-232(6). ~~The~~ *Except as provided in subsection (3), the* remaining bond may not be released prior to a period of 10 years after the last year of augmented seeding, fertilizing, irrigation, or other work required under this part for those operations or portions of operations that were seeded after May 2, 1978, or prior to a period of 5 years after initial planting for all exploration activities and all other operations.

(3) (a) *Vegetative cover of water management facilities and other support facilities composing no more than 10% of the area for which bond release is sought is not subject to the 10-year responsibility period. Water management facilities and other support facilities include but are not limited to sedimentation ponds, diversions, other water management structures, soils stockpiles, access roads, segments of haul roads, and electrical substations.*

(b) Vegetative cover of water management facilities and other support facilities composing no more than 10% of the area for which bond release is sought is eligible for bond release if the vegetative cover otherwise meets the reclamation standards in subsection (1).

(4) (a) Notwithstanding the ~~provision in subsection~~ *provisions of subsections* (2) *and (3)*, on land from which coal was removed prior to May 3, 1978, and on land from which coal was not removed and that was not used, disturbed, or redisturbed in connection with this part after May 2, 1978, pursuant to a permit issued by the department under this part, the department may approve for release a bond on an area of reclaimed vegetation that meets the following criteria:

(i) it was seeded using a seed mixture that was approved by the department under the criteria established pursuant to 82-4-233 and that included introduced species; and

(ii) at least one of the following conditions exists:

(A) the standards of 82-4-233(1) are otherwise achieved;

(B) the operator has demonstrated substantial usefulness of the reclaimed vegetation for grazing of livestock;

(C) the operator demonstrates that the reclaimed vegetation has substantial value as a habitat component for wildlife present in the area; or

(D) the topography and soils are suitable for conversion to cropland or hayland consistent with the standards of 82-4-232 and the department approves and the operator completes that conversion.

(b) On lands that meet the criteria described in subsection ~~(3)(a)~~ *(4)(a)*, interseeding or supplemental planting may be performed without reinitiating the liability period provided in subsection (2)."

Section 2. Contingent voidness. (1) If any portion of [section 1] is disapproved by the United States secretary of the interior pursuant to 30 CFR 732.17, then [section 1] is void.

(2) Within 15 days of the effective date of the disapproval under subsection (1), the department of environmental quality shall notify the code commissioner, certifying that the disapproval under subsection (1) has occurred.

Approved March 25, 2009

CHAPTER NO. 73

[HB 285]

AN ACT AUTHORIZING GRAY WATER REUSE FOR SYSTEMS OTHER THAN PRIVATE, SINGLE-FAMILY RESIDENCES; CLARIFYING THE BOARD OF ENVIRONMENTAL REVIEW'S RULEMAKING AUTHORITY; REVISING THE DEFINITION OF "GRAY WATER REUSE SYSTEM"; AND AMENDING SECTIONS 75-5-305, 75-5-317, AND 75-5-325, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-5-305, MCA, is amended to read:

"75-5-305. Adoption of requirements for treatment of wastes — variance procedure — appeals. (1) The board may establish minimum requirements for the treatment of wastes. For cases in which the federal government has adopted technology-based treatment requirements for a particular industry or activity in 40 CFR, chapter I, subchapter N, the board shall adopt those requirements by reference. To the extent that the federal government has not adopted minimum treatment requirements for a particular industry or activity, the board may do so, through rulemaking, for parameters likely to affect beneficial uses, ensuring that the requirements are cost-effective and economically, environmentally, and technologically feasible. Except for the technology-based treatment requirements set forth in 40 CFR, chapter I, subchapter N, minimum treatment may not be required to address the discharge of a parameter when the discharge is considered nonsignificant under rules adopted pursuant to 75-5-301.

(2) (a) The board shall establish minimum requirements for the control and disposal of sewage from private and public buildings, including standards and procedures for variances from the requirements.

(b) For gray water reuse systems ~~in private, single-family residences~~, the board shall establish rules that:

(i) allow the diversion of gray water from wastewater treatment systems and limit the amount of gray water flow allowed by permit;

(ii) address the uses of gray water, including when and how gray water may be applied to land; and

(iii) include any other provisions that the board considers necessary to ensure that gray water reuse systems comply with laws and regulations and protect public health and the environment.

(3) An applicant for a variance from minimum requirements adopted by a local board of health pursuant to 50-2-116 may appeal the local board of health's final decision to the department by submitting a written request for a hearing within 30 days after the decision. The written request must describe the activity for which the variance is requested, include copies of all documents submitted to the local board of health in support of the variance, and specify the reasons for the appeal of the local board of health's final decision.

(4) The department shall conduct a hearing on the request pursuant to Title 2, chapter 4, part 6. Within 30 days after the hearing, the department shall grant, conditionally grant, or deny the variance. The department shall base its decision on the board's standards for a variance.

(5) A decision of the department pursuant to subsection (4) is appealable to district court under the provisions of Title 2, chapter 4, part 7."

Section 2. Section 75-5-317, MCA, is amended to read:

"75-5-317. Nonsignificant activities. (1) The categories or classes of activities identified in subsection (2) cause changes in water quality that are nonsignificant because of their low potential for harm to human health or the environment and their conformance with the guidance found in 75-5-301(5)(c).

(2) The following categories or classes of activities are not subject to the provisions of 75-5-303:

(a) existing activities that are nonpoint sources of pollution as of April 29, 1993;

(b) activities that are nonpoint sources of pollution initiated after April 29, 1993, when reasonable land, soil, and water conservation practices are applied and existing and anticipated beneficial uses will be fully protected;

(c) use of agricultural chemicals in accordance with a specific agricultural chemical ground water management plan promulgated under 80-15-212, if applicable, or in accordance with an environmental protection agency-approved label and when existing and anticipated uses will be fully protected;

(d) changes in existing water quality resulting from an emergency or remedial activity that is designed to protect public health or the environment and is approved, authorized, or required by the department;

(e) changes in existing ground water quality resulting from treatment of a public water supply system, as defined in 75-6-102, or a public sewage system, as defined in 75-6-102, by chlorination or other similar means that is designed to protect the public health or the environment and that is approved, authorized, or required by the department;

(f) the use of drilling fluids, sealants, additives, disinfectants, and rehabilitation chemicals in water well or monitoring well drilling, development, or abandonment, if used according to department-approved water quality protection practices and if no discharge to surface water will occur;

(g) short-term changes in existing water quality resulting from activities authorized by the department pursuant to 75-5-308;

(h) land application of animal waste, domestic septage, or waste from public sewage treatment systems containing nutrients when the wastes are applied to the land in a beneficial manner, application rates are based on agronomic uptake of applied nutrients, and other parameters will not cause degradation;

(i) use of gray water, as defined in 75-5-325, from nonpublic gray water reuse systems for irrigation during the growing season in accordance with gray water reuse rules adopted pursuant to 75-5-305;

~~(i)~~*(j)* incidental leakage of water from a public water supply system, as defined in 75-6-102, or from a public sewage system, as defined in 75-6-102, utilizing best practicable control technology designed and constructed in accordance with Title 75, chapter 6;

~~(j)~~*(k)* discharges of water to ground water from water well or monitoring well tests, hydrostatic pressure and leakage tests, or wastewater from the disinfection or flushing of water mains and storage reservoirs, conducted in accordance with department-approved water quality protection practices;

~~(k)~~*(l)* oil and gas drilling, production, abandonment, plugging, and restoration activities that do not result in discharges to surface water and that are performed in accordance with Title 82, chapter 10, or Title 82, chapter 11;

~~(l)~~*(m)* short-term changes in existing water quality resulting from ordinary and everyday activities of humans or domesticated animals, including but not limited to:

(i) such recreational activities as boating, hiking, hunting, fishing, wading, swimming, and camping;

(ii) fording of streams or other bodies of water by vehicular or other means; and

(iii) drinking from or fording of streams or other bodies of water by livestock and other domesticated animals;

~~(m)~~*(n)* coal and uranium prospecting that does not result in a discharge to surface water, that does not involve a test pit located in surface water or that may affect surface water, and that is performed in accordance with Title 82, chapter 4;

~~(n)~~*(o)* solid waste management systems, motor vehicle wrecking facilities, and county motor vehicle graveyards licensed and operating in accordance with Title 75, chapter 10, part 2, or Title 75, chapter 10, part 5;

~~(o)~~*(p)* hazardous waste management facilities permitted and operated in accordance with Title 75, chapter 10, part 4;

~~(p)~~*(q)* metallic and nonmetallic mineral exploration that does not result in a discharge to surface water and that is permitted under and performed in accordance with Title 82, chapter 4, parts 3 and 4;

~~(q)~~*(r)* stream-related construction projects or stream enhancement projects that result in temporary changes to water quality but do not result in long-term detrimental effects and that have been authorized pursuant to 75-5-318;

~~(r)~~*(s)* diversions or withdrawals of water established and recognized under Title 85, chapter 2;

~~(s)~~*(t)* the maintenance, repair, or replacement of dams, diversions, weirs, or other constructed works that are related to existing water rights and that are within wilderness areas so long as existing and anticipated beneficial uses are protected and as long as the changes in existing water quality relative to the project are short term; and

~~(t)~~*(u)* any other activity that is nonsignificant because of its low potential for harm to human health or to the environment and its conformance with the guidance found in 75-5-301(5)(c)."

Section 3. Section 75-5-325, MCA, is amended to read:

"75-5-325. Definitions. As used in this part, unless the context indicates otherwise, the following definitions apply:

(1) "Gray water" means wastewater that is collected separately from a sewage flow and that does not contain industrial chemicals, hazardous wastes, or wastewater from toilets.

(2) "Gray water reuse system" means a plumbing system ~~for a private, single-family residence~~ that collects gray water."

Approved March 25, 2009

CHAPTER NO. 74

[HB 287]

AN ACT AUTHORIZING A UTILITY TO REMOVE OR ALTER VEGETATION OR OTHER MATERIAL WITHIN A UTILITY RIGHT-OF-WAY; PROVIDING THAT THE UTILITY PROVIDE NOTICE UNDER CERTAIN CIRCUMSTANCES; PROHIBITING A PERSON FROM DENYING ACCESS OR INTERFERING WITH A UTILITY'S REMOVAL OR ALTERATION ACTIVITIES; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Authorization to remove vegetation or other materials from utility right-of-way — notice — prohibition. (1) A utility, as defined in 69-5-102, may remove or alter any vegetation or other material within a utility right-of-way or easement if the utility:

(a) determines that the removal or alteration is reasonably necessary for the safe repair, use, operation, or maintenance of the utility's electricity or gas transmission or distribution facilities; and

(b) complies with the notice provisions of subsection (2).

(2) (a) Except as provided in subsection (2)(b), a utility shall provide an affected property owner with written notice at least 15 days prior to the removal or alteration of vegetation or other materials when the action is part of a preventative maintenance program for the utility's easements and rights-of-way. The written notice must include contact information for the utility where the affected property owner can receive information regarding the utility's right to remove or alter any vegetation or material within a utility right-of-way or easement.

(b) A utility is not required to give notice to an affected property owner when the removal or alteration of the vegetation or other materials is undertaken to alleviate an imminent threat to the safe and reliable operation of the utility's electricity or gas transmission or distribution facilities.

(3) An affected property owner may not deny access to or interfere with the activities of a utility within a utility's right-of-way or easement to remove vegetation as provided in this section.

(4) Nothing in this section may be construed to expand a utility's right-of-way or easement.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 69, and the provisions of Title 69 apply to [section 1].

Section 3. Effective date. [This act] is effective July 1, 2009.

Approved March 25, 2009

CHAPTER NO. 75

[HB 293]

AN ACT REVISING TRAINING STANDARDS FOR PEACE OFFICERS; PROVIDING FOR RECOGNITION OF COURSES TAUGHT BY THE FEDERAL GOVERNMENT, OTHER STATES, AND THE UNITED STATES MILITARY; PROVIDING FOR THE EMPLOYMENT OF MILITARY LAW ENFORCEMENT WHO SERVED IN THAT CAPACITY IN THE PRIOR 5 YEARS; AND AMENDING SECTION 7-32-303, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-32-303, MCA, is amended to read:

"7-32-303. Peace officer employment, education, and certification standards — suspension or revocation — penalty. (1) For purposes of this section, unless the context clearly indicates otherwise, "peace officer" means a deputy sheriff, undersheriff, police officer, highway patrol officer, fish and game warden, park ranger, campus security officer, or airport police officer.

(2) A sheriff of a county, mayor of a city, board, or commission or other person authorized by law to appoint peace officers in this state may not appoint any person as a peace officer who does not meet the following qualifications plus any additional qualifying standards for employment promulgated by the Montana public safety officer standards and training council established in 2-15-2029:

(a) be a citizen of the United States;

(b) be at least 18 years of age;

(c) be fingerprinted and a search made of the local, state, and national fingerprint files to disclose any criminal record;

(d) not have been convicted of a crime for which the person could have been imprisoned in a federal or state penitentiary;

(e) be of good moral character, as determined by a thorough background investigation;

(f) be a high school graduate or have passed the general education development test and have been issued an equivalency certificate by the superintendent of public instruction or by an appropriate issuing agency of another state or of the federal government;

(g) be examined by a licensed physician, who is not the applicant's personal physician, appointed by the employing authority to determine if the applicant is free from any mental or physical condition that might adversely affect performance by the applicant of the duties of a peace officer;

(h) successfully complete an oral examination conducted by the appointing authority or its designated representative to demonstrate the possession of communication skills, temperament, motivation, and other characteristics necessary to the accomplishment of the duties and functions of a peace officer; and

(i) possess or be eligible for a valid Montana driver's license.

(3) At the time of appointment, a peace officer shall take a formal oath of office.

(4) Within 10 days of the appointment, termination, resignation, or death of any peace officer, written notice ~~thereof~~ *of the event* must be given to the Montana public safety officer standards and training council by the employing authority.

(5) (a) Except as provided in subsections (5)(b) and (5)(c), it is the duty of an appointing authority to cause each peace officer appointed under its authority to attend and successfully complete, within 1 year of the initial appointment, an appropriate peace officer basic course certified by the Montana public safety officer standards and training council. Any peace officer appointed after September 30, 1983, who fails to meet the minimum requirements as set forth in subsection (2) or who fails to complete the basic course as required by this subsection (5)(a) forfeits the position, authority, and arrest powers accorded a peace officer in this state.

(b) A peace officer who has been issued a basic certificate by the Montana public safety officer standards and training council and whose last date of employment as a peace officer was less than 36 months prior to the date of the person's present appointment as a peace officer is not required to fulfill the basic educational requirements of subsection (5)(a). If the peace officer's last date of employment as a peace officer was 36 or more but less than 60 months prior to the date of present employment as a peace officer, the peace officer may satisfy the basic educational requirements as set forth in subsection (5)(c).

(c) A peace officer ~~under the provisions of~~ *referred to in* subsection (5)(b) or a peace officer who has completed a basic peace officer's course ~~in another state~~ *that is taught by a federal, state, or United States military law enforcement agency and that is reviewed and approved by the Montana public safety officer standards and training council as equivalent with current training in Montana* and whose last date of employment as a peace officer *or member of the military law enforcement* was less than 60 months prior to the date of present appointment as a peace officer may, within 1 year of the peace officer's present employment or initial appointment as a peace officer within this state, satisfy the basic educational requirements by successfully ~~passing~~ *completing* a basic equivalency ~~test~~ *course* administered by the Montana law enforcement academy ~~and successfully completing a legal training course conducted by the academy~~. *The prior employment of a member of the military law enforcement must be reviewed and approved by the Montana public safety officer standards and training council.* If the peace officer fails the basic equivalency ~~test~~ *course*, the peace officer shall complete the *appropriate* basic *equivalency* course within 120 days of the date of the ~~test~~ *failure of the equivalency course*.

(6) The Montana public safety officer standards and training council may extend the 1-year time requirements of subsections (5)(a) and (5)(c) upon the written application of the peace officer and the appointing authority of the officer. The application must explain the circumstances that make the extension necessary. Factors that the council may consider in granting or denying the extension include but are not limited to illness of the peace officer or a member of the peace officer's immediate family, absence of reasonable access to the basic *equivalency* course ~~or the legal training course~~, and an unreasonable shortage of personnel within the department. The council may not grant an extension to exceed 180 days.

(7) A peace officer who has successfully met the employment standards and qualifications and the educational requirements of this section and who has completed a 1-year probationary term of employment must, upon application to the Montana public safety officer standards and training council, be issued a

basic certificate by the council, certifying that the peace officer has met all the basic qualifying peace officer standards of this state.

(8) It is unlawful for a person whose certification as a peace officer, detention officer, or detention center administrator has been revoked or suspended by the Montana public safety officer standards and training council to act as a peace officer, detention officer, or detention center administrator. A person convicted of violating this subsection is guilty of a misdemeanor, punishable by a term of imprisonment not to exceed 6 months in the county jail or by a fine not to exceed $500, or both."

Approved March 25, 2009

CHAPTER NO. 76

[HB 298]

AN ACT CLARIFYING THAT JUDGES HAVE THE AUTHORITY TO DEFER TRAFFIC VIOLATIONS EXCEPT FOR HOLDERS OF COMMERCIAL DRIVER'S LICENSES; AMENDING SECTION 61-11-101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-11-101, MCA, is amended to read:

"61-11-101. Report of convictions and suspension or revocation of driver's licenses — surrender of licenses. (1) If a person is convicted of an offense for which chapter 5 or chapter 8, part 8, makes mandatory the suspension or revocation of the driver's license or commercial driver's license of the person by the department, the court in which the conviction occurs shall require the surrender to it of all driver's licenses then held by the convicted person. The court shall, within 5 days after the conviction becomes final, forward the license and a record of the conviction to the department. If the person does not possess a driver's license, the court shall indicate that fact in its report to the department.

(2) A court having jurisdiction over offenses committed under a statute of this state or a municipal ordinance regulating the operation of motor vehicles on highways, except for standing or parking statutes or ordinances, shall forward a record of the conviction, as defined in 61-5-213, to the department within 5 days after the conviction becomes final. The court may recommend that the department issue a restricted probationary license on the condition that the individual comply with the requirement that the person attend and complete a chemical dependency education course, treatment, or both, as ordered by the court under 61-8-732.

(3) A court or other agency of this state or of a subdivision of the state that has jurisdiction to take any action suspending, revoking, or otherwise limiting a license to drive shall report an action and the adjudication upon which it is based to the department within 5 days on forms furnished by the department.

(4) A conviction becomes final for the purposes of this part upon the later of:

(a) expiration of the time for appeal of the court's judgment or sentence to the next highest court;

(b) forfeiture of bail that is not vacated; or

(c) imposition of a fine or court cost as a condition of a deferred imposition of a sentence or a suspended execution of a sentence.

(5) *(a)* ~~A~~ *On a conviction referred to in subsection (1) of a person who holds a commercial driver's license or who is required to hold a commercial driver's license, a* court may not take any action, including deferring imposition of judgment, ~~on a conviction~~ that would prevent a conviction for any violation of a state or local traffic control law or ordinance, except a parking law or ordinance, in any type of motor vehicle, from appearing on the person's driving record. *The provisions of this subsection (5)(a) apply only to the conviction of a person who holds a commercial driver's license or who is required to hold a commercial driver's license and do not apply to the conviction of a person who holds any other type of driver's license.*

(b) For purposes of this subsection (5), "who is required to hold a commercial driver's license" refers to a person who did not have a commercial driver's license but who was operating a commercial motor vehicle at the time of a violation of a state or local traffic control law or ordinance resulting in a conviction referred to in subsection (1)."

Section 2. Effective date. [This act] is effective on passage and approval.

Section 3. Applicability. [This act] applies to convictions occurring on or after [the effective date of this act].

Approved March 25, 2009

CHAPTER NO. 77

[HB 426]

AN ACT CLARIFYING THE APPOINTMENT OF COMMISSIONERS OF REGIONAL AIRPORT AUTHORITIES AND SUBJECTING THE COMMISSIONERS TO ETHICS LAWS FOR LOCAL GOVERNMENT OFFICIALS; AND AMENDING SECTIONS 2-2-102 AND 67-11-104, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-2-102, MCA, is amended to read:

"2-2-102. Definitions. As used in this part, the following definitions apply:

(1) "Business" includes a corporation, partnership, sole proprietorship, trust or foundation, or any other individual or organization carrying on a business, whether or not operated for profit.

(2) "Compensation" means any money or economic benefit conferred on or received by any person in return for services rendered or to be rendered by the person or another.

(3) (a) "Gift of substantial value" means a gift with a value of $50 or more for an individual.

(b) The term does not include:

(i) a gift that is not used and that, within 30 days after receipt, is returned to the donor or delivered to a charitable organization or the state and that is not claimed as a charitable contribution for federal income tax purposes;

(ii) food and beverages consumed on the occasion when participation in a charitable, civic, or community event bears a relationship to the public officer's or public employee's office or employment or when the officer or employee is in attendance in an official capacity;

(iii) educational material directly related to official governmental duties;

(iv) an award publicly presented in recognition of public service; or

(v) educational activity that:

(A) does not place or appear to place the recipient under obligation;

(B) clearly serves the public good; and

(C) is not lavish or extravagant.

(4) "Local government" means a county, a consolidated government, an incorporated city or town, a school district, or a special district.

(5) "Official act" or "official action" means a vote, decision, recommendation, approval, disapproval, or other action, including inaction, that involves the use of discretionary authority.

(6) "Private interest" means an interest held by an individual that is:

(a) an ownership interest in a business;

(b) a creditor interest in an insolvent business;

(c) an employment or prospective employment for which negotiations have begun;

(d) an ownership interest in real property;

(e) a loan or other debtor interest; or

(f) a directorship or officership in a business.

(7) "Public employee" means:

(a) any temporary or permanent employee of the state;

(b) any temporary or permanent employee of a local government;

(c) a member of a quasi-judicial board or commission or of a board, commission, or committee with rulemaking authority; and

(d) a person under contract to the state.

(8) *(a)* "Public officer" includes any state officer and any elected officer of a local government.

(b) For the purposes of 67-11-104, the term also includes a commissioner of an airport authority.

(9) "Special district" means a unit of local government, authorized by law to perform a single function or a limited number of functions. The term includes but is not limited to conservation districts, water districts, weed management districts, irrigation districts, fire districts, community college districts, hospital districts, sewer districts, and transportation districts. The term also includes any district or other entity formed by interlocal agreement.

(10) (a) "State agency" includes:

(i) the state;

(ii) the legislature and its committees;

(iii) all executive departments, boards, commissions, committees, bureaus, and offices;

(iv) the university system; and

(v) all independent commissions and other establishments of the state government.

(b) The term does not include the judicial branch.

(11) "State officer" includes all elected officers and directors of the executive branch of state government as defined in 2-15-102."

Section 2. Section 67-11-104, MCA, is amended to read:

"67-11-104. Commissioners. (1) The powers of each authority ~~shall be~~ *are* vested in the commissioners ~~thereof~~ *of the authority*. A majority of the commissioners of an authority ~~shall~~ constitute a quorum for the purpose of conducting business of the authority and exercising its powers and for all other purposes. Action may be taken by the authority upon a vote of not less than a majority of the commissioners present.

(2) There ~~shall~~ *must* be elected a ~~chairman~~ *presiding officer* and ~~vice-chairman~~ *vice presiding officer* from among the commissioners. An authority may employ an executive director, secretary, technical experts, and ~~such~~ other officers, agents, and employees, permanent and temporary, ~~as~~ *that* it may require and shall determine their qualifications, duties, and compensation. An authority may delegate to one or more of its agents or employees ~~such~~ powers or duties ~~as~~ *that* it ~~may deem~~ *considers* proper.

(3) A commissioner of an authority ~~shall be~~ *is* entitled to the necessary expense, including travel expenses, as provided for in 2-18-501 through 2-18-503, incurred in the discharge of ~~his~~ *the commissioner's* duties. Each commissioner shall hold office until ~~his~~ *a* successor has been appointed and has qualified *by law to serve*. The certificates of the appointment and reappointment of commissioners ~~shall~~ *must* be filed with the authority."

Approved March 25, 2009

CHAPTER NO. 78

[SB 5]

AN ACT REQUIRING APPROVAL BY THE BOARD OF LAND COMMISSIONERS FOR THE GIFT OR PURCHASE OF LAND FOR THE PURPOSE OF RECLAMATION OF MINES; AMENDING SECTIONS 82-4-239 AND 82-4-371, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 82-4-239, MCA, is amended to read:

"82-4-239. Reclamation. (1) The department may have reclamation work done by its employees, by employees of other governmental agencies, by soil conservation districts, or through contracts with qualified persons. The board may construct, operate, and maintain plants for the control and treatment of water pollution resulting from mine drainage.

(2) Any funds or any public works programs available to the department must be used and expended to reclaim and rehabilitate lands that have been subjected to strip mining or underground mining and that have not been reclaimed and rehabilitated in accordance with the standards of this part. The department shall cooperate with federal, state, and private agencies to engage in cooperative projects under this section.

(3) Agents, employees, or contractors of the department may enter upon any land for the purpose of conducting studies or exploratory work to determine whether the land has been strip- or underground-mined and not reclaimed and rehabilitated in accordance with the requirements of this part and to determine

the feasibility of restoration, reclamation, abatement, control, or prevention of any adverse effects of past coal-mining practices. Upon request of the director of the department, the attorney general shall bring an injunctive action to restrain any interference with the exercise of the right to enter and inspect granted in this subsection. The action must be brought in the county in which the mine is located.

(4) (a) The department shall take the actions described in subsection (4)(b) when it makes a finding of fact that:

(i) land or water resources have been adversely affected by past coal-mining practices;

(ii) the adverse effects are at a stage at which, in the public interest, action to restore, reclaim, abate, control, or prevent should be taken; and

(iii) the owners of the land or water resources where entry must be made to restore, reclaim, abate, control, or prevent the adverse effects of past coal-mining practices are not known or readily available or the owners will not give permission for the department or its agents, employees, or contractors to enter upon the property to restore, reclaim, abate, control, or prevent the adverse effects of past coal-mining practices.

(b) After giving notice by mail to the owner, if known, and any purchaser under contract for deed, if known, or, if neither is known, by posting notice on the premises and advertising in a newspaper of general circulation in the county in which the land lies, the agents, employees, or contractors of the department may enter on the property adversely affected by past coal-mining practices and on any other property necessary for access to the mineral property to do all things necessary or expedient to restore, reclaim, abate, control, or prevent the adverse effects of past coal-mining practices.

(c) Action taken under subsection (4)(b) is not an act of condemnation of property or of trespass, but rather is an exercise of the power granted by Article IX, sections 1 and 2, of the Montana constitution.

(5) (a) Within 6 months after the completion of projects to restore, reclaim, abate, control, or prevent adverse effects of past coal-mining practices on privately owned land, the department shall itemize the money expended and may file a statement of those expenses in the office of the clerk and recorder of the county in which the land lies, together with a notarized appraisal by an independent appraiser of the value of the land before the restoration, reclamation, abatement, control, or prevention of adverse effects of past coal-mining practices if the money expended resulted in a significant increase in property value. The statement constitutes a lien upon the land. The lien may not exceed the amount determined by the appraisal to be the increase in the market value of the land as a result of the restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal-mining practices. A lien under this subsection (5)(a) may not be filed against the property of a person who owned the surface prior to May 2, 1977, and who did not consent to, participate in, or exercise control over the mining operation that necessitated the reclamation performed under this part.

(b) The landowner may petition within 60 days of the filing of the lien to determine the increase in the market value of the land as a result of the restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal-mining practices. The amount reported to be the increase in value of the premises constitutes the amount of the lien and must be recorded

with the statement provided for in this section. Any party aggrieved by the decision may appeal as provided by law.

(c) The lien provided in this section must be recorded at the office of the county clerk and recorder. The statement constitutes a lien upon the land as of the date of the expenditure of the money and has priority as a lien second only to the lien of real estate taxes imposed upon the land.

(6) The department may acquire the necessary property by gift or purchase. *A gift or purchase must be approved by the board of land commissioners.* If the property cannot be acquired by gift or purchase at a reasonable cost, proceedings may be instituted in the manner provided in Title 70, chapter 30, against all nonaccepting landholders if:

(a) the property is necessary for successful reclamation;

(b) the acquired land after restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal-mining practices will serve recreation and historic purposes or conservation and reclamation purposes or provide open space benefits; and

(c) (i) permanent facilities, such as treatment plants or relocated stream channels, will be constructed on the land for the restoration, reclamation, abatement, control, or prevention of the adverse effects of past strip- or underground-coal-mining practices; or

(ii) acquisition of coal refuse disposal sites and all coal refuse on the land will serve the purposes of this part because public ownership is desirable to meet emergency situations and prevent recurrences of the adverse effects of past coal-mining practices."

Section 2. Section 82-4-371, MCA, is amended to read:

"82-4-371. Reclamation of abandoned mine sites. (1) Agents, employees, or contractors of the department may enter upon property for the purpose of conducting studies or exploratory work to determine whether the property has been mined and not reclaimed and rehabilitated in accordance with the requirements of this part and to determine the feasibility of restoration or reclamation of the property or abatement, control, or prevention of the adverse effects of past mining practices. The department may bring an injunctive action to restrain interference with the exercise of the right to enter and inspect granted in this subsection.

(2) (a) The department may enter upon property pursuant to subsection (2)(b) if it makes a finding that:

(i) land or water resources on the property have been adversely affected by past mining practices;

(ii) the adverse effects are at a stage that, in the public interest, action to restore or reclaim the property or to abate, control, or prevent the adverse effects should be taken; and

(iii) the owners of the land or water resources where entry must be made to restore or reclaim the property or to abate, control, or prevent the adverse effects of past mining practices are not known or readily available or the owners will not give permission for the department or its agents, employees, or contractors to enter upon the property to restore or reclaim the property or to abate, control, or prevent the adverse effects of past mining practices.

(b) If the department has made findings pursuant to subsection (2)(a), agents, employees, or contractors of the department may enter upon property

adversely affected by past mining practices and other property necessary for access to the adversely affected property to do all things necessary or expedient to restore or reclaim the property or to abate, control, or prevent the adverse effects of past mining practices after:

(i) giving notice by mail to the owner, if known, and a purchaser under contract for deed, if known; or

(ii) if neither is known, posting notice upon the property and advertising in a newspaper of general circulation in the county in which the property lies.

(c) Entry upon property pursuant to this section is not an act of condemnation of property or of trespass but rather an exercise of the power granted by Article IX, sections 1 and 2, of the Montana constitution.

(3) The board may acquire the necessary property by gift or purchase~~,~~. *A gift or purchase must be approved by the board of land commissioners.* ~~or if~~ *If* the property cannot be acquired by gift or purchase at a reasonable cost, proceedings may be instituted in the manner provided in Title 70, chapter 30, against all nonaccepting landholders if:

(a) acquisition of the property is necessary for successful reclamation;

(b) the acquired property after restoration or reclamation or after abatement, control, or prevention of the adverse effects of past mining practices will serve recreation and historic purposes or conservation and reclamation purposes or provide open space benefits; and

(c) (i) permanent facilities, such as treatment plants or relocated stream channels, will be constructed on the property for the restoration or reclamation of the property or for abatement, control, or prevention of the adverse effects of past mining practices; or

(ii) acquisition of refuse disposal sites and all refuse on the sites will serve the purposes of this part in that public ownership is desirable to meet emergency situations and prevent recurrences of the adverse effects of past mining practices.

(4) The department may record in the office of the clerk and recorder in the county in which property that has been reclaimed pursuant to 82-4-424 or this section is located a notice that the property has been mined and reclaimed. The notice must include the date and a brief description of the reclamation."

Section 3. Effective date. [This act] is effective on passage and approval.

Approved March 25, 2009

CHAPTER NO. 79

[SB 25]

AN ACT ELIMINATING CERTAIN CONTINGENCIES RELATED TO VIOLATIONS, PENALTIES, AND WAIVERS UNDER THE COAL AND URANIUM MINE AND RECLAMATION LAWS; AND REPEALING SECTION 6, CHAPTER 486, LAWS OF 2005, AND SECTION 30, CHAPTER 487, LAWS OF 2005.

Be it enacted by the Legislature of the State of Montana:

Section 1. Repealer. Section 6, Chapter 486, Laws of 2005, and section 30, Chapter 487, Laws of 2005, are repealed.

Approved March 25, 2009

CHAPTER NO. 80

[SB 40]

AN ACT CLARIFYING THE DEFINITION OF "FRIEND OF RESPONDENT" IN INVOLUNTARY COMMITMENT PROCEDURES; REQUIRING A FINDING THAT THERE IS A PERSON WILLING AND ABLE TO SERVE AS A FRIEND OF RESPONDENT AND CONSENT OF THE RESPONDENT PRIOR TO APPOINTMENT OF A FRIEND OF RESPONDENT; REQUIRING THE APPOINTMENT OF AN ALTERNATE FRIEND OF RESPONDENT AT THE REQUEST OF THE RESPONDENT OR IF A CONFLICT OF INTEREST IS DETERMINED TO EXIST; AMENDING SECTIONS 53-21-102 AND 53-21-122, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-21-102, MCA, is amended to read:

"53-21-102. Definitions. As used in this part, the following definitions apply:

(1) "Abuse" means any willful, negligent, or reckless mental, physical, sexual, or verbal mistreatment or maltreatment or misappropriation of personal property of any person receiving treatment in a mental health facility that insults the psychosocial, physical, or sexual integrity of any person receiving treatment in a mental health facility.

(2) "Behavioral health inpatient facility" means a facility or a distinct part of a facility of 16 beds or less licensed by the department that is capable of providing secure, inpatient psychiatric services, including services to persons with mental illness and co-occurring chemical dependency.

(3) "Board" or "mental disabilities board of visitors" means the mental disabilities board of visitors created by 2-15-211.

(4) "Commitment" means an order by a court requiring an individual to receive treatment for a mental disorder.

(5) "Court" means any district court of the state of Montana.

(6) "Department" means the department of public health and human services provided for in 2-15-2201.

(7) "Emergency situation" means a situation in which any person is in imminent danger of death or bodily harm from the activity of a person who appears to be suffering from a mental disorder and appears to require commitment.

(8) "Friend of respondent" means any person willing and able to assist a person suffering from a mental disorder and requiring commitment or a person alleged to be suffering from a mental disorder and requiring commitment in dealing with legal proceedings, including consultation with legal counsel and others. ~~The friend of respondent may be the next of kin, the person's conservator or legal guardian, if any, representatives of a charitable or religious organization, or any other person appointed by the court to perform the functions of a friend of respondent set out in this part. Only one person may at any one time be the friend of respondent within the meaning of this part. In appointing a friend of respondent, the court shall consider the preference of the respondent. The court may at any time, for good cause, change its designation of the friend of respondent.~~

(9) (a) "Mental disorder" means any organic, mental, or emotional impairment that has substantial adverse effects on an individual's cognitive or volitional functions.

(b) The term does not include:

(i) addiction to drugs or alcohol;

(ii) drug or alcohol intoxication;

(iii) mental retardation; or

(iv) epilepsy.

(c) A mental disorder may co-occur with addiction or chemical dependency.

(10) "Mental health facility" or "facility" means the state hospital, the Montana mental health nursing care center, or a hospital, a behavioral health inpatient facility, a mental health center, a residential treatment facility, or a residential treatment center licensed or certified by the department that provides treatment to children or adults with a mental disorder. A correctional institution or facility or jail is not a mental health facility within the meaning of this part.

(11) "Mental health professional" means:

(a) a certified professional person;

(b) a physician licensed under Title 37, chapter 3;

(c) a professional counselor licensed under Title 37, chapter 23;

(d) a psychologist licensed under Title 37, chapter 17;

(e) a social worker licensed under Title 37, chapter 22; or

(f) an advanced practice registered nurse, as provided for in 37-8-202, with a clinical specialty in psychiatric mental health nursing.

(12) (a) "Neglect" means failure to provide for the biological and psychosocial needs of any person receiving treatment in a mental health facility, failure to report abuse, or failure to exercise supervisory responsibilities to protect patients from abuse and neglect.

(b) The term includes but is not limited to:

(i) deprivation of food, shelter, appropriate clothing, nursing care, or other services;

(ii) failure to follow a prescribed plan of care and treatment; or

(iii) failure to respond to a person in an emergency situation by indifference, carelessness, or intention.

(13) "Next of kin" includes but is not limited to the spouse, parents, adult children, and adult brothers and sisters of a person.

(14) "Patient" means a person committed by the court for treatment for any period of time or who is voluntarily admitted for treatment for any period of time.

(15) "Peace officer" means any sheriff, deputy sheriff, marshal, police officer, or other peace officer.

(16) "Professional person" means:

(a) a medical doctor;

(b) an advanced practice registered nurse, as provided for in 37-8-202, with a clinical specialty in psychiatric mental health nursing;

(c) a licensed psychologist; or

(d) a person who has been certified, as provided for in 53-21-106, by the department.

(17) "Reasonable medical certainty" means reasonable certainty as judged by the standards of a professional person.

(18) "Respondent" means a person alleged in a petition filed pursuant to this part to be suffering from a mental disorder and requiring commitment.

(19) "State hospital" means the Montana state hospital."

Section 2. Section 53-21-122, MCA, is amended to read:

"53-21-122. Petition for commitment — filing of — initial hearing on. (1) The petition must be filed with the clerk of court who shall immediately notify the judge.

(2) *(a)* The judge shall consider the petition. If the judge finds no probable cause, the petition must be dismissed. If the judge finds probable cause and the respondent does not have private counsel present, the judge may order the office of state public defender, provided for in 47-1-201, to immediately assign counsel for the respondent, and the respondent must be brought before the court with the respondent's counsel. The respondent must be advised of the respondent's constitutional rights, the respondent's rights under this part, and the substantive effect of the petition. The respondent may at this appearance object to the finding of probable cause for filing the petition. The judge shall appoint a professional person ~~and a friend of respondent~~ and set a date and time for the hearing on the petition that may not be on the same day as the initial appearance and that may not exceed 5 days, including weekends and holidays, unless the fifth day falls upon a weekend or holiday and unless additional time is requested on behalf of the respondent.

(b) ~~The desires of the respondent must be taken into consideration in the appointment of the friend of respondent~~ *If the court finds that an appropriate person is willing and able to perform the functions of a friend of respondent as set out in this part and the respondent personally or through counsel consents, the court shall appoint the person as the friend of respondent. The friend of respondent may be the next of kin, the person's conservator or legal guardian, if any, representatives of a charitable or religious organization, or any other person appointed by the court. Only one person may at any one time be the friend of respondent within the meaning of this part. The court may at any time, for good cause, change its designation of the friend of respondent. The court shall change the designation of the friend of respondent at the request of the respondent or if it determines that a conflict of interest exists between the respondent and the friend of respondent.*

(3) If a judge is not available in the county in person, the clerk shall notify a resident judge by telephone and shall read the petition to the judge. The judge may do all things necessary through the clerk of court by telephone as if the judge were personally present, including ordering the office of state public defender, provided for in 47-1-201, to immediately provide assigned counsel. The judge, through the clerk of court, may also order that the respondent be brought before a justice of the peace with the respondent's counsel to be advised of the respondent's constitutional rights, the respondent's rights under this part, and the contents of the order, as well as to furnish the respondent with a copy of the order. The justice of the peace shall ascertain the desires of the respondent with respect to the assignment of counsel or the hiring of private

counsel, pursuant to 53-21-116 and 53-21-117, and this information must be immediately communicated to the resident judge."

Section 3. Effective date. [This act] is effective on passage and approval.

Approved March 25, 2009

CHAPTER NO. 81

[SB 54]

AN ACT REVISING THE MONTANA DEFERRED DEPOSIT LOAN ACT TO REQUIRE THE DEPARTMENT OF ADMINISTRATION TO REFUSE TO ISSUE OR RENEW A DEFERRED DEPOSIT LENDER'S LICENSE ON VARIOUS GROUNDS INCLUDING AN APPLICANT'S MAKING MATERIAL MISSTATEMENTS OF FACT; PROVIDING THAT A PERSON MAY NOT APPLY FOR A LICENSE FOR 1 YEAR FOLLOWING A DENIAL OR REFUSAL BY THE DEPARTMENT TO ISSUE OR RENEW A LICENSE; PROVIDING THAT THE VIOLATION OF CERTAIN SPECIFIED FEDERAL ACTS, INCLUDING THE TRUTH IN LENDING ACT AND THE FAIR CREDIT REPORTING ACT, IS ALSO A VIOLATION OF THE MONTANA DEFERRED DEPOSIT LOAN ACT; GRANTING THE DEPARTMENT RULEMAKING AUTHORITY; ELIMINATING THE EXEMPTION FROM THE PROVISIONS OF THE MONTANA DEFERRED DEPOSIT LOAN ACT FOR A COLLECTION AGENCY THAT HAS ENTERED INTO AN AGREEMENT WITH A DEFERRED DEPOSIT LENDER FOR THE COLLECTION OF CLAIMS; REVISING LICENSE APPLICATION REQUIREMENTS; REVISING THE DEPARTMENT'S FEES FOR EXAMINING LICENSEES; PROVIDING THAT A COLLECTION AGENCY ACTING ON BEHALF OF A LICENSEE MAY NOT COLLECT CERTAIN DAMAGES; AND AMENDING SECTIONS 31-1-704, 31-1-705, 31-1-711, AND 31-1-722, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Denial of license and license renewal. (1) (a) Except as provided in subsection (1)(b), the department shall deny any new license or refuse to renew any license if:

(i) the applicant does not meet the qualifications stated in this part or in rules adopted pursuant to this part;

(ii) the department finds that the criminal history of any employee of the applicant at the time of application or renewal demonstrates any conviction involving fraud or financial dishonesty or if the department's findings show civil judgments involving fraudulent or dishonest financial dealings;

(iii) the financial responsibility, experience, character, and general fitness of the applicant do not warrant the belief that the business will be operated lawfully and fairly and within the provisions of this part;

(iv) the applicant does not have unencumbered assets of at least $25,000 for each location to be operated by the applicant;

(v) the applicant has not provided a sworn statement that the applicant will not in the future, directly or indirectly, use a criminal process to collect the payment of deferred deposit loans or any civil process to collect the payment of deferred deposit loans not generally available to creditors to collect on loans in default;

(vi) other information that the department considers necessary has not been provided; or

(vii) the applicant makes any material misstatement of fact or any material omission of fact in the application.

(b) A denial is not required pursuant to subsection (1)(a)(ii) if the department finds that the applicant dismissed the employee promptly upon learning of the employee's conviction involving fraud or financial dishonesty or of civil judgments involving fraudulent or dishonest financial dealings by the employee.

(2) The department shall provide written notice to the applicant of the denial or refusal, setting forth in the notice the grounds upon which the denial or refusal is based.

(3) The applicant has the right to a hearing under the Montana Administrative Procedure Act on any denial or refusal to issue a license. The request for a hearing must be made within 10 days of the date of receipt of the written notice of denial or refusal.

(4) An applicant whose application for licensure or renewal has been denied or refused may not reapply for 1 year following the denial or refusal.

Section 2. Violation of specified federal laws — rulemaking authority. (1) A violation of any applicable provision of the Truth in Lending Act, 15 U.S.C. 1601, et seq., the Equal Credit Opportunity Act, 15 U.S.C. 1691, et seq., the Fair Credit Reporting Act, 15 U.S.C. 1681, et seq., the Fair Debt Collection Practices Act, 15 U.S.C. 1692, et seq., the Financial Services Modernization Act of 1999 (Gramm-Leach-Bliley Act), 15 U.S.C. 6801, et seq., the USA PATRIOT Act of 2001, as reauthorized, Public Law 107-56, or the John Warner National Defense Authorization Act for Fiscal Year 2007, Public Law 109-364, or any regulation promulgated under those acts is also a violation of this part.

(2) The department shall adopt rules to implement this section.

Section 3. Section 31-1-704, MCA, is amended to read:

"31-1-704. Scope. (1) This part applies to deferred deposit lenders and to persons who facilitate, enable, or act as a conduit for persons making deferred deposit loans.

(2) This part does not apply to~~:~~

~~(a)~~ retail sellers who cash checks incidental to or independent of a sale and who do not charge more than $2 a check for the service~~; or~~

~~(b) a collection agency doing business in this state that has entered into an agreement with a deferred deposit lender for the collection of claims owed or due or asserted to be owed or due the deferred deposit lender~~."

Section 4. Section 31-1-705, MCA, is amended to read:

"31-1-705. License — *application requirements* — business locations. (1) A person may not engage in or offer to engage in the business of making deferred deposit loans unless licensed by the department. A license may be granted to a person located within the state or to a person located outside of the state who uses the internet, facsimiles, or third persons to conduct transactions with consumers in this state.

(2) An applicant for a license to engage in the business of making deferred deposit loans shall pay to the department a license application fee of $500.

~~(3) (a) The department may not issue or renew a license unless findings are made that:~~

~~(i) the financial responsibility, experience, character, and general fitness of the applicant warrant the belief that the business will be operated lawfully and fairly and within the provisions of this part;~~

~~(ii) the applicant has unencumbered assets of at least $25,000 for each location;~~

~~(iii) the applicant has provided a sworn statement that the applicant will not in the future, directly or indirectly, use a criminal process to collect the payment of deferred deposit loans or any civil process to collect the payment of deferred deposit loans not generally available to creditors to collect on loans in default; and~~

~~(iv) other information that the department considers necessary has been provided.~~

~~(b) The department may not issue or renew a license if the criminal history of the employees of the applicant demonstrates any convictions involving fraud or financial dishonesty or if the department's findings show adverse civil judgments involving fraudulent or dishonest financial dealings.~~

(3) The application for licensure must be in writing, under oath, and in the form prescribed by the department. The application must contain:

(a) the name of the applicant;

(b) the date of formation if a business entity;

(c) the physical address of each deferred deposit loan office to be operated by the applicant;

(d) the name and resident address of the owner or partners or, if a corporation or association, of the directors, trustees, and principal officers; and

(e) any other pertinent information that the department may require.

(4) A license may not be issued for longer than 1 year. The license year must coincide with the calendar year, and the license fee for any period less than 6 months is $250.

(5) Each licensee shall post a bond in the amount of $10,000 for each location. The bond must continue in effect for 2 years after the licensee ceases operation in the state. The bond must be available to pay damages and penalties to consumers harmed by any violation of this part.

(6) More than one place of business may not be maintained under the same license, but the department may issue more than one license to the same licensee upon compliance with the provisions of this section governing issuance of a single license."

Section 5. Section 31-1-711, MCA, is amended to read:

"31-1-711. Examinations — fee. (1) The department may conduct an examination of each licensee's deferred deposit lending operation to ensure that the licensee is in compliance with the provisions of this part.

(2) (a) A licensee shall pay the department a fee in the amount of ~~$300 a day~~ *$37.50 an hour* for each examiner required to conduct an examination.

(b) The department may charge a licensee for no more than three examinations a year under this section.

(3) A licensee shall make available to a department examiner the information required under 31-1-714 or as required by rule."

Section 6. Section 31-1-722, MCA, is amended to read:

"31-1-722. Prohibited and permitted fees — attorney fees and costs. (1) A licensee may not charge or receive, directly or indirectly, any interest, fees, or charges except those specifically authorized by this section.

(2) A licensee may not charge a fee for each deferred deposit loan entered into with a consumer that exceeds 25% of the principal amount of the deferred deposit loan that is advanced or, in the case of an electronic transaction, 25% of the principal amount of the deferred deposit loan.

(3) If there are insufficient funds to pay a check on the date of presentment, a licensee may charge a fee, not to exceed $30. Only one fee may be collected pursuant to this subsection with respect to a particular check even if it has been redeposited and returned more than once. A fee charged pursuant to this subsection is a licensee's exclusive charge for late payment. A licensee *or any collection agency acting as an agent of a licensee, as a holder in due course of a licensee, or under an agreement with a licensee to collect amounts due or asserted to be due* may not collect damages under 27-1-717(3) for an insufficient funds check.

(4) If the loan involves an electronic deduction and there are insufficient funds to deduct on the date on which the payment is due, a licensee may charge a fee, not to exceed $30. Only one fee may be collected pursuant to this subsection with respect to a particular loan even if the licensee has attempted more than once to deduct the amount due from the consumer's account. A fee charged pursuant to this subsection is a licensee's exclusive charge for late payment. A licensee *or any collection agency acting as an agent of a licensee, as a holder in due course of a licensee, or under an agreement with a licensee to collect amounts due or asserted to be due* may not collect damages under 27-1-717(3) for an electronic deduction for which there are insufficient funds.

(5) If the loan agreement in 31-1-721 requires, reasonable attorney fees and court costs may be awarded to the party in whose favor a final judgment is rendered in any action on a deferred deposit loan entered into pursuant to this part."

Section 7. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 31, chapter 1, part 7, and the provisions of Title 31, chapter 1, part 7, apply to [sections 1 and 2].

Approved March 25, 2009

CHAPTER NO. 82

[SB 77]

AN ACT DEFINING VOLUNTEER EMERGENCY MEDICAL TECHNICIAN; ADDING A VOLUNTEER EMERGENCY MEDICAL TECHNICIAN TO THE BOARD OF MEDICAL EXAMINERS; REQUIRING ONE PHYSICIAN MEMBER OF THE BOARD TO HAVE EXPERIENCE IN EMERGENCY MEDICINE; AMENDING SECTION 2-15-1731, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Definition. "Volunteer emergency medical technician" means an individual who is licensed pursuant to this part and provides emergency medical care:

(1) on the days and the times of the day chosen by the individual; and

(2) for an emergency medical service other than:

(a) a private ambulance company, unless the care is provided without compensation and outside of the individual's regular work schedule; or

(b) a private business or a public agency, as defined in 7-1-4121, that employs the individual on a regular basis with a regular, hourly wage to provide emergency medical care as part of the individual's job duties.

Section 2. Section 2-15-1731, MCA, is amended to read:

"2-15-1731. Board of medical examiners. (1) There is a Montana state board of medical examiners.

(2) The board consists of ~~11~~ *12* members appointed by the governor with the consent of the senate. Appointments made when the legislature is not in session may be confirmed at the next session.

(3) The members are:

(a) five members having the degree of doctor of medicine*, including one member with experience in emergency medicine*;

(b) one member having the degree of doctor of osteopathy;

(c) one member who is a licensed podiatrist;

(d) one member who is a licensed nutritionist;

(e) one member who is a licensed physician assistant;

(f) one member who is a volunteer emergency medical technician, as defined in [section 1]; and

~~(f)~~*(g)* two members of the general public who are not medical practitioners.

(4) *(a)* The members having the degree of doctor of medicine may not be from the same county.

(b) The volunteer emergency medical technician must have a demonstrated interest in and knowledge of state and national issues involving emergency medical service.

(c) Each member must be a citizen of the United States.

(d) Each member, except for public members, must have been licensed and must have practiced medicine*, emergency medical care,* or dietetics-nutrition in this state for at least 5 years and must have been a resident of this state for at least 5 years.

(5) Members shall serve staggered 4-year terms. A term ~~commences~~ *begins* on September 1 of each year of appointment. A member may be removed by the governor for neglect of duty, incompetence, or unprofessional or dishonorable conduct.

(6) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."

Section 3. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 50, chapter 6, part 2, and the provisions of Title 50, chapter 6, part 2, apply to [section 1].

Section 4. Effective date. [This act] is effective on passage and approval.

Approved March 25, 2009

CHAPTER NO. 83

[SB 88]

AN ACT REVISING ALTERED SPEED LIMIT PROVISIONS FOR SCHOOL ZONES; DEFINING "SCHOOL ZONE"; CLARIFYING SIGNING REQUIREMENTS FOR SCHOOL ZONES; AND AMENDING SECTIONS 61-1-101, 61-8-310, AND 61-8-726, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-1-101, MCA, is amended to read:

"61-1-101. Definitions. As used in this title, unless the context indicates otherwise, the following definitions apply:

(1) (a) "Authorized agent" means a person who has executed a written agreement with the department and is specifically authorized by the department to electronically access and update the department's motor vehicle titling, registration, or driver records, using an approved automated interface, for specific functions or purposes upon behalf of a third party.

(b) For purposes of this subsection (1), "person" means an individual, corporation, partnership, limited partnership, limited liability company, association, joint venture, state agency, local government unit, another state government, the United States, a political subdivision of this or another state, or any other legal or commercial entity.

(2) "Authorized agent agreement" means the written agreement executed between an authorized agent and the department that sets the technical and operational program standards, compliance criteria, payment options, and service expectations by which the authorized agent is required to operate in performing specific motor vehicle or driver-related record functions.

(3) "Bus" means a motor vehicle designed for carrying more than 10 passengers and used for the transportation of persons and any other motor vehicle, other than a taxicab, designed and used for the transportation of persons for compensation.

(4) (a) "Business entity" means a corporation, association, partnership, limited liability partnership, limited liability company, or other legal entity recognized under state law.

(b) The term does not include an individual.

(5) (a) "Camper" means a structure designed to be mounted in the cargo area of a truck or attached to an incomplete vehicle for the purpose of providing shelter for persons. The term includes but is not limited to a cab-over, half cab-over, noncab-over, telescopic, and telescopic cab-over.

(b) The term does not include a truck canopy cover or topper.

(6) "Certificate of title" means the paper record issued by the department or by the appropriate agency of another jurisdiction that establishes a verifiable record of ownership between an identified person or persons and the motor vehicle specifically described in the record and that provides notice of a perfected security interest in the motor vehicle.

(7) "Commercial driver's license" means:

(a) a driver's license issued under or granted by the laws of this state that authorizes a person to operate a class of commercial motor vehicle; and

(b) the privilege of a person to drive a commercial motor vehicle, whether or not the person holds a valid commercial driver's license.

(8) (a) "Commercial motor vehicle" means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the vehicle:

(i) has a gross combination weight rating or a gross combination weight of 26,001 pounds or more, whichever is greater, inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds;

(ii) has a gross vehicle weight rating or a gross vehicle weight of 26,001 pounds or more, whichever is greater;

(iii) is designed to transport at least 16 passengers, including the driver;

(iv) is a school bus; or

(v) is of any size and is used in the transportation of hazardous materials as defined in 61-8-801.

(b) The following vehicles are not commercial motor vehicles:

(i) an authorized emergency service vehicle:

(A) equipped with audible and visual signals as required under 61-9-401 and 61-9-402; and

(B) entitled to the exemptions granted under 61-8-107;

(ii) a vehicle:

(A) controlled and operated by a farmer, family member of the farmer, or person employed by the farmer;

(B) used to transport farm products, farm machinery, or farm supplies to or from the farm within Montana within 150 miles of the farm or, if there is a reciprocity agreement with a state adjoining Montana, within 150 miles of the farm, including any area within that perimeter that is in the adjoining state; and

(C) not used to transport goods for compensation or for hire; or

(iii) a vehicle operated for military purposes by active duty military personnel, a member of the military reserves, a member of the national guard on active duty, including personnel on full-time national guard duty, personnel in part-time national guard training, and national guard military technicians, or active duty United States coast guard personnel.

(c) For purposes of this subsection (8):

(i) "farmer" means a person who operates a farm or who is directly involved in the cultivation of land or crops or the raising of livestock owned by or under the direct control of that person;

(ii) "gross combination weight rating" means the value specified by the manufacturer as the loaded weight of a combination or articulated vehicle;

(iii) "gross vehicle weight rating" means the value specified by the manufacturer as the loaded weight of a single vehicle; and

(iv) "school bus" has the meaning provided in 49 CFR 383.5.

(9) "Commission" means the state transportation commission.

(10) "Custom-built motorcycle" means a motorcycle that is equipped with:

(a) an engine that was manufactured 20 years prior to the current calendar year and that has been altered from the manufacturer's original design;

(b) an engine that was manufactured to resemble an engine 20 or more years old and that has been constructed in whole or in part from nonoriginal materials.

(11) "Custom vehicle" means a motor vehicle other than a motorcycle that:

(a) (i) was manufactured with a model year after 1948 and that is at least 25 years old; or

(ii) was built to resemble a vehicle manufactured after 1948 and at least 25 years before the current calendar year, including a kit vehicle intended to resemble a vehicle manufactured after 1948 and that is at least 25 years old; and

(b) has been altered from the manufacturer's original design or has a body constructed from nonoriginal materials.

(12) "Customer identification number" means:

(a) a driver's license or identification card number when the customer is an individual who has been issued a driver's license or identification card by a state driver licensing authority;

(b) a federal employer or tax identification number when the customer is a business entity that has been issued a federal employer or tax identification number;

(c) the identification number assigned by the secretary of state to a business entity authorized to do business in this state under Title 35 if the customer is a business entity that does not have a federal employer or tax identification number other than a social security number; or

(d) if the customer has not been issued one of the numbers described in subsections (12)(a) through (12)(c), a number assigned to the customer by the department when a transaction is initiated under this title.

(13) (a) "Dealer" means a person that, for commission or profit, engages in whole or in part in the business of buying, selling, exchanging, or accepting on consignment new or used motor vehicles, trailers, semitrailers, pole trailers, travel trailers, motorboats, sailboats, snowmobiles, off-highway vehicles, or special mobile equipment that is not registered in the name of the person.

(b) The term does not include the following:

(i) receivers, trustees, administrators, executors, guardians, or other persons appointed by or acting under a judgment or order of any court of competent jurisdiction;

(ii) employees of the persons included in subsection (13)(b)(i) when engaged in the specific performance of their duties as employees; or

(iii) public officers while performing or in the operation of their duties.

(14) "Declared weight" means the total unladen weight of a vehicle plus the weight of the maximum load to be carried on the vehicle as stated by the registrant in the application for registration.

(15) "Department" means the department of justice acting directly or through its duly authorized officers or agents.

(16) "Dolly or converter gear" means a device consisting of one or two axles with a fifth wheel and trailer tongue used to support the forward end of a semitrailer, converting a semitrailer into a trailer.

(17) "Domiciled" means a place where:

(a) an individual establishes residence;

(b) a business entity maintains its principal place of business;

(c) the business entity's registered agent maintains an address; or

(d) a business entity most frequently uses, dispatches, or controls a motor vehicle, trailer, semitrailer, or pole trailer that it owns or leases.

(18) "Driver" means a person who drives or is in actual physical control of a vehicle.

(19) "Driver's license" means a license or permit to operate a motor vehicle issued under or granted by the laws of this state, including:

(a) any temporary license or instruction permit;

(b) the privilege of any person to drive a motor vehicle, whether or not the person holds a valid license;

(c) any nonresident's driving privilege;

(d) a motorcycle endorsement; or

(e) a commercial driver's license.

(20) "Electric personal assistive mobility device" means a device that has two nontandem wheels, is self-balancing, and is designed to transport only one person with an electric propulsion system that limits the maximum speed of the device to 12 1/2 miles an hour.

(21) "For hire" means an action performed for remuneration of any kind, whether paid or promised, either directly or indirectly, or received or obtained through leasing, brokering, or buy-and-sell arrangements from which a remuneration is obtained or derived for transportation service.

(22) "Gross vehicle weight" means the weight of a vehicle without load plus the weight of any load on the vehicle.

(23) "Highway" or "public highway" means the entire width between the boundary lines of every publicly maintained way when any part of the publicly maintained way is open to the use of the public for purposes of vehicular travel.

(24) "Highway patrol officer" means a state officer authorized to direct or regulate traffic or to make arrests for violations of traffic regulations.

(25) "Implement of husbandry" means a vehicle that is designed for agricultural purposes and exclusively used by the owner of the vehicle in the conduct of the owner's agricultural operations.

(26) "Kit vehicle" is a motor vehicle assembled from a manufactured kit either as:

(a) a complete kit, consisting of a prefabricated body and chassis, to construct a new motor vehicle; or

(b) a kit with a prefabricated body to be mounted to an existing motor vehicle chassis and drivetrain, commonly referred to as a donor vehicle.

(27) "Light vehicle" means a motor vehicle commonly referred to as an automobile, van, sport utility vehicle, or truck having a manufacturer's rated capacity of 1 ton or less.

(28) "Manufactured home" has the meaning provided in 15-24-201.

(29) "Manufacturer" includes any person engaged in the manufacture of motor vehicles, trailers, semitrailers, pole trailers, travel trailers, motorboats, sailboats, snowmobiles, or off-highway vehicles as a regular business.

(30) "Manufacturer's certificate of origin" means the original paper record produced and issued by the manufacturer of a vehicle or, if in a medium authorized by the department, an electronic record created and transmitted by the manufacturer of a vehicle to the manufacturer's agent or a licensed dealer. The record must establish the origin of the vehicle specifically described in the record and, upon assignment, transfers of ownership of the vehicle to the person or persons named in the certificate.

(31) (a) "Medium-speed electric vehicle" is a motor vehicle, upon or by which a person may be transported, that:

(i) has a maximum speed of 35 miles an hour as certified by the manufacturer;

(ii) is propelled by its own power, using an electric motor or other device that transforms stored electrical energy into the motion of the vehicle;

(iii) stores electricity in batteries, ultracapacitors, or similar devices, which are charged from the power grid or from renewable electrical energy sources;

(iv) is fully enclosed and includes at least one door for entry;

(v) has a wheelbase of 40 inches or greater and a wheel diameter of 10 inches or greater;

(vi) exhibits a manufacturer's compliance with 49 CFR, part 565, or displays a 17-character vehicle identification number as provided in 49 CFR, part 565;

(vii) bears a sticker, affixed by the manufacturer or dealer, on the left side of the rear window that indicates the vehicle's maximum speed rating; and

(viii) as certified by the manufacturer, is equipped as provided in 61-9-432.

(b) A medium-speed electric vehicle must be treated as a light vehicle for purposes of titling and registration under Title 61, chapter 3.

(32) "Mobile home" or "housetrailer" has the meaning provided in 15-24-201.

(33) "Montana resident" means:

(a) an individual who resides in Montana as determined under 1-1-215;

(b) for the purposes of chapter 3, a business entity that maintains a principal place of business or a registered agent in this state.

(34) (a) "Motorboat" means a vessel, including a personal watercraft or pontoon, propelled by any machinery, motor, or engine of any description, whether or not the machinery, motor, or engine is the principal source of propulsion. The term includes boats temporarily equipped with detachable motors or engines.

(b) The term does not include a vessel that has a valid marine document issued by the U.S. coast guard or any successor federal agency.

(35) (a) "Motor carrier" means a person or corporation or its lessees, trustees, or receivers appointed by a court that are operating motor vehicles upon a public highway in this state for the transportation of property for hire on a commercial basis.

(b) The term does not include motor carriers regulated under Title 69, chapter 12.

(36) (a) "Motorcycle" means a motor vehicle that has a seat or saddle for the use of the operator and that is designated to travel on not more than three wheels in contact with the ground. A motorcycle may carry one or more attachments and a seat for the conveyance of a passenger.

(b) The term does not include a tractor, a bicycle as defined in 61-8-102, a motorized nonstandard vehicle, or a two- or three-wheeled all-terrain vehicle that is used exclusively on private property.

(37) (a) "Motor-driven cycle" means a motorcycle, including a motor scooter, with a motor that produces 5 horsepower or less.

(b) The term does not include a bicycle, as defined in 61-8-102, or a motorized nonstandard vehicle.

(38) "Motor home" means a motor vehicle:

(a) designed to provide temporary living quarters, built as an integral part of or permanently attached to a self-propelled motor vehicle chassis or van;

(b) containing permanently installed independent life support systems that meet the ANSIA/A119.2 standard; and

(c) providing at least four of the following types of facilities:

(i) cooking, refrigeration, or icebox;

(ii) self-contained toilet;

(iii) heating or air-conditioning, or both;

(iv) potable water supply, including a faucet and sink; or

(v) separate 110-volt or 125-volt electrical power supply or a liquefied petroleum gas supply; or both.

(39) (a) "Motorized nonstandard vehicle" means a vehicle, upon or by which a person may be transported, that:

(i) is propelled by its own power, using an internal combustion engine or an electric motor;

(ii) has a wheelbase of less than 40 inches and a wheel diameter of less than 10 inches; and

(iii) does not display a manufacturer's certification in accordance with 49 CFR, part 567, or have a 17-character vehicle identification number assigned by the manufacturer in accordance with 49 CFR, part 565.

(b) The term includes but is not limited to a motorized skateboard and a vehicle commonly known as a "pocket rocket".

(c) The term does not include an electric personal assistive mobility device or a motorized wheelchair or other low-powered, mechanically propelled vehicle designed specifically for use by a physically disabled person.

(40) (a) "Motor vehicle" means:

(i) a vehicle propelled by its own power and designed or used to transport persons or property upon the highways of the state; and

(ii) a quadricycle if it is equipped for use on the highways as prescribed in chapter 9.

(b) The term does not include a bicycle as defined in 61-8-102, an electric personal assistive mobility device, a motorized nonstandard vehicle, or a motorized wheelchair or other low-powered, mechanically propelled vehicle that is designed specifically for use by a physically disabled person and that is used as a means of mobility for that person.

(41) "New motor vehicle" means a motor vehicle, regardless of the mileage of the vehicle, the legal or equitable title to which has never been transferred by a manufacturer, distributor, or dealer to another person as the result of a retail sale.

(42) "Nonresident" means a person who is not a Montana resident.

(43) (a) "Not used for general transportation purposes" means the operation of a motor vehicle, registered as a collector's item, a custom vehicle, a street rod, or a custom-built motorcycle to or from a car or motorcycle club activity or event or an exhibit, show, cruise night, or parade, or other occasional transportation activity.

(b) The term does not include operation of a motor vehicle for routine or ordinary household maintenance, employment, education, or other similar purposes.

(44) (a) "Off-highway vehicle" means a self-propelled vehicle designed for recreation or cross-country travel on public lands, trails, easements, lakes, rivers, or streams. The term includes but is not limited to motorcycles, quadricycles, dune buggies, amphibious vehicles, air cushion vehicles, and any other means of land transportation deriving motive power from any source other than muscle or wind.

(b) The term does not include:

(i) vehicles designed primarily for travel on, over, or in the water;

(ii) snowmobiles; or

(iii) motor vehicles designed to transport persons or property upon the highways unless the vehicle is used for off-road recreation on public lands.

(45) "Operator" means a person who is in actual physical control of a motor vehicle.

(46) "Owner" means a person who holds the legal title to a vehicle. If a vehicle is the subject of an agreement for the conditional sale of the vehicle with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee, or in the event a vehicle is subject to a lease, contract, or other legal arrangement vesting right of possession or control, for security or otherwise, or in the event a mortgagor of a vehicle is entitled to possession, then the owner is the person in whom is vested the right of possession or control.

(47) "Person" means an individual, corporation, partnership, association, firm, or other legal entity.

(48) "Personal watercraft" means a vessel that uses an outboard motor or an inboard engine powering a water jet pump as its primary source of propulsion and that is designed to be operated by a person sitting, standing, or kneeling on the vessel rather than by the conventional method of sitting or standing in the vessel.

(49) "Pole trailer" means a vehicle without power designed to be drawn by another vehicle and attached to the towing vehicle by means of a reach or pole or by being boomed or otherwise secured to the towing vehicle and ordinarily used for transporting long or irregularly shaped loads such as poles, pipes, or structural members capable generally of sustaining themselves as beams between the supporting connections.

(50) "Police officer" means an officer authorized to direct or regulate traffic or to make arrests for violations of traffic regulations.

(51) (a) "Quadricycle" means a four-wheeled motor vehicle, designed for on-road or off-road use, having a seat or saddle upon which the operator sits and a motor capable of producing not more than 50 horsepower.

(b) The term does not include golf carts.

(52) "Railroad" means a carrier of persons or property upon cars, other than streetcars, operated upon stationary rails.

(53) (a) "Railroad train" or "train" means a steam engine or electric or other motor, with or without cars coupled to the engine, that is operated upon rails.

(b) The term does not include streetcars.

(54) "Recreational vehicle" includes a motor home, travel trailer, or camper.

(55) "Registration" or "register" means the act or process of creating an electronic record, maintained by the department, of the assignment of a license plate or a set of license plates to and the issuance of a registration decal for a specific vehicle, the ownership of which has been established or is presumed in department records.

(56) "Registration decal" means an adhesive sticker produced by the department and issued by the department, its authorized agent, or a county treasurer to the owner of a motor vehicle, trailer, semitrailer, pole trailer, motorboat, sailboat, personal watercraft, or snowmobile as proof of payment of all fees imposed for the registration period indicated on the sticker as recorded by the department under 61-3-101.

(57) "Registration receipt" means a paper record that is produced and issued or, if authorized by the department, an electronic record that is transmitted by the department, its authorized agent, or a county treasurer to the owner of a vehicle that identifies a vehicle, based on information maintained in the electronic record of title for the vehicle, and that provides evidence of the payment of all fees required to be paid for the registration of the vehicle for the registration period indicated in the receipt.

(58) "Retail sale" means the sale of a motor vehicle, trailer, semitrailer, pole trailer, travel trailer, motorboat, snowmobile, off-highway vehicle, or special mobile equipment by a dealer to a person for purposes other than resale.

(59) "Revocation" means the termination by action of the department of a person's driver's license, privilege to drive a motor vehicle on the public highways, and privilege to apply for and be issued a driver's license for a period of time designated by law, during which the license or privilege may not be renewed, restored, or exercised. An application for a new license may be presented and acted upon by the department after the expiration of the period of the revocation.

(60) "Roadway" means that portion of a highway improved, designed, or ordinarily used for vehicular travel, exclusive of the berm or shoulder. In the event that a highway includes two or more separate roadways, the term refers to any roadway separately but not to all roadways collectively.

(61) (a) "Sailboat" means a vessel that uses a sail and wind as its primary source of propulsion.

(b) The term does not include a canoe or kayak propelled by wind.

(62) "School zone" means an area near a school beginning at the school's front door, encompassing the campus and school property, and including the streets directly adjacent to the school property and for as many blocks surrounding the

school as determined by the local authority establishing a special speed limit under 61-8-310(1)(d).

~~(62)~~*(63)* "Sell" means to transfer ownership from one person to another person or from a dealer to another person for consideration.

~~(63)~~*(64)* "Semitrailer" means a vehicle, with or without motive power, other than a pole trailer, designed for carrying property and for being drawn by a motor vehicle and constructed so that some part of its weight and that of its load rests upon or is carried by another vehicle.

~~(64)~~*(65)* "Snowmobile" means a self-propelled vehicle of an overall width of 48 inches or less, excluding accessories, that is designed primarily for travel on snow or ice, that may be steered by skis or runners, and that is not otherwise registered or licensed under the laws of the state of Montana.

~~(65)~~*(66)* "Special mobile equipment" means a vehicle not designed for the transportation of persons or property on the highways but incidentally operated or moved over the highways, including road construction or maintenance machinery, ditch-digging apparatus, and well-boring apparatus. The fact that equipment is permanently attached to a vehicle does not make the vehicle special mobile equipment. The enumeration in this subsection is partial and does not exclude other vehicles that are within the general terms of this subsection.

~~(66)~~*(67)* (a) "Specially constructed vehicle" means a motor vehicle, including a motorcycle, that:

(i) was not originally constructed under a distinctive make, model, or type by a generally recognized manufacturer of motor vehicles;

(ii) has been structurally modified so that it does not have the same appearance as similar vehicles from a generally recognized manufacturer of motor vehicles;

(iii) has been constructed or assembled entirely from custom-built parts and materials not obtained from other vehicles;

(iv) has been constructed or assembled by using major component parts from one or more manufactured vehicles and that cannot be identified as a specific make or model; or

(v) has been constructed by the use of a kit that cannot be visually identified as a specific make or model.

(b) The term does not include a motor vehicle that has been repaired or restored to its original design by replacing parts.

~~(67)~~*(68)* (a) "Sport utility vehicle" means a light vehicle designed to transport 10 or fewer persons that is constructed on a truck chassis or that has special features for occasional off-road use.

(b) The term does not include trucks having a manufacturer's rated capacity of 1 ton or less.

~~(68)~~*(69)* (a) "Stop", when required, means complete cessation from movement.

(b) "Stop", "stopping", or "standing", when prohibited, means any stopping or standing of a vehicle, whether occupied or not, except when necessary to avoid conflict with other traffic or in compliance with the directions of a police officer, highway patrol officer, or traffic control sign or signal.

~~(69)~~*(70)* "Storage lot" means property owned, leased, or rented by a dealer that is not contiguous to the dealer's established place of business where a motor vehicle from the dealer's inventory may be placed when space at the dealer's established place of business is not available.

~~(70)~~*(71)* "Street" means the entire width between the boundary lines of every publicly maintained way when any part of the publicly maintained way is open to the use of the public for purposes of vehicular travel.

~~(71)~~*(72)* "Street rod" means a motor vehicle, other than a motorcycle, that:

(a) was manufactured prior to 1949 or was built to resemble a vehicle manufactured before 1949, including a kit vehicle intended to resemble a vehicle manufactured before 1949; and

(b) has been altered from the manufacturer's original design or has a body constructed from nonoriginal materials.

~~(72)~~*(73)* "Suspension" means the temporary withdrawal by action of the department of a person's driver's license, privilege to drive a motor vehicle on the public highways, and privilege to apply for or be issued a driver's license for a period of time designated by law.

~~(73)~~*(74)* "Temporary registration permit" means a paper record:

(a) issued by the department, an authorized agent, a county treasurer, or a person, using a department-approved electronic interface after an electronic record has been transmitted to the department, that contains:

(i) required vehicle and owner information; and

(ii) the purpose for which the record was generated; and

(b) that, when placed in a durable license-plate style plastic pouch approved by the department and displayed as prescribed in 61-3-224, authorizes a person to operate the described motor vehicle, motorboat, sailboat that is 12 feet in length or longer, snowmobile, or off-highway vehicle for 40 days from the date the record is issued or until the vehicle is registered under Title 23 or this title, whichever first occurs.

~~(74)~~*(75)* "Traffic" means pedestrians, ridden or herded animals, vehicles, streetcars, and other conveyances either singly or together while using any highways for purposes of travel.

~~(75)~~*(76)* (a) "Trailer" means a vehicle, with or without motive power, other than a pole trailer, designed for carrying property and for being drawn by a motor vehicle and constructed so that no part of its weight rests upon the towing vehicle.

(b) The term does not include a mobile home or a manufactured home, as defined in 15-1-101.

~~(76)~~*(77)* "Transaction summary receipt" means an electronic record produced and issued by the department, its authorized agent, or a county treasurer for which a paper receipt is issued. The record may be created by the department and transmitted to the owner of a vehicle, a secured party, or a lienholder. The record must contain a unique transaction record number and summarize and verify the electronic filing of the transaction described in the receipt on the electronic record of title maintained under 61-3-101.

~~(77)~~*(78)* "Travel trailer" means a vehicle:

(a) that is 40 feet or less in length;

(b) that is of a size or weight that does not require special permits when towed by a motor vehicle;

(c) with gross trailer area of less than 320 square feet; and

(d) that is designed to provide temporary facilities for recreational, travel, or camping use and not used as a principal residence.

~~(78)~~*(79)* "Truck" or "motortruck" means a motor vehicle designed, used, or maintained primarily for the transportation of property.

~~(79)~~*(80)* "Truck tractor" means a motor vehicle designed and used primarily for drawing other vehicles and not constructed to carry a load other than a part of the weight of the vehicle and load drawn.

~~(80)~~*(81)* "Under the influence" has the meaning provided in 61-8-401.

~~(81)~~*(82)* "Used motor vehicle" includes any motor vehicle that has been sold, bargained, exchanged, given away, or had its title transferred from the person who first took title to it from the manufacturer, importer, dealer, wholesaler, or agent of the manufacturer or importer and that has been used so as to have become what is commonly known as "secondhand" within the ordinary meaning of that term.

~~(82)~~*(83)* "Van" means a motor vehicle designed for the transportation of at least six persons and not more than nine persons and intended for but not limited to family or personal transportation without compensation.

~~(83)~~*(84)* (a) "Vehicle" means a device in, upon, or by which any person or property may be transported or drawn upon a public highway, except devices moved by animal power or used exclusively upon stationary rails or tracks.

(b) The term does not include a manually or mechanically propelled wheelchair or other low-powered, mechanically propelled vehicle that is designed specifically for use by a physically disabled person and that is used as a means of mobility for that person.

~~(84)~~*(85)* "Vehicle identification number" means the number, letters, or combination of numbers and letters assigned by the manufacturer, by the department, or in accordance with the laws of another state or country for the purpose of identifying the motor vehicle or a component part of the motor vehicle.

~~(85)~~*(86)* "Vessel" means every description of watercraft, unless otherwise defined by the department, other than a seaplane on the water, used or capable of being used as a means of transportation on water.

~~(86)~~*(87)* "Wholesaler" means a person that for a commission or with intent to make a profit or gain of money or other thing of value sells, exchanges, or attempts to negotiate a sale or exchange of an interest in a used motor vehicle, trailer, semitrailer, pole trailer, travel trailer, motorboat, snowmobile, off-highway vehicle, or special mobile equipment only to dealers and auto auctions licensed under chapter 4, part 1."

Section 2. Section 61-8-310, MCA, is amended to read:

"61-8-310. When local authorities may and shall alter limits *or establish or alter area of school zone*. (1) If a local authority in its jurisdiction determines on the basis of an engineering and traffic investigation that the speed permitted under 61-8-303 and 61-8-309 through 61-8-313 is greater or less than is reasonable and safe under the conditions found to exist upon a highway or part of a highway, the local authority may set a reasonable and safe limit that:

(a) decreases the limit at an intersection;

(b) increases the limit within an urban district, but not to more than 65 miles an hour during the nighttime;

(c) decreases the limit outside an urban district, but not to less than 35 miles an hour; or

(d) decreases the limit in ~~an area near a school~~ *a school zone or in an area near*~~,~~ a senior citizen center, as defined in 23-5-112, or a designated crosswalk that is close to a school or a senior citizen center to not less than 80%, rounded down to the nearest whole number evenly divisible by 5, of the limit that would be set on the basis of an engineering and traffic investigation, but not less than 15 miles an hour. If warranted by an engineering and traffic investigation, a local authority may adopt variable speed limits to adapt to traffic conditions by time of day, provided that the variable limits comply with the provisions of 61-8-206.

(2) A board of county commissioners may set limits, as provided in subsection (1)(c), without an engineering and traffic investigation on a county road.

(3) A local authority in its jurisdiction may determine the proper speed for all arterial streets and shall set a reasonable and safe limit on arterial streets that may be greater or less than the speed permitted under 61-8-303 for an urban district.

(4) *(a)* An altered limit established as authorized under this section is effective at all times or at other times determined by the authority when appropriate signs giving notice of the altered limit are erected upon the highway.

(b) If a local authority decreases a speed limit in a school zone, the local authority shall erect signs conforming with the manual adopted by the department of transportation under 61-8-202 giving notice that the school zone has been entered, of the altered speed limit and the penalty provided in 61-8-726, and that the school zone has ended.

(5) Except as provided in subsection (1)(d), the commission has exclusive jurisdiction to set special speed limits on all federal-aid highways or extensions of federal-aid highways in all municipalities or urban areas. The commission shall set these limits in accordance with 61-8-309.

(6) A local authority establishing or altering the area of a school zone shall consult with the department of transportation and the commission if the school zone includes a state highway or a federal-aid highway or extension of a federal-aid highway.

(7) A local authority shall consult with district officials for a school when:

(a) establishing or altering the area of a school zone near the school; or

(b) setting a speed limit pursuant to subsection (1)(d) in a school zone near the school."

Section 3. Section 61-8-726, MCA, is amended to read:

"61-8-726. Violating speed limit ~~near~~ *in* school *zone* — penalty doubled — disposition of fines. (1) A person convicted of violating a special speed limit ~~near~~ *in* a school *zone* imposed by a local authority pursuant to 61-8-310(1)(d) is guilty of a misdemeanor. Upon arrest and conviction, the person shall be punished by a fine of not less than double the penalty provided for the violation in 61-8-711.

(2) The fine proceeds must be allocated as follows:

(a) 50% of the fine collected must be distributed as provided in 3-10-601, 46-17-402, or 46-18-235; and

(b) 50% must be forwarded to the local authority that adopted the special speed limit as provided in 61-8-310(1)(d) for the purposes of erecting signs providing ~~notification~~ *notice* of the *school zone, the speed limit, and the* penalty or for other local law enforcement needs."

Approved March 25, 2009

CHAPTER NO. 84

[SB 89]

AN ACT MAKING PERMANENT THE PRIMARY SECTOR BUSINESS WORKFORCE TRAINING ACT; REPEALING SECTION 10, CHAPTER 567, LAWS OF 2003, AND SECTION 4, CHAPTER 169, LAWS OF 2005; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Repealer. Section 10, Chapter 567, Laws of 2003, and Section 4, Chapter 169, Laws of 2005, are repealed.

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 25, 2009

CHAPTER NO. 85

[SB 102]

AN ACT AUTHORIZING THE ADOPTION OF RULES FOR CORRECTIVE ACTION BY PUBLIC WATER SUPPLY SYSTEMS OR PUBLIC SEWAGE SYSTEMS TO PREVENT OR CORRECT CONTAMINATION OF DRINKING WATER; AND AMENDING SECTION 75-6-103, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-6-103, MCA, is amended to read:

"75-6-103. Duties of board. (1) The board has general supervision over all state waters that are directly or indirectly being used by a person for a public water supply system or domestic purposes or as a source of ice.

(2) The board shall, subject to the provisions of 75-6-116, adopt rules and standards concerning:

(a) maximum contaminant levels for waters that are or will be used for a public water supply system;

(b) fees, as described in 75-6-108, for services rendered by the department;

(c) monitoring, recordkeeping, and reporting by persons who own or operate public water supply systems;

(d) requiring public notice to all users of a public water supply system when a person has been granted a variance or exemption or is in violation of this part or a rule or order issued pursuant to this part;

(e) the siting, construction, operation, and modification of a public water supply system or public sewage system*, including requirements to remedy:*

(i) defects in the design, operation, or maintenance of a public water supply system or public sewage system in order to prevent or correct introduction of contamination into water used for a public water supply system, for domestic purposes, or as a source of ice;

(ii) fecal contamination in water used by a public water supply system; or

(iii) failure or malfunction of the sources, treatment, storage, or distribution portion of a public water supply system in order to prevent or correct introduction of contamination into water used for a public water supply system, for domestic purposes, or as a source of ice;

(f) the review of the technical, managerial, and financial capacity of a proposed public water supply system or public sewage system, as necessary to ensure the capability of the system to meet the requirements of this part;

(g) the collection and analysis of samples of water used for drinking or domestic purposes;

(h) the issuance of variances and exemptions as authorized by the federal Safe Drinking Water Act and this part;

(i) administrative enforcement procedures and administrative penalties authorized under this part;

(j) standards and requirements for the review and approval of programs that may be voluntarily submitted by suppliers of public water supply systems to prevent water supply contamination from a cross-connection, including provisions to exempt cross-connections from the standards and requirements if all connected systems are department-approved public water supply systems; and

(k) any other requirement necessary for the protection of public health as described in this part.

(3) Board rules must provide for the following:

(a) a water supply or water distribution facility reviewed and approved by the department is not subject to changes in department design and construction criteria for a period of 36 months after written approval of the facility is issued by the department;

(b) except for facilities subject to permit requirements under Title 75, chapter 5, part 4, a system of water supply, drainage, wastewater, or sewage reviewed and approved under this section is not subject to changes in department design or construction criteria for a period of 36 months after written approval is issued by the department;

(c) plans and specifications for a portion of a facility or system subject to a 36-month limit on criteria changes pursuant to subsections (3)(a) and (3)(b), but not constructed within the 36-month timeframe, must be resubmitted for department review and approval before construction of that portion of the facility;

(d) the provisions of this subsection (3) may not limit an applicant's ability to alter a proposed project that is otherwise in conformance with applicable laws, rules, standards, and criteria.

(4) The board may issue orders necessary to fully implement the provisions of this part."

Approved March 25, 2009

CHAPTER NO. 86

[SB 120]

AN ACT GENERALLY REVISING CONTROLLED GROUND WATER LAWS; GRANTING RULEMAKING AUTHORITY; ALLOWING PETITIONS FROM LOCAL ENTITIES AND WATER RIGHT HOLDERS; ALLOWING CONSIDERATION OF FUNDING AND STUDIES; REVISING CRITERIA FOR DESIGNATING OR MODIFYING A CONTROLLED GROUND WATER AREA; EXPANDING CONTROL PROVISIONS; REMOVING PREFERENCES FOR DOMESTIC AND LIVESTOCK WITHDRAWALS; ELIMINATING GROUND WATER SUPERVISORS; REMOVING PENALTIES ASSOCIATED WITH NONCOMPLIANCE WITH GROUND WATER STATUTES; AMENDING SECTIONS 85-2-306, 85-2-402, 85-2-501, 85-2-506, AND 85-2-508, MCA; REPEALING SECTIONS 85-2-507, 85-2-509, 85-2-511, 85-2-513, 85-2-518, AND 85-2-520, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 85-2-306, MCA, is amended to read:

"85-2-306. Exceptions to permit requirements. (1) (a) Except as provided in subsection (1)(b), ground water may be appropriated only by a person who has a possessory interest in the property where the water is to be put to beneficial use and exclusive property rights in the ground water development works.

(b) If another person has rights in the ground water development works, water may be appropriated with the written consent of the person with those property rights or, if the ground water development works are on national forest system lands, with any prior written special use authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of diversion, impoundment, storage, transportation, withdrawal, use, or distribution of water under the certificate.

(c) If the person does not have a possessory interest in the real property from which the ground water may be appropriated, the person shall provide to the owner of the real property written notification of the works and the person's intent to appropriate ground water from the works. The written notification must be provided to the landowner at least 30 days prior to constructing any associated works or, if no new or expanded works are proposed, 30 days prior to appropriating the water. The written notification under this subsection is a notice requirement only and does not create an easement in or over the real property where the ground water development works are located.

(2) Inside the boundaries of a controlled ground water area, ground water may be appropriated only:

(a) according to a permit received pursuant to 85-2-508; or

(b) according to the requirements of ~~an order issued pursuant to 85-2-507~~ *a rule promulgated pursuant to 85-2-506*.

(3) (a) Outside the boundaries of a controlled ground water area, a permit is not required before appropriating ground water by means of a well or developed spring with a maximum appropriation of 35 gallons a minute or less, not to exceed 10 acre-feet a year, except that a combined appropriation from the same source from two or more wells or developed springs exceeding this limitation requires a permit.

(b) (i) Within 60 days of completion of the well or developed spring and appropriation of the ground water for beneficial use, the appropriator shall file a notice of completion with the department on a form provided by the department through its offices.

(ii) Upon receipt of the notice, the department shall review the notice and may, before issuing a certificate of water right, return a defective notice for correction or completion, together with the reasons for returning it. A notice does not lose priority of filing because of defects if the notice is corrected, completed, and refiled with the department within 30 days of notification of defects or within a further time as the department may allow, not to exceed 6 months.

(iii) If a notice is not corrected and completed within the time allowed, the priority date of appropriation is the date of refiling a correct and complete notice with the department.

(c) A certificate of water right may not be issued until a correct and complete notice has been filed with the department, including proof of landowner notification or a written federal special use authorization as necessary under subsection (1). The original of the certificate must be sent to the appropriator. The department shall keep a copy of the certificate in its office in Helena. The date of filing of the notice of completion is the date of priority of the right.

(4) An appropriator of ground water by means of a well or developed spring first put to beneficial use between January 1, 1962, and July 1, 1973, who did not file a notice of completion, as required by laws in force prior to April 14, 1981, with the county clerk and recorder shall file a notice of completion, as provided in subsection (3), with the department to perfect the water right. The filing of a claim pursuant to 85-2-221 is sufficient notice of completion under this subsection. The priority date of the appropriation is the date of the filing of a notice, as provided in subsection (3), or the date of the filing of the claim of existing water right.

(5) An appropriation under subsection (4) is an existing right, and a permit is not required. However, the department shall acknowledge the receipt of a correct and complete filing of a notice of completion, except that for an appropriation of 35 gallons a minute or less, not to exceed 10 acre-feet a year, the department shall issue a certificate of water right. If a certificate is issued under this section, a certificate need not be issued under the adjudication proceedings provided for in 85-2-236.

(6) A permit is not required before constructing an impoundment or pit and appropriating water for use by livestock if:

(a) the maximum capacity of the impoundment or pit is less than 15 acre-feet;

(b) the appropriation is less than 30 acre-feet a year;

(c) the appropriation is from a source other than a perennial flowing stream; and

(d) the impoundment or pit is to be constructed on and will be accessible to a parcel of land that is owned or under the control of the applicant and that is 40 acres or larger.

(7) (a) Within 60 days after constructing an impoundment or pit, the appropriator shall apply for a permit as prescribed by this part. Subject to subsection (7)(b), upon receipt of a correct and complete application for a stock water provisional permit, the department shall automatically issue a

provisional permit. If the department determines after a hearing that the rights of other appropriators have been or will be adversely affected, it may revoke the permit or require the permittee to modify the impoundment or pit and may then make the permit subject to terms, conditions, restrictions, or limitations that it considers necessary to protect the rights of other appropriators.

(b) If the impoundment or pit is on national forest system lands, an application is not correct and complete under this section until the applicant has submitted proof of any written special use authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of diversion, impoundment, storage, transportation, withdrawal, use, or distribution of water under the permit.

(8) A person may also appropriate water without applying for or prior to receiving a permit under rules adopted by the department under 85-2-113."

Section 2. Section 85-2-402, MCA, is amended to read:

"85-2-402. Changes in appropriation rights — definition. (1) (a) The right to make a change in appropriation right subject to the provisions of this section in an existing water right, a permit, or a state water reservation is recognized and confirmed. In a change in appropriation right proceeding under this section, there is no presumption that an applicant for a change in appropriation right cannot establish lack of adverse effect prior to the adjudication of other rights in the source of supply pursuant to this chapter. Except as provided in 85-2-410 and subsections (15) and (16) of this section, an appropriator may not make a change in an appropriation right without the approval of the department or, if applicable, of the legislature. An applicant shall submit a correct and complete application.

(b) If an application involves a change in a point of diversion, conveyance, or place of use located on national forest system lands, the application is not correct and complete until the applicant has submitted proof to the department of any written special use authorization required by federal law for the proposed change in occupancy, use, or traverse of national forest system lands for the purpose of diversion, impoundment, storage, transportation, withdrawal, use, or distribution of water.

(c) As used in this part, "national forest system lands" has the same meaning as that provided in 85-20-1401, Article I.

(2) Except as provided in subsections (4) through (6), (15), and (16) and, if applicable, subject to subsection (17), the department shall approve a change in appropriation right if the appropriator proves by a preponderance of evidence that the following criteria are met:

(a) The proposed change in appropriation right will not adversely affect the use of the existing water rights of other persons or other perfected or planned uses or developments for which a permit or certificate has been issued or for which a state water reservation has been issued under part 3.

(b) Except for a change in appropriation right for instream flow to protect, maintain, or enhance streamflows to benefit the fishery resource pursuant to 85-2-436 or a temporary change in appropriation right authorization to maintain or enhance streamflows to benefit the fishery resource pursuant to 85-2-408 or a change in appropriation right to instream flow to protect, maintain, or enhance streamflows pursuant to 85-2-320, the proposed means of diversion, construction, and operation of the appropriation works are adequate.

(c) The proposed use of water is a beneficial use.

(d) Except for a change in appropriation right for instream flow to protect, maintain, or enhance streamflows to benefit the fishery resource pursuant to 85-2-436 or a temporary change in appropriation right authorization pursuant to 85-2-408 or a change in appropriation right to instream flow to protect, maintain, or enhance streamflows pursuant to 85-2-320, the applicant has a possessory interest, or the written consent of the person with the possessory interest, in the property where the water is to be put to beneficial use or, if the proposed change involves a point of diversion, conveyance, or place of use on national forest system lands, the applicant has any written special use authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of diversion, impoundment, storage, transportation, withdrawal, use, or distribution of water.

(e) If the change in appropriation right involves salvaged water, the proposed water-saving methods will salvage at least the amount of water asserted by the applicant.

(f) The water quality of an appropriator will not be adversely affected.

(g) The ability of a discharge permitholder to satisfy effluent limitations of a permit issued in accordance with Title 75, chapter 5, part 4, will not be adversely affected.

(3) The applicant is required to prove that the criteria in subsections (2)(f) and (2)(g) have been met only if a valid objection is filed. A valid objection must contain substantial credible information establishing to the satisfaction of the department that the criteria in subsection (2)(f) or (2)(g), as applicable, may not be met.

(4) The department may not approve a change in purpose of use or place of use of an appropriation of 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water unless the appropriator proves by a preponderance of evidence that:

(a) the criteria in subsection (2) are met; and

(b) the proposed change in appropriation right is a reasonable use. A finding of reasonable use must be based on a consideration of:

(i) the existing demands on the state water supply, as well as projected demands for water for future beneficial purposes, including municipal water supplies, irrigation systems, and minimum streamflows for the protection of existing water rights and aquatic life;

(ii) the benefits to the applicant and the state;

(iii) the effects on the quantity and quality of water for existing uses in the source of supply;

(iv) the availability and feasibility of using low-quality water for the purpose for which application has been made;

(v) the effects on private property rights by any creation of or contribution to saline seep; and

(vi) the probable significant adverse environmental impacts of the proposed use of water as determined by the department pursuant to Title 75, chapter 1, or Title 75, chapter 20.

(5) The department may not approve a change in purpose of use or place of use for a diversion that results in 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water being consumed unless:

(a) the applicant proves by clear and convincing evidence and the department finds that the criteria in subsections (2) and (4) are met; and

(b) for the withdrawal and transportation of appropriated water for out-of-state use, the department then petitions the legislature and the legislature affirms the decision of the department after one or more public hearings.

(6) The state of Montana has long recognized the importance of conserving its public waters and the necessity to maintain adequate water supplies for the state's water requirements, including requirements for federal non-Indian and Indian reserved water rights held by the United States for federal reserved lands and in trust for the various Indian tribes within the state's boundaries. Although the state of Montana also recognizes that, under appropriate conditions, the out-of-state transportation and use of its public waters are not in conflict with the public welfare of its citizens or the conservation of its waters, the following criteria must be met before out-of-state use may occur:

(a) The department and, if applicable, the legislature may not approve a change in appropriation right for the withdrawal and transportation of appropriated water for use outside the state unless the appropriator proves by clear and convincing evidence and, if applicable, the legislature approves after one or more public hearings that:

(i) depending on the volume of water diverted or consumed, the applicable criteria and procedures of subsection (2) or (4) are met;

(ii) the proposed out-of-state use of water is not contrary to water conservation in Montana; and

(iii) the proposed out-of-state use of water is not otherwise detrimental to the public welfare of the citizens of Montana.

(b) In determining whether the appropriator has proved by clear and convincing evidence that the requirements of subsections (6)(a)(ii) and (6)(a)(iii) will be met, the department and, if applicable, the legislature shall consider the following factors:

(i) whether there are present or projected water shortages within the state of Montana;

(ii) whether the water that is the subject of the proposed change in appropriation might feasibly be transported to alleviate water shortages within the state of Montana;

(iii) the supply and sources of water available to the applicant in the state where the applicant intends to use the water; and

(iv) the demands placed on the applicant's supply in the state where the applicant intends to use the water.

(c) When applying for a change in appropriation right to withdraw and transport water for use outside the state, the applicant shall submit to and comply with the laws of the state of Montana governing the appropriation and use of water.

(7) For any application for a change in appropriation right involving 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water, the department shall give notice of the proposed change in appropriation right in accordance with 85-2-307 and shall hold one or more hearings in accordance with 85-2-309 prior to its approval or denial of the proposed change in appropriation right. The department shall provide notice and may hold one or

more hearings upon any other proposed change in appropriation right if it determines that the proposed change in appropriation right might adversely affect the rights of other persons.

(8) The department or the legislature, if applicable, may approve a change in appropriation right subject to the terms, conditions, restrictions, and limitations that it considers necessary to satisfy the criteria of this section, including limitations on the time for completion of the change in appropriation right. The department may extend time limits specified in the change in appropriation right approval under the applicable criteria and procedures of 85-2-312(3).

(9) Upon actual application of water to the proposed beneficial use within the time allowed, the appropriator shall notify the department that the appropriation has been completed. The notification must contain a certified statement by a person with experience in the design, construction, or operation of appropriation works describing how the appropriation was completed.

(10) If a change in appropriation right is not completed as approved by the department or legislature or if the terms, conditions, restrictions, and limitations of the change in appropriation right approval are not complied with, the department may, after notice and opportunity for hearing, require the appropriator to show cause why the change in appropriation right approval should not be modified or revoked. If the appropriator fails to show sufficient cause, the department may modify or revoke the change in appropriation right approval.

(11) The original of a change in appropriation right approval issued by the department must be sent to the applicant, and a duplicate must be kept in the office of the department in Helena.

(12) A person holding an issued permit or change in appropriation right approval that has not been perfected may change the place of diversion, place of use, purpose of use, or place of storage by filing an application for change in appropriation right pursuant to this section.

(13) A change in appropriation right contrary to the provisions of this section is invalid. An officer, agent, agency, or employee of the state may not knowingly permit, aid, or assist in any manner an unauthorized change in appropriation right. A person or corporation may not, directly or indirectly, personally or through an agent, officer, or employee, attempt to change an appropriation right except in accordance with this section.

(14) The department may adopt rules to implement the provisions of this section.

(15) (a) An appropriator may change an appropriation right for a replacement well without the prior approval of the department if:

(i) the appropriation right is for:

(A) ground water outside the boundaries of a controlled ground water area; or

(B) ground water inside the boundaries of a controlled ground water area and if the provisions of the ~~order declaring~~ *rule establishing* the controlled ground water area do not restrict a change in appropriation right;

(ii) the change in appropriation right is to replace an existing well and the existing well will no longer be used;

(iii) the rate and volume of the appropriation from the replacement well are equal to or less than that of the well being replaced and do not exceed:

(A) 450 gallons a minute for a municipal well; or

(B) 35 gallons a minute and 10 acre-feet a year for all other wells;

(iv) the water from the replacement well is appropriated from the same aquifer as the water appropriated from the well being replaced; and

(v) a timely, correct and complete notice of replacement well is submitted to the department as provided in subsection (15)(b).

(b) (i) After completion of a replacement well and appropriation of ground water for a beneficial use, the appropriator shall file a notice of replacement well with the department on a form provided by the department.

(ii) (A) The department shall review the notice of replacement well and shall issue an authorization of a change in an appropriation right if all of the criteria in subsection (15)(a) have been met and the notice is correct and complete.

(B) If the replacement well is located on national forest system lands, the notice is not correct and complete under this subsection (15) until the appropriator has submitted proof of any written special use authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of constructing the replacement well.

(iii) The department may not issue an authorization of a change in appropriation right until a correct and complete notice of replacement well has been filed with the department. The department shall return a defective notice to the appropriator, along with a description of defects in the notice. The appropriator shall refile a corrected and completed notice of replacement well within 30 days of notification of defects or within a further time as the department may allow, not to exceed 6 months.

(iv) If a notice of replacement well is not completed within the time allowed, the appropriator shall:

(A) cease appropriation of water from the replacement well pending approval by the department; and

(B) submit an application for a change in appropriation right to the department pursuant to subsections (1) through (3).

(c) The provisions of this subsection (15) do not apply to an appropriation right abandoned under 85-2-404.

(d) For each well that is replaced under this subsection (15), the appropriator shall follow the well abandonment procedures, standards, and rules adopted by the board of water well contractors pursuant to 37-43-202.

(e) The provisions of subsections (2), (3), (9), and (10) do not apply to a change in appropriation right that meets the requirements of subsection (15)(a).

(16) (a) An appropriator may change an appropriation right without the prior approval of the department for the purpose of constructing a redundant water supply well in a public water supply system, as defined in 75-6-102, if the redundant water supply well:

(i) withdraws water from the same ground water source as the original well; and

(ii) is required by a state or federal agency.

(b) The priority date of the redundant water supply well is the same as the priority date of the original well. Only one well may be used at one time.

(c) Within 60 days of completion of a redundant water supply well, the appropriator shall file a notice of construction of the well with the department on a form provided by the department. The department may return a defective notice of construction to the appropriator for correction and completion. If the redundant water supply well is located on national forest system lands, the notice is not correct and complete under this subsection until the appropriator has submitted proof of any written special use authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of constructing the redundant water supply well.

(d) The provisions of subsections (9) and (10) do not apply to a change in appropriation right that meets the requirements of this subsection (16).

(17) The department shall accept and process an application for a change in appropriation right for instream flow to protect, maintain, or enhance streamflows pursuant to 85-2-320 and this section and to benefit the fishery resource pursuant to 85-2-436 and this section."

Section 3. Section 85-2-501, MCA, is amended to read:

"85-2-501. Definitions. Unless the context requires otherwise, in this part the following definitions apply:

(1) "Aquifer" means any underground geological structure or formation that is capable of yielding water *in usable quantities* or is capable of recharge.

(2) "Aquifer test" means stressing an aquifer by removing or adding water at a known rate or changing the pressure by a known quantity and measuring the resultant change in hydraulic head for the purpose of determining the aquifer's hydraulic properties near the tested well.

(3) "Bureau" means the Montana state bureau of mines and geology provided for in 20-25-211.

(4) "Ground water" means any water that is beneath the ground surface.

(5) "Ground water area" means an area that, as nearly as known facts permit, may be designated so as to enclose a single and distinct body of ground water, which must be described horizontally by surface description in all cases and which may be limited vertically by describing known geological formations if conditions dictate vertical limits to be desirable."

Section 4. Rulemaking. The department shall adopt rules for the purpose of implementing 85-2-506 and other controlled ground water area statutes. The rules must include but are not limited to petition requirements and the hearing procedure and process for controlled ground water areas.

Section 5. Section 85-2-506, MCA, is amended to read:

"85-2-506. Controlled ground water areas — designation or modification. (1) The department may *by rule* designate or modify *permanent or temporary* controlled ground water areas as provided in this part. *The rule for each controlled ground water area must designate the boundaries of the controlled ground water area.*

(2) ~~Designation~~ *The rulemaking process for designation* or modification of ~~an area of~~ *a* controlled ground water *area* ~~use~~ may be ~~proposed to~~ *initiated by:*

(a) the department*;* ~~on its own motion, by~~

(b) submission of a correct and complete petition ~~of~~ *from* a state or local public health agency for identified public health risks*; or*

(c) submission of a correct and complete petition:

(i) by a municipality, county, conservation district, or local water quality district formed under Title 7, chapter 13, part 45; or

(ii) signed by at least one-third of the water right holders in a proposed controlled ground water area.~~, or by petition signed by at least 20 or one-fourth of the users, whichever is the lesser number, of ground water in a ground water area in which there are alleged to be facts showing that:~~

~~(a) ground water withdrawals are in excess of recharge to the aquifer or aquifers within the ground water area;~~

~~(b) excessive ground water withdrawals are very likely to occur in the near future because of consistent and significant increases in withdrawals from within the ground water area;~~

~~(c) significant disputes regarding priority of rights, amounts of ground water in use by appropriators, or priority of type of use are in progress within the ground water area;~~

~~(d) ground water levels or pressures in the area in question are declining or have declined excessively;~~

~~(e) excessive ground water withdrawals would cause contaminant migration;~~

~~(f) ground water withdrawals adversely affecting ground water quality within the ground water area are occurring or are likely to occur; or~~

~~(g) water quality within the ground water area is not suited for a specific beneficial use defined by 85-2-102(4)(a).~~

(3) (a) A correct and complete petition must:

(i) be in a form prescribed by the department and must contain analysis prepared by a hydrogeologist, a qualified scientist, or a qualified licensed professional engineer concluding that one or more of the criteria provided in subsection (5) are met; and

(ii) describe proposed measures, if any, to mitigate effects of the criteria identified in subsection (5) that are alleged in the petition.

~~(3)~~*(b)* When *the department proposes a rule pursuant to this section,* ~~a proposal is made, the department shall fix a time and place for a hearing, which may not be less than 90 days from the making of the proposal. The~~ *the* place for the hearing must be within or as close as practical to the *proposed or existing* controlled ground water area.

~~(4) The department shall publish a notice of the hearing, setting forth:~~

~~(a) the names of the petitioners;~~

~~(b) the description by legal subdivisions (section, township, range) of all lands included in or proposed to be included in the ground water area or subarea;~~

~~(c) the purpose of the hearing; and~~

~~(d) the time and place of the hearing where any interested person may appear, either in person or by attorney, file written objections to the granting of the proposal, and be fully heard.~~

(c) (i) The department shall notify the petitioner of any defects in a petition within 180 days. If the department does not notify the petitioner of any defects within 180 days, the petition must be treated as correct and complete.

(ii) A petition that is not made correct and complete within 90 days from the date of notification by the department of any defect is terminated.

(4) (a) Within 60 days after a petition is determined to be correct and complete, the department shall:

(i) deny in writing the petition in whole or in part, stating the reasons for denial;

(ii) inform the petitioner that the department will study the information presented in the petition for a period not to exceed 90 days before denying or proceeding with the petition; or

(iii) initiate rulemaking proceedings in accordance with Title 2, chapter 4, part 3.

(b) Failure of the department to act under subsection (4)(a) does not mandate that the department grant the petition for rulemaking.

(c) In addition to the notice requirements of Title 2, chapter 4, parts 1 through 4, the department shall provide public notice of the rulemaking hearing by:

(i) ~~(5) (a) The notice of hearing must be published~~ *publishing a notice* at least once each week for 3 successive weeks*, with the first notice* not less than 30 days before the date of the hearing in a newspaper of general circulation in the county or counties in which the *proposed controlled* ground water area ~~or subarea~~ is located~~;. The department shall also cause a copy of the notice, together with a copy of the petition, to be served by mail, not less than 30 days before the hearing, upon:~~

~~(i) each well driller licensed in Montana whose address is within any county in which any part of the area in question is located;~~

(ii) *serving by mail a copy of the notice, not less than 30 days before the hearing, upon* each person or public agency known from an examination of the records ~~in the department's office to be a claimant or appropriator of ground water in the area in question;~~

~~(iii) the bureau; and~~

~~(iv) the mayor or presiding officer of the governing body of each incorporated municipality located in whole or in part within the proposed ground water area.~~ *of the department to be a water right holder with a diversion within the proposed controlled ground water area, all landowners of record within the proposed controlled ground water area, and each well driller licensed in Montana whose address is within any county in which any part of the proposed controlled ground water area is located; and*

~~(b)~~*(iii)* ~~The department may also serve notice~~ *serving by mail a copy of the notice* upon any other person or state or federal agency that the department feels may be interested in or affected by the proposed designation or modification of a controlled ground water area. ~~The petition need not be served on any petitioner. A copy of the notice, together with a copy of the proposal, must be mailed to each person at the person's last-known address, and service is complete upon depositing it in the post office, postage prepaid, addressed to each person on whom it is to be served.~~

(d) The notice under subsection (4)(c) must include a summary of the basis for the proposed rule. Publication and mailing of the notice as prescribed in this section, when completed, is considered to be sufficient notice of the hearing to all interested persons.

~~(c) As used in subsection (5)(a), "claimant or appropriator" means a person who diverts, impounds, or withdraws ground water and not merely a person who uses or obtains ground water from another person who diverts, impounds, or withdraws ground water.~~

(5) The department may designate a permanent controlled ground water area by rule if it finds by a preponderance of the evidence that any of the following criteria have been met and cannot be appropriately mitigated:

(a) current or projected reductions of recharge to the aquifer or aquifers in the proposed controlled ground water area will cause ground water levels to decline to the extent that water right holders cannot reasonably exercise their water rights;

(b) current or projected ground water withdrawals from the aquifer or aquifers in the proposed controlled ground water area have reduced or will reduce ground water levels or surface water availability necessary for water right holders to reasonably exercise their water rights;

(c) current or projected ground water withdrawals from the aquifer or aquifers in the proposed controlled ground water area have induced or altered or will induce or alter contaminant migration exceeding relevant water quality standards;

(d) current or projected ground water withdrawals from the aquifer or aquifers in the proposed controlled ground water area have impaired or will impair ground water quality necessary for water right holders to reasonably exercise their water rights based on relevant water quality standards;

(e) ground water within the proposed controlled ground water area is not suited for beneficial use; or

(f) public health, safety, or welfare is or will become at risk.

(6) (a) If the department finds that sufficient facts are not available to designate a permanent controlled ground water area, it may designate by rule a temporary controlled ground water area to allow studies to obtain the facts needed to determine whether or not it is appropriate to designate a permanent controlled ground water area. The department shall set the length of time that the temporary controlled ground water area will be in effect. Subject to subsection (6)(c), the term of a temporary controlled ground water area may be extended by rule.

(b) A temporary controlled ground water area designation is for the purpose of study and cannot include the control provisions provided in subsection (7), other than measurement, water quality testing, and reporting requirements.

(c) A temporary controlled ground water area designation may not exceed a total of 6 years, including any extensions.

(d) Prior to expiration of a temporary controlled ground water area, the department may amend or repeal the rule establishing the temporary controlled ground water area or may designate a permanent controlled ground water area through the rulemaking process under this section.

(e) Studies for temporary controlled ground water areas may be considered for funding under the renewable resource grant and loan program in Title 85, chapter 1, part 6.

(f) If there is a ground water investigation program within the bureau, the ground water assessment steering committee established by 2-15-1523 shall consider temporary controlled ground water areas for study.

(7) A controlled ground water area may include but is not limited to the following control provisions:

(a) a provision closing the controlled ground water area to further appropriation of ground water;

(b) a provision restricting the development of future ground water appropriations in the controlled ground water area by flow, volume, purpose, aquifer, depth, water temperature, water quality, density, or other criteria that the department determines necessary;

(c) a provision requiring measurement of future ground water or surface water appropriations;

(d) a provision requiring the filing of notice on land records within the boundary of a permanent controlled ground water area to inform prospective holders of an interest in the property of the existence of a permanent controlled ground water area. Notice of the designation must be removed or modified as necessary to accurately reflect modification or repeal of a permanent designation within 60 days.

(e) a provision for well spacing requirements, well construction constraints, and prior department approval before well drilling, unless the well is regulated pursuant to Title 82, chapter 11;

(f) a provision for mitigation of ground water withdrawals;

(g) a provision for water quality testing;

(h) a provision for data reporting to the department; and

(i) other control provisions that the department determines are appropriate and adopts through rulemaking."

Section 6. Section 85-2-508, MCA, is amended to read:

"85-2-508. Controlled ground water areas — permits to appropriate. (1) A person may appropriate ground water in a controlled ground water area by:

(a) applying for and receiving a permit from the department in accordance with part 3 of this chapter; or

(b) following the requirements ~~of an order issued~~ *a rule promulgated* pursuant to ~~85-2-507~~ *85-2-506*.

(2) The department may not grant a permit if the withdrawal would be beyond the capacity of the aquifer or aquifers in the *controlled* ground water area to yield ground water within a reasonable or feasible pumping lift, in the case of pumping developments, or within a reasonable or feasible reduction of pressure, in the case of artesian developments."

Section 7. Criteria for petition applications. Municipalities, counties, conservation districts, and local water quality districts may establish specific criteria for acceptance of an application to the municipality, county, conservation district, or local water quality district to petition for creation of a controlled ground water area and other criteria necessary to implement this part. Those criteria may include but are not limited to:

(1) the submission of substantial credible evidence that one or more of the criteria provided in 85-2-506(5) are met;

(2) a description of proposed measures, if any, to mitigate effects of the criteria identified in 85-2-506(5);

(3) a description of proposed studies for a temporary controlled ground water area;

(4) a requirement that an application be supported by owners of at least one-fourth of the water rights with a point of diversion of water within the boundaries of the proposed controlled ground water area;

(5) a requirement that an applicant pay an application or processing fee for the application; and

(6) a description of proposed funding for studies for a controlled ground water area.

Section 8. Repealer. Sections 85-2-507, 85-2-509, 85-2-511, 85-2-513, 85-2-518, and 85-2-520, MCA, are repealed.

Section 9. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 10. Codification instruction. [Sections 4 and 7] are intended to be codified as an integral part of Title 85, chapter 2, part 5, and the provisions of Title 85, chapter 2, part 5, apply to [sections 4 and 7].

Section 11. Effective date. [This act] is effective on passage and approval.

Approved March 25, 2009

CHAPTER NO. 87

[SB 135]

AN ACT REVISING THE SMALL BUSINESS HEALTH INSURANCE PROGRAM; ALLOWING THE INSURANCE COMMISSIONER TO EXEMPT THE SMALL BUSINESS HEALTH INSURANCE PURCHASING POOL FROM REPORTING AS REQUIRED FOR VOLUNTARY PURCHASING POOLS; CLARIFYING TERMS FOR PREMIUM INCENTIVE PAYMENT SCHEDULES; CLARIFYING THE DESCRIPTION OF HEALTH PLANS AS THOSE PROVIDING CREDITABLE COVERAGE; PROVIDING REVISED ELIGIBILITY TERMS FOR OWNERS, PARTNERS, OR SHAREHOLDERS EARNING MORE THAN $75,000 AND FOR CERTAIN EMPLOYEES OR DEPENDENTS; REVISING FUNDING TERMS FOR PREMIUM ASSISTANCE AND PREMIUM INCENTIVE PAYMENTS; AMENDING SECTIONS 33-22-1816, 33-22-2004, 33-22-2006, 33-22-2007, 33-22-2008, AND 53-4-1004, MCA; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-22-1816, MCA, is amended to read:

"33-22-1816. Commissioner powers and duties — application for registration — reporting insolvency. (1) The commissioner shall develop forms for registration of an organization as a voluntary purchasing pool.

(2) An organization seeking to be registered as a voluntary purchasing pool shall make application to the commissioner. The commissioner shall register an organization as a voluntary purchasing pool upon proof of fulfillment of the qualifications provided in 33-22-1815.

(3) Except as provided in subsection (5), on March 1 of each year, the voluntary purchasing pool shall provide a report and financial statement for the

previous calendar year to the commissioner ~~in order~~ *so* that the commissioner may determine:

(a) whether the operation of the voluntary purchasing pool is fiscally sound;

(b) whether the voluntary purchasing pool is bearing any risk; and

(c) the number of individuals covered.

(4) The annual report of the voluntary purchasing pool must disclose its total administrative cost.

(5) A voluntary purchasing pool may choose to operate on a fiscal year other than on the calendar year. A voluntary purchasing pool that establishes a fiscal year that is other than the calendar year shall provide the report required in subsection (3) to the commissioner within 60 days of the voluntary purchasing pool's fiscal yearend.

(6) The commissioner may exempt the small business health insurance purchasing pool established in 33-22-2001 from the reporting requirements under subsection (3)."

Section 2. Section 33-22-2004, MCA, is amended to read:

"33-22-2004. Powers and duties of board. (1) The board shall:

(a) establish an operating plan that includes but is not limited to administrative and accounting procedures for the operation of the purchasing pool and a schedule for premium incentive and premium assistance payments and that complies with the powers and duties provided for in this section;

(b) require employers and employees to reapply for premium incentive payments or premium assistance payments on an annual basis;

(c) upon reapplication, give priority to employers and their employees who are already receiving the premium incentive payments and premium assistance payments;

(d) upon reapplication, allow employers to retain eligibility to receive premium incentive payments and premium assistance payments on behalf of their employees if the number of their employees goes over the maximum number, not to exceed nine employees, established by the commissioner in administrative rule;

(e) renew purchasing pool group health plan coverage for all employer groups, even if the employer group no longer receives or is eligible for a premium incentive *or premium assistance* payment;

(f) adopt a premium incentive payment ~~amount~~ *schedule* that is *based on a percentage of the employer's share of the premium and apply the schedule uniformly to* ~~the same for~~ all registered eligible small employers who join the purchasing pool or obtain qualified association health plan coverage;

(g) adopt premium assistance payment amounts that, in combination with the premium incentive payments, are consistent with the amounts provided for in 33-22-2006 and 33-22-2008 or*,* with the assistance of the department of public health and human services, adopt a premium assistance payment schedule that is equitably proportional to the income or wage level for employees;

(h) establish criteria for determining which employees will be eligible for a premium assistance payment and the amount that the employees will receive from among those eligible small employer groups that have registered with the commissioner pursuant to 33-22-2008 and applied for coverage under the purchasing pool group health plan or qualified association health plan.

However, to the extent that federal funds are used to make some premium assistance payments, criteria for those payments must be consistent with any waiver requirements determined by the department of public health and human services pursuant to 53-2-216. Eligibility for employees is not limited to the waiver eligibility groups.

(i) make appropriate changes to eligibility or other elements in the operating plan as needed to reach the goal of expending 90% of the funding dedicated to premium incentive payments and premium assistance payments during the current biennium;

(j) limit the total amount of premium incentive payments and premium assistance payments paid to the amount of available state, federal, and private funding;

(k) approve no more than six fully insured group health plans with different benefit levels that will be offered to employers participating in the purchasing pool;

(l) prepare appropriate specifications and bid forms and solicit bids from health insurance issuers authorized to do business in this state;

(m) contract with no more than three health insurance issuers to underwrite the group health plans that will be offered through the purchasing pool;

(n) request that the department of public health and human services seek a federal waiver for medicaid matching funds for premium assistance payments based on the department's analysis, as provided in 53-2-216, if it is in the best interests of the purchasing pool;

(o) comply with the participation requirements provided for in 33-22-1811;

(p) meet at least four times annually; and

(q) within 2 years after the purchasing pool is established and considered stable by the board, examine the possibility of offering an opportunity for individual sole proprietors without employees to purchase insurance from the purchasing pool without premium incentive payments, premium assistance payments, or tax credits.

(2) The board may:

(a) borrow money;

(b) enter into contracts with insurers, administrators, or other persons;

(c) hire employees to perform the administrative tasks of the purchasing pool;

(d) assess its members for costs associated with administration of the purchasing pool and request that the commissioner transfer funds or request that the department of public health and human services transfer funds from the special revenue account, as provided in 53-6-1201, for that purpose;

(e) set contribution levels for employers;

(f) *at least 30 days before the end of the current fiscal year,* request that funds be transferred from the funds appropriated for premium incentive payments and premium assistance payments to the *department of revenue for reimbursement of the* general fund to offset tax credits if the number of eligible small employers seeking premium incentive payments and employees receiving premium assistance payments is insufficient to exhaust at least 90% of the appropriated funds for the premium incentive and assistance payments during a ~~biennium~~ *fiscal year*;

(g) at least 90 days before the end of the current fiscal year, request that funds be transferred from the funds allocated for tax credits to the funds appropriated for premium incentive payments and premium assistance payments if the number of eligible small employers seeking tax credits is insufficient to exhaust at least 90% of the funds allocated for tax credits during a fiscal year;

~~(g)~~*(h)* seek other federal, state, and private funding sources;

~~(h)~~*(i)* accept all small employer groups who apply for coverage under the small business health insurance pool group health plan even if they are not eligible for any tax credit or premium incentive payment and have not been registered by the commissioner pursuant to 33-22-2008;

~~(i)~~*(j)* receive from the commissioner's office or the department of public health and human services premium incentive payments on behalf of eligible small employers and premium assistance payments on behalf of employees, collect the employer or employee premiums from the employer or employees, and make premium payments to insurers on behalf of the eligible small employers and employees;

~~(j)~~*(k)* request the commissioner to direct more than 30% of the available funding for premium incentives and premium assistance payments to qualified association health plan coverage instead of purchasing pool coverage; and

~~(k)~~*(l)* pay appropriate commissions to licensed insurance producers who market purchasing pool coverage."

Section 3. Section 33-22-2006, MCA, is amended to read:

"33-22-2006. Premium incentive payments, premium assistance payments, and tax credits for small employer health insurance premiums paid — eligibility for small group coverage — amounts. (1) An employer is eligible to apply for premium incentive payments and premium assistance payments or a tax credit under this part if the employer and any related employers:

(a) did not have more than the number of employees established for eligibility by the commissioner at the time of registering for premium incentive payments or premium assistance payments or a tax credit under 33-22-2008;

(b) provide or will provide a group health plan *that meets the requirements of creditable coverage* for the employer's and any related employer's employees;

(c) do not have delinquent state income tax liability owing to the department of revenue from previous years;

(d) have been registered as eligible small employer participants by the commissioner as provided in 33-22-2008; and

(e) do not have any employees, not including an owner, partner, or shareholder of the business, who received more than $75,000 in ~~gross compensation, including bonuses and commissions~~ *wages, as defined in 39-71-123*, from the small employer or related employer in the prior tax year.

(2) An owner, partner, or shareholder of a business who received more than $75,000 in wages, as defined in 39-71-123, and those individuals' spouses who are employees are not eligible under this chapter for:

(a) any premium assistance payment. However, a premium incentive payment may be made for the premium share paid by the business for group health insurance coverage for:

(i) the owner, partner, or shareholder;

(ii) a spouse of those listed in subsection (2)(a)(i) who is also an employee of the business; or

(iii) dependents of those listed in subsection (2)(a)(i).

(b) a tax credit for group health insurance premiums paid by the business or the owner, partner, or shareholder for group health insurance coverage for the individual or the individual's dependents.

(3) An employee, including an owner, partner, or shareholder or any dependent of an employee, who is also eligible for the children's health insurance program provided for under Title 53, chapter 4, part 10, or medicaid under Title XIX of the Social Security Act may become ineligible to receive a premium assistance payment.

~~(2)~~*(4)* The commissioner shall establish, by rule, the maximum number of employees that may be employed to qualify as a small employer under subsection (1). However, the number may not be less than two employees or more than nine employees. The maximum number may be different for employers seeking premium incentive payments and premium assistance payments than for employers seeking a tax credit. The number must be set to maximize the number of employees receiving coverage under this part. The commissioner may not change the maximum employee number more often than every 6 months. If the maximum number of allowable employees is changed, the change does not disqualify registered employers with respect to the tax year for which the employer has registered.

~~(3)~~*(5)* Except as provided in subsection ~~(4)~~ *(6)*, an eligible small employer may claim a tax credit in the following amounts:

(a) (i) not more than $100 each month for each employee and $100 each month for each employee's spouse, if the employer covers the employee's spouse, if the average age of the group is under 45 years of age; or

(ii) not more than $125 each month for each employee and $100 each month for each employee's spouse, if the employer covers the employee's spouse, if the average age of the group is 45 years of age or older; and

(b) not more than $40 each month for each dependent, other than the employee's spouse, if the employer is paying for coverage for the dependents, not to exceed two dependents of an employee in addition to the employee's spouse.

~~(4)~~*(6)* An employer may not claim a tax credit:

(a) in excess of 50% of the total premiums paid by the employer for the qualifying small group;

(b) for premiums paid from a medical care savings account provided for in Title 15, chapter 61; or

(c) for premiums for which a deduction is claimed under 15-30-121 or 15-31-114.

~~(5)~~*(7)* An employer may not claim a premium incentive payment in excess of 50% of the total premiums paid by the employer for the qualifying small group."

Section 4. Section 33-22-2007, MCA, is amended to read:

"33-22-2007. Filing for tax credit — filing for premium incentive payments and premium assistance payments. (1) An eligible small employer may:

(a) apply the tax credit against taxes due for the current tax year on a return filed pursuant to Title 15, chapter 30 or 31; or

(b) if the eligible small employer did not sponsor a group health plan *that provides creditable coverage* for employees during the 2 years prior to the first tax year of registration for the premium incentive payments or premium assistance payments or operates a new business that is less than 2 years old and has never sponsored a group health plan *that provides creditable coverage*, apply to receive monthly premium incentive payments and premium assistance payments to be applied to coverage obtained through the purchasing pool or qualified association health plan coverage approved by the commissioner.

(2) An eligible small employer may not, in the same tax year, apply the tax credit against taxes due for the current tax year as provided for in subsection (1)(a) and receive premium incentive payments as provided for in subsection (1)(b).

(3) The premium incentive payments and premium assistance payments provided for in subsection (1)(b) must be paid pursuant to a plan of operation implemented by the board and any applicable administrative rules.

(4) (a) If an eligible small employer's tax credit as provided in subsection (1)(a) exceeds the employer's liability under 15-30-103 or 15-31-121, the amount of the excess must be refunded to the eligible small employer. The tax credit may be claimed even if the eligible small employer has no tax liability under 15-30-103 or 15-31-121.

(b) A tax credit is not allowed under 15-30-129, 15-31-132, or any other provision of Title 15, chapter 30 or 31, with respect to any amount for which a tax credit is allowed under this part.

(5) The department of revenue or the commissioner may grant a reasonable extension for filing a claim for premium incentive payments or premium assistance payments or a tax credit whenever, in the department's or the commissioner's judgment, good cause exists. The department of revenue and the commissioner shall keep a record of each extension and the reason for granting the extension.

(6) (a) If an employer that would have a claim under this part ceases doing business before filing the claim, the representative of the employer who files the tax return or pays the premium may file the claim.

(b) If a corporation that would have a claim under this part merges with or is acquired by another corporation and the merger or acquisition makes the previously eligible corporation ineligible for the premium incentive payments, premium assistance payments, or tax credit in the future, the surviving or acquired corporation may file for the premium incentive payments, premium assistance payments, or tax credit for any claim period during which the former eligible corporation remained eligible.

(c) If an employer that would have a claim under this part files for bankruptcy protection, the receiver may file for the premium incentive payments, premium assistance payments, or tax credit for any claim period during which the employer was eligible."

Section 5. Section 33-22-2008, MCA, is amended to read:

"33-22-2008. Registration — funding limitations — transfers — maximum number — waiting list — information transfer for tax credits. (1) (a) Each eligible small employer that proposes to apply for premium incentive payments and premium assistance payments or a tax credit under this part must be registered each year with the commissioner. ~~The commissioner shall begin taking new applications for 2006 on October 1, 2005.~~

(b) An eligible small employer may submit a new application for the premium incentive payments and premium assistance payments or the tax credit anytime during the year, but in order to maintain the employer's registration for the next year, the registration application must be renewed each year.

(c) The commissioner shall begin accepting renewal applications on October 1 of each year and stop accepting renewal applications on October 31 of each year.

(d) The registration application must include the number of individuals covered, as of the date of the registration application, under the small group health plan for which the employer is seeking premium incentive payments and premium assistance payments or a tax credit. If, after the initial registration, the number of individuals increases, the employer may apply to register the additional individuals, but those additional individuals may be added only at the discretion of the commissioner, who shall limit enrollment based on available funds.

(e) A small employer is not eligible to apply for premium incentive payments and premium assistance payments or a tax credit for a number of employees, or the employees' spouses or dependents, over the number that has been established in 33-22-2006 as the maximum number of employees an employer may have in order to qualify for registration for the time period in question.

(f) An employer's decision to apply for premium incentive payments and premium assistance payments or a tax credit is irrevocable for 12 months or until the purchasing pool group health plan or qualified association health plan renews its registration, whichever time period is less. An employer may choose to discontinue receiving any premium incentive payments and premium assistance payments or tax credits at any time.

(2) The commissioner shall register qualifying eligible small employers in the order in which applications are received and according to whether or not the application is for premium incentive payments and premium assistance payments or a tax credit. Initially, 60% of the available funding must be dedicated to provide and maintain premium incentive payments and premium assistance payments for eligible small employers who have not sponsored group health plans *that provide creditable coverage* in the previous 2 years and who chose to join the purchasing pool or a qualified association health plan and 40% of the available funding must be dedicated to tax credits for eligible small employers who currently sponsor a small group health plan *that provides creditable coverage*. Funding may be transferred from the allocated fund for premium incentive payments and premium assistance payments to the general fund for tax credits *or from the funds allocated for tax credits to the allocated fund for premium incentive payments and premiums assistance payments* if the board requests the transfer as provided in 33-22-2004 and the commissioner approves the request.

(3) (a) The maximum number of eligible small employers is reached when the anticipated amount of claims for premium incentive payments and premium assistance payments and tax credits has reached 95% of the amount of money allocated for premium incentive payments and premium assistance payments and tax credits.

(b) The commissioner may establish a waiting list for applicants that are otherwise qualified for registration but cannot be registered because of a lack of

money or because the maximum number of eligible small employers has been reached.

(c) The commissioner shall mail to each employer registered under this section a notice of registration containing a unique registration number and indicating eligibility for either premium incentive payments and premium assistance payments or a tax credit. The commissioner shall also issue to each employer that is eligible for premium incentive payments and premium assistance payments or the tax credit a certificate, placard, sticker, or other evidence of participation that may be publicly posted.

(d) The commissioner shall notify all persons who applied for registration and who were not accepted that they were not registered and the reason that they were not registered.

(4) A prospective participant shall apply for registration on a form provided by the commissioner. The prospective participant shall:

(a) provide the number of employees and whether the employer qualifies under 33-22-2006;

(b) provide information that is necessary to estimate the amount of the premium incentive payments and premium assistance payments payable to the applicant or the amount of the tax credit available to the applicant, such as the ages of employees or dependents, relationships of employees' dependents, and information required by the department of public health and human services for determination of eligibility for premium assistance payments matched by federal funds;

(c) indicate whether the prospective employer intends to pursue the claim as a tax credit through the income tax process or through premium incentive payments and premium assistance payments to be applied toward purchasing pool or eligible qualified association health plan coverage;

(d) indicate whether or not the employer previously sponsored a group health plan *that provided creditable coverage* and, if so, when and for how long; and

(e) provide any additional information determined by the commissioner to be necessary to support an application.

(5) Each year, small employer participants shall reregister with the commissioner in order to determine the participant's continued eligibility.

(6) The commissioner shall transmit to the department of revenue, at least annually, a list of eligible small employers that are taxpayers entitled to the tax credit and shall specify the taxpayer's name and tax identification number, the tax year to which the credit applies, the amount of the credit, and whether the credit is to be applied against taxes due on the taxpayer's return or paid as premium incentive payments or premium assistance payments. Unless there has been a finding of fraud or misrepresentation on the part of the taxpayer regarding issues relating to eligibility for the tax credit, the department of revenue may not redetermine or change the commissioner's determination regarding the taxpayer's entitlement to and amount of the tax credit.

(7) If the department of public health and human services receives approval for a section 1115 waiver as provided in 53-2-216, the commissioner shall work with the department of public health and human services with regard to eligibility determinations as required by federal law or waiver conditions."

Section 6. Section 53-4-1004, MCA, is amended to read:

"53-4-1004. *(Temporary)* **Eligibility for program — rulemaking.** (1) To be considered eligible for the program, a child:

(a) must be 18 years of age or younger;

(b) must have a combined family income at or below 250% of the federal poverty level or at a lower level determined by the department of public health and human services as provided in subsection (4);

(c) may not already be covered by private insurance that offers creditable coverage, as defined in 42 U.S.C. 300gg(c), for 3 months prior to enrollment in the program or since birth, whichever period is less*, except that the break in coverage is waived for a covered dependent whose coverage moves from the purchasing pool provided under Title 33, chapter 22, part 20, to coverage under this part*;

(d) may not be eligible for medicaid benefits; and

(e) must be a United States citizen or qualified alien and a Montana resident.

(2) The department of public health and human services shall adopt rules that establish the program's criteria for residency. The criteria must conform as nearly as practicable with the residency requirements for medicaid eligibility.

(3) Subject to 53-4-1009(3), rules governing eligibility may also include financial standards and criteria for income and resources, treatment of resources, and nonfinancial criteria.

(4) If the department determines that there is insufficient funding for the program, it may lower the percentage of the federal poverty level established in subsection (1)(b) in order to reduce the number of persons who may be eligible to participate or may limit the amount, scope, or duration of specific services provided. *(Terminates on occurrence of contingency—sec. 15, Ch. 571, L. 1999; sec. 14, I.M. No. 155, approved November 4, 2008.)*"

Section 7. Contingent voidness. [Section 6] is void on the date that the centers for medicare and medicaid services notifies the department of public health and human services of disapproval of the state plan amendment. The department of public health and human services shall notify the code commissioner of the date of the notification if the state plan amendment is disapproved.

Section 8. Effective dates. (1) Except as provided in subsection (2), [this act] is effective July 1, 2009.

(2) [Section 3] is effective January 1, 2010.

Approved March 25, 2009

CHAPTER NO. 88

[SB 150]

AN ACT GENERALLY REVISING UNEMPLOYMENT INSURANCE LAWS; AUTHORIZING THE GOVERNOR TO APPOINT A SUBSTITUTE MEMBER TO THE BOARD OF LABOR APPEALS; PROVIDING FOR INELIGIBILITY FOR UNEMPLOYMENT BENEFITS DURING A LEAVE OF ABSENCE; ESTABLISHING THE INELIGIBILITY PERIOD FOR UNEMPLOYMENT BENEFITS FOR A PERSON SUSPENDED FROM EMPLOYMENT; CLARIFYING THE REQUISITIONING OF MONEY FROM THE UNEMPLOYMENT TRUST FUND; ALLOWING THE DEPARTMENT OF

LABOR AND INDUSTRY TO CHARGE FEES FOR PROVIDING INFORMATION; REVISING CONFIDENTIALITY REQUIREMENTS; GRANTING RULEMAKING AUTHORITY; REVISING GENERAL BENEFIT ELIGIBILITY REQUIREMENTS; REVISING AGENCY REQUIREMENTS FOR PERSONS ACTING ON BEHALF OF A CLAIMANT; REVISING COLLECTION PROCEDURES FOR OVERPAYMENTS; AMENDING SECTIONS 2-15-1704, 35-8-304, 39-51-403, 39-51-501, 39-51-603, 39-51-1105, 39-51-1216, 39-51-1301, 39-51-2101, 39-51-2104, 39-51-2307, 39-51-2402, 39-51-2403, 39-51-2405, 39-51-3201, 39-51-3202, 39-51-3206, AND 39-51-3207, MCA; REPEALING SECTION 39-51-3104, MCA; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-1704, MCA, is amended to read:

"2-15-1704. Board of labor appeals — allocation — composition — function — quasi-judicial. (1) There is a board of labor appeals.

(2) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121.

(3) The board is composed of three members of the public who are not employees of the state government, appointed by the governor as prescribed in 2-15-124.

(4) The governor may appoint a substitute board member to the board who is subject to the same qualifications and confirmation requirements as the regular board members as prescribed in subsection (3) and in 2-15-124. The substitute board member may serve in place of any regular board member who is unable to attend a board meeting and participate in the proceedings and decisions of that board meeting. The substitute board member is entitled to the same compensation and per diem as the regular board members.

~~(4)~~*(5)* The board is designated as a quasi-judicial board for purposes of 2-15-124."

Section 2. Benefit ineligibility for leave of absence. (1) An individual is ineligible to receive benefits during an approved leave of absence.

(2) An individual is eligible to receive benefits when the individual returns to and offers service to the individual's employer after returning from an approved leave of absence and the individual's regular or comparable suitable work is not available, as determined by the department, provided that the individual is otherwise eligible.

Section 3. Benefit ineligibility for suspension. (1) An individual who files for benefits during a disciplinary suspension is ineligible to receive benefits for 2 weeks or until the suspension ends, whichever occurs first.

(2) Ineligibility based upon a disciplinary suspension may not be imposed for any week beginning after the second week of the suspension. If the individual remains suspended, the individual must be considered discharged for purposes of unemployment insurance. The department shall determine whether the discharge constitutes misconduct under 39-51-2303.

Section 4. Section 35-8-304, MCA, is amended to read:

"35-8-304. Liability of members and managers to third parties. (1) Except as provided in *39-51-1105 and* subsection (3) *of this section*, a person who is a member or manager, or both, of a limited liability company is not liable, solely by reason of being a member or manager, or both, under a judgment,

decree or order of a court, or in any other manner, for a debt, obligation, or liability of the limited liability company, whether arising in contract, tort, or otherwise or for the acts or omissions of any other member, manager, agent, or employee of the limited liability company.

(2) The failure of a limited liability company to observe the usual company formalities or requirements relating to the exercise of its company powers or management of its business is not a ground for imposing personal liability on the members or managers of the limited liability company.

(3) All or specified members of a limited liability company are liable in their capacity as members for all or specified debts, obligations, or liabilities of the company if:

(a) a provision to that effect is contained in the articles of organization; and

(b) a member named as liable has consented in writing to the adoption of the provision or to be bound by the provision."

Section 5. Section 39-51-403, MCA, is amended to read:

"39-51-403. Money to be requisitioned from unemployment trust fund solely for payment of benefits — ~~exception~~. (1) Money may be requisitioned from this state's account in the unemployment trust fund solely for the payment of benefits and in accordance *with section 904 of the Social Security Act, 42 U.S.C. 1104, and* with regulations prescribed by the department~~, except that money credited to this state's account pursuant to sections 903 and 904 of the Social Security Act (42 U.S.C. 1103 and 1104), as amended, may also be withdrawn for the payment of expenses for the administration of this chapter and of public employment offices, as provided by this chapter~~. Money withheld by the department from a benefits payment at the request of an individual*,* ~~or~~ in accordance with the department's rules pertaining to deductions and withholding for federal income tax purposes pursuant to 39-51-2207*,* ~~or money withheld~~ for repayment of an overissuance of food stamp coupons pursuant to 39-51-2208*, or for repayment of child support obligations pursuant to 39-51-3106* must be considered benefits for the purposes of this subsection.

(2) The department shall from time to time requisition from the unemployment trust fund amounts, not exceeding the amounts in this state in the fund, as it considers necessary for the payment of benefits for a reasonable future period. Upon receipt of a requisition, the ~~treasurer~~ *secretary of the treasury of the United States* shall deposit the money in the benefit account. ~~and~~ *Upon receipt of the deposit, the department* shall issue warrants for the payment of benefits solely from the benefit account.

(3) Expenditures of money in the benefit account and refunds from the clearing account are not subject to any provisions of law requiring specific appropriations or other formal release by state officers of money in their custody.

(4) Any balance of money requisitioned from the unemployment trust fund that remains unclaimed or unpaid in the benefit account after the expiration of the period for which the sums were requisitioned must be deducted from estimates for and may be used for the payment of benefits during succeeding periods or, in the discretion of the department, must be redeposited with the secretary of the treasury of the United States to the credit of this state's account in the unemployment trust fund, as provided in 39-51-402."

Section 6. Section 39-51-501, MCA, is amended to read:

"39-51-501. State-federal cooperation. (1) *(a)* In the administration of this chapter, the department shall:

~~(a) cooperate to the fullest extent consistent with the provisions of this chapter with the secretary of labor, pursuant to the provisions of the Social Security Act, as amended;~~

~~(b) make reports in a form and containing the information that the secretary of labor may require and shall comply with the provisions that the secretary of labor may find necessary to ensure the correctness and verification of the reports; and~~

~~(c) comply with the regulations prescribed by the secretary of labor governing the expenditures of the sums that are allotted and paid to this state under Title III of the Social Security Act (now Subchapter III), as amended, for the purpose of assisting in the administration of this chapter.~~

(i) afford reasonable cooperation to every agency of the United States charged with the administration of any unemployment insurance law;

(ii) disclose wage and other required information to authorized recipients as provided by 42 U.S.C. 503; and

(iii) establish necessary safeguards to ensure that any information disclosed is used only for the purposes outlined in 42 U.S.C. 503.

(b) The department may charge fees commensurate with the costs of providing any information pursuant to subsection (1)(a) and shall deposit the fees in the state special revenue fund.

(2) The department shall cooperate with the secretary of labor in the administration of any act of congress establishing unemployment insurance benefits or similar benefits for federal employees and veterans or ex-service personnel of the armed forces of the United States and shall do so in a manner considered advisable and expedient in order to carry out the purpose of this chapter.

(3) The department is authorized to perform any acts, including the execution of agreements and contracts that may be required under and pursuant to any act passed by the congress of the United States, authorizing the extension of unemployment insurance benefits by federal law if the department in its discretion considers it advisable to perform such acts.

(4) Upon request, the department shall furnish to any agency of the United States charged with the administration of public works or assistance through public employment the name, address, ordinary occupation, and employment status of each recipient of benefits and the recipient's rights to further benefits under this chapter."

Section 7. Section 39-51-603, MCA, is amended to read:

"39-51-603. Employing unit to keep records and make reports — *confidentiality — rules.* (1) Each employing unit shall keep true and accurate work records containing the information that the department may prescribe. Those records must be open to inspection and audit and may be copied by the department or its authorized representative at any reasonable time and as often as may be necessary. An employing unit that maintains its records outside Montana shall furnish a copy of those records to the department at the employing unit's expense or shall pay the department for the costs associated with conducting the audit outside Montana.

(2) The department and the presiding officer of any appeal tribunal may require from any employing unit any sworn or unsworn reports with respect to

persons employed by it that the department considers necessary for the effective administration of this chapter.

(3) Information obtained from any individual under this chapter must, except to the individual claimant to the extent necessary for the proper presentation of a claim, be held confidential and may not be published or be open to public inspection, except to public employees in the performance of their public duties, in any manner revealing the individual's or employing unit's identity, but any claimant or the claimant's legal representative at a hearing before the board or appeal tribunal must be supplied with information from the records to the extent necessary for the proper presentation of the claim.

(4) In order to prevent the misuse of personal and other sensitive information collected by the department in the administration of the unemployment insurance laws, the department shall adopt rules providing for confidentiality of unemployment insurance information, including the circumstances and conditions under which information may be disclosed to appropriate persons and government agencies. The rules must be consistent with federal requirements regarding confidentiality and disclosure of unemployment insurance information.

~~(4)~~*(5) (a)* Any employee or member of the department *or other state or local government employee* who violates any provision of this section shall be fined not less than $20 or more than $200 or shall be imprisoned for not longer than 90 days, or both.

(b) Any person other than those described in subsection (5)(a) who receives information from the department may only use the disclosed information for purposes authorized by law. A person who violates the provisions of this subsection (5)(b) is subject to the penalties provided for in subsection (5)(a)."

Section 8. Section 39-51-1105, MCA, is amended to read:

"39-51-1105. Liability for taxes, penalties, and interest owed. (1) The officer of a corporation whose responsibility it is to pay the taxes, penalties, and interest, as provided by *39-51-404,* 39-51-1103(1) and (2)*,* ~~and~~ 39-51-1125(1) and (2), *and 39-51-1301,* is liable for the taxes, penalties, and interest due.

(2) (a) The department shall consider the officer of the corporation individually liable with the corporation for filing reports and unpaid taxes, penalties, and interest upon a determination that the corporate officer:

(i) possessed the responsibility to file reports and pay taxes on behalf of the corporation; and

(ii) possessed the responsibility on behalf of the corporation to direct the filing of reports or payment of other corporate obligations and exercised the responsibility that resulted in failure to file reports or pay taxes due.

(b) The department is not limited to considering the elements set forth in subsection (2)(a) to establish individual liability and may consider any other available information.

(3) The liability imposed upon an individual by this section remains unaffected by the bankruptcy of a business entity to which a discharge cannot be granted under 11 U.S.C. 727. The individual is liable for the unpaid amount of taxes, penalties, and interest.

(4) In the case of a limited liability company treated as a partnership pursuant to 39-51-207, the liability for unemployment insurance taxes, penalties, and interest owed extends jointly and severally to each member *and to each manager, if any*.

(5) In the case of a limited liability company that is not treated as a partnership pursuant to 39-51-207, liability for unemployment insurance taxes, penalties, and interest owed extends jointly and severally to the managers *and members* of the limited liability company."

Section 9. Section 39-51-1216, MCA, is amended to read:

"39-51-1216. Experience rating record voided when account inactive. ~~Whenever an~~ *An* employer *who has not had covered employment or* whose coverage has been terminated because ~~he~~ *the employer* has ceased to do business *for 5 consecutive years* ~~or because he has not covered employment for a period of 3 years becomes a covered employer, he~~ is considered a new employer and ~~he is not to~~ *may not* be credited with ~~his~~ *the employer's* previous experience for the purpose of computing any future "experience factor"."

Section 10. Section 39-51-1301, MCA, is amended to read:

"39-51-1301. Penalty and interest on past-due reports and ~~taxes~~ *payments.* (1) Failure to file reports and *make* payments in a timely manner, as required under *39-51-404,* 39-51-603, 39-51-1103, and 39-51-1125, may subject an employer to penalty and interest, as provided in subsection (2).

(2) The department may assess penalties and interest under this section as follows:

(a) a penalty of $25 for the failure to file reports or make payments in a timely manner;

(b) in addition to the late penalty provided in subsection (2)(a), a penalty of $50 if the department issues a subpoena or makes a summary or jeopardy assessment, as provided in 39-51-1302, as the result of an employer's refusal or failure to provide requested information;

(c) in addition to the penalties in subsections (2)(a) and (2)(b), a penalty of $100 for failure to comply with a subpoena; and

(d) interest at the rate of 1.5% a month on any amounts owed to the department under this subsection (2) that are not paid in a timely manner.

(3) The department may waive all or any portion of any penalties and interest assessed ~~pursuant to~~ *under* subsection (2).

(4) There is an account in the federal special revenue fund. Penalties and interest collected for unemployment insurance obligations must be deposited in that account. Money deposited in that account and appropriated to the department may be used by the department only to administer this chapter, including the detection and collection of unpaid taxes and overpayments of benefits to the extent that federal grant revenue is less than amounts appropriated for this purpose. Money in the account not appropriated for these purposes must be transferred by the department to the unemployment insurance trust fund at the end of each fiscal year.

(5) All money accruing to the unemployment insurance trust fund from interest and penalties collected on past-due unemployment insurance taxes must be used solely for the payment of unemployment insurance benefits and may not be used for any other purpose."

Section 11. Section 39-51-2101, MCA, is amended to read:

"39-51-2101. Total unemployment — when. An individual is considered to be totally unemployed in any week during which the individual:

(1) ~~performed no~~ *did not perform any* work in employment and ~~earned no~~ *did not earn any* wages for employment; or

(2) ~~performed~~ *worked* less than ~~full-time work in employment with wages for employment of~~ *the customary hours that are normal for the individual's particular occupation due to a lack of work and provided that the wages payable to the individual are* less than two times the individual's weekly benefit amount."

Section 12. Section 39-51-2104, MCA, is amended to read:

"39-51-2104. General benefit eligibility conditions. (1) An unemployed individual*, including an alien entitled to benefits under the provisions of 39-51-2110,* is eligible to receive benefits for any week of total unemployment within the individual's benefit year only if the department finds that the individual:

(a) has filed a claim and has filed continued claims in accordance with rules that the department may prescribe;

(b) is able to work, is available for work, and is seeking work. *An individual may not place limitations on the individual's availability that would constitute a withdrawal from the labor market.* A claimant is not considered ineligible in any week of unemployment for failure to comply with the provisions of this subsection if the failure is because of~~:~~

~~(i)~~ an illness or disability that occurs after the claimant has filed or reopened a claim for unemployment insurance benefits and suitable work has not been offered to the claimant after the beginning of the illness or disability~~; or~~

~~(ii) enrollment as a student as provided in 39-51-2307~~.

(c) prior to the first week for which the individual is paid benefits, has been totally unemployed for a waiting period of 1 week. A week is not counted as a week of total unemployment for the purposes of this subsection:

(i) if benefits have been paid for that week;

(ii) unless the individual was eligible for benefits during the week;

(iii) unless it occurs within the benefit year of the claimant;

(iv) unless it occurs after benefits first could become payable to any individual under this chapter.

(d) has registered for work with the individual's local job service office unless the individual is excused by department rule from registering for work.

(2) (a) Except as provided in subsection (2)(b), if an individual is unavailable for work for less than 3 days within a week for which work is available, the individual must be paid the weekly benefit amount reduced by one-fifth of that amount for each day or part of a day that the individual is unavailable for work.

(b) If the individual is unavailable for work for 3 days or more, or part of each of 3 days or more, within a week for which work is available, the individual must be considered unavailable for work for the entire week, and is not eligible to receive benefits for the week.

~~(2)~~*(3)* (a) The department shall establish a profiling system to identify individuals who are likely to exhaust their regular benefits and who are in need of reemployment services.

(b) In addition to the requirements listed in subsection (1), an individual identified pursuant to subsection ~~(2)(a)~~ *(3)(a)* may be required to participate in reemployment services in order to be eligible for unemployment benefits.

(c) The requirement for participation in reemployment services may be waived if the department determines that:

(i) the individual has completed reemployment services; or

(ii) the individual's failure to participate in reemployment services is justifiable."

Section 13. Section 39-51-2307, MCA, is amended to read:

"39-51-2307. ~~Disqualification because of student status~~ *School attendance.* (1) ~~Except as provided in subsection (2) or (3), an individual is disqualified for benefits during the school year (within the autumn, winter, and spring seasons of the year) or the vacation periods within the school year or during any prescribed school term if the individual is a student regularly attending an established educational institution.~~ *An individual who is a student attending an established educational institution may qualify for benefits provided that the individual can demonstrate to the department's satisfaction that the individual meets the requirements of 39-51-2104.*

(2) An individual attending an adult basic education class 20 hours a week or less while laid off from a job is not disqualified from receiving benefits if the individual is willing to return to work when notified.

(3) An otherwise eligible individual may not be denied benefits for any week because the individual is in training approved by the department, nor may the individual be denied benefits with respect to any week in which the individual is in training approved by the department by reason of the application of provisions in 39-51-2304 or the application of provisions in 39-51-2104(1)(b)."

Section 14. Section 39-51-2402, MCA, is amended to read:

"39-51-2402. ~~Initial determination~~ *Determination* — redetermination. (1) ~~A representative designated by the department and referred to as a deputy~~ *The department* shall promptly examine a claim for benefits, and on the basis of the ~~deputy's~~ *department's* findings of fact, the ~~deputy~~ *department* shall determine whether or not the claim is valid. If the claim is valid, the ~~deputy~~ *department* shall determine the week the benefits commence, the weekly benefit amount payable, and the maximum benefit amount. The ~~deputy~~ *department* may refer the claim or any question involved in the claim to an appeals referee who shall make the decision on the claim in accordance with the procedure prescribed in 39-51-2403. The ~~deputy~~ *department* shall promptly notify the claimant and any other interested party of ~~the decision~~ *its determination* and the reasons for reaching the ~~decision~~ *determination*.

(2) The ~~deputy~~ *department* may for good cause reconsider ~~the decision~~ *its determination* and shall promptly notify the claimant and other interested parties of the ~~amended decision~~ *redetermination* and the reasons for the ~~decision~~ *redetermination*.

(3) A determination or redetermination is final unless an interested party entitled to notice of the decision applies for reconsideration of the determination or appeals the decision within 10 days after the notification was mailed to the interested party's last-known address. The 10-day period may be extended for good cause.

(4) Except as provided in subsection (5), a redetermination of ~~a claim for benefits~~ *any issue of an original determination* may not be made after 2 years from the date of the ~~initial~~ *original* determination *of that issue*.

(5) A redetermination *of any issue of an original determination* may be made within 3 years from the date of the ~~initial~~ *original* determination *of that issue* ~~of a claim~~ if the ~~initial~~ *original* determination was based on a false claim,

misrepresentation, or failure to disclose a material fact by the claimant or the employer."

Section 15. Section 39-51-2403, MCA, is amended to read:

"39-51-2403. Hearing — decision of appeals referee. Upon appeal of a determination or redetermination under 39-51-2402, an appeals referee shall hold a hearing, which may be conducted by telephone or by videoconference. After the hearing, the appeals referee shall promptly make findings and conclusions and affirm, modify, or reverse the ~~deputy's~~ *department's* determination or redetermination. Each interested party must be promptly furnished a copy of the decision and the supporting findings and conclusions. This decision is final unless further review is initiated pursuant to 39-51-2404 within 10 days after notification was mailed to the interested party's last-known address. The 10-day period may be extended for good cause."

Section 16. Section 39-51-2405, MCA, is amended to read:

"39-51-2405. Prompt payment of claims. (1) Notwithstanding any provision in 39-51-2402 or 39-51-2404, benefits ~~shall~~ *must* be paid promptly in accordance with a determination or redetermination under 39-51-2402 or the decision of an appeals referee, the board, or a reviewing court under 39-51-2404 upon the issuance of ~~such~~ *the* determination, redetermination, or decision. *The benefits must be paid* regardless of the pendency of the period to apply for reconsideration, file an appeal, or petition for judicial review that is provided with respect *to the application, filing, or petition* ~~thereto~~ in 39-51-2404, as the case may be, or the pendency of ~~any such~~ *the actual* application, filing, or petition, unless and until ~~such~~ *the* determination, redetermination, or decision has been modified or reversed by a subsequent redetermination or decision, in which ~~event~~ *case the* benefits ~~shall~~ *must* be paid or denied for *the following* weeks of unemployment ~~thereafter~~ in accordance with ~~such~~ *the* modifying or reversing redetermination or decision.

(2) If ~~a deputy's~~ *the department's* determination or redetermination allowing benefits is affirmed in any amount by an appeals referee or by the board or if a decision of an appeals referee allowing benefits is affirmed in any amount by the board, ~~such~~ *the* benefits ~~shall~~ *must* be paid promptly regardless of any further appeal or the disposition of ~~such~~ *the* appeal and ~~no~~ *an* injunction, supersedeas, stay, or other writ or process suspending the payment of ~~such~~ *the* benefits ~~shall~~ *may not* be issued by the board or any court. Benefits ~~shall~~ *may* not be paid for any weeks of unemployment involved in ~~such~~ *any* modification or reversal that begins after ~~such~~ *the* final decision."

Section 17. Section 39-51-3201, MCA, is amended to read:

"39-51-3201. Making false statement or representation or failing to disclose material fact in order to obtain or increase benefits — administrative penalty and remedy. (1) *(a)* A person who makes a false statement or representation knowing it to be false or who knowingly fails to disclose a material fact in order to obtain or increase any benefit or other payment under this chapter or under an employment security law of any other state or territory or the federal government, either for the individual or for any other person, is:

~~(a)~~*(i)* disqualified for benefits for a period of not more than 52 weeks, beginning with the first compensable week following the date of determination by the department, with the length of time of the disqualification to be determined by the department in accordance with the severity of each case; and

~~(b)~~*(ii)* required to repay to the department*, pursuant to the provisions of 39-51-3206*, ~~either directly or as authorized by the department, by offset of future benefits to which the individual may be entitled, or by a combination of both methods,~~ a sum equal to the amount wrongfully received by the individual, plus the department may assess a penalty not to exceed 100% of the fraudulently obtained benefits.

(b) Future benefits may not be used to offset the penalty due. However, the individual is not required to repay any amount wrongfully obtained more than 5 years prior to the date of the department's determination that the individual made false statements, willful nondisclosure, or misrepresentation.

(2) *(a)* An individual, other than a person with a bona fide disability that prevents the individual from making or filing a claim for benefits on the individual's own behalf, who allows or authorizes another person to make or file a claim for benefits on the individual's behalf *without designating that person as an authorized agent* is subject to the penalties prescribed in subsection (1).

(b) The designation of a person who is not an attorney as an individual's agent must be in writing and signed by the individual. The designation must specify:

(i) the period of time covered by the designation; and

(ii) any limits on the agent's authority.

(c) Any action taken or information provided by an agent has the same effect as an action taken or information provided by the individual.

(3) All money accruing from the penalty under subsection ~~(1)(b)~~ *(1)(a)* must be deposited in the federal special revenue account. Money deposited in that account may be appropriated to the department to be used to detect and collect unpaid taxes and overpayments of benefits to the extent that federal grant revenues are inadequate for these purposes. Money in the account not appropriated for these purposes must be transferred by the department to the unemployment insurance trust fund at the end of each fiscal year."

Section 18. Section 39-51-3202, MCA, is amended to read:

"39-51-3202. Making false statement or representation or failing to disclose material fact in order to obtain or increase benefits — criminal penalty. (1) A person who, in order to obtain or increase for personal gain or for any other person benefits under this chapter or under an employment security law of any other state or territory or the federal government, knowingly makes a false statement or representation or knowingly fails to disclose a material fact is guilty of a crime under 45-7-203, and the department may cause criminal proceedings to be initiated against the person.

(2) A person will be required to repay to the department an amount as determined by 39-51-3201(1)~~(b)~~*(a)*.

(3) For purposes of this section, restitution awarded under this section must include a sum equal to the amount wrongfully received, plus the department may assess a penalty not to exceed 100% of the amount wrongfully received. All money accruing from the penalty must be deposited in the federal special revenue account. Money deposited in that account may be appropriated to the department to be used to detect and collect unpaid taxes and overpayments of benefits to the extent that federal grant revenues are inadequate for these purposes. Money in the account not appropriated for these purposes must be transferred by the department to the unemployment insurance trust fund at the end of each fiscal year."

Section 19. Section 39-51-3206, MCA, is amended to read:

"39-51-3206. Collection of benefit overpayments. *(1)* A person who receives benefits not authorized by this chapter shall repay to the department either directly or, as authorized by the department, by offset of future benefits to which the claimant may be entitled, or by a combination of both methods, a sum equal to the amount of the overpayment.

(2) The department may collect a benefit overpayment and any penalty:

(a) by having the claimant pay the amount owed directly to the department by check, money order, credit card, debit card, or electronic funds transfer; or

(b) by offsetting the amount of the overpaid benefits owed against future unemployment benefits to be received by the claimant.

(3) The claimant is responsible for any:

(a) penalty established in accordance with 39-51-3201; and

(b) costs or processing fees associated with using the repayment methods set out in subsection (2)(a).

(4) The department may enter into an agreement with a claimant for the repayment of any benefit overpayment and penalty provided that repayment in full is made within 5 years of the date that it was established that an overpayment occurred.

(5) A benefit offset may not exceed 50% of the weekly benefits to which a claimant is entitled unless the claimant gives written consent, except in cases of theft or fraud, when benefits may be offset by as much as 100% of the weekly benefits to which a claimant is entitled. ~~The sum is collectible in the manner provided in this chapter for the collection of past-due contributions.~~

(6) (a) The department may collect any benefit overpayment and penalty by directing the offset of any funds due the claimant from the state, except future unemployment benefits as provided in subsection (1) and retirement benefits. The department, through the department of revenue, shall provide the claimant with notice of the right to request a hearing on the offset action. A request for hearing must be made within 30 days of the date of the notice.

(b) The debt does not have to be determined to be uncollectible before being transferred for offset.

(7) (a) The department may direct the offset of funds owed to a person under 26 U.S.C. 6402 if the person owes a covered unemployment compensation debt.

(b) For the purposes of this subsection (7), "covered unemployment compensation debt" means:

(i) a benefit overpayment and penalty owed because of the erroneous payment of unemployment compensation resulting from fraud, which has been adjudicated as a debt under Montana law and has remained uncollected for not more than 10 years; or

(ii) employer contributions, penalty, and interest owed to the unemployment trust fund that the department determines are attributable to fraud and that have remained uncollected for not more than 10 years.

(8) If, upon demand of the department, the claimant fails to make the payments provided for in this section, the unpaid benefit overpayment and associated penalty may be treated as a judgment against the claimant at the time the payments become due. The department may issue a certificate setting forth the amount of payment due and direct the clerk of the district court of any county

in the state to enter the certificate as a judgment on the docket pursuant to 25-9-301. From the time the judgment is docketed, it becomes a lien upon all real property of the claimant. The department may enforce the judgment at any time within 10 years of creation of the lien.

(9) The department may waive the benefit overpayment if the department finds that*:*

(a) the claimant did not conceal or misrepresent material facts to obtain the overpaid benefits and that recovery of the benefit overpayment would cause a long-term financial hardship on the claimant*; or*

(b) the overpayment was the result of department error.

(10) An action for collection of overpaid benefits must be brought within 5 years after the date of the overpayment.

(11) Notwithstanding any other provision of this chapter, the department may recover an overpayment of benefits paid to any individual under the laws of this state or another state or under an unemployment benefit program of the United States."

Section 20. Section 39-51-3207, MCA, is amended to read:

"39-51-3207. Authority to determine uncollectibility of debts — transfer of debts for collection — liability for payment of fees and costs of collection. (1) After making all reasonable efforts to collect unpaid contributions, assessments under 39-51-404, and penalties and interest, or overpaid benefits *and penalties* under 39-51-3206 ~~and interest~~, the department may determine a debt to be uncollectible. Upon determining that a debt is uncollectible, the department may transfer the debt to the department of revenue for collection as provided in 17-4-104.

(2) Subject to approval by the department, reasonable fees or costs of collection incurred by the department of revenue may be added to the amount of the debt, including added fees or costs. The debtor is liable for repayment of the amount of the debt plus fees or costs added pursuant to this subsection. All money collected must be returned to the department to be applied to the debt, except that all fees or costs collected must be retained by the department of revenue. If less than the full amount of the debt is collected, the department of revenue shall retain only a proportionate share of the collection fees or costs."

Section 21. Repealer. Section 39-51-3104, MCA, is repealed.

Section 22. Codification instruction. [Sections 2 and 3] are intended to be codified as an integral part of Title 39, chapter 51, part 21, and the provisions of Title 39, chapter 51, part 21, apply to [sections 2 and 3].

Section 23. Effective dates. (1) Except as provided in subsections (2) and (3), [this act] is effective on passage and approval.

(2) [Sections 5 through 7, 9, 13, and 18] are effective July 1, 2009.

(3) [Sections 2 and 3, 11, 12, 17, and 19] are effective January 1, 2010.

Approved March 25, 2009

CHAPTER NO. 89

[SB 155]

AN ACT REQUIRING A RANDOM-SAMPLE AUDIT OF VOTE-COUNTING MACHINES AFTER A FEDERAL ELECTION; ESTABLISHING AUDIT

PROCEDURES; AUTHORIZING COUNTY AUDIT COMMITTEES; PROVIDING DEFINITIONS; PROVIDING RULEMAKING AUTHORITY; AND AMENDING SECTIONS 13-1-101, 13-1-303, 13-15-401, AND 13-15-502, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Short title. [Sections 1 through 9] may be cited as the "Postelection Audit Act".

Section 2. Definitions. As used in [sections 1 through 9], the following definitions apply:

(1) "Computer software expert" means a person who has obtained a bachelor of science degree in computer science with expertise in software engineering and who is not affiliated with an election software vendor.

(2) "County audit committee" means the committee that conducts a random-sample audit in a county.

(3) "Vote-counting machine" means an individual piece of equipment used to automatically tabulate votes.

Section 3. Random-sample audit of vote-counting machines required — rulemaking authority. (1) After unofficial results are available to the public in a federal election, but before the official canvass by the county board of canvassers, the county audit committee shall conduct a random-sample audit of vote-counting machines.

(2) The random-sample audit may not include a ballot that a vote-counting machine was unable to process and that was not resolved pursuant to 13-15-206 because the ballot:

(a) appeared to have at least one overvote;

(b) appeared to be blank;

(c) was in a condition that prevented its processing by a vote-counting machine; or

(d) contained a mark, error, or omission that prevented its processing by a vote-counting machine.

(3) Except as provided in subsections (4) and (5), the random-sample audit must include:

(a) at least 5% of the precincts in each county or a minimum of one precinct in each county, whichever is greater; and

(b) an election for:

(i) one statewide office race, if any;

(ii) one federal office race;

(iii) one legislative office race; and

(iv) one statewide ballot issue if a statewide ballot issue was on the ballot.

(4) The audit may not include:

(a) a retention election for a judicial candidate; or

(b) a race in which a candidate was unopposed.

(5) A county is exempt from the postelection random-sample audit requirements if:

(a) the county does not use a vote-counting machine; or

(b) the county's unofficial final vote totals for any race or ballot issue involving more than one precinct show a tie vote or a vote within the margins allowed by Title 13, chapter 16, part 2, for a recount without a court order. A county meeting the requirements of this subsection (5)(b) shall notify the secretary of state as soon as practicable.

(6) The secretary of state shall adopt rules to implement the provisions of [sections 1 through 9], including but not limited to rules for:

(a) the process to be used for selecting precincts, races, and ballot issues for the random-sample audit; and

(b) the manner in which the random-sample audit of vote-counting machines will be conducted pursuant to the procedures established in [sections 1 through 9].

Section 4. County audit committee — membership — oath required. (1) Prior to each federal election, the county governing body shall appoint at least three individuals to serve on the county audit committee from a list of county employees and county residents who have offered to serve on the committee.

(2) The county audit committee may not include:

(a) a person who served as an election judge in the election;

(b) a person employed by the vendor who supplied the vote-counting machines subject to the audit; or

(c) a person who has performed maintenance on the vote-counting machines subject to the audit.

(3) Before beginning service, the audit committee members shall take and subscribe the official oath prescribed by the Montana constitution. The audit committee members may administer the oath to each other.

(4) The county election administrator shall serve as the secretary to the county audit committee.

Section 5. Selection process for random-sample audit. (1) No sooner than 7 days after the election and no later than 9 days after the election, the state board of canvassers, pursuant to [section 3] and as established by rule, shall randomly select:

(a) the races and ballot issue to be audited;

(b) the precincts to be audited in each county; and

(c) three additional precincts in each county that would be audited if a discrepancy in vote tallies occurs and results in the need to audit additional precincts pursuant to [section 7].

(2) The selection process must be open to the public.

(3) After selecting the precincts, races, and ballot issue for the random-sample audit, the state board of canvassers shall direct the secretary of state to:

(a) notify each county election administrator of the selections; and

(b) make a list of the selections available electronically.

Section 6. Conduct of random-sample audit. (1) The random-sample audit must be completed at least 1 day before the official canvass by the county board of canvassers.

(2) The county audit committee shall manually count the votes for the random-sample audit as follows:

(a) One member shall read the ballot while the remaining members shall each record on an official tally sheet the number of valid votes cast for each of the selected offices and ballot issue.

(b) (i) After the vote is complete, the tally sheets of the members recording the votes must be compared.

(ii) If the tallies match, the county audit committee shall compare the manual count for the selected offices and the ballot issue to the vote-counting machine count for the selected offices and the ballot issue.

(iii) If the tallies do not match, the count must be conducted again as provided in this subsection (2) until the tallies match.

(c) (i) If the manual count and the vote-counting machine totals match, the county audit committee shall certify the results to the county election administrator and the secretary of state.

(ii) If the manual count and the vote-counting machine totals do not match, the county audit committee shall follow the procedures established in [section 7].

(3) The audit process must be public.

Section 7. Discrepancies — substitution of results — examination of machines. (1) If a discrepancy exists between the vote-counting machine totals and the manual count totals, the random-sample audit results must serve as the definitive record for purposes of the canvass.

(2) If the random-sample audit results in a discrepancy of more than 0.5% of total ballots cast or five ballots, whichever is greater, and if the discrepancy is determined to be due to the vote-counting machine and not to administrative or user error:

(a) the vote-counting machine involved in the discrepancy in that county may not be used in another election until it has been examined and tested by a computer software expert in consultation with a voting system vendor and approved by the secretary of state; and

(b) at least three additional precincts within the county must be audited for the office or ballot issue in question. If the county has fewer than three additional precincts, all remaining precincts must be audited.

(3) If the audit of the additional precincts results in a discrepancy for those precincts of more than 0.5% of total ballots cast or five ballots, whichever is greater, and if the discrepancy is determined to be due to the vote-counting machine and not to administrative or user error, the vote-counting machine involved in the discrepancy in that county may not be used in another election until it has been examined and tested by a computer software expert in consultation with a voting system vendor and approved by the secretary of state.

(4) The results of the random-sample audit must be public.

Section 8. Reimbursement of county costs. (1) Except as provided in subsection (2), the secretary of state shall reimburse each county for any costs incurred in implementing the provisions of [sections 1 through 9].

(2) A vendor who supplies a vote-counting machine that was purchased after October 1, 2009, and that fails an audit due to software or machine defects or vendor employee error shall pay the costs incurred for the audit of vote-counting

machines in the affected county. The provisions of this subsection must be reflected in the contract for the purchase of vote-counting machines.

Section 9. Vote-counting machine maintenance — examination. (1) Upgrades, patches, fixes, or alterations may not be applied to any vote-counting machine during the 30 days following a federal election.

(2) If a vote-counting machine fails an audit pursuant to [section 7], the vote-counting machine is subject to examination by a computer software expert in consultation with a voting system vendor.

Section 10. Section 13-1-101, MCA, is amended to read:

"13-1-101. Definitions. As used in this title, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Active elector" means an elector who voted in the previous federal general election and whose name is on the active list.

(2) "Active list" means a list of active electors maintained pursuant to 13-2-220.

(3) "Anything of value" means any goods that have a certain utility to the recipient that is real and that is ordinarily not given away free but is purchased.

(4) "Application for voter registration" means a voter registration form prescribed by the secretary of state that is completed and signed by an elector, submitted to the election administrator, and contains voter registration information subject to verification as provided by law.

(5) "Ballot" means a paper ballot counted manually or a paper ballot counted by a machine, such as an optical scan system or other technology that automatically tabulates votes cast by processing the paper ballots.

(6) "Candidate" means:

(a) an individual who has filed a declaration or petition for nomination, acceptance of nomination, or appointment as a candidate for public office as required by law;

(b) for the purposes of chapter 35, 36, or 37, an individual who has solicited or received and retained contributions, made expenditures, or given consent to an individual, organization, political party, or committee to solicit or receive and retain contributions or make expenditures on the individual's behalf to secure nomination or election to any office at any time, whether or not the office for which the individual will seek nomination or election is known when the:

(i) solicitation is made;

(ii) contribution is received and retained; or

(iii) expenditure is made; and

(c) an officeholder who is the subject of a recall election.

(7) (a) "Contribution" means:

(i) an advance, gift, loan, conveyance, deposit, payment, or distribution of money or anything of value to influence an election;

(ii) a transfer of funds between political committees;

(iii) the payment by a person other than a candidate or political committee of compensation for the personal services of another person that are rendered to a candidate or political committee.

(b) "Contribution" does not mean:

(i) services provided without compensation by individuals volunteering a portion or all of their time on behalf of a candidate or political committee or meals and lodging provided by individuals in their private residences for a candidate or other individual;

(ii) the cost of any bona fide news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication of general circulation;

(iii) the cost of any communication by any membership organization or corporation to its members or stockholders or employees; or

(iv) filing fees paid by the candidate.

(8) "Election" means a general, regular, special, or primary election held pursuant to the requirements of state law, regardless of the time or purpose.

(9) "Election administrator" means the county clerk and recorder or the individual designated by a county governing body to be responsible for all election administration duties, except that with regard to school elections, the term means the school district clerk.

(10) "Elector" means an individual qualified to vote under state law.

(11) (a) "Expenditure" means a purchase, payment, distribution, loan, advance, promise, pledge, or gift of money or anything of value made for the purpose of influencing the results of an election.

(b) "Expenditure" does not mean:

(i) services, food, or lodging provided in a manner that they are not contributions under subsection (7);

(ii) payments by a candidate for a filing fee or for personal travel expenses, food, clothing, lodging, or personal necessities for the candidate and the candidate's family;

(iii) the cost of any bona fide news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication of general circulation; or

(iv) the cost of any communication by any membership organization or corporation to its members or stockholders or employees.

(12) "Federal election" means a general or primary election in which an elector may vote for individuals for the office of president of the United States or for the United States congress.

(13) "General election" or "regular election" means an election held for the election of public officers throughout the state at times specified by law, including elections for officers of political subdivisions when the time of the election is set on the same date for all similar political subdivisions in the state. For ballot issues required by Article III, section 6, or Article XIV, section 8, of the Montana constitution to be submitted by the legislature to the electors at a general election, "general election" means an election held at the time provided in 13-1-104(1). For ballot issues required by Article XIV, section 9, of the Montana constitution to be submitted as a constitutional initiative at a regular election, regular election means an election held at the time provided in 13-1-104(1).

(14) "Inactive elector" means an individual who failed to vote in the preceding federal general election and whose name was placed on an inactive list pursuant to 13-2-220.

(15) "Inactive list" means a list of inactive electors maintained pursuant to 13-2-220.

(16) "Individual" means a human being.

(17) (a) "Issue" or "ballot issue" means a proposal submitted to the people at an election for their approval or rejection, including but not limited to initiatives, referenda, proposed constitutional amendments, recall questions, school levy questions, bond issue questions, or a ballot question.

(b) For the purposes of chapters 35 and 37, an issue becomes a "ballot issue" upon certification by the proper official that the legal procedure necessary for its qualification and placement upon the ballot has been completed, except that a statewide issue becomes a "ballot issue" upon preparation and transmission by the secretary of state of the form of the petition or referral to the person who submitted the proposed issue.

(18) "Legally registered elector" means an individual whose application for voter registration was accepted, processed, and verified as provided by law.

(19) "Person" means an individual, corporation, association, firm, partnership, cooperative, committee, club, union, or other organization or group of individuals or a candidate as defined in subsection (6).

(20) "Political committee" means a combination of two or more individuals or a person other than an individual who makes a contribution or expenditure:

(a) to support or oppose a candidate or a committee organized to support or oppose a candidate or a petition for nomination; or

(b) to support or oppose a ballot issue or a committee organized to support or oppose a ballot issue; or

(c) as an earmarked contribution.

(21) "Political subdivision" means a county, consolidated municipal-county government, municipality, special district, or any other unit of government, except school districts, having authority to hold an election for officers or on a ballot issue.

(22) "Primary" or "primary election" means an election held throughout the state to nominate candidates for public office at times specified by law, including nominations of candidates for offices of political subdivisions when the time for nominations is set on the same date for all similar subdivisions in the state.

(23) "Provisional ballot" means a ballot cast by an elector whose identity and eligibility to vote have not been verified as provided by law.

(24) "Provisionally registered elector" means an individual whose application for voter registration was accepted but whose eligibility has not yet been verified as provided by law.

(25) "Public office" means a state, county, municipal, school, or other district office that is filled by the people at an election.

(26) "Random- sample audit" means an audit involving a manual count of ballots from designated races and ballot issues in precincts selected through a random process as provided in [section 3].

~~(26)~~*(27)* "Registrar" means the county election administrator and any regularly appointed deputy or assistant election administrator.

~~(27)~~*(28)* "Special election" means an election other than a statutorily scheduled primary or general election held at any time for any purpose provided by law. It may be held in conjunction with a statutorily scheduled election.

~~(28)~~*(29)* "Statewide voter registration list" means the voter registration list established and maintained pursuant to 13-2-107 and 13-2-108.

~~(29)~~*(30)* "Transfer form" means a form prescribed by the secretary of state that may be filled out by an elector to transfer the elector's registration when the elector's residence address has changed within the county.

~~(30)~~*(31)* "Valid vote" means a vote that has been counted as valid or determined to be valid as provided in 13-15-206.

~~(31)~~*(32)* "Voting system" or "system" means any machine, device, technology, or equipment used to automatically record, tabulate, or process the vote of an elector cast on a paper ballot."

Section 11. Section 13-1-303, MCA, is amended to read:

"13-1-303. Disposition of ballots and other election materials. (1) *(a)* ~~The~~ *Except for a federal election, the* voted ballots, detached stubs, unvoted ballots, and unused ballots from an election must be kept in the unopened packages received from the election judges for a period of 12 months. The packages may be opened only when an order for opening is given by the proper official for a recount procedure. ~~After 12 months, if there is no contest begun, recount pending, or appeal of a decision relating to a contest or recount, an election administrator may dispose of the ballots as provided in subsection (2).~~

(b) The voted ballots, detached stubs, unvoted ballots, and unused ballots from a federal election must be retained in the unopened packages received from the election judges for a period of 22 months. The packages may be opened only as provided in subsection (1)(a) or for a postelection random-sample audit of vote-counting machines.

(c) An election administrator may dispose of the ballots as provided in subsection (2) if after the time periods provided for in this subsection (1), there is no:

(i) contest begun;

(ii) recount pending; or

(iii) appeal of a decision relating to a contest, a recount, or a postelection random-sample audit.

(2) Each election administrator shall prepare a plan for retention and destruction of election records in the county according to the retention schedules established by the local government records committee provided for in 2-6-402."

Section 12. Section 13-15-401, MCA, is amended to read:

"13-15-401. Governing body as board of county canvassers. (1) The governing body of a county or consolidated local government is ex officio a board of county canvassers and shall meet as the board of county canvassers at the usual *meeting* place ~~of meeting~~ of the governing body within 3 to ~~7~~ *14* days after each election, at a time determined by the board, to canvass the returns.

(2) If one or more of the members of the governing body cannot attend the meeting, the member's place must be filled by one or more county officers chosen by the remaining members of the governing body so that the board of county canvassers' membership equals the membership of the governing body.

(3) The governing body of any political subdivision in the county that participated in the election may join with the governing body of the county or consolidated local government in canvassing the votes cast at the election.

(4) The election administrator is secretary of the board of county canvassers and shall keep minutes of the meeting of the board and file them in the official records of the administrator's office."

Section 13. Section 13-15-502, MCA, is amended to read:

"13-15-502. Composition and meeting of board of state canvassers. Within ~~20~~ *27* days after the election, or sooner if the returns are all received, the state auditor, superintendent of public instruction, and attorney general shall meet as a board of state canvassers in the office of the secretary of state and determine the vote. The secretary of state shall serve as secretary of the board, keep minutes of the meeting of the board, and file them in the official records of ~~his~~ *the secretary of state's* office."

Section 14. Codification instruction. [Sections 1 through 9] are intended to be codified as an integral part of Title 13, chapter 17, and the provisions of Title 13, chapter 17, apply to [sections 1 through 9].

Approved March 25, 2009

CHAPTER NO. 90

[SB 160]

AN ACT CLARIFYING DISCIPLINARY PROCEDURES FOR HIGHWAY PATROL OFFICERS, INCLUDING THOSE COVERED BY A COLLECTIVE BARGAINING AGREEMENT; CLARIFYING THAT DISCIPLINARY PROCEDURES FALL WITHIN THE EXEMPTION PROVISIONS OF THE WRONGFUL DISCHARGE FROM EMPLOYMENT ACT; AMENDING SECTIONS 44-1-806 AND 44-1-902, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Exemption. A member of the highway patrol covered by a collective bargaining agreement is subject to the disciplinary procedures contained in the collective bargaining agreement and is not subject to Title 44, chapter 1, parts 7 and 8.

Section 2. Section 44-1-806, MCA, is amended to read:

"44-1-806. Disciplinary action. *(1)* If after a hearing, the department of justice finds that any charge or charges made against the patrol officer are true, it may punish the ~~offending party~~ *patrol officer* by suspension without pay, demotion, or discharge.

(2) A discharge after a hearing is exempt from the Wrongful Discharge From Employment Act as provided in 39-2-912."

Section 3. Section 44-1-902, MCA, is amended to read:

"44-1-902. Action by court. The district court shall review a decision or determination appealed pursuant to 44-1-901(1)(a) ~~in a summary manner~~ *under the standard of review provided in 2-4-704* and render its decision within 90 days from the filing of the appeal."

Section 4. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 44, chapter 1, part 9, and the provisions of Title 44, chapter 1, part 9, apply to [section 1].

Section 5. Effective date. [This act] is effective on passage and approval.

Approved March 25, 2009

CHAPTER NO. 91

[SB 170]

AN ACT CLARIFYING REIMBURSEMENT RATES FOR MEALS AND LODGING FOR FOREIGN TRAVEL; AUTHORIZING THE DEPARTMENT OF ADMINISTRATION TO DESIGNATE THE LOCATIONS AND CIRCUMSTANCES FOR REIMBURSING FOREIGN TRAVEL EXPENSES AT RATES HIGHER THAN THE MAXIMUM RATE; AMENDING SECTION 2-18-501, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-18-501, MCA, is amended to read:

"2-18-501. Meals, lodging, and transportation of persons in state service. All elected state officials, appointed members of boards, commissions, or councils, department directors, and all other state employees must be reimbursed for meals and lodging while away from the person's designated headquarters and engaged in official state business in accordance with the following provisions:

(1) Except as provided under subsection (3), for travel within the state of Montana, lodging must be authorized at the actual cost of lodging, not exceeding $35 per day, and taxes on the allowable cost of lodging, except as provided in subsection (3), plus $5 for the morning meal, $6 for the midday meal, and $12 for the evening meal. All claims for lodging expense reimbursement allowed under this section must be documented by an appropriate receipt.

(2) Except as provided in subsection (3), for travel outside the state of Montana and within the United States, the following provisions apply:

(a) Lodging must be reimbursed at actual cost, not to exceed the prescribed maximum standard federal rate per day for the location involved plus taxes on the allowable cost.

(b) Meal reimbursement may not exceed the prescribed maximum standard federal rate per meal.

(3) The department shall designate the locations and circumstances under which the governor, other elected state officials, appointed members of boards, commissions, or councils, department directors, and all other state employees may be authorized the actual cost of *the following:*

(a) meals, not including alcoholic beverages, when the actual cost exceeds the maximum established in subsection (4)(a); and

(b) lodging when the actual cost exceeds the maximum established in subsection (1)*,* ~~or~~ (2)(a)*, or (4)(a)*.

(4) ~~For~~ *Except as provided in subsection (3), for* travel to a foreign country, the following provisions apply:

(a) All elected state officials, *all* appointed members of boards, commissions, *and* councils, *all* department directors, and all other state employees must be reimbursed ~~for the cost of meals and lodging within the rates established by the department of administration when traveling in the normal course of their duties to designated areas. The department shall use the United States department of state maximum travel per diem allowances for foreign areas in establishing the rates~~ *as follows:*

(i) $7 for the morning meal, $11 for the midday meal, and $18 for the evening meal; and

(ii) $155 per night for lodging.

(b) All claims for *meal and* lodging reimbursement allowed under this subsection (4) must be documented by an appropriate receipt.

(5) When other than commercial, nonreceiptable lodging facilities are used by a state official or employee while conducting official state business in a travel status, the amount of $12 is authorized for lodging expenses for each day in which travel involves an overnight stay in lieu of the amount authorized in subsection (1)(a) or (2)(a). However, when overnight accommodations are provided at the expense of a government entity, reimbursement may not be claimed for lodging.

(6) The actual cost of reasonable transportation expenses and other necessary business expenses incurred by a state official or employee while in an official travel status is subject to reimbursement.

(7) The provisions of this section may not be construed as affecting the validity of 5-2-301.

(8) The department of administration shall establish policies necessary to effectively administer this section for state government.

(9) All commercial air travel must be by the least expensive class service available."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 25, 2009

CHAPTER NO. 92

[SB 182]

AN ACT CLARIFYING THE STANDARD TO BE USED BY A COURT TO DETERMINE PARENTAL FITNESS IN GRANDPARENT-GRANDCHILD CONTACT CASES; AMENDING SECTION 40-9-102, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 40-9-102, MCA, is amended to read:

"40-9-102. Grandparent-grandchild contact. (1) Except as provided in subsection ~~(5)~~ *(7)*, the district court may grant to a grandparent of a child reasonable rights to contact with the child, including but not limited to rights regarding a child who is the subject of, or as to whom a disposition has been made during, an administrative or court proceeding under Title 41 or this title. The department of public health and human services must be given notice of a petition for grandparent-grandchild contact regarding a child who is the subject of, or as to whom a disposition has been made during, an administrative or court proceeding under Title 41 or this title.

(2) Before a court may grant a petition brought pursuant to this section for grandparent-grandchild contact over the objection of a parent whose parental rights have not been terminated, the court shall make a determination as to whether the objecting parent is a fit parent. A determination of fitness and granting of the petition may be made only after a hearing, upon notice as determined by the court. *Fitness must be determined on the basis of whether the parent adequately cares for the parent's child.*

~~(3) A determination of unfitness may be made only if the court, based upon clear and convincing evidence, makes one or more of the determinations~~

~~provided in 42-2-608(1) or finds that one or more of the events provided for in that subsection have occurred.~~

~~(4)~~*(3)* Grandparent-grandchild contact may be granted over the objection of a parent determined by the court pursuant to subsection (2) to be unfit only if the court also determines by clear and convincing evidence that the contact is in the best interest of the child.

~~(5)~~*(4)* Grandparent-grandchild contact granted under this section over the objections of a fit parent may be granted only upon a finding by the court, based upon clear and convincing evidence, that the contact with the grandparent would be in the best interest of the child and that the presumption in favor of the parent's wishes has been rebutted.

~~(6)~~*(5)* A person may not petition the court under this section more often than once every 2 years unless there has been a significant change in the circumstances of:

(a) the child;

(b) the child's parent, guardian, or custodian; or

(c) the child's grandparent.

~~(7)~~*(6)* The court may appoint an attorney to represent the interests of a child with respect to grandparent-grandchild contact when the interests are not adequately represented by the parties to the proceeding.

~~(8)~~*(7)* This section does not apply if the child has been adopted by a person other than a stepparent or a grandparent. Grandparent-grandchild contact granted under this section terminates upon the adoption of the child by a person other than a stepparent or a grandparent.

~~(9)~~*(8)* A determination pursuant to subsection (2) that a parent is unfit has no effect upon the rights of a parent, other than with regard to grandparent-grandchild contact if a petition pursuant to this section is granted, unless otherwise ordered by the court."

Section 2. Applicability. [This act] applies to petitions for grandparent-grandchild contact filed in accordance with Title 40, chapter 9, part 1, on or after October 1, 2009.

Approved March 25, 2009

CHAPTER NO. 93

[SB 196]

AN ACT DESIGNATING THE LAST FRIDAY OF SEPTEMBER AS A DAY TO CELEBRATE AMERICAN INDIAN HERITAGE.

WHEREAS, Article IX, section 4, of the Montana Constitution requires the Legislature to provide for, among other things, the enhancement and preservation of scenic, historic, archeologic, scientific, and cultural areas, sites, records, and objects and for their use and enjoyment by the people; and

WHEREAS, Article X, section 1, of the Montana Constitution recognizes the distinct and unique cultural heritage of the American Indians and commits, through educational goals, to the preservation of their cultural integrity; and

WHEREAS, section 2-1-305, MCA, specifically protects Indian culture; and

WHEREAS, all Montanans respect American Indian culture and recognize the educational and cultural value of designating one day each year on which

American Indians should celebrate their heritage and on which American Indians' heritage should be celebrated by all Montanans.

Be it enacted by the Legislature of the State of Montana:

Section 1. American Indian heritage day. There is established an American Indian heritage day for the state of Montana. American Indian heritage day is the last Friday in September of each year and is recognized as a day of observance to commemorate this state's American Indians and their valued heritage and culture. On this day, all Montanans are urged to:

(1) reflect on American Indian culture and heritage; and

(2) celebrate American Indians and their culture and heritage in all lawful ways.

Section 2. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

Section 3. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 1, chapter 1, part 2, and the provisions of Title 1, chapter 1, part 2, apply to [section 1].

Approved March 25, 2009

CHAPTER NO. 94

[SB 219]

AN ACT CHANGING THE MONTH USED IN CALCULATING THE INFLATION ADJUSTMENT APPLIED TO LIMITS ON AGGREGATE CAMPAIGN CONTRIBUTIONS BY POLITICAL COMMITTEES OR INDIVIDUALS; AND AMENDING SECTION 13-37-216, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13-37-216, MCA, is amended to read:

"13-37-216. Limitations on contributions — adjustment. (1) (a) Subject to adjustment as provided for in subsection (4), aggregate contributions for each election in a campaign by a political committee or by an individual, other than the candidate, to a candidate are limited as follows:

(i) for candidates filed jointly for the office of governor and lieutenant governor, not to exceed $500;

(ii) for a candidate to be elected for state office in a statewide election, other than the candidates for governor and lieutenant governor, not to exceed $250;

(iii) for a candidate for any other public office, not to exceed $130.

(b) A contribution to a candidate includes contributions made to the candidate's committee and to any political committee organized on the candidate's behalf.

(2) (a) A political committee that is not independent of the candidate is considered to be organized on the candidate's behalf. For the purposes of this section, an independent committee means a committee that is not specifically organized on behalf of a particular candidate or that is not controlled either directly or indirectly by a candidate or candidate's committee and that does not act jointly with a candidate or candidate's committee in conjunction with the making of expenditures or accepting contributions.

(b) A leadership political committee maintained by a political officeholder is considered to be organized on the political officeholder's behalf.

(3) All political committees except those of political party organizations are subject to the provisions of subsections (1) and (2). For purposes of this subsection, "political party organization" means any political organization that was represented on the official ballot at the most recent gubernatorial election. Political party organizations may form political committees that are subject to the following aggregate limitations, adjusted as provided for in subsection (4), from all political party committees:

(a) for candidates filed jointly for the offices of governor and lieutenant governor, not to exceed $18,000;

(b) for a candidate to be elected for state office in a statewide election, other than the candidates for governor and lieutenant governor, not to exceed $6,500;

(c) for a candidate for public service commissioner, not to exceed $2,600;

(d) for a candidate for the state senate, not to exceed $1,050;

(e) for a candidate for any other public office, not to exceed $650.

(4) (a) The commissioner shall adjust the limitations in subsections (1) and (3) by multiplying each limit by an inflation factor, which is determined by dividing the consumer price index for ~~January~~ *June* of the year ~~in which an~~ *prior to the year in which a general* election is held by the consumer price index for ~~January~~ *June* ~~2003~~ *2002*.

(b) The resulting figure must be rounded up or down to the nearest:

(i) $10 increment for the limits established in subsection (1); and

(ii) $50 increment for the limits established in subsection (3).

(c) The commissioner shall publish the revised limitations as a rule.

(5) A candidate may not accept any contributions, including in-kind contributions, in excess of the limits in this section.

(6) For purposes of this section, "election" means the general election or a primary election that involves two or more candidates for the same nomination. If there is not a contested primary, there is only one election to which the contribution limits apply. If there is a contested primary, then there are two elections to which the contribution limits apply."

Approved March 25, 2009

CHAPTER NO. 95

[SB 255]

AN ACT REVISING RESPONSIBILITY FOR DEBT LIABILITY WHEN RURAL FIRE DISTRICT PROPERTY IS ANNEXED BY A MUNICIPALITY; AND AMENDING SECTION 7-33-2129, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-33-2129, MCA, is amended to read:

"7-33-2129. Annexation of rural fire district property by municipality — responsibility for ~~bonded indebtedness~~ *debt.* (1) If a municipality annexes property from a rural fire district, the annexed property is liable for any bonded ~~indebtedness~~ *debt* of the rural fire district *or for secured debt incurred by the district for the purchase of real or personal property* existing as of the date ~~of annexation~~ *the annexation proceeding was commenced* to the same extent as it would have been liable if not withdrawn.

(2) A municipality ~~may~~ *shall*:

(a) offset the municipal mills levied on the annexed property by the mills levied on the property for bonded ~~indebtedness~~ *or secured debt*; or

(b) annually appropriate funds to the rural fire district in an amount equal to the mills levied on the annexed property for bonded ~~indebtedness~~ *or secured debt*."

Approved March 25, 2009

CHAPTER NO. 96

[SB 262]

AN ACT ALLOWING COUNTY WATER AND SEWER DISTRICTS TO ASSESS THE COST OF SERVICES AND IMPROVEMENTS BY DWELLING UNIT; AMENDING SECTION 7-13-2303, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-13-2303, MCA, is amended to read:

"7-13-2303. Method of assessment. (1) When the amount of money required for any purpose enumerated in 7-13-2302 has been determined*, the county commissioners or board of directors may use one of the following methods of assessment*:

(a) each lot or parcel of land to be assessed ~~shall~~ *must* be assessed with that part of the amount of money required ~~which~~ *that* its area bears to the total area of all of the lands to be assessed; ~~or~~

(b) ~~said~~ *the* assessment may, at the option of the board or boards of county commissioners, be based upon the taxable valuation as stated in the last-completed county assessment roll of the lots or parcels of land, exclusive of improvements ~~thereon~~, within ~~said~~ *the* district~~;~~. ~~and in which~~ *In that* case, each lot or parcel of land to be assessed ~~shall~~ *must* be assessed with that part of the amount of money required ~~which~~ *that* its taxable valuation bears to the total taxable valuation of all of the lands to be assessed.

(c) each dwelling unit may be assessed a flat fee. For purposes of this subsection (1)(c), "dwelling unit" has the meaning provided for in 70-24-103.

(2) ~~However, where~~ *If* the district lies in more than one county, the same method of assessment ~~shall~~ *must* be used by each board of county commissioners."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 25, 2009

CHAPTER NO. 97

[SB 296]

AN ACT REVISING THE REQUIREMENTS FOR THE NEWSPAPERS IN WHICH MUNICIPALITIES PROVIDE PUBLIC NOTICE WHEN PUBLICATION OF NOTICE IS REQUIRED; REQUIRING THE NEWSPAPERS TO SUBMIT CERTAIN INFORMATION TO THE CITY CLERK; AMENDING SECTION 7-1-4127, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-1-4127, MCA, is amended to read:

"7-1-4127. Publication of notice — content — proof. (1) When a municipality is required to publish notice, publication must be in a newspaper, except that in a municipality with a population of 500 or less or in which ~~no~~ *a* newspaper is *not* published, publication may be made by posting in three public places in the municipality ~~which~~ *that* have been designated by ordinance.

(2) The newspaper must ~~be~~:

(a) *be* of general ~~paid~~ circulation ~~with a periodicals mailing permit~~;

(b) *be* published at least once a week; ~~and~~

(c) *be* published in the county where the municipality is located*; and*

(d) have, prior to July 1 of each year, submitted to the city clerk a sworn statement that includes:

(i) circulation for the prior 12 months;

(ii) a statement of net distribution;

(iii) itemization of paid circulation and circulation that is free; and

(iv) the method of distribution.

(3) A newspaper of general circulation does not include a newsletter or other document produced or published by the municipality.

~~(3)~~*(4)* In the case of a contract award, the newspaper must have been published continuously in the county for the 12 months preceding the awarding of the contract.

~~(4)~~*(5)* In a county where ~~no~~ *a* newspaper ~~meets these~~ *does not meet the* qualifications *in subsection (2)*, publication must be made in a qualified newspaper in an adjacent county.

~~(5)~~*(6)* If a person is required by law or ordinance to pay for publication, the payment must be received before the publication may be made.

~~(6)~~*(7)* The notice must be published twice, with at least 6 days separating each publication.

~~(7)~~*(8)* The published notice must contain:

(a) the date, time, and place of the hearing or other action;

(b) a brief statement of the action to be taken;

(c) the address and telephone number of the person who may be contacted for further information on the action to be taken; and

(d) any other information required by the specific section requiring notice by publication.

~~(8)~~*(9)* A published notice required by law may be supplemented by a radio or television broadcast of the notice in the manner prescribed in 2-3-105 through 2-3-107.

~~(9)~~*(10)* Proof of the publication or posting of any notice may be made by affidavit of the owner, publisher, printer, or clerk of the newspaper or of the person posting the notice."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 25, 2009

CHAPTER NO. 98

[SB 331]

AN ACT REVISING THE LAW RELATING TO CRIMINAL USE OF OFFICIAL POSITION; AND AMENDING SECTION 45-7-103, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 45-7-103, MCA, is amended to read:

"45-7-103. ~~Compensation for past official behavior~~ *Criminal use of office or position.* (1) ~~A person~~ *An elected official or other public servant* commits ~~an~~ *the* offense ~~under this section~~ *of criminal use of office or position* if ~~he~~ *the person* knowingly solicits, accepts, or agrees to accept any pecuniary benefit ~~as compensation~~ *accruing to the person, the person's political campaign, or the person's political party* for ~~having, as a public servant, given~~ *giving or offering to give* a decision, opinion, recommendation, or vote favorable to another, for ~~having otherwise exercised~~ *exercising or offering to exercise* a discretion in another's favor, or for ~~having violated his~~ *violating or offering to violate the person's* duty. A person commits an offense under this section if ~~he~~ *the person* knowingly offers, confers, or agrees to confer compensation ~~which~~ *that* is prohibited by this section.

(2) A person convicted under this section shall be fined *an amount* not to exceed $500 or *be* imprisoned in the county jail for ~~any~~ *a* term not to exceed 6 months, or both."

Approved March 25, 2009

CHAPTER NO. 99

[SB 376]

AN ACT EXEMPTING UTILITIES' AFFILIATES FROM A CUSTOMER FISCAL IMPACT ANALYSIS; AND AMENDING SECTION 69-2-217, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-2-217, MCA, is amended to read:

"69-2-217. Exemptions — *definition.* *(1)* Projects proposed by utilities, as defined in 69-8-103, *or their affiliates* are exempt from the analysis required by 69-2-216 *if the utility or affiliate files the necessary tariffs, rate schedules, and other requisite information with the commission or the federal energy regulatory commission*.

(2) For the purposes of this section, "affiliate" means an entity wholly or partially owned by, closely connected to, or associated with a utility."

Approved March 25, 2009

CHAPTER NO. 100

[SB 390]

AN ACT AUTHORIZING CITIES AND TOWNS TO ENTER INTO LOAN AGREEMENTS WITH THE STATE OF MONTANA TO FUND IMPROVEMENTS WITHIN STREET MAINTENANCE DISTRICTS AND USE THE DISTRICT ASSESSMENTS TO SERVICE THE LOAN; AND AMENDING SECTION 7-12-4429, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-12-4429, MCA, is amended to read:

"7-12-4429. Financial assistance from the United States *and state of Montana*. Cities and towns are authorized to:

(1) enter into suitable agreements with the United States of America *or the state of Montana* for loans of money and for receiving financial assistance to do the work and improvements contemplated by 7-12-4405; and

(2) provide for the repayment ~~thereof~~ *of the loans* by yearly payments from funds derived from districts created under 7-12-4402, apportioned over a period of time not exceeding 20 years."

Approved March 25, 2009

CHAPTER NO. 101

[SB 438]

AN ACT REVISING THE DEFINITION OF "LIQUOR" TO INCLUDE CAFFEINATED OR STIMULANT-ENHANCED MALT BEVERAGES; DEFINING "CAFFEINATED OR STIMULANT-ENHANCED MALT BEVERAGE"; AND AMENDING SECTION 16-1-106, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 16-1-106, MCA, is amended to read:

"16-1-106. Definitions. As used in this code, the following definitions apply:

(1) "Agency franchise agreement" means an agreement between the department and a person appointed to sell liquor and table wine as a commission merchant rather than as an employee.

(2) "Agency liquor store" means a store operated under an agency franchise agreement in accordance with this code for the purpose of selling liquor at either the posted or the retail price for off-premises consumption.

(3) "Alcohol" means ethyl alcohol, also called ethanol, or the hydrated oxide of ethyl.

(4) "Alcoholic beverage" means a compound produced and sold for human consumption as a drink that contains more than 0.5% of alcohol by volume.

(5) *(a)* "Beer" means a malt beverage containing not more than 7% of alcohol by weight.

(b) The term does not include a caffeinated or stimulant-enhanced malt beverage.

(6) "Beer importer" means a person other than a brewer who imports malt beverages.

(7) "Brewer" means a person who produces malt beverages.

(8) "Caffeinated or stimulant-enhanced malt beverage" means:

(a) a beverage:

(i) that is fermented in a manner similar to beer, from which some or all of the fermented alcohol has been removed and replaced with distilled ethyl alcohol;

(ii) that contains at least 1/2 of 1% alcohol by volume;

(iii) that is treated by processing, filtration, or another method of manufacture that is not generally recognized as a traditional process in the production of beer as described in 27 CFR 25.55; and

(iv) to which is added caffeine or other stimulants, including but not limited to guarana, ginseng, and taurine; or

(b) a beverage:

(i) that contains at least 1/2 of 1% alcohol by volume;

(ii) that is treated by processing, filtration, or another method of manufacture that is not generally recognized as a traditional process in the production of beer as described in 27 CFR 25.55;

(iii) to which is added a flavor or other ingredient containing alcohol, except for a hop extract;

(iv) to which is added caffeine or other stimulants, including but not limited to guarana, ginseng, and taurine;

(v) for which the producer is required to file a formula for approval with the United States alcohol and tobacco tax and trade bureau pursuant to 27 CFR 25.55; and

(vi) that is not exempt pursuant to 27 CFR 25.55(f).

~~(8)~~*(9)* "Community" means:

(a) in an incorporated city or town, the area within the incorporated city or town boundaries;

(b) in an unincorporated city or area, the area identified by the federal bureau of the census as a community for census purposes; and

(c) in a consolidated local government, the area of the consolidated local government not otherwise incorporated.

~~(9)~~*(10)* "Department" means the department of revenue, unless otherwise specified, and includes the department of justice with respect to receiving and processing, but not granting or denying, an application under a contract entered into under 16-1-302.

~~(10)~~*(11)* "Hard cider" means an alcoholic beverage that is made from the alcoholic fermentation of the juices of apples or pears and that contains not less than 0.5% alcohol by volume and not more than 6.9% alcohol by volume, including but not limited to flavored, sparkling, or carbonated cider.

~~(11)~~*(12)* "Immediate family" means a spouse, dependent children, or dependent parents.

~~(12)~~*(13)* "Import" means to transfer beer or table wine from outside the state of Montana into the state of Montana.

~~(13)~~*(14)* "Liquor" means an alcoholic beverage except beer and table wine. *The term includes a caffeinated or stimulant-enhanced malt beverage.*

~~(14)~~*(15)* "Malt beverage" means an alcoholic beverage made by the fermentation of an infusion or decoction, or a combination of both, in potable brewing water, of malted barley with or without hops or their parts or their products and with or without other malted cereals and with or without the addition of unmalted or prepared cereals, other carbohydrates, or products prepared from carbohydrates and with or without other wholesome products suitable for human food consumption.

~~(15)~~*(16)* "Package" means a container or receptacle used for holding an alcoholic beverage.

~~(16)~~*(17)* "Posted price" means the wholesale price of liquor for sale to persons who hold liquor licenses as fixed and determined by the department and in addition an excise and license tax as provided in this code.

~~(17)~~*(18)* "Proof gallon" means a U.S. gallon of liquor at 60 degrees on the Fahrenheit scale that contains 50% of alcohol by volume.

~~(18)~~*(19)* "Public place" means a place, building, or conveyance to which the public has or may be permitted to have access and any place of public resort.

~~(19)~~*(20)* "Retail price" means the price established by an agent for the sale of liquor to persons who do not hold liquor licenses. The retail price may not be less than the department's posted price.

~~(20)~~*(21)* "Rules" means rules adopted by the department or the department of justice pursuant to this code.

~~(21)~~*(22)* "Special event", as it relates to an application for a beer and wine special permit, means a short, infrequent, out-of-the-ordinary occurrence, such as a picnic, fair, reception, or sporting contest.

~~(22)~~*(23)* "State liquor warehouse" means a building owned or under control of the department for the purpose of receiving, storing, transporting, or selling alcoholic beverages to agency liquor stores.

~~(23)~~*(24)* "Storage depot" means a building or structure owned or operated by a brewer at any point in the state of Montana off and away from the premises of a brewery, which building or structure is equipped with refrigeration or cooling apparatus for the storage of beer and from which a brewer may sell or distribute beer as permitted by this code.

~~(24)~~*(25)* "Subwarehouse" means a building or structure owned or operated by a licensed beer wholesaler or table wine distributor, located at a site in Montana other than the site of the beer wholesaler's or table wine distributor's warehouse or principal place of business, and used for the receiving, storage, and distribution of beer or table wine as permitted by this code.

~~(25)~~*(26)* "Table wine" means wine that contains not more than 16% alcohol by volume and includes cider.

~~(26)~~*(27)* "Table wine distributor" means a person importing into or purchasing in Montana table wine for sale or resale to retailers licensed in Montana.

~~(27)~~*(28)* "Warehouse" means a building or structure located in Montana that is owned or operated by a licensed beer wholesaler or table wine distributor for the receiving, storage, and distribution of beer or table wine as permitted by this code.

~~(28)~~*(29)* "Wine" means an alcoholic beverage made from or containing the normal alcoholic fermentation of the juice of sound, ripe fruit or other agricultural products without addition or abstraction, except as may occur in the usual cellar treatment of clarifying and aging, and that contains more than 0.5% but not more than 24% of alcohol by volume. Wine may be ameliorated to correct natural deficiencies, sweetened, and fortified in accordance with applicable federal regulations and the customs and practices of the industry. Other alcoholic beverages not defined in this subsection but made in the manner

of wine and labeled and sold as wine in accordance with federal regulations are also wine."

Approved March 25, 2009

CHAPTER NO. 102

[HB 192]

AN ACT REVISING THE METHOD OF VOTING ON WHETHER TO OVERRIDE THE GOVERNOR'S VETO OF A BILL APPROVED BY TWO-THIRDS OF THE MEMBERS VOTING ON THE FINAL VOTE ON THE BILL WHEN THE LEGISLATURE IS NOT IN SESSION; AMENDING SECTION 5-4-306, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 5-4-306, MCA, is amended to read:

"5-4-306. Return when legislature not in session. (1) If, on the day the governor desires to return a bill without approval and with objections to the bill to the house in which it originated, that house has adjourned for the day, but not for the session, the governor may deliver the bill with the message to the presiding officer, secretary, clerk, or any member of that house. The delivery is as effectual as though returned in open session if the governor, on the first day the house is again in session, by message, notifies it of the delivery and of the time when and the person to whom the delivery was made.

(2) If the legislature is not in session when the governor vetoes a bill, the governor shall return the bill with the reasons for the veto to the secretary of state. If the bill was not approved by two-thirds of the members voting on the final vote on the bill, the secretary of state shall within 5 working days of receipt of the bill and veto message mail a copy of the title of the bill and the veto message to each member of the legislature. If the bill was approved by two-thirds of the members voting on the final vote on the bill, the secretary of state shall poll the members of the legislature. The secretary of state shall within 5 working days of receipt of the bill and veto message send by certified mail to each legislator, at an address provided by the legislator, a copy of the bill and the veto message, *a ballot, a return envelope,* instructions for casting a vote, and notice of the date by which each legislator shall return a vote. The date for return must be within 30 days after the date on which the bill, veto message, and voting instructions are sent. A legislator may cast and return a vote by delivering ~~it~~ *the ballot and return envelope* in person~~,~~ *or by* mailing ~~it, or sending a facsimile transmission of it~~ *the ballot in the return envelope by regular mail, postage paid, or by sending the ballot by facsimile transmission* to the office of the secretary of state. *A legislator may not change the legislator's vote after the ballot is received by the secretary of state.* The secretary of state shall tally the votes within 1 working day after the date for return of the votes. If two-thirds or more of the members of each house vote to override the veto, the bill becomes law.

(3) The legislature may reconvene to reconsider any bill vetoed by the governor when the legislature is not in session by using the statutory procedure provided for convening in special session."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 28, 2009

CHAPTER NO. 103

[HB 39]

AN ACT GENERALLY REVISING WATER RIGHT ENFORCEMENT LAWS; ALLOWING FOR THE LIMITED APPOINTMENT OF WATER MASTERS AS SPECIAL MASTERS IN DISTRICT COURT PROCEEDINGS; REQUIRING THAT PROTECTION OF PRIOR APPROPRIATORS BE GIVEN PRIORITY IN JUDICIAL ENFORCEMENT CONSIDERATIONS; MAKING THE PURSUIT OF VOLUNTARY COMPLIANCE OPTIONAL; ELIMINATING CERTAIN CRIMINAL PENALTIES; ESTABLISHING A WATER RIGHT ENFORCEMENT PROGRAM AND A WATER RIGHT ENFORCEMENT ACCOUNT; PROVIDING A STATUTORY APPROPRIATION; AMENDING SECTIONS 3-7-311, 17-7-502, 85-2-114, AND 85-2-122, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 3-7-311, MCA, is amended to read:

"3-7-311. Duties of water masters. (1) The water master has the general powers given to a master by Rule 53(c), M.R.Civ.P.

(2) Within a reasonable time after June 30, 1983, the water master shall issue a report to the water judge meeting the requirements for the preliminary decree as specified in 85-2-231.

(3) After a water judge issues a preliminary decree, the water master shall assist the water judge in the performance of the water division's further duties as ordered by the water judge.

(4) A water master may be appointed by a district court to serve as a special master to a district court for actions brought pursuant to 85-2-114(1) or (3) or 85-5-301 if the appointment is approved by the chief water judge."

Section 2. Section 17-7-502, MCA, is amended to read:

"17-7-502. Statutory appropriations — definition — requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-17-105; 5-11-120; 5-11-407; 5-13-403; 7-4-2502; 10-1-1202; 10-1-1303; 10-2-603; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-121; 15-1-218; 15-23-706; 15-31-906; 15-35-108; 15-36-332; 15-37-117; 15-39-110; 15-65-121; 15-70-101; 15-70-369; 15-70-601; 16-11-509; 17-3-106; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-7-304; 18-11-112; 19-3-319; 19-6-404; 19-6-410; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 19-20-607; 19-21-203; 20-8-107; 20-9-534; 20-9-622; 20-26-1503; 22-3-1004; 23-4-105; 23-4-202; 23-4-204; 23-4-302; 23-4-304; 23-5-306; 23-5-409; 23-5-612; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503; 41-5-2011; 42-2-105;

44-1-504; *[section 5];* 44-12-206; 44-13-102; 50-4-623; 53-1-109; 53-6-703; 53-24-108; 53-24-206; 60-11-115; 61-3-415; 69-3-870; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 76-13-150; 77-1-108; 77-2-362; 80-2-222; 80-4-416; 80-5-510; 80-11-518; 82-11-161; 87-1-513; 90-1-115; 90-1-205; 90-3-1003; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 4, Ch. 497, L. 1999, the inclusion of 15-38-202 terminates July 1, 2014; pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, and secs. 3 and 6, Ch. 481, L. 2003, the inclusion of 15-35-108 terminates June 30, 2010; pursuant to sec. 17, Ch. 593, L. 2005, the inclusion of 15-31-906 terminates January 1, 2010; pursuant to sec. 73, Ch. 44, L. 2007, the inclusion of 19-6-410 terminates upon the death of the last recipient eligible under 19-6-709(2) for the supplemental benefit provided by 19-6-709; and pursuant to sec. 6, Ch. 2, Sp. L. September 2007, the inclusion of 76-13-150 terminates June 30, 2009.)"

Section 3. Section 85-2-114, MCA, is amended to read:

"85-2-114. Judicial enforcement. (1) If the department ascertains, by a means reasonably considered sufficient by it, that a person is wasting water, using water unlawfully, preventing water from moving to another person having a prior right to use the water, or violating a provision of this chapter, it may~~, after reasonable attempts have failed to obtain voluntary compliance as provided in subsection (4),~~ petition the district court supervising the distribution of water among appropriators from the source to:

(a) regulate the controlling works of an appropriation as may be necessary to prevent the wasting or unlawful use of water or to secure water to a person having a prior right to its use;

(b) order the person wasting, unlawfully using, or interfering with another's rightful use of the water to cease and desist from doing so and to take steps that may be necessary to remedy the waste, unlawful use, or interference; or

(c) issue a temporary, preliminary, or permanent injunction to prevent a violation of this chapter. Notwithstanding the provisions of Title 27, chapter 19, part 3, a temporary restraining order must be granted if it clearly appears from the specific facts shown by affidavit or by the verified complaint that a provision of this chapter is being violated.

(2) Upon the issuance of an order or injunction, the department may attach to the controlling works a written notice, properly dated and signed, setting forth the fact that the controlling works have been properly regulated by it. The notice constitutes legal notice to all persons interested in the appropriation or distribution of the water.

(3) The department may also direct its own attorney or request the attorney general or county attorney to bring suit to enjoin the waste, unlawful use, interference, or violation.

(4) The county attorney *or the attorney general* may ~~prosecute under 85-2-122(1)~~ *bring suit to enjoin the waste, unlawful use, interference, or violation* or bring an action under ~~85-2-122(2)~~ *85-2-122(1)* without being requested to do so by the department. ~~The attorney general and a county attorney are subject to the voluntary compliance provisions of subsection (4).~~

(5) A county attorney who takes action pursuant to subsection (3) or (4) may request assistance from the attorney general.

(6) When enforcing the provisions of this section, the department, the county attorney, and the attorney general shall give priority to protecting the water rights of a prior appropriator under an existing water right, a certificate, a permit, or a state water reservation.

~~(4)~~*(7)* ~~The~~ *After considering the provisions of subsection (6), the* department ~~shall~~ *may* attempt to obtain voluntary compliance through warning, conference, or any other appropriate means before petitioning the district court under subsection (1). ~~The attempts~~ *An attempt* to obtain voluntary compliance under this subsection must extend over a period of at least 7 days and may not exceed 30 working days."

Section 4. Section 85-2-122, MCA, is amended to read:

"85-2-122. Penalties. ~~(1) A person who violates or refuses or neglects to comply with the provisions of this chapter, any order of the department, or any rule of the department is guilty of a misdemeanor.~~

~~(2)~~*(1)* Except as provided in 85-2-410(6), a person who violates or refuses or neglects to comply with the provisions of 85-2-114, any order of the department, or any rule of the department is subject to a civil penalty not to exceed $1,000 per violation. Each day of violation constitutes a separate violation.

~~(3) (a)~~*(2)* Except as provided in subsection ~~(3)(b)~~ *(3)*, fines collected by the department or a district court under subsection ~~(2)~~ *(1)* must be deposited in the account established in 85-2-318 for use by the department in the enforcement of 85-2-114.

~~(b)~~*(3)* If a fine is collected by an independent action brought by*:*

(a) the county attorney, the fine must be deposited in the general fund of the county~~.~~*; or*

(b) the county attorney with assistance from the attorney general or by the attorney general, the fine must be deposited in the water right enforcement account created in [section 5] and must be used to enforce the provisions of 85-2-114."

Section 5. Water right enforcement account — statutory appropriation. (1) There is a water right enforcement account in the state special revenue fund.

(2) Fines collected pursuant to 85-2-122(3)(b) must be deposited in the water right enforcement account.

(3) The money in the account is statutorily appropriated, as provided in 17-7-502, to the department of justice to enforce the provisions of 85-2-114.

Section 6. Water right enforcement program. There is a water right enforcement program in the department of justice. The program staff may enforce the provisions of 85-2-114. The program is under the supervision and control of the attorney general.

Section 7. Codification instruction. [Sections 5 and 6] are intended to be codified as an integral part of Title 44, chapter 4, and the provisions of Title 44, chapter 4, apply to [sections 5 and 6].

Section 8. Effective date. [This act] is effective on passage and approval.

Approved April 1, 2009

CHAPTER NO. 104

[HB 41]

AN ACT REQUIRING THAT A DISCHARGE PERMIT MUST BE OBTAINED, IF NECESSARY, FOR AN AQUIFER RECHARGE PLAN OR A MITIGATION PLAN IN A CLOSED BASIN; AMENDING SECTIONS 75-5-410, 85-2-362, AND 85-2-364, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-5-410, MCA, is amended to read:

"75-5-410. Water quality ~~of return flows and discharges associated with~~ *requirements* — aquifer recharge ~~plan~~ *or certain mitigation plans* — minimum requirements. (1) *(a) Except as provided in subsection (1)(b), a* ~~A~~ person who proposes ~~to use sewage from a system requiring a water quality permit for the purposes of aquifer recharge pursuant to 85-2-362 or plans to use sewage from a system requiring a water quality permit as a return flow to minimize the amount of water necessary to offset adverse effects resulting from net depletion of surface water through~~ an aquifer recharge *or mitigation* plan pursuant to 85-2-362 shall ~~obtain~~ *apply for, if necessary,* a current permit pursuant to this chapter.

(b) The requirements of this section do not apply to the portion of a mitigation plan that consists of a change in appropriation rights for instream flow filed pursuant to 85-2-402.

(2) The minimum treatment requirements for sewage systems subject to this section are the federal requirements provided for in 40 CFR 133, and the system must meet, at a minimum, the requirements of level two treatment for the removal of nitrogen in the effluent.

(3) In addition to the minimum treatment requirements of subsection (2), sewage systems subject to this section that are used for aquifer injection must meet the more stringent of either primary drinking water standards pursuant to Title 75, chapter 6, or the nondegradation requirements pursuant to 75-5-303 at the point of discharge.

(4) In addition to the minimum treatment requirements of subsection (2), sewage systems subject to this section that are used for aquifer recharge must meet either primary drinking water standards pursuant to Title 75, chapter 6, or the nondegradation requirements pursuant to 75-5-303 at the point of discharge.

~~(4) The appropriate interim legislative committee shall review drinking water standards and effluent treatment standards in other jurisdictions and recommend appropriate treatment standards for purposes of aquifer recharge and mitigation.~~

(5) For the purposes of this section, "aquifer injection" means the use of a well to inject water directly into an aquifer system without filtration through the geologic materials overlying the aquifer system for the purpose of aquifer

recharge or for an aquifer storage and recovery project *and "aquifer recharge" and "mitigation" have the meanings provided in 85-2-102*."

Section 2. Section 85-2-362, MCA, is amended to read:

"85-2-362. Aquifer recharge or mitigation plans in closed basins — minimum requirements. (1) An applicant whose hydrogeologic assessment conducted pursuant to 85-2-361 predicts that there will be a net depletion of surface water shall offset the net depletion that results in the adverse effect through a mitigation plan or an aquifer recharge plan.

(2) A mitigation plan must include:

(a) where and how the water in the plan will be put to beneficial use;

(b) when and where, generally, water reallocated through exchange or substitution will be required;

(c) the amount of water reallocated through exchange or substitution that is required;

(d) how the proposed project or beneficial use for which the mitigation plan is required will be operated;

(e) evidence that an application for a change in appropriation right, if necessary, has been submitted;

(f) evidence of water availability; ~~and~~

(g) evidence of how the mitigation plan will offset the required amount of net depletion of surface water in a manner that will offset an adverse effect on a prior appropriator*; and*

(h) evidence that the appropriate water quality permits have been granted pursuant to Title 75, chapter 5, as required by 75-5-410 and 85-2-364.

(3) An aquifer recharge plan must include:

(a) evidence that the appropriate water quality ~~related~~ permits have been granted pursuant to Title 75, chapter 5, ~~and pursuant to~~ *as required by* 75-5-410 and 85-2-364;

(b) where and how the water in the plan will be put to beneficial use;

(c) when and where, generally, water reallocated through exchange or substitution will be required;

(d) the amount of water reallocated through exchange or substitution that is required;

(e) how the proposed project or beneficial use for which the aquifer recharge plan is required will be operated;

(f) evidence that an application for a change in appropriation right, if necessary, has been submitted;

(g) a description of the process by which water will be reintroduced to the aquifer;

(h) evidence of water availability; and

(i) evidence of how the aquifer recharge plan will offset the required amount of net depletion of surface water in a manner that will offset any adverse effect on a prior appropriator.

(4) The department may not require an applicant, through a mitigation plan or an aquifer recharge plan, to provide more water than the quantity needed to offset the adverse effects on a prior appropriator caused by the net depletion.

(5) An appropriation right that relies on a mitigation plan or aquifer recharge plan to offset net depletion of surface water that results in an adverse effect on a prior appropriator must be issued as a conditional permit that requires that the mitigation plan or aquifer recharge plan must be exercised when the appropriation right is exercised."

Section 3. Section 85-2-364, MCA, is amended to read:

"85-2-364. Department permit coordination — requirements for aquifer recharge *or mitigation* plans. To ensure that the department and the department of environmental quality are coordinating their respective permitting activities:

(1) an applicant for a new appropriation right pursuant to 85-2-360 that involves aquifer recharge *or mitigation* shall provide the department with a copy of a relevant discharge permit if necessary; and

(2) the department may not grant a new appropriation right pursuant to 85-2-360 that involves aquifer recharge *or mitigation* until the discharge permit, if necessary, has been obtained and presented to the department."

Section 4. Coordination instruction. If both Senate Bill No. 94 and [this act] are passed and approved, then the amendments to 85-2-362 in both Senate Bill No. 94 and [this act] are void and 85-2-362 must read as follows:

"85-2-362. Aquifer recharge or mitigation plans in closed basins — minimum requirements. (1) An applicant whose hydrogeologic assessment conducted pursuant to 85-2-361 predicts that there will be a net depletion of surface water shall offset the net depletion that results in the adverse effect through a mitigation plan or an aquifer recharge plan. *A mitigation plan or an aquifer recharge plan, or both, must provide evidence of how the plan will offset the net depletion of surface water from an appropriation of water that results in an adverse effect, including, at a minimum, evidence:*

~~(2) A mitigation plan must include:~~

~~(a) where and how the water in the plan will be put to beneficial use;~~

~~(b) when and where, generally, water reallocated through exchange or substitution will be required;~~

~~(c) the amount of water reallocated through exchange or substitution that is required;~~

~~(d) how the proposed project or beneficial use for which the mitigation plan is required will be operated;~~

~~(e) evidence~~

(a) of the amount of water reallocated through exchange or substitution;

(b) of the general timing and location of the water reallocated through exchange or substitution;

(c) that the mitigation water will be available;

(d) of how the mitigation water in the plan will be protected and how it will be measured or accounted for;

(e) that the appropriate water quality permits have been applied for pursuant to Title 75, chapter 5, as required by 75-5-410 and 85-2-364; and

(f) that an application for a change in appropriation right, if necessary, has been submitted~~;~~.

~~(f) evidence of water availability; and~~

~~(g) evidence of how the mitigation plan will offset the required amount of net depletion of surface water in a manner that will offset an adverse effect on a prior appropriator.~~

~~(3) An aquifer recharge plan must include:~~

~~(a) evidence that the appropriate water quality related permits have been granted pursuant to Title 75, chapter 5, and pursuant to 75-5-410 and 85-2-364;~~

~~(b) where and how the water in the plan will be put to beneficial use;~~

~~(c) when and where, generally, water reallocated through exchange or substitution will be required;~~

~~(d) the amount of water reallocated through exchange or substitution that is required;~~

~~(e) how the proposed project or beneficial use for which the aquifer recharge plan is required will be operated;~~

~~(f) evidence that an application for a change in appropriation right, if necessary, has been submitted;~~

~~(g)~~*(2) In addition to the requirements in subsection (1), an aquifer recharge plan must also include* a description of the process by which water will be reintroduced to the aquifer~~;~~.

~~(h) evidence of water availability; and~~

~~(i) evidence of how the aquifer recharge plan will offset the required amount of net depletion of surface water in a manner that will offset any adverse effect on a prior appropriator.~~

(3) A mitigation plan or aquifer recharge plan may not include the proposed elimination of vegetation for which there is not an associated water right.

(4) A mitigation plan or aquifer recharge plan may not include the use of tributary water collected from land surfaces that have been made impermeable, thereby increasing the runoff but not adding to the existing supply of tributary water. This subsection does not apply to actions that increase the efficiency of existing conveyance structures.

~~(4)~~*(5)* The department may not require an applicant, through a mitigation plan or an aquifer recharge plan, to provide more water than the quantity needed to offset the adverse effects on a prior appropriator caused by the net depletion.

~~(5)~~*(6)* An appropriation right that relies on a mitigation plan or aquifer recharge plan to offset net depletion of surface water that results in an adverse effect on a prior appropriator must be issued as a conditional permit that requires that the mitigation plan or aquifer recharge plan must be exercised when the appropriation right is exercised."

Section 5. Coordination instruction. If both Senate Bill No. 94 and [this act] are passed and approved, then the amendments to 85-2-364 in both Senate Bill No. 94 and [this act] are void and 85-2-364 must read as follows:

"85-2-364. Department permit coordination — requirements for aquifer recharge plans. To ensure that the department and the department of environmental quality are coordinating their respective permitting activities:

(1) an applicant for a new appropriation right pursuant to 85-2-360 that involves aquifer recharge *or mitigation and requires a discharge permit pursuant to Title 75, chapter 5,* shall provide *to* the department ~~with a copy of a relevant discharge permit if necessary~~ *evidence that an application for the*

discharge permit has been submitted to the department of environmental quality; and

(2) the department may not grant a new appropriation right pursuant to 85-2-360 that involves aquifer recharge *or mitigation* until the discharge permit, if necessary, has been obtained and presented to the department."

Section 6. Effective date. [This act] is effective on passage and approval.

Section 7. Applicability. [This act] applies to applications received by the department of natural resources and conservation on or after [the effective date of this act].

Approved April 1, 2009

CHAPTER NO. 105

[HB 45]

AN ACT REVISING THE LAWS GOVERNING THE DISTRIBUTION OF FEDERAL FOREST RESERVE FUNDS TO COMPLY WITH FEDERAL LAW; AMENDING SECTIONS 17-3-211, 17-3-212, AND 17-3-213, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-3-211, MCA, is amended to read:

"17-3-211. Forest reserve money and other federal funds. (1) The state treasurer, for the purpose of carrying out the provisions of 16 U.S.C. 500, Public Law 106-393, *Public Law 110-343,* and all acts subsequent to them, shall divide and distribute all forest reserve*,* ~~and~~ Public Law 106-393*, and Public Law 110-343* funds received by the state, plus interest earned, to and among the several counties entitled to the funds and pay the amounts to the several county treasurers of the counties within 30 days after receiving full payment, as directed by the department.

(2) The forest reserve money*,* ~~and~~ the Public Law 106-393 money*, and Public Law 110-343 money* must be invested and all investment earnings credited to the forest reserve account or the Public Law 106-393 *and Public Law 110-343* account, as appropriate."

Section 2. Section 17-3-212, MCA, is amended to read:

"17-3-212. Apportionment of forest reserve funds and other federal funds among counties. (1) The forest reserve funds, all Public Law 106-393 funds, *all Public Law 110-343 funds,* and earned interest are statutorily appropriated, as provided in 17-7-502, from the federal special revenue fund to the department. The department shall apportion all forest reserve funds, all Public Law 106-393 funds, *all Public Law 110-343 funds,* and earned interest for allocation among the counties in which the forest reserve is situated based upon federal law and this section.

(2) The state treasurer shall pay the apportioned amounts plus interest, as provided in 17-3-211, to the respective counties."

Section 3. Section 17-3-213, MCA, is amended to read:

"17-3-213. Allocation of forest reserve funds and other federal funds — options provided in federal law. (1) The board of county commissioners in each county shall decide among payment options provided in subsections (2) through ~~(4)~~ *(6)*, as provided in Public Law 106-393 *and Public Law 110-343*, to

determine how the forest reserve funds, ~~and~~ Public Law 106-393 funds, *and Public Law 110-343 funds* apportioned to each county must be distributed by the county treasurer pursuant to this section.

(2) If a board of county commissioners chooses to receive a payment that is 25% of the revenue derived from national forest system lands, as provided in 16 U.S.C. 500, all funds received must be distributed as provided in subsection (5).

(3) (a) Except as provided in subsection (4), if a county elects to receive the county's full payment under Public Law 106-393, a minimum of 80% up to a maximum of 85% of the county's full payment must be designated by the county for distribution as provided in subsection (5).

(b) The balance not distributed pursuant to subsection (3)(a) may be allocated by the county in accordance with Public Law 106-393.

(4) If a county's full payment *under Public Law 106-393* is less than $100,000, the county may elect to distribute up to 100% of the payment as provided in subsection (5).

(5) The total amount designated by a county in accordance with subsection (3)(a) or (4) must be distributed as follows:

(a) to the general road fund, 66 2/3% of the amount designated;

(b) to the following countywide school levies, 33 1/3% of the amount designated:

(i) county equalization for elementary schools provided for in 20-9-331;

(ii) county equalization for high schools provided for in 20-9-333;

(iii) the county transportation fund provided for in 20-10-146; and

(iv) the elementary and high school district retirement fund obligations provided for in 20-9-501.

(6) The apportionment of money to the funds provided for under subsection (5)(b) must be made by the county superintendent based on the proportion that the mill levy of each fund bears to the total number of mills for all the funds. Whenever the total amount of money available for apportionment under subsection (5)(b) is greater than the total requirements of a levy, the excess money and any interest income must be retained in a separate reserve fund, to be reapportioned in the ensuing school fiscal year to the levies designated in subsection (5)(b).

(7) In counties in which special road districts have been created according to law, the board of county commissioners shall distribute a proportionate share of the 66 2/3% distributed under subsection ~~(5)(b)~~ *(5)(a)* for the general road fund to the special road districts within the county based upon the percentage that the total area of the road district bears to the total area of the entire county.

(8) Except as provided in subsection (9), if a county elects to receive the county's full payment under Public Law 110-343, not less than 80% but not more than 85% of the funds must be expended in the same manner as provided in subsection (5). A county may reserve not more than 7% of the county's full payment for projects in accordance with Title III of section 601 of Public Law 110-343. The balance of the funds may be:

(a) reserved for projects in accordance with Title II of section 601 of Public Law 110-343; or

(b) returned to the United States.

(9) (a) If a county's full payment is more than $100,000 but less than or equal to $350,000, the county may use all of the funds as provided in Title II or Title III of section 601 of Public Law 110-343 or return the funds to the United States.

(b) If a county's full payment is less than or equal to $100,000, the county may elect to distribute up to 100% of the payment as provided in subsection (5)."

Section 4. Effective date. [This act] is effective on passage and approval.

Approved April 1, 2009

CHAPTER NO. 106

[HB 48]

AN ACT REVISING LAWS RELATING TO THE GROWTH THROUGH AGRICULTURE ACT; REVISING ELIGIBILITY AND DISBURSEMENT GUIDELINES; ALLOWING THE USE OF GRANTS; GRANTING RULEMAKING AUTHORITY; AMENDING SECTIONS 90-9-102, 90-9-103, 90-9-202, 90-9-203, 90-9-301, 90-9-306, 90-9-307, 90-9-311, 90-9-401, AND 90-9-402, MCA; REPEALING SECTIONS 90-9-303, 90-9-312, 90-9-313, 90-9-314, 90-9-315, 90-9-316, AND 90-9-317, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 90-9-102, MCA, is amended to read:

"90-9-102. Purpose. It is the purpose of this chapter to strengthen and diversify Montana's agricultural industry ~~by establishing a public-private sector partnership~~ *through loans and grants* to assist the development of innovative agricultural business organizational improvements and the commercialization and marketing of new agricultural products in order to keep pace with a transforming agricultural industry and to create new jobs and expand small business opportunities."

Section 2. Section 90-9-103, MCA, is amended to read:

"90-9-103. Definitions. As used in this chapter, the following definitions apply:

(1) "Act" means the Montana Growth Through Agriculture Act.

(2) "Agricultural business" means an enterprise engaged in the production, processing, marketing, distribution, or exporting of agricultural products. The term includes any related business the primary function of which is providing goods or services to an agricultural enterprise.

~~(3) "Agricultural development project" means a marketing, agribusiness development, seed capital, or research and development project designed to discover, develop, transfer, market, use, or commercialize existing or new agricultural products or processes in order to strengthen and enhance agricultural economic development in the state.~~

~~(4) "Agricultural development project loan agreement" or "loan" means an agreement entered into between the council and the loan recipient of a seed capital project loan or a research and development project loan that:~~

~~(a) creates a debt relationship between the parties;~~

~~(b) provides for a financial return to the council;~~

~~(c) provides economic development potential to the state; and~~

~~(d) contains various provisions and terms as required by the act.~~

~~(5)~~*(3)* "Company" means a natural person, firm, partnership, corporation, association, or other entity authorized to conduct business in the state.

~~(6) "Convertible debenture" means a debenture convertible into stock under certain conditions by an individual or company, but not by the council.~~

~~(7)~~*(4)* "Council" means the Montana agriculture development council established in 2-15-3015.

~~(8) "Debenture" or "note" means a writing or certificate issued as evidence of debt.~~

~~(9)~~*(5)* "Department" means the department of agriculture established in 2-15-3001.

~~(10) "Innovative agricultural technology" means the involvement of an agricultural product or process that embodies the use of implements, machinery, equipment, chemical formulations, resources, materials, methods, or other items in a manner that departs from previous commercial developments, practices, or applications.~~

~~(11) "Investment" means an award of money, with or without repayment requirements, for the purposes provided for in this chapter.~~

~~(12)~~*(6)* (a) "Matching funds" means the funds received by the ~~agricultural development project~~ loan or ~~investment~~ *grant* recipient from private, federal, state, or commodity checkoff funds and contributed by the ~~loan or investment~~ recipient ~~to the project~~ *in support of a loan or grant application* in an amount that is at least equal to the funds disbursed to the recipient by the council ~~for use in the agricultural development project~~.

(b) Matching funds may not include other state grants.

~~(13) "Portfolio company" means a startup or expansion stage company that has received a seed capital project loan from the council.~~

~~(14) "Private sector" means any entity or individual, not principally a part of or associated with a governmental unit.~~

~~(15) "Research and development project" means an agricultural development project that falls into the category of applied technology research or agricultural technology transfer and assistance.~~

~~(16) "Research and development project loan" means an agricultural development project loan agreement entered into between the council and a loan recipient for a research and development project.~~

~~(17) (a) "Seed capital project" means an agricultural development project loan entered into between the council and a loan recipient for the purposes of providing the recipient with startup or expansion capital.~~

~~(b) The term does not include an investment.~~

~~(18)~~*(7)* "State" means the state of Montana.

~~(19) "Warrant" means an instrument issued by a corporation giving a holder other than the council the right to purchase stock of a corporation at a fixed price, either for a limited time or perpetually.~~"

Section 3. Section 90-9-202, MCA, is amended to read:

"90-9-202. Powers and duties of council. *(1)* The council shall:

~~(1)~~*(a)* establish policies and priorities to enhance the future development of agriculture in Montana, including the Indian reservations in the state;

~~(2)~~*(b)* make ~~investments or~~ loans *or grants, pursuant to the provisions of Title 90, chapter 9, part 3,* ~~in agricultural development projects~~ that have a ~~short-~~ *short-term* or long-term ability to stimulate agriculture development and diversification in rural, urban, and tribal settings in Montana~~, including but not limited to:~~

~~(a) seed capital projects for development and commercialization of new products and processes;~~

~~(b) foreign and domestic market development activities;~~

~~(c) applied technological research;~~

~~(d) agricultural development projects; and~~

~~(e) agricultural technology assistance and transfer~~; and

~~(3)~~*(c)* accept grants or receive devises of money or property for use in making the ~~investments or~~ loans *or grants* authorized by this chapter.

(2) The council may:

(a) defer or forgive any loan in whole or in part; and

(b) forgive any accrued interest in whole or in part."

Section 4. Section 90-9-203, MCA, is amended to read:

"90-9-203. Rulemaking. The council shall adopt rules necessary to implement the provisions of this chapter, including ~~but not limited to~~ rules:

(1) governing the conduct of council business;

(2) establishing application procedures ~~that, at a minimum, require the submittal of an executive summary for an agricultural development project loan or investment, a business plan for a seed capital project, a research and development project proposal for a research and development project loan, and other documents necessary to meet the criteria established in the act~~ *for loans and grants authorized in 90-9-202*;

(3) establishing procedures to be followed by the council in its review process prior to making ~~an agricultural development project~~ *a* loan or ~~investment~~ *grant*;

(4) establishing postdisbursement activities ~~that describe the ongoing involvement or follow-along management of the council that may be required in an agricultural development project loan~~ *to monitor the use of a loan* or ~~investment agreement~~ *grant by its recipient, including:*

(a) any reporting requirements; and

(b) procedures for repayment of a loan or grant upon failure of a recipient to meet the terms and conditions of that loan or grant;

(5) establishing interest rates for loans in accordance with market factors and the purposes of this chapter;

(6) limiting the amount of loans or grants that any company may receive or apply for over a given period of time;

(7) governing the deferral or forgiveness of loans and any accrued interest; and

(8) establishing other terms and conditions of loans and grants, as necessary, within the requirements and purposes of this chapter."

Section 5. Section 90-9-301, MCA, is amended to read:

"90-9-301. Agriculture seed capital account — matching funds. (1) There is an agriculture seed capital account administered by the council. *Money received by the council under 90-9-306 must be deposited in this account.*

(2) The council may loan or ~~invest~~ *grant* money from the agriculture seed capital account*, pursuant to the provisions of 90-9-311 and [sections 11 through 13]* ~~to support agricultural development projects and research relating to innovative organizational improvements in agricultural businesses and to the commercialization and marketing of new agricultural products or agricultural production processes~~.

~~(3) The council may not make a loan or investment to an agricultural development project unless the recipient provides matching funds. Matching funds are required prior to any expenditure of state funds. The council may accept as matching funds those funds received by the loan recipient within 1 year prior to the execution of the loan agreement.~~"

Section 6. Section 90-9-306, MCA, is amended to read:

"90-9-306. Appropriation authority and funding — ~~prohibited investments~~ *prohibitions.* (1) The council may accept and expend ~~all~~ *the* funds ~~received by~~ *that* it ~~as~~ *receives from* grants, donations, or other private or public income, including amounts repaid as principal and interest on ~~investments~~ *loans* made by the council. These funds are statutorily appropriated to the council, as provided in 17-7-502, for the purposes of this chapter, except that expenditures for actual and necessary expenses required for the efficient administration of this chapter must be made from temporary appropriations, as described in 17-7-501(1) or (2), made for that purpose.

(2) Council members may not personally apply for or receive council funds. If an organization with which a member is affiliated applies for council funds, the member shall disclose the nature of the affiliation and, if the council member is a board member or officer of the organization, may not participate in the decision of the council regarding the application."

Section 7. Section 90-9-307, MCA, is amended to read:

"90-9-307. Accountability. The council shall develop independent review and audit procedures to ensure that ~~investments and~~ loans *and grants* made by it are used for the ~~purposes identified in its investment and loan agreements~~ *specified purposes*."

Section 8. Section 90-9-311, MCA, is amended to read:

"90-9-311. General criteria underlying ~~agricultural development project~~ loans and ~~investments~~ *grants.* The council may make ~~an agricultural development project~~ *a* loan or ~~investment~~ *grant* only ~~upon a favorable determination that the proposed agricultural development project~~ *if the council determines that*:

(1) *the loan or grant* is consistent with the findings and purposes of ~~the act~~ *this chapter* because it *primarily* adds value to Montana's agricultural products~~. Priority must be given to projects that incorporate innovative agricultural technology.~~

~~(2) has prospects for collaboration between the public and private sectors of the state's economy~~;

~~(3)~~*(2) the project for which the loan or grant is made* has prospects for achieving commercial success *given the current personnel, experience, and resources of the applicant;*

(3) ~~and for creating~~ *the project for which the loan or grant is made is anticipated to create* new *jobs or retain existing* jobs in the state;

~~(4) has potential for commercial success related to the specific product, process, or business development methodology proposed;~~

~~(5) can provide matching funds;~~

~~(6) has potential to benefit existing agricultural business;~~

~~(7) can be reasonably expected to provide an economic return within a reasonable period of time;~~

~~(8)~~*(4) the loan or grant is primarily intended to be used for* ~~involves~~ processing or adding value to agricultural products produced *or potentially produced* in the state; and

~~(9)~~*(5) the applicant* has a management structure that allows *the council to reasonably conclude that the applicant will comply with* ongoing *reporting requirements and* postdisbursement ~~involvement~~ *monitoring activities established* by the council."

Section 9. Section 90-9-401, MCA, is amended to read:

"90-9-401. Agricultural marketing enhancement. ~~The~~ *As directed by the* council*, the department* shall assist in identification and development of new domestic and foreign markets for Montana agricultural products. ~~The council shall~~ *This includes*:

(1) ~~assist~~ *assisting* in placing one full-time professional marketing person in Japan or another Pacific Rim country to develop export marketing opportunities in the Pacific region;

(2) ~~provide~~ *providing* assistance for appropriate trade missions of Montana producers, processors, or distributors of agricultural products on a cost-share basis; and

(3) ~~assist~~ *assisting* in other appropriate means of enhancing domestic markets for Montana agricultural products."

Section 10. Section 90-9-402, MCA, is amended to read:

"90-9-402. Export finance assistance. ~~The~~ *As directed by the* council*, the department* shall provide professional assistance to persons who apply for financial assistance for the purpose of developing export sales of Montana agricultural products."

Section 11. Application for loans and grants — additional criteria. (1) All applicants shall complete an application and provide financial information as established by rule.

(2) The council may not make a loan or grant unless the recipient provides matching funds prior to the expenditure of any state funds. The council may accept as matching funds those funds expended by the recipient within 1 year prior to the execution of the loan or grant.

(3) The department may provide assistance to applicants during the application process.

Section 12. Terms and conditions of loans. (1) The term of any loan may not exceed 8 years.

(2) The amount of any loan may not exceed $100,000 in any 9-month period.

(3) Repayment of a loan is due in full upon dissolution or liquidation of the recipient company.

(4) The council may make a low-interest loan, at a rate established by rule, only if it determines that the applicant meets the criteria set forth in 90-9-311 and [section 11] and the applicant:

(a) has unencumbered collateral to secure the full amount of the loan; or

(b) meets other requirements established by rule.

(5) The council may make a high-interest loan, at a rate established by rule, only if it determines that the applicant meets the criteria set forth in 90-9-311 and [section 11].

(6) The council may establish other terms and conditions by rule.

Section 13. Terms and conditions of grants. (1) A grant does not accrue interest, but is contingent on the funds being used for the specified purpose.

(2) The council may make a grant of up to $50,000 if an application meets all of the criteria set forth in 90-9-311 and [section 11] and one of the following applies:

(a) the proposal will benefit agricultural companies in addition to the applicant;

(b) the proposal will accomplish research that benefits agriculture as a whole; or

(c) the applicant is a nonprofit entity.

(3) The council may award a grant of up to $2,500 for educational, promotional, marketing, travel, or other business expenses related to agricultural development. These grants are not subject to the criteria set forth in 90-9-311 or [section 11].

Section 14. Repealer. Sections 90-9-303, 90-9-312, 90-9-313, 90-9-314, 90-9-315, 90-9-316, and 90-9-317, MCA, are repealed.

Section 15. Codification instruction. [Sections 11 through 13] are intended to be codified as an integral part of Title 90, chapter 9, part 3, and the provisions of Title 90, chapter 9, part 3, apply to [sections 11 through 13].

Section 16. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 17. Effective date. [This act] is effective July 1, 2009.

Approved April 1, 2009

CHAPTER NO. 107

[HB 75]

AN ACT REVISING THE PROVISIONS OF THE ENVIRONMENTAL REHABILITATION AND RESPONSE ACCOUNT; AUTHORIZING THE EXPENDITURE OF FUNDS FROM THE ENVIRONMENTAL REHABILITATION AND RESPONSE ACCOUNT FOR THE CLEANUP OF SOLID WASTE SITES; AMENDING SECTION 75-1-110, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-1-110, MCA, is amended to read:

"75-1-110. Environmental rehabilitation and response account. (1) There is an environmental rehabilitation and response account in the state special revenue fund provided for in 17-2-102.

(2) There must be deposited in the account:

(a) fine and penalty money received pursuant to 75-10-1223, 82-4-311, and 82-4-424 and other funds or contributions designated for deposit to the account;

(b) unclaimed or excess reclamation bond money received pursuant to 82-4-241, 82-4-311, 82-4-424, and 82-4-426; *and*

~~and~~

~~(c)~~*(c)* interest earned on the account.

(3) Money in the account is available to the department of environmental quality by appropriation and must be used to pay for:

(a) reclamation and revegetation of land affected by mining activities, research pertaining to the reclamation and revegetation of land, and the rehabilitation of water affected by mining activities;

(b) reclamation and revegetation of unreclaimed mine lands for which the department may not require reclamation by, or obtain costs of reclamation from, a legally responsible party;

(c) remediation of sites containing hazardous wastes *as defined in 75-10-403,* ~~or~~ hazardous *or deleterious* substances *as defined in 75-10-701, or solid waste as defined in 75-10-203;* ~~for which the department may not recover costs from a legally responsible party;~~ or

(d) response to an imminent threat of substantial harm to the environment, to public health, or to public safety for which no funding or insufficient funding is available pursuant to 75-1-1101.

~~(4)~~*(4)* Any unspent or unencumbered money in the account at the end of a fiscal year must remain in the account until spent or appropriated by the legislature."

Section 2. Effective date. [This act] is effective July 1, 2009.

Approved April 1, 2009

CHAPTER NO. 108

[HB 78]

AN ACT INCREASING THE BOARD FEET OF SALVAGE TIMBER THAT MAY BE SOLD WITHOUT ADVERTISEMENT; AMENDING SECTION 77-5-212, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 77-5-212, MCA, is amended to read:

"77-5-212. Commercial permits for timber sale. (1) Permits may be issued to citizens of the state for commercial purposes, at commercial rates, without advertising, and under restrictions and rules that the board may approve for the sale of timber:

(a) in quantities of less than 100,000 board feet; and

(b) in cases of emergency due to fire, insect, fungus, parasite, or blowdown and no other, in quantities of less than ~~200,000~~ *500,000* board feet.

(2) To apply for a permit under this section, an individual shall:

(a) complete a permit application on a form provided by the department and submit the completed application to the department office that is responsible for management of the state land where the proposed sale is located;

(b) using ribbon, mark the area of the proposed sale; and

(c) designate on a U.S. geological survey map or other approved map the area proposed for sale and existing roads that would be used to remove timber from the site.

(3) For sales of less than 30,000 board feet, an individual shall provide proof of vehicle liability insurance and $1 million in commercial general liability insurance, naming the state of Montana as additionally insured, and shall provide a performance bond in an amount not to exceed $1,000.

(4) For sales of 30,000 board feet or more, an individual shall provide proof of vehicle liability insurance and $1 million in commercial general liability insurance, naming the state of Montana as additionally insured, and shall provide a performance bond in accordance with 77-5-202.

(5) Unless the timber proposed for sale is already sold or is part of another proposed sale being reviewed by the department, the department shall review completed permit applications within 30 days of the application's submittal. If the proposed sale complies with existing state and federal laws and regulations, the department shall perform an appraisal within 60 days of the application's submittal.

(6) The department shall issue a permit within 5 working days of the date that the applicant agrees to the terms of the proposed sale, unless the parties mutually agree upon a time extension.

(7) Repeated permits of this kind may not be issued to avoid advertising and the consequent competition secured by advertising.

(8) Permit applications pursuant to subsection (1)(b) are categorical exclusions as defined by rule, and the department is not required to comply with the provisions of 75-1-201(1) in reviewing those applications.

(9) Proposed timber sales under subsection (1)(b) do not take precedence over the timely sale and harvest of green timber pursuant to 77-5-207.

(10) Permit applications made pursuant to this section may be subject to further environmental review, and the number of permits may be limited if the department determines that sales may have a cumulative effect on geographic area."

Section 2. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 1, 2009

CHAPTER NO. 109

[HB 80]

AN ACT REVISING PROFESSIONAL AND OCCUPATIONAL LICENSING LAWS; REVISING AND CLARIFYING CERTAIN BOARD MEMBER REQUIREMENTS, BOARD TERMS, AND BOARD COMPOSITION;

REQUIRING SENATE CONFIRMATION OF APPOINTMENTS TO THE BOARD OF RESPIRATORY CARE PRACTITIONERS AND THE BOARD OF SOCIAL WORK EXAMINERS AND PROFESSIONAL COUNSELORS; REVISING CERTAIN REGULATORY AND LICENSURE REQUIREMENTS; REVISING CERTAIN BOARD DUTIES; REVISING PROVISIONS RELATING TO UNPROFESSIONAL CONDUCT; REVISING HEARING AID DISPENSER TRAINEE AND BOARD DUTIES; CREATING A TEMPORARY PRACTICE PERMIT IN ADDICTION COUNSELING; REVISING CERTAIN LICENSING REQUIREMENTS FOR PUBLIC ACCOUNTANTS AND FIRMS; REMOVING AUTHORIZATION FOR LAETRILE MANUFACTURE, SALE, POSSESSION, AND DISTRIBUTION; AMENDING SECTIONS 2-15-1738, 2-15-1740, 2-15-1741, 2-15-1744, 2-15-1748, 2-15-1750, 2-15-1753, 2-15-1756, 23-3-501, 30-11-515, 37-1-316, 37-1-410, 37-3-102, 37-3-305, 37-3-306, 37-3-308, 37-3-311, 37-3-323, 37-3-342, 37-4-501, 37-8-202, 37-9-203, 37-9-301, 37-9-302, 37-9-305, 37-9-312, 37-10-302, 37-16-202, 37-16-405, 37-16-411, 37-16-413, 37-18-302, 37-25-303, 37-29-201, 37-35-201, 37-35-202, 37-36-202, 37-47-302, 37-47-404, 37-50-101, 37-50-102, 37-50-203, 37-50-301, 37-50-314, 37-50-330, 37-50-335, 37-50-341, 37-50-401, AND 37-50-402, MCA; AND REPEALING SECTIONS 37-21-101, 37-21-201, 37-21-301, 37-21-302, 37-21-405, 37-21-406, 37-50-323, 37-50-324, 50-41-101, 50-41-102, 50-41-103, 50-41-104, 50-41-105, 50-41-106, AND 50-41-107, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Practice privilege for nonresident certified public accountant — rules. (1) (a) A person whose principal place of business is not in this state and who holds a valid license as a certified public accountant from any state that the national association of state boards of accountancy national qualification appraisal service or successor organization has verified to be in substantial equivalence with the certified public accountant licensure requirements of the Uniform Accountancy Act or subsequent act of the American institute of certified public accountants/national association of state boards of accountancy has qualifications substantially equivalent to this state's requirements and has all the privileges of persons holding a certificate and a permit of this state without the need to obtain a certificate under 37-50-302 or a permit under 37-50-314.

(b) A person who offers or renders professional services under this section, whether in person, by mail, by telephone, or by electronic means, is granted practice privileges in this state and no notice, fee, or other submission is required. The person is subject to the requirements of subsections (3) and (4) and this subsection (1).

(2) (a) A person whose principal place of business is not in this state and who holds a valid license as a certified public accountant from any state that the national association of state boards of accountancy national qualification appraisal service or successor organization has not verified to be in substantial equivalence with the certified public accountant licensure requirements of the Uniform Accountancy Act or subsequent act of the American institute of certified public accountants/national association of state boards of accountancy has qualifications substantially equivalent to this state's requirements and has all the privileges of persons holding a certificate and a permit of this state without the need to obtain a certificate under 37-50-302 or a permit under 37-50-314 if the person obtains verification from the national association of state boards of accountancy national qualification appraisal service that the person's CPA qualifications are substantially equivalent to the CPA licensure

requirements of the Uniform Accountancy Act of the American institute of certified public accountants/national association of state boards of accountancy.

(b) A person who has passed the uniform certified public accountant examination and holds a valid license issued by any other state prior to January 1, 2012, is exempt from the education requirements in the Uniform Accountancy Act or subsequent act for purposes of this subsection (2).

(c) A person who offers or renders professional services under this subsection (2), whether in person, by mail, by telephone, or by electronic means, is granted practice privileges in this state and no notice, fee, or other submission is required. The person is subject to the requirements of subsections (3) and (4) and this subsection (2).

(3) A licensee of another state exercising the privilege under this section and the firm that employs that person, as a condition of the grant of this privilege:

(a) are subject to the personal and subject matter jurisdiction and disciplinary authority of the board;

(b) shall comply with this chapter and the board's rules;

(c) shall cease offering or rendering professional services in this state individually or on behalf of a firm if the license from the state of the person's principal place of business is no longer valid; and

(d) shall accept the appointment of the state board that issued the license as the agent upon whom process may be served in any action or proceeding by the board of public accountants against the licensee.

(4) A person who has been granted practice privileges under this section and who, for any client with its home office in this state, performs any attest services or compilations may do so only through a firm registered under 37-50-335.

Section 2. Section 2-15-1738, MCA, is amended to read:

"2-15-1738. Board of radiologic technologists. (1) There is a board of radiologic technologists.

(2) The board consists of seven members appointed by the governor with the consent of the senate*, including*:

(a) ~~one member shall be~~ a radiologist licensed to practice medicine in Montana;

~~(b) one member shall be a physician licensed to practice medicine in Montana who employs at least one person granted a permit issued by the board pursuant to 37-14-306;~~

~~(c)~~*(b)* ~~one member shall be~~ a person granted a permit issued by the board pursuant to 37-14-306;

~~(d)~~*(c)* ~~one member shall be~~ a public member; and

~~(e)~~*(d)* ~~three members shall be~~ *four licensed* radiologic technologists registered with the American registry of radiologic technologists (ARRT) ~~who, with the exception of the first appointed members, are licensed radiologic technologists~~*, including one radiologist assistant or radiology practitioner assistant licensed under 37-14-313*.

(3) Vacancies in unexpired terms ~~shall~~ *must* be filled for the remainder of the term.

(4) Each member shall serve ~~for a term of 3 years~~ *3-year terms*.

(5) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."

Section 3. Section 2-15-1740, MCA, is amended to read:

"2-15-1740. Board of hearing aid dispensers. (1) There is a board of hearing aid dispensers.

(2) The board consists of ~~seven~~ *five* members appointed by the governor with the consent of the senate~~. The members are:~~*, including:*

~~(a) one member who shall hold or be eligible for a certificate of qualification from the American board of otolaryngology;~~

~~(b)~~*(a)* two members, each of whom has been a licensed hearing aid dispenser for at least 5 years, possesses ~~national certification in audiology~~ *a current audiologist license issued under Title 37, chapter 15*, and has a master's level college degree;

~~(c)~~*(b)* two members, each of whom does not hold a master's level college degree in audiology but has been a licensed dispenser and fitter of hearing aids for at least 5 years before being appointed to the board; *and*

~~(d)~~*(c)* ~~two~~ *one* public ~~members~~ *member*~~, each of whom is not in the hearing health field and one of whom~~ *who is either an otolaryngologist or a person who is not a licensed hearing aid dispenser or a licensed audiologist and who* regularly uses a hearing aid because ~~the person has~~ *of* a demonstrated hearing impairment.

(3) Each member shall serve for ~~a term of 3 years~~ *3-year terms*. A member may not be reappointed within 1 year after the expiration of the member's second consecutive full term.

(4) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."

Section 4. Section 2-15-1741, MCA, is amended to read:

"2-15-1741. Board of psychologists. (1) There is a board of psychologists.

(2) The board consists of six members appointed by the governor with the consent of the senate. Two members must be licensed psychologists in private practice, one member must be a licensed psychologist in public health, one member must be a licensed psychologist engaged in the teaching of psychology, and two members must be from the general public. A member may not serve *more than two* consecutive 5-year terms ~~but may be reappointed after 5 years following the termination of the previous appointment~~.

(3) Members shall serve staggered 5-year terms.

(4) The board is allocated to the department for administrative purposes only, as prescribed in 2-15-121."

Section 5. Section 2-15-1744, MCA, is amended to read:

"2-15-1744. Board of social work examiners and professional counselors. (1) (a) The governor shall appoint*, with the consent of the senate,* a board of social work examiners and professional counselors consisting of seven members.

(b) Three members must be licensed social workers, and three must be licensed professional counselors.

(c) One member must be appointed from and represent the general public and may not be engaged in social work.

(2) The board is allocated to the department for administrative purposes only as provided in 2-15-121.

(3) ~~Members are appointed, serve, and are subject to removal in accordance with 2-15-124~~ *Members shall serve staggered 4-year terms*."

Section 6. Section 2-15-1748, MCA, is amended to read:

"2-15-1748. Board of physical therapy examiners. (1) There is a board of physical therapy examiners.

(2) The board consists of five members appointed by the governor with the consent of the senate for terms of 3 years. The members are:

(a) ~~three~~ *four* physical therapists licensed under Title 37, chapter 11, who have been actively engaged in the practice of physical therapy for the 3 years preceding appointment to the board; *and*

~~(b) one physician licensed under Title 37, chapter 3, who has been actively engaged in the practice of medicine for the 3 years preceding appointment to the board; and~~

~~(c)~~*(b)* one member of the general public who is not a physician or a physical therapist.

(3) Each member must have been a resident of Montana for the 3 years preceding appointment to the board.

~~(4) The Montana medical association may submit names of nominees under subsection (2)(b) to the governor as provided in 37-1-132.~~

~~(5)~~*(4)* A vacancy on the board must be filled in the same manner as the original appointment. These appointments may be made only for the unexpired portions of the term.

~~(6)~~*(5)* A member may not be appointed for more than two consecutive terms.

~~(7)~~*(6)* The governor may remove any board member for negligence in performance of any duty required by law and for incompetence or unprofessional or dishonorable conduct.

~~(8)~~*(7)* A board member is not liable to civil action for any act performed in good faith in the execution of the duties required by Title 37, chapter 11.

~~(9)~~*(8)* The board shall provide for its organizational structure by rule, which must include a presiding officer, vice presiding officer, and secretary-treasurer.

~~(10)~~*(9)* The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."

Section 7. Section 2-15-1750, MCA, is amended to read:

"2-15-1750. Board of respiratory care practitioners. (1) There is a board of respiratory care practitioners. The board consists of five members appointed by the governor *with the consent of the senate*. Each member must be a citizen of the United States and a resident of this state. The governor may request advice from the Montana society for respiratory care in making appointments to the board.

(2) The board consists of:

(a) *subject to subsection (3),* three respiratory care practitioners, each of whom has engaged in the practice of respiratory care for a period of at least 3 years immediately preceding appointment to the board~~. At least one of these members must have passed the registry examination for respiratory therapists administered by the national board for respiratory care, and at least one of these~~

~~members must have passed the entry-level examination for respiratory therapy technicians administered by the national board for respiratory care.~~

(b) one ~~physician licensed in Montana who has a special interest in the treatment of cardiopulmonary diseases~~ *respiratory care practitioner who has engaged in the practice of respiratory care for at least 3 years immediately prior to appointment and who specializes in pulmonary functions or sleep studies*; and

(c) one member of the public who is not a member of a health care profession.

(3) At least one of the members appointed under subsection (2)(a) must have passed the registry examination for respiratory therapists administered by the national board for respiratory care, and at least one of the members must have passed the entry-level examination for certified respiratory therapists administered by the national board for respiratory care.

~~(3)~~*(4)* Members ~~are appointed, serve, are compensated, and are subject to removal as provided in 2-15-124~~ *shall serve staggered 4-year terms*.

~~(4)~~*(5)* The board is allocated to the department of labor and industry for administrative purposes only as provided in 2-15-121."

Section 8. Section 2-15-1753, MCA, is amended to read:

"2-15-1753. Board of clinical laboratory science practitioners. (1) There is a board of clinical laboratory science practitioners.

(2) The board is composed of five members who have been residents of this state for at least 2 years prior to appointment ~~and who are actively engaged in their respective practices~~.

(3) Members are appointed by the governor, with consent of the senate. The members are:

~~(a) one physician who is qualified to direct a high complexity laboratory as provided for in the federal clinical laboratory regulations set forth in 42 CFR part 493;~~

~~(b)~~*(a)* ~~three~~ *four* clinical laboratory science practitioners who~~, except for the initial appointments,~~ hold active licenses as clinical laboratory science practitioners in Montana; and

~~(c)~~*(b)* one public member who is not associated with or financially interested in the practice of clinical laboratory science.

(4) ~~Following the initial appointments of members to the board, all members~~ *Members* shall serve *staggered* 4-year terms. ~~The terms of the initial appointments must be staggered, with three members serving 4-year terms and two members serving 2-year terms.~~ A member may not serve more than two consecutive terms.

(5) Whenever a vacancy occurs on the board during a term of office, the governor shall appoint a successor with similar qualifications for the remainder of the unexpired term.

(6) The board is allocated to the department for administrative purposes only, as provided in 2-15-121.

(7) Members of the board are entitled to compensation and travel expenses as provided ~~by law~~ *for in 2-18-501 through 2-18-503*."

Section 9. Section 2-15-1756, MCA, is amended to read:

"2-15-1756. Board of public accountants. (1) There is a board of public accountants.

(2) The board consists of seven members appointed by the governor. The members are:

(a) ~~four~~ *except as provided in subsection (3), five* certified public accountants certified under Title 37, chapter 50, who are certified and actively engaged in the practice of public accounting and who have held a valid certificate for at least 5 years before being appointed*; and*. ~~The Montana society of certified public accountants shall submit to the governor annually a list of names of two candidates from which the appointments of these members may be made. However, the governor is not restricted to the names on this list. These members may not be residents of the same county.~~

~~(b) one licensed public accountant licensed under Title 37, chapter 50, who is actively engaged in the practice of public accounting and who has held a valid license for at least 5 years before being appointed. When an appointment in this category is necessary, the Montana society of public accountants shall submit to the governor a list of names of two candidates from which the appointment may be made. However, the governor is not restricted to the names on this list. If there is no licensed public accountant known by the governor to be qualified and willing to serve in this position, the governor may appoint a certified public accountant meeting the qualifications provided in subsection (2)(a).~~

~~(c)~~*(b)* two members of the general public who are not engaged in the practice of public accounting.

(3) The board may include four certified public accountants pursuant to subsection (2)(a) and one licensed public accountant licensed under Title 37, chapter 50, who is actively engaged in the practice of public accounting and who has held a valid license for at least 5 years prior to appointment.

(4) Professional associations of public accountants may submit to the governor a list of names of two candidates for each position from which the appointment pursuant to subsection (2)(a) may be made. However, the governor is not restricted to the names on the list. The list may include recommendations for a certified public accountant or a licensed public accountant.

~~(3)~~*(5)* Each appointment is subject to confirmation by the senate and must be submitted for consideration at the next regular session following appointment.

~~(4)~~*(6)* The members shall serve staggered ~~5-year~~ *4-year* terms. ~~A member may not serve consecutive 5-year terms on the board. A member is eligible for reappointment to the board after 1 year or more has elapsed.~~ The governor may remove a member for neglect of duty or other just cause.

~~(5)~~*(7)* The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."

Section 10. Section 23-3-501, MCA, is amended to read:

"23-3-501. Licenses — fees. (1) The department may issue a ~~license to a professional or semiprofessional promoter of combative events, whether an individual or organization,~~ *promoter's license to an individual* for the sole purpose of conducting professional or semiprofessional combative events.

(2) The department may issue licenses to qualified referees, managers, contestants, seconds, trainers, and judges.

(3) A license issued in accordance with subsections (1) and (2) expires on the date set by department rule.

(4) Each application for a license under this section must be accompanied by a fee, as provided in 37-1-134, set by the department."

Section 11. Section 30-11-515, MCA, is amended to read:

"30-11-515. Enforcement. The provisions of this part must be enforced by ~~the department of labor and industry and~~ the county attorney of the county in which the violation occurred."

Section 12. Section 37-1-316, MCA, is amended to read:

"37-1-316. Unprofessional conduct. The following is unprofessional conduct for a licensee or license applicant governed by this ~~chapter~~ *part*:

(1) conviction, including conviction following a plea of nolo contendere, of a crime relating to or committed during the course of the person's practice or involving violence, use or sale of drugs, fraud, deceit, or theft, whether or not an appeal is pending;

(2) permitting, aiding, abetting, or conspiring with a person to violate or circumvent a law relating to licensure or certification;

(3) fraud, misrepresentation, deception, or concealment of a material fact in applying for or assisting in securing a license or license renewal or in taking an examination required for licensure;

(4) signing or issuing, in the licensee's professional capacity, a document or statement that the licensee knows or reasonably ought to know contains a false or misleading statement;

(5) a misleading, deceptive, false, or fraudulent advertisement or other representation in the conduct of the profession or occupation;

(6) offering, giving, or promising anything of value or benefit to a federal, state, or local government employee or official for the purpose of influencing the employee or official to circumvent a federal, state, or local law, rule, or ordinance governing the licensee's profession or occupation;

(7) denial, suspension, revocation, probation, fine, or other license restriction or discipline against a licensee by a state, province, territory, or Indian tribal government or the federal government if the action is not on appeal, under judicial review, or has been satisfied~~.~~*;*

(8) failure to comply with a term, condition, or limitation of a license by final order of a board;

(9) revealing confidential information obtained as the result of a professional relationship without the prior consent of the recipient of services, except as authorized or required by law;

~~(10) addiction to or dependency on a habit-forming drug or controlled substance as defined in Title 50, chapter 32, as a result of illegal use of the drug or controlled substance;~~

~~(11)~~*(10)* use of *alcohol,* a habit-forming drug*,* or *a* controlled substance as defined in Title 50, chapter 32, to the extent that the use impairs the user physically or mentally *in the performance of licensed professional duties*;

~~(12)~~*(11)* having a physical or mental disability that renders the licensee or license applicant unable to practice the profession or occupation with reasonable skill and safety;

~~(13)~~*(12)* engaging in conduct in the course of one's practice while suffering from a contagious or infectious disease involving serious risk to public health or

without taking adequate precautions, including but not limited to informed consent, protective gear, or cessation of practice;

~~(14)~~*(13)* misappropriating property or funds from a client or workplace or failing to comply with a board rule regarding the accounting and distribution of a client's property or funds;

~~(15)~~*(14)* interference with an investigation or disciplinary proceeding by willful misrepresentation of facts, by the use of threats or harassment against or inducement to a client or witness to prevent them from providing evidence in a disciplinary proceeding or other legal action, or by use of threats or harassment against or inducement to a person to prevent or attempt to prevent a disciplinary proceeding or other legal action from being filed, prosecuted, or completed;

~~(16)~~*(15)* assisting in the unlicensed practice of a profession or occupation or allowing another person or organization to practice or offer to practice by use of the licensee's license;

~~(17)~~*(16)* failing to report the institution of or final action on a malpractice action, including a final decision on appeal, against the licensee or of an action against the licensee by a:

(a) peer review committee;

(b) professional association; or

(c) local, state, federal, territorial, provincial, or Indian tribal government;

~~(18)~~*(17)* conduct that does not meet the generally accepted standards of practice. A certified copy of a malpractice judgment against the licensee or license applicant or of a tort judgment in an action involving an act or omission occurring during the scope and course of the practice is conclusive evidence of but is not needed to prove conduct that does not meet generally accepted standards."

Section 13. Section 37-1-410, MCA, is amended to read:

"37-1-410. Unprofessional conduct. ~~(1)~~ The following is unprofessional conduct for a licensee or license applicant in a profession or occupation governed by this ~~chapter~~ *part*:

~~(a)~~*(1)* being convicted, including a conviction following a plea of nolo contendere and regardless of a pending appeal, of a crime relating to or committed during the course of practicing the person's profession or occupation or involving violence, the use or sale of drugs, fraud, deceit, or theft;

~~(b)~~*(2)* permitting, aiding, abetting, or conspiring with a person to violate or circumvent a law relating to licensure or certification;

~~(c)~~*(3)* committing fraud, misrepresentation, deception, or concealment of a material fact in applying for or assisting in securing a license or license renewal or in taking an examination required for licensure;

~~(d)~~*(4)* signing or issuing, in the licensee's professional capacity, a document or statement that the licensee knows or reasonably ought to know contains a false or misleading statement;

~~(e)~~*(5)* making a misleading, deceptive, false, or fraudulent advertisement or other representation in the conduct of the profession or occupation;

~~(f)~~*(6)* offering, giving, or promising anything of value or benefit to a federal, state, or local government employee or official for the purpose of influencing the

employee or official to circumvent a federal, state, or local law, rule, or ordinance governing the licensee's profession or occupation;

~~(g)~~*(7)* receiving a denial, suspension, revocation, probation, fine, or other license restriction or discipline against a licensee by a state, province, territory, or Indian tribal government or the federal government if the action is not on appeal or under judicial review or has been satisfied~~.~~*;*

~~(h)~~*(8)* failing to comply with a term, condition, or limitation of a license by final order of the department;

~~(i)~~*(9)* having a physical or mental disability that renders the licensee or license applicant unable to practice the profession or occupation with reasonable skill and safety;

~~(j)~~*(10)* misappropriating property or funds from a client or workplace or failing to comply with the department's rule regarding the accounting and distribution of a client's property or funds;

~~(k)~~*(11)* interfering with an investigation or disciplinary proceeding by willful misrepresentation of facts, failure to respond to department inquiries regarding a complaint against the licensee or license applicant, or the use of threats or harassment against or inducement to a client or witness to prevent them from providing evidence in a disciplinary proceeding or other legal action or use of threats or harassment against or inducement to a person to prevent or attempt to prevent a disciplinary proceeding or other legal action from being filed, prosecuted, or completed;

~~(l)~~*(12)* assisting in the unlicensed practice of a profession or occupation or allowing another person or organization to practice or offer to practice the profession or occupation by use of the licensee's license~~.~~*;*

~~(2) For the purposes of Title 37, chapters 72 and 73, and Title 50, chapters 74 and 76, the following~~ additional practices are considered unprofessional conduct:

~~(a) addiction to or dependency on alcohol, an illegal drug, or a dangerous drug, as defined in Title 50, chapter 32;~~

~~(b)~~*(13)* ~~use of~~ *using* alcohol, an illegal drug, or a dangerous drug, as defined in Title 50, chapter 32, to the extent that the use impairs the user physically or mentally *in the performance of licensed professional duties*; *or*

~~(c)~~*(14) exhibiting* conduct that does not meet generally accepted standards of practice. A certified copy of a judgment against the licensee or license applicant or of a tort judgment in an action involving an act or omission occurring within the scope of practice and the course of the practice is considered conclusive evidence of but is not needed to prove conduct that does not meet generally accepted standards."

Section 14. Section 37-3-102, MCA, is amended to read:

"37-3-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Approved internship" means an internship training program of at least 1 year in a hospital that is either approved for intern training by the American osteopathic association or conforms to the minimum standards for intern training established by the council on medical education of the American medical association or successors. However, the board may, upon investigation, approve any other internship.

(2) "Approved medical school" means a school that either is accredited by the American osteopathic association or conforms to the minimum education standards established by the council on medical education of the American medical association or successors for medical schools or is equivalent in the sound discretion of the board. The board may, on investigation of the education standards and facilities, approve any medical school, including foreign medical schools.

(3) "Approved residency" means a residency training program in a hospital conforming to the minimum standards for residency training established by the council on medical education of the American medical association or successors or approved for residency training by the American osteopathic association. ~~However, the board may upon investigation approve any other residency.~~

(4) "Board" means the Montana state board of medical examiners provided for in 2-15-1731.

(5) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(6) "Medical assistant" means an unlicensed allied health care worker who functions under the supervision of a physician or podiatrist in a physician's or podiatrist's office and who performs administrative and clinical tasks.

(7) "Physician" means a person who holds a degree as a doctor of medicine or doctor of osteopathy and who has a valid license to practice medicine or osteopathic medicine in this state.

(8) "Practice of medicine" means the diagnosis, treatment, or correction of or the attempt to or the holding of oneself out as being able to diagnose, treat, or correct human conditions, ailments, diseases, injuries, or infirmities, whether physical or mental, by any means, methods, devices, or instrumentalities. If a person who does not possess a license to practice medicine in this state under this chapter and who is not exempt from the licensing requirements of this chapter performs acts constituting the practice of medicine, the person is practicing medicine in violation of this chapter."

Section 15. Section 37-3-305, MCA, is amended to read:

"37-3-305. Qualifications for licensure. (1) Except as provided in subsections (4) and (5), a person may not be granted a physician's license to practice medicine in this state unless the person:

(a) is of good moral character as determined by the board;

(b) is a graduate of an approved medical school as defined in 37-3-102;

(c) has *successfully* completed an approved ~~postgraduate~~ *residency* program of at least 2 years or, ~~in the opinion of the board,~~ *for an applicant who graduated from medical school prior to 2000,* has had experience or training *that in the opinion of the board* ~~that~~ is at least the equivalent of a 2-year ~~postgraduate~~ *approved residency* program;

(d) has submitted a completed application; and

(e) is able to communicate, in the opinion of the board, in the English language.

(2) The board may authorize the department to issue the license subject to terms of probation or other conditions or limitations set by the board or may refuse a license if the applicant has committed unprofessional conduct or is otherwise unqualified.

(3) A person may not be granted a temporary license to practice medicine in this state unless the person:

(a) is of good moral character as determined by the board;

(b) is a graduate of an approved medical school as defined in 37-3-102;

(c) has *successfully* completed an approved ~~postgraduate~~ *residency* program of at least 2 years or, ~~in the opinion of the board,~~ *for an applicant who graduated from medical school prior to 2000,* has had experience or training *that in the opinion of the board* ~~that~~ is at least the equivalent of a 2-year ~~postgraduate~~ *approved residency* program; and

(d) is able, in the opinion of the board, to communicate in the English language.

(4) The 2-year minimum requirements in subsections (1)(c) and (3)(c) do not apply to a person who:

(a) has completed an approved internship of at least 1 year or in the opinion of the board has had experience or training that is at least the equivalent of a 1-year internship;

(b) is a resident in good standing with the Montana family practice residency program; and

(c) is seeing patients under the supervision of a physician who possesses a current, unrestricted license to practice medicine in this state.

(5) The 2-year minimum requirements in subsections (1)(c) and (3)(c) do not apply to a person who:

(a) has completed an approved internship of at least 1 year or, in the opinion of the board, has had experience or training that is at least the equivalent of a 1-year internship;

(b) is a resident in good standing with a program accredited by the accreditation council for graduate medical education or the American osteopathic association;

(c) in the course of an approved rotation of the person's residency program, is seeing patients under the supervision of a physician who possesses a current, unrestricted license to practice medicine in this state;

(d) makes application to the department on an approved form; and

(e) pays a fee set by the board, as provided in 37-3-308."

Section 16. Section 37-3-306, MCA, is amended to read:

"37-3-306. Physician's license — examination — reciprocity and endorsement. (1) The board may authorize the department to issue to an applicant a physician's license, license by reciprocity, or license by endorsement only on the basis of:

~~(a) passing an approved examination, subject to 37-1-101;~~

~~(b)~~*(a)* certification of record or other certificate of examination issued to or for the applicant by the national board of medical examiners or successors, by the federation licensing examination committee or successors, by the national board of examiners for osteopathic physicians and surgeons, incorporated, or by the medical council of Canada or successors if the applicant is a graduate of a Canadian medical school that has been approved by the medical council of Canada or successors, certifying that the applicant has passed an examination given by this board; or

~~(c)~~*(b)* a valid, unsuspended, and unrevoked license or certificate issued to the applicant on the basis of an examination by an examining board under the laws of another state or territory of the United States or of the District of Columbia or of a foreign country whose licensing standards at the time the license or certificate was issued were, in the judgment of the board, essentially equivalent to those of this state for granting a license to practice medicine, if under the scope of the license or certificate the applicant was authorized to practice medicine in the other state, territory, or country.

(2) An applicant who applies for a license on the basis of an examination and fails the examination may not be granted a license based on credentials from another state, territory, or foreign country or on a certificate issued by the national board of medical examiners or successors, by the federation licensing examination committee or successors, or by the medical council of Canada or successors.

(3) The board may adopt reciprocity or endorsement requirements current with changes in standards in the practice of medicine.

(4) The board may, in the case of an applicant for admission by reciprocity or endorsement, require a written or oral examination of the applicant.

(5) The board may require that graduates of foreign medical schools pass an examination given by the education council for foreign medical graduates or successors.

(6) A holder of the degree of doctor of osteopathy granted in 1955 or before may not be licensed without taking and passing the examination given by the department, subject to 37-1-101. A holder of the degree of doctor of osteopathy granted after 1955 must be licensed in the same manner as provided in this section for physicians."

Section 17. Section 37-3-308, MCA, is amended to read:

"37-3-308. ~~Examination and application fees~~ *Application fee* — further tax forbidden. (1) An applicant for a license to practice medicine to be issued on the basis of an examination by the board shall pay an examination fee as set by the board. The board shall set the fee, and it shall be reasonable and commensurate with the costs of the examination and related costs. Such examination fee shall be in addition to the application fee.

~~(2)~~ All applicants, including applicants for a temporary license, shall pay an initial application fee as prescribed by the board.

~~(3)~~*(2)* ~~No~~ *A* license tax ~~shall~~ *may not* be imposed upon physicians by a municipality or any other subdivision of the state."

Section 18. Section 37-3-311, MCA, is amended to read:

"37-3-311. ~~Examination~~ *Foreign medical graduate examination.* (1) An applicant who is a graduate of a foreign medical school is required to have passed an examination given by the education council for foreign medical graduates or its successor *and attained a minimum grade as set by the board*.

~~(2) The board may in its discretion require the department to give, subject to 37-1-101, an oral or practical examination to test the applicant's qualifications for licensure and grant appropriate credit for the examination.~~

~~(3) The board may use other Montana physicians to assist in preparing the examination.~~

~~(4) A person may not be granted a license to practice medicine if the person fails to attain a passing grade as set by the board.~~

(2) If an applicant fails to meet the minimum grade requirements on the first examination, the applicant may be reexamined not more than two additional times on each of the component parts of the examination. If an applicant is prevented through no fault of the applicant's from taking a scheduled examination, the applicant may, within 2 years, be examined without submitting a new application."

Section 19. Section 37-3-323, MCA, is amended to read:

"37-3-323. ~~Revocation or suspension of license~~ *Suspension of license — investigation*. (1) The department may investigate whenever the department learns of a reason to suspect that a *license applicant or a* person having a license to practice medicine in this state:

(a) is mentally or physically unable to safely engage in the practice of medicine, has procured a license to practice medicine by fraud or misrepresentation or through mistake, has been declared incompetent by a court of competent jurisdiction and has not later been lawfully declared competent, or has a condition that impairs the person's intellect or judgment to the extent that the condition incapacitates the person for the safe performance of professional duties;

(b) has been guilty of unprofessional conduct;

(c) has practiced medicine with a suspended or revoked license;

(d) has had a license to practice medicine suspended or revoked by any licensing authority for reasons other than nonpayment of fees; or

(e) while under probation has violated the terms of probation.

(2) The investigation must be for the purpose of determining the probability of the existence of these conditions or the commission of these offenses and may, upon order of the board, include requiring the person to submit to a physical examination or a mental examination, or both, by a physician or physicians selected by the board if it appears to be in the best interests of the public that this evaluation be secured. The board may examine and scrutinize the hospital records and reports of a licensee *or license applicant* as part of the examination, and copies must be released to the board on written request.

(3) If a person holding a license to practice medicine under this chapter is by a final order or adjudication of a court of competent jurisdiction adjudged to be mentally incompetent, to be addicted to the use of addictive substances, or to have been committed pursuant to 53-21-127, the person's license may be suspended by the board. The suspension continues until the licensee is found or adjudged by the court to be restored to reason or cured or until the person is discharged as restored to reason or cured and the person's professional competence has been proved to the satisfaction of the board."

Section 20. Section 37-3-342, MCA, is amended to read:

"37-3-342. Definition — scope of practice allowed by telemedicine license. (1) As used in 37-3-301, 37-3-341 through 37-3-345, and 37-3-347 through 37-3-349, "telemedicine" means the practice of medicine, as defined in 37-3-102, by a physician located outside the state who performs an evaluative or therapeutic act relating to the treatment or correction of a patient's physical or mental condition, ailment, disease, injury, or infirmity and who transmits that evaluative or therapeutic act into Montana through any means, method, device, or instrumentality under the following conditions:

(a) The information or opinion is provided *directly to a patient in Montana* for compensation or with the expectation of compensation.

(b) The physician does not limit the physician's services to an occasional case.

(c) The physician has an established or regularly used connection with the state, including but not limited to:

(i) an office or another place for the reception of a transmission from the physician;

(ii) a contractual relationship with a person or entity in Montana related to the physician's practice of medicine; or

(iii) privileges in a Montana hospital or another Montana health care facility, as defined in 50-5-101.

(2) As used in 37-3-301, 37-3-341 through 37-3-345, and 37-3-347 through 37-3-349, telemedicine does not mean:

(a) an act or practice that is exempt from licensure under 37-3-103;

(b) an informal consultation, made without compensation or expectation of compensation, between an out-of-state physician and a physician or other health care provider located in Montana;

(c) the transfer of patient records, independent of any other medical service and without compensation;

(d) communication about a Montana patient with the patient's physician or other health care provider who practices in Montana, in lieu of direct communication with the Montana patient or the patient's legal representative; *or*

~~(e) diagnosis of a medical condition by a physician located outside the state, based upon an x-ray, cardiogram, pap smear, or other specimen sent for evaluation to the physician outside the state by a health care provider in Montana; or~~

~~(f)~~*(e)* a communication from a physician located outside Montana to a patient in Montana in ~~collaboration~~ *consultation* with a physician or other health care provider licensed to practice medicine in Montana."

Section 21. Section 37-4-501, MCA, is amended to read:

"37-4-501. Work order for construction or repair of appliances. (1) A licensed dentist who employs or engages the services of a person, firm, or corporation to construct, reproduce, make, alter, or repair bridges, crowns, dentures, other prosthetic appliances, surgical appliances, or orthodontic appliances shall furnish the person, firm, or corporation with a written work authorization on forms ~~prescribed by the board which shall~~ *that must* contain:

(a) the name and address of the person, firm, or corporation to which the work authorization is directed;

(b) the patient's name or identification number, but if only a number is used, the patient's name ~~shall~~ *must* be written on the duplicate copy of the work authorization retained by the dentist;

(c) the date on which the work authorization was written;

(d) a description of the work to be done, including diagrams if necessary;

(e) a specification of the type and quality of the materials to be used; and

(f) the signature of the dentist and the number of ~~his~~ *the dentist's* license to practice dentistry.

(2) The person, firm, or corporation receiving a work authorization from a licensed dentist shall retain the original work authorization, and the dentist shall retain the duplicate copy for inspection at a reasonable time by the board for a period of 2 years from date of issuance."

Section 22. Section 37-8-202, MCA, is amended to read:

"37-8-202. Organization — meetings — powers and duties. (1) The board shall:

(a) meet annually and elect from among the members a president and a secretary;

(b) hold other meetings when necessary to transact its business;

(c) prescribe standards for schools preparing persons for registration and licensure under this chapter;

(d) provide for surveys of schools at times the board considers necessary;

(e) approve programs that meet the requirements of this chapter and of the board;

(f) conduct hearings on charges that may call for discipline of a licensee, revocation of a license, or removal of schools of nursing from the approved list;

(g) cause the prosecution of persons violating this chapter. The board may incur necessary expenses for prosecutions.

(h) adopt rules regarding authorization for prescriptive authority of advanced practice registered nurses. If considered appropriate for an advanced practice registered nurse who applies to the board for authorization, prescriptive authority must be granted.

(i) establish a program to assist licensed nurses who are found to be ~~physically or mentally~~ impaired by *mental illness,* habitual intemperance*,* or the excessive use of narcotic drugs, alcohol, or any other drug or substance. The program must provide for assistance to licensees in seeking treatment for *mental illness or* substance abuse and monitor their efforts toward rehabilitation. For purposes of funding this program, the board shall adjust the renewal fee to be commensurate with the cost of the program.

(2) The board may:

(a) participate in and pay fees to a national organization of state boards of nursing to ensure interstate endorsement of licenses;

(b) define the educational requirements and other qualifications applicable to recognition of advanced practice registered nurses. Advanced practice registered nurses are nurses who must have additional professional education beyond the basic nursing degree required of a registered nurse. Additional education must be obtained in courses offered in a university setting or the equivalent. The applicant must be certified or in the process of being certified by a certifying body for advanced practice registered nurses. Advanced practice registered nurses include nurse practitioners, nurse-midwives, nurse anesthetists, and clinical nurse specialists.

(c) establish qualifications for licensure of medication aides, including but not limited to educational requirements. The board may define levels of licensure of medication aides consistent with educational qualifications, responsibilities, and the level of acuity of the medication aides' patients. The board may limit the type of drugs that are allowed to be administered and the method of administration.

(d) adopt rules for delegation of nursing tasks by licensed nurses to unlicensed persons;

(e) adopt rules necessary to administer this chapter; and

(f) fund additional staff, hired by the department, to administer the provisions of this chapter."

Section 23. Section 37-9-203, MCA, is amended to read:

"37-9-203. Duties of board. The board shall:

(1) develop, impose, and enforce standards that must be met by individuals in order to ~~register and~~ receive a license as a nursing home administrator, designed to ensure that nursing home administrators are individuals of good character and otherwise suitable and, by *education,* training, or experience in the field of institutional administration, are qualified to serve as nursing home administrators;

(2) develop and apply appropriate techniques, including examination and investigation, for determining whether individuals meet the standards;

(3) authorize the department to ~~register and~~ issue licenses to individuals~~, after application of the techniques,~~ determined to meet the standards;

(4) establish and implement procedures designed to ensure that individuals ~~registered and~~ licensed as nursing home administrators will, during the period that they serve, comply with the requirements of the standards; *and*

(5) conduct a continuing study and investigation of nursing home administrators within the state with a view to the improvement of the standards imposed for the licensing of administrators and of procedures and methods for the enforcement of the standards with respect to nursing home administrators."

Section 24. Section 37-9-301, MCA, is amended to read:

"37-9-301. Qualifications for licensure — examination. ~~(1) The department shall register and issue licenses to qualified persons as nursing home administrators, and the board shall establish qualification criteria for nursing home administrators. No registration or license shall be issued to a person as a nursing home administrator unless he:~~

~~(a)~~*(1) A person may not be granted a nursing home administrator license unless the person:*

(a) is of good *moral* character, *as determined by the board, and* ~~of sound physical and mental health,~~ has received a high school diploma or its equivalent; and

(b) (i) has satisfactorily completed a course of instruction and training prescribed by the board, which ~~shall~~ *must* be designed and administered to present sufficient knowledge of the needs properly served by long-term care facilities, laws governing the operation of long-term care facilities and the protection of the interests of patients, and the elements of good nursing home administration; or

(ii) has presented evidence satisfactory to the board of sufficient education, training, or experience, or a combination of education, training, and experience, in the fields referred to in subsection (1)(b)(i) to administer, supervise, and manage a long-term care facility; and

(c) has passed an examination designed to test for competence in the subject matters referred to in subsection (1)(b)(i).

(2) The minimum standards for qualification ~~shall~~ *must* comply with the requirements, if any, set forth in ~~Title XIX of the Social Security Act, Public Law 90-248, as amended~~ *42 U.S.C. 1396g*."

Section 25. Section 37-9-302, MCA, is amended to read:

"37-9-302. Department to license pursuant to board rules — nontransferability. (1) The department shall ~~register and~~ license nursing home administrators under the rules adopted by the board.

(2) A nursing home administrator's ~~registration and~~ license is not transferable ~~and is valid until surrendered for cancellation, suspended, or revoked for violation of this chapter or any other laws or rules relating to the proper administration and management of a long-term care facility~~."

Section 26. Section 37-9-305, MCA, is amended to read:

"37-9-305. License — grounds for discipline. A license must be granted ~~as a matter of course. However, if the board finds, after notice and hearing, that the applicant has acted or failed to act in accordance with this chapter, the board may find grounds for discipline~~ *if the applicant meets the qualifications pursuant to 37-9-301 and, if the applicant holds another professional, temporary, or restricted license, there is no finding of unprofessional conduct. If an applicant for a license is denied, the applicant is entitled to notice and a hearing as provided in Title 2, chapter 4, part 6*."

Section 27. Section 37-9-312, MCA, is amended to read:

"37-9-312. Violation. It ~~shall be~~ *is* unlawful for any person to act or serve in the capacity of a nursing home administrator unless ~~he~~ *the person* is the holder of a ~~registration and~~ license as a nursing home administrator, issued in accordance with the provisions of this chapter. A person who violates the provisions of this chapter ~~shall be~~ *is* guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than $500, ~~or~~ by imprisonment for not more than 6 months, or ~~by~~ both ~~such fine and imprisonment~~."

Section 28. Section 37-10-302, MCA, is amended to read:

"37-10-302. Qualifications — application. (1) The board shall adopt rules relative to and governing the qualifications of applicants for licensure as optometrists.

(2) A person is not eligible to receive a license unless that person is of good moral character.

(3) A person is not eligible to receive a license unless that person has graduated from an accredited school of optometry in which the practice and science of optometry is taught in a course of study that is accredited by the ~~international association of boards of examiners in optometry~~ *association of regulatory boards of optometry*.

(4) An applicant for a license shall file a completed application on a form provided by the department and pay a fee prescribed by the board."

Section 29. Section 37-16-202, MCA, is amended to read:

"37-16-202. Powers and duties. *(1)* The powers and duties of the board are to:

~~(1)~~*(a)* license persons who apply and are qualified to practice the fitting of hearing aids;

~~(2)~~*(b)* establish a procedure ~~to act as a grievance board~~ to initiate or receive, investigate, and ~~mediate~~ *process* complaints from any source concerning the

activities of persons licensed under this chapter ~~or their agents, whether licensed or not~~;

~~(3)~~*(c)* adopt rules necessary to carry out this chapter;

~~(4)~~*(d)* require the periodic inspection and calibration of audiometric testing equipment ~~and carry out periodic inspections of facilities of persons who practice or engage in the business of fitting or selling hearing aids~~;

~~(5)~~*(e)* initiate legal action to enjoin from operation a person engaged in the sale, dispensing, or fitting of hearing aids in this state that is not licensed under this chapter;

~~(6)~~*(f)* adopt rules consistent with the provisions of 37-16-301, 37-16-303, 37-16-304, 37-16-402, 37-16-405, 37-16-408, and 37-16-411~~. Rules adopted by the board may include but are not limited to rules defining the term "related devices" and other rules necessary to implement 37-16-301, 37-16-303, 37-16-304, 37-16-402, 37-16-405, 37-16-408, and 37-16-411.~~*; and*

~~(7)~~*(g)* establish and adopt minimum requirements for the form of bills of sale and receipts.

(2) Rules adopted by the board pursuant to subsection (1)(f) may include but are not limited to rules defining the term "related devices" and other rules necessary to implement 37-16-301, 37-16-303, 37-16-304, 37-16-402, 37-16-405, 37-16-408, and 37-16-411."

Section 30. Section 37-16-405, MCA, is amended to read:

"37-16-405. Trainee license. (1) An applicant who fulfills the requirements of 37-16-402 and who has not previously applied to take a practical examination may apply to the board for a trainee license.

(2) On receiving an application under subsection (1), accompanied by a fee fixed by the board and verification that the applicant has passed the written portion of the examination with a passing score as determined by board rule, the board shall issue a trainee license that entitles the applicant to engage in a ~~180-day~~ training period during which the applicant~~:~~

~~(a) is required to pass the practical examination administered by the board before being issued a hearing aid dispenser's license; and~~

~~(b)~~ shall work under the direct supervision of the sponsoring licensed hearing aid dispenser. During this time the applicant may do the testing necessary for proper selection and fitting of hearing aids and related devices and make necessary impressions. However, the delivery and final fitting of the hearing aid and related devices must be made by the trainee and the supervisor.

~~(3) The training period must consist of a continuous 180-day term. Any break in training requires application for another trainee license under rules that the board may prescribe.~~

~~(4)~~*(3)* A trainee license may not be issued unless the board has on file an unrevoked statement from a qualified licensed hearing aid dispenser accepting responsibility for the trainee. Every licensed hearing aid dispenser supervising a trainee license holder shall submit a report every 90 days of the trainee's activities and training assignments, on forms furnished by the board. The supervisor is responsible for all hearing aid fittings of the trainee. A supervisor may terminate any responsibilities to the trainee by mailing ~~by certified mail~~ *a* written notice *by certified mail* to the board and the trainee.

~~(5) If a person who holds a trainee license takes and fails to pass the practical examination, the trainee license expires, and the person may not practice as a trainee.~~

~~(6)~~*(4)* A person licensed as an audiologist under the provisions of Title 37, chapter 15, or a person practicing pursuant to 37-1-305 is exempt from the ~~180-day~~ training period but is required to pass the examinations prescribed in this chapter.

(5) The trainee license terminates 1 year after issuance or after the trainee passes the practical examination, whichever occurs first.

(6) Upon completion of 1,000 hours of supervised training, the trainee is eligible to take the practical examination.

(7) A trainee who does not complete 1,000 hours of supervised training before the trainee license terminates may be issued a second trainee license upon making application and paying the appropriate fee. The hours of training obtained under the first trainee license must be carried forward.

(8) A trainee who fails the practical examination may continue to practice under direct supervision until the trainee license terminates. A second trainee license may not be issued. Termination of the trainee license and cessation of the authority to practice do not preclude a person from retaking the practical examination upon payment of the appropriate fees.

(9) Upon passing the practical examination, a trainee may submit an application for a hearing aid dispenser license with the appropriate fee and a hearing aid dispenser license must be issued.

~~(7)~~*(10)* A licensed hearing aid dispenser who sponsors a trainee is directly responsible and accountable under the disciplinary authority of the board for the conduct of the trainee as if the conduct were the licensee's own.

~~(8)~~*(11)* For the purposes of this section, "direct supervision" means the direct and regular observation and instruction of a trainee by a licensed hearing aid dispenser who is available at the same location for prompt consultation and treatment."

Section 31. Section 37-16-411, MCA, is amended to read:

"37-16-411. Revocation or suspension of license — investigations — fines. (1) The board may, at its discretion or upon written complaint of an aggrieved person, investigate an alleged violation of this chapter by a licensee or applicant for licensure. If the investigation discloses a probable violation of this chapter *or board rules*, the board may~~,~~ *institute a proceeding* pursuant to the provisions of 37-1-136 *and 37-1-137*~~, suspend or revoke the accused person's license or suspend or deny the person's application for a fixed period to be determined by the board~~.

(2) A ~~person licensed under this chapter may have the license revoked or suspended for a fixed period to be determined by the board or be fined not to exceed $500 per incident~~ *licensee or license applicant may be sanctioned as provided in 37-1-312* for any of the following causes:

(a) being convicted of a felony, subject to chapter 1, part 2, of this title. The record of the conviction or a certified copy from the clerk of the court for the district where the conviction occurred or certification by the judge of the court is conclusive evidence of the conviction, except that if the person has been pardoned by a governor or the president of the United States, the conviction does not constitute grounds for ~~revocation or suspension~~ *imposing sanctions*.

(b) securing a license under this chapter through fraud, deceit, or false statements;

(c) the personal use of a false name or alias in professional practice;

(d) violating any of the provisions of this chapter;

(e) obtaining a fee or making any sale by fraud or misrepresentation;

(f) knowingly employing, directly or indirectly, any suspended or unlicensed person to perform any work covered by this chapter;

(g) using or causing or promoting the use of any advertising matter, promotional literature, testimonial, guarantee, warranty, label, brand, insignia, or any other representation, however disseminated or published, that is improbable, misleading, deceptive, or untruthful;

(h) representing that the services or advice of a person licensed to practice medicine or possessing certification as an audiologist will be used or made available in the selection, fitting, adjustment, maintenance, or repair of hearing aids and related devices if that is not true or using the terms "doctor", "clinic", "hearing clinic", "state registered", or other similar words, abbreviations, or symbols that tend to connote the medical profession when that use is not accurate;

(i) permitting another to use ~~the~~ *a* license or certificate;

~~(j) defaming competitors by falsely imputing to them dishonorable conduct, inability to perform contracts, or questionable credit standing or by other false representations or falsely disparaging the products of competitors in any respect or their business methods, selling prices, values, credit terms, policies, or services;~~

~~(k)~~*(j)* using any method of advertising prohibited by trade practice rules 1 through 17 of the federal trade commission;

~~(l) obtaining information concerning the business of a competitor by bribery of an employee or agent of that competitor, by false or misleading statements or representations, by the impersonation of one in authority, or by any other unlawful means;~~

~~(m)~~*(k)* directly or indirectly giving or offering to give or permitting or causing to be given money or anything of value to any person who advises another in a professional capacity as an inducement to influence others to purchase or contract to purchase products sold or offered for sale by a hearing aid dispenser or influencing persons to refrain from dealing in the products of competitors;

~~(n)~~*(l)* unethical conduct or gross incompetence or negligence in the performance of professional duties, including repeated failure to make indicated medical referrals of customers;

~~(o)~~*(m)* selling a hearing aid or related device to a person who has not been given tests using appropriate established procedures and instrumentation in fitting hearing aids or related devices, except for the sale of a replacement hearing aid or a related device of the same make and model within 1 year of the original sale;

~~(p)~~*(n)* falsifying hearing test or evaluation results or any associated client records;

~~(q)~~*(o)* refusing to cooperate with an investigation by the board by:

(i) failing to furnish requested records or documents;

(ii) failing to furnish a complete explanation of matters referred to in the complaint;

(iii) failing to respond to a subpoena issued by the board;

(iv) willfully misrepresenting any relevant fact to a board investigator; or

(v) attempting to discourage a potential witness from cooperating with a board investigator or from testifying by using threats, harassment, extortion, or bribery."

Section 32. Section 37-16-413, MCA, is amended to read:

"37-16-413. Penalty for unlawful practice — injunction. (1) Any person who practices the selling, fitting, or dispensing of hearing aids without a valid license ~~shall be~~ *is* guilty of a misdemeanor and upon conviction *shall* be fined not ~~more than $500~~ *less than $250 or more than $1,000,* ~~or~~ be imprisoned ~~for not more than 90 days,~~ *in the county jail for not less than 90 days or more than 1 year,* or both.

(2) The board may enforce any provision of this chapter by injunction or by any other appropriate proceeding."

Section 33. Section 37-18-302, MCA, is amended to read:

"37-18-302. Application — qualification — ~~fee.~~ A person desiring to begin the practice of veterinary medicine or veterinary surgery in this state or who desires to hold out to the public that the person is a practitioner of veterinary medicine or veterinary surgery, except as provided in 37-18-104, shall apply to the department for a license to do so. The application must be on a form furnished by the department, must be accompanied by satisfactory evidence of the good moral character of the applicant, and must contain evidence of the applicant's having received a degree from a legally authorized veterinary medical school having educational standards equal to those approved by the American veterinary medical association. On application, a certified transcript of the applicant must be submitted to the department for inspection and verification. The certified transcript remains the property of the department. ~~A person applying for a license to practice shall pay to the department a nonrefundable fee commensurate with the costs of the examinations and set by the board.~~"

Section 34. Section 37-25-303, MCA, is amended to read:

"37-25-303. Issuance of license — ~~effective date.~~ ~~(1)~~ Upon successful completion of the requirements in 37-25-302, an applicant must be issued a license attesting to the date and fact of licensure.

~~(2) The license is effective on the date of issuance and expires 1 year after that date.~~"

Section 35. Section 37-29-201, MCA, is amended to read:

"37-29-201. Board powers and duties. The board has the following powers and duties:

(1) determination of the qualifications of applicants for licensure under this chapter;

(2) administration of examinations for licensure under this chapter;

(3) collection of fees and charges prescribed in this chapter;

(4) issuance, suspension, and revocation of licenses for the practice of denturitry under the conditions prescribed in this chapter; and

(5) to adopt, amend, and repeal rules necessary for the implementation, continuation, and enforcement of this chapter, including but not limited to form and display of licenses, license examination format, criteria and grading of

examinations, *and* disciplinary standards for licensees~~, and inspection of denturitry premises and facilities~~."

Section 36. Section 37-35-201, MCA, is amended to read:

"37-35-201. License required — exceptions. (1) Except as otherwise provided in this chapter, a person may not practice addiction counseling or represent to the public that the person is a licensed addiction counselor unless the person is licensed under the provisions of this chapter.

(2) This chapter does not prohibit an activity or service:

(a) performed by a qualified member of a profession, such as a physician, lawyer, licensed professional counselor, licensed social worker, licensed psychiatrist, licensed psychologist, nurse, probation officer, court employee, pastoral counselor, or school counselor, consistent with the person's licensure or certification and the code of ethics of the person's profession, as long as the person does not represent by title that the person is a licensed addiction counselor. If a person is a qualified member of a profession that is not licensed or certified or for which there is no applicable code of ethics, this section does not prohibit an activity or service of the profession as long as the person does not represent by title that the person is a licensed addiction counselor.

(b) of, or use of an official title by, a person employed or acting as a volunteer for a federal, state, county, or municipal agency or an educational, research, or charitable institution if that activity or service or use of that title is a part of the duties of the office or position;

(c) of an employee of a business establishment performed solely for the benefit of the establishment's employees;

~~(d) of a student, intern, or resident in addiction counseling who is pursuing a course of study at an accredited college or university or who is working in a generally recognized training center if the activity or service constitutes part of the course of study;~~

(d) of a student in addiction counseling who is pursuing a course of study at an accredited college or university or who is working in a generally recognized training center if the activity or service constitutes part of the course of study; or

~~(e)~~*(e)* of a person who is not a resident of this state if the activity or service is rendered for a period that does not exceed, in the aggregate, 60 days during a calendar year and if the person is authorized under the laws of the state or country of residence to perform the activity or service. However, the person shall report to the department the nature and extent of the activity or service if it exceeds 10 days in a calendar year.

~~(f) of a person who is working to satisfactorily complete supervised addiction counseling experience required for licensure.~~

(3) This chapter is not intended to limit, preclude, or interfere with the practice of other persons and health care providers licensed by the appropriate agencies of the state of Montana."

Section 37. Section 37-35-202, MCA, is amended to read:

"37-35-202. Licensure requirements — examination — fees — *temporary practice permit.* (1) To be eligible for licensure as a licensed addiction counselor, the applicant shall submit an application fee in an amount established by the department by rule and a written application on a form provided by the department that demonstrates that the applicant has completed

the eligibility requirements and competency standards as defined by department rule.

(2) A person may apply for licensure as a licensed addiction counselor if the person has:

(a) received a baccalaureate or advanced degree in alcohol and drug studies, psychology, sociology, social work, or counseling, or a comparable degree from an accredited college or university; or

(b) received an associate of arts degree in alcohol and drug studies, addiction, or substance abuse from an accredited institution.

(3) Prior to becoming eligible to begin the examination process, each person shall complete supervised work experience in an addiction treatment program as defined by the department, in ~~an internship~~ *a program* approved by the department, or in a similar program recognized under the laws of another state.

(4) Each applicant shall successfully complete a competency examination, in writing only, as defined by rules adopted by the department.

(5) (a) Except as provided in subsections (5)(d) and (6), an applicant who has completed all licensure requirements except the required supervised work experience may apply for a temporary practice permit that authorizes the applicant to complete the required supervised work experience.

(b) Temporary practice permits must be issued if it is determined that:

(i) a complete application approved by the department has been submitted;

(ii) initial screening by program staff shows no current disciplinary action against the applicant in this or any other state;

(iii) the applicant for a temporary practice permit may only function under the supervision of a supervisor who is trained in addiction counseling or a related field as defined by rule and who has an active license in good standing in Montana or any other state; and

(iv) the applicant has completed all educational requirements as prescribed in subsection (2)(a) or (2)(b).

(c) A person may practice licensed addiction counseling under a temporary practice permit until the person either fails the first license examination for which the person is eligible following issuance of the temporary practice permit or passes the examination and is granted a license.

(d) A student is not required to obtain a temporary practice permit.

(6) The provisions of subsection (5) do not apply until the department has adopted rules implementing this section. The rules must provide for a waiver of the provisions of subsection (5) for a person who is engaged in a supervised work experience prior to the adoption of the rules.

~~(5)~~*(7)* A person holding a license to practice as a licensed addiction counselor in this state may use the title "licensed addiction counselor".

~~(6)~~*(8)* For the purposes of this section, "comparable degree" means a degree with accredited college course work, of which 6 credit hours must be in human behavior, sociology, psychology, or a similar emphasis, 3 credit hours must be in psychopathology or course work exploring patterns and courses of abnormal or deviant behavior, and 9 credit hours must be in counseling. For the 9 credit hours in counseling, 6 credit hours must be in group counseling and 3 credit hours must be in the theory of counseling. The credit hours specified in this subsection may be obtained in an associate or master's degree program if the applicant does not have a qualifying baccalaureate degree."

Section 38. Section 37-36-202, MCA, is amended to read:

"37-36-202. License — revocation. (1) Except as provided in subsection (2), a license issued under this chapter is valid for ~~3 years~~ *1 year*.

(2) The board may revoke a license if a licensee knowingly:

(a) provided fraudulent information on the application or documentation required in 37-36-201;

(b) violated standards of conduct as prescribed by the board; or

(c) engaged in practices beyond the scope and limitation of the person's training and education as determined by the board."

Section 39. Section 37-47-302, MCA, is amended to read:

"37-47-302. Outfitter's qualifications. An applicant for an outfitter's license or renewal of a license must meet the following qualifications:

(1) be 18 years of age or older, be physically capable and mentally competent to perform the duties of an outfitter, and meet experience, training, and testing requirements as prescribed by board rule;

(2) own or hold under written lease or represent a company, corporation, or partnership who owns or holds under written lease the equipment and facilities that are necessary to provide the services advertised, contracted for, or agreed upon between the outfitter and the outfitter's clients (all equipment and facilities are subject to inspection at all reasonable times and places by the board or its designated agent); *and*

(3) have demonstrated a respect for and compliance with the laws of any state or of the United States and all rules promulgated under those laws related to fish and game, conservation of natural resources, and preservation of the natural ecosystem without pollution of the ecosystem~~;~~ .

~~(4) have not, at any time, practiced fraud, deception, or material misrepresentation in procuring any previous outfitter's, guide's, professional guide's, or conservation license from the state of Montana;~~

~~(5) have not, at any time, promulgated any false or misleading advertising relating to the business of outfitting.~~"

Section 40. Section 37-47-404, MCA, is amended to read:

"37-47-404. Responsibility for violations of law. (1) A person accompanying a hunting or fishing party as an outfitter, ~~or~~ guide, *or* professional guide~~, or other employee of the outfitter~~ is equally responsible with any person or party ~~employing~~ *engaging* the person as an outfitter for any violation of fish and game laws unless the violation is reported to a peace officer by the outfitter, guide, *or* professional guide~~, or employee~~ and the outfitter, guide, *or* professional guide~~, or employee~~ was not an active participant. An outfitter, ~~or~~ guide, *or* professional guide~~, or other employee of an outfitter~~ who willfully fails or refuses to report any violation of fish and game laws is liable ~~to~~ *for* the penalties provided in this ~~section~~ *chapter*. If ~~any~~ *a* guide or professional guide violates the laws or applicable regulations relating to fish and game, outfitting, or guiding with actual or implied knowledge of an outfitter ~~employing~~ *engaging* the guide or professional guide, the outfitter is legally responsible for the violation for all purposes under the laws or regulations if the outfitter fails to report the violation to the proper authority.

(2) An outfitter, guide, or professional guide shall report any violation or suspected violation of fish and game laws that the outfitter, guide, or professional guide knows or reasonably should have known has been committed

by the employees, agents, representatives, clients, or participants in the outfitting or guiding activity. The violation or suspected violation must be reported to a peace officer at the earliest possible opportunity.

(3) A person may not hire or retain an outfitter unless the outfitter is currently licensed in accordance with the laws of the state of Montana. A person may not use the services of a guide or professional guide and a guide or professional guide may not offer services unless the services are obtained through an endorsing outfitter."

Section 41. Section 37-50-101, MCA, is amended to read:

"37-50-101. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Affiliated entity" means an entity owned, leased, or controlled by a firm through common employment or any other service arrangement, including but not limited to financial or investment services, insurance, real estate, and employee benefits services.

(2) "Agreed-upon procedures engagement" means an engagement performed in accordance with applicable attestation standards and in which a firm or person is engaged to issue a written finding that:

(a) is based on specific procedures that the specified parties agree are sufficient for their purposes;

(b) is restricted to the specified parties; and

(c) does not provide an opinion or negative assurance.

(3) "Attest" means providing the following services:

(a) an audit or other engagement to be performed in accordance with the statements on auditing standards;

(b) a review of a financial statement to be performed in accordance with the statements on standards for accounting and review services;

(c) an examination of prospective financial information to be performed in accordance with the statements on standards for attestation engagements;

(d) an engagement to be performed in accordance with the auditing standards of the public company oversight board; and

(e) an agreed-upon procedures engagement to be performed in accordance with the statements on standards for attestation engagements.

~~(1)~~*(4)* "Board" means the board of public accountants provided for in 2-15-1756.

(5) "Compilation" means providing a service to be performed in accordance with statements on standards for accounting and review services that presents, in the form of financial statements, information that is the representation of owners without undertaking to express any assurance on the statements.

~~(2)~~*(6)* "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(7) "Firm" means a sole proprietorship, partnership, professional corporation, or limited liability company engaged in the practice of public accounting.

(8) "Home office" is the location specified by the client as the address where a service described in [section 1(4)] is directed.

(9) "Peer review" means a board-approved study, appraisal, or review of one or more aspects of the attest or compilation work of a permitee or licensee of a registered firm in the practice of public accounting, by a person or persons who hold licenses in this or another jurisdiction and who are not affiliated with the person or firm being reviewed.

~~(3)~~*(10)* "Practice of public accounting" means performing or offering to perform, by a person certified under 37-50-302, ~~or~~ licensed under 37-50-303, *or holding a practice privilege under [section 1],* for a client or potential client~~,~~ one or more types of services involving the use of accounting or auditing skills, including:

(a) the issuance of reports or financial statements on which the public may rely;

(b) one or more types of management advisory or consulting services;

(c) the preparation of tax returns; or

(d) furnishing advice on tax matters.

(11) "Principal place of business" means the office location designated by the licensee for the purposes of substantial equivalency.

(12) "Substantial equivalency" or "substantially equivalent" means a determination by the board or its designee that the education, examination, and experience requirements contained in the statutes and rules of another jurisdiction are comparable to or exceed the education, examination, and experience requirements contained in the Uniform Accountancy Act or subsequent acts or that an individual certified public accountant's education, examination, and experience qualifications are comparable to or exceed the education, examination, and experience requirements contained in the Uniform Accountancy Act. In ascertaining substantial equivalency, the board shall take into account the qualifications without regard to the sequence in which the experience, education, and examination requirements were attained."

Section 42. Section 37-50-102, MCA, is amended to read:

"37-50-102. Exemptions. This chapter does not prohibit any person who is not a certified public accountant or licensed public accountant from serving as an employee of or an assistant to a certified public accountant or a licensed public accountant holding a permit to practice under 37-50-314, a ~~partnership or corporation~~ *firm* composed of certified public accountants or licensed public accountants registered under this chapter, or a foreign accountant whose credentials have been recognized under 37-50-313. However, the employee or assistant may not issue any accounting or financial statement in the employee's or assistant's name."

Section 43. Section 37-50-203, MCA, is amended to read:

"37-50-203. Rules of ~~the~~ board. (1) The board may adopt rules, consistent with the purposes of this chapter, ~~as~~ *that* it considers necessary.

(2) The board shall adopt:

(a) rules of professional conduct appropriate to establish and maintain a high standard of integrity, dignity, and competency in the profession of public accounting, including competency in specific fields of public accounting;

(b) rules of procedure governing the conduct of matters before the board;

(c) rules governing education requirements, as provided in 37-50-305, for issuance of the certificate of a certified public accountant and the license for licensed public accountant;

(d) rules defining requirements for accounting experience, not exceeding 2 years, for issuance of the initial permit; and

(e) rules to enforce the provisions of this chapter. The purpose of the rules must be to provide for the monitoring of the profession of public accounting and to maintain the quality of the accounting profession.

(3) The board may adopt rules:

(a) governing ~~partnerships, corporations,~~ *firms* and other types of entities practicing public accounting, including but not limited to rules concerning style, name, title, and affiliation with other organizations;

(b) (i) establishing reasonable standards with respect to professional liability insurance and unimpaired capital; and

(ii) prescribing joint and several liability for torts relating to professional services for shareholders of a ~~corporation~~ *firm* or owners of other types of entities that fail to comply with standards established pursuant to subsection (3)(b)(i); and

(c) establishing education and experience qualifications for out-of-state and foreign accountants seeking ~~authorization~~ *permits, certificates, or licenses* to practice in Montana."

Section 44. Section 37-50-301, MCA, is amended to read:

"37-50-301. Illegal use of title. (1) *It is not a violation of this chapter for a firm that is not registered under 37-50-335 and that does not have an office in this state to provide its professional services and to practice public accounting in this state and use the title "CPA" or "CPA firm" so long as it complies with the exemption requirements of 37-50-335(2).*

(2) A person may not assume or use the title or designation "certified public accountant" or the abbreviation "CPA" or any other title, designation, words, letters, abbreviation, sign, card, or device indicating that the person is a certified public accountant unless the person holds a current certificate as a certified public accountant under this chapter *or qualifies for the practice privilege under [section 1].* However, a foreign accountant whose credentials are recognized under the provisions of 37-50-313 shall use the title under which the foreign accountant is generally known in the foreign country, followed by the name of the country from which the foreign accountant's certificate, license, or degree was received.

~~(2)~~*(3)* A ~~partnership or corporation~~ *firm* may not assume or use the title or designation "certified public accountant" or the abbreviation "CPA" or any other title, designation, words, letters, abbreviation, sign, card, or device indicating that the ~~partnership or corporation~~ *firm* is composed of certified public accountants pursuant to the requirements of 37-50-330 unless it is registered as required under 37-50-335 *or meets the conditions to be exempt from such registration set forth in 37-50-335(2).*

~~(3)~~*(4)* A person may not assume or use the title or designation "licensed public accountant", "public accountant", or any other title, designation, words, letters, abbreviation, sign, card, or device indicating that the person is a public accountant unless the person holds a current license as a licensed public accountant under this chapter.

~~(4)~~*(5)* A ~~partnership or corporation~~ *firm* may not assume or use the title or designation "licensed public accountant", "public accountant", or any other title, designation, words, letters, abbreviation, sign, card, or device indicating that

the ~~partnership or corporation~~ *firm* is composed of public accountants unless it is registered as required under 37-50-335.

~~(5)~~*(6)* A person~~, corporation, or partnership~~ *or firm* may not assume or use the title or designation "certified accountant", "chartered accountant", "enrolled accountant", "licensed accountant", "registered accountant", or any other title or designation likely to be confused with "certified public accountant", "licensed public accountant", "public accountant" or any of the abbreviations "CA", "EA", "LA", or "RA" or similar abbreviations likely to be confused with "CPA". However, a foreign accountant whose credentials are recognized under 37-50-313 shall use the title under which the foreign accountant is generally known in the foreign country, followed by the name of the country from which the foreign accountant's certificate, license, or degree was received, and a person who is licensed as an enrolled agent by the internal revenue service may use the title "enrolled agent" or the abbreviation "EA".

~~(6)~~*(7)* A person may not sign or affix the person's name or any trade or assumed name used by the person in the person's profession or business with any wording indicating that the person has expert knowledge in accounting or auditing to any accounting or financial statement or to any opinion on, report on, or certificate to any accounting or financial statement unless the person holds a current permit issued under 37-50-314 and all of the person's offices in this state for the practice of public accounting are maintained and registered under 37-50-335. However, the provisions of this subsection do not prohibit any officer, employee, partner, or principal of any organization from affixing a signature to any statement or report in reference to the financial affairs of that organization with any wording designating the position, title, or office that the person holds in that organization, nor do the provisions of this subsection prohibit any act of a public official or public employee in the performance of the official's or employee's public duties.

~~(7)~~*(8)* A person may not sign or affix a ~~partnership or corporation~~ *firm* name with any wording indicating that it is a ~~partnership or corporation~~ *firm* composed of persons having expert knowledge in accounting or auditing to any accounting or financial statement or to any report on or certificate to any accounting or financial statement unless the ~~partnership or corporation~~ *firm* conforms to the requirements of 37-50-330 and is registered as required under 37-50-335.

~~(8)~~*(9)* A person may not assume or use the title or designation "certified public accountant" or "public accountant" in conjunction with names indicating or implying that there is a ~~partnership or corporation~~ *firm* or in conjunction with the designation "and company" or "and co." or a similar designation if there is in fact no bona fide ~~partnership or corporation~~ *firm* that has been formed subject to the provisions of 37-50-330 and registered under 37-50-335. However, it is lawful for a sole proprietor to continue the use of a deceased's name in connection with the sole proprietor's business for a reasonable period of time after the death of a former partner *or co-owner*."

Section 45. Section 37-50-314, MCA, is amended to read:

"37-50-314. Permit required — display. (1) A person may not engage in the practice of public accounting in this state without a current permit issued by the department. A permit to engage in the practice of public accounting in this state must be issued by the department to a person who holds a current certificate as a certified public accountant or license as a licensed public accountant and complies with the requirements of this chapter.

(2) The current permit to engage in the practice of public accounting must be prominently displayed for public inspection.

(3) A person qualifying for a practice privilege under [section 1(1) or (2)] is exempt from this requirement."

Section 46. Section 37-50-330, MCA, is amended to read:

"37-50-330. ~~Corporations and partnerships — registration — compliance~~ *Compliance* with ownership requirements — *firm registration.* (1) A ~~corporation or partnership~~ *firm* composed of certified public accountants or a ~~corporation or partnership~~ *firm* composed of public accountants that is or plans to become engaged in the practice of public accounting may include ~~individuals~~ *persons* who are not licensed as public accountants or certified as certified public accountants if:

(a) the ~~corporation or partnership~~ *firm* designates an accountant who is licensed or certified in this state *or, in the case of a firm that must be registered pursuant to 37-50-335, a licensee of another state who meets the requirements set out in [section 1(1) or (2)]* to be responsible for the proper registration of the ~~corporation or partnership~~ *firm*;

(b) a simple majority of ownership in the ~~corporation or partnership~~ *firm*, in terms of equity and voting rights, is held by accountants who are licensed or certified accountants in this state or in another *substantially equivalent* jurisdiction *or meet the requirements of [section 1(2)]*;

(c) all persons with an ownership interest in the ~~partnership or corporation~~ *firm* are individuals actively participating in the business of the ~~partnership or corporation~~ *firm or its affiliated entities*; and

(d) any person with an ownership interest in the ~~partnership or corporation~~ *firm* who is not licensed or certified as an accountant and who holds a professional license, registration, or certification issued by this state or another jurisdiction is in compliance with the requirements for that license, registration, or certification.

(2) An accountant licensed or certified in this state *or a person qualifying for practice privileges under [section 1]* who holds an ownership interest in a ~~partnership or corporation organized pursuant to this section is ultimately responsible for all services provided by the partnership or corporation including any unit, branch, or division of the partnership or corporation providing attestation services~~ *firm, who is responsible for supervising attest or compilation services, and who signs or authorizes someone to sign the accountant's report on the financial statements on behalf of the firm is responsible for all attest or compilation services.*

(3) A person licensed or certified in this state and a person qualifying for practice privileges under [section 1] who signs or authorizes someone to sign the accountant's report on the financial statements on behalf of the firm must meet the competency requirements of 37-50-203(2)(a).

~~(3)~~*(4)* (a) A ~~partnership or corporation~~ *firm* that is no longer in compliance with the ownership requirements of subsection (1)(b) shall give notice to the board within 90 days of the noncompliance.

(b) The board shall grant the ~~partnership or corporation~~ *firm* a reasonable amount of time to reestablish compliance with the ownership requirements of subsection (1)(b). The time granted by the board to a ~~partnership or corporation~~ *firm* to reestablish compliance may not be less than 90 days from the date the board receives the ~~partnership's or corporation's~~ *firm's* notice of noncompliance.

(c) The failure of a ~~partnership or corporation~~ *firm* to reestablish compliance with the ownership requirements of subsection (1)(b) is grounds for the board to suspend or revoke the ~~partnership's or corporation's~~ *firm's* registration required by 37-50-335."

Section 47. Section 37-50-335, MCA, is amended to read:

"37-50-335. Registration of ~~offices~~ *firms — exemptions.* *(1) The following firms must register annually with the department:*

(a) those with an office in this state performing attest services and compilations;

(b) those with an office in this state that use the title "CPA" or "CPA firm"; and

(c) those that do not have an office in this state but perform attest services and compilations for a client having its home office in this state.

(d) A fee may not be charged for the annual registration required in subsection (1)(c).

(2) A firm that undergoes a board-sanctioned compliance or peer review process and receives an acceptable, a pass, or a pass with deficiencies rating for these services and completes all remediation in its principal place of business is exempt from registration.

(3) A firm that is not subject to the requirements of subsection (1) may perform other professional services while using the title "CPA" or "CPA firm" in this state without registering with the department only if:

(a) it performs the services through a person with practice privileges under [section 1]; and

(b) it can lawfully perform the services in the state where persons with practice privileges have their principal place of business.

(4) Each office established or maintained in this state for the practice of public accounting in this state by a certified public accountant, by a ~~partnership or corporation~~ *firm* of certified public accountants, by a licensed public accountant, by a ~~partnership or corporation~~ *firm* of licensed public accountants, or by a foreign accountant recognized under 37-50-313 must ~~be registered~~ *register* annually with the department. A fee may not be charged for this registration. ~~In addition, each individual engaged in this state in the practice of public accounting must have annually received a permit under 37-50-314.~~"

Section 48. Section 37-50-341, MCA, is amended to read:

"37-50-341. Initiation of proceedings — hearings and rulemaking. (1) The board may initiate proceedings under this chapter ~~either~~ on its own motion*, upon a complaint made by the board of accountancy of another state,* or on the complaint of a person.

(2) A person licensed or certified in this state offering or rendering services or using a "CPA" title in another state is subject to disciplinary action in this state for an act committed in another state where the licensee would be subject to discipline for the act committed in the other state.

(3) A person licensed or certified in another state offering or rendering services or using a "CPA" title in this state is subject to disciplinary action in this state for an act committed in this state for which a licensee in this state would be subject to discipline.

~~(2)~~*(4)* Hearings and rulemaking proceedings ~~shall be~~ *are* governed ~~in all respects~~ by the Montana Administrative Procedure Act."

Section 49. Section 37-50-401, MCA, is amended to read:

"37-50-401. False statements by accountants — misdemeanor — penalty. Any person practicing as an accountant, public accountant, ~~auditor,~~ or certified public accountant in this state who, because of negligence, gross inefficiency, or willfulness, ~~shall issue or permit~~ *issues or permits* the issuance of any false statement of the financial transactions, standing, or condition of any ~~corporation, partnership,~~ *firm* or individual business undertaking ~~shall be deemed~~ *is* guilty of a misdemeanor and upon conviction ~~thereof~~ shall be fined not less than $500 or more than $2,000, ~~or~~ *be* imprisoned for a period of not less than 90 days or more than 1 year, or ~~subjected to~~ both ~~said fine and imprisonment, in the discretion of the court~~."

Section 50. Section 37-50-402, MCA, is amended to read:

"37-50-402. Privileged communications — exceptions. (1) Except by permission of the client, person, *or* firm~~, or corporation~~ engaging a certified or licensed public accountant or an employee of the accountant or by permission of the heirs, successors, or personal representatives of the client, person, *or* firm~~, or corporation~~ and except for the expression of opinions on financial statements, a certified public accountant, licensed public accountant, or employee ~~thereof~~ may not be required to disclose or divulge or voluntarily disclose or divulge information that the certified or licensed accountant or an employee may have relative to and in connection with any professional services as a public accountant. The information derived from or as a result of professional services is considered confidential and privileged.

(2) The provisions of this section do not apply to the testimony or documents of a public accountant furnished pursuant to a subpoena in a court of competent jurisdiction, pursuant to a board proceeding, or in the process of any board-approved practice review program."

Section 51. Repealer. Sections 37-21-101, 37-21-201, 37-21-301, 37-21-302, 37-21-405, 37-21-406, 37-50-323, 37-50-324, 50-41-101, 50-41-102, 50-41-103, 50-41-104, 50-41-105, 50-41-106, and 50-41-107, MCA, are repealed.

Section 52. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 37, chapter 50, part 3, and the provisions of Title 37, chapter 50, part 3, apply to [section 1].

Section 53. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 54. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved April 1, 2009

CHAPTER NO. 110

[HB 82]

AN ACT REVISING THE ALLOCATION OF FUNDS FOR 9-1-1 PURPOSES; REDUCING THE ALLOCATION OF FUNDS FOR ADMINISTRATION OF

9-1-1 LAWS; AMENDING SECTION 10-4-301, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 10-4-301, MCA, is amended to read:

"10-4-301. Establishment of emergency telecommunications accounts. (1) There are established in the state special revenue fund in the state treasury:

(a) an account for all fees collected for basic 9-1-1 services pursuant to 10-4-201(1)(a);

(b) an account for all fees collected for enhanced 9-1-1 services pursuant to 10-4-201(1)(b); and

(c) an account for all fees collected for wireless enhanced 9-1-1 services pursuant to 10-4-201(1)(c). The money is allocated as follows:

(i) 50% of the account must be deposited in an account for distribution to the 9-1-1 jurisdictions; and

(ii) 50% of the account must be deposited in an account for distribution to wireless providers.

(2) All money received by the department of revenue pursuant to 10-4-201 must be paid to the state treasurer for deposit in the appropriate account. An amount equal to ~~3.74%~~ *2.74%* of the money received pursuant to 10-4-201 must be deposited in *an account in* the state ~~general~~ *special revenue* fund *to be used for the administration of this chapter. Any remaining funds at the end of a fiscal year must be equally distributed to each of the four accounts provided for in subsection (1).*

(3) The accounts established in subsection (1) retain interest earned from the investment of money in the accounts.

(4) After payment of refunds pursuant to 10-4-205, the balance of the respective accounts must be used for the purposes described in part 1 of this chapter.

(5) The distribution of funds in the 9-1-1 emergency telecommunications accounts described in subsection (1), as required by 10-4-302, 10-4-311, and 10-4-313, is statutorily appropriated, as provided in 17-7-502, to the department.

(6) Expenditures for actual and necessary expenses required for the efficient administration of the plan must be made from appropriations made for that purpose."

Section 2. Effective date. [This act] is effective July 1, 2009.

Approved April 1, 2009

CHAPTER NO. 111

[HB 118]

AN ACT REVISING THE DISTRIBUTION OF WIRELESS 9-1-1 FUNDS AMONG COUNTIES; REQUIRING LOCAL 9-1-1 JURISDICTIONS TO PROVIDE PROGRAM INFORMATION TO THE DEPARTMENT OF ADMINISTRATION; AMENDING SECTIONS 10-4-102, 10-4-302, AND 10-4-313, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 10-4-102, MCA, is amended to read:

"10-4-102. Department of administration duties and powers. (1) The department shall assist in the development of basic and enhanced 9-1-1 systems in the state. The department shall:

(a) establish procedures for determining and evaluating requests for variations from basic or enhanced 9-1-1 service;

(b) upon request of a 9-1-1 jurisdiction, assist in planning a basic or enhanced 9-1-1 system;

(c) establish criteria for evaluating basic and enhanced 9-1-1 system plans;

(d) monitor implementation of approved basic and enhanced 9-1-1 system plans for compliance with the plan and use of funding; and

(e) as it finds necessary, report to the legislature the progress made in implementing statewide basic and enhanced 9-1-1 systems and in implementing wireless enhanced 9-1-1 services.

(2) The department shall obtain input from all 9-1-1 jurisdictions by creating an advisory council to participate in development and implementation of the 9-1-1 program in the state. The council must be established pursuant to 2-15-122. The highway patrol, emergency medical services organizations, telephone companies, the associated public safety communicators, the department of emergency services, police departments, sheriff's offices, local citizens, organizations, and other public safety organizations may submit recommendations for membership on the advisory council.

(3) The department may request information from a specific 9-1-1 jurisdiction as determined necessary for the department to fulfill its duties under this chapter. If a 9-1-1 jurisdiction does not comply with the request, the department may suspend distributions to the 9-1-1 jurisdiction as provided in 10-4-302(4)."

Section 2. Section 10-4-302, MCA, is amended to read:

"10-4-302. Distribution of basic 9-1-1 account by department. (1) The department shall make quarterly distributions of the entire basic 9-1-1 account. The distributions must be made for the costs incurred during the preceding calendar quarter by each provider of telephone service in the state for:

(a) collection of the fees imposed by 10-4-201;

(b) modification of central office switching and trunking equipment for emergency telephone service only; and

(c) conversion of pay station telephones required by 10-4-121.

(2) Payments under subsection (1) may be made only after application by the provider to the department for costs incurred in subsection (1). The department shall review all applications relevant to subsection (1) for appropriateness of costs claimed by the provider. If the provider contests the review, payment may not be made until the amount owed the provider is made certain.

(3) After all amounts under subsections (1) and (2) have been paid, the balance of the account must be allocated to cities and counties on a per capita basis. However, each county must be allocated a minimum of 1% of the balance of the counties' share of the account. A 9-1-1 jurisdiction whose 9-1-1 service area includes more than one city or county is eligible to receive operating funds from the allocation for each city or county involved. The department shall

distribute to the accounting entity designated by a 9-1-1 jurisdiction with an approved final plan the proportional amount for each city or county served by the 9-1-1 jurisdiction. The department shall provide a report indicating the proportional share derived from the individual city's or county's allocation with each distribution to a 9-1-1 jurisdiction.

(4) If the department through its monitoring process determines that a 9-1-1 jurisdiction is not adhering to an approved plan, ~~or~~ is not using funds in the manner prescribed in 10-4-303, *or has failed to provide information as provided in 10-4-102(3),* the department may, after notice and hearing, suspend payment to the 9-1-1 jurisdiction. The jurisdiction is not eligible to receive funds until the department determines that the jurisdiction is complying with the approved plan and fund usage limitations *or has provided the requested information*.

~~(5) The department shall distribute any balance in the basic 9-1-1 account on July 1, 1998, on a per capita basis to those 9-1-1 jurisdictions that have approved final plans filed with the department as required by 10-4-112.~~"

Section 3. Section 10-4-313, MCA, is amended to read:

"10-4-313. Distribution of wireless enhanced 9-1-1 account by department. (1) The department shall make quarterly distribution of the portion of the wireless enhanced 9-1-1 account for allowable costs described in 10-4-301(1)(c)(ii) incurred by each wireless provider in each 9-1-1 jurisdiction as follows:

(a) For each fiscal year through the fiscal year ending June 30, 2011:

(i) 84% of the balance of the account must be allocated to the wireless providers providing wireless enhanced 9-1-1 in each county on a per capita basis. The wireless provider in each county must be allocated a minimum of 1% of the balance of the counties' share of the account.

(ii) the balance of the account must be ~~distributed~~ *allocated* evenly to the wireless providers providing wireless enhanced 9-1-1 in counties with 1% or less of the total population of the state~~.~~*; and*

(iii) prior to distribution, the amounts allocated under subsections (1)(a)(i) and (1)(a)(ii) must be adjusted to ensure that a wireless provider does not receive less than the amount allocated to wireless providers providing wireless enhanced 9-1-1 in counties with 1% or less of the total population of the state.

(b) For fiscal years beginning after June 30, 2011, 100% of the balance of the account must be allocated to the wireless providers providing wireless enhanced 9-1-1 in each county on a per capita basis. Each county must be allocated a minimum of 1% of the balance of the counties' share of the account.

(c) If the department is unable to fully reimburse a wireless provider under subsection (1)(a) in any quarter, the department shall in the subsequent quarter pay from the allocation under subsection (1)(a) to wireless providers any unpaid balances from the previous quarter. If the amount available is insufficient to pay all previous unpaid balances, the department shall repeat the process of paying unpaid balances that remain unpaid for as many quarters as necessary until all unpaid balances are fully paid. The department shall review all invoices for appropriateness of costs claimed by the wireless provider. If the wireless provider contests the review, payment may not be made until the amount owed to the wireless provider is determined.

(d) A wireless provider shall submit an invoice for cost recovery according to the allowable costs.

(e) The department shall determine the percentage of overall subscribers, based on billing addresses, within the 9-1-1 jurisdiction for each wireless provider seeking cost recovery by dividing the wireless provider's subscribers by the total number of subscribers in that 9-1-1 jurisdiction. The percentage must be applied to the total wireless provider funds for that 9-1-1 jurisdiction, and each wireless provider shall receive distribution based on the provider's percentage. To receive cost recovery, wireless providers shall submit subscriber counts to the department on a quarterly basis. The subscriber count must be provided for each 9-1-1 jurisdiction in which the wireless provider receives cost recovery within 30 calendar days following the end of each quarter. The department shall recalculate distribution percentages on a quarterly basis.

(f) If the department determines that a wireless provider has submitted costs that exceed allowable costs or are not submitted in the manner prescribed in 10-4-115, the department may, after giving notice to the wireless provider, suspend or withhold payment from the wireless enhanced 9-1-1 account.

(2) The department shall make quarterly distribution of the portion of the wireless enhanced 9-1-1 account described in 10-4-301(1)(c)(i) to each 9-1-1 jurisdiction in accordance with 10-4-311(3) as follows:

(a) for each fiscal year through the fiscal year ending June 30, 2011:

(i) 84% of the balance of the account must be allocated to cities and counties on a per capita basis. However, each county must be allocated a minimum of 1% of the balance of the counties' share of the account.

(ii) the balance of the account must be ~~distributed~~ *allocated* evenly to the counties with 1% or less than 1% of the total population of the state; *and*

(iii) prior to distribution, the amounts allocated under subsections (2)(a)(i) and (2)(a)(ii) must be adjusted to ensure that a county does not receive less than the amount allocated to counties with 1% or less of the total population of the state; and

(b) for fiscal years beginning after June 30, 2011, 100% of the balance of the account must be allocated to cities and counties on a per capita basis. However, each county must be allocated a minimum of 1% of the balance of the counties' share of the account."

Section 4. Effective date. [This act] is effective July 1, 2009.

Approved April 1, 2009

CHAPTER NO. 112

[HB 119]

AN ACT REVISING LAWS RELATED TO EMPLOYMENT; AUTHORIZING NEGOTIATION OF AGREEMENTS WITH TRIBAL GOVERNMENTS TO RECOGNIZE AND GIVE EFFECT TO CERTAIN TRIBAL WORKERS' COMPENSATION PLANS; AUTHORIZING PLAN NO. 1 EMPLOYERS TO TRANSFER CLAIM LIABILITIES TO THIRD PARTIES; REQUIRING CONTROLLING PERSONS OF PROFESSIONAL EMPLOYER ORGANIZATIONS TO SUBMIT FINGERPRINTS; INCLUDING RELIGIOUS ORGANIZATIONS AS EMPLOYERS FOR WORKERS' COMPENSATION PURPOSES UNDER CERTAIN CONDITIONS; PROVIDING A RANGE OF UP TO 3 PERCENT ON CERTAIN ASSESSMENTS ON PAID LOSSES; CLARIFYING CERTAIN PROCEDURES USED BY THE UNINSURED EMPLOYERS' FUND; CLARIFYING THAT THE TIME TO APPEAL TO

MEDIATION IS FROM THE DATE OF DETERMINATION BY THE DEPARTMENT; PROVIDING FOR CERTAIN VOLUNTARY NONBINDING MEDIATION; SPECIFYING TYPES OF MEDICAL FEE SCHEDULES THAT MAY BE USED FOR WORKERS' COMPENSATION CLAIMS; PROVIDING TIMELINES FOR PAYMENTS AND INTEREST PENALTIES; REMOVING THE 26-WEEK LIMIT ON TEMPORARY PARTIAL DISABILITY BENEFITS; ALLOWING FOR INCREASED PRESCRIPTION SUPPLIES; REVISING APPLICATION TIMELINES UNDER THE SUBSEQUENT INJURY FUND; INCREASING THE TRIGGERING AMOUNT NECESSARY FOR ASSESSMENTS UNDER THE SUBSEQUENT INJURY FUND; CLARIFYING THE JURISDICTION OF THE WORKERS' COMPENSATION COURT; AMENDING SECTIONS 39-8-202, 39-71-107, 39-71-117, 39-71-118, 39-71-123, 39-71-201, 39-71-307, 39-71-501, 39-71-506, 39-71-520, 39-71-601, 39-71-613, 39-71-704, 39-71-711, 39-71-712, 39-71-727, 39-71-743, 39-71-905, 39-71-915, 39-71-2339, 39-71-2905, AND 39-73-104, MCA; AND PROVIDING EFFECTIVE DATES AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Tribal employment coverage. The department may, as provided in Title 18, chapter 11, enter into an agreement with a tribal government to recognize, with the same effect as the exclusive remedy and benefits under plans No. 1, 2, and 3, tribal workers' compensation plans or self-insured plans that the department determines provide adequate coverage to persons who are:

(1) employed by an enrolled tribal member or by an association, business, corporation, or other entity at least 51% of which is owned by one or more enrolled tribal members; and

(2) working outside the exterior boundaries of an Indian reservation.

Section 2. Transfer of claim liabilities. (1) A current or former self-insurer or group may transfer existing workers' compensation claim liabilities to another entity upon authorization from the department and concurrence of the Montana self-insurers guaranty fund by:

(a) submitting an application on a form designated by the department;

(b) completing an agreement of assumption and guarantee of workers' compensation liabilities;

(c) submitting a loss portfolio transfer agreement; and

(d) posting a security deposit.

(2) If the assuming entity fails to meet the terms of the transfer agreement, liability reverts to the original self-insurer.

(3) The entity assuming liability for a claim shall comply with all reporting requirements set by the department.

(4) The department shall adopt rules to implement this section.

Section 3. Uninsured employer as party to benefits disputes — indemnification by uninsured employer for benefits paid — lien for payment — levy and execution. (1) An uninsured employer or an employer alleged to be uninsured is a party to all disputes concerning any benefits for which the employer may become obligated to indemnify the department pursuant to 39-71-504(1)(b).

(2) (a) After mediation pursuant to department rules, an uninsured employer or an employer alleged to be uninsured is joined as a party when a

dispute over benefits is brought before the workers' compensation judge pursuant to 39-71-2905.

(b) The workers' compensation judge may enter a judgment, including a default judgment, requiring an uninsured employer to indemnify the department with respect to any benefits paid or ordered payable by the department in relation to the claim.

(c) If a judgment ordered under subsection (2)(b) includes a specific amount paid or ordered payable, the department may issue to the uninsured employer a certificate listing the amount of payment due and directing the clerk of the district court of any county in the state to enter the certificate as a judgment on the docket pursuant to 25-9-301. The judgment becomes a lien on all real property of the uninsured employer from the time of being entered on the docket.

(3) (a) An uninsured employer is obligated to make claim reimbursements as provided in 39-71-504(1)(b), plus the interest and other charges assessed on the claim reimbursement as provided in 39-71-504(2), when demand for those payments is made to the uninsured employer.

(b) If the uninsured employer does not make the payments and does not dispute the obligation in the manner provided by 39-71-520, the department may issue a certificate listing the amount of payment due and directing the clerk of the district court of any county in the state to enter the certificate as a judgment on the docket pursuant to 25-9-301. The judgment becomes a lien on all real property of the uninsured employer from the time of being entered on the docket.

(4) A judgment lien filed pursuant to this section may be renewed for another 10-year period upon motion of the lienholder or by a judgment for that purpose.

Section 4. Section 39-8-202, MCA, is amended to read:

"39-8-202. Initial license application — application fee — standards — provisional license. (1) An applicant for initial licensure as a professional employer organization or group shall file with the department a completed application on a form provided by the department.

(2) The application must be accompanied by a nonrefundable application fee and any material or information required by the department that demonstrates compliance with the requirements of this chapter. The application fee is:

(a) $750 for a resident or nonresident unrestricted license; and

(b) $500 for a restricted license.

(3) As a condition of licensure under this chapter, an applicant who is not a resident or who is domiciled outside the state must first be licensed as a professional employer organization or group in the state in which the applicant is a resident or is domiciled if licensing is required by that state.

(4) An applicant for licensure as a professional employer organization or group must meet one of the following applicable standards:

(a) An individual must be 18 years of age or older.

(b) A partnership or a limited partnership shall provide the names and home addresses of all partners, indicate whether each partner is a general or a limited partner, and include a copy of the partnership agreement or an affidavit signed by all partners acknowledging that a written partnership agreement does not exist.

(c) A corporation shall state the names and home addresses of all officers, directors, and shareholders who own a 5% or greater interest in the corporation. A domestic or foreign corporation must have filed any required documents with the secretary of state and shall remain in good standing to conduct business pursuant to this chapter.

(d) A limited liability company shall state the names and home addresses of those individuals who own a 5% or greater interest in the limited liability company. A domestic or foreign limited liability company must have filed any required documents with the secretary of state and shall remain in good standing to conduct business pursuant to this chapter.

(e) A group:

(i) must be authorized to act on behalf of the group;

(ii) shall include for each professional employer organization within the group the information required in subsection (4); and

(iii) shall guarantee, on a form provided by the department and executed by each professional employer organization within the group, payment of all financial obligations with respect to wages, payroll-related taxes, insurance premiums, and employee benefits of each other member within the group.

(5) (a) An applicant shall also provide:

(i) the trade name or names under which the applicant conducts business, the business's taxpayer or employer identification number, the address of the business's principal place of business in the state, and the addresses of any other offices within the state through which the applicant intends to conduct business as a professional employer organization or group. If the applicant's principal place of business is located in another state, the address must be provided.

(ii) a list by jurisdiction of each name under which the applicant has operated in the preceding 5 years, including any alternative names, names of predecessors, and names of related business entities with common majority ownership, and detailed information on the background of each controlling person to the extent required by the department; and

(iii) other information requested by the department to show that the applicant and each controlling person are of good moral character, have business integrity, and are financially responsible. "Good moral character" means a personal history of honesty, trustworthiness, and fairness; a good reputation for fair dealings; and respect for the rights of others and for the laws of this state and nation.

(b) (i) As a prerequisite to the issuance of a license, the department shall require the applicant *and any controlling person* to submit fingerprints for the purpose of fingerprint checks by the Montana department of justice and the federal bureau of investigation.

(ii) The applicant *and any controlling person* shall sign a release of information to the department and ~~is~~ *are* responsible to the department of justice for the payment of all fees associated with the criminal background check.

(iii) Upon completion of the criminal background check, the department of justice shall forward all criminal justice information, as defined in 44-5-103, concerning the applicant *or any controlling person* that involves the conviction of a criminal offense in any jurisdiction to the department, as authorized in 44-5-303.

(iv) At the conclusion of any background check required by this section, the department must receive the criminal background check report but may not receive the fingerprint card of the applicant *or of any controlling person*. Upon receipt of the criminal background check report, the department of justice shall promptly destroy the fingerprint card of the applicant *and of any controlling person*.

(c) If an applicant *or any controlling person* has a history of criminal convictions, then pursuant to 37-1-203, the applicant *or controlling person* has the opportunity to demonstrate to the department that the applicant *or controlling person* is sufficiently rehabilitated to warrant the public trust, and if the department determines that the applicant *or controlling person* is not, the license may be denied.

(6) (a) Except for an applicant who is granted a restricted license under subsection (9), an applicant shall maintain a tangible accounting net worth of not less than $50,000, evidenced by:

(i) providing financial statements that have been independently audited by a certified public accountant in accordance with generally accepted accounting principles; or

(ii) providing independently compiled financial statements and a $100,000 security deposit in a form that is acceptable to the department.

(b) If, after licensure, an applicant defaults in paying wages or payroll-related taxes or in meeting any liability arising pursuant to Title 39, chapter 71, or this chapter, the security deposit may be used to meet those obligations. The security deposit may not be used in determining the net worth of an applicant.

(c) (i) Documents submitted to establish net worth must reflect net worth as of a date not more than 6 months prior to the date on which the application is submitted.

(ii) Financial statements submitted must be attested by the president, chief financial officer, and at least one controlling person of the professional employer organization or group.

(iii) If an applicant is unable to meet the $50,000 net worth requirement, the applicant shall provide to the department a surety bond, a letter of credit, or marketable securities acceptable to the department in an amount of not less than $50,000 to cover the deficiency. If, after licensure, an applicant defaults in paying wages or payroll-related taxes or in meeting any liability arising pursuant to Title 39, chapter 71, or this chapter, the surety bond, letter of credit, or marketable securities provided to the department may be used to meet those obligations.

(7) The applicant shall maintain a positive working capital, as evidenced by financial statements.

(8) The department may provide by rule for the acceptance, in lieu of the requirements of subsections (6) and (7), of an affidavit provided by a bonded, independent, and qualified assurance organization that has been approved by the department certifying the qualifications of a professional employer organization or group seeking licensure under this chapter.

(9) The department may issue a restricted license for limited operation within this state to a professional employer organization or group that is a resident of or domiciled in another state if:

(a) the applicant's state of residence or domicile provides for licensing of professional employer organizations or groups and the applicant is licensed and in good standing in that state and that state grants a similar privilege for restricted licensing to professional employer organizations or groups that are residents of or domiciled in this state and that are licensed under this chapter;

(b) the applicant does not maintain an office, a sales force, or a sales representative in this state and does not solicit clients who are residents of or domiciled in this state; and

(c) the applicant does not have more than 100 leased employees working in this state.

(10) An applicant for a license shall appoint a recognized and approved entity as its registered agent to receive service of legal process issued against it in this state if a registered agent has not already been appointed.

(11) The department may issue a provisional license to an applicant that allows the applicant to operate in this state while the applicant's application is being processed by the department. The department may not charge a fee for a provisional license. The department may adopt rules to implement the provisions of this subsection.

(12) A license issued under 39-8-204 or this section may not be transferred."

Section 5. Section 39-71-107, MCA, is amended to read:

"39-71-107. Insurers to act promptly on claims — in-state claims examiners. (1) Pursuant to the public policy stated in 39-71-105, prompt claims handling practices are necessary to provide appropriate service to injured workers, to employers, and to providers who are the customers of the workers' compensation system.

(2) All workers' compensation and occupational disease claims filed pursuant to the Workers' Compensation Act must be examined by a claims examiner in Montana. For a claim to be considered as examined by a claims examiner in Montana, the claims examiner examining the claim is required to determine the entitlement to benefits, authorize payment of all benefits due, manage the claim, have authority to settle the claim, maintain an office located in Montana, and examine Montana claims from that office. Use of a mailbox or maildrop in Montana does not constitute maintaining an office in Montana.

(3) An insurer shall maintain the documents related to each claim filed with the insurer under the Workers' Compensation Act at the Montana office of the claims examiner examining the claim in Montana until the claim is settled. The documents may be either original documents or duplicates of the original documents and must be maintained in a manner that allows the documents to be retrieved from that office and copied at the request of the claimant or the department. Settled claim files stored outside of the claims examiner's office must be made available within 48 hours of a request for the file. Electronic or optically imaged documents are permitted.

(4) (a) An insurer that uses a third-party agent to provide the insurer with claim examination services shall notify the department in writing of a change of a third-party agent at least 14 days in advance of the change.

(b) The department may assess a penalty not to exceed $200 against an insurer that does not comply with the advance notice provision in subsection (4)(a). The penalty may be assessed for each failure by an insurer to give the required advance notice.

(5) An insurer shall provide to the claimant:

(a) a written statement of the reasons that a claim is being denied at the time of denial;

(b) whenever benefits ~~requested by a claimant~~ are denied~~,~~ *to a claimant,* a written explanation of how the claimant may appeal an insurer's decision; and

(c) a written explanation of the amount of wage-loss benefits being paid to the claimant, along with an explanation of the calculation used to compute those benefits. The explanation must be sent within 7 days of the initial payment of the benefit.

(6) An insurer shall:

(a) begin making payments that are due on a claim within 14 days of acceptance of the claim, unless the insurer promptly notifies the claimant that the insurer needs additional information in order to begin paying benefits and specifies the information needed; and

(b) pay settlements within 30 days of the date the department issues an order approving the settlement.

(7) The department may adopt rules to implement this section.

(8) (a) For purposes of this section, "settled claim" means a department-approved or court-ordered compromise of benefits between a claimant and an insurer or a claim that was paid in full.

(b) The term does not include a claim in which there has been only a lump-sum advance of benefits."

Section 6. Section 39-71-117, MCA, is amended to read:

"39-71-117. Employer defined. (1) "Employer" means:

(a) the state and each county, city and county, city school district, and irrigation district; all other districts established by law; all public corporations and quasi-public corporations and public agencies; each person; each prime contractor; each firm, voluntary association, limited liability company, limited liability partnership, and private corporation, including any public service corporation and including an independent contractor who has a person in service under an appointment or contract of hire, expressed or implied, oral or written; and the legal representative of any deceased employer or the receiver or trustee of the deceased employer;

(b) any association, corporation, limited liability company, limited liability partnership, or organization that seeks permission and meets the requirements set by the department by rule for a group of individual employers to operate as self-insured under plan No. 1 of this chapter; ~~and~~

(c) any nonprofit association, limited liability company, limited liability partnership, or corporation or other entity funded in whole or in part by federal, state, or local government funds that places community service participants, as described in 39-71-118(1)(e), with nonprofit organizations or associations or federal, state, or local government entities*; and*

(d) a religious corporation, religious organization, or religious trust receiving remuneration from nonmembers for agricultural production, manufacturing, or a construction project conducted by its members on or off the property of the religious corporation, religious organization, or religious trust.

(2) A temporary service contractor is the employer of a temporary worker for premium and loss experience purposes.

(3) Except as provided in chapter 8 of this title, an employer defined in subsection (1) who uses the services of a worker furnished by another person, association, contractor, firm, limited liability company, limited liability partnership, or corporation, other than a temporary service contractor, is presumed to be the employer for workers' compensation premium and loss experience purposes for work performed by the worker. The presumption may be rebutted by substantial credible evidence of the following:

(a) the person, association, contractor, firm, limited liability company, limited liability partnership, or corporation, other than a temporary service contractor, furnishing the services of a worker to another retains control over all aspects of the work performed by the worker, both at the inception of employment and during all phases of the work; and

(b) the person, association, contractor, firm, limited liability company, limited liability partnership, or corporation, other than a temporary service contractor, furnishing the services of a worker to another has obtained workers' compensation insurance for the worker in Montana both at the inception of employment and during all phases of the work performed.

(4) An interstate or intrastate common or contract motor carrier that maintains a place of business in this state and uses an employee or worker in this state is considered the employer of that employee, is liable for workers' compensation premiums, and is subject to loss experience rating in this state unless:

(a) the worker in this state is certified as an independent contractor as provided in 39-71-417; or

(b) the person, association, contractor, firm, limited liability company, limited liability partnership, or corporation furnishing employees or workers in this state to a motor carrier has obtained Montana workers' compensation insurance on the employees or workers in Montana both at the inception of employment and during all phases of the work performed."

Section 7. Section 39-71-118, MCA, is amended to read:

"39-71-118. Employee, worker, volunteer, and volunteer firefighter defined. (1) As used in this chapter, the term "employee" or "worker" means:

(a) each person in this state, including a contractor other than an independent contractor, who is in the service of an employer, as defined by 39-71-117, under any appointment or contract of hire, expressed or implied, oral or written. The terms include aliens and minors, whether lawfully or unlawfully employed, and all of the elected and appointed paid public officers and officers and members of boards of directors of quasi-public or private corporations, except those officers identified in 39-71-401(2), while rendering actual service for the corporations for pay. Casual employees, as defined by 39-71-116, are included as employees if they are not otherwise covered by workers' compensation and if an employer has elected to be bound by the provisions of the compensation law for these casual employments, as provided in 39-71-401(2). Household or domestic employment is excluded.

(b) any juvenile who is performing work under authorization of a district court judge in a delinquency prevention or rehabilitation program;

(c) a person who is receiving on-the-job vocational rehabilitation training or other on-the-job training under a state or federal vocational training program, whether or not under an appointment or contract of hire with an employer, as defined in 39-71-117, and, except as provided in subsection (9), whether or not

receiving payment from a third party. However, this subsection (1)(c) does not apply to students enrolled in vocational training programs, as outlined in this subsection, while they are on the premises of a public school or community college.

(d) an aircrew member or other person who is employed as a volunteer under 67-2-105;

(e) a person, other than a juvenile as described in subsection (1)(b), who is performing community service for a nonprofit organization or association or for a federal, state, or local government entity under a court order, or an order from a hearings officer as a result of a probation or parole violation, whether or not under appointment or contract of hire with an employer, as defined in 39-71-117, and whether or not receiving payment from a third party. For a person covered by the definition in this subsection (1)(e):

(i) compensation benefits must be limited to medical expenses pursuant to 39-71-704 and an impairment award pursuant to 39-71-703 that is based upon the minimum wage established under Title 39, chapter 3, part 4, for a full-time employee at the time of the injury; and

(ii) premiums must be paid by the employer, as defined in 39-71-117(3), and must be based upon the minimum wage established under Title 39, chapter 3, part 4, for the number of hours of community service required under the order from the court or hearings officer.

(f) an inmate working in a federally certified prison industries program authorized under 53-1-301;

(g) a volunteer firefighter as described in 7-33-4109 or a person who provides ambulance services under Title 7, chapter 34, part 1; ~~and~~

(h) a person placed at a public or private entity's worksite pursuant to 53-4-704. The person is considered an employee for workers' compensation purposes only. The department of public health and human services shall provide workers' compensation coverage for recipients of financial assistance, as defined in 53-4-201, or for participants in the food stamp program, as defined in 53-2-902, who are placed at public or private worksites through an endorsement to the department of public health and human services' workers' compensation policy naming the public or private worksite entities as named insureds under the policy. The endorsement may cover only the entity's public assistance participants and may be only for the duration of each participant's training while receiving financial assistance or while participating in the food stamp program under a written agreement between the department of public health and human services and each public or private entity. The department of public health and human services may not provide workers' compensation coverage for individuals who are covered for workers' compensation purposes by another state or federal employment training program. Premiums and benefits must be based upon the wage that a probationary employee is paid for work of a similar nature at the assigned worksite.

(i) a member of a religious corporation, religious organization, or religious trust while performing services for the religious corporation, religious organization, or religious trust, as described in 39-71-117(1)(d).

(2) The terms defined in subsection (1) do not include a person who is:

(a) participating in recreational activity and who at the time is relieved of and is not performing prescribed duties, regardless of whether the person is

using, by discount or otherwise, a pass, ticket, permit, device, or other emolument of employment;

(b) performing voluntary service at a recreational facility and who receives no compensation for those services other than meals, lodging, or the use of the recreational facilities;

(c) performing services as a volunteer, except for a person who is otherwise entitled to coverage under the laws of this state. As used in this subsection (2)(c), "volunteer" means a person who performs services on behalf of an employer, as defined in 39-71-117, but who does not receive wages as defined in 39-71-123.

(d) serving as a foster parent, licensed as a foster care provider in accordance with 52-2-621, and providing care without wage compensation to no more than six foster children in the provider's own residence. The person may receive reimbursement for providing room and board, obtaining training, respite care, leisure and recreational activities, and providing for other needs and activities arising in the provision of in-home foster care.

(3) With the approval of the insurer, an employer may elect to include as an employee under the provisions of this chapter any volunteer as defined in subsection (2)(c).

(4) (a) The term "volunteer firefighter" means a firefighter who is an enrolled and active member of a governmental fire agency organized under Title 7, chapter 33, except 7-33-4109.

(b) The term "volunteer hours" means all the time spent by a volunteer firefighter in the service of an employer, including but not limited to training time, response time, and time spent at the employer's premises.

(5) (a) If the employer is a partnership, limited liability partnership, sole proprietor, or a member-managed limited liability company, the employer may elect to include as an employee within the provisions of this chapter any member of the partnership or limited liability partnership, the owner of the sole proprietorship, or any member of the limited liability company devoting full time to the partnership, limited liability partnership, proprietorship, or limited liability company business.

(b) In the event of an election, the employer shall serve upon the employer's insurer written notice naming the partners, sole proprietor, or members to be covered and stating the level of compensation coverage desired by electing the amount of wages to be reported, subject to the limitations in subsection (5)(d). A partner, sole proprietor, or member is not considered an employee within this chapter until notice has been given.

(c) A change in elected wages must be in writing and is effective at the start of the next quarter following notification.

(d) All weekly compensation benefits must be based on the amount of elected wages, subject to the minimum and maximum limitations of this subsection (5)(d). For premium ratemaking and for the determination of the weekly wage for weekly compensation benefits, the electing employer may elect an amount of not less than $900 a month and not more than 1 1/2 times the state's average weekly wage.

(6) (a) If the employer is a quasi-public or a private corporation or a manager-managed limited liability company, the employer may elect to include as an employee within the provisions of this chapter any corporate officer or manager exempted under 39-71-401(2).

(b) In the event of an election, the employer shall serve upon the employer's insurer written notice naming the corporate officer or manager to be covered and stating the level of compensation coverage desired by electing the amount of wages to be reported, subject to the limitations in subsection (5)(d). A corporate officer or manager is not considered an employee within this chapter until notice has been given.

(c) A change in elected wages must be in writing and is effective at the start of the next quarter following notification.

(d) All weekly compensation benefits must be based on the amount of elected wages, subject to the minimum and maximum limitations of this subsection (6)(d). For premium ratemaking and for the determination of the weekly wage for weekly compensation benefits, the electing employer may elect an amount of not less than $200 a week and not more than 1 1/2 times the state's average weekly wage.

(7) (a) The trustees of a rural fire district, a county governing body providing rural fire protection, or the county commissioners or trustees for a fire service area may elect to include as an employee within the provisions of this chapter any volunteer firefighter. A volunteer firefighter who receives workers' compensation coverage under this section may not receive disability benefits under Title 19, chapter 17.

(b) In the event of an election, the employer shall report payroll for all volunteer firefighters for premium and weekly benefit purposes based on the number of volunteer hours of each firefighter times the average weekly wage divided by 40 hours, subject to a maximum of 1 1/2 times the state's average weekly wage.

(c) A self-employed sole proprietor or partner who has elected not to be covered under this chapter, but who is covered as a volunteer firefighter pursuant to subsection (7)(a) and when injured in the course and scope of employment as a volunteer firefighter, may in addition to the benefits described in subsection (7)(b) be eligible for benefits at an assumed wage of the minimum wage established under Title 39, chapter 3, part 4, for 2,080 hours a year. The trustees of a rural fire district, a county governing body providing rural fire protection, or the county commissioners or trustees for a fire service area may make an election for benefits. If an election is made, payrolls must be reported and premiums must be assessed on the assumed wage.

(8) Except as provided in chapter 8 of this title, an employee or worker in this state whose services are furnished by a person, association, contractor, firm, limited liability company, limited liability partnership, or corporation, other than a temporary service contractor, to an employer, as defined in 39-71-117, is presumed to be under the control and employment of the employer. This presumption may be rebutted as provided in 39-71-117(3).

(9) A student currently enrolled in an elementary, secondary, or postsecondary educational institution who is participating in work-based learning activities and who is paid wages by the educational institution or business partner is the employee of the entity that pays the student's wages for all purposes under this chapter. A student who is not paid wages by the business partner or the educational institution is a volunteer and is subject to the provisions of this chapter.

(10) For purposes of this section, an "employee or worker in this state" means:

(a) a resident of Montana who is employed by an employer and whose employment duties are primarily carried out or controlled within this state;

(b) a nonresident of Montana whose principal employment duties are conducted within this state on a regular basis for an employer;

(c) a nonresident employee of an employer from another state engaged in the construction industry, as defined in 39-71-116, within this state; or

(d) a nonresident of Montana who does not meet the requirements of subsection (10)(b) and whose employer elects coverage with an insurer that allows an election for an employer whose:

(i) nonresident employees are hired in Montana;

(ii) nonresident employees' wages are paid in Montana;

(iii) nonresident employees are supervised in Montana; and

(iv) business records are maintained in Montana.

(11) An insurer may require coverage for all nonresident employees of a Montana employer who do not meet the requirements of subsection (10)(b) or (10)(d) as a condition of approving the election under subsection (10)(d)."

Section 8. Section 39-71-123, MCA, is amended to read:

"39-71-123. Wages defined. (1) "Wages" means all remuneration paid for services performed by an employee for an employer, or income provided for in subsection (1)(d). Wages include the cash value of all remuneration paid in any medium other than cash. The term includes but is not limited to:

(a) commissions, bonuses, and remuneration at the regular hourly rate for overtime work, holidays, vacations, and periods of sickness;

(b) backpay or any similar pay made for or in regard to previous service by the employee for the employer, other than retirement or pension benefits from a qualified plan;

(c) tips or other gratuities received by the employee, to the extent that tips or gratuities are documented by the employee to the employer for tax purposes;

(d) income or payment in the form of a draw, wage, net profit, or substitute for money received or taken by a sole proprietor or partner, regardless of whether the sole proprietor or partner has performed work or provided services for that remuneration;

(e) board, lodging, rent, or housing if it constitutes a part of the employee's remuneration and is based on its actual value; and

(f) payments made to an employee on any basis other than time worked, including but not limited to piecework, an incentive plan, or profit-sharing arrangement.

(2) The term "wages" does not include any of the following:

(a) employee expense reimbursements or allowances for meals, lodging, travel, subsistence, and other expenses, as set forth in department rules;

(b) the amount of the payment made by the employer for employees, if the payment was made for:

(i) retirement or pension pursuant to a qualified plan as defined under the provisions of the Internal Revenue Code;

(ii) sickness or accident disability under a workers' compensation policy;

(iii) medical or hospitalization expenses in connection with sickness or accident disability, including health insurance for the employee or the employee's immediate family;

(iv) death, including life insurance for the employee or the employee's immediate family;

(c) vacation or sick leave benefits accrued but not paid;

(d) special rewards for individual invention or discovery; or

(e) monetary and other benefits paid to a person as part of public assistance, as defined in 53-4-201.

(3) (a) Except as provided in subsection (3)(b), for compensation benefit purposes, the average actual earnings for the four pay periods immediately preceding the injury are the employee's wages, except that if the term of employment for the same employer is less than four pay periods, the employee's wages are the hourly rate times the number of hours in a week for which the employee was hired to work.

(b) For good cause shown, if the use of the last four pay periods does not accurately reflect the claimant's employment history with the employer, the wage may be calculated by dividing the total earnings for an additional period of time, not to exceed 1 year prior to the date of injury, by the number of weeks in that period, including periods of idleness or seasonal fluctuations.

(4) (a) For the purpose of calculating compensation benefits for an employee working concurrent employments, the average actual wages must be calculated as provided in subsection (3). As used in this subsection, "concurrent employment" means employment in which the employee was actually employed at the time of the injury and would have continued to be employed without a break in the term of employment if not for the injury.

(b) Except as provided in 39-71-118(7)(c), the compensation benefits for a covered volunteer must be based on the average actual wages in the volunteer's regular employment, except self-employment as a sole proprietor or partner who elected not to be covered, from which the volunteer is disabled by the injury incurred.

(c) The compensation benefits for an employee working at two or more concurrent remunerated employments must be based on the aggregate of average actual wages of all employments, except for the wages earned by individuals while engaged in the employments outlined in 39-71-401(3)(a) who elected not to be covered, from which the employee is disabled by the injury incurred.

(5) For the purposes of calculating compensation benefits for an employee working for an employer, as provided in 39-71-117(1)(d), and for calculating premiums to be paid by that employer, the wages must be based upon all hours worked multiplied by the mean hourly wage by area, as published by the department in the edition of Montana Informational Wage Rates by Occupation, adopted annually by the department, that is in effect as of the date of injury or for the period in which the premium is due."

Section 9. Section 39-71-201, MCA, is amended to read:

"39-71-201. Administration fund. (1) A workers' compensation administration fund is established out of which are to be paid upon lawful appropriation all costs of administering the Workers' Compensation Act and the statutory occupational safety acts that the department is required to administer, with the exception of the certification of independent contractors

provided for in Title 39, chapter 71, part 4, the subsequent injury fund provided for in 39-71-907, and the uninsured employers' fund provided for in 39-71-503. The department shall collect and deposit in the state treasury to the credit of the workers' compensation administration fund:

(a) all fees and penalties provided in 39-71-107, 39-71-205, 39-71-223, 39-71-304, 39-71-307, 39-71-315, 39-71-316, 39-71-401(6), 39-71-2204, 39-71-2205, and 39-71-2337; and

(b) all fees paid by an assessment ~~of 3% of~~ *on* paid losses, plus administrative fines and interest provided by this section.

(2) For the purposes of this section, paid losses include the following benefits paid during the preceding calendar year for injuries covered by the Workers' Compensation Act without regard to the application of any deductible whether the employer or the insurer pays the losses:

(a) total compensation benefits paid; and

(b) except for medical benefits in excess of $200,000 for each occurrence that are exempt from assessment, total medical benefits paid for medical treatment rendered to an injured worker, including hospital treatment and prescription drugs.

(3) Each plan No. 1 employer, plan No. 2 insurer subject to the provisions of this section, and plan No. 3, the state fund, shall file annually on March 1 in the form and containing the information required by the department a report of paid losses pursuant to subsection (2).

(4) Each employer enrolled under compensation plan No. 1, compensation plan No. 2, or compensation plan No. 3, the state fund, shall pay ~~a~~ *its* proportionate share *determined by the paid losses in the preceding calendar year* of all costs of administering and regulating the Workers' Compensation Act and the statutory occupational safety acts that the department is required to administer, with the exception of the certification of independent contractors provided for in Title 39, chapter 71, part 4, the subsequent injury fund provided for in 39-71-907, and the uninsured employers' fund provided for in 39-71-503. In addition, compensation plan No. 3, the state fund, shall pay a proportionate share of these costs based upon paid losses for claims arising before July 1, 1990.

(5) (a) Each employer enrolled under compensation plan No. 1 shall pay an assessment to fund administrative and regulatory costs. The assessment ~~is equal~~ *may be up* to 3% of the paid losses paid in the preceding calendar year by or on behalf of the plan No. 1 employer ~~or $500, whichever is greater~~. Any entity, other than the department, that assumes the obligations of an employer enrolled under compensation plan No. 1 is considered to be the employer for the purposes of this section.

(b) An employer formerly enrolled under compensation plan No. 1 shall pay an assessment to fund administrative and regulatory costs. The assessment ~~is equal~~ *may be up* to 3% of the paid losses paid in the preceding calendar year by or on behalf of the employer for claims arising out of the time when the employer was enrolled under compensation plan No. 1.

(c) *By April 30 of each year, the department shall notify employers described in subsections (5)(a) and (5)(b) of the percentage of the assessment that comprises the compensation plan No. 1 proportionate share of administrative and regulatory costs.* Payment of the assessment provided for by this subsection (5) must be paid by the employer in:

(i) one installment due on July 1; or

(ii) two equal installments due on July 1 and December 31 of each year.

(d) If an employer fails to timely pay to the department the assessment under this section, the department may impose on the employer an administrative fine of $500 plus interest on the delinquent amount at the annual interest rate of 12%. Administrative fines and interest must be deposited in the workers' compensation administration fund.

(6) (a) Compensation plan No. 3, the state fund, shall pay an assessment to fund administrative and regulatory costs attributable to claims arising before July 1, 1990. The assessment ~~is equal~~ *may be up* to 3% of the paid losses paid in the preceding calendar year for claims arising before July 1, 1990. As required by 39-71-2352, the state fund may not pass along to insured employers the cost of the assessment for administrative and regulatory costs that is attributable to claims arising before July 1, 1990.

(b) Payment of the assessment must be paid in:

(i) one installment due on July 1; or

(ii) two equal installments due on July 1 and December 31 of each year.

(c) If the state fund fails to timely pay to the department the assessment under this section, the department may impose on the state fund an administrative fine of $500 plus interest on the delinquent amount at the annual interest rate of 12%. Administrative fines and interest must be deposited in the workers' compensation administration fund.

(7) (a) Each employer insured under compensation plan No. 2 or plan No. 3, the state fund, shall pay a premium surcharge to fund administrative and regulatory costs. The premium surcharge must be collected by each plan No. 2 insurer and by plan No. 3, the state fund, from each employer that it insures. The premium surcharge must be stated as a separate cost on an insured employer's policy or on a separate document submitted to the insured employer and must be identified as "workers' compensation regulatory assessment surcharge". The premium surcharge must be excluded from the definition of premiums for all purposes, including computation of insurance producers' commissions or premium taxes. However, an insurer may cancel a workers' compensation policy for nonpayment of the premium surcharge. When collected, assessments may not constitute an element of loss for the purpose of establishing rates for workers' compensation insurance but, for the purpose of collection, must be treated as a separate cost imposed upon insured employers.

(b) The amount to be funded by the premium surcharge ~~is equal~~ *may be up* to 3% of the paid losses paid in the preceding calendar year by or on behalf of all plan No. 2 insurers and *may be up to* 3% of paid losses for claims arising on or after July 1, 1990, for plan No. 3, the state fund, plus or minus any adjustments as provided by subsection (7)(f). The amount to be funded must be divided by the total premium paid by all employers enrolled under compensation plan No. 2 or plan No. 3 during the preceding calendar year. A single premium surcharge rate, applicable to all employers enrolled in compensation plan No. 2 or plan No. 3, must be calculated annually by the department by not later than April 30. The resulting rate, expressed as a percentage, is levied against the premium paid by each employer enrolled under compensation plan No. 2 or plan No. 3 in the next fiscal year.

(c) On or before April 30 of each year, the department, in consultation with the advisory organization designated pursuant to 33-16-1023, shall notify plan No. 2 insurers and plan No. 3, the state fund, of the premium surcharge

percentage to be effective for policies written or renewed annually on and after July 1 of that year.

(d) The premium surcharge must be paid whenever the employer pays a premium to the insurer. Each insurer shall collect the premium surcharge levied against every employer that it insures. Each insurer shall pay to the department all money collected as a premium surcharge within 20 days of the end of the calendar quarter in which the money was collected. If an insurer fails to timely pay to the department the premium surcharge collected under this section, the department may impose on the insurer an administrative fine of $500 plus interest on the delinquent amount at the annual interest rate of 12%. Administrative fines and interest must be deposited in the workers' compensation administration fund.

(e) If an employer fails to remit to an insurer the total amount due for the premium and premium surcharge, the amount received by the insurer must be applied to the premium surcharge first and the remaining amount applied to the premium due.

(f) The amount actually collected as a premium surcharge in a given year must be compared to the ~~3% of~~ *assessment on the* paid losses paid in the preceding year. Any *excess* amount collected ~~in excess of the 3%~~ must be deducted from the amount to be collected as a premium surcharge in the following year. The amount collected that is less than the ~~3%~~ *assessed amount* must be added to the amount to be collected as a premium surcharge in the following year.

(8) ~~On or before April 30 of each year, upon a determination by the department,~~ *By July 1,* an insurer under compensation plan No. 2 that pays benefits in the preceding calendar year but that will not collect any premium for coverage in the following fiscal year shall pay an assessment ~~equal~~ *of up* to 3% of paid losses paid in the preceding calendar year~~, subject to a minimum assessment of $500, that is due on July 1~~. *The department shall determine and notify the insurer by April 30 of each year the amount that is due by July 1.*

(9) An employer that makes a first-time application for permission to enroll under compensation plan No. 1 shall pay an assessment of $500 within 15 days of being granted permission by the department to enroll under compensation plan No. 1.

(10) The department shall deposit all funds received pursuant to this section in the state treasury, as provided in this section.

(11) The administration fund must be debited with expenses incurred by the department in the general administration of the provisions of this chapter, including the salaries of its members, officers, and employees and the travel expenses of the members, officers, and employees, as provided for in 2-18-501 through 2-18-503, incurred while on the business of the department either within or without the state.

(12) Disbursements from the administration fund must be made after being approved by the department upon claim for disbursement.

(13) The department may assess and collect the workers' compensation regulatory assessment surcharge from uninsured employers, as defined in 39-71-501, that fail to properly comply with the coverage requirements of the Workers' Compensation Act. Any amounts collected by the department pursuant to this subsection must be deposited in the workers' compensation administration fund."

Section 10. Section 39-71-307, MCA, is amended to read:

"39-71-307. Employers and insurers to file reports — penalty. (1) Every employer insured by a plan No. 2 or a plan No. 3 insurer is required to file with the employer's insurer, under rules adopted by the department, a full and complete report of every accident, injury, or occupational disease to an employee arising out of or in the course of employment.

(2) Every insurer transacting business under this chapter shall, under rules adopted by the department, make and file with the department the reports of every injury or occupational disease.

(3) An employer~~,~~ *or* insurer~~, or claims examiner~~ who refuses or neglects to submit the reports necessary for the proper filing and review of a claim, as provided in subsection (1) or (2), shall be assessed a penalty of not less than $200 or more than $500 for each offense. The department shall assess and collect the penalty. An employer or insurer may contest a penalty assessment in a hearing conducted according to department rules."

Section 11. Section 39-71-501, MCA, is amended to read:

"39-71-501. Definition of uninsured employer. For the purposes of 39-71-501, 39-71-503 through 39-71-511, ~~and~~ 39-71-515 through 39-71-520, *and [section 3],* "uninsured employer" means an employer who has not properly complied with the provisions of 39-71-401."

Section 12. Section 39-71-506, MCA, is amended to read:

"39-71-506. Lien for payment of unpaid penalties, fees, *and* interest~~, and claims~~ — levy and execution. (1) *(a)* If, upon demand of the department, an uninsured employer refuses to make the payments to the fund that are provided for in 39-71-504*(1)(a), (1)(c), and (2)*, the unpaid penalties, fees, *and* interest~~, and claims~~ have the effect of a judgment against the employer at the time the payments become due. After *issuing an order to the uninsured employer requiring payment of penalties, fees, and interest and after* the due process requirements of 39-71-2401(2) and (3) are satisfied, the department may issue a certificate setting forth the amount of payment due and direct the clerk of the district court of any county in the state to enter the certificate as a judgment on the docket pursuant to 25-9-301. From the time the judgment is ~~docketed~~ *entered on the docket*, it becomes a lien upon all real property of the *uninsured* employer. ~~After satisfying any due process requirements, the~~ *The* department may enforce the judgment at any time within 10 years of creation of the lien.

(b) A judgment lien filed pursuant to this section may be renewed for another 10-year period upon motion of the lienholder or by a judgment for that purpose.

(2) The department may settle through compromise with an uninsured employer the amount due the fund under ~~39-71-504~~ *subsection (1)*."

Section 13. Section 39-71-520, MCA, is amended to read:

"39-71-520. Time limit to appeal to mediation — petitioning workers' compensation court — failure to settle or petition. (1) A dispute concerning uninsured employers' fund benefits must be appealed to mediation within 90 days from the date of the determination *by the department* or ~~the date that~~ the determination is considered final.

(2) (a) If the parties fail to reach a settlement through the mediation process, any party *who disagrees with the department's determination* may file a petition before the workers' compensation court.

(b) A party's petition must be filed within 60 days of the mailing of the mediator's report provided for in 39-71-2411 unless the parties stipulate in writing to a longer time period for filing the petition.

(c) If a settlement is not reached through mediation and a petition is not filed within 60 days of the mailing of the mediator's report, the determination by the department is final.

(d) A mediator's report is not a determination by the department for the purposes of this section. A determination by the department is final if an appeal to mediation described in subsection (1) or a petition described in subsection (2)(a) is not filed within the required time period."

Section 14. Section 39-71-601, MCA, is amended to read:

"39-71-601. Statute of limitation on presentment of claim — waiver. (1) Except for a claim for benefits for occupational diseases pursuant to subsections (3) and (4), all claims in the case of personal injury or death must be forever barred unless signed by the claimant or the claimant's representative and presented in writing to the employer, the insurer, or the department~~, as the case may be,~~ within 12 months from the date of the happening of the accident, either by the claimant or someone legally authorized to act on the claimant's behalf.

(2) The insurer may waive the time requirement up to an additional 24 months upon a reasonable showing by the claimant of:

(a) lack of knowledge of disability;

(b) latent injury; or

(c) equitable estoppel.

(3) When a claimant seeks benefits for an occupational disease, the claimant's claims for benefits must be *in writing, signed by the claimant or the claimant's representative, and* presented ~~in writing~~ to the employer, the employer's insurer, or the department within 1 year from the date that the claimant knew or should have known that the claimant's condition resulted from an occupational disease. When a beneficiary seeks benefits under this chapter, claims for death benefits must be presented in writing to the employer, the employer's insurer, or the department within 1 year from the date that the beneficiary knew or should have known that the decedent's death was related to an occupational disease.

(4) Any dispute regarding the statute of limitations for filing time is considered a dispute that, after mediation pursuant to department rules, is subject to jurisdiction of the workers' compensation court."

Section 15. Section 39-71-613, MCA, is amended to read:

"39-71-613. Regulation of attorney fees — forfeiture of fee for noncompliance — return of fee when claimant received benefits through fraud or deception. (1) When an attorney represents or acts on behalf of a claimant or any other party on any workers' compensation claim, the attorney shall submit to the department a contract of employment, on a form provided by the department, stating specifically the terms of the fee arrangement between the attorney and the claimant.

(2) The department may regulate the amount of the attorney fees in any workers' compensation case. In regulating the amount of the fees, the department shall consider:

(a) the benefits the claimant gained due to the efforts of the attorney;

(b) the time the attorney was required to spend on the case;

(c) the complexity of the case; and

(d) any other relevant matter the department may consider appropriate.

(3) An attorney who violates a provision of this section, a rule adopted under this section, or an order fixing attorney fees under this section forfeits the right to any fees that the attorney collected or was entitled to collect.

(4) If, after an attorney receives attorney fees and costs assessed against an insurer, the claimant is convicted of having obtained benefits through fraud or deception, the attorney fees and costs for obtaining the benefits must be returned to the insurer by the attorney.

(5) *(a)* A dispute concerning the forfeiture or return of attorney fees is considered a dispute for which the workers' compensation court has original jurisdiction and is not subject to mediation or a contested case hearing.

(b) The parties to a dispute referred to in subsection (5)(a) may voluntarily request a mediator appointed by the department and proceed to nonbinding mediation."

Section 16. Section 39-71-704, MCA, is amended to read:

"39-71-704. Payment of medical, hospital, and related services — fee schedules and hospital rates — fee limitation. (1) In addition to the compensation provided under this chapter and as an additional benefit separate and apart from compensation benefits actually provided, the following must be furnished:

(a) After the happening of a compensable injury and subject to other provisions of this chapter, the insurer shall furnish reasonable primary medical services for conditions resulting from the injury for those periods as the nature of the injury or the process of recovery requires.

(b) The insurer shall furnish secondary medical services only upon a clear demonstration of cost-effectiveness of the services in returning the injured worker to actual employment.

(c) The insurer shall replace or repair prescription eyeglasses, prescription contact lenses, prescription hearing aids, and dentures that are damaged or lost as a result of an injury, as defined in 39-71-119, arising out of and in the course of employment.

(d) (i) The insurer shall reimburse a worker for reasonable travel, lodging, meals, and miscellaneous expenses incurred in travel to a medical provider for treatment of an injury pursuant to rules adopted by the department. Reimbursement must be at the rates allowed for reimbursement for state employees.

(ii) Rules adopted under subsection (1)(d)(i) must provide for submission of claims, within 90 days from the date of travel, following notification to the claimant of reimbursement rules, must provide procedures for reimbursement receipts, and must require the use of the least costly form of travel unless the travel is not suitable for the worker's medical condition. The rules must exclude from reimbursement:

(A) 100 miles of automobile travel for each calendar month unless the travel is requested or required by the insurer pursuant to 39-71-605;

(B) travel to a medical provider within the community in which the worker resides;

(C) travel outside the community in which the worker resides if comparable medical treatment is available within the community in which the worker resides, unless the travel is requested by the insurer; and

(D) travel for unauthorized treatment or disallowed procedures.

(iii) An insurer is not liable for injuries or conditions that result from an accident that occurs during travel or treatment, except that the insurer retains liability for the compensable injuries and conditions for which the travel and treatment were required.

(e) Pursuant to rules adopted by the department, an insurer shall reimburse a catastrophically injured worker's family or, if a family member is unavailable, a person designated by the injured worker or approved by the insurer for travel assistance expenditures in an amount not to exceed $2,500 to be used as a match to those funds raised by community service organizations to help defray the costs of travel and lodging expenses incurred by the family member or designated person when traveling to be with the injured worker. These funds must be paid in addition to any travel expenses paid by an insurer for a travel companion when it is medically necessary for a travel companion to accompany the catastrophically injured worker.

(f) Except for the repair or replacement of a prosthesis furnished as a result of an industrial injury, the benefits provided for in this section terminate when they are not used for a period of 60 consecutive months.

(g) Notwithstanding subsection (1)(a), the insurer may not be required to furnish, after the worker has achieved medical stability, palliative or maintenance care except:

(i) when provided to a worker who has been determined to be permanently totally disabled and for whom it is medically necessary to monitor administration of prescription medication to maintain the worker in a medically stationary condition;

(ii) when necessary to monitor the status of a prosthetic device; or

(iii) when the worker's treating physician believes that the care that would otherwise not be compensable under subsection (1)(g) is appropriate to enable the worker to continue current employment or that there is a clear probability of returning the worker to employment. A dispute regarding the compensability of palliative or maintenance care is considered a dispute over which, after mediation pursuant to department rule, the workers' compensation court has jurisdiction.

(h) Notwithstanding any other provisions of this chapter, the department, by rule and upon the advice of the professional licensing boards of practitioners affected by the rule, may exclude from compensability any medical treatment that the department finds to be unscientific, unproved, outmoded, or experimental.

(2) (a) The department shall annually establish a schedule of fees for medical services that are necessary for the treatment of injured workers. Charges submitted by providers must be the usual and customary charges for nonworkers' compensation patients. The department may require insurers to submit information to be used in establishing the schedule. ~~Until the department adopts a fee schedule applicable to medical services provided by a hospital, insurers shall pay at the rate payable on June 30, 2007, for those services provided by a hospital. The rate must be adjusted by the annual~~

~~percentage increase in the state's average weekly wage, as defined in 39-71-116, factoring in changes in the hospital's medical service charges.~~

(b) (i) The department may not set the rate for medical services at a rate greater than 10% above the average of the conversion factors used by *up to* the top five insurers or third-party administrators providing ~~disability~~ *group health* insurance *coverage* within this state who use the resource-based relative value scale to determine fees for covered services. *To be included in the rate determination, the insurer or third-party administrator must occupy at least 1% of the market share for group health insurance policies as reported annually to the state auditor.*

(ii) The ~~top five~~ insurers or third-party administrators *included under subsection (2)(b)(i)* shall provide their standard conversion rates to the department.

(iii) The department may use the conversion rates only for the purpose of determining average conversion rates under this subsection (2).

(iv) The department shall maintain the confidentiality of the conversion rates.

(c) The fee schedule rates established in subsection (2)(b) ~~apply to medical services covered by the American medical association current procedural terminology codes in effect at the time the services are provided regardless of where the services are provided~~ *must be based on the following standards as adopted by the centers for medicare and medicaid services in effect at the time the services are provided, regardless of where services are provided:*

(i) the American medical association current procedural terminology codes;

(ii) the healthcare common procedure coding system;

(iii) the medicare severity diagnosis-related groups;

(iv) the ambulatory payment classifications;

(v) the ratio of costs to charges for each hospital;

(vi) the national correct coding initiative edits; and

(vii) the relative value units as adjusted annually using the most recently published resource-based relative value scale.

(d) The department may establish *additional* coding standards ~~to be utilized~~ *for use* by providers when billing for medical services under this section.

(3) (a) The department may establish by rule evidence-based utilization and treatment guidelines for primary and secondary medical services. There is a rebuttable presumption that the utilization and treatment guidelines established by the department are correct medical treatment for the injured worker.

(b) An insurer is not responsible for treatment or services that do not fall within the utilization and treatment guidelines adopted by the department unless the provider obtains prior authorization from the insurer. If prior authorization is not requested or obtained from the insurer, an injured worker is not responsible for payment of the medical treatment or services.

(c) The department may establish by rule an independent medical review process for treatment or services denied by an insurer pursuant to this subsection (3) prior to mediation under 39-71-2401.

(4) For services available in Montana, insurers ~~are not required to~~ *may* pay facilities located outside Montana ~~rates that are greater than those allowed for~~

~~services delivered in Montana~~ *according to the workers' compensation fee schedule of the state where the medical service is performed*.

(5) (a) An insurer shall make payments at the fee schedule rate within 30 days of receipt of medical bills for which a claim has been accepted and for which no other disputes exist. Disputes must be defined by the department by rule.

(b) Any unpaid balance under this subsection (5) accrues interest at 12% a year or 1% a month or a fraction of a month. If the charge is not paid within 30 days, interest on the unpaid balance accrues from the date of receipt of the original billing.

(6) Once a determination has been made regarding the correct reimbursement amount, any overpayment made to a medical provider must be reimbursed to the insurer within 30 days of the determination. Any reimbursement amount remaining unpaid after 30 days accrues interest at 12% a year or 1% a month or a fraction of a month. Interest on the reimbursement amount remaining unpaid accrues from the date of receipt of the determination of the correct reimbursement amount.

~~(5)~~*(7)* For a ~~medical assistance facility or a~~ critical access hospital licensed pursuant to Title 50, chapter 5, the rate for services is the usual and customary charge.

~~(6)~~*(8)* Payment pursuant to reimbursement agreements between managed care organizations or preferred provider organizations and insurers is not bound by the provisions of this section.

~~(7)~~*(9)* After mediation pursuant to department rules, ~~disputes~~ *an unresolved dispute* between an insurer and a medical service provider regarding the amount of a fee for medical services ~~must~~ *may* be ~~resolved by a hearing before the department upon written application of a party to the dispute~~ *brought before the workers' compensation court*.

~~(8)~~*(10)* (a) After the initial visit, the worker is responsible for $25 of the cost of each subsequent visit to a hospital emergency department for treatment relating to a compensable injury or occupational disease.

(b) "Visit", as used in this subsection ~~(8)~~ *(10)*, means each time that the worker obtains services relating to a compensable injury or occupational disease from:

(i) a treating physician;

(ii) a physical therapist;

(iii) a psychologist; or

(iv) hospital outpatient services available in a nonhospital setting.

(c) A worker is not responsible for the cost of a subsequent visit pursuant to subsection ~~(8)(a)~~ *(10)(a)* if the visit is for treatment requested by an insurer."

Section 17. Section 39-71-711, MCA, is amended to read:

"39-71-711. Impairment evaluation — ratings. (1) An impairment rating:

(a) is a purely medical determination and must be determined by an impairment evaluator after a claimant has reached maximum healing;

(b) must be based on the current edition of the Guides to Evaluation of Permanent Impairment published by the American medical association;

(c) must be expressed as a percentage of the whole person; and

(d) must be established by objective medical findings.

(2) A claimant or insurer, or both, may obtain an impairment rating from an evaluator ~~who is a~~ *if the injury falls within the scope of the evaluator's practice and if the evaluator is one of the following:*

(a) a physician or an osteopath licensed under Title 37, chapter 3, with admitting privileges to practice in one or more hospitals, if any, in the area where the physician or osteopath is located;

(b) a chiropractor licensed under Title 37, chapter 12;

(c) a physician assistant licensed under Title 37, chapter 20, if there is not a physician as provided for in subsection (2)(a) in the area where the physician assistant is located;

(d) a dentist licensed under Title 37, chapter 4;

(e) an advanced practice registered nurse licensed under Title 37, chapter 8; or

(f) for a claimant residing out of state or upon approval of the insurer, an evaluator referred to in subsections (2)(a) through (2)(e) who is licensed or certified in another state. ~~medical doctor or from an evaluator who is a chiropractor if the injury falls within the scope of chiropractic practice.~~

(3) If the claimant and insurer cannot agree upon the rating, the mediation procedure in *Title 39, chapter 71,* part 24, ~~of this chapter~~ must be followed.

~~(3) An evaluator must be a physician licensed under Title 37, chapter 3, except if the claimant's treating physician is a chiropractor, the evaluator may be a chiropractor who is certified as an evaluator under chapter 12.~~

~~(4)~~*(4)* Disputes over impairment ratings are subject to the provisions of 39-71-605."

Section 18. Section 39-71-712, MCA, is amended to read:

"39-71-712. Temporary partial disability benefits. (1) Subject to the provisions of subsection ~~(6)~~ *(5)*, if prior to maximum healing an injured worker has a physical restriction and is approved to return to a modified or alternative employment that the worker is able and qualified to perform and the worker suffers an actual wage loss as a result of a temporary work restriction, the worker qualifies for temporary partial disability benefits.

(2) An insurer's liability for temporary partial disability must be the difference between the injured worker's average weekly wage received at the time of the injury, subject to a maximum of 40 hours a week, and the actual weekly wages earned during the period that the claimant is temporarily partially disabled, not to exceed the injured worker's temporary total disability benefit rate.

~~(3) Temporary partial disability benefits are limited to a total of 26 weeks. The insurer may extend the period of temporary partial disability payments.~~

~~(4)~~*(3)* Except as provided in subsection ~~(6)~~ *(5)*, a worker is not eligible for temporary partial disability benefits or temporary total disability benefits if:

(a) the worker has been released by the treating physician to return to a modified or alternative position that the individual is able and qualified to perform with the same employer;

(b) the wages payable in the modified or alternative position, when combined with the temporary partial disability benefits, would result in an equivalent or higher wage than the worker received at the time of injury; and

(c) the worker refuses to accept the modified or alternative position. A worker requalifies for temporary total disability benefits if the modified or alternative position is no longer available to the worker for any reason except for the worker's incarceration as provided for in 39-71-744, resignation, or termination for disciplinary reasons caused by a violation of the employer's policies that provide for termination of employment and if the worker continues to be temporarily totally disabled as defined in 39-71-116.

~~(5)~~*(4)* Temporary partial disability may not be credited against any permanent partial disability award or settlement under 39-71-703.

~~(6)~~*(5)* Unless a collective bargaining agreement precludes an injured worker from working in a modified or alternative position with a different employer or includes criteria different from those outlined in this subsection ~~(6)~~ *(5)*, an injured worker who has not reached maximum healing and who has a physical restriction may return to a modified or alternative position with a different employer at the same or a lower rate of wages as the rate paid by the employer at the time of injury if:

(a) a modified or alternative employment with the employer at the time of injury is not provided and the injured worker and that employer agree to the modified or alternative position with a different employer;

(b) a written description and all required duties of the modified or alternative position with a different employer are approved by the treating physician;

(c) both the employer at the time of injury and the injured worker agree to the type of alternative work, the alternative employer, and the terms and conditions of employment, including payment of benefits and employment taxes for the modified or alternative position with a different employer;

(d) an employee is not displaced as a result of the injured worker's placement in the modified or alternative position with a different employer; and

(e) the employer at the time of injury, the different employer, and the injured worker agree in writing to the terms and conditions, including payment of benefits, covering the injured worker for subsequent injury, unemployment insurance, employment taxes, and liability and provide a copy of the agreement to the injured employee.

~~(7)~~*(6)* Any additional expenses related to the modified or alternative position, including travel, equipment, or training, must be paid by either the employer at the time of injury or the different employer and may not be charged to or deducted from the wages or benefits of the injured employee.

~~(8)~~*(7)* Notwithstanding a written agreement between the employer at the time of injury and a different employer, the employer at the time of injury is the primary employer if a dispute over wages, benefits, employment taxes, workers' compensation insurance, or other terms or conditions of employment occurs.

~~(9)~~*(8)* The injured worker may refuse to accept a modified or alternative position with an employer other than the employer at the time of injury without penalty. If the injured worker is offered a modified or alternative position with a different employer, the injured worker must be given written notice of the right of refusal from the employer at the time of injury and the insurer prior to beginning work with the different employer."

Section 19. Section 39-71-727, MCA, is amended to read:

"39-71-727. Payment for prescription drugs — limitations. (1) For payment of prescription drugs, an insurer is liable only for the purchase of

generic-name drugs if the generic-name product is the therapeutic equivalent of the brand-name drug prescribed by the physician, unless the generic-name drug is unavailable.

(2) If an injured worker prefers a brand-name drug, the worker may pay directly to the pharmacist the difference in the reimbursement rate between the brand-name drug and the generic-name product, and the pharmacist may bill the insurer only for the reimbursement rate of the generic-name drug.

(3) The pharmacist may bill only for the cost of the generic-name product on a signed itemized billing, except if purchase of the brand-name drug is allowed as provided in subsection (1).

(4) When billing for a brand-name drug, the pharmacist shall certify that the generic-name drug was unavailable.

(5) The department shall establish ~~annually~~ a schedule of fees for prescription drugs.

(6) ~~The~~ *Except as provided in subsection (8), a* pharmacist may not dispense more than a 30-day supply at any one time.

(7) For purposes of this section, the terms "brand name" and "generic name" have the meanings provided in 37-7-502.

(8) An insurer may not require a worker receiving benefits under this chapter to obtain medications from an out-of-state mail service pharmacy. *However, an insurer may authorize up to a 90-day supply of medications from an in-state mail service pharmacy.*

(9) The provisions of this section do not apply to an agreement between a preferred provider organization and an insurer."

Section 20. Section 39-71-743, MCA, is amended to read:

"39-71-743. Assignment or attachment of payments. (1) Payments under this chapter ~~may~~ *are* not ~~be~~ assignable, subject to attachment or garnishment, or held liable in any way for debts, except:

(a) as provided in 71-3-1118;

(b) a portion of any lump-sum award or periodic payment to pay a monetary obligation for current or past-due child support, subject to the limitations in subsection (2), whenever the support obligation is established by order of a court of competent jurisdiction or by order rendered in an administrative process authorized by state law;

(c) as provided in 53-2-612 or 53-2-613 for medical benefits paid pursuant to this chapter;

(d) as provided in 39-71-742; or

(e) for workers' compensation benefits payable to an injured worker to pay restitution to an insurer whenever the injured worker is subject to court-ordered restitution for theft of workers' compensation benefits. The insurer shall notify the injured worker in writing of the withholding of any court-ordered restitution from the injured worker's benefits.

(2) Payments under this chapter are subject to assignment, attachment, or garnishment for child support as follows:

(a) for any periodic payment, an amount up to the percentage amount established in the guidelines promulgated by the department of public health and human services pursuant to 40-5-209; or

(b) for any lump-sum award, an amount up to that portion of the award that is necessary to pay current child support and a past-due child support obligation.

(3) After determination that the claim is covered under the Workers' Compensation Act, the liability for payment of the claim is the responsibility of the appropriate workers' compensation insurer. Except as provided in ~~39-71-704(8)~~ *39-71-704(10)*, a fee or charge is not payable by the injured worker for treatment of injuries sustained if liability is accepted by the insurer."

Section 21. Section 39-71-905, MCA, is amended to read:

"39-71-905. Certification as person with disability — eligibility for benefits under fund. (1) A person who wishes to be certified as a person with a disability for purposes of this part shall apply to the department on forms furnished by the department. The department shall conduct an investigation and shall issue a certificate to a person who, in the department's discretion, meets the requirements for certification. A person shall apply for certification ~~before employment or within 60 days after the person becomes employed or reemployed and~~ before an injury occurs that is covered by this part. The certification is effective ~~on the date of employment or reemployment. Certification is effective on the date the application is approved for a person who applies for certification more than 60 days after employment or reemployment, but before an injury occurs~~ *retroactively to the date the department received the application*.

(2) If a claimant has met the provisions of subsection (1) and a subsequent claim has been accepted by an insurer, the claim is eligible for the benefits under the fund."

Section 22. Section 39-71-915, MCA, is amended to read:

"39-71-915. Assessment of insurer — employers — definition — collection. (1) As used in this section, "paid losses" means the following benefits paid during the preceding calendar year for injuries covered by the Workers' Compensation Act without regard to the application of any deductible, regardless of whether the employer or the insurer pays the losses:

(a) total compensation benefits paid; and

(b) except for medical benefits in excess of $200,000 for each occurrence that are exempt from assessment, total medical benefits paid for medical treatment rendered to an injured worker, including hospital treatment and prescription drugs.

(2) The fund must be maintained by assessing each plan No. 1 employer, each employer insured by a plan No. 2 insurer, plan No. 3, the state fund, with respect to claims arising before July 1, 1990, and each employer insured by plan No. 3, the state fund. The assessment amount is the total amount paid by the fund in the preceding fiscal year and the expenses of administration less other realized income that is deposited in the fund. The total assessment amount to be collected must be allocated among plan No. 1 employers, plan No. 2 employers, plan No. 3, the state fund, and plan No. 3 employers, based on a proportionate share of paid losses for the calendar year preceding the year in which the assessment is collected. The board of investments shall invest the money of the fund, and the investment income must be deposited in the fund.

(3) On or before May 31 each year, the department shall notify each plan No. 1 employer, plan No. 2 insurer, and plan No. 3, the state fund, of the amount to be assessed for the ensuing fiscal year. The amount to be assessed against the

state fund must separately identify the amount attributed to claims arising before July 1, 1990, and the amount attributable to state fund claims arising on or after July 1, 1990. On or before April 30 each year, the department, in consultation with the advisory organization designated under 33-16-1023, shall notify plan No. 2 insurers and plan No. 3 of the premium surcharge rate to be effective for policies written or renewed on and after July 1 in that year.

(4) The portion of the plan No. 1 assessment assessed against an individual plan No. 1 employer is a proportionate amount of total plan No. 1 paid losses during the preceding calendar year that is equal to the percentage that the total paid losses of the individual plan No. 1 employer bore to the total paid losses of all plan No. 1 employers during the preceding calendar year.

(5) The portion of the assessment attributable to state fund claims arising before July 1, 1990, is the proportionate amount that is equal to the percentage that total paid losses for those claims during the preceding calendar year bore to the total paid losses for all plans in the preceding calendar year. As required by 39-71-2352, the state fund may not pass along to insured employers the cost of the subsequent injury fund assessment that is attributable to claims arising before July 1, 1990.

(6) The remaining portion of the assessment must be paid by way of a surcharge on premiums paid by employers being insured by a plan No. 2 insurer or plan No. 3, the state fund, for policies written or renewed annually on or after July 1. The surcharge rate must be computed by dividing the remaining portion of the assessment by the total amount of premiums paid by employers insured under plan No. 2 or plan No. 3 in the previous calendar year. The numerator for the calculation must be adjusted as provided by subsection (9).

(7) Each plan No. 2 insurer providing workers' compensation insurance and plan No. 3, the state fund, shall collect from its policyholders the assessment premium surcharge provided for in subsection (6). When collected, the assessment premium surcharge may not constitute an element of loss for the purpose of establishing rates for workers' compensation insurance but, for the purpose of collection, must be treated as separate costs imposed upon insured employers. The total of this assessment premium surcharge must be stated as a separate cost on an insured employer's policy or on a separate document submitted by the insured employer and must be identified as "workers' compensation subsequent injury fund surcharge". Each assessment premium surcharge must be shown as a percentage of the total workers' compensation policyholder premium. This assessment premium surcharge must be collected at the same time and in the same manner that the premium for the coverage is collected. The assessment premium surcharge must be excluded from the definition of premiums for all purposes, including computation of insurance producers' commissions or premium taxes, except that an insurer may cancel a workers' compensation policy for nonpayment of the assessment premium surcharge. Cancellation must be in accordance with the procedures applicable to the nonpayment of premium. If an employer fails to remit to an insurer the total amount due for the premium and assessment premium surcharge, the amount received by the insurer must be applied to the assessment premium surcharge first and the remaining amount applied to the premium due.

(8) (a) All assessments paid to the department must be deposited in the fund.

(b) Each plan No. 1 employer shall pay its assessment by July 1.

(c) Each plan No. 2 insurer and plan No. 3, the state fund, shall remit to the department all assessment premium surcharges collected during a calendar quarter by not later than 20 days following the end of the quarter.

(d) The state fund shall pay the portion of the assessment attributable to claims arising before July 1, 1990, by July 1.

(e) If a plan No. 1 employer, a plan No. 2 insurer, or plan No. 3, the state fund, fails to timely pay to the department the assessment or assessment premium surcharge under this section, the department may impose on the plan No. 1 employer, the plan No. 2 insurer, or plan No. 3, the state fund, an administrative fine of $100 plus interest on the delinquent amount at the annual interest rate of 12%. Administrative fines and interest must be deposited in the fund.

(9) The amount of the assessment premium surcharge actually collected pursuant to subsection (7) must be compared each year to the amount assessed and upon which the premium surcharge was calculated. The amount undercollected or overcollected in any given year must be used as an adjustment to the numerator provided for by subsection (6) for the following year's assessment premium surcharge.

(10) If the total assessment is less than ~~$500,000~~ *$1 million* for any year, the department may defer the assessment amount for that year and add that amount to the assessment amount for the subsequent year."

Section 23. Section 39-71-2339, MCA, is amended to read:

"39-71-2339. Cancellation of coverage — twenty days' notice required. (1) The state fund may cancel an employer's coverage under this part for failure to report payroll or pay the premiums due or for another cause provided in the insurance policy. Cancellation may take effect only by written notice to the named insured and the department at least 20 days prior to the date of cancellation or, in cases of nonreporting of payroll or nonpayment of a premium, by failure of the employer to submit payroll reports or pay a premium within 20 days after the due date. The state fund shall notify the department of the names and effective dates of all policies canceled. However, the policy terminates on the effective date of a replacement or succeeding insurance policy issued to the insured. This section does not prevent the state fund from canceling an insurance policy before a replacement policy is issued to the insured. After the cancellation date, the employer has the same status as an employer who is not enrolled under the Workers' Compensation Act unless a replacement or succeeding insurance policy has been issued. ~~Beginning January 1, 2006, notice~~ *Notice* to the department under this section must be provided electronically.

(2) The department:

(a) may recognize the advisory organization designated under 33-16-1023 or recognize other organizations as agents for the state fund; and

(b) shall, under terms and conditions acceptable to the department, accept notice of cancellation received from the agents recognized under subsection (2)(a) as the state fund's notice of cancellation.

(3) (a) The department may assess a penalty of up to $200 against the state fund if it does not comply with the notice requirement in subsection (1).

(b) The penalty may be assessed for each policy cancellation that is not reported to the department in a timely manner.

~~(b)~~*(c)* The state fund may contest the penalty assessment in a hearing conducted according to department rules."

Section 24. Section 39-71-2905, MCA, is amended to read:

"39-71-2905. Petition to workers' compensation judge — time limit on filing. (1) ~~A~~ *If a* claimant*,* ~~or~~ an insurer ~~who~~*, an employer alleged to be an uninsured employer, or the uninsured employers' fund* has a dispute concerning any benefits under *this* chapter*,* ~~71 of this title~~ *it* may petition the workers' compensation judge for a determination of the dispute after satisfying dispute resolution requirements otherwise provided in this chapter. In addition, the district court that has jurisdiction over a pending action under 39-71-515 may request the workers' compensation judge to determine the amount of recoverable damages due to the employee. The judge, after a hearing, shall make a determination of the dispute in accordance with the law as set forth in *this* chapter ~~71 of this title~~. If the dispute relates to benefits due to a claimant under *this* chapter ~~71~~, the judge shall fix and determine any benefits to be paid and specify the manner of payment. After parties have satisfied dispute resolution requirements provided elsewhere in this chapter, the workers' compensation judge has exclusive jurisdiction to make determinations concerning disputes under *this* chapter ~~71~~, except as provided in 39-71-317 and 39-71-516. The penalties and assessments allowed against an insurer under *this* chapter ~~71~~ are the exclusive penalties and assessments that can be assessed by the workers' compensation judge against an insurer for disputes arising under *this* chapter ~~71~~.

(2) A petition for *a* hearing before the workers' compensation judge must be filed within 2 years after benefits are denied."

Section 25. Section 39-73-104, MCA, is amended to read:

"39-73-104. Eligibility requirements for benefits. Payment must be made under this chapter to any person who:

(1) has silicosis, as defined in 39-73-101, that results in the person's total disability so as to render it impossible for the person to follow continuously any substantially gainful occupation;

(2) has resided in and been an inhabitant of the state of Montana for 10 years or more immediately preceding the date of the application;

(3) is not receiving, with respect to any month for which the person would receive a payment under this chapter, compensation under ~~39-71-115~~ *39-71-715* equal to the sum of $350."

Section 26. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

Section 27. Codification instructions. (1) [Section 1] is intended to be codified as an integral part of Title 39, chapter 71, part 4, and the provisions of Title 39, chapter 71, part 4, apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 39, chapter 71, part 21, and the provisions of Title 39, chapter 71, part 21, apply to [section 2].

(3) [Section 3] is intended to be codified as an integral part of Title 39, chapter 71, part 5, and the provisions of Title 39, chapter 71, part 5, apply to [section 3].

Section 28. Saving clause. Except as provided in [section 30], [this act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 29. Effective dates. (1) Except as provided in subsection (2), [this act] is effective July 1, 2009.

(2) [Sections 3, 11, 12, 15, 16, 24, 26 through 28, and 30 and this section] are effective on passage and approval.

Section 30. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to liens filed by the department of labor and industry on judgments issued against uninsured employers prior to [the effective date of this act] and to actions pending within the department of labor and industry or the workers' compensation court on [the effective date of this act] regarding benefit disputes and penalty disputes as provided in [sections 3, 12, and 24].

Approved April 1, 2009

CHAPTER NO. 113

[HB 129]

AN ACT CLARIFYING THAT POLITICAL SUBDIVISIONS MAY ADOPT FEDERAL FLOOD PLAIN MAPS TO COMPLY WITH THE NATIONAL FLOOD INSURANCE PROGRAM; AMENDING SECTIONS 76-5-103 AND 76-5-201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 76-5-103, MCA, is amended to read:

"76-5-103. Definitions. As used in parts 1 through 4 of this chapter, unless the context otherwise requires, the following definitions apply:

(1) "Artificial obstruction" means any obstruction that is not a natural obstruction and includes any dam, wall, riprap, embankment, levee, dike, pile, abutment, projection, revetment, excavation, channel rectification, bridge, conduit, culvert, building, refuse, automobile body, fill, or other analogous structure or matter in, along, across, or projecting into any flood plain or floodway that may impede, retard, or change the direction of the flow of water, either in itself or by catching or collecting debris carried by the water, or that is placed where the natural flow of the water would carry the same downstream to the damage or detriment of either life or property.

(2) "Channel" means the geographical area within either the natural or artificial banks of a watercourse or drainway.

(3) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(4) "Designated flood plain" means a flood plain whose limits have been designated ~~and established by order of the department~~ *pursuant to part 2 of this chapter*.

(5) "Designated floodway" means a floodway whose limits have been designated ~~and established by order of the department~~ *pursuant to part 2 of this chapter*.

(6) "Drainway" means any depression 2 feet or more below the surrounding land serving to give direction to a current of water less than 9 months of the year and having a bed and well-defined banks.

(7) "Establish" means construct, place, insert, or excavate.

(8) "Flood" means the water of any watercourse or drainway that is above the bank or outside the channel and banks of the watercourse or drainway.

(9) "Flood of 100-year frequency" means a flood magnitude expected to recur on the average of once every 100 years or a flood magnitude that has a 1% chance of occurring in any given year.

(10) "Flood plain" means the area adjoining the watercourse or drainway that would be covered by the floodwater of a flood of 100-year frequency, except for sheetflood areas that receive less than 1 foot of water per occurrence and are considered "zone B" by the federal emergency management agency.

(11) "Floodway" means the channel of a watercourse or drainway and those portions of the flood plain adjoining the channel that are reasonably required to carry and discharge the floodwater of any watercourse or drainway.

(12) "Natural obstruction" means any rock, tree, gravel, or analogous natural matter that is an obstruction and has been located within the flood plain or floodway by a nonhuman cause.

(13) "Owner" means any person who has dominion over, control of, or title to an obstruction.

(14) "Political subdivision" means any incorporated city or town or any county organized and having authority to adopt and enforce land use regulations.

(15) "Responsible political subdivision" means a political subdivision that has enacted land use regulations in accordance with parts 1 through 4.

(16) (a) "Watercourse" means any depression 2 feet or more below the surrounding land serving to give direction to a current of water at least 9 months of the year and having a bed and well-defined banks.

(b) Upon order of the department, the term also includes any particular depression that would not otherwise be within the definition of watercourse."

Section 2. Section 76-5-201, MCA, is amended to read:

"76-5-201. Program for delineation of flood plains and floodways. (1) The department shall initiate a comprehensive program for the delineation of designated flood plains and designated floodways for each watercourse and drainway in the state. It shall make a study relating to the acquiring of flood data and may enter into arrangements with the United States geological survey, the United States army corps of engineers, or any other state or federal agency for the acquisition of data.

(2) Before the department establishes by order a designated flood plain or a designated floodway, the department shall consult with the affected political subdivisions. Consultation must include but is not limited to the following:

(a) specifically requesting that the political subdivisions submit pertinent data concerning flood hazards, including flooding experiences, plans to avoid potential hazards, estimates of economic impacts of flooding on the community, both historical and prospective, and other data that is considered appropriate;

(b) notifying local officials, including members of the county commission, city council, and planning board, of the progress of surveys, studies, and investigations and of proposed findings, along with information concerning data and methods employed in reaching conclusions; and

(c) encouraging local dissemination of information concerning surveys, studies, and investigations so that interested persons will have an opportunity to bring relevant data to the attention of the department.

(3) Nothing in this part precludes a political subdivision from designating by ordinance or resolution, without prior state designation, flood plains and

floodways as designated by the United States federal emergency management agency and as necessary for compliance with the national flood insurance program if the department determines the designation is in compliance with parts 1 through 4 of this chapter."

Section 3. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 4. Effective date. [This act] is effective on passage and approval.

Approved April 1, 2009

CHAPTER NO. 114

[HB 137]

AN ACT REVISING LICENSE BENEFITS FOR LANDOWNERS ENROLLED IN THE HUNTER MANAGEMENT PROGRAM; ALLOWING EMPLOYEES OF LANDOWNERS TO RECEIVE THE FREE BIG GAME COMBINATION LICENSE ALLOTTED TO THE LANDOWNER; DEFINING "EMPLOYEE"; DELETING THE REQUIREMENT THAT THE COST OF A FREE LICENSE RECEIVED BY A LANDOWNER BE DEDUCTED FROM COMPENSATION PAID; AMENDING SECTION 87-1-266, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-1-266, MCA, is amended to read:

"87-1-266. Hunter management program — benefits for providing hunting access — nonresident landowner limitation — restriction on landowner liability. (1) As provided in 87-1-265, the department may establish a voluntary hunter management program to provide tangible benefits to private landowners enrolled in the block management program who grant access to their land for public hunting. The decision to enroll a landowner in the hunter management program is the responsibility of the department. Benefits may be granted as provided in this section and by rule.

(2) As a benefit for enrolling property in the hunter management program, a resident landowner who becomes a cooperator in the program and who agrees to provide public hunting access may receive one Class AAA combination sports license, without charge, if the landowner is the owner of record. The license may be used for the full hunting or fishing season in any district where it is valid. The license may not be transferred by gift or sale.

(3) As a benefit for enrolling property in the hunter management program, a nonresident landowner who becomes a cooperator in the program and who agrees to provide public hunting access may receive one Class B-10 nonresident big game combination license, without charge, if the landowner is the owner of record. The license may be used for the full hunting or fishing season in any district where it is valid. The license may not be transferred by gift or sale. The grant of a license under this subsection also qualifies the licensee to apply for a permit through the normal drawing process. The grant of a license under this subsection does not affect the limits established under 87-1-268 and 87-2-505.

(4) (a) Instead of receiving the benefits provided in subsection (2) or (3), a landowner of record who becomes a cooperator in the hunter management program and who agrees to provide public hunting access may designate an immediate family member to receive a Class AAA combination sports license,

without charge, if the family member is a resident or a Class B-10 nonresident big game combination license, without charge, if the family member is a nonresident. *An employee rather than a family member may be designated to receive a license.*

(b) For purposes of this subsection (4), an immediate family member means a parent, grandparent, child, or grandchild of the cooperator *by blood or marriage,* ~~and~~ *a* spouse*,* ~~and includes~~ *a* legally adopted ~~children and~~ *child, a sibling of* the ~~cooperator's~~ *cooperator or spouse,* ~~and spouse's siblings and siblings' children~~ *or a niece or nephew*.

~~(c) If a cooperator elects to designate an immediate family member to receive a license pursuant to this subsection (4), the cost of the license must be deducted from hunter management program compensation paid to the cooperator.~~

(c) For purposes of this subsection (4), the term "employee" means a person who works full time and year-round for the landowner as part of an active farm or ranch operation.

(d) An immediate family member *or employee* who is designated to receive a license pursuant to this subsection (4) must be eligible for licensure under current Montana law and may not transfer the license by gift or sale.

(e) The grant of a Class B-10 nonresident big game combination license to an immediate family member *or employee* pursuant to this subsection (4) does not affect the limits established in 87-1-268 and 87-2-505.

(5) Any landowner who is enrolled in the block management program may receive the benefits provided under the hunter management program, as outlined in this section, and the benefits provided under the hunting access enhancement program, as outlined in 87-1-267.

(6) The restriction on liability of a landowner, agent, or tenant that is provided under 70-16-302(1) applies to a landowner who participates in the hunter management program."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 1, 2009

CHAPTER NO. 115

[HB 139]

AN ACT ALLOWING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO INTERVENE IN LITIGATION OR APPEALS ON FEDERAL FOREST MANAGEMENT PROJECTS IF THE DEPARTMENT DETERMINES THERE IS A SIGNIFICANT THREAT TO PUBLIC HEALTH AND SAFETY; AMENDING SECTION 76-13-702, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 76-13-702, MCA, is amended to read:

"76-13-702. Duties — authority. To implement the policy of 76-13-701, the department of natural resources and conservation:

(1) shall support sustainable forest management practices, including forest restoration, on public forests in Montana consistent with all applicable laws and administrative requirements;

(2) shall provide technical information and educational assistance to nonindustrial, private forest landowners;

(3) shall promote forest management activities within and adjacent to the wildland-urban interface and promote the implementation of community wildfire protection plans;

(4) shall promote a viable forest and wood products industry and other businesses and individual activities that rely on public forest lands;

(5) shall represent the state's interest in the federal forest management planning and policy process, including establishing cooperative agency status with federal agencies;

(6) shall promote the development of an independent, long-term sustained yield calculation on Montana's federal forests;

(7) has the authority to intervene in litigation or appeals on federal forest management projects that*:*

(a) comply with the policy in 76-13-701 and in which local and state interests are clearly involved; *or*

(b) involve fuel-loading conditions that the department considers to be a significant threat to public health and safety;

(8) has the authority to enter into agreements with federal agencies to participate in forest management activities on federal lands; and

(9) shall participate in and facilitate collaboration between traditional forest interests in reaching consensus-based solutions on federal land management issues."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 1, 2009

CHAPTER NO. 116

[HB 140]

AN ACT INCREASING THE AMOUNT BY WHICH THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION MAY EXCEED THE ANNUAL SUSTAINED HARVEST LEVEL USING CONTRACT HARVESTING IF THE DEPARTMENT IS ADDRESSING FOREST HEALTH CONCERNS; AMENDING SECTION 77-5-216, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 77-5-216, MCA, is amended to read:

"77-5-216. Contract harvesting authorized. (1) Under direction of the board and after submitting the various portions of the sale for bid, as described in 77-5-201, the department is authorized to sell timber and forest products from contract harvesting sales through the competitive bidding process pursuant to 77-5-201(1) and (2) and to contract with firms and individuals for the removal of timber and forest products from state trust lands, the preparation of those materials into merchantable form, the transportation of those materials to a point of sale, and other purposes that the department determines to be necessary.

(2) Except as provided in subsection (3), the department may not conduct contract harvesting on state trust lands in an amount greater than 10% of the annual sustained yield.

(3) If the department is addressing forest health concerns as provided in 77-5-217, the department may exceed the annual sustained harvest level by up to ~~5%~~ *10%* using contract harvesting, provided that the contract harvest volume in excess of the annual sustained harvest level contains no more than 25% merchantable sawlog volume."

Section 2. Federal funding for forest health concerns — authorized expenditure. (1) There is an account in the federal special revenue fund into which must be deposited specific federal appropriations intended to address forest health concerns.

(2) The funds in the account may be used for the purposes of 77-5-216.

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 1, 2009

CHAPTER NO. 117

[HB 153]

AN ACT REVISING THE VOLUNTARY CLEANUP AND REDEVELOPMENT ACT; REVISING PROCEDURES GOVERNING APPLICATION FOR AND REVIEW OF VOLUNTARY CLEANUP PLANS; REVISING REIMBURSEMENT AND DISCLOSURE PROVISIONS; AND AMENDING SECTIONS 75-10-733, 75-10-735, AND 75-10-736, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-10-733, MCA, is amended to read:

"75-10-733. Voluntary cleanup plan and reimbursement of remedial action costs. (1) Any person may submit an application for the approval of a voluntary cleanup plan to the department under the provisions of this section.

(2) A voluntary cleanup plan must include:

(a) an environmental assessment of the facility that includes the information required in 75-10-734;

(b) a remediation proposal that includes the information required in 75-10-734 and that meets the requirements of 75-10-721; and

(c) the written consent of current owners of the facility or property to both the implementation of the voluntary cleanup plan and access to the facility by the applicant and its agents and the department.

(3) *(a)* The applicant shall reimburse the department for any remedial action costs that the state incurs in the review and oversight of a voluntary cleanup plan.

(b) If the applicant does not reimburse the department for its remedial action costs in the time required under 75-10-722, the department may discontinue the review or approval process of the voluntary cleanup plan or void its approval of the voluntary cleanup plan. The department may also take action to recover its outstanding costs.

(4) The department may approve a voluntary cleanup plan that provides for phases of remediation or that addresses only a portion of the facility. To the extent that the original environmental assessment required under 75-10-734 addresses subsequent phases of remediation, the applicant may rely on that assessment when submitting voluntary cleanup plans for subsequent phases of remediation."

Section 2. Section 75-10-735, MCA, is amended to read:

"75-10-735. Public participation. (1) Upon determination by the department that an application for a voluntary cleanup plan is complete pursuant to 75-10-736(1) *and (2)*, the department shall publish a notice and brief analysis of the proposed plan in a daily newspaper of general circulation in the area affected and make the plan available to the public.

(2) The notice must provide 30 days for submission of written comments to the department regarding the plan. Upon written request by 10 or more persons, by a group composed of 10 or more members, or by a local governing body of a city, town, or county within the comment period, the department shall conduct a public meeting at or near the facility regarding the proposed voluntary cleanup plan. The meeting must be held within 45 days of *the date that written notice of* the department's completeness determination *is provided to the applicant* under ~~75-10-736(1)~~ *75-10-736(2).*

(3) The department shall consider and respond to relevant written or verbal comments submitted during the comment period or at the public meeting.

(4) The department's decision on the final plan and the reasons for any significant modification of the final plan must be published in accordance with subsection (1).

(5) Compliance with this section is considered to satisfy the public participation requirements of Title 75, chapter 1."

Section 3. Section 75-10-736, MCA, is amended to read:

"75-10-736. Approval of voluntary cleanup plan — time limits — content of notice — expiration of approval. (1) The department shall review for completeness, including adequacy and accuracy, *in accordance with the requirements of 75-10-734, the environmental assessment component of* ~~an application for~~ a voluntary cleanup plan and shall provide a written completeness notice to the applicant ~~within 30 days after receipt of an application for a plan that would take 24 months or less to complete and within 60 days for a plan that would take more than 24 months to complete~~ *within 30 days of receipt*. The completeness notice must note all deficiencies identified in the information submitted.

(2) Once the department determines that the environmental assessment component of a voluntary cleanup plan is complete, the applicant may submit the remediation proposal component. The department shall review the remediation proposal for completeness, including adequacy and accuracy, in accordance with the requirements of 75-10-734, and shall provide a written completeness notice to the applicant within 30 days of receipt. The completeness notice must note all deficiencies identified in the information submitted.

~~(2)~~*(3)* ~~For~~ *Once the department determines that the application for* a voluntary cleanup plan ~~that~~ is ~~considered~~ complete ~~by the department~~ pursuant to ~~subsection~~ *subsections* (1) *and (2)*, the department shall provide formal written notification *of approval or disapproval* ~~that the voluntary cleanup plan has been approved or disapproved no more than~~ *within* 60 days ~~for a plan that would take 24 months or less to complete and within 75 days for a plan that would take more than 24 months to complete after the department's determination that an application is complete,~~ unless the applicant and the department agree to an extension of the review to a date certain. The review must be limited to a review of the materials submitted by the applicant, public comments, and documents or information readily available to the department. The department shall communicate with the applicant during the review period

to ensure that the applicant has the opportunity to address the public comments.

~~(3)~~*(4)* (a) If the department receives five applications for review of *either component of* a voluntary cleanup plan in a calendar month, including applications deferred from prior months, the department may notify any additional applicants in that month that their plans must be reviewed in the order received. The ~~30-day~~ *60-day* period for department completeness review of deferred applications ~~pursuant to subsection (1)~~ must begin on the first day of the subsequent month that each plan is eligible for review.

(b) The department shall discontinue accepting *either component of* voluntary cleanup applications when 15 applications are pending and are being reviewed by the department. The department shall establish a waiting list for applications and shall consider the applications in order of submittal.

(c) If the department has received multiple ~~cleanup~~ applications for a voluntary cleanup at the same facility, the department shall notify all of the applicants and offer them the opportunity to submit a joint application.

~~(4)~~*(5)* Consistent with the provisions of 75-10-707, the department may access the facility during review of *either component of* the application and implementation of the voluntary cleanup plan to confirm information provided by the applicant and verify that the cleanup is being conducted consistent with the approved plan.

~~(5)~~*(6)* The department shall approve a voluntary cleanup plan if the department concludes that the plan meets the requirements specified in 75-10-734 and will attain a degree of cleanup and control of hazardous or deleterious substances that complies with the requirements of 75-10-721. Except for the period necessary for the operation and maintenance of the approved remediation proposal, the department may not approve a voluntary remediation proposal that would take longer than 60 months after department approval to complete.

~~(6)~~*(7)* If a voluntary cleanup plan is not approved by the department, the department shall promptly provide the applicant with a written statement of the reasons for denial. The denial may be appealed to the board of environmental review in accordance with the provisions of 75-10-732(4).

~~(7)~~*(8)* The approval of a voluntary cleanup plan by the department applies only to conditions at the facility that are known to the department at the time of department approval. If a voluntary remediation proposal is not initiated within 12 months and, except for the period necessary for the operation and maintenance of the approved remediation proposal, is not completed within 60 months after approval by the department, the department's approval lapses. However, the department may grant an extension of the time limit for completion of the voluntary cleanup plan.

~~(8)~~*(9)* If ~~reasonably unforeseeable~~ conditions are discovered during implementation of a voluntary cleanup plan that *were not identified in the environmental assessment component pursuant to subsection (1),* ~~substantially~~ affect the risk to public health, safety, or welfare or the environment ~~or~~*, and* ~~substantially~~ change the scope of the approved plan, the applicant shall ~~promptly~~ notify the department *within 10 days of discovery*. The department may require the applicant to submit an amendment to the approved plan to address the ~~unforeseen~~ conditions or may determine that a voluntary cleanup plan is no longer appropriate pursuant to 75-10-732(3).

~~(9) Written notification by the department that a voluntary cleanup plan is not approved must state the basis for disapproval of the voluntary cleanup plan.~~

(10) *Departmental approval is void if the applicant or the applicant's agents:*

(a) ~~Failure of the applicant or the applicant's agents~~ *fail* to materially comply with the voluntary cleanup plan ~~approved by the department pursuant to this section renders the approval void.~~*;*

(b) ~~Submission of~~ *submit* materially misleading information ~~by the applicant or the applicant's agents~~ in the application or during implementation of the voluntary cleanup plan ~~renders the department approval void.~~*; or*

(c) fail to report any newly discovered information to the department during the application process or implementation of the voluntary cleanup plan regarding releases or threatened releases of hazardous or deleterious substances within 10 days of discovery of that information.

(11) Within 60 days after completion of the approved remediation proposal described in the voluntary cleanup plan approved by the department, the applicant shall provide to the department a certification from a qualified environmental professional that the plan has been fully implemented, including all documentation necessary to demonstrate the successful implementation of the plan, such as confirmation sampling, if necessary.

(12) Except as provided in 75-10-738(2)(b), the department may not require financial assurance under this part for voluntary cleanup plans approved under this section.

(13) If a person who would otherwise not be a liable person under 75-10-715(1) elects to undertake an approved voluntary cleanup plan, the person may not become a liable person under 75-10-715(1) by undertaking a voluntary cleanup if the person materially complies with the voluntary cleanup plan approved by the department pursuant to this section.

(14) Immunity from liability under this section does not apply to a release that is caused by conduct that is negligent or grossly negligent or that constitutes intentional misconduct."

Approved April 1, 2009

CHAPTER NO. 118

[HB 179]

AN ACT REVISING THE DEFINITION OF COMPETITIVE ELECTRICITY SUPPLIER; AMENDING SECTIONS 69-3-2003 AND 90-3-1003, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-3-2003, MCA, is amended to read:

"69-3-2003. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Ancillary services" means services or tariff provisions related to generation and delivery of electric power other than simple generation, transmission, or distribution. Ancillary services related to transmission services include energy losses, energy imbalances, scheduling and dispatching, load following, system protection, and reactive power.

(2) "Common ownership" means the same or substantially similar persons or entities that maintain a controlling interest in more than one community renewable energy project even if the ownership shares differ between two community renewable energy projects. Two community renewable energy projects may not be considered to be under common ownership simply because the same entity provided debt or equity or both debt and equity to both projects.

(3) "Community renewable energy project" means an eligible renewable resource that is interconnected on the utility side of the meter in which local owners have a controlling interest and that is less than or equal to 5 megawatts in total calculated nameplate capacity.

(4) *(a)* "Competitive electricity supplier" means any person, corporation, or governmental entity that is selling electricity to small customers at retail rates in the state of Montana and that is not a public utility or cooperative.

(b) The term does not include governmental entities selling electricity produced only by facilities generating less than 250 kilowatts that were in operation prior to 1990.

(5) "Compliance year" means each calendar year beginning January 1 and ending December 31, starting in 2008, for which compliance with this part must be demonstrated.

(6) "Cooperative utility" means:

(a) a utility qualifying as an electric cooperative pursuant to Title 35, chapter 18; or

(b) an existing municipal electric utility as of May 2, 1997.

(7) "Eligible renewable resource" means a facility either located within Montana or delivering electricity from another state into Montana that commences commercial operation after January 1, 2005, and that produces electricity from one or more of the following sources:

(a) wind;

(b) solar;

(c) geothermal;

(d) water power, in the case of a hydroelectric project that does not require a new appropriation, diversion, or impoundment of water and that has a nameplate rating of 10 megawatts or less;

(e) landfill or farm-based methane gas;

(f) gas produced during the treatment of wastewater;

(g) low-emission, nontoxic biomass based on dedicated energy crops, animal wastes, or solid organic fuels from wood, forest, or field residues, except that the term does not include wood pieces that have been treated with chemical preservatives such as creosote, pentachlorophenol, or copper-chroma-arsenic;

(h) hydrogen derived from any of the sources in this subsection (7) for use in fuel cells; and

(i) the renewable energy fraction from the sources identified in subsections (7)(a) through (7)(h) of electricity production from a multiple-fuel process with fossil fuels.

(8) "Local owners" means:

(a) Montana residents or entities composed of Montana residents;

(b) Montana small businesses;

(c) Montana nonprofit organizations;

(d) Montana-based tribal councils;

(e) Montana political subdivisions or local governments;

(f) Montana-based cooperatives other than cooperative utilities; or

(g) any combination of the individuals or entities listed in subsections (8)(a) through (8)(f).

(9) "Public utility" means any electric utility regulated by the commission pursuant to Title 69, chapter 3, on January 1, 2005, including the public utility's successors or assignees.

(10) "Renewable energy credit" means a tradable certificate of proof of 1 megawatt hour of electricity generated by an eligible renewable resource that is tracked and verified by the commission and includes all of the environmental attributes associated with that 1 megawatt-hour unit of electricity production.

(11) "Small customer" means a retail customer that has an individual load with an average monthly demand of less than 5,000 kilowatts.

(12) "Total calculated nameplate capacity" means the calculation of total nameplate capacity of the community renewable energy project and other eligible renewable resources that are:

(a) located within 5 miles of the project;

(b) constructed within the same 12-month period; and

(c) under common ownership."

Section 2. Section 90-3-1003, MCA, is amended to read:

"90-3-1003. Research and commercialization account — use. (1) The research and commercialization account provided for in 90-3-1002 is statutorily appropriated, as provided in 17-7-502, to the board of research and commercialization technology, provided for in 2-15-1819, for the purposes provided in this section.

(2) The establishment of the account in 90-3-1002 is intended to enhance the economic growth opportunities for Montana and constitute a public purpose.

(3) The account may be used only for:

(a) loans that are to be used for research and commercialization projects to be conducted at research and commercialization centers located in Montana;

(b) grants that are to be used for production agriculture research and commercialization projects, clean coal research and development projects, or renewable resource research and development projects to be conducted at research and commercialization centers located in Montana;

(c) matching funds for grants from nonstate sources that are to be used for research and commercialization projects to be conducted at research and commercialization centers located in Montana; or

(d) administrative costs that are incurred by the board in carrying out the provisions of this part.

(4) At least 20% of the account funds approved for research and commercialization projects must be directed toward projects that enhance production agriculture.

(5) (a) At least 30% of the account funds approved for research and commercialization projects must be directed toward projects that enhance clean coal research and development or renewable resource research and development.

(b) If the board is not in receipt of a qualified application for a project to enhance clean coal research and development or renewable resource research and development, subsection (5)(a) does not apply.

(6) An applicant for a grant shall provide matching funds from nonstate sources equal to 25% of total project costs. The requirement to provide matching funds is a qualifier, but not a criterion, for approval of a grant.

(7) The board shall establish policies, procedures, and criteria that achieve the objectives in its research and commercialization strategic plan for the awarding of grants and loans. The criteria must include:

(a) the project's potential to diversify or add value to a traditional basic industry of the state's economy;

(b) whether the project shows promise for enhancing technology-based sectors of Montana's economy or promise for commercial development of discoveries;

(c) whether the project employs or otherwise takes advantage of existing research and commercialization strengths within the state's public university and private research establishment;

(d) whether the project involves a realistic and achievable research project design;

(e) whether the project develops or employs an innovative technology;

(f) verification that the project activity is located within the state;

(g) whether the project's research team possesses sufficient expertise in the appropriate technology area to complete the research objective of the project;

(h) verification that the project was awarded based on its scientific merits, following review by a recognized federal agency, philanthropic foundation, or other private funding source; and

(i) whether the project includes research opportunities for students.

(8) The board shall direct the state treasurer to distribute funds for approved projects. Unallocated interest and earnings from the account must be retained in the account. Repayments of loans and any agreements authorizing the board to take a financial right to licensing or royalty fees paid in connection with the transfer of technology from a research and commercialization center to another nonstate organization or ownership of corporate stock in a private sector organization must be deposited in the account.

(9) The board shall refer grant applications to external peer review groups. The board shall compile a list of persons willing to serve on peer review groups for purposes of this section. The peer review group shall review the application and make a recommendation to the board as to whether the application for a grant should be approved. The board shall review the recommendation of the peer review group and either approve or deny a grant application.

(10) The board shall identify whether a grant or loan is to be used for basic research, applied research, or some combination of both. For the purposes of this section, "applied research" means research that is conducted to attain a specific benefit or solve a practical problem and "basic research" means research that is conducted to uncover the basic function or mechanism of a scientific question.

(11) For the purposes of this section:

(a) "clean coal research and development" means research and development of projects that would advance the efficiency, environmental performance, and

cost-competitiveness of using coal as an energy source well beyond the current level of technology used in commercial service;

(b) "renewable resource research and development" means research and development that would advance:

(i) the use of any of the sources of energy listed in ~~69-3-2003(6)~~ *69-3-2003(7)* to produce electricity; and

(ii) the efficiency, environmental performance, and cost-competitiveness of using renewable resources as an energy source well beyond the current level of technology used in commercial service."

Section 3. Effective date. [This act] is effective on passage and approval.

Section 4. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to competitive electricity suppliers during the compliance year beginning January 1, 2009, for the renewable energy standard pursuant to 69-3-2004.

Approved April 1, 2009

CHAPTER NO. 119

[HB 203]

AN ACT REQUIRING THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO NOTIFY THE PUBLIC WHEN INTRODUCING OR TRANSPLANTING WOLVES, BEARS, AND MOUNTAIN LIONS ON PRIVATE OR PUBLIC PROPERTY; PROHIBITING THE TRANSPLANTATION OF ANY ANIMAL ONTO PRIVATE PROPERTY WITHOUT PRIOR PERMISSION FROM THE LANDOWNER; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Notification of transplantation or introduction of wildlife. (1) When the decision to introduce or transplant a wolf, bear, or mountain lion is made pursuant to this part, the department shall:

(a) provide public notice on its website and, when practical, by personal contact in the general area where the animal is released; and

(b) notify the public through print and broadcast media of the availability of release information on the department's website.

(2) Prior permission from the landowner is required before any animal may be transplanted onto private property.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 87, chapter 5, part 7, and the provisions of Title 87, chapter 5, part 7, apply to [section 1].

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 1, 2009

CHAPTER NO. 120

[HB 204]

AN ACT REVISING WORKERS' COMPENSATION LAW TO PROVIDE THAT AN APPLICANT WHO HAS BEEN CERTIFIED AS AN INDEPENDENT

CONTRACTOR IS NOT REQUIRED TO SUBMIT DOCUMENTS PREVIOUSLY SUBMITTED IF THE APPLICANT VERIFIES THAT THE PREVIOUSLY SUBMITTED DOCUMENTS ARE STILL CURRENT AND VALID OR THE DEPARTMENT DECIDES THE DOCUMENTS ARE STILL CURRENT AND VALID; AND AMENDING SECTION 39-71-417, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-71-417, MCA, is amended to read:

"39-71-417. Independent contractor certification. (1) (a) (i) Except as provided in subsection (1)(a)(ii), a person who regularly and customarily performs services at a location other than the person's own fixed business location shall apply to the department for an independent contractor exemption certificate unless the person has elected to be bound personally and individually by the provisions of compensation plan No. 1, 2, or 3.

(ii) An officer or manager who is exempt under 39-71-401(2)(r)(iii) or (2)(r)(iv) may apply, but is not required to apply, to the department for an independent contractor exemption certificate.

(b) A person who meets the requirements of this section and receives an independent contractor exemption certificate is not required to obtain a personal workers' compensation insurance policy.

(c) For the purposes of this section, "person" means:

(i) a sole proprietor;

(ii) a working member of a partnership;

(iii) a working member of a limited liability partnership; or

(iv) a working member of a member-managed limited liability company.

(2) The department shall adopt rules relating to an original application for or renewal of an independent contractor exemption certificate. The department shall adopt by rule the amount of the fee for an application or certificate renewal. The application or renewal must be accompanied by the fee.

(3) The department shall deposit the application or renewal fee in an account in the state special revenue fund to pay the costs of administering the program.

(4) (a) ~~To~~ *To* obtain an independent contractor exemption certificate, the applicant shall swear to and acknowledge the following:

(i) that the applicant has been and will continue to be free from control or direction over the performance of the person's own services, both under contract and in fact; and

(ii) that the applicant is engaged in an independently established trade, occupation, profession, or business and will provide sufficient documentation of that fact to the department.

(b) For the purposes of subsection (4)(a)(i), an endorsement required for licensure, as provided in 37-47-303, does not imply or constitute control.

(5) *(a)* An applicant for an independent contractor exemption certificate shall submit an application under oath on a form prescribed by the department and containing the following:

~~(a)~~*(i)* the applicant's name and address;

~~(b)~~*(ii)* the applicant's social security number;

~~(c)~~*(iii)* each occupation for which the applicant is seeking independent contractor certification; and

~~(d)~~*(iv)* other documentation as provided by department rule to assist in determining if the applicant has an independently established business.

(b) The department shall adopt a retention schedule that maintains copies of documents submitted in support of an initial application or renewal application for an independent contractor exemption certificate for a minimum of 3 years after an application has been received by the department. The department shall, to the extent feasible, produce renewal applications that reduce the burden on renewal applicants to supply information that has been previously provided to the department as part of the application process.

(c) An applicant who applies on or after July 1, 2011, to renew an independent contractor exemption certificate is not required to submit documents that have been previously submitted to the department if:

(i) the applicant certifies under oath that the previously submitted documents are still valid and current; and

(ii) the department, if it considers it necessary, independently verifies a specific document or decides that a document has not expired pursuant to the document's own terms and is therefore still valid and current.

(6) The department shall issue an independent contractor exemption certificate to an applicant if the department determines that an applicant meets the requirements of this section.

(7) (a) When the department approves an application for an independent contractor exemption certificate and the person is working under the independent contractor exemption certificate, the person's status is conclusively presumed to be that of an independent contractor.

(b) A person working under an approved independent contractor exemption certificate has waived all rights and benefits under the Workers' Compensation Act and is precluded from obtaining benefits unless the person has elected to be bound personally and individually by the provisions of compensation plan No. 1, 2, or 3.

(c) For the purposes of the Workers' Compensation Act, a person is working under an independent contractor exemption certificate if:

(i) the person is performing work in the trade, business, occupation, or profession listed on the person's independent contractor exemption certificate; and

(ii) the hiring agent and the person holding the independent contractor exemption certificate do not have a written or an oral agreement that the independent contractor exemption certificate holder's status with respect to that hiring agent is that of an employee.

(8) Once issued, an independent contractor exemption certificate remains in effect for 2 years unless:

(a) suspended or revoked pursuant to 39-71-418; or

(b) canceled by the independent contractor.

(9) If the department's independent contractor central unit denies an application for an independent contractor exemption certificate, the applicant may contest that decision as provided in 39-71-415(2)."

Approved April 1, 2009

CHAPTER NO. 121

[HB 223]

AN ACT REVISING LAWS GOVERNING THE REVOCATION OF HUNTING, FISHING, AND TRAPPING PRIVILEGES; AUTHORIZING THE REVOCATION OF THE PRIVILEGE TO HUNT, FISH, OR TRAP IF A PERSON COMMITS CRIMINAL MISCHIEF OR TRESPASS ON PROPERTY OWNED OR ADMINISTERED BY THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS OR COMMITS CRIMINAL TRESPASS WHILE HUNTING, FISHING, OR TRAPPING; AND AMENDING SECTIONS 23-1-106, 45-6-101, 45-6-203, AND 87-1-102, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 23-1-106, MCA, is amended to read:

"23-1-106. Rules — penalties — enforcement. (1) The department may make rules governing the use, occupancy, and protection of the ~~lands and~~ property under its control.

(2) Any person who ~~injures or damages any land or property under control of the department or private property thereon or therein or~~ violates any of the rules made by the department ~~relating to these areas~~ *pursuant to subsection (1)* is guilty of a misdemeanor and shall be fined not more than $500 or be imprisoned in the county jail for not more than 6 months.

(3) It is unlawful and a misdemeanor punishable as provided in subsection (2) to refuse to exhibit for inspection any park permit, proof of age, or proof of residency upon request by a fish and game warden, park ranger, or peace officer.

(4) The department shall enforce the provisions of this chapter and rules implementing this chapter. The director of the department shall employ all necessary and qualified personnel for enforcement purposes.

(5) The department is a criminal justice agency for the purpose of obtaining the technical assistance and support services provided by the board of crime control under the provisions of 44-4-301. Authorized officers of the department are granted peace officer status with the power:

(a) of search, seizure, and arrest;

(b) to investigate activities in this state regulated by this chapter and rules of the department and the fish, wildlife, and parks commission; and

(c) to report violations to the county attorney of the county in which they occur."

Section 2. Section 45-6-101, MCA, is amended to read:

"45-6-101. Criminal mischief. (1) A person commits the offense of criminal mischief if the person knowingly or purposely:

(a) injures, damages, or destroys any property of another or public property without consent;

(b) without consent tampers with property of another or public property so as to endanger or interfere with persons or property or its use;

(c) damages or destroys property with the purpose to defraud an insurer; or

(d) fails to close a gate previously unopened that the person has opened, leading in or out of any enclosed premises. This does not apply to gates located in cities or towns.

(2) A person convicted of criminal mischief must be ordered to make restitution in an amount and manner to be set by the court. The court shall determine the manner and amount of restitution after full consideration of the convicted person's ability to pay the restitution. Upon good cause shown by the convicted person, the court may modify any previous order specifying the amount and manner of restitution. Full payment of the amount of restitution ordered must be made prior to the release of state jurisdiction over the person convicted.

(3) A person convicted of the offense of criminal mischief shall be fined not to exceed $1,000 or be imprisoned in the county jail for any term not to exceed 6 months, or both. If the offender commits the offense of criminal mischief and causes pecuniary loss in excess of $1,000, injures or kills a commonly domesticated hoofed animal, or causes a substantial interruption or impairment of public communication, transportation, supply of water, gas, or power, or other public services, the offender shall be fined an amount not to exceed $50,000 or be imprisoned in the state prison for a term not to exceed 10 years, or both.

(4) Amounts involved in criminal mischiefs committed pursuant to a common scheme or the same transaction, whether against the public or the same person or several persons, may be aggregated in determining pecuniary loss.

(5) A person convicted of or who forfeits bond or bail for committing an act of criminal mischief involving property owned or administered by the department of fish, wildlife, and parks is subject to an additional penalty as provided in 87-1-102(2)(e)."

Section 3. Section 45-6-203, MCA, is amended to read:

"45-6-203. Criminal trespass to property. (1) Except as provided in 15-7-139, 70-16-111, and 76-13-116, a person commits the offense of criminal trespass to property if the person knowingly:

(a) enters or remains unlawfully in an occupied structure; or

(b) enters or remains unlawfully in or upon the premises of another.

(2) A person convicted of the offense of criminal trespass to property shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

(3) A person convicted of or who forfeits bond or bail for committing an act of criminal trespass involving property owned or administered by the department of fish, wildlife, and parks or while hunting, fishing, or trapping is subject to an additional penalty as provided in 87-1-102(2)(f)."

Section 4. Section 87-1-102, MCA, is amended to read:

"87-1-102. Penalties — violation of state law. (1) A person who purposely, knowingly, or negligently violates a provision of this title or any other state law pertaining to fish and game is guilty of a misdemeanor, except if a felony is expressly provided by law, and shall be fined an amount not less than $50 or more than $1,000 or imprisoned in the county detention center for not more than 6 months, or both, unless a different punishment is expressly provided by law for the violation. In addition, the person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of that person's license and the privilege to hunt, fish, or trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period set by the court. If the court imposes forfeiture of the person's license and privilege to hunt, fish, or trap or to use state lands, the department shall notify the person of the loss of privileges as

imposed by the court. The person shall surrender all licenses, as ordered by the court, to the department within 10 days.

(2) (a) A person convicted of unlawfully taking, killing, possessing, or transporting a bighorn sheep, moose, wild buffalo, caribou, mountain goat, black bear, or grizzly bear or any part of these animals shall be fined an amount not less than $500 or more than $2,000 or imprisoned in the county detention center for not more than 6 months, or both. In addition, that person, upon conviction or forfeiture of bond or bail, shall forfeit any current hunting, fishing, recreational use, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state for 30 months from the date of conviction or forfeiture~~,~~ unless the court imposes a longer forfeiture period. For each conviction or forfeiture, the department shall notify the person of the loss of privileges. The person shall surrender all hunting, fishing, and trapping licenses to the department within 10 days.

(b) A person convicted of unlawfully taking, killing, possessing, or transporting a deer, antelope, elk, or mountain lion or any part of these animals shall be fined an amount not less than $300 or more than $1,000 or imprisoned in the county detention center for not more than 6 months, or both. In addition, that person, upon conviction or forfeiture of bond or bail, shall forfeit any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state for 24 months from the date of conviction or forfeiture~~,~~ unless the court imposes a longer forfeiture period. For each conviction or forfeiture, the department shall notify the person of the loss of privileges. The person shall surrender all hunting, fishing, and trapping licenses to the department within 10 days.

(c) A person convicted of unlawfully attempting to trap or hunt a game animal shall be fined an amount not less than $200 or more than $600 or imprisoned in the county detention center for not more than 60 days, or both.

(d) A person convicted of purposely, knowingly, or negligently taking, killing, trapping, possessing, transporting, shipping, labeling, or packaging a fur-bearing animal or pelt of a fur-bearing animal in violation of any provision of this title shall be fined an amount not less than $100 or more than $1,000, imprisoned in the county detention center for not more than 6 months, or both. In addition, that person, upon conviction or forfeiture of bond or bail, shall forfeit any current license and the privilege to hunt, fish, or trap in this state for 24 months from the date of conviction or forfeiture~~,~~ unless the court imposes a longer forfeiture period, and any pelts possessed unlawfully must be confiscated. For each conviction or forfeiture, the department shall notify the person of the loss of privileges. The person shall surrender all hunting, fishing, and trapping licenses to the department within 10 days.

(e) Upon conviction of or forfeiture of bond or bail imposed for an act of criminal mischief, as defined in 45-6-101, involving property owned or administered by the department, a person shall forfeit any current license and the privilege to hunt, fish, or trap in this state for at least 24 months from the date of conviction or forfeiture.

(f) Upon conviction of or forfeiture of bond or bail imposed for committing an act of criminal trespass, as defined in 45-6-203, involving property owned or administered by the department or while hunting, fishing, or trapping, the privilege of a person to hunt, fish, or trap in this state may be revoked for up to 24 months from the date of conviction or forfeiture.

~~(e)~~*(g)* A person convicted of hunting, fishing, or trapping while that person's license is forfeited or a privilege is denied shall be imprisoned in the county detention center for not less than 5 days or more than 6 months. In addition, that person may be fined an amount not less than $500 or more than $2,000.

(3) If a person is convicted of illegally taking an animal described in 87-1-111 or 87-1-115 through the use of spotlights, nightscopes, or infrared scopes, the person is prohibited from fishing or hunting in the state for an additional 5 years following the ending date of the original prohibition period. In addition, the person, upon conviction or forfeiture of bond or bail, shall successfully complete, at the person's own expense, a department-sponsored hunter education course.

(4) A person convicted or who has forfeited bond or bail under this section and whose license privileges are forfeited may not purchase, acquire, obtain, possess, or apply for a hunting, fishing, or trapping license or permit during the period when license privileges have been forfeited. A person convicted of unlawfully purchasing, acquiring, obtaining, possessing, or applying for a hunting, fishing, or trapping license during the period when license privileges have been forfeited shall be fined an amount not less than $500 or more than $2,000, imprisoned in the county jail for not more than 60 days, or both.

(5) A person convicted or who has forfeited bond or bail under this section and who has been ordered to pay restitution under the provisions of 87-1-111 or 87-1-115 may not apply for any special license under Title 87, chapter 2, part 7, or enter any drawing for a special license or permit for a period of 5 years following the date of conviction or restoration of license privileges, whichever is later. If the violation involved the unlawful taking of a moose, a bighorn sheep, or a mountain goat, the person may not apply for a special license or enter a drawing for a special license or permit for the same species of game animal that was unlawfully taken for an additional period of 5 years following the ending date of the first 5-year period. A person convicted of unlawfully applying for any special license under Title 87, chapter 2, part 7, or unlawfully entering a drawing for a special license or permit shall be fined an amount not less than $500 or more than $2,000, imprisoned in the county detention center for not more than 60 days, or both.

(6) (a) A person convicted of a second offense of any of the following offenses within 10 years of the first conviction or who is convicted of two or more of the following offenses at different times within a 10-year period is subject to the penalties provided in subsection (6)(b):

(i) hunting during a closed season;

(ii) spotlighting;

(iii) hunting without a license;

(iv) unlawful taking of more than double the legal bag limit;

(v) unlawful possession of more than double the legal bag limit; and

(vi) waste of game by abandonment in the field.

(b) (i) A person convicted of the offenses in subsection (6)(a) in the time periods specified in subsection (6)(a) shall be fined an amount not less than $2,000 or more than $5,000 or be imprisoned in the county jail for not more than 1 year, or both. In addition, the person, upon conviction or forfeiture of bond or bail, shall forfeit all current hunting, fishing, and trapping licenses issued by this state and the privilege to hunt, fish, or trap in this state for 60 months from the date of conviction or forfeiture~~,~~ unless the court imposes a longer forfeiture period.

(ii) The department shall notify the offender of the loss of privileges.

(iii) The offender shall surrender all hunting, fishing, and trapping licenses to the department within 10 days after having received notice from the department that privileges have been revoked.

(7) (a) A person convicted of a third offense of any of the following offenses within 10 years of the first conviction is subject to the penalties provided in subsection (7)(b):

(i) hunting during a closed season;

(ii) spotlighting;

(iii) hunting without a license; and

(iv) unlawful taking of more than double the legal bag limit.

(b) (i) A person convicted of the offenses in subsection (7)(a) in the time period specified in subsection (7)(a) shall be fined an amount not less than $5,000 or more than $10,000 or be imprisoned in the county jail for not more than 1 year, or both. In addition, the person, upon conviction or forfeiture of bond or bail, shall forfeit all current hunting, fishing, and trapping licenses issued by this state and the privilege to hunt, fish, or trap in this state for life.

(ii) The department shall notify the offender of the loss of privileges.

(iii) The offender shall surrender all hunting, fishing, and trapping licenses to the department within 10 days after having received notice from the department that privileges have been revoked.

(8) Subject to sentencing restrictions, the court shall order a person who is convicted pursuant to this section to pay the costs of imprisonment under this section.

(9) A mandatory forfeiture of privileges imposed pursuant to this section does not apply to juveniles. However, the court may, at its discretion, order forfeiture of a juvenile's license and privilege to hunt, fish, or trap upon conviction or forfeiture of bond or bail for a violation of this title.

(10) Notwithstanding the provision of subsection (1), the penalties provided by this section are in addition to any penalties provided in Title 37, chapter 47, and Title 87, chapter 4, part 2.

(11) If an administrative authority suspends a license, permit, or privilege to obtain a license or permit issued under this title, the administrative authority or the department shall notify the person of the suspension and the person shall surrender the license or permit to the department within 10 days.

(12) For the purposes of this section, the terms "knowingly", "negligently", and "purposely" have the same meaning as provided in 45-2-101."

Approved April 1, 2009

CHAPTER NO. 122

[HB 230]

AN ACT REVISING LAWS GOVERNING LOCAL GOVERNMENT EMPLOYEE INCENTIVE PROGRAMS TO ALLOW FOR LIMITED INCENTIVE AWARDS FOR PARTICIPATION IN PROGRAMS DESIGNED TO IMPROVE EMPLOYEE HEALTH AND SAFETY; AMENDING SECTIONS 7-4-501, 7-4-505, AND 7-4-506, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-4-501, MCA, is amended to read:

"7-4-501. Establishment of program — *award value limited.* *(1)* A governing body may develop and administer an employee incentive award program to appropriately recognize and monetarily reward local government employees in a timely manner for*:*

(a) suggestions or inventions that contribute to the efficiency, economy, or other improvement of local government by reducing costs of governmental operations*; or*

(b) participation in or successful completion of a program designed to improve employee health or enhance employee safety.

(2) An award to an individual under this part may not exceed $50 in value."

Section 2. Section 7-4-505, MCA, is amended to read:

"7-4-505. Eligibility for award. (1) Except as provided in subsection (2), an employee may be eligible for an incentive award if*:*

(a) the employee's suggestion or invention results in~~:~~

~~(a)~~ eliminating or reducing an agency's expenditures~~;~~ or

~~(b)~~ improving services to the public by permitting more work to be accomplished without increasing the cost of governmental operations*; or*

(b) the employee participates in or successfully completes a program designed to improve employee health or enhance employee safety.

(2) (a) An employee may not be eligible for an incentive award *under subsection (1)(a)* if the employee's suggestion or invention directly relates to the employee's assigned duties and responsibilities unless the proposal ~~is so superior or meritorious as to warrant~~ *warrants* special recognition as determined by the governing body.

(b) Suggestions or inventions relating to the following matters may not be considered for awards:

(i) personnel grievances;

(ii) classification and pay of positions;

(iii) matters recommended for study or review; and

(iv) proposals resulting from assigned or contracted audits, studies, surveys, reviews, or research."

Section 3. Section 7-4-506, MCA, is amended to read:

"7-4-506. Agency head to grant award. After an agency implements an employee's suggestion or invention and the amount of monetary savings to the local government is estimated *or an employee participates in or successfully completes a health or safety program*, an agency head, upon written application to and approval from the governing body and the incentive awards advisory council, if there is ~~such~~ a council, may grant an incentive award to an employee whose proposal *or activity* meets the requirements of 7-4-505."

Section 4. Effective date. [This act] is effective on passage and approval.

Approved April 1, 2009

CHAPTER NO. 123

[HB 244]

AN ACT REVISING THE CIRCUMSTANCES UNDER WHICH A COUNTY OFFICER MAY BE ABSENT FROM THE STATE WITHOUT FORFEITING THE OFFICER'S OFFICE; AMENDING SECTION 7-4-2208, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-4-2208, MCA, is amended to read:

"7-4-2208. Absence of county officers from state. (1) Subject to subsection (2) and except as provided in 10-1-1008, if a county officer is absent from the state for a period of more ~~than 60 days or for a period longer~~ than ~~15~~ *30 consecutive* days without the consent of the board of county commissioners, the officer forfeits the office.

~~(2) The sheriff, undersheriff, or deputy sheriffs of any county may absent themselves from the state, with the permission of the board, for a period of more than 60 days for the sole purpose of attending a recognized and accredited law enforcement training school without effecting forfeiture of their offices.~~

(2) If the county officer who is seeking consent to be absent from the state for more than 30 consecutive days is a member of the board of county commissioners, the officer may participate in the vote on the question of providing consent for the absence."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 1, 2009

CHAPTER NO. 124

[HB 270]

AN ACT REVISING FLOOD PLAIN LAWS; CLARIFYING THE DEFINITION OF "FLOOD PLAIN"; ELIMINATING THE REQUIREMENT FOR CONSTRUCTING STRUCTURES ON FILL WITHIN THE FLOOD PLAIN; AND AMENDING SECTIONS 76-5-103 AND 76-5-402, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 76-5-103, MCA, is amended to read:

"76-5-103. Definitions. As used in parts 1 through 4 of this chapter, unless the context otherwise requires, the following definitions apply:

(1) "Artificial obstruction" means any obstruction that is not a natural obstruction and includes any dam, wall, riprap, embankment, levee, dike, pile, abutment, projection, revetment, excavation, channel rectification, bridge, conduit, culvert, building, refuse, automobile body, fill, or other analogous structure or matter in, along, across, or projecting into any flood plain or floodway that may impede, retard, or change the direction of the flow of water, either in itself or by catching or collecting debris carried by the water, or that is placed where the natural flow of the water would carry the same downstream to the damage or detriment of either life or property.

(2) "Channel" means the geographical area within either the natural or artificial banks of a watercourse or drainway.

(3) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(4) "Designated flood plain" means a flood plain whose limits have been designated and established by order of the department.

(5) "Designated floodway" means a floodway whose limits have been designated and established by order of the department.

(6) "Drainway" means any depression 2 feet or more below the surrounding land serving to give direction to a current of water less than 9 months of the year and having a bed and well-defined banks.

(7) "Establish" means construct, place, insert, or excavate.

(8) "Flood" means the water of any watercourse or drainway that is above the bank or outside the channel and banks of the watercourse or drainway.

(9) "Flood of 100-year frequency" means a flood magnitude expected to recur on the average of once every 100 years or a flood magnitude that has a 1% chance of occurring in any given year.

(10) "Flood plain" means the area adjoining the watercourse or drainway that would be covered by the floodwater of a flood of 100-year frequency, except for sheetflood areas that receive less than 1 foot of water per occurrence and are considered "zone B" *or a "shaded X zone"* by the federal emergency management agency.

(11) "Floodway" means the channel of a watercourse or drainway and those portions of the flood plain adjoining the channel that are reasonably required to carry and discharge the floodwater of any watercourse or drainway.

(12) "Natural obstruction" means any rock, tree, gravel, or analogous natural matter that is an obstruction and has been located within the flood plain or floodway by a nonhuman cause.

(13) "Owner" means any person who has dominion over, control of, or title to an obstruction.

(14) "Political subdivision" means any incorporated city or town or any county organized and having authority to adopt and enforce land use regulations.

(15) "Responsible political subdivision" means a political subdivision that has enacted land use regulations in accordance with parts 1 through 4.

(16) (a) "Watercourse" means any depression 2 feet or more below the surrounding land serving to give direction to a current of water at least 9 months of the year and having a bed and well-defined banks.

(b) Upon order of the department, the term also includes any particular depression that would not otherwise be within the definition of watercourse."

Section 2. Section 76-5-402, MCA, is amended to read:

"76-5-402. Permissible uses within flood plain but outside floodway. Permits ~~must~~ *must* be granted for the following uses within that portion of the flood plain not contained within the designated floodway to the extent that they are not prohibited by any other ordinance, regulation, or statute:

(1) any use permitted in the designated floodway;

(2) structures, including but not limited to residential, commercial, and industrial structures, provided that:

(a) the structures meet the minimum standards adopted by the department;

(b) residential structures are constructed ~~on fill such~~ *so* that the lowest floor elevation*,* ~~(~~including basements~~)~~*,* is 2 feet above the 100-year flood elevation;

(c) commercial and industrial structures are either constructed ~~on fill~~ as specified in subsection (2)(b) or are adequately floodproofed up to an elevation no lower than 2 feet above the 100-year flood elevation. The floodproofing must be in accordance with the minimum standards adopted by the department."

Approved April 1, 2009

CHAPTER NO. 125

[HB 283]

AN ACT REVISING WORKERS' COMPENSATION LAWS; PROVIDING FOR VOLUNTARY CERTIFICATION OF WORKERS' COMPENSATION CLAIMS EXAMINERS; REQUIRING A LETTER OF INTENT TO CREATE A NEW EXEMPTION UNDER THE WORKERS' COMPENSATION ACT; ESTABLISHING CRITERIA FOR CERTIFYING CLAIMS EXAMINERS; AMENDING SECTION 2-6-109, MCA; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, section 39-71-105, MCA, states that it is public policy for the workers' compensation system to provide protections for employees that are at "reasonably constant rates" for employers; and

WHEREAS, over time the types of occupations, persons, and businesses that are exempt from the coverage requirements of the Workers' Compensation Act have continually expanded; and

WHEREAS, solvency of the workers' compensation system requires a broad base of coverage.

Be it enacted by the Legislature of the State of Montana:

Section 1. Letter of intent required to create new exemption. (1) A bill draft request to create and list an additional exemption under Title 39, chapter 71, must include a letter of intent not exceeding 1,000 words that addresses the criteria in subsection (2).

(2) The letter of intent must contain a good faith effort to provide the following:

(a) an estimate of the number of employees statewide who would become exempt from coverage under the Workers' Compensation Act;

(b) an estimate of the number of employers statewide who would no longer be required to provide workers' compensation coverage to the exempt workers;

(c) an analysis of which entity would become responsible for the costs of injury;

(d) an analysis of the change in potential liability to an employer if an exempt employee is injured;

(e) an estimate of the reduction in total state payroll for the occupation for which the exemption is being requested; and

(f) an explanation of the possible social costs of allowing the exemption.

(3) The legislative fiscal analyst shall provide to the bill draft requester an independent assessment of the letter of intent.

(4) The department of labor and industry shall provide an independent assessment of the letter of intent regarding information that is within the expertise of that department.

(5) For the purposes of this section, a letter of intent is a public record.

(6) A bill draft request submitted without this letter of intent may not be processed for introduction to the legislature.

Section 2. Voluntary certification program for claims examiners — purpose — rulemaking — advisory committee — continuing education. (1) Pursuant to the public policy stated in 39-71-105, accurate and prompt claims handling practices are necessary to provide appropriate service to injured workers, employers, and medical providers. In order to further that public policy, the purpose of this section is to authorize the department to establish a voluntary certification program for claims examiners. The department shall administer the voluntary certification program.

(2) The voluntary certification program is intended to improve the handling of workers' compensation claims by:

(a) establishing minimum qualifications and procedures for certifying claims examiners;

(b) requiring continuing education for certified claims examiners;

(c) better educating certified claims examiners about changes in the law; and

(d) providing standards for the qualifications of instructors, courses, and materials.

(3) The department shall adopt rules for the certification of workers' compensation claims examiners, providing for:

(a) minimum qualifications;

(b) examination;

(c) 2-year certification and renewal;

(d) continuing education requirements; and

(e) a waiver of the examination requirement for an individual requesting certification as a claims examiner within the first 12 months after the department has adopted the initial rules under this subsection (3). The waiver is available only to an individual who has been actively engaged in the work of a claims examiner in this state, working on workers' compensation claims for 5 of the 7 years immediately preceding the individual's application for certification under this section.

(4) The department may appoint an advisory committee composed of injured workers, insurers, self-insured employers, third-party administrators, claims examiners, and members of the public to advise the department on setting standards for certification and continuing education.

(5) The department shall maintain:

(a) a list of all certified claims examiners; and

(b) the following records related to certified claims examiners:

(i) documentation of current and historical certifications;

(ii) beginning and ending dates of certifications; and

(iii) continuing education records.

(6) The training curriculum and continuing education used by insurers, self-insured employers, and third-party administrators for claims examiners must relate to the state workers' compensation system or to interactions among injured workers, medical providers, and employers. The training curriculum, course content, instructors, materials, instructional format, and the sponsoring organization must be approved by the department as qualifying for use in certification of claims examiners. The department may offer specialized training for continuing education purposes that is exempt from the approval requirements of this subsection.

(7) The department shall determine the number of credit hours to be awarded for completion of an approved training curriculum or department-approved specialized training. The department may accept continuing education credits approved by the insurance commissioner's office as provided in Title 33, chapter 17, the office of public instruction, or the state bar of Montana to satisfy the continuing education requirements for renewal of the claims examiner certification. The department, in its discretion, may accept continuing education credits from other accrediting sources.

(8) The department shall by rule adopt fees commensurate with the costs of administering the voluntary certification program. All fees collected by the department as provided in this section must be deposited in the workers' compensation administration fund provided for in 39-71-201. The department may charge a fee for the certification program, including but not limited to fees for:

(a) initial certification, including examination;

(b) certification renewal;

(c) approval of training curricula, including continuing education courses, course content, instructors, materials, instructional format, and sponsoring organizations; and

(d) specialized training offered by the department.

Section 3. Section 2-6-109, MCA, is amended to read:

"2-6-109. Prohibition on distribution or sale of mailing lists — exceptions — penalty. (1) Except as provided in subsections (3) through (9), in order to protect the privacy of those who deal with state and local government:

(a) an agency may not distribute or sell for use as a mailing list any list of persons without first securing the permission of those on the list; and

(b) a list of persons prepared by the agency may not be used as a mailing list except by the agency or another agency without first securing the permission of those on the list.

(2) As used in this section, "agency" means any board, bureau, commission, department, division, authority, or officer of the state or a local government.

(3) This section does not prevent an individual from compiling a mailing list by examination of records that are otherwise open to public inspection.

(4) This section does not apply to the lists of*:*

(a) registered electors and the new voter lists provided for in 13-2-115~~, to lists of~~*;*

(b) the names of employees governed by Title 39, chapter 31~~, to lists of~~*;*

(c) persons holding driver's licenses or Montana identification cards provided for under 61-5-127~~, or to lists of~~*;*

(d) persons holding professional or occupational licenses governed by Title 23, chapter 3; Title 37, chapters 1 through 4, 6 through 29, 31, 34~~, 35~~ *through 36*, 40, 47, 48, 50, 51, 53, 54, 60, 65 through 69, 72, *and* 73~~, and 76~~; and Title 50, chapters 39, 72, 74, and 76*; or*

(e) persons certified as claims examiners under [section 2].

(5) This section does not prevent an agency from providing a list to persons providing prelicensing or continuing educational courses subject to state law or subject to Title 33, chapter 17.

(6) This section does not apply to the right of access by Montana law enforcement agencies.

(7) This section does not apply to a corporate information list developed by the secretary of state containing the name, address, registered agent, officers, and directors of business, nonprofit, religious, professional, and close corporations authorized to do business in this state.

(8) This section does not apply to the use by the public employees' retirement board of a mailing list of board-administered retirement system participants to send materials on behalf of a retiree organization formed for board-administered retirement system participants and with tax-exempt status under section 501(c)(4) of the Internal Revenue Code, as amended, for a fee determined by rules of the board, provided that the mailing list is not released to the organization.

(9) This section does not apply to a public school providing lists of graduating students to representatives of the armed forces of the United States or to the national guard for the purposes of recruitment.

(10) A person violating the provisions of subsection (1)(b) is guilty of a misdemeanor."

Section 4. Codification instruction. (1) [Section 1] is intended to be codified as an integral part of Title 2, chapter 8, and the provisions of Title 2, chapter 8, apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 39, chapter 71, part 3, and the provisions of Title 39, chapter 71, part 3, apply to [section 2].

Section 5. Effective date. [This act] is effective July 1, 2009.

Approved April 1, 2009

CHAPTER NO. 126

[HB 288]

AN ACT BANNING REPRODUCTIVE HUMAN CLONING; AND ESTABLISHING PENALTIES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Definitions. As used in [sections 1 through 3], the following definitions apply:

(1) "Embryo" means an organism of the species Homo sapiens from the single cell stage to 8 weeks of development.

(2) "Fetus" means an organism of the species Homo sapiens from 8 weeks of development until complete expulsion or extraction from a woman's body or

removal from an artificial womb or other similar environment designed to nurture the development of the organism.

(3) "Oocyte" means the human female germ cell, the egg.

(4) "Reproductive human cloning" means human cloning intended to result in the gestation or birth of a child who is genetically identical to another conceptus, embryo, fetus, or human being, living or dead.

(5) "Somatic cell" means a diploid cell, having a complete set of chromosomes, obtained or derived from a living or deceased human body at any stage of development.

Section 2. Prohibited acts — penalties. (1) A person or entity, public or private, may not knowingly:

(a) perform or attempt to perform reproductive human cloning;

(b) participate in an attempt to perform reproductive human cloning;

(c) ship, transfer, or receive for any purpose an embryo for reproductive human cloning; or

(d) ship, transfer, or receive, in whole or in part, any oocyte, embryo, fetus, or human somatic cell for the purpose of reproductive human cloning.

(2) A violation of subsection (1)(a) or (1)(b), or both, is a felony.

(3) A violation of subsection (1)(c) or (1)(d), or both, is a misdemeanor.

(4) All fines collected under this section must be deposited in the state general fund.

Section 3. Scientific research — exception. (1) [Sections 1 and 2] do not restrict areas of scientific research not specifically prohibited by [sections 1 and 2], including research into the use of nuclear transfer or other cloning techniques to produce molecules, deoxyribonucleic acid, tissues, organs, plants, cells other than human embryos, or animals other than humans.

(2) [Sections 1 and 2] do not apply to in vitro fertilization, the administration of fertility-enhancing drugs, or other medical procedures used to assist a woman in becoming or remaining pregnant if the procedure is not specifically intended to result in the gestation or birth of a child who is genetically identical to another conceptus, embryo, fetus, or human being, living or dead.

(3) Nothing in this section prohibits embryonic stem cell research using embryonic stem cell lines of uncloned origin.

Section 4. Codification instruction. [Sections 1 through 3] are intended to be codified as an integral part of Title 50, and the provisions of Title 50 apply to [sections 1 through 3].

Approved April 1, 2009

CHAPTER NO. 127

[HB 294]

AN ACT ALLOWING A NATURAL GAS UTILITY THAT HAS RESTRUCTURED TO ACQUIRE NATURAL GAS PRODUCTION AND GATHERING RESOURCES AND INCLUDE THEM IN THE RATE BASE; ESTABLISHING PROCEDURES FOR THE ACQUISITION AND INCLUSION OF THE RESOURCES IN THE RATE BASE; AMENDING

SECTIONS 69-3-1402 AND 69-3-1404, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Statement of purpose. The purpose of [sections 1 through 4] is to establish procedures for a natural gas utility that has restructured pursuant to this part to acquire rate-based facilities.

Section 2. Acquisition of rate-based facilities. A natural gas utility that provides its customers with a choice of natural gas suppliers pursuant to 69-3-1403 and that does not own natural gas production and gathering resources on [the effective of this act] may acquire those facilities and place them in the rate base as provided in [sections 1 through 4].

Section 3. Application and approval of natural gas production and gathering resources. (1) A natural gas utility may apply to the commission for approval of a natural gas production and gathering resource that is not yet procured.

(2) (a) Within 45 days of the natural gas utility's submission of an application under subsection (1), the commission shall determine whether or not the application is adequate and in compliance with the commission's minimum filing requirements.

(b) If the commission determines that the application is inadequate, the commission shall, within 10 days of the determination, provide written notice to the natural gas utility of the deficiencies.

(3) The commission shall issue an order within 270 days of receipt of an adequate application for approval of an application to lease or acquire an equity interest in natural gas production and gathering resources.

(4) To facilitate timely consideration of an application, the commission may initiate proceedings to evaluate planning and procurement activities related to a potential resource procurement prior to the natural gas utility's submission of an application for approval.

(5) (a) The commission may approve or deny, in whole or in part, an application for approval of a natural gas production resource, a gathering resource, or both.

(b) The commission may consider all relevant information known up to the time that the administrative record in the proceeding is closed in the evaluation of an application for approval.

(c) A commission order granting approval of an application must find that the application is in whole or in part in the public interest.

(d) The commission order may include a provision for allowable natural gas production and gathering assets cost of service when the utility has filed an application for the lease or acquisition of an equity interest in natural gas production and gathering resources.

(e) The commission order may include other findings that the commission determines necessary.

(f) A commission order that denies approval must describe why the findings required in subsection (5)(c) could not be reached.

(6) Except as otherwise provided in this part, if the commission has issued an order containing the findings required under subsection (5)(c), the commission may not subsequently disallow the recovery of costs related to the

approved natural gas production and gathering resource based on contrary findings.

(7) Nothing in this section limits the commission's ability to, in any future rate proceeding, inquire into the manner in which the natural gas utility has managed, dispatched, operated, or maintained any resource or managed any natural gas supply purchase agreement as part of its overall resource portfolio. The commission may subsequently disallow rate recovery for the costs that result from the failure of a natural gas utility to reasonably manage, dispatch, operate, maintain, or administer natural gas production and gathering resources in a manner consistent with [sections 1 through 4] and commission rules.

(8) By March 31, 2010, the commission shall adopt rules prescribing minimum filing requirements for applications filed pursuant to this part.

Section 4. Use of natural gas production and gathering resources. (1) Natural gas production and gathering resources acquired by a natural gas utility pursuant to this part:

(a) must be used by the natural gas utility to serve and benefit customers that have not made a choice of natural gas suppliers within the natural gas utility's Montana service territory; and

(b) may not be removed from the rate base unless the commission finds that customers of the natural gas utility will not be adversely affected.

(2) Natural gas production and gathering assets cost of service may not be allocated to a customer being served by an alternative natural gas supplier.

Section 5. Section 69-3-1402, MCA, is amended to read:

"69-3-1402. Definitions. As used in this part, the following definitions apply:

(1) "Customer" means a natural gas customer or consumer of natural gas supply or natural gas transmission facilities, storage facilities, or distribution facilities.

(2) "Distribution facilities" means those facilities that are not transmission facilities:

(a) by and through which natural gas is received from a transmission services provider and transmitted to the customer; and

(b) operated by a distribution services provider.

(3) "Distribution services provider" means a person controlling or operating distribution facilities for distribution of natural gas to the public.

(4) "Natural gas production and gathering assets cost of service" means a return on invested capital and all costs associated with the acquisition, construction, administration, operation, and maintenance of a plant or equipment, minerals, and mineral rights owned or leased by a public utility and used for natural gas production and gathering.

(5) "Natural gas production and gathering resources" means plants or equipment, minerals, and mineral rights used to extract natural gas from the earth and to collect, purify, measure, regulate, compress, and transport natural gas from its place of production to its connection with a transmission facility.

~~(4)~~*(6)* "Natural gas supplier" means a person, including aggregators, market aggregators, brokers, and marketers, licensed by the commission that is offering to sell natural gas to retail customers in the state of Montana.

~~(5)~~*(7)* "Natural gas utility" means a utility regulated by the commission on May 2, 1997, that provides natural gas services to the public.

~~(6)~~*(8)* "Open access" means that a natural gas utility has made its transmission facilities, storage facilities, or distribution facilities available to all natural gas suppliers, transmission services providers, distribution services providers, and customers on a nondiscriminatory and comparable basis.

~~(7)~~*(9)* "Performance-based ratemaking" means those forms of regulation that include but are not limited to the use of revenue indexing, price indexing, ranges of authorized return, gas cost indexing, and innovative use of utility-related assets and activities, such as system sales of excess natural gas supplies, release of upstream pipeline capacity, and performance of billing services for other natural gas suppliers. A performance-based regulation may also include a mechanism for automatic annual adjustments of revenue to prices to reflect changes in any index adopted for the implementation of the performance-based form of regulation.

~~(8)~~*(10)* "Storage facilities" means those facilities that are owned, controlled, or operated by a person offering storage service for natural gas and generally means any underground reservoir suitable for the storage of natural gas and the facilities used to inject and withdraw natural gas into and out of that underground reservoir.

~~(9)~~*(11)* "Transition costs" means:

(a) a natural gas utility's net, verifiable production-related and gathering-related costs, including costs of capital, that become unrecoverable as a result of customer choice and open access. These costs include but are not limited to:

(i) regulatory assets and deferred charges that exist as a result of current regulatory practices and that may be accounted for up to the point in time that the commission issues a final order in a docket addressing transition costs, including all costs, expenses, and fees related to the issuance of transition bonds;

(ii) the above-market costs associated with existing gas supply commitments;

(iii) other natural gas utility investments rendered uneconomic as a result of implementation of customer choice and open access;

(iv) the costs associated with renegotiation or buyout of existing natural gas purchase contracts; and

(v) the costs associated with the issuance of any related transition bonds authorized by the commission pursuant to 69-3-1403.

(b) the costs of refinancing or retiring debt or equity capital of the natural gas utility and associated federal and state tax liabilities or other utility costs for which the use of transition bonds would benefit customers.

~~(10)~~*(12)* "Transmission facilities" means those facilities owned, controlled, and operated by a transmission services provider that are used to transport natural gas from a gathering line or storage facility to a distribution facility, storage facility, or end-use customer.

~~(11)~~*(13)* "Transmission services provider" means a person controlling or operating transmission facilities.

~~(12)~~*(14)* "Universal system benefits charge" means a nonbypassable rate or charge to be imposed on a customer to pay the customer's share of universal system benefits program costs.

~~(13)~~*(15)* "Universal system benefits programs" means public purpose programs for cost-effective local energy conservation, low-income energy bill discounts, low-income weatherization, and emergency low-income energy bill assistance."

Section 6. Section 69-3-1404, MCA, is amended to read:

"69-3-1404. Functional separation — code of conduct — emergency services — customer protection. (1) A *Except as provided in [sections 1 through 4], a* natural gas utility that provides customer choice and open access on its system shall:

(a) functionally separate its natural gas production and gathering *resources* from its natural gas transmission, storage, and distribution services and remove natural gas production and gathering *resources* from the rate base;

(b) adopt and comply with commission-approved standards of conduct to be included in a tariff to govern its natural gas transmission, storage, and distribution services; and

(c) provide emergency natural gas supply and related services to the extent necessary to maintain the operational integrity of the transmission system as determined by the commission.

(2) The commission shall develop standards that protect consumers and natural gas suppliers from anticompetitive and abusive practices.

(3) This part does not reduce or otherwise change the authority of the commission to review the prudence of natural gas purchases made by a natural gas utility for its customers that do not have a choice or that have not made a choice of natural gas suppliers or have not been assigned a natural gas supplier."

Section 7. Codification instruction. [Sections 1 through 4] are intended to be codified as an integral part of Title 69, chapter 3, part 14, and the provisions of Title 69, chapter 3, part 14, apply to [sections 1 through 4].

Section 8. Effective date. [This act] is effective on passage and approval.

Section 9. Applicability. [This act] applies to applications received by the public service commission after March 31, 2010.

Approved April 1, 2009

CHAPTER NO. 128

[HB 308]

AN ACT ALLOWING A SENTENCING COURT TO ORDER THAT AN OFFENDER MAKE A DONATION OF FOOD TO A FOOD BANK PROGRAM TO FULFILL ALL OR PART OF A SENTENCE; AMENDING SECTION 46-18-201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-18-201, MCA, is amended to read:

"46-18-201. Sentences that may be imposed. (1) (a) Whenever a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or

nolo contendere, a sentencing judge may defer imposition of sentence, except as otherwise specifically provided by statute, for a period:

(i) not exceeding 1 year for a misdemeanor or for a period not exceeding 3 years for a felony; or

(ii) not exceeding 2 years for a misdemeanor or for a period not exceeding 6 years for a felony if a financial obligation is imposed as a condition of sentence for either the misdemeanor or the felony, regardless of whether any other conditions are imposed.

(b) Except as provided in 46-18-222, imposition of sentence in a felony case may not be deferred in the case of an offender who has been convicted of a felony on a prior occasion, whether or not the sentence was imposed, imposition of the sentence was deferred, or execution of the sentence was suspended.

(2) Whenever a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere, a sentencing judge may suspend execution of sentence, except as otherwise specifically provided by statute, for a period up to the maximum sentence allowed or for a period of 6 months, whichever is greater, for each particular offense.

(3) *(a)* Whenever a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere, a sentencing judge may impose a sentence that may include:

~~(a)~~*(i)* a fine as provided by law for the offense;

~~(b)~~*(ii)* payment of costs, as provided in 46-18-232, or payment of costs of assigned counsel as provided in 46-8-113;

~~(c)~~*(iii)* a term of incarceration, as provided in Title 45 for the offense, at a county detention center or at a state prison to be designated by the department of corrections;

~~(d)~~*(iv)* commitment of:

~~(i)~~*(A)* an offender not referred to in subsection ~~(3)(d)(ii)~~ *(3)(a)(iv)(B)* to the department of corrections, with a recommendation for placement in an appropriate correctional facility or program; however, all but the first 5 years of the commitment to the department of corrections must be suspended, except as provided in 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(c), and 45-5-625(4); or

~~(ii)~~*(B)* a youth transferred to district court under 41-5-206 and found guilty in the district court of an offense enumerated in 41-5-206 to the department of corrections for a period determined by the court for placement in an appropriate correctional facility or program;

~~(e)~~*(v)* with the approval of the facility or program, placement of the offender in a community corrections facility or program as provided in 53-30-321;

~~(f)~~*(vi)* with the approval of the prerelease center or prerelease program and confirmation by the department of corrections that space is available, placement of the offender in a prerelease center or prerelease program for a period not to exceed 1 year;

~~(g)~~*(vii)* chemical treatment of sexual offenders, as provided in 45-5-512, if applicable, that is paid for by and for a period of time determined by the department of corrections, but not exceeding the period of state supervision of the person; or

~~(h)~~*(viii)* any combination of subsections (2) ~~through (3)(g)~~ *and (3)(a)(i) through (3)(a)(vii).*

(b) A court may permit a part or all of a fine to be satisfied by a donation of food to a food bank program.

(4) When deferring imposition of sentence or suspending all or a portion of execution of sentence, the sentencing judge may impose upon the offender any reasonable restrictions or conditions during the period of the deferred imposition or suspension of sentence. Reasonable restrictions or conditions imposed under subsection (1)(a) or (2) ~~of this section~~ may include but are not limited to:

(a) limited release during employment hours as provided in 46-18-701;

(b) incarceration in a detention center not exceeding 180 days;

(c) conditions for probation;

(d) payment of the costs of confinement;

(e) payment of a fine as provided in 46-18-231;

(f) payment of costs as provided in 46-18-232 and 46-18-233;

(g) payment of costs of assigned counsel as provided in 46-8-113;

(h) with the approval of the facility or program, an order that the offender be placed in a community corrections facility or program as provided in 53-30-321;

(i) with the approval of the prerelease center or prerelease program and confirmation by the department of corrections that space is available, an order that the offender be placed in a prerelease center or prerelease program for a period not to exceed 1 year;

(j) community service;

(k) home arrest as provided in Title 46, chapter 18, part 10;

(l) payment of expenses for use of a judge pro tempore or special master as provided in 3-5-116;

(m) with the approval of the department of corrections and with a signed statement from an offender that the offender's participation in the boot camp incarceration program is voluntary, an order that the offender complete the boot camp incarceration program established pursuant to 53-30-403;

(n) participation in a day reporting program provided for in 53-1-203;

(o) any other reasonable restrictions or conditions considered necessary for rehabilitation or for the protection of the victim or society; or

(p) any combination of the restrictions or conditions listed in subsections (4)(a) through (4)(p).

(5) In addition to any other penalties imposed, if a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere and the sentencing judge finds that a victim, as defined in 46-18-243, has sustained a pecuniary loss, the sentencing judge shall, as part of the sentence, require payment of full restitution to the victim, as provided in 46-18-241 through 46-18-249, whether or not any part of the sentence is deferred or suspended.

(6) In addition to any of the penalties, restrictions, or conditions imposed pursuant to subsections (1) through (5), the sentencing judge may include the suspension of the license or driving privilege of the person to be imposed upon the failure to comply with any penalty, restriction, or condition of the sentence. A suspension of the license or driving privilege of the person must be accomplished as provided in 61-5-214 through 61-5-217.

(7) In imposing a sentence on an offender convicted of a sexual or violent offense, as defined in 46-23-502, the sentencing judge may not waive the registration requirement provided in Title 46, chapter 23, part 5.

(8) If a felony sentence includes probation, the department of corrections shall supervise the offender unless the court specifies otherwise."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 1, 2009

CHAPTER NO. 129

[HB 363]

AN ACT REVISING THE TEACHERS' RETIREMENT SYSTEM TO ALLOW RETIRED TEACHERS, SPECIALISTS, AND ADMINISTRATORS TO RETURN TO WORK FOR A LIMITED PERIOD OF TIME UNDER CERTAIN CIRCUMSTANCES WITHOUT A REDUCTION IN THEIR RETIREMENT BENEFITS; AMENDING SECTION 19-20-731, MCA; AND PROVIDING AN EFFECTIVE DATE, AN APPLICABILITY DATE, AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Reemployment of certain retired teachers, specialists and administrators — procedure — definitions. (1) Subject to the provisions of this section:

(a) a teacher, specialist, or administrator who has been receiving a retirement allowance for no less than 2 months, except a disability retirement allowance pursuant to part 9 of this chapter, may be employed on a full-time basis by an employer for a maximum of 3 years during the lifetime of the retired member without the loss or interruption of any payments or retirement benefits if:

(i) the retired member completed 30 or more years of creditable service prior to retirement;

(ii) the retired member holds a valid certificate pursuant to the provisions of 20-4-106; and

(iii) each year, prior to employing a retired member, the employer certifies to the office of public instruction and to the retirement board that after having advertised the position for that year the employer has been unable to fill the position because the employer either has received no qualified applications or has not received an acceptance of an offer of employment made to a nonretired teacher, specialist, or administrator;

(b) the employer certification required by this section must include the retired member's name and social security number and a copy of the proposed contract of employment for the retired member;

(c) upon receipt of the employer's certification and of the proposed contract of employment, the retirement board shall verify whether the retired member meets the requirements of subsection (1)(a)(i) and shall notify the employer and the retired member of its findings;

(d) a retired member reemployed under this section is ineligible for active membership under 19-20-302 and is ineligible to receive service credit under any retirement system identified in Title 19; and

(e) the retirement board shall report to the appropriate committee each legislative session regarding the implementation of and results arising from this section.

(2) An employer employing a retired member pursuant to this section shall contribute monthly to the retirement system an amount equal to the sum of the contribution rates required by 19-20-602, 19-20-604, 19-20-605, and 19-20-607.

(3) A retired member reemployed pursuant to this section is exempt from the earnings and employment limits provided in 19-20-731.

(4) If reemployed in a position covered by a collective bargaining agreement pursuant to Title 39, chapter 31, the retired member is subject to all the terms and conditions of the agreement and is entitled to all the benefits and protections of the agreement.

(5) The board may adopt rules to implement this section.

(6) As used in this section, the following definitions apply:

(a) "Employer" means a school district as defined in 20-6-101 and 20-6-701.

(b) "Year" means all or any part of a school year.

Section 2. Section 19-20-731, MCA, is amended to read:

"19-20-731. Postretirement employment limitations — cancellation and recalculation of benefits. (1) (a) Except as *provided in [section 1] or as* otherwise provided in this section, a retired member may be employed part-time by a school district, state agency, or unit of the university system in a position eligible to participate in the retirement system and may earn, without an adjustment of retirement benefits, an amount not to exceed the greater of:

(i) one-third of the sum of the member's average final compensation; or

(ii) one-third of the median of the average final compensation for members retired during the preceding fiscal year as determined by the retirement board.

(b) For the purposes of this subsection (1), the maximum compensation that a retired member may earn under subsection (1)(a) without an adjustment of retirement benefits includes all remuneration paid to the retired member, excluding:

(i) the amount of health insurance premiums paid by the employer on the retired member's behalf;

(ii) the value of housing provided by the employer to the retired member;

(iii) the amount of employment-related travel expenses reimbursed to the retired member by the employer;

(iv) de minimis fringe benefits, as defined in 26 U.S.C. 132(e), paid by the employer to or on behalf of the retired member; and

(v) payroll taxes paid by the employer on behalf of the retired member.

(2) On July 1 of each year following the member's retirement effective date, the maximum that a retired member may earn under subsection (1)(a) is increased by an amount equal to the consumer price index increase for urban wage earners compiled by the bureau of labor statistics of the United States department of labor or its successor agency in the preceding calendar year.

(3) Except as provided in *[section 1] and in* subsection (5) *of this section*, the retirement benefit of a retired member:

(a) employed in a part-time position or earning more than allowed by subsections (1) and (2) must be temporarily reduced by $1 for each dollar earned

over the maximum allowed. Monthly benefits must be reduced beginning as soon as practical after the excess earnings have been reported to the retirement system by the employer. The retirement benefit must be canceled if the retired member's earnings over the maximum allowed exceed the gross monthly benefit amount.

(b) employed in a full-time position must be canceled beginning in the month in which the retired member returns to full-time employment.

(4) Upon termination and retirement subsequent to a cancellation of benefits pursuant to subsection (3), the retirement benefit of a member:

(a) who was reemployed and earned less than 1 year of creditable service must be reinstated beginning either the first of the month following termination or on July 1 following the date on which the retired member was reemployed, whichever is later. The reinstated retirement benefit is the amount and option that the retired member would have been entitled to receive had the retired member not returned to employment.

(b) who was reemployed and earned at least 1 year of creditable service must be recalculated under 19-20-804 if the member has attained normal retirement age or under 19-20-802 if the member has not attained normal retirement age but is eligible for early retirement. The recalculated benefit must include the service credit accumulated at the time of the member's previous retirement, plus any service credit accumulated subsequent to reemployment. The recalculated normal form benefit amount must be increased by the amount of any benefit enhancement received pursuant to 19-20-719 that the retired member was receiving when the member's benefits were canceled.

(5) If an early-retired member under 19-20-802 is reemployed with the same employer within 30 days from the member's effective date of retirement or if the early-retired member is guaranteed reemployment with the same employer, the member must be considered to have continued in the status of an active member and not to have separated from service. Any retirement allowance payments received by the member must be repaid to the system, together with interest, at the actuarially assumed rate, and the retirement allowance must be canceled.

(6) For purposes of this section, "position eligible to participate in the retirement system" includes work performed by a retiree through a professional employer arrangement, an employee leasing arrangement, or a temporary service contractor, as those terms are defined in 39-8-102.

(7) The retirement allowance of any retired member who is employed in a position and who elects to participate in the optional retirement program under Title 19, chapter 21, must be suspended until the member is no longer employed in the position and is no longer participating in the optional retirement program."

Section 3. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 19, chapter 20, part 7, and the provisions of Title 19, chapter 20, part 7, apply to [section 1].

Section 4. Effective date — applicability. [This act] is effective July 1, 2009, and applies to retired teachers, specialists, and administrators who are employed for school fiscal years beginning on or after [the effective date of this act] and who will exceed the postretirement limits provided in 19-20-731.

Section 5. Termination. [This act] terminates June 30, 2015.

Approved April 1, 2009

CHAPTER NO. 130

[HB 366]

AN ACT ALLOWING THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO ENTER INTO AGREEMENTS WITH ADJOINING STATES REGARDING RECIPROCAL FISHING PRIVILEGES IN MONTANA RIVERS AND STREAMS IF THE BORDERING STATE GRANTS THE SAME OR SIMILAR PRIVILEGES; AMENDING SECTIONS 87-2-1001 AND 87-2-1003, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-2-1001, MCA, is amended to read:

"87-2-1001. Reciprocal fishing privileges of licensees of bordering states. (1) Any person who is properly licensed to fish in a state that borders Montana and who complies with Montana fish and game laws and regulations may fish in any part of a lake, reservoir, pond, *river, stream,* or body of water in Montana that lies within or partly within 10 miles of the boundaries of Montana when the water is declared to be open to fishing by the department if the bordering state grants the same or similar privileges in any ~~body or bodies of water or in all~~ lakes, reservoirs, ponds, *rivers, streams,* or bodies of water ~~similarly defined~~ *designated in a reciprocal agreement as authorized in subsection (2)* within its boundaries to holders of valid Montana fishing licenses~~,~~ and if the bordering state enters into a reciprocal agreement with Montana setting forth terms as provided by this part.

(2) The department is authorized to enter into reciprocal agreements with corresponding state officials of adjoining states for purposes of providing reciprocal fishing privileges upon any body or bodies of water as described in subsection (1). A reciprocal agreement may include provisions by which each state shall honor the license of the other state only when a valid reciprocal license is purchased from the honoring state, the charge for the reciprocal license being set by mutual agreement of the states."

Section 2. Section 87-2-1003, MCA, is amended to read:

"87-2-1003. Bodies of water subject to reciprocal privileges. It is the primary purpose of this part to provide a method whereby the fishing opportunities afforded upon any part of any body of water located within or partly within 10 miles of the boundaries of this state may be mutually enjoyed by the residents of Montana and the residents of ~~such~~ *the* adjoining states~~, and it is not intended to cover the waters of rivers or streams~~*, subject to the terms of a reciprocal agreement as authorized in 87-2-1001*."

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 1, 2009

CHAPTER NO. 131

[HB 383]

AN ACT PROVIDING FOR THE ISSUANCE OF A CERTAIN NUMBER OF FREE HUNTING LICENSES TO CERTAIN YOUTHS WITH LIFE-THREATENING ILLNESSES; DEFINING "LIFE-THREATENING ILLNESS"; AMENDING SECTION 87-2-805, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-2-805, MCA, is amended to read:

"87-2-805. (Temporary) **Persons under eighteen years of age — youth combination sports license — ~~terminally ill~~ youth *with life-threatening illness* under ~~seventeen~~ *eighteen* years of age — free wildlife conservation license for resident seniors and certain minors.** (1) Resident minors who are 12 years of age or older and under 15 years of age may fish and may hunt upland game and migratory game birds during the open season with only a conservation license. Resident minors who are 15 years of age may hunt migratory game birds with only a conservation license. Resident minors who are under 12 years of age may fish without a license. A nonresident person under 15 years of age may not fish in or on any Montana waters without first having obtained a Class B, B-4, or B-5 fishing license unless the nonresident person under 15 years of age is in the company of an adult in possession of a valid Montana fishing license. The limit of fish for the nonresident person and the accompanying adult combined may not exceed the limit for one adult as established by law or by rule of the department.

(2) A resident, as defined by 87-2-102, who is 12 years of age or older and under 15 years of age may purchase a Class A-3 deer A tag for $6.50 and a Class A-5 elk tag for $8.

(3) (a) A resident who is 12 years of age or older and under 18 years of age may purchase a youth combination sports license for $25. A resident who is 12 years of age or older and under 18 years of age and who applies for any hunting license for the first time is entitled to receive a youth combination sports license free of charge.

(b) The youth combination sports license includes:

(i) a conservation license;

(ii) a fishing license;

(iii) an upland game bird license;

(iv) an elk license; and

(v) a deer license.

(c) A resident who is 15 years of age or older and under 18 years of age may purchase a Class A fishing license for $8.

(d) A resident who is 15 years of age or older and under 18 years of age may purchase a Class A-1 upland game bird license for $3.

(e) A person who lawfully purchases or is granted a free youth combination sports license at 17 years of age, but who reaches 18 years of age during that license year, may legally use the license during that license year. A person who hunts or fishes using a youth combination sports license purchased or granted free after the person reaches 18 years of age is guilty of a misdemeanor and shall be subject to any of the following penalties by the sentencing court:

(i) revocation of the person's hunting and fishing privileges for at least 5 years, revocation of the person's hunting and fishing privileges for more than 5 years, or revocation of the person's hunting and fishing privileges for life; and

(ii) a monetary fine of not less than $500 and not more than $5,000 in addition to the fine imposed on a person under this chapter for the specific hunting or fishing violation.

(f) This section does not prohibit a resident minor from purchasing any individual licenses for which the minor may be eligible under this chapter if the minor does not purchase the youth combination sports license.

(4) (a) The department may issue a free resident or nonresident big game combination license, as applicable, *or a free resident or nonresident antelope license and wildlife conservation license, as applicable,* to a resident or nonresident youth under ~~17~~ *18* years of age who has been diagnosed with a ~~terminal~~ *life-threatening* illness. In order for a youth to qualify for the free license, the department must receive documentation *that the youth has been diagnosed with a life-threatening illness* from a ~~licensed physician verifying that the youth is terminally ill~~ *licensed physician*. The free license may be issued to a youth on a one-time basis for only one hunting season. *As used in this subsection, "life-threatening illness" means any progressive, degenerative, or malignant disease or condition that results in a significant threat, likelihood, or certainty that the child's life expectancy will not extend past the child's 19th birthday unless the course of the disease is interrupted or abated.*

(b) In exercising hunting privileges, the youth must be in the company of an adult in possession of a valid Montana hunting license or of a licensed Montana outfitter and conduct all hunting within the terms and conditions of the license issued.

(c) The department may waive hunter safety and education and bowhunter education requirements in 87-2-105 for a qualified youth under this subsection (4) and, in appropriate circumstances, may also allow the qualified youth to hunt from a vehicle in the manner described in 87-2-803.

(d) The department may limit the number of licenses issued pursuant to this subsection (4) to a total of 25 annually.

(5) Resident minors who are 12 years of age or older and under 15 years of age and residents who are 62 years of age or older must, upon application and production of the documentation and information required by 87-2-202(1), be issued a resident wildlife conservation license without charge. (Terminates February 28, 2009—sec. 7, Ch. 452, L. 2007.)

87-2-805. (Effective March 1, 2009) **Persons under eighteen years of age — youth combination sports license — ~~terminally ill~~ youth *with life-threatening illness* under ~~seventeen~~ *eighteen* years of age.** (1) Resident minors who are 12 years of age or older and under 15 years of age may fish and may hunt upland game and migratory game birds during the open season with only a conservation license. Resident minors who are 15 years of age may hunt migratory game birds with only a conservation license. Resident minors who are under 12 years of age may fish without a license. A nonresident person under 15 years of age may not fish in or on any Montana waters without first having obtained a Class B, B-4, or B-5 fishing license unless the nonresident person under 15 years of age is in the company of an adult in possession of a valid Montana fishing license. The limit of fish for the nonresident person and the accompanying adult combined may not exceed the limit for one adult as established by law or by rule of the department.

(2) A resident, as defined by 87-2-102, who is 12 years of age or older and under 15 years of age may purchase a Class A-3 deer A tag for $6.50 and a Class A-5 elk tag for $8.

(3) (a) A resident who is 12 years of age or older and under 18 years of age may purchase a youth combination sports license for $25. A resident who is 12 years of age or older and under 18 years of age and who applies for any hunting

license for the first time is entitled to receive a youth combination sports license free of charge.

(b) The youth combination sports license includes:

(i) a conservation license;

(ii) a fishing license;

(iii) an upland game bird license;

(iv) an elk license; and

(v) a deer license.

(c) A resident who is 15 years of age or older and under 18 years of age may purchase a Class A fishing license for $8.

(d) A resident who is 15 years of age or older and under 18 years of age may purchase a Class A-1 upland game bird license for $3.

(e) A person who lawfully purchases or is granted a free youth combination sports license at 17 years of age, but who reaches 18 years of age during that license year, may legally use the license during that license year. A person who hunts or fishes using a youth combination sports license purchased or granted free after the person reaches 18 years of age is guilty of a misdemeanor and shall be subject to any of the following penalties by the sentencing court:

(i) revocation of the person's hunting and fishing privileges for at least 5 years, revocation of the person's hunting and fishing privileges for more than 5 years, or revocation of the person's hunting and fishing privileges for life; and

(ii) a monetary fine of not less than $500 and not more than $5,000 in addition to the fine imposed on a person under this chapter for the specific hunting or fishing violation.

(f) This section does not prohibit a resident minor from purchasing any individual licenses for which the minor may be eligible under this chapter if the minor does not purchase the youth combination sports license.

(4) (a) The department may issue a free resident or nonresident big game combination license, as applicable, *or a free resident or nonresident antelope license and wildlife conservation license, as applicable,* to a resident or nonresident youth under ~~17~~ *18* years of age who has been diagnosed with a ~~terminal~~ *life-threatening* illness. In order for a youth to qualify for the free license, the department must receive documentation *that the youth has been diagnosed with a life-threatening illness* from a ~~licensed physician verifying that the youth is terminally ill~~ *licensed physician*. The free license may be issued to a youth on a one-time basis for only one hunting season. *As used in this subsection, "life-threatening illness" means any progressive, degenerative, or malignant disease or condition that results in a significant threat, likelihood, or certainty that the child's life expectancy will not extend past the child's 19th birthday unless the course of the disease is interrupted or abated.*

(b) In exercising hunting privileges, the youth must be in the company of an adult in possession of a valid Montana hunting license or of a licensed Montana outfitter and conduct all hunting within the terms and conditions of the license issued.

(c) The department may waive hunter safety and education and bowhunter education requirements in 87-2-105 for a qualified youth under this subsection (4) and, in appropriate circumstances, may also allow the qualified youth to hunt from a vehicle in the manner described in 87-2-803.

(d) The department may limit the number of licenses issued pursuant to this subsection (4) to a total of 25 annually."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 1, 2009

CHAPTER NO. 132

[HB 432]

AN ACT CLARIFYING SCHOOL TRUSTEE ELECTIONS; AUTHORIZING ELECTION BY ACCLAMATION IF THE NUMBER OF CANDIDATES FOR VACANT SCHOOL TRUSTEE POSITIONS IS LESS THAN THE NUMBER OF POSITIONS TO BE ELECTED; AMENDING SECTION 20-3-313, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-3-313, MCA, is amended to read:

"20-3-313. Election by acclamation — notice. (1) If the number of candidates filing for ~~a position~~ *vacant positions* or filing a declaration of intent to be a write-in candidate under 13-10-211 is equal to *or less than* the number of positions to be elected ~~and there is no other reason for the election~~, the trustees may give notice that ~~an~~ *a trustee* election will not be held. Notice must be given no later than 25 days before the election.

(2) If ~~an~~ *a trustee* election is not held, the trustees shall declare elected by acclamation the candidate who filed for the position or who filed a declaration of intent to be a write-in candidate and *shall* issue a certificate of election to the candidate."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 1, 2009

CHAPTER NO. 133

[HB 545]

AN ACT REVISING THE MEMBERSHIP OF THE COUNTY COMPENSATION BOARD; AND AMENDING SECTION 7-4-2503, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-4-2503, MCA, is amended to read:

"7-4-2503. Salary schedule for certain county officers — county compensation board. (1) (a) The salary paid to the county treasurer, county clerk and recorder, clerk of the district court, county assessor, county superintendent of schools, county sheriff, county surveyor in counties where county surveyors receive salaries as provided in 7-4-2812, justice of the peace, and county auditor in all counties where the office is authorized must be established by the county governing body based upon the recommendations of the county compensation board provided for in subsection (4).

(b) Except as provided in subsection (2), the annual salary established pursuant to subsection (1)(a) must be uniform for all county officers referred to in subsection (1)(a).

(2) (a) An elected county superintendent of schools must receive, in addition to the salary based upon subsection (1), the sum of $400 a year, except that an elected county superintendent of schools who holds a master of arts degree or a master's degree in education, with an endorsement in school administration, from a unit of the Montana university system or an equivalent institution may, at the discretion of the county commissioners, receive, in addition to the salary based upon subsection (1), up to $2,000 a year.

(b) The county sheriff must receive, in addition to the salary based upon subsection (1), the sum of $2,000 a year.

(c) The county sheriff must receive a longevity payment amounting to 1% of the salary determined under subsection (1) for each year of service with the sheriff's office, but years of service during any year in which the salary was set at the level of the salary of the prior fiscal year may not be included in any calculation of longevity increases. The additional salary amount provided for in this subsection may not be included in the salary for purposes of computing the compensation for undersheriffs and deputy sheriffs as provided in 7-4-2508.

(d) If the clerk and recorder is also the county election administrator, the clerk and recorder may receive, in addition to the base salary provided in subsection (1)(a), up to $2,000 a year. The additional salary provided for in this subsection (2)(d) may not be included as salary for the purposes of computing the compensation of any other county officers or employees.

(e) The county treasurer may receive, in addition to the base salary provided in subsection (1)(a), up to $2,000 a year. The additional salary provided for in this subsection (2)(e) may not be included as salary for the purposes of computing the compensation of any other county officers or employees.

(3) (a) Subject to subsection (3)(b), the salary for the county attorney must be set as provided in subsection (4).

(b) If the uniform base salary set for county officials pursuant to subsection (1) is increased, then the county attorney is entitled to at least the same increase unless the increase would cause the county attorney's salary to exceed the salary of a district court judge.

(c) (i) After completing 4 years of service as deputy county attorney, each deputy county attorney is entitled to an increase in salary of $1,000 on the anniversary date of employment as deputy county attorney. After completing 5 years of service as deputy county attorney, each deputy county attorney is entitled to an additional increase in salary of $1,500 on the anniversary date of employment. After completing 6 years of service as deputy county attorney and for each year of additional service up to completion of the 11th year of service, each deputy county attorney is entitled to an additional annual increase in salary of $500.

(ii) The years of service as a deputy county attorney accumulated prior to July 1, 1985, must be included in the calculation of the longevity increase.

(4) (a) There is a county compensation board consisting of*:*

(i) the county commissioners~~,~~*;*

(ii) three of the county officials described in subsection (1) appointed by the board of county commissioners~~,~~*;*

(iii) the county attorney~~,~~*;*

(iv) ~~and~~ two to four resident taxpayers appointed initially by the board of county commissioners to staggered terms of 3 years, with the initial

appointments of one or two taxpayer members for a 2-year term and one or two taxpayer members for a 3-year term*; and*

(v) (A) subject to subsection (4)(a)(v)(B), one resident taxpayer appointed by each of the three county officials described in subsection (4)(a)(ii).

(B) The appointments in subjection (4)(a)(v)(A) are not mandatory.

(b) The county compensation board shall hold hearings annually for the purpose of reviewing the compensation paid to county officers. The county compensation board may consider the compensation paid to comparable officials in other Montana counties, other states, state government, federal government, and private enterprise.

~~(b)~~*(c)* The county compensation board shall prepare a compensation schedule for the elected county officials, including the county attorney, for the succeeding fiscal year. The schedule must take into consideration county variations, including population, the number of residents living in unincorporated areas, assessed valuation, motor vehicle registrations, building permits, and other factors considered necessary to reflect the variations in the workloads and responsibilities of county officials as well as the tax resources of the county.

~~(c)~~*(d)* A recommended compensation schedule requires a majority vote of the county compensation board, and at least two county commissioners must be included in the majority. A recommended compensation schedule may not reduce the salary of a county officer that was in effect on May 1, 2001.

~~(d)~~*(e)* The provisions of this subsection (4) do not apply to a county that has adopted a charter form of government or to a charter, consolidated city-county government."

Approved April 1, 2009

CHAPTER NO. 134

[SB 47]

AN ACT REVISING THE MONTANA TITLE LOAN ACT TO REQUIRE THE DEPARTMENT OF ADMINISTRATION TO REFUSE TO ISSUE OR RENEW A TITLE LENDER'S LICENSE ON VARIOUS GROUNDS INCLUDING AN APPLICANT'S MAKING MATERIAL MISSTATEMENTS OF FACT; PROVIDING THAT A PERSON MAY NOT APPLY FOR A LICENSE FOR 1 YEAR FOLLOWING A DENIAL OR REFUSAL BY THE DEPARTMENT TO ISSUE OR RENEW A LICENSE; PROVIDING THAT THE VIOLATION OF CERTAIN SPECIFIED FEDERAL ACTS, INCLUDING THE TRUTH IN LENDING ACT AND THE FAIR CREDIT REPORTING ACT, IS ALSO A VIOLATION OF THE MONTANA TITLE LOAN ACT; GRANTING THE DEPARTMENT RULEMAKING AUTHORITY; REVISING THE DEPARTMENT'S FEES FOR EXAMINING LICENSEES; AND AMENDING SECTIONS 31-1-805 AND 31-1-810, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Denial of license and license renewal. (1) (a) Except as provided in subsection (1)(b), the department shall deny any new license or refuse to renew any license if:

(i) the applicant does not meet the qualifications stated in this part or in rules adopted pursuant to this part;

(ii) the department finds that the criminal history of any employee of the applicant at the time of application or renewal demonstrates any conviction involving fraud or financial dishonesty or if the department's findings show civil judgments involving fraudulent or dishonest financial dealings; or

(iii) the applicant makes any material misstatement of fact or any material omission of fact in the application.

(b) A denial is not required pursuant to subsection (1)(a)(ii) if the department finds that the applicant dismissed the employee promptly upon learning of the employee's conviction involving fraud or financial dishonesty or of civil judgments involving fraudulent or dishonest financial dealings by the employee.

(2) The department shall provide written notice to the applicant of the denial or refusal in writing, setting forth in the notice the grounds upon which the denial or refusal is based.

(3) The applicant has the right to a hearing under the Montana Administrative Procedure Act on any denial or refusal to issue a license. The request for a hearing must be made within 10 days of the date of receipt of the written notice of denial or refusal.

(4) An applicant whose application for licensure or renewal has been denied or refused may not reapply for 1 year following the denial or refusal.

Section 2. Violation of specified federal laws — rulemaking authority. (1) A violation of any applicable provision of the Truth in Lending Act, 15 U.S.C. 1601, et seq., the Equal Credit Opportunity Act, 15 U.S.C. 1691, et seq., the Fair Credit Reporting Act, 15 U.S.C. 1681, et seq., the Fair Debt Collection Practices Act, 15 U.S.C. 1692, et seq., the Financial Services Modernization Act of 1999 (Gramm-Leach-Bliley Act), 15 U.S.C. 6801, et seq., the USA PATRIOT Act of 2001, as reauthorized, Public Law 107-56, or the John Warner National Defense Authorization Act for Fiscal Year 2007, Public Law 109-364, or any regulation promulgated under those acts is also a violation of this part.

(2) The department shall adopt rules to implement this section.

Section 3. Section 31-1-805, MCA, is amended to read:

"31-1-805. Qualifications for licensure. (1) To be eligible for licensure as a title lender, an applicant must be a natural person residing in this state, a business entity formed under the laws of this state, or a foreign business entity qualified to conduct business in this state.

(2) (a) The application for licensure must be in writing, under oath, and in the form prescribed by the department.

(b) The application must contain:

(i) the name of the applicant;

(ii) the date of formation if a business entity;

(iii) the physical address of each title loan office to be operated;

(iv) the name and resident address of the owner or partners or, if a corporation or association, of the directors, trustees, and principal officers; and

(v) any other pertinent information that the department may require.

~~(3) The department may not issue or renew a license if findings are made that the criminal history of any employees of the applicant at the time of application demonstrates any convictions involving fraud or financial~~

~~dishonesty or if the findings show civil judgments involving fraudulent or dishonest financial dealings.~~

~~(4)~~*(3)* An applicant for licensure shall pay an application fee of $500, unless less than 6 months remain in the calendar year, in which case the fee is $250, and an annual license renewal fee of $500 for each title loan office that the applicant intends to operate or operates in this state.

~~(5)~~*(4)* (a) Each license must specify the location of the specific title loan office to which it applies and must be conspicuously displayed in the title loan office.

(b) Before any title loan office location may be changed or moved by the title lender, the department shall approve the change of location by endorsing the license for that title loan office or mailing the licensee a new license for that title loan office without charge.

~~(6)~~*(5)* (a) Upon the filing of the application and the payment of the fee by a person eligible to apply for a title lender's license, the department shall issue a license to the applicant to engage in the title loan business in accordance with the provisions of this part for a period that expires on the last day of December following the date of its issuance.

(b) Each license must be uniquely numbered and may not be transferred or assigned. Renewal licenses are effective for a period of 1 year.

~~(7)~~*(6)* Each licensee shall post a bond in the amount of $10,000 for each location. The bond must continue in effect for 2 years after the licensee ceases operation in this state. The bond must be available to pay damages and penalties to consumers harmed by a violation of this part.

~~(8)~~*(7)* More than one place of business may not be maintained under the same license, but the department may issue more than one license to the same licensee if the licensee is otherwise qualified."

Section 4. Section 31-1-810, MCA, is amended to read:

"31-1-810. Examinations — fees. (1) The department may conduct an examination of a licensee's title lending operation at any time to ensure that the licensee is in compliance with the provisions of this part.

(2) A licensee shall pay the department a fee in the amount of ~~$300 a day~~ *$37.50 an hour* for each examiner required to conduct an annual examination.

(3) A licensee shall make available to a department examiner the information required under 31-1-815 or as required by rule.

(4) Completion of an annual examination must, in the absence of the department's finding of just cause to revoke or suspend a license, constitute grounds for license renewal."

Section 5. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 31, chapter 1, part 8, and the provisions of Title 31, chapter 1, part 8, apply to [sections 1 and 2].

Approved April 1, 2009

CHAPTER NO. 135

[SB 49]

AN ACT REQUIRING THE DEPARTMENT OF ADMINISTRATION TO ESTABLISH HIGH-PERFORMANCE BUILDING STANDARDS FOR STATE-OWNED BUILDINGS AND NEW STATE-LEASED BUILDINGS;

AMENDING SECTION 17-7-201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. High-performance building standards. (1) New buildings and major renovations constructed under 17-7-202 and new state-leased buildings must:

(a) be built and operated as high-performance buildings; and

(b) exceed the International Energy Conservation Code most recently adopted by the department of labor and industry by 20% or to the extent that is cost-effective over the life of the building or major renovation.

(2) The department, in collaboration with the Montana university system and other state agencies, shall adopt high-performance building standards. In developing these standards, the department shall consider:

(a) integrated design principles to optimize energy performance, enhance indoor environmental quality, and conserve natural resources;

(b) cost-effectiveness, including productivity, deferred maintenance, and operational considerations;

(c) environmental, economic, and social sustainability of materials and components; and

(d) building functionality, durability, and maintenance.

Section 2. Section 17-7-201, MCA, is amended to read:

"17-7-201. Definitions ~~of building and construction~~. In this part, the following definitions apply:

(1) *(a)* "Building" includes a:

~~(a)~~*(i)* building, facility, or structure constructed or purchased wholly or in part with state ~~moneys~~ *money*;

~~(b)~~*(ii)* building, facility, or structure at a state institution;

~~(c)~~*(iii)* building, facility, or structure owned or to be owned by a state agency, including the department of transportation.

~~(2)~~*(b)* ~~"Building"~~ *The term* does not include a:

~~(a)~~*(i)* building, facility, or structure owned or to be owned by a county, city, town, school district, or special improvement district;

~~(b)~~*(ii)* facility or structure used as a component part of a highway or water conservation project.

~~(3)~~*(2)* "Construction" includes construction, repair, alteration, and equipping and furnishing during construction, repair, or alteration.

(3) "High-performance building" means a building that integrates and optimizes all major high-performance building attributes, including but not limited to:

(a) energy efficiency;

(b) durability;

(c) life-cycle performance; and

(d) occupant productivity."

Section 3. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 17, chapter 7, part 2, and the provisions of Title 17, chapter 7, part 2, apply to [section 1].

Section 4. Effective date. [This act] is effective on passage and approval.

Section 5. Applicability. [This act] applies to buildings constructed, renovated, or leased after [the effective date of this act].

Approved April 1, 2009

CHAPTER NO. 136

[SB 184]

AN ACT REVISING LICENSE APPLICATION RESTRICTIONS ON LICENSES FOR BEAR, MOUNTAIN LION, AND WILD BUFFALO OR BISON; AMENDING SECTION 87-2-702, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-2-702, MCA, is amended to read:

"87-2-702. Restrictions on special licenses — *availability of bear and mountain lion licenses.* (1) A person who has killed or taken any game animal, except a deer, an elk, or an antelope, during the current license year is not permitted to receive a special license under this chapter to hunt or kill a second game animal of the same species.

(2) The commission may require applicants for special permits authorized by this chapter to obtain a valid big game license for that species for the current year prior to applying for a special permit.

(3) A person may take only one grizzly bear in Montana with a license authorized by 87-2-701.

(4) (a) Except as provided in 87-1-271(2), a person who receives a moose, mountain goat, or limited mountain sheep license, as authorized by 87-2-701, with the exception of an ~~anterless~~ *antlerless* moose or an adult ewe game management license issued under 87-2-104, is not eligible to receive another special license for that species for the next 7 years. For the purposes of this subsection (4)(a), "limited mountain sheep license" means a license that is valid for an area in which the number of licenses issued is restricted.

(b) Except as provided in 87-1-271(2), a person who takes a mountain sheep using an unlimited mountain sheep license, with the exception of a mountain sheep taken pursuant to an adult ewe license, as authorized by 87-2-701, is not eligible to receive another special license for that species for the next 7 years. For the purposes of this subsection (4)(b), "unlimited mountain sheep license" means a license that is valid for an area in which the number of licenses issued is not restricted.

(5) An application for a wild buffalo or bison license must be made on the same form and is subject to the same license application deadline as the special license for moose, mountain goat, and mountain sheep.

(6) (a) Licenses for spring bear hunts must be available for purchase at department offices after April 15 of any license year. However, a person who purchases a license for a spring bear hunt after April 15 of any license year may not use the license until 5 days after the license is issued.

(b) Licenses for fall bear hunts must be available for purchase at department offices after August 31 of any license year. However, a person who purchases a license for a fall bear hunt after August 31 of any license year may not use the license until 5 days after the license is issued.

(7) Licenses for mountain lion hunts must be available for purchase at department offices after August 31 of any license year. However, a person who purchases a license for a mountain lion hunt after August 31 of any license year may not use the license until 5 days after the license is issued."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 1, 2009

CHAPTER NO. 137

[SB 216]

AN ACT ALLOWING SCHOOL DISTRICT TRUSTEES TO ENTER INTO AN INTERLOCAL AGREEMENT WITH THE MONTANA YOUTH CHALLENGE PROGRAM TO PROVIDE EDUCATIONAL OR VOCATIONAL SERVICES TO A STUDENT WHO IS A RESIDENT OF THE DISTRICT; ALLOWING A SCHOOL DISTRICT TO INCLUDE A RESIDENT STUDENT WHO IS RECEIVING EDUCATIONAL OR VOCATIONAL SERVICES FROM THE MONTANA YOUTH CHALLENGE PROGRAM UNDER AN INTERLOCAL AGREEMENT IN THE ENROLLMENT COUNT OF THE DISTRICT FOR THE PURPOSE OF CALCULATING AVERAGE NUMBER BELONGING; AMENDING SECTIONS 20-7-420, 20-9-311, AND 20-9-707, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-7-420, MCA, is amended to read:

"20-7-420. Residency requirements — financial responsibility for special education. (1) Except for a pupil attending *the Montana youth challenge program or* a job corps program pursuant to 20-9-707, a child's district of residence for special education purposes must be determined in accordance with the provisions of 1-1-215, unless otherwise determined by the court. This applies to a child living at home, in an institution, or under foster care. If the parent has left the state, the parent's last-known district of residence is the child's district of residence.

(2) The superintendent of public instruction is financially responsible for tuition and transportation as established under 20-5-323 and 20-5-324 for a child with a disability, as defined in 20-7-401, who attends school outside the district and county of residence because the student has been placed in a foster care or group home licensed by the state. The superintendent of public instruction is not financially responsible for tuition and transportation for a child who is placed by a state agency in an out-of-state public school or an out-of-state private residential facility.

(3) If an eligible child, as defined in 20-7-436, is receiving inpatient treatment in an in-state residential treatment facility or children's psychiatric hospital, as defined in 20-7-436, and the educational services are provided by a public school district under the provisions of 20-7-411 or 20-7-435, the superintendent of public instruction shall reimburse the district providing the services for the negotiated amount, as established pursuant to 20-7-435(5), that represents the district's costs of providing education and related services. Payments must be made from funds appropriated for this purpose. If the negotiated amount exceeds the daily membership rate under 20-7-435(3) and any per-ANB amount of direct state aid, the superintendent of public instruction shall pay the remaining balance from available funds. However, the

amount spent from available funds for this purpose may not exceed $500,000 during a biennium.

(4) A state agency that makes a placement of a child with a disability is responsible for the financial costs of room and board and the treatment of the child. The state agency that makes an out-of-state placement of a child with a disability is responsible for the education fees required to provide a free appropriate public education that complies with the requirements of Title 20, chapter 7, part 4."

Section 2. Section 20-9-311, MCA, is amended to read:

"20-9-311. Calculation of average number belonging (ANB) — three-year averaging. (1) Average number belonging (ANB) must be computed for each budget unit as follows:

(a) compute an average enrollment by adding a count of regularly enrolled full-time pupils who were enrolled as of the first Monday in October of the prior school fiscal year to a count of regularly enrolled pupils on February 1 of the prior school fiscal year, or the next school day if those dates do not fall on a school day, and divide the sum by two; and

(b) multiply the average enrollment calculated in subsection (1)(a) by the sum of 180 and the approved pupil-instruction-related days for the current school fiscal year and divide by 180.

(2) For the purpose of calculating ANB under subsection (1), up to 7 approved pupil-instruction-related days may be included in the calculation.

(3) When a school district has approval to operate less than the minimum aggregate hours under 20-9-806, the total ANB must be calculated in accordance with the provisions of 20-9-805.

(4) (a) For the purpose of calculating ANB, enrollment in an education program:

(i) from 180 to 359 aggregate hours of pupil instruction per school year is counted as one-quarter-time enrollment;

(ii) from 360 to 539 aggregate hours of pupil instruction per school year is counted as half-time enrollment;

(iii) from 540 to 719 aggregate hours of pupil instruction per school year is counted as three-quarter-time enrollment; and

(iv) 720 or more aggregate hours of pupil instruction per school year is counted as full-time enrollment.

(b) Enrollment in a program intended to provide fewer than 180 aggregate hours of pupil instruction per school year may not be included for purposes of ANB.

(c) Enrollment in a self-paced program or course may be converted to an hourly equivalent based on the hours necessary and appropriate to provide the course within a regular classroom schedule.

(d) A pupil in kindergarten through grade 12 who is concurrently enrolled in more than one public school, program, or district may not be counted as more than one full-time pupil for ANB purposes.

(5) For a district that is transitioning from a half-time to a full-time kindergarten program, the state superintendent shall count kindergarten enrollment in the previous year as full-time enrollment for the purpose of calculating ANB for the elementary programs offering full-time kindergarten in

the current year. For the purposes of calculating the 3-year ANB, the superintendent of public instruction shall count the kindergarten enrollment as one-half enrollment and then add the additional kindergarten ANB to the 3-year average ANB for districts offering full-time kindergarten.

(6) When a pupil has been absent, with or without excuse, for more than 10 consecutive school days, the pupil may not be included in the enrollment count used in the calculation of the ANB unless the pupil resumes attendance prior to the day of the enrollment count.

(7) The enrollment of preschool pupils, as provided in 20-7-117, may not be included in the ANB calculations.

(8) The average number belonging of the regularly enrolled, full-time pupils for the public schools of a district must be based on the aggregate of all the regularly enrolled, full-time pupils attending the schools of the district, except that the ANB is calculated as a separate budget unit when:

(a) (i) a school of the district is located more than 20 miles beyond the incorporated limits of a city or town located in the district and at least 20 miles from any other school of the district, the number of regularly enrolled, full-time pupils of the school must be calculated as a separate budget unit for ANB purposes and the district must receive a basic entitlement for the school calculated separately from the other schools of the district;

(ii) a school of the district is located more than 20 miles from any other school of the district and incorporated territory is not involved in the district, the number of regularly enrolled, full-time pupils of the school must be calculated separately for ANB purposes and the district must receive a basic entitlement for the school calculated separately from the other schools of the district;

(iii) the superintendent of public instruction approves an application not to aggregate when conditions exist affecting transportation, such as poor roads, mountains, rivers, or other obstacles to travel, or when any other condition exists that would result in an unusual hardship to the pupils of the school if they were transported to another school, the number of regularly enrolled, full-time pupils of the school must be calculated separately for ANB purposes and the district must receive a basic entitlement for the school calculated separately from the other schools of the district; or

(iv) two or more districts consolidate or annex under the provisions of 20-6-422 or 20-6-423, the ANB and the basic entitlements of the component districts must be calculated separately for a period of 3 years following the consolidation or annexation. Each district shall retain a percentage of its basic entitlement for 3 additional years as follows:

(A) 75% of the basic entitlement for the fourth year;

(B) 50% of the basic entitlement for the fifth year; and

(C) 25% of the basic entitlement for the sixth year.

(b) a junior high school has been approved and accredited as a junior high school, all of the regularly enrolled, full-time pupils of the junior high school must be considered as high school district pupils for ANB purposes;

(c) a middle school has been approved and accredited, all pupils below the 7th grade must be considered elementary school pupils for ANB purposes and the 7th and 8th grade pupils must be considered high school pupils for ANB purposes; or

(d) a school has not been accredited by the board of public education, the regularly enrolled, full-time pupils attending the nonaccredited school are not eligible for average number belonging calculation purposes, nor will an average number belonging for the nonaccredited school be used in determining the BASE funding program for the district.

(9) The district shall provide the superintendent of public instruction with semiannual reports of school attendance, absence, and enrollment for regularly enrolled students, using a format determined by the superintendent.

(10) (a) Except as provided in subsections (10)(b) and (10)(c), enrollment in a basic education program provided by the district through any combination of onsite or offsite instruction may be included for ANB purposes only if the pupil is offered access to the complete range of educational services for the basic education program required by the accreditation standards adopted by the board of public education.

(b) Access to school programs and services for a student placed by the trustees in a private program for special education may be limited to the programs and services specified in an approved individual education plan supervised by the district.

(c) Access to school programs and services for a student who is incarcerated in a facility, other than a youth detention center, may be limited to the programs and services provided by the district at district expense under an agreement with the incarcerating facility.

(d) This subsection (10) may not be construed to require a school district to offer access to activities governed by an organization having jurisdiction over interscholastic activities, contests, and tournaments to a pupil who is not otherwise eligible under the rules of the organization.

(11) A district may include only, for ANB purposes, an enrolled pupil who is otherwise eligible under this title and who is:

(a) a resident of the district or a nonresident student admitted by trustees under a student attendance agreement and who is attending a school of the district;

(b) unable to attend school due to a medical reason certified by a medical doctor and receiving individualized educational services supervised by the district, at district expense, at a home or facility that does not offer an educational program;

(c) unable to attend school due to the student's incarceration in a facility, other than a youth detention center, and who is receiving individualized educational services supervised by the district, at district expense, at a home or facility that does not offer an educational program;

(d) receiving special education and related services, other than day treatment, under a placement by the trustees at a private nonsectarian school or private program if the pupil's services are provided at the district's expense under an approved individual education plan supervised by the district;

(e) participating in the running start program at district expense under 20-9-706;

(f) receiving educational services, provided by the district, using appropriately licensed district staff at a private residential program or private residential facility licensed by the department of public health and human services;

(g) enrolled in an educational program or course provided at district expense using electronic or offsite delivery methods, including but not limited to tutoring, distance learning programs, online programs, and technology delivered learning programs, while attending a school of the district or any other nonsectarian offsite instructional setting with the approval of the trustees of the district. The pupil shall:

(i) meet the residency requirements for that district as provided in 1-1-215;

(ii) live in the district and must be eligible for educational services under the Individuals With Disabilities Education Act or under 29 U.S.C. 794; or

(iii) attend school in the district under a mandatory attendance agreement as provided in 20-5-321.

(h) a resident of the district attending *the Montana youth challenge program or* a Montana job corps program under an interlocal agreement with the district under 20-9-707.

(12) A district shall, for ANB purposes, calculate the enrollment of an eligible Montana youth challenge program participant as half-time enrollment.

~~(12)~~*(13)* (a) For an elementary or high school district that has been in existence for 3 years or more, the district's maximum general fund budget and BASE budget for the ensuing school fiscal year must be calculated using the current year ANB for all budget units or the 3-year average ANB for all budget units, whichever generates the greatest maximum general fund budget.

(b) For a K-12 district that has been in existence for 3 years or more, the district's maximum general fund budget and BASE budget for the ensuing school fiscal year must be calculated separately for the elementary and high school programs pursuant to subsection ~~(12)(a)~~ *(13)(a)* and then combined.

~~(13)~~*(14)* The term "3-year ANB" means an average ANB over the most recent 3-year period, calculated by:

(a) adding the ANB for the budget unit for the ensuing school fiscal year to the ANB for each of the previous 2 school fiscal years; and

(b) dividing the sum calculated under subsection ~~(13)(a)~~ *(14)(a)* by three."

Section 3. Section 20-9-707, MCA, is amended to read:

"20-9-707. Agreement with *Montana youth challenge program or* accredited Montana job corps program. (1) The trustees of a school district may enter into an interlocal cooperative agreement for the ensuing school fiscal year under the provisions of Title 7, chapter 11, part 1, with *the Montana youth challenge program or with* a Montana job corps program accredited by the northwest association of schools and colleges to provide educational or vocational services that are supplemental to the educational programs offered by the resident school district.

(2) A student who receives educational or vocational services at *the Montana youth challenge program or* a Montana job corps program pursuant to an agreement authorized under subsection (1) must be enrolled, for purposes of calculating average number belonging, in a public school in the student's district of residence. Credits taken at the *Montana youth challenge program or an* accredited Montana job corps program must be approved by the school district and meet the requirements for graduation at a school in the student's district of residence, must be taught by an instructor who has a current and appropriate Montana high school certification, and must be reported by the institution to the student's district of residence. Upon accumulating the

necessary credits at ~~either~~ a school in the district of residence *or at the Montana youth challenge program* or ~~at~~ an accredited Montana job corps program pursuant to an interlocal cooperative agreement, a student must be allowed to graduate from the school in the student's district of residence.

(3) A school district that, pursuant to an interlocal cooperative agreement, allows an enrolled student to attend *the Montana youth challenge program or* a Montana job corps program accredited as prescribed in subsection (1) is not responsible for payment of the student's transportation costs to the job corps program.

(4) A student attending *the Montana youth challenge program or* a job corps program may not claim the *Montana youth challenge program's or* job corps program's facility as the student's residence for the purposes of this section."

Section 4. Effective date — applicability. [This act] is effective July 1, 2009, and applies to school fiscal years beginning on or after July 1, 2010.

Approved April 1, 2009

CHAPTER NO. 138

[SB 323]

AN ACT PROVIDING THAT PRIOR TO SIGNING A WRITTEN RENTAL AGREEMENT THE LANDLORD AND TENANT SHALL AGREE TO ACCEPT THE DEFAULT EXTENSION PERIOD FOR THE LEASE CHOSEN BY THE TENANT THAT IS TO BE GIVEN EFFECT IF THE LEASE IS NOT REVISED OR NEITHER PARTY GIVES NOTICE OF TERMINATION TO THE OTHER PRIOR TO THE RENTAL AGREEMENT'S ORIGINAL TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Extension of written rental agreements. (1) Prior to signing a written rental agreement, the landlord and tenant shall agree to accept a default extension period for the lease chosen by the tenant pursuant to subsection (2) that is to be given effect if a revised lease is not agreed to or if neither party gives a 30-day written notice of termination to the other prior to the rental agreement's original termination date.

(2) The tenant shall choose from a list of default options, including but not limited to renewal for an additional term of equal length as the original term, renewal for a set term that is not of equal length as the original term, renewal on a month-to-month basis, or termination of the tenancy.

(3) If neither party gives a 30-day written notice to the other as to the extension or termination of the tenancy, the mutually agreed upon default option takes affect immediately following the termination of the original rental agreement.

(4) If the landlord and tenant fail to establish a default option at the beginning of the tenancy as required in subsection (1) and neither party gives a 30-day written notice to the other to terminate the tenancy, the tenancy continues on a month-to-month basis.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 70, chapter 24, part 2, and the provisions of Title 70, chapter 24, part 2, apply to [section 1].

Approved April 1, 2009

CHAPTER NO. 139

[HB 106]

AN ACT CHANGING "ALTERED" BIRTH CERTIFICATES TO "AMENDED" BIRTH CERTIFICATES; AND AMENDING SECTIONS 50-15-202 AND 50-15-204, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-15-202, MCA, is amended to read:

"50-15-202. Unattended birth. (1) If a birth is unattended and neither parent is able to prepare a birth certificate, the local registrar shall:

(a) secure information from any person having knowledge of the birth;

(b) prepare and file a birth certificate;

(c) within the time prescribed by the department, file a supplementary report furnishing information omitted from the original birth certificate if additional information is received.

(2) Birth certificates completed by a supplementary report ~~shall~~ *may* not be considered "delayed" or "~~altered~~" *"amended"*."

Section 2. Section 50-15-204, MCA, is amended to read:

"50-15-204. Delayed or amended birth certificate. (1) (a) If a certificate of birth for a person born in this state has not been filed within 1 year of the birth, a delayed certificate of birth may be filed in accordance with rules adopted by the department. A delayed certificate of birth may not be registered until the requirements regarding facts pertaining to the delayed certificate, as specified by rule, have been met.

(b) A birth of a person in this state whose name has not been registered within 1 year after the birth must be registered on a delayed certificate of birth form. The delayed certificate must contain the date of registration and a summary statement of the information submitted to explain the delayed registration.

(c) A delayed certificate of birth may not be registered for a deceased person.

(d) The department may not register a delayed certificate of birth if an applicant for a delayed certificate of birth does not submit the minimum documentation required by rule for delayed registration or if the department has cause to question the validity or adequacy of the applicant's sworn statement or the documentation provided to establish the facts and the deficiencies are not corrected. The department shall advise the applicant of the reasons for the refusal to register the delayed certificate of birth. The department shall advise the applicant of the right to seek an order from a court of competent jurisdiction to obtain registration of the delayed certificate of birth as provided in 50-15-222.

(e) The department may, by rule, provide for the dismissal of an application for registration of a delayed certificate of birth that is not actively pursued.

(2) The department or its designee may amend a birth, death, or fetal death certificate upon submitting proof as required by the department.

(3) The department shall adopt rules establishing the circumstances under which vital records may be corrected or amended and the procedure to correct or amend those records.

(4) If birth certificates are ~~altered~~ *amended* by the department after filing, the certificate must show the date of the ~~alteration~~ *amendment* and the mark ~~"altered"~~ *"amended"*. A summary statement of the evidence in support of the ~~alteration~~ *amendment* must be endorsed on the certificate.

(5) The probative value of a "delayed" or ~~"altered"~~ *"amended"* certificate of birth is determined by the judicial or administrative body before whom the certificate is offered as evidence."

Approved April 2, 2009

CHAPTER NO. 140

[HB 304]

AN ACT NAMING A PORTION OF U.S. HIGHWAY 2 AFTER HIGHWAY PATROL OFFICER DAVID GRAHAM; REQUIRING THE DEPARTMENT OF TRANSPORTATION TO PROVIDE MARKERS TO RECOGNIZE THE DESIGNATION WHEN EXISTING SIGNS NEED REPLACING; REQUIRING NEW ROADWAY MAPS TO INCLUDE THE DESIGNATION; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, Trooper David A. Graham was a dedicated trooper to the safety and protection of the citizens of Montana; and

WHEREAS, David was dedicated to the happiness of his family and friends; and

WHEREAS, David will always be loved and missed dearly as he was the most helpful and loving person we have known.

Be it enacted by the Legislature of the State of Montana:

Section 1. Highway patrol officer David Graham memorial highway. (1) There is established the highway patrol officer David Graham memorial highway on the existing U.S. highway 2 from the southern boundary of the city of Kalispell to the western boundary of the city of Columbia Falls.

(2) When existing road signs on the designated highway need replacement, the department shall provide appropriate markers to recognize the memorial designation of the highway.

(3) Maps that identify roadways in Montana must be updated to reflect the memorial designation in subsection (1) when the maps are updated.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 60, chapter 1, part 2, and the provisions of Title 60, chapter 1, part 2, apply to [section 1].

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 2, 2009

CHAPTER NO. 141

[HB 311]

AN ACT NAMING A PORTION OF U.S. HIGHWAY 2 AFTER HIGHWAY PATROL OFFICER EVAN F. SCHNEIDER; REQUIRING THE DEPARTMENT OF TRANSPORTATION TO PROVIDE MARKERS TO RECOGNIZE THE DESIGNATION WHEN EXISTING SIGNS NEED

REPLACING; REQUIRING NEW ROADWAY MAPS TO INCLUDE THE DESIGNATION; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, Evan F. Schneider proudly and honorably served the great State of Montana as a Montana Highway Patrol Trooper; his service record was exemplary; and even the people he arrested thanked him for his kindness and respect; and

WHEREAS, Evan helped many Montanans who were in crisis on our State's highways; and

WHEREAS, Evan joyfully fulfilled his duty as a Montana Highway Patrol Trooper to protect every person who travels Montana's highways; and

WHEREAS, we honor his ultimate sacrifice, his final duty to the citizens of Montana.

Be it enacted by the Legislature of the State of Montana:

Section 1. Highway patrol officer Evan F. Schneider memorial highway. (1) There is established the highway patrol officer Evan F. Schneider memorial highway on the existing U.S. highway 2 from the eastern boundary of the city of Columbia Falls to the western boundary of the city of Hungry Horse.

(2) When existing road signs on the designated highway need replacement, the department shall provide appropriate markers to recognize the memorial designation of the highway.

(3) Maps that identify roadways in Montana must be updated to reflect the memorial designation in subsection (1) when the maps are updated.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 60, chapter 1, part 2, and the provisions of Title 60, chapter 1, part 2, apply to [section 1].

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 2, 2009

CHAPTER NO. 142

[HB 324]

AN ACT ALLOWING A RETIRING LAW ENFORCEMENT OFFICER TO PURCHASE CERTAIN FIREARMS ISSUED TO THE OFFICER; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Purchase of firearm by retiring law enforcement officer. A sheriff or other peace officer, as defined in 7-32-303, who is terminating from service and is eligible for a retirement benefit from a retirement plan under Title 19, chapters 6 through 9, 19, or 21, may request to purchase firearms that have been issued to the sheriff or peace officer and that are legal for a private citizen to possess. If the request is accepted, the parties shall agree on the purchase price, not to exceed fair market value.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 7, chapter 32, part 3, and the provisions of Title 7, chapter 32, part 3, apply to [section 1].

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 2, 2009

CHAPTER NO. 143

[SB 141]

AN ACT REPEALING FRANCHISE DISABILITY INSURANCE; REPEALING SECTION 33-22-401, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Repealer. Section 33-22-401, MCA, is repealed.

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 2, 2009

CHAPTER NO. 144

[SB 173]

AN ACT CLARIFYING THE ABILITY OF SCHOOL DISTRICTS TO SHARE SUPERINTENDENTS AND PRINCIPALS; AND AMENDING SECTION 20-4-401, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-4-401, MCA, is amended to read:

"20-4-401. Appointment and dismissal of district superintendent or county high school principal. (1) The trustees of any high school district, except a county high school *or other high school district that operates under a separate board of trustees due to alternative methods of electing the members of the high school board of trustees as provided in 20-3-352(3)*, and the trustees of the elementary district where its high school building is located shall jointly employ and appoint a district superintendent. The trustees of a county high school *or other high school district that operates under a separate board of trustees due to alternative methods of electing the members of the high school board of trustees as provided in 20-3-352(3)* shall employ and appoint a district superintendent, except that ~~they~~ *the trustees of a county high school district* may employ and appoint a holder of a class 3 teacher certificate with a district superintendent endorsement as the county high school principal in lieu of a district superintendent. The trustees of any other district may employ and appoint a district superintendent.

(2) Whenever a joint board of trustees has been formed by a county high school and the elementary district where the county high school is located, the joint board shall jointly employ and appoint a district superintendent. During the term of contract of the jointly appointed district superintendent, neither district may separately employ and appoint a district superintendent or county high school principal.

(3) School districts other than those provided in subsection (2) that form a joint board of trustees or the boards of trustees of two or more districts may jointly employ and appoint a district superintendent, as allowed in 20-3-362, or may enter into an interlocal agreement pursuant to Title 7, chapter 11, part 1, to cooperatively share the employment of a district superintendent.

(4) The written contract of employment of a district superintendent or a county high school principal must be authorized by the proper resolution of the trustees of the district or the joint board of trustees and executed in duplicate by the presiding officer of the trustees or joint board of trustees and the clerks of the

districts in the name of the districts and by the district superintendent or the county high school principal. The contract must be for a term of not more than 3 years, and after the second successive contract, the contract is considered to be renewed for a further term of 1 year from year to year unless the trustees, by resolution passed by a majority vote of its membership, resolve to terminate the services of the district superintendent or the county high school principal at the expiration of the existing contract. The trustees shall take the termination action and notify the district superintendent or the county high school principal in writing of their intent to terminate the superintendent's or principal's services at the expiration of the superintendent's or principal's current contract not later than February 1 of the last year of the contract.

(5) Whenever a joint board of trustees or the boards of trustees of two or more districts employs a person as the district superintendent under subsection (2) or (3), the districts shall prorate the compensation provided by the contract of employment on the basis of the number of teachers employed by each district.

(6) At any time the class 3 teacher certification or the endorsement of the certificate of a district superintendent or a county high school principal that qualifies the person to hold the position becomes invalid, the trustees of the district or the joint board of trustees shall discharge the person as the district superintendent or county high school principal regardless of the unexpired term of the contract. The trustees may not compensate the superintendent or principal under the terms of the contract for any services rendered subsequent to the date of the invalidation of the teacher certificate.

(7) A district superintendent or county high school principal may not engage in any work or activity that the trustees consider to be in conflict with the duties and employment as the district superintendent or county high school principal."

Approved April 2, 2009

CHAPTER NO. 145

[SB 208]

AN ACT AUTHORIZING THE GOVERNING BODY OF A COUNTY, CITY, OR TOWN TO CONSIDER THE EMPLOYEES OF PRIVATE, NONPROFIT HOSPITALS, HEALTH CENTERS, OR NURSING HOMES TO BE EMPLOYEES OF THE COUNTY, CITY, OR TOWN SOLELY FOR THE PURPOSE OF PARTICIPATION IN GROUP HOSPITALIZATION, MEDICAL, HEALTH, INCLUDING LONG-TERM DISABILITY, ACCIDENT, OR GROUP LIFE INSURANCE CONTRACTS OR PLANS; AMENDING SECTION 2-18-702, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-18-702, MCA, is amended to read:

"2-18-702. Group insurance for public employees and officers. (1) (a) Except as provided in subsection (1)(c), all counties, cities, towns, school districts, and the board of regents shall upon approval by two-thirds vote of their respective officers and employees enter into group hospitalization, medical, health, including long-term disability, accident, or group life insurance contracts or plans for the benefit of their officers and employees and their dependents. The laws prohibiting discrimination on the basis of marital status in Title 49 do not prohibit bona fide group insurance plans from providing

greater or additional contributions for insurance benefits to employees with dependents than to employees without dependents or with fewer dependents.

(b) The governing body of a county, city, or town may, at its discretion, consider the employees of private, nonprofit economic development organizations*, hospitals, health centers, or nursing homes* to be employees of the county, city, or town solely for the purpose of participation in group hospitalization, medical, health, including long-term disability, accident, or group life insurance contracts or plans as provided in subsection (1)(a). The governing body of the county, city, or town may require an employee*,* ~~or~~ organization*, hospital, health center, or nursing home* to pay the actual cost of coverage required for participation or may, at its discretion and subject to any restriction on who may be a member of a group, pay all or part of the cost of coverage of the employee of the organization.

(c) The governing body of a third, fourth, fifth, sixth, or seventh class county or the board of trustees of a hospital district may, at its discretion, exempt employees of a county hospital, county rest home *or nursing home*, or hospital district from participation in group hospitalization, medical, health, including long-term disability, accident, or group life insurance contracts or plans provided pursuant to subsection (1)(a) or (1)(b).

(2) State employees and elected officials, as defined in 2-18-701, may participate in state employee group benefit plans as are provided for under part 8 of this chapter.

(3) For state officers and employees, the premiums required from time to time to maintain the insurance in force must be paid by the insured officers and employees, and the state treasurer shall deduct the premiums from the salary or wages of each officer or employee who elects to become insured, on the officer's or employee's written order, and issue a warrant for the premiums to the insurer.

(4) For the purpose of this section, the plans of health service corporations for defraying or assuming the cost of professional services of ~~licentiates~~ *licensees* in the field of health or the services of hospitals, clinics, or sanitariums or both professional and hospital services must be construed as group insurance and the dues payable under the plans must be construed as premiums for group insurance.

(5) If the board of trustees of a school district implements a self-insured group health plan or if the board of regents implements an alternative to conventional insurance to provide group benefits to its employees, the board shall maintain the alternative plan on an actuarially sound basis."

Section 2. Effective date. [This act] is effective July 1, 2009.

Approved April 2, 2009

CHAPTER NO. 146

[SB 409]

AN ACT PROVIDING FOR THE ENFORCEMENT OF THE USE OF A MUFFLER FOR AN ENGINE COMPRESSION BRAKE DEVICE; PROVIDING FOR A NOTICE OF DEFICIENCY; PROVIDING A PENALTY; AND AMENDING SECTIONS 61-9-321, 61-9-501, AND 61-9-503, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-9-321, MCA, is amended to read:

"61-9-321. Engine compression brake device — use. (1) A commercial motor vehicle equipped with an engine compression brake device must be equipped with a muffler in good working condition to prevent excessive noise.

(2) An operator of a commercial motor vehicle that has an engine compression brake device with a factory-installed muffler or an equivalent after-market muffler may not be prohibited from using the engine compression brake device.

(3) The department of transportation employees who are designated as peace officers pursuant to 61-10-154 shall work with law enforcement in the enforcement of standards adopted pursuant to this section.

(a) Notice of a deficiency must be given pursuant to 61-9-501.

(b) A violation of the rules adopted to implement to this section is punishable as provided in 61-9-521."

Section 2. Section 61-9-501, MCA, is amended to read:

"61-9-501. Inspections by officers of ~~the~~ department. (1) The department or its agents may at any time upon reasonable cause to believe that a vehicle is unsafe or not equipped as required by law or that its equipment is not in proper adjustment or repair require the driver of ~~such~~ *the* vehicle to stop and submit ~~such~~ *the* vehicle to an inspection and ~~such~~ test ~~with reference thereto~~ as may be appropriate.

(2) In the event ~~such~~ *the* vehicle and its equipment are found to be in safe condition and in full compliance with the law, the officer making ~~such~~ *the* inspection may issue to the driver an official certificate of inspection and approval of ~~such~~ *the* vehicle specifying those parts or equipment ~~so~~ *that have been* inspected and approved.

(3) In the event ~~such~~ *the* vehicle is found to be in unsafe condition or any required part or equipment is not present or is not in proper repair and adjustment, the officer shall give a written notice to the driver and shall send a copy to the department. ~~Said~~ *The* notice ~~shall~~ *must* specify the deficiencies and require that ~~such~~ *the* vehicle be placed in safe condition and its equipment in proper repair and adjustment within 5 days*, except as provided in subsection (4).*

(4) For the purpose of 61-9-321 only, the notice must require the engine compression brake device muffler be in proper repair and adjustment within 14 days."

Section 3. Section 61-9-503, MCA, is amended to read:

"61-9-503. Owners and drivers to comply with inspection laws. (1) No person driving a vehicle may refuse to submit the vehicle to an inspection and test when required to do so by the department or an authorized officer or employee of the department.

(2) Every owner or driver, upon receiving a notice as provided in 61-9-501, shall comply ~~therewith~~ and ~~shall within 5 days~~ have the deficiencies corrected and forward notification of the correction to the department. In lieu of compliance with this subsection, the vehicle may not be operated, except as provided in subsection (3).

(3) No person may operate any vehicle after receiving ~~a~~ notice ~~with reference thereto as above provided~~ except as may be necessary to return the vehicle to the residence or place of business of the owner or driver, if within a distance of 20 miles, or to a garage until the vehicle and its equipment have been placed in

proper repair and adjustment and otherwise made to conform to the requirements of this chapter."

Approved April 2, 2009

CHAPTER NO. 147

[HB 24]

AN ACT INSTRUCTING THE MONTANA CODE COMMISSIONER TO RENUMBER AND RECODIFY TITLE 15, CHAPTER 30, MONTANA CODE ANNOTATED, SPECIFICALLY RELATING TO THE RATE AND RETURN OF THE INDIVIDUAL INCOME TAX AND CERTAIN PORTIONS OF THE ADMINISTRATION AND COLLECTION OF THE INDIVIDUAL INCOME TAX; COMBINING CERTAIN INDIVIDUAL INCOME TAX PROVISIONS TO IMPROVE USABILITY AND IMPROVE THE RECODIFICATION; AMENDING SECTIONS 15-30-111, 15-30-114, 15-30-171, 15-30-172, 15-30-174, 15-30-176, AND 15-30-177, MCA; AND REPEALING SECTIONS 15-30-110, 15-30-115, 15-30-173, 15-30-175, 15-30-178, AND 15-30-179, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Instructions to code commissioner. (1) The code commissioner is instructed to renumber sections and parts of the Montana Code Annotated currently in Title 15, chapter 30.

(a) The code commissioner shall create new parts of Title 15, chapter 30, and all sections within current parts must be moved and renumbered to the new parts. Except as provided in subsections (1)(b) and (1)(c), the sections must retain their current codified relationship.

(b) All sections in Title 15, chapter 30, part 1, except 15-30-126 and 15-30-141 through 15-30-149, must be recodifed as integral parts of two new parts of Title 15, chapter 30, one part based upon the rate and return of the individual income tax and the second part relating to specific tax credits and tax checkoffs.

(c) Section 15-30-126 must be recodified as an integral part of Title 15, chapter 31, governing corporation license or income tax.

(d) Sections 15-30-141 through 15-30-149 must be recodified as an integral part of Title 15, chapter 30, current part 3, relating to tax administration and collections, as that part is recodified.

(2) The code commissioner is instructed to change internal references within and to the renumbered sections, including sections enacted or amended by the 61st legislature, to reflect the new section numbers assigned to sections pursuant to this section.

(3) Any enactment, including an enactment of the 61st legislature, that requires that a section be codified in a part of Title 15, chapter 30, and that is recodified pursuant to this section is codified as an integral part of the recodified part, and the provisions of the newly recodified part apply to the recodified section.

(4) Any amendment to the following sections repealed by [section 9], unless specifically coordinated in another act, is to be codified as an integral part of the specified section:

(a) 15-30-110 to be codified in 15-30-111;

(b) 15-30-115 to be codified in 15-30-114;

(c) 15-30-173 to be codified in 15-30-172;

(d) 15-30-178 to be codified in 15-30-174;

(e) 15-30-175 to be codified in 15-30-176; and

(f) 15-30-179 to be codified in 15-30-177.

Section 2. Section 15-30-111, MCA, is amended to read:

"15-30-111. Adjusted gross income. (1) ~~Adjusted~~ *Subject to subsection (13), adjusted* gross income is the taxpayer's federal adjusted gross income as defined in section 62 of the Internal Revenue Code, 26 U.S.C. 62, and in addition includes the following:

(a) (i) interest received on obligations of another state or territory or county, municipality, district, or other political subdivision of another state, except to the extent that the interest is exempt from taxation by Montana under federal law;

(ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code, 26 U.S.C. 852(b)(5), that are attributable to the interest referred to in subsection (1)(a)(i);

(b) refunds received of federal income tax, to the extent that the deduction of the tax resulted in a reduction of Montana income tax liability;

(c) that portion of a shareholder's income under subchapter S. of Chapter 1 of the Internal Revenue Code that has been reduced by any federal taxes paid by the subchapter S. corporation on the income;

(d) depreciation or amortization taken on a title plant as defined in 33-25-105;

(e) the recovery during the tax year of an amount deducted in any prior tax year to the extent that the amount recovered reduced the taxpayer's Montana income tax in the year deducted;

(f) if the state taxable distribution of an estate or trust is greater than the federal taxable distribution of the same estate or trust, the difference between the state taxable distribution and the federal taxable distribution of the same estate or trust for the same tax period; and

(g) except for exempt-interest dividends described in subsection (2)(a)(ii), for tax years commencing after December 31, 2002, the amount of any dividend to the extent that the dividend is not included in federal adjusted gross income.

(2) Notwithstanding the provisions of the Internal Revenue Code, adjusted gross income does not include the following, which are exempt from taxation under this chapter:

(a) (i) all interest income from obligations of the United States government, the state of Montana, or a county, municipality, district, or other political subdivision of the state and any other interest income that is exempt from taxation by Montana under federal law;

(ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code, 26 U.S.C. 852(b)(5), that are attributable to the interest referred to in subsection (2)(a)(i);

(b) interest income earned by a taxpayer who is 65 years of age or older in a tax year up to and including $800 for a taxpayer filing a separate return and $1,600 for each joint return;

(c) (i) except as provided in subsection (2)(c)(ii), the first $3,600 of all pension and annuity income received as defined in 15-30-101;

(ii) for pension and annuity income described under subsection (2)(c)(i), as follows:

(A) each taxpayer filing singly, head of household, or married filing separately shall reduce the total amount of the exclusion provided in subsection (2)(c)(i) by $2 for every $1 of federal adjusted gross income in excess of $30,000 as shown on the taxpayer's return;

(B) in the case of married taxpayers filing jointly, if both taxpayers are receiving pension or annuity income or if only one taxpayer is receiving pension or annuity income, the exclusion claimed as provided in subsection (2)(c)(i) must be reduced by $2 for every $1 of federal adjusted gross income in excess of $30,000 as shown on their joint return;

(d) all Montana income tax refunds or tax refund credits;

(e) gain required to be recognized by a liquidating corporation under 15-31-113(1)(a)(ii);

(f) all tips or gratuities that are covered by section 3402(k) or service charges that are covered by section 3401 of the Internal Revenue Code of 1954, 26 U.S.C. 3402(k) or 3401, as amended and applicable on January 1, 1983, received by a person for services rendered to patrons of premises licensed to provide food, beverage, or lodging;

(g) all benefits received under the workers' compensation laws;

(h) all health insurance premiums paid by an employer for an employee if attributed as income to the employee under federal law;

(i) all money received because of a settlement agreement or judgment in a lawsuit brought against a manufacturer or distributor of "agent orange" for damages resulting from exposure to "agent orange";

(j) principal and income in a medical care savings account established in accordance with 15-61-201 or withdrawn from an account for eligible medical expenses, as defined in 15-61-102, of the taxpayer or a dependent of the taxpayer or for the long-term care of the taxpayer or a dependent of the taxpayer;

(k) principal and income in a first-time home buyer savings account established in accordance with 15-63-201 or withdrawn from an account for eligible costs, as provided in 15-63-202(7), for the first-time purchase of a single-family residence;

(l) contributions withdrawn from a family education savings account or earnings withdrawn from a family education savings account for qualified higher education expenses, as defined in 15-62-103, of a designated beneficiary;

(m) the recovery during the tax year of any amount deducted in any prior tax year to the extent that the recovered amount did not reduce the taxpayer's Montana income tax in the year deducted;

(n) if the federal taxable distribution of an estate or trust is greater than the state taxable distribution of the same estate or trust, the difference between the federal taxable distribution and the state taxable distribution of the same estate or trust for the same tax period;

(o) deposits, not exceeding the amount set forth in 15-30-603, deposited in a Montana farm and ranch risk management account, as provided in 15-30-601 through 15-30-605, in any tax year for which a deduction is not provided for federal income tax purposes;

(p) income of a dependent child that is included in the taxpayer's federal adjusted gross income pursuant to the Internal Revenue Code. The child is

required to file a Montana personal income tax return if the child and taxpayer meet the filing requirements in 15-30-142.

(q) principal and income deposited in a health care expense trust account, as defined in 2-18-1303, or withdrawn from the account for payment of qualified health care expenses as defined in 2-18-1303; and

(r) that part of the refundable credit provided in 33-22-2006 that reduces Montana tax below zero.

(3) A shareholder of a DISC that is exempt from the corporation license tax under 15-31-102(1)(l) shall include in the shareholder's adjusted gross income the earnings and profits of the DISC in the same manner as provided by section 995 of the Internal Revenue Code, 26 U.S.C. 995, for all periods for which the DISC election is effective.

(4) A taxpayer who, in determining federal adjusted gross income, has reduced the taxpayer's business deductions by an amount for wages and salaries for which a federal tax credit was elected under sections 38 and 51(a) of the Internal Revenue Code, 26 U.S.C. 38 and 51(a), is allowed to deduct the amount of the wages and salaries paid regardless of the credit taken. The deduction must be made in the year that the wages and salaries were used to compute the credit. In the case of a partnership or small business corporation, the deduction must be made to determine the amount of income or loss of the partnership or small business corporation.

(5) Married taxpayers filing a joint federal return who are required to include part of their social security benefits or part of their tier 1 railroad retirement benefits in federal adjusted gross income may split the federal base used in calculation of federal taxable social security benefits or federal taxable tier 1 railroad retirement benefits when they file separate Montana income tax returns. The federal base must be split equally on the Montana return.

(6) Married taxpayers filing a joint federal return who are allowed a capital loss deduction under section 1211 of the Internal Revenue Code, 26 U.S.C. 1211, and who file separate Montana income tax returns may claim the same amount of the capital loss deduction that is allowed on the federal return. If the allowable capital loss is clearly attributable to one spouse, the loss must be shown on that spouse's return; otherwise, the loss must be split equally on each return.

(7) In the case of passive and rental income losses, married taxpayers filing a joint federal return and who file separate Montana income tax returns are not required to recompute allowable passive losses according to the federal passive activity rules for married taxpayers filing separately under section 469 of the Internal Revenue Code, 26 U.S.C. 469. If the allowable passive loss is clearly attributable to one spouse, the loss must be shown on that spouse's return; otherwise, the loss must be split equally on each return.

(8) Married taxpayers filing a joint federal return in which one or both of the taxpayers are allowed a deduction for an individual retirement contribution under section 219 of the Internal Revenue Code, 26 U.S.C. 219, and who file separate Montana income tax returns may claim the same amount of the deduction that is allowed on the federal return. The deduction must be attributed to the spouse who made the contribution.

(9) (a) Married taxpayers filing a joint federal return who are allowed a deduction for interest paid for a qualified education loan under section 221 of the Internal Revenue Code, 26 U.S.C. 221, and who file separate Montana income tax returns may claim the same amount of the deduction that is allowed on the

federal return. The deduction may be split equally on each return or in proportion to each taxpayer's share of federal adjusted gross income.

(b) Married taxpayers filing a joint federal return who are allowed a deduction for qualified tuition and related expenses under section 222 of the Internal Revenue Code, 26 U.S.C. 222, and who file separate Montana income tax returns may claim the same amount of the deduction that is allowed on the federal return. The deduction may be split equally on each return or in proportion to each taxpayer's share of federal adjusted gross income.

(10) A taxpayer receiving retirement disability benefits who has not attained 65 years of age by the end of the tax year and who has retired as permanently and totally disabled may exclude from adjusted gross income up to $100 a week received as wages or payments in lieu of wages for a period during which the employee is absent from work due to the disability. If the adjusted gross income before this exclusion exceeds $15,000, the excess reduces the exclusion by an equal amount. This limitation affects the amount of exclusion, but not the taxpayer's eligibility for the exclusion. If eligible, married individuals shall apply the exclusion separately, but the limitation for income exceeding $15,000 is determined with respect to the spouses on their combined adjusted gross income. For the purpose of this subsection, "permanently and totally disabled" means unable to engage in any substantial gainful activity by reason of any medically determined physical or mental impairment lasting or expected to last at least 12 months.

(11) An individual who contributes to one or more accounts established under the Montana family education savings program may reduce adjusted gross income by the lesser of $3,000 or the amount of the contribution. In the case of married taxpayers, each spouse is entitled to a reduction, not in excess of $3,000, for the spouses' contributions to the accounts. Spouses may jointly elect to treat half of the total contributions made by the spouses as being made by each spouse. The reduction in adjusted gross income under this subsection applies only with respect to contributions to an account of which the account owner, as defined in 15-62-103, is the taxpayer, the taxpayer's spouse, or the taxpayer's child or stepchild if the taxpayer's child or stepchild is a Montana resident. The provisions of subsection (1)(e) do not apply with respect to withdrawals of contributions that reduced adjusted gross income.

(12) (a) A taxpayer may exclude the amount of the loan payment received pursuant to subsection (12)(a)(iv), not to exceed $5,000, from the taxpayer's adjusted gross income if the taxpayer:

(i) is a health care professional licensed in Montana as provided in Title 37;

(ii) is serving a significant portion of a designated geographic area, special population, or facility population in a federally designated health professional shortage area, a medically underserved area or population, or a federal nursing shortage county as determined by the secretary of health and human services or by the governor;

(iii) has had a student loan incurred as a result of health-related education; and

(iv) has received a loan payment during the tax year made on the taxpayer's behalf by a loan repayment program described in subsection (12)(b) as an incentive to practice in Montana.

(b) For the purposes of subsection (12)(a), a loan repayment program includes a federal, state, or qualified private program. A qualified private loan repayment program includes a licensed health care facility, as defined in

50-5-101, that makes student loan payments on behalf of the person who is employed by the facility as a licensed health care professional.

(13) Notwithstanding the provisions of subsection (1), adjusted gross income does not include 40% of capital gains on the sale or exchange of capital assets before December 31, 1986, as capital gains are determined under subchapter P. of Chapter 1 of the Internal Revenue Code as it read on December 31, 1986. (Subsection (2)(f) terminates on occurrence of contingency—sec. 3, Ch. 634, L. 1983; subsection (2)(o) terminates on occurrence of contingency—sec. 9, Ch. 262, L. 2001.)"

Section 3. Section 15-30-114, MCA, is amended to read:

"15-30-114. Additional exemption for dependent child with a disability — *physician's verification*. (1) In lieu of the exemption in 15-30-112(5), an exemption for twice the amount allowed for dependents is allowed for each dependent child with a disability.

(2) In order to be eligible for the exemption, a dependent child with a disability must, for the taxable year of the taxpayer, have as the child's principal place of abode the home of the taxpayer and have a permanent disability of great enough severity that it constitutes not less than 50% disability to the body as a whole. An exemption may be allowed for a dependent with a permanent disability after the individual reaches the age of majority if the individual continues to be a dependent.

(3) A taxpayer claiming the exemption provided for in subsection (1) shall provide with the taxpayer's income tax return written documentation by a licensed physician that the disability qualifies under subsection (2). The written documentation remains in effect in subsequent tax years for the purpose of claiming the additional exemption unless there is a change in the dependent's physical circumstances to the extent that the dependent no longer qualifies for the additional exemption. The taxpayer shall inform the department of any change in the dependent's eligibility. The department may inquire by mail whether any material change has occurred in the dependent's physical circumstances that may affect the dependent's eligibility for the additional exemption and that may require additional written documentation by a licensed physician at any time that the department considers necessary."

Section 4. Section 15-30-171, MCA, is amended to read:

"15-30-171. Residential property tax credit for elderly — definitions. As used in 15-30-171*,* ~~through 15-30-179~~ *15-30-172, 15-30-174, 15-30-176, and 15-30-177*, the following definitions apply:

(1) "Claim period" means the tax year for individuals required to file Montana individual income tax returns and the calendar year for individuals not required to file returns.

(2) "Claimant" means a person who is eligible to file a claim under 15-30-172.

(3) "Department" means the department of revenue.

(4) "Gross household income" means all income received by all individuals of a household while they are members of the household.

(5) "Gross rent" means the total rent in cash or its equivalent actually paid during the claim period by the renter or lessee for the right of occupancy of the homestead pursuant to an arm's-length transaction with the landlord.

(6) "Homestead" means:

(a) a single-family dwelling or unit of a multiple-unit dwelling that is subject to property taxes in Montana and as much of the surrounding land, but not in excess of 1 acre, as is reasonably necessary for its use as a dwelling; or

(b) a single-family dwelling or unit of a multiple-unit dwelling that is rented from a county or municipal housing authority as provided in Title 7, chapter 15.

(7) *(a)* "Household" means an association of persons who live in the same dwelling, sharing its furnishings, facilities, accommodations, and expenses.

(b) The term does not include bona fide lessees, tenants, or roomers and boarders on contract.

(8) "Household income" means the amount obtained by subtracting $6,300 from gross household income.

(9) (a) "Income" means, except as provided in subsection (9)(b), federal adjusted gross income, without regard to loss, as that quantity is defined in the Internal Revenue Code of the United States, plus all nontaxable income, including but not limited to:

(i) the amount of any pension or annuity, including Railroad Retirement Act benefits and veterans' disability benefits;

(ii) the amount of capital gains excluded from adjusted gross income;

(iii) alimony;

(iv) support money;

(v) nontaxable strike benefits;

(vi) cash public assistance and relief;

(vii) interest on federal, state, county, and municipal bonds; and

(viii) all payments received under federal social security except social security income paid directly to a nursing home.

(b) For the purposes of this subsection (9), income is reduced by the taxpayer's basis.

(10) "Property tax billed" means taxes levied against the homestead, including special assessments and fees but excluding penalties or interest during the claim period.

(11) "Rent-equivalent tax paid" means 15% of the gross rent."

Section 5. Section 15-30-172, MCA, is amended to read:

"15-30-172. Residential property tax credit for elderly — eligibility — *disallowance or adjustment*. (1) In order to be eligible to make a claim under 15-30-171, ~~through 15-30-179~~ *15-30-172, 15-30-174, 15-30-176, and 15-30-177*, an individual:

(a) must have reached age 62 or older during the claim period for which relief is sought;

(b) must have resided in Montana for at least 9 months of that period;

(c) must have occupied one or more dwellings in Montana as an owner, renter, or lessee for at least 6 months of the claim period; and

(d) must have less than $45,000 of gross household income.

(2) A person is not disqualified as a claimant if the person changes residences during the claim period, provided that the person occupies one or more dwellings in Montana as an owner, renter, or lessee for at least 6 months during the claim period.

(3) A claim is disallowed if the department finds that the claimant received title to the claimant's homestead primarily for the purpose of receiving benefits under 15-30-171, 15-30-172, 15-30-174, 15-30-176, and 15-30-177.

(4) When the landlord and tenant have not dealt at arm's length and the department judges the gross rent charged to be excessive, the department may adjust the gross rent to a reasonable amount."

Section 6. Section 15-30-174, MCA, is amended to read:

"15-30-174. Residential property tax credit for elderly — filing date. (1) Except as provided in subsection (2), a claim for relief must be submitted at the same time the claimant's individual income tax return is due. For an individual not required to file a tax return, the claim must be submitted on or before April 15 of the year following the year for which relief is sought.

(2) A receipt showing property tax billed or a receipt showing gross rent paid, whichever is appropriate, must be filed with each claim. In addition, each claimant shall, at the request of the department, supply all additional information necessary to support a claim.

~~(2)~~*(3)* The department may grant a reasonable extension for filing a claim whenever, in its judgment, good cause exists.

~~(3)~~*(4)* In the event that an individual who would have a claim under 15-30-171*,* ~~through 15-30-179~~ *15-30-172, 15-30-174, 15-30-176, and 15-30-177* dies before filing the claim, the personal representative of the estate of the decedent may file the claim.

~~(4)~~*(5)* The department or an individual may revise a return and make a claim under 15-30-171*,* ~~through 15-30-179~~ *15-30-172, 15-30-174, 15-30-176, and 15-30-177* within 5 years from the last day prescribed for filing a claim for relief."

Section 7. Section 15-30-176, MCA, is amended to read:

"15-30-176. Residential property tax credit for elderly — computation of relief. The amount of the tax credit granted under the provisions of 15-30-171*,* ~~through 15-30-179~~ *15-30-172, 15-30-174, 15-30-176, and 15-30-177* is computed as follows:

(1) In the case of a claimant who owns the homestead for which a claim is made, the credit is the amount of property tax billed less the deduction specified in subsection (4).

(2) In the case of a claimant who rents the homestead for which a claim is made, the credit is the amount of rent-equivalent tax paid less the deduction specified in subsection (4).

(3) In the case of a claimant who both owns and rents the homestead for which a claim is made, the credit is:

(a) the amount of property tax billed on the owned portion of the homestead less the deduction specified in subsection (4); plus

(b) the amount of rent-equivalent tax paid on the rented portion of the homestead less the deduction specified in subsection (4).

(4) Property tax billed and rent-equivalent tax paid are reduced according to the following schedule:

Household income	Amount of reduction
$0 - $999	$0
$1,000 - $1,999	$0
$2,000 - $2,999	the product of .006 times the household income

$3,000 - $3,999	the product of .016 times the household income
$4,000 - $4,999	the product of .024 times the household income
$5,000 - $5,999	the product of .028 times the household income
$6,000 - $6,999	the product of .032 times the household income
$7,000 - $7,999	the product of .035 times the household income
$8,000 - $8,999	the product of .039 times the household income
$9,000 - $9,999	the product of .042 times the household income
$10,000 - $10,999	the product of .045 times the household income
$11,000 - $11,999	the product of .048 times the household income
$12,000 & over	the product of .050 times the household income

(5) For a claimant whose household income is $35,000 or more but less than $45,000, the amount of the credit is equal to the credit calculated under this section multiplied by the decimal equivalent of a percentage figure according to the following table:

Gross household income	Percentage of credit allowed
$35,000 - $37,500	40%
$37,501 - $40,000	30%
$40,001 - $42,500	20%
$42,501 - $44,999	10%
$45,000 or more	0%

(6) The credit granted may not exceed $1,000.

(7) Relief under 15-30-171, 15-30-172, 15-30-174, 15-30-176, and 15-30-177 is a credit against the claimant's Montana individual income tax liability for the claim period. If the amount of the credit exceeds the claimant's liability under this chapter, the amount of the excess must be refunded to the claimant. The credit may be claimed even though the claimant has no income taxable under this chapter."

Section 8. Section 15-30-177, MCA, is amended to read:

"15-30-177. Residential property tax credit for elderly — limitations — *denial of claim.* (1) Only one claimant per household in a claim period under the provisions of 15-30-171, ~~through 15-30-179~~ *15-30-172, 15-30-174, 15-30-176, and 15-30-177* is entitled to relief.

(2) Except as provided in subsection (3), a claim for relief may not be allowed for any portion of property taxes billed or rent-equivalent taxes paid that is derived from a public rent or tax subsidy program.

(3) Except for dwellings rented from a county or municipal housing authority, a claim for relief may not be allowed on rented lands or rented dwellings that are not subject to Montana property taxes during the claim period.

(4) A person filing a false or fraudulent claim under the provisions of 15-30-171, 15-30-172, 15-30-174, 15-30-176, and 15-30-177 must be charged with the offense of unsworn falsification to authorities pursuant to 45-7-203. If a false or fraudulent claim has been paid, the amount paid may be recovered as any other debt owed to the state. An additional 10% may be added to the amount due as a penalty. The unpaid debt must bear interest from the date of the original payment of claim until paid, at the rate of 1% per month."

Section 9. Repealer. Sections 15-30-110, 15-30-115, 15-30-173, 15-30-175, 15-30-178, and 15-30-179, MCA, are repealed.

Approved April 3, 2009

CHAPTER NO. 148

[HB 67]

AN ACT CLARIFYING THAT THE SCHEDULE OF PRICES FOR COUNTY LEGAL PRINTING ARE ADOPTED BY ADMINISTRATIVE RULE; DIRECTING THE CODE COMMISSIONER TO RENUMBER STATUTES RELATED TO COUNTY PRINTING AS PART OF THE STATUTES RELATED TO STATE PRINTING; AMENDING SECTION 7-5-2404, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-5-2404, MCA, is amended to read:

"7-5-2404. Establishment of maximum prices. (1) The board shall adopt*, by rule,* and publish a schedule of maximum prices to be charged for county legal advertising.

(2) The board shall conduct hearings when required to determine maximum rates for county legal advertising. Notice of the hearing must be mailed to the Montana association of counties and the Montana newspaper association.

(3) The board shall deliver, free of charge, to each board of county commissioners in this state a copy of every schedule of maximum prices adopted by the board within 30 days of its publication, together with a notice of the date fixed by the board when the prices will be effective.

(4) The county commissioners shall require each establishment that prints county legal advertising to verify that:

(a) the legal advertisement was published on the dates ordered by the county and in the style set by the board; and

(b) the price was not in excess of the maximum price set by the board.

(5) The board may not establish maximum prices for printed county forms."

Section 2. Instructions to code commissioner. The code commissioner is directed to renumber Title 7, chapter 5, part 24, MCA, as an integral part of Title 18, chapter 7, MCA.

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 3, 2009

CHAPTER NO. 149

[HB 72]

AN ACT CLARIFYING THE DURATION OF THE CARETAKER RELATIVE EDUCATIONAL AUTHORIZATION AFFIDAVIT; AMENDING SECTION 20-5-503, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-5-503, MCA, is amended to read:

"20-5-503. Caretaker relative educational authorization affidavit — use — immunity — format. (1) A caretaker relative of a child who has voluntarily been given custody of the child by a parent of the child has the same authority as a custodial parent of the child to discuss with an educator the educational progress of the child, consent to an educational service, and consent to medical care related to an educational service for the child for which parental consent is usually required if a caretaker relative educational authorization affidavit is completed in compliance with this section.

(2) An affidavit is effective only if it is signed by the caretaker relative, under oath, before a notary public. A clear photographic copy of an affidavit completed in compliance with this section is sufficient in any instance in which an original is required by a school official or health care provider.

(3) Unless parental rights have been judicially terminated or unless the ability to give legal consent for the child to receive an educational service and any medical care related to the educational service for which parental consent is usually required has been granted to the caretaker relative pursuant to 40-4-211 and 40-4-228, a decision by a parent of the child communicated to a school official, a health care provider, or both, regarding the child supersedes a conflicting decision by a caretaker relative made pursuant to an affidavit completed in compliance with this section. However, a decision by a parent does not supersede a decision by a caretaker relative pursuant to an affidavit completed in compliance with this section if the decision by the parent endangers the life of the child. A school official or health care provider may require reasonable proof of authenticity of a decision by a parent intended to supersede a decision by a caretaker relative.

(4) (a) A public or private entity or individual who acts in good faith reliance on a caretaker relative educational authorization affidavit completed in compliance with this section and who has no actual knowledge of facts contrary to those indicated in the affidavit is not subject to civil liability or criminal prosecution or to a professional disciplinary procedure for an action that would have been proper if the facts had been as the entity or individual believed them to be.

(b) This subsection (4) applies even if an educational service or educationally related medical care, or both, are provided to a child against the wishes of a parent of that child if the person rendering the service does not have actual knowledge of the parent's wishes.

(5) A person who relies on an affidavit completed in compliance with this section has no obligation to make further inquiry or investigation.

(6) An affidavit completed in compliance with this section is effective for the earlier of:

(a) the end of the first school year after delivery of the affidavit to a school district;

(b) until it has been revoked by the caretaker relative; or

(c) until the child no longer resides with the caretaker relative.

(7) If the child ceases to live with the caretaker relative or the caretaker relative revokes the affidavit, the caretaker relative shall provide written notice of that fact to all persons to whom the caretaker relative has given the affidavit or to whom the caretaker relative has caused the affidavit to be given.

(8) This section does not relieve a person from a violation of other law, and this section does not affect the rights of a child's parent except as provided in this section.

(9) A caretaker relative educational authorization affidavit is invalid unless it is written in substantially the following form and contains the warning provided for in paragraph 5 of the format below:

CARETAKER RELATIVE'S
EDUCATIONAL AUTHORIZATION AFFIDAVIT

Use of this affidavit is authorized by 20-5-503, MCA.

1. INSTRUCTIONS: The completion and signing of the affidavit before a notary public are sufficient to authorize educational enrollment and services and school-related medical care for the named child. Please print clearly.

The child named below lives in my home, and I am 18 years of age or older.

a. Name of child:

b. Child's date of birth:

c. My name (caretaker relative):

d. My home address:

e. My relationship to the child (the caretaker relative must be an individual related by blood, marriage, or adoption by another individual to the child whose care is undertaken by the caretaker relative, but who is not a parent, foster parent, stepparent, or legal guardian of the child):

2. I hereby certify that this affidavit is not being used for the purpose of circumventing school residency laws, to take advantage of a particular academic program or athletic activity, to circumvent a disciplinary action of a previous school, or for an otherwise unlawful purpose.

3. My date and year of birth:

4. Check the following if true (all must be checked for this affidavit to apply):

[ ] A parent of the child identified in paragraph 1a of this affidavit has left the child with me and has expressed no definite time period when the parent will return for the child.

[ ] The child is now residing with me on a full-time basis.

[ ] I am unable to locate or contact the parents of the child at this time to notify the parents of my intended authorization, or the parents refuse to regain custody of the child even though I have asked in writing that the parents do so.

[ ] No adequate provision, such as appointment of a guardian ad litem or execution of a power of attorney, has been made for enrollment of the child in school, other educational services, or educationally related medical services.

5. WARNING: DO NOT SIGN THIS FORM IF ANY OF THE STATEMENTS ABOVE ARE INCORRECT OR YOU WILL BE COMMITTING A CRIME PUNISHABLE BY A FINE, IMPRISONMENT, OR BOTH.

6. I declare under penalty of false swearing under the laws of Montana that the foregoing is true and correct.

Signed this __ day of _____, 20__.

_____

(Signature of caretaker relative)

_____

(Signature, county, state, and seal of notary public)

7. NOTICES:

a. Completion of this affidavit does not affect the rights of the child's parents or legal guardian regarding the care, custody, and control of the child and does not mean that the caretaker relative has legal custody of the child.

b. A person who relies on this affidavit has no obligation to make any further inquiry or investigation.

c. This affidavit is ~~not valid for more than 6 months after the date on which it is signed by the caretaker relative~~ *effective until the earlier of:*

i. the end of the first school year after delivery of the affidavit to a school district;

ii. revocation by the caretaker relative; or

iii. the child no longer resides with the caretaker relative.

8. ADDITIONAL INFORMATION:

a. TO CARETAKER RELATIVES: If the child stops living with you, you shall notify anyone to whom you have given this affidavit, as well as anyone who received the affidavit from someone else.

b. TO PUBLIC AND PRIVATE SCHOOL OFFICIALS AND PUBLIC AND PRIVATE HEALTH CARE PROVIDERS:

(1) A public or private school official or a public school district official may require additional reasonable evidence that the caretaker relative lives at the address provided in item 1d of the affidavit form.

(2) A public or private entity or individual who acts in good faith reliance upon a caretaker relative educational authorization affidavit to enroll a child in school or to provide educational services or educationally related medical care, or both, without actual knowledge of facts contrary to those indicated in the affidavit, is not subject to criminal prosecution or civil liability to any person, or subject to any professional disciplinary action, for reliance on an affidavit completed in compliance with 20-5-503, MCA."

Section 2. Effective date. [This act] is effective on passage and approval.

Section 3. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to caretaker relative educational authorization affidavits completed in compliance with 20-5-503 for the 2008-2009 school year.

Approved April 3, 2009

CHAPTER NO. 150

[HB 93]

AN ACT CLARIFYING MEDICAL DIRECTION FOR EMERGENCY MEDICAL SERVICES; CLARIFYING THE PROCEDURES FOR HANDLING COMPLAINTS RELATED TO PREHOSPITAL AND INTERFACILITY EMERGENCY CARE; AMENDING SECTIONS 50-6-104, 50-6-201, 50-6-203, 50-6-302, 50-6-317, AND 50-6-323, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-6-104, MCA, is amended to read:

"50-6-104. Interdepartmental cooperation required. The department of public health and human services, ~~the department of justice,~~ *the board of medical examiners,* and other interested departments or divisions shall develop in writing a mutually agreeable plan of cooperation so that governmental ~~effort~~

~~will~~ *efforts are* not ~~be~~ duplicated and governmental resources ~~will be~~ *are* applied on a reasonable priority basis."

Section 2. Emergency medical care standards — review process. (1) The board of medical examiners shall establish patient care standards for prehospital and interfacility emergency medical treatment and transportation.

(2) (a) Complaints involving prehospital care, interfacility care, or the operation of an emergency medical service, as defined in 50-6-302, must be filed with the board and reviewed by a screening panel pursuant to 37-1-307.

(b) If a complaint is initially filed with the department of public health and human services, the department shall refer the complaint to the board for review by a screening panel.

(3) (a) When a complaint involves the operation or condition of an emergency medical service, the screening panel shall refer the complaint to the department for investigation as provided in 50-6-323.

(b) When a complaint involves patient care provided by an emergency medical technician, the screening panel shall:

(i) refer the complaint to the board for investigation as provided in 37-1-308 and 50-6-203; and

(ii) forward to the department the complaint and the results of the screening panel's initial review as soon as the review is completed.

(c) When a complaint involves a combination of patient care and emergency medical service matters, the screening panel shall refer the complaint to both the department and the board for matters that fall within the jurisdiction of each entity.

(4) For a complaint involving patient care, the board shall:

(a) immediately share with the department any information indicating:

(i) a potential violation of department rules; or

(ii) that the existing policies or practices of an emergency medical service may be jeopardizing patient care; and

(b) notify the department when:

(i) a sanction is imposed upon an emergency medical technician; or

(ii) the complaint is resolved.

(5) For a complaint involving an emergency medical service, the department shall:

(a) immediately share with the board any information indicating:

(i) a potential violation of board rules; or

(ii) that the practices of an emergency medical technician may be jeopardizing patient care; and

(b) notify the board when:

(i) a sanction is imposed upon an emergency medical service; or

(ii) the complaint is resolved.

Section 3. Section 50-6-201, MCA, is amended to read:

"50-6-201. Legislative findings — *duties of board.* *(1)* The legislature finds and declares that prompt and efficient emergency medical care of the sick and injured at the scene and during transport to a health care facility is an important ingredient necessary for reduction of the mortality and morbidity

rate during the first critical minutes immediately after an accident or the onset of an emergent condition and that a program for emergency medical technicians is required in order to provide the safest and most efficient delivery of emergency care.

(2) The board has a duty to ensure that emergency medical technicians provide proper treatment to patients in their care."

Section 4. Section 50-6-203, MCA, is amended to read:

"50-6-203. Rules. (1) The board, after consultation with the department of public health and human services~~, the department of justice,~~ and other appropriate departments, associations, and organizations, shall adopt rules of the board implementing this part, including but not limited to*:*

(a) training and ~~certification~~ *licensure* of emergency medical technicians*;* ~~and~~

(b) the administration of drugs *by emergency medical technicians; and*

(c) the handling of complaints involving patient care provided by emergency medical technicians.

(2) The board may, by rule, establish various levels of emergency medical technician ~~certification~~ *licensure* and shall specify for each level the training requirements, acts allowed, ~~recertification~~ *relicensure* requirements, and any other requirements regarding the training, performance, or ~~certification~~ *licensure* of that level of emergency medical technician that it considers necessary, subject to the provisions of 37-1-138."

Section 5. Section 50-6-302, MCA, is amended to read:

"50-6-302. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Aircraft" has the ~~same~~ meaning ~~given~~ *provided* in 67-1-101. The term includes any fixed-wing airplane or helicopter.

(2) (a) "Ambulance" means a privately or publicly owned motor vehicle or aircraft that is maintained and used for the transportation of patients.

(b) The term does not include:

(i) a motor vehicle or aircraft owned by or operated under the direct control of the United States; or

(ii) air transportation services, such as charter or fixed-based operators, that are regulated by the federal aviation administration and that offer no special medical services or provide only transportation to patients or persons at the direction or under the supervision of an independent physician.

(3) "Board" means the Montana state board of medical examiners provided for in 2-15-1731.

~~(3)~~*(4)* "Department" means the department of public health and human services provided for in 2-15-2201.

~~(4)~~*(5)* "Emergency medical service" means a prehospital or ~~interhospital~~ *interfacility* emergency medical transportation or treatment service provided by an ambulance or nontransporting medical unit *that is licensed by the department*.

~~(5) "Medical control" means the function of a licensed physician in providing direction, advice, or orders to an emergency medical service provider.~~

(6) "Nontransporting medical unit" means an aggregate of persons who are organized to respond to a call for emergency medical service and to treat a patient until the arrival of an ambulance. Nontransporting medical units provide any one of varying types and levels of service defined by department rule but may not transport patients.

(7) "Offline medical direction" means the function of a board-licensed physician or physician assistant in providing:

(a) medical oversight and supervision for an emergency medical service or an emergency medical technician; and

(b) review of patient care techniques, emergency medical service procedures, and quality of care.

(8) "Online medical direction" means the function of a board-licensed physician or physician assistant or the function of a designee of the physician or physician assistant in providing direction, advice, or orders to an emergency medical technician for prehospital and interfacility emergency care as identified in a plan for offline medical direction.

~~(7) "Offline medical director" means a physician who is responsible and accountable for the overall medical direction and medical supervision of an emergency medical service and who is responsible for the proper application of patient care techniques and the quality of care provided by the emergency medical services personnel. The term includes only a physician who volunteers the physician's services as an offline medical director or whose total reimbursement for those services in any 12-month period does not exceed $5,000.~~

~~(8)~~*(9)* (a) "Patient" means an individual who is sick, injured, wounded, or otherwise incapacitated or helpless.

(b) The term does not include an individual who is nonambulatory and who needs transportation assistance solely because that individual is confined to a wheelchair as the individual's usual means of mobility.

~~(9)~~*(10)* "Person" means an individual, firm, partnership, association, corporation, company, group of individuals acting together for a common purpose, or organization of any kind, including a governmental agency other than the United States."

Section 6. Section 50-6-317, MCA, is amended to read:

"50-6-317. Liability protection. (1) A physician*, physician assistant,* or registered nurse licensed under the laws of this state who ~~gives instructions for medical care~~ *provides online medical direction* to a member of an emergency medical service without compensation or for compensation not exceeding $5,000 in any 12-month period and whose professional practice is not primarily in an emergency or trauma room or ward is not liable for civil damages for an injury resulting from the instructions, except damages for an injury resulting from the gross negligence of the physician*, physician assistant,* or nurse, if the instructions given by the physician*, physician assistant,* or nurse are:

(a) consistent with the protocols and the ~~medical control~~ *offline medical direction* plan approved by the department in licensing the emergency medical service; and

(b) consistent with the level of ~~certification or~~ licensure of the emergency medical services personnel instructed by the physician*, physician assistant,* or nurse.

(2) ~~An offline medical director~~ *An individual who volunteers or who is reimbursed $5,000 or less in any 12-month period for providing offline medical direction* is not liable for civil damages for an injury resulting from the performance of ~~his~~ *the individual's offline medical direction* duties, except damages for an injury resulting from the gross negligence of the ~~director~~ *individual*."

Section 7. Section 50-6-323, MCA, is amended to read:

"50-6-323. Powers and duties of department. (1) The department has general authority to supervise and regulate emergency medical services in Montana.

(2) ~~The~~ *Upon referral by a screening panel pursuant to [section 2], the* department shall ~~receive and~~ *review and may* investigate complaints relating to the operation of any emergency medical service~~, including complaints concerning:~~.

(3) In investigating a complaint, the department may review:

(a) ~~patient~~ *the type and condition of equipment and procedures used by an emergency medical service to provide* care ~~provided~~ *at the scene or during prehospital or interfacility transportation* ~~by an emergency medical service~~;

(b) the condition of any vehicle or aircraft used as an ambulance; ~~or~~

(c) ~~individual~~ *general* performance by an emergency medical service ~~provider~~*; and*

(d) the results of any investigation conducted by the board concerning patient care by an emergency medical technician who was, at the time of the complaint, providing care through the emergency medical service that is the subject of a complaint under investigation by the department.

~~(3)~~*(4)* Upon completion of an investigation as provided in subsection ~~(2)~~ *(3)*, the department shall take appropriate action, including *sharing information regarding complaints with the board as provided in [section 2] and* ~~the institution of~~ *initiating any* necessary legal proceedings~~,~~ as authorized under this part.

~~(4)~~*(5)* In order to carry out the provisions of this part, the department shall prescribe and enforce rules for emergency medical services. Rules of the department may include but are not limited to the following:

(a) the classification and identification of specific types and levels of prehospital and ~~interhospital~~ *interfacility* medical transportation or treatment services;

(b) procedures for issuing, denying, renewing, and canceling licenses;

(c) minimum licensing standards for each type and level of service, including requirements for personnel, ~~medical control~~ *offline medical direction, online medical direction*, maintenance, equipment, reporting, recordkeeping, sanitation, and minimum insurance coverage as determined appropriate by the department; and

(d) other requirements necessary and appropriate to assure the quality, safety, and proper operation and administration of emergency medical services.

~~(5)~~*(6)* A rule ~~under~~ *adopted pursuant to* this section is not effective until:

(a) a public hearing has been held for review of the rule; and

(b) notice of the public hearing and a copy of the proposed rules have been sent to all persons licensed under 50-6-306 to conduct or operate an emergency

medical service. Notice must be sent at least 30 days prior to the date of the public hearing."

Section 8. Codification instruction. [Section 2] is intended to be codified as an integral part of Title 50, chapter 6, part 1, and the provisions of Title 50, chapter 6, apply to [section 2].

Approved April 3, 2009

CHAPTER NO. 151

[HB 367]

AN ACT PROVIDING FOR A SEPARATE POSTADOPTIVE COUNSELING AND SUPPORT PROGRAM WITHIN A CHILD-PLACING AGENCY; SPECIFYING THAT THE COSTS OF THE PROGRAM MAY NOT BE INCLUDED IN PLACEMENT FEES; AND AMENDING SECTIONS 42-2-409 AND 42-7-105, MCA.

WHEREAS, child-placing agencies that provide care and placement of children are in a unique position to provide care and support to a birth parent after relinquishment of a child, especially to parents of few means, which would be consistent with the agencies' ministry; and

WHEREAS, there are currently financial and other means of support for parents who choose to keep their children that are compelling parents of little means to keep their children; and

WHEREAS, the ability to provide similar forms of support to a parent who has chosen to relinquish a child in order to give the parent a chance to grieve and to assist the parent with counseling, temporary housing, mentoring services, job training, life skills development, budgeting and financial management, and educational opportunities will provide birth parents with another option that can help provide for their future after their children have been placed with adoptive families; and

WHEREAS, explicit authority for the program is necessary with the caveat that the program must be kept separate from any program for the placement of children and must be paid for by the agency with separate funds.

Be it enacted by the Legislature of the State of Montana:

Section 1. Postadoptive counseling and support — intent. (1) An agency may have a specific program, separate from its program for the care and placement of children, to provide postadoptive counseling and support for birth parents who have relinquished children for adoption. The program may include but is not limited to grief and loss counseling, temporary housing, mentoring services, job training, life skills development, budgeting and financial management, educational opportunities, and transportation.

(2) (a) The provision of the services in subsection (1) may not be included by an agency in the fees related to placement for adoption by a parent as provided in 42-7-101.

(b) An agency providing postadoptive counseling and support shall include a full accounting of the operation of the program as part of the financial statement required in 52-8-104.

(c) An agency may accept federal funds, grants, or donations specifically for the purpose of funding a program to provide the services in subsection (1) that is separate from the agency's program for the care and placement of children.

Section 2. Section 42-2-409, MCA, is amended to read:

"42-2-409. Counseling requirements. (1) Counseling of the birth mother is required in department, agency, and direct parental placement adoptions. If any other parent is involved in an adoptive placement, counseling of that parent is encouraged.

(2) Counseling must be performed by a person employed by the department or by a staff person of a licensed child-placing agency designated to provide this type of counseling. Unless the counseling requirement is waived for good cause by a court, a minimum of 3 hours of counseling must be completed prior to execution of a relinquishment of parental rights and consent to adopt. A relinquishment and consent to adopt executed prior to completion of required counseling is void.

(3) During counseling, the counselor shall offer an explanation of:

(a) adoption procedures and options that are available to a parent through the department or licensed child-placing agencies;

(b) adoption procedures and options that are available to a parent through direct parental placement adoptions, including the right to an attorney and that legal expenses are an allowable expense that may be paid by a prospective adoptive parent as provided in 42-7-101 and 42-7-102;

(c) the alternative of parenting rather than relinquishing the child for adoption;

(d) the resources that are available to provide assistance or support for the parent and the child if the parent chooses not to relinquish the child;

(e) the legal and personal effect and impact of terminating parental rights and of adoption;

(f) the options for contact and communication between the birth family and the adoptive family;

(g) postadoptive issues, including grief and loss*, and the existence of a postadoptive counseling and support program*;

(h) the reasons for and importance of providing accurate medical and social history information under 42-3-101;

(i) the operation of the confidential intermediary program; and

(j) the fact that the adoptee may be provided with a copy of the original birth certificate upon request after reaching 18 years of age, unless the birth parent has specifically requested in writing that the vital statistics bureau withhold release of the original birth certificate.

(4) The counselor shall prepare a written report containing a description of the topics covered and the number of hours of counseling. The report must specifically include the counselor's opinion of whether or not the parent understood all of the issues and was capable of informed consent. The report must, on request, be released to the person counseled, to the department, to an agency, or with the consent of the person counseled, to an attorney for the prospective adoptive parents."

Section 3. Section 42-7-105, MCA, is amended to read:

"42-7-105. Prohibited activities — violations — penalties. (1) A person, other than the department or a licensed child-placing agency, may not:

(a) advertise in any public medium that the person:

(i) knows of a child who is available for adoption; or

(ii) is willing to accept a child for adoption or knows of prospective adoptive parents for a child; or

(b) engage in placement activities as defined in 52-8-101.

(2) An individual other than an extended family member or stepparent of a child may not obtain legal or physical custody of a child for purposes of adoption unless the individual has a favorable preplacement evaluation or a court-ordered waiver of the evaluation.

(3) A person who, as a condition for placement, relinquishment, or consent to the adoption of a child, knowingly offers, gives, agrees to give, solicits, accepts, or agrees to accept from another person, either directly or indirectly, anything other than the fees allowed under 42-7-101 commits the offense of paying or charging excessive adoption process fees.

(4) It is illegal to require repayment or reimbursement of anything provided to a birth parent under 42-7-101. All payments by the adoptive parent made on behalf of a birth parent pursuant to this section are considered a gift to the birth parent.

(5) Nothing in this section prohibits a licensed child-placing agency from maintaining a separate program for the assistance of a biological parent who is in need of postadoptive counseling and support as provided in [section 1]. Services must be provided based on need and may not be contingent on a placement being made privately, by the department, or by a licensed child-placing agency. A postadoptive counseling and support program may not be used to induce a biological parent to place a child for adoption.

~~(5)~~*(6)* A person convicted of the offense of paying or charging excessive adoption process fees, attempting to recover expenses incurred from an adoption process, or otherwise violating this title may be fined an amount not to exceed $10,000 in an action brought by the appropriate city or county attorney. The court may also enjoin from further violations any person who violates this title."

Section 4. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 42, chapter 4, part 2, and the provisions of Title 42, chapter 4, part 2, apply to [section 1].

Approved April 3, 2009

CHAPTER NO. 152

[SB 20]

AN ACT CLARIFYING THE MEANING OF THE TERM "SUBSTANTIAL COMPLIANCE"; PROVIDING A STATEMENT OF LEGISLATIVE PURPOSE FOR THE MONTANA ADMINISTRATIVE PROCEDURE ACT; AMENDING SECTIONS 2-4-101 AND 2-4-305, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, on November 6, 2007, the Montana Supreme Court issued its opinion in the case of Montana Society of Anesthesiologists v. Montana Board of Nursing, 2007 MT 290, 339 Mont. 472, 171 P.3d 704 (2007) (MSA opinion), holding that a nurse anesthetist may practice without direct supervision by an anesthesiologist M.D.; and

WHEREAS, the Montana Society of Anesthesiologists (MSA) challenged the legality of an administrative rule adopted by the Montana Board of Nursing,

alleging, among other things, that the rule was adopted without a sufficient statement of reasonable necessity, as required by section 2-4-305(6)(b), MCA, of the Montana Administrative Procedure Act (MAPA); and

WHEREAS, in the MSA opinion, the Montana Supreme Court held that because MAPA, in section 2-4-305(7), MCA, requires that rules must be adopted in "substantial compliance" with MAPA and because the Montana Supreme Court had previously held that substantial compliance has occurred if the purpose of MAPA has been fulfilled, the defective notice of proposed rulemaking substantially complied with MAPA because the purpose of MAPA is to give public notice of the adoption of a rule and that adequate notice had been given by the Board of Nursing; and

WHEREAS, under the rationale employed by the Montana Supreme Court in the MSA opinion, every rule adopted by an agency could be found to be in substantial compliance with MAPA since every notice of proposed rulemaking gives some notice of a proposed rule adoption, amendment, or repeal; and

WHEREAS, the Legislature intends that a determination of whether MAPA's substantial compliance requirement in section 2-4-305(7), MCA, has been satisfied requires an analysis of more than whether an agency provided adequate public notice of its proposed rule, but rather requires an analysis of whether the agency complied with 2-4-302, 2-4-303, 2-4-305, or 2-4-306, MCA; and

WHEREAS, enactment of this legislation is not intended by the Legislature as a comment upon the outcome of the MSA opinion, but rather is intended to change the analysis used by the courts when determining whether MAPA's substantial compliance requirement, found in section 2-4-305(7), MCA, has been satisfied in future cases.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-4-101, MCA, is amended to read:

"2-4-101. Short title — *purpose.* *(1)* This chapter ~~shall be~~ *is* known and may be cited as the "Montana Administrative Procedure Act".

(2) The purposes of the Montana Administrative Procedure Act are to:

(a) generally give notice to the public of governmental action and to provide for public participation in that action;

(b) establish general uniformity and due process safeguards in agency rulemaking, legislative review of rules, and contested case proceedings;

(c) establish standards for judicial review of agency rules and final agency decisions; and

(d) provide the executive and judicial branches of government with statutory directives."

Section 2. Section 2-4-305, MCA, is amended to read:

"2-4-305. Requisites for validity — authority and statement of reasons. (1) The agency shall fully consider written and oral submissions respecting the proposed rule. Upon adoption of a rule, an agency shall issue a concise statement of the principal reasons for and against its adoption, incorporating in the statement the reasons for overruling the considerations urged against its adoption. If substantial differences exist between the rule as proposed and as adopted and the differences have not been described or set forth in the adopted rule as that rule is printed in the register, the differences must be described in the statement of reasons for and against agency action. When

written or oral submissions have not been received, an agency may omit the statement of reasons.

(2) Rules may not unnecessarily repeat statutory language. Whenever it is necessary to refer to statutory language in order to convey the meaning of a rule interpreting the language, the reference must clearly indicate the portion of the language that is statutory and the portion that is an amplification of the language.

(3) Each proposed and adopted rule must include a citation to the specific grant of rulemaking authority pursuant to which the rule or any part of the rule is adopted. In addition, each proposed and adopted rule must include a citation to the specific section or sections in the Montana Code Annotated that the rule purports to implement. A substantive rule may not be proposed or adopted unless:

(a) a statute granting the agency authority to adopt rules clearly and specifically lists the subject matter of the rule as a subject upon which the agency shall or may adopt rules; or

(b) the rule implements and relates to a subject matter or an agency function that is clearly and specifically included in a statute to which the grant of rulemaking authority extends.

(4) Each rule that is proposed and adopted by an agency and that implements a policy of a governing board or commission must include a citation to and description of the policy implemented. Each agency rule implementing a policy and the policy itself must be based on legal authority and otherwise comply with the requisites for validity of rules established by this chapter.

(5) To be effective, each substantive rule adopted must be within the scope of authority conferred and in accordance with standards prescribed by other provisions of law.

(6) Whenever by the express or implied terms of any statute a state agency has authority to adopt rules to implement, interpret, make specific, or otherwise carry out the provisions of the statute, an adoption, amendment, or repeal of a rule is not valid or effective unless it is:

(a) consistent and not in conflict with the statute; and

(b) reasonably necessary to effectuate the purpose of the statute. A statute mandating that the agency adopt rules establishes the necessity for rules but does not, standing alone, constitute reasonable necessity for a rule. The agency shall also address the reasonableness component of the reasonable necessity requirement by, as indicated in 2-4-302(1) and subsection (1) of this section, stating the principal reasons and the rationale for its intended action and for the particular approach that it takes in complying with the mandate to adopt rules. Subject to the provisions of subsection (8), reasonable necessity must be clearly and thoroughly demonstrated for each adoption, amendment, or repeal of a rule in the agency's notice of proposed rulemaking and in the written and oral data, views, comments, or testimony submitted by the public or the agency and considered by the agency. A statement that merely explains what the rule provides is not a statement of the reasonable necessity for the rule.

(7) A rule is not valid unless notice of it is given and it is adopted in substantial compliance with 2-4-302, 2-4-303, or 2-4-306 and this section and unless notice of adoption of the rule is published within 6 months of the publishing of notice of the proposed rule. *The measure of whether an agency has adopted a rule in substantial compliance with 2-4-302, 2-4-303, or 2-4-306 and*

this section is not whether the agency has provided notice of the proposed rule, standing alone, but rather must be based on an analysis of the agency's substantial compliance with 2-4-302, 2-4-303, or 2-4-306 and this section. If an amended or supplemental notice of either proposed or final rulemaking, or both, is published concerning the same rule, the 6-month limit must be determined with reference to the latest notice in all cases.

(8) An agency may use an amended proposal notice or the adoption notice to correct deficiencies in citations of authority for rules and in citations of sections implemented by rules. An agency may use an amended proposal notice but, except for clerical corrections, may not use the adoption notice to correct deficiencies in a statement of reasonable necessity.

(9) If a majority of the members of the appropriate administrative rule review committee notify the committee presiding officer that those members object to a notice of proposed rulemaking, the committee shall notify the agency in writing that the committee objects to the proposal notice and will address the objections at the next committee meeting. Following notice by the committee to the agency, the proposal notice may not be adopted until publication of the last issue of the register that is published before expiration of the 6-month period during which the adoption notice must be published, unless prior to that time, the committee meets and does not make the same objection. A copy of the committee's notification to the agency must be included in the committee's records."

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 3, 2009

CHAPTER NO. 153

[SB 82]

AN ACT GENERALLY REVISING LAWS RELATING TO RECOVERY OF MEDICAID BENEFITS FOR SERVICES PAID ON BEHALF OF MEDICAID RECIPIENTS; REMOVING THE COUNTY FROM THE RECOVERY OF MEDICAID BENEFITS PROCESS; PROVIDING DEFINITIONS; AMENDING SECTIONS 53-2-612, 53-6-165, 53-6-167, 53-6-168, AND 53-6-178, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-2-612, MCA, is amended to read:

"53-2-612. Lien of department ~~or county~~ upon third-party recoveries. (1) Upon notice by the department~~, a county,~~ or the recipient to a third party or the third party's insurer as provided in subsection (5)(b), the department ~~or county~~ has a lien upon ~~all~~ money paid by a third party or the third party's insurer in satisfaction of a judgment or settlement arising from a recipient's claim for damages or compensation for personal injury, disease, illness, or disability to the extent that the department ~~or county~~ has paid medical assistance on behalf of the recipient for the same personal injury, disease, illness, or disability *and to the extent that the money represents payment for medical expenses*.

(2) The department ~~or county~~ may, in the name of the recipient on whose behalf medical assistance has been paid by the department ~~or county~~, commence and prosecute to final conclusion any action that may be necessary to recover from a third party or the third party's insurer compensation or damages for

medical assistance paid by the department ~~or county~~ on behalf of the recipient. This section does not affect the right of the recipient to initiate and prosecute to final conclusion an action for damages or compensation in the recipient's own name in accordance with the provisions of this section.

(3) (a) The lien~~:~~

~~(i) applies to all money paid by a third party or a third party's insurer regardless of whether the recovery is allocated by the parties or a court to any particular type or element of damages; and~~

~~(ii)~~ is subordinate to the lien of an attorney under 37-61-420.

(b) Unless specifically provided by law, the recipient's right to recover damages or compensation from a third party or a third party's insurer may not be reduced or denied on the ground that the recipient's costs of medical treatment and medical-related services have been paid by the department ~~or county~~ under any public assistance program.

(c) From the amount collected by the department~~, county,~~ or recipient from legal proceedings or as a result of settlement, reasonable attorney fees and costs must be first deducted and paid. Unless the department ~~or county~~ and the recipient agree to a different settlement, the amount previously paid as medical assistance by the department ~~or county~~, less a pro rata share of attorney fees and costs, must be deducted next and paid to the department ~~or county~~*, but only to the extent that the amount paid as medical assistance does not exceed the portion of the amount collected that represents payment of medical expenses*. The remainder, if any, must be paid to the recipient.

(d) In all cases of payment to the department ~~or county~~ out of an amount collected from a third party or insurer on a recipient's claim, the amount of the lien must be reduced by a pro rata share of attorney fees and costs as provided in subsection (3)(c), but the department ~~or county~~ may not be required to participate in payment of attorney fees and costs unless the recipient's claim results in recovery out of which the department ~~or county~~ receives full or partial payment of its lien.

(e) *(i)* Except as provided in subsections (3)(e)~~(i)~~*(ii)* and (3)(e)~~(ii)~~*(iii)*, the department may not impose a lien under this section upon a self-sufficiency trust established pursuant to Title 53, chapter 18, part 1, or upon the assets of a self-sufficiency trust established pursuant to Title 53, chapter 18, part 1.

~~(i)~~*(ii)* The department may impose a lien under this section upon a self-sufficiency trust or upon the assets of a self-sufficiency trust established pursuant to Title 53, chapter 18, part 1, if the department is required by federal law to recover or collect from the trust or its assets as a condition of receiving federal financial participation for the medicaid program.

~~(ii)~~*(iii)* To the extent otherwise permitted by this section, the department is not precluded from asserting a claim or imposing a lien upon real or personal property prior to transfer of the property to the trust. If the department imposes a lien upon property prior to transfer to a self-sufficiency trust, any transfer of the property to the trust is subject to the lien.

(4) (a) A recipient of medical assistance or the recipient's legal representative shall notify the department ~~or county~~ by certified letter within 30 days if the recipient or the recipient's legal representative asserts a claim against a third party or a third party's insurer for damages or compensation for a personal injury, disease, illness, or disability for which the department ~~or county~~ paid medical assistance in whole or in part or for which the recipient has

applied for medical assistance. The notice must be mailed to the director of the department ~~or the county commissioners of the county that paid medical assistance~~. At the same time, a copy must be sent by certified mail to the third party or the third party's insurer.

(b) The notice must contain the following information:

(i) the name and address of the recipient and the recipient's legal representative, if any;

(ii) the name and address of the third party alleged to be liable to the recipient;

(iii) the name and address of any known insurer of the third party; and

(iv) the judicial district and docket number of any action filed.

(c) A recipient or the recipient's legal representative who has received actual notice that the department ~~or county~~ has paid medical assistance is liable to the department ~~or county~~ for the amount it is entitled to receive under this section if:

(i) the recipient or the recipient's legal representative fails to timely notify the department ~~or county~~ or fails to mail a copy of the notice to the third party or the third party's insurer; and

(ii) a third party or the third party's insurer that did not receive notice from the department ~~or county~~ as provided for in subsection (5)(b) pays the recipient or the recipient's legal representative without satisfying any lien of the department ~~or county~~.

(5) (a) If a third party or the third party's insurer that has received notice of the department's ~~or county's~~ lien as provided for in subsection (5)(b) makes payment in whole or in part of the recipient's claim without first satisfying the lien of the department ~~or county~~, the third party or the third party's insurer is liable to the department ~~or county~~ for the amount the department ~~or county~~ is entitled to receive under this section.

(b) For the purposes of subsection (5)(a), a third party or the third party's insurer has been given notice if:

(i) the department ~~or county~~ mails, by certified mail, to the third party or the third party's insurer:

(A) a statement of the medical assistance paid or that may be paid by the department ~~or county~~ on behalf of the recipient; and

(B) a claim for reimbursement;

(ii) the recipient or the recipient's legal representative mails, by certified mail, to the third party or the third party's insurer:

(A) a copy of the notice required by subsection (4)(a); or

(B) a statement stating that the recipient has applied for or has received medical assistance from the department ~~or county~~ in connection with the same claim; or

(iii) the recipient or the recipient's legal representative has commenced an action against the third party or the third party's insurer for damages or compensation for personal injury, disease, illness, or disability for which the department ~~or county~~ has paid or may pay medical assistance, in whole or in part, and the department ~~or county~~ files in the court in which the action is pending a notice of lien stating that a lien is claimed for medical assistance on

any money paid in satisfaction of any judgment in or settlement of the action and that:

(A) medical assistance in a stated amount has been paid by the department ~~or county~~ on behalf of the recipient; or

(B) medical assistance may be paid on behalf of the recipient.

(6) As used in this section, the following definitions apply:

~~(a) "County" means a county that has provided medical assistance to a recipient through an indigent assistance program operated at the option of the county.~~

~~(b)~~*(a)* "Legal representative" means an attorney having or exercising authority on behalf of a recipient with respect to a claim or action to recover damages or compensation from a third party or a third party's insurer.

~~(c)~~*(b)* "Recipient" means a person on whose behalf the department ~~or a county~~ has paid or may pay medical assistance for the cost of medical treatment and medical-related services for personal injury, disease, illness, or disability. If the context allows, the term includes a recipient's legal representative.

~~(d)~~*(c)* "Third party" means an individual, institution, corporation, or public or private agency that is or may be liable to pay all or part of the cost of medical treatment and medical-related services for personal injury, disease, illness, or disability of a recipient of medical assistance from the department ~~or a county~~ and includes but is not limited to insurers, health service organizations, and parties liable or who may be liable in tort."

Section 2. Section 53-6-165, MCA, is amended to read:

"53-6-165. Definitions. As used in this part, unless expressly provided otherwise, the following definitions apply:

(1) "Department" means the department of public health and human services provided for in 2-15-2201.

(2) "Financial institution" means any organization in the business of moving, investing, or lending money, dealing in financial instruments, or providing financial services, including but not limited to federally chartered and state-chartered banks, savings and loan associations, and credit unions.

~~(2)~~*(3)* "Recipient" means an individual who has been determined by a medicaid agency to be eligible for medicaid benefits, whether or not the individual has actually received a benefit, or an individual who has received benefits, whether or not that person has been determined to be eligible.

~~(3)~~*(4) (a)* "Recoverable medical assistance" means a payment pursuant to this part, including but not limited to a payment made for items or services provided to and insurance premiums, deductibles, and coinsurance paid on behalf of a recipient who:

~~(a)~~*(i)* during the recipient's lifetime, was an inpatient in a nursing facility, intermediate care facility for the developmentally disabled, or institution for mental disease and, with respect to that institutionalization, the department determined under 53-6-171 that the person was not reasonably expected to be discharged and return home; or

~~(b)~~*(ii)* was at least 55 years of age or younger if allowed by 42 U.S.C. 1396p, as may be amended, when the item or service was provided or when the insurance premium, deductible, or coinsurance was paid.

(b) The term does not include medical assistance for medicare cost-sharing or for benefits described in 42 U.S.C. 1396a(a)(10)(E).

~~(4)~~*(5)* "Recovery" means legal action brought for the payment or repayment of recoverable medical assistance or amounts of money paid for other purposes."

Section 3. Section 53-6-167, MCA, is amended to read:

"53-6-167. Recovery of medicaid benefits after recipient's death. (1) ~~After~~ *Except as provided in subsection (7) or (9)(b), after* the death of a recipient, the department shall execute and present a claim~~:~~

~~(a)~~ against the recipient's estate, within the time specified in the published notice to creditors in the estate proceeding, for the total amount of recoverable medical assistance paid to or on behalf of the recipient~~; and~~. *The department is not required to initiate probate proceedings in order to present a claim in a case in which no proceeding has been commenced to probate the estate of the deceased recipient.*

~~(b)~~*(2) Except as prohibited by subsection (9)(b), after the death of a recipient, the department may execute and present a claim* against a person who has received property of the recipient by distribution or survival for an amount equal to the recoverable medical assistance paid on behalf of the recipient or the value of the property received by the person from the recipient by distribution or survival, whichever is less. The amount recoverable from a person with respect to property of the recipient must be reduced by the value of any property transferred to the person for less than full market value for which a period of ineligibility was imposed under 53-6-166 against the recipient during the recipient's life. The department may bring an action in district court to collect upon a claim under this subsection ~~(1)(b)~~ *(2)*.

~~(2)~~*(3)* A department claim under subsection (1) *or (2)* must include notice of the right to seek an undue hardship exception under rules adopted by the department in accordance with subsection ~~(7)~~ *(8)*.

~~(3)~~*(4)* (a) Notwithstanding any statute of limitations or other claim presentation deadline provided by law, a department claim against an estate is not barred for lack of timely presentation if it is presented in the probate proceeding within the time specified in the published notice to creditors.

(b) An action to collect a claim under subsection ~~(1)(b)~~ *(2)* must be commenced within 3 years of the later of the recipient's death or the closing of the recipient's estate.

~~(4)~~*(5)* (a) For purposes of this section, property of a deceased recipient received by distribution or survival is any real or personal property or other assets in which the recipient had any right, title, or interest immediately prior to the time of death, including but not limited to assets passing to one or more survivors, heirs, assignees, or beneficiaries of the deceased recipient through joint tenancy, tenancy in common, right of survivorship, conveyance by the recipient subject to life estate, living trust, or other arrangement. For purposes of this section, property is not received by distribution or survival to the extent that the person received the property or property interest for consideration equal to the fair market value of the property or property interest received.

(b) Property received by distribution includes but is not limited to:

(i) property from a deceased recipient's estate distributed to a person through a probated estate or a small estate administration procedure; and

(ii) property from a deceased recipient's estate otherwise distributed to or in the possession of a person through any other procedure or when a legal procedure for distribution has not been followed.

(c) Assets of a deceased recipient's estate and property of a deceased recipient received by distribution or survival are not exempt from recovery under this section because the assets or property were or may have been considered by the department as exempt income or resources for the purpose of determining eligibility for medical assistance during the recipient's lifetime.

~~(5)~~*(6)* (a) The department may seek recovery under ~~subsection (1)(a) or (1)(b)~~ *subsection (1) or (2)*, or both, with respect to a deceased recipient until its claim is satisfied in full. Upon full satisfaction of its claim, the department may not seek further recovery and shall provide appropriate releases to the deceased recipient's estate and to other affected persons.

(b) An estate or other person is not entitled to a reduction or waiver of the department's claim on the grounds that there is or may be another person from whom recovery may be made under this section.

~~(6)~~*(7)* The department may waive recovery under this section if it determines that recovery would not be cost-effective. In determining whether recovery would be cost-effective for purposes of this subsection, the department may consider but is not limited to consideration of the following factors:

(a) the estimated cost of recovery;

(b) the amount reasonably likely to be recovered;

(c) the likelihood that recovery by the department will cause a person to become eligible for public assistance; and

(d) the importance of the case or the issues in the case and the need for judicial interpretation of issues that may recur with respect to the administration or implementation of this section.

~~(7)~~*(8)* (a) Upon presentation or assertion of a claim by the department under this section, the personal representative of the estate or another affected person may apply to the department, in accordance with procedures established by department rule, for a waiver of recovery based on undue hardship. The department shall waive its recovery under this section in whole or in part if it determines that recovery would result in undue hardship as defined by department rule.

(b) The department shall adopt rules that are consistent with 42 U.S.C. 1396p, as may be amended, and that implement federal regulations and policies, establishing procedures and criteria for undue hardship exceptions. The rules adopted under this section must include but are not limited to rules addressing the following:

(i) a description of the circumstances considered to constitute an undue hardship;

(ii) the procedures by which an individual may seek an undue hardship exception;

(iii) the persons entitled to an undue hardship exception; and

(iv) whether an exception is partial or temporary and the circumstances under which partial or temporary exceptions may be granted.

(c) If a person is aggrieved by a department determination on an application for an undue hardship exception, the person may assert a claim of entitlement to an undue hardship exception in any court proceeding on a department petition

for allowance of an estate claim or for recovery of an amount due under this section. When a person claims entitlement to an undue hardship exception in the proceeding, the court shall make a determination on the claim for an exception based upon the department rules adopted in accordance with this section. Department denial of all or any part of the relief requested in an exception application under this section may be reviewed by a district court only as provided in this subsection ~~(c)~~ *(8)(c)*. Denial does not grant a right to a contested case hearing or a right to judicial review under the Montana Administrative Procedure Act or the department's rules.

~~(8)~~*(9)* (a) Except as provided in subsection ~~(8)(b)~~ *(9)(b)*, if the requirements of this section are met, the department may collect upon its claim.

(b) The department may not recover under this section while there is a surviving spouse of the recipient or while there is a surviving child of the recipient who is under 21 years of age, blind, or permanently and totally disabled. This subsection ~~(b)~~ *(9)(b)* does not preclude the department from recovering from the recipient's estate after the death of the surviving spouse or child.

~~(9)~~*(10)* All money recovered under this section from any source must be distributed to the state general fund and to the United States as required by applicable state and federal laws and regulations."

Section 4. Section 53-6-168, MCA, is amended to read:

"53-6-168. Payment of certain funds of deceased recipient to department. (1) (a) A nursing facility*, a financial institution,* or a person~~, other than a financial institution,~~ holding personal funds of a deceased nursing facility resident who received medicaid benefits at any time shall, within 30 days following the resident's death, pay those funds to the department.

(b) A nursing facility may satisfy a debt owed by the deceased resident to the facility from the deceased resident's personal funds that are held by the nursing facility and that would have been payable to the facility from the resident's funds. The facility shall pay the remaining funds to the department as required by this section.

(c) Funds paid to the department under this section are not considered to be property of the deceased resident's estate, and 53-6-167 does not apply to recovery of the funds by the department.

(2) For purposes of this section, a nursing facility is holding personal funds of a resident if the facility:

(a) maintains possession of the funds in the facility; or

(b) as the recipient's trustee or representative, has deposited the resident's funds in an individual or shared account in a financial institution.

(3) The department shall apply any funds received under this section proportionately to the federal and state shares of recoverable medical assistance and shall pay any remaining amount to a person entitled by law to the funds."

Section 5. Section 53-6-178, MCA, is amended to read:

"53-6-178. Department right of recovery — limitations. (1) Except as provided in 53-6-180, 53-6-182, and this section, the department may collect upon its lien as provided in 53-6-171 through 53-6-188.

(2) The department may not recover upon a lien imposed on the recipient's home under 53-6-171 while the recipient's sibling or child who has resided lawfully and continuously in the home for at least ~~1 year~~ *18 months* immediately

before the recipient's institutionalization continues to lawfully reside in the home. This subsection does not preclude the department from recovering under 53-6-167, 53-6-168, or 53-6-169.

(3) The department may not recover on a lien imposed under 53-6-171 while there is a surviving spouse of the recipient or while there is a surviving child of the recipient who is under 21 years of age, blind, or permanently and totally disabled. This subsection does not preclude the department from later recovery in accordance with 53-6-181."

Section 6. Effective date. [This act] is effective July 1, 2009.

Approved April 3, 2009

CHAPTER NO. 154

[SB 197]

AN ACT DEFINING COURT TRANSCRIPTS; ESTABLISHING TRANSCRIPT COSTS AND PROVIDING FOR COST-OF-LIVING ADJUSTMENTS IN TRANSCRIPT COSTS; AMENDING SECTIONS 3-5-604 AND 40-6-119, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 3-5-604, MCA, is amended to read:

"3-5-604. Court reporters — transcript of *district court* proceedings — costs. ~~(1) Each court reporter shall furnish, upon request, with all reasonable diligence, to a party or a party's attorney in a case in which the court reporter has attended the trial or hearing a transcript from stenographic notes of the testimony and proceedings of the trial or hearing or a part of a trial or hearing upon payment by the person requiring the transcript of $2 a page for the original transcript, 50 cents a page for the first copy, and 25 cents a page for each additional copy, except as otherwise provided in this section.~~ *(1) When a transcript of the testimony and proceedings of a trial or hearing or a part of a trial or hearing is requested, a court reporter shall furnish the transcript to the requester with all reasonable diligence. The court reporter shall submit an invoice with the transcript when it is furnished. The court reporter may withhold delivery of the transcript until the transcription fee is paid or satisfactory arrangement for payment is made.*

(2) Compensation for transcripts under this section is as follows:

(a) (i) Ordinary transcript - $2 per page for the original furnished to a state or local government agency, $2.50 per page for the original furnished to any other party, 50 cents per page for the first copy to each party, and 25 cents per page for each additional copy to the same party.

(ii) Expedited transcript - $4 per page for the original, 50 cents per page for the first copy to each party, and 25 cents per page for each additional copy to the same party.

(iii) Daily transcript - $5 per page for the original, 50 cents per page for the first copy to each party, and 25 cents per page for each additional copy to the same party.

(b) (i) The transcript cost is subject to a cost-of-living adjustment as provided in subsection (2)(b)(ii).

(ii) Prior to June 30 of each even-numbered year, the office of the court administrator shall determine whether an increase of the transcript amount

specified in subsections (2)(a)(i) through (2)(a)(iii) must be made based on the increase, if any, from June of the preceding year to May of the year in which the calculation is made in the consumer price index, U.S. city average, all urban consumers, for all items, as published by the bureau of labor statistics of the United States department of labor.

(iii) The transcript amount established under subsection (2)(b)(ii) must be rounded to the nearest 5 cents and becomes effective as the new transcript cost, replacing the costs specified in subsections (2)(a)(i) through (2)(a)(iii), on July 1 of the year following the year the calculation was made. The office of the court administrator shall publish the adjusted costs on the judicial branch website prior to July 1 of each year.

~~(2)~~*(3)* If the court reporter is not entitled to retain transcription fees under 3-5-601, the transcription fees required by subsection ~~(1)~~ *(2)* must be paid to the clerk of district court, who shall forward the amount to the department of revenue for deposit in the state general fund.

~~(3)~~*(4)* (a) If the county attorney, attorney general, or judge requires a transcript in a criminal case, the reporter shall furnish it. The transcription fee must be paid by the office of court administrator as provided in 3-5-901. *The office of the court administrator may pay only for ordinary transcripts and may not pay for daily or expedited transcripts.*

(b) If the judge requires a copy in a civil case to assist in rendering a decision, the reporter shall furnish the copy without charge.

(c) In civil cases, all transcripts required by the county must be furnished and ~~only the reporter's actual costs of preparation may~~ *must* be paid *for* by the county *pursuant to subsection (2)*.

~~(4)~~*(5)* (a) If a public defender, as defined in 47-1-103, requests a transcript, the transcript must be furnished to the public defender and paid for by the ~~state~~ office of *state* public defender, as provided in 47-1-201.

(b) If an indigent party is eligible for a public defender but is acting pro se and requests a transcript, the transcript must be furnished to the party and paid for by the office of court administrator, as provided in 3-5-901.

(6) As used in this section, the following definitions apply:

(a) "Copy" means any replication of the original transcript regardless of the medium.

(b) "Daily transcript" means a transcript of all or part of the proceedings to be delivered the following day.

(c) "Expedited transcript" means a transcript of all or part of the proceedings to be delivered within 7 calendar days.

(d) "Ordinary transcript" means a transcript of all or part of the proceedings."

Section 2. Section 40-6-119, MCA, is amended to read:

"40-6-119. Right to counsel — transcript on appeal. (1) At the pretrial hearing and in further proceedings, any party may be represented by counsel. The court shall order the office of state public defender, pursuant to the Montana Public Defender Act, Title 47, chapter 1, to assign counsel for a party who is financially unable to obtain counsel.

(2) The court may order reasonable fees for experts and the child's guardian ad litem and other costs of the action and pretrial proceedings, including blood

test costs, to be paid by the parties in proportions and at times determined by the court.

(3) If a party is financially unable to pay the cost of a transcript, the court shall furnish on request a transcript for purposes of appeal. Transcript fees must be paid as provided in 3-5-604~~(4)~~."

Section 3. Effective date. [This act] is effective July 1, 2009.

Approved April 3, 2009

CHAPTER NO. 155

[SB 319]

AN ACT ELIMINATING VIOLATIONS OF SIZE, WEIGHT, AND LOAD RESTRICTIONS AS VIOLATIONS THAT RESULT IN AN OFFENDER ACCUMULATING POINTS TOWARDS A HABITUAL OFFENDER DESIGNATION; AND AMENDING SECTION 61-11-203, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-11-203, MCA, is amended to read:

"61-11-203. Definitions. As used in this part, the following definitions apply:

(1) "Conviction" has the meaning provided in 61-5-213.

(2) "Habitual traffic offender" means any person who within a 3-year period accumulates 30 or more conviction points according to the schedule specified in this subsection:

(a) deliberate homicide resulting from the operation of a motor vehicle, 15 points;

(b) mitigated deliberate homicide, negligent homicide resulting from operation of a motor vehicle, or negligent vehicular assault, 12 points;

(c) any offense punishable as a felony under the motor vehicle laws of Montana or any felony in the commission of which a motor vehicle is used, 12 points;

(d) driving while under the influence of intoxicating liquor or narcotics or drugs of any kind or operation of a motor vehicle by a person with alcohol concentration of 0.08 or more, 10 points;

(e) operating a motor vehicle while the license to do so has been suspended or revoked, 6 points;

(f) failure of the driver of a motor vehicle involved in an accident resulting in death or injury to any person to stop at the scene of the accident and give the required information and assistance, as described in 61-7-105, 8 points;

(g) willful failure of the driver involved in an accident resulting in property damage of $250 to stop at the scene of the accident and give the required information or failure to otherwise report an accident in violation of the law, 4 points;

(h) reckless driving, 5 points;

(i) illegal drag racing or engaging in a speed contest in violation of the law, 5 points;

(j) any of the mandatory motor vehicle liability protection offenses under 61-6-301 and 61-6-302, 5 points;

(k) operating a motor vehicle without a license to do so, 2 points. However, this subsection (2)(k) does not apply to operating a motor vehicle within a period of 180 days from the date the license expired.

(l) speeding, except as provided in 61-8-725(2), 3 points;

(m) all other moving violations, 2 points.

(3) There may not be multiple application of cumulative points when two or more charges are filed involving a single occurrence. If there are two or more convictions involving a single occurrence, only the number of points for the specific conviction carrying the highest points is chargeable against that defendant.

(4) "License" means any type of license or permit to operate a motor vehicle.

(5) "Moving violation" means a violation of a traffic regulation of this state or another jurisdiction by a person while operating a motor vehicle or in actual physical control of a motor vehicle upon a highway.

(6) A traffic regulation includes any provision governing motor vehicle operation, equipment, safety, ~~size, weight, and load restrictions~~ or driver licensing. A traffic regulation does not include provisions governing vehicle registration or local parking."

Approved April 3, 2009

CHAPTER NO. 156

[SB 325]

AN ACT CLARIFYING THAT A PERSON WHO IS A DESIGNATED CAREGIVER UNDER THE MEDICAL MARIJUANA ACT MAY NOT USE MARIJUANA AND MAY USE DRUG PARAPHERNALIA ONLY IN LIMITED CIRCUMSTANCES; AND AMENDING SECTIONS 45-10-103, 50-46-102, 50-46-103, 50-46-201, 50-46-205, AND 50-46-206, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 45-10-103, MCA, is amended to read:

"45-10-103. Criminal possession of drug paraphernalia. ~~It~~ *Except as provided in Title 50, chapter 46, it* is unlawful for a person to use or to possess with intent to use drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a dangerous drug. A person who violates this section is guilty of a misdemeanor and upon conviction shall be imprisoned in the county jail for not more than 6 months, fined an amount of not more than $500, or both. A person convicted of a first violation of this section is presumed to be entitled to a deferred imposition of sentence of imprisonment."

Section 2. Section 50-46-102, MCA, is amended to read:

"50-46-102. Definitions. As used in this chapter, the following definitions apply:

(1) (a) "Caregiver" means an individual, 18 years of age or older who has agreed to undertake responsibility for managing the well-being of a person with respect to the medical use of marijuana. A qualifying patient may have only one caregiver at any one time.

(b) The term does not include the qualifying patient's physician.

(2) "Debilitating medical condition" means:

(a) cancer, glaucoma, or positive status for human immunodeficiency virus, acquired immune deficiency syndrome, or the treatment of these conditions;

(b) a chronic or debilitating disease or medical condition or its treatment that produces one or more of the following:

(i) cachexia or wasting syndrome;

(ii) severe or chronic pain;

(iii) severe nausea;

(iv) seizures, including but not limited to seizures caused by epilepsy; or

(v) severe or persistent muscle spasms, including but not limited to spasms caused by multiple sclerosis or Crohn's disease; or

(c) any other medical condition or treatment for a medical condition adopted by the department by rule.

(3) "Department" means the department of public health and human services.

(4) "Marijuana" has the meaning provided in 50-32-101.

(5) "Medical use" means*:*

(a) the acquisition, possession, cultivation, manufacture, ~~use,~~ delivery, transfer, or transportation of marijuana or paraphernalia *by a qualifying patient or a caregiver* relating to the consumption of marijuana to alleviate the symptoms or effects of a qualifying patient's debilitating medical condition*;*

(b) the use of marijuana or paraphernalia by a qualifying patient to alleviate the symptoms or effects of the patient's debilitating medical condition; or

(c) the use of paraphernalia by a caregiver for the cultivation, manufacture, delivery, transfer, or transportation of marijuana for use by a qualifying patient.

(6) "Paraphernalia" has the meaning provided in 45-10-101.

~~(6)~~*(7)* "Physician" means a person who is licensed under Title 37, chapter 3.

~~(7)~~*(8)* "Qualifying patient" means a person who has been diagnosed by a physician as having a debilitating medical condition.

~~(8)~~*(9)* "Registry identification card" means a document issued by the department that identifies a person as a qualifying patient or caregiver.

~~(9)~~*(10)* (a) "Usable marijuana" means the dried leaves and flowers of marijuana and any mixture or preparation of marijuana.

(b) The term does not include the seeds, stalks, and roots of the plant.

~~(10)~~*(11)* "Written certification" means a qualifying patient's medical records or a statement signed by a physician stating that in the physician's professional opinion, after having completed a full assessment of the qualifying patient's medical history and current medical condition made in the course of a bona fide physician-patient relationship, the qualifying patient has a debilitating medical condition and the potential benefits of the medical use of marijuana would likely outweigh the health risks for the qualifying patient."

Section 3. Section 50-46-103, MCA, is amended to read:

"50-46-103. Procedures — minors — confidentiality — report to legislature. (1) The department shall establish and maintain a program for the issuance of registry identification cards to persons who meet the requirements of this chapter.

(2) Except as provided in subsection (3), the department shall issue a registry identification card to a qualifying patient who submits the following, in accordance with department rules:

(a) written certification that the person is a qualifying patient;

(b) an application or renewal fee;

(c) the name, address, and date of birth of the qualifying patient;

(d) the name, address, and telephone number of the qualifying patient's physician; and

(e) the name, address, and date of birth of the qualifying patient's caregiver, if any.

(3) The department shall issue a registry identification card to a minor if the materials required under subsection (2) are submitted and the *minor's* custodial parent or legal guardian with responsibility for health care decisions ~~for the minor~~ signs and submits a written statement that:

(a) the minor's physician has explained to ~~that~~ *the* minor and to the *minor's* custodial parent or legal guardian with responsibility for health care decisions ~~for the minor~~ the potential risks and benefits of the medical use of marijuana; and

(b) the *minor's* custodial parent or legal guardian with responsibility for health care decisions ~~for the minor~~:

(i) consents to the medical use of marijuana by the minor;

(ii) agrees to serve as the minor's caregiver; and

(iii) agrees to control the acquisition of marijuana and the dosage and frequency of the medical use of marijuana by the minor.

(4) *(a)* The department shall issue a registry identification card to the caregiver who is named in a qualifying patient's approved application if the caregiver signs a statement*:*

(i) agreeing to provide marijuana only to qualifying patients who have named the applicant as caregiver*; and*

(ii) acknowledging that possession of the registry identification card does not allow the caregiver to engage in the use of marijuana or to use paraphernalia for any purpose other than cultivating, manufacturing, delivering, transferring, or transporting marijuana for medical use by a qualifying patient.

(b) The department may not issue a registry identification card to a proposed caregiver who has previously been convicted of a felony drug offense.

(c) A caregiver may receive reasonable compensation for services provided to assist with a qualifying patient's medical use of marijuana.

(5) (a) The department shall verify the information contained in an application or renewal submitted pursuant to this section and shall approve or deny an application or renewal within 15 days of receipt of the application or renewal.

(b) The department may deny an application or renewal only if the applicant did not provide the information required pursuant to this section, the department determines that the information was falsified, or the applicant is not qualified to receive a registry identification card under the provisions of this chapter. Rejection of an application or renewal is considered a final department action, subject to judicial review.

(6) The department shall issue a registry identification card within 5 days of approving an application or renewal. Registry identification cards expire 1 year after the date of issuance. Registry identification cards must state:

(a) the name, address, and date of birth of the qualifying patient;

(b) the name, address, and date of birth of the qualifying patient's caregiver, if any;

(c) the date of issuance and expiration date of the registry identification card; and

(d) other information that the department may specify by rule.

(7) A person who has been issued a registry identification card shall notify the department of any change in the qualifying patient's name, address, physician, or caregiver or change in status of the qualifying patient's debilitating medical condition within 10 days of the change. If a change occurs and is not reported to the department, the registry identification card is void.

(8) The department shall maintain a confidential list of the persons to whom the department has issued registry identification cards. Individual names and other identifying information on the list must be confidential and are not subject to disclosure, except to:

(a) authorized employees of the department as necessary to perform official duties of the department; or

(b) authorized employees of state or local law enforcement agencies, only as necessary to verify that a person is a lawful possessor of a registry identification card.

(9) The department shall report annually to the legislature the number of applications for registry identification cards, the number of qualifying patients and caregivers approved, the nature of the debilitating medical conditions of the qualifying patients, the number of registry identification cards revoked, and the number of physicians providing written certification for qualifying patients. The department may not provide any identifying information of qualifying patients, caregivers, or physicians."

Section 4. Section 50-46-201, MCA, is amended to read:

"50-46-201. Medical use of marijuana — legal protections — limits on amount — presumption of medical use. (1) A ~~qualifying patient or caregiver~~ *person* who possesses a registry identification card issued pursuant to 50-46-103 may not be arrested, prosecuted, or penalized in any manner or be denied any right or privilege, including but not limited to civil penalty or disciplinary action by a professional licensing board or the department of labor and industry, ~~for the medical use of marijuana or for assisting in the medical use of marijuana~~ if*:*

(a) the qualifying patient or caregiver *acquires,* possesses*, cultivates, manufactures, delivers, transfers, or transports* marijuana not in excess of the amounts allowed in subsection (2)*; or*

(b) the qualifying patient uses marijuana for medical use.

(2) A qualifying patient and that qualifying patient's caregiver may not possess more than six marijuana plants and 1 ounce of usable marijuana each.

(3) (a) A qualifying patient or caregiver is presumed to be engaged in the medical use of marijuana if the qualifying patient or caregiver:

(i) is in possession of a registry identification card; and

(ii) is in possession of an amount of marijuana that does not exceed the amount permitted under subsection (2).

(b) The presumption may be rebutted by evidence that the possession of marijuana was not for the purpose of alleviating the symptoms or effects of a qualifying patient's debilitating medical condition.

(4) A physician may not be arrested, prosecuted, or penalized in any manner or be denied any right or privilege, including but not limited to civil penalty or disciplinary action by the board of medical examiners or the department of labor and industry, for providing written certification for the medical use of marijuana to qualifying patients.

(5) An interest in or right to property that is possessed, owned, or used in connection with the medical use of marijuana or acts incidental to medical use may not be forfeited under any provision of law providing for the forfeiture of property other than as a sentence imposed after conviction of a criminal offense.

(6) A person may not be subject to arrest or prosecution for constructive possession, conspiracy, as provided in 45-4-102, or other provisions of law or any other offense for simply being in the presence or vicinity of the medical use of marijuana as permitted under this chapter.

(7) Possession of or application for a registry identification card does not alone constitute probable cause to search the person or property of the person possessing or applying for the registry identification card or otherwise subject the person or property of the person possessing or applying for the card to inspection by any governmental agency, including a law enforcement agency.

(8) A registry identification card or its equivalent issued by another state government to permit the medical use of marijuana by a qualifying patient or to permit a person to assist with a qualifying patient's medical use of marijuana has the same force and effect as a registry identification card issued by the department."

Section 5. Section 50-46-205, MCA, is amended to read:

"50-46-205. Limitations of Medical Marijuana Act. (1) This chapter does not permit:

(a) any person to operate, navigate, or be in actual physical control of any motor vehicle, aircraft, or motorboat while under the influence of marijuana; ~~or~~

(b) the use of marijuana by a caregiver; or

~~(b)~~*(c)* the smoking of marijuana *by a qualifying patient*:

(i) in a school bus or other form of public transportation;

(ii) on any school grounds;

(iii) in any correctional facility; or

(iv) at any public park, public beach, public recreation center, or youth center.

(2) Nothing in this chapter may be construed to require:

(a) a government medical assistance program or private health insurer to reimburse a person for costs associated with the medical use of marijuana; or

(b) an employer to accommodate the medical use of marijuana in any workplace.

(3) Nothing in this chapter may be construed to allow a caregiver to use marijuana or to prevent criminal prosecution of a caregiver who uses marijuana or paraphernalia for the caregiver's personal use."

Section 6. Section 50-46-206, MCA, is amended to read:

"50-46-206. Affirmative defense. Except as provided in 50-46-205, it is an affirmative defense to any criminal offense involving marijuana that the person charged with the offense:

(1) (a) has a physician who states that or has medical records that indicate that, in the physician's professional opinion, after having completed a full assessment of the person's medical history and current medical condition made in the course of a bona fide physician-patient relationship, the potential benefits of medical marijuana would likely outweigh the health risks for the person; or

(b) provides marijuana to a person described in subsection (1)(a) if the person does not provide marijuana to anyone for uses that are not medical;

(2) *(a)* is engaged in the acquisition, possession, cultivation, manufacture, ~~use,~~ delivery, transfer, or transportation of marijuana or paraphernalia relating to the consumption of marijuana to alleviate the symptoms or effects of the medical condition of the person identified in subsection (1)(a) *if the person charged with the offense is a qualifying patient or a caregiver; or*

(b) is engaged in the use of marijuana if the person charged with the offense is a qualifying patient; and

(3) possesses marijuana only in an amount that is reasonably necessary to ensure the uninterrupted availability of marijuana for the purpose of alleviating the symptoms or effects of the medical condition of the person identified in subsection (1)(a)."

Approved April 3, 2009

CHAPTER NO. 157

[SB 368]

AN ACT EXTENDING THE LIABILITY LIMITS ON MEDICAL PRACTITIONERS AND DENTAL HYGIENISTS WHO PROVIDE SERVICES WITHOUT COMPENSATION TO COMMUNITY-BASED PROGRAMS; AMENDING SECTION 27-1-736, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 27-1-736, MCA, is amended to read:

"27-1-736. Limits on liability of medical practitioner or dental hygienist who provides services without compensation. (1) A medical practitioner, as defined in 37-2-101, or a dental hygienist licensed under Title 37, chapter 4, who renders, at any site, any health care within the scope of the provider's license, voluntarily and without compensation, to a patient of a clinic*,* ~~or~~ to a patient referred by a clinic*, or in a community-based program to provide access to health care services for uninsured persons* is not liable to a person for civil damages resulting from the rendering of the care~~,~~ unless the damages were the result of gross negligence or willful or wanton acts or omissions by the medical practitioner or dental hygienist. Each patient must be given notice that under state law the medical practitioner or dental hygienist cannot be held

legally liable for ordinary negligence if the medical practitioner or dental hygienist does not have malpractice insurance.

(2) For purposes of this section:

(a) "clinic" means a place for the provision of health care to patients that is organized for the delivery of health care without compensation or that is operated as a health center under 42 U.S.C. 254b;

(b) "community-based program to provide access to health care services for uninsured persons" means a local program in which care is provided without compensation to individuals who have been referred through that community-based program and in which the medical practitioner or dental hygienist has entered into a written agreement to provide the service;

~~(b)~~*(c)* "health care" has the meaning provided in 50-16-504;

~~(c)~~*(d)* "without compensation" means that the medical practitioner or dental hygienist voluntarily rendered health care without receiving any reimbursement or compensation, except for reimbursement for supplies.

(3) Subsection (1) applies only to a medical practitioner or dental hygienist who:

(a) does not have malpractice insurance coverage because the medical practitioner or dental hygienist is retired or is otherwise not engaged in active practice; or

(b) has malpractice insurance coverage that has a rider or exclusion that excludes coverage for services provided under this section."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 3, 2009

CHAPTER NO. 158

[SB 432]

AN ACT CLARIFYING THAT FAILURE OF AN OSTENSIBLE AGENT TO COMPLY WITH A HEALTH CARE PROVIDER'S POLICY OR PRACTICE REQUIRING THE AGENT TO SECURE PROFESSIONAL LIABILITY INSURANCE CONSTITUTES PROFESSIONAL MISCONDUCT; AMENDING SECTIONS 28-10-103 AND 37-1-316, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 28-10-103, MCA, is amended to read:

"28-10-103. Actual versus ostensible agency — limitation. (1) An agency is either actual or ostensible. An agency is actual when the agent is really employed by the principal. An agency is ostensible when the principal intentionally or by want of ordinary care causes a third person to believe another to be the principal's agent when that person is not really employed by the principal.

(2) Except as provided in subsection (3), for purposes of a malpractice claim, as defined in 27-6-103, liability may not be imposed on a health care provider, as defined in 27-6-103, for an act or omission by a person or entity alleged to have been an ostensible agent of the health care provider at the time that the act or omission occurred.

(3) *(a)* Subsection (2) is not applicable unless the health care provider has~~, by~~ *instituted a* policy or practice~~, ensured~~ *requiring* ~~that those~~ persons providing independent professional services *to* have insurance of a type and in the amount required by the rules and regulations of the medical staff, by the medical staff bylaws, or by other similar health care facility rules or regulations. The insurance provided for in this subsection must be in effect for the period of time during which a medical malpractice action must be brought as provided in 27-2-205.

(b) Failure of a health care provider providing independent professional services to comply with a policy or practice implementing subsection (3)(a) constitutes unprofessional conduct pursuant to 37-1-316(18) and [section 3]."

Section 2. Section 37-1-316, MCA, is amended to read:

"37-1-316. Unprofessional conduct. The following is unprofessional conduct for a licensee or license applicant governed by this chapter:

(1) conviction, including conviction following a plea of nolo contendere, of a crime relating to or committed during the course of the person's practice or involving violence, use or sale of drugs, fraud, deceit, or theft, whether or not an appeal is pending;

(2) permitting, aiding, abetting, or conspiring with a person to violate or circumvent a law relating to licensure or certification;

(3) fraud, misrepresentation, deception, or concealment of a material fact in applying for or assisting in securing a license or license renewal or in taking an examination required for licensure;

(4) signing or issuing, in the licensee's professional capacity, a document or statement that the licensee knows or reasonably ought to know contains a false or misleading statement;

(5) a misleading, deceptive, false, or fraudulent advertisement or other representation in the conduct of the profession or occupation;

(6) offering, giving, or promising anything of value or benefit to a federal, state, or local government employee or official for the purpose of influencing the employee or official to circumvent a federal, state, or local law, rule, or ordinance governing the licensee's profession or occupation;

(7) denial, suspension, revocation, probation, fine, or other license restriction or discipline against a licensee by a state, province, territory, or Indian tribal government or the federal government if the action is not on appeal, under judicial review, or has been satisfied.

(8) failure to comply with a term, condition, or limitation of a license by final order of a board;

(9) revealing confidential information obtained as the result of a professional relationship without the prior consent of the recipient of services, except as authorized or required by law;

(10) addiction to or dependency on a habit-forming drug or controlled substance as defined in Title 50, chapter 32, as a result of illegal use of the drug or controlled substance;

(11) use of a habit-forming drug or controlled substance as defined in Title 50, chapter 32, to the extent that the use impairs the user physically or mentally;

(12) having a physical or mental disability that renders the licensee or license applicant unable to practice the profession or occupation with reasonable skill and safety;

(13) engaging in conduct in the course of one's practice while suffering from a contagious or infectious disease involving serious risk to public health or without taking adequate precautions, including but not limited to informed consent, protective gear, or cessation of practice;

(14) misappropriating property or funds from a client or workplace or failing to comply with a board rule regarding the accounting and distribution of a client's property or funds;

(15) interference with an investigation or disciplinary proceeding by willful misrepresentation of facts, by the use of threats or harassment against or inducement to a client or witness to prevent them from providing evidence in a disciplinary proceeding or other legal action, or by use of threats or harassment against or inducement to a person to prevent or attempt to prevent a disciplinary proceeding or other legal action from being filed, prosecuted, or completed;

(16) assisting in the unlicensed practice of a profession or occupation or allowing another person or organization to practice or offer to practice by use of the licensee's license;

(17) failing to report the institution of or final action on a malpractice action, including a final decision on appeal, against the licensee or of an action against the licensee by a:

(a) peer review committee;

(b) professional association; or

(c) local, state, federal, territorial, provincial, or Indian tribal government;

(18) failure of a health care provider, as defined in 27-6-103, to comply with a policy or practice implementing 28-10-103(3)(a);

~~(18)~~*(19)* conduct that does not meet the generally accepted standards of practice. A certified copy of a malpractice judgment against the licensee or license applicant or of a tort judgment in an action involving an act or omission occurring during the scope and course of the practice is conclusive evidence of but is not needed to prove conduct that does not meet generally accepted standards."

Section 3. Failure of health care provider to obtain insurance as unprofessional conduct. In addition to the conduct described in 37-1-316, failure of a health care provider, as defined in 27-6-103, to comply with a policy or practice implementing 28-10-103(3)(a) requiring insurance constitutes unprofessional conduct.

Section 4. Codification instruction. [Section 3] is intended to be codified as an integral part of Title 37, chapter 2, part 3, and the provisions of Title 37, chapter 2, part 3, apply to [section 3].

Section 5. Effective date. [This act] is effective on passage and approval.

Approved April 3, 2009

CHAPTER NO. 159

[HB 21]

AN ACT REPEALING THE TERMINATION DATE FOR CREDIT AGAINST AIR QUALITY PERMITTING FEES FOR CERTAIN USES OF POSTCONSUMER GLASS IN RECYCLED MATERIAL; REPEALING THE

TERMINATION DATE FOR THE TAX CREDIT FOR INVESTMENT IN PROPERTY USED TO COLLECT OR PROCESS RECLAIMABLE MATERIALS; REPEALING THE TERMINATION DATE FOR THE TAX DEDUCTION FOR THE PURCHASE OF RECYCLED MATERIALS; AMENDING SECTIONS 75-2-225 AND 75-2-226, MCA; REPEALING SECTION 9, CHAPTER 712, LAWS OF 1991, SECTIONS 4 AND 5, CHAPTER 542, LAWS OF 1995, SECTION 1, CHAPTER 411, LAWS OF 1997, SECTIONS 4, 5, 6, AND 7, CHAPTER 398, LAWS OF 2001, SECTION 8, CHAPTER 516, LAWS OF 2001, SECTIONS 3 AND 5, CHAPTER 129, LAWS OF 2005, AND SECTIONS 1, 2, 3, 4, 5, 6, 7, AND 8, CHAPTER 569, LAWS OF 2005; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-2-225, MCA, is amended to read:

"75-2-225. ~~*(Temporary)*~~ **Amount and duration of credit — how claimed.** (1) An applicant may receive a credit against the fees imposed in 75-2-220 for using postconsumer glass in recycled material if the applicant qualifies under 75-2-226.

(2) ~~Subject to 75-2-226(2), an~~ *An* applicant qualifying for a credit under 75-2-226 is entitled to claim a credit, as provided in subsection (3) of this section, for using postconsumer glass in recycled material in the calendar year subsequent to the calendar year in which the postconsumer glass was used in recycled material.

(3) (a) The amount of the credit that may be claimed under this section is $8 for each ton of postconsumer glass that was used as a substitute for nonrecycled material in the calendar year prior to the calendar year for which the applicant is paying fees for permits under 75-2-220.

(b) The maximum credit allowable in any calendar year for fees payable under 75-2-220 is $2,000 or the total amount of fees due, whichever is less. ~~*(Terminates December 31, 2009—secs. 3, 5, Ch. 129, L. 2005.)*~~"

Section 2. Section 75-2-226, MCA, is amended to read:

"75-2-226. ~~*(Temporary)*~~ **Credit for use of postconsumer glass.** (1) The following requirements must be met for an applicant to be entitled to a credit for the use of postconsumer glass:

(a) The postconsumer glass must have been used in recycled material in the calendar year prior to the calendar year in which the applicant is applying for and paying for permits under 75-2-220.

(b) (i) The applicant claiming a credit must be a person who, as an owner, including a contract purchaser or lessee, or who pursuant to an agreement owns, leases, or has a beneficial interest in a business that uses postconsumer glass in recycled materials. The use of postconsumer glass as recycled material may be a minor or nonprofit part of a business otherwise engaged in a business activity.

(ii) The applicant may but need not operate or conduct a business that uses postconsumer glass as recycled material. If more than one person has an interest in a business with qualifying uses of postconsumer glass, they may allocate all or any part of the allowable credit among themselves and their successors or assigns.

(c) The business must have been owned or leased by the applicant claiming the credit during the calendar year prior to the calendar year for which the permit fees are due under 75-2-220, except as otherwise provided in subsection

(1)(b), and must have used postconsumer glass in recycled material during the calendar year prior to the calendar year for which the credit is claimed.

(d) The postconsumer glass used in recycled material may not be an industrial waste generated by the person claiming the credit unless:

(i) the person generating the waste historically has disposed of the waste onsite or in a licensed landfill; and

(ii) standard industrial practice has not generally included the reuse of the waste in the manufacturing process.

~~(2) A credit under this section may be claimed by an applicant for a business only if the qualifying postconsumer glass was used in recycled material before January 1, 2010.~~

~~(3)~~*(2)* The credit provided by this section is not in lieu of any other incentive to which the applicant otherwise may be entitled under Title 15 or this chapter.

~~(4)~~*(3)* A credit otherwise allowable under this section that is not used by the applicant in the calendar year for which the permits are applied may not be:

(a) carried forward to offset an applicant's permit fees for any succeeding calendar year; or

(b) carried back to offset an applicant's permit fees for any preceding calendar year. *~~(Terminates December 31, 2009—secs. 3, 5, Ch. 129, L. 2005.)~~*"

Section 3. Repealer. Section 9, Chapter 712, Laws of 1991, sections 4 and 5, Chapter 542, Laws of 1995, section 1, Chapter 411, Laws of 1997, sections 4, 5, 6, and 7, Chapter 398, Laws of 2001, section 8, Chapter 516, Laws of 2001, sections 3 and 5, Chapter 129, Laws of 2005, and sections 1, 2, 3, 4, 5, 6, 7, and 8, Chapter 569, Laws of 2005, are repealed.

Section 4. Effective date. [This act] is effective July 1, 2009.

Approved April 6, 2009

CHAPTER NO. 160

[HB 54]

AN ACT REQUIRING THE PREPARATION AND PUBLICATION OF A SEPARATE INDEX FOR THE MONTANA CONSTITUTION AS PART OF THE MONTANA CODE ANNOTATED; AMENDING SECTION 1-11-204, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 1-11-204, MCA, is amended to read:

"1-11-204. Duties of code commissioner. (1) Prior to November 1 immediately preceding each regular legislative session, the code commissioner shall prepare and submit to the legislative council a report, in tabular or other form, indicating the commissioner's recommendations for legislation that will:

(a) eliminate archaic or outdated laws;

(b) eliminate obsolete or redundant wording of laws;

(c) eliminate duplications in law and any laws repealed directly or by implication;

(d) clarify existing laws;

(e) correct errors and inconsistencies within the laws.

(2) The commissioner shall cause to be prepared for publication with the Montana Code Annotated the following material:

(a) the statutory history of each code section;

(b) annotations of state and federal court decisions relating to the subject matter of the code;

(c) editorial notes, cross-references, and other matter the commissioner considers desirable or advantageous;

(d) the Declaration of Independence;

(e) the Constitution of the United States of America and amendments to the constitution;

(f) acts of congress relating to the authentication of laws and records;

(g) the Organic Act of the Territory of Montana;

(h) The Enabling Act;

(i) The 1972 Constitution of the State of Montana and any amendments to the constitution;

(j) ordinances relating to federal relations and elections;

(k) rules of civil, criminal, and appellate procedure and other rules of procedure the Montana supreme court may adopt; and

(l) a complete subject index, *a separate index for the constitution,* a popular name index, and comparative disposition tables or cross-reference indexes relating sections of the Montana Code Annotated to prior compilations and session laws.

(3) (a) After publication of the Montana Code Annotated, the code commissioner shall:

(i) annotate, arrange, and prepare for publication all laws of a general and permanent nature enacted at each legislative session and assign catchlines and code section numbers to each new section;

(ii) continue to codify, index, arrange, rearrange, and generally update the Montana Code Annotated to maintain an orderly and logical arrangement of the laws in order to avoid future need for bulk revision;

(iii) prepare and publish a report entitled "Official Report of the Montana Code Commissioner—(year)" that indicates, in tabular or other form, all changes made during the continuous recodification, other than punctuation, spelling, and capitalization, to clearly indicate the character of each change made since the last report.

(b) In carrying out the duty imposed by subsection (3)(a)(ii), the commissioner shall recodify the Montana Code Annotated on a title-by-title basis. The recodification is intended to be secondary to the completion of other interim duties.

(4) From time to time, the commissioner shall confer with members of the judiciary and the state bar relative to recodification procedures."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 6, 2009

CHAPTER NO. 161

[HB 58]

AN ACT ELIMINATING THE SOCIAL SECURITY CONTRIBUTION ACCOUNT AND RELATED PROVISIONS FROM STATE LAW; AMENDING SECTIONS 19-1-402, 19-1-503, 19-1-813, AND 19-1-825, MCA; REPEALING SECTIONS 19-1-601, 19-1-602, 19-1-603, 19-1-604, 19-1-701, 19-1-703, 19-1-706, 19-1-801, AND 19-1-814, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-1-402, MCA, is amended to read:

"19-1-402. Contents of federal-state agreement. The agreement authorized by 19-1-401 may contain provisions relating to coverage, benefits, ~~contributions,~~ effective date, *and* modification ~~and termination~~ of the agreement, administration, and other appropriate provisions as the state agency and secretary of health and human services ~~shall~~ agree upon~~;~~. ~~but, except~~ *Except* as ~~may be~~ otherwise required or permitted by ~~or under~~ the Social Security Act ~~as to~~ *regarding* the services to be covered, the agreement must provide ~~in effect~~ that:

(1) benefits will be provided for employees whose services are covered by the agreement ~~(~~and *for* their dependents and survivors~~)~~ on the same basis as though the services constituted employment within the meaning of Title II of the Social Security Act;

~~(2) the state will pay to the secretary of the treasury of the United States, at a time or times as may be prescribed under the Social Security Act, contributions with respect to wages equal to the sum of the taxes that would be imposed by the Federal Insurance Contributions Act if the services covered by the agreement constituted employment within the meaning of that act;~~

~~(3)~~*(2)* the agreement must be effective with respect to services in employment covered by the agreement performed after a date specified in the agreement, but may not be effective with respect to services performed prior to the first day of the calendar year in which the agreement is entered into or in which the modification of the agreement making it applicable to services is entered into, except that the effective date may be made retroactive to the extent permitted by section 218(e) of the Social Security Act, ~~(~~42 U.S.C. 418(e)~~)~~;

~~(4)~~*(3)* all services that constitute employment and are performed ~~in the employ of the state~~ by employees of the state must be covered by the agreement; and

~~(5)~~*(4)* all services that constitute employment, are performed ~~in the employ~~ *by employees* of a political subdivision of the state, and are covered by a plan that is in conformity with the terms of the agreement and that has been approved by the state agency under *Title 19, chapter 1,* part 5 must be covered by the agreement."

Section 2. Section 19-1-503, MCA, is amended to read:

"19-1-503. Required provisions of plan. A plan may not be approved unless:

(1) it is in conformity with the requirements of the Social Security Act and with the agreement entered into under 19-1-401 and 19-1-402;

(2) it provides that all services that constitute employment and that are performed ~~in the employ of the political subdivisions~~ by employees of the

political subdivisions will be covered by the plan, except that it may exclude services performed by individuals to whom section 218(c)(3)(B) of the Social Security Act, ~~(~~42 U.S.C. 418(c)(3)(B)~~)~~, is applicable~~;~~

~~(3) it specifies the sources from which the funds necessary to make the payments required by 19-1-704 and 19-1-706 are expected to be derived and contains reasonable assurance that the sources will be adequate to make the payments;~~

~~(4) it provides for methods of administration of the plan by the political subdivision as are found by the state agency to be necessary for the proper and efficient administration of the plan;~~

~~(5) it provides that the political subdivision will make reports, in a form and containing information, as the state agency may require and will comply with the provisions that the state agency or the secretary of health and human services finds necessary to ensure the correctness and verification of the reports;~~

~~(6) it authorizes the state agency, in its discretion, to terminate the plan in its entirety if it finds that there has been a failure to comply substantially with any provision contained in the plan. The termination is to take effect at the expiration of any notice and on conditions as may be provided by regulations of the state agency and may be consistent with the provisions of the Social Security Act~~."

Section 3. Section 19-1-813, MCA, is amended to read:

"19-1-813. Collection of contributions. The fiscal officer of the *school* district shall ~~thereafter~~ collect the contributions required under *section 218 of* the ~~federal~~ Social Security Act, ~~section 218 (~~42 U.S.C. 418~~)~~, from the staff and teachers by payroll deduction and from the school district as *the* employer. ~~The funds collected shall be deposited with the department of administration and held in the contribution account as provided by parts 1 through 7 of this chapter.~~"

Section 4. Section 19-1-825, MCA, is amended to read:

"19-1-825. Collection of contributions. ~~(1)~~ The fiscal officer for an institution for whose retirement system an agreement has been made shall collect the contributions required by section 218~~, as follows~~ *of the Social Security Act, 42 U.S.C. 418,*~~:~~

~~(a)~~ from the teachers in the retirement system of that institution, by payroll deductions~~; and~~

~~(b) from the state, from any appropriations to the institution involved for salaries or other purposes.~~

~~(2) In the absence of a specific provision in the appropriations for or budget of an institution for such contributions, the board of regents of higher education shall designate the funds from which the required contributions will be made and the budgetary items to which they will be allocated~~."

Section 5. Repealer. Sections 19-1-601, 19-1-602, 19-1-603, 19-1-604, 19-1-701, 19-1-703, 19-1-706, 19-1-801, and 19-1-814, MCA, are repealed.

Approved April 6, 2009

CHAPTER NO. 162

[HB 146]

AN ACT REQUIRING THE ITEMIZATION OF EXPENDITURES MADE TO CONSULTANTS, ADVERTISING AGENCIES, POLLING FIRMS, OR OTHER PERSONS; AND AMENDING SECTION 13-37-230, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13-37-230, MCA, is amended to read:

"13-37-230. Disclosure of expenditures made. *(1)* ~~Each~~ *Except as provided in subsection (3), each* report required by this chapter ~~shall~~ *must* disclose the following information~~, except that a candidate shall only be required to report the information specified in this section if the transactions involved were undertaken for the purpose of influencing an election~~:

~~(1)~~*(a)* the full name and mailing address (occupation and the principal place of business, if any) of each person to whom expenditures have been made by the committee or candidate during the reporting period, including the amount, date, and purpose of each expenditure and the total amount of expenditures made to each person;

~~(2)~~*(b)* the full name and mailing addresses (occupation and the principal place of business, if any) of each person to whom an expenditure for personal services, salaries, and reimbursed expenses have been made, including the amount, date, and purpose of that expenditure and the total amount of expenditures made to each person;

~~(3)~~*(c)* the total sum of expenditures made by a political committee or candidate during the reporting period;

~~(4)~~*(d)* the name and address of each political committee or candidate to which the reporting committee or candidate made any transfer of funds, together with the amount and dates of all transfers;

~~(5)~~*(e)* the name of any person to whom a loan was made during the reporting period, including the full name and mailing address (occupation and principal place of business, if any) of that person, and the full name and mailing address (occupation and principal place of business, if any) of the endorsers, if any, and the date and amount of each loan;

~~(6)~~*(f)* the amount and nature of debts and obligations owed by a political committee or candidate in the form prescribed by the commissioner; *and*

~~(7)~~*(g)* other information that may be required by the commissioner to fully disclose the disposition of funds used to support or oppose candidates or issues.

(2) Reports of expenditures made to a consultant, advertising agency, polling firm, or other person that performs services for or on behalf of a candidate or political committee must be itemized and described in sufficient detail to disclose the specific services performed by the entity to which payment or reimbursement was made.

(3) A candidate is required to report the information specified in this section only if the transactions involved were undertaken for the purpose of influencing an election."

Approved April 6, 2009

CHAPTER NO. 163

[HB 155]

AN ACT REQUIRING STATE AGENCIES TO PROTECT CERTAIN PERSONAL INFORMATION; REQUIRING STATE AGENCIES TO DEVELOP PROCEDURES TO PROTECT SOCIAL SECURITY NUMBERS; AND PROVIDING A NOTIFICATION PROCEDURE FOR STATE AGENCIES OR THIRD PARTIES REGARDING A BREACH SUSPECTED OF COMPROMISING CERTAIN PERSONAL INFORMATION.

Be it enacted by the Legislature of the State of Montana:

Section 1. Definitions. For the purposes of [sections 1 through 4], the following definitions apply:

(1) "Breach of the security of a data system" or "breach" means unauthorized acquisition of computerized data that:

(a) materially compromises the security, confidentiality, or integrity of the personal information maintained by a state agency or by a third party on behalf of the state agency; and

(b) causes or is reasonably believed to cause loss or injury to a person.

(2) "Individual" means a human being.

(3) "Person" means an individual, a partnership, a corporation, an association, or a public organization of any character.

(4) (a) "Personal information" means a first name or first initial and last name in combination with any one or more of the following data elements when the name and the data elements are not encrypted:

(i) a social security number or tax identification number;

(ii) a driver's license number, an identification number issued pursuant to 61-12-501, a tribal identification number or enrollment number, or a similar identification number issued by any state, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, or American Samoa; or

(iii) an account number or credit or debit card number in combination with any required security code, access code, or password that would permit access to a person's financial account.

(b) The term does not include publicly available information that is lawfully made available to the general public from federal, state, local, or tribal government records.

(5) "Redaction" means the alteration of personal information contained within data to make all or a significant part of the data unreadable. The term includes truncation, which means that no more than the last four digits of an identification number are accessible as part of the data.

(6) (a) "State agency" means an agency, authority, board, bureau, college, commission, committee, council, department, hospital, institution, office, university, or other instrumentality of the legislative or executive branch of state government. The term includes an employee of a state agency acting within the course and scope of employment.

(b) The term does not include an entity of the judicial branch.

(7) "Third party" means:

(a) a person with a contractual obligation to perform a function for a state agency; or

(b) a state agency with a contractual or other obligation to perform a function for another state agency.

Section 2. Protection of social security numbers — compliance. (1) Each state agency that maintains the social security number of an individual shall develop procedures to protect the social security number while enabling the state agency to use the social security number as necessary for the performance of its duties under federal or state law.

(2) The procedures must include measures to:

(a) eliminate the unnecessary use of social security numbers;

(b) identify the person or state agency authorized to have access to a social security number;

(c) restrict access to social security numbers by unauthorized persons or state agencies;

(d) identify circumstances when redaction of social security numbers is appropriate;

(e) dispose of documents that contain social security numbers in a manner consistent with other record retention requirements applicable to the state agency;

(f) eliminate the unnecessary storage of social security numbers on portable devices; and

(g) protect data containing social security numbers if that data is on a portable device.

(3) Except as provided in [section 3], each state agency in existence on [the effective date of this act] shall complete the requirements of this section by September 1, 2012. A state agency that is created after [the effective date of this act] shall complete the requirements of this section within 1 year of its creation.

Section 3. Extensions. The chief information officer provided for in 2-17-511 may grant an extension to any state agency subject to the provisions of the Montana Information Technology Act provided for in Title 2, chapter 17, part 5. The chief information officer shall inform the information technology board, the office of budget and program planning, and the legislative finance committee of all extensions that are granted and of the rationale for granting the extensions. The chief information officer shall maintain written documentation that identifies the terms and conditions of each extension and the rationale for the extension.

Section 4. Notification of breach of security of data system. (1) (a) Upon discovery or notification of a breach of the security of a data system, a state agency that maintains computerized data containing personal information in the data system shall make reasonable efforts to notify any person whose unencrypted personal information was or is reasonably believed to have been acquired by an unauthorized person.

(b) The notification must be made without unreasonable delay, consistent with the legitimate needs of law enforcement as provided in subsection (3) or with any measures necessary to determine the scope of the breach and to restore the reasonable integrity of the data system.

(2) (a) A third party that receives personal information from a state agency and maintains that information in a computerized data system in order to perform a state agency function shall:

(i) notify the state agency immediately following discovery of the breach of the security of a data system if the personal information is reasonably believed to have been acquired by an unauthorized person; and

(ii) make reasonable efforts upon discovery or notification of a breach of the security of a data system to notify any person whose unencrypted personal information is reasonably believed to have been acquired by an unauthorized person as part of the breach of the security of a data system. This notification must be provided in the same manner as the notification required in subsection (1).

(b) A state agency notified of a breach by a third party has no independent duty to provide notification of the breach if the third party has provided notification of the breach in the manner required by subsection (2)(a) but shall provide notification if the third party fails to do so in a reasonable time and may recover from the third party its reasonable costs for providing the notice.

(3) The notification required by this section may be delayed if a law enforcement agency determines that the notification will impede a criminal investigation and requests a delay of notification. The notification required by this section must be made after the law enforcement agency determines that the notification will not compromise the investigation.

(4) All state agencies and third parties to whom personal information is disclosed by a state agency shall develop and maintain:

(a) an information security policy designed to safeguard personal information; and

(b) breach notification procedures that provide reasonable notice to individuals as provided in subsections (1) and (2).

Section 5. Codification instruction. [Sections 1 through 4] are intended to be codified as an integral part of Title 2, and the provisions of Title 2 apply to [sections 1 through 4].

Approved April 6, 2009

CHAPTER NO. 164

[HB 193]

AN ACT CHANGING THE NAME OF THE STATE COORDINATOR OF INDIAN AFFAIRS TO STATE DIRECTOR OF INDIAN AFFAIRS; AMENDING SECTIONS 2-15-102, 2-15-149, 2-15-217, 2-15-225, 2-15-1205, 22-2-602, 90-1-104, 90-1-131, 90-1-132, 90-1-133, 90-11-101, AND 90-11-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-102, MCA, is amended to read:

"2-15-102. Definitions. As used in this chapter, the following definitions apply:

(1) "Advisory capacity" means furnishing advice, gathering information, making recommendations, and performing other activities that may be

necessary to comply with federal funding requirements and does not mean administering a program or function or setting policy.

(2) "Agency" means an office, position, commission, committee, board, department, council, division, bureau, section, or any other entity or instrumentality of the executive branch of state government.

(3) "Data" means any information stored on information technology resources.

(4) "Department" means a principal functional and administrative entity that:

(a) is created by this chapter within the executive branch of state government;

(b) is one of the 20 principal departments permitted under the constitution; and

(c) includes its units.

(5) "Department head" means a director, commission, board, commissioner, or constitutional officer in charge of a department created by this chapter.

(6) *(a)* "Director" means a department head specifically referred to as a director in this chapter and does not mean a commission, board, commissioner, or constitutional officer.

(b) The term does not include the state director of Indian affairs provided for in 2-15-217.

(7) "Executive branch" means the executive branch of state government referred to in Article III, section 1, and Article VI of the Montana constitution.

(8) "Function" means a duty, power, or program, exercised by or assigned to an agency, whether or not specifically provided for by law.

(9) "Information technology resources" means hardware, software, and associated services and infrastructure used to store or transmit information in any form, including voice, video, and electronic data.

(10) "Quasi-judicial function" means an adjudicatory function exercised by an agency, involving the exercise of judgment and discretion in making determinations in controversies. The term includes but is not limited to the functions of:

(a) interpreting, applying, and enforcing existing rules and laws;

(b) granting or denying privileges, rights, or benefits;

(c) issuing, suspending, or revoking licenses, permits, and certificates;

(d) determining rights and interests of adverse parties;

(e) evaluating and passing on facts;

(f) awarding compensation;

(g) fixing prices;

(h) ordering action or abatement of action;

(i) adopting procedural rules;

(j) holding hearings; and

(k) any other act necessary to the performance of a quasi-judicial function.

(11) "Quasi-legislative function" generally means making or having the power to make rules or set rates and all other acts connected with or essential to the proper exercise of a quasi-legislative function.

(12) "Unit" means an internal subdivision of an agency, created by law or by administrative action, including a division, bureau, section, or department, and an agency allocated to a department for administrative purposes only by this chapter."

Section 2. Section 2-15-149, MCA, is amended to read:

"2-15-149. Naming of sites and geographic features — replacement of word "squaw" — advisory group. (1) The ~~coordinator~~ *state director* of Indian affairs shall appoint an advisory group that will serve on a volunteer basis to consult with local agencies, organizations, and individuals in developing names to replace present site or geographic names that contain the word "squaw".

(2) Each agency of state government that owns or manages public land in the state shall identify any features or places under its jurisdiction that contain the word "squaw" and inform the advisory group of the agency's identification of features or places containing that word. The agency shall ensure that whenever the agency updates a map or replaces a sign, interpretive marker, or any other marker because of wear or vandalism, the word "squaw" is removed and replaced with the name chosen by the advisory group.

(3) The advisory group shall:

(a) notify the U.S. forest service, the Montana departments of commerce and natural resources and conservation, and any other entity that compiles information for and develops maps for the state or for public use of the name change so that it may be reflected on subsequent editions of any maps or informational literature produced by those entities; and

(b) place a formal request with the United States board on geographic names to render a decision on the proposed name change so that the new name will be reflected on all United States board on geographic names maps."

Section 3. Section 2-15-217, MCA, is amended to read:

"2-15-217. Office of state ~~coordinator~~ *director* of Indian affairs. (1) There is an office of state ~~coordinator~~ *director* of Indian affairs. The office is allocated to the governor's office for administrative purposes only as prescribed in 2-15-121.

(2) The ~~coordinator~~ *state director* must be appointed by the governor from a list of five qualified Indian applicants agreed upon by the tribal councils of the respective Indian tribes of the state. The ~~coordinator~~ *state director* shall serve at the pleasure of the governor.

(3) Except as provided in subsection (4), the qualifications for applicants must include but are not limited to:

(a) a bachelor's degree in a relevant public policy field, as determined by the governor;

(b) not less than 3 years experience in a professional administrative capacity; and

(c) demonstrated skills in conducting policy research and obtaining grant funds from federal, state, or private sector sources.

(4) The governor may appoint an applicant agreed upon by the tribal councils as provided in subsection (2) whose skills and experience are commensurate with the qualifications set forth in subsection (3)."

Section 4. Section 2-15-225, MCA, is amended to read:

"2-15-225. Interagency coordinating council for state prevention programs. (1) There is an interagency coordinating council for state prevention programs consisting of the following members:

(a) the attorney general provided for in 2-15-501;

(b) the director of the department of public health and human services provided for in 2-15-2201;

(c) the superintendent of public instruction provided for in 2-15-701;

(d) the presiding officer of the Montana children's trust fund board;

(e) two persons appointed by the governor who have experiences related to the private or nonprofit provision of prevention programs and services;

(f) the administrator of the board of crime control provided for in 2-15-2006;

(g) the commissioner of labor and industry provided for in 2-15-1701;

(h) the director of the department of corrections provided for in 2-15-2301;

(i) the state ~~coordinator~~ *director* of Indian affairs provided for in 2-15-217;

(j) the adjutant general of the department of military affairs provided for in 2-15-1202;

(k) the director of the department of transportation provided for in 2-15-2501;

(l) the commissioner of higher education provided for in 2-15-1506; and

(m) the designated representative of a state agency desiring to participate who is accepted as a member by a majority of the current coordinating council members.

(2) The coordinating council shall perform the following duties:

(a) develop, through interagency planning efforts, a comprehensive and coordinated prevention program delivery system that will strengthen the healthy development, well-being, and safety of children, families, individuals, and communities;

(b) develop appropriate interagency prevention programs and services that address the problems of at-risk children and families and that can be provided in a flexible manner to meet the needs of those children and families;

(c) study various financing options for prevention programs and services;

(d) ensure that a balanced and comprehensive range of prevention services is available to children and families with specific or multiagency needs;

(e) assist in development of cooperative partnerships among state agencies and community-based public and private providers of prevention programs; and

(f) develop, maintain, and implement benchmarks for state prevention programs. As used in this subsection, "benchmark" means a specified reference point in the future that is used to measure the state of affairs at that point in time and to determine progress toward or the attainment of an ultimate goal, which is an outcome reflecting the desired state of affairs.

(3) The coordinating council shall cooperate with and report to any standing or interim legislative committee that is assigned to study the policies and funding for prevention programs or other state programs and policies related to children and families.

(4) The coordinating council must be compensated, reimbursed, and otherwise governed by the provisions of 2-15-122.

(5) The coordinating council is attached for administrative purposes only to the governor's office, which may assist the council by providing staff and budgetary, administrative, and clerical services that the council or its presiding officer requests.

(6) Staffing and other resources may be provided to the coordinating council only from state and nonstate resources donated to the council and from direct appropriations by each legislature."

Section 5. Section 2-15-1205, MCA, is amended to read:

"2-15-1205. Board of veterans' affairs — composition — quorum — voting — compensation — allocation. (1) There is a board of veterans' affairs.

(2) (a) The board consists of 20 members. All members must be residents of this state. Eleven members are voting members, who must be confirmed by the senate, and nine members are nonvoting, ex officio members.

(b) The governor shall appoint 19 members in a manner that provides for staggered terms. The members are:

(i) five regional representatives, who must be voting members and who must have been honorably discharged from service in the military forces of the United States. Each must be appointed to represent a different geographic region of the state and must be a resident of that geographic region. The board shall establish the geographic regions by rule. A member who represents a geographic region and who changes residence to a different geographic region may no longer serve on the board unless appointed as a representative for the new location or as a representative meeting other criteria.

(ii) one honorably discharged veteran, who must be a voting member and serve as a representative of veterans at large;

(iii) one tribal member, who must be an honorably discharged veteran and who is a voting member;

(iv) three members who must have training, education, or experience related to veterans' issues, including but not limited to health and medical care, mental health care, chemical or drug dependency, homelessness, or job training and placement. These three members are voting members.

(v) a representative of the office of state ~~coordinator~~ *director* of Indian affairs, who is a nonvoting member;

(vi) a representative from the department of public health and human services, who is a nonvoting member;

(vii) a representative of the United States department of veterans affairs, who is a nonvoting member;

(viii) a representative of the veterans' employment and training service office in the United States department of labor, who is a nonvoting member;

(ix) a representative of the state administration and veterans' affairs interim committee, who is a nonvoting member;

(x) three members, one representing each house and senate member of Montana's congressional delegation, who are nonvoting members; and

(xi) the director of the department of military affairs, who is a nonvoting member.

(c) The tribal leaders of the eight tribal councils in Montana may appoint one voting member who is affiliated with a Montana tribe and is an honorably

discharged veteran. If a tribal member is not appointed by the Montana tribal leaders, the governor shall choose this member by lot from a pool of names submitted by the eight tribal councils in the state, with each tribal council submitting one name.

(3) A vacancy occurring on the board must be filled by the governor, subject to the conditions of subsection (2).

(4) A quorum is six voting members.

(5) A vote resulting in a tie is the same as a negative vote.

(6) Each voting member must receive meals, lodging, and travel expenses as provided for in 2-18-501 through 2-18-503. Compensation for the legislator who represents the state administration and veterans' affairs interim committee must be paid from the board of veterans' affairs budget.

(7) The board shall meet at least three times a year. Special meetings may be called by the administrator or by a majority of voting members. Meetings may be held at different locations around the state to give local veterans an opportunity to attend. Advance notice of meetings must be provided to all veterans' groups and to any individual who requests notification.

(8) Each voting member may serve for a maximum of two terms. Each term is for 4 years.

(9) A member may be removed by the governor only for incompetence, malfeasance, or neglect of duty.

(10) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121. However, the board may hire its own personnel, including an administrator. The administrator shall serve as the secretary of the board and may represent the board in communications with the governor and with other state agencies, notwithstanding the provisions of 2-15-121(3)(a)."

Section 6. Section 22-2-602, MCA, is amended to read:

"22-2-602. Advisory committee — composition — duties. (1) To coordinate the project provided for in 22-2-601, the governor shall appoint an advisory committee composed of the following 11 members:

(a) a representative from the Montana arts council;

(b) a representative from each of the state's seven Indian reservations;

(c) a representative from the architecture and engineering division of the department of administration;

(d) the ~~governor's~~ state ~~coordinator~~ *director* of Indian affairs or the ~~coordinator's~~ *state director's* designee; and

(e) a representative of the Montana historical society.

(2) The advisory committee shall review the proposals submitted in the design competition for the monument and flag circle and select an appropriate design.

(3) The advisory committee shall make recommendations to the department of administration for an appropriate site for the monument and the flag circle on the grounds of the capitol complex. The monument and flag circle may be located separately on the grounds.

(4) The advisory committee shall solicit and accept private contributions to finance the monument and the placement of the monument and the flag circle on the grounds of the capitol complex."

Section 7. Section 90-1-104, MCA, is amended to read:

"90-1-104. Functions of department of commerce — recreational development. The department of commerce shall:

(1) exercise state responsibility for that part of recreational planning and development that is directly related to private investment in recreational facilities;

(2) assemble and correlate information that may influence the development of recreational enterprises and disseminate it to persons, firms, or corporations interested in constructing or maintaining recreational facilities open to the public; and

(3) coordinate the promotion of Indian tourism activities in the state in cooperation with the seven tribal governments and the ~~coordinator~~ *state director* of Indian affairs."

Section 8. Section 90-1-131, MCA, is amended to read:

"90-1-131. State-tribal economic development commission — composition — compensation for members. (1) There is a state-tribal economic development commission administratively attached to the department of commerce as prescribed in 2-15-121.

(2) The commission is composed of 11 members, each appointed by the governor to 3-year staggered terms commencing on July 1 of each year of appointment, and must include:

(a) the state ~~coordinator~~ *director* of Indian affairs;

(b) one member from the department of commerce;

(c) one member from the governor's office of economic development;

(d) one member from each of the seven federally recognized tribes in Montana and one member from the Little Shell band of Chippewa Indians. A tribal government may advertise for individuals interested in serving on the commission and develop a list of applicants from which it may choose its nominee to recommend to the governor. In place of choosing from a list of applicants, a tribal government may select an elected tribal official to recommend for membership on the commission. If a tribal government nominates or otherwise recommends more than one person for membership on the commission, the governor shall select one individual from among those recommended persons.

(3) The members of the commission shall elect a presiding officer from among the members.

(4) Six members of the commission constitute a quorum, and the affirmative vote of the majority of the members present is sufficient for any action taken by the commission.

(5) Any vacancy on the commission must be filled in the same manner as the original appointment.

(6) Each member of the commission is entitled to reimbursement for expenses as provided in 2-18-501 through 2-18-503."

Section 9. Section 90-1-132, MCA, is amended to read:

"90-1-132. Commission purposes — duties and responsibilities. (1) The general purposes of the *state-tribal economic development* commission include:

(a) assisting, promoting, encouraging, developing, and advancing economic prosperity and employment on Indian reservations in Montana by fostering the expansion of business, manufacturing, tourism, agriculture, and community development programs;

(b) cooperating and acting in conjunction with other organizations, public and private, to benefit tribal communities;

(c) recruiting business enterprises to locate on or invest in enterprises on the reservations; and

(d) identifying, obtaining, and coordinating federal, state, and private sector gifts, grants, loans, and donations to further economic development on the Indian reservations in Montana.

(2) The state-tribal economic development commission shall:

(a) determine, with assistance from the tribal business center coordinator and the federal grants coordinator in the office of the *state director of* Indian affairs ~~coordinator~~, the availability of federal, state, and private sector gifts, grants, loans, and donations to tribal governments, Indian business enterprises, and communities located on Indian reservations in Montana;

(b) apply for grants listed in the Catalog of Federal Domestic Assistance for which the commission is eligible and which would, if awarded, supply identifiable economic benefits to any or all of the Indian reservations in Montana;

(c) in cooperation with a tribal government, and when allowed by federal law and regulation, assist the tribe in applying for grants listed in the Catalog of Federal Domestic Assistance for which an appropriate tribal entity is eligible and which would, if awarded, supply identifiable economic benefits to any or all of the Indian reservations in Montana;

(d) evaluate the apportionment of current spending of federal funds by state agencies in areas including but not limited to economic development, housing, community infrastructure, business finance, tourism promotion, transportation, and agriculture;

(e) conduct or commission and oversee a comprehensive assessment of the economic development needs and priorities of each Indian reservation in the state;

(f) notify tribal governments, the governor, the *state director of* Indian affairs ~~coordinator~~, and the directors of the departments of commerce, agriculture, and transportation, of the availability of specific federal, state, or private sector funding programs or opportunities that would directly benefit Indian communities in Montana;

(g) assist tribal governments and other tribal entities that are eligible for federal assistance programs as provided in the most recent published edition in the Catalog of Federal Domestic Assistance in applying for funds that would contribute to the respective tribes' economic development;

(h) work cooperatively with tribal government officials, the state ~~coordinator~~ *director* of Indian affairs, and other appropriate state officials to help foster state-tribal cooperative agreements pursuant to Title 18, chapter 11, part 1, that will:

(i) enhance economic development on the Indian reservations in Montana; and

(ii) help the department of commerce to fully implement and comply with the provisions of 90-1-105; and

(i) provide to the governor, the legislative council, the legislative auditor, and to each of the presiding officers of the tribal governments in Montana a biennial report that summarizes the activities of the commission."

Section 10. Section 90-1-133, MCA, is amended to read:

"90-1-133. Comprehensive assessment on reservations. (1) The state-tribal economic development commission shall conduct an accurate, comprehensive, detailed, and objective assessment of economic conditions on each of the Indian reservations in the state. In addition to an initial assessment, the commission may also require periodic updates of the data and analysis contained in the assessment, mainly for the purpose of monitoring progress toward goals and objectives set forth by the commission.

(2) The commission, the ~~coordinator~~ *state director* of Indian affairs, or the governor may issue a request for proposals and, on the basis of a competitive bidding process, select a qualified researcher or research team from the private sector or a college or university to conduct the assessment and report findings and conclusions to the commission.

(3) If the commission has adequate financial resources, the commission may, at its discretion, conduct or commission subsequent followup studies or assessments to obtain updated information.

(4) An assessment of economic conditions on the Indian reservations in Montana must include the consideration of multiple dimensions of economic development, including reservation demographics, economic development strengths and weaknesses, salient factors relating to economic development, natural resources, conditions in the natural environment, human resources, financial resources, business assistance programs, job training programs, education curriculum, the availability of technical training and assistance, and relevant tribal, state, and federal policies."

Section 11. Section 90-11-101, MCA, is amended to read:

"90-11-101. Legislative policy. The legislature finds and declares that:

(1) a considerable portion of the citizens of the state of Montana are American Indians;

(2) since statehood, Indian citizens of the state of Montana have lived on reservations set apart for those purposes by the United States of America, and by virtue of their isolation and supervision by the federal government, great problems of economic and social significance have arisen and presently exist;

(3) the best interests of Montana Indian tribes will be served by engaging in government-to-government relationships designed to recognize the rights, duties, and privileges of full citizenship that Indians are entitled to as citizens of this state;

(4) because the tribes are domestic dependent nations, agencies of the federal government retain jurisdiction and a fiduciary duty throughout the state of Montana for the administration of economic, social, health, education, and welfare programs for Indians;

(5) unique differences exist between the tribes, their reservations, customs, and treaties, and their respective relationships with the federal government, all of which influence the relationships among tribes and between the tribes and the state;

(6) there are sizeable numbers of off-reservation enrolled and unenrolled Indians residing in our state whose needs for social, environmental, educational, and economic assistance are borne in part by state and local agencies;

(7) programs of the state of Montana should not duplicate those supported by agencies of the federal government or tribal governments with regard to jurisdiction of Indian people, because state responsibility includes off-reservation Indians and because those Indians require assistance to coordinate their affairs with various tribal groups and federal agencies where they have no official recognition;

(8) the state and the tribes working together in a government-to-government relationship and engaging in compacts and other cooperative agreements for the benefit of Indian and non-Indian residents will promote economic development, environmental protection, education, social services support, and enduring good will;

(9) to facilitate the discussion and resolution of issues and concerns that Indian tribes have in relation to the state, the federal government, and among themselves, the ~~coordinator~~ *state director* of Indian affairs shall:

(a) maintain effective tribal-state communications;

(b) assess tribal and individual Indian concerns and interests to seek ways and means of communicating these concerns and interests to relevant state agencies and to the legislature and actively assist in organizing these efforts; and

(c) act as a liaison for tribes and Indian people, whether the Indian people reside on or off reservations, whenever assistance is required;

(10) the ~~coordinator~~ *state director* of Indian affairs shall endeavor to assist tribes to seek agreements between the state and tribes and to work toward a consensus among the tribes and other parties on shared goals and principles."

Section 12. Section 90-11-102, MCA, is amended to read:

"90-11-102. Duties and assistance. (1) It is the duty of the state ~~coordinator~~ *director* of Indian affairs to carry out the legislative policy set forth in 90-11-101.

(2) The state ~~coordinator~~ *director* shall:

(a) meet at least quarterly with tribal governments and become acquainted with the problems confronting the Indians of Montana;

(b) meet with executive branch directors on issues arising between Montana's Indian citizens, tribes, and state agency personnel and programs;

(c) report to the governor's cabinet meeting concerning issues confronting Indian people and tribal governments;

(d) advise the legislative and executive branches of the state of Montana of those problems and issues;

(e) make recommendations for the alleviation of those problems and issues;

(f) serve the Montana delegation in the federal congress as an adviser and intermediary in the field of Indian affairs;

(g) act as a liaison for representative Indian organizations and groups, public and private, whenever the state ~~coordinator's~~ *director's* support is solicited by tribal governmental entities;

(h) serve on the state-tribal economic development commission established in 90-1-131;

(i) report in detail at every meeting of the interim committee of the legislature responsible for acting as a liaison between the legislature and the tribal governments those actions taken by the state-tribal economic development commission established by 90-1-131 to carry out its duties; and

(j) hire, with the concurrence of the other members of the state-tribal economic development commission, a tribal business center coordinator and a federal grants coordinator, and subsequently provide administrative support for both positions.

(3) All executive and legislative agencies of state government may within the area of their expertise and authority provide assistance to tribal councils or their official designees requesting assistance on any matter relating to education, health, natural resources, and economic development on Indian reservation lands."

Section 13. Name change — directions to code commissioner. In any legislation enacted by the 2009 legislature that refers to the state coordinator of Indian affairs, the code commissioner is directed to change the term to state director of Indian affairs.

Section 14. Effective date. [This act] is effective on passage and approval.

Approved April 6, 2009

CHAPTER NO. 165

[HB 214]

AN ACT REVISING MEDICAID ELIGIBILITY REQUIREMENTS FOR PREGNANT WOMEN, INFANTS AND CHILDREN, AND CARETAKERS; AMENDING SECTION 53-6-131, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-6-131, MCA, is amended to read:

"53-6-131. Eligibility requirements. (1) Medical assistance under the Montana medicaid program may be granted to a person who is determined by the department of public health and human services, in its discretion, to be eligible as follows:

(a) The person receives or is considered to be receiving supplemental security income benefits under Title XVI of the Social Security Act, 42 U.S.C. 1381, et seq., and does not have income or resources in excess of the applicable medical assistance limits.

(b) The person would be eligible for assistance under the program described in subsection (1)(a) if that person were to apply for that assistance.

(c) The person is in a medical facility that is a medicaid provider and, but for residence in the facility, the person would be receiving assistance under the program in subsection (1)(a).

(d) The person is under 21 years of age and in foster care under the supervision of the state or was in foster care under the supervision of the state and has been adopted as a child with special needs.

(e) The person meets the nonfinancial criteria of the categories in subsections (1)(a) through (1)(d) and:

(i) the person's income does not exceed the income level specified for federally aided categories of assistance and the person's resources are within the resource standards of the federal supplemental security income program; or

(ii) the person, while having income greater than the medically needy income level specified for federally aided categories of assistance:

(A) has an adjusted income level, after incurring medical expenses, that does not exceed the medically needy income level specified for federally aided categories of assistance or, alternatively, has paid in cash to the department the amount by which the person's income exceeds the medically needy income level specified for federally aided categories of assistance; and

(B) *(I) in the case of a person who meets the nonfinancial criteria for medical assistance because the person is aged, blind, or disabled,* has resources that ~~are within~~ *do not exceed* the resource standards of the federal supplemental security income program.*; or*

(II) in the case of a person who meets the nonfinancial criteria for medical assistance because the person is pregnant, is an infant or child, or is the caretaker of an infant or child, has resources that do not exceed the resource standards adopted by the department.

(f) The person is a qualified pregnant woman or *a* child as defined in 42 U.S.C. 1396d(n).

(g) The person is under 19 years of age and lives with a family having a combined income that does not exceed 185% of the federal poverty level. The department may establish lower income levels to the extent necessary to maximize federal matching funds provided for in 53-4-1104.

(2) The department may establish income and resource limitations. Limitations of income and resources must be within the amounts permitted by federal law for the medicaid program. Any otherwise applicable eligibility resource test prescribed by the department does not apply to enrollees in the healthy Montana kids plan provided for in 53-4-1104.

(3) The Montana medicaid program shall pay, as required by federal law, the premiums necessary for medicaid-eligible persons participating in the medicare program and may, within the discretion of the department, pay all or a portion of the medicare premiums, deductibles, and coinsurance for a qualified medicare-eligible person or for a qualified disabled and working individual, as defined in section 6408(d)(2) of the federal Omnibus Budget Reconciliation Act of 1989, Public Law 101-239, who:

(a) has income that does not exceed income standards as may be required by the Social Security Act; and

(b) has resources that do not exceed standards that the department determines reasonable for purposes of the program.

(4) The department may pay a medicaid-eligible person's expenses for premiums, coinsurance, and similar costs for health insurance or other available health coverage, as provided in 42 U.S.C. 1396b(a)(1).

(5) In accordance with waivers of federal law that are granted by the secretary of the U.S. department of health and human services, the department of public health and human services may grant eligibility for basic medicaid benefits as described in 53-6-101 to an individual receiving section 1931 medicaid benefits, as defined in 53-4-602, as the specified caretaker relative of a

dependent child under the section 1931 medicaid program. A recipient who is pregnant, meets the criteria for disability provided in Title II of the Social Security Act, 42 U.S.C. 416, et seq., or is less than 21 years of age is entitled to full medicaid coverage, as provided in 53-6-101.

(6) The department, under the Montana medicaid program, may provide, if a waiver is not available from the federal government, medicaid and other assistance mandated by Title XIX of the Social Security Act, 42 U.S.C. 1396, et seq., as may be amended, and not specifically listed in this part to categories of persons that may be designated by the act for receipt of assistance.

(7) Notwithstanding any other provision of this chapter, medical assistance must be provided to infants and pregnant women whose family income does not exceed ~~133% of the federal poverty threshold, as provided in 42 U.S.C. 1396a(a)(10)(A)(ii)(IX) and~~ *income standards adopted by the department that comply with the requirements of* 42 U.S.C. 1396a(l)(2)(A)(i)~~,~~ and whose family resources do not exceed standards that the department determines reasonable for purposes of the program.

(8) Subject to appropriations, the department may cooperate with and make grants to a nonprofit corporation that uses donated funds to provide basic preventive and primary health care medical benefits to children whose families are ineligible for the Montana medicaid program and who are ineligible for any other health care coverage, are under 19 years of age, and are enrolled in school if of school age.

(9) A person described in subsection (7) must be provided continuous eligibility for medical assistance, as authorized in 42 U.S.C. 1396a(e)(5) through a(e)(7).

(10) Full medical assistance under the Montana medicaid program may be granted to an individual during the period in which the individual requires treatment of breast or cervical cancer, or both, or of a precancerous condition of the breast or cervix, if the individual:

(a) has been screened for breast and cervical cancer under the Montana breast and cervical health program funded by the centers for disease control and prevention program established under Title XV of the Public Health Service Act, 42 U.S.C. 300k, or in accordance with federal requirements;

(b) needs treatment for breast or cervical cancer, or both, or a precancerous condition of the breast or cervix;

(c) is not otherwise covered under creditable coverage, as provided by federal law or regulation;

(d) is not eligible for medical assistance under any mandatory categorically needy eligibility group; and

(e) has not attained 65 years of age."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 6, 2009

CHAPTER NO. 166

[HB 307]

AN ACT ALLOWING A MEDICAL PRACTITIONER TO DISPENSE DRUGS THAT ARE NOT AVAILABLE FROM A COMMUNITY PHARMACY; AND AMENDING SECTION 37-2-104, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-2-104, MCA, is amended to read:

"37-2-104. Dispensing of drugs by medical practitioners unlawful — exceptions. (1) Except as otherwise provided by this section, it is unlawful for a medical practitioner to engage, directly or indirectly, in the dispensing of drugs.

(2) This section does not prohibit:

(a) a medical practitioner from furnishing a patient any drug in an emergency;

(b) the administration of a unit dose of a drug to a patient by or under the supervision of a medical practitioner;

(c) dispensing a drug to a patient by a medical practitioner whenever there is no community pharmacy available to the patient;

(d) the dispensing of drugs occasionally, but not as a usual course of doing business, by a medical practitioner;

(e) a medical practitioner from dispensing drug samples;

(f) the dispensing of factory prepackaged contraceptives, other than mifepristone, by a registered nurse employed by a family planning clinic under contract with the department of public health and human services if the dispensing is in accordance with:

(i) a physician's written protocol specifying the circumstances under which dispensing is appropriate; and

(ii) the drug labeling, storage, and recordkeeping requirements of the board of pharmacy;

(g) a contract physician at an urban Indian clinic from dispensing drugs to qualified patients of the clinic. The clinic may not stock or dispense any dangerous drug, as defined in 50-32-101, or any controlled substance. The contract physician may not delegate the authority to dispense any drug for which a prescription is required under 21 U.S.C. 353(b).

(h) a medical practitioner from dispensing a drug if the medical practitioner has prescribed the drug and verified that the drug is not otherwise available from a community pharmacy. A drug dispensed pursuant to this subsection (2)(h) must meet the labeling requirements of the board of pharmacy."

Approved April 6, 2009

CHAPTER NO. 167

[HB 372]

AN ACT REVISING EXEMPTIONS FROM JURY DUTY; PROVIDING THAT THE UNDUE HARDSHIP EXEMPTION APPLIES TO BREASTFEEDING MOTHERS AND OTHER PROSPECTIVE JURORS WHO ARE PRIMARY CAREGIVERS TO DEPENDENT PERSONS; AND AMENDING SECTION 3-15-313, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 3-15-313, MCA, is amended to read:

"3-15-313. Who may be excused — affidavit to claim excuse — permanent exclusion for chronically incapacitated. (1) The court or *the* jury commissioner with the approval of the court shall excuse a person from jury

service upon finding that jury service would entail undue hardship for the person*, a dependent of the person,* or the public served by the person. *An excuse may be granted if the prospective juror is a breastfeeding mother or otherwise has a personal obligation to provide actual and necessary care to another, including a sick, aged, or special needs dependent who requires the prospective juror's personal care and attention, and comparable substitute care is either unavailable or impractical without imposing an undue economic hardship on the prospective juror or dependent person.*

(2) If a person believes jury service would entail undue hardship for the person*, a dependent of the person,* or the public served *by the person*, the person may make and transmit an affidavit to the jury commissioner for which the person is summoned, stating the person's occupation or other facts that the person believes will excuse the person from jury service. The affidavit must be filed with the jury commissioner, who shall transmit it to the court. The court or *the* jury commissioner with the approval of the court ~~may~~ *shall* excuse a prospective juror from jury service if the prospective juror satisfies the provisions of subsection (1).

(3) A person who is chronically incapacitated by illness or injury may request a permanent exclusion from jury service by making and transmitting an affidavit to the jury commissioner of the person's place of residence. The affidavit must include a certification by the person's physician that the person is chronically incapacitated by illness or injury. The affidavit must be filed with the jury commissioner, who shall transmit it to the court. The court or jury commissioner with the approval of the court may permanently excuse a prospective juror from jury service if the prospective juror satisfies the provisions of this subsection (3).

(4) For purposes of subsection (3), a person is chronically incapacitated if the person has a condition due to an illness or injury that restricts the person's ability to leave the person's place of residence without the aid of supportive devices, such as crutches, a cane, a wheelchair, or a walker, that restricts the person's ability to leave home without the use of special transportation or the assistance of another person, or that causes leaving home to be medically contraindicated. Examples of factors to be taken into account in determining whether chronic incapacitation exists include but are not limited to the following:

(a) paralysis by a stroke or other cause;

(b) blindness;

(c) senility;

(d) loss of the use of a person's extremities requiring the assistance of another in leaving the person's place of residence;

(e) arteriosclerotic heart disease of such severity that a person ~~must~~ *is required to* avoid all stress and physical activity; or

(f) a psychiatric problem if the illness is manifested in part by a refusal to leave home or is of such a nature that it would not be considered safe for the person to leave home unattended, even if there are no physical limitations."

Approved April 6, 2009

CHAPTER NO. 168

[HB 387]

AN ACT REVISING THE DEFINITION OF "INVENTORY" WITH RESPECT TO CANCELED DEALERSHIP CONTRACT REPURCHASE REQUIREMENTS; AMENDING SECTION 30-11-701, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 30-11-701, MCA, is amended to read:

"30-11-701. Definitions. As used in this part, the following definitions apply:

(1) "Current net price" means:

(a) with respect to a dealership contract, the price listed in the wholesaler's, manufacturer's, or distributor's price list or catalog in effect at the time a dealership contract is discontinued or, if none is then in effect, the last available price so listed; and

(b) with respect to a distribution contract, the price listed in the manufacturer's or distributor's price list or catalog in effect at the time a distribution contract is discontinued or, if none is then in effect, the last available price so listed.

(2) "Dealership contract" means a written contract between a retailer and a wholesaler, manufacturer, or distributor in which the retailer becomes a dealer in goods sold by the wholesaler, manufacturer, or distributor, evidenced by a franchise agreement, sales agreement, security agreement, or other similar agreement or arrangement.

(3) "Distribution contract" means a written contract between a wholesaler and a manufacturer or distributor in which the wholesaler becomes a dealer in goods sold by the manufacturer or distributor, evidenced by a franchise agreement, sales agreement, security agreement, or other similar agreement or arrangement.

(4) "Inventory" means:

(a) farm implements, machinery, attachments, and repair parts;

(b) industrial and construction equipment and repair parts;

(c) ~~automobiles, trucks~~ *new motor vehicles, trucks, trailers, semitrailers, pole trailers, travel trailers*, and repair parts sold by ~~an automobile or truck~~ *a* dealer as defined in 61-1-101;

(d) motorcycles, motor-driven cycles, recreational vehicles, and quadricycles, as those terms are defined in 61-1-101, and repair parts;

(e) snowmobiles, as defined in 23-2-601, and repair parts;

(f) off-highway vehicles, as defined in 23-2-801, and repair parts; and

(g) vessels, as defined in 23-2-502, detachable motors or engines used to propel vessels, and repair parts.

(5) "Net cost" means:

(a) with respect to a dealership contract, the price actually paid for an inventory item by the retailer to the wholesaler, manufacturer, or distributor, plus applicable freight costs paid by or charged to the retailer; and

(b) with respect to a distribution contract, the price actually paid for an inventory item by the wholesaler to a manufacturer or distributor, plus applicable freight costs paid by or charged to the wholesaler.

(6) "Retailer" or "retail dealer" means any individual, partnership, association, or corporation engaged in the business of selling inventory, as defined in this section, to the general public.

(7) "Wholesaler" means any individual, partnership, association, or corporation engaged in the business of selling inventory, as defined in this section, to retailers."

Section 2. Effective date. [This act] is effective on passage and approval.

Section 3. Applicability. [This act] applies to dealership contracts entered into or renewed on or after [the effective date of this act].

Approved April 6, 2009

CHAPTER NO. 169

[HB 621]

AN ACT PROVIDING THAT AN EXISTING RETAIL BEER OR BEER AND WINE LICENSE FOR A FAIRGROUNDS COMPLEX MAY BE TRANSFERRED TO A POLITICAL SUBDIVISION OF THE STATE UNDER CERTAIN CIRCUMSTANCES; GRANTING RULEMAKING AUTHORITY TO THE DEPARTMENT OF REVENUE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Transfer of existing license to political subdivision of state — rulemaking. (1) A political subdivision of the state of Montana may apply to the department for the transfer of an existing retail beer or beer and wine license and, upon approval by the department, the political subdivision may own and operate the license or lease the license to a person, firm, corporation, or other entity approved by the department.

(2) A license that is transferred to a political subdivision of the state:

(a) may be transferred only to another political subdivision of the state and not to any other person, firm, corporation, or entity;

(b) does not authorize and may not be used in conjunction with gambling activities except for horseracing as authorized in Title 23, chapter 4;

(c) may be authorized only for a fairgrounds complex owned by the political subdivision;

(d) is authorized for use in all facilities contained in the fairgrounds complex;

(e) is not, with respect to the facilities, subject to the provisions of 16-4-204(2);

(f) must be taken into account in determining the license quota restrictions of 16-4-105; and

(g) is subject to all license fees, laws, and rules applicable to retail beer or beer and wine licenses.

(3) The department may adopt rules to implement the provisions of this section.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 16, chapter 4, part 3, and the provisions of Title 16, chapter 4, part 3, apply to [section 1].

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 6, 2009

CHAPTER NO. 170

[HB 623]

AN ACT CLARIFYING THE AUTHORITY OF A COUNTY, CITY, OR TOWN TO DONATE REAL PROPERTY OR SELL REAL PROPERTY AT A REDUCED PRICE TO A CORPORATION FOR LOW-INCOME HOUSING; AMENDING SECTIONS 7-8-2219, 7-8-2301, 7-8-2308, 7-8-2402, 7-8-2502, 7-8-2504, 7-8-4201, AND 7-15-4262, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-8-2219, MCA, is amended to read:

"7-8-2219. Exchange *or donation* of county land ~~in case of~~ — failure to make sale. *(1)* If within 1 year ~~no immediate sale be had of~~ real estate attempted to be sold under the provisions of 7-8-2211 through 7-8-2220 *is not sold*, the board of county commissioners may make trades or exchanges of ~~such~~ *the* real estate owned by the county for any other ~~lands~~ *land* or real estate of equal value located within the same county.

(2) In lieu of the procedure in subsection (1), the board of county commissioners may donate the land or sell the land at a reduced price to a corporation for the purpose of constructing:

(a) a multifamily housing development operated by the corporation for low-income housing;

(b) single-family houses. Upon completion of a house, the corporation shall sell the property to a low-income person who meets the eligibility requirements of the corporation. Once the sale is completed, the property becomes subject to taxation.

(c) improvements to real property or modifying, altering, or repairing improvements to real property that will enable the corporation, subject to the restrictions of Article X, section 6, of the Montana constitution, to pursue purposes specified in the articles of incorporation of the corporation, including the sale, lease, rental, or other use of the donated land and improvements.

(3) Land that is transferred pursuant to subsection (2) must be used to permanently provide low-income housing. The transfer of the property may contain a reversionary clause to reflect this condition."

Section 2. Section 7-8-2301, MCA, is amended to read:

"7-8-2301. Disposal of county tax-deed land. (1) Whenever the county acquires land by tax deed, it is the duty of the board of county commissioners, within 6 months after acquiring title, to enter an order to:

(a) sell the land at public auction;

(b) donate the land to a municipality, as provided in subsection (3), if the land is within the incorporated boundaries of the municipality;

(c) donate the land *or sell the land at a reduced price* to a ~~nonprofit~~ corporation as provided in subsection (3); or

(d) retain the land for the county as provided in subsection (3).

(2) When tax-deed land is to be sold, the sale may not be made for a price less than the sales price determined and fixed by the board prior to making the order of sale. The sales price may be set in an amount sufficient to recover the full amount of taxes, assessments, penalties, and interest due at the time the tax deed was issued to the county plus the county's costs in taking the tax deed and in conducting the sale and additional taxes due, if any, at the time of the sale.

(3) A board of county commissioners may, upon expiration of the repurchase period provided for in 7-8-2303:

(a) sell the land as provided in subsections (2) and (4);

(b) donate the land to a municipality with the consent of the municipality;

(c) donate the land *or sell the land at a reduced price* to a ~~nonprofit~~ corporation for the purpose of constructing:

(i) a multifamily housing development operated by the corporation *for low-income housing*;

(ii) single-family houses. Upon completion of a house, the ~~nonprofit~~ corporation shall sell the property to a low-income person who meets the eligibility requirements of the corporation. Once the sale is completed, the property becomes subject to taxation.

(iii) improvements to real property or modifying, altering, or repairing improvements to real property that will enable the ~~nonprofit~~ corporation, subject to the restrictions of Article X, section 6, of the Montana constitution, to pursue purposes specified in the articles of incorporation of the ~~nonprofit~~ corporation, including the sale, lease, rental, or other use of the donated land and improvements;

(d) retain the land for the county pursuant to 7-8-2501.

(4) If bids are not received at a sale of tax-deed land, the board shall order another auction sale of the land under this part within 6 months and may, if required by the circumstances, redetermine the sales price of the land determined under subsection (2). In the period of time between the auction conducted under subsection (1), in which there were not any qualifying bids for the land, and an auction held pursuant to this subsection, the board may sell the land by negotiated sale at a price that is not less than the sales price that was fixed for the original auction under subsection (1)(a).

(5) If a bid is not received at the sale conducted under subsection (4), the board may dispose of the land as provided in 7-8-2218.

(6) Notwithstanding the amount of the sales price fixed by the board prior to the auction conducted under subsection (1)(a), if the successful sale bidder is the delinquent taxpayer or the taxpayer's successor in interest, the taxpayer's agent, or a member of the taxpayer's immediate family, the purchase price may not be less than the amount necessary to pay, in full, the taxes, assessments, penalties, and interest due on the land at the time of taking the tax deed plus interest on the full amount at the rate provided for in 15-16-102 from the date of the tax deed to the date of the repurchase as well as the costs of the county in taking the tax deed and additional taxes or assessments due, if any, at the time of repurchase.

(7) Land that is transferred pursuant to subsection (3)(c) must be used to permanently provide low-income housing. The transfer of the property may contain a reversionary clause to reflect this condition."

Section 3. Section 7-8-2308, MCA, is amended to read:

"7-8-2308. Sale *or donation* of ~~lands~~ *land* of less than fifty dollar valuation and other than tax-deed ~~lands~~ *land.* *(1)* Property belonging to the county of the value of less than $50 and property of the county acquired by means other than by tax deed may be*:*

(a) sold as provided by 7-8-2211 through 7-8-2220 ~~and, except so far as they~~. *Except to the extent that those sections* may conflict with the provisions of this part, 7-8-2211 through 7-8-2220 ~~shall~~ remain in force and effect. ~~Nothing herein contained shall~~ *This section may not* be construed as repealing 7-8-2401 through 7-8-2403.

(b) donated or sold at a reduced price to a corporation for the purpose of constructing:

(i) a multifamily housing development operated by the corporation for low-income housing;

(ii) single-family houses. Upon completion of a house, the corporation shall sell the property to a low-income person who meets the eligibility requirements of the corporation. Once the sale is completed, the property becomes subject to taxation.

(iii) improvements to real property or modifying, altering, or repairing improvements to real property that will enable the corporation, subject to the restrictions of Article X, section 6, of the Montana constitution, to pursue purposes specified in the articles of incorporation of the corporation, including the sale, lease, rental, or other use of the donated land and improvements.

(2) Land that is transferred pursuant to subsection (1)(b) must be used to permanently provide low-income housing. The transfer of the property may contain a reversionary clause to reflect this condition."

Section 4. Section 7-8-2402, MCA, is amended to read:

"7-8-2402. Disposal of land and timber acquired by county pursuant to exchange agreement with United States. (1) Any timber acquired from the United States in any exchange may be disposed of by the county commissioners by agreement with the United States department of agriculture that ~~such~~ *the* timber ~~shall~~ *must* be cut and removed by any agency selected by the United States department of agriculture, with the understanding that the stumpage payments for timber ~~so~~ cut will be paid over to the county in cash as full compensation for the county land exchanged to the United States. The amount of ~~such~~ *the* stumpage payments~~, so paid over, shall~~ *must* equal the appraised value of the county land exchanged for ~~same~~ *timber*, and ~~such~~ *the* cash payments ~~shall~~ *must* be deposited in the county treasury for the use of the county.

(2) All land and all timber not subject to the arrangement authorized in subsection (1) and acquired by the county under the provisions of this part may be*:*

(a) sold by the board of county commissioners in the manner provided by law for the sale of county property, and the proceeds of ~~such~~ *the* sale ~~shall~~ *must* be deposited in the county treasury for the use of the county*; or*

(b) donated or sold at a reduced price to a corporation for the purpose of constructing:

(i) a multifamily housing development operated by the corporation for low-income housing;

(ii) single-family houses. Upon completion of a house, the corporation shall sell the property to a low-income person who meets the eligibility requirements of the corporation. Once the sale is completed, the property becomes subject to taxation.

(iii) improvements to real property or modifying, altering, or repairing improvements to real property that will enable the corporation, subject to the restrictions of Article X, section 6, of the Montana constitution, to pursue purposes specified in the articles of incorporation of the corporation, including the sale, lease, rental, or other use of the donated land and improvements.

(3) Land that is transferred pursuant to subsection (2)(b) must be used to permanently provide low-income housing. The transfer of the property may contain a reversionary clause to reflect this condition."

Section 5. Section 7-8-2502, MCA, is amended to read:

"7-8-2502. Application of part. (1) Any ~~lands~~ *land* offered for sale by the county commissioners of any county pursuant to 7-8-2301 and not sold at the sale, any ~~lands~~ *land* classified for retention by the county, any ~~lands~~ *land* concerning which the preferential right to purchase has been terminated and barred pursuant to the provisions of 7-8-2303, and any other ~~lands~~ *land* owned by the county, however acquired, may, in the discretion and at the election of the board, be*:*

(a) administered by the board under this part*; or*

(b) donated or sold at a reduced price to a corporation for the purpose of constructing:

(i) a multifamily housing development operated by the corporation for low-income housing;

(ii) single-family houses. Upon completion of a house, the corporation shall sell the property to a low-income person who meets the eligibility requirements of the corporation. Once the sale is completed, the property becomes subject to taxation.

(iii) improvements to real property or modifying, altering, or repairing improvements to real property that will enable the corporation, subject to the restrictions of Article X, section 6, of the Montana constitution, to pursue purposes specified in the articles of incorporation of the corporation, including the sale, lease, rental, or other use of the donated land and improvements.

(2) The board may in its discretion elect to exercise any of the powers and authority granted to it by this part, and to the extent that the board elects, the provisions of this part are controlling and supersede all conflicting provisions of other laws.

(3) The sale, exchange, lease, *donation,* or issuance of licenses and permits of county ~~lands~~ *land* as provided in this part extends only to ~~those lands~~ *land* not necessary to the conduct of the county's business.

(4) Land that is transferred pursuant to subsection (1)(b) must be used to permanently provide low-income housing. The transfer of the property may contain a reversionary clause to reflect this condition."

Section 6. Section 7-8-2504, MCA, is amended to read:

"7-8-2504. Classification of county ~~lands~~ *land*. The board may:

(1) establish criteria for the classification of the ~~lands~~ *land* referred to in 7-8-2502(1)*(a)*;

(2) classify ~~such lands~~ *the land*, surface and subsurface, for retention or disposal and for ~~such~~ purposes and uses ~~as~~ *that* the board may determine are in the best interests of the county and for the public benefit and welfare~~,~~. ~~and in so doing~~ *In classifying the land*, the board shall consider the multiple-use potential of ~~said lands~~ *the land* and the potential of ~~said lands~~ *the land* as access to other intermingled or adjacent multiple-use ~~lands~~ *land* or areas."

Section 7. Section 7-8-4201, MCA, is amended to read:

"7-8-4201. Disposal or lease of municipal property. (1) Subject to the provisions of subsection (2), the city or town council may sell, dispose of, *donate,* or lease any property belonging to the city or town.

(2) (a) Except for property described in subsection (3), the lease*, donation,* or transfer must be made by an ordinance or resolution passed by a two-thirds vote of all the members of the council.

(b) Except for property acquired by tax deed or property described in subsection (3), if the property is held in trust for a specific purpose, the sale or lease must be approved by a majority vote of the electors of the municipality voting at an election called for that purpose. The election must be held in conjunction with a regular or primary election.

(3) If a city or town owns property containing a historically significant building or monument, the city or town may sell or give the property to nonprofit organizations or groups that agree to restore or preserve the property. The contract for the transfer of the property must contain a provision that:

(a) requires the property to be preserved in its present or restored state upon any subsequent transfer; and

(b) provides for the reversion of the property to the city or town for noncompliance with conditions attached to the transfer.

(4) This section may not be construed to abrogate the power of the board of park commissioners to lease all lands owned by the city that were acquired for parks within the limitations prescribed by 7-16-4223.

(5) A city or town may donate land or sell the land at a reduced price to a corporation for the purpose of constructing:

(a) a multifamily housing development operated by the corporation for low-income housing;

(b) single-family houses. Upon completion of a house, the corporation shall sell the property to a low-income person who meets the eligibility requirements of the corporation. Once the sale is completed, the property becomes subject to taxation.

(c) improvements to real property or modifying, altering, or repairing improvements to real property that will enable the corporation, subject to the restrictions of Article X, section 6, of the Montana constitution, to pursue purposes specified in the articles of incorporation of the corporation, including the sale, lease, rental, or other use of the donated land and improvements.

(6) Land that is transferred pursuant to subsection (5) must be used to permanently provide low-income housing. The transfer of the property may contain a reversionary clause to reflect this condition."

Section 8. Section 7-15-4262, MCA, is amended to read:

"7-15-4262. Disposal of municipal property in urban renewal areas. (1) A municipality may:

(a) sell, lease, or otherwise transfer real property in an urban renewal area or any interest ~~therein~~ *in real property* acquired by it for an urban renewal project for residential, recreational, commercial, industrial, or other uses or for public use and enter into contracts with respect ~~thereto~~ *to the real property*; or

(b) retain ~~such~~ *the* property or interest only for parks and recreation, education, public transportation, public safety, health, highways, streets and alleys, administrative buildings, or civic centers, in accordance with the urban renewal project plan and subject to ~~such~~ *any* covenants, conditions, and restrictions, including covenants running with the land, ~~as~~ *that* it ~~may deem to be~~ *considers* necessary or desirable to assist in preventing the development or spread of blighted areas or otherwise to carry out the purposes of this part.

(2) ~~Such~~ *The* sale, lease, other transfer, or retention and any agreement relating ~~thereto~~ *the real property* may be made only after the approval of the urban renewal plan by the local governing body.

(3) ~~Such~~ *Except as provided in subsection (5), the* real property or interest ~~shall~~ *must* be sold, leased, otherwise transferred, or retained at not less than its fair value for uses in accordance with the urban renewal plan. In determining the fair value of real property for uses in accordance with the urban renewal plan, a municipality shall take into account and give consideration to the*:*

(a) uses provided in ~~such~~ *the* plan;

(b) ~~the~~ restrictions upon and the covenants, conditions, and obligations assumed by the purchaser or lessee or by the municipality retaining the property; and

(c) ~~the~~ objectives of ~~such~~ *the* plan for the prevention of the recurrence of blighted areas.

(4) Real property acquired by a municipality which, in accordance with the provisions of the urban renewal plan, is to be transferred ~~shall~~ *must* be transferred as rapidly as feasible, in the public interest, consistent with the carrying out of the provisions of the urban renewal plan.

(5) A transfer under this section may include a donation of the land or a sale of the land at a reduced price to a corporation for the purpose of constructing:

(a) a multifamily housing development operated by the corporation for low-income housing;

(b) single-family houses. Upon completion of a house, the corporation shall sell the property to a low-income person who meets the eligibility requirements of the corporation. Once the sale is completed, the property becomes subject to taxation.

(c) improvements to real property or modifying, altering, or repairing improvements to real property that will enable the corporation, subject to the restrictions of Article X, section 6, of the Montana constitution, to pursue purposes specified in the articles of incorporation of the corporation, including the sale, lease, rental, or other use of the donated land and improvements.

(6) Land that is transferred pursuant to subsection (5) must be used to permanently provide low-income housing. The transfer of the property may contain a reversionary clause to reflect this condition."

Section 9. Effective date. [This act] is effective July 1, 2009.

Approved April 6, 2009

CHAPTER NO. 171

[SB 74]

AN ACT REVISING THE DUTIES OF A GOVERNMENTAL FIRE AGENCY; REVISING REQUIREMENTS FOR PROVISION AND MANAGEMENT OF EMERGENCY SERVICES BY A FIRE CHIEF; REVISING THE ENTITY UNDER WHICH A FIRE CHIEF SERVES; AND AMENDING SECTION 7-33-2001, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-33-2001, MCA, is amended to read:

"7-33-2001. Fire chief — powers and duties. (1) A fire chief of a governmental fire agency organized under this chapter must be considered the highest ranking officer in the agency and is responsible for the operation of the agency, including but not limited to:

(a) development and implementation of agency programs and procedures;

(b) performance of agency personnel;

(c) preventing outbreak of fires;

(d) minimizing danger to persons and damage to property caused by fires; and

(e) ~~ensuring the provision and management of any~~ *providing and managing* emergency services that are established by the agency and that are consistent with national ~~and other appropriate~~ standards. These services may include but are not limited to:

(i) fire suppression;

(ii) medical aid;

(iii) hazardous materials response;

(iv) ambulance service; and

(v) extrication from vehicles.

(2) In development of agency regulations, programs, and procedures, the fire chief is subject to applicable laws and ordinances.

(3) The fire chief serves under the direction of the ~~governing body that has created the governmental fire agency~~ *trustees, if trustees have been designated to manage the fire agency under the provisions of this chapter. If the governing body retains management, then the fire chief serves under the direction of the governing body*.

(4) The fire chief shall develop organizational and operational procedures and shall implement those procedures by issuing written administrative regulations and operational guidelines.

(5) In the event of a fire or other emergency involving the protection of life or property, the fire chief has the authority to direct any operation necessary to extinguish or control the fire or perform a rescue in coordination with other authorities having jurisdiction.

(6) The fire chief may investigate suspected or reported fires, gas leaks, or other hazardous conditions and may take any action necessary to protect public

health and safety and protect property or mitigate damage to property in the exercise of the chief's duties.

(7) In the exercise of the authority provided in subsections (5) and (6), the fire chief may:

(a) enter any property;

(b) prohibit any person, vehicle, or thing from approaching the scene;

(c) remove or cause to be removed from the scene of the fire or other emergency any person, vehicle, or thing that the chief determines may interfere with the operations of the agency.

(8) (a) Subject to 50-3-102(1)(c), the fire chief may investigate the cause, origin, and circumstances of every fire that occurs in the chief's jurisdiction that involves the loss of life, injury to a person, destruction of property, or damage to property.

(b) Subject to 50-3-102(1)(c), as part of the investigation, the fire chief may take immediate charge of all physical evidence relating to the cause of the fire and may pursue the investigation to its conclusion.

(c) The fire chief may investigate the cause, origin, and circumstances of unauthorized releases of hazardous materials.

(9) (a) The fire chief may establish and maintain a program applicable to every community in the chief's jurisdiction that provides for:

(i) regular examination of fire hazards; and

(ii) regular inspection of commercial property, after the property has been approved for occupancy by a certified city, county, or town building code jurisdiction or the department of labor and industry's bureau of building and measurement standards, with particular emphasis on occupancies identified as high risk to life and property.

(b) The fire chief may establish a formal fire inspection program as authorized by the department of justice under 50-61-102.

(10) The fire chief shall report all fires to the department of justice and shall use the national fire incident reporting system or other reporting method approved by the department of justice's fire prevention and investigation section.

(11) The fire chief is responsible for establishing and maintaining a training program for the agency and may use existing federal, regional, state, and local training resources. The agency's program must include training in all areas of emergency response in which the agency provides services.

(12) For the purposes of this section, "governmental fire agency" does not include municipal fire departments."

Approved April 6, 2009

CHAPTER NO. 172

[SB 111]

AN ACT CLARIFYING THAT THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION MAY ENGAGE IN WILDFIRE INITIAL ATTACK; AMENDING SECTION 76-13-104, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 76-13-104, MCA, is amended to read:

"76-13-104. Functions of department — rulemaking. (1) *(a)* The department has the duty to ensure the protection of land under state and private ownership and to suppress wildfires on land under state and private ownership. ~~No fees~~ *Fees* may *not* be collected for this purpose except fees provided for in 76-13-201.

(b) The department may engage in wildfire initial attack on all lands if the fire threatens to move onto state or private land.

(2) (a) The department shall adopt rules to protect the natural resources of the state, especially the natural resources owned by the state, from destruction by fire and for that purpose, in declared emergencies, may employ personnel and incur other expenses when necessary.

(b) The department may adopt and enforce reasonable rules for the purpose of enforcing and accomplishing the provisions and purposes of part 2 and this part.

(3) The duty imposed on the department under this section is not exclusive to the department and does not absolve private property owners or local governmental fire agencies organized under Title 7, chapter 33, from any fire protection or suppression responsibilities.

(4) The department may give technical and practical advice concerning forest, range, water, and soil conservation and the establishment and maintenance of woodlots, windbreaks, shelterbelts, and fire protection.

(5) The department shall cooperate with all public and other agencies in the development, protection, and conservation of the forest, range, and water resources in this state.

(6) The department shall establish and maintain wildland fire control training programs.

(7) The department shall appoint firewardens in the number and localities that it considers necessary, subject to confirmation by the local county government, and shall adopt rules prescribing the qualifications and duties of firewardens that are in addition to those provided in 76-13-116.

(8) ~~By October 1, 2008, the~~ *The* department shall adopt rules addressing development within the wildland-urban interface, including but not limited to:

(a) best practices for development within the wildland-urban interface; and

(b) criteria for providing grant and loan assistance to local government entities to encourage adoption of best practices for development within the wildland-urban interface."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 6, 2009

CHAPTER NO. 173

[SB 143]

AN ACT ESTABLISHING A MINIMUM AMOUNT OF ASSESSMENT FEES FOR FIRE PROTECTION FOR PEOPLE WHO OWN A SHARE OF PROPERTY AND AN INDIVIDUAL UNIT ON THE PROPERTY; AMENDING SECTION 76-13-213, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 76-13-213, MCA, is amended to read:

"76-13-213. Formula to set landowner assessments for fire protection. (1) The department shall, pursuant to 76-13-207, set the annual fire assessment fee due from landowners pursuant to Title 76, chapter 13, parts 1 and 2. The total of all statewide landowner assessments may be no greater than one-third of the amount appropriated by the legislature to fund the protection costs.

(2) The individual assessments must be established using the following criteria:

(a) Each person or corporation who is responsible for fire protection pursuant to 76-13-108 and 76-13-201 and for whom the department provides fire protection must be assessed a per capita landowner fee. The total per capita landowner assessments statewide from persons or corporations who own 20 acres or less of land for which the department provides protection must be as close as administratively possible to 60% of the total private landowner assessments.

(b) A person or corporation who owns more than 20 acres of land for which the department provides protection shall, in addition to the fee assessed pursuant to subsection (2)(a), pay a per-acre fee for each whole acre that the person owns in excess of 20 acres. The total of all assessments statewide from persons or corporations that own more than 20 acres must be as close as administratively possible to 40% of the total private landowner assessments.

(c) A person who owns a share of property and has full ownership of a unit on the property must be assessed an amount not less than one-half of the amount established to be assessed for the property under subsection (2)(a).

(3) (a) Except as provided in subsection (3)(b), the per capita and per-acre fees must remain in effect for subsequent years.

(b) The department shall reset the per capita and per-acre fees whenever it is necessary to obtain up to one-third of the amount appropriated by the legislature.

(c) Whenever the department resets the fees pursuant to subsection (3)(b), it shall do so in accordance with 76-13-201(2)."

Section 2. Effective date. [This act] is effective May 1, 2009.

Approved April 6, 2009

CHAPTER NO. 174

[SB 185]

AN ACT CREATING A NONRESIDENT COLLEGE STUDENT BIG GAME COMBINATION LICENSE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Class B-14—nonresident college student big game combination license. (1) A student who is not a resident, as defined in 87-2-102, may purchase a Class B-14 nonresident college student big game combination license for the same price as a Class AAA combination sports license if that student:

(a) is currently enrolled as a full-time student at a postsecondary educational institution in Montana, with 12 credits or more being considered full-time; or

(b) (i) has a natural or adoptive parent who currently is a Montana resident, as defined in 87-2-102;

(ii) has a high school diploma from a Montana public, private, or home school or can provide certified verification that the applicant has passed the general educational development test in Montana; and

(iii) is currently enrolled as a full-time student at a postsecondary educational institution in another state.

(2) The holder of a Class B-14 license is entitled to all the privileges of a Class B license, a Class B-1 license, a Class B-7 license, an elk tag, and a nonresident wildlife conservation license.

(3) Application for a Class B-14 nonresident college student big game combination license may be made after the second Monday in September at any department regional office or at the department headquarters in Helena. To qualify, the applicant shall present a valid student identification card and verification of current full-time enrollment at a postsecondary educational institution as required by the department.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 87, chapter 2, part 5, and the provisions of Title 87, chapter 2, part 5, apply to [section 1].

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 6, 2009

CHAPTER NO. 175

[SB 188]

AN ACT PROVIDING THAT IN A HUNTING DISTRICT OR PORTION OF A DISTRICT WHERE THE HOLDER OF A GENERAL ELK LICENSE IS ALLOWED TO HUNT ANTLERLESS ELK DURING CERTAIN TIMES, THE HOLDER OF A SPECIAL ELK PERMIT TO HUNT ANTLERLESS ELK IN THAT DISTRICT OR PORTION OF A DISTRICT MAY ALSO HUNT ANY ELK AUTHORIZED UNDER THE REGULATIONS FOR A GENERAL ELK LICENSE DURING THOSE SAME TIMES; AMENDING SECTION 87-2-704, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-2-704, MCA, is amended to read:

"87-2-704. Regulation of special elk permits. (1) The department may:

(a) provide for the refund of resident elk tag license fees to persons applying for special elk permits in hunting districts where there is no general elk hunting and set time limits and describe area restrictions; and

(b) designate special elk permit areas where priority will be given to applicants who have not held special elk permits for a period of years to be determined by the department.

(2) The department shall provide that a person who is issued a special elk permit to hunt antlerless elk during the regular hunting season is:

(a) limited to the hunting and taking of only an antlerless elk in the hunting district or portion of a hunting district where the permit is valid*, except that in a hunting district or portion of a district where the holder of a general elk license is allowed to hunt antlerless elk during certain times, the holder of a special elk permit to hunt antlerless elk in that district or portion of a district may also hunt any elk authorized under the regulations for a general elk license during those same times*; and

(b) entitled to the general elk hunting privileges for a holder of a Class A-5 license in all other hunting districts.

(3) The commission may establish a waiting period during which a person who has received a special elk permit that is valid for an antlered bull may not receive another special elk permit that is valid for an antlered bull. The commission may specify which special elk permits are subject to the waiting period, by hunting district or portion of a hunting district.

(4) The fee for a special elk permit is $4.

(5) The department may adopt rules necessary to implement this section."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 6, 2009

CHAPTER NO. 176

[SB 209]

AN ACT REPLACING THE UNIFORM FOREIGN MONEY-JUDGMENTS RECOGNITION ACT WITH THE UNIFORM FOREIGN-COUNTRY MONEY JUDGMENTS RECOGNITION ACT; AMENDING SECTIONS 25-9-601, 25-9-602, 25-9-603, 25-9-605, 25-9-606, AND 25-9-607, MCA; REPEALING SECTION 25-9-604, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 25-9-601, MCA, is amended to read:

"25-9-601. Short title. This part may be cited as the "Uniform ~~Foreign Money-Judgments~~ *Foreign-Country Money Judgments* Recognition Act"."

Section 2. Section 25-9-602, MCA, is amended to read:

"25-9-602. Definitions. As used in this part, the following definitions apply:

(1) "Foreign country" means a government other than:

(a) the United States;

(b) a state, district, commonwealth, territory, or insular possession of the United States; or

(c) any other government with regard to which the decision in this state as to whether to recognize a judgment of that government's courts is initially subject to determination under the full faith and credit clause of the United States constitution.

~~(1)~~*(2)* "~~Foreign~~ *Foreign-country* judgment" means any judgment of a foreign ~~state granting or denying recovery of a sum of money, other than a judgment for taxes, a fine or other penalty, or a judgment for support in matrimonial or family matters~~ *country*.

~~(2) "Foreign state" means any governmental unit other than the United States or any state, district, commonwealth, territory, or insular possession thereof or the Panama Canal Zone, the Trust Territory of the Pacific Islands, or the Ryukyu Islands.~~"

Section 3. Section 25-9-603, MCA, is amended to read:

"25-9-603. Applicability. *(1)* ~~This~~ *Except as provided in subsection (2), this* part applies to *a* ~~any foreign~~ *foreign-country* judgment *to the extent that the judgment:*

(a) grants or denies recovery of a sum of money; and

(b) under the law of the foreign country where rendered, ~~that~~ is final*,* ~~and~~ conclusive*,* and enforceable ~~where rendered even though an appeal from the judgment is pending or it is subject to appeal~~.

(2) This part does not apply to a foreign-country judgment, even if the judgment grants or denies recovery of a sum of money, to the extent that the judgment is:

(a) a judgment for taxes;

(b) a fine or other penalty; or

(c) a judgment for dissolution of marriage, support, or maintenance, or other judgment rendered in connection with domestic relations.

(3) A party seeking recognition of a foreign-country judgment has the burden of establishing that this part applies to the foreign-country judgment."

Section 4. Section 25-9-605, MCA, is amended to read:

"25-9-605. ~~**Grounds for nonrecognition**~~ ***Standards for recognition of foreign-country judgment.*** *(1) Except as provided in subsections (2) and (3), a court of this state shall recognize a foreign-country judgment to which this part applies.*

~~(1)~~*(2)* A ~~foreign~~ *court of this state may not recognize a foreign-country* judgment ~~is not conclusive~~ if:

(a) the judgment was rendered under a *judicial* system that does not provide impartial tribunals or procedures compatible with the requirements of due process of law;

(b) the foreign court did not have personal jurisdiction over the defendant; or

(c) the foreign court did not have jurisdiction over the subject matter.

~~(2)~~*(3)* A ~~foreign judgment~~ *court of this state* need not ~~be recognized~~ *recognize a foreign-country judgment* if:

(a) the defendant in the ~~proceedings~~ *proceeding* in the foreign court did not receive notice of the ~~proceedings~~ *proceeding* in sufficient time to enable the defendant to defend;

(b) the judgment was obtained by fraud *that deprived the losing party of an adequate opportunity to present its case*;

(c) the *judgment or the* cause of action or claim for relief on which the judgment is based is repugnant to the public policy of this state *or of the United States*;

(d) the judgment conflicts with another final and conclusive judgment;

(e) the proceeding in the foreign court was contrary to an agreement between the parties under which the dispute in question was to be ~~settled~~ *determined* otherwise than by proceedings in that court; ~~or~~

(f) in the case of jurisdiction based only on personal service, the foreign court was a seriously inconvenient forum for the trial of the action*;*

(g) the judgment was rendered in circumstances that raise substantial doubt about the integrity of the rendering court with respect to the judgment; or

(h) the specific proceeding in the foreign court leading to the judgment was not compatible with the requirements of due process of law.

(4) A party resisting recognition of a foreign-country judgment has the burden of establishing that a ground for nonrecognition stated in subsection (2) or (3) exists."

Section 5. Section 25-9-606, MCA, is amended to read:

"25-9-606. Personal jurisdiction. (1) ~~Except as provided in 25-9-605, the foreign~~ *A foreign-country* judgment may not be refused recognition for lack of personal jurisdiction if:

(a) the defendant was served *with process* personally in the foreign ~~state~~ *country*;

(b) the defendant voluntarily appeared in the ~~proceedings~~ *proceeding,* other than for the purpose of protecting property seized or threatened with seizure in the ~~proceedings~~ *proceeding* or of contesting the jurisdiction of the court over the defendant;

(c) the defendant, ~~prior to~~ *before* the commencement of the ~~proceedings~~ *proceeding*, had agreed to submit to the jurisdiction of the foreign court with respect to the subject matter involved;

(d) the defendant was domiciled in the foreign ~~state~~ *country* when the ~~proceedings were~~ *proceeding was* instituted or~~, being a body corporate,~~ *was a corporation or other form of business organization that* had its principal place of business *in*, *or* was ~~incorporated, or had otherwise acquired corporate status in~~ *organized under the laws of,* the foreign ~~state~~ *country*;

(e) the defendant had a business office in the foreign ~~state~~ *country* and the ~~proceedings~~ *proceeding* in the foreign court involved a cause of action or claim for relief arising out of business done by the defendant through that office in the foreign ~~state~~ *country*; or

(f) the defendant operated a motor vehicle or airplane in the foreign ~~state~~ *country* and the proceedings involved a cause of action or claim for relief arising out of ~~the~~ *that* operation.

(2) *The list of bases for personal jurisdiction in subsection (1) is not exclusive.* The courts of this state may recognize ~~other~~ bases of *personal* jurisdiction *other than those listed in subsection (1) as sufficient to support a foreign-country judgment*."

Section 6. Section 25-9-607, MCA, is amended to read:

"25-9-607. Stay ~~in case~~ of *proceedings pending* appeal *of foreign-country judgment.* If ~~the defendant satisfies the court either~~ *a party establishes* that an appeal *from a foreign-country judgment* is pending or ~~that the defendant is entitled and intends to appeal from the foreign judgment~~ *will be taken*, the court may stay ~~the~~ *any* proceedings *with regard to the foreign-country judgment* until the appeal ~~has been determined or until the expiration of a period of time sufficient to enable the defendant~~ *is concluded, the time for appeal expires, or the appellant has had sufficient time* to prosecute the appeal *and has failed to do so*."

Section 7. Procedure for recognition of foreign-country judgment. (1) If recognition of a foreign-country judgment is sought as an original matter, the issue of recognition must be raised by filing an action seeking recognition of the foreign-country judgment.

(2) If recognition of a foreign-country judgment is sought in a pending action, the issue of recognition may be raised by counterclaim, cross-claim, or affirmative defense.

Section 8. Effect of recognition of foreign-country judgment. If the court in a proceeding under [section 7] finds that the foreign-country judgment is entitled to recognition under this part then, to the extent that the foreign-country judgment grants or denies recovery of a sum of money, the foreign-country judgment is:

(1) conclusive between the parties to the same extent as the judgment of a sister state entitled to full faith and credit in this state would be conclusive; and

(2) enforceable in the same manner and to the same extent as a judgment rendered in this state.

Section 9. Statute of limitations. An action to recognize a foreign-country judgment must be commenced within the earlier of the time during which the foreign-country judgment is effective in the foreign country or 10 years from the date that the foreign-country judgment became effective in the foreign country.

Section 10. Repealer. Section 25-9-604, MCA, is repealed.

Section 11. Codification instruction. [Sections 7 through 9] are intended to be codified as an integral part of Title 25, chapter 9, part 6, and the provisions of Title 25, chapter 9, part 6, apply to [sections 7 through 9].

Section 12. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 13. Applicability. [This act] applies to all actions commenced on or after [the effective date of this act] in which the issue of recognition of a foreign-country judgment is raised.

Approved April 6, 2009

CHAPTER NO. 177

[SB 250]

AN ACT ESTABLISHING THE OFFENSE OF TRADEMARK COUNTERFEITING; PROVIDING CRIMINAL PENALTIES FOR TRADEMARK COUNTERFEITING; PROVIDING FOR RESTITUTION FOR PERSONS HARMED BY TRADEMARK COUNTERFEITING; PROVIDING FOR SEIZURE OF GOODS USED IN TRADEMARK COUNTERFEITING; AMENDING SECTIONS 30-13-301 AND 30-13-333, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 30-13-301, MCA, is amended to read:

"30-13-301. Definitions. In this part, unless the context requires otherwise, the following definitions apply:

(1) "Abandoned" with respect to a mark, means the occurrence of either of the following:

(a) when a mark's use has been discontinued with intent not to resume use. Intent not to resume may be inferred from circumstances. Nonuse for 2 consecutive years constitutes prima facie evidence of abandonment.

(b) when any course of conduct of the owner, including acts of omission as well as commission, causes the mark to lose its significance as a mark.

(2) "Applicant" means the person filing an application for registration of a mark under this part or the person's legal representatives, successors, or assigns.

(3) "Counterfeit mark" means a spurious mark:

(a) that is applied to or used in connection with any goods, services, labels, patches, fabric, stickers, wrappers, badges, emblems, medallions, charms, boxes, containers, cans, cases, hangtags, documentation, packaging, or any other components of any type or nature that are designed, marketed, or otherwise intended to be used on or in connection with any goods or services;

(b) that is identical with or substantially indistinguishable from a mark that is in use and is registered in this state or any other state or on the principal register in the United States patent and trademark office, whether or not the person employing the mark knew the mark was registered; and

(c) the application or use of which is:

(i) likely to deceive or cause confusion or mistake; or

(ii) otherwise intended to be used on or in connection with the goods or services for which a registered mark is registered.

(4) "Counterfeiter" means a person employing a counterfeit mark.

~~(3)~~*(5)* "Dilution" means the lessening of the capacity of a famous mark to identify and distinguish goods or services, regardless of the presence or absence of:

(a) competition between the owner of the famous mark and other parties; or

(b) likelihood of confusion, mistake, or deception.

~~(4)~~*(6)* "Mark" means any trademark or service mark entitled to registration under this part whether registered or not.

~~(5)~~*(7)* "Person" means any individual, firm, partnership, limited liability company, corporation, association, union, or other organization capable of suing and being sued in a court of law.

~~(6)~~*(8)* "Registrant" means the person to whom the registration of a mark under this part is issued or the person's legal representatives, successors, or assigns.

(9) "Retail value" means:

(a) the counterfeiter's regular selling price for goods or services unless the goods or services bearing a counterfeit mark or the items and components described in subsection (9)(b) would appear to a reasonably prudent person to be authentic, in which case the retail value is the price of the authentic counterpart; or

(b) in the case of items bearing a counterfeit mark that are components of a finished product and in the case of labels, patches, fabric, stickers, wrappers, badges, emblems, medallions, charms, boxes, containers, cans, cases, hangtags,

documentation, packaging, or any other components of any type or nature that are designed, marketed, or otherwise intended to be used on or in connection with any goods or services, the counterfeiter's regular selling price of the finished product on or in which the items or component would be utilized.

~~(7)~~*(10)* "Service mark" means any word, name, symbol, or device or any combination of words, names, symbols, or devices used by a person to identify and distinguish the services of one person, including a unique service, from the services of others and to indicate the source of the services, even if that source is unknown. Titles, character names used by a person, and other distinctive features of radio or television programs may be registered as service marks notwithstanding that they or the programs may advertise the goods of the sponsor.

~~(8)~~*(11)* "Trade name" means any name used by a person to identify a business or vocation of that person.

~~(9)~~*(12)* "Trademark" means any word, name, symbol, device, or any combination of words, names, symbols, or devices used by a person to identify and distinguish the goods of that person, including a unique product, from those manufactured or sold by others and to indicate the source of the goods, even if that source is unknown.

~~(10)~~*(13)* "Use" means the bona fide use of a mark in the ordinary course of trade and not a use merely to reserve a right in a mark. For the purposes of this part, a mark is considered to be in use:

(a) on goods when:

(i) it is placed in any manner on the goods or other containers or the displays associated with the goods or on the tags or labels affixed to the goods; or

(ii) if the nature of the goods makes placement on the goods or containers impracticable, it is placed on documents associated with the goods or their sale; and

(iii) the goods are sold or transported in commerce in this state; and

(b) on services when it is used or displayed in the sale or advertising of services and the services are rendered in this state."

Section 2. Trademark counterfeiting — presumption — penalties — restitution — forfeiture. (1) (a) A person commits the offense of trademark counterfeiting if the person knowingly manufactures, distributes, transports, offers for sale, sells, or possesses with intent to sell or distribute any goods, services, labels, patches, fabric, stickers, wrappers, badges, emblems, medallions, charms, boxes, containers, cans, cases, hangtags, documentation, packaging, or any other components of any type or nature that are designed, marketed, or otherwise intended to be used on or in connection with any goods or services bearing a counterfeit mark.

(b) A person having possession, custody, or control of more than 25 goods, labels, patches, fabric, stickers, wrappers, badges, emblems, medallions, charms, boxes, containers, cans, cases, hangtags, documentation, packaging, or any other components of any type or nature bearing a counterfeit mark must be presumed to possess the items with intent to offer for sale, sell, or distribute the items.

(2) (a) A person convicted of the offense of trademark counterfeiting shall be fined an amount not to exceed $1,000 or be imprisoned in the county jail for a term not to exceed 6 months, or both, if the offense involves less than 100 items bearing one or more counterfeit marks or the total retail value is less than

$1,000. A person convicted of a second offense shall be fined $1,000 or be imprisoned in the county jail for a term not to exceed 6 months, or both. A person convicted of a third or subsequent offense shall be fined $1,000 and be imprisoned in the county jail for a term of not less than 30 days or more than 6 months.

(b) If the offense involves 100 items or more bearing one or more counterfeit marks and the retail value is $1,000 or more, the person shall be fined an amount not to exceed $10,000 or be imprisoned in the state prison for a term not to exceed 1 year, or both.

(3) When imposing sentence on a person convicted of a violation of this section, the court may order restitution as provided in 30-13-335 to any person harmed by the trademark counterfeiting.

(4) (a) Any items bearing a counterfeit mark and all personal property employed or used in connection with counterfeiting, including but not limited to any items, objects, tools, machines, equipment, instruments, or vehicles of any kind, must be seized by law enforcement officials who have the opportunity to take possession of the items or personal property.

(b) All seized items and personal property referenced in this subsection (4) must be forfeited and may, upon request of the registrant, be released to the registrant for destruction or destroyed by an officer of the court as provided in 30-13-335 unless the registrant agrees to another disposition of the seized items or personal property.

Section 3. Section 30-13-333, MCA, is amended to read:

"30-13-333. Infringement. (1) ~~Subject~~ *In addition to the penalties and remedies provided for in [section 2] and subject* to the provisions of 30-13-336 and subsection (2) of this section, a person is liable in a civil action brought by the registrant under 30-13-335 if the person:

(a) uses, without the consent of the registrant, any reproduction, counterfeit, copy, or colorable imitation of a mark registered under this part in connection with the sale, offering for sale, or advertising of any goods or services on or in connection with which the use is likely to cause confusion or mistake or to deceive as to the source of origin of the goods or services; or

(b) reproduces, counterfeits, copies, or colorably imitates any registered mark and applies the reproduction, counterfeit, copy, or colorable imitation to labels, signs, prints, packages, wrappers, receptacles, or advertisements intended to be used upon or in conjunction with the sale or other distribution in this state of the goods or services.

(2) However, the registrant is not entitled to recover under subsection (1)(b) any profits or damages unless the acts have been committed with knowledge that the mark is intended to be used to cause confusion or mistake or to deceive."

Section 4. Codification instruction. [Section 2] is intended to be codified as an integral part of Title 30, chapter 13, part 3, and the provisions of Title 30, chapter 13, part 3, apply to [section 2].

Section 5. Effective date. [This act] is effective July 1, 2009.

Approved April 6, 2009

CHAPTER NO. 178

[SB 273]

AN ACT REVISING THE CONFLICTS OF INTERESTS LAWS RELATIVE TO SCHOOL TRUSTEES; AND AMENDING SECTION 20-9-204, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-9-204, MCA, is amended to read:

"20-9-204. Conflicts of interests, letting contracts, and calling for bids. (1) It is unlawful for a trustee to:

(a) have any pecuniary interest, either directly or indirectly, in any contract made by the trustee while acting in that official capacity or by the board of trustees of which the trustee is a member; or

(b) be employed in any capacity by the trustee's own school district*, with the exception of officiating at athletic competitions under the auspices of the Montana officials association*.

(2) For the purposes of subsection (1):

(a) "pecuniary interest" does not include holding an interest of 10% or less in a corporation; and

(b) "contract" does not include:

(i) merchandise sold to the highest bidder at public auctions;

(ii) investments or deposits in financial institutions that are in the business of loaning or receiving money when the investments or deposits are made on a rotating or ratable basis among financial institutions in the community or when there is only one financial institution in the community; or

(iii) contracts for professional services, other than salaried services, or for maintenance or repair services or supplies when the services or supplies are not reasonably available from other sources if the interest of any board member and a determination of the lack of availability are entered in the minutes of the board meeting at which the contract is considered.

(3) (a) Except for district needs that must be met because of an unforeseen emergency, as defined in 20-3-322(5), or as provided in subsections (4) and (7) of this section, whenever any building, furnishing, repairing, or other work for the benefit of the district or purchasing of supplies for the district is necessary, the work done or the purchase made must be by contract if the sum exceeds $50,000.

(b) Except as provided in Title 18, chapter 2, part 5, each contract must be let to the lowest responsible bidder after advertisement for bids. The advertisement must be published in the newspaper that will give notice to the largest number of people of the district as determined by the trustees. The advertisement must be made once each week for 2 consecutive weeks, and the second publication must be made not less than 5 days or more than 12 days before consideration of bids. A contract not let pursuant to this section is void. The bidding requirements applicable to services performed for the benefit of the district under this section do not apply to:

(i) a registered professional engineer, surveyor, real estate appraiser, or registered architect;

(ii) a physician, dentist, pharmacist, or other medical, dental, or health care provider;

(iii) an attorney;

(iv) a consulting actuary;

(v) a private investigator licensed by any jurisdiction;

(vi) a claims adjuster;

(vii) an accountant licensed under Title 37, chapter 50; or

(viii) a project, as defined in 18-2-501, for which a governing body, as defined in 18-2-501, enters into an alternative project delivery contract pursuant to Title 18, chapter 2, part 5.

(4) A district may enter into a cooperative purchasing contract for the procurement of supplies or services with one or more districts. The award of a contract to a successful bidder must comply with the requirements of subsection (5). The request for bids must be advertised in a daily newspaper of general circulation in each county in which a district participating in the cooperative purchasing contract is located. The advertisement must be made once each week for 2 consecutive weeks, and the second publication must be made not less than 5 days or more than 12 days before consideration of bids.

(5) Except as provided in Title 18, chapter 2, part 5, whenever bidding is required, the contract must be awarded to the lowest responsible bidder, except that any or all bids may be rejected.

(6) This section may not require the board of trustees to let a contract for any routine and regularly performed maintenance or repair project or service that can be accomplished by district staff whose regular employment with the school district is related to the routine performance of maintenance for the district.

(7) Subsection (3) does not apply to the solicitation or award of a contract for an investment grade energy audit or an energy performance contract pursuant to Title 90, chapter 4, part 11, including construction and installation of conservation measures pursuant to the energy performance contract."

Approved April 6, 2009

CHAPTER NO. 179

[SB 340]

AN ACT GENERALLY REVISING THE LAWS RELATING TO THE LIMITED EMANCIPATION OF MINORS; PROVIDING FOR NOTICE; MAKING TECHNICAL REVISIONS; AND AMENDING SECTIONS 41-1-306, 41-1-501, 41-3-102, AND 41-3-438, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 41-1-306, MCA, is amended to read:

"41-1-306. Minor cannot disaffirm certain obligations. A minor cannot disaffirm an obligation, otherwise valid, entered into by ~~him~~ *the minor* under the express authority or direction of a statute or when ~~he~~ *the minor* has been granted limited emancipation, including a specific right to enter into contracts, under ~~41-1-501~~ *[section 4]* and 41-3-438."

Section 2. Section 41-1-501, MCA, is amended to read:

"41-1-501. ~~Limited~~ *Petition for limited* emancipation. (1) ~~The court may, upon the request of a~~ *A* youth who is 16 years of age or older, the youth's parent, or the department of public health and human services~~, enter~~ *may petition the court for* an order granting limited emancipation to the youth.

(2) ~~Limited emancipation may be granted only if the court has found~~ *The petition for limited emancipation must be in writing and must set forth*:

(a) the name, age, and address of the youth;

(b) the names and addresses of:

(i) the parents of the youth;

(ii) any legal guardian of the youth; or

(iii) if no parent or guardian can be found, the last-known address of the youth's parent or guardian and the name and address of the youth's nearest known relative residing in the state;

~~(a)~~*(c)* that limited emancipation is in the youth's best interests;

~~(b)~~*(d)* that the youth desires limited emancipation;

~~(c)~~*(e)* that there exists no public interest compelling denial of limited emancipation;

~~(d)~~*(f)* that the youth has, or will reasonably obtain, money sufficient to pay for financial obligations incurred as a result of limited emancipation;

~~(e)~~*(g)* that the youth, as shown by prior conduct and preparation, understands and may be expected to responsibly exercise those rights and responsibilities incurred as a result of limited emancipation;

~~(f)~~*(h)* that the youth has graduated or will continue to diligently pursue graduation from high school, unless circumstances clearly compel deferral of education; and

~~(g)~~*(i)* that, if it is considered necessary by the court, the youth will undergo periodic counseling with an appropriate advisor.

~~(3) An order of limited emancipation must specifically set forth the rights and responsibilities that are being conferred upon the youth. These may include but are not limited to one or more of the following:~~

~~(a) the right to live independently of in-house supervision;~~

~~(b) the right to live in housing of the youth's choice;~~

~~(c) the right to directly receive and expend money to which the youth is entitled and to conduct the youth's own financial affairs;~~

~~(d) the right to enter into contractual agreements and incur debts;~~

~~(e) the right to obtain access to medical treatment and records upon the youth's own authorization; and~~

~~(f) the right to obtain a license to operate equipment or perform a service.~~

~~(4) An order of limited emancipation must include a provision requiring that the youth make periodic reports to the court upon terms prescribed by the court.~~

~~(5) The court, on its own motion or on the motion of the county attorney or any parties to the dispositional hearing, may modify or revoke the order upon a showing that:~~

~~(a) the youth has committed a material violation of the law;~~

~~(b) the youth has violated a condition of the limited emancipation order; or~~

~~(c) the best interests of the youth are no longer served by limited emancipation.~~"

Section 3. Hearing and notice. (1) At least 10 days before the petition for limited emancipation is heard, notice that the court determines is reasonable must be given to the youth's parent, guardian, or other person identified in

41-1-501(2)(b). Service must be waived if proof is made to the court that the address of the parents or legal guardian is unavailable or unascertainable.

(2) The notice must include the date and place of hearing and a form on which the youth's parents, legal guardian, or other person entitled to the custody of the youth may give the person's written consent to the limited emancipation.

Section 4. Order of limited emancipation. (1) Limited emancipation may be granted only if the court has found that the youth satisfies the requirements of 41-1-501(2)(c) through (2)(i).

(2) An order of limited emancipation must specifically set forth the rights and responsibilities that are being conferred upon the youth. These may include but are not limited to one or more of the following:

(a) the right to live independently of in-house supervision;

(b) the right to live in housing of the youth's choice;

(c) the right to directly receive and expend money to which the youth is entitled and to conduct the youth's own financial affairs;

(d) the right to enter into contractual agreements and incur debts;

(e) the right to obtain access to medical treatment and records upon the youth's own authorization; and

(f) the right to obtain a license to operate equipment or perform a service.

(3) An order of limited emancipation must include a provision requiring that the youth make periodic reports to the court subject to terms prescribed by the court.

(4) The court, on its own motion or on the motion of the county attorney or any parties to the dispositional hearing, may modify or revoke the order upon a showing that:

(a) the youth has committed a material violation of the law;

(b) the youth has violated a condition of the limited emancipation order; or

(c) the best interests of the youth are no longer served by limited emancipation.

Section 5. Section 41-3-102, MCA, is amended to read:

"41-3-102. Definitions. As used in this chapter, the following definitions apply:

(1) (a) "Abandon", "abandoned", and "abandonment" mean:

(i) leaving a child under circumstances that make reasonable the belief that the parent does not intend to resume care of the child in the future;

(ii) willfully surrendering physical custody for a period of 6 months and during that period not manifesting to the child and the person having physical custody of the child a firm intention to resume physical custody or to make permanent legal arrangements for the care of the child;

(iii) that the parent is unknown and has been unknown for a period of 90 days and that reasonable efforts to identify and locate the parent have failed; or

(iv) the voluntary surrender, as defined in 40-6-402, by a parent of a newborn who is no more than 30 days old to an emergency services provider, as defined in 40-6-402.

(b) The terms do not include the voluntary surrender of a child to the department solely because of parental inability to access publicly funded services.

(2) "A person responsible for a child's welfare" means:

(a) the child's parent, guardian, foster parent or an adult who resides in the same home in which the child resides;

(b) a person providing care in a day-care facility;

(c) an employee of a public or private residential institution, facility, home, or agency; or

(d) any other person responsible for the child's welfare in a residential setting.

(3) "Abused or neglected" means the state or condition of a child who has suffered child abuse or neglect.

(4) (a) "Adequate health care" means any medical care or nonmedical remedial health care recognized by an insurer licensed to provide disability insurance under Title 33, including the prevention of the withholding of medically indicated treatment or medically indicated psychological care permitted or authorized under state law.

(b) This chapter may not be construed to require or justify a finding of child abuse or neglect for the sole reason that a parent or legal guardian, because of religious beliefs, does not provide adequate health care for a child. However, this chapter may not be construed to limit the administrative or judicial authority of the state to ensure that medical care is provided to the child when there is imminent substantial risk of serious harm to the child.

(5) "Best interests of the child" means the physical, mental, and psychological conditions and needs of the child and any other factor considered by the court to be relevant to the child.

(6) "Child" or "youth" means any person under 18 years of age.

(7) (a) "Child abuse or neglect" means:

(i) actual physical or psychological harm to a child;

(ii) substantial risk of physical or psychological harm to a child; or

(iii) abandonment.

(b) (i) The term includes:

(A) actual physical or psychological harm to a child or substantial risk of physical or psychological harm to a child by the acts or omissions of a person responsible for the child's welfare; or

(B) exposing a child to the criminal distribution of dangerous drugs, as prohibited by 45-9-101, the criminal production or manufacture of dangerous drugs, as prohibited by 45-9-110, or the operation of an unlawful clandestine laboratory, as prohibited by 45-9-132.

(ii) For the purposes of this subsection (7), "dangerous drugs" means the compounds and substances described as dangerous drugs in Schedules I through IV in Title 50, chapter 32, part 2.

(c) In proceedings under this chapter in which the federal Indian Child Welfare Act is applicable, this term has the same meaning as "serious emotional or physical damage to the child" as used in 25 U.S.C. 1912(f).

(d) The term does not include self-defense, defense of others, or action taken to prevent the child from self-harm that does not constitute physical or psychological harm to a child.

(8) "Concurrent planning" means to work toward reunification of the child with the family while at the same time developing and implementing an alternative permanent plan.

(9) "Department" means the department of public health and human services provided for in 2-15-2201.

(10) "Family group decisionmaking meeting" means a meeting that involves family members in either developing treatment plans or making placement decisions, or both.

(11) "Indian child" means any unmarried person who is under 18 years of age and who is either:

(a) a member of an Indian tribe; or

(b) eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.

(12) "Indian child's tribe" means:

(a) the Indian tribe in which an Indian child is a member or eligible for membership; or

(b) in the case of an Indian child who is a member of or eligible for membership in more than one Indian tribe, the Indian tribe with which the Indian child has the more significant contacts.

(13) "Indian custodian" means any Indian person who has legal custody of an Indian child under tribal law or custom or under state law or to whom temporary physical care, custody, and control have been transferred by the child's parent.

(14) "Indian tribe" means any Indian tribe, band, nation, or other organized group or community of Indians recognized by:

(a) the state of Montana; or

(b) the United States secretary of the interior as being eligible for the services provided to Indians or because of the group's status as Indians, including any Alaskan native village as defined in federal law.

(15) "Limited emancipation" means a status conferred on a youth by a court in accordance with ~~41-1-501~~ *[section 4]* under which the youth is entitled to exercise some but not all of the rights and responsibilities of a person who is 18 years of age or older.

(16) "Parent" means a biological or adoptive parent or stepparent.

(17) "Parent-child legal relationship" means the legal relationship that exists between a child and the child's birth or adoptive parents, as provided in Title 40, chapter 6, part 2, unless the relationship has been terminated by competent judicial decree as provided in 40-6-234, Title 42, or part 6 of this chapter.

(18) "Permanent placement" means reunification of the child with the child's parent, adoption, placement with a legal guardian, placement with a fit and willing relative, or placement in another planned permanent living arrangement until the child reaches 18 years of age.

(19) "Physical abuse" means an intentional act, an intentional omission, or gross negligence resulting in substantial skin bruising, internal bleeding, substantial injury to skin, subdural hematoma, burns, bone fractures, extreme

pain, permanent or temporary disfigurement, impairment of any bodily organ or function, or death.

(20) "Physical neglect" means either failure to provide basic necessities, including but not limited to appropriate and adequate nutrition, protective shelter from the elements, and appropriate clothing related to weather conditions, or failure to provide cleanliness and general supervision, or both, or exposing or allowing the child to be exposed to an unreasonable physical or psychological risk to the child.

(21) (a) "Physical or psychological harm to a child" means the harm that occurs whenever the parent or other person responsible for the child's welfare:

(i) inflicts or allows to be inflicted upon the child physical abuse, physical neglect, or psychological abuse or neglect;

(ii) commits or allows sexual abuse or exploitation of the child;

(iii) induces or attempts to induce a child to give untrue testimony that the child or another child was abused or neglected by a parent or other person responsible for the child's welfare;

(iv) causes malnutrition or a failure to thrive or otherwise fails to supply the child with adequate food or fails to supply clothing, shelter, education, or adequate health care, though financially able to do so or offered financial or other reasonable means to do so;

(v) exposes or allows the child to be exposed to an unreasonable risk to the child's health or welfare by failing to intervene or eliminate the risk; or

(vi) abandons the child.

(b) The term does not include a youth not receiving supervision solely because of parental inability to control the youth's behavior.

(22) (a) "Protective services" means services provided by the department:

(i) to enable a child alleged to have been abused or neglected to remain safely in the home;

(ii) to enable a child alleged to have been abused or neglected who has been removed from the home to safely return to the home; or

(iii) to achieve permanency for a child adjudicated as a youth in need of care when circumstances and the best interests of the child prevent reunification with parents or a return to the home.

(b) The term includes emergency protective services provided pursuant to 41-3-301, voluntary protective services provided pursuant to 41-3-302, and court-ordered protective services provided pursuant to parts 4 and 6 of this chapter.

(23) (a) "Psychological abuse or neglect" means severe maltreatment through acts or omissions that are injurious to the child's emotional, intellectual, or psychological capacity to function, including the commission of acts of violence against another person residing in the child's home.

(b) The term may not be construed to hold a victim responsible for failing to prevent the crime against the victim.

(24) "Qualified expert witness" as used in cases involving an Indian child in proceedings subject to the federal Indian Child Welfare Act means:

(a) a member of the Indian child's tribe who is recognized by the tribal community as knowledgeable in tribal customs as they pertain to family organization and child-rearing practices;

(b) a lay expert witness who has substantial experience in the delivery of child and family services to Indians and extensive knowledge of prevailing social and cultural standards and child-rearing practices within the Indian child's tribe; or

(c) a professional person who has substantial education and experience in providing services to children and families and who possesses significant knowledge of and experience with Indian culture, family structure, and child-rearing practices in general.

(25) "Reasonable cause to suspect" means cause that would lead a reasonable person to believe that child abuse or neglect may have occurred or is occurring, based on all the facts and circumstances known to the person.

(26) "Residential setting" means an out-of-home placement where the child typically resides for longer than 30 days for the purpose of receiving food, shelter, security, guidance, and, if necessary, treatment.

(27) (a) "Sexual abuse" means the commission of sexual assault, sexual intercourse without consent, indecent exposure, deviate sexual conduct, sexual abuse, ritual abuse, or incest, as described in Title 45, chapter 5.

(b) Sexual abuse does not include any necessary touching of an infant's or toddler's genital area while attending to the sanitary or health care needs of that infant or toddler by a parent or other person responsible for the child's welfare.

(28) "Sexual exploitation" means allowing, permitting, or encouraging a child to engage in a prostitution offense, as described in 45-5-601 through 45-5-603, or allowing, permitting, or encouraging sexual abuse of children as described in 45-5-625.

(29) (a) "Social worker" means an employee of the department who, before the employee's field assignment, has been educated or trained in a program of social work or a related field that includes cognitive and family systems treatment or who has equivalent verified experience or verified training in the investigation of child abuse, neglect, and endangerment.

(b) This definition does not apply to any provision of this code that is not in this chapter.

(30) "Treatment plan" means a written agreement between the department and the parent or guardian or a court order that includes action that must be taken to resolve the condition or conduct of the parent or guardian that resulted in the need for protective services for the child. The treatment plan may involve court services, the department, and other parties, if necessary, for protective services.

(31) "Unfounded" means that after an investigation, the investigating person has determined that the reported abuse, neglect, or exploitation has not occurred.

(32) "Unsubstantiated" means that after an investigation, the investigator was unable to determine by a preponderance of the evidence that the reported abuse, neglect, or exploitation has occurred.

(33) (a) "Withholding of medically indicated treatment" means the failure to respond to an infant's life-threatening conditions by providing treatment, including appropriate nutrition, hydration, and medication, that, in the treating physician's or physicians' reasonable medical judgment, will be most likely to be effective in ameliorating or correcting the conditions.

(b) The term does not include the failure to provide treatment, other than appropriate nutrition, hydration, or medication, to an infant when, in the treating physician's or physicians' reasonable medical judgment:

(i) the infant is chronically and irreversibly comatose;

(ii) the provision of treatment would:

(A) merely prolong dying;

(B) not be effective in ameliorating or correcting all of the infant's life-threatening conditions; or

(C) otherwise be futile in terms of the survival of the infant; or

(iii) the provision of treatment would be virtually futile in terms of the survival of the infant and the treatment itself under the circumstances would be inhumane. For purposes of this subsection (33), "infant" means an infant less than 1 year of age or an infant 1 year of age or older who has been continuously hospitalized since birth, who was born extremely prematurely, or who has a long-term disability. The reference to less than 1 year of age may not be construed to imply that treatment should be changed or discontinued when an infant reaches 1 year of age or to affect or limit any existing protections available under state laws regarding medical neglect of children 1 year of age or older.

(34) "Youth in need of care" means a youth who has been adjudicated or determined, after a hearing, to be or to have been abused, neglected, or abandoned."

Section 6. Section 41-3-438, MCA, is amended to read:

"41-3-438. Disposition — hearing — order. (1) Unless a petition is dismissed or unless otherwise stipulated by the parties pursuant to 41-3-434 or ordered by the court, a dispositional hearing must be held on every petition filed under this chapter within 20 days after an adjudicatory order has been entered under 41-3-437. Exceptions to the time limit may be allowed only in cases involving newly discovered evidence, unavoidable delays, stipulation by the parties pursuant to 41-3-434, and unforeseen personal emergencies.

(2) (a) A dispositional order must be made after a dispositional hearing that is separate from the adjudicatory hearing under 41-3-437. The hearing process must be scheduled and structured so that dispositional issues are specifically addressed apart from adjudicatory issues. Hearsay evidence is admissible at the dispositional hearing.

(b) A dispositional hearing may follow an adjudicatory hearing in a bifurcated manner immediately after the adjudicatory phase of the proceedings if:

(i) all required reports are available and have been received by all parties or their attorneys at least 5 working days in advance of the hearing; and

(ii) the judge has an opportunity to review the reports after the adjudication.

(c) The dispositional hearing may be held prior to the entry of written findings required by 41-3-437.

(3) If a child is found to be a youth in need of care under 41-3-437, the court may enter its judgment, making any of the following dispositions to protect the welfare of the child:

(a) permit the child to remain with the child's custodial parent or guardian, subject to those conditions and limitations the court may prescribe;

(b) order the department to evaluate the noncustodial parent as a possible caretaker;

(c) order the temporary placement of the child with the noncustodial parent, superseding any existing custodial order, and keep the proceeding open pending completion by the custodial parent of any treatment plan ordered pursuant to 41-3-443;

(d) order the placement of the child with the noncustodial parent, superseding any existing custodial order, and dismiss the proceeding with no further obligation on the part of the department to provide services to the parent with whom the child is placed or to work toward reunification of the child with the parent or guardian from whom the child was removed in the initial proceeding;

(e) grant an order of limited emancipation to a child who is 16 years of age or older, as provided in ~~41-1-501~~ *[section 4]*;

(f) transfer temporary legal custody to any of the following:

(i) the department;

(ii) a licensed child-placing agency that is willing and able to assume responsibility for the education, care, and maintenance of the child and that is licensed or otherwise authorized by law to receive and provide care of the child; or

(iii) a nonparent relative or other individual who has been evaluated and recommended by the department or a licensed child-placing agency designated by the court and who is found by the court to be qualified to receive and care for the child;

(g) order a party to the action to do what is necessary to give effect to the final disposition, including undertaking medical and psychological evaluations, treatment, and counseling that does not require an expenditure of money by the department unless the department consents and informs the court that resources are available for payment. The department is the payor of last resort after all family, insurance, and other resources have been examined.

(h) order further care and treatment as the court considers in the best interests of the child that does not require an expenditure of money by the department unless the department consents and informs the court that resources are available for the proposed care and treatment. The department is the payor of last resort after all family, insurance, and other resources have been examined pursuant to 41-3-446.

(4) (a) If the court awards temporary legal custody of an abandoned child other than to the department or to a noncustodial parent, the court shall award temporary legal custody of the child to a member of the child's extended family, including adult siblings, grandparents, great-grandparents, aunts, and uncles, if:

(i) placement of the abandoned child with the extended family member is in the best interests of the child;

(ii) the extended family member requests that the child be placed with the family member; and

(iii) the extended family member is found by the court to be qualified to receive and care for the child.

(b) If more than one extended family member satisfies the requirements of subsection (4)(a), the court may award custody to the extended family member who can best meet the child's needs.

(c) If a member of the child's extended family, including an adult sibling, grandparent, great-grandparent, aunt, or uncle, has requested that custody be awarded to that family member, the department shall investigate and determine if awarding custody to the family member is in the best interests of the child. The department shall provide the reasons for any denial to the court. If the court accepts the department's custody recommendation, the court shall inform any denied family member of the reasons for the denial to the extent that confidentiality laws allow. The court shall include the reasons for denial in the court order if the family member who is denied temporary legal custody requests it to be included.

(5) If reasonable efforts have been made to prevent removal of a child from the home or to return a child to the child's home but continuation of the efforts is determined by the court to be inconsistent with permanency for the child, the department shall make reasonable efforts to place the child in a timely manner in accordance with a permanent plan and to complete whatever steps are necessary to finalize the permanent placement of the child.

(6) If the court finds that reasonable efforts are not necessary pursuant to 41-3-442(1) or subsection (5) of this section, a permanency hearing must be held within 30 days of that determination and reasonable efforts must be made to place the child in a timely manner in accordance with the permanency plan and to complete whatever steps are necessary to finalize the permanent placement of the child.

(7) If the time limitations of this section are not met, the court shall review the reasons for the failure and order an appropriate remedy that considers the best interests of the child."

Section 7. Codification instruction. [Sections 3 and 4] are intended to be codified as an integral part of Title 41, chapter 1, part 5, and the provisions of Title 41, chapter 1, part 5, apply to [sections 3 and 4].

Approved April 6, 2009

CHAPTER NO. 180

[SB 341]

AN ACT REVISING THE LAW RELATING TO THE RECOVERY FROM DEFENDANTS OF PROSECUTION COSTS; AMENDING SECTION 46-18-232, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Legislative findings — cost of criminal proceedings. With respect to the cost of criminal proceedings, the legislature finds that:

(1) the vast majority of the cost of the criminal proceedings in the state is borne by the general taxpaying public;

(2) it is in the state's best interest to attempt to recover as much as possible of the cost of criminal proceedings from individuals who have been convicted of violating state laws;

(3) various courts in the state of Montana have recently held that certain reasonable fees imposed upon defendants in criminal proceedings in the state,

such as fees for general cost of prosecution, pretrial supervision, and community service supervision, were unlawful because there was no specific statutory authorization for the imposition of the costs on the defendant; and

(4) the costs of prosecution and supervision of criminal defendants is a shared responsibility of the state and the counties.

Section 2. Section 46-18-232, MCA, is amended to read:

"46-18-232. Payment of costs by defendant. (1) A court may require a convicted defendant in a felony or misdemeanor case to pay costs, as defined in 25-10-201, plus costs of jury service*, costs of prosecution, and the cost of pretrial, probation, or community service supervision* as a part of ~~his~~ *the defendant's* sentence. ~~Such~~ *The* costs*, in addition to those allowable under 25-10-201,* ~~shall~~ *must* be limited to expenses specifically incurred by the prosecution *or other agency* in connection with the proceedings against the defendant *or $100 per felony case or $50 per misdemeanor case, whichever is greater*.

(2) The court may not sentence a defendant to pay costs unless the defendant is or will be able to pay them. In determining the amount and method of payment of costs, the court shall take into account the financial resources of the defendant*, the future ability of the defendant to pay costs,* and the nature of the burden that payment of costs will impose.

(3) A defendant who has been sentenced to pay costs and who is not in default in the payment ~~thereof~~ may at any time petition the court that sentenced ~~him~~ *the defendant* for remission of the payment of costs or of any unpaid portion ~~thereof~~ *of the costs*. If it appears to the satisfaction of the court that payment of the amount due will impose manifest hardship on the defendant or ~~his~~ *the defendant's* immediate family, the court may remit all or part of the amount due in costs or modify the method of payment."

Section 3. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 46, chapter 18, part 2, and the provisions of Title 46, chapter 18, part 2, apply to [section 1].

Section 4. Effective date. [This act] is effective July 1, 2009.

Approved April 6, 2009

CHAPTER NO. 181

[SB 395]

AN ACT CLARIFYING AMBIGUITIES IN THE BEER FRANCHISE LAW; REAFFIRMING THE CORE PURPOSES OF THE ALCOHOLIC BEVERAGE CODE IN RELATION TO THE TWENTY-FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION; CLARIFYING THE NONWAIVER NATURE OF THE PROVISIONS OF THE BEER FRANCHISE LAW; CLARIFYING THAT JUST CAUSE REQUIRES THAT THE WHOLESALER FAILED TO COMPLY WITH THE REASONABLE CONTRACTUAL REQUIREMENTS OF THE BREWER; CLARIFYING THAT THE APPOINTMENT OF A WHOLESALER TO A BRAND IN AN EXCLUSIVE TERRITORY IS NOT AFFECTED BY A TRANSFER OF OWNERSHIP OF THE MANUFACTURER OF THAT BRAND; PROVIDING THAT THE BEER FRANCHISE LAW MUST BE LIBERALLY CONSTRUED; AMENDING SECTIONS 16-1-101, 16-3-221, AND 16-3-222, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 16-1-101, MCA, is amended to read:

"16-1-101. Citation — declaration of policy — subject matters of regulation. (1) Chapters 1 through 4 and 6 of this title may be cited as the "Montana Alcoholic Beverage Code".

(2) It is the policy of the state of Montana to effectuate and ensure the entire control of the manufacture, sale, importation, and distribution of alcoholic beverages within the state subject to the authority of the state acting through the department.

(3) This code is an exercise of the police power of the state for the protection of the welfare, health, peace, morals, and safety of the people of the state and of the state's power under the 21st amendment to the United States constitution to control the transportation and importation of alcoholic beverages into the state. *The overall purposes of this code under the 21st amendment to the United States constitution are to promote temperance, create orderly markets, and aid in the collection of taxes.* The provisions of this code must be broadly construed to accomplish these purposes."

Section 2. Section 16-3-221, MCA, is amended to read:

"16-3-221. Illegal acts by brewers or beer importers. *(1)* It is unlawful for any brewer or beer importer or any officer, agent, or representative of any brewer or beer importer to:

~~(1)~~*(a)* coerce, attempt to coerce, or persuade any person licensed to sell beer at wholesale to enter into any agreement or to take any action that would violate or tend to violate any of the laws of this state or any rules promulgated by the department;

~~(2)~~*(b)* sell its products in the state without a written contract, which conforms to the provisions of 16-3-221 through 16-3-226, with each appointed licensed wholesale distributor;

~~(3)~~*(c)* designate or allow more than one wholesale distributor to sell or distribute a specific brand of the brewer's or beer importer's products to retail licensees in the same area, provided that nothing in this part prohibits the brewer or beer importer from designating more than one wholesale distributor to sell or distribute different brands of the same manufacturer to retail licensees in the same area;

~~(4)~~*(d)* fix or maintain the price at which a wholesale distributor resells the brewer's or beer importer's products. Without limitation, it is a violation of this section if:

~~(a)~~*(i)* after a wholesale distributor has exceeded a resale price increase recommended by a brewer or beer importer, the brewer or beer importer raises the price that it charges the wholesale distributor for those products within 60 days;

~~(b)~~*(ii)* after a wholesale distributor has exceeded a resale price increase recommended by a brewer or beer importer, the brewer or beer importer raises the price that it charges the wholesale distributor in an amount proportionately larger than the amount that it raised the wholesale distributor's prices initially when compared to the increase in the resale price that it recommended to the wholesale distributor; or

~~(c)~~*(iii)* the brewer or beer importer links or ties its participation in promotional discounts to the wholesale distributor's compliance with any recommended resale price.

~~(5)~~*(e)* cancel, ~~or~~ terminate, *discontinue, or fail to renew,* except for just cause ~~or~~ *and* in accordance with the current terms and standards established by the brewer or beer importer then equally applicable to all wholesalers, any agreement or contract, written or oral, or the franchise of any wholesaler existing on January 1, 1974, or entered into after that date to sell beer manufactured by the brewer or imported by the beer importer. A brewer or beer importer may, notwithstanding the preceding sentence, make reasonable classifications among wholesalers. If a brewer or beer importer cancels or terminates a wholesaler's franchise, the brewer or beer importer has the burden of proving that the classification was reasonable and not arbitrary. ~~After July 1, 1974, the~~ *The* provisions of 16-3-221 through 16-3-226 must be a part of any franchise, contract, agreement, or understanding, whether written or oral, between any wholesaler of beer licensed to do business in this state and any manufacturer or beer importer doing business with the licensed wholesaler just as though the provisions had been specifically agreed upon between the wholesaler and the manufacturer or beer importer. *A wholesaler of beer licensed to conduct business in the state may not waive any of the protections or agree to any provision contrary to 16-3-221 through 16-3-226, by any conduct, including but not limited to the signing of any contract or agreement with terms contrary to those provisions.*

(2) (a) Just cause as used in subsection (1)(e) means that the wholesaler failed to comply with the reasonable requirements placed on the wholesaler by the brewer or beer importer as a part of any written franchise, contract, or agreement between the parties.

(b) The sale or purchase or other restructuring of the brewer or beer importer by a successor in the manufacturing tier of the beer industry does not constitute just cause as that term is used in subsection (1)(e).

(c) For the purposes of this subsection (2), a successor means a person or entity who replaces a brewer or beer importer with regard to the right to manufacture, sell, distribute, or import a brand or brands of beer regardless of the character or form of the succession. A successor is obligated to all of the terms and conditions of any franchise, contract, agreement, or understanding, whether written or oral, in effect on the date of succession. A successor has the right to contractually require its wholesalers to comply with operational standards of performance if the standards are uniformly established for all of the successor's wholesalers and conform to the requirements of this section."

Section 3. Section 16-3-222, MCA, is amended to read:

"16-3-222. Mandatory provisions of brewer-wholesaler or beer importer-wholesaler contracts, agreements, and franchises. All contracts, agreements, or franchises between a brewer and a wholesaler or a beer importer and a wholesaler must specifically set forth or contain the following:

(1) that the brewer or beer importer or any officer, agent, or representative of any brewer or beer importer and the wholesaler involved mutually shall determine the size or extent of the area in which the wholesaler may sell or distribute the products of the brewer or beer importer to the retail licensees. The territory must be the territory agreed upon between the wholesaler and brewer or the wholesaler and beer importer and may not be changed without the mutual consent of both the wholesaler and brewer or the wholesaler and beer importer.

(2) the agreed-upon brands of the brewer or beer importer to be sold by the wholesaler;

(3) that the brewer or beer importer recognizes that the wholesaler is free to manage the wholesaler's business in the manner that the wholesaler considers best and that this prerogative vests in the wholesaler the exclusive right to establish selling prices, to select the brands that the wholesaler wishes to handle, and to determine the effort and resources that the wholesaler will exert to develop and promote the sale of the brewer's or beer importer's products handled by the wholesaler;

(4) a procedure for the review of alleged wholesaler deficiencies *asserted by the brewer or beer importer to constitute just cause as provided in 16-3-221*, including the submission in writing to the wholesaler by the brewer or beer importer of the deficiencies, if the deficiencies are susceptible of correction and if the wholesaler desires to correct the deficiencies, and that a reasonable period of time must be given the wholesaler for rectification of the deficiencies prior to any notice of intent to terminate;

(5) a termination clause providing that the brewer or beer importer shall deliver, in writing, to the wholesaler a 60-day notice of intent to terminate the agreement, contract, or franchise;

(6) that all agreements between a brewer and a wholesaler are interpreted and governed by the laws of Montana *and that those laws must be liberally construed to effectuate the remedial purpose of the protections of the beer franchise law contained in 16-3-221 through 16-3-226*;

(7) that in any dispute resulting in litigation between a brewer or a beer importer and a wholesaler, the litigation must occur in a Montana court, either federal or state, unless that forum would create an unreasonable burden on any party, as determined by the court in which the litigation is commenced;

(8) that all agreements between a brewer or a beer importer and a wholesaler must recognize the constitutional right to a jury trial as set forth in Article II, section 26, of the Montana constitution."

Section 4. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 5. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 6. Effective date. [This act] is effective on passage and approval.

Approved April 6, 2009

CHAPTER NO. 182

[HB 326]

AN ACT PROVIDING THAT A NOTICE OF THE RIGHT TO CLAIM A LIEN AND A RELEASE OF A NOTICE OF THE RIGHT TO CLAIM A LIEN MUST BE FILED WITH THE CLERK AND RECORDER AND MUST BE SIGNED BY THE PERSON OR THE PERSON'S AGENT WHO FILED THE NOTICE OF THE RIGHT TO CLAIM A LIEN OR THE RELEASE OF A NOTICE OF THE RIGHT TO CLAIM A LIEN; AND AMENDING SECTION 71-3-531, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 71-3-531, MCA, is amended to read:

"71-3-531. Notice of right to claim lien required — exceptions. (1) The following are not required to give notice of ~~a~~ *the* right to claim a lien as required by this section:

(a) an original contractor who furnishes services or materials directly to the owner at the owner's request;

(b) a wage earner or laborer who performs personal labor services for a person furnishing any service or material pursuant to a real estate improvement contract;

(c) a person who furnishes services or materials pursuant to a real estate improvement contract that relates to a dwelling for five or more families; and

(d) a person who furnishes services or materials pursuant to a real estate improvement contract that relates to an improvement that is partly or wholly commercial in character.

(2) A person who may claim a construction lien pursuant to this part shall give notice of the right to claim a lien to the contracting owner in order to claim a lien.

(3) Except as provided in subsection (4), the notice may not be given later than 20 days after the date on which the services or materials are first furnished to the contracting owner. If notice is not given within this period, a lien is enforceable only for the services or materials furnished within the 20-day period before the date on which notice is given.

(4) When payment for services or materials furnished pursuant to a real estate improvement contract, excluding a contract on an owner-occupied residence, is made by or on behalf of the contracting owner from funds provided by a regulated lender and secured by an interest, lien, mortgage, or encumbrance for the purpose of paying the particular real estate improvement being liened, the notice required by this section may not be given later than 45 days after the date on which the services or materials are first furnished to the contracting owner. If notice is not given within this period, a lien is enforceable only for the services or materials furnished within the 45-day period before the date on which notice is given.

(5) The notice of the right to claim a lien must be sent to the contracting owner by certified mail or delivered personally to the owner. Notice by certified mail is effective on the date on which the notice is mailed. If the notice is delivered personally to the contracting owner, written acknowledgment of receipt must be obtained from the contracting owner. A person may not claim a construction lien unless the person has complied with this subsection.

(6) (a) A person who may claim a lien shall also file with the clerk and recorder of the county in which the improved real estate is located a copy of the notice of the right to claim a lien, in the form required by 71-3-532. This copy may not be filed later than 5 business days after the date on which the notice of the right to claim a lien is given to the contracting owner. *The notice filed with the clerk and recorder must be signed by the person filing the notice or by a person authorized to sign for the person filing the notice.*

(b) The county clerk and recorder may allow the notice of the right to claim a lien to be electronically filed. *A notice filed electronically with the clerk and recorder must be electronically signed by the person filing the notice or by a person authorized to sign for the person filing the notice.*

(c) The notice filed with the clerk and recorder for the purpose of public notice is effective for 1 year from the date of filing. The notice lapses upon the

expiration of the 1-year period unless the person who may claim a lien files with the clerk and recorder a 1-year continuation of the notice prior to the date on which the notice lapses. The clerk and recorder may remove the notice from the public record when it lapses.

(d) ~~The~~ *A* continuation ~~statement~~ *of the notice must be signed by the person who filed the original notice of the right to claim a lien or by a person authorized to sign for the person who filed the original notice of the right to claim a lien and* must include:

(i) the clerk and recorder's file number of the *original* notice;

(ii) the date on which the *original* notice ~~originally~~ was filed; and

(iii) the name of the person to whom the original notice was given.

(e) If a notice of ~~a~~ *the* right to claim a lien is required under this section, a person may not claim a construction lien pursuant to this part unless there is an unexpired notice of right to claim a construction lien or an unexpired continuation notice filed with the clerk and recorder at the time that the person files the lien.

(7) A contracting owner shall provide in the construction contract with the original contractor:

(a) a street address or legal description that is sufficient to identify the real estate being improved; and

(b) the name and address of the contracting owner.

(8) At the request of any subcontractor or material supplier who may claim a lien through an original contractor providing services or materials to a contracting owner, the original contractor shall furnish to the requestor within 5 business days:

(a) a street address or legal description sufficient to identify the real estate being improved; and

(b) the name and address of the contracting owner."

Section 2. Release of notice of right to claim lien. (1) A person who has filed a notice of the right to claim a lien shall file a release of the notice of the right to claim a lien when the person is paid for the services and materials that are the subject of the notice of the right to claim a lien.

(2) If a person subject to the provisions of subsection (1) has been paid for the services and materials pursuant to a real estate improvement contract, the person shall file a release of the notice of the right to claim a lien within 5 business days of the contracting owner's request that the release be filed.

(3) The release must be filed with the clerk and recorder of the county in which the improved real estate is located and must include:

(a) the clerk and recorder's file number of the notice of the right to claim a lien;

(b) the date on which the notice of the right to claim a lien was filed; and

(c) the name of the person to whom the notice of the right to claim a lien was given.

(4) The release must be signed by the person who filed the notice of the right to claim a lien or by a person authorized to sign for the person who filed the notice of the right to claim a lien.

Section 3. Codification instruction. [Section 2] is intended to be codified as an integral part of Title 71, chapter 3, part 5, and the provisions of Title 71, chapter 3, part 5, apply to [section 2].

Approved April 6, 2009

CHAPTER NO. 183

[SB 21]

AN ACT CLARIFYING THE DISTRIBUTION OF CERTAIN MOTOR VEHICLE REVENUE; CORRECTING THE BASE DISTRIBUTION AMOUNTS FOR THE ADOPTION SERVICES ACCOUNT AND THE DEPARTMENT OF TRANSPORTATION STATE SPECIAL REVENUE NONRESTRICTED ACCOUNT TO PROVIDE FOR FUNDING AS ORIGINALLY ENACTED FOR MOTOR VEHICLE FUND DISTRIBUTIONS; PROVIDING FOR A DISTRIBUTION TO THE ADOPTION SERVICES ACCOUNT FOR AN AMOUNT EQUAL TO THAT NOT PAID DUE TO THE USE OF THE ERRONEOUS BASE AMOUNT FOR COMPUTING THE DISTRIBUTION; AMENDING SECTION 15-1-122, MCA; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-1-122, MCA, is amended to read:

"15-1-122. Fund transfers. (1) There is transferred from the state general fund to the adoption services account, provided for in 42-2-105, a base amount of ~~$36,764~~ *$59,209*, and the amount of the transfer must be increased by 10% in each succeeding fiscal year.

(2) There is transferred from the state general fund to the department of transportation state special revenue nonrestricted account a base amount of ~~$3,050,205~~ *$3,142,397*, increased by 1.5% in each succeeding fiscal year.

(3) For each fiscal year, there is transferred from the state general fund to the accounts, entities, or recipients indicated the following amounts:

(a) to the motor vehicle recycling and disposal program provided for in Title 75, chapter 10, part 5, 1.48% of the motor vehicle revenue deposited in the state general fund in each fiscal year. The amount of 9.48% of the allocation in each fiscal year must be used for the purpose of reimbursing the hired removal of abandoned vehicles. Any portion of the allocation not used for abandoned vehicle removal reimbursement must be used as provided in 75-10-532.

(b) to the noxious weed state special revenue account provided for in 80-7-816, 1.50% of the motor vehicle revenue deposited in the state general fund in each fiscal year;

(c) to the department of fish, wildlife, and parks:

(i) 0.46% of the motor vehicle revenue deposited in the state general fund, with the applicable percentage to be:

(A) used to:

(I) acquire and maintain pumpout equipment and other boat facilities, 4.8% in each fiscal year;

(II) administer and enforce the provisions of Title 23, chapter 2, part 5, 19.1% in each fiscal year;

(III) enforce the provisions of 23-2-804, 11.1% in each fiscal year; and

(IV) develop and implement a comprehensive program and to plan appropriate off-highway vehicle recreational use, 16.7% in each fiscal year; and

(B) deposited in the state special revenue fund established in 23-1-105 in an amount equal to 48.3% in each fiscal year;

(ii) 0.10% of the motor vehicle revenue deposited in the state general fund in each fiscal year, with 50% of the amount to be used for enforcing the purposes of 23-2-601, 23-2-602, 23-2-611, 23-2-614 through 23-2-618, 23-2-621, 23-2-622, 23-2-631 through 23-2-635, and 23-2-641 through 23-2-644 and 50% of the amount designated for use in the development, maintenance, and operation of snowmobile facilities; and

(iii) 0.16% of the motor vehicle revenue deposited in the state general fund in each fiscal year to be deposited in the motorboat account to be used as provided in 23-2-533;

(d) 0.64% of the motor vehicle revenue deposited in the state general fund in each fiscal year, with 24.55% to be deposited in the state veterans' cemetery account provided for in 10-2-603 and with 75.45% to be deposited in the veterans' services account provided for in 10-2-112(1);

(e) 0.30% of the motor vehicle revenue deposited in the state general fund in each fiscal year for deposit in the state special revenue fund to the credit of the senior citizens and persons with disabilities transportation services account provided for in 7-14-112; and

(f) to the search and rescue account provided for in 10-3-801, 0.04% of the motor vehicle revenue deposited in the state general fund in each fiscal year.

(4) For the purposes of this section, "motor vehicle revenue deposited in the state general fund" means revenue received from:

(a) fees for issuing a motor vehicle title paid pursuant to 61-3-203;

(b) fees, fees in lieu of taxes, and taxes for vehicles, vessels, and snowmobiles registered or reregistered pursuant to 61-3-321 and 61-3-562;

(c) GVW fees for vehicles registered for licensing pursuant to Title 61, chapter 3, part 3; and

(d) all money collected pursuant to 15-1-504(3).

(5) The amounts transferred from the general fund to the designated recipient must be appropriated as state special revenue in the general appropriations act for the designated purposes."

Section 2. Transfer to adoption services account. There is transferred $11,223 from the state general fund to the adoption services account provided in 42-2-105.

Section 3. Effective dates. (1) Except as provided in subsection (2), [this act] is effective on passage and approval.

(2) [Section 1] is effective July 1, 2009.

Approved April 3, 2009

CHAPTER NO. 184

[HB 133]

AN ACT REVISING LAWS RELATING TO THE ADMINISTRATION OF CHILD SUPPORT ENFORCEMENT; ALLOWING ALTERNATIVE

METHODS OF PAYMENT IN LIEU OF INCOME WITHHOLDING; CONFORMING CHILD SUPPORT ASSIGNMENT PROVISIONS TO THE FEDERAL DEFICIT REDUCTION ACT OF 2005; AMENDING SECTIONS 17-4-105, 40-5-225, 40-5-403, 40-5-601, 40-5-907, 53-2-110, AND 53-2-613, MCA; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-4-105, MCA, is amended to read:

"17-4-105. Authority to collect debt — offsets. (1) Once a debt of an agency has been transferred to the department, the department may collect it. The department may contract with commercial collection agents for recovery of debts owed to agencies.

(2) The department shall, when appropriate, offset any amount due an agency from a person or entity against any amount, including refunds of taxes, owing the person or entity by an agency. The department may not exercise this right of offset until the debtor has first been notified by the department and been given an opportunity for a hearing pursuant to 15-1-211. An offset may not be made against any amount paid out as child support collected by the department of public health and human services. The department shall deduct from the claim and draw warrants for the amounts offset in favor of the respective agencies to which the debt is due and for any balance in favor of the claimant. Whenever insufficient to offset all amounts due the agencies, the amount available must be applied first to debts owed by reason of the nonpayment of child support and then in the manner determined appropriate by the department.

(3) (a) The department may enter into an agreement with the federal government to offset against tax refunds payable by the federal government and pay to ~~this~~ *the* state ~~those~~ *any* taxes or other debts owed to an agency of ~~this~~ *the* state.

(b) (i) The department may enter into an agreement with another state or an agency of another state to offset against tax refunds payable by the other state or agency of the other state and pay to this state ~~those~~ *any* taxes or other debts owed to this state or an agency of this state.

(ii) To facilitate an agreement of the kind authorized by subsection (3)(b)(i), the department may enter into an agreement that allows the other state or agency of the other state to offset against tax refunds payable by this state the whole or part of an amount owed for taxes to the other state or agency of the other state. However, the department may enter into an agreement of the type authorized by this subsection (3)(b)(ii) only if the other state or agency of the other state allows this state or an agency of this state to offset against tax refunds owed by the other state or agency of the other state *any* taxes or other debts owed to this state or an agency of this state.

(c) A state or agency of another state entering into an agreement with the department pursuant to subsection (3)(b)(ii) may not exercise the offset against tax refunds unless the other state or agency of the other state has notified the taxpayer of the taxes due and has given the taxpayer an opportunity for review or appeal of the tax debt. Another state or agency of another state intending to offset taxes shall provide the department with proof of notification and opportunity for review or appeal before the offset is exercised.

(4) (a) A debt owed to the department of public health and human services or being collected by the department of public health and human services on behalf of any person or agency may be offset by the department if the debt is being

enforced or collected by the department of public health and human services under Title IV-D of the Social Security Act.

(b) The debt *does not* need ~~not~~ *to* be determined to be uncollectible as provided for in 17-4-104 before being transferred to the department for offset. The debt must have accrued through written contract, court judgment, ~~or~~ administrative order*, or a distribution the recipient was not entitled to retain as described in 40-5-910*.

(c) Within 30 days following the notification provided for in subsection (2), the person owing a debt described in subsection (4)(a) may request a hearing. The request must be in writing and be mailed to the department. The person owing a debt is not entitled to a hearing if the amount of the debt has been the subject matter of any proceeding conducted for the purpose of determining the validity of the debt and a decision made as a result of that proceeding has become final. The hearing must initially be conducted by teleconferencing methods and is subject to the provisions of the Montana Administrative Procedure Act. The department of public health and human services shall adopt rules governing the hearing procedures.

(5) If the department determines that a person or entity has refused or neglected to file a claim within a reasonable time, the head of the state agency owing the amount shall file the claim on behalf of the person or entity. If the claim is approved by the department, the claim has the same force and effect as ~~though~~ *if it were* filed by the person or entity. The amount due any person or entity from the state or any agency of the state is the net amount otherwise owing the person or entity after any offset, as provided in this section.

(6) A debt owed to a state agency by a local government may not be offset against a payment due to a local government pursuant to 15-1-121."

Section 2. Section 40-5-225, MCA, is amended to read:

"40-5-225. Notice of financial responsibility — temporary and final support obligations — administrative procedure. (1) In the absence of an existing support order, when the requirements of this section are met, the department may enter an order requiring a child's parent or parents to pay an amount each month for the support of the child. An order issued under this section must include a medical support order as required by 40-5-208.

(2) ~~An~~ *The department shall begin an* action to establish a support order ~~must be commenced~~ by serving a notice of financial responsibility on the parent or parents. The notice must include a statement:

(a) of the names of the child, the obligee, and, if different than the obligee, the child's guardian or caretaker relative;

(b) of the dollar amount of the support obligation to be paid each month for the child, if any;

(c) that the monthly support obligation, if any, is effective on the date of service of the notice, unless an objection is made and a hearing is requested, and may be collected during the proceeding that establishes the support obligation by any remedy available to the department for the enforcement of child support obligations;

(d) that in addition to or independent of child support, the parent or parents may be ordered to provide for the child's medical support needs;

(e) that any party may request a hearing to contest the amount of child support shown in the notice or to contest the establishment of a medical support order;

(f) that if a party does not ~~timely~~ file a request for *a* hearing *in a timely manner*, support, including medical support, will be ordered as declared in the notice or in accordance with the child support guidelines adopted under 40-5-209;

(g) that if a party does request a hearing, the other parties may refuse to participate in the proceedings and that the child support and medical support order will be determined using the information available to the department or provided at the hearing;

(h) that a party's refusal to participate is ~~a consent~~ *equivalent to consenting* to entry of a child support and medical support order consistent with the department's determination; and

(i) that the parties are entitled to a fair hearing under 40-5-226.

(3) *(a)* ~~If~~ *The department may enter an order requiring a child's parent or parents to pay an amount each month for the temporary support of the child pending entry of a support order by the district court if:*

(i) a support action is pending in district court and a temporary or permanent support obligation has not been ordered*;* or

(ii) ~~if~~ a paternity action is pending and there is clear and convincing evidence of paternity based on paternity blood tests or other evidence~~, the department may enter an order requiring a child's parent or parents to pay an amount each month for the temporary support of the child pending entry of a support order by the district court~~.

(b) The temporary support order must include a medical support order as required by 40-5-208.

(c) A temporary support order may be modified by the department as provided in 40-5-272, 40-5-273, 40-5-277, and 40-5-278 but remains a temporary support order subject to the provisions of this section.

(4) ~~An~~ *The department shall begin an* action to establish a temporary support order ~~must be commenced~~ by serving a notice of temporary support obligation on the parent or parents. In addition to the statements required in subsection (2), the notice must include a statement that:

(a) a party may request a hearing to show that a temporary support obligation is inappropriate under the circumstances; and

(b) the temporary support order will terminate upon the entry of a final support order or an order of nonpaternity. If the final order is retroactive, any amount paid for a particular period under the temporary support order must be credited against the amounts due under the final order for the same period, but excess amounts may not be refunded. If an order of nonpaternity is issued or if the final support order states that periodic support obligation is not proper, the obligee shall refund to the obligor any improper amounts paid under the temporary support order, plus any costs that the obligor incurs in recovering the amount to be refunded.

(5) (a) If a temporary support order is entered or if proceedings are commenced under this section for a married obligor, the department shall vacate any support order or dismiss any proceeding under this part if it finds that the parties to the marriage have:

(i) reconciled without the marriage having been dissolved;

(ii) made joint application to the department to vacate the order or dismiss the proceeding; and

(iii) provided proof that the marriage has been resumed.

(b) The department may not vacate a support order or dismiss a proceeding under this subsection (5) if it determines that the rights of a third person or the child are affected. The department may issue a new notice of temporary support obligation under this section if the parties subsequently separate.

(6) A notice of financial responsibility and the notice of temporary support obligation may be served either by certified mail or in the manner prescribed for the service of a summons in a civil action in accordance with the Montana Rules of Civil Procedure.

(7) If prior to service of a notice under this section the department has sufficient financial information, the department's allegation of the obligor's monthly support responsibility, whether temporary or final, must be based on the child support guidelines established under 40-5-214. If the information is unknown to the department, the allegations of the parent's or parents' monthly support responsibility must be based on the greater of:

(a) the maximum amount of public assistance that could be payable to the child under Title 53 if the child was otherwise eligible for assistance; or

(b) the child's actual need as alleged by the custodial parent, guardian, or caretaker of the child.

(8) (a) A party who objects to a notice of financial responsibility or notice of temporary support obligation may file a written request for a hearing with the department:

(i) within 20 days from the date of service of a notice of financial responsibility; and

(ii) within 10 days from the date of service of a notice of temporary support obligation.

(b) If the department receives a timely request for a hearing, it shall conduct one under 40-5-226.

(c) If the department does not receive a timely request for a hearing, it shall order the parent or parents to pay child support, if any, and to provide for the child's medical needs as stated in the notice. The child support obligation must be the amount stated in the notice or determined in accordance with the child support guidelines adopted under 40-5-209.

(9) If the department is unable to enter an obligation in accordance with the child support guidelines because of default of a party, the department may, upon notice to the parties to the original order, substitute a support order made in accordance with the guidelines for the defaulted order.

(10) After establishment of an order under this section, the department may initiate a subsequent action on the original order to establish a child support or medical support obligation for another child of the same parents.

(11) A child support and medical support order under subsection (1) is effective as of the date of service of a notice of financial responsibility on the parent or parents and may be collected by any remedy available to the department for the enforcement of child support obligations. A final order is retroactive to the date of service of the notice of financial responsibility as provided in this subsection, except that the final order may also determine child support for a prior period as provided in 40-5-226(3).

(12) A child support and medical support order under subsection (1) continues until the child reaches 18 years of age or until the child's graduation

from high school, whichever occurs later, but not later than the child's 19th birthday~~,~~ unless the child is ~~sooner~~ emancipated by court order *at an earlier time*. A temporary support obligation established under subsection (3) continues until terminated as provided in subsection (5) or until the temporary *support* order is superseded by a final order, judgment, or decree."

Section 3. Section 40-5-403, MCA, is amended to read:

"40-5-403. Definitions. As used in this part, the following definitions apply:

(1) "Alternative arrangement" means a written agreement between the obligor and obligee, and the department in the case of an assignment of rights under 53-2-613, that has been approved and entered in the record of the court or administrative authority issuing or modifying the support order.

(2) "Department" means the department of public health and human services provided for in 2-15-2201.

(3) "Employer" includes a payor.

(4) "Financial institution" means:

(a) a depository institution, as defined in section 3(c) of the Federal Deposit Insurance Act, 12 U.S.C. 1813(c);

(b) an institution-affiliated party, as defined in the Federal Deposit Insurance Act, 12 U.S.C. 1813(u);

(c) any state credit union, as defined in 32-3-102, or federal credit union, as defined in section 101 of the Federal Credit Union Act, 12 U.S.C. 1752, including an institution-affiliated party of a credit union, as defined in section 206(r) of the Federal Credit Union Act, 12 U.S.C. 1786(r); and

(d) any benefit association, insurance company, safe deposit company, money market mutual fund, or similar entity authorized to do business in the state.

~~(4)~~*(5) (a)* "Income" means any form of periodic payment to a person, regardless of source, including commissions, bonuses, workers' compensation, disability payments, payments under a pension or retirement program, interest, and earnings and wages.

(b) ~~However, income~~ *Income* does not include:

~~(a)~~*(i)* any amount required by law to be withheld, other than creditor claims, including federal, state, and local taxes, ~~and~~ social security, *mandatory retirement and disability contributions, and union dues*; ~~and~~ *or*

~~(b)~~*(ii)* any amounts exempted from judgment, execution, or attachment by federal or state law.

~~(5)~~*(6)* "Obligee" means either a person to whom a duty of support is owed or a public agency of this or another state or an Indian tribe to which a person has assigned the right to receive current and accrued support payments.

~~(6)~~*(7)* "Obligor" means a person who owes a duty to make payments under a support order.

~~(7)~~*(8)* "Payor" means any payor of income to an obligor on a periodic basis and includes any person, firm, corporation, association, employer, trustee, political subdivision, state agency, or any agent thereof who is subject to the jurisdiction of the courts of this state under Rule 4B of the Montana Rules of Civil Procedure or any employer under the Uniform Interstate Family Support Act contained in part 1 of this chapter.

~~(8)~~*(9)* "Support order" has the meaning provided in 40-5-201.

~~(9)~~*(10)* "IV-D agency" or "Title IV-D agency" means the agency responsible for the provision of services under Title IV-D of the Social Security Act, 42 U.S.C. 651, et seq."

Section 4. Alternative method of payment in lieu of income withholding. (1) If an obligor who would otherwise be subject to immediate income withholding under 40-5-411 demonstrates good cause not to require immediate income withholding and the department concurs, the department may enter into a written agreement with the obligor that provides for an alternative method of payment in lieu of and to satisfy immediate income withholding.

(2) The agreement must allow funds to be deducted from a financial institution deposit account or to be paid by credit card.

(3) To qualify for an alternative method of payment, an obligor must have paid the full amount of the child support obligation for the lesser of either the past 12 months or the time period since the support order was issued.

Section 5. Section 40-5-601, MCA, is amended to read:

"40-5-601. Failure to pay support — civil contempt. (1) For purposes of this section, "support" means child support; spousal support; health insurance, medical, dental, and optical payments; day-care expenses; and any other payments due as support under a court or administrative order. Submission of health insurance claims is a support obligation if health insurance coverage is ordered.

(2) If a person obligated to provide support fails to pay as ordered, the payee or assignee of the payee of the support order may petition a district court to find the obligated person in contempt.

(3) The petition may be filed in the district court:

(a) that issued the support order;

(b) of the judicial district in which the obligated person resides; or

(c) of the judicial district in which the payee or assignee of the payee resides or has an office.

(4) Upon filing of a verified petition alleging facts constituting contempt of the support order, the district court shall issue an order requiring the obligated person to appear and show cause why the obligated person should not be held in contempt and punished under this section.

(5) The obligated person is presumed to be in contempt upon a showing that:

(a) there is a support order issued by a court or administrative agency of this or another state, an Indian tribe, or a country with jurisdiction to enter the order;

(b) the obligated person had actual or constructive knowledge of the order; and

(c) the obligated person failed to pay support as ordered.

(6) Certified payment records maintained by a clerk of court or administrative agency authorized by law or by the support order to collect support are admissible in a proceeding under this section and are prima facie evidence of the amount of support paid and any arrearages under the support order.

(7) Following a showing under subsection (5), the obligated person may move to be excused from the contempt by showing clear and convincing evidence that the obligated person:

(a) has insufficient income to pay the arrearages;

(b) lacks personal or real property that can be sold, mortgaged, or pledged to raise the needed sum;

(c) has unsuccessfully attempted to borrow the sum from a financial institution;

(d) has no other source, including relatives, from which the sum can be borrowed or secured;

(e) ~~does not have~~ *has* a valid out-of-court agreement with the payee waiving, deferring, or otherwise compromising the support obligation; or

(f) cannot, for some other reason, reasonably comply with the order.

(8) In addition to the requirement of subsection (7), the obligated person shall also show by clear and convincing evidence that factors constituting the excuse were not ~~occasioned or~~ caused by the obligated person voluntarily:

(a) remaining unemployed or underemployed when there is employment suitable to the obligated person's skills and abilities available within a reasonable distance from the obligated person's residence;

(b) selling, transferring, or encumbering real or personal property for fictitious or inadequate consideration within 6 months prior to a failure to pay support when due;

(c) selling or transferring real property without delivery of possession within 6 months prior to a failure to pay support when due or, if the sale or transfer includes a reservation of a trust for the use of the obligated person, purchasing real or personal property in the name of another person or entity;

(d) continuing to engage in an unprofitable business or contract unless the obligated person cannot reasonably be removed from the unprofitable situation; or

(e) incurring debts subsequent to entry of the support order that impair the obligated person's ability to pay support.

(9) If the obligated person is not excused under subsections (7) and (8), the district court shall find the obligated person in contempt of the support order. For each failure to pay support under the order, the district court shall order punishment as follows:

(a) not more than 5 days incarceration in the county jail;

(b) not more than 120 hours of community service work;

(c) not more than a $500 fine; or

(d) any combination of the penalties in subsections (9)(a) through (9)(c).

(10) An order under subsection (9) must include a provision allowing the obligated person to purge the contempt. The obligated person may purge the contempt by complying with an order requiring the obligated person to:

(a) seek employment and periodically report to the district court all efforts to find employment;

(b) meet a repayment schedule;

(c) compensate the payee for the payee's attorney fees, costs, and expenses for a proceeding under this section;

(d) sell or transfer real or personal property or transfer real or personal property to the payee, even if the property is exempt from execution;

(e) borrow the arrearage amount or report to the district court all efforts to borrow the sum;

(f) meet any combination of the conditions in subsections (10)(a) through (10)(e); or

(g) meet any other conditions that the district court in its discretion finds reasonable.

(11) If the obligated person fails to comply with conditions for purging contempt, the district court shall immediately find the obligated person in contempt under this section and impose punishment.

(12) A proceeding under this section must be brought within 3 years of the date of the last failure to comply with the support order."

Section 6. Section 40-5-907, MCA, is amended to read:

"40-5-907. Case registry — abstracts — information required — mandatory updating. (1) There must be registered in the case registry an abstract of:

(a) each case, including interstate cases, receiving IV-D services provided by the department;

(b) each support order entered and each modification of an existing support order made in this state after October 1, 1998; and

(c) each subsequent order or action establishing, modifying, adjusting, granting relief from, terminating, or otherwise affecting a support order in a registered case.

(2) Each abstract must include:

(a) the name, sex, [social security number, other] identification numbers, if any, date of birth, driver's license number, telephone number, and residential and mailing addresses of the parents;

(b) the child's name, date of birth, sex, [social security number, if any,] and residential address if different from that of the child's custodian;

(c) the name and location of the obligee if the obligee is a person or agency other than the child's parent;

(d) the name, address, and telephone number of the obligor's employer or of another payor of income to the obligor; *and*

(e) *(i)* if the child is covered by a health or medical insurance plan *and the information is available in an electronic format*, the name of the insurance carrier or health benefit plan, the policy identification number, the name of the persons covered, and any other pertinent information regarding coverage~~,~~*;* or

(ii) if the child is not covered, information as to the availability of coverage for the child through the obligor's and obligee's employers~~; and~~

~~(f) any other information that the department considers relevant and requires by rule~~.

(3) The abstract of a support order must include:

(a) the amount of the support payment and supplemental support payments, if any, for each child and the amount of spousal maintenance if ordered in the same case;

(b) the specific day or dates the payment is due;

(c) the inclusive dates of the support obligation;

(d) the terms of any condition that may affect the amount of the payment, the due date, or the obligation to pay support;

(e) each subsequent judgment for support arrears and the amounts of any interest, late payment penalties, and fees included in the judgment;

(f) any specific child support lien imposed against real or personal property of the obligor;

(g) the terms of any medical and health coverage provision for the child; and

(h) the name and county of the judicial district or the name and address of the agency where the record of the case is located and the cause number or case identification number for the case.

(4) (a) For each IV-D case with a support order registered in the case registry, there must be a record of the date and the amount of support payments made by the obligor, dates and amounts of support collected from other sources, dates of distribution of support payments, names and locations of persons or agencies to whom support payments and collections were distributed, and the balance of support owed by the obligor.

(b) Except as provided in subsection (5), the department need not maintain payment records in a non IV-D case.

(5) A copy of each non IV-D income-withholding order must be included in the case registry. For each registered income-withholding order, there must be a record of payments received by the department from the payor under the income-withholding order, the date and amount of each payment, the date the department distributed the payment, and the person or agency to whom the payment was distributed.

(6) The statistical report required by the department under 50-15-302 may be combined with and made a part of the abstract of support order form.

(7) (a) Each support order entered or modified in this state after October 1, 1998, must include a requirement that the obligor and obligee update, as necessary, the information included in the abstract under subsection (2).

(b) The order must also provide that in a subsequent child support enforcement action, upon sufficient showing that diligent effort has been made to ascertain the location of the obligor or obligee, the court or agency taking the enforcement action may consider the due process requirements for notice and service of process to be met with respect to the party upon delivery of written notice by regular mail to the most recent address or employer address reported to the case registry.

(c) If the support order does not include the provisions required by subsections (7)(a) and (7)(b) or if the support order was entered or last modified in this state before October 1, 1998, the department may give written notice of the provisions to the obligor and obligee. Upon receipt of the notice, the provisions have the same force and effect on the obligor and obligee as if included in the support order. (Bracketed language terminates on occurrence of contingency—sec. 1, Ch. 27, L. 1999.)"

Section 7. Section 53-2-110, MCA, is amended to read:

"53-2-110. Payment of debts to department. If money is due and owing the department, a payment due under Title 40, chapter 5, ~~part 2 or 4~~ *part 2, 4, 7, or 9*, or under this chapter that is accompanied by or bears any notation by the debtor that the payment represents payment in full is not full payment,

notwithstanding the department's acceptance of the payment, unless ~~there is additional~~ *the department signs a* written agreement~~, signed by the department,~~ that the payment is payment in full."

Section 8. Section 53-2-613, MCA, is amended to read:

"53-2-613. Application for assistance — assignment of support rights. (1) Applications for public assistance, including but not limited to financial assistance or nonfinancial assistance, as defined in 53-2-902, and medical assistance, may be made in any local office of public assistance. The application must be submitted, in the manner and form prescribed by the department, and must contain information required by the department.

(2) A person who signs an application for financial assistance, as defined in 53-2-902, or for related medical assistance assigns to the state, to the department, and to the county, if county funds were used to pay for services, all rights that the applicant may have to monetary and medical support from any other person in the applicant's own behalf or in behalf of any other family member for whom application is made. A person who signs an application for public assistance other than financial assistance, as defined in 53-2-902, or for related medical assistance may, in accordance with rules adopted by the department, be required to assign to the state, to the department, and to the county all rights that the applicant may have to monetary and medical support from any other person in the applicant's own behalf or on behalf of any other family member for whom application is made.

(3) The assignment:

(a) is effective for ~~both~~ current ~~and accrued~~ support~~, including unpaid support that accrued before the applicant received public assistance,~~ and medical obligations;

(b) takes effect upon a determination that the applicant is eligible for public assistance; and

(c) remains in effect with respect to the amount of any unpaid support and medical obligation accrued under the assignment that was owed prior to the termination of public assistance to a recipient.

(4) If a person who is the legal custodian and child support obligee under a support order relinquishes physical custody of a child to a caretaker relative without obtaining a modification of legal custody and the caretaker relative is determined eligible for public assistance on behalf of the child, the child support obligation is transferred by operation of law to the caretaker relative and may be assigned as provided in subsection (2). The transfer and assignment terminate when the caretaker relative no longer has physical custody of the child, except for any unpaid support still owing under the assignment at that time.

(5) Whenever a child support or spousal support obligation is assigned to the department pursuant to this section, the following provisions apply:

(a) If the support obligation is based upon a judgment or decree or an order of a court of competent jurisdiction, the department may retain assigned support amounts in an amount sufficient to reimburse the cumulative total of public assistance money expended.

(b) A recipient or former recipient of public assistance may not commence or maintain an action to recover or enforce a delinquent support obligation or make any agreements with any other person or agency concerning the support obligation, except as provided in 40-5-202.

(c) If a notice of assigned interest is filed with the district court, the clerk of the court may not pay ~~over~~ or release for the benefit of any recipient or former recipient of public assistance any amounts received pursuant to a judgment or decree or an order of the court until the department's child support enforcement division has filed a written notice that:

(i) the assignment of current support amounts has been terminated; and

(ii) all assigned support delinquencies, if any, are satisfied or released.

(d) A recipient or former recipient of public assistance may not take action to modify or make any agreement to modify, settle, or release any past, present, or future support obligation unless the department's child support enforcement division is given written notice under the provisions of 40-5-202. Any modifications or agreements entered into without the participation of the department are void with respect to the state, the department, and the local office of public assistance.

(e) A support obligation assigned under this section may not be terminated, invalidated, waived, set aside, or considered uncollectible by the conduct, misconduct, or failure of a recipient or former recipient of public assistance to take any action or to cease any action required under a decree, judgment, support order, custody order, visitation order, restraining order, or other similar order."

Section 9. Codification instruction. [Section 4] is intended to be codified as an integral part of Title 40, chapter 5, part 4, and the provisions of Title 40, chapter 5 apply to [section 4].

Section 10. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 11. Effective dates. (1) Except as provided in subsection (2), [this act] is effective October 1, 2009.

(2) [Section 4 and this section] are effective on passage and approval.

Approved April 9, 2009

CHAPTER NO. 185

[HB 144]

AN ACT CLARIFYING AND RECODIFYING THE MANDATORY LEAVE OF ABSENCE FOR EMPLOYEES HOLDING PUBLIC OFFICE; AMENDING SECTION 2-18-601, MCA; REPEALING SECTION 2-18-620, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Mandatory leave of absence for employees holding public office. (1) Employers of employees elected or appointed to a public office in the city, county, or state shall grant the employees leaves of absence, not to exceed 180 days per year, while they are performing public service. Employees of an employer who employs 10 or more persons must, upon complying with the requirements of subsection (2), be restored to their positions, with the same seniority, status, compensation, hours, locality, and benefits as existed immediately prior to their leaves of absence for public service under this section.

(2) An employee granted a leave of absence shall make arrangements to return to work within 10 days following the completion of the service for which

the leave was granted unless the employee is unable to do so because of illness or disabling injury certified to by a licensed physician.

(3) Unemployment benefits paid to a person by application of this section may not be charged against an employer under the unemployment insurance law.

Section 2. Section 2-18-601, MCA, is amended to read:

"2-18-601. Definitions. For the purpose of this part~~, except 2-18-620,~~ the following definitions apply:

(1) (a) "Agency" means any legally constituted department, board, or commission of state, county, or city government or any political subdivision of the state.

(b) The term does not mean the state compensation insurance fund.

(2) "Break in service" means a period of time in excess of 5 working days when the person is not employed and that severs continuous employment.

(3) "Common association" means an association of employees established pursuant to 2-18-1310 for the purposes of employer and employee participation in the plan.

(4) "Continuous employment" means working within the same jurisdiction without a break in service of more than 5 working days or without a continuous absence without pay of more than 15 working days.

(5) "Contracting employer" means an employer who, pursuant to 2-18-1310, has contracted with the department of administration to participate in the plan.

(6) "Employee" means any person employed by an agency except elected state, county, and city officials, schoolteachers, persons contracted as independent contractors or hired under personal services contracts, and student interns.

(7) "Full-time employee" means an employee who normally works 40 hours a week.

(8) "Holiday" means a scheduled day off with pay to observe a legal holiday, as specified in 1-1-216 or 20-1-305, except Sundays.

(9) "Member" means an employee who belongs to a voluntary employees' beneficiary association established under 2-18-1310.

(10) "Part-time employee" means an employee who normally works less than 40 hours a week.

(11) "Permanent employee" means a permanent employee as defined in 2-18-101.

(12) "Plan" means the employee welfare benefit plan established under Internal Revenue Code section 501(c)(9) pursuant to 2-18-1304.

(13) "Seasonal employee" means a seasonal employee as defined in 2-18-101.

(14) "Short-term worker" means:

(a) for the executive and judicial branches, a short-term worker as defined in 2-18-101; or

(b) for the legislative branch, an individual who:

(i) is hired by a legislative agency for an hourly wage established by the agency;

(ii) may not work for the agency for more than 6 months in a continuous 12-month period;

(iii) is not eligible for permanent status;

(iv) may not be hired into another position by the agency without a competitive selection process; and

(v) is not eligible to earn the leave and holiday benefits provided in this part or the group insurance benefits provided in part 7.

(15) "Sick leave" means a leave of absence with pay for:

(a) a sickness suffered by an employee or a member of the employee's immediate family; or

(b) the time that an employee is unable to perform job duties because of:

(i) a physical or mental illness, injury, or disability;

(ii) maternity or pregnancy-related disability or treatment, including prenatal care, birth, or medical care for the employee or the employee's child;

(iii) parental leave for a permanent employee as provided in 2-18-606;

(iv) quarantine resulting from exposure to a contagious disease;

(v) examination or treatment by a licensed health care provider;

(vi) short-term attendance, in an agency's discretion, to care for a relative or household member not covered by subsection (15)(a) until other care can reasonably be obtained;

(vii) necessary care for a spouse, child, or parent with a serious health condition, as defined in the Family and Medical Leave Act of 1993; or

(viii) death or funeral attendance of an immediate family member or, at an agency's discretion, another person.

(16) "Student intern" means a student intern as defined in 2-18-101.

(17) "Temporary employee" means a temporary employee as defined in 2-18-101.

(18) "Transfer" means a change of employment from one agency to another agency in the same jurisdiction without a break in service.

(19) "Vacation leave" means a leave of absence with pay for the purpose of rest, relaxation, or personal business at the request of the employee and with the concurrence of the employer."

Section 3. Repealer. Section 2-18-620, MCA, is repealed.

Section 4. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 39, chapter 2, part 1, and the provisions of Title 39, chapter 2, part 1, apply to [section 1].

Section 5. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 6. Effective date. [This act] is effective on passage and approval.

Approved April 9, 2009

CHAPTER NO. 186

[HB 163]

AN ACT EXTENDING THE AVAILABILITY AND USE OF TAX CREDITS UNDER THE BIG SKY ON THE BIG SCREEN ACT; AMENDING SECTION

17, CHAPTER 593, LAWS OF 2005, AND SECTION 9, CHAPTER 367, LAWS OF 2007; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17, Chapter 593, Laws of 2005, is amended to read:

"**Section 17. Termination — carryforward.** [This act] terminates January 1, ~~2010~~ *2015*, but an unused credit under [section 7] may be carried forward for use on returns for tax years beginning before January 1, ~~2014~~ *2019*, subject to use, limitations on the amount of the credit, carryforward, and recapture provisions of the credit effective on December 31, ~~2009~~ *2014*."

Section 2. Section 9, Chapter 367, Laws of 2007, is amended to read:

"**Section 9. Termination — carryforward**. [Sections 1 through 4] terminate January 1, ~~2010~~ *2015*, but an unused credit under 15-31-907 may be carried forward for use on returns for tax years beginning before January 1, ~~2014~~ *2019*, subject to use, limitations on the amount of the credit, carryforward, and recapture provisions of the credit effective on December 31, ~~2009~~ *2014*."

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 9, 2009

CHAPTER NO. 187

[HB 195]

AN ACT REVISING THE LAWS RELATED TO THE QUALIFICATIONS AND CONDITIONS FOR OBTAINING A RESTAURANT BEER AND WINE LICENSE; CLARIFYING THE DEFINITION OF A FULL-SERVICE RESTAURANT; ELIMINATING THE REQUIREMENT THAT AN UNSUCCESSFUL LOTTERY APPLICANT BE GIVEN A PREFERENCE IN FUTURE LOTTERIES; AMENDING SECTION 16-4-420, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 16-4-420, MCA, is amended to read:

"16-4-420. Restaurant beer and wine license. (1) The department shall issue a restaurant beer and wine license to an applicant whenever the department determines that the applicant, in addition to satisfying the requirements of this section, meets the following qualifications and conditions:

(a) ~~in the case of an individual applicant:~~

~~(i) the applicant's past record and present status as a purveyor of alcoholic beverages and as a business person and citizen demonstrate that the applicant is likely to operate the establishment in compliance with all applicable laws of the state and local governments; and~~

~~(ii) the applicant is not under 19 years of age;~~

~~(b) in the case of a corporate applicant:~~

~~(i) in the case of a corporation listed on a national stock exchange, the corporate officers and the board of directors must meet the requirements of subsection (1)(a);~~

~~(ii) in the case of a corporation not listed on a national stock exchange, each owner of 10% or more of the outstanding stock must meet the requirements for an individual listed in subsection (1)(a); and~~

~~(iii) the corporation is authorized to do business in Montana;~~

~~(c) in the case of any other business entity, including but not limited to partnerships, including limited liability partnerships, limited partnerships, and limited liability companies, but not including any form of a trust:~~

~~(i) if the applicant consists of more than one individual, all individuals must meet the requirements of subsection (1)(a); and~~

~~(ii) if the applicant consists of more than one corporation, all corporations listed on a national stock exchange must meet the requirements of subsection (1)(b)(i) and corporations not listed on a national stock exchange must meet the requirements of subsection (1)(b)(ii);~~ *the applicant complies with the licensing criteria provided in 16-4-401 for an on-premises consumption license;*

~~(d)~~*(b)* the applicant operates a restaurant at the location where the restaurant beer and wine license will be used or satisfies the department that:

(i) the applicant intends to open a restaurant that will meet the requirements of subsection (6) and intends to operate the restaurant so that at least 65% of the restaurant's gross income during its first year of operation is expected to be the result of the sale of food;

(ii) the restaurant beer and wine license will be used in conjunction with that restaurant, that the restaurant will serve beer and wine only to a patron who orders food, and that beer and wine purchases will be stated on the food bill; and

(iii) the restaurant will serve beer and wine from a service bar, as service bar is defined by the department by rule;

~~(e)~~*(c)* the applicant understands and acknowledges in writing on the application that this license prohibits the applicant from being licensed to conduct any gaming or gambling activity or operate any gambling machines and that if any gaming or gambling activity or machine exists at the location where the restaurant beer and wine license will be used, the activity must be discontinued or the machines must be removed before the restaurant beer and wine license takes effect; and

~~(f)~~*(d)* the applicant states the planned seating capacity of the restaurant, if it is to be built, or the current seating capacity if the restaurant is operating.

(2) (a) A restaurant that has an existing retail license for the sale of beer, wine, or any other alcoholic beverage may not be considered for a restaurant beer and wine license at the same location.

(b) (i) An on-premises retail licensee who sells the licensee's existing retail license may not apply for a license under this section for a period of 1 year from the date that license is transferred to a new purchaser.

(ii) A person, including an individual, with an ownership interest in an existing on-premises retail license that is being transferred to a new purchaser may not attain an ownership interest in a license applied for under this section for a period of 1 year from the date that the existing on-premises retail license is transferred to a new purchaser.

(3) A completed application for a license under this section and the appropriate application fee, as provided in subsection (11), must be submitted to the department. The department shall investigate the items relating to the application as described in subsections (3)(a) through (3)(d). Based on the results of the investigation and the exercise of its sound discretion, the department shall determine whether:

(a) the applicant is qualified to receive a license;

(b) the applicant's premises are suitable for the carrying on of the business;

(c) the requirements of this code and the rules promulgated by the department are complied with; and

(d) the seating capacity stated on the application is correct.

(4) An application for a beer and wine license submitted under this section is subject to the provisions of 16-4-203, 16-4-207, and 16-4-405.

(5) If a premises proposed for licensing under this section is a new or remodeled structure, then the department may issue a conditional license prior to completion of the premises based on reasonable evidence, including a statement from the applicant's architect or contractor confirming that the seating capacity stated on the application is correct, that the premises will be suitable for the carrying on of business as a bona fide restaurant, as defined in subsection (6).

(6) *(a)* For purposes of this section, "restaurant" means a public eating place*:*

(i) where individually priced meals are prepared and served for on-premises consumption.*;*

(ii) ~~At~~ *where at* least 65% of the restaurant's annual gross income from the operation must be from the sale of food and not from the sale of alcoholic beverages. Each year after a license is issued, the applicant shall file with the department a statement, in a form approved by the department, attesting that at least 65% of the gross income of the restaurant during the prior year resulted from the sale of food.

(iii) ~~The restaurant must have~~ *that has* a dining room, a kitchen, and the number and kinds of employees necessary for the preparation, cooking, and serving of meals in order to satisfy the department that the space is intended for use as a full-service restaurant.*; and*

(iv) ~~A full-service restaurant is a restaurant that provides~~ *that serves* an evening dinner meal *at least 4 days a week for at least 2 hours a day between the hours of 5 p.m. and 11 p.m. The provisions of this subsection (6)(a)(iv) and subsection (6)(b) do not apply to a restaurant for which a restaurant beer and wine license is in effect as of [the effective date of this act] or to subsequent renewals of that license.*

(b) The term does not mean a fast-food restaurant that, excluding any carry-out business, serves a majority of its food and drink in throw-away containers not reused in the same restaurant.

(7) (a) ~~(i) Subject to the conditions of subsection (7)(a)(ii), a~~ *A* restaurant beer and wine license may be transferred, upon approval by the department, from the original applicant to a new owner of the restaurant ~~if there is no change of location, and the original owner may transfer location after the license is issued by the department to a new location, upon approval by the department.~~

~~(ii) A new owner may not transfer the license to a new location for a period of 1 year following the transfer of the license to the new~~ *only after 1 year of use by the original* owner.

(b) A license issued under this section may be jointly owned, and the license may pass to the surviving joint tenant upon the death of the other tenant. However, the license may not be transferred to any other person or entity by operation of the laws of inheritance or succession or any other laws allowing the transfer of property upon the death of the owner in this state or in another state.

(c) An estate may, upon the sale of a restaurant that is property of the estate and with the approval of the department, transfer a restaurant beer and wine license to a new owner.

(8) (a) The department shall issue a restaurant beer and wine license to a qualified applicant:

(i) except as provided in subsection (8)(c), for a restaurant located in a quota area with a population of 5,000 persons or fewer, as the quota area population is determined in 16-4-105, if the number of restaurant beer and wine licenses issued in that quota area is equal to or less than 80% of the number of beer licenses that may be issued in that quota area pursuant to 16-4-105;

(ii) for a restaurant located in a quota area with a population of 5,001 to 20,000 persons, as the quota area population is determined in 16-4-105, if the number of restaurant beer and wine licenses issued in that quota area is equal to or less than 160% of the number of beer licenses that may be issued in that quota area pursuant to 16-4-105;

(iii) for a restaurant located in a quota area with a population of 20,001 to 60,000 persons, as the quota area population is determined in 16-4-105, if the number of restaurant beer and wine licenses issued in that quota area is equal to or less than 100% of the number of beer licenses that may be issued in that quota area pursuant to 16-4-105;

(iv) for a restaurant located in a quota area with a population of 60,001 persons or more, as the quota area population is determined in 16-4-105, if the number of restaurant beer and wine licenses issued in that quota area is equal to or less than 80% of the number of beer licenses that may be issued in that quota area pursuant to 16-4-105; and

(v) for a restaurant located in a quota area that is also a resort community, as the resort community is designated by the department of commerce under 7-6-1501(5), if the number of restaurant beer and wine licenses issued in the quota area that is also a resort community is equal to or less than 200% of the number of beer licenses that may be issued in that quota area pursuant to 16-4-105.

(b) In determining the number of restaurant beer and wine licenses that may be issued under this subsection (8) based on the percentage amounts described in subsections (8)(a)(i) through (8)(a)(v), the department shall round to the nearer whole number.

(c) If the department has issued the number of restaurant beer and wine licenses authorized for a quota area under subsection (8)(a)(i), there must be a one-time adjustment of four additional licenses for that quota area.

(d) If there are more applicants than licenses available in a quota area, then the license must be awarded by lottery as provided in subsection (9).

(9) (a) When a restaurant beer and wine license becomes available by the initial issuance of licenses under this section or as the result of an increase in the population in the quota area, the nonrenewal of a restaurant beer and wine license, or the lapse or revocation of a license by the department, then the department shall advertise the availability of the license in the quota area for which it is available. If there are more applicants than number of licenses available, the license must be awarded to an applicant by a lottery.

(b) ~~Any~~ *A preference must be given to an* applicant who *does not yet have in any quota area a restaurant beer and wine license or a retail beer license and who* operates a restaurant *that is in the quota area described in subsection (8) in*

which the license has become available and that meets the qualifications of subsection (6) for at least 12 months prior to the filing of an application ~~must be given a preference, and any unsuccessful lottery applicants from previous selections must also be given a preference~~. An applicant with ~~both preferences~~ *a preference* must be awarded a license before any applicant ~~with only one~~ *without a* preference.

(c) The department shall numerically rank all applicants in the lottery. Only the successful applicants will be required to submit a completed application and a one-time required fee. An applicant's ranking may not be sold or transferred to another person or entity. The preference and an applicant's ranking apply only to the intended license advertised by the department or to the number of licenses determined under subsection (8) when there are more applicants than licenses available. The applicant's qualifications for any other restaurant beer and wine license awarded by lottery must be determined at the time of the lottery.

(d) If a successful lottery applicant does not use a license within 1 year of notification by the department of license eligibility, the applicant shall forfeit the license. The department shall refund any fees paid except the application fee and offer the license to the next eligible ranked applicant in the lottery.

(10) Under a restaurant beer and wine license, beer and wine may not be sold for off-premises consumption.

(11) An application for a restaurant beer and wine license must be accompanied by a fee equal to 20% of the initial licensing fee. If the department does not make a decision either granting or denying the license within 4 months of receipt of a complete application, the department shall pay interest on the application fee at the rate of 1% a month until a license is issued or the application is denied. Interest may not accrue during any period that the processing of an application is delayed by reason of a protest filed pursuant to 16-4-203 or 16-4-207. If the department denies an application, the application fee, plus any interest, less a processing fee established by rule, must be refunded to the applicant. Upon the issuance of a license, the licensee shall pay the balance of the initial licensing fee. The amount of the initial licensing fee is determined according to the following schedule:

(a) $5,000 for restaurants with a stated seating capacity of 60 persons or less;

(b) $10,000 for restaurants with a stated seating capacity of 61 to 100 persons; or

(c) $20,000 for restaurants with a stated seating capacity of 101 persons or more.

(12) The annual fee for a restaurant beer and wine license is $400.

(13) If a restaurant licensed under this part increases the stated seating capacity of the licensed restaurant or if the department determines that a licensee has increased the stated seating capacity of the licensed restaurant, then the licensee shall pay to the department the difference between the fees paid at the time of filing the original application and issuance of a license and the applicable fees for the additional seating.

(14) The number of beer and wine licenses issued to restaurants with a stated seating capacity of 101 persons or more may not exceed 25% of the total licenses issued.

(15) Possession of a restaurant beer and wine license is not a qualification for licensure of any gaming or gambling activity. A gaming or gambling activity may not occur on the premises of a restaurant with a restaurant beer and wine license."

Section 2. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 3. Effective date. [This act] is effective on passage and approval.

Section 4. Applicability. [This act] applies to restaurant beer and wine licenses applied for and to lotteries conducted on or after [the effective date of this act].

Approved April 9, 2009

CHAPTER NO. 188

[HB 197]

AN ACT REVISING SIGNATURE REQUIREMENTS FOR RECALL PETITIONS; AND AMENDING SECTIONS 2-16-612 AND 2-16-614, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-16-612, MCA, is amended to read:

"2-16-612. Persons qualified to petition — penalty for false signatures. (1) A person who is a qualified elector of this state may sign a petition for recall of a state officer.

(2) A person who is a qualified elector of a district of the state from which a state-district officer is elected may sign a petition for recall of a state-district officer of that district or appointed by an officer or the officers of that election district.

(3) A person who is a qualified elector of a political subdivision of this state may sign a petition for recall of an officer of that political subdivision. ~~However, if a political subdivision is divided into election districts, a person must be a qualified elector in the election district to be eligible to sign a petition to recall an officer elected from that election district.~~

(4) A person signing any name other than the person's own to any petition or knowingly signing more than once for the recall or who is not at the time of the signing a qualified elector or a person who knowingly makes a false entry upon an affidavit required in connection with the filing of a petition for the recall of an officer is guilty of unsworn falsification or tampering with public records or information, as appropriate, and is punishable as provided in 45-7-203 or 45-7-208, as applicable."

Section 2. Section 2-16-614, MCA, is amended to read:

"2-16-614. Number of electors required for recall petition. *(1)* Recall petitions for elected or appointed state officers ~~shall~~ *must* contain the signatures of qualified electors equaling at least 10% of the number of persons registered to vote at the preceding state general election.

(2) A petition for the recall of a state-district officer must contain the signatures of qualified electors equaling at least 15% of the number of persons registered to vote in the last preceding election in that district.

(3) (a) ~~Recall~~ *Except as provided in subsection (3)(b), recall* petitions for elected or appointed county officers ~~shall~~ *must* contain the signatures of qualified electors equaling at least 15% of the number of persons registered to vote at the preceding county general election.

(b) If a recall petition is for a county commissioner in a county that is divided into commissioner districts pursuant to 7-4-2102, then the petition:

(i) must contain the signatures of qualified electors equaling at least 15% of the number of persons registered to vote at the preceding county general election; and

(ii) must also contain the signatures from at least 15% of the qualified electors residing in that commissioner's commission district.

(4) Recall petitions for elected or appointed officers of municipalities or school districts ~~shall~~ *must* contain the signatures of qualified electors equaling at least 20% of the number of persons registered to vote at the preceding election for the municipality or school district."

Approved April 9, 2009

CHAPTER NO. 189

[HB 221]

AN ACT REVISING THE TIME AT WHICH YOUTH REACHING 12 YEARS OF AGE DURING A LICENSE YEAR ARE ELIGIBLE TO HUNT; AMENDING SECTION 87-2-805, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-2-805, MCA, is amended to read:

"87-2-805. (Temporary) **Persons under eighteen years of age — youth combination sports license — terminally ill youth under seventeen years of age — free wildlife conservation license for resident seniors and certain minors.** (1) Resident minors who are 12 years of age or older and under 15 years of age may fish and may hunt upland game and migratory game birds during the open season with only a conservation license. Resident minors who are 15 years of age may hunt migratory game birds with only a conservation license. Resident minors who are under 12 years of age may fish without a license. A nonresident person under 15 years of age may not fish in or on any Montana waters without first having obtained a Class B, B-4, or B-5 fishing license unless the nonresident person under 15 years of age is in the company of an adult in possession of a valid Montana fishing license. The limit of fish for the nonresident person and the accompanying adult combined may not exceed the limit for one adult as established by law or by rule of the department.

(2) A resident, as defined by 87-2-102, who is 12 years of age or older and under 15 years of age may purchase a Class A-3 deer A tag for $6.50 and a Class A-5 elk tag for $8.

(3) (a) A resident who is 12 years of age or older and under 18 years of age may purchase a youth combination sports license for $25. A resident who is 12 years of age or older and under 18 years of age and who applies for any hunting license for the first time is entitled to receive a youth combination sports license free of charge.

(b) The youth combination sports license includes:

(i) a conservation license;

(ii) a fishing license;

(iii) an upland game bird license;

(iv) an elk license; and

(v) a deer license.

(c) A resident who is 15 years of age or older and under 18 years of age may purchase a Class A fishing license for $8.

(d) A resident who is 15 years of age or older and under 18 years of age may purchase a Class A-1 upland game bird license for $3.

(e) A person who lawfully purchases or is granted a free youth combination sports license at 17 years of age, but who reaches 18 years of age during that license year, may legally use the license during that license year. A person who hunts or fishes using a youth combination sports license purchased or granted free after the person reaches 18 years of age is guilty of a misdemeanor and shall be subject to any of the following penalties by the sentencing court:

(i) revocation of the person's hunting and fishing privileges for at least 5 years, revocation of the person's hunting and fishing privileges for more than 5 years, or revocation of the person's hunting and fishing privileges for life; and

(ii) a monetary fine of not less than $500 and not more than $5,000 in addition to the fine imposed on a person under this chapter for the specific hunting or fishing violation.

(f) This section does not prohibit a resident minor from purchasing any individual licenses for which the minor may be eligible under this chapter if the minor does not purchase the youth combination sports license.

(4) (a) The department may issue a free resident or nonresident big game combination license, as applicable, to a resident or nonresident youth under 17 years of age who has been diagnosed with a terminal illness. In order for a youth to qualify for the free license, the department must receive documentation from a licensed physician verifying that the youth is terminally ill. The free license may be issued to a youth on a one-time basis for only one hunting season.

(b) In exercising hunting privileges, the youth must be in the company of an adult in possession of a valid Montana hunting license or of a licensed Montana outfitter and conduct all hunting within the terms and conditions of the license issued.

(c) The department may waive hunter safety and education and bowhunter education requirements in 87-2-105 for a qualified youth under this subsection (4) and, in appropriate circumstances, may also allow the qualified youth to hunt from a vehicle in the manner described in 87-2-803.

(5) Resident minors who are 12 years of age or older and under 15 years of age and residents who are 62 years of age or older must, upon application and production of the documentation and information required by 87-2-202(1), be issued a resident wildlife conservation license without charge.

(6) Prior to reaching 12 years of age, minors who will reach 12 years of age by January 16 of a license year may hunt any game species after August 15 of that license year as long as the minor obtains the necessary license pursuant to this chapter. (Terminates February 28, 2009—sec. 7, Ch. 452, L. 2007.)

87-2-805. (Effective March 1, 2009) **Persons under eighteen years of age — youth combination sports license — terminally ill youth under**

seventeen years of age. (1) Resident minors who are 12 years of age or older and under 15 years of age may fish and may hunt upland game and migratory game birds during the open season with only a conservation license. Resident minors who are 15 years of age may hunt migratory game birds with only a conservation license. Resident minors who are under 12 years of age may fish without a license. A nonresident person under 15 years of age may not fish in or on any Montana waters without first having obtained a Class B, B-4, or B-5 fishing license unless the nonresident person under 15 years of age is in the company of an adult in possession of a valid Montana fishing license. The limit of fish for the nonresident person and the accompanying adult combined may not exceed the limit for one adult as established by law or by rule of the department.

(2) A resident, as defined by 87-2-102, who is 12 years of age or older and under 15 years of age may purchase a Class A-3 deer A tag for $6.50 and a Class A-5 elk tag for $8.

(3) (a) A resident who is 12 years of age or older and under 18 years of age may purchase a youth combination sports license for $25. A resident who is 12 years of age or older and under 18 years of age and who applies for any hunting license for the first time is entitled to receive a youth combination sports license free of charge.

(b) The youth combination sports license includes:

(i) a conservation license;

(ii) a fishing license;

(iii) an upland game bird license;

(iv) an elk license; and

(v) a deer license.

(c) A resident who is 15 years of age or older and under 18 years of age may purchase a Class A fishing license for $8.

(d) A resident who is 15 years of age or older and under 18 years of age may purchase a Class A-1 upland game bird license for $3.

(e) A person who lawfully purchases or is granted a free youth combination sports license at 17 years of age, but who reaches 18 years of age during that license year, may legally use the license during that license year. A person who hunts or fishes using a youth combination sports license purchased or granted free after the person reaches 18 years of age is guilty of a misdemeanor and shall be subject to any of the following penalties by the sentencing court:

(i) revocation of the person's hunting and fishing privileges for at least 5 years, revocation of the person's hunting and fishing privileges for more than 5 years, or revocation of the person's hunting and fishing privileges for life; and

(ii) a monetary fine of not less than $500 and not more than $5,000 in addition to the fine imposed on a person under this chapter for the specific hunting or fishing violation.

(f) This section does not prohibit a resident minor from purchasing any individual licenses for which the minor may be eligible under this chapter if the minor does not purchase the youth combination sports license.

(4) (a) The department may issue a free resident or nonresident big game combination license, as applicable, to a resident or nonresident youth under 17 years of age who has been diagnosed with a terminal illness. In order for a youth to qualify for the free license, the department must receive documentation from

a licensed physician verifying that the youth is terminally ill. The free license may be issued to a youth on a one-time basis for only one hunting season.

(b) In exercising hunting privileges, the youth must be in the company of an adult in possession of a valid Montana hunting license or of a licensed Montana outfitter and conduct all hunting within the terms and conditions of the license issued.

(c) The department may waive hunter safety and education and bowhunter education requirements in 87-2-105 for a qualified youth under this subsection (4) and, in appropriate circumstances, may also allow the qualified youth to hunt from a vehicle in the manner described in 87-2-803.

(5) Prior to reaching 12 years of age, minors who will reach 12 years of age by January 16 of a license year may hunt any game species after August 15 of that license year as long as the minor obtains the necessary license pursuant to this chapter."

Section 2. Effective date. [This act] is effective March 1, 2010.

Approved April 9, 2009

CHAPTER NO. 190

[HB 243]

AN ACT DIRECTING THE CHILDREN'S SYSTEM OF CARE PLANNING COMMITTEE TO STUDY THE SYSTEM OF CARE FOR HIGH-RISK CHILDREN WITH MULTIAGENCY SERVICE NEEDS; REQUIRING A REPORT TO THE LEGISLATURE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the 2003 Legislature directed state agencies to develop a statewide system of care for children with multiagency service needs; and

WHEREAS, the state has worked to implement that directive by developing Kids Management Authorities in a number of communities around the state; and

WHEREAS, Kids Management Authorities have been developed through a combination of grant funds from the federal Substance Abuse and Mental Health Services Administration and state and local funds; and

WHEREAS, federal grant funds are rapidly diminishing and will run out in the next biennium, while the state and local matching requirements for those funds must be significantly increased this biennium in order to sustain Kids Management Authorities at the community level; and

WHEREAS, the Legislature has provided clear direction to state agencies that treatment for children with multiagency service needs should be family centered, should attempt to provide treatment for children in their homes and communities, and should avoid out-of-home and out-of-state placements when possible; and

WHEREAS, the Legislature wants treatment for children to provide positive outcomes and value for the funds spent on treatment; and

WHEREAS, the Legislature created a children's system of care planning committee in section 52-2-303, MCA, to oversee the development of the statewide system of care effort; and

WHEREAS, the Legislature would benefit from more information on the progress made toward a statewide system of care and from recommendations on whether this effort should be sustained, modified, or abandoned.

Be it enacted by the Legislature of the State of Montana:

Section 1. Report to legislature — purpose — requirements. (1) (a) The children's system of care planning committee established in 52-2-303 shall study progress achieved to date in developing a statewide system of care for high-risk children with multiagency service needs. The committee shall prepare a report and recommendations for the legislature and provide the information to the appropriate interim committee no later than July 1, 2010.

(b) In preparing the report, the system of care planning committee shall take special note of input from communities and from families and children involved in the system of care.

(2) The report must:

(a) detail the progress made in developing the system of care, including the communities and areas currently being served, the agencies involved in each effort, and the organizational approaches being used in the communities;

(b) provide a summary of the number of total clients served, by community, and detail the types of services being provided;

(c) provide a summary of the federal, state, and local funds spent in operating the system of care and of the cost of services provided by the system of care; and

(d) include an analysis of the effectiveness of the children's system of care, along with a summary of the barriers that exist in further developing the system of care.

(3) The recommendations must:

(a) state whether and how kids management authorities or their equivalent should be structured, staffed, and funded, including but not limited to identifying the agencies that should be involved, how their involvement could be encouraged or required, and how they could most effectively participate in the process;

(b) define a clear role for kids management authorities, including whether or how the authorities should be involved in:

(i) coordinating services to individual children at the local level;

(ii) encouraging and ensuring that state agency practices are family centered;

(iii) providing assistance and advocacy for families in navigating the array of state services for children;

(c) identify how agency funding may be better blended to provide services to multiagency children, including but not limited to an analysis of whether the state should seek waivers for use of medicaid funds or funds provided through Title IV-E of the Social Security Act;

(d) provide a clear statement of which children and family populations should be served by the system of care;

(e) define how local governments may or should be involved in the system of care; and

(f) define how and state whether the wraparound process of providing a unique set of services that are based on a child's and family's needs and

strengths will be connected to the system of care, including recommendations on how the wraparound process will be provided, to whom it will be provided, who should provide it, and how it will be funded.

(4) The study and report must be completed within the budget approved for the department of public health and human services for the biennium beginning July 1, 2009.

Section 2. Effective date. [This act] is effective July 1, 2009.

Approved April 9, 2009

CHAPTER NO. 191

[HB 290]

AN ACT INCREASING THE LIMIT ON THE AMOUNT OF GROSS ANNUAL SALES THAT REQUIRES A PERSON WHO GROWS AND RETAILS MONTANA-GROWN PRODUCE TO PAY PRODUCE ASSESSMENT FEES AND OBTAIN A PRODUCE DEALER LICENSE; AMENDING SECTIONS 80-3-314 AND 80-3-321, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 80-3-314, MCA, is amended to read:

"80-3-314. Reporting requirements — assessment fees — exceptions. (1) Produce sold or distributed in this state must be reported~~,~~ on forms approved by the department~~,~~ and must be assessed a fee ~~per~~ *for each* produce unit or equivalent poundage. The fee amount may be adjusted by rule but must be at least 3 cents and not more than 7 cents ~~per~~ *for each* produce unit.

(2) The produce dealer who first distributes produce in this state or a grower who retails Montana-grown produce with gross annual sales exceeding ~~$15,000~~ *$25,000* shall pay the produce assessment fee established in subsection (1). However, any produce dealer in possession of the produce may be held responsible for payment of the fee unless the grower has paid for a produce dealer license or has made available to the produce dealer a written form provided by the department stating that the assessment fees are being paid.

(3) The report and fees are due on or before the 30th day of the month following each calendar quarter.

(4) Payment of the produce assessment fee is not required on produce that is:

(a) grown and retailed in Montana by the grower if annual gross retail sales by the grower do not exceed ~~$15,000~~ *$25,000*;

(b) grown in this state, not packaged for market, and sold for resale by the grower;

(c) in the case of vegetative seed potato products, intended or used for planting purposes; or

(d) purchased from or distributed by a produce dealer licensed under 80-3-321 if the produce has been reported and the assessment fee has been paid."

Section 2. Section 80-3-321, MCA, is amended to read:

"80-3-321. Produce dealer license — exception — renewal. (1) A produce dealer license is required for any person who:

(a) wholesales produce in this state;

(b) transports produce from out of state into this state for retail sale; or

(c) retails produce grown by the produce dealer in this state when gross retail sales exceed ~~$15,000~~ *$25,000* annually.

(2) A produce dealer license is not required for a person who complies with the requirements of this part and ~~who~~:

(a) retails produce grown by that person in this state if annual gross produce sales do not exceed ~~$15,000;~~ *$25,000.* ~~however~~ *However*, the person shall, upon request ~~by~~ *of* the department, furnish a sworn statement providing that the produce was grown by that person, stating the location where the produce was grown, and stating the amount of gross sales~~; or~~.

(b) is a nonprofit organization that is recognized by the director and that retails only produce purchased from licensed produce dealers or from Montana produce dealers who are in compliance with this part.

(3) An applicant for a produce dealer license shall provide any information that the department finds necessary to carry out the provisions of this part. Produce dealer licenses expire on December 31 of the year of issuance. A produce dealer shall pay a nonrefundable license fee of $50. A separate license is required for each place of business, including vehicles. The license fee must be credited toward the produce assessment fee prescribed in 80-3-314.

(4) A produce dealer license, if required, must be carried at any time produce is sold, and the license is subject to inspection by any person.

(5) A license issued under this section may not be sold or transferred from one vehicle or location to another without the written consent of the department."

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 9, 2009

CHAPTER NO. 192

[HB 291]

AN ACT REDEFINING THE MARKET PRICE THAT MUST BE USED WITH RESPECT TO AUTOMOBILE GLASS REPAIR AND WITH RESPECT TO AUTOMOBILE BODY REPAIR BUSINESSES; AMENDING SECTIONS 33-18-221, 33-18-222, 33-18-223, AND 33-18-224, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-18-221, MCA, is amended to read:

"33-18-221. Designation of specific repair shops prohibited — lists allowed. (1) An insurance company, including its producers and adjusters, that issues or renews a policy of insurance in this state covering, in whole or part, a motor vehicle may not:

(a) require that a person insured under the policy use a particular company or location for providing automobile glass replacement, glass repair services, or glass products insured in whole or part by the policy; or

(b) engage in any act or practice of intimidation, coercion, or threat for or against an insured person to use a particular company or location to provide

automobile glass replacement, glass repair services, or glass products insured, in whole or in part, under the terms of an insurance policy.

(2) (a) An insurance company may provide an insured with a list that includes the names of particular companies or locations providing automobile glass replacement, glass repair services, or glass products if some of the listed companies or locations are reasonably close and convenient to the insured. The insurance company may restrict the list to those companies or locations that meet reasonable standards of quality, service, and safety.

(b) The insured may use a nonlisted company or location at the insured's sole discretion, and subject to the provisions of subsections (2)(c) and (3), the insurance company will fully and promptly pay for the cost of automobile glass replacement, glass repair services, or glass products provided, less any deductible under the terms of the policy.

(c) If the insured does not use a list as provided in subsection (2)(a), the insurer may require the insured to obtain not more than three competitive bids to establish the cost of automobile glass replacement, glass repair services, or glass products provided.

(3) This section does not require an insurer to pay more for automobile glass replacement, glass repair services, or glass products than the ~~lowest prevailing~~ market price as defined in 33-18-222.

(4) Notwithstanding the provisions of subsections (1) through (3), an insurance company may agree to pay the full cost of glass replacement or repair."

Section 2. Section 33-18-222, MCA, is amended to read:

"33-18-222. ~~Lowest prevailing market~~ *Market* price. *(1)* For purposes of 33-18-221*,* ~~and~~ 33-18-223, *and 33-18-224,* "~~lowest prevailing~~*"* market price" means the*:*

(a) price agreed upon between the insurer and the business; or ~~lowest market price in a local area~~

(b) prevailing competitive rate that is reasonable and necessary in the local area where the repairs are to be performed.

(2) The ~~lowest prevailing~~ market price may not be less than cost as provided in 30-14-209."

Section 3. Section 33-18-223, MCA, is amended to read:

"33-18-223. Prohibited activities — glass broker defined. (1) It is unlawful for an insurance company, individually or with others, to directly or indirectly:

(a) establish an agreement with any person to act as a glass broker for the insurance company under which the glass broker sets a price that must be met by a glass repair shop as a condition for doing glass replacement or glass repair work for the insurance company;

(b) establish an agreement with a glass broker that requires a glass repair shop to bill through that glass broker as a condition of doing glass replacement or glass repair work; or

(c) establish a price that must be met by a glass repair shop as a condition for doing glass replacement or glass repair work that is below the ~~lowest prevailing~~ market price as provided in 33-18-222.

(2) As used in this section, "glass broker" means an automobile glass company that acts as a third-party agent for the insurer whenever the glass broker enters into agreements with other automobile glass dealers to perform glass replacement or glass repair work."

Section 4. Section 33-18-224, MCA, is amended to read:

"33-18-224. Designation of specific automobile body repair businesses prohibited. (1) (a) An insurance company, including its producers and adjusters, that issues or renews a policy of insurance in this state covering, in whole or in part, a motor vehicle may not:

(i) require that a claimant under the policy use a particular automobile body repair business or location for an estimate or a repair; or

(ii) engage in any act or practice that intimidates, coerces, or threatens a claimant or that provides an incentive or inducement for a claimant to use a particular automobile body repair business or location.

(b) An insurance company, including its producers and adjusters, that issues or renews a policy of insurance in this state covering, in whole or in part, a motor vehicle may have access to the motor vehicle for purposes of preparing a competitive estimate.

(2) (a) Except as provided in subsection (2)(b), if an insurance company has direct repair programs with automobile body repair businesses or locations, the insurance company may not limit the number of automobile body repair businesses or locations with whom it maintains direct repair programs.

(b) An insurance company may limit the number of automobile body repair businesses or locations participating in the insurance company's direct repair program to those automobile body repair businesses or locations that comply with the provisions of subsection (2)(c). An insurance company is not required to establish a direct repair program in a particular market area in which the insurance company's number of policyholders does not support establishing a direct repair program with any automobile body repair business or location.

(c) Upon request, the insurance company shall provide, without prejudice or bias, the claimant with a list that includes all automobile body repair businesses or locations that are reasonably close or convenient to the claimant and willing to provide services and that meet the insurance company's criteria regarding whether the automobile body repair business or location:

(i) possesses the equipment necessary to undertake repairs;

(ii) undertakes training of management and technical personnel with respect to repair information and the claims process;

(iii) agrees to perform quality repairs at the ~~prevailing competitive~~ market price and that meet reasonable industry repair standards;

(iv) agrees to warrant the quality of work, including refinishing, in writing to the claimant, for a period of not less than 1 year from the date of repair;

(v) agrees to inspection of its repairs and services by the insurance company and agrees that the insurance company may terminate the direct repair program with the automobile body repair business or location if the repairs and services are below the standards of quality required by the insurance company; and

(vi) if requested, agrees to execute an agreement with the insurance company that may contain additional criteria that are not designed to unfairly limit the number of automobile body repair businesses or locations with whom

the insurance company maintains direct repair programs. The additional criteria may include criteria determined to be necessary by the insurance company and designed to ensure that the automobile body repair business or location has the necessary estimating systems and programs and equipment to communicate electronically with the insurance company and that the automobile body repair business or location has taken steps to ensure the privacy of the insurance company and the claimant.

(d) If the claimant requests the list provided for in subsection (2)(c), the insurance company shall inform the claimant that the claimant may use an automobile body repair business or location at the sole discretion of the claimant.

(3) For the purposes of this section, an incentive or inducement does not include:

(a) providing a claimant with the list provided for in subsection (2)(c); or

(b) referring to a warranty issued by an automobile body repair business or location.

(4) The claimant may use an automobile body repair business or location at the claimant's sole discretion, and the insurance company shall pay for the reasonable and necessary cost of the automobile body repair services for covered damages, less any deductible under the terms of the policy. This section does not require an insurer to pay more for automobile body repair services than the ~~lowest prevailing~~ market price, as defined in 33-18-222.

(5) If the claimant uses an automobile body repair business or location that is not on a list provided for in subsection (2)(c), the insurance company may not be held liable for any repair work performed by the automobile body repair business or location chosen by the claimant.

(6) It is unlawful for an automobile body repair business or location to charge or agree to charge a claimant more than an uninsured customer for any automobile body repair service.

(7) An insurance company that contracts with an independent adjuster may not be held liable for the independent adjuster's failure to comply with the terms of this section.

(8) For purposes of this section:

(a) "automobile body repair business or location" does not include a business or location that exclusively provides automobile glass replacement, glass repair services, or glass products;

(b) "claimant" means the person seeking repair of a motor vehicle whether that person is the insured person or a third party making a claim against the insurer."

Section 5. Effective date. [This act] is effective on passage and approval.

Approved April 9, 2009

CHAPTER NO. 193

[HB 317]

AN ACT GUARANTEEING A MEMBER OF THE ARMED FORCES WHO FORFEITED A SPECIAL HUNTING LICENSE OR PERMIT ISSUED BY DRAWING AS A RESULT OF DEPLOYMENT OUTSIDE OF THE

CONTINENTAL UNITED STATES IN SUPPORT OF A CONTINGENCY OPERATION THE SAME SPECIAL LICENSE OR PERMIT, WITHOUT ADDITIONAL FEE, UPON APPLICATION IN THE YEAR OF THE MEMBER'S RETURN FROM MILITARY SERVICE OR IN THE FIRST YEAR THAT THE LICENSE OR PERMIT IS MADE AVAILABLE AFTER THE MEMBER'S RETURN; AND AMENDING SECTION 87-2-803, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-2-803, MCA, is amended to read:

"87-2-803. Persons with disabilities — service members — definitions. (1) Persons with disabilities are entitled to fish and to hunt game birds, not including turkeys, with only a conservation license if they are residents of Montana not residing in an institution and are certified as disabled as prescribed by departmental rule. A person who has purchased a conservation license and a resident fishing license or game bird license for a particular license year and who is subsequently certified as disabled is entitled to a refund for the fishing license or game bird license previously purchased for that license year. A person who is certified as disabled pursuant to subsection (3) and who was issued a permit to hunt from a vehicle for license year 2000 or a subsequent license year is automatically entitled to a permit to hunt from a vehicle for subsequent license years if the criteria for obtaining a permit does not change.

(2) A resident of Montana who is certified as disabled by the department and who is not residing in an institution may purchase a Class A-3 deer A tag for $6.50 and a Class A-5 elk tag for $8. A person who has purchased a conservation license and a resident deer license or resident elk license for a particular license year and who is subsequently certified as disabled is entitled to a refund for the deer license or elk license previously purchased and reissuance of the license for that license year at the rate established in this subsection.

(3) A person may be certified as disabled by the department and issued a permit to hunt from a vehicle, on a form prescribed by the department, if the person establishes one or more of the disabilities pursuant to subsection (9).

(4) (a) A person with a disability carrying a permit to hunt from a vehicle, referred to in this subsection (4) as a permitholder, may hunt by shooting a firearm from:

(i) the shoulder, berm, or barrow pit right-of-way of a public highway, as defined in 61-1-101, except a state or federal highway;

(ii) within a self-propelled or drawn vehicle that is parked on a shoulder, berm, or barrow pit right-of-way in a manner that will not impede traffic or endanger motorists or that is parked in an area, not a public highway, where hunting is permitted; or

(iii) an off-highway vehicle or snowmobile, as defined in 61-1-101, in any area where hunting is permitted and that is open to motorized use, unless otherwise prohibited by law, as long as the off-highway vehicle or snowmobile is marked as described in subsection (4)(d) of this section.

(b) This subsection (4) does not allow a permitholder to shoot across the roadway of any public highway or to hunt on private property without permission of the landowner.

(c) A permitholder must have a companion to assist in immediately dressing any killed game animal. The companion may also assist the permitholder by hunting a game animal that has been wounded by the permitholder when the permitholder is unable to pursue and kill the wounded game animal.

(d) Any vehicle from which a permitholder is hunting must be conspicuously marked with an orange-colored international symbol of persons with disabilities on the front, rear, and each side of the vehicle, or as prescribed by the department.

(5) A veteran who meets the qualifications in subsection (9) as a result of a combat-connected injury may apply at a fish, wildlife, and parks office for a regular Class A-3 deer A tag, a Class A-4 deer B tag, a Class B-7 deer A tag, a Class B-8 deer B tag, and a special antelope license at one-half the license fee. Fifty licenses of each license type must be made available annually. Licenses issued to veterans under this part do not count against the number of special antelope licenses reserved for people with permanent disabilities, as provided in 87-2-706.

(6) (a) A resident of Montana who is certified by the department as experiencing blindness, as defined in 53-7-301, may be issued a lifetime fishing license for the blind upon payment of a one-time fee of $10. The license is valid for the lifetime of the blind individual and allows the licensee to fish as authorized by department rule. An applicant for a license under this subsection need not obtain a wildlife conservation license as a prerequisite to licensure.

(b) A person who is certified by the department as experiencing blindness, as defined in 53-7-301, may be issued regular resident deer and elk licenses, in the manner provided in subsection (2) of this section, and must be accompanied by a companion, as provided in subsection (4)(c) of this section.

(7) The department shall adopt rules to establish the qualifications that a person must meet to be a companion and may adopt rules to establish when a companion can be a designated shooter for a disabled person.

(8) As used in this section, "disabled person", "person with a disability", or "disabled" means or refers to a person experiencing a condition medically determined to be permanent and substantial and resulting in significant impairment of the person's functional ability.

(9) A person is entitled to a permit to hunt from a vehicle if the person:

(a) is certified by a licensed physician, an advanced practice registered nurse, or a licensed physician assistant to be dependent on an oxygen device or dependent on a wheelchair, crutch, or cane for mobility;

(b) is an amputee above the wrist or ankle; or

(c) is certified by a licensed physician, an advanced practice registered nurse, or a licensed physician assistant to be unable to walk, unassisted, 600 yards over rough and broken ground while carrying 15 pounds within 1 hour and to be unable to handle and maneuver up to 25 pounds.

(10) Certification by a licensed physician, an advanced practice registered nurse, or a licensed physician assistant under subsection (9) must be on a form provided by the department.

(11) The department or a person who disagrees with a determination of disability or eligibility for a permit to hunt from a vehicle may request a review by the board of medical examiners pursuant to 37-3-203.

(12) (a) A Montana resident who is a member of the Montana national guard or the federal reserve as provided in 10 U.S.C. 10101 or who was otherwise engaged in active duty and who participated in a contingency operation as provided in 10 U.S.C. 101(a)(13) that required the member to serve at least 2 months outside of the state, upon request and upon presentation of the documentation described in subsection (12)(b), must be issued a free resident

wildlife conservation license or a Class AAA resident combination sports license, which may not include a bear license, upon payment of the resident hunting access enhancement fee provided for in 87-2-202(3)(c), in the license year that the member returns from military service or in the year following the member's return, based on the member's election, and in any of the 4 years after the member's election. A member who participated in a contingency operation after September 11, 2001, that required the member to serve at least 2 months outside of the state may make an election in 2007 or in the year following the member's return, based on the member's election, and in any of the 4 years after the member's election and be entitled to a free resident wildlife conservation license or a free Class AAA resident combination sports license in the year of election and in any of the 4 years after the member's election.

(b) To be eligible for the free resident wildlife conservation license or free Class AAA resident combination sports license provided for in subsection (12)(a), an applicant shall, in addition to the written application and proof of residency required in 87-2-202(1), provide to any regional department office or to the department headquarters in Helena, by mail or in person, the member's DD form 214 verifying the member's release or discharge from active duty. The applicant is responsible for providing documentation showing that the applicant participated in a contingency operation as provided in 10 U.S.C. 101(a)(13).

(c) A Montana resident who meets the service qualifications of subsection (12)(a) and the documentation required in subsection (12)(b) is entitled to a free Class A resident fishing license in the license year that the member returns from military service or in the year following the member's return, based on the member's election, and in any of the 4 years after the member's election.

(d) The department's general license account must be reimbursed by a quarterly transfer of funds from the general fund to the general license account for costs associated with the free licenses granted pursuant to this subsection (12) during the preceding calendar quarter. Reimbursement costs must be designated as license revenue.

(13) A member of the armed forces who forfeited a license or permit issued through a drawing as a result of deployment outside of the continental United States in support of a contingency operation as provided in 10 U.S.C. 101(a)(13) is guaranteed the same license or permit, without additional fee, upon application in the year of the member's return from deployment or in the first year that the license or permit is made available after the member's return."

Approved April 9, 2009

CHAPTER NO. 194

[HB 354]

AN ACT REVISING LAWS GOVERNING LICENSURE OF PRIVATE INVESTIGATORS; ELIMINATING THE DEFINITION OF AND REFERENCES TO FIRE INVESTIGATORS IN LAWS GOVERNING PRIVATE INVESTIGATORS AND PRIVATE SECURITY AND ELIMINATING THE NEED FOR A SEPARATE FIRE INVESTIGATION LICENSE; INCLUDING INVESTIGATION OF FIRES AMONG A LICENSED PRIVATE INVESTIGATOR'S ACTIVITIES; PROVIDING CERTAIN EXEMPTIONS FROM LICENSE REQUIREMENTS; AND AMENDING SECTIONS 37-60-101, 37-60-103, 37-60-105, 37-60-301, AND 37-60-304, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-60-101, MCA, is amended to read:

"37-60-101. Definitions. As used in this chapter, the following definitions apply:

(1) "Alarm response runner" means an individual employed by an electronic security company, a contract security company, or a proprietary security organization to respond to security alarm system signals.

(2) "Armed" means an individual who at any time wears, carries, or possesses a firearm in the performance of professional duties.

(3) "Armed carrier service" means any person or security company who transports or offers to transport under armed private security guard from one place to another any currency, documents, papers, maps, stocks, bonds, checks, or other items of value that require expeditious delivery.

(4) "Armed private investigator" means a private investigator who at any time wears, carries, or possesses a firearm in the performance of the individual's duties.

(5) "Armed private security guard" means an individual employed by a contract security company or a proprietary security organization whose duty or any portion of whose duty is that of a security guard, armored car service guard, or carrier service guard and who at any time wears or carries a firearm in the performance of the individual's duties.

(6) "Armored car service" means any person or security company who transports or offers to transport under armed private security guard from one place to another any currency, jewels, stocks, bonds, paintings, or other valuables of any kind in a specially equipped motor vehicle that offers a high degree of security.

(7) "Board" means the board of private security provided for in 2-15-1781.

(8) "Branch office" means any office of a licensee within the state, other than its principal place of business within the state.

(9) "Contract security company" means any person who undertakes to provide a private security guard, alarm response runner, armored car service, street patrol service, or armed carrier service on a contractual basis to another person who exercises no direction and control over the performance of the details of the services rendered.

(10) "Department" means the department of labor and industry provided for in 2-15-1701.

(11) (a) "Electronic security company" means a person who installs, services, or maintains a security alarm system and who undertakes to hire, employ, and provide alarm response runners and security alarm installers on a contractual basis to another person who does not exercise direction and control over the performance of the services rendered.

(b) The term does not include a person whose primary business is that of a locksmith and who may also install closed-circuit television cameras and battery-operated door devices.

~~(12) (a) "Fire investigator" means a person other than an individual identified in subsection (12)(b) who for any consideration:~~

~~(i) makes or agrees to make an investigation with reference to:~~

~~(A) a fire to identify evidence and determine the cause of the fire; or~~

~~(B) accidents involving suspected negligence or arson for criminal or civil action;~~

~~(ii) testifies as an expert witness for investigations identified under this subsection (12); or~~

~~(iii) cooperates with law enforcement agencies in conducting fire investigations and collecting evidence relating to fires.~~

~~(b) The term does not mean an insurance adjuster, an individual designated as the state fire marshal under 2-15-2005, or a member of:~~

~~(i) a fire department as described in 7-3-1345;~~

~~(ii) law enforcement; or~~

~~(iii) an entity organized under Title 7, chapter 33.~~

~~(13)~~*(12)* "Firearms course" means the course approved by the board and conducted by a firearms instructor.

~~(14)~~*(13)* "Firearms instructor" means an individual who has been approved by the board to instruct firearms courses in the use of weapons.

~~(15)~~*(14)* "Insurance adjuster" means a person employed by an insurance company, other than a private investigator, who for any consideration conducts investigations in the course of adjusting or otherwise participating in the disposal of any claims in connection with a policy of insurance but who does not perform surveillance activities or investigate crimes against the United States or any state or territory of the United States.

~~(16)~~*(15)* "Licensee" means a person licensed under this chapter.

~~(17)~~*(16)* "Paralegal" or "legal assistant" means a person qualified through education, training, or work experience to perform substantive legal work that requires knowledge of legal concepts and that is customarily but not exclusively performed by a lawyer and who may be retained or employed by one or more lawyers, law offices, governmental agencies, or other entities or who may be authorized by administrative, statutory, or court authority to perform this work.

~~(18)~~*(17)* "Person" means an individual, firm, company, association, organization, partnership, or corporation.

~~(19)~~*(18)* "Private investigator" means a person other than an insurance adjuster who for any consideration makes or agrees to make any investigation with reference to:

(a) crimes against the United States or any state or territory of the United States;

(b) the identity, habits, conduct, business, occupation, honesty, integrity, trustworthiness, efficiency, loyalty, activity, movement, location, affiliations, associations, transactions, reputation, or character of any person;

(c) the location, disposition, or recovery of lost or stolen property;

(d) the cause or responsibility for *fires,* libels, losses, accidents, or injury to persons or property; or

(e) gathering evidence to be used before any court, board, officer, or investigating committee.

~~(20)~~*(19)* "Private security guard" means an individual employed or assigned duties to protect a person or property or both a person and property from criminal acts and whose duties or any portion of whose duties include but are not

limited to the prevention of unlawful entry, theft, criminal mischief, arson, or trespass on private property or the direction of the movements of the public in public areas.

~~(21)~~*(20)* "Process server" means a person described in 25-1-1101(1).

~~(22)~~*(21)* "Proprietary security organization" means any person who employs a private security guard, alarm response runner, armored car service, street patrol service, or armed carrier service on a routine basis solely for the purposes of that person and exerts direction and control over the performance of the details of the service rendered.

~~(23)~~*(22)* "Resident manager" means the person appointed to exercise direct supervision, control, charge, management, or operation of each branch office located in this state where the business of the licensee is conducted.

~~(24)~~*(23)* (a) "Security alarm installer" means an individual who installs, services, or maintains security alarm systems to detect and signal unauthorized intrusion, movement, break-in, or criminal acts and is employed by an electronic security company.

(b) The term does not include a person whose primary business is that of a locksmith and who may also install closed-circuit television cameras and battery-operated door devices.

~~(25)~~*(24)* (a) "Security alarm system" means an assembly of equipment and devices or a single device or a portion of a system intended to detect or signal or to both detect and signal unauthorized intrusion, movement, or criminal acts at a location.

(b) The term does not include systems that monitor temperature, humidity, or any other atmospheric condition not directly related to the detection of an unauthorized intrusion or criminal act at a location.

~~(26)~~*(25)* "Security company" means an electronic security company, a proprietary security organization, or a contract security company.

~~(27)~~*(26)* "Street patrol service" means a person providing patrols by means of foot, vehicle, or other method of transportation using public streets, thoroughfares, or property in the performance of the person's duties and responsibilities.

~~(28)~~*(27)* "Unarmed private investigator" means a private investigator who does not wear, carry, or possess a firearm in the performance of the individual's duties.

~~(29)~~*(28)* "Unarmed private security guard" means an individual who is employed by a contract security company or a proprietary security organization, whose duty or any portion of whose duty is that of a private security guard, armored car service guard, or alarm response runner, and who does not wear, carry, or possess a firearm in the performance of those duties."

Section 2. Section 37-60-103, MCA, is amended to read:

"37-60-103. Purpose. The purpose of this chapter is to increase the levels of integrity, competency, and performance of security companies and their employees who are required to be licensed, firearms instructors, ~~fire investigators,~~ private investigators, and process servers to safeguard the public health, safety, and welfare against illegal, improper, or incompetent actions committed by security companies and their licensed employees, firearms instructors, ~~fire investigators,~~ private investigators, or process servers."

Section 3. Section 37-60-105, MCA, is amended to read:

"37-60-105. Exemptions. (1) Except as provided in subsection (2), this chapter does not apply to:

(a) any one person employed singly and exclusively by any one employer in connection with the affairs of that employer only and when there exists an employer-employee relationship and the employee is unarmed, does not wear a uniform, and is guarding inside a structure that at the time is not open to the public;

(b) a person:

(i) employed singly and exclusively by a retail merchant;

(ii) performing at least some work for the retail merchant as a private security guard; and

(iii) who has received training as a private security guard from the employer or at the employer's direction;

(c) an officer or employee of the United States, of this state, or of a political subdivision of the United States or this state while the officer or employee is engaged in the performance of official duties;

(d) a person engaged exclusively in the business of obtaining and furnishing information as to the financial rating of persons or as to the personal habits and financial responsibility of applicants for insurance, indemnity bonds, or commercial credit;

(e) an attorney at law while performing duties as an attorney at law;

(f) a legal intern, paralegal, or legal assistant employed by one or more lawyers, law offices, governmental agencies, or other entities; ~~or~~

(g) a law student who is serving a legal internship;

(h) a collection agency or finance company licensed to do business under the laws of this state, or an employee of a collection agency or finance company licensed in this state while acting within the scope of employment, while making an investigation incidental to the business of the agency or company, including an investigation of the location of a debtor or the debtor's property when the contract with an assignor creditor is for the collection of claims owed or due or asserted to be owed or due or the equivalent;

(i) special agents employed by railroad companies, provided that the railroad company notifies the board that its agents are operating in the state;

(j) insurers and insurance producers and insurance brokers licensed by the state while performing duties in connection with insurance transacted by them;

(k) individuals engaged in the collection and examination of physical material for forensic purposes;

~~(k)~~*(l)* an insurance adjuster, as defined in 37-60-101; ~~or~~

~~(l)~~*(m)* an internal investigator or auditor while making an investigation incidental to the business of the agency or company by which the investigator or auditor is singularly and regularly employed*; or*

(n) a person who evaluates and advises management on personnel and human resource issues in the workplace.

(2) (a) Except as provided in subsection (2)(b), persons listed as exempt in subsection (1) are not exempt for the purposes of acting as registered process servers.

(b) Subsection (2)(a) does not apply to attorneys or persons who make 10 or fewer services of process in a calendar year, as provided in 25-1-1101."

Section 4. Section 37-60-301, MCA, is amended to read:

"37-60-301. License required — process server registration required. (1) (a) Except as provided in 37-60-105, it is unlawful for any person to act as or perform the duties, as defined in 37-60-101, of a contract security company, a proprietary security organization, an electronic security company, a branch office, a private investigator, ~~a fire investigator,~~ a security alarm installer, an alarm response runner, a resident manager, a certified firearms instructor, or a private security guard without having first obtained a license from the board.

(b) Except as provided in 25-1-1101(2), it is unlawful for any person to act as or perform the duties of a process server for more than 10 services of process in a calendar year without being issued a certificate of registration by the board.

(2) It is unlawful for any unlicensed person to act as, pretend to be, or represent to the public that the person is licensed as a contract security company, a proprietary security organization, an electronic security company, a branch office, a private investigator, ~~a fire investigator,~~ a security alarm installer, an alarm response runner, a resident manager, a certified firearms instructor, or a private security guard.

(3) A person appointed by the court as a confidential intermediary under 42-6-104 is not required to be licensed under this chapter. A person who is licensed under this chapter is not authorized to act as a confidential intermediary, as defined in 42-1-103, without meeting the requirements of 42-6-104.

(4) A person who knowingly engages an unlicensed contract security company, proprietary security organization, electronic security company, branch office, private investigator, ~~fire investigator,~~ security alarm installer, alarm response runner, resident manager, certified firearms instructor, or private security guard is guilty of a misdemeanor punishable under 37-60-411."

Section 5. Section 37-60-304, MCA, is amended to read:

"37-60-304. Licenses and registration — application form and content. (1) An application for a license or for a certificate of registration as a process server must be submitted to the department and accompanied by the application fee set by the board.

(2) An application must be made under oath and must include:

(a) the full name and address of the applicant;

(b) the name under which the applicant intends to do business;

(c) a statement as to the general nature of the business in which the applicant intends to engage;

(d) a statement as to whether the applicant desires to be licensed as a contract security company, a proprietary security organization, an electronic security company, a branch office, a certified firearms instructor, a private investigator, ~~a fire investigator,~~ a security alarm installer, an alarm response runner, a resident manager, or a private security guard or registered as a process server;

(e) except for an applicant pursuant to 37-60-303(7)(a), one recent photograph of the applicant, of a type prescribed by the department, and one classifiable set of the applicant's fingerprints;

(f) a statement of the applicant's age and experience qualifications, except for an applicant pursuant to 37-60-303(7)(a); and

(g) other information, evidence, statements, or documents as may be prescribed by the rules of the board.

(3) The board shall verify the statements in the application.

(4) The submittal of fingerprints is a prerequisite to the issuance of a license or certificate of registration to an applicant, other than an applicant under 37-60-303(7)(a), by means of fingerprint checks by the Montana department of justice and the federal bureau of investigation."

Approved April 9, 2009

CHAPTER NO. 195

[HB 365]

AN ACT PROVIDING FOR PROGRAMS OF ALL-INCLUSIVE CARE FOR THE ELDERLY; ALLOWING A WAIVER OF HEALTH MAINTENANCE ORGANIZATION REQUIREMENTS; CLARIFYING THAT PROGRAMS OF ALL-INCLUSIVE CARE FOR THE ELDERLY ARE NOT MEDICAID MANAGED CARE NETWORKS; AMENDING SECTIONS 33-31-102, 33-31-201, AND 53-6-702, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-31-102, MCA, is amended to read:

"33-31-102. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Affiliation period" means a period that, under the terms of the health insurance coverage offered by a health maintenance organization, must expire before the health insurance coverage becomes effective.

(2) "Basic health care services" means:

(a) consultative, diagnostic, therapeutic, and referral services by a provider;

(b) inpatient hospital and provider care;

(c) outpatient medical services;

(d) medical treatment and referral services;

(e) accident and sickness services by a provider to each newborn infant of an enrollee pursuant to 33-31-301(3)(e);

(f) care and treatment of mental illness, alcoholism, and drug addiction;

(g) diagnostic laboratory and diagnostic and therapeutic radiologic services;

(h) preventive health services, including:

(i) immunizations;

(ii) well-child care from birth;

(iii) periodic health evaluations for adults;

(iv) voluntary family planning services;

(v) infertility services; and

(vi) children's eye and ear examinations conducted to determine the need for vision and hearing correction;

(i) minimum mammography examination, as defined in 33-22-132;

(j) outpatient self-management training and education for the treatment of diabetes along with certain diabetic equipment and supplies as provided in 33-22-129; and

(k) treatment and medical foods for inborn errors of metabolism. "Medical foods" and "treatment" have the meanings provided for in 33-22-131.

(3) "Commissioner" means the commissioner of insurance of the state of Montana.

(4) "Dependent" has the meaning provided in 33-22-140.

(5) "Enrollee" means a person:

(a) who enrolls in or contracts with a health maintenance organization;

(b) on whose behalf a contract is made with a health maintenance organization to receive health care services; or

(c) on whose behalf the health maintenance organization contracts to receive health care services.

(6) "Evidence of coverage" means a certificate, agreement, policy, or contract issued to an enrollee setting forth the coverage to which the enrollee is entitled.

(7) "Health care services" means:

(a) the services included in furnishing medical or dental care to a person;

(b) the services included in hospitalizing a person;

(c) the services incident to furnishing medical or dental care or hospitalization; or

(d) the services included in furnishing to a person other services for the purpose of preventing, alleviating, curing, or healing illness, injury, or physical disability.

(8) "Health care services agreement" means an agreement for health care services between a health maintenance organization and an enrollee.

(9) *(a)* "Health maintenance organization" means a person who provides or arranges for basic health care services to enrollees on a prepaid basis, either directly through provider employees or through contractual or other arrangements with a provider or a group of providers. This subsection does not limit methods of provider payments made by health maintenance organizations.

(b) The term does not apply to a PACE organization that has received a waiver pursuant to 33-31-201.

(10) "Insurance producer" means an individual, partnership, or corporation appointed or authorized by a health maintenance organization to solicit applications for health care services agreements on its behalf.

(11) "PACE organization" means an organization, as defined in 42 CFR 460.6, that is authorized by the centers for medicare and medicaid services and the department of public health and human services to operate a program of all-inclusive care for the elderly.

~~(11)~~*(12)* "Person" means:

(a) an individual;

(b) a group of individuals;

(c) an insurer, as defined in 33-1-201;

(d) a health service corporation, as defined in 33-30-101;

(e) a corporation, partnership, facility, association, or trust; or

(f) an institution of a governmental unit of any state licensed by that state to provide health care, including but not limited to a physician, hospital, hospital-related facility, or long-term care facility.

~~(12)~~*(13)* "Plan" means a health maintenance organization operated by an insurer or health service corporation as an integral part of the corporation and not as a subsidiary.

~~(13)~~*(14)* "Point-of-service option" means a delivery system that permits an enrollee of a health maintenance organization to receive health care services from a provider who is, under the terms of the enrollee's contract for health care services with the health maintenance organization, not on the provider panel of the health maintenance organization.

~~(14)~~*(15)* "Provider" means a physician, hospital, hospital-related facility, long-term care facility, dentist, osteopath, chiropractor, optometrist, podiatrist, psychologist, licensed social worker, registered pharmacist, or advanced practice registered nurse, as specifically listed in 37-8-202, who treats any illness or injury within the scope and limitations of the provider's practice or any other person who is licensed or otherwise authorized in this state to furnish health care services.

~~(15)~~*(16)* "Provider panel" means those providers with whom a health maintenance organization contracts to provide health care services to the health maintenance organization's enrollees.

~~(16)~~*(17)* "Purchaser" means the individual, employer, or other entity, but not the individual certificate holder in the case of group insurance, that enters into a health care services agreement.

~~(17)~~*(18)* "Uncovered expenditures" mean the costs of health care services that are covered by a health maintenance organization and for which an enrollee is liable if the health maintenance organization becomes insolvent."

Section 2. Section 33-31-201, MCA, is amended to read:

"33-31-201. Establishment of health maintenance organizations — *waiver.* (1) Notwithstanding any law of this state to the contrary, a person may apply to the commissioner for and obtain a certificate of authority to establish and operate a health maintenance organization in compliance with this chapter. A person may not establish or operate a health maintenance organization in this state except as authorized by a subsisting certificate of authority issued to it by the commissioner. A foreign person may qualify for a certificate of authority if it first obtains from the secretary of state a certificate of authority to transact business in this state as a foreign corporation under 35-1-1028.

(2) Each health maintenance organization operating in this state as of October 1, 1987, shall submit an application for a certificate of authority under subsection (3) within 30 days after the effective date of rules adopted by the commissioner as provided in 33-31-103. Each ~~such~~ applicant may continue to operate in this state until the commissioner acts upon the application. If an application is denied under 33-31-202, the applicant must be treated as a health maintenance organization whose certificate of authority has been revoked.

(3) Each application of a health maintenance organization, whether separately licensed or not, for a certificate of authority must:

(a) be verified by an officer or authorized representative of the applicant;

(b) be in a form prescribed by the commissioner;

(c) contain:

(i) the applicant's name;

(ii) the location of the applicant's home office or principal office in the United States ~~(~~if a foreign person~~)~~;

(iii) the date of organization or incorporation;

(iv) the form of organization, ~~(~~including whether the providers affiliated with the health maintenance organization will be salaried employees or group or individual contractors~~)~~;

(v) the state or country of domicile; and

(vi) any additional information the commissioner may reasonably require; and

(d) set forth the following information or be accompanied by the following documents, as applicable:

(i) a copy of the applicant's organizational documents, such as its corporate charters or articles of incorporation, articles of association, partnership agreement, trust agreement, or other applicable documents, and all amendments ~~thereto~~ *to those documents*, certified by the public officer with whom the originals were filed in the state or country of domicile;

(ii) a copy of the bylaws, rules, and regulations, or similar document, if any, regulating the conduct of the applicant's internal affairs, certified by its secretary or other officer having custody ~~thereof~~ *of the document*;

(iii) a list of the names, addresses, and official positions of the persons responsible for the conduct of the applicant's affairs, including all members of the board of directors, board of trustees, executive committee, or other governing board or committee~~;~~*,* the principal officers in the case of a corporation~~;~~*,* and the partners or members in the case of a partnership or association;

(iv) a copy of any contract made or to be made between:

(A) any provider and the applicant; or

(B) any person listed in subsection (3)(d)(iii) and the applicant. The applicant may file a list of providers executing a standard contract and a copy of the contract instead of copies of each executed contract.

(v) the extent to which any of the following will be included in provider contracts and the form of any provisions that:

(A) limit a provider's ability to seek reimbursement for basic health care services or health care services from an enrollee;

(B) permit or require a provider to assume a financial risk in the health maintenance organization, including any provisions for assessing the provider, adjusting capitation or fee-for-service rates, or sharing in the earnings or losses; and

(C) govern amending or terminating an agreement with a provider;

(vi) a financial statement showing the applicant's assets, liabilities, and sources of financial support. If the applicant's financial affairs are audited by independent certified public accountants, a copy of the applicant's most recent certified financial statement satisfies this requirement unless the commissioner

directs that additional or more recent financial information is required for the proper administration of this chapter.

(vii) a description of the proposed method of marketing, a financial plan that includes a projection of operating results anticipated until the organization has had net income for at least 1 year, and a statement as to the sources of working capital as well as any other source of funding;

(viii) a power of attorney executed by the applicant, on a form prescribed by the commissioner, appointing the commissioner, ~~his~~ *the commissioner's* successors in office, and ~~his~~ *the commissioner's* authorized deputies as the applicant's attorney to receive service of legal process issued against it in this state;

(ix) a statement reasonably describing the geographic service area or areas to be served, by county, including:

(A) a chart showing the number of primary and specialty care providers, with locations and service areas by county;

(B) the method of handling emergency care, with the location of each emergency care facility; and

(C) the method of handling out-of-area services;

(x) a description of the way in which the health maintenance organization provides services to enrollees in each geographic service area, including the extent to which a provider under contract with the health maintenance organization provides primary care to those enrollees;

(xi) a description of the complaint procedures to be used as required under 33-31-303;

(xii) a description of the mechanism by which enrollees will be afforded an opportunity to participate in matters of policy and operation under 33-31-222;

(xiii) a summary of the way in which administrative services will be provided, including the size and qualifications of the administrative staff and the projected cost of administration in relation to premium income. If the health maintenance organization delegates management authority for a major corporate function to a person outside the organization, the health maintenance organization shall include a copy of the contract in its application for a certificate of authority. Contracts for delegated management authority must be filed with the commissioner in accordance with the filing provisions of 33-31-301(2)~~;~~. ~~however~~ *However*, nothing in this subsection deprives the health maintenance organization of its right to confidentiality of any proprietary information, and the commissioner may not disclose that proprietary information to any other person. All contracts must include:

(A) the services to be provided;

(B) the standards of performance for the manager;

(C) the method of payment, including any provisions for the administrator to participate in the profits or losses of the plan;

(D) the duration of the contract; and

(E) any provisions for modifying, terminating, or renewing the contract.

(xiv) a summary of all financial guaranties by providers, sponsors, affiliates, or parents within a holding company system or any other guaranties that are intended to ensure the financial success of the plan, including hold harmless

agreements by providers, insolvency insurance, reinsurance, or other guaranties;

(xv) a summary of benefits to be offered enrollees, including any limitations and exclusions and the renewability of all contracts to be written;

(xvi) evidence that it can meet the requirement of 33-31-216(10); and

(xvii) any other information that the commissioner may reasonably require to make the determinations required in 33-31-202.

(4) Each health maintenance organization shall file each substantial change, alteration, or amendment to the information submitted under subsection (3) with the commissioner at least 30 days prior to its effective date, including changes in articles of incorporation and bylaws, organization type, geographic service area, provider contracts, provider availability, plan administration, financial projections and guaranties, and any other change that might affect the financial solvency of the plan. The commissioner may, after notice and hearing, disapprove any proposed change, alteration, or amendment to the business plan. The commissioner may make reasonable rules exempting from the filing requirements of this subsection those items he considers unnecessary.

(5) An applicant or a health maintenance organization holding a certificate of authority shall file with the commissioner all contracts of reinsurance and any modifications ~~thereto~~ *to the contracts*. An agreement between a health maintenance organization and an insurer is subject to Title 33, chapter 2, part 12. A reinsurance agreement must remain in full force and effect for at least 90 days following written notice of cancellation by either party by certified mail to the commissioner.

(6) Each health maintenance organization shall maintain, at its administrative office, and make available to the commissioner upon request executed copies of all provider contracts.

(7) The commissioner may make reasonable rules exempting an insurer or health service corporation operating a health maintenance organization as a plan from the filing requirements of this section if information requested in the application has been submitted to the commissioner under other laws and rules administered by the commissioner.

(8) (a) The commissioner may waive the requirements of this section for a PACE organization that has entered into a PACE program agreement pursuant to 42 U.S.C. 1396u-4.

(b) A request for waiver must be submitted in a form prescribed by the commissioner. The waiver application must be filed and approved annually. The annual renewal process must be completed by June 30 of each year.

(c) The factors that the commissioner may take into account when granting a waiver include but are not limited to the financial condition of the PACE organization, any consumer complaints against the PACE organization, and the length of time the PACE organization has been in business.

(d) The PACE organization shall submit an audited financial statement for the organization as a whole and a financial statement for the PACE program specifically with the initial waiver application and annually on June 30. The commissioner may request additional information necessary to evaluate the waiver request.

(e) The waiver automatically expires if the certification of the PACE organization by the centers for medicare and medicaid services or the department of public health and human services expires or is terminated.

(f) The PACE organization shall notify the commissioner within 30 days if the centers for medicare or medicaid services takes adverse action or issues any warnings regarding the continuation of the PACE organization."

Section 3. Section 53-6-702, MCA, is amended to read:

"53-6-702. Definitions. As used in this part, the following definitions apply:

(1) "Department" means the department of public health and human services.

(2) "Health maintenance organization" means a health maintenance organization as defined in 33-31-102.

(3) (a) "Managed care community network" or "network" means an entity, other than a health maintenance organization, that provides or arranges for comprehensive physical or mental health care services under a contract with the department, that is reimbursed by a capitated rate or a fixed monetary amount for a specified time period with a risk of financial loss or a financial incentive to the entity, and that:

(i) contracts for an estimated annual value of $1 million or more of state and federal medicaid funds; or

(ii) operates statewide or covers 20% or more of the medicaid population.

(b) The term does not include a provider of health care services under a contract with the department on a fee-for-service basis *or a PACE organization, as defined in 42 CFR 460.6, that has received a waiver under 33-31-201*.

(4) "Managed health care entity" or "entity" means a health maintenance organization or a managed care community network.

(5) "Program" means an element of the integrated health care system created by this part."

Section 4. Effective date. [This act] is effective on passage and approval.

Approved April 9, 2009

CHAPTER NO. 196

[HB 397]

AN ACT CREATING A REGISTRY FOR VOLUNTARY REGISTRATION BY CLOSE RELATIVES FOR PURPOSES OF NOTIFYING THOSE RELATIVES WHEN A CHILD THAT IS RELATED HAS BEEN REMOVED FROM THE CHILD'S HOME BY THE STATE; AND AMENDING SECTION 41-3-101, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 41-3-101, MCA, is amended to read:

"41-3-101. Declaration of policy. (1) It is the policy of the state of Montana to:

(a) provide for the protection of children whose health and welfare are or may be adversely affected and further threatened by the conduct of those responsible for the children's care and protection;

(b) achieve these purposes in a family environment and preserve the unity and welfare of the family whenever possible;

(c) ensure that there is no forced removal of a child from the family based solely on an allegation of abuse or neglect unless the department has reasonable cause to suspect that the child is at imminent risk of harm;

(d) recognize that a child is entitled to assert the child's constitutional rights;

(e) ensure that all children have a right to a healthy and safe childhood in a permanent placement; and

(f) ensure that whenever removal of a child from the home is necessary, the child is entitled to maintain ethnic, cultural, and religious heritage whenever appropriate.

(2) It is intended that the mandatory reporting of abuse or endangerment cases by professional people and other community members to the appropriate authority will cause the protective services of the state to seek to prevent further abuses, protect and enhance the welfare of these children, and preserve family life whenever appropriate.

(3) In implementing this chapter, whenever it is necessary to remove a child from the child's home, the department shall, when it is in the best interests of the child, place the child with the child's noncustodial birth parent or with the child's extended family, including adult siblings, grandparents, great-grandparents, aunts, and uncles, when placement with the extended family is approved by the department, prior to placing the child in an alternative protective or residential facility. Prior to approving a placement, the department shall investigate whether anyone living in the home has been convicted of a crime involving serious harm to children.

(4) (a) The department shall create a registry for voluntary registration by close relatives of a child for purposes of notifying those relatives when a child that is related has been removed from the child's home pursuant to this chapter.

(b) The registry must contain the names of the child and the child's parents and may contain the names of the child's grandparents, aunts, uncles, adult brothers, and adult sisters and must contain the contact information for the child and parents and any of the relatives whose names appear in the registry.

(5) The department shall consult the registry and notify the relatives on the registry on the first working day after placing the child in accordance with 41-3-301.

(6) The department may charge a fee commensurate with the cost of operating the registry. The fee may be charged only to those persons whose names are voluntarily entered in the registry.

~~(4)~~*(7)* In implementing the policy of this section, the child's health and safety are of paramount concern."

Approved April 9, 2009

CHAPTER NO. 197

[HB 400]

AN ACT REVISING THE ALCOHOL CONTENT OF BEER; AND AMENDING SECTIONS 16-1-102, 16-1-106, AND 16-3-244, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 16-1-102, MCA, is amended to read:

"16-1-102. Policy as to sale of beer. It is ~~hereby declared to be~~ the policy of the state of Montana that the manufacture, transportation, distribution, sale, and possession of "beer", as that term is defined in this code*,* ~~and which contains not more than 7% of alcohol by weight, shall~~ *must* be controlled and regulated as provided under this code. ~~Beer~~ *Unless defined as beer in 16-1-106(5)(b), beer*, porter, ale, stout, and malt liquors containing more than ~~7% of~~ *8.75%* alcohol by ~~weight~~ *volume* and ~~which~~ *that* are defined as "liquor" ~~shall be~~ *are* subject to the regulations and controls provided for liquor."

Section 2. Section 16-1-106, MCA, is amended to read:

"16-1-106. Definitions. As used in this code, the following definitions apply:

(1) "Agency franchise agreement" means an agreement between the department and a person appointed to sell liquor and table wine as a commission merchant rather than as an employee.

(2) "Agency liquor store" means a store operated under an agency franchise agreement in accordance with this code for the purpose of selling liquor at either the posted or the retail price for off-premises consumption.

(3) "Alcohol" means ethyl alcohol, also called ethanol, or the hydrated oxide of ethyl.

(4) "Alcoholic beverage" means a compound produced and sold for human consumption as a drink that contains more than 0.5% of alcohol by volume.

(5) "Beer" means*:*

(a) a malt beverage containing not more than ~~7% of~~ *8.75%* alcohol by ~~weight~~ *volume; or*

(b) an alcoholic beverage containing not more than 14% alcohol by volume:

(i) that is made by the alcoholic fermentation of an infusion or decoction, or a combination of both, in potable brewing water, of malted cereal grain; and

(ii) in which the sugars used for fermentation of the alcoholic beverage are at least 75% derived from malted cereal grain measured as a percentage of the total dry weight of the fermentable ingredients.

(6) "Beer importer" means a person other than a brewer who imports malt beverages.

(7) "Brewer" means a person who produces malt beverages.

(8) "Community" means:

(a) in an incorporated city or town, the area within the incorporated city or town boundaries;

(b) in an unincorporated city or area, the area identified by the federal bureau of the census as a community for census purposes; and

(c) in a consolidated local government, the area of the consolidated local government not otherwise incorporated.

(9) "Department" means the department of revenue, unless otherwise specified, and includes the department of justice with respect to receiving and processing, but not granting or denying, an application under a contract entered into under 16-1-302.

(10) "Hard cider" means an alcoholic beverage that is made from the alcoholic fermentation of the juices of apples or pears and that contains not less than 0.5% alcohol by volume and not more than 6.9% alcohol by volume, including but not limited to flavored, sparkling, or carbonated cider.

(11) "Immediate family" means a spouse, dependent children, or dependent parents.

(12) "Import" means to transfer beer or table wine from outside the state of Montana into the state of Montana.

(13) "Liquor" means an alcoholic beverage except beer and table wine.

(14) "Malt beverage" means an alcoholic beverage made by the fermentation of an infusion or decoction, or a combination of both, in potable brewing water, of malted barley with or without hops or their parts or their products and with or without other malted cereals and with or without the addition of unmalted or prepared cereals, other carbohydrates, or products prepared from carbohydrates and with or without other wholesome products suitable for human food consumption.

(15) "Package" means a container or receptacle used for holding an alcoholic beverage.

(16) "Posted price" means the wholesale price of liquor for sale to persons who hold liquor licenses as fixed and determined by the department and in addition an excise and license tax as provided in this code.

(17) "Proof gallon" means a U.S. gallon of liquor at 60 degrees on the Fahrenheit scale that contains 50% of alcohol by volume.

(18) "Public place" means a place, building, or conveyance to which the public has or may be permitted to have access and any place of public resort.

(19) "Retail price" means the price established by an agent for the sale of liquor to persons who do not hold liquor licenses. The retail price may not be less than the department's posted price.

(20) "Rules" means rules adopted by the department or the department of justice pursuant to this code.

(21) "Special event", as it relates to an application for a beer and wine special permit, means a short, infrequent, out-of-the-ordinary occurrence, such as a picnic, fair, reception, or sporting contest.

(22) "State liquor warehouse" means a building owned or under control of the department for the purpose of receiving, storing, transporting, or selling alcoholic beverages to agency liquor stores.

(23) "Storage depot" means a building or structure owned or operated by a brewer at any point in the state of Montana off and away from the premises of a brewery, which building or structure is equipped with refrigeration or cooling apparatus for the storage of beer and from which a brewer may sell or distribute beer as permitted by this code.

(24) "Subwarehouse" means a building or structure owned or operated by a licensed beer wholesaler or table wine distributor, located at a site in Montana other than the site of the beer wholesaler's or table wine distributor's warehouse or principal place of business, and used for the receiving, storage, and distribution of beer or table wine as permitted by this code.

(25) "Table wine" means wine that contains not more than 16% alcohol by volume and includes cider.

(26) "Table wine distributor" means a person importing into or purchasing in Montana table wine for sale or resale to retailers licensed in Montana.

(27) "Warehouse" means a building or structure located in Montana that is owned or operated by a licensed beer wholesaler or table wine distributor for the receiving, storage, and distribution of beer or table wine as permitted by this code.

(28) "Wine" means an alcoholic beverage made from or containing the normal alcoholic fermentation of the juice of sound, ripe fruit or other agricultural products without addition or abstraction, except as may occur in the usual cellar treatment of clarifying and aging, and that contains more than 0.5% but not more than 24% of alcohol by volume. Wine may be ameliorated to correct natural deficiencies, sweetened, and fortified in accordance with applicable federal regulations and the customs and practices of the industry. Other alcoholic beverages not defined in this subsection but made in the manner of wine and labeled and sold as wine in accordance with federal regulations are also wine."

Section 3. Section 16-3-244, MCA, is amended to read:

"16-3-244. Beer advertising limitations. It ~~shall be~~ *is* lawful to advertise beer ~~containing not more than 7% of alcohol by weight~~, as defined and regulated, subject to the restrictions on brewers and beer importers contained in 16-3-241 of this code and subject to the following restrictions on retailers. ~~No~~ *A* retail licensee ~~shall~~ *may not* display or permit to be displayed on the exterior portion or surface of ~~such~~ *the* retailer's place of business or on the exterior portion or surface of any building of which ~~said~~ *the* place of business is a part or on any premises adjacent ~~thereto~~ *to the place of business*, whether any of ~~such~~ *the* premises ~~be~~ *are* owned or leased by the retailer, any sign, poster, or advertisement bearing the name, brand name, trade name, trademark, or other designation indicating the manufacturer, brewer, beer importer, wholesaler, or place of manufacture of any beer ~~whatsoever~~, unless it is on a marquee, board, or other space used for temporary advertisements and is not displayed for more than 10 days per display period."

Approved April 9, 2009

CHAPTER NO. 198

[HB 407]

AN ACT REVISING THE LAW RELATING TO SEXUAL ABUSE OF CHILDREN; PROVIDING A REPORTING REQUIREMENT FOR PEACE OFFICERS; AND AMENDING SECTION 45-5-625, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 45-5-625, MCA, is amended to read:

"45-5-625. Sexual abuse of children. (1) A person commits the offense of sexual abuse of children if the person:

(a) knowingly employs, uses, or permits the employment or use of a child in an exhibition of sexual conduct, actual or simulated;

(b) knowingly photographs, films, videotapes, develops or duplicates the photographs, films, or videotapes, or records a child engaging in sexual conduct, actual or simulated;

(c) knowingly, by any means of communication, including electronic communication, persuades, entices, counsels, or procures a child under 16 years of age or a person the offender believes to be a child under 16 years of age to engage in sexual conduct, actual or simulated;

(d) knowingly processes, develops, prints, publishes, transports, distributes, sells, exhibits, or advertises any visual or print medium, including a medium by use of electronic communication in which a child is engaged in sexual conduct, actual or simulated;

(e) knowingly possesses any visual or print medium, including a medium by use of electronic communication in which a child is engaged in sexual conduct, actual or simulated;

(f) finances any of the activities described in subsections (1)(a) through (1)(d) and (1)(g), knowing that the activity is of the nature described in those subsections; ~~or~~

(g) possesses with intent to sell any visual or print medium, including a medium by use of electronic communication in which a child is engaged in sexual conduct, actual or simulated*;*

(h) knowingly travels within, from, or to this state with the intention of meeting a child under 16 years of age or a person the offender believes to be a child under 16 years of age in order to engage in sexual conduct, actual or simulated; or

(i) knowingly coerces, entices, persuades, arranges for, or facilitates a child under 16 years of age or a person the offender believes to be a child under 16 years of age to travel within, from, or to this state with the intention of engaging in sexual conduct, actual or simulated.

(2) (a) Except as provided in subsection (2)(b), (2)(c), or (4), a person convicted of the offense of sexual abuse of children shall be punished by life imprisonment or by imprisonment in the state prison for a term not to exceed 100 years and may be fined not more than $10,000.

(b) Except as provided in 46-18-219, if the victim is under 16 years of age, a person convicted of the offense of sexual abuse of children shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 4 years or more than 100 years and may be fined not more than $10,000.

(c) Except as provided in 46-18-219, a person convicted of the offense of sexual abuse of children for the possession of material, as provided in subsection (1)(e), shall be fined not to exceed $10,000 or be imprisoned in the state prison for a term not to exceed 10 years, or both.

(3) An offense is not committed under subsections (1)(d) through (1)(g) if the visual or print medium is processed, developed, printed, published, transported, distributed, sold, possessed, or possessed with intent to sell, or if the activity is financed, as part of a sexual offender information or treatment course or program conducted or approved by the department of corrections.

(4) (a) If the victim was 12 years of age or younger and the offender was 18 years of age or older at the time of the offense, the offender:

(i) shall be punished by imprisonment in a state prison for a term of 100 years. The court may not suspend execution or defer imposition of the first 25 years of a sentence of imprisonment imposed under this subsection (4)(a)(i) except as provided in 46-18-222, and during the first 25 years of imprisonment, the offender is not eligible for parole.

(ii) may be fined an amount not to exceed $50,000; and

(iii) shall be ordered to enroll in and successfully complete the educational phase and the cognitive and behavioral phase of a sexual offender treatment program provided or approved by the department of corrections.

(b) If the offender is released after the mandatory minimum period of imprisonment, the offender is subject to supervision by the department of corrections for the remainder of the offender's life and shall participate in the program for continuous, satellite-based monitoring provided for in 46-23-1010.

(5) As used in this section, the following definitions apply:

(a) "Electronic communication" means a sign, signal, writing, image, sound, data, or intelligence of any nature transmitted or created in whole or in part by a wire, radio, electromagnetic, photoelectronic, or photo-optical system.

(b) "Sexual conduct" means:

(i) actual or simulated:

(A) sexual intercourse, whether between persons of the same or opposite sex;

(B) penetration of the vagina or rectum by any object, except when done as part of a recognized medical procedure;

(C) bestiality;

(D) masturbation;

(E) sadomasochistic abuse;

(F) lewd exhibition of the genitals, breasts, pubic or rectal area, or other intimate parts of any person; or

(G) defecation or urination for the purpose of the sexual stimulation of the viewer; or

(ii) depiction of a child in the nude or in a state of partial undress with the purpose to abuse, humiliate, harass, or degrade the child or to arouse or gratify the person's own sexual response or desire or the sexual response or desire of any person.

(c) "Simulated" means any depicting of the genitals or pubic or rectal area that gives the appearance of sexual conduct or incipient sexual conduct.

(d) "Visual medium" means:

(i) any film, photograph, videotape, negative, slide, or photographic reproduction that contains or incorporates in any manner any film, photograph, videotape, negative, or slide; or

(ii) any disk, diskette, or other physical media that allows an image to be displayed on a computer or other video screen and any image transmitted to a computer or other video screen by telephone line, cable, satellite transmission, or other method."

Section 2. Sexual abuse of children — report to national center for missing and exploited children. A peace officer who, pursuant to a criminal investigation, recovers images or movies of a child in an exhibition of sexual conduct, actual or simulated, or images or movies of a child engaging in sexual conduct, actual or simulated, shall:

(1) provide the images or movies to the law enforcement contact at the child victim identification program at the national center for missing and exploited children;

(2) request the law enforcement contact at the child victim identification program to identify any images or movies recovered that contain an identified victim of child sexual abuse as defined by 45-5-625; and

(3) provide case information to the child victim identification program in any case in which the peace officer identifies a previously unidentified victim of child sexual abuse.

Section 3. Codification instruction. [Section 2] is intended to be codified as an integral part of Title 46, chapter 4, part 3, and the provisions of Title 46, chapter 4, part 3, apply to [section 2].

Approved April 9, 2009

CHAPTER NO. 199

[HB 530]

AN ACT REVISING THE DEFINITION OF "SOCIAL WORK" TO CLARIFY THAT THE TERM INCLUDES THE USE OF DIAGNOSES AND ADMINISTERING, EVALUATING, AND ASSESSING TESTS; AND AMENDING SECTION 37-22-102, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-22-102, MCA, is amended to read:

"37-22-102. Definitions. As used in this chapter:

(1) "Board" means the board of social work examiners and professional counselors established under 2-15-1744.

(2) "Department" means the department of labor and industry.

(3) "Licensee" means a person licensed under this chapter.

(4) "Psychotherapy" means the use of psychosocial methods within a professional relationship to assist a person to achieve a better psychosocial adaptation and to modify internal and external conditions that affect individuals, groups, or families in respect to behavior, emotions, and thinking concerning their interpersonal processes.

(5) "Social work" means the professional practice directed toward helping people achieve more adequate, satisfying, and productive social adjustments. The practice of social work involves special knowledge of social resources, human capabilities, and the roles that individual motivation and social influences play in determining behavior and involves *diagnoses and* the application of social work techniques, including:

(a) counseling and using psychotherapy with individuals, families, or groups;

(b) providing information and referral services;

(c) providing, arranging, or supervising the provision of social services;

(d) explaining and interpreting the psychosocial aspects in the situations of individuals, families, or groups;

(e) helping communities to organize to provide or improve social and health services; ~~and~~

(f) research or teaching related to social work*; and*

(g) administering, evaluating, and assessing tests if the licensee is qualified to administer the test and make the evaluation and assessment."

Approved April 9, 2009

CHAPTER NO. 200

[HB 593]

AN ACT PROVIDING REQUIREMENTS FOR MINE AND SMELTER WASTE REMEDIATION PROJECTS; PROVIDING PENALTIES FOR FAILURE TO COMPLY WITH THE REQUIREMENTS; AMENDING SECTION 75-1-110, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Definitions. As used in [sections 1 through 7], unless the context requires otherwise, the following definitions apply:

(1) "Department" means the department of environmental quality provided for in 2-15-3501.

(2) "Mine waste" means soil, rock, and other earthen materials excavated from a mine and slimes, tailings, dusts, sludges, or other waste products from the crushing, cleaning, milling, or beneficiation of ores or other mineral-bearing materials, including material that may have migrated from its original place of deposition by erosion or human transit, and that contain hazardous or deleterious substances.

(3) "Smelter waste" means cinders, clinker, slag, and other waste products from the reduction of ores by any means, including material that may have migrated from its original place of deposition by erosion, and that contain hazardous or deleterious substances.

Section 2. Remediation schedule. Except as provided in [section 7], a person who undertakes a remedial action for the remediation of mine or smelter waste on property owned by someone other than the owner of the waste shall complete the remedial action in accordance with a schedule negotiated between the person completing the remedial action and the property owner and approved by the department.

Section 3. Remediation location. (1) Except as provided in [section 7] and subsection (2) of this section, as part of a remedial action on property owned by another, mine and smelter waste may not be placed or remediated in place at a location within 200 feet of any mine excavation or opening.

(2) (a) The requirements of subsection (1) may be waived when, after review of an application by a person undertaking a remedial action, the department finds that the remedial action plan complies with Title 75, chapters 2, 5, and 10, and applicable rules.

(b) The person conducting the remedial action shall reimburse the department for costs incurred by the department under this section.

(c) Reimbursements must be deposited in the environmental rehabilitation and response account provided for in 75-1-110.

(3) The person conducting the remedial action must have the landowner's consent before taking action under this section.

(4) This section does not apply to facilities containing mine or smelter waste that are permitted under Title 82, chapter 4, or that were constructed prior to January 1, 2007.

Section 4. Minimum reclamation standards. (1) Except as provided in [section 7], mine and smelter waste repositories constructed by persons undertaking a remedial action on property owned by another must be capped with a minimum of 24 inches of cover material, including a minimum of 6 inches of topsoil, and revegetated as provided in subsection (3).

(2) Except as agreed to by the person undertaking the remedial action and the property owner or as provided in [section 7], locations where mine or smelter waste has been removed by a person undertaking a remedial action on property owned by someone other than the waste owner must be capped by a minimum of 6 inches of topsoil and revegetated as provided in subsection (3).

(3) Except as provided in [section 7]:

(a) mine and smelter waste repositories or lands where mine or smelter waste has been removed must be revegetated using plant species native to the area; and

(b) revegetated areas must achieve a vegetative cover equal to 85% of the vegetation cover of adjacent lands that were not previously disturbed within 3 years of the initial seeding.

Section 5. Remediation plan. (1) A person undertaking a remediation action for mine or smelter waste on property owned by someone other than the waste owner shall prepare and submit to the property owner a detailed, written plan describing the waste to be remediated and remedial actions to take place on the property.

(2) The property owner has a minimum of 30 days to review the plan. If the remediation is completed pursuant to 75-10-712 or 75-10-746, the review is not required.

Section 6. Civil penalty. (1) A district court may assess a civil penalty upon a person who violates [sections 1 through 5] of not more than $1,000 per day.

(2) An action under this section is not a bar to enforcement by injunction or other appropriate civil remedy.

(3) The penalty provided for in subsection (1) is recoverable in an action brought by the property owner and is payable to the property owner. The action must be filed in the district court of the county where the violation occurred.

Section 7. Mine and smelter waste remediation — compliance with hazardous waste cleanup orders. [Sections 1 through 6] do not apply to reclamation of an abandoned mine site pursuant to 82-4-371 or to the extent that the actions irreconcilably conflict with an order or plan approval issued by the department pursuant to Title 75, chapter 10, part 7, a corrective action order or permit issued pursuant to Title 75, chapter 10, part 4, or a permit issued for reclamation of a mine site pursuant to Title 82, chapter 4, part 3.

Section 8. Section 75-1-110, MCA, is amended to read:

"75-1-110. Environmental rehabilitation and response account. (1) There is an environmental rehabilitation and response account in the state special revenue fund provided for in 17-2-102.

(2) There must be deposited in the account:

(a) fine and penalty money received pursuant to 75-10-1223, 82-4-311, and 82-4-424 and other funds or contributions designated for deposit to the account;

(b) reimbursements received pursuant to [section 3];

~~(b)~~*(c)* unclaimed or excess reclamation bond money received pursuant to 82-4-241, 82-4-311, 82-4-424, and 82-4-426; and

~~(c)~~*(d)* interest earned on the account.

(3) Money in the account is available to the department of environmental quality by appropriation and must be used to pay for:

(a) reclamation and revegetation of land affected by mining activities, research pertaining to the reclamation and revegetation of land, and the rehabilitation of water affected by mining activities;

(b) reclamation and revegetation of unreclaimed mine lands for which the department may not require reclamation by, or obtain costs of reclamation from, a legally responsible party;

(c) remediation of sites containing hazardous wastes or hazardous substances for which the department may not recover costs from a legally responsible party; or

(d) response to an imminent threat of substantial harm to the environment, to public health, or to public safety for which no funding or insufficient funding is available pursuant to 75-1-1101.

(4) Any unspent or unencumbered money in the account at the end of a fiscal year must remain in the account until spent or appropriated by the legislature."

Section 9. Codification instruction. [Sections 1 through 7] are intended to be codified as an integral part of Title 75, chapter 10, and the provisions of Title 75, chapter 10, apply to [sections 1 through 7].

Section 10. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 11. Effective date. [This act] is effective on passage and approval.

Approved April 9, 2009

CHAPTER NO. 201

[HB 190]

AN ACT REVISING LAWS RELATED TO ACCESS TO STATE WATERS FROM COUNTY ROADS AND BRIDGES; PROVIDING THAT A FENCE ATTACHED TO OR ABUTTING A COUNTY ROAD BRIDGE IS NOT CONSIDERED AN ENCROACHMENT UNDER CERTAIN CIRCUMSTANCES; PROVIDING FOR PUBLIC ACCESS TO SURFACE WATERS FOR RECREATIONAL USE FROM A COUNTY ROAD RIGHT-OF-WAY AND FROM A COUNTY BRIDGE, ITS RIGHT-OF-WAY, AND ITS ABUTMENTS; PROVIDING FOR PUBLIC PASSAGE TO SURFACE WATERS THROUGH COUNTY ROAD AND BRIDGE RIGHTS-OF-WAY WHILE MAINTAINING LIVESTOCK CONTROL OR PROPERTY MANAGEMENT; REQUIRING THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO NEGOTIATE WITH AFFECTED LANDOWNERS TO PROVIDE METHODS TO ENSURE PUBLIC PASSAGE TO SURFACE WATERS FOR RECREATIONAL PURPOSES WHILE MAINTAINING LIVESTOCK CONTROL OR PROPERTY MANAGEMENT; PROVIDING FOR PAYMENT OF THE COSTS OF ANY FENCE MODIFICATION NECESSARY TO PROVIDE FOR PUBLIC PASSAGE; AMENDING SECTION 7-14-2134, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, the Legislature finds that significant controversy has existed related to public access to streams and rivers from county road and bridge rights-of-way; and

WHEREAS, a Montana Attorney General's Opinion in 2000 (48 A.G. Op. 13) held that the use of a county road right-of-way to gain access to streams and rivers is consistent with and reasonably incidental to the public's right to travel on county roads and that the public may gain access to streams and rivers by using the bridge, its right-of-way, and its abutments; and

WHEREAS, during the 2007-08 interim a group of stakeholders met to address the controversy and agreed in principle that a legislative solution was preferable and that past legislative attempts may have failed because they were overly complex; and

WHEREAS, the stakeholders also agreed in principle that any proposed legislation needed to provide:

(1) that a fence in a county road right-of-way abutting a bridge should not be considered an encroachment;

(2) that the public may access streams and rivers from a county road or bridge right-of-way, but that the public must stay in the right-of-way to gain access;

(3) that the legislation neither create any right nor extinguish any right related to county roads established by prescriptive use that exist at the time of passage;

(4) a process to define the physical characteristics of a fence used for public access in county road and bridge rights-of-way; and

(5) an approach with broad scope rather than an attempt to resolve a myriad of possible contingencies; and

WHEREAS, the stakeholders determined that each of these provisions was integral to the others and that if any section of the proposed legislation containing the agreed-upon principles was removed, the entire legislation should be void.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-14-2134, MCA, is amended to read:

"7-14-2134. Removal of highway encroachment. (1) ~~If~~ *Except as provided in subsection (4) and as clarified in [sections 2 and 3], if* any highway is encroached upon by fence, building, or otherwise, the road supervisor or county surveyor of the district must give notice, orally or in writing, requiring the encroachment to be removed from the highway.

(2) If the encroachment obstructs and prevents the use of the highway for vehicles, the road supervisor or county surveyor ~~must~~ *shall* immediately remove the ~~same~~ *encroachment*.

(3) The board of county commissioners may at any time order the road supervisor or county surveyor to immediately remove any encroachment.

(4) This section does not apply to a fence for livestock control or property management that is in a county road right-of-way and that is attached to or abuts a county road bridge edge, guardrail, or abutment if the fence and bridge appurtenances are not on the roadway, as defined in 61-1-101. Any fence described in this subsection must comply with [section 3]."

Section 2. Access to surface waters by public bridge or county road right-of-way. (1) A person may gain access to surface waters for recreational use by using:

(a) a public bridge, its right-of-way, and its abutments; and

(b) a county road right-of-way.

(2) When accessing surface waters pursuant to subsection (1), a person shall stay within the road or bridge right-of-way. Absent definition in an easement or deed to the contrary, the width of a bridge right-of-way is the same width as the right-of-way of the road to which the bridge is attached.

(3) The provisions in [sections 1 and 3] and this section related to public access to surface waters for recreational use neither create nor extinguish any right related to county roads established by prescriptive use that exist on [the effective date of this act].

(4) For purposes of determining liability, a person accessing surface waters for recreational use pursuant to this section is owed no duty by a landowner or an agent or tenant of that landowner other than for an act or omission that constitutes willful or wanton misconduct.

Section 3. Fencing for livestock control and public passage — negotiation — costs. (1) At county road bridges for which public access is authorized pursuant to [section 2], each fence attached to or abutting a county road bridge edge, guardrail, or abutment for livestock control or for property management pursuant to 7-14-2134(4) must provide for public passage to surface waters for recreational use pursuant to this section.

(2) (a) If a dispute arises regarding public passage pursuant to subsection (1), the department, pursuant to the department's policy in 87-1-229 to work with private land managers to resolve and reduce user conflicts, shall negotiate with the affected landowner regarding the characteristics of an access feature of a legal fence for public passage and livestock control or property management. Examples of an access feature of a legal fence that provides public passage and livestock control or property management may include:

(i) a stile;

(ii) a gate;

(iii) a roller;

(iv) a walkover;

(v) a wooden rail fence that provides for passage; or

(vi) any other method designed for public passage and livestock control or property management.

(b) One access feature, as described in subsection (2)(a), on each side of the stream is sufficient. When practicable, one access feature must be located on the downstream bridge edge, guardrail, or abutment. The department may waive these provisions when one access feature is sufficient.

(c) If the landowner and the department cannot reach agreement within 60 days after the department's initial contact with the landowner for negotiation, the department shall provide the landowner with options for methods to provide public passage while controlling livestock or managing property. If the landowner does not choose one of the method options within 30 days after the options are offered, the department shall choose and then may install one of the method options.

(3) The department, in cooperation with other interested parties, shall provide the materials, installation, and maintenance of any fence modifications necessary to provide public passage as required by this section.

Section 4. Codification instruction. [Sections 2 and 3] are intended to be codified as an integral part of Title 23, chapter 2, part 3, and the provisions of Title 23, chapter 2, part 3, apply to [sections 2 and 3].

Section 5. Nonseverability. It is the intent of the legislature that each part of [this act] is essentially dependent upon every other part, and if one part is held unconstitutional or invalid, all other parts are invalid.

Section 6. Effective date. [This act] is effective on passage and approval.

Approved April 13, 2009

CHAPTER NO. 202

[HB 104]

AN ACT CLARIFYING THAT STATE ACTIVE DUTY PAY AND EXPENSES MUST BE DRAWN ON APPROPRIATED FUNDS; AMENDING SECTION 10-1-501, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 10-1-501, MCA, is amended to read:

"10-1-501. Pay for militia. (1) When the organized militia is ordered into active duty as provided for in Article VI, section 13, of the constitution of this state, warrants for pay and expenses must be drawn upon ~~the general fund of the state~~ *funds appropriated by the legislature*.

(2) If national guard members are placed on state duty for special work pursuant to 10-1-505, the members are entitled to pay and allowances as provided in 10-1-502(3). Warrants for pay and allowances for state duty for special work must be drawn upon funds appropriated by the legislature."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 15, 2009

CHAPTER NO. 203

[HB 116]

AN ACT CLARIFYING THE PROOF OF INSURANCE REQUIREMENT FOR AN OWNER OR OPERATOR OF A MOTOR VEHICLE; AMENDING SECTION 61-6-302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-6-302, MCA, is amended to read:

"61-6-302. Proof of compliance. (1) The registration receipt required by 61-3-322 must contain a statement that unless the vehicle is eligible for an exemption under 61-6-303, it is unlawful to operate the vehicle without a valid motor vehicle liability insurance policy, a certificate of self-insurance, or a posted indemnity bond, as required by 61-6-301.

(2) Each ~~person~~ *owner or operator of a motor vehicle* shall carry in ~~a~~ *the* motor vehicle ~~being operated by the person~~ an insurance card approved by the

department but issued by the insurance carrier to the motor vehicle owner as proof of compliance with 61-6-301. A motor vehicle *owner or* operator shall exhibit the insurance card upon demand of a justice of the peace, a city or municipal judge, a peace officer, a highway patrol officer, or a field deputy or inspector of the department. A person commits an offense under this subsection if the person fails to carry the insurance card in a motor vehicle or fails to exhibit the insurance card upon demand of a person specified in this subsection. However, a person charged with violating this subsection may not be convicted if the person produces in court or the office of the arresting officer proof of insurance valid at the time of arrest."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 15, 2009

CHAPTER NO. 204

[HB 161]

AN ACT RATIFYING THE WATER RIGHTS COMPACT ENTERED INTO BY THE BLACKFEET TRIBE OF THE BLACKFEET INDIAN RESERVATION, THE STATE OF MONTANA, AND THE UNITED STATES OF AMERICA; TRANSFERRING $4 MILLION FROM THE GENERAL FUND TO THE BLACKFEET TRIBE WATER RIGHTS COMPACT INFRASTRUCTURE ACCOUNT; APPROPRIATING FUNDS FOR WATER-RELATED INFRASTRUCTURE PROJECTS WITHIN THE EXTERIOR BOUNDARIES OF THE BLACKFEET INDIAN RESERVATION; AMENDING SECTION 85-20-1505, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, it is the policy of the state to seek negotiated settlements of federal and Indian reserved water rights claims in Montana under Title 85, chapter 2, part 7, MCA; and

WHEREAS, pursuant to this policy, the Montana Reserved Water Rights Compact Commission, under 85-2-702(1), MCA, is authorized to negotiate the settlement of water rights claims filed by Indian tribes or on their behalf by the United States claiming reserved waters within the state of Montana; and

WHEREAS, the Montana Reserved Water Rights Compact Commission and the Blackfeet Tribe have reached agreement on a water rights compact; and

WHEREAS, a Blackfeet Tribe-Montana water rights compact is essential to provide legal certainty with regard to the water rights of Indian and non-Indian water rights holders; and

WHEREAS, implementation of the compact will require state and federal cost sharing; and

WHEREAS, the State of Montana has expressed a commitment to share the costs of the construction, renovation, and upgrade of infrastructure relating to Four Horns Reservoir in the amount of $20 million; and

WHEREAS, state law requires legislative ratification of any compact entered into pursuant to 85-2-702, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Water rights compact entered into by the Blackfeet Tribe of the Blackfeet Indian Reservation, the State of Montana, and the United States ratified. The compact entered into by the Blackfeet Tribe, the State of Montana and the United States of America to settle for all time any and

all claims to federal reserved water rights for the Blackfeet Tribe within the boundaries of the Blackfeet Indian Reservation within the State of Montana and filed with the secretary of state of the State of Montana under the provisions of 85-2-703 on [date of filing] is ratified. The compact is as follows:

ARTICLE I - RECITALS

WHEREAS, pursuant to the Treaty of 1855, 11 Stat. 657, a Reservation was established in Montana for the Blackfeet Tribe; and

WHEREAS, pursuant to said Treaty, the Blackfeet Tribe claims reserved water rights to fulfill the purposes of the Treaty and the Reservation; and

WHEREAS, in 1979, the United States, on its own behalf and on behalf of the Blackfeet Tribe, its members and Allottees brought suit in the United States District Court for the District of Montana to obtain a final determination of the Tribe's water rights claims, see United States v. Aageson, No. CIV-79-21-GF (filed April 5, 1979); and

WHEREAS, Congress consented to state court jurisdiction over the quantification of claims to water rights held by the United States of America in trust for Indian tribes; see "the McCarran Amendment," 43 U.S.C. 666(a)(1) (1952); Colorado River Water Conservation Dist. v. United States, 424 U.S. 800 (1976); Arizona v. San Carlos Apache Tribe, 463 U.S. 545 (1983); and

WHEREAS, the State of Montana initiated a general stream adjudication pursuant to the provisions of Chapter 697, Laws of Montana 1979, which includes Blackfeet tribal water rights; and

WHEREAS, the United States has filed claims on its own behalf and on behalf of the Blackfeet Tribe, its members and Allottees in the general stream adjudication initiated by the State of Montana, see In the Matter of the Adjudication of the Existing and Reserved Rights to the Use of Water, Both Surface and Underground, of the Blackfeet Tribe of the Blackfeet Reservation within the State of Montana, Civil No. WC-91-1; and

WHEREAS, the Montana Reserved Water Rights Compact Commission, under 85-2-702(1), MCA, is authorized to negotiate settlement of water rights claims filed by Indian tribes and/or on their behalf by the United States claiming reserved waters within the State of Montana; and

WHEREAS, the federal district court litigation was stayed in 1983 pending the outcome of Montana State court water adjudication proceedings, see Northern Cheyenne v. Adsit, 721 F.2d 1187 (9th Cir.,1983); and

WHEREAS, the adjudication of Blackfeet tribal water rights in the State court proceeding has been stayed while negotiations are proceeding to conclude a compact resolving all water rights claims of the Blackfeet Tribe within the Reservation; and

WHEREAS, the Blackfeet Tribal Business Council, or its duly designated representatives, have authority to negotiate this Compact pursuant to Article VI, Section 1(a) of the Constitution and By-Laws for the Blackfeet Tribe of the Blackfeet Indian Reservation of Montana, as amended; and

WHEREAS, the United States Attorney General, or a duly designated official of the United States Department of Justice, has authority to execute this Compact on behalf of the United States pursuant to the authority to settle litigation contained in 28 U.S.C. sections 516-17; and

WHEREAS, the Secretary of the Interior, or a duly designated official of the United States Department of the Interior, has authority to execute this

Compact on behalf of the United States Department of the Interior pursuant to 43 U.S.C. 1457, inter alia; and

WHEREAS, the Blackfeet Tribe of the Blackfeet Indian Reservation, the State of Montana, and the United States agree that the Tribal Water Right described in this Compact is in satisfaction of the water rights claims of the Tribe, its members and Allottees, and of the United States on behalf of the Tribe and its members and Allottees within the Blackfeet Indian Reservation; and

WHEREAS, the Parties agree that it is in the best interest of all Parties that the water rights claims of the Blackfeet Tribe be settled through agreement between and among the Tribe, the State of Montana, and the United States.

NOW THEREFORE, the Parties agree to enter into this Compact for the purpose of settling the federally reserved water rights claims of the Blackfeet Tribe, its members, and Allottees of the Blackfeet Indian Reservation and of the United States on behalf of the Tribe, its members and Allottees within the Blackfeet Indian Reservation.

ARTICLE II- DEFINITIONS

The following definitions shall apply for purposes of this Compact:

(1) "Acre-foot" or "Acre-feet" or "AF" means the amount of water necessary to cover one acre to a depth of one foot and is equivalent to 43,560 cubic feet of water.

(2) "Acre-Feet per Year" or "AFY" means an annual quantity of water measured in acre-feet over a period of a calendar year.

(3) "Allottee" or "Allottees" means any individual or individuals who own or hold a trust allotment or interest in a trust allotment on the Reservation under the authority of the General Allotment Act (24 Stat. 388) and the Blackfeet Allotment Acts (34 Stat. 1035 and 41 Stat. 3), and subject to the terms and conditions of those Acts.

(4) "Annual" means during one calendar year.

(5) "Available St. Mary River Water" means:

(a) water from the St. Mary River allocated to the United States under the Boundary Waters Treaty minus that quantity of water required for the Milk River Project Water Right; and/or

(b) water otherwise part of the Milk River Project Water Right but made available to the Tribe by the United States without any net reduction to the legal entitlements to water of water users within entities with contracts for water from the Milk River Project Water Right, as those legal entitlements may be determined initially by the Secretary or subsequently by a court of competent jurisdiction.

(6) "Badger Creek Drainage" means Badger Creek and its tributaries within the Reservation within Basin 41M, as shown in Appendix 2.

(7) "Basin 40F" means the hydrologic Basin 40F, including the Milk River and its tributaries, as shown in Appendix 2.

(8) "Basin 41L" means the hydrologic Basin 41L, including Cut Bank Creek and its tributaries, as shown in Appendix 2.

(9) "Basin 41M" means the hydrologic Basin 41M, including Birch Creek, Badger Creek, Two Medicine River and their respective tributaries, as shown in Appendix 2.

(10) "Basin 40T" means the hydrologic Basin 40T, including the St. Mary River and its tributaries, as shown in Appendix 2.

(11) "Birch Creek" means the mainstem of the southern boundary stream of the Reservation from the southwestern Reservation boundary to the confluence of the Two Medicine River, as shown in Appendix 2.

(12) "Birch Creek Drainage" means Birch Creek and its tributaries within the Reservation within Basin 41M, as shown in Appendix 2.

(13) "Birch Creek Management Plan" means the management plan entered into by the Tribe, the State, the Bureau of Indian Affairs and the Pondera County Canal and Reservoir Company, attached hereto as Appendix 1, and any amendments thereto. Such amendments are pursuant to, and shall not be deemed a modification or amendment of, this Compact.

(14) "Blackfeet Irrigation Project" means the irrigation project authorized by federal law for development on the Reservation in Basins 41L and 41M, and currently administered by the United States Department of the Interior, Bureau of Indian Affairs.

(15) "Blackfeet Water Resources Department" or "BWRD" means the Blackfeet Water Resources Department, or any successor agency.

(16) "Board" means the Blackfeet-Montana Compact Board established by Section J.1 of Article IV of this Compact.

(17) "Boundary Waters Treaty" means the "Treaty Between the United States and Great Britain Relating to Boundary Waters, and Questions Arising Between the United States and Canada," entered into on January 11, 1909, and ratified by the Senate on May 13, 1910 (36 Stat. 2448).

(18) "Call" means the right of the holder of a water right with a senior priority and an immediate need for a recognized use to require a holder of a water right with a junior priority to refrain from diverting water otherwise physically available.

(19) "Cfs" means cubic feet per second.

(20) "Change in Use" means a change in the point of diversion, the place of use, the purpose of use, the period of use or the place or means of storage, including for Lease.

(21) "Compact" means this water rights settlement entered into by the Blackfeet Tribe, the State and the United States.

(22) "Cut Bank Creek Drainage" means Cut Bank Creek and its tributaries within the Reservation within Basin 41L, as shown in Appendix 2.

(23) "Direct Use" means diversion of water from the Natural Flow of a source to be used for a designated purpose without intermediate storage.

(24) "DNRC" means the Montana Department of Natural Resources and Conservation, or any successor agency.

(25) "Effective Date" means the date on which the Compact is finally approved by the Tribe, by the Montana legislature and by the Congress of the United States, whichever date is latest.

(26) "Excepted Rights" means any right excepted from the permitting requirements of State law to appropriate Stock Water for impoundments or pits with a priority date after the Effective Date of this Compact, any right exempt from the permitting requirements of State law to appropriate Ground Water with a priority date after the Effective Date of this Compact, temporary

emergency appropriations made after the Effective Date of this Compact and as provided in 85-2-113, MCA, and those small Stock Water and Ground Water rights that are developed free from pre-development review, and those temporary emergency uses to protect lives or property, under tribal law, as each may be applicable.

(27) "Existing Uses" means, as applied to the Tribal Water Right, uses both existing and that historically existed, from both Natural Flow and Ground Water, including irrigation use on all assessable and temporarily non-assessable lands within the Blackfeet Irrigation Project, as of the date the ratification of the Compact by the Montana legislature becomes effective. The following shall be considered Existing Uses and not New Developments:

(a) water made available by the replacement, repair or rehabilitation of storage facilities existing as of the Effective Date of the Compact to their originally designed capacity;

(b) water made available by the rehabilitation, betterment, enlargement, improvement and/or construction of facilities of the Badger-Fisher Irrigation Unit of the Bureau of Indian Affairs' Blackfeet Irrigation Project and other related facilities, specifically:

(i) rehabilitation and betterment of the Four Horns Feeder Canal system up to at least 300 cfs in capacity;

(ii) enlargement of the existing off-stream Four Horns Dam and Reservoir to its maximum practical capacity;

(iii) construction of facilities to deliver a minimum of 15,000 acre-feet of water per year from the enlarged Four Horns Dam to a point on Birch Creek to be designated by the Parties;

(iv) rehabilitation and betterment of the outlet canal delivery system from Four Horns Dam to Blacktail Creek;

(v) rehabilitation and betterment of the Badger-Fisher Main Canal; and

(vi) measures to enhance on-farm efficiency in the Badger-Fisher Irrigation Unit of the Blackfeet Irrigation Project;

(c) water made available by the rehabilitation and betterment of Lower Two Medicine Lake and Mission Lake;

(d) water used by the development of the Two Medicine Water Treatment Plant and Municipal Water Project and associated delivery works, including delivery of water to East Glacier, Browning, Seville and Cut Bank; and

(e) water used by the development of the Babb municipal water supply system.

(28) "Ground Water" means any water that is beneath the ground surface.

(29) "Harm" means an impact on a water right resulting in a material injury.

(30) "Lake Elwell" means the water impounded on the Marias River in Montana by Tiber Dam, a feature of the Lower Marias Unit, Pick-Sloan Missouri Basin Program built pursuant to the Act of December 22, 1944 (58 Stat. 887), as set forth in House Document 475 and Senate Document 191, as revised and coordinated by Senate Document 247, 78th Congress, Second Session.

(31) "Lease" means, as applied to the Tribal Water Right, to authorize a Person or Persons to use all or any part of the Tribal Water Right through a

service contract, temporary assignment, or other similar agreement of limited duration.

(32) "Milk River Drainage" means the Milk River and its tributaries within the Reservation within Basin 40F, as shown in Appendix 2.

(33) "Milk River Project" means the Bureau of Reclamation project conditionally approved by the Secretary of the Interior on March 14, 1903, under the Act of June 17, 1902 (32 Stat. 388, chapter 1093), commencing at Lake Sherburne Reservoir and providing water to a point approximately 6 miles east of Nashua, Montana. The St. Mary Storage Unit was authorized on March 25, 1905 by the Secretary of the Interior. Fresno Dam, constructed under the National Industrial Recovery Act, was approved by the President in August 1935, pursuant to the acts of June 25, 1910, and December 5, 1924. The Dodson Pumping Unit was approved by the President on March 17, 1944, under the Water Conservation and Utilization Act of August 11, 1939.

(34) "Milk River Project Water Right" is included herein as a Water Right Arising Under State Law and means those water rights held by the United States Bureau of Reclamation on behalf of the Milk River Project as finally adjudicated by the Montana Water Court.

(35) "Missouri River Basin" means the hydrologic basin of the Missouri River and its tributaries.

(36) "Natural Flow" means the water that would exist in a watercourse absent human intervention.

(37) "New Development" means the development of a use of the Tribal Water Right set forth in this Compact, from any source, commencing after the date the ratification of the Compact by the Montana legislature becomes effective, and encompasses all uses of the Tribal Water Right not defined as Existing Uses.

(38) "Non-irrigation Use" means the use of a water right for purposes other than irrigation.

(39) "Parties" means the Tribe, the State, and the United States.

(40) "Person" means an individual or any other entity, public or private, including the Tribe, the State, and the United States, and all officers, agents and departments of each of the above.

(41) "Recognized Under State Law" means, as applied to a water right, a water right arising under Montana law and does not include water rights arising under federal law.

(42) "Reservation" means the Blackfeet Indian Reservation of Montana as established by the Treaty of October 17, 1855, 11 Stat. 657, and as the Reservation was modified by Executive Order of July 5, 1873, I Kappler 855; the Act of April 15, 1874, 18 Stat. 28; Executive Order of August 19, 1874, I Kappler 856; Executive Order of April 13, 1875, I Kappler 856; Executive Order of July 13, 1880, I Kappler 856; Agreements with the Blackfeet, ratified by the Act of May 1, 1888, 25 Stat. 113; and Agreement with the Blackfeet, ratified by the Act of June 10, 1896, 29 Stat. 321, 353.

(43) "St. Mary River Drainage" means the St. Mary River and its tributaries within the Reservation within Basin 40T, as shown in Appendix 2.

(44) "Secretary" means the Secretary of the United States Department of the Interior, or the Secretary's duly authorized representative.

(45) "State" means the State of Montana and all officers, agencies, departments and political subdivisions thereof.

(46) "Stock Water" means water used for livestock.

(47) "Tribal Water Right" means the right of the Blackfeet Tribe, including any Tribal member or Allottee, to divert, use or store water as described in Article III of this Compact.

(48) "Tribe" means the Blackfeet Tribe of the Blackfeet Indian Reservation and all officers, agencies, and departments thereof.

(49) "Two Medicine River Drainage" means the Two Medicine River and its tributaries within the Reservation within Basin 41M, as shown in Appendix 2.

(50) "Upper Birch Creek Drainage" means that portion of the Birch Creek Drainage within the Reservation from Swift Dam to the confluence of Blacktail Creek, as shown in Appendix 2.

(51) "United States" means the federal government and all officers, agencies and departments thereof.

(52) "Water Rights Arising Under State Law" means those valid water rights Recognized Under State Law existing as of the date the ratification of the Compact by the Montana legislature becomes effective, and not subsequently relinquished or abandoned, as: decreed or to be decreed by the Montana Water Court pursuant to 85-2-234, MCA; permitted by DNRC; issued, as State water reservations, by the Montana Board of Natural Resources and Conservation or DNRC; exempted from filing in the State adjudication pursuant to 85-2-222, MCA; excepted from the permitting process pursuant to 85-2-306, MCA. The following State water reservations, though Recognized Under State Law, do not constitute Water Rights Arising Under State Law as that term is used in this Compact: Water Reservation Nos. 41L 71688 and 41M 72585 other than the portion authorized for use as PO-171-071-01; and Water Reservation Nos. 41M 30017392, 41M 30017536 other than the portion arising off the Reservation, and 41L 30017445, as shown in Appendix 3.

ARTICLE III - TRIBAL WATER RIGHT

A. Religious or Cultural Uses. The Tribal Water Right described in this Article III includes all traditional religious or cultural uses of water by Blackfeet Tribal members within the Reservation.

B. Right of Use. All Existing Uses by the Tribe, its members and Allottees are included in the Tribal Water Right recognized in this Compact. Such uses include but are not limited to irrigation, Stock Water, domestic, municipal, storage and those uses identified in Article III.A.

C. Basin 41M - Birch Creek Drainage.

1. Quantification.

a. Irrigation right. The Tribe has a Direct Use water right of 100 Cfs of the Natural Flow of Birch Creek for irrigation use in the Upper Birch Creek Drainage. This right may be changed to another place of use or purpose of use only in accordance with Article IV.D.3.

b. In-stream Flow Right.

i. The Tribe also has an in-stream Natural Flow right in Birch Creek of 15 Cfs from October 1 to March 31, and 25 Cfs from April 1 to September 30 of each year. The Tribe may establish, in its discretion and after conferral with appropriate fish and wildlife agencies, a lesser in-stream Natural Flow level of not less than 10 Cfs. Subject to Appendix 1, the Tribe may use all or part of the difference between the in-stream Natural Flow right set forth herein and any

lesser in-stream Natural Flow level of not less than 10 Cfs at any place of use and for any purpose of use.

ii. Other than as set forth in Article III.C.1.b.i, the in-stream flow right set forth herein shall not be subject to change to any other use, provided that the emergency use of water pursuant to Article III.H.5 shall not be considered a change or alteration in use, or a violation of a water right for in-stream flow.

c. Additional Flow Right. After satisfaction of all Water Rights Arising Under State Law in Basin 41M, the Tribe may divert or authorize the use of the Natural Flow in Birch Creek as measured at the State Highway 358 bridge crossing Birch Creek and any gaining flows available from the same bridge crossing to Birch Creek's confluence with the Two Medicine River.

d. Ground Water Right. The Tribe also has a right to all Ground Water in the Birch Creek Drainage that is not hydrologically connected to Birch Creek, and to develop or permit the development of Excepted Rights in the Birch Creek Drainage.

2. Priority Date. The priority date of the Tribal Water Right set forth in Article III.C.1 shall be October 17, 1855.

3. Period of Use.

a. Except as provided in Article IV.D.3, the period of use of the water right set forth in Article III.C.1.a shall be April 1 to October 1 of each year.

b. The period of use of the water right set forth in Article III.C.1.b, c and d shall be January 1 to December 31 of each year.

4. Points and Means of Diversion. Subject to the terms and conditions of Article IV of this Compact, and in addition to what is specifically authorized in Article III.C.1.b.i, the Tribe may divert or permit the diversion of the water right set forth in Article III.C.1.a and c from any point on Birch Creek for use within the Reservation and by any means authorized by the Tribal Water Code, or permit the diversion of the water right set forth in Article III.C.1.c from a point off the Reservation pursuant to a Lease under Article IV.D.2.

5. Purposes. The water right set forth in Article III.C.1 may be used for any purpose consistent with the terms of this Compact and allowed by Tribal or federal law.

6. Call Protection. All Water Rights Arising Under State Law using water from sources other than Birch Creek within Basin 41M shall be protected from any Call for the in-stream flows set forth in Article III.C.1.b.

7. Birch Creek Management Plan. The use of the water right set forth in Article III.C.1.a shall also be governed by the terms of the Birch Creek Management Plan, set forth as Appendix 1.

8. Commencement of Development. In addition to the foregoing, the exercise of the water rights set forth in Article III.C.1.a and b is subject to the Agreement Regarding Birch Creek Water Use entered into by the Tribe and the State on January 31, 2008.

D. Basin 41M - Badger Creek Drainage and Two Medicine River Drainage.

1. Quantification.

a. The Tribe has a water right to all Natural Flow and Ground Water within the Badger Creek and Two Medicine Drainages, with the exception of those waters subject to the Water Rights Arising Under State Law in those drainages.

b. Of the Tribal Water Right set forth in Article III.D.1.a, 20 Cfs shall be dedicated to maintain an in-stream flow in the mainstem of Badger Creek within the Badger Creek Drainage, and 20 Cfs shall be dedicated to maintain an in-stream flow in the mainstem of the Two Medicine River within the Two Medicine River Drainage. The in-stream flow right set forth in this Article III.D.1.b shall not be subject to change to any other use, provided that the emergency use of water pursuant to Article III.H.5 shall not be considered a change or alteration in use, or a violation of a water right for in-stream flow.

c. The Tribe is entitled to develop such storage as is necessary to effectuate the right set forth in Article III.D.1.a.

2. Priority Date. The priority date of the Tribal Water Right set forth in Article III.D.1 shall be October 17, 1855.

3. Period of Use. The period of use of the water right set forth in Article III.D.1 shall be January 1 to December 31 of each year.

4. Points and Means of Diversion. Subject to the terms and conditions of Article IV of this Compact, the Tribe may divert or permit the diversion of the water right set forth in Article III.D.1 from any point within the Reservation for use within the Reservation and by any means authorized by the Tribal Water Code, or permit the diversion of the water right set forth in Article III.D.1 from a point off the Reservation pursuant to a Lease under Article IV.D.2.

5. Purposes. The water right set forth in Article III.D.1 may be used for any purpose consistent with the terms of this Compact and allowed by Tribal or federal law.

6. Call Protection. All Water Rights Arising Under State Law within Basin 41M shall be protected from any Call from any user of the Tribal Water Right, with the exceptions of Calls for the in-stream flows set forth in Article III.D.1.b, Calls for stored water, and Calls for water diverted from another hydrologic basin.

E. Basin 41L - Cut Bank Creek Drainage.

1. Quantification.

a. The Tribe has a water right to all Natural Flow and Ground Water within the Cut Bank Creek Drainage, with the exception of those waters subject to the Water Rights Arising Under State Law in that drainage.

b. Of the water right set forth in Article III.E.1.a, 2 Cfs shall be dedicated to maintain an in-stream flow in the mainstem of Cut Bank Creek as shown on Appendix 2. The in-stream flow right set forth in this Article III.E.1.b shall not be subject to change to any other use, provided that the emergency use of water pursuant to Article III.H.5 shall not be considered a change or alteration in use, or a violation of a water right for in-stream flow.

c. The Tribe is entitled to develop such storage as is necessary to effectuate the right set forth in Article III.E.1.a.

d. The Tribe shall defer New Development of the Tribal Water Right set forth in Article III.E.1.a for irrigation uses not relying exclusively on stored water or water diverted from another hydrologic basin for a period of ten years after the Effective Date of this Compact.

2. Priority Date. The priority date of the Tribal Water Right set forth in Article III.E.1 shall be October 17, 1855.

3. Period of Use. The period of use of the water right set forth in Article III.E.1 shall be January 1 to December 31 of each year.

4. Points and Means of Diversion. Subject to the terms and conditions of Article IV of this Compact, the Tribe may divert or permit the diversion of the water right set forth in Article III.E.1 from any point within the Reservation for use within the Reservation and by any means authorized by the Tribal Water Code, or permit the diversion of the water right set forth in Article III.E.1 from a point off the Reservation pursuant to a Lease under Article IV.D.2.

5. Purposes. The water right set forth in Article III.E.1 may be used for any purpose consistent with the terms of this Compact and allowed by Tribal or federal law.

6. Call Protection. All Water Rights Arising Under State Law for Non-Irrigation Uses within Basin 41L shall be protected from any Call from any user of the Tribal Water Right, with the exceptions of Calls for the in-stream flows set forth in Article III.E.1.b, Calls for stored water, and Calls for water diverted from another hydrologic basin.

F. Basin 40F - Milk River Drainage.

1. Quantification.

a. The Tribe has a water right to all Natural Flow and Ground Water available to the United States under the Boundary Waters Treaty and all Ground Water not subject to the Boundary Waters Treaty in Basin 40F within the Reservation, with the exception of those waters subject to the Water Rights Arising Under State Law in Basin 40F on the Reservation.

b. Of the water right set forth in Article III.F.1.a, 2 Cfs shall be dedicated to maintain an in-stream flow in the Milk River, as shown on Appendix 2. The in-stream flow right set forth in this Article III.F.1.b shall not be subject to change to any other use, provided that the emergency use of water pursuant to Article III.H.5 shall not be considered a change or alteration in use, or a violation of a water right for in-stream flow.

c. The Tribe is entitled to develop such storage as is necessary to effectuate the right set forth in Article III.F.1.a.

d. The Tribe shall defer New Development of the Tribal Water Right set forth in Article III.F.1.a for irrigation uses not relying exclusively on stored water or water diverted from another hydrologic basin for a period of ten years after the Effective Date of this Compact.

2. Priority Date. The priority date of the Tribal Water Right set forth in Article III.F.1 shall be October 17, 1855.

3. Period of Use. The period of use of the water right set forth in Article III.F.1 shall be January 1 to December 31 of each year.

4. Points and Means of Diversion. Subject to the terms and conditions of Article IV of this Compact, the Tribe may divert or permit the diversion of the water right set forth in Article III.F.1 from any point within Basin 40F within the Reservation for use within the Reservation and by any means authorized by the Tribal Water Code, or permit the diversion of the water right set forth in Article III.F.1 from a point off the Reservation pursuant to a Lease under Article IV.D.2.

5. Purposes. The water right set forth in Article III.F.1 may be used for any purpose consistent with the terms of this Compact and allowed by Tribal or federal law.

6. Call Protection. All Water Rights Arising Under State Law for Non-Irrigation Uses within Basin 40F on the Reservation shall be protected

from any Call from any user of the Tribal Water Right, with the exceptions of Calls for the in-stream flows set forth in Article III.F.1.b, Calls for stored water, and Calls for water diverted from another hydrologic basin.

G. Basin 40T - St. Mary River Drainage.

1. Quantification.

a. St. Mary River. The Tribe has a water right to:

i. 50,000 Acre Feet per Year of water from the St. Mary River Drainage, other than Lee Creek and Willow Creek, subject to the Boundary Waters Treaty and the terms of Article IV.D.4; and

ii. all Ground Water in the St. Mary River Drainage not subject to the Boundary Waters Treaty.

b. Lee Creek. The Tribe also has the right to all Natural Flow available to the United States under the Boundary Waters Treaty and all Ground Water in Lee Creek within the Reservation, with the exception of those waters subject to Water Rights Arising Under State Law in Lee Creek.

c. Willow Creek. The Tribe also has the right to all Natural Flow available to the United States under the Boundary Waters Treaty and all Ground Water in Willow Creek (also known as Rolf Creek) within the Reservation, with the exception of those waters subject to Water Rights Arising Under State Law in Willow Creek.

d. Additional Waters. After satisfaction of all Water Rights Arising Under State Law and full development, pursuant to Article IV.D.4, of the Tribal Water Right set forth in Article III.G.1.a.i, the Tribe also has the right to the remaining portion of the United States' share of the St. Mary River under the Boundary Waters Treaty for any tribally authorized use and need.

e. Storage. The Tribe is entitled to develop such storage within the Reservation as is necessary to effectuate the right set forth in Article III.G.1.a-d.

2. Priority Date. The priority date of the Tribal Water Right set forth in Article III.G.1 shall be October 17, 1855.

3. Period of Use. The period of use of the water right set forth in Article III.G.1 shall be from January 1 through December 31 of each year.

4. Points and Means of Diversion. Subject to the terms and conditions of Article IV of this Compact, the Tribe may divert or permit the diversion of the water right set forth in Article III.G.1 from any point within the Reservation for use within the Reservation and by any means authorized by the Tribal Water Code and, if necessary, federal law, or permit the diversion of the water right set forth in Article III.G.1 from a point off the Reservation pursuant to a Lease under Article IV.D.2.

5. Purposes. The water right set forth in Article III.G.1 may be used for any purpose consistent with the terms of this Compact and allowed by Tribal or federal law.

6. Call Protection. All Water Rights Arising Under State Law within Basin 40T shall be protected from any Call from any user of the Tribal Water Right, except for Calls for stored water or water diverted from another hydrologic basin.

H. Additional Rights to Water. In addition to the water rights specifically set forth in Article III.A-G of this Compact, the Tribe has the following rights to water:

1. Lake Elwell. As part of the Tribal Water Right, the Tribe shall be entitled to an allocation of stored water in Lake Elwell as agreed to by the Parties and as provided by Congress, measured at the dam, for use or disposition by the Tribe for any beneficial purpose, pursuant to the terms of this Compact; provided that such allocation shall be in accordance with the terms and conditions of any Act of Congress ratifying this Compact. Except as directed by Congress, the United States shall have no responsibility or obligation to provide any facility for the transport of water allocated under Article III.H.1 to the Reservation or to any other location.

2. Appurtenant Water Rights. For land within the Reservation acquired after the Effective Date of this Compact, the Tribe has the right to any Water Right Arising Under State Law acquired as an appurtenance to the land. At such time as the acquired land is transferred to trust status, the water right appurtenant to the land acquired shall be added to the Tribal Water Right quantified in this Compact with an October 17, 1855 priority date, provided that the Tribe shall continue to use the acquired right as historically used or may change the use of the right pursuant to the provisions set forth in Article IV.D. The Tribe shall notify DNRC of any acquisition of water upon acquisition or no later than in the Tribe's annual report and shall identify the water right acquired, as set forth in Article IV.I.5. Any water right acquired shall be added as decreed by the Montana Water Court to the list of Existing Uses of the Tribal Water Right as provided in Article IV.I.3 of this Compact.

3. Water Rights Arising Under State Law - Relinquishment or Abandonment. Any portion of a Water Right Arising Under State Law within the Reservation that is voluntarily relinquished or is determined under State law to be abandoned, relinquished, or having otherwise ceased to exist, shall be stricken from the relevant basin decree as a Water Right Arising Under State Law and be entitled to no further protection as such a right pursuant to this Compact.

4. Lakes, Ponds and Wetlands. As part of the Tribal Water Right, the Tribe, its members and Allottees have the right to all water naturally occurring in all lakes, ponds, wetlands and other such water bodies located within the Reservation on trust lands and fee lands owned by the Tribe, its members or Allottees as of the Effective Date of this Compact.

5. Emergency Use. The Tribe has the right to use or authorize the use of water from any source on the Reservation for temporary emergency appropriations necessary to protect lives or property.

I. Use of the Tribal Water Right on the Blackfeet Irrigation Project. The use of the water rights set forth in Article III.C through E on units of the Blackfeet Irrigation Project as part of that Blackfeet Irrigation Project is a use of the Tribal Water Right, and the use of this water shall be subject to federal law.

J. Basin Closures.

1. In those portions of Basins 40F, 40T, 41L and 41M within the Reservation, and from the mainstems of the Reservation boundary streams (Birch Creek, Cut Bank Creek, and the Two Medicine River), DNRC shall not process or grant any application for an appropriation received after the ratification of this Compact by the Montana legislature becomes effective. Provided that, in accordance with the terms and conditions of Article IV.G.1, DNRC may issue a certificate of water right or permit for use on fee land for Excepted Rights from the sources otherwise closed by this subsection. Provided further that, after such time as the Tribe promulgates an amended water code

pursuant to the provisions of Article IV.C, DNRC shall not issue a certificate of water right or permit for use on fee land within the Reservation for Excepted Rights from the sources otherwise closed by this subsection.

2. The basin closures set forth in Article III.J.1 are not a limit on use of the Tribal Water Right as set forth in this Compact.

3. The basin closures set forth in Article III.J.1 are not a limit on Change in Use or transfers of Water Rights Arising Under State Law, subject to the terms and conditions in Article IV.G.2.

K. Proposed Decree. For purposes of entry in the Montana Water Court, the proposed decree of the Tribal Water Right set forth in Article III of this Compact is attached as Appendix 5. If there are differences between Appendix 5 and the Final Decree, the Final Decree shall control.

ARTICLE IV - IMPLEMENTATION OF COMPACT

A. Trust Status of Tribal Water Right. The Tribal Water Right shall be held in trust by the United States for the benefit of the Tribe, its members and Allottees.

B. Use of Tribal Water Right.

1. Persons Entitled to Use Tribal Water Right. The Tribal Water Right may be used by the Tribe, and/or Persons authorized by the Tribe.

2. Effect of Non-Use of the Tribal Water Right. Non-use of all or any portion of the Tribal Water Right described in Article III shall not constitute a relinquishment, forfeiture, or abandonment of such rights.

C. Tribal Water Right: Administration.

1. Except as otherwise provided in this Compact, the use of the Tribal Water Right shall be administered by the Tribe, and the Tribe has the final and exclusive jurisdiction to resolve all disputes between or among users of the Tribal Water Right. The Tribal Water Right shall be administered and enforced pursuant to an amended tribal water code. The amended code shall be developed and adopted by the Tribe, following public comment, within one year of the Effective Date of this Compact. The code and any subsequent amendments thereto will not take effect until the Secretary has timely approved the code or any subsequent amendment thereto. The amended tribal water code shall include:

a. a process by which any Allottee may request and be provided with an equitable distribution of water for irrigation use on the Allottee's trust allotment;

b. a process for notice and a right to be heard for the consideration and determination of any request by an Allottee for an equitable distribution of water for irrigation use on the Allottee's trust allotment, including a process for formal review of denied or disputed distributions and for resolution of contested administrative decisions;

c. a process by which any Person within the Reservation may apply for use of a portion of the Tribal Water Right, including for their historic use of water;

d. a process by which any Person shall receive authorization for an Excepted Right, without pre-development review, including a Ground Water use, a Stock Water impoundment or pit, or an emergency use to protect lives or property, consistent with standards no more restrictive than those under State law for uses excepted from permitting requirements.

e. a process by which determination of Harm shall be made, which shall include notice to potentially affected water users and the DNRC, due process, a written determination and the basis therefor, and full access to all information on which the determination is based.

f. a process for protecting Ground Water from New Developments in areas where Ground Water may be inadequate due to either quantity or quality.

2. Administration and delivery of the Tribal Water Right within the Blackfeet Irrigation Project shall be conducted by the United States Department of the Interior, Bureau of Indian Affairs (BIA), in accordance with applicable federal laws. In the event the Tribe assumes ownership of the Blackfeet Irrigation Project or the Tribe contracts the administration, operation and maintenance, and/or other functions of the Blackfeet Irrigation Project under the Indian Self-Determination and Education Assistance Act, P.L. 93-638, or the Tribe establishes a separate entity that assumes ownership of the Blackfeet Irrigation Project or contracts the administration, operation and maintenance, and/or other functions of the Blackfeet Irrigation Project under P.L. 93-638, administration and delivery of the Tribal Water Right within the Blackfeet Irrigation Project shall be conducted by the Tribe in accordance with applicable federal laws.

3. After approval by the Secretary of the Tribe's amended water code, the Tribe shall have sole and exclusive jurisdiction to issue authorizations for Excepted Rights, provided that any filing for use of a portion of the Tribal Water Right for an Excepted Right made with the DNRC shall be made on a form provided by the Tribe and, including any fee submitted in conjunction with the filing, shall be promptly forwarded to the BWRD for processing pursuant to the Tribal water code.

D. Tribal Water Right: New Development or Change in Use.

1. Authorization. Except as specifically set forth in Article IV.D.3, and subject to the conditions set forth immediately below, the Tribe may make or authorize a New Development or Change in Use of the Tribal Water Right. Except as set forth in the tribal water code pursuant to Article IV.C.1.e, any New Development or Change in Use shall not Harm any Water Right Arising Under State Law for Non-irrigation Uses.

2. Lease.

a. The Tribe may make a Lease for use off the Reservation of the following portion of the Tribal Water Right that has been put to use and/or stored prior to the provision of notice to the DNRC, pursuant to Article IV.D.2.b, or the date of the application for Change in Use, as applicable:

i. Water developed by Direct Use from Birch Creek pursuant to Article III.C.1.c, the Badger Creek Drainage and/or Two Medicine River Drainage pursuant to Article III.D.1, and/or the St. Mary River Drainage pursuant to Article III.G.1;

ii. Water stored from the Badger Creek Drainage and/or Two Medicine River Drainage pursuant to Article III.D.1; from the Cut Bank Creek Drainage pursuant to Article III.E.1; from the Milk River Drainage pursuant to Article III.F.1; from the St. Mary River Drainage pursuant to Article III.G.1; and/or in Tiber Reservoir as allocated to the Tribe pursuant to Article III.H.1 or otherwise and federal law; and

iii. That portion of the Tribal Water Right quantified in Article III.C.1.b.i that the Tribe may use for purposes other than in-stream flow pursuant to the terms of that subsection.

b. The Tribe may make a Lease for use off the Reservation from the storage sources listed in Article IV.D.2.a.ii and from the source identified in Article IV.D.2.a.iii so long as it provides notice in advance to the DNRC of the terms of the Lease and any modifications thereto or termination thereof. For Leases from the sources identified in Article IV.D.2.a.ii lasting one irrigation season or less, notice to the DNRC shall be provided as far in advance as practicable. For Leases from the sources identified in Article IV.D.2.a.ii lasting longer then one year, notice shall be provided to the DNRC no later than the later of 120 days prior to the date on which the Lease is to take effect or March 31 of the year in which the Lease is to take effect. Provision of notice regarding Leases from the source identified in Article IV.D.2.a.iii shall be governed by the provisions of the Birch Creek Management Plan (Appendix 1). The point of delivery for a lease from the storage sources listed in Article IV.D.2.a.ii shall be the dam of the storage project. The point of delivery for leases from the source identified in Article IV.D.2.a.iii shall be the Reservation boundary. If disputes arise between or among holders of Water Rights Arising Under State Law as to the reasonable transmission and carriage losses from the point of delivery to the place of use of the Lease, the district court pursuant to its powers and duties under Title 85, Chapter 5, MCA, shall calculate such losses.

c. The Tribe may make a Lease for use off the Reservation from the sources listed in Article IV.D.2.a.i provided that either the Tribe or its assignee, on behalf of the Tribe, first complies with the following provisions of State law as those provisions read on October 31, 2007:

i. Subsections (1)-(3), (5)(a) (with the exception of that portion of subsection (5)(a) that requires the application of 85-2-402(4), which shall not apply) and of 85-2-402(8) through (17), MCA;

ii. Subsections (1) through (8) of 85-2-407, MCA, provided, however, that the term of any such Lease may be for up to 99 years, and the DNRC may approve the renewal of such a Lease for a period of up to 99 years; and

iii. 85-2-408, MCA.

If the assignee is the party submitting the change application (pursuant to 85-2-402 and 85-2-407, MCA) on behalf of the Tribe, the assignee must first have obtained approval of the Lease from the Tribe pursuant to the Tribal Water Code.

d. In the event that, after the Effective Date of this Compact, the Montana legislature substantively amends or repeals any of the sections identified in Article IV.D.2.c, the Tribe and the DNRC shall meet no later than 60 days after the effective date of the State legislative action amending or repealing to determine whether the provisions set forth in Article IV.D.2.c or the new provisions of State law shall govern the process for off-

Reservation Leases under this Compact. In the event that the Tribe and the DNRC are unable to agree, the provisions of Article IV.D.2.c shall remain in effect. Any modification to the provisions of Article IV.D.2.c agreed to by the Tribe and the DNRC in response to future State legislative action shall be pursuant to and not a modification or amendment to this Compact.

e. If the Tribe receives a good faith offer from a Person for Lease of a portion of the Tribal Water Right in Birch Creek pursuant to Article III.C.1.c to an off-Reservation point of diversion or place of use, or in the Badger Creek Drainage set forth in Article III.D.1 to an off-Reservation point of diversion or place of use, and if delivery facilities exist to otherwise allow the diversion of Badger Creek water into Birch Creek, the Tribe shall allow holders of Water

Rights Arising Under State Law using water out of Birch Creek the first opportunity to acquire use of such rights on the same terms and conditions as the good faith offer.

f. If the Tribe receives a good faith offer from a Person for Lease of a portion of the Tribal Water Right in the Cut Bank Creek Drainage set forth in Article III.E.1 to an off-Reservation point of diversion or place of use, the Tribe shall allow holders of Water Rights Arising Under State Law using water from the Cut Bank Creek Drainage the first opportunity to acquire use of such rights on the same terms and conditions as the good faith offer.

g. If the Tribe receives a good faith offer from a Person for Lease of a portion of the Tribal Water Right in the Milk River Drainage set forth in Article III.F.1 to an off-Reservation point of diversion or place of use, the Tribe shall allow holders of Water Rights Arising Under State Law using water from the Milk River Drainage the first opportunity to acquire use of such rights on the same terms and conditions as the good faith offer.

h. If the Tribe receives a good faith offer from a Person for Lease of a portion of the Tribal Water Right in the St. Mary River set forth in Article III.G to an off-Reservation point of diversion or place of use, the Tribe shall allow water users receiving water from the Milk River Project the first opportunity, and other Milk River water users the second opportunity, to acquire use of such rights on the same terms and conditions as the good faith offer.

i. Except as may be provided by Congress, the off-Reservation use of any portion of the Tribal Water Right set forth in Article III.C.1.b, III.D.1, III.E.1 or III.F.1 is limited to a place of use within the Missouri River Basin.

j. No Lease of any portion of the Tribal Water Right may permanently alienate the water right.

k. The Tribe or any Person using diversion or transportation facilities located off the Reservation in connection with a use of the Tribal Water Right shall apply for and obtain all permits, certificates, variances and other authorizations required by State laws regulating, conditioning or permitting the siting, construction, operation, alteration or use of any equipment, device, facility or associated facility proposed to use or transport water, prior to exercising a use of the Tribal Water Right off the Reservation.

3. Special Rules for Changes in Use of the Birch Creek Water Right Set Forth in Article III.C.1.a.

a. Change in Place of Use. The Tribe may change or authorize a change in the place of use of the water right set forth in Article III.C.1.a only if:

i. the proposed change in place of use is to the Badger-Fisher Unit of the Blackfeet Irrigation Project, or to other areas of the Birch Creek Drainage served by water out of the Badger Creek Drainage; and

ii. there is a need for irrigation water beyond available supplies in those areas due to constraints imposed on the Badger-Fisher Unit by the physical availability of water other than as a result of Leases, a failure of delivery capabilities, or significant adverse environmental impacts of continued delivery of Badger Creek water due to degraded delivery systems or otherwise; and

iii. total annual diversions to the Badger-Fisher Unit pursuant to the water right set forth in Article III.C.1.a do not exceed the volume of water needed to supply 75% of the net irrigation requirement for a crop mix of 75% alfalfa and 25% small grains delivered at 50% efficiency for 6000 acres, and the flow rate of the right set forth in Article III.C.1.a for use in the Upper Birch Creek Drainage

is reduced by the flow rate of water being diverted for use in the Badger-Fisher Unit.

b. Change in Purpose of Use. The Tribe may change or authorize a change in the purpose of use of the water right set forth in Article III.C.1.a up to a maximum of 6250 AFY. The relationship between the quantity and flow rate of water proposed for change and the quantity of water available for irrigation pursuant to the water right set forth in Article III.C.1 shall be determined by the following formula:

The volume of water proposed to be changed will be divided by 50% to determine the diverted volume of the Tribal change. This diverted volume of the Tribal change is subtracted from the modeled average diversion volume (12,500 acre-feet) to determine the changed average diversion volume. The new irrigation diversion flow rate is established by dividing the changed average diversion volume by the modeled diversion volume and multiplying this quotient by the flow rate set forth in Article III.C.1.a (100 Cfs). Several example scenarios are shown in Appendix 4.

4. Development of the Tribe's St. Mary River Right Set Forth in Article III.G.1.a.i. As directed by Congress, and after appropriate investigation and study, the Parties shall identify and the United States shall provide the Tribe, from Available St. Mary River Water, and/or from any other source mutually agreed to by the Parties, sufficient water to fulfill the Tribe's water right set forth in Article III.G.1.a.i. The fulfillment of the Tribe's water right set forth in Article III.G.1.a.i, pursuant to this subsection, from any water subject to the Milk River Project Water Right may occur only in a manner that causes no injury to the Milk River Project and shall not require current or future Milk River Project water users or their contracting entity or entities to subsidize or pay for any costs required to develop or fulfill the water right set forth in Article III.G.1.a.i. The use of the Tribe's water right set forth in Article III.G.1.a.i, or of any portion of that right, shall commence only after the Parties have mutually agreed in writing that water has been identified and is available to fulfill that right or any portion of it consistent with the terms of this Compact.

E. Subsequent Federal or State Law. Administration under Article IV.C.2 and Article IV.F.1 shall be as set forth in this Compact except as may otherwise be determined by a court of competent jurisdiction or established by Congress.

F. Water Rights Arising Under State Law: Administration.

1. The State shall administer and enforce all Water Rights Arising Under State Law to the use of Natural Flows and Ground Water within and outside the Reservation. The State shall have the final and exclusive jurisdiction to resolve all disputes between holders of Water Rights Arising Under State Law.

2. The State shall not administer or enforce any part of the Tribal Water Right within the Reservation.

G. Water Rights Arising Under State Law: New Uses or Change in Use.

1. Limit on New Uses. DNRC shall not process or grant an application for an appropriation within those portions of the Basins closed pursuant to Article III.J received after the ratification of this Compact by the Montana legislature becomes effective, provided that, DNRC may process applications and issue certificates of water right or permits for use on fee land of those uses excepted from the closures as set forth in Article III.J until such time as the Secretary approves an amended tribal water code promulgated pursuant to the provisions of Article IV.C. After approval of the amended water code by the Secretary,

filings for Excepted Rights shall be processed pursuant to the provisions of Article IV.C.3.

2. Change in Use of Water Rights Arising Under State Law within the Reservation. The State may authorize a Change in Use of a Water Right Arising Under State Law within the Reservation in accordance with State law. DNRC shall provide timely notice to the Tribe of every application for change.

H. Cooperative Ground Water Management. BWRD may designate or modify a controlled Ground Water area within the Reservation pursuant to Article IV.C.1.f and applicable tribal law. DNRC may designate or modify a controlled Ground Water area adjacent to the Reservation pursuant to applicable State law. DNRC may manage a permanent or temporary controlled Ground Water area adjacent to the Reservation in cooperation with BWRD.

I. Information Sharing.

1. Within one year after a hydrologic basin subject to this Compact is finally decreed by the Montana Water Court, the DNRC shall provide the BWRD and the United States with a report listing all decreed Water Rights Arising Under State Law within that hydrologic basin.

2. Within one year after the date the ratification of this Compact by the Montana legislature becomes effective, the DNRC shall provide the BWRD and the United States with a report listing all uses pursuant to permits and water reservations, and those uses excepted from the permitting requirements of State law to the extent that the DNRC has such information.

3. Within one year after the ratification of this Compact by the Montana legislature becomes effective, the BWRD and the United States shall provide the DNRC with a report listing all Existing Uses of the Tribal Water Right, provided that, due to the small and varied nature of the traditional religious and cultural uses identified in Article III.A, such uses need not be included on the report required by this subsection. The Parties shall concur in the listing of all Existing Uses of the Tribal Water Right within six months after receipt of the report.

4. On an annual basis DNRC shall provide the Tribe and the United States with a listing of all Excepted Rights for which a certificate of water right or permit has been issued or a Change in Use has been approved by DNRC within the Reservation and in drainages affected by this Compact, and an ownership update for each water right within the Reservation and in drainages affected by this Compact whose owner of record has been changed in DNRC's database.

5. On an annual basis BWRD shall provide the DNRC and the United States with an update since the last report listing all New Development of the Tribal Water Right described in this Compact within and outside the Reservation, of all Changes in Use of water rights within and outside the Reservation, and of all appurtenant water rights acquired pursuant to Article III.H.2.

6. The BWRD, the DNRC, and the United States may agree to modify the reporting requirements set forth in Article IV.I. Such modification is pursuant to, and shall not be deemed a modification of, this Compact.

7. Any Party may request additional information from any other Party to assist in reviewing any report made by one Party to another.

J. Enforcement: Blackfeet-Montana Compact Board.

1. Establishment of Board. There is hereby established the Blackfeet-Montana Compact Board. The Board shall consist of three members: one member selected by the Governor of the State of Montana, after consultation

with affected water users; one member appointed by the Chairman of the Blackfeet Tribal Business Council; and one member selected by the other two members. All members shall be appointed within six months of the Effective Date of this Compact and within thirty days of the date any vacancy occurs. If an appointment is not timely made by the Governor, the Director of DNRC or the Director's designee shall fill the State's position. If an appointment is not timely made by the Chairman of the Blackfeet Tribal Business Council, the Director of BWRD or the Director's designee shall fill the Tribe's position. Each member shall serve a five-year term and shall be eligible for reappointment. The initial term of each member shall be staggered with one member serving a five-year term, one a four-year term, and one a three-year term. The initial term of each member shall be chosen by lot. Expenses of the members appointed by the State and the Tribe shall be borne by the entity appointing the member. The expenses of the third member and all other expenses shall be borne equally by the Tribe and the State, subject to the availability of funds.

2. Membership. Should the two appointed members fail to agree on the selection of a third member within sixty days of the date of appointment of the second member, or within thirty days after any vacancy occurs, the following procedure shall be utilized:

a. Within five days thereafter each member shall nominate three persons to serve as a member of the Board;

b. Within fifteen days thereafter each member shall reject two of the persons nominated by the other member;

c. Within five days thereafter, the remaining two nominees shall be submitted to the chief judge of the United States District Court for the District of Montana for selection of the third member of the Board.

3. Quorum and Vote Required. Two members of the Board shall constitute a quorum if reasonable notice of the time, place, and purpose of the meeting, hearing, or other proceeding has been provided in advance to the absent member. All Board decisions shall be by a majority of the Board.

4. Jurisdiction of the Board.

a. The Blackfeet-Montana Compact Board shall have jurisdiction to resolve controversies over the right to the use of water as between the Parties or holders of water rights developed or authorized under the Tribal Water Right and holders of Water Rights Arising Under State Law. Such controversies shall include, but shall not be limited to, disputes as to the meaning of this Compact, disputes over the application and interpretation of the provisions of Article IV.D.3, disputes over the application and interpretation of the provisions of the Birch Creek Management Plan, and disputes between holders of Excepted Rights issued pursuant to Article IV.C.3 who are not enrolled members of the Tribe and other water right holders under either State or tribal law.

b. The jurisdiction of the Board shall not extend to the administration or distribution of water on lands served by the Milk River Project, nor to the diversion of water made outside the Reservation for Milk River Project use, nor to the administration or distribution of water on lands served by the Blackfeet Irrigation Project, nor to the administration or distribution of water on lands served by the Pondera County Canal and Reservoir Company.

5. Prerequisite Administrative Procedures.

a. Any Tribal Water Right holder concerned that a use of water by a holder of a Water Right Arising Under State Law is inconsistent with the Compact shall

first contact the BWRD. If the BWRD and the DNRC are unable to resolve the issue in a manner acceptable to the Tribal Water Right holder within a reasonable time through discussion, the BWRD or the Tribal Water Right holder may seek relief through the Compact Board. The DNRC agrees to assist the BWRD in obtaining reasonable access onto the land of the holder of the Water Right Arising Under State Law to acquire information regarding the challenged use.

b. Any holder of a Water Right Arising Under State Law concerned that an exercise of the Tribal Water Right is inconsistent with the Compact shall first contact the DNRC. If the DNRC and the BWRD are unable to resolve the issue in a manner acceptable to the water right holder within a reasonable time through discussion, the DNRC or the water right holder may seek relief through the Compact Board. The Tribe agrees to allow the DNRC reasonable access onto Tribal land or to assist the DNRC in obtaining reasonable access onto the land of the Tribal Water Right holder to acquire information regarding the challenged exercise.

c. The BWRD and the DNRC may jointly develop supplemental procedures as necessary or appropriate after consultation with affected water right holders. Such supplemental procedures are pursuant to, and shall not be deemed a modification of, this Compact.

d. Any authorized user of a portion of the Tribal Water Right appealing a decision of the DNRC to the Compact Board may seek technical assistance from the BWRD in preparing and presenting the appeal.

e. Any holder of a Water Right Under State Law appealing a decision of the BWRD to the Compact Board may seek technical assistance from the DNRC in preparing and presenting the appeal.

6. Powers and Duties.

a. Hearings. The Board shall hold hearings upon notice in proceedings before it and shall have the power to administer oaths, take evidence and issue subpoenas to compel attendance of witnesses or production of documents or other evidence, and to appoint technical experts. The Tribe and the State shall enforce the Board's subpoenas in the same manner as prescribed by the laws of the Tribe and the State for enforcing a subpoena issued by the courts of each respective sovereign in a civil action. The Persons involved in the controversy may present evidence and cross examine any witnesses. The Board shall determine the controversy and grant any appropriate relief, including a temporary order; provided that, the Board shall have no power to award money damages, costs, or attorneys' fees. All decisions of the Board shall be in writing, and, together with a written justification for the decision and any dissenting opinions, shall be served personally or by certified mail on all Persons involved in the proceeding before the Board, the Tribe, the State and the United States. The Board shall adopt necessary rules and regulations to carry out its responsibilities within six months after its first meeting. All records of the Board shall be open to public inspection, except as otherwise ordered by the Board consistent with applicable federal, State and tribal law.

b. Appointment of Water Commissioner.

i. The Board shall have the authority to appoint one or more commissioners to provide day to day administration of water subject to this Compact, including the opening and closing of headgates. The Tribe and the State shall agree on a recommendation for each commissioner to be appointed by the Board. If the Tribe and the State fail to agree, each may nominate one individual for

consideration for each commissioner position, and the Board shall select from between the nominees.

ii. Under the jurisdiction of the Board, the commissioners shall have the authority to administer and distribute water on the Reservation and from the off-reservation portions of the Reservation boundary streams (the mainstems of Birch Creek, Cut Bank Creek and the Two Medicine River), to water right holders under the Tribal Water Right and the holders of Water Rights Arising Under State Law according to the rights fixed by all applicable decrees and this Compact. The authority of any commissioners appointed pursuant to this Article IV.J.6.b, as it pertains to facilities owned by the United States, shall extend only to the provision of written orders to the federal representative with the authority to adjust diversions or releases, which the federal representative, or his or her designee, shall then promptly carry out, so long as the federal representative determines that execution of the order does not threaten the safety, security or physical integrity of the facility, and does not extend to the actual opening or closing of headgates. The authority of any commissioners appointed pursuant to this Article IV.J.6.b, as it pertains the use of the Milk River Project Water Right, shall extend only to the delivery of water to the diversion facilities of the Milk River Project on the Reservation and shall not extend to the administration, diversion or distribution of water to or from any facilities or lands served by the Milk River Project off the Reservation. The authority of any commissioners appointed pursuant to this Article IV.J.6.b, as it pertains to portions of the Tribal Water Right used within the Blackfeet Irrigation Project, extends only to the delivery of water to Blackfeet Irrigation Project diversion facilities and shall not extend to the administration of that water on lands served by the Blackfeet Irrigation Project, which shall remain subject to Article IV.C.2. The authority of any commissioners appointed pursuant to this Article IV.J.6.b, as it pertains to the use of the Water Rights Arising Under State Law of the Pondera County Canal and Reservoir Company (PCCRC), extends only to the delivery of water to PCCRC diversion facilities from Birch Creek and shall not extend to the administration of that water on lands served by PCCRC.

iii. The State and the Tribe shall share the costs of any water commissioners appointed by the Board.

7. Review and Enforcement of Board Decisions.

a. Decisions by the Board shall be effective immediately, unless stayed by the Board. Persons involved in the proceedings before the Board may appeal any final decision by the Board to a court of competent jurisdiction within thirty days of such decision. The hearing on appeal shall be a trial de novo. The notice of appeal shall be filed with the Board and served personally or by certified mail upon all Persons involved in the proceeding before the Board, the Tribe, the State and the United States.

b. Unless an appeal is filed within thirty days of a final decision of the Board, as provided in Article IV.J.7.a, any decision of the Board shall be recognized and enforced by any court of competent jurisdiction on petition of the Board, or any Person before the Board in the proceeding in which the decision was made.

c. A court of competent jurisdiction in which a timely appeal is filed pursuant to Article IV.J.7.a, or in which a petition to confirm or enforce is filed pursuant to Article IV.J.7.b, may order such temporary or permanent relief as it considers just and proper.

d. An appeal may be taken from any decision of the court in which a timely appeal is filed pursuant to Article IV.J.7.a, or in which a petition to confirm or enforce is filed pursuant to Article IV.J.7.b, in the manner and to the same extent as from orders or judgments of the court in a civil action.

e. In any appeal or petition to confirm or enforce the Board's decision, the Board shall file with the court the record of the proceedings before the Board within sixty days of filing of a notice of appeal.

8. Waiver of Immunity. The Tribe and the State hereby waive their respective immunities from suit, including any defense the State shall have under the Eleventh Amendment of the Constitution of the United States, in order to permit the resolution of disputes under this Compact by the Blackfeet-Montana Compact Board, and the appeal or judicial enforcement of Board decisions as provided herein, except that such waivers of sovereign immunity by the Tribe or the State shall not extend to any action for money damages, costs, or attorneys' fees. The Parties agree that only Congress can waive the immunity of the United States. The participation of the United States in the proceedings of the Compact Board shall be as provided by Congress.

K. Notice and Reporting. All notices and reports required by this Compact to be delivered to or served on a Party shall be sent to:

1. The Chairman of the Blackfeet Tribal Business Council, Browning, Montana;

2. The Director of DNRC, Helena, Montana; and

3. The Director of the Rocky Mountain Regional Office of the Bureau of Indian Affairs, Billings, Montana.

ARTICLE V - DISCLAIMERS AND RESERVATION OF RIGHTS

A. No Effect on Other Tribal Rights or Federal Reserved Water Rights.

1. Except as otherwise provided herein, the relationship between the Tribal Water Right described herein and any rights to water of any other Indian Tribe, or of any federally derived water right of an individual, or of the United States on behalf of such Tribe or individual shall be determined by the rule of priority.

2. Nothing in this Compact may be construed or interpreted as a precedent to establish the nature, extent, or manner of administration of the rights to water of any other Indian tribes, tribal members, or Indian owner of trust land of other Indian tribes outside of the Blackfeet Reservation.

3. Nothing in this Compact is otherwise intended to affect or abrogate a right or claim of an Indian Tribe other than the Blackfeet Tribe.

4. Except as provided herein and authorized by Congress, nothing in this Compact may be construed or interpreted in any manner to establish the nature, extent, or manner of administration of the rights to water of the United States on federal lands outside the Reservation.

B. General Disclaimers. Nothing in this Compact shall be so construed or interpreted:

1. As a precedent for the litigation of reserved water rights;

2. As a precedent for the interpretation or administration of future compacts between the United States and the State, or the United States and any other state;

3. Except as provided in Article III.J pertaining to basin closures, to preclude the acquisition or exercise of a Water Right Arising Under State Law to the use

of water by any Allottee or member of the Tribe outside the Reservation by purchase of such right or by application to the State in accordance with State law;

4. To determine the relative rights inter sese of Persons using water under the authority of the State or the Tribe;

5. To limit in any way the rights of the Parties or any other Person to litigate any issues or questions not resolved by this Compact;

6. To authorize the taking of a water right that is vested under State or federal law;

7. To create or deny substantive rights through headings or captions used in this Compact;

8. To address or prejudge how, in any interstate or international apportionment, the Tribal Water Right shall be counted;

9. To constitute a waiver of sovereign immunity by the Tribe or State, except as is expressly set forth in this Compact;

10. To constitute a waiver of sovereign immunity by the United States except as expressly set forth in 43 U.S.C. 666 (1952) or as otherwise provided by Congress;

11. To prohibit the Tribe, its members, or Allottees, or the United States on behalf of the Tribe, its members, or Allottees, or the United States in any other capacity from objecting in any general stream adjudication in Montana Water Court to any claims to water rights;

12. To prevent the Tribe, its members or Allottees, or the United States on behalf of the Tribe, its members or Allottees, from filing an action in a court of competent jurisdiction to prevent any Person or Party from interfering with the Tribe in the enjoyment of the Tribal Water Right;

13. To affect or determine the applicability of any State or federal law, including, without limitation, environmental and public safety laws, on activities of the Tribe, its members, or Allottees, the State or holders of Water Rights Arising Under State law, or the United States;

14. To limit any existing, present or future claims of the Tribe, its members or Allottees, or the United States on behalf of the Tribe, its members or Allottees, concerning water quality;

15. To prevent the Montana Water Court from adjudicating any properly filed claims to the use of water within the Reservation;

16. Except as expressly provided herein and as required by Congress, to modify the obligation of any agency of the United States pursuant to federal law;

17. To limit the ability of the Tribe, the State, or the United States to enforce any tribal, State, or federal laws or any common law rights relating to the protection of the environment;

18. To prejudice any right that Tribal members may have to secure a portion of the Tribal Water Right from the Tribe;

19. To affect the right, if any, of the Tribe to establish, through a final court judgment or congressional act, that its aboriginal or treaty title to lands outside the Reservation, including but not limited to lands within Glacier National Park and the Lewis and Clark National Forest, has not been extinguished; and

20. To determine the rights, if any, of the Tribe on lands within Glacier National Park and the Lewis and Clark National Forest.

21. Nothing in this Compact shall be construed or interpreted to create any right, title or interest in federal lands off the Reservation.

C. Rights Reserved. The Parties expressly reserve all rights not granted, recognized or relinquished in this Compact.

D. Obligations of the United States Contingent.

1. Notwithstanding any other language in this Compact, except as authorized under other provisions of federal law, the obligations of the United States under this Compact shall be contingent on ratification and necessary authorization by Congress.

2. The expenditure or advance of any money or the performance of any work by the United States or the Tribe pursuant to this Compact which may require appropriation of money by Congress or allotment of funds is contingent on such appropriation or allotment being made.

3. The State and the Tribe recognize that this Compact has not been approved by the United States or any agency thereof and ratification by the Montana legislature or ratification by the Tribe in no manner binds or restricts the discretion of the United States in the negotiation of all related matters.

E. Obligations of the State Contingent. The expenditure or advance of any money or the performance of any work by the State pursuant to this Compact which may require appropriation of money by the Montana legislature or allotment of funds shall be contingent on such appropriation or allotment being made.

ARTICLE VI - CONTRIBUTIONS TO SETTLEMENT

A. State Contribution to Settlement. The Parties agree that the State contribution to settlement shall be negotiated by the State, the Tribe, and the United States as part of the negotiations on the federal legislation contemplated by Article VI.C. The agreement to, expenditure, or advance of any State contribution which may require authorization and appropriation of money by the Montana legislature or allotment of funds is contingent on such appropriation or allotment being made.

B. Federal Contribution to Settlement. The Parties agree that the federal contribution to settlement shall be negotiated by the Tribe, the State, and the United States as part of the negotiations on the Federal legislation.

C. Federal Legislation. The Tribe and the State agree to seek ratification of the Compact by Congress and any additional federal legislation necessary to effectuate the Compact.

ARTICLE VII - FINALITY

A. Ratification and Effectiveness of Compact.

1. Following the first ratification by any Party, the terms of this Compact may not be modified without the consent of the Parties.

2. Notwithstanding any other provision in this Compact, the Tribe reserves the right to withdraw as a Party if:

a. Congress has not ratified this Compact and authorized appropriations within four years from the date the ratification of the Compact by the Montana legislature becomes effective;

b. Appropriations are not made in the manner contemplated by the federal legislation ratifying this Compact;

c. The Parties do not reach agreement on the State contribution to settlement;

d. The State has not authorized appropriations within five years from the date the Compact is ratified by the United States; or

e. Appropriations are not made by the State in the manner contemplated by any agreement for contributions to settlement made pursuant to Article VI.A.

3. The Tribe may exercise its right to withdraw from the Compact under Article VII.A.2 by sending to the Governor of Montana and to the Secretary of the Interior by certified mail a resolution of the Blackfeet Tribal Business Council stating the Tribe's intent to withdraw and specifying a reason for withdrawal and a withdrawal date not sooner than one hundred and twenty days from the date of the resolution. On the date designated in the resolution for Tribal withdrawal, this Compact shall become null and void without further action by any Party, and the Parties agree to resume negotiation in good faith for quantification of the water rights of the Blackfeet Tribe and entry of a decree in a court of competent jurisdiction.

4. Notwithstanding any other provision in this Compact, the State reserves the right to withdraw as a Party to this Compact if:

a. the Tribe and Congress have not ratified this Compact within four years from the date the ratification of the Compact by the Montana legislature becomes effective;

b. Congress requires a State contribution to settlement that exceeds the contributions described in Article VI.A;

c. Congress does not authorize and appropriate the federal share of funding agreed to pursuant to Article VI.B; or

d. the DNRC does not concur in the list of Existing Uses of the Tribal Water Right pursuant to Article IV.I.2.

5. The State may exercise its right to withdraw by sending to the Chairman of the Blackfeet Tribal Business Council and to the Secretary of the Interior a letter delivered by certified mail from the Governor of the State of Montana stating the State's intent to withdraw and specifying a reason for withdrawal and a withdrawal date not sooner than one hundred and twenty days from the date of the letter. On the date designated in the letter for State withdrawal, this Compact shall become null and void without further action by any Party, and the Parties agree to resume negotiation in good faith for quantification of the water rights of the Blackfeet Tribe and entry of a decree in a court of competent jurisdiction.

6. Notwithstanding any other provision in this Compact, the Department of the Interior reserves the right to refuse to support federal legislation ratifying this Compact.

B. Incorporation into Decrees.

1. Within one hundred eighty days of the date this Compact is ratified by the Tribe, the State, and Congress, whichever is latest, the Tribe, the State, or the United States shall file, in the case In the Matter of the Adjudication of the Existing and Reserved Rights to the Use of Water, Both Surface and Underground, of the Blackfeet Tribe of the Blackfeet Reservation within the State of Montana, Civ. No. WC-91-1, pursuant to the provisions of State law, a motion for entry of the proposed decree set forth in Appendix 5 as the decree of the water rights held by the United States in trust for the Blackfeet Tribe. If the Montana Water Court does not approve the proposed decree submitted with the

motion within three years following the filing of the motion, the Compact shall be voidable by agreement of the State and the Tribe. If the Montana Water Court approves the proposed decree within three years, but the decree is subsequently set aside by the Montana Water Court or on appeal, the Compact shall be voidable by agreement of the State and the Tribe. Any effect of the failure of approval or setting aside of the decree on the approval, ratification, and confirmation by the United States shall be as provided by Congress. The Parties understand and agree that the submission of this Compact to a State court or courts, as provided for in this Compact, is solely to comply with the provisions of State law, and does not expand the jurisdiction of the State court or expand in any manner the waiver of sovereign immunity of the United States in the McCarran Amendment, 43 U.S.C. 666, or other provision of federal law.

2. Consistent with 3-7-224, MCA, setting forth the jurisdiction of the chief water judge, for the purposes of 85-2-702(3), MCA, the review by the Montana Water Court shall be limited to Article III, and Appendix 5 (proposed decree), and may extend to other sections of the Compact only to the extent that they relate to the determination of existing water rights. The final decree shall consist of Article III as displayed in Appendix 5, and such other information as may be required by 85-2-234, MCA. Nevertheless, pursuant to 85-2-702(3), MCA, the terms of the entire Compact must be included in the preliminary decree without alteration for the purpose of notice.

C. Disposition of Federal Suit.

1. On issuance of a final decree by the Montana Water Court or its successor, and the completion of any direct appeals therefrom, or on expiration of the time for filing any such appeal, the United States, the Tribe, and the State shall execute and file joint motions pursuant to Rule 41(a), Fed.R.Civ.P., to dismiss without prejudice the claims of the Tribe, Tribal members, and Allottees and any claims made by the United States for benefit of the Tribe, Tribal members, and Allottees in United States v. Aageson, No. CIV-79-21-GF (filed April 5, 1979). The case may only be resumed if the State or Tribe exercises their rights under Article VII.A.

2. The Decree shall be filed by the Parties as a consent decree in Aageson, or in federal court as a new proceeding after the dismissal of Aageson conditional on agreement by the Parties to seek the necessary State, Tribal, and federal legislation to implement the remaining provisions of the Compact, if it is finally determined in a judgment binding on the State of Montana that the State courts lack jurisdiction over, or that the State court proceedings are inadequate to adjudicate some or all of the water rights asserted in Aageson.

D. Settlement of Tribal Water Right Claims.

1. The water rights and other benefits confirmed to the Tribe in this Compact are in full and final satisfaction of and are intended to be in replacement of and substitution for all claims to water or to the use of water by the Tribe, Tribal members, and Allottees and the United States on behalf of the Tribe, Tribal members, and Allottees existing on the Effective Date of this Compact, including water rights claims based on or recognized in Conrad Inv. Co. v. United States, 161 F. 829 (9th Cir. 1908), within the Reservation.

2. In consideration of the rights confirmed to the Tribe, Tribal members, and Allottees in this Compact, and of performance by the State and the United States of all actions required by this Compact, and on entry of a final order issuing the decree of the Tribal Water Right held in trust by the United States as quantified in this Compact and displayed in Appendix 5, and except for water

rights, benefits and uses confirmed in this Compact, the Tribe and the United States as trustee for the Tribe, Tribal members, and Allottees hereby waive, release, and relinquish any and all claims to water rights or to the use of water within the Reservation existing on the Effective Date of this Compact.

3. Any claim to water by the Tribe, its members or Allottees within the Reservation shall be satisfied out of the Tribal Water Right confirmed by this Compact, except for any Water Rights Arising Under State Law held by the Tribe, its members or Allottees as of the Effective Date of this Compact, which shall be satisfied pursuant to their own terms.

E. Settlement of Tribal Claims Against the United States. Waiver of claims against the United States, by the Tribe, its members and Allottees shall be as provided by Congress.

F. Binding Effect. After the Effective Date of this Compact and entry of a final decree, its terms shall be binding on:

1. The State and any Person using, claiming or in any manner asserting any right under the authority of the State to the use of water in Montana; provided that, the validity of consent, ratification, or authorization by the State is to be determined by Montana law;

2. The Tribe and any Person using, claiming or in any manner asserting any right to the use of the Tribal Water Right, or any right arising under any doctrine of reserved or aboriginal water rights for the Tribe or Tribal members, or any rights arising under tribal law; provided that, the validity of consent, ratification or authorization by the Tribe is to be determined by Tribal law; and

3. The United States and any Person using, claiming or in any manner asserting any right under the authority of the United States to the use of water in Montana; provided that, the validity of consent, ratification or authorization by the United States is to be determined by federal law.

ARTICLE VIII - LEGISLATION/DEFENSE OF COMPACT

A. State Legislation. The State and Tribe agree to seek ratification of the Compact by the Montana legislature and any additional State legislation necessary to effectuate the Compact.

B. Federal Legislation. The State and Tribe agree to seek ratification of the Compact by Congress and any additional federal legislation necessary to effectuate the Compact.

C. Tribal Legislation. The State and Tribe agree to seek ratification of the Compact by the Blackfeet Tribe and any Tribal legislation necessary to effectuate the Compact.

D. Defense of the Compact. The Parties agree to defend the Compact after its Effective Date from all challenges and attacks and in all proceedings pursuant to Article VII.B and C, and agree that no provision of the Compact shall be modified as to substance except as may be provided in the Compact, or by agreement among the Parties.

Section 2. Section 85-20-1505, MCA, is amended to read:

"85-20-1505. Blackfeet Tribe water rights compact infrastructure account — use. (1) There is an account within the state special revenue fund called the Blackfeet Tribe water rights compact infrastructure account. The department shall administer the account.

(2) The Blackfeet Tribe water rights compact infrastructure account may be used only for water-related infrastructure projects within the exterior boundaries of the Blackfeet Indian reservation.

(3) Funds from this account may not be disbursed unless a water rights compact among the Blackfeet Tribe, the state, and the United States has been finally ratified by the legislature, the Congress of the United States, and the Blackfeet Tribe.

(4) All interest and other income earned on money in the account must be deposited in the account."

Section 3. General fund transfer. There is transferred for the 2011 biennium $4 million from the state general fund to the Blackfeet Tribe water rights compact infrastructure account provided for in 85-20-1505.

Section 4. Appropriation. There is appropriated to the department of natural resources and conservation from the Blackfeet Tribe water rights compact infrastructure account established in 85-20-1505 $4 million for the purposes of and subject to the requirements of 85-20-1505.

Section 5. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

Section 6. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 85, chapter 20, and the provisions of Title 85, chapter 20, apply to [section 1].

Section 7. Effective date. [This act] is effective on passage and approval.

Approved April 15, 2009

CHAPTER NO. 205

[HB 246]

AN ACT EXEMPTING FROM FEDERAL REGULATION UNDER THE COMMERCE CLAUSE OF THE CONSTITUTION OF THE UNITED STATES A FIREARM, A FIREARM ACCESSORY, OR AMMUNITION MANUFACTURED AND RETAINED IN MONTANA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Short title. [Sections 1 through 6] may be cited as the "Montana Firearms Freedom Act".

Section 2. Legislative declarations of authority. The legislature declares that the authority for [sections 1 through 6] is the following:

(1) The 10th amendment to the United States constitution guarantees to the states and their people all powers not granted to the federal government elsewhere in the constitution and reserves to the state and people of Montana certain powers as they were understood at the time that Montana was admitted to statehood in 1889. The guaranty of those powers is a matter of contract between the state and people of Montana and the United States as of the time that the compact with the United States was agreed upon and adopted by Montana and the United States in 1889.

(2) The ninth amendment to the United States constitution guarantees to the people rights not granted in the constitution and reserves to the people of

Montana certain rights as they were understood at the time that Montana was admitted to statehood in 1889. The guaranty of those rights is a matter of contract between the state and people of Montana and the United States as of the time that the compact with the United States was agreed upon and adopted by Montana and the United States in 1889.

(3) The regulation of intrastate commerce is vested in the states under the 9th and 10th amendments to the United States constitution, particularly if not expressly preempted by federal law. Congress has not expressly preempted state regulation of intrastate commerce pertaining to the manufacture on an intrastate basis of firearms, firearms accessories, and ammunition.

(4) The second amendment to the United States constitution reserves to the people the right to keep and bear arms as that right was understood at the time that Montana was admitted to statehood in 1889, and the guaranty of the right is a matter of contract between the state and people of Montana and the United States as of the time that the compact with the United States was agreed upon and adopted by Montana and the United States in 1889.

(5) Article II, section 12, of the Montana constitution clearly secures to Montana citizens, and prohibits government interference with, the right of individual Montana citizens to keep and bear arms. This constitutional protection is unchanged from the 1889 Montana constitution, which was approved by congress and the people of Montana, and the right exists as it was understood at the time that the compact with the United States was agreed upon and adopted by Montana and the United States in 1889.

Section 3. Definitions. As used in [sections 1 through 6], the following definitions apply:

(1) "Borders of Montana" means the boundaries of Montana described in Article I, section 1, of the 1889 Montana constitution.

(2) "Firearms accessories" means items that are used in conjunction with or mounted upon a firearm but are not essential to the basic function of a firearm, including but not limited to telescopic or laser sights, magazines, flash or sound suppressors, folding or aftermarket stocks and grips, speedloaders, ammunition carriers, and lights for target illumination.

(3) "Generic and insignificant parts" includes but is not limited to springs, screws, nuts, and pins.

(4) "Manufactured" means that a firearm, a firearm accessory, or ammunition has been created from basic materials for functional usefulness, including but not limited to forging, casting, machining, or other processes for working materials.

Section 4. Prohibitions. A personal firearm, a firearm accessory, or ammunition that is manufactured commercially or privately in Montana and that remains within the borders of Montana is not subject to federal law or federal regulation, including registration, under the authority of congress to regulate interstate commerce. It is declared by the legislature that those items have not traveled in interstate commerce. This section applies to a firearm, a firearm accessory, or ammunition that is manufactured in Montana from basic materials and that can be manufactured without the inclusion of any significant parts imported from another state. Generic and insignificant parts that have other manufacturing or consumer product applications are not firearms, firearms accessories, or ammunition, and their importation into Montana and incorporation into a firearm, a firearm accessory, or ammunition manufactured in Montana does not subject the firearm, firearm accessory, or ammunition to

federal regulation. It is declared by the legislature that basic materials, such as unmachined steel and unshaped wood, are not firearms, firearms accessories, or ammunition and are not subject to congressional authority to regulate firearms, firearms accessories, and ammunition under interstate commerce as if they were actually firearms, firearms accessories, or ammunition. The authority of congress to regulate interstate commerce in basic materials does not include authority to regulate firearms, firearms accessories, and ammunition made in Montana from those materials. Firearms accessories that are imported into Montana from another state and that are subject to federal regulation as being in interstate commerce do not subject a firearm to federal regulation under interstate commerce because they are attached to or used in conjunction with a firearm in Montana.

Section 5. Exceptions. [Section 4] does not apply to:

(1) a firearm that cannot be carried and used by one person;

(2) a firearm that has a bore diameter greater than 1 1/2 inches and that uses smokeless powder, not black powder, as a propellant;

(3) ammunition with a projectile that explodes using an explosion of chemical energy after the projectile leaves the firearm; or

(4) a firearm that discharges two or more projectiles with one activation of the trigger or other firing device.

Section 6. Marketing of firearms. A firearm manufactured or sold in Montana under [sections 1 through 6] must have the words "Made in Montana" clearly stamped on a central metallic part, such as the receiver or frame.

Section 7. Codification instruction. [Sections 1 through 6] are intended to be codified as an integral part of Title 30, and the provisions of Title 30 apply to [sections 1 through 6].

Section 8. Applicability. [This act] applies to firearms, firearms accessories, and ammunition that are manufactured, as defined in [section 3], and retained in Montana after October 1, 2009.

Approved April 15, 2009

CHAPTER NO. 206

[HB 263]

AN ACT REQUIRING CERTAIN HEALTH CARE PROVIDERS AND FACILITIES TO DISCLOSE ESTIMATED COSTS OF TREATMENT.

Be it enacted by the Legislature of the State of Montana:

Section 1. Short title. [Sections 1 through 3] may be cited as the "Patient's Right to Know the Costs of Medical Procedures Act".

Section 2. Legislative purpose. The purpose of [sections 1 through 3] is to provide health care consumers with better information on the cost of their medical care and to introduce elements of competition into the marketplace.

Section 3. Disclosures required of health care providers. (1) Upon request of a patient or a patient's agent, a health care provider, outpatient center for surgical services, clinic, or hospital shall provide the patient or the patient's agent with its estimated charge for a health care service or course of treatment that exceeds $500. The estimate must be provided for a service that a patient is receiving or has been recommended to receive. The estimate must be

provided at the time the service is scheduled or within 10 business days of the patient's or agent's request.

(2) The patient or patient's agent may request that the information required under this section be provided in writing or electronically.

(3) The estimated charge:

(a) must represent a good faith effort to provide accurate information to the patient or the patient's agent;

(b) is not a binding contract upon the parties; and

(c) is not a guarantee that the estimated amount will be the charged amount or will account for unforeseen conditions.

Section 4. Codification instruction. [Sections 1 through 3] are intended to be codified as an integral part of Title 50, chapter 4, part 5, and the provisions of Title 50, chapter 4, part 5, apply to [sections 1 through 3].

Approved April 15, 2009

CHAPTER NO. 207

[HB 264]

AN ACT REQUIRING HEALTH INSURERS TO DISCLOSE PREAUTHORIZATION OR PREAPPROVAL REQUIREMENTS AND ESTIMATED COVERED AND OUT-OF-POCKET COSTS FOR CERTAIN HEALTH CARE SERVICES; AMENDING SECTIONS 33-22-244 AND 33-22-521, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-22-244, MCA, is amended to read:

"33-22-244. Disclosure standards — individual policy. (1) In order to provide for full and fair disclosure in the sale of disability insurance, an individual disability insurance policy may not be delivered or issued for delivery in this state unless an outline of coverage is filed with and approved by the insurance commissioner in accordance with 33-1-501 and is delivered to the applicant at the time the application is made.

(2) The outline of coverage must include:

(a) a general description of the principal benefits and coverages provided by the policy;

(b) a general description of the insured's financial responsibility under the policy, including, if applicable, the amount of the deductible, the amount or percentage of copayment, and the maximum annual out-of-pocket expenses to be paid by the insured;

(c) a statement of the maximum lifetime benefit available under the policy;

(d) a statement of the estimated periodic premium to be paid by the insured;

(e) a general description of the factors or case characteristics that the insurer may consider in establishing or changing the premiums and, if applicable, in determining the insurability of the applicant;

(f) a description of any preauthorization or other preapproval requirements for medical care;

~~(f)~~*(g)* a prominently displayed statement of the insured's responsibility for payment of billed charges beyond those charges reimbursed by the insurer when

the insured uses health care services from a health care provider who is outside a network of health care providers used by the insurer; and

~~(g)~~*(h)* a general description of the trend of premium increases or decreases for comparable policies issued by the insurer during the preceding 5 years, if the trend data is available.

(3) The outline of coverage may include any other information that the insurer considers relevant to the applicant's selection of an appropriate individual disability policy.

(4) An insurer or producer shall provide to an individual, upon request, an outline of coverage for any health benefit product marketed to the general public. The outline of coverage provided under this subsection may exclude the statement of the estimated periodic premium to be paid by the insured.

(5) Prior to issuance of an individual disability insurance policy, written informational materials describing the policy's cancer screening coverages must be provided to a potential applicant. The informational materials are not subject to filing with and approval of the insurance commissioner."

Section 2. Section 33-22-521, MCA, is amended to read:

"33-22-521. Disclosure standards — group policy. (1) In order to provide for full and fair disclosure in the sale of disability insurance, a group disability insurance policy may not be delivered or issued for delivery in this state unless an outline of coverage is filed with and approved by the insurance commissioner in accordance with 33-1-501 and is delivered to the applicant at the time the application is made.

(2) The outline of coverage must include:

(a) a general description of the principal benefits and coverages provided by the policy;

(b) a general description of the insured's financial responsibility under the policy, including, if applicable, the amount of the deductible, the amount or percentage of copayment, and the maximum annual out-of-pocket expenses to be paid by the insured;

(c) a statement of the maximum lifetime benefit available under the policy;

(d) a statement of the estimated periodic premium to be paid by the insured;

(e) a general description of the factors or case characteristics that the insurer may consider in establishing or changing the premiums and, if applicable, in determining the insurability of the applicant;

(f) a description of any preauthorization or other preapproval requirements for medical care;

~~(f)~~*(g)* a prominently displayed statement of the insured's responsibility for payment of billed charges beyond those charges reimbursed by the insurer when the insured uses health care services from a health care provider who is outside a network of health care providers used by the insurer; and

~~(g)~~*(h)* a general description of the trend of premium increases or decreases for comparable policies issued by the insurer during the preceding 5 years, if the trend data is available.

(3) If applicable, the outline of coverage must disclose that the policy does not contain coverage for mental illness or chemical dependency.

(4) The outline of coverage may include any other information that the insurer considers relevant to the applicant's selection of an appropriate group disability policy.

(5) An insurer or producer shall provide to an individual, upon request, an outline of coverage for any health benefit product marketed to the general public. The outline of coverage provided under this subsection may exclude the statement of the estimated periodic premium to be paid by the insured.

(6) An outline of coverage must also be sent to an employee when an employee is sent a certificate of insurance.

(7) Prior to issuance of a group disability insurance policy, written informational materials describing the policy's cancer screening coverages must be provided to a prospective applicant. The informational materials are not subject to filing with and approval of the insurance commissioner."

Section 3. Short title. [Sections 3 through 5] may be cited as the "Patient's Right to Know of Insurance Coverage Provisions Act".

Section 4. Legislative purpose. The purpose of [sections 3 through 5] is:

(1) to provide health care consumers with better information regarding the portion of their health care costs that will be paid by their health insurer and the portion that they will have to pay themselves; and

(2) to introduce elements of competition into the marketplace.

Section 5. Disclosures required of health insurers — limitations. (1) When requested by an insured or the insured's agent, a health insurer shall provide a summary of the insured's coverage for a specific health care service or course of treatment when an actual charge or estimate of charges by a health care provider, outpatient center for surgical services, clinic, or hospital exceeds $500.

(2) The insured or insured's agent may request that the information required under this section be provided in writing or electronically.

(3) The health insurer shall make a good faith effort to provide accurate information under this section. The health insurer is only required to provide information under this section based upon cost estimates and procedure codes obtained by the insured from the insured's health care provider.

Section 6. Codification instruction. [Sections 3 through 5] are intended to be codified as an integral part of Title 50, chapter 4, part 5, and the provisions of Title 50, chapter 4, part 5, apply to [sections 3 through 5].

Section 7. Effective date. [This act] is effective January 1, 2010.

Approved April 15, 2009

CHAPTER NO. 208

[HB 386]

AN ACT CREATING THE MONTANA RIGHT OF DISPOSITION ACT PERTAINING TO FUNERAL OR OTHER DISPOSITION ARRANGEMENTS; ESTABLISHING A PRIORITY OF PERSONS WHO MAY ARRANGE FOR THE FUNERAL OR DISPOSITION OF OTHERS; PROVIDING FOR THE LOSS OF THE RIGHT OF DISPOSITION; PROVIDING FOR THE RESOLUTION OF DISPUTES AS TO THE RIGHT OF DISPOSITION; ESTABLISHING RIGHTS AND IMMUNITY FOR A MORTICIAN WHO

RELIES ON INSTRUCTIONS OF A PERSON WHO THE MORTICIAN REASONABLY BELIEVES HAS THE RIGHT OF DISPOSITION; CLARIFYING THE RIGHT TO CONTROL THE DISPOSITION OF HUMAN REMAINS WITH RESPECT TO MAUSOLEUM AND COLUMBARIUM AUTHORITIES; REVISING THE DEFINITION OF "AUTHORIZING AGENT"; AND AMENDING SECTIONS 35-21-810 AND 37-19-101, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Short title. [Sections 1 through 9] may be cited as the "Montana Right of Disposition Act".

Section 2. Purpose. The legislature declares that it is the public policy of this state to provide an orderly and uniform system to determine which individuals hold the right to direct and carry out funeral and disposition arrangements for the remains of deceased individuals.

Section 3. Prepaid funeral arrangements — disposition directions — definition. (1) A person who is 18 years of age or older and of sound mind, by entering into a prepaid funeral contract with any mortuary licensed under Title 37, chapter 19, part 4, or by providing disposition directions may direct the location, manner, and conditions of disposition of the person's remains and the arrangements for funeral goods and services to be provided upon the person's death.

(2) The funeral prearrangements that are prepaid and contracted for with a licensed mortuary or the disposition directions may not be canceled or substantially revised unless the cancellation or substantial revision has been ordered by a person appointed by the decedent in the prepaid funeral contract or the disposition directions as the person authorized to cancel or revise the terms of the prepaid funeral contract or the disposition directions.

(3) As used in this section, the term "disposition directions" means:

(a) a video provided in a replayable format of the person who is the subject of the disposition directions in which the person describes the wishes for disposition and that is accompanied by a written attestation of the video accuracy by two witnesses who are at least 18 years of age; or

(b) a legible written instrument signed by the person who is the subject of the disposition directions and by two people who are at least 18 years of age who have witnessed the signing by the person. The written instrument may be but is not limited to a letter of instructions, a will, a trust document, or advance directives. A written instrument that does not name a person with the right to control the decedent's disposition must follow the priority of rights of disposition provided in [section 4].

Section 4. Priority of rights of disposition. (1) A person who is 18 years of age or older and of sound mind wishing to authorize another person to control the disposition of the person's remains may execute an affidavit or a written instrument before a notary public in substantially the following form:

"State of Montana] ss

County of .....]

I, ... [person designating another person to control the disposition of the person's remains] do hereby designate ..... [person who is provided with the right to control the disposition] with the right to control the disposition of my remains upon my death. I ..... have or ..... have not attached specific directions concerning the disposition of my remains with which the designee shall substantially comply,

provided the directions are lawful and there are sufficient resources in my estate to carry out the directions.

Subscribed and sworn to before me this ..... day of the month of ..... of the year ..... .

....."

(2) Except as provided in [sections 3 and 7] and subsection (1) of this section, the right to control the disposition of the remains of a deceased person, including the location, manner, and conditions of the disposition and arrangements for funeral goods and services, vests in the following persons in the order named if the named person is 18 years of age or older and is of sound mind:

(a) a person designated by the decedent as the person with the right to control the decedent's disposition in an affidavit or written instrument executed in accordance with subsection (1);

(b) the surviving spouse;

(c) the sole surviving child of the decedent or, if there is more than one child of the decedent, the majority of the surviving children. However, less than one-half of the surviving children may be vested with the rights and duties provided in this section if those surviving children have used reasonable efforts to notify all other surviving children of their instructions and they are not aware of opposition to their instructions on the part of more than one-half of all surviving children.

(d) the surviving parent or parents of the decedent. If one of the surviving parents is absent, the remaining parent may be vested with the rights and duties provided in this section if that parent's reasonable efforts have been unsuccessful in locating the absent surviving parent.

(e) the surviving sibling of the decedent or, if there is more than one sibling of the decedent, the majority of the surviving siblings. However, less than one-half of the surviving siblings may be vested with the rights and duties provided in this section if those siblings have used reasonable efforts to notify all other surviving siblings of their instructions and they are not aware of any opposition to their instructions on the part of more than one-half of all surviving siblings.

(f) the surviving grandparent of the decedent or, if there is more than one surviving grandparent, the majority of the grandparents. However, less than one-half of the surviving grandparents may be vested with the rights and duties provided in this section if those grandparents have used reasonable efforts to notify all other surviving grandparents of their instructions and are not aware of any opposition to their instructions on the part of more than one-half of all surviving grandparents.

(g) the guardian of the decedent at the time of the decedent's death, if a guardian had been appointed;

(h) the personal representative of the estate of the decedent;

(i) the person in classes of the next degree of kinship, in descending order, under the laws of descent and distribution to inherit the estate of the decedent. If there is more than one person of the same degree, any person of that degree may exercise the right of disposition.

(j) if the disposition of the remains of the decedent is the responsibility of the state or a local government, the public officer, administrator, or employee responsible for arranging the disposition of the decedent's remains; and

(k) in the absence of any person provided for in subsections (2)(a) through (2)(j), any other person, including the mortician with custody of the remains, who is willing to assume the responsibility to act and arrange the disposition of the decedent's remains after attesting in writing that a good faith effort has been made to contact the individuals provided for in subsections (2)(a) through (2)(j).

Section 5. Arrangements provided by survivors. The provisions of [section 3 and section 4(1)] do not prevent the decedent's survivors, in the order listed in [section 4], from pursuing, at their own expense, meaningful services and making arrangements for funeral services that do not conflict with the decedent's instructions for disposition made in accordance with [section 3 and section 4(1)].

Section 6. Loss of right of disposition. A person entitled to the right of disposition under [section 4] forfeits that right and the right is passed on to the next qualifying person listed in [section 4] under the following circumstances:

(1) the person is charged with deliberate or negligent homicide in connection with the decedent's death. However, if the charges against the person are dismissed or if the person is acquitted of the charges, the right of disposition is returned to the person.

(2) the person does not exercise the person's right of disposition within 2 days after notification of the death of the decedent or within 3 days of the decedent's death, whichever is earlier;

(3) the person and the decedent are spouses and a petition to dissolve the marriage was pending at the time of the decedent's death; or

(4) the district court, pursuant to [section 7], determines that the person entitled to the right of disposition and the decedent were estranged at the time of death. For purposes of this subsection, "estranged" means a physical and emotional separation from the decedent existing at the time of death and that existed for a period of time prior to death that clearly demonstrates an absence of affection, trust, and regard for the decedent.

Section 7. Disputes. (1) The district court for the county where the decedent resided may award the right of disposition to the person determined by the court to be the most fit and appropriate to carry out the right of disposition and make decisions regarding the decedent's remains if those sharing the right of disposition under [section 4] cannot agree.

(2) The following provisions apply to the court's determination under subsection (1):

(a) If the persons holding the right of disposition are two or more persons with the same relationship to the decedent and they cannot, by majority vote, make a decision regarding the disposition of the decedent's remains, any of the persons or a mortician with custody of the remains may file a petition asking the district court to make a determination in the matter.

(b) In making a determination, the district court shall consider the following:

(i) the reasonableness and practicality of any proposed funeral arrangements and disposition;

(ii) the degree of the personal relationship between the decedent and each of the persons claiming the right of disposition;

(iii) the desires of the person or persons who are able and willing to pay the cost of the funeral arrangements and disposition;

(iv) the convenience and needs of other family and friends wishing to pay respects;

(v) the desires of the decedent;

(vi) the degree to which the funeral arrangements would allow maximum participation by all those wishing to pay their respects.

(3) (a) In the event of a dispute regarding the right of disposition, a mortician may not be held liable for refusing to accept the remains or to inter or otherwise dispose of the remains of the decedent or complete the arrangements for final disposition of the remains until the mortician receives a court order or a written agreement signed by the parties to the disagreement that decides the final disposition of the remains.

(b) If the mortician retains the remains for final disposition while the parties are in disagreement, the mortician may embalm or refrigerate and shelter the body, or both, in order to preserve the body while awaiting the final decision of the district court and may add the cost of embalming or refrigeration and sheltering, or both, to the final disposition costs.

(c) If a mortician files a petition under this section for an order of disposition from the district court, the mortician may add the legal fees and court costs associated with the petition to the final disposition costs.

(d) This section may not be construed to require or to impose a duty upon a mortician to bring an action under this section. A mortician may not be held criminally or civilly liable for choosing not to bring an action under this section.

(4) Except to the extent that it may be considered by the district court under subsection (2)(b)(iii), the fact that a person has paid or agreed to pay for all or part of the funeral arrangements and disposition does not give that person a greater right of disposition than the person would otherwise have.

(5) The personal representative of the estate of the decedent does not have, by virtue of being the personal representative, a greater claim to the right of disposition than the person would otherwise have under the provisions of [sections 1 through 9].

Section 8. Right to rely. (1) A person who signs a funeral agreement, cremation authorization form, or other authorization for disposition must be considered as warranting the truthfulness of any facts set forth in the agreement, form, or authorization, including:

(a) the identity of the decedent whose remains are subject to the disposition; and

(b) the person's authority to order the disposition.

(2) A mortician may rely on the funeral service agreement, cremation authorization form, or other authorization and may carry out the instructions of the person or persons who the mortician reasonably believes hold the right of disposition.

(3) A mortician is not responsible to contact or to independently investigate the existence of any next of kin or relatives of the decedent.

(4) If a class includes two or more persons who are equal in priority, a mortician may rely on and act according to the instructions of the first person in the class to make funeral and disposition arrangements if another person in the class has not provided to the mortician written notice of the person's objections to the arrangements and the mortician does not have knowledge of any objections to the arrangements by other members of the class.

Section 9. Immunity. A mortuary or mortician who relies in good faith on the instructions of an individual claiming the right of disposition is not subject to criminal or civil liability or subject to disciplinary action for carrying out the disposition of the remains in accordance with the instructions.

Section 10. Section 35-21-810, MCA, is amended to read:

"35-21-810. Disposition of remains — liability. (1) The right to control the disposition of the remains of a deceased person, unless other directions have been given by the decedent, ~~vests in, and the duty of interment and the liability for the reasonable cost of interment of the remains devolves upon, the following in the order named:~~

~~(a) a spouse;~~

~~(b) a majority of adult children;~~

~~(c) a parent;~~

~~(d) a close relative of the decedent; or~~

~~(e) in the absence of a person listed in subsections (3)(a) through (3)(d), a personal representative, a public administrator, the deceased through a preneed authorization, or others as designated by the board of funeral service by rule~~ *is as provided in [section 4]*.

(2) The liability for the reasonable cost of interment devolves jointly and severally upon all kin of the decedent listed in ~~subsection (1)~~ *[section 4]* in the same degree of kindred and upon the estate of the decedent.

(3) A person signing an authorization for the interment of any remains warrants the truthfulness of any fact set forth in the authorization, the identity of the person whose remains are sought to be interred, and the person's authority to order the interment. The person signing the authorization is personally liable for all damage occasioned by or resulting from breach of the warranty.

(4) The mausoleum-columbarium authority may inter any remains upon the receipt of a written authorization of a person representing to be a person who has acquired the right to control the disposition of the remains. A mausoleum-columbarium authority is not liable for interring pursuant to the authorization unless it has actual notice that presentation is untrue."

Section 11. Section 37-19-101, MCA, is amended to read:

"37-19-101. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Arrangements" includes:

(a) planning the details of funeral service, including time of service, type of service, and, if requested, acquiring the services of clergy;

(b) obtaining the necessary information for filing death certificates;

(c) comparing or discussing prices, including merchandise prices and financial arrangements; and

(d) providing for onsite direction and coordination of participants and onsite direction, coordination, and facilitation at funeral, graveside, or memorial services or rites.

(2) "At-need" arrangements means arrangements made by an authorized person on behalf of a deceased.

(3) "Authorizing agent" means a person legally entitled to order the final disposition *of human remains*, including burial, cremation, entombment,

donation to medical science, or other means~~.~~. ~~of human remains. An authorizing agent is, in~~ *The* order of preference~~:~~ *for an authorizing agent is subject to the priority of rights of disposition established in [section 4].*

~~(a) a spouse;~~

~~(b) a majority of adult children;~~

~~(c) a parent;~~

~~(d) a close relative of the deceased; or~~

~~(e) in the absence of a person or persons listed in subsections (1)(a) through (1)(d), a personal representative, a public administrator, the deceased through a preneed authorization, or others as designated by board rule.~~

(4) "Board" means the board of funeral service provided for in 2-15-1743.

(5) "Branch establishment" means a separate facility that may or may not have a suitable visitation room or preparation room and that is owned by, a subsidiary of, or otherwise financially connected to or controlled by a licensed mortuary.

(6) "Cemetery" means any land or structure in this state dedicated to and used or intended to be used for interment of cremated remains or human remains. It may be any one or a combination of a burial park for earth interments, a mausoleum for crypt or niche interments, or a columbarium.

(7) "Cemetery company" means an individual, partnership, corporation, or association that:

(a) owns or controls cemetery lands or property and conducts the business of a cemetery; or

(b) applies to the board to own or control cemetery lands or property and conduct the business of a cemetery.

(8) "Closed container" means a container in which cremated remains can be placed and enclosed in a manner that prevents leakage or spillage of cremated remains or entrance of foreign material.

(9) "Columbarium" means a room or space in a building or structure used or intended to be used for the interment of cremated remains.

(10) "Cremated remains" means all human remains recovered after the completion of the cremation, including pulverization that leaves only bone fragments reduced to unidentifiable dimensions.

(11) "Cremation" means the technical process, using heat, that reduces human remains to bone fragments. The reduction takes place through heat and evaporation.

(12) "Cremation chamber" means the enclosed space within which the cremation process takes place. Cremation chambers of crematoriums licensed by this chapter must be used exclusively for the cremation of human remains.

(13) "Cremation container" means the container in which the human remains are placed in the cremation chamber for a cremation. A cremation container must meet substantially all of the following standards:

(a) be composed of readily combustible materials suitable for cremation;

(b) be able to be closed in order to provide a complete covering for the human remains;

(c) be resistant to leakage and spillage;

(d) be rigid enough for handling with ease; and

(e) be able to provide protection for the health, safety, and integrity of crematory personnel.

(14) "Crematory" means the building or portion of a building that houses the cremation chamber and the holding facility.

(15) "Crematory operator" means the person in charge of the licensed crematory facility.

(16) "Crematory technician" means an employee of a crematory facility who is trained to perform cremations and is licensed by the board.

(17) "Crypt" means a chamber of sufficient size to inter the remains of a deceased person.

(18) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(19) "Embalming" means:

(a) obtaining burial or removal permits or assuming other duties incidental to the practice of embalming;

(b) disinfecting and preserving or attempting to preserve dead human bodies in their entirety or in parts by the use of chemical substances, fluids, or gases ordinarily intended for that use by introducing the chemical substances, fluids, or gases into the body by vascular or hypodermic injection or by direct introduction into the organs or cavities; and

(c) restorative art.

(20) "Funeral directing" includes:

(a) supervising funerals;

(b) the making of preneed or at-need contractual arrangements for funerals;

(c) preparing dead bodies for burial, other than by embalming;

(d) maintaining a mortuary for the preparation, disposition, or care of dead human bodies; and

(e) representing to the public that one is a funeral director.

(21) "Holding facility" means an area within or adjacent to the crematory facility designated for the retention of human remains prior to cremation that must:

(a) comply with any applicable public health law;

(b) preserve the dignity of the human remains;

(c) recognize the health, safety, and integrity of the crematory operator and crematory personnel; and

(d) be secure from access by anyone other than authorized personnel.

(22) "Human remains" means the body of a deceased person or part of a body or limb that has been removed from a living person, including the body, part of a body, or limb in any stage of decomposition.

(23) "Interment" means any lawful disposition of cremated remains or human remains.

(24) (a) "Intern" means a person who has met the educational and testing requirements for a license to practice mortuary science in Montana, has been licensed by the board as an intern, and is engaged in the practice of mortuary science under the supervision of a licensed mortician.

(b) For the purposes of this subsection (24), "supervision" means the extent of oversight that a mortician believes an intern requires based upon the training, experience, judgment, and professional development of the intern.

(25) "Lot" or "grave space" means a space in a cemetery used or intended to be used for interment.

(26) "Mausoleum" means a community-type room or space in a building or structure used or intended to be used for the interment of human remains in crypts or niches.

(27) "Mortician" means a person licensed under this chapter to practice mortuary science.

(28) (a) "Mortuary" means a place of business licensed by the board, located in a building or portion of a building having a specific street address or location, containing but not limited to a suitable room for viewing or visitation and a preparation room, and devoted exclusively to activities that are related to the preparation and arrangements for funerals, transportation, burial, or other disposition of dead human bodies.

(b) The term includes conducting activities from the place of business referred to in subsection (28)(a) that are incidental, convenient, or related to the preparation of funeral or memorial services or rites or the transportation, burial, cremation, or other disposition of dead human bodies in any area where those activities may be conducted.

(29) "Mortuary science" means the profession or practice of funeral directing and embalming.

(30) "Niche" means a space in a columbarium or mausoleum used or intended to be used for the interment of the cremated remains or human remains of one or more deceased persons.

(31) "Perpetual care and maintenance" means continual and proper maintenance of cemetery buildings, grounds, and lots or grave spaces.

(32) "Preneed arrangements" means arrangements made with a licensed funeral director or licensed mortician by a person on the person's own behalf or by an authorized individual on the person's behalf prior to the death of the person.

(33) "Temporary container" means a receptacle for cremated remains that is usually made of cardboard, plastic film, or similar material designed to hold the cremated remains until an urn or other permanent container is acquired.

(34) "Urn" means a receptacle designed to permanently encase the cremated remains."

Section 12. Codification instruction. [Sections 1 through 9] are intended to be codified as an integral part of Title 37, chapter 19, and the provisions of Title 37, chapter 19, apply to [sections 1 through 9].

Approved April 15, 2009

CHAPTER NO. 209

[HB 402]

AN ACT REVISING LAWS RELATED TO STATE LAND BANKING; REMOVING THE SUNSET OF THE LAND BANKING PROGRAM; INCREASING THE NUMBER OF ACRES OF STATE LAND THAT MAY BE

SOLD OR DISPOSED OF; AMENDING SECTIONS 77-2-363 AND 77-2-366, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 77-2-363, MCA, is amended to read:

"77-2-363. Land banking land sales and limitations — sale preparation costs. (1) (a) The board may not cumulatively sell or dispose of more than ~~100,000~~ *250,000* acres of state land. Seventy-five percent of the acreage cumulatively sold must be isolated parcels that do not have a legal right of access by the public. At any one time during the life of the land banking process, the board may not sell more than 20,000 acres of state land unless the board has acted to use the revenue from that land to make purchases pursuant to 77-2-364.

(b) The estimated fair market value must be determined by a Montana-licensed and Montana-certified appraiser.

(2) (a) A person bidding to purchase state land offered for sale shall 20 days prior to the day of auction deposit with the department a bid bond in the form of a certified check or cashier's check drawn on any Montana bank equal to at least 20% of the minimum sale price specified by the department pursuant to 77-2-323(1) to guarantee the bidder's payment of the purchase price.

(b) If the current lessee of the land to be sold has initiated the sale as authorized by 77-2-364, the lessee may cancel the sale by giving notice to the department at least 10 days prior to the day of the auction. When the sale is canceled by the lessee, the lessee shall pay the costs incurred by the department for the preparation of the sale, including any costs incurred for preparation of documents required by 75-1-201.

(c) The department shall retain the bid bond of the successful bidder and shall return the bid bonds of the unsuccessful bidders. If the successful bidder fails to comply with the terms of the sale for any reason, the successful bidder's bid bond must be forfeited and credited to the interest and income account of the proper trust.

(3) Except for a sale that is initiated by the lessee of the parcel of land proposed for sale, prior to the proposed sale of any parcel of state land under the land banking process, the board shall give 60 days' notice of the proposed sale to the lessee of the parcel to allow the lessee sufficient time to determine whether the lessee wishes to propose an exchange of the land to the board.

(4) For a sale initiated by the board or the department, the lessee of the land must be afforded all the rights and privileges to match the high bid, as provided in 77-2-324.

(5) (a) When the lessee has initiated a sale of land under this section, the lessee shall remit to the department the estimated costs of preparing the parcel for sale, including but not limited to appraisals, cultural surveys, environmental review pursuant to Title 75, chapter 1, parts 1 through 3, and land surveys. Payment must be made within 10 days after the board has provided preliminary approval for the sale of the parcel.

(b) If the parcel is sold to the lessee, the funds remitted for the costs of the sale must be applied to the actual costs at closing. If the parcel is sold to a party other than the lessee, the funds remitted by the lessee must be refunded to the lessee and actual costs of preparing the parcel for sale must be assessed to the purchaser at closing."

Section 2. Section 77-2-366, MCA, is amended to read:

"77-2-366. Land banking ~~process — time limit~~ — report to environmental quality council. ~~(1) State land may not be sold through the land banking process pursuant to 77-2-361 through 77-2-367 after October 1, 2011. Land banking purchases under 77-2-364 may continue after October 1, 2011, until all the proceeds in the state land bank fund are expended or revert to the public school fund or the permanent fund of the respective trust pursuant to 77-2-362(2)(d).~~

~~(2)~~ The department shall provide a report to the environmental quality council by *the* July 1~~, 2008~~, *prior to each regular legislative session* that describes the results of the land banking program in detail. At a minimum, the report must summarize the sale and purchase transactions made through the program by type, location, acreage, value, and trust beneficiary. The environmental quality council shall make any recommendations that it determines necessary regarding the implementation of the state land banking process, including recommendations for legislation."

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 15, 2009

CHAPTER NO. 210

[HB 403]

AN ACT REQUIRING THAT COURTS CONSIDER A CHILD'S NEED FOR CONTINUITY OF CARE IN DETERMINING WHETHER THE CHILD SHOULD BE PLACED WITH A PERSON OTHER THAN A PARENT; AND AMENDING SECTIONS 40-4-211, 40-6-601, 40-6-602, 41-3-437, 41-3-438, 41-3-439, 72-5-223, AND 72-5-225, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 40-4-211, MCA, is amended to read:

"40-4-211. Jurisdiction — commencement of parenting proceedings. (1) A court of this state competent to decide parenting matters has jurisdiction to make a parenting determination by initial or amended decree if:

(a) this state:

(i) is the home state of the child at the time of commencement of the proceedings; or

(ii) had been the child's home state within 6 months before commencement of the proceedings and the child is absent from this state because of the child's removal or retention by any person and a parent or person acting as parent continues to live in this state; or

(b) it is in the best interest of the child that a court of this state assume jurisdiction because:

(i) the child and the parents or the child and at least one contestant have a significant connection with this state; and

(ii) there is available in this state substantial evidence concerning the child's present or future care, protection, training, and personal relationships; or

(c) the child is physically present in this state and:

(i) has been abandoned, including being surrendered to an emergency services provider as provided in 40-6-405; ~~or~~

(ii) has been with a caretaker relative who has been awarded continuing custody pursuant to 40-6-602; or

~~(ii)~~*(iii)* it is necessary in an emergency to protect the child because the child has been subjected to or threatened with mistreatment or abuse or is neglected or dependent; or

(d) (i) no other state has jurisdiction under prerequisites substantially in accordance with subsection (1)(a), (1)(b), or (1)(c) or another state has declined to exercise jurisdiction on the ground that this state is the more appropriate forum to determine parenting of the child; and

(ii) it is in the child's best interest that the court assume jurisdiction.

(2) Except under subsections (1)(c) and (1)(d), physical presence in this state of the child or of the child and one of the contestants is not alone sufficient to confer jurisdiction on a court of this state to make a parenting determination.

(3) Physical presence of the child, while desirable, is not a prerequisite for jurisdiction to determine parenting of the child.

(4) A parenting plan proceeding is commenced in the district court:

(a) by a parent, by filing a petition:

(i) for dissolution or legal separation;

(ii) for parenting in the county in which the child is permanently resident or found; or

(iii) for custody under 40-6-411; or

(b) by a person other than a parent if the person has established a child-parent relationship with the child, by filing a petition for parenting in the county in which the child resides or is found.

(5) Notice of a parenting proceeding must be given to the child's parent, guardian, caretaker, those persons with whom the child is physically residing, and all other contestants, who may appear, be heard, and file a responsive pleading. The court, upon a showing of good cause, may permit intervention of other interested parties.

(6) For purposes of subsection (4)(b), "child-parent relationship" means a relationship that*:*

(a) exists or did exist, in whole or in part, preceding the filing of an action under this section, in which a person provides or provided for the physical needs of a child by supplying food, shelter, and clothing and provides or provided the child with necessary care, education, and discipline*;* ~~and which relationship~~

(b) continues or existed on a day-to-day basis through interaction, companionship, interplay, and mutuality that fulfill the child's psychological needs for a parent as well as the child's physical needs*; and*

(c) meets or met the child's need for continuity of care by providing permanency or stability in residence, schooling, and activities outside of the home.

(7) A custody proceeding under 40-6-411 is commenced in the district court by a parent by filing in one of the following counties:

(a) the county where the newborn is located if the parent knows where the newborn is;

(b) the county where the emergency services provider to whom the newborn was surrendered is located if subsection (7)(a) does not apply; or

(c) the county where the biological parent is located if neither subsection (7)(a) or (7)(b) applies."

Section 2. Section 40-6-601, MCA, is amended to read:

"40-6-601. Legislative finding and purpose — definitions. (1) The legislature recognizes that the right of parents to the custody and control of their children is based upon the liberties secured by the United States and Montana constitutions and that a parent's right to that custody and control is therefore normally supreme to the interests of other persons. The legislature also recognizes a growing phenomenon in which absent or otherwise unavailable parents have temporarily surrendered the custody and care of a child to a grandparent or other caretaker relative for a lengthy period of time. The legislature finds that a caretaker relative frequently offers *continuity of care by providing* a child a loving, stable, and secure environment in which to live, make friends, and attend school, which is an environment not provided by a parent who temporarily abandons a child. However, a child is deprived of that caring and safe environment*, and the related continuity of care it may provide,* when a parent returns to claim the child with little or no notice to the caretaker relative. This situation, which in some instances has occurred multiple times with the same child, is disruptive to the more stable life offered by the caretaker relative and may violate the child's rights ensured by Article II, section 15, of the Montana constitution, such as the right under Article II, section 3, of the Montana constitution of seeking safety, health, and happiness. For these reasons, it is the purpose of the legislature in enacting 40-6-602 and this section to exercise its police powers for the health and welfare of children who have been abandoned by their parents to the care of relatives and to create a procedure, applicable in limited situations caused by the voluntary surrender of a child by a parent, under circumstances indicating abandonment, whereby a child in the care of a relative may remain with that relative while the issue of abandonment by the parent is reviewed and determined by a court of law. The legislature believes that this temporary infringement on the right of a parent to the custody and control of a minor child is justified by the possibility of abandonment by the parent, because the welfare of the child is at stake, and because of the likely violation of the child's rights ensured by Article II, section 15, of the Montana constitution.

(2) As used in 40-6-602 and this section, the following definitions apply:

(a) "Caretaker relative" or "relative" means an individual related to a child by blood, marriage, or adoption by another individual, who has care and custody of a child but who is not a parent, foster parent, stepparent, or legal guardian of the child.

(b) "Parent" means a biological or adoptive parent or other legal guardian of a child."

Section 3. Section 40-6-602, MCA, is amended to read:

"40-6-602. Caretaker relative rights upon return of parent — continuing custody affidavit — review, finding, and order by district court — limited reconsideration — immunity. (1) If custody of a child has been voluntarily given to a relative of the child by a parent of the child and the child has remained with that relative for at least 6 months under circumstances in which it is unclear whether or when the parent will return and retake custody of the child, the provisions of this section apply unless, during that 6-month period, the parent expresses to the relative a firm intention and a date on which

the parent will return and resume custody of the child and subsequently adheres to that schedule.

(2) Upon a return of the parent and an expression by the parent of an intent by that parent to reassert the parent's right of custody and control over the child, the caretaker relative may file, without payment of a filing fee, with the district court in the county of the relative's residence a detailed affidavit as provided in this section. The affidavit must contain the following matters, the exclusion of any of which makes the affidavit void:

(a) the identification of:

(i) the caretaker relative, including the relative's address;

(ii) the child in the custody of the relative; and

(iii) the parent demanding custody of the child, including the parent's address, if known;

(b) a statement of the facts, as nearly as can be determined, of:

(i) the date, time, and circumstances surrounding the voluntary surrender of the custody of the child to the caretaker relative, including any conversation between the relative and the parent concerning the purpose of the parent's absence and when the parent would return and resume custody of the child;

(ii) the reason for the surrender of the child to the relative, as far as is known by the relative;

(iii) the efforts made by the relative to care for the child, including:

(A) facts explaining the nature *and permanency or stability* of the home provided by the relative for the child;

(B) the schooling of the child while in the relative's custody; and

(C) the socialization of the child with other children and adults, both inside and outside the family of the caretaker relative; and

(iv) whether any contact was made by the child's parent with the relative, the child, or both, during the absence of the parent and if so, the date, time, and circumstances of that contact, including any conversation between the relative and the parent concerning when the parent would return and resume custody of the child;

(c) a statement by the caretaker relative as to*:*

(i) why the relative wishes to maintain custody of the child*; and*

(ii) how the relative has offered and will continue to offer continuity of care by providing permanency or stability in residence, schooling, and activities outside of the home;

(d) a warning, in at least 14-point type, to the caretaker relative in the following language: "WARNING: DO NOT SIGN THE FOREGOING AFFIDAVIT IF ANY OF THE ABOVE STATEMENTS ARE INCORRECT OR YOU WILL BE COMMITTING AN OFFENSE PUNISHABLE BY FINE, IMPRISONMENT, OR BOTH"; and

(e) a notarized signature of the caretaker relative following a written declaration that the affidavit is made under oath and under penalty of the laws of Montana governing the giving of false sworn testimony and that the information stated by the caretaker relative in the affidavit is true and correct.

(3) A copy of the affidavit filed with the district court must be provided by the caretaker relative to the child's parent, if the address or location of the parent is

known to the relative, and may be provided to the department of public health and human services. A caretaker relative may maintain temporary custody of the child for 5 days following the return of the parent and the demand by the parent for custody of the child pending completion of the affidavit and the order of the district court. During that 5-day period, the caretaker relative may not be deprived of the custody of the child by a peace officer or by the order of a court unless a court finds, upon petition by the child's parent and after a hearing and upon notice to the caretaker relative as the court shall require, that:

(a) the child has not been in the custody of the caretaker relative for at least 6 months;

(b) the caretaker relative has committed child abuse or neglect with regard to the child in the custody of the relative; or

(c) the action by the caretaker relative to make and file the affidavit with the district court in accordance with this section was not made in good faith.

(4) Upon receipt of the caretaker relative's affidavit pursuant to subsection (3), the department may proceed pursuant to 41-3-202 as if a report of abandonment of the child had been received.

(5) (a) Within 48 hours of the filing of the affidavit, the district court shall review the affidavit and determine ex parte whether the affidavit contains prima facie evidence that the child was abandoned by the child's parent. If the court determines that there is prima facie evidence that the child was abandoned by the child's parent, the court shall within 3 business days of its determination of prima facie evidence enter appropriate findings of fact concerning the abandonment and enter an ex parte order approving and ordering continued custody and control of the child by the caretaker relative. An order of the district court pursuant to this subsection approving and ordering continued custody by the caretaker relative is effective for 14 days following entry of the order.

(b) If the court determines that the affidavit does not provide prima facie evidence of abandonment by the parent, the court shall within 3 business days of its determination make appropriate findings of fact and order the child returned to the parent. Upon receipt of the written findings and order of the court, the caretaker relative shall surrender the custody and control of the child to the child's parent.

(c) During or after the 14-day period established under subsection (5)(a), the caretaker relative may commence a parenting plan proceeding under 40-4-211 or petition the court to be appointed the guardian of the minor under 72-5-225.

(6) Upon entry of an order by the district court pursuant to subsection (5)(a), a copy of the order must be sent to the child's parent, if the address of the parent is known.

(7) The child's parent may, after receipt of the court's findings and order ordering continued custody of a child by a caretaker relative, apply to the court, upon notice to the caretaker relative as the court shall provide, for a reconsideration of the court's order approving continued custody of the child by the relative. The court shall reconsider its order and may reverse its order based upon presentation of evidence of nonabandonment. Pending a reconsideration pursuant to this subsection, custody of the child must remain with the relative unless the order of the district court approving that custody expires or a court has ordered a change of custody pursuant to subsection (3).

(8) (a) A caretaker relative refusing to surrender custody of a child while acting in good faith and in accordance with this section is immune from civil or criminal action brought because of that refusal.

(b) A peace officer acting in good faith and taking or refusing to take custody of a child from a relative in accordance with this section and the entity employing the officer is immune from civil or criminal action or professional discipline brought because of the taking of or refusal to take custody of the child.

(9) Subject to availability of appropriations, the attorney general shall prepare a form for the affidavit provided for in this section and shall distribute the form as the attorney general determines appropriate."

Section 4. Section 41-3-437, MCA, is amended to read:

"41-3-437. Adjudication — temporary disposition — findings — order. (1) Upon the filing of an appropriate petition, an adjudicatory hearing must be held within 90 days of a show cause hearing under 41-3-432. Adjudication may take place at the show cause hearing if the requirements of subsection (2) are met or may be made by prior stipulation of the parties pursuant to 41-3-434 and order of the court. Exceptions to the time limit may be allowed only in cases involving newly discovered evidence, unavoidable delays, stipulation by the parties pursuant to 41-3-434, and unforeseen personal emergencies.

(2) The court may make an adjudication on a petition under 41-3-422 if the court determines by a preponderance of the evidence, except as provided in the federal Indian Child Welfare Act, if applicable, that the child is a youth in need of care. Except as otherwise provided in this part, the Montana Rules of Civil Procedure and the Montana Rules of Evidence apply to adjudication and to an adjudicatory hearing. Adjudication must determine the nature of the abuse and neglect and establish facts that resulted in state intervention and upon which disposition, case work, court review, and possible termination are based.

(3) The court shall hear evidence regarding the residence of the child, paternity, if in question, the whereabouts of the parents, guardian, or nearest adult relative, and any other matters the court considers relevant in determining the status of the child. Hearsay evidence of statements made by the affected youth is admissible according to the Montana Rules of Evidence.

(4) In a case in which abandonment has been alleged by the county attorney, the attorney general, or an attorney hired by the county, the court shall hear offered evidence, including evidence offered by a person appearing pursuant to 41-3-422(9)(a) or (9)(b), regarding any of the following subjects:

(a) the extent to which the child has been cared for, nurtured, or supported by a person other than the child's parents; and

(b) whether the child was placed or allowed to remain by the parents with another person for the care of the child, and, if so, then the court shall accept evidence regarding:

(i) the intent of the parents in placing the child or allowing the child to remain with that person; ~~and~~

(ii) the continuity of care the person has offered the child by providing permanency or stability in residence, schooling, and activities outside of the home; and

~~(ii)~~*(iii)* the circumstances under which the child was placed or allowed to remain with that other person, including:

(A) whether a parent requesting return of the child was previously prevented from doing so as a result of an order issued pursuant to Title 40, chapter 15, part 2, or of a conviction pursuant to 45-5-206; and

(B) whether the child was originally placed with the other person to allow the parent to seek employment or attend school.

(5) In all civil and criminal proceedings relating to abuse or neglect, the privileges related to the examination or treatment of the child do not apply, except the attorney-client privilege granted by 26-1-803 and the mediation privilege granted by 26-1-813.

(6) (a) If the court determines that the child is not an abused or neglected child, the petition must be dismissed and any order made pursuant to 41-3-427 or 41-3-432 must be vacated.

(b) If the child is adjudicated a youth in need of care, the court shall set a date for a dispositional hearing to be conducted within 20 days, as provided in 41-3-438(1), and order any necessary or required investigations. The court may issue a temporary dispositional order pending the dispositional hearing. The temporary dispositional order may provide for any of the forms of relief listed in 41-3-427(2).

(7) (a) Before making an adjudication, the court may make oral findings, and following the adjudicatory hearing, the court shall make written findings on issues, including but not limited to the following:

(i) which allegations of the petition have been proved or admitted, if any;

(ii) whether there is a legal basis for continued court and department intervention; and

(iii) whether the department has made reasonable efforts to avoid protective placement of the child or to make it possible to safely return the child to the child's home.

(b) The court may order:

(i) terms for visitation, support, and other intrafamily communication pending disposition if the child is to be placed or to remain in temporary out-of-home care prior to disposition;

(ii) examinations, evaluations, or counseling of the child or parents in preparation for the disposition hearing that does not require an expenditure of money by the department unless the court finds after notice and a hearing that the expenditure is reasonable and that resources are available for payment. The department is the payor of last resort after all family, insurance, and other resources have been examined.

(iii) the department to evaluate the noncustodial parent or relatives as possible caretakers, if not already done;

(iv) the perpetrator of the alleged child abuse or neglect to be removed from the home to allow the child to remain in the home; and

(v) the department to continue efforts to notify noncustodial parents.

(8) If a proceeding under this chapter involves an Indian child and is subject to the federal Indian Child Welfare Act, a qualified expert witness is required to testify that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child."

Section 5. Section 41-3-438, MCA, is amended to read:

"41-3-438. Disposition — hearing — order. (1) Unless a petition is dismissed or unless otherwise stipulated by the parties pursuant to 41-3-434 or ordered by the court, a dispositional hearing must be held on every petition filed under this chapter within 20 days after an adjudicatory order has been entered under 41-3-437. Exceptions to the time limit may be allowed only in cases involving newly discovered evidence, unavoidable delays, stipulation by the parties pursuant to 41-3-434, and unforeseen personal emergencies.

(2) (a) A dispositional order must be made after a dispositional hearing that is separate from the adjudicatory hearing under 41-3-437. The hearing process must be scheduled and structured so that dispositional issues are specifically addressed apart from adjudicatory issues. Hearsay evidence is admissible at the dispositional hearing.

(b) A dispositional hearing may follow an adjudicatory hearing in a bifurcated manner immediately after the adjudicatory phase of the proceedings if:

(i) all required reports are available and have been received by all parties or their attorneys at least 5 working days in advance of the hearing; and

(ii) the judge has an opportunity to review the reports after the adjudication.

(c) The dispositional hearing may be held prior to the entry of written findings required by 41-3-437.

(3) If a child is found to be a youth in need of care under 41-3-437, the court may enter its judgment, making any of the following dispositions to protect the welfare of the child:

(a) permit the child to remain with the child's custodial parent or guardian, subject to those conditions and limitations the court may prescribe;

(b) order the department to evaluate the noncustodial parent as a possible caretaker;

(c) order the temporary placement of the child with the noncustodial parent, superseding any existing custodial order, and keep the proceeding open pending completion by the custodial parent of any treatment plan ordered pursuant to 41-3-443;

(d) order the placement of the child with the noncustodial parent, superseding any existing custodial order, and dismiss the proceeding with no further obligation on the part of the department to provide services to the parent with whom the child is placed or to work toward reunification of the child with the parent or guardian from whom the child was removed in the initial proceeding;

(e) grant an order of limited emancipation to a child who is 16 years of age or older, as provided in 41-1-501;

(f) transfer temporary legal custody to any of the following:

(i) the department;

(ii) a licensed child-placing agency that is willing and able to assume responsibility for the education, care, and maintenance of the child and that is licensed or otherwise authorized by law to receive and provide care of the child; or

(iii) a nonparent relative or other individual who has been evaluated and recommended by the department or a licensed child-placing agency designated by the court and who is found by the court to be qualified to receive and care for the child;

(g) order a party to the action to do what is necessary to give effect to the final disposition, including undertaking medical and psychological evaluations, treatment, and counseling that does not require an expenditure of money by the department unless the department consents and informs the court that resources are available for payment. The department is the payor of last resort after all family, insurance, and other resources have been examined.

(h) order further care and treatment as the court considers in the best interests of the child that does not require an expenditure of money by the department unless the department consents and informs the court that resources are available for the proposed care and treatment. The department is the payor of last resort after all family, insurance, and other resources have been examined pursuant to 41-3-446.

(4) (a) If the court awards temporary legal custody of an abandoned child other than to the department or to a noncustodial parent, the court shall award temporary legal custody of the child to a member of the child's extended family, including adult siblings, grandparents, great-grandparents, aunts, and uncles, if:

(i) placement of the abandoned child with the extended family member is in the best interests of the child;

(ii) the extended family member requests that the child be placed with the family member; ~~and~~

(iii) the extended family member is able to offer continuity of care for the child by providing permanency or stability in residence, schooling, and activities outside of the home; and

~~(iii)~~*(iv)* the extended family member is found by the court to be qualified to receive and care for the child.

(b) If more than one extended family member satisfies the requirements of subsection (4)(a), the court may award custody to the extended family member who can best meet the child's needs.

(c) If a member of the child's extended family, including an adult sibling, grandparent, great-grandparent, aunt, or uncle, has requested that custody be awarded to that family member, the department shall investigate and determine if awarding custody to the family member is in the best interests of the child. The department shall provide the reasons for any denial to the court. If the court accepts the department's custody recommendation, the court shall inform any denied family member of the reasons for the denial to the extent that confidentiality laws allow. The court shall include the reasons for denial in the court order if the family member who is denied temporary legal custody requests it to be included.

(5) If reasonable efforts have been made to prevent removal of a child from the home or to return a child to the child's home but continuation of the efforts is determined by the court to be inconsistent with permanency for the child, the department shall make reasonable efforts to place the child in a timely manner in accordance with a permanent plan and to complete whatever steps are necessary to finalize the permanent placement of the child.

(6) If the court finds that reasonable efforts are not necessary pursuant to 41-3-442(1) or subsection (5) of this section, a permanency hearing must be held within 30 days of that determination and reasonable efforts must be made to place the child in a timely manner in accordance with the permanency plan and to complete whatever steps are necessary to finalize the permanent placement of the child.

(7) If the time limitations of this section are not met, the court shall review the reasons for the failure and order an appropriate remedy that considers the best interests of the child."

Section 6. Section 41-3-439, MCA, is amended to read:

"41-3-439. Department to give placement priority to extended family member of abandoned child. (1) If the department has received temporary legal custody of an abandoned child pursuant to 41-3-438 or permanent legal custody pursuant to 41-3-607, the department shall give priority to a member of the child's extended family, including adult siblings, grandparents, great-grandparents, aunts, and uncles, in determining the person or persons with whom the abandoned child should be placed if:

(a) placement with the extended family member is in the best interests of the abandoned child;

(b) the extended family member has requested that the abandoned child be placed with the family member; ~~and~~

(c) the extended family member is able to offer the child continuity of care by providing permanency or stability in residence, schooling, and activities outside of the home; and

~~(c)~~*(d)* the department has determined that the extended family member is qualified to receive and care for the abandoned child.

(2) If more than one extended family member of the abandoned child has requested that the child be placed with the family member and all are qualified to receive and care for the child, the department may determine which extended family member to place the abandoned child with in the same manner as provided for in 41-3-438(4).

(3) This part does not affect the department's ability to assess the appropriateness of placement of the child with a noncustodial parent when abandonment has been found against only one parent.

(4) If a member of the child's extended family, including an adult sibling, grandparent, great-grandparent, aunt, or uncle, has requested that the child be placed with that family member and the department denies the request, the department shall give that family member a written statement of the reasons for the denial to the extent that confidentiality laws allow."

Section 7. Section 72-5-223, MCA, is amended to read:

"72-5-223. Guardian of minor by court appointment — qualifications — nominee of minor preferred. The court may appoint as guardian any person whose appointment would be in the best interests of the minor*, including the minor's interest in continuity of care*. The court shall appoint a person nominated by the minor if the minor is 14 years of age or older unless the court finds the appointment contrary to the best interests of the minor."

Section 8. Section 72-5-225, MCA, is amended to read:

"72-5-225. Procedure for court appointment of guardian of minor — notice — hearing — representation by attorney. (1) Notice of the time and place of hearing of a petition for the appointment of a guardian of a minor must be given by the petitioner in the manner prescribed by 72-1-301 to:

(a) the minor, if the minor is 14 years of age or older;

(b) the person who has had the principal care and custody of the minor during the 60 days preceding the date of the petition; and

(c) any living parent of the minor.

(2) Upon hearing, ~~if~~ the court *shall make the appointment if the court* finds that a qualified person seeks appointment, venue is proper, the required notices have been given, the requirements of 72-5-222 have been met, and the welfare and best interests of the minor*, including the need for continuity of care,* will be served by the requested appointment~~, it shall make the appointment~~. In other cases, the court may dismiss the proceedings or make any other disposition of the matter that will best serve the interests of the minor.

(3) If, at any time in the proceeding, the court determines that the interests of the minor are or may be inadequately represented, the court may order the office of state public defender, provided for in 47-1-201, to assign counsel pursuant to the Montana Public Defender Act, Title 47, chapter 1, to represent the minor."

Approved April 15, 2009

CHAPTER NO. 211

[HB 495]

AN ACT CLARIFYING THE RIGHTS OF RESIDENT ASSOCIATIONS IN A MOBILE HOME PARK; PROHIBITING LANDLORD INTERFERENCE WITH AN INVITEE TO RESIDENT ASSOCIATION MEETINGS; CLARIFYING THAT A RESIDENT ASSOCIATION'S MEETING MAY BE HELD RELATING TO THE FUTURE OF THE MOBILE HOME PARK; AMENDING SECTION 70-33-314, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 70-33-314, MCA, is amended to read:

"70-33-314. Resident associations — meetings. (1) The membership of a resident association may elect officers of the association at a meeting at which a majority of the members are present. All residents may attend meetings, but the landlord and the landlord's employees may not be members and may not attend meetings unless specifically invited by the tenants' resident association. *The landlord may not interfere with or prevent the attendance of an invitee at a resident association's meeting.*

(2) The landlord may not prohibit meetings by a resident association or tenants relating to*:*

(a) mobile home living*; or*

(b) the future plans for the mobile home park, including sale or change of use."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 15, 2009

CHAPTER NO. 212

[HB 509]

AN ACT REVISING REQUIREMENTS FOR COUNTING VOTES FOR WRITE-IN CANDIDATES; AND AMENDING SECTION 13-15-206, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13-15-206, MCA, is amended to read:

"13-15-206. Counting votes — uniformity — rulemaking — definitions. (1) When conducting vote counts as provided by law, a counting board, absentee ballot counting board, or recount board shall count and determine the validity of each vote in a uniform manner as provided in this section.

(2) A manual count or recount of votes must be conducted as follows:

(a) One election judge on the board shall read the ballot while the two other judges on the board shall each record on an official tally sheet the number of valid votes cast for each individual or ballot issue. Write-in votes must be counted in accordance with *subsection (5) and* rules adopted pursuant to subsection (7). If a vote has not been cast according to instructions, the vote must be considered questionable and the entire ballot must be set aside and votes on the ballot must be handled as provided in subsection (4).

(b) (i) After the vote count is complete, the tally sheets of the two judges recording the votes must be compared.

(ii) If the two tallies match, the judges shall record in the pollbook:

(A) the names of all individuals who received votes;

(B) the offices for which individuals received votes;

(C) the total votes received by each individual as shown by the tally sheets; and

(D) the total votes received for or against each ballot issue, if any.

(iii) If the tallies do not match, the count must be conducted again as provided in this subsection (2) until the two tallies match.

(3) (a) When a voting system is counting votes:

(i) if a vote is recognized and counted by the system, it is a valid vote;

(ii) if a vote is not recognized and counted by the system, it is not a valid vote;

(iii) write-in votes must be counted in accordance with rules adopted pursuant to subsection (7).

(b) If the voting system cannot process the ballot because of the ballot's condition or if the voting system registers an unvoted ballot or an overvote, which must be considered a questionable vote, the entire ballot must be set aside and the votes on the ballot must be counted as provided in subsection (4).

(c) If an election administrator or counting board has reason to believe that a voting system is not functioning correctly, the election administrator shall follow the procedures prescribed in 13-15-209.

(d) After all valid votes have been counted and totaled, the judges shall record in the pollbook the information specified in subsection (2)(b)(ii).

(4) (a) (i) Before being counted, each questionable vote on a ballot set aside under subsection (2)(a) or (3)(b) must be reviewed by the counting board. The counting board shall evaluate each questionable vote according to rules adopted by the secretary of state.

(ii) If a majority of the counting board members agree that under the rules the voter's intent can be clearly determined, the vote is valid and must be counted according to the voter's intent.

(iii) If a majority of the counting board members do not agree that the voter's intent can be clearly determined under the rules, the vote is not valid and may not be counted.

(b) If a ballot was set aside under subsection (3)(b) because it could not be processed by the voting system due to the ballot's condition, the counting board shall transfer all valid votes to a new ballot that can be processed by the voting system.

(5) A write-in vote may be counted if:

(a) *(i)* the write-in vote identifies an individual by a designation filed pursuant to 13-10-211(1)(a); or

~~(b)~~*(ii)* pursuant to 13-10-211(7), a declaration of nomination was not filed and the write-in vote identifies an individual who is qualified for the office*; and*

(b) the oval, box, or other designated voting area on the ballot is marked.

(6) A vote is not valid and may not be counted if the elector's choice cannot be determined as provided in this section.

(7) The secretary of state shall adopt rules defining a valid vote and a valid write-in vote for each type of ballot and for each type of voting system used in the state. The rules must provide a sufficient guarantee that all votes are treated equally among jurisdictions using similar ballot types and voting systems.

(8) Local election administrators shall adopt policies to govern local processes that are consistent with the provisions of this title and that provide for:

(a) the security of the counting process against fraud;

(b) the place and time and public notice of each count or recount;

(c) public observance of each count or recount, including observance by representatives authorized under 13-16-411;

(d) the recording of objections to determinations on the validity of an individual vote or to the entire counting process; and

(e) the keeping of a public record of count or recount proceedings.

(9) For purposes of this section, "overvote" means an elector's vote that has been interpreted by the voting system as an elector casting more votes than allowable for a particular office or ballot issue."

Approved April 15, 2009

CHAPTER NO. 213

[HB 513]

AN ACT REVISING SCHOOL FINANCE LAWS BY ALLOWING BONDING CAPACITIES TO BE COMBINED IN HIGH SCHOOL DISTRICTS WITH AN ATTACHED ELEMENTARY DISTRICT; ELIMINATING TRANSITION COSTS FROM THE CALCULATION OF THE TOTAL AMOUNT OF THE DISTRICT BUILDING RESERVE FUND; AND AMENDING SECTIONS 20-9-406 AND 20-9-502, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-9-406, MCA, is amended to read:

"20-9-406. Limitations on amount of bond issue — definition of federal impact aid basic support payment. (1) (a) Except as provided in subsection ~~(1)~~(d) *(1)(c)*, the maximum amount for which an elementary district or a high school district may become indebted by the issuance of general obligation bonds, including all indebtedness represented by outstanding

general obligation bonds of previous issues, registered warrants, outstanding obligations under 20-9-471 ~~and 20-9-502~~, and any other loans or notes payable that are held as general obligations of the district, is 50% of the taxable value of the property subject to taxation, as ascertained by the last assessment for state, county, and school taxes previous to the incurring of the indebtedness.

(b) Except as provided in subsection ~~(1)(d)~~ *(1)(c)*, the maximum amount for which a K-12 school district, as formed pursuant to 20-6-701, may become indebted by the issuance of general obligation bonds, including all indebtedness represented by outstanding general obligation bonds of previous issues, registered warrants, outstanding obligations under 20-9-471 and 20-9-502, and any other loans or notes payable that are held as general obligations of the district, is up to 100% of the taxable value of the property subject to taxation, as ascertained by the last assessment for state, county, and school taxes previous to the incurring of the indebtedness.

~~(c) The total indebtedness of the high school district with an attached elementary district is limited to the sum of 50% of the taxable value of the property for elementary school program purposes and 50% of the taxable value of the property for high school program purposes.~~

~~(d)~~*(c)* (i) The maximum amount for which an elementary district or a high school district with a district mill value per elementary ANB or per high school ANB that is less than the facility guaranteed mill value per elementary ANB or high school ANB under 20-9-366 may become indebted by the issuance of general obligation bonds, including all indebtedness represented by outstanding general obligation bonds of previous issues, registered warrants, outstanding obligations under 20-9-471 and 20-9-502, and any other loans or notes payable that are held as general obligations of the district, is 50% of the corresponding facility guaranteed mill value per ANB times 1,000 times the ANB of the district. For a K-12 district, the maximum amount for which the district may become indebted is 50% of the sum of the facility guaranteed mill value per elementary ANB times 1,000 times the elementary ANB of the district and the facility guaranteed mill value per high school ANB times 1,000 times the high school ANB of the district. For the purpose of calculating ANB under this subsection, a district may use the greater of the current year ANB or the 3-year ANB calculated under 20-9-311.

(ii) If mutually agreed upon by the affected districts, for the purpose of calculating its maximum bonded indebtedness under this subsection ~~(1)(d)~~ *(1)(c)*, a district may include the ANB of the district plus the number of students residing within the district for which the district or county pays tuition for attendance at a school in an adjacent district. The receiving district may not use out-of-district ANB for the purpose of calculating its maximum indebtedness if the out-of-district ANB has been included in the ANB of the sending district pursuant to the mutual agreement. For the purpose of calculating ANB under this subsection, a district may use the greater of the current year ANB or the 3-year ANB calculated under 20-9-311.

(2) The maximum amounts determined in subsection (1) do not pertain to indebtedness imposed by special improvement district obligations or assessments against the school district or to general obligation bonds issued for the repayment of tax protests lost by the district. All general obligation bonds issued in excess of the amount are void, except as provided in this section.

(3) The maximum amount of impact aid revenue bonds that an elementary district, high school district, or K-12 school district may issue may not exceed a

total aggregate amount equal to three times the average of the school district's annual federal impact aid basic support payments for the 5 years immediately preceding the issuance of the bonds. However, at the time of issuance of the bonds, the average annual payment of principal and interest on the impact aid bonds each year may not exceed 35% of the total federal impact aid basic support payments of the school district for the current year.

(4) When the total indebtedness of a school district has reached the limitations prescribed in this section, the school district may pay all reasonable and necessary expenses of the school district on a cash basis in accordance with the financial administration provisions of this chapter.

(5) Whenever bonds are issued for the purpose of refunding bonds, any money to the credit of the debt service fund for the payment of the bonds to be refunded is applied toward the payment of the bonds and the refunding bond issue is decreased accordingly.

(6) As used in this part, "federal impact aid basic support payment" means the annual impact aid revenue received by a district under 20 U.S.C. 7703(b) but excludes revenue received for impact aid special education under 20 U.S.C. 7703(d) and impact aid construction under 20 U.S.C. 7707."

Section 2. Section 20-9-502, MCA, is amended to read:

"20-9-502. Purpose and authorization of building reserve fund by election — levy for school transition costs. (1) The trustees of any district, with the approval of the qualified electors of the district, may establish a building reserve for the purpose of raising money for the future construction, equipping, or enlarging of school buildings, for the purpose of purchasing land needed for school purposes in the district, or for the purpose of funding school transition costs as provided in subsections (5) and (6). In order to submit to the qualified electors of the district a building reserve proposition for the establishment of or addition to a building reserve, the trustees shall pass a resolution that specifies:

(a) the purpose or purposes for which the new or addition to the building reserve will be used;

(b) the duration of time over which the new or addition to the building reserve will be raised in annual, equal installments;

(c) the total amount of money that will be raised during the duration of time specified in subsection (1)(b); and

(d) any other requirements under 15-10-425 and 20-20-201 for the calling of an election.

(2) ~~The total amount of building reserve, less the amount provided for in subsection (5), when added to the outstanding indebtedness of the district may not be more than the limitations provided in 20-9-406.~~ Except as provided in subsections (5)(b) and (6), a building reserve tax authorization may not be for more than 20 years.

(3) The election must be conducted in accordance with the school election laws of this title, and the electors qualified to vote in the election must be qualified under the provisions of 20-20-301. The ballot for a building reserve proposition must be substantially in compliance with 15-10-425.

(4) The building reserve proposition is approved if a majority of those electors voting at the election approve the establishment of or addition to the building reserve. The annual budgeting and taxation authority of the trustees for a building reserve is computed by dividing the total authorized amount by

the specified number of years. The authority of the trustees to budget and impose the taxation for the annual amount to be raised for the building reserve lapses when, at a later time, a bond issue is approved by the qualified electors of the district for the same purpose or purposes for which the building reserve fund of the district was established. Whenever a subsequent bond issue is made for the same purpose or purposes of a building reserve, the money in the building reserve must be used for the purpose or purposes before any money realized by the bond issue is used.

(5) (a) The trustees may submit a proposition to the qualified electors of the district for a levy to provide funding for transition costs incurred when the trustees:

(i) open a new school under the provisions of Title 20, chapter 6;

(ii) close a school;

(iii) replace a school building; or

(iv) consolidate with or annex another district under the provisions of Title 20, chapter 6.

(b) Except as provided in subsections (5)(c) and (6), the total amount the trustees may submit to the electorate for transition costs may not exceed the number of years specified in the proposition times the greater of 5% of the district's maximum general fund budget for the current year or $250 per ANB for the current year. Except as provided in subsection (6), the duration of the levy for transition costs may not exceed 6 years.

(c) If the levy for transition costs is for consolidation or annexation:

(i) the limitation on the amount levied is calculated using the ANB and the maximum general fund budget for the districts that are being combined; and

(ii) the proposition must be submitted to the qualified electors in the combined district.

(d) The levy for transition costs may not be considered as outstanding indebtedness for the purpose of calculating the limitation in 20-9-406.

(6) The trustees of a K-12 district shall impose a levy for transition costs to fund the payment required by 20-6-326(6)(b) when a proposition to create the K-12 district and to assess the transition levy has been approved pursuant to 20-6-326(2). The levy is limited to the amount required by 20-6-326(6)(b) for a period not to exceed 3 years."

Approved April 15, 2009

CHAPTER NO. 214

[HB 534]

AN ACT REQUIRING THE ELECTRONIC RECORDING OF CUSTODIAL INTERROGATIONS IN FELONY CASES AND IN YOUTH COURT CASES INVOLVING AN OFFENSE THAT WOULD BE A FELONY IF COMMITTED BY AN ADULT.

Be it enacted by the Legislature of the State of Montana:

Section 1. Purpose. The legislature intends to require the electronic recording of custodial interrogations in felony cases based on the finding that properly recorded interrogations:

(1) provide the best evidence of the communications that occurred during an interrogation;

(2) prevent disputes about a peace officer's conduct or treatment of a suspect during the course of an interrogation;

(3) prevent a defendant from lying about the account of events originally provided to law enforcement by the defendant;

(4) spare judges and jurors the time necessary and the need to assess which account of an interrogation to believe;

(5) enhance public confidence in the criminal process; and

(6) have been encouraged by the Montana supreme court in a written opinion of that court.

Section 2. Definitions. As used in [sections 1 through 6], the following definitions apply:

(1) "Custodial interrogation" means an interview conducted by a peace officer in a place of detention for the purpose of investigating a felony or, in the case of a youth, an offense that would be a felony if committed by an adult if the interview is reasonably likely to elicit a response from the person being interviewed that may incriminate the person being interviewed with regard to the commission of an offense.

(2) "Electronic recording" or "electronically recorded" means an audio recording, visual recording, or audiovisual recording, if available, that is an authentic, unaltered record of a custodial interrogation.

(3) "Place of detention" means a jail, police or sheriff's station, holding cell, correctional or detention facility, office, or other structure in this state where persons are held in connection with criminal charges or juvenile delinquency proceedings.

(4) "Statement" means an oral, written, sign language, or nonverbal communication.

Section 3. Recordings required. Except as provided in [section 4], all custodial interrogations must be electronically recorded. The recording must contain a peace officer advising the person being interviewed of the person's Miranda rights, a recording of the interview, and a conclusion of the interview.

Section 4. Exceptions to custodial recording requirements. A judge shall admit statements or evidence of statements that do not conform to [section 3] if, at hearing, the state proves by a preponderance of the evidence that:

(1) the statements have been made voluntarily and are reliable; or

(2) one or more of the following circumstances existed at the time of the custodial interrogation:

(a) the questions put forth by law enforcement personnel and the person's responsive statements were part of the routine processing or booking of the person;

(b) before or during a custodial interrogation, the person unambiguously declared that the person would respond to the law enforcement officer's questions only if the person's statements were not electronically recorded;

(c) the failure to electronically record an interrogation in its entirety was the result of unforeseeable equipment failure and obtaining replacement equipment was not practicable;

(d) exigent circumstances prevented the making of an electronic recording of the custodial interrogation;

(e) the person's statements were surreptitiously recorded by or under the direction of law enforcement personnel;

(f) the person's statement was made during a custodial interrogation that was conducted in another state by peace officers of that state in compliance with the laws of that state; or

(g) the person's statement was made spontaneously and not in response to a question.

Section 5. Cautionary jury instruction. If the defendant objects to the introduction of evidence under [section 3] and the court finds by a preponderance of the evidence that the statements are admissible, the judge shall, upon motion of the defendant, provide the jury with a cautionary instruction.

Section 6. Handling and preservation of electronic recordings. (1) An electronic recording of a custodial interrogation must be clearly identified and catalogued by law enforcement personnel.

(2) If a criminal or youth court proceeding is brought against a person who was the subject of an electronically recorded custodial interrogation, the electronic recording must be preserved by law enforcement personnel until all appeals and all postconviction and habeas corpus proceedings are final and concluded or until the time within which the proceedings must be brought has expired.

(3) Upon motion by the defendant, the court may order that a copy of the electronic recording be preserved for any period beyond the expiration of all appeals.

(4) If a criminal or youth court proceeding is not brought against a person who has been the subject of an electronically recorded custodial interrogation, the related electronic recording must be preserved by law enforcement personnel until all applicable state and federal statutes of limitations bar prosecution of the person.

Section 7. Codification instruction. [Sections 1 through 6] are intended to be codified as an integral part of Title 46, chapter 4, and the provisions of Title 46 apply to [sections 1 through 6].

Approved April 15, 2009

CHAPTER NO. 215

[HB 572]

AN ACT ESTABLISHING A PROGRAM AND CRITERIA TO PROVIDE STATE MATCHING GRANTS FOR FEDERAL SMALL BUSINESS INNOVATIVE RESEARCH GRANTS OR FEDERAL SMALL BUSINESS TECHNOLOGY TRANSFER GRANTS; AMENDING SECTION 90-1-147, MCA; AND PROVIDING AN EFFECTIVE DATE .

Be it enacted by the Legislature of the State of Montana:

Section 1. Small business state matching grant program — purpose. (1) There is a small business state matching grant program established within the department of commerce to provide guidelines and state matching grants to businesses meeting the criteria in [section 2] that have received phase I funding

for federal small business innovative research grants or small business technology transfer grants and that are applying for phase II federal small business innovative research grants or small business technology transfer grants.

(2) The state matching grants available for the small business state matching grant program are from any funds received for the program or appropriated to the program by the legislature.

(3) The purpose of the program is to foster job creation and economic development in the state by providing state matching grants to eligible businesses meeting the criteria described in [section 2].

Section 2. Small business eligibility criteria. To be eligible for a state matching grant under [sections 1 through 3], a business shall provide evidence to the department of commerce that the business meets all of the following criteria:

(1) the business is a for-profit sole proprietorship, partnership, limited liability company, limited liability partnership, or corporation registered with the secretary of state under Title 35 and has its principal place of business in this state;

(2) the business has received a phase I award under a small business innovative research grant or small business technology transfer grant from a participating federal agency in response to a specific federal solicitation;

(3) the business meets all federal eligibility requirements for a small business innovative research grant or a small business technology transfer grant;

(4) the business is not concurrently receiving funding from other state funding programs that duplicate the purpose stated in [section 1];

(5) the business certifies that at least 51% of the research described in the business's proposal for phase II funding under a small business innovative research grant or small business technology transfer grant is to be conducted in this state and that the business will remain a Montana-based business for the duration of a phase II project under a small business innovative research grant or small business technology transfer grant; and

(6) the business demonstrates an ability to conduct research for the business's phase II proposal under the small business innovative research grant or small business technology transfer grant.

Section 3. Grant award guidelines. (1) The department of commerce may award grants of no more than $100,000 to a business meeting the criteria in [section 2].

(2) A business may receive a state matching grant for each separate project that is submitted under a federal small business innovative research grant or small business technology transfer grant.

(3) (a) Upon application from a business that has met the criteria in [section 2], the department may award up to 50% of the grant.

(b) To receive the remaining 50% of the state matching grant, the business shall submit to the participating federal agency, with copies to the department of commerce, a final phase I project report, a letter of support from the sponsoring agency indicating that the sponsoring agency is interested in the phase II proposal, and an application for phase II funding. The remaining 50% of

the state matching grant is not contingent upon approval of the phase II project by the participating federal agency.

(c) Upon receipt of the documents listed in subsection (3)(b) and verification by the business of a submitted phase II application to the participating federal agency, the department of commerce shall remit to the business the remaining 50% of the grant to be provided under [sections 1 through 3].

(4) A business applying for a state matching grant under [sections 1 through 3] shall submit on a form prescribed by the department of commerce an application that contains:

(a) the name of the business, the form of business organization that is registered with the secretary of state, and the names and addresses of the principals or management of the business;

(b) proof of receipt of a phase I award under a federal small business innovative research grant or a federal small business technology transfer grant; and

(c) any other information required by the department of commerce by rule.

Section 4. Section 90-1-147, MCA, is amended to read:

"90-1-147. Rulemaking. The department of commerce may adopt rules to:

(1) provide for uniform loan and grant applications, when appropriate;

(2) coordinate the announcement and marketing of available financial assistance programs that are administered by other state agencies;

(3) provide for the specific requirements necessary to develop useful and logical navigation pathways and cross-references for a financial assistance program internet website and a standard form of internet links and access, consistent with the financial assistance program website, for individual agency websites that administer financial assistance programs; and

(4) develop processes and procedures necessary to effectively implement the provisions of 90-1-141 through 90-1-147 *and [sections 1 through 3]*."

Section 5. Codification instruction. [Sections 1 through 3] are intended to be codified as an integral part of Title 90, chapter 1, and the provisions of Title 90, chapter 1, apply to [sections 1 through 3].

Section 6. Effective date. [This act] is effective July 1, 2009.

Approved April 15, 2009

CHAPTER NO. 216

[HB 626]

AN ACT REVISING PROVISIONS RELATED TO THE TRANSFER OF LOCAL POLICE RETIREMENT FUNDS AND MEMBERS TO THE STATEWIDE MUNICIPAL POLICE OFFICERS' RETIREMENT SYSTEM; EXTENDING THE TIME ALLOWED FOR THE LOCAL FUND TO PAY LIABILITIES; AMENDING SECTION 19-9-207, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-9-207, MCA, is amended to read:

"19-9-207. Election to join retirement system — transfer of assets. (1) Cities other than those participating in the statewide police reserve fund

administered by the board in accordance with Chapter 335, Laws of 1974, as of June 30, 1977, may elect to join the retirement system by passing an ordinance stating the election and the consent of the city to be bound by the provisions of this retirement system. Upon the enactment of an ordinance, the provisions of this retirement system become applicable to the city. Any city enacting an election ordinance shall send a certified copy of the ordinance to the board and shall, as soon as possible, deposit all cash and securities held by it in its local police reserve or retirement fund into the municipal police officers' pension trust fund. The value of the securities must be determined by the board.

(2) The trustees or other administrative head of the local plan as of the effective date of the election shall certify the proportion, if any, of the funds of the plan that represents the accumulated contributions of the active members and the relative shares of the members as of that date. The shares must be charged to the employer and credited to the respective members in the retirement system and administered as if the contributions had been made during membership in the retirement system. Any excess of employer credits over charges under this section must be offset, with interest, against future required employer contributions for a period determined by the board. Any excess of employer charges over credits under this section are payable by the employer, with interest, for a period of ~~10~~ *30* years or less as determined by the board."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 15, 2009

CHAPTER NO. 217

[SB 124]

AN ACT CLARIFYING THAT THE DEATH OF A CANDIDATE CREATES AN ERROR OR OMISSION ON A PRINTED ABSENTEE BALLOT; REQUIRING THAT ABSENTEE BALLOTS CAST FOR A DECEASED CANDIDATE BE COUNTED FOR THE DECEASED CANDIDATE; AMENDING SECTIONS 13-13-204 AND 13-15-106, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13-13-204, MCA, is amended to read:

"13-13-204. Authority to vote in person — printing error or ballot destroyed — failure to receive ballot — effect of absentee elector's death. (1) *(a)* If an elector has ~~voted by~~ *received but not voted an* absentee ballot ~~but~~ *and* the absentee ballot contains printing errors or omissions,~~except that the name of a candidate who has died since the printing of the ballot and that appears on the ballot does not constitute an error or omission,~~ the elector may *receive a replacement or corrected ballot and* vote in person ~~in any manner at the elector's polling place~~ *at the election administrator's office*.

(b) The death of a candidate after the printing of the ballot constitutes a printing error or omission on the ballot.

(2) If an elector does not receive an absentee ballot or if the absentee ballot was destroyed, the elector may appear at the appropriate polling place on election day and vote in person after signing an affidavit, in the form prescribed by the secretary of state, swearing that the elector's ballot has not been received

or was destroyed. The ballot must be handled as a provisional ballot under 13-15-107.

(3) If an elector votes by absentee ballot and the ballot has been mailed or otherwise returned to the election administrator but the elector dies between the time of balloting and election day, the deceased elector's ballot must be counted."

Section 2. Section 13-15-106, MCA, is amended to read:

"13-15-106. Counting of absentee ballot for deceased ~~joint candidate in general election~~ *candidate*. (1) ~~An~~ *Except as provided in subsection (2) or (3), an* absentee ballot voted ~~in a general election, as provided in subsection (2) or (3),~~ for a candidate ~~for governor or lieutenant governor~~ who dies after printing of the ballot but before the election must be counted ~~as provided in subsection (2) or (3)~~ *for the deceased candidate*.

(2) A vote for a deceased candidate for governor must be counted as a vote for the lieutenant governor candidate as governor and as a vote for the candidate chosen pursuant to 13-10-328 for lieutenant governor.

(3) A vote for a deceased candidate for lieutenant governor must be counted as a vote for the candidate chosen pursuant to 13-10-328 for lieutenant governor."

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 15, 2009

CHAPTER NO. 218

[SB 192]

AN ACT PROVIDING SMALL BUSINESSES WITH AN OPPORTUNITY FOR WORKERS' COMPENSATION RELIEF BY ALLOWING POOLED RISK SAFETY GROUPS IN WORKERS' COMPENSATION PLAN NO. 3; PROVIDING AN OPPORTUNITY FOR A RETURN ON PREMIUM BASED ON REDUCED LOSSES TO EMPLOYERS THAT IMPLEMENT CERTAIN SAFETY AND RETURN-TO-WORK PROVISIONS; AMENDING SECTION 39-71-2311, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

WHEREAS, Workers' Compensation Plan No. 3, an insurer for all businesses in Montana, is a nonprofit, independent, public corporation that nevertheless is a creation of the state; and

WHEREAS, more than 90% of businesses in Montana have fewer than 20 employees and more than 80% of businesses in Montana have fewer than 10 employees, with many if not most of these small businesses obtaining workers' compensation insurance from the State Fund because not all private insurers write for small businesses; and

WHEREAS, Montana's workers' compensation rates among all insurers are the second highest in the nation and the current economic crisis has the potential to hit all employers hard, but especially small businesses that may have fewer lifelines for survival than larger businesses; and

WHEREAS, the opportunity to pool risk in a group that has made a commitment to safety yields the potential to benefit small businesses by reducing losses and possibly generating a return on premium.

Be it enacted by the Legislature of the State of Montana:

Section 1. Workplace safety program. (1) An employer that is not eligible for the tier with the lowest-rated premium for workers' compensation purposes is eligible to join a state fund pooled risk safety group, as provided in [section 2], if the employer:

(a) adopts and maintains a written, comprehensive workplace safety program that has been in place for more than 1 year and that meets the criteria established by rule implementing Title 39, chapter 71, part 15.

(b) adopts transitional and return-to-work programs;

(c) has at least 3 years of experience without losses;

(d) uses available safety consultation services or programs offered by the department or the state fund. Safety consultation may be provided to individual employers or to groups. The department and the state fund shall notify each employer in a group, as provided in [section 2], regarding the availability of safety and return-to-work resources.

(e) complies with the terms and conditions of the state fund pooled risk safety group as provided in [section 2].

(2) The state fund and the department shall share information on workplace safety programs and transitional and return-to-work programs.

Section 2. Pooled risk safety group. (1) The state fund may establish one or more groups of individual policies in a pooled risk safety group to promote safety as a way to reduce losses among members of the pooled risk safety group.

(2) Each member of a pooled risk safety group must be eligible as provided in [section 1] and must have an individual workers' compensation plan No. 3 policy. An individual policy may be included in only one group.

(3) The state fund shall annually establish the terms and conditions of the plan that defines the requirements of participation for a pooled risk safety group. The plan must include the criteria to be eligible for an aggregate return of premium and a method for apportioning the return of premium among members of the group.

(4) The aggregate record of the individual members of the pooled risk safety group is the basis for determining if the members of the pooled risk safety group qualify for a return on premiums.

Section 3. Section 39-71-2311, MCA, is amended to read:

"39-71-2311. Intent and purpose of plan — expense constant defined. (1) It is the intent and purpose of the state fund to allow employers an option to insure their liability for workers' compensation and occupational disease coverage with the state fund. The state fund must be neither more nor less than self-supporting. ~~Premium~~ *Premium* rates must be set at least annually at a level sufficient to ensure the adequate funding of the insurance program, including the costs of administration, benefits, and adequate reserves, during and at the end of the period for which the rates will be in effect. In determining premium rates, the state fund shall make every effort to adequately predict future costs. When the costs of a factor influencing rates are unclear and difficult to predict, the state fund shall use a prediction calculated to be more than likely to cover those costs rather than less than likely to cover those costs. *The prediction must take into account the goal of pooling risk and may not place an undue burden on employers that are not eligible for the tier with the lowest-rated premium for workers' compensation purposes.*

(2) Unnecessary surpluses that are created by the imposition of premiums found to have been set higher than necessary because of a high estimate of the cost of a factor or factors may be refunded by the declaration of a dividend as provided in this part. For the purpose of keeping the state fund solvent, the board of directors may implement multiple rating tiers as provided in 39-71-2330 and may assess an expense constant, a minimum premium, or both.

~~(2)~~*(3)* As used in this section, "expense constant" means a premium charge applied to each workers' compensation policy to pay expenses related to issuing, servicing, maintaining, recording, and auditing the policy."

Section 4. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 39, chapter 71, part 23, and the provisions of Title 39, chapter 71, part 23, apply to [sections 1 and 2].

Section 5. Effective date — applicability. [This act] is effective July 1, 2009, and applies to groups formed on or after July 1, 2010.

Approved April 15, 2009

CHAPTER NO. 219

[SB 276]

AN ACT REQUIRING ELECTION ADMINISTRATORS TO MAIL AN ADDRESS CONFIRMATION FORM TO EACH ELECTOR WHO HAS REQUESTED AN ABSENTEE BALLOT FOR SUBSEQUENT ELECTIONS; REVISING THE DURATION FOR WHICH A PROPERLY SUBMITTED ADDRESS CONFIRMATION FORM FOR ABSENTEE VOTERS IS VALID; AMENDING SECTION 13-13-212, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13-13-212, MCA, is amended to read:

"13-13-212. Application for absentee ballot — special provisions. (1) (a) Except as provided in subsection (1)(b), an elector may apply for an absentee ballot by using a standardized form provided by rule by the secretary of state or by making a written request, which must include the applicant's birth date and must be signed by the applicant. The request must be submitted to the election administrator of the applicant's county of residence within the time period specified in 13-13-211.

(b) A person who holds a power of attorney from an absent uniformed services elector may apply for an absentee ballot for that election on behalf of the uniformed services elector. The applicant shall provide a copy of the power of attorney authorizing the request for an absentee ballot along with the application.

(2) (a) If an elector requests an absentee ballot because of a sudden illness or health emergency, the application for an absentee ballot may be made by written request signed by the elector at the time that the ballot is delivered in person by the special absentee election board provided for in 13-13-225.

(b) The elector may request by telephone, facsimile transmission, or other means to have a ballot and application personally delivered by the special absentee election board at the elector's place of confinement, hospitalization, or residence within the county.

(c) A request under this subsection (2) must be received by the election administrator within the time period specified in 13-13-211(2).

(3) An elector who has made a request for an absentee ballot by one of the methods provided in this section may, in the event of the death of a candidate after the primary election but before the general election, make a request for a replacement ballot. The request for a replacement ballot may be made orally to the election administrator.

(4) (a) When applying for an absentee ballot under this section, an elector may also request to be mailed an absentee ballot, as soon as the ballot becomes available, for each subsequent election in which the elector is eligible to vote or only for each subsequent federal election in which the elector is eligible to vote for as long as the elector remains qualified to vote and resides at the address provided in the initial application.

(b) The election administrator shall mail an address confirmation form in January ~~and July~~ of each year to each elector who has requested an absentee ballot for subsequent elections. The address confirmation form ~~mailed in January~~ is for elections to be held between February 1 following the mailing through ~~July of the same year, and the address confirmation form mailed in July is for elections to be held between August 1 following the mailing through~~ January of the succeeding year. The elector shall sign the form, indicate the address to which the absentee ballot should be sent, and return the form to the election administrator. If the form is not completed and returned, the election administrator shall remove the elector from the register of electors who have requested an absentee ballot for each subsequent election.

(c) An elector who has been removed from the register may subsequently request to be mailed an absentee ballot for each subsequent election."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 15, 2009

CHAPTER NO. 220

[SB 405]

AN ACT EXTENDING GRANDPARENT-GRANDCHILD CONTACT RIGHTS TO GREAT-GRANDPARENTS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Grandparents include great-grandparents. For purposes of this part, the term "grandparent" includes a great-grandparent.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 40, chapter 9, part 1, and the provisions of Title 40, chapter 9, part 1, apply to [section 1].

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 15, 2009

CHAPTER NO. 221

[SB 447]

AN ACT CLARIFYING PRACTICES RELATED TO THE PRESERVATION AND DISPOSAL OF BIOLOGICAL EVIDENCE IN FELONY CRIMINAL CASES; AND AMENDING SECTION 46-21-111, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-21-111, MCA, is amended to read:

"46-21-111. Preservation and disposal of ~~scientific identification~~ *biological* evidence obtained in criminal proceeding. (1) *(a)* ~~The state~~ *A law enforcement agency* shall preserve ~~scientific identification~~ *biological* evidence that the ~~state~~ *agency* has reason to believe contains DNA material and that is obtained in connection with a felony for which a conviction is obtained. The ~~state~~ *agency* shall preserve the evidence for a minimum of 3 years after the conviction in the case becomes final or for any period beyond 3 years that is required by a court order issued within 3 years after the conviction in the case becomes final.

~~(2)~~*(b)* ~~The state~~ *An agency* may propose to dispose of ~~scientific identification~~ *biological* evidence before the expiration of the time period described in subsection (1)*(a)* if the ~~state~~ *agency* notifies the convicted person*,* ~~and any~~ *the* attorney of record for the convicted person*, and the Montana chief public defender*. The notification must include a description of the ~~scientific identification~~ *biological* evidence, a statement that the ~~state~~ *agency* will dispose of the evidence unless a party files an objection in writing within 120 days from the date of service of the notification in the court that entered the judgment, and the name and mailing address of the court where an objection may be filed. If an objection to the disposition of the evidence is not filed within ~~that~~ *the* 120-day period, the ~~state~~ *agency* may dispose of the evidence. If a written objection is filed, the court shall consider the reasons for and against disposition of the evidence, may hold a hearing on the proposed disposition of the evidence, and shall issue an order ruling on the matter as required by the interests of justice and the integrity of the criminal justice system.

~~(3)~~*(c)* If a party objects to the disposition of the ~~scientific identification~~ *biological* evidence, the ~~state~~ *agency* has the burden of proving by a preponderance of the evidence that the evidence should be disposed of.

(2) Upon completion of laboratory analysis, the laboratory operated by the forensic sciences division of the department of justice shall permanently preserve under laboratory control any remaining biological evidence collected from items submitted to it.

(3) For purposes of this section, the following definitions apply:

(a) "Biological evidence" means any item that contains blood, semen, hair, saliva, skin tissue, fingernail scrapings, bone, bodily fluids, or other identifiable biological material, including the contents of a sexual assault examination kit, that is collected as part of a criminal investigation or that may reasonably be used to incriminate or exculpate any person of an offense.

(b) "DNA" means deoxyribonucleic acid."

Approved April 15, 2009

CHAPTER NO. 222

[HB 71]

AN ACT REPEALING THE SUNSET PROVISION FOR THE UTILIZATION FEE FOR HOSPITAL INPATIENT BED DAYS; REPEALING SECTION 20, CHAPTER 390, LAWS OF 2003, SECTIONS 4 AND 7, CHAPTER 606, LAWS OF 2005, AND SECTIONS 4, 5, 6, AND 8, CHAPTER 517, LAWS OF 2007; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Repealer. Section 20, Chapter 390, Laws of 2003, is repealed.

Section 2. Repealer. Sections 4 and 7, Chapter 606, Laws of 2005, are repealed.

Section 3. Repealer. Sections 4, 5, 6, and 8, Chapter 517, Laws of 2007, are repealed.

Section 4. Effective date. [This act] is effective on passage and approval.

Approved April 16, 2009

CHAPTER NO. 223

[HB 95]

AN ACT EXPANDING THE ENFORCEMENT AUTHORITY FOR COLLECTING PARENTAL COST-OF-CARE CONTRIBUTIONS THAT ARE ORDERED BY A YOUTH COURT; AMENDING SECTIONS 40-5-303, 40-5-601, 40-5-701, AND 41-5-1525, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 40-5-303, MCA, is amended to read:

"40-5-303. Petition for income deduction — who may initiate. (1) If an obligor is exempted from immediate income withholding under 40-5-315 or is not otherwise subject to an income-withholding order, the obligor's income may be withheld for the payment of child support if the obligor becomes delinquent in the payment of support, a person or entity referred to in subsection (2) notifies the obligor that income withholding will be initiated if the delinquent amount is not paid within 8 days of the date of the notice, and the obligor does not pay the delinquent amount within that time. Notification that income withholding will be initiated if a delinquency is not paid within 8 days of the date of the notice is not necessary if such a notice was given for a prior delinquency and the prior delinquency in fact existed. This notice is different from the notice required by 40-5-305.

(2) Income withholding for the payment of child support may be initiated by:

(a) the person named as the recipient of the child support payments in the child support order;

(b) the child or the guardian of the child named in the child support order; ~~or~~

(c) the department of public health and human services~~.~~*; or*

(d) the state of Montana, including the department of corrections and respective county attorneys, for the purpose of enforcing contribution orders under 41-5-1525. These contribution orders are considered to be child support orders for purposes of enforcement under this chapter.

(3) (a) At the request of an initiating party who has determined that an obligor is delinquent, the district court shall issue an order for income deductions for immediate service upon the obligor's payor or payors. The order is limited to current support unless modified to include arrears as provided in 40-5-308.

(b) At the same time an income deduction order is issued, the requesting party shall notify the obligor as provided in 40-5-305 that income deductions have been initiated.

(4) Deductions under this section for current support may be terminated only if:

(a) the district court determines after a hearing that the obligor was not delinquent when the deduction order was issued;

(b) the obligation to pay support has terminated and all delinquencies are paid in full; or

(c) the department of public health and human services has superseded the deduction order under authority of Title 40, chapter 5, part 4.

(5) As used in this part, the following definitions apply:

(a) "Employer" includes a payor.

(b) (i) "Income" means any form of periodic payment to a person, regardless of source, including commissions, bonuses, workers' compensation, disability benefits, payments under a pension or retirement program, interest and earnings, and wages.

(ii) Income does not include:

(A) an amount, other than creditor claims, required by law to be withheld, including federal, state, and local taxes and social security; or

(B) an amount exempted from judgment, execution, or attachment by federal or state law.

(c) "Payor" means any entity that pays income to an obligor on a periodic basis and includes any person, firm, corporation, association, employer, trustee, political subdivision, or state agency or an agent of any one of them, subject to the jurisdiction of the courts of this state under Rule 4B of the Montana Rules of Civil Procedure."

Section 2. Section 40-5-601, MCA, is amended to read:

"40-5-601. Failure to pay support — civil contempt. (1) For purposes of this section, "support" means child support; spousal support; health insurance, medical, dental, and optical payments; day-care expenses; ~~and~~ any other payments due as support under a court or administrative order*; and contributions ordered pursuant to 41-5-1525.* Submission of health insurance claims is a support obligation if health insurance coverage is ordered.

(2) If a person obligated to provide support fails to pay as ordered, the payee or assignee of the payee of the support order may petition a district court to find the obligated person in contempt.

(3) The petition may be filed in the district court:

(a) that issued the support order;

(b) of the judicial district in which the obligated person resides; or

(c) of the judicial district in which the payee or assignee of the payee resides or has an office.

(4) Upon filing of a verified petition alleging facts constituting contempt of the support order, the district court shall issue an order requiring the obligated person to appear and show cause why the obligated person should not be held in contempt and punished under this section.

(5) The obligated person is presumed to be in contempt upon a showing that:

(a) there is a support order issued by a court or administrative agency of this or another state, an Indian tribe, or a country with jurisdiction to enter the order;

(b) the obligated person had actual or constructive knowledge of the order; and

(c) the obligated person failed to pay support as ordered.

(6) Certified payment records maintained by a clerk of court or administrative agency authorized by law or by the support order to collect support are admissible in a proceeding under this section and are prima facie evidence of the amount of support paid and any arrearages under the support order.

(7) Following a showing under subsection (5), the obligated person may move to be excused from the contempt by showing clear and convincing evidence that the obligated person:

(a) has insufficient income to pay the arrearages;

(b) lacks personal or real property that can be sold, mortgaged, or pledged to raise the needed sum;

(c) has unsuccessfully attempted to borrow the sum from a financial institution;

(d) has no other source, including relatives, from which the sum can be borrowed or secured;

(e) does not have a valid out-of-court agreement with the payee waiving, deferring, or otherwise compromising the support obligation; or

(f) cannot, for some other reason, reasonably comply with the order.

(8) In addition to the requirement of subsection (7), the obligated person shall also show by clear and convincing evidence that factors constituting the excuse were not occasioned or caused by the obligated person voluntarily:

(a) remaining unemployed or underemployed when there is employment suitable to the obligated person's skills and abilities available within a reasonable distance from the obligated person's residence;

(b) selling, transferring, or encumbering real or personal property for fictitious or inadequate consideration within 6 months prior to a failure to pay support when due;

(c) selling or transferring real property without delivery of possession within 6 months prior to a failure to pay support when due or, if the sale or transfer includes a reservation of a trust for the use of the obligated person, purchasing real or personal property in the name of another person or entity;

(d) continuing to engage in an unprofitable business or contract unless the obligated person cannot reasonably be removed from the unprofitable situation; or

(e) incurring debts subsequent to entry of the support order that impair the obligated person's ability to pay support.

(9) If the obligated person is not excused under subsections (7) and (8), the district court shall find the obligated person in contempt of the support order. For each failure to pay support under the order, the district court shall order punishment as follows:

(a) not more than 5 days incarceration in the county jail;

(b) not more than 120 hours of community service work;

(c) not more than a $500 fine; or

(d) any combination of the penalties in subsections (9)(a) through (9)(c).

(10) An order under subsection (9) must include a provision allowing the obligated person to purge the contempt. The obligated person may purge the contempt by complying with an order requiring the obligated person to:

(a) seek employment and periodically report to the district court all efforts to find employment;

(b) meet a repayment schedule;

(c) compensate the payee for the payee's attorney fees, costs, and expenses for a proceeding under this section;

(d) sell or transfer real or personal property or transfer real or personal property to the payee, even if the property is exempt from execution;

(e) borrow the arrearage amount or report to the district court all efforts to borrow the sum;

(f) meet any combination of the conditions in subsections (10)(a) through (10)(e); or

(g) meet any other conditions that the district court in its discretion finds reasonable.

(11) If the obligated person fails to comply with conditions for purging contempt, the district court shall immediately find the obligated person in contempt under this section and impose punishment.

(12) A proceeding under this section must be brought within 3 years of the date of the last failure to comply with the support order."

Section 3. Section 40-5-701, MCA, is amended to read:

"40-5-701. Definitions. As used in this part, the following definitions apply:

(1) (a) "Child" means:

(i) a person under 18 years of age who is not emancipated, self-supporting, married, or a member of the armed forces of the United States;

(ii) a person under 19 years of age who is still in high school;

(iii) a person who is mentally or physically incapacitated when the incapacity began prior to that person reaching 18 years of age; and

(iv) in IV-D cases, a person for whom:

(A) support rights are assigned under 53-2-613;

(B) a public assistance payment has been made;

(C) the department is providing support enforcement services under 40-5-203; or

(D) the department has received a referral for IV-D services under the provisions of the Uniform Interstate Family Support Act, the Revised Uniform Reciprocal Enforcement of Support Act, the Uniform Reciprocal Enforcement of Support Act, or Title IV-D of the Social Security Act.

(b) The term may not be construed to limit the ability of the department to enforce a support order according to its terms when the order provides for support extending beyond the time the child reaches 18 years of age.

(2) "Delinquency" means a support debt or support obligation due under a support order in an amount greater than or equal to 6 months' support payments as of the date of service of a notice of intent to suspend a license.

(3) "Department" means the department of public health and human services.

(4) "License" means a license, certificate, registration, permit, or any other authorization issued by an agency of the state of Montana granting a person a right or privilege to engage in a business, occupation, profession, recreational activity, or any other privilege that is subject to suspension, revocation, forfeiture, termination, or a declaration of ineligibility to purchase by the licensing authority prior to its date of expiration.

(5) "Licensing authority" means any department, division, board, agency, or instrumentality of this state that issues a license.

(6) "Obligee" means:

(a) a person to whom a support debt or support obligation is owed; or

(b) a public agency of this or another state or an Indian tribe that has the right to receive current or accrued support payments or that is providing support enforcement services under this chapter.

(7) "Obligor" means a person who owes a duty of support or who is subject to a subpoena or warrant in a paternity or child support proceeding.

(8) "Order suspending a license" means an order issued by a support enforcement entity to suspend a license. The order must contain the name of the obligor, the type of license, and, if known, the social security number of the obligor.

(9) "Payment plan" includes but is not limited to a plan approved by the support enforcement entity that provides sufficient security to ensure compliance with a support order and that incorporates voluntary or involuntary income withholding under part 3 or 4 of this chapter or a similar plan for periodic payment of a support debt and, if applicable, current and future support.

(10) "Recreational activity" means an activity for which a license or permit is issued by the department of fish, wildlife, and parks under Title 87, chapter 2, part 6 or 7, except 87-2-708 or 87-2-711, or under 87-2-505, 87-2-507, 87-2-508, or 87-2-510.

(11) "Subpoena" means a writ or order issued by a court or the department in a proceeding or as part of an investigation related to the paternity or support of a child that commands a person to appear at a particular place and time to testify or produce documents or things under the person's control.

(12) "Support debt" or "support obligation" means the amount created by the failure to provide or pay:

(a) support to a child under the laws of this or any other state or under a support order;

(b) court-ordered spousal maintenance or other court-ordered support for the child's custodial parent; ~~or~~

(c) fines, fees, penalties, interest, and other funds and costs that the support enforcement entity is authorized to collect by the use of any procedure available to the entity for the payment, enforcement, and collection of child support or spousal maintenance or support*; or*

(d) contributions ordered pursuant to 41-5-1525.

(13) "Support enforcement entity" means:

(a) in IV-D cases, the department; or

(b) in all other cases, the district court that entered the support order or a district court in which the support order is registered.

(14) (a) "Support order" means an order that provides a determinable amount for temporary or final periodic payment of a support debt or support obligation and that may include payment of a determinable or indeterminable amount for insurance covering the child issued by:

(i) a district court of this state;

(ii) a court of appropriate jurisdiction of another state, an Indian tribe, or a foreign country;

(iii) an administrative agency pursuant to proceedings under Title 40, chapter 5, part 2; or

(iv) an administrative agency of another state or an Indian tribe with a hearing function and process similar to those of the department.

(b) If an action for child support is commenced under this part and the context so requires, support order also includes:

(i) judgments and orders providing periodic payments for the maintenance or support of the child's custodial parent; and

(ii) amounts for the recovery of fines, fees, penalties, interest, and other funds and costs that the support enforcement entity is authorized to collect by the use of any procedure available to the entity for the payment, enforcement, and collection of child support or spousal maintenance or support.

(15) "Suspension" includes the withdrawal, withholding, revocation, forfeiture, or nonissuance of a license and license privileges.

(16) "Warrant" means a bench warrant, a warrant to appear, an order to show cause, or any other order issued by a court relating to the appearance of a party in a paternity or child support proceeding.

(17) "IV-D case" means a case in which the department is providing support enforcement services as a result of:

(a) an assignment of support rights under 53-2-613;

(b) a payment of public assistance;

(c) an application for support enforcement services under 40-5-203; or

(d) a referral for services from an agency of another state or an Indian tribe under the provisions of the Uniform Reciprocal Enforcement of Support Act, the Revised Uniform Reciprocal Enforcement of Support Act, the Uniform Interstate Family Support Act, or Title IV-D of the Social Security Act."

Section 4. Section 41-5-1525, MCA, is amended to read:

"41-5-1525. Contribution for costs — order for contribution — exceptions — collection. (1) If a youth is placed in substitute care, a youth assessment center, or detention requiring payment by any state or local government agency or committed to the department, the court shall examine the financial ability of the youth's parents or guardians to pay a contribution covering all or part of the costs for the adjudication, disposition, attorney fees for the costs of prosecuting or defending the youth, costs of detention, supervision, care, custody, and treatment of the youth, including the costs of necessary medical, dental, and other health care.

(2) If the court determines that a youth's parents or guardians are financially able to pay a contribution for adjudication, disposition, attorney fees for the costs of prosecuting or defending the youth, costs of detention, or

supervision as provided in subsection (1), the court shall order the youth's parents or guardians to pay a specified amount. The order must state to which state or local government agency all or a part of the contribution is due and in what order the payments must be made.

(3) If the court determines that the youth's parents or guardians are financially able to pay a contribution as provided in subsection (1), the court shall order the youth's parents or guardians to pay an amount attributable to care, custody, and treatment based on the uniform child support guidelines adopted by the department of public health and human services pursuant to 40-5-209.

(4) (a) Except as provided in subsection (4)(b), contributions ordered under subsection (3) and each modification of an existing order are enforceable by immediate or delinquency income withholding, or both, under Title 40, chapter 5, ~~part~~ *parts 3 and* 4. An order for contribution that is inconsistent with this section is nevertheless subject to withholding for the payment of the contribution without need for an amendment of the support order or for any further action by the court.

(b) A court-ordered exception from contributions under this section must be in writing and must be included in the order. An exception from the immediate income-withholding requirement may be granted if the court finds that there is:

(i) good cause not to require immediate income withholding; or

(ii) an alternative arrangement between the department and the person who is ordered to pay contributions.

(c) A finding of good cause not to require immediate income withholding must, at a minimum, be based upon:

(i) a written determination and explanation by the court of the reasons why the implementation of immediate income withholding is not in the best interests of the youth; and

(ii) proof of timely payment of previously ordered support in cases involving modification of contributions ordered under this section.

(d) An alternative arrangement must:

(i) provide sufficient security to ensure compliance with the arrangement;

(ii) be in writing and be signed by a representative of the department and the person required to make contributions; and

(iii) if approved by the court, be entered into the record of the proceeding.

(5) Upon a showing of a change in the financial ability of the youth's parents or guardians to pay, the court may modify its order for the payment of contributions required under subsection (3).

(6) (a) If the court orders the payment of contributions under this section, the department ~~shall~~ *may* apply to the department of public health and human services for support enforcement services pursuant to Title IV-D of the Social Security Act.

(b) The department of public health and human services may collect and enforce a contribution order under this section by any means available under law, including the remedies provided for in Title 40, chapter 5, parts 2 and 4."

Section 5. Effective date. [This act] is effective on passage and approval.

Section 6. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to contribution orders in existence on [the effective date of this act].

Approved April 16, 2009

CHAPTER NO. 224

[HB 103]

AN ACT REQUIRING THAT COMMERCIAL TOW TRUCK OPERATORS FILE PROOF OF INSURANCE WITH THE DEPARTMENT OF JUSTICE RATHER THAN THE PUBLIC SERVICE COMMISSION; AND AMENDING SECTIONS 61-8-906 AND 69-12-102, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-8-906, MCA, is amended to read:

"61-8-906. Liability insurance — storage requirements. (1) Notwithstanding the provisions of 61-6-301, a commercial tow truck operator shall continuously provide:

(a) insurance against loss resulting from liability imposed by law for bodily injury or death or damage to property caused by the maintenance or use of a commercial tow truck, as defined in 61-9-416, or occurring on the business premises of a commercial tow truck operator in an amount not less than:

(i) $300,000 for class A tow trucks;

(ii) $500,000 for class B tow trucks; and

(iii) $750,000 for class C tow trucks;

(b) insurance in an amount not less than $20,000 to cover the damage to cargo or other property entrusted to the care of the commercial tow truck operator; and

(c) garage keepers legal liability insurance or on-hook liability insurance in an amount not less than $50,000.

(2) A commercial tow truck operator shall provide proof of the insurance required in subsection (1) to the ~~public service commission~~ *department*.

(3) A qualified tow truck operator shall provide a storage facility, either a fenced lot or a building, that is:

(a) adequate for the secure storage and safekeeping of stored vehicles;

(b) located in a place that is reasonably convenient for public access;

(c) available to public access between 8 a.m. and 5 p.m., Monday through Friday, excluding legal holidays;

(d) large enough to store all the vehicles towed for law enforcement agencies; and

(e) if a fenced lot, constructed of chain link at least 6 feet high or constructed of materials and in a manner sufficient to deter trespassing or vandalism."

Section 2. Section 69-12-102, MCA, is amended to read:

"69-12-102. Scope of chapter — exemptions. (1) This chapter does not affect:

(a) the operation of school buses that are used in conveying pupils or other students enrolled in classes to and from district or other schools or in

transportation movements related to school activities that are sponsored or supervised by school authorities;

(b) the transportation by means of motor vehicles in the regular course of business of employees by a person or corporation engaged exclusively in the construction or maintenance of highways or engaged exclusively in logging or mining operations, insofar as the use of employees in construction and production is concerned;

(c) the transportation of household goods and garbage by motor vehicle in a city, town, or village with a population of less than 500 persons according to the latest United States census or in the commercial areas of a city, town, or village with a population of less than 500 persons, as determined by the commission;

(d) the transportation of newspapers, newspaper supplements, periodicals, or magazines;

(e) motor vehicles used exclusively in carrying junk vehicles from a collection point to a motor vehicle wrecking facility or a motor vehicle graveyard;

(f) ambulances;

(g) the transportation by motor vehicle of not more than 15 passengers between their places of residence or termini near their residences and their places of employment in a single daily round trip if the driver is also going to or from the driver's place of employment;

(h) the operation of:

(i) a transportation system by a municipality or transportation district as provided in Title 7, chapter 14, part 2;

(ii) a municipal bus service pursuant to Title 7, chapter 14, part 44; or

(iii) any public transportation system recognized by the Montana department of transportation as a federal transit administration provider pursuant to 49 U.S.C. 5311;

(i) armored motor vehicles used for the transportation of valuable paintings and other items of unusual value requiring special handling and security;

(j) the transportation of household goods or garbage under an agreement between a motor carrier and an office or agency of the United States government; or

(k) the transportation of persons provided by private, nonprofit organizations, including those recognized by the Montana department of transportation as federal transit administration providers pursuant to 49 U.S.C. 5310. As used in this subsection, "private, nonprofit organization" means an organization recognized as nonprofit under section 501(c) of the Internal Revenue Code.

(2) Except for the identification of ownership requirements provided in 69-12-408, this chapter does not affect commercial tow trucks designed and exclusively used in towing wrecked, disabled, or abandoned vehicles or while these tow trucks are rendering assistance to wrecked, disabled, or abandoned vehicles. ~~However, commercial tow truck firms shall file policies of insurance showing coverage required by 61-8-906.~~

(3) This chapter does not prevent bona fide leases, brokerage agreements, or buy-and-sell agreements."

Approved April 16, 2009

CHAPTER NO. 225

[HB 107]

AN ACT CLARIFYING THE DEFINITION OF ENTERPRISE FUNDS SUBJECT TO APPROPRIATION; AMENDING SECTIONS 17-7-111, 17-7-123, AND 17-8-101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-7-111, MCA, is amended to read:

"17-7-111. Preparation of state budget — agency program budgets — form distribution and contents. (1) (a) To prepare a state budget, the executive branch, the legislature, and the citizens of the state need information that is consistent and accurate. Necessary information includes detailed disbursements by fund type for each agency and program for the appropriate time period, recommendations for creating a balanced budget, and recommended disbursements and estimated receipts by fund type and fund category.

(b) Subject to the requirements of this chapter, the budget director and the legislative fiscal analyst shall by agreement:

(i) establish necessary standards, formats, and other matters necessary to share information between the agencies and to ensure that information is consistent and accurate for the preparation of the state's budget; and

(ii) provide for the collection and provision of budgetary and financial information that is in addition to or different from the information otherwise required to be provided pursuant to this section.

(2) In the preparation of a state budget, the budget director shall, not later than the date specified in 17-7-112(1), distribute to all agencies the proper forms and instructions necessary for the preparation of budget estimates by the budget director. These forms must be prescribed by the budget director to procure the information required by subsection (3). The forms must be submitted to the budget director by the date provided in 17-7-112(2)(a) or the agency's budget is subject to preparation based upon estimates as provided in 17-7-112(5). The budget director may refuse to accept forms that do not comply with the provisions of this section or the instructions given for completing the forms.

(3) The agency budget request must set forth a balanced financial plan for the agency completing the forms for each fiscal year of the ensuing biennium. The plan must consist of:

(a) a consolidated agency budget summary of funds subject to appropriation, ~~or enterprise funds that transfer profits to the general fund or to an account subject to appropriation~~ *as provided in 17-8-101,* for the current base budget expenditures, including statutory appropriations, and for each present law adjustment and new proposal request setting forth the aggregate figures of the full-time equivalent personnel positions (FTE) and the budget, showing a balance between the total proposed disbursements and the total anticipated receipts, together with the other means of financing the budget for each fiscal year of the ensuing biennium, contrasted with the corresponding figures for the last-completed fiscal year and the fiscal year in progress;

(b) a schedule of the actual and projected receipts, disbursements, and solvency of each fund for the current biennium and estimated for the subsequent biennium;

(c) a statement of the agency mission and a statement of goals and objectives for each program of the agency. The goals and objectives must include, in a concise form, sufficient specific information and quantifiable information to enable the legislature to formulate an appropriations policy regarding the agency and its programs and to allow a determination, at some future date, on whether the agency has succeeded in attaining its goals and objectives.

(d) actual FTE and disbursements for the completed fiscal year of the current biennium, estimated FTE and disbursements for the current fiscal year, and the agency's request for the ensuing biennium, by program;

(e) actual disbursements for the completed fiscal year of the current biennium, estimated disbursements for the current fiscal year, and the agency's recommendations for the ensuing biennium, by disbursement category;

(f) for only agencies with more than 20 FTE, a plan to reduce the proposed base budget for the general appropriations act and the proposed state pay plan to 95% of the current base budget or lower if directed by the budget director. Each agency plan must include base budget reductions that reflect the required percentage reduction by fund type for the general fund and state special revenue fund types. Exempt from the calculations of the 5% target amounts are legislative audit costs, administratively attached entities that hire their own staff under 2-15-121, and state special revenue accounts that do not transfer their investment earnings or fund balances to the general fund. The plan must include:

(i) a prioritized list of services that would be eliminated or reduced;

(ii) for each service included in the prioritized list, the savings that would result from the elimination or reduction; and

(iii) the consequences or impacts of the proposed elimination or reduction of each service.

(g) a reference for each new information technology proposal stating whether the new proposal is included in the approved agency information technology plan as required in 2-17-523; and

(h) other information the budget director feels is necessary for the preparation of a budget.

(4) The budget director shall prepare and submit to the legislative fiscal analyst in accordance with 17-7-112:

(a) detailed recommendations for the state long-range building program. Each recommendation must be presented by institution, agency, or branch, by funding source, with a description of each proposed project.

(b) a statewide project budget summary as provided in 2-17-526;

(c) the proposed pay plan schedule for all executive branch employees at the program level by fund, with the specific cost and funding recommendations for each agency. Submission of a pay plan schedule under this subsection is not an unfair labor practice under 39-31-401.

(d) agency proposals for the use of cultural and aesthetic project grants under Title 22, chapter 2, part 3, the renewable resource grant and loan program under Title 85, chapter 1, part 6, the reclamation and development grants program under Title 90, chapter 2, part 11, and the treasure state endowment program under Title 90, chapter 6, part 7.

(5) The board of regents shall submit, with its budget request for each university unit in accordance with 17-7-112, a report on the university system

bonded indebtedness and related finances as provided in this subsection (5). The report must include the following information for each year of the biennium, contrasted with the same information for the last-completed fiscal year and the fiscal year in progress:

(a) a schedule of estimated total bonded indebtedness for each university unit by bond indenture;

(b) a schedule of estimated revenue, expenditures, and fund balances by fiscal year for each outstanding bond indenture, clearly delineating the accounts relating to each indenture and the minimum legal funding requirements for each bond indenture; and

(c) a schedule showing the total funds available from each bond indenture and its associated accounts, with a list of commitments and planned expenditures from such accounts, itemized by revenue source and project for each year of the current and ensuing bienniums.

(6) (a) The department of revenue shall make Montana individual income tax information available by removing names, addresses, and social security numbers and substituting in their place a state accounting record identifier number. Except for the purposes of complying with federal law, the department may not alter the data in any other way.

(b) The department of revenue shall provide the name and address of a taxpayer on written request of the budget director when the values on the requested return, including estimated payments, are considered necessary by the budget director to properly analyze state revenue and are of a sufficient magnitude to materially affect the analysis and when the identity of the taxpayer is necessary to evaluate the effect of the return or payments on the analysis being performed."

Section 2. Section 17-7-123, MCA, is amended to read:

"17-7-123. Form of executive budget. (1) The budget submitted must set forth a balanced financial plan for funds subject to appropriation, ~~and enterprise funds that transfer profits to the general fund or to accounts subject to appropriation~~ *as provided in 17-8-101,* for each accounting entity and for the state government for each fiscal year of the ensuing biennium. The base level plan must consist of:

(a) a consolidated budget summary setting forth the aggregate figures of the budget in a manner that shows a balance between the total proposed disbursements and the total anticipated receipts, together with the other means of financing the budget for each fiscal year of the ensuing biennium, contrasted with the corresponding figures for the last-completed fiscal year and the fiscal year in progress. The consolidated budget summary must be supported by explanatory schedules or statements.

(b) budget and full-time equivalent personnel position comparisons by agency, program, and appropriated funds for the current and subsequent biennium;

(c) the departmental mission and a statement of goals and objectives for the department;

(d) base budget disbursements for the completed fiscal year of the current biennium, estimated comparable disbursements for the current fiscal year, and the proposed present law base budget plus new proposals, if any, for each department and each program of the department;

(e) a statement containing recommendations of the governor for the ensuing biennium by program and disbursement category, including:

(i) explanations of appropriation and revenue measures included in the budget that involve policy changes;

(ii) matters not included as a part of the budget bill but included as a part of the executive budget, such as the state employee pay plan, programs funded through separate appropriations measures, and other matters considered necessary for comprehensive public and legislative consideration of the state budget; and

(iii) a summary of budget requests that include proposed expenditures on information technology resources. The summary must include funding, program references, and a decision package reference;

(f) a report on:

(i) enterprise funds not subject to the requirements of subsections (1)(a) through (1)(e), including retained earnings and contributed capital, projected operations and charges, and projected fund balances; and

(ii) fees and charges in the internal service fund type, including changes in the level of fees and charges, projected use of the fees and charges, and projected fund balances. Fees and charges in the internal service fund type must be approved by the legislature in the general appropriations act. Fees and charges in a biennium may not exceed the level approved by the legislature in the general appropriations act effective for that biennium.

(g) any other financial or budgetary material agreed to by the budget director and the legislative fiscal analyst.

(2) The statement of departmental goals and objectives and the schedule for each fund required in 17-7-111(3)(b) of the executive budget are not required to be printed but must be available in the office of budget and program planning and on the internet."

Section 3. Section 17-8-101, MCA, is amended to read:

"17-8-101. Appropriation and disbursement of money from treasury. (1) For purposes of complying with Article VIII, section 14, of the Montana constitution, money deposited in the general fund, the special revenue fund type (except money deposited in the treasury from nonstate and nonfederal sources restricted by law or by the terms of an agreement, such as a contract, trust agreement, or donation), and the capital projects fund type, with the exception of refunds authorized in subsection (4), may be paid out of the treasury only on appropriation made by law.

(2) Subject to the provisions of subsection (8), money deposited in the enterprise fund type, debt service fund type, internal service fund type, private purpose trust fund type, agency fund type, and state special revenue fund from nonstate and nonfederal sources restricted by law or by the terms of an agreement, such as a contract, trust agreement, or donation, may be paid out of the treasury:

(a) by appropriation; or

(b) under general laws, or contracts entered into in pursuance of law, permitting the disbursement if a subclass is established on the state financial system.

(3) The pension trust fund type is not considered a part of the state treasury for appropriation purposes. Money deposited in the pension trust fund type may

be paid out of the treasury pursuant to general laws, trust agreement, or contract.

(4) Money paid into the state treasury through error or under circumstances such that the state is not legally entitled to retain it and a refund procedure is not otherwise provided by law may be refunded upon the submission of a verified claim approved by the department.

(5) Authority to expend appropriated money may be transferred from one state agency to another, provided that the original purpose of the appropriation is maintained. The office of budget and program planning shall report semiannually to the legislative finance committee concerning all appropriations transferred under the provisions of this section.

(6) Fees and charges for services deposited in the internal service fund type must be based upon commensurate costs. The legislative auditor, during regularly scheduled audits of state agencies, shall audit and report on the reasonableness of internal service fund type fees and charges and on the fund equity balances.

(7) The creation of accounts in the enterprise fund or the internal service fund must be approved by the department, using conformity with generally accepted accounting principles as the primary approval criteria. The department shall report annually to the office of budget and program planning and the legislative finance committee on the nature, status, and justification for all new accounts in the enterprise fund and the internal service fund.

(8) Enterprise and internal service funds must be appropriated if they are used as a part of a program that is not an enterprise or internal service function and that otherwise requires an appropriation. An enterprise fund that ~~transfers its ending fund balance to the general fund~~ *is required by law to transfer money to the general fund or to any other appropriated fund* is subject to appropriation. The payment of funds into an internal service fund must be authorized by law."

Section 4. Effective date. [This act] is effective on passage and approval.

Approved April 16, 2009

CHAPTER NO. 226

[HB 112]

AN ACT INCREASING THE THRESHOLD AMOUNT CONSTITUTING A SIGNIFICANT CHANGE IN AN AGENCY OR PROGRAM'S OPERATING BUDGET SUBJECT TO REVIEW BY THE LEGISLATIVE FISCAL ANALYST; INCREASING THE THRESHOLD AMOUNT CONSTITUTING A SIGNIFICANT CHANGE IN AN AGENCY OR PROGRAM'S BUDGET TRANSFERS SUBJECT TO REVIEW BY THE LEGISLATIVE FISCAL ANALYST; AMENDING SECTIONS 17-7-138 AND 17-7-139, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-7-138, MCA, is amended to read:

"17-7-138. Operating budget. (1) (a) Expenditures by a state agency must be made in substantial compliance with the budget approved by the legislature. Substantial compliance may be determined by conformity to the conditions contained in the general appropriations act and to legislative intent as established in the narrative accompanying the general appropriations act. An

explanation of any significant change in agency or program scope must be submitted on a regular basis to the interim committee that has program evaluation and monitoring functions for the agency pursuant to Title 5, chapter 5, part 2. An explanation of any significant change in agency or program scope, objectives, activities, or expenditures must be submitted to the legislative fiscal analyst for review and comment by the legislative finance committee prior to any implementation of the change. A significant change may not conflict with a condition contained in the general appropriations act. If the approving authority certifies that a change is time-sensitive, the approving authority may approve the change prior to the next regularly scheduled meeting of the legislative finance committee. The approving authority shall submit all proposed time-sensitive changes to the legislative fiscal analyst prior to approval. If the legislative fiscal analyst determines that notification of the legislative finance committee is warranted, the legislative fiscal analyst shall immediately notify as many members as possible of the proposed change and communicate any concerns expressed to the approving authority. The approving authority shall present a report fully explaining the reasons for the action to the next meeting of the legislative finance committee. Except as provided in subsection (2), the expenditure of money appropriated in the general appropriations act is contingent upon approval of an operating budget by August 1 of each fiscal year. An approved original operating budget must comply with state law and conditions contained in the general appropriations act.

(b) For the purposes of this subsection (1), an agency or program is considered to have a significant change in its scope, objectives, activities, or expenditures if:

(i) the operating budget change exceeds $1 million; or

(ii) the operating budget change exceeds 25% of a budget category and the change is greater than ~~$25,000~~ *$75,000*. If there have been other changes to the budget category in the current fiscal year, all the changes, including the change under consideration, must be used in determining the 25% and ~~$25,000~~ *$75,000* threshold.

(2) The expenditure of money appropriated in the general appropriations act to the board of regents, on behalf of the university system units, as defined in 17-7-102, is contingent upon approval of a comprehensive operating budget by October 1 of each fiscal year. The operating budget must contain detailed revenue and expenditures and anticipated fund balances of current funds, loan funds, endowment funds, and plant funds. After the board of regents approves operating budgets, transfers between units may be made only with the approval of the board of regents. Transfers and related justification must be submitted to the office of budget and program planning and to the legislative fiscal analyst.

(3) The operating budget for money appropriated by the general appropriations act must be separate from the operating budget for money appropriated by another law except a law appropriating money for the state pay plan or any portion of the state pay plan. The legislature may restrict the use of funds appropriated for personal services to allow use only for the purpose of the appropriation. Each operating budget must include expenditures for each agency program, detailed at least by first-level categories as provided in 17-1-102(3). Each agency shall record its operating budget for all funds, other than higher education funds, and any approved changes on the statewide budget and accounting state financial system. Documents implementing approved changes must be signed. The operating budget for higher education funds must be recorded on the university financial system, with separate

accounting categories for each source or use of state government funds. State sources and university sources of funds may be combined for the general operating portion of the current unrestricted funds."

Section 2. Section 17-7-139, MCA, is amended to read:

"17-7-139. Program transfers. (1) Unless prohibited by law or a condition contained in the general appropriations act, the approving authority may approve agency requests to transfer appropriations between programs within each fund type within each fiscal year. The legislature may restrict the use of funds appropriated for personal services to allow use only for the purpose of the appropriation. An explanation of any significant transfer must be submitted on a regular basis to the interim committee that has program evaluation and monitoring functions for the agency pursuant to Title 5, chapter 5, part 2. An explanation of any transfer that involves a significant change in agency or program scope, objectives, activities, or expenditures must be submitted to the legislative fiscal analyst for review and comment by the legislative finance committee prior to any implementation of the change. If the approving authority certifies that a request for a transfer representing a significant change in agency or program scope, objectives, activities, or expenditures is time-sensitive, the approving authority may approve the transfer prior to the next regularly scheduled meeting of the legislative finance committee. The approving authority shall submit all proposed time-sensitive changes to the legislative fiscal analyst prior to approval. If the legislative fiscal analyst determines that notification of the legislative finance committee is warranted, the legislative fiscal analyst shall immediately notify as many members as possible of the proposed change and communicate any concerns expressed to the approving authority. The approving authority shall present a report fully explaining the reasons for the action to the next meeting of the legislative finance committee. All program transfers must be completed within the same fund from which the transfer originated. A request for a transfer accompanied by a justification explaining the reason for the transfer must be submitted by the requesting agency to the approving authority and the office of budget and program planning. Upon approval of the transfer in writing, the approving authority shall inform the legislative fiscal analyst of the approved transfer and the justification for the transfer. If money appropriated for a fiscal year is transferred to another fiscal year, the money may not be retransferred, except that money remaining from projected costs for spring fires estimated in the last quarter of the first year of a biennium may be retransferred.

(2) For the purposes of subsection (1), an agency or program is considered to have a significant change in its scope, objectives, activities, or expenditures if:

(a) the budget transfer exceeds $1 million; or

(b) the budget transfer exceeds 25% of a program's total operating plan and the transfer is greater than ~~$25,000~~ *$75,000*. If there have been other transfers to or from the program in the current fiscal year, all the transfers, including the transfer under consideration, must be used in determining the 25% and ~~$25,000~~ *$75,000* threshold."

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 16, 2009

CHAPTER NO. 227

[HB 127]

AN ACT CREATING A STATE SPECIAL REVENUE ACCOUNT FOR THE PURCHASE OF LAND FOR THE MONTANA NATIONAL GUARD FROM FUNDS DERIVED FROM THE STATE'S SALE OF ARMORIES; AMENDING SECTIONS 10-1-108 AND 17-7-502, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 10-1-108, MCA, is amended to read:

"10-1-108. Armories — *acquisition and sale — proceeds — account.* (1) A county, city, or town may convey or lease real property to the state for armories or other military facilities.

(2) A county, city, or town in which a unit of the national guard is organized and regularly stationed may provide any part of the funds to build an armory. The armory must be of sufficient size and suitable for the drill of the unit.

(3) (a) There is a Montana national guard land purchase account in the state special revenue fund. If the state sells an armory, the money from the sale must be deposited in the account.

(b) Money in the account is statutorily appropriated, as provided in 17-7-502, for the purposes described in subsection (4).

(c) Any interest and income accruing on the account must be deposited in the state general fund.

(4) Money in the account may be used only for preparations to purchase or the purchase of land necessary for the Montana national guard's mission and is expendable solely upon the authorization of the governor."

Section 2. Section 17-7-502, MCA, is amended to read:

"17-7-502. Statutory appropriations — definition — requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-17-105; 5-11-120; 5-11-407; 5-13-403; 7-4-2502; *10-1-108;* 10-1-1202; 10-1-1303; 10-2-603; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-121; 15-1-218; 15-23-706; 15-31-906; 15-35-108; 15-36-332; 15-37-117; 15-39-110; 15-65-121; 15-70-101; 15-70-369; 15-70-601; 16-11-509; 17-3-106; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-7-304; 18-11-112; 19-3-319; 19-6-404; 19-6-410; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 19-20-607; 19-21-203; 20-8-107; 20-9-534; 20-9-622; 20-26-1503; 22-3-1004; 23-4-105; 23-4-202; 23-4-204; 23-4-302; 23-4-304; 23-5-306; 23-5-409; 23-5-612; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503; 41-5-2011; 42-2-105; 44-1-504; 44-12-206; 44-13-102; 50-4-623;

53-1-109; 53-6-703; 53-24-108; 53-24-206; 60-11-115; 61-3-415; 69-3-870; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 76-13-150; 77-1-108; 77-2-362; 80-2-222; 80-4-416; 80-5-510; 80-11-518; 82-11-161; 87-1-513; 90-1-115; 90-1-205; 90-3-1003; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 4, Ch. 497, L. 1999, the inclusion of 15-38-202 terminates July 1, 2014; pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, and secs. 3 and 6, Ch. 481, L. 2003, the inclusion of 15-35-108 terminates June 30, 2010; pursuant to sec. 17, Ch. 593, L. 2005, the inclusion of 15-31-906 terminates January 1, 2010; pursuant to sec. 73, Ch. 44, L. 2007, the inclusion of 19-6-410 terminates upon the death of the last recipient eligible under 19-6-709(2) for the supplemental benefit provided by 19-6-709; and pursuant to sec. 6, Ch. 2, Sp. L. September 2007, the inclusion of 76-13-150 terminates June 30, 2009.)"

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 16, 2009

CHAPTER NO. 228

[HB 177]

AN ACT DEFINING A "CONDITIONAL DISCHARGE" FOR PROBATION AND PAROLE PURPOSES; AND ESTABLISHING GROUNDS FOR REVOKING A CONDITIONAL DISCHARGE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Conditional discharge — definition — revocation. (1) (a) A conditional discharge granted under 46-23-1011 or 46-23-1021 is:

(i) a discharge from supervision by the department for the time remaining on the sentence imposed if the probationer or parolee complies with all the conditions imposed by the district court or the board; and

(ii) a release from the obligation to pay supervision fees imposed as part of a sentence or as terms of parole or probation.

(b) If an individual who has been granted a conditional discharge under 46-23-1011 or 46-23-1021 becomes a resident of another state, the conditional discharge must be construed as a discharge of the imposed sentence subject to revocation as provided in subsection (2).

(2) A conditional discharge may be revoked if, within the time remaining on the sentence that was conditionally discharged, the individual:

(a) is charged with a felony offense;

(b) is charged with a misdemeanor offense for which the individual could be sentenced to incarceration for a period of more than 6 months; or

(c) violates any condition imposed by the district court or the board.

(3) A sexual or violent offender who is subject to lifetime supervision by the department is not eligible for a conditional discharge from supervision.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 46, chapter 23, part 10, and the provisions of Title 46, chapter 23, part 10, apply to [section 1].

Approved April 16, 2009

CHAPTER NO. 229

[HB 218]

AN ACT GENERALLY REVISING FISH AND GAME LAWS; CLARIFYING PROHIBITIONS ON THE USE OF PROJECTED ARTIFICIAL LIGHT TO HUNT AND ON THE WASTE OF FUR-BEARING ANIMALS; DEFINING "PELT"; AMENDING SECTIONS 87-1-102, 87-3-101 AND 87-3-506, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-1-102, MCA, is amended to read:

"87-1-102. Penalties — violation of state law. (1) A person who purposely, knowingly, or negligently violates a provision of this title or any other state law pertaining to fish and game is guilty of a misdemeanor, except if a felony is expressly provided by law, and shall be fined an amount *of* not less than $50 or more than $1,000*,* ~~or~~ *be* imprisoned in the county detention center for not more than 6 months, or both~~,~~ unless a different punishment is expressly provided by law for the violation. In addition, the person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of that person's license and the privilege to hunt, fish, or trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period set by the court. If the court imposes forfeiture of the person's license and privilege to hunt, fish, or trap or to use state lands, the department shall notify the person of the loss of privileges as imposed by the court. The person shall surrender all licenses, as ordered by the court, to the department within 10 days.

(2) (a) A person convicted of unlawfully taking, killing, possessing, or transporting a bighorn sheep, moose, wild buffalo, caribou, mountain goat, black bear, or grizzly bear or any part of these animals shall be fined an amount *of* not less than $500 or more than $2,000*,* ~~or~~ *be* imprisoned in the county detention center for not more than 6 months, or both. In addition, that person, upon conviction or forfeiture of bond or bail, shall forfeit any current hunting, fishing, recreational use, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state for 30 months from the date of conviction or forfeiture~~,~~ unless the court imposes a longer forfeiture period. For each conviction or forfeiture, the department shall notify the person of the loss of privileges. The person shall surrender all hunting, fishing, and trapping licenses to the department within 10 days.

(b) A person convicted of unlawfully taking, killing, possessing, or transporting a deer, antelope, elk, or mountain lion or any part of these animals shall be fined an amount *of* not less than $300 or more than $1,000*,* ~~or~~ *be* imprisoned in the county detention center for not more than 6 months, or both. In addition, that person, upon conviction or forfeiture of bond or bail, shall forfeit any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state for 24 months from the date of

conviction or forfeiture~~,~~ unless the court imposes a longer forfeiture period. For each conviction or forfeiture, the department shall notify the person of the loss of privileges. The person shall surrender all hunting, fishing, and trapping licenses to the department within 10 days.

(c) A person convicted of unlawfully attempting to trap or hunt a game animal shall be fined an amount *of* not less than $200 or more than $600*,* ~~or~~ *be* imprisoned in the county detention center for not more than 60 days, or both.

(d) A person convicted of purposely, knowingly, or negligently taking, killing, trapping, possessing, transporting, shipping, labeling, or packaging a fur-bearing animal or pelt of a fur-bearing animal in violation of any provision of this title shall be fined an amount *of* not less than $100 or more than $1,000, *be* imprisoned in the county detention center for not more than 6 months, or both. In addition, that person, upon conviction or forfeiture of bond or bail, shall forfeit any current license and the privilege to hunt, fish, or trap in this state for 24 months from the date of conviction or forfeiture~~,~~ unless the court imposes a longer forfeiture period, and any pelts possessed unlawfully must be confiscated. For each conviction or forfeiture, the department shall notify the person of the loss of privileges. The person shall surrender all hunting, fishing, and trapping licenses to the department within 10 days.

(e) A person convicted of hunting, fishing, or trapping while that person's license is forfeited or a privilege is denied shall be imprisoned in the county detention center for not less than 5 days or more than 6 months. In addition, that person may be fined an amount *of* not less than $500 or more than $2,000.

(3) If a person is convicted of illegally taking an animal described in 87-1-111 or 87-1-115 through the use of ~~spotlights~~ *projected artificial light*, nightscopes, or infrared scopes, the person is prohibited from fishing or hunting in the state for an additional 5 years following the ending date of the original prohibition period. In addition, the person, upon conviction or forfeiture of bond or bail, shall successfully complete, at the person's own expense, a department-sponsored hunter education course.

(4) A person convicted or who has forfeited bond or bail under this section and whose license privileges are forfeited may not purchase, acquire, obtain, possess, or apply for a hunting, fishing, or trapping license or permit during the period when license privileges have been forfeited. A person convicted of unlawfully purchasing, acquiring, obtaining, possessing, or applying for a hunting, fishing, or trapping license during the period when license privileges have been forfeited shall be fined an amount *of* not less than $500 or more than $2,000, *be* imprisoned in the county jail for not more than 60 days, or both.

(5) A person convicted or who has forfeited bond or bail under this section and who has been ordered to pay restitution under the provisions of 87-1-111 or 87-1-115 may not apply for any special license under Title 87, chapter 2, part 7, or enter any drawing for a special license or permit for a period of 5 years following the date of conviction or restoration of license privileges, whichever is later. If the violation involved the unlawful taking of a moose, a bighorn sheep, or a mountain goat, the person may not apply for a special license or enter a drawing for a special license or permit for the same species of game animal that was unlawfully taken for an additional period of 5 years following the ending date of the first 5-year period. A person convicted of unlawfully applying for any special license under Title 87, chapter 2, part 7, or unlawfully entering a drawing for a special license or permit shall be fined an amount *of* not less than $500 or more than $2,000, *be* imprisoned in the county detention center for not more than 60 days, or both.

(6) (a) A person convicted of a second offense of any of the following offenses within 10 years of the first conviction or who is convicted of two or more of the following offenses at different times within a 10-year period is subject to the penalties provided in subsection (6)(b):

(i) hunting during a closed season;

(ii) ~~spotlighting~~ *taking an animal or hunting while using projected artificial light*;

(iii) hunting without a license;

(iv) unlawful taking of more than double the legal bag limit;

(v) unlawful possession of more than double the legal bag limit; and

(vi) waste of game by abandonment in the field.

(b) (i) A person convicted of the offenses in subsection (6)(a) in the time periods specified in subsection (6)(a) shall be fined an amount *of* not less than $2,000 or more than $5,000*,* ~~or~~ be imprisoned in the county jail for not more than 1 year, or both. In addition, the person, upon conviction or forfeiture of bond or bail, shall forfeit all current hunting, fishing, and trapping licenses issued by this state and the privilege to hunt, fish, or trap in this state for 60 months from the date of conviction or forfeiture~~,~~ unless the court imposes a longer forfeiture period.

(ii) The department shall notify the offender of the loss of privileges.

(iii) The offender shall surrender all hunting, fishing, and trapping licenses to the department within 10 days after having received notice from the department that privileges have been revoked.

(7) (a) A person convicted of a third offense of any of the following offenses within 10 years of the first conviction is subject to the penalties provided in subsection (7)(b):

(i) hunting during a closed season;

(ii) ~~spotlighting~~ *taking an animal or hunting while using projected artificial light*;

(iii) hunting without a license; and

(iv) unlawful taking of more than double the legal bag limit.

(b) (i) A person convicted of the offenses in subsection (7)(a) in the time period specified in subsection (7)(a) shall be fined an amount *of* not less than $5,000 or more than $10,000*,* ~~or~~ be imprisoned in the county jail for not more than 1 year, or both. In addition, the person, upon conviction or forfeiture of bond or bail, shall forfeit all current hunting, fishing, and trapping licenses issued by this state and the privilege to hunt, fish, or trap in this state for life.

(ii) The department shall notify the offender of the loss of privileges.

(iii) The offender shall surrender all hunting, fishing, and trapping licenses to the department within 10 days after having received notice from the department that privileges have been revoked.

(8) Subject to sentencing restrictions, the court shall order a person who is convicted pursuant to this section to pay the costs of imprisonment under this section.

(9) A mandatory forfeiture of privileges imposed pursuant to this section does not apply to juveniles. However, the court may, at its discretion, order forfeiture of a juvenile's license and privilege to hunt, fish, or trap upon conviction or forfeiture of bond or bail for a violation of this title.

(10) Notwithstanding the provision of subsection (1), the penalties provided by this section are in addition to any penalties provided in Title 37, chapter 47, and Title 87, chapter 4, part 2.

(11) If an administrative authority suspends a license, permit, or privilege to obtain a license or permit issued under this title, the administrative authority or the department shall notify the person of the suspension and the person shall surrender the license or permit to the department within 10 days.

(12) For the purposes of this section, the terms "knowingly", "negligently", and "purposely" have the same ~~meaning as~~ *meanings* provided in 45-2-101."

Section 2. Section 87-3-101, MCA, is amended to read:

"87-3-101. General restrictions. Except as provided in 87-2-803(4), it is unlawful for anyone to hunt or attempt to hunt any game animal or game bird:

(1) from any self-propelled or drawn vehicle;

(2) on, from, or across any public highway or the shoulder, berm, or barrow pit right-of-way of any public highway, as defined in 61-1-101, in the state ~~of Montana~~; or

(3) by the aid or with the use of any set gun, ~~jacklight, spotlight or other~~ *projected* artificial light, trap, snare (except as allowed in 87-3-127 and 87-3-128), salt lick, or bait."

Section 3. Section 87-3-506, MCA, is amended to read:

"87-3-506. Wasting of fur-bearing animals. (1) A person *commits the offense of wasting a fur-bearing animal if that person purposely or knowingly:* ~~who~~

(a) fails to pick up traps or snares at the end of the trapping season *so that the pelt of a fur-bearing animal is wasted;* ~~or~~

(b) attends ~~his~~ traps or snares so that fur-bearing animals are wasted*; or*

(c) wastes the pelt of any fur-bearing animal ~~is guilty of a misdemeanor and upon conviction shall be punished as provided by law~~.

(2) The department ~~of fish, wildlife, and parks~~ shall enforce the provisions of this section.

(3) *(a)* Federal, state, and county predator control programs are exempt from this section.

(b) Pelts of muskrat and beaver killed pursuant to 87-3-501(2) are exempt from this section.

(4) As used in this section, "pelt" means the pelt, skin, or fur of a fur-bearing animal."

Section 4. Effective date. [This act] is effective on passage and approval.

Approved April 16, 2009

CHAPTER NO. 230

[HB 328]

AN ACT ELIMINATING THE REQUIREMENT FOR SIGNATURES ON A PETITION FOR NOMINATION TO AN ELECTIVE PUBLIC OFFICE FOR WHICH NO SALARY OR FEES ARE PAID TO THE PERSON ELECTED; AND AMENDING SECTION 13-14-113, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13-14-113, MCA, is amended to read:

"13-14-113. Filing for offices without salary or fees. (1) Candidates for nonpartisan offices for which a salary or fees are not paid shall file with the appropriate official a petition for nomination containing the ~~same~~ information and the oath of the candidate required for a declaration of nomination in a form prescribed by the secretary of state.

~~(2) The petition must contain the signatures of registered electors of the election district in which the office will be on the ballot. The number of signatures must be equal to 5% of the total vote cast for the successful candidate for that office at the last general election, but may not be less than five signatures.~~

~~(3) The number of signatures necessary for a petition for nomination for an office not previously on the ballot or for which the election district boundaries have changed since the last general election must be determined by the secretary of state.~~

~~(4)~~*(2)* Petitions for nomination must be filed at the same time provided in 13-10-201 for other candidates and offices.

~~(5)~~*(3)* A candidate may not file for more than one public office."

Approved April 16, 2009

CHAPTER NO. 231

[HB 338]

AN ACT PROVIDING COMMON CARRIER STATUS TO PIPELINES MOVING CARBON DIOXIDE PRODUCED IN THE COMBUSTION OR GASIFICATION OF FOSSIL FUELS; AND AMENDING SECTIONS 69-13-101, 69-13-102, 69-13-201, 69-13-301, 69-13-302, AND 69-13-303, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-13-101, MCA, is amended to read:

"69-13-101. Common carrier pipeline. (1) ~~The following are hereby declared to be common carriers and subject to the provisions of this chapter: every~~ *A* person, firm, corporation, limited partnership, joint-stock association, or association ~~of any kind whatever~~ *is a common carrier if it engages in*:

(a) owning, operating, or managing any pipeline or any part of any pipeline within the state for the transportation of crude petroleum, coal, ~~or~~ the products ~~thereof~~ *of crude petroleum or coal, or carbon dioxide produced in the combustion or gasification of fossil fuels* to or for the public for hire or engaging in the business of transporting crude petroleum, coal, ~~or~~ the products ~~thereof~~ *of crude petroleum or coal, or carbon dioxide produced in the combustion or gasification of fossil fuels* by pipelines;

(b) owning, operating, or managing any pipeline or any part of any pipeline for the transportation of crude petroleum, coal, ~~or~~ the products ~~thereof~~ *of crude petroleum or coal, or carbon dioxide produced in the combustion or gasification of fossil fuels* to or for the public for hire~~, which~~ *when the* pipeline is constructed or maintained upon, along, over, or under any public road or highway;

(c) owning, operating, or managing any pipeline or any part of any pipeline for transportation to or for the public for hire of crude petroleum, coal, ~~or~~ the

products ~~thereof, which~~ *of crude petroleum or coal, or carbon dioxide produced in the combustion or gasification of fossil fuels when the* pipeline is or may be constructed, operated, or maintained across, upon, along, over, or under the right-of-way of any railroad, corporation, or other common carrier required by law to transport crude petroleum, coal, ~~or~~ the products ~~thereof~~ *of crude petroleum or coal, or carbon dioxide produced in the combustion or gasification of fossil fuels* as a common carrier;

(d) owning, operating, or managing or participating in ownership, operation, or management, under lease, contract of purchase, agreement to buy or sell, or other agreement or arrangement of any kind whatsoever, any pipeline or any part of any pipeline for the transportation from any oil field, coal mine or field, or place of production within ~~the~~ *this* state to any distributing, refining, or marketing center or reshipping point ~~thereof,~~ within this state~~,~~ of crude petroleum, coal, ~~or~~ the products ~~thereof~~ *of crude petroleum or coal, or carbon dioxide produced in the combustion or gasification of fossil fuels*~~,~~ bought ~~of~~ *from* others; or

(e) made a common carrier by or under the terms of contract with or in pursuance of the law of the United States.

(2) The provisions of this chapter ~~shall~~ *do* not apply to*:*

(a) ~~those~~ pipelines ~~which~~ *that* are limited in their use to the wells, stations, plants, and refineries of the owner and ~~which~~ *that* are not a part of the pipeline transportation system of any common carrier~~, as herein defined~~; ~~nor shall such provisions apply to~~ *or*

(b) any property of ~~such~~ a common carrier ~~which~~ *that* is not a part of or necessarily incident to its pipeline transportation system."

Section 2. Section 69-13-102, MCA, is amended to read:

"69-13-102. Scope of chapter — enforcement. (1) It is declared that the operation of ~~these~~ pipelines, to which this chapter applies, for the transportation of crude petroleum, coal, ~~or~~ the products ~~thereof~~ *of crude petroleum or coal, or carbon dioxide produced in the combustion or gasification of fossil fuels*, in connection with the purchase or purchase and sale of ~~such~~ crude petroleum, coal, ~~or~~ the products ~~thereof~~ *of crude petroleum or coal, or carbon dioxide produced in the combustion or gasification of fossil fuels*, is a business in ~~mode of the conduct of~~ which the public is interested and ~~as such~~ is subject to regulation by law. The business of purchasing or of purchasing and selling crude petroleum, coal, ~~or~~ the products ~~thereof~~ *of crude petroleum or coal, or carbon dioxide produced in the combustion or gasification of fossil fuels*, using in connection with ~~such~~ *that* business a pipeline of the class subject to this chapter to transport the crude petroleum, coal, ~~or~~ the products ~~thereof so~~ *of crude petroleum or coal, or carbon dioxide produced in the combustion or gasification of fossil fuels* bought or sold ~~shall~~ *may* not be conducted unless ~~such~~ *the* pipeline ~~so~~ used in connection with ~~such~~ *that* business is a common carrier within the purview of this ~~law~~ *chapter* and subject to the jurisdiction ~~herein~~ conferred upon the commission.

(2) It ~~shall be~~ *is* the duty of the attorney general to enforce this provision by injunction or other adequate remedy."

Section 3. Section 69-13-201, MCA, is amended to read:

"69-13-201. Establishment of rates and operating rules. (1) The commission ~~shall have the power to~~ *may* establish and enforce rates of charges and regulations for gathering, transporting, loading, and delivering crude

petroleum, coal, ~~or~~ the products ~~thereof~~ *of crude petroleum or coal, or carbon dioxide produced in the combustion or gasification of fossil fuels* by ~~such~~ common carrier in this state and for the use of storage facilities necessarily incident to ~~such~~ *the* transportation and ~~to~~ *may* prescribe and enforce rules for the government and control of ~~such~~ common carriers in respect to their pipelines and receiving, transferring, and loading facilities. ~~It shall be its duty to~~ *The commission shall* exercise ~~such~~ *the* power upon petition by any person showing a substantial interest in the subject.

(2) ~~No~~ *An* order establishing or prescribing rates and rules ~~shall~~ *may not* be made except after hearing and at least 10 days' and not more than 30 days' notice to the person, firm, corporation, partnership, joint-stock association, or association owning or controlling and operating the pipeline or pipelines affected.

(3) ~~In the event any~~ *If a* rate ~~shall be~~ *is* filed by any pipeline and *a* complaint against the ~~same~~ *rate* or *a* petition to reduce the ~~same shall be~~ *rate is* filed by any shipper and ~~such complaint be~~ *is* sustained, in whole or in part, all shippers who ~~shall~~ have paid the rates ~~so~~ filed by the pipeline ~~shall~~ have the right to reparation or reimbursement of all excess in transportation charges ~~so~~ paid, over and above the proper rate as finally determined, on all shipments made after the date of the filing of ~~such~~ *the* complaint."

Section 4. Section 69-13-301, MCA, is amended to read:

"69-13-301. Records and reports. (1) ~~Such common~~ *Common* carriers of crude petroleum, coal, ~~or~~ the products ~~thereof~~ *of crude petroleum or coal, or carbon dioxide produced in the combustion or gasification of fossil fuels* shall make and publish their tariffs under ~~such~~ rules ~~as~~ *that* may be prescribed by ~~said~~ *the* commission. The commission shall require ~~them~~ *the common carriers* to make reports and may investigate their books and records kept in connection with ~~such~~ *the* business.

(2) The commission shall require ~~of such~~ common carrier pipelines *to make* monthly reports, duly verified under oath, of the total quantities of crude petroleum, coal, ~~or~~ the products ~~thereof~~ *of crude petroleum or coal, or carbon dioxide produced in the combustion or gasification of fossil fuels* owned by ~~such~~ *the* pipelines, of that held by them in storage for others, and of their unfilled storage capacity. ~~No publicity shall~~ *Publicity may not* be given by the commission to the reports as to stock of crude petroleum, coal, ~~or~~ the products ~~thereof~~ *of crude petroleum or coal, or carbon dioxide produced in the combustion or gasification of fossil fuels* on hand of any particular pipeline, but the commission in its discretion may make public the aggregate amounts held by all the pipelines making ~~such~~ *the* reports and of their aggregate storage capacity."

Section 5. Section 69-13-302, MCA, is amended to read:

"69-13-302. Connection and interchange facilities. (1) ~~Every~~ *Each* common carrier shall exchange crude petroleum tonnage, coal tonnage, ~~or~~ petroleum or coal products tonnage*, or carbon dioxide volume* with each ~~like~~ *similar* common carrier. The commission ~~shall have the power to~~ *may* require ~~such~~ connections and facilities for the interchange of ~~such~~ *the* tonnage *and volume* to be made at every locality reached by both pipelines whenever a necessity ~~therefor~~ *for the connections and facilities* exists, subject to ~~such~~ rates and regulations ~~as~~ *that* may be made by the commission. Any ~~such~~ common carrier under ~~like~~ *similar* rules ~~shall~~ *must* be required to install and maintain facilities for the receipt and delivery of crude petroleum, coal, ~~or~~ the products

~~thereof~~ *of crude petroleum or coal, or carbon dioxide produced in the combustion or gasification of fossil fuels* of patrons at all points on ~~such~~ *the* pipeline.

(2) ~~No~~ *A* carrier ~~shall~~ *may not* be required to receive or transport any crude petroleum, coal, ~~or~~ the products ~~thereof~~ *of crude petroleum or coal, or carbon dioxide produced in the combustion or gasification of fossil fuels* except ~~such~~ as may be marketable under rules ~~to be~~ prescribed by the commission~~, which they are hereby empowered and required to prescribe~~. The commission ~~is also empowered and required to~~ *shall* make rules for the ascertainment of the amount of water and other foreign matter in crude oil, coal, ~~or~~ the products ~~thereof~~ *of crude petroleum or coal, or carbon dioxide produced in the combustion or gasification of fossil fuels* tendered for transportation, for deduction ~~therefor~~ *for water and foreign matter*, and for the amount of deduction to be made for temperature, leakage, and evaporation.

(3) The ~~recital herein of~~ particular powers ~~on~~ *delegated to* the ~~part of said~~ commission ~~shall~~ *in this section may* not be construed to limit the general powers conferred by this chapter."

Section 6. Section 69-13-303, MCA, is amended to read:

"69-13-303. Prohibition of discrimination in rates or service. (1) Except as provided in subsection (2), ~~no such~~ *a* common carrier in its operations ~~as such shall~~ *may not* discriminate between or against shippers in regard to facilities furnished, service rendered, or rates charged under *the* same or similar circumstances in the transportation of crude petroleum, coal, ~~or~~ the products ~~thereof; nor shall there~~ *of crude petroleum or coal, or carbon dioxide produced in the combustion or gasification of fossil fuels. There may not* be any discrimination in the transportation of crude petroleum, coal, ~~or~~ the products ~~thereof~~ *of crude petroleum or coal, or carbon dioxide produced in the combustion or gasification of fossil fuels* produced or purchased by ~~itself~~ *the common carrier* directly or indirectly. In this connection the pipeline ~~shall~~ *must* be considered as a shipper of the crude petroleum, coal, ~~or~~ the products ~~thereof~~ *of crude petroleum or coal, or carbon dioxide produced in the combustion or gasification of fossil fuels* produced or purchased by ~~itself~~ *the pipeline* directly or indirectly and handled through its facilities. ~~No such~~ *A* carrier in ~~such~~ *the* operation ~~shall~~ *may not* directly or indirectly charge, demand, collect, or receive from any one a greater or lesser compensation for any service rendered than from another for a like and contemporaneous service. Subject to the provisions of this chapter and the rules ~~which~~ *that* may be prescribed by the commission, every ~~such~~ common carrier shall receive and transport crude petroleum*,* ~~or~~ coal*, the products of crude petroleum or coal, or carbon dioxide produced in the combustion or gasification of fossil fuels* delivered to it for transportation and shall ~~so~~ receive and transport the ~~same~~ *products* and perform its other duties with respect ~~thereto~~ *to the products* without discrimination.

(2) The provisions of subsection (1) ~~shall~~ *do* not limit the right of the commission to prescribe rates and regulations different from or to some places from other rates or regulations for transportation from or to other places, as it may determine.~~; nor shall any~~ *A* carrier ~~be~~ *is not* guilty of discrimination when obeying any order of the commission. When there ~~shall be~~ *is* offered for transportation more crude petroleum, coal, ~~or~~ the products ~~thereof~~ *of crude petroleum or coal, or carbon dioxide produced in the combustion or gasification of fossil fuels* than can be immediately transported, the ~~same shall~~ *products must* be equitably apportioned. The commission may make and enforce general or specific regulations in this regard. ~~No such~~ *A* common carrier ~~shall~~ *may not* at any time be required to receive *petroleum or petroleum products* for shipments

exceeding 3,000 barrels ~~of petroleum or the products thereof~~ in any one day from any person, firm, corporation, or association of persons."

Approved April 16, 2009

CHAPTER NO. 232

[HB 343]

AN ACT REVISING DEFINITIONS FOR THE ADMINISTRATION OF THE RENEWABLE RESOURCE STANDARD FOR PUBLIC UTILITIES AND ELECTRICITY SUPPLIERS; ALLOWING ELIGIBLE RENEWABLE RESOURCES OWNED BY A PUBLIC UTILITY TO BE USED TO COMPLY WITH THE COMMUNITY RENEWABLE ENERGY PROJECT REQUIREMENTS IN THE RENEWABLE RESOURCE STANDARD; REQUIRING A UTILITY TO CONSIDER DISPATCH ABILITY AND SEASONALITY IN MEETING THE RENEWABLE RESOURCE STANDARD; AMENDING SECTIONS 69-3-2003, 69-3-2005, 90-3-1003, AND 90-4-1202, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-3-2003, MCA, is amended to read:

"69-3-2003. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Ancillary services" means services or tariff provisions related to generation and delivery of electric power other than simple generation, transmission, or distribution. Ancillary services related to transmission services include energy losses, energy imbalances, scheduling and dispatching, load following, system protection, *spinning reserves and nonspinning reserves,* and reactive power.

(2) "Balancing authority" means a transmission system control operator who balances electricity supply and load at all times to meet transmission system operating criteria and to provide reliable electric service to customers.

~~(2)~~*(3)* "Common ownership" means the same or substantially similar persons or entities that maintain a controlling interest in more than one community renewable energy project even if the ownership shares differ between two community renewable energy projects. Two community renewable energy projects may not be considered to be under common ownership simply because the same entity provided debt or equity or both debt and equity to both projects.

~~(3)~~*(4)* "Community renewable energy project" means an eligible renewable resource that*:*

(a) is interconnected on the utility side of the meter in which local owners have a controlling interest and that is less than or equal to 5 megawatts in total calculated nameplate capacity*; or*

(b) is owned by a public utility and has less than or equal to 25 megawatts in total nameplate capacity.

~~(4)~~*(5)* "Competitive electricity supplier" means any person, corporation, or governmental entity that is selling electricity to small customers at retail rates in the state of Montana and that is not a public utility or cooperative.

~~(5)~~*(6)* "Compliance year" means each calendar year beginning January 1 and ending December 31, starting in 2008, for which compliance with this part must be demonstrated.

~~(6)~~*(7)* "Cooperative utility" means:

(a) a utility qualifying as an electric cooperative pursuant to Title 35, chapter 18; or

(b) an existing municipal electric utility as of May 2, 1997.

(8) "Dispatch ability" means the ability of either a balancing authority or the owner of an electric generating resource to rapidly start, stop, increase, or decrease electricity production from that generating resource in order to respond to the balancing authority's need to match supply resources to loads on the transmission system.

(9) "Electric generating resource" means any plant or equipment used to generate electricity by any means.

~~(7)~~*(10)* "Eligible renewable resource" means a facility either located within Montana or delivering electricity from another state into Montana that commences commercial operation after January 1, 2005, and that produces electricity from one or more of the following sources:

(a) wind;

(b) solar;

(c) geothermal;

(d) water power, in the case of a hydroelectric project that*:*

(i) does not require a new appropriation, diversion, or impoundment of water and that has a nameplate rating of 10 megawatts or less; *or*

(ii) is installed at an existing reservoir or on an existing irrigation system that does not have hydroelectric generation as of [the effective date of this act] and has a nameplate capacity of 15 megawatts or less;

(e) landfill or farm-based methane gas;

(f) gas produced during the treatment of wastewater;

(g) low-emission, nontoxic biomass based on dedicated energy crops, animal wastes, or solid organic fuels from wood, forest, or field residues, except that the term does not include wood pieces that have been treated with chemical preservatives such as creosote, pentachlorophenol, or copper-chroma-arsenic;

(h) hydrogen derived from any of the sources in this subsection ~~(7)~~ *(10)* for use in fuel cells; ~~and~~

(i) the renewable energy fraction from the sources identified in subsections ~~(7)(a) through (7)(h)~~ *(10)(a) through (10)(j)* of electricity production from a multiple-fuel process with fossil fuels*; and*

(j) compressed air derived from any of the sources in this subsection (10) that is forced into an underground storage reservoir and later released, heated, and passed through a turbine generator.

~~(8)~~*(11)* "Local owners" means:

(a) Montana residents or entities composed of Montana residents;

(b) Montana small businesses;

(c) Montana nonprofit organizations;

(d) Montana-based tribal councils;

(e) Montana political subdivisions or local governments;

(f) Montana-based cooperatives other than cooperative utilities; or

(g) any combination of the individuals or entities listed in subsections ~~(8)(a) through (8)(f)~~ *(11)(a) through (11)(f)*.

(12) "Nonspinning reserve" means offline generation that can be ramped up to capacity and synchronized to the grid within 10 minutes and that is needed to maintain system frequency stability during emergency conditions, unforeseen load swings, and generation disruptions.

~~(9)~~*(13)* "Public utility" means any electric utility regulated by the commission pursuant to Title 69, chapter 3, on January 1, 2005, including the public utility's successors or assignees.

~~(10)~~*(14)* "Renewable energy credit" means a tradable certificate of proof of 1 megawatt hour of electricity generated by an eligible renewable resource that is tracked and verified by the commission and includes all of the environmental attributes associated with that 1 megawatt-hour unit of electricity production.

(15) "Seasonality" means the degree to which an electric generating resource is capable of producing electricity in each of the seasons of the year.

~~(11)~~*(16)* "Small customer" means a retail customer that has an individual load with an average monthly demand of less than 5,000 kilowatts.

(17) "Spinning reserve" means the online reserve capacity that is synchronized to the grid system and immediately responsive to frequency control and that is needed to maintain system frequency stability during emergency conditions, unforeseen load swings, and generation disruptions.

~~(12)~~*(18)* "Total calculated nameplate capacity" means the calculation of total nameplate capacity of the community renewable energy project and other eligible renewable resources that are:

(a) located within 5 miles of the project;

(b) constructed within the same 12-month period; and

(c) under common ownership."

Section 2. Section 69-3-2005, MCA, is amended to read:

"69-3-2005. Procurement — cost recovery — reporting. (1) In meeting the requirements of this part, a public utility shall:

(a) ~~conduct~~ *conduct* renewable energy solicitations under which the public utility offers to purchase renewable energy credits, either with or without the associated electricity, under contracts of at least 10 years in duration; ~~and~~

(b) consider the importance of geographically diverse rural economic development when procuring renewable energy credits*; and*

(c) consider the importance of dispatch ability, seasonality, and other attributes of the eligible renewable resource contained in the commission's supply procurement rules when considering the procurement of renewable energy or renewable energy credits.

(2) A public utility that intends to enter into contracts of less than 10 years in duration shall demonstrate to the commission that these contracts will provide a lower long-term cost of meeting the standard established in 69-3-2004.

(3) (a) Contracts signed for projects located in Montana must require all contractors to give preference to the employment of bona fide Montana residents, as defined in 18-2-401, in the performance of the work on the projects

if the Montana residents have substantially equal qualifications to those of nonresidents.

(b) Contracts signed for projects located in Montana must require all contractors to pay the standard prevailing rate of wages for heavy construction, as provided in 18-2-401(13)(a), during the construction phase of the project.

(4) All contracts signed by a public utility to meet the requirements of this part are eligible for advanced approval under procedures established by the commission. Upon advanced approval by the commission, these contracts are eligible for cost recovery from ratepayers, except that nothing in this part limits the commission's ability to subsequently, in any future cost-recovery proceeding, inquire into the manner in which the public utility has managed the contract and to disallow cost recovery if the contract was not reasonably administered.

(5) A public utility or competitive electricity supplier shall submit renewable energy procurement plans to the commission in accordance with rules adopted by the commission. The plans must be submitted to the commission on or before:

~~(a) January 1, 2007, for the standard required in 69-3-2004(2);~~

~~(b) June 1, 2008, for the standard required in 69-3-2004(3);~~

~~(c)~~*(a)* June 1, 2013, for the standard required in 69-3-2004(4); and

~~(d)~~*(b)* any additional future dates as required by the commission.

(6) A public utility or competitive electricity supplier shall submit annual reports, in a format to be determined by the commission, demonstrating compliance with this part for each compliance year. The reports must be filed by March 1 of the year following the compliance year.

(7) For the purpose of implementing this part, the commission has regulatory authority over competitive electricity suppliers."

Section 3. Section 90-3-1003, MCA, is amended to read:

"90-3-1003. Research and commercialization account — use. (1) The research and commercialization account provided for in 90-3-1002 is statutorily appropriated, as provided in 17-7-502, to the board of research and commercialization technology, provided for in 2-15-1819, for the purposes provided in this section.

(2) The establishment of the account in 90-3-1002 is intended to enhance the economic growth opportunities for Montana and constitute a public purpose.

(3) The account may be used only for:

(a) loans that are to be used for research and commercialization projects to be conducted at research and commercialization centers located in Montana;

(b) grants that are to be used for production agriculture research and commercialization projects, clean coal research and development projects, or renewable resource research and development projects to be conducted at research and commercialization centers located in Montana;

(c) matching funds for grants from nonstate sources that are to be used for research and commercialization projects to be conducted at research and commercialization centers located in Montana; or

(d) administrative costs that are incurred by the board in carrying out the provisions of this part.

(4) At least 20% of the account funds approved for research and commercialization projects must be directed toward projects that enhance production agriculture.

(5) (a) At least 30% of the account funds approved for research and commercialization projects must be directed toward projects that enhance clean coal research and development or renewable resource research and development.

(b) If the board is not in receipt of a qualified application for a project to enhance clean coal research and development or renewable resource research and development, subsection (5)(a) does not apply.

(6) An applicant for a grant shall provide matching funds from nonstate sources equal to 25% of total project costs. The requirement to provide matching funds is a qualifier, but not a criterion, for approval of a grant.

(7) The board shall establish policies, procedures, and criteria that achieve the objectives in its research and commercialization strategic plan for the awarding of grants and loans. The criteria must include:

(a) the project's potential to diversify or add value to a traditional basic industry of the state's economy;

(b) whether the project shows promise for enhancing technology-based sectors of Montana's economy or promise for commercial development of discoveries;

(c) whether the project employs or otherwise takes advantage of existing research and commercialization strengths within the state's public university and private research establishment;

(d) whether the project involves a realistic and achievable research project design;

(e) whether the project develops or employs an innovative technology;

(f) verification that the project activity is located within the state;

(g) whether the project's research team possesses sufficient expertise in the appropriate technology area to complete the research objective of the project;

(h) verification that the project was awarded based on its scientific merits, following review by a recognized federal agency, philanthropic foundation, or other private funding source; and

(i) whether the project includes research opportunities for students.

(8) The board shall direct the state treasurer to distribute funds for approved projects. Unallocated interest and earnings from the account must be retained in the account. Repayments of loans and any agreements authorizing the board to take a financial right to licensing or royalty fees paid in connection with the transfer of technology from a research and commercialization center to another nonstate organization or ownership of corporate stock in a private sector organization must be deposited in the account.

(9) The board shall refer grant applications to external peer review groups. The board shall compile a list of persons willing to serve on peer review groups for purposes of this section. The peer review group shall review the application and make a recommendation to the board as to whether the application for a grant should be approved. The board shall review the recommendation of the peer review group and either approve or deny a grant application.

(10) The board shall identify whether a grant or loan is to be used for basic research, applied research, or some combination of both. For the purposes of this section, "applied research" means research that is conducted to attain a specific benefit or solve a practical problem and "basic research" means research that is conducted to uncover the basic function or mechanism of a scientific question.

(11) For the purposes of this section:

(a) "clean coal research and development" means research and development of projects that would advance the efficiency, environmental performance, and cost-competitiveness of using coal as an energy source well beyond the current level of technology used in commercial service;

(b) "renewable resource research and development" means research and development that would advance:

(i) the use of any of the sources of energy listed in ~~69-3-2003(6)~~ *69-3-2003(10)* to produce electricity; and

(ii) the efficiency, environmental performance, and cost-competitiveness of using renewable resources as an energy source well beyond the current level of technology used in commercial service."

Section 4. Section 90-4-1202, MCA, is amended to read:

"90-4-1202. Definitions. Unless the context requires otherwise, in this part, the following definitions apply:

(1) "Ancillary services" has the meaning provided in 69-3-2003.

(2) "Bond" means bond, note, or other obligation.

(3) "Clean renewable energy bonds" means one or more bonds issued by a governmental body pursuant to section 54 of the Internal Revenue Code, 26 U.S.C. 54, and this part.

(4) "Commission" means the public service commission provided for in 69-1-102.

(5) "Governing authority" means a council, board, or other body governing the affairs of the governmental body.

(6) "Governmental body" means a city, town, county, school district, consolidated city-county, Indian tribal government, or any other political subdivision of the state, however organized.

(7) "Intermittent generation resource" means a generator that operates on a limited and irregular basis due to the inconsistent nature of its fuel supply, which is primarily wind or solar power.

(8) "Internal Revenue Code" has the meaning provided in 15-30-101.

(9) "Project" means:

(a) a facility qualifying as a "qualified project" within the meaning of section 54(d)(2) of the Internal Revenue Code, 26 U.S.C. 54(d)(2);

(b) a community renewable energy project as defined in ~~69-3-2003~~ *69-3-2003(4)(a)*; or

(c) an alternative renewable energy source as defined in 15-6-225."

Section 5. Effective date. [This act] is effective on passage and approval.

Section 6. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to the compliance year beginning January 1, 2009.

Approved April 16, 2009

CHAPTER NO. 233

[HB 373]

AN ACT CREATING GOLD STAR FAMILY SPECIAL LICENSE PLATES; AMENDING SECTIONS 49-4-302, 49-4-304, 61-3-407, 61-3-426, 61-3-458, AND 61-3-459, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 49-4-302, MCA, is amended to read:

"49-4-302. Privileges of permitholder — privilege for disabled veteran — exemptions from time limits — requirements for special parking spaces. (1) The parking permit issued under this part, when displayed, entitles a person to park a motor vehicle in a special parking space reserved for a person with a disability, whether on public property or on private property available for public use, when the person for whom the permit was issued is using the special parking space to enter or exit the vehicle.

(2) A vehicle may not be parked in a parking space on public or private property that is clearly identified by an official sign as being reserved for use by a person with a disability unless:

(a) the vehicle is lawfully displaying a parking permit issued under this part, a distinguishing license plate or placard for a person with a disability that was issued by a foreign jurisdiction conferring parking privileges similar to those conferred in subsection (1), or a specially inscribed license plate displaying the letters "DV" issued under 61-3-458~~(3)(b)~~*(4)(b)* or ~~(3)(i)~~ *(4)(i)* or displaying a wheelchair as provided in 61-3-332(9); and

(b) the reserved parking space is being used by the person for whom the permit, plate, or placard was issued to enter or exit the vehicle.

(3) The governing body of a city, town, or county may exempt vehicles lawfully displaying parking permits issued under this part and vehicles lawfully displaying specially inscribed license plates displaying the letters "DV" issued under 61-3-458~~(3)(b)~~*(4)(b)* or ~~(3)(i)~~ *(4)(i)* or displaying a wheelchair as provided in 61-3-332(9) and parked in public places along public streets from any time limitation imposed upon parking, except in areas where:

(a) stopping, standing, or parking of all vehicles is prohibited;

(b) only special vehicles may be parked; or

(c) parking is not allowed during specific periods of the day in order to accommodate heavy traffic.

(4) In accordance with subsection (2), the governing body of a city, town, or county or appropriate state agency may impose all, but not less than all, of the following requirements with respect to any special parking space constructed after September 30, 1985, and reserved for a person with a disability or a permitholder on ways of this state open to the public, as defined in 61-8-101:

(a) The space must be located on a smooth, level surface as near as practicable to building entrances or walkways that have curb cuts and appropriately designed ramps and access lanes to accommodate wheelchairs.

(b) If parallel to curbside, the parking space must be separated from an adjacent space, either in the front or the rear, by at least 5 feet of striped no-parking area.

(c) If at an angle to curbside, the parking space must be at least 8 feet wide and free of obstruction if located at the end of a line of angle parking spaces, and

each other angle parking space designated for a person with a disability must be at least 13 feet wide.

(d) A parking space reserved for a person with a disability must be designated by a sign showing the international symbol of accessibility, indicating that a permit is required, and stating the penalty for a violation. In order to meet the penalty statement requirement, signs existing on October 1, 1993, must have attached a decal stating the penalty for a violation. The sign must be attached to a wall or post in a way that it is not obscured by a vehicle parked in the space."

Section 2. Section 49-4-304, MCA, is amended to read:

"49-4-304. Special license plate or card to be provided and displayed — additional cards allowed for owners of more than one vehicle. (1) Except as authorized in 49-4-303, unless the department of justice issued a special license plate under 61-3-332(9) or 61-3-458~~(3)(b)~~*(4)(b)* or ~~(3)(i)~~ *(4)(i)* indicating a special parking privilege, the department shall provide a card to be displayed on or in a motor vehicle to indicate a parking privilege granted under this part. The special license plate must be affixed to the vehicle according to 61-3-301, or the card must be prominently displayed in the windshield of a vehicle when the parking privilege is being used by the person with a disability in a vehicle other than the one to which a special license plate is affixed.

(2) Subject to the provisions of 49-4-301 through 49-4-305, a person who is eligible to receive a special parking permit and who owns more than one motor vehicle may request and the department of justice shall provide additional cards described in subsection (1) to equal the number of motor vehicles, other than commercial vehicles, owned by the person.

(3) Upon application under 49-4-301, a person with a disability who does not hold a driver's license or does not own a vehicle may receive a card described in subsection (1) to be displayed in a vehicle in which the person with a disability is being conveyed when the parking privilege is being used.

(4) The card must bear a representation of a wheelchair as the symbol of a person with a disability."

Section 3. Section 61-3-407, MCA, is amended to read:

"61-3-407. Personalized license plates for disabled — special veteran and generic specialty license plates. Subject to the provisions of 61-3-405 and 61-3-406, an application for standard license plates bearing a wheelchair as the symbol of a person with a disability under 61-3-332(9), special veteran license plates under 61-3-458~~(3)~~*(4)*, or generic specialty license plates under 61-3-472 through 61-3-481 may be combined with an application for personalized plates. The application must be made on a form supplied by the department."

Section 4. Section 61-3-426, MCA, is amended to read:

"61-3-426. Combined license plates. (1) An application for license plates for amateur radio operators may be combined with an application for the special license plates issued under 61-3-458~~(3)~~*(4)* or with an application for special license plates issued to a person with a disability who complies with the provisions in 61-3-332(9).

(2) Issuance of combined license plates is subject to 61-3-422.

(3) The combined license plates must display the official amateur radio call letters of the owner as assigned to the owner by the federal communications

commission. The plates must also display the design or decal provided for in 61-3-332(9) or 61-3-458~~(3)~~*(4)*."

Section 5. Section 61-3-458, MCA, is amended to read:

"61-3-458. Special plates for military personnel, veterans, ~~and~~ spouses*, and gold star families*. (1) (a) Active military personnel, veterans, or the surviving spouse of an eligible veteran, if the spouse has not remarried, may be issued special military or veteran license plates as provided in this section.

(b) Family members of a member of the U.S. armed forces who are eligible for a "Gold Star Lapel Button" may be issued special gold star family license plates as provided in subsection (3).

~~(b)~~*(c)* Subject to the provisions of 61-3-332 and except as otherwise provided in this chapter, special license plates issued pursuant to this section must be numbered in sets of two with a different number on each set and must be properly displayed as provided in 61-3-301. Special military*,* ~~or~~ veteran*, or gold star family* license plates may not be issued for a motorcycle, quadricycle, semitrailer, or pole trailer. Special military*,* ~~or~~ veteran*, or gold star family* license plates bearing a wheelchair as the symbol of a person with a disability may be issued to a person who meets the qualifications under 61-3-332(9) and this section.

(2) (a) Upon application, after paying all applicable motor vehicle, trailer, semitrailer, or pole trailer registration fees and special license plate fees and providing an official certificate from the applicant's unit commander verifying the individual's eligibility and authorizing the department to issue the plates to the individual, eligible military personnel may be issued one set of special military license plates as provided in this subsection (2).

(b) A member of the Montana national guard who is a state resident may be issued special license plates with a design or decal displaying the letters "NG". However, the member shall surrender the plates to the department when the member becomes ineligible.

(c) A member of the reserve armed forces of the United States who is a state resident may be issued special license plates according to the member's branch of service verified in the application with a design or decal displaying one of the following: United States army reserve, AR (symbol); United States naval reserve, NR (anchor); United States air force reserve, AFR (symbol); or United States marine corps reserve, MCR (globe and anchor). However, the member shall surrender the plates to the department when the member becomes ineligible.

(d) An active member of the regular armed forces of the United States who is a state resident may be issued special license plates inscribed with a symbol signifying the United States army, United States navy, United States air force, United States marine corps, or United States coast guard, according to the member's branch of service verified in the application. However, the member shall surrender the plates to the department upon becoming ineligible.

(3) Upon application, after paying all applicable motor vehicle, trailer, semitrailer, or pole trailer registration fees and special license plate fees and providing a department of defense form 3 (DD Form 3) or its successor or documents showing the person's eligibility for a "Gold Star Lapel Button", a family member of a member of the U.S. armed services who is eligible to receive a "Gold Star Lapel Button" as provided in Public Law 534 - 89th Congress may be

issued special license plates inscribed with a blue-bordered gold star with the words "Gold Star Family" inscribed beneath the registration number.

~~(3)~~*(4)* (a) Upon application, after presenting proper identification and a department of defense form 214 (DD-214) or its successor or documents showing an other-than-dishonorable discharge or a reenlistment verifying the applicant's eligibility and paying the veterans' cemetery fee specified in 61-3-459 and all applicable motor vehicle, trailer, semitrailer, or pole trailer registration fees under this chapter, subject to the provisions of 61-3-460, an eligible veteran must be issued any set and more than one set of the special license plates provided for in this subsection ~~(3)~~ *(4)* that the member requests and is eligible to receive.

(b) A veteran may be issued special license plates displaying the letters "DV", which entitles the veteran to the parking privileges allowed to a person with a special parking permit issued under Title 49, chapter 4, part 3, if the veteran:

(i) has been awarded the purple heart and has been rated by the U.S. department of veterans affairs as 50% or more disabled because of a service-connected injury; or

(ii) is currently rated 100% disabled or is paid at the 100% disabled rate by the U.S. department of veterans affairs for a service-connected disability.

(c) A veteran who has been awarded the purple heart may be issued special license plates with the purple heart decal displaying the words "combat wounded".

(d) A veteran who was captured and held prisoner by the military force of a foreign nation may be issued special license plates with a design or decal displaying the words "ex-prisoner of war" or an abbreviation that the department considers appropriate.

(e) If the veteran was a member of the United States armed forces on December 7, 1941, and during the hours of 7:55 a.m. to 9:45 a.m. (Hawaii time) was on station at Pearl Harbor on the island of Oahu or was offshore from Pearl Harbor at a distance of not more than 3 miles, the veteran may be issued special license plates designed to show that the veteran is a survivor of the Pearl Harbor attack.

(f) A person who is a member of the legion of valor may be issued special plates displaying a design or decal depicting the recognized legion of valor medallion.

(g) A veteran may be issued special license plates displaying the word "VETERAN" and a symbol signifying the United States army, United States navy, United States air force, United States marine corps, or United States coast guard, according to the veteran's service record verified in the application.

(h) A member or a former member of the Montana national guard eligible to receive a military retirement may be issued special license plates displaying the Montana national guard insignia and the words "National Guard veteran".

(i) A veteran who qualifies under subsections ~~(3)(b)~~ *(4)(b)* and ~~(3)(c)~~ *(4)(c)* may be issued special combination license plates displaying the letters "DV" and displaying a purple heart decal with the words "combat wounded". A person who receives the combination plates is entitled to the same parking privileges as provided in subsection ~~(3)(b)~~ *(4)(b)*.

~~(4)~~*(5)* Upon request, after paying the veterans' cemetery fee provided in 61-3-459 and all applicable vehicle registration fees under this chapter, subject

to the provisions of 61-3-460, the surviving spouse of an eligible veteran, if the spouse has not remarried, may retain the special license plates issued to the deceased veteran, except the special "DV" plates provided for under subsection ~~(3)(b)~~ *(4)(b)* or the combination plates provided for in subsection ~~(3)(i)~~ *(4)(i)*.

~~(5)~~*(6)* For purposes of this section, "veteran" has the meaning provided in 10-2-101."

Section 6. Section 61-3-459, MCA, is amended to read:

"61-3-459. Veterans' cemetery fee for special veteran license plates — disposition. (1) Except as provided in 61-3-460, an applicant for special veteran license plates provided for under 61-3-458~~(3)~~*(4)* shall pay $10 for each set issued, renewed, or transferred, in addition to any other taxes or fees applicable under this chapter.

(2) Fees collected under this section must be deposited in the state general fund and transferred as provided in 15-1-122 to the special revenue account for state veterans' cemeteries established in 10-2-603."

Section 7. Effective date. [This act] is effective January 1, 2010.

Approved April 16, 2009

CHAPTER NO. 234

[HB 378]

AN ACT EXEMPTING FROM THE WORKERS' COMPENSATION ACT THE EMPLOYMENT OF PERSONS PERFORMING THE SERVICES OF AN INTRASTATE OR INTERSTATE COMMON OR CONTRACT MOTOR CARRIER IF HIRED BY A FREIGHT FORWARDER; AMENDING SECTION 39-71-401, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-71-401, MCA, is amended to read:

"39-71-401. Employments covered and employments exempted. (1) Except as provided in subsection (2), the Workers' Compensation Act applies to all employers and to all employees. An employer who has any employee in service under any appointment or contract of hire, expressed or implied, oral or written, shall elect to be bound by the provisions of compensation plan No. 1, 2, or 3. Each employee whose employer is bound by the Workers' Compensation Act is subject to and bound by the compensation plan that has been elected by the employer.

(2) Unless the employer elects coverage for these employments under this chapter and an insurer allows an election, the Workers' Compensation Act does not apply to any of the following employments:

(a) household or domestic employment;

(b) casual employment;

(c) employment of a dependent member of an employer's family for whom an exemption may be claimed by the employer under the federal Internal Revenue Code;

(d) employment of sole proprietors, working members of a partnership, working members of a limited liability partnership, or working members of a member-managed limited liability company, except as provided in subsection (3);

(e) employment of a real estate, securities, or insurance salesperson paid solely by commission and without a guarantee of minimum earnings;

(f) employment as a direct seller as defined by 26 U.S.C. 3508;

(g) employment for which a rule of liability for injury, occupational disease, or death is provided under the laws of the United States;

(h) employment of a person performing services in return for aid or sustenance only, except employment of a volunteer under 67-2-105;

(i) employment with a railroad engaged in interstate commerce, except that railroad construction work is included in and subject to the provisions of this chapter;

(j) employment as an official, including a timer, referee, umpire, or judge, at an amateur athletic event;

(k) employment of a person performing services as a newspaper carrier or freelance correspondent if the person performing the services or a parent or guardian of the person performing the services in the case of a minor has acknowledged in writing that the person performing the services and the services are not covered. As used in this subsection (2)(k):

(i) "freelance correspondent" means a person who submits articles or photographs for publication and is paid by the article or by the photograph; and

(ii) "newspaper carrier":

(A) means a person who provides a newspaper with the service of delivering newspapers singly or in bundles; and

(B) does not include an employee of the paper who, incidentally to the employee's main duties, carries or delivers papers.

(l) cosmetologist's services and barber's services as referred to in 39-51-204(1)(e);

(m) a person who is employed by an enrolled tribal member or an association, business, corporation, or other entity that is at least 51% owned by an enrolled tribal member or members, whose business is conducted solely within the exterior boundaries of an Indian reservation;

(n) employment of a jockey who is performing under a license issued by the board of horseracing from the time that the jockey reports to the scale room prior to a race through the time that the jockey is weighed out after a race if the jockey has acknowledged in writing, as a condition of licensing by the board of horseracing, that the jockey is not covered under the Workers' Compensation Act while performing services as a jockey;

(o) employment of a trainer, assistant trainer, exercise person, or pony person who is performing services under a license issued by the board of horseracing while on the grounds of a licensed race meet;

(p) employment of an employer's spouse for whom an exemption based on marital status may be claimed by the employer under 26 U.S.C. 7703;

(q) a person who performs services as a petroleum land professional. As used in this subsection, a "petroleum land professional" is a person who:

(i) is engaged primarily in negotiating for the acquisition or divestiture of mineral rights or in negotiating a business agreement for the exploration or development of minerals;

(ii) is paid for services that are directly related to the completion of a contracted specific task rather than on an hourly wage basis; and

(iii) performs all services as an independent contractor pursuant to a written contract.

(r) an officer of a quasi-public or a private corporation or manager of a manager-managed limited liability company who qualifies under one or more of the following provisions:

(i) the officer or manager is not engaged in the ordinary duties of a worker for the corporation or the limited liability company and does not receive any pay from the corporation or the limited liability company for performance of the duties;

(ii) the officer or manager is engaged primarily in household employment for the corporation or the limited liability company;

(iii) the officer or manager either:

(A) owns 20% or more of the number of shares of stock in the corporation or owns 20% or more of the limited liability company; or

(B) owns less than 20% of the number of shares of stock in the corporation or limited liability company if the officer's or manager's shares when aggregated with the shares owned by a person or persons listed in subsection (2)(r)(iv) total 20% or more of the number of shares in the corporation or limited liability company; or

(iv) the officer or manager is the spouse, child, adopted child, stepchild, mother, father, son-in-law, daughter-in-law, nephew, niece, brother, or sister of a corporate officer who meets the requirements of subsection (2)(r)(iii)(A) or (2)(r)(iii)(B);

(s) a person who is an officer or a manager of a ditch company as defined in 27-1-731;

(t) service performed by an ordained, commissioned, or licensed minister of a church in the exercise of the church's ministry or by a member of a religious order in the exercise of duties required by the order;

(u) service performed to provide companionship services, as defined in 29 CFR 552.6, or respite care for individuals who, because of age or infirmity, are unable to care for themselves when the person providing the service is employed directly by a family member or an individual who is a legal guardian;

(v) employment of a person performing the services of an intrastate or interstate common or contract motor carrier when hired by an individual or entity who meets the definition of a broker *or freight forwarder*, as provided in 49 U.S.C. 13102;

(w) employment of a person who is not an employee or worker in this state as defined in 39-71-118(10);

(x) employment of a person who is working under an independent contractor exemption certificate;

(y) employment of an athlete by or on a team or sports club engaged in a contact sport. As used in this subsection, "contact sport" means a sport that includes significant physical contact between the athletes involved. Contact sports include but are not limited to football, hockey, roller derby, rugby, lacrosse, wrestling, and boxing.

(3) (a) (i) A person who regularly and customarily performs services at locations other than the person's own fixed business location shall elect to be bound personally and individually by the provisions of compensation plan No. 1, 2, or 3 unless the person has waived the rights and benefits of the Workers'

Compensation Act by obtaining an independent contractor exemption certificate from the department pursuant to 39-71-417.

(ii) Application fees or renewal fees for independent contractor exemption certificates must be deposited in the state special revenue account established in 39-9-206 and must be used to offset the certification administration costs.

(b) A person who holds an independent contractor exemption certificate may purchase a workers' compensation insurance policy and with the insurer's permission elect coverage for the certificate holder.

(c) For the purposes of this subsection (3), "person" means a sole proprietor, a working member of a partnership, a working member of a limited liability partnership, or a working member of a member-managed limited liability company.

(4) (a) A corporation or a manager-managed limited liability company shall provide coverage for its employees under the provisions of compensation plan No. 1, 2, or 3. A quasi-public corporation, a private corporation, or a manager-managed limited liability company may elect coverage for its corporate officers or managers, who are otherwise exempt under subsection (2), by giving a written notice in the following manner:

(i) if the employer has elected to be bound by the provisions of compensation plan No. 1, by delivering the notice to the board of directors of the corporation or to the management organization of the manager-managed limited liability company; or

(ii) if the employer has elected to be bound by the provisions of compensation plan No. 2 or 3, by delivering the notice to the board of directors of the corporation or to the management organization of the manager-managed limited liability company and to the insurer.

(b) If the employer changes plans or insurers, the employer's previous election is not effective and the employer shall again serve notice to its insurer and to its board of directors or the management organization of the manager-managed limited liability company if the employer elects to be bound.

(5) The appointment or election of an employee as an officer of a corporation, a partner in a partnership, a partner in a limited liability partnership, or a member in or a manager of a limited liability company for the purpose of exempting the employee from coverage under this chapter does not entitle the officer, partner, member, or manager to exemption from coverage.

(6) Each employer shall post a sign in the workplace at the locations where notices to employees are normally posted, informing employees about the employer's current provision of workers' compensation insurance. A workplace is any location where an employee performs any work-related act in the course of employment, regardless of whether the location is temporary or permanent, and includes the place of business or property of a third person while the employer has access to or control over the place of business or property for the purpose of carrying on the employer's usual trade, business, or occupation. The sign must be provided by the department, distributed through insurers or directly by the department, and posted by employers in accordance with rules adopted by the department. An employer who purposely or knowingly fails to post a sign as provided in this subsection is subject to a $50 fine for each citation."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 16, 2009

CHAPTER NO. 235

[HB 380]

AN ACT ALLOWING THE PURCHASER OF A MOTOR VEHICLE SOLD WITHOUT A MANUFACTURER'S CERTIFICATE OF ORIGIN TO TITLE THE VEHICLE UPON PURCHASING A SURETY BOND, EQUIPPING THE MOTOR VEHICLE WITH CERTAIN REQUIRED EQUIPMENT, AND OBTAINING A LAW ENFORCEMENT INSPECTION; AMENDING SECTION 61-3-208, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-3-208, MCA, is amended to read:

"61-3-208. Affidavit and bond for certificate of title. (1) If an applicant for a certificate of title cannot provide the department with the certificate of title that assigns the prior owner's interest in the motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile to the applicant, the department may issue a certificate of title if subsection (2) is complied with.

(2) (a) The applicant shall submit an affidavit in a form prescribed by the department that must be signed and sworn to before an officer authorized to administer oaths and affirmations. The affidavit must accompany the application for the certificate of title and must:

(i) include the facts and circumstances through which the applicant acquired ownership and possession of the motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile;

(ii) disclose security interests, liens, or encumbrances that are known to the applicant and that are outstanding against the motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile;

(iii) state that the applicant has the right to have a certificate of title issued.

(b) The application must satisfy one of the following conditions:

(i) The vehicle for which the application is being made must be a camper, off-highway vehicle, motorboat, personal watercraft, sailboat 12 feet in length or longer, or snowmobile, and the loss of the certificate of title must be established by the applicant to the department's satisfaction.

(ii) If application is being made for a certificate of title to a motor vehicle, trailer, semitrailer, or pole trailer with a value of $500 or less, the applicant shall establish the loss of the certificate of title to the department's satisfaction and either provide evidence of the average trade-in or wholesale value of the motor vehicle, trailer, semitrailer, or pole trailer as determined by the applicable national appraisal guide for the vehicle as of January 1 for the year in which the application is made or, if a national appraisal guide is not available for a motor vehicle, trailer, semitrailer, or pole trailer, the applicant shall certify that the value of the motor vehicle, trailer, semitrailer, or pole trailer is $500 or less.

(iii) If application is being made for a motor vehicle, trailer, semitrailer, or pole trailer with a value that exceeds $500, the applicant shall provide a bond, in a form prescribed by the department, issued by a surety company authorized to do business in this state, in an amount equal to the value of the motor vehicle, trailer, semitrailer, or pole trailer for which the application is being made as

determined by the applicant, based on information from the applicable national appraisal guide for the motor vehicle, trailer, semitrailer, or pole trailer as of January 1 for the year in which the application is made or, if a national appraisal guide is not available for a motor vehicle, trailer, semitrailer, or pole trailer, according to the applicant's knowledge and belief. The bond is conditioned to indemnify a prior owner, lienholder, subsequent purchaser, secured creditor, or encumbrancer of the motor vehicle, trailer, semitrailer, or pole trailer and any respective successors in interest against expenses, losses, or damages, including reasonable attorney fees, caused by the issuance of the certificate of title or by a defect in or undisclosed security interest upon the right, title, and interest of the applicant in the motor vehicle, trailer, semitrailer, or pole trailer.

(iv) If the application is being made for a motor vehicle sold without a manufacturer's certificate of origin, the applicant shall:

(A) purchase and install all equipment required for the motor vehicle pursuant to Title 61, chapter 9, part 2;

(B) obtain an inspection by a law enforcement agent to verify that all required equipment is present and operational;

(C) provide a bond, in a form prescribed by the department, issued by a surety company authorized to do business in this state, in an amount equal to the full retail price of the motor vehicle for which the application is being made. The bond is conditioned to indemnify a prior owner, lienholder, subsequent purchaser, secured creditor, or encumbrancer of the motor vehicle and any respective successors in interest against expenses, losses, or damages, including reasonable attorney fees, caused by the issuance of the certificate of title or by a defect in or undisclosed security interest upon the right, title, and interest of the applicant in the motor vehicle.

(3) Any interested person has a right of action to recover on the bond furnished under this section for a breach of its conditions, but the aggregate liability of the surety to all persons may not exceed the amount of the bond.

(4) Unless the department has been notified of a pending action to recover the bond furnished under this section, the department shall return the bond at the earlier of:

(a) 3 years from the date of issuance of the certificate of title; or

(b) the date of surrender of the valid certificate of title to the department if the motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile is no longer required to have a certificate of title in this state."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 16, 2009

CHAPTER NO. 236

[HB 477]

AN ACT ADOPTING THE UNIFORM ADULT GUARDIANSHIP AND PROTECTIVE PROCEEDINGS JURISDICTIONS ACT; AMENDING SECTIONS 72-5-102 AND 72-5-304, MCA; AND REPEALING SECTIONS 72-5-232 AND 72-5-323, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Short title. [Sections 1 through 22] may be cited as the "Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act".

Section 2. Definitions. In [sections 1 through 22]:

(1) "Adult" means an individual who has attained 18 years of age.

(2) "Conservator" means a person appointed by the court to administer the property of an adult, including a person appointed under 53-20-141, 53-21-141, or Title 72, chapter 5, part 4.

(3) "Guardian" means a person appointed by the court to make decisions regarding the person of an adult, including a person appointed under Title 72, chapter 5, part 3.

(4) "Guardianship order" means an order appointing a guardian.

(5) "Guardianship proceeding" means a judicial proceeding in which an order for the appointment of a guardian is sought or has been issued.

(6) "Incapacitated person" means an adult for whom a guardian has been appointed.

(7) "Party" means the respondent, petitioner, guardian, conservator, or any other person allowed by the court to participate in a guardianship or protective proceeding.

(8) "Person", except in the term incapacitated person or protected person, means an individual, a corporation, a business trust, an estate, a trust, a partnership, a limited liability company, an association, a joint venture, a public corporation, a government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(9) "Protected person" means an adult for whom a protective order has been issued.

(10) "Protective order" means an order appointing a conservator or other order related to management of an adult's property.

(11) "Protective proceeding" means a judicial proceeding in which a protective order is sought or has been issued.

(12) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(13) "Respondent" means an adult for whom a protective order or the appointment of a guardian is sought.

(14) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, a federally recognized Indian tribe, or any territory or insular possession subject to the jurisdiction of the United States.

Section 3. International application. A court of this state may treat a foreign country as if it were a state for the purpose of applying [sections 1 through 17, 21, and 22].

Section 4. Communication between courts. (1) A court of this state may communicate with a court in another state concerning a proceeding arising under [sections 1 through 22]. The court may allow the parties to participate in the communication. Except as otherwise provided in subsection (2), the court shall make a record of the communication. The record may be limited to the fact that the communication occurred.

(2) Courts may communicate concerning schedules, calendars, court records, and other administrative matters without making a record.

Section 5. Cooperation between courts. (1) In a guardianship or protective proceeding in this state, a court of this state may request the appropriate court of another state to do any of the following:

(a) hold an evidentiary hearing;

(b) order a person in that state to produce evidence or give testimony pursuant to procedures of that state;

(c) order that an evaluation or assessment be made of the respondent;

(d) order any appropriate investigation of a person involved in a proceeding;

(e) forward to the court of this state a certified copy of the transcript or other record of a hearing under subsection (1)(a) or any other proceeding, any evidence otherwise produced under subsection (1)(b), and any evaluation or assessment prepared in compliance with an order under subsection (1)(c) or (1)(d);

(f) issue any order necessary to ensure the appearance in the proceeding of a person whose presence is necessary for the court to make a determination, including the respondent or the incapacitated or protected person;

(g) issue an order authorizing the release of medical, financial, criminal, or other relevant information in that state, including protected health information as defined in 45 C.F.R. 164.504.

(2) If a court of another state in which a guardianship or protective proceeding is pending requests assistance of the kind provided in subsection (1), a court of this state has jurisdiction for the limited purpose of granting the request or making reasonable efforts to comply with the request.

Section 6. Taking testimony in another state. (1) In a guardianship or protective proceeding, in addition to other procedures that may be available, testimony of a witness who is located in another state may be offered by deposition or other means allowable in this state for testimony taken in another state. The court on its own motion may order that the testimony of a witness be taken in another state and may prescribe the manner in which and the terms upon which the testimony is to be taken.

(2) In a guardianship or protective proceeding, a court in this state may permit a witness located in another state to be deposed or to testify by telephone or audiovisual or other electronic means. A court of this state shall cooperate with the court of the other state in designating an appropriate location for the deposition or testimony.

(3) Documentary evidence transmitted from another state to a court of this state by technological means that do not produce an original writing may not be excluded from evidence on an objection based on the best evidence rule.

Section 7. Definitions — significant connection factors. (1) In [sections 7 through 15]:

(a) "Emergency" means a circumstance that likely will result in substantial harm to a respondent's health, safety, or welfare and for which the appointment of a guardian is necessary because no other person has authority and is willing to act on the respondent's behalf.

(b) "Home state" means the state in which the respondent was physically present, including any period of temporary absence, for at least 6 consecutive months immediately before the filing of a petition for a protective order or the

appointment of a guardian, or if none, the state in which the respondent was physically present, including any period of temporary absence, for at least 6 consecutive months ending within the 6 months prior to the filing of the petition.

(c) "Significant-connection state" means a state, other than the home state, with which a respondent has a significant connection other than mere physical presence and in which substantial evidence concerning the respondent is available.

(2) In determining under [sections 9 and 16(5)] whether a respondent has a significant connection with a particular state, the court shall consider:

(a) the location of the respondent's family and other persons required to be notified of the guardianship or protective proceeding;

(b) the length of time the respondent at any time was physically present in the state and the duration of any absence;

(c) the location of the respondent's property; and

(d) the extent to which the respondent has ties to the state such as voting registration, state or local tax return filing, vehicle registration, driver's license, social relationship, and receipt of services.

Section 8. Exclusive basis. [Sections 7 through 15] provide the exclusive jurisdictional basis for a court of this state to appoint a guardian or issue a protective order for an adult.

Section 9. Jurisdiction. A court of this state has jurisdiction to appoint a guardian or issue a protective order for a respondent if:

(1) this state is the respondent's home state;

(2) on the date the petition is filed, this state is a significant-connection state and:

(a) the respondent does not have a home state or a court of the respondent's home state has declined to exercise jurisdiction because this state is a more appropriate forum; or

(b) the respondent has a home state, a petition for an appointment or order is not pending in a court of that state or another significant-connection state, and before the court makes the appointment or issues the order:

(i) a petition for an appointment or order is not filed in the respondent's home state;

(ii) an objection to the court's jurisdiction is not filed by a person required to be notified of the proceeding; and

(iii) the court in this state concludes that it is an appropriate forum under the factors set forth in [section 12];

(3) this state does not have jurisdiction under either subsection (1) or (2), the respondent's home state and all significant-connection states have declined to exercise jurisdiction because this state is the more appropriate forum, and jurisdiction in this state is consistent with the constitutions of this state and the United States; or

(4) the requirements for special jurisdiction under [section 10] are met.

Section 10. Special jurisdiction. (1) A court of this state lacking jurisdiction under [section 9(1) through (3)] has special jurisdiction to do any of the following:

(a) appoint a guardian in an emergency for a term not exceeding 90 days for a respondent who is physically present in this state;

(b) issue a protective order with respect to real or tangible personal property located in this state;

(c) appoint a guardian or conservator for an incapacitated or protected person for whom a provisional order to transfer the proceeding from another state has been issued under procedures similar to [section 16].

(2) If a petition for the appointment of a guardian in an emergency is brought in this state and this state was not the respondent's home state on the date the petition was filed, the court shall dismiss the proceeding at the request of the court of the home state, if any, whether dismissal is requested before or after the emergency appointment.

Section 11. Exclusive and continuing jurisdiction. Except as otherwise provided in [section 10], a court that has appointed a guardian or issued a protective order consistent with [sections 1 through 22] has exclusive and continuing jurisdiction over the proceeding until it is terminated by the court or the appointment or order expires by its own terms.

Section 12. Appropriate forum. (1) A court of this state having jurisdiction under [section 9] to appoint a guardian or issue a protective order may decline to exercise its jurisdiction if it determines at any time that a court of another state is a more appropriate forum.

(2) If a court of this state declines to exercise its jurisdiction under subsection (1), it shall either dismiss or stay the proceeding. The court may impose any condition the court considers just and proper, including the condition that a petition for the appointment of a guardian or issuance of a protective order be filed promptly in another state.

(3) In determining whether it is an appropriate forum, the court shall consider all relevant factors, including:

(a) any expressed preference of the respondent;

(b) whether abuse, neglect, or exploitation of the respondent has occurred or is likely to occur and which state could best protect the respondent from the abuse, neglect, or exploitation;

(c) the length of time the respondent was physically present in or was a legal resident of this or another state;

(d) the distance of the respondent from the court in each state;

(e) the financial circumstances of the respondent's estate;

(f) the nature and location of the evidence;

(g) the ability of the court in each state to decide the issue expeditiously and the procedures necessary to present evidence;

(h) the familiarity of the court of each state with the facts and issues in the proceeding; and

(i) if an appointment were made, the court's ability to monitor the conduct of the guardian or conservator.

Section 13. Jurisdiction declined by reason of conduct. (1) If at any time a court of this state determines that it acquired jurisdiction to appoint a guardian or issue a protective order because of unjustifiable conduct, the court may:

(a) decline to exercise jurisdiction;

(b) exercise jurisdiction for the limited purpose of fashioning an appropriate remedy to ensure the health, safety, and welfare of the respondent or the protection of the respondent's property or prevent a repetition of the unjustifiable conduct, including staying the proceeding until a petition for the appointment of a guardian or issuance of a protective order is filed in a court of another state having jurisdiction; or

(c) continue to exercise jurisdiction after considering:

(i) the extent to which the respondent and all persons required to be notified of the proceedings have acquiesced in the exercise of the court's jurisdiction;

(ii) whether it is a more appropriate forum than the court of any other state under the factors set forth in [section 12(3)]; and

(iii) whether the court of any other state would have jurisdiction under factual circumstances in substantial conformity with the jurisdictional standards of [section 9].

(2) If a court of this state determines that it acquired jurisdiction to appoint a guardian or issue a protective order because a party seeking to invoke its jurisdiction engaged in unjustifiable conduct, it may assess against that party necessary and reasonable expenses, including attorney fees, investigative fees, court costs, communication expenses, witness fees and expenses, and travel expenses. The court may not assess fees, costs, or expenses of any kind against this state or a governmental subdivision, agency, or instrumentality of this state unless authorized by law other than [sections 1 through 22].

Section 14. Notice of proceeding. If a petition for the appointment of a guardian or issuance of a protective order is brought in this state and this state was not the respondent's home state on the date the petition was filed, in addition to complying with the notice requirements of this state, notice of the petition must be given to those persons who would be entitled to notice of the petition if a proceeding were brought in the respondent's home state. The notice must be given in the same manner as notice is required to be given in this state.

Section 15. Proceedings in more than one state. Except for a petition for the appointment of a guardian in an emergency or issuance of a protective order limited to property located in this state under [section 10(1)(a) or (1)(b)], if a petition for the appointment of a guardian or issuance of a protective order is filed in this state and in another state and neither petition has been dismissed or withdrawn, the following rules apply:

(1) If the court in this state has jurisdiction under [section 9], it may proceed with the case unless a court in another state acquires jurisdiction under provisions similar to [section 9] before the appointment or issuance of the order.

(2) If the court in this state does not have jurisdiction under [section 9], whether at the time the petition is filed or at any time before the appointment or issuance of the order, the court shall stay the proceeding and communicate with the court in the other state. If the court in the other state has jurisdiction, the court in this state shall dismiss the petition unless the court in the other state determines that the court in this state is a more appropriate forum.

Section 16. Transfer of guardianship or conservatorship to another state. (1) A guardian or conservator appointed in this state may petition the court to transfer the guardianship or conservatorship to another state.

(2) Notice of a petition under subsection (1) must be given to the persons that would be entitled to notice of a petition in this state for the appointment of a guardian or conservator.

(3) On the court's own motion or on request of the guardian or conservator, the incapacitated or protected person, or other person required to be notified of the petition, the court shall hold a hearing on a petition filed pursuant to subsection (1).

(4) The court shall issue an order provisionally granting a petition to transfer a guardianship and shall direct the guardian to petition for guardianship in the other state if the court is satisfied that the guardianship will be accepted by the court in the other state and the court finds that:

(a) the incapacitated person is physically present in or is reasonably expected to move permanently to the other state;

(b) an objection to the transfer has not been made or, if an objection has been made, the objector has not established that the transfer would be contrary to the interests of the incapacitated person; and

(c) plans for care and services for the incapacitated person in the other state are reasonable and sufficient.

(5) The court shall issue a provisional order granting a petition to transfer a conservatorship and shall direct the conservator to petition for conservatorship in the other state if the court is satisfied that the conservatorship will be accepted by the court of the other state and the court finds that:

(a) the protected person is physically present in or is reasonably expected to move permanently to the other state or the protected person has a significant connection to the other state considering the factors in [section 7(2)];

(b) an objection to the transfer has not been made or, if an objection has been made, the objector has not established that the transfer would be contrary to the interests of the protected person; and

(c) adequate arrangements will be made for management of the protected person's property.

(6) The court shall issue a final order confirming the transfer and terminating the guardianship or conservatorship upon its receipt of:

(a) a provisional order accepting the proceeding from the court to which the proceeding is to be transferred that is issued under provisions similar to [section 17]; and

(b) the documents required to terminate a guardianship or conservatorship in this state.

Section 17. Accepting guardianship or conservatorship transferred from another state. (1) To confirm transfer of a guardianship or conservatorship transferred to this state under provisions similar to [section 16], the guardian or conservator shall petition the court in this state to accept the guardianship or conservatorship. The petition must include a certified copy of the other state's provisional order of transfer.

(2) Notice of a petition under subsection (1) must be given to those persons that would be entitled to notice if the petition were a petition for the appointment of a guardian or issuance of a protective order in both the transferring state and this state. The notice must be given in the same manner as notice is required to be given in this state.

(3) On the court's own motion or on request of the guardian or conservator, the incapacitated or protected person, or other person required to be notified of the proceeding, the court shall hold a hearing on a petition filed pursuant to subsection (1).

(4) The court shall issue an order provisionally granting a petition filed under subsection (1) unless:

(a) an objection is made and the objector establishes that transfer of the proceeding would be contrary to the interests of the incapacitated or protected person; or

(b) the guardian or conservator is ineligible for appointment in this state.

(5) The court shall issue a final order accepting the proceeding and appointing the guardian or conservator as guardian or conservator in this state upon its receipt from the court from which the proceeding is being transferred of a final order issued under provisions similar to [section 16] transferring the proceeding to this state.

(6) Not later than 90 days after issuance of a final order accepting transfer of a guardianship or conservatorship, the court shall determine whether the guardianship or conservatorship needs to be modified to conform to the law of this state.

(7) In granting a petition under this section, the court shall recognize a guardianship or conservatorship order from the other state, including the determination of the incapacitated or protected person's incapacity and the appointment of the guardian or conservator.

(8) The denial by a court of this state of a petition to accept a guardianship or conservatorship transferred from another state does not affect the ability of the guardian or conservator to seek appointment as guardian or conservator in this state under Title 72, chapter 5, part 3 or 4, if the court has jurisdiction to make an appointment other than by reason of the provisional order of transfer.

Section 18. Registration of guardianship orders. If a guardian has been appointed in another state and a petition for the appointment of a guardian is not pending in this state, the guardian appointed in the other state, after giving notice to the appointing court of an intent to register, may register the guardianship order in this state by filing as a foreign judgment in a court, in any appropriate county of this state, certified copies of the order and letters of office.

Section 19. Registration of protective orders. If a conservator has been appointed in another state and a petition for a protective order is not pending in this state, the conservator appointed in the other state, after giving notice to the appointing court of an intent to register, may register the protective order in this state by filing as a foreign judgment in a court of this state, in any county in which property belonging to the protected person is located, certified copies of the order and letters of office and of any bond.

Section 20. Effect of registration. (1) Upon registration of a guardianship or protective order from another state, the guardian or conservator may exercise in this state all powers authorized in the order of appointment except as prohibited under the laws of this state, including maintaining actions and proceedings in this state and, if the guardian or conservator is not a resident of this state, subject to any conditions imposed upon nonresident parties.

(2) A court of this state may grant any relief available under [sections 1 through 22] and other law of this state to enforce a registered order.

Section 21. Uniformity of application and construction. In applying and construing [sections 1 through 22], consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Section 22. Relation to electronic signatures in global and national commerce act. [Sections 1 through 22] modify, limit, and supersede the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001, et seq., but does not modify, limit, or supersede section 101(c) of that act, 15 U.S.C. 7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of that act, 15 U.S.C. 7003(b).

Section 23. Transitional provision. (1) [Sections 1 through 22] apply to guardianship and protective proceedings begun on or after [the effective date of this act].

(2) [Sections 1 through 6 and 16 through 22] apply to proceedings begun before [the effective date of this act], regardless of whether a guardianship or protective order has been issued.

Section 24. Section 72-5-102, MCA, is amended to read:

"72-5-102. ~~Jurisdiction of subject matter — consolidation~~ *Consolidation* of proceedings. ~~(1) The court has jurisdiction over protective proceedings and guardianship proceedings.~~

~~(2)~~ When both guardianship and protective proceedings as to the same person are commenced or pending in the same court, the proceedings may be consolidated."

Section 25. Section 72-5-304, MCA, is amended to read:

"72-5-304. Objection by alleged incapacitated person to testamentary appointment. Upon the filing in the court in which the will was probated or, in the case of a nontestamentary nominating instrument, in the court at the place where the incapacitated person resides or is present, of written objection to the appointment by the incapacitated person for whom a parental or spousal appointment of guardian has been made, the appointment is terminated. An objection does not prevent appointment by the court in a proper proceeding of the parental or spousal nominee or any other suitable person upon an adjudication of incapacity in proceedings under 72-5-305*, 72-5-306, 72-5-311* through *72-5-322, 72-5-324, and* 72-5-325."

Section 26. Repealer. Sections 72-5-232 and 72-5-323, MCA, are repealed.

Section 27. Codification instruction. [Sections 1 through 22] are intended to be codified as an integral part of Title 72, chapter 5, and the provisions of Title 72, chapter 5, apply to [sections 1 through 22].

Approved April 16, 2009

CHAPTER NO. 237

[HB 504]

AN ACT PROVIDING THAT A COURT MAY NOT GRANT A FULL GUARDIAN AUTHORITY TO CONSENT TO THE WITHHOLDING OR WITHDRAWAL OF LIFE-SUSTAINING TREATMENT IF IT CONFLICTS WITH THE WARD'S WISHES; DEFINING "SUBSTITUTED JUDGMENT"; AMENDING SECTIONS 72-5-101 AND 72-5-321, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 72-5-101, MCA, is amended to read:

"72-5-101. Definitions. Unless otherwise apparent from the context, in ~~this code~~ *chapters 1 through 5 and chapter 16, part 6*, the following definitions apply:

(1) "Incapacitated person" means any person who is impaired by reason of mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, or other cause*,* ~~(~~except minority~~)~~*,* to the extent that ~~he~~ *the person* lacks sufficient understanding or capacity to make or communicate responsible decisions concerning ~~his~~ *the* person or which cause has so impaired the person's judgment that ~~he~~ *the person* is incapable of realizing and making a rational decision with respect to ~~his~~ *the person's* need for treatment.

(2) "Protected person" means a minor or other person for whom a conservator has been appointed or other protective order has been made.

(3) "Protective proceeding" means a proceeding under the provisions of 72-5-409 to determine that a person cannot effectively manage or apply ~~his~~ *the person's* estate to necessary ends, either because ~~he~~ *the person* lacks the ability or is otherwise inconvenienced or because ~~he~~ *the person* is a minor, and to secure administration of ~~his~~ *the person's* estate by a conservator or other appropriate relief.

(4) "Substituted judgment" means the judgment that an incapacitated person would make if restored to capacity based upon:

(a) the person's present preference or, if the person is incapable of indicating the person's preference, the person's prior expressed preference;

(b) the person's personal, moral, and religious convictions;

(c) the person's relationship with family members;

(d) the consequences if the action proposed is not taken;

(e) the consequences if the action proposed is taken; and

(f) other relevant factors.

~~(4)~~*(5)* "Ward" means a person for whom a guardian has been appointed. A "minor ward" is a minor for whom a guardian has been appointed solely because of minority."

Section 2. Section 72-5-321, MCA, is amended to read:

"72-5-321. Powers and duties of guardian of incapacitated person. (1) The powers and duties of a limited guardian are those specified in the order appointing the guardian. The limited guardian is required to report the condition of the incapacitated person and of the estate that has been subject to the guardian's possession and control, as required by the court or by court rule.

(2) A full guardian of an incapacitated person has the same powers, rights, and duties respecting the ward that a parent has respecting an unemancipated minor child, except that a guardian is not liable to third persons for acts of the ward solely by reason of the parental relationship. In particular and without qualifying the foregoing, a full guardian has the following powers and duties, except as limited by order of the court:

(a) To the extent that it is consistent with the terms of any order by a court of competent jurisdiction relating to detention or commitment of the ward, the full guardian is entitled to custody of the person of the ward and may establish the ward's place of residence within or outside of this state.

(b) If entitled to custody of the ward, the full guardian shall make provision for the care, comfort, and maintenance of the ward and whenever appropriate arrange for the ward's training and education. Without regard to custodial rights of the ward's person, the full guardian shall take reasonable care of the ward's clothing, furniture, vehicles, and other personal effects and commence protective proceedings if other property of the ward is in need of protection.

(c) A full guardian may give any consents or approvals that may be necessary to enable the ward to receive medical or other professional care, counsel, treatment, or service. This subsection (2)(c) does not authorize a full guardian to consent to the withholding or withdrawal of life-sustaining treatment or to a do not resuscitate order if the full guardian does not have authority to consent pursuant to the Montana Rights of the Terminally Ill Act, Title 50, chapter 9, or to the do not resuscitate provisions of Title 50, chapter 10. A full guardian may petition the court for authority to consent to the withholding or withdrawal of life-sustaining treatment or to a do not resuscitate order. The court may *not* grant that authority ~~only upon finding that consent to the withholding or withdrawal of life-sustaining treatment or the do not resuscitate order is consistent~~ *if it conflicts* with the ward's wishes to the extent that those wishes can be determined. *To determine the ward's wishes, the court shall determine by a preponderance of evidence if the ward's substituted judgment, as applied to the ward's current circumstances, conflicts with the withholding or withdrawal of life-sustaining treatment or a do not resuscitate order.*

(d) If a conservator for the estate of the ward has not been appointed, a full guardian may:

(i) institute proceedings to compel any person under a duty to support the ward or to pay sums for the welfare of the ward to perform that person's duty;

(ii) receive money and tangible property deliverable to the ward and apply the money and property for support, care, and education of the ward. However, the full guardian may not use funds from the ward's estate for room and board that the full guardian, the full guardian's spouse, parent, or child has furnished the ward unless a charge for the service is approved by order of the court made upon notice to at least one of the next of kin of the incompetent ward, if notice is possible. The full guardian must exercise care to conserve any excess for the ward's needs.

(e) Unless waived by the court, a full guardian is required to report the condition of the ward and of the estate which has been subject to the full guardian's possession or control annually for the preceding year. A copy of the report must be served upon the ward's parent, child, or sibling if that person has made an effective request under 72-5-318.

(f) If a conservator has been appointed, all of the ward's estate received by the full guardian in excess of those funds expended to meet current expenses for support, care, and education of the ward must be paid to the conservator for management as provided in this chapter, and the full guardian must account to the conservator for funds expended.

(3) Upon failure, as determined by the clerk of court, of the guardian to file an annual report, the court shall order the guardian to file the report and give good cause for the guardian's failure to file a timely report.

(4) Any full guardian of one for whom a conservator also has been appointed shall control the custody and care of the ward. A limited guardian of a person for whom a conservator has been appointed shall control those aspects of the

custody and care of the ward over which the limited guardian is given authority by the order establishing the limited guardianship. The full guardian or limited guardian is entitled to receive reasonable sums for the guardian's services and for room and board furnished to the ward as agreed upon between the guardian and the conservator, provided the amounts agreed upon are reasonable under the circumstances. The full guardian or limited guardian authorized to oversee the incapacitated person's care may request the conservator to expend the ward's estate by payment to third persons or institutions for the ward's care and maintenance.

(5) A full guardian or limited guardian may not involuntarily commit for mental health treatment or for treatment of a developmental disability or for observation or evaluation a ward who is unwilling or unable to give informed consent to commitment, except as provided in 72-5-322, unless the procedures for involuntary commitment set forth in Title 53, chapters 20 and 21, are followed. This chapter does not abrogate any of the rights of mentally disabled persons provided for in Title 53, chapters 20 and 21.

(6) Upon the death of a full guardian's or limited guardian's ward, the full guardian or limited guardian, upon an order of the court and if there is no personal representative authorized to do so, may make necessary arrangements for the removal, transportation, and final disposition of the ward's physical remains, including burial, entombment, or cremation, and for the receipt and disposition of the ward's clothing, furniture, and other personal effects that may be in the possession of the person in charge of the ward's care, comfort, and maintenance at the time of the ward's death."

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 16, 2009

CHAPTER NO. 238

[HB 517]

AN ACT ESTABLISHING THE CRITICAL INCIDENT STRESS MANAGEMENT ACT; REQUIRING THAT CRITICAL INCIDENT MEETINGS BE CLOSED TO THE PUBLIC AND OTHERS; REQUIRING THAT CERTAIN INFORMATION PROVIDED DURING CRITICAL INCIDENT STRESS MANAGEMENT AND RESPONSE BE KEPT CONFIDENTIAL; PROVIDING DEFINITIONS; PROVIDING EXCEPTIONS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, it is in the public interest to promote the mental health and well-being of emergency responders and to protect their ability to cope with abnormally tragic events.

Be it enacted by the Legislature of the State of Montana:

Section 1. Short title. [Sections 1 through 5] may be cited as the "Critical Incident Stress Management Act".

Section 2. Policy. In order to promote the resiliency and well-being of Montana emergency service providers, it is the policy of the state of Montana to encourage the practice of critical incident stress management.

Section 3. Purpose. (1) It is the purpose of [sections 1 through 5] to recognize the importance of critical incident stress management and to protect the integrity of the critical incident stress management process.

(2) The legislature finds that, in some cases of dealing with extreme psychological stress or trauma that has resulted from a response to a critical incident, the privacy of the emergency service provider exceeds the merits of public disclosure.

Section 4. Definitions. As used in [sections 1 through 5], the following definitions apply:

(1) "Critical incident" means an event that results in acute or cumulative psychological stress or trauma to an emergency service provider as a result of response to the incident.

(2) "Critical incident stress" means an unusually strong emotional, cognitive, or physical reaction that has the potential to interfere with normal functioning and that results from the response to a critical incident. This may include but is not limited to physical and emotional illness, failure of usual coping mechanisms, loss of interest in the job, personality changes, or loss of ability to function.

(3) "Critical incident stress management" means a process of crisis intervention designed to assist emergency service personnel in coping with the psychological trauma resulting from response to a critical incident.

(4) "Critical incident stress management and response services" means consultation, counseling, debriefing, defusing, intervention services, management, prevention, and referral provided by a critical incident stress management team member to emergency service personnel.

(5) "Critical incident stress management team" means the group of one or more trained volunteers or paid professionals who offer critical incident stress management and response services following a critical incident.

(6) "Critical incident stress management team member" or "team member" means an individual specially trained to provide critical incident stress management and response services as a member of an organized team or emergency services provider agency.

(7) "Emergency service provider" or "emergency service personnel" means a law enforcement officer, firefighter, emergency medical service provider, dispatcher, rescue service provider, or other personnel who provide emergency response services.

Section 5. Critical incident meetings closed — confidentiality — exceptions. (1) To protect the privacy rights of an emergency service provider in receiving critical incident stress management and response services, critical incident stress management debriefing meetings and other critical incident stress management and response services meetings are closed to the general public and may be closed to anyone who was not directly involved in the critical incident that is the subject of the meeting.

(2) Any information divulged to the team during the provision of critical incident stress management and response services must be kept confidential and may not be disclosed to a third party or in a criminal, civil, or administrative proceeding, unless the merits of disclosure exceed the demands of an individual's privacy. Records kept by critical incident stress management team members are not subject to subpoena, discovery, or introduction into evidence in a criminal, civil, or administrative action.

(3) The confidentiality privilege provided in subsections (1) and (2) does not apply:

(a) for the appropriate referral to or consultation with other critical incident stress management team members or related qualified professionals;

(b) if the emergency service provider conveys that the provider is an imminent threat to the provider or anyone else or if the provider appears to be an imminent threat to the provider or anyone else;

(c) if the emergency services provider divulges information regarding a past, present, or future criminal act that does not involve the critical incident;

(d) if the emergency service provider or the provider's legal guardian gives consent;

(e) if the emergency service provider is deceased; or

(f) to the facts divulged by the emergency service provider concerning a person injured in a critical incident and the services and care provided to or withheld from that person by an emergency service provider.

Section 6. Codification instruction. [Sections 1 through 5] are intended to be codified as an integral part of Title 39, and the provisions of Title 39 apply to [sections 1 through 5].

Section 7. Effective date. [This act] is effective on passage and approval.

Approved April 16, 2009

CHAPTER NO. 239

[HB 529]

AN ACT REVISING ENVIRONMENTAL REVIEW LAWS RELATED TO ENERGY DEVELOPMENT PROJECTS; LIMITING THE SCOPE OF ENVIRONMENTAL REVIEW UNDER THE MONTANA ENVIRONMENTAL POLICY ACT FOR CERTAIN ENERGY DEVELOPMENT PROJECTS ON STATE LANDS; AMENDING SECTION 77-1-121, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Environmental review of energy development projects on state land. (1) Except as provided in subsection (2), the scope of any environmental review under Title 75, chapter 1, parts 1 and 2, for a proposed action on state land is limited to the impacts of the proposed action within the boundaries of the state land parcel or parcels in which the proposed state action is taking place if the:

(a) board or the department, pursuant to Title 77, is proposing a sale or exchange or to issue a right-of-way, easement, placement of improvement, lease, license, or permit or if the department or board is acting in response to an application for an authorization for a proposal; and

(b) state action is part of a larger energy development project that includes private or federal land that is not subject to permitting or certification under Title 75 or Title 82.

(2) If more than 33% of the total land area physically occupied by the proposed energy development project provided for in subsection (1) is state land, then the scope of the environmental review under Title 75, chapter 1, parts 1 and 2, for the proposed action must include the total land area, including federal and private land, that will be occupied by the proposed energy development project.

Section 2. Section 77-1-121, MCA, is amended to read:

"77-1-121. Environmental review compliance — exemptions. (1) Except as provided in *[section 1] and* subsection (2) *of this section*, the department and board are required to comply with the provisions of Title 75, chapter 1, parts 1 and 2, when implementing provisions within Title 77 only if the department is actively proposing ~~to issue~~ a sale~~,~~ *or* exchange~~,~~ *or to issue a* right-of-way, easement, placement of improvement, lease, license, or permit~~,~~ or is acting in response to an application for an authorization for ~~such~~ a proposal.

(2) The department and board are exempt from the provisions of Title 75, chapter 1, parts 1 and 2, when issuing any lease or license that expressly states that the lease or license is subject to further permitting under any of the provisions of Title 75 or 82.

(3) Except for rulemaking and as provided in subsection (1), the department and board are otherwise exempt from the provisions of Title 75, chapter 1, parts 1 and 2, when implementing provisions within Title 77, including but not limited to the issuance of lease renewals. The department and board do not have an obligation to comply with the provisions of Title 75, chapter 1, parts 1 and 2, when implementing provisions within Title 77 if the department or board chooses not to take any action, even though either may have the authority to take an action.

(4) The department and board are exempt from the provisions of Title 75, chapter 1, parts 1 and 2, when taking actions, including preparing plans or proposals, in relation to and in compliance with the following local government actions:

(a) development or adoption of a growth policy or a neighborhood plan pursuant to Title 76, chapter 1;

(b) development or adoption of zoning regulations;

(c) review of a proposed subdivision pursuant to Title 76, chapter 3;

(d) actions related to annexation;

(e) development or adoption of plans or reports on extension of services; and

(f) other actions that are related to local planning."

Section 3. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 77, chapter 1, part 1, and the provisions of Title 77, chapter 1, part 1, apply to [section 1].

Section 4. Effective date. [This act] is effective on passage and approval.

Section 5. Applicability. [This act] applies to environmental reviews pursuant to Title 75, chapter 1, part 2, initiated on or after [the effective date of this act].

Approved April 16, 2009

CHAPTER NO. 240

[HB 542]

AN ACT REVISING MOTORSPORTS MANUFACTURER UNFAIR TRADE PRACTICES LAW; REVISING DEFINITIONS; REVISING WHAT CONSTITUTES UNFAIR TRADE PRACTICES WITH RESPECT TO THE RELATIONSHIP BETWEEN MOTORSPORTS MANUFACTURERS AND MOTORSPORTS DEALERS; CLARIFYING INJUNCTION AND DAMAGES

PROVISIONS AND ELIMINATING THE VENUE REQUIREMENT WITH RESPECT TO THE PROPER PLACE TO BRING A CLAIM FOR AN UNFAIR TRADE PRACTICE BY A MOTORSPORTS MANUFACTURER; AMENDING SECTIONS 30-14-2501, 30-14-2502, AND 30-14-2503, MCA; AND PROVIDING EFFECTIVE DATES, AN APPLICABILITY DATE, AND A TERMINATION DATE.

WHEREAS, the Legislature finds and declares that the distribution and sale of motorsports vehicles in this state affects the general economy of the state and the public interest, safety, and welfare and that the maintenance of strong and sound motorsports dealerships is essential to provide continuing and necessary reliable services to the consuming public in this state and to provide stable employment to the citizens of this state; and

WHEREAS, the Legislature finds that there can be a substantial disparity in bargaining power between motorsports manufacturers and their motorsports dealers and that in order to promote the public interest and the public welfare and in the exercise of the state's police power, it is necessary to regulate the relationship between motorsports manufacturers and motorsports dealers doing business in this state, not only for the protection of motorsports dealers but also for the benefit of the public in ensuring the continued availability and servicing of motorsports vehicles sold to the public; and

WHEREAS, the Legislature recognizes it is in the best interest of motorsports manufacturers and motorsports dealers to conduct business with each other in a fair, efficient, and competitive manner, and the Legislature has determined that the public interest is best served by motorsports dealers being assured of the ability to manage their business enterprises without unreasonable interference by motorsports manufacturers.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 30-14-2501, MCA, is amended to read:

"30-14-2501. Definitions. As used in this part, the following definitions apply:

(1) "Actual price" means the price ~~to be~~ paid by ~~the~~ *a motorsports* dealer *to a motorsports manufacturer for a motorsports product* less any ~~incentive paid~~ *pecuniary benefit relating to a motorsports product paid or credited* by the *motorsports* manufacturer~~, whether paid~~ to the *motorsports* dealer or the ultimate purchaser of the motorsports ~~vehicle~~ *product*.

(2) "Confidential or proprietary information" means trade secrets as defined in 30-14-402 and includes business plans, marketing plans or strategies, customer lists, contracts, sales data, revenue, or other financial information.

~~(2)~~*(3)* "Control" or "controlling" means:

(a) the possession of, title to, or control of 10% or more of the voting equity interest in a person, whether directly or indirectly through a fiduciary, agent, or other intermediary; or

(b) the possession, direct or indirect, of the power to direct or cause the direction of the management or policies of a person, whether through the ownership of voting securities, through director control, by contract, or otherwise~~, except as expressly provided under the franchise agreement~~.

(4) "Department" means the department of justice created in 2-15-2001.

(5) "Fleet" means a group of 15 or more new motorsports vehicles that are sold or leased by a motorsports dealer at one time under a single purchase or lease agreement for use as part of a fleet.

~~(3) "Line-make" means a type of motorsports vehicle produced by a manufacturer.~~

(6) "Motorsports dealer" means a new motor vehicle dealer, as defined in 61-4-201, who sells motorsports vehicles.

(7) "Motorsports manufacturer" means a manufacturer, distributor, distributor branch, factory branch, or importer, as those terms are defined in 61-4-201, who sells motorsports vehicles to motorsports dealers within this state.

~~(4)~~*(8)* "Motorsports vehicle" means a personal watercraft as defined in 23-2-502, a snowmobile as defined in 23-2-601, a motorcycle as defined in 61-1-101, a motor-driven cycle as defined in 61-1-101, *an off-highway vehicle as defined in 61-1-101,* or a quadricycle as defined in 61-1-101.

~~(5)~~*(9)* "Operate" means to manage a *motorsports* dealership, whether directly or indirectly.

~~(6)~~*(10)* "Own" or "ownership" means to hold the beneficial ownership of 1% or more of any class of equity interest in a *motorsports* dealership, whether the interest is that of a shareholder, partner, limited liability company member, or otherwise. To hold an ownership interest means to have possession of, title to, or control of the ownership interest, whether directly or indirectly through a fiduciary, agent, or other intermediary.

~~(7)~~*(11)* "Person" has the meaning provided in 30-14-102."

Section 2. Section 30-14-2502, MCA, is amended to read:

"30-14-2502. Unfair trade practices — relationship between motorsports ~~vehicle~~ manufacturers and *motorsports* dealers. *(1)* In addition to the prohibited practices provided for in *30-14-103 and* 61-4-208 and notwithstanding the terms of a franchise agreement, a *motorsports* manufacturer~~, distributor, factory branch, or factory representative~~ or an agent, officer, parent company, wholly or partially owned subsidiary, affiliated entity, or other person controlled by or under common control with a *motorsports* manufacturer~~, distributor, factory branch, or factory representative~~ may not:

~~(1)~~*(a)* discriminate between *motorsports* dealers by*:*

(i) selling or offering to sell a like motorsports vehicle to one *motorsports* dealer at a lower actual price than the actual price offered to another *motorsports* dealer for the same model similarly equipped;

~~(2)~~*(ii)* ~~discriminate between dealers by~~ selling or offering to sell parts or accessories to one *motorsports* dealer at a lower actual price than the actual price offered to another *motorsports* dealer;

~~(3)~~*(iii)* ~~discriminate between dealers by~~ using a promotion plan, marketing plan, allocation plan, flooring assistance plan, or other similar device that results in a lower actual price on *motorsports* vehicles, parts, or accessories being charged to one *motorsports* dealer over another *motorsports* dealer; *or*

~~(4)~~*(iv)* ~~discriminate between dealers by adopting~~ *using* a method ~~or changing an existing method for the allocation~~ *of allocating*, scheduling, or ~~delivery of~~ *delivering* new motorsports vehicles, parts, or accessories to its *motorsports* dealers that is not fair, reasonable, and equitable. Upon the request of a *motorsports* dealer, a *motorsports* manufacturer shall disclose in writing ~~to the~~

~~dealer~~ the method by which new motorsports vehicles, parts, and accessories are allocated, scheduled, or delivered to its *motorsports* dealers handling the same line or make of vehicles.

~~(5)~~*(b)* give preferential treatment to some *motorsports* dealers over others by*:*

(i) refusing or failing to deliver *to any of its motorsports dealers*, in reasonable quantities and within a reasonable time after receipt of an order, ~~to a dealer holding a franchise for a line or make of motorsports vehicles sold or distributed by the manufacturer a new~~ *any motorsports* vehicle, parts, or accessories~~, if the motorsports vehicle, parts, or accessories~~ *that* are being delivered to other *motorsports* dealers*;*~~, or require~~

(ii) requiring a *motorsports* dealer to purchase unreasonable advertising displays or other materials*;* or

(iii) ~~unreasonably require~~ *requiring* a *motorsports* dealer to remodel or renovate existing facilities as a prerequisite to receiving a model or series of *motorsports* vehicles;

~~(6)~~*(c)* except as provided in 61-4-208(3)(b) or (3)(c), compete with a *motorsports* dealer by acting in the capacity of a *motorsports* dealer or by owning, operating, or controlling, whether directly or indirectly, a *motorsports* dealership in this state;

~~(7)~~*(d)* compete with a *motorsports* dealer by owning, operating, or controlling, whether directly or indirectly, a service facility in this state for the repair or maintenance of motorsports vehicles under the *motorsports* manufacturer's new motorsports vehicle warranty and extended warranty. However, a *motorsports* manufacturer may own or operate a service facility for the purpose of providing or performing maintenance, repair, or service work on motorsports vehicles that are owned by the *motorsports* manufacturer.

~~(8)~~*(e)* use confidential or proprietary information obtained from a *motorsports* dealer to unfairly compete with the *motorsports* dealer without the prior written consent of the *motorsports* dealer.*;* ~~For purposes of this subsection, "confidential or proprietary information" means trade secrets as defined in 30-14-402 and includes business plans, marketing plans or strategies, customer lists, contracts, sales data, revenue, or other financial information.~~

~~(9)~~*(f)* coerce, threaten, intimidate, or require, either directly or indirectly, a *motorsports* dealer to*:*

(i) accept, buy, or order any motorsports vehicle, part, accessory, or any other commodity or service not voluntarily ordered or requested*;* ~~or to~~

(ii) buy, order, or pay anything of value *other than the purchase price* ~~for the items~~ in order to obtain a motorsports vehicle, part, accessory, or other commodity that has been voluntarily ordered or requested;

~~(10)~~*(iii)* ~~coerce, threaten, intimidate, or require, either directly or indirectly, a dealer to~~ enter into any agreement that violates this chapter; *or*

(iv) order or accept delivery of a motorsports vehicle with special features, accessories, or equipment not included in the list price of the motorsports vehicle as advertised by the motorsports manufacturer, except items that:

(A) have been voluntarily requested or ordered by the motorsports dealer; or

(B) are required by law;

~~(11) require a change in capital structure or means of financing for the dealership if the dealer at all times meets the reasonable, written, and uniformly applied capital standards determined by the manufacturer;~~

~~(12)~~*(g) require a change or* prevent or attempt to prevent a *motorsports* dealer from making reasonable changes in the capital structure ~~of a dealership~~ or ~~the~~ means ~~by which the dealership is financed~~ *of financing for a motorsports dealership* if the *motorsports* dealer *at all times* meets ~~the~~ reasonable, written, and uniformly applied capital ~~requirements~~ *standards* determined by the *motorsports* manufacturer;

~~(13) unreasonably require the dealer to change the location or require any substantial alterations to the place of business;~~

~~(14) condition a renewal or extension of the franchise on the dealer's substantial renovation of the existing place of business or on the construction, purchase, acquisition, or re-lease of a new place of business unless written notice is first provided 180 days before the date of renewal or extension and the manufacturer demonstrates the reasonableness of the requested actions. The manufacturer shall agree to supply the dealer with an adequate quantity of motorsports vehicles, parts, and accessories to meet the sales level necessary to support the overhead resulting from substantial construction, acquisition, or lease of a new place of business.~~

~~(15) coerce, threaten, intimidate, or require, either directly or indirectly, a dealer to order or accept delivery of a motorsports vehicle with special features, accessories, or equipment not included in the list price of the vehicle as advertised by the manufacturer, except items:~~

~~(a) that have been voluntarily requested or ordered by the dealer; and~~

~~(b) required by law;~~

~~(16)~~*(h)* fail to hold harmless and indemnify a *motorsports* dealer against losses, including ~~lawsuits and court~~ *attorney fees and* costs *incurred by a motorsports dealer*, arising from:

~~(a)~~*(i) any lawsuit relating to* the manufacture or performance of a motorsports vehicle, part, or accessory if the lawsuit involves representations by the *motorsports* manufacturer ~~on~~ *relating to* the manufacture or performance of a motorsports vehicle*, part, or accessory if there is no allegation of* ~~without~~ negligence on the part of the *motorsports* dealer;

~~(b)~~*(ii)* damage to merchandise in transit when the *motorsports* manufacturer specifies the carrier;

~~(c)~~*(iii)* the *motorsports* manufacturer's failure to jointly defend product liability suits concerning ~~the~~ *a* motorsports vehicle, part, or accessory *that the motorsports manufacturer* provided to the *motorsports* dealer; or

~~(d)~~*(iv)* any other act performed by the *motorsports* manufacturer;

~~(17)~~*(i)* unfairly prevent or attempt to prevent a *motorsports* dealer from receiving reasonable compensation for the value of ~~a~~ motorsports ~~vehicle~~ *products*;

~~(18)~~*(j)* fail to pay to a *motorsports* dealer, within a reasonable time after receipt of a valid claim, a payment agreed to be made by the *motorsports* manufacturer ~~on grounds that a new motorsports vehicle or a prior year's model is in the dealer's inventory at the time of introduction of new model motorsports vehicles~~;

~~(19)~~*(k)* deny a *motorsports* dealer the right of free association with any other *motorsports* dealer for any lawful purpose;

~~(20)~~*(l)* charge increased prices without having given written notice to the *motorsports* dealer at least 15 days before the effective date of the price increases;

~~(21)~~*(m)* permit factory authorized warranty service to be performed upon motorsports vehicles or accessories by persons other than its ~~franchised~~ *motorsports* dealers;

~~(22)~~*(n)* require or coerce a *motorsports* dealer to sell, assign, or transfer a retail sales installment contract or require the *motorsports* dealer to act as an agent for ~~a~~ *the motorsports* manufacturer in the securing of a promissory note~~,~~ *and* a security agreement given in connection with the sale of a motorsports vehicle, or a policy of insurance for a motorsports vehicle~~. The manufacturer may not~~ *or* condition delivery of any motorsports vehicle, parts, or accessories upon the *motorsports* dealer's assignment, sale, or other transfer of sales installment contracts to specific finance companies~~.~~*;*

~~(23)~~*(o) except as provided in 61-4-141,* require or coerce a *motorsports* dealer to grant ~~a~~ *the motorsports* manufacturer a right of first refusal or other preference to purchase the *motorsports* dealer's ~~franchise~~ *dealership* or place of business, or both;

~~(24)~~*(p)* deny a *motorsports* dealer the right of lawfully selling or offering to sell motorsports vehicles *to customers who reside* in another country;

~~(25)~~*(q)* require a *motorsports* dealer to accept delivery of a number or percentage of motorsport vehicles during a specific period of a sales order;

~~(26) use a manufacturer order or allocation formula that is not based on actual local area sales and local area market data;~~

~~(27)~~*(r)* require a *motorsports* dealer to maintain an inventory in excess of the inventory needed for a period of 90 days; ~~or~~

(s) refuse to allocate, sell, or deliver motorsports vehicles, may not charge back or withhold payments or other things of value for which the motorsports dealer is otherwise eligible under a sales promotion, program, or contest, and may not prevent the motorsports dealer from participating in any promotion, program, or contest based on the motorsports dealer's selling of a motorsports vehicle to a customer who was present at the dealership if the motorsports dealer did not know or could not have reasonably known that the motorsports vehicle would be shipped to a foreign country. There is a rebuttable presumption that the motorsports dealer did not know or could not have reasonably known that the motorsports vehicle would be shipped to a foreign country if the motorsports vehicle is titled in the United States.

~~(28)~~*(t)* require that any arbitration proceedings or legal action between the parties take place in a venue other than the state of Montana.

(2) Subsection (1)(a) does not apply to a sale to a motorsports dealer for resale to a federal, state, or local governmental agency if:

(a) the motorsports vehicle will be sold or donated for use in a program of driver's education;

(b) the sale is made under a manufacturer's bona fide fleet vehicle discount program; or

(c) the sale is made under a volume discount program that is uniformly available to all the motorsports dealers of a motorsports manufacturer."

Section 3. Section 30-14-2502, MCA, is amended to read:

"30-14-2502. Unfair trade practices — relationship between motorsports ~~vehicle~~ manufacturers and *motorsports* dealers. *(1)* In addition to the prohibited practices provided for in *30-14-103 and* 61-4-208 and notwithstanding the terms of a franchise agreement, a *motorsports*

manufacturer~~, distributor, factory branch, or factory representative~~ or an agent, officer, parent company, wholly or partially owned subsidiary, affiliated entity, or other person controlled by or under common control with a *motorsports* manufacturer~~, distributor, factory branch, or factory representative~~ may not:

~~(1)~~*(a)* discriminate between *motorsports* dealers by*:*

(i) selling or offering to sell a like motorsports vehicle to one *motorsports* dealer at a lower actual price than the actual price offered to another *motorsports* dealer for the same model similarly equipped;

~~(2)~~*(ii)* ~~discriminate between dealers by~~ selling or offering to sell parts or accessories to one *motorsports* dealer at a lower actual price than the actual price offered to another *motorsports* dealer;

~~(3)~~*(iii)* ~~discriminate between dealers by~~ using a promotion plan, marketing plan, allocation plan, flooring assistance plan, or other similar device that results in a lower actual price on *motorsports* vehicles, parts, or accessories being charged to one *motorsports* dealer over another *motorsports* dealer; *or*

~~(4)~~*(iv)* ~~discriminate between dealers by adopting~~ *using* a method ~~or changing an existing method for the allocation~~ *of allocating*, scheduling, or ~~delivery of~~ *delivering* new motorsports vehicles, parts, or accessories to its *motorsports* dealers that is not fair, reasonable, and equitable. Upon the request of a *motorsports* dealer, a *motorsports* manufacturer shall disclose in writing ~~to the dealer~~ the method by which new motorsports vehicles, parts, and accessories are allocated, scheduled, or delivered to its *motorsports* dealers handling the same line or make of vehicles.

~~(5)~~*(b)* give preferential treatment to some *motorsports* dealers over others by*:*

(i) refusing or failing to deliver *to any of its motorsports dealers*, in reasonable quantities and within a reasonable time after receipt of an order, ~~to a dealer holding a franchise for a line or make of motorsports vehicles sold or distributed by the manufacturer a new~~ *any motorsports* vehicle, parts, or accessories~~, if the motorsports vehicle, parts, or accessories~~ *that* are being delivered to other *motorsports* dealers*;*~~, or require~~

(ii) requiring a *motorsports* dealer to purchase unreasonable advertising displays or other materials*;* or

(iii) ~~unreasonably require~~ *requiring* a *motorsports* dealer to remodel or renovate existing facilities as a prerequisite to receiving a model or series of *motorsports* vehicles;

~~(6)~~*(c)* except as provided in 61-4-208(3)(b) or (3)(c), compete with a *motorsports* dealer by acting in the capacity of a *motorsports* dealer or by owning, operating, or controlling, whether directly or indirectly, a *motorsports* dealership in this state;

~~(7)~~*(d)* compete with a *motorsports* dealer by owning, operating, or controlling, whether directly or indirectly, a service facility in this state for the repair or maintenance of motorsports vehicles under the *motorsports* manufacturer's new motorsports vehicle warranty and extended warranty. However, a *motorsports* manufacturer may own or operate a service facility for the purpose of providing or performing maintenance, repair, or service work on motorsports vehicles that are owned by the *motorsports* manufacturer.

~~(8)~~*(e)* use confidential or proprietary information obtained from a *motorsports* dealer to unfairly compete with the *motorsports* dealer without the

prior written consent of the *motorsports* dealer.*;* ~~For purposes of this subsection, "confidential or proprietary information" means trade secrets as defined in 30-14-402 and includes business plans, marketing plans or strategies, customer lists, contracts, sales data, revenue, or other financial information.~~

~~(9)~~*(f)* coerce, threaten, intimidate, or require, either directly or indirectly, a *motorsports* dealer to*:*

(i) accept, buy, or order any motorsports vehicle, part, accessory, or any other commodity or service not voluntarily ordered or requested*;* ~~or to~~

(ii) buy, order, or pay anything of value *other than the purchase price* ~~for the items~~ in order to obtain a motorsports vehicle, part, accessory, or other commodity that has been voluntarily ordered or requested;

~~(10)~~*(iii)* ~~coerce, threaten, intimidate, or require, either directly or indirectly, a dealer to~~ enter into any agreement that violates this chapter; *or*

(iv) order or accept delivery of a motorsports vehicle with special features, accessories, or equipment not included in the list price of the motorsports vehicle as advertised by the motorsports manufacturer, except items that:

(A) have been voluntarily requested or ordered by the motorsports dealer; or

(B) are required by law;

~~(11) require a change in capital structure or means of financing for the dealership if the dealer at all times meets the reasonable, written, and uniformly applied capital standards determined by the manufacturer;~~

~~(12)~~*(g) require a change or* prevent or attempt to prevent a *motorsports* dealer from making reasonable changes in the capital structure ~~of a dealership~~ or ~~the~~ means ~~by which the dealership is financed~~ *of financing for a motorsports dealership* if the *motorsports* dealer *at all times* meets ~~the~~ reasonable, written, and uniformly applied capital ~~requirements~~ *standards* determined by the *motorsports* manufacturer;

~~(13) unreasonably require the dealer to change the location or require any substantial alterations to the place of business;~~

~~(14) condition a renewal or extension of the franchise on the dealer's substantial renovation of the existing place of business or on the construction, purchase, acquisition, or re-lease of a new place of business unless written notice is first provided 180 days before the date of renewal or extension and the manufacturer demonstrates the reasonableness of the requested actions. The manufacturer shall agree to supply the dealer with an adequate quantity of motorsports vehicles, parts, and accessories to meet the sales level necessary to support the overhead resulting from substantial construction, acquisition, or lease of a new place of business.~~

~~(15) coerce, threaten, intimidate, or require, either directly or indirectly, a dealer to order or accept delivery of a motorsports vehicle with special features, accessories, or equipment not included in the list price of the vehicle as advertised by the manufacturer, except items:~~

~~(a) that have been voluntarily requested or ordered by the dealer; and~~

~~(b) required by law;~~

~~(16)~~*(h)* fail to hold harmless and indemnify a *motorsports* dealer against losses, including ~~lawsuits and court~~ *attorney fees and* costs *incurred by a motorsports dealer*, arising from:

~~(a)~~*(i) any lawsuit relating to* the manufacture or performance of a motorsports vehicle, part, or accessory if the lawsuit involves representations by the *motorsports* manufacturer ~~on~~ *relating to* the manufacture or performance of a motorsports vehicle*, part, or accessory if there is no allegation of* ~~without~~ negligence on the part of the *motorsports* dealer;

~~(b)~~*(ii)* damage to merchandise in transit when the *motorsports* manufacturer specifies the carrier;

~~(c)~~*(iii)* the *motorsports* manufacturer's failure to jointly defend product liability suits concerning ~~the~~ *a* motorsports vehicle, part, or accessory *that the motorsports manufacturer* provided to the *motorsports* dealer; or

~~(d)~~*(iv)* any other act performed by the *motorsports* manufacturer;

~~(17)~~*(i)* unfairly prevent or attempt to prevent a *motorsports* dealer from receiving reasonable compensation for the value of ~~a~~ motorsports ~~vehicle~~ *products*;

~~(18)~~*(j)* fail to pay to a *motorsports* dealer, within a reasonable time after receipt of a valid claim, a payment agreed to be made by the *motorsports* manufacturer ~~on grounds that a new motorsports vehicle or a prior year's model is in the dealer's inventory at the time of introduction of new model motorsports vehicles~~;

~~(19)~~*(k)* deny a *motorsports* dealer the right of free association with any other *motorsports* dealer for any lawful purpose;

~~(20)~~*(l)* charge increased prices without having given written notice to the *motorsports* dealer at least 15 days before the effective date of the price increases;

~~(21)~~*(m)* permit factory authorized warranty service to be performed upon motorsports vehicles or accessories by persons other than its ~~franchised~~ *motorsports* dealers;

~~(22)~~*(n)* require or coerce a *motorsports* dealer to sell, assign, or transfer a retail sales installment contract or require the *motorsports* dealer to act as an agent for ~~a~~ *the motorsports* manufacturer in the securing of a promissory note~~,~~ *and* a security agreement given in connection with the sale of a motorsports vehicle, or a policy of insurance for a motorsports vehicle~~. The manufacturer may not~~ *or* condition delivery of any motorsports vehicle, parts, or accessories upon the *motorsports* dealer's assignment, sale, or other transfer of sales installment contracts to specific finance companies~~.~~*;*

~~(23)~~*(o) except as provided in 61-4-141,* require or coerce a *motorsports* dealer to grant ~~a~~ *the motorsports* manufacturer a right of first refusal or other preference to purchase the *motorsports* dealer's ~~franchise~~ *dealership* or place of business, or both;

~~(24)~~*(p)* deny a *motorsports* dealer the right of lawfully selling or offering to sell motorsports vehicles *to customers who reside* in another country;

~~(25)~~*(q)* require a *motorsports* dealer to accept delivery of a number or percentage of motorsport vehicles during a specific period of a sales order;

~~(26) use a manufacturer order or allocation formula that is not based on actual local area sales and local area market data;~~

~~(27)~~*(r)* require a *motorsports* dealer to maintain an inventory in excess of the inventory needed for a period of 90 days; ~~or~~

~~(28)~~*(s)* require that any arbitration proceedings or legal action between the parties take place in a venue other than the state of Montana~~.~~*;*

(t) (i) offer a program where a Montana motorsports dealer would be eligible for a benefit or advantage that lowers the actual price of a motorsports vehicle, part, or accessory only if the motorsports dealer purchases from the motorsports manufacturer a quantity of motorsports vehicles, parts, or accessories as determined by the motorsports manufacturer unless:

(A) the motorsports dealer agrees in writing to the quantity of motorsports vehicles, parts, or accessories to be purchased as determined by the motorsports manufacturer; or

(B) the quantity determined by the motorsports manufacturer for each motorsports dealer is reasonable, fair, and equitable based upon the motorsports dealer's purchase history, the history of motorsports sales in the motorsports dealer's community, the motorsports dealer's present inventory of similar motorsports vehicles, parts, and accessories, the market conditions as of the effective date of the offer, and all other factors that are brought to the attention of the motorsports manufacturer by the motorsports dealer. For each offer to which this subsection (1)(t) applies the motorsports manufacturer shall, if requested, provide the motorsports dealer with a statement in writing specifying the sales goal or objective relating to the offer for each of the motorsports manufacturer's Montana motorsports dealers, identifying each factor that was considered in determining each Montana motorsports dealer's sales goal and objective and explaining how each factor was evaluated and applied in determining the sales goal or objective for each Montana motorsports dealer.

(ii) For the purposes of this subsection (1)(t) "community" has the meaning provided in 61-4-201.

(u) refuse to allocate, sell, or deliver motorsports vehicles, may not charge back or withhold payments or other things of value for which the motorsports dealer is otherwise eligible under a sales promotion, program, or contest, and may not prevent the motorsports dealer from participating in any promotion, program, or contest based on the motorsports dealer's selling of a motorsports vehicle to a customer who was present at the dealership if the motorsports dealer did not know or could not have reasonably known that the motorsports vehicle would be shipped to a foreign country. There is a rebuttable presumption that the motorsports dealer did not know or could not have reasonably known that the motorsports vehicle would be shipped to a foreign country if the motorsports vehicle is titled in the United States.

(2) (a) Subsection (1)(a) does not apply to a sale to a motorsports dealer for resale to a federal, state, or local governmental agency if:

(i) the motorsports vehicle will be sold or donated for use in a program of driver's education;

(ii) the sale is made under a manufacturer's bona fide fleet vehicle discount program; or

(iii) the sale is made under a volume discount program that is uniformly available to all the motorsports dealers of a motorsports manufacturer.

(b) Subsection (1)(a) does not apply to sales to a motorsports dealer pursuant to a motorsports manufacturer's promotional or incentive program under which eligibility for any benefit or advantage that would reduce the actual price of motorsports products to a motorsports dealer is determined based on the motorsports dealer meeting any sales goals or objectives if the motorsports dealer agrees in writing with the sales goals or objectives or the sales goals or objectives are reasonable, fair, and equitable and meet all of the requirements of subsection (1)(t)."

Section 4. Section 30-14-2503, MCA, is amended to read:

"30-14-2503. Injunction — damages — ~~venue~~. (1) A ~~person who is injured by a violation of 30-14-2502~~ *motorsports dealer* may maintain an action to enjoin ~~a~~ *the* continuance of ~~an~~ *any* act in violation of *the provisions of* 30-14-2502 and to recover damages. A court, upon finding that the ~~defendant~~ *motorsports manufacturer* is violating or has violated the provisions of 30-14-2502, shall enjoin the ~~defendant~~ *motorsports manufacturer* from continuing the violation. ~~It~~ *To obtain an injunction it* is not necessary *for the motorsports dealer* to allege or prove actual damages ~~to the plaintiff~~ *arising from the violation*.

(2) In addition to injunctive relief, ~~the plaintiff may~~ *any motorsports dealer who incurs pecuniary loss due to a violation of 30-14-2502 by a motorsports manufacturer is entitled to* recover ~~from the defendant~~ three times the ~~amount of actual damages sustained plus attorney fees and~~ *pecuniary loss together with* costs*,* ~~of suit~~ *including attorney fees*.

~~(3) The proper place for trial of an action based on a claim of a violation of 30-14-2502 is the district court for Lewis and Clark County or the county in which the alleged violation occurred.~~

(3) A violation of 30-14-2502 also constitutes a violation of 30-14-103, and the department may bring an action to restrain any unlawful act pursuant to the provisions of 30-14-111."

Section 5. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 6. Effective date — contingent effective date — contingent termination date. (1) Except as provided in subsections (2) and (3), [this act] is effective on passage and approval.

(2) [Section 3] is effective contingent upon a final court ruling that [section 2(1)(a)] is invalid or unconstitutional. If [section 2(1)(a)] is found to be invalid or unconstitutional the department of justice shall notify the code commissioner when the contingency has been met.

(3) [Section 2] terminates if [section 2(1)(a)] is found to be invalid or unconstitutional as provided for in subsection (2).

Section 7. Applicability. [This act] applies to motorsports manufacturers and motorsports dealer transactions that occur on or after [the effective date of this section].

Approved April 16, 2009

CHAPTER NO. 241

[HB 563]

AN ACT ESTABLISHING A PROCESS FOR A DISTRICT COURT TO RECOGNIZE A ROUTE OF A COUNTY ROAD AS THE LEGAL ROUTE IF CERTAIN CONDITIONS EXIST; AND AMENDING SECTIONS 7-14-2101 AND 60-1-201, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Recognition of county road route by district court. (1) The county commission or a directly affected person, if the person has appeared

before a regular meeting of the county commission to notify the commission of the person's intent, may request that a district court recognize a route of a county road that is maintained by the county and used by the public as the legal route if any of the following conditions exist:

(a) there is doubt about the legal establishment or evidence of establishment of the county road;

(b) the location of the county road cannot be accurately determined because of:

(i) numerous alterations to the road;

(ii) a defective survey of the road or adjacent property; or

(iii) loss or destruction of the original survey of the road; or

(c) the road as traveled and used for 10 years or more does not conform to the location of the road as described in county records.

(2) The county commission or the directly affected person requesting recognition of a route shall provide to the court:

(a) the reason for the request and the condition that exists;

(b) the location of the portion of the road that is the subject of the request;

(c) any maps or historical use information that may assist the court in determining whether or not to recognize a route; and

(d) any other information requested by the court.

(3) Upon receipt of a request and consideration of the information provided and any other information that the court considers appropriate, the court may, subject to subsection (4), recognize a route of a county road as the legal route. The route as recognized by the court is considered to be a county road.

(4) The court shall provide notice and the opportunity for a public hearing to affected landowners, the county commission, and directly affected persons before recognizing or declining to recognize a route of a county road as the legal route.

(5) This section does not apply to county roads established by prescriptive easement.

Section 2. Section 7-14-2101, MCA, is amended to read:

"7-14-2101. General powers of county relating to roads and bridges — definitions. (1) The board of county commissioners, under the limitations and restrictions that are prescribed by law, may:

(a) (i) lay out, maintain, control, and manage county roads and bridges within the county;

(ii) subject to 15-10-420, levy taxes for the laying out, maintenance, control, and management of the county roads and bridges within the county as provided by law;

(b) (i) in the exercise of sound discretion, jointly with other counties, lay out, maintain, control, manage, and improve county roads and bridges in adjacent counties, wholly or in part as agreed upon between the boards of the counties concerned;

(ii) subject to 15-10-420, levy taxes for the laying out, maintenance, control, management, and improvement of county roads and bridges in adjacent counties or shared jointly with other counties, as agreed upon between the boards of the counties concerned and as provided by law;

(c) (i) enter into agreements for adjusted annual contributions over not more than 6 years toward the cost of joint highway or bridge construction projects entered into in cooperation with other counties, the state, or the United States;

(ii) subject to 15-10-420, place a joint project in the budget and levy taxes for a joint project as provided by law.

(2) Unless the context requires otherwise, for the purposes of this chapter, the following definitions apply:

(a) "Bridge" includes rights-of-way or other interest in land, abutments, superstructures, piers, and approaches except dirt fills.

(b) "County road" means:

(i) a road that is petitioned by freeholders, approved by resolution, and opened by a board of county commissioners in accordance with this title;

(ii) a road that is dedicated for public use in the county and approved by resolution by a board of county commissioners;

(iii) a road that has been acquired by eminent domain pursuant to Title 70, chapter 30, and accepted by resolution as a county road by a board of county commissioners; ~~or~~

(iv) a road that has been gained by the county in an exchange with the state as provided in 60-4-201*; or*

(v) a road that has been the subject of a request under [section 1] and for which a legal route has been recognized by a district court as provided in [section 1].

(3) (a) Following a public hearing, a board of county commissioners may accept by resolution a road that has not previously been considered a county road but that has been laid out, constructed, and maintained with state department of transportation or county funds.

(b) A survey is not required of an existing county road that is accepted by resolution by a board of county commissioners.

(c) A road that is abandoned by the state may be designated as a county road upon the acceptance and approval by resolution of a board of county commissioners."

Section 3. Section 60-1-201, MCA, is amended to read:

"60-1-201. Classification — highways and roads. (1) Public highways of this state are classified as follows:

(a) federal-aid highways;

(b) state highways;

(c) county roads;

(d) city streets.

(2) All highways that are not designated, selected, or established by the commission or constructed or maintained by the department may be designated as county roads or city streets upon the acceptance of the county or city.

(3) County roads are those *that are* opened, established, constructed, maintained, changed, abandoned, or discontinued by a county in accordance with Title 7, chapter 14*, or that have been the subject of a request under [section 1] and for which a legal route has been recognized by a district court as provided in [section 1].*

(4) City streets are those public highways under the jurisdiction of municipal officials."

Section 4. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 7, chapter 14, part 26, and the provisions of Title 7, chapter 14, part 26, apply to [section 1].

Approved April 16, 2009

CHAPTER NO. 242

[HB 591]

AN ACT PROVIDING THAT ONE MEMBER OF THE BOARD OF PARDONS AND PAROLE MUST BE AN ENROLLED MEMBER OF A STATE-RECOGNIZED OR FEDERALLY RECOGNIZED INDIAN TRIBE LOCATED WITHIN THE BOUNDARIES OF THE STATE OF MONTANA; AMENDING SECTION 2-15-2302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-2302, MCA, is amended to read:

"2-15-2302. Board of pardons and parole — composition — allocation — quasi-judicial. (1) There is a board of pardons and parole.

(2) The board consists of three members and four auxiliary members, each of whom must have knowledge of American Indian culture and problems gained through training as required by rules adopted by the board. *One member must be an enrolled member of a state-recognized or federally recognized Indian tribe located within the boundaries of the state of Montana. The tribal member may not be required to hear and act on all American Indian applications before the board.* Members of the board, including the auxiliary members, must possess academic training that has qualified them for professional practice in a field such as criminology, education, psychiatry, psychology, law, social work, sociology, or guidance and counseling. Related work experience in the areas listed may be substituted for these educational requirements.

(3) An auxiliary member shall attend any meeting that a regular board member is unable to attend, and at that time, the auxiliary member has all the rights and responsibilities of a regular board member.

(4) Board members and auxiliary members shall serve staggered 4-year terms. The governor shall appoint one member and two auxiliary members in January of the first year of the governor's term, one member and one auxiliary member in January of the second year of the governor's term, and one member and one auxiliary member in January of the third year of the governor's term.

(5) ~~The~~ *The* terms of board members and auxiliary members run with the position, and if a vacancy occurs, the governor shall appoint a person to fill the unexpired portion of the term.

(6) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121. However, the board may hire its own personnel, and 2-15-121(2)(d) does not apply.

(7) The board, including the auxiliary members, is designated as a quasi-judicial board for purposes of 2-15-124, except board members must be compensated as provided by legislative appropriation and the terms of board members must be staggered as provided in subsection (4).

(8) The provisions of 2-15-124(2) do not apply to the board."

Section 2. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

Section 3. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 4. Effective date. [This act] is effective on passage and approval.

Approved April 16, 2009

CHAPTER NO. 243

[SB 68]

AN ACT CREATING AN EXCEPTION TO THE UNLAWFUL DISPOSITION OF DEAD ANIMALS FOR LICENSED COMPOSTING FACILITIES; AMENDING SECTION 75-10-213, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-10-213, MCA, is amended to read:

"75-10-213. Unlawful disposition of dead animals — exception. It is unlawful to:

(1) place all or any part of a dead animal in any lake, river, creek, pond, reservoir, road, street, alley, lot, or field;

(2) place all or any part of a dead animal within 1 mile of the residence of any person unless the dead animal or part of a dead animal is*:*

(a) burned or buried at least 2 feet underground; or

(b) placed in an animal composting facility that is licensed under Title 75, chapter 10, part 2; or

(3) being the owner, permit all or any part of a dead animal to remain in the places specified in subsections (1) and (2) of this section except as provided in subsection (2) of this section."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 16, 2009

CHAPTER NO. 244

[SB 136]

AN ACT CLARIFYING THE EXCEPTION TO AN ORDER ESTABLISHING TEMPORARY OR PERMANENT OIL AND GAS WELL SPACING UNITS; AMENDING SECTION 82-11-201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 82-11-201, MCA, is amended to read:

"82-11-201. Establishment of well spacing units. (1) To prevent or to assist in preventing waste of oil or gas prohibited by this chapter, to avoid the drilling of unnecessary wells, or to protect correlative rights, the board, upon its

own motion or upon application of an interested person, after hearing, may by order establish:

(a) temporary spacing units on a statewide basis or for defined areas within the state for oil, gas, or oil and gas wells drilled to varying depths; and

(b) permanent spacing units for a discovered pool, except in those pools that, prior to April 1, 1953, have been developed to such an extent that it would be impracticable or unreasonable to establish spacing units at the existing stage of development.

(2) The size and the shape of temporary spacing units must be established to promote the orderly development of unproven areas and must be uniform throughout the surface area and depths covered by the unit. A temporary spacing unit must remain in effect until superseded by an order issued by the board or until a permanent spacing unit is established.

(3) Permanent spacing units do not need to be uniform in size or shape but must result in the efficient and economic development of the pool as a whole. In establishing permanent spacing units, the acreage to be embraced within a unit and the shape of the unit must be determined by the board based upon evidence introduced at the hearing. The board may divide a pool into zones and establish spacing units for each zone if necessary for a purpose mentioned in subsection (1) or to facilitate production through the use of innovative drilling and completion methods. The spacing units within the zone may differ in size and shape from spacing units in any other zone but may not be smaller than the maximum area that can be efficiently and economically drained by one well.

(4) An order establishing temporary or permanent spacing units may permit only one well to be drilled and produced from the common source of supply on any spacing unit~~,~~. ~~and the~~ *The* well must be drilled at a location authorized by the order, with an exception as may be reasonably necessary. The *well location* exception may be included *in the request to establish permanent or temporary spacing units* if, upon application, notice, and hearing, the board finds that the spacing unit is located on the edge of a pool or field and adjacent to a producing unit or, for some other reason, that the requirement to drill the well at the authorized location on the spacing unit would be inequitable or unreasonable. The board shall take action to offset any advantage that the person securing the exception may have over other producers by reason of drilling the well as an exception. The order must include provisions to prevent production from the spacing unit from being more than its just and equitable share of the producible oil and gas in the pool.

(5) An order establishing temporary or permanent spacing units for a pool must cover all lands determined or believed to be underlaid by the pool and may be modified after notice and hearing by the board to include additional areas subsequently determined to be underlaid by the pool.

(6) The board, upon application, notice, and hearing, may increase or decrease the size of a temporary or permanent spacing unit or permit the drilling of additional wells in a spacing unit for a purpose mentioned in subsection (1)."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 16, 2009

CHAPTER NO. 245

[SB 200]

AN ACT BANNING THE SALE OF PHOSPHORUS-CONTAINING HOUSEHOLD CLEANING PRODUCTS IN CERTAIN COUNTIES FOR WATER QUALITY REASONS; PROVIDING FOR ENFORCEMENT; AMENDING SECTION 75-7-411, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Short title. [Sections 1 through 5] may be cited as the "Phosphorus Ban Act".

Section 2. Findings — purpose. (1) The legislature finds that:

(a) high levels of phosphorus in water bodies results in heavy growths of algae;

(b) excessive algae growth degrades aquatic habitats, decreases diversity in aquatic invertebrate communities, and places stress on native fish populations;

(c) municipal wastewater treatment plants and individual septic systems are sources of phosphorus, an ingredient in many household cleaning products; and

(d) Montana has adopted numeric water quality standards for phosphorus.

(2) Consistent with the policy established in 75-5-101 to conserve water by protecting, maintaining, and improving the quality and potability of water for public water supplies, wildlife, fish and aquatic life, agriculture, industry, recreation, and other beneficial uses, the purpose of [sections 1 through 5] is to limit the introduction of phosphorus into water bodies from municipal point source discharges or the cumulative effect of individual septic system discharges.

Section 3. Definitions. As used in [sections 1 through 5], the following definitions apply:

(1) "Commercial establishment" means any premises used for the purpose of carrying on or exercising any trade, business, profession, vocation, or commercial or charitable activity, including but not limited to laundries, hospitals, hotels, motels, and food or restaurant establishments.

(2) (a) "Household cleaning product" means any product, including but not limited to soaps and detergents, used for domestic cleaning purposes, which include but are not limited to the cleaning of fabrics, dishes, food utensils, and household premises.

(b) The term does not mean food, drugs, cosmetics, or personal care items such as toothpaste, shampoo, or hand soap.

(3) "Phosphorus" means the element phosphorus as indicated in the periodic table of elements.

(4) "Trace quantity" means an incidental amount of phosphorus that is not part of a household cleaning product formulation, that is present only as a consequence of manufacturing, and that does not exceed 0.5% of the content of the product by weight expressed as the element phosphorus.

Section 4. Applicability to counties — notification. (1) The provisions of [section 5] apply to counties where one or more surface water bodies exceed

the numeric algal biomass or total phosphorus standards adopted pursuant to 75-5-301.

(2) The department shall notify counties that meet the provisions of subsection (1) that they are subject to the provisions of [section 5].

(3) The governing body of a county that does not meet the provisions of subsection (1) may adopt an ordinance pursuant to Title 75, chapter 7, part 4.

Section 5. Prohibitions and exceptions. (1) In counties that meet the requirements of [section 4], a household cleaning product may not be distributed, sold, offered, or exposed for sale if it contains phosphorus in concentrations in excess of a trace quantity.

(2) The following cleaning agents and other products containing phosphorus are exempt from the provisions of this section:

(a) those used in food or beverage processing;

(b) those used by health care services and facilities;

(c) those used by institutional or commercial establishments;

(d) those used for industrial processes; and

(e) those used for agricultural operations.

Section 6. Section 75-7-411, MCA, is amended to read:

"75-7-411. County regulation of sale and distribution of certain phosphorus compounds. (1) The governing body of a county may adopt, through the procedures of 7-5-103 through 7-5-107, an ordinance prohibiting the sale and distribution of certain phosphorus compounds used for cleaning purposes. The governing body may rescind, modify, or repeal the ordinance at any time by use of the same procedures.

(2) An ordinance prohibiting the sale and distribution of certain phosphorus compounds used for cleaning purposes may be adopted only if:

(a) the county has a natural lake, whether or not it is fitted with a dam, for which the department of environmental quality or the governing body of the county has determined that eutrophication enhanced by human activity is occurring and that phosphorus is the limiting factor; and

(b) other efforts are being undertaken in the county to reduce the amount of phosphorus entering surface waters.

(3) Any ordinance adopted by the governing body of a county must contain standards designated by the model rule adopted by the department of environmental quality under 75-7-401 and in effect at the time of the adoption of the county ordinance.

(4) Any ordinance adopted by the governing body of a county must be enforced by the county.

(5) The provisions of this part do not apply to counties where the sale of phosphorus-containing household cleaning products is banned pursuant to [sections 4 and 5]."

Section 7. Codification instruction. [Sections 1 through 5] are intended to be codified as an integral part of Title 75, chapter 5, and the provisions of Title 75, chapter 5, apply to [sections 1 through 5].

Section 8. Effective date. [This act] is effective July 1, 2010.

Approved April 16, 2009

CHAPTER NO. 246

[SB 261]

AN ACT ENABLING A CITY OR TOWN COUNCIL OR COMMISSION TO ADOPT ORDINANCES OR RESOLUTIONS TO PROVIDE FOR THE SAFE OPERATION OF THE MUNICIPAL BUSLINE TRANSPORTATION SYSTEM AND TO PROVIDE FOR THE ENFORCEMENT OF THOSE ADOPTED ORDINANCES OR RESOLUTIONS; AND AMENDING SECTION 7-14-4403, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-14-4403, MCA, is amended to read:

"7-14-4403. Operation of municipal busline. The city or town council or commission ~~shall have~~ *has* authority to provide for the*:*

(1) management and operation of the system authorized by 7-14-4401(1) and to do all things necessary for the successful operation of ~~said~~ *that* transportation system*;*

(2) safe operation of the transportation system, including the adoption of ordinances or resolutions to require motor vehicles to yield the right-of-way to buses reentering the traffic flow; and

(3) enforcement of ordinances or resolutions adopted under subsection (2)."

Approved April 16, 2009

CHAPTER NO. 247

[SB 275]

AN ACT ADDING AN ADDITIONAL PHARMACIST TO THE BOARD OF PHARMACY; AND AMENDING SECTION 2-15-1733, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-1733, MCA, is amended to read:

"2-15-1733. Board of pharmacy. (1) There is a board of pharmacy.

(2) The board consists of ~~six~~ *seven* members appointed by the governor with the consent of the senate. ~~Three~~ *Four* members must be licensed pharmacists, one member must be a registered pharmacy technician, and two members must be from the general public.

(a) Each licensed pharmacist member must have graduated and received the first professional undergraduate degree from the school of pharmacy of the university of Montana-Missoula or from an accredited pharmacy degree program that has been approved by the board. Each licensed pharmacist member must have at least 5 consecutive years of practical experience as a pharmacist immediately before appointment to the board. A licensed pharmacist member who, during the member's term of office, ceases to be actively engaged in the practice of pharmacy in this state must be automatically disqualified from membership on the board.

(b) A registered pharmacy technician member must have at least 5 consecutive years of practical experience as a pharmacy technician immediately before appointment to the board. A registered pharmacy technician member who, during the member's term of office, ceases to be actively engaged as a

pharmacy technician in this state must be automatically disqualified from membership on the board.

(c) Each public member of the board must be a resident of the state and may not be or ever have been:

(i) a member of the profession of pharmacy or the spouse of a member of the profession of pharmacy;

(ii) a person having any material financial interest in the providing of pharmacy services; or

(iii) a person who has engaged in any activity directly related to the practice of pharmacy.

(3) Members shall serve staggered 5-year terms. A member may not serve more than two consecutive full terms. For the purposes of this section, an appointment to fill an unexpired term does not constitute a full term.

(4) A member must be removed from office by the governor:

(a) upon proof of malfeasance or misfeasance in office, after reasonable notice of charges against the member and after a hearing; or

(b) upon refusal or inability to perform the duties of a board member in an efficient, responsible, and professional manner.

(5) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."

Approved April 16, 2009

CHAPTER NO. 248

[SB 294]

AN ACT INCLUDING STREETS AND ROADS AMONG THE UNDERTAKINGS FOR WHICH A MUNICIPALITY MAY ISSUE REVENUE BONDS; AMENDING SECTIONS 7-7-4402 AND 7-7-4424, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-7-4402, MCA, is amended to read:

"7-7-4402. Definitions. Whenever used in this part, unless a different meaning clearly appears from the context, the following definitions apply:

(1) ~~The term "governing~~ *"Governing* body" ~~shall include bodies and boards, by whatsoever names they may be known, having~~ *means a body or board that has* charge of finances and management of a municipality.

(2) ~~The term "municipality" shall include any~~ *"Municipality" means a* city or ~~any~~ town, however organized.

(3) ~~The term "undertaking" shall mean any~~ *"Undertaking" means* one or a combination of the following:

(a) water and sewer systems, together with all parts ~~thereof~~ *of the systems* and appurtenances ~~thereto~~ *to the systems,* including but not limited to supply and distribution systems, reservoirs, dams, and sewage treatment and disposal works;

(b) public airport construction and public airport building;

(c) convention facilities;

(d) public recreation facilities; ~~and~~

(e) streets and roads; and

~~(e)~~*(f)* public parking facilities, solid waste management systems, or other revenue-producing facilities and services authorized ~~in these codes~~ for cities and towns."

Section 2. Section 7-7-4424, MCA, is amended to read:

"7-7-4424. Undertakings to be self-supporting. (1) *(a)* ~~The~~ *Except as provided in subsections (1)(b) and (1)(c), the* governing body of a municipality issuing bonds pursuant to this part shall prescribe and collect reasonable rates, fees, or charges for the services, facilities, and commodities of the undertaking and shall revise the rates, fees, or charges from time to time whenever necessary so that the undertaking is and remains self-supporting.

(b) The property taxes specifically authorized to be levied for the general purpose served by an undertaking or resort taxes approved, levied, and appropriated to an undertaking in compliance with 7-6-1501 through 7-6-1509 constitute revenue of the undertaking and may not result in an undertaking being considered not self-supporting.

(c) Revenue from assessments and fees enacted by local ordinance constitutes revenue of the undertaking and may not result in an undertaking being considered not self-supporting.

(2) The rates, fees, or charges prescribed, along with any appropriated property or resort tax collections, must produce revenue at least sufficient to:

(a) pay when due all bonds and interest on the bonds, *for* the payment of which the revenue has been pledged, charged, or otherwise encumbered, including reserves for the bonds; and

(b) provide for all expenses of operation and maintenance of the undertaking, including reserves."

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 16, 2009

CHAPTER NO. 249

[SB 311]

AN ACT ELIMINATING THE REQUIREMENT THAT A MEDICAL CERTIFICATE BE ATTACHED TO A DECLARATION OF MARRIAGE; AND AMENDING SECTION 40-1-311, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 40-1-311, MCA, is amended to read:

"40-1-311. Declaration of marriage without solemnization. (1) Persons desiring to consummate a marriage by written declaration in this state without the solemnization provided for in 40-1-301 shall, prior to executing the declaration, secure the medical certificate required by this chapter~~,~~. ~~which~~ *The declaration and the certificate or the waiver provided for in 40-1-203* must be ~~firmly attached to the declaration and must be~~ filed by the clerk of the district court in the county where the contract was executed.

(2) A declaration of marriage must contain substantially the following:

(a) the names, ages, and residences of the parties;

(b) the fact of marriage;

(c) the name of father and maiden name of mother of both parties and address of each;

(d) a statement that both parties are legally competent to enter into the marriage contract.

(3) The declaration must be subscribed by the parties and attested by at least two witnesses and formally acknowledged before the clerk of the district court of the county.

(4) The fee for filing a declaration is $53 and must be paid to the clerk at time of filing."

Approved April 16, 2009

CHAPTER NO. 250

[HB 23]

AN ACT REMOVING STATUTORY REFERENCES TO THE LEGISLATIVE ADMINISTRATION COMMITTEES; AMENDING SECTIONS 5-2-202 AND 5-11-402, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 5-2-202, MCA, is amended to read:

"5-2-202. Presession activity. (1) Members of the legislature nominated to leadership positions during the presession caucus provided for in 5-2-201 and members nominated or appointed to the ~~legislative administration committees,~~ committee on committees~~,~~ and rules committees may meet and perform necessary organizational tasks prior to the regular session, including but not limited to appointing committees, hiring staff, and assigning space and seating.

(2) Members of the house appropriations committee and of the senate finance and claims committee named prior to the regular session may begin reviewing requests for appropriations immediately and may visit state agencies and institutions to discuss requests."

Section 2. Section 5-11-402, MCA, is amended to read:

"5-11-402. Legislative branch computer system planning council. There is a legislative branch computer system planning council composed of:

(1) the secretary of the senate or another representative of the senate designated by the president;

(2) the chief clerk of the house of representatives or another representative of the house designated by the speaker;

(3) the sergeants-at-arms in the two houses or another representative of each house designated by the presiding officer ~~of the legislative administration committee~~ of that house;

(4) the executive director of the legislative services division, who shall chair the planning council;

(5) the legislative auditor;

(6) the legislative fiscal analyst;

(7) the consumer counsel; and

(8) a person designated by the director of the department of administration to represent the information technology responsibilities of the department, who shall serve as a nonvoting member of the planning council."

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 17, 2009

CHAPTER NO. 251

[HB 40]

AN ACT REVISING THE WATER PERMIT AND CHANGE IN APPROPRIATION RIGHT PROCESS; CLARIFYING THE DEFINITION OF "CORRECT AND COMPLETE"; REQUIRING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO ISSUE A PRELIMINARY DETERMINATION ON A WATER RIGHT PERMIT OR A CHANGE IN APPROPRIATION RIGHT; REQUIRING PERMIT OR CHANGE IN APPROPRIATION RIGHT DECISIONS WITHIN 90 DAYS AFTER CLOSE OF ADMINISTRATIVE RECORD; AMENDING SECTIONS 85-2-102, 85-2-307, 85-2-308, 85-2-309, 85-2-310, 85-2-401, AND 85-2-804, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 85-2-102, MCA, is amended to read:

"85-2-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Appropriate" means:

(a) to divert, impound, or withdraw, including by stock for stock water, a quantity of water for a beneficial use;

(b) in the case of a public agency, to reserve water in accordance with 85-2-316;

(c) in the case of the department of fish, wildlife, and parks, to change an appropriation right to instream flow to protect, maintain, or enhance streamflows to benefit the fishery resource in accordance with 85-2-436;

(d) in the case of the United States department of agriculture, forest service:

(i) instream flows and in situ use of water created in 85-20-1401, Article V; or

(ii) to change an appropriation right to divert or withdraw water under subsection (1)(a) to instream flow to protect, maintain, or enhance streamflows in accordance with 85-2-320;

(e) temporary changes or leases for instream flow to maintain or enhance instream flow to benefit the fishery resource in accordance with 85-2-408;

(f) a use of water for aquifer recharge or mitigation as provided in 85-2-360 and 85-2-362; or

(g) a use of water for an aquifer storage and recovery project as provided in 85-2-368.

(2) "Aquifer recharge" means either the controlled subsurface addition of water directly to the aquifer or controlled application of water to the ground surface for the purpose of replenishing the aquifer to offset adverse effects resulting from net depletion of surface water.

(3) "Aquifer storage and recovery project" means a project involving the use of an aquifer to temporarily store water through various means, including but not limited to injection, surface spreading and infiltration, drain fields, or another department-approved method. The stored water may be either pumped from the injection well or other wells for beneficial use or allowed to naturally drain away for a beneficial use.

(4) "Beneficial use", unless otherwise provided, means:

(a) a use of water for the benefit of the appropriator, other persons, or the public, including but not limited to agricultural, stock water, domestic, fish and wildlife, industrial, irrigation, mining, municipal, power, and recreational uses;

(b) a use of water appropriated by the department for the state water leasing program under 85-2-141 and of water leased under a valid lease issued by the department under 85-2-141;

(c) a use of water by the department of fish, wildlife, and parks through a change in an appropriation right for instream flow to protect, maintain, or enhance streamflows to benefit the fishery resource authorized under 85-2-436;

(d) a use of water through a temporary change in appropriation right or lease to enhance instream flow to benefit the fishery resource in accordance with 85-2-408;

(e) a use of water for aquifer recharge or mitigation as provided in 85-2-360 and 85-2-362; or

(f) a use of water for an aquifer storage and recovery project as provided in 85-2-368.

(5) "Certificate" means a certificate of water right issued by the department.

(6) "Change in appropriation right" means a change in the place of diversion, the place of use, the purpose of use, or the place of storage.

(7) "Commission" means the fish, wildlife, and parks commission provided for in 2-15-3402.

(8) "Correct and complete" means that the information required to be submitted conforms to the standard of substantial credible information and that all of the necessary parts of the form requiring the information have been filled in with the required information *for the department to begin evaluating the information*.

(9) "Declaration" means the declaration of an existing right filed with the department under section 8, Chapter 452, Laws of 1973.

(10) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(11) "Developed spring" means any artificial opening or excavation in the ground, however made, including any physical alteration at the point of discharge regardless of whether it results in any increase in the yield of ground water, from which ground water is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn.

(12) "Existing right" or "existing water right" means a right to the use of water that would be protected under the law as it existed prior to July 1, 1973. The term includes federal non-Indian and Indian reserved water rights created under federal law and water rights created under state law.

(13) "Ground water" means any water that is beneath the ground surface.

(14) "Late claim" means a claim to an existing right forfeited pursuant to the conclusive presumption of abandonment under 85-2-226.

(15) "Mitigation" means the reallocation of surface water or ground water through a change in appropriation right or other means that does not result in surface water being introduced into an aquifer through aquifer recharge to offset adverse effects resulting from net depletion of surface water.

(16) "Municipality" means an incorporated city or town organized and incorporated under Title 7, chapter 2.

(17) "Permit" means the permit to appropriate issued by the department under 85-2-301 through 85-2-303 and 85-2-306 through 85-2-314.

(18) "Person" means an individual, association, partnership, corporation, state agency, political subdivision, the United States or any agency of the United States, or any other entity.

(19) (a) "Political subdivision" means any county, incorporated city or town, public corporation, or district created pursuant to state law or other public body of the state empowered to appropriate water.

(b) The term does not mean a private corporation, association, or group.

(20) "Salvage" means to make water available for beneficial use from an existing valid appropriation through application of water-saving methods.

(21) "State water reservation" means a water right created under state law after July 1, 1973, that reserves water for existing or future beneficial uses or that maintains a minimum flow, level, or quality of water throughout the year or at periods or for defined lengths of time.

(22) "Substantial credible information" means probable, believable facts sufficient to support a reasonable legal theory upon which the department should proceed with the action requested by the person providing the information.

(23) "Waste" means the unreasonable loss of water through the design or negligent operation of an appropriation or water distribution facility or the application of water to anything but a beneficial use.

(24) "Water" means all water of the state, surface and subsurface, regardless of its character or manner of occurrence, including but not limited to geothermal water, diffuse surface water, and sewage effluent.

(25) "Water division" means a drainage basin as defined in 3-7-102.

(26) "Water judge" means a judge as provided for in Title 3, chapter 7.

(27) "Water master" means a master as provided for in Title 3, chapter 7.

(28) "Watercourse" means any naturally occurring stream or river from which water is diverted for beneficial uses. It does not include ditches, culverts, or other constructed waterways.

(29) "Well" means any artificial opening or excavation in the ground, however made, by which ground water is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn."

Section 2. Section 85-2-307, MCA, is amended to read:

"85-2-307. Notice of application for permit or change in appropriation right. *(1) Upon receipt of an application for a permit or a change in appropriation right, the department shall publish notice of receipt of the application on the department's website.*

~~(1)~~*(2)* (a) ~~Upon~~ *Within 120 days of the* receipt of a correct and complete application for a permit or change in appropriation right, the department*:*

(i) may meet informally with the applicant, the persons listed in subsection (2)(d), and persons who may claim standing pursuant to 85-2-308 to discuss the application;

(ii) shall make a written preliminary determination as to whether or not the application satisfies the applicable criteria for issuance of a permit or change in appropriation right; and

(iii) may include conditions in the written preliminary determination to satisfy applicable criteria for issuance of a permit or change in appropriation right.

(b) If the preliminary determination proposes to grant an application, the department shall prepare a notice containing the facts pertinent to the application*, including the summary of the preliminary determination and any conditions,* and shall publish the notice once in a newspaper of general circulation in the area of the source.

(c) If the preliminary determination proposes to deny an application, the process provided in 85-2-310 must be followed.

~~(b)~~*(d)* Before the date of publication, the department shall also serve the notice by first-class mail upon:

(i) an appropriator of water or applicant for or holder of a permit who, according to the records of the department, may be affected by the proposed appropriation;

(ii) any purchaser under contract for deed, as defined in 70-20-115, of property that, according to the records of the department, may be affected by the proposed appropriation; and

(iii) any public agency that has reserved waters in the source under 85-2-316.

~~(c)~~*(e)* The department may, in its discretion, also serve notice upon any state agency or other person the department feels may be interested in or affected by the proposed appropriation.

~~(d)~~*(f)* The department shall file in its records proof of service by affidavit of the publisher in the case of notice by publication and by its own affidavit in the case of service by mail.

~~(2)~~*(3)* The notice ~~shall~~ *must* state that by a date set by the department, ~~(~~not less than 15 days or more than 60 days after the date of publication~~)~~, persons may file with the department written objections to the application.

~~(3)~~*(4)* The requirements of subsections ~~(1)~~ *(2)* and ~~(2)~~ *(3)* do not apply if the department finds, on the basis of information reasonably available to it, that the appropriation as proposed in the application will not adversely affect the rights of other persons."

Section 3. Section 85-2-308, MCA, is amended to read:

"85-2-308. Objections. (1) (a) An objection to an application under this chapter must be filed by the date specified by the department under 85-2-307~~(2)~~*(3)*.

(b) The objection to an application for a permit must state the name and address of the objector and facts indicating that one or more of the criteria in 85-2-311 are not met.

(2) For an application for a change in appropriation rights, the objection must state the name and address of the objector and facts indicating that one or more of the criteria in 85-2-320, if applicable, 85-2-402, *85-2-407, 85-2-408,* and 85-2-436, if applicable, are not met.

(3) A person has standing to file an objection under this section if the property, water rights, or interests of the objector would be adversely affected by the proposed appropriation.

(4) For an application for a reservation of water, the objection must state the name and address of the objector and facts indicating that one or more of the criteria in 85-2-316 are not met.

(5) An objector to an application under this chapter shall file a correct and complete objection on a form prescribed by the department within the time period stated on the public notice associated with the application. In order to assist both applicants and objectors, the department shall adopt rules in accordance with this chapter delineating the components of a correct and complete objection. For instream flow water rights for fish, wildlife, and recreation, the rules must require the objector to describe the reach or portion of the reach of the stream or river subject to the instream flow water right and the beneficial use that is adversely affected and to identify the point or points where the instream flow water right is measured and monitored. The department shall notify the objector of any defects in an objection. An objection not corrected or completed within 15 days from the date of notification of the defects is terminated.

(6) An objection is valid if the objector has standing pursuant to subsection (3), has filed a correct and complete objection within the prescribed time period, and has stated the applicable information required under this section and rules of the department."

Section 4. Section 85-2-309, MCA, is amended to read:

"85-2-309. Hearings on objections — jurisdiction. (1) If the department determines that an objection to an application for a permit *under 85-2-311* or change ~~approval~~ *in appropriation right* under 85-2-402 states a valid objection, it shall hold a ~~contested case hearing, pursuant to Title 2, chapter 4, part 6, on the objection within 60 days from the date set by the department for the filing of objections,~~ *contested case hearing, pursuant to Title 2, chapter 4, part 6, on the objection within 90 days from the date set by the department for the filing of objections* after serving notice of the hearing by first-class mail upon the applicant and the objector, unless the department certifies an issue to the district court for determination by a water judge under subsection (2). The department may consolidate hearings if more than one objection is filed to an application. *The department may extend the 90-day deadline for good cause shown or upon request of the applicant and all objectors.* The department shall file in its records proof of the service by affidavit of the department.

(2) (a) At any time prior to commencement or before the conclusion of a hearing as provided in subsection (1), the department may in its discretion certify to the district court all factual and legal issues involving the adjudication or determination of the water rights at issue in the hearing, including but not limited to issues of abandonment, quantification, or relative priority dates. Certified controversies must be given priority by a water judge over all other adjudication matters.

(b) If the department fails to certify an issue as provided in this section after a timely request by a party to the hearing, the department shall include its denial to certify as part of the record of the hearing.

(c) Upon determination of the issues certified to it by the department, the court shall remand the matter to the department for further processing of the application under this chapter.

(3) Subsection (2) does not apply in the case of a matter considered at a hearing under this section pursuant to 85-2-316 or 85-2-322."

Section 5. Section 85-2-310, MCA, is amended to read:

"85-2-310. Action on application for permit or change in appropriation right. (1) *(a)* ~~The department shall grant, deny, or condition an application for a permit or change in appropriation right in whole or in part within 120 days after the last date of publication of the notice of application if no objections have been received and within 180 days if a hearing is held or objections have been received. However, in either case the time may be extended upon agreement of the applicant or, in those cases where an environmental impact statement must be prepared or in other extraordinary cases, may be extended by not more than 60 days upon order of the department. If the department orders the time extended, it shall serve a notice of the extension and the reasons for the extension by first-class mail upon the applicant and each person who has filed an objection as provided by 85-2-308.~~ *If the department proposes to deny an application for a permit or a change in appropriation right under 85-2-307, unless the applicant withdraws the application, the department shall hold a hearing pursuant to 2-4-604 after serving notice of the hearing by first-class mail upon the applicant for the applicant to show cause by a preponderance of the evidence as to why the permit or change in appropriation right should not be denied.*

(b) (i) Upon request from the applicant, the department shall appoint a hearing examiner who did not participate in the preliminary determination.

(ii) The applicant may make only one request pursuant to this subsection (1)(b) for a different hearing examiner.

(2) A proposal to grant an application with or without conditions following a hearing on a proposal to deny the application must proceed as if the department proposed to grant the application in its preliminary determination pursuant to 85-2-307.

(3) If valid objections are not received on an application or if valid objections are unconditionally withdrawn and the department preliminarily determined to grant the permit or change in appropriation right, the department shall grant the permit or change in appropriation right as proposed in the preliminary determination pursuant to 85-2-307.

(4) If valid objections to an application are received and withdrawn with conditions stipulated with the applicant and the department preliminarily determined to grant the permit or change in appropriation right, the department shall grant the permit or change in appropriation right subject to conditions as necessary to satisfy applicable criteria.

(5) The department shall deny or grant with or without conditions a permit under 85-2-311 or a change in appropriation right under 85-2-402 within 90 days after the administrative record is closed.

~~(2)~~*(6)* If an application is to appropriate water with a point of diversion, conveyance, or place of use on national forest system lands, any application approved by the department is subject to any written special use authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of diversion, impoundment, storage, transportation,

withdrawal, use, or distribution of the water applied for and any terms, conditions, and limitations related to the use of water contained in any special use authorization required by federal law.

~~(3)~~*(7)* Except as provided in subsection ~~(2)~~ *(6)*, an application may not be denied or approved in a modified form or upon terms, conditions, or limitations specified by the department~~,~~ unless the applicant is first granted an opportunity to be heard. If an objection is not filed against the application but the department is of the opinion that the application should be denied or approved in a modified form or upon terms, conditions, or limitations specified by it, the department shall prepare a statement of its opinion and its reasons for the opinion. The department shall serve a statement of its opinion by first-class mail upon the applicant, with a notice that the applicant may obtain a hearing by filing a request within 30 days after the notice is mailed. The notice must further state that the application will be modified in a specified manner or denied unless a hearing is requested.

~~(4)~~*(8)* The department may cease action upon an application for a permit or change in appropriation right and return it to the applicant when it finds that the application is not in good faith or does not show a bona fide intent to appropriate water for a beneficial use. An application returned for either of these reasons must be accompanied by a statement of the reasons for which it was returned, and for a permit application there is not a right to a priority date based upon the filing of the application. Returning an application pursuant to this subsection is a final decision of the department.

~~(5)~~*(9)* For all applications filed after July 1, 1973, the department shall find that an application is not in good faith or does not show a bona fide intent to appropriate water for a beneficial use if:

(a) an application is not corrected and completed as required by 85-2-302;

(b) the appropriate filing fee is not paid;

(c) the application does not document:

(i) a beneficial use of water;

(ii) the proposed place of use of all water applied for;

(iii) for an appropriation of 4,000 acre-feet a year or more and 5.5 cubic feet per second or more, a detailed project plan describing when and how much water will be put to a beneficial use. The project plan must include a reasonable timeline for the completion of the project and the actual application of the water to a beneficial use.

(iv) for appropriations not covered in subsection ~~(4)(c)(iii)~~ *(9)(c)(iii)*, a general project plan stating when and how much water will be put to a beneficial use; and

(v) if the water applied for is to be appropriated above that which will be used solely by the applicant or if it will be marketed by the applicant to other users, information detailing:

(A) each person who will use the water and the amount of water each person will use;

(B) the proposed place of use of all water by each person;

(C) the nature of the relationship between the applicant and each person using the water; and

(D) each firm contractual agreement for the specified amount of water for each person using the water; or

(d) the appropriate environmental impact statement costs or fees, if any, are not paid as required by 85-2-124."

Section 6. Section 85-2-401, MCA, is amended to read:

"85-2-401. Priority — recognition and confirmation of changes in appropriations issued after July 1, 1973. (1) As between appropriators, the first in time is the first in right. Priority of appropriation does not include the right to prevent changes by later appropriators in the condition of water occurrence, such as the increase or decrease of streamflow or the lowering of a water table, artesian pressure, or water level, if the prior appropriator can reasonably exercise the water right under the changed conditions.

(2) Priority of appropriation made under this chapter dates from the filing of an application for a permit with the department, except as otherwise provided in 85-2-301 through 85-2-303, 85-2-306, ~~85-2-310(4)~~ *85-2-310(8)*, and 85-2-313.

(3) Priority of appropriation perfected before July 1, 1973, must be determined as provided in part 2 of this chapter.

(4) All changes in appropriation rights actions of the department after July 1, 1973, are recognized and confirmed subject to this part and any terms, conditions, and limitations placed on a change in appropriation authorization by the department."

Section 7. Section 85-2-804, MCA, is amended to read:

"85-2-804. Application — notice — objections — hearing. (1) Any appropriator proposing to divert from the basin water allocated to Montana under the terms of the compact or divert from the basin unallocated compact water within Montana shall file an application with the department. The application must state the name and address of the applicant and facts tending to show that:

(a) the diversion and ultimate use of the water in Montana is for a beneficial use of water;

(b) the diversion and ultimate use of water will not adversely affect the water rights of other persons;

(c) the proposed means of diversion, construction, and operation are adequate;

(d) the diversion and ultimate use will not interfere unreasonably with other planned uses or developments for which a water right has been established or a permit has been issued or for which water has been reserved;

(e) the diversion and ultimate use of the water will not exceed the allocated share under the compact of any of the signatory states;

(f) the diversion and ultimate use of the water are in the public interest of Montana; and

(g) the applicant intends to comply with the laws of the signatory states to the compact.

(2) Any appropriator proposing to divert from the basin water allocated to North Dakota or Wyoming under the terms of the compact or divert from the basin unallocated compact water within North Dakota or Wyoming shall file an application with the department. The application must state the name and address of the applicant and facts tending to show that:

(a) the proposed means of diversion, construction, and operation are adequate;

(b) the diversion and ultimate use of the water will not exceed the allocated share under the compact of any of the signatory states; and

(c) the applicant intends to comply with the compact.

(3) Notice of the proposed diversion must be given by the department in the same manner as provided in ~~subsections (1) and (2) of~~ 85-2-307*(1) through (3)*.

(4) An objection to an application must be filed by the date specified by the department in the notice.

(5) The objector to an application under subsection (1) shall state his name and address and facts tending to show that:

(a) the diversion and ultimate use of the water in Montana are not for a beneficial use of water;

(b) the property, rights, or interests of the objector would be adversely affected by the proposed diversion or ultimate use of the water;

(c) the proposed means of diversion, construction, and operation are not adequate;

(d) the diversion and ultimate use will interfere unreasonably with the objector's planned uses or development for which the objector has a water right, a permit, or a reserved water right;

(e) the diversion and ultimate use of the water will exceed the allocated share under the compact of any signatory state; or

(f) the diversion and ultimate use of the water are not in the public interest of Montana.

(6) The objector to an application under subsection (2) shall state his name and address and facts tending to show that:

(a) the property, rights, or interests of the objector would be adversely affected by the proposed diversion or ultimate use of the water;

(b) the proposed means of diversion, construction, and operation are not adequate; or

(c) the diversion and ultimate use of the water will exceed the allocated share under the compact of any signatory state.

(7) If the department receives an objection to an application, it shall hold a hearing on the application within 60 days from the date set by the department for filing objections. Service of notice of the hearing must be made by certified mail upon the applicant and the objector.

(8) The hearing shall be conducted under the contested case procedures of the Montana Administrative Procedure Act in Title 2, chapter 4, part 6."

Section 8. Effective date. [This act] is effective July 1, 2009.

Section 9. Applicability. [This act] applies to applications received by the department after [the effective date of this act].

Approved April 17, 2009

CHAPTER NO. 252

[HB 147]

AN ACT REVISING DISCLOSURE AND REPORTING OF CERTAIN CAMPAIGN EXPENDITURES, INCLUDING EXPENDITURES BY

INDEPENDENT COMMITTEES, MADE AFTER THE CLOSING DATE OF THE PREELECTION REPORTING PERIOD; AND AMENDING SECTIONS 13-37-226 AND 13-37-228, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13-37-226, MCA, is amended to read:

"13-37-226. Time for filing reports. (1) Candidates for a state office filled by a statewide vote of all the electors of Montana and political committees that are organized to support or oppose a particular statewide candidate shall file reports:

(a) quarterly, due on the fifth day following a calendar quarter, beginning with the calendar quarter in which funds are received or expended during the year or years prior to the election year that the candidate expects to be on the ballot;

(b) on the 10th day of March and September in each year that an election is to be held*;*

(c) ~~and~~ on the 15th and 5th days preceding the date on which an election is held*;*

(d) ~~and~~ within 24 hours after receiving a contribution of $200 or more if received between the 10th day before the election and the day of the election,~~;~~

~~(c)~~*(e)* not more than 20 days after the date of the election; and

~~(d)~~*(f)* on the 10th day of March and September of each year following an election until the candidate or political committee files a closing report as specified in 13-37-228(3).

(2) Political committees organized to support or oppose a particular statewide ballot issue shall file reports:

(a) quarterly, due on the fifth day following a calendar quarter, beginning with the calendar quarter in which the text of the proposed ballot issue is submitted for review and approval pursuant to 13-27-202 during the year or years prior to the election year that an issue is or is expected to be on the ballot;

(b) on the 10th day of March and on the 10th day of each subsequent month through September;

(c) on the 15th and 5th days preceding the date on which an election is held;

(d) within 24 hours after receiving a contribution of $500 or more if received between the 10th day before the election and the day of the election,~~;~~

(e) within 20 days after the election; and

(f) on the 10th day of March and September of each year following an election until the political committee files a closing report as specified in 13-37-228(3).

(3) Candidates for a state district office, including but not limited to candidates for the legislature, the public service commission, or a district court judge, and political committees that are specifically organized to support or oppose a particular state district candidate or issue shall file reports:

(a) on the 12th day preceding the date on which an election is held*;*

(b) ~~and~~ within 48 hours after receiving a contribution of $100 or more if received between the 17th day before the election and the day of the election. The report under this subsection ~~(3)(a) may~~ *(3)(b) must* be made ~~by mail or~~ *by mail or* by electronic ~~communication~~ *communication* to the ~~clerk and recorder~~

~~and the commissioner of political practices~~ *commissioner and the election administrator of the appropriate county pursuant to 13-37-225*.

~~(b)~~*(c)* not more than 20 days after the date of the election; and

~~(c)~~*(d)* whenever a candidate or political committee files a closing report as specified in 13-37-228(3).

(4) Candidates for any other public office and political committees that are specifically organized to support or oppose a particular local issue shall file the reports specified in subsection (3) only if the total amount of contributions received or the total amount of funds expended for all elections in a campaign, excluding the filing fee paid by the candidate, exceeds $500, except as provided in 13-37-206.

(5) For the purposes of this subsection, a committee that is not specifically organized to support or oppose a particular candidate or ballot issue and that receives contributions and makes expenditures in conjunction with an election is an independent committee. For the purpose of reporting, a political party committee is an independent committee. An independent committee shall file:

(a) a report on the 12th day preceding the date of an election in which it participates by making an expenditure;

(b) a report within 24 hours of making an expenditure or incurring a debt or obligation of $500 or more for election material described in 13-35-225(1) if made between the 17th day before the election and the day of the election;

~~(b)~~*(c)* a report not more than 20 days after the date of the election in which it participates by making an expenditure; and

~~(c)~~*(d)* a report on a date to be prescribed by the commissioner for a closing report at the close of each calendar year.

(6) The commissioner may promulgate rules regarding the extent to which organizations that are incidental political committees shall report their politically related activities in accordance with this chapter.

(7) ~~All~~ *Except as provided in subsections (1)(d), (2)(d), (3)(b), and (5)(b), all* reports required by this section must be complete as of the fifth day before the date of filing as specified in 13-37-228(2) and this section."

Section 2. Section 13-37-228, MCA, is amended to read:

"13-37-228. Time periods covered by reports. Reports filed under 13-37-225 and 13-37-226 must be filed to cover the following time periods even though no contributions or expenditures may have been received or made during the period:

(1) The initial report must cover all contributions received or expenditures made by a candidate or political committee prior to the time that a person became a candidate or a political committee, as defined in 13-1-101, until the fifth day before the date of filing of the appropriate initial report pursuant to ~~subsections (1) through (5) of~~ 13-37-226*(1) through (5)*. Reports filed by political committees organized to support or oppose a statewide ballot issue must disclose all contributions received and expenditures made prior to the time an issue becomes a ballot issue by transmission of the petition to the proponent of the ballot issue or referral by the secretary of state~~,~~ even if the issue subsequently fails to garner sufficient signatures to qualify for the ballot.

(2) Subsequent periodic reports must cover the period of time from the closing of the previous report to 5 days before the date of filing of a report pursuant to 13-37-226(1) through (5). *For the purposes of this subsection, the*

reports required under 13-37-226(1)(d), (2)(d), (3)(b), and (5)(b) are not periodic reports and must be filed as required by 13-37-226(1)(d), (2)(d), (3)(b), or (5)(b), as applicable.

(3) Closing reports must cover the period of time from the last periodic report to the final closing of the books of the candidate or political committee. A candidate or political committee shall file a closing report following an election in which the candidate or political committee participates whenever all debts and obligations are extinguished and no further contributions or expenditures will be received or made which relate to the campaign~~,~~ unless the election is a primary election and the candidate or political committee will participate in the general election."

Approved April 17, 2009

CHAPTER NO. 253

[HB 222]

AN ACT REQUIRING THAT A PERSON WHO IS CONVICTED OF A HUNTING, FISHING, OR TRAPPING CRIMINAL VIOLATION AND WHOSE PRIVILEGES TO HUNT, FISH, OR TRAP HAVE BEEN REVOKED IS NOT ELIGIBLE TO PURCHASE A LICENSE TO HUNT, FISH, OR TRAP UNTIL ALL SENTENCING TERMS ARE MET; AMENDING SECTIONS 87-1-102 AND 87-2-106, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-1-102, MCA, is amended to read:

"87-1-102. Penalties — violation of state law. (1) *(a)* A person who purposely, knowingly, or negligently violates a provision of this title or any other state law pertaining to fish and game is guilty of a misdemeanor, except if a felony is expressly provided by law, and shall be fined an amount not less than $50 or more than $1,000 or imprisoned in the county detention center for not more than 6 months, or both, unless a different punishment is expressly provided by law for the violation. In addition, the person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of that person's license and the privilege to hunt, fish, or trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period set by the court.

(b) (i) If the court imposes forfeiture of the person's license and privilege to hunt, fish, or trap or to use state lands, the department shall notify the person of the loss of privileges as imposed by the court. The person shall surrender all licenses, as ordered by the court, to the department within 10 days.

(ii) After a forfeiture period imposed pursuant to this section and upon receipt of notification from the court that the defendant has appeared and all terms of the court sentence, including making payment of any fine, costs, or restitution, have been met or the defendant is in compliance with installment payments specified by the court, the department shall reinstate the privileges unless the person is not otherwise entitled to reinstatement. After the privileges are reinstated, the department may revoke the privileges if it is notified by the clerk of court that the person is in default on any installment payment.

(iii) A person convicted of hunting, fishing, or trapping while the person's license or privilege is forfeited shall be imprisoned in the county detention center for not less than 5 days or more than 6 months and may be fined an amount not less than $500 or more than $2,000.

(2) (a) A person convicted of unlawfully taking, killing, possessing, or transporting a bighorn sheep, moose, wild buffalo, caribou, mountain goat, black bear, or grizzly bear or any part of these animals shall be fined an amount not less than $500 or more than $2,000 or imprisoned in the county detention center for not more than 6 months, or both. In addition, that person, upon conviction or forfeiture of bond or bail, shall forfeit any current hunting, fishing, recreational use, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state for 30 months from the date of conviction or forfeiture, unless the court imposes a longer forfeiture period. ~~For each conviction or forfeiture, the department shall notify the person of the loss of privileges. The person shall surrender all hunting, fishing, and trapping licenses to the department within 10 days.~~

(b) A person convicted of unlawfully taking, killing, possessing, or transporting a deer, antelope, elk, or mountain lion or any part of these animals shall be fined an amount not less than $300 or more than $1,000 or imprisoned in the county detention center for not more than 6 months, or both. In addition, that person, upon conviction or forfeiture of bond or bail, shall forfeit any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state for 24 months from the date of conviction or forfeiture, unless the court imposes a longer forfeiture period. ~~For each conviction or forfeiture, the department shall notify the person of the loss of privileges. The person shall surrender all hunting, fishing, and trapping licenses to the department within 10 days.~~

(c) A person convicted of unlawfully attempting to trap or hunt a game animal shall be fined an amount not less than $200 or more than $600 or imprisoned in the county detention center for not more than 60 days, or both.

(d) A person convicted of purposely, knowingly, or negligently taking, killing, trapping, possessing, transporting, shipping, labeling, or packaging a fur-bearing animal or pelt of a fur-bearing animal in violation of any provision of this title shall be fined an amount not less than $100 or more than $1,000, imprisoned in the county detention center for not more than 6 months, or both. In addition, that person, upon conviction or forfeiture of bond or bail, shall forfeit any current license and the privilege to hunt, fish, or trap in this state for 24 months from the date of conviction or forfeiture, unless the court imposes a longer forfeiture period, and any pelts possessed unlawfully must be confiscated. ~~For each conviction or forfeiture, the department shall notify the person of the loss of privileges. The person shall surrender all hunting, fishing, and trapping licenses to the department within 10 days.~~

~~(e) A person convicted of hunting, fishing, or trapping while that person's license is forfeited or a privilege is denied shall be imprisoned in the county detention center for not less than 5 days or more than 6 months. In addition, that person may be fined an amount not less than $500 or more than $2,000.~~

(3) If a person is convicted of illegally taking an animal described in 87-1-111 or 87-1-115 through the use of spotlights, nightscopes, or infrared scopes, the person is prohibited from fishing or hunting in the state for an additional 5 years following the ending date of the original prohibition period. In addition, the person, upon conviction or forfeiture of bond or bail, shall successfully complete, at the person's own expense, a department-sponsored hunter education course.

(4) A person convicted or who has forfeited bond or bail under this section and whose license privileges are forfeited may not purchase, acquire, obtain, possess, or apply for a hunting, fishing, or trapping license or permit during the

period when license privileges have been forfeited. A person convicted of unlawfully purchasing, acquiring, obtaining, possessing, or applying for a hunting, fishing, or trapping license during the period when license privileges have been forfeited shall be fined an amount not less than $500 or more than $2,000, imprisoned in the county jail for not more than 60 days, or both.

(5) A person convicted or who has forfeited bond or bail under this section and who has been ordered to pay restitution under the provisions of 87-1-111 or 87-1-115 may not apply for any special license under Title 87, chapter 2, part 7, or enter any drawing for a special license or permit for a period of 5 years following the date of conviction or restoration of license privileges, whichever is later. If the violation involved the unlawful taking of a moose, a bighorn sheep, or a mountain goat, the person may not apply for a special license or enter a drawing for a special license or permit for the same species of game animal that was unlawfully taken for an additional period of 5 years following the ending date of the first 5-year period. A person convicted of unlawfully applying for any special license under Title 87, chapter 2, part 7, or unlawfully entering a drawing for a special license or permit shall be fined an amount not less than $500 or more than $2,000, imprisoned in the county detention center for not more than 60 days, or both.

(6) (a) A person convicted of a second offense of any of the following offenses within 10 years of the first conviction or who is convicted of two or more of the following offenses at different times within a 10-year period is subject to the penalties provided in subsection (6)(b):

(i) hunting during a closed season;

(ii) spotlighting;

(iii) hunting without a license;

(iv) unlawful taking of more than double the legal bag limit;

(v) unlawful possession of more than double the legal bag limit; and

(vi) waste of game by abandonment in the field.

(b) ~~(i)~~ A person convicted of the offenses in subsection (6)(a) in the time periods specified in subsection (6)(a) shall be fined an amount not less than $2,000 or more than $5,000 or be imprisoned in the county jail for not more than 1 year, or both. In addition, the person, upon conviction or forfeiture of bond or bail, shall forfeit all current hunting, fishing, and trapping licenses issued by this state and the privilege to hunt, fish, or trap in this state for 60 months from the date of conviction or forfeiture, unless the court imposes a longer forfeiture period.

~~(ii) The department shall notify the offender of the loss of privileges.~~

~~(iii) The offender shall surrender all hunting, fishing, and trapping licenses to the department within 10 days after having received notice from the department that privileges have been revoked.~~

(7) (a) A person convicted of a third offense of any of the following offenses within 10 years of the first conviction is subject to the penalties provided in subsection (7)(b):

(i) hunting during a closed season;

(ii) spotlighting;

(iii) hunting without a license; and

(iv) unlawful taking of more than double the legal bag limit.

(b) ~~(i)~~ A person convicted of the offenses in subsection (7)(a) in the time period specified in subsection (7)(a) shall be fined an amount not less than $5,000 or more than $10,000 or be imprisoned in the county jail for not more than 1 year, or both. In addition, the person, upon conviction or forfeiture of bond or bail, shall forfeit all current hunting, fishing, and trapping licenses issued by this state and the privilege to hunt, fish, or trap in this state for life.

~~(ii) The department shall notify the offender of the loss of privileges.~~

~~(iii) The offender shall surrender all hunting, fishing, and trapping licenses to the department within 10 days after having received notice from the department that privileges have been revoked.~~

(8) Subject to sentencing restrictions, the court shall order a person who is convicted pursuant to this section to pay the costs of imprisonment under this section.

(9) A mandatory forfeiture of privileges imposed pursuant to this section does not apply to juveniles. However, the court may, at its discretion, order forfeiture of a juvenile's license and privilege to hunt, fish, or trap upon conviction or forfeiture of bond or bail for a violation of this title.

(10) Notwithstanding the provision of subsection (1), the penalties provided by this section are in addition to any penalties provided in Title 37, chapter 47, and Title 87, chapter 4, part 2.

(11) If an administrative authority suspends a license, permit, or privilege to obtain a license or permit issued under this title, the administrative authority or the department shall notify the person of the suspension and the person shall surrender the license or permit to the department within 10 days.

(12) For the purposes of this section, the terms "knowingly", "negligently", and "purposely" have the same meaning as provided in 45-2-101."

Section 2. Section 87-2-106, MCA, is amended to read:

"87-2-106. (Temporary) **Application for license — penalties for violation — forfeiture of privileges.** (1) A license may be procured from the director, a warden, or an authorized agent of the director. The applicant shall state the applicant's name, age, [last four digits of the applicant's social security number,] occupation, street address of permanent residence, mailing address, qualifying length of time as a resident in the state of Montana, and status as a citizen of the United States or as an alien and other facts, data, or descriptions as may be required by the department. An applicant for a resident license shall present a valid Montana driver's license, Montana driver's examiner's identification card, tribal identification card, or other identification specified by the department to substantiate the required information. It is the applicant's burden to provide documentation establishing the applicant's identity and qualifications to purchase a license. It is a misdemeanor for a license agent to sell a hunting, fishing, or trapping license to an applicant who fails to produce the required identification at the time of application for licensure. Except as provided in subsections (2) through (4), the statements made by the applicant must be subscribed to before the officer or agent issuing the license.

(2) Except as provided in subsection (3), department employees or officers may issue licenses by telephone, by mail, on the internet, or by other electronic means. Statements on an application for a license to be issued by telephone, by mail, on the internet, or by other electronic means need not be subscribed to before the employee or officer.

(3) To apply for a license under the provisions of 87-2-102(7), the applicant shall apply to the director and shall submit at the time of application a notarized affidavit that attests to fulfillment of the requirements of 87-2-102(7). The director shall process the application in an expedient manner.

(4) A resident may apply for and purchase a wildlife conservation license, hunting license, or fishing license for the resident's spouse, parent, child, brother, or sister who is otherwise qualified to obtain the license.

(5) A license is void unless subscribed to by the licensee.

(6) It is unlawful to subscribe to or make any statement, on an application or license, that is materially false. Any material false statement contained in an application renders the license issued pursuant to it void. A person violating any provision of this subsection is guilty of a misdemeanor.

(7) A person whose privilege to hunt, fish, or trap has been revoked is not eligible to purchase any license until all terms of the court sentence in which the privilege was revoked, including making restitution, have been met or the person is in compliance with installment payments specified by the court and the department has received notification from the sentencing court to that effect pursuant to 87-1-102(1).

~~(7)~~*(8)* It is unlawful for a nonresident to apply for or purchase for a nonresident's use the following resident licenses and permits:

(a) wildlife conservation license;

(b) hunting license or permit; or

(c) fishing license or permit.

~~(8)~~*(9)* (a) A person not meeting the residency criteria set out in 87-2-102 who is convicted of affirming to or making a false statement to obtain a resident license or who is convicted of applying for or purchasing a resident license in violation of subsection ~~(7)~~ *(8)* shall be:

(i) fined not less than the greater of $100 or twice the cost of the nonresident license that authorized the sought-after privilege or more than $1,000;

(ii) imprisoned in the county jail for not more than 6 months; or

(iii) both fined and imprisoned.

(b) In addition to the penalties specified in subsection ~~(8)(a)~~ *(9)(a)*, upon conviction or forfeiture of bond or bail, the person shall forfeit any current hunting, fishing, and trapping licenses and the privilege to hunt, fish, and trap in Montana for not less than 18 months.

~~(9)~~*(10)* It is a misdemeanor for a person to purposely or knowingly assist an unqualified applicant in obtaining a resident license in violation of this section.

[~~(10)~~*(11)* The department shall keep the applicant's social security number confidential, except that the number may be provided to the department of public health and human services for use in administering Title IV-D of the Social Security Act.]

~~(11)~~*(12)* The department shall delete an applicant's social security number in any electronic database [5 years after the date that application is made for the most recent license]. (Terminates April 24, 2010, pursuant to sec. 5, Ch. 237, L. 2007, unless contingency occurs. Bracketed language terminates or is amended on occurrence of contingency—sec. 3, Ch. 321, L. 2001; sec. 5, Ch. 237, L. 2007.)

87-2-106. (Effective April 25, 2010, pursuant to Ch. 237, L. 2007, unless contingency occurs) **Application for license — penalties for violation —**

forfeiture of privileges. (1) A license may be procured from the director, a warden, or an authorized agent of the director. The applicant shall state the applicant's name, age, [social security number,] occupation, street address of permanent residence, mailing address, qualifying length of time as a resident in the state of Montana, and status as a citizen of the United States or as an alien and other facts, data, or descriptions as may be required by the department. An applicant for a resident license shall present a valid Montana driver's license, Montana driver's examiner's identification card, tribal identification card, or other identification specified by the department to substantiate the required information. It is the applicant's burden to provide documentation establishing the applicant's identity and qualifications to purchase a license. It is a misdemeanor for a license agent to sell a hunting, fishing, or trapping license to an applicant who fails to produce the required identification at the time of application for licensure. Except as provided in subsections (2) through (4), the statements made by the applicant must be subscribed to before the officer or agent issuing the license.

(2) Except as provided in subsection (3), department employees or officers may issue licenses by telephone, by mail, on the internet, or by other electronic means. Statements on an application for a license to be issued by telephone, by mail, on the internet, or by other electronic means need not be subscribed to before the employee or officer.

(3) To apply for a license under the provisions of 87-2-102(7), the applicant shall apply to the director and shall submit at the time of application a notarized affidavit that attests to fulfillment of the requirements of 87-2-102(7). The director shall process the application in an expedient manner.

(4) A resident may apply for and purchase a wildlife conservation license, hunting license, or fishing license for the resident's spouse, parent, child, brother, or sister who is otherwise qualified to obtain the license.

(5) A license is void unless subscribed to by the licensee.

(6) It is unlawful to subscribe to or make any statement, on an application or license, that is materially false. Any material false statement contained in an application renders the license issued pursuant to it void. A person violating any provision of this subsection is guilty of a misdemeanor.

(7) A person whose privilege to hunt, fish, or trap has been revoked is not eligible to purchase any license until all terms of the court sentence in which the privilege was revoked, including making restitution, have been met or the person is in compliance with installment payments specified by the court and the department has received notification from the sentencing court to that effect pursuant to 87-1-102(1).

~~(7)~~*(8)* It is unlawful for a nonresident to apply for or purchase for a nonresident's use the following resident licenses and permits:

(a) wildlife conservation license;

(b) hunting license or permit; or

(c) fishing license or permit.

~~(8)~~*(9)* (a) A person not meeting the residency criteria set out in 87-2-102 who is convicted of affirming to or making a false statement to obtain a resident license or who is convicted of applying for or purchasing a resident license in violation of subsection ~~(7)~~ *(8)* shall be:

(i) fined not less than the greater of $100 or twice the cost of the nonresident license that authorized the sought-after privilege or more than $1,000;

(ii) imprisoned in the county jail for not more than 6 months; or

(iii) both fined and imprisoned.

(b) In addition to the penalties specified in subsection ~~(8)(a)~~ *(9)(a)*, upon conviction or forfeiture of bond or bail, the person shall forfeit any current hunting, fishing, and trapping licenses and the privilege to hunt, fish, and trap in Montana for not less than 18 months.

~~(9)~~*(10)* It is a misdemeanor for a person to purposely or knowingly assist an unqualified applicant in obtaining a resident license in violation of this section.

[~~(10)~~*(11)* The department shall keep the applicant's social security number confidential, except that the number may be provided to the department of public health and human services for use in administering Title IV-D of the Social Security Act.]

~~(11)~~*(12)* The department shall delete an applicant's social security number in any electronic database [5 years after the date that application is made for the most recent license]. (Bracketed language terminates or is amended on occurrence of contingency—sec. 3, Ch. 321, L. 2001.)"

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 17, 2009

CHAPTER NO. 254

[HB 357]

AN ACT SHORTENING A CONSTRUCTION CONTRACTOR'S OBLIGATION TO PAY INTEREST ON A DELAYED PERIODIC OR FINAL PAYMENT TO A SUBCONTRACTOR FROM 30 DAYS PLUS 3 WORKING DAYS TO 30 DAYS; PROVIDING THAT ONLY ACCEPTANCE OF A FINAL PAYMENT, RATHER THAN ACCEPTANCE OF A PROGRESS PAYMENT OR FINAL PAYMENT, RELEASES ANY CLAIM FOR INTEREST; AND AMENDING SECTION 28-2-2104, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 28-2-2104, MCA, is amended to read:

"28-2-2104. Obligations upon delay of payment. (1) If a periodic or final payment that is required by a construction contract to be paid by an owner to a contractor is delayed by more than 30 days from the date the payment is required by the contract to be made, the owner shall pay to the contractor interest, beginning on the day following the date when the payment is due, at the rate of 1 1/2% a month or a pro rata fraction of that amount on the unpaid balance. If the contractor receives interest from the owner for a delayed payment by the owner, the contractor shall ensure that any interest accrued on a delayed payment is distributed by the contractor to subcontractors on a pro rata basis.

(2) If a periodic or final payment required by a subcontract to be paid by a contractor to a subcontractor is delayed for more than 30 days ~~plus 3 working days~~ from the date the payment is required by the subcontract to be made, the contractor shall pay to the subcontractor interest beginning on the day following the date when the payment is due, at the rate of 1 1/2% a month or a pro rata fraction of that amount on the unpaid balance. If a subcontractor receives interest from the contractor for a delayed payment by the contractor, the subcontractor shall ensure that any interest accrued on the delayed payment is

distributed by the subcontractor to other subcontractors, if any, on a pro rata basis.

(3) Acceptance of ~~progress payments or~~ *the* final payment releases any claim for interest on the payment."

Approved April 17, 2009

CHAPTER NO. 255

[HB 362]

AN ACT REVISING LAWS RELATING TO DISASTER AND EMERGENCY SERVICES; DEFINING "DISASTER MEDICINE"; LIMITING LIABILITY OF LICENSED HEALTH CARE PROFESSIONALS DURING THE PRACTICE OF DISASTER MEDICINE; AND AMENDING SECTIONS 10-3-101, 10-3-103, 10-3-111, 10-3-302, AND 10-3-303, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 10-3-101, MCA, is amended to read:

"10-3-101. Declaration of policy. Because of the existing and increasing possibility of the occurrence of disasters or emergencies of unprecedented size and destructiveness resulting from enemy attack, sabotage, or other hostile action and natural disasters and in order to provide for prompt and timely reaction to an emergency or disaster, to insure that preparation of this state will be adequate to deal with disasters or emergencies, and generally to provide for the common defense and to protect the public peace, health, and safety and to preserve the lives and property of the people of this state *to the fullest extent practicable*, it is declared to be necessary to:

(1) authorize the creation of local or interjurisdictional organizations for disaster and emergency services in the political subdivisions of this state;

(2) reduce vulnerability of people and communities of this state to damage, injury, and loss of life and property resulting from natural or ~~man-made~~ *human-caused* disasters;

(3) provide a setting conducive to the rapid and orderly start of restoration and rehabilitation of persons and property affected by disasters;

(4) clarify and strengthen the roles of the governor, state agencies, and local governments in prevention of, preparation for, response to, and recovery from emergencies and disasters;

(5) authorize and provide for cooperation in disaster prevention, preparedness, response, and recovery;

(6) authorize and provide for coordination of activities relating to disaster prevention, preparedness, *mitigation,* response, and recovery by agencies and officers of this state and similar state-local, interstate, federal-state, and foreign activities in which the state and its political subdivisions may participate;

(7) provide an emergency and disaster management system embodying all aspects of emergency or disaster prevention, preparedness, response, and recovery;

(8) assist in prevention of disasters caused or aggravated by inadequate planning for public and private facilities and land use;

(9) supplement, without in any way limiting, authority conferred by previous statutes of this state and increase the capability of the state, local, and

interjurisdictional disaster and emergency services agencies to perform disaster and emergency services; and

(10) authorize the payment of extraordinary costs and the temporary hiring, with statutorily appropriated funds under 10-3-312, of professional and technical personnel to meet the state's responsibilities in providing assistance in the response to, recovery from, and mitigation of disasters in either state or federal emergency or disaster declarations."

Section 2. Section 10-3-103, MCA, is amended to read:

"10-3-103. Definitions. As used in parts 1 through 4 of this chapter, the following definitions apply:

(1) "Civil defense" means the nuclear preparedness functions and responsibilities of disaster and emergency services.

(2) "Department" means the department of military affairs.

(3) "Disaster" means the occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or artificial cause, including tornadoes, windstorms, snowstorms, wind-driven water, high water, floods, wave action, earthquakes, landslides, mudslides, volcanic action, fires, explosions, air or water contamination requiring emergency action to avert danger or damage, blight, droughts, infestations, riots, sabotage, hostile military or paramilitary action, disruption of state services, accidents involving radiation byproducts or other hazardous materials, *outbreak of disease,* bioterrorism, or incidents involving weapons of mass destruction.

(4) "Disaster and emergency services" means the preparation for and the carrying out of disaster and emergency functions and responsibilities, other than those for which military forces or other state or federal agencies are primarily responsible, to mitigate, prepare for, respond to, and recover from injury and damage resulting from emergencies or disasters.

(5) "Disaster medicine" means the provision of patient care by a health care provider during a disaster or emergency when the number of patients exceeds the capacity of normal medical resources, facilities, and personnel. Disaster medicine may include implementing patient care guidelines that depart from recognized nondisaster triage and standard treatment patient care guidelines determining the order of evacuation and treatment of persons needing care.

~~(5)~~*(6)* "Division" means the division of disaster and emergency services of the department.

~~(6)~~*(7)* "Emergency" means the imminent threat of a disaster causing immediate peril to life or property that timely action can avert or minimize.

~~(7)~~*(8)* (a) "Incident" means an event or occurrence, caused by either an individual or by natural phenomena, requiring action by disaster and emergency services personnel to prevent or minimize loss of life or damage to property or natural resources. The term includes the imminent threat of an emergency.

(b) The term does not include a state of emergency or disaster declared by the governor pursuant to 10-3-302 or 10-3-303.

~~(8)~~*(9)* "Political subdivision" means any county, city, town, or other legally constituted unit of local government in this state.

~~(9)~~*(10)* "Principal executive officer" means the mayor, presiding officer of the county commissioners, or other chief executive officer of a political subdivision.

~~(10)~~*(11)* "Temporary housing" means unoccupied habitable dwellings, suitable rental housing, mobile homes, or other readily fabricated dwellings."

Section 3. Section 10-3-111, MCA, is amended to read:

"10-3-111. Personnel immune from liability. (1) The state, a political subdivision of the state, or the agents or representatives of the state or a political subdivision of the state are not liable for personal injury or property damage sustained by a person appointed or acting as a volunteer civilian defense *or other response and recovery activity* worker or member of an agency engaged in civilian defense *or other response and recovery* activity during an incident, disaster, or emergency. This section does not affect the right of a person to receive benefits or compensation to which the person might otherwise be entitled under the workers' compensation law or a pension law or an act of congress.

(2) The state or a political subdivision of the state or, except in cases of willful misconduct, gross negligence, or bad faith, the employees, agents, or representatives of the state or a political subdivision of the state or a volunteer or auxiliary civilian defense *or other response and recovery* worker or member of an agency engaged in civilian defense *or other response and recovery* activity during an incident, disaster, or emergency or the owners of facilities used for civil defense *or other response and recovery* shelters, pursuant to a fallout shelter license or privilege agreement and while complying with or reasonably attempting to comply with parts 1 through 4 or 12 of this chapter or an order or rule promulgated under the provisions of parts 1 through 4 or 12 of this chapter or pursuant to an ordinance relating to blackout or other precautionary measures enacted by a political subdivision of the state, are not liable for the death of or injury to persons or for damage to property as a result of any activity specified in this subsection."

Section 4. Section 10-3-302, MCA, is amended to read:

"10-3-302. Declaration of emergency — effect and termination. (1) A state of emergency may be declared by the governor when ~~he~~ *the governor* determines that an emergency as defined in 10-3-103 exists.

(2) An executive order or proclamation of a state of emergency ~~shall activate~~ *activates* the emergency response and disaster preparation aspects of the state disaster and emergency plan and program applicable to the political subdivision or area and ~~be~~ *is* authority for the deployment and use of any forces to which the plans apply and for the distribution and use of any supplies, equipment, and materials and facilities assembled, stockpiled, or arranged to be made available pursuant to parts 1 through 4 of this chapter or any other provision of law pertaining to disasters and disaster-related emergencies. *An executive order or proclamation may authorize the practice of disaster medicine. The provisions of [section 6] do not apply to the state of emergency unless the order or proclamation includes a provision authorizing the practice of disaster medicine.*

(3) A state of emergency may not continue for longer than 20 days unless continuing conditions of the state of emergency exist, which ~~shall~~ *must* be determined by a declaration of an emergency by the president of the United States or by a declaration of the legislature by joint resolution of continuing conditions of the state of emergency."

Section 5. Section 10-3-303, MCA, is amended to read:

"10-3-303. Declaration of disaster — effect and termination. (1) A state of disaster may be declared by the governor when ~~he~~ *the governor* determines that a disaster has occurred.

(2) An executive order or proclamation of a state of disaster ~~shall activate~~ *activates* the disaster response and recovery aspects of the state disaster and emergency plan and program applicable to the political subdivision or area and ~~be~~ *is* authority for the deployment and use of any forces to which the plans apply and for the distribution and use of any supplies, equipment, and materials and facilities assembled, stockpiled, or arranged to be made available pursuant to parts 1 through 4 of this chapter or any other provision of law pertaining to disaster and disaster-related emergencies. *The executive order or proclamation may authorize the practice of disaster medicine. The provisions of [section 6] do not apply to the state of disaster unless the order or proclamation includes a provision authorizing the practice of disaster medicine.*

(3) A state of disaster may not continue for longer than 30 days unless continuing conditions of the state of disaster exist, which ~~shall~~ *must* be determined by a declaration of a major disaster by the president of the United States or by the declaration of the legislature by joint resolution of continuing conditions of the state of disaster.

(4) The governor shall terminate a state of emergency or disaster when:

(a) the emergency or disaster has passed;

(b) the emergency or disaster has been dealt with to the extent that emergency or disaster conditions no longer exist; or

(c) at any time the legislature terminates the state of emergency or disaster by joint resolution. However, after termination of the state of emergency or disaster, disaster and emergency services required as a result of the emergency or disaster may continue."

Section 6. Medical services during declared emergency or disaster — limitation of liability — administrative disciplinary sanctions. (1) Except as provided in subsection (3), a health care professional licensed to practice in Montana who, in good faith and regardless of compensation, renders or fails to render emergency care, health care services, or first aid during a declared emergency or disaster is not liable for any civil damages or injury unless the damages or injury was caused by gross negligence or willful and wanton misconduct and as a result of:

(a) an act or omission arising out of activities undertaken in response to the disaster or emergency;

(b) any act or omission related to the rendering of or failure to render services; or

(c) evacuation or treatment or the failure to evacuate or provide treatment conducted in accordance with disaster medicine or at the direction of military or government authorities.

(2) A licensing program, licensing board, or any other disciplinary authority in Montana may impose administrative sanctions upon a health care professional for unprofessional conduct in response to a declared public health emergency that occurs in Montana. An administrative disciplinary sanction imposed upon a health care professional who is licensed in another state must be reported to the licensing authority in the health care professional's state and each state in which the health care professional is licensed. The standard of review for administrative disciplinary sanctions must be whether the health care professional exercised good faith clinical judgment given the circumstances under which the judgment was exercised.

(3) This section does not apply to a health care provider employed by the United States, a state, or a political subdivision acting within the scope of the provider's employment or duties.

Section 7. Codification instruction. [Section 6] is intended to be codified as an integral part of Title 10, chapter 3, part 1, and the provisions of Title 10, chapter 3, part 1, apply to [section 6].

Approved April 17, 2009

CHAPTER NO. 256

[HB 371]

AN ACT REVISING THE MOTOR VEHICLE CODE TO INCLUDE OTHER ON-TRACK EQUIPMENT IN STATUTES CONCERNING APPROACHING TRAINS AT RAILROAD CROSSINGS AND SIGNALS; AND AMENDING SECTIONS 61-8-347, 61-8-348, 61-8-349, 61-8-350, 61-8-713, AND 61-8-813, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-8-347, MCA, is amended to read:

"61-8-347. Obedience to signal indicating approach of train *or other on-track equipment*. (1) When a person operating a vehicle approaches a railroad crossing under any of the circumstances stated in this section, the operator of the vehicle shall stop as close as practicable but not less than 15 feet from the nearest rail of the railroad and may not proceed until the operator can do so safely. These requirements apply when:

(a) a clearly visible electric or mechanical signal device gives warning of the presence or immediate approach of a railroad train *or other on-track equipment*;

(b) a crossing gate is lowered or when a flag person gives a signal of the approach or passage of a railroad train *or other on-track equipment*;

(c) a railroad train approaching within approximately 1,500 feet of the crossing emits a signal audible from that distance, except at crossings within quiet zones established under 69-14-620, indicating that the train is an immediate hazard because of its speed or nearness to the crossing; or

(d) an approaching railroad train *or other on-track equipment* is plainly visible and is in hazardous proximity to the crossing.

(2) A person may not operate a vehicle through, around, or under any crossing gate or barrier at a railroad grade crossing while the gate or barrier is closed or is being opened or closed."

Section 2. Section 61-8-348, MCA, is amended to read:

"61-8-348. All vehicles to stop at certain railroad grade crossings. (1) The department of transportation and local authorities in their respective jurisdictions may designate particularly dangerous highway grade crossings of railroads and erect stop signs at these crossings. Where these stop signs are erected, the operator of a vehicle shall stop as close as practicable but not less than 15 feet from the nearest rail of the railroad and may proceed only upon exercising due care.

(2) The operator of a vehicle upon a highway outside of the limits of an incorporated city or town who is approaching a highway grade crossing where a flag person or a mechanical device is not in place or maintained to warn the

public of approaching trains *or other on-track equipment* shall, before crossing the railroad tracks, stop the vehicle as close as practicable but not less than 15 feet from the nearest rail if:

(a) a curve in the tracks or vegetation or some other feature or characteristic obscures the view of approaching trains *or other on-track equipment*; or

(b) a moving train *or other on-track equipment* is within sight or hearing."

Section 3. Section 61-8-349, MCA, is amended to read:

"61-8-349. Certain vehicles to stop at all railroad grade crossings. (1) (a) Except as provided in subsection (1)(b), the driver of a motor vehicle carrying seven or more passengers for hire, a school bus with or without passengers, or a vehicle carrying explosive substances or flammable liquids as a cargo or part of a cargo, before crossing at grade any track or tracks of a railroad, shall stop the vehicle as close as practicable but not less than 15 feet from the nearest rail of the railroad and while stopped shall open the door, ~~(~~in the case of a school bus~~)~~, and shall listen and look in both directions along the track for an approaching train *or other on-track equipment* and for signals indicating the approach of a train *or other on-track equipment* and may not proceed until the driver can do so safely. After stopping as required in this section and upon proceeding when it is safe to do so, the operator of a vehicle may cross only in a gear of the vehicle that requires no changing gears while traversing the crossing. The operator may not shift gears while crossing the track or tracks.

(b) A stop is not required at a crossing where a police officer, highway patrol officer, or official traffic control device directs traffic to proceed.

(2) As used in this section, "official traffic control device" does not include a railroad grade crossing signal."

Section 4. Section 61-8-350, MCA, is amended to read:

"61-8-350. Moving heavy equipment at railroad grade crossings. (1) A person shall comply with the provisions of this section before operating or moving upon or across the tracks at a railroad grade crossing any crawler-type tractor, steam shovel, derrick, roller, or any equipment or structure that has:

(a) a normal operating speed of 10 or less miles an hour; or

(b) a vertical body or load clearance measured above the surface of the roadway of:

(i) less than one-half inch for each foot of the distance between any two adjacent axles; or

(ii) at least 9 inches.

(2) Notice of an intended crossing must be given to a representative of the railroad and reasonable time must be given to the railroad to provide proper protection at the crossing.

(3) Before making a crossing, the person operating or moving the vehicle or equipment shall first stop the vehicle or equipment as close as practicable but not less than 15 feet from the nearest rail of the railroad and while stopped shall listen and look in both directions along the track for any approaching train *or other on-track equipment* and for signals indicating the approach of a train *or other on-track equipment*. The person may not proceed until the crossing can be made safely.

(4) A crossing may not be made when warning is given by automatic signal, crossing gates, a flag person, or other official traffic control device of the immediate approach of a railroad train or car *or other on-track equipment*. If a

flag person is provided by the railroad, movement over the crossing must be under the flag person's direction."

Section 5. Section 61-8-713, MCA, is amended to read:

"61-8-713. Injury to or removal of sign or marker as misdemeanor — penalty. (1) A person who maliciously injures, defaces, damages, or removes any sign, signal, or marker, either temporarily or permanently erected on the right-of-way of any secondary, state, or interstate highway for warning, instruction, or information of the public, is guilty of a misdemeanor and upon conviction shall be punished by a fine of $250, by imprisonment in the county jail for a period not exceeding 60 days, or both. This section applies to secondary, state, or interstate highways that are completed and to secondary, state, or interstate highways that are under construction or repair.

(2) A person may not, without lawful authority, attempt to or in fact alter, deface, injure, knock down, or remove any official traffic control device or any railroad sign or signal or any inscription, shield, or insignia on or part of the sign or device.

(3) As used in this section, "railroad sign or signal" means any sign, signal, or device erected by authority of a public body or official or by a railroad and intended to give notice of the presence of railroad tracks or the approach of a railroad train *or other on-track equipment*."

Section 6. Section 61-8-813, MCA, is amended to read:

"61-8-813. Suspension of commercial driver's license — railroad crossing offenses. (1) The department shall suspend a person's commercial driver's license upon the report of a conviction of any of the following railroad crossing offenses or conduct:

(a) for drivers who are not required to always stop:

(i) failing to slow down and check that the tracks are clear of an approaching train *or other on-track equipment*; or

(ii) failing to stop before reaching the crossing if the tracks are not clear;

(b) for drivers who are always required to stop, failing to stop before driving onto the crossing;

(c) for all drivers:

(i) failing to have sufficient space to drive completely through the crossing without stopping;

(ii) failing to obey a traffic control device or the directions of an enforcement official at the crossing; or

(iii) failing to negotiate a crossing because of insufficient undercarriage clearance.

(2) Upon receipt of a report of a conviction of any railroad crossing offense or conduct described in subsection (1), the following suspension periods must be imposed:

(a) 60 days upon a first conviction;

(b) 120 days upon a second conviction within a 3-year period; or

(c) 1 year upon a third or subsequent conviction within a 3-year period."

Approved April 17, 2009

CHAPTER NO. 257

[HB 374]

AN ACT GENERALLY REVISING ELECTRICIAN LICENSING LAWS; REVISING DEFINITIONS; REQUIRING ELECTRICIANS TO CARRY THEIR LICENSES ON JOBSITES; REVISING LICENSE EXEMPTION PROVISIONS; INCREASING PENALTIES FOR VIOLATING LICENSING LAWS; MAKING THE IMPOSITION OF CERTAIN PENALTIES PERMISSIVE RATHER THAN MANDATORY; AMENDING SECTIONS 37-68-101, 37-68-102, 37-68-103, 37-68-201, 37-68-301, 37-68-302, 37-68-303, 37-68-304, 37-68-305, 37-68-311, 37-68-315, AND 37-68-322, MCA; AND REPEALING SECTIONS 37-68-307 AND 37-68-314, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-68-101, MCA, is amended to read:

"37-68-101. Purpose. The purpose of this chapter is to:

(1) protect the health and safety of the people of this state from the danger of electrically caused shocks, fires, and explosions;

(2) protect property from the hazard of electrically caused fires and explosions;

(3) establish a procedure for determining where and by whom electrical installations are to be made;

(4) assure the public that persons making electrical installations are qualified; and

(5) ~~insure~~ *ensure* that the electrical installations ~~and electrical products made and sold~~ in this state meet minimum safety standards."

Section 2. Section 37-68-102, MCA, is amended to read:

"37-68-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Board" means the state electrical board provided for in 2-15-1764.

(2) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(3) "Electrical construction" means work performed by an individual, firm, or corporation in which an electrical connection is made to a supply of electricity or in which electricity is supplied to any electric equipment installation for which a permit is required by the authority having jurisdiction.

~~(3)~~*(4) (a)* "Electrical contractor" means a person, firm, partnership, corporation, association, or combination of these *entities* that undertakes or offers to undertake for another the planning, laying out, supervising, and installing or the making of additions, alterations, and repairs in the installation of wiring apparatus and equipment for electric light, heat, and power.

(b) The term does not include a person, firm, partnership, corporation, association, or combination of these entities ~~A registered electrical engineer who~~ *that only* plans or designs electrical installations ~~is not an electrical contractor~~.

~~(4)~~*(5)* "Journeyman electrician" means a person having the necessary qualifications, training, experience, and technical knowledge to wire for, install, and repair electrical apparatus and equipment for light, heat, power, and other purposes under the rules governing this work.

(6) "Journeyman level experience" means being recognized as a journeyman electrician by a state or other legally authorized jurisdiction or having a minimum of 8,000 hours of practical experience.

~~(5)~~*(7)* "Master electrician" means a person having the necessary qualifications, training, experience, and technical knowledge to properly plan, ~~lay out~~ *layout*, and supervise the installation and repair of wiring apparatus and equipment for electric light, heat, power, and other purposes under the rules governing this work.

(8) "Practical experience" means experience gained in the electrical construction industry consisting of layout, assembly, repairs, connecting and testing electrical fixtures, apparatus, and control equipment, and wiring in residential and nonresidential settings pursuant to the provisions of the national electrical code or pursuant to the requirements of another authority having jurisdiction.

(9) "Public utility" has the meaning provided in 69-3-101.

~~(6)~~*(10)* "Residential electrician" means a person having the necessary qualifications, training, experience, and technical knowledge to wire for, install, and repair electrical apparatus and equipment for light, heat, power, and other purposes in residential construction consisting of less than five living units in a single structure under the rules governing this work."

Section 3. Section 37-68-103, MCA, is amended to read:

"37-68-103. Exemptions. (1) ~~Nothing in this~~ *This* chapter ~~shall be deemed~~ *does not* ~~to~~ apply to the installation, alteration, or repair of electrical signal or communications equipment owned or operated by a public utility or a city. For purposes of this exemption, "communications equipment" includes telephone wire inside a customer's premises. ~~Nothing in this~~ *This* chapter ~~prohibits~~ *does not prohibit* a public utility from doing inside wiring to install, alter, repair, or maintain electrical equipment, installations, or facilities in buildings owned by the public utility if the work is accomplished by an employee who is a licensed electrician. If the building owned by the public utility is open to the public and the inside wiring constitutes major renovation or construction, the installation, alteration, repair, or maintenance of electrical equipment, installations, or facilities is subject to *the* permits and inspections required by law.

(2) The licensing or inspection provisions of this chapter do not apply to regularly employed maintenance electricians doing maintenance work on the business premises of their employer~~, nor do they apply~~ *or* to line work on the business premises of the employer when ordinary and customary in-plant or onsite installations, modifications, additions, or repairs are performed.

(3) ~~Nothing in this chapter shall be construed to~~ *This chapter does not* require an individual to hold a license ~~while or for doing~~ *to perform* electrical work on ~~his~~ *the individual's* own property or residence provided that ~~said~~ *the* property or residence is maintained for ~~his~~ *the individual's* own use.

(4) An individual, firm, partnership, or corporation may *apply for licensure* ~~engage in business~~ as an electrical contractor ~~without an electrician's license~~ if all electrical work performed by ~~such~~ *the* individual, firm, partnership, or corporation is under the direction, control, and supervision of a licensed master electrician or under the direction, control, and supervision of a *licensed* journeyman electrician for residential construction consisting of less than five living units in a single structure.

(5) ~~Any~~ *A* person who plugs in an electrical appliance where an approved electrical outlet is already installed ~~shall~~ *may* not be considered ~~as~~ an installer.

(6) ~~No~~ *The* provisions of this chapter ~~shall~~ *may not* in any manner interfere with, hamper, preclude, or prohibit any vendor of any electrical appliance from selling, delivering, and connecting any electrical appliance if the connection does not necessitate the installation of electrical wiring of the structure where the appliance is to be connected."

Section 4. Section 37-68-201, MCA, is amended to read:

"37-68-201. Organization — meetings — rulemaking power — seal. (1) Each July, the board shall elect from its membership a president, vice president, and secretary-treasurer.

(2) The board shall meet quarterly and at other times that the board considers necessary.

(3) The board shall:

(a) adopt rules for the administration of this chapter, for the licensing of electrical contractors, and for the examination of master*,* ~~and~~ journeyman*, and residential* electricians;

(b) adopt a seal;

(c) ~~cause~~ *provide for* the prosecution and enjoinder of persons violating this chapter."

Section 5. Section 37-68-301, MCA, is amended to read:

"37-68-301. License required to engage in electrical work. (1) A person may not engage in or work at the business~~,~~ *or* trade~~, or calling~~ of *or hold out to the public that the person is an electrician,* electrical contractor, residential electrician, journeyman electrician, or master electrician in this state until the person has received from the department a license or permit to work as an electrical contractor, residential electrician, journeyman electrician, or master electrician.

(2) A person who has received a license from the department under the provisions of this chapter shall carry the license~~, or proof of licensure,~~ at all times while working at a ~~job site~~ *jobsite* and performing work that requires a license. ~~Acceptable proof of licensure must be determined by the board and made known to each licensee by the department when a license is issued.~~

(3) A private or public employment agency or labor union, or an employee ~~thereof,~~ *of the agency or union* who refers persons for employment by others may not refer a person for employment by others to perform the work of an electrical contractor, residential electrician, journeyman electrician, or master electrician in this state unless the person has received from the department a license or permit to work as an electrical contractor, residential electrician, journeyman electrician, or master electrician."

Section 6. Section 37-68-302, MCA, is amended to read:

"37-68-302. Unauthorized use of title. ~~No~~ *A* person, firm, partnership, corporation, or association ~~shall~~ *may not* assume or use the title or designation of licensed master electrician, *master electrician,* licensed journeyman electrician, *journeyman electrician,* ~~or~~ *licensed* residential electrician*, residential electrician, licensed electrician, or electrician* unless qualified and licensed under this chapter."

Section 7. Section 37-68-303, MCA, is amended to read:

"37-68-303. Apprentice may work under licensed electrician — record of apprentices. This chapter does not prohibit a person from working as an apprentice in the *electrical* trade ~~of electrician~~ with an electrician licensed under this chapter and under rules ~~made~~ *adopted* by the board. The name and ~~residence~~ *address* of each apprentice and the name and ~~residence~~ *address* of ~~his~~ *the apprentice's* employer ~~shall~~ *must* be filed with the department, and a record ~~shall~~ *must* be kept by the department showing the name and ~~residence~~ *address* of each apprentice."

Section 8. Section 37-68-304, MCA, is amended to read:

"37-68-304. Master electricians — application — qualifications — contents of examination — fees. (1) An applicant for a master electrician's license shall furnish written evidence of *at least one of the following:*

(a) being a graduate electrical engineer of an accredited college or university and ~~of~~ having ~~1 year~~ *a minimum of 2,000 hours* of legally obtained practical electrical experience ~~or that the applicant is a graduate of an electrical trade school and has at least 4 years of legally obtained practical experience in electrical work or~~*; or*

(b) ~~has had~~ *having* at least ~~5 years~~ *8,000 hours* of legally obtained ~~practical~~ *journeyman level* experience in planning, laying out, or supervising the installation and repair of wiring, apparatus, or equipment for electrical light, heat, and power.

(2) An applicant for a license as a master electrician shall file an application on a form furnished by the department, submit appropriate fees, and satisfactorily pass an examination prescribed by the board. The board shall~~, not less than 30 days prior to a scheduled examination,~~ notify each applicant that the evidence submitted with the applicant's application is sufficient to qualify to take the examination or that the evidence is insufficient and is rejected. If the application is rejected, the board shall set forth the reasons in the notice to the applicant. ~~The place of examinations must be designated by the board, and examinations must be held at least once a year and at other times as, in the opinion of the board, the number of applicants warrants.~~

(3) The examination must consist of at least ~~30~~ *80* questions designed to fairly test the applicant's knowledge and the applicant's technical application *skills* in the following subjects:

(a) the national electric code; *and*

(b) board rules and applicable laws under Title 37.

~~(b) cost estimating for electrical installments;~~

~~(c) procurement and handling of materials needed for electrical installations and repair;~~

~~(d) reading blueprints for electrical work;~~

~~(e) drafting and layout of electrical circuits; and~~

~~(f) knowledge of practical electrical theory.~~

(4) The board shall determine by rule the fees to be charged an applicant for each examination or reexamination. The fees must be commensurate with costs."

Section 9. Section 37-68-305, MCA, is amended to read:

"37-68-305. Journeyman and residential electricians — application — qualifications — contents of examination. (1) An applicant for a

journeyman electrician's license shall furnish written evidence of at least *one of the following:*

(a) ~~4 years~~ *completion of an approved* ~~of~~ apprenticeship *program* in the electrical trade*;* ~~or~~

(b) completion of an appropriate training program conducted by a bona fide union or trade association;

(c) ~~4 years~~ *8,000 hours* of legally obtained practical experience in the wiring for, installing, and repairing of electrical apparatus and equipment for light, heat, and power~~.~~*; or*

(d) work in the electrical maintenance field for at least 20,000 hours, accompanied by written certification by the applicant's employer that the employer considers the applicant qualified to take the examination for which the applicant is applying and that the applicant has attained at least 20,000 hours in the electrical maintenance field while working for the employer. A minimum of 8,000 of these hours must be practical experience.

(2) Applications for license and notice to the applicant must be made and given ~~as in the case of~~ *in the same manner as for* master electricians' licenses. The examination for a journeyman's license must consist of at least ~~30~~ *60* questions designed to fairly test the applicant's knowledge and the applicant's technical application *skills* in the following subjects:

~~(a) the Ohm's law;~~

~~(b)~~*(a)* the national electric code; and

~~(c)~~*(b)* ~~layout and practical installation of electrical circuits~~ *board rules and applicable laws under Title 37*.

~~(2)~~*(3)* An applicant for a residential electrician's license shall furnish written evidence of *at least one of the following:*

(a) ~~at least 2 years of~~ *completion of an approved residential electrician* apprenticeship *program;*

(b) ~~in the electrical trade or 2 years~~ *4,000 hours* of legally obtained practical experience in the wiring for, installing, and repairing of electrical apparatus and equipment for light, heat, and power in residential construction consisting of less than five living units in a single structure~~.~~*;*

(c) completion of an appropriate training program conducted by a bona fide union or trade association; or

(d) work in the electrical maintenance field for at least 20,000 hours, accompanied by written certification by the applicant's employer that the employer considers the applicant qualified to take the examination for which the applicant is applying and that the applicant has attained at least 20,000 hours in the electrical maintenance field while working for the employer. A minimum of 8,000 of these hours must be practical experience.

(4) Application for license and notice to the applicant must be made and given ~~as in the case of~~ *in the same manner as for* master electricians' licenses. The examination for a residential electrician's license must consist of at least ~~30~~ *50* questions designed to fairly test the applicant's knowledge and the applicant's technical application *skills* in the following subjects:

~~(a) the Ohm's law;~~

~~(b)~~*(a)* the national electric code; and

~~(c)~~*(b) board rules and applicable laws under Title 37* ~~layout and practical installation of electrical circuits~~.

(5) (a) For the purposes of this section "electrical maintenance" means the ordinary and customary installations in a plant or onsite in addition to modifications, additions, or repairs that are limited to replacing ballasts, relamping, trouble-shooting motor controls, and replacing motors, breakers, or magnetic starters in a kind-for-kind manner. The term includes the connection of specific items of specialized equipment that can be directly connected to an existing branch circuit panel by means of factory-installed leads.

(b) The term does not include installation of a new circuit to operate the equipment described in subsection (5)(a) or installation that requires the size of supply conductors to be increased."

Section 10. Section 37-68-311, MCA, is amended to read:

"37-68-311. Application fee — license fee — specific exemption for apprentices. (1) Master electricians and journeyman or residential electricians installing or intending to install for hire electric wiring or equipment to convey electric current or apparatus to be operated by electric current shall apply for a license to the department. The application must be on a form furnished by the department and must be accompanied by an application fee set by the board. The forms must state the applicant's full name and address, the extent of work experience, and other information required by the board. If the applicant has complied with the rules adopted by the board and, being qualified, has successfully completed the examination, the department shall issue the proper license to the applicant.

(2) A person serving ~~a 4-year electrician~~ *in an approved journeyman* apprenticeship *program or a residential apprenticeship program* under the supervision of a licensed electrician is exempt from the licensing provision of this section during training. ~~Credit for the time spent in an electrical school must be given to the master electrician, journeyman electrician, residential electrician, or apprentice, up to a total of 2 years, on the 4-year requirement.~~

(3) In addition to the temporary permits authorized in 37-1-305, the board may, ~~on a case-by-case basis at the board's discretion and~~ in accordance with criteria determined by the board, ~~renew~~ *issue* a *second* temporary practice permit for a person who fails the first license examination ~~for which the person is eligible but~~ *and* who submits a temporary practice permit *fee with a request for a second temporary practice permit* ~~renewal application~~ to the board stating that the person intends to retake the license examination ~~on the next available date~~ *within 3 months of failing the first examination*."

Section 11. Section 37-68-315, MCA, is amended to read:

"37-68-315. ~~Proof~~ *Presentation* of license. (1) An employee of a private or public employment agency or labor union, a building code compliance inspector, an employee of the department, a person who is professionally responsible for a job site, or an electrician licensed under ~~Title 37, chapter 68,~~ *this chapter* has the right to ask a person *who is* working at a ~~job site~~ *jobsite* doing work that requires an electrician's license to *present the person's license* ~~provide proof of licensure~~. If the person performing the work is unable to furnish *the person's license* ~~proof of licensure~~, the requesting person may report that fact to the board or the department.

(2) An employee of the department may issue a citation to and collect a fine, as provided in 37-68-316, from a person at a ~~job site~~ *jobsite* where the person is

performing electrical work if the person fails to display an electrician's license ~~or proof of licensure~~ at the request of the department ~~inspector~~ *employee*."

Section 12. Section 37-68-322, MCA, is amended to read:

"37-68-322. Penalty. (1) *(a)* ~~Any~~ *A* person ~~or corporation violating~~ *who knowingly violates* any provision of this chapter ~~shall~~ *may* upon conviction of a violation~~:~~

~~(a) if a person,~~ be punished by a fine *of* not more than ~~$500~~ *$750*, by imprisonment for a term not to exceed 6 months, by revocation of the license, or by any combination of the fine, imprisonment, and revocation~~, in the discretion of the court; and~~.

(b) ~~if~~ *If* a corporation~~,~~ *or other business entity violates any provision of this chapter, it may* be punished by a fine of not more than $1,000.

(2) Any officer or agent of a corporation *or other business entity* or member or agent of a partnership or association who *knowingly and* personally participates in or is an accessory to any violation of this chapter by the ~~partnership, association, or~~ corporation*, other business entity, partnership, or association* ~~shall be~~ *is* subject to the penalties prescribed ~~for individuals~~ *in subsection (1)(a)*.

(3) A violation of this chapter is a continuing violation, and the statute of limitations is tolled until the violation ceases. The county attorney shall, upon request of the board, prosecute any violation of the licensing requirements of this chapter."

Section 13. Repealer. Sections 37-68-307 and 37-68-314, MCA, are repealed.

Approved April 17, 2009

CHAPTER NO. 258

[HB 404]

AN ACT PROVIDING AUTHORITY TO THE BOARD OF PROFESSIONAL ENGINEERS AND PROFESSIONAL LAND SURVEYORS TO PRESCRIBE UNIFORM STANDARDS GOVERNING CERTIFICATES OF SURVEY AND FINAL SUBDIVISION PLATS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Board to prescribe standards. The board of professional engineers and professional land surveyors shall, in conformance with the Montana Administrative Procedure Act, prescribe uniform standards governing certificates of survey and final subdivision plats.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 76, chapter 3, part 4, and the provisions of Title 76, chapter 3, part 4, apply to [section 1].

Approved April 16, 2009

CHAPTER NO. 259

[HB 412]

AN ACT REVISING THE LIQUOR EXCISE TAX RATE SCHEDULE TO PROVIDE ADDITIONAL RATES FOR COMPANIES THAT PRODUCE LESS THAN 200,000 PROOF GALLONS OF LIQUOR; AMENDING SECTION

16-1-401, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 16-1-401, MCA, is amended to read:

"16-1-401. Liquor excise tax. (1) The department shall collect at the time of the sale and delivery of any liquor as authorized under any provision of the laws of the state of Montana an excise tax at ~~the~~ *a* rate ~~of:~~ *that is the percent of the retail selling price determined in accordance with the following schedule based on all liquor sold and delivered in the state by a company that manufactured, distilled, rectified, bottled, or processed the liquor and sold the specified number of proof gallons of liquor nationwide in the calendar year preceding imposition of the tax pursuant to this section:*

~~(a) 16% of the retail selling price on all liquor sold and delivered in the state by a company that manufactured, distilled, rectified, bottled, or processed, and sold more than 200,000 proof gallons of liquor nationwide in the calendar year preceding imposition of the tax pursuant to this section;~~

~~(b) 13.8% of the retail selling price on all liquor sold and delivered in the state by a company that manufactured, distilled, rectified, bottled, or processed, and sold not more than 200,000 proof gallons of liquor nationwide in the calendar year preceding imposition of the tax pursuant to this section.~~

Nationwide production	*Tax rate*
Less than 20,000 proof gallons	*3%*
20,000 to 50,000 proof gallons	*8%*
50,001 to 200,000 proof gallons	*13.8%*
Over 200,000 proof gallons	*16%*

(2) The department shall retain the amount of the excise tax received in a separate account and shall, in accordance with the provisions of 17-2-124, deposit, to the credit of the general fund, the amount collected and received not later than the 10th day of each month."

Section 2. Effective date. [This act] is effective on passage and approval.

Section 3. Applicability. [This act] applies to liquor sold and delivered after July 1, 2009.

Approved April 17, 2009

CHAPTER NO. 260

[HB 416]

AN ACT EXEMPTING CERTAIN BIODIESEL PRODUCED FROM WASTE VEGETABLE OIL FEEDSTOCK FROM THE SPECIAL FUEL TAX; PROVIDING DEFINITIONS; PROVIDING REGISTRATION AND REPORTING REQUIREMENTS; AMENDING SECTION 15-70-301, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Exemption from special fuel tax. (1) Subject to the conditions of this section, a special biodiesel fuel producer is exempt from the special fuel tax imposed by 15-70-321 on biodiesel produced by the producer from waste vegetable oil feedstock.

(2) This section does not apply to special fuel used for agricultural purposes pursuant to 15-70-362.

(3) To qualify for the exemption under this section, the special biodiesel fuel producer shall:

(a) register annually with the department; and

(b) report on the amount of biodiesel produced and used by the producer in a calendar year by February 15 of the succeeding year.

Section 2. Section 15-70-301, MCA, is amended to read:

"15-70-301. Definitions. As used in this part, the following definitions apply:

(1) "Agricultural use" means use of special fuel by a person who earns income while engaging in the business of farming or ranching and who files farm or income reports for tax purposes as required by the United States internal revenue service.

(2) (a) "Biodiesel" means a fuel produced from monoalkyl esters of long-chain fatty acids derived from vegetable oils, renewable lipids, animal fats, or any combination of those ingredients. The fuel must meet the requirements of ASTM D6751, also known as the Standard Specification for Biodiesel Fuel (B100) Blend Stock for Distillate Fuels, as adopted by the American society for testing and materials.

(b) Biodiesel is also known as "B-100".

(3) "Biodiesel blend" means a blend of biodiesel and petroleum diesel fuel that is at least 2% biodiesel.

(4) "Bond" means:

(a) a bond executed by a special fuel user as principal with a corporate surety qualified under the laws of Montana, payable to the state of Montana, and conditioned upon faithful performance of all requirements of this part, including the payment of all taxes, penalties, and other obligations of the special fuel user arising out of this part; or

(b) a deposit with the department by the special fuel user, under terms and conditions that the department may prescribe, of certificates of deposit or irrevocable letters of credit issued by a bank and insured by the federal deposit insurance corporation.

(5) "Bulk delivery" means placing special fuel not intended for resale in storage or containers. The term does not mean special fuel delivered into the supply tank of a motor vehicle.

(6) "Cardtrol" or "keylock" means a unique device intended to allow access to a special fuel dealer's unattended pump or dispensing unit for the purpose of delivery of special fuel to an authorized user of the unique device.

(7) "Department" means the department of transportation.

(8) (a) "Distributed" means, at the time that special fuel is withdrawn, the withdrawal from a storage tank, a refinery, or a terminal storage in this state for sale or use in this state or for the transportation other than by pipeline to another refinery in this state or a pipeline terminal in this state of the following:

(i) special fuel refined, produced, manufactured, or compounded in this state and placed in storage tanks in this state;

(ii) special fuel transferred from a refinery or pipeline terminal in this state and placed in tanks at the refinery or terminal; or

(iii) special fuel imported into this state and placed in storage at a refinery or pipeline terminal.

(b) When withdrawn from the storage tanks, refinery, or terminal, the special fuel may be distributed only by a person who is the holder of a valid distributor's license.

(c) Special fuel imported into this state, other than that special fuel placed in storage at a refinery or pipeline terminal, is considered to be distributed after it has arrived in and is brought to rest in this state.

(9) *(a)* "Distributor" means:

~~(a)~~*(i)* a person who engages in the business in this state of producing, refining, manufacturing, or compounding special fuel for sale, use, or distribution;

~~(b)~~*(ii)* an importer who imports special fuel for sale, use, or distribution;

~~(c)~~*(iii)* a person who engages in the wholesale distribution of special fuel in this state and chooses to become licensed to assume the Montana state special fuel tax liability; and

~~(d)~~*(iv)* an exporter.

(b) The term does not include a special biodiesel fuel producer who produces biodiesel from waste vegetable oil feedstock in this state for the operation of motor vehicles owned or controlled by the person upon the public roads and highways of the state.

(10) "Export" means to transport out of Montana, by any means other than in the fuel supply tank of a motor vehicle, special fuel received from a refinery or pipeline terminal within Montana.

(11) "Exporter" means a person who transports, other than in the fuel supply tank of a motor vehicle, special fuel received from a refinery or pipeline terminal in Montana to a destination outside Montana for sale, use, or consumption outside Montana.

(12) "Import" means to first receive special fuel into possession or custody after its arrival and coming to rest at a destination within the state or to first receive any special fuel shipped or transported into this state from a point of origin outside this state other than in the fuel supply tank of a motor vehicle.

(13) "Importer" means a person who transports or arranges for the transportation of special fuel into Montana for sale, use, or distribution.

(14) "Improperly imported fuel" means special fuel that is:

(a) consigned to a Montana destination and imported into the state without the distributor first having obtained a Montana special fuel distributor license as required in 15-70-341; or

(b) delivered, possessed, sold, or transferred in the state in any manner not authorized under Title 15, chapter 70.

(15) "Motor vehicle" means all vehicles that are operated upon the public highways or streets of this state and that are operated in whole or in part by the combustion of special fuel.

(16) "Person" includes any person, firm, association, joint-stock company, syndicate, partnership, or corporation. Whenever the term is used in any clause prescribing and imposing a fine or imprisonment, or both, as applied to a firm, association, syndicate, or partnership, it includes the partners or members and, as applied to joint-stock companies and corporations, the officers.

(17) "Public roads and highways of this state" means all streets, roads, highways, and related structures:

(a) built and maintained with appropriated funds of the United States, the state of Montana, or any political subdivision of the state;

(b) dedicated to public use;

(c) acquired by eminent domain, as provided in Title 60, chapter 4, or Title 70, chapter 30; or

(d) acquired by adverse use by the public, with jurisdiction having been assumed by the state or any political subdivision of the state.

(18) "Special biodiesel fuel producer" means a person who produces less than 2,500 gallons annually of biodiesel fuel from waste vegetable oil feedstock for the operation of motor vehicles owned or controlled by the person upon the public roads and highways of the state.

~~(18)~~*(19)* "Special fuel" means those combustible gases and liquids commonly referred to as diesel fuel or any other volatile liquid of less than 46 degrees A.P.I. (American petroleum institute) gravity test, except liquid petroleum gas, when actually sold for use in motor vehicles operating upon the public roads and highways within the state of Montana. The term special fuel includes biodiesel and additives of all types when the additive is mixed or blended into special fuel, regardless of the additive's classifications or uses.

~~(19)~~*(20)* "Special fuel dealer" means:

(a) a person in the business of handling special fuel who delivers any part of the fuel into the fuel supply tank or tanks of a motor vehicle not then owned or controlled by the person;

(b) a person who sells special fuel at a location unattended by the dealer through an unattended pump by use of a cardtrol, keylock, or similar device; or

(c) a person who provides a facility, with or without attended services, from which more than one special fuel user obtains special fuel for use in the fuel supply tank of a motor vehicle not then controlled by the dealer.

~~(20)~~*(21)* (a) "Special fuel user" means a person who consumes in this state special fuel for the operation of motor vehicles owned or controlled by the person upon the highways of this state.

(b) The term does not include*:*

(i) the U.S. government, a state, a county, an incorporated city or town, or a school district of this state*; or*

(ii) a special biodiesel fuel producer who produces biodiesel from waste vegetable oil feedstock for the operation of motor vehicles owned or controlled by the person upon the public roads and highways of the state.

~~(21)~~*(22)* "Use", when the term relates to a special fuel user, means the consumption by a special fuel user of special fuels in the operation of a motor vehicle on the highways of this state.

(23) "Waste vegetable oil" means used cooking oil gathered from restaurants or commercial food processors."

Section 3. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 15, chapter 70, part 3, and the provisions of Title 15, chapter 70, part 3, apply to [section 1].

Section 4. Effective date. [This act] is effective July 1, 2009.

Section 5. Applicability. [This act] applies to biodiesel produced from waste vegetable oil feedstock produced after June 30, 2009.

Approved April 17, 2009

CHAPTER NO. 261

[HB 466]

AN ACT PROVIDING THAT EMPLOYEES OF ALL POLITICAL SUBDIVISIONS OF THE STATE WHO ARE MEMBERS OF THE NATIONAL GUARD OR MILITARY RESERVES ARE ENTITLED TO PAID MILITARY LEAVE; AMENDING SECTION 10-1-1009, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 10-1-1009, MCA, is amended to read:

"10-1-1009. Paid military leave for public employees. (1) ~~A state, city, town, or county~~ *An* employee *of the state or of any political subdivision, as defined in 2-9-101,* who is a member of the organized militia of this state or who is a member of the organized or unorganized reserve corps or military forces of the United States and who has been an employee for a period of at least 6 months must be given leave of absence with pay accruing at a rate of ~~15 working days~~ *120 hours* in a calendar year*, or academic year if applicable,* for performing military service.

(2) Military leave may not be charged against the employee's annual vacation time.

(3) Unused military leave must be carried over to the next calendar year, *or academic year if applicable,* but may not exceed a total of ~~30 days~~ *240 hours* in any calendar *or academic* year."

Section 2. Effective date. [This act] is effective July 1, 2009.

Approved April 17, 2009

CHAPTER NO. 262

[HB 544]

AN ACT PROVIDING THAT A DISABILITY INSURER MAY NOT CHARGE THE INSURED ANY FEES OR PENALTY FOR CANCELING COVERAGE THAT THE INSURED HAS PAID FOR IN ADVANCE; REQUIRING THE DISABILITY INSURER TO REFUND ANY UNEARNED PORTION OF THE PREMIUM TO THE INSURED; AND CREATING AN EXCEPTION FOR CERTAIN SHORT-TERM DISABILITY POLICIES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Return of unearned premium. If an insured pays a premium in advance for coverage to any disability insurer licensed in this state and the insured subsequently cancels the coverage, the disability insurer shall refund the unearned portion of the premium. The disability insurer may consider premium to be earned only on a calendar month basis. The disability insurer may not charge the insured any fees or penalty for canceling the coverage. This section does not apply to a short-term disability policy that has a duration of 6 months or less.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 33, chapter 22, part 1, and the provisions of Title 33, chapter 22, part 1, apply to [section 1].

Approved April 17, 2009

CHAPTER NO. 263

[HB 574]

AN ACT REVISING THE ELEMENTS OF THE OFFENSES OF BURGLARY AND AGGRAVATED BURGLARY; AND AMENDING SECTION 45-6-204, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 45-6-204, MCA, is amended to read:

"45-6-204. Burglary. (1) A person commits the offense of burglary if ~~he~~ *the person* knowingly enters or remains unlawfully in an occupied structure ~~with the purpose to commit an offense therein~~ *and:*

(a) the person has the purpose to commit an offense in the occupied structure; or

(b) the person knowingly or purposely commits any other offense within that structure.

(2) A person commits the offense of aggravated burglary if ~~he~~ *the person* knowingly enters or remains unlawfully in an occupied structure ~~with the purpose to commit an offense therein~~ and:

(a) (i) the person has the purpose to commit an offense in the occupied structure; or

(ii) the person knowingly or purposely commits any other offense within that structure; and

~~(a)~~*(b)* in effecting entry or in the course of committing the offense or in immediate flight ~~thereafter, he~~ *after committing the offense:*

(i) the person or another participant in the offense is armed with explosives or a weapon; or

~~(b) in effecting entry or in the course of committing the offense or in immediate flight thereafter, he~~

(ii) the person purposely, knowingly, or negligently inflicts or attempts to inflict bodily injury upon anyone.

(3) A person convicted of the offense of burglary shall be imprisoned in the state prison for any term not to exceed 20 years or be fined an amount not to exceed $50,000, or both. A person convicted of the offense of aggravated burglary shall be imprisoned in the state prison for any term not to exceed 40 years or be fined an amount not to exceed $50,000, or both."

Approved April 17, 2009

CHAPTER NO. 264

[HB 588]

AN ACT REVISING THE DISTRIBUTION OF COAL GROSS PROCEEDS TAXES TO LOCAL TAXING JURISDICTIONS AND THE STATE;

ESTABLISHING A BASIS FOR THE DISTRIBUTION OF COAL GROSS PROCEEDS TAXES; PROVIDING THAT COAL GROSS PROCEEDS TAXES MUST BE DISTRIBUTED ACCORDING TO THE PREVIOUS FISCAL YEAR MILL LEVIES; ELIMINATING THE DISTRIBUTION OF COAL GROSS PROCEEDS BASED ON THE UNIT VALUE CALCULATION; REMOVING THE STATUTORY APPROPRIATION OF COAL GROSS PROCEEDS TAXES; AMENDING SECTIONS 15-23-703 AND 17-7-502, MCA; REPEALING SECTIONS 15-23-705, 15-23-706, AND 15-23-707, MCA; AND PROVIDING AN EFFECTIVE DATE AND APPLICABILITY DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-23-703, MCA, is amended to read:

"15-23-703. Taxation of gross proceeds — taxable value for county classification and ~~guaranteed tax base aid to schools~~ *nontax purposes*. (1) The department shall compute from the reported *value of coal* gross proceeds ~~from coal~~ a tax roll that must be transmitted to the county treasurer on or before September 15 *of* each year. The department may not levy or assess any mills against ~~the reported~~ *coal* gross proceeds ~~of coal~~ but shall levy a tax of 5% against the value of ~~the reported gross proceeds~~ *coal* as provided in 15-23-701(1)(d). The county treasurer shall give full notice to each coal producer of the taxes due and shall collect the taxes.

(2) For county classification and all nontax purposes, the taxable value of the gross proceeds of coal is 45% of the contract sales price as defined in 15-35-102.

~~(3) Except as provided in subsection (6), the county treasurer shall calculate and distribute to the state, county, and eligible school districts in the county the amount of the coal gross proceeds tax, determined by multiplying the unit value calculated in 15-23-705 times the tons of coal extracted, treated, and sold on which the coal gross proceeds tax was owed during the preceding calendar year.~~

~~(4) Except as provided in subsections (5), (6), and (8), the county treasurer shall credit the amount determined under subsection (3) and the amounts received under 15-23-706:~~

~~(a) to the state and to the counties that levied mills in fiscal year 1990 against 1988 production in the relative proportions required by the levies for state and county purposes in the same manner as property taxes were distributed in fiscal year 1990 in the taxing jurisdiction; and~~

~~(b) to school districts in the county that either levied mills in school fiscal year 1990 against 1988 production or used nontax revenue, such as impact aid money, as provided in 20 U.S.C. 7701, et seq., in lieu of levying mills against production, in the same manner that property taxes collected or property taxes that would have been collected would have been distributed in the 1990 school fiscal year in the school district.~~

~~(5) (a) If the total tax liability in a taxing jurisdiction exceeds the amount determined in subsection (3), the county treasurer shall, immediately following the distribution from taxes paid on May 31 of each year, send the excess revenue, excluding any protested coal gross proceeds tax revenue, to the department for redistribution as provided in 15-23-706.~~

~~(b) If the total tax liability in a taxing jurisdiction is less than the amount determined in subsection (3), the taxing jurisdiction is entitled to a redistribution as provided by 15-23-706.~~

(3) (a) Except as provided in subsection (6) and subject to subsection (3)(b), coal gross proceeds taxes must be allocated to the state, county, and school districts in the same relative proportions as the taxes were distributed in fiscal year 1990.

(b) The county treasurer shall multiply the coal gross proceeds taxes collected in the county under this part by the relative proportions determined for the state, county, and school districts under subsection (3)(a). Those amounts must be distributed as follows:

(i) the state share must be distributed in the relative proportions required by levies for state purposes in the same manner as property taxes were distributed in fiscal year 1990;

(ii) except as provided in subsection (4), the county share must be distributed in the relative proportions required by levies for county purposes, other than an elementary school or high school, in the same manner as property taxes were distributed in the previous fiscal year;

(iii) except as provided in subsection (5), the school districts' share must be distributed in the relative proportions required by levies for school district purposes in the same manner as property taxes were distributed in the previous fiscal year.

~~(6)~~*(4)* The board of county commissioners of a county may direct the county treasurer to reallocate the distribution of coal gross proceeds taxes that would have gone to a taxing unit, as provided in subsection ~~(4)(a)~~ *(3)(b)(i)*, to another taxing unit or taxing units, other than an elementary school or high school, within the county under the following conditions:

(a) The county treasurer shall first allocate the coal gross proceeds taxes to the taxing units within the county in the same proportion that all other property tax proceeds were distributed in the county in *the previous* fiscal year ~~1990~~.

(b) If the allocation in subsection ~~(6)(a)~~ *(4)(a)* exceeds the total budget ~~for~~ *of* a taxing unit, the commissioners may direct the county treasurer to ~~allocate~~ *reallocate* the excess to any taxing unit within the county.

~~(7)~~*(5)* The board of trustees of an elementary or high school district may reallocate the coal gross proceeds taxes distributed to the district by the county treasurer under the following conditions:

(a) The district shall first allocate the coal gross proceeds taxes to the budgeted funds of the district in the same proportion that all other property tax proceeds were distributed in the district in *the previous* fiscal year ~~1990~~.

(b) If the allocation under subsection ~~(7)(a)~~ *(5)(a)* exceeds the total budget for a fund, the trustees may ~~allocate~~ *reallocate* the excess to any budgeted fund of the school district.

~~(8)~~*(6)* ~~The~~ *Except as provided in subsections (7) and (8), the* county treasurer shall credit all taxes collected under this part from coal mines that began production after December 31, 1988, in the relative proportions required by the levies for state, county, and school district purposes in the same manner as property taxes were distributed in the previous fiscal year.

(7) The board of county commissioners of a county may direct the county treasurer to reallocate the distribution of coal gross proceeds under subsection (6) in the same manner as provided in subsection (4).

(8) The board of trustees of an elementary or high school district may reallocate the coal gross proceeds taxes distributed to the district by the county treasurer under subsection (6) in the same manner as provided in subsection (5)."

Section 2. Section 17-7-502, MCA, is amended to read:

"17-7-502. Statutory appropriations — definition — requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-17-105; 5-11-120; 5-11-407; 5-13-403; 7-4-2502; 10-1-1202; 10-1-1303; 10-2-603; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-121; 15-1-218; ~~15-23-706;~~ 15-31-906; 15-35-108; 15-36-332; 15-37-117; 15-39-110; 15-65-121; 15-70-101; 15-70-369; 15-70-601; 16-11-509; 17-3-106; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-7-304; 18-11-112; 19-3-319; 19-6-404; 19-6-410; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 19-20-607; 19-21-203; 20-8-107; 20-9-534; 20-9-622; 20-26-1503; 22-3-1004; 23-4-105; 23-4-202; 23-4-204; 23-4-302; 23-4-304; 23-5-306; 23-5-409; 23-5-612; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503; 41-5-2011; 42-2-105; 44-1-504; 44-12-206; 44-13-102; 50-4-623; 53-1-109; 53-6-703; 53-24-108; 53-24-206; 60-11-115; 61-3-415; 69-3-870; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 76-13-150; 77-1-108; 77-2-362; 80-2-222; 80-4-416; 80-5-510; 80-11-518; 82-11-161; 87-1-513; 90-1-115; 90-1-205; 90-3-1003; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 4, Ch. 497, L. 1999, the inclusion of 15-38-202 terminates July 1, 2014; pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, and secs. 3 and 6, Ch. 481, L. 2003, the inclusion of 15-35-108 terminates June 30, 2010; pursuant to sec. 17, Ch. 593, L. 2005, the inclusion of 15-31-906 terminates January 1, 2010; pursuant to sec. 73, Ch. 44, L. 2007, the inclusion of 19-6-410 terminates upon the death of the last recipient eligible under 19-6-709(2) for the supplemental benefit provided by 19-6-709; and pursuant to sec. 6, Ch. 2, Sp. L. September 2007, the inclusion of 76-13-150 terminates June 30, 2009.)"

Section 3. Repealer. Sections 15-23-705, 15-23-706, and 15-23-707, MCA, are repealed.

Section 4. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

Section 5. Effective date. [This act] is effective July 1, 2009.

Section 6. Applicability. (1) [This act] applies retroactively, as provided in 1-2-109, to coal produced and sold after December 31, 2007.

(2) [This act] applies to coal gross proceeds taxes distributed for fiscal years beginning after June 30, 2009.

Approved April 17, 2009

CHAPTER NO. 265

[SB 9]

AN ACT ALLOWING FOR CERTAIN PUBLIC TRANSPORTATION SYSTEMS TO BE INCLUDED IN PROJECTS FINANCED BY MUNICIPAL REVENUE BONDS; AMENDING SECTION 7-7-4402, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-7-4402, MCA, is amended to read:

"7-7-4402. Definitions. ~~Whenever~~ *As* used in this part, unless a different meaning clearly appears from the context, the following definitions apply:

(1) The term "governing body" ~~shall include~~ *includes* bodies and boards, by whatsoever names they may be known, having charge of finances and management of a municipality.

(2) The term "municipality" ~~shall include~~ *includes* any city or any town, however organized.

(3) The term "undertaking" ~~shall mean~~ *means* any one or a combination of the following:

(a) water and sewer systems, together with all parts ~~thereof~~ *of the systems* and appurtenances ~~thereto~~ *to the systems,* including but not limited to supply and distribution systems, reservoirs, dams, and sewage treatment and disposal works;

(b) public airport construction and public airport building;

(c) convention facilities;

(d) public recreation facilities; ~~and~~

(e) public parking facilities, solid waste management systems, or other revenue-producing facilities and services authorized ~~in these codes~~ for cities and towns*; and*

(f) public transportation systems, including passenger buses, trolleys, passenger trains and lines, light rail trains and lines, and the facilities associated with those systems."

Section 2. Effective date. [This act] is effective July 1, 2009.

Approved April 17, 2009

CHAPTER NO. 266

[SB 71]

AN ACT REVISING STATE REMEDIATION LAWS; ALLOWING REIMBURSEMENT OF CLAIMS FROM A LEAD LIABLE PERSON UPON COMPLETION AND APPROVAL OF CERTAIN REPORTS; CLARIFYING

THE DEPARTMENT'S RESPONSIBILITY TO IDENTIFY PERSONS LIABLE FOR A RELEASE OR THREATENED RELEASE; AND AMENDING SECTIONS 75-10-743 AND 75-10-745, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-10-743, MCA, is amended to read:

"75-10-743. Orphan share state special revenue account — reimbursement of claims — payment of department costs. (1) There is an orphan share account in the state special revenue fund established in 17-2-102 that is to be administered by the department. Money in the account is available to the department by appropriation and, except as provided in subsections (9) and (10), must be used to reimburse remedial action costs claimed pursuant to 75-10-742 through 75-10-751 and to pay costs incurred by the department in defending the orphan share.

(2) There must be deposited in the orphan share account:

(a) all penalties assessed pursuant to 75-10-750(12);

(b) funds received from the distribution of oil and natural gas production taxes pursuant to 15-36-331;

(c) unencumbered funds remaining in the abandoned mines state special revenue account;

(d) interest income on the account;

(e) funds received from settlements pursuant to 75-10-719(7); and

(f) funds received from reimbursement of the department's orphan share defense costs pursuant to subsection (6).

(3) If the orphan share fund contains sufficient money, valid claims must be reimbursed subsequently in the order in which they were received by the department. If the orphan share fund does not contain sufficient money to reimburse claims for completed remedial actions, a reimbursement may not be made and the orphan share fund, the department, and the state are not liable for making any reimbursement for the costs. The department and the state are not liable for any penalties if the orphan share fund does not contain sufficient money to reimburse claims, and interest may not accrue on outstanding claims.

(4) Except as provided in subsections (6) and (7), claims may not be submitted and remedial action costs may not be reimbursed from the orphan share fund until all remedial actions, except for operation and maintenance, are completed at a facility.

(5) Except as provided in subsection (6), reimbursement from the orphan share fund must be limited to actual documented remedial action costs incurred after the date of a petition provided for in 75-10-745. Reimbursement may not be made for attorney fees, legal costs, or operation and maintenance costs.

(6) (a) The department's costs incurred in defending the orphan share must be paid by the persons participating in the allocation under 75-10-742 through 75-10-751 in proportion to their allocated shares. The orphan share fund is responsible for a portion of the department's costs incurred in defending the orphan share in proportion to the orphan share's allocated share, as follows:

(i) If sufficient funds are available in the orphan share fund, the department's costs incurred in defending the orphan share must be paid from the orphan share fund in proportion to the share of liability allocated to the orphan share.

(ii) If sufficient funds are not available in the orphan share fund, persons participating in the allocation under 75-10-742 through 75-10-751 shall pay all the orphan share's allocated share of the department's costs incurred in defending the orphan share in proportion to each person's allocated share of liability.

(b) A person who pays the orphan share's proportional share of costs has a claim against the orphan share fund and must be reimbursed as provided in subsection (3).

(c) A state agency that is liable for remedial action costs incurred has a claim against the orphan share fund and must be reimbursed as provided in subsection (3). The agency may submit a claim before or after remedial action is complete. Reimbursement may not be made for attorney fees, legal costs, or operation and maintenance costs. The agency may be reimbursed only after:

(i) its liability has been determined pursuant to 75-10-742 through 75-10-751 or by a court of competent jurisdiction;

(ii) it has received a notice letter pursuant to 75-10-711; and

(iii) the department has approved the costs.

(7) *(a)* If the lead liable person under 75-10-746 presents evidence to the department that the person cannot complete the remedial actions without partial reimbursement and that a delay in reimbursement will cause undue financial hardship on the person, the department may allow the submission of claims and may reimburse the claims prior to the completion of all remedial actions. A person is not eligible for early reimbursement unless the person is in substantial compliance with all department-approved remedial action plans.

(b) The department may reimburse claims from a lead liable person upon completion and department approval of a report evaluating the nature and extent of contamination and a report formulating and evaluating final remediation alternatives. This early reimbursement is limited to those eligible costs incurred by the lead liable person for the preparation of the reports.

(8) A person participating in the allocation process who received funds under the mixed funding pilot program provided for in sections 14 through 20, Chapter 584, Laws of 1995, may not claim or receive reimbursement from the orphan share fund for the amount of funds received under the mixed funding pilot program that are later attributed to the orphan share under the allocation process.

(9) (a) For the biennium beginning July 1, 2005, up to $1.25 million may be used by the department to pay the costs incurred by the department in contracting for evaluating the extent of contamination and formulating final remediation alternatives for releases at the Kalispell pole and timber, reliance refinery company, and Yale oil corporation facility complex. If the department spends less than $1.25 million for those purposes, the remaining funds must be spent for remediation of the facility complex. The department may not seek recovery of the $1.25 million from potentially liable persons.

(b) The money spent pursuant to subsection (9)(a) must be credited against the amount owed by the state agency in a judgment or settlement agreement for payment of the remedial action costs at the facility for which the money was spent.

~~(c) The department shall consult with the noticed potentially liable persons regarding contractor selection and determination of the scope of the work for contract tasks. The department shall also provide the noticed potentially liable~~

~~persons with contract performance updates and shall consult with the noticed potentially liable persons regarding expenses and progress on contract tasks.~~

~~(d) The department shall contract for the compilation, assessment, and summarization of the existing data pertaining to the complex described in subsection (9)(a), for recommendations for and conducting of additional investigations and studies necessary to develop remediation alternatives, and for development and assessment of remediation alternatives.~~

~~(e) Unless the department is delayed by a challenge to a contracting action, multiple contractor selection processes, or other unanticipated circumstances, the activities authorized under subsection (9)(a) must meet the following schedule:~~

~~(i) Contracts for investigations and studies must be in place by August 31, 2005.~~

~~(ii) A summary of existing data must be prepared by December 31, 2005.~~

~~(iii) The contract or contract task order for investigations, studies, and development and evaluation of final remediation alternatives must be in place by April 30, 2006.~~

~~(iv) All intended field work must be completed by November 30, 2006, and to the extent that this field work indicates that followup is necessary, the followup field work must be completed as soon as possible or addressed in the report that must be submitted pursuant to subsection (9)(g).~~

~~(v) The contractor shall submit evaluations of the extent of contamination by October 31, 2006.~~

~~(vi) The contractor shall submit final remediation alternatives by July 31, 2007.~~

~~(f) The department shall report to the environmental quality council quarterly during calendar years 2005, 2006, and 2007 regarding the progress being made to meet the requirements of subsection (9)(e). The report must include information on expenditures.~~

~~(g) If investigations completed under this subsection (9) indicate the need for additional information or for pilot tests and other related remedial action process activities, the department shall prepare a report identifying the rationale and estimated costs for additional work and present it to the environmental quality council during the spring of 2007.~~

~~(h) The department shall provide to the environmental quality council copies of investigations and reports completed pursuant to subsection (9)(d).~~

(10) (a) ~~Beginning in the fiscal year that commences July 1, 2005, the~~ *The* department shall transfer from the orphan share account to the long-term or perpetual water treatment permanent trust fund provided for in 82-4-367 $1.2 million in each fiscal year until the board of investments makes the certification pursuant to subsection (10)(b) of this section.

(b) (i) The board of investments shall monitor the long-term or perpetual water treatment permanent trust fund provided for in 82-4-367 to determine when the amount of money in the long-term or perpetual water treatment permanent trust fund will be sufficient, with future earnings, to provide a fund balance of $19.3 million on January 1, 2018.

(ii) When the board of investments makes the determination pursuant to subsection (10)(b)(i), the board of investments shall notify the department and certify to the department the amount of money, if any, that must be transferred

during the fiscal year in which the board of investments makes its determination pursuant to subsection (10)(b)(i) in order to provide a fund balance of $19.3 million on January 1, 2018.

(iii) In the fiscal year that the board of investments makes its determination and notifies the department, the department shall transfer only the amount certified by the board of investments, if any, and may not make additional transfers during subsequent fiscal years.

~~(11) For the biennium beginning July 1, 2007, the department shall transfer from the orphan share fund:~~

~~(a) $600,000 to the hazardous waste/CERCLA account provided for in 75-10-621 to provide for a positive account balance;~~

~~(b) $50,000 to the oil and gas production damage mitigation account pursuant to the conditions of 82-11-161 to provide for a positive account balance;~~

~~(c) $2 million to the environmental quality protection fund established in 75-10-704 to be used by the department to expedite the cleanup of the burlington northern Santa Fe Livingston site;~~

~~(d) $200,000 to the natural resources operations state special revenue account established in 15-38-301 to provide for a positive account balance; and~~

~~(e) $800,000 to the natural resources projects state special revenue account established in 15-38-302 to provide for a positive account balance.~~"

Section 2. Section 75-10-745, MCA, is amended to read:

"75-10-745. Allocation of liability — process initiation. (1) For a facility at which the department has initiated a remedial action under 75-10-711 through the issuance of a notice letter prior to July 1, 1997, any person determined to be potentially liable under 75-10-715 may petition the department in writing to initiate the allocation process. The right to participate in the allocation process is waived if the written petition is not provided to the department prior to the completion of remedial actions, except for operation and maintenance, at the facility.

(2) For a facility at which the department has not initiated a remedial action through the issuance of a notice letter under 75-10-711, any person potentially liable under 75-10-715 who has received approval of a voluntary cleanup plan under 75-10-730 through 75-10-738 may petition the department in writing to initiate the allocation process. The right to participate in the allocation process is waived if the written petition is not provided to the department prior to the completion of remedial actions, except for operation and maintenance, at the facility.

(3) For a facility at which the department initiates a remedial action through the issuance of a notice letter under 75-10-711 after July 1, 1997, any person potentially liable under 75-10-715 may petition the department in writing within 60 days of the date of the notice letter to initiate the allocation process. Any potentially liable person under 75-10-715 who does not provide a written petition to the department within this timeframe waives the right to participate in the allocation process and remains liable as provided in 75-10-715. The notice letter sent by the department must advise that a failure to petition the department for allocation as provided in this subsection will result in a waiver of the right to participate in the allocation process.

(4) The allocation process may be initiated and may proceed upon written petition of one or more potentially liable persons.

(5) Prior to the initiation of discovery as provided in 75-10-747, all persons who participate in the allocation process shall agree in writing that the allocator's decision is binding, subject only to the provisions of 75-10-750(9) and the appeal provisions of 75-10-751.

(6) All liable or potentially liable persons under 75-10-715 who do not participate in the allocation process under 75-10-742 through 75-10-751 remain liable as provided in 75-10-715.

(7) Upon receipt of a written petition under subsection (1) or (2) or when initiating actions at a facility without a prior notice letter under subsection (3), the department shall:

~~(a) conduct a good faith investigation and may use its authority in 75-10-707 to identify persons who may be liable under 75-10-715; and~~

(a) make a diligent good faith effort to determine the identity of the person or persons liable for the release or threatened release; and

(b) issue notice letters to one or more of the persons it identifies as potentially liable under 75-10-715. If a person petitions the department to initiate the allocation process as provided for in subsection (8), the department shall issue notice letters or nomination letters pursuant to subsection (9) to the persons it identified as potentially liable under 75-10-715 who were not previously given notice.

(8) A person who receives a notice letter may, within 60 days from the date of the notice letter, petition the department in writing to participate in an allocation process and provide the department with the identity of other potentially liable persons under 75-10-715 who were not given notice by the department. When identifying additional potentially liable persons, the person given notice shall provide to the department a statement and credible evidence showing that there is a basis in law and fact to determine that the identified person is potentially liable under 75-10-715.

(9) Within 30 days of receipt of the information provided for in subsection (8), the department may issue a notice letter to an identified person whom the department determines is a potentially liable person under 75-10-715 or to a person whom the department identified in subsection (7) and who was not previously given notice. If the department does not issue a notice letter to an identified person, the department shall issue the person a nomination letter indicating that the person has been identified as potentially liable under 75-10-715. The nomination letter must state that the person has the right to participate in the allocation process and that if the person does not participate and is found liable, the person remains subject to liability as provided in 75-10-715. If the newly noticed or nominated person chooses to participate in the allocation process, the person shall provide a written petition of the person's intent to participate in the allocation process to the department within 30 days of the date of the notice or nomination letter. A failure to petition the department for allocation as provided in this subsection results in a waiver of the right to participate in the allocation process.

(10) If a person nominated under subsection (9) cannot be readily located, the department shall, within 30 days of receipt of the information provided for in subsection (8), publish one notice of the person's nomination, along with the information contained in a nomination letter under subsection (9), in a newspaper of general circulation in the county where all or a portion of the facility is located. The notice must state that the person has 30 days from the date of the notice to petition the department, in writing, to participate in the

allocation process. A failure to petition the department for allocation as provided in this subsection results in a waiver of the right to participate in the allocation process.

(11) If one or more potentially liable persons petition in writing for an allocation process under subsection (1), (2), or (3) and the department determines that the facility has a potential orphan share, the department shall:

(a) publish a notice and brief description of the facility in a newspaper of general circulation in the area affected and provide at least 30 days for submission of public comment on the identification of potentially liable persons under 75-10-715; and

(b) notify interested persons and the county commissioners of each county in which all or a portion of the facility is located and provide at least 30 days for submission of comments on the identification of potentially liable persons under 75-10-715.

(12) If a nominated person participates in the allocation and the person is assigned a zero share of liability by the allocator, that person's reasonable costs of participating in the allocation, including attorney fees, must be borne by the person who proposed the addition of the nominated person to the allocation.

(13) If the department anticipates that a facility may have an orphan share, the department shall represent the orphan share in the allocation process. If the state is a potentially liable person under 75-10-715, an agency or entity other than the department shall represent the state in the allocation process.

(14) Except as provided in subsection (15), whenever the department is involved in allocation processes on five facilities, other allocation processes may be stayed before the discovery stage provided in 75-10-747. Upon completion of an allocation provided in 75-10-750 or 75-10-751, execution of a stipulated agreement under 75-10-750, or a default to liability as provided in 75-10-715 for one of the five facilities, the department shall notify the potentially liable persons for the facility on the waiting list that has the earliest date of written petition. Discovery under 75-10-747 must begin within 10 days of department notification.

(15) A stay on the allocation process may not occur under subsection (14) if all persons participating in the allocation process agree in writing that there is no orphan share and that the state is not a potentially liable person under 75-10-715. The agreement is binding upon all noticed or nominated persons.

(16) If, after initiating the process, a potentially liable person elects to discontinue participation in the process, the person remains subject to liability as provided in 75-10-715."

Approved April 17, 2009

CHAPTER NO. 267

[SB 95]

AN ACT AUTHORIZING THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO USE TEMPORARY NUTRIENT CRITERIA TO ESTABLISH PERMIT LIMITS FOR POINT SOURCE DISCHARGES TO SURFACE WATER; ESTABLISHING A TIME LIMIT FOR TEMPORARY CRITERIA; REQUIRING A REPORT TO THE ENVIRONMENTAL QUALITY COUNCIL; AND AMENDING SECTION 75-5-103, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-5-103, MCA, is amended to read:

"75-5-103. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) *(a) "Base numeric nutrient standards" means numeric water quality standards for nutrients in surface water that are adopted to protect the designated uses of a surface water body.*

(b) The term does not include numeric water quality standards for nitrate, nitrate plus nitrite, or nitrite that are adopted to protect human health.

(2) "Board" means the board of environmental review provided for in 2-15-3502.

~~(2)~~*(3)* "Contamination" means impairment of the quality of state waters by sewage, industrial wastes, or other wastes, creating a hazard to human health.

~~(3)~~*(4)* "Council" means the water pollution control advisory council provided for in 2-15-2107.

~~(4)~~*(5)* (a) "Currently available data" means data that is readily available to the department at the time a decision is made, including information supporting its previous lists of water bodies that are threatened or impaired.

(b) The term does not mean new data to be obtained as a result of department efforts.

~~(5)~~*(6)* "Degradation" means a change in water quality that lowers the quality of high-quality waters for a parameter. The term does not include those changes in water quality determined to be nonsignificant pursuant to 75-5-301(5)(c).

~~(6)~~*(7)* "Department" means the department of environmental quality provided for in 2-15-3501.

~~(7)~~*(8)* "Disposal system" means a system for disposing of sewage, industrial, or other wastes and includes sewage systems and treatment works.

~~(8)~~*(9)* "Effluent standard" means a restriction or prohibition on quantities, rates, and concentrations of chemical, physical, biological, and other constituents that are discharged into state waters.

~~(9)~~*(10)* "Existing uses" means those uses actually attained in state waters on or after July 1, 1971, whether or not those uses are included in the water quality standards.

~~(10)~~*(11)* "High-quality waters" means all state waters, except:

(a) ground water classified as of January 1, 1995, within the "III" or "IV" classifications established by the board's classification rules; and

(b) surface waters that:

(i) are not capable of supporting any one of the designated uses for their classification; or

(ii) have zero flow or surface expression for more than 270 days during most years.

~~(11)~~*(12)* "Impaired water body" means a water body or stream segment for which sufficient credible data shows that the water body or stream segment is failing to achieve compliance with applicable water quality standards.

~~(12)~~*(13)* "Industrial waste" means a waste substance from the process of business or industry or from the development of any natural resource, together with any sewage that may be present.

~~(13)~~*(14)* "Interested person" means a person who has a real property interest, a water right, or an economic interest that is or may be directly and adversely affected by the department's preliminary decision regarding degradation of state waters, pursuant to 75-5-303. The term includes a person who has requested authorization to degrade high-quality waters.

~~(14)~~*(15)* "Load allocation" means the portion of a receiving water's loading capacity that is allocated to one of its existing or future nonpoint sources or to natural background sources.

~~(15)~~*(16)* "Loading capacity" means the mass of a pollutant that a water body can assimilate without a violation of water quality standards. For pollutants that cannot be measured in terms of mass, it means the maximum change that can occur from the best practicable condition in a surface water without causing a violation of the surface water quality standards.

~~(16)~~*(17)* "Local department of health" means the staff, including health officers, employed by a county, city, city-county, or district board of health.

~~(17)~~*(18)* "Metal parameters" includes but is not limited to aluminum, antimony, arsenic, beryllium, barium, cadmium, chromium, copper, fluoride, iron, lead, manganese, mercury, nickel, selenium, silver, thallium, and zinc.

~~(18)~~*(19)* "Mixing zone" means an area established in a permit or final decision on nondegradation issued by the department where water quality standards may be exceeded, subject to conditions that are imposed by the department and that are consistent with the rules adopted by the board.

(20) "Nutrient work group" means an advisory work group, convened by the department, representing publicly owned and privately owned point sources of pollution, nonpoint sources of pollution, and other interested parties that will advise the department on the base numeric nutrient standards, the development of temporary nutrient criteria, and the implementation of those standards and criteria together with associated economic impacts.

~~(19)~~*(21)* "Other wastes" means garbage, municipal refuse, decayed wood, sawdust, shavings, bark, lime, sand, ashes, offal, night soil, oil, grease, tar, heat, chemicals, dead animals, sediment, wrecked or discarded equipment, radioactive materials, solid waste, and all other substances that may pollute state waters.

~~(20)~~*(22)* "Outstanding resource waters" means:

(a) state surface waters located wholly within the boundaries of areas designated as national parks or national wilderness areas as of October 1, 1995; or

(b) other surface waters or ground waters classified by the board under the provisions of 75-5-316 and approved by the legislature.

~~(21)~~*(23)* "Owner or operator" means a person who owns, leases, operates, controls, or supervises a point source.

~~(22)~~*(24)* "Parameter" means a physical, biological, or chemical property of state water when a value of that property affects the quality of the state water.

~~(23)~~*(25)* "Person" means the state, a political subdivision of the state, institution, firm, corporation, partnership, individual, or other entity and includes persons resident in Canada.

~~(24)~~*(26)* "Point source" means a discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or vessel or other floating craft, from which pollutants are or may be discharged.

~~(25)~~*(27)* (a) "Pollution" means:

(i) contamination or other alteration of the physical, chemical, or biological properties of state waters that exceeds that permitted by Montana water quality standards, including but not limited to standards relating to change in temperature, taste, color, turbidity, or odor; or

(ii) the discharge, seepage, drainage, infiltration, or flow of liquid, gaseous, solid, radioactive, or other substance into state water that will or is likely to create a nuisance or render the waters harmful, detrimental, or injurious to public health, recreation, safety, or welfare, to livestock, or to wild animals, birds, fish, or other wildlife.

(b) A discharge, seepage, drainage, infiltration, or flow that is authorized under the pollution discharge permit rules of the board is not pollution under this chapter. Activities conducted under the conditions imposed by the department in short-term authorizations pursuant to 75-5-308 are not considered pollution under this chapter.

~~(26)~~*(28)* "Sewage" means water-carried waste products from residences, public buildings, institutions, or other buildings, including discharge from human beings or animals, together with ground water infiltration and surface water present.

~~(27)~~*(29)* "Sewage system" means a device for collecting or conducting sewage, industrial wastes, or other wastes to an ultimate disposal point.

~~(28)~~*(30)* "Standard of performance" means a standard adopted by the board for the control of the discharge of pollutants that reflects the greatest degree of effluent reduction achievable through application of the best available demonstrated control technology, processes, operating methods, or other alternatives, including, when practicable, a standard permitting no discharge of pollutants.

~~(29)~~*(31)* (a) "State waters" means a body of water, irrigation system, or drainage system, either surface or underground.

(b) The term does not apply to:

(i) ponds or lagoons used solely for treating, transporting, or impounding pollutants; or

(ii) irrigation waters or land application disposal waters when the waters are used up within the irrigation or land application disposal system and the waters are not returned to state waters.

~~(30)~~*(32)* "Sufficient credible data" means chemical, physical, or biological monitoring data, alone or in combination with narrative information, that supports a finding as to whether a water body is achieving compliance with applicable water quality standards.

(33) "Temporary nutrient criteria" means numeric permit limits for nutrients that are based on a determination that the base numeric nutrient standards cannot be achieved by a particular point source discharger due to economic impacts or the limits of technology.

~~(31)~~*(34)* "Threatened water body" means a water body or stream segment for which sufficient credible data and calculated increases in loads show that the

water body or stream segment is fully supporting its designated uses but threatened for a particular designated use because of:

(a) proposed sources that are not subject to pollution prevention or control actions required by a discharge permit, the nondegradation provisions, or reasonable land, soil, and water conservation practices; or

(b) documented adverse pollution trends.

~~(32)~~*(35)* "Total maximum daily load" or "TMDL" means the sum of the individual waste load allocations for point sources and load allocations for both nonpoint sources and natural background sources established at a level necessary to achieve compliance with applicable surface water quality standards.

~~(33)~~*(36)* "Treatment works" means works, including sewage lagoons, installed for treating or holding sewage, industrial wastes, or other wastes.

~~(34)~~*(37)* "Waste load allocation" means the portion of a receiving water's loading capacity that is allocated to one of its existing or future point sources.

~~(35)~~*(38)* "Water quality protection practices" means those activities, prohibitions, maintenance procedures, or other management practices applied to point and nonpoint sources designed to protect, maintain, and improve the quality of state waters. Water quality protection practices include but are not limited to treatment requirements, standards of performance, effluent standards, and operating procedures and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from material storage.

~~(36)~~*(39)* "Water well" means an excavation that is drilled, cored, bored, washed, driven, dug, jetted, or otherwise constructed and intended for the location, diversion, artificial recharge, or acquisition of ground water.

~~(37)~~*(40)* "Watershed advisory group" means a group of individuals who wish to participate in an advisory capacity in revising and reprioritizing the list of water bodies developed under 75-5-702 and in the development of TMDLs under 75-5-703, including those groups or individuals requested by the department to participate in an advisory capacity as provided in 75-5-704."

Section 2. Temporary nutrient criteria. (1) The department may, on a case-by-case basis, approve the use of temporary nutrient criteria in a discharge permit based upon adequate justification pursuant to subsection (2) that attainment of the base numeric nutrient standards is precluded due to economic impacts or the limits of technology.

(2) (a) The department, in consultation with the nutrient work group, shall develop guidelines to ensure that the economic impacts from base numeric nutrient standards on public and private systems are equally and adequately addressed. In developing those guidelines, the department and the nutrient work group shall consider economic impacts appropriate for application within Montana and may also consider relevant guidance of the United States environmental protection agency pertaining to analysis of economic impacts from water quality standards.

(b) In the event that economic impacts do not justify temporary nutrient criteria for a particular discharger, the department may approve temporary nutrient criteria based upon a finding that the limits of technology preclude the attainment of the base numeric nutrient standards. The department's determination that the limits of technology justify temporary nutrient criteria must be based on available and proven treatment technologies at the time the temporary nutrient criteria are approved.

(c) The department shall consult with the nutrient work group prior to recommending base numeric nutrient standards or criteria to the board and shall continue to consult with the nutrient work group in implementing temporary nutrient criteria.

(3) The department shall review each application for temporary nutrient criteria on a case-by-case basis to determine if there are reasonable alternatives, such as trading or permit compliance schedules, that preclude the need for the temporary criteria.

(4) (a) Temporary nutrient criteria approved by the department become effective and may be incorporated into a permit only after a public hearing and adoption by the department under the rulemaking procedures of Title 2, chapter 4, part 3.

(b) Temporary nutrient criteria may be established for a period not to exceed 20 years and must be reviewed by the department every 5 years from the date of adoption to ensure that the justification for their adoption is still valid.

(c) On or before July 1 of each year, the department, in consultation with the nutrient work group, shall report to the environmental quality council by providing a summary of the status of the base numeric nutrient standards, temporary nutrient criteria, and implementation of those criteria, including estimated economic impacts.

(d) On or before September 1 of each year preceding the convening of a regular session of the legislature, the department, in consultation with the nutrient work group, shall summarize the previous two reports provided in subsection (4)(c) to the environmental quality council in accordance with 5-11-210.

Section 3. Codification instruction. [Section 2] is intended to be codified as an integral part of Title 75, chapter 5, part 3, and the provisions of Title 75, chapter 5, part 3, apply to [section 2].

Approved April 17, 2009

CHAPTER NO. 268

[SB 96]

AN ACT REQUIRING A MENTAL EVALUATION OF CERTAIN CRIMINAL DEFENDANTS CLAIMING A MENTAL DISEASE OR DEFECT OR A DEVELOPMENTAL DISABILITY; AMENDING SECTIONS 46-14-311 AND 46-18-111, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-14-311, MCA, is amended to read:

"46-14-311. Consideration of mental disease or defect or developmental disability in sentencing. *(1)* Whenever a defendant is convicted on a verdict of guilty or a plea of guilty or nolo contendere and claims *at the time of the omnibus hearing held pursuant to 46-13-110 or, if no omnibus hearing is held, at the time of any change of plea by the defendant* that at the time of the commission of the offense of which convicted the defendant was suffering from a mental disease or defect or developmental disability that rendered the defendant unable to appreciate the criminality of the defendant's behavior or to conform the defendant's behavior to the requirements of law, the sentencing

court shall consider any relevant evidence presented at the trial and shall ~~require additional evidence that it considers necessary for the determination of the issue, including examination of the defendant and a report of the examination as provided in 46-14-202 and 46-14-206~~ *also consider the results of the presentence investigation required pursuant to subsection (2)*.

(2) Under the circumstances referred to in subsection (1), the sentencing court shall order a presentence investigation and a report on the investigation pursuant to 46-18-111. The investigation must include a mental evaluation by a person appointed by the director of the department of public health and human services or the director's designee. The evaluation must include an opinion as to whether the defendant suffered from a mental disease or defect or developmental disability with the effect as described in subsection (1). If the opinion concludes that the defendant did suffer from a mental disease or defect or developmental disability with the effect as described in subsection (1), the evaluation must also include a recommendation as to the care, custody, and treatment needs of the defendant."

Section 2. Section 46-18-111, MCA, is amended to read:

"46-18-111. Presentence investigation — when required. (1) *(a)* Upon the acceptance of a plea or upon a verdict or finding of guilty to one or more felony offenses, the district court shall direct the probation officer to make a presentence investigation and report. The district court shall consider the presentence investigation report prior to sentencing.

(b) If the defendant was convicted of an offense under 45-5-502, 45-5-503, 45-5-504, 45-5-505, 45-5-507, 45-5-625, 45-5-627, 45-5-601(3), 45-5-602(3), or 45-5-603(2)(c) or if the defendant was convicted under 46-23-507 and the offender was convicted of failure to register as a sexual offender pursuant to Title 46, chapter 23, part 5, the investigation must include a psychosexual evaluation of the defendant and a recommendation as to treatment of the defendant in the least restrictive environment, considering the risk the defendant presents to the community and the defendant's needs, unless the defendant was sentenced under 46-18-219. The evaluation must be completed by a sex offender therapist who is a member of the Montana sex offender treatment association or has comparable credentials acceptable to the department of labor and industry. The psychosexual evaluation must be made available to the county attorney's office, the defense attorney, the probation and parole officer, and the sentencing judge. All costs related to the evaluation must be paid by the defendant. If the defendant is determined by the district court to be indigent, all costs related to the evaluation are the responsibility of the district court and must be paid by the county or the state, or both, under Title 3, chapter 5, part 9.

(c) When, pursuant to 46-14-311, the court has ordered a presentence investigation and a report pursuant to this section, the mental evaluation required by 46-14-311 must be attached to the presentence investigation report and becomes part of the report. The report must be made available to persons and entities as provided in 46-18-113.

(2) The court shall order a presentence *investigation* report unless the court makes a finding that a report is unnecessary. Unless the court makes that finding, a defendant convicted of any offense not enumerated in subsection (1) that may result in incarceration for 1 year or more may not be sentenced before a written presentence investigation report by a probation and parole officer is presented to and considered by the district court. The district court may order a

presentence investigation for a defendant convicted of a misdemeanor only if the defendant was convicted of a misdemeanor that the state originally charged as a sexual or violent offense as defined in 46-23-502.

(3) The defendant shall pay to the department of corrections a $50 fee at the time that the report is completed, unless the court determines that the defendant is not able to pay the fee within a reasonable time. The fee may be retained by the department and used to finance contracts entered into under 53-1-203(5)."

Section 3. Effective date. [This act] is effective on passage and approval.

Section 4. Applicability. [This act] applies to a defendant convicted on a verdict of guilty or a plea of guilty or nolo contendere on or after [the effective date of this act].

Approved April 17, 2009

CHAPTER NO. 269

[SB 104]

AN ACT REVISING THE TIME REQUIREMENTS APPLICABLE TO THE HOLDING OF ESTRAYS AND THE PUBLIC NOTIFICATION REQUIREMENTS RELATING TO THE DISPOSITION OF ESTRAYS BY A STOCK INSPECTOR; AND AMENDING SECTION 81-4-603, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 81-4-603, MCA, is amended to read:

"81-4-603. Taking up and disposition of estrays — advertisement. (1) A stock inspector authorized by the department shall take into ~~his~~ possession an estray found in ~~his~~ *the stock inspector's* district and shall either*:*

(a) ship or arrange for the shipment of the estray to a licensed livestock market for sale~~.~~*;* or

(b) ~~he may~~ hold the estray in ~~his~~ *the stock inspector's* possession and care for the estray in the cheapest and most practicable manner for ~~a period of not less~~ *at least 10 days and not more* than 30 days *after public notice is published as provided in subsection (2)* ~~or more than 60 days,~~. ~~during which time he~~ *During the holding period, the stock inspector* shall advertise that ~~he holds~~ the estray *is being held* and that, unless *the estray is* claimed by the owner, ~~he will~~ on a date to be specified in the notice *the stock inspector will* sell the estray at a public auction to the highest bidder for cash.

(2) The notice ~~shall~~ *must* be published ~~in the newspaper doing the county printing of the county in which the estray is found and in addition to that paper in a paper published in the town or city nearest the place in which the estray is held~~ *in the newspaper doing the county printing of the county in which the estray is found and on the department's website and in each livestock market brand office and county sheriff's office in the state*. This notice ~~shall be published at least once a week for 4 consecutive weeks and shall~~ *must be published in the newspaper at least one time and must* contain a statement of the date of the sale, the place where the sale is to be held, and a general description of the estray, including the sex and the approximate age, together with an illustration of the brand and the position of the brand on the estray and a description of the place or locality where the estray was found or taken.

(3) The proceeds from the sale ~~shall~~ *must* be disposed of under 81-4-605 and 81-4-606.

(4) The owner of the estray may appear and claim it at any time before the sale or shipment, as provided in this part, upon payment to the department of the cost of caring for the estray as determined by the department."

Approved April 17, 2009

CHAPTER NO. 270

[SB 123]

AN ACT PROHIBITING THE USE OF AN AMENDED NOTICE OF PROPOSED RULEMAKING BY A STATE AGENCY TO CURE A DEFICIENCY IN A STATEMENT OF REASONABLE NECESSITY UNLESS CERTAIN CONDITIONS ARE MET; AMENDING SECTION 2-4-305, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-4-305, MCA, is amended to read:

"2-4-305. Requisites for validity — authority and statement of reasons. (1) The agency shall fully consider written and oral submissions respecting the proposed rule. Upon adoption of a rule, an agency shall issue a concise statement of the principal reasons for and against its adoption, incorporating in the statement the reasons for overruling the considerations urged against its adoption. If substantial differences exist between the rule as proposed and as adopted and the differences have not been described or set forth in the adopted rule as that rule is printed in the register, the differences must be described in the statement of reasons for and against agency action. When written or oral submissions have not been received, an agency may omit the statement of reasons.

(2) Rules may not unnecessarily repeat statutory language. Whenever it is necessary to refer to statutory language in order to convey the meaning of a rule interpreting the language, the reference must clearly indicate the portion of the language that is statutory and the portion that is an amplification of the language.

(3) Each proposed and adopted rule must include a citation to the specific grant of rulemaking authority pursuant to which the rule or any part of the rule is adopted. In addition, each proposed and adopted rule must include a citation to the specific section or sections in the Montana Code Annotated that the rule purports to implement. A substantive rule may not be proposed or adopted unless:

(a) a statute granting the agency authority to adopt rules clearly and specifically lists the subject matter of the rule as a subject upon which the agency shall or may adopt rules; or

(b) the rule implements and relates to a subject matter or an agency function that is clearly and specifically included in a statute to which the grant of rulemaking authority extends.

(4) Each rule that is proposed and adopted by an agency and that implements a policy of a governing board or commission must include a citation to and description of the policy implemented. Each agency rule implementing a

policy and the policy itself must be based on legal authority and otherwise comply with the requisites for validity of rules established by this chapter.

(5) To be effective, each substantive rule adopted must be within the scope of authority conferred and in accordance with standards prescribed by other provisions of law.

(6) Whenever by the express or implied terms of any statute a state agency has authority to adopt rules to implement, interpret, make specific, or otherwise carry out the provisions of the statute, an adoption, amendment, or repeal of a rule is not valid or effective unless it is:

(a) consistent and not in conflict with the statute; and

(b) reasonably necessary to effectuate the purpose of the statute. A statute mandating that the agency adopt rules establishes the necessity for rules but does not, standing alone, constitute reasonable necessity for a rule. The agency shall also address the reasonableness component of the reasonable necessity requirement by, as indicated in 2-4-302(1) and subsection (1) of this section, stating the principal reasons and the rationale for its intended action and for the particular approach that it takes in complying with the mandate to adopt rules. Subject to the provisions of subsection (8), reasonable necessity must be clearly and thoroughly demonstrated for each adoption, amendment, or repeal of a rule in the agency's notice of proposed rulemaking and in the written and oral data, views, comments, or testimony submitted by the public or the agency and considered by the agency. A statement that merely explains what the rule provides is not a statement of the reasonable necessity for the rule.

(7) A rule is not valid unless notice of it is given and it is adopted in substantial compliance with 2-4-302, 2-4-303, or 2-4-306 and this section and unless notice of adoption of the rule is published within 6 months of the publishing of notice of the proposed rule. If an amended or supplemental notice of either proposed or final rulemaking, or both, is published concerning the same rule, the 6-month limit must be determined with reference to the latest notice in all cases.

(8) *(a)* An agency may use an amended proposal notice or the adoption notice to correct deficiencies in citations of authority for rules and in citations of sections implemented by rules.

(b) An agency may use an amended proposal notice but, except for clerical corrections, may not use the adoption notice to correct deficiencies in a statement of reasonable necessity.

(c) If an agency uses an amended proposal notice to amend a statement of reasonable necessity for reasons other than for corrections in citations of authority, in citations of sections being implemented, or of a clerical nature, the agency shall allow additional time for oral or written comments from the same interested persons who were notified of the original proposal notice, including from a primary sponsor, if primary sponsor notification was required under 2-4-302, and from any other person who offered comments or appeared at a hearing already held on the proposed rule.

(9) If a majority of the members of the appropriate administrative rule review committee notify the committee presiding officer that those members object to a notice of proposed rulemaking, the committee shall notify the agency in writing that the committee objects to the proposal notice and will address the objections at the next committee meeting. Following notice by the committee to the agency, the proposal notice may not be adopted until publication of the last issue of the register that is published before expiration of the 6-month period

during which the adoption notice must be published, unless prior to that time, the committee meets and does not make the same objection. A copy of the committee's notification to the agency must be included in the committee's records."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 17, 2009

CHAPTER NO. 271

[SB 133]

AN ACT GENERALLY REVISING INSURANCE LAWS; SUBSTITUTING THE TERM "BUSINESS ENTITY" FOR "PARTNERSHIP" AND "CORPORATION" IN VARIOUS CONTEXTS THROUGHOUT THE INSURANCE CODE; AUTHORIZING THE COMMISSIONER OF INSURANCE TO ADOPT RULES TO FACILITATE ELECTRONIC FILING OF CERTAIN DOCUMENTS; EXTENDING THE TIME THAT A LICENSEE MAY NOT CLAIM AN EXEMPTION FROM CERTAIN PROVISIONS OF STATE INSURANCE LAWS BASED ON FEDERAL PRIVACY STANDARDS; PROVIDING THAT A BUSINESS ENTITY THAT IS OTHER THAN A CORPORATION OR PARTNERSHIP MUST BE ORGANIZED UNDER THE LAWS OF THIS STATE; CLARIFYING THAT DISABILITY INSURANCE IS SUBJECT TO GUARANTEED RENEWABILITY PROVISIONS; REQUIRING THAT INSUREDS PAY ONLY THE REQUIRED COPAYMENT OR OTHER COST-SHARING REQUIREMENT FOR COVERED PRESCRIPTION DRUGS AT THE TIME OF PURCHASE; CLARIFYING CERTAIN INCURRED GROUP HEALTH INSURANCE CLAIMS MAY BE HELD PENDING PREMIUM PAYMENT; AMENDING SECTIONS 33-1-601, 33-2-116, 33-2-301, 33-2-305, 33-2-306, 33-4-502, 33-4-503, 33-4-504, 33-17-211, 33-17-212, 33-17-214, 33-17-231, 33-17-301, 33-17-1001, 33-17-1002, 33-17-1103, 33-17-1204, 33-19-105, 33-20-606, 33-20-1303, 33-20-1307, 33-21-113, 33-22-101, 33-22-142, 33-22-232, 33-22-302, 33-22-530, 33-22-602, 33-22-1809, 33-28-104, 33-30-102, 33-31-102, 33-31-111, AND 33-31-311, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-1-601, MCA, is amended to read:

"33-1-601. Commissioner — attorney for service of process. (1) Each insurer applying for authority to transact insurance in this state shall appoint the commissioner as its attorney to receive service of legal process issued against it in Montana. Service of legal process under this section means a summons and a complaint. The appointment must be made on a form designated and furnished by the commissioner. The appointment is irrevocable, binds the insurer and any successor in interest or to the assets or liabilities of the insurer, and remains in effect as long as there is in force in Montana any contract made by the insurer or obligations arising from a contract.

(2) Each insurer at the time of application for a certificate of authority shall file with the commissioner the name and address of the person to whom process against ~~it~~ *the insurer* served upon the commissioner is to be forwarded. The insurer may change the designation *or address* by a new filing*, which must be filed on a form designated and furnished by the commissioner*."

Section 2. Section 33-2-116, MCA, is amended to read:

"33-2-116. Issuance or refusal of certificate of authority — state ownership of certificate. (1) If upon completion of ~~its~~ *an insurer's* application *for a certificate of authority* the commissioner finds that the insurer has met the requirements for *a certificate of authority* ~~and is entitled thereto~~ under this code, ~~he~~ *the commissioner* shall issue to the insurer a proper certificate of authority. If ~~he~~ *the commissioner* does not ~~so~~ find *that the insurer is entitled to a certificate of authority*, the commissioner shall issue ~~his~~ *an* order refusing ~~such~~ *to issue a* certificate. The commissioner shall act upon an application for a certificate of authority within 180 days after its completion.

(2) The certificate, if issued, ~~shall~~ *must* specify the kind or kinds of insurance the insurer is authorized to transact in Montana. At the insurer's request, the commissioner may issue a certificate of authority limited to particular types of insurance or insurance coverages within the scope of a kind of insurance as defined in 33-1-205 through 33-1-212.

(3) Although issued to the insurer, the certificate of authority is at all times the property of the state of Montana. Upon any expiration~~, suspension,~~ or termination ~~thereof~~ *of the certificate of authority*, the insurer shall promptly deliver the certificate of authority to the commissioner."

Section 3. Section 33-2-301, MCA, is amended to read:

"33-2-301. Short title — purpose — definitions. (1) This part constitutes and may be referred to as "The Surplus Lines Insurance Law".

(2) This part must be applied to:

(a) protect persons seeking insurance in this state;

(b) permit surplus lines insurance to be placed with reputable and financially sound unauthorized insurers and to be exported from this state pursuant to this part;

(c) establish a system of regulation that will permit orderly access to surplus lines insurance in this state and encourage authorized insurers to provide new and innovative types of insurance to consumers in this state; and

(d) protect revenues of this state.

(3) As used in this part, the following definitions apply:

(a) "Authorized insurer" means an insurer authorized pursuant to 33-2-101 to transact insurance in this state.

(b) "Eligible surplus lines insurer" means an unauthorized insurer with which a surplus lines insurance producer may place surplus lines insurance under 33-2-307.

(c) "Export" means to place surplus lines insurance with an unauthorized insurer.

(d) "Producing insurance producer" means the individual insurance producer dealing directly with the person seeking insurance.

(e) *(i)* "Surplus lines insurance" means any insurance on risks resident, located, or to be performed in this state permitted to be placed through a surplus lines insurance producer with an unauthorized insurer eligible to accept the insurance.

(ii) The term does not include the kinds of insurance exempted under 33-2-317.

(f) "Surplus lines insurance producer" means an individual~~, partnership,~~ or ~~corporation~~ *business entity* licensed under 33-2-305 to place surplus lines

insurance on risks resident, located, or to be performed in this state with unauthorized insurers eligible to accept the insurance.

(g) "Unauthorized insurer" means an insurer not authorized pursuant to 33-2-101 to transact insurance in this state. The term includes insurance exchanges authorized under the laws of other states."

Section 4. Section 33-2-305, MCA, is amended to read:

"33-2-305. Licensing of surplus lines insurance producer — fee. (1) A person may not place a contract of surplus lines insurance with an unauthorized insurer unless the person is licensed as a property and casualty insurance producer and possesses a current surplus lines insurance producer's license issued by the commissioner.

(2) The commissioner shall issue a surplus lines insurance producer's license to any qualified holder of a current property and casualty insurance producer license only if the insurance producer has:

(a) remitted to the commissioner the fee prescribed by 33-2-708;

(b) submitted to the commissioner a completed license application in a form approved by the commissioner; and

(c) been licensed as a property and casualty insurance producer continuously for 5 years or more.

(3) The licensee shall renew the license on a form prescribed by the commissioner. The commissioner may establish rules for biennial renewal of the license. A license lapses if not renewed.

(4) A ~~corporation~~ *business entity* is eligible to be licensed as a surplus lines insurance producer if:

(a) the ~~corporate~~ *business entity's* license lists the individuals within the ~~corporation~~ *business entity* who have satisfied the requirements of this part to become surplus lines insurance producers; and

(b) only those individuals listed on the ~~corporate~~ *business entity's* license transact surplus lines insurance.

(5) This section may not be construed to require agents, producers, or brokers acting as intermediaries between a surplus lines insurance producer and an unauthorized insurer under this part to hold a valid Montana surplus lines insurance producer's license."

Section 5. Section 33-2-306, MCA, is amended to read:

"33-2-306. Surplus lines insurance producer's authority under license — acceptance of business from other insurance producers. (1) Under a surplus lines insurance producer's license the licensee may place surplus lines insurance, in compliance with ~~The Surplus Lines Insurance Law~~ *this part*, with a foreign or alien insurer not authorized to transact insurance in this state and may act as a surplus lines insurance producer in this state for the insurer.

(2) The surplus lines insurance producer may accept surplus lines insurance from a licensed insurance producer of an authorized insurer or, if the commissioner agrees in advance, through an individual~~, partnership,~~ or ~~corporation~~ *business entity* that has not been appointed as an insurance producer in this state and may compensate ~~him therefor~~ *the licensed insurance producer of an authorized insurer, individual, or business entity for the accepted surplus lines insurance*.

(3) A surplus lines insurance producer who places or renews surplus lines insurance in accordance with subsection (1) may collect an inspection fee for the actual costs of inspecting the risk to be covered."

Section 6. Section 33-4-502, MCA, is amended to read:

"33-4-502. Limit of risk — retention of liability. (1) Except as provided in subsection (3), the maximum amount of insurance that an insurer ~~shall~~ *may* retain on a single risk, after deduction of applicable reinsurance, may not exceed *the greater of* 10% of the admitted assets of the insurer or $50,000~~, whichever is the larger amount~~.

(2) For the purposes of this section, a "single risk" as to insurance against fire and hazards other than windstorm, earthquake, or other catastrophic perils includes all properties insured by the same insurer that are reasonably susceptible to loss or damage from the same fire or the same occurrence of another hazard insured against.

(3) A farm mutual insurer:

(a) that insures any portion of a liability risk shall maintain a surplus of at least $50,000;

(b) that retains any portion of a liability risk shall obtain reinsurance on that liability insurance with an insurer ~~authorized to do business in this state~~ *that meets the criteria established in 33-4-503*, and the farm mutual insurer's maximum aggregate liability for incurred losses on liability coverage retained for any calendar year or contract year may not exceed the smaller of $200,000 or 20% of the farm mutual insurer's surplus as of December 31 of the preceding year; and

(c) may not retain liability risk or risk resulting from insuring growing crops against loss or damage from hail or other hazards greater than the proportional share of each limit of liability in the following schedule:

Surplus as of the Preceding December 31:	Proportional Share of Each Limit of Liability Retained:
$1,000,000 or greater	15%
$800,000 to $999,999	12%
$600,000 to $799,999	9%
$400,000 to $599,999	6%
$200,000 to $399,999	3%
Under $200,000	0"

Section 7. Section 33-4-503, MCA, is amended to read:

"33-4-503. Reinsurance. A farm mutual insurer may cede reinsurance to any other farm mutual insurer or insurers and to other authorized property insurers and reinsurers meeting the requirements of 33-2-1216~~(3)~~ and may accept reinsurance from other farm mutual insurers."

Section 8. Section 33-4-504, MCA, is amended to read:

"33-4-504. Cash premium or assessment plans. (1) An insurer may transact business either on ~~the~~ *a* cash premium plan ~~altogether~~ or on ~~the~~ *an* assessment plan ~~altogether~~, *depending upon* ~~whichever~~ *which* plan is provided for in its articles of incorporation or bylaws.

(2) If transacting business on the cash premium plan, the insurer shall collect from each member ~~before or at the time of effectuation of the member's~~

~~insurance the~~ *a* premium in cash in ~~such~~ *an* amount ~~as~~ *that* the insurer ~~deems will be~~ *considers* adequate to cover losses and expenses incurred during the term of ~~such~~ *the* insurance.

(3) If transacting business on the assessment plan, the insurer ~~will~~ *must principally* depend for the payment of losses and expenses ~~principally~~ upon assessments from time to time levied upon members either before or after ~~such~~ *any* losses or expenses have been incurred. This provision ~~shall~~ *may* not be construed~~, however,~~ as preventing any ~~such~~ insurer from collecting from each member ~~such~~ *an* initial amount ~~as it may deem~~ *that the insurer considers* proper prior to or at the time of the effectuation of the member's insurance~~; nor shall it be deemed~~, *and this provision may not be considered* to prohibit the acquisition, accumulation, and maintenance of surplus or unallocated funds.

(4) An insurer transacting business on the cash premium plan may ~~nevertheless~~ provide in its bylaws and policies for special assessment of its members ~~in event~~ *if* the cash premium charged is found by ~~it~~ *the insurer* to be inadequate to pay in full losses and expenses currently incurred. The bylaws ~~shall~~ *must* provide a specific limitation ~~as to~~ *on* the amount ~~which~~ *that* can be ~~so~~ assessed in any one policy year, ~~such~~ *and the* amount ~~to~~ *may not* be ~~not~~ less than one or more than six times the premium charged on each member's policy at the annual rate for a term of 1 year."

Section 9. Section 33-17-211, MCA, is amended to read:

"33-17-211. General qualifications — application for license. (1) An individual applying for a license shall apply in a form approved by the commissioner and declare under penalty of refusal, suspension, or revocation of the license that statements made in the application are true, correct, and complete to the best of the individual's knowledge and belief. Before approving the application, the commissioner shall verify that the individual:

(a) is 18 years of age or older;

(b) has not committed an act that is a ground for refusal, suspension, or revocation as set forth in 33-17-1001;

(c) has paid the license fees stated in 33-2-708;

(d) has successfully passed the examinations for each kind of insurance for which the individual has applied within 12 months of application;

(e) is a resident of this state or of another state that grants similar privileges to residents of this state. Licenses issued based upon Montana state residency terminate if the licensee relocates to another state.

(f) is competent, trustworthy, and of good reputation;

(g) has experience or training or otherwise is qualified in the kind or kinds of insurance for which the applicant applies to be licensed and is reasonably familiar with the provisions of this code that govern the applicant's operations as an insurance producer;

(h) if applying for a license as to life or disability insurance, except as permitted by 33-20-1501(1)(c)(ii):

(i) is not a funeral director, undertaker, or mortician operating in this or any other state;

(ii) is not an officer, employee, or representative of a funeral director, undertaker, or mortician operating in this or any other state; or

(iii) does not hold an interest in or benefit from a business of a funeral director, undertaker, or mortician operating in this or any other state; and

(i) has completed a background examination pursuant to 33-17-220.

(2) A resident or nonresident business entity acting as an insurance producer is required to obtain an insurance producer's license. Application must be made in a form approved by the commissioner. To approve the application, the commissioner shall verify that:

(a) the business entity has paid the appropriate fee; and

(b) the business entity has designated an individual licensed insurance producer who is responsible for the business entity's compliance with the insurance laws of this state.

(3) A person acting as an insurance producer shall obtain a license. A person shall apply for a license in a form approved by the commissioner. Before approving the application, the commissioner shall verify that:

(a) the person meets the requirements listed in subsection (1);

(b) the person has paid the licensing fees stated in 33-2-708 for each individual licensed in conjunction with the person's license. A licensed person shall promptly notify the commissioner of each change relating to an individual listed in the license.

(c) the person has designated a licensed officer to be responsible for the person's compliance with the insurance laws and rules of this state;

(d) each member*,* ~~and~~ employee*,* ~~of a partnership and each~~ officer, director, *or* stockholder~~, or employee~~ of a ~~corporation~~ *business entity* who is acting as an insurance producer in this state has obtained a license;

(e) (i) ~~if the person is a partnership or corporation~~ *with respect to a business entity*, the transaction of insurance business is within the purposes stated in the partnership agreement, the articles of incorporation, or other organizational documents; and

(ii) ~~if the person is~~ *with respect to* a corporation, the secretary of state has issued a certificate of existence or authority under 35-1-1312 or filed articles of incorporation under 35-1-220.

(4) (a) The commissioner may license as a resident insurance producer an association of licensed Montana insurance producers, whether or not incorporated, formed and existing substantially for purposes other than insurance.

(b) The license must be used solely for the purpose of enabling the association to place, as a resident insurance producer, insurance of the properties, interests, and risks of the state of Montana and of other public agencies, bodies, and institutions and to receive the customary commission for the placement.

(c) The president and secretary of the association shall apply for the license in the name of the association, and the commissioner shall issue the license to the association in the association's name alone.

(d) The fee for the license is the same as that required by 33-2-708(1)(a).

(e) The commissioner may, after a hearing with notice to the association, revoke the license if the commissioner finds that continuation of the license is not in the public interest or that a ground listed in 33-17-1001 exists.

(5) An insurance producer using an assumed business name shall register the name with the commissioner before using the name."

Section 10. Section 33-17-212, MCA, is amended to read:

"33-17-212. Examination required — exceptions — fees. (1) Except as provided in subsection (6), an individual applying for a license is required to pass a written examination. The examination must test the knowledge of the individual concerning each kind of insurance listed in subsection (5) for which application is made, the duties and responsibilities of an insurance producer, and the insurance laws and rules of this state. The examination must be developed and conducted under rules adopted by the commissioner.

(2) The commissioner may conduct the examination or make arrangements, including contracting with an outside testing service, for administering the examination. The commissioner may arrange for the testing service to recover the cost of the examination from the applicant.

(3) An individual who fails to appear for the examination as scheduled or fails to pass the examination may reapply for an examination and shall remit all forms before being rescheduled for another examination.

(4) If the applicant is a ~~partnership or corporation~~ *business entity*, each individual who is to be named in the license as having authority to act for the applicant in its insurance transactions under the license ~~shall~~ *must* meet the qualifications ~~as~~ provided *for* in this section.

(5) Examination of an applicant for a license must cover all of the kinds of insurance for which the applicant has applied to be licensed, as constituted by any one or more of the following classifications:

(a) life insurance;

(b) disability insurance;

(c) property insurance~~. For~~*, which for* the purposes of this provision~~,~~ ~~property insurance~~ includes marine insurance~~.~~*;*

(d) casualty insurance;

(e) surety insurance;

(f) limited lines credit insurance;

(g) title insurance.

(6) This section does not apply to and an examination is not required of:

(a) an individual lawfully licensed as an insurance producer as to the kind or kinds of insurance to be transacted as of or immediately prior to January 1, 1961, and who continues to be licensed;

(b) an applicant for a license covering the same kind or kinds of insurance as to which the applicant was licensed in this state, other than under a temporary license, within the 12 months immediately preceding the date of application unless the commissioner has suspended, revoked, or terminated the previous license;

(c) an applicant for a license as a nonresident insurance producer;

(d) transportation ticket agents of common carriers applying for a license to solicit and sell only:

(i) accident insurance ticket policies; or

(ii) insurance of personal effects while being carried as baggage on a common carrier, as incidental to their duties as transportation ticket agents;

(e) an association applying for a license under 33-17-211; or

(f) an individual who, within 90 days of cancellation of a license issued by the state of the individual's residence, files with the commissioner a current letter of

clearance certifying that the individual has passed an examination and held an insurance license in good standing in the individual's state of licensure, except that the individual shall take an examination pertaining to this state's law and each kind of insurance for which the individual has applied for a license and that is not covered under the license held in the other state.

(7) (a) Subject to the provisions of subsection (7)(b), an individual who applies for a nonresident insurance producer license in this state and who was previously licensed for the same lines of authority in another state may not be required to complete any prelicensing education or examination.

(b) The exemption in subsection (7)(a) is available only if the individual is currently licensed in the other state or the individual's application is received within 90 days of the cancellation of the individual's previous license and if the other state issues a certification that, at the time of the cancellation, the individual was in good standing in that state or the state's database records, maintained by the national association of insurance commissioners or any of the association's affiliates or subsidiaries that the association oversees, indicate that the insurance producer is or was licensed in good standing for the lines of authority requested."

Section 11. Section 33-17-214, MCA, is amended to read:

"33-17-214. Issuance of license — insurance producer lines of authority — license data — lapse of license — change of address. (1) A person who has met the requirements of 33-17-211 and 33-17-212 must be issued a license unless that person has been denied a license pursuant to 33-17-1001.

(2) An insurance producer may receive a license qualifying the insurance producer in one or more of the following lines of authority:

(a) life insurance coverage on human lives, including benefits of endowment and annuities, and the coverage may include:

(i) funeral insurance as defined in 33-20-1501;

(ii) benefits in the event of death or dismemberment by accident; and

(iii) benefits for disability income;

(b) accident and health or sickness insurance coverage providing for sickness, bodily injury, or accidental death, and the coverage may provide benefits for disability income;

(c) property insurance coverage for the direct or consequential loss or damage to property of every kind;

(d) casualty insurance coverage against legal liability, including liability for death, injury, or disability or damage to real or personal property;

(e) variable life and variable annuity products insurance coverage provided under variable life insurance contracts and variable annuities;

(f) personal lines of property and casualty insurance coverage sold to individuals and families for primarily noncommercial purposes;

(g) limited line credit insurance; or

(h) any other line of insurance permitted under Title 33.

(3) The license must state the name and address of the licensee, personal identification number, date of issuance, general conditions relative to expiration or termination, kind of insurance covered, and other information that the commissioner considers necessary.

(4) The license of a ~~partnership, corporation, or association~~ *business entity* must also state the name of each individual authorized to exercise the license powers.

(5) Each license remains in effect, unless it is suspended, revoked, or terminated or the license lapses.

(6) (a) A person shall inform the commissioner in writing within 30 days of:

(i) a change of address;

(ii) the final disposition resulting in disciplinary action taken against or a conviction of the insurance producer in any state or federal jurisdiction or by another governmental agency in this state of:

(A) any administrative action related to transacting insurance;

(B) any action taken against any type of securities license; and

(C) any criminal action, excluding traffic violations.

(b) (i) As used in this subsection (6), "final disposition" includes but is not limited to a settlement agreement, consent order, plea agreement, sentence and judgment, or order.

(ii) The term does not include an action that is dismissed or that results in an acquittal, for which no report is necessary."

Section 12. Section 33-17-231, MCA, is amended to read:

"33-17-231. Appointment of insurance producers — continuation and termination. (1) Each insurer appointing an insurance producer in this state shall file with the commissioner the appointment, specifying the kinds of insurance to be transacted by the insurance producer for the insurer. The appointment may be electronically filed ~~pursuant to rules adopted by the commissioner~~. *The commissioner may adopt rules to implement electronic filing.*

(2) Each appointment remains in effect until the insurance producer's license is revoked or otherwise terminated unless written notice of earlier termination of the appointment is filed with the commissioner by the insurer or the insurance producer. The written notice may be electronically filed ~~pursuant to rules adopted by the commissioner~~. *The commissioner may adopt rules to implement electronic filing.* Termination of the insurer's authority in Montana also terminates the appointment.

(3) Subject to the insurance producer's contract rights, an insurer may terminate an insurance producer's appointment at any time. The insurer shall promptly give written notice of the termination to the commissioner and to the insurance producer. The commissioner may require reasonable proof that the insurer has given notice to the insurance producer.

(4) As part of the notice of termination given the commissioner, the insurer shall file with the commissioner a statement of the facts relative to the termination and the cause of termination. Any information or statement contained in the notice of termination is not admissible as evidence in any action or proceeding against the insurer or any representative of the insurer by or on behalf of any person affected by the termination."

Section 13. Section 33-17-301, MCA, is amended to read:

"33-17-301. Adjuster license — qualifications — catastrophe adjustments — public adjuster. (1) An individual may not act as or purport to be an adjuster in this state unless licensed as an adjuster under this chapter. An individual shall apply to the commissioner for an adjuster license in a form

approved by the commissioner. The commissioner shall issue the adjuster license to individuals qualified to be licensed as an adjuster.

(2) To be licensed as an adjuster, the applicant:

(a) must be an individual 18 years of age or more;

(b) must be a resident of Montana or resident of another state that ~~will permit~~ *permits* residents of Montana regularly to act as adjusters in the other state;

(c) shall pass an adjuster licensing examination as prescribed by the commissioner and pay the fee pursuant to 33-2-708;

(d) must be trustworthy and of good character and reputation; and

(e) must have and shall maintain in this state an office accessible to the public and shall keep in the office for not less than 5 years the usual and customary records pertaining to transactions under the license. This provision does not prohibit maintenance of the office in the home of the licensee.

(3) A ~~partnership or corporation~~ *business entity*, whether or not organized under the laws of this state, may be licensed as an adjuster if each individual who is to exercise the adjuster license powers is separately licensed or is named in the ~~partnership or corporation~~ *business entity* adjuster license and is qualified for an individual adjuster license.

(4) An adjuster license or qualifications are not required for an adjuster who is sent into this state by and on behalf of an insurer or adjusting ~~partnership or corporation~~ *business entity* for the purpose of investigating or making adjustments of a particular loss under an insurance policy or for the adjustment of a series of losses resulting from a catastrophe common to all losses.

(5) An adjuster license continues in force until lapsed, suspended, revoked, or terminated. The licensee shall renew the license by the biennial renewal date and pay the appropriate fee or the license will lapse. The biennial fee is established pursuant to 33-2-708.

(6) The commissioner may adopt rules providing for the examination, licensure, bonding, and regulation of public adjusters."

Section 14. Section 33-17-1001, MCA, is amended to read:

"33-17-1001. Suspension, revocation, or refusal of license. (1) The commissioner may suspend, revoke, refuse to renew, or refuse to issue an insurance producer's license, adjuster license, or consultant license, may levy a civil penalty in accordance with 33-1-317, or may choose any combination of actions when an insurance producer, adjuster, consultant, or applicant for those licenses has:

(a) engaged or is about to engage in an act or practice for which issuance of the license could have been refused;

(b) obtained or attempted to obtain a license through misrepresentation or fraud, including but not limited to providing incorrect, misleading, incomplete, or materially untrue information in the license application or in the continuing education affidavit;

(c) violated or failed to comply with a provision of this code or has violated a rule, subpoena, or order of the commissioner or of the commissioner of any other state;

(d) improperly withheld, misappropriated, or converted to the licensee's or applicant's own use money or property belonging to policyholders, insurers, beneficiaries, or others and received in conduct of business under the license;

(e) been convicted of a felony;

(f) in the conduct of the affairs under the license, used fraudulent, coercive, or dishonest practices or the licensee or applicant is incompetent, untrustworthy, financially irresponsible, or a source of injury and loss to the public;

(g) misrepresented the terms of an actual or proposed insurance contract or application for insurance;

(h) been found guilty of an unfair trade practice or fraud prohibited by Title 33, chapter 18;

(i) had a similar license suspended or revoked in any other state;

(j) forged another's name to an application for insurance or to any document related to an insurance transaction;

(k) cheated on an examination for a license; or

(l) knowingly accepted insurance business from a person who is not licensed.

(2) The license of a ~~partnership or corporation~~ *business entity* may be suspended, revoked, refused, or denied if a reason listed in subsection (1) applies to an individual designated in the license to exercise its powers.

(3) The commissioner retains the authority to enforce the provisions of and impose any penalty or remedy authorized by the insurance code against any person who is under investigation for or charged with a violation of the insurance code even if the person's license or registration has been surrendered*, suspended, revoked, refused, or denied* or has lapsed."

Section 15. Section 33-17-1002, MCA, is amended to read:

"33-17-1002. Procedure following suspension or revocation. (1) Upon suspension, revocation, or refusal of a license, the commissioner shall notify the licensee or applicant by mail addressed to the licensee or applicant at the last-known address contained in the records of the commissioner. Notice is effectuated when mailed.

(2) The commissioner may reissue a license that has lapsed if the insurance producer has paid the lapsed license reinstatement fee pursuant to 33-2-708 and has filed certification of completion of continuing education requirements for the preceding biennium within 1 year of the lapse occurring.

(3) The commissioner may not again issue a license under this code to a person whose license has been revoked until after expiration of 1 year and until the person again qualifies for a license in accordance with this code. If the commissioner revokes a person's license, the commissioner may refuse to issue a license to the person for up to 5 years after the revocation. A person whose license has been revoked twice is not again eligible for any license under this code.

(4) If the license of a ~~partnership or corporation~~ *business entity* is suspended or revoked, a member*,* ~~of the partnership or~~ officer*,* or director of the ~~corporation~~ *business entity* may not be licensed or be designated in a license to exercise ~~its~~ *the business entity's* powers during the period of the suspension or revocation unless the commissioner determines upon substantial evidence that the member, officer, or director was not personally at fault and did not acquiesce in the matter on account of which the license was suspended or revoked."

Section 16. Section 33-17-1103, MCA, is amended to read:

"33-17-1103. Accepting and paying commissions, fees, or consideration. (1) An insurer or insurance producer may not pay, directly or indirectly, a commission, service fee, brokerage fee, or other valuable consideration to a person for services as an insurance producer unless the person performing the service holds a valid license with regard to the kind or kinds of insurance for which the service was rendered at the time the service was performed. A person not properly licensed in accordance with this chapter at the time the person performs the service as an insurance producer may not accept a commission, service fee, brokerage fee, or other valuable consideration for the service. This section does not prevent payment or receipt of renewal or other deferred commissions to or by a person entitled to receive the payment under this section.

(2) An insurance producer may not directly or indirectly share the insurance producer's commissions or other compensation received or to be received by the insurance producer on account of a transaction under the insurance producer's license with any person not also licensed under this chapter as to the same kind or kinds of insurance involved in the transactions. This provision does not affect payment of the regular salaries due to employees of the licensee, the distribution in regular course of business of compensation and profits among members or stockholders if the licensee is a ~~partnership or corporation~~ *business entity*, or use of funds for family or personal purposes.

(3) Surplus lines producers may share commissions with a property and casualty insurance producer pursuant to 33-2-306."

Section 17. Section 33-17-1204, MCA, is amended to read:

"33-17-1204. Review and approval of continuing education courses by commissioner — advisory council. (1) The commissioner shall, after review by and at the recommendations of the advisory council established under subsection (2), approve only those continuing education courses, lectures, seminars, and instructional programs that the commissioner determines would improve the product knowledge, management, ethics, or marketing capability of the licensee. Course content, instructors, material, instructional format, and the sponsoring organization must be approved and periodically reviewed by the commissioner. The fee for approval of a course, lecture, seminar, or instructional program is listed in 33-2-708(2). The commissioner shall also determine the number of credit hours to be awarded for completion of an approved continuing education activity.

(2) The commissioner shall appoint an advisory council, pursuant to 2-15-122, consisting of at least one representative of the independent insurance agents of Montana, one representative of the ~~Montana~~ *national* association of insurance and financial advisors-*Montana*, one representative of the professional insurance agents of Montana, one representative of the Montana state adjusters association, one title insurance producer, two public members who are not directly employed by the insurance industry, one insurance producer or consultant not affiliated with any of the three listed organizations, and a nonvoting presiding officer from the department who will be appointed by the commissioner as a representative of the department. The members of the council shall serve a term of 2 years, except that the initial term of the representative from each organization is 3 years. The commissioner shall consult with the council in formulating rules and standards for the approval of continuing education activities and prior to approving specific education activities. The provisions of 2-15-122(9) and (10) do not apply to this council.

(3) In conducting periodic review of course content, instructors, material, instructional format, or a sponsoring organization, the commissioner may exercise any investigative power of the commissioner provided for in 33-1-311 or 33-1-315.

(4) If after review or investigation the commissioner determines an approved continuing education activity is not being operated in compliance with the standards established under this section, the commissioner may revoke approval, place the activity under probationary approval, or issue a cease and desist order under 33-1-318."

Section 18. Section 33-19-105, MCA, is amended to read:

"33-19-105. Exemption based on federal standards for privacy of individually identifiable health information — notice to commissioner required — rules. (1) The obligations imposed under this chapter do not apply to a licensee that is a covered entity under the provisions of federal regulations that are part of the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA), 45 CFR, parts 160 and 164, standards for privacy of individually identifiable health information or security standards for the protection of electronic health information as to any use or disclosure of personal information that is covered under the HIPAA privacy and security regulations, except for the following provisions:

(a) A notice of insurance information practices described as a notice of privacy practices for protected health information under HIPAA privacy regulations must be delivered annually, as provided for in 33-19-202(1).

(b) To the extent that an insurer collects, discloses, or uses personal information that is not covered under the HIPAA notice of privacy practices, a separate Montana specific notice must be delivered pursuant to the provisions of 33-19-202.

(c) A disclosure authorization remains valid for a period that does not exceed 24 months, as provided for in 33-19-206(2).

(d) The reasons for an adverse underwriting decision must be specified, as provided for in 33-19-303.

(e) Disclosure of underwriting information is required, as provided for in 33-19-308.

(2) The commissioner may adopt rules regarding the exceptions from the exemption provisions described in subsection (1), including additional exceptions that embody substantive provisions of this chapter but would not be preempted by HIPAA privacy regulations.

(3) If a licensee considers itself exempt from a provision of this chapter for the reason provided in subsection (1), the licensee shall give written notice to the commissioner of that exemption and a brief statement describing why the licensee is a HIPAA-covered entity.

(4) A licensee may claim an exemption only for those lines of business that are subject to HIPAA privacy regulations. All other lines of business are subject to this chapter.

(5) A business associate, as defined in the HIPAA privacy regulations, 45 CFR 160.103, that is a party to a valid business associate agreement required by HIPAA privacy regulations is exempt from the provisions of this chapter, but only as to the scope of that particular agreement. Any activity of the business associate that falls outside of the scope of that agreement is subject to the provisions of this chapter.

(6) The commissioner retains the authority to conduct complete market conduct examinations of the licensee as to the privacy policies and practices that are subject to state privacy laws.

(7) Beginning July 1, ~~2009~~ *2011*:

(a) if a licensee is subject to and in compliance with a federal regulation that is part of the federal health insurance portability and accountability privacy and security regulations, 45 CFR, parts 160 and 164, and the federal regulation with which the licensee complies is inconsistent with a provision of this chapter and not less protective of consumer privacy, the licensee is exempt from compliance with the inconsistent provision of this chapter;

(b) if a licensee considers itself exempt from a provision of this chapter for the reason provided in subsection (7)(a), the licensee shall give written notice to the commissioner of that exemption unless the requirements of this subsection (7) are preempted by HIPAA privacy regulations. The notice must include a statement of the reason for the claimed exemption."

Section 19. Section 33-20-606, MCA, is amended to read:

"33-20-606. Variable contracts to meet insurance contract requirements. (1) Except for 33-15-321 through 33-15-329, 33-20-302, and 33-20-307 for variable annuity contracts and 33-20-104, *33-20-110,* 33-20-111, 33-20-112, and 33-20-201 through 33-20-213 for variable life insurance policies and as otherwise provided in this part, all pertinent provisions of Title 33 and other laws relating to insurance apply to separate accounts and their related policies and contracts.

(2) Any individual variable life insurance contract or any individual variable annuity contract delivered or issued for delivery in this state must contain grace and reinstatement provisions appropriate to the contract. Any individual variable life insurance contract must contain nonforfeiture provisions appropriate to ~~such a~~ *that* contract.

(3) An insurer shall file with the commissioner a copy of a final prospectus, dated and effective, before it issues or delivers an individual variable life insurance contract or an individual variable annuity contract in this state.

(4) The reserve liability for any variable contract must be established in accordance with actuarial procedures that recognize the variable nature of benefits provided and mortality guarantees."

Section 20. Section 33-20-1303, MCA, is amended to read:

"33-20-1303. License requirements. (1) A person may not act as or purport to be a viatical settlement provider unless licensed as a viatical settlement provider under this part.

(2) (a) Except as provided in subsections (2)(b) and (2)(c), an individual may not broker, solicit, or negotiate viatical settlement contracts between a viator and one or more viatical settlement providers or otherwise act on behalf of a viator without first having obtained a license as a viatical settlement broker from the commissioner. An applicant for a viatical settlement broker's license shall:

(i) attend required viatical settlement broker training and pass a viatical settlement broker examination designated by the commissioner by rule; and

(ii) pay a fee for an original viatical settlement broker's license pursuant to 33-2-708. The fees for license renewal and lapsed license reinstatement for a viatical settlement broker's license are as provided in 33-2-708.

(b) A resident or nonresident insurance producer must be considered to meet the licensing requirements of a viatical settlement broker and must be permitted to operate as a viatical settlement broker if the insurance producer is licensed as an insurance producer with a life insurance line of authority in this state or in the insurance producer's home state and has been licensed for at least 1 year. In addition:

(i) not later than 30 days from the first day of operating as a viatical settlement broker, the insurance producer shall notify the commissioner, on a form or in a manner prescribed by the commissioner, that the insurance producer is acting as a viatical settlement broker and shall pay a fee pursuant to 33-2-708(1)(b)(viii). The notification must include an acknowledgment by the insurance producer that the insurance producer will operate as a viatical settlement broker in accordance with this part.

(ii) regardless of the manner in which the insurance producer is compensated, the insurance producer must be considered to represent only the viator and owes a fiduciary duty to the viator to act according to the viator's instructions and in the best interests of the viator.

(c) If requested by the commissioner, a life insurance producer acting as a viatical settlement broker under this subsection (2) who has previously complied with subsection (2)(b)(i) shall report to the commissioner when renewing a resident or nonresident life insurance producer's license regarding the life insurance producer's intent to continue to act as a viatical settlement broker. The statement regarding an intent to continue acting as a viatical settlement broker must be made on the life insurance producer's license renewal form. An individual who makes a statement pursuant to this subsection (2)(c) may not be charged an additional fee.

(d) The provisions of subsections (2)(a) and (2)(b) do not prohibit an individual licensed as an attorney, certified public accountant, or certified financial planner who is accredited by a nationally recognized accreditation agency, who is retained to represent the viator, and whose compensation is not paid directly or indirectly by the viatical settlement provider from negotiating viatical settlement contracts without having to obtain a license as a viatical settlement broker.

(3) Regardless of the manner in which a viatical settlement broker or insurance producer is compensated, the viatical settlement broker or insurance producer must be considered to represent only the viator and the viatical settlement broker or insurance producer owes a fiduciary duty to the viator to act according to the viator's instructions and in the best interests of the viator.

(4) (a) To obtain a license to transact business as a viatical settlement provider or as a viatical settlement broker, if required to obtain a viatical settlement broker's license under the provisions of subsection (2)(a), an applicant shall apply for the license in a form approved by the commissioner and shall pay the fee required for the application.

(b) The commissioner may request biographical, organizational, locational, financial, employment, and other information on the application form that the commissioner determines to be relevant to the evaluation of applications and to the granting of the license. The commissioner may require a statement of the business plan or plan of operation of the applicant. The commissioner shall require an applicant for a viatical settlement provider license to file with the application for the commissioner's approval a copy of the viatical settlement contract that the applicant intends to use in business under the license.

(c) If an applicant is a corporation, the corporation must be:

(i) incorporated or organized under the laws of this state; or

(ii) a foreign corporation authorized to transact business in this state.

(d) If the applicant is a partnership, the partnership must be organized under the laws of this state.

(e) If the applicant is a business entity other than a corporation or partnership, the business entity must be organized under the laws of this state.

(5) (a) An individual licensed as a viatical settlement broker must meet the continuing education requirements in 33-17-1203.

(b) The hours of continuing education required under subsection (5)(a) must be in the subjects of life insurance, viaticals, or ethics.

(c) For an individual licensed as a viatical settlement broker, the 24-month period for meeting the continuing education requirements must correlate with the broker's license renewal period.

(d) The viatical settlement broker's license of an individual who fails to comply with this continuing education requirement and who has not been granted an extension of time to comply in accordance with 33-17-1203(2) must be terminated and promptly surrendered to the commissioner."

Section 21. Section 33-20-1307, MCA, is amended to read:

"33-20-1307. Suspension — revocation — refusal to issue or renew license. (1) The commissioner may suspend, revoke, refuse to issue, or refuse to renew a license if the commissioner determines that the licensee or applicant for a license is untrustworthy or incompetent to act as a licensee or is guilty of one or more of the following:

(a) dishonesty, fraud, or gross negligence in the conduct of business as a licensee;

(b) a pattern of unreasonable payments to policyholders or certificate holders;

(c) falsification of an application for the license or renewal of the license or misrepresentation or engagement in any other dishonest act in relation to the application;

(d) conduct resulting in a conviction of a felony under the laws of any state or of the United States;

(e) conviction of any crime, an essential element of which is dishonesty or fraud, under the laws of any state or of the United States;

(f) refusal to renew or cancellation, revocation, or suspension of authority to transact insurance or business as a viatical settlement provider, viatical settlement broker, or similar entity in another state;

(g) failure to pay a civil penalty imposed by final order of the commissioner or to carry out terms of probation set by the commissioner;

(h) refusal by a licensee to be examined or to produce accounts, records, or files for examination, refusal by any officers or employees to give information with respect to the affairs of the licensee, or refusal to perform any other legal obligation as to the examination, when required by the commissioner;

(i) affiliation with or under the same general management or interlocking directorate or ownership as another viatical settlement provider, viatical

settlement broker, or insurer, any of which unlawfully transacts business in this state;

(j) failure at any time to meet any qualification for which issuance of the license could have been refused had the failure then existed and been known to the commissioner; or

(k) violation of any rule or order of the commissioner or any provision of Montana law.

(2) The commissioner may suspend or refuse to renew a license immediately and without hearing if the commissioner determines that one or both of the following circumstances exist:

(a) the licensee is insolvent;

(b) the financial condition or business practices of the licensee otherwise pose an imminent threat to the public health, safety, or welfare of the residents of this state.

(3) The commissioner may refuse to issue a license in the name of any ~~firm, partnership, or corporation~~ *business entity* if the commissioner believes that any *member,* officer, employee, stockholder, or partner who may materially influence the conduct of the applicant does not meet the standards of this section.

(4) A viatical settlement provider or viatical settlement broker holding a license that has not been renewed or that has been revoked shall surrender the license to the commissioner at the commissioner's request.

(5) The commissioner may take any other administrative action authorized under Montana law in addition to or in lieu of the actions authorized under this part."

Section 22. Section 33-21-113, MCA, is amended to read:

"33-21-113. Penalties. In addition to any penalty provided by law, a person *or business entity* who violates an order of the commissioner after it has become final and while the order is in effect shall, upon proof ~~thereof~~ *of the violation* to the satisfaction of ~~the~~ *a* court, ~~forfeit and~~ pay to the state of Montana a sum not to exceed $250 *if the violation is found to be not willful.* ~~which~~ *The sum* may be recovered in a civil action.~~, except that if~~ *If* the violation is found to be willful, the amount of the penalty ~~is~~ *may be in an amount* ~~a sum~~ not to exceed $1,000. The commissioner~~, in his discretion,~~ may revoke or suspend the license or certificate of authority of the person~~, partnership, or corporation~~ *or business entity* guilty of ~~such~~ *the* violation. The order for suspension or revocation is subject to judicial review as provided in 33-1-711."

Section 23. Section 33-22-101, MCA, is amended to read:

"33-22-101. Exceptions to scope. (1) Subject to subsection (2), parts 1 through 4 of this chapter, except 33-22-107, 33-22-110, 33-22-111, 33-22-114, 33-22-125, 33-22-129, 33-22-130 through 33-22-136, 33-22-140, 33-22-141, 33-22-142, 33-22-243, and 33-22-304, and part 19 of this chapter do not apply to or affect:

(a) any policy of liability or workers' compensation insurance with or without supplementary expense coverage;

(b) any group or blanket policy;

(c) life insurance, endowment, or annuity contracts or supplemental contracts that contain only those provisions relating to disability insurance that:

(i) provide additional benefits in case of death or dismemberment or loss of sight by accident or accidental means; or

(ii) operate to safeguard contracts against lapse or to give a special surrender value or special benefit or an annuity if the insured or annuitant becomes totally and permanently disabled as defined by the contract or supplemental contract;

(d) reinsurance.

(2) Sections 33-22-150 through 33-22-152*, [section 24],* and 33-22-301 apply to group or blanket policies."

Section 24. Cost-sharing requirements — applicability. (1) Each group or individual health insurance policy, certificate of insurance, and membership contract that covers prescription drugs and that is delivered, issued for delivery, renewed, extended, or modified in this state must provide that after the applicable deductible is met, the insured shall pay only the required copayment or other cost-sharing requirement for a covered prescription drug at the time of purchase if the prescription drug dispenser, third-party administrator, or health insurance issuer can determine that amount at the time of purchase.

(2) This section applies to blanket policies issued pursuant to Title 33, chapter 22, part 6.

(3) This section does not apply to disability income, hospital indemnity, medicare supplement, accident-only, vision, dental, or long-term care policies.

Section 25. Section 33-22-142, MCA, is amended to read:

"33-22-142. Certification of creditable coverage. (1) A group health plan and a health insurance issuer offering group health insurance coverage shall issue the certification described in subsection (3):

(a) within 10 days after an individual ceases to be covered under the group health plan or otherwise becomes covered under a COBRA continuation provision;

(b) not later than 10 days after *the expiration of the notice period for* cancellation for nonpayment of premium ~~is effective~~ pursuant to the provisions of *33-22-121 and* 33-22-530 or after termination of coverage for any other reason;

(c) in the case of an individual becoming covered under a COBRA continuation provision, at the time that the individual ceases to be covered under a COBRA continuation provision; and

(d) at the request on behalf of an individual made not later than 24 months after the date of termination of the coverage described in subsection (1)(a) or (1)(c), whichever is later.

(2) The certification pursuant to subsection (1)(a) may be provided, to the extent practicable, at a time consistent with notices required under any applicable COBRA continuation provision.

(3) Certification is the written:

(a) certification of the period of creditable coverage of the individual under a group health plan and the coverage under the COBRA continuation provision;

(b) certification of the waiting period, if any, and affiliation period, as defined in 33-31-102, if applicable, imposed with respect to the individual for any coverage under a group health plan;

(c) certification of the date of issuance of the certificate specified on the form; and

(d) notification to the individual of:

(i) the individual's option to apply to the Montana comprehensive health association, provided for in 33-22-1503, for an association portability plan, as defined in 33-22-1501, within 63 days of issuance of a certificate of creditable coverage;

(ii) the individual's conversion rights;

(iii) the availability of COBRA continuation coverage;

(iv) the telephone number and address of the Montana comprehensive health association; and

(v) other notification as determined necessary and in the form prescribed by rule by the commissioner.

(4) To the extent that medical care under a group health plan consists of group health insurance coverage, a group health plan satisfies the certification requirement of this section if the health insurance issuer offering the coverage provides the certification in accordance with this section.

(5) In the case of an election described in 33-22-141 by a group health plan or health insurance issuer, if the group health plan or health insurance issuer enrolls an individual for coverage under the group health plan and the individual provides a certification of coverage of the individual, the entity that issued the certification shall upon request of the group health plan or health insurance issuer promptly disclose information on coverage of classes and categories of health benefits available under the certified coverage. The entity may charge the requesting group health plan or health insurance issuer the reasonable cost of disclosing the information.

(6) This section applies to health insurance coverage offered by a health insurance issuer in the individual market in the same manner as it applies to health insurance coverage offered by a health insurance issuer in connection with a group health plan in the group market."

Section 26. Section 33-22-232, MCA, is amended to read:

"33-22-232. Renewal at option of insurer. *(1) Except as provided in subsection (2),* ~~Disability~~ *disability* insurance policies, other than accident insurance only policies, in which the insurer reserves the right to refuse renewal ~~shall~~ *must* provide ~~in substance~~ *the statement* in a *policy* provision*,* ~~thereof or in~~ an endorsement*,* ~~thereon~~ or *an attached* rider ~~attached thereto~~*. The statement must provide* that*,* subject to the *insurer's* right to terminate the policy upon nonpayment of premium when due, ~~such~~ *the* right to refuse renewal may not be exercised so as to take effect before the renewal date occurring on or after and nearest each policy anniversary ~~(~~or in the case of lapse and reinstatement, at the renewal date occurring on or after and nearest each anniversary of the last reinstatement~~)~~, and that any refusal of renewal ~~shall~~ *must* be without prejudice to any claim originating while the policy is in force. The ~~parenthetic~~ reference to lapse and reinstatement may be omitted at the insurer's option.

(2) Policies conforming to this section are subject to the guaranteed renewability provisions of 33-22-247 or 33-22-524."

Section 27. Section 33-22-302, MCA, is amended to read:

"33-22-302. Age limits — effect on coverage. *(1)(a) Except as provided in subsection (1)(b), if* ~~If~~ any ~~such~~ *disability* policy contains a provision

establishing, as an age limit or otherwise, a date after which the coverage provided by the policy will not be effective and if ~~such~~ *that* date falls within a period for which premium is accepted by the insurer or if the insurer accepts a premium after ~~such~~ *that* date, the coverage provided by the policy will continue in force subject to any right of cancellation until the end of the period for which premium has been accepted.

(b) Policies conforming to subsection (1)(a) are subject to the guaranteed renewability provisions of 33-22-247 or 33-22-524.

(2) In the event the age of the insured has been misstated and if, according to the correct age of the insured, the coverage provided by the policy would not have become effective or would have ceased prior to the acceptance of ~~such~~ *the* premium or premiums, then the liability of the insurer ~~shall be~~ *is* limited to the refund, upon request, of all *premium or* premiums paid for the period not covered by the policy."

Section 28. Section 33-22-530, MCA, is amended to read:

"33-22-530. Notice required for cancellation for nonpayment of group health insurance. (1) A health insurance issuer shall provide at least 15 days prior notification of cancellation for nonpayment of premium for group health insurance coverage.

(2) The notice must be sent to the policyholder at the policyholder's last-known address and must specify the date of cancellation of coverage. The insurer shall attach a properly executed proof of mailing to this notice and maintain a copy of the proof of mailing in its records.

(3) The health insurance issuer shall hold for processing of payment any claims ~~received~~ *for covered benefits incurred* during the 15-day notification period for nonpayment of premium for group health insurance coverage. Upon receipt of the premium, claims held for the 15-day notification period must be processed for payment.

(4) The policy continues in full force and effect, subject to the requirements of subsection (3), until the proper 15-day notice has been given, unless the coverage has already been replaced.

(5) The 15-day period begins to run from the date of the proof of mailing.

(6) The issuer may collect premiums for any time period that the coverage remains in effect.

(7) When coverage is actually canceled, notice must also be mailed to all certificate holders at:

(a) their last-known home addresses if available; or

(b) the business address of the group policyholder.

(8) The notice of cancellation to certificate holders must be separate from the certificate of creditable coverage required in 33-22-142, although it may be mailed simultaneously with the certificate."

Section 29. Section 33-22-602, MCA, is amended to read:

"33-22-602. Required provisions of blanket policies. ~~Any~~ *An* insurer authorized to write disability insurance in this state ~~shall have~~ *has* the power to issue blanket disability insurance. ~~No such~~ *A* blanket policy may *not* be issued or delivered in this state unless a copy of the *policy* form ~~thereof shall have been~~ *is* filed in accordance with 33-1-501. ~~Every such~~ *A* blanket policy ~~shall~~ *must* contain provisions ~~which~~ *that* in the opinion of the commissioner are at least as

favorable to the policyholder and the individual insured as the following~~, a provision that~~ *provisions*:

(1) the policy and the application ~~shall~~ constitute the entire contract between the parties, ~~and that~~ all statements made by the policyholder ~~shall~~ *are*, in absence of fraud, ~~be deemed~~ *considered* representations and not warranties, and ~~that no such~~ statements ~~shall~~ *may not* be used in defense to a claim under the policy~~,~~ unless it is contained in a written application;

(2) written notice of sickness or of injury must be given to the insurer within 20 days after the date when ~~such~~ *the* sickness or injury occurred. Failure to give notice within ~~such time shall~~ *20 days may* not invalidate or reduce ~~any~~ *a* claim if ~~it shall be shown not to have been~~ *the insured shows that it was not* reasonably possible to give ~~such~~ *the required* notice and that notice was given as soon as was reasonably possible.

(3) the insurer will furnish to the policyholder ~~such~~ forms ~~as are usually furnished by it~~ for filing proof of loss. If ~~such~~ forms are not furnished ~~before the expiration of~~ *within* 15 days after the ~~giving of such notice~~ *insured provided notice of sickness or injury*, the claimant ~~shall be deemed~~ *is considered* to have complied with the requirements of the policy as to proof of loss upon submitting, within the time ~~fixed~~ *established* in the policy for filing proof of loss, written proof covering the occurrence, character, and extent of the loss for which claim is made.

(4) in the case of *a* claim for loss of time for disability, written proof of ~~such~~ *the* loss must be furnished to the insurer within 30 days after the commencement of the period for which the insurer is liable and ~~that~~ subsequent written ~~proofs~~ *proof* of the continuance of ~~such~~ *the* disability must be furnished to the insurer at ~~such~~ intervals ~~as~~ *established by* the insurer. ~~may reasonably require and that in~~ *In* the case of *a* claim for any other loss, written proof of ~~such~~ *the* loss must be furnished to the insurer within 90 days after the date of ~~such~~ *the* loss. Failure to furnish ~~such~~ proof within ~~such time shall~~ *90 days may* not invalidate or reduce ~~any~~ *a* claim if ~~it shall be shown not to have been~~ *the insured shows it was not* reasonably possible to furnish ~~such~~ *the required* proof and that ~~such~~ proof was furnished as soon as was reasonably possible.

(5) *except as provided in [section 24],* all benefits payable under the policy other than benefits for loss of time ~~will be~~ *are* payable immediately upon receipt of ~~due~~ written proof of ~~such~~ *the* loss. ~~and that, subject~~ *Subject* to ~~due~~ proof of loss, all accrued benefits payable under the policy for loss of time ~~will~~ *must* be paid ~~not later than at the expiration of each period of~~ *at least every* 30 days during the ~~continuance of the~~ period for which the insurer is liable. ~~and that any~~ *Any* balance remaining unpaid at the termination of ~~such period will~~ *the period of liability must* be paid immediately upon receipt of ~~such~~ *the* proof~~;~~ *of loss.*

(6) the insurer at its own expense ~~shall have~~ *has* the right and opportunity to examine the person of the insured when and ~~so~~ *as* often as ~~it may~~ reasonably ~~require~~ *required* during the pendency of *a* claim under the policy and also the right and opportunity to make an autopsy in case of death ~~where~~ *when* it is not prohibited by law;

(7) ~~no~~ *an* action at law or in equity ~~shall~~ *may not* be brought to recover *a loss* under the policy ~~prior to the expiration of~~ *sooner than* 60 days after written proof of loss has been furnished in accordance with the requirements of the policy and ~~that no such action shall be brought after the expiration of~~ *no later than* 3 years after the time written proof of loss is required to be furnished."

Section 30. Section 33-22-1809, MCA, is amended to read:

"33-22-1809. Restrictions relating to premium rates. (1) Premium rates for health benefit plans under this part are subject to the following provisions:

(a) The index rate for a rating period for any class of business may not exceed the index rate for any other class of business by more than 20%.

(b) For each class of business, the premium rates charged during a rating period to small employers with similar case characteristics for the same or similar coverage or the rates that could be charged to the employer under the rating system for that class of business may not vary from the index rate by more than 25% of the index rate.

(c) The percentage increase in the premium rate charged to a small employer for a new rating period may not exceed the sum of the following:

(i) the percentage change in the new business premium rate measured from the first day of the prior rating period to the first day of the new rating period; in the case of a health benefit plan into which the small employer carrier is no longer enrolling new small employers, the small employer carrier shall use the percentage change in the base premium rate, provided that the change does not exceed, on a percentage basis, the change in the new business premium rate for the most similar health benefit plan into which the small employer carrier is actively enrolling new small employers;

(ii) any adjustment, not to exceed 15% annually and adjusted pro rata for rating periods of less than 1 year, because of the claims experience, health status, or duration of coverage of the employees or dependents of the small employer, as determined from the small employer carrier's rate manual for the class of business; and

(iii) any adjustment because of a change in coverage or a change in the case characteristics of the small employer, as determined from the small employer carrier's rate manual for the class of business.

(d) Adjustments in rates for claims experience, health status, and duration of coverage may not be charged to individual employees or dependents. Any adjustment must be applied uniformly to the rates charged for all employees and dependents of the small employer.

(e) If a small employer carrier uses industry as a case characteristic in establishing premium rates, the rate factor associated with any industry classification may not vary from the average of the rate factors associated with all industry classifications by more than 15% ~~of that coverage~~.

(f) A small employer carrier shall:

(i) apply rating factors, including case characteristics, consistently with respect to all small employers in a class of business. Rating factors must produce premiums for identical groups that differ only by the amounts attributable to plan design and that do not reflect differences because of the nature of the groups. Differences among base premium rates may not be based in any way on the actual or expected health status or claims experience of the small employer groups that choose or are expected to choose a particular health benefit plan.

(ii) treat all health benefit plans issued or renewed in the same calendar month as having the same rating period.

(g) For the purposes of this subsection (1), a health benefit plan that includes a restricted network provision may not be considered similar coverage to a health benefit plan that does not include a restricted network provision.

(2) A small employer carrier may not transfer a small employer involuntarily into or out of a class of business. A small employer carrier may not offer to transfer a small employer into or out of a class of business unless the offer is made to transfer all small employers in the class of business without regard to case characteristics, claims experience, health status, or duration of coverage since the insurance was issued.

(3) The commissioner may suspend for a specified period the application of subsection (1)(a) for the premium rates applicable to one or more small employers included within a class of business of a small employer carrier for one or more rating periods upon a filing by the small employer carrier and a finding by the commissioner either that the suspension is reasonable in light of the financial condition of the small employer carrier or that the suspension would enhance the fairness and efficiency of the small employer health insurance market.

(4) In connection with the offering for sale of any health benefit plan to a small employer, a small employer carrier shall make a reasonable disclosure, as part of its solicitation and sales materials, of each of the following:

(a) the extent to which premium rates for a specified small employer are established or adjusted based upon the actual or expected variation in claims costs or upon the actual or expected variation in health status of the employees of small employers and the employees' dependents;

(b) the provisions of the health benefit plan concerning the small employer carrier's right to change premium rates and the factors, other than claims experience, that affect changes in premium rates;

(c) the provisions relating to renewability of policies and contracts; and

(d) the provisions relating to any preexisting condition.

(5) (a) Each small employer carrier shall maintain at its principal place of business a complete and detailed description of its rating practices and renewal underwriting practices, including information and documentation that demonstrate that its rating methods and practices are based upon commonly accepted actuarial assumptions and are in accordance with sound actuarial principles.

(b) Each small employer carrier shall file with the commissioner annually, on or before March 15, an actuarial certification certifying that the carrier is in compliance with this part and that the rating methods of the small employer carrier are actuarially sound. The actuarial certification must be in a form and manner and must contain information as specified by the commissioner. A copy of the actuarial certification must be retained by the small employer carrier at its principal place of business.

(c) A small employer carrier shall make the information and documentation described in subsection (5)(a) available to the commissioner upon request. Except in cases of violations of the provisions of this part and except as agreed to by the small employer carrier or as ordered by a court of competent jurisdiction, the information must be considered proprietary and trade secret information and is not subject to disclosure by the commissioner to persons outside of the department.

(6) The commissioner may not require prior approval of the rating methods used by small employer carriers or the premium rates of the health benefit plans offered to small employers."

Section 31. Section 33-28-104, MCA, is amended to read:

"33-28-104. Minimum capital surplus — letter of credit. (1) A captive insurance company may not be issued a license unless it possesses and maintains unimpaired paid-in capital and surplus of:

(a) in the case of a pure captive insurance company, not less than $250,000;

(b) in the case of an industrial insured captive insurance company, not less than $500,000;

(c) in the case of an association captive insurance company, not less than $750,000; *or*

(d) in the case of a protected cell captive insurance company, not less than $500,000. However, if the protected cell captive insurance company does not assume any risks, the risks insured by the protected cells are homogenous, and if there are not more than 10 cells, the commissioner may reduce the amount required in this subsection (1)(d) to an amount not less than $250,000.

(e) ~~(i)~~ in the case of a branch captive insurance company, not less than the applicable amount of capital and surplus required in subsections (1)(a) through (1)(d), as determined based upon the organizational form of the foreign captive insurance company~~; and~~.

~~(ii) the~~ *The* minimum capital and surplus must be jointly held by the commissioner and the branch captive insurance company in a bank of the federal reserve system approved by the commissioner~~;~~. ~~or~~

(f) in the case of a captive reinsurance company, not less than 50% of the capital that would be required for that type of captive ~~reinsurance~~ *insurance* company.

(2) The commissioner may require additional capital and surplus based upon the type, volume, and nature of insurance business transacted.

(3) Capital and surplus may be in the form of cash, cash equivalent, or an irrevocable letter of credit issued by a bank chartered by the state of Montana or a member bank of the federal reserve system and approved by the commissioner."

Section 32. Section 33-30-102, MCA, is amended to read:

"33-30-102. Application of this chapter — construction of other related laws. (1) All health service corporations are subject to the provisions of this chapter. In addition to the provisions contained in this chapter, other chapters and provisions of this title apply to health service corporations as follows: 33-2-1212; 33-3-307; 33-3-308; *33-3-401;* 33-3-431; 33-3-701 through 33-3-704; 33-17-101; Title 33, chapter 2, part 19; Title 33, chapter 17, parts 2 and 10 through 12; and Title 33, chapters 1, 15, 18, 19, and 22, except 33-22-111.

(2) A law of this state other than the provisions of this chapter applicable to health service corporations must be construed in accordance with the fundamental nature of a health service corporation, and in the event of a conflict, the provisions of this chapter prevail."

Section 33. Section 33-31-102, MCA, is amended to read:

"33-31-102. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Affiliation period" means a period that, under the terms of the health insurance coverage offered by a health maintenance organization, must expire before the health insurance coverage becomes effective.

(2) "Basic health care services" means:

(a) consultative, diagnostic, therapeutic, and referral services by a provider;

(b) inpatient hospital and provider care;

(c) outpatient medical services;

(d) medical treatment and referral services;

(e) accident and sickness services by a provider to each newborn infant of an enrollee pursuant to 33-31-301(3)(e);

(f) care and treatment of mental illness, alcoholism, and drug addiction;

(g) diagnostic laboratory and diagnostic and therapeutic radiologic services;

(h) preventive health services, including:

(i) immunizations;

(ii) well-child care from birth;

(iii) periodic health evaluations for adults;

(iv) voluntary family planning services;

(v) infertility services; and

(vi) children's eye and ear examinations conducted to determine the need for vision and hearing correction;

(i) minimum mammography examination, as defined in 33-22-132;

(j) outpatient self-management training and education for the treatment of diabetes along with certain diabetic equipment and supplies as provided in 33-22-129; and

(k) treatment and medical foods for inborn errors of metabolism. "Medical foods" and "treatment" have the meanings provided for in 33-22-131.

(3) "Commissioner" means the commissioner of insurance of the state of Montana.

(4) "Dependent" has the meaning provided in 33-22-140.

(5) "Enrollee" means a person:

(a) who enrolls in or contracts with a health maintenance organization;

(b) on whose behalf a contract is made with a health maintenance organization to receive health care services; or

(c) on whose behalf the health maintenance organization contracts to receive health care services.

(6) "Evidence of coverage" means a certificate, agreement, policy, or contract issued to an enrollee setting forth the coverage to which the enrollee is entitled.

(7) "Health care services" means:

(a) the services included in furnishing medical or dental care to a person;

(b) the services included in hospitalizing a person;

(c) the services incident to furnishing medical or dental care or hospitalization; or

(d) the services included in furnishing to a person other services for the purpose of preventing, alleviating, curing, or healing illness, injury, or physical disability.

(8) "Health care services agreement" means an agreement for health care services between a health maintenance organization and an enrollee.

(9) "Health maintenance organization" means a person who provides or arranges for basic health care services to enrollees on a prepaid basis, either directly through provider employees or through contractual or other arrangements with a provider or a group of providers. This subsection does not limit methods of provider payments made by health maintenance organizations.

(10) "Insurance producer" means an individual~~, partnership, or corporation~~ *or business entity* appointed or authorized by a health maintenance organization to solicit applications for health care services agreements on its behalf.

(11) "Person" means:

(a) an individual;

(b) a group of individuals;

(c) an insurer, as defined in 33-1-201;

(d) a health service corporation, as defined in 33-30-101;

(e) a corporation, partnership, facility, association, or trust; or

(f) an institution of a governmental unit of any state licensed by that state to provide health care, including but not limited to a physician, hospital, hospital-related facility, or long-term care facility.

(12) "Plan" means a health maintenance organization operated by an insurer or health service corporation as an integral part of the corporation and not as a subsidiary.

(13) "Point-of-service option" means a delivery system that permits an enrollee of a health maintenance organization to receive health care services from a provider who is, under the terms of the enrollee's contract for health care services with the health maintenance organization, not on the provider panel of the health maintenance organization.

(14) "Provider" means a physician, hospital, hospital-related facility, long-term care facility, dentist, osteopath, chiropractor, optometrist, podiatrist, psychologist, licensed social worker, registered pharmacist, or advanced practice registered nurse, as specifically listed in 37-8-202, who treats any illness or injury within the scope and limitations of the provider's practice or any other person who is licensed or otherwise authorized in this state to furnish health care services.

(15) "Provider panel" means those providers with whom a health maintenance organization contracts to provide health care services to the health maintenance organization's enrollees.

(16) "Purchaser" means the individual, employer, or other entity, but not the individual certificate holder in the case of group insurance, that enters into a health care services agreement.

(17) "Uncovered expenditures" mean the costs of health care services that are covered by a health maintenance organization and for which an enrollee is liable if the health maintenance organization becomes insolvent."

Section 34. Section 33-31-111, MCA, is amended to read:

"33-31-111. (Temporary) **Statutory construction and relationship to other laws.** (1) Except as otherwise provided in this chapter, the insurance or health service corporation laws do not apply to a health maintenance organization authorized to transact business under this chapter. This provision does not apply to an insurer or health service corporation licensed and regulated

pursuant to the insurance or health service corporation laws of this state except with respect to its health maintenance organization activities authorized and regulated pursuant to this chapter.

(2) Solicitation of enrollees by a health maintenance organization granted a certificate of authority or its representatives is not a violation of any law relating to solicitation or advertising by health professionals.

(3) A health maintenance organization authorized under this chapter is not practicing medicine and is exempt from Title 37, chapter 3, relating to the practice of medicine.

(4) This chapter does not exempt a health maintenance organization from the applicable certificate of need requirements under Title 50, chapter 5, parts 1 and 3.

(5) This section does not exempt a health maintenance organization from the prohibition of pecuniary interest under 33-3-308 or the material transaction disclosure requirements under 33-3-701 through 33-3-704. A health maintenance organization must be considered an insurer for the purposes of 33-3-308 and 33-3-701 through 33-3-704.

(6) This section does not exempt a health maintenance organization from:

(a) prohibitions against interference with certain communications as provided under chapter 1, part 8;

(b) the provisions of Title 33, chapter 22, part 19;

(c) the requirements of 33-22-134 and 33-22-135;

(d) network adequacy and quality assurance requirements provided under chapter 36, except as provided in 33-22-262; or

(e) the requirements of Title 33, chapter 18, part 9.

(7) Except as provided in 33-22-262, the provisions of Title 33, chapter 1, parts 12 and 13, Title 33, chapter 2, part 19, 33-2-1114, 33-2-1211, 33-2-1212, *33-3-401,* 33-3-422, 33-3-431, 33-15-308, Title 33, chapter 17, Title 33, chapter 19, 33-22-107, 33-22-129, 33-22-131, 33-22-136, 33-22-141, 33-22-142, 33-22-152, *[section 24],* 33-22-244, 33-22-246, 33-22-247, 33-22-514, 33-22-521, 33-22-523, 33-22-524, 33-22-526, and 33-22-706 apply to health maintenance organizations. (Terminates June 30, 2009—sec. 14, Ch. 325, L. 2003.)

33-31-111. (Effective July 1, 2009) **Statutory construction and relationship to other laws.** (1) Except as otherwise provided in this chapter, the insurance or health service corporation laws do not apply to a health maintenance organization authorized to transact business under this chapter. This provision does not apply to an insurer or health service corporation licensed and regulated pursuant to the insurance or health service corporation laws of this state except with respect to its health maintenance organization activities authorized and regulated pursuant to this chapter.

(2) Solicitation of enrollees by a health maintenance organization granted a certificate of authority or its representatives is not a violation of any law relating to solicitation or advertising by health professionals.

(3) A health maintenance organization authorized under this chapter is not practicing medicine and is exempt from Title 37, chapter 3, relating to the practice of medicine.

(4) This chapter does not exempt a health maintenance organization from the applicable certificate of need requirements under Title 50, chapter 5, parts 1 and 3.

(5) This section does not exempt a health maintenance organization from the prohibition of pecuniary interest under 33-3-308 or the material transaction disclosure requirements under 33-3-701 through 33-3-704. A health maintenance organization must be considered an insurer for the purposes of 33-3-308 and 33-3-701 through 33-3-704.

(6) This section does not exempt a health maintenance organization from:

(a) prohibitions against interference with certain communications as provided under chapter 1, part 8;

(b) the provisions of Title 33, chapter 22, part 19;

(c) the requirements of 33-22-134 and 33-22-135;

(d) network adequacy and quality assurance requirements provided under chapter 36; or

(e) the requirements of Title 33, chapter 18, part 9.

(7) Title 33, chapter 1, parts 12 and 13, Title 33, chapter 2, part 19, 33-2-1114, 33-2-1211, 33-2-1212, *33-3-401,* 33-3-422, 33-3-431, 33-15-308, Title 33, chapter 17, Title 33, chapter 19, 33-22-107, 33-22-129, 33-22-131, 33-22-136, 33-22-141, 33-22-142, 33-22-152, *[section 24],* 33-22-244, 33-22-246, 33-22-247, 33-22-514, 33-22-521, 33-22-523, 33-22-524, 33-22-526, and 33-22-706 apply to health maintenance organizations."

Section 35. Section 33-31-311, MCA, is amended to read:

"33-31-311. Insurance producer license required. An individual~~,~~ ~~partnership, or corporation~~ *or business entity* may not act as or represent to the public that the individual~~, partnership, or corporation~~ *or business entity* is an insurance producer for a health maintenance organization unless the individual~~, partnership, or corporation~~ *or business entity* is:

(1) licensed as a disability insurance producer by the commissioner pursuant to Title 33, chapter 17, parts 1, 2, 4, and 10 through 12, or licensed as an insurance producer as provided in 33-30-311; and

(2) appointed or authorized by the health maintenance organization or other health insurance issuer to sell, solicit, or negotiate health care service agreements on its behalf."

Section 36. Codification instruction. [Section 24] is intended to be codified as an integral part of Title 33, chapter 22, part 1, and the provisions of Title 33, chapter 22, part 1, apply to [section 24].

Section 37. Effective date. [This act] is effective July 1, 2009.

Section 38. Applicability. [Section 24] applies to policies, certificates, and membership contracts that are delivered, issued, renewed, extended, or modified on or after January 1, 2010.

Approved April 17, 2009

CHAPTER NO. 272

[SB 151]

AN ACT REVISING INSURANCE LAWS PERTAINING TO VIATICAL SETTLEMENTS; PROHIBITING VIATICAL SETTLEMENT FRAUD AND PROVIDING REMEDIES AND PENALTIES; INCLUDING SUSPECTED VIATICAL SETTLEMENT FRAUD IN ACTIVITIES THAT MUST BE REPORTED BY INSURERS AND OTHERS; REVISING REQUIREMENTS

FOR VIATICAL SETTLEMENT CONTRACT TERMS; LENGTHENING TO 3 BUSINESS DAYS THE AMOUNT OF TIME A VIATICAL SETTLEMENT PROVIDER HAS TO DEPOSIT PROCEEDS OF A SETTLEMENT INTO AN ESCROW OR TRUST ACCOUNT; ESTABLISHING CRITERIA FOR DETERMINING CONFLICT OF LAWS QUESTIONS; AMENDING SECTIONS 33-1-1301, 33-1-1302, 33-1-1303, 33-20-1308, AND 33-20-1314, MCA; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-1-1301, MCA, is amended to read:

"33-1-1301. Insurance, *viatical settlement,* medical care discount card, pharmacy discount card, and securities fraud education and prevention program — *definitions.* (1) The commissioner may:

(a) establish an insurance, *viatical settlement,* medical care discount card, pharmacy discount card, and securities fraud education and prevention program; and

(b) conduct investigations of insurance, *viatical settlement,* medical care discount card, pharmacy discount card, and securities fraud.

(2) As used in this ~~section~~ *part:*

(a) "medical care discount card" and "pharmacy discount card" have the meanings provided in 33-38-102*; and*

(b) "viatical settlement broker", "viatical settlement contract", and "viatical settlement provider" have the meanings provided in 33-20-1302."

Section 2. Section 33-1-1302, MCA, is amended to read:

"33-1-1302. Insurance, *viatical settlement,* medical care discount card, and pharmacy discount card fraud — insurer. (1) A person commits the act of insurance, *viatical settlement,* medical care discount card, or pharmacy discount card fraud when~~,~~*:*

(a) in the course of offering or selling insurance, a medical care discount card, or a pharmacy discount card, the person misrepresents a material fact, known to the person to be untrue or made with reckless indifference as to whether it is true, with the intention of causing another person to rely upon the misrepresentation to that relying person's detriment*; or*

(b) with respect to a viatical settlement, the person violates the provisions of [section 3].

(2) A person commits the act of insurance fraud or viatical settlement fraud by engaging in any transaction, act, practice, course of business, or course of dealing that involves a violation of insurable interest laws.

~~(2)~~*(3)* The commissioner may, after having conducted a hearing pursuant to 33-1-701, impose the penalties provided for in 33-1-317 for a violation of *[section 3] or* this section. Failure to pay a fine under this section results in a lien upon the assets and property of the person as provided in 33-1-318(3).

~~(3)~~*(4)* In addition to any penalty provided for in 33-1-317, the commissioner may require a person regulated under this title who commits insurance, *viatical settlement,* medical care discount card, or pharmacy discount card fraud to make full restitution to the victim for all financial losses sustained as a result of the fraud with interest of 10% a year from the date of the fraud plus any costs and reasonable attorney fees, less the amount of any income, refund, or other benefit received by the victim from the insurance, *viatical settlement,* medical care discount card, or pharmacy discount card.

~~(4)~~*(5)* The commissioner may require a person who commits ~~insurance fraud~~ *a violation of this part* to make full restitution to any ~~insurer, purported insurer, or insurance producer~~ *person* who may have sustained any losses as a result of the fraud with interest of 10% a year from the date of the loss plus any costs and reasonable attorney fees.

~~(5)~~*(6)* An insurer, insurance producer, or other person who sustained any losses and who was awarded restitution may bring suit to recover those sums, including any attorney fees, interest at 10% a year, and costs incurred in obtaining a judgment.

~~(6)~~*(7)* Failure of a person to pay any amount ordered under this section constitutes a forfeiture of the right to do business in this state.

~~(7)~~*(8)* A person who purposely or knowingly is involved in the misappropriation or theft of insurance premiums or proceeds, *viatical settlement proceeds,* a medical care discount card fee, or a pharmacy discount card fee commits the offense of theft and deceptive practices and is punishable as provided in 45-6-301 and 45-6-317, and the commissioner may refer evidence concerning the violation to the attorney general or other appropriate prosecuting attorney.

~~(8) As used in this section "medical care discount card" and "pharmacy discount card" have the meanings provided in 33-38-102.~~"

Section 3. Viatical settlement fraud. Viatical settlement fraud consists of but is not limited to the following committed by a person or the person's agents or employees:

(1) acts or omissions by any person who, knowingly and with intent to defraud, for the purpose of depriving another of property or for pecuniary gain, engages in or permits the person's employees or agents to engage in acts that include but are not limited to:

(a) presenting, causing to be presented, or preparing with knowledge and belief that it will be presented to or by a viatical settlement provider, viatical settlement broker, premium finance lender, life insurer, life insurance producer, or any other person false material information; or

(b) concealing material information as part of, in support of, or concerning a fact material to one or more of the following:

(i) an application for the issuance of a viatical settlement contract or life insurance policy;

(ii) the underwriting of a viatical settlement contract or life insurance policy;

(iii) a claim for payment or benefit pursuant to a viatical settlement contract or life insurance policy;

(iv) premiums paid on a life insurance policy;

(v) payments and changes in ownership or beneficiary made in accordance with the terms of a viatical settlement contract or life insurance policy;

(vi) the reinstatement or conversion of a life insurance policy;

(vii) the solicitation, offer to enter into, or effectuation of a viatical settlement contract or life insurance policy;

(viii) the issuance of written evidence of viatical settlement contracts or life insurance; or

(ix) any application for, the existence of, or any payments related to a loan secured directly or indirectly by any interest in a life insurance policy.

(2) employing any device, scheme, or artifice to defraud in the business of viatical settlements;

(3) removing, concealing, altering, destroying, or sequestering from the commissioner the assets or records of a licensee or other person engaged in the business of viatical settlements;

(4) misrepresenting or concealing the financial condition of a licensee, financing entity, insurer, or other person;

(5) transacting the business of viatical settlements in violation of laws requiring a license, certificate of authority, or other legal authority for the transaction of the business of viatical settlements;

(6) filing with the commissioner or the chief insurance regulatory official of another jurisdiction a document containing false information or otherwise concealing information about a material fact;

(7) engaging in embezzlement, theft, misappropriation, or conversion of money, funds, premiums, credits, or other property of a viatical settlement provider, viatical settlement broker, insurer, insured, policy owner, or any other person engaged in the business of viatical settlements or life insurance;

(8) knowingly and with intent to defraud entering into, brokering, or otherwise dealing in a viatical settlement contract the subject of which is a life insurance policy that was obtained by presenting false information concerning any fact material to the policy or by concealing, for the purpose of misleading another, information concerning any fact material to the policy if the policy owner or the owner's agent intended to defraud the issuer of the policy;

(9) attempting to commit or to assist, aid, or abet in the commission of or conspiring to commit the acts or omissions specified in this section; or

(10) misrepresenting the state of residence of a policy owner to be a state or jurisdiction that does not have a law substantially similar to this part or Montana's Viatical Settlement Act, Title 33, chapter 20, part 13, for the purpose of evading or avoiding the provisions of Montana law.

Section 4. Section 33-1-1303, MCA, is amended to read:

"33-1-1303. Reporting requirements. (1) An insurer, insurance producer, or other person who has reason to believe that insurance, *viatical settlement,* medical care discount card, or pharmacy discount card fraud has occurred shall report the suspected fraud to the commissioner or to the insurance producer's or other person's insurer within 60 days of discovery of the occurrence. An insurer shall review a report given to the insurer, and if the insurer determines that there is a reasonable likelihood that fraud has occurred the insurer shall forward the report to the commissioner within 30 days of receipt.

(2) In the absence of malice, an insurer, insurance producer, or other person may not be subjected to civil liability for reporting or providing information or otherwise cooperating with an investigation of insurance, *viatical settlement,* medical care discount card, or pharmacy discount card fraud."

Section 5. Section 33-20-1308, MCA, is amended to read:

"33-20-1308. Terms of contract. (1) A viatical settlement contract must be in writing. A viatical settlement provider shall establish in the contract the terms under which the viatical settlement provider will pay compensation or anything of value in return for the policyholder's or certificate holder's

assignment, transfer, sale, devise, or bequest of the death benefit or ownership of the insurance policy or certificate to the viatical settlement provider.

(2) A viatical settlement provider may not use a viatical settlement contract in this state unless the viatical settlement provider has filed the contract form with the commissioner and the commissioner has approved the contract form according to the provisions set forth in 33-1-501. The commissioner shall disapprove a viatical settlement contract form if, in the commissioner's judgment, the contract or any provision of the contract is unreasonable, contrary to the interests of the public, or otherwise misleading or unfair to the policyholder or certificate holder.

(3) Each viatical settlement contract entered into in this state must contain a provision enabling the policyholder or certificate holder to rescind the contract not later than the 30th day after the date on which the contract is executed by all parties or not later than the 15th day after the policyholder or certificate holder receives the viatical settlement proceeds, whichever is the longer period. In order to rescind a contract, a policyholder or certificate holder who has received the proceeds shall return them to the viatical settlement provider *or financing entity*.

(4) If a viatical settlement provider enters into a viatical settlement that allows the viator to retain an interest in the policy, the viatical settlement contract must contain all of the following provisions:

(a) that the viatical settlement provider shall effect the transfer of the amount of the death benefit only to the extent or portion of the amount viaticated. Benefits in excess of the amount viaticated must be paid directly to the viator's beneficiary by the insurance company.

(b) that the premiums to be paid by the viatical settlement provider and the viator will be apportioned unless the viatical settlement contract specifies that all premiums must be paid by the viatical settlement provider. The contract may also require that the viator reimburse the viatical settlement provider for the premiums attributable to the retained interest.

(c) that the viatical settlement provider shall, upon acknowledgment of the perfection of the transfer, either:

(i) advise the insured in writing that the insurance company has confirmed the viator's interest in the policy; or

(ii) provide the insured with a copy of the instrument provided by the insurance company to the viatical settlement provider that acknowledges the viator's interest in the policy."

Section 6. Section 33-20-1314, MCA, is amended to read:

"33-20-1314. Payment to escrow or trust account — lump-sum payment. (1) ~~Immediately upon~~ *Within 3 business days after* receipt of documents from the policyholder or certificate holder effecting the transfer of the insurance policy or certificate, the viatical settlement provider shall pay the proceeds of the settlement to an escrow or trust account managed by a trustee or escrow agent in a bank approved by the commissioner, pending acknowledgment of the transfer by the issuer of the life insurance policy. The trustee or escrow agent shall transfer the proceeds due to the policyholder or certificate holder immediately upon receipt of acknowledgment of the transfer from the insurer.

(2) A viatical settlement provider shall make payment of the proceeds of a viatical settlement contract in a lump sum except as provided in this subsection.

A viatical settlement provider may not retain any portion of the proceeds. A viatical settlement provider may make installment payments only if the viatical settlement provider has purchased an annuity issued by an authorized insurer or a similar financial instrument issued by a financial institution authorized to engage in the business of a financial institution in this state.

(3) Failure by the viatical settlement provider to tender the viatical settlement by the date disclosed to the policyholder or certificate holder renders the contract void."

Section 7. Conflict of laws. (1) If there is more than one owner on a single life insurance policy and the owners are residents of different states, the viatical settlement contract is governed by the law of the state in which the owner having the largest percentage ownership resides or, if the owners hold equal ownership, the state of residence of one owner agreed upon in writing by all of the owners. The law of the state of the insured governs if equal owners fail to agree in writing upon a state of residence for jurisdictional purposes.

(2) (a) A viatical settlement provider from this state who enters into a viatical settlement contract with a viator who is a resident of another state that has enacted statutes or adopted regulations governing viatical settlement contracts is governed in the effectuation of that viatical settlement contract by the statutes and regulations of the viator's state of residence.

(b) A viatical settlement provider from this state who enters into a viatical settlement contract with a viator who is a resident of another state that has not enacted statutes or adopted regulations governing viatical settlement contracts is governed in the effectuation of that viatical settlement contract by the laws of this state. The viatical settlement provider shall give the viator notice that this state regulates the transaction into which the viator is entering. The viatical settlement provider shall maintain all records required by this state and use forms approved in this state.

(3) If there is a conflict in the laws that apply to a viator and a viatical settlement purchaser in any individual transaction, the laws of the state that apply to the viator take precedence and the viatical settlement provider shall comply with those laws.

Section 8. Codification instruction. (1) [Section 3] is intended to be codified as an integral part of Title 33, chapter 1, part 13, and the provisions of Title 33, chapter 1, part 13, apply to [section 3].

(2) [Section 7] is intended to be codified as an integral part of Title 33, chapter 20, part 13, and the provisions of Title 33, chapter 20, part 13, apply to [section 7].

Section 9. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 10. Effective dates. (1) Except as provided in subsection (2), [this act] is effective on passage and approval.

(2) [Section 5] is effective January 1, 2010.

Approved April 17, 2009

CHAPTER NO. 273

[SB 222]

AN ACT REVISING PROVISIONS RELATED TO FOUR-LANE HIGHWAY CONSTRUCTION ALONG U.S. HIGHWAY 2; REMOVING THE REQUIREMENT THAT THE DEPARTMENT SEEK FEDERAL FUNDING FOR THE PROJECT THAT DOES NOT REQUIRE A STATE MATCH; REMOVING THE PROHIBITION ON EXPENDING RESOURCES THAT WOULD JEOPARDIZE FUTURE HIGHWAY PROJECTS; AND AMENDING SECTION 60-2-133, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 60-2-133, MCA, is amended to read:

"60-2-133. U.S. highway 2 — planning — ~~funding~~. ~~(1)~~ The commission ~~shall~~ *may* direct the department to construct a four-lane highway generally along the present route of U.S. highway 2 from the North Dakota border to the Idaho border in order to increase tourism and to bring economic development to Montana. Planning for the U.S. highway 2 project ~~must~~ *may* be included in any future fiscal plan developed by the department.

~~(2) The department shall seek additional federal funding that does not require a state funding match for the U.S. highway 2 project.~~

~~(3) The department may not expend any resources on the U.S. highway 2 project that would jeopardize any future highway projects.~~"

Approved April 17, 2009

CHAPTER NO. 274

[SB 227]

AN ACT REVISING THE TIME FOR FILING CERTAIN CAMPAIGN FINANCE REPORTS; REQUIRING THAT CERTAIN REPORTS BE FILED ELECTRONICALLY; AND AMENDING SECTION 13-37-226, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13-37-226, MCA, is amended to read:

"13-37-226. Time for filing reports. (1) Candidates for a state office filled by a statewide vote of all the electors of Montana and political committees that are organized to support or oppose a particular statewide candidate shall file reports *electronically as follows*:

(a) quarterly, due on the fifth day following a calendar quarter, beginning with the calendar quarter in which funds are received or expended during the year or years prior to the election year that the candidate expects to be on the ballot;

(b) on the 10th day of March ~~and September in each year that an election is to be held and on the 15th and~~*, April, July, August, and September;*

(c) on the 15th and 5th ~~days~~ *days* preceding the date on which an election is held*;* ~~and~~

(d) within 24 hours after receiving a contribution of $200 or more if received between the 10th day before the election and the day of the election;

~~(c)~~*(e)* not more than 20 days after the date of the election; and

~~(d)~~*(f)* on the 10th day of March and ~~September~~ *September* of each year following an election until the candidate or political committee files a closing report as specified in 13-37-228(3).

(2) Political committees organized to support or oppose a particular statewide ballot issue shall file reports:

(a) quarterly, due on the fifth day following a calendar quarter, beginning with the calendar quarter in which the text of the proposed ballot issue is submitted for review and approval pursuant to 13-27-202 during the year or years prior to the election year that an issue is or is expected to be on the ballot;

(b) on the 10th day of March and on the 10th day of each subsequent month through ~~September~~ *September*;

(c) on the ~~15th and~~ *15th and* 5th ~~days~~ *days* preceding the date on which an election is held;

(d) within 24 hours after receiving a contribution of $500 or more if received between the 10th day before the election and the day of the election;

(e) within 20 days after the election; and

(f) on the 10th day of March and ~~September~~ *September* of each year following an election until the political committee files a closing report as specified in 13-37-228(3).

(3) Candidates for a state district office, including but not limited to candidates for the legislature, the public service commission, or a district court judge, and political committees that are specifically organized to support or oppose a particular state district candidate or issue shall file reports:

(a) on the 12th day preceding the date on which an election is held and within 48 hours after receiving a contribution of $100 or more if received between the 17th day before the election and the day of the election. The report under this subsection (3)(a) may be made by mail or by electronic communication to the clerk and recorder and the commissioner of political practices.

(b) not more than 20 days after the date of the election; and

(c) whenever a candidate or political committee files a closing report as specified in 13-37-228(3).

(4) Candidates for any other public office and political committees that are specifically organized to support or oppose a particular local issue shall file the reports specified in subsection (3) only if the total amount of contributions received or the total amount of funds expended for all elections in a campaign, excluding the filing fee paid by the candidate, exceeds $500, except as provided in 13-37-206.

(5) For the purposes of this subsection, a committee that is not specifically organized to support or oppose a particular candidate or ballot issue and that receives contributions and makes expenditures in conjunction with an election is an independent committee. For the purpose of reporting, a political party committee is an independent committee. An independent committee shall file:

(a) a report on the 12th day preceding the date of an election in which it participates by making an expenditure;

(b) a report not more than 20 days after the date of the election in which it participates by making an expenditure; and

(c) a report on a date to be prescribed by the commissioner for a closing report at the close of each calendar year.

(6) The commissioner may promulgate rules regarding the extent to which organizations that are incidental political committees shall report their politically related activities in accordance with this chapter.

(7) All reports required by this section must be complete as of the fifth day before the date of filing as specified in 13-37-228(2) and this section."

Approved April 17, 2009

CHAPTER NO. 275

[SB 228]

AN ACT REVISING LAWS RELATED TO WOLF MANAGEMENT; PLACING PRIORITY ON THE PROTECTION OF HUMANS, LIVESTOCK, AND PETS; ALLOWING THE REMOVAL OF PROBLEM WOLVES FOR LIVESTOCK DEPREDATION; DEFINING "PROBLEM WOLVES"; PROVIDING THAT FOLLOWING DELISTING SPECIAL KILL PERMITS MAY BE ISSUED TO LANDOWNERS AND PUBLIC LAND PERMITTEES; AMENDING SECTIONS 87-1-217 AND 87-5-131, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-1-217, MCA, is amended to read:

"87-1-217. Policy for management of large predators — legislative intent. (1) In managing large predators, the primary goals of the department*, in the order of listed priority,* ~~must be~~ *are* to:

~~(a) preserve citizens' opportunities to hunt large game species;~~

~~(b)~~*(a)* protect humans, livestock, and pets; ~~and~~

~~(c)~~*(b)* preserve and enhance the safety of the public during outdoor recreational and livelihood activities~~.~~*; and*

(c) preserve citizens' opportunities to hunt large game species.

(2) As used in this section:

(a) "large game species" means deer, elk, mountain sheep, moose, antelope, and mountain goats; and

(b) "large predators" means bears, mountain lions, and wolves.

(3) With regard to large predators, it is the intent of the legislature that the specific provisions of this section concerning the management of large predators will control the general supervisory authority of the department regarding the management of all wildlife.

(4) For the management of wolves in accordance with the priorities established in subsection (1), the department may use lethal action to take problem wolves that attack livestock, so long as the state objective for breeding pairs has been met. For the purposes of this subsection, "problem wolves" means any individual wolf or pack of wolves with a history of livestock predation."

Section 2. Section 87-5-131, MCA, is amended to read:

"87-5-131. Process for delisting of gray wolf — management following delisting. (1) If the United States fish and wildlife service removes the Northern Rocky Mountain or gray wolf from the United States' list of

endangered or threatened wildlife, the department is authorized to remove the wolf from the state list of endangered species upon a determination by the department pursuant to this part that the wolf is no longer endangered.

(2) Following state delisting of the wolf, the department shall manage the wolf as a species in need of management until the department and the commission determine that the wolf no longer needs protection as a species in need of management and can be managed and protected as a game animal. Upon making that determination, the commission may declare the wolf a big game animal or a furbearer and may regulate the taking of a wolf as a big game animal or furbearer.

(3) *(a)* Following state delisting of the wolf, the department, or the department of livestock, pursuant to 81-7-102 and 81-7-103, may control wolves for the protection and safeguarding of livestock if the control action is consistent with a wolf management plan approved by both the department and the department of livestock.

(b) Any wolf management plan approved by the department and the department of livestock must allow the issuance of special kill permits, also known as shoot-on-sight written take authorizations, by the department to landowners or public land permittees who have experienced livestock depredation."

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 17, 2009

CHAPTER NO. 276

[SB 297]

AN ACT ESTABLISHING A SAND AND GRAVEL DEPOSIT PROGRAM WITHIN THE MONTANA BUREAU OF MINES AND GEOLOGY; ALLOWING THE MONTANA BUREAU OF MINES AND GEOLOGY TO ACCEPT GIFTS, GRANTS, AND REIMBURSEMENTS; REQUIRING PRESENTATIONS OF FINDINGS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Sand and gravel deposit program — investigation — purpose — prioritization. (1) The Montana bureau of mines and geology shall establish a sand and gravel deposit program for the purpose of investigating sand and gravel deposits in areas of the state where conflicts between development and sand and gravel operations are high.

(2) In prioritizing areas for investigation, the bureau of mines and geology shall consider the largest counties, according to the most recent census data, and counties with the most opencut mining permits and subdivision applications, according to the department of environmental quality.

(3) The bureau of mines and geology may start an investigation when it has sufficient funds to conduct an investigation.

(4) Within 1 year of starting an investigation, the bureau of mines and geology shall present the results of the investigation in the form of maps and text to:

(a) the counties included in the investigation;

(b) the education and local government interim committee; and

(c) the environmental quality council.

Section 2. Authority to accept gifts, grants, and reimbursements. The Montana bureau of mines and geology may accept gifts, grants, and reimbursements to be used for the purposes of [section 1].

Section 3. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 82, chapter 2, and the provisions of Title 82, chapter 2, apply to [sections 1 and 2].

Section 4. Effective date. [This act] is effective on passage and approval.

Approved April 17, 2009

CHAPTER NO. 277

[SB 308]

AN ACT REVISING LAWS RELATED TO THE STANDARD PREVAILING RATE OF WAGES FOR PUBLIC WORKS CONTRACTS; PROVIDING FOR WAGE AND BENEFIT SURVEYS AND ALTERNATE METHODOLOGIES; SPECIFYING PAYMENT TERMS FOR APPRENTICES WORKING ON PUBLIC WORKS CONTRACTS; LIMITING TO 10 THE MAXIMUM NUMBER OF PREVAILING WAGE RATE DISTRICTS; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 15-6-157, 15-6-158, 15-6-159, 15-24-3111, 15-70-522, 18-2-401, 18-2-402, 18-2-403, 18-2-407, 18-2-411, 18-2-412, AND 69-3-2005, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Standard prevailing rate of wages for building construction services. (1) The department shall conduct an annual survey to calculate the standard prevailing rate of wages for building construction services using the process described in this section.

(2) The standard prevailing wage rates adopted under subsection (1) must be set for the districts established pursuant to 18-2-411.

(3) The department shall survey:

(a) electrical contractors who are licensed under Title 37, chapter 68, who perform commercial work;

(b) plumbers who are licensed under Title 37, chapter 69, whose work is performed according to commercial building codes; and

(c) construction contractors registered under Title 39, chapter 9, whose work is performed according to commercial building codes.

(4) The surveys required under subsection (3) must include those wages, including fringe benefits plus travel allowances if applicable, that are paid in the applicable district by other contractors for work of a similar character performed in that district by each craft, classification, or type of worker needed to complete a contract under this part.

(5) The contractor survey must include information pertaining to the number of skilled workers employed in the contractor's peak month of employment and the wages and benefits paid for each craft, classification, or type of work. In setting the prevailing wages from the survey for each craft, classification, or type of work, the department shall use a weighted average wage for each craft, classification, or type of work, except in those cases in which

the survey shows that at least 50% of the skilled workers are receiving the same wage. If the survey shows that at least 50% of the skilled workers are receiving the same wage, that wage is the prevailing wage for that craft, classification, or type of work.

(6) The work performed must be work of a similar character to the work performed in the applicable district unless the survey in the applicable district does not generate sufficient data. If the survey produces insufficient data, the rate may be established by the use of other information or methods that the commissioner determines fairly establish the standard prevailing rate of wages.

(7) (a) The commissioner shall establish by rule the methodology for determining the standard prevailing rate of wages. The rules must include an alternate methodology to determine the standard prevailing rate of wages whenever insufficient data is generated by the survey of contractors in the applicable district. The rules must identify the amount of data that constitutes insufficient data.

(b) The commissioner shall use an alternate methodology provided by rule to determine the standard prevailing rate of wages whenever insufficient data exists.

(c) The alternative method of determining the prevailing rate of wages must provide for review and the incorporation of data from work of a similar character, which must be based on a survey that is conducted as closely as possible to the original district.

(8) Whenever work of a similar character is not being performed in the district, the standard prevailing rate of wages, including fringe benefits and the rate of travel allowance, must be those rates established by collective bargaining agreements in effect in the applicable district for each craft, classification, or type of skilled worker needed to complete the contract.

Section 2. Standard prevailing rate of wages for heavy construction services and for highway construction services — definition. (1) The department shall establish from time to time the standard prevailing rate of wages for heavy construction services and for highway construction services.

(2) In establishing the standard prevailing rate of wages for heavy construction services and for highway construction services, the department may either:

(a) conduct a survey of construction contractors registered under Title 39, chapter 9, who perform heavy construction services or highway construction services; or

(b) adopt by reference through rulemaking the rates established by the U.S. department of labor under the federal Davis-Bacon Act, 29 CFR 1 et seq., for projects in Montana.

(3) For the purposes of this section, the term "standard prevailing rate of wages for heavy construction services and for highway construction services" means wage rates, including fringe benefits plus zone pay and travel allowances that are determined and established statewide for heavy construction projects and highway construction projects. The department may define by rule the terms heavy construction projects and highway construction projects. The definitions of heavy construction projects and highway construction projects must include but are not limited to projects the same as or similar to the construction, alteration, or repair of roads, streets, highways, alleys, runways, airport runways and ramps, dams, powerhouses, canals, channels, pipelines,

parking areas, utility rights-of-way, staging yards located on or off the right-of-way, or new or reopened pits that produce aggregate, asphalt, concrete, or backfill when the pit does not normally sell to the general public.

Section 3. Standard prevailing rate of wages for nonconstruction services — survey. (1) The department shall conduct an annual survey to calculate the standard prevailing rate of wages for nonconstruction services using the process described in this section.

(2) The standard prevailing wage rates adopted under subsection (1) must be set for the districts established under 18-2-411.

(3) (a) The department shall survey those employers that the department determines provide nonconstruction services in Montana in fulfillment of public works contracts.

(b) The department may survey employers that request to be included in the survey related to the nonconstruction services standard prevailing rate of wages or employers whose names and addresses are supplied by a political subdivision of the state as employers who have submitted bona fide bids or responses to requests for proposals for public works contracts for nonconstruction services.

(4) If the department does not survey an employer who is required to be surveyed under subsection (3)(a) or eligible to be surveyed under subsection (3)(b), the resulting survey and the ratesetting process remain valid.

(5) The survey must include:

(a) those wages, including fringe benefits and travel allowances if applicable, that are paid in the applicable district by other employers for work of a similar character performed in that district by each craft, classification, or type of worker needed to complete a contract under this part; and

(b) information pertaining to the number of workers employed in the employer's peak month of employment.

(6) In setting the standard prevailing rate of wages for nonconstruction services from the survey for each craft, classification, or type of work, the department shall use the weighted average wage for each craft, classification, or type of work, except in cases in which the survey shows that at least 50% of the workers are receiving the same wage. If the survey shows that at least 50% of the workers are receiving the same wage, that wage is the standard prevailing rate of wages for that craft, classification, or type of work.

(7) The work performed must be work of a similar character to the work performed in the applicable district unless the survey in the applicable district does not generate sufficient data. If the survey produces insufficient data, the standard prevailing rate of wages may be established by the use of other information or an alternate methodology as provided in subsection (8).

(8) (a) The commissioner shall establish by rule the methodology for determining the standard prevailing rate of wages. The rules must include an alternate methodology to determine the standard prevailing rate of wages whenever insufficient data is generated by the survey of contractors in the applicable district. The rules must identify the amount of data that constitutes insufficient data.

(b) The commissioner shall use an alternate methodology provided by rule to determine the standard prevailing rate of wages whenever insufficient data exists.

(c) The alternative method of determining the prevailing rate of wages must provide for review and the incorporation of data from work of a similar character, which must be based on a survey that is conducted as closely as possible to the original district.

(9) Whenever work of a similar character is not being performed in the district, the standard prevailing rate of wages, including fringe benefits, must be those rates established by collective bargaining agreements in effect in the applicable district for each craft, classification, or type of skilled worker needed to complete the contract.

Section 4. Wages paid to registered apprentices. (1) Only an apprentice whose indenture agreement is registered with the department under Title 39, chapter 6, or recognized by the department as being registered with an appropriate registration agency of another state or the federal government may be paid as provided in subsection (2) when working on a public works contract. An apprentice whose indenture agreement is not registered with or recognized by the department must be paid the full amount of the standard prevailing rate of wages, including any applicable travel allowances.

(2) A recognized, registered apprentice must be paid the percentage of the standard prevailing rate of wages provided for in the apprenticeship standards applicable to that apprentice. The percentage amount applies to wage rates only and not to fringe benefits. The full amount of any applicable fringe benefits must be paid to the apprentice while the apprentice is working on the public works contract.

Section 5. Wage rate adjustments for multiyear contracts. (1) Any public works contract that by the terms of the original contract calls for more than 30 months to fully perform must include a provision to adjust, as provided in subsection (2), the standard prevailing rate of wages to be paid to the workers performing the contract.

(2) The standard prevailing rate of wages paid to workers under a contract subject to this section must be adjusted 12 months after the date of the award of the public works contract. The amount of the adjustment must be a 3% increase. The adjustment must be made and applied every 12 months for the term of the contract.

(3) Any increase in the standard rate of prevailing wages for workers under this section is the sole responsibility of the contractor and any subcontractors and not the contracting agency.

Section 6. Section 15-6-157, MCA, is amended to read:

"15-6-157. Class fourteen property — description — taxable percentage. (1) Class fourteen property includes:

(a) wind generation facilities of a centrally assessed electric power company;

(b) wind generation facilities owned or operated by an exempt wholesale generator or an entity certified as an exempt wholesale generator pursuant to section 32 of the Public Utility Holding Company Act of 1935, 15 U.S.C. 79z-5a;

(c) noncentrally assessed wind generation facilities owned or operated by any electrical energy producer;

(d) wind generation facilities owned or operated by cooperative rural electric associations described under 15-6-137;

(e) all property of a biodiesel production facility, as defined in 15-24-3102, that has commenced construction after June 1, 2007;

(f) all property of a biogas production facility, as defined in 15-24-3102, that has commenced construction after June 1, 2007;

(g) all property of a biomass gasification facility, as defined in 15-24-3102;

(h) all property of a coal gasification facility, as defined in 15-24-3102, except for property in subsection (1)(k) of this section, that sequesters carbon dioxide;

(i) all property of an ethanol production facility, as defined in 15-24-3102, that has commenced construction after June 1, 2007;

(j) all property of a geothermal facility, as defined in 15-24-3102;

(k) all property of an integrated gasification combined cycle facility, as defined in 15-24-3102, that sequesters carbon dioxide, as required by 15-24-3111(4)(c);

(l) all property or a portion of the property of a renewable energy manufacturing facility, as defined in 15-24-3102, that has commenced construction after June 1, 2007;

(m) all property of a natural gas combined cycle facility;

(n) equipment that is used to capture and to prepare for transport carbon dioxide that will be sequestered or injected for the purpose of enhancing the recovery of oil and gas, other than that equipment at coal combustion plants of the types that are generally in commercial use as of December 31, 2007, that commence construction after December 31, 2007;

(o) high-voltage direct-current transmission lines and associated equipment and structures, including converter stations and interconnections, other than property classified under 15-6-159, that:

(i) originate in Montana with a converter station located in Montana east of the continental divide and that are constructed after July 1, 2007;

(ii) are certified under the Montana Major Facility Siting Act; and

(iii) provide access to energy markets for Montana electrical generation facilities listed in this section that commenced construction after June 1, 2007;

(p) all property of electric transmission lines, including substations, that originate at facilities specified in this subsection (1), with at least 90% of electricity carried by the line originating at facilities specified in this subsection (1) and terminating at an existing transmission line or substation that has commenced construction after June 1, 2007;

(q) the qualified portion of an alternating current transmission line and its associated equipment and structures, including interconnections, that has commenced construction after June 1, 2007.

(2) (a) The qualified portion of an alternating current transmission line in subsection (1)(q) is that percentage, as determined by the department of environmental quality, of rated transmission capacity of the line contracted for on a firm basis by buyers or sellers of electricity generated by facilities specified in subsection (1) that are located in Montana.

(b) The department of revenue shall classify the total value of an alternating current transmission line in accordance with the determination made by the department of environmental quality pursuant to subsection (2)(a).

(c) The owner of property described under this subsection (2) shall disclose the location of the generation facilities specified in subsection (1) and information sufficient to demonstrate that there is a firm contract for transmission capacity available throughout the year. For purposes of the initial

qualification, the owner is not required to disclose financial terms and conditions of contracts beyond that needed for classification.

(3) Class fourteen property does not include facilities:

(a) at which the standard prevailing rate of wages for heavy construction, as provided in ~~18-2-401(13)(a)~~ *[section 2]*, was not paid during the construction phase; or

(b) that are exempt under 15-6-225.

(4) For the purposes of this section, "wind generation facilities" means any combination of a physically connected wind turbine or turbines, associated prime movers, and other associated property, including appurtenant land and improvements and personal property, that are normally operated together to produce electric power from wind.

(5) (a) The department of environmental quality shall determine whether to certify that a transmission line meets the criteria of subsection (1)(o), (1)(p), or (1)(q), as applicable, based on an application provided for in 15-24-3112. The department of environmental quality shall review the certification 10 years after the line is operational, and if the property no longer meets the requirements of subsection (1)(o), (1)(p), or (1)(q), the certification must be revoked.

(b) If the department of revenue finds that a certification previously granted was based on an application that the applicant knew was false or fraudulent, the property must be placed in class nine under 15-6-141. If the application was fraudulent, the applicant may be liable for additional taxes, penalty, and interest from the time that the certification was in effect.

(6) Class fourteen property is taxed at 3% of its market value."

Section 7. Section 15-6-158, MCA, is amended to read:

"15-6-158. Class fifteen property — description — taxable percentage. (1) Class fifteen property includes:

(a) carbon dioxide pipelines certified by the department of environmental quality under 15-24-3112 for the transportation of carbon dioxide for the purposes of sequestration or for use in closed-loop enhanced oil recovery operations;

(b) qualified liquid pipelines certified by the department of environmental quality under 15-24-3112;

(c) carbon sequestration equipment;

(d) equipment used in closed-loop enhanced oil recovery operations; and

(e) all property of pipelines, including pumping and compression equipment, carrying products other than carbon dioxide, that originate at facilities specified in 15-6-157(1), with at least 90% of the product carried by the pipeline originating at facilities specified in 15-6-157(1) and terminating at an existing pipeline or facility.

(2) For the purposes of this section, the following definitions apply:

(a) "Carbon dioxide pipeline" means a pipeline that transports carbon dioxide from a plant or facility that produces or captures carbon dioxide to a carbon sequestration point, including a closed-loop enhanced oil recovery operation.

(b) "Carbon sequestration" means the long-term storage of carbon dioxide from a carbon dioxide pipeline in geologic formations, including but not limited

to deep saline formations, basalt or oil shale formations, depleted oil and gas reservoirs, unminable coal beds, and closed-loop enhanced oil recovery operations.

(c) "Carbon sequestration equipment" means the equipment used for carbon sequestration, including equipment used to inject carbon dioxide at the carbon sequestration point and equipment used to retain carbon dioxide in the sequestration location.

(d) "Carbon sequestration point" means the location where the carbon dioxide is to be confined for sequestration.

(e) "Closed-loop enhanced oil recovery operation" means all oil production equipment, as described in 15-6-138(1)(c), owned by an entity that owns or operates an operation that, after construction, installation, and testing has been completed and the full enhanced oil recovery process has been commenced, injects carbon dioxide to increase the amount of crude oil that can be recovered from a well and retains as much of the injected carbon dioxide as practicable, but not less than 85% of the carbon dioxide injected each year absent catastrophic or unforeseen occurrences.

(f) "Liquid pipeline" means a pipeline that is dedicated to using 90% of its pipeline capacity for transporting fuel or methane gas from a coal gasification facility, biodiesel production facility, biogas production facility, or ethanol production facility.

(g) "Plant or facility that produces or captures carbon dioxide" means a facility that produces a flow of carbon dioxide that can be sequestered or used in a closed-loop enhanced oil recovery operation. This does not include wells from which the primary product is carbon dioxide.

(3) Class fifteen property does not include a carbon dioxide pipeline, liquid pipeline, or closed-loop enhanced oil recovery operation for which, during construction, the standard prevailing wages for heavy construction, as provided in ~~18-2-401(13)(a)~~ *[section 2]*, were not paid during the construction phase.

(4) Class fifteen property is taxed at 3% of its market value."

Section 8. Section 15-6-159, MCA, is amended to read:

"15-6-159. Class sixteen property — description — taxable percentage. (1) Class sixteen property includes high-voltage direct-current converter stations that are constructed in a location and manner so that the converter station can direct power to two different regional power grids.

(2) Class sixteen property does not include property described in subsection (1) for which the standard prevailing rate of wages for heavy construction, as provided in ~~18-2-401(13)(a)~~ *[section 2]*, was not paid during the construction phase.

(3) (a) The department shall determine whether to certify that the property meets the criteria of subsection (1).

(b) If the department finds that a certification previously granted was based on an application that the applicant knew was false or fraudulent, the property must be placed in class nine under 15-6-141. If the application was fraudulent, the applicant may be liable for additional taxes, penalty, and interest from the time that the certification was in effect.

(4) Class sixteen property is taxed at 2.25% of its market value."

Section 9. Section 15-24-3111, MCA, is amended to read:

"15-24-3111. Energy production or development — tax abatement — eligibility. (1) A facility listed in subsection (3), clean advanced coal research and development equipment, and renewable energy research and development equipment may qualify for an abatement of property tax liability pursuant to this part.

(2) (a) If the abatement is granted for a facility listed in subsection (3), the qualifying facility must be assessed at 50% of its taxable value for the qualifying period.

(b) If the abatement is granted for clean advanced coal research and development equipment or renewable energy research and development equipment, the qualifying equipment, up to the first $1 million of the value of equipment at a facility, must be assessed at 50% of its taxable value for the qualifying period. There is no abatement for any portion of the value of equipment at a facility in excess of $1 million.

(c) The abatement applies to all mills levied against the qualifying facility or equipment.

(3) Subject to subsections (4) and (5), the following facilities or property may qualify for the abatement allowed under this part:

(a) biodiesel production facilities;

(b) biogas production facilities;

(c) biomass gasification facilities;

(d) coal gasification facilities for which carbon dioxide from the coal gasification process is sequestered;

(e) ethanol production facilities;

(f) geothermal facilities;

(g) renewable energy manufacturing facilities;

(h) clean advanced coal research and development equipment and renewable energy research and development equipment;

(i) a natural gas combined cycle facility that offsets a portion of the carbon dioxide produced through carbon credit offsets;

(j) transmission lines and associated equipment and structures classified in 15-6-157;

(k) converter stations classified under 15-6-159;

(l) carbon sequestration equipment as defined in 15-6-158; and

(m) pipelines classified under 15-6-158.

(4) (a) In order to qualify for the abatement under this part, a facility listed in subsection (3) must meet the following requirements:

(i) commencement of construction of the facility must occur after June 1, 2007; and

(ii) the standard prevailing rate of wages for heavy construction, as provided in ~~18-2-401(13)(a)~~ *[section 2]*, must be paid during the construction phase of the facility.

(b) In order to qualify for the abatement under this part, clean advanced coal research and development equipment and renewable energy research and development equipment must be placed into service after June 30, 2007.

(c) For the facility to qualify under subsection (3)(d), the carbon dioxide produced from the gasification process must be sequestered at a rate that is practically obtainable but may not be less than 65%.

(d) Integrated gasification combined cycle facilities for which a permit under Title 75, chapter 2, is applied for after December 31, 2014, do not qualify under subsection (3)(d).

(e) To qualify under subsection (3)(i), the facility shall offset carbon dioxide emissions by the percentage determined in 15-24-3116.

(5) To qualify for an abatement, the facility or clean advanced coal research and development equipment and renewable energy research and development equipment must be certified as provided in 15-24-3112.

(6) Upon termination of the qualifying period, the abatement ceases and the property for which the abatement had been granted must be assessed at 100% of its taxable value.

(7) For the purposes of this section, "qualifying period" means the construction period and the first 15 years after the facility commences operation or the clean advanced coal research and development equipment or renewable energy research and development equipment is purchased. The total time of the qualifying period may not exceed 19 years."

Section 10. Section 15-70-522, MCA, is amended to read:

"15-70-522. Tax incentive for production of ethanol — rules. (1) (a) If the ethanol was produced in Montana from Montana agricultural products, including Montana wood or wood products, or if the ethanol was produced from non-Montana agricultural products when Montana products are not available, there is a tax incentive payable to ethanol distributors for distilling ethanol that:

(i) is to be blended with gasoline for sale as ethanol-blended gasoline in Montana;

(ii) was exported from Montana to be blended with gasoline for sale as ethanol-blended gasoline; or

(iii) is to be used in the production of ethyl butyl ether for use in reformulated gasoline.

(b) Payment must be made by the department out of the amount collected under 15-70-204.

(2) Except as provided in subsections (3) and (4), the tax incentive on each gallon of ethanol distilled in accordance with subsection (1) is 20 cents a gallon for each gallon that is 100% produced from Montana products, with the amount of the tax incentive for each gallon reduced proportionately, based upon the amount of agricultural or wood products not produced in Montana that is used in the production of the ethanol. The tax incentive is available to a facility for the first 6 years from the date that the facility begins production. The facility shall file a business plan with the department at least 2 years before the estimated beginning date of production. After the initial business plan is filed, the facility shall provide the department with quarterly updates regarding any changes to the business plan.

(3) Regardless of the ethanol tax incentive provided in subsection (2):

(a) the total payments made for the incentive under this part may not exceed $6 million in any consecutive 12-month period;

(b) a plant or facility is not eligible to receive the tax incentive unless the facility paid the standard prevailing rate of wages for heavy construction, as provided in ~~18-2-401(13)(a)~~ *[section 2]*, during the construction phase; and

(c) an ethanol distributor is not eligible to receive the tax incentive unless at least:

(i) 20% Montana product is used to produce ethanol at the facility in the first year of production;

(ii) 25% Montana product is used to produce ethanol at the facility in the second year of production;

(iii) 35% Montana product is used to produce ethanol at the facility in the third year of production;

(iv) 45% Montana product is used to produce ethanol at the facility in the fourth year of production;

(v) 55% Montana product is used to produce ethanol at the facility in the fifth year of production; and

(vi) 65% Montana product is used to produce ethanol at the facility in the sixth year of production.

(4) (a) An ethanol distributor may not receive tax incentive payments under subsection (2) that exceed $2 million in any consecutive 12-month period. Subject to subsections (5) and (6), an ethanol distributor may receive tax incentive payments commencing the first quarter after a facility begins production. The distributor shall report its production to the department pursuant to 15-70-205.

(b) The distributor's report must include:

(i) the total number of gallons produced for the month;

(ii) the total amount of products purchased for the production of ethanol;

(iii) the percentage of the total amount of products purchased that are Montana products; and

(iv) other information that the department determines is necessary.

(5) (a) A plant shall apply for the incentive payment by submitting an application to the department when the plant has proof of commitment from lenders to finance the plant. Subject to subsection (5)(b), the department shall respond to the applicant with approval of the application within 45 days of receipt of the application, after confirming the lending commitment. Upon approval of the application, the department shall enter into a contract with the plant that ensures the state's commitment to pay incentive payments to qualifying ethanol plants.

(b) If the department is not able to confirm a lending commitment, the department shall deny the application.

(6) After the department has verified production, the application provisions of subsection (5) are met, and the plant owner presents proof of financing, the department shall begin payments of the ethanol tax incentives based on actual production according to the terms of subsections (2) and (4).

(7) The department shall adopt rules necessary to carry out the provisions of this section. The department shall coordinate and request information and input from the ethanol production industry as a part of the rulemaking process and shall follow the procedures provided in Title 2, chapter 4."

Section 11. Section 18-2-401, MCA, is amended to read:

"18-2-401. Definitions. Unless the context requires otherwise, in this part, the following definitions apply:

(1) *(a)* ~~A "bona~~ *"Bona* fide *Montana* resident ~~of Montana~~" ~~is a person~~ *means an individual* who, at the time of employment and immediately prior to the time of employment, has lived in this state in a manner and for a time that is sufficient to clearly justify the conclusion that the ~~person's~~ *individual's* past habitation in this state has been coupled with an intention to make ~~it the person's~~ *this state the individual's* home. ~~Persons~~

(b) Individuals who come to Montana solely in ~~pursuance~~ *pursuit* of ~~any~~ *a* contract or *an* agreement to perform labor may not be considered to be bona fide *Montana* residents ~~of Montana~~ within the meaning and for the purpose of this part.

(2) "Commissioner" means the commissioner of labor and industry provided for in 2-15-1701.

(3) (a) "Construction services" means work performed by an individual in *building* construction, heavy construction, highway construction, and remodeling work.

(b) The term does not include:

(i) engineering, superintendence, management, office, or clerical work on a public works contract; or

(ii) consulting contracts, contracts with commercial suppliers for goods and supplies, or contracts with professionals licensed under state law.

(4) "Contractor" means any *individual,* general contractor, subcontractor, firm, association, partnership, corporation, limited liability partnership, or limited liability company engaged in construction services.

(5) "Department" means the department of labor and industry provided for in 2-15-1701.

(6) "District" means a prevailing wage rate district established as provided in 18-2-411.

(7) "Employer" means any *individual,* firm, association, partnership, corporation, limited liability partnership, or limited liability company engaged in nonconstruction services.

~~(8) "Heavy and highway construction wage rates" means wage rates, including fringe benefits for health and welfare and pension contributions, that meet the requirements of the Employee Retirement Income Security Act of 1974 and other bona fide programs approved by the United States department of labor and zone pay and travel allowance that are determined and established statewide for heavy and highway construction projects, such as alteration or repair of roads, streets, highways, alleys, runways, trails, parking areas, utility rights-of-way, staging yards located on or off the right-of-way, or new or reopened pits that produce aggregate, asphalt, concrete, or backfill when the pit does not normally sell to the general public.~~

(8) "Fringe benefits" means health, welfare, and pension contributions that meet the requirements of the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1001, et seq., and other bona fide programs approved by the U.S. department of labor.

(9) "Nonconstruction services" means work performed by an individual, not including management, office, or clerical work, for:

(a) the maintenance of publicly owned buildings and facilities, including public highways, roads, streets, and alleys;

(b) custodial or security services for publicly owned buildings and facilities;

(c) grounds maintenance for publicly owned property;

(d) the operation of public drinking water supply, waste collection, and waste disposal systems;

(e) law enforcement, including janitors and prison guards;

(f) fire protection;

(g) public or school transportation driving;

(h) nursing, nurse's aid services, and medical laboratory technician services;

(i) material and mail handling;

(j) food service and cooking;

(k) motor vehicle and construction equipment repair and servicing; and

(l) appliance and office machine repair and servicing.

(10) "Project location" means the construction site where a public works project involving construction services is being built, installed, or otherwise improved or reclaimed, as specified on the project plans and specifications.

(11) (a) "Public works contract" means a contract for construction services let by the state, county, municipality, school district, or political subdivision or for nonconstruction services let by the state, county, municipality, or political subdivision in which the total cost of the contract is in excess of $25,000. The nonconstruction services classification does not apply to any school district that at any time prior to April 27, 1999, contracted with a private contractor for the provision of nonconstruction services on behalf of the district.

(b) The term does not include contracts entered into by the department of public health and human services for the provision of human services.

(12) "Special circumstances" means all work performed at a facility that is built or developed for a specific Montana public works project and that is located in a prevailing wage district that contains the project location or that is located in a contiguous prevailing wage district.

(13) ~~(a)~~ "Standard prevailing rate of wages" or "standard prevailing wage" means *the rates established as provided in*:

(a) [section 1] for building construction services;

(b) [section 2] for heavy construction services and for highway construction services; and

(c) [section 3] for nonconstruction services.

~~(i) the heavy and highway construction wage rates applicable to heavy and highway construction projects; or~~

~~(ii) those wages, other than heavy and highway construction wages, including fringe benefits for health and welfare and pension contributions, that meet the requirements of the Employee Retirement Security Act of 1974 and other bona fide programs approved by the United States department of labor and travel allowance that are paid in the district by other contractors for work of a similar character performed in that district by each craft, classification, or type of worker needed to complete a contract under this part. In each district, the standard prevailing rate of wages must be computed by the department based on work performed by electrical contractors who are licensed under Title~~

37, chapter 68, master plumbers who are licensed under Title 37, chapter 69, part 3, and Montana contractors who are registered under Title 39, chapter 9, and whose work is performed according to commercial building codes. The contractor survey must include information pertaining to the number of skilled craftspersons employed in the employer's peak month of employment and the wages and benefits paid for each craft. In setting the prevailing wages from the survey for each craft, the department shall use the weighted average wage for each craft, except in those cases in which the survey shows that 50% of the craftspersons are receiving the same wage. When the survey shows that 50% of the craftspersons are receiving the same wage, that wage is the prevailing wage for that craft. The work performed must be work of a similar character to the work performed in the district unless the annual survey of construction contractors and the biennial survey of nonconstruction service employers in the district does not generate sufficient data. If the survey produces insufficient data, the rate may be established by the use of other information or methods that the commissioner determines fairly establish the standard prevailing rate of wages. The commissioner shall establish by rule the method or methods by which the standard prevailing rate of wages is determined. The rules must establish a process for determining if there is insufficient data generated by the survey of employers in the district that requires the use of other methods of determining the standard prevailing rate of wages. The rules must identify the amount of data that constitutes insufficient data and require the commissioner of labor to use other methods of determining the standard prevailing rate of wages when insufficient data exists. The alternative methods of determining the prevailing rate of wages must provide for review and the incorporation of data from work of a similar character that is conducted as near as possible to the original district.

~~(b) When work of a similar character is not being performed in the district, the standard prevailing rate of wages, including fringe benefits for health and welfare and pension contributions, that meets the requirements of the Employee Retirement Security Act of 1974 and other bona fide programs approved by the United States department of labor and the rate of travel allowance must be those rates established by collective bargaining agreements in effect in the district for each craft, classification, or type of worker needed to complete the contract.~~

(14) "Work of a similar character" means work on private commercial projects as well as work on public projects."

Section 12. Section 18-2-402, MCA, is amended to read:

"18-2-402. Standard prevailing rate of wages. (1) The ~~Montana~~ commissioner ~~of labor~~ may determine the standard prevailing rate of wages applicable to public works contracts under this part. The commissioner shall ~~undertake to~~ keep and maintain copies of collective bargaining agreements and other information on which the rates are based.

(2) The provisions of this part do not apply in those instances ~~where~~ *in which* the standard prevailing rate of wages is determined ~~pursuant to~~ *by* federal law.

(3) ~~In no instances where~~ *Whenever* this part is applicable, ~~shall~~ the standard prevailing rate of ~~wage be determined to~~ *wages may* be *equal to but not* greater than the *highest* applicable rate of ~~wage~~ *wages* in the area for the particular work in question as negotiated under existing and current collective bargaining agreements."

Section 13. Section 18-2-403, MCA, is amended to read:

"18-2-403. Preference of Montana labor in public works — wages — tax-exempt project — federal exception. (1) In every public works contract, there must be inserted in the bid specification and the public works contract a provision requiring the contractor to give preference to the employment of bona fide *Montana* residents ~~of Montana~~ in the performance of the work.

(2) All public works contracts for construction services under subsection (1), except those for heavy and highway construction, that are conducted at the project location or under special circumstances must contain a provision requiring the contractor to pay:

(a) the travel allowance that is in effect and applicable to the district in which the work is being performed; and

(b) the standard prevailing rate of wages, including fringe benefits ~~for health and welfare and pension contributions~~, that:

~~(i) meets the requirements of the Employee Retirement Income Security Act of 1974 and other bona fide programs approved by the United States department of labor; and~~

~~(ii)~~ is in effect and applicable to the district in which the work is being performed.

(3) In every public works contract for heavy and highway construction, there must be inserted a provision to require the contractor to pay the ~~heavy and highway construction~~ *standard prevailing* wage rates established statewide for heavy and highway construction services conducted at the project location or under special circumstances.

(4) Except as provided in subsection (5), all public works contracts for nonconstruction services under subsection (1) must contain a provision requiring the contractor to pay:

(a) the travel allowance that is in effect and applicable to the district in which the work is being performed; and

(b) the standard prevailing rate of wages, including fringe benefits ~~for health and welfare and pension contributions~~, that:

~~(i) meets the requirements of the Employee Retirement Income Security Act of 1974 and other bona fide programs approved by the United States department of labor; and~~

~~(ii)~~ is in effect and applicable to the district in which the work is being performed.

(5) An employer who, as a nonprofit organization providing individuals with vocational rehabilitation, performs a public works contract for nonconstruction services and who employs an individual whose earning capacity is impaired by a mental, emotional, or physical disability may pay the individual wages that are less than the standard prevailing wage if the employer complies with the provisions of section 214(c) of the Fair Labor Standards Act of 1938, 29 U.S.C. 214 and 29 CFR, part 525, and the wages paid are equal to or above the minimum wage required in ~~39-3-404~~ *39-3-409*.

(6) Transportation of goods, supplies, materials, and manufactured or fabricated items to or from the project location is not subject to payment of the standard prevailing rate of wages.

(7) A contract, other than a public works contract, let for a project costing more than $25,000 and financed from the proceeds of bonds issued under Title 17, chapter 5, part 15, or Title 90, chapter 5 or 7, must contain a provision

requiring the contractor to pay the standard prevailing wage rate in effect and applicable to the district in which the work is being performed unless the contractor performing the work has entered into a collective bargaining agreement covering the work to be performed.

(8) A public works contract may not be let to any person, firm, association, or corporation refusing to execute an agreement with the provisions described in subsections (1) through (7) in it, provided that in public works contracts involving the expenditure of federal-aid funds, this part may not be enforced in a manner as to conflict with or be contrary to the federal statutes prescribing a labor preference to honorably discharged veterans of the armed forces and prohibiting as unlawful any other preference or discrimination among citizens of the United States.

(9) Failure to include the provisions required by 18-2-422 in a public works contract relieves the contractor from the contractor's obligation to pay the standard prevailing wage rate and places the obligation on the public contracting agency."

Section 14. Section 18-2-407, MCA, is amended to read:

"18-2-407. Forfeiture for failure to pay standard prevailing ~~wage~~ *rate of wages.* (1) Except as provided in 18-2-403, a contractor, subcontractor, or employer who pays workers or employees at less than the standard prevailing ~~wage~~ *rate of wages* as established under the public works contract shall forfeit to the department a penalty at a rate of up to 20% of the delinquent wages plus fringe benefits, attorney fees, audit fees, and court costs. Money collected by the department under this section must be deposited in the general fund. A contractor, subcontractor, or employer shall also forfeit to the employee the amount of wages owed plus $25 a day for each day that the employee was underpaid.

(2) Whenever it appears to the contracting agency or to the ~~Montana~~ commissioner ~~of labor and industry~~ that there is insufficient money due to the contractor or the employer under the terms of the contract to cover penalties, the ~~Montana~~ commissioner ~~of labor and industry~~ may, within 90 days after the filing of notice of completion of the project and its acceptance by the contracting agency, maintain an action in district court to recover all penalties and forfeitures due. This part does not prevent the individual worker who has been underpaid or the commissioner ~~of labor and industry~~ on behalf of all the underpaid workers from maintaining an action for recovery of the wages due under the contract as provided in Title 39, chapter 3, part 2~~, except that appeal of the hearings officer's decision is made directly to district court rather than to the board of personnel appeals~~."

Section 15. Section 18-2-411, MCA, is amended to read:

"18-2-411. Creation of prevailing wage rate districts. (1) Without taking into consideration heavy *construction services* and highway construction *services* wage rates, the commissioner shall divide the state into ~~at least~~ *not more than* 10 prevailing wage rate districts *for building construction services and nonconstruction services*.

(2) In initially determining the districts, the commissioner ~~must~~ *shall*:

(a) follow the rulemaking procedures in the Montana Administrative Procedure Act; and

(b) publish the reasons supporting the creation of each district.

(3) A district boundary may not be changed except for good cause and in accordance with the rulemaking procedures in the Montana Administrative Procedure Act.

(4) The presence of collective bargaining agreements in a particular area may not be the sole basis for the creation of boundaries of a district, nor may the absence of collective bargaining agreements in a particular area be the sole basis for changing the boundaries of a district.

(5) For each prevailing wage rate district established under this section, the commissioner shall determine the standard prevailing rate of wages to be paid employees, as provided in ~~18-2-401 and 18-2-402~~ *this part*. The standard prevailing rate of wages for construction services, as determined by the commissioner in this subsection, must be used for calculating an apprentice's wage, as provided in 39-6-108."

Section 16. Section 18-2-412, MCA, is amended to read:

"18-2-412. Method for payment of standard prevailing wage. (1) To fulfill the obligation to pay the standard prevailing rate of wages under 18-2-403, a contractor or subcontractor may:

(a) pay the amount of fringe benefits and the basic hourly rate of pay that is part of the standard prevailing rate of wages directly to the worker or employee in cash;

(b) make an irrevocable contribution to a trustee or a third person pursuant to a fringe benefit fund, plan, or program that meets the requirements of the Employee Retirement Income Security Act of 1974 or that is a bona fide program approved by the ~~United States~~ *U.S.* department of labor; or

(c) make payments using any combination of methods set forth in subsections (1)(a) and (1)(b) so that the aggregate of payments and contributions is not less than the standard prevailing rate of wages, including fringe benefits ~~for health and welfare and pension contributions that meet the requirements of the Employee Retirement Income Security Act of 1974,~~ *and* travel~~, or other bona fide programs approved by the United States department of labor, that is~~ *allowances,* applicable to the district for the particular type of work being performed.

(2) The fringe benefit fund, plan, or program described in subsection (1)(b) must provide benefits to workers or employees for health care, pensions on retirement or death, life insurance, disability and sickness insurance, or bona fide programs that meet the requirements of the Employee Retirement Income Security Act of 1974 or that are approved by the ~~United States~~ *U.S.* department of labor.

(3) A private contractor or subcontractor shall file a copy of the fringe benefit fund, plan, or program described in subsection (2) with the department."

Section 17. Section 69-3-2005, MCA, is amended to read:

"69-3-2005. Procurement — cost recovery — reporting. (1) In meeting the requirements of this part, a public utility shall:

(a) conduct renewable energy solicitations under which the public utility offers to purchase renewable energy credits, either with or without the associated electricity, under contracts of at least 10 years in duration; and

(b) consider the importance of geographically diverse rural economic development when procuring renewable energy credits.

(2) A public utility that intends to enter into contracts of less than 10 years in duration shall demonstrate to the commission that these contracts will provide a lower long-term cost of meeting the standard established in 69-3-2004.

(3) (a) Contracts signed for projects located in Montana must require all contractors to give preference to the employment of bona fide Montana residents, as defined in 18-2-401, in the performance of the work on the projects if the Montana residents have substantially equal qualifications to those of nonresidents.

(b) Contracts signed for projects located in Montana must require all contractors to pay the standard prevailing rate of wages for heavy construction, as provided in ~~18-2-401(13)(a)~~ *[section 2]*, during the construction phase of the project.

(4) All contracts signed by a public utility to meet the requirements of this part are eligible for advanced approval under procedures established by the commission. Upon advanced approval by the commission, these contracts are eligible for cost recovery from ratepayers, except that nothing in this part limits the commission's ability to subsequently, in any future cost-recovery proceeding, inquire into the manner in which the public utility has managed the contract and to disallow cost recovery if the contract was not reasonably administered.

(5) A public utility or competitive electricity supplier shall submit renewable energy procurement plans to the commission in accordance with rules adopted by the commission. The plans must be submitted to the commission on or before:

~~(a) January 1, 2007, for the standard required in 69-3-2004(2);~~

~~(b) June 1, 2008, for the standard required in 69-3-2004(3);~~

~~(c)~~*(a)* June 1, 2013, for the standard required in 69-3-2004(4); and

~~(d)~~*(b)* any additional future dates as required by the commission.

(6) A public utility or competitive electricity supplier shall submit annual reports, in a format to be determined by the commission, demonstrating compliance with this part for each compliance year. The reports must be filed by March 1 of the year following the compliance year.

(7) For the purpose of implementing this part, the commission has regulatory authority over competitive electricity suppliers."

Section 18. Codification instruction. [Sections 1 through 5] are intended to be codified as an integral part of Title 18, chapter 2, part 4, and the provisions of Title 18, chapter 2, part 4, apply to [sections 1 through 5].

Section 19. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 20. Effective date. [This act] is effective July 1, 2009.

Approved April 17, 2009

CHAPTER NO. 278

[SB 367]

AN ACT REVISING REGISTRATION AND VOTING FOR ABSENT UNIFORMED SERVICES AND OVERSEAS ELECTORS; REQUIRING ELECTION ADMINISTRATORS TO ALLOW ABSENT UNIFORMED

SERVICES AND OVERSEAS ELECTORS TO REGISTER AND VOTE ELECTRONICALLY; AUTHORIZING LATE AND SAME-DAY REGISTRATION AND VOTING BY ABSENT UNIFORMED SERVICES AND OVERSEAS ELECTORS; REVISING WHAT MUST BE INCLUDED IN RULES ADOPTED BY THE SECRETARY OF STATE CONCERNING ELECTRONIC REGISTRATION AND VOTING; REQUIRING THE SECRETARY OF STATE TO REPORT TO THE GOVERNOR AND THE LEGISLATURE; AMENDING SECTIONS 13-21-104, 13-21-201, 13-21-207, AND 13-21-210, MCA; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13-21-104, MCA, is amended to read:

"13-21-104. Adoption of rules *on electronic registration and voting* — acceptance of funds. (1) The secretary of state shall adopt reasonable rules under the rulemaking provisions of the Montana Administrative Procedure Act to implement 13-21-207. The rules are binding upon election administrators. ~~The rules must require compliance with the same time requirements or deadlines as for registration and voting by absentee ballot by use of the public mails. The rules must maintain the accuracy, integrity, and secrecy of the ballot process and must allow registration and voting by facsimile through use of a private corporation or other private entity for transmission of facsimile messages only if the secretary of state finds that the use is essential to the purposes of this chapter.~~

(2) The rules must provide that:

(a) there are uniform statewide standards concerning electronic registration and voting;

(b) regular absentee ballots for a primary, general, or special election are available in a format that allows the ballot to be electronically transmitted to a United States elector as soon as the ballots are available pursuant to 13-13-205;

(c) a United States elector may, subject to 13-2-304, register and vote up to the time that the polls close on election day;

(d) a United States elector is allowed to cast a provisional ballot if there is a question about the elector's registration information or eligibility to vote; and

(e) a ballot cast by a United States elector and transmitted electronically will remain secret, as required by Article IV, section 1, of the Montana constitution. This subsection (2)(e) does not prohibit the adoption of rules establishing administrative procedures on how electronically transmitted votes must be transcribed to an official ballot. However, the rules must be designed to protect the accuracy, integrity, and secrecy of the process.

~~(2)~~*(3)* The secretary of state may apply for and receive a grant of funds from any agency or office of the United States government or from any other public or private source and may use the money for the purpose of implementing this chapter."

Section 2. Section 13-21-201, MCA, is amended to read:

"13-21-201. Registration of United States electors — simultaneous application for absentee ballot. (1) A United States elector may register with the election administrator in the elector's county of residence by properly completing, signing, and returning:

(a) the voter registration form;

(b) the federal post card application; or

(c) the federal write-in absentee ballot as provided in 13-21-205.

(2) A registration application under subsection (1)(a) or (1)(b) must be received by the election administrator ~~not less than 30 days before the election for the registration to be valid for the election. If the registration application is received less than 30 days before the election, the registration application must be processed for the next election~~ *by the time specified in 13-2-304 for late registration*.

(3) A registration application using a federal post card application or the federal write-in absentee ballot transmission envelope must be considered a simultaneous application for absentee ballots under 13-21-210."

Section 3. Section 13-21-207, MCA, is amended to read:

"13-21-207. Registration ~~and voting by facsimile and internet authorized~~ *and voting electronically — definition.* *(1)* Notwithstanding other provisions of this title, each election administrator ~~may~~ *shall*, in any primary election, general election, and special election, *allow a United States elector to* take the following ~~acts by facsimile transmission, if facsimile facilities are available, or electronically through the internet for a United States elector, if internet facilities that provide for secrecy are available,~~ *actions electronically* in place of the public mails:

~~(1)~~*(a)* register an individual to vote;

~~(2)~~*(b)* give notice of registration;

~~(3)~~*(c)* receive requests for an absentee ballot;

~~(4)~~*(d)* transmit absentee ballots to electors; and

~~(5)~~*(e)* receive absentee ballots from electors.

(2) A ballot cast by a United States elector pursuant to this section may be counted only if it is transmitted by the elector to the election administrator before the close of polls on election day and is received by the election administrator before 5 p.m. on the day after the election. Ballots received pursuant to this section must be counted at the same time as provisional ballots are counted.

(3) For purposes of this section, "electronically" means by facsimile transmission or electronic mail. The term includes internet-based voting if an internet-based voting system approved by the secretary of state is available to the election administrator."

Section 4. Section 13-21-210, MCA, is amended to read:

"13-21-210. Application for absentee ballots. (1) (a) A United States elector may apply for a regular absentee ballot as follows:

(i) by making a written request, which must include the elector's birth date and signature; or

(ii) by properly completing, signing, and returning to the election administrator the federal post card application.

(b) A person who holds a power of attorney from an absent uniformed services elector may apply for an absentee ballot for that election on behalf of the uniformed services elector. The applicant shall provide a copy of the power of attorney authorizing the request for an absentee ballot along with the application.

(2) An application for a regular absentee ballot must be received by the appropriate county election administrator ~~not less than 30 days before the date of an election. An application for a regular absentee ballot that is received less~~

~~than 30 days before the date of an election must be processed for the next election~~ *by the time specified in 13-2-304 for late registration*.

(3) An application under this section is valid for all state and local elections in the calendar year in which the application is made and the next two regularly scheduled federal general elections.

(4) The elector's county election administrator shall provide the elector with a regular absentee ballot for the elections described in subsection (3) as soon as the ballots are printed."

Section 5. Report by secretary of state. (1) The secretary of state and county election administrators shall work with staff of the department of military affairs and with other interested parties to identify, investigate, and resolve problems with and challenges to implementing efficient, secure, and timely registration and voting for absent uniformed services electors and overseas electors as required by [this act].

(2) (a) During the 2009-10 interim, the secretary of state shall, whenever requested, report to the state administration and veterans' affairs interim committee on the progress of the investigation.

(b) The secretary of state shall complete the investigation prior to September 1, 2010. Completion of the investigation includes providing a final report of the secretary of state's and election administrators' findings, conclusions, and specific recommendations to the governor and to the legislature as provided in 5-11-210.

(c) If the secretary of state recommends statutory changes or anticipates requesting an appropriation from the 62nd legislature as a result of the investigation, the secretary of state shall, at a time requested by the state administration and veterans' affairs interim committee, present to the committee the concept for the legislation, appropriation, or both.

(3) The state administration and veterans' affairs interim committee shall consider the proposal for legislation as required in 5-5-215.

Section 6. Effective date. (1) Except as provided in subsection (2), [this act] is effective on passage and approval.

(2) [Section 3] is effective January 1, 2012.

Approved April 17, 2009

CHAPTER NO. 279

[SB 392]

AN ACT AUTHORIZING THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO REVIEW PARCELS OF LAND SUBMITTED FOR REVIEW BY THE OWNER OF THE PARCEL TO DETERMINE WHETHER THE PARCEL MAY BE DEVELOPED WITH WATER AND WASTEWATER SYSTEMS AND TO PROVIDE ADEQUATE SOLID WASTE DISPOSAL AND STORM WATER MANAGEMENT; AUTHORIZING THE ISSUANCE OF A CERTIFICATE OF SUBDIVISION APPROVAL FOR THE PARCEL; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Voluntary review applications. The department may review any parcel of land submitted for review by the owner of the parcel to determine whether the parcel may be developed with water and wastewater systems and to

provide adequate solid waste disposal and storm water management. Upon making the determinations, the department may issue a certificate of subdivision approval for the parcel.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 76, chapter 4, part 1, and the provisions of Title 76, chapter 4, part 1, apply to [section 1].

Section 3. Effective date. [This act] is effective July 1, 2009.

Approved April 17, 2009

CHAPTER NO. 280

[SB 426]

AN ACT ADOPTING THE NATIONAL BISON RANGE WATER COMPACT; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. United States of America, fish and wildlife service, national bison range - Montana compact ratified. This Compact is entered into by the State of Montana and the United States of America to settle for all time any and all claims to federal reserved water rights for the National Bison Range administered by the U.S. Fish and Wildlife Service within the State of Montana.

ARTICLE I - RECITALS

WHEREAS, in 1979, the United States brought several actions in the United States District Court for the District of Montana to adjudicate, inter alia, its rights to water with respect to the National Bison Range, see United States v. Abell, No. CV 79-33-M (filed April 5, 1979);

WHEREAS, Congress consented to state court jurisdiction over the quantification of claims to water rights held by the United States of America; see "the McCarran Amendment," 43 U.S.C. 666(a)(1) (1952);

WHEREAS, the State of Montana in 1979 pursuant to Title 85, Chapter 2 of the Montana Code Annotated (MCA), commenced a general adjudication of the rights to use water within the State of Montana, including all federal reserved and appropriative water rights;

WHEREAS, the Montana Reserved Water Rights Compact Commission, pursuant to 85-2-703, MCA, is authorized to negotiate settlement of water rights claims filed by the United States for areas in which the United States claims reserved waters within the State of Montana;

WHEREAS, the United States wishes to quantify and have decreed the amount of water necessary to fulfill the purposes of the National Bison Range, in the State of Montana;

WHEREAS, the United States Attorney General, or a duly designated official of the United States Department of Justice, has authority to execute this Compact on behalf of the United States pursuant to the authority to settle litigation contained in 28 U.S.C. 516-517 and 519 (1968);

WHEREAS, the Secretary of the Interior, or a duly designated official of the United States Department of the Interior, has authority to execute this Compact on behalf of the United States Department of the Interior pursuant to 43 U.S.C. §1457 (1986, Supp 1992), inter alia; and

WHEREAS, it is in the best interest of all Parties that the water rights claims for the National Bison Range be settled through agreement between the State of Montana and the United States;

NOW THEREFORE, the Parties agree to enter into this Compact for the purpose of settling the water rights claims of the United States for the National Bison Range.

ARTICLE II - DEFINITIONS

For purposes of this Compact only, the following definitions shall apply:

(1) "Abstract" means the copy of the documents entitled "Abstract of U.S. Fish and Wildlife Service Water Rights" referenced in this Compact as Appendices 3, 4, 5 and 6.

(2) "Acre-foot" or "Acre-feet" or "AF" means the amount of water necessary to cover one acre to a depth of one foot and is equivalent to 43,560 cubic feet of water.

(3) "Acre-foot per year" or "Acre-feet per year" or "AFY" means an annual quantity of water measured in acre-feet over a period of a year.

(4) "Animal Unit" means a measure of animal numbers, where one male bison equals 1.5 Animal Units, one female bison equals 0.9 Animal Units, one elk equals 0.75 Animal Units, and one mule deer, whitetail deer, bighorn sheep, or antelope equals 0.2 Animal Units.

(5) "Arising Under State Law" means, as applied to a water right, a water right created under Montana law and does not include water rights created under federal law.

(6) "Change in Use" means, as applied to the National Bison Range water right, a change in the point of diversion, the place of use, the purpose of use, or the place of storage.

(7) "Consumptive Use" means a use of water that removes water from the source of supply such that the quality or quantity is reduced or the timing of return delayed, making it unusable or unavailable for use by others, and includes evaporative loss from impoundments and natural lakes.

(8) "Department" means the Montana Department of Natural Resources and Conservation, or any successor agency.

(9) "Effective Date" means the date on which the Compact is given ratification by the Montana Legislature, written approval by the United States Department of the Interior, or written approval by the United States Department of Justice, whichever date is latest.

(10) "FWS" means the United States Fish and Wildlife Service of the United States Department of the Interior, or any successor agency.

(11) "Ground Water" means any water that is beneath the surface of the ground.

(12) "National Bison Range" means those lands located in the State of Montana that were withdrawn from disposition and reserved by the Act of May 23, 1908, 35 Stat. 267; and that were expanded by the Agricultural Appropriations Bill of 1910 (35 Stat. 1051 - Act of March 4, 1909). The lands that comprise the National Bison Range are depicted on the map attached as Appendix 1 to this Compact.

(13) "Nonconsumptive Use" means the use of a water right considered to be nonconsumptive by the decree, permit, or law authorizing the use because it results in no depletion of water from the source.

(14) "Party" or "Parties" means the State of Montana, the United States of America or both.

(15) "Person" or "Persons" means an individual or individuals or any other entity, public or private, including the State, a tribe and the United States and all officers, agents, and departments thereof.

(16) "State" means the State of Montana and all officers, agents, departments, and political subdivisions thereof, and unless otherwise indicated, for purposes of notification or consent "State" means the Director of the Department, or the Director's designee.

(17) "Tribal Water Right" means those water rights held by the Confederated Salish and Kootenai Tribes (the "Tribes" or "CSKT") or by the United States in trust for the Tribes, their members and allottees.

(18) "United States" means the federal government and all officers, agencies, and departments thereof, and unless otherwise indicated, for purposes of notification or consent other than service in litigation "United States" means the Secretary of the Department of the Interior, or the Secretary's designee.

ARTICLE III - NATIONAL BISON RANGE WATER RIGHT

The Parties agree that the following water rights are in settlement of the reserved water rights of the United States for the National Bison Range.

A. Purpose of Reservation for the National Bison Range. The National Bison Range was created on May 23, 1908 for the purpose of being a permanent range for the care and maintenance of a herd of bison and other mammals. 35 Stat. 267, 35 Stat. 1051. An executive order of December 22, 1921, (No. 3596) added the purpose of a bird refuge to the National Bison Range as well.

B. Quantification. Subject to the terms of Article IV, the United States shall have the right to water for the following purposes from the sources identified on National Bison Range lands.

1. Wildlife Use.

a. Consumptive Use. The United States has federal reserved water rights for Consumptive Use for wildlife purposes at the locations identified in the table attached as Appendix 2, provided that the total Consumptive Use for wildlife purposes on National Bison Range lands shall not exceed the amount of water needed to feed and water the historic maximum carrying capacity of the National Bison Range of 755 Animal Units. The specific elements of these rights are set forth in the Abstracts attached as Appendix 3 to this Compact.

b. Nonconsumptive Use. The United States also has federal reserved water rights in the amount of 18.48 Acre-feet per year for largely Nonconsumptive Uses to fill the Ravalli Potholes, when the water is naturally available, and an in-stream flow in the amount of 177 gallons per minute from Mission, Pauline, Trisky and Elk Creeks, when such flows are naturally available. The specific elements of these rights are set forth in the Abstracts attached as Appendix 4 to this Compact.

2. Administrative Uses.

a. Current Administrative Uses. The United States has federal reserved rights for Consumptive Use for current administrative uses on National Bison Range lands totaling 35.2 Acre-feet per year. The United States also has a federal reserved water right of up to 536 Acre-feet per year of flood flows from Mission Creek for largely Nonconsumptive Uses for administrative purposes,

when such flows are naturally available. The specific elements of these rights are set forth in the Abstracts attached as Appendix 5 to this Compact.

b. Future Administrative Uses. The United States has federal reserved water rights from Ground Water for Consumptive Use for future administrative uses up to a total additional volume of 15 Acre-feet per year to fulfill the purposes of the National Bison Range. The types of use of the United States' federal reserved water rights for administrative uses may include, but are not limited to: domestic, lawn and garden, storage, and dust abatement.

3. Emergency Fire Suppression. The use of water for emergency fire suppression benefits the public, and is necessary for the purposes of the National Bison Range. The United States may, as part of its reserved water right, divert or withdraw water for fire suppression on National Bison Range lands as needed and without a definition of the specific elements of a recordable water right. Use of water for fire suppression shall not be considered an exercise of the United States' water rights for Consumptive Use.

4. Period of Use. The period of use of the United States' federal reserved water rights quantified in the Compact shall be from January 1 to December 31 of each year.

5. Priority Date. The priority date for the federal reserved water rights set forth in this Compact is May 23, 1908.

ARTICLE IV - IMPLEMENTATION OF COMPACT

A. Abstracts. Concurrent with this Compact, the Parties have prepared Abstracts, copies of which are attached as Appendices 3, 4, and 5 to this Compact, which specifically identify all of the United States' use of water for the National Bison Range described in this Compact and quantified in accordance with this Compact. These abstracts specifically do not include that use of water that is the subject of water right claim number 76L 187042 00, which claim the FWS and the State agree that the FWS shall retain (unless it shall choose voluntarily to withdraw or abandon it in the future) and have adjudicated by the Montana Water Court as a water right Arising Under State Law subject to the terms, conditions and procedures of the Montana Water Use Act, Title 85, Chapter 2, MCA, and the Montana general water rights adjudication. The Parties prepared the Abstracts to comply with the requirements for a final decree as set forth in state law, and in an effort to assist the state courts in the process of entering decrees accurately and comprehensively reflecting the rights described in this Compact. The rights specified in the Abstracts are subject to the terms and conditions of this Compact. In the event of a discrepancy between a right listed in an Abstract and that same right as quantified in accordance with Articles III and IV of this Compact, the Parties intend that the quantification in accordance with Articles III and IV of this Compact shall be reflected in a final decree.

B. Enforcement of Water Right.

1. The United States, the State, a holder of a water right Arising Under State Law or a holder of a right to use any portion of the Tribal Water Right, may petition a state or federal court of competent jurisdiction for relief when a controversy arises between the United States' water rights described by this Compact, and a holder of a water right Arising Under State Law or a holder of a right to use any portion of a Tribal Water Right. Resolution of the controversy shall be governed by the terms of this Compact where applicable, or to the extent not applicable, by applicable state, federal and tribal law.

2. The United States agrees that a water commissioner appointed by a state or federal court of competent jurisdiction, or other official authorized by law, may enter the National Bison Range for the purpose of data collection, including the collection of information necessary for water distribution on or off the National Bison Range, and to inspect structures for the diversion and measurement of water described in this Compact for Consumptive Use. The terms of entry shall be as specified in an order of a court of competent jurisdiction or other entity authorized by law to prescribe such terms of entry.

3. So long as the Department remains the administrative entity responsible for the water rights quantified in this Compact, the Department may enter the National Bison Range at a reasonable hour of the day, for the purposes of data collection on water diversion and stream flow or inspection of devices maintained by the United States pursuant to this Compact. The Department shall notify the United States by certified mail, telephone, e-mail or in person, at least 24 hours prior to entry. If some other body becomes responsible for the administration of the National Bison Range water rights, representatives of that entity may enter the National Bison Range on the same terms and conditions set forth above in this subsection.

4. So long as the Department remains the administrative entity responsible for the water rights quantified in this Compact, the United States may request an investigation by the Department of a diversion located on a stream for which a water right is described in this Compact. The Department may investigate. If an investigation occurs, the United States may accompany the Department. If some other body becomes responsible for the administration of the National Bison Range water rights, the United States may request an investigation by that entity in the same manner and on the same terms and conditions set forth above in this subsection.

5. The United States shall maintain structures, including wellhead equipment and casing, for the diversion of water authorized for Consumptive Use by this Compact. The United States shall maintain any devices it deems necessary for enforcement of its water right for natural flow described in this Compact.

C. Use of Federal Reserved Water Rights.

1. Federal Reserved Water Rights. The reserved rights of the United States described in this agreement are federal water rights. Nonuse of all or a part of the federal reserved water rights described in this Compact shall not constitute abandonment or forfeiture of those rights. The federal reserved water rights described in this Compact need not be applied to a use deemed beneficial under state law, but shall be restricted to uses necessary to fulfill the purposes of the National Bison Range.

2. Development of Future Uses. The United States, without prior approval of the Department, or any other administrative entity with regulatory authority over the water rights of the National Bison Range, may develop a future use after the Effective Date of this Compact as described in Article III.B.2.(b), provided that:

(a) the purpose of use is for the use authorized under Article III.B.2.(a);

(b) the total quantity of water shall not exceed the amount set forth in Article III.B.2.;

(c) the source of supply shall be restricted as set forth in Article III; and

(d) the use shall not adversely affect a senior water right Arising Under State Law.

D. Change in Use of Federal Reserved Water Rights.

1. Nonconsumptive Uses. Water rights specified in this Compact for natural flow or other Nonconsumptive Uses shall not be subject to Change in Use, provided that the emergency use of water for fire suppression as provided for in Article III.B.3 shall not be deemed a Change in Use or violation of a water right for natural flow.

2. Consumptive Uses. The United States may make a Change in Use of its Consumptive Use water rights described in Article III of this Compact provided that:

(a) the Change in Use shall be in fulfillment of the purposes of the National Bison Range;

(b) the total Consumptive Use shall not exceed the amount described in this Compact;

(c) the Change in Use shall not adversely affect any water right Arising Under State Law; and

(d) with the exception of the provisions governing a change in the purpose for which the water right is used, the United States, in making the change, shall comply with the provisions of the Montana Water Use Act, Title 85, chapter 2, MCA, applicable to change in appropriation rights at the time of the change.

3. Emergency Fire Suppression. The United States' federal reserved water right to divert or withdraw water for emergency fire suppression as described in Article III.B.3 shall not be changed to any other use.

E. Reporting Requirements. The United States shall provide a report to the Department and the Tribes on an annual basis, or on a periodic basis agreed to by the Parties and the Tribes, containing specific information on:

1. the development of new uses as described in Article III.B.2.(b);

2. changes in use as described in Article IV.D; and

3. the source of supply, the dates of use, and the estimated amount of water used for emergency fire suppression as described in Article III.B.3.

ARTICLE V - GENERAL PROVISIONS

A. No Effect on Tribal Rights or Other Federal Reserved Water Rights. The relationship between the water rights of the United States described in this Compact and any rights to water of any Indian tribe, or any federally derived water right of an individual, or of the United States on behalf of such tribe or individual, shall be determined by the rule of priority. The Parties agree that the water rights described in this Compact are junior to any rights to water of any Indian tribe, or any federally derived water right of an individual, or of the United States on behalf of such tribe or individual, currently quantified or as may be quantified after the Effective Date of this Compact and with a priority date before the Effective Date of this Compact, including aboriginal rights, if any, in the basins affected.

2. Nothing in the Compact may be construed or interpreted as a precedent to establish the nature, extent, or manner of administration of the rights to water of any other federal agency or federal lands in Montana other than those of the FWS at the National Bison Range.

3. Nothing in this Compact may be construed or interpreted in any manner to establish the nature, extent or manner of administration of the water rights of any Indian tribe or tribal member.

4. Nothing in this Compact is otherwise intended to conflict with or abrogate a right or claim of any Indian tribe regarding its boundaries or property interests in the State of Montana.

B. State Water Rights. Nothing in this Compact may limit the authority of the State, including the authority of a water commissioner authorized by state law, to administer all current and future water rights Arising Under State Law within and upstream of the National Bison Range, provided that in administration of those water rights in which the United States has an interest, such authority is limited to that granted under federal law, and provided that any scheme of comprehensive administration of all water rights located within the exterior boundaries of the Flathead Indian Reservation (which include the water rights recognized in this Compact) that is negotiated and approved in a water rights settlement among the State, the CSKT and the United States shall supersede any administrative provisions in this Compact the conflict with a State-CSKT water rights settlement.

C. General Disclaimers. Nothing in this Compact may be construed or interpreted:

1. as a precedent for the litigation of reserved water rights or the interpretation or administration of future compacts between the United States and the State, or the United States and any other state;

2. as a waiver by the United States of its right under state law to raise objections in state court to individual water rights claimed pursuant to the Montana Water Use Act, Title 85, MCA, in the basins affected by this Compact; or any right to raise objections in an appropriate forum to individual water rights subject to a provisional permit under the Montana Water Use Act, Title 85, MCA, in the basins affected by this Compact;

3. as a waiver by the United States of its right to seek relief from a conflicting water use not entitled to protection under the terms of this Compact;

4. to determine the relative rights inter sese of Persons using water under the authority of state or tribal law, or to limit the rights of the Parties or any other Person to litigate any issues or questions not resolved by this Compact;

5. to authorize the taking of a water right that is vested under state or federal law;

6. to create or deny substantive rights through headings or captions used in this Compact;

7. to expand or restrict any waiver of sovereign immunity existing pursuant to federal law as of the Effective Date of this Compact;

8. to affect or determine the applicability of any state or federal law, including, without limitation, environmental and public safety laws, on activities of the FWS;

9. to affect the right of the State to seek fees or reimbursement for costs or the right of the United States to contest the imposition of such fees or costs, pursuant to a ruling by a State or federal court of competent jurisdiction or Act of Congress;

10. to affect in any manner the entitlement to or quantification of other federal water rights. This Compact is only binding on the United States with

regard to the water rights of the United States for the National Bison Range, and does not affect the water rights of any other federal agency that is not a successor in interest to the water rights subject to this Compact;

11. to prevent the United States from constructing or modifying an outlet to an impoundment at the National Bison Range in compliance with all applicable laws;

12. to prevent the United States from seeking a permit to appropriate water under applicable State or other law.

D. Reservation of Rights. The Parties expressly reserve all rights not granted, described or relinquished in this Compact.

E. Severability. The provisions of this Compact are not severable.

F. Multiple Originals. This Compact is executed in triplicate. Each of the three Compacts bearing original signatures shall be deemed an original.

G. Notice. Unless otherwise specifically provided for in this Compact, service of notice required hereunder, except service in litigation, shall be:

1. State: Upon the Director of the Department and such other officials as the Director may designate in writing; and

United States: Upon the Secretary of the Interior and such other officials as the Secretary may designate in writing.

CSKT: Upon the Tribal Chairman of the CSKT and such other officials as the Chairman may designate in writing.

ARTICLE VI - FINALITY

Binding Effect.

1. The Effective Date of this Compact is the date of the ratification of this Compact by the Montana legislature, written approval by the United States Department of the Interior, or written approval by the United States Department of Justice, whichever occurs later. Once effective, all of the provisions of this Compact shall be binding on the Parties.

2. Following the Effective Date, this Compact shall not be modified without the consent of both Parties. Either Party may seek enforcement of this Compact in a court of competent jurisdiction.

3. On approval of this Compact by a state or federal court of competent jurisdiction and entry of a decree by such court confirming the rights described herein, this Compact and such rights are binding on all Persons bound by the final order of the court.

4. If an objection to this Compact is sustained pursuant to 85-2-703, MCA, and 85-2-702(3), MCA, this Compact shall be voidable by action of and without prejudice to either Party.

B. Filing Compact with State Court. Subject to the following stipulations and within one hundred eighty (180) days of the Effective Date of this Compact, the Parties shall submit this Compact to an appropriate state court or courts having jurisdiction over this matter in an action commenced pursuant to 43 U.S.C. 666, for approval in accordance with state law and for the incorporation of the water rights described in this Compact into a decree or decrees entered therein. The Parties understand and agree that the submission of this Compact to a state court or courts, as provided for in this Compact, is solely to comply with the provisions of 85-2-702(3), MCA, and does not expand the jurisdiction of the state court or expand in any manner the waiver of sovereign immunity of the

United States in the McCarran Amendment, 43 U.S.C. 666, or other provision of federal law.

C. Dismissal of Filed Claims. At the time the state courts approve the water rights described in this Compact and enter a decree or decrees confirming the rights described herein, such courts shall dismiss, with prejudice, all water right claims specified in Appendix 6 of this Compact for the National Bison Range. If this Compact is not approved or a federal reserved water right described herein is not confirmed, any corresponding state law-based claim filed by the FWS for use on the National Bison Range shall not be dismissed.

D. Settlement of Claims. The Parties intend that the water rights described in this Compact are in full and final settlement of the federal reserved water right claims for the National Bison Range described in this Compact and administered by the FWS on the Effective Date of this Compact. On the Effective Date of this Compact, the United States hereby and in full settlement of any and all claims to federal reserved water rights by the United States, including all claims that the FWS filed or could have filed as part of the ongoing statewide adjudication process, relinquishes forever all claims to federal reserved water rights within the State of Montana for the National Bison Range. The State agrees to recognize the water rights described and quantified herein and shall, except as expressly provided for herein, treat them in the same manner as a water right recognized by the State. Nothing in this Compact precludes the FWS from filing for future water use permits under Montana state law.

E. Continuation of Negotiations. The Parties have not finalized agreement on quantification of the water rights for the Charles M. Russell and UL Bend National Wildlife Refuges and UL Bend Wilderness Area, prior to the Effective Date of this Compact. The Parties agree to continue to pursue, in good faith, negotiations toward compacts for the quantification of water rights for these areas. In the event the Parties are unable to agree on quantification, the United States retains its right to have the quantity of any reserved water right for these areas adjudicated in a state or federal court of competent jurisdiction.

F. Defense of Compact. The Parties agree to defend the provisions and purposes of this Compact from all challenges and attacks.

IN WITNESS WHEREOF the representatives of the State of Montana and the United States have signed this Compact on the ____ day of _____, 2009.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 85, chapter 20, and the provisions of Title 85, chapter 20, apply to [section 1].

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 17, 2009

CHAPTER NO. 281

[SB 463]

AN ACT CLARIFYING THAT RESPITE CARE WORKERS MAY BE EMPLOYED BY A FAMILY MEMBER; REQUIRING TRAINING AND EDUCATIONAL MATERIALS TO BE PROVIDED TO AN INDIVIDUAL EMPLOYING A RESPITE CARE WORKER; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Liability training program and materials for respite care. (1) The department, in conjunction with the department of labor and industry, shall develop a training program and educational materials on labor law and liability issues related to the employment of a person by an individual for respite care services under the exemptions provided in 39-3-406(1)(p), 39-51-204(1)(y), and 39-71-401(2)(u). The educational materials must provide information on the labor law requirements applicable to an individual hiring a person for respite care services.

(2) The department shall make the training materials available to providers of community-based services for people with developmental disabilities that serve as the organized health care delivery system for respite care funds available from the department for use by individuals who hire and pay a person to provide respite care to a family member or a person for whom they are the legal guardian.

(3) To qualify for the respite care funds available from the department, an individual shall:

(a) receive training offered by a provider; and

(b) sign a statement acknowledging that the individual has completed the training and has read the related educational materials.

Section 2. Respite care and employment responsibilities — liabilities. (1) Contingent upon approval of the program by the federal government for purposes of receiving federal medicaid funds, the department may make payment to an approved, certified, and qualified medicaid provider who passes through the payment on behalf of a family to a person providing respite care for individuals who, because of age or infirmity, are unable to care for themselves as provided under 29 U.S.C. 213. A qualified medicaid provider who passes through payment may not be considered an employer by the department for the purposes of workers' compensation, unemployment insurance, or wage and hour requirements.

(2) The department through administrative rule, waiver of a state or federal program providing payment for respite care, or a pilot program may not require a qualified medicaid provider to assume employer responsibilities or liabilities if the family chooses to negotiate the respite care agreement and the qualified provider does not:

(a) control the person who provides respite care; or

(b) direct the respite care provided by the person.

(3) (a) The department may provide an option to families to choose self-directed care.

(b) The department shall continue to provide families the choice of negotiating respite care by using a local qualified medicaid provider to provide pass-through payment and benefiting from the exemptions provided under 39-3-406(1)(p), 39-51-204(1)(y), and 39-71-402(2)(u).

Section 3. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 53, chapter 20, part 2, and the provisions of Title 53, chapter 20, part 2, apply to [sections 1 and 2].

Section 4. Effective date. [This act] is effective on passage and approval.

Approved April 17, 2009

CHAPTER NO. 282

[HB 59]

AN ACT REVISING THE TEACHERS' RETIREMENT SYSTEM LAWS; REVISING LAWS TO COMPLY WITH THE PENSION PROTECTION ACT OF 2006; CLARIFYING DEFINITIONS; CLARIFYING WHO MUST BE A MEMBER OF THE SYSTEM; CLARIFYING FAMILY LAW ORDERS; CLARIFYING OPTIONAL RETIREMENT ALLOWANCES; REQUIRING CERTIFICATION OF TERMINATION OF EMPLOYMENT IN COMPLIANCE WITH THE INTERNAL REVENUE CODE; COMPLYING WITH THE FEDERAL HEROES EARNINGS ASSISTANCE AND RELIEF TAX ACT OF 2008; AMENDING SECTIONS 19-20-101, 19-20-302, 19-20-305, 19-20-401, 19-20-409, 19-20-603, 19-20-605, 19-20-701, 19-20-702, 19-20-703, 19-20-718, 19-20-731, 19-20-804, 19-20-905, 19-20-1001, 19-20-1003, 20-15-106, AND 20-15-403, MCA; REPEALING SECTION 19-20-406, MCA; AND PROVIDING AN EFFECTIVE DATE AND RETROACTIVE APPLICABILITY DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-20-101, MCA, is amended to read:

"19-20-101. Definitions. As used in this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Accumulated contributions" means the sum of all the amounts deducted from the compensation of a member or paid by a member and credited to the member's individual account in the annuity savings account, together with interest. Regular interest must be computed and allowed to provide a benefit at the time of retirement.

(2) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of the mortality table and interest rate assumption set by the retirement board.

(3) "Average final compensation" means the average of a member's earned compensation during the 3 consecutive years of full-time service or as provided under 19-20-805 that yield the highest average and on which contributions have been made as required by 19-20-602. If amounts defined in subsection (6)(b) have been converted by an employer to earned compensation for all members and have been continuously reported as earned compensation in a like amount for at least the 5 fiscal years preceding the member's retirement, the amounts may be included in the calculation of average final compensation. If amounts defined in subsection (6)(b) have been reported as earned compensation for less than 5 fiscal years or if the member has been given the option to have amounts reported as earned compensation, any amounts reported in the 3-year period that constitute average final compensation must be included in average final compensation as provided under 19-20-716(1)(b).

(4) "Beneficiary" means one or more persons formally designated by a member, retiree, or benefit recipient to receive a retirement allowance or payment upon the death of the member, retiree, or benefit recipient.

(5) "Creditable service" is that service defined by 19-20-401.

(6) (a) "Earned compensation" means, except as limited by 19-20-715, remuneration, exclusive of maintenance, allowance, and expenses, paid for services by a member out of funds controlled by an employer before any pretax deductions allowed under the Internal Revenue Code are deducted from the member's compensation.

(b) Earned compensation does not mean:

(i) direct employer premium payments on behalf of members for health or dependent care expense accounts or any employer contribution for health, medical, pharmaceutical, disability, life, vision, dental, or any other insurance;

(ii) any direct employer payment or reimbursement for:

(A) professional membership dues;

(B) maintenance;

(C) housing;

(D) day care;

(E) automobile, travel, lodging, or entertaining expenses; or

(F) any similar payment for any form of maintenance, allowance, or expenses;

(iii) the imputed value of health, life, or disability insurance or any other fringe benefits; or

(iv) any noncash benefit provided by an employer to or on behalf of an employee.

(c) Unless included pursuant to 19-20-716, earned compensation does not include termination pay.

(d) Adding a direct employer-paid or noncash benefit to an employee's contract or subtracting the same or like amount as a pretax deduction is considered a fringe benefit and not earned compensation.

(e) Earned compensation does not include:

(i) compensation paid to a member from a plan for the deferral of compensation under section 457(f) of the Internal Revenue Code, 26 U.S.C. 457(f);

(ii) payment for sick, annual, or other types of leave that is allowed to a member and that is accrued in excess of that normally allowed; or

(iii) incentive or bonus payments paid to a member that are not part of a series of annual payments.

(7) "Employer" means*:*

(a) the state of Montana~~,~~;

(b) ~~the trustees of~~ a public school district, *as provided in 20-6-101 and 20-6-701;*

(c) the office of public instruction;

(d) the board of public education;

(e) an education cooperative;

(f) the Montana school for the deaf and blind, as described in 20-8-101;

(g) the Montana youth challenge program, as defined in 10-1-101;

(h) a state youth correctional facility, as defined in 41-5-103;

(i) the Montana university system;

(j) a community college; or

(k) any other agency or subdivision of the state that employs a person who is designated a member of the retirement system *pursuant to 19-20-302.*

(8) "Full-time service" means service that is*:*

(a) at least 180 days in a fiscal year*;* ~~or~~

(b) at least 140 hours a month during 9 months in a fiscal year*; or*

(c) full-time under an alternative school calendar adopted by a school board that is less than 180 days but meets minimum accreditation requirements of 1,080 hours.

(9) "Internal Revenue Code" has the meaning provided in 15-30-101.

(10) "Member" means a person who has an individual account in the annuity savings account. An active member is a person included under the provisions of 19-20-302. An inactive member is a person included under the provisions of 19-20-303.

(11) "Normal form" or "normal form benefit" means a monthly retirement benefit payable during the lifetime of the retired member.

~~(11)~~*(12)* "Normal retirement age" means an age no earlier than ~~the age at which the member is eligible to retire:~~

~~(a) by virtue of age, length of service, or both;~~

~~(b) without disability; and~~

~~(c)~~ *55 years of age,* with the right to receive immediate retirement benefits without an actuarial reduction in the benefits.

~~(12)~~*(13)* "Part-time service" means service that is less than ~~full-time~~ *180 days in a fiscal year or less than 140 hours a month during 9 months in a fiscal year*. Part-time service must be credited in the proportion that the actual time worked compares to full-time service.

~~(13) "Prior service" means employment of the same nature as service but rendered before September 1, 1937.~~

(14) "Regular interest" means interest at a rate set by the retirement board in accordance with 19-20-501(2).

(15) "Retired member" means a person who has terminated employment that qualified the person for membership under 19-20-302 and who has received at least one monthly retirement benefit paid pursuant to this chapter.

(16) "Retirement allowance" means a monthly payment due to a person who has qualified for service or disability retirement or due to a beneficiary as provided in 19-20-1001.

(17) "Retirement board" or "board" means the retirement system's governing board provided for in 2-15-1010.

(18) "Retirement system", "system", or "plan" means the teachers' retirement system of the state of Montana provided for in 19-20-102.

(19) "Service" means the performance of instructional duties or related activities that would entitle the person to active membership in the retirement system under the provisions of 19-20-302.

(20) "Termination" or "terminate" means that the member has severed the employment relationship with the member's employer and that all, if any, payments due upon termination of employment, including but not limited to accrued sick and annual leave balances, have been paid to the member.

(21) (a) "Termination pay" means any form of bona fide vacation leave, sick leave, severance pay, amounts provided under a window or early retirement incentive plan, or other payments contingent on the employee terminating employment and on which employee and employer contributions have been paid as required by 19-20-716.

(b) Termination pay does not include:

(i) amounts that are not wages under section 3121 of the Internal Revenue Code, determined without regard to the wage base limitation; and

(ii) amounts that are payable to a member from a plan for the deferral of compensation under section 457(f) of the Internal Revenue Code, 26 U.S.C. 457(f).

(22) "Vested" means that a member has been credited with at least 5 full years of membership service upon which contributions have been made, as required by 19-20-602, 19-20-605, and 19-20-607, and who has a right to a future retirement benefit.

(23) "Written application" or "written election" means a written instrument, required by statute or the rules of the board, properly signed~~,~~ and filed with the board, that contains all the required information, including documentation that the board considers necessary."

Section 2. Section 19-20-302, MCA, is amended to read:

"19-20-302. Active membership. (1) Unless otherwise provided by this chapter, the following persons *employed by an employer* must be active members of the retirement system:

(a) a person who is a teacher, principal, or district superintendent as defined in 20-1-101;

(b) a person who is an administrative officer or a member of the instructional or scientific staff of a unit of the Montana university system and who has not elected or is not required to participate in the optional retirement program under Title 19, chapter 21;

(c) a person employed as a speech-language pathologist, school nurse, *professionally qualified person as defined in 20-7-901,* paraprofessional who provides instructional support, ~~or~~ *dean of students, or* school psychologist ~~or~~*;*

(d) a person employed in a teaching *or an educational services* capacity by ~~the office of the superintendent of public instruction,~~ the office of a county superintendent, ~~a special~~ *an* education cooperative, a public institution of the state of Montana, the Montana state school for the deaf and blind, or a school district;

~~(d)~~*(e)* a person who is an administrative officer or a member of the instructional staff of the board of public education;

~~(e)~~*(f)* the superintendent of public instruction or a person employed *as a teacher or* in an ~~instructional~~ *educational* services capacity by the office of public instruction; ~~and~~

~~(f)~~*(g) except as provided in subsection (2),* a person elected to the office of county superintendent of schools*;*

(h) a person who is an administrative officer or a member of the instructional or scientific staff of a community college; and

(i) a person employed in a nonclerical position and who is reported on an employer's annual data collection report submitted to the office of public instruction.

(2) A retired member elected to the office of county superintendent of schools or appointed to complete the term of an elected county superintendent of schools after July 1, 1995, is not eligible for optional membership in the public employees' retirement system under the provisions of 19-3-412 and shall, within

30 days of taking office, file an irrevocable written election to become or to not become an active member of the teachers' retirement system. The retirement system membership of an elected county superintendent of schools as of June 30, 1995, must remain unchanged for as long as the person continues to serve in the capacity of county superintendent of schools.

(3) In order to be eligible for active membership, a person described in subsection (1) or (2) must:

(a) be employed in the capacity prescribed for the person's eligibility for at least 30 days in any fiscal year; and

(b) have the compensation for the person's creditable service totally paid by an employer.

(4) (a) A substitute teacher or a part-time teacher's aide:

(i) shall file an irrevocable written election determining whether to become an active member of the retirement system on the first day of employment; or

(ii) is required to become an active member of the retirement system after completing 210 hours of employment in any fiscal year if the substitute teacher or part-time teacher's aide has not elected membership under subsection (4)(a)(i).

(b) Once a part-time teacher's aide becomes a member, the aide is required to remain an active member as long as the aide is employed in that capacity. Once a substitute teacher becomes a member, the substitute teacher is required to remain a member as long as the teacher is available for employment in that capacity.

(c) The employer shall give written notification to a substitute teacher or part-time teacher's aide on the first day of employment of the option to elect membership under subsection (4)(a)(i).

(d) If a substitute teacher or part-time teacher's aide declines to elect membership during the election period, the teacher or part-time teacher's aide shall file a written statement with the employer waiving membership and the employer shall retain the statement.

(5) A school district clerk or business official may not become a member of the teachers' retirement system. A school district clerk or business official who is a member of the system on July 1, 2001, is required to remain an active member of the system while employed in that capacity, and any postretirement earnings from employment as a school district clerk or school business official are subject to the limit on earnings provided in 19-20-731.

(6) At any time that a person's eligibility to become a member of the retirement system is in doubt, the retirement board shall determine the person's eligibility for membership. All persons in similar circumstances must be treated alike.

(7) As used in this section, "part-time teacher's aide" means an individual who works less than 7 hours a day assisting a certified teacher in a classroom.

(8) (a) An active member of the system concurrently employed in a position identified in subsection (1)(b) may not elect to participate in the optional retirement program under Title 19, chapter 21.

(b) An employee of the Montana university system who is a participant in the optional retirement program under Title 19, chapter 21, and who is concurrently employed in a position identified in subsections (1)(a) or (1)(c) through ~~(1)(f)~~ *(1)(i)* is ineligible to be an active member of this system."

Section 3. Section 19-20-305, MCA, is amended to read:

"19-20-305. Alternate payees — family law orders. (1) A participant in a retirement system may have the participant's rights modified or recognized by a family law order.

(2) For purposes of this section:

(a) "actuarially equivalent amount" means the portion of the participant's benefit transferred to an alternate payee and actuarially adjusted to provide a benefit payable for the alternate payee's lifetime;

~~(a)~~*(b)* "alternate payee" means the former spouse of the member or retiree who is entitled to an actuarially equivalent ~~portion~~ *amount* or a fixed amount of the member's or retiree's retirement benefit;

~~(b)~~*(c)* "family law order" means a certified copy of a judgment, decree, or order of a court with competent jurisdiction concerning spousal maintenance or marital property rights that includes a transfer of all or a portion of a participant's payment rights in a retirement system to an alternate payee in compliance with this section; and

~~(c)~~*(d)* "participant" means a member or retiree of the retirement system.

(3) A family law order must identify an alternate payee by full name, current address, and social security number. An alternate payee's rights and interests granted in compliance with this section are not subject to assignment, execution, garnishment, attachment, or other process. An alternate payee's rights or interests may be modified only by a family law order amending the family law order that established the right or interest.

(4) A family law order may not require:

(a) a type or form of benefit, option, or payment not available to the affected participant under the retirement system; or

(b) an amount of payment greater than that available to a participant.

(5) (a) The service, disability, or survivor retirement benefit payments or withdrawals of member contributions may be apportioned to an alternate payee by directing payment of:

(i) an actuarially equivalent amount payable *for the life of the alternate payee*; or

(ii) a fixed amount, *to be deducted from the participant's benefit,* of no more than the amount payable to the participant. A fixed amount must be payable for a determinate period of time not greater than the life of the participant *or the life of the benefit recipient under a retirement allowance elected pursuant to 19-20-702.*

(b) (i) The actuarially equivalent service, disability, or survivor retirement benefit payable to the alternate payee must be calculated by taking the total years of service for which the benefit was earned during the marriage divided by the total years of creditable service used in the calculation of the retirement benefit, multiplied by a percentage share of the benefit payable to the alternate payee, multiplied by the total amount payable to the participant. *The participant's benefit must be reduced by the amount determined under this subsection (5)(b)(i).*

(ii) The amount payable *to the alternate payee, calculated under subsection (5)(b)(i),* must be actuarially adjusted to provide a benefit payable for the alternate payee's lifetime.

~~(c) The participant's benefit must be reduced by the amount determined under subsection (5)(b)(i).~~

~~(6) The duration of payments to an alternate payee may be limited only to a specified maximum time or for the life of the alternate payee.~~

~~(7)~~*(6)* If a participant elects to withdraw the accumulated contributions and forfeit all rights to service, disability, or survivor benefits, the alternate payee is entitled to a percentage of the amount payable as determined by the formula in subsection (5)(b)(i).

~~(8)~~*(7)* Retirement benefit adjustments for which a participant is eligible after retirement must be apportioned in the same manner as determined under subsection (5)(b)(i).

~~(9)~~*(8)* Payments of monthly benefits to the alternate payee must commence on the latest of the following dates:

(a) the date the participant begins receiving benefits; or

(b) the first day of the month following receipt of a certified family law order.

~~(10)~~*(9)* The board may assess a participant or an alternate payee for all costs of reviewing and administering a family law order, including reasonable attorney fees. The board may adopt rules to implement this section.

~~(11)~~*(10)* Each family law order establishing a final obligation concerning payments by the retirement system must contain a statement that the order is subject to review and approval by the board.

~~(12)~~*(11)* If the participant retired on a disability retirement benefit and the benefit is subsequently canceled pursuant to 19-20-903 or 19-20-905, the alternate payee's payments also terminate. When the participant again qualifies for retirement benefits, the amount payable to the alternate payee must be recalculated pursuant to this section."

Section 4. Section 19-20-401, MCA, is amended to read:

"19-20-401. Creditable service. (1) The creditable service of a member begins on the date of the member's employment in a capacity prescribed for eligibility in 19-20-302 and accumulates to the member's credit on the basis of the retirement board's policy governing creditable service.

(2) The creditable service of a member includes the following:

(a) each year of service for which contributions to the retirement system were deducted from the member's compensation under the provisions of Chapter 87, Laws of 1937, Chapter 215, Laws of 1939, this chapter, and their subsequent amendments, except that credit may not be awarded for those years of service for which the contributions have been withdrawn and not replaced;

~~(b) any service awarded by a prior service certificate issued under the provisions of Chapter 87, Laws of 1937, Chapter 215, Laws of 1939, and their subsequent amendments or under the provisions of 19-20-406;~~

~~(c)~~*(b)* any out-of-state employment service awarded by the retirement board under the provisions of 19-20-402;

~~(d)~~*(c)* any service awarded for employment while on leave under 19-20-403;

~~(e)~~*(d)* any service in the military, red cross, or merchant marine awarded by the retirement board under 19-20-404;

~~(f)~~*(e)* any employment service awarded by the retirement board under the provisions of 19-20-408;

~~(g)~~*(f)* any service transferred after October 1, 1989, from the public employees' retirement system under 19-20-409;

~~(h)~~*(g)* any service awarded by the retirement board for extension service employment under 19-20-410;

~~(i)~~*(h)* any service awarded for absence because of employment-related injury under 19-20-411; and

~~(j)~~*(i)* any service awarded for service purchased under 19-20-426.

(3) The retirement board's determination of creditable service under this section is final and conclusive for the purposes of the retirement system unless, at any time, the board discovers an error or fraud in the establishment of creditable service, in which case the board shall redetermine the creditable service.

(4) For a member completing only part-time service during the qualifying period, the first full year's teaching salary used to calculate the cost to purchase creditable service is the salary that the member would have earned if the member's first year part-time salary had been full-time."

Section 5. Section 19-20-409, MCA, is amended to read:

"19-20-409. Transfer of service credits and contributions from public employees' retirement system. (1) An active member may at any time before retirement file a written application with the retirement board to purchase all of the member's previous creditable service in the public employees' retirement system. The amount that must be paid to the retirement system to purchase this service under this section is the sum of subsections (2) and (3).

(2) The public employees' retirement system shall transfer to the teachers' retirement system an amount equal to 72% of the amount paid by the member.

(3) The member shall pay either directly or by transferring contributions on account with the public employees' retirement system an amount equal to the member's accumulated contributions at the time that active membership was terminated, plus accrued interest. Interest must be calculated from the date of termination until a transfer is received by the retirement system, based on the interest tables in use by the public employees' retirement system.

(4) A member who purchases service from the public employees' retirement system in the teachers' retirement system must have completed 5 years of membership service in the teachers' retirement system to receive credit or purchase military service, out-of-state service, employment while on leave, and private school employment.

(5) The retirement board shall determine the service credits that may be transferred.

(6) If an active member who also has creditable service in the public employees' retirement system before becoming a member of the teachers' retirement system dies before purchasing this service in the teachers' retirement system and if the member's service credits from both systems, when combined, entitle the member's beneficiary to a death benefit, the payment of the death benefit is the liability of the teachers' retirement system. Before payment of the death benefit, the public employees' retirement board must transfer to the teachers' retirement system the contributions necessary to purchase this service in the teachers' retirement system as provided in subsections (2) and (3).

(7) (a) If the teachers' retirement board determines that an individual's membership was erroneously classified and reported to the public employees' retirement system, the public employees' retirement board shall transfer to the teachers' retirement system the member's accumulated contributions and service, together with employer contributions plus interest.

(b) For the period of time that the employer contributions are held by the public employees' retirement system, interest paid on employer contributions transferred under this subsection (7) must be calculated at the short-term investment pool rate earned by the board of investments in the fiscal year preceding the transfer request.

(c) Any employee and employer contributions due as calculated in 19-20-602 and 19-20-605, plus interest, are the liability of the employee and the employing entity where the error occurred.

(8) A ~~vested~~ member who participated in the public employees' retirement system defined contribution plan provided for in Title 19, chapter 3, part 21, ~~prior to becoming a member of the teachers' retirement system~~ may purchase creditable service for the time spent as a participant in the defined contribution plan if:

(a) the member *has 5 years of membership service and* has completed at least 1 full year in the teachers' retirement system following the member's public employees' retirement system service;

(b) for each full year or portion of a year to be purchased pursuant to this subsection (8), the member contributes the actuarial cost of the service based on the most recent valuation of the system; and

(c) the member has withdrawn the member's money in the member's public employees' retirement system defined contribution plan account or has rolled over the amount required to purchase service in accordance with this subsection (8).

(9) Creditable service purchased under subsection (8) must be determined according to the laws and rules governing service credit in the public employees' retirement system."

Section 6. Section 19-20-603, MCA, is amended to read:

"19-20-603. Withdrawal of accumulated contributions — options. An inactive member electing to do so or a person whose membership terminates without a prospect or anticipation that the member will return to work for an employer within 60 days of termination may withdraw the member's accumulated contributions from the annuity savings account in the retirement system in accordance with the following provisions:

(1) An inactive member under the provisions of 19-20-303(1) or (3) may elect, without right of revocation, to withdraw the member's accumulated contributions. If the member does not withdraw the accumulated contributions, the member remains an inactive member of the retirement system with the right to qualify for its benefits.

(2) Upon recovery from a disabling illness or separation from the armed forces, a person qualifying as an inactive member under the provisions of 19-20-303(2) may withdraw the member's accumulated contributions unless the member returns to active membership.

(3) Upon written application to the board, a terminating member may have the payment of all or any portion of the member's accumulated contributions rolled over or transferred into another ~~qualified~~ *eligible retirement* plan *or a*

Roth IRA, provided for under 26 U.S.C. 408A, designated by the member. The portion not rolled over or transferred must be paid directly to the terminating member. The board shall provide forms for filing the written application. The terminating member is responsible for correctly designating an account or plan eligible to receive the tax-deferred amount in order to continue the tax-deferred status of the amount. To the extent required by section 401(a)(31) of the Internal Revenue Code, the board shall allow members and qualified beneficiaries to elect a direct rollover of eligible distributions to another eligible retirement plan.

(4) If a nonvested member terminates with accumulated contributions of less than $200, the board shall pay the accumulated contributions in a lump sum as soon as administratively feasible without a written application from the member unless there is a return to service. Upon the payment of accumulated contributions, the member is considered to have withdrawn from the system."

Section 7. Section 19-20-605, MCA, is amended to read:

"19-20-605. Pension accumulation account — employer's contribution. (1) The pension accumulation account is the account in which the reserves for payment of retirement allowances and benefits must be accumulated and from which retirement allowances and benefits must be paid to retirees or their beneficiaries. Contributions to and payments from the pension accumulation account must be made as provided in this section.

(2) Except as provided in subsection (3), for each member employed during the whole or part of the preceding payroll period, the employer shall pay into the pension accumulation account an amount equal to~~:~~

~~(a) beginning July 1, 2007, through June 30, 2009, 9.47% of total earned compensation; and~~

~~(b) beginning July 1, 2009,~~ 9.85% of total earned compensation.

(3) For each member employed by a school district*, an education cooperative, a county,* or a community college during the whole or part of the preceding payroll period, the employer shall pay into the pension accumulation account an amount equal to 7.47% of total earned compensation.

(4) If the employer is a district or community college district, the trustees shall budget and pay for the employer's contribution under the provisions of 20-9-501.

(5) If the employer is the superintendent of public instruction, a public institution of the state of Montana, a unit of the Montana university system, or the Montana state school for the deaf and blind, the legislature shall appropriate to the employer an adequate amount to allow the payment of the employer's contribution.

(6) If the employer is a county, the county commissioners shall budget and pay for the employer's contribution in the manner provided by law for the adoption of a county budget and for payments under the budget.

(7) All interest and other earnings realized on the money of the retirement system must be credited to the pension accumulation account, and the amount required to allow regular interest on the annuity savings account must be transferred to that account from the pension accumulation account.

(8) The board may transfer from the pension accumulation account to the expense account an amount necessary to cover expenses of administration."

Section 8. Section 19-20-701, MCA, is amended to read:

"19-20-701. Benefits. The retirement, disability, and other benefits of the retirement system ~~shall~~ *must* be granted on the basis of the provisions of this chapter. *A member's written application for benefits must include a statement certifying there has been a bona fide separation from service, including whether there are any intentions to be reemployed with the same employer that would be prohibited under the Internal Revenue Code.*"

Section 9. Section 19-20-702, MCA, is amended to read:

"19-20-702. Optional allowances. (1) Until the first payment on account of any benefit becomes normally due, any member may elect to receive one of the ~~optional~~ allowances described in subsection (2) *or (3)* in lieu of the normal form of retirement allowance, which is provided for in 19-20-902 and part 8 of this chapter. If a member dies within 30 days after retirement, the member's election to receive an optional allowance is void and the member's death will be considered as that of an active member.

(2) An optional allowance is the actuarial equivalent of the member's service retirement or disability retirement allowance at the time of the member's retirement effective date and provides an allowance payable to the member throughout the member's lifetime and, upon the member's death, an allowance payable to the person that the member nominated by written designation, duly acknowledged and filed with the retirement board at the time of the member's retirement, in accordance with one of the following options:

(a) Option A—the optional allowance will be paid to the member throughout the member's lifetime and, upon the member's death, continue throughout the lifetime of the member's designated beneficiary.

(b) Option B—the optional allowance will be paid to the member throughout the member's lifetime, and upon the member's death, one-half of the optional allowance will be continued throughout the lifetime of the member's designated beneficiary.

(c) Option C—the optional allowance will be paid to the member throughout the member's lifetime, and upon the member's death, two-thirds of the optional allowance will be continued throughout the lifetime of the member's designated beneficiary.

~~(d)~~*(3) (a)* ~~Period certain and life—a retirement allowance will be paid for a certain period of time or for the member's lifetime, whichever is greater.~~

~~(i) The member shall elect one of the following certain time periods:~~ *In lieu of any other option available in this section, a member may elect to receive one of the following allowances that must be paid over the certain period of time or for the member's lifetime, whichever is greater:*

~~(A)~~*(i)* 10 years if the member is 75 years of age or younger at the time of retirement; or

~~(B)~~*(ii)* 20 years if the member is 65 years of age or younger at the time of retirement.

~~(ii)~~*(b)* At the time of retirement, the member shall file with the board a written nomination of beneficiaries to receive payments if the member dies before the end of the certain period elected. Unless limited by a family law order, the nominated beneficiary may be changed by the member at any time by filing with the board a written notice designating different beneficiaries.

~~(3)~~*(4)* (a) Upon written application to the retirement board, a retired member whose effective date of retirement is before October 1, 1993, and who is receiving an optional retirement allowance may *select a different actuarially*

equivalent optional allowance and designate a different beneficiary~~, select a different option, or convert the member's optional retirement allowance to a normal form of retirement allowance~~ if:

(i) the original beneficiary has died. The benefit must convert to the normal form of retirement allowance effective the first of the month following the death of the designated beneficiary.

(ii) the member has been divorced from the original beneficiary and the original beneficiary has not been granted the right to receive the optional retirement allowance as part of the divorce settlement. The benefit must convert to the normal form of retirement allowance effective the first of the month following receipt of a written application and verification that the original beneficiary has not been granted the right to receive the optional retirement allowance as part of the divorce settlement.

(b) Upon receipt of the written application, the board shall actuarially adjust the member's monthly retirement or disability allowance to reflect the change.

~~(4)~~*(5)* A retired member receiving an optional retirement allowance pursuant to subsection (2)(a), (2)(b), or (2)(c) that is effective after October 1, 1993, may file a written application to *select a different actuarially equivalent optional allowance and designate a different beneficiary or to* revert the optional retirement allowance to the full normal form of retirement allowance available at the time of retirement if:

(a) the original beneficiary has died. The benefit must revert to the full normal form of retirement allowance effective the first of the month following the death of the designated beneficiary.

(b) the member has been divorced from the original beneficiary and the original beneficiary has not been granted the right to receive the optional retirement allowance as part of the divorce settlement. The benefit must revert to the full normal form of retirement allowance effective the first of the month following receipt of a written application and verification that the original beneficiary has not been granted the right to receive the optional retirement allowance as part of the divorce settlement.

~~(5)~~*(6)* The normal form of retirement allowance available must be increased by the value of any postretirement adjustments received by the member since the effective date of retirement.

~~(6)~~*(7)* The retired member shall file the written application required by subsection ~~(3)~~ *(4)* or ~~(4)~~ *(5)* with the board ~~to designate a different beneficiary or to select an actuarially equivalent optional allowance, or both,~~ within 18 months of the death or divorce of the designated beneficiary."

Section 10. Section 19-20-703, MCA, is amended to read:

"19-20-703. Payments to be monthly. (1) All retirement allowances must be paid in equal monthly installments.

(2) The retirement allowance may commence:

(a) no earlier than the first day of the month following the member's termination date or on the first day of the month following the date when the member first becomes eligible, whichever date is later; or

(b) if requested by the inactive member in writing:

(i) on the first day of a later month; or

(ii) on the first day of the month following the member's 60th birthday.

(3) Distribution of ~~a~~ *an inactive* member's benefit must begin by the later of the April 1 following the calendar year in which a member attains age 70 1/2 or April 1 of the year following the calendar year in which the member terminates. If a member fails to apply for retirement benefits by the later of either of those dates, the board shall begin distribution of the monthly benefit as provided in ~~19-20-702(2)(d)(i)(A)~~ *19-20-702(3)(a)(i)*.

(4) The life expectancy of a member or the member's beneficiary may not be recalculated after benefits commence."

Section 11. Section 19-20-718, MCA, is amended to read:

"19-20-718. Maximum contribution limitation. (1) Notwithstanding any other provision of law to the contrary, the board may modify a request by a participant to make a contribution to the system required under part 4 or *part* 6 of this chapter that would exceed the limits in section 415(c) or 415(n) of the Internal Revenue Code by using the following methods:

(a) The board may establish a periodic payment plan in order to avoid a contribution in excess of the limits of section 415(c) or 415(n) of the Internal Revenue Code.

(b) If the board's option in subsection (1)(a) will not avoid a contribution in excess of the limits in section 415(c) of the Internal Revenue Code, the board may direct the excess contribution to the qualified governmental excess benefit arrangement pursuant to section 415(m) of the Internal Revenue Code if a qualified governmental excess benefit arrangement has been established pursuant to 19-20-212.

(2) If the board's options in subsections (1)(a) and (1)(b) will not avoid a contribution in excess of the limits of section 415(c) of the Internal Revenue Code, the board shall reduce or refuse the contribution.

(3) The board shall use the provisions of section 415(n) of the Internal Revenue Code, as the provisions apply to a government plan, to facilitate member's service purchases. An eligible participant in a retirement plan, as defined by section 1526 of the Taxpayer Relief Act of 1997, 26 U.S.C. 415, may purchase service credit without regard to the limitations of section 415(c)(1) of the Internal Revenue Code under the Montana statutes in effect on August 5, 1997.

(4) *(a)* For the purpose of calculating the maximum contribution under section 415 of the Internal Revenue Code, the definitions of "compensation", "wages", and "salary" include the amount of any elective deferral, as defined in section 402(g) of the Internal Revenue Code, or any contribution that is contributed or deferred by the employer at the election of the member and that is not includable in the gross income of the member by reason of section 125, 132(f), 403(b), or 457 of the Internal Revenue Code. Any changes in the maximum limits under section 415 of the Internal Revenue Code must be applied prospectively.

(b) For limitation years beginning after December 31, 2000, compensation must also include any elective amounts that are not able to be included in the gross income of the member by reason of section 132(f)(4) of the Internal Revenue Code.

(c) For limitation years beginning on and after September 1, 2009, compensation for the limitation year must also include compensation paid by the later of 2.5 months after a member's severance from employment or the end of the

limitation year that includes the date of the member's severance from employment if:

(i) the payment is regular compensation for services during the member's regular working hours or compensation for services outside the member's regular working hours, such as overtime or shift differential, commissions, bonuses, or other similar payments, and absent a severance from employment, the payments would have been paid to the member while the member continued in employment with the employer; or

(ii) the payment is for unused accrued sick, vacation, or other leave that the member would have been able to use if employment had continued.

(d) For limitation years beginning on or after September 1, 2009, a member's compensation for purposes of this section may not exceed the annual limit under section 401(a)(17) of the Internal Revenue Code."

Section 12. Section 19-20-731, MCA, is amended to read:

"19-20-731. Postretirement employment limitations — cancellation and recalculation of benefits. (1) (a) Except as otherwise provided in this section, a retired member may be employed part-time by a school district, state agency, or unit of the university system in a position eligible to participate in the retirement system and may earn, without an adjustment of retirement benefits, an amount not to exceed the greater of:

(i) one-third of the sum of the member's average final compensation; or

(ii) one-third of the median of the average final compensation for members retired during the preceding fiscal year as determined by the retirement board.

(b) For the purposes of this subsection (1), the maximum compensation that a retired member may earn under subsection (1)(a) without an adjustment of retirement benefits includes all remuneration paid to the retired member, excluding:

(i) the amount of health insurance premiums paid by the employer on the retired member's behalf;

(ii) the value of housing provided by the employer to the retired member;

(iii) the amount of employment-related travel expenses reimbursed to the retired member by the employer;

(iv) de minimis fringe benefits, as defined in 26 U.S.C. 132(e), paid by the employer to or on behalf of the retired member; and

(v) payroll taxes paid by the employer on behalf of the retired member.

(2) On July 1 of each year following the member's retirement effective date, the maximum that a retired member may earn under subsection (1)(a)*(i)* is increased by an amount equal to the consumer price index increase for urban wage earners compiled by the bureau of labor statistics of the United States department of labor or its successor agency in the preceding calendar year.

(3) Except as provided in subsection (5), the retirement benefit of a retired member:

(a) employed in a part-time position or earning more than allowed by subsections (1) and (2) must be temporarily reduced by $1 for each dollar earned over the maximum allowed. Monthly benefits must be reduced beginning as soon as practical after the excess earnings have been reported to the retirement system by the employer. The retirement benefit must be canceled if the retired

member's earnings over the maximum allowed exceed the gross monthly benefit amount.

(b) employed in a full-time position must be canceled beginning in the month in which the retired member returns to full-time employment.

(4) Upon termination and retirement subsequent to a cancellation of benefits pursuant to subsection (3), the retirement benefit of a member:

(a) who was reemployed and earned less than 1 year of creditable service must be reinstated beginning either the first of the month following termination or on July 1 following the date on which the retired member was reemployed, whichever is later. The reinstated retirement benefit is the amount and option that the retired member would have been entitled to receive had the retired member not returned to employment.

(b) who was reemployed and earned at least 1 year of creditable service must be recalculated under 19-20-804 if the member ~~has attained normal retirement age~~ *would qualify for a service retirement benefit under 19-20-801* or under 19-20-802 if the member ~~has not attained normal retirement age but~~ is eligible for early retirement. The recalculated benefit must include the service credit accumulated at the time of the member's previous retirement, plus any service credit accumulated subsequent to reemployment. The recalculated normal form benefit amount must be increased by the amount of any benefit enhancement received pursuant to 19-20-719 that the retired member was receiving when the member's benefits were canceled.

(5) If ~~an early-retired~~ *a retired* member ~~under 19-20-802~~ *who has not attained normal retirement age* is reemployed with the same employer within 30 days from the member's effective date of retirement or if the early-retired member is guaranteed reemployment with the same employer, the member must be considered to have continued in the status of an active member and not to have separated from service. Any retirement allowance payments received by the member must be repaid to the system, together with interest, at the actuarially assumed rate, and the retirement allowance must be canceled.

(6) For purposes of this section, "position eligible to participate in the retirement system" includes work performed by a retiree through a professional employer arrangement, an employee leasing arrangement, or a temporary service contractor, as those terms are defined in 39-8-102.

(7) The retirement allowance of any retired member who is employed in a position and who elects to participate in the optional retirement program under Title 19, chapter 21, must be suspended until the member is no longer employed in the position and is no longer participating in the optional retirement program."

Section 13. Section 19-20-804, MCA, is amended to read:

"19-20-804. Allowance for service retirement. Upon termination, a member who ~~has attained normal retirement age~~ *qualifies for benefits pursuant to 19-20-801* must receive a retirement allowance equal to one-sixtieth of the member's average final compensation, as limited by 19-20-715, multiplied by the sum of the number of years of creditable service and service transferred under 19-20-409."

Section 14. Section 19-20-905, MCA, is amended to read:

"19-20-905. Cancellation of allowance and restoration of membership. (1) If a disabled retiree is employed full-time in a capacity that would otherwise meet the eligibility requirements of active membership, as

provided under 19-20-302, the retiree's retirement allowance must cease. If the retiree is employed full-time by an employer covered under this chapter, the retiree ~~shall~~ *must* again become an active member of the retirement system. ~~Any prior service certificate on the basis of which the member's service was computed at the time of the member's disability retirement must be restored to full force, and upon the member's subsequent retirement, the member must be credited with the prior service and all subsequent service as a member.~~

(2) If the member is restored to active membership on or after the attainment of the age of 55 years, the member's retirement allowance upon subsequent retirement may not exceed the retirement allowance that the member would have received had the member remained in service during the period of the member's previous retirement or the sum of the retirement allowance that the member was receiving immediately prior to the member's last restoration to service and the retirement allowance that the member would have received on account of the member's service since the member's last restoration had the member entered service at that time as a new member."

Section 15. Section 19-20-1001, MCA, is amended to read:

"19-20-1001. Allowances for death of member. (1) If a member dies before retirement, the member's accumulated contributions must be paid to the member's estate or to the beneficiary that the member nominated by a written application in a manner prescribed by the board and filed with the retirement board prior to the member's death.

(2) (a) In lieu of benefits provided for in subsection (1), if the deceased member qualified by reason of service for a retirement benefit, the nominated beneficiary may elect to receive a retirement allowance. The retirement allowance must be determined as prescribed in 19-20-804 ~~and section 5~~, ~~Chapter 549, Laws of 1981~~ *without reference to 19-20-715*, in the same manner as if the member elected option A provided for in 19-20-702(2)(a).

(b) The effective date of the retirement allowance provided for in subsection (2)(a) is the earlier of:

(i) the first of the month following the date of death; or

(ii) the effective date of the member's retirement, as acknowledged in writing by the retirement system before the member's death.

(c) In the event that payments made to the beneficiary do not equal the amount of the member's accumulated contributions before the member's death, the difference between the total retirement allowance payments made and the amount of the accumulated contributions at the time of the member's death must be paid to the beneficiary's estate.

(3) If the deceased member had 5 or more years of creditable service and was an active member in the state of Montana within 1 year before the member's death, a lump-sum death benefit of $500 is payable to the member's designated beneficiary.

(4) If a deceased member had 5 or more years of creditable service and was an active member in the state of Montana within 1 year prior to the member's death, the sum of $200 a month must be paid to each minor child of the deceased member until the child reaches 18 years of age.

(5) If the member nominated more than one beneficiary to receive payment of a benefit provided by this section upon the member's death *or if a family law order has been issued*, then:

(a) each beneficiary *and alternate payee, if applicable,* is entitled to share in that benefit; and

(b) if a beneficiary predeceases the member, the benefit must be divided among the surviving beneficiaries."

Section 16. Section 19-20-1003, MCA, is amended to read:

"19-20-1003. Payment of death benefits. (1) Death benefits paid from the system are subject to the requirements of this section.

(2) Death benefits must be distributed in accordance with section 401(a)(9) of the Internal Revenue Code and the regulations adopted under that section.

(3) The amount of benefits payable to a member's beneficiary may not exceed the maximum determined under the incidental death benefit requirements of the Internal Revenue Code.

(4) If the member dies before retirement benefits commence and a benefit is payable pursuant to 19-20-1001, distributions to the member's beneficiaries must begin as soon as administratively feasible and must begin no later than December 31 of the calendar year immediately following the calendar year in which the member died. If the beneficiary has not elected the form of payment by the date on which the beneficiary is to receive the benefit and the beneficiary is eligible for a monthly benefit, the benefit must be paid as provided in ~~19-20-702(2)(d)(i)(A)~~ *19-20-702(3)(a)(i)* or a lump sum must be paid if that is the only benefit due the beneficiary."

Section 17. Compliance with federal act. With respect to a member's death occurring on or after January 1, 2007, while a member is performing qualified military service covered under the Heroes Earnings Assistance and Relief Tax Act of 2008, Public Law 110-245, and to the extent required by section 401(a)(37) of the Internal Revenue Code, 26 U.S.C. 401(a)(37), the designated beneficiaries are entitled to benefits that the system would have provided if the member had resumed employment and then died and that are contingent on the member's death while employed.

Section 18. Section 20-15-106, MCA, is amended to read:

"20-15-106. Retirement systems for employees, ~~and~~ teachers, *and administrators.* (1) Teachers *and administrators* of a community college district are subject to and eligible for the benefits of the Montana teachers' retirement system *pursuant to the provisions of Title 19, chapter 20*.

(2) The employees of a community college district not eligible for teachers' retirement system benefits are subject to and eligible for the benefits of the Montana public employees' retirement system *pursuant to Title 19, chapters 2 and 3*."

Section 19. Section 20-15-403, MCA, is amended to read:

"20-15-403. Applications of other school district provisions. (1) When the term "school district" appears in the following sections outside of Title 20, the term includes community college districts and the provisions of those sections applicable to school districts apply to community college districts: 2-9-101, 2-9-111, 2-9-316, 2-16-114, 2-16-602, 2-16-614, 2-18-703, 7-3-1101, 7-6-2604, 7-6-2801, 7-7-123, 7-8-2214, 7-8-2216, 7-11-103, 7-12-4106, 7-13-110, 7-13-210, 7-15-4206, 10-1-703, 15-1-101, 15-6-204, 15-16-101, 15-16-605, 15-70-301, 17-5-101, 17-5-202, 17-6-103, 17-6-204, 17-6-213, 17-7-201, 18-1-201, 18-2-101, 18-2-103, 18-2-113, 18-2-114, 18-2-401, 18-2-404, 18-2-432, 18-5-205, 19-1-102, 19-1-811, *19-20-302,* 22-1-309, 25-1-402, 27-18-406, 33-20-1104, 39-3-104, 39-4-107, 39-31-103, 39-31-304, 39-71-116, 39-71-117, 39-71-2106,

40-6-237, 49-3-101, 49-3-102, 52-2-617, 53-20-304, 82-10-201 through 82-10-203, 85-7-2158, and 90-6-208 and Rules 4D(2)(g) and 15(c), M.R.Civ.P., as amended.

(2) When the term "school district" appears in a section outside of Title 20 but the section is not listed in subsection (1), the school district provision does not apply to a community college district."

Section 20. Repealer. Section 19-20-406, MCA, is repealed.

Section 21. Codification instruction. [Section 17] is intended to be codified as an integral part of Title 19, chapter 20, part 10, and the provisions of Title 19, chapter 20, part 10, apply to [section 17].

Section 22. Effective date. [This act] is effective July 1, 2009.

Section 23. Retroactive applicability. (1) The amendment to the definition of full-time service in 19-20-101 applies retroactively, within the meaning of 1-2-109, to full-time service on or after January 1, 2005.

(2) [Section 11] applies retroactively, within the meaning of 1-2-109, to pension year benefits beginning after January 1, 2001.

(3) [Section 17] applies retroactively, within the meaning of 1-2-109, to teachers' retirement system member deaths on and after January 1, 2008.

Approved April 17, 2009

CHAPTER NO. 283

[HB 109]

AN ACT GENERALLY REVISING THE STATUTES CONCERNING CERTAIN PUBLIC EMPLOYEE RETIREMENT SYSTEMS; REQUIRING THE PUBLIC EMPLOYEE RETIREMENT BOARD TO ADOPT RULES; AMENDING SECTIONS 19-2-303, 19-2-506, 19-2-704, 19-2-710, 19-2-715, 19-2-801, 19-2-908, 19-3-201, 19-3-316, 19-3-403, 19-3-504, 19-3-513, 19-3-906, 19-3-1015, 19-3-1106, 19-3-1210, 19-3-2111, 19-3-2133, 19-5-601, 19-5-612, 19-5-801, 19-5-802, 19-6-612, 19-7-404, 19-7-612, 19-8-712, 19-9-904, 19-9-1101, 19-13-104, 19-13-704, 19-13-803, 19-13-804, 19-17-107, 19-17-401, 19-17-408, AND 19-17-504, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-2-303, MCA, is amended to read:

"19-2-303. Definitions. Unless the context requires otherwise, for each of the retirement systems subject to this chapter, the following definitions apply:

(1) "Accumulated contributions" means the sum of all the regular and any additional contributions made by a member in a defined benefit plan, together with the regular interest on the contributions.

(2) "Active member" means a member who is a paid employee of an employer, is making the required contributions, and is properly reported to the board for the most current reporting period.

(3) "Actuarial cost" means the amount determined by the board in a uniform and nondiscriminatory manner to represent the present value of the benefits to be derived from the additional service to be credited based on the most recent actuarial valuation for the system and the age, years until retirement, and current salary of the member.

(4) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of the mortality table and interest rate assumptions adopted by the board.

(5) "Actuarial liabilities" means the excess of the present value of all benefits payable under a defined benefit retirement plan over the present value of future normal costs in that retirement plan.

(6) "Actuary" means the actuary retained by the board in accordance with 19-2-405.

(7) "Additional contributions" means contributions made by a member of a defined benefit plan to purchase various types of optional service credit as allowed by the applicable retirement plan.

(8) "Annuity" means:

(a) in the case of a defined benefit plan, equal and fixed payments for life that are the actuarial equivalent of a lump-sum payment under a retirement plan and as such are not benefits paid by a retirement plan and are not subject to periodic or one-time increases; or

(b) in the case of the defined contribution plan, a payment of a fixed sum of money at regular intervals.

(9) "Benefit" means:

(a) the service retirement benefit, early retirement benefit, or disability retirement or survivorship benefit payment provided by a defined benefit retirement plan; or

(b) a payment or distribution under the defined contribution retirement plan, including a disability payment under 19-3-2141, for the exclusive benefit of a plan member or the member's beneficiary or an annuity purchased under 19-3-2124.

(10) "Board" means the public employees' retirement board provided for in 2-15-1009.

(11) "Contingent annuitant" means ~~a person~~*:*

(a) under option 2 or 3 provided for in 19-3-1501, one natural person designated to receive a continuing monthly benefit after the death of a retired member*; or*

(b) under option 4 provided for in 19-3-1501, a natural person, charitable organization, estate, or trust that may receive a continuing monthly benefit after the death of a retired member.

(12) "Covered employment" means employment in a covered position.

(13) "Covered position" means a position in which the employee must be a member of the retirement system except as otherwise provided by law.

(14) "Defined benefit retirement plan" or "defined benefit plan" means a plan within the retirement systems provided for pursuant to 19-2-302 that is not the defined contribution retirement plan.

(15) "Defined contribution retirement plan" or "defined contribution plan" means the plan within the public employees' retirement system established in 19-3-103 that is provided for in chapter 3, part 21, of this title and that is not a defined benefit plan.

(16) "Department" means the department of administration.

(17) "Designated beneficiary" means the person*, charitable organization, estate, or trust for the benefit of a natural person* designated by a member or payment recipient to receive any survivorship benefits, lump-sum payments, or benefit from a retirement account upon the death of the member or payment recipient, including annuities derived from the benefits or payments.

(18) "Disability" or "disabled" means a total inability of the member to perform the member's duties by reason of physical or mental incapacity. The disability must be incurred while the member is an active member and must be one of permanent duration or of extended and uncertain duration, as determined by the board on the basis of competent medical opinion.

(19) "Early retirement benefit" means the retirement benefit payable to a member following early retirement and is the actuarial equivalent of the accrued portion of the member's service retirement benefit.

(20) "Employee" means a person who is employed by an employer in any capacity and whose salary is being paid by the employer or a person for whom an interlocal governmental entity is responsible for paying retirement contributions pursuant to 7-11-105.

(21) "Employer" means a governmental agency participating in a retirement system enumerated in 19-2-302 on behalf of its eligible employees. The term includes an interlocal governmental entity identified as responsible for paying retirement contributions pursuant to 7-11-105.

(22) "Essential elements of the position" means fundamental job duties. An element may be considered essential because of but not limited to the following factors:

(a) the position exists to perform the element;

(b) there are a limited number of employees to perform the element; or

(c) the element is highly specialized.

(23) "Fiscal year" means a plan year, which is any year commencing with July 1 and ending the following June 30.

(24) "Inactive member" means a member who terminates service and does not retire or take a refund of the member's accumulated contributions.

(25) "Internal Revenue Code" has the meaning provided in 15-30-101.

(26) "Member" means either:

(a) a person with accumulated contributions and service credited with a defined benefit retirement plan or receiving a retirement benefit on account of the person's previous service credited in a retirement system; or

(b) a person with a retirement account in the defined contribution plan.

(27) "Membership service" means the periods of service that are used to determine eligibility for retirement or other benefits.

(28) (a) "Normal cost" or "future normal cost" means an amount calculated under an actuarial cost method required to fund accruing benefits for members of a defined benefit retirement plan during any year in the future.

(b) Normal cost does not include any portion of the supplemental costs of a retirement plan.

(29) "Normal retirement age" means the age at which a member is eligible to immediately receive a retirement benefit based on the member's age, length of service, or both, as specified under the member's retirement system, without disability and without an actuarial or similar reduction in the benefit.

(30) "Pension" means benefit payments for life derived from contributions to a retirement plan made from state- or employer-controlled funds.

(31) "Pension trust fund" means a fund established to hold the contributions, income, and assets of a retirement system or plan in public trust.

(32) "Plan choice rate" means the amount of the employer contribution as a percentage of payroll covered by the defined contribution plan members that is allocated to the public employees' retirement system's defined benefit plan pursuant to 19-3-2117 and that is adjusted by the board pursuant to 19-3-2121 to actuarially fund the unfunded liabilities and the normal cost rate changes in a defined benefit plan resulting from member selection of the defined contribution plan.

(33) "Regular contributions" means contributions required from members under a retirement plan.

(34) "Regular interest" means interest at rates set from time to time by the board.

(35) "Retirement" or "retired" means the status of a member who has:

(a) terminated from service; and

(b) received and accepted a retirement benefit from a retirement plan.

(36) "Retirement account" means an individual account within the defined contribution retirement plan for the deposit of employer and member contributions and other assets for the exclusive benefit of a member of the defined contribution plan or the member's beneficiary.

(37) "Retirement benefit" means:

(a) in the case of a defined benefit plan, the periodic benefit payable as a result of service retirement, early retirement, or disability retirement under a defined benefit plan of a retirement system. With respect to a defined benefit plan, the term does not mean an annuity.

(b) in the case of the defined contribution plan, a benefit as defined in subsection (9)(b).

(38) "Retirement plan" or "plan" means either a defined benefit plan or a defined contribution plan under one of the public employee retirement systems enumerated in 19-2-302.

(39) "Retirement system" or "system" means one of the public employee retirement systems enumerated in 19-2-302.

(40) "Service" means employment of an employee in a position covered by a retirement system.

(41) "Service credit" means the periods of time for which the required contributions have been made to a retirement plan and that are used to calculate retirement benefits or survivorship benefits under a defined benefit retirement plan.

(42) "Service retirement benefit" means the retirement benefit that the member may receive at normal retirement age.

(43) "Statutory beneficiary" means the surviving spouse or dependent child or children of a member of the highway patrol officers', municipal police officers', or firefighters' unified retirement system who are statutorily designated to receive benefits upon the death of the member.

(44) "Supplemental cost" means an element of the total actuarial cost of a defined benefit retirement plan arising from benefits payable for service

performed prior to the inception of the retirement plan or prior to the date of contribution rate increases, changes in actuarial assumptions, actuarial losses, or failure to fund or otherwise recognize normal cost accruals or interest on supplemental costs. These costs are included in the unfunded actuarial liabilities of the retirement plan.

(45) "Survivorship benefit" means payments for life to the statutory or designated beneficiary of a deceased member who died while in service under a defined benefit retirement plan.

(46) "Termination of employment", "termination from employment", "terminated employment", "terminated from employment", "terminate employment", or "terminates employment" means that:

(a) there has been a complete severance of a covered employment relationship by the positive act of either the employee, the employer, or both; and

(b) the member is no longer receiving compensation for covered employment, other than any outstanding lump-sum payment for compensatory leave, sick leave, or annual leave.

(47) "Termination of service", "termination from service", "terminated from service", "terminated service", "terminating service", or "terminates service" means that:

(a) there has been a complete severance of a covered employment relationship by the positive act of either the employee, the employer, or both for at least 30 days;

(b) the member is no longer receiving compensation for covered employment; and

(c) the member has been paid all compensation for compensatory leave, sick leave, or annual leave to which the member was entitled. For the purposes of this subsection (47), compensation does not mean compensation as a result of a legal action, court order, or settlement to which the board was not a party.

(48) "Unfunded actuarial liabilities" or "unfunded liabilities" means the excess of a defined benefit retirement plan's actuarial liabilities at any given point in time over the value of its cash and investments on that same date.

(49) "Vested account" means an individual account within a defined contribution plan that is for the exclusive benefit of a member or the member's beneficiary. A vested account includes all contributions and the income on all contributions in each of the following accounts:

(a) the member's contribution account;

(b) the vested portion of the employer's contribution account; and

(c) the member's account for other contributions.

(50) "Vested member" or "vested" means:

(a) with respect to a defined benefit plan, a member or the status of a member who has at least 5 years of membership service; or

(b) with respect to the defined contribution plan, a member or the status of a member who meets the minimum membership service requirement of 19-3-2116.

(51) "Written application" or "written election" means a written instrument, prescribed by the board or required by law, properly signed and filed with the

board, that contains all required information, including documentation that the board considers necessary.

(52) "Written instrument" includes an electronic record containing an electronic signature, as defined in 30-18-102."

Section 2. Section 19-2-506, MCA, is amended to read:

"19-2-506. Payment of contributions by employers — accompanying reports — penalty. (1) The board shall prescribe by rule the procedure for payment of retirement contributions for the retirement systems administered by the board. Each employer shall pick up the employee contributions and remit the employer and employee contributions required by the member's retirement system. Payments must be considered delinquent until both the required contributions and the valid payroll report are received by the board.

(2) The board may collect payments delinquent under subsection (1) with an interest penalty at the rate of 9% a year or $10 a day, whichever is greater. The board may, in its discretion, waive the penalty. The collection may be made by either:

(a) an action in a court of competent jurisdiction against the employer; or

(b) deductions, at the request of the board, from any other money payable to the employer by any agency or fund of the state.

(3) *(a)* The board shall prescribe by rule the procedure for submitting employer reports. The reports must include data about member and nonmember employees who work for the employer. ~~The data required must include items such as compensation paid, hourly rates, changes in pay status, current home addresses, and any other data concerning employees that the board needs to administer the specific retirement system or plan. The board shall establish~~

(b) The rules must specify the employee categories to be reported, the data required, the method of reporting, the reporting period, and the frequency of reports *needed* to meet the demands of the relevant retirement system or plan.

(c) The board may establish by rule the penalty fees for noncompliance in reporting any of the required information and the procedure for collection of the fees.

(4) Each employer shall furnish additional information concerning members that the board may request in connection with claims by members for benefits or service under a retirement system.

(5) The board, from time to time, may send materials to an employer for redistribution to employees. To facilitate distribution, each employer shall provide the board with a point of contact responsible for distributing the materials."

Section 3. Section 19-2-704, MCA, is amended to read:

"19-2-704. Purchasing service credits allowed — payroll deduction. (1) Subject to the rules promulgated by the board, an eligible member may elect to make additional contributions to purchase service credits as provided by the statutes governing the retirement system.

(2) Subject to any statutory provision establishing stricter limitations, only active or vested inactive members are eligible to purchase or transfer service credit, membership service, or contributions.

(3) A member who wishes to redeposit amounts withdrawn under 19-2-602 or who is eligible to purchase service credit as provided by the statutes

governing the retirement system to which the member belongs may elect to make a lump-sum payment *by personal check or rollover of funds from another eligible plan*, *to make* installment payments, or *to make* a combination of a lump-sum payment and installment payments.

(4) Installment payments must be *made by personal check* paid directly to the board~~,~~ unless the member elects to make payments by irrevocable payroll deduction. The minimum installment period for payments ~~made directly to the board~~ is 3 months, and the maximum installment period is 5 years.

(5) To elect installment payments by irrevocable payroll deduction, the member shall file with the board and the member's employer an irrevocable, written application and authorization for payroll deductions. The application and authorization:

(a) must be signed by the member and the member's employer;

(b) must specify the dollar amount of each deduction and the number of deductions to be made, subject to any maximum amounts or duration established by state or federal law;

(c) ~~must provide that the deductions are to be made over a period of time of no less than 3 months and no more than 5 years in duration;~~

~~(d)~~ may not give the member the option of receiving the deduction amounts directly instead of having them paid by the employer to the board; and

~~(e)~~*(d)* must specify that the additional contributions being picked up, although designated as employee contributions, are being paid by the employer directly to the board in lieu of contributions paid directly by the employee.

(6) If the board notifies the employer that a proper written application and authorization has been filed with the board, the employer shall initiate the payroll deduction as follows:

(a) An employer shall pick up the member's elective additional contributions made pursuant to a payroll deduction authorization. The contributions picked up by the employer must be paid from the same source as is used to pay compensation to the member and must be included as part of the member's earned compensation before the deduction is made.

(b) Employee contributions, even though designated as employee contributions for state law purposes, are paid by the member's employer in lieu of contributions paid directly by the member to the board.

(c) The member may not choose to receive the contributed amounts directly instead of having them paid by the employer to the board.

(d) The effective date of the employer pickup and payment pursuant to this section is the date on which the employee's additional contribution is first deducted from the employee's compensation. However, the effective date may not be prior to the date that the member properly completes the written application and authorization for payroll deductions and files it with the board. The pickup may not apply to any additional contributions made before the effective date or to any contributions related to compensation earned for services rendered before the effective date.

(e) Installment payments initiated by contract prior to July 1, 1999, may be paid by payroll deduction only if the member files a written application and authorization for payroll deductions pursuant to this section. If the member does not file a written application and authorization for payroll deductions

pursuant to this section, the installment contract payments agreed to by the member must be paid by the member directly to the board.

(f) A member may file more than one irrevocable payroll deduction agreement and authorization as long as a subsequent deduction authorization does not amend a previous irrevocable authorization. A member may not prepay an amount under an irrevocable payroll deduction *agreement without terminating employment*, except when a member ~~with an existing contract to purchase service credit elects to transfer to the defined contribution retirement plan pursuant to 19-3-2111(7) or to the optional retirement program pursuant to 19-3-2112(2)(j)~~ *becomes a member of another retirement system by an authorized election and the service purchase is in accordance with 19-2-715*.

(7) If a member terminates employment or dies before completing all payments required by a payroll deduction authorization filed pursuant to this section, the deduction authorization expires and the board shall prorate the service credit based on the amount paid unless further payment is made as provided in this subsection. In the case of a termination from employment, the member may make a lump-sum payment for up to the balance of the service credit remaining to be purchased, subject to the limitations of section 415 of the Internal Revenue Code. In the case of death of the member, the payment may be made from the member's estate subject to the limitations of section 415 of the Internal Revenue Code."

Section 4. Section 19-2-710, MCA, is amended to read:

"19-2-710. Nonapplication of part to defined contribution plan. Except as otherwise provided in *19-2-715 and* chapter 3, part 21, of this title, none of the provisions of this part apply under the defined contribution plan."

Section 5. Section 19-2-715, MCA, is amended to read:

"19-2-715. Purchase of Montana public service. (1) (a) ~~A~~ *An active* member may, at any time before retirement, file a written application with the board to purchase as service credit in the member's retirement system all or any portion of the member's previous service credit in the public employees', judges', highway patrol officers', sheriffs', game wardens' and peace officers', firefighters' unified, or municipal police officers' retirement system if the member has:

(i) received or is eligible to receive a refund of accumulated contributions; or

(ii) become a member of one of the other retirement systems covered under chapter 3, 5, 6, 7, 8, 9, or 13 of this title.

(b) To purchase this service credit, the member shall pay the actuarial cost of the service credit in the member's current retirement system, based on the system's most recent actuarial valuation and the annual compensation of the member, minus the employer contribution provided in subsection (1)(c).

(c) Upon receiving the member's payment under subsection (1)(b), the board shall transfer from the member's former retirement system to the member's current retirement system an amount equal to the employer contributions made on compensation during the member's former service, but no more than an amount equal to the normal cost contribution rate minus the employee contribution rate in the member's current retirement system according to the system's most recent actuarial valuation.

(d) If the member was formerly in the public employees' retirement system's defined contribution plan, the member shall pay the actuarial cost of the service credit in the member's current retirement system, based on the system's most

recent actuarial valuation and the annual compensation of the member. The member is eligible to transfer the vested portion of the member's defined contribution account to pay the balance due. Any nonvested portion of the defined contribution account is forfeited pursuant to 19-3-2117.

(2) (a) An active member may, at any time before retirement, file a written application with the board to purchase all or a portion of ~~service credit for full-time service performed~~ *previous employment* for the state or a political subdivision of the state. The member shall provide salary and employment documentation certified by the member's former public employer. To purchase service credit under this section, the member shall pay the actuarial cost of the service credit in the member's current retirement system, as determined by the board, based on the system's most recent actuarial valuation. *For the purpose of this subsection (2)(a), a political subdivision of the state includes a school district.*

(b) The board is the sole authority under subsection (2)(a) in determining what constitutes ~~full-time~~ public service, subject to 19-2-403."

Section 6. Section 19-2-801, MCA, is amended to read:

"19-2-801. Designation of beneficiary. (1) *(a)* In the absence of any statutory beneficiaries, designated beneficiaries are the natural persons, charitable organizations, estate of the payment recipient, or trusts for the benefit of natural living persons that the member or payment recipient designates on the membership card or other form provided by the board. Unless otherwise provided by statute, a member or payment recipient may revoke the designation and name different designated beneficiaries by filing with the board a new membership card or other form provided by the board. ~~The~~ *Except as provided in subsection (1)(b), the* most recent beneficiary designation filed with the board is effective for all purposes.

(b) A member may elect to either override or retain the member's existing beneficiary designation when completing a membership card for temporary or secondary employment with another employer within the same Title 19 retirement system.

(2) If a statutory or designated beneficiary predeceases the member or payment recipient, the predeceased beneficiary's share must be paid to the remaining statutory or designated beneficiaries in amounts proportional to each remaining statutory or designated beneficiary's original share.

(3) A statutory or designated beneficiary who renounces an interest in the payment rights of a member or payment recipient will be considered, with respect to that interest, as having predeceased the member or payment recipient."

Section 7. Section 19-2-908, MCA, is amended to read:

"19-2-908. Time of commencement of benefit — rulemaking. (1) (a) The board shall grant a benefit to any active or inactive member who is vested, or the member's statutory or designated beneficiary, who has fulfilled all eligibility requirements, terminated service, and filed the appropriate written application with the board. However, the board may, on its own accord and without a written application, begin benefit payments to a member or beneficiary in order to comply with section 401(a)(9) of the Internal Revenue Code.

(b) A member may apply for retirement benefits before termination from employment, but commencement of the benefits must be as provided in this section.

(2) (a) Except as provided in subsection (2)(b), the service retirement benefit may commence on the first day of the month following the eligible member's last day of ~~membership service~~ *employment* or, if requested by the ~~inactive~~ member in writing, on the first day of a later month ~~following filing of the written application~~.

(b) If an elected official's term of office expires before the 15th day of the month, the official may elect that service retirement benefits from a defined benefit plan commence on the first day of the month following the official's last full month in office. An official electing this option shall file a written application with the board. An official electing this option may not earn membership service, service credit, or compensation for purposes of calculating highest average compensation or final average compensation, as defined under the provisions of the appropriate retirement system, in the partial month ending the official's term, and compensation earned in that partial month is not subject to employer or employee contributions.

(3) (a) Subject to the provisions of subsection (3)(b), the disability retirement benefit payable to a member must commence on the day following the member's termination from employment.

(b) The guaranteed annual benefit adjustment payable pursuant to 19-3-1605, 19-5-901, 19-6-710, 19-6-711, 19-7-711, 19-8-1105, 19-9-1009, 19-9-1010, 19-9-1013, 19-13-1010, and 19-13-1011 may not be paid retroactively. The guaranteed annual benefit adjustment begins on January 1 of the year after the member has received an amount equal to or greater than 12 months of disability benefit payments.

(4) Monthly survivorship benefits from a defined benefit plan must commence on the day following the death of the member.

(5) Estimated and finalized benefit payments must be issued as provided in rules adopted by the board.

(6) With respect to the defined contribution plan, the board shall adopt rules regarding the commencement of benefits that are consistent with applicable provisions of the Internal Revenue Code and its implementing regulations."

Section 8. Section 19-3-201, MCA, is amended to read:

"19-3-201. Contracts with political subdivisions. (1) Any municipal corporation, county, or public agency in the state may become a contracting employer ~~and make all or specified groups of its employees members of the retirement system by~~ *through* a contract entered into between the board and the legislative body of the contracting employer. *The contract must provide that all employees eligible under this chapter must become members. Contracts executed prior to July 1, 2009, that limit membership to a specific group or groups of employees remain valid.* The contract may include any provisions that are consistent with chapter 2 and this chapter and necessary in the administration of the retirement system as it affects the contracting employer and its employees.

(2) The approval of the contract is subject to the following provisions, in addition to the other provisions of chapter 2 and this chapter:

(a) The legislative body of the contracting employer shall adopt a resolution of intention to approve the contract and containing a summary of the major provisions of the retirement system. The contract may not be approved unless the employees proposed to be included in the retirement system adopt the proposal by a majority affirmative vote in a secret ballot. The ballot at the

election must include the summary of the retirement system as set forth in the resolution. The election must be conducted as prescribed by the legislative body of the contracting employer. Approval of the contract must be by the affirmative vote of two-thirds of the members of the legislative body within 40 days after the adoption of the resolution.

(b) The contract must specify that the provisions of the retirement system apply to all employees on the effective date of the contract and to all employees hired after the effective date of the contract. An employee's membership in either the defined benefit plan or the defined contribution plan is determined on an individual basis as provided in this chapter.

(c) The contract may be amended in the manner prescribed in this section for the original approval of contracts. The contract must be approved by the board. The board may disapprove of a contract if, in the board's sole discretion, the contract adversely affects the interests of the retirement system. Any amendments to the retirement system made pursuant to Montana laws immediately apply to and become a part of the contract.

(3) The termination of the contract is subject to the following provisions, in addition to the other provisions of this chapter:

(a) The legislative body of a contracting employer shall adopt a resolution giving notice to its employees that it intends to terminate retirement system coverage.

(b) All employees covered under the retirement system must be given notice of the termination resolution and be permitted to vote for or against the resolution by secret ballot.

(c) If a majority of covered employees votes for termination, the legislative body, within 20 days after the approval of the resolution by the employees, may adopt by a two-thirds majority a resolution terminating coverage under the system effective the last day of that month and forward the resolution and a certified copy of the election results to the board.

(d) Upon receipt of the termination resolution, the board may request an actuarial valuation of the liabilities of the terminating agency to the retirement system, and the board may withhold approval of the termination of contract until satisfactory arrangements are made to provide funding for any excess accrued liabilities not previously funded by the terminating agency."

Section 9. Section 19-3-316, MCA, is amended to read:

"19-3-316. Employer contribution rates. (1) Each employer shall contribute to the system. Except as provided in subsection (2), the employer shall pay as employer contributions 6.9% of the compensation paid to all of the employer's employees plus any additional contribution under subsection (3), except for those employees properly excluded from membership. Of employer contributions made under this subsection for both defined benefit plan and defined contribution plan members, a portion must be allocated for educational programs as provided in 19-3-112. Employer contributions for members under the defined contribution plan must be allocated as provided in 19-3-2117.

(2) Local government and school district employer contributions must be the total employer contribution rate provided in subsection (1) minus the state contribution rates under 19-3-319.

(3) Subject to subsection (4), each employer shall contribute to the system an additional employer contribution equal to ~~the following percentage~~ *0.27%* of the

compensation paid to all of the employer's employees, except for those employees properly excluded from membership:

~~(a) beginning July 1, 2007, 0.135%; and~~

~~(b) beginning July 1, 2009, 0.27%~~.

(4) (a) The board shall periodically review the additional employer contribution provided for under subsection (3) and recommend adjustments to the legislature as needed to maintain the amortization schedule set by the board for payment of the system's unfunded liabilities.

(b) The employer contribution required under subsection (3) terminates on July 1 ~~immediately~~ following the *board's receipt of the* system's actuarial valuation if:

(i) the actuarial valuation determines that the period required to amortize the system's unfunded liabilities, including adjustments made for any benefit enhancements enacted by the legislature after the valuation, is less than 25 years; and

(ii) terminating the additional employer contribution would not cause the amortization period as of the most recent actuarial valuation to exceed 25 years."

Section 10. Section 19-3-403, MCA, is amended to read:

"19-3-403. Exclusions from membership. The following persons may not become members of the retirement system *and, except as provided in subsection (7), may not later purchase previous service under 19-3-505*:

(1) inmates of state institutions;

(2) persons in state institutions principally for the purpose of training but who receive compensation;

(3) independent contractors;

(4) persons who are members of any other retirement or pension system supported wholly or in part by funds of the United States government, any state government, or political subdivision of the state and who are receiving credit in the other system for employment. It is the purpose of this subsection to prevent a person from receiving credit for the same employment in two retirement systems supported wholly or in part by public funds, except when the service qualifies and is applied for and the service credit is purchased pursuant to 19-3-503. A member of the retirement system who, because of employment by the state, is required to become a member of any other system described in this subsection is considered, with regard to that employment, an inactive member of the retirement system, except that the member is not eligible for retirement or a refund of the member's accumulated contributions. Exclusion under this subsection is subject to the following exceptions:

(a) The employees of an employer who has entered into a collective bargaining agreement involving a multiemployer pension plan qualified by the internal revenue service and that requires contributions by the employer for the members of the bargaining unit remain eligible, if otherwise qualified, for membership in the retirement system.

(b) For the purpose of this subsection (4), persons receiving pensions, retirement benefits, or other payments from any source on account of employment other than as an employee are not considered, because of receipt, members of any other retirement or pension system.

(5) substitute teachers or part-time teacher's aides who may elect to join the teachers' retirement system in accordance with 19-20-302(4);

~~(5)~~*(6)* court commissioners, elected officials, or appointive members of any board or commission who serve the state or any contracting employer intermittently and who are paid on a per diem basis;

~~(6)~~*(7)* full-time students employed at and attending the same public elementary school, high school, community college, or unit of the state university system, except that a person excluded from membership as a student of a public community college or a unit of the state university system who later becomes an active member by otherwise becoming an employee may affirmatively exercise the option of purchasing the service credit excluded by this subsection by applying to the board in writing after becoming an active member and become eligible to receive service credit for the excluded service under the provisions of 19-3-505."

Section 11. Section 19-3-504, MCA, is amended to read:

"19-3-504. Absence due to illness or injury. (1) Time, not to exceed 5 years, during which a member is absent from service because of injury or illness is considered membership service if, within 1 year after the end of the absence, the injury or illness is determined to have arisen out of and in the course of the member's employment. However, the member may not earn service ~~credits~~ *credit* for this period unless the member *files with the board a written notice of the member's intent to purchase the time of absence and* complies with ~~subsections (2) and (3)~~ *subsection (2)*, in which case the absence is considered as time spent in service for both service credit and membership service.

(2) (a) A member absent because of an employment-related *illness or* injury entitling the member to workers' compensation payments may, upon the member's return to service~~,~~ *or upon termination of employment if the member cannot return to service due to the illness or injury,* contribute to the retirement system an amount equal to the contributions that would have been made by the member to the system *during the absence. The amount of contributions owed will be based* on ~~the basis of~~ the member's compensation at the commencement of the member's absence*,* plus regular interest accruing ~~from~~ 1 year from the date after the member returns to service *or terminates employment* to the date the member contributes for the period of absence.

(b) Whenever a member elects to contribute under subsection (2)(a), the employer shall contribute employer contributions for the period of absence based on the salary as calculated in subsection (2)(a) and may pay interest on the employer's contribution calculated in the same manner as interest on the employee's contribution under subsection (2)(a). An employer electing to make an interest payment shall do so for all employees similarly situated. If the employer elects not to pay the interest costs, this amount must be paid by the employee.

(3) ~~At some time after returning to service, a member shall file with the board a written notice of the member's intent to pay the contributions under subsection (2).~~

~~(4)~~ A member loses the right to contribute for ~~an~~*:*

(a) the entire absence under this section if all of the member's accumulated contributions are refunded pursuant to 19-2-602*;* or ~~for~~

(b) the period of time during which retirement benefits are received if the member retires during the absence."

Section 12. Section 19-3-513, MCA, is amended to read:

"19-3-513. Application to purchase additional service. (1) Subject to 19-3-514, a member with at least 5 years of membership service may, at any time before retirement, file a written application with the board to purchase 1 year of additional service credit for each 5 years of membership service.

(2) To purchase this service credit under this section, a member shall pay the actuarial cost of the service credit, based on the system's most recent actuarial valuation.

(3) Service credit purchased under this section is not membership service and may not be used to qualify a member for service retirement.

(4) Once a member has at least 25 years of membership service, purchases of one-for-five service will be used to adjust the early retirement reduction required in 19-3-906."

Section 13. Section 19-3-906, MCA, is amended to read:

"19-3-906. Early retirement benefit. (1) The amount of retirement benefit payable to a member following early retirement is the actuarial equivalent of the accrued portion of the service retirement benefit that would have been payable to the member commencing at age 60 or upon completion of 30 years of membership service pursuant to 19-3-904.

(2) The early retirement benefit must be determined as prescribed in 19-3-904, with the exception that the benefit must be reduced as follows:

(a) by 1/2 of 1% multiplied by the number of months up to a maximum of 60 months by which the retirement date precedes the date on which the member would have retired had the member attained 60 years of age or had the member completed 30 years of membership service; and

(b) by 3/10 of 1% multiplied by the number of months in excess of the 60 months in subsection (2)(a) but not to exceed 60 additional months that the retirement date precedes the date on which the member would have retired had the member attained 60 years of age or had the member completed 30 years of membership service.

(3) The actuarial reduction provided for in this section must be adjusted for any ~~additional service credit~~ *one-for-five service* purchased under 19-3-513 *once the member has at least 25 years of membership service*."

Section 14. Section 19-3-1015, MCA, is amended to read:

"19-3-1015. Medical examination of disability retiree — cancellation and reinstatement. (1) The board may, in its discretion, require a disabled member to undergo a medical examination. The examination must be made by a *board-approved* physician or surgeon ~~appointed by the board,~~ at a place mutually agreed ~~upon~~ *on* by the ~~retired member and the~~ board*, the disabled member, and the physician or surgeon and at the board's expense*. Upon the basis of the examination, the board shall determine whether the disabled member is unable, by reason of physical or mental incapacity, to perform the essential elements of either the position held by the member when the member retired or the position proposed to be assigned to the member. If the board determines that the member is not incapacitated or if the member refuses to submit to a medical examination, the member's disability retirement benefit must be canceled.

(2) If the board determines that a disabled member should no longer be subject to medical review, the board may grant service retirement status to the member without recalculating the monthly benefit. The board shall notify the

member in writing as to the change in status. If the disabled member disagrees with the board's determination, the member may file a written application with the board requesting that the board reconsider its action. The written application for reconsideration must be filed within 60 days after receipt of the notice of the status change.

(3) (a) Except as provided in subsections (3)(b) and (3)(c), a member whose disability retirement benefit is canceled because the board has determined that the member is no longer incapacitated must be reinstated to the position held by the member immediately before the member's retirement or to a position in a comparable pay and benefit category with duties within the member's capacity if the member was an employee of the state or of the university. If the member was an employee of a contracting employer, the board shall notify the proper official of the contracting employer that the disability retirement benefit has been canceled and that the former employee is eligible for reinstatement to duty. The fact that the former employee was retired for disability may not prejudice any right to reinstatement to duty that the former employee may have or claim to have.

(b) A member who is employed by an employer forfeits any right to reinstatement provided by this section.

(c) This section does not affect any requirement that the former employee meet or be able to meet professional certification and licensing standards unrelated to the disability and necessary for reinstatement to duty.

(4) If a member whose disability retirement benefit is canceled is not reemployed in a position subject to the retirement system, the member is considered, for the purposes of 19-2-602, to have terminated service coincident with the commencement of the member's retirement benefit."

Section 15. Section 19-3-1106, MCA, is amended to read:

"19-3-1106. Limited reemployment — reduction of service retirement benefit upon exceeding limits — exceptions. (1) A retired member under 65 years of age who is receiving a service retirement benefit or early retirement benefit may return to employment covered by the retirement system for a period not to exceed 960 hours in any calendar year without returning to active service and without any effect to the retiree's retirement benefit. The retirement benefit for any retiree exceeding this 960-hour limitation in any calendar year after retirement must be temporarily reduced $1 for each $1 earned after working 960 hours in that calendar year.

(2) A retiree 65 years of age or older who returns to employment covered by the retirement system is either subject to the 960-hour limitation of subsection (1) or may earn in any calendar year an amount that, when added to the retiree's current annual retirement benefits, will not exceed the member's annualized highest average compensation, adjusted for inflation as of January 1 of the current calendar year, whichever limitation provides the higher limit on earned compensation to the retiree. Upon reaching the applicable limitation, the retiree's benefits must be temporarily reduced $1 for each $1 of compensation earned in service beyond the applicable limitation during that calendar year.

(3) ~~A~~ *The employer of a* retiree returning to employment covered by the retirement system ~~and the returning employee's employer~~ shall certify to the board the number of hours worked by the retiree and the gross compensation paid to the retiree in that employment during any ~~month~~ *pay period* after retirement. *The certification of hours and compensation may be submitted electronically pursuant to rules adopted by the board.*

(4) A retiree returning to employment covered by the retirement system may elect to return to active membership at any time during this period of covered employment.

(5) The following members who return to employment covered by the retirement system are not subject to the hour or earnings limitations in subsections (1) and (2) or the reporting requirements in subsection (3):

(a) a retired member who is 70 1/2 years of age or older; or

(b) an elected official in a covered position who declines optional membership as provided in 19-3-412.

(6) For the purposes of this section, "employment covered by the retirement system" includes work performed by a retiree through a professional employer arrangement, an employee leasing arrangement, or a temporary service contractor as those terms are defined in 39-8-102."

Section 16. Section 19-3-1210, MCA, is amended to read:

"19-3-1210. Death payments to designated beneficiaries of retired members. If a retired member dies without designating a contingent annuitant under 19-3-1501, the member's designated beneficiary or*, if there is no surviving designated beneficiary, the member's* estate must be paid the amount, if any, of the member's accumulated contributions calculated as of the day of the member's retirement minus the total of any retirement benefits already paid from the member's account."

Section 17. Section 19-3-2111, MCA, is amended to read:

"19-3-2111. Plan membership — written election required — failure to elect — effect of election. (1) Except as otherwise provided in this part:

(a) ~~(i) a member who is an active member of the defined benefit plan on the date that the defined contribution plan becomes effective may, within 12 months after that date, elect to transfer to and become a member of the plan regardless of whether the member remains active, becomes inactive, or terminates employment and plan membership within the 12-month period;~~

~~(ii)~~ a member who was an inactive member of the defined benefit plan on the *effective* date ~~that~~ *of* the defined contribution plan ~~becomes effective~~ and who is rehired into covered employment after the plan effective date may, within the 12-month period provided for in subsection (2)(a), elect to transfer to and become a member of the plan regardless of whether the member remains active, becomes inactive, or terminates employment and plan membership within the 12-month period;

(b) a member who is initially hired into covered employment on or after the *effective* date ~~that~~ *of* the defined contribution plan ~~becomes effective~~ may, within the 12-month period provided for in subsection (2)(a), elect to become a member of the plan regardless of whether the member remains active, becomes inactive, or terminates employment and plan membership within the 12-month period.

(2) (a) Elections made pursuant to this section must be made on a form prescribed by the board and must be made within 12 months from the month that the employer properly reports the new or rehired member to the board.

(b) A member failing to make an election prescribed by this section remains a member of the defined benefit plan.

(c) An election under this section, including the default election pursuant to subsection (2)(b), is a one-time irrevocable election. Subject to 19-3-2113, this

subsection (2)(c) does not prohibit a new election after a member has terminated membership in either plan and returned to covered employment.

(3) A member in either the defined benefit plan or the defined contribution plan who becomes inactive after an election under this section and who returns to active membership remains in the plan previously elected.

(4) A system member may not simultaneously be a member of the defined benefit plan and the defined contribution plan and must be a member of either the defined benefit plan or the defined contribution plan. A period of service may not be credited in more than one retirement plan within the system.

(5) The provisions of this part do not prohibit the board from adopting rules to allow an employee to elect the defined contribution plan from the first day of covered employment.

(6) A member of the defined benefit plan who is subject to a family law order pursuant to 19-2-907 or an execution or income-withholding order pursuant to 19-2-909 may not transfer to the defined contribution plan unless the order is modified to apply under the defined contribution plan.

(7) (a) A member of the defined benefit plan who is purchasing service credit through installment payments, either made directly to the board or pursuant to a payroll deduction agreement, may not transfer membership to the defined contribution plan unless the member first completes or terminates the contract for purchase of service credit.

(b) A member who files an election to transfer membership may make a lump-sum payment for up to the balance of the service credit remaining to be purchased prior to transferring, subject to the limitations of section 415 of the Internal Revenue Code. The lump-sum payment, unless made by a rollover pursuant to 19-2-708, must be made with after-tax dollars.

(c) If a member who files an election to transfer membership fails to complete or terminate the contract for purchase of service credit by the end of the member's 12-month election window, the board shall terminate the service purchase contract and credit the member with the prorated amount of service credit purchased under the contract."

Section 18. Section 19-3-2133, MCA, is amended to read:

"19-3-2133. Employee investment advisory council. *(1)* The board shall create an employee investment advisory council. The advisory council shall meet at least four times a year to:

~~(1)~~*(a)* advise the board concerning the operation of the defined contribution plan, including the selection of the initial investment alternatives to be provided pursuant to 19-3-2122;

~~(2)~~*(b)* advise the board about negotiating, contracting, or modifying services for the state deferred compensation plan provided for in chapter 50; and

~~(3)~~*(c)* review existing deferred compensation plans and to advise the board on the administration of the program.

(2) The advisory council is not subject to 2-15-122."

Section 19. Section 19-5-601, MCA, is amended to read:

"19-5-601. Disability retirement benefit. *(1)* ~~In~~ *Except as provided in subsections (2) and (3), in* the case of the disability of a member, a disability retirement benefit must be granted the member in an amount actuarially equivalent to the service retirement benefit standing to the member's credit at the time of the member's disability retirement.

(2) If the disability is a direct result of any service or duty for the Montana judiciary, the member's disability retirement benefit must be~~:~~

~~(1)~~ the greater of one-half of the member's current salary or ~~the contingent annuitant's benefit, if applicable, for a person not covered under 19-5-901; or~~

~~(2) the greater of~~ one-half of the member's highest average compensation ~~or the contingent annuitant's benefit, if applicable, for a person covered under 19-5-901~~.

(3) If the member was retired at the time of becoming disabled, the member must continue to receive the same retirement benefit previously elected."

Section 20. Section 19-5-612, MCA, is amended to read:

"19-5-612. Medical examination of disability retiree — cancellation of benefit. (1) The board, in its discretion, may require the recipient of a disability retirement benefit to undergo a medical examination. The examination must be made by a *board-approved* physician or surgeon at ~~the recipient's place of residence or at another~~ *a* place mutually agreed on~~,~~ *by the board, the disabled member, and the physician or surgeon and* at the board's expense. Upon the basis of the examination, the board shall determine, by reason of physical or mental capacity, whether the recipient can perform the essential elements of the position held by the recipient when the recipient was retired. If the board determines that the recipient is not incapacitated or if the recipient refuses to submit to a medical examination, the recipient's disability retirement benefit must be canceled.

(2) The cancellation of a disability retirement benefit because a recipient is no longer incapacitated may not prejudice any right of the recipient to a retirement benefit other than a disability retirement benefit."

Section 21. Section 19-5-801, MCA, is amended to read:

"19-5-801. Payments upon employment-related death. (1) ~~If~~ *Except as provided in subsection (3), if* the board finds that a member died as a direct and proximate result of injury received in the course of the member's service or duty, a survivorship benefit must be paid to the member's designated beneficiary.

(2) The survivorship benefit is the ~~greater of the following:~~

~~(a) the equivalent of the contingent annuitant's benefit, if applicable; or~~

~~(b) the~~ member's service retirement benefit standing to the member's credit on the date of death.

(3) If the member was retired at the time of death, the provisions of 19-5-701 apply."

Section 22. Section 19-5-802, MCA, is amended to read:

"19-5-802. Payments in case of death from other causes. (1) If a retired member not covered under 19-5-901 dies without designating a contingent annuitant under 19-5-701(2), the member's designated beneficiary must be paid the amount, if any, of the member's accumulated contributions calculated as of the day of the member's retirement minus the total of any retirement benefits already paid from the member's account. At the designated beneficiary's request, the lump sum may be paid as an actuarially equivalent annuity that will not be subject to increases for any purpose.

(2) If a retired member covered under 19-5-901 dies without designating a contingent annuitant under 19-5-701(2), the member's designated beneficiary must be paid the amount, if any, of the member's accumulated contributions

calculated as of the day of the member's retirement minus the total of any retirement benefits already paid from the member's account.

(3) If a *vested* member dies before reaching normal retirement age, the member's designated beneficiary is entitled to a monthly survivorship benefit that is the actuarial equivalent of the involuntary retirement benefit provided in 19-5-503."

Section 23. Section 19-6-612, MCA, is amended to read:

"19-6-612. Medical examination of disability retiree — cancellation of benefit. (1) The board may require the recipient of a disability retirement benefit to undergo a medical examination. The examination must be made by a *board-approved* physician or surgeon at ~~the recipient's place of residence or at another~~ *a* place mutually agreed on~~,~~ *by the board, the disabled member, and the physician or surgeon and* at the board's expense. Upon the basis of the examination, the board shall determine whether the recipient can perform the essential elements of the position held by the recipient when the recipient retired. If the board determines that the recipient is not incapacitated, the recipient's disability retirement benefit must be canceled when the recipient is offered a position under subsection (3) or when, if a position is available, the recipient cannot be reinstated under subsection (3) for reasons unrelated to the disability. If the recipient refuses to submit to a medical examination, the recipient's disability retirement benefit must be canceled.

(2) If the board determines that a recipient of a disability retirement benefit should no longer be subject to medical review, the board may grant a service retirement status to the recipient without recalculating the recipient's monthly benefit. The board shall notify the recipient in writing as to the change in status. If the recipient disagrees with the board's determination, the recipient may file a written application with the board requesting that the board reconsider its action. The request for reconsideration must be filed within 60 days after receipt of the notice of the status change.

(3) (a) Except as provided in subsection (3)(b), a recipient whose disability retirement benefit is canceled because the board has determined that the recipient is no longer incapacitated must be reinstated to the position held by the recipient immediately before the recipient's retirement or to a position in a comparable pay and benefit category within the recipient's capacity, whichever is first open. The fact that the recipient was retired for disability may not prejudice any right to reinstatement to duty that the recipient may have or claim to have.

(b) This section does not affect any requirement that the former employee meet or be able to meet professional certification and licensing standards unrelated to the disability and necessary for reinstatement to duty.

(4) The department of justice may request a medical or psychological review as to the ability of the recipient to return to work as a member of the highway patrol. If the board's findings are upheld, the department of justice shall pay the cost of the review."

Section 24. Section 19-7-404, MCA, is amended to read:

"19-7-404. Employer contributions. (1) Each employer shall pay 9.535% of the compensation paid to all of the employer's employees plus any additional contribution under subsection (3), except for those employees properly excluded from membership.

(2) If the required contribution to the retirement system exceeds the funds available to a county from general revenue sources, a county may, subject to 15-10-420, budget, levy, and collect annually a tax on the taxable value of all taxable property within the county that is sufficient to raise the amount of revenue needed to meet the county's obligation.

(3) Subject to subsection (4), each employer shall contribute to the system an additional employer contribution equal to ~~the following percentage~~ *0.58%* of the compensation paid to all of the employer's employees, except for those employees properly excluded from membership~~:~~

~~(a) beginning July 1, 2007, 0.29%; and~~

~~(b) beginning July 1, 2009, 0.58%~~.

(4) (a) The board shall periodically review the additional employer contribution provided for under subsection (3) and recommend adjustments to the legislature as needed to maintain the amortization schedule set by the board for payment of the system's unfunded liabilities.

(b) The employer contribution required under subsection (3) terminates on July 1 ~~immediately~~ following the *board's receipt of the* system's actuarial valuation if:

(i) the actuarial valuation determines that the period required to amortize the system's unfunded liabilities, including adjustments made for any benefit enhancements enacted by the legislature after the valuation, is less than 25 years; and

(ii) terminating the additional employer contribution would not cause the amortization period as of the most recent actuarial valuation to exceed 25 years."

Section 25. Section 19-7-612, MCA, is amended to read:

"19-7-612. Medical examination of disability retiree — cancellation of benefit. (1) The board, in its discretion, may require the recipient of a disability retirement benefit to undergo a medical examination. The examination must be made by a *board-approved* physician or surgeon at ~~the recipient's place of residence or at another~~ *a* place mutually agreed on~~,~~ *by the board, the disabled member, and the physician or surgeon and* at the board's expense. Upon the basis of the examination, the board shall determine, by reason of physical or mental capacity, whether the recipient can perform the essential elements of the position held by the recipient when the recipient was retired. If the board determines that the recipient is not incapacitated, the recipient's disability retirement benefit must be canceled when the recipient is offered a position under subsection (2) or when, if a position is available, the recipient cannot be reinstated under subsection (2) for reasons unrelated to the disability. If the recipient refuses to submit to a medical examination, the recipient's disability retirement benefit must be canceled when the recipient is notified of the determination of the board.

(2) (a) Except as provided in subsection (2)(b), a person other than an elected official whose disability retirement benefit is canceled because the person is no longer incapacitated must be reinstated to the position held by the person immediately before the person's retirement or to a position in a comparable pay and benefit category within the person's capacity, whichever is first open. The fact that the person was retired for disability may not prejudice any right to reinstatement to duty that the person may have or claim to have.

(b) This section does not affect any requirement that the former employee meet or be able to meet professional certification and licensing standards unrelated to the disability and necessary for reinstatement.

(3) The public body required to reinstate a person under subsection (2) may request a medical or psychological review as to the ability of the member to return to work as a member of the sheriff's office. If the board's findings are upheld, the public body shall pay the cost of the review."

Section 26. Section 19-8-712, MCA, is amended to read:

"19-8-712. Medical examination of disability retiree — cancellation of benefit. (1) The board, in its discretion, may require the recipient of a disability retirement benefit to undergo a medical examination. The examination must be made by a *board-approved* physician or surgeon at ~~the recipient's place of residence or at another~~ *a* place mutually agreed on~~,~~ *by the board, the disabled member, and the physician or surgeon and* at the board's expense. Upon the basis of the examination, the board shall determine, by reason of physical or mental capacity, whether the recipient can perform the essential elements of the position held by the recipient when the recipient retired. If the board determines that the recipient is not incapacitated, the recipient's disability retirement benefit must be canceled when the recipient is offered a position under subsection (3) or when, if a position is available, the recipient cannot be reinstated under subsection (3) for reasons unrelated to the disability. If the recipient refuses to submit to a medical examination, the recipient's disability retirement benefit must be canceled when the recipient is notified of the determination of the board.

(2) If the board determines that a recipient of a disability retirement benefit should no longer be subject to medical review, the board may grant a service retirement status to the recipient without recalculating the recipient's monthly benefit. The board shall notify the recipient in writing as to the change in status. If the recipient disagrees with the board's determination, the recipient may file a written application with the board requesting that the board reconsider its action. The request for reconsideration must be filed within 60 days after receipt of the notice of the status change.

(3) (a) Except as provided in subsection (3)(b), a recipient whose disability retirement benefit is canceled because the board has determined that the recipient is no longer incapacitated must be reinstated to the position held by the recipient immediately before the recipient's retirement or to a position in a comparable pay and benefit category within the recipient's capacity, whichever is first open. The fact that the recipient was retired for disability may not prejudice any right to reinstatement to duty that the recipient may have or claim to have.

(b) This section does not affect any requirement that the former employee meet or be able to meet professional certification and licensing standards unrelated to the disability and necessary for reinstatement.

(4) The member's former employer may request a medical or psychological review as to the ability of the recipient to return to work as a peace officer. If the board's findings are upheld, the former employer shall pay the cost of the review."

Section 27. Section 19-9-904, MCA, is amended to read:

"19-9-904. Termination of disability benefit. The board, in its discretion, may require the recipient of a disability retirement benefit to undergo a medical examination. The examination must be made by a

board-approved physician or surgeon at ~~the recipient's place of residence or at another~~ *a* place mutually agreed on~~,~~ *by the board, the disabled member, and the physician or surgeon and* at the board's expense. Upon the basis of the examination, the board shall determine, by reason of physical or mental capacity, whether the recipient can perform the essential elements of the position held by the recipient when the recipient was retired. If an inactive member is determined by the board to be no longer disabled, the inactive member's disability retirement benefit must be canceled when the inactive member is offered a position under 19-9-905 or when, if a position is available, the former employee could not be reinstated under 19-9-905 for reasons unrelated to the disability. If the inactive member refuses to submit to a medical examination, the inactive member's disability retirement benefit must cease as of the date of the determination. The inactive member must be notified of the determination by the board. The board may review the status of an inactive member at any time."

Section 28. Section 19-9-1101, MCA, is amended to read:

"19-9-1101. Preretirement death benefits. Upon the death of an active member, the member's surviving spouse or dependent child is eligible for benefits equal to one-half of the member's final average compensation, payable as provided in 19-9-804(2). If the deceased member has completed over 20 years of membership service, the survivorship benefit must equal 2.5% of the member's final average compensation for each year of ~~membership~~ service *credit*."

Section 29. Section 19-13-104, MCA, is amended to read:

"19-13-104. Definitions. Unless the context requires otherwise, the following definitions apply in this chapter:

(1) Any reference to "city" or "town" includes those jurisdictions that, before the effective date of a county-municipal consolidation, were incorporated municipalities, subsequent districts created for urban firefighting services, or the entire county included in the county-municipal consolidation.

(2) "Compensation" means:

(a) for a full-paid firefighter, the remuneration paid from funds controlled by an employer in payment for the member's services before any pretax deductions allowed by state and federal law are made;

(b) for a part-paid firefighter employed by a city of the second class:

(i) 15% of the regular remuneration, excluding overtime, holiday payments, shift differential payments, compensatory time payments, and payments in lieu of sick leave, paid on July 1 of each year to a newly confirmed, full-paid firefighter of the city that employs the part-paid firefighter; or

(ii) if that city does not employ a full-paid firefighter, 15% of the average regular remuneration, excluding overtime, holiday payments, shift differential payments, compensatory time payments, and payments in lieu of sick leave, paid on July 1 of each year to all newly confirmed, full-paid firefighters employed by cities of the second class.

(c) Compensation for full-paid and part-paid firefighters does not include:

(i) overtime, holiday payments, shift differential payments, compensatory time payments, and payments in lieu of sick leave; and

(ii) maintenance, allowances, and expenses.

(3) "Dependent child" means a child of a deceased member who is:

(a) unmarried and under 18 years of age; or

(b) unmarried, under 24 years of age, and attending an accredited postsecondary educational institution as a full-time student in anticipation of receiving a certificate or degree.

(4) "Employer" means*:*

(a) any city that is of the first or second class or that elects to join this retirement system under 19-13-211 ~~or~~*,;*

(b) a city or a rural fire district referred to in 19-13-210(3);

(c) with respect to firefighters covered in the retirement system pursuant to 19-13-210(2), the department of military affairs established in 2-15-1201*; and*

(d) any other statutorily allowed entity that elects to join this retirement system pursuant to 19-13-210.

(5) "Firefighter" means a person employed as a full-paid or part-paid firefighter by an employer.

(6) "Full-paid firefighter" means a person appointed by an employer as a firefighter under the standards provided in 7-33-4106 *and 7-33-4107*.

(7) "Highest average compensation" means the monthly compensation of a member averaged over the highest consecutive 36 months of the member's active service or, in the event a member has not served at least 36 consecutive months, the total compensation earned divided by the number of months of service. Lump-sum payments for annual leave paid to the member upon termination of employment may be used to replace, on a month-for-month basis, the regular compensation for a month or months included in the calculation of highest average compensation.

(8) "Minimum retirement date" means the first day of the month coinciding with or immediately following, if none coincides, the date on which a member reaches both 50 years of age or older and completes 5 or more years of membership service.

(9) "Part-paid firefighter" means a person employed under 7-33-4109 who receives compensation in excess of $300 a year for service as a firefighter *and who is appointed by an employer as a firefighter under the standards provided in 7-33-4106 and 7-33-4107*.

(10) "Prior plan" means the fire department relief association plan of a city that elects to join the retirement system under 19-13-211 or the fire department relief association plan of a city of the first or second class.

(11) "Retirement date" means the date on which the first payment of benefits is payable.

(12) "Retirement system" means the firefighters' unified retirement system provided for in this chapter.

(13) "Surviving spouse" means the spouse married to a member at the time of the member's death."

Section 30. Section 19-13-704, MCA, is amended to read:

"19-13-704. Amount of service retirement benefit. (1) Except as provided in subsection (2), a member who retires with at least 5 years of membership service must receive a service retirement benefit equal to 2.5% of the member's highest average compensation for each year of service credit.

(2) A member hired before July 1, 1981, who does not elect to be covered under 19-13-1010 is entitled to the greater of:

(a) the benefit provided under subsection (1); or

(b) (i) if the member retires with less than 20 years of membership service, a benefit equal to 2% of the member's highest monthly compensation for each year of service; or

(ii) if the member retires with 20 or more years of membership service, a benefit equal to 50% of the member's highest monthly compensation plus 2% of the member's highest monthly compensation for each year of service *credit* over 20 years.

(3) Upon a retired member's death, the benefit must be made to the surviving spouse. If there is no surviving spouse or if the surviving spouse dies and if the member leaves one or more dependent children, the children are entitled to receive the benefit as long as they remain dependent children as defined in 19-13-104."

Section 31. Section 19-13-803, MCA, is amended to read:

"19-13-803. Amount of disability retirement benefit. (1) A member who becomes disabled:

(a) before completing 20 years of membership service must receive a disability retirement benefit equal to one-half the member's highest average compensation;

(b) after completing 20 years or more of membership service must receive a disability retirement benefit equal to 2.5% of the member's highest average compensation for each year of service credit*, but no less than one-half of the member's highest average compensation*.

(2) Upon the death of a member receiving a disability retirement benefit under this section, the member's surviving spouse or dependent child is eligible for benefits as provided in 19-13-104."

Section 32. Section 19-13-804, MCA, is amended to read:

"19-13-804. Medical examination of disability retiree — cancellation of benefit. (1) The board, in its discretion, may require the recipient of a disability retirement benefit to undergo a medical examination ~~at the board's expense~~. The examination must be made by a *board-approved* physician or surgeon at ~~the recipient's place of residence or at another~~ *a* place mutually agreed on *by the board, the disabled member, and the physician or surgeon and at the board's expense*. ~~Based on the results~~ *Upon the basis* of the examination, the board shall determine*, by reason of physical or mental capacity,* whether the recipient ~~has the physical or mental capacity to~~ *can* perform the essential elements ~~required by the recipient's former~~ *of the* position *held by the recipient when the recipient retired*.

(2) If the board determines that the recipient is not incapacitated, if the recipient refuses to submit to a medical examination, or if, when a position is available, the recipient cannot be reinstated under 19-13-805 for reasons unrelated to the disability, the recipient's disability retirement benefit must be canceled. The board shall notify the recipient of this determination and the cancellation of the recipient's benefit.

~~(2)~~*(3)* The cancellation of a disability retirement benefit because a member is no longer incapacitated does not prejudice any right of the member to a service retirement benefit."

Section 33. Section 19-17-107, MCA, is amended to read:

"19-17-107. Employment of actuary — ~~biennial~~ *annual* investigation. (1) The board shall retain a competent actuary who is an enrolled member of the American academy of actuaries and who is familiar with public pension systems. The actuary is the technical adviser to the board on matters regarding the actuarial funding of the pension trust fund.

(2) The board shall require the actuary to make ~~a biennial~~ *an annual* actuarial valuation of the assets and liabilities of the pension trust fund. The actuarial valuation must include the sufficiency of the fund to pay full and partial benefits to members and benefit recipients and must include recommendations for any changes that should be made to those benefits or the contributions to the pension trust fund to ensure the actuarial soundness of the pension trust fund.

(3) The board shall require the actuary to conduct periodic actuarial experience studies of the pension trust fund and to recommend any changes in actuarial assumptions or tables based upon the studies."

Section 34. Section 19-17-401, MCA, is amended to read:

"19-17-401. Eligibility for pension and disability benefits. (1) To qualify for a full pension, partial pension, or disability benefit under this chapter, a member shall meet the requirements of subsections (2) or (3) and (4).

(2) (a) For a full pension benefit, a member must have completed 20 years of service and must have attained 55 years of age, but need not be an active member of a fire company when 55 years of age is reached.

(b) A member who is prevented from completing at least 20 years of service may qualify for a partial pension benefit if the member has completed at least 10 years of service and has attained 60 years of age, but need not be an active member of any fire company when 60 years of age is reached.

(3) An active member of a fire company whose duty-related injury results in permanent total disability, as defined in 39-71-116 and determined pursuant to 19-17-410, is eligible, regardless of age or service, to receive a disability benefit.

(4) Except as provided in subsection (5):

(a) to receive a pension or disability benefit, a volunteer firefighter may not be an active member of any fire company; and

(b) a volunteer firefighter who receives a pension or disability benefit under this chapter may not become an active member of any fire company.

(5) ~~(a) In the event of a declared national, state, or local emergency affecting Montana, a retired volunteer firefighter who is not receiving a disability benefit under this chapter may return to active service with a fire company for the duration of the declared emergency without becoming an active member under the Volunteer Firefighters' Compensation Act and the volunteer firefighters' pension plan and without loss of previously earned benefits. Only the fire chief of the fire company may determine who may return to active service. The fire chief shall prescribe the duties of any retired volunteer firefighter returning to active service.~~

~~(b)~~ A member who is receiving a full pension benefit, as provided in 19-17-404, may return to service with a volunteer fire company without loss of benefits. A member returning to service under this section may not be considered an active member earning service credit. *The fire chief shall prescribe the duties of any retired volunteer firefighter returning to service.*"

Section 35. Section 19-17-408, MCA, is amended to read:

"19-17-408. Medical review of certain disability retirees. The board may require a member who receives a disability benefit to undergo periodic medical examinations. The examinations must be made by a *board-approved* physician or surgeon at ~~the member's residence or~~ a place mutually agreeable to the board*, the physician or surgeon,* and the member *and at the board's expense*. Upon the basis of these examinations and the advice of the board's consulting physician, the board shall determine, by reason of physical or mental capacity, whether the member remains permanently and totally disabled."

Section 36. Section 19-17-504, MCA, is amended to read:

"19-17-504. Medical expenses. (1) The board shall authorize payment of some or all medical expenses resulting from an injury or illness that was incurred in the line of duty, as described in 19-17-105, and that required the services of a physician, surgeon, or nurse, whether or not the member was hospitalized. The payments must equal the amount of the member's necessary and reasonable out-of-pocket medical expenses that resulted directly from the injury or illness and that were billed within 36 months following the date of the injury or illness. *The member shall file a claim for reimbursement within 12 months of the date of the bill.* The total claim for reimbursement may not exceed $25,000.

(2) If an injury incurred in the line of duty results in the loss by amputation of an arm, hand, leg, or foot, the enucleation of an eye, or the loss of any natural teeth, the board shall authorize either a payment for the cost of a prosthesis or a payment of $1,500 to help defray the cost of a prosthesis, whichever is less. The prosthesis may be replaced when necessary, but not more often than every 5 years. The board shall authorize payment of not more than $1,500 of the replacement costs."

Section 37. Effective date. [This act] is effective July 1, 2009.

Approved April 17, 2009

CHAPTER NO. 284

[HB 170]

AN ACT GENERALLY REVISING STATUTES GOVERNING VARIOUS STATE RETIREMENT SYSTEMS IN ORDER TO ENSURE THAT THOSE SYSTEMS CONSTITUTE QUALIFIED RETIREMENT PLANS UNDER THE INTERNAL REVENUE CODE; AMENDING SECTIONS 5-2-304, 19-2-303, 19-2-602, 19-2-902, 19-2-907, 19-2-1001, 19-2-1002, 19-2-1005, 19-3-315, 19-3-412, 19-3-1501, 19-3-2123, 19-3-2126, 19-5-701, 19-7-1001, 19-8-801, 19-9-301, 19-9-1206, 19-9-1208, 19-13-210, AND 19-13-301, MCA; AND PROVIDING AN EFFECTIVE DATE AND RETROACTIVE APPLICABILITY DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 5-2-304, MCA, is amended to read:

"5-2-304. Participation in public retirement systems. (1) The purpose of this section is to allow a person who is elected or appointed to the Montana legislature and who is also a member of a retirement system provided for in Title 19, chapter 3, 5, 6, 7, 8, 9, 13, 20, or 21, by virtue of the person's nonlegislative employment to continue the person's participation in the public retirement system of which the person is a member.

(2) This section is not intended to provide duplicate credit for the same service in two retirement systems supported wholly or in part by public funds. This section does not affect contribution rates or benefit payments specifically provided for in the laws governing the operation of individual retirement systems.

(3) (a) A person who is an inactive or retired member of a retirement system provided for in Title 19, chapter 5, 6, 7, 8, 9, 13, 20, or 21, and who is elected or appointed to be a legislator may:

(i) return to active membership in the system of which the person is an inactive or retired member under the requirements of that system; or

(ii) remain an inactive or retired member of the retirement system and become an active member of the public employees' retirement system pursuant to 19-3-412.

(b) A person who is an inactive or retired member of the public employees' retirement system provided for in Title 19, chapter 3, and who is elected or appointed to the legislature may return to active membership in the public employees' retirement system but cannot simultaneously be an inactive or retired member of the system as a result of prior covered terminated employment and an active member of the retirement system under 19-3-412 or this section.

(4) (a) A person who is an active member of a public retirement system governed by state law and who is elected or appointed to be a legislator may, but is not required to, continue the person's participation in that public retirement system while engaged in official duties as a legislator.

(b) To continue participation as an active member in the public retirement system, a legislator shall, within ~~180~~ *90* days of taking office and in a manner prescribed by the appropriate board, file an irrevocable written election with the teachers' retirement board or the public employees' retirement board.

(5) A legislator who elects to continue participation as an active member as provided in subsection (4) shall continue the payments into the fund of the retirement system at the rate currently in effect in the system based on the legislator's monthly salary as a member of that system.

(6) The state contribution must be made by legislative appropriation. It must equal the appropriate employer contribution at the rate currently in effect in the system."

Section 2. Section 19-2-303, MCA, is amended to read:

"19-2-303. Definitions. Unless the context requires otherwise, for each of the retirement systems subject to this chapter, the following definitions apply:

(1) "Accumulated contributions" means the sum of all the regular and any additional contributions made by a member in a defined benefit plan, together with the regular interest on the contributions.

(2) "Active member" means a member who is a paid employee of an employer, is making the required contributions, and is properly reported to the board for the most current reporting period.

(3) "Actuarial cost" means the amount determined by the board in a uniform and nondiscriminatory manner to represent the present value of the benefits to be derived from the additional service to be credited based on the most recent actuarial valuation for the system and the age, years until retirement, and current salary of the member.

(4) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of the mortality table and interest rate assumptions adopted by the board.

(5) "Actuarial liabilities" means the excess of the present value of all benefits payable under a defined benefit retirement plan over the present value of future normal costs in that retirement plan.

(6) "Actuary" means the actuary retained by the board in accordance with 19-2-405.

(7) "Additional contributions" means contributions made by a member of a defined benefit plan to purchase various types of optional service credit as allowed by the applicable retirement plan.

(8) "Annuity" means:

(a) in the case of a defined benefit plan, equal and fixed payments for life that are the actuarial equivalent of a lump-sum payment under a retirement plan and as such are not benefits paid by a retirement plan and are not subject to periodic or one-time increases; or

(b) in the case of the defined contribution plan, a payment of a fixed sum of money at regular intervals.

(9) "Benefit" means:

(a) the service retirement benefit, early retirement benefit, or disability retirement or survivorship benefit payment provided by a defined benefit retirement plan; or

(b) a payment or distribution under the defined contribution retirement plan, including a disability payment under 19-3-2141, for the exclusive benefit of a plan member or the member's beneficiary or an annuity purchased under 19-3-2124.

(10) "Board" means the public employees' retirement board provided for in 2-15-1009.

(11) "Contingent annuitant" means a person designated to receive a continuing monthly benefit after the death of a retired member.

(12) "Covered employment" means employment in a covered position.

(13) "Covered position" means a position in which the employee must be a member of the retirement system except as otherwise provided by law.

(14) "Defined benefit retirement plan" or "defined benefit plan" means a plan within the retirement systems provided for pursuant to 19-2-302 that is not the defined contribution retirement plan.

(15) "Defined contribution retirement plan" or "defined contribution plan" means the plan within the public employees' retirement system established in 19-3-103 that is provided for in chapter 3, part 21, of this title and that is not a defined benefit plan.

(16) "Department" means the department of administration.

(17) "Designated beneficiary" means the person designated by a member or payment recipient to receive any survivorship benefits, lump-sum payments, or benefit from a retirement account upon the death of the member or payment recipient, including annuities derived from the benefits or payments.

(18) "Direct rollover" means a payment by the plan to the eligible retirement plan specified by the distributee.

~~(18)~~*(19)* "Disability" or "disabled" means a total inability of the member to perform the member's duties by reason of physical or mental incapacity. The disability must be incurred while the member is an active member and must be one of permanent duration or of extended and uncertain duration, as determined by the board on the basis of competent medical opinion.

(20) "Distributee" means:

(a) a member;

(b) a member's surviving spouse;

(c) a member's spouse or former spouse who is the alternate payee under a family law order as defined in 19-2-907; or

(d) effective January 1, 2007, a member's nonspouse beneficiary who is a designated beneficiary as defined by section 401(a)(9)(E) of the Internal Revenue Code, 26 U.S.C. 401(a)(9)(E).

~~(19)~~*(21)* "Early retirement benefit" means the retirement benefit payable to a member following early retirement and is the actuarial equivalent of the accrued portion of the member's service retirement benefit.

(22) "Eligible retirement plan" means any of the following that accepts the distributee's eligible rollover distribution:

(a) an individual retirement account described in section 408(a) of the Internal Revenue Code, 26 U.S.C. 408(a);

(b) an individual retirement annuity described in section 408(b) of the Internal Revenue Code, 26 U.S.C. 408(b);

(c) an annuity plan described in section 403(a) of the Internal Revenue Code, 26 U.S.C. 403(a);

(d) a qualified trust described in section 401(a) of the Internal Revenue Code, 26 U.S.C. 401(a);

(e) effective January 1, 2002, an annuity contract described in section 403(b) of the Internal Revenue Code, 26 U.S.C. 403(b);

(f) effective January 1, 2002, a plan eligible under section 457(b) of the Internal Revenue Code, 26 U.S.C. 457(b), that is maintained by a state, a political subdivision of a state, or any agency or instrumentality of a state or a political subdivision of a state that agrees to separately account for amounts transferred into that plan from a plan under this title; or

(g) effective January 1, 2008, a Roth IRA described in section 408A of the Internal Revenue Code, 26 U.S.C. 408A.

(23) "Eligible rollover distribution":

(a) means any distribution of all or any portion of the balance from a retirement plan to the credit of the distributee, as provided in [section 9];

(b) effective January 1, 2002, includes a distribution to a surviving spouse or to a spouse or former spouse who is an alternate payee under a domestic relations order, as defined in section 414(p) of the Internal Revenue Code, 26 U.S.C. 414(p).

~~(20)~~*(24)* "Employee" means a person who is employed by an employer in any capacity and whose salary is being paid by the employer or a person for whom an interlocal governmental entity is responsible for paying retirement contributions pursuant to 7-11-105.

~~(21)~~*(25)* "Employer" means a governmental agency participating in a retirement system enumerated in 19-2-302 on behalf of its eligible employees. The term includes an interlocal governmental entity identified as responsible for paying retirement contributions pursuant to 7-11-105.

~~(22)~~*(26)* "Essential elements of the position" means fundamental job duties. An element may be considered essential because of but not limited to the following factors:

(a) the position exists to perform the element;

(b) there are a limited number of employees to perform the element; or

(c) the element is highly specialized.

~~(23)~~*(27)* "Fiscal year" means a plan year, which is any year commencing with July 1 and ending the following June 30.

~~(24)~~*(28)* "Inactive member" means a member who terminates service and does not retire or take a refund of the member's accumulated contributions.

~~(25)~~*(29)* "Internal Revenue Code" has the meaning provided in 15-30-101.

~~(26)~~*(30)* "Member" means either:

(a) a person with accumulated contributions and service credited with a defined benefit retirement plan or receiving a retirement benefit on account of the person's previous service credited in a retirement system; or

(b) a person with a retirement account in the defined contribution plan.

~~(27)~~*(31)* "Membership service" means the periods of service that are used to determine eligibility for retirement or other benefits.

~~(28)~~*(32)* (a) "Normal cost" or "future normal cost" means an amount calculated under an actuarial cost method required to fund accruing benefits for members of a defined benefit retirement plan during any year in the future.

(b) Normal cost does not include any portion of the supplemental costs of a retirement plan.

~~(29)~~*(33)* "Normal retirement age" means the age at which a member is eligible to immediately receive a retirement benefit based on the member's age, length of service, or both, as specified under the member's retirement system, without disability and without an actuarial or similar reduction in the benefit.

~~(30)~~*(34)* "Pension" means benefit payments for life derived from contributions to a retirement plan made from state- or employer-controlled funds.

~~(31)~~*(35)* "Pension trust fund" means a fund established to hold the contributions, income, and assets of a retirement system or plan in public trust.

~~(32)~~*(36)* "Plan choice rate" means the amount of the employer contribution as a percentage of payroll covered by the defined contribution plan members that is allocated to the public employees' retirement system's defined benefit plan pursuant to 19-3-2117 and that is adjusted by the board pursuant to 19-3-2121 to actuarially fund the unfunded liabilities and the normal cost rate changes in a defined benefit plan resulting from member selection of the defined contribution plan.

~~(33)~~*(37)* "Regular contributions" means contributions required from members under a retirement plan.

~~(34)~~*(38)* "Regular interest" means interest at rates set from time to time by the board.

~~(35)~~*(39)* "Retirement" or "retired" means the status of a member who has:

(a) terminated from service; and

(b) received and accepted a retirement benefit from a retirement plan.

~~(36)~~*(40)* "Retirement account" means an individual account within the defined contribution retirement plan for the deposit of employer and member contributions and other assets for the exclusive benefit of a member of the defined contribution plan or the member's beneficiary.

~~(37)~~*(41)* "Retirement benefit" means:

(a) in the case of a defined benefit plan, the periodic benefit payable as a result of service retirement, early retirement, or disability retirement under a defined benefit plan of a retirement system. With respect to a defined benefit plan, the term does not mean an annuity.

(b) in the case of the defined contribution plan, a benefit as defined in subsection (9)(b).

~~(38)~~*(42)* "Retirement plan" or "plan" means either a defined benefit plan or a defined contribution plan under one of the public employee retirement systems enumerated in 19-2-302.

~~(39)~~*(43)* "Retirement system" or "system" means one of the public employee retirement systems enumerated in 19-2-302.

~~(40)~~*(44)* "Service" means employment of an employee in a position covered by a retirement system.

~~(41)~~*(45)* "Service credit" means the periods of time for which the required contributions have been made to a retirement plan and that are used to calculate retirement benefits or survivorship benefits under a defined benefit retirement plan.

~~(42)~~*(46)* "Service retirement benefit" means the retirement benefit that the member may receive at normal retirement age.

~~(43)~~*(47)* "Statutory beneficiary" means the surviving spouse or dependent child or children of a member of the highway patrol officers', municipal police officers', or firefighters' unified retirement system who are statutorily designated to receive benefits upon the death of the member.

~~(44)~~*(48)* "Supplemental cost" means an element of the total actuarial cost of a defined benefit retirement plan arising from benefits payable for service performed prior to the inception of the retirement plan or prior to the date of contribution rate increases, changes in actuarial assumptions, actuarial losses, or failure to fund or otherwise recognize normal cost accruals or interest on supplemental costs. These costs are included in the unfunded actuarial liabilities of the retirement plan.

~~(45)~~*(49)* "Survivorship benefit" means payments for life to the statutory or designated beneficiary of a deceased member who died while in service under a defined benefit retirement plan.

~~(46)~~*(50)* "Termination of employment", "termination from employment", "terminated employment", "terminated from employment", "terminate employment", or "terminates employment" means that:

(a) there has been a complete severance of a covered employment relationship by the positive act of either the employee, the employer, or both; and

(b) the member is no longer receiving compensation for covered employment, other than any outstanding lump-sum payment for compensatory leave, sick leave, or annual leave.

~~(47)~~*(51)* "Termination of service", "termination from service", "terminated from service", "terminated service", "terminating service", or "terminates service" means that:

(a) there has been a complete severance of a covered employment relationship by the positive act of either the employee, the employer, or both for at least 30 days;

(b) the member is no longer receiving compensation for covered employment; and

(c) the member has been paid all compensation for compensatory leave, sick leave, or annual leave to which the member was entitled. For the purposes of this subsection ~~(47)~~ *(51)*, compensation does not mean compensation as a result of a legal action, court order, or settlement to which the board was not a party.

~~(48)~~*(52)* "Unfunded actuarial liabilities" or "unfunded liabilities" means the excess of a defined benefit retirement plan's actuarial liabilities at any given point in time over the value of its cash and investments on that same date.

~~(49)~~*(53)* "Vested account" means an individual account within a defined contribution plan that is for the exclusive benefit of a member or the member's beneficiary. A vested account includes all contributions and the income on all contributions in each of the following accounts:

(a) the member's contribution account;

(b) the vested portion of the employer's contribution account; and

(c) the member's account for other contributions.

~~(50)~~*(54)* "Vested member" or "vested" means:

(a) with respect to a defined benefit plan, a member or the status of a member who has at least 5 years of membership service; or

(b) with respect to the defined contribution plan, a member or the status of a member who meets the minimum membership service requirement of 19-3-2116.

~~(51)~~*(55)* "Written application" or "written election" means a written instrument, prescribed by the board or required by law, properly signed and filed with the board, that contains all required information, including documentation that the board considers necessary."

Section 3. Section 19-2-602, MCA, is amended to read:

"19-2-602. Refund of member's contributions on termination of service. (1) Except as provided in this section, any member who has terminated service, other than by death or retirement, must be paid the member's accumulated contributions upon the filing of a written application by the member and board approval. Prior to termination of service, a member may not receive a refund of any portion of the member's accumulated contributions.

(2) A nonvested member who has terminated service with accumulated contributions of less than $200 must be paid the accumulated contributions in a lump sum as soon as administratively feasible without a written application being filed by the member.

(3) A nonvested member who has terminated service with accumulated contributions of $200 to $1,000 must be paid the accumulated contributions in a

lump sum as soon as administratively feasible~~,~~ unless a written application is filed pursuant to subsection (4).

(4) Upon the filing of a written application by an alternate payee eligible to receive a single distribution of $200 or more under 19-2-907 or 19-2-909 or by a member who is terminating service and is eligible to receive a refund of $200 or more of accumulated contributions, the board shall make a direct rollover distribution ~~as~~ *of any eligible rollover distribution* allowed under *section 401(a)(31) of the* Internal Revenue Code*, 26 U.S.C. 401(a)(31)* ~~section 401(a)(31)~~. The direct rollover distribution must be paid directly to an eligible retirement plan allowed under applicable federal law ~~or to~~. *As of January 1, 2008, an eligible retirement plan includes* a Roth IRA, provided for under 26 U.S.C. 408A. The applicant is responsible for designating an eligible retirement plan on forms provided by the board. The portion of the account *that is* not *an* eligible ~~for direct~~ rollover distribution must be paid directly to the recipient."

Section 4. Section 19-2-902, MCA, is amended to read:

"19-2-902. Payment of benefits. (1) A retirement benefit or survivorship benefit granted under a retirement system subject to this chapter, other than a benefit under the defined contribution plan, must be payable in monthly installments, except as provided in this part.

(2) *(a)* If ~~the total actuarial present value of a benefit payable to~~ a member or beneficiary ~~is equal to or less than $5,000~~ *elects*, the board shall pay the present value of the benefit to the member or beneficiary in a single lump sum ~~unless the member or beneficiary chooses to receive a monthly benefit~~.

(b) The lump sum must be paid at the time the initial monthly benefit would otherwise be payable.

(c) An election to receive a ~~monthly benefit~~ *single lump sum* must be made at least 30 days prior to the first payment date.

(3) If a benefit recipient dies before the last day of the month, a ~~smaller~~ pro rata amount otherwise payable to the payment recipient must be paid to the designated beneficiary, statutory beneficiary, or contingent annuitant or to the benefit recipient's estate, as appropriate."

Section 5. Section 19-2-907, MCA, is amended to read:

"19-2-907. Alternate payees — family law orders — rulemaking. (1) A participant in a retirement system may have the participant's rights modified or recognized by a family law order.

(2) For purposes of this section:

(a) "family law order" means a judgment, decree, or order of a court of competent jurisdiction under Title 40 concerning child support, parental support, spousal maintenance, or marital property rights that includes a transfer of all or a portion of a participant's payment rights in a retirement system to an alternate payee in compliance with this section *and with section 414(p) of the Internal Revenue Code, 26 U.S.C. 414(p)*; and

(b) "participant" means an identified person who is a member or an actual or potential beneficiary, survivor, or contingent annuitant of a retirement system or plan designated pursuant to Title 19, chapter 3, 5, 6, 7, 8, 9, 13, or 17.

(3) A family law order must identify a participant and an alternate payee by full name, current address, date of birth, and social security number. An alternate payee's rights and interests granted in compliance with this section are not subject to assignment, execution, garnishment, attachment, or other

process. An alternate payee's rights or interests may be modified only by a family law order amending the family law order that established the right or interest.

(4) ~~A~~ *Except as provided in subsection (6)(a), a* family law order may not require:

(a) a type or form of benefit, option, or payment not available to the affected participant under the appropriate retirement system or plan; or

(b) an amount or duration of payment greater than that available to a participant under the appropriate retirement system or plan.

(5) With respect to a defined benefit plan, a family law order may provide for payment to an alternate payee only as follows:

(a) Retirement benefit payments or refunds may be apportioned by directing payment of either a percentage of the amount payable or a fixed amount of no more than the amount payable to the participant. Payments to an alternate payee may be limited to a specific amount each month if the number of payments is specified.

(b) The maximum amount of disability or survivorship benefits that may be paid to alternate payees is the monthly benefit amount that would have been payable on the date of termination of service if the member had retired without disability or death. The maximum amount paid may be zero, depending on the member's age and service credit at the time of disability or death. Conversion of a disability retirement to a service retirement pursuant to 19-2-406(4), 19-3-1015(2), 19-6-612(2), or 19-8-712(2) does not increase the maximum monthly amount that may be paid to an alternate payee.

(c) Retirement benefit adjustments for which a participant is eligible after retirement may be paid as a percentage only if existing benefit payments are paid as a percentage. The adjustments must be paid as a percentage in the same ratio as existing benefit payments.

(d) The participant may be required to choose a specified form of benefit payment or designate a beneficiary or contingent annuitant if the retirement system or plan allows for that option.

(6) With respect to a defined contribution plan, a family law order may provide for payment to an alternate payee only as follows:

(a) The vested account of the participant may be apportioned by directing payment of either a percentage or a fixed amount. The total amount paid may not exceed the amount in the participant's vested account. The alternate payee may receive the payment only as a direct payment, rollover, or transfer. ~~A new account may be established for an alternate payee, but money in the account~~ *The alternate payee's portion* must be totally disbursed to the alternate payee as soon as *administratively* feasible upon the ~~participant's termination of service or death~~ *board's approval of the family law order*.

(b) If the participant is receiving periodic payments or an annuity provided under the plan, those payments may be apportioned as a percentage of the amount payable to the participant. Payments to the alternate payee may be limited to a specific amount each month if the number of payments is specified. Payments may not total more than the amount payable to the payee.

(7) The duration of monthly payments paid from a defined benefit or defined contribution plan participant to an alternate payee may not exceed the lifetime of the appropriate participant. The duration of the monthly payments may be further limited only to a specified maximum time, the life of the alternate payee,

or the life of another specified participant. The alternate payee's rights and interests survive the alternate payee's death and may be transferred by inheritance.

(8) The board may assess a participant or an alternate payee for all costs of reviewing and administering a family law order, including reasonable attorney fees. The board may adopt rules to implement this section.

(9) Each family law order establishing a final obligation concerning payments by the retirement system must contain a statement that the order is subject to review and approval by the board.

(10) The board shall adopt rules to provide for the administration of family law orders."

Section 6. Section 19-2-1001, MCA, is amended to read:

"19-2-1001. Maximum contribution and benefit limitations. (1) *(a)* Employee contributions paid to and retirement benefits paid from a retirement system or plan may not exceed the annual limits on contributions and benefits, respectively, allowed by section 415 of the Internal Revenue Code*, 26 U.S.C. 415*.

(b) For purposes of determining whether the annual limitations in subsection (1)(a) are met:

(i) all defined benefit plans of the employer, whether or not terminated, must be treated as a single defined benefit plan;

(ii) all defined contribution plans of the employer, whether terminated or not, must be treated as a single defined contribution plan;

(iii) retirement systems and plans established under Title 19 must be prioritized for disqualification purposes above any plans not established under Title 19; and

(iv) retirement systems and plans established under Title 19 that must be aggregated for purposes of the limits in section 415 of the Internal Revenue Code, 26 U.S.C. 415, must be prioritized for qualification purposes based on the system or plan providing the member with the highest benefit.

(2) A member may not receive an annual benefit that exceeds the dollar amount specified in section 415(b)(1)(A) of the Internal Revenue Code, *26 U.S.C. 415(b)(1)(A),* subject to the applicable adjustments in section ~~415(b)~~ *415(d)* of the Internal Revenue Code*, 26 U.S.C. 415(d).*

(3) Notwithstanding any other provision of law to the contrary, the board may modify a request by a member to make a contribution to a retirement system or plan if the amount of the contribution would exceed the limits provided in section 415 of the Internal Revenue Code, by using the following methods:

(a) If the law requires a lump-sum payment for the purchase of service credit, the board may establish a periodic payment plan for the member to avoid a contribution in excess of the limits under section 415(c) or 415(n) of the Internal Revenue Code*, 26 U.S.C. 415(c) or 415(n).*

(b) If payment pursuant to subsection (3)(a) will not avoid a contribution in excess of the limits imposed by section 415(c) of the Internal Revenue Code, *26 U.S.C. 415(c),* the board shall either reduce the member's contribution to an amount within the limits of that section or refuse the member's contribution.

(4) (a) Effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, if a member makes one or more

contributions to purchase permissive service credit under a retirement system or plan to which this section applies, then the requirements of this section will be treated as met only if:

(i) except as provided in subsection (4)(b), the requirements of section 415(b) of the Internal Revenue Code, 26 U.S.C. 415(b), are met, determined by treating the accrued benefit derived from all the contributions as an annual benefit for purposes of section 415(b) of the Internal Revenue Code, 26 U.S.C. 415(b); or

(ii) except as provided in subsection (4)(c), the requirements of section 415(c) of the Internal Revenue Code, 26 U.S.C. 415(c), are met, determined by treating all the contributions as annual additions for purposes of section 415(c) of the Internal Revenue Code, 26 U.S.C. 415(c).

(b) For purposes of applying subsection (4)(a)(i), the retirement system or plan may not fail to meet the reduced limit under section 415(b)(2)(C) of the Internal Revenue Code, 26 U.S.C. 415(b)(2)(C), solely by reason of subsection (4)(a).

(c) For purposes of applying subsection (4)(a)(ii), the retirement system or plan may not fail to meet the percentage limitation under section 415(c)(1)(B) of the Internal Revenue Code, 26 U.S.C. 415(c)(1)(B) solely by reason of this subsection (4).

(5) For purposes of subsection (4), the term "permissive service credit" means service credit:

(a) specifically recognized by a plan subject to this chapter for purposes of calculating a plan member's benefit under the member's plan;

(b) that the plan member has not received under the plan;

(c) that the plan member may receive only by making a voluntary additional contribution, in an amount determined under the plan, that does not exceed the amount necessary to fund the benefit attributable to the service credit; and

(d) effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, service credit for periods for which there is no performance of service, which, notwithstanding subsection (5)(b), may include service credit purchased in order to provide an increased benefit under the plan.

(6) A retirement system or plan fails to meet the requirements of subsection (4) if:

(a) more than 5 years of nonqualified service credit are taken into account; or

(b) any nonqualified service credit is taken into account before the plan member has at least 5 years of participation under the plan.

(7) For purposes of subsection (6), effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, the term "nonqualified service credit" means permissive service credit other than that allowed with respect to:

(a) service, including parental, medical, sabbatical, and similar leave, as an employee of the government of the United States, any state or political subdivision of a state, or any agency or instrumentality of a state or of a political subdivision of a state, other than military service or service for credit that was obtained as a result of a repayment of a refund as described in section 415(k)(3) of the Internal Revenue Code, 26 U.S.C. 415(k)(3);

(b) service, including parental, medical, sabbatical, and similar leave, as an employee, other than an employee described in subsection (7)(a), of an education

organization described in section 170(b)(1)(A)(ii) of the Internal Revenue Code, 26 U.S.C. 170(b)(1)(A)(ii), that is a public, private, or sectarian school that provides elementary or secondary education through grade 12 or a comparable level of education, as determined under the applicable law of the jurisdiction in which the service was performed;

(c) service as an employee of an association of employees who are described in subsection (7)(a); or

(d) military service, other than qualified military service under section 414(u) of the Internal Revenue Code, 26 U.S.C. 414(u), recognized by the system or plan.

(8) In the case of service described in subsection (7)(a), (7)(b), or (7)(c), service must be nonqualified service if recognition of the service would cause a plan member to receive a retirement benefit for the same service under more than one plan.

(9) In the case of a trustee-to-trustee transfer after December 31, 2001, to which section 403(b)(13)(A) or 457(e)(17)(A) of the Internal Revenue Code, 26 U.S.C. 403(b)(13)(A) or 457 (e)(17)(A), applies, without regard to whether the transfer is made between plans maintained by the same employer:

(a) the limitations in subsection (7) do not apply in determining whether the transfer is for the purchase of permissive service credit; and

(b) the distribution rules applicable to the plan under federal law apply to those amounts and any benefits attributable to those amounts.

(10) (a) For purposes of this subsection (10), an eligible plan member is an individual who became a member of the plan before January 1, 1998.

(b) For an eligible plan member, the limitation in section 415(c)(1) of the Internal Revenue Code, 26 U.S.C. 415(c)(1), may not be applied to reduce the amount of permissive service credit that may be purchased to an amount less than the amount that was allowed to be purchased under the terms of the applicable law in effect on August 5, 1997.

~~(4)~~*(11)* The limitation year for purposes of section 415 of the Internal Revenue Code*, 26 U.S.C. 415,* is the calendar year beginning each January 1 and ending December 31.

~~(5)~~*(12) (a)* "Salary" ~~or any other similar term used~~, for the purposes of determining compliance with section 415 of the Internal Revenue Code*, 26 U.S.C. 415,* ~~includes~~ *and for no other purposes, means compensation as defined in 26 CFR 1.415(c)-1 through 1.415(c)-2(d)(4). However:*

(i) employee contributions picked up under section 414(h)(2) of the Internal Revenue Code, 26 U.S.C. 414(h)(2), are excluded from salary; and

(ii) the amount of an elective deferral, as defined in section 402(g) of the Internal Revenue Code*, 26 U.S.C. 402(g)*, or any other contribution that is contributed or deferred by the employer at the election of the member and that is not includable in the gross income of the member because of ~~sections~~ *section* 125, 403(b), or 457 of the Internal Revenue Code*, 26 U.S.C. 125, 403(b), or 457, is included in the definition*.

(b) For limitation years beginning after December 31, 2000, the term includes any elective amounts that are not includable in the gross income of the member by reason of section 132(f)(4) of the Internal Revenue Code, 26 U.S.C. 132(f)(4).

(c) For limitation years beginning no later than January 1, 2008, the term includes compensation paid by the later of 2.5 months after a member's severance

from employment or the end of the limitation year that includes the date of the member's severance from employment if:

(i) the payment is regular compensation for services during the member's regular working hours or compensation for services outside the member's regular working hours such as overtime or shift differential, commissions, bonuses, or other similar payments and, absent a severance from employment, the payments would have been paid to the member while the member continued in employment with the employer; or

(ii) the payment is for unused accrued bona fide sick, vacation, or other leave that the member would have been able to use if employment had continued.

(d) For limitation years beginning on or after January 1, 2009, the term, as calculated, may not exceed the annual limit under section 401(a)(17) of the Internal Revenue Code, 26 U.S.C. 401(a)(17).

(13) For the purposes of applying the limits on a defined benefit plan member's annual benefit under section 415(b) of the Internal Revenue Code, 26 U.S.C. 415(b), the following apply:

(a) Prior to January 1, 2009, any automatic adjustment under the retirement system or a plan subject to this chapter must be taken into consideration when determining a member's applicable limit.

(b) On or after January 1, 2009, with respect to a member who does not receive a portion of the member's annual benefit in a lump sum:

(i) a member's applicable limit must be applied to the member's annual benefit in the first limitation year without regard to any automatic cost-of-living increases;

(ii) to the extent the member's annual benefit equals or exceeds the applicable limit, the member is no longer eligible for cost-of-living increases until the benefit plus the accumulated increases are less than the limit; and

(iii) in any subsequent limitation year, the member's annual benefit, including any automatic cost-of-living increase applicable, is subject to the applicable benefit limit, including any adjustment to the dollar limit in section 415(b)(1)(A) of the Internal Revenue Code, 26 U.S.C. 415(b)(1)(A), under section 415(d) of the Internal Revenue Code, 26 U.S.C. 415(d) and the implementing regulations.

(c) On or after January 1, 2009, with respect to a member who receives a portion of the member's annual benefit in a lump sum, a member's applicable limit must be applied, taking into consideration automatic cost-of-living increases as required by section 415(b) of the Internal Revenue Code, 26 U.S.C. 415(b), and applicable U.S. treasury regulations.

(d) (i) A member's annual benefit payable under the member's plan in any limitation year may not be greater than the limit applicable at the annuity starting date, as increased in subsequent years pursuant to section 415(d) of the Internal Revenue Code, 26 U.S.C. 415(d), and the implementing regulations.

(ii) If the form of benefit without regard to the automatic benefit increase feature is not a straight life or a qualified joint and survivor annuity, then this subsection (13)(d) is applied by either reducing the limit in section 415(b) of the Internal Revenue Code, 26 U.S.C. 415(b), applicable at the annuity starting date or adjusting the form of benefit to an actuarially equivalent straight life annuity benefit determined using the following assumptions that take into account the death benefits under the form of benefit:

(A) for a benefit paid in a form to which section 417(e)(3) of the Internal Revenue Code, 26 U.S.C. 417(e)(3), does not apply, the actuarially equivalent straight life annuity benefit that is the greater of:

(I) the annual amount of any straight life annuity payable to the member under the member's plan commencing at the same annuity starting date as the form of benefit payable to the member; or

(II) the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the form of benefit payable to the member, computed using a 5% interest assumption, or the applicable statutory interest assumption, and the applicable mortality table described in 26 CFR 1.417(e)-1(d)(2); or

(B) for a benefit paid in a form to which section 417(e)(3) of the Internal Revenue Code, 26 U.S.C. 417(e)(3), applies, the actuarially equivalent straight life annuity benefit that is the greatest of:

(I) the annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using the interest rate and mortality table or tabular factor specified in the plan for actuarial experience;

(II) the annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using a 5.5% interest assumption, or the applicable statutory interest assumption, and the applicable mortality table for the distribution under 26 CFR 1.417(e)-1(d)(2); or

(III) the annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using as the applicable interest rate for the distribution under 26 CFR 1.417(e)-1(d)(3) prior to January 1, 2009, the 30-year treasury rate in effect for the month prior to retirement or, on or after January 1, 2009, the 30-year treasury rate in effect for the first day of the plan year with a 1-year stabilization period and, in either case, the applicable mortality table for the distribution under 26 CFR 1.417(e)-1(d)(2).

(iii) With respect to subsections (13)(d)(ii)(A) and (13)(d)(ii)(B), the board's actuary may reduce the limitation found in section 415(b) of the Internal Revenue Code, 26 U.S.C. 415(b), for testing purposes using the assumptions specified in subsections (13)(d)(ii)(A) and (13)(d)(ii)(B)."

Section 7. Section 19-2-1002, MCA, is amended to read:

"19-2-1002. ~~Vesting of retirement benefits upon termination~~ *Termination* of plan. *(1)* Upon termination of a retirement system or plan, termination of employment of a substantial number of members that would constitute a partial termination of the retirement system or plan, or complete discontinuance of contributions to that retirement system or plan, the retirement benefit accrued to each member directly affected by the occurrence becomes fully vested and nonforfeitable to the extent funded.

(2) A plan member is 100% vested in the member's accumulated contributions at all times.

(3) At any time prior to satisfaction of all liabilities to members and their beneficiaries under the retirement system or plan, any part of a member's accumulated contributions may not be used for or diverted to purposes other than the exclusive benefit of members and their beneficiaries."

Section 8. Section 19-2-1005, MCA, is amended to read:

"19-2-1005. Compensation limit. A retirement system or plan subject to this chapter may not take into account compensation of a member in excess of the amount permitted in ~~Internal Revenue Code~~ section 401(a)(17) *of the Internal Revenue Code, 26 U.S.C. 401(a)(17), as adjusted for cost-of-living increases in accordance with section 401(a)(17)(B) of the Internal Revenue Code, 26 U.S.C. 401(a)(17)(B).*"

Section 9. Limitations on eligible rollover distributions. (1) An eligible rollover distribution may not include:

(a) any distribution that is one of a series of substantially equal periodic payments made at least annually for:

(i) the life or the life expectancy of the distributee;

(ii) the joint lives or joint life expectancies of the distributee and the distributee's designated beneficiary; or

(iii) a specified period of 10 years or more;

(b) any distribution to the extent the distribution is required under section 401(a)(9) of the Internal Revenue Code, 26 U.S.C. 401(a)(9);

(c) the portion of any distribution that is not includable in gross income; or

(d) any other distribution that is reasonably expected to total less than $200 during the year.

(2) Effective January 1, 2002, a portion of a distribution may not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions that are not includable in gross income. However, that portion may be transferred only to:

(a) an individual retirement account or annuity described in section 408(a) or (b) of the Internal Revenue Code, 26 U.S.C. 408(a) or (b);

(b) a qualified defined contribution plan described in section 401(a) of the Internal Revenue Code, 26 U.S.C. 401(a);

(c) a qualified plan described in section 403(a) of the Internal Revenue Code, 26 U.S.C. 403(a);

(d) on or after January 1, 2007, a qualified defined benefit plan described in section 401(a) of the Internal Revenue Code, 26 U.S.C. 401(a); or

(e) an annuity contract described in section 403(b) of the Internal Revenue Code, 26 U.S.C. 403(b), that agrees to separately account for amounts that are transferred and earnings on those amounts, including separately accounting for the portion of the distribution that is includable in gross income and the portion of the distribution that is not includable.

Section 10. Compliance with federal restrictions on interest rate crediting. Interest credited on any refund of accumulated member contributions under a defined benefit plan subject to Title 19, chapter 2, must comply with any applicable provisions of the federal Age Discrimination in Employment Act, Public Law 90-202, and any applicable U.S. treasury regulations establishing market rates of return for purposes of complying with that federal act.

Section 11. Section 19-3-315, MCA, is amended to read:

"19-3-315. Member's contribution to be deducted. (1) Each member's contribution is 6.9% of the member's compensation.

(2) Payment of salaries or wages less the contribution is full and complete discharge and acquittance of all claims and demands for the service rendered by

members during the period covered by the payment, except their claims to the benefits to which they may be entitled under the provisions of this chapter.

(3) Each employer, pursuant to section 414(h)(2) of the federal Internal Revenue Code ~~of 1954, as amended and applicable on July 1, 1985~~, *26 U.S.C. 414(h)(2),* shall pick up and pay the contributions that would be payable by the member under subsection (1) for service rendered after June 30, 1985.

(4) (a) The member's contributions picked up by the employer must be designated for all purposes of the retirement system as the member's contributions, except for the determination of a tax upon a distribution from the retirement system.

(b) In the case of a member of the defined benefit plan, these contributions must become part of the member's accumulated contributions but must be accounted for separately from those previously accumulated.

(c) In the case of a member of the defined contribution plan, these contributions must be allocated as provided in 19-3-2117.

(5) The member's contributions picked up by the employer must be payable from the same source as is used to pay compensation to the member and must be included in the member's wages, as defined in 19-1-102, and compensation. The employer shall deduct from the member's compensation an amount equal to the amount of the member's contributions picked up by the employer and remit the total of the contributions to the board."

Section 12. Section 19-3-412, MCA, is amended to read:

"19-3-412. Optional membership. (1) Except as provided in 5-2-304 and subsection (2) of this section, the following employees and elected officials in covered positions shall elect either to become active members of the retirement system or to decline this optional membership by filing an irrevocable, written application with the board in the manner prescribed in subsection (3):

(a) elected officials of the state or local governments, including individuals appointed to fill the unexpired term of elected officials, who:

(i) are paid on a salary or wage basis rather than on a per diem or other reimbursement basis; or

(ii) were members receiving retirement benefits under the defined benefit plan or a distribution under the defined contribution plan at the time of their election;

(b) employees serving in employment that does not cumulatively exceed a total of 960 hours of covered employment with all employers under this chapter in any fiscal year;

(c) employees directly appointed by the governor;

(d) employees working 10 months or less for the legislative branch to perform work related to the legislative session;

(e) the chief administrative officer of any city or county;

(f) employees of county hospitals or rest homes.

(2) A member who is elected to a local government position in which the member works less than 960 hours in a calendar year may, within ~~180~~ *90* days of being elected, decline optional membership with respect to the member's elected position.

(3) (a) The board shall prescribe the form of the written application required pursuant to subsection (1) and provide written application forms to each employer.

(b) Each employee or elected official in a position covered under subsection (1) shall obtain the written application form from the employer and complete and return it to the board.

(c) The written application must be filed with the board:

(i) for an employee described in subsection (1)(d), within ~~300~~ *90* days of the commencement of the employee's employment; and

(ii) for an employee or elected official described in subsection (1)(a), (1)(b), (1)(c), (1)(e), or (1)(f), within ~~180~~ *90* days of the commencement of the employee's or elected official's employment.

(d) The employer shall retain a copy of the employee's or elected official's written application.

(4) If the employee or elected official fails to file the written application required under subsection (1) with the board within the time allowed in subsection (3), the employee or elected official waives membership.

(5) An employee or elected official who declines optional membership may not receive membership service or service credit for the employment for which membership was declined.

(6) An employee or elected official who declined optional membership but later becomes a member may purchase service credit for the period of time beginning with the date of employment in which membership was declined to the commencement of membership. Purchase of service credit pursuant to this subsection must comply with 19-3-505.

(7) Except as provided in subsection (2), membership in the retirement system is not optional for an employee or elected official who is already a member. Upon employment in a position for which membership is optional:

(a) a member who was an active member before the employment remains an active member;

(b) a member who was an inactive member before the employment becomes an active member; and

(c) a member who was a retired member before the employment is subject to part 11 of this chapter.

(8) (a) An employee ~~or elected official~~ who declines membership for a position for which membership is optional may not later become a member while still employed *with the same employer but* in ~~that~~ *a different optional membership* position.

(b) An elected official who declines membership for a position for which membership is optional may not later become a member if reelected to the same optional membership position.

~~(b)~~*(c)* If, after a break in service of 30 days or more, an employee who was employed in an optional membership position is reemployed in the same position or is employed in a different position for which membership is optional, the employee shall again choose or decline membership.

~~(c)~~*(d)* If the break in service is less than 30 days, an employee who declined membership is bound by the employee's original decision to decline membership.

(9) An employee accepting a position that requires membership must become a member even if the employee previously declined membership and did not have a 30-day break in service."

Section 13. Section 19-3-1501, MCA, is amended to read:

"19-3-1501. Optional forms of benefits — designation of contingent annuitant. (1) The retirement benefit of a member or the survivorship benefit of a designated beneficiary who so elects must be converted, in lieu of all other benefits under this chapter, into an optional retirement benefit that is the actuarial equivalent of the original benefit. An optional retirement benefit is initially payable during the member's or designated beneficiary's lifetime, with a subsequent benefit, depending on the option selected, to a contingent annuitant as follows:

(a) option 2—a continuation of the optional retirement benefit after the death of the initial payee and payable during the lifetime of the named contingent annuitant~~;~~. *This option may be the chosen benefit only if the adjusted age difference between the member or designated beneficiary and the contingent annuitant, other than the member's or designated beneficiary's spouse, is 10 years or less. The adjusted age difference is either:*

(i) the excess of the age of the member or designated beneficiary over the age of the nonspouse contingent annuitant based on their ages on their birthdays in a calendar year; or

(ii) if the member or designated beneficiary is under 70 years of age, the age difference determined in subsection (1)(a)(i) reduced by the number of years that the member or designated beneficiary is under 70 years of age on the member's or beneficiary's birthday in the calendar year that contains the benefit starting date.

(b) option 3—a continuation of one-half of the optional retirement benefit after the death of the initial payee and payable during the lifetime of the named contingent annuitant;

(c) option 4—a continuation of the optional retirement benefit to one or more contingent annuitants in the event of the initial payee's death before the end of a period certain, determined as follows:

(i) the period certain commences at the time that the initial payee first begins receiving the retirement benefit and is available as either:

(A) a 10-year period certain if the member retired at 75 years of age or younger; or

(B) a 20-year period certain if the member retired at 65 years of age or younger;

(ii) if there is more than one surviving contingent annuitant, each contingent annuitant must receive a proportion of the initial payee's benefit on a share-and-share-alike basis.

(2) The member or the designated beneficiary who elects an optional retirement benefit shall file a written application with the board prior to the first payment of the benefit. A contingent annuitant must be identified on the application.

(3) If ~~a benefit recipient or the recipient's~~ *the member or designated beneficiary or the named* contingent annuitant dies before the first payment has been made under option 2 or 3, the election of the option is automatically canceled.

(4) If ~~a~~ *the* member dies after retirement and within 30 days from the date that the member's written application electing or changing an election of an optional retirement benefit is received by the board, then the election is void.

(5) ~~(a) Upon filing a written application with the board, a~~ *A* retired member ~~who is~~ receiving an optional retirement benefit ~~that became effective before October 1, 1999, may designate a different contingent annuitant, select a different option, or convert~~ *pursuant to subsection (1)(a) or (1)(b) may file a written application with the board to have* the member's optional retirement benefit *revert* to ~~a~~ *the* regular retirement benefit *available at the time of the member's retirement* if:

~~(i)~~*(a)* the original contingent annuitant has died~~;~~*, in which case the optional benefit must revert effective on the first day of the month following the contingent annuitant's death;* or

~~(ii)~~*(b)* the member's marriage to the original contingent annuitant has ~~no~~ *not been granted the* right to receive the optional retirement benefit as part of a family law order, as defined in 19-2-907. *The benefit must then revert effective on the first day of the month following receipt of the written application and verification that the family law order does not grant the optional benefit to the original contingent annuitant.*

~~(b) Upon receipt of the written application, the board shall actuarially adjust the member's monthly retirement benefit to reflect the change.~~

~~(6) (a) A retired member receiving an optional retirement benefit pursuant to subsection (1)(a) or (1)(b) that is initially effective on or after October 1, 1999, may file a written application with the board to have the optional retirement benefit revert to the regular retirement benefit available at the time of the member's retirement, designate a different contingent annuitant, or select a different option if:~~

~~(i) the contingent annuitant has died, in which case the optional benefit may revert effective on the first day of the month following the contingent annuitant's death; or~~

~~(ii) the member's marriage to the contingent annuitant is dissolved and the beneficiary has no right to receive the optional retirement benefit as part of a family law order, in which case the benefit must revert effective on the first day of the month following receipt of the written application and verification that the family law order does not grant the optional benefit to the contingent annuitant.~~

~~(b) A regular retirement benefit provided pursuant to this subsection (6) must be increased by the amount of any postretirement adjustments received by the member since the effective date of the member's retirement.~~

(6) A member who applies to revert under subsection (5) shall, at the time of the application, choose one of the following alternatives:

(a) revert to the member's original retirement benefit, increased by the amount of any adjustments received by the member since the effective date of the member's retirement;

(b) retain the same option 2 or option 3 originally selected but name a new contingent annuitant; or

(c) select a different option and name a new contingent annuitant.

(7) If the member selects an alternative under subsection (6)(b) or (6)(c), the member's retirement benefit must be calculated based on the member's and the new contingent annuitant's ages at the time of this election.

~~(7)~~*(8)* A written application pursuant to subsection (5) ~~or (6)~~ must be filed with the board within 18 months of the death of or dissolution of marriage to the contingent annuitant."

Section 14. Section 19-3-2123, MCA, is amended to read:

"19-3-2123. Payout of vested account balances when terminating plan membership. Except as provided in 19-3-2142, any time after termination of service, a member or the member's beneficiary may terminate plan membership by filing a written application with the board and removing the member's vested account balance from the plan through any combination of the following payout options, each of which is subject to applicable regulations of the internal revenue service:

(1) a direct rollover to an eligible retirement plan ~~or to~~*, which includes* an individual retirement account or annuity *and, effective January 1, 2008, a Roth IRA provided for in section 408A of the Internal Revenue Code, 26 U.S.C. 408A,* pursuant to section 401(a)(31) of the Internal Revenue Code*, 26 U.S.C. 401(a)(31)*;

(2) a regular rollover to an eligible retirement plan pursuant to section 402(c) of the Internal Revenue Code*, 26 U.S.C. 402(c)*; or

(3) a lump-sum distribution of the member's vested account balance."

Section 15. Section 19-3-2126, MCA, is amended to read:

"19-3-2126. Refunds — minimum account balance — adjustment by rule. (1) Before termination of service, a member may not receive a refund of any portion of the member's vested account balance.

(2) Except as provided in 19-3-2142, a member who terminates service and whose vested account balance is less than $200 must be paid the vested account balance in a lump sum. If the member's employer contribution account is not vested, the employer contributions and income are forfeited and must be allocated as provided in 19-3-2117. The payment must be made as soon as administratively feasible without a written application from the member.

(3) Except as provided in 19-3-2142, unless a written application is made pursuant to subsection (4)(a), a member who terminates service and whose vested account balance is between $200 and ~~$5,000~~ *$1,000* must be paid the vested account balance in a lump sum. The payment must be made as soon as administratively feasible. If the member's employer contribution account is not vested, the employer contributions and income are forfeited and must be allocated as provided in 19-3-2117.

(4) (a) Except as provided in 19-3-2142, upon the written application of a member terminating service whose vested account balance is $200 or more, the board shall make a direct rollover distribution pursuant to section 401(a)(31) of the Internal Revenue Code*, 26 U.S.C. 401(a)(31),* of the eligible *rollover distribution* portion of that balance. To receive the direct rollover distribution, the member is responsible for correctly designating, on forms provided by the board, an eligible retirement plan that allows the rollover under applicable federal law.

(b) The direct rollover distribution must be paid directly to ~~the~~ *an* eligible retirement plan *allowed under applicable federal law that, effective January 1, 2008, includes a Roth IRA provided for in section 408A of the Internal Revenue Code, 26 U.S.C. 408A.*

(5) A member who terminates service with an account balance greater than ~~$5,000~~ *$1,000*, whether vested or not, may remain in the plan.

(6) The board may by rule adjust the minimum account balance provided in this section as necessary to maintain reasonable administrative costs and to account for inflation *and in accordance with the requirements of section 401(a)(31)(B) of the Internal Revenue Code, 26 U.S.C. 401(a)(31)(B), and applicable regulations*."

Section 16. Section 19-5-701, MCA, is amended to read:

"19-5-701. Optional forms of benefits — designation of contingent annuitant. (1) The retirement benefit of a member or the survivorship benefit of a designated beneficiary who so elects must be converted, in lieu of all other benefits under this chapter, into an optional retirement benefit that is the actuarial equivalent of the original benefit. An optional retirement benefit is initially payable during the member's or designated beneficiary's lifetime, with a subsequent benefit, depending on the option selected, to a contingent annuitant as follows:

(a) option 2—a continuation of the optional retirement benefit after the death of the initial payee and payable during the lifetime of the named contingent annuitant~~:~~. *This option may be the chosen benefit only if the adjusted age difference between the member or designated beneficiary and the contingent annuitant, other than the member's or designated beneficiary's spouse, is 10 years or less. The adjusted age difference is either:*

(i) the excess of the age of the member or designated beneficiary over the age of the nonspouse contingent annuitant based on their ages on their birthdays in a calendar year; or

(ii) if the member or designated beneficiary is under 70 years of age, the age difference determined in subsection (1)(a)(i) reduced by the number of years that the member or designated beneficiary is under 70 years of age on the member's or beneficiary's birthday in the calendar year that contains the benefit starting date.

(b) option 3—a continuation of one-half of the optional retirement benefit after the death of the initial payee and payable during the lifetime of the named contingent annuitant;

(c) option 4—a continuation of the optional retirement benefit to one or more contingent annuitants in the event of the initial payee's death before the end of a period certain, determined as follows:

(i) the period certain commences at the time that the initial payee first begins receiving the retirement benefit and is available as either:

(A) a 10-year period certain if the member retired at 75 years of age or younger; or

(B) a 20-year period certain if the member retired at 65 years of age or younger;

(ii) if there is more than one surviving contingent annuitant, each contingent annuitant must receive a proportion of the initial payee's benefit on a share-and-share-alike basis.

(2) The member or designated beneficiary who elects an optional retirement benefit shall file a written application with the board prior to the first payment of the benefit. A contingent annuitant must be identified on the application.

(3) If ~~a benefit recipient or the recipient's~~ *the member or designated beneficiary or the named* contingent annuitant dies before the first payment has

been made under option 2 or 3, the election of the option is automatically canceled.

(4) If the member dies after retirement and within 30 days from the date that the member's written application electing or changing an election of an optional retirement benefit is received by the board, the election is void.

(5) ~~(a)~~ A retired member receiving an optional retirement benefit pursuant to subsection (1)(a) or (1)(b) ~~that is initially effective on or after October 1, 1999,~~ may file a written application with the board to have the *member's* optional retirement benefit revert to the regular retirement benefit available at the time of the member's retirement if:

~~(i)~~*(a)* the *original* contingent annuitant has died, in which case the optional benefit must revert effective on the first day of the month following the contingent annuitant's death; or

~~(ii)~~*(b)* the member's marriage to the *original* contingent annuitant ~~is~~ *has been* dissolved and the ~~beneficiary~~ *original contingent annuitant* has ~~no~~ *not been granted the* right to receive the optional retirement benefit as part of a family law order, as defined in 19-2-907~~, in which case the~~. *The* benefit must *then* revert effective on the first day of the month following receipt of the written application and verification that the family law order does not grant the optional benefit to the *original* contingent annuitant.

~~(b) A regular retirement benefit provided pursuant to this subsection (5) must be increased by the amount of any postretirement adjustments received by the member since the effective date of the member's retirement.~~

(6) ~~A written application pursuant to subsection (5) must be filed with the board within 18 months of the death of or dissolution of marriage to the contingent annuitant.~~ *A member who applies to revert under subsection (5) shall, at the time of the application, choose one of the following alternatives:*

(a) revert to the member's original retirement benefit, increased by the amount of any adjustments received by the member since the effective date of the member's retirement;

(b) retain the same option 2 or option 3 originally selected but name a new contingent annuitant; or

(c) select a different option and name a new contingent annuitant.

(7) ~~(a) Upon filing a written application with the board, a retired member who is receiving an optional retirement benefit may designate a different contingent annuitant, select a different option, or convert the member's optional retirement benefit to a regular retirement benefit if:~~

~~(i) the original contingent annuitant has died; or~~

~~(ii) the member has been divorced from the original contingent annuitant and the original contingent annuitant has no right to receive the optional retirement benefit as part of a family law order.~~

~~(b) Upon receipt of the written application, the board shall actuarially adjust the member's monthly retirement benefit to reflect the change.~~ *If the member selects an alternative under subsection (6)(b) or (6)(c), the member's retirement benefit must be calculated based on the member's and the new contingent annuitant's ages at the time of this election.*

(8) A written application pursuant to subsection (5) must be filed with the board within 18 months of the death of or dissolution of marriage to the contingent annuitant."

Section 17. Section 19-7-1001, MCA, is amended to read:

"19-7-1001. Optional forms of benefits — designation of contingent annuitant. (1) The retirement benefit of a member or the survivorship benefit of a designated beneficiary who so elects must be converted, in lieu of all other benefits under this chapter, into an optional retirement benefit that is the actuarial equivalent of the original benefit. An optional retirement benefit is initially payable during the member's or designated beneficiary's lifetime with a subsequent benefit, depending on the option selected, to a contingent annuitant, as follows:

(a) option 2—a continuation of the optional retirement benefit after the death of the initial payee and payable during the lifetime of the named contingent annuitant~~;~~. *This option may be the chosen benefit only if the adjusted age difference between the member or designated beneficiary and the contingent annuitant, other than the member's or designated beneficiary's spouse, is 10 years or less. The adjusted age difference is either:*

(i) the excess of the age of the member or designated beneficiary over the age of the nonspouse contingent annuitant based on their ages on their birthdays in a calendar year; or

(ii) if the member or designated beneficiary is under 70 years of age, the age difference determined in subsection (1)(a)(i) reduced by the number of years that the member or designated beneficiary is under 70 years of age on the member's or beneficiary's birthday in the calendar year that contains the benefit starting date.

(b) option 3—a continuation of one-half of the optional retirement benefit after the death of the initial payee and payable during the lifetime of the named contingent annuitant;

(c) option 4—a continuation of the optional retirement benefit to one or more contingent annuitants in the event of the initial payee's death before the end of a period certain, determined as follows:

(i) the period certain commences at the time that the initial payee first begins receiving the retirement benefit and is available as either:

(A) a 10-year period certain if the member retired at 75 years of age or younger; or

(B) a 20-year period certain if the member retired at 65 years of age or younger;

(ii) if there is more than one surviving contingent annuitant, each contingent annuitant must receive a proportion of the initial payee's benefit on a share-and-share-alike basis.

(2) The member or the designated beneficiary who elects an optional retirement benefit shall file a written application with the board prior to the first payment of the benefit. A contingent annuitant must be identified on the application.

(3) If ~~a benefit recipient or the recipient's~~ *the member or designated beneficiary or the named* contingent annuitant dies before the first payment has been made under option 2 or 3, the election of the option is automatically canceled.

(4) If the member dies after retirement and within 30 days from the date that the member's written application electing or changing an election of an optional retirement benefit is received by the board, the election is void.

(5) ~~(a)~~ A retired member receiving an optional retirement benefit pursuant to subsection (1)(a) or (1)(b) ~~that is initially effective on or after October 1, 1999,~~ may file a written application with the board to have the *member's* optional retirement benefit revert to the regular retirement benefit available at the time of the member's retirement if:

~~(i)~~*(a)* the *original* contingent annuitant has died, in which case the optional benefit must revert effective on the first day of the month following the contingent annuitant's death; or

~~(ii)~~*(b)* the member's marriage to the *original* contingent annuitant ~~is~~ *has been* dissolved and the ~~beneficiary~~ *original contingent annuitant* has ~~no~~ *not been granted the* right to receive the optional retirement benefit as part of a family law order, as defined in 19-2-907~~, in which case the~~. *The* benefit must revert effective on the first day of the month following receipt of the written application and verification that the family law order does not grant the optional benefit to the contingent annuitant.

~~(b) A regular retirement benefit provided pursuant to this subsection (5) must be increased by the amount of any postretirement adjustments received by the member since the effective date of the member's retirement.~~

(6) A ~~written application pursuant to subsection (5) must be filed with the board within 18 months of the death of or dissolution of marriage to the contingent annuitant.~~ *member who applies to revert under subsection (5) shall, at the time of the application, choose one of the following alternatives:*

(a) revert to the member's original retirement benefit, increased by the amount of any adjustments received by the member since the effective date of the member's retirement;

(b) retain the same option 2 or option 3 originally selected but name a new contingent annuitant; or

(c) select a different option and name a new contingent annuitant.

(7) ~~(a) Upon filing a written application with the board, a retired member who is receiving an optional retirement benefit may designate a different contingent annuitant, select a different option, or convert the member's optional retirement benefit to a regular retirement benefit if:~~

~~(i) the original contingent annuitant has died; or~~

~~(ii) the member has been divorced from the original contingent annuitant and the original contingent annuitant has no right to receive the optional retirement benefit as part of the a family law order.~~

~~(b) Upon receipt of the written application, the board shall actuarially adjust the member's monthly retirement benefit to reflect the change.~~ *If the member selects an alternative under subsection (6)(b) or (6)(c), the member's retirement benefit must be calculated based on the member's and the new contingent annuitant's ages at the time of the election.*

(8) A written application pursuant to subsection (5) must be filed with the board within 18 months of the death of or dissolution of marriage to the contingent annuitant."

Section 18. Section 19-8-801, MCA, is amended to read:

"19-8-801. Optional forms of benefits — designation of contingent annuitant. (1) The retirement benefit of a member or the survivorship benefit of a designated beneficiary who so elects must *be converted*, in lieu of all other benefits under this chapter, ~~be converted~~ into an optional retirement benefit

that is the actuarial equivalent of the original benefit. An optional retirement benefit is initially payable during the member's or designated beneficiary's lifetime with a subsequent benefit, depending on the option selected, to a contingent annuitant as follows:

(a) option 2—a continuation of the optional retirement benefit after the death of the initial payee and payable during the lifetime of the named contingent annuitant~~;~~. *This option may be the chosen benefit only if the adjusted age difference between the member or designated beneficiary and the contingent annuitant, other than the member's or designated beneficiary's spouse, is 10 years or less. The adjusted age difference is either:*

(i) the excess of the age of the member or designated beneficiary over the age of the nonspouse contingent annuitant based on their ages on their birthdays in a calendar year; or

(ii) if the member or designated beneficiary is under 70 years of age, the age difference determined in subsection (1)(a)(i) reduced by the number of years that the member or designated beneficiary is under 70 years of age on the member's or beneficiary's birthday in the calendar year that contains the benefit starting date.

(b) option 3—a continuation of one-half of the optional retirement benefit after the death of the initial payee and payable during the lifetime of the named contingent annuitant;

(c) option 4—a continuation of the optional retirement benefit to one or more contingent annuitants in the event of the initial payee's death before the end of a period certain, determined as follows:

(i) the period certain commences at the time that the initial payee first begins receiving the retirement benefit and is available as either:

(A) a 10-year period certain if the member retired at 75 years of age or younger; or

(B) a 20-year period certain if the member retired at 65 years of age or younger;

(ii) if there is more than one surviving contingent annuitant, each contingent annuitant must receive a proportion of the initial payee's benefit on a share-and-share-alike basis.

(2) The member or the designated beneficiary who elects an optional retirement benefit shall file a written application with the board prior to the first payment of the benefit. A contingent annuitant must be identified on the application.

(3) If ~~a benefit recipient or the recipient's~~ *the member or designated beneficiary or the named* contingent annuitant dies before the first payment has been made under option 2 or 3, the election of the option is automatically canceled.

(4) If the member dies after retirement and within 30 days from the date that the member's written application electing or changing an election of an optional retirement benefit is received by the board, the election is void.

(5) ~~(a)~~ A retired member receiving an optional retirement benefit pursuant to subsection (1)(a) or (1)(b) ~~that is initially effective on or after October 1, 1999,~~ may file a written application with the board to have the *member's* optional retirement benefit revert to the regular retirement benefit available at the time of the member's retirement if:

~~(i)~~*(a)* the *original* contingent annuitant has died, in which case the optional benefit must revert effective on the first day of the month following the contingent annuitant's death; or

~~(ii)~~*(b)* the member's marriage to the *original* contingent annuitant ~~is~~ *has been* dissolved and the ~~beneficiary~~ *original contingent annuitant* has ~~no~~ *not been granted the* right to receive the optional retirement benefit as part of a family law order, as defined in 19-2-907~~, in which case the~~. *The* benefit must *then* revert effective on the first day of the month following receipt of the written application and verification that the family law order does not grant the optional benefit to the *original* contingent annuitant.

~~(b) A regular retirement benefit provided pursuant to this subsection (5) must be increased by the amount of any postretirement adjustments received by the member since the effective date of the member's retirement.~~

(6) ~~A written application pursuant to subsection (5) must be filed with the board within 18 months of the death of or dissolution of marriage to the contingent annuitant.~~ *A member who applies to revert under subsection (5) shall, at the time of the application, choose one of the following alternatives:*

(a) revert to the member's original retirement benefit, increased by the amount of any adjustments received by the member since the effective date of the member's retirement;

(b) retain the same option 2 or option 3 originally selected but name a new contingent annuitant; or

(c) select a different option and name a new contingent annuitant.

(7) ~~(a) Upon filing a written application with the board, a retired member who is receiving an optional retirement benefit may designate a different contingent annuitant, select a different option, or convert the member's optional retirement benefit to a regular retirement benefit if:~~

~~(i) the original contingent annuitant has died; or~~

~~(ii) the member has been divorced from the original contingent annuitant and the original contingent annuitant has not been granted the right to receive the optional retirement benefit as part of a family law order.~~

~~(b) Upon receipt of the written application, the board shall actuarially adjust the member's monthly retirement benefit to reflect the change.~~ *If the member selects an alternative under subsection (6)(b) or (6)(c), the member's retirement benefit must be calculated based on the member's and the new contingent annuitant's ages at the time of the election.*

(8) A written application pursuant to subsection (5) must be filed with the board within 18 months of the death of or dissolution of marriage to the contingent annuitant."

Section 19. Section 19-9-301, MCA, is amended to read:

"19-9-301. Active membership — inactive vested member — inactive nonvested member. (1) A police officer becomes an active member of the retirement system:

(a) on the date the police officer's service with an employer commences;

(b) on July 1, 1977, if the police officer is employed by an employer on that date; or

(c) in the case of an employer that elects to join the retirement system, as provided in 19-9-207, on the effective date of the election if the police officer is

employed by the employer on that date. A person who is a member of the public employees' retirement system on the date of the employer's election may remain in the public employees' retirement system or may elect to become a member of the municipal police officers' retirement system by filing ~~a~~ *an irrevocable* written election with the board no later than ~~30~~ *90* days after the date of the employer's election.

(2) Upon becoming eligible for membership, the police officer shall complete the forms and furnish the proof required by the board.

(3) A member becomes an inactive member on the first day of an approved absence from service of a substantial duration.

(4) (a) An inactive member with at least 5 years of membership service is an inactive vested member and retains the right to purchase service credit and to receive a retirement benefit under the provisions of this chapter.

(b) If an inactive vested member chooses to take a lump-sum payment rather than a retirement benefit, the lump-sum payment consists of only the member's accumulated contributions and not the employer contributions.

(5) (a) An inactive member with less than 5 years of membership service is an inactive nonvested member and is not eligible for any benefits from the retirement system.

(b) An inactive nonvested member is eligible only for a refund of the member's accumulated contributions."

Section 20. Section 19-9-1206, MCA, is amended to read:

"19-9-1206. Survivorship benefits. (1) If a participant dies prior to the receipt of the DROP benefit pursuant to 19-9-1208, the participant's surviving spouse or dependent child is entitled to receive a lump-sum payment equal to the participant's DROP benefit and the member's accumulated contributions minus any benefits paid from the member's DROP account, including monthly DROP accruals.

(2) If there is no surviving spouse or dependent child, the designated beneficiary is entitled to receive a lump-sum payment equal to the participant's DROP benefit.

(3) The benefit paid pursuant to this section must include interest *credited to the participant's account as follows:*

(a) through June 30, 2009, interest must be credited every fiscal yearend at a rate reflecting the retirement system's annual investment earnings ~~from the date the member's DROP period commenced~~ *for the applicable fiscal year;*

(b) after June 30, 2009, interest must be credited every fiscal yearend at the actuarially assumed rate of return. Proportionate interest must be credited for distributions taking place at other than a fiscal yearend."

Section 21. Section 19-9-1208, MCA, is amended to read:

"19-9-1208. Distribution of DROP benefit. (1) Upon termination of service, a participant is entitled to:

(a) receive a lump-sum distribution of the participant's DROP benefit;

(b) roll the participant's DROP benefit into another eligible retirement plan in a manner prescribed and authorized by the board; or

(c) any other distribution or method of payment of the DROP benefit approved by the board.

(2) A distribution pursuant to this section is subject to the provisions of 19-2-907 and 19-2-909 and all other applicable provisions of Title 19 and the Internal Revenue Code.

(3) The amount of a distribution, rollover, transfer, or other payment of a DROP benefit pursuant to this section must include interest *credited to the participant's account as follows:*

(a) through June 30, 2009, interest must be credited every fiscal yearend at the rate reflecting the retirement system's annual investment earnings ~~from the date the member's DROP period commenced~~ *for the applicable fiscal year;*

(b) after June 30, 2009, interest must be credited every fiscal yearend at the actuarially assumed rate of return. Proportionate interest must be credited for distributions taking place at other than a fiscal yearend."

Section 22. Section 19-13-210, MCA, is amended to read:

"19-13-210. Participation in retirement system. (1) Cities of the first and second class that employ full-paid firefighters shall participate in the retirement system. If a city of the first or second class is reduced to a city of the third class or a town under 7-1-4118, it shall continue to participate in the retirement system as long as it has retired firefighters or survivors eligible to receive retirement benefits.

(2) Firefighters hired by the Montana air national guard on or after October 1, 2001, or on or after the date of the execution of an agreement between the department of military affairs and the board, whichever is later, shall participate in the retirement system.

(3) (a) A city that is not covered under subsection (1) and that has full-paid firefighters covered by the public employees' retirement system and any rural fire district department with full-paid firefighters covered by the public employees' retirement system may elect to be covered under the retirement system as provided in 19-13-211.

(b) An election by a city fire department ~~or a rural fire department~~ to be covered by the retirement system must be made through adoption of ~~a resolution~~ *an ordinance* stating that the governing body of the city ~~or the fire district~~ agrees to be bound by the provisions of the retirement system.

(c) A similar election may be made by a rural fire district through adoption of a resolution stating that the governing body of the fire district agrees to be bound by the provisions of the retirement system.

(d) The *ordinance or* resolution must specify the effective date of the ~~department's~~ election. The provisions of the retirement system become applicable on the effective date specified in the adopted *ordinance or* resolution. A certified copy of the *ordinance or* resolution must be provided to the board.

(4) The following are the terms and conditions of an election ~~by a fire department~~ to join the retirement system pursuant to subsection (3):

(a) Each firefighter employed by the fire department before the effective date of the ~~department's~~ election must be given ~~180~~ *90* days from the effective date of the ~~department's~~ election to make an individual, one-time, irrevocable election to remain in the public employees' retirement system or to join the retirement system. Failure to make an election under this subsection (4)(a) must be considered an election to remain in the public employees' retirement system.

(b) Each firefighter employed by the fire department who is hired on or after the effective date of the ~~department's~~ election must be covered by the retirement system.

(c) A firefighter electing to join the retirement system may retain prior service in the public employees' retirement system or ~~qualify~~ *purchase* the prior service ~~in~~ *and transfer that prior service to* the retirement system as provided for in 19-2-715."

Section 23. Section 19-13-301, MCA, is amended to read:

"19-13-301. Active membership — inactive vested member — inactive nonvested member. (1) Except as provided in subsection (7), a full-paid firefighter becomes an active member of the retirement system:

(a) on the first day of the firefighter's service with an employer;

(b) on July 1, 1981, if the firefighter is employed by an employer on that date; or

(c) in the case of an employer who elects to join the retirement system, as provided in 19-13-211, on the effective date of the election if the firefighter is employed by the employer on that date.

(2) Upon becoming eligible for membership, the firefighter shall complete the forms and furnish any proof required by the board.

(3) A part-paid firefighter may elect to become a member of the retirement system by filing ~~a membership application~~ *an irrevocable written election* with the board within ~~6 months~~ *90 days* of becoming a part-paid firefighter.

(4) An active member becomes an inactive member upon the occurrence of the earliest of the following:

(a) the date on which the member ceases service with an employer;

(b) the 31st day of an approved absence from active duty with an employer; or

(c) the date on which the member ceases to be employed because of a reduction of the number of firefighters in the fire department as provided in 7-33-4125.

(5) (a) An inactive member with at least 5 years of membership service is an inactive vested member and retains the right to purchase service credit and to receive a retirement benefit under the provisions of this chapter.

(b) If an inactive vested member chooses to take a lump-sum payment rather than a retirement benefit, the lump-sum payment consists of only the member's accumulated contributions and not the employer's contributions.

(6) (a) An inactive member with less than 5 years of membership service is an inactive nonvested member and is not eligible for any benefits from the retirement system.

(b) An inactive nonvested member is eligible only for a refund of the member's accumulated contributions.

(7) (a) A firefighter previously employed in a position covered under the public employees' retirement system and who is first hired into a position covered under the firefighters' unified retirement system after attaining 45 years of age may elect to remain in the public employees' retirement system.

(b) A firefighter making an *irrevocable* election to remain in the public employees' retirement system shall make the election in a manner prescribed by

the board within ~~30~~ *90* days of being hired into the position otherwise covered under the firefighters' unified retirement system.

(8) A retired member who is receiving a service retirement benefit or early retirement benefit may return to employment covered by the retirement system for a period not to exceed 480 hours in any calendar year without returning to active service and without any effect to the retiree's retirement benefit."

Section 24. Compliance with federal laws regarding military service. (1) With respect to a member's death occurring on or after January 1, 2007, while the member is performing qualified military service covered under the Heroes Earnings Assistance and Relief Tax Act of 2008, Public Law 110-245, and to the extent required by section 401(a)(37) of the Internal Revenue Code, 26 U.S.C. 401(a)(37), the designated beneficiaries are entitled to benefits that the system would have provided if the member's death had occurred while in covered employment.

(2) With respect to a member's disability occurring on or after January 1, 2009, while the member is performing qualified military service covered under the Heroes Earnings Assistance and Relief Tax Act of 2008, Public Law 110-245, and to the extent required by section 401(a)(37) of the Internal Revenue Code, 26 U.S.C. 401(a)(37), the member is entitled to any benefits that the system would have provided had the member become disabled while in covered employment.

Section 25. Codification instruction. [Sections 9, 10, and 24] are intended to be codified as an integral part of Title 19, chapter 2, part 10, and the provisions of Title 19, chapter 2, part 10, apply to [sections 9, 10, and 24].

Section 26. Effective date. [This act] is effective July 1, 2009.

Section 27. Retroactive applicability. The following sections apply retroactively, within the meaning of 1-2-109, to the following provisions or events:

(1) The definition of "distributee" in 19-2-303 applies retroactively to January 1, 2007, as provided in that section.

(2) The definition of "eligible retirement plan" in 19-2-303 applies retroactively to January 1, 2002, and January 1, 2008, as provided in that section.

(3) The definition of "eligible rollover distribution" in 19-2-303 applies retroactively to January 1, 2002, as provided in that section.

(4) Section 19-2-602(4) applies retroactively to January 1, 2008, for the determination of an eligible retirement plan as provided in that subsection.

(5) Section 19-2-1001(4)(a) applies retroactively to January 1, 1998, for a permissive service credit contribution as provided in that subsection.

(6) Section 19-2-1001(5)(d) applies retroactively to January 1, 1998, for permissive service credit contributions as provided in that subsection.

(7) Section 19-2-1001(7) applies retroactively to January 1, 1998, for the definition of "nonqualified service credit" as provided in that subsection.

(8) Section 19-2-1001(9) applies retroactively to December 31, 2001, for trustee-to-trustee transfers as provided in that subsection.

(9) Section 19-2-1001(10) applies retroactively to years before January 1, 1998, for a determination as to who is an eligible plan member.

(10) Section 19-2-1001(12) applies retroactively to the definition of "salary" as provided in that subsection.

(11) Section 19-2-1001(13) applies retroactively to January 1, 2001, January 1, 2008, and January 1, 2009, for the limits on a defined benefit plan member's annual benefit as provided in that subsection.

(12) Section 19-3-2123(1) applies retroactively to January 1, 2008, for a determination as to what constitutes an eligible retirement plan as provided in that subsection.

(13) Section 19-3-2126(4)(b) applies retroactively to January 1, 2008, for a determination as to what constitutes an eligible retirement plan as provided in that subsection.

(14) [Section 24] applies retroactively to retirement system member deaths on and after January 1, 2007, and to retirement system member disabilities on and after January 1, 2009.

Approved April 17, 2009

CHAPTER NO. 285

[SB 22]

AN ACT CREATING THE WATER POLICY COMMITTEE; ALLOWING THE WATER POLICY COMMITTEE TO STUDY ANY ISSUE RELATED TO WATER POLICY; MODIFYING THE STATUTORY PROVISIONS REQUIRING THE ENVIRONMENTAL QUALITY COUNCIL TO STUDY WATER POLICY ISSUES; REQUIRING THE WATER POLICY COMMITTEE TO COORDINATE WITH THE ENVIRONMENTAL QUALITY COUNCIL AND ANY OTHER COMMITTEE TO AVOID DUPLICATION OF EFFORTS; AMENDING SECTIONS 5-5-202 AND 85-2-105, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Water policy committee. (1) There is a water policy committee. Except as provided in subsection (2), the committee is treated as an interim committee for the purposes of 5-5-211 through 5-5-214. The committee shall:

(a) determine which water policy issues it examines;

(b) conduct interim studies as assigned pursuant to 5-5-217;

(c) subject to the provisions of 5-5-202(4), coordinate with the environmental quality council and other interim committees to avoid duplication of efforts; and

(d) report its activities, findings, recommendations, and any proposed legislation as provided in 5-11-210.

(2) At least two members of the committee must possess experience in agriculture.

Section 2. Section 5-5-202, MCA, is amended to read:

"5-5-202. Interim committees. (1) During an interim when the legislature is not in session, the committees listed in subsection (2) are the interim committees of the legislature. They are empowered to sit as committees and may act in their respective areas of responsibility. The functions of the legislative council, legislative audit committee, legislative finance committee, environmental quality council, *water policy committee,* and state-tribal relations committee are provided for in the statutes governing those committees.

(2) The following are the interim committees of the legislature:

(a) economic affairs committee;

(b) education and local government committee;

(c) children, families, health, and human services committee;

(d) law and justice committee;

(e) energy and telecommunications committee;

(f) revenue and transportation committee; and

(g) state administration and veterans' affairs committee.

(3) An interim committee or the environmental quality council may refer an issue to another committee that the referring committee determines to be more appropriate for the consideration of the issue. Upon the acceptance of the referred issue, the accepting committee shall consider the issue as if the issue were originally within its jurisdiction. If the committee that is referred an issue declines to accept the issue, the original committee retains jurisdiction.

(4) If there is a dispute between committees as to which committee has proper jurisdiction over a subject, the legislative council shall determine the most appropriate committee and assign the subject to that committee."

Section 3. Section 85-2-105, MCA, is amended to read:

"85-2-105. Environmental quality council — water policy duties. (1) The environmental quality council shall meet as often as necessary, including during the interim between sessions, to perform the duties specified within this section.

(2) On a continuing basis, the environmental quality council ~~shall~~ *may*:

(a) advise the legislature on the adequacy of the state's water policy and on important state, regional, national, and international developments that affect Montana's water resources;

(b) oversee the policies and activities of the department, other state executive agencies, and other state institutions as those policies and activities affect the water resources of the state;

(c) assist with interagency coordination related to Montana's water resources; and

(d) communicate with the public on matters of water policy as well as the water resources of the state.

(3) On a regular basis, the environmental quality council shall:

(a) analyze and comment on the state water plan required by 85-1-203, when filed by the department;

(b) analyze and comment on the report of the status of the state's renewable resource grant and loan program required by 85-1-621, when filed by the department;

(c) analyze and comment on water-related research undertaken by any state agency, institution, college, or university;

(d) analyze, verify, and comment on the adequacy of and information contained in the water information system maintained by the natural resource information system under 90-15-305; and

(e) report to the legislature as provided in 5-11-210.

(4) The legislative services division shall provide staff assistance to the environmental quality council to carry out its water policy duties."

Section 4. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 5, chapter 5, part 2, and the provisions of Title 5, chapter 5, part 2, apply to [section 1].

Section 5. Effective date. [This act] is effective July 1, 2009.

Approved April 17, 2009

CHAPTER NO. 286

[SB 57]

AN ACT GENERALLY REVISING THE LAWS RELATING TO SPECIAL DISTRICTS; ALLOWING FOR THE CREATION OF SPECIAL DISTRICTS BY LOCAL GOVERNMENTS WORKING INDIVIDUALLY AND JOINTLY; ESTABLISHING UNIFORM STANDARDS FOR THE CREATION, ADMINISTRATION, AND OPERATION OF SPECIAL DISTRICTS BY GOVERNING BODIES AND ELECTED OR APPOINTED BOARDS; ELIMINATING SPECIFIC PROVISIONS RELATING TO CEMETERY DISTRICTS, COUNTY MUSEUMS, FACILITIES FOR THE ARTS, MUSEUM DISTRICTS, COUNTY PARK DISTRICTS, COUNTY FAIR COMMISSIONS, COUNTY FAIR DISTRICTS, MULTICOUNTY FAIR DISTRICTS, JOINT SOLID WASTE MANAGEMENT DISTRICTS, LOCAL IMPROVEMENT DISTRICTS, MOSQUITO CONTROL DISTRICTS, MULTIJURISDICTIONAL SERVICE DISTRICTS, PARK MAINTENANCE DISTRICTS, ROAD IMPROVEMENT DISTRICTS, RODENT CONTROL DISTRICTS, SOLID WASTE MANAGEMENT DISTRICTS, AND TELEVISION DISTRICTS; GRANTING RULEMAKING AUTHORITY; AMENDING SECTIONS 7-1-201, 7-1-202, 7-6-2527, 7-7-2101, 7-11-1102, 7-11-1112, 7-13-2511, 7-13-2512, 7-14-2138, 7-16-2105, 7-16-2109, 7-21-3411, 7-22-2512, 15-6-201, 20-15-403, 53-30-503, AND 70-30-102, MCA; REPEALING SECTIONS 7-11-1101, 7-11-1105, 7-11-1106, 7-11-1107, 7-11-1111, 7-12-4001, 7-13-201, 7-13-202, 7-13-203, 7-13-204, 7-13-205, 7-13-206, 7-13-207, 7-13-208, 7-13-209, 7-13-210, 7-13-211, 7-13-212, 7-13-213, 7-13-215, 7-13-216, 7-13-217, 7-13-218, 7-13-231, 7-13-232, 7-13-233, 7-13-234, 7-13-235, 7-13-236, 7-13-237, 7-13-301, 7-13-302, 7-13-303, 7-13-304, 7-13-305, 7-13-306, 7-13-307, 7-13-308, 7-13-309, 7-13-310, 7-13-311, 7-13-2501, 7-13-2502, 7-13-2503, 7-13-2504, 7-13-2505, 7-13-2506, 7-13-2507, 7-13-2508, 7-13-2509, 7-13-2510, 7-13-2521, 7-13-2527, 7-13-2528, 7-13-2529, 7-13-2541, 7-13-2542, 7-14-2701, 7-14-2702, 7-14-2703, 7-14-2704, 7-14-2705, 7-14-2706, 7-14-2707, 7-14-2708, 7-14-2709, 7-14-2710, 7-14-2711, 7-14-2712, 7-14-2713, 7-14-2714, 7-14-2715, 7-14-2716, 7-14-2717, 7-14-2718, 7-14-2719, 7-14-2720, 7-14-2721, 7-14-2731, 7-14-2732, 7-14-2733, 7-14-2734, 7-14-2735, 7-14-2736, 7-14-2737, 7-14-2738, 7-14-2739, 7-14-2740, 7-14-2741, 7-14-2742, 7-14-2743, 7-14-2744, 7-14-2745, 7-14-2746, 7-14-2751, 7-14-2752, 7-14-2753, 7-14-2754, 7-14-2755, 7-14-2756, 7-14-2757, 7-14-2758, 7-14-2759, 7-14-2760, 7-14-2761, 7-14-2762, 7-14-2763, 7-14-2901, 7-14-2902, 7-14-2903, 7-14-2907, 7-14-2908, 7-16-2201, 7-16-2202, 7-16-2203, 7-16-2205, 7-16-2211, 7-16-2212, 7-16-2213, 7-16-2214, 7-16-2215, 7-16-2216, 7-16-2217, 7-16-2218, 7-16-2219, 7-16-2401, 7-16-2402, 7-16-2403, 7-16-2411, 7-16-2412, 7-16-2413, 7-16-2421, 7-16-2422, 7-16-2423, 7-16-2431, 7-16-2433, 7-16-2441, 7-16-2442, 7-16-2443, 7-21-3401, 7-21-3406, 7-21-3407, 7-21-3408, 7-21-3409, 7-21-3410, 7-21-3412, 7-21-3413, 7-21-3421, 7-21-3422, 7-21-3423, 7-21-3424, 7-21-3425,

7-21-3426, 7-21-3427, 7-21-3428, 7-21-3429, 7-21-3430, 7-21-3431, 7-21-3432, 7-21-3433, 7-21-3434, 7-21-3435, 7-21-3451, 7-21-3452, 7-21-3453, 7-21-3454, 7-21-3455, 7-21-3456, 7-21-3457, 7-21-3458, 7-22-2207, 7-22-2208, 7-22-2209, 7-22-2210, 7-22-2211, 7-22-2212, 7-22-2213, 7-22-2214, 7-22-2215, 7-22-2216, 7-22-2221, 7-22-2222, 7-22-2223, 7-22-2224, 7-22-2225, 7-22-2226, 7-22-2231, 7-22-2232, 7-22-2233, 7-22-2401, 7-22-2402, 7-22-2403, 7-22-2405, 7-22-2408, 7-22-2409, 7-22-2410, 7-22-2411, 7-22-2415, 7-22-2416, 7-22-2417, 7-22-2418, 7-22-2419, 7-22-2420, 7-22-2431, 7-22-2432, 7-22-2433, 7-22-2434, 7-22-2441, 7-22-2442, 7-22-2443, 7-22-2444, 7-22-2445, 7-22-2446, 7-22-2447, 7-22-2448, 7-35-101, 7-35-102, 7-35-2101, 7-35-2102, 7-35-2103, 7-35-2104, 7-35-2105, 7-35-2106, 7-35-2107, 7-35-2108, 7-35-2109, 7-35-2110, 7-35-2111, 7-35-2112, 7-35-2113, 7-35-2114, 7-35-2115, 7-35-2116, 7-35-2121, 7-35-2122, 7-35-2123, 7-35-2124, 7-35-2125, 7-35-2201, 7-35-2202, 7-35-4101, 7-35-4103, 7-35-4105, 7-35-4106, 7-35-4107, 7-35-4108, AND 7-35-4109, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Purpose. The purpose of [sections 1 through 20] is to allow for the creation and governance of special districts.

Section 2. Definitions. As used in [sections 1 through 20], the following definitions apply:

(1) "Governing body" means the legislative authority of a local government.

(2) "Local government" means a city, town, county, or consolidated city-county government or any combination of these acting jointly.

(3) (a) "Special district" means a unit of local government that is authorized by law to perform a single function or a limited number of functions.

(b) The term includes but is not limited to cemetery districts, museum districts, park districts, fair districts, solid waste districts, local improvement districts, mosquito control districts, multijurisdictional districts, road districts, rodent control districts, television districts, and districts created for any public or governmental purpose not specifically prohibited by law. The term also includes any district or other entity formed to perform a single or limited number of functions by interlocal agreement.

(c) The term does not include business improvement districts, cattle protective districts, conservancy districts, conservation districts, water and sewer districts, planning and zoning districts, drainage districts, grazing districts, hospital districts, irrigation districts, library districts, livestock protective committees, parking districts, resort area districts, rural improvement districts, special improvement districts, lighting districts, rural fire districts, street maintenance districts, tax increment financing districts, urban transportation districts, water conservation and flood control projects, and weed management districts.

Section 3. Authorization to create special districts. (1) Whenever the public convenience and necessity may require:

(a) the governing body may create a special district to serve the inhabitants of the special district; or

(b) petitioners may initiate the creation of a special district to serve inhabitants of the special district.

(2) (a) Subject to subsection (2)(b), a petition to institute the creation of a special district must be signed by 40% of registered voters or 40% of owners of

real property within the boundary of the proposed special district and submitted to the clerk of the governing body.

(b) If a proposed special district would be financed by a mill levy, a petition to institute the creation of the special district must be signed by 40% of registered voters or 40% of property taxpayers within the boundary of the proposed district.

(c) The form of the petition may be prescribed by the governing body.

(d) Subject to subsection (2)(c), the petition must:

(i) require the printed name of each signatory;

(ii) specify whether the signatory is a property taxpayer or owner of real property within the proposed special district and the address of that property;

(iii) describe the type of special district being proposed and the general character of any proposed improvements and program to be administered within the special district;

(iv) designate the method of financing any proposed improvements and program within the special district;

(v) include a general description of the areas to be included in the proposed special district; and

(vi) specify whether the proposed special district would be administered by the local governing body or an appointed or elected board.

(3) Within 30 days of receipt of a petition to create a special district, the clerk of the governing body shall:

(a) certify that the petition is sufficient under the provisions of subsection (2) and present it to the governing body at its next meeting; or

(b) reject the petition if it is insufficient under the provisions of subsection (2).

(4) A defect in the contents of the petition or in its title, form of notice, or signatures may not invalidate the petition and subsequent proceedings as long as the petition has a sufficient number of qualified signatures attached.

Section 4. Determining special district boundaries. (1) The boundaries of the proposed special district must be mapped and clearly described before the district may be approved.

(2) The governing body or petitioners shall consult with a professional land surveyor, as defined in 37-67-101, to prepare a legal description of the boundaries for the proposed special district.

(3) The boundaries must follow property ownership, precinct, school district, municipal, and county lines as far as practical.

Section 5. Public hearing — resolution of intention to create special district. (1) The governing body shall hold at least one public hearing concerning the creation of a proposed special district prior to the passage of a resolution of intention to create the special district. A resolution of intention to create a special district may be based upon a decision of the governing body or upon a petition that contains the required number of signatures.

(2) The resolution must designate:

(a) the proposed name of the special district;

(b) the necessity for the proposed special district;

(c) a general description of the territory or lands to be included within the proposed special district, giving the boundaries of the proposed special district;

(d) the general character of any proposed improvements and the proposed location for the proposed program or improvements;

(e) the estimated cost and method of financing the proposed program or improvements;

(f) any requirements specifically applicable to the type of special district; and

(g) whether the proposed special district would be administered by the governing body or an appointed or elected board.

(3) (a) The governing body shall publish notice of passage of the resolution of intention to create a special district as provided in 7-1-2121 and 7-1-2122 or 7-1-4127 and 7-1-4129, as applicable. The notice must contain a notice of a hearing and the time and place where the hearing will be held.

(b) At the same time that notice is published pursuant to subsection (3)(a), the governing body shall provide a list of those properties subject to potential assessment, fees, or taxation under the creation of the proposed special district. The list may not be distributed or sold for use as a mailing list in accordance with 2-6-109.

(c) A copy of the notice described in subsection (3)(a) must be mailed to the owners of the property included on the list referred to in subsection (3)(b).

Section 6. Right to protest — procedure — hearing. (1) An owner of property that is liable to be assessed for the program or improvements in the proposed special district has 30 days from the date of the first publication of the notice of passage of the resolution of intention to make a written protest against the proposed program or improvements.

(2) The protest must be in writing, identify the property in the district owned by the protestor, be signed by all of the owners of that property, and be delivered to the clerk of the governing body, who shall endorse on the protest the date of receipt.

(3) (a) For purposes of this section, "owner" means, as of the date a protest is filed, the record owner of fee simple title to the property or the contract buyer on file with the county clerk and recorder.

(b) The term does not include a tenant of or other holder of a leasehold interest in the property.

(4) An owner of property created as a condominium may protest pursuant to the provisions in [section 18].

(5) (a) At the hearing provided for in [section 5], the governing body shall consider all protests.

(b) In determining the sufficiency of protest, each protest must be weighted in proportion to the amount of the assessment to be levied against the lot or parcel with respect to which it is made.

(c) If the protest is made by the owners of property in the proposed district to be assessed for more than 50% of the cost of the proposed program or improvements, in accordance with the method or methods of assessment, further proceedings may not be taken by the governing body for at least 12 months.

(d) In determining whether or not sufficient protests have been filed in the proposed special district to prevent further proceedings, property owned by a

governmental entity must be considered the same as any other property in the district.

(e) The decision of the governing body is final and conclusive.

(f) The governing body may adjourn the hearing from time to time.

Section 7. Referendum — election. (1) The governing body may order a referendum on the creation of the proposed special district to be submitted to the registered voters who reside within the proposed special district and the individuals qualified to vote pursuant to subsections (5) and (6).

(2) The referendum must state:

(a) the type and maximum rate of the initial proposed assessments or fees that would be imposed, consistent with the requirements of [sections 5(2)(e) and 15];

(b) the type of activities proposed to be financed, including a general description of the program or improvements;

(c) a general description of the areas included in the proposed special district; and

(d) whether the proposed special district would be administered by the governing body or an appointed or elected board.

(3) The referendum must be held in conjunction with a regular or primary election or must be conducted by mail ballot election as provided in Title 13, chapter 19.

(4) The proposition to be submitted to the electorate must read: "Shall the proposition to organize (name of proposed special district) be adopted?"

(5) Except as provided in subsection (6), an individual is entitled to vote on the proposition if the individual:

(a) meets all qualifications required of electors under the general election laws of the state; and

(b) is a resident of or owner of taxable real property in the area subject to the proposed special district.

(6) An individual who is the owner of real property described in subsection (5)(b) need not possess the qualifications required of an elector in subsection (5)(a) if the individual is qualified to vote in any county of the state and files proof of registration with the election administrator at least 20 days prior to the referendum in which the individual intends to vote.

(7) The referendum must be conducted, the vote canvassed, and the result declared in the same manner as provided by Title 13 in respect to general elections, so far as it is applicable, except as provided in subsection (3).

(8) If the referendum is approved, the election administrator of each county shall:

(a) immediately file with the secretary of state a certificate stating that the proposition was adopted and record the certificate in the office of the clerk and recorder of the county or counties in which the special district is situated; and

(b) notify any municipalities lying within the boundaries of the special district.

Section 8. Certificate of establishment. (1) Upon receipt of the certificate referred to in [section 7(8)], the secretary of state shall, within 10 days, issue a certificate reciting that the specified district has been established

according to the laws of the state of Montana. A copy of the certificate must be transmitted to and filed with the clerk and recorder of the county or counties in which the district is situated.

(2) When the certificate is issued by the secretary of state, the district named in the certificate is established with all the rights, privileges, and powers set forth in [section 12].

Section 9. Order creating district — power to implement program. (1) The governing body may create a special district and establish assessments or fees if the governing body finds that insufficient protests have been made in accordance with [section 6] or if the eligible registered voters have approved a referendum as provided in [section 7].

(2) To create a special district, the governing body shall issue an order or pass an ordinance or resolution in accordance with the resolution of intention introduced and passed by the governing body or in accordance with the terms of the referendum. This must be done within 30 days of the end of the protest period or approval of the referendum.

(3) If the governing body creates the special district of its own accord and without a referendum being held, a copy of the order, ordinance, or resolution creating the district, certified by the clerk of the governing body, must be delivered to the clerk and recorder of the county or counties in which the special district is situated and to the secretary of state, who shall issue a certificate of establishment in accordance with [section 8].

Section 10. Additional reporting procedures — coordination of information collection, transfer, and accessibility. (1) Within 60 days after the creation of a special district or by January 1 of the effective tax year, whichever occurs first, the governing body shall provide to the department of revenue a:

(a) legal description of the special district;

(b) map of its boundaries;

(c) list of the property taxpayers or owners of real property within the special district's boundaries; and

(d) copy of the resolution establishing the special district, including any adopted method of assessment.

(2) The department of revenue shall review the information provided in accordance with subsection (1) and work with the governing body to identify and correct any discrepancies before the information is recorded by the department.

(3) If the governing body intends to submit any digital information to the department of revenue for the purposes of subsection (4)(b), the governing body shall notify the department of revenue as to the expected date of submission and submit the digital information in a manner prescribed by the department of revenue in consultation with the department of administration.

(4) The department of administration, in coordination with the department of revenue, governing bodies, and other appropriate entities, may develop standards, best practices, and procedures for:

(a) collecting and transferring between agencies any digital information submitted by a governing body for purposes of subsection (4)(b); and

(b) creating digital information to map special districts for land information purposes authorized in Title 90, chapter 1, part 4, that can be accessed through

the department's base map service center's website and discovered through the Montana geographical information system portal at the Montana state library.

Section 11. Limitations on lawsuits. (1) A finding of the governing body in favor of the genuineness and sufficiency of the petition or election is final and conclusive against all persons except the state of Montana upon suit brought by the attorney general.

(2) A lawsuit filed by the attorney general must be filed by the earlier of:

(a) 1 year after the order, ordinance, or resolution creating the special district is approved by the governing body; or

(b) the issuance of bonds to implement the program or improvements approved for the special district.

Section 12. Governance — powers and duties. (1) A special district must be administered and operated either by the governing body or by a separate elected or appointed board as determined by the governing body.

(2) (a) If the special district is governed by a separate board, the board must be established in accordance with Title 7, chapter 1, part 2, and specific powers and duties granted to the board and those specifically withheld must be stated.

(b) The governing body may grant additional powers to the board. This includes the authorization to use privately contracted legal counsel or the attorney of the governing body. If privately contracted counsel is used, notice must be provided to the attorney of the governing body.

(c) The governing body has ultimate authority under this subsection (2).

(3) The entity chosen to administer the special district, as provided in subsection (1), may:

(a) implement a program and order improvements for the special district designed to fulfill the purposes of the special district;

(b) administer the budget of the special district;

(c) employ personnel;

(d) purchase, rent, or lease equipment, personal property, and material necessary to develop and implement an effective program;

(e) cooperate or contract with any corporation, association, individual, or group of individuals, including any agency of federal, state, or local government, in order to develop and implement an effective program;

(f) receive gifts, grants, or donations for the purpose of advancing the program and, by gift, deed, devise, or purchase, acquire land, facilities, buildings, and material necessary to implement the purposes of the special district;

(g) construct and maintain facilities and buildings necessary to accomplish the purposes of the special district;

(h) provide grants to private, nonprofit entities as part of implementing an effective program;

(i) adopt a seal and alter it at the entity's pleasure;

(j) administer local ordinances as appropriate;

(k) establish district capital improvement funds pursuant to 7-6-616, maintenance funds, and debt service funds; and

(l) borrow money by the issuance of:

(i) general obligation bonds as authorized by the governing body pursuant to Title 7, chapter 6, part 40, and the appropriate provisions of Title 7, chapter 7, part 22 or 42; or

(ii) revenue bonds for the lease, purchase, and maintenance of land, facilities, and buildings and the funding of projects in the manner and subject to the appropriate provisions of Title 7, chapter 7, part 25 or 44.

(4) The entity chosen to administer the special district shall submit annual budget and work plans to the governing body for review and approval.

(5) The right to exercise eminent domain pursuant to 70-30-102 is limited to cemetery districts.

Section 13. Multiple jurisdictions. (1) A special district created by a combination of local governments acting together must be administered according to an interlocal agreement. The interlocal agreement may determine whether the administrative body of the special district consists of the entire membership of all governing bodies from the participating jurisdictions or representatives of each governing body or jurisdiction.

(2) A special district created by a combination of local governments acting together may enlarge an existing service district, but may not supersede or void an existing contract, district, or interlocal agreement under which the same service is currently provided to residents of one or more of the participating jurisdictions. The local governments acting together may agree to alter an existing contract, district, or interlocal agreement as necessary.

(3) The local governments shall proportionally share the ownership of real or personal property acquired by the district pursuant to their interlocal agreement.

Section 14. Alteration of special districts. (1) The governing body may change the boundaries of any special district by resolution.

(2) The boundaries may be altered by petition after complying with the requirements for petitions as provided in [section 3].

(3) Alteration of boundaries is also subject to procedures for public notice, protest, referendum, certification, reporting, and establishment of assessment as provided in [sections 4 through 11 and 15].

(4) Changes made to the boundaries may not:

(a) occur more than once each year unless the governing body makes a special finding that an alteration is necessary;

(b) delete any portion of the area if the deletion will create an island of included or excluded lands;

(c) delete any portion of the area that is negatively contributing or may reasonably be expected to negatively contribute to environmental impacts that fall within the scope of the special district's program; and

(d) affect indebtedness existing at the time of the change.

Section 15. Financing for special district. (1) The governing body shall make assessments or impose fees for the costs and expenses of the special district based upon a budget proposed by the governing body or separate board administering the district pursuant to [section 12].

(2) For the purposes of this section, "assessable area" means the portion of a lot or parcel of land that is benefited by the special district. The assessable area may be less than but may not exceed the actual area of the lot or parcel.

(3) The governing body shall assess the percentage of the cost of the program or improvements:

(a) against the entire district as follows:

(i) each lot or parcel of land within the special district may be assessed for that part of the cost that its assessable area bears to the assessable area of the entire special district, exclusive of roads, streets, avenues, alleys, and public places;

(ii) if the governing body determines that the benefits derived from the program or improvements by each lot or parcel are substantially equivalent, the cost may be assessed equally to each lot or parcel located within the special district without regard to the assessable area of the lot or parcel;

(iii) each lot or parcel of land, including the improvements on the lot or parcel, may be assessed for that part of the cost of the special district that its taxable valuation bears to the total taxable valuation of the property of the district;

(iv) each lot or parcel of land may be assessed based on the lineal front footage of any part of the lot or parcel that is in the district and abuts the area to be improved or maintained;

(v) each lot or parcel of land within the district may be assessed for that part of the cost that the reasonably estimated vehicle trips generated for a lot or parcel of its size in its zoning classification bear to the reasonably estimated vehicle trips generated for all lots in the district based on their size and zoning classification; or

(vi) any combination of the assessment options provided in subsections (3)(a)(i) through (3)(a)(v) may be used for the special district as a whole; or

(b) based upon the character, kind, and quality of service for a residential or commercial unit, taking into consideration:

(i) the nature of the property or entity assessed;

(ii) a calculated basis for the program or service, including volume or weight;

(iii) the cost, incentives, or penalties applicable to the program or service practices; or

(iv) any combination of these factors.

(4) If property created as a condominium is subject to assessment, each unit within the condominium is considered a separate parcel of real property subject to separate assessment and the lien of the assessment. Each unit must be assessed for the unit's percentage of undivided interest in the common elements of the condominium. The percentage of the undivided ownership interest must be as set forth in the condominium declaration.

Section 16. Notice of resolution for assessment — assessment. (1) The governing body shall estimate, as near as practicable, the cost of each established special district annually by the later of the second Monday in August or within 45 calendar days after receiving certified taxable values from the department of revenue.

(2) The governing body shall pass and finally adopt a resolution specifying the special district assessment option and levying and assessing all the property within the special district with an amount equal to the annual cost of the program and improvements.

(3) The resolution levying the assessment to defray the cost of the special district must contain or refer to a list that describes the lot or parcel of land assessed with the name of the owner of the lot or parcel, if known, and the amount assessed.

(4) The resolution must be kept on file in the office of the clerk of the governing body.

(5) A notice, signed by the clerk of the governing body, stating that the resolution levying a special assessment or changing the method of assessment to defray the cost of the special district is on file in the clerk's office and subject to inspection must be published as provided in 7-1-2121 or 7-1-4127. The notice must state the time and place at which objections to the final adoption of the resolution will be heard by the governing body and must contain a statement setting out the method of assessment being proposed for adoption or the change in assessment being proposed for adoption. The time for the hearing must be at least 5 days after the final publication of the notice.

(6) The notice and hearing process may be included in the local government's general budgeting process as provided in Title 7, chapter 6, part 40.

(7) At the time set, the governing body shall meet and hear all objections that may be made to the assessment or any part of the assessment, may adjourn from time to time for that purpose, and may by resolution modify the assessment.

(8) A copy of the resolution, certified by the clerk of the governing body, must be delivered to the department of revenue by the third Monday in August or within 45 calendar days after receiving certified taxable values from the department of revenue.

Section 17. Collection of special district assessments. (1) When a resolution of assessment has been certified by the clerk of the local government, the county treasurer, the city treasurer, or the town clerk, as provided in 7-12-4182, shall collect the assessment in the same manner and at the same time as property taxes for general purposes are collected.

(2) All money received by the special district, including interest and earnings accrued, must be deposited in an account held only for the special district by the office of the county treasurer, city treasurer, or town clerk.

Section 18. Payment of assessment under protest — action to recover. (1) When an assessment made under [sections 1 through 20] is considered unlawful by the party whose property is charged or from whom the payment is demanded, the person may pay the assessment or any part of the assessment considered to be unlawful under protest to the county treasurer, city treasurer, or town clerk, whoever is charged with collection of the assessment.

(2) The party paying under protest or the party's legal representative may bring an action in any court of competent jurisdiction against the officer to whom the assessment was paid or against the local government on whose behalf the assessment was collected to recover the assessment or any portion of the assessment paid under protest. An action instituted to recover the assessment paid under protest must be commenced within 90 days after the date of payment.

(3) The assessment paid under protest must be held by the county treasurer, city treasurer, or town clerk until the determination of an action brought for the recovery of the assessment.

(4) If the assessment considered to be unlawful pertains to property created as a condominium and the property is not solely a certain unit in the

condominium, then the owner of the property created as a condominium that is entitled to protest is considered to be the collective owners of all units having an undivided ownership interest in the common elements of the condominium.

(5) An owner of property created as a condominium may protest against the method of assessment or vote at an election of the special district only through a president, vice president, secretary, or treasurer of the condominium owners' association who timely presents to the secretary of the special district the following:

(a) a writing identifying the condominium property;

(b) the condominium declaration or other condominium document that shows how votes of unit owners in the condominium are calculated;

(c) original signatures of owners of units in the condominium having an undivided ownership interest in the common elements of the condominium sufficient to constitute an affirmative vote for an undertaking relating to the common elements under the condominium declaration; and

(d) a certificate signed by the president, vice president, secretary, or treasurer of the condominium owners' association certifying that the votes of the unit owners, as evidenced by the signatures of the owners, are sufficient to constitute an affirmative vote of the condominium owners' association to protest against the method of assessment.

Section 19. Assessments as liens. (1) An assessment made and levied to defray the cost and expenses of the program or improvements, together with any percentages imposed for delinquency and for cost of collection, constitutes a lien upon the property on which the assessment is made and levied from the date of the passage of the resolution levying the assessment. This lien may be extinguished only by payment of the assessment, with all penalties, costs, and interest, or by sale of the property as provided in subsection (2).

(2) When the payment of an installment of an assessment becomes delinquent, all payments of subsequent installments of the assessment may, at the option of the governing body and upon adoption of the appropriate resolutions, become delinquent. Upon delinquency in one or all installments, the whole property must be sold in the same manner as other property is sold for taxes. The enforcement of the lien of any installment of a special assessment by any method authorized by law does not prevent the enforcement of the lien of any subsequent installment when it becomes delinquent.

Section 20. Dissolution of special district. (1) A special district may be dissolved if it is considered to be in the best interest of a local government or the inhabitants of the local government or if the purpose for creating the special district has been fulfilled and the special district is not needed in perpetuity.

(2) The governing body may pass a resolution of intention to dissolve a special district upon its own request or upon request of the separate board administering the special district.

(3) After the passage of the resolution provided for in subsection (2), the clerk of the local government that established the special district shall publish a notice, as provided in 7-1-2121 or 7-1-4127, of the intention to dissolve the district.

(4) The notice must specify the boundaries of the special district to be dissolved, the date of the passage of the resolution of intention to dissolve, the date set for the passage of the resolution of dissolution, and that the resolution

will be passed unless the clerk of the local government receives written protest in advance from:

(a) 40% of registered voters or 40% of the owners of real property in the district; or

(b) 40% of registered voters or 40% of the property taxpayers in the district if the district program or improvements have been financed through a mill levy.

(5) If the special district is dissolved, the clerk of the local government shall immediately send written notice to:

(a) the secretary of state; and

(b) the department of revenue, providing the same information required in [section 10] when a district is created. The department of revenue and the department of administration shall respond to the dissolution in the same manner they respond to the creation of a district, as described in [section 10].

(6) The dissolution of a special district may not relieve the property owners from the assessment and payment of a sufficient amount to liquidate all charges existing against the special district prior to the date of dissolution.

(7) Any assets remaining after all debts and obligations of the special district have been paid, discharged, or irrevocably settled must be:

(a) deposited in the general fund of the local government;

(b) in the case of multiple local governments, divided in accordance with their interlocal agreement and deposited in the general fund of each local government; or

(c) transferred to a new special district that has been created to provide substantially the same service as provided by the dissolved special district.

(8) If the remaining assets are derived from private grants or gifts that restrict the use of those funds, the funds must be returned to the grantor or donor.

Section 21. Multijurisdictional public library districts — administration. A multijurisdictional public library district created under the provisions of [sections 1 through 20] must be administered according to the provisions of 22-1-305 through 22-1-317.

Section 22. Section 7-1-201, MCA, is amended to read:

"7-1-201. Boards. (1) A board of county commissioners may by resolution establish the administrative boards, districts, or commissions allowed by law or required by law to be established pursuant to 7-1-202, 7-1-203, *[sections 1 through 20],* and this section and listed in 7-1-202. The resolution creating an administrative board, district, or commission must specify:

(a) the number of board, district, or commission members;

(b) the terms of the members;

(c) whether members are entitled to mileage, per diem, expenses, and salary; and

(d) any special qualifications for membership in addition to those established by law.

(2) (a) An administrative board, district, or commission may be assigned responsibility for a department or service district.

(b) An administrative board, district, or commission may:

(i) exercise administrative powers as granted by resolution, except that it may not pledge the credit of the county or impose a tax unless specifically authorized by state law;

(ii) administer programs, establish policy, and adopt administrative and procedural rules.

(c) The resolution creating an administrative board, district, or commission must grant the board, district, or commission all powers necessary and proper to the establishment, operation, improvement, maintenance, and administration of the department or district.

(d) If authorized by resolution, an administrative board, district, or commission may employ personnel to assist in its functions.

(3) (a) Administrative boards, districts, and commissions may be made elective.

(b) If an administrative board is made elective and if the number of candidates is equal to or less than the number of positions to be elected, the election administrator may cancel the election in accordance with 13-1-304. A position for which there were no nominees must be filled by appointment by the county commissioners for the same term as if the position were filled by election. If there is only one nominee for a position, the nominee may be declared elected by acclamation.

(4) Administrative boards, districts, and commissions may not sue or be sued independently of the local government unless authorized by state law.

(5) Members must be appointed by the county commissioners. The county commissioners shall post prospective membership vacancies at least 1 month prior to filling the vacancy.

(6) The county commissioners shall maintain a register of appointments, including:

(a) the name of the board, district, or commission;

(b) the date of appointment and confirmation, if any is required;

(c) the length of term;

(d) the name and term of the presiding officer and other officers of each administrative board, district, or commission; and

(e) the date, time, and place of regularly scheduled meetings.

(7) Terms of all members, except elected members, may not exceed 4 years. Unless otherwise provided by resolution, members shall serve terms beginning on July 1 and shall serve at the pleasure of the county commissioners.

(8) An administrative board, district, or commission must consist of a minimum of 3 members and must have an odd number of members.

(9) The resolution creating an administrative board, district, or commission may provide for voting or nonvoting ex officio members.

(10) Two or more local governments may provide for joint boards, districts, or commissions to be established by interlocal agreements.

(11) A majority of members constitutes a quorum for the purposes of conducting business and exercising powers and responsibilities. Action may be taken by a majority vote of members present and voting, unless the resolution creating the board, district, or commission specifies otherwise.

(12) An administrative board, district, or commission shall provide for the keeping of written minutes, including the final vote on all actions and the vote of each member.

(13) An administrative board, district, or commission shall provide by rule for the date, time, and place of regularly scheduled meetings and file the information with the county commissioners.

(14) Unless otherwise provided by law, a person must be a resident of the county to be eligible for appointment to an administrative board, district, or commission. The county commissioners may prescribe by resolution additional qualifications for membership.

(15) A person may be removed from an administrative board, district, or commission for cause by the county commissioners or as provided by resolution.

(16) A resolution creating an administrative board, district, or commission must contain, if applicable, budgeting and accounting requirements for which the board, district, or commission is accountable to the county commissioners.

(17) If a municipality creates a special district in accordance with [sections 1 through 20], the governing body of the municipality shall comply with this section if the governing body chooses to have the special district governed by a separate board."

Section 23. Section 7-1-202, MCA, is amended to read:

"7-1-202. Creation of new boards. Subject to 7-1-201 and 7-1-203 and in addition to the following, a county may create administrative boards, districts, and commissions that are not otherwise provided for by law:

(1) county building commission;

(2) cemetery districts;

(3) county fair commission;

~~(4)~~*(4)* mosquito control board;

~~(5)~~*(5)* museum board;

~~(6)~~*(6)* board of park commissioners;

(7) road district;

~~(7)~~*(8)* rodent control board;

~~(8)~~*(9)* solid waste district;

~~(9)~~*(10)* television district;

~~(10)~~*(11)* weed management district."

Section 24. Section 7-6-2527, MCA, is amended to read:

"7-6-2527. Taxation — public and governmental purposes. A county may impose a property tax levy for any public or governmental purpose not specifically prohibited by law. Public and governmental purposes include but are not limited to:

(1) district court purposes as provided in 7-6-2511;

(2) county-owned or county-operated health care facility purposes as provided in 7-6-2512;

(3) county law enforcement services and maintenance of county detention center purposes as provided in 7-6-2513 and search and rescue units as provided in 7-32-235;

(4) multijurisdictional service purposes as provided in ~~7-11-1106~~ *[section 13]*;

(5) transportation services for senior citizens and persons with disabilities as provided in 7-14-111;

(6) support for a port authority as provided in 7-14-1132;

(7) county road, bridge, and ferry purposes as provided in 7-14-2101, 7-14-2501, 7-14-2502, 7-14-2503, 7-14-2801, and 7-14-2807;

(8) recreational, educational, and other activities of the elderly as provided in 7-16-101;

(9) purposes of county fair activities, parks, cultural facilities, and any county-owned civic center, youth center, recreation center, or recreational complex as provided in 7-16-2102, *and* 7-16-2109~~, and 7-21-3410~~;

(10) programs for the operation of licensed day-care centers and homes as provided in 7-16-2108 and 7-16-4114;

(11) support for ~~a museum, facility for the arts and the humanities, collection of exhibits, or a museum district as provided in 7-16-2205~~ *a museum, facility for the arts and the humanities, collection of exhibits, or a museum district created under provisions of former Title 7, chapter 16, part 22, or [sections 1 through 20]*;

(12) extension work in agriculture and home economics as provided in 7-21-3203;

(13) weed control and management purposes as provided in 7-22-2142;

(14) insect control programs as provided in 7-22-2306;

(15) fire control as provided in 7-33-2209;

(16) ambulance service as provided in 7-34-102;

(17) public health purposes as provided in 50-2-111 and 50-2-114;

(18) public assistance purposes as provided in 53-3-115;

(19) indigent assistance purposes as provided in 53-3-116;

(20) developmental disabilities facilities as provided in 53-20-208;

(21) mental health services as provided in 53-21-1010;

(22) airport purposes as provided in 67-10-402 and 67-11-302;

(23) purebred livestock shows and sales as provided in 81-8-504;

(24) economic development purposes as provided in 90-5-112; and

(25) prevention programs, including programs that reduce substance abuse."

Section 25. Section 7-7-2101, MCA, is amended to read:

"7-7-2101. Limitation on amount of county indebtedness. (1) A county may not issue bonds or incur other indebtedness for any purpose in an amount, including existing indebtedness, that in the aggregate exceeds 2.5% of the total assessed value of taxable property, determined as provided in 15-8-111, within the county~~,~~ as ascertained by the last assessment for state and county taxes.

(2) Except as provided in 7-7-2402 ~~and 7-21-3413~~, a county may not incur indebtedness or liability for any single purpose to an amount exceeding $500,000 without the approval of a majority of the electors of the county voting at an election as provided by law.

(3) This section does not apply to the acquisition of conservation easements as set forth in Title 76, chapter 6."

Section 26. Section 7-11-1102, MCA, is amended to read:

"7-11-1102. Services that may be provided. (1) A multijurisdictional service district may provide only those services that are authorized to be provided by local governments.

(2) The services that a multijurisdictional service district may provide are:

(a) recreation programs other than park and recreation programs in a county park district established under ~~Title 7, chapter 16, part 24~~ *[sections 1 through 20]*;

(b) road, street, and highway maintenance;

(c) libraries;

(d) jails;

(e) dog control programs;

(f) ambulance service;

(g) dispatch service;

(h) protection of human health and the environment, including scenic concerns and recreational activities for areas requiring or involving environmental reclamation;

(i) health services and health department functions; and

(j) maintenance or provision of any public infrastructure facility, project, or service."

Section 27. Section 7-11-1112, MCA, is amended to read:

"7-11-1112. Financing. (1) Subject to 15-10-420, local governments organizing a multijurisdictional service district are authorized to levy property taxes in an amount not to exceed that authorized for the district in ~~7-11-1106~~ *accordance with [section 5]* and to appropriate funds derived from other than general tax ~~revenues~~ *revenue* for the operation of the district. Subject to 15-10-420, property taxes levied for a library established under this part as a multijurisdictional service must be added to taxes levied under 22-1-304.

(2) A property tax levied for the purpose of financing the district ~~must~~ *may*, for all agricultural property having an area greater than 10 acres, be levied only on the principal residential dwelling, if any, on the property."

Section 28. Section 7-13-2511, MCA, is amended to read:

"7-13-2511. Prohibition on operation of cable TV systems. A television district organized under *[sections 1 through 20] or the former provision of* this part may not perform any acts or take any steps to construct or operate community antenna systems, commonly known and referred to as cable TV systems."

Section 29. Section 7-13-2512, MCA, is amended to read:

"7-13-2512. Authorization for FM translator. (1) A television district may construct and operate a broadcast FM translator facility (88 to 108 megahertz) as provided in this section.

(2) (a) A request to provide FM translator services may be initiated by a petition signed by at least 51% of the registered electors who are residents of the television district and presented to the board of county commissioners ~~which~~ *that* initially established the district. The petition, its filing~~,~~ and ~~its~~ processing*, and the public hearing* are governed by ~~7-13-2503, 7-13-2504, and 7-13-2505~~ *[sections 3, 5, and 6]*.

(b) ~~Upon receiving a certified petition, the board of county commissioners shall give notice and hold a hearing as provided in 7-13-2506 and 7-13-2507. After the hearing, the board of county commissioners shall approve or deny the petition by resolution.~~ If the *county commissioners approve the* ~~decision is to approve the~~ petition, the resolution ~~shall~~ *must* authorize the board of trustees of the district to provide the requested services and ~~shall~~ *must* describe the proposed system, including the type of construction, proposed location, and estimated costs."

Section 30. Section 7-14-2138, MCA, is amended to read:

"7-14-2138. Prosecution by county attorney. (1) The county attorney, upon complaint of the road supervisor, county surveyor, or any other person, shall prosecute all actions provided in *Title 7, chapter 14,* parts 21 through *26 and* 28*,* in the name of the state of Montana.

(2) All penalties, except those paid to a justice's court, ~~shall~~ *must* be paid into the general fund of the county."

Section 31. Section 7-16-2105, MCA, is amended to read:

"7-16-2105. Acquisition of land by county for public recreational or cultural purposes. ~~(1)~~ A county may acquire, by purchase, grant, deed, gift, devise, condemnation pursuant to Title 70, chapter 30, or otherwise, lands suitable for public camping, public recreational purposes, civic centers, youth centers, museums, recreational centers, and any combination of the enumerated uses. A county may lease the land tracts, each of which must be situated so that it offers ready access to a public highway.

~~(2) This section may not be construed as amending or repealing 7-16-2201 through 7-16-2203.~~"

Section 32. Section 7-16-2109, MCA, is amended to read:

"7-16-2109. Single ~~tax~~ *assessment* for county fair activities, county parks, and certain cultural, social, and recreational facilities — restriction. (1) Subject to 15-10-420 and except as provided in subsection (2) *of this section*, the county commissioners of a county who have levied taxes pursuant to ~~both~~ 7-16-2102 ~~and 7-21-3410~~ may combine ~~the two taxes~~ *that levy with any fees assessed in accordance with [section 15]* into a single ~~tax~~ *assessment* for the purpose of maintaining, operating, and equipping county fair activities, county parks, cultural facilities, and any county-owned civic center, youth center, recreation center, recreational complex, or any combination of purposes, activities, and facilities. The money collected may be distributed among the activities and facilities as determined by the county commissioners.

(2) (a) The board of county commissioners shall submit the question of imposing or continuing the imposition of the single ~~tax~~ *assessment* provided for in subsection (1) to the electors of the county at the next general election if a petition requesting a vote on the single ~~tax~~ *assessment*, signed by at least 15% of the resident taxpayers of the county, is filed with the county clerk *and recorder* at least 90 days prior to the date of the general election.

(b) The question must be submitted as provided in 15-10-425.

(c) The board of county commissioners shall ~~levy the tax~~ *collect the assessment* if the imposition or continued imposition of the single ~~tax~~ *assessment* is approved by a majority of the electors voting on the question."

Section 33. Section 7-21-3411, MCA, is amended to read:

"7-21-3411. Restriction on use of appropriation or tax money. ~~No portion~~ *An amount* of the appropriation or tax levy ~~provided for in 7-21-3410 shall~~ *or assessment for a county fair district or a multiple county fair district may not* be expended for horseracing."

Section 34. Section 7-22-2512, MCA, is amended to read:

"7-22-2512. Financing of vertebrate pest management program — tax. (1) A governing body may:

(a) appropriate from the county general fund an amount to fund vertebrate pest management and transfer it to the county vertebrate pest management fund; and

(b) subject to 15-10-420, levy a vertebrate pest management tax on the taxable valuation of all agricultural, horticultural, grazing, and timber lands and their improvements. Land within a rodent control district may not be taxed in any given year under both ~~7-22-2222~~ *[section 15]* and this section for the control of rodents ~~as defined in 7-22-2207~~. Land within a rodent control district may be taxed under this section only *in* a dollar amount that is proportional to the part of the vertebrate pest program's projected fiscal year budget that is allocated to the management and suppression of vertebrate pests other than rodents.

(2) The tax provided for in subsection (1) must be collected as other county taxes and credited to the county vertebrate pest management fund."

Section 35. Section 15-6-201, MCA, is amended to read:

"15-6-201. Governmental, charitable, and educational categories — exempt property. (1) The following categories of property are exempt from taxation:

(a) except as provided in 15-24-1203, the property of:

(i) the United States, except:

(A) if congress passes legislation that allows the state to tax property owned by the federal government or an agency created by congress; or

(B) as provided in 15-24-1103;

(ii) the state, counties, cities, towns, and school districts;

(iii) irrigation districts organized under the laws of Montana and not operated for gain or profit;

(iv) municipal corporations;

(v) public libraries; ~~and~~

(vi) rural fire districts and other entities providing fire protection under Title 7, chapter 33; *and*

(vii) special districts created pursuant to [sections 1 through 20];

(b) buildings and furnishings in the buildings that are owned by a church and used for actual religious worship or for residences of the clergy, not to exceed one residence for each member of the clergy, together with the land that the buildings occupy and adjacent land reasonably necessary for convenient use of the buildings, which must be identified in the application, and all land and improvements used for educational or youth recreational activities if the facilities are generally available for use by the general public but may not exceed 15 acres for a church or 1 acre for a clergy residence after subtracting any area required by zoning, building codes, or subdivision requirements;

(c) property owned and used exclusively for agricultural and horticultural societies not operated for gain or profit;

(d) property, not to exceed 80 acres, which must be legally described in the application for the exemption, used exclusively for educational purposes, including dormitories and food service buildings for the use of students in attendance and other structures necessary for the operation and maintenance of an educational institution that:

(i) is not operated for gain or profit;

(ii) has an attendance policy; and

(iii) has a definable curriculum with systematic instruction;

(e) property used exclusively for nonprofit health care facilities, as defined in 50-5-101, licensed by the department of public health and human services and organized under Title 35, chapter 2 or 3. A health care facility that is not licensed by the department of public health and human services and organized under Title 35, chapter 2 or 3, is not exempt.

(f) property that is:

(i) owned and held by an association or corporation organized under Title 35, chapter 2, 3, 20, or 21;

(ii) devoted exclusively to use in connection with a cemetery or cemeteries for which a permanent care and improvement fund has been established as provided for in Title 35, chapter 20, part 3; and

(iii) not maintained and not operated for gain or profit;

(g) subject to subsection (2), property that is owned or property that is leased from a federal, state, or local governmental entity by institutions of purely public charity if the property is directly used for purely public charitable purposes;

(h) evidence of debt secured by mortgages of record upon real or personal property in the state of Montana;

(i) public museums, art galleries, zoos, and observatories that are not operated for gain or profit;

(j) motor vehicles, land, fixtures, buildings, and improvements owned by a cooperative association or nonprofit corporation organized to furnish potable water to its members or customers for uses other than the irrigation of agricultural land;

(k) the right of entry that is a property right reserved in land or received by mesne conveyance (exclusive of leasehold interests), devise, or succession to enter land with a surface title that is held by another to explore, prospect, or dig for oil, gas, coal, or minerals;

(l) (i) property that is owned and used by a corporation or association organized and operated exclusively for the care of persons with developmental disabilities, persons with mental illness, or persons with physical or mental impairments that constitute or result in substantial impediments to employment and that is not operated for gain or profit; and

(ii) property that is owned and used by an organization owning and operating facilities that are for the care of the retired, aged, or chronically ill and that are not operated for gain or profit; and

(m) property owned by a nonprofit corporation that is organized to provide facilities primarily for training and practice for or competition in international

sports and athletic events and that is not held or used for private or corporate gain or profit. For purposes of this subsection (1)(m), "nonprofit corporation" means an organization that is exempt from taxation under section 501(c) of the Internal Revenue Code and incorporated and admitted under the Montana Nonprofit Corporation Act.

(2) (a) For the purposes of subsection (1)(b), the term "clergy" means, as recognized under the federal Internal Revenue Code:

(i) an ordained minister, priest, or rabbi;

(ii) a commissioned or licensed minister of a church or church denomination that ordains ministers if the person has the authority to perform substantially all the religious duties of the church or denomination;

(iii) a member of a religious order who has taken a vow of poverty; or

(iv) a Christian Science practitioner.

(b) For the purposes of subsection (1)(g):

(i) the term "institutions of purely public charity" includes any organization that meets the following requirements:

(A) The organization offers its charitable goods or services to persons without regard to race, religion, creed, or gender and qualifies as a tax-exempt organization under the provisions of section 501(c)(3), Internal Revenue Code, as amended.

(B) The organization accomplishes its activities through absolute gratuity or grants. However, the organization may solicit or raise funds by the sale of merchandise, memberships, or tickets to public performances or entertainment or by other similar types of fundraising activities.

(ii) agricultural property owned by a purely public charity is not exempt if the agricultural property is used by the charity to produce unrelated business taxable income as that term is defined in section 512 of the Internal Revenue Code, 26 U.S.C. 512. A public charity claiming an exemption for agricultural property shall file annually with the department a copy of its federal tax return reporting any unrelated business taxable income received by the charity during the tax year, together with a statement indicating whether the exempt property was used to generate any unrelated business taxable income.

(iii) up to 15 acres of property owned by a purely public charity is exempt at the time of its purchase even if the property must be improved before it can directly be used for its intended charitable purpose. If the property is not directly used for the charitable purpose within 8 years of receiving an exemption under this section or if the property is sold or transferred before it entered direct charitable use, the exemption is revoked and the property is taxable. In addition to taxes due for the first year that the property becomes taxable, the owner of the property shall pay an amount equal to the amount of the tax due that year times the number of years that the property was tax-exempt under this section. The amount due is a lien upon the property and when collected must be distributed by the treasurer to funds and accounts in the same ratio as property tax collected on the property is distributed. At the time the exemption is granted, the department shall file a notice with the clerk and recorder in the county in which the property is located. The notice must indicate that an exemption pursuant to this section has been granted. The notice must describe the penalty for default under this section and must specify that a default under this section will create a lien on the property by operation of law. The notice must be on a form prescribed by the department.

(iv) not more than 160 acres may be exempted by a purely public charity under any exemption originally applied for after December 31, 2004. An application for exemption under this section must contain a legal description of the property for which the exemption is requested.

(c) For the purposes of subsection (1)(i), the term "public museums, art galleries, zoos, and observatories" means governmental entities or nonprofit organizations whose principal purpose is to hold property for public display or for use as a museum, art gallery, zoo, or observatory. The exempt property includes all real and personal property owned by the public museum, art gallery, zoo, or observatory that is reasonably necessary for use in connection with the public display or observatory use. Unless the property is leased for a profit to a governmental entity or nonprofit organization by an individual or for-profit organization, real and personal property owned by other persons is exempt if it is:

(i) actually used by the governmental entity or nonprofit organization as a part of its public display;

(ii) held for future display; or

(iii) used to house or store a public display."

Section 36. Section 20-15-403, MCA, is amended to read:

"20-15-403. Applications of other school district provisions. (1) When the term "school district" appears in the following sections outside of Title 20, the term includes community college districts and the provisions of those sections applicable to school districts apply to community college districts: 2-9-101, 2-9-111, 2-9-316, 2-16-114, 2-16-602, 2-16-614, 2-18-703, 7-3-1101, 7-6-2604, 7-6-2801, 7-7-123, 7-8-2214, 7-8-2216, 7-11-103, 7-12-4106, 7-13-110, ~~7-13-210,~~ 7-15-4206, 10-1-703, 15-1-101, 15-6-204, 15-16-101, 15-16-605, 15-70-301, 17-5-101, 17-5-202, 17-6-103, 17-6-204, 17-6-213, 17-7-201, 18-1-201, 18-2-101, 18-2-103, 18-2-113, 18-2-114, 18-2-401, 18-2-404, 18-2-432, 18-5-205, 19-1-102, 19-1-811, 22-1-309, 25-1-402, 27-18-406, 33-20-1104, 39-3-104, 39-4-107, 39-31-103, 39-31-304, 39-71-116, 39-71-117, 39-71-2106, 40-6-237, 49-3-101, 49-3-102, 52-2-617, 53-20-304, 82-10-201 through 82-10-203, 85-7-2158, and 90-6-208 and Rules 4D(2)(g) and 15(c), M.R.Civ.P., as amended.

(2) When the term "school district" appears in a section outside of Title 20 but the section is not listed in subsection (1), the school district provision does not apply to a community college district."

Section 37. Section 53-30-503, MCA, is amended to read:

"53-30-503. Definitions. As used in this part, the following definitions apply:

(1) "Corporation" means an entity organized and existing pursuant to Title 35, chapter 1 or 2, and approved or designated by a local governmental entity.

(2) "Department" means the department of corrections.

(3) "Interlocal cooperation commission" means a commission established in accordance with Title 7, chapter 11, part 2.

(4) "Local governmental entity" means:

(a) a local governmental unit;

(b) a multijurisdictional service district; or

(c) an interlocal cooperation commission.

(5) "Multijurisdictional service district" means a district established in accordance with ~~Title 7, chapter 11, part 11~~ *[sections 1 through 20]*.

(6) "Regional correctional facility" means a facility for the housing of persons charged with or convicted of a criminal offense that is a joint detention center and correctional facility and that is designed, constructed, or operated under this part by a local governmental entity, a corporation, the department, or any combination of a local governmental entity, a corporation, and the department."

Section 38. Section 70-30-102, MCA, is amended to read:

"70-30-102. Public uses enumerated. Subject to the provisions of this chapter, the right of eminent domain may be exercised for the following public uses:

(1) all public uses authorized by the government of the United States;

(2) public buildings and grounds for the use of the state and all other public uses authorized by the legislature of the state;

(3) public buildings and grounds for the use of any county, city, town, or school district;

(4) canals, aqueducts, flumes, ditches, or pipes conducting water, heat, or gas for the use of the inhabitants of any county, city, or town;

(5) projects to raise the banks of streams, remove obstructions from streambanks, and widen, deepen, or straighten stream channels;

(6) water and water supply systems as provided in Title 7, chapter 13, part 44;

(7) roads, streets, alleys, controlled-access facilities, and other publicly owned buildings and facilities for the benefit of a county, city, or town or the inhabitants of a county, city, or town;

(8) acquisition of road-building material as provided in 7-14-2123;

(9) stock lanes as provided in 7-14-2621;

(10) parking areas as provided in 7-14-4501 and 7-14-4622;

(11) airport purposes as provided in 7-14-4801, 67-2-301, 67-7-210, and Title 67, chapters 10 and 11;

(12) urban renewal projects as provided in Title 7, chapter 15, parts 42 and 43, except that private property may be acquired for urban renewal through eminent domain only if the property is determined to be a blighted area, as defined in 7-15-4206(2)(a), (2)(h), (2)(k), or (2)(n), and may not be acquired for urban renewal through eminent domain if the purpose of the project is to increase government tax revenue;

(13) housing authority purposes as provided in Title 7, chapter 15, part 44;

(14) county recreational and cultural purposes as provided in 7-16-2105;

(15) city or town athletic fields and civic stadiums as provided in 7-16-4106;

(16) county cemetery purposes ~~as provided in~~ *pursuant to* ~~7-35-2201~~ *[section 12]*, cemetery association purposes as provided in 35-20-104, and state veterans' cemetery purposes as provided in 10-2-604;

(17) preservation of historical or archaeological sites as provided in 23-1-102 and 87-1-209(2);

(18) public assistance purposes as provided in 53-2-201;

(19) highway purposes as provided in 60-4-103 and 60-4-104;

(20) common carrier pipelines as provided in 69-13-104;

(21) water supply, water transportation, and water treatment systems as provided in 75-6-313;

(22) mitigation of the release or threatened release of a hazardous or deleterious substance as provided in 75-10-720;

(23) the acquisition of nonconforming outdoor advertising as provided in 75-15-123;

(24) screening for or the relocation or removal of junkyards, motor vehicle graveyards, motor vehicle wrecking facilities, garbage dumps, and sanitary landfills as provided in 75-15-223;

(25) water conservation and flood control projects as provided in 76-5-1108;

(26) acquisition of natural areas as provided in 76-12-108;

(27) acquisition of water rights for the natural flow of water as provided in 85-1-204;

(28) property and water rights necessary for waterworks as provided in 85-1-209 and 85-7-1904;

(29) conservancy district purposes as provided in 85-9-410;

(30) wharves, docks, piers, chutes, booms, ferries, bridges, private roads, plank and turnpike roads, and railroads;

(31) canals, ditches, flumes, aqueducts, and pipes for:

(a) supplying mines, mills, and smelters for the reduction of ores;

(b) supplying farming neighborhoods with water and drainage;

(c) reclaiming lands; and

(d) floating logs and lumber on streams that are not navigable;

(32) sites for reservoirs necessary for collecting and storing water. However, reservoir sites must possess a public use demonstrable to the district court as the highest and best use of the land.

(33) roads, tunnels, and dumping places for working mines, mills, or smelters for the reduction of ores;

(34) outlets, natural or otherwise, for the flow, deposit, or conduct of tailings or refuse matter from mines, mills, and smelters for the reduction of ores;

(35) an occupancy in common by the owners or the possessors of different mines of any place for the flow, deposit, or conduct of tailings or refuse matter from their several mines, mills, or smelters for reduction of ores and sites for reservoirs necessary for collecting and storing water for the mines, mills, or smelters. However, the reservoir sites must possess a public use demonstrable to the district court as the highest and best use of the land.

(36) private roads leading from highways to residences or farms;

(37) telephone or electrical energy lines, except that local government entities as defined in 2-7-501, municipal utilities, or competitive electricity suppliers may not use this chapter to acquire existing telephone or electrical energy lines and appurtenant facilities owned by a public utility or cooperative for the purpose of transmitting or distributing electricity or providing telecommunications services;

(38) telegraph lines;

(39) sewerage of any:

(a) county, city, or town or any subdivision of a county, city, or town, whether incorporated or unincorporated;

(b) settlement consisting of not less than 10 families; or

(c) public buildings belonging to the state or to any college or university;

(40) tramway lines;

(41) logging railways;

(42) temporary logging roads and banking grounds for the transportation of logs and timber products to public streams, lakes, mills, railroads, or highways for a time that the court or judge may determine. However, the grounds of state institutions may not be used for this purpose.

(43) underground reservoirs suitable for storage of natural gas;

(44) projects to mine and extract ores, metals, or minerals owned by the condemnor located beneath or upon the surface of property where the title to the surface vests in others. However, the use of the surface of property for strip mining or open-pit mining of coal (i.e., any mining method or process in which the strata or overburden is removed or displaced in order to extract the coal) is not a public use, and eminent domain may not be exercised for this purpose.

(45) projects to restore and reclaim lands that were strip mined or underground mined for coal and not reclaimed in accordance with Title 82, chapter 4, part 2, and to abate or control adverse effects of strip or underground mining on those lands."

Section 39. Repealer. Sections 7-11-1101, 7-11-1105, 7-11-1106, 7-11-1107, 7-11-1111, 7-12-4001, 7-13-201, 7-13-202, 7-13-203, 7-13-204, 7-13-205, 7-13-206, 7-13-207, 7-13-208, 7-13-209, 7-13-210, 7-13-211, 7-13-212, 7-13-213, 7-13-215, 7-13-216, 7-13-217, 7-13-218, 7-13-231, 7-13-232, 7-13-233, 7-13-234, 7-13-235, 7-13-236, 7-13-237, 7-13-301, 7-13-302, 7-13-303, 7-13-304, 7-13-305, 7-13-306, 7-13-307, 7-13-308, 7-13-309, 7-13-310, 7-13-311, 7-13-2501, 7-13-2502, 7-13-2503, 7-13-2504, 7-13-2505, 7-13-2506, 7-13-2507, 7-13-2508, 7-13-2509, 7-13-2510, 7-13-2521, 7-13-2527, 7-13-2528, 7-13-2529, 7-13-2541, 7-13-2542, 7-14-2701, 7-14-2702, 7-14-2703, 7-14-2704, 7-14-2705, 7-14-2706, 7-14-2707, 7-14-2708, 7-14-2709, 7-14-2710, 7-14-2711, 7-14-2712, 7-14-2713, 7-14-2714, 7-14-2715, 7-14-2716, 7-14-2717, 7-14-2718, 7-14-2719, 7-14-2720, 7-14-2721, 7-14-2731, 7-14-2732, 7-14-2733, 7-14-2734, 7-14-2735, 7-14-2736, 7-14-2737, 7-14-2738, 7-14-2739, 7-14-2740, 7-14-2741, 7-14-2742, 7-14-2743, 7-14-2744, 7-14-2745, 7-14-2746, 7-14-2751, 7-14-2752, 7-14-2753, 7-14-2754, 7-14-2755, 7-14-2756, 7-14-2757, 7-14-2758, 7-14-2759, 7-14-2760, 7-14-2761, 7-14-2762, 7-14-2763, 7-14-2901, 7-14-2902, 7-14-2903, 7-14-2907, 7-14-2908, 7-16-2201, 7-16-2202, 7-16-2203, 7-16-2205, 7-16-2211, 7-16-2212, 7-16-2213, 7-16-2214, 7-16-2215, 7-16-2216, 7-16-2217, 7-16-2218, 7-16-2219, 7-16-2401, 7-16-2402, 7-16-2403, 7-16-2411, 7-16-2412, 7-16-2413, 7-16-2421, 7-16-2422, 7-16-2423, 7-16-2431, 7-16-2433, 7-16-2441, 7-16-2442, 7-16-2443, 7-21-3401, 7-21-3406, 7-21-3407, 7-21-3408, 7-21-3409, 7-21-3410, 7-21-3412, 7-21-3413, 7-21-3421, 7-21-3422, 7-21-3423, 7-21-3424, 7-21-3425, 7-21-3426, 7-21-3427, 7-21-3428, 7-21-3429, 7-21-3430, 7-21-3431, 7-21-3432, 7-21-3433, 7-21-3434, 7-21-3435, 7-21-3451, 7-21-3452, 7-21-3453, 7-21-3454, 7-21-3455, 7-21-3456, 7-21-3457, 7-21-3458, 7-22-2207, 7-22-2208, 7-22-2209, 7-22-2210, 7-22-2211, 7-22-2212, 7-22-2213, 7-22-2214, 7-22-2215, 7-22-2216, 7-22-2221, 7-22-2222, 7-22-2223, 7-22-2224, 7-22-2225, 7-22-2226, 7-22-2231, 7-22-2232, 7-22-2233, 7-22-2401, 7-22-2402, 7-22-2403, 7-22-2405, 7-22-2408, 7-22-2409, 7-22-2410, 7-22-2411, 7-22-2415, 7-22-2416, 7-22-2417, 7-22-2418, 7-22-2419, 7-22-2420, 7-22-2431, 7-22-2432, 7-22-2433, 7-22-2434, 7-22-2441, 7-22-2442, 7-22-2443,

7-22-2444, 7-22-2445, 7-22-2446, 7-22-2447, 7-22-2448, 7-35-101, 7-35-102, 7-35-2101, 7-35-2102, 7-35-2103, 7-35-2104, 7-35-2105, 7-35-2106, 7-35-2107, 7-35-2108, 7-35-2109, 7-35-2110, 7-35-2111, 7-35-2112, 7-35-2113, 7-35-2114, 7-35-2115, 7-35-2116, 7-35-2121, 7-35-2122, 7-35-2123, 7-35-2124, 7-35-2125, 7-35-2201, 7-35-2202, 7-35-4101, 7-35-4103, 7-35-4105, 7-35-4106, 7-35-4107, 7-35-4108, and 7-35-4109, MCA, are repealed.

Section 40. Codification instruction. [Sections 1 through 20] are intended to be codified as an integral part of Title 7, and the provisions of Title 7 apply to [sections 1 through 20].

Section 41. Codification instruction. [Section 21] is intended to be codified as an integral part of Title 22, chapter 1, part 7, and the provisions of Title 22, chapter 1, part 7, apply to [section 21].

Section 42. Saving clause. [Sections 1 through 20] do not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before July 1, 2009.

Section 43. Transition. (1) Subject to subsection (2), a special district in existence on [the effective date of this act] must comply with the provisions of [sections 1 through 20] upon alteration of its boundaries or a change in its amount or method of assessment. If dissolution is proposed for a special district in existence on [the effective date of this act], the proposal is subject to the provisions of [section 20].

(2) A special district in existence on [the effective date of this act] is required to comply with the provisions of [section 10] only upon alteration of its boundaries.

Section 44. Effective date. [This act] is effective July 1, 2009.

Approved April 17, 2009

CHAPTER NO. 287

[SB 58]

AN ACT GENERALLY REVISING THE LAWS RELATING TO LOCAL GOVERNMENTS; ALLOWING CONTRACTING WITH PRIVATE INSTITUTIONS FOR THE SALE OF BONDS RELATED TO RURAL IMPROVEMENT DISTRICTS AND SPECIAL IMPROVEMENT DISTRICTS; AMENDING SECTIONS 7-12-2172 AND 7-12-4204, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-12-2172, MCA, is amended to read:

"7-12-2172. Procedure to issue bonds and warrants. (1) *Subject to subsection (2), the* ~~The~~ board of county commissioners shall sell bonds or warrants issued under the provisions of 7-12-2169 and 7-12-2171 through 7-12-2174, in an amount sufficient to pay that part of the total cost and expense of the improvements ~~which~~ *that* is to be assessed against the benefited property within the district, to the highest and best bidder for cash, at a price, including interest to date of delivery, not less than that prescribed by the board in the resolution calling for the sale of the bonds or warrants. The board may fix the minimum price for the bonds or warrants in an amount less than the face value of the bonds or warrants if it determines that the sale is in the best interests of the district and the county.

(2) *(a) Subject to subsection (2)(b), the* ~~The~~ bonds or warrants may be sold at a private negotiated sale to the United States or the state of Montana~~,~~ or *to* an agency, instrumentality, corporation, or department ~~thereof~~ *of the state*.

(b) Bonds in amounts up to $1 million may be sold through private negotiated sale to a financial institution referred to in 32-1-102 that is authorized to conduct business in the state of Montana.

(3) In all other cases, the provisions of 7-7-4251, 7-7-4252, and 7-7-4254 ~~which~~ *that* relate to the notice of sale, publication of notice, and manner and method of selling bonds by cities and towns, insofar as they are applicable and not in conflict with the provisions of ~~this section and~~ 7-12-2173 *and this section*, ~~shall~~ apply to, govern, and control the form of notice of sale, publication of notice, and manner and method of selling bonds or warrants."

Section 2. Section 7-12-4204, MCA, is amended to read:

"7-12-4204. Procedure to issue bonds and warrants. (1) *Subject to subsection (2), the* ~~The~~ city or town council shall sell bonds or warrants issued under the provisions of 7-12-4201, in an amount sufficient to pay that part of the total cost and expense of the improvements that is to be assessed against benefited property within the district, to the highest and best bidder for cash at a price, including interest to date of delivery, not less than that prescribed by the city council in the resolution calling for the sale of the bonds or warrants. The city council may fix the minimum price for the bonds or warrants in an amount less than face value if it determines that the sale is in the best interests of the district and the city.

(2) *(a) Subject to subsection (2)(b), the* ~~The~~ bonds or warrants may be sold at a private negotiated sale to the United States or the state of Montana or to an agency, instrumentality, corporation, or department of the state.

(b) Bonds in amounts up to $1 million may be sold through private negotiated sale to a financial institution referred to in 32-1-102 that is authorized to conduct business in the state of Montana.

(3) In all other cases, the provisions of 7-7-4251, 7-7-4252, and 7-7-4254 with regard to the notice of sale, publication of notice, and manner and method of selling bonds by cities and towns, insofar as the same are applicable and not in conflict with the provisions of ~~this section and~~ 7-12-4205 *and this section*, apply to, govern, and control the form of notice of sale, publication of notice, and manner and method of selling the bonds or warrants."

Section 3. Effective date. [This act] is effective July 1, 2009.

Approved April 17, 2009

CHAPTER NO. 288

[SB 62]

AN ACT CLARIFYING THE FUNDING FOR THE ENVIRONMENTAL CONTINGENCY ACCOUNT; AMENDING SECTION 15-38-202, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-38-202, MCA, is amended to read:

"15-38-202. Investment of resource indemnity trust fund — expenditure — minimum balance. (1) All money paid into the resource indemnity trust fund must be invested at the discretion of the board of

investments. Only the net earnings, excluding unrealized gains and losses, may be appropriated and expended until the fund balance, excluding unrealized gains and losses, reaches $100 million. After the fund balance reaches $100 million, all net earnings, excluding unrealized gains and losses, and all receipts may be appropriated by the legislature and expended, provided that the fund balance, excluding unrealized gains and losses, may never be less than $100 million.

(2) (a) At the beginning of each fiscal year, there is allocated from the interest income of the resource indemnity trust fund:

(i) $3.5 million to be deposited in the natural resources projects state special revenue account, established in 15-38-302, for the purpose of making grants;

(ii) $300,000 to be deposited in the ground water assessment account established in 85-2-905;

(iii) $500,000 to the department of fish, wildlife, and parks for the purposes of 87-1-283. The future fisheries review panel shall approve and fund qualified mineral reclamation projects before other types of qualified projects.

~~(iv) $175,000 to be deposited in the environmental contingency account established in 75-1-1101.~~

(b) At the beginning of each biennium, there is allocated from the interest income of the resource indemnity trust fund:

(i) an amount not to exceed $50,000 to be deposited in the oil and gas production damage mitigation account pursuant to the conditions of 82-11-161; ~~and~~

(ii) $500,000 to be deposited in the water storage state special revenue account created by 85-1-631~~.~~*; and*

(iii) $175,000 to be deposited in the environmental contingency account established in 75-1-1101.

(c) The remainder of the interest income is allocated as follows:

(i) Sixty-five percent of the interest income of the resource indemnity trust fund must be allocated to the natural resources operations state special revenue account established in 15-38-301.

(ii) Twenty-six percent of the interest income of the resource indemnity trust fund must be allocated to the hazardous waste/CERCLA special revenue account provided for in 75-10-621.

(iii) Nine percent of the interest income of the resource indemnity trust fund must be allocated to the environmental quality protection fund provided for in 75-10-704.

(3) Any formal budget document prepared by the legislature or the executive branch that proposes to appropriate funds other than as provided for by the allocations in subsection (2) must specify the amount of money from each allocation that is proposed to be diverted and the proposed use of the diverted funds. A formal budget document includes a printed and publicly distributed budget proposal or recommendation, an introduced bill, or a bill developed during the legislative appropriation process or otherwise during a legislative session."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 17, 2009

CHAPTER NO. 289

[SB 113]

AN ACT ESTABLISHING A PILOT PROGRAM FOR MECHANIZED EQUIPMENT FUELS REDUCTION ON STATE LANDS WITHIN THE WILDLAND-URBAN INTERFACE AND FOR FIRE SUPPRESSION PURPOSES; REQUIRING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO REPORT TO THE LEGISLATURE; PROVIDING RULEMAKING AUTHORITY; CREATING A MECHANIZED EQUIPMENT FUELS REDUCTION PILOT PROGRAM ACCOUNT; PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Authorization of pilot program for mechanized fuels reduction and fire suppression — reporting requirement — rulemaking. (1) The department of natural resources and conservation shall

establish and implement a private contracting mechanized equipment fuels reduction pilot program on state land within the wildland-urban interface as defined in 76-13-102.

(2) The purpose of the pilot program is to evaluate the feasibility of using privately contracted mechanized equipment for fuel reduction and fire suppression purposes.

(3) The department shall:

(a) design the private contracting mechanized equipment fuels reduction pilot program to:

(i) cost-effectively reduce fuel loads on state land within the wildland-urban interface;

(ii) improve the overall health, productivity, and long-term revenue potential for the timber stand;

(iii) limit visual impacts, minimize soil disturbance, and promote habitat improvement in a manner that conforms with best forestry practices;

(iv) be consistent with the state forest land management plan; and

(v) comply with all applicable state laws and rules; and

(b) provide a report to the 62nd legislature as provided in 5-11-210, evaluating the effectiveness of the pilot program.

(4) The department may adopt rules to implement this section.

(5) (a) Unless included in a specific general fund appropriation from the legislature, general fund money may not be used for the pilot program for mechanized equipment fuels reduction and fire suppression provided for in this section. This restriction does not preclude the use of a specific federal appropriation, transfer, gift, donation, grant, legacy, bequest, or devise made for the purposes of this section.

(b) Money provided pursuant to subsection (5)(a) must be deposited in the appropriate mechanized equipment fuels reduction pilot program account established in [section 2].

Section 2. Mechanized equipment fuels reduction pilot program accounts. (1) There is an account in the state special revenue fund established by 17-2-102 to be known as the mechanized equipment fuels reduction pilot program account.

(2) There must be deposited in the account:

(a) money received from legislative allocations;

(b) a transfer of money from a state or local agency for the purposes of [section 1]; and

(c) a gift, donation, grant, legacy, bequest, or devise made for the purposes of [section 1].

(3) There is an account in the federal special revenue fund established by 17-2-102 to be known as the mechanized equipment fuels reduction pilot program account. There must be deposited in the account money received from the federal government for the purpose of administering [section 1].

(4) Funds in either account created in this section may be used by the department of natural resources and conservation only to establish, administer, and implement the mechanized equipment fuels reduction pilot program provided for in [section 1].

Section 3. Coordination instruction. If both House Bill No. 140 and [this act] are passed and approved, then the reference in [this act] to "mechanized equipment fuels reduction pilot program account" in [section 1(5)(b)] must be changed to "forest health account".

Section 4. Coordination instruction. If both House Bill No. 140 and [this act] are passed and approved, then [section 2] of House Bill No. 140 and [section 2 of this act] are void and [section 2] must read as follows:

NEW SECTION. **Section 2. Forest health accounts.** (1) There is an account in the state special revenue fund established by 17-2-102 to be known as the forest health account. There must be deposited in the account:

(a) money received from legislative allocations;

(b) a transfer of money from a state or local agency for the purposes of [section 1] or 77-5-216; and

(c) a gift, donation, grant, legacy, bequest, or devise made for the purposes of [section 1] or 77-5-216.

(2) There is an account in the federal special revenue fund established by 17-2-102 to be known as the forest health account. There must be deposited in the account money received from the federal government for the purpose of administering [section 1] or 77-5-216.

(3) Funds in either account created in this section must be used by the department of natural resources and conservation for the purposes of [section 1] or 77-5-216.

Section 5. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 76, chapter 13, and the provisions of Title 76, chapter 13, apply to [sections 1 and 2].

Section 6. Effective date. [This act] is effective on passage and approval.

Section 7. Termination. [This act] terminates December 31, 2012.

Approved April 17, 2009

CHAPTER NO. 290

[SB 126]

AN ACT PROVIDING FOR A PERMANENT TRANSPORTATION PERMIT FOR RODEO BULLS; ESTABLISHING CONDITIONS FOR ISSUANCE OF THE PERMIT; PROVIDING THAT THE PERMIT IS VALID FOR THE LIFE OF THE BULL OR UNTIL THE BULL CHANGES OWNERSHIP; REQUIRING RECOGNITION BY THE STATE OF VALID PERMANENT TRANSPORTATION PERMITS ISSUED FOR RODEO BULLS IN OTHER JURISDICTIONS; AMENDING SECTIONS 81-3-203 AND 81-3-211, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 81-3-203, MCA, is amended to read:

"81-3-203. Duties of state stock inspectors and deputy stock inspectors. (1) State stock inspectors and deputy state stock inspectors, upon the application of the owner or the ~~duly~~ authorized agent of the owner of livestock, shall inspect ~~the~~ livestock ~~which~~ *that are* ~~is~~ intended for sale, removal, shipment, or slaughter at a licensed slaughter plant and issue a certificate of inspection ~~therefor~~ *for the livestock* if it appears with reasonable certainty that the applicant is the owner of the livestock or has the lawful right to ~~the possession thereof~~ *possess the livestock*.

(2) The inspection ~~shall~~ *must* include an examination of the livestock and all marks and brands ~~thereon~~ *on the livestock* to identify ownership of the livestock. The certificate of inspection ~~shall~~ *must* be made in triplicate and ~~shall~~ *must* specify the date of inspection, the place of origin and place of destination of the shipment, the name and address of the owner of the livestock or of the applicant for inspection and the purchaser or transferee, if applicable, the class of the animal, the marks and brands, if any, ~~upon~~ *on* the animal, and any other information ~~upon~~ *on* the ~~form of~~ certificate ~~as~~ *that* the department may ~~from time to time~~ require. One copy of the certificate ~~shall~~ *must* be retained by the inspector, one copy ~~shall~~ *must* be furnished by the inspector to the owner or shipper of the livestock, and one copy ~~shall~~ *must* be filed by the inspector with the department within 5 days.

(3) If it appears with reasonable certainty that the applicant is the owner of the livestock or has the lawful right to ~~the possession thereof~~ *possess the livestock*, the state stock inspectors or deputy state stock inspectors, upon application of an owner or ~~his~~ *the owner's* agent of the livestock to be consigned and delivered directly to a licensed livestock market or licensed livestock slaughterhouse located in another county of the state or delivered directly to a shipping point ~~duly~~ approved by the department where a livestock inspector is available for inspection in an adjoining county, shall issue to the person a separate market consignment permit or transportation permit for each owner when the owner or owners or their ~~duly~~ authorized agents sign the permit certifying the brands, description, and destination of the livestock. The market consignment permit or transportation permit ~~shall~~ *must* be made in triplicate, ~~shall~~ *must* specify the date and time issued, the place of origin and place of destination of the shipment, the name and address of the owner of the livestock and the name and address of the person actually transporting the livestock if different ~~than~~ *from* the owner, the kind of livestock, the marks and brands, if any, ~~upon~~ *on* the livestock, a description of the vehicle or vehicles to be used to transport the livestock*,* ~~to include~~ *including* the license number of the vehicles, and any other information ~~upon~~ *on* the ~~form of~~ permit ~~as~~ *that* the department

may ~~from time to time~~ require. Any permit ~~so~~ issued ~~shall be~~ *is* good for shipment within 36 hours from date and time of issue~~;~~. ~~however~~ *However*, permits not used within this time limitation must be returned to the issuing officer to be canceled and to release the permittee from performance. One copy of the permit ~~shall~~ *must* be retained by the inspector, one copy ~~shall~~ *must* be filed by the inspector with the department within 5 days of the date of issue, and one copy ~~shall~~ *must* be furnished by the inspector to the owner or shipper of the livestock~~, which~~. *The owner's or shipper's* copy of the permit ~~shall~~ *must* accompany the shipment and be delivered to the state stock inspector at the livestock market or shipping point where the livestock ~~is~~ *are* delivered.

(4) Upon application of an owner or ~~his~~ *the owner's* agent, when it appears with reasonable certainty that the applicant is the owner of the livestock or has lawful right to ~~the possession thereof~~ *possess the livestock*, a state stock inspector shall issue a transportation permit ~~which~~ *that* will allow the movement of the livestock into an adjoining county to land owned or controlled by the owner or ~~his~~ *the owner's* agent for purposes of grazing. The transportation permit ~~shall~~ *must* state the breed, description, marks and brands, if any, head count, and description of land to and from which the livestock will be moved. The permit is valid as provided in 81-3-211(6)~~(d)~~*(e)*. A state stock inspector may enter the premises where livestock ~~so moved~~ have been transported and inspect any livestock moved under the transportation permit or any livestock commingled ~~therewith~~ *with the livestock*.

(5) Any person transporting strays or livestock not lawfully under ~~his~~ *that person's* control is guilty of a misdemeanor and *is* punishable as provided in 81-3-231."

Section 2. Section 81-3-211, MCA, is amended to read:

"81-3-211. Inspection of livestock before change of ownership or removal from county — transportation permits. (1) For the purposes of this section:

(a) "Family business entity" means:

(i) a corporation whose stock is owned solely by members of the same family;

(ii) a partnership in which the partners are all members of the same family;

(iii) an association whose members are all members of the same family; or

(iv) any other entity owned solely by members of the same family.

(b) "Members of the same family" means a group whose membership is determined by including an individual, the individual's spouse, and the individual's parents, children, grandchildren, and the spouses of each.

(c) "Rodeo producer" means a person who produces or furnishes livestock that ~~is~~ *are* used for rodeo purposes.

(2) Except as otherwise provided in this part, it is unlawful to remove or cause to be removed from a county in this state any livestock or to transfer ownership by sale or otherwise or for an intended purchaser or a purchaser's agent to take possession of any livestock subject to title passing upon meeting or satisfaction of any conditions, unless the livestock have been inspected for brands by a state stock inspector or deputy state stock inspector and a certificate of the inspection has been issued in connection with and for the purpose of the transportation or removal or of the change of ownership as provided in this part. The inspection must be made in daylight. However, the change of ownership inspection requirements of this subsection do not apply when the change of ownership transaction is accomplished without the livestock changing

premises, involves part of a herd to which livestock have not been added other than by natural increase or after brand inspection, and is between:

(a) members of the same family;

(b) a member of one family and the same family's business entity; or

(c) the same family's business entities.

(3) (a) It is unlawful to sell or offer for sale at a livestock market any livestock originating within any county in this state in which a livestock market is maintained or transported under a market consignment permit until the livestock ~~has~~ *have* been inspected for marks and brands by a state stock inspector, as provided in this part.

(b) It is unlawful to slaughter livestock at a licensed livestock slaughterhouse unless the livestock ~~has~~ *have* been inspected for marks or brands by a state or deputy state stock inspector.

(4) It is unlawful to remove or cause to be removed any livestock from the premises of a livestock market in this state unless the livestock ~~has~~ *have* been released by a state stock inspector and a certificate of release for the livestock has been issued in connection with and for the purpose of the removal from the premises of the livestock market. The release obtained pursuant to this subsection ~~will permit~~ *permits* the movement of the released livestock directly to the destination shown on the certificate.

(5) The person in charge of livestock being removed from a county in this state, when inspection is required by this section, when a change of ownership has occurred, or when moved under a market consignment permit or a market release certificate, must have in the person's possession the certificate of inspection, market consignment permit, transportation permit, or market release certificate and shall exhibit the certificate to any sheriff, deputy sheriff, constable, highway patrol officer, state stock inspector, or deputy state stock inspector upon request. Section 81-3-204 must be extended to livestock transported or sold under the permits.

(6) The following transportation permits may be issued:

(a) If a saddle, work, or show horse is being transported from county to county in this state by the owner for the owner's personal use or business or if cattle are being transported from county to county in this state by their owner for show purposes and there is no change of ownership, the inspection certificate required by this section may be endorsed, as to the purpose and extent of transportation, by the inspector issuing the certificate in order to serve as a travel permit in this state for a period not to exceed 1 year for the horse or cattle described in the certificate. The permit becomes void upon any transfer of ownership or if the horse or cattle are to be removed from the state. If the permit is void, an inspection must be secured for removal and the endorsed certificate must be surrendered.

(b) The owner of a saddle, work, or show horse may apply for a permanent transportation permit valid for both interstate and intrastate transportation of the horse until there is a change of ownership. ~~To obtain a permit, a~~ *The* horse must have either a registered brand that has been legally cleared or a lip tattoo or the owner is required to present proof of ownership to a state stock inspector or a specially qualified deputy stock inspector. A written application, on forms to be provided by the department, must be completed by the owner and presented to a state stock inspector or a specially qualified deputy stock inspector, together with a permit fee established by the department, for each horse. The application

must contain a thorough physical description of the horse and list all brands and tattoos carried by the horse. Upon approval of the application by a state stock inspector, a permanent transportation permit must be issued by the department to the owner for each horse, and the permit is valid for the life of the horse. If there is a change ~~of~~ *in* ownership ~~in~~ *of* a horse, the permit automatically is void. The permit must accompany the horse for which it was issued at all times while the horse is in transit. This permit is in lieu of other permits and certificates required under the provisions of this section. The state of Montana shall recognize as valid permanent transportation permits issued in other jurisdictions to the owner of a saddle, work, or show horse subsequently entering the state. A permit is automatically void upon a change of ownership.

(c) When livestock owned by and bearing the registered brand of a bona fide rodeo producer are being transported from county to county in this state by the owner for rodeo purposes and there is no change of ownership, the inspection certificate required by this section may be endorsed, as to the purpose and extent of transportation, by the inspector issuing the certificate in order to serve as a travel permit in this state for the livestock described in the certificate. The certificate is effective for the calendar year for which it is issued. The certificate must be issued by a state stock inspector.

(d) The owner of a bull bearing the registered brand of a bona fide rodeo producer may apply for a permanent transportation permit valid for both interstate and intrastate transportation of the bull until there is a change of ownership. The bull must have a registered brand that has been legally cleared and a legible number brand on the shoulder or hip used for individual identification, or the owner is required to present proof of ownership to a state stock inspector or a specially qualified deputy stock inspector. A written application, on forms to be provided by the department, must be completed by the owner and presented to a state stock inspector or a specially qualified deputy stock inspector, together with a permit fee established by the department, for each bull. The application must contain a thorough physical description of the bull and list all brands and tattoos carried by the bull. Upon approval of the application by a state stock inspector, a permanent transportation permit must be issued by the department to the owner for each bull, and the permit is valid for the life of the bull. If there is a change in ownership of a bull, the permit automatically is void. The permit must accompany the bull for which it was issued at all times while the bull is in transit. This permit is in lieu of other permits and certificates required under the provisions of this section. The state of Montana shall recognize as valid permanent transportation permits issued in other jurisdictions to the owner of a rodeo bull subsequently entering the state. A permit is automatically void upon a change of ownership.

~~(d)~~*(e)* An owner of livestock or the owner's agent may be issued one transportation permit in a 12-month period allowing the movement of the livestock into an adjoining county and return when the livestock are being moved for grazing purposes and when they are being moved to and from land owned or controlled by the owner of the livestock or the owner's agent. The permit is valid for a period of 8 months from the date of issuance and must be issued by a state stock inspector. The permit may be issued only if the livestock are branded with the permittee's brand, which must be registered in Montana. The department shall establish a fee for the permit, to be paid to the state stock inspector at the time the permit is issued and remitted by the inspector to the department for deposit in the state treasury to the credit of the state special revenue fund for the use of the department. This permit may be used in lieu of

the inspection and certificate required by this section for movement of livestock across a county line.

(7) Before any removal or change of ownership may take place, the seller of livestock shall request all required inspections and shall pay the required fees."

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 17, 2009

CHAPTER NO. 291

[SB 148]

AN ACT GENERALLY REVISING AND CLARIFYING LAWS RELATED TO LOCAL GOVERNMENTS; RECOGNIZING ALTERNATIVE FORMS OF COUNTY GOVERNMENT; REVISING SPECIFIC DOLLAR AMOUNTS IN STATUTES; ELIMINATING ARCHAIC STATUTES; AMENDING SECTIONS 7-3-4465, 7-4-2101, 7-4-2102, 7-4-2104, 7-4-2105, 7-4-2108, 7-4-2111, 7-4-2312, 7-4-2503, 7-4-2504, 7-4-2525, 7-4-2715, 7-5-2129, 7-6-201, 7-6-4413, 7-8-2215, 7-14-2712, 7-21-2116, 7-21-2303, 7-21-2305, 7-21-2306, 7-21-2308, 7-21-2404, 7-21-2407, 7-21-2408, 7-21-2409, 7-21-2410, 7-21-2503, 7-21-2507, 7-21-3101, 7-21-3105, 7-21-3107, 7-21-3212, 7-33-2314, 81-4-505, AND 81-4-509, MCA; AND REPEALING SECTIONS 7-4-4202, 7-14-2713, 7-21-3202, 7-21-3213, 7-31-4102, AND 30-13-112, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-3-4465, MCA, is amended to read:

"7-3-4465. Police department. (1) The chief of police has exclusive control of the stationing and transfer of all patrol officers and other officers and employees constituting the police force, under rules that the director of public safety may prescribe. The police force must be composed of a chief of police and officers, patrol officers, and other employees that the city manager may determine. In *the* case of *a* riot, in *the* event of *an* emergency, or at *the* time of elections or similar occasions, the director of public safety may appoint additional patrol officers and officers for temporary service who need not be in the classified service.

(2) A person may not act as a special detective or special police officer for any purpose whatsoever except upon the written authority of the director of public safety. The written authority ~~must~~ *may* be exercised only under the direction and control of the chief of police and for a specified time.

(3) ~~Section 7-4-4202(1) and (4), parts 2 and 41 of~~ *Title 7,* chapter 32, *parts 2 and 41,* and *Title 19,* chapters 9 and 19, ~~of Title 19~~ are in all respects applicable to and govern the police departments of all cities and towns under the commission-manager form of government provided for in this part."

Section 2. Section 7-4-2101, MCA, is amended to read:

"7-4-2101. Composition of board of county commissioners. Each county may have a board of county commissioners consisting of three members *or any other number provided for under any of the forms of government allowed under Title 7, chapter 3*."

Section 3. Section 7-4-2102, MCA, is amended to read:

"7-4-2102. Division of county into commissioner districts. (1) In ~~every~~ *each* county of the state, following each federal decennial census, the board of county commissioners shall divide their respective counties into ~~three~~ *as many*

commissioner districts *as there are county commissioners*~~,~~ *and ensure that the districts are* as compact and equal in population and area as possible. ~~Such~~ *The* apportionment may take place at any time for the purpose of equalizing in population and area ~~such~~ *the* commissioner districts. However, ~~no~~ *a* commissioner district ~~shall~~ *may not* at any time be changed to affect the term of office of any county commissioner who has been elected. ~~No~~ *A* change in the boundaries of any commissioner district ~~shall~~ *must* be made within 6 months ~~next~~ preceding a primary election.

(2) The district judge or judges of the county shall review the action of the commissioners to determine whether or not ~~such~~ *the* action meets the requirements of this section.

~~(3) Sections 7-4-2102 through 7-4-2104 shall not apply to counties adopting an optional or alternative form of government authorized by law.~~"

Section 4. Section 7-4-2104, MCA, is amended to read:

"7-4-2104. Commissioners to be elected by district. (1) At each general election, the member or members of the board of county commissioners to be elected must be selected from the residents and electors of the district or districts in which the vacancy occurs, but the election of the member or members of the board must be submitted to the entire electorate of the county *unless otherwise provided for under:*

(a) a plan of government provided for in a county adopting an optional or alternative form of government; or

(b) a court order.

(2) A person may not be elected as a member of a board of county commissioners unless the person has resided in the county and the district for at least 2 years preceding the general election."

Section 5. Section 7-4-2105, MCA, is amended to read:

"7-4-2105. Term of office. (1) The term of office of county commissioners is 6 years *unless otherwise provided for under a plan of government provided for in a county adopting an optional or alternative form of government*. A county commissioner takes office at 12:01 a.m. on January 1 succeeding the date of the election at which the county commissioner was elected.

(2) A county commissioner elected to take office shall take the oath of office on or before the last business day of December following the commissioner's election, except as provided for in 7-4-2106."

Section 6. Section 7-4-2108, MCA, is amended to read:

"7-4-2108. Mileage allowance for county commissioners — expenses. (1) In addition to the salary provided by 7-4-2107(1), each member of the board of county commissioners ~~in counties of the first, second, third, and fourth class shall~~ *must* receive a mileage allowance as provided in 2-18-503 for the distance necessarily traveled in going to and returning from the county seat and the commissioner's place of residence each day that the trip is actually made and while engaged in the performance of official duties.

(2) ~~Each member of the board in all other counties is entitled to a mileage allowance as provided in 2-18-503 for the distance necessarily traveled in going to and returning from the county seat and the commissioner's place of residence each day that the trip is actually made to perform official duties. Any~~ *A* county commissioner whose place of residence is 50 miles or more from the county seat, as measured by the usual route of travel, and who elects to remain more than

one day in the county seat to attend sessions of the board or perform official duties is entitled to receive, in addition to mileage for one round trip between the commissioner's place of residence and the county seat, ~~$18~~ *the rate for lodging established in Title 2, chapter 18, part 5, or the amount calculated in this section for mileage, whichever is less,* ~~per day~~ as expenses for each day's attendance on sessions of the board while engaged in the performance of official duties.

(3) All claims for lodging expense reimbursement allowed under this section must be documented by an appropriate receipt.

(4) When other than commercial, nonreceiptable lodging facilities are utilized by a county commissioner, the ~~amount of $7~~ *rate for noncommercial, nonreceiptable lodging established in Title 2, chapter 18, part 5,* is authorized for lodging expenses for each day in which travel involves an overnight stay in lieu of the amount authorized in this section. However, when overnight accommodations are provided at the expense of any government entity, reimbursement may not be claimed for lodging.

(5) This section does not apply to counties that have adopted a charter form of government."

Section 7. Section 7-4-2111, MCA, is amended to read:

"7-4-2111. Indemnity insurance for county officers. The board of county commissioners may pay a proper charge to any insurance company authorized to do business in this state *or to a self-insurance pool insuring counties as authorized by 2-9-211* for ~~effecting~~ insurance providing indemnity for or protection to any county officer against liability for the loss, without fault, connivance, or neglect on the officer's part, of money, securities, or other property for which the officer is accountable to the county."

Section 8. Section 7-4-2312, MCA, is amended to read:

"7-4-2312. Salary and bond of officer following consolidation. (1) (a) When two or more offices are consolidated under a single officer, the officer ~~shall~~ *must* receive a salary determined by the board or boards of county commissioners. However, the salary may not be more than 20% higher than the highest salary provided by law to be paid to any officer whose duties the officer is required to perform by reason of the consolidations.

(b) The board or boards shall, in ~~June of each fourth year~~ *conjunction with setting elected officials' salaries as provided in 7-4-2503, annually* adopt a resolution fixing the *percentage adjustment of the* salary of the officer *holding the consolidated office* for the term beginning with the first Monday in January immediately following the adoption of the resolution.

(2) The officer shall give a bond in an amount equal to the highest bond required by law of any officer whose duties the officer is required to perform by reason of the consolidation of offices."

Section 9. Section 7-4-2503, MCA, is amended to read:

"7-4-2503. Salary schedule for certain county officers — county compensation board. (1) (a) The salary paid to the county treasurer, county clerk and recorder, clerk of the district court, county assessor, county superintendent of schools, county sheriff, county surveyor in counties where county surveyors receive salaries as provided in 7-4-2812, justice of the peace, *county coroner,* and county auditor in all counties ~~where~~ *in which* the office is authorized must be established by the county governing body based upon the recommendations of the county compensation board provided for in subsection (4).

(b) Except as provided in subsection (2), the annual salary established pursuant to subsection (1)(a) must be uniform for all county officers referred to in subsection (1)(a).

(2) (a) An elected county superintendent of schools must receive, in addition to the salary based upon subsection (1), the sum of $400 a year, except that an elected county superintendent of schools who holds a master of arts degree or a master's degree in education, with an endorsement in school administration, from a unit of the Montana university system or an equivalent institution may, at the discretion of the county commissioners, receive, in addition to the salary based upon subsection (1), up to $2,000 a year.

(b) The county sheriff must receive, in addition to the salary based upon subsection (1), the sum of $2,000 a year.

(c) The county sheriff must receive a longevity payment amounting to 1% of the salary determined under subsection (1) for each year of service with the sheriff's office, but years of service during any year in which the salary was set at the level of the salary of the prior fiscal year may not be included in any calculation of longevity increases. The additional salary amount provided for in this subsection may not be included in the salary for purposes of computing the compensation for undersheriffs and deputy sheriffs as provided in 7-4-2508.

(d) If the clerk and recorder is also the county election administrator, the clerk and recorder may receive, in addition to the base salary provided in subsection (1)(a), up to $2,000 a year. The additional salary provided for in this subsection (2)(d) may not be included as salary for the purposes of computing the compensation of any other county officers or employees.

(e) The county treasurer may receive, in addition to the base salary provided in subsection (1)(a), up to $2,000 a year. The additional salary provided for in this subsection (2)(e) may not be included as salary for the purposes of computing the compensation of any other county officers or employees.

(f) The county coroner may be a part-time position, and the salary may be set accordingly.

(3) (a) Subject to subsection (3)(b), the salary for the county attorney must be set as provided in subsection (4).

(b) If the uniform base salary set for county officials pursuant to subsection (1) is increased, then the county attorney is entitled to at least the same increase unless the increase would cause the county attorney's salary to exceed the salary of a district court judge.

(c) (i) After completing 4 years of service as deputy county attorney, each deputy county attorney is entitled to an increase in salary of $1,000 on the anniversary date of employment as deputy county attorney. After completing 5 years of service as deputy county attorney, each deputy county attorney is entitled to an additional increase in salary of $1,500 on the anniversary date of employment. After completing 6 years of service as deputy county attorney and for each year of additional service up to completion of the 11th year of service, each deputy county attorney is entitled to an additional annual increase in salary of $500.

(ii) The years of service as a deputy county attorney accumulated prior to July 1, 1985, must be included in the calculation of the longevity increase.

(4) (a) There is a county compensation board consisting of the county commissioners, three of the county officials described in subsection (1) appointed by the board of county commissioners, the county attorney, and two to

four resident taxpayers appointed initially by the board of county commissioners to staggered terms of 3 years, with the initial appointments of one or two taxpayer members for a 2-year term and one or two taxpayer members for a 3-year term. The county compensation board shall hold hearings annually for the purpose of reviewing the compensation paid to county officers. The county compensation board may consider the compensation paid to comparable officials in other Montana counties, other states, state government, federal government, and private enterprise.

(b) The county compensation board shall prepare a compensation schedule for the elected county officials, including the county attorney, for the succeeding fiscal year. The schedule must take into consideration county variations, including population, the number of residents living in unincorporated areas, assessed valuation, motor vehicle registrations, building permits, and other factors considered necessary to reflect the variations in the workloads and responsibilities of county officials as well as the tax resources of the county.

(c) A recommended compensation schedule requires a majority vote of the county compensation board, and at least two county commissioners must be included in the majority. A recommended compensation schedule may not reduce the salary of a county officer that was in effect on May 1, 2001.

(d) The provisions of this subsection (4) do not apply to a county that has adopted a charter form of government or to a charter, consolidated city-county government."

Section 10. Section 7-4-2504, MCA, is amended to read:

"7-4-2504. Salaries to be fixed by resolution — cost-of-living increments. The county governing body shall by resolution on or before August 1 of each year adjust and uniformly fix the salaries of the county treasurer, county clerk, county assessor, county school superintendent, county sheriff, clerk of district court, county auditor (if there is one), justice of the peace, *county coroner,* and county surveyor (if the surveyor receives a salary) by adding to the annual salary provided for in 7-4-2503(1) a cost-of-living increment based upon the schedule developed and approved by the county compensation board provided for in 7-4-2503(4)."

Section 11. Section 7-4-2525, MCA, is amended to read:

"7-4-2525. Fees of sheriff to be fixed by resolution. (1) The county governing body may annually, by resolution *pursuant to 7-6-4013*, fix the fees of the sheriff for services provided in 7-32-2141 *and for other services*.

(2) Fees ~~set under subsection (1)~~ *for services provided under 7-32-2141* must be based upon the prevailing rate charged by private process servers in the county for similar services.

(3) Fees collected under this section must be paid and credited as provided in 7-32-2141."

Section 12. Section 7-4-2715, MCA, is amended to read:

"7-4-2715. Records and reports. The county attorney shall:

~~(1) keep a register of all official business, in which must be entered a note of every action, whether criminal or civil, prosecuted officially and of the proceedings in the action;~~

~~(2)~~*(1)* deliver receipts for money or property received in an official capacity and file duplicates of the receipts with the county treasurer;

~~(3)~~*(2)* on the first Monday of January, April, July, and October in each year file with the county clerk an account, verified by oath, of all money received by the county attorney in an official capacity during the preceding 3 months and at the same time pay it over to the county treasurer."

Section 13. Section 7-5-2129, MCA, is amended to read:

"7-5-2129. Certain records to be kept by board. The board of county commissioners ~~must~~ *shall* cause to be kept~~:~~

~~(1)~~ a "Minute Book" in which must be recorded all orders and decisions made by them and the daily proceedings had at all regular and special meetings~~;~~

~~(2) a "Road Book" containing all proceedings and adjudications relating to the establishment, maintenance, change, and discontinuance of roads and road districts or relating to road supervisors and their reports and accounts;~~

~~(3) a "Franchise Book" containing all franchises granted by them, for what purpose, the length of time and to whom granted, and the amount of bond and license tax required;~~

~~(4) a "Warrant Book" in which must be entered, in the order of drawing, all warrants drawn on the treasury, with their number and reference to the order on the minute book and with the date, amount, on what account, and name of payee~~."

Section 14. Section 7-6-201, MCA, is amended to read:

"7-6-201. Deposit of public funds in financial institutions. (1) Except as provided in 7-6-202, 7-6-206, or 7-6-2701, it ~~shall be~~ *is* the duty of all county and city treasurers and town clerks to deposit all public money in their possession and under their control *only* in ~~any~~ solvent banks, building and loan associations, savings and loan associations, or credit unions ~~located in the county, city, or town of which such treasurer is an officer~~, subject to national supervision or state examination as the local governing body may designate~~, and no other~~.

(2) ~~Said~~ *The* local governing body ~~is hereby authorized to~~ *may* deposit ~~such~~ public money not necessary for immediate use by ~~such~~ *the* county, city, or town in a savings or time deposit with any bank, building and loan association, savings and loan association, or credit union authorized ~~above~~ *in subsection (1)* or in a repurchase agreement as authorized in 7-6-213.

(3) The treasurer or town clerk shall take from ~~such~~ *the* bank, building and loan association, savings and loan association, or credit union ~~such~~ security ~~as~~ *that* the local governing body may prescribe, approve, and ~~deem~~ *consider* fully sufficient and necessary to ~~insure~~ *ensure* the safety and prompt payment of all ~~such~~ deposits, together with the interest on any time or savings deposits.

(4) All ~~such~~ deposits ~~shall~~ *must* be subject to withdrawal by the treasurer or town clerk in ~~such~~ amounts ~~as~~ *that* may be necessary from time to time. ~~No~~ *A* deposit of funds ~~shall~~ *may not* be made or permitted to remain in any bank, building and loan association, savings and loan association, or credit union until the security for ~~such deposits shall have~~ *the deposit has* been first approved by the local governing body and delivered to the treasurer or town clerk."

Section 15. Section 7-6-4413, MCA, is amended to read:

"7-6-4413. Collection of taxes. (1) Except in the case of cities of the first, second, and third classes that provide by ordinance for the city treasurer to collect the taxes from the corrected property tax record, the county treasurer of

each county shall collect the tax levied by all cities and towns in the respective county.

(2) The county treasurer shall collect the city or town taxes~~, including unpaid road poll taxes,~~ at the same time as the state and county taxes and with the same penalties and interest in case of delinquency."

Section 16. Section 7-8-2215, MCA, is amended to read:

"7-8-2215. Procedure to challenge appraised value. (1) ~~Any~~ *A* taxpayer who ~~may believe~~ *believes* that ~~such~~ *the* appraised value *under 7-8-2214* is less than the actual value of the property may, at any time before the day fixed for the sale of ~~such~~ *the* property, file with the board of county commissioners written objections to ~~such~~ *the* appraised value.

(2) When ~~any such~~ *an* objection is filed, it vacates the sale and the board ~~must~~ *shall* at once apply to the judge of the district court to have ~~such~~ *the* property reappraised.

(3) (a) Upon ~~such~~ application, the district judge shall appoint for purpose of reappraisal three disinterested persons *or a disinterested certified real estate appraiser*. ~~Such appraisers~~ *Each appraiser*, when appointed by the district judge and after filing ~~their~~ *the* appraisal report with the county clerk and recorder, ~~shall~~ *must* be allowed ~~$5 per day for each day necessarily employed in making such appraisal and their~~ necessary and actual expenses *as determined by the judge*.

(b) The appraisal of the persons appointed under subsection (3)(a) must be made and filed with the county clerk and recorder. The new appraisal or reappraisal ~~shall~~ *must* be used in the next sale of ~~such~~ *the* property."

Section 17. Section 7-14-2712, MCA, is amended to read:

"7-14-2712. Inspector of works ~~— compensation~~. ~~(1)~~ The committee and road superintendent together shall appoint a suitable and competent person other than the committee or the superintendent to act as an inspector of the work. The inspector must be present at the location of the work at all times during its progress and shall inspect the performance of the work. The inspector shall report to and be under the supervision of the superintendent.

~~(2) The inspector must be paid at the rate of $5 a day for the time actually engaged as inspector.~~"

Section 18. Section 7-21-2116, MCA, is amended to read:

"7-21-2116. Enforcement of licensing requirements. ~~(1)~~ The county ~~treasurer must direct~~ *shall bring* suit in the name of the state of Montana as plaintiff ~~to be brought~~ for the recovery of the license tax *or fee authorized by this part*~~,~~ against any person required to take out a license who fails, neglects, or refuses to take out ~~such~~ *the* license or who carries on or attempts to carry on business without ~~such~~ *the* license. ~~In such case, either~~ *Either* the *county* treasurer or the county attorney ~~must~~ *shall* make the necessary affidavit for the writ of attachment, and ~~such~~ *the* writ of attachment may ~~issue~~ *be issued* without any bonds being given on behalf of the plaintiff.

~~(2) In case of a recovery by the plaintiff, $15 damages must be added to the judgment and costs to be collected from the defendant.~~"

Section 19. Section 7-21-2303, MCA, is amended to read:

"7-21-2303. License required to do business as itinerant vendor — fee. For the purpose of defraying the expenses of regulation under this part, ~~every~~ *an* itinerant vendor desiring to do business in any county of this state

shall, before commencing business, pay to the county treasurer of the county the sum of ~~$15~~ *$25* for a license to conduct the itinerant business for a period of 90 days from the date the license is issued."

Section 20. Section 7-21-2305, MCA, is amended to read:

"7-21-2305. Application for itinerant vendor license. (1) An itinerant vendor desiring to do business in any county of this state shall, before commencing business, file with the county treasurer of the county, on a form to be provided by the treasurer, an application in writing, subscribed and sworn to by the applicant before an officer in this state authorized to take oaths.

(2) The application must set forth:

(a) the name of the applicant;

(b) the applicant's place of permanent residence;

(c) the applicant's local headquarters, if any;

(d) the time of the applicant's arrival in the county;

(e) the county from which the last license, if any, was received;

(f) whether the applicant is acting as principal, agent, or employee;

(g) if acting as agent or employee, the name and place of business of the principal or employer;

(h) a brief descriptive list of articles to be offered for sale or services to be performed *along with a statement of total value of anticipated sales*; and

(i) whether payments or deposits of money are collected when orders are taken or in advance of final delivery.

(3) If the applicant is acting as an agent, the principal's acknowledgment of the agency must accompany the application as part of the application.

(4) At the time of filing the application, the itinerant vendor shall accompany the application with the sum specified in 7-21-2303 as a license fee."

Section 21. Section 7-21-2306, MCA, is amended to read:

"7-21-2306. Bond required if deposit taken on orders for future delivery. (1) An application made by an itinerant vendor taking orders for future delivery and collecting advance payments, deposits, or guarantees on the orders under the terms of 7-21-2301 through 7-21-2305 must be accompanied by a bond ~~in the sum of $250~~ *equal to 125% of the value stated in the vendor's application, as provided in 7-21-2305, and must be* payable to the county treasurer.

(2) (a) The bond must be executed by a surety company licensed to do business in this state ~~or by two responsible freeholders residing in the county and whose names appear upon the assessment roll of the county~~.

(b) In lieu of a bond meeting the requirements of subsection (2)(a), the application may be accompanied by a cash bond*, irrevocable letter of credit, or other acceptable form of security* of *an* equal amount.

(3) The bond *or security* must be approved by the county treasurer and conditioned upon making of final delivery of the goods ordered or the services to be rendered in accordance with the terms of the order or, failing delivery, that the money advanced by the customers will be refunded.

(4) The bond *or security* must remain in full force and effect for a period of 6 months after the expiration of a license and must be held to ensure only business

transacted under the authority of the license issued pursuant to the application that the bond accompanied."

Section 22. Section 7-21-2308, MCA, is amended to read:

"7-21-2308. Processing of application — issuance of license. (1) Upon filing of the application prescribed in 7-21-2305 or the filing of the application and the bond *or security* prescribed in 7-21-2306, in proper form, and upon the payment to the county treasurer of the sum required by 7-21-2303, the county treasurer shall issue and deliver to the applicant a license to carry on the business described in the application in the county in which the license is issued for a period of 90 days from the date of the license.

(2) The county treasurer shall endorse upon each application the date of issuance of the license and shall immediately file the application with the county clerk and recorder of that county. The county clerk and recorder shall file the application in the clerk's office and keep an appropriate index of the applications that shows the date filed, the name of the applicant, and an appropriate reference to the file number by which the application may be found."

Section 23. Section 7-21-2404, MCA, is amended to read:

"7-21-2404. License required to do business as transient retail merchant — fee. ~~The amount to be paid for the license to conduct the business of a~~ *For the purpose of defraying the expenses of regulation under this part, a* transient retail merchant *desiring to do business in any county of this state* shall*,* ~~be~~ *before commencing business, pay in advance* the sum of ~~$5~~ *$25* for each week or fraction ~~thereof~~ *of a week*~~, to be paid in advance~~ to the county treasurer of the county in which ~~such~~ *the* business is conducted."

Section 24. Section 7-21-2407, MCA, is amended to read:

"7-21-2407. Bond *or security* in lieu of license fee. (1) In lieu of the license fee prescribed in 7-21-2404, every transient retail merchant who files with the application required in 7-21-2406 an affidavit indicating bona fide intention to become a permanent merchant and continue in business for a period longer than 1 year shall, upon filing and approval of the bond *or security* provided for in this section, receive from the county treasurer a license permitting the conduct of ~~such~~ *the* business for a period of 1 year.

(2) ~~Such~~ *The* bond ~~shall~~ *must* be a surety bond in the sum of $1,000 to ~~said~~ *the* county treasurer.

(3) (a) The bond ~~shall~~ *must* be executed by a surety company licensed to do business in this state ~~or by two responsible freeholders residing in the county and whose names appear upon the assessment roll of said county~~.

(b) In lieu of a bond meeting the requirements of subsection (3)(a), the bond *or security* may be a cash bond*, irrevocable letter of credit, or other acceptable form of security* of *an* equal amount.

(4) The bond ~~shall~~ *or security must* be approved by ~~said~~ *the* county treasurer and conditioned upon the performance of the intention to become a permanent merchant and continue in business for a period longer than 1 year and to ~~insure~~ *ensure* the payment of license fees for the period ~~such~~ *the* business is actually conducted if *the business is* not in fact a bona fide permanent business. The bond ~~shall~~ *or security must* be further conditioned upon the delivery of goods ordered or sold in accordance with the terms of ~~such~~ *the* order or sale.

(5) ~~Such~~ *The* bond ~~shall~~ *or security must* remain in full force and effect for a period of 6 months after the expiration of the 1-year period."

Section 25. Section 7-21-2408, MCA, is amended to read:

"7-21-2408. Right of aggrieved purchaser. A person aggrieved by any action or misrepresentation of a transient retail merchant has a right of action on the bond *or security* provided for in 7-21-2407 for the recovery of money advanced or damages and costs."

Section 26. Section 7-21-2409, MCA, is amended to read:

"7-21-2409. Processing of application — issuance of license. (1) (a) Upon filing of the application prescribed in 7-21-2406 and the payment of the fee prescribed in 7-21-2404, the county treasurer shall issue and deliver to the applicant, in the county, a license to carry on the business described in the application in the county in which the license is issued for the period for which the license is requested.

(b) Upon filing of the application prescribed in 7-21-2406 and the bond *or security* prescribed in 7-21-2407, the county treasurer shall issue and deliver to the applicant a license to carry on the business described in the application in the county in which the license is issued for a period of 1 year from the date of the license.

(2) The county treasurer shall endorse upon each application the date of issuance of the license and the duration of the license and shall immediately file the application with the county clerk and recorder of the county. The county clerk and recorder shall file the application in the clerk's office and keep an appropriate index of the applications that shows the date filed, the name of the applicant, and an appropriate reference to the file number by which the application may be found."

Section 27. Section 7-21-2410, MCA, is amended to read:

"7-21-2410. License to be displayed in place of business. (1) A transient retail merchant doing business under the provisions of this part shall at all times keep the license conspicuously posted in the place of business.

(2) A transient retail merchant who fails to post and keep posted the license as provided in subsection (1) is guilty of a misdemeanor and *upon conviction* shall be fined not less than ~~$10~~ *$100* or more than ~~$25~~ *$500* for each offense."

Section 28. Section 7-21-2503, MCA, is amended to read:

"7-21-2503. License required to do business as huckster — fee. ~~Every~~ *A* huckster desiring to do business in any county of this state ~~must~~ *shall*, before commencing ~~such~~ business, pay to the county treasurer of ~~such~~ *the* county the sum of ~~$15~~ *$25* for a license to conduct ~~such~~ *the* business for a period of 6 months from the date ~~such~~ *the* license is issued."

Section 29. Section 7-21-2507, MCA, is amended to read:

"7-21-2507. License to be displayed upon demand. (1) A huckster doing business under the provisions of this part shall, upon demand of any interested person, exhibit the huckster's license and permit the ~~the~~ license to be read at that time by the person making the demand.

(2) A huckster who refuses or fails to exhibit the license as provided in subsection (1) is guilty of a misdemeanor and *upon conviction* shall be fined not less than ~~$10~~ *$100* or more than ~~$25~~ *$500*."

Section 30. Section 7-21-3101, MCA, is amended to read:

"7-21-3101. Establishment of public scales. When petitioned by 25 or more ~~residents and freeholders~~ *resident landowners* of the county, the board of county commissioners of any county ~~is hereby authorized in its discretion to~~ *may*

establish and locate public scales at any suitable location selected by the county commissioners within the county."

Section 31. Section 7-21-3105, MCA, is amended to read:

"7-21-3105. Bond of public weigher. A public weigher appointed pursuant to 7-21-3104 *who is not a county employee* shall give a bond to the county in the sum of $500, conditioned for the safekeeping of the public scales and for the faithful and impartial discharge of the duties incident to the weigher's trust in office."

Section 32. Section 7-21-3107, MCA, is amended to read:

"7-21-3107. Fee for weighing. *(1)* A public weigher *who is not a county employee* may not receive more than ~~10 cents~~ *$10* for each receipt issued.

(2) A county that operates a public scale, after a public hearing and after providing notice of the hearing under 7-1-2121, may adopt a fee schedule for weighing."

Section 33. Section 7-21-3212, MCA, is amended to read:

"7-21-3212. Compensation of stock inspector. (1) Whenever a stock inspector is employed, the inspector's compensation must be at a rate ~~not to exceed the sum of $7.50 a day~~ *commensurate with the rate paid to an entry level deputy sheriff of the county,* ~~and~~ *including* necessary expenses for the time actually engaged in the work, and the inspector must be paid by a warrant on the general fund of the county.

(2) Whenever a stock inspector is employed in the investigation of a crime and a reward has been offered under 7-32-2301 for the apprehension and conviction of the party or parties guilty of the crime, the inspector is not entitled to any part of the reward."

Section 34. Section 7-33-2314, MCA, is amended to read:

"7-33-2314. ~~Certain exemptions~~ *Military exemption* for firefighters. The officers and members of regularly organized unpaid fire companies and exempt firefighters are entitled to ~~the following privileges and exemptions:~~

~~(1) exemption from payment of poll tax, road tax, and head tax of every description;~~

~~(2)~~ exemption from military duty except in case of war, invasion, or insurrection."

Section 35. Section 81-4-505, MCA, is amended to read:

"81-4-505. Roundup ~~foreman~~ *supervisor* — duties — bond. (1) All roundups ~~shall~~ *must* be under the control and supervision of the board of county commissioners of the county in which the ~~same shall be~~ *roundup is* held. Roundup districts ~~shall~~ *must* be numbered in the order of their creation. Each roundup ~~shall~~ *must* be conducted by ~~some~~ *a* person designated *or employed* by the board of county commissioners, whose official designation ~~shall~~ *must* be "roundup ~~foreman~~ *supervisor*, ... roundup district, ... County, state of Montana".

(2) ~~Such person~~ *The roundup supervisor* shall maintain ~~his~~ headquarters at the place designated by the board of county commissioners in its order as the headquarters of ~~such~~ *the* roundup. ~~Such~~ *The* roundup ~~foreman shall have~~ *supervisor has the* power to administer oaths and affirmations in all matters coming within the scope of ~~his~~ official duties.

(3) ~~The~~ *If the roundup supervisor is not employed by the board of county commissioners, the* board ~~of county commissioners~~ shall require from ~~such~~ *the* roundup ~~foreman~~ *supervisor* an official bond, in an amount not less than $2,500 and not to exceed $5,000, ~~which bond shall~~ *that must* be conditioned as official bonds of county officers and ~~shall be~~ *is* subject to all provisions of law applicable to ~~such~~ *county officer* bonds."

Section 36. Section 81-4-509, MCA, is amended to read:

"81-4-509. Proof of ownership — payment of taxes and penalties — decision of commissioners on claim. ~~Any~~ *A* person claiming ~~any~~ *an* abandoned horse or horses as provided in 81-4-508 shall, within 5 days after serving the notice provided for in 81-4-508~~,~~ or within ~~such~~ *a* further time ~~as~~ *that* the board of county commissioners ~~shall allow~~ *allows*, upon good cause shown, submit to ~~such~~ *the* board proof of ~~his~~ ownership and shall deposit with ~~said~~ *the* board the amount of any unpaid taxes and penalties ~~which~~ *that* may be assessed against ~~such~~ *the* horse or horses, together with ~~the sum of $5~~ *a $100* roundup fee. The board shall decide all ~~such~~ cases in preference to all other matters coming before it and at the earliest possible moment. If the claim ~~shall be~~ *is* allowed, the roundup ~~foreman~~ *supervisor* in charge of ~~such~~ *the* roundup ~~shall~~ *must* immediately be notified of ~~such~~ *the* decision and ~~he~~ *the supervisor* shall ~~forthwith~~ deliver ~~such~~ *the* horse or horses ~~as to which ownership shall be so proved~~ to the owner upon payment of any amount due from ~~such~~ *the* owner for the estimated cost of keeping and feeding ~~such~~ *the* horse or horses ~~as aforesaid~~. The deposit made by ~~such~~ *the* owner of taxes, penalties, and *the* roundup fee ~~shall~~ *must* be delivered by the board to the county treasurer. If ~~such~~ *the* board ~~shall deny~~ *denies* the claim of ownership, it shall ~~forthwith~~ notify the person in charge of ~~such~~ *the* roundup of its decision and ~~such~~ *the* horse or horses as to which ~~such~~ *the* claim ~~shall be~~ *is* denied ~~shall~~ *must* be offered for sale at the earliest convenient session of the sales being held under ~~such~~ *the* roundup~~, and if~~. *If the horses are* not sold, ~~the same shall~~ *they must* be destroyed or otherwise disposed of as though no claim had been presented."

Section 37. Repealer. Sections 7-4-4202, 7-14-2713, 7-21-3202, 7-21-3213, 7-31-4102, and 30-13-112, MCA, are repealed.

Approved April 17, 2009

CHAPTER NO. 292

[SB 156]

AN ACT CHANGING THE BEGINNING AND ENDING DATES THAT A CANDIDATE MAY FILE FOR CERTAIN ELECTIONS; CLARIFYING PROVISIONS FOR SPECIAL ELECTIONS CALLED TO FILL A VACANCY IN CONGRESSIONAL OFFICES; AND AMENDING SECTIONS 13-10-201, 13-10-208, 13-10-325, 13-10-326, 13-10-405, 13-10-503, 13-10-601, 13-12-201, 13-14-112, 13-14-113, 13-25-203, 13-25-205, 13-26-103, 13-35-107, AND 13-37-126, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13-10-201, MCA, is amended to read:

"13-10-201. Declaration for nomination. (1) Each candidate in the primary election, except nonpartisan candidates filing under the provisions of *Title 13,* chapter 14, shall file a declaration for nomination with the secretary of state or election administrator. A candidate may not file for more than one

public office. Each candidate for governor shall file a joint declaration for nomination with a candidate for lieutenant governor.

(2) A declaration for nomination must be filed in the office of:

(a) the secretary of state for placement of a name on the ballot for the presidential preference primary, a congressional office, a state or district office to be voted for in more than one county, a member of the legislature, or a judge of the district court;

(b) the election administrator for a county, municipal, precinct, or district office (other than a member of the legislature or judge of the district court) to be voted for in only one county.

(3) Each candidate shall sign the declaration and send with it the required filing fee or, in the case of an indigent candidate, send with it the documents required by 13-10-203. Unless filed electronically with the secretary of state, the declaration for nomination must be acknowledged by an officer empowered to acknowledge signatures or by the officer of the office at which the filing is made.

(4) The declaration, when filed, is conclusive evidence that the elector is a candidate for nomination by the elector's party. For a partisan election, an elector may not file a declaration for more than one party's nomination.

(5) (a) The declaration for nomination must be in the form and contain the information prescribed by the secretary of state.

(b) A person seeking nomination to the legislature shall provide the secretary of state with a street address, legal description, or road designation to indicate the person's place of residence. If a candidate for the legislature changes residence, the candidate shall, within 15 days after the change, notify the secretary of state on a form prescribed by the secretary of state.

(c) The secretary of state and election administrator shall furnish declaration for nomination forms to individuals requesting them.

(6) *(a)* ~~Declarations~~ *Except as provided in subsection (6)(b) and 13-10-211, a candidate's declaration* for nomination must be filed no sooner than 135 days before the election in which the office first appears on the ballot and no later than 5 p.m., 75 days before the date of the primary election.

(b) For an election held pursuant to 13-1-104(1)(a) or 13-1-107(1), a candidate's declaration for nomination must be filed no sooner than 145 days before the election in which the office first appears on the ballot and no later than 5 p.m., 85 days before the date of the primary election.

(7) A declaration for nomination form may be sent by facsimile transmission if a facsimile facility is available for use by the election administrator or by the secretary of state, delivered in person, or mailed to the election administrator or to the secretary of state."

Section 2. Section 13-10-208, MCA, is amended to read:

"13-10-208. Certificate of primary ballot — preparing ballot. (1) Not more than ~~75~~ *85* days and not less than ~~67~~ *75* days before the date of the primary election, the secretary of state shall certify to the election administrators the names and designations of candidates, except as provided in 13-37-126, and any ballot issues as shown in the official records of the secretary of state's office in the manner provided in 13-10-209 and *Title 13,* chapter 12, part 2~~, of this title~~.

(2) *(a)* ~~Not~~ *Except as provided in subsection (2)(b), not* more than 67 days and not less than 62 days before the date of the primary election, the election administrator shall certify the names and designations of candidates, except as

provided in 13-37-126, and any ballot issues as shown in the official record of the election administrator's office and must have the official ballots prepared in the manner provided in 13-10-209 and *Title 13,* chapter 12, part 2~~, of this title~~.

(b) For a primary election conducted pursuant to 13-1-107(1) the election administrator shall, not more than 75 days and not less than 70 days before the date of the primary election, certify the names and designations of candidates, except as provided in 13-37-126, and any ballot issues as shown in the official record of the election administrator's office and must have the official ballots prepared in the manner provided in 13-10-209 and Title 13, chapter 12, part 2.

(3) If a candidate for the legislature is no longer eligible under Article V, section 4, of the Montana constitution to seek the office for which the candidate has filed because the candidate has changed residence, the secretary of state shall notify the candidate that the candidate is required to withdraw as provided in 13-10-325."

Section 3. Section 13-10-325, MCA, is amended to read:

"13-10-325. Withdrawal from nomination. (1) *(a)* A candidate for nomination or candidate for election to an office may withdraw from the election by sending a statement of withdrawal to the officer with whom ~~his~~ *the candidate's* declaration, petition, or acceptance of nomination was filed. The statement must contain all information necessary to identify the candidate and the office sought and the reason for withdrawal. It ~~shall~~ *must* be sworn or affirmed before an officer empowered to administer oaths.

(b) ~~A~~ *Except as provided in subsection (1)(c), a* candidate may not withdraw later than 85 days before a general election or 75 days before a primary election.

(c) A candidate may not withdraw later than 85 days before a general election conducted pursuant to 13-1-104(1)(a) or a primary election conducted pursuant to 13-1-107(1).

(2) Filing fees paid by the candidate may not be refunded."

Section 4. Section 13-10-326, MCA, is amended to read:

"13-10-326. Vacancy prior to primary election. (1) *Except as provided in subsection (2):*

(a) ~~If~~ *if* a candidate for nomination for a partisan office dies or withdraws 75 days or more before the primary election, the affected political party may appoint someone to replace the candidate by the procedure provided in 13-10-327~~.~~*; or*

~~(2)~~*(b)* ~~If~~ *if* a candidate for nomination for a partisan office dies less than 75 days before the primary *election*, the affected political party shall appoint a candidate after the primary *election* as provided in 13-10-327 if a candidate for that office for that party was not nominated at the primary election.

(2) For an election conducted pursuant to 13-1-104(1)(a) or 13-1-107(1):

(a) if a candidate for nomination for a partisan office dies or withdraws 85 days or more before the primary election, the affected political party may appoint someone to replace the candidate by the procedure provided in 13-10-327; or

(b) if a candidate for nomination for a partisan office dies less than 85 days before the primary election, the affected political party shall appoint a candidate after the primary election as provided in 13-10-327 if a candidate for that office for that party was not nominated at the primary election.

(3) This section does not allow a political party to appoint a candidate for an office if no candidate for nomination by that party filed for the office before the primary election."

Section 5. Section 13-10-405, MCA, is amended to read:

"13-10-405. Submission and verification of petition. Petitions of nomination for the presidential preference primary election and the affidavits of circulation required by 13-27-302 must be presented to the election administrator of the county in which the signatures are gathered at least 1 week before the primary election filing deadline prescribed in 13-10-201(6)*(b)*. A filing fee is not required. The election administrator shall verify the signatures in the manner prescribed in 13-27-303 through 13-27-308 and must forward the petitions to the secretary of state."

Section 6. Section 13-10-503, MCA, is amended to read:

"13-10-503. Filing deadlines. (1) A petition for nomination and the affidavits of circulation required by 13-27-302, accompanied by the required filing fee, must be filed with the same officer with whom other nominations for the office sought are filed. Petitions must be submitted, at least 1 week before the deadline for filing, to the election administrator in the county where the signer resides for verification and certification by the procedures provided in 13-27-303 through 13-27-306. If there are insufficient signatures on the petition, additional signatures may be submitted before the deadline for filing. If sufficient signatures are verified and certified pursuant to 13-10-502, the county election administrator shall file the petition for nomination with the same officer with whom other nominations for the office sought are filed.

(2) Except as provided in 13-10-504, each petition for nomination, accompanied by the required filing fee, must be filed by the applicable deadline established in 13-10-201(6)*(a) or (6)(b)*."

Section 7. Section 13-10-601, MCA, is amended to read:

"13-10-601. Parties eligible for primary election — petitions by minor parties. (1) Each political party that had a candidate for a statewide office in either of the last two general elections who received a total vote that was 5% or more of the total votes cast for the most recent successful candidate for governor shall nominate its candidates for public office, except for presidential electors, by a primary election as provided in this chapter.

(2) (a) A political party that does not qualify to hold a primary election under subsection (1) may qualify to nominate its candidates by primary election by presenting a petition, in a form prescribed by the secretary of state, requesting the primary election.

(b) The petition must be signed by a number of registered voters equal to 5% or more of the total votes cast for the successful candidate for governor at the last general election or 5,000 electors, whichever is less~~,~~. ~~which~~ *The* number must include the registered voters in more than one-third of the legislative districts equal to 5% or more of the total votes cast for the successful candidate for governor at the last general election in those districts or 150 electors in those districts, whichever is less.

(c) At least 1 week before the ~~filing~~ deadline provided in subsection (2)(d), the petition and the affidavits of circulation required by 13-27-302 must be presented to the election administrator of the county in which the signatures were gathered to be verified under the procedures provided in 13-27-303 through 13-27-306.

(d) The election administrator shall forward the verified petition to the secretary of state at least ~~75~~ *85* days before the date of the primary."

Section 8. Section 13-12-201, MCA, is amended to read:

"13-12-201. Secretary of state to certify ballot. (1) Seventy-five days or more before ~~an~~ *a federal general* election, ~~except as provided in 13-10-208,~~ the secretary of state shall certify to the election administrators the name and party or other designation of each candidate entitled to appear on the ballot and the ballot issues as shown in the official records of the secretary of state's office, which must include the notification specified in 13-37-126.

(2) The election administrator shall certify the name and party or other designation of each candidate entitled to appear on the ballot and the ballot issues as shown in the official records of the election administrator's office, which must include the notification specified in 13-37-126, and shall have the official ballots prepared.

(3) If a candidate for the legislature is no longer eligible under Article V, section 4, of the Montana constitution to seek the office for which the candidate has filed because the candidate has changed residence, the secretary of state shall notify the candidate that the candidate is required to withdraw as provided in 13-10-325."

Section 9. Section 13-14-112, MCA, is amended to read:

"13-14-112. Declarations for nomination — fee — *filing*. (1) Nonpartisan candidates shall file declarations for nomination as required by the primary election laws in a form prescribed by the secretary of state except as provided in 13-14-113. A candidate may not file for more than one public office.

(2) Declarations may not indicate political affiliation. The candidate may not state in the declaration any principles or measures that the candidate advocates or any slogans.

(3) Each individual filing a declaration shall pay the fee prescribed by law for the ~~position~~ *office* that the individual seeks.

(4) Declarations must be filed*:*

(a) in the office of the secretary of state or the appropriate election administrator as provided in 13-10-201. ~~Time of filing must be the same as~~*; and*

(b) within the applicable filing period provided in 13-10-201*(6)(a) or (6)(b) for the office that the individual seeks*."

Section 10. Section 13-14-113, MCA, is amended to read:

"13-14-113. Filing for offices without salary or fees. (1) Candidates for nonpartisan offices for which a salary or fees are not paid shall file with the appropriate official a petition for nomination containing the same information and the oath of the candidate required for a declaration of nomination in a form prescribed by the secretary of state.

(2) The petition must contain the signatures of registered electors of the election district in which the office will be on the ballot. The number of signatures must be equal to 5% of the total vote cast for the successful candidate for that office at the last general election, but may not be less than five signatures.

(3) The number of signatures necessary for a petition for nomination for an office not previously on the ballot or for which the election district boundaries have changed since the last general election must be determined by the secretary of state.

(4) Petitions for nomination must be filed ~~at the same time~~ *within the applicable filing period* provided in 13-10-201*(6)(a) or (6)(b)* ~~for other candidates and offices~~.

(5) A candidate may not file for more than one public office."

Section 11. Section 13-25-203, MCA, is amended to read:

"13-25-203. Vacancy in office of United States representative. (1) If a vacancy occurs in the office of United States representative, the governor shall immediately order an election to be held to fill the vacancy, except as provided in subsection (3).

(2) The election to fill the unexpired term ~~shall~~ *must* be held no less than ~~75~~ *85* or more than ~~90~~ *100* days from the ~~time~~ *date on which* the vacancy occurs, except that if the vacancy occurs 150 days or less before a primary election or between the primary and general elections in odd-numbered years, the election ~~shall~~ *must* be held with the primary or general election.

(3) If the vacancy occurs between the primary and general election in even-numbered years, the candidate elected to the office for the succeeding full term shall immediately take office to fill the unexpired term."

Section 12. Section 13-25-205, MCA, is amended to read:

"13-25-205. Nominations for special election. (1) When a special election is ordered to fill a vacancy in the office of ~~United States senator or~~ United States representative, each political party shall choose a candidate according to the rules of the party. Nominations by parties ~~shall~~ *must* be made no later than ~~75~~ *85* days before the date set for the election.

(2) Nominating petitions may be filed by independent candidates for the office up to 5:00 p.m. of the ~~75th~~ *85th* day before the election."

Section 13. Section 13-26-103, MCA, is amended to read:

"13-26-103. Nomination of delegates. (1) Nominations for the office of delegate ~~shall~~ *must* be *made:*

(a) by petition signed by not less than 100 voters of the district~~.~~*;*

~~(2)~~*(b)* ~~Nominations shall be~~ without political designation ~~but shall be~~*; and*

(c) as "in favor of" or "opposed to" ratification of the proposed amendment.

~~(3)~~*(2)* Petitions and acceptances ~~shall~~ *must* be filed not less than ~~75~~ *85* days prior to the election."

Section 14. Section 13-35-107, MCA, is amended to read:

"13-35-107. Voiding election. (1) *(a)* If a court finds that the violation of any provision of this title by any person probably affected the outcome of any election, the result of that election may be held void and a special election held*:*

(i) except as provided in subsection (1)(a)(ii), within 75 days of ~~that~~ *the* finding~~.~~*; or*

(ii) if the election was held pursuant to 13-1-104(1)(a) or 13-1-107(1), within 85 days of the finding.

(b) If the violation occurred during a primary election, the court may direct the selection of a new candidate according to the provisions of state law relating to the filling of vacancies on the general election ballot. Except as provided in subsection (2), an action to void an election ~~shall~~ *must* be commenced within 1 year of the date of the election in question.

(2) An action to void a bond election ~~shall~~ *must* be commenced within 60 days of the date of the election in question."

Section 15. Section 13-37-126, MCA, is amended to read:

"13-37-126. Names not to appear on ballot. (1) The name of a candidate may not appear on the official ballot for an election if the candidate or a treasurer for a candidate fails to file any statement or report as required by this chapter.

(2) A vacancy on an official ballot under this section may be filled in the manner provided by law, but not by the name of the same candidate.

(3) *(a)* In carrying out the mandate of this section, the commissioner shall, by a written statement, notify the secretary of state or the election administrator that a candidate or a candidate's treasurer has not complied with the provisions of this chapter, as described in subsection (1), and that a candidate's name ~~should~~ *may* not appear on the official ballot.

(b) The commissioner shall provide ~~this~~ *the* notification*:* ~~by the ballot certification deadline~~

(i) within 8 calendar days after the close of the certification deadline provided in 13-10-208*(1)* for primary elections *held pursuant to 13-1-107(1); or*

(ii) by the earliest date specified under 13-10-208(2) for the county election administrator to certify the ballot for primary elections held pursuant to 13-1-107(2) or (3); and

(iii) by no later than 7 days before the ballot certification deadline provided in 13-12-201 for general elections."

Approved April 17, 2009

CHAPTER NO. 293

[SB 174]

AN ACT CREATING THE PROFESSIONAL CLASSIFICATION OF CLINICAL PHARMACIST PRACTITIONER; PROVIDING DEFINITIONS AND QUALIFICATIONS; REQUIRING THE BOARD OF PHARMACY AND THE BOARD OF MEDICAL EXAMINERS TO ESTABLISH REQUIREMENTS FOR CLINICAL PHARMACIST PRACTITIONERS; AND AMENDING SECTIONS 37-7-101 AND 37-7-201, MCA.

WHEREAS, the Medicare Payment Advisory Commission has recommended that the Centers for Medicare and Medicaid Services recognize pharmacists engaging in medication therapy management as practitioners under Medicare, thus permitting those professionals to bill the program independently for their patient care services; and

WHEREAS, the introduction of this federal legislation would require each state to define and articulate requirements necessary for a pharmacist to become clinically certified; and

WHEREAS, the Montana Pharmacy Association hopes to be proactive in having this state legislation ready in anticipation of the federal law; and

WHEREAS, advancing pharmacy practitioners within the state of Montana achieves better patient care and advances national goals for health care reform; and

WHEREAS, pharmacists have demonstrated a large role in producing favorable outcomes with medication therapy management because of their drug knowledge, clinical skills, and access to patients; and

WHEREAS, well-trained, credentialed pharmacists are needed to work with physicians in managing patients with chronic medical conditions requiring a large number of medications; and

WHEREAS, pharmacists play a critical role in health care access to patients, especially in rural Montana.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-7-101, MCA, is amended to read:

"37-7-101. Definitions. As used in parts 1 through 7 of this chapter, the following definitions apply:

(1) (a) "Administer" means the direct application of a drug to the body of a patient by injection, inhalation, ingestion, or any other means.

(b) The term does not include immunization by injection for children under 18 years of age.

(2) "Board" means the board of pharmacy provided for in 2-15-1733.

(3) "Chemical" means medicinal or industrial substances, whether simple, compound, or obtained through the process of the science and art of chemistry, whether of organic or inorganic origin.

(4) "Clinical pharmacist practitioner" means a licensed pharmacist in good standing who meets the requirements specified in [section 2].

~~(4)~~*(5)* "Collaborative pharmacy practice" means the practice of pharmacy by a pharmacist who has agreed to work in conjunction with one or more prescribers, on a voluntary basis and under protocol, and who may perform certain patient care functions under certain specified conditions or limitations authorized by the prescriber.

~~(5)~~*(6)* "Collaborative pharmacy practice agreement" means a written and signed agreement between one or more pharmacists and one or more prescribers that provides for collaborative pharmacy practice for the purpose of drug therapy management of patients.

~~(6)~~*(7)* "Commercial purposes" means the ordinary purposes of trade, agriculture, industry, and commerce, exclusive of the practices of medicine and pharmacy.

~~(7)~~*(8)* "Compounding" means the preparation, mixing, assembling, packaging, or labeling of a drug or device based on:

(a) a practitioner's prescription drug order;

(b) a professional practice relationship between a practitioner, pharmacist, and patient;

(c) research, instruction, or chemical analysis, but not for sale or dispensing; or

(d) the preparation of drugs or devices based on routine, regularly observed prescribing patterns.

~~(8)~~*(9)* "Confidential patient information" means privileged information accessed by, maintained by, or transmitted to a pharmacist in patient records or that is communicated to the patient as part of patient counseling.

~~(9)~~*(10)* "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

~~(10)~~*(11)* "Device" has the same meaning as defined in 37-2-101.

~~(11)~~*(12)* "Dispense" or "dispensing" means the interpretation, evaluation, and implementation of a prescription drug order, including the preparation and delivery of a drug or device to a patient or patient's agent in a suitable container appropriately labeled for administration to or use by a patient.

~~(12)~~*(13)* "Distribute" means the delivery of a drug or device by means other than administering or dispensing.

~~(13)~~*(14)* "Drug" means a substance:

(a) recognized as a drug in any official compendium or supplement;

(b) intended for use in diagnosis, cure, mitigation, treatment, or prevention of disease in humans or animals;

(c) other than food, intended to affect the structure or function of the body of humans or animals; and

(d) intended for use as a component of a substance specified in subsection ~~(13)(a)~~ *(14)(a)*, ~~(13)(b)~~ *(14)(b)*, or ~~(13)(c)~~ *(14)(c)*.

~~(14)~~*(15)* "Drug utilization review" means an evaluation of a prescription drug order and patient records for duplication of therapy, interactions, proper utilization, and optimum therapeutic outcomes. The term includes but is not limited to the following evaluations:

(a) known allergies;

(b) rational therapy contraindications;

(c) reasonable dose and route administration;

(d) reasonable directions for use;

(e) drug-drug interactions;

(f) drug-food interactions;

(g) drug-disease interactions; and

(h) adverse drug reactions.

~~(15)~~*(16)* "Equivalent drug product" means a drug product that has the same established name, active ingredient or ingredients, strength or concentration, dosage form, and route of administration and meets the same standards as another drug product as determined by any official compendium or supplement. Equivalent drug products may differ in shape, scoring, configuration, packaging, excipients, and expiration time.

~~(16)~~*(17)* "Intern" means:

(a) a person who is licensed by the state to engage in the practice of pharmacy while under the personal supervision of a preceptor and who is satisfactorily progressing toward meeting the requirements for licensure as a pharmacist;

(b) a graduate of an accredited college of pharmacy who is licensed by the state for the purpose of obtaining practical experience as a requirement for licensure as a pharmacist;

(c) a qualified applicant awaiting examination for licensure; or

(d) a person participating in a residency or fellowship program.

~~(17)~~*(18)* (a) "Manufacturing" means the production, preparation, propogation, conversion, or processing of a drug or device, either directly or indirectly, by extraction from substances of natural origin or independently by means of chemical or biological synthesis.

(b) Manufacturing includes:

(i) any packaging or repackaging;

(ii) labeling or relabeling;

(iii) promoting or marketing; and

(iv) preparing and promoting commercially available products from bulk compounds for resale by pharmacies, practitioners, or other persons.

~~(18)~~*(19)* "Medicine" means a remedial agent that has the property of curing, preventing, treating, or mitigating diseases or which is used for this purpose.

~~(19)~~*(20)* "Patient counseling" means the communication by the pharmacist of information, as defined by the rules of the board, to the patient or caregiver in order to ensure the proper use of drugs or devices.

~~(20)~~*(21)* "Person" includes an individual, partnership, corporation, association, or other legal entity.

~~(21)~~*(22)* "Pharmaceutical care" means the provision of drug therapy and other patient care services intended to achieve outcomes related to the cure or prevention of a disease, elimination or reduction of a patient's symptoms, or arresting or slowing of disease process.

~~(22)~~*(23)* "Pharmacist" means a person licensed by the state to engage in the practice of pharmacy and who may affix to the person's name the term "R.Ph.".

~~(23)~~*(24)* "Pharmacy" means an established location, either physical or electronic, registered by the board where drugs or devices are dispensed with pharmaceutical care or where pharmaceutical care is provided.

~~(24)~~*(25)* "Pharmacy technician" means an individual who assists a pharmacist in the practice of pharmacy.

~~(25)~~*(26)* "Poison" means a substance that, when introduced into the system, either directly or by absorption, produces violent, morbid, or fatal changes or that destroys living tissue with which it comes in contact.

~~(26)~~*(27)* "Practice of pharmacy" means:

(a) interpreting, evaluating, and implementing prescriber orders;

(b) administering drugs and devices pursuant to a collaborative practice agreement and compounding, labeling, dispensing, and distributing drugs and devices, including patient counseling;

(c) properly and safely procuring, storing, distributing, and disposing of drugs and devices and maintaining proper records;

(d) monitoring drug therapy and use;

(e) initiating or modifying drug therapy in accordance with collaborative pharmacy practice agreements established and approved by health care facilities or voluntary agreements with prescribers;

(f) participating in quality assurance and performance improvement activities;

(g) providing information on drugs, dietary supplements, and devices to patients, the public, and other health care providers; and

(h) participating in scientific or clinical research as an investigator or in collaboration with other investigators.

~~(27)~~*(28)* "Practice telepharmacy" means to provide pharmaceutical care through the use of information technology to patients at a distance.

~~(28)~~*(29)* "Preceptor" means an individual who is registered by the board and participates in the instructional training of a pharmacy intern.

~~(29)~~*(30)* "Prescriber" has the same meaning as provided in 37-7-502.

~~(30)~~*(31)* "Prescription drug" means any drug that is required by federal law or regulation to be dispensed only by a prescription subject to section 503(b) of the Federal Food, Drug, and Cosmetic Act, ~~(~~21 U.S.C. 353~~)~~.

~~(31)~~*(32)* "Prescription drug order" means an order from a prescriber for a drug or device that is communicated directly or indirectly by the prescriber to the furnisher by means of a signed order, by electronic transmission, in person, or by telephone. The order must include the name and address of the prescriber, the prescriber's license classification, the name and address of the patient, the name, strength, and quantity of the drug, drugs, or device prescribed, the directions for use, and the date of its issue. These stipulations apply to written, oral, electronically transmitted, and telephoned prescriptions and orders derived from collaborative pharmacy practice.

~~(32)~~*(33)* "Utilization plan" means a plan under which a pharmacist may use the services of a pharmacy technician in the practice of pharmacy to perform tasks that:

(a) do not require the exercise of the pharmacist's independent professional judgment; and

(b) are verified by the pharmacist.

~~(33)~~*(34)* "Wholesale" means a sale for the purpose of resale."

Section 2. Clinical pharmacist practitioner qualifications. (1) A clinical pharmacist practitioner is a licensed pharmacist in good standing who:

(a) is certified by the board, in concurrence with the board of medical examiners, to provide drug therapy management, including initiating, modifying, or discontinuing therapies, identifying and managing drug-related problems, or ordering tests under the direction or supervision of a prescriber;

(b) has additional education, experience, or certification as required by the board in concurrence with the board of medical examiners; and

(c) has in place a collaborative pharmacy practice agreement.

(2) Only a pharmacist certified by the board may legally be identified as a clinical pharmacist practitioner.

Section 3. Section 37-7-201, MCA, is amended to read:

"37-7-201. Organization — powers and duties. (1) The board shall meet at least once a year to transact its business. The board shall annually elect from its members a president, vice president, and secretary.

(2) The board shall regulate the practice of pharmacy in this state, including but not limited to:

(a) establishing minimum standards for:

(i) equipment necessary in and for a pharmacy;

(ii) the purity and quality of drugs, devices, and other materials dispensed within the state through the practice of pharmacy, using an official compendium recognized by the board or current practical standards;

(iii) specifications for the facilities, environment, supplies, technical equipment, personnel, and procedures for the storage, compounding, or dispensing of drugs and devices;

(iv) monitoring drug therapy; and

(v) maintaining the integrity and confidentiality of prescription information and other confidential patient information;

(b) requesting the department to inspect, at reasonable times:

(i) places where drugs, medicines, chemicals, or poisons are sold, vended, given away, compounded, dispensed, or manufactured; and

(ii) the appropriate records and the license of any person engaged in the practice of pharmacy for the purpose of determining whether any laws governing the legal distribution of drugs or devices or the practice of pharmacy are being violated. The board shall cooperate with all agencies charged with the enforcement of the laws of the United States, other states, or this state relating to drugs, devices, and the practice of pharmacy. It is a misdemeanor for a person to refuse to permit or otherwise prevent the department from entering these places and making an inspection.

(c) regulating:

(i) the training, qualifications, employment, licensure, and practice of interns;

(ii) the training, qualifications, employment, and registration of pharmacy technicians; and

(iii) under therapeutic classification, the sale and labeling of drugs, devices, medicines, chemicals, and poisons;

(d) examining applicants and issuing and renewing licenses of:

(i) applicants whom the board considers qualified under this chapter to practice pharmacy;

(ii) pharmacies and certain stores under this chapter;

(iii) wholesale drug distributors; and

(iv) persons engaged in the manufacture and distribution of drugs or devices;

(e) in concurrence with the board of medical examiners, defining the additional education, experience, or certification required of a licensed pharmacist to become a certified clinical pharmacist practitioner;

~~(e)~~*(f)* issuing certificates of "certified pharmacy" under this chapter;

~~(f)~~*(g)* establishing and collecting license and registration fees;

~~(g)~~*(h)* approving pharmacy practice initiatives that improve the quality of, or access to, pharmaceutical care but that fall outside the scope of this chapter. This subsection ~~(2)(g)~~ *(2)(h)* may not be construed to expand on the definition of the practice of pharmacy ~~as defined in 37-7-101~~.

~~(h)~~*(i)* making rules for the conduct of its business;

~~(i)~~*(j)* performing other duties and exercising other powers as this chapter requires;

~~(j)~~*(k)* adopting and authorizing the department to publish rules for carrying out and enforcing parts 1 through 7 of this chapter, including but not limited to:

(i) requirements and qualifications for the transfer of board-issued licenses;

(ii) minimum standards for pharmacy internship programs and qualifications for licensing pharmacy interns;

(iii) qualifications and procedures for registering pharmacy technicians; and

(iv) requirements and procedures necessary to allow a pharmacy licensed in another jurisdiction to be registered to practice telepharmacy across state lines.

(3) The board may:

(a) join professional organizations and associations organized exclusively to promote the improvement of standards of the practice of pharmacy for the protection of the health and welfare of the public and whose activities assist and facilitate the work of the board; and

(b) establish standards of care for patients concerning health care services that a patient may expect with regard to pharmaceutical care."

Section 4. Codification. [Section 2] is intended to be codified as an integral part of Title 37, chapter 7, and the provisions of Title 37, chapter 7, apply to [section 2].

Approved April 17, 2009

CHAPTER NO. 294

[SB 202]

AN ACT PROHIBITING THE FEEDING OF CERTAIN WILDLIFE; AMENDING SECTION 87-3-130, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-3-130, MCA, is amended to read:

"87-3-130. Taking of wildlife to protect persons or livestock. (1) This chapter may not be construed to impose, by implication or otherwise, criminal liability for the taking of wildlife protected by this title if the wildlife is attacking, killing, or threatening to kill a person or livestock, except that, for purposes of protecting livestock, a person may not kill or attempt to kill a grizzly bear unless the grizzly bear is in the act of attacking or killing livestock. In addition, a person may kill or attempt to kill a wolf or mountain lion that is in the act of attacking or killing a domestic dog. A person who, under this subsection, takes wildlife protected by this title shall, within 72 hours, notify the department and surrender or arrange to surrender the wildlife to the department.

(2) A person may not provide supplemental feed attractants to game animals by:

(a) purposely or knowingly attracting *any ungulates,* bears*, or mountain lions* with supplemental feed attractants;

(b) after having received a previous warning, negligently failing to properly store supplemental feed attractants and allowing *any ungulates,* bears*, or mountain lions* access to the supplemental feed attractants; or

(c) purposely or knowingly providing supplemental feed attractants in a manner that results in an artificial concentration of game animals that may potentially contribute to the transmission of disease or that constitutes a threat to public safety.

(3) A person who is engaged in the normal feeding of livestock, in a normal agricultural practice, in cultivation of a lawn or garden, or in the commercial processing of garbage is not subject to civil or criminal liability under this section.

(4) A person who is engaged in the recreational feeding of birds is not subject to civil or criminal liability under this section unless, after having received a previous warning by the department, the person continues to feed birds in a manner that attracts ungulates or bears and that may contribute to the transmission of disease or constitute a threat to public safety.

~~(4)~~*(5)* A person who violates subsection (2) is guilty of a misdemeanor and is subject to the penalty provided in 87-1-102(1). This section does not apply to supplemental feeding activities conducted by the department for disease control purposes.

~~(5)~~*(6)* As used in this section:

(a) "livestock" includes ostriches, rheas, and emus; and

(b) "supplemental feed attractant" means any food, garbage, or other attractant for game animals. *The term does not include growing plants or plants harvested for the feeding of livestock.*"

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 17, 2009

CHAPTER NO. 295

[SB 280]

AN ACT REVISING THE EXEMPTION OF CERTAIN PERSONAL PROPERTY OF A RENTAL PROPERTY BUSINESS BY EXTENDING THE EXEMPTION TO THE PERSONAL PROPERTY RENTED ON A SEMIMONTHLY OR MONTHLY BASIS; AMENDING SECTION 15-6-219, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-6-219, MCA, is amended to read:

"15-6-219. Personal and other property exemptions. The following categories of property are exempt from taxation:

(1) harness, saddlery, and other tack equipment;

(2) the first $15,000 or less of market value of tools owned by the taxpayer that are customarily hand-held and that are used to:

(a) construct, repair, and maintain improvements to real property; or

(b) repair and maintain machinery, equipment, appliances, or other personal property;

(3) all household goods and furniture, including but not limited to clocks, musical instruments, sewing machines, and wearing apparel of members of the family, used by the owner for personal and domestic purposes or for furnishing or equipping the family residence;

(4) a bicycle, as defined in 61-8-102, used by the owner for personal transportation purposes;

(5) items of personal property intended for rent or lease in the ordinary course of business if each item of personal property satisfies all of the following:

(a) the acquired cost of the personal property is less than $15,000;

(b) the personal property is owned by a business whose primary business income is from rental or lease of personal property to individuals and no one

customer of the business accounts for more than 10% of the total rentals or leases during a calendar year; and

(c) the lease of the personal property is generally on an hourly, daily, ~~or~~ weekly*, semimonthly, or monthly* basis;

(6) space vehicles and all machinery, fixtures, equipment, and tools used in the design, manufacture, launch, repair, and maintenance of space vehicles that are owned by businesses engaged in manufacturing and launching space vehicles in the state or that are owned by a contractor or subcontractor of that business and that are directly used for space vehicle design, manufacture, launch, repair, and maintenance; and

(7) a title plant owned by a title insurer or a title insurance producer, as those terms are defined in 33-25-105."

Section 2. Applicability. [This act] applies to tax years beginning after December 31, 2009.

Approved April 17, 2009

CHAPTER NO. 296

[SB 424]

AN ACT ESTABLISHING THE MERCURY-ADDED THERMOSTAT COLLECTION ACT; BANNING MERCURY-ADDED THERMOSTAT SALES AND INSTALLATION; REQUIRING COLLECTION AND RECYCLING OF MERCURY-ADDED THERMOSTATS; PROVIDING RULEMAKING AUTHORITY; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, mercury that is released into the atmosphere can be transported long distances and deposited in aquatic ecosystems where it is methylated to methylmercury, the organic and most toxic form of mercury; and

WHEREAS, mercury-added thermostats represent the largest amount of mercury in ordinary household products; and

WHEREAS, a single mercury-added thermostat contains 3 to 5 grams of mercury; and

WHEREAS, according to the U.S. Environmental Protection Agency's 2002 estimates, each year about 6 to 8 tons of mercury from discarded thermostats end up in solid waste facilities and between 1 and 2 tons are released into the air; and

WHEREAS, according to a 2004 study by the U.S. Environmental Protection Agency, more than 10% of the estimated mercury reservoir still currently in use in the United States resides in mercury-added thermostats; and

WHEREAS, methylmercury bioaccumulates and biomagnifies in animals, including fish and humans; and

WHEREAS, according to the Montana Department of Public Health and Human Services, mercury has been found in fish in at least 28 water bodies in Montana, including Canyon Ferry Reservoir, Cooney Reservoir, Flathead Lake, Fort Peck Reservoir, Hebgen Lake, Lake Koocanusa, Seeley Lake, Swan Lake, Tongue River Reservoir, and Whitefish Lake; and

WHEREAS, methylmercury is a known neurotoxin to which the human fetus is very sensitive; and

WHEREAS, the federal Centers for Disease Control and Prevention estimate that between 300,000 and 630,000 infants are born in the United States each year with mercury levels that are associated, at later ages, with the loss of IQ; and

WHEREAS, new evidence indicates that methylmercury exposure may increase the risk of cardiovascular disease in humans, especially adult men; and

WHEREAS, decreases in local and regional sources of mercury emissions have been shown to lead to decreases in mercury levels in fish and wildlife; and

WHEREAS, in 1998, thermostat makers General Electric, Honeywell, and White-Rodgers established the Thermostat Recycling Corporation to implement a program for collecting used mercury-added thermostats under which thermostat wholesalers and contractors, as well as household hazardous waste facilities, volunteer to collect thermostats from heating, ventilating, and air-conditioning contractors and the general public.

Be it enacted by the Legislature of the State of Montana:

Section 1. Short title. [Sections 1 through 9] may be cited as the "Mercury-Added Thermostat Collection Act".

Section 2. Purpose. The purpose of [sections 1 through 9] is to facilitate the proper disposal of mercury-added thermostats.

Section 3. Definitions. As used in [sections 1 through 9], unless the context requires otherwise, the following definitions apply:

(1) "Department" means the department of environmental quality provided for in 2-15-3501.

(2) "Manufacturer" means a business concern that owns or owned the name brand of a mercury-added thermostat sold in this state.

(3) (a) "Mercury-added thermostat" means a product or device that uses a mercury switch to sense and control room temperature through communication with heating, ventilating, or air-conditioning equipment in residential, commercial, industrial, or other buildings.

(b) The term does not include a thermostat used to sense and control temperature as part of a manufacturing process.

(4) "Out-of-service mercury-added thermostat" means a mercury-added thermostat that is removed from a building or facility and is intended to be discarded.

(5) "Program" means a system for the collection, transportation, recycling, and disposal of out-of-service mercury-added thermostats that is financed, as well as managed or provided, by a manufacturer or collectively with other manufacturers.

(6) "Qualified contractor" means a person engaged in the business of installation, service, or removal of heating, ventilation, and air-conditioning components who employs seven or more service technicians or installers or who is located in areas outside of urban areas as defined by the United States bureau of the census.

(7) "Retailer" means a person who sells thermostats of any kind directly to a consumer through a selling or distribution mechanism, including but not limited to a sale using catalogs or the internet.

(8) (a) "Thermostat" means a product or device that uses a switch to sense and control room temperature through communication with heating,

ventilating, or air-conditioning equipment in residential, commercial, industrial, and other buildings.

(b) The term does not include a product or device used to sense and control temperature as part of a manufacturing process.

(9) (a) "Wholesaler" means a person engaged in the distribution and wholesale selling of heating, ventilation, and air-conditioning components to contractors who install heating, ventilation, and air-conditioning components and whose total wholesale sales account for 80% or more of total sales. The term may include a retailer.

(b) The term does not include a manufacturer.

Section 4. Prohibition on sale and installation of mercury-added thermostats — list. (1) After January 1, 2010, a person may not sell, offer for sale, or install a mercury-added thermostat in Montana.

(2) The department shall maintain a list on its website of manufacturers that are in compliance with [sections 1 through 9].

Section 5. Manufacturer collection and recycling program — requirements. (1) By January 1, 2010, a manufacturer shall establish and maintain a program for out-of-service mercury-added thermostats in compliance with [sections 1 through 9]. A manufacturer may establish a program individually or collectively with other manufacturers. A manufacturer or a group of manufacturers operating a program collectively may contract with a retailer for collection of out-of-service mercury-added thermostats.

(2) A program for out-of-service mercury-added thermostats must meet the following requirements:

(a) Out-of-service mercury-added thermostats collected by the program must be collected, handled, and recycled in compliance with [sections 1 through 9] and rules adopted pursuant to [section 9].

(b) The program must provide collection bins for out-of-service mercury-added thermostat collection to wholesalers and qualified contractors at a nominal one-time administrative fee not to exceed $40 to offset the cost of each collection bin for each collection location.

(c) The program must make available authorized recycling bins for out-of-service mercury-added thermostats at a nominal one-time administrative fee not to exceed $40 to offset the cost of each collection bin for each collection location to any local governmental entity that requests a bin for use at a household hazardous waste collection facility or event.

(d) The program must either arrange for pickup of the collection bins provided pursuant to this section or pay for the costs of shipping the collection bins for proper handling and recycling in accordance with the program.

(e) The program must develop educational and other outreach materials for contractors and homeowners and make those materials available at program collection locations. These materials may include, but are not limited to:

(i) signage that is prominently displayed and easily visible to consumers and contractors;

(ii) written materials and templates of materials for reproduction by retailers and wholesalers to be provided to the consumer at the time of purchase, delivery, or both purchase and delivery of a thermostat. The materials must include the proper management of out-of-service mercury-added thermostats and the locations of collection bins.

(iii) advertising or other promotional materials, or both, that include references to the collection locations; and

(iv) materials to be used in direct communications with the consumer and contractor at the time of purchase.

(f) The program must provide nonfinancial incentives and education to contractors, service technicians, and homeowners to encourage the return of out-of-service mercury-added thermostats to established collection locations.

(g) The program must encourage the purchase of thermostats that are programmable and increase energy efficiency as replacements for mercury-added thermostats.

(3) The department may order a manufacturer or a group of manufacturers operating a program to revise the program to comply with this section.

Section 6. Initial education and outreach — requirements. From [the effective date of this act] through December 31, 2012, a manufacturer shall conduct initial education and outreach efforts, including but not limited to:

(1) the establishment of a public internet website. Templates of educational materials must be posted on the website in a format that can be easily downloaded. A link to the website must be provided to the department.

(2) methods used to engage other stakeholders, such as waste, demolition, heating, ventilation, and air-conditioning organizations, as well as appropriate state agencies and local governments, in securing support and participation in programs that encourage the proper management of out-of-service mercury-added thermostats;

(3) strategies to work with utilities participating in programs involving the replacement of thermostats to encourage their participation in the collection and proper management of out-of-service mercury-added thermostats. These strategies may include the inclusion of an educational insert in utility bills.

(4) contacting wholesalers and encouraging participation in educating customers on the proper management of out-of-service mercury-added thermostats; and

(5) strategies used to encourage support and participation by retailers and other outlets in educating consumers on the proper management of out-of-service mercury-added thermostats.

Section 7. Annual report — publication. (1) By April 1, 2011, and by April 1 of each succeeding year, a manufacturer shall submit an annual report to the department covering the previous calendar year. The annual reports must provide the department with the following:

(a) the number of out-of-service mercury-added thermostats collected by the program;

(b) the estimated total amount of mercury contained in the thermostat components collected by the program;

(c) an evaluation of the effectiveness of the program;

(d) collection goals that must ensure an increase in the number of mercury-added thermostats collected each year until 2016 or a time that the department determines that the number of in-service thermostats is steadily declining;

(e) an accounting of the program administrative costs, including a copy of Internal Revenue Service Form 990 for a nonprofit organization's program. For

a for-profit organization's program, the manufacturer or group of manufacturers operating a program shall submit independently audited financial statements detailing revenue and a full accounting of administrative costs incurred.

(f) a description of outreach strategies used to increase participation and collection rates;

(g) examples of outreach and educational materials used by the program;

(h) names and locations of collection locations;

(i) the number of out-of-service mercury-added thermostats collected at each collection location;

(j) a description of how the collected out-of-service mercury-added thermostats were managed; and

(k) any proposed modifications the manufacturer may make to the program.

(2) The department shall use the report to determine whether collection goals are being met. If collection goals are not met, the department shall require modifications to manufacturers' collection plans in an attempt to improve collection rates.

(3) The manufacturer or group of manufacturers operating a program shall post the report to a public website.

(4) The department shall post reports submitted pursuant to this section on the department website or may provide a link to the public website.

(5) Based on diminished return of thermostats, the department may discontinue the requirement for the annual report pursuant to this section on finding that mercury-added thermostats no longer pose a threat to the environment and public health in Montana.

Section 8. Wholesaler collection sites. (1) A wholesaler with a physical location in Montana shall act as a collection location for out-of-service mercury-added thermostats.

(2) A wholesaler that distributes thermostats by mail to buyers in the state shall include with the sale of the thermostat a website address and a toll-free telephone number with instructions on obtaining a prepaid mail-in label that a consumer may use to send an out-of-service mercury-added thermostat to a collection location.

(3) A wholesaler shall distribute to its customers the educational and outreach materials developed by a manufacturer pursuant to [section 5].

Section 9. Rulemaking authority. The department shall adopt rules to implement the provisions of [sections 1 through 9].

Section 10. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

Section 11. Codification instruction. [Sections 1 through 9] are intended to be codified as an integral part of Title 75, part 10, and the provisions of Title 75, part 10, apply to [sections 1 through 9].

Section 12. Effective date. [This act] is effective on passage and approval.

Approved April 17, 2009

CHAPTER NO. 297

[HB 19]

AN ACT CLARIFYING STATE ELECTION LAWS TO PROVIDE FOR CONSISTENT TREATMENT AMONG POLLING PLACE, ABSENTEE, MAIL, AND PROVISIONAL BALLOT PROVISIONS; PROVIDING DEFINITIONS; CLARIFYING PUBLIC NOTICE REQUIREMENTS; CREATING MORE CONSISTENCY BETWEEN THE ADMINISTRATION OF SCHOOL ELECTIONS AND OTHER ELECTIONS BY REQUIRING TRAINING AND REVISING PAYMENT FOR SCHOOL ELECTION JUDGES; CLARIFYING HOW TO HANDLE TIE VOTES IN A SCHOOL TRUSTEE ELECTION; ELIMINATING OUTDATED PROVISIONS; AND AMENDING SECTIONS 13-1-101, 13-1-108, 13-1-113, 13-1-115, 13-2-110, 13-2-116, 13-2-220, 13-2-222, 13-2-301, 13-2-304, 13-2-402, 13-3-205, 13-3-206, 13-4-102, 13-4-106, 13-4-202, 13-4-203, 13-10-211, 13-13-204, 13-13-205, 13-13-212, 13-13-213, 13-13-214, 13-13-222, 13-13-241, 13-13-301, 13-15-107, 13-17-103, 13-17-203, 13-17-212, 13-19-102, 13-19-105, 13-19-106, 13-19-204, 13-19-205, 13-19-206, 13-19-207, 13-19-301, 13-19-303, 13-19-304, 13-19-305, 13-19-306, 13-19-307, 13-19-308, 13-19-310, 13-19-311, 13-19-312, 13-19-313, 13-19-314, 13-21-203, 13-21-210, 13-27-311, 13-37-226, 20-20-107, AND 20-20-203, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13-1-101, MCA, is amended to read:

"13-1-101. Definitions. As used in this title, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Active elector" means an elector ~~who voted in the previous federal general election and whose name is on the active list~~ *whose name has not been placed on the inactive list due to failure to respond to confirmation notices pursuant to 13-2-220 or 13-19-313*.

(2) "Active list" means a list of active electors maintained pursuant to 13-2-220.

(3) "Anything of value" means any goods that have a certain utility to the recipient that is real and that is ordinarily not given away free but is purchased.

(4) "Application for voter registration" means a voter registration form prescribed by the secretary of state that is completed and signed by an elector, submitted to the election administrator, and contains voter registration information subject to verification as provided by law.

(5) "Ballot" means a paper ballot counted manually or a paper ballot counted by a machine, such as an optical scan system or other technology that automatically tabulates votes cast by processing the paper ballots.

(6) "Candidate" means:

(a) an individual who has filed a declaration or petition for nomination, acceptance of nomination, or appointment as a candidate for public office as required by law;

(b) for the purposes of chapter 35, 36, or 37, an individual who has solicited or received and retained contributions, made expenditures, or given consent to an individual, organization, political party, or committee to solicit or receive and retain contributions or make expenditures on the individual's behalf to secure nomination or election to any office at any time, whether or not the office for which the individual will seek nomination or election is known when the:

(i) solicitation is made;

(ii) contribution is received and retained; or

(iii) expenditure is made; ~~and~~ *or*

(c) an officeholder who is the subject of a recall election.

(7) (a) "Contribution" means:

(i) an advance, gift, loan, conveyance, deposit, payment, or distribution of money or anything of value to influence an election;

(ii) a transfer of funds between political committees;

(iii) the payment by a person other than a candidate or political committee of compensation for the personal services of another person that are rendered to a candidate or political committee.

(b) "Contribution" does not mean:

(i) services provided without compensation by individuals volunteering a portion or all of their time on behalf of a candidate or political committee or meals and lodging provided by individuals in their private residences for a candidate or other individual;

(ii) the cost of any bona fide news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication of general circulation;

(iii) the cost of any communication by any membership organization or corporation to its members or stockholders or employees; or

(iv) filing fees paid by the candidate.

(8) "Election" means a general, regular, special, or primary election held pursuant to the requirements of state law, regardless of the time or purpose.

(9) "Election administrator" means the county clerk and recorder or the individual designated by a county governing body to be responsible for all election administration duties, except that with regard to school elections *not administered by the county*, the term means the school district clerk.

(10) "Elector" means an individual qualified to vote under state law.

(11) (a) "Expenditure" means a purchase, payment, distribution, loan, advance, promise, pledge, or gift of money or anything of value made for the purpose of influencing the results of an election.

(b) "Expenditure" does not mean:

(i) services, food, or lodging provided in a manner that they are not contributions under subsection (7);

(ii) payments by a candidate for a filing fee or for personal travel expenses, food, clothing, lodging, or personal necessities for the candidate and the candidate's family;

(iii) the cost of any bona fide news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication of general circulation; or

(iv) the cost of any communication by any membership organization or corporation to its members or stockholders or employees.

(12) "Federal election" means a general or primary election in which an elector may vote for individuals for the office of president of the United States or for the United States congress.

(13) "General election" or "regular election" means an election held for the election of public officers throughout the state at times specified by law, including elections for officers of political subdivisions when the time of the election is set on the same date for all similar political subdivisions in the state. For ballot issues required by Article III, section 6, or Article XIV, section 8, of the Montana constitution to be submitted by the legislature to the electors at a general election, "general election" means an election held at the time provided in 13-1-104(1). For ballot issues required by Article XIV, section 9, of the Montana constitution to be submitted as a constitutional initiative at a regular election, regular election means an election held at the time provided in 13-1-104(1).

(14) "Inactive elector" means an individual who failed to ~~vote in the preceding federal general election~~ *respond to confirmation notices* and whose name was placed on ~~an~~ *the* inactive list pursuant to 13-2-220 *or 13-19-313*.

(15) "Inactive list" means a list of inactive electors maintained pursuant to 13-2-220 *or 13-19-313*.

(16) "Individual" means a human being.

(17) (a) "Issue" or "ballot issue" means a proposal submitted to the people at an election for their approval or rejection, including but not limited to initiatives, referenda, proposed constitutional amendments, recall questions, school levy questions, bond issue questions, or a ballot question.

(b) For the purposes of chapters 35 and 37, an issue becomes a "ballot issue" upon certification by the proper official that the legal procedure necessary for its qualification and placement upon the ballot has been completed, except that a statewide issue becomes a "ballot issue" upon preparation and transmission by the secretary of state of the form of the petition or referral to the person who submitted the proposed issue.

(18) "Legally registered elector" means an individual whose application for voter registration was accepted, processed, and verified as provided by law.

(19) "Mail ballot election" means any election that is conducted under Title 13, chapter 19, by mailing ballots to all active electors.

~~(19)~~*(20)* "Person" means an individual, corporation, association, firm, partnership, cooperative, committee, club, union, or other organization or group of individuals or a candidate as defined in subsection (6).

(21) "Place of deposit" means a location designated by the election administrator pursuant to 13-19-307 for a mail ballot election conducted under Title 13, chapter 19.

~~(20)~~*(22)* "Political committee" means a combination of two or more individuals or a person other than an individual who makes a contribution or expenditure:

(a) to support or oppose a candidate or a committee organized to support or oppose a candidate or a petition for nomination; or

(b) to support or oppose a ballot issue or a committee organized to support or oppose a ballot issue; or

(c) as an earmarked contribution.

(23) "Polling place election" means an election primarily conducted at polling places rather than by mail under the provisions of Title 13, chapter 19.

~~(21)~~*(24)* "Political subdivision" means a county, consolidated municipal-county government, municipality, special district, or any other unit

of government, except school districts, having authority to hold an election for officers or on a ballot issue.

~~(22)~~*(25)* "Primary" or "primary election" means an election held throughout the state to nominate candidates for public office at times specified by law, including nominations of candidates for offices of political subdivisions when the time for nominations is set on the same date for all similar subdivisions in the state.

~~(23)~~*(26)* "Provisional ballot" means a ballot cast by an elector whose identity ~~and~~ *or* eligibility to vote ~~have~~ *has* not been verified as provided by law.

~~(24)~~*(27)* "Provisionally registered elector" means an individual whose application for voter registration was accepted but whose *identity or* eligibility has not yet been verified as provided by law.

~~(25)~~*(28)* "Public office" means a state, county, municipal, school, or other district office that is filled by the people at an election.

~~(26)~~*(29)* "Registrar" means the county election administrator and any regularly appointed deputy or assistant election administrator.

~~(27)~~*(30)* "Special election" means an election other than a statutorily scheduled primary or general election held at any time for any purpose provided by law. It may be held in conjunction with a statutorily scheduled election.

~~(28)~~*(31)* "Statewide voter registration list" means the voter registration list established and maintained pursuant to 13-2-107 and 13-2-108.

~~(29)~~*(32)* "Transfer form" means a form prescribed by the secretary of state that may be filled out by an elector to transfer the elector's registration when the elector's residence address has changed within the county.

~~(30)~~*(33)* "Valid vote" means a vote that has been counted as valid or determined to be valid as provided in 13-15-206.

(34) "Voted ballot" means a ballot that is:

(a) deposited in the ballot box at a polling place;

(b) received at the election administrator's office; or

(c) returned to a place of deposit.

~~(31)~~*(35)* "Voting system" or "system" means any machine, device, technology, or equipment used to automatically record, tabulate, or process the vote of an elector cast on a paper ballot."

Section 2. Section 13-1-108, MCA, is amended to read:

"13-1-108. Notice of special elections. Notice of any special election must be *broadcast or* published at least three times in the 4 weeks immediately preceding the close of registration on radio or television as provided in 2-3-105 through 2-3-107 or in a newspaper of general circulation in the jurisdiction where the election will be held*, using the method the election administrator believes is best suited to reach the largest number of potential electors*. The provisions of this section are fulfilled upon the third publication *or broadcast of the notice*."

Section 3. Section 13-1-113, MCA, is amended to read:

"13-1-113. Only one residence. There ~~can~~ *may* be only one residence *for the purposes of this title*."

Section 4. Section 13-1-115, MCA, is amended to read:

"13-1-115. Privilege from arrest. Electors ~~are privileged from arrest~~ *may not be arrested* during their attendance at elections and in going to and from voting places *in polling place elections and to and from places of deposit in mail ballot elections*, except in cases of treason, felony, or breach of the peace."

Section 5. Section 13-2-110, MCA, is amended to read:

"13-2-110. Application for voter registration — sufficiency and verification of information — identifiers assigned for voting purposes. (1) An individual may apply for voter registration in person or by mail by completing and signing an application for voter registration and providing the application to the election administrator in the county in which the elector resides.

(2) An individual applying by mail shall send the application to the election administrator, postage paid, no later than 15 days after the date it is signed.

(3) Each application for voter registration must be accepted and processed as provided in rules adopted under 13-2-109.

(4) Except as provided in subsection (5):

(a) an applicant for voter registration shall provide the applicant's driver's license number; or

(b) if the applicant does not have a driver's license, the applicant shall provide the last four digits of the applicant's social security number.

(5) *(a)* If an applicant does not have a driver's license or social security number*, the applicant shall provide as an alternative form of identification*:

~~(a) an applicant appearing in person before the election administrator shall provide:~~

(i) *a* current and valid photo identification, including but not limited to a school district or postsecondary education photo identification or a tribal photo identification, with the individual's name; or

(ii) a current utility bill, bank statement, paycheck, government check, or other government document that shows the individual's name and current address.

~~(b) an applicant applying by mail to register shall also enclose a copy of:~~

~~(i) a current and valid photo identification, including but not limited to a school district or postsecondary education photo identification or a tribal photo identification, with the individual's name; or~~

~~(ii) a current utility bill, bank statement, paycheck, government check, or other government document that shows the individual's name and current address.~~

(b) The alternative form of identification must be:

(i) an original version presented to the election administrator if the applicant is applying in person; or

(ii) a copy of any of the required documents, which must be enclosed with the application, if the applicant is applying by mail.

(6) (a) If information provided on an application for voter registration is sufficient to be accepted and processed and is verified pursuant to rules adopted under 13-2-109, the election administrator shall register the elector as a legally registered elector.

(b) If information provided on an application for voter registration was sufficient to be accepted but the applicant failed to provide the information required in subsection (4) or (5) or if the information provided was incorrect or insufficient to verify the individual's *identity or* eligibility to vote, the election administrator shall register the applicant as a provisionally registered elector.

(7) Each applicant for voter registration must be notified of the elector's registration status pursuant to rules adopted under 13-2-109.

(8) The secretary of state shall assign to each elector whose application was accepted a unique identification number for voting purposes and shall establish a statewide uniform method to allow the secretary of state and local election officials to distinguish legally registered electors from provisionally registered electors.

(9) The provisions of this section may not be interpreted to conflict with voter registration accomplished under 13-2-221, 13-21-201, 13-21-203, and 61-5-107 and as provided for in federal law."

Section 6. Section 13-2-116, MCA, is amended to read:

"13-2-116. Precinct register. (1) ~~Before each election~~ *Except for mail ballot elections conducted under Title 13, chapter 19*, the election administrator shall prepare from the certified statewide voter registration list a precinct register for each precinct in the county for use by the election judges. The register *may be prepared no sooner than the Friday before each election and* must contain an alphabetical list of the names, with addresses, of the legally registered electors and provisionally registered electors, a space for the signature of the elector, and other information as prescribed by the secretary of state.

(2) If some of the electors in a precinct are not eligible to receive all ballots at an election because of a combination of the elections of more than one political subdivision, the election administrator shall distinguish the names of those eligible for each ballot by whatever method will be clear and efficient.

(3) When several precincts have been combined at one polling place for an election, the election administrator may combine the electors from all precincts into one register or may provide separate registers for each precinct.

(4) Precinct registers need not be printed if the election will not be held."

Section 7. Section 13-2-220, MCA, is amended to read:

"13-2-220. Maintenance of active and inactive voter registration lists for elections — rules by secretary of state. (1) The rules adopted by the secretary of state under 13-2-108 must include the following procedures, which an election administrator shall follow in every odd-numbered year:

(a) compare the entire list of registered electors against the national change of address files and provide appropriate confirmation notice to those individuals whose addresses have apparently changed;

(b) mail a nonforwardable, first-class, "return if undeliverable—address correction requested" notice to all registered electors of each jurisdiction to confirm their addresses and provide the appropriate confirmation notice to those individuals who return the notices;

(c) mail a targeted mailing to electors who failed to vote in the preceding federal general election by:

(i) sending the list of nonvoters a nonforwardable notice, followed by the appropriate forwardable confirmation notice to those electors who appear to have moved from their addresses of record;

(ii) comparing the list of nonvoters against the national change of address files, followed by the appropriate confirmation notices to those electors who appear to have moved from their addresses of record;

(iii) sending forwardable confirmation notices; or

(iv) making a door-to-door canvass.

(2) Any notices returned to the election administrator after using the procedures provided in subsection (1) must be followed by an appropriate confirmation notice that is a forwardable, first-class, postage-paid, self-addressed, return notice. If the elector fails to respond within 30 days of the confirmation notice, the election administrator shall move the elector to the inactive list.

(3) A procedure used by an election administrator pursuant to this section must be completed at least 90 days before a primary or general election for federal office.

(4) An elector's registration may be reactivated pursuant to 13-2-222 or may be canceled pursuant to 13-2-402."

Section 8. Section 13-2-222, MCA, is amended to read:

"13-2-222. Reactivation of elector. (1) The name of an elector must be moved by an election administrator from the inactive list to the active list of a county if an elector meets the requirements for registration provided in this chapter and:

(a) appears *at a polling place* in order to vote*,* ~~or~~ votes by absentee ballot in ~~any~~ *a polling place election or mail ballot* election*, or votes in a mail ballot election conducted under Title 13, chapter 19*;

(b) notifies the county election administrator in writing of the elector's current residence, which must be in that county; or

(c) completes a reactivation form provided by the county election administrator that provides current address information in that county.

(2) After an elector has complied with subsection (1)(a), (1)(b), or (1)(c), the county election administrator shall place the elector's name on the active voting list for that county.

(3) An elector reactivated pursuant to subsection (1)(a) is a legally registered elector for purposes of the election in which the elector voted."

Section 9. Section 13-2-301, MCA, is amended to read:

"13-2-301. Close of regular registration — notice — changes. (1) The election administrator shall:

(a) close regular registrations for 30 days before any election; and

(b) ~~broadcast~~ *publish* a notice specifying the day regular registrations will close *and the availability of the late registration option provided for in 13-2-304* ~~on radio or television as provided in 2-3-105 through 2-3-107 or publish the notice~~ in a newspaper of general circulation in the county at least three times in the 4 weeks preceding the close of registration *or broadcast a notice on radio or television as provided in 2-3-105 through 2-3-107, using the method the election administrator believes is best suited to reach the largest number of potential*

electors. The provisions of this subsection (1)(b) are fulfilled upon the third publication *or broadcast of the notice*.

(2) Information to be included in the notice must be prescribed by the secretary of state.

(3) An application for voter registration properly executed and postmarked on or before the day regular registration is closed must be accepted as a regular registration for 3 days after regular registration is closed under subsection (1)(a).

(4) An individual who submits a completed registration form to the election administrator before the deadlines provided in this section is allowed to correct a mistake on the completed registration form until 5 p.m. on the 10th day following the close of regular registration, and the qualified elector is then eligible to vote in the election ~~at the polling place for that elector's precinct~~.

(5) ~~Subject to the provisions of 13-2-304, an~~ *An* elector who misses the deadlines provided for in this section may register to vote or change the elector's voter information and vote in the election, except as otherwise provided in 13-2-304."

Section 10. Section 13-2-304, MCA, is amended to read:

"13-2-304. Late registration — late changes — nonapplicability for school elections. (1) Except as provided in subsections (2) and (3), the following provisions apply:

(a) An elector may register or change the elector's voter registration information after the close of regular registration in 13-2-301 and vote in the election if the election administrator in the county where the elector resides receives and verifies the elector's voter registration information prior to the close of the polls on election day.

(b) Late registration is closed from noon to 5 p.m. on the day before the election.

(c) Except as provided in 13-2-514(2)(a), an elector who registers or changes the elector's voter information pursuant to this section may vote in the election only if the elector ~~votes at the county election administrator's office~~ *obtains the ballot from and returns it to the location designated by the county election administrator*.

(2) If an elector has already been sent an absentee ballot for the election, the elector may change the elector's voter registration information only with respect to the next election.

(3) The provisions of subsection (1) do not apply with respect to an elector's registration to vote in a school election held pursuant to Title 20."

Section 11. Section 13-2-402, MCA, is amended to read:

"13-2-402. Reasons for cancellation. The election administrator shall cancel the registration of an elector if:

(1) the elector submits a written request for cancellation;

(2) a certificate of the death of the elector is filed or if the elector is reported to the election administrator as deceased by the department of public health and human services in the department's reports submitted to the county under 50-15-409 or through a newspaper obituary;

(3) the elector is of unsound mind as established by a court;

(4) the incarceration of the elector in a penal institution for a felony conviction is legally established;

(5) a certified copy of a court order directing the cancellation is filed with the election administrator;

(6) a notice is received from the secretary of state or from another county or state that the elector has registered in another county or state;

(7) the elector*:*

(a) fails to respond to certain confirmation mailings*;*

(b) is placed on the inactive list; and

(c) then fails to vote in two consecutive federal general elections; or

(8) the elector fails to meet any voter qualification that is listed in 13-1-111."

Section 12. Section 13-3-205, MCA, is amended to read:

"13-3-205. Adoption of standards for polling place accessibility — rulemaking authority. (1) The secretary of state, with advice from election administrators and individuals with disabilities and elderly individuals, shall establish standards for accessibility of polling places.

(2) ~~(a) Standards for polling places approved pursuant to subsection (1) prior to October 1, 2005, must be consistent with the standards for accessibility established by the American national standards institute and the uniform federal accessibility standards.~~

~~(b)~~ Standards for polling places approved *pursuant to subsection (1)* on or after October 1, 2005, must comply with the accessibility standards in the Americans With Disabilities Act of 1990, 42 U.S.C. 12101, et seq.

(3) The secretary of state:

(a) may adopt rules to implement the provisions of this part; and

(b) shall adopt rules to implement the exemption provisions of 13-3-212."

Section 13. Section 13-3-206, MCA, is amended to read:

"13-3-206. Survey of polling places to determine accessibility — procedures. (1) The election administrator in each county shall conduct an onsite survey of each polling place used in an election to determine whether it meets the standards for accessibility established under 13-3-205.

(2) Each election administrator shall conduct the survey in a manner that represents the path of travel that an elector would reasonably be expected to take in order to reach the polling place on election day.

(3) A polling place that has been surveyed pursuant to this section need not be surveyed again unless*:*

(a) the conditions of accessibility change*; or*

(b) the initial survey results are inaccurate."

Section 14. Section 13-4-102, MCA, is amended to read:

"13-4-102. Manner of choosing election judges. (1) Subject to 13-4-107, election judges must be chosen from lists of qualified registered electors for each precinct in the county, submitted at least 45 days before the primary election in even-numbered years by the county central committees of the political parties eligible to nominate candidates in the primary.

(2) The list of each party may contain more names than the number of election judges to be appointed. The names of those not appointed as election

judges must be given to the election administrator for use in making appointments to fill vacancies.

(3) Each board of election judges must include judges representing all parties that have submitted lists as provided in subsection (1). No more than the number of election judges needed to obtain a simple majority may be appointed from the list of one political party in each precinct. If any of the political parties entitled to do so fail to submit a list, the governing body shall, ~~insofar as~~ *to the extent* possible, appoint judges so that all parties eligible to participate in the primary are represented on each board.

(4) The election administrator shall make appointments to fill vacancies from the list provided for in subsection (2). If the list is insufficient or if one or more of the eligible political parties fails to submit a list, the election administrator may ~~randomly select, either by manual drawing or by computer, sufficient qualified registered electors in the county~~ *select enough people meeting the qualifications of 13-4-107* to fill election judge vacancies in all precincts.

(5) An elector chosen to potentially serve as an election judge must be notified of selection at least 30 days before the primary election in even-numbered years. Each elector who agrees to serve as an election judge shall attend a training class conducted under 13-4-203 and shall continue to serve as provided in 13-4-103."

Section 15. Section 13-4-106, MCA, is amended to read:

"13-4-106. Compensation of judges. (1) Except as provided in subsection (2), election judges must be paid at least the ~~prevailing~~ *state or* federal minimum wage*, whichever is greater,* for the number of hours worked during an election plus the number of hours spent at the instruction session. Mileage may be paid to election judges for attending instruction sessions. Election judges are exempt from unemployment insurance coverage for services performed pursuant to this chapter if the remuneration received by the election judge is less than $1,000 in the calendar year.

(2) The chief election judge may be paid at a rate higher than the other election judges and may be reimbursed for the actual expenses of transporting election materials.

(3) The election administrator shall certify the amount due each election judge to the county governing body as soon after an election as all records necessary for the certification are received."

Section 16. Section 13-4-202, MCA, is amended to read:

"13-4-202. Administration of oaths. Any election judge may administer and certify oaths required *from electors or election judges* during an election."

Section 17. Section 13-4-203, MCA, is amended to read:

"13-4-203. Instruction of judges — training materials. (1) Before each election, all election judges who do not possess a current certificate of instruction obtained pursuant to 13-1-203(3) must be instructed by the election administrator. In precincts where voting systems are used, instructions must cover both how to operate the voting system and how to manually process any paper ballots.

(2) Chief *election* judges may be required to attend the training session before each election, as well as a special session that may be held for chief *election* judges only, even if they possess a current certificate of instruction.

(3) Any individual willing to be appointed as an election judge may attend an instruction session by registering with the election administrator. However, the individual may not be paid for attendance unless the individual is appointed as an election judge.

(4) Each election judge completing a training session under this section must be given a certificate of completion. An individual may not serve as an election judge without a valid certificate obtained under 13-1-203(3) or this section. However, this *requirement* does not apply to individuals filling vacancies in emergencies.

(5) All ~~certificates of completion expire 30 days~~ *election judges shall obtain a certificate of instruction or be recertified* before the primary election in even-numbered years.

(6) Notice of *the* place and time of instruction must be given by the election administrator to the presiding officers of the political parties in the county."

Section 18. Section 13-10-211, MCA, is amended to read:

"13-10-211. Declaration of intent for write-in candidates. (1) Except as provided in subsection (7), a person seeking to become a write-in candidate for an office in any election shall file a declaration of intent. The declaration of intent must be filed with the secretary of state or election administrator, depending on where a declaration of nomination for the desired office is required to be filed under 13-10-201, or with the school district clerk for a school district office. *When a county election administrator is conducting the election for a school district, the school district clerk or school district office that receives the declaration of intent shall notify the county election administrator of the filing.* Except as provided in subsections (2) and (3), the declaration must be filed no later than 5 p.m. on the 10th day before the date established under 13-13-205 on which a ballot must be available for absentee voting for the election and must contain:

(a) (i) the candidate's first and last names;

(ii) the candidate's initials, if any, used instead of a first name, or first and middle name, and the candidate's last name;

(iii) the candidate's nickname, if any, used instead of a first name, and the candidate's last name; and

(iv) a derivative or diminutive name, if any, used instead of a first name, and the candidate's last name;

(b) the candidate's mailing address;

(c) a statement declaring the candidate's intention to be a write-in candidate;

(d) the title of the office sought;

(e) the date of the election;

(f) the date of the declaration; and

(g) the candidate's signature.

(2) A declaration of intent may be filed after the deadline provided for in subsection (1) but no later than 5 p.m. on the day before the election if, after the deadline prescribed in subsection (1), a candidate for the office that the write-in candidate is seeking dies or is charged with a felony offense.

(3) A person seeking to become a write-in candidate in a mail ballot election or for a trustee position in a school board election shall file a declaration of intent no later than 5 p.m. on the 26th day before the election.

(4) The secretary of state shall notify each election administrator of the names of write-in candidates who have filed a declaration of intent with the secretary of state. Each election administrator and school district clerk shall notify the election judges in the county or district of the names of write-in candidates who have filed a declaration of intent.

(5) A declaration of intent may be *provided to the election administrator or secretary of state:*

(a) ~~sent~~ by facsimile transmission if a facsimile facility is available for ~~use by the election administrator or by the secretary of state,~~ *receipt;*

(b) ~~delivered~~ in person~~,~~*;* or

(c) ~~mailed to the election administrator or to the secretary of state~~ *by mail*.

(6) A declaration is not valid until the filing fee required pursuant to 13-10-202 is received by the secretary of state or the election administrator.

(7) The requirements in subsection (1) do not apply if:

(a) an election is held;

(b) a person's name is written in on the ballot;

(c) the person is qualified for and seeks election to the office for which the person's name was written in; and

(d) no other candidate has filed a declaration or petition for nomination or a declaration of intent."

Section 19. Section 13-13-204, MCA, is amended to read:

"13-13-204. Authority to vote in person — printing error or ballot destroyed — failure to receive ballot — effect of absentee elector's death. (1) If an elector has ~~voted by~~ *received an* absentee ballot but the absentee ballot contains printing errors or omissions, except that the name of a candidate who has died since the printing of the ballot and that appears on the ballot does not constitute an error or omission, the elector may *receive a corrected ballot and* vote in person ~~in any manner at the elector's polling place~~ *at the election administrator's office*.

(2) If an elector does not receive an absentee ballot or if the absentee ballot was destroyed, the elector may appear at the appropriate polling place on election day and vote in person after signing an affidavit, in the form prescribed by the secretary of state, swearing that the elector's ballot has not been received or was destroyed. The ballot must be handled as a provisional ballot under 13-15-107.

(3) If an elector votes by absentee ballot and the ballot has been mailed or otherwise returned to the election administrator but the elector dies between the time of balloting and election day, the deceased elector's ballot must be counted."

Section 20. Section 13-13-205, MCA, is amended to read:

"13-13-205. When ballots to be available. (1) ~~The~~ *Except as provided in subsection (2), the* election administrator shall ensure that ballots are ~~printed~~ *available for voting* at least:

(a) 30 days prior to an election for those elections held in compliance with 13-1-107(1);

(b) 20 days prior to an election for those elections held in compliance with 13-1-104(2) and (3) and 13-1-107(2); and

(c) ~~45~~ *30* days prior to an election held in conjunction with a federal general election in compliance with 13-1-104(1).

(2) A ballot ~~may not be provided to an elector for absentee voting sooner than 30 days before an election, except that an absentee ballot~~ requested pursuant to Title 13, chapter 21, ~~may~~ *must* be sent to the elector as soon as the ballot is printed *or at least 45 days in advance of an election held in conjunction with a federal general election in compliance with 13-1-104(1)*."

Section 21. Section 13-13-212, MCA, is amended to read:

"13-13-212. Application for absentee ballot — special provisions. (1) (a) Except as provided in subsection (1)(b), an elector may apply for an absentee ballot by using a standardized form provided by rule by the secretary of state or by making a written request, which must include the applicant's birth date and must be signed by the applicant. The request must be submitted to the election administrator of the applicant's county of residence within the time period specified in 13-13-211.

(b) A person who holds a power of attorney from an absent uniformed services elector may apply for an absentee ballot for that election on behalf of the uniformed services elector. The applicant shall provide a copy of the power of attorney authorizing the request for an absentee ballot along with the application.

(2) (a) If an elector requests an absentee ballot because of a sudden illness or health emergency, the application for an absentee ballot may be made by written request signed by the elector at the time that the ballot is delivered in person by the special absentee election board provided for in 13-13-225.

(b) The elector may request by telephone, facsimile transmission, or other means to have a ballot and application personally delivered by the special absentee election board at the elector's place of confinement, hospitalization, or residence within the county.

(c) A request under this subsection (2) must be received by the election administrator within the time period specified in 13-13-211(2).

(3) An elector who has made a request for an absentee ballot by one of the methods provided in this section may, in the event of the death of a candidate after the primary election but before the general election, make a request for a replacement ballot. The request for a replacement ballot may be made orally to the election administrator.

(4) (a) ~~When applying for an absentee ballot under this section, an~~ *An* elector may ~~also~~ *at any time* request to be mailed an absentee ballot~~, as soon as the ballot becomes available,~~ for each subsequent election in which the elector is eligible to vote or only for each subsequent federal election in which the elector is eligible to vote for as long as the elector remains qualified to vote and resides at the address provided in the initial application.

(b) The election administrator shall mail ~~an~~ *a forwardable* address confirmation form in January and July of each year to each elector who has requested an absentee ballot for subsequent elections. The address confirmation form mailed in January is for elections to be held between February 1 following the mailing through July of the same year, and the address confirmation form mailed in July is for elections to be held between August 1 following the mailing through January of the succeeding year. The elector shall sign the form, indicate the address to which the absentee ballot should be sent, and return the form to the election administrator. If the form is not completed and returned, the

election administrator shall remove the elector from the register of electors who have requested an absentee ballot for each subsequent election.

(c) An elector who has been removed from the register may subsequently request to be mailed an absentee ballot for each subsequent election."

Section 22. Section 13-13-213, MCA, is amended to read:

"13-13-213. Transmission of application to election administrator — delivery of ballot. (1) All absentee ballot application forms must be addressed to the appropriate election official.

(2) Except as provided in subsection ~~(4)~~ *(5)*, the elector may mail the application directly to the election administrator or deliver the application in person to the election administrator. An agent designated pursuant to 13-1-116 or a third party may collect the elector's application and forward it to the election administrator.

(3) *(a)* The election administrator shall compare the signature on the application with the applicant's signature on the registration card *or the agent's signature on the agent designation form*. If convinced that the individual making the application is the same as the one whose name appears on the registration card *or the agent designation form*, the election administrator shall deliver the ballot to the elector in person or as otherwise provided in 13-13-214, subject to 13-13-205.

(b) If the election administrator is not convinced that the individual signing the application is the same person whose name appears on the registration card or agent designation form, the election administrator shall notify the elector or agent, either by mail or by the most expedient method available under rules adopted by the secretary of state, and inform the elector or agent that the elector or agent may verify the signature, after proof of identification, by mail or in person at the election administrator's office prior to 8 p.m. on election day.

(4) If an election administrator cannot verify the signature, a ballot may not be provided to the elector.

~~(4)~~*(5)* In lieu of the requirement provided in subsection (2), an elector who requests an absentee ballot pursuant to 13-13-212(2) may return the application to the special absentee election board. Upon receipt of the application, the special absentee election board shall examine the signatures on the application and a copy of the voting registration card *or agent designation form* to be provided by the election administrator. If the special absentee election board believes that the applicant is the same person as the one whose name appears on the registration card *or agent designation form*, the special absentee election board shall provide a ballot to the elector~~, subject to~~ *when the ballot is available pursuant to* 13-13-205."

Section 23. Section 13-13-214, MCA, is amended to read:

"13-13-214. Mailing absentee ballot to elector — delivery to person other than elector. (1) (a) Except as provided in 13-13-213 and in subsection ~~(1)(b)~~ *(1)(c)* of this section, the election administrator shall~~, no sooner than authorized in 13-13-205,~~ mail, postage prepaid, to each legally registered elector and provisionally registered elector from whom the election administrator has received a valid absentee ballot application under 13-13-211 and 13-13-212 whatever official ballots are necessary.

(b) The election administrator shall mail the ballots in a manner that conforms to the deadlines established for ballot availability in 13-13-205.

~~(b)~~*(c)* The election administrator may deliver a ballot in person to an individual other than the elector if:

(i) the elector has designated the individual, either by a signed letter or by making the designation on the application form in a manner prescribed by the secretary of state or pursuant to 13-1-116;

(ii) the individual taking delivery of the ballot on behalf of the elector verifies, by signature, receipt of the ballot;

(iii) the election administrator believes that the individual receiving the ballot is the designated person; and

(iv) the designated person has not previously picked up ballots for four other electors.

(2) The election administrator shall enclose with the ballots:

(a) a form prescribed by the secretary of state that allows the elector to request absentee ballots for each subsequent federal election only or for all subsequent elections, as provided for in 13-13-212(4);

(b) a secrecy envelope, free of any marks that would identify the voter; and

(c) an envelope for the return of the ballots. The envelope must be self-addressed by the election administrator and an affirmation in the form prescribed by the secretary of state must be printed on the back of the envelope.

(3) The election administrator shall ensure that the ballots provided to an absentee elector are marked as provided in 13-13-116 and remove the stubs from the ballots, attaching the stubs to the elector's absentee ballot application.

(4) If the ballots sent to the elector are for a primary election, the election administrator shall enclose an extra envelope marked "For Unvoted Party Ballot(s)". This envelope may not be numbered or marked in any way so that it can be identified as being used by any one elector.

(5) Instructions for voting must be enclosed with the ballots. Instructions for primary elections must include use of the envelope for unvoted ballots. The instructions must include information concerning the type or types of writing instruments that may be used to mark the absentee ballot. The instructions must include information regarding use of the secrecy envelope and use of the return envelope. The election administrator shall include a voter information pamphlet with the instructions if:

(a) a statewide ballot issue appears on the ballot mailed to the elector; and

(b) the elector requests a voter information pamphlet."

Section 24. Section 13-13-222, MCA, is amended to read:

"13-13-222. Marking ballot before election day. (1) As soon as the official ballots are available pursuant to 13-13-205, the election administrator shall permit an elector to apply for, receive, and mark an absentee ballot before election day by appearing in person at the office of the election administrator and marking the ballot in a voting station area designated by the election administrator.

(2) The provisions of this chapter apply to voting under this section.

(3) If the ballot is marked before the election administrator, the election administrator shall deal with it as provided in 13-13-231.

(4) The ballot is considered voted at the time it is received by the election administrator."

Section 25. Section 13-13-241, MCA, is amended to read:

"13-13-241. Examination of absentee ballot return envelopes — deposit of absentee and unvoted ballots. (1) (a) After an absentee ballot is received, an election administrator shall compare the signature of the elector *or elector's agent* on the absentee ballot request with the signature on the absentee ballot return envelope.

(b) If the elector is legally registered and the signature on the return envelope matches the signature on the absentee ballot application, the election administrator or an election judge shall handle the ballot as a regular ballot.

(c) (i) If the elector is provisionally registered and the signature on the return envelope matches the signature on the absentee ballot application, the election administrator or an election judge shall open the outer return envelope and determine whether the elector's voter identification *and eligibility* information, if enclosed pursuant to 13-13-201, ~~is~~ *are* sufficient pursuant to rules adopted under 13-2-109 to legally register the elector.

(ii) If the voter identification *and eligibility* information ~~is~~ *are* sufficient to legally register the elector, the ballot must be handled as a regular ballot.

(iii) If voter identification *or eligibility* information was not enclosed or the information enclosed is insufficient to legally register the elector, the ballot must be handled as a provisional ballot under 13-15-107.

(2) If a voted absentee ballot has not been placed in a secrecy envelope, the election administrator shall place the ballot in a secrecy envelope without examining the ballot.

(3) In a primary election, unvoted party ballots must be separated from the secrecy envelopes and handled without being removed from their enclosure envelopes.

(4) If an elector's ballot is to be handled as a provisional ballot, the election administrator shall notify the absentee elector by mail or by the most expedient method available under rules adopted by the secretary of state that the elector's identification *or eligibility* information was insufficient and that the elector's ballot will be treated as a provisional ballot until the elector provides sufficient information, pursuant to rules adopted by the secretary of state. If the elector is notified by mail, the election administrator shall provide a self-addressed return envelope along with a description of the information necessary for the absentee elector to reclassify the provisional ballot as a regular ballot.

(5) If the signature on the absentee ballot return envelope does not match the signature on the absentee ballot request form, ~~the absentee ballot must be rejected. The election administrator, without opening the absentee ballot return envelope, shall mark across it the reason for rejection. Unopened rejected absentee ballot return envelopes must be handled in the same manner as provided for rejected ballots in 13-15-108(1)~~ *the election administrator shall notify the elector, either by first-class mail or the most expedient method available under rules adopted by the secretary of state, and inform the elector that the elector may verify the signature, after proof of identification, by mail or in person at the election administrator's office prior to 8 p.m. on election day.*

(6) The elector may verify the signature by affirming that the signature is in fact the elector's or by completing a new registration card containing the elector's current signature or by filing a new agent designation form.

(7) If an elector notified pursuant to subsection (5) fails to verify the signature before 8 p.m. on election day, the ballot must be handled as a provisional ballot under 13-15-107.

~~(6)~~*(8)* After receiving an absentee ballot secrecy envelope, without opening the secrecy envelope, the election judges shall on election day place the secrecy envelope in the proper ballot box."

Section 26. Section 13-13-301, MCA, is amended to read:

"13-13-301. Challenges. (1) An elector's right to vote may be challenged at any time by any registered elector by the challenger filling out and signing an affidavit stating the grounds of the challenge and providing any evidence supporting the challenge to the election administrator or, on election day, to an election judge.

(2) A challenge may be made on the grounds that the elector:

(a) is of unsound mind, as determined by a court;

(b) has voted before in that election;

(c) has been convicted of a felony and is serving a sentence in a penal institution;

(d) is not registered as required by law;

(e) is not 18 years of age or older;

(f) has not been, for at least 30 days, a resident of the county in which the elector is offering to vote; or

(g) is a provisionally registered elector whose status has not been changed to a legally registered voter.

(3) When a challenge has been made under this section:

(a) prior to the close of registration under 13-2-301, the election administrator shall question the challenger and the challenged elector and may question other persons to determine whether the challenge is sufficient or insufficient to cancel the elector's registration under 13-2-402; or

(b) after the close of registration or on election day, the election administrator or, on election day, the election judge shall allow the challenged elector to cast a provisional paper ballot, which must be handled as provided in 13-15-107.

(4) (a) In response to a challenge, the challenged elector may fill out and sign an affidavit to refute the challenge and swear that the elector is eligible to vote.

(b) If the challenge was not made in the presence of the elector being challenged, the election administrator or election judge shall notify the challenged elector ~~as soon as possible~~ of who made the challenge and the grounds of the challenge and explain what information the elector may provide to respond to the challenge. *The notification must be made:*

(i) within 5 days of the filing of the challenge if the election is more than 5 days away; or

(ii) on or before election day if the election is less than 5 days away.

(c) The election administrator or, on election day, the election judge shall also provide to the challenged elector a copy of the challenger's affidavit and any supporting evidence provided. ~~If the challenge is made more than 5 days before an election, "as soon as possible", as used in this subsection (4)(b), means no later than 5 days after the challenge.~~

(5) The secretary of state shall adopt rules to implement the provisions of this section and shall provide standardized affidavit forms for challengers and challenged electors."

Section 27. Section 13-15-107, MCA, is amended to read:

"13-15-107. Handling and counting provisional and challenged ballots. (1) To verify eligibility to vote, a provisionally registered elector who casts a provisional ballot has until 5 p.m. on the day after the election to provide valid identification *or eligibility* information either in person, by facsimile, by electronic ~~mail~~ *means*, or by mail postmarked no later than the day after the election.

(2) (a) If a legally registered elector casts a provisional ballot because the elector failed to provide sufficient identification as required pursuant to 13-13-114(1)(a), the election administrator shall compare the ~~elector's~~ signature *of the elector or the elector's agent designated pursuant to 13-1-116* on the affirmation required under 13-13-601 to the ~~elector's~~ signature on the elector's voter registration card *or the agent's designation form*.

(b) If the signatures match, the election administrator shall handle the ballot as provided in subsection (6).

(c) If the signatures do not match *and the elector or the elector's agent fails to provide valid identification information by the deadline*, the ballot must be rejected and handled as provided in 13-15-108.

(3) A provisional ballot must be counted if the election administrator verifies the elector's *identity or* eligibility pursuant to rules adopted under 13-13-603. However, if the election administrator cannot verify the elector's *identity or* eligibility under the rules, the elector's provisional ballot must be rejected and handled as provided in 13-15-108. If the ballot is provisional because of a challenge and the challenge was made on the grounds that the elector is of unsound mind or serving a felony sentence in a penal institution, the elector's provisional ballot must be counted unless the challenger provides documentation by 5 p.m. on the day after the election that a court has established that the elector is of unsound mind or that the elector has been convicted and sentenced and is still serving a felony sentence in a penal institution.

(4) The election administrator shall provide an elector who cast a provisional ballot but whose ballot was not counted with the reasons why the ballot was not counted.

(5) A provisional ballot ~~cast by an elector whose voter information is verified before 5 p.m. on the day after the election~~ must be removed from its provisional envelope, grouped with other ballots in a manner that allows for the secrecy of the ballot to the greatest extent possible, and counted as any other *provisional* ballot *if the elector's voter information is:*

(a) verified before 5 p.m. on the day after the election; or

(b) postmarked by 5 p.m. on the day after election day and received and verified by 3 p.m. on the sixth day after the election.

(6) Provisional ballots that are not resolved by the end of election day may not be counted until after 3 p.m. on the sixth day after the election."

Section 28. Section 13-17-103, MCA, is amended to read:

"13-17-103. Required specifications for voting systems. (1) A voting system may not be approved under 13-17-101 unless the voting system:

(a) allows an elector to vote in secrecy;

(b) prevents an elector from voting for any candidate or on any ballot issue more than once;

(c) prevents an elector from voting on any office or ballot issue for which the elector is not entitled to vote;

(d) allows an elector to vote only for the candidates of the party selected by the elector in the primary election;

(e) allows an elector to vote a split ticket in a general election if the elector desires;

(f) allows each valid vote cast to be registered and recorded within the performance standards adopted pursuant to subsection (2);

(g) ~~may be~~ *is* protected from tampering for a fraudulent purpose;

(h) prevents an individual from seeing or knowing the number of votes registered for any candidate or on any ballot issue during the progress of voting;

(i) allows write-in voting;

(j) will, if purchased by a jurisdiction within the state, be provided with a guarantee that the training and technical assistance will be provided to election officials under the contract for purchase of the voting system;

(k) uses a paper ballot that allows votes to be manually counted; and

(l) allows auditors to access and monitor any software program while it is running on the system to determine whether the software is running properly.

(2) To implement the provisions of subsection (1)(f), the secretary of state shall adopt rules setting a benchmark performance standard that must be met in tests by each voting system prior to approval under 13-17-101. The standard must be based on commonly accepted industry standards for readily available technologies."

Section 29. Section 13-17-203, MCA, is amended to read:

"13-17-203. Publication of information concerning voting systems. *(1)* Not more than 10 or less than 3 days before an election at which a voting system will be used, the election administrator shall ~~publish~~ *broadcast* on radio or television, as provided in 2-3-105 through 2-3-107, or *publish* in a newspaper of general circulation in the county:

~~(1)~~*(a)* a diagram showing the voting system and ballot arrangement (in newspaper only);

~~(2)~~*(b)* a statement of the locations where voting systems are on public exhibition; *and*

~~(3)~~*(c)* instructions on how to vote.

(2) The election administrator shall select the method of notification that the election administrator believes is best suited to reach the largest number of potential electors."

Section 30. Section 13-17-212, MCA, is amended to read:

"13-17-212. Performance testing and certification of voting systems prior to election. (1) No more than 30 days prior to an election in which a voting system is used, the election administrator shall publicly test and certify that the system is performing properly.

(2) The secretary of state shall ensure that at least 10% of ~~all voting systems~~ *each type of voting system* in the state ~~have~~ *has* been randomly tested and certified at least once every calendar year.

~~(3) If any type of direct recording electronic voting system is approved pursuant to 13-17-101 after meeting the requirements of 13-17-103, provision must be made to ensure that, at a minimum, each system is tested and certified as follows:~~

~~(a) upon delivery;~~

~~(b) no more than 30 days prior to the election; and~~

~~(c) on election day.~~

~~(4)~~*(3)* The provisions of this section must be implemented according to rules adopted by the secretary of state pursuant to 13-17-211."

Section 31. Section 13-19-102, MCA, is amended to read:

"13-19-102. Definitions. As used in this chapter, the following definitions apply:

(1) "Ballot" means the ballot or set of ballots that is to be returned by a specified election day.

~~(1)~~*(2)* "Election day" is the date established by law on which a particular election would be held if that election were being conducted by means other than a mail ballot election.

~~(2) "Mail ballot election" means any election conducted by mail pursuant to 13-19-104 and in compliance with the procedure specified in 13-19-106.~~

(3) "Political subdivision" means a political subdivision of the state, including a school district.

(4) "Return/verification envelope" means an envelope that contains a secrecy envelope and ballot and that is designed to:

(a) allow election officials, upon examination of the outside of the envelope, to determine that the ballot is being submitted by someone who is in fact a qualified elector and who has not already voted; and

(b) allow it to be used in the United States mail.

(5) "Secrecy envelope" means an envelope used to contain the elector's ballot and that is designed to conceal the elector's ~~vote~~ *ballot* and to prevent that elector's ballot from being distinguished from the ballots of other electors."

Section 32. Section 13-19-105, MCA, is amended to read:

"13-19-105. Role of secretary of state. In addition to other powers and duties conveyed by law, the secretary of state, with advice from election administrators, shall:

(1) prescribe the form of materials to be used in the conduct of mail ballot elections;

(2) review written plans for the conduct of mail ballot elections as provided in 13-19-205; and

(3) adopt rules consistent with this chapter to:

(a) establish and maintain uniformity in the conduct of mail ballot elections; and

(b) establish procedures for the conduct of mail ballot elections that*, when implemented by the election administrator*:

(i) prevent fraud;

(ii) ensure the accurate handling and canvassing of mail ballots; and

(iii) ensure that the secrecy of voted ballots is maintained."

Section 33. Section 13-19-106, MCA, is amended to read:

"13-19-106. General requirements for mail ballot election. A mail ballot election must be conducted substantially as follows:

(1) Subject to 13-12-202, official mail ballots must be prepared and all other initial procedures followed as provided by law, except that mail ballots must be paper ballots and are not required to have stubs.

(2) An official ballot must be mailed to every qualified elector of the political subdivision conducting the election.

(3) Each return/verification envelope must contain a form prescribed by the secretary of state for the elector to verify the accuracy of the elector's address or notify the election administrator of the elector's correct mailing address and to return the corrected address with the voted ballot in the manner provided by 13-19-306.

(4) The elector shall mark the ballot and place it in a secrecy envelope.

(5) *(a)* The elector shall then place the secrecy envelope containing the elector's ballot in a return/verification envelope and ~~shall return it by mailing~~ *mail* it or ~~delivering~~ *deliver* it in person to a place of deposit designated by the election administrator ~~so that it is received before a specified time on election day~~.

(b) Except as provided in 13-21-206, the voted ballot must be received before 8 p.m. on election day.

(6) ~~Once returned, election~~ *Election* officials shall first qualify the ~~submitted~~ *voted* ballot by examining the return/verification envelope to determine whether it is submitted by a qualified elector who has not previously voted *in the election*.

(7) If the *voted* ballot qualifies and is otherwise valid, officials shall then open the return/verification envelope and remove the secrecy envelope, which ~~is then voted by depositing it~~ *must be deposited* unopened in an official ballot box.

(8) ~~After~~ *Except as provided in 13-19-312, after* the close of ~~polls~~ *voting* on election day, voted ballots must be counted and canvassed as provided in *Title 13,* chapter 15."

Section 34. Section 13-19-204, MCA, is amended to read:

"13-19-204. Objection of political subdivision. (1) A political subdivision may, by resolution of the governing body, object to the conduct of one of its elections under this chapter. The resolution must include a statement of the reasons for the objection.

(2) If ~~such a~~ *the* resolution is filed with the election administrator no later than 55 days prior to election day, the election may not be conducted *by mail* under this chapter."

Section 35. Section 13-19-205, MCA, is amended to read:

"13-19-205. Written plan for conduct of election — amendments — approval procedures. (1) The election administrator shall prepare a written plan~~, including a timetable,~~ for the conduct of the election and shall submit it to the secretary of state *in a manner that ensures that it is received* at least 60 days prior to the date set for the election.

(2) The written plan must include:

(a) a timetable for the election; and

(b) sample written instructions that will be sent to the electors. The instructions must include but are not limited to:

(i) information on the estimated amount of postage required to return the ballot; and

(ii) (A) the location of the places of deposit and the days and times when ballots may be returned to the places of deposit, if the information is available; or

(B) if the information on location and hours of places of deposit is not available, a section that will allow the information to be added before the instructions are mailed to electors.

~~(2)~~*(3)* The plan may be amended by the election administrator any time prior to the 35th day before election day by notifying the secretary of state in writing of any changes.

~~(3)~~*(4)* Within 5 days of receiving the plan and as soon as possible after receiving any amendments, the secretary of state shall approve, disapprove, or recommend changes to the plan or amendments.

~~(4)~~*(5)* When the written plan has been approved, the election administrator shall proceed to conduct the election according to the approved plan *unless the election is canceled for any reason provided by law*."

Section 36. Section 13-19-206, MCA, is amended to read:

"13-19-206. Distributing materials to electors — procedure. For each election conducted under this chapter, the election administrator shall:

(1) mail a single packet to every qualified elector of the political subdivision conducting the election;

(2) ensure that each packet contains only one each of the following:

(a) an official ballot~~, except that the election administrator may include separate ballots~~ for each type of election being held ~~concurrently~~ *on the specified election day*;

(b) a secrecy envelope;

(c) a return/verification envelope; and

(d) complete written instructions*, as approved by the secretary of state pursuant to 13-19-205,* for *mail ballot* voting ~~and returning ballots~~ *procedures*; ~~and~~

(3) ensure that each packet is:

(a) addressed to a single individual elector at the most current address available from the official registration records; and

(b) deposited in the United States mail with sufficient ~~prepaid~~ postage for it to be delivered to the elector's address*; and*

(4) mail the packet in a manner that conforms to postal regulations to require the return, not forwarding, of undelivered packets."

Section 37. Section 13-19-207, MCA, is amended to read:

"13-19-207. When materials to be mailed. ~~For~~ *(1) Except as provided in subsection (2), for* any election conducted by mail, ballots must be mailed no sooner than the 25th day and no later than the 15th day before election day.

(2) (a) All ballots *mailed to electors on the active list* must be mailed the same day.

(b) At any time before noon on the day before election day, a ballot may be mailed or, upon request, provided in person at the election administrator's office to:

(i) an elector on the inactive list after the elector reactivates the elector's registration as provided in 13-2-222; or

(ii) an individual who registers under the late registration option provided for in 13-2-304.

(c) An elector on the inactive list shall vote at the election administrator's office on election day if the elector reactivates the elector's registration after noon on the day before election day.

(d) An elector who registers pursuant to 13-2-304 on election day or on the day before election day must receive the ballot and vote it at the election administrator's office."

Section 38. Section 13-19-301, MCA, is amended to read:

"13-19-301. Voting mail ballots. (1) Upon receipt of ~~his~~ *the mailed* ballot, the elector may vote by:

(a) marking the ballot in the manner specified;

(b) placing the marked ballot in the secrecy envelope, free of any identifying marks;

(c) placing the secrecy envelope ~~containing a single ballot~~ in the return/verification envelope;

(d) executing the affidavit printed on the return/verification envelope; and

(e) returning the return/verification envelope with the secrecy envelope containing the ballot ~~enclosed~~, as provided in 13-19-306.

(2) For the purpose of this chapter, an official ballot is voted when~~, after the requirements of 13-19-310 and 13-19-311 have been satisfied, the return/verification envelope has been opened by election officials and the secrecy envelope containing the ballot has been deposited in the official ballot box~~ *the marked ballot is received at a place of deposit*."

Section 39. Section 13-19-303, MCA, is amended to read:

"13-19-303. Voting by elector when absent from place of residence during conduct of election. (1) A qualified elector who will be absent from the county during the time the election is being conducted may:

(a) vote in person in the election administrator's office as soon as ballots are available and until noon the day before the ballots are scheduled to be mailed; or

(b) make a written request, signed by the applicant and addressed to the election administrator, that the ballot be mailed to an address other than *the address* that ~~which~~ appears on the registration card. Written requests must be accepted until noon the day before the ballots are scheduled to be mailed.

(2) *(a)* Ballots mailed to electors *on the active list* pursuant to this section must be mailed the same day that all other ballots are mailed*, except that a ballot requested pursuant to Title 13, chapter 21, may be sent to the elector as soon as the ballot is available.*

(b) A ballot may be provided pursuant to this section until noon on the day before election day if, after the ballots are mailed to active electors:

(i) an inactive elector reactivates the elector's registration as provided in 13-2-222; or

(ii) an individual registers under the late registration option provided for in 13-2-304."

Section 40. Section 13-19-304, MCA, is amended to read:

"13-19-304. Voting by nonregistered electors. (1) For any election being conducted under this chapter by a political subdivision that allows individuals to vote who are not registered electors, ~~such an~~ *the* individual may vote by appearing in person at the election administrator's office *or by providing materials by mail, facsimile, or electronic means* and demonstrating that ~~he~~ *the individual* possesses the qualifications ~~which entitle him to vote~~ *required for voting*.

(2) An individual complying with subsection (1) before official ballots are available may ~~leave~~ *provide* a card ~~with~~ *to* the election administrator containing ~~his~~ *the* signature *of the individual or the individual's agent designated pursuant to 13-1-116* and the address to which ~~his~~ *the* ballot is to be mailed. The signature provided must then be used for verification when the mail ballot is returned.

(3) An individual complying with subsection (1) after official ballots are available and before the close of the polls on election day must be permitted to vote at that time."

Section 41. Section 13-19-305, MCA, is amended to read:

"13-19-305. Replacement ballots — procedures. (1) An elector may obtain a replacement ballot as provided in this section if ~~his~~ *the original* ballot is destroyed, spoiled, lost, or not received by the elector.

(2) An elector seeking *or receiving* a replacement ballot shall sign a sworn statement stating that the *original* ballot was either destroyed, spoiled, lost, or not received and shall present the statement to the election administrator no later than 8 p.m. on election day.

(3) Upon receiving the sworn statement, the election administrator shall issue a replacement ballot to the elector. Each spoiled ballot must be returned before ~~a new one~~ *another ballot* may be issued.

(4) The election administrator shall designate ~~his~~ *the election administrator's* office or a central location in the political subdivision in which the election is conducted as the single location for obtaining a replacement ballot.

(5) A replacement ballot may also be issued pursuant to 13-19-313.

(6) The election administrator shall keep a record of each replacement ballot issued. If ~~he~~ *the election administrator* later determines that any elector to whom a replacement ballot has been issued has attempted to vote more than once, ~~he~~ *the election administrator* shall immediately notify the county attorney and the secretary of state of each instance."

Section 42. Section 13-19-306, MCA, is amended to read:

"13-19-306. Returning marked ballots — when — where. (1) After complying with 13-19-301, an elector or ~~his~~ *the elector's agent or* designee may return ~~his~~ *the elector's* ballot on or before election day by either:

(a) depositing the return/verification envelope in the United States mail, with sufficient postage affixed; or

(b) returning it to any place of deposit designated by the election administrator pursuant to 13-19-307.

(2) ~~In order to have his ballot~~ *Except as provided in 13-21-206, in order for the ballot to be* counted, each elector must return it in ~~such~~ a manner that *ensures* it is received prior to 8 p.m. on election day."

Section 43. Section 13-19-307, MCA, is amended to read:

"13-19-307. Places of deposit. (1) *(a)* The election administrator shall designate ~~his~~ *the election administrator's* office and may designate one or more places in the political subdivision in which the election is being conducted as places of deposit where ballots may be returned in person by the elector *or the elector's agent or designee*.

(b) If the election administrator's office is not accessible pursuant to 13-3-205, the election administrator shall designate at least one accessible place of deposit.

(2) Prior to election day, ballots may be returned to any designated place of deposit ~~only during regular business hours~~ *during the days and times set by the election administrator and within the regular business hours of the location*.

(3) On election day, each location designated as a place of deposit must be open as provided in 13-1-106, and ballots may be returned during those hours.

(4) The election administrator may designate certain locations as election day places of deposit, and any *designated* location ~~so designated shall~~ *must* function as a place of deposit only on election day.

(5) Each place of deposit must be staffed by at least two election officials who are selected in the same manner as provided for the selection of election judges in 13-4-102.

~~(5)~~*(6)* The election administrator shall provide each designated place of deposit with an official ballot transport box secured as provided by law."

Section 44. Section 13-19-308, MCA, is amended to read:

"13-19-308. Disposition of ballots returned in person. Ballots returned ~~by the elector~~ in person *by the elector or the elector's agent or designee* must be processed as follows:

(1) If returned to the election administrator's office directly, the ballot must be processed in the same manner provided for ballots returned by mail except that, while the elector*, agent, or designee* is present, officials shall:

(a) verify the signature pursuant to 13-19-310;

(b) resolve any questions as to the validity of the ballot *as provided in 13-19-314*; and

(c) deposit the unopened secrecy envelope containing the *voted* ballot in the official ballot box.

(2) If returned to a place of deposit other than the election administrator's office, the election ~~official~~ *officials* on location shall:

(a) keep a log of the names of all electors ~~from~~ *for* whom ~~he receives~~ *the officials receive* ballots ~~and the names of the people who deliver the ballots~~;

(b) deposit the unopened return/verification envelope in the sealed ballot transport box provided for that purpose; and

(c) securely retain all *voted* ballots until they are transported to the election administrator's office. The transport boxes must then be opened and the ballots ~~disposed of~~ *handled* in the same manner provided for ballots returned by mail."

Section 45. Section 13-19-310, MCA, is amended to read:

"13-19-310. Signature verification — procedures. (1) The election administrator shall verify the signature of each elector by comparing the affidavit printed on the return/verification envelope to the signature on that elector's registration card or *agent designation form or on the* signature card provided under 13-19-304.

(2) If the election administrator is convinced that the individual signing the affidavit is the same as the one whose name appears on the registration card, ~~he~~ *agent designation form, or signature card, the election administrator* shall proceed to validate the ballot.

(3) If the election administrator is not convinced that the individual signing the return/verification envelope is the same as the one whose name appears on the registration card, ~~he may not validate the ballot but instead~~ *agent designation form, or signature card, the election administrator* shall:

(a) *designate the ballot as a provisional ballot; and*

(b) give notice to the elector as provided in 13-19-313~~; and~~

~~(b) if the discrepancy is not rectified to the election administrator's satisfaction, present the unopened envelope and the registration card to the canvassing board for a determination~~."

Section 46. Section 13-19-311, MCA, is amended to read:

"13-19-311. Valid ballots — requirements. (1) Only valid ballots may be counted in an election conducted under this chapter.

(2) For the purpose of this chapter, a *voted* ballot is valid only if:

(a) it is sealed in the secrecy envelope and returned in the return/verification envelope;

(b) the elector's signature on the affidavit on the return/verification envelope is verified pursuant to 13-19-310; and

(c) it is received before 8 p.m. on election day*, except as provided in 13-21-206*.

(3) If a voted ballot has not been placed in a secrecy envelope, the election administrator shall place the ballot in a secrecy envelope without examining the ballot.

~~(3)~~*(4)* A ballot is invalid if:

(a) any identifying marks are placed on the ballot by the elector; or

~~(a)~~*(b)* more than one ballot is enclosed in a single return/verification or secrecy envelope unless*:*

(i) there are multiple elections being held at the same time and ~~there is~~ *the envelope contains* only one ballot for each election ~~in the envelope~~; or

(ii) (A) the return/verification envelope contains ballots from the same household;

(B) each ballot is in its own secrecy envelope; and

(C) the return/verification envelope contains a valid signature for each elector who has returned a ballot.

~~(b) any identifying marks are placed on the ballot by the elector.~~

~~(4) Failure of an elector to verify the accuracy of the elector's address or notify the election administrator of the elector's correct mailing address in conjunction with a mailed ballot, as provided in 13-19-106, invalidates an otherwise valid mailed ballot.~~"

Section 47. Section 13-19-312, MCA, is amended to read:

"13-19-312. Counting procedure. (1) Except as provided in subsection (2), after the close of voting on election day, the counting board appointed pursuant to 13-15-112 shall:

(a) open the official ballot boxes;

(b) open each secrecy envelope, removing the *voted* ballot; and

(c) proceed to count the votes as provided in *Title 13,* chapter 15.

(2) On election day, the election administrator may begin the procedures described in subsection (1) before the polls close if the election administrator complies with the procedures described in 13-15-207(3)."

Section 48. Section 13-19-313, MCA, is amended to read:

"13-19-313. Notice to elector — opportunity to resolve questions. (1) As soon as possible after receipt of an elector's return/verification envelope, the election administrator shall give notice to the elector~~, either by telephone or by first-class mail,~~ *by the most expedient method available* if the election administrator:

(a) is unable to verify the elector's *or agent's* signature under 13-19-310; ~~or~~

(b) has discovered a procedural mistake made by the elector that would invalidate the elector's ballot under 13-19-311*; or*

(c) finds that the elector has failed to attest to the accuracy of the elector's address or notify the election administrator of the elector's correct mailing address as provided in 13-19-106.

(2) The election administrator shall inform the elector that*,* ~~the elector may appear in person at the election administrator's office~~ prior to 8 p.m. on election day ~~and verify the signature or correct the mistake.~~

~~(3) Any elector appearing pursuant to subsection (2) must be permitted to~~*, the elector may*:

(a) *by mail or in person,* verify the elector's *or agent's* signature, after proof of identification, by affirming that the signature is in fact the elector's*,* ~~or~~ by completing a new registration card containing the elector's current signature*, or by providing a new agent designation form*;

(b) *by mail, facsimile, telephone, or electronic means, provide the address information required under 13-19-106 or* correct any minor mistake if the correction would render the ballot valid; or

(c) if necessary, request and receive a replacement ballot and vote it at ~~that time~~ *the election administrator's office*.

(3) The ballot of an elector who fails to provide information pursuant to subsection (2) must be handled as a provisional ballot pursuant to 13-15-107.

(4) *(a)* If a mail ballot is returned *as undeliverable*, the election administrator shall investigate the reason for the return and mail a confirmation notice. The notice must be sent by forwardable, first-class mail with a postage-paid, return-addressed notice.

(b) If the confirmation notice is returned to the election administrator, the elector must be placed on ~~an~~ *the* inactive list *provided for in 13-2-220* until ~~that~~ *the* elector becomes a qualified elector."

Section 49. Section 13-19-314, MCA, is amended to read:

"13-19-314. Resolving ballots in question. Any questions concerning the validity of a ballot or signature must be resolved in the following manner:

(1) If the election administrator is unable to determine without doubt whether a *voted* ballot is valid or invalid, the election administrator shall give notice to the elector as provided in 13-19-313.

(2) If, subsequent to following the procedure in 13-19-313, the election administrator is still unable to determine without doubt whether the *voted* ballot is valid or invalid, the ~~election administrator shall present the issue for a determination to the counting board appointed pursuant to 13-15-112~~ *ballot must be handled as a provisional ballot pursuant to 13-15-107*.

~~(3) If a majority of the counting board is unable to agree on whether the ballot is valid or invalid, it may not count the ballot in question, and the election administrator shall present the ballot to the board of canvassers for a determination of the issue.~~

~~(4) If a majority of the board of canvassers is unable to agree that the ballot is valid, the ballot is invalid and may not be counted.~~"

Section 50. Section 13-21-203, MCA, is amended to read:

"13-21-203. Registration of United States electors after return. *(1)* A United States elector who has returned to the elector's residence too late to register at the time ~~when~~ and place ~~where~~ *required for regular* registration ~~is required is entitled to~~ *may* register*:*

(a) under the late registration provisions of 13-2-304; or

(b) ~~for the purpose of voting at the next election after the date of the elector's return~~ up to noon on the day before the election *for the purpose of voting at the next election after the date of the elector's return*.

(2) The elector shall execute a sworn affidavit qualifying the elector under this section to be filed in the office of the elector's registration. The county registrar shall provide to the person registering under the provisions of this section a certificate stating the precinct in which the elector is entitled to vote. This certificate must be presented to the election judges of that precinct at the time of voting."

Section 51. Section 13-21-210, MCA, is amended to read:

"13-21-210. Application for absentee ballots. (1) (a) A United States elector may apply for a regular absentee ballot as follows:

(i) by making a written request, which must include the elector's birth date and signature; or

(ii) by properly completing, signing, and returning to the election administrator the federal post card application.

(b) A person who holds a power of attorney from an absent uniformed services elector may apply for an absentee ballot for that election on behalf of the uniformed services elector. The applicant shall provide a copy of the power of attorney authorizing the request for an absentee ballot along with the application.

(2) An application for a regular absentee ballot must be received by the appropriate county election administrator not less than 30 days before the date of an election. An application for a regular absentee ballot that is received less than 30 days before the date of an election must be processed for the next election.

(3) An application under this section is valid for all state and local elections in the calendar year in which the application is made and the next two regularly scheduled federal general elections *unless an elector requests to be mailed an absentee ballot for each subsequent election in which the elector is eligible to vote or only for each subsequent federal election in which the elector is eligible to vote for as long as the elector remains eligible to vote and resides at the address provided in the initial application*.

(4) If an elector fails to provide the address confirmation required by 13-13-212, the elector will be removed from the permanent absentee ballot list. An elector who is removed from the permanent absentee ballot list will continue to receive absentee ballots during the period covered in the elector's initial application under this section.

~~(4)~~*(5)* The elector's county election administrator shall provide the elector with a regular absentee ballot for the elections described in subsection (3) as soon as the ballots are printed."

Section 52. Section 13-27-311, MCA, is amended to read:

"13-27-311. Publication of proposed constitutional amendments. (1) If a ~~proposed~~ constitutional amendment ~~or amendments are~~ *proposed by initiative is* submitted to the people, the secretary of state shall have the proposed amendment ~~or amendments~~ published in full twice each month for 2 months ~~previous~~ *prior* to the election at which ~~they are~~ *it is* to be voted upon by the people~~,~~ in not less than one newspaper of general circulation in each county.

(2) *(a)* ~~The~~ *For a proposed constitutional amendment referred to the voters by the legislature, the* secretary of state may arrange for newspaper~~,~~ *publication or* radio~~,~~ or television ~~publication of proposed constitutional amendments~~ *broadcast of the amendment,* in each county.

(b) ~~A summary of~~ *The ballot statements reviewed or prepared by the attorney general for* the amendment ~~as provided by the attorney general~~, as described in 13-27-312 or 13-27-315, ~~would suffice~~ *are sufficient* for the publication ~~required~~ *allowed* by this ~~section~~ *subsection (2)* and should be made at least twice each month for 2 months ~~previous~~ *prior* to the election.

(c) The election administrator shall select the method of notification that the election administrator believes is best suited to reach the largest number of potential electors."

Section 53. Section 13-37-226, MCA, is amended to read:

"13-37-226. Time for filing reports. (1) Candidates for a state office filled by a statewide vote of all the electors of Montana and political committees that are organized to support or oppose a particular statewide candidate shall file reports:

(a) quarterly, due on the fifth day following a calendar quarter, beginning with the calendar quarter in which funds are received or expended during the year or years prior to the election year that the candidate expects to be on the ballot;

(b) on the 10th day of March and September in each year that an election is to be held and on the 15th and 5th days preceding the date on which an election is held and within 24 hours after receiving a contribution of $200 or more if received between the 10th day before the election and the day of the election;

(c) not more than 20 days after the date of the election; and

(d) on the 10th day of March and September of each year following an election until the candidate or political committee files a closing report as specified in 13-37-228(3).

(2) Political committees organized to support or oppose a particular statewide ballot issue shall file reports:

(a) quarterly, due on the fifth day following a calendar quarter, beginning with the calendar quarter in which the text of the proposed ballot issue is submitted for review and approval pursuant to 13-27-202 during the year or years prior to the election year that an issue is or is expected to be on the ballot;

(b) on the 10th day of March and on the 10th day of each subsequent month through September *in each year that an election is to be held*;

(c) on the 15th and 5th days preceding the date on which an election is held;

(d) within 24 hours after receiving a contribution of $500 or more if received between the 10th day before the election and the day of the election;

(e) within 20 days after the election; and

(f) on the 10th day of March and September of each year following an election until the political committee files a closing report as specified in 13-37-228(3).

(3) Candidates for a state district office, including but not limited to candidates for the legislature, the public service commission, or a district court judge, and political committees that are specifically organized to support or oppose a particular state district candidate or issue shall file reports:

(a) on the 12th day preceding the date on which an election is held and within 48 hours after receiving a contribution of $100 or more if received between the 17th day before the election and the day of the election. The report under this subsection (3)(a) may be made by mail or by electronic communication to the clerk and recorder and the commissioner of political practices.

(b) not more than 20 days after the date of the election; and

(c) whenever a candidate or political committee files a closing report as specified in 13-37-228(3).

(4) Candidates for any other public office and political committees that are specifically organized to support or oppose a particular local issue shall file the reports specified in subsection (3) only if the total amount of contributions received or the total amount of funds expended for all elections in a campaign, excluding the filing fee paid by the candidate, exceeds $500, except as provided in 13-37-206.

(5) For the purposes of this subsection, a committee that is not specifically organized to support or oppose a particular candidate or ballot issue and that receives contributions and makes expenditures in conjunction with an election is an independent committee. For the purpose of reporting, a political party committee is an independent committee. An independent committee shall file:

(a) a report on the 12th day preceding the date of an election in which it participates by making an expenditure;

(b) a report not more than 20 days after the date of the election in which it participates by making an expenditure; and

(c) a report on a date to be prescribed by the commissioner for a closing report at the close of each calendar year.

(6) The commissioner may promulgate rules regarding the extent to which organizations that are incidental political committees shall report their politically related activities in accordance with this chapter.

(7) All reports required by this section must be complete as of the fifth day before the date of filing as specified in 13-37-228(2) and this section."

Section 54. Section 20-20-107, MCA, is amended to read:

"20-20-107. Election expenses. *(1)* All expenses necessarily incurred in the matter of holding school elections ~~shall~~ *must* be paid out of the school funds of the district, except when ~~such~~ *the* expenses are by law to be shared by a community college district for which the district is conducting an election.

(2) The trustees ~~may~~ *shall* pay the election judges of a school election ~~at a rate not to exceed the prevailing~~ *at least the state or* federal minimum wage*, whichever is greater,* ~~per~~ *for each* hour of service in connection with ~~such~~ *the* election*, including the number of hours required to attend training pursuant to [section 55].*

(3) Election judges are exempt from unemployment insurance coverage for services performed pursuant to this chapter if the remuneration received by the election judge is less than $1,000 per calendar year."

Section 55. Election judges — qualifications — training. (1) Election judges must be qualified registered electors of the school district in which they serve.

(2) An election judge may not be:

(a) the candidate;

(b) an ascendant, descendant, brother, or sister of a candidate; or

(c) the spouse of the candidate or of any of the individuals listed in subsection (2)(b).

(3) School election judges must meet the training and certification requirements of 13-4-203.

Section 56. Section 20-20-203, MCA, is amended to read:

"20-20-203. Resolution for poll hours, polling places, and judges. (1) At the trustee meeting when a school election is called, the trustees shall:

(a) except as provided in 20-20-106(3), establish the time at which the polls are to open if in their discretion they determine that the polls ~~shall~~ *must* be open before noon;

(b) establish the polling places for ~~such~~ *the* election, using the established polling places for general elections within the district wherever possible; *and*

(c) appoint~~, from among the qualified electors of the district,~~ at least three judges for each polling place ~~for such election and notify each judge of such appointment not less than 10 days before the election~~.

(2) There ~~shall~~ *must* be one polling place in each district unless the trustees establish additional polling places. If more than one polling place is established, the trustees shall define the boundaries for each polling place~~, and such trustee-defined polling place~~ *so that the* boundaries ~~shall be~~ *for each polling place are* coterminous with county precinct boundaries existing within a district. If the site of a polling place is changed from the polling place site used for the last preceding school election, special reference to the changed site of the polling place ~~shall~~ *must* be included in the notice for ~~such~~ *the* election."

Section 57. Tie votes. If a tie vote occurs among the candidates for a school trustee position, the trustees shall appoint one of the candidates who tied to fill the office as in other cases of vacancy.

Section 58. Codification instruction. (1) [Section 55] is intended to be codified as an integral part of Title 20, chapter 20, part 1, and the provisions of Title 20, chapter 20, apply to [section 55].

(2) [Section 57] is intended to be codified as an integral part of Title 20, chapter 20, part 4, and the provisions of Title 20, chapter 20, apply to [section 57].

Section 59. Coordination instruction. If [this act] and Senate Bill No. 394 are both passed and approved and both bills amend 13-19-205, then the sections amending 13-19-205 are void and 13-19-205 must be amended as follows:

"13-19-205. Written plan for conduct of election — amendments — approval procedures. (1) The election administrator shall prepare a written plan, including a timetable, for the conduct of the election and shall submit it to the secretary of state *and the governing body concerned in a manner that ensures that it is received* at least 60 days prior to the date set for the election.

(2) (a) The written plan must include:

(i) a timetable for the election;

(ii) the location of places of deposit for ballots;

(iii) the location of any accessible places of deposit that would include the use of specialized voting equipment designed to accommodate physically disabled voters;

(iv) a description of any other voter services to be provided at the places of deposit;

(v) any specific effort designed to increase or enhance the ability of a person to participate in the election; and

(vi) sample written instructions that will be sent to the electors. The instructions must include but are not limited to information on the estimated amount of postage required to return the ballot and, if the information is available, the location of places of deposit for ballots and the days and times when ballots may be returned to the places of deposit.

(b) If the information described in subsection (2)(a)(vi) is not available when the plan is submitted under subsection (1), the sample written instructions must include a section that will allow the information to be added before the instructions are mailed to electors.

~~(2)~~*(3)* The plan may be amended by the election administrator any time prior to the 35th day before election day by notifying the secretary of state in writing of any changes. *Only the governing body concerned must be notified of any changes to information required in subsection (2).*

~~(3)~~*(4)* Within 5 days of receiving the plan and as soon as possible after receiving any amendments, the secretary of state shall approve, disapprove, or recommend changes to the plan or amendments.

~~(4)~~*(5)* When the written plan has been approved, the election administrator shall proceed to conduct the election according to the approved plan *unless the election is canceled for any reason provided by law*."

Approved April 18, 2009

CHAPTER NO. 298

[HB 34]

AN ACT REVISING TEACHERS' RETIREMENT SYSTEM LAWS; SUSPENDING RETIREMENT BENEFITS WHEN MEMBERS RETURN TO FULL-TIME EMPLOYMENT COVERED BY THE TEACHERS' RETIREMENT SYSTEM AND PROVIDING FOR THE CALCULATION OF A SECOND BENEFIT; REQUIRING EMPLOYER CONTRIBUTIONS ON WAGES PAID TO RETIRED MEMBERS; CLARIFYING THE EFFECTIVE DATE OF RETIREMENT OF A MEMBER WHO TERMINATES WITHIN 30 DAYS OF THE END OF A SCHOOL YEAR; AMENDING SECTIONS 19-20-501, 19-20-605, 19-20-703, AND 19-20-731, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Resumption of employment by retired member — suspension of benefits. (1) If a retired member returns to full-time employment in a position covered by the retirement system and becomes an active contributing member, benefits must be suspended until the member terminates all employment and applies to have benefits reinstated.

(2) Except as provided in subsection (4), upon termination and retirement of a previously retired member who was reinstated to active membership pursuant to 19-20-731 before July 1, 2009:

(a) if the member earned less than 1 year of creditable service, the original benefit and retirement option the member was receiving at the time of suspension of benefits must be reinstated beginning either the first of the month following termination or on July 1 following the date on which the retired member was reemployed, whichever is later; or

(b) if the member earned 1 year or more of creditable service, retirement benefits must be recalculated under 19-20-804 if the member has attained normal retirement age or under 19-20-802 if the member has not attained normal retirement age but is eligible for early retirement. The recalculated benefit must include the service credit accumulated at the time of the member's previous retirement, plus any service credit accumulated subsequent to reemployment. The recalculated benefit amount must be increased by the amount of any benefit enhancement received pursuant to 19-20-719 that the retired member was receiving when the member's benefits were suspended.

(3) (a) Except as provided in subsection (4), upon the subsequent retirement of a formerly retired member who was reinstated to active membership pursuant to 19-20-731 on or after July 1, 2009, and earned:

(i) at least 3 years of membership service following suspension of benefits, the member is entitled to resume receiving the suspended benefit in accordance with the retirement benefit option and beneficiary previously selected, plus an additional benefit based upon the new creditable service and compensation earned. The second benefit must be calculated as provided under 19-20-804 if the member is eligible for a service retirement benefit or under 19-20-802 if the member is eligible for early retirement. The second benefit must be paid under the same retirement allowance with the same beneficiary originally elected.

(ii) less than 3 years of membership service following suspension of benefits, the member is entitled to resume receiving the suspended benefit in accordance with the retirement benefit option previously selected, plus a refund of the

employee contributions contributed after the member was reinstated to active service, plus interest.

(b) If a member dies during the period of reemployment following an initial retirement, the member must be considered as retiring on the day preceding the date of death and benefits must be determined according to the following:

(i) If the member elected the normal form benefit prior to reemployment, the member's designated beneficiary must receive an amount equal to the member's accumulated contributions on deposit.

(ii) If the member elected a retirement option pursuant to 19-20-702 prior to reemployment, the benefits due are payable in accordance with the terms of the original option elected and this subsection (3).

(4) If a member who retired under 19-20-802 is reemployed with the same employer within 30 days from the member's effective date of retirement or if that member is guaranteed reemployment with the same employer, the member must be considered to have continued in the status of an active member and not to have separated from service. Any retirement allowance payments received by the member must be repaid to the system, together with interest, at the actuarially assumed rate, and the retirement allowance must be canceled.

Section 2. Section 19-20-501, MCA, is amended to read:

"19-20-501. Financial administration of money. The members of the retirement board are the trustees of all money collected for the retirement system, and as trustees, they shall provide for the financial administration of the money as provided in Article VIII, section 15, of the Montana constitution in the following manner:

(1) The money must be invested and reinvested by the state board of investments.

(2) The retirement board shall annually establish the rate of regular interest.

(3) In accordance with the provisions of 19-20-605~~(7)~~*(8)*, the amount to be credited to each reserve must be allocated from the interest and other earnings on the money of the retirement system actually realized during the preceding fiscal year, less the amount allocated to administrative expenses. The administrative expenses of the retirement system, less amortization of intangible assets, may not exceed 1.5% of retirement benefits paid.

(4) The state treasurer is the custodian of the collected retirement system money and of the securities in which the money is invested.

(5) For purposes of Article VIII, section 12, of the Montana constitution, all the reserves established by part 6 of this chapter must be accounts in the pension trust fund type of the treasury fund structure of the state.

(6) Benefits and refunds to eligible recipients are payable pursuant to a contract as contained in statute. Unless specifically provided for by statute, the contract does not contain revisions to statutes after the time of retirement or termination."

Section 3. Section 19-20-605, MCA, is amended to read:

"19-20-605. Pension accumulation account — employer's contribution. (1) The pension accumulation account is the account in which the reserves for payment of retirement allowances and benefits must be accumulated and from which retirement allowances and benefits must be paid

to retirees or their beneficiaries. Contributions to and payments from the pension accumulation account must be made as provided in this section.

(2) Except as provided in subsection (3), for each member employed during the whole or part of the preceding payroll period, the employer shall pay into the pension accumulation account an amount equal to~~:~~

~~(a) beginning July 1, 2007, through June 30, 2009, 9.47% of total earned compensation; and~~

~~(b) beginning July 1, 2009,~~ 9.85% of total earned compensation.

(3) For each member employed by a school district or a community college during the whole or part of the preceding payroll period, the employer shall pay into the pension accumulation account an amount equal to 7.47% of total earned compensation.

(4) Beginning July 1, 2013, for each retired member who returns to covered employment under the provisions of 19-20-731 during all or part of the preceding payroll period, the employer shall pay into the pension accumulation account an amount equal to 9.85% of the total earned compensation paid to the retired member.

~~(4)~~*(5)* If the employer is a district or community college district, the trustees shall budget and pay for the employer's contribution under the provisions of 20-9-501.

~~(5)~~*(6)* If the employer is the superintendent of public instruction, a public institution of the state of Montana, a unit of the Montana university system, or the Montana state school for the deaf and blind, the legislature shall appropriate to the employer an adequate amount to allow the payment of the employer's contribution.

~~(6)~~*(7)* If the employer is a county, the county commissioners shall budget and pay for the employer's contribution in the manner provided by law for the adoption of a county budget and for payments under the budget.

~~(7)~~*(8)* All interest and other earnings realized on the money of the retirement system must be credited to the pension accumulation account, and the amount required to allow regular interest on the annuity savings account must be transferred to that account from the pension accumulation account.

~~(8)~~*(9)* The board may transfer from the pension accumulation account to the expense account an amount necessary to cover expenses of administration."

Section 4. Section 19-20-703, MCA, is amended to read:

"19-20-703. Payments to be monthly. (1) All retirement allowances must be paid in equal monthly installments.

(2) ~~The~~ *Except as provided in subsection (5), the* retirement allowance may commence:

(a) no earlier than the first day of the month following the member's termination date or on the first day of the month following the date when the member first becomes eligible, whichever date is later; or

(b) if requested by the inactive member in writing:

(i) on the first day of a later month; or

(ii) on the first day of the month following the member's 60th birthday.

(3) Distribution of a member's benefit must begin by the later of the April 1 following the calendar year in which a member attains age 70 1/2 or April 1 of the year following the calendar year in which the member terminates. If a

member fails to apply for retirement benefits by the later of either of those dates, the board shall begin distribution of the monthly benefit as provided in 19-20-702(2)(d)(i)(A).

(4) The life expectancy of a member or the member's beneficiary may not be recalculated after benefits commence.

(5) If a member terminates within 30 days of the last day of the school year, the member is considered to have terminated at the end of the member's contract, and the retirement allowance may not commence earlier than the first day of the month following the last scheduled pupil-instruction day or pupil-instruction-related day as described in 20-1-304, whichever is later."

Section 5. Section 19-20-731, MCA, is amended to read:

"19-20-731. Postretirement employment limitations — cancellation and recalculation of benefits. (1) (a) Except as otherwise provided in this section, a retired member may be employed part-time by a school district, state agency, or unit of the university system in a position eligible to participate in the retirement system and may earn, without an adjustment of retirement benefits, an amount not to exceed the greater of:

(i) one-third of the sum of the member's average final compensation; or

(ii) one-third of the median of the average final compensation for members retired during the preceding fiscal year as determined by the retirement board.

(b) For the purposes of this subsection (1), the maximum compensation that a retired member may earn under subsection (1)(a) without an adjustment of retirement benefits includes all remuneration paid to the retired member, excluding:

(i) the amount of health insurance premiums paid by the employer on the retired member's behalf;

(ii) the value of housing provided by the employer to the retired member;

(iii) the amount of employment-related travel expenses reimbursed to the retired member by the employer;

(iv) de minimis fringe benefits, as defined in 26 U.S.C. 132(e), paid by the employer to or on behalf of the retired member; and

(v) payroll taxes paid by the employer on behalf of the retired member.

(2) On July 1 of each year following the member's retirement effective date, the maximum that a retired member may earn under subsection (1)(a)*(i)* is increased by an amount equal to the consumer price index increase for urban wage earners compiled by the bureau of labor statistics of the United States department of labor or its successor agency in the preceding calendar year.

(3) Except as provided in ~~subsection (5)~~ *[section 1]*, the retirement benefit of a retired member:

(a) employed in a part-time position or earning more than allowed by subsections (1) and (2) must be temporarily reduced by $1 for each dollar earned over the maximum allowed. Monthly benefits must be reduced beginning as soon as practical after the excess earnings have been reported to the retirement system by the employer. The retirement benefit must be canceled if the retired member's earnings over the maximum allowed exceed the gross monthly benefit amount.

(b) employed in a full-time position must be canceled beginning in the month in which the retired member returns to full-time employment.

~~(4) Upon termination and retirement subsequent to a cancellation of benefits pursuant to subsection (3), the retirement benefit of a member:~~

~~(a) who was reemployed and earned less than 1 year of creditable service must be reinstated beginning either the first of the month following termination or on July 1 following the date on which the retired member was reemployed, whichever is later. The reinstated retirement benefit is the amount and option that the retired member would have been entitled to receive had the retired member not returned to employment.~~

~~(b) who was reemployed and earned at least 1 year of creditable service must be recalculated under 19-20-804 if the member has attained normal retirement age or under 19-20-802 if the member has not attained normal retirement age but is eligible for early retirement. The recalculated benefit must include the service credit accumulated at the time of the member's previous retirement, plus any service credit accumulated subsequent to reemployment. The recalculated normal form benefit amount must be increased by the amount of any benefit enhancement received pursuant to 19-20-719 that the retired member was receiving when the member's benefits were canceled.~~

~~(5) If an early-retired member under 19-20-802 is reemployed with the same employer within 30 days from the member's effective date of retirement or if the early-retired member is guaranteed reemployment with the same employer, the member must be considered to have continued in the status of an active member and not to have separated from service. Any retirement allowance payments received by the member must be repaid to the system, together with interest, at the actuarially assumed rate, and the retirement allowance must be canceled.~~

~~(6)~~*(4)* For purposes of this section, "position eligible to participate in the retirement system" includes work performed by a retiree through a professional employer arrangement, an employee leasing arrangement, or a temporary service contractor, as those terms are defined in 39-8-102.

~~(7)~~*(5)* The retirement allowance of any retired member who is employed in a position and who elects to participate in the optional retirement program under Title 19, chapter 21, must be suspended until the member is no longer employed in the position and is no longer participating in the optional retirement program."

Section 6. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 19, chapter 20, part 7, and the provisions of Title 19, chapter 20, part 7, apply to [section 1].

Section 7. Coordination instruction. If [this act] and House Bill No. 363 are both passed and approved and if [section 1] of House Bill No. 363 establishes a new section dealing with the reemployment of certain retired teachers, specialists, and administrators, then [section 1 of this act] must read as follows:

"NEW SECTION. **Section 1. Resumption of employment by retired member — suspension of benefits.** (1) Except as provided in [section 1 of House Bill No. 363], if a retired member returns to full-time employment in a position covered by the retirement system and becomes an active contributing member, benefits must be suspended until the member terminates all employment and applies to have benefits reinstated.

(2) Except as provided in subsection (4), upon termination and retirement of a previously retired member who was reinstated to active membership pursuant to 19-20-731 before July 1, 2009:

(a) if the member earned less than 1 year of creditable service, the original benefit and retirement option the member was receiving at the time of suspension of benefits must be reinstated beginning either the first of the month following termination or on July 1 following the date on which the retired member was reemployed, whichever is later; or

(b) if the member earned 1 year or more of creditable service, retirement benefits must be recalculated under 19-20-804 if the member would qualify for a service retirement benefit under 19-20-801 or under 19-20-802 if the member is eligible for early retirement. The recalculated benefit must include the service credit accumulated at the time of the member's previous retirement, plus any service credit accumulated subsequent to reemployment. The recalculated benefit amount must be increased by the amount of any benefit enhancement received pursuant to 19-20-719 that the retired member was receiving when the member's benefits were suspended.

(3) (a) Except as provided in subsection (4), upon the subsequent retirement of a formerly retired member who was reinstated to active membership pursuant to 19-20-731 on or after July 1, 2009, and earned:

(i) at least 3 years of membership service following suspension of benefits, the member is entitled to resume receiving the suspended benefit in accordance with the retirement benefit option and beneficiary previously selected, plus an additional benefit based upon the new creditable service and compensation earned. The second benefit must be calculated as provided under 19-20-804 if the member is eligible for a service retirement benefit or under 19-20-802 if the member is eligible for early retirement. The second benefit must be paid under the same retirement allowance with the same beneficiary originally elected.

(ii) less than 3 years of membership service following suspension of benefits, the member is entitled to resume receiving the suspended benefit in accordance with the retirement benefit option previously selected, plus a refund of the employee contributions contributed after the member was reinstated to active service, plus interest.

(b) If a member dies during the period of reemployment following an initial retirement, the member must be considered as retiring on the day preceding the date of death and benefits must be determined according to the following:

(i) If the member elected the normal form benefit prior to reemployment, the member's designated beneficiary must receive an amount equal to the member's accumulated contributions on deposit.

(ii) If the member elected a retirement option pursuant to 19-20-702 prior to reemployment, the benefits due are payable in accordance with the terms of the original option elected and this subsection (3).

(4) If a retired member who has not attained normal retirement age is reemployed with the same employer within 30 days from the member's effective date of retirement or if that member is guaranteed reemployment with the same employer, the member must be considered to have continued in the status of an active member and not to have separated from service. Any retirement allowance payments received by the member must be repaid to the system, together with interest, at the actuarially assumed rate, and the retirement allowance must be canceled."

Section 8. Coordination instruction. If [this act] and House Bill No. 59 are both passed and approved and both contain a section that amends 19-20-731, then the section in House Bill No. 59 that amends 19-20-731 is void.

Section 9. Coordination instruction. If [this act] and House Bill No. 363 are both passed and approved and if both contain a section that amends 19-20-731, then the sections that amend 19-20-731 are void and 19-20-731 must be amended as follows:

"19-20-731. Postretirement employment limitations — cancellation and recalculation of benefits. (1) (a) Except as *provided in [section 1 of House Bill No. 363] or as* otherwise provided in this section, a retired member may be employed part-time by a school district, state agency, or unit of the university system in a position eligible to participate in the retirement system and may earn, without an adjustment of retirement benefits, an amount not to exceed the greater of:

(i) one-third of the sum of the member's average final compensation; or

(ii) one-third of the median of the average final compensation for members retired during the preceding fiscal year as determined by the retirement board.

(b) For the purposes of this subsection (1), the maximum compensation that a retired member may earn under subsection (1)(a) without an adjustment of retirement benefits includes all remuneration paid to the retired member, excluding:

(i) the amount of health insurance premiums paid by the employer on the retired member's behalf;

(ii) the value of housing provided by the employer to the retired member;

(iii) the amount of employment-related travel expenses reimbursed to the retired member by the employer;

(iv) de minimis fringe benefits, as defined in 26 U.S.C. 132(e), paid by the employer to or on behalf of the retired member; and

(v) payroll taxes paid by the employer on behalf of the retired member.

(2) On July 1 of each year following the member's retirement effective date, the maximum that a retired member may earn under subsection (1)(a)*(i)* is increased by an amount equal to the consumer price index increase for urban wage earners compiled by the bureau of labor statistics of the United States department of labor or its successor agency in the preceding calendar year.

(3) Except as provided in ~~subsection (5)~~ *[section 1 of House Bill No. 34] and [section 1 of House Bill No. 363]*, the retirement benefit of a retired member:

(a) employed in a part-time position or earning more than allowed by subsections (1) and (2) must be temporarily reduced by $1 for each dollar earned over the maximum allowed. Monthly benefits must be reduced beginning as soon as practical after the excess earnings have been reported to the retirement system by the employer. The retirement benefit must be canceled if the retired member's earnings over the maximum allowed exceed the gross monthly benefit amount.

(b) employed in a full-time position must be canceled beginning in the month in which the retired member returns to full-time employment.

~~(4) Upon termination and retirement subsequent to a cancellation of benefits pursuant to subsection (3), the retirement benefit of a member:~~

~~(a) who was reemployed and earned less than 1 year of creditable service must be reinstated beginning either the first of the month following termination or on July 1 following the date on which the retired member was reemployed, whichever is later. The reinstated retirement benefit is the amount and option~~

~~that the retired member would have been entitled to receive had the retired member not returned to employment.~~

~~(b) who was reemployed and earned at least 1 year of creditable service must be recalculated under 19-20-804 if the member has attained normal retirement age or under 19-20-802 if the member has not attained normal retirement age but is eligible for early retirement. The recalculated benefit must include the service credit accumulated at the time of the member's previous retirement, plus any service credit accumulated subsequent to reemployment. The recalculated normal form benefit amount must be increased by the amount of any benefit enhancement received pursuant to 19-20-719 that the retired member was receiving when the member's benefits were canceled.~~

~~(5) If an early-retired member under 19-20-802 is reemployed with the same employer within 30 days from the member's effective date of retirement or if the early-retired member is guaranteed reemployment with the same employer, the member must be considered to have continued in the status of an active member and not to have separated from service. Any retirement allowance payments received by the member must be repaid to the system, together with interest, at the actuarially assumed rate, and the retirement allowance must be canceled.~~

~~(6)~~*(4)* For purposes of this section, "position eligible to participate in the retirement system" includes work performed by a retiree through a professional employer arrangement, an employee leasing arrangement, or a temporary service contractor, as those terms are defined in 39-8-102.

~~(7)~~*(5)* The retirement allowance of any retired member who is employed in a position and who elects to participate in the optional retirement program under Title 19, chapter 21, must be suspended until the member is no longer employed in the position and is no longer participating in the optional retirement program."

Section 10. Effective date. [This act] is effective July 1, 2009.

Approved April 18, 2009

CHAPTER NO. 299

[HB 409]

AN ACT ESTABLISHING A CANCER DRUG REPOSITORY PROGRAM AND PARTICIPANT REGISTRY; PROVIDING DEFINITIONS; PROVIDING IMMUNITY; AND AMENDING SECTIONS 37-7-101, 37-7-1401, 37-7-1402, AND 37-7-1408, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Cancer drug repository program — donations — registry. (1) The board shall establish a cancer drug repository program for accepting donated cancer drugs and devices and dispensing the drugs and devices to qualified patients. Participation in the program is voluntary.

(2) Any person or entity, including but not limited to a health care facility or the manufacturer of a cancer drug or device, may donate cancer drugs or devices to a participant pursuant to the provisions of [sections 1 through 3].

(3) The board shall establish and maintain a registry of participants in the cancer drug repository program. The participant registry must:

(a) include the participant's name, address, and telephone number; and

(b) identify whether the participant is a physician's office, pharmacy, hospital, or health clinic.

(4) The board shall make the participant registry available to a person or entity wishing to donate a cancer drug or device to the cancer drug repository program.

Section 2. Cancer drugs accepted or dispensed — conditions. (1) (a) Unless otherwise prohibited by law, a cancer drug or device may be accepted or dispensed under the cancer drug repository program established under [section 1] if the drug or device is in its original, unopened, sealed, and tamper-evident unit dose packaging.

(b) A cancer drug packaged in single-unit doses may be accepted and dispensed if the outside packaging is opened but the single-unit dose packaging is unopened.

(2) A cancer drug may not be accepted or dispensed under this section if the drug:

(a) bears an expiration date that is earlier than 6 months after the date the drug was donated;

(b) is considered adulterated or misbranded under the provisions of Title 50, chapter 31, part 3; or

(c) is subject to restricted distribution pursuant to 21 CFR 314.520.

(3) Subject to the limitations provided in this section, an unused cancer drug or device dispensed under the medicaid program provided for in Title 53, chapter 6, may be accepted and dispensed under the cancer drug repository program.

(4) A cancer drug or device donated under this program must be stored:

(a) separately from other prescription drugs or stock;

(b) according to the manufacturer's recommended storage conditions; and

(c) in the compounding or dispensing area if stored in a pharmacy.

(5) In dispensing a donated cancer drug or device, a participant shall give first priority to a qualified patient in the participant's service area. Other cancer patients may receive donated cancer drugs or devices if a qualified patient is not available.

(6) A participant shall notify a patient if the patient is receiving a cancer drug or device that has been donated.

Section 3. Participants — duties — fee authorized. (1) A participant shall comply with all applicable provisions of state and federal law relating to the storage, distribution, and dispensing of a donated cancer drug or device and shall inspect all donated drugs and devices before dispensing them to determine if they are adulterated or misbranded.

(2) A cancer drug or device may be:

(a) dispensed only pursuant to a prescription issued by a prescriber authorized to prescribe cancer drugs or devices; or

(b) distributed to another participant for dispensing.

(3) A cancer drug or device donated to the cancer drug repository program may not be resold.

(4) A participant may charge a handling fee for distributing or dispensing a cancer drug or device.

(5) A participant shall maintain records of donated drugs and devices and the distribution of the drugs and devices.

(6) (a) For cancer drugs or devices that are donated to the participant, records maintained pursuant to subsection (5) must include but are not limited to the following information:

(i) the date the participant received the cancer drug or device;

(ii) the drug name, strength, and amount;

(iii) the prescription number;

(iv) the expiration date of the drug;

(v) the manufacturer's name and lot number; and

(vi) the name and address of the person or entity donating the drug.

(b) For cancer drugs or devices that are distributed or dispensed by the participant, records maintained pursuant to subsection (5) must include but are not limited to the following information:

(i) the name and address of the receiving person or entity;

(ii) the name, strength, and quantity of the drug;

(iii) the dosage form, if applicable;

(iv) the name and address of the participant who distributed or dispensed the drug or device;

(v) the date the participant distributed or dispensed the drug or device;

(vi) the manufacturer's name and lot number; and

(vii) the expiration date of the drug.

Section 4. Section 37-7-101, MCA, is amended to read:

"37-7-101. Definitions. As used in ~~parts 1 through 7 of~~ this chapter, the following definitions apply:

(1) (a) "Administer" means the direct application of a drug to the body of a patient by injection, inhalation, ingestion, or any other means.

(b) The term does not include immunization by injection for children under 18 years of age.

(2) "Board" means the board of pharmacy provided for in 2-15-1733.

(3) "Cancer drug" means a prescription drug used to treat:

(a) cancer or its side effects; or

(b) the side effects of a prescription drug used to treat cancer or its side effects.

~~(3)~~*(4)* "Chemical" means medicinal or industrial substances, whether simple, compound, or obtained through the process of the science and art of chemistry, whether of organic or inorganic origin.

~~(4)~~*(5)* "Collaborative pharmacy practice" means the practice of pharmacy by a pharmacist who has agreed to work in conjunction with one or more prescribers, on a voluntary basis and under protocol, and who may perform certain patient care functions under certain specified conditions or limitations authorized by the prescriber.

~~(5)~~*(6)* "Collaborative pharmacy practice agreement" means a written and signed agreement between one or more pharmacists and one or more prescribers that provides for collaborative pharmacy practice for the purpose of drug therapy management of patients.

~~(6)~~*(7)* "Commercial purposes" means the ordinary purposes of trade, agriculture, industry, and commerce, exclusive of the practices of medicine and pharmacy.

~~(7)~~*(8)* "Compounding" means the preparation, mixing, assembling, packaging, or labeling of a drug or device based on:

(a) a practitioner's prescription drug order;

(b) a professional practice relationship between a practitioner, pharmacist, and patient;

(c) research, instruction, or chemical analysis, but not for sale or dispensing; or

(d) the preparation of drugs or devices based on routine, regularly observed prescribing patterns.

~~(8)~~*(9)* "Confidential patient information" means privileged information accessed by, maintained by, or transmitted to a pharmacist in patient records or that is communicated to the patient as part of patient counseling.

~~(9)~~*(10)* "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

~~(10)~~*(11)* "Device" has the same meaning as defined in 37-2-101.

~~(11)~~*(12)* "Dispense" or "dispensing" means the interpretation, evaluation, and implementation of a prescription drug order, including the preparation and delivery of a drug or device to a patient or patient's agent in a suitable container appropriately labeled for administration to or use by a patient.

~~(12)~~*(13)* "Distribute" means the delivery of a drug or device by means other than administering or dispensing.

~~(13)~~*(14)* "Drug" means a substance:

(a) recognized as a drug in any official compendium or supplement;

(b) intended for use in diagnosis, cure, mitigation, treatment, or prevention of disease in humans or animals;

(c) other than food, intended to affect the structure or function of the body of humans or animals; and

(d) intended for use as a component of a substance specified in subsection ~~(13)(a)~~ *(14)(a)*, ~~(13)(b)~~ *(14)(b)*, or ~~(13)(c)~~ *(14)(c)*.

~~(14)~~*(15)* "Drug utilization review" means an evaluation of a prescription drug order and patient records for duplication of therapy, interactions, proper utilization, and optimum therapeutic outcomes. The term includes but is not limited to the following evaluations:

(a) known allergies;

(b) rational therapy contraindications;

(c) reasonable dose and route administration;

(d) reasonable directions for use;

(e) drug-drug interactions;

(f) drug-food interactions;

(g) drug-disease interactions; and

(h) adverse drug reactions.

~~(15)~~*(16)* "Equivalent drug product" means a drug product that has the same established name, active ingredient or ingredients, strength or concentration,

dosage form, and route of administration and meets the same standards as another drug product as determined by any official compendium or supplement. Equivalent drug products may differ in shape, scoring, configuration, packaging, excipients, and expiration time.

(17) "Health care facility" has the meaning provided in 50-5-101.

(18) (a) "Health clinic" means a facility in which advice, counseling, diagnosis, treatment, surgery, care, or services relating to preserving or maintaining health are provided on an outpatient basis for a period of less than 24 consecutive hours to a person not residing at or confined to the facility.

(b) The term includes an outpatient center for primary care and an outpatient center for surgical services, as those terms are defined in 50-5-101, and a local public health agency as defined in 50-1-101.

(c) The term does not include a facility that provides routine health screenings, health education, or immunizations.

(19) "Hospital" has the meaning provided in 50-5-101.

~~(16)~~*(20)* "Intern" means:

(a) a person who is licensed by the state to engage in the practice of pharmacy while under the personal supervision of a preceptor and who is satisfactorily progressing toward meeting the requirements for licensure as a pharmacist;

(b) a graduate of an accredited college of pharmacy who is licensed by the state for the purpose of obtaining practical experience as a requirement for licensure as a pharmacist;

(c) a qualified applicant awaiting examination for licensure; or

(d) a person participating in a residency or fellowship program.

(21) "Long-term care facility" has the meaning provided in 50-5-101.

~~(17)~~*(22)* (a) "Manufacturing" means the production, preparation, ~~propogation~~ *propagation*, conversion, or processing of a drug or device, either directly or indirectly, by extraction from substances of natural origin or independently by means of chemical or biological synthesis.

(b) Manufacturing includes:

(i) any packaging or repackaging;

(ii) labeling or relabeling;

(iii) promoting or marketing; and

(iv) preparing and promoting commercially available products from bulk compounds for resale by pharmacies, practitioners, or other persons.

~~(18)~~*(23)* "Medicine" means a remedial agent that has the property of curing, preventing, treating, or mitigating diseases or which is used for this purpose.

(24) "Participant" means a physician's office, pharmacy, hospital, or health clinic that has elected to voluntarily participate in the cancer drug repository program provided for in [section 1] and that accepts donated cancer drugs or devices under rules adopted by the board.

~~(19)~~*(25)* "Patient counseling" means the communication by the pharmacist of information, as defined by the rules of the board, to the patient or caregiver in order to ensure the proper use of drugs or devices.

~~(20)~~*(26)* "Person" includes an individual, partnership, corporation, association, or other legal entity.

~~(21)~~*(27)* "Pharmaceutical care" means the provision of drug therapy and other patient care services intended to achieve outcomes related to the cure or prevention of a disease, elimination or reduction of a patient's symptoms, or arresting or slowing of disease process.

~~(22)~~*(28)* "Pharmacist" means a person licensed by the state to engage in the practice of pharmacy and who may affix to the person's name the term "R.Ph.".

~~(23)~~*(29)* "Pharmacy" means an established location, either physical or electronic, registered by the board where drugs or devices are dispensed with pharmaceutical care or where pharmaceutical care is provided.

~~(24)~~*(30)* "Pharmacy technician" means an individual who assists a pharmacist in the practice of pharmacy.

~~(25)~~*(31)* "Poison" means a substance that, when introduced into the system, either directly or by absorption, produces violent, morbid, or fatal changes or that destroys living tissue with which it comes in contact.

~~(26)~~*(32)* "Practice of pharmacy" means:

(a) interpreting, evaluating, and implementing prescriber orders;

(b) administering drugs and devices pursuant to a collaborative practice agreement and compounding, labeling, dispensing, and distributing drugs and devices, including patient counseling;

(c) properly and safely procuring, storing, distributing, and disposing of drugs and devices and maintaining proper records;

(d) monitoring drug therapy and use;

(e) initiating or modifying drug therapy in accordance with collaborative pharmacy practice agreements established and approved by health care facilities or voluntary agreements with prescribers;

(f) participating in quality assurance and performance improvement activities;

(g) providing information on drugs, dietary supplements, and devices to patients, the public, and other health care providers; and

(h) participating in scientific or clinical research as an investigator or in collaboration with other investigators.

~~(27)~~*(33)* "Practice telepharmacy" means to provide pharmaceutical care through the use of information technology to patients at a distance.

~~(28)~~*(34)* "Preceptor" means an individual who is registered by the board and participates in the instructional training of a pharmacy intern.

~~(29)~~*(35)* "Prescriber" has the same meaning as provided in 37-7-502.

~~(30)~~*(36)* "Prescription drug" means any drug that is required by federal law or regulation to be dispensed only by a prescription subject to section 503(b) of the Federal Food, Drug, and Cosmetic Act, ~~(~~21 U.S.C. 353~~)~~.

~~(31)~~*(37)* "Prescription drug order" means an order from a prescriber for a drug or device that is communicated directly or indirectly by the prescriber to the furnisher by means of a signed order, by electronic transmission, in person, or by telephone. The order must include the name and address of the prescriber, the prescriber's license classification, the name and address of the patient, the name, strength, and quantity of the drug, drugs, or device prescribed, the directions for use, and the date of its issue. These stipulations apply to written, oral, electronically transmitted, and telephoned prescriptions and orders derived from collaborative pharmacy practice.

(38) "Provisional community pharmacy" means a pharmacy that has been approved by the board, including but not limited to federally qualified health centers, as defined in 42 CFR 405.2401, where prescription drugs are dispensed to appropriately screened, qualified patients.

(39) "Qualified patient" means a person who is uninsured, indigent, or has insufficient funds to obtain needed prescription drugs or cancer drugs.

~~(32)~~*(40)* "Utilization plan" means a plan under which a pharmacist may use the services of a pharmacy technician in the practice of pharmacy to perform tasks that:

(a) do not require the exercise of the pharmacist's independent professional judgment; and

(b) are verified by the pharmacist.

~~(33)~~*(41)* "Wholesale" means a sale for the purpose of resale."

Section 5. Section 37-7-1401, MCA, is amended to read:

"37-7-1401. ~~Department of public health and human services and board of pharmacy to create program~~ *Programs* for donation of unused prescription drugs*, cancer drugs, and devices* — rulemaking required. (1) The board of pharmacy shall, in consultation and cooperation with the department of public health and human services, create a program for the donation of prescription drugs collected from long-term care facilities to qualified patients.

(2) For the purposes of the program created pursuant to subsection (1), prescription drugs, except those drugs defined as a dangerous drug in 50-32-101 or a drug designated as a precursor to a controlled substance in 50-32-401, unneeded by a resident or former resident of a long-term care facility may be donated by the long-term care facility to a provisional community pharmacy that provides or may provide prescription drugs to individuals who are qualified patients for transfer free of charge or at a reduced charge to those individuals.

(3) This section does not amend or otherwise change the law applicable to the prescribing of prescription drugs, the sale of those drugs, or the licensing of long-term care facilities or pharmacies.

(4) The board of pharmacy shall adopt rules to implement this part. The rules must address ~~the subjects of~~*:*

(a) the collection*,* ~~and~~ receipt*, and storage* of donated ~~prescription~~ drugs *and devices* ~~from residents of long-term care facilities, keeping of those drugs within the long-term care facility,~~*;*

(b) the transfer of ~~the drugs~~ *prescription drugs donated by a long-term care facility* to provisional community pharmacies~~,~~*;*

(c) which pharmacies may be considered provisional community pharmacies that may sell or give the *prescription* drugs *donated by long-term care facilities* to others~~, and~~*;*

(d) eligibility criteria and other standards and procedures for participants that accept and distribute or dispense donated cancer drugs or devices;

(e) the forms needed for the administration of the donated drug programs;

(f) categories of cancer drugs and devices that the cancer drug repository program will accept for dispensing and categories it will not accept, including the reason that a cancer drug or device will not be accepted;

(g) the price for which the *prescription* drugs *donated by a long-term care facility* may be sold*; and*

(h) the maximum handling fee that may be charged by participants that accept and distribute or dispense a cancer drug or device.

(5) In adopting the rules, the board of pharmacy shall consider the ability of persons to pay for the drugs and the existence and operation of similar programs in other states.

~~(5) As used in this part, the following definitions apply:~~

~~(a) "Long-term care facility" has the meaning provided in 50-5-101.~~

~~(b) "Provisional community pharmacy" means the practice of pharmacy at a site that has been approved by the board, including but not limited to federally qualified health centers as defined in 42 CFR 405.2401, where prescription drugs are dispensed to appropriately screened, qualified patients.~~

~~(c) "Qualified patients" mean persons who are uninsured, indigent, or have insufficient funds to obtain needed prescription drugs.~~"

Section 6. Section 37-7-1402, MCA, is amended to read:

"37-7-1402. ~~Long-term care facilities to delete identifying~~ *Identifying* information *to be deleted* from donated ~~prescription~~ drugs *or devices*. ~~A long-term care facility~~ *A person or entity* donating a prescription drug*, a cancer drug, or a device* pursuant to the ~~program~~ *programs* created under this part shall delete from the container in which ~~that~~ *the* drug *or device* is held any information by which the ~~long-term care facility resident or former resident~~ *person* for whom the ~~drugs were~~ *drug or device was* prescribed may be identified."

Section 7. Section 37-7-1408, MCA, is amended to read:

"37-7-1408. ~~Immunity~~ *Donated drugs and devices — immunity* ~~for long-term care patients and facilities donating prescription drugs~~. *(1)* A resident or former resident of a long-term care facility and the long-term care facility donating a prescription drug*, a cancer drug, or a device* as part of the ~~program~~ *programs* created pursuant to this part are not liable for simple negligence in the donation of a drug *or device* if the requirements of this part and the rules implementing this part have been complied with.

(2) Except as provided in subsection (3):

(a) a person or entity, including the manufacturer of a cancer drug or device that exercises reasonable care in donating, accepting, distributing, or dispensing a cancer drug or device under the provisions of [sections 1 through 3] and rules adopted by the board, is immune from civil or criminal liability or professional disciplinary action of any kind for an injury, death, or loss to a person or property relating to the accepting, distributing, or dispensing of the cancer drug or device;

(b) a person or entity, unless directly negligent, is not liable for the negligence or lack of care of other persons or entities and is entitled to the immunity of this part.

(3) (a) The donation of a cancer drug or device by the manufacturer of the drug or device does not absolve the manufacturer from criminal or civil liability or increase a liability that would have existed had the drug or device not been donated.

(b) The civil immunity provisions of subsection (2) do not apply to a person employed by or an entity operated by the state or a political subdivision of the state."

Section 8. Codification instruction. [Sections 1 through 3] are intended to be codified as an integral part of Title 37, chapter 7, part 14, and the provisions of Title 37, chapter 7, part 14, apply to [sections 1 through 3].

Approved April 18, 2009

CHAPTER NO. 300

[HB 420]

AN ACT PROVIDING THAT A COUNTY, CITY, OR TOWN WITH A BUILDING CODE ENFORCEMENT PROGRAM MAY ADOPT INCENTIVE-BASED ENERGY CONSERVATION STANDARDS FOR NEW CONSTRUCTION; PROVIDING THAT THE INCENTIVE-BASED ENERGY CONSERVATION STANDARDS ADOPTED MAY EXCEED ANY APPLICABLE ENERGY CONSERVATION STANDARDS CONTAINED IN THE STATE BUILDING CODE; AND AMENDING SECTIONS 50-60-102, 50-60-106, 50-60-301, AND 50-60-802, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-60-102, MCA, is amended to read:

"50-60-102. Applicability — *local government energy conservation standards.* (1) Except as provided in subsection (5), the state building code, as defined in 50-60-203(3), does not apply to:

(a) residential buildings containing less than five dwelling units or their attached-to structures, any farm or ranch building of any size, and any private garage or private storage structure of any size used only for the owner's own use, located within a county, city, or town, unless the local legislative body by ordinance or resolution makes the state building code applicable to these structures;

(b) mines and buildings on mine property regulated under Title 82, chapter 4, and subject to inspection under the Federal Mine Safety and Health Act;

(c) petroleum refineries and pulp and paper mills, except a structure classified under chapter 7, section 701, group B, division 2, and chapter 9, section 901, group H, outside of process units, of the 1991 edition of the Uniform Building Code; or

(d) industrial process piping, vessels, and equipment and process-related structures located outside of another structure occupied on a regular basis by employees or the public.

(2) Except as provided in subsection (5), the state may not enforce the state building code under 50-60-205 for the buildings referred to in subsection (1). A county, city, or town that has made the state building code applicable to the buildings referred to in subsection (1) may enforce within the area of its jurisdiction the state building code as adopted by the county, city, or town.

(3) When good and sufficient cause exists, a written request for limitation of the state building code may be filed with the department for filing as a permanent record.

(4) The department may limit the application of any rule or portion of the state building code to include or exclude:

(a) specified classes or types of buildings according to use or other distinctions as may make differentiation or separate classification or regulation necessary, proper, or desirable;

(b) specified areas of the state based on size, population density, special conditions prevailing in the area, or other factors that make differentiation or separate classification or regulation necessary, proper, or desirable.

(5) (a) ~~For~~ *Subject to subsection (6), for* purposes of promoting the energy efficiency of home design and operation, the provisions of the state building code relating to energy conservation adopted pursuant to 50-60-203(1) apply to residential buildings, except:

(i) farm and ranch buildings; and

(ii) any private garage or private storage structure attached to a residential building and used only for the owner's own use.

(b) ~~The~~ *Subject to subsection (6), the* provisions of the state building code relating to energy conservation in residential buildings are enforceable:

(i) by the department only for those residential buildings containing five or more dwelling units or otherwise subject to the state building code; and

(ii) through the builder self-certification program provided for in 50-60-802 for those residential buildings containing less than five dwelling units and not otherwise subject to the state building code.

(6) (a) A county, city, or town with a building code enforcement program may, as part of its building code or by town ordinance or resolution, adopt voluntary energy conservation standards for new construction for the purpose of providing incentives to encourage voluntary energy conservation. The incentive-based standards adopted may exceed any applicable energy conservation standards contained in the state building code.

(b) New construction is not required to meet local standards that exceed state energy conservation standards unless the building contractor elects to receive a local incentive."

Section 2. Section 50-60-106, MCA, is amended to read:

"50-60-106. Powers and duties of counties, cities, and towns. (1) As allowed by Title 50, chapter 60, part 3, the examination, approval, or disapproval of plans and specifications, the issuance and revocation of building permits, licenses, certificates, and similar documents, the inspection of buildings, and the administration and enforcement of building regulations within the limits of a city or town are the responsibility of the city or town. The examination, approval, or disapproval of plans and specifications, the issuance and revocation of building permits, licenses, certificates, and similar documents, the inspection of buildings, and the administration and enforcement of building regulations within the portion of a county that is covered by a county building code enforcement program are the responsibility of the county.

(2) Each county, city, or town certified under 50-60-302 shall, within its jurisdictional area:

(a) examine, approve, or disapprove plans and specifications for the construction of any building, the construction of which is pursuant or purports to be pursuant to the applicable provisions of the state building code or county, city, or town building code, and direct the inspection of the buildings during and in the course of construction;

(b) require that construction of buildings be in accordance with the applicable provisions of the state building code or county, city, or town building

code, subject to the powers of variance or modification granted to the department;

(c) make available to building contractors at a price that is commensurate with reproduction costs a checklist devised by the department pursuant to 50-60-118 for single-family dwellings and provide to contractors who attach a completed checklist to the plans submitted for examination the relevant building permit or notice of plan disapproval within 10 working days of the contractor's submission;

(d) during and in the course of construction, order in writing the remedying of any condition found to exist in, on, or about any building that is being constructed in violation of the state building code or county, city, or town building code. Orders may be served upon the owner or the owner's authorized agent personally or by sending by certified mail a copy of the order to the owner or the owner's authorized agent at the address set forth in the application for permission for the construction of the building. A county, city, or town certified pursuant to 50-60-302, by action of its building official, may grant in writing time as may be reasonably necessary for achieving compliance with the order. For the purposes of subsection (2)(a) and this subsection (2)(d), the phrase "during and in the course of construction" refers to the construction of a building until all necessary building permits have been obtained and all work authorized by those permits has been fully approved by the building official having jurisdiction.

(e) issue certificates of occupancy as provided in 50-60-107;

(f) issue permits, licenses, and other required documents in connection with the construction of a building;

(g) ensure that all construction-related fees or charges imposed and collected by the county, city, or town are necessary, reasonable, and uniform and are:

(i) except as provided in subsection (2)(g)(iii), used only for building code enforcement, which consists of those necessary and reasonable costs directly and specifically identifiable for the enforcement of building codes, plus indirect costs charged on the same basis as other local government proprietary funds not paying administrative charges as direct charges. If indirect costs are waived for any local government proprietary fund, they must also be waived for the program established in this section. Indirect charges are limited to the charges that are allowed under federal cost accounting principles that are applicable to a local government.

(ii) reduced if the amount of the fees or charges accumulates above the amount needed to enforce building codes for 12 months. The excess must be placed in a reserve account and may be used only for building code enforcement. Collection and expenditure of fees and charges must be fully documented.

(iii) allocated and remitted to the department, in an amount not to exceed 0.5% of the building fees or charges collected, for the building codes education program established in 50-60-116.

(3) Each county, city, or town with a building code enforcement program that has been certified under 50-60-302 may, within the area of its jurisdiction:

(a) make, amend, and repeal rules for the administration and enforcement of the provisions of this section and for the collection of fees and charges related to construction; and

(b) prohibit the commencement of construction until a permit has been issued by the building code enforcement authority having jurisdiction after a showing of compliance with the requirements of the applicable provisions of the state building code or county, city, or town building code or other county, city, or town ordinance or resolution that pertains to the proposed construction. *A county, city, or town subject to this subsection (3) may, as part of its building code or by town ordinance or resolution, adopt voluntary energy conservation standards for new construction for the purpose of providing incentives to encourage voluntary energy conservation. The incentive-based energy conservation standards adopted may exceed any applicable energy conservation standards contained in the state building code. New construction is not required to meet local standards that exceed state energy conservation standards unless the building contractor elects to receive a local incentive.*

(4) Each county, city, or town with a building code enforcement program that has been certified under 50-60-302 may perform inspections of buildings that are outside its jurisdictional limits, subject to the following conditions:

(a) The inspections are requested in writing by the owners or builders of the buildings to be inspected.

(b) The inspections are not done in lieu of inspections by another county, city, or town that has jurisdiction over the buildings to be inspected.

(c) (i) The county, city, or town powers of enforcement possessed as a result of building code enforcement certification by the department may not be exercised in conjunction with the requested inspections.

(ii) Similar powers of building code enforcement may not be contractually created or required by the requester and the inspecting jurisdiction.

(5) In situations in which buildings may be annexed into an inspecting city's or town's jurisdiction subsequent to a requested inspection, the city or town may not require owners or builders to have duplicative inspections of those buildings prior to annexation as a condition precedent to receiving any public services or utilities."

Section 3. Section 50-60-301, MCA, is amended to read:

"50-60-301. County, city, and town building codes authorized — health care facility and public health center doors — fee adjustment for model plans. (1) The local legislative body of a county, city, or town may adopt a building code to apply to the county, city, or town by an ordinance or resolution, as appropriate:

(a) adopting a building code; or

(b) authorizing the adoption of a building code by administrative action.

(2) *(a) Except as provided in subsection (2)(b), a* A county, city, or town building code may include only codes adopted by the department.

(b) A county, city, or town may, as part of its building code or by town ordinance or resolution, adopt voluntary energy conservation standards for new construction for the purpose of providing incentives to encourage voluntary energy conservation. The incentive-based energy conservation standards adopted may exceed any applicable energy conservation standards contained in the state building code. New construction is not required to meet local standards that exceed state energy conservation standards unless the building contractor elects to receive a local incentive.

(3) Any provision of a building code requiring the installation or maintenance of self-closing or automatic closing corridor doors to patient rooms does not apply to health care facilities, as defined in 50-5-101, or to a public health center, as defined in 7-34-2102.

(4) (a) When the same single-family dwelling plan is constructed at more than one site, the county, city, or town shall, after the first examination of the plan, adjust the required plan fee to reflect only the cost of reviewing requirements pertaining to the review of:

(i) zoning;

(ii) footings, foundations, and basements;

(iii) curbs;

(iv) gutters;

(v) landscaping;

(vi) utility connections;

(vii) street requirements;

(viii) sidewalks; and

(ix) other requirements related specifically to the exterior of the building.

(b) If a building contractor alters the single-family dwelling plan referred to in subsection (4)(a) in a fashion that substantially affects the building code requirements, the county, city, or town may impose the full examination fee permitted under 50-60-106."

Section 4. Section 50-60-802, MCA, is amended to read:

"50-60-802. Enforcement of energy code through builder self-certification. *(1) Except as provided in subsection (2), a* ~~A~~ person who begins construction on a residential building in Montana after October 1, 1993, shall certify in writing to the building owner at the conclusion of construction that the residential building has been constructed in compliance with the energy-efficient construction standards adopted under the provisions of 50-60-203(1).

(2) A person who begins construction on a residential building in Montana after [the effective date of this act] shall certify in writing to the building owner at the conclusion of construction that the residential building has been constructed in compliance with the voluntary energy-efficient construction standards adopted by a county, city, or town with a building code enforcement program that has jurisdiction over the construction if the building meets or exceeds those standards."

Approved April 18, 2009

CHAPTER NO. 301

[HB 443]

AN ACT CLARIFYING THE AUTHORITY OF THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO MANAGE CERTAIN SPECIES; REVISING THE DEFINITION OF "MANAGEMENT"; AMENDING SECTION 87-5-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-5-102, MCA, is amended to read:

"87-5-102. Definitions. As used in this part, the following definitions apply:

(1) "Account" means the nongame wildlife account established in 87-5-121.

(2) "Commercial purposes" means the collection, harvest, possession, or transportation of a species or subspecies of nongame wildlife from the wild with the intent to barter, offer for sale, ship or transport for eventual sale, or sell the animal or any part of the animal.

(3) "Ecosystem" means a system of living organisms and their environment, each influencing the existence of the other and both necessary for the maintenance of life.

(4) "Endangered species" means a species or subspecies of wildlife that is actively threatened with extinction due to any of the following factors:

(a) the destruction, drastic modification, or severe curtailment of its habitat;

(b) its overutilization for scientific, commercial, or sporting purposes;

(c) the effect on it of disease, pollution, or predation;

(d) other natural or artificial factors affecting its prospects of survival or recruitment within the state; or

(e) any combination of the foregoing factors.

(5) "Management" means the collection and application of biological information for the purposes of ~~increasing the number of individuals within species and populations of wildlife up to the optimum carrying capacity of their habitat and maintaining those levels~~ *conserving populations of wildlife consistent with other uses of land and habitat*. The term includes the entire range of activities that constitute a modern scientific resource program, including but not limited to research, census, law enforcement, habitat improvement, *control,* and education. The term also includes the periodic ~~or total~~ protection of species or populations as well as regulated taking.

(6) "Nongame wildlife" means a wild mammal, bird, amphibian, reptile, fish, mollusk, crustacean, or other wild animal not otherwise ~~legally classified by statute or regulation of this state~~ *legally classified by statute or regulation of this state*. ~~Animals designated by statute or regulation of this state as predatory in nature are not classified as nongame wildlife for purposes of this part.~~ *Animals designated by statute or regulation of this state as predatory in nature are not classified as nongame wildlife for purposes of this part.*

~~(7) "Optimum carrying capacity" means that point at which a given habitat can support healthy populations of wildlife species, having regard to the total ecosystem, without diminishing the ability of the habitat to continue that function.~~

~~(8)~~*(7)* "Person" means an individual, firm, corporation, association, or partnership.

~~(9)~~*(8)* "Take" means to harass, hunt, capture, or kill or attempt to harass, hunt, capture, or kill wildlife.

~~(10)~~*(9)* "Wildlife" means a wild mammal, bird, reptile, amphibian, fish, mollusk, crustacean, or other wild animal or any part, product, egg, or offspring or the dead body or parts of the animal."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 18, 2009

CHAPTER NO. 302

[HB 451]

AN ACT REQUIRING GENERAL CONTRACTORS AND BUILDERS OR DEVELOPERS TO DISCLOSE CERTAIN INFORMATION AND TO PROVIDE EXPRESS WARRANTIES WITH RESPECT TO THE BUILDING OR SALE OF NEW RESIDENCES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Residential construction contracts — disclosure and warranty requirements. (1) For the purposes of this section, "residential construction contract" means a contract between a general contractor and an owner for the construction of a new residence.

(2) All residential construction contracts that are subject to the provisions of this section must be in writing and must contain the following:

(a) a disclosure that the general contractor has a current general liability policy;

(b) a disclosure that the general contractor has a workers' compensation policy or is an independent contractor without employees;

(c) a provision setting out the billing cycle establishing the payment schedule to be followed by the owner;

(d) a provision establishing procedures for handling change orders by the owner;

(e) a statement of all inspections and tests that the general contractor will perform or have performed prior to, during, or upon completion of construction and a statement that the owner is entitled to receive the results of any tests conducted by the general contractor or conducted at the general contractor's request;

(f) a statement that the owner is entitled at the owner's expense to have any inspections and tests conducted that the owner considers necessary; and

(g) a statement that the general contractor is providing an express warranty that is valid for a period of at least 1 year from completion of the construction project. The warranty must provide detailed descriptions of those components that are included or excluded from the warranty, the length of the warranty, and any specialty warranty provisions or time periods relating to certain components. The warranty provisions must also clearly set forth the requirements that must be adhered to by the buyer, including the time and method for reporting warranty claims, in order for the warranty provision to become applicable.

Section 2. Disclosure and warranty requirements for sales of newly constructed residences. (1) This section applies only to the sale of a newly constructed residence that has not been previously occupied and where the seller is the builder or a developer who has built or had the residence built for the purpose of resale.

(2) A builder or developer that is subject to the provisions of this section is required to provide to a buyer, prior to the sale of a new residence, the following:

(a) a statement of all inspections and tests that the general contractor performed or had performed prior to, during, or upon completion of construction of the residence that is the subject of the potential sale; and

(b) an express warranty that is valid for a period of at least 1 year from the date of the sale of the residence. The warranty must provide detailed descriptions of those components that are included or excluded from the warranty, the length of the warranty, and any specialty warranty provisions or time periods relating to certain components. The warranty provisions must also clearly set forth the requirements that must be adhered to by the buyer, including the time and method for reporting warranty claims, in order for the warranty provisions to become applicable.

Section 3. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 28, chapter 2, and the provisions of Title 28, chapter 2, apply to [sections 1 and 2].

Approved April 18, 2009

CHAPTER NO. 303

[HB 475]

AN ACT RELATING TO ELECTRONIC-FORMAT RULES AND RULEMAKING NOTICES, ELECTRONIC RULEMAKING SERVICES, AND FEES FOR THOSE RULES, NOTICES, AND SERVICES CHARGED BY THE SECRETARY OF STATE; AND AMENDING SECTIONS 2-4-305, 2-4-306, 2-4-311, AND 2-4-313, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-4-305, MCA, is amended to read:

"2-4-305. Requisites for validity — authority and statement of reasons. (1) The agency shall fully consider written and oral submissions respecting the proposed rule. Upon adoption of a rule, an agency shall issue a concise statement of the principal reasons for and against its adoption, incorporating in the statement the reasons for overruling the considerations urged against its adoption. If substantial differences exist between the rule as proposed and as adopted and the differences have not been described or set forth in the adopted rule as that rule is ~~printed~~ *published* in the register, the differences must be described in the statement of reasons for and against agency action. When written or oral submissions have not been received, an agency may omit the statement of reasons.

(2) Rules may not unnecessarily repeat statutory language. Whenever it is necessary to refer to statutory language in order to convey the meaning of a rule interpreting the language, the reference must clearly indicate the portion of the language that is statutory and the portion that is an amplification of the language.

(3) Each proposed and adopted rule must include a citation to the specific grant of rulemaking authority pursuant to which the rule or any part of the rule is adopted. In addition, each proposed and adopted rule must include a citation to the specific section or sections in the Montana Code Annotated that the rule purports to implement. A substantive rule may not be proposed or adopted unless:

(a) a statute granting the agency authority to adopt rules clearly and specifically lists the subject matter of the rule as a subject upon which the agency shall or may adopt rules; or

(b) the rule implements and relates to a subject matter or an agency function that is clearly and specifically included in a statute to which the grant of rulemaking authority extends.

(4) Each rule that is proposed and adopted by an agency and that implements a policy of a governing board or commission must include a citation to and description of the policy implemented. Each agency rule implementing a policy and the policy itself must be based on legal authority and otherwise comply with the requisites for validity of rules established by this chapter.

(5) To be effective, each substantive rule adopted must be within the scope of authority conferred and in accordance with standards prescribed by other provisions of law.

(6) Whenever by the express or implied terms of any statute a state agency has authority to adopt rules to implement, interpret, make specific, or otherwise carry out the provisions of the statute, an adoption, amendment, or repeal of a rule is not valid or effective unless it is:

(a) consistent and not in conflict with the statute; and

(b) reasonably necessary to effectuate the purpose of the statute. A statute mandating that the agency adopt rules establishes the necessity for rules but does not, standing alone, constitute reasonable necessity for a rule. The agency shall also address the reasonableness component of the reasonable necessity requirement by, as indicated in 2-4-302(1) and subsection (1) of this section, stating the principal reasons and the rationale for its intended action and for the particular approach that it takes in complying with the mandate to adopt rules. Subject to the provisions of subsection (8), reasonable necessity must be clearly and thoroughly demonstrated for each adoption, amendment, or repeal of a rule in the agency's notice of proposed rulemaking and in the written and oral data, views, comments, or testimony submitted by the public or the agency and considered by the agency. A statement that merely explains what the rule provides is not a statement of the reasonable necessity for the rule.

(7) A rule is not valid unless notice of it is given and it is adopted in substantial compliance with 2-4-302, 2-4-303, or 2-4-306 and this section and unless notice of adoption of the rule is published within 6 months of the publishing of notice of the proposed rule. If an amended or supplemental notice of either proposed or final rulemaking, or both, is published concerning the same rule, the 6-month limit must be determined with reference to the latest notice in all cases.

(8) An agency may use an amended proposal notice or the adoption notice to correct deficiencies in citations of authority for rules and in citations of sections implemented by rules. An agency may use an amended proposal notice but, except for clerical corrections, may not use the adoption notice to correct deficiencies in a statement of reasonable necessity.

(9) If a majority of the members of the appropriate administrative rule review committee notify the committee presiding officer that those members object to a notice of proposed rulemaking, the committee shall notify the agency in writing that the committee objects to the proposal notice and will address the objections at the next committee meeting. Following notice by the committee to the agency, the proposal notice may not be adopted until publication of the last issue of the register that is published before expiration of the 6-month period during which the adoption notice must be published, unless prior to that time, the committee meets and does not make the same objection. A copy of the

committee's notification to the agency must be included in the committee's records."

Section 2. Section 2-4-306, MCA, is amended to read:

"2-4-306. Filing, *and* format~~, and~~ — adoption and effective dates — dissemination of emergency rules. (1) Each agency shall file with the secretary of state a copy of each rule adopted by it or a reference to the rule as contained in the proposal notice. A rule is adopted on the date that the adoption notice is filed with the secretary of state and is effective on the date referred to in subsection (4), except that if the secretary of state requests corrections to the adoption notice, the rule is adopted on the date that the revised notice is filed with the secretary of state.

(2) Pursuant to 2-15-401, the secretary of state may prescribe rules to effectively administer this chapter, including rules regarding the *printed or electronic* format, style, and arrangement for notices and rules that are filed pursuant to this chapter, and may refuse to accept the filing of any notice or rule that is not in compliance with this chapter *and the secretary of state's rules*. The secretary of state shall keep and maintain a permanent register of all notices and rules filed, including superseded and repealed rules, that must be open to public inspection and shall provide copies of any notice or rule upon request of any person. Unless otherwise provided by statute, the secretary of state may require the payment of the cost of providing copies.

(3) If the appropriate administrative rule review committee has conducted a poll of the legislature in accordance with 2-4-403, the results of the poll must be published with the rule if the rule is adopted by the agency.

(4) Each rule is effective after publication in the register, as provided in 2-4-312, except that:

(a) if a later date is required by statute or specified in the rule, the later date is the effective date;

(b) subject to applicable constitutional or statutory provisions:

(i) a temporary rule is effective immediately upon filing with the secretary of state or at a stated date following publication in the register; and

(ii) an emergency rule is effective at a stated date following publication in the register or immediately upon filing with the secretary of state if the agency finds that this effective date is necessary because of imminent peril to the public health, safety, or welfare. The agency's finding and a brief statement of reasons for the finding must be filed with the rule. The agency shall, in addition to the required publication in the register, take appropriate and extraordinary measures to make emergency rules known to each person who may be affected by them.

(c) if, following written administrative rule review committee notification to an agency under 2-4-305(9), the committee meets and under 2-4-406(1) objects to all or some portion of a proposed rule before the proposed rule is adopted, the proposed rule or portion of the proposed rule objected to is not effective until the day after final adjournment of the regular session of the legislature that begins after the notice proposing the rule was published by the secretary of state~~,~~ unless, following the committee's objection under 2-4-406(1):

(i) the committee withdraws its objection under 2-4-406 before the proposed rule is adopted; or

(ii) the rule or portion of a rule objected to is adopted with changes that in the opinion of a majority of the committee members, as communicated in writing to

the committee presiding officer and staff, make it comply with the committee's objection and concerns.

(5) An agency may not enforce, implement, or otherwise treat as effective a rule proposed or adopted by the agency until the effective date of the rule as provided in this section. Nothing in this subsection prohibits an agency from enforcing an established policy or practice of the agency that existed prior to the proposal or adoption of the rule as long as the policy or practice is within the scope of the agency's lawful authority."

Section 3. Section 2-4-311, MCA, is amended to read:

"2-4-311. Publication and arrangement of ARM. (1) The secretary of state shall compile, index, arrange, rearrange, correct errors or inconsistencies without changing the meaning, intent, or effect of any rule, and publish in the appropriate format all rules filed pursuant to this chapter in the ARM. The secretary of state shall supplement, revise, and publish the ARM or any part of the ARM as often as the secretary of state considers necessary. The secretary of state may include editorial notes, cross-references, and other matter that the secretary of state considers desirable or advantageous. The secretary of state shall publish supplements to the ARM at the times and in the form that the secretary of state considers appropriate.

(2) The ARM must be arranged, indexed, and ~~printed~~ *published* or duplicated in a manner that permits separate publication of portions relating to individual agencies. An agency may make arrangements with the secretary of state for the printing *or electronic distribution* of as many copies of the separate publications as it may require. The secretary of state may charge a fee for any separate *printed or electronic* publications. The fee must be set and deposited in accordance with 2-15-405 and must be paid by the agency."

Section 4. Section 2-4-313, MCA, is amended to read:

"2-4-313. Distribution, costs, ~~and~~ maintenance, *and fees.* (1) The secretary of state shall distribute copies of the ARM and supplements or revisions to the ARM to the following in an electronic format unless a hard copy is requested:

(a) attorney general, one copy;

(b) clerk of United States district court for the district of Montana, one copy;

(c) clerk of United States court of appeals for the ninth circuit, one copy;

(d) county commissioners or governing body of each county of this state, for use of county officials and the public, at least one but not more than two copies, which may be maintained in a public library in the county seat or in the county offices as the county commissioners or governing body of the county may determine;

(e) state law library, one copy;

(f) state historical society, one copy;

(g) each unit of the Montana university system, one copy;

(h) law library of the university of Montana-Missoula, one copy;

(i) legislative services division, two copies;

(j) library of congress, one copy;

(k) state library, one copy.

(2) The secretary of state, each county in the state, and the librarians for the state law library and the university of Montana-Missoula law library shall

maintain a complete, current set of the ARM, including supplements or revisions to the ARM. The designated persons shall also maintain the register issues published during the preceding 2 years. The secretary of state shall maintain a permanent set of the registers. *An entity required by this section to maintain a copy or set of the ARM and supplements or revisions to it and a copy of the register complies with this section if it provides access to an electronic version of the current ARM and the current year's issues of the register or the current year's issue and register archives for the prescribed period of time.*

(3) The secretary of state shall make *printed or electronic* copies of and subscriptions to the ARM and supplements or revisions to the ARM and the register available to any person for a fee set in accordance with subsection ~~(5)~~ *(6)*. Fees are not refundable.

(4) The secretary of state may charge agencies a filing fee for all material to be published in the ARM or the register.

(5) In addition to the fees authorized by 2-4-311 and 2-4-312 and other fees authorized by this section, the secretary of state may charge fees for internet or other computer-based services requested by state agencies, groups, or individuals.

~~(5)~~*(6)* The secretary of state shall set and deposit the fees authorized in this section in accordance with 2-15-405."

Approved April 18, 2009

CHAPTER NO. 304

[HB 480]

AN ACT AUTHORIZING NONRESIDENT YOUTH TO HUNT UPLAND GAME BIRDS AND MIGRATORY BIRDS WITH THE PURCHASE OF A CLASS B-1 NONRESIDENT UPLAND GAME BIRD LICENSE AT A DISCOUNTED PRICE; AMENDING SECTIONS 87-1-270 AND 87-2-805, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-1-270, MCA, is amended to read:

"87-1-270. Allocation of license fees to hunting access enhancement program. (1) ~~The~~ *Except as provided in 87-2-805(1)(b)(ii), the* amount of $55 from the sale of each Class B-1 nonresident upland game bird license must be used by the department to encourage public access to private lands for hunting purposes in accordance with 87-1-265 through 87-1-267.

(2) The resident hunting access enhancement fee in 87-2-202(3)(c) and the nonresident hunting access enhancement fee in 87-2-202(3)(d) must be used by the department to encourage public access to private and public lands for hunting purposes in accordance with 87-1-265 through 87-1-267."

Section 2. Section 87-2-805, MCA, is amended to read:

"87-2-805. (Temporary) **Persons under eighteen years of age — youth combination sports license — terminally ill youth under seventeen years of age — free wildlife conservation license for resident seniors and certain minors.** (1) *(a)* Resident minors who are*:*

(i) 12 years of age or older and under 15 years of age may fish and may hunt upland game and migratory game birds during the open season with only a conservation license.*;*

(ii) ~~Resident minors who are~~ 15 years of age may hunt migratory game birds with only a conservation license~~.~~*; and*

(iii) ~~Resident minors who are~~ under 12 years of age may fish without a license.

(b) A nonresident ~~person~~ *minor:*

(i) under 15 years of age may not fish in or on any Montana waters without first having obtained a Class B, B-4, or B-5 fishing license unless the nonresident ~~person under 15 years of age~~ *minor* is in the company of an adult in possession of a valid Montana fishing license. The limit of fish for the nonresident ~~person~~ *minor* and the accompanying adult combined may not exceed the limit for one adult as established by law or by rule of the department.

(ii) who is 12 years of age or older and under 16 years of age may hunt upland game and migratory game birds during the open season with the purchase of a Class B-1 nonresident upland game bird license for a cost of $35. Of that fee, $17 must be deposited pursuant to 87-1-270 and $7 must be deposited pursuant to 87-1-246.

(2) A resident, as defined by 87-2-102, who is 12 years of age or older and under 15 years of age may purchase a Class A-3 deer A tag for $6.50 and a Class A-5 elk tag for $8.

(3) (a) A resident who is 12 years of age or older and under 18 years of age may purchase a youth combination sports license for $25. A resident who is 12 years of age or older and under 18 years of age and who applies for any hunting license for the first time is entitled to receive a youth combination sports license free of charge.

(b) The youth combination sports license includes:

(i) a conservation license;

(ii) a fishing license;

(iii) an upland game bird license;

(iv) an elk license; and

(v) a deer license.

(c) A resident who is 15 years of age or older and under 18 years of age may purchase a Class A fishing license for $8.

(d) A resident who is 15 years of age or older and under 18 years of age may purchase a Class A-1 upland game bird license for $3.

(e) A person who lawfully purchases or is granted a free youth combination sports license at 17 years of age, but who reaches 18 years of age during that license year, may legally use the license during that license year. A person who hunts or fishes using a youth combination sports license purchased or granted free after the person reaches 18 years of age is guilty of a misdemeanor and shall be subject to any of the following penalties by the sentencing court:

(i) revocation of the person's hunting and fishing privileges for at least 5 years, revocation of the person's hunting and fishing privileges for more than 5 years, or revocation of the person's hunting and fishing privileges for life; and

(ii) a monetary fine of not less than $500 and not more than $5,000 in addition to the fine imposed on a person under this chapter for the specific hunting or fishing violation.

(f) This section does not prohibit a resident minor from purchasing any individual licenses for which the minor may be eligible under this chapter if the minor does not purchase the youth combination sports license.

(4) (a) The department may issue a free resident or nonresident big game combination license, as applicable, to a resident or nonresident youth under 17 years of age who has been diagnosed with a terminal illness. In order for a youth to qualify for the free license, the department must receive documentation from a licensed physician verifying that the youth is terminally ill. The free license may be issued to a youth on a one-time basis for only one hunting season.

(b) In exercising hunting privileges, the youth must be in the company of an adult in possession of a valid Montana hunting license or of a licensed Montana outfitter and conduct all hunting within the terms and conditions of the license issued.

(c) The department may waive hunter safety and education and bowhunter education requirements in 87-2-105 for a qualified youth under this subsection (4) and, in appropriate circumstances, may also allow the qualified youth to hunt from a vehicle in the manner described in 87-2-803.

(5) Resident minors who are 12 years of age or older and under 15 years of age and residents who are 62 years of age or older must, upon application and production of the documentation and information required by 87-2-202(1), be issued a resident wildlife conservation license without charge. (Terminates February 28, 2009—sec. 7, Ch. 452, L. 2007.)

87-2-805. (Effective March 1, 2009) **Persons under eighteen years of age — youth combination sports license — terminally ill youth under seventeen years of age.** (1) *(a)* Resident minors who are*:*

(i) 12 years of age or older and under 15 years of age may fish and may hunt upland game and migratory game birds during the open season with only a conservation license.*;*

(ii) ~~Resident minors who are~~ 15 years of age may hunt migratory game birds with only a conservation license.*; and*

(iii) ~~Resident minors who are~~ under 12 years of age may fish without a license.

(b) A nonresident ~~person~~ *minor:*

(i) under 15 years of age may not fish in or on any Montana waters without first having obtained a Class B, B-4, or B-5 fishing license unless the nonresident ~~person under 15 years of age~~ *minor* is in the company of an adult in possession of a valid Montana fishing license. The limit of fish for the nonresident ~~person~~ *minor* and the accompanying adult combined may not exceed the limit for one adult as established by law or by rule of the department.

(ii) who is 12 years of age or older and under 16 years of age may hunt upland game and migratory game birds during the open season with the purchase of a Class B-1 nonresident upland game bird license for a cost of $35. Of that fee, $17 must be deposited pursuant to 87-1-270 and $7 must be deposited pursuant to 87-1-246.

(2) A resident, as defined by 87-2-102, who is 12 years of age or older and under 15 years of age may purchase a Class A-3 deer A tag for $6.50 and a Class A-5 elk tag for $8.

(3) (a) A resident who is 12 years of age or older and under 18 years of age may purchase a youth combination sports license for $25. A resident who is 12

years of age or older and under 18 years of age and who applies for any hunting license for the first time is entitled to receive a youth combination sports license free of charge.

(b) The youth combination sports license includes:

(i) a conservation license;

(ii) a fishing license;

(iii) an upland game bird license;

(iv) an elk license; and

(v) a deer license.

(c) A resident who is 15 years of age or older and under 18 years of age may purchase a Class A fishing license for $8.

(d) A resident who is 15 years of age or older and under 18 years of age may purchase a Class A-1 upland game bird license for $3.

(e) A person who lawfully purchases or is granted a free youth combination sports license at 17 years of age, but who reaches 18 years of age during that license year, may legally use the license during that license year. A person who hunts or fishes using a youth combination sports license purchased or granted free after the person reaches 18 years of age is guilty of a misdemeanor and shall be subject to any of the following penalties by the sentencing court:

(i) revocation of the person's hunting and fishing privileges for at least 5 years, revocation of the person's hunting and fishing privileges for more than 5 years, or revocation of the person's hunting and fishing privileges for life; and

(ii) a monetary fine of not less than $500 and not more than $5,000 in addition to the fine imposed on a person under this chapter for the specific hunting or fishing violation.

(f) This section does not prohibit a resident minor from purchasing any individual licenses for which the minor may be eligible under this chapter if the minor does not purchase the youth combination sports license.

(4) (a) The department may issue a free resident or nonresident big game combination license, as applicable, to a resident or nonresident youth under 17 years of age who has been diagnosed with a terminal illness. In order for a youth to qualify for the free license, the department must receive documentation from a licensed physician verifying that the youth is terminally ill. The free license may be issued to a youth on a one-time basis for only one hunting season.

(b) In exercising hunting privileges, the youth must be in the company of an adult in possession of a valid Montana hunting license or of a licensed Montana outfitter and conduct all hunting within the terms and conditions of the license issued.

(c) The department may waive hunter safety and education and bowhunter education requirements in 87-2-105 for a qualified youth under this subsection (4) and, in appropriate circumstances, may also allow the qualified youth to hunt from a vehicle in the manner described in 87-2-803."

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 18, 2009

CHAPTER NO. 305

[HB 488]

AN ACT REVISING TERRITORY TRANSFER LAWS RELATING TO SCHOOL DISTRICTS; AMENDING SECTION 20-6-105, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-6-105, MCA, is amended to read:

"20-6-105. Transfer of territory from one district to another — hearing on effects of proposed transfer — burden of proof — standard of proof — appeal to district court. (1) (a) Except as provided in 20-6-214, 20-6-215, 20-6-308, 20-6-322, and ~~subsection~~ *subsections* (1)(b) *and (1)(c)* of this section, a petition to transfer territory from one school district to another may be presented to the county superintendent if:

(i) the petition is signed by 60% of the registered electors qualified to vote at general elections in the territory proposed for transfer;

(ii) the territory to be transferred is contiguous to the district to which it is to be attached, includes taxable property, and has school-age children living in it;

(iii) the territory to be transferred is not located within 3 miles, over the shortest practicable route, of an operating school in the district from which it is to be transferred; and

(iv) the board of trustees of the school district that would receive the territory has approved the proposed transfer by a resolution adopted by a majority of the members of the board of trustees at a meeting for which proper notice was given.

(b) A petition to transfer territory to or from a K-12 district may not be presented to a county superintendent unless both school boards and the county superintendents have agreed in writing.

(c) Registered voters within the exterior boundaries of school districts that consolidated during the years 2004 to 2008 may petition for changes in their boundaries under the law in effect on July 1, 2005.

(2) Once a petition to transfer territory has been filed, an additional petition to transfer that territory may not be filed for 4 years *unless the county superintendents have agreed in writing*.

(3) The petition for a transfer of territory must be delivered to the county superintendent and must:

(a) provide a legal description of the territory that is requested to be transferred and a description of the district to which the territory is to be transferred;

(b) state the reasons why the transfer is requested; and

(c) state the number of school-age children residing in the territory.

(4) If both the trustees of the receiving and transferring school districts have approved the proposed territory transfer in writing, the county superintendent shall grant the transfer.

(5) For any petition that meets the criteria specified in subsection (1) and contains the information required by subsection (3) but that has not been approved in writing by the board of trustees of the school district that would transfer the territory, the county superintendent shall:

(a) not more than 40 days after receipt of the petition, set a place, date, and time for a hearing to consider the petition; and

(b) give notice of the place, date, and time of the hearing. The notice must be posted in the districts affected by the petition for the transfer of territory in the manner prescribed in this title for notices for school elections, with at least one notice posted in the territory to be transferred. Notice must also be delivered to the board of trustees of the school district from which the territory is to be transferred.

(6) The county superintendent shall conduct a hearing as scheduled, and any resident, taxpayer, or representative of the receiving or transferring district must, upon request, be heard. At the hearing, the petitioners have the initial burden of presenting evidence on the proposed transfer's effect on:

(a) the educational opportunity for the students in the receiving and transferring districts, including but not limited to:

(i) class size;

(ii) ability to maintain demographic diversity;

(iii) local control;

(iv) parental involvement; and

(v) the capability of the receiving district to provide educational services;

(b) student transportation, including but not limited to:

(i) safety;

(ii) cost; and

(iii) travel time of students;

(c) the economic viability of the proposed new districts, including but not limited to:

(i) the existence of a significant burden on the taxpayers of the district from which the territory will be transferred;

(ii) the significance of any loss in state funding for the students in both the receiving and transferring districts;

(iii) the viability of the future bonding capacity of the receiving and transferring districts, including but not limited to the ability of the receiving district and the transferring district to meet minimum bonding requirements;

(iv) the ability of the receiving district and the transferring district to maintain sufficient reserves; and

(v) the cumulative effect of other transfers of territory out of the district in the previous 8 years on the taxable value of the district from which the territory is to be transferred. In cases where the cumulative effect of other transfers of territory out of the district in the previous 8 years is equal to or greater than 25% of the district's taxable value, the following additional factors must be considered and weighed in the decision:

(A) the district's rate of passage of discretional levies placed before the voters over the previous 8 years;

(B) the district's reduction or elimination of instructional staff or programs over the previous 8 years; and

(C) any increase in district taxes over the previous 8 years and the likely increase in district taxes if the transfer is granted.

(7) After receiving evidence from both the proponents and opponents of the proposed territory transfer on the effects described in subsection (6), the county superintendent shall, within 30 days after the hearing, issue findings of fact, conclusions of law, and an order.

(8) If, based on a preponderance of the evidence, the county superintendent determines that the evidence on the effects described in subsection (6) supports a conclusion that a transfer of the territory is in the best and collective interest of students in the receiving and transferring districts and does not negatively impact the ability of the districts to serve those students, the county superintendent shall grant the transfer. If the county superintendent determines that, based on a preponderance of the evidence presented at the hearing, a transfer of the territory is not in the best and collective interest of students in the receiving and transferring districts and will negatively impact the ability of the districts to serve those students, the county superintendent shall deny the territory transfer.

(9) The decision of the county superintendent is final 30 days after the date of the decision unless it is appealed to the district court by a resident, taxpayer, or representative of either district affected by the petitioned territory transfer. The county superintendent's decision must be upheld unless the court finds that the county superintendent's decision constituted an abuse of discretion under this section.

(10) Whenever a petition to transfer territory from one district to another district creates a joint district or affects the boundary of an existing joint district, the petition to transfer territory must be delivered to the county superintendent of the county in which the territory proposed to be transferred is located. The county superintendent shall notify any other county superintendents of counties with districts affected by the petition, and the duties prescribed in this section for the county superintendent must be performed jointly. If the number of county superintendents involved is an even number, the county superintendents shall jointly appoint an additional county superintendent from an unaffected county to join them in conducting the hearing required in subsection (6) and in issuing the decision required in subsection (8). The decision issued under subsection (8) must be made by a majority of the county superintendents.

(11) A petition seeking to transfer territory out of or into a K-12 district must propose the transfer of territory for both elementary and high school purposes. In the case of a proposed transfer out of or into a K-12 district, a petition that fails to propose the transfer of territory for both elementary and high school purposes is invalid for the purposes of this section."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 18, 2009

CHAPTER NO. 306

[HB 499]

AN ACT REVISING LAWS RELATED TO THE UPLAND GAME BIRD ENHANCEMENT PROGRAM; ESTABLISHING A CITIZENS' ADVISORY COUNCIL; AUTHORIZING DEVELOPMENT OF A STRATEGIC PROGRAM PLAN; REVISING REPORTING REQUIREMENTS; AMENDING SECTIONS 87-1-247 AND 87-1-250, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-1-247, MCA, is amended to read:

"87-1-247. ~~Authorized~~ *Upland game bird enhancement program — authorized* use of funds. (1) ~~Not more than 15% of the money generated under~~ *Subject to subsections (2) and (3), revenue dedicated to the upland game bird enhancement program pursuant to* 87-1-246 ~~may~~ *must* be used by the department to:

(a) prepare and disseminate information to landowners and organizations concerning the upland game bird enhancement program;

(b) review potential upland game bird release sites;

(c) assist applicants in preparing management plans for project areas; ~~and~~

(d) evaluate the upland game bird enhancement program~~.~~*;*

(e) develop a strategic plan pursuant to [section 3(2)(a)];

~~(2) The remainder of the money raised must be used for releasing~~

(f) pursuant to subsection (2), release upland game birds in suitable habitat*;* ~~and~~

(g) ~~for the development, enhancement, and conservation of~~ *develop, enhance, and conserve* upland game bird habitat in Montana*; and*

(h) establish and assist an upland game bird citizens' advisory council pursuant to [section 3].

~~(3)~~*(2)* (a) At least 15% of the funds collected under 87-1-246 must be set aside each fiscal year for expenditures related to upland game bird releases.

(b) At least 25% of the funds set aside for upland game bird ~~release~~ *releases* must be spent each year.

(3) As far as practicable, expenditures made pursuant to subsection (1) must be prioritized by administrative region based on need, taking into consideration any biological, recreational, or economic benefit and the objectives established in a strategic plan developed pursuant to [section 3(2)(a)]."

Section 2. Section 87-1-250, MCA, is amended to read:

"87-1-250. ~~Report~~ *Upland game bird enhancement program — report.* The department shall report to the fish and game committee of each house of the legislature concerning upland game bird enhancement activities undertaken pursuant to 87-1-246 through 87-1-249 *and [section 3]* during the preceding biennium, *including providing:*

(1) copies of reports made to the upland game bird citizens' advisory council pursuant to [section 3(2)(b)]; and

(2) ~~together with~~ any recommendations concerning the operation of the program."

Section 3. Upland game bird enhancement program — advisory council. (1) There is an upland game bird citizens' advisory council consisting of 12 members appointed by the director and serving staggered 4-year terms. The 12 members must include a public member representing each of the department's administrative regions. Council membership must include:

(a) an upland game bird hunter;

(b) a local chamber of commerce representative;

(c) a conservationist;

(d) an upland game bird biologist;

(e) at least two landowners, one of whom must be enrolled in the block management program; and

(f) a senator and a representative from different political parties.

(2) The council shall meet at least once each year but not more than once each month as necessary to:

(a) advise the department on the development and maintenance of a 10-year strategic plan that at a minimum:

(i) defines quantifiable goals, objectives, and performance measurements for the upland game bird enhancement program based on need by administrative region, taking into consideration any biological, recreational, or economic benefit, including the prioritization of at-risk upland game bird species and their associated habitats;

(ii) establishes regional and statewide priorities for the development of upland game bird habitat based on land management needs, sustaining upland game bird populations, and landowner input;

(iii) prioritizes resource allocation, including funding and personnel, in accordance with objectives and goals established pursuant to this subsection (2)(a);

(iv) promotes landowner outreach and relations with both private and public landowners;

(v) provides for the ongoing monitoring of, access to, and signage for upland game bird enhancement projects, as well as the renewal or replacement of expiring projects; and

(vi) develops strategies to ensure the effective release of upland game birds and use of funding for upland game bird releases; and

(b) provide ongoing monitoring of upland game bird enhancement program activities, including but not limited to receipt from the department of an annual:

(i) activity report to evaluate whether objectives, goals, and performance measurements established pursuant to subsection (2)(a) are being met or are expected to be met;

(ii) financial report, providing a summary of revenue and expenditures for the upland game bird enhancement program and any unreserved balance remaining at the end of the fiscal year from fees collected pursuant to 87-1-246; and

(iii) report reviewing whether upland game bird enhancement project contracts are in compliance with 87-1-248 and rules adopted pursuant to 87-1-249.

(3) The council may recommend rules for adoption by the department.

(4) Each member of the council is entitled to receive $50 in compensation and travel expenses, as provided for in 2-18-501 through 2-18-503, for each day spent on official council business. Council members who conduct official council business in their city of residence are entitled to receive a midday meal allowance as provided for in 2-18-502.

(5) The department shall provide administrative support as necessary to assist the advisory council in its duties pursuant to this section.

Section 4. Codification instruction. [Section 3] is intended to be codified as an integral part of Title 87, chapter 1, part 2, and the provisions of Title 87, chapter 1, part 2, apply to [section 3].

Section 5. Effective date. [This act] is effective July 1, 2009.

Approved April 18, 2009

CHAPTER NO. 307

[HB 546]

AN ACT PROVIDING THAT A PRIVATE ENTITY MAY NOT, AS A CONDITION OF PROPERTY OWNERSHIP WITHIN THE JURISDICTION OF THE PRIVATE ENTITY OR BY OTHER MEANS, PROHIBIT THE PLACEMENT OF A SIGN ADVOCATING THE ELECTION, APPOINTMENT, OR DEFEAT OF A CANDIDATE FOR PUBLIC OFFICE OR THE PASSAGE OR DEFEAT OF A BALLOT ISSUE ON PROPERTY BELONGING TO AN INDIVIDUAL OR JOINT OWNER WHO AUTHORIZES THE SIGN TO BE PLACED ON PROPERTY BELONGING TO THE OWNER OR ON COMMON AREAS IN WHICH THE OWNER OWNS AN UNDIVIDED INTEREST; ALLOWING FOR REGULATION OF SIGN SIZE AND PLACEMENT; AND AMENDING SECTIONS 70-1-521, 70-17-203, 70-17-204, 70-17-206, 70-20-306, 70-23-308, 70-23-506, AND 70-23-601, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Certain restrictions on political free speech contrary to public policy — enforcement prohibited — definitions. (1) A person, homeowners' association, property owners' association, corporation, or other private entity may not, as a condition of property ownership within the jurisdiction of the private entity or by other means, prohibit the placement of a sign advocating the election, appointment, or defeat of a candidate for public office or the passage or defeat of a ballot issue on:

(a) property belonging to individual or joint property owners who authorize the placement of the sign; or

(b) common areas in which an owner owns an undivided interest.

(2) A person, homeowners' association, property owners' association, corporation, or other private entity may impose limits on the size of signs allowed to be displayed within the jurisdiction of the private entity and may regulate the location of sign placement and the time period during which signs may be displayed.

(3) An ordinance, covenant, contract term, or other provision, whether agreed to or not between the homeowners' association, property owners' association, corporation, or other private entity and the owner or tenant, is contrary to the public policy of this state. A court may not enforce the terms of an ordinance, covenant, contract term, or other provision that is contrary to public policy under this section.

(4) As used in this section, "ballot issue" and "candidate" have the meanings provided in 13-1-101.

Section 2. Section 70-1-521, MCA, is amended to read:

"70-1-521. Grant may inure to benefit of stranger. ~~A~~ *Except as provided in [section 1], a* present interest and the benefit of a condition or covenant

respecting property may be taken by any natural person under a grant although not named a party ~~thereto~~ *to the grant*."

Section 3. Section 70-17-203, MCA, is amended to read:

"70-17-203. Covenants that run with land. (1) ~~Every~~ *Except as provided in [section 1], every* covenant contained in a grant of an estate in real property that is made for the direct benefit of the property or some part of the property then in existence runs with the land.

(2) Subsection (1) includes:

(a) covenants of warranty, for quiet enjoyment, or for further assurance on the part of the grantor and covenants for the payment of rent or of taxes or assessments upon the land on the part of a grantee; and

(b) conservation easements pursuant to 76-6-209.

(3) A covenant for the addition of some new thing to real property or for the direct benefit of some part of the property not then in existence or annexed to the property, when contained in a grant of an estate in the property and made by the covenantor expressly for covenantor's assigns or to the assigns of the covenantee, runs with the land so far as the assigns mentioned are concerned."

Section 4. Section 70-17-204, MCA, is amended to read:

"70-17-204. Who bound by covenant. ~~A~~ *Except as provided in [section 1], a* covenant running with the land binds only those who acquire the whole estate of the covenantor in some part of the property."

Section 5. Section 70-17-206, MCA, is amended to read:

"70-17-206. Apportionment of burdens and benefits. ~~Where~~ *Except as provided in [section 1], if* several persons holding by several titles are subject to the burden or entitled to the benefits of a covenant running with the land, ~~it~~ *the covenant* must be apportioned among them according to the value of the property subject to it held by them respectively if ~~such~~ *the* value can be ascertained and, if not, then according to their respective interests in point of quantity."

Section 6. Section 70-20-306, MCA, is amended to read:

"70-20-306. Responsibility of heirs of covenantor — certain warranties abolished. Lineal and collateral warrants, with all their incidents, are abolished, but the heirs and devisees of every person who has made any covenant or agreement in reference to the title of, in, or to any real property are*, except as provided in [section 1],* answerable upon ~~such~~ *the* covenant or agreement to the extent of the land descended or devised to them in the cases and in the manner prescribed by law."

Section 7. Section 70-23-308, MCA, is amended to read:

"70-23-308. Contents of bylaws. ~~The~~ *Subject to [section 1], the* bylaws must provide for:

(1) the election from among the unit owners of a board of directors, the number of persons constituting the board, and that the terms of at least one-third of the directors expire annually~~;~~*,* the powers and duties of the board~~;~~*,* the compensation, if any, of the directors~~;~~*,* the method of removal from office of the directors~~;~~*,* and whether or not the board may engage the services of a manager or managing agent;

(2) the method of calling meetings of the unit owners and the percentage, if other than a majority as defined by 70-23-102, that constitutes a quorum;

(3) the election of a presiding officer, a secretary, and a treasurer;

(4) the maintenance, upkeep, and repair of the common elements and payment for those expenses, including the method of approving payment vouchers;

(5) the employment of personnel necessary for the maintenance, upkeep, and repair of the common elements;

(6) the manner of collecting from the unit owners their share of the common expenses;

(7) the method of adopting and of amending administrative rules governing the details of the operation and use of the common elements;

(8) restrictions on and requirements respecting the use and maintenance of the units and the use of the common elements, not included in the declaration, as are designed to prevent unreasonable interference with the use of the unit owners' respective units and of the common elements by the several unit owners;

(9) the method of amending the bylaws subject to 70-23-307."

Section 8. Section 70-23-506, MCA, is amended to read:

"70-23-506. Compliance with bylaws, rules, and covenants required — action. ~~Each~~ *Except as provided in [section 1], each* unit owner shall comply with the bylaws and with the ~~administrative~~ rules adopted pursuant ~~thereto~~ *to the bylaws* and with the covenants, conditions, and restrictions in the declaration or in the deed to ~~his~~ *the owner's* unit. Failure to comply ~~therewith shall be~~ *with the bylaws and rules is* grounds for an action maintainable by the association of unit owners or by an aggrieved unit owner."

Section 9. Section 70-23-601, MCA, is amended to read:

"70-23-601. Contents of deed or lease of unit. ~~The~~ *Except as provided in [section 1], the* deed or lease of a unit ~~shall~~ *must* contain:

(1) a description of the land, the name of the property, and the recording index numbers and date of recording of the declaration;

(2) the unit designation of the unit;

(3) the use for which the unit is intended;

(4) the percentages of undivided interest in the common elements appertaining to the unit;

(5) any further details the grantor and grantee or lessor and lessee may consider desirable."

Section 10. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 70, chapter 1, and the provisions of Title 70, chapter 1, apply to [section 1].

Approved April 18, 2009

CHAPTER NO. 308

[HB 567]

AN ACT GENERALLY REVISING NEW MOTOR VEHICLE FRANCHISING LAWS; REVISING DEFINITIONS; MODIFYING CLAIMS PROCEDURES BETWEEN FRANCHISORS AND NEW MOTOR VEHICLE DEALERS; REVISING PROCEDURES FOR CANCELLING OR TERMINATING

FRANCHISE AGREEMENTS; REVISING PROVISIONS PERTAINING TO PROHIBITED ACTS; AMENDING SECTIONS 61-4-201, 61-4-202, 61-4-204, 61-4-205, 61-4-207, 61-4-208, AND 61-4-210, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-4-201, MCA, is amended to read:

"61-4-201. Definitions. As used in this part, the following definitions apply unless the context clearly indicates otherwise:

(1) "Community" means the relevant market area of a franchise. For the purposes of this part, the relevant market area of a franchise is the county or counties in which the franchisee is located.

(2) "Distribute" means to sell new motor vehicles other than at retail or to enter into a franchise agreement authorizing a dealer to buy new motor vehicles for resale or to service motor vehicles under a manufacturer's or distributor's warranty.

~~(2)~~*(3)* "Distributor" or "wholesaler" means a person who sells or distributes *a line-make of* new motor vehicles to new motor vehicle dealers in this state or who maintains distributor representatives in this state.

~~(3)~~*(4)* "Distributor branch" means a branch office maintained or availed of by a distributor or wholesaler for the sale of *a line-make of* new motor vehicles to new motor vehicle dealers in this state for directing or supervising its representatives in this state.

~~(4)~~*(5)* "Factory branch" means a branch office maintained or availed of by a manufacturer for the sale of *a line-make of* new motor vehicles to distributors or for the sale of new motor vehicles to new motor vehicle dealers in this state or for directing or supervising its representatives in this state.

~~(5)~~*(6)* "Franchise" means a contract *and any agreed-to amendments* between or among two or more persons when all of the following conditions are included:

(a) a commercial relationship of definite duration or continuing indefinite duration is involved;

(b) the franchisee is granted the right to:

(i) offer, sell, and service in this state new motor vehicles manufactured or distributed by the franchisor; or

(ii) service motor vehicles pursuant to the terms of a franchise and a manufacturer's warranty;

(c) the franchisee, as an independent and separate business, constitutes a component of the franchisor's distribution system; and

(d) the operation of the franchisee's business is substantially reliant on the franchisor for the continued supply of new motor vehicles, parts, and accessories.

~~(6)~~*(7)* "Franchisee" means a person who receives new motor vehicles from the franchisor under a franchise and who offers, sells, and services the new motor vehicles to and for the general public.

~~(7)~~*(8)* "Franchisor" means a person who manufactures, imports, or distributes new motor vehicles and who may enter into a franchise.

~~(8)~~*(9)* "Importer" means a person who transports or arranges for the transportation of a foreign manufactured new motor vehicle into the United States for sale in this state.

(10) "Line-make" means vehicles that are offered for sale, lease, or distribution under a common name, trademark, or service mark.

~~(9)~~*(11)* "Manufacturer" means a person who manufactures or assembles *a line-make of* new motor vehicles *and distributes them directly or indirectly through one or more distributors to one or more new motor vehicle dealers in this state* or who manufactures or installs on previously assembled truck chassis special bodies or equipment that, when installed, forms an integral part of the new motor vehicle and that constitutes a major manufacturing alteration, but does not include a person who installs a camper on a pickup truck. *The term includes a central or principal sales corporation or other entity through which, by contractual agreement or otherwise, a manufacturer distributes its products.*

~~(10)~~*(12)* "Motor vehicle" includes a personal watercraft as defined in 23-2-502, a snowmobile as defined in 23-2-601, and an off-highway vehicle as defined in 23-2-801.

~~(11)~~*(13)* "New motor vehicle" means a motor vehicle that has not been the subject of a retail sale regardless of the mileage of the vehicle.

~~(12)~~*(14)* "New motor vehicle dealer" means a person who buys, sells, exchanges, or offers or attempts to negotiate a sale or exchange or any interest in or who is engaged in the business of selling new motor vehicles under a franchise with the manufacturer of the new motor vehicles or used motor vehicles taken in trade on new motor vehicles.

~~(13)~~*(15)* (a) "Retail sale" means the sale of a new motor vehicle.

(b) "Retail sale" does not mean a sale:

(i) of a new motor vehicle to a purchaser who is acquiring the vehicle for the purposes of a resale; or

(ii) that is the result of a transfer between two licensed new motor vehicle dealers."

Section 2. Section 61-4-202, MCA, is amended to read:

"61-4-202. License requirements. (1) A new motor vehicle dealer, manufacturer, distributor, factory branch, distributor branch, importer, or franchisor may not engage in business in Montana except in accordance with the requirements of this part. The provisions of this part do not apply to a public officer engaged in the discharge of official duties or to a trustee, receiver, or other officer acting under the jurisdiction of a court, to financial institutions disposing of repossessed vehicles, or to a person disposing of a personal motor vehicle. The provisions of this part regulating and licensing new motor vehicle dealers, manufacturers, distributors, factory branches, distributor branches, importers, and franchisors apply only to those new motor vehicle dealers, manufacturers, distributors, factory branches, distributor branches, importers, and franchisors of motor vehicles as defined by this part.

(2) A manufacturer, distributor, factory branch, distributor branch, importer, or franchisor transacting business within Montana by offering, selling, trading, consigning, or otherwise transferring a new motor vehicle to a new motor vehicle dealer must be licensed by the state of Montana. The department shall issue licenses to qualified applicants upon receipt of a license fee in the amount of $15 accompanied by the information required in this section.

(3) The following information, if applicable, must be submitted by an applicant upon forms supplied by the department:

(a) the name and address of the applicant;

(b) the make and model of each new motor vehicle to be franchised;

(c) the name and address of each of the applicant's franchisees within the state; and

(d) the name and address of each factory branch, distributor branch, agent, or representative within the state.

(4) A license may be renewed each year if the applicant is in compliance with the provisions of this part, remits a renewal fee in the amount of $15, and notifies the department of any changes in the information previously supplied.

(5) (a) A new motor vehicle may not be sold in this state unless either the manufacturer on direct dealership of domestic motor vehicles, the importer of foreign manufactured motor vehicles on direct dealership, or the distributor on indirect dealerships of either domestic or foreign motor vehicles is licensed as provided in this part.

(b) Notwithstanding any other licensing provision contained in Montana law, every new motor vehicle dealer shall obtain a license under part 1 of this chapter.

(c) The obtaining of a license under Title 61, chapter 4, part 1, or this part conclusively establishes that a new motor vehicle dealer, manufacturer, distributor, or importer is subject to the laws of this state regulating new motor vehicle dealers, manufacturers, importers, and distributors.

(6) When an objection to a proposal to terminate or not continue a franchise or a proposal to enter into a franchise establishing an additional new motor vehicle dealership of the same line-make is made pursuant to 61-4-206, a replacement license or new license may not be issued under this section to any replacement dealer or new dealer until adjudication by the department of the written objection filed pursuant to 61-4-206 and the exhaustion of all appellate remedies available to the objector."

Section 3. Section 61-4-204, MCA, is amended to read:

"61-4-204. Filing agreement — product liability. (1) A franchisee shall, at the time of application for a new motor vehicle dealer license under the provisions of 61-4-101, file with the department a certified copy of the franchisee's written agreement with a manufacturer and a certificate of appointment as dealer or distributor. The certificate of appointment must be signed by an authorized agent of the manufacturer of domestic motor vehicles whenever there is a direct manufacturer dealer agreement or by an authorized agent of the distributor whenever the manufacturer is wholesaling through an appointed distributorship. The certificate must be signed by an authorized agent of the importer of foreign-made vehicles whenever there is a direct importer-dealer agreement or by an authorized agent of the distributor whenever there is an indirect distributor-dealer agreement. The distributor's certificate of appointment must be signed by an authorized agent of the manufacturer of domestically manufactured motor vehicles or by an authorized agent of the manufacturer or importer of foreign-made motor vehicles.

(2) A franchisee need not file a written agreement or certificate of appointment if the manufacturer on direct dealerships or distributor on indirect dealerships or importer on direct dealerships uses the identical basic agreement for all its franchised dealers or distributors in this state and certifies in the certificate of appointment that the blanket agreement is on file and the written agreement with the particular dealer or distributor, respectively, is identical

with the filed blanket agreement and that the franchisee has filed with the department one agreement together with a list of franchised dealers or distributors.

(3) A ~~manufacturer, distributor, or importer~~ *franchisor* shall notify the department within 30 days of any revision of or addition to the basic agreement on file or of any franchise supplement to the agreement. Annual renewal of a certificate filed as provided in this section is not required.

(4) A manufacturer shall file with the department a copy of the delivery and preparation obligations required to be performed by a dealer prior to the delivery of a new motor vehicle to a buyer. These delivery and preparation obligations constitute the dealer's only responsibility for product liability as between the dealer and the manufacturer. Any mechanical, body, or parts defects arising from an express or implied warranty of the manufacturer constitute the manufacturer's product or warranty liability only. However, this section may not affect the obligations of new motor vehicle dealers to perform warranty repair and maintenance that may be required by law or contract. Except with regard to household appliances, including but not limited to ranges, refrigerators, and water heaters, in a recreational vehicle and except with regard to a truck rated at more than 10,000 pounds gross vehicle weight, the manufacturer shall compensate an authorized dealer for labor, parts, and other expenses incurred by a dealer who performs work to rectify the manufacturer's product or warranty defect or for delivery and preparation obligations at the same rate and time the dealer charges to its retail customers for nonwarranty work of a like kind, based upon a published, nationally recognized, retail flat-rate labor time guide manual if the dealer uses the manual as the basis for computing charges for both warranty and retail work.

(5) (a) All claims made by the dealer pursuant to this section for compensation for delivery, preparation, warranty, and recall service, including labor, parts, and other expenses, *and claims made for incentives* must be paid by the manufacturer within 30 days of receipt of the claim from the dealer, except that a manufacturer of a motor home shall pay any claim within 60 days of receipt from the dealer.

(b) If a claim is disapproved, the dealer must be notified in writing of the grounds for disapproval. A claim that has not been disapproved in writing within 30 days of having been received must be considered approved, and payment is due to the claimant immediately. However, the manufacturer retains the right to audit a claim for a period of 12 months following the payment of the claim.

(c) A claim that has been approved and paid may not be charged back to the dealer unless the manufacturer proves that:

(i) the claim was false or fraudulent;

(ii) the repairs were not properly made; or

(iii) the repairs were not necessary to correct the defective condition.

(d) A manufacturer may not deny a claim or reduce the amount to be reimbursed to the dealer if the dealer has provided reasonably sufficient documentation demonstrating that the dealer performed the services in compliance with the written policies and procedures of the manufacturer. *A manufacturer may not deny a claim based solely on a dealer's incidental failure to comply with a specific claim processing requirement, such as a clerical error or other administrative technicality that does not put into question the legitimacy of the claim.*

(6) Notwithstanding the terms of any agreement, the franchisor may not refuse to allocate, sell, or deliver motor vehicles, may not penalize a dealer, may not charge back or withhold payments or other things of value for which the dealer is otherwise eligible under a sales promotion, program, or contest, and may not prevent the dealer from participating in any promotion, program, or contest based on the dealer's selling of a motor vehicle to a customer who was present at the dealership and that the dealer did not know or could not have reasonably known that the motor vehicle would be shipped to a foreign country. There is a rebuttable presumption that the dealer did not know or could not have reasonably known that the vehicle would be shipped to a foreign country if the motor vehicle is titled in the United States.

(7) A franchisor may not recover or seek to recover any of its costs for compensating a dealer for warranty work, including labor and parts, or for the dealer's participation in incentives by imposing on the dealer any charge or surcharge to the wholesale price paid by the dealer to the franchisor for any product, including motor vehicles and parts.

~~(c)~~*(8)* A franchisor may reasonably and periodically audit a motor vehicle dealer to determine the validity of paid claims or chargebacks for customer or dealer incentives. ~~An audit of incentive payments may apply only to the 18-month period immediately preceding the date on which the dealer was notified of an impending audit.~~

(9) A dealer has 60 days from the date of notification by a manufacturer of a denial or a chargeback to the dealer to resubmit a claim for payment or compensation if the claim was denied for a dealer's incidental failure as set forth in subsection (5)(d), regardless of whether the denial or chargeback was a direct or an indirect transaction.

(10) A dealer has 90 days after the expiration of a franchisor incentive program, or a longer time if provided by the franchise agreement, to submit a claim for payment or compensation under the program.

(11) Notwithstanding the terms of a franchise agreement or other contract with a dealer and except as provided in subsection (5)(c), after the expiration of 1 year after the date of payment of a motor vehicle claim or 1 year from the end of a program that does not exceed 1 year in length, whichever is later, a franchisor may not:

(a) charge back to a dealer, whether directly or indirectly, the amount of a claim that has been approved and paid by the franchisor under an incentive program;

(b) charge back to a dealer, whether directly or indirectly, the cash value of a prize or other thing of value awarded to the dealer under an incentive program; or

(c) audit the records of a dealer to determine compliance with the terms of an incentive program.

(12) Subsection (11) does not prohibit a franchisor from making chargebacks to a dealer for fraud at any time as permitted by subsection (5)(c).

~~(6)~~*(13)* The dealer shall furnish the purchaser of a new motor vehicle with a signed copy of the manufacturer's delivery and preparation requirements indicating that each of those requirements has been performed."

Section 4. Section 61-4-205, MCA, is amended to read:

"61-4-205. Limitations on cancellation and termination. (1) Notwithstanding the terms, provisions, or conditions of any agreement or

franchise, a franchisor may not cancel, terminate, or refuse to continue a franchise unless the franchisor has cause for termination or noncontinuance.

(2) A franchisor may not enter into a franchise for the purpose of establishing an additional new motor vehicle dealership in any community in which the same line-make is then represented unless there is good cause for an additional new motor vehicle dealership under a franchise and it is in the public interest.

(3) If a franchisor seeks to terminate or not continue a franchise or seeks to enter into a franchise establishing an additional new motor vehicle dealership of the same line-make, the franchisor shall, not less than 60 days prior to the intended action, and the franchisee may, at any time, file a notice with the department of intention to terminate or not continue the franchise or to enter into a franchise for additional representation of the same line-make. A notice of intention to terminate or not continue a franchise is not required from a franchisor until the conclusion of any review proceeding of that intention offered to the franchisee under the franchise. This section does not apply to an intended termination or noncontinuance of a franchise that the franchisee elects voluntarily, pursuant to a plan established by a franchisor, to submit to binding arbitration.

(4) Upon receiving a notice of intention under the provisions of subsection (3), the department shall, within 5 days of receipt of a notice of intention, send by certified mail, with return receipt requested, a copy of the notice to the franchisor and to the franchisee whose franchise the franchisor seeks to establish, terminate, or not continue. If the notice states an intent to establish an additional new motor vehicle dealership, a copy of the notice must be sent within 5 days of receipt to all franchisees in the community who are then engaged in the business of offering to sell or selling the same line-make. Copies of notices must be addressed to the principal place of business of each recipient and to the statutory agent of each corporate recipient. The department may also give a copy of the franchisor's notice to any other parties whom the department may consider interested persons.

(5) In instances where the change in ownership has the effect of the sale of the franchise, the franchisor may not without good cause withhold its consent to the sale. Good cause relates only to the transferee's financial and managerial capabilities or to the inability of the transferee to comply with a state or federal law relating to new motor vehicle dealerships. The burden of establishing good cause is upon the franchisor.

(6) Notwithstanding the terms, provisions, or conditions of an agreement or franchise, in the event of the sale or transfer of ownership of the franchisee's dealership by sale or transfer of the business or by stock transfer to the dealer's or wholesaler's spouse~~, son, or daughter~~ *or child*, the franchisor shall give effect to the sale or transfer of ownership in the franchise unless the transfer of the franchisee's new motor vehicle dealer's or wholesaler's license is denied or the new owner is unable to obtain a license under the laws of this state.

(7) If a franchisor enters into or attempts to enter into a franchise, whether upon termination or refusal to continue another franchise or upon the establishment of an additional new motor vehicle dealership in a community where the same line-make is then represented, without first complying with the provisions of this part, a license under Title 23 or 61-4-101 may not be issued to that franchisee or proposed franchisee to engage in the business of selling new motor vehicles manufactured or distributed by that franchisor.

(8) A franchisor shall, unless a new franchisor of the line-make continues or replaces the dealer's franchise under subsection (10), compensate the dealer as provided in subsection (9) if the franchisor renders itself incapable of performing under a franchise agreement or renders a distributor incapable of performing under a franchise agreement by:

(a) selling or otherwise transferring some or all of the assets essential to the manufacture or distribution of the line-make covered by the franchise agreement;

(b) ceasing production of the line-make; or

(c) terminating, canceling, or not renewing the distributor's rights to distribute the line-make.

(9) (a) A franchisor considered incapable of performing under subsection (8) shall compensate the affected dealer in an amount equal to the greater of:

(i) the actual pecuniary loss that the dealer and its owners suffered as a result of the termination, cancellation, or failure to renew; or

(ii) the higher of the fair market value of the franchise on the following dates:

(A) the effective date of the termination, cancellation, or failure to renew;

(B) the date 1 year prior to the effective date of termination, cancellation, or failure to renew; or

(C) the day prior to the date on which the franchisor announces the action that results in the termination, cancellation, or failure to renew.

(b) The compensation required by this subsection (9) must be paid to the dealer within 30 days of the affected parties' mutual agreement in writing as to the amount of the compensation. If an agreement on compensation is not reached within 90 days of the effective date of the termination, cancellation, or failure to renew, an affected dealer may bring an action for a determination of the amount of compensation due and for recovery of that amount, plus costs and attorney fees.

(10) If, as a result of any of the circumstances described in subsection (8), an entity other than the original manufacturer or distributor of a line-make becomes the manufacturer or distributor for the line-make and intends to distribute motor vehicles of that line-make in this state, the entity shall honor the franchise agreements of the original franchisor and its dealers or offer those dealers a new franchise agreement for the line-make on substantially similar terms and conditions.

(11) The franchisor that is terminating, canceling, or not renewing a franchise agreement pursuant to subsection (8) shall:

(a) authorize the franchisee or another new motor vehicle dealer of the franchisor in the area to continue servicing and supplying parts, including service and parts pursuant to a warranty issued by the franchisor for any goods or services marketed by the franchisee pursuant to the motor vehicle franchise for a period of not less than 5 years from the effective date of the termination, cancellation, or nonrenewal; and

(b) continue to reimburse the franchisee or another new motor vehicle dealer of the franchisor in the area for warranty parts and service in an amount and on terms not less favorable than those in effect prior to the termination, cancellation, or nonrenewal.

(12) The franchisor shall continue to supply the franchisee whose agreement is terminated, canceled, or not renewed pursuant to subsection (8) or another new motor vehicle dealer of the franchisor in the area with replacement parts for any

goods or services marketed by the franchisee pursuant to the franchise agreement for a period of not less than 5 years from the effective date of the termination, cancellation, or nonrenewal at the same price and terms as the franchisor supplies the parts, goods, or services to the remaining franchisees of the franchisor or if there are not any remaining franchisees, at a price and on terms not less favorable than those in effect prior to the termination, cancellation, or nonrenewal.

(13) If the franchisee continues to service motor vehicles and sell parts after the termination, cancellation, or nonrenewal of the franchise agreement pursuant to subsection (8), the compensation paid to the franchisee pursuant to subsection (9) must be reduced to the extent, if any, of the fair market value of the right to continue to service motor vehicles and sell parts as of the effective date of the termination, cancellation, or nonrenewal."

Section 5. Section 61-4-207, MCA, is amended to read:

"61-4-207. Determination of good cause. (1) In determining whether good cause has been established for terminating or not continuing a franchise, the department shall take into consideration the existing circumstances, including but not limited to:

(a) ~~amount of business transacted by the franchise~~ *the franchisee's sales in relation to the market*;

(b) investment necessarily made and obligations incurred by the franchisee in the performance of the franchisee's part of the franchise;

(c) permanency of the investment;

(d) whether it is injurious to the public welfare for the business of the franchisee to be discontinued;

(e) whether the franchisee has adequate new motor vehicle facilities, equipment, parts, and qualified management, sales, and service personnel to reasonably provide consumer care for the new motor vehicles sold at retail by the franchisee and any other new motor vehicle of the same line-make;

(f) whether the franchisee refuses to honor warranties of the franchisor to be performed by the franchisee if the franchisor reimburses the franchisee for warranty work performed by the franchisee *pursuant to this part*; ~~and~~

(g) except as provided in subsection (2), ~~failure by the franchisee to substantially comply with the written and uniformly applied requirements of the franchise that are determined by the department to be reasonable and material~~ *actions by the franchisee that result in a material breach of the written and uniformly applied requirements of the franchise that are determined by the department to be reasonable and material; and*

(h) the enforceability of the franchise from a public policy standpoint, including issues of the reasonableness of the franchise's terms and the parties' relative bargaining power.

(2) Notwithstanding the terms, provisions, or conditions of an agreement or franchise, the following do not constitute good cause for the termination or noncontinuance of a franchise:

(a) a change in ownership of the franchisee's dealership; ~~or~~

(b) the fact that the franchisee refused to purchase or accept delivery of a new motor vehicle, part, accessory, or any other commodity or service not ordered by the franchisee*;*

(c) the failure of a franchisee to change location of the dealership or to make substantial alterations to the use or number of franchises or the dealership premises or facilities; or

(d) the desire of a franchisor or a franchisor's representative for market penetration.

(3) In determining whether good cause has been established for entering into an additional franchise for the same line-make, the department shall take into consideration the existing circumstances, including but not limited to:

(a) amount of business transacted by other franchisees of the same line-make in that community;

(b) investment necessarily made and obligations incurred by other franchisees of the same line-make in that community in the performance of their part of their franchises; and

(c) whether the franchisees of the same line-make in that community are providing adequate consumer care, including satisfactory new motor vehicle dealer sales and service facilities, equipment, parts supply, and qualified management, sales, and service personnel, for the new motor vehicle products of the line-make."

Section 6. Section 61-4-208, MCA, is amended to read:

"61-4-208. Prohibited acts. (1) A manufacturer of new motor vehicles, a factory branch, a distributor, a distributor branch, an importer, a field representative, an officer, an agent, or any representative of the persons or entities listed may not:

(a) coerce, attempt to coerce, or require a new motor vehicle dealer *or transferee of a new motor vehicle dealer* to:

(i) accept delivery of a new motor vehicle, a part, or an accessory for a new motor vehicle or any other commodity that has not been ordered by the *new motor vehicle dealer or transferee of a new motor vehicle* dealer;

(ii) participate in or contribute to any local, regional, or national advertising fund or to participate in or to contribute to contests, giveaways, or other sales devices;

(iii) change location of the dealership or to make substantial alterations to the use or number of franchises or the dealership premises or facilities ~~when to do so would be unreasonable, or without written assurance of a sufficient supply of new motor vehicles that would justify an expansion~~;

(iv) either establish or maintain exclusive facilities, personnel, or display space or to abandon an existing franchise relationship with another manufacturer ~~that was established before April 8, 1997, when those requirements are not justified by reasonable business considerations;~~ *in order to keep or enter into a franchise agreement or to participate in any program discount, credit, rebate, or sales incentive;*

(v) require, coerce, or attempt to coerce a new motor vehicle dealer or transferee of a new motor vehicle dealer to refrain from participation in the management of, investment in, or acquisition of any other line-make of new motor vehicle or related products, as long as the new motor vehicle dealer or transferee of a new motor vehicle dealer maintains a reasonable line of credit for each franchise and the new motor vehicle dealer or transferee of a new motor vehicle dealer remains in substantial compliance with reasonable facilities requirements. The reasonable facilities requirements may not include any

requirement that a new motor vehicle dealer or transferee of a new motor vehicle dealer establish or maintain exclusive facilities, personnel, or display space.

~~(v)~~*(vi)* refrain from participation in the management of, investment in, or acquisition of any other line of new motor vehicle or related products if the new motor vehicle dealer *or transferee of a new motor vehicle dealer* maintains a reasonable line of credit for each make or line of new motor vehicles and remains in compliance with any reasonable capital standards and facility requirements of the manufacturer; or

~~(vi)~~*(vii)* enter into an agreement with a manufacturer, factory branch, distributor, distributor branch, or representative of the listed persons or entities or do any other act unfair to the *new motor vehicle* dealer *or transferee of a new motor vehicle dealer* by:

(A) threatening to cancel or not renew a franchise existing between the manufacturer, factory branch, distributor, distributor branch, or representative of the listed persons or entities and the *new motor vehicle* dealer *or transferee of a new motor vehicle dealer*; or

(B) threatening to withhold, delay, or disrupt the receipt of new motor vehicles or any motor vehicle parts or supplies ordered by the *new motor vehicle dealer* ~~dealer~~ *or transferee of a new motor vehicle dealer* from the manufacturer, factory branch, distributor, distributor branch, importer, or representative or agent of the listed entities;

(b) delay, refuse, or fail to deliver new motor vehicles in a reasonable time in a reasonable quantity relative to the new motor vehicle dealer's *or transferee of a new motor vehicle dealer's* facilities and sales potential after accepting an order from a new motor vehicle dealer *or transferee of a new motor vehicle dealer* if the new motor vehicles are publicly advertised as being available for immediate delivery; ~~or~~

(c) impose unreasonable restrictions on the assertion of legal or equitable rights on the new motor vehicle dealer *or transferee of a new motor vehicle dealer* or franchise *of a new motor vehicle dealer or transferee of a new motor vehicle dealer* regarding transfer; sale; right to renew; termination; discipline; noncompetition covenants; site control, whether by sublease, collateral pledge of lease, or otherwise; or compliance with subjective standards*; or*

(d) notwithstanding the terms, provisions, or conditions of any agreement or franchise, use or consider the new motor vehicle dealer's or transferee of a new motor vehicle dealer's performance relating to the sale of new motor vehicles or ability to satisfy any minimum sales or market share quota or responsibility relating to the sale of new motor vehicles, parts, or service contracts in determining:

(i) eligibility to purchase program, certified, or other used motor vehicles;

(ii) the volume, type, or model of program, certified, or other used motor vehicles the new motor vehicle dealer or transferee of a new motor vehicle dealer is eligible to purchase;

(iii) the price or prices of any program, certified, or other used motor vehicles that the new motor vehicle dealer or transferee of a new motor vehicle dealer is eligible to purchase; or

(iv) the availability or amount of any discount, credit, rebate, or sales incentive that the new motor vehicle dealer or transferee of a new motor vehicle dealer is eligible to receive for the purchase of any program, certified, or other used motor vehicles.

(2) There is no violation of subsection (1)(a)(iii) or (1)(b) if a failure on the part of the manufacturer, factory branch, distributor, or distributor branch is beyond the control of the listed persons or entities.

(3) (a) Except as provided in subsection (3)(b) or (3)(c), a manufacturer of new motor vehicles, a factory branch, a distributor, a distributor branch, an importer, a field representative, an officer, an agent, or any representative of any of these persons or entities may not own or operate, directly or indirectly, a motor vehicle dealership in Montana that is for sale or has been for sale under a franchise agreement with a new motor vehicle dealer in Montana.

(b) If there is no independent person available to own and operate a motor vehicle dealership in a manner that is consistent with the public interest, a manufacturer of new motor vehicles, a factory branch, a distributor, a distributor branch, an importer, a field representative, an officer, an agent, or any representative of any of these persons or entities may own and operate a motor vehicle dealership for a temporary period, not to exceed 1 year, during the transition from one owner of the dealership to another. Approval of the sale may not be unreasonably withheld by the manufacturer.

(c) A manufacturer of new motor vehicles, a factory branch, a distributor, a distributor branch, an importer, a field representative, an officer, an agent, or any representative of any of these persons or entities may own an interest in a motor vehicle dealership but may not operate the dealership unless a manufacturer of new motor vehicles, a factory branch, a distributor, a distributor branch, an importer, a field representative, an officer, an agent, or any representative of any of these persons or entities has a bona fide business relationship with an independent person who is not a franchisor or a franchisor's agent or affiliate, who has made an investment that is subject to loss in the dealership, and who reasonably expects to acquire full ownership of the dealership on reasonable terms and conditions."

Section 7. Section 61-4-210, MCA, is amended to read:

"61-4-210. Penalties — administrative penalties. (1) Except as provided in subsection (2), a person who violates any provision of this part is guilty of a misdemeanor and upon conviction shall be fined not less than $500 or more than $1,000 for each violation. Each day that a violation continues or occurs constitutes a separate violation.

(2) A manufacturer on direct dealerships, distributor on indirect dealerships, or importer on direct dealerships who has filed with the department an agreement used by all its franchisees in this state together with a list of all such franchisees and who fails to notify the department within 30 days of any revision, change, or addition thereto is guilty of a misdemeanor and upon conviction shall be fined not to exceed $500.

(3) If any new motor vehicle dealer *or transferee of a new motor vehicle dealer* incurs pecuniary loss due to a violation of this part by a manufacturer, distributor, importer, or factory branch or representative or agent ~~thereof~~ *of the listed persons or entities*, the *new motor vehicle dealer or transferee of a new motor vehicle* dealer may recover damages ~~therefor~~ in a court of competent jurisdiction in *an* amount equal to three times the pecuniary loss, together with costs including reasonable ~~attorney's~~ *attorney* fees.

(4) In addition to any other penalty provided for in this part, the department may take appropriate enforcement action on its own initiative in accordance with the contested case procedures of Title 2, chapter 4. A person who violates

the provisions of this part may be subject to administrative action and a civil penalty not to exceed $500 for each violation."

Section 8. Damage notice. (1) Except as provided in subsection (2), a franchisor is required:

(a) to disclose in writing to a new motor vehicle dealer damage to a new motor vehicle delivered to the new motor vehicle dealer if the damage is known to the franchisor and repaired, the damage occurred after the manufacturing process is complete but before delivery to the new motor vehicle dealer, and the damage exceeds 5% of the franchisor's suggested retail price as calculated at the rate of the new motor vehicle dealer's authorized warranty rate for labor and parts; and

(b) to disclose in writing to a purchaser of the new motor vehicle before entering into a sales contract that the new motor vehicle has been damaged and repaired if the damage to the new motor vehicle exceeds 5% of the franchisor's suggested retail price as calculated at the rate of the new motor vehicle dealer's authorized warranty rate for labor and parts.

(2) Disclosure is not required for any glass, tires, or bumper of a new motor vehicle if the damaged item has been replaced with original or comparable equipment.

(3) If disclosure is not required under subsection (2), a purchaser may not revoke or rescind a sales contract due solely to the fact that the new motor vehicle was damaged and repaired before completion of the sale.

(4) For purposes of this section, "franchisor's suggested retail price" means the retail price of the new motor vehicle suggested by the franchisor, including the retail delivered price suggested by the franchisor for each accessory or item of optional equipment physically attached to the new motor vehicle at the time of delivery to the new motor vehicle dealer that is not included within the retail price suggested by the franchisor for the new motor vehicle.

Section 9. Codification instruction. [Section 8] is intended to be codified as an integral part of Title 61, chapter 4, and the provisions of Title 61, chapter 4, apply to [section 8].

Section 10. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 11. Effective date. [This act] is effective on passage and approval.

Approved April 18, 2009

CHAPTER NO. 309

[HB 635]

AN ACT REPEALING THE MONTANA EQUITY CAPITAL INVESTMENT ACT; AMENDING SECTIONS 33-2-705 AND 90-1-112, MCA; REPEALING SECTIONS 15-30-184, 15-31-152, 90-10-101, 90-10-102, 90-10-103, 90-10-201, 90-10-202, 90-10-301, 90-10-302, 90-10-303, 90-10-304, 90-10-305, 90-10-306, 90-10-307, 90-10-308, 90-10-309, AND 90-10-310, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-2-705, MCA, is amended to read:

"33-2-705. Report on premiums and other consideration — tax. (1) Each authorized insurer and each formerly authorized insurer with respect to premiums received while an authorized insurer in this state shall file with the commissioner, on or before March 1 each year, a report in a form prescribed by the commissioner showing total direct premium income, including policy, membership, and other fees, premiums paid by application of dividends, refunds, savings, savings coupons, and similar returns or credits to payment of premiums for new or additional or extended or renewed insurance, charges for payment of premium in installments, and all other consideration for insurance from all kinds and classes of insurance, whether designated as a premium or otherwise, received by a life insurer or written by an insurer other than a life insurer during the preceding calendar year on account of policies covering property, subjects, or risks located, resident, or to be performed in Montana, with proper proportionate allocation of premium as to property, subjects, or risks in Montana insured under policies or contracts covering property, subjects, or risks located or resident in more than one state, after deducting from the total direct premium income applicable cancellations, returned premiums, the unabsorbed portion of any deposit premium, the amount of reduction in or refund of premiums allowed to industrial life policyholders for payment of premiums direct to an office of the insurer, all policy dividends, refunds, savings, savings coupons, and other similar returns paid or credited to policyholders with respect to the policies. As to title insurance, "premium" includes the total charge for the insurance. A deduction may not be made of the cash surrender values of policies. Considerations received on annuity contracts may not be included in total direct premium income and are not subject to tax.

(2) Coincident with the filing of the tax report referred to in subsection (1), each insurer shall pay to the commissioner a tax upon the net premiums computed at the rate of 2 3/4%.

(3) That portion of the tax paid under this section by an insurer on account of premiums received for fire insurance must be separately specified in the report ~~as~~ required by the commissioner~~,~~ for apportionment as provided by law. When insurance against fire is included with insurance of property against other perils at an undivided premium, the insurer shall make a reasonable allocation from the entire premium to the fire portion of the coverage as must be stated in the report and as may be approved or accepted by the commissioner.

(4) With respect to authorized insurers, the premium tax provided by this section must be payment in full and in lieu of all other demands for any and all state, county, city, district, municipal, and school taxes, licenses, fees, and excises of whatever kind or character, excepting only those prescribed by this code, taxes on real and tangible personal property located in this state, and taxes payable under 50-3-109.

~~(5) Insurers paying a premium tax under subsection (2) and holding a certificate pursuant to Title 90, chapter 10, may redeem the certificate under the terms of 90-10-304 as a credit against the premium tax after excluding the portion of premiums identified in subsection (3).~~

~~(6)~~*(5)* The commissioner may suspend or revoke the certificate of authority of any insurer that fails to pay its taxes as required under this section.

~~(7)~~*(6)* In addition to the penalty provided for in subsection ~~(6)~~ *(5)*, the commissioner may impose upon an insurer who fails to pay the tax required under this section a fine of $100 plus interest on the delinquent amount at the annual interest rate of 12%.

~~(8)~~*(7)* The commissioner may by rule provide a quarterly schedule for payment of portions of the premium tax under this section during the year in which tax liability is accrued."

Section 2. Section 90-1-112, MCA, is amended to read:

"90-1-112. Policy — purpose. (1) It is the policy of this state to:

(a) strengthen the foundations of the state's business environment and diversify and expand existing economic endeavors to achieve long-term economic stability;

(b) cooperate with business enterprises, local governments, other public organizations, and the federal government and use all practical means and measures, including financial and technical assistance, to:

(i) establish an economic climate in which the state's natural resources and agricultural operations remain constant contributors to the state's economic welfare;

(ii) articulate a coherent economic development vision for the future; and

(iii) take a proactive role to ensure that Montana has the flexibility and resources to be an effective competitor in the changing global marketplace.

(2) The purpose of 2-15-218, 2-15-219, *and* 90-1-112 through 90-1-114~~, and Title 90, chapter 10~~, is to provide a vision and a direction through the development of strategies and initiatives to ensure that the state's role in expanding the economy takes place in an orderly and effective manner."

Section 3. Repealer. Sections 15-30-184, 15-31-152, 90-10-101, 90-10-102, 90-10-103, 90-10-201, 90-10-202, 90-10-301, 90-10-302, 90-10-303, 90-10-304, 90-10-305, 90-10-306, 90-10-307, 90-10-308, 90-10-309, and 90-10-310, MCA, are repealed.

Section 4. Effective date. [This act] is effective on passage and approval.

Approved April 18, 2009

CHAPTER NO. 310

[SB 26]

AN ACT REVISING THE REGULATION OF ECONOMIC CREDENTIALING OF PHYSICIANS; MODIFYING ECONOMIC CREDENTIALING REGULATIONS TO INCLUDE OUTPATIENT CENTERS FOR SURGICAL SERVICES AND TO EXCLUDE DIAGNOSTIC FACILITIES; DEFINING "CONFLICT OF INTEREST"; REVISING REGULATORY AUTHORITY OF DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES; RETAINING THE RESTRICTION ON HOSPITALS LIMITING MEMBERSHIP OR PRIVILEGES; AMENDING SECTIONS 50-5-117 AND 50-5-207, MCA; REPEALING SECTION 6, CHAPTER 351, LAWS OF 2007; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-5-117, MCA, is amended to read:

"50-5-117. ~~(Temporary)~~ **Economic credentialing of physicians prohibited — definitions.** (1) ~~A~~ *Except to the extent necessary to determine physician competency or to comply with medicare or medicaid certification under Titles XVIII and XIX of the Social Security Act, respectively, or for accreditation by organizations that accredit hospitals or outpatient centers for*

surgical services, a hospital *or an outpatient center for surgical services* may not engage in economic credentialing by:

(a) ~~except as may be required for medicare certification or for accreditation by the joint commission on accreditation of healthcare organizations,~~ requiring a physician requesting medical staff membership or medical staff privileges to agree to make referrals to that hospital*, to an outpatient center for surgical services,* or to any facility related to the hospital *or the outpatient center for surgical services*;

(b) refusing to grant staff membership or medical staff privileges or conditioning or otherwise limiting a physician's medical staff participation because the physician or a partner, associate, or employee of the physician:

(i) provides medical or health care services at, has an ownership interest in, or occupies a leadership position on the medical staff of a different hospital, hospital system, or health care facility; or

(ii) participates or does not participate in any particular health plan; or

(c) refusing to grant participatory status in a hospital or hospital system health plan *or outpatient center for surgical services health plan* to a physician ~~or a partner, associate, or employee of the physician~~ *who has medical staff privileges* because the physician or *a* partner, *an* associate, or *an* employee of the physician provides medical or health care services at, has an ownership interest in, or occupies a leadership position on the medical staff of a different hospital, hospital system, or health care facility.

(2) Notwithstanding the prohibitions in subsection (1), a hospital *or an outpatient center for surgical services* may ~~refuse to appoint a physician to the governing body of the hospital or to the position of president of the medical staff or presiding officer of a medical staff committee if the physician or a partner or employee of the physician provides medical or health care services at, has an ownership interest in, or occupies a leadership position on the medical staff of a different hospital, hospital system, or health care facility~~ *require recusal of a physician member of the board, the president of the medical staff of the hospital or outpatient center for surgical services, or the presiding officer of a medical staff committee from financial decisions and information related to the hospital or outpatient center for surgical services if the physician member of the board, president of the hospital medical staff or outpatient center for surgical services staff, or the presiding officer of a medical staff committee has a conflict of interest relevant to those decisions or that information*.

(3) For the purposes of this section, the following definitions apply:

(a) *"Board" means the governing body or board of directors of a hospital or an outpatient center for surgical services.*

(b) "Conflict of interest" means, notwithstanding the board's own conflict of interest policy, a situation in which a physician in a leadership position either individually or through an immediate family member, as defined in 15-30-602, or through a partner or employee of the physician has a financial interest in any health care facility that may compromise the board's fiduciary responsibility.

(c) (i) "Economic credentialing" means the denial of a physician's application for staff membership or clinical privileges to practice medicine in a hospital *or an outpatient center for surgical services* on criteria other than the individual's *education,* training, current competence, experience, ability, personal character, and judgment.

(ii) This term does not mean use by the hospital *or the outpatient center for surgical services* of:

~~(i)~~*(A)* exclusive contracts with physicians *if the contracts do not violate the unfair trade practices provisions of Title 30, chapter 14, part 2*;

~~(ii)~~*(B)* medical staff on-call requirements *if the on-call requirements do not violate the unfair trade practices and consumer protection provisions of 30-14-103~~;~~ or Title 30, chapter 14, part 2;*

~~(iii)~~*(C)* adherence to a formulary approved by the medical staff; or

~~(iv)~~*(D)* other medical staff policy adopted to manage health care costs or improve quality.

~~(b)~~*(d)* "Health care facility" has the meaning provided in 50-5-101 ~~and includes diagnostic facilities~~.

~~(c)~~*(e)* "Health plan" means a plan offered by any person, employer, trust, government agency, association, corporation, or other entity to provide, sponsor, arrange for, indemnify another for, or pay for health care services to eligible members, insureds, enrollees, employees, participants, beneficiaries, or dependents, including but not limited to a health plan provided by an insurance company, health service organization, health maintenance organization, preferred provider organization, self-insured health plan, captive insurer, multiple employee welfare arrangement, workers' compensation plan, medicare, or medicaid.

~~(d)~~*(f)* "Physician" has the meaning provided in 37-3-102.

~~(4) For the purposes of this section, the provisions of 50-5-207 do not apply. (Terminates June 30, 2009—sec. 6, Ch. 351, L. 2007.)~~"

Section 2. Section 50-5-207, MCA, is amended to read:

"50-5-207. ~~(Temporary)~~ **Denial, suspension, or revocation of health care facility license — provisional license.** (1) The department may deny, suspend, or revoke a health care facility license if any of the following circumstances exist:

(a) The facility fails to meet the minimum standards pertaining to it prescribed under 50-5-103.

(b) The staff is insufficient in number or unqualified by lack of training or experience.

(c) The applicant or any person managing it has been convicted of a felony and denial of a license on that basis is consistent with 37-1-203 or the applicant otherwise shows evidence of character traits inimical to the health and safety of patients or residents.

(d) The applicant does not have the financial ability to operate the facility in accordance with law or rules or standards adopted by the department.

(e) There is cruelty or indifference affecting the welfare of the patients or residents.

(f) There is misappropriation of the property or funds of a patient or resident.

(g) There is conversion of the property of a patient or resident without the patient's or resident's consent.

(h) Any provision of parts 1 through 3~~, except 50-5-117,~~ is violated.

(2) The department may reduce a license to provisional status if as a result of an inspection it is determined that the facility has failed to comply with a

provision of part 1 or 2 of this chapter or has failed to comply with a rule, license provision, or order adopted or issued pursuant to part 1 or 2.

(3) The denial, suspension, or revocation of a health care facility license is not subject to the certificate of need requirements of part 3.

(4) The department may provide in its revocation order that the revocation is in effect for up to 2 years. If this provision is appealed, it must be affirmed or reversed by the court. ~~(Terminates June 30, 2009—sec. 6, Ch. 351, L. 2007.)~~

~~**50-5-207.** (Effective July 1, 2009)~~ **Denial, suspension, or revocation of health care facility license — provisional license.** ~~(1) The department may deny, suspend, or revoke a health care facility license if any of the following circumstances exist:~~

~~(a) The facility fails to meet the minimum standards pertaining to it prescribed under 50-5-103.~~

~~(b) The staff is insufficient in number or unqualified by lack of training or experience.~~

~~(c) The applicant or any person managing it has been convicted of a felony and denial of a license on that basis is consistent with 37-1-203 or the applicant otherwise shows evidence of character traits inimical to the health and safety of patients or residents.~~

~~(d) The applicant does not have the financial ability to operate the facility in accordance with law or rules or standards adopted by the department.~~

~~(e) There is cruelty or indifference affecting the welfare of the patients or residents.~~

~~(f) There is misappropriation of the property or funds of a patient or resident.~~

~~(g) There is conversion of the property of a patient or resident without the patient's or resident's consent.~~

~~(h) Any provision of parts 1 through 3 is violated.~~

~~(2) The department may reduce a license to provisional status if as a result of an inspection it is determined that the facility has failed to comply with a provision of part 1 or 2 of this chapter or has failed to comply with a rule, license provision, or order adopted or issued pursuant to part 1 or 2.~~

~~(3) The denial, suspension, or revocation of a health care facility license is not subject to the certificate of need requirements of part 3.~~

~~(4) The department may provide in its revocation order that the revocation is in effect for up to 2 years. If this provision is appealed, it must be affirmed or reversed by the court.~~"

Section 3. Repealer. Section 6, Chapter 351, Laws of 2007, is repealed.

Section 4. Effective date. [This act] is effective on passage and approval.

Approved April 19, 2009

CHAPTER NO. 311

[SB 76]

AN ACT REVISING THE PERCENTAGE OWNERSHIP REQUIREMENTS FOR APPROVAL OF UNIT PLAN OPERATIONS BY PERSONS PAYING THE COSTS OF UNIT OPERATIONS; AMENDING SECTION 82-11-207, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 82-11-207, MCA, is amended to read:

"82-11-207. Approval of plan for unit operations by persons paying costs. An order of the board providing for unit operations may not become effective unless ~~and until~~ the plan for unit operations prescribed by the board has been approved in writing by those persons who under the board's order will be required to pay at least ~~80%~~ *70%* of the costs of the unit operations and also by the persons owning at least ~~80%~~ *60%* of the production or proceeds ~~thereof~~ *of the unit operations* that will be credited to interests ~~which~~ *that* are free of cost, such as royalties, overriding royalties, and production payments, and the board has made a finding, either in the order providing for unit operations or in a supplemental order, that the plan for unit operations has been ~~so~~ approved~~;~~. ~~however,~~ *However,* if one owner who is obligated to pay costs of the unit operation owns ~~80%~~ *70%* or more but less than 100%, the approval of that owner and at least one other ~~such~~ owner is required, and if one person entitled to production or proceeds ~~thereof~~ *of the production* that will be credited to interests ~~which~~ *that* are free of costs owns ~~80%~~ *60%* or more but less than 100%, the approval of that person and at least one other ~~such person~~ *owner* is required. If the plan for unit operations has not been ~~so~~ approved at the time the order providing for unit operations is made, the board shall, upon application and notice, hold ~~such~~ supplemental hearings ~~as~~ *that* may be required to determine if and when the plan for unit operations has been ~~so~~ approved. If the requisite number of owners and persons and the requisite percentage of interests in the unit area do not approve the plan for unit operations within a period of 6 months from the date on which the order providing for unit operations is made, the board shall revoke the order unless*,* for good cause shown*,* the board extends the time."

Section 2. Effective date. [This act] is effective July 1, 2009.

Approved April 19, 2009

CHAPTER NO. 312

[SB 84]

AN ACT AUTHORIZING THE MONTANA CORRECTIONAL ENTERPRISES PROGRAM; REORGANIZING STATUTES DEALING WITH MONTANA CORRECTIONAL ENTERPRISES; AMENDING SECTIONS 39-71-118, 53-1-202, 53-30-131, 53-30-132, 53-30-133, AND 61-3-478, MCA; REPEALING SECTIONS 53-1-301, 53-1-302, 53-1-303, AND 53-1-304, MCA; AND PROVIDING A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-71-118, MCA, is amended to read:

"39-71-118. Employee, worker, volunteer, and volunteer firefighter defined. (1) As used in this chapter, the term "employee" or "worker" means:

(a) each person in this state, including a contractor other than an independent contractor, who is in the service of an employer, as defined by 39-71-117, under any appointment or contract of hire, expressed or implied, oral or written. The terms include aliens and minors, whether lawfully or unlawfully employed, and all of the elected and appointed paid public officers and officers and members of boards of directors of quasi-public or private corporations, except those officers identified in 39-71-401(2), while rendering actual service

for the corporations for pay. Casual employees, as defined by 39-71-116, are included as employees if they are not otherwise covered by workers' compensation and if an employer has elected to be bound by the provisions of the compensation law for these casual employments, as provided in 39-71-401(2). Household or domestic employment is excluded.

(b) any juvenile who is performing work under authorization of a district court judge in a delinquency prevention or rehabilitation program;

(c) a person who is receiving on-the-job vocational rehabilitation training or other on-the-job training under a state or federal vocational training program, whether or not under an appointment or contract of hire with an employer, as defined in 39-71-117, and, except as provided in subsection (9), whether or not receiving payment from a third party. However, this subsection (1)(c) does not apply to students enrolled in vocational training programs, as outlined in this subsection, while they are on the premises of a public school or community college.

(d) an aircrew member or other person who is employed as a volunteer under 67-2-105;

(e) a person, other than a juvenile as described in subsection (1)(b), who is performing community service for a nonprofit organization or association or for a federal, state, or local government entity under a court order, or an order from a hearings officer as a result of a probation or parole violation, whether or not under appointment or contract of hire with an employer, as defined in 39-71-117, and whether or not receiving payment from a third party. For a person covered by the definition in this subsection (1)(e):

(i) compensation benefits must be limited to medical expenses pursuant to 39-71-704 and an impairment award pursuant to 39-71-703 that is based upon the minimum wage established under Title 39, chapter 3, part 4, for a full-time employee at the time of the injury; and

(ii) premiums must be paid by the employer, as defined in 39-71-117(3), and must be based upon the minimum wage established under Title 39, chapter 3, part 4, for the number of hours of community service required under the order from the court or hearings officer.

(f) an inmate working in a federally certified prison industries program authorized under ~~53-1-301~~ *53-30-132*;

(g) a volunteer firefighter as described in 7-33-4109 or a person who provides ambulance services under Title 7, chapter 34, part 1; and

(h) a person placed at a public or private entity's worksite pursuant to 53-4-704. The person is considered an employee for workers' compensation purposes only. The department of public health and human services shall provide workers' compensation coverage for recipients of financial assistance, as defined in 53-4-201, or for participants in the food stamp program, as defined in 53-2-902, who are placed at public or private worksites through an endorsement to the department of public health and human services' workers' compensation policy naming the public or private worksite entities as named insureds under the policy. The endorsement may cover only the entity's public assistance participants and may be only for the duration of each participant's training while receiving financial assistance or while participating in the food stamp program under a written agreement between the department of public health and human services and each public or private entity. The department of public health and human services may not provide workers' compensation coverage for individuals who are covered for workers' compensation purposes by

another state or federal employment training program. Premiums and benefits must be based upon the wage that a probationary employee is paid for work of a similar nature at the assigned worksite.

(2) The terms defined in subsection (1) do not include a person who is:

(a) participating in recreational activity and who at the time is relieved of and is not performing prescribed duties, regardless of whether the person is using, by discount or otherwise, a pass, ticket, permit, device, or other emolument of employment;

(b) performing voluntary service at a recreational facility and who receives no compensation for those services other than meals, lodging, or the use of the recreational facilities;

(c) performing services as a volunteer, except for a person who is otherwise entitled to coverage under the laws of this state. As used in this subsection (2)(c), "volunteer" means a person who performs services on behalf of an employer, as defined in 39-71-117, but who does not receive wages as defined in 39-71-123.

(d) serving as a foster parent, licensed as a foster care provider in accordance with 52-2-621, and providing care without wage compensation to no more than six foster children in the provider's own residence. The person may receive reimbursement for providing room and board, obtaining training, respite care, leisure and recreational activities, and providing for other needs and activities arising in the provision of in-home foster care.

(3) With the approval of the insurer, an employer may elect to include as an employee under the provisions of this chapter any volunteer as defined in subsection (2)(c).

(4) (a) The term "volunteer firefighter" means a firefighter who is an enrolled and active member of a governmental fire agency organized under Title 7, chapter 33, except 7-33-4109.

(b) The term "volunteer hours" means all the time spent by a volunteer firefighter in the service of an employer, including but not limited to training time, response time, and time spent at the employer's premises.

(5) (a) If the employer is a partnership, limited liability partnership, sole proprietor, or a member-managed limited liability company, the employer may elect to include as an employee within the provisions of this chapter any member of the partnership or limited liability partnership, the owner of the sole proprietorship, or any member of the limited liability company devoting full time to the partnership, limited liability partnership, proprietorship, or limited liability company business.

(b) In the event of an election, the employer shall serve upon the employer's insurer written notice naming the partners, sole proprietor, or members to be covered and stating the level of compensation coverage desired by electing the amount of wages to be reported, subject to the limitations in subsection (5)(d). A partner, sole proprietor, or member is not considered an employee within this chapter until notice has been given.

(c) A change in elected wages must be in writing and is effective at the start of the next quarter following notification.

(d) All weekly compensation benefits must be based on the amount of elected wages, subject to the minimum and maximum limitations of this subsection (5)(d). For premium ratemaking and for the determination of the weekly wage for weekly compensation benefits, the electing employer may elect an amount of

not less than $900 a month and not more than 1 1/2 times the state's average weekly wage.

(6) (a) If the employer is a quasi-public or a private corporation or a manager-managed limited liability company, the employer may elect to include as an employee within the provisions of this chapter any corporate officer or manager exempted under 39-71-401(2).

(b) In the event of an election, the employer shall serve upon the employer's insurer written notice naming the corporate officer or manager to be covered and stating the level of compensation coverage desired by electing the amount of wages to be reported, subject to the limitations in subsection (5)(d). A corporate officer or manager is not considered an employee within this chapter until notice has been given.

(c) A change in elected wages must be in writing and is effective at the start of the next quarter following notification.

(d) All weekly compensation benefits must be based on the amount of elected wages, subject to the minimum and maximum limitations of this subsection (6)(d). For premium ratemaking and for the determination of the weekly wage for weekly compensation benefits, the electing employer may elect an amount of not less than $200 a week and not more than 1 1/2 times the state's average weekly wage.

(7) (a) The trustees of a rural fire district, a county governing body providing rural fire protection, or the county commissioners or trustees for a fire service area may elect to include as an employee within the provisions of this chapter any volunteer firefighter. A volunteer firefighter who receives workers' compensation coverage under this section may not receive disability benefits under Title 19, chapter 17.

(b) In the event of an election, the employer shall report payroll for all volunteer firefighters for premium and weekly benefit purposes based on the number of volunteer hours of each firefighter times the average weekly wage divided by 40 hours, subject to a maximum of 1 1/2 times the state's average weekly wage.

(c) A self-employed sole proprietor or partner who has elected not to be covered under this chapter, but who is covered as a volunteer firefighter pursuant to subsection (7)(a) and when injured in the course and scope of employment as a volunteer firefighter, may in addition to the benefits described in subsection (7)(b) be eligible for benefits at an assumed wage of the minimum wage established under Title 39, chapter 3, part 4, for 2,080 hours a year. The trustees of a rural fire district, a county governing body providing rural fire protection, or the county commissioners or trustees for a fire service area may make an election for benefits. If an election is made, payrolls must be reported and premiums must be assessed on the assumed wage.

(8) Except as provided in chapter 8 of this title, an employee or worker in this state whose services are furnished by a person, association, contractor, firm, limited liability company, limited liability partnership, or corporation, other than a temporary service contractor, to an employer, as defined in 39-71-117, is presumed to be under the control and employment of the employer. This presumption may be rebutted as provided in 39-71-117(3).

(9) A student currently enrolled in an elementary, secondary, or postsecondary educational institution who is participating in work-based learning activities and who is paid wages by the educational institution or business partner is the employee of the entity that pays the student's wages for

all purposes under this chapter. A student who is not paid wages by the business partner or the educational institution is a volunteer and is subject to the provisions of this chapter.

(10) For purposes of this section, an "employee or worker in this state" means:

(a) a resident of Montana who is employed by an employer and whose employment duties are primarily carried out or controlled within this state;

(b) a nonresident of Montana whose principal employment duties are conducted within this state on a regular basis for an employer;

(c) a nonresident employee of an employer from another state engaged in the construction industry, as defined in 39-71-116, within this state; or

(d) a nonresident of Montana who does not meet the requirements of subsection (10)(b) and whose employer elects coverage with an insurer that allows an election for an employer whose:

(i) nonresident employees are hired in Montana;

(ii) nonresident employees' wages are paid in Montana;

(iii) nonresident employees are supervised in Montana; and

(iv) business records are maintained in Montana.

(11) An insurer may require coverage for all nonresident employees of a Montana employer who do not meet the requirements of subsection (10)(b) or (10)(d) as a condition of approving the election under subsection (10)(d)."

Section 2. Section 53-1-202, MCA, is amended to read:

"53-1-202. Department of corrections. (1) Adult and youth correctional services are included in the department of corrections to carry out the purposes of the department.

(2) Adult corrections services consist of the following correctional facilities or programs:

(a) the prisons listed in 53-30-101;

(b) appropriate community-based programs for the placement, supervision, and rehabilitation of adult felons who meet the criteria developed by the department for placement:

(i) in prerelease centers;

(ii) under intensive supervision;

(iii) under parole or probation pursuant to Title 46, chapter 23, part 2; or

(iv) in other appropriate programs; ~~and~~

(c) the boot camp authorized by 53-30-403*; and*

(d) the Montana correctional enterprises prison industries training program authorized by 53-30-131.

(3) Youth correctional services consist of the following correctional facilities or programs to provide for custody, supervision, training, education, and rehabilitation of delinquent youth and youth in need of intervention pursuant to Title 52, chapter 5:

(a) Pine Hills youth correctional facility or other state youth correctional facility; and

(b) any other facility or program that provides custody and services for delinquent youth.

(4) A state institution or correctional facility may not be moved, discontinued, or abandoned without the consent of the legislature."

Section 3. Section 53-30-131, MCA, is amended to read:

"53-30-131. ~~Prison~~ *Montana correctional enterprises prison* industries training program — purpose and scope. (1) ~~In addition to any correctional facility industry operated at the Montana state prison, the department of corrections shall conduct a prison industries training program.~~

~~(2) The purpose of the prison industries training program is to:~~

~~(a) provide innovative and progressive inmate reformation and rehabilitation possibilities by exposing inmates to worthwhile training;~~

~~(b) prepare inmates for release by providing industries at the prison that utilize their skills, thus providing experience beyond mere training, inculcating inmates with good production and work habits, and providing them with a means to earn money that will be available to them upon release.~~ *There is a Montana correctional enterprises program within the department of corrections to operate a prison industries training program. The Montana correctional enterprises program shall:*

(a) prepare inmates for release by providing vocational education training and work programs at facilities owned, operated, and contracted with by the department; and

(b) provide inmates the opportunity to earn money to pay restitution, fines, and fees, to pay for hygiene and commissary items, and to save for their eventual release from incarceration.

~~(3) The prison industries training program consists of vocational training, on-the-job training, and production experience. The department may contract with public and private vocational education entities to provide this training.~~

(2) The prison industries training program consists of vocational education, on-the-job training, and production experience. The Montana correctional enterprises program may contract with public and private educational entities to provide this training.

~~(4)~~*(3)* The *Montana correctional enterprises* program may*:*

(a) provide training and experience ~~involving~~ *within the prison system in:*

(i) cultivation, production, *processing, manufacture,* repair, construction, refurbishment, service, and related processes involving personal property, including but not limited to such items as crops, *milk and milk products, wood products,* livestock, furniture, *and* office and electrical equipment~~, and motor vehicles~~*;*

(ii) animal training and boarding;

(iii) vehicle and equipment maintenance and repair;

(iv) wildland fire suppression; and

(v) approved community work programs for governmental entities and not-for-profit organizations;~~. The products and services, with the exception of livestock and agricultural products produced from the Montana state prison ranch and products or services of a federally certified prison industries program, may be provided only to state agencies, local government units, school districts, authorities, and other governmental entities.~~

(b) provide for the repair and maintenance of property and equipment of institutions or facilities by inmates;

(c) provide for construction projects, up to the aggregate sum of $200,000 for each project, performed by inmates. The department of administration may:

(i) exempt projects authorized by this subsection (3)(c) from the provisions of Title 18, chapter 2, relating to construction, public bidding, bonding, or contracts; and

(ii) exempt inmates who provide labor for those projects from the labor and wage requirements of Title 18, chapter 2, part 4.

(d) provide for the manufacture by prison industries of highway, road, and general information signs for the use of the state or any of its political subdivisions, except when the manufacture of the signs is in violation of a collective bargaining contract; and

(e) provide for the manufacture of motor vehicle license plates and other related articles.

(4) The Montana correctional enterprises program may provide its products and services to government agencies, school districts, and nonprofit and for-profit organizations through contracts and dealer networks. Furniture, print, and sign shop products may be sold to the general public only through dealer networks.

(5) Except as provided in subsection (6), furniture made in the prison may be purchased by state agencies in accordance with the procurement provisions under Title 18, chapter 4.

(6) Any state institution, facility, or program operated by the department of corrections may purchase prison-made furniture without complying with the procurement provisions under Title 18, chapter 4.

~~(5)~~*(7)* The ~~department~~ *Montana correctional enterprises program* may donate surplus food grown or produced at the prison to local food banks, nonprofit organizations, and low-income persons.

(8) The Montana correctional enterprises program is authorized to sell livestock on the open market."

Section 4. Section 53-30-132, MCA, is amended to read:

"53-30-132. Inmate participation and status in prison work programs — *Montana correctional enterprises* prison industries ~~and vocational~~ training program — wages and benefits. (1) ~~The department of corrections may:~~

~~(a) establish prison industries that will result in the production or manufacture of products and the rendering of services that may be needed by any department or agency of the state or any political subdivision of the state, by any agency of the federal government, by any other states or their political subdivisions, or by nonprofit organizations and that will assist in the rehabilitation of inmates in institutions;~~ *Able-bodied persons committed to a state prison as adult offenders may be required to perform work as provided for by the department of corrections, including work in the Montana correctional enterprises prison industries training program involving the manufacture of products or the rendering of services. In order to ensure the public safety, the department may secure inmates performing work.*

~~(b)~~*(2) The Montana correctional enterprises prison industries training program may:*

(a) obtain federal certification*, as required by federal law,* of specific prison industries programs in order to gain access to interstate markets for prison industries products;

~~(c) contract with private industry for the sale of goods or components manufactured or produced in shops under its jurisdiction and for the employment of inmates in federally certified prison industries programs;~~

~~(d)~~*(b)* print catalogs describing goods manufactured or produced by prison industries and distribute the catalogs;

~~(e)~~*(c)* fix the sale price for goods produced or manufactured by prison industries. ~~Prices may not exceed prices existing in the open market for goods of comparable quality.~~ *Prices may be set according to market standards and prices for goods or services of comparable quality. The price of products must include the cost of all raw materials and labor used to manufacture or produce the product.*

~~(f)~~*(d)* require a correctional facility to purchase needed goods *and services* from ~~other correctional facilities~~; *the Montana correctional enterprises program.*

~~(g) provide for the repair and maintenance of property and equipment of institutions by inmates;~~

~~(h) provide for the removal of graffiti from property and equipment of institutions and the removal of litter from the property of institutions, public roads, and public parks by inmates;~~

~~(i) provide for construction projects, up to the aggregate sum of $200,000 for each project, performed by inmates. The department of administration may:~~

~~(i) exempt projects authorized by this subsection from the provisions of Title 18, chapter 2, relating to construction, public bidding, bonding, or contracts; and~~

~~(ii) exempt inmates who provide labor for those projects from the labor and wage requirements of Title 18, chapter 2, part 4. Inmates providing labor for projects under this subsection must be paid a rate of pay as provided in subsection (5).~~

~~(j) provide for the repair and maintenance by prison industries of furniture and equipment of any state agency;~~

~~(k) provide for the manufacture by prison industries of motor vehicle license plates and other related articles;~~

~~(l) sell manufactured or agricultural products and livestock on the open market;~~

~~(m) provide for the manufacture by prison industries of highway, road, and street marking signs for the use of the state or any of its political subdivisions, except when the manufacture of the signs is in violation of a collective bargaining contract;~~

~~(n)~~*(3) The Montana correctional enterprises program may:*

(a) pay an inmate from receipts from the sale of products produced or manufactured or services rendered in a program in which the inmate is working;

~~(o)~~*(b)* collect 15% of the gross wages paid to an inmate employed in a federally certified prison industries program~~,~~ to ~~be deposited in a department restitution fund and used to~~ satisfy any unpaid *court-ordered obligations, including* restitution ~~obligation of the inmate or, if the obligation has~~ *on previously discharged sentences for which restitution remains owing. If the inmate's court-ordered obligations have* been fully paid or no restitution was ordered, *the Montana correctional enterprises program shall collect 15% of the gross wages paid to an inmate* for transfer quarterly to the crime victims

compensation and assistance program in the department of justice for deposit in the state general fund as provided in Title 53, chapter 9, part 1~~; and~~.

~~(p)~~*(c)* collect *charges for room and board* from an inmate employed in a federally certified prison industries program ~~charges for room and board consistent with charges established by the director for inmates assigned to prerelease centers~~. *The Montana correctional enterprises program shall deposit inmates' room and board charges into its enterprise fund to help defray the cost of prison industries training programs.*

~~(2) Except as provided in subsection (3), furniture made in the prison may be purchased by state agencies in accordance with the procurement provisions under Title 18, chapter 4. All other prison-made furniture may be sold only through licensed wholesale or retail furniture outlets or through export firms for sale to international markets.~~

~~(3) Any state institution, facility, or program operated by the department of corrections may purchase prison-made furniture without complying with the procurement provisions under Title 18, chapter 4.~~

(4) While engaged in on-the-job training and production, inmates not employed in a federally certified prison industries program may be paid a wage in accordance with subsection (5). Inmates employed in a federally certified prison industries program must be paid as provided in subsection (5)*(b)*.

(5) (a) Except as provided ~~for~~ in subsection (5)(b), *the maximum rate of pay must be determined by the appropriation established for the program, and* payment for the performance of work may be based on the following criteria:

(i) knowledge and skill;

(ii) attitude toward authority;

(iii) physical effort;

(iv) responsibility for equipment and materials; and

(v) regard for safety of others.

(b) ~~The maximum rate of pay must be determined by the appropriation established for the program, except that an inmate~~ *Inmates* employed in a federally certified prison industries program must be paid *the federal minimum wage or be paid* at a rate not less than the rate paid for similar work in the locality where the inmate performs the work *as determined by the federal bureau of justice*.

(6) Premiums for workers' compensation and occupational disease coverage for federally certified prison industries programs must be paid by the *Montana correctional enterprises* prison industries *training* program or by the department of corrections. If the department of corrections pays the premium, reimbursement for premium payments for workers' compensation and occupational disease coverage must be made to the department of corrections by the private company contracting with the federally certified prison industries program for services and products.

(7) Inmates not working in a federally certified prison industries ~~training~~ program are not employees, either public or private, and employment rights accorded other classes of workers do not apply to the inmates. Inmates working in a federally certified prison ~~industry~~ *industries* program are entitled to coverage and benefits as provided in 39-71-744.

~~(8) Able-bodied persons committed to a state prison as adult offenders must be required to perform work as provided for by the department of corrections,~~

~~including the manufacture of products or the rendering of services. In order to ensure the public safety, the department may secure inmates performing work.~~"

Section 5. Section 53-30-133, MCA, is amended to read:

"53-30-133. Administration of ~~prison industries training~~ *Montana correctional enterprises* program. (1) (a) The ~~prison industries training~~ *Montana correctional enterprises* program need not be a self-supporting program. ~~The department of corrections may enter into contracts and establish prices for products or services produced by this program. Within budgetary restrictions, the department shall establish prices that tend to maximize the amount of work available for inmates.~~ All revenue raised through the program may be used only for the program, ~~and~~ *including the* payment of inmate wages.

(b) State agencies, local governments, school districts, authorities, and other local government entities are encouraged to ~~explore the possibilities of using~~ *use* the ~~prison industries training program~~ *Montana correctional enterprises program's products and services*. State agencies shall cooperate with the department of corrections in notifying governmental entities within the state of the program and of the services and products that are available.

(2) (a) ~~The department of corrections shall adopt rules implementing this program.~~ Any price lists established by the department are exempt from the provisions of Title 2, chapter 4, but the department may, if it considers it an effective method of dissemination, publish the price lists ~~in the Montana Administrative Register or the Administrative Rules of Montana, or both~~.

(b) The ~~department of corrections~~ *Montana correctional enterprises program* is subject to program audits ~~of the prison industries training program~~ by the legislative auditor."

Section 6. Section 61-3-478, MCA, is amended to read:

"61-3-478. Generic specialty license plate sponsor fee — exception. (1) Except as provided in subsection (2), upon approval of an organization's application to sponsor a generic specialty license plate and before a sponsor's generic specialty license plates may be manufactured, the department shall assess and the sponsor shall pay a $4,000 fee to ~~reimburse~~ the department of corrections ~~for the~~ *Montana correctional enterprises* prison industries training program *enterprise fund* for the initial costs incurred in producing the generic specialty license plates for the sponsor.

(2) In lieu of the fee required in subsection (1), a minimum of 400 applications for a sponsor's generic specialty license plates must be filed and prepaid with the department before the generic specialty license plates may be manufactured and issued."

Section 7. Repealer. Sections 53-1-301, 53-1-302, 53-1-303, and 53-1-304, MCA, are repealed.

Section 8. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to any money that Montana correctional enterprises collected from inmates for room and board reimbursement before October 1, 2009.

Approved April 19, 2009

CHAPTER NO. 313

[SB 127]

AN ACT REVISING LAWS RELATING TO INSURANCE PRODUCERS; REVISING INSURANCE PRODUCER LICENSING; PROVIDING DEFINITIONS; AMENDING SECTIONS 33-2-301, 33-2-305, 33-2-306, 33-17-102, 33-17-212, 33-17-214, 33-17-1001, AND 33-17-1203, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-2-301, MCA, is amended to read:

"33-2-301. Short title — purpose — definitions. (1) This part constitutes and may be referred to as "The Surplus Lines Insurance Law".

(2) ~~This~~ *The purpose of this* part ~~must be applied~~ *is* to:

(a) protect persons seeking insurance in this state;

(b) permit surplus lines insurance to be placed with reputable and financially sound unauthorized insurers and to be exported from this state pursuant to this part;

(c) establish a system of regulation that will permit orderly access to surplus lines insurance in this state and encourage authorized insurers to provide new and innovative types of insurance to consumers in this state; and

(d) protect revenues of this state.

(3) As used in this part, the following definitions apply:

(a) "Authorized insurer" means an insurer authorized pursuant to 33-2-101 to transact insurance in this state.

(b) (i) "Business entity" means a corporation, a limited liability company, an association, a partnership, a limited liability partnership, or other legal entity.

(ii) The term does not include an individual.

~~(b)~~*(c)* "Eligible surplus lines insurer" means an unauthorized insurer with which a surplus lines insurance producer may place surplus lines insurance under 33-2-307.

~~(c)~~*(d)* "Export" means to place surplus lines insurance with an unauthorized insurer.

~~(d)~~*(e)* "Producing insurance producer" means the individual insurance producer dealing directly with the person seeking insurance.

~~(e)~~*(f) (i)* "Surplus lines insurance" means any insurance on risks resident, located, or to be performed in this state permitted to be placed through a surplus lines insurance producer with an unauthorized insurer eligible to accept the insurance.

(ii) The term does not include the kinds of insurance exempted under 33-2-317.

~~(f)~~*(g)* "Surplus lines insurance producer" means an individual~~, partnership, or corporation~~ *or business entity* licensed under 33-2-305 to place surplus lines insurance on risks resident, located, or to be performed in this state with unauthorized insurers eligible to accept the insurance.

~~(g)~~*(h)* "Unauthorized insurer" means an insurer not authorized pursuant to 33-2-101 to transact insurance in this state. The term includes insurance exchanges authorized under the laws of other states."

Section 2. Section 33-2-305, MCA, is amended to read:

"33-2-305. Licensing of surplus lines insurance producer — fee. (1) ~~A~~ *If a* person ~~may not place~~ *places* a contract of surplus lines insurance with an unauthorized insurer, ~~unless the person is~~ *the person placing the contract must be* licensed as a property and casualty insurance producer and ~~possesses~~ *possess* a current surplus lines insurance producer's license issued by the commissioner.

(2) The commissioner shall issue a surplus lines insurance producer's license to any qualified holder of a current property and casualty insurance producer license only if the insurance producer has:

(a) remitted to the commissioner the fee prescribed by 33-2-708; *and*

(b) submitted to the commissioner a completed license application in a form approved by the commissioner~~; and~~

~~(c) been licensed as a property and casualty insurance producer continuously for 5 years or more~~.

(3) The licensee shall renew the license on a form prescribed by the commissioner. The commissioner may establish rules for biennial renewal of the license. A license lapses if not renewed.

(4) A ~~corporation~~ *business entity* is eligible to be licensed as a surplus lines insurance producer if:

(a) the ~~corporate~~ *business entity* license lists the individuals within the ~~corporation~~ *business entity* who have satisfied the requirements of this part to become surplus lines insurance producers; and

(b) only those individuals listed on the ~~corporate~~ *business entity* license transact surplus lines insurance.

(5) This section may not be construed to require agents, producers, or brokers acting as intermediaries between a surplus lines insurance producer and an unauthorized insurer under this part to hold a valid Montana surplus lines insurance producer's license."

Section 3. Section 33-2-306, MCA, is amended to read:

"33-2-306. Surplus lines insurance producer's authority under license — acceptance of business from other insurance producers. (1) Under a surplus lines insurance producer's license the licensee may place surplus lines insurance, in compliance with The Surplus Lines Insurance Law, with a foreign or alien insurer not authorized to transact insurance in this state and may act as a surplus lines insurance producer in this state for the insurer.

(2) The surplus lines insurance producer may accept surplus lines insurance from a licensed insurance producer of an authorized insurer or, if the commissioner agrees in advance, through an individual~~, partnership,~~ or ~~corporation~~ *business entity* that has not been appointed as an insurance producer in this state and may ~~compensate him therefor~~ *provide compensation for the service, notwithstanding 33-17-1103*.

(3) A surplus lines insurance producer who places or renews surplus lines insurance in accordance with subsection (1) may collect an inspection fee for the actual costs of inspecting the risk to be covered."

Section 4. Section 33-17-102, MCA, is amended to read:

"33-17-102. Definitions. As used in this title, the following definitions apply:

(1) (a) "Adjuster" means a person who, on behalf of the insurer, for compensation as an independent contractor or as the employee of an independent contractor or for a fee or commission investigates and negotiates the settlement of claims arising under insurance contracts or otherwise acts on behalf of the insurer.

(b) The term does not include a:

(i) licensed attorney who is qualified to practice law in this state;

(ii) salaried employee of an insurer or of a managing general agent;

(iii) licensed insurance producer who adjusts or assists in adjustment of losses arising under policies issued by the insurer;

(iv) licensed third-party administrator who adjusts or assists in adjustment of losses arising under policies issued by the insurer; or

(v) claims examiner as defined in 39-71-116.

(2) "Adjuster license" means a document issued by the commissioner that authorizes a person to act as an adjuster.

(3) (a) "Administrator" means a person who collects charges or premiums from residents of this state in connection with life, disability, property, or casualty insurance or annuities or who adjusts or settles claims on these coverages.

(b) The term does not include:

(i) an employer on behalf of its employees or on behalf of the employees of one or more subsidiaries of affiliated corporations of the employer;

(ii) a union on behalf of its members;

(iii) (A) an insurer that is either authorized in this state or acting as an insurer with respect to a policy lawfully issued and delivered by the insurer in and pursuant to the laws of a state in which the insurer is authorized to transact insurance; or

(B) a health service corporation as defined in 33-30-101;

(iv) a life, disability, property, or casualty insurance producer who is licensed in this state and whose activities are limited exclusively to the sale of insurance;

(v) a creditor on behalf of its debtors with respect to insurance covering a debt between the creditor and its debtors;

(vi) a trust established in conformity with 29 U.S.C. 186 or the trustees, agents, and employees of the trust;

(vii) a trust exempt from taxation under section 501(a) of the Internal Revenue Code or the trustees and employees of the trust;

(viii) a custodian acting pursuant to a custodian account that meets the requirements of section 401(f) of the Internal Revenue Code or the agents and employees of the custodian;

(ix) a bank, credit union, or other financial institution that is subject to supervision or examination by federal or state banking authorities;

(x) a company that issues credit cards and that advances for and collects premiums or charges from the company's credit card holders who have authorized the company to do so, if the company does not adjust or settle claims;

(xi) a person who adjusts or settles claims in the normal course of the person's practice or employment as an attorney and who does not collect charges or premiums in connection with life or disability insurance or annuities; or

(xii) a person appointed as a managing general agent in this state whose activities are limited exclusively to those described in 33-2-1501(10) and Title 33, chapter 2, part 16.

(4) "Administrator license" means a document issued by the commissioner that authorizes a person to act as an administrator.

(5) (a) "Business entity" means a corporation, association, partnership, limited liability company, limited liability partnership, or other legal entity.

(b) The term does not include an individual.

(6) "Consultant" means an individual who for a fee examines, appraises, reviews, evaluates, makes recommendations, or gives advice regarding an insurance policy, annuity, or pension contract, plan, or program.

(7) "Consultant license" means a document issued by the commissioner that authorizes an individual to act as an insurance consultant.

(8) "Home state" means the District of Columbia or any state or territory of the United States in which the insurance producer:

(a) maintains a principal place of residence or a principal place of business; and

(b) is licensed as an insurance producer.

~~(8)~~*(9)* "Individual" means a natural person.

~~(9)~~*(10)* "Insurance producer", except as provided in 33-17-103, means a person required to be licensed under the laws of this state to sell, solicit, or negotiate insurance.

~~(10)~~*(11)* "Lapse" means the expiration of the license for failure to renew by the biennial renewal date.

~~(11)~~*(12)* "License" means a document issued by the commissioner that authorizes a person to act as an insurance producer for the lines of authority specified in the document. The license itself does not create actual, apparent, or inherent authority in the holder to represent or commit an insurer to a binding agreement.

~~(12)~~*(13)* "Limited line credit insurance" includes credit life insurance, credit disability insurance, credit property insurance, credit unemployment insurance, involuntary unemployment insurance, mortgage life insurance, mortgage guaranty insurance, mortgage disability insurance, gap insurance, and any other form of insurance offered in connection with an extension of credit that is limited to partially or wholly extinguishing the credit obligation and that the commissioner determines should be designated as a form of limited line credit insurance.

~~(13)~~*(14)* "Limited line credit insurance producer" means a person who sells, solicits, or negotiates one or more forms of limited line credit insurance coverage to individuals through a master, corporate, group, or individual policy.

~~(14)~~*(15)* "Limited lines insurance" means those lines of insurance that the commissioner finds necessary to recognize for the purposes of complying with 33-17-401(3).

~~(15)~~*(16)* "Limited lines producer" means a person authorized by the commissioner to sell, solicit, or negotiate limited lines insurance.

~~(16)~~*(17)* "Lines of authority" means any kind of insurance as defined in Title 33.

~~(17)~~*(18)* "Negotiate" means the act of conferring directly with or offering advice directly to a purchaser or prospective purchaser of a particular contract of insurance concerning any of the substantive benefits, terms, or conditions of the contract if the person engaged in negotiation either sells insurance or obtains insurance from insurers for purchasers.

~~(18)~~*(19)* "Person" means an individual or a business entity.

~~(19)~~*(20)* "Public adjuster" means an adjuster employed by and representing the interests of the insured.

~~(20)~~*(21)* "Sell" means to exchange a contract of insurance by any means, for money or the equivalent, on behalf of an insurance company.

~~(21)~~*(22)* "Solicit" means attempting to sell insurance or asking or urging a person to apply for a particular kind of insurance.

~~(22)~~*(23)* "Suspend" means to bar the use of a person's license for a period of time.

~~(23)~~*(24)* "Uniform application" means the national association of insurance commissioners' uniform application for resident and nonresident insurance producer licensing.

~~(24)~~*(25)* "Uniform business entity application" means the national association of insurance commissioners uniform business entity application for resident and nonresident business entities."

Section 5. Section 33-17-212, MCA, is amended to read:

"33-17-212. Examination required — exceptions — fees. (1) Except as provided in subsection (6), an individual applying for a license is required to pass a written examination. The examination must test the knowledge of the individual concerning each kind of insurance listed in subsection (5) for which application is made, the duties and responsibilities of an insurance producer, and the insurance laws and rules of this state. The examination must be developed and conducted under rules adopted by the commissioner.

(2) The commissioner may conduct the examination or make arrangements, including contracting with an outside testing service, for administering the examination. The commissioner may arrange for the testing service to recover the cost of the examination from the applicant.

(3) An individual who fails to appear for the examination as scheduled or fails to pass the examination may reapply for an examination and shall remit all forms before being rescheduled for another examination.

(4) ~~If~~ *Except as provided in subsection (6), if* the applicant is a ~~partnership or corporation~~ *business entity*, each individual who is to be named in the license as having authority to act for the applicant in its insurance transactions under the license ~~shall~~ *must* meet the qualifications as provided in this section.

(5) Examination of an applicant for a license must cover all of the kinds of insurance for which the applicant has applied to be licensed, as constituted by any one or more of the following classifications:

(a) life insurance;

(b) disability insurance;

(c) property insurance~~. For~~, *which, for* the purposes of this provision, ~~property insurance~~ includes marine insurance~~.~~*;*

(d) casualty insurance;

(e) surety insurance;

(f) limited lines credit insurance;

(g) title insurance.

(6) This section does not apply to and an examination is not required of:

(a) an individual lawfully licensed as an insurance producer as to the kind or kinds of insurance to be transacted as of or immediately prior to January 1, 1961, and who continues to be licensed;

(b) an applicant for a license covering the same kind or kinds of insurance as to which the applicant was licensed in this state, other than under a temporary license, within the 12 months immediately preceding the date of application unless the commissioner has suspended, revoked, or terminated the previous license;

(c) an applicant for a license as a nonresident insurance producer;

(d) transportation ticket agents of common carriers applying for a license to solicit and sell only:

(i) accident insurance ticket policies; or

(ii) insurance of personal effects while being carried as baggage on a common carrier, as incidental to their duties as transportation ticket agents; *or*

(e) an association applying for a license under 33-17-211~~; or~~

~~(f) an individual who, within 90 days of cancellation of a license issued by the state of the individual's residence, files with the commissioner a current letter of clearance certifying that the individual has passed an examination and held an insurance license in good standing in the individual's state of licensure, except that the individual shall take an examination pertaining to this state's law and each kind of insurance for which the individual has applied for a license and that is not covered under the license held in the other state~~.

(7) (a) Subject to the provisions of subsection (7)(b), an individual who applies for a nonresident insurance producer license in this state and who was previously licensed for the same lines of authority in another state may not be required to complete any prelicensing education or examination.

(b) The exemption in subsection (7)(a) is available only if the individual is currently licensed in the other state or the individual's application is received within 90 days of the cancellation of the individual's previous license and if the other state issues a certification that, at the time of the cancellation, the individual was in good standing in that state or the state's database records, maintained by the national association of insurance commissioners or any of the association's affiliates or subsidiaries that the association oversees, indicate that the insurance producer is or was licensed in good standing for the lines of authority requested."

Section 6. Section 33-17-214, MCA, is amended to read:

"33-17-214. Issuance of license — insurance producer lines of authority — license data — lapse of license — change of address. (1) A person who has met the requirements of 33-17-211 and 33-17-212 must be issued a license unless that person has been denied a license pursuant to 33-17-1001.

(2) An insurance producer may receive a license qualifying the insurance producer in one or more of the following lines of authority:

(a) life insurance coverage on human lives, including benefits of endowment and annuities, and the coverage may include:

(i) funeral insurance as defined in 33-20-1501;

(ii) benefits in the event of death or dismemberment by accident; and

(iii) benefits for disability income;

(b) accident and health or sickness insurance coverage providing for sickness, bodily injury, or accidental death, and the coverage may provide benefits for disability income;

(c) property insurance coverage for the direct or consequential loss or damage to property of every kind;

(d) casualty insurance coverage against legal liability, including liability for death, injury, or disability or damage to real or personal property;

(e) variable life and variable annuity products insurance coverage provided under variable life insurance contracts and variable annuities;

(f) personal lines of property and casualty insurance coverage sold to individuals and families for primarily noncommercial purposes;

(g) limited line credit insurance; or

(h) any other line of insurance permitted under Title 33.

(3) The license must state the name and address of the licensee, personal identification number, date of issuance, general conditions relative to expiration or termination, kind of insurance covered, and other information that the commissioner considers necessary.

(4) The license of a ~~partnership, corporation, or association~~ *business entity* must also state the name of each individual authorized to exercise the license powers.

(5) Each license remains in effect, unless it is suspended, revoked, or terminated or the license lapses.

(6) (a) A person shall inform the commissioner in writing within 30 days of:

(i) a change of address;

(ii) the final disposition resulting in disciplinary action taken against or a conviction of the insurance producer in any state or federal jurisdiction or by another governmental agency in this state of:

(A) any administrative action related to transacting insurance;

(B) any action taken against any type of securities license; and

(C) any criminal action, excluding traffic violations.

(b) (i) As used in this subsection (6), "final disposition" includes but is not limited to a settlement agreement, consent order, plea agreement, sentence and judgment, or order.

(ii) The term does not include an action that is dismissed or that results in an acquittal, for which no report is necessary."

Section 7. Section 33-17-1001, MCA, is amended to read:

"33-17-1001. Suspension, revocation, or refusal of license. (1) The commissioner may suspend, revoke, refuse to renew, or refuse to issue an insurance producer's license, adjuster license, or consultant license, may levy a civil penalty in accordance with 33-1-317, or may choose any combination of actions when an insurance producer, adjuster, consultant, or applicant for those licenses has:

(a) engaged or is about to engage in an act or practice for which issuance of the license could have been refused;

(b) obtained or attempted to obtain a license through misrepresentation or fraud, including but not limited to providing incorrect, misleading, incomplete, or materially untrue information in the license application or in the continuing education affidavit;

(c) violated or failed to comply with a provision of this code or has violated a rule, subpoena, or order of the commissioner or of the commissioner of any other state;

(d) improperly withheld, misappropriated, or converted to the licensee's or applicant's own use money or property belonging to policyholders, insurers, beneficiaries, or others and received in conduct of business under the license;

(e) been convicted of a felony;

(f) in the conduct of the affairs under the license, used fraudulent, coercive, or dishonest practices or the licensee or applicant is incompetent, untrustworthy, financially irresponsible, or a source of injury and loss to the public;

(g) misrepresented the terms of an actual or proposed insurance contract or application for insurance;

(h) been found guilty of an unfair trade practice or fraud prohibited by Title 33, chapter 18;

(i) had a similar license *denied,* suspended*,* or revoked in any other state;

(j) forged another's name to an application for insurance or to any document related to an insurance transaction;

(k) cheated on an examination for a license; ~~or~~

(l) knowingly accepted insurance business from a person who is not licensed*;*

(m) failed to comply with a final administrative or court order imposing a child support obligation; or

(n) failed to pay state income tax determined to be delinquent or to comply with any final administrative or court order directing payment of state income tax.

(2) The license of a ~~partnership or corporation~~ *business entity* may be suspended, revoked, refused, or denied if a reason listed in subsection (1) applies to an individual designated in the license to exercise its powers.

(3) The commissioner retains the authority to enforce the provisions of and impose any penalty or remedy authorized by the insurance code against any person who is under investigation for or charged with a violation of the insurance code even if the person's license or registration has been surrendered or has lapsed."

Section 8. Section 33-17-1203, MCA, is amended to read:

"33-17-1203. Continuing education — basic requirements — exceptions. (1) Unless exempt under subsection (3):

(a) an individual licensed to act as an insurance producer, adjuster, or consultant other than an individual licensed for limited lines credit insurance shall, during each 24-month period, complete at least 24 credit hours of approved continuing education*, including at least 3 hours of ethics credits and at least 1 credit hour on changes in Montana insurance statutes and administrative rules*;

(b) an individual licensed to act as an insurance producer only for limited lines credit insurance shall, during each biennium, complete 5 credit hours of

approved continuing education*, including at least 1 credit hour on changes in Montana insurance statutes and administrative rules and the remaining credit hours* in the areas of insurance law, ethics, or limited lines credit insurance~~;~~

~~(c) an individual licensed as an insurance producer, adjuster, or consultant shall, during each biennium, complete at least 1 credit hour of approved continuing education on changes in Montana insurance statutes and administrative rules~~.

(2) The commissioner may, for good cause, grant an extension of time, not to exceed 1 year, during which the requirements imposed by subsection (1) may be completed.

(3) The minimum continuing education requirements do not apply to:

(a) an individual holding a temporary license issued under 33-17-216; or

(b) an insurance producer, adjuster, or consultant otherwise exempted by the commissioner."

Section 9. Effective date. [This act] is effective July 1, 2009.

Section 10. Applicability. [Section 8] applies to 24-month periods for obtaining continuing education beginning on or after January 1, 2010.

Approved April 18, 2009

CHAPTER NO. 314

[SB 193]

AN ACT REQUIRING THE PRESERVATION OF MONUMENTS FOR THE PURPOSES OF LAND SURVEYS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Monument preservation. (1) A public or private entity or person shall, before engaging in activity that will or is likely to disturb or destroy a monument or the accessories to a monument, require the following activities to be performed by a professional land surveyor, as defined in 37-67-101, or a qualified person under the direct supervision of a professional land surveyor:

(a) locate and reference the monument or the accessories to the monument; and

(b) file a corner record showing the location of the references to the monument or to the accessories to the monument as required in 70-22-104 and 70-22-105.

(2) A public or private entity or person shall, within 30 days of completing activity that has disturbed or destroyed a monument or the accessories to a monument, require the following activities to be performed by a professional land surveyor, as defined in 37-67-101, or a qualified person under the direct supervision of a professional land surveyor:

(a) restore or replace the monument or the accessories to the monument, using the references established in subsection (1)(b); and

(b) file a new corner record as required in 70-22-104 and 70-22-105.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 70, chapter 22, part 1, and the provisions of Title 70, chapter 22, apply to [section 1].

Approved April 19, 2009

CHAPTER NO. 315

[SB 226]

AN ACT AUTHORIZING THE TEMPORARY LICENSURE OF NONRESIDENT DENTISTS AND DENTAL HYGIENISTS TO PROVIDE VOLUNTARY SERVICES TO PERSONS SERVED BY UNIVERSITY CLINICS, CORRECTIONAL FACILITY CLINICS, AND CERTAIN FEDERALLY FUNDED CLINICS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Licensure of out-of-state volunteer dentists and dental hygienists without examination. (1) The board may issue a restricted temporary license to a nonresident dentist or dental hygienist, without examination, to practice in a clinic listed in 37-4-103(6) if the applicant:

(a) has graduated from a dental or dental hygiene program or school accredited by the commission on dental accreditation;

(b) is currently licensed in another state as an actively practicing dentist or dental hygienist; and

(c) is in good standing and does not have a disciplinary action pending in the other state.

(2) A dentist or dental hygienist holding a restricted temporary license under this section:

(a) may not receive monetary or other compensation for providing services; and

(b) may serve only those persons served by the clinics listed in 37-4-103(6).

(3) An application for a restricted temporary license must be submitted on a form approved by the board.

(4) The board shall issue a restricted temporary license within 60 days of receipt of a completed application that demonstrates the applicant meets the requirements of this section. A temporary restricted license may be renewed annually.

(5) A restricted temporary license is not intended as a means to allow an applicant to practice in this state before a permanent license is granted or as a means to obtain a permanent license when the applicant does not otherwise meet the requirements for permanent licensure.

(6) The board may adopt rules to implement this section, including but not limited to rules to:

(a) establish the scope of practice for a dentist or dental hygienist practicing with a temporary license;

(b) establish a limitation on the number of days a dentist or dental hygienist may practice with a temporary license during any 12-month period; and

(c) set fees for issuance of the license that must be commensurate with costs.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 37, chapter 4, and the provisions of Title 37, chapter 4, apply to [section 1].

Approved April 18, 2009

CHAPTER NO. 316

[SB 247]

AN ACT REVISING LAWS RELATED TO NONFERROUS METAL TRANSACTIONS; REQUIRING SALVAGE METAL DEALERS TO MAINTAIN AND RETAIN NONFERROUS METAL ACQUISITION RECORDS; AUTHORIZING INSPECTION OF THOSE RECORDS; AND PROVIDING THAT A VIOLATION CONSTITUTES A MISDEMEANOR.

Be it enacted by the Legislature of the State of Montana:

Section 1. Definitions. As used in [sections 1 through 3], unless the context requires otherwise, the following definitions apply:

(1) "Nonferrous metal" means metal and metal alloys not containing significant quantities of iron or steel, including but not limited to:

(a) copper;

(b) brass;

(c) aluminum, other than aluminum cans;

(d) bronze;

(e) lead;

(f) zinc;

(g) nickel;

(h) stainless steel, including stainless steel beer kegs; and

(i) precious metals, including catalytic converters.

(2) "Person" means an individual, partnership, corporation, joint venture, trust, association, or any other legal entity.

(3) "Salvage metal dealer" means a person who is engaged in the business of paying, trading, or bartering for or collecting nonferrous metals that have served their original economic purpose, whether or not the person is engaged in the business of performing the manufacturing process by which ferrous metals or nonferrous metals are converted into raw material products consisting of prepared grades and having an existing or potential economic value.

(4) "Seller" means a person who sells or delivers nonferrous metal or otherwise makes nonferrous metal available to a salvage metal dealer.

Section 2. Recordkeeping. (1) A salvage metal dealer shall:

(a) maintain a nonferrous metal acquisition record for nonferrous metal transactions that exceed $50;

(b) retain a nonferrous metal acquisition record for a period of not less than 2 years from the date of the transaction; and

(c) make nonferrous metal acquisition records available to any peace officer on demand.

(2) The nonferrous metal acquisition record required under subsection (1) must contain:

(a) the time and date of the transaction and the name of the person conducting the transaction on behalf of the salvage metal dealer;

(b) a general description, using scrap specifications recognized by the institute of scrap recycling industries, inc., of the property acquired, including the type and amount and, if readily discernible, any identifiable marks on the property;

(c) the amount of consideration given for the nonferrous metal;

(d) a photocopy or scanned copy of a current, valid driver's license, passport, or state identification card of the seller, except that the identification copies required under this subsection (2)(d) do not apply if a check for payment is provided to a seller or transferor;

(e) a signature of the seller or transferor; and

(f) a description of any motor vehicle and its license number used in the delivery of the nonferrous metal.

Section 3. Penalty. A salvage metal dealer who violates the provisions of [section 2] is guilty of a misdemeanor. Absolute liability, as provided for in 45-2-104, is imposed for a violation of [section 2].

Section 4. Codification instruction. [Sections 1 through 3] are intended to be codified as an integral part of Title 30, and the provisions of Title 30 apply to [sections 1 through 3].

Approved April 18, 2009

CHAPTER NO. 317

[SB 269]

AN ACT GENERALLY REVISING LAWS REGULATING THE SALE OF TIMESHARES; REVISING DEFINITIONS; REVISING THE BOARD OF REALTY REGULATION'S RULEMAKING AUTHORITY; REVISING REGISTRATION APPLICATION PROCEDURES; SUBSTITUTING "PUBLIC OFFERING STATEMENT" FOR "DISCLOSURE DOCUMENT"; REQUIRING NOTICE TO THE BOARD OF ANY CHANGES IN A TIMESHARE OFFERING; EXPANDING THE EXEMPTIONS FROM REGISTRATION FOR TIMESHARE OFFERINGS; AMENDING SECTIONS 37-53-102, 37-53-104, 37-53-202, 37-53-203, 37-53-204, 37-53-205, 37-53-301, 37-53-302, 37-53-303, 37-53-304, 37-53-307, AND 37-53-308, MCA; REPEALING SECTIONS 37-53-211, 37-53-212, 37-53-214, 37-53-401, 37-53-402, 37-53-403, 37-53-504, AND 37-53-505, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-53-102, MCA, is amended to read:

"37-53-102. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

~~(1) "Advertisement" means a written, printed, audio, or visual communication that is published in whole or in part to sell, offer to sell, or solicit an offer for a timeshare.~~

~~(2)~~*(1)* "Affiliate" means a person who controls, is controlled by, or is under the control of a developer.

~~(3)~~*(2)* "Association" or "owners' association" means the association of owners created by the timeshare instruments for purposes of managing and maintaining the project for the benefit of all timeshare owners.

~~(4)~~*(3)* "Board" means the board of realty regulation provided for in 2-15-1757.

~~(5)~~*(4)* "Developer" means:

(a) a person creating timeshares or engaged in the business of selling his own timeshares;

(b) a person who controls, is controlled by, or is in common control with the person engaged in creating or selling timeshares; or

(c) any successor*, agent,* or assignee of a person referred to in subsection ~~(5)(a)~~ *(4)(a)* or ~~(5)(b)~~ *(4)(b)*.

(5) (a) "Expenses" means expenditures, fees, charges, or liabilities, including any allocations to reserves:

(i) incurred, with respect to timeshare intervals or units, by or on behalf of all timeshare owners in one timeshare property; and

(ii) imposed on the timeshare intervals or units by the entity governing the project of which the timeshare intervals or units are a part.

(b) The term does not include purchase money payable for timeshare intervals or units.

(6) "Managing entity" means a person hired by the timeshare association or developer to manage the timeshare plan or the timeshare property.

(7) "Offer" or "offering" means an inducement, solicitation, or attempt to encourage a person to acquire a timeshare *interest*. An offer is made in this state if the offer originates in this state*, is advertised in this state,* or if the principal timeshare property is located in this state.

(8) "Person" means a natural person, corporation, business trust, estate, trust, partnership, association, joint venture, or other legal or commercial entity.

~~(9) "Prize and gift promotional offer" means advertising material stating that a prospective purchaser may receive goods or services other than the timeshare plan itself, either free or at a discount, including but not limited to the use of a prize, gift, award, premium, or lodging or vacation certificate.~~

~~(10)~~*(9)* "Project" means the real property or real estate, ~~that~~ *which* must contain more than one unit, in which timeshares are created by a single instrument or set of instruments.

~~(11)~~*(10)* "Promoter" means any person who ~~initiates the inducement, solicitation, or encouragement of~~ *induces, solicits, or encourages* another person~~, by any means, of~~ *to* ~~the~~ review or ~~acquisition~~ *acquire* ~~of~~ a timeshare interval.

(11) "Public offering statement" means the written statement required by 37-53-303.

(12) "Purchaser" means a person, other than a developer, who by means of a voluntary transfer acquires a legal or equitable interest in a timeshare, other than as security for an obligation.

(13) "Real estate" means real estate as defined in 37-51-102.

(14) "Sale" or "sell" includes each contract of sale of, contract to sell, or disposition of a timeshare for value.

~~(15) "Timeshare broker" means a natural person who supervises a timeshare sales operation and one or more timeshare salespersons.~~

~~(16) "Timeshare expenses" means expenditures, fees, charges, or liabilities:~~

~~(a) incurred with respect to the timeshares by or on behalf of all timeshare owners in one timeshare property; and~~

~~(b) imposed on the timeshare by the entity governing a project of which the timeshare is a part, together with any allocations to reserve. The term does not include purchase money payable for timeshares.~~

~~(17)~~*(15)* "Timeshare instrument" means one or more documents, by whatever name denominated, creating or regulating timeshares.

~~(18)~~*(16)* "Timeshare interval" or "timeshare interest" means the right, however evidenced or documented, to use and occupy one or more timeshare units on a periodic basis according to an arrangement allocating such use and occupancy rights between similar users.

~~(19)~~*(17)* "Timeshare owner" means a person, other than a developer, who is an owner or co-owner of a timeshare. If title to a timeshare is held in trust, timeshare owner means the beneficiary of the trust.

~~(20) "Timeshare salesperson" means a person who for a salary, commission, or compensation of any kind is associated, either directly or indirectly, regularly or occasionally, with a timeshare broker to sell, purchase, or negotiate for sale, purchase, lease, or exchange of the timeshare interests in real estate and who, on behalf of a developer, sells or offers to sell a timeshare to a purchaser.~~

(18) "Timeshare salesperson" means a person who for a salary, commission, or compensation of any kind is associated with a timeshare development to sell, purchase, or negotiate for sale, purchase, lease, or exchange of the timeshare interests in real estate and who, on behalf of a developer, sells or offers to sell a timeshare to a purchaser.

~~(21)~~*(19)* "Timeshare unit" or "unit" means the real property or portion ~~thereof~~ *of the property* in which the timeshare *interval* exists *or will exist* ~~and that is designated for separate use~~, including campgrounds, campsites, and outdoor recreation sites with spaces designed or promoted for the purpose of locating a trailer, tent, tent trailer, camper, or similar device for land-based portable housing."

Section 2. Section 37-53-104, MCA, is amended to read:

"37-53-104. Rulemaking authority. The board shall adopt rules to carry out the provisions of this chapter. The rules may include but are not limited to:

(1) ~~qualifications for applicants and any additional applicant~~ *registration* information that must be supplied;

(2) documents acceptable in lieu of registration documents under 37-53-204;

~~(3) conditions that may be placed upon registration under 37-53-212;~~

~~(4) the subject matter of the examination or continuing education requirement for license as a timeshare salesperson or timeshare broker;~~

(3) qualifications for applicants as provided in 37-53-301;

(4) continuing education requirements for renewal of a timeshare salesperson's license;

~~(5)~~*(5)* additional information included in a ~~disclosure document~~ *public offering statement*; and

~~(6)~~*(6)* fees established pursuant to 37-1-134."

Section 3. Section 37-53-202, MCA, is amended to read:

"37-53-202. Application for registration. An application for registration of a timeshare offering must be ~~in a form developed by the board in conjunction with input from the timeshare industry. The application must be~~ signed by the ~~applicant~~ *developer* and accompanied by the registration fee. *A timeshare offering may not be registered unless the developer has filed a complete application as determined by the board or the board's designee.* Except as provided in 37-53-204, the application must contain:

(1) ~~audited financial statements showing the financial condition of the developer and any affiliate, including:~~

~~(a) a balance sheet dated within 4 months before the filing of the application for registration; and~~

~~(b) statements of income, shareholders' equity, and material changes in financial position as of the end of the prior fiscal year and for any period between the end of the prior fiscal year and the date of the last balance sheet;~~

~~(2) a projected budget for the timeshare project for 2 years after the offering being made, including but not limited to source of revenues and expenses of construction, development, management, maintenance, advertisement, operating reserves, interest, and any other necessary reserves;~~

~~(3) a description of the background of the developer for the previous 10 years, including information about the business experience of the developer and any relevant criminal convictions, civil lawsuits, or administrative actions related to any offering during that period~~ *financial statements prepared in accordance with generally accepted accounting principles that fully and fairly disclose the current financial condition of the developer*;

~~(4)~~*(2)* a statement disclosing any fees in excess of the stated price per unit to be charged to the purchasers, a description of their purpose, and the method of calculation;

~~(5) a statement disclosing when and where the developer or an affiliate has previously sold timeshares;~~

~~(6) a statement of any liens, defects, or encumbrances on or affecting the title to the timeshare units;~~

~~(7)~~*(3)* copies of all timeshare instruments;

~~(8)~~*(4)* a copy of the ~~disclosure document~~ *public offering statement* provided for in 37-53-303~~, signed by the applicant~~;

~~(9)~~*(5)* an irrevocable consent to service of process signed by the ~~applicant~~ *developer*; and

~~(10)~~*(6)* any other information that the board may *require* by rule ~~require in the protection of the public interest or necessary to describe the risks involved~~."

Section 4. Section 37-53-203, MCA, is amended to read:

"37-53-203. ~~Registration period — renewal~~ *Notice of changes in timeshare offering.* ~~(1) A timeshare offering registration is effective for 1 year from the date of approval of the registration application.~~

~~(2) Registration of a timeshare offering may be renewed for an additional 1-year period by filing a renewal application with the board no later than 30 days before the expiration of the registration period and paying the prescribed fee. A renewal application must contain any information the board requires to indicate any substantial changes in the information contained in the original application.~~

~~(3)~~ If a ~~materially adverse~~ *material* change in the ~~condition of the developer or an affiliate~~ *timeshare offering* occurs, ~~during any year,~~ *the developer is required to file* an amendment to the documents filed under 37-53-202 ~~must be filed~~, along with the prescribed fee.

~~(4) This section may not be interpreted to conflict with 37-1-138.~~"

Section 5. Section 37-53-204, MCA, is amended to read:

"37-53-204. Alternative filing documents. (1) In lieu of the documents required to be filed with an application under 37-53-202, the board may accept~~:~~

~~(a)~~ a ~~disclosure document~~ *public offering statement* filed with an agency of the United States or any other state.~~; or~~

~~(b) a disclosure document compiled in accordance with a rule of an agency of the United States or any other state.~~

(2) The board ~~shall~~ *may* prescribe by rule those documents acceptable under subsection (1)."

Section 6. Section 37-53-205, MCA, is amended to read:

"37-53-205. Exemption from registration. The registration requirements of this chapter do not apply to:

(1) an offer, sale, or transfer of not more than two timeshare interests by a timeshare owner in a 12-month period;

(2) a gratuitous transfer of a timeshare *interest*;

(3) a sale under court order;

(4) a sale by any government or a governmental agency;

(5) a sale by forfeiture, foreclosure, or deed in lieu of foreclosure; ~~or~~

(6) a sale of a ~~project~~ *timeshare offering already registered in Montana* or *a sale of* all timeshare units *or timeshare intervals* ~~therein~~ *in the timeshare offering* to any one purchaser*; or*

(7) a transfer of a timeshare interest by a timeshare owner other than the developer or the developer's agent unless the transfer is made for the purpose of avoiding the provisions of this chapter."

Section 7. Section 37-53-301, MCA, is amended to read:

"37-53-301. Licensure of ~~timeshare brokers and~~ timeshare salespersons — *licensee duties.* (1) ~~(a)~~ A person offering timeshare ~~units for his own account or for the account of others~~ *intervals in a project located in Montana* must be licensed as a timeshare salesperson ~~or timeshare broker~~ *and affiliated with at least one registered timeshare project* unless the offering is exempt under 37-53-205.

(2) Licensure may be obtained *upon*:

~~(i)~~*(a)* ~~upon~~ completion of an application ~~and personal disclosure statement and passage of an examination prescribed by the board demonstrating knowledge of the timeshare industry and this chapter~~;

(b) meeting the qualifications listed in subsection (3);

(c) demonstration to the board that the applicant is an individual of good repute and competent to transact the business of a timeshare salesperson in a manner that safeguards the interests of the public;

(d) payment of fees set by the board by rule; and

~~(ii)~~*(e)* ~~upon~~ successful completion of a course of education related to the timeshare industry that has been approved by the board.

~~(b) The board shall then issue a certificate of completion to the applicant.~~

~~(2) A person licensed as a real estate broker or salesperson under Title 37, chapter 51, may act as a timeshare salesperson or timeshare broker upon successful completion of a course of education related to the timeshare industry that has been approved by the board. The board shall then issue a certificate of completion to the applicant. No license other than that issued pursuant to Title 37, chapter 51, is required.~~

(3) An applicant for a timeshare salesperson license must:

(a) be at least 18 years of age; and

(b) have graduated from an accredited high school or completed equivalent education as determined by the board.

(4) The board shall issue a certificate of completion to an applicant who successfully completes the course of education provided for in subsection (2)(e) and may issue a license to an applicant meeting the qualifications and licensure provisions.

(5) A licensed timeshare salesperson shall notify the department of a change of affiliation within 10 days of the change, designate the new license affiliation, and pay all required fees.

(6) If a timeshare salesperson is no longer affiliated with a timeshare project, the timeshare salesperson shall notify the board that the license is inactive and pay the fees required by rule. A timeshare salesperson may reactivate an inactive license by filling out an application, listing a new affiliation, and paying all required fees."

Section 8. Section 37-53-302, MCA, is amended to read:

"37-53-302. Denial, suspension, or revocation of license or application. The board may by an order deny, suspend, or revoke a timeshare salesperson's ~~or timeshare broker's~~ license or application for license if the board finds that the order is in the public interest and that the applicant or licensee:

(1) has filed an application for licensure ~~and personal disclosure statement~~ as a timeshare salesperson ~~or timeshare broker~~ that is incomplete ~~in any material respect~~ or contains any statement that is~~, in the light of the circumstances under which it was made,~~ false or misleading ~~with respect to any material fact~~;

(2) has violated or failed to comply with any provision of ~~this chapter, rules adopted under this chapter, or~~ Title 37, ~~chapter~~ *chapters 1,* 51*, and 53, or any rules adopted by the board if the violation or the failure to comply related to the timeshare business*;

(3) has been convicted of a felony ~~involving theft, fraud, or any consumer protection statute or a felony involving moral turpitude and related to the occupation of timeshare salesperson or timeshare broker~~ *unless the provisions of Title 37, chapter 1, part 2, are met*;

(4) is permanently or temporarily enjoined by a court from engaging in or continuing any conduct or practice involving an aspect of the timeshare business;

(5) has engaged in dishonest or unethical practices *related to public health, welfare, and safety* ~~in~~ *as those practices apply to* the timeshare business; or

(6) has not complied with any condition imposed by the board ~~or is not qualified on the basis of knowledge of the timeshare industry or this chapter~~."

Section 9. Section 37-53-303, MCA, is amended to read:

"37-53-303. ~~Disclosure document~~ *Public offering statement.* *Unless exempt from registration, a* ~~A~~ person who offers or sells a timeshare *interval* shall provide the prospective purchaser with a written ~~disclosure document~~ *public offering statement* before the prospective purchaser signs an agreement for the purchase of a timeshare. The ~~disclosure document~~ *public offering statement* must include *and fully and accurately disclose*:

(1) the official name and address of the developer, its parent or affiliates, and the names and addresses of the director and officers of each;

(2) the location of the timeshare property;

(3) a general description of the ~~timeshare property and the~~ timeshare units *and associated real property, including but not limited to the developer's schedule of commencement and completion of all buildings, units, and amenities or, if completed, a statement that they have been completed*;

(4) a list of all *timeshare* units *and timeshare intervals* offered by the *developer or* promoter in the same project, including:

(a) the types, current prices, and number of units;

(b) the types and durations of the ~~timeshares~~ *timeshare intervals*;

(c) the maximum number of units that may become part of the timeshare property;

(d) a statement of the maximum number of ~~timeshares~~ *timeshare units and timeshare intervals* that may be created or a statement that there is ~~no~~ *not a* maximum;

(5) a description of the types of financing offered by the promoter *or developer*;

(6) a statement of ownership of all properties included in the timeshare offering, including any liens or encumbrances affecting the property;

(7) copies of any agreements or leases to be signed by purchasers at closing and a copy of the timeshare instrument *or instruments*;

(8) the identity of the managing entity and the name, address, and telephone number of the person or persons in charge~~,~~ and the manner, if any, whereby the developer may change the managing entity;

(9) a ~~true~~ copy of the current *budget and* ~~or~~ projected budget *for the timeshare offering.* ~~of the owners' association along with a description of the nature and purpose of all charges, dues, maintenance fees, and other expenses that may be assessed, including the formula for payment of charges if all timeshares are not sold and a statement of who pays additional costs;~~ *The budget must include:*

(a) a statement of the amount included in the budget as a reserve for repairs, maintenance, and replacement of the timeshare units;

(b) a detailed list of projected common expenses, liabilities, and expenditures for the timeshare units and timeshare intervals; and

(c) a statement of any services or expenses not reflected in the budget that the developer provides or pays.

(10) a statement in boldface type on the cover page of the ~~disclosure document~~ *public offering statement* that, within ~~3~~ *7* days after receipt of ~~a disclosure document~~ *the public offering statement* or the signing of the timeshare purchase agreement, whichever is later, a purchaser may cancel any agreement for the purchase of a timeshare *interval* ~~from a developer or salesperson~~ and that the cancellation must be in writing and be delivered either in person or by certified mail to the developer or the developer's agent;

(11) a prepared legal document that once executed will effectively cancel the agreement between the purchaser and the developer;

~~(11)~~*(12)* any restrictions on transfers of a timeshare *interval* or portion ~~thereof~~ *of the timeshare interval*;

~~(12)~~*(13)* a description of any insurance coverage provided for the benefit of timeshare *interval* owners by the managing entity or the timeshare *interval* owners' association;

~~(13)~~*(14)* a full and accurate disclosure of whether the timeshare *interval* owners are permitted or required to become members of or participate in any program for the exchange of property rights among themselves or with the timeshare *interval* owners of other timeshare units, or both, and a complete description of the program; and

~~(14)~~*(15)* any additional information the board finds necessary to fully inform prospective purchasers, including but not limited to the financial ~~and background~~ information required by 37-53-202."

Section 10. Section 37-53-304, MCA, is amended to read:

"37-53-304. Disclosure to purchaser — cancellation of agreement. The developer or any person offering a timeshare *interval* shall provide a prospective purchaser with a copy of the ~~disclosure document~~ *public offering statement* described in 37-53-303 before the execution of any agreement for the purchase of a timeshare *interval*. ~~A purchaser may, within 3~~ *Within 7* days following receipt of a ~~disclosure document~~ *public offering statement* or signing of a timeshare purchase agreement, whichever is later, *a purchaser may* cancel the agreement and receive a refund of any consideration paid by providing written notice of the cancellation to the ~~promoter or promoter's~~ *developer or developer's* agent either by certified mail or personal delivery. If the purchaser does not receive the ~~disclosure document~~ *public offering statement*, the agreement is voidable by the purchaser until the purchaser receives the ~~document~~ *public offering statement* and for ~~3~~ *7* days ~~thereafter~~ *after receipt*. The provisions of this section may not be waived."

Section 11. Section 37-53-307, MCA, is amended to read:

"37-53-307. Illegal practices. (1) It is unlawful for any person in connection with the offer, sale, or lease of a timeshare interest in this state to:

(a) make any false or misleading statement of a material fact or to omit a material fact;

(b) employ any device, scheme, or artifice to defraud;

(c) engage in any act, practice, or course of business that operates or would operate as a fraud or deceit upon any person;

(d) file or cause to be filed with the board any document that contains false or misleading information; or

(e) violate any provision of this chapter or a rule adopted under this chapter ~~or any applicable provision of Title 37, chapter 51~~.

(2) A violation of this section is a misdemeanor punishable as provided in 46-18-212."

Section 12. Section 37-53-308, MCA, is amended to read:

"37-53-308. Civil liability. Any person who offers, sells, or materially aids in the offer or sale of a timeshare *interval* in violation of this chapter is liable to the person buying the timeshare *interval*, who may sue to recover the consideration paid for the timeshare *interval*, together with interest at the current legal rate from date of payment and costs, upon the tender of the timeshare *interval* or for damages if the person no longer owns the timeshare *interval*."

Section 13. Repealer. Sections 37-53-211, 37-53-212, 37-53-214, 37-53-401, 37-53-402, 37-53-403, 37-53-504, and 37-53-505, MCA, are repealed.

Approved April 18, 2009

CHAPTER NO. 318

[SB 292]

AN ACT PROVIDING FOR A REDUCED SEVERANCE TAX RATE ON COAL RECOVERED FROM A STRIP MINE BY AUGER MINING; AMENDING SECTIONS 15-35-102 AND 15-35-103, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-35-102, MCA, is amended to read:

"15-35-102. Definitions. As used in this chapter, the following definitions apply:

(1) "Agreement" means a signed contract that is valid under Montana law between a coal mine operator and a purchaser or broker for the sale of coal that is produced in Montana.

(2) "Auger mining" means the method of recovering coal by boring with an auger into a coal bed prepared by strip-mining excavations or in naturally sloping terrain. Auger mining is used when the ratio of overburden to coal does not allow the economical recovery of coal.

~~(2) (a) "Base consumption level" for a purchaser, except as provided in subsection (2)(b), applies only for the term of an agreement in effect as of December 31, 1984, and means the lesser of:~~

~~(i) the volume of coal purchased during calendar year 1986 from all Montana coal mine operators; or~~

~~(ii) the greater of:~~

~~(A) the arithmetic average volume of coal purchased during calendar years 1983 and 1984 from all Montana coal mine operators; or~~

~~(B) 90% of the maximum tonnage provided for in any agreement executed prior to January 1, 1985, for which the highest scheduled minimum quantity of coal stipulated by the terms of the agreement as they existed on January 1, 1985, has not been purchased at any time during the term of the agreement, plus the arithmetic average volume of coal purchased during calendar years 1983 and 1984 from all Montana coal mine operators under all other agreements.~~

~~(b) If the volume calculated in subsection (2)(a)(i) is less than one-third of the volume calculated in subsection (2)(a)(ii), the base consumption level is the volume calculated in subsection (2)(a)(ii).~~

~~(3) (a) Except as provided in subsection (3)(b), "base production level" for a coal mine operator applies only for the term of an agreement in effect as of December 31, 1984, and means the lesser of:~~

~~(i) the arithmetic average volume of coal produced in Montana and sold to a purchaser in calendar years 1983 and 1984; or~~

~~(ii) the volume of coal produced in Montana and sold to a purchaser in 1986.~~

~~(b) If the amount calculated in subsection (3)(a)(ii) is less than one-third of the amount calculated in subsection (3)(a)(i), the base production level is the amount calculated in subsection (3)(a)(i).~~

~~(4)~~*(3)* "Broker" means any person who resells Montana coal.

~~(5)~~*(4)* "Contract sales price" means either the price of coal extracted and prepared for shipment f.o.b. mine, excluding that amount charged by the seller to pay taxes paid on production, or a price imputed by the department under 15-35-107. Contract sales price includes all royalties paid on production, no matter how the royalties are calculated. However, with respect to royalties paid to the government of the United States, the state of Montana, or a federally recognized Indian tribe, the contract sales price includes 15 cents per ton.

~~(6) "Department" means the department of revenue.~~

~~(7)~~*(5)* "Energy conversion process" includes any process by which coal in the solid state is transformed into slurry, gas, electrical energy, or any other form of energy.

~~(8) "Incremental production" means that quantity of coal produced annually by a coal mine operator and sold to a qualified purchaser that exceeds the base production level of the coal mine operator for that purchaser, but only to the extent the quantity of coal exceeds that purchaser's base consumption level from all Montana producers.~~

~~(9)~~*(6)* "Produced" means severed from the earth.

~~(10)~~*(7)* "Purchaser" means a person who purchases or contracts to purchase Montana coal directly from a coal mine operator or indirectly from a broker and who utilizes that coal in any industrial, commercial, or energy conversion process. A coal broker or any other third party intermediary is not a purchaser under the provisions of this chapter.

~~(11) "Qualified purchaser" means a purchaser whose purchases of Montana coal in any given year exceed the purchaser's base consumption level. A purchaser of Montana coal who enters into a coal agreement with another purchaser or a broker that causes a reduction in the base consumption level of a purchaser is not a qualified purchaser.~~

~~(12)~~*(8)* "Strip mining" is defined in 82-4-203 and includes "surface mining".

~~(13)~~*(9)* "Taxes paid on production" includes any tax paid to the federal, state, or local governments upon the quantity of coal produced as a function of either the volume or the value of production and does not include any tax upon the value of mining equipment, machinery, or buildings and lands, any tax upon a person's net income derived in whole or in part from the sale of coal, or any license fee.

~~(14)~~*(10)* "Ton" means 2,000 pounds.

~~(15)~~*(11)* "Underground mining" means a coal mining method utilizing shafts and tunnels and as further defined in 82-4-203."

Section 2. Section 15-35-103, MCA, is amended to read:

"15-35-103. Severance tax — rates imposed. (1) A severance tax is imposed on each ton of coal produced in the state in accordance with the following schedule:

Heating quality (Btu per pound of coal):	Surface Mining	*Auger Mining*	Underground Mining
Under 7,000	10% of value	*3.75% of value*	3% of value
7,000 and over	15% of value	*5% of value*	4% of value

(2) "Value" means the contract sales price.

(3) A person is not liable for any severance tax upon 50,000 tons of the coal that the person produces in a calendar year, except that if more than 50,000 tons of coal are produced in a calendar year, the producer is liable for severance tax upon all coal produced in excess of the first 20,000 tons.

(4) The reduced tax rate on coal produced by auger mining applies only to coal recovered from a mining operation that would otherwise be uneconomical to recover by conventional strip-mining methods as specified in the coal conservation plan submitted to and approved by the department of environmental quality under the provisions of Title 82, chapter 4, part 2."

Section 3. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

Section 4. Effective date. [This act] is effective July 1, 2009.

Section 5. Applicability. [This act] applies to coal recovered from a strip mine by auger mining after June 30, 2009.

Approved April 18, 2009

CHAPTER NO. 319

[SB 299]

AN ACT REVISING THE APPOINTMENT, QUALIFICATIONS, AND DUTIES OF NOTARIES PUBLIC; REQUIRING TRAINING IN SPECIFIED CIRCUMSTANCES; REQUIRING THAT A JOURNAL BE KEPT; REQUIRING THE DESTRUCTION OF THE NOTARY PUBLIC'S STAMP AND SEAL UPON TERMINATION FROM OFFICE; AMENDING SECTIONS 1-5-401, 1-5-402, 1-5-416, 1-5-419, AND 1-5-610, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 1-5-401, MCA, is amended to read:

"1-5-401. Appointment. The secretary of state may appoint and commission as many *qualified* notaries public for the state of Montana as in the secretary of state's judgment ~~may be deemed best~~ *is considered appropriate*."

Section 2. Section 1-5-402, MCA, is amended to read:

"1-5-402. Qualifications — *training* — residence. *(1) A person may not be appointed as a notary public unless the person has satisfactorily completed a training program certified by the secretary of state.*

(2) A person may not be reappointed as a notary public if at any time during the notary's term a complaint has been filed against the notary or the secretary of state's office has received evidence of improperly notarized documents by the notary unless the person has satisfactorily completed a training program certified by the secretary of state.

(3) A person appointed *or reappointed* as *a* notary public may not, at the time of appointment *or reappointment*, be a convicted felon. Each person appointed *or reappointed* as a notary public must be a resident of Montana for at least ~~1 year~~ *30 days* immediately preceding appointment *or reappointment* and must continue to reside within the state of Montana. Removal from the state or conviction of a felony vacates the office and is equivalent to resignation."

Section 3. Section 1-5-416, MCA, is amended to read:

"1-5-416. Powers and duties. (1) A notary public shall:

(a) subject to subsection (2), take the acknowledgment or proof of any power of attorney, mortgage, deed, grant, transfer, or other instrument executed by any person and give a certificate of the proof or acknowledgment, endorsed on or attached to the instrument;

(b) take depositions and affidavits, if the notary is knowledgeable of the applicable legal requirements, and administer oaths and affirmations in all matters incident to the duties of the notary public's office or to be used before any court, judge, officer, or board in this state;

(c) whenever requested and upon payment of the required fees, make and give a certified copy of any record kept or that originated in the notary public's place of employment;

(d) provide and keep an official ~~crimper-type or~~ ink stamp *and* seal *prescribed by the secretary of state*~~, upon which must be engraved the name of the state of Montana and the words "Notarial Seal" or "Notary Public", with the name of the notary public exactly as that name appears on the notary's certificate of commission issued by the secretary of state~~;

(e) authenticate with the notary public's official seal~~,~~ and the notary's original signature*, which must be in blue or black ink,* as it appears on the notary's certificate of commission, all official acts. Whenever the notary public signs officially as a notary public, the notary public shall add to the signature the words "Notary Public for the State of Montana, residing at.... (stating the name of the town or city of the notary public's post office)" and shall endorse upon the instrument the date, showing the month, day, and four-digit year, of the expiration of the notary public's commission.

(f) on every document on which the notary's seal of office is used, type, stamp, or legibly print the notary's name, as shown on the notary's certificate of commission, after or below the original signature of the notary~~.~~*;*

(g) keep and maintain an official notary journal recording the details of each notarial act performed, including the date, the type of notarial act, the type of document, the date of the document, the name, address, and signature of the individual for whom the notarization was performed, the type of identification used, and any other information prescribed by the secretary of state.

(2) A notary public may not:

(a) notarize the notary's own signature;

(b) notarize a document in which the notary is individually named or has an interest from which the notary will directly benefit by a transaction involving the document; or

(c) certify a document issued by a public entity, such as a birth, death, or marriage certificate, unless the notary is employed by the entity issuing or holding the original version of that document."

Section 4. Section 1-5-419, MCA, is amended to read:

"1-5-419. Transfer of records upon termination of office. *(1)* ~~It is the duty of each~~ *A* notary public*,* upon resignation or removal from office or at the expiration of the notary public's term ~~and,~~ *if the notary public is not reappointed, or,* in case of *the notary public's* death, ~~of~~ the notary public's legal representative *shall:*

(a) ~~to deposit~~ *transfer* in a timely manner all the ~~records~~ *journals* kept by the notary public ~~in~~ *to* the office of the county clerk and recorder of the county in which the notary public was a resident*; and*

(b) destroy the notary's official stamp and seal.

(2) ~~On failure to do so, the~~ *A knowing failure to take the actions prescribed in subsection (1) makes the* offending person ~~is~~ liable for damages to any person injured by the failure."

Section 5. Section 1-5-610, MCA, is amended to read:

"1-5-610. Short forms. The following short-form certificates of notarial acts are sufficient for the purposes indicated if they are completed with the information required by 1-5-416*(1)(e) and (1)(f)* and 1-5-609(1):

(1) For an acknowledgment in an individual capacity:

State of_____

(County) of_____

This instrument was acknowledged before me on (date) by (name(s) of person(s))

_____

_____

(Signature of notarial officer)

(Seal, if any)

_____

(Name - typed, stamped, or printed)

_____

Title (and Rank)

_____

(Residing at)

[My commission expires: _____]

(2) For an acknowledgment in a representative capacity:

State of_____

(County) of_____

This instrument was acknowledged before me on (date) by (name(s) of person(s)) as (type of authority, e.g., officer, trustee, etc.) of (name of party on behalf of whom instrument was executed).

_____

(Signature of notarial officer)

(Seal, if any)

_____

(Name - typed, stamped, or printed)

_____

Title (and Rank)

_____

(Residing at)

[My commission expires: _____]

(3) For a verification upon oath or affirmation:

State of_____

(County) of_____

Signed and sworn to (or affirmed) before me on (date) by (name(s) of person(s) making statement)

_____

_____

(Signature of notarial officer)

(Seal, if any)

_____

(Name - typed, stamped, or printed)

_____

Title (and Rank)

_____

(Residing at)

[My commission expires: _____]

(4) For witnessing or attesting a signature:

State of_____

(County) of_____

Signed or attested before me on (date) by (name(s) of person(s))

_____

_____

(Signature of notarial officer)

(Seal, if any)

_____

(Name - typed, stamped, or printed)

_____

Title (and Rank)

_____

(Residing at)

[My commission expires: _____]

(5) For attestation of a copy of a document:

State of_____

(County) of_____

I certify that this is a true and correct copy of a document in the possession of _____.

Dated _____

_____

(Signature of notarial officer)

(Seal, if any)

_____

(Name - typed, stamped, or printed)

_____

Title (and Rank)

(Residing at)

[My commission expires: _____]"

Section 6. Effective date. [Section 2] is effective July 1, 2010.

Approved April 18, 2009

CHAPTER NO. 320

[SB 330]

AN ACT STATING ACCOUNTABILITY AS A PURPOSE AND POLICY OF THE STATE FOR SERVICES FOR OLDER MONTANANS; PROVIDING A PROCESS TO ACHIEVE ACCOUNTABILITY AND REQUIRING REPORTS; AND AMENDING SECTION 52-3-503, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 52-3-503, MCA, is amended to read:

"52-3-503. Purpose and policy. (1) The legislature finds that older Montanans constitute a valuable resource of this state and that their competence, experience, and wisdom must be used more effectively for the benefit of all Montanans.

(2) The legislature further finds that a complete range of services is not available in all areas of the state and that many Montanans lack access to the services that are available.

(3) The legislature declares that it is the policy of this state, subject to available funding, to provide a wide range of coordinated services to enable older Montanans to maintain an independent lifestyle, avoid unnecessary institutional care, and live in dignity.

(4) It is the intent of the legislature that available federal, state, regional, and local resources be used to strengthen the economic, social, and general well-being of older Montanans and that the state:

(a) develop appropriate programs for older Montanans;

(b) coordinate and integrate all levels of service, with emphasis on the whole person; and

(c) promote alternative forms of service that will create options for older Montanans.

(5) The legislature declares that it is the policy of the state to ensure accountability, as provided in [section 2], in providing quality services in a cost-effective manner."

Section 2. Achieving accountability. (1) The department shall achieve accountability in providing quality services in a cost-effective manner by:

(a) establishing goals, responsibilities, and performance expectations for goals in providing services to the aged and to older Montanans as provided in Title 52, chapter 3, parts 1, 4, and 5;

(b) requiring periodic reporting of performance or progress toward stated goals by departmental programs for aging services and area agencies on aging;

(c) establishing a continual process for the evaluation of all functions, the review of the evaluations, and the followup required to correct any deficiencies; and

(d) providing for feedback on the accountability process.

(2) The department shall adopt rules only as necessary to implement the goals, responsibilities, performance expectations, reporting periods, and evaluation process to be followed.

Section 3. Reporting requirement. The department of public health and human services shall report to the children, families, health, and human services interim committee on a quarterly basis during the 2009-2010 interim on the department's progress in complying with [section 2].

Section 4. Codification instruction. [Section 2] is intended to be codified as an integral part of Title 52, chapter 3, part 4, and the provisions of Title 52, chapter 3, part 4, apply to [section 2].

Approved April 18, 2009

CHAPTER NO. 321

[SB 351]

AN ACT GENERALLY REVISING MORTGAGE LENDING LAWS; EXPANDING THE MORTGAGE BROKER AND LOAN ORIGINATOR ACT TO INCLUDE MORTGAGE LENDERS; IMPLEMENTING PROVISIONS OF THE FEDERAL SECURE AND FAIR ENFORCEMENT FOR MORTGAGE LICENSING ACT OF 2008 WITH RESPECT TO MORTGAGE BROKERS, MORTGAGE LENDERS, AND MORTGAGE LOAN ORIGINATORS; PROVIDING FOR A REGISTERED AGENT FOR MORTGAGE BROKERS, MORTGAGE LENDERS, AND MORTGAGE LOAN ORIGINATORS WITHOUT AN IN-STATE OFFICE; REPEALING THE MONTANA RESIDENTIAL MORTGAGE LENDER LICENSING ACT; AMENDING SECTIONS 32-9-101, 32-9-102, 32-9-103, 32-9-104, 32-9-109, 32-9-110, 32-9-116, 32-9-117, 32-9-118, 32-9-121, 32-9-122, 32-9-123, 32-9-124, 32-9-125, 32-9-126, 32-9-130, AND 32-9-133, MCA; REPEALING SECTIONS 32-9-108, 32-9-115, 32-9-119, 32-10-101, 32-10-102, 32-10-103, 32-10-201, 32-10-202, 32-10-203, 32-10-204, 32-10-207, 32-10-208, 32-10-209, 32-10-301, 32-10-302, 32-10-303, 32-10-309, 32-10-310, 32-10-401, 32-10-402, 32-10-403, 32-10-404, 32-10-405, 32-10-406, 32-10-501, 32-10-502, 32-10-503, 32-10-504, 32-10-505, 32-10-506, 32-10-507, 32-10-512, 32-10-513, 32-10-514, AND 32-10-515, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 32-9-101, MCA, is amended to read:

"32-9-101. Short title and purpose. (1) This part may be cited as the "Montana Mortgage Broker*, Mortgage Lender,* and *Mortgage* Loan Originator Licensing Act".

(2) The legislature recognizes that buying or financing a home is one of the largest, most complicated, and vitally important decisions facing consumers in Montana. Therefore, the legislature finds it desirable to license *certain persons in the residential mortgage industry that are outside of the traditional banking industry and that have a direct involvement in consumers' financial welfare, including* ~~residential~~ mortgage brokers*, mortgage lenders,* and *mortgage* loan originators*,* to promote honesty, education, and professionalism, to ensure the availability and diversity of residential mortgage funding, and to protect Montana consumers and the stability of Montana's economy.

(3) The legislature finds that it is necessary to implement the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 and, together with the residential mortgage industry, recognizes the importance of statewide participation in the nationwide mortgage licensing system and registry."

Section 2. Section 32-9-102, MCA, is amended to read:

"32-9-102. License requirement — *registration.* (1) *Unless exempt under 32-9-104, a* ~~A~~ person ~~or entity~~ may not act as a ~~residential~~ mortgage broker*, mortgage lender,* or *mortgage* loan originator *with respect to any residential real estate located in Montana* unless licensed under the provisions of this part.

~~(2) A mortgage banker who provides services for a fee as an intermediary between a borrower and a lender in obtaining financing for a borrower that is to be secured by a residential dwelling for between one and four families is acting as a mortgage broker and must be licensed as a mortgage broker.~~

(2) Any person acting as a mortgage broker, mortgage lender, or mortgage loan originator under this part is required to be licensed and registered with and maintain a valid unique identifier issued by the nationwide mortgage licensing system and registry by the date set forth in [section 6(4)]."

Section 3. Section 32-9-103, MCA, is amended to read:

"32-9-103. Definitions. As used in this part, the following definitions apply:

(1) "Administrative or clerical tasks" mean the receipt, collection, and distribution of information common for the processing or underwriting of a residential mortgage loan and communication with a consumer to obtain information necessary for the processing or underwriting of a residential mortgage loan to the extent that the communication does not include offering or negotiating loan rates or terms or counseling consumers about residential mortgage loan rates or terms.

(2) "Approved education course" means any course approved by the nationwide mortgage licensing system and registry.

(3) "Approved test provider" means any test provider approved by the nationwide mortgage licensing system and registry.

~~(1)~~*(4)* "Bona fide third party" means a person ~~or entity~~ that provides services relative to residential mortgage loan transactions. The term includes but is not limited to real estate appraisers and credit reporting agencies.

~~(2)~~*(5)* "Borrower" means ~~an individual who is solicited to purchase or who purchases the services of a mortgage broker for other than commercial mortgage lending~~ *a person seeking a residential mortgage loan*.

~~(3)~~*(6)* "Branch office" means a location other than a licensee's principal place of business.

(7) (a) "Control" means the power, directly or indirectly, to direct the management or policies of an entity, whether through ownership of securities, by contract, or otherwise.

(b) A person is presumed to control an entity if that person:

(i) is a director, general partner, or executive officer;

(ii) directly or indirectly has the right to vote 10% or more of a class of a voting security or has the power to sell or direct the sale of 10% or more of a class of voting securities;

(iii) in the case of a limited liability company, is a managing member; or

(iv) in the case of a partnership, has the right to receive upon dissolution or has contributed 10% or more of the capital.

~~(4)~~*(8)* "Department" means the department of administration provided for in 2-15-1001, acting through its division of banking and financial institutions.

(9) "Depository institution" has the meaning provided in section 3 of the Federal Deposit Insurance Act, 12 U.S.C. 1813(c), and includes any credit union.

~~(5)~~*(10)* "Designated manager" means ~~a person located in this state and employed by a mortgage broker entity, other than a sole proprietorship, as the person responsible for operating the business at the location where the person is employed. A designated manager must be licensed as a mortgage broker~~ *a mortgage loan originator with at least 3 years of experience as a mortgage loan originator or registered mortgage loan originator who is designated by an entity as the individual responsible for the operation of a particular location that is under the designated manager's full management, supervision, and control*.

~~(6)~~*(11)* "Entity" means a business organization, ~~other than~~ *including* a sole proprietorship ~~or an individual person, that provides mortgage broker services~~.

(12) "Escrow account" means a depository account with a financial institution that provides deposit insurance and that is separate and distinct from any personal, business, or other account of the mortgage lender and is maintained solely for the holding and payment of escrow funds.

(13) "Escrow funds" means funds entrusted to a mortgage lender by a borrower for payment of taxes, insurance, or other payments to be made in connection with the servicing of a loan.

(14) "Federal banking agency" means the board of governors of the federal reserve system, the comptroller of the currency, the director of the office of thrift supervision, the national credit union administration, or the federal deposit insurance corporation.

(15) "Immediate family member" means a spouse, child, sibling, grandparent, grandchild, stepchild, stepbrother, or stepsister and includes parent, grandparent, child, grandchild, and sibling relationships based upon adoptive relationships.

(16) "Individual" means a natural person.

~~(7) "Lender" means an entity that funds or services a residential mortgage loan.~~

(17) "Licensee" means a person authorized pursuant to this part to engage in activities regulated by this part. The term does not include an individual who is a registered mortgage loan originator.

~~(8) "Loan originator" means a licensed individual employed by a mortgage broker to assist borrowers by originating a residential loan.~~

(18) "Loan commitment" means a statement transmitted in writing or electronically by a mortgage lender setting forth the terms and conditions upon which the mortgage lender is willing to make a particular residential mortgage loan to a particular borrower.

(19) "Loan processor or underwriter" means an individual who performs administrative or clerical tasks as an employee, subsequent to the receipt of a residential mortgage loan application, at the direction of and subject to the supervision of a licensed mortgage loan originator or registered mortgage loan originator.

~~(9)~~*(20)* "Mortgage" means a consensual interest in real property located in Montana, including improvements, securing a debt evidenced by a mortgage, trust indenture, deed of trust, or other lien on real property.

~~(10) "Mortgage banker" means a person or entity that makes, services, or buys and sells mortgage loans and that may be required to submit audited financial statements to the United States department of housing and urban development, the United States department of veterans affairs, the federal national mortgage association, the federal home loan mortgage corporation, or the government national mortgage association.~~

~~(11)~~*(21) (a)* "Mortgage broker" means ~~a person or entity that provides services for a fee as an intermediary between a borrower and a lender in obtaining financing for the borrower that is to be secured by a residential dwelling for between one and four families~~ *an entity that obtains, attempts to obtain, or assists in obtaining a mortgage loan for a borrower from a mortgage lender in return for consideration or in anticipation of consideration.*

(b) For purposes of this subsection (21), attempting to or assisting in obtaining a mortgage loan includes referring a borrower to a mortgage lender or mortgage broker, soliciting or offering to solicit a mortgage loan on behalf of a borrower, or negotiating or offering to negotiate the terms or conditions of a mortgage loan with a mortgage lender on behalf of a borrower.

(22) "Mortgage lender" means an entity that closes a residential mortgage loan, advances funds, offers to advance funds, or commits to advancing funds for a mortgage loan applicant.

(23) (a) "Mortgage loan originator" means an individual who for compensation or gain or in the expectation of compensation or gain:

(i) takes a residential mortgage loan application; or

(ii) offers or negotiates terms of a residential mortgage loan.

(b) The term does not include an individual:

(i) engaged solely as a loan processor or underwriter, except as provided in [section 5]; or

(ii) involved solely in extensions of credit relating to timeshare plans, as that term is defined in 11 U.S.C. 101(53D).

(24) "Mortgage servicer loss mitigation specialist" means a person who on behalf of the person making the residential mortgage loan works with a borrower who is in default or in a foreseeable likelihood of a default to modify or refinance either temporarily or permanently the borrower's obligations in order to avoid foreclosure or otherwise to finalize collection through the foreclosure process.

(25) "Nationwide mortgage licensing system and registry" means a mortgage licensing system developed and maintained by the conference of state bank supervisors and the American association of residential mortgage regulators for the registration of state-licensed mortgage brokers, state-licensed mortgage lenders, state-licensed mortgage loan originators, and registered mortgage loan originators.

(26) "Nontraditional mortgage product" means any mortgage product other than a 30-year, fixed-rate mortgage.

~~(12) "Originate" means:~~

~~(a) to negotiate or arrange or to offer to negotiate or arrange a mortgage loan between a borrower and a person or entity that makes or funds mortgage loans;~~

~~(b) to issue a commitment for a mortgage loan to a borrower; or~~

~~(c) to place, assist in placing, or find a mortgage loan for a borrower.~~

(27) "Person" means an individual, sole proprietorship, corporation, company, limited liability company, partnership, limited liability partnership, trust, or association.

(28) "Real estate brokerage activities" means activities that involve offering or providing real estate brokerage services to the public, including:

(a) acting as a real estate salesperson or real estate broker for a buyer, seller, lessor, or lessee of real property;

(b) bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property;

(c) negotiating, on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental, or exchange of real property other than in connection with providing financing with respect to the transaction;

(d) engaging in any activity for which a person is required to be licensed as a real estate salesperson or real estate broker under Montana law; or

(e) offering to engage in any activity or act in any capacity described in subsections (28)(a) through (28)(d).

(29) "Registered mortgage loan originator" means an individual who:

(a) meets the definition of mortgage loan originator and is an employee of:

(i) a depository institution;

(ii) a subsidiary that is owned and controlled by a depository institution and regulated by a federal banking agency; or

(iii) an institution regulated by the farm credit administration; and

(b) is registered with and maintains a unique identifier through the nationwide mortgage licensing system and registry.

(30) "Residential mortgage loan" means a loan primarily for personal, family, or household use secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling, as defined in section 103(v) of the Truth in Lending Act, 15 U.S.C. 1602(v), or on residential real estate located in Montana.

(31) "Residential real estate" means any real property located in the state of Montana upon which is constructed a dwelling or upon which a dwelling is intended to be built within a 2-year period, subject to 24 CFR 3500.5(b)(4). The borrower's intent to construct a dwelling is presumed unless the borrower has submitted a written, signed statement to the contrary.

~~(13)~~*(32)* "Trust account" means a depository account with a financial institution that provides deposit insurance that is separate and distinct from any personal, business, or other account of the mortgage broker *or the mortgage lender* and that is maintained solely for the holding and payment of bona fide third-party fees.

(33) "Ultimate equity owner" means an individual who, directly or indirectly, owns or controls an ownership interest in a corporation, a foreign corporation, an alien business organization, or any other form of business organization, regardless of whether the individual owns or controls an ownership interest, individually or in any combination, through one or more persons or one or more proxies, powers of attorney, nominees, corporations, associations, partnerships, trusts, joint-stock companies, or other entities or devices.

(34) "Unique identifier" means a number or other identifier assigned by protocols established by the nationwide mortgage licensing system and registry."

Section 4. Section 32-9-104, MCA, is amended to read:

"32-9-104. Exemptions — *proof of exemption.* *(1)* The provisions of this part do not apply to:

~~(1) a person or entity that makes or collects loans, to the extent that those activities are subject to licensure or registration by this state under other provisions of Montana law unless the person or entity is also acting as a mortgage broker or loan originator;~~

~~(2) (a) a bank or trust company chartered under Title 32, chapter 1, a bank or trust company chartered under the National Bank Acts in Title 12 of the United States Code, a building and loan association chartered under Title 32, chapter 2, a savings and loan association chartered under the Home Owners' Loan Act in Title 12 of the United States Code, a credit union chartered under Title 32, chapter 3, or a credit union chartered under the Federal Credit Union Act in Title 12 of the United States Code;~~

~~(b) any employee of an entity listed in subsection (2)(a); or~~

~~(c) any subsidiary of an entity listed in subsection (2)(a) and any employee of the subsidiary if the subsidiary is subject to the examination and supervision of:~~

~~(i) the department;~~

~~(ii) the federal deposit insurance corporation;~~

~~(iii) the federal reserve system;~~

~~(iv) the national credit union administration; or~~

~~(v) the department of the treasury through its office of the comptroller of the currency or office of thrift supervision;~~

~~(3) a person or entity engaged solely in commercial mortgage lending; or~~

~~(4) a political subdivision or governmental entity of the United States or any state of the United States.~~

(a) an entity that is an agency of the federal, state, or municipal government;

(b) an entity described in 32-9-103(29)(a)(i) through (29)(a)(iii);

(c) a registered mortgage loan originator when acting for an entity described in 32-9-103(29)(a)(i) through (29)(a)(iii);

(d) an individual who offers or negotiates terms of a residential mortgage loan with or on behalf of an immediate family member of that individual;

(e) a person who offers, negotiates, or provides financing in conjunction with the sale of real property owned by that person and that is secured by a contract for deed, mortgage, deed of trust, or other equivalent security interest on the real property sold;

(f) a loan that is made by an entity to an employee of the entity if the proceeds of the loan are used to assist the employee in meeting the employee's housing needs;

(g) an entity engaged solely in commercial real estate lending;

(h) an entity qualified as a pension plan under 26 U.S.C. 401 if the plan makes residential mortgages only to the plan's participants;

(i) the federal national mortgage association, the federal home loan mortgage corporation, and the government national mortgage association;

(j) a 501(c)(3) corporation, which is not otherwise engaged in or holding itself out to the public as being engaged in the mortgage loan business, that makes mortgage loans to promote home ownership or improvements for bona fide low-income individuals;

(k) a person that performs only real estate brokerage activities and is licensed or registered pursuant to 37-51-301 unless the person is compensated by a mortgage lender, a mortgage broker, or a mortgage loan originator or an agent of the mortgage lender, mortgage broker, or mortgage loan originator;

(l) a licensed attorney who negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to the attorney's representation of the client unless the attorney is compensated by a mortgage lender, mortgage broker, or mortgage loan originator or any agent of the mortgage lender, mortgage broker, or mortgage loan originator; or

(m) a licensed certified public accountant or a licensed public accountant who negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to providing public accounting services to the client unless the accountant is compensated by a mortgage lender, a mortgage broker, or a mortgage loan originator or an agent of the mortgage lender, mortgage broker, or mortgage loan originator.

(2) The department or the secretary of housing and urban development may exempt from this part mortgage servicer loss mitigation specialists if the department or the secretary of housing and urban development determines by guideline, interpretation, or rule that an exemption of a mortgage servicer loss mitigation specialist is not in violation of the Secure and Fair Enforcement for Mortgage Licensing Act, Title V of the Housing and Economic Recovery Act, Public Law 110-289.

(3) The burden of proving an exemption under this section is on the person claiming the exemption. The department shall create a form for requesting an exemption."

Section 5. Loan processors and underwriters. (1) A person engaging solely in loan processor or underwriter activities may not represent to the public, through advertising or other means of communication, including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items, that the person can or will perform any of the activities pertaining to originating a residential mortgage loan.

(2) A loan processor or underwriter who is an independent contractor may not engage in mortgage loan originator activities unless licensed as a mortgage loan originator under this part. Each independent contractor loan processor or underwriter licensed as a mortgage loan originator shall maintain a valid unique identifier issued by the nationwide mortgage licensing system and registry.

Section 6. Overall licensing requirements for mortgage brokers, mortgage lenders, and mortgage loan originators. (1) The department is authorized to participate in the nationwide mortgage licensing system and registry and shall require mortgage lenders, mortgage brokers, and mortgage loan originators to apply for state licensure on applications approved by the nationwide mortgage licensing system and registry by the dates set forth in subsection (4).

(2) The department may establish requirements as necessary to comply with the nationwide mortgage licensing system and registry, including:

(a) payment of nonrefundable fees to apply for, maintain, and renew licenses through the nationwide mortgage licensing system and registry;

(b) renewal or reporting dates;

(c) procedures for amending or surrendering a license; and

(d) requirements pertaining to any other activity necessary for participation in the nationwide mortgage licensing system and registry.

(3) The state portion of the licensing fees collected by the nationwide mortgage licensing system and registry under this section must be deposited into the department's account in the state special revenue fund to be used for administering this part.

(4) In order to facilitate an orderly transition to licensing and minimize disruption in the mortgage marketplace, the implementation date of subsection (1) is:

(a) April 1, 2010, for all new applicants applying after [the effective date of this act];

(b) June 30, 2010, for all licensees with current licenses as of [the effective date of this act]; and

(c) for mortgage servicer loss mitigation specialists, if not exempt under 32-9-104(2), a date as set by the department by rule.

(5) The provisions of this part apply to the activities of retail sellers of manufactured homes and recreational vehicles to the extent determined by the United States department of housing and urban development through guidelines, regulations, or interpretive letters.

Section 7. Dual licensure. An entity may be simultaneously licensed as a mortgage lender and a mortgage broker provided that the entity meets all requirements for licensure as a mortgage lender and a mortgage broker.

Section 8. Prelicensing education requirements for mortgage loan originators. (1) An individual seeking a mortgage loan originator's license shall complete at least 20 hours of approved education courses, which must include:

(a) at least 3 hours of training on federal law and regulations;

(b) 3 hours of training in ethics, including instruction on fraud, consumer protection, and fair lending issues; and

(c) 2 hours of training related to lending standards for the nontraditional mortgage product marketplace.

(2) The prelicensing education courses that comply with the requirements of subsection (1) and that are approved by the nationwide mortgage licensing system and registry for any other state must be accepted with respect to the completion of prelicensing education requirements in Montana.

(3) If allowed by the nationwide mortgage licensing system and registry, the department is authorized to certify to the nationwide mortgage licensing system and registry that continuing education hours that were previously approved by the department have been completed by a mortgage loan originator.

Section 9. Section 32-9-109, MCA, is amended to read:

"32-9-109. Experience requirements. (1) (a) An individual ~~applying for a license as a mortgage broker~~ *may not act as a designated manager* ~~must have~~ *without* a minimum of 3 years of experience working as a *mortgage* loan originator~~, as a mortgage banker,~~ or in a related field.

(b) An individual applying for a license as a *mortgage* loan originator must have a minimum of 6 months of experience working in a related field.

(2) The department shall by rule establish what constitutes work in a related field."

Section 10. Section 32-9-110, MCA, is amended to read:

"32-9-110. Examination requirements *for mortgage loan originators.* (1) ~~Individuals~~ *An individual* seeking a ~~mortgage broker's license and individuals seeking a~~ *mortgage* loan originator's license shall submit to an examination ~~provided for by the department. The department may use a third party to perform examination and grading services~~.

~~(2) The examination must be designed to demonstrate that the applicant possesses competency to originate loans. The test may cover subject matter areas including but not limited to:~~

~~(a) knowledge of this part;~~

~~(b) knowledge of disclosures and protections that borrowers are entitled to by state and federal law;~~

~~(c) the ability to read, understand, and explain appraisal basics, credit reports, and title commitments; and~~

~~(d) the ability to evaluate credit, calculate a basic debt-to-income ratio, calculate loan-to-value ratios, and complete a basic loan application.~~

(2) In order to meet the examination requirement referred to in subsection (1), an individual shall pass, in accordance with the standards established under this section, a qualified written exam developed by the nationwide mortgage licensing system and registry that is administered by an approved test provider.

(3) A written examination may not be treated as a qualified written examination for purposes of this section unless the exam adequately measures the applicant's knowledge and comprehension in appropriate subject areas, including but not limited to:

(a) ethics;

(b) federal and state laws and regulations pertaining to mortgage origination; and

(c) federal and state laws and regulations pertaining to fraud, consumer protection, the nontraditional mortgage product marketplace, and fair lending issues.

(4) An individual may not be considered to have passed a qualified examination unless the individual achieves an exam score of at least 75%.

(5) An individual may retake a test three consecutive times with each consecutive test being taken at least 30 days after the previous testing date.

(6) An individual who fails three consecutive tests may not take the test for at least 6 months from the date of failing the third test.

(7) A licensed mortgage loan originator who fails to maintain a valid license for a period of 5 years shall retake the test. The 5-year period may not take into account any time during which the person is a registered mortgage loan originator."

Section 11. Application for mortgage broker, mortgage lender, and mortgage loan originator license. (1) An applicant under this part shall apply for a state license in a form prescribed by the department that complies with the requirements of the nationwide mortgage licensing system and

registry. Each form must contain content as set forth by the nationwide mortgage licensing system and registry and may be changed or updated by the department as necessary to comply with the nationwide mortgage licensing system and registry.

(2) The department may establish a relationship or contract with the nationwide mortgage licensing system and registry or another entity designated by the nationwide mortgage licensing system and registry to collect and maintain records and process transaction fees or other fees related to licensees or other persons subject to this part.

(3) An applicant shall furnish information to the nationwide mortgage licensing system and registry concerning the applicant's identity, including but not limited to:

(a) fingerprints for submission to the federal bureau of investigation and any governmental agency or entity authorized to receive information for a state, national, and international criminal history background check;

(b) legal name, birth date, and social security number for submission to the criminal investigation bureau of the Montana department of justice as authorized for a state criminal history background check; and

(c) personal history and experience in a form prescribed by the nationwide mortgage licensing system and registry, including submission of authorization for the nationwide mortgage licensing system and registry and the department to obtain:

(i) an independent credit report from a consumer reporting agency described in section 603(p) of the Fair Credit Reporting Act, 15 U.S.C. 1681a(p); and

(ii) information related to administrative, civil, or criminal findings by a governmental jurisdiction.

(4) To reduce the points of contact that the federal bureau of investigation may be required to maintain for purposes of subsection (3), the department may use the nationwide mortgage licensing system and registry as a channeling agent for requesting information from and distributing information to the United States department of justice or other governmental agencies.

(5) To reduce the points of contact that the department may be required to maintain for purposes of subsection (3), the department may use the nationwide mortgage licensing system and registry as a channeling agent for requesting and distributing information to and from any source directed by the department.

(6) The department shall issue a license to an applicant that has met all the requirements of this section, has paid the fee required under 32-9-117, and is not determined ineligible under [section 17].

Section 12. Application for licensure. In order for an entity to be considered for state licensure, each of the following is required to independently meet the requirements established in [section 17(1)(a) through (1)(d)]:

(1) ultimate equity owners of 25% or more of the applicant if the equity owners are individuals;

(2) control persons of the applicant if the control persons are individuals; and

(3) individuals that control, directly or indirectly, the election of 25% or more of the members of the board of directors of the entity.

Section 13. Section 32-9-116, MCA, is amended to read:

"32-9-116. ~~Application for loan originator license — employment~~ *Employment* of *mortgage* loan originator. ~~(1) An application for a loan originator license must include:~~

~~(a) the name and address of the applicant;~~

~~(b) evidence of the applicant's experience and knowledge of the mortgage industry; and~~

~~(c) a statement as to whether the applicant is under investigation, has been convicted of or pleaded guilty to any felony or criminal offense involving fraud or dishonesty, or has been subject to any adverse civil judgment for any conduct involving fraudulent or dishonest dealing.~~

~~(2) The department shall investigate each applicant. The investigation shall include a criminal records check based on the fingerprints of the applicant and a civil records check. The department shall require each applicant to file a set of the applicant's fingerprints, taken by a law enforcement agency, and any other information necessary to complete a statewide and nationwide criminal check with the criminal investigation bureau of the department of justice for state processing and with the federal bureau of investigation for federal processing. All costs associated with the criminal history check are the responsibility of the applicant. Criminal history records provided to the department under this section are confidential and the department may use the records only to determine if the applicant is eligible for licensure. If an investigation outside this state is necessary, the department may require the applicant to advance sufficient funds to pay the actual expenses of the investigation. The department may deny the application if the applicant's criminal history demonstrates any felony criminal convictions or other convictions involving fraud or dishonesty or if the applicant has had any adverse civil judgments involving fraudulent or dishonest dealings.~~

~~(3)~~*(1)* A *mortgage* loan originator may transact business only for an employing mortgage broker *or one employing mortgage lender* licensed in accordance with the provisions of this part. Each original license issued to a *mortgage* loan originator must be provided to and maintained by the employing mortgage broker *or employing mortgage lender* at the ~~mortgage broker's~~ *employing licensee's* main office. A copy of the *mortgage* loan originator's license must be displayed at the office where that *mortgage* loan originator principally transacts business.

~~(4)~~*(2)* If the employment of a *mortgage* loan originator is terminated, the mortgage broker *or the mortgage lender* shall return the *mortgage* loan originator's license to the department within 5 business days after the termination *and remove sponsorship of the mortgage loan originator on the nationwide mortgage licensing system and registry within 5 business days of the termination*. For a period of 6 months after the termination of employment, the *mortgage* loan originator may request the transfer of the license to another mortgage broker *or mortgage lender* by ~~submitting a relocation application to the department, along with~~ *complying with the nationwide mortgage licensing system and registry procedures and paying* a fee established by the department by rule. The ~~return~~ *removal of sponsorship* of the license of any *mortgage* loan originator ~~to the department~~ that is not transferred to another mortgage broker *or mortgage lender* terminates the right of the *mortgage* loan originator to engage in any residential mortgage loan origination activity until ~~department~~ *nationwide mortgage licensing system and registry* procedures have been followed to ~~reinstate~~ *sponsor* the license. The license of any *mortgage* loan originator that has been ~~returned to the department~~ *removed from sponsorship*

and not transferred within 6 months of termination of employment must be canceled."

Section 14. Provisional licenses and previously licensed persons. The department may establish by rule licensing requirements, fees, and interim procedures for licensing and acceptance of applications for the purposes of implementing an orderly and efficient licensing process. The department may by rule establish expedited review and licensing procedures for a previously licensed person.

Section 15. Section 32-9-117, MCA, is amended to read:

"32-9-117. Fees — license renewal — disposition of fees. (1) (a) Except as provided in subsection (1)(b), ~~an individual mortgage broker or~~ an entity seeking licensure as a mortgage broker shall pay an initial nonrefundable license application fee of $500 *and an additional application fee of $250 for any branch location*. A *mortgage* loan originator shall pay an initial nonrefundable license application fee of ~~$400~~ *$400. An entity seeking licensure as a mortgage lender shall pay an initial nonrefundable license application fee of $750 and an additional application fee of $250 for any branch location.* An applicant shall pay one-half of these initial nonrefundable license application fees for any license period of less than 6 months.

(b) An individual who is seeking licensure as a mortgage ~~broker~~ *loan originator* and who is the ~~sole~~ owner of an entity that is seeking licensure as a mortgage broker shall pay a single initial nonrefundable license application fee of $500.

(2) The license of a mortgage broker*, mortgage lender,* or *mortgage* loan originator is valid for a 1-year period ~~and expires on June 30~~. ~~Every~~ *A state* licensee shall~~, on or before May 31 of the year,~~ submit a renewal application and pay to the ~~department~~ *nationwide mortgage licensing system and registry* a renewal fee in an amount set by the department by rule. The department shall establish by rule the requirements for renewal applications. The department shall establish a single renewal fee for individuals and entities described in ~~subsection~~ *subsection* (1)(b) ~~that are licensed as mortgage brokers~~. An individual described in subsection (1)(b) may act as a designated manager under 32-9-122 and is not subject to any additional license fees for acting in the capacity of a designated manager. The fees set by the department must be commensurate with the costs of the program. Failure to submit required information or fees within the time prescribed *means the license* automatically ~~revokes the license~~ *expires. The department may adopt procedures for reinstatement of expired licenses that are consistent with the standards established by the nationwide mortgage licensing system and registry*.

(3) An application for renewal must be accompanied by evidence that the continuing education requirements provided for in 32-9-118 have been met and that there has not been a material change in the status of the licensee in the preceding 12 months. *An application for renewal also must demonstrate that the licensee continues to meet the standards for licensure under this part and that the licensee has paid all fees for renewal of the license.*

(4) ~~All~~ *The state portion of the* fees collected under this section must be deposited in the department's state special revenue fund to be used by the department in administering the provisions of this part.

(5) An applicant for a mortgage broker, mortgage lender, or mortgage loan originator license renewal shall apply for state licensure on an application form approved by the nationwide mortgage licensing system and registry."

Section 16. Compliance of current mortgage brokers, mortgage lenders, and mortgage loan originator licensees with background check and minimum standards — renewals. (1) Upon application to the nationwide mortgage licensing system and registry by a current licensee for renewal of a mortgage broker, a mortgage lender, or a mortgage loan originator license, the applicant shall furnish information concerning the applicant to the nationwide mortgage and licensing system and registry regarding the following:

(a) fingerprints for submission to the federal bureau of investigation and any governmental agency or entity authorized to receive information for a criminal history background check at the state, federal, and international levels;

(b) legal name, birth date, and social security number for submission to the criminal investigation bureau of the Montana department of justice as authorized for a state criminal history background check; and

(c) a written statement of personal history and experience in a form prescribed by the nationwide mortgage licensing system and registry, including authorization for the nationwide mortgage licensing system and registry to obtain:

(i) a current independent credit report obtained from a consumer reporting agency described in section 603(p) of the Fair Credit Reporting Act, 15 U.S.C. 1681a(p); and

(ii) information related to any administrative, civil, or criminal findings by any governmental jurisdiction.

(2) To reduce the points of contact that the federal bureau of investigation may be required to maintain for purposes of subsection (1), the department may use the nationwide mortgage licensing system and registry as a channeling agent for requesting information from and distributing information to the United States department of justice or other governmental agencies.

(3) To reduce the points of contact that the department may be required to maintain for purposes of subsection (1), the department may use the nationwide mortgage licensing system and registry as a channeling agent for requesting and distributing information to and from any source directed by the department.

(4) Upon application to the nationwide mortgage licensing system and registry by a current licensee for renewal of a mortgage broker, mortgage lender, or mortgage loan originator license, the department shall commence a supplemental investigation of the applicant and may not renew any license if any of the following facts are found:

(a) the applicant has ever had a mortgage broker, mortgage lender, or mortgage loan originator license or the equivalent revoked in any governmental jurisdiction. A subsequent formal vacation of a revocation means that the revocation may not be considered a revocation. The department may by order vacate a revocation of a license and enter an appropriate order.

(b) the applicant has been convicted of or pled guilty or nolo contendere to a felony in a domestic, foreign, or military court during the 7-year period preceding the date of the application for renewal or at any time preceding the date of application if the felony involved an act of fraud, dishonesty, a breach of trust, or money laundering. The pardon of a conviction is not a conviction for the purposes of this subsection (2)(b).

(c) the applicant has failed to demonstrate financial responsibility, character, and general fitness to command the confidence of the community and to warrant a determination that the mortgage broker, mortgage lender, or mortgage loan originator will operate honestly, fairly, and efficiently within the purposes of this section;

(d) the applicant has not met the surety bond or net worth requirement as required pursuant to 32-9-123;

(e) the applicant has not completed the prelicensing education requirement described in [section 8];

(f) the applicant has not passed a written test that meets the test requirements described in 32-9-110;

(g) the applicant made a material misstatement of fact or material omission of fact in the application.

(5) The department shall determine that the applicant has demonstrated the qualities of financial responsibility, character, and general fitness referred to in subsection (2)(c) if all other requirements for licensure under this section have been satisfied and the department's investigation does not reveal a specific problem on the applicant's part with respect to subsection (2)(c).

Section 17. Denial of mortgage broker, mortgage lender, or mortgage loan originator license application or license renewal. (1) The department may not issue or renew any mortgage broker, mortgage lender, or mortgage loan originator license if any of the following facts are found during the application procedure:

(a) the applicant has ever had a mortgage broker, mortgage lender, or mortgage loan originator license or their equivalent revoked in any governmental jurisdiction. A subsequent formal vacation of a revocation means that the revocation may not be considered a revocation. The department may by order vacate a revocation of a license and enter an appropriate order.

(b) the applicant has been convicted of or pled guilty or nolo contendere to a felony in a domestic, foreign, or military court during the 7-year period preceding the date of the application for licensing or renewal or at any time preceding the date of application if the felony involved an act of fraud, dishonesty, a breach of trust, or money laundering. The pardon of a conviction is not a conviction for the purposes of this subsection (1)(b).

(c) the applicant has failed to demonstrate financial responsibility, character, and general fitness to command the confidence of the community and to warrant a determination that the mortgage broker, mortgage lender, or mortgage loan originator will operate honestly, fairly, and efficiently within the purposes of this section;

(d) the applicant has not met the surety bond or net worth requirement as required pursuant to 32-9-123;

(e) the applicant has not completed the prelicensing education requirement described in [section 8];

(f) the applicant has not passed a written test that meets the test requirements described in 32-9-110;

(g) the applicant made a material misstatement of fact or material omission of fact in the application.

(2) The department shall determine that the applicant has demonstrated the qualities of financial responsibility, character, and general fitness referred

to in subsection (1)(c) if all other requirements for licensure under this section have been satisfied and the department's investigation does not reveal a specific problem on the applicant's part with respect to subsection (1)(c).

Section 18. Section 32-9-118, MCA, is amended to read:

"32-9-118. Continuing education requirements *for mortgage loan originators.* *(1)* All *mortgage* loan originators ~~and all individual mortgage brokers~~ shall complete and submit to the ~~department~~ *nationwide mortgage licensing system and registry* evidence of at least 12 hours of continuing education every year at the time they submit their license renewal applications. The 12 hours of continuing education must be *obtained* in ~~courses or programs of study approved by the department and in areas established by the department by rule~~ *an approved education course*.

(2) The 12 hours of education must include at least:

(a) 3 hours of training on federal laws and regulations;

(b) 2 hours of training in ethics, including instruction on fraud prevention, consumer protection, and fair lending issues; and

(c) 2 hours of training related to lending standards for the nontraditional mortgage product marketplace.

(3) A person who has successfully completed the education requirements that comply with the requirements of subsection (1) and that are approved by the nationwide mortgage licensing system and registry for any other state must be given credit toward completion of continuing education requirements in Montana.

(4) A licensed mortgage loan originator who subsequently becomes unlicensed shall complete the continuing education requirements for the last year in which the license was held prior to issuance of a new or renewed license."

Section 19. Section 32-9-121, MCA, is amended to read:

"32-9-121. ~~In-state office requirement — records~~ *Records* maintenance — advertising requirement. (1) ~~Except for an individual mortgage broker working as an employee of a licensed mortgage broker, a person or entity licensed as a mortgage broker shall maintain at least one physical office located in this state either on its own accord or in conjunction with another licensed mortgage broker or regulated lender located in this state.~~ Licensees shall maintain books, accounts, records, and copies of residential mortgage loan files and trust account *or escrow account* records that are necessary to enable the department to determine whether a licensee is in compliance with the applicable laws and rules. The ~~required materials must be maintained at the Montana office location where services are provided, and the~~ materials must be maintained in accordance with generally accepted accounting principles and good business practices. Each office location must have at least one phone line. ~~Licensees shall pay state income tax on all income earned in Montana.~~ *Whenever a licensee's usual business location is outside of this state the licensee shall, at its election, either maintain its books and records at a location in this state or reimburse the department for expenses incurred, including but not limited to staff time, transportation, food, and lodging expenses, relating to an examination or investigation under this part.*

(2) A mortgage broker *or mortgage lender* shall maintain a residential mortgage file for a minimum of 5 years from the date of the last activity pertaining to the file. A mortgage broker *or mortgage lender* shall maintain trust account *or escrow account* records for a minimum of 5 years.

(3) (a) In any printed, published, ~~televised,~~ e-mail, or internet advertisement for the provision of services, the following information must be included:

(i) a name~~, address,~~ and license number for each mortgage broker*, mortgage lender,* or *mortgage* loan originator advertising as an individual; or

(ii) the name~~, address,~~ and license number only of the licensed entity when the licensed entity is advertising on its own behalf or as an entity with one or more mortgage brokers*, mortgage lenders,* or *mortgage* loan originators also listed.

(b) For the purposes of this subsection (3), advertising does not include stationery or business forms but does include business cards. A business card must include a mortgage broker's ~~or~~*, a mortgage lender's, or a mortgage* loan originator's license number but is not required to list the entity's license number if the entity's name is listed."

Section 20. Section 32-9-122, MCA, is amended to read:

"32-9-122. ~~Requirement for designated~~ *Designated* manager *and branch license requirements.* *(1) A mortgage broker or mortgage lender entity shall apply for a license for a main office and for every branch office through the nationwide mortgage licensing system and registry and maintain a unique identifier.*

~~(1)~~*(2)* A mortgage broker ~~that is not a sole proprietorship~~ *entity* shall designate to the ~~department~~ *nationwide mortgage licensing system and registry* an individual ~~within its organization who is located in this state and~~ *who* is licensed *by this state* as a mortgage ~~broker~~ *loan originator to serve* as the designated manager of the ~~organization~~ *main office and a separate designated manager to serve at each branch location*.

(3) A mortgage lender entity shall designate to the nationwide mortgage licensing system and registry for each office that originates a residential mortgage loan an individual who is licensed as a mortgage loan originator as the designated manager of the main office and shall designate a separate designated manager to serve each branch location.

(4) A designated manager must have 3 years of experience as either a mortgage loan originator or a registered mortgage loan originator.

(5) A designated manager is responsible for the operation of the business at the location under the designated manager's full charge, supervision, and control.

(6) A mortgage broker or mortgage lender entity is responsible for the conduct of a designated manager or mortgage loan originator while the designated manager or mortgage loan originator is employed by the mortgage broker or mortgage lender entity, including for violations of federal laws that are applicable to the origination of residential mortgage loans, violations of this part, and violations of any administrative rule adopted pursuant to this part.

(7) A designated manager is responsible for conduct that violates federal laws that are applicable to the origination of residential mortgage loans, violations of this part, and violations of any administrative rule adopted pursuant to this part. The designated manager's responsibility includes conduct by the designated manager and each mortgage loan originator employed by the entity while the designated manager is employed at the location that the designated manager manages.

~~(2)~~*(8)* If the designated manager ceases to act in that capacity, within 15 days the mortgage broker *or mortgage loan originator* shall designate another individual licensed as a mortgage broker as designated manager and shall submit information ~~in writing to the department~~ *to the nationwide mortgage licensing system and registry* establishing that the subsequent designated manager is in compliance with the provisions of this part.

~~(3)~~*(9)* If the employment of a designated manager is terminated, the mortgage broker *or mortgage lender* shall return the designated manager's license to the department within 5 business days of the termination *and remove the sponsorship of the designated manager on the nationwide mortgage licensing system and registry within 5 business days of the termination*."

Section 21. Registered agent for mortgage broker, mortgage lender, or mortgage loan originator licensee without physical office in state — venue. (1) An applicant for a mortgage broker, mortgage lender, or mortgage loan originator license under [section 12] who does not maintain a physical office within the state shall file, in a form prescribed by the department, an irrevocable consent appointing the department as the registered agent of the applicant for the purpose of receiving service of any lawful process in a noncriminal suit, action, or proceeding against the applicant or its successors, executor, or administrator that is based on an alleged violation of this part or any administrative rule adopted pursuant to this part. Service on the department has the same force and validity as if served personally on the applicant or the person filing the consent.

(2) Service must be made by leaving a copy of the process in the office of the department and is effective only if:

(a) notice of the service and a copy of the process are sent by certified mail to the defendant or respondent at the last-known address on file with the department by the plaintiff, which may be the department, in an action, suit, or proceeding; and

(b) the plaintiff's affidavit of compliance with this section is filed in the case on or before the return day of the process, if any, or within a time the court allows.

(3) In a judicial action, suit, or proceeding arising under this part or any administrative rule adopted pursuant to this part between the department and a licensee who does not maintain a physical office in this state, venue must be exclusively in Lewis and Clark County.

(4) A notice, hearing schedule, or order must be mailed to the person or licensee by certified mail at the last-known address for which the license was issued or, in the case of an unlicensed person, at the last-known address of the person.

Section 22. Section 32-9-123, MCA, is amended to read:

"32-9-123. ~~Irrevocable letter of credit or surety~~ *Surety* bond *or net worth requirement* — notice of legal action. ~~(1) Each mortgage broker, other than an individual mortgage broker working as an employee of a mortgage broker, shall maintain at all times an irrevocable letter of credit or surety bond, naming the department as a beneficiary, in the amount of $25,000 for each principal location and branch office identified in the application for licensure.~~

(1) (a) A mortgage loan originator must be covered by a surety bond in accordance with this section. If a mortgage loan originator is an employee of or exclusive agent for a licensed mortgage lender or mortgage broker, the surety

bond of the licensed mortgage lender or mortgage broker may be used in lieu of a mortgage loan originator's surety bond.

(b) The department shall use the proceeds of the ~~letters of credit or~~ surety bonds to reimburse borrowers or bona fide third parties who successfully demonstrate a financial loss because of an act of a ~~licensee~~ *mortgage broker, mortgage lender, or mortgage loan originator* that violates the provisions of this part.

(2) (a) A mortgage broker or mortgage lender is required to maintain one surety bond for each entity license.

(b) The amount of the required surety bond must be calculated by combining the annual loan production amounts for all persons originating residential mortgage loans and for all business locations of the mortgage broker or mortgage lender and must be in the following amount:

(i) $25,000 for a combined annual loan production that does not exceed $50 million a year;

(ii) $50,000 for annual loan production of $50 million but not exceeding $100 million a year; or

(iii) $100,000 for annual loan production of more than $100 million a year.

(3) (a) In lieu of a surety bond, a mortgage broker may meet a minimum net worth requirement.

(b) Minimum net worth must be maintained in an amount determined by the department that reflects the dollar amount of loans originated.

(c) The department shall adopt rules with respect to the requirements for minimum net worth as are necessary to accomplish the purposes of this part.

(4) Evidence that a mortgage broker is approved by the department of housing and urban development to originate loans insured by the federal housing administration must be considered as satisfying the net worth requirement provided that the actual net worth determined in the department of housing and urban development's approval is equivalent to the bond amount set forth for the corresponding dollar amount range set forth in subsections (2)(b)(i) through (2)(b)(iii).

~~(2)~~*(5)* A mortgage broker*, mortgage lender,* or *mortgage* loan originator shall give notice to the department by certified mail within 15 days of the mortgage broker's*, mortgage lender's,* or *mortgage* loan originator's *obtaining* knowledge of the initiation of an investigation or the entry of a judgment in a criminal or civil action. The notice must be given if the investigation or the legal action is in any state and involves a mortgage broker, *mortgage lender,* anyone having an ownership interest in a mortgage broker entity *or mortgage lender entity*, or a *mortgage* loan originator. In the case of a legal action, the notice must include a copy of the criminal or civil judgment."

Section 23. Escrow fund. (1) An escrow fund authorized for any purpose by a mortgage loan contract is subject to applicable state and federal requirements. Money received from a borrower by a mortgage lender licensed under this part must be considered as held in trust immediately upon receipt. The mortgage lender shall place escrow funds in a depository institution prior to the end of the third business day following their receipt.

(2) An escrow fund account must be a separate account established to hold only borrowers' funds. The account must be designated and maintained for the benefit of borrowers. Escrow funds may not be commingled with any other funds.

(3) Escrow funds must be kept in the segregated account until disbursement. Money maintained in an escrow fund account is exempt from execution, attachment, or garnishment.

(4) A licensee may not encumber the corpus of an escrow fund account or commingle other operating funds with account funds.

(5) An escrow fund account may be used only for:

(a) a payment authorized by the borrower or the mortgage loan contract or required by federal or state law;

(b) a refund to the borrower;

(c) transfer to a depository institution;

(d) transfer to the appropriate mortgage lender or mortgage servicer in the case of a transfer of servicing;

(e) a purpose authorized by the mortgage loan contract; or

(f) purposes of complying with an order issued by the commissioner or a court.

(6) Accounting for escrow funds must be performed in compliance with the aggregate accounting rules established in regulation X, 24 CFR 3500, and in compliance with 71-1-115.

Section 24. Disclosure of mortgage costs by mortgage lender. (1) Within 3 business days of taking a mortgage loan application and prior to receiving any consideration from the borrower, the mortgage lender shall disclose the terms of the loan to the borrower in compliance with the disclosure requirements of the federal Real Estate Settlement Procedures Act, 12 U.S.C. 2601, et seq., the federal Truth in Lending Act, 15 U.S.C. 1601, et seq., and any regulations promulgated under those acts.

(2) A mortgage lender shall disclose the terms of any prepayment penalty on the mortgage loan, including the amount of the prepayment penalty or the formula for calculating the prepayment penalty. If the initial mortgage loan offer does not include a prepayment penalty, but a prepayment penalty is later included in the mortgage loan offer, disclosure of the terms of the prepayment penalty must be made within 3 business days of the prepayment penalty being added to the mortgage loan offer.

(3) A licensed mortgage lender may not require a borrower to pay any fees or charges prior to the mortgage loan closing, except:

(a) charges to be incurred by the mortgage lender on behalf of the borrower for services from third parties necessary to process the application, such as credit reports and appraisals;

(b) an application fee;

(c) an interest rate lock-in fee if the borrower is provided an interest rate lock-in agreement, the terms of which must include but are not limited to:

(i) the expiration date of the interest rate lock-in agreement;

(ii) the principal amount of the mortgage loan, the term of the mortgage loan, and identification of the residential real estate;

(iii) the initial interest rate and the discount points to be paid; and

(iv) the amounts and payment terms of the interest rate lock-in, along with a statement as to whether the fee is refundable and the terms and conditions necessary to obtain a refund; and

(d) a loan commitment fee, upon approval of the mortgage loan application, if the borrower is provided with a loan commitment in writing that it is signed by the mortgage lender and the borrower and the terms include the terms and conditions of the mortgage loan as well as the terms and conditions of the loan commitment, including but not limited to:

(i) the time period during which the loan commitment is irrevocable and may be accepted by the borrower, which may not be less than 7 calendar days from the date of the loan commitment or the date of mailing, whichever is later;

(ii) the amount and payment terms of the loan commitment fee, along with a statement as to whether the fee is refundable and the terms and conditions necessary to obtain a refund;

(iii) the expiration date of the loan commitment;

(iv) conditions precedent to closing; and

(v) the terms and conditions, if any, for obtaining a refund of fees for third-party services or arranging for the transfer of third-party service work products to another mortgage lender.

(4) Any amount collected under subsection (3) in excess of the actual costs must be returned to the borrower within 60 days after rejection, withdrawal, or closing.

(5) (a) Except as provided in subsection (5)(b), fees or charges collected pursuant to this section, other than fees for third-party services collected pursuant to subsection (3)(a), must be refunded if a valid loan commitment is not produced or if closing does not occur.

(b) Applicable fees may be retained by the licensee in accordance with the terms of the loan commitment upon the licensee's ability to demonstrate any of the following:

(i) the borrower withdraws the mortgage loan application after the lender has issued a loan commitment on the same terms and conditions disclosed to the borrower on the most recent good faith estimate;

(ii) the borrower has made a material misrepresentation or omission on the mortgage loan application; or

(iii) the borrower has failed to provide documentation necessary to the processing or closing of the mortgage loan application and closing does not occur without fault of the lender.

Section 25. Section 32-9-124, MCA, is amended to read:

"32-9-124. Prohibitions — required disclosure. (1) A mortgage broker*, mortgage lender,* or *mortgage* loan originator may not do any of the following:

(a) retain original documents owned by the borrower and submitted in connection with the loan application;

(b) directly or indirectly employ any scheme to defraud or mislead a borrower, a *mortgage* lender, or any other person;

(c) make any misrepresentation or deceptive statement in connection with a residential mortgage loan, including but not limited to interest rates, points, costs at closing, or other financing terms or conditions;

(d) fail to pay a bona fide third party later than 30 days after recording of the loan closing documents or 90 days after completion of the bona fide third-party service, whichever is earlier, unless otherwise agreed by the parties;

(e) accept any fees or compensation at closing that were not disclosed as required by state or federal law;

(f) accept any fees or compensation in excess of those allowed by state or federal law; ~~or~~

(g) sign a borrower's application or related documents on behalf of or in lieu of another mortgage broker*, mortgage lender,* or *mortgage* loan originator~~.~~*;*

(h) (i) assist or aid and abet any person in the conduct of business under this part without a valid license as required under this part; or

(ii) conduct any business covered by the provisions of the Secure and Fair Enforcement for Mortgage Licensing Act, Title V of the Housing and Economic Recovery Act of 2008, Public Law 110-289, without holding a valid license as required under this part;

(i) fail to comply with this part or rules promulgated under this part or fail to comply with any other state or federal laws, including the rules and regulations adopted pursuant to those laws, applicable to any business authorized by or conducted under this part;

(j) negligently make any false statement or knowingly and willfully make any omission of material fact in connection with any information or reports filed with a government agency or the nationwide mortgage licensing system and registry or in connection with any investigation conducted by the department or another governmental agency.

(2) A mortgage lender may not do any of the following:

(a) cause or require a borrower to obtain property insurance coverage in an amount that exceeds the replacement cost of the improvements as established by the property insurer;

(b) disburse the mortgage loan proceeds to a closing agent in any form other than, as applicable:

(i) direct deposit to a borrower's account;

(ii) wire;

(iii) bank or certified check;

(iv) attorney's check drawn on a trust account; or

(v) other form as specifically authorized by applicable law;

(c) disburse the proceeds of a mortgage loan without sufficient collected funds on hand at the time of the disbursement in the account upon which the funds are drawn;

(d) fail to disburse funds in accordance with a loan commitment to make a mortgage loan that was accepted by the borrower;

(e) fail to take the actions required to affect a release of the lender's security interest in the property as described in 71-1-212;

(f) advertise that a mortgage applicant will have unqualified access to credit without disclosing what material limitations on the availability of credit exist, such as the percentage of down payment required, that a higher rate or points could be required, or that restrictions as to the maximum principal amount of the mortgage loan offered could apply;

(g) advertise a mortgage loan for which a prevailing rate is indicated in the advertisement unless the advertisement specifically states that the expressed rate could change or not be available at commitment or closing;

(h) advertise mortgage loans, including rates, margins, discounts, points, fees, commissions, or other material information, including material limitations on mortgage loans, unless the person is able to make advertised mortgage loans to a reasonable number of qualified applicants; or

(i) falsely advertise or misuse names in violation of 18 U.S.C. 709.

~~(2)~~*(3)* Prior to providing *residential* mortgage ~~broker~~ services to a borrower, the *mortgage loan originator* ~~licensee~~ *working for a mortgage broker*, in addition to other disclosures required by this part, subsection (3) ~~of this section~~, and other state and federal laws, shall provide to the borrower ~~at the time of application~~ a written disclosure containing substantially the following language, which must be signed by the borrower:

"MORTGAGE LOAN ORIGINATION DISCLOSURE

(Name of licensee) is a licensed mortgage ~~broker~~ *loan originator* in Montana authorized to provide mortgage ~~brokerage~~ *loan origination* services to you in connection with your real estate loan. Lenders whose loan products we distribute generally provide their loan products to us at a wholesale rate. The rate you pay may be higher.

SECTION 1. NATURE OF RELATIONSHIP. In connection with this mortgage loan:

(1) (name of licensee) is acting as an independent contractor and not as your agent;

(2) (name of licensee) enters into separate independent contractor agreements with various lenders; and

(3) while (name of licensee) seeks to assist you in meeting your financial needs, (name of licensee) does not distribute products of all lenders or investors in the market and cannot guarantee the lowest price or best terms available.

SECTION 2. OUR COMPENSATION.

(1) The retail price (name of licensee) offers you, including the interest rate, total points, and fees, will include (name of licensee's) compensation.

(2) In some cases, (name of licensee) may be paid all of (name of licensee's) compensation by either you or the lender.

(3) Alternatively, (name of licensee) may be paid a portion of (name of licensee's) compensation by both you and the lender. For example, in some cases, if you would rather pay a lower interest rate, you may pay more money in upfront points and fees. Also, in some cases, if you would rather pay less money up front, you may be able to pay some or all of our compensation indirectly through a higher interest rate, in which case (name of licensee) will be paid directly by the lender.

(4) (Name of licensee) may also be paid by the lender based on the value of the mortgage loan or related servicing rights in the market place or based on other services, goods, or facilities performed or provided by (name of licensee) to the lender.

By signing below, you acknowledge that you have received a copy of this disclosure."

~~(3)~~*(4)* The disclosure must include the address of the department's division of banking and financial institutions, the division's phone number and website, and a statement informing borrowers that the division can provide information about whether a mortgage broker or *mortgage* loan originator is licensed as well as other legally available information.

(5) The disclosure must include the state license number and the unique identifier issued by the nationwide mortgage licensing system and registry for the mortgage loan originator."

Section 26. Section 32-9-125, MCA, is amended to read:

"32-9-125. Trust accounts — bona fide third-party fees. (1) Every mortgage broker *and mortgage lender* doing business in this state shall:

(a) maintain a trust account at a *federally insured* financial institution ~~located in this state whose deposits or shares are insured~~, and the trust account funds may not be commingled with any other funds of the mortgage broker *or mortgage lender*;

(b) deposit into the trust account any bona fide third-party fee that the mortgage broker *or mortgage lender* receives; and

(c) pay third-party fees to a bona fide third party from the ~~mortgage broker's~~ trust account unless the borrower, the seller, or another person involved in the transaction pays the bona fide third party directly.

(2) A mortgage broker *or mortgage lender* may not charge or receive, directly or indirectly, fees for assisting a borrower in obtaining a mortgage until all of the services that the mortgage broker *or mortgage lender* has agreed to perform for the borrower are completed. A mortgage broker *or mortgage lender* may not charge a residential loan application fee in excess of the amount allowed by federal law. Prior to completion of services, the fees provided for in subsection (3) incurred by a bona fide third party in assisting the borrower to obtain a mortgage must be paid.

(3) The following fees must be paid by the borrower, the seller, or another person involved in the transaction directly to the bona fide third party providing the services or must be paid by the borrower, the seller, or another person involved in the transaction to the mortgage broker *or mortgage lender* for payment of services performed by the bona fide third party:

(a) credit report fees;

(b) notary fees;

(c) title search, appraisal, or survey fees;

(d) rate-lock fees not exceeding 3% of the mortgage loan amount; and

(e) fees paid directly by the borrower, the seller, or another person involved in the transaction to a state or federal government agency or instrumentality for purposes of processing a mortgage application relating to a government-sponsored or guaranteed mortgage program.

(4) The department shall by rule define the meaning of "another person involved in the transaction"."

Section 27. Section 32-9-126, MCA, is amended to read:

"32-9-126. Revocation, suspension, *conditioning,* and reinstatement of licenses. (1) The department, upon giving ~~the~~ *a mortgage broker, mortgage lender, or mortgage loan originator* licensee 10 days' written notice, which includes a statement of the grounds for the proposed suspension*, conditioning,* or revocation, and informing the licensee that the licensee has the right to be heard at an administrative hearing if requested by the licensee, may suspend*, condition,* or revoke a license if it finds that the licensee has violated any provision of this part.

(2) All notices, hearing schedules, and orders must be mailed to the licensee by certified mail to the address for which the license was issued.

(3) A revocation, suspension, or surrender of a license does not relieve the licensee from civil or criminal liability for acts committed prior to the revocation, suspension, or surrender of the license.

(4) The department may reinstate any suspended ~~or revoked~~ license if there is not a fact or condition existing at the time of reinstatement that would have justified the department's refusal to originally issue the license. ~~If a license has been revoked for cause, an application may not be made for the issuance of a new license or the reinstatement of a revoked license for a period of 6 months from the date of revocation.~~

(5) The department may by order vacate a revocation of a license and enter an appropriate order."

Section 28. Unique identifier for mortgage brokers, mortgage lenders, mortgage loan originators, and registered mortgage loan originators. (1) Each licensed mortgage broker, mortgage lender, and mortgage loan originator shall post the mortgage broker's, mortgage lender's, or mortgage loan originator's unique identifier in a conspicuous place within the office where the licensee principally transacts business.

(2) The department shall post on its website the names of all licensees, together with their license numbers. In conjunction with that posting, the department shall also provide the unique identifier of all licensed mortgage brokers, mortgage lenders, and mortgage loan originators so that consumers, borrowers, and the public may access that information for use in conjunction with the nationwide mortgage licensing system and registry.

(3) The department shall also post on its website the names and unique identifiers of all registered mortgage loan originators conducting business in the state.

Section 29. Mortgage call reports. Each mortgage broker and mortgage lender entity shall submit to the nationwide mortgage licensing system and registry reports of condition, which must be in the form and must contain information that the nationwide mortgage licensing system and registry may require.

Section 30. Nationwide mortgage licensing system and registry information challenge process. The department shall establish a process under which mortgage brokers, mortgage lenders, and mortgage loan originators may challenge information entered into the nationwide mortgage licensing system and registry by the department.

Section 31. Section 32-9-130, MCA, is amended to read:

"32-9-130. Department authority — rulemaking. (1) The department shall adopt rules necessary to carry out the intent and purposes of this part. The rules adopted are binding on all licensees and enforceable through the power of suspension or revocation of licenses.

(2) The rules must address:

(a) revocation or suspension of licenses for cause;

(b) investigation of applicants, licensees, and unlicensed persons alleged to have violated a provision of this part and handling of complaints made by any person in connection with any business transacted by a licensee;

(c) *(i) ensuring that all persons are informed of their right to contest a decision by the department under the Montana Administrative Procedure Act; and*

(ii) holding contested case hearings pursuant to the Montana Administrative Procedure Act and issuing cease and desist orders, orders of restitution, and orders for the recovery of administrative costs;

(d) prescribing forms for applications; *and*

~~(e) developing or approving tests to be given as a prerequisite for licensure;~~

~~(f) approval of programs for continuing education; and~~

~~(g)~~*(e)* establishing fees for ~~testing, continuing education programs, and~~ license renewals.

(3) The department may seek a writ or order restraining or enjoining, temporarily or permanently, any act or practice violating any provision of this part.

~~(4) (a) The department may at any time examine any mortgage broker transaction and may examine the residential mortgage loan files, trust account records, and other information related to mortgage loan transactions of a licensee.~~

(4) (a) For the purposes of investigating violations or complaints arising under this part or for the purposes of examination, the department may review, investigate, or examine any licensee or person subject to this part as often as necessary in order to carry out the purposes of this part.

(b) The commissioner may direct, subpoena, or order the attendance of and may examine under oath any person whose testimony may be required about the subject matter of any examination or investigation and may direct, subpoena, or order the person to produce books, accounts, records, files, and any other documents the commissioner considers relevant to the inquiry.

(5) Each licensee or person subject to this part shall make available to the department upon request the documents and records relating to the operations of the licensee or person. The department may access the documents and records and may interview the officers, principals, mortgage loan originators, employees, independent contractors, agents, customers of the licensee or person concerning the business of the licensee or person, or any other person having knowledge the department considers relevant.

(6) (a) The department may conduct investigations and examinations for the purposes of initial licensing, license renewal, license suspension, license conditioning, license revocation, or license termination or to determine compliance with this part.

(b) The department has the authority to access, receive, and use any books, accounts, records, files, documents, information, or evidence, including but not limited to:

(i) criminal, civil, and administrative history information, including confidential criminal justice information as defined in 44-5-103;

(ii) personal history and experience information, including independent credit reports obtained from a consumer reporting agency described in section 603(p) of the Fair Credit Reporting Act, 15 U.S.C. 1681, et seq.; and

(iii) any other documents, information, or evidence the department considers relevant to an inquiry or investigation regardless of the location, possession, control, or custody of the documents, information, or evidence.

~~(b) When conducting a financial examination or an audit of a licensee, the department may require the licensee to pay a fee of $300 per day for each examiner performing the financial examination or audit.~~

(7) (a) The total cost for any examination or investigation must be in accordance with fees determined by the department by rule pursuant to this section and may include expenses for necessary travel outside the state for the purposes of conducting the examination or investigation. The fees set by the department must be commensurate with the cost of the examination or investigation. All fees collected under this section must be deposited in the department's account in the state special revenue fund to be used by the department to cover the department's cost of conducting examinations and investigations.

~~(c) If any examination fees are not paid within 30 days of the department's mailing of an invoice, the license of the mortgage broker or designated manager for the mortgage broker entity may be suspended or revoked.~~

(b) The cost of an examination or investigation must be paid by the licensee or person within 30 days after the date of the invoice. Failure to pay the cost of an examination or investigation when due must result in the suspension or revocation of a licensee's license.

~~(5) (a)~~*(8) (a)* The department may:

(i) exchange information with federal and state regulatory agencies, the attorney general, the consumer protection office of the department, and the legislative auditor;

(ii) exchange information other than confidential information with the mortgage asset research institute, inc., and other similar organizations; and

(iii) refer any matter to the appropriate law enforcement agency for prosecution of a violation of this part.

(b) To carry out the purposes of this section, the department may:

(i) enter into agreements or relationships with other government officials or regulatory associations to improve efficiencies and reduce the regulatory burden by sharing resources, adopting standardized or uniform methods or procedures, and sharing documents, records, information, or evidence obtained under this section;

(ii) retain attorneys, accountants, or other professionals and specialists as examiners, auditors, or investigators to conduct or assist in the conduct of examinations or investigations;

(iii) use, hire, contract, or employ public or privately available analytical systems, methods, or software to examine or investigate the licensee or person subject to this part;

(iv) accept and rely on examination or investigation reports by other government officials, within or outside of this state;

(v) accept audit reports made by an independent certified public accountant for the licensee or person subject to this part if the examination or investigation covers at least in part the same general subject matter as the audit report and may incorporate the audit report in the report of the examination, report of the investigation, or other writing of the department under this part; and

(vi) assess against the licensee or person subject to this part the costs incurred by the department in conducting the examination or investigation.

~~(b)~~*(c)* Except as provided in subsection ~~(5)(a)(i)~~ *(8)(a)(i) and [section 33]*, the department shall treat all confidential criminal justice information as confidential unless otherwise required by law.

~~(6)~~*(9)* The department shall prepare, at least once each calendar year, a roster listing the name and locations for each mortgage broker *and mortgage lender* and a roster of all *mortgage* loan originators and designated managers and the name of their employing *mortgage* brokers *or employing mortgage lenders*. The roster must be available to interested persons and to the general public.

(10) Pursuant to section 1508(d) of the of the Secure and Fair Enforcement for Mortgage Licensing Act, Title V of the Housing and Economic Recovery Act of 2008, Public Law 110-289, the department is authorized to:

(a) supervise and enforce the provisions of this part, including the suspension, termination, revocation, or nonrenewal of a license for violation of state or federal law;

(b) participate in the nationwide mortgage licensing system and registry;

(c) ensure that all mortgage broker, mortgage lender, and mortgage loan originator applicants under this part apply for state licensure and pay any required nonrefundable fees to and maintain a valid unique identifier issued by the nationwide mortgage licensing system and registry; and

(d) regularly report violations of state or federal law and enforcement actions to the nationwide mortgage licensing system and registry.

(11) (a) The department may, if the U.S. department of housing and urban development determines that a provision of this part does not meet the requirements of the Secure and Fair Enforcement for Mortgage Licensing Act, Title V of the Housing and Economic Recovery Act of 2008, Public Law 110-289, or that additional persons are subject to this part, refrain from enforcing the provision that is determined to be noncompliant and shall by rule invalidate any noncompliant exemption to this part or require that additional persons be temporarily subject to this part to be compliant with federal law, including the provisions for licensure and registration with and maintenance of a valid unique identifier with the nationwide mortgage licensing system and registry.

(b) The department shall propose to the regular session of the legislature that follows the determination by the U.S. department of housing and urban development legislation to address the incompatibility with federal law. The provisions that the United States department of housing and urban development determine to not be in compliance with the requirements of the Secure and Fair Enforcement for Mortgage Licensing Act, Public Law 110-289, must be amended in the correcting legislation."

Section 32. Section 32-9-133, MCA, is amended to read:

"32-9-133. Penalties — restitution. (1) If the department finds, after providing a 10-day written notice that includes a statement of alleged violations and a hearing or an opportunity for hearing, as provided in the Montana Administrative Procedure Act, that any person, licensee, or officer, agent, employee, or representative of the person or licensee, whether licensed or unlicensed, has violated any of the provisions of this part, has failed to comply with the rules, instructions, or orders promulgated by the department, has failed or refused to make required reports to the department, has furnished false information to the department, or has operated without a required license, the department may impose a civil penalty not to exceed $5,000 for the first violation and not to exceed $10,000 for each subsequent violation.

(2) The department may issue an order requiring restitution to borrowers and reimbursement of the department's cost in bringing the administrative

action. In addition, the department may issue an order revoking, *conditioning,* or suspending the right of the person or licensee, directly or through an officer, agent, employee, or representative, to do business in this state as a licensee or to engage in the mortgage broker*, mortgage lender* ~~business~~*, or mortgage loan origination business*.

(3) All notices, hearing schedules, and orders must be mailed to the person or licensee by certified mail to the address for which the license was issued or in the case of an unlicensed business to the last-known address of record.

(4) The fines must be deposited in the ~~state general fund~~ *department's account in the state special revenue fund and used to administer the provisions of this part*.

(5) In addition to the penalties in subsection (1), a person practicing as a mortgage broker*, mortgage lender,* or *mortgage* loan originator without being licensed as required under subsection (1) is guilty of a misdemeanor and may be punished by a fine of not less than $250 or more than $1,000, by imprisonment in the county jail for not less than 90 days or more than 1 year, or both. Each violation of the provisions of subsection (1) constitutes a separate offense."

Section 33. Confidentiality. (1) (a) Except as otherwise provided in section 1512 of the Secure and Fair Enforcement for Mortgage Licensing Act, Title V of the Housing and Economic Recovery Act of 2008, Public Law 110-289, the requirements under federal law, the Montana constitution, or Montana law regarding the privacy or confidentiality of any information or material provided to the nationwide mortgage licensing system and registry and any privilege arising under federal or state law, including the rules of a federal or state court, pertaining to the information or material continue to apply to the information or material after the information or material has been disclosed to the nationwide mortgage licensing system and registry.

(b) Information and material may be shared with all state and federal regulatory officials with mortgage industry oversight authority and with the board of governors of the federal reserve system without the loss of confidentiality protections or the loss of privilege provided by federal law, the Montana constitution, or Montana law.

(2) The department may enter into agreements or sharing arrangements with other governmental agencies, the conference of state bank supervisors, the American association of residential mortgage regulators, or associations representing governmental agencies as established by rule of the department.

(3) Information or material subject to confidentiality or a privilege under subsection (1) is not subject to:

(a) disclosure under a federal or state law governing disclosure to the public of information held by an officer or an agency of the federal government or the respective state; or

(b) subpoena, discovery, or admission into evidence in any private civil action or administrative process unless, with respect to any privilege held by the nationwide mortgage licensing system and registry concerning the information or material, the person to whom the information or material pertains waives, in whole or in part, that privilege.

(4) Montana law relating to the disclosure of confidential supervisory information or information or material described in subsection (1) that is inconsistent with subsection (1) is superseded by the requirements of section

1512 of the Secure and Fair Enforcement for Mortgage Licensing Act, Title V of the Housing and Economic Recovery Act of 2008, Public Law 110-289.

(5) Examination reports, information contained in examination reports, and examiners' work papers are confidential, subject to the licensee's and any uninvolved person's reasonable expectation of privacy and, although filed with the department as provided in this part, are not subject to public inspection.

(6) This section does not apply to information or material relating to the employment history of and publicly adjudicated disciplinary and enforcement actions against mortgage lenders, mortgage brokers, and mortgage loan originators included in the nationwide mortgage licensing system and registry that is available for public access.

Section 34. Repealer. Sections 32-9-108, 32-9-115, 32-9-119, 32-10-101, 32-10-102, 32-10-103, 32-10-201, 32-10-202, 32-10-203, 32-10-204, 32-10-207, 32-10-208, 32-10-209, 32-10-301, 32-10-302, 32-10-303, 32-10-309, 32-10-310, 32-10-401, 32-10-402, 32-10-403, 32-10-404, 32-10-405, 32-10-406, 32-10-501, 32-10-502, 32-10-503, 32-10-504, 32-10-505, 32-10-506, 32-10-507, 32-10-512, 32-10-513, 32-10-514, and 32-10-515, MCA, are repealed.

Section 35. Codification instruction. [Sections 5 through 8, 11, 12, 14, 16, 17, 21, 23, 24, 28 through 30, and 33] are intended to be codified as an integral part of Title 32, chapter 9, part 1, and the provisions of Title 32, chapter 9, part 1, apply to [sections 5 through 8, 11, 12, 14, 16, 17, 21, 23, 24, 28 through 30, and 33].

Section 36. Severability. If a part of [this act] is invalid, including a determination that any part of [this act] is out of compliance with the Secure and Fair Enforcement for Mortgage Licensing Act of 2008, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 37. Contingent suspension. If the secretary of housing and urban development determines by guideline, interpretation, or rule that any part of [this act] is out of compliance with the Secure and Fair Enforcement for Mortgage Licensing Act, Public Law 110-289, the operation and effect of that part is suspended.

Section 38. Effective date. [This act] is effective July 1, 2009.

Approved April 19, 2009

CHAPTER NO. 322

[SB 353]

AN ACT ELIMINATING THE LICENSE TAX RATE REDUCTION FOR ETHANOL; AMENDING SECTION 15-70-204, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-70-204, MCA, is amended to read:

"15-70-204. (Temporary) **Gasoline license tax — rate.** (1) Each distributor shall pay to the department a license tax for the privilege of engaging in and carrying on business in this state in an amount equal to:

(a) 4 cents for each gallon of aviation fuel, other than fuel sold to the federal defense fuel supply center, which is allocated to the department as provided by 67-1-301; and

(b) 27 cents for each gallon of all other gasoline distributed by the distributor within the state and upon which the gasoline license tax has not been paid by any other distributor.

(2) Gasoline exported may not be included in the measure of the distributor's license tax unless the distributor is not licensed and is not paying the tax to the state the fuel is destined for.

~~(3) Ethanol-blended gasoline, as defined in 15-70-201, is subject to 85% of the tax imposed in subsection (1)(b).~~

~~(4) Beginning on the date that the requirement for use of ethanol-blended gasoline contained in 82-15-121 occurs, ethanol-blended gasoline is subject to the tax imposed in subsection (1)(b).~~ (Terminates on occurrence of contingency—sec. 21, Ch. 452, L. 2005.)

15-70-204. (Effective on occurrence of contingency) **Gasoline license tax — rate.** (1) Each distributor shall pay to the department a license tax for the privilege of engaging in and carrying on business in this state in an amount equal to:

(a) 4 cents for each gallon of aviation fuel, other than fuel sold to the federal defense fuel supply center, which is allocated to the department as provided by 67-1-301; and

(b) 27 cents for each gallon of all other gasoline distributed by the distributor within the state and upon which the gasoline license tax has not been paid by any other distributor.

(2) Gasoline exported may not be included in the measure of the distributor's license tax unless the distributor is not licensed and is not paying the tax to the state the fuel is destined for.

~~(3) Ethanol-blended gasoline is subject to 85% of the tax imposed in subsection (1)(b).~~"

Section 2. Effective date. [This act] is effective July 1, 2009.

Approved April 19, 2009

CHAPTER NO. 323

[SB 361]

AN ACT REVISING LAWS RELATING TO TAX LIENS; PROVIDING THAT A COUNTY TREASURER MAY ALLOW A PURCHASER OF A PROPERTY TAX LIEN TO USE AN AFFIDAVIT OF COSTS IN LIEU OF PRODUCING THE RECEIPTS OF COSTS; PROVIDING THAT THE NOTICE OF PAYMENT FOR A TAX LIEN SALE CERTIFICATE MAY NOT BE MADE MORE THAN 60 DAYS PRIOR TO THE DATE OF PAYMENT; AND AMENDING SECTIONS 15-17-121 AND 15-17-212, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-17-121, MCA, is amended to read:

"15-17-121. Definitions. Except as otherwise specifically provided, when terms mentioned in Title 15, chapters 17 and 18, are used in connection with taxation, they are defined in the following manner:

(1) "Certificate" or "tax lien sale certificate" means the document described in 15-17-212.

(2) (a) "Cost" means the cost incurred by the county as a result of a taxpayer's failure to pay taxes when due. It includes but is not limited to any actual out-of-pocket expenses incurred by the county plus the administrative cost of:

(i) preparing the list of delinquent taxes;

(ii) preparing the notice of pending tax lien sale;

(iii) conducting the tax lien sale;

(iv) assigning the county's interest in a tax lien to a third party;

(v) identifying interested persons entitled to notice of the pending issuance of a tax deed;

(vi) notifying interested persons;

(vii) issuing the tax deed; and

(viii) any other administrative task associated with accounting for or collecting delinquent taxes.

(b) The term includes ~~receipted~~ costs that are required by law and incurred by the purchaser of a property tax lien other than the county. The *county treasurer may require the* purchaser of the property tax lien ~~shall~~ *to* provide receipts *or may allow the purchaser of the property tax lien to provide a notarized affidavit of costs* to the county treasurer upon issuance of a tax lien sale certificate as required in 15-17-212 and notification that a tax deed may be issued as required by 15-18-212 and 15-18-216. *A county treasurer may at any time require a purchaser who provided an affidavit of costs to submit the receipted costs upon which the affidavit was based.*

(c) The term does not include interest for payments for the following:

(i) postage for certified mailings and certified mailings with return receipt requested;

(ii) a title search, to the extent necessary to identify interested persons entitled to notice of the pending issuance of a tax deed;

(iii) publishing costs for required publications; and

(iv) filing costs for proof of notice.

(3) "County" means any county government and includes those classified as consolidated governments.

(4) "Property tax lien" means a lien acquired by the payment at a tax lien sale of all outstanding delinquent taxes, including penalties, interest, and costs.

(5) "Purchaser" means any person, other than the person to whom the property is assessed, who pays at the tax lien sale the delinquent taxes, including penalties, interest, and costs, and receives a certificate representing a lien on the property or who is otherwise listed as the purchaser. An assignee is a purchaser.

(6) "Tax", "taxes", or "property taxes" means all ad valorem property taxes, property assessments, fees related to property, and assessments for special improvement districts and rural special improvement districts.

(7) "Tax lien sale" means:

(a) with respect to real property and improvements, the offering for sale by the county treasurer of a property tax lien representing delinquent taxes, including penalties, interest, and costs; and

(b) with respect to personal property, the offering for sale by the county treasurer of personal property on which the taxes are delinquent or other personal property on which the delinquent taxes are a lien."

Section 2. Section 15-17-212, MCA, is amended to read:

"15-17-212. Tax lien sale certificate. (1) After receiving proof of mail notice to the person to whom the property was assessed, as required by subsection (3), and upon receipt of all delinquent taxes, penalties, interest, and costs, the county treasurer shall prepare a tax lien sale certificate that must contain:

(a) the date on which the property taxes became delinquent;

(b) the date on which a property tax lien was sold at a tax lien sale;

(c) the name and address of record of the person to whom the taxes were assessed;

(d) a description of the property on which the taxes were assessed;

(e) the name and mailing address of the purchaser;

(f) the amount paid to liquidate the delinquency, including a separate listing of the amount of the delinquent taxes, penalties, interest, and costs;

(g) a statement that the certificate represents a lien on the property that may lead to the issuance of a tax deed for the property;

(h) a statement specifying the date on which the purchaser will be entitled to a tax deed; and

(i) an identification number corresponding to the tax lien sale certificate number recorded by the county treasurer as required in 15-17-213.

(2) The certificate must be signed by the county treasurer and delivered to the purchaser. A copy of the certificate must be filed by the treasurer in the office of the county clerk. A copy of the certificate must also be mailed to the person to whom the taxes were assessed, at the address of record, together with a notice that the person may contact the county treasurer for further information on property tax lien sales.

(3) Prior to paying delinquent taxes, penalties, interests, and costs received by the county treasurer under subsection (1), a person shall send notice of the proposed payment, by certified mail, to the person to whom the property was assessed. The form of the notice must be adopted by the department by rule. The notice must have been mailed at least 2 weeks prior to the date of the payment *but may not be mailed earlier than 60 days prior to the date of the payment*. The person making the payment shall provide proof of the mailing."

Approved April 19, 2009

CHAPTER NO. 324

[SB 375]

AN ACT PROVIDING THAT A STATE BANK, CREDIT UNION, OR MORTGAGE LENDER MAY NOT REQUIRE A BORROWER, AS A CONDITION OF OBTAINING OR MAINTAINING A LOAN SECURED BY REAL PROPERTY, TO PROVIDE INSURANCE ON IMPROVEMENTS TO REAL PROPERTY IN AN AMOUNT THAT EXCEEDS THE REASONABLE REPLACEMENT VALUE OF THE IMPROVEMENTS; AND AMENDING SECTIONS 32-1-430, 32-3-604, AND 32-10-401, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 32-1-430, MCA, is amended to read:

"32-1-430. Authority of state banks to make real estate loans — *borrower insurance requirements.* *(1)* A bank in this state has ~~from time to time~~ the same authority to make loans upon real estate ~~which may be~~ *that is* given by acts of congress or the federal reserve system to national banks or bank members of the federal reserve system.

(2) A bank that is subject to this section may not require a borrower, as a condition of obtaining or maintaining a loan secured by real property, to provide insurance on improvements to real property in an amount that exceeds the reasonable replacement value of the improvements."

Section 2. Section 32-3-604, MCA, is amended to read:

"32-3-604. Security — *real property loans.* *(1)* In addition to generally accepted types of security, the endorsement of a note by a surety, comaker, or guarantor or pledge of shares, in a manner consistent with the laws of this state, must be considered security within the meaning of this chapter. The adequacy of any security is subject to the lending policies established by the board of directors.

(2) A credit union that is subject to the provisions of this part may not require a borrower, as a condition of obtaining or maintaining a loan secured by real property, to provide insurance on improvements to real property in an amount that exceeds the reasonable replacement value of the improvements."

Section 3. Section 32-10-401, MCA, is amended to read:

"32-10-401. Prohibited practices. It is unlawful for any person to:

(1) provide or offer to provide any service requiring a license unless the person has been issued the appropriate license or is exempt from licensure;

(2) disburse the mortgage loan proceeds to a closing agent in any form other than, as applicable:

(a) direct deposit to a borrower's account:

(b) wire;

(c) bank or certified check;

(d) attorney's check drawn on a trust account; or

(e) other form as specifically authorized by applicable law;

(3) disburse the proceeds of a mortgage loan without sufficient collected funds on hand at the time of the disbursement in the account upon which the funds are drawn;

(4) fail to disburse funds in accordance with a loan commitment to make a mortgage loan that was accepted by the borrower;

(5) accept any fees at closing that were not disclosed as required by law;

(6) retain third-party fees at closing in excess of the actual cost of third-party services;

(7) require the borrower to be represented by a third-party service provider except under the terms permitted by applicable federal law;

(8) fail to take the actions required to effect a release of the lender's security interest in the property as described in 71-1-212;

(9) obtain any agreement or instrument in which blanks are left to be filled in after execution;

(10) obtain any exclusive dealing or exclusive agency agreement from any borrower;

(11) delay closing of any mortgage loan for the purpose of increasing interest, costs, fees, or charges payable by the borrower;

(12) engage in unfair, deceptive, or fraudulent mortgage loan practices;

(13) make payment of any kind, whether directly or indirectly, to any appraiser for the purpose of influencing the independent judgment of the appraiser with respect to the value of any residential real property that is to be mortgaged;

(14) make any misrepresentations or false promises likely to influence or persuade or pursue a course of misrepresentation and false promises through officers, directors, partners, trustees, independent contractors, employees, agents, advertising, or otherwise;

(15) misrepresent, circumvent, or conceal, through any subterfuge or device, any of the material facts or terms of a mortgage loan;

(16) act as a mortgage lender in this state without a license issued by the department;

(17) advertise that a mortgage applicant will have unqualified access to credit without disclosing what material limitations on the availability of credit exist, such as the percentage of down payment required, that a higher rate or points could be required, or that restrictions as to the maximum principal amount of the mortgage loan offered could apply;

(18) advertise a mortgage loan for which a prevailing rate is indicated in the advertisement unless the advertisement specifically states that the expressed rate could change or not be available at commitment or closing;

(19) advertise mortgage loans, including rates, margins, discounts, points, fees, commissions, or other material information, including material limitations on mortgage loans, unless the person is able to make advertised mortgage loans to a reasonable number of qualified applicants;

(20) falsely advertise or misuse names in violation of 18 U.S.C. 709; ~~or~~

(21) make any untrue statement of a material fact in any document filed with the department or to omit any material fact that is required to be stated in any document*; or*

(22) require a borrower, as a condition of obtaining or maintaining a loan secured by real property, to provide insurance on improvements to real property in an amount that exceeds the reasonable replacement value of the improvements."

Approved April 19, 2009

CHAPTER NO. 325

[SB 388]

AN ACT CREATING AN INCUMBENT WORKER TRAINING PROGRAM; PROVIDING CRITERIA FOR PARTICIPATION AND FOR AWARDS; AND PROVIDING RULEMAKING AUTHORITY.

Be it enacted by the Legislature of the State of Montana:

Section 1. Incumbent worker training program — purpose. There is an incumbent worker training program, administered by the department, the purpose of which is to:

(1) meet the training needs of incumbent workers in businesses employing 20 or fewer workers in this state at any one location but not more than 50 workers statewide; and

(2) assist local businesses in preserving existing jobs for Montana residents.

Section 2. Definitions. As used in [sections 1 through 6], the following definitions apply:

(1) "BEAR program" means a business expansion and retention program implemented by local communities that uses assessments, interviews, and surveys to assist employers and that has been recognized as a BEAR program for the purposes of [sections 1 through 6] by the governor's office of economic development, the department of commerce, and the department.

(2) "Department" means the department of labor and industry provided for in 2-15-1701.

(3) "Eligible training provider" means:

(a) a unit of the university system, as defined in 20-25-201;

(b) a community college district, as defined in 20-15-101;

(c) an accredited, tribally controlled community college located in the state of Montana;

(d) an apprenticeship program that is in compliance with Title 39, chapter 6; or

(e) an entity approved to provide workforce training that is approved by representatives of the BEAR program, the small business development centers, or the Montana manufacturing extension center at Montana state university-Bozeman.

(4) "Employee" or "worker" means an individual currently employed in a full-time job or a permanent part-time job.

(5) "Employer" means a business entity that employs 20 or fewer employees in this state in one location but not more than 50 employees statewide and that is registered with the secretary of state to conduct business as a sole proprietor, if required, or as a corporation, a partnership, a limited liability company, or an association.

(6) "Full-time job" means a predominantly year-round position requiring an average of 35 hours or more of work each week.

(7) "Incumbent worker" means an employee who has completed a probationary period as defined by the employer's policy or as described in 39-2-904, whichever period is shorter.

(8) "Incumbent worker training program grant" or "grant" means the grant awarded to employers to hire eligible training providers to provide incumbent workers with education and training required to improve productivity, efficiency, or wages in existing jobs.

(9) "Permanent part-time job" means a predominantly year-round position requiring an average of 20 to 34 hours of work each week.

Section 3. Incumbent worker training program criteria for applicants. (1) An employer applying for an incumbent worker training program grant must:

(a) have been in business in this state for a minimum of 1 year;

(b) have a need for training incumbent workers; and

(c) be an existing client of a BEAR program recognized by the department, of a small business development center, or of the Montana manufacturing extension center at Montana state university-Bozeman.

(2) An applicant for an incumbent worker training program grant shall agree to:

(a) provide certified education or skills-based training for incumbent workers in existing full-time jobs and permanent part-time jobs through an eligible training provider;

(b) match every $4 requested with at least $1 of employer funds. The same match applies for in-state training and for out-of-state training. Matching funds may include wages and benefits paid for the day that the actual training takes place and for appropriate travel and lodging charges associated with the approved training. For out-of-state training the employer is responsible for at least 50% of the actual costs of appropriate travel and lodging.

(c) provide evidence to the department that training was completed.

(3) An incumbent worker training program grant application must contain at a minimum:

(a) a cover letter describing the goals of the training for the incumbent workers, the anticipated economic benefits from the training, and the amount of funding requested;

(b) information that provides an adequate understanding of the applicant's business and the training objective;

(c) a description of the eligible training provider's proposed curriculum, resources, methods, and duration of training;

(d) a list of incumbent workers to be trained and their current job descriptions and base wage rates plus the expected wage rates after training;

(e) the total number of the employer's employees at the location of the proposed training and within the state;

(f) the sources of matching funds to be provided; and

(g) any other information required by rule by the department that is similar to information required for other employment-related grants.

Section 4. Incumbent worker training program grant award criteria. (1) Subject to appropriation by the legislature, the department shall award grants based on recommendations from BEAR programs, small business development centers, or the Montana manufacturing extension center at Montana state university-Bozeman as provided in subsection (2). The distribution of funding must be reviewed annually by the department, and funds that are not being used or for which there are no qualified applications, as determined by the department, may be transferred to other programs as provided in 17-7-138 and 17-7-139.

(2) A BEAR program, a small business development center, or the Montana manufacturing extension center at Montana state university-Bozeman participating in the incumbent worker training program shall review applications and make recommendations for awards to the department regarding qualified applicants based on the criteria in subsection (3).

(3) The following criteria must be used in determining whether to award an incumbent worker training program grant:

(a) prospects for enhancing the incumbent worker's productivity, efficiency, or wages;

(b) prospects for reducing incumbent worker turnover;

(c) ability to provide matching funds;

(d) a demonstrated need by the employer for upgrading skills of incumbent workers through training as a way to improve the employer's ability to remain competitive in the industry or in the economy;

(e) a direct relationship between the training and an added benefit to the incumbent worker's occupation or craft; and

(f) a demonstration that the training is not normally provided or required by the employer and, as far as may be determined, by the employer's competitors.

(4) An incumbent worker training program grant award is limited to:

(a) $2,000 or less annually for each full-time job for which an incumbent worker is being trained; or

(b) $1,000 or less for each permanent part-time job for which an incumbent worker is being trained.

(5) Subject to funding, the department may:

(a) limit the number of applicants that receive grant awards;

(b) award less than the amount provided in subsection (4); or

(c) award a higher amount than that provided in subsection (4) if a full-time job for which an incumbent worker is being trained under an incumbent worker training program grant award pays significantly higher wages and benefits than the incumbent worker's current job. Before making an award for a higher amount as provided in this subsection (5)(c), the department must receive a recommendation for the higher amount from a BEAR program, a small business development center, or the Montana manufacturing extension center at Montana state university-Bozeman working with the employer and documentation from the employer regarding the need for the higher amount.

(6) The recipient of a grant shall provide the department with:

(a) a properly executed agreement, signed by the employer's authorized representative, that outlines terms of the grant;

(b) documentation upon completion of training that the training was provided and to whom the training was provided, including copies of certificates or statements of completion; and

(c) all receipts or copies of receipts associated with the training and the application.

Section 5. Special revenue account. There is a federal special revenue account to the credit of the department for use in the incumbent worker training program that may be spent subject to appropriation by the legislature. Money must be deposited in the account from federal funds that are available for incumbent worker training.

Section 6. Rulemaking. The department may adopt rules to further define information for applications, distribution of grants, and the use of the special revenue account provided for in [section 5].

Section 7. Codification instruction. [Sections 1 through 6] are intended to be codified as an integral part of Title 53, chapter 2, and the provisions of Title 53, chapter 2, apply to [sections 1 through 6].

Section 8. Contingent voidness. If House Bill No. 2 or [LC 2314] is passed and approved but does not contain funding for an incumbent worker training program, then [this act] is void.

Approved April 18, 2009

CHAPTER NO. 326

[SB 401]

AN ACT REQUIRING THE BOARD OF MEDICAL EXAMINERS TO ENSURE THAT A LICENSEE WHO IS REQUIRED TO PARTICIPATE IN A REHABILITATION PROGRAM MUST BE ALLOWED TO ENROLL IN A QUALIFIED PROGRAM WITHIN MONTANA IF ONE IS AVAILABLE; AMENDING SECTIONS 37-3-203, 37-3-208, AND 37-3-401, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-3-203, MCA, is amended to read:

"37-3-203. Powers and duties. *(1)* The board may:

~~(1)~~*(a)* adopt rules necessary or proper to carry out parts 1 through 3 of this chapter. The rules must be fair, impartial, and nondiscriminatory.

~~(2)~~*(b)* hold hearings and take evidence in matters relating to the exercise and performance of the powers and duties vested in the board;

~~(3)~~*(c)* aid the county attorneys of this state in the enforcement of parts 1 through 3 of this chapter and the prosecution of persons, firms, associations, or corporations charged with violations of parts 1 through 3 of this chapter;

~~(4)~~*(d)* establish a program to assist and rehabilitate licensees who are subject to the jurisdiction of the board and who are found to be physically or mentally impaired by habitual intemperance or the excessive use of addictive drugs, alcohol, or any other drug or substance or by mental or chronic physical illness;

~~(5)~~*(e)* review certifications of disability and determinations of eligibility for a permit to hunt from a vehicle as provided in 87-2-803(11); and

~~(6)~~*(f)* fund additional staff, hired by the department, to administer the provisions of this chapter, by increasing license fees as necessary.

(2) If the board establishes a program pursuant to subsection (1)(d), the board shall ensure that a licensee who is required or volunteers to participate in the program as a condition of continued licensure or reinstatement of licensure must be allowed to enroll in a qualified program within this state and may not require a licensee to enroll in a qualified program outside the state unless the board finds that there is no qualified program in this state."

Section 2. Section 37-3-208, MCA, is amended to read:

"37-3-208. Confidentiality of information — physician assistance program. (1) The proceedings and records of the program created by the board pursuant to 37-3-203~~(4)~~*(1)(d)* relating to a physician who has received assistance from the program are considered to be proceedings and records of a professional standards review committee under 37-2-201 and are not subject to discovery or introduction into evidence in any administrative or judicial proceeding, except that the proceedings and records of the program as they

pertain to a physician are subject to discovery or introduction into evidence in a disciplinary proceeding before the board against the physician.

(2) Proceedings and records of the program created by the board pursuant to 37-3-203~~(4)~~*(1)(d)* do not include health care information, as defined in 50-16-803, maintained by a health care provider in the provision of health care services to a physician who is receiving or has received assistance from the program. The health care information is subject to discovery from the physician or health care provider and to introduction into evidence in an administrative or judicial proceeding as may otherwise be allowed by law."

Section 3. Section 37-3-401, MCA, is amended to read:

"37-3-401. Report of incompetence or unprofessional conduct. (1) Notwithstanding any provision of state law dealing with confidentiality, each licensed physician, professional standards review organization, and the Montana medical association or any component society of the association shall and any other person may report to the board any information that the physician, organization, association, society, or person has that appears to show that a physician is:

(a) medically incompetent;

(b) mentally or physically unable to safely engage in the practice of medicine; or

(c) guilty of unprofessional conduct.

(2) (a) Information that relates to possible physical or mental impairment connected to habitual intemperance or excessive use of addictive drugs, alcohol, or any other drug or substance by a licensee or to other mental or chronic physical illness of a licensee may be reported to the appropriate personnel of the program established by the board under 37-3-203~~(4)~~*(1)(d)*, in lieu of reporting directly to the board.

(b) The program personnel referred to in subsection (2)(a) shall report to the board the identity of a licensee and all facts and documentation in their possession if:

(i) the licensee fails or refuses to comply with a reasonable request that the licensee undergo a mental, physical, or chemical dependency evaluation or a combination of evaluations;

(ii) the licensee fails or refuses to undergo a reasonable course of treatment that they recommend, including reasonable aftercare;

(iii) the licensee fails or refuses to satisfactorily complete a reasonable evaluation, a course of treatment, or aftercare;

(iv) the licensee's condition creates a risk of harm to the licensee, a patient, or others; or

(v) they are in possession of information that appears to show that the licensee has or is otherwise engaged in unprofessional conduct.

(3) This section applies to professional standards review organizations only to the extent that the organizations are not prohibited from disclosing information under federal law."

Section 4. Effective date. [This act] is effective on passage and approval.

Approved April 18, 2009

CHAPTER NO. 327

[SB 441]

AN ACT GENERALLY REVISING LAWS RELATING TO JUDGMENTS AND COLLECTIONS; CLARIFYING THE STATUTE OF LIMITATIONS FOR BRINGING AN ACTION TO COLLECT EXPENSES INCURRED BY EITHER SPOUSE FOR FAMILY EXPENSES OR CHILDREN'S EDUCATION; PROVIDING THAT WHEN A JUDGMENT IS FOR A FINE AND IMPRISONMENT, THE COURT MAY ORDER EXECUTION ON THE FINE PORTION OF THE JUDGMENT; AND AMENDING SECTIONS 40-2-106 AND 46-19-102, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 40-2-106, MCA, is amended to read:

"40-2-106. Liability for acts or debts of spouse. *(1)* ~~Neither~~ *A* husband ~~nor~~ *or* wife, ~~as such~~ *solely on the basis of being a spouse*, is *not* answerable for the acts of the other *spouse* or liable for the debts contracted by the other *spouse*,~~; provided, however,~~ *except* that the expenses for ~~necessaries~~ *necessities* of the family and of the education of the *spouses'* children are chargeable upon the property of both *the* husband and wife, or either of them, and in relation ~~thereto~~ *to those expenses* ~~they~~ *the husband and wife* may be sued jointly or separately.

(2) The period prescribed for commencing an action to recover expenses described in subsection (1) incurred by either spouse is governed by the provisions of 27-2-202."

Section 2. Section 46-19-102, MCA, is amended to read:

"46-19-102. Execution of judgment. (1) If ~~the~~ *a* judgment is for a fine alone *or for a fine and imprisonment*, execution may issue on the *fine portion of the* judgment, any unpaid interest accrued on the *fine portion of the* judgment, and costs and fees incurred in collecting the *fine portion of the* judgment as on a judgment in a civil case.

(2) If the judgment is for a fine and imprisonment until the fine is paid, the defendant must be committed to the custody of the proper officer and detained and allowed a credit for each day of incarceration as provided in 46-18-403.

(3) (a) The court may contract with a private person or entity for the collection of any *fine portion of a* judgment.

(b) In the event that a private person or entity is retained to collect ~~a~~ *the fine portion of a* judgment, the court may assign the *fine portion of the* judgment to the private person or entity and the private person or entity may, as an assignee, institute suit or other lawful collection procedures and postjudgment remedies in the private person's or entity's own name.

(c) The court, after deducting the charges provided for in 46-18-236, may pay the private person or entity a reasonable fee for collecting the *fine portion of a* judgment. The fee incurred by the court must be added to the *fine portion of the* judgment amount."

Approved April 18, 2009

CHAPTER NO. 328

[SB 444]

AN ACT CLARIFYING THE APPLICATION OF THE UNIFORM PRUDENT MANAGEMENT OF INSTITUTIONAL FUNDS ACT TO PROPERTY CONTRIBUTED PRIOR TO OCTOBER 1, 2007; AMENDING SECTIONS 72-30-102, 72-30-207, 72-30-208, 72-30-209, AND 72-30-210, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 72-30-102, MCA, is amended to read:

"72-30-102. Definitions. In this chapter, the following definitions apply:

(1) "Charitable purpose" means the relief of poverty, the advancement of education or religion, the promotion of health, the promotion of a governmental purpose, or any other purpose the achievement of which is beneficial to the community.

(2) (a) "Endowment fund" means an institutional fund or any part of the fund that under the terms of a gift instrument *or instrument of donor intent* is not wholly expendable by the institution on a current basis.

(b) The term does not include assets that an institution designates as an endowment fund for its own use.

(3) "Gift instrument" means a record or records, including an institutional solicitation, under which property is granted to, transferred to, or held by an institution as an institutional fund.

(4) "Institution" means:

(a) a person, other than an individual, organized and operated exclusively for charitable purposes;

(b) a government or governmental subdivision, agency, or instrumentality to the extent that it holds funds exclusively for a charitable purpose; and

(c) a trust that had both charitable and noncharitable interests, after all noncharitable interests have terminated.

(5) (a) "Institutional fund" means a fund held by an institution exclusively for charitable purposes.

(b) The term does not include:

(i) program-related assets;

(ii) a fund held for an institution by a trustee that is not an institution; or

(iii) a fund in which a beneficiary that is not an institution has an interest, other than an interest that could arise upon violation or failure of the purposes of the fund.

(6) "Instrument of donor intent" means a record by a person that contributed property, pursuant to the provisions of this chapter that were in effect prior to October 1, 2007, setting forth the person's intention regarding investment or retention of the contributed property.

~~(6)~~*(7)* "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

~~(7)~~*(8)* "Program-related asset" means an asset held by an institution primarily to accomplish a charitable purpose of the institution and not primarily for investment.

~~(8)~~*(9)* "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form."

Section 2. Section 72-30-207, MCA, is amended to read:

"72-30-207. Release or modification of restrictions on management, investment, or purpose. (1) If the donor consents in a record, an institution may release or modify, in whole or in part, a restriction contained in a gift instrument *or instrument of donor intent* on the management, investment, or purpose of an institutional fund. A release or modification may not allow a fund to be used for a purpose other than a charitable purpose of the institution.

(2) The court, upon application of an institution, may modify a restriction contained in a gift instrument *or instrument of donor intent* regarding the management or investment of an institutional fund if the restriction has become impracticable or wasteful, if it impairs the management or investment of the fund, or if, because of circumstances not anticipated by the donor, a modification of a restriction will further the purposes of the fund. The institution shall notify the attorney general of the application, and the attorney general must be given an opportunity to be heard. To the extent practicable, any modification must be made in accordance with the donor's probable intention.

(3) If a particular charitable purpose or a restriction contained in a gift instrument *or instrument of donor intent* on the use of an institutional fund becomes unlawful, impracticable, impossible to achieve, or wasteful, the court, upon application of an institution, may modify the purpose of the fund or the restriction on the use of the fund in a manner consistent with the charitable purposes expressed in the gift instrument *or instrument of donor intent*. The institution shall notify the attorney general of the application, and the attorney general must be given an opportunity to be heard.

(4) If an institution determines that a restriction contained in a gift instrument *or instrument of donor intent* on the management, investment, or purpose of an institutional fund is unlawful, impracticable, impossible to achieve, or wasteful, the institution, 60 days after notification to the attorney general, may release or modify the restriction, in whole or part, if:

(a) the institutional fund subject to the restriction has a total value of less than $25,000; or

(b) more than 20 years have elapsed since the fund was established; and

(c) the institution uses the property in a manner consistent with the charitable purposes expressed in the gift instrument *or instrument of donor intent*."

Section 3. Section 72-30-208, MCA, is amended to read:

"72-30-208. Standard of conduct in managing and investing institutional fund. (1) Subject to the intent of a donor expressed in a gift instrument *or instrument of donor intent*, an institution, in managing and investing an institutional fund, shall consider the charitable purposes of the institution and the purposes of the institutional fund.

(2) In addition to complying with the duty of loyalty imposed by law other than this chapter, each person responsible for managing and investing an institutional fund shall manage and invest the fund in good faith and with the

care an ordinarily prudent person in a like position would exercise under similar circumstances.

(3) In managing and investing an institutional fund, an institution:

(a) may incur only costs that are appropriate and reasonable in relation to the assets, the purposes of the institution, and the skills available to the institution; and

(b) shall make a reasonable effort to verify facts relevant to the management and investment of the fund.

(4) An institution may pool two or more institutional funds for purposes of management and investment.

(5) Except as otherwise provided by a gift instrument *or instrument of donor intent*, the following rules apply:

(a) In managing and investing an institutional fund, the following factors, if relevant, must be considered:

(i) general economic conditions;

(ii) the possible effect of inflation or deflation;

(iii) the expected tax consequences, if any, of investment decisions or strategies;

(iv) the role that each investment or course of action plays within the overall investment portfolio of the fund;

(v) the expected total return from income and the appreciation of investments;

(vi) other resources of the institution;

(vii) the needs of the institution and the fund to make distributions and to preserve capital; and

(viii) an asset's special relationship or special value, if any, to the charitable purposes of the institution.

(b) Management and investment decisions about an individual asset must be made not in isolation but rather in the context of the institutional fund's portfolio of investments as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the fund and to the institution.

(c) Except as otherwise provided by law other than this chapter, an institution may invest in any kind of property or type of investment consistent with this section.

(d) An institution shall diversify the investments of an institutional fund unless the institution reasonably determines that, because of special circumstances, the purposes of the fund are better served without diversification *or unless the gift instrument or instrument of donor intent provides otherwise*.

(e) Within a reasonable time after receiving property, an institution shall make and carry out decisions concerning the retention or disposition of the property or to rebalance a portfolio, in order to bring the institutional fund into compliance with the purposes, terms, and distribution requirements of the institution as necessary to meet other circumstances of the institution and the requirements of this chapter.

(f) A person that has special skills or expertise or is selected in reliance upon the person's representation that the person has special skills or expertise has a duty to use those skills or that expertise in managing and investing institutional funds."

Section 4. Section 72-30-209, MCA, is amended to read:

"72-30-209. Appropriation for expenditure or accumulation of endowment fund — rules of construction. (1) Subject to the intent of a donor expressed in the gift instrument *or instrument of donor intent* and to subsection (4), an institution may appropriate for expenditure or accumulate so much of an endowment fund as the institution determines is prudent for the uses, benefits, purposes, and duration for which the endowment fund is established. Unless stated otherwise in the gift instrument *or instrument of donor intent*, the assets in an endowment fund are donor-restricted assets until appropriated for expenditure by the institution. In making a determination to appropriate or accumulate, the institution shall act in good faith, with the care that an ordinarily prudent person in a like position would exercise under similar circumstances, and shall*, in addition to considering the gift instrument or instrument of donor intent,* consider, if relevant, the following factors:

(a) the duration and preservation of the endowment fund;

(b) the purposes of the institution and the endowment fund;

(c) general economic conditions;

(d) the possible effect of inflation or deflation;

(e) the expected total return from income and the appreciation of investments;

(f) other resources of the institution; and

(g) the investment policy of the institution.

(2) To limit the authority to appropriate for expenditure or accumulate under subsection (1), a gift instrument *or instrument of donor intent* must specifically state the limitation.

(3) Terms in a gift instrument *or instrument of donor intent* designating a gift as an endowment or a direction or authorization in the gift instrument *or instrument of donor intent* to use only "income", "interest", "dividends", or "rents, issues, or profits" or "to preserve the principal intact" or words of similar import:

(a) create an endowment fund of permanent duration unless other language in the gift instrument *or instrument of donor intent* limits the duration or purpose of the fund; and

(b) do not otherwise limit the authority to appropriate for expenditure or accumulate under subsection (1).

(4) The appropriation for expenditure in any year of an amount greater than 7% of the fair market value of an endowment fund, calculated on the basis of market values determined at least quarterly and averaged over a period of not less than 3 years immediately preceding the year in which the appropriation for expenditure was made, creates a rebuttable presumption of imprudence. For an endowment fund in existence for fewer than 3 years, the fair market value of the endowment fund must be calculated for the period the endowment fund has been in existence. This subsection does not:

(a) apply to an appropriation for expenditure permitted under law other than this chapter or by the gift instrument *or instrument of donor intent*; or

(b) create a presumption of prudence for an appropriation for expenditure of an amount less than or equal to 7% of the fair market value of the endowment fund."

Section 5. Section 72-30-210, MCA, is amended to read:

"72-30-210. Delegation of management and investment functions. (1) Subject to any specific limitation set forth in a gift instrument*, in an instrument of donor intent,* or in law other than this chapter, an institution may delegate to an external agent the management and investment of an institutional fund to the extent that an institution could prudently delegate under the circumstances. An institution shall act in good faith, with the care that an ordinarily prudent person in a like position would exercise under similar circumstances, in:

(a) selecting an agent;

(b) establishing the scope and terms of the delegation, consistent with the purposes of the institution and the institutional fund; and

(c) periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the scope and terms of the delegation.

(2) In performing a delegated function, an agent owes a duty to the institution to exercise reasonable care to comply with the scope and terms of the delegation.

(3) An institution that complies with subsection (1) is not liable for the decisions or actions of an agent to which the function was delegated.

(4) By accepting delegation of a management or investment function from an institution that is subject to the laws of this state, an agent submits to the jurisdiction of the courts of this state in all proceedings arising from or related to the delegation or the performance of the delegated function.

(5) An institution may delegate management and investment functions to its committees, officers, or employees as authorized by law of this state other than this chapter."

Section 6. Effective date. [This act] is effective on passage and approval.

Approved April 18, 2009

CHAPTER NO. 329

[SB 449]

AN ACT AUTHORIZING THE BOARD OF OIL AND GAS CONSERVATION TO PROMOTE THE STATE'S OIL AND GAS INDUSTRY, TO ENCOURAGE EFFICIENT ENERGY USE, TO PROMOTE ENVIRONMENTALLY SOUND EXPLORATION AND PRODUCTION METHODS AND TECHNOLOGIES, TO DEVELOP THE STATE'S OIL AND GAS RESOURCES, AND TO SUPPORT RESEARCH AND EDUCATIONAL ACTIVITIES CONCERNING THE OIL AND NATURAL GAS EXPLORATION AND PRODUCTION INDUSTRY; ALLOWING COORDINATION WITH MONTANA TECH OF THE UNIVERSITY OF MONTANA; AUTHORIZING THE BOARD TO MAKE LOANS OR GRANTS, ENTER INTO CONTRACTS OR AGREEMENTS, ACCEPT FUNDS, AND DISTRIBUTE MONEY; AND AMENDING SECTION 82-11-111, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 82-11-111, MCA, is amended to read:

"82-11-111. Powers and duties of board. (1) The board shall make ~~such~~ investigations ~~as~~ *that* it considers proper to determine whether waste exists or is imminent or whether other facts exist ~~which~~ *that* justify any action by the board under the authority granted by this chapter ~~with respect thereto~~.

(2) Subject to the administrative control of the department under 2-15-121, the board shall:

(a) require measures to be taken to prevent contamination of or damage to surrounding land or underground strata caused by drilling operations and production, including but not limited to regulating the disposal or injection of water and disposal of oil field wastes;

(b) classify wells as oil or gas wells or class II injection wells for purposes material to the interpretation or enforcement of this chapter;

(c) adopt and enforce rules and orders to ~~effectuate the purposes and the intent of~~ *implement* this chapter.

(3) The board shall determine and prescribe ~~what~~ *which* producing wells ~~shall be~~ *are* defined as "stripper wells" and ~~what~~ *which* wells ~~shall be~~ *are* defined as "wildcat wells" and make ~~such~~ orders ~~as~~ *that* in its judgment are required to protect those wells and provide that stripper wells may be produced to capacity if ~~it~~ *that* is considered necessary in the interest of conservation ~~to do so~~.

(4) With respect to any pool from which gas was being produced by a gas well on or prior to April 1, 1953, this chapter does not authorize the board to limit or restrain the rate*,* ~~(~~daily or otherwise~~)~~*,* of production of gas from that pool by any *existing* well ~~then~~ or ~~thereafter~~ *a well* drilled *after that date* and producing from that pool to less than the rate at which the well can be produced without adversely affecting the quantity of gas ultimately recoverable by the well.

(5) The board has exclusive jurisdiction over all class II injection wells and all pits and ponds in relation to those injection wells. The board may:

(a) issue, suspend, revoke, modify, or deny permits to operate class II injection wells, consistent with rules made by it;

(b) examine plans and other information needed to determine whether a permit should be issued or require changes in plans as a condition to the issuance of a permit;

(c) clearly specify in a permit any limitations imposed as to the volume and characteristics of the fluids to be injected and the operation of the well;

(d) authorize its staff to enter upon any public or private property at reasonable times to:

(i) investigate conditions relating to violations of permit conditions;

(ii) have access to and copy records required under this chapter;

(iii) inspect monitoring equipment or methods; and

(iv) sample fluids ~~which~~ *that* the operator is required to sample; and

(e) adopt standards for the design, construction, testing, and operation of class II injection wells.

(6) The board shall determine, for the purposes of using the oil and gas production damage mitigation account established in 82-11-161:

(a) when the person responsible for an abandoned well, sump, or hole cannot be identified or located, or if the person is identified or located, when the person

does not have sufficient financial resources to properly plug the well, sump, or hole; or

(b) when a previously abandoned well, sump, or hole is the cause of potential environmental problems and no responsible party can be identified or located or, if a responsible party can be identified and located, the person does not have sufficient financial resources to correct the problems.

(7) The board may take measures to demonstrate to the general public the importance of the state's oil and gas exploration and production industry, to encourage and promote the wise and efficient use of energy, to promote environmentally sound exploration and production methods and technologies, to develop the state's oil and gas resources, and to support research and educational activities concerning the oil and natural gas exploration and production industry. The board may:

(a) make grants or loans and provide other forms of financial assistance as necessary or appropriate from available funds to qualified persons for research, development, marketing, educational projects, and processes or activities directly related to the state's oil and gas exploration and production industry;

(b) enter into contracts or agreements to carry out the purposes of this subsection (7), including the authority to contract for the administration of an oil and gas research, development, marketing, and educational program;

(c) cooperate with any private, local, state, or national commission, organization, agent, or group and enter into contracts and agreements for programs benefiting the oil and gas exploration and production industry;

(d) coordinate with the Montana university system, including Montana tech of the university of Montana or any of its affiliated research programs;

(e) accept donations, grants, contributions, and gifts from any public or private source for deposit in the oil and gas education and research account established in [section 2];

(f) distribute funds from the oil and gas education and research account to carry out the provisions of this subsection (7); and

(g) make orders and rules to implement the provisions of this subsection (7)."

Section 2. Oil and gas education and research account. There is an oil and gas education and research account within the state special revenue fund established in 17-2-102. Interest or other income earned on money in the oil and gas education and research account accrues to that account.

Section 3. Codification instruction. [Section 2] is intended to be codified as an integral part of Title 82, chapter 11, part 1, and the provisions of Title 82, chapter 11, part 1, apply to [section 2].

Approved April 18, 2009

CHAPTER NO. 330

[HB 42]

AN ACT REQUIRING THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO ADDRESS FIRE MITIGATION, PINE BEETLE INFESTATION, AND WILDLIFE HABITAT ENHANCEMENT FOR CERTAIN LANDS UNDER DEPARTMENT JURISDICTION; ESTABLISHING A FOREST MANAGEMENT SPECIAL REVENUE ACCOUNT; PROVIDING A STATUTORY APPROPRIATION; AMENDING SECTIONS 17-7-502,

87-1-201, AND 87-1-601, MCA; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-7-502, MCA, is amended to read:

"17-7-502. Statutory appropriations — definition — requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-17-105; 5-11-120; 5-11-407; 5-13-403; 7-4-2502; 10-1-1202; 10-1-1303; 10-2-603; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-121; 15-1-218; 15-23-706; 15-31-906; 15-35-108; 15-36-332; 15-37-117; 15-39-110; 15-65-121; 15-70-101; 15-70-369; 15-70-601; 16-11-509; 17-3-106; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-7-304; 18-11-112; 19-3-319; 19-6-404; 19-6-410; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 19-20-607; 19-21-203; 20-8-107; 20-9-534; 20-9-622; 20-26-1503; 22-3-1004; 23-4-105; 23-4-202; 23-4-204; 23-4-302; 23-4-304; 23-5-306; 23-5-409; 23-5-612; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503; 41-5-2011; 42-2-105; 44-1-504; 44-12-206; 44-13-102; 50-4-623; 53-1-109; 53-6-703; 53-24-108; 53-24-206; 60-11-115; 61-3-415; 69-3-870; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 76-13-150; 77-1-108; 77-2-362; 80-2-222; 80-4-416; 80-5-510; 80-11-518; 82-11-161; 87-1-513; *[section 3];* 90-1-115; 90-1-205; 90-3-1003; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 4, Ch. 497, L. 1999, the inclusion of 15-38-202 terminates July 1, 2014; pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, and secs. 3 and 6, Ch. 481, L. 2003, the inclusion of 15-35-108 terminates June 30, 2010; pursuant to sec. 17, Ch. 593, L. 2005, the inclusion of 15-31-906 terminates January 1, 2010; pursuant to sec. 73, Ch. 44, L. 2007, the inclusion of 19-6-410 terminates upon the death of the last recipient eligible under 19-6-709(2) for the supplemental benefit provided by 19-6-709; and pursuant to sec. 6, Ch. 2, Sp. L. September 2007, the inclusion of 76-13-150 terminates June 30, 2009.)"

Section 2. Section 87-1-201, MCA, is amended to read:

"87-1-201. Powers and duties. (1) The department shall supervise all the wildlife, fish, game, game and nongame birds, waterfowl, and the game and fur-bearing animals of the state and may implement voluntary programs that encourage hunting access on private lands and that promote harmonious relations between landowners and the hunting public. It possesses all powers necessary to fulfill the duties prescribed by law and to bring actions in the proper courts of this state for the enforcement of the fish and game laws and the rules adopted by the department.

(2) The department shall enforce all the laws of the state respecting the protection, preservation, management, and propagation of fish, game, fur-bearing animals, and game and nongame birds within the state.

(3) The department has the exclusive power to spend for the protection, preservation, management, and propagation of fish, game, fur-bearing animals, and game and nongame birds all state funds collected or acquired for that purpose, whether arising from state appropriation, licenses, fines, gifts, or otherwise. Money collected or received from the sale of hunting and fishing licenses or permits, from the sale of seized game or hides, from fines or damages collected for violations of the fish and game laws, or from appropriations or received by the department from any other sources is appropriated to and under control of the department.

(4) The department may discharge any appointee or employee of the department for cause at any time.

(5) The department may dispose of all property owned by the state used for the protection, preservation, management, and propagation of fish, game, fur-bearing animals, and game and nongame birds that is of no further value or use to the state and shall turn over the proceeds from the sale to the state treasurer to be credited to the fish and game account in the state special revenue fund.

(6) The department may not issue permits to carry firearms within this state to anyone except regularly appointed officers or wardens.

(7) The department is authorized to make, promulgate, and enforce reasonable rules and regulations not inconsistent with the provisions of chapter 2 that in its judgment will accomplish the purpose of chapter 2.

(8) The department is authorized to promulgate rules relative to tagging, possession, or transportation of bear within or outside of the state.

(9) (a) The department shall implement programs that:

(i) manage wildlife, fish, game, and nongame animals in a manner that prevents the need for listing under 87-5-107 or under the federal Endangered Species Act, 16 U.S.C. 1531, et seq.;

(ii) manage listed species, sensitive species, or a species that is a potential candidate for listing under 87-5-107 or under the federal Endangered Species Act, 16 U.S.C. 1531, et seq., in a manner that assists in the maintenance or recovery of those species; ~~and~~

(iii) manage elk, deer, and antelope populations based on habitat estimates determined as provided in 87-1-322 and maintain elk, deer, and antelope population numbers at or below population estimates as provided in 87-1-323. In implementing an elk management plan, the department shall, as necessary to achieve harvest and population objectives, request that land management agencies open public lands and public roads to public access during the big game hunting season.

(iv) address fire mitigation, pine beetle infestation, and wildlife habitat enhancement giving priority to forested lands in excess of 50 contiguous acres in any state park, fishing access site, or wildlife management area under the department's jurisdiction.

(b) In maintaining or recovering a listed species, a sensitive species, or a species that is a potential candidate for listing, the department shall seek, to the fullest extent possible, to balance maintenance or recovery of those species with the social and economic impacts of species maintenance or recovery.

(c) Any management plan developed by the department pursuant to this subsection (9) is subject to the requirements of Title 75, chapter 1, part 1.

(d) This subsection (9) does not affect the ownership or possession, as authorized under law, of a privately held listed species, a sensitive species, or a species that is a potential candidate for listing.

(10) The department shall publish an annual game count, estimating to the department's best ability the numbers of each species of game animal, as defined in 87-2-101, in the hunting districts and administrative regions of the state. In preparing the publication, the department may incorporate field observations, hunter reporting statistics, or any other suitable method of determining game numbers. The publication must include an explanation of the basis used in determining the game count."

Section 3. Forest management account. (1) There is a special revenue account called the forest management account to the credit of the department of fish, wildlife, and parks.

(2) The forest management account consists of money deposited into the account from forest management projects undertaken pursuant to 87-1-201(9)(a)(iv) and from any other source. Any interest earned by the account must be deposited into the account.

(3) Except as otherwise directed by state or federal law, funds from the forest management account are statutorily appropriated, as provided in 17-7-502, to the department and must be used by the department to implement forest management projects that may result pursuant to the provisions of 87-1-201(9)(a)(iv).

Section 4. Forest management account. (1) There is a special revenue account called the forest management account to the credit of the department of fish, wildlife, and parks.

(2) The forest management account consists of money deposited into the account from forest management projects undertaken pursuant to 87-1-201(9)(a)(iv) and from any other source. Any interest earned by the account must be deposited into the account.

(3) Except as otherwise directed by state or federal law, funds from the forest management account must be used by the department to implement forest management projects that may result pursuant to the provisions of 87-1-201(9)(a)(iv).

Section 5. Section 87-1-601, MCA, is amended to read:

"87-1-601. Use of fish and game money. (1) (a) Except as provided in subsections (7) and (9), all money collected or received from the sale of hunting and fishing licenses or permits, from the sale of seized game or hides, from damages collected for violations of the fish and game laws of this state, or from appropriations or received by the department from any other state source must

be turned over to the department of revenue and placed in the state special revenue fund to the credit of the department.

(b) Any money received from federal sources must be deposited in the federal special revenue fund to the credit of the department.

(c) All interest earned on money from the following sources must be placed in the state special revenue fund to the credit of the department:

(i) the general license account;

(ii) the license drawing account;

(iii) accounts established to administer the provisions of 87-1-246, 87-1-258, 87-1-605, 87-2-411, 87-2-722, and 87-2-724; and

(iv) money received from the sale of any other hunting and fishing license.

(2) Except as provided in 87-2-411, the money described in subsection (1) must be exclusively set apart and made available for the payment of all salaries, per diem, fees, expenses, and expenditures authorized to be made by the department under the terms of this title. The money described in subsection (1) must be spent for those purposes by the department, subject to appropriation by the legislature.

(3) Any reference to the fish and game fund in Title 87 means fish and game money in the state special revenue fund and the federal special revenue fund.

(4) Except as provided in subsections (7) and (8), all money collected or received from fines and forfeited bonds, except money collected or received by a justice's court, that relates to violations of state fish and game laws under Title 87 must be deposited by the department of revenue and credited to the department in a state special revenue fund account for this purpose. Out of any fine imposed by a court for the violation of the fish and game laws, the costs of prosecution must be paid to the county where the trial was held in any case in which the fine is not imposed in addition to the costs of prosecution.

(5) (a) Except as provided in *[section 2] and* section 2(3), Chapter 560, Laws of 2005, money must be deposited in an account in the permanent fund if it is received by the department from:

(i) the sale of surplus real property;

(ii) exploration or development of oil, gas, or mineral deposits from lands acquired by the department, except royalties or other compensation based on production; and

(iii) leases of interests in department real property not contemplated at the time of acquisition.

(b) The interest derived from the account, but not the principal, may be used only for the purpose of operation, development, and maintenance of real property of the department and only upon appropriation by the legislature. If the use of money as set forth in this section would result in violation of applicable federal laws or state statutes specifically naming the department or money received by the department, then the use of this money must be limited in the manner, method, and amount to those uses that do not result in a violation.

(6) Money received from the collection of license drawing applications is subject to the deposit requirements of 17-6-105(6) unless the department has submitted and received approval for a modified deposit schedule pursuant to 17-6-105(8).

(7) Money collected or received from fines or forfeited bonds for the violation of 77-1-801, 77-1-806, or rules adopted under 77-1-804 must be deposited in the state general fund.

(8) The department of revenue shall deposit in the state general fund one-half of the money received from the fines pursuant to 87-1-102.

(9) (a) The department shall deposit all money received from the search and rescue surcharge in 87-2-202 in a state special revenue account to the credit of the department for search and rescue purposes as provided for in 10-3-801.

(b) Upon certification by the department of reimbursement requests submitted by the department of military affairs for search and rescue missions involving persons engaged in hunting, fishing, or trapping, the department may transfer funds from the special revenue account to the search and rescue account provided for in 10-3-801 to reimburse counties for the costs of those missions as provided in 10-3-801.

(c) Using funds in the department's search and rescue account that are not already committed to reimbursement for search and rescue missions, the department may provide matching funds to the department of military affairs to reimburse counties for search and rescue training and equipment costs up to the proportion that the number of search and rescue missions involving persons engaged in hunting, fishing, or trapping bears to the statewide total of search and rescue missions.

(d) Any money deposited in the special revenue account is available for reimbursement of search and rescue missions and to provide matching funds to reimburse counties for search and rescue training and equipment costs."

Section 6. Codification instruction. [Sections 3 and 4] are intended to be codified as an integral part of Title 87, chapter 1, and the provisions of Title 87, chapter 1, apply to [sections 3 and 4].

Section 7. Effective dates. (1) Except as provided in subsection (2), [this act] is effective July 1, 2009.

(2) [Section 4] is effective July 1, 2013.

Section 8. Termination. [Section 3] terminates June 30, 2013.

Approved April 24, 2009

CHAPTER NO. 331

[HB 150]

AN ACT CREATING THE MONTANA RECREATION RESPONSIBILITY ACT; PROVIDING THAT A PERSON WHO ENGAGES IN A SPORT OR RECREATIONAL OPPORTUNITY ASSUMES THE INHERENT RISKS IN THAT SPORT OR RECREATIONAL OPPORTUNITY AND IS RESPONSIBLE FOR INJURIES AND DAMAGES RESULTING FROM THOSE INHERENT RISKS; LIMITING THE LIABILITY OF THE PROVIDERS OF A SPORT OR RECREATIONAL OPPORTUNITY; PROVIDING GOVERNMENTAL IMMUNITY; CLARIFYING THAT A PROVIDER IS NOT REQUIRED TO ELIMINATE, ALTER, OR CONTROL THE INHERENT RISKS WITHIN A PARTICULAR SPORT OR RECREATIONAL OPPORTUNITY; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

WHEREAS, all sports and recreational activities involve inherent risks that provide the challenge and excitement that entice recreationists to participate in those activities; and

WHEREAS, recreationists should accept the risks inherent in sports and recreational activities and be responsible for injury or damage resulting from those inherent risks; and

WHEREAS, the state has a legitimate interest in maintaining the economic viability of the sports and recreational industries by discouraging claims based on damages resulting from risks inherent in a sport or recreational activity; and

WHEREAS, providers of recreational opportunities should not be required to alter the challenge and excitement of recreational activities by controlling risks inherent in the activities; and

WHEREAS, the liability of providers of recreational opportunities should be limited to negligence that is not associated with the inherent risks of a sport or recreational activity.

Be it enacted by the Legislature of the State of Montana:

Section 1. Short title. [Sections 1 through 4] may be cited as the "Montana Recreation Responsibility Act".

Section 2. Definitions. As used in [sections 1 through 4], the following definitions apply:

(1) "Inherent risks" means those dangers or conditions that are characteristic of, intrinsic to, or an integral part of any sport or recreational activity and that cannot be prevented by the use of reasonable care.

(2) "Provider" means a person, corporation, partnership, or other business entity, including a governmental entity as defined in 2-9-111, that promotes, offers, or conducts a sport or recreational opportunity, for profit or otherwise.

(3) "Sport or recreational opportunity" means any sporting activity, whether undertaken with or without permission, including but not limited to baseball, softball, football, soccer, basketball, bicycling, hiking, swimming, boating, hockey, dude ranching, nordic or alpine skiing, snow boarding, snow sliding, mountain climbing, river floating, whitewater rafting, canoeing, kayaking, target shooting, hunting, fishing, backcountry trips, horseback riding and other equine activity, snowmobiling, off-highway vehicle use, and any similar recreational activity.

Section 3. Limitation on liability in sport or recreational opportunity. (1) A person who participates in any sport or recreational opportunity assumes the inherent risks in that sport or recreational opportunity, whether those risks are known or unknown, and is legally responsible for all injury or death to the person and for all damage to the person's property that result from the inherent risks in that sport or recreational opportunity.

(2) A provider is not required to eliminate, alter, or control the inherent risks within the particular sport or recreational opportunity that is provided.

(3) [Sections 1 through 4] do not preclude an action based on the negligence of the provider if the injury, death, or damage is not the result of an inherent risk of the sport or recreational opportunity.

(4) [Sections 1 through 4] do not apply to a cause of action based on the design, manufacture, provision, or maintenance of sports or recreational

equipment or products or safety equipment used incidental to or required by the sport or recreational activity.

Section 4. Recreational activity — applicability exceptions. [Sections 1 through 3] do not apply to duties, responsibilities, liability, or immunity related to:

(1) recreational use of waters or land, as provided in 23-2-321;

(2) snowmobiling, as provided in 23-2-653 and 23-2-654;

(3) skiing, as provided in Title 23, chapter 2, part 7;

(4) off-highway vehicle operation, as provided in 23-2-822;

(5) instruction in firearms and hunter safety or hunter education, as provided in 27-1-721;

(6) equine activity, as provided in 27-1-727;

(7) sponsored rodeo and similar events, as provided in 27-1-733;

(8) amusement rides, as provided in 27-1-743 and 27-1-744;

(9) recreational use of land, as provided in 23-2-907, 70-16-302, 77-1-805, 87-1-266, 87-1-267, and 87-1-286;

(10) wildcrafting, as provided in 76-10-106; and

(11) placement of a sign or marker warning of a hazard in water legally accessible to the public, as provided in 87-1-287.

Section 5. Codification instruction. [Sections 1 through 4] are intended to be codified as an integral part of Title 27, chapter 1, part 7, and the provisions of Title 27, chapter 1, part 7, apply to [sections 1 through 4].

Section 6. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 7. Two-thirds vote required. Because [section 3] limits governmental liability, Article II, section 18, of the Montana constitution requires a vote of two-thirds of the members of each house of the legislature for passage.

Section 8. Effective date. [This act] is effective on passage and approval.

Section 9. Applicability. [This act] applies to injuries and deaths that occur on or after [the effective date of this act].

Approved April 27, 2009

CHAPTER NO. 332

[HB 228]

AN ACT PRESERVING AND CLARIFYING LAWS RELATING TO THE RIGHT OF SELF-DEFENSE AND THE RIGHT TO BEAR ARMS; AMENDING SECTIONS 45-3-103, 45-8-321, AND 46-6-502, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, the Legislature declares that:

(1) the right of Montanans to defend their lives and liberties, as provided in Article II, section 3, of the Montana Constitution, and their right to keep or bear arms in defense of their homes, persons, and property, as provided in Article II,

section 12, of the Montana Constitution, are fundamental and may not be called into question;

(2) the use of firearms for self-defense is recognized within the right reserved to the individual people of Montana in Article II, section 12, of the Montana Constitution;

(3) self-defense is a natural right under section 1-2-104, MCA, and is included in sections 49-1-101 and 49-1-103, MCA;

(4) the lawful use of firearms for self-defense is not a crime or an offense against the people of the state;

(5) in a criminal case in which self-defense is asserted, the burden of proof is as provided in [section 10];

(6) in self-defense, the use of justifiable force discourages violent crime and prevents victimization; and

(7) the purpose of [sections 1 through 3] is to clarify and secure the ability of the people to protect themselves.

Be it enacted by the Legislature of the State of Montana:

Section 1. No duty to summon help or flee. Except as provided in 45-3-105, a person who is lawfully in a place or location and who is threatened with bodily injury or loss of life has no duty to retreat from a threat or summon law enforcement assistance prior to using force. The provisions of this section apply to a person offering evidence of justifiable use of force under 45-3-102, 45-3-103, or 45-3-104.

Section 2. Openly carrying weapon — display — exemption. (1) Any person who is not otherwise prohibited from doing so by federal or state law may openly carry a weapon and may communicate to another person the fact that the person has a weapon.

(2) If a person reasonably believes that the person or another person is threatened with bodily harm, the person may warn or threaten the use of force, including deadly force, against the aggressor, including drawing or presenting a weapon.

(3) This section does not limit the authority of the board of regents or other postsecondary institutions to regulate the carrying of weapons, as defined in 45-8-361(5)(b), on their campuses.

Section 3. Investigation of alleged offense involving claim of justifiable use of force. When an investigation is conducted by a peace officer of an incident that appears to have or is alleged to have involved justifiable use of force, the investigation must be conducted so as to disclose all evidence, including testimony concerning the alleged offense and that might support the apparent or alleged justifiable use of force.

Section 4. Section 45-3-103, MCA, is amended to read:

"45-3-103. Use of force in defense of occupied structure. *(1)* A person is justified in the use of force or threat to use force against another when and to the extent that ~~he~~ *the person* reasonably believes that ~~such conduct~~ *the use of force* is necessary to prevent or terminate ~~such~~ *the* other's unlawful entry into or attack upon an occupied structure. ~~However, he~~

(2) A person justified in the use of force pursuant to subsection (1) is justified in the use of force likely to cause death or serious bodily harm only if:

~~(1)~~*(a)* the entry is made or attempted ~~in violent, riotous, or tumultuous manner~~ and ~~he~~ *the person* reasonably believes that ~~such~~ *the* force is necessary to prevent an assault upon ~~or offer of personal violence to him~~ *the person* or another then in the occupied structure; or

~~(2)~~*(b)* ~~he~~ *the person* reasonably believes that ~~such~~ *the* force is necessary to prevent the commission of a forcible felony in the occupied structure."

Section 5. Firearm not to be destroyed. If a firearm possessed by a law enforcement agency was not purchased by the agency for agency use, if it is legal for a private person to own and possess the firearm, and if the legal owner cannot be determined by the agency, the agency may not destroy the firearm and shall sell the firearm to a licensed dealer. The proceeds of the sale must be deposited in the general fund of the governmental entity of which the agency is a part.

Section 6. Landlords and tenants — no firearm prohibition allowed. A landlord or operator of a hotel or motel may not, by contract or otherwise, prevent a tenant or a guest of a tenant from possessing on the premises a firearm that it is legal for the tenant or guest to possess. A landlord or operator of a hotel or motel may prohibit the discharge of a firearm on the premises except in self-defense.

Section 7. Section 45-8-321, MCA, is amended to read:

"45-8-321. Permit to carry concealed weapon. (1) A county sheriff shall, within 60 days after the filing of an application, issue a permit to carry a concealed weapon to the applicant. The permit is valid for 4 years from the date of issuance. An applicant must be a United States citizen who is 18 years of age or older and who holds a valid Montana driver's license or other form of identification issued by the state that has a picture of the person identified. An applicant must have been a resident of the state for at least 6 months. Except as provided in subsection (2), this privilege may not be denied an applicant unless the applicant:

(a) is ineligible under Montana or federal law to own, possess, or receive a firearm;

(b) has been charged and is awaiting judgment in any state of a state or federal crime that is punishable by incarceration for 1 year or more;

(c) *subject to the provisions of subsection (6),* has been convicted in any state or federal court of*:*

(i) a crime punishable by more than 1 year of incarceration ~~or,~~*; or*

(ii) regardless of the sentence that may be imposed, a crime that includes as an element of the crime an act, attempted act, or threat of intentional homicide, ~~violence, bodily or~~ serious bodily harm, unlawful restraint, sexual abuse, or sexual intercourse or contact without consent;

(d) has been convicted under 45-8-327 or 45-8-328, unless the applicant has been pardoned or 5 years have elapsed since the date of the conviction;

(e) has a warrant of any state or the federal government out for the applicant's arrest;

(f) has been adjudicated in a criminal or civil proceeding in any state or federal court to be an unlawful user of an intoxicating substance and is under a court order of imprisonment or other incarceration, probation, suspended or deferred imposition of sentence, treatment or education, or other conditions of release or is otherwise under state supervision;

(g) has been adjudicated in a criminal or civil proceeding in any state or federal court to be mentally ill, mentally defective, or mentally disabled and is still subject to a disposition order of that court; or

(h) was dishonorably discharged from the United States armed forces.

(2) The sheriff may deny an applicant a permit to carry a concealed weapon if the sheriff has reasonable cause to believe that the applicant is mentally ill, mentally defective, or mentally disabled or otherwise may be a threat to the peace and good order of the community to the extent that the applicant should not be allowed to carry a concealed weapon. At the time an application is denied, the sheriff shall, unless the applicant is the subject of an active criminal investigation, give the applicant a written statement of the reasonable cause upon which the denial is based.

(3) An applicant for a permit under this section must, as a condition to issuance of the permit, be required by the sheriff to demonstrate familiarity with a firearm by:

(a) completion of a hunter education or safety course approved or conducted by the department of fish, wildlife, and parks or a similar agency of another state;

(b) completion of a firearms safety or training course approved or conducted by the department of fish, wildlife, and parks, a similar agency of another state, a national firearms association, a law enforcement agency, an institution of higher education, or an organization that uses instructors certified by a national firearms association;

(c) completion of a law enforcement firearms safety or training course offered to or required of public or private law enforcement personnel and conducted or approved by a law enforcement agency;

(d) possession of a license from another state to carry a firearm, concealed or otherwise, that is granted by that state upon completion of a course described in subsections (3)(a) through (3)(c); or

(e) evidence that the applicant, during military service, was found to be qualified to operate firearms, including handguns.

(4) A photocopy of a certificate of completion of a course described in subsection (3), an affidavit from the entity or instructor that conducted the course attesting to completion of the course, or a copy of any other document that attests to completion of the course and can be verified through contact with the entity or instructor that conducted the course creates a presumption that the applicant has completed a course described in subsection (3).

(5) If the sheriff and applicant agree, the requirement in subsection (3) of demonstrating familiarity with a firearm may be satisfied by the applicant's passing, to the satisfaction of the sheriff or of any person or entity to which the sheriff delegates authority to give the test, a physical test in which the applicant demonstrates the applicant's familiarity with a firearm.

(6) A person, except a person referred to in subsection (1)(c)(ii), who has been convicted of a felony and whose rights have been restored pursuant to Article II, section 28, of the Montana constitution is entitled to issuance of a concealed weapons permit if otherwise eligible."

Section 8. Section 46-6-502, MCA, is amended to read:

"46-6-502. Arrest by private person. (1) A private person may arrest another when there is probable cause to believe that the person is committing or

has committed an offense and the existing circumstances require the person's immediate arrest. *The private person may use reasonable force to detain the arrested person.*

(2) A private person making an arrest shall immediately notify the nearest available law enforcement agency or peace officer and give custody of the person arrested to the officer or agency."

Section 9. Justifiable use of force — burden of proof. In a criminal trial, when the defendant has offered evidence of justifiable use of force, the state has the burden of proving beyond a reasonable doubt that the defendant's actions were not justified.

Section 10. Codification instruction. (1) [Sections 1 through 3] are intended to be codified as an integral part of Title 45, chapter 3, part 1, and the provisions of Title 45, chapter 3, part 1, apply to [sections 1 through 3].

(2) [Section 5] is intended to be codified as an integral part of Title 46, chapter 5, part 3, and the provisions of Title 46, chapter 5, part 3, apply to [section 5].

(3) [Section 6] is intended to be codified as an integral part of Title 70, chapter 24, part 1, and the provisions of Title 70, chapter 24, part 1, apply to [section 6].

(4) [Section 9] is intended to be codified as an integral part of Title 46, chapter 16, part 1, and the provisions of Title 46, chapter 16, part 1, apply to [section 9].

Section 11. Effective date. [This act] is effective on passage and approval.

Approved April 27, 2009

CHAPTER NO. 333

[HB 238]

AN ACT ESTABLISHING A STATE TEEN DRIVER SAFETY DAY AS AN OFFICIAL DAY OF OBSERVANCE IN MONTANA TO PROMOTE TEEN DRIVER EDUCATION AND SAFETY.

WHEREAS, Congressman Charlie Dent (R-PA) and Senator Bob Casey (D-PA) introduced a resolution creating a National Teen Driver Safety Week in response to several tragic crashes involving Pennsylvania high school students and the first annual National Teen Driver Safety Week was held October 15 through 20, 2007; and

WHEREAS, many people, especially teenagers, do not realize the consequences of driving while distracted and education is needed in order for teenagers to become more aware of the dangers they face while driving; and

WHEREAS, a national survey shows that two out of three teenagers use cell phone text messaging while driving, which has been found to increase the chances of a car accident by 50%; and

WHEREAS, other distractions while driving include talking on a cell phone, eating, dealing with personal hygiene, and adjusting music and, according to the federal government, more than 30% of all car crashes in the United States involve a distracted driver; and

WHEREAS, because 77% of fatal crashes involving 16-year-olds behind the wheel are caused by driver error, it is apparent that education could significantly lower the number of fatal car accidents; and

WHEREAS, car crashes are the leading cause of death for teenagers in the United States, about 10 teenagers between 16 and 19 years of age die in teen driver car accidents every day, and teens make up only 6.7% of all motorists even though they account for 14% of fatal car crashes in the United States; and

WHEREAS, officials say that teens' inexperience and recklessness on the road have a lot to do with the deadly statistics; and

WHEREAS, 18 states, not including Montana, have focused on the specific problem of teen driving and cell phone text messaging while driving and have made text messaging while driving illegal; and

WHEREAS, since 2007, approximately 21 states have recognized National Teen Driver Safety Week and planned specific activities targeting teen drivers; and

WHEREAS, establishing a state Teen Driver Safety Day is an important tool for raising awareness about the tragedy of teen driver car crashes, will spark communication among teenagers, their parents, and civic leaders about the causes of and solutions to teen driver car crashes, and will encourage self-reflection by teen drivers.

Be it enacted by the Legislature of the State of Montana:

Section 1. State teen driver safety day. (1) To increase public awareness and promote teen driver safety, the third Tuesday in October is designated teen driver safety day and is an official day of observance.

(2) All Montanans are encouraged to participate in special observances and exercises throughout the state on this day in order to educate teens about the fatal consequences of distractions while driving and to promote teen driver safety. The governor and the office of public instruction may officially recognize and encourage the observances and exercises described in this section.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 1, chapter 1, part 2, and the provisions of Title 1, chapter 1, part 2, apply to [section 1].

Approved April 24, 2009

CHAPTER NO. 334

[HB 262]

AN ACT REVISING THE DEFINITION OF "LOW-EMISSION WOOD OR BIOMASS COMBUSTION DEVICE" TO INCLUDE A MASONRY HEATER AND AN OUTDOOR HYDRONIC HEATER FOR THE PURPOSE OF CLAIMING THE TAX CREDIT FOR INSTALLING AN ALTERNATIVE ENERGY SYSTEM; AMENDING SECTIONS 15-32-102 AND 15-32-201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-32-102, MCA, is amended to read:

"15-32-102. Definitions. As used in this part, the following definitions apply:

(1) "Alternative energy system" means the generation system or equipment used to convert energy sources into usable sources using fuel cells that do not require hydrocarbon fuel, geothermal systems, low-emission wood or biomass, wind, photovoltaics, geothermal, small hydropower plants under 1 megawatt, and other recognized nonfossil forms of energy generation.

(2) "Building" means:

(a) a single or multiple dwelling, including a mobile home or manufactured home; or

(b) a building used for commercial, industrial, or agricultural purposes that is enclosed with walls and a roof.

(3) "Capital investment" means any material or equipment purchased and installed in a building or land with or without improvements.

(4) "Energy conservation purpose" means one or both of the following results of an investment:

(a) reducing the waste or dissipation of energy; or

(b) reducing the amount of energy required to accomplish a given quantity of work.

(5) "Geothermal system" means a system that transfers energy either from the ground, by way of a closed loop, or from ground water, by way of an open loop, for the purpose of heating or cooling a residential building.

(6) "Low-emission wood or biomass combustion device" means ~~a wood-burning appliance~~:

(a) *a wood burning appliance that is:*

(i) certified by the U.S. environmental protection agency pursuant to 40 CFR 60.533; ~~or~~ *or*

(ii) qualified for the phase 2 white tag under the U.S. environmental protection agency method 28 OWHH for outdoor hydronic heaters;

(b) *an appliance* that uses wood pellets as its primary source of fuel*; or*

(c) a masonry heater constructed or installed in compliance with the requirements for masonry heaters in the International Residential Code for One- and Two-Family Dwellings.

~~(7)~~*(7)* "Passive solar system" means a direct thermal energy system that uses the structure of a building and its operable components to provide heating or cooling during the appropriate times of the year by using the climate resources available at the site. ~~It~~ *The term* includes only those portions and components of a building that are expressly designed and required for the collection, storage, and distribution of solar energy and that are not standard components of a conventional building.

~~(8)~~*(8)* "Recognized nonfossil forms of energy generation" means:

(a) a system that captures energy or converts energy sources into usable sources, including electricity, by using:

(i) solar energy, including passive solar systems;

(ii) wind;

(iii) solid waste;

(iv) the decomposition of organic wastes;

(v) geothermal;

(vi) fuel cells that do not require hydrocarbon fuel; or

(vii) an alternative energy system;

(b) a system that produces electric power from biomass or solid wood wastes; or

(c) a small system that uses water power by means of an impoundment that is not over 20 acres in surface area."

Section 2. Section 15-32-201, MCA, is amended to read:

"15-32-201. Amount of credit — to whom available. (1) A resident individual taxpayer who completes installation of an energy system using a recognized nonfossil form of energy generation, as defined in 15-32-102, ~~in~~ *to provide heat for* the taxpayer's principal dwelling ~~after December 31, 2001,~~ is ~~entitled~~ *allowed* to claim a tax credit in an amount equal to the cost of the system, including installation costs, less grants received, not to exceed $500, against the income tax liability imposed against the taxpayer pursuant to chapter 30.

(2) ~~A~~ *A* resident individual taxpayer who completes installation of an energy system using a low-emission wood or biomass combustion device, as defined in 15-32-102, ~~in~~ *to provide heat for* the taxpayer's principal dwelling ~~after December 31, 2001,~~ is ~~entitled~~ *allowed* to claim a tax credit in an amount equal to the cost of the system, including the installation costs, not to exceed $500, against the income tax liability imposed against the taxpayer pursuant to Title 15, chapter 30."

Section 3. Effective date. [This act] is effective on passage and approval.

Section 4. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to masonry heaters installed after December 31, 2008, and to tax years beginning after December 31, 2008.

Approved April 24, 2009

CHAPTER NO. 335

[HB 269]

AN ACT REVISING THE DOLLAR RATE AT WHICH FINES FOR CERTAIN CRIMINAL OFFENSES WILL BE SATISFIED BASED ON EACH DAY OF IMPRISONMENT; AMENDING SECTIONS 46-17-302 AND 61-7-118, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-17-302, MCA, is amended to read:

"46-17-302. Execution of judgment. (1) The judgment must be executed by the sheriff, constable, marshal, or ~~policeman~~ *police officer* of the jurisdiction in which the ~~conviction was had~~ *offender was convicted*.

(2) When a judgment of imprisonment is entered, a certified copy ~~thereof~~ must be delivered to the sheriff or other officer, which is a sufficient warrant for its execution.

(3) If a judgment is rendered imposing a fine only without imprisonment for nonpayment and the ~~defendant~~ *offender* is not detained for any other legal cause, ~~he~~ *the offender* must be discharged as soon as the judgment is given.

(4) A judgment that the ~~defendant~~ *offender* pay a fine may also direct that ~~he~~ *the offender* be imprisoned until the fine ~~be~~ *is* satisfied in the proportion of 1

day's imprisonment for ~~every $25~~ *every $75* of the fine. When the judgment is rendered, the ~~defendant~~ *offender* must be held in custody the time specified in the judgment unless the fine is paid.

(5) Any officer charged with the collection of fines under the provisions of this chapter ~~must~~ *shall* return the execution to the judge within 30 days from its delivery to ~~him~~ *the officer* and pay ~~over to the judge~~ the money collected *to the judge after*~~,~~ deducting ~~his~~ *the officer's* fees for the collection."

Section 2. Section 61-7-118, MCA, is amended to read:

"61-7-118. Penalty for violation. (1) A person violating any provision of 61-7-104 through 61-7-110 or 61-7-112 through 61-7-114 is guilty of a misdemeanor. Upon a first conviction, the offender shall be punished by a fine of not less than $200 or more than $300 or by imprisonment for not more than 20 days. For a second conviction within 1 year of the first conviction, the offender shall be punished by a fine of not less than $300 or more than $400, by imprisonment for not more than 30 days, or both. Upon a third or subsequent conviction within 1 year of the first conviction, an offender shall be punished by a fine of not less than $400 or more than $500, by imprisonment for not more than 6 months, or both.

(2) Subject to the limitations of 46-18-231(3), an offender who fails to pay a fine shall be imprisoned in the county jail in the county in which the offense was committed, and the punishment ~~shall~~ *must* be commuted at the rate of 1 day's incarceration for ~~each $20~~ *each $75* of the fine."

Section 3. Effective date. [This act] is effective July 1, 2009.

Approved April 24, 2009

CHAPTER NO. 336

[HB 280]

AN ACT SPECIFYING THAT NEW COMMUNITY HEALTH CENTERS MAY RECEIVE STATE FUNDING FOR A MAXIMUM OF 6 YEARS; AMENDING SECTION 50-4-805, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-4-805, MCA, is amended to read:

"50-4-805. Program expenditures — report to legislature. (1) Subject to appropriation by the legislature, the department shall provide competitive grants in accordance with 50-4-806 and this section to community or tribal boards operating as a nonprofit entity in accordance with the Public Health Service Act, 42 U.S.C. 254b, to increase access to primary care and preventive health services for uninsured, underinsured, low-income, or underserved Montanans.

(2) Grants must be made each year to accomplish any of the following goals:

(a) to create and support new nonfederally funded community health centers *with state funding for a maximum of 6 years or* until federal funds are granted. Successful applicants for the state grants shall also apply for federally qualified health center look-alike status and federal community health center grants at the first available opportunity.

(b) to expand the medical, mental health, or dental services offered by existing federally qualified community health centers or other facilities that have received federally qualified health center look-alike status; and

(c) to provide one-time grants for capital expenditures to existing federally qualified community health centers and facilities with federally qualified health center look-alike status.

(3) The department shall contract with an entity that is able to:

(a) provide technical assistance to new and existing federally qualified community health centers in their efforts to apply for federal funds;

(b) assist new and existing centers in their efforts to expand services; and

(c) collect standardized data on the provision of services to low-income and uninsured Montanans.

(4) The department shall require the contractor to provide an annual report on the services it has provided, the data it has collected, and the status of applications for federal community health center funding.

(5) (a) The department shall provide regular interim reports on the status of the program and program expenditures to the legislative finance committee and the children, families, health, and human services interim committee.

(b) The department shall report to the legislature, as provided for in 5-11-210, the following information for each year of the biennium:

(i) the status of the expenditures made pursuant to this part;

(ii) the number of people served by the expenditure of funds; and

(iii) the costs to the state of the services provided pursuant to this part."

Section 2. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

Section 3. Effective date. [This act] is effective July 1, 2009.

Approved April 27, 2009

CHAPTER NO. 337

[HB 306]

AN ACT REQUIRING THE DEPARTMENT OF JUSTICE TO DESIGN AND ISSUE SPECIAL MOTORCYCLE LICENSE PLATES FOR MILITARY PERSONNEL, VETERANS, AND SPOUSES; REQUIRING THE DONATION FOR A PLATE TO BE DEPOSITED INTO THE SPECIAL REVENUE ACCOUNT FOR THE STATE VETERANS' CEMETERIES; AMENDING SECTIONS 61-3-455 AND 61-3-458, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Special motorcycle license plates for military personnel, veterans, and spouses — department to design — fees — disposition. (1) The department shall design and issue motorcycle license plates for all special military and veteran license plates provided for in 61-3-458(2)(d) and (3).

(2) A person requesting a special military or veteran motorcycle license plate under this section:

(a) is subject to the eligibility requirements for the license plate as provided in 61-3-458; and

(b) shall pay to the county treasurer:

(i) an administrative fee of $5 upon issuance of the motorcycle license plate, to be deposited in the county general fund;

(ii) a $5 license plate fee, to be deposited in the state general fund; and

(iii) a $10 veterans' cemetery fee, to be deposited as provided in 61-3-459(2).

(3) Upon request, after paying the fees imposed under subsection (2)(b) and any applicable vehicle registration fees under this chapter, the surviving spouse of an eligible veteran, if the spouse has not remarried, may retain the special license plates issued to the deceased veteran, subject to the eligibility requirements for the plate as provided in 61-3-458(4).

Section 2. Section 61-3-455, MCA, is amended to read:

"61-3-455. Violation a misdemeanor. A person who violates 61-3-458, ~~or~~ 61-3-460*, or [section 1]* or who knowingly and wrongfully attempts to secure license plates under 61-3-332, 61-3-458, ~~or~~ 61-3-460*, or [section 1]* is guilty of a misdemeanor and shall be punished by a fine of not less than $100 or imprisonment for not more than 30 days, or both."

Section 3. Section 61-3-458, MCA, is amended to read:

"61-3-458. Special plates for military personnel, veterans, and spouses. (1) (a) Active military personnel, veterans, or the surviving spouse of an eligible veteran, if the spouse has not remarried, may be issued special military or veteran license plates as provided in this section.

(b) Subject to the provisions of 61-3-332 and except as otherwise provided in this chapter, special license plates issued pursuant to this section must be numbered in sets of two with a different number on each set and must be properly displayed as provided in 61-3-301. Special military or veteran license plates may not be issued for a ~~motorcycle,~~ quadricycle, semitrailer, or pole trailer. Special military or veteran license plates bearing a wheelchair as the symbol of a person with a disability may be issued to a person who meets the qualifications under 61-3-332(9) and this section. *Special military or veteran license plates may be issued for a motorcycle pursuant to [section 1].*

(2) (a) Upon application, after paying all applicable motor vehicle, trailer, semitrailer, or pole trailer registration fees and special license plate fees and providing an official certificate from the applicant's unit commander verifying the individual's eligibility and authorizing the department to issue the plates to the individual, eligible military personnel may be issued one set of special military license plates as provided in this subsection (2).

(b) A member of the Montana national guard who is a state resident may be issued special license plates with a design or decal displaying the letters "NG". However, the member shall surrender the plates to the department when the member becomes ineligible.

(c) A member of the reserve armed forces of the United States who is a state resident may be issued special license plates according to the member's branch of service verified in the application with a design or decal displaying one of the following: United States army reserve, AR (symbol); United States naval reserve, NR (anchor); United States air force reserve, AFR (symbol); or United States marine corps reserve, MCR (globe and anchor). However, the member shall surrender the plates to the department when the member becomes ineligible.

(d) An active member of the regular armed forces of the United States who is a state resident may be issued special license plates inscribed with a symbol signifying the United States army, United States navy, United States air force,

United States marine corps, or United States coast guard, according to the member's branch of service verified in the application. However, the member shall surrender the plates to the department upon becoming ineligible.

(3) (a) Upon application, after presenting proper identification and a department of defense form 214 (DD-214) or its successor or documents showing an other-than-dishonorable discharge or a reenlistment verifying the applicant's eligibility and paying the veterans' cemetery fee specified in 61-3-459 and all applicable motor vehicle, trailer, semitrailer, or pole trailer registration fees under this chapter, subject to the provisions of 61-3-460, an eligible veteran must be issued any set and more than one set of the special license plates provided for in this subsection (3) that the member requests and is eligible to receive.

(b) A veteran may be issued special license plates displaying the letters "DV", which entitles the veteran to the parking privileges allowed to a person with a special parking permit issued under Title 49, chapter 4, part 3, if the veteran:

(i) has been awarded the purple heart and has been rated by the U.S. department of veterans affairs as 50% or more disabled because of a service-connected injury; or

(ii) is currently rated 100% disabled or is paid at the 100% disabled rate by the U.S. department of veterans affairs for a service-connected disability.

(c) A veteran who has been awarded the purple heart may be issued special license plates with the purple heart decal displaying the words "combat wounded".

(d) A veteran who was captured and held prisoner by the military force of a foreign nation may be issued special license plates with a design or decal displaying the words "ex-prisoner of war" or an abbreviation that the department considers appropriate.

(e) If the veteran was a member of the United States armed forces on December 7, 1941, and during the hours of 7:55 a.m. to 9:45 a.m. (Hawaii time) was on station at Pearl Harbor on the island of Oahu or was offshore from Pearl Harbor at a distance of not more than 3 miles, the veteran may be issued special license plates designed to show that the veteran is a survivor of the Pearl Harbor attack.

(f) A person who is a member of the legion of valor may be issued special plates displaying a design or decal depicting the recognized legion of valor medallion.

(g) A veteran may be issued special license plates displaying the word "VETERAN" and a symbol signifying the United States army, United States navy, United States air force, United States marine corps, or United States coast guard, according to the veteran's service record verified in the application.

(h) A member or a former member of the Montana national guard eligible to receive a military retirement may be issued special license plates displaying the Montana national guard insignia and the words "National Guard veteran".

(i) A veteran who qualifies under subsections (3)(b) and (3)(c) may be issued special combination license plates displaying the letters "DV" and displaying a purple heart decal with the words "combat wounded". A person who receives the combination plates is entitled to the same parking privileges as provided in subsection (3)(b).

(4) Upon request, after paying the veterans' cemetery fee provided in 61-3-459 and all applicable vehicle registration fees under this chapter, subject to the provisions of 61-3-460, the surviving spouse of an eligible veteran, if the spouse has not remarried, may retain the special license plates issued to the deceased veteran, except the special "DV" plates provided for under subsection (3)(b) or the combination plates provided for in subsection (3)(i).

(5) For purposes of this section, "veteran" has the meaning provided in 10-2-101."

Section 4. No appropriation. It is the intent of the legislature that the requirements of [this act] be conducted within existing levels of funding.

Section 5. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 61, chapter 3, and the provisions of Title 61, chapter 3, apply to [section 1].

Section 6. Effective date. [This act] is effective January 1, 2010.

Approved April 24, 2009

CHAPTER NO. 338

[HB 318]

AN ACT REGULATING DEBT SETTLEMENT PROVIDERS; PROVIDING DEFINITIONS; PROVIDING INSURANCE AND ACCOUNTING REQUIREMENTS FOR DEBT SETTLEMENT PROVIDERS; ESTABLISHING PROHIBITED PRACTICES FOR DEBT SETTLEMENT PROVIDERS; AND PROVIDING REMEDIES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Definitions. As used in [sections 1 through 4], the following definitions apply:

(1) (a) "Debt settlement provider" means any person or entity engaging in or holding itself out as engaging in the business of debt settlement for compensation that does not in the usual and regular course of business hold, receive, or disburse a debtor's funds in connection with debt settlement services.

(b) The term does not include any of the following:

(i) attorneys, escrow agents, accountants, broker dealers in securities, or investment advisors in securities, when acting in the ordinary practice of their professions;

(ii) any bank, agent of a bank, trust company, savings and loan association, savings bank, credit union, crop credit association, development credit corporation, industrial development corporation, title insurance company, or insurance company operating or organized under the laws of this state, another state, or the United States, or any other person authorized to make loans under Montana law;

(iii) persons who perform credit services for their employer while receiving a regular salary or wage when the employer is not engaged in the business of debt settlement;

(iv) public officers while acting in their official capacities and persons acting under court order;

(v) any person while performing services incidental to the dissolution, winding up, or liquidating of a partnership, corporation, or other business enterprise; or

(vi) any for-profit or nonprofit entity that is subject to the provisions of Title 30, chapter 14, part 20, the Montana Consumer Debt Management Services Act.

(2) "Debt settlement service" is the negotiation, adjustment, or settlement of a consumer's debt without holding, receiving, or disbursing the debtor's funds.

(3) "Principal amount of the debt" means the total amount of debt of an individual at the time the individual is accepted into a debt settlement program.

Section 2. Requirements for debt settlement providers. (1) (a) A debt settlement provider shall maintain insurance coverage for dishonesty, fraud, theft, and other misconduct on the part of directors, officers, employees, or agents that is issued by an insurer rated at least A- or its equivalent by a nationally recognized rating organization. The debt settlement provider shall, at the request of the attorney general, make available to the attorney general proof of the insurance coverage required by this subsection (1)(a).

(b) The insurance coverage must be in a minimum amount of $100,000 with a deductible of not more than $10,000. A debt settlement provider is required to give at least 30 days' advance written notice to the attorney general if the coverage is being replaced.

(2) (a) A debt settlement provider is required to maintain books and records in accordance with generally accepted accounting principles and file a financial statement annually with the attorney general. The attorney general may require an audit or review of the financial statement by an independent certified public accountant.

(b) The annual filing by the debt settlement provider must be accompanied by a filing fee of $250 and must include, in addition to the financial statement, the following:

(i) the name of the debt settlement provider;

(ii) the date of formation if the debt settlement provider is an entity;

(iii) the physical address of each location to be operated by the debt settlement provider;

(iv) the name and resident address of the owners or partners or, if the debt settlement provider is a corporation, limited liability company, or association, the name and resident address of officers, directors, trustees, and managers; and

(v) any other pertinent information required by the attorney general.

(c) Fees received pursuant to this section and any civil fines, fees, costs, or penalties received or recovered by the department of justice pursuant to [section 4] must be deposited into a state special revenue account to the credit of the department of justice and must be used to defray the expenses of the department in discharging its administrative and regulatory powers and duties in relation to [sections 1 through 4]. Civil penalties, costs, or settlements received by a county attorney must be paid to the general fund of the county in which any enforcement action was commenced.

(3) (a) A debt settlement provider shall disclose in writing to a debtor, prior to entering into an agreement to provide services to the debtor, that:

(i) there will be fees charged by the debt settlement provider and shall disclose the type and amount of all of those fees;

(ii) the settlement of debts through a debt settlement program might have an impact on the debtor's credit history;

(iii) there may be tax consequences for the debtor as a result of a debt settlement;

(iv) collection activity by the creditor for a debt may continue until the creditor accepts a settlement for that debt;

(v) any settlement amount is an estimate based on the experience of prior customers and is not guaranteed to be accepted by the creditor;

(vi) a creditor may not be forced to accept a proposed settlement;

(vii) the debtor is required to meet certain savings goals in order to maximize settlement opportunities;

(viii) the debt settlement provider does not provide legal, accounting, tax, or bankruptcy advice or assistance;

(ix) the debt settlement provider will not use a payment made by the debtor to make a payment to a creditor; and

(x) debt settlement may not be the only option available to the debtor.

(b) The written disclosure must be in a minimum size of 12-point type.

Section 3. Prohibitions — contract cancellation. (1) A debt settlement provider may not do any of the following:

(a) provide debt settlement services without a written contract signed by the debtor;

(b) receive or charge fees, other than setup fees, in an aggregate amount that is in excess of 20% of the principal amount of the debt. No more than 5% of the principal amount of the debt may be charged as a setup fee.

(c) make loans or offer credit;

(d) take any confession of judgment or power of attorney to confess judgment against the debtor or appear as the debtor or on behalf of the debtor in any judicial proceedings;

(e) take as part of any agreement to provide debt settlement services a release of any obligation to be performed on the part of the debt settlement provider;

(f) advertise, display, distribute, broadcast, or televise services or permit services to be displayed, advertised, distributed, broadcasted, or televised, in any manner whatsoever, that contains any false, misleading, or deceptive statements or representations with regard to the services to be performed or the fees to be charged by the debt settlement provider;

(g) receive any cash, fee, gift, bonus, premium, reward, or other compensation from any person other than the debtor or a person on the debtor's behalf for performing debt settlement services;

(h) disclose to anyone the name or any personal information of a debtor for whom the debt settlement provider has provided or is providing debt settlement service other than a debtor's own creditors or the debt settlement provider's agents, affiliates, or contractors;

(i) disclose the name of a debtor's creditor to anyone other than the debtor, a company acting on behalf of the debtor or the debtor's debt settlement provider, or another creditor of the debtor and then only to the extent necessary to secure the cooperation of a creditor in a debt settlement plan;

(j) enter into a contract with a debtor without first providing the disclosure required in [section 2(3)];

(k) collect fees until a written debt settlement services contract has been executed by the debtor containing a schedule of fees in the actual amount to be charged the debtor and stating when those fees will be charged;

(l) advertise services in any manner in this state without first filing a financial statement with the attorney general;

(m) misrepresent any material fact or make a false promise intended to convince a debtor to enter into a debt settlement plan; or

(n) violate the provisions of any applicable state or federal do-not-call registry or Title 30, chapter 14, part 5.

(2) If a debt settlement service contract is canceled by the debtor before the contract is completed, the debt settlement provider shall, on request of the debtor, refund 50% of any collected but unrefunded service fee on a pro rata basis for those accounts that have not received a settlement offer by the time of the cancellation. Fees associated with the setup of a debt settlement service contract are not required to be refunded.

Section 4. Remedies. (1) The attorney general or the county attorney of any county in which a debt settlement provider is doing business or a debtor resides may bring an action for a violation of [section 2 or 3]. Upon finding that a person has violated or is violating a provision of [section 2 or 3], a court may make any necessary order or judgment, including an injunction, restitution, and an award of reasonable attorney fees and costs for the investigation and litigation of the violations.

(2) The attorney general or county attorney may accept an assurance of discontinuance of any method, act, or practice that is in violation of the provisions of [section 2 or 3] from any person alleged to be engaged in the unlawful act. The assurance may include a stipulation for the voluntary payment of the costs of investigation or of an amount to be held in escrow pending the outcome of any action or as restitution for any aggrieved person, or both. The court may award to the state a civil penalty not exceeding $10,000 for any violation of an assurance of discontinuance. Any matter closed by the acceptance of an assurance may be reopened at any time.

(3) A violation of a provision of [section 2 or 3] is a violation of 30-14-103, and a debtor is entitled to any remedy available under the provisions of Title 30, chapter 14, part 1, or other applicable state law.

Section 5. Codification instruction. [Sections 1 through 4] are intended to be codified as an integral part of Title 30, chapter 14, and the provisions of Title 30, chapter 14, apply to [sections 1 through 4].

Approved April 24, 2009

CHAPTER NO. 339

[HB 322]

AN ACT REQUIRING A PERSON PROPOSED, NOMINATED, OR APPOINTED AS A NEUTRAL ARBITRATOR TO DISCLOSE A CONFLICT OF INTEREST; PROVIDING FOR VACATING AN AWARD BECAUSE OF A FAILURE TO DISCLOSE A CONFLICT OF INTEREST; AND AMENDING SECTIONS 27-5-211 AND 27-5-312, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Short title — neutral arbitrator's disclosure required. (1) This section may be cited as the "Fairness in Arbitration Act".

(2) Beginning October 1, 2009, a person who has been proposed, nominated, or appointed as a neutral arbitrator pursuant to an arbitration agreement, other than one contained in a collective bargaining agreement, must comply with the requirements of this section.

(3) A person who has been proposed, nominated, or appointed as a neutral arbitrator for an arbitration proceeding shall disclose to each party all matters that could cause a person aware of the facts underlying a potential conflict of interest to have a reasonable doubt that the person would be able to act as a neutral or impartial arbitrator.

(4) In addition to any matters disclosed pursuant to subsection (3), the person proposed, nominated, or appointed shall disclose:

(a) the existence, regarding the person, of any ground specified in 3-1-803 for disqualification of a judge;

(b) whether the person has been employed by a party to the arbitration proceeding within the last 5 years;

(c) (i) (A) the names of the parties to arbitration proceedings commenced after October 1, 2009, other than the pending proceeding, in which the person served or is serving as a party arbitrator and not a neutral arbitrator for any party to that proceeding or as an attorney for a party to that proceeding and the results of each of those proceedings that were arbitrated to conclusion; or

(B) beginning October 1, 2014, the names of the parties to all prior or current arbitration proceedings, other than the pending proceeding, within the last 5 years in which the person served or is serving as a party arbitrator and not a neutral arbitrator for any party to that proceeding or as an attorney for a party to that proceeding and the results of each of those proceedings that were arbitrated to conclusion;

(ii) regarding the information disclosed pursuant to subsection (4)(c)(i), as appropriate, the:

(A) date of the arbitration award;

(B) identification of the prevailing party;

(C) names of the parties' attorneys; and

(D) amount of monetary damages awarded, if any;

(d) (i) (A) the names of the parties to arbitration proceedings commenced after October 1, 2009, other than the pending proceeding, in which the person served or is serving as a neutral arbitrator and the results of each of those proceedings that were arbitrated to conclusion; or

(B) beginning October 1, 2014, the names of the parties to all prior or current arbitration proceedings, other than the pending proceeding, within the last 5 years in which the person served or is serving as a neutral arbitrator and the results of each of those proceedings that were arbitrated to conclusion;

(ii) regarding the information disclosed pursuant to subsection (4)(d)(i), as appropriate, the:

(A) date of the arbitration award;

(B) identification of the prevailing party;

(C) identification of the person and the party who selected the person to serve as a neutral arbitrator, if any;

(D) names of the parties' attorneys; and

(E) amount of monetary damages awarded, if any; and

(e) any attorney-client relationship the person has or has had with a party or an attorney for a party to the arbitration proceeding within the last 5 years.

(5) In order to preserve confidentiality, it is sufficient for the purposes of subsections (4)(c) and (4)(d) for the person to identify any party who is not a party to the pending arbitration proceeding as "claimant" or "respondent" if that party is or was an individual and not a business or corporate entity.

(6) The person proposed, nominated, or appointed as a neutral arbitrator shall make the disclosure required by this section in writing to all parties by serving a disclosure upon the parties within 10 days of any notice of the person's proposal, nomination, or appointment. The disclosure must be served in accordance with Title 25, chapter 3, part 2.

(7) An arbitration proceeding does not include an arbitration proceeding pursuant to a collective bargaining agreement.

(8) This section does not apply to:

(a) arbitration agreements that have been approved by the United States security and exchange commission pursuant to the Securities and Exchange Act of 1934; or

(b) arbitrations conducted by the Montana bar association's voluntary fee arbitration program.

Section 2. Section 27-5-211, MCA, is amended to read:

"27-5-211. Appointment of arbitrators — *conflict of interest provisions applicable.* ~~If~~ *Except as provided in [section 1], if* the arbitration agreement provides a method of appointment of arbitrators, this method ~~shall~~ *must* be followed. If ~~no~~ *a* method is *not* provided, the agreed method fails or for any reason cannot be followed, or an appointed arbitrator fails or is unable to act and ~~his~~ *a* successor has not been ~~duly~~ appointed, the district court on application of a party shall appoint one or more arbitrators. An arbitrator so appointed has all the powers of one specifically named in the agreement. *A neutral arbitrator appointed by the district court on or after October 1, 2009, shall comply with the provisions of [section 1].*"

Section 3. Section 27-5-312, MCA, is amended to read:

"27-5-312. Vacating an award. (1) Upon the application of a party, the district court shall vacate an award if:

(a) the award was procured by corruption, fraud, or other undue means;

(b) there was evident partiality by an arbitrator appointed as a neutral or corruption in any of the arbitrators or misconduct prejudicing the rights of any party;

(c) the arbitrators exceeded their powers;

(d) the arbitrators refused to postpone the hearing upon sufficient cause being shown ~~therefor~~ or refused to hear evidence material to the controversy or otherwise ~~so~~ conducted the hearing, contrary to the provisions of 27-5-213, ~~as to prejudice~~ *in a manner that* substantially *prejudiced* the rights of a party; ~~or~~

(e) there was no arbitration agreement and the issue was not adversely determined in proceedings under 27-5-115 and the party did not participate in the arbitration hearing without raising the objection*; or*

(f) a neutral arbitrator failed to make a material disclosure required by [section 1]. An award may be vacated because of a material noncompliance with [section 1] no later than 90 days following discovery of the failure to disclose.

(2) The fact that the relief ~~was such that it~~ could not or would not be granted by a court of law or equity is not grounds for vacating or refusing to confirm the award.

(3) An application under this section must be made within 90 days after delivery of a copy of the award to the applicant, except that if it is predicated upon corruption, fraud, or other undue means, it must be made within 90 days after ~~such~~ *the* grounds are known or should have been known.

(4) In vacating the award on grounds other than those stated in subsection (1)(e), the court may order a rehearing before new arbitrators chosen as provided in the agreement or, if the agreement does not provide a method of selection, by the court in accordance with 27-5-211 or, if the award is vacated on grounds set forth in subsection (1)(c) or (1)(d), the court may order a rehearing before the arbitrators who made the award or their successors appointed in accordance with 27-5-211. The time within which the agreement requires the award to be made is applicable to the rehearing and commences on the date of the order for rehearing.

(5) If the application to vacate is denied and ~~no~~ *a* motion to modify or correct the award is *not* pending, the court shall confirm the award."

Section 4. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 27, chapter 5, part 1, and the provisions of Title 27, chapter 5, part 1, apply to [section 1].

Approved April 24, 2009

CHAPTER NO. 340

[HB 356]

AN ACT REVISING THE USE OF PORTABLE SCALES; REQUIRING PORTABLE SCALES TO BE USED ON ENGINEERED SITES; DEFINING "ENGINEERED SITE"; AND AMENDING SECTIONS 61-10-141 AND 61-10-144, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-10-141, MCA, is amended to read:

"61-10-141. Officers authorized to weigh vehicles and require removal of excessive loads — *definition.* (1) (a) A peace officer, officer of the highway patrol, or employee of the department of transportation may weigh any vehicle regulated by 61-10-101 through 61-10-104 and 61-10-106 through 61-10-110, except recreational vehicles, travel trailers, or motor homes, by means of either portable *scales used on an engineered site* or stationary scales. ~~and~~ *The peace officer, officer of the highway patrol, or employee of the department of transportation* may require that the vehicle be driven to the nearest *stationary* scales *or engineered site for use of portable scales* if those *stationary* scales *or an engineered site* ~~are~~ *is* within 2 miles.

(b) If it is determined in the weighing process that the maximum allowable weights specified in 61-10-101 through 61-10-104 and 61-10-106 through 61-10-110 have been exceeded, the peace officer, officer of the highway patrol, or employee of the department of transportation may then require the driver to

unload at a designated facility that portion of the load necessary to decrease the weight of the vehicle to conform to the maximum allowable weights specified in 61-10-101 through 61-10-104 and 61-10-106 through 61-10-110. If the excess weight does not exceed 10,000 pounds, an excess weight permit may be issued in accordance with 61-10-121. The permit authorizes the driver of the excess weight load to proceed to a designated facility where the load can be safely reduced to legal limits.

(2) Commodities and material unloaded as required by this section must be cared for by the owner or operator of the vehicle at the risk of that owner or operator. Commodities or material unloaded as required by this section may not be left on the highway right-of-way.

(3) The department of transportation may establish, maintain, and operate weigh stations, either intermittently or on a continuous schedule, and may require vehicles, except passenger cars and pickup trucks under 14,000 pounds GVW and recreational vehicles that are not new or used recreational vehicles traveling into or through Montana for delivery to a distributor or a dealer, to enter for the purpose of weighing and inspection for compliance with all laws pertaining to their operation and safety requirements. The department may require vehicles over 10,000 pounds to be inspected and weighed by portable scale crews *when the portable scales are used on an engineered site*.

(4) For the purposes of this section, "engineered site" means:

(a) a turnout designed and constructed by the department of transportation that has indents in the pavement to level portable scales; or

(b) a site where leveling pads can be used in strict accordance with all of the manufacturer's manuals and specifications."

Section 2. Section 61-10-144, MCA, is amended to read:

"61-10-144. Violation of standards — tolerance. (1) It is a misdemeanor for a person, firm, or corporation to violate any provision of 61-10-101 through 61-10-104 and 61-10-106 through 61-10-110.

(2) The operator of a vehicle or combination of vehicles may move over the highways to the first open ~~state~~ *stationary* scale~~, permanent~~ or portable *scale on an engineered site, as defined in 61-10-141(4)*, without incurring the excess weight penalties set forth in 61-10-145 if the total gross weight of the vehicle or combination of vehicles does not exceed allowable total gross weight limitations by more than 10% and if the weight carried by any axle or combination of axles does not exceed the allowable axle weight limitations by more than 10%. If the vehicle or combination of vehicles is not in excess of the allowable total gross or axle weight limitations by more than 10%, the department may issue a single trip permit for the fee of $10, allowing the vehicle or combination of vehicles to move over the highways to the first facility where its load can be safely adjusted or to its destination. Violations of total gross or axle weight limitations in excess of 10% are subject to the fines provided in 61-10-145, and all loads in excess of 10% of the total gross or axle weight limitations:

(a) may be required to be adjusted or reduced to conform to the size and weight limitations before the vehicle or combination of vehicles is moved from the point of weighing; or

(b) may be issued a permit as authorized by 61-10-141.

(3) Farm vehicles transporting agricultural products from a harvesting combine or other harvesting machinery may be operated on any highway, except a highway that is part of the federal-aid interstate system, within a

100-mile radius of the harvested field to the point of first unloading without incurring excess weight penalties under 61-10-145 if the total gross weight of the farm vehicle or combination of vehicles does not exceed allowable weight limitations by more than 20% for each axle and the maximum load for each inch of tire width does not exceed 670 pounds. A single trip permit, as required in subsection (2), is not applicable to the farm vehicle or combination of vehicles. When a farm vehicle or combination of vehicles violates any of the provisions of this subsection, the fine or penalty imposed applies to that portion of the load above the legal limit."

Approved April 24, 2009

CHAPTER NO. 341

[HB 384]

AN ACT GENERALLY REVISING THE MONTANA UNIFIED VOLUME CAP BOND ALLOCATION PLAN ACT; INCREASING THE FEE FOR ISSUANCE OF THE BONDS; PROVIDING THAT AS A CONDITION TO ISSUING BONDS EACH ISSUER IS REQUIRED TO PROVIDE THE LEGISLATIVE AUDITOR WITH FULL ACCESS TO ITS FINANCIAL RECORDS; PROVIDING THAT AS A CONDITION OF ISSUING BONDS THE MONTANA HIGHER EDUCATION STUDENT ASSISTANCE CORPORATION IS REQUIRED TO COMPLY WITH OPEN MEETING LAWS AND PROVIDE THE LEGISLATIVE AUDITOR WITH FULL ACCESS TO ANY MANAGEMENT OR LOAN SERVICING CONTRACTS; AMENDING SECTIONS 17-5-1302, 17-5-1312, AND 17-5-2201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-5-1302, MCA, is amended to read:

"17-5-1302. Definitions. As used in this part, unless the context clearly requires otherwise, the following definitions apply:

(1) "Allocation" means an allocation of a part of the state's volume cap to an issuer pursuant to this part.

(2) "Board" means the board of examiners.

(3) "Bonds" means bonds, notes, or other interest-bearing obligations of an issuer.

(4) "Cap bonds" means those private activity bonds and that portion of governmental bonds for which a part of the volume cap is required to be allocated pursuant to the tax act.

(5) "Department" means the department of administration.

(6) "Governmental bonds" means bonds other than private activity bonds.

(7) "Issuer" means a state issuer or local issuer.

(8) "Local issuer" means a city, town, county, or other political subdivision of the state authorized to issue private activity bonds or governmental bonds.

(9) "Local portion" means that portion of the state's volume cap reserved for local issuers.

(10) "Montana board of housing" (MBH) means the board created in 2-15-1814.

(11) "Montana board of investments" (MBI) means the board provided for in 2-15-1808.

(12) "Montana facility finance authority" (MFFA) means the authority provided for in 2-15-1815.

(13) "Montana higher education student assistance corporation" (MHESAC) means the nonprofit corporation established to provide student loan capital to the student loan program established by the board of regents of higher education under Title 20, chapter 26, part 11.

(14) "Private activity bonds" (PABs) has the meaning prescribed under section 141 of the Internal Revenue Code*, 26 U.S.C. 141*.

(15) "State issuer" means the state and any agency of the state authorized to issue private activity bonds. For this part only, the Montana higher education student assistance corporation*, to the extent authorized under federal law to issue private activity bonds,* is considered ~~an agency of the~~ *a* state *issuer*.

(16) "State portion" means that portion of the state's volume cap reserved for state issuers.

(17) "State's volume cap" means that amount of the volume cap specified by the department pursuant to 17-5-1311(2).

(18) "Tax act" means the latest limitation enacted by the United States congress on the amount of cap bonds that may be issued by a state or local issuer.

(19) "Volume cap" means, with respect to each calendar year, the principal amount of cap bonds that may be issued in the state in a calendar year as determined under the provisions of the tax act."

Section 2. Section 17-5-1312, MCA, is amended to read:

"17-5-1312. Allocation to state issuers. (1) Except as provided in subsection (5), the state portion must be allocated to state issuers pursuant to 17-5-1316.

(2) As a condition of receiving an allocation, each state issuer~~,~~*:*

(a) upon issuance of the bonds, shall pay ~~30~~ *35* cents per thousand of bonds to be deposited in the state general fund for the purpose of funding a portion of the comprehensive annual financial report audit*; and*

(b) shall provide the legislative auditor with full access to its financial records.

(3) As long as the Montana higher education student assistance corporation requests and receives authority to issue bonds under this part, the corporation shall:

(a) comply with the provisions of Title 2, chapter 3, in all meetings of the corporation's board of directors or other governing body unless compliance would conflict with federal or state security disclosure laws; and

(b) provide the legislative auditor with full access to any management or loan servicing contracts.

~~(3)~~*(4)* The following set-aside percentages of the state's volume cap must be made in each calendar year for the following state issuers:

State Issuer	Percentage
Board	4
MBH	41
MBI	25

MHESAC	26
MFFA	4
Total	100%

~~(4)~~*(5)* Each set-aside expires on the first Monday in September.

~~(5)~~*(6)* Prior to the set-aside expiration date, allocations may be made by the department to each state issuer only from its respective set-aside pursuant to 17-5-1316 and a state issuer is not entitled to an allocation except from its set-aside unless otherwise provided by the governor.

~~(6)~~*(7)* After the expiration date, the amount of the set-aside remaining unallocated is available for allocation by the department to issuers pursuant to 17-5-1316 without preference or priority."

Section 3. Section 17-5-2201, MCA, is amended to read:

"17-5-2201. Fee for issuance of bonds. Except for issuers of general obligation bonds ~~which~~ *that* are payable solely by general fund revenues *and as provided in 17-5-1312(2)(a)*, each state bond issuer shall, upon issuance of the bonds, pay 30 cents per thousand of bonds ~~to~~ *unless another fee is specifically provided for a type of bonds. The fee must* be deposited in the state general fund for the purpose of funding a portion of the comprehensive annual financial report audit."

Section 4. Effective date. [This act] is effective on passage and approval.

Approved April 24, 2009

CHAPTER NO. 342

[HB 449]

AN ACT GENERALLY REVISING STATE AND LOCAL GOVERNMENT LAWS RELATED TO FINANCE; REVISING NOTICE INFORMATION IN CONNECTION WITH INTENTION TO CREATE A RURAL SPECIAL IMPROVEMENT DISTRICT; REVISING PROTEST PROVISIONS FOR THE CREATION OR EXTENSION OF A RURAL SPECIAL IMPROVEMENT DISTRICT; ALTERING THE TIME FOR CANVASSING OF VOTES FOR WATER AND SEWER DISTRICT ELECTIONS; CLARIFYING CHARGES FOR SERVICES; CLARIFYING THE LEVY OF DISTRICT WATER OR SEWER TAX TO PAY EXPENSES OF OR CLAIMS AGAINST THE DISTRICT; REMOVING CONDITIONS PLACED ON STATE REFUNDING BONDS; CLARIFYING THE ACCOUNTS FOR DEPOSIT OF PROCEEDS OF, AND THE USE OF BOND PREMIUMS ON, STATE GENERAL OBLIGATION BONDS; REMOVING THE REQUIREMENT THAT REVISED MUNICIPAL UTILITY RATE SCHEDULES BE FILED WITH THE PUBLIC SERVICE COMMISSION; EXTENDING THE MAXIMUM TERM OF LOAN UNDER WATER POLLUTION CONTROL STATE REVOLVING FUND PROGRAM IN CERTAIN CIRCUMSTANCES; AMENDING SECTIONS 7-12-2103, 7-12-2105, 7-12-2109, 7-12-2112, 7-13-2256, 7-13-2301, 7-13-2302, 17-5-305, 17-5-803, 69-7-112, AND 75-5-1113, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-12-2103, MCA, is amended to read:

"7-12-2103. Resolution of intention to create rural improvement district. (1) Before creating a special improvement district for the purpose of

making any of the improvements or acquiring any private property for any purpose authorized by this part, the board of county commissioners shall pass a resolution of intention.

(2) The resolution must:

(a) designate the number of the district;

(b) describe the boundaries of the district;

(c) state in the resolution the general character of the improvements that are to be made;

(d) designate the name of the engineer who is to have charge of the work and an approximate estimate of the cost of the work; *and*

(e) specify the method or methods by which the costs of the improvements will be assessed against property in the district~~; and~~

~~(f) if applicable, provide any additional information required to be included in the notice under 7-12-2105(3)(a)~~.

(3) The board of county commissioners may include, in one proceeding under one resolution of intention and in one contract, any of the different kinds of improvements or work provided for in this part and may include any number of streets and rights-of-way or portions of streets and rights-of-way, and it may exempt any of the work already done upon a street to the official grade."

Section 2. Section 7-12-2105, MCA, is amended to read:

"7-12-2105. Notice of resolution of intention to create district — hearing — exception. (1) Upon ~~having passed the~~ *passage of a* resolution of intention pursuant to 7-12-2103, the board of county commissioners shall publish notice of the passage ~~of the resolution of intention~~ as provided in 7-1-2121.

(2) A copy of the notice must be mailed, as provided in 7-1-2122, to each person, firm, or corporation or the agent of the person, firm, or corporation owning real property within the proposed district listed in the owner's name upon the last-completed assessment roll for state, county, and school district taxes.

(3) (a) The notice must describe the general character of the ~~improvement or~~ improvements proposed to be made or acquired by purchase, state the estimated cost of the improvements, describe generally the method or methods by which the costs of the improvements will be assessed, and designate the time when and the place where the board will hear and pass upon all protests that may be made against the making or maintenance of the improvements or the creation of the district. ~~If one or more of the improvements proposed to be made or acquired by purchase are related to each other or are part of a larger project, the notice must describe the entire scope of the related or larger project, including the estimated costs of all related improvements, the method or methods by which these costs will be assessed, the impacts on property rights, and other actual or potential costs reasonably related to the proposed improvement.~~

(b) If the revolving fund is to be pledged to secure the payment of bonds and warrants, the notice must include a statement that, subject to the limitations in 7-12-2182:

(i) the county general fund may be used to provide loans to the revolving fund; or

(ii) a general tax levy may be imposed on all taxable property in the county to meet the financial requirements of the revolving fund.

(c) The notice must refer to the resolution on file in the office of the county clerk for the description of the boundaries. If the proposal is for the purchase of an existing improvement, the notice must state the exact purchase price of the existing improvement.

(4) The provisions of this section do not apply to a resolution of intention to create a district that is passed upon receipt of a petition as provided in 7-12-2102(2)."

Section 3. Section 7-12-2109, MCA, is amended to read:

"7-12-2109. Right to protest creation or extension of district — exception. (1) (a) Except as provided in subsections (1)(b) and (2), at any time within 30 days after the date of the first publication of the notice of the passage of the resolution of intention, any owner of property liable to be assessed for the work proposed in the resolution may make written protest against the proposed work or against the creation or extension of the district to be assessed, or both. The protest must be in writing, ~~and~~ identify the property in the district owned by the protestor*, and except as provided in 7-12-2141, be signed by all owners of the property*. The protest must be delivered to the county clerk, who shall endorse on the protest document the date of its receipt by the county clerk.

(b) If the period described in subsection (1)(a) includes a holiday as enumerated in 1-1-216, other than a Sunday, the period must be extended for an additional 2 days.

(2) The provisions of subsection (1)(a) do not apply if a resolution of intention to create the district is a result of a petition submitted as provided in 7-12-2102(2).

(3) (a) For purposes of this section, "owner" means, as of the date a protest is filed, the record owner of fee simple title to the property.

(b) The term does not include a tenant of or other holder of a leasehold interest in the property."

Section 4. Section 7-12-2112, MCA, is amended to read:

"7-12-2112. Sufficient protest to bar proceedings — exception. (1) Except as provided in subsection (2), further proceedings may not be taken for a period of 6 months from the date when a protest was received by the county clerk if the board of county commissioners finds that the protest is made by~~:~~

~~(a) the owners of property within the proposed district having projected assessments, when aggregated, representing not less than 50% of the total projected assessments for property within the district;~~ *the owners of property in the proposed district to be assessed for more than 50% of the cost of the proposed program or improvements as determined by the method or methods of assessment described in the resolution of intention*

~~(b) the owners of property within the proposed district having a taxable valuation, when aggregated, representing not less than 50% of the total taxable valuation of the property within the district; or~~

~~(c) not less than 50% of the owners of property within the district~~.

(2) If the improvements are the construction of sanitary sewers, the protests may be overruled by a unanimous vote of the board if:

(a) the improvements are ordered by the department of environmental quality or the federal environmental protection agency; or

(b) the governing body makes written findings after a public hearing and public comment, based on evidence in the record, that the proposed

improvements protect public health or the environment, mitigate harm to the public health or environment, and are achievable under current technology."

Section 5. Section 7-13-2256, MCA, is amended to read:

"7-13-2256. Canvass of vote. (1) ~~The~~ *Except as provided in part 23 and this part, the* board of county commissioners shall canvass the returns of the first election, and ~~thereafter, except as provided in this part and part 23~~ *for subsequent elections*, the board of directors shall meet as a canvassing board and ~~duly~~ canvass the returns ~~within 4 days~~ *at the first regular meeting of the board of directors* after any district election, including any district bond election.

(2) If the district lies in more than one county, the board of county commissioners whose county contains the largest percentage of the territory of ~~said~~ *the* district shall canvass the returns of the first election."

Section 6. Section 7-13-2301, MCA, is amended to read:

"7-13-2301. Establishment of charges for services — payment of charges. (1) The board of directors shall fix all water and sewer rates and shall, through the general manager, collect the sewer charges and the charges for the sale and distribution of water to all users.

(2) *(a)* The board, in furnishing water, sewer service, other services, and facilities, shall review, at least once every ~~2 years~~ *year*, and ~~from time to time fix~~ *set, as required,* the rate, fee, toll, rent, *tax,* or other charge for the services, facilities, and benefits directly afforded by the facilities, taking into account services provided and direct benefits received~~,~~. ~~that will~~ *Taking into account the collections of any special assessments levied pursuant to 7-13-2280 through 7-13-2290 and any property taxes that will be levied to pay debt service on general obligation bonds authorized pursuant to 7-13-2331, the amount to be collected and appropriated must* be sufficient in each year to provide income and revenue adequate~~, with the collections of any special assessments levied pursuant to 7-13-2280 through 7-13-2289 and appropriated~~, for *the*:

~~(a)~~*(i)* ~~the~~ payment of the reasonable expense of operation and maintenance of the facilities;

~~(b)~~*(ii)* administration of the district;

~~(c)~~*(iii)* ~~the~~ payment of principal and interest on any bonded or other indebtedness of the district; and

~~(d)~~*(iv)* ~~the~~ establishment or maintenance of any required reserves, including reserves needed for expenditures for depreciation and replacement of facilities, as may be determined necessary from time to time by the board or as covenanted in the ordinance or resolution authorizing the outstanding bonds of the district.

(b) A portion of the rate, fee, toll, rent, tax, or other charge provided for in subsection (2)(a) may be charged to the owner of an undeveloped lot, tract, or parcel to pay a share of the principal of and interest on bonded indebtedness issued to finance the capital cost of improvements to an existing water or sewer system, so long as the board makes findings in a resolution or ordinance of the district that demonstrate the improvements to the existing system to be financed by the bonded indebtedness confer a direct benefit on the lot, tract, or parcel.

~~(3)~~*(3)* A person or entity may not use any facility without paying the rate established for the facility. In the event of nonpayment, the board may order the discontinuance of water or sewer service, or both, to the property and may require that all delinquent charges, interest, penalties, and deposits be paid before restoration of the service.

~~(4)~~*(4)* (a) If the board has ordered discontinuance of service as provided in subsection ~~(3)~~ *(3)* and the person or entity who received the service has not made full payment of all delinquent charges, interest, penalties, and deposits, then a district may elect to have its delinquent charges for water or sewer services collected as a tax against the property by following the procedures of this subsection ~~(4)~~ *(4)*. If a charge for services is due and payable in a fiscal year and is not paid by the end of the fiscal year, the general manager shall, by July 15 of the succeeding fiscal year, give notice to the owners of the property to which the service was provided. The notice must be in writing and:

(i) must specify the charges owed, including any interest and penalty;

(ii) must specify that the amount due must be paid by August 15 or it will be levied as a tax against the property;

(iii) must state that the district may institute suit in any court of competent jurisdiction to recover the amount due; and

(iv) may be served on the owner personally or by letter addressed to the post-office address of the owner as recorded in the county assessor's office.

(b) On September 1 of each year, the general manager shall certify and file with the county assessor a list of all property, including legal descriptions, on which arrearages remain unpaid. The list must include the amount of each arrearage, including interest and penalty. The county assessor shall assess the amount owed as a tax against each lot or parcel with an arrearage. If the property on which arrearages remain unpaid contains a mobile home, the amount owed must be assessed as a tax against the owner of the mobile home. If the mobile home for which arrearages remain unpaid is no longer on the property, the amount owed must be assessed as a tax against the property.

~~(5)~~*(6)(5)* In addition to collecting delinquent charges in the same manner as a tax, a district may bring suit in any court of competent jurisdiction to collect amounts due as a debt owed to the district.

~~(6)~~*(7)(6)* Notwithstanding any other section of part 22 or this part or any limitation imposed in part 22 or this part, when the board has applied for and received from the federal government any money for the construction, operation, and maintenance of facilities, the board may adopt a system of charges and rates to require that each recipient of facility services pays its proportionate share of the costs of operation, maintenance, and replacement and may require industrial users of facilities to pay the portion of the cost of construction of the facilities that is allocable to the treatment of that industrial user's wastes."

Section 7. Section 7-13-2302, MCA, is amended to read:

"7-13-2302. Levy of taxes to meet bond obligations and other expenses. (1) If for any reason the revenue of the district is inadequate to pay the interest or principal of any bonded debt as it becomes due, exclusive of revenue or special assessment bonded indebtedness incurred pursuant to 7-13-2333 or bonded indebtedness incurred to refund the revenue or special assessment bonded indebtedness without authorization at an election, or any other expenses or claims against the district, then the board of directors shall, at least 15 days before the first day of the month in which the board of county commissioners of the county, city and county, or counties in which the district is located are required by law to levy the amount of taxes required for county or city and county purposes, furnish to the board or boards of county commissioners and to the auditor or auditors, respectively, an estimate in writing:

(a) of the amount of money required by the district for the payment of the principal of or interest on any bonded debt as it becomes due;

(b) of the amount of money required to establish reasonable reserve funds for either purpose, together with a description of the lands benefited by the bonds, as stated by the board of directors in the resolution declaring the necessity to incur bonded indebtedness; and

(c) of the amount of money required by the district for any other purpose set forth in this section.

(2) The board of county commissioners of the county or city and county, annually, at the time and in the manner of levying other county or city and county taxes, shall:

(a) until any bonded debt is fully paid, levy upon the benefited lands and collect the proportionate share to be borne by the land located in their county of a tax sufficient for the payment of the bonded debt, to be known as the ..... district bond tax; and

(b) until all other expenses or claims are fully paid, levy upon all of the lands of the district and collect the proportionate share to be borne by the land located in their county of a tax sufficient for the payment of the ~~bonded debt~~ *other expenses or claims*, to be known as the ..... district water and/or sewer tax.

(3) Taxes for the payment of any bonded debt must be levied on the property benefited, as stated by the board of directors in the resolution declaring the necessity for the bonds, and all taxes for other purposes must be levied on all property in the territory comprising the district."

Section 8. Section 17-5-305, MCA, is amended to read:

"17-5-305. Sale of bonds and debentures. The refunding bonds or debentures ~~which~~ *that* may be issued under the provisions of this part ~~shall~~ *must* be sold by the board of examiners in ~~such~~ *a* manner ~~as~~ *that* ~~they shall deem for~~ *the board considers to be in* the best interests of the state~~,~~. ~~provided that:~~

~~(1) none thereof shall be sold at less than its par value; and~~

~~(2)~~ *However,* if the state ~~shall hold~~ *holds* any bonds or debentures to be refunded by ~~any such~~ *an* issue of refunding bonds or debentures as investments of institutional or other funds, the ~~same~~ *original bonds or debentures* may be exchanged for the refunding bonds or debentures if ~~such~~ *the* exchange ~~be~~ *is* authorized by the proper state officers or board."

Section 9. Section 17-5-803, MCA, is amended to read:

"17-5-803. Form — principal and interest — fiscal agent — bond registrar and transfer agent — deposit of proceeds. (1) Subject to the limitations contained in this part and in the bond act and in the furtherance of each bond act, bonds may be issued by the board upon request of the department. The bonds may be issued in the denominations and form, whether payable to bearer or registered as to principal or both principal and interest, with provisions for conversion or exchange, and for the issuance of temporary bonds bearing interest at a rate or rates, maturing at times not exceeding 30 years from date of issue, subject to redemption at earlier times and prices and on notice, and payable at the office of the fiscal agency of the state as the board determines.

(2) In all other respects, the board is authorized to prescribe the form and terms of the bonds and do whatever is lawful and necessary for their issuance and payment. Action taken by the board under this part must be by a majority

vote of its members. The state treasurer shall keep a record of all bonds issued and sold.

(3) The board is authorized to employ a fiscal agent and a bond registrar and transfer agent to assist in the performance of its duties under this part.

(4) The board, in its discretion, is authorized to pay all costs of issuance of bonds, including without limitation rating agency fees, printing costs, legal fees, bank or trust company fees, costs to employ persons or firms to assist in the sale of the bonds, line of credit fees and charges, and all other amounts related to the costs of issuing the bonds from amounts available for these purposes in the general fund or from the proceeds of the bonds.

(5) All proceeds of bonds and notes issued under this part *to pay the costs of a project* must be deposited in the capital projects account *or in a separate general obligation bond or note account created in the state special revenue fund established in 17-2-102*, except that any premiums*, unless used to pay the costs of issuance,* and accrued interest received ~~and the proceeds of refunding bonds or notes~~ must be deposited in the debt service account."

Section 10. Section 69-7-112, MCA, is amended to read:

"69-7-112. Conduct of municipal rate hearing. (1) At the hearing, all persons, associations, corporations, or companies affected or interested, including the Montana consumer counsel, may be present and represented by counsel. The hearing may be continued from time to time by the governing body of the municipality. At the conclusion of the hearing, all interested parties ~~shall~~ *must* be allowed to make ~~such~~ arguments ~~as~~ *that* they may consider proper.

(2) Within 30 days after the hearing, the governing body of the municipality shall issue its decision. The decision is final 10 days after being filed with the municipal clerk. ~~A copy of each revised rate schedule shall be filed with the public service commission upon final decision.~~"

Section 11. Section 75-5-1113, MCA, is amended to read:

"75-5-1113. Conditions on loans. (1) Upon approval of a project by the department, the department of natural resources and conservation may lend amounts on deposit in the revolving fund to a municipality or private person to pay part or all of the cost of a project or to buy or refinance an outstanding obligation of a municipality that was issued to finance a project. The loan is subject to the municipality or private person complying with the following conditions:

(a) meeting requirements of financial capability set by the department of natural resources and conservation to ensure sufficient revenue to operate and maintain the project for its useful life and to repay the loan, including the establishment and maintenance by the municipality of a reserve or revolving fund to secure the payment of principal of and interest on the loan to the extent permitted by the applicable law governing the municipality's obligation;

(b) agreeing to operate and maintain the project properly over its structural and material design life, which may not be less than the term of the loan;

(c) agreeing to maintain proper financial records in accordance with generally accepted accounting standards and agreeing that all records are subject to audit;

(d) meeting the requirements listed in the federal act for projects constructed with funds directly made available by federal capitalization grants;

(e) providing legal assurance that all necessary property titles, easements, and rights-of-way have been obtained to construct, operate, and maintain the project;

(f) submitting an engineering report evaluating the proposed project, including information demonstrating its cost-effectiveness and environmental information necessary for the department and the department of natural resources and conservation to fulfill their responsibilities under the Montana Environmental Policy Act and rules adopted to implement that act;

(g) complying with plan and specification requirements and other requirements established by the department; and

(h) providing for proper construction inspection and project management.

(2) *(a)* Each loan, unless prepaid, is payable subject to the limitations of the federal act, with interest paid in annual or more frequent installments, the first of which must be received not more than 1 year after the completion date of the project and*, except as provided in subsection (2)(b),* the last of which must be received not more than 20 years after the completion date.

(b) If the applicant is a disadvantaged community, as defined by rule, that has qualified for and applied for a loan subsidy, the department may determine that the last installment must be received not more than 30 years after the completion date of the project if the period of the loan does not exceed the expected design life of the project being financed.

(3) *(a)* Subject to the limitations of the federal act, the interest rate on a loan must ensure that the interest payments on the loan and on other outstanding loans will be sufficient, if paid timely and in full, with other available funds in the revolving fund, including investment income, to enable the state to pay the principal of and interest on the bonds issued pursuant to 75-5-1121.

~~(a)~~*(b)* The interest rate must be determined as of the date the loan is authorized by the department of natural resources and conservation.

~~(b)~~*(c)* The rate may include any additional rate that the department of natural resources and conservation considers reasonable or necessary to provide a reserve for the repayment of the loans. The additional rate may be fixed or variable or may be calculated according to a formula, and it may differ from the rate established for any other loan. Once the reserve has been established at a level considered by the department to be reasonable and prudent for the loans outstanding, the department may use excess reserve payments to make grants to aid in the feasibility of projects.

(4) Each loan must be evidenced by a bond, note, or other evidence of indebtedness of the municipality or private person, in a form prescribed or approved by the department of natural resources and conservation, except that the bond, note, or other evidence must include provisions required by the federal act and must be consistent with the provisions of this part. The bond, note, or other evidence is not required to be identical for all loans. The department of natural resources and conservation may require that loans to private persons be further secured by a mortgage and other security interests in the project that is being financed or other forms of additional security as considered necessary, including personal guarantees and letters of credit.

(5) As a condition to making a loan, the department of natural resources and conservation, with the concurrence of the department, may impose a reasonable administrative fee that may be paid from the proceeds of the loan or other available funds of the municipality or private person. Administrative fees may be deposited:

(a) in a special administrative costs account that the department of natural resources and conservation may create for that purpose outside the revolving fund provided for in 75-5-1106; or

(b) in the administration account. Money deposited in the administration account established in 75-5-1106 must be used for the payment of administrative costs of the program. Money deposited in the special administration costs account must be used for the payment of administrative costs of the program unless not required for that purpose, in which case the money may be transferred to other funds and accounts in the program."

Section 12. Effective date. [This act] is effective on passage and approval.

Approved April 24, 2009

CHAPTER NO. 343

[HB 487]

AN ACT PROVIDING THAT FARM IMPLEMENTS OR CONSTRUCTION EQUIPMENT THAT IS RENTED UNDER A PURCHASE INCENTIVE RENTAL PROGRAM IS CONSIDERED BUSINESS INVENTORY FOR THE PURPOSE OF EXEMPTION FROM PROPERTY TAXATION; REQUIRING THAT PROPERTY MUST MEET CERTAIN CONDITIONS TO QUALIFY AS PURCHASE INCENTIVE RENTAL PROGRAM PROPERTY; AMENDING SECTIONS 15-6-138, 15-6-202, AND 15-24-301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-6-138, MCA, is amended to read:

"15-6-138. Class eight property — description — taxable percentage. (1) Class eight property includes:

(a) all agricultural implements and equipment that are not exempt under 15-6-207 or 15-6-220;

(b) all mining machinery, fixtures, equipment, tools that are not exempt under 15-6-219, and supplies except those included in class five *under 15-6-135*;

(c) all oil and gas production machinery, fixtures, equipment, including pumping units, oil field storage tanks, water storage tanks, water disposal injection pumps, gas compressor and dehydrator units, communication towers, gas metering shacks, treaters, gas separators, water flood units, gas boosters, and similar equipment that is skidable, portable, or movable, tools that are not exempt under 15-6-219, and supplies except those included in class five;

(d) all manufacturing machinery, fixtures, equipment, tools, except a certain value of hand-held tools and personal property related to space vehicles, ethanol manufacturing, and industrial dairies and milk processors as provided in 15-6-220, and supplies except those included in class five;

(e) all goods and equipment that are intended for rent or lease, except goods and equipment that are specifically included and taxed in another class *or that are rented under a purchase incentive rental program as defined in 15-6-202(4)*;

(f) special mobile equipment as defined in 61-1-101;

(g) furniture, fixtures, and equipment, except that specifically included in another class, used in commercial establishments as defined in this section;

(h) x-ray and medical and dental equipment;

(i) citizens' band radios and mobile telephones;

(j) radio and television broadcasting and transmitting equipment;

(k) cable television systems;

(l) coal and ore haulers;

(m) theater projectors and sound equipment; and

(n) all other property that is not included in any other class in this part, except that property that is subject to a fee in lieu of a property tax.

(2) As used in this section, *the following definitions apply:*

(a) "~~coal~~ *"Coal* and ore haulers" means nonhighway vehicles that exceed 18,000 pounds an axle and that are primarily designed and used to transport coal, ore, or other earthen material in a mining or quarrying environment.

~~(3)~~*(b)* "Commercial establishment" includes any hotel, motel, office, petroleum marketing station, or service, wholesale, retail, or food-handling business.

~~(4)~~*(3)* Class eight property is taxed at 3% of its market value.

~~(5)~~*(4)* The class eight property of a person or business entity that owns an aggregate of $20,000 or less in market value of class eight property is exempt from taxation."

Section 2. Section 15-6-202, MCA, is amended to read:

"15-6-202. Freeport merchandise and business inventories exemption — *definitions.* (1) Freeport merchandise and business inventories are exempt from taxation.

(2) *(a)* "Freeport merchandise" means ~~those~~ stocks of merchandise manufactured or produced outside this state that are in transit through this state and consigned to a warehouse or other storage facility, public or private, within this state for storage in transit prior to shipment to a final destination outside the state and that have acquired a taxable situs within the state.

~~(3)~~*(b)* Stocks of merchandise do not lose their status as freeport merchandise because while in the storage facility they are assembled, bound, joined, processed, disassembled, divided, cut, broken in bulk, relabeled, or repackaged.

~~(4)~~*(c)* ~~Any~~ *A* person ~~or other group~~ seeking to qualify ~~its~~ *the person's* property ~~for inclusion in the~~ *as* freeport merchandise ~~class~~ shall make application to the department ~~of revenue~~ in the manner ~~or form as may be required~~ *prescribed* by the department.

~~(5)~~*(3) (a)* "Business inventories" ~~includes~~ *include* goods primarily intended for sale and not for lease in the ordinary course of business and raw materials and work in progress with respect to those goods. ~~Business~~ *Except for farm implements and construction equipment described in subsection (3)(b), business* inventories do not include goods that are leased or rented.

(b) Business inventories include farm implements, as defined in 30-11-801, or construction equipment, as defined in 30-11-901, that are held pursuant to a purchase incentive rental program.

(4) (a) For the purpose of subsection (3)(b), "purchase incentive rental program" means a program operated by a dealer of farm implements, as defined in 30-11-801, or a dealer of construction equipment, as defined in 30-11-901, where the farm implement or construction equipment is owned by the dealership, held for sale, and rented to a single user of the farm implement or construction equipment as an incentive for the purchase of the property.

(b) A purchase incentive rental program does not include a farm implement or construction equipment that is:

(i) rented to a person for more than 9 months;

(ii) rented more than once to the same person; or

(iii) not owned by a farm implement dealership or construction equipment dealership.

(c) All farm implements and construction equipment in a purchase incentive rental program must be reported to the department each calendar quarter on a form provided by the department."

Section 3. Section 15-24-301, MCA, is amended to read:

"15-24-301. Personal property brought into state — assessment — exceptions — custom combine equipment. (1) Except as provided in subsections (2) through ~~(5)~~ *(6), the following* property ~~in the following cases~~ is subject to taxation and assessment for all taxes levied that year in the county in which it is located:

(a) personal property, excluding livestock, brought into this state at any time during the year that is used in the state for hire, compensation, or profit;

(b) property belonging to an owner or user who is engaged in a gainful occupation or business enterprise in the state; or

(c) property that becomes a part of the general property of the state.

(2) The taxes on this property are levied in the same manner, except as otherwise provided, as though the property had been in the county on the regular assessment date, provided that the property has not been regularly assessed for the year in ~~some other~~ *another* county of the state.

(3) This section does not levy a tax against a merchant or dealer within this state on goods, wares, or merchandise brought into the county to replenish the stock of the merchant or dealer.

(4) Except as provided in 15-6-217, a motor vehicle that is brought into this state by a nonresident person temporarily employed in Montana and used exclusively for transportation of the person is subject to registration under 61-3-701.

(5) Agricultural harvesting machinery classified under class eight, licensed in another state, and operated on the land of a person other than the owner of the machinery under a contract for hire is subject to a fee in lieu of tax of $35 for each machine for the calendar year in which the fee is collected. The machinery is subject to taxation under ~~class eight~~ *15-6-138* only if the machinery is sold in Montana.

(6) This section does not levy a tax on farm implements, as defined in 30-11-801, or construction equipment, as defined in 30-11-901, that is brought into the state under a purchase incentive rental program as defined in 15-6-202(4). The property is subject to taxation under 15-6-138 only if the property is sold in Montana or otherwise disposed of in the state."

Section 4. Effective date. [This act] is effective on passage and approval.

Section 5. Applicability. [This act] applies retroactively, within the meaning of 1-2-109, to property tax years beginning after December 31, 2008.

Approved April 24, 2009

CHAPTER NO. 344

[HB 562]

AN ACT ALLOWING A SCHOOL DISTRICT THAT HAS PROPERTY SUBJECT TO PENDING PROPERTY TAX PROTESTS TO WAIVE THE DISTRICT'S RIGHT TO RECEIVE ITS PORTION OF THE PROTESTED TAXES UPON SETTLEMENT OF THE TAX PROTEST; PROVIDING THAT A DISTRICT THAT HAS WAIVED ITS RIGHT TO RECEIVE ITS PORTION OF PROTESTED PROPERTY TAXES WILL HAVE ITS GUARANTEED TAX BASE AID DETERMINED ON PROPERTY VALUE THAT DOES NOT INCLUDE THE VALUE OF THE PROTESTED PROPERTY; AMENDING SECTION 15-1-402, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Exclusion of property subject to property tax protest — guarantee tax base — tax refund. (1) A school district that has property subject to pending property tax protests shall, prior to February 1 of each year, elect whether to waive the school district's right to receive its portion of protested taxes for the previous year.

(2) If the school district elects to waive its right to its portion of the protested taxes, the district's guaranteed tax base aid calculated under 20-9-366 must be determined based on the total taxable value of property in the school district that is not subject to a tax protest. Upon settlement or other resolution of the protest, the department is responsible for refunding protested taxes or paying any other costs due the protesting taxpayer and retaining any portion of protested taxes that would have been distributed to the school district for each year the school district has elected to waive receiving its portion of the protested taxes.

Section 2. Section 15-1-402, MCA, is amended to read:

"15-1-402. Payment of property taxes or fees under protest. (1) (a) The person upon whom a property tax or fee is being imposed under this title may, before the property tax or fee becomes delinquent, pay under written protest that portion of the property tax or fee protested.

(b) The protested payment must:

(i) be made to the officer designated and authorized to collect it;

(ii) specify the grounds of protest; and

(iii) not exceed the difference between the payment for the immediately preceding tax year and the amount owing in the tax year protested unless a different amount results from the specified grounds of protest, which may include but are not limited to changes in assessment due to reappraisal under 15-7-111.

(c) If the protested property tax or fee is on property that is subject to central assessment pursuant to 15-23-101, the person shall report to the department the grounds of the protest and the amount of the protested payment for each county in which a protested payment was made. By November 1 of each year, the department shall mail a notice stating the requirements of this subsection (1)(c) to owners of property subject to central assessment under 15-23-101(1) and (2) who have filed a timely appeal under 15-1-211.

(2) A person appealing a property tax or fee pursuant to chapter 2 or 15, including a person appealing a property tax or fee on property that is subject to central assessment pursuant to 15-23-101(1) or (2), shall pay the tax or fee

under protest when due in order to receive a refund. If the tax or fee is not paid under protest when due, the appeal may continue but a tax or fee may not be refunded as a result of the appeal.

(3) If a protested property tax or fee is payable in installments, a subsequent installment portion considered unlawful by the state tax appeal board need not be paid and an action or suit need not be commenced to recover the subsequent installment. The determination of the action or suit commenced to recover the first installment portion paid under protest determines the right of the party paying the subsequent installment to have it or any part of it refunded to the party or the right of the taxing authority to collect a subsequent installment not paid by the taxpayer plus interest from the date the subsequent installment was due.

(4) (a) Except as provided in subsection (4)(b), all property taxes and fees paid under protest to a county or municipality must be deposited by the treasurer of the county or municipality to the credit of a special fund to be designated as a protest fund and must be retained in the protest fund until the final determination of any action or suit to recover the taxes and fees unless they are released at the request of the county, municipality, or other local taxing jurisdiction pursuant to subsection (5). This section does not prohibit the investment of the money of this fund in the state unified investment program or in any manner provided in Title 7, chapter 6. The provision creating the special protest fund does not apply to any payments made under protest directly to the state.

(b) (i) Property taxes that are levied by the state against property that is centrally assessed pursuant to 15-23-101 *and any protested taxes in a school district that has elected to waive its right to protested taxes in a specific year pursuant to [section 1]* must be remitted by the county treasurer to the department *for deposit as provided in subsections (4)(b)(ii) through (4)(b)(iv)*.

(ii) The department shall deposit 50% of that portion of the funds levied for the university system pursuant to ~~15-10-107~~ *15-10-108* in the state special revenue fund to the credit of the university system, and the other 50% of the funds levied pursuant to ~~15-10-107~~ *15-10-108* must be deposited in a centrally assessed property tax state special revenue fund.

(iii) Fifty percent of the funds remaining after the deposit of university system funds must be deposited in the state general fund, and the other 50% must be deposited in a centrally assessed property tax state special revenue fund.

(iv) Fifty percent of the funds from a school district that has waived its right to protested taxes must be deposited in the state general fund, and the other 50% must be deposited in a school district property tax protest state special revenue fund.

(5) (a) Except as provided in ~~subsection~~ *subsections* (5)(b) *and (5)(c)*, the governing body of a taxing jurisdiction affected by the payment of taxes under protest in the second and subsequent years that a tax protest remains unresolved may demand that the treasurer of the county or municipality pay the requesting taxing jurisdiction all or a portion of the protest payments to which it is entitled, except the amount paid by the taxpayer in the first year of the protest. The decision in a previous year of a taxing jurisdiction to leave protested taxes in the protest fund does not preclude it from demanding in a subsequent year any or all of the payments to which it is entitled, except the first-year protest amount.

(b) The governing body of a taxing jurisdiction affected by the payment of taxes under protest on property that is centrally assessed pursuant to 15-23-101 in the first and subsequent years that a tax protest remains unresolved may demand that the treasurer of the county or municipality pay the requesting taxing jurisdiction all or a portion of the protest payments to which it is entitled. The decision in a previous year of a taxing jurisdiction to leave protested taxes of centrally assessed property in the protest fund does not preclude it from demanding in a subsequent year any or all of the payments to which it is entitled.

(c) The provisions of subsections (5)(a) and (5)(b) do not apply to a school district that has elected to waive its right to its portion of protested taxes for that specific year as provided in [section 1].

(6) (a) If action before the county tax appeal board, state tax appeal board, or district court is not commenced within the time specified or if the action is commenced and finally determined in favor of the department of revenue, county, municipality, or treasurer of the county or the municipality, the amount of the protested portions of the property tax or fee must be taken from the protest fund or the centrally assessed property tax state special revenue fund and deposited to the credit of the fund or funds to which the property tax belongs, less a pro rata deduction for the costs of administration of the protest fund and related expenses charged to the local government units.

(b) (i) If the action is finally determined adversely to the governmental entity levying the tax, then the treasurer of the municipality, county, or state entity levying the tax shall, upon receipt of a certified copy of the final judgment in the action and upon expiration of the time set forth for appeal of the final judgment, refund to the person in whose favor the judgment is rendered the amount of the protested portions of the property tax or fee that the person holding the judgment is entitled to recover, together with interest from the date of payment under protest. *The department shall refund from the school district property tax protest state special revenue fund the protested portions of property taxes and interest to a taxpayer in a school district in which the school district has elected to waive its right to its portion of protested taxes for that specific year as provided in [section 1]. If the amount available for the refund in the school district property tax protest state special revenue fund is insufficient to refund the property tax payments, the department shall pay the remainder of the refund from the state general fund.*

(ii) The taxing jurisdiction shall pay interest at the rate of interest earned by the pooled investment fund provided for in 17-6-203 for the applicable period.

(c) If the amount retained in the protest fund is insufficient to pay all sums due the taxpayer, the treasurer shall apply the available amount first to tax repayment, then to interest owed, and lastly to costs.

(d) (i) If the protest action is decided adversely to a taxing jurisdiction and the amount retained in the protest fund is insufficient to refund the tax payments and costs to which the taxpayer is entitled and for which local government units are responsible, the treasurer shall bill and the taxing jurisdiction shall refund to the treasurer that portion of the taxpayer refund, including tax payments and costs, for which the taxing jurisdiction is proratably responsible. The treasurer is not responsible for the amount required to be refunded by the state treasurer as provided in subsection (6)(b).

(ii) For an adverse protest action against the state for centrally assessed property, the department shall refund from the centrally assessed property tax

state special revenue fund the amount of protested taxes and from the state general fund the amount of interest as required in subsection (6)(b). The amount refunded for an adverse protested action from the centrally assessed property tax state special revenue fund may not exceed the amount of protested taxes or fees required to be deposited for that action pursuant to subsections (4)(b)(ii) and (4)(b)(iii) or, for taxes or fees protested prior to April 28, 2005, an equivalent amount of the money transferred to the fund pursuant to section 3, Chapter 536, Laws of 2005. If the amount available for the adverse protested action in the centrally assessed property tax state special revenue fund is insufficient to refund the tax payments to which the taxpayer is entitled and for which the state is responsible, the department shall pay the remainder of the refund proportionally from the state general fund and from money deposited in the state special revenue fund levied pursuant to ~~15-10-107~~ *15-10-108*.

(e) In satisfying the requirements of subsection (6)(d), the taxing jurisdiction, including the state, is allowed not more than 1 year from the beginning of the fiscal year following a final resolution of the protest. The taxpayer is entitled to interest on the unpaid balance at the rate referred to in subsection (6)(b) from the date of payment under protest until the date of final resolution of the protest and at the combined rate of the federal reserve discount rate quoted from the federal reserve bank in New York, New York, on the date of final resolution, plus 4 percentage points, from the date of final resolution of the protest until refund is made.

(7) A taxing jurisdiction, except the state, may satisfy the requirements of this section by use of funds from one or more of the following sources:

(a) imposition of a property tax to be collected by a special tax protest refund levy;

(b) the general fund or any other funds legally available to the governing body; and

(c) proceeds from the sale of bonds issued by a county, city, or school district for the purpose of deriving revenue for the repayment of tax protests lost by the taxing jurisdiction. The governing body of a county, city, or school district is authorized to issue the bonds pursuant to procedures established by law. The bonds may be issued without being submitted to an election. Property taxes may be levied to amortize the bonds.

(8) If the department revises an assessment that results in a refund of taxes of $5 or less, a refund is not owed."

Section 3. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 15, chapter 1, part 4, and the provisions of Title 15, chapter 1, part 4, apply to [section 1].

Section 4. Applicability. [This act] applies to tax years beginning after December 31, 2009.

Approved April 24, 2009

CHAPTER NO. 345

[HB 585]

AN ACT PROMOTING MONTANA'S FAMILY HUNTING HERITAGE BY CREATING NONRESIDENT COMBINATION HUNTING LICENSES THAT MAY BE USED BY ADULT NONRESIDENT FAMILY MEMBERS WHO WISH TO RETURN TO MONTANA TO HUNT WITH A SPONSOR OR

FAMILY MEMBER; ESTABLISHING THE TERMS AND CONDITIONS OF LICENSURE AND SPONSORSHIP; DEDICATING MONEY FROM THE SALE OF THE LICENSES TO THE ACQUISITION OF PUBLIC HUNTING ACCESS TO INACCESSIBLE PUBLIC LAND; AND PROVIDING A DELAYED EFFECTIVE DATE AND A TERMINATION DATE.

WHEREAS, Montana's hunting heritage is promoted when families can continue to hunt together; and

WHEREAS, members of many Montana families have been required to move out of state to pursue expanded employment opportunities; and

WHEREAS, it can be difficult for these adult nonresident family members to draw a nonresident license in order to come back to Montana to hunt with their families; and

WHEREAS, there is a need for new revenue to address public land access concerns because access to public land for hunting is becoming increasingly difficult to obtain as traditional routes across private land are closed to public hunters; and

WHEREAS, creating a temporary new pool of nonresident licenses dedicated to former residents who desire to return to Montana to hunt with their families and directing the revenue from those licenses to fund public access to inaccessible public land would assist in strengthening both aspects of Montana's hunting heritage; and

WHEREAS, statistics compiled by the Department of Fish, Wildlife, and Parks will provide a measurement of the success of the pilot program to provide more opportunities for former residents to come back home to hunt and to determine whether the license and the associated public land access efforts have resulted in a net increase or decrease in hunting opportunities for resident hunters.

Be it enacted by the Legislature of the State of Montana:

Section 1. License for nonresident to hunt with resident sponsor or family member — use of license revenue. (1) In addition to the nonresident licenses provided for in 87-2-505 and 87-2-510, the department may offer for sale 500 B-10 nonresident big game combination licenses and 500 B-11 nonresident deer combination licenses. The licenses may be used only as provided in this section and as authorized by department rules. Sale of licenses pursuant to this section may not affect the license quotas established in 87-2-505 and 87-2-510. The price of licenses sold under this subsection must be the same as nonresident big game combination licenses and nonresident deer combination licenses offered by general drawing pursuant to 87-2-505 and 87-2-510.

(2) A license authorized in subsection (1) may be used only by an adult nonresident family member of a resident who sponsors the license application and who meets the qualifications of subsection (3). The nonresident family member must have completed a Montana hunter safety and education course prior to March 1, 2010, or have previously purchased a resident hunting license. A nonresident family member who receives a license pursuant to subsection (1) must be accompanied in the field by a sponsor or family member who meets the qualifications of subsection (3).

(3) To qualify as a sponsor or family member who will accompany a nonresident licensed under subsection (1), a person must be a resident, as defined in 87-2-102, who is 18 years old or older and possesses a current resident hunting license and who is related to the nonresident within the second degree

of kinship by blood or marriage. The second degree of kinship includes a mother, father, brother, sister, son, daughter, spouse, grandparent, grandchild, brother-in-law, sister-in-law, son-in-law, daughter-in-law, father-in-law, mother-in-law, stepfather, stepmother, stepbrother, stepsister, stepson, and stepdaughter. The sponsor shall list on the license application the names of family members who are eligible to hunt with the nonresident hunter.

(4) If the department receives more applications for licenses than the number that are available under subsection (1), the department shall conduct a drawing for the licenses. Applicants who are unsuccessful in the drawing must be entered in the general drawing for a nonresident license provided under 87-2-505 or 87-2-510, as applicable.

(5) All money received from the sale of licenses under subsection (1) must be deposited in a separate account and must be used by the department to acquire public hunting access to inaccessible public land, which may include obtaining hunting access through private land to inaccessible public land.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 87, chapter 2, part 5, and the provisions of Title 87, chapter 2, part 5, apply to [section 1].

Section 3. Effective date. [This act] is effective March 1, 2010.

Section 4. Termination. [This act] terminates March 1, 2014.

Approved April 24, 2009

CHAPTER NO. 346

[HB 608]

AN ACT AUTHORIZING LOCAL GOVERNMENTS TO EXECUTE A LIEN FOR PURPOSES OF DEBRIS REMOVAL; AMENDING SECTIONS 27-18-101, 27-18-202, 27-18-203, 27-18-204, AND 27-18-1502, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 27-18-101, MCA, is amended to read:

"27-18-101. Cases in which property may be attached. (1) Property may be attached in:

(a) an action upon a contract, express or implied, for the direct payment of money where the contract:

(i) is not secured by any mortgage or lien upon real property; or

(ii) is originally secured and such security has, without any act of the plaintiff or the person to whom the security was given, become valueless; ~~and~~

(b) an action based upon a statutory stockholders' liability*; and*

(c) an action by a local government for the purpose of ensuring debris removal if it is determined that the underlying property is worth less than the cost of debris removal.

(2) Attachment may not issue if the defendant gives security to pay the judgment.

(3) For the purpose of this section, the guaranty of a loan in which the only condition precedent to the obligation of the guarantor is the default of the principal is an unconditional contract for the direct payment of money."

Section 2. Section 27-18-202, MCA, is amended to read:

"27-18-202. Plaintiff's affidavit. When attachment of a defendant's property is sought, an affidavit must be made by the plaintiff or someone ~~in his~~ *on the plaintiff's* behalf stating:

(1) facts which show the defendant is indebted to the plaintiff in the manner specified in 27-18-101(1);

(2) that the attachment is not sought to hinder, delay, or defraud any creditor of the defendant;

(3) facts creating a reasonable belief that the defendant:

(a) is leaving or about to leave this state taking ~~with him~~ property, money, or other effects which might be subjected to payment of the debt;

(b) is disposing or about to dispose of ~~his~~ property which would be subject to execution;

(c) has the power to dispose of or conceal or remove from the state property ~~which~~ *that* would be subject to execution; or

(d) is likely to suffer liens or encumbrances on ~~his~~ *the defendant's* property ~~which~~ *that* would be subject to execution;

(4) a particular description and the actual value of the property to be attached*;*

(5) facts creating a reasonable basis for a local government belief that the underlying property is worth less than the cost of debris removal."

Section 3. Section 27-18-203, MCA, is amended to read:

"27-18-203. Affidavit requirements when debt not yet due. Actions may be commenced and writs of attachment issued upon any debt for the payment of money or specific property before the ~~same shall have~~ *debt has* become due*, or upon a local government debris removal issue,* when it ~~shall appear~~ *appears* by the affidavit, in addition to what is required in 27-18-202:

(1) that the defendant is leaving or is about to leave this state, taking ~~with him~~ property, ~~moneys~~ *money*, or other effects ~~which~~ *that* might be subjected to the payment of the debt, for the purpose of defrauding ~~his~~ *the defendant's* creditors *or a local government*; or

(2) that the defendant is disposing of ~~his~~ property or is about to dispose of ~~his~~ property, subject to execution, for the purpose of defrauding ~~his~~ *the defendant's* creditors *or a local government*."

Section 4. Section 27-18-204, MCA, is amended to read:

"27-18-204. Plaintiff's undertaking. Before issuing the writ, the court must require a written undertaking on the part of the plaintiff, *except a local government,* with two or more sufficient sureties to be approved by the court, in a sum not less than double the amount claimed by the plaintiff if ~~such~~ *the* amount ~~be~~ *is* $1,000 or under or, in case the amount ~~so~~ claimed by plaintiff ~~shall exceed~~ *exceeds* $1,000, then in a sum equal to ~~such~~ *that* amount. ~~In no case shall an~~ *An* undertaking *may not* be required exceeding ~~in amount~~ the sum of $20,000. The condition of ~~such~~ *the* undertaking ~~shall~~ *must* be to the effect that if the defendant recovers judgment or if the court finally decides that the plaintiff was not entitled to an attachment, the plaintiff will pay all costs that may be awarded to the defendant and all damages ~~he~~ *the defendant* may sustain by reason of the issuing of the attachment, not exceeding the sum specified in the undertaking."

Section 5. Section 27-18-1502, MCA, is amended to read:

"27-18-1502. Plaintiff's undertaking. Before issuing the writ, the justice must require a written undertaking in due form on the part of the plaintiff, *except a local government,* with two or more sureties, in a sum of not less than $50 or more than $300, to the effect that if defendant recover judgment, the plaintiff will pay all costs that may be awarded to defendant and all damages ~~which he~~ *that the defendant* may sustain by reason of the attachment, not exceeding the sum specified in the undertaking."

Section 6. Effective date. [This act] is effective on passage and approval.

Approved April 26, 2009

CHAPTER NO. 347

[HB 622]

AN ACT REVISING LAWS RELATING TO CONSTITUENT ACCOUNTS; EXPANDING THE PERSONS WHO MAY ESTABLISH A CONSTITUENT ACCOUNT; REQUIRING THAT MONEY REMAINING IN A CONSTITUENT SERVICES ACCOUNT ESTABLISHED PRIOR TO MAY 14, 2007, MUST BE DONATED TO CHARITY OR DEPOSITED TO A NEW CONSTITUENT SERVICES ACCOUNT; AMENDING SECTION 13-37-402, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13-37-402, MCA, is amended to read:

"13-37-402. Constituent accounts — reports. (1) A constituent services account may be established ~~by a person elected to a statewide or legislative office or as a public service commissioner~~ to pay for constituent services *by a successful candidate required to report contributions under 13-37-229 and expenditures under 13-37-230.* A constituent services account may be established by filing an appropriate form with the commissioner.

(2) (a) A successful candidate ~~for the legislature, a statewide elected office, or the public service commission~~ may deposit only surplus campaign funds in a constituent services account.

(b) The money in the account may be used only for constituent services. The money in the account may not be used for personal benefit. Expenditures from a constituent services account may not be made when the holder of the constituent services account also has an open campaign account.

(3) A ~~statewide elected official, legislator, or public service commissioner~~ *person described in subsection (1)* may not establish any account related to the public official's office other than a constituent services account. This subsection does not prohibit a ~~statewide elected official, legislator, or public service commissioner~~ *person* from establishing a campaign account.

(4) The holder of a constituent services account shall file a quarterly report with the commissioner, by a date established by the commissioner by rule. The report must disclose the source of all money deposited in the account and enumerate expenditures from the account. The report must include the same information as required for a candidate reporting contributions under 13-37-229 and expenditures under 13-37-230. The report must be certified as provided in 13-37-231.

(5) The holder of a constituent services account shall close the account within 120 days after the account holder leaves public office."

Section 2. Constituent services account — prior contributions — donation to charity. A person who established a constituent services account prior to May 14, 2007, shall donate any money remaining in the account on [the effective date of this act] to charity by July 1, 2009, or deposit the money by July 1, 2009, into a constituent services account established after May 14, 2007, and shall close the old account. The holder of a constituent services account subject to this section shall file a report with the commissioner of political practices describing the disposition of the money subject to this section.

Section 3. Effective date. [This act] is effective on passage and approval.

Section 4. Retroactive applicability. [Section 2] applies retroactively, within the meaning of 1-2-109, to money placed in a constituent services account that was established prior to May 14, 2007.

Approved April 24, 2009

CHAPTER NO. 348

[HB 628]

AN ACT PROVIDING A STATUTE OF LIMITATIONS FOR PROSECUTION OF CARELESS DRIVING RESULTING IN DEATH AND RECKLESS DRIVING RESULTING IN DEATH; AND AMENDING SECTIONS 45-1-205 AND 61-5-405, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 45-1-205, MCA, is amended to read:

"45-1-205. General time limitations. (1) (a) A prosecution for deliberate, mitigated, or negligent homicide may be commenced at any time.

(b) Except as provided in subsection (9), a prosecution for a felony offense under 45-5-502, 45-5-503, or 45-5-507(4) or (5) may be commenced within 10 years after it is committed, except that it may be commenced within 10 years after the victim reaches 18 years of age if the victim was less than 18 years of age at the time that the offense occurred. A prosecution for a misdemeanor offense under those provisions may be commenced within 1 year after the offense is committed, except that it may be commenced within 5 years after the victim reaches 18 years of age if the victim was less than 18 years of age at the time that the offense occurred.

(c) Except as provided in subsection (9), a prosecution under 45-5-504, 45-5-505, 45-5-507(1), (2), (3), or (6), 45-5-625, or 45-5-627 may be commenced within 5 years after the victim reaches 18 years of age if the victim was less than 18 years of age at the time that the offense occurred.

(2) Except as provided in subsection (7)(b) or as otherwise provided by law, prosecutions for other offenses are subject to the following periods of limitation:

(a) A prosecution for a felony must be commenced within 5 years after it is committed.

(b) A prosecution for a misdemeanor must be commenced within 1 year after it is committed.

(3) The periods prescribed in subsection (2) are extended in a prosecution for theft involving a breach of fiduciary obligation to an aggrieved person as follows:

(a) if the aggrieved person is a minor or incompetent, during the minority or incompetency or within 1 year after the termination of the minority or incompetency;

(b) in any other instance, within 1 year after the discovery of the offense by the aggrieved person or by a person who has legal capacity to represent an aggrieved person or has a legal duty to report the offense and is not personally a party to the offense or, in the absence of discovery, within 1 year after the prosecuting officer becomes aware of the offense.

(4) The period prescribed in subsection (2) must be extended in a prosecution for unlawful use of a computer, and prosecution must be brought within 1 year after the discovery of the offense by the aggrieved person or by a person who has legal capacity to represent an aggrieved person or has a legal duty to report the offense and is not personally a party to the offense or, in the absence of discovery, within 1 year after the prosecuting officer becomes aware of the offense.

(5) The period prescribed in subsection (2) is extended in a prosecution for misdemeanor fish and wildlife violations under Title 87, and prosecution must be brought within 3 years after an offense is committed.

(6) The period prescribed in subsection (2)(b) is extended in a prosecution for misdemeanor violations of the laws regulating the activities of outfitters and guides under Title 37, chapter 47, and prosecution must be brought within 3 years after an offense is committed.

(7) (a) An offense is committed either when every element occurs or, when the offense is based upon a continuing course of conduct, at the time when the course of conduct is terminated. Time starts to run on the day after the offense is committed.

(b) A prosecution for theft under 45-6-301 may be commenced at any time during the 5 years following the date of the theft, whether or not the offender is in possession of or otherwise exerting unauthorized control over the property at the time the prosecution is commenced. After the 5-year period ends, a prosecution may be commenced at any time if the offender is still in possession of or otherwise exerting unauthorized control over the property, except that the prosecution must be commenced within 1 year after the investigating officer discovers that the offender still possesses or is otherwise exerting unauthorized control over the property.

(8) A prosecution is commenced either when an indictment is found or an information or complaint is filed.

(9) If a suspect is conclusively identified by DNA testing after a time period prescribed in subsection (1)(b) or (1)(c) has expired, a prosecution may be commenced within 1 year after the suspect is conclusively identified by DNA testing.

(10) A prosecution for reckless driving resulting in death may be commenced within 3 years after the offense is committed.

(11) A prosecution of careless driving resulting in death may be commenced within 3 years after the offense is committed."

Section 2. Section 61-5-405, MCA, is amended to read:

"61-5-405. Offenses furnishing ground for suspension or revocation of license — return to licensing jurisdiction of abstracts of court records and reports of conviction. (1) Items enumerated in Article IV(1), subsections (a), (b), (c), and (d) of 61-5-401 refer specifically to 45-5-103,

45-5-104, 61-8-401, the definition of felony as provided in 45-2-101, and 61-7-103, respectively.

(2) In addition to convictions mentioned in subsection (1), the department, for the purpose of suspension, revocation, or limitation of the license to operate a motor vehicle, shall give the same effect to the conduct reported as it would if the conduct had occurred in this state for:

(a) convictions of perjury or the making of a false affidavit relating to the ownership or operation of a motor vehicle (61-5-303); ~~and~~

(b) three convictions of reckless driving committed within a period of 12 months (61-8-301)*; or*

(c) convictions of careless driving resulting in death or reckless driving resulting in death.

(3) Court abstracts or reports of conviction received by the department that name an individual licensed in another jurisdiction must be forwarded to the jurisdiction of licensure. The department may not take action against the driver's license or driving privilege of the individual as may be required elsewhere in this title."

Approved April 26, 2009

CHAPTER NO. 349

[HB 630]

AN ACT REVISING LAWS RELATED TO REVOLVING FUNDS FOR RURAL IMPROVEMENT DISTRICTS AND SPECIAL IMPROVEMENT DISTRICTS; INCREASING THE AMOUNT OF MONEY THAT MAY BE REQUIRED FOR DEPOSIT IN REVOLVING FUNDS WHEN USED TO SECURE BONDS OR WARRANTS FOR IMPROVEMENTS; MAKING THE PURPOSES FOR WHICH EXCESS FUNDS IN RURAL IMPROVEMENT DISTRICT REVOLVING FUNDS MAY BE USED COMPARABLE TO THOSE OF SPECIAL IMPROVEMENT DISTRICT REVOLVING FUNDS; AMENDING SECTIONS 7-12-2153, 7-12-2182, 7-12-2185, 7-12-2186, 7-12-4169, 7-12-4222, 7-12-4225, AND 7-12-4227, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-12-2153, MCA, is amended to read:

"7-12-2153. Incidental expenses considered as cost of improvements — costs for bonds or warrants secured by revolving fund — district reserve account. (1) Incidental expenses connected with the formation of a ~~special~~ *rural* improvement district, including the cost of preparation of plans, specifications, maps, or plats; engineering, superintendence, and inspection; preparation of assessment rolls; and the other incidental expenses described in 7-12-2101(7) are considered a part of the cost of making the improvements within the ~~special~~ *rural* improvement district.

(2) If the bonds or warrants are secured by the revolving fund pursuant to 7-12-2185, the original costs of any improvement must include an amount ~~equal to~~ *of at least* 5% *and not more than 10%* of the principal amount of any bonds or warrants to be issued, which must be deposited in the revolving fund created in 7-12-2181.

(3) (a) Subject to the provisions of subsections (3)(b) through (3)(e), the board of county commissioners may create a district reserve account.

(b) As part of the original costs of the improvements, the board of county commissioners may include an amount, in addition to the amount, if any, specified in subsection (2), not to exceed 5% of the principal amount of any rural ~~special~~ improvement district bonds or warrants issued. The amount must be deposited in a district reserve account created and maintained in the district fund.

(c) If there are insufficient funds in the district bond and interest accounts to pay when due the principal of and the interest on bonds or warrants, the district reserve account, if established, must be used to pay the principal of and the interest on the bonds or warrants issued against the district fund.

(d) If bonds or warrants are secured by the revolving fund, the district reserve account, if established, must be exhausted before a loan may be made from the revolving fund pursuant to 7-12-2183.

(e) Money remaining in the district reserve account after the principal and interest on all bonds and warrants drawn on the district have been paid or discharged must be transferred to the revolving fund.

(4) The establishment of a district reserve account does not preclude the board of county commissioners from requiring additional security from the owners of real property in the district."

Section 2. Section 7-12-2182, MCA, is amended to read:

"7-12-2182. Sources of money for revolving fund. (1) For the purpose of providing funds for the revolving fund, the board of county commissioners:

(a) shall, if the bonds or warrants are secured by the revolving fund pursuant to 7-12-2185, include in the cost of the improvements to be ~~defrayed~~ *paid* from the proceeds of the bonds or warrants an amount ~~equal to~~ *of at least* 5% *and not more than 10%* of the principal amount of the bonds or warrants to be issued as provided in 7-12-2153(2);

(b) may, from time to time, transfer to the revolving fund from the general fund of the county an amount as may be necessary. The amount transferred is a loan from the general fund to the revolving fund.

(c) shall, in addition to a transfer or transfers from the general fund or in lieu of a transfer, levy for the revolving fund a tax, declared to be for a public purpose, on all taxable property in the county as is necessary to meet the financial requirements of the revolving fund. A tax may not be levied if the balance in the revolving fund ~~exceeds 5%~~ *will exceed 10% or, with the amount levied by the tax, will exceed 10%* of the principal amount of the then-outstanding rural ~~special~~ improvement district bonds and warrants secured by the revolving fund *after all required transfers have been made to the district funds through fiscal yearend*. ~~If a tax is levied, the tax may not be an amount that would increase the balance in the revolving fund above 5% of the then-outstanding rural special improvement district bonds and warrants secured by the revolving fund.~~

(2) Whenever there is money in the district fund that is not required for payment of any bond or warrant of the district secured by the revolving fund or of interest on the bond or warrant, as much of the money as may be necessary to pay the loan provided for in 7-12-2183 must, by order of the board, be transferred to the revolving fund and the balance of the money or, if there is no outstanding loan, as much of the money as the board considers necessary may be transferred to the improvement district's maintenance fund. After all the bonds

and warrants secured by the revolving fund issued on any rural ~~special~~ improvement district have been fully paid, all money remaining in the district fund must, by order of the board, be transferred to and become part of the revolving fund or the improvement district's maintenance fund."

Section 3. Section 7-12-2185, MCA, is amended to read:

"7-12-2185. Covenants to use revolving fund — duration of revolving fund obligation — factors to be considered. (1) In connection with the issuance of rural ~~special~~ improvement district bonds or warrants, the board of county commissioners may undertake and agree:

(a) to make loans or advances from the revolving fund to the district fund involved in amounts sufficient to make good any deficiency in the bond and interest accounts, to the extent that funds are available; ~~and~~

(b) to provide funds for the revolving fund pursuant to the provisions of 7-12-2182 by annually making a tax levy ~~(~~or, in lieu of the tax levy, a loan from the general fund~~)~~, subject to the maximum limitations imposed by 7-12-2182~~.~~*.; and*

(c) to retain in the revolving fund a balance up to 10% of the then-outstanding rural improvement district bonds and warrants secured by the revolving fund.

(2) (a) The undertakings and agreements are binding upon the county with respect to the rural ~~special~~ improvement district bonds or warrants until the earlier of:

(i) the date on which all bonds or warrants of the issue and interest on the bonds or warrants have been fully paid or discharged in a bankruptcy case in which the ~~special~~ *rural* improvement district is the debtor; or

(ii) the date that is the later of:

(A) the final stated maturity date of the bonds or warrants; or

(B) the date on which all special assessments levied in the district have been either paid or discharged.

(b) The discharge of delinquent special assessments levied with respect to a particular lot or parcel is considered to occur upon:

(i) the issuance of a tax deed, as provided in 15-18-214, or, if the county is the recipient of the tax deed, upon the sale, lease, or other disposition of the property by the county as provided in Title 7, chapter 8, part 22, 23, 24, or 25, or other applicable law; or

(ii) payment in full of the allowed secured claim for the special assessments in a bankruptcy case in which the owner of the lot or parcel is the debtor.

(3) Prior to entering into the undertakings and agreements set forth in subsection (1), the board of county commissioners shall take into consideration the following factors, including other circumstances that the board may determine to be material to the public interest of securing the bonds or warrants by the revolving fund:

(a) the estimated market value of the lots, parcels, or tracts included in the district at the time that the district is created in comparison to the estimated market value of the lots, parcels, or tracts after the improvements are made;

(b) the diversity of ownership of property in the district;

(c) the amount of the special assessments proposed to be levied against each lot, parcel, or tract in the district in comparison to the estimated market value of the lot, parcel, or tract after the improvements are made;

(d) the amount of any outstanding special assessments against the property in the district;

(e) the amount of delinquencies in the payment of outstanding special assessments or property taxes levied against property in the district;

(f) the public benefit of the improvements proposed to be financed; and

(g) in the case of a district created to make improvements in a newly platted subdivision:

(i) the prior subdivision development experience and credit rating or credit history of the person developing the land; and

(ii) any contribution by property owners to the costs of the improvements or any security given by property owners to secure payment of special assessments levied in the district.

(4) Any findings or determinations with respect to the factors contained in subsection (3) made by the board of county commissioners in a resolution authorizing the undertakings and agreements or the issuance of bonds or warrants are conclusive evidence that the board has taken into consideration the factors required by subsection (3).

(5) In lieu of the undertakings and agreements set forth in subsection (1), the board of county commissioners may determine in the resolution authorizing the issuance of the bonds or warrants that the revolving fund does not secure the bonds or warrants and that the bonds or warrants are payable solely from the district fund created for the bonds or warrants and do not have a claim against the revolving fund."

Section 4. Section 7-12-2186, MCA, is amended to read:

"7-12-2186. Utilization of excess money in revolving fund. Whenever there is in the revolving fund an amount in excess of ~~5%~~ *the amount deposited pursuant to 7-12-2153(2) and in excess of 10%* of the then-outstanding rural ~~special~~ improvement district bonds and warrants secured ~~thereby~~ *by the revolving fund* and the board considers any part of the excess to be greater than the amount necessary for payment or redemption of maturing bonds or warrants secured ~~thereby~~ *by the revolving fund* or interest ~~thereon~~ *on the revolving fund*, the board may order *that any part of* the amount the board considers greater than the amount necessary ~~or any part thereof~~ *to be:*

(1) transferred to the general fund of the county*;*

(2) used for the purchase of property at sales for delinquent taxes, assessments, or both; or

(3) used for the purchase of property that may have been struck off or sold to the county for delinquent taxes, assessments, or both and against which there is an unpaid assessment for special improvements and there are outstanding special improvement district bonds or warrants of the city or town."

Section 5. Section 7-12-4169, MCA, is amended to read:

"7-12-4169. Incidental expenses considered as cost of improvements — costs for bonds or warrants secured by revolving fund — district reserve account. (1) Incidental expenses connected with the formation of a special improvement district, including costs of preparation of plans, specifications, maps, and plats; engineering, superintendence, and inspection; preparation of assessment rolls; and the other incidental expenses described in 7-12-4101(7) are considered a part of the cost of making the improvements within the special improvement district.

(2) If the bonds or warrants are secured by the revolving fund under 7-12-4225, the costs of any improvement must include an amount ~~equal to~~ *of at least* 5% *and not more than 10%* of the principal amount of any bonds or warrants to be issued, which must be deposited in the revolving fund created in 7-12-4221.

(3) (a) Subject to the provisions of subsections (3)(b) through (3)(e), the city or town council may create a district reserve account.

(b) As part of the original costs of the improvements, the city or town council may include an amount, in addition to the amount, if any, specified in subsection (2), not to exceed 5% of the principal amount of any special improvement district bonds or warrants issued. The amount must be deposited in a district reserve account created and maintained in the district fund.

(c) If there are insufficient funds in the district bond and interest accounts to pay when due the principal of and the interest on bonds or warrants, the district reserve account, if established, must be used to pay the principal of and the interest on the bonds or warrants issued against the district fund.

(d) If bonds or warrants are secured by the revolving fund, the district reserve account, if established, must be exhausted before a loan may be made from the revolving fund pursuant to 7-12-4223.

(e) Money in the district reserve account may be used to pay the final principal and interest payment on bonds or warrants.

(4) The establishment of a district reserve account does not preclude the city or town council from requiring additional security from owners of real property in the district."

Section 6. Section 7-12-4222, MCA, is amended to read:

"7-12-4222. Sources of money for revolving fund. (1) For the purpose of providing funds for the revolving fund, the city or town council:

(a) may, from time to time, transfer to the revolving fund from the general fund of the city or town an amount as may be necessary. The amount transferred is a loan from the general fund to the revolving fund.

(b) shall, if the bonds or warrants are secured by the revolving fund pursuant to 7-12-4225, include in the cost of the improvement to be ~~defrayed~~ *paid* from the proceeds of the bonds or warrants an amount ~~equal to~~ *of at least* 5% *and not more than 10%* of the principal amount of the bonds or warrants as provided in 7-12-4169; and

(c) shall, in addition to a transfer or transfers from the general fund or in lieu of a transfer, levy for the revolving fund a tax, declared to be for a public purpose, on all taxable property in the city or town as is necessary to meet the financial requirements of the revolving fund. A tax may not be levied if the balance in the revolving fund ~~exceeds 5%~~ *will exceed 10% or, with the amount levied by the tax, will exceed 10%* of the principal amount of the then-outstanding special improvement district bonds and warrants secured by the revolving fund *after all required transfers have been made to the district funds through fiscal yearend*. ~~If a tax is levied, the tax may not be an amount that would increase the balance in the revolving fund above 5% of the then-outstanding special improvement district bonds and warrants secured by the revolving fund.~~

(2) Whenever there is money in the district fund that is not required for payment of any bond or warrant of the district secured by the revolving fund or of interest on the bond or warrant, as much of the money as may be necessary to pay the loan provided for in 7-12-4223 must, by order of the council, be

transferred to the revolving fund. After all the bonds and warrants issued on any special improvement district or sidewalk, curb, and alley approach warrants secured by the revolving fund have been fully paid, all money remaining in the district fund must, by order of the council, be transferred to and become part of the revolving fund."

Section 7. Section 7-12-4225, MCA, is amended to read:

"7-12-4225. Covenants to use revolving fund — duration of revolving fund obligation — factors to be considered. (1) In connection with the issuance of special improvement district bonds or sidewalk, curb, and alley approach warrants, the city or town council may undertake and agree:

(a) to make loans or advances from the revolving fund to the district fund involved in amounts sufficient to make good any deficiency in the bond and interest accounts, to the extent that funds are available; ~~and~~

(b) to provide funds for the revolving fund pursuant to the provisions of 7-12-4222(1) by annually making a tax levy ~~(~~or, in lieu of the tax levy, a loan from the general fund~~)~~, subject to the maximum limitations imposed by 7-12-4222(1)~~.~~*; and*

(c) to retain in the revolving fund a balance of up to 10% of the then-outstanding special improvement district bonds and warrants secured by the revolving fund.

(2) The undertakings and agreements referred to in subsection (1) are binding upon the city or town with respect to the special improvement district bonds or sidewalk, curb, and alley approach warrants until the earlier of:

(a) the date on which all bonds or warrants of the issue and interest on the bonds or warrants have been fully paid or discharged in a bankruptcy case in which the special improvement district is the debtor; or

(b) the date that is the later of:

(i) the final stated maturity date of the bonds or warrants; or

(ii) the date on which all special assessments levied in the district have been either paid or discharged.

(3) The discharge of delinquent special assessments levied with respect to a particular lot or parcel is considered to have occurred upon:

(a) the issuance of a tax deed, as provided in 15-18-214, or, if the county is the recipient of the tax deed, upon the sale, lease, or other disposition of the property by the county as provided in Title 7, chapter 8, part 22, 23, 24, or 25, or other applicable law;

(b) the discharge of the trust pursuant to 15-17-318 or upon the sale or lease of the property under 15-17-319 if the property in the district has been assigned to the city or town under Title 15, chapter 17, part 3; or

(c) payment in full of the allowed secured claim for the special assessments in a bankruptcy case in which the owner of the lot or parcel is the debtor.

(4) Prior to entering into the undertakings and agreements set forth in subsection (1), the city or town council shall take into consideration the following factors, including other circumstances that the city or town council may determine to be material to the public interest of securing the bonds or warrants by the revolving fund:

(a) the estimated market value of the lots, parcels, or tracts included in the district at the time that the district is created in comparison to the estimated market value of the lots, parcels, or tracts after the improvements are made;

(b) the diversity of ownership of property in the district;

(c) the amount of the special assessments proposed to be levied against each lot, parcel, or tract in the district in comparison to the estimated market value of the lot, parcel, or tract after the improvements are made;

(d) the amount of any outstanding special assessments against the property in the district;

(e) the amount of delinquencies in the payment of outstanding special assessments or property taxes levied against property in the district;

(f) the public benefit of the improvements proposed to be financed; and

(g) in the case of a district created to make improvements in a newly platted subdivision:

(i) the prior subdivision development experience and credit rating or credit history of the person developing the land; and

(ii) any contribution by property owners to the costs of the improvements or any security given by property owners to secure payment of special assessments levied in the district.

(5) Any findings or determinations with respect to the factors contained in subsection (4) made by the city or town council in a resolution authorizing the undertakings and agreements or the issuance of bonds or warrants are conclusive evidence that the city or town council has taken into consideration the factors required by subsection (4).

(6) In lieu of the undertakings and agreements set forth in subsection (1), the city or town council may determine in the resolution authorizing the issuance of the bonds or warrants that the revolving fund does not secure the bonds or warrants and that the bonds or warrants are payable solely from the district fund created for the bonds or warrants and do not have a claim against the revolving fund."

Section 8. Section 7-12-4227, MCA, is amended to read:

"7-12-4227. Utilization of excess money in revolving fund. Whenever there is an amount in the revolving fund in excess of the amount deposited in the revolving fund under 7-12-4169(2) and in excess of ~~5%~~ *10%* of the outstanding special improvement district bonds and warrants *secured by the revolving fund* and the council considers any part of the excess to be greater than the amount necessary for payment or redemption of maturing bonds or warrants secured ~~thereby~~ *by the revolving fund* or interest ~~thereon~~ *on the revolving fund*, the council may~~:~~

~~(1) by vote of all of its members at a meeting called for that purpose,~~ order *that any part of* the amount of the excess that is greater than the amount necessary for the payment or redemption of maturing bonds or warrants secured ~~thereby~~ *by the revolving fund* or interest ~~thereon or any part thereof~~ *on the revolving fund to be:*

(1) transferred to the general fund of ~~such~~ *the* city or town; ~~or~~

(2) ~~use the excess that is greater than the amount necessary for the payment or redemption of maturing bonds or warrants secured thereby or interest thereon or any part thereof~~ *used* for the purchase of property at sales for delinquent taxes, ~~or~~ assessments, or both~~,~~*;* or

(3) used for the purchase of property ~~which~~ *that* may have been struck off or sold to the county for delinquent taxes, ~~or~~ assessments, or both~~,~~ and against which ~~property~~ there ~~then be any~~ *is an* unpaid assessment for special

improvements ~~on account whereof~~ *and* there are outstanding special improvement district bonds or warrants of the city or town."

Section 9. Effective date. [This act] is effective on passage and approval.

Approved April 24, 2009

CHAPTER NO. 350

[HB 653]

AN ACT PROVIDING FOR THE ADJUSTMENT OF BASE TAXABLE VALUE IN AN URBAN RENEWAL AREA, AN INDUSTRIAL DISTRICT, OR A TECHNOLOGY DISTRICT FOR TAX INCREMENT FINANCING PURPOSES BECAUSE OF A LOCAL DISASTER; AMENDING SECTION 7-15-4293, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-15-4293, MCA, is amended to read:

"7-15-4293. Adjustment of base taxable value following change of law *or local disaster*. (1) If the base taxable value of an urban renewal area, an industrial district, or a technology district is affected after its original determination by a statutory, administrative, or judicial change in the method of appraising property, the tax rate applied to it, the tax exemption status of property, or the taxable valuation of property if the change in taxable valuation is based on conditions existing at the time the base year was established, the governing body of the municipality may request the department of revenue to estimate the base taxable value so that the tax increment resulting from the increased incremental value is sufficient to pay all principal and interest on the bonds as those payments become due.

(2) If a tax increment financing district created after January 1, 2002, has not issued bonds, the governing body of a municipality may request the department of revenue to adjust the base taxable value to account for a loss of taxable revenue resulting from the state granting property in the district tax-exempt status within the first year of creation of the tax increment financing district. The municipality shall give notice of and hold a public hearing on the proposed change.

(3) (a) If an urban renewal area, an industrial district, or a technology district suffers a loss of property value directly related to a disaster for which the principal executive officer of the local jurisdiction has made a disaster declaration pursuant to 10-3-402, the department of revenue shall decrease the base taxable value of the area or district by the amount of the base taxable value lost because of the disaster in the tax year in which the disaster is declared. The principal executive officer shall forward a copy of the disaster declaration to the department of revenue.

(b) The taxable value removed from the base taxable value of the area or district under subsection (3)(a) must be added to the base taxable value of the area or district upon reconstruction of the property in the tax year of reconstruction. If reconstruction of the property is only partially completed as of January 1 of the tax year, the department of revenue shall determine the base taxable value of the property for that tax year by multiplying the percentage of completion, expressed as a decimal equivalent, of reconstruction of the property by the original base taxable value of the property. The addition to the base taxable

value under this subsection (3)(b) is limited to the amount of the original base taxable value of each parcel before the disaster occurred."

Section 2. Coordination instruction. If Senate Bill No. 48 is passed and approved and if it includes a section that amends 7-15-4293, then [section 1(3) of this act] must read as follows:

"*(3) (a) If an urban renewal area, an industrial district, a technology district, or an aerospace transportation and technology district suffers a loss of property value directly related to a disaster for which the principal executive officer of the local jurisdiction has made a disaster declaration pursuant to 10-3-402, the department of revenue shall decrease the base taxable value of the area or district by the amount of the base taxable value lost because of the disaster in the tax year in which the disaster is declared. The principal executive officer shall forward a copy of the disaster declaration to the department of revenue.*

(b) The taxable value removed from the base taxable value of the area or district under subsection (3)(a) must be added to the base taxable value of the area or district upon reconstruction of the property in the tax year of reconstruction. If reconstruction of the property is only partially completed as of January 1 of the tax year, the department of revenue shall determine the base taxable value of the property for that tax year by multiplying the percentage of completion, expressed as a decimal equivalent, of reconstruction of the property by the original base taxable value of the property. The addition to the base taxable value under this subsection (3)(b) is limited to the amount of the original base taxable value of each parcel before the disaster occurred."

Section 3. Effective date. [This act] is effective on passage and approval.

Section 4. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2008.

Approved April 24, 2009

CHAPTER NO. 351

[SB 8]

AN ACT ALLOWING FOR THE CREATION AND EXPANSION OF REGIONAL RESOURCE AUTHORITIES; GRANTING A REGIONAL RESOURCE AUTHORITY CERTAIN POWERS; AUTHORIZING THE ISSUANCE OF REVENUE BONDS TO FUND PROJECTS; AMENDING SECTIONS 2-7-501, 7-6-4020, 7-6-4035, AND 15-10-420, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Regional resource authorities — purpose. (1) Electors residing within the boundaries of a proposed regional resource authority may create or expand an authority by proceeding under the provisions of [sections 1 through 23].

(2) Regional resource authorities may be created to provide for collaboration and coordination in the conservation of water resources or in the management of water resources for agricultural and recreational uses.

Section 2. Authorization to create or expand regional resource authorities. (1) A petition requesting the establishment or expansion of a regional resource authority must be signed by at least 10% of the registered electors within the boundaries of the territory proposed to be organized into the

authority or expansion and must be presented to the board of county commissioners of the county in which the proposed authority expansion is located.

(2) When the area to be included within the proposed authority or expansion lies in more than one county, the electors within the proposed area shall present a petition to the board of county commissioners in each county. Each petition must contain the signatures of at least 10% of the registered electors within the boundaries of the proposed authority or expansion that lies within that county.

(3) The petition must include:

(a) a legal description or map of the proposed authority or expansion boundaries. Boundaries must coincide with the boundaries of political subdivisions of the state to the greatest extent possible and may exclude incorporated cities or towns.

(b) the proposed name of the authority;

(c) a statement that there is a need in the interest of the public health, safety, and welfare for an authority to function or expand in the territory described in the petition;

(d) a request that a referendum be held in the territories included within the proposed boundaries on the question of creating or expanding the authority; and

(e) the structure of the governing body for the authority as provided in [section 7].

(4) Land, water, projects, as defined in [section 9], or other resources within the exterior boundaries of an Indian reservation may not be included within the boundaries of a regional resource authority without the consent of the governing body of the tribe of the Indian reservation.

Section 3. Regional resource authority or expansion — notice of petition — hearing. (1) The board of county commissioners shall publish the text of the petition described in [section 2], as provided in 7-1-2121, in each county in which the proposed regional resource authority or expansion lies and shall publish the date, time, and place that a public hearing on the petition will be held.

(2) If the proposed authority or expansion lies within two or more counties, the provisions of this section apply to each county.

(3) Upon concluding the hearing on the petition, the board of county commissioners shall determine whether the petition complies with the requirements of [section 2] and enter its determination into the minutes of a regularly scheduled meeting.

Section 4. Regional resource authority or expansion — election required — notice. (1) Upon a determination that the petition complies with the provisions of [section 2], the board of county commissioners of each county in which the proposed regional resource authority or expansion lies shall give notice of an election to be held within the boundaries of the proposed authority or expansion for the purpose of determining whether a regional resource authority should be created or expanded. The election must be held in conjunction with a regular or primary election.

(2) Notice of the election must be made as provided in 13-1-108 and must:

(a) describe the purpose of the proposed authority or expansion; and

(b) state the name of the proposed authority.

(3) The election on the question of creating or expanding a regional resource authority must be conducted as provided by Title 13 with respect to general and school elections.

(4) If the proposed authority or expansion lies in more than one county, the board of county commissioners whose county contains the largest percentage of the territory of the proposed authority or expansion shall administer the election and canvass the returns.

Section 5. Resolution creating or expanding regional resource authority upon favorable vote. (1) If a majority of the votes cast within the proposed boundaries of the regional resource authority or expansion are in favor of creating or expanding the authority, the board of county commissioners in the county that administered the election shall, by resolution, declare the territory enclosed within the proposed boundaries or expansion duly organized as a regional resource authority.

(2) Immediately following adoption of the resolution creating or expanding the regional resource authority, the board of county commissioners shall file a copy of the resolution with the secretary of state and the county clerk and recorder.

Section 6. Regional resource authority — certificate of incorporation or expansion from secretary of state. Within 10 days of receiving a copy of the resolution described in [section 5], the secretary of state shall issue a certificate stating that the regional resource authority has been established or expanded under the laws of the state of Montana. The secretary of state shall file a copy of the certificate with the clerk and recorder in each county in which the authority is located.

Section 7. Governing body of regional resource authority. (1) The initial members of the local governing body must be appointed by the county commissioners in the county where the election is administered pursuant to [section 4(4)], based on the recommendations of the petitioners.

(2) The commissioners shall appoint members of the governing body to staggered 2-year and 4-year terms.

(3) The appointments under subsection (1) must be made within 30 days after the adoption of the resolution for creation provided for in [section 5].

(4) Prior to the expiration of the initial appointments, the governing body shall divide itself into districts from which members are elected to succeeding terms.

Section 8. Regional resource authority — powers — limits. (1) A regional resource authority has power to:

(a) sue and be sued;

(b) purchase and hold lands within its limits;

(c) make contracts and purchase and hold personal property that may be necessary to the exercise of its powers;

(d) make orders for the disposition or use of its property that the interests of its inhabitants require; and

(e) subject to 15-10-420, levy and collect taxes for public or governmental purposes, as described in 7-6-2527, under its exclusive jurisdiction unless prohibited by law;

(f) impose fees or assessments for services provided;

(g) pay debts and expenses;

(h) solicit and accept bequests, donations, or grants of money, property, services, or other advantages and comply with any condition that is not contrary to the public interest;

(i) execute documents necessary to receive money, property, services, or other advantages from the state government, the federal government, or any other source;

(j) make grants and loans of money, property, and services for public purposes;

(k) require the attendance of witnesses and production of documents relevant to matters being considered by the governing body;

(l) hire, direct, and discharge employees and appoint and remove members of boards;

(m) ratify any action of the regional resource authority or its officers or employees that could have been approved in advance;

(n) acquire by eminent domain, as provided in Title 70, chapter 30, any interest in property for a public use authorized by law;

(o) initiate a civil action to restrain or enjoin an action adverse to the regional resource authority;

(p) enter private property, obtaining warrants when necessary, for the purpose of enforcing its authority that affects the general welfare and public safety;

(q) conduct preparatory studies;

(r) purchase insurance and establish self-insurance plans;

(s) exercise powers not inconsistent with law necessary for effective administration of authorized services and functions;

(t) enter into interlocal agreements or other agreements with the federal government or its agencies; and

(u) issue bonds and notes for the purpose of funding projects as provided in [sections 9 through 23].

(2) A regional resource authority may not:

(a) authorize a tax on income or the sale of goods or services;

(b) regulate private activity beyond its geographic limits;

(c) impose a duty on another unit of local government, except that nothing in this limitation affects the right of a regional resource authority to enter into and enforce an agreement on interlocal cooperation;

(d) exercise any judicial function, except as an incident to the exercise of an administrative power; or

(e) exercise any power enumerated in 7-1-111.

Section 9. Regional resource authority projects — definition. (1) A regional resource authority may:

(a) construct, reconstruct, improve, or extend any project within the boundaries of the regional resource authority or partially within or partially outside of the boundaries, and acquire by gift, purchase, or the exercise of the

right of eminent domain pursuant to Title 70, chapter 30, any project and land or rights in land or water rights in connection with the project;

(b) operate and maintain any project and furnish the service, facilities, and commodities of the project for its own use and for the use of public and private consumers within or outside of the boundaries of the regional resource authority; and

(c) prescribe and collect rates, fees, and charges for the services, facilities, and commodities furnished by the project.

(2) The project may be acquired, purchased, constructed, reconstructed, improved, bettered, and extended and bonds may be issued under [sections 9 through 23] for those purposes.

(3) As used in [sections 9 through 23], "project" means one or a combination of water systems, together with all parts of the systems and appurtenances to the systems, including but not limited to supply and distribution systems, reservoirs, dams, and treatment and disposal works.

Section 10. Role of state agencies. A regional resource authority acting pursuant to [sections 9 through 23] is not required to obtain any certificate of convenience or necessity, franchise, license, permit, or other authorization from any bureau, board, commission, or other instrumentality of the state in order to acquire, construct, purchase, reconstruct, improve, better, extend, maintain, and operate a project. The supervisory powers and duties of the department of environmental quality apply to projects under [sections 9 through 23], and the functions of the department of natural resources and conservation and the water court apply to water rights associated with projects.

Section 11. Authority to issue revenue bonds. A regional resource authority may:

(1) issue its bonds to finance in whole or in part the cost of the acquisition, purchase, construction, reconstruction, improvement, betterment, or extension of any project;

(2) pledge to the punctual payment of the bonds issued under [sections 9 through 23] and interest on the bonds an amount of the revenue of the project or of any part of the project sufficient to pay the bonds and interest as the bonds and interest become due and create and maintain reasonable reserves for the payments.

Section 12. Determination of cost. The governing body of a regional resource authority, in determining cost for purposes of [section 11], may include:

(1) all costs and estimated costs of the issuance of revenue bonds, including a permissible underwriter's discount, if any;

(2) all engineering, inspection, fiscal, and legal expenses; and

(3) interest estimated to accrue during the construction period and for 6 months after construction on money borrowed or on money that it is estimated will be borrowed pursuant to [sections 9 through 23].

Section 13. Nature of revenue bonds. (1) The holder or holders of any bonds issued under [sections 9 through 23] does not have the right to compel any exercise of taxing power of the regional resource authority to pay the revenue bonds or the interest on the bonds.

(2) Each bond issued under [sections 9 through 23] must recite in substance that:

(a) the bond, including interest on the bond, is payable from the revenue pledged to the payment of the bond; and

(b) the bond does not constitute a debt of the regional resource authority within the meaning of any constitutional or statutory limitation or provision.

Section 14. Projects to be self-supporting. (1) A regional resource authority issuing bonds pursuant to [sections 9 through 23] shall prescribe and collect reasonable rates, fees, or charges for the services, facilities, and commodities of the project and shall revise the rates, fees, or charges from time to time whenever necessary so that the project is and remains self-supporting. The property taxes specifically authorized to be levied for the general purpose served by the project constitute revenue of the project and may not result in a project being considered not self-supporting.

(2) The rates, fees, or charges prescribed, along with any appropriated property tax collections, must produce revenue at least sufficient to:

(a) pay when due all bonds and interest on the bonds, the payment for which the revenue has been pledged, charged, or otherwise encumbered, including reserves for the bonds; and

(b) provide for all expenses of operation and maintenance of the project, including reserves.

Section 15. Use of revenue from project. (1) A regional resource authority issuing bonds pursuant to [sections 9 through 23] for the acquisition, purchase, construction, reconstruction, improvement, betterment, or extension of any project has the right to appropriate, apply, or expend the revenue of the project for the following purposes:

(a) to pay when due all bonds and interest on the bonds for the payment of which the revenue is or has been pledged, charged, or otherwise encumbered, including reserves;

(b) to provide for all expenses of operation and maintenance of the project, including reserves; and

(c) to provide a reserve for improvements or enhancements to the project.

(2) Unless and until adequate provision has been made for the purposes of subsection (1), a regional resource authority may not transfer the revenue of the project to its general fund.

Section 16. Covenants in resolution authorizing issuance of bonds. Any resolution or resolutions authorizing the issuance of bonds under [sections 9 through 23] may contain covenants as to:

(1) the purpose or purposes to which the proceeds of sale of the bonds may be applied and the disposition of the proceeds;

(2) the use and disposition of the revenue of the project for which the bonds are to be issued, including the creation and maintenance of reserves and including the pledge or appropriation of all or a portion of the property tax revenue referred to in [section 8];

(3) the transfer from the general fund of the regional resource authority to the account or accounts of the project of an amount equal to the cost of furnishing the regional resource authority or any of its departments or boards with the services, facilities, or commodities of the project;

(4) the issuance of other or additional bonds payable from the revenue of the project;

(5) the operation and maintenance of the project;

(6) the insurance to be carried on the project and the use and disposition of insurance money;

(7) books of account and the inspection and audit of the books; and

(8) the terms and conditions upon which the holders or trustees of the bonds or any proportion of the bonds are entitled to the appointment of a receiver by the district court having jurisdiction. The receiver may:

(a) enter and take possession of the project;

(b) operate and maintain the project;

(c) prescribe rates, fees, or charges, subject to the approval of the public service commission; and

(d) collect, receive, and apply all revenue arising from the project.

Section 17. Remedies. The provisions of [sections 9 through 23] and any resolution or resolutions are enforceable by any bondholder in any court of competent jurisdiction by mandamus or other appropriate suit, action, or proceeding.

Section 18. Presumption of validity of bonds. (1) Bonds bearing the signatures of the officers of the regional resource authority in office on the date of the signing of the bonds are valid and binding obligations, notwithstanding that before the delivery of the bonds and payment for the bonds, any or all the persons whose signatures appear on the bonds have ceased to be officers of the regional resource authority issuing the bonds.

(2) The validity of the bonds is not dependent on or affected by the validity or regularity of any proceedings relating to the acquisition, purchase, construction, reconstruction, improvement, betterment, or extension of the project for which the bonds are issued.

(3) The resolution authorizing the bonds may provide that the bonds must contain a recital that they are issued pursuant to [sections 9 through 23]. The recital is conclusive evidence of the validity of the bonds and of the regularity of their issuance.

Section 19. Liens arising from bonds. The resolution or resolutions authorizing the bonds must specify and define the revenue or portion of the revenue that is appropriated and pledged for the security and payment of the bond principal and interest and the relative security of liens on the revenue in favor of bonds of one or more series or issues, whether issued concurrently or at different times.

Section 20. Details relating to revenue bonds. (1) Bonds authorized to be issued under [sections 9 through 23]:

(a) must bear interest at a rate or rates not exceeding the limitation of 17-5-102;

(b) may be issued in one or more series;

(c) may bear a date or dates;

(d) may mature at a time or times not exceeding 40 years from their respective dates of issue;

(e) may be payable in a place or places;

(f) may carry registration privileges;

(g) may be subject to terms of redemption;

(h) may be executed;

(i) may contain terms, covenants, and conditions; and

(j) may be in coupon or registered form, as provided by the initial resolution or subsequent resolutions.

(2) The regional resource authority may fix the minimum price for the bonds in an amount less than the principal amount of the bonds but not less than 97% of the principal amount if it determines that a sale at that price is in the best interests of the project.

Section 21. Sale of bonds. (1) Bonds authorized to be issued under [sections 9 through 23] must be sold at a price not less than that prescribed by the governing body of the regional resource authority, plus interest to the date of delivery of the bonds.

(2) (a) The bonds may be sold at private sale to the United States or the state of Montana or any agency, instrumentality, or corporation of the United States or the state.

(b) Unless sold to the United States or the state of Montana or an agency, instrumentality, or corporation of the United States or the state, the bonds must be sold at public sale after notice of the sale.

Section 22. Notice of sale of bonds. The notice of sale of bonds required by [section 21(2)(b)] must be published once at least 5 days prior to the sale in a newspaper of general circulation in the state, and the regional resource authority may publish the notice or summary of the notice in a financial newspaper published in the city of New York, Chicago, or San Francisco.

Section 23. Interim receipts or certificates. Pending the preparation of the definitive bonds, interim receipts or certificates, in a form and with provisions that the governing body of the regional resource authority may determine, may be issued to the purchaser or purchasers of bonds sold pursuant to [sections 9 through 23]. The bonds and interim receipts or certificates are fully negotiable, as provided by Title 30, chapter 8.

Section 24. Section 2-7-501, MCA, is amended to read:

"2-7-501. Definitions. Unless the context requires otherwise, in this part, the following definitions apply:

(1) "Audit" means a financial audit and includes financial statement and financial-related audits as defined by government auditing standards as established by the U.S. comptroller general.

(2) "Board" means the Montana board of public accountants provided for in 2-15-1756.

(3) "Department" means the department of administration.

(4) (a) "Financial assistance" means assistance provided by a federal, state, or local government entity to a local government entity or subrecipient to carry out a program. Financial assistance may be in the form of grants, contracts, cooperative agreements, loans, loan guarantees, property, interest subsidies, insurance, direct appropriations, or other noncash assistance. Financial assistance includes awards received directly from federal and state agencies or indirectly when subrecipients receive funds identified as federal or state funds by recipients. The granting agency is responsible for identifying the source of funds awarded to recipients. The recipient is responsible for identifying the source of funds awarded to subrecipients.

(b) Financial assistance does not include direct federal, state, or local government cash assistance to individuals.

(5) "Financial report" means a presentation of financial statements, including applicable supplemental notes and supplemental schedules, that are prepared in a format published by the department using the Budgetary Accounting and Reporting System for Montana Cities, Towns, and Counties Manual and that reflect a current financial position and the operating results for the 1-year reporting period.

(6) "Independent auditor" means:

(a) a federal, state, or local government auditor who meets the standards specified in the government auditing standards; or

(b) a licensed accountant who meets the standards in subsection (6)(a).

(7) (a) "Local government entity" means a county, city, district, or public corporation that:

(i) has the power to raise revenue or receive, disburse, or expend local, state, or federal government revenue for the purpose of serving the general public;

(ii) is governed by a board, commission, or individual elected or appointed by the public or representatives of the public; and

(iii) receives local, state, or federal financial assistance.

(b) Local government entities include but are not limited to:

(i) airport authority districts;

(ii) cemetery districts;

(iii) counties;

(iv) county housing authorities;

(v) county road improvement districts;

(vi) county sewer districts;

(vii) county water districts;

(viii) county weed management districts;

(ix) drainage districts;

(x) fire companies;

(xi) fire districts;

(xii) fire service areas;

(xiii) hospital districts;

(xiv) incorporated cities or towns;

(xv) irrigation districts;

(xvi) mosquito districts;

(xvii) municipal fire departments;

(xviii) municipal housing authority districts;

(xix) port authorities;

(xx) solid waste management districts;

(xxi) rural improvement districts;

(xxii) school districts, including a district's extracurricular funds;

(xxiii) soil conservation districts;

(xxiv) special education or other cooperatives;

(xxv) television districts;

(xxvi) urban transportation districts;

(xxvii) water conservancy districts; ~~and~~

(xxviii) regional resource authorities; and

~~(xxviii)~~*(xxix)* other miscellaneous and special districts.

(8) "Revenues" means all receipts of a local government entity from any source excluding the proceeds from bond issuances."

Section 25. Section 7-6-4020, MCA, is amended to read:

"7-6-4020. Preliminary annual operating budget. (1) A preliminary annual operating budget must be prepared for the local government.

(2) This part does not provide for the consolidation or reassignment, but does not prohibit delegation by mutual agreement, of any duties of elected county officials.

(3) (a) Before June 1 of each year, the county clerk and recorder shall notify the county commission and each board, office, *regional resource authority,* or official that they are required to file preliminary budget proposals for their component of the total county budget.

(b) Component budgets must be submitted to the clerk and recorder before June 10th or on a date designated by the county commission and must be submitted on forms provided by the county clerk and recorder.

(c) The county clerk and recorder shall prepare and submit the county's preliminary annual operating budget.

(d) Component budget responsibilities as provided in this subsection (3) include but are not limited to the following:

(i) The county surveyor or any special engineer shall compute road and bridge component budgets and submit them to the county commission.

(ii) The county commission shall submit road and bridge component budgets.

(iii) The county treasurer shall submit debt service component budgets.

(iv) The county commission shall submit component budgets for construction or improvements to be made from new general obligation debt.

(4) The preliminary annual operating budget for each fund must include, at a minimum:

(a) a listing of all revenue and other resources for the prior budget year, current budget year, and proposed budget year;

(b) a listing of all expenditures for the prior budget year, the current budget year, and the proposed budget year. All expenditures must be classified under one of the following categories:

(i) salaries and wages;

(ii) operations and maintenance;

(iii) capital outlay;

(iv) debt service; or

(v) transfers out.

(c) a projection of changes in fund balances or cash balances available for governmental fund types and a projection of changes in cash balances and

working capital for proprietary fund types. This projection must be supported by a summary for each fund or group of funds listing the estimated beginning balance plus estimated revenue, less proposed expenditures, cash reserves, and estimated ending balances.

(d) a detailed list of proposed capital expenditures and a list of proposed major capital projects for the budget year;

(e) financial data on current and future debt obligations;

(f) schedules or summary tables of personnel or position counts for the prior budget year, current budget year, and proposed budget year. The budgeted amounts for personnel services must be supported by a listing of positions, salaries, and benefits for all positions of the local government. The listing of positions, salaries, and benefits is not required to be part of the budget document.

(g) all other estimates that fall under the purview of the budget.

(5) The preliminary annual operating budget for each fund for which the local government will levy an ad valorem property tax must include the estimated amount to be raised by the tax."

Section 26. Section 7-6-4035, MCA, is amended to read:

"7-6-4035. Tax levies for boards and commissions — bond exemption. (1) The proposed budget and mill levy for each board, commission, or other governing entity are subject to approval by the governing body.

(2) Except for a port authority created under Title 7, chapter 14, part 11, the taxes, revenue, or fees legally pledged for the payment of debt *or for the operations of a regional resource authority* are not subject to approval by the governing body.

(3) Except for judgment levies under 2-9-316 or 7-6-4015, all tax levies are subject to 15-10-420."

Section 27. Section 15-10-420, MCA, is amended to read:

"15-10-420. Procedure for calculating levy. (1) (a) Subject to the provisions of this section, a governmental entity that is authorized to impose mills may impose a mill levy sufficient to generate the amount of property taxes actually assessed in the prior year plus one-half of the average rate of inflation for the prior 3 years. The maximum number of mills that a governmental entity may impose is established by calculating the number of mills required to generate the amount of property tax actually assessed in the governmental unit in the prior year based on the current year taxable value, less the current year's value of newly taxable property, plus one-half of the average rate of inflation for the prior 3 years.

(b) A governmental entity that does not impose the maximum number of mills authorized under subsection (1)(a) may carry forward the authority to impose the number of mills equal to the difference between the actual number of mills imposed and the maximum number of mills authorized to be imposed. The mill authority carried forward may be imposed in a subsequent tax year.

(c) For the purposes of subsection (1)(a), the department shall calculate one-half of the average rate of inflation for the prior 3 years by using the consumer price index, U.S. city average, all urban consumers, using the 1982-84 base of 100, as published by the bureau of labor statistics of the United States department of labor.

(2) A governmental entity may apply the levy calculated pursuant to subsection (1)(a) plus any additional levies authorized by the voters, as provided in 15-10-425, to all property in the governmental unit, including newly taxable property.

(3) (a) For purposes of this section, newly taxable property includes:

(i) annexation of real property and improvements into a taxing unit;

(ii) construction, expansion, or remodeling of improvements;

(iii) transfer of property into a taxing unit;

(iv) subdivision of real property; and

(v) transfer of property from tax-exempt to taxable status.

(b) Newly taxable property does not include an increase in value that arises because of an increase in the incremental value within a tax increment financing district.

(4) (a) For the purposes of subsection (1), the taxable value of newly taxable property includes the release of taxable value from the incremental taxable value of a tax increment financing district because of:

(i) a change in the boundary of a tax increment financing district;

(ii) an increase in the base value of the tax increment financing district pursuant to 7-15-4287; or

(iii) the termination of a tax increment financing district.

(b) If a tax increment financing district terminates prior to the certification of taxable values as required in 15-10-202, the increment value is reported as newly taxable property in the year in which the tax increment financing district terminates. If a tax increment financing district terminates after the certification of taxable values as required in 15-10-202, the increment value is reported as newly taxable property in the following tax year.

(c) For the purpose of subsection (3)(a)(iv), the subdivision of real property includes the first sale of real property that results in the property being taxable as class four property or as nonqualified agricultural land as described in 15-6-133(1)(c).

(5) Subject to subsection (8), subsection (1)(a) does not apply to:

(a) school district levies established in Title 20; ~~or~~

(b) the portion of a governmental entity's property tax levy for premium contributions for group benefits excluded under 2-9-212 or 2-18-703*; or*

(c) a mill levy imposed for a newly created regional resource authority.

(6) For purposes of subsection (1)(a), taxes imposed do not include net or gross proceeds taxes received under 15-6-131 and 15-6-132.

(7) In determining the maximum number of mills in subsection (1)(a), the governmental entity may increase the number of mills to account for a decrease in reimbursements.

(8) The department shall calculate, on a statewide basis, the number of mills to be imposed for purposes of 15-10-107, 20-9-331, 20-9-333, 20-9-360, 20-25-423, and 20-25-439. However, the number of mills calculated by the department may not exceed the mill levy limits established in those sections. The mill calculation must be established in whole mills. If the mill levy calculation does not result in a whole number of mills, then the calculation must be rounded up to the nearest whole mill.

(9) (a) The provisions of subsection (1) do not prevent or restrict:

(i) a judgment levy under 2-9-316, 7-6-4015, or 7-7-2202;

(ii) a levy to repay taxes paid under protest as provided in 15-1-402;

(iii) an emergency levy authorized under 10-3-405, 20-9-168, or 20-15-326; ~~or~~

(iv) a levy for the support of a study commission under 7-3-184*; or*

(v) a levy for the support or a newly established regional resource authority.

(b) A levy authorized under subsection (9)(a) may not be included in the amount of property taxes actually assessed in a subsequent year.

(10) A governmental entity may levy mills for the support of airports as authorized in 67-10-402, 67-11-301, or 67-11-302 even though the governmental entity has not imposed a levy for the airport or the airport authority in either of the previous 2 years and the airport or airport authority has not been appropriated operating funds by a county or municipality during that time.

(11) The department may adopt rules to implement this section. The rules may include a method for calculating the percentage of change in valuation for purposes of determining the elimination of property, new improvements, or newly taxable property in a governmental unit."

Section 28. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

Section 29. Codification instruction. [Sections 1 through 23] are intended to be codified as an integral part of Title 7, and the provisions of Title 7 apply to [sections 1 through 23].

Section 30. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 31. Effective date. [This act] is effective on passage and approval.

Approved April 24, 2009

CHAPTER NO. 352

[SB 32]

AN ACT PROVIDING THAT CERTIFICATION OF A PERSON AS DISABLED FOR PURPOSES OF OBTAINING A PERMIT TO HUNT FROM A VEHICLE MAY BE ENDORSED BY A LICENSED CHIROPRACTOR IN ADDITION TO CERTAIN OTHER MEDICAL CARE PROVIDERS; AMENDING SECTION 87-2-803, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-2-803, MCA, is amended to read:

"87-2-803. Persons with disabilities — service members — definitions. (1) Persons with disabilities are entitled to fish and to hunt game birds, not including turkeys, with only a conservation license if they are residents of Montana not residing in an institution and are certified as disabled as prescribed by departmental rule. A person who has purchased a conservation license and a resident fishing license or game bird license for a particular license year and who is subsequently certified as disabled is entitled to a refund for the fishing license or game bird license previously purchased for that license year. A

person who is certified as disabled pursuant to subsection (3) and who was issued a permit to hunt from a vehicle for license year 2000 or a subsequent license year is automatically entitled to a permit to hunt from a vehicle for subsequent license years if the criteria for obtaining a permit does not change.

(2) A resident of Montana who is certified as disabled by the department and who is not residing in an institution may purchase a Class A-3 deer A tag for $6.50 and a Class A-5 elk tag for $8. A person who has purchased a conservation license and a resident deer license or resident elk license for a particular license year and who is subsequently certified as disabled is entitled to a refund for the deer license or elk license previously purchased and reissuance of the license for that license year at the rate established in this subsection.

(3) A person may be certified as disabled by the department and issued a permit to hunt from a vehicle, on a form prescribed by the department, if the person establishes one or more of the disabilities pursuant to subsection (9).

(4) (a) A person with a disability carrying a permit to hunt from a vehicle, referred to in this subsection (4) as a permitholder, may hunt by shooting a firearm from:

(i) the shoulder, berm, or barrow pit right-of-way of a public highway, as defined in 61-1-101, except a state or federal highway;

(ii) within a self-propelled or drawn vehicle that is parked on a shoulder, berm, or barrow pit right-of-way in a manner that will not impede traffic or endanger motorists or that is parked in an area, not a public highway, where hunting is permitted; or

(iii) an off-highway vehicle or snowmobile, as defined in 61-1-101, in any area where hunting is permitted and that is open to motorized use, unless otherwise prohibited by law, as long as the off-highway vehicle or snowmobile is marked as described in subsection (4)(d) of this section.

(b) This subsection (4) does not allow a permitholder to shoot across the roadway of any public highway or to hunt on private property without permission of the landowner.

(c) A permitholder must have a companion to assist in immediately dressing any killed game animal. The companion may also assist the permitholder by hunting a game animal that has been wounded by the permitholder when the permitholder is unable to pursue and kill the wounded game animal.

(d) Any vehicle from which a permitholder is hunting must be conspicuously marked with an orange-colored international symbol of persons with disabilities on the front, rear, and each side of the vehicle, or as prescribed by the department.

(5) A veteran who meets the qualifications in subsection (9) as a result of a combat-connected injury may apply at a fish, wildlife, and parks office for a regular Class A-3 deer A tag, a Class A-4 deer B tag, a Class B-7 deer A tag, a Class B-8 deer B tag, and a special antelope license at one-half the license fee. Fifty licenses of each license type must be made available annually. Licenses issued to veterans under this part do not count against the number of special antelope licenses reserved for people with permanent disabilities, as provided in 87-2-706.

(6) (a) A resident of Montana who is certified by the department as experiencing blindness, as defined in 53-7-301, may be issued a lifetime fishing license for the blind upon payment of a one-time fee of $10. The license is valid for the lifetime of the blind individual and allows the licensee to fish as

authorized by department rule. An applicant for a license under this subsection need not obtain a wildlife conservation license as a prerequisite to licensure.

(b) A person who is certified by the department as experiencing blindness, as defined in 53-7-301, may be issued regular resident deer and elk licenses, in the manner provided in subsection (2) of this section, and must be accompanied by a companion, as provided in subsection (4)(c) of this section.

(7) The department shall adopt rules to establish the qualifications that a person must meet to be a companion and may adopt rules to establish when a companion can be a designated shooter for a disabled person.

(8) As used in this section, "disabled person", "person with a disability", or "disabled" means or refers to a person experiencing a condition medically determined to be permanent and substantial and resulting in significant impairment of the person's functional ability.

(9) A person is entitled to a permit to hunt from a vehicle if the person:

(a) is certified by a licensed physician, *a licensed chiropractor,* an advanced practice registered nurse, or a licensed physician assistant to be dependent on an oxygen device or dependent on a wheelchair, crutch, or cane for mobility;

(b) is an amputee above the wrist or ankle; or

(c) is certified by a licensed physician, *a licensed chiropractor,* an advanced practice registered nurse, or a licensed physician assistant to be unable to walk, unassisted, 600 yards over rough and broken ground while carrying 15 pounds within 1 hour and to be unable to handle and maneuver up to 25 pounds.

(10) Certification by a licensed physician, *a licensed chiropractor,* an advanced practice registered nurse, or a licensed physician assistant under subsection (9) must be on a form provided by the department.

(11) The department or a person who disagrees with a determination of disability or eligibility for a permit to hunt from a vehicle may request a review by the board of medical examiners pursuant to 37-3-203.

(12) (a) A Montana resident who is a member of the Montana national guard or the federal reserve as provided in 10 U.S.C. 10101 or who was otherwise engaged in active duty and who participated in a contingency operation as provided in 10 U.S.C. 101(a)(13) that required the member to serve at least 2 months outside of the state, upon request and upon presentation of the documentation described in subsection (12)(b), must be issued a free resident wildlife conservation license or a Class AAA resident combination sports license, which may not include a bear license, upon payment of the resident hunting access enhancement fee provided for in 87-2-202(3)(c), in the license year that the member returns from military service or in the year following the member's return, based on the member's election, and in any of the 4 years after the member's election. A member who participated in a contingency operation after September 11, 2001, that required the member to serve at least 2 months outside of the state may make an election in 2007 or in the year following the member's return, based on the member's election, and in any of the 4 years after the member's election and be entitled to a free resident wildlife conservation license or a free Class AAA resident combination sports license in the year of election and in any of the 4 years after the member's election.

(b) To be eligible for the free resident wildlife conservation license or free Class AAA resident combination sports license provided for in subsection (12)(a), an applicant shall, in addition to the written application and proof of residency required in 87-2-202(1), provide to any regional department office or

to the department headquarters in Helena, by mail or in person, the member's DD form 214 verifying the member's release or discharge from active duty. The applicant is responsible for providing documentation showing that the applicant participated in a contingency operation as provided in 10 U.S.C. 101(a)(13).

(c) A Montana resident who meets the service qualifications of subsection (12)(a) and the documentation required in subsection (12)(b) is entitled to a free Class A resident fishing license in the license year that the member returns from military service or in the year following the member's return, based on the member's election, and in any of the 4 years after the member's election.

(d) The department's general license account must be reimbursed by a quarterly transfer of funds from the general fund to the general license account for costs associated with the free licenses granted pursuant to this subsection (12) during the preceding calendar quarter. Reimbursement costs must be designated as license revenue."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 24, 2009

CHAPTER NO. 353

[SB 73]

AN ACT REVISING THE DEFINITION OF MEDIUM-SPEED ELECTRIC VEHICLE; AND AMENDING SECTION 61-1-101, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-1-101, MCA, is amended to read:

"61-1-101. Definitions. As used in this title, unless the context indicates otherwise, the following definitions apply:

(1) (a) "Authorized agent" means a person who has executed a written agreement with the department and is specifically authorized by the department to electronically access and update the department's motor vehicle titling, registration, or driver records, using an approved automated interface, for specific functions or purposes upon behalf of a third party.

(b) For purposes of this subsection (1), "person" means an individual, corporation, partnership, limited partnership, limited liability company, association, joint venture, state agency, local government unit, another state government, the United States, a political subdivision of this or another state, or any other legal or commercial entity.

(2) "Authorized agent agreement" means the written agreement executed between an authorized agent and the department that sets the technical and operational program standards, compliance criteria, payment options, and service expectations by which the authorized agent is required to operate in performing specific motor vehicle or driver-related record functions.

(3) "Bus" means a motor vehicle designed for carrying more than 10 passengers and used for the transportation of persons and any other motor vehicle, other than a taxicab, designed and used for the transportation of persons for compensation.

(4) (a) "Business entity" means a corporation, association, partnership, limited liability partnership, limited liability company, or other legal entity recognized under state law.

(b) The term does not include an individual.

(5) (a) "Camper" means a structure designed to be mounted in the cargo area of a truck or attached to an incomplete vehicle for the purpose of providing shelter for persons. The term includes but is not limited to a cab-over, half cab-over, noncab-over, telescopic, and telescopic cab-over.

(b) The term does not include a truck canopy cover or topper.

(6) "Certificate of title" means the paper record issued by the department or by the appropriate agency of another jurisdiction that establishes a verifiable record of ownership between an identified person or persons and the motor vehicle specifically described in the record and that provides notice of a perfected security interest in the motor vehicle.

(7) "Commercial driver's license" means:

(a) a driver's license issued under or granted by the laws of this state that authorizes a person to operate a class of commercial motor vehicle; and

(b) the privilege of a person to drive a commercial motor vehicle, whether or not the person holds a valid commercial driver's license.

(8) (a) "Commercial motor vehicle" means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the vehicle:

(i) has a gross combination weight rating or a gross combination weight of 26,001 pounds or more, whichever is greater, inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds;

(ii) has a gross vehicle weight rating or a gross vehicle weight of 26,001 pounds or more, whichever is greater;

(iii) is designed to transport at least 16 passengers, including the driver;

(iv) is a school bus; or

(v) is of any size and is used in the transportation of hazardous materials as defined in 61-8-801.

(b) The following vehicles are not commercial motor vehicles:

(i) an authorized emergency service vehicle:

(A) equipped with audible and visual signals as required under 61-9-401 and 61-9-402; and

(B) entitled to the exemptions granted under 61-8-107;

(ii) a vehicle:

(A) controlled and operated by a farmer, family member of the farmer, or person employed by the farmer;

(B) used to transport farm products, farm machinery, or farm supplies to or from the farm within Montana within 150 miles of the farm or, if there is a reciprocity agreement with a state adjoining Montana, within 150 miles of the farm, including any area within that perimeter that is in the adjoining state; and

(C) not used to transport goods for compensation or for hire; or

(iii) a vehicle operated for military purposes by active duty military personnel, a member of the military reserves, a member of the national guard on active duty, including personnel on full-time national guard duty, personnel in part-time national guard training, and national guard military technicians, or active duty United States coast guard personnel.

(c) For purposes of this subsection (8):

(i) "farmer" means a person who operates a farm or who is directly involved in the cultivation of land or crops or the raising of livestock owned by or under the direct control of that person;

(ii) "gross combination weight rating" means the value specified by the manufacturer as the loaded weight of a combination or articulated vehicle;

(iii) "gross vehicle weight rating" means the value specified by the manufacturer as the loaded weight of a single vehicle; and

(iv) "school bus" has the meaning provided in 49 CFR 383.5.

(9) "Commission" means the state transportation commission.

(10) "Custom-built motorcycle" means a motorcycle that is equipped with:

(a) an engine that was manufactured 20 years prior to the current calendar year and that has been altered from the manufacturer's original design;

(b) an engine that was manufactured to resemble an engine 20 or more years old and that has been constructed in whole or in part from nonoriginal materials.

(11) "Custom vehicle" means a motor vehicle other than a motorcycle that:

(a) (i) was manufactured with a model year after 1948 and that is at least 25 years old; or

(ii) was built to resemble a vehicle manufactured after 1948 and at least 25 years before the current calendar year, including a kit vehicle intended to resemble a vehicle manufactured after 1948 and that is at least 25 years old; and

(b) has been altered from the manufacturer's original design or has a body constructed from nonoriginal materials.

(12) "Customer identification number" means:

(a) a driver's license or identification card number when the customer is an individual who has been issued a driver's license or identification card by a state driver licensing authority;

(b) a federal employer or tax identification number when the customer is a business entity that has been issued a federal employer or tax identification number;

(c) the identification number assigned by the secretary of state to a business entity authorized to do business in this state under Title 35 if the customer is a business entity that does not have a federal employer or tax identification number other than a social security number; or

(d) if the customer has not been issued one of the numbers described in subsections (12)(a) through (12)(c), a number assigned to the customer by the department when a transaction is initiated under this title.

(13) (a) "Dealer" means a person that, for commission or profit, engages in whole or in part in the business of buying, selling, exchanging, or accepting on consignment new or used motor vehicles, trailers, semitrailers, pole trailers, travel trailers, motorboats, sailboats, snowmobiles, off-highway vehicles, or special mobile equipment that is not registered in the name of the person.

(b) The term does not include the following:

(i) receivers, trustees, administrators, executors, guardians, or other persons appointed by or acting under a judgment or order of any court of competent jurisdiction;

(ii) employees of the persons included in subsection (13)(b)(i) when engaged in the specific performance of their duties as employees; or

(iii) public officers while performing or in the operation of their duties.

(14) "Declared weight" means the total unladen weight of a vehicle plus the weight of the maximum load to be carried on the vehicle as stated by the registrant in the application for registration.

(15) "Department" means the department of justice acting directly or through its duly authorized officers or agents.

(16) "Dolly or converter gear" means a device consisting of one or two axles with a fifth wheel and trailer tongue used to support the forward end of a semitrailer, converting a semitrailer into a trailer.

(17) "Domiciled" means a place where:

(a) an individual establishes residence;

(b) a business entity maintains its principal place of business;

(c) the business entity's registered agent maintains an address; or

(d) a business entity most frequently uses, dispatches, or controls a motor vehicle, trailer, semitrailer, or pole trailer that it owns or leases.

(18) "Driver" means a person who drives or is in actual physical control of a vehicle.

(19) "Driver's license" means a license or permit to operate a motor vehicle issued under or granted by the laws of this state, including:

(a) any temporary license or instruction permit;

(b) the privilege of any person to drive a motor vehicle, whether or not the person holds a valid license;

(c) any nonresident's driving privilege;

(d) a motorcycle endorsement; or

(e) a commercial driver's license.

(20) "Electric personal assistive mobility device" means a device that has two nontandem wheels, is self-balancing, and is designed to transport only one person with an electric propulsion system that limits the maximum speed of the device to 12 1/2 miles an hour.

(21) "For hire" means an action performed for remuneration of any kind, whether paid or promised, either directly or indirectly, or received or obtained through leasing, brokering, or buy-and-sell arrangements from which a remuneration is obtained or derived for transportation service.

(22) "Gross vehicle weight" means the weight of a vehicle without load plus the weight of any load on the vehicle.

(23) "Highway" or "public highway" means the entire width between the boundary lines of every publicly maintained way when any part of the publicly maintained way is open to the use of the public for purposes of vehicular travel.

(24) "Highway patrol officer" means a state officer authorized to direct or regulate traffic or to make arrests for violations of traffic regulations.

(25) "Implement of husbandry" means a vehicle that is designed for agricultural purposes and exclusively used by the owner of the vehicle in the conduct of the owner's agricultural operations.

(26) "Kit vehicle" is a motor vehicle assembled from a manufactured kit either as:

(a) a complete kit, consisting of a prefabricated body and chassis, to construct a new motor vehicle; or

(b) a kit with a prefabricated body to be mounted to an existing motor vehicle chassis and drivetrain, commonly referred to as a donor vehicle.

(27) "Light vehicle" means a motor vehicle commonly referred to as an automobile, van, sport utility vehicle, or truck having a manufacturer's rated capacity of 1 ton or less.

(28) "Manufactured home" has the meaning provided in 15-24-201.

(29) "Manufacturer" includes any person engaged in the manufacture of motor vehicles, trailers, semitrailers, pole trailers, travel trailers, motorboats, sailboats, snowmobiles, or off-highway vehicles as a regular business.

(30) "Manufacturer's certificate of origin" means the original paper record produced and issued by the manufacturer of a vehicle or, if in a medium authorized by the department, an electronic record created and transmitted by the manufacturer of a vehicle to the manufacturer's agent or a licensed dealer. The record must establish the origin of the vehicle specifically described in the record and, upon assignment, transfers of ownership of the vehicle to the person or persons named in the certificate.

(31) (a) "Medium-speed electric vehicle" is a motor vehicle, upon or by which a person may be transported, that:

(i) has a maximum speed of ~~35~~ *45* miles an hour as certified by the manufacturer;

(ii) is propelled by its own power, using an electric motor or other device that transforms stored electrical energy into the motion of the vehicle;

(iii) stores electricity in batteries, ultracapacitors, or similar devices, which are charged from the power grid or from renewable electrical energy sources;

(iv) is fully enclosed and includes at least one door for entry;

(v) has a wheelbase of 40 inches or greater and a wheel diameter of 10 inches or greater;

(vi) exhibits a manufacturer's compliance with 49 CFR, part 565, or displays a 17-character vehicle identification number as provided in 49 CFR, part 565;

(vii) bears a sticker, affixed by the manufacturer or dealer, on the left side of the rear window that indicates the vehicle's maximum speed rating; and

(viii) as certified by the manufacturer, is equipped as provided in 61-9-432.

(b) A medium-speed electric vehicle must be treated as a light vehicle for purposes of titling and registration under Title 61, chapter 3.

(c) A medium-speed electric vehicle may not have a gross vehicle weight in excess of 5,000 pounds.

(32) "Mobile home" or "housetrailer" has the meaning provided in 15-24-201.

(33) "Montana resident" means:

(a) an individual who resides in Montana as determined under 1-1-215;

(b) for the purposes of chapter 3, a business entity that maintains a principal place of business or a registered agent in this state.

(34) (a) "Motorboat" means a vessel, including a personal watercraft or pontoon, propelled by any machinery, motor, or engine of any description,

whether or not the machinery, motor, or engine is the principal source of propulsion. The term includes boats temporarily equipped with detachable motors or engines.

(b) The term does not include a vessel that has a valid marine document issued by the U.S. coast guard or any successor federal agency.

(35) (a) "Motor carrier" means a person or corporation or its lessees, trustees, or receivers appointed by a court that are operating motor vehicles upon a public highway in this state for the transportation of property for hire on a commercial basis.

(b) The term does not include motor carriers regulated under Title 69, chapter 12.

(36) (a) "Motorcycle" means a motor vehicle that has a seat or saddle for the use of the operator and that is designated to travel on not more than three wheels in contact with the ground. A motorcycle may carry one or more attachments and a seat for the conveyance of a passenger.

(b) The term does not include a tractor, a bicycle as defined in 61-8-102, a motorized nonstandard vehicle, or a two- or three-wheeled all-terrain vehicle that is used exclusively on private property.

(37) (a) "Motor-driven cycle" means a motorcycle, including a motor scooter, with a motor that produces 5 horsepower or less.

(b) The term does not include a bicycle, as defined in 61-8-102, or a motorized nonstandard vehicle.

(38) "Motor home" means a motor vehicle:

(a) designed to provide temporary living quarters, built as an integral part of or permanently attached to a self-propelled motor vehicle chassis or van;

(b) containing permanently installed independent life support systems that meet the ANSIA/A119.2 standard; and

(c) providing at least four of the following types of facilities:

(i) cooking, refrigeration, or icebox;

(ii) self-contained toilet;

(iii) heating or air-conditioning, or both;

(iv) potable water supply, including a faucet and sink; or

(v) separate 110-volt or 125-volt electrical power supply or a liquefied petroleum gas supply; or both.

(39) (a) "Motorized nonstandard vehicle" means a vehicle, upon or by which a person may be transported, that:

(i) is propelled by its own power, using an internal combustion engine or an electric motor;

(ii) has a wheelbase of less than 40 inches and a wheel diameter of less than 10 inches; and

(iii) does not display a manufacturer's certification in accordance with 49 CFR, part 567, or have a 17-character vehicle identification number assigned by the manufacturer in accordance with 49 CFR, part 565.

(b) The term includes but is not limited to a motorized skateboard and a vehicle commonly known as a "pocket rocket".

(c) The term does not include an electric personal assistive mobility device or a motorized wheelchair or other low-powered, mechanically propelled vehicle designed specifically for use by a physically disabled person.

(40) (a) "Motor vehicle" means:

(i) a vehicle propelled by its own power and designed or used to transport persons or property upon the highways of the state; and

(ii) a quadricycle if it is equipped for use on the highways as prescribed in chapter 9.

(b) The term does not include a bicycle as defined in 61-8-102, an electric personal assistive mobility device, a motorized nonstandard vehicle, or a motorized wheelchair or other low-powered, mechanically propelled vehicle that is designed specifically for use by a physically disabled person and that is used as a means of mobility for that person.

(41) "New motor vehicle" means a motor vehicle, regardless of the mileage of the vehicle, the legal or equitable title to which has never been transferred by a manufacturer, distributor, or dealer to another person as the result of a retail sale.

(42) "Nonresident" means a person who is not a Montana resident.

(43) (a) "Not used for general transportation purposes" means the operation of a motor vehicle, registered as a collector's item, a custom vehicle, a street rod, or a custom-built motorcycle to or from a car or motorcycle club activity or event or an exhibit, show, cruise night, or parade, or other occasional transportation activity.

(b) The term does not include operation of a motor vehicle for routine or ordinary household maintenance, employment, education, or other similar purposes.

(44) (a) "Off-highway vehicle" means a self-propelled vehicle designed for recreation or cross-country travel on public lands, trails, easements, lakes, rivers, or streams. The term includes but is not limited to motorcycles, quadricycles, dune buggies, amphibious vehicles, air cushion vehicles, and any other means of land transportation deriving motive power from any source other than muscle or wind.

(b) The term does not include:

(i) vehicles designed primarily for travel on, over, or in the water;

(ii) snowmobiles; or

(iii) motor vehicles designed to transport persons or property upon the highways unless the vehicle is used for off-road recreation on public lands.

(45) "Operator" means a person who is in actual physical control of a motor vehicle.

(46) "Owner" means a person who holds the legal title to a vehicle. If a vehicle is the subject of an agreement for the conditional sale of the vehicle with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee, or in the event a vehicle is subject to a lease, contract, or other legal arrangement vesting right of possession or control, for security or otherwise, or in the event a mortgagor of a vehicle is entitled to possession, then the owner is the person in whom is vested the right of possession or control.

(47) "Person" means an individual, corporation, partnership, association, firm, or other legal entity.

(48) "Personal watercraft" means a vessel that uses an outboard motor or an inboard engine powering a water jet pump as its primary source of propulsion and that is designed to be operated by a person sitting, standing, or kneeling on the vessel rather than by the conventional method of sitting or standing in the vessel.

(49) "Pole trailer" means a vehicle without power designed to be drawn by another vehicle and attached to the towing vehicle by means of a reach or pole or by being boomed or otherwise secured to the towing vehicle and ordinarily used for transporting long or irregularly shaped loads such as poles, pipes, or structural members capable generally of sustaining themselves as beams between the supporting connections.

(50) "Police officer" means an officer authorized to direct or regulate traffic or to make arrests for violations of traffic regulations.

(51) (a) "Quadricycle" means a four-wheeled motor vehicle, designed for on-road or off-road use, having a seat or saddle upon which the operator sits and a motor capable of producing not more than 50 horsepower.

(b) The term does not include golf carts.

(52) "Railroad" means a carrier of persons or property upon cars, other than streetcars, operated upon stationary rails.

(53) (a) "Railroad train" or "train" means a steam engine or electric or other motor, with or without cars coupled to the engine, that is operated upon rails.

(b) The term does not include streetcars.

(54) "Recreational vehicle" includes a motor home, travel trailer, or camper.

(55) "Registration" or "register" means the act or process of creating an electronic record, maintained by the department, of the assignment of a license plate or a set of license plates to and the issuance of a registration decal for a specific vehicle, the ownership of which has been established or is presumed in department records.

(56) "Registration decal" means an adhesive sticker produced by the department and issued by the department, its authorized agent, or a county treasurer to the owner of a motor vehicle, trailer, semitrailer, pole trailer, motorboat, sailboat, personal watercraft, or snowmobile as proof of payment of all fees imposed for the registration period indicated on the sticker as recorded by the department under 61-3-101.

(57) "Registration receipt" means a paper record that is produced and issued or, if authorized by the department, an electronic record that is transmitted by the department, its authorized agent, or a county treasurer to the owner of a vehicle that identifies a vehicle, based on information maintained in the electronic record of title for the vehicle, and that provides evidence of the payment of all fees required to be paid for the registration of the vehicle for the registration period indicated in the receipt.

(58) "Retail sale" means the sale of a motor vehicle, trailer, semitrailer, pole trailer, travel trailer, motorboat, snowmobile, off-highway vehicle, or special mobile equipment by a dealer to a person for purposes other than resale.

(59) "Revocation" means the termination by action of the department of a person's driver's license, privilege to drive a motor vehicle on the public highways, and privilege to apply for and be issued a driver's license for a period of time designated by law, during which the license or privilege may not be renewed, restored, or exercised. An application for a new license may be

presented and acted upon by the department after the expiration of the period of the revocation.

(60) "Roadway" means that portion of a highway improved, designed, or ordinarily used for vehicular travel, exclusive of the berm or shoulder. In the event that a highway includes two or more separate roadways, the term refers to any roadway separately but not to all roadways collectively.

(61) (a) "Sailboat" means a vessel that uses a sail and wind as its primary source of propulsion.

(b) The term does not include a canoe or kayak propelled by wind.

(62) "Sell" means to transfer ownership from one person to another person or from a dealer to another person for consideration.

(63) "Semitrailer" means a vehicle, with or without motive power, other than a pole trailer, designed for carrying property and for being drawn by a motor vehicle and constructed so that some part of its weight and that of its load rests upon or is carried by another vehicle.

(64) "Snowmobile" means a self-propelled vehicle of an overall width of 48 inches or less, excluding accessories, that is designed primarily for travel on snow or ice, that may be steered by skis or runners, and that is not otherwise registered or licensed under the laws of the state of Montana.

(65) "Special mobile equipment" means a vehicle not designed for the transportation of persons or property on the highways but incidentally operated or moved over the highways, including road construction or maintenance machinery, ditch-digging apparatus, and well-boring apparatus. The fact that equipment is permanently attached to a vehicle does not make the vehicle special mobile equipment. The enumeration in this subsection is partial and does not exclude other vehicles that are within the general terms of this subsection.

(66) (a) "Specially constructed vehicle" means a motor vehicle, including a motorcycle, that:

(i) was not originally constructed under a distinctive make, model, or type by a generally recognized manufacturer of motor vehicles;

(ii) has been structurally modified so that it does not have the same appearance as similar vehicles from a generally recognized manufacturer of motor vehicles;

(iii) has been constructed or assembled entirely from custom-built parts and materials not obtained from other vehicles;

(iv) has been constructed or assembled by using major component parts from one or more manufactured vehicles and that cannot be identified as a specific make or model; or

(v) has been constructed by the use of a kit that cannot be visually identified as a specific make or model.

(b) The term does not include a motor vehicle that has been repaired or restored to its original design by replacing parts.

(67) (a) "Sport utility vehicle" means a light vehicle designed to transport 10 or fewer persons that is constructed on a truck chassis or that has special features for occasional off-road use.

(b) The term does not include trucks having a manufacturer's rated capacity of 1 ton or less.

(68) (a) "Stop", when required, means complete cessation from movement.

(b) "Stop", "stopping", or "standing", when prohibited, means any stopping or standing of a vehicle, whether occupied or not, except when necessary to avoid conflict with other traffic or in compliance with the directions of a police officer, highway patrol officer, or traffic control sign or signal.

(69) "Storage lot" means property owned, leased, or rented by a dealer that is not contiguous to the dealer's established place of business where a motor vehicle from the dealer's inventory may be placed when space at the dealer's established place of business is not available.

(70) "Street" means the entire width between the boundary lines of every publicly maintained way when any part of the publicly maintained way is open to the use of the public for purposes of vehicular travel.

(71) "Street rod" means a motor vehicle, other than a motorcycle, that:

(a) was manufactured prior to 1949 or was built to resemble a vehicle manufactured before 1949, including a kit vehicle intended to resemble a vehicle manufactured before 1949; and

(b) has been altered from the manufacturer's original design or has a body constructed from nonoriginal materials.

(72) "Suspension" means the temporary withdrawal by action of the department of a person's driver's license, privilege to drive a motor vehicle on the public highways, and privilege to apply for or be issued a driver's license for a period of time designated by law.

(73) "Temporary registration permit" means a paper record:

(a) issued by the department, an authorized agent, a county treasurer, or a person, using a department-approved electronic interface after an electronic record has been transmitted to the department, that contains:

(i) required vehicle and owner information; and

(ii) the purpose for which the record was generated; and

(b) that, when placed in a durable license-plate style plastic pouch approved by the department and displayed as prescribed in 61-3-224, authorizes a person to operate the described motor vehicle, motorboat, sailboat that is 12 feet in length or longer, snowmobile, or off-highway vehicle for 40 days from the date the record is issued or until the vehicle is registered under Title 23 or this title, whichever first occurs.

(74) "Traffic" means pedestrians, ridden or herded animals, vehicles, streetcars, and other conveyances either singly or together while using any highways for purposes of travel.

(75) (a) "Trailer" means a vehicle, with or without motive power, other than a pole trailer, designed for carrying property and for being drawn by a motor vehicle and constructed so that no part of its weight rests upon the towing vehicle.

(b) The term does not include a mobile home or a manufactured home, as defined in 15-1-101.

(76) "Transaction summary receipt" means an electronic record produced and issued by the department, its authorized agent, or a county treasurer for which a paper receipt is issued. The record may be created by the department and transmitted to the owner of a vehicle, a secured party, or a lienholder. The record must contain a unique transaction record number and summarize and

verify the electronic filing of the transaction described in the receipt on the electronic record of title maintained under 61-3-101.

(77) "Travel trailer" means a vehicle:

(a) that is 40 feet or less in length;

(b) that is of a size or weight that does not require special permits when towed by a motor vehicle;

(c) with gross trailer area of less than 320 square feet; and

(d) that is designed to provide temporary facilities for recreational, travel, or camping use and not used as a principal residence.

(78) "Truck" or "motortruck" means a motor vehicle designed, used, or maintained primarily for the transportation of property.

(79) "Truck tractor" means a motor vehicle designed and used primarily for drawing other vehicles and not constructed to carry a load other than a part of the weight of the vehicle and load drawn.

(80) "Under the influence" has the meaning provided in 61-8-401.

(81) "Used motor vehicle" includes any motor vehicle that has been sold, bargained, exchanged, given away, or had its title transferred from the person who first took title to it from the manufacturer, importer, dealer, wholesaler, or agent of the manufacturer or importer and that has been used so as to have become what is commonly known as "secondhand" within the ordinary meaning of that term.

(82) "Van" means a motor vehicle designed for the transportation of at least six persons and not more than nine persons and intended for but not limited to family or personal transportation without compensation.

(83) (a) "Vehicle" means a device in, upon, or by which any person or property may be transported or drawn upon a public highway, except devices moved by animal power or used exclusively upon stationary rails or tracks.

(b) The term does not include a manually or mechanically propelled wheelchair or other low-powered, mechanically propelled vehicle that is designed specifically for use by a physically disabled person and that is used as a means of mobility for that person.

(84) "Vehicle identification number" means the number, letters, or combination of numbers and letters assigned by the manufacturer, by the department, or in accordance with the laws of another state or country for the purpose of identifying the motor vehicle or a component part of the motor vehicle.

(85) "Vessel" means every description of watercraft, unless otherwise defined by the department, other than a seaplane on the water, used or capable of being used as a means of transportation on water.

(86) "Wholesaler" means a person that for a commission or with intent to make a profit or gain of money or other thing of value sells, exchanges, or attempts to negotiate a sale or exchange of an interest in a used motor vehicle, trailer, semitrailer, pole trailer, travel trailer, motorboat, snowmobile, off-highway vehicle, or special mobile equipment only to dealers and auto auctions licensed under chapter 4, part 1."

Approved April 24, 2009

CHAPTER NO. 354

[SB 79]

AN ACT DEFINING "NONEMERGENCY AMBULANCE TRANSPORT" AND "VOLUNTEER EMERGENCY MEDICAL TECHNICIAN"; ESTABLISHING STAFFING REQUIREMENTS FOR CERTAIN AMBULANCE TRANSPORTS; AMENDING SECTION 50-6-302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-6-302, MCA, is amended to read:

"50-6-302. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Aircraft" has the same meaning given in 67-1-101. The term includes any fixed-wing airplane or helicopter.

(2) (a) "Ambulance" means a privately or publicly owned motor vehicle or aircraft that is maintained and used for the transportation of patients.

(b) The term does not include:

(i) a motor vehicle or aircraft owned by or operated under the direct control of the United States; or

(ii) air transportation services, such as charter or fixed-based operators, that are regulated by the federal aviation administration and that offer no special medical services or provide only transportation to patients or persons at the direction or under the supervision of an independent physician.

(3) "Department" means the department of public health and human services provided for in 2-15-2201.

(4) "Emergency medical service" means a prehospital or interhospital emergency medical transportation or treatment service provided by an ambulance or nontransporting medical unit.

(5) "Medical control" means the function of a licensed physician in providing direction, advice, or orders to an emergency medical service provider.

(6) "Nonemergency ambulance transport" means the use of an ambulance to transport a patient between health care facilities, as defined in 50-5-101, including federal facilities, when the patient's medical condition requires special transportation considerations, supervision, or handling but does not indicate a need for medical treatment during transit or for emergency medical treatment upon arrival at the receiving health care facility.

~~(6)~~*(7)* "Nontransporting medical unit" means an aggregate of persons who are organized to respond to a call for emergency medical service and to treat a patient until the arrival of an ambulance. Nontransporting medical units provide any one of varying types and levels of service defined by department rule but may not transport patients.

~~(7)~~*(8)* "Offline medical director" means a physician who is responsible and accountable for the overall medical direction and medical supervision of an emergency medical service and who is responsible for the proper application of patient care techniques and the quality of care provided by the emergency medical services personnel. The term includes only a physician who volunteers the physician's services as an offline medical director or whose total reimbursement for those services in any 12-month period does not exceed $5,000.

~~(8)~~*(9)* (a) "Patient" means an individual who is sick, injured, wounded, or otherwise incapacitated or helpless.

(b) The term does not include an individual who is nonambulatory and who needs transportation assistance solely because that individual is confined to a wheelchair as the individual's usual means of mobility.

~~(9)~~*(10)* "Person" means an individual, firm, partnership, association, corporation, company, group of individuals acting together for a common purpose, or organization of any kind, including a governmental agency other than the United States.

(11) "Volunteer emergency medical technician" means an individual who is licensed pursuant to Title 50, chapter 6, part 2, and provides emergency medical care:

(a) on the days and at the times of the day chosen by the individual; and

(b) for an emergency medical service other than:

(i) a private ambulance company, unless the care is provided without compensation and outside of the individual's regular work schedule; or

(ii) a private business or a public agency, as defined in 7-1-4121, that employs the individual on a regular basis with a regular, hourly wage to provide emergency medical care as part of the individual's job duties."

Section 2. Staffing — nonemergency ambulance transports — transports in rural areas. An emergency medical service that is staffed primarily by volunteer emergency medical technicians may staff an ambulance with one emergency medical technician licensed at an emergency medical technician-basic level or higher and one driver trained in the operation of emergency vehicles for the following types of responses:

(1) nonemergency ambulance transports;

(2) emergency medical service provided by an ambulance company located in a county with a population of fewer than 20,000 residents; and

(3) emergency medical service provided by an ambulance company located in a county with a population of 20,000 residents or more if the ambulance company is transporting a patient from a community within that county that has a population of 1,500 residents or less to the nearest health care facility that is able to meet the patient's medical needs.

Section 3. Codification instruction. [Section 2] is intended to be codified as an integral part of Title 50, chapter 6, part 3, and the provisions of Title 50, chapter 6, apply to [section 2].

Section 4. Effective date. [This act] is effective on passage and approval.

Approved April 24, 2009

CHAPTER NO. 355

[SB 86]

AN ACT GENERALLY REVISING GAMBLING LAWS; REVISING DEFINITIONS; REQUIRING THE SUBMISSION OF FINGERPRINTS FOR THE PURPOSE OF CRIMINAL BACKGROUND CHECKS BY LICENSE APPLICANTS; PROVIDING FOR A LICENSE FOR ASSOCIATED GAMBLING BUSINESSES; REQUIRING APPROVAL OF CERTAIN BINGO CARDS; REMOVING CERTAIN RESTRICTIONS ON RAFFLE PRIZES;

AMENDING SECTIONS 23-5-112, 23-5-115, 23-5-157, 23-5-324, 23-5-412, 23-5-413, AND 23-5-621, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 23-5-112, MCA, is amended to read:

"23-5-112. Definitions. Unless the context requires otherwise, the following definitions apply to parts 1 through 8 of this chapter:

(1) "Applicant" means a person who has applied for a license or permit issued by the department pursuant to parts 1 through 8 of this chapter.

(2) "Application" means a written request for a license or permit issued by the department. The department shall adopt rules describing the forms and information required for issuance of a license.

(3) "Associated gambling business" means a person who provides a service or product to a licensed gambling business and who:

(a) has a reason to possess or maintain control over gambling devices;

(b) has access to proprietary information or gambling tax information; or

(c) is a party in processing gambling transactions.

~~(3)~~*(4)* "Authorized equipment" means, with respect to live keno or bingo, equipment that may be inspected by the department and that randomly selects the numbers.

~~(4)~~*(5)* "Bingo" means a gambling activity played for prizes with a card bearing a printed design of 5 columns ~~of 5 squares each, 25 squares in all~~. The letters B-I-N-G-O must appear above the design, with each letter above one of the columns. More than 75 numbers may not be used. One ~~number must~~ *or more numbers may* appear in each square, except for the center square, which may be considered a free play. Numbers ~~are~~ *must be* randomly drawn using authorized equipment until the game is won by the person or persons who first cover one or more previously designated arrangements of numbers on the bingo card.

~~(5)~~*(6)* "Bingo caller" means a person 18 years of age or older who, using authorized equipment, announces the order of the numbers drawn in live bingo.

~~(6)~~*(7)* "Card game table" or "table" means a live card game table:

(a) authorized by permit and made available to the public on the premises of a licensed gambling operator; or

(b) operated by a senior citizen center.

~~(7)~~*(8)* "Card game tournament" means a gambling activity for which a permit has been issued involving participants who pay valuable consideration for the opportunity to compete against each other in a series of live card games conducted over a designated period of time.

~~(8)~~*(9)* "Dealer" means a person with a dealer's license issued under part 3 of this chapter.

~~(9)~~*(10)* "Department" means the department of justice.

~~(10)~~*(11)* "Distributor" means a person who:

(a) purchases or obtains from a licensed manufacturer, distributor, or route operator equipment of any kind for use in gambling activities; and

(b) sells the equipment to a licensed distributor, route operator, or operator.

~~(11)~~*(12)* (a) "Gambling" or "gambling activity" means risking any money, credit, deposit, check, property, or other thing of value for a gain that is

contingent in whole or in part upon lot, chance, or the operation of a gambling device or gambling enterprise.

(b) The term does not mean conducting or participating in a promotional game of chance and does not include amusement games regulated by Title 23, chapter 6, part 1.

(c) The term does not include social card games played solely for prizes of minimal value, defined as class I gaming by 25 U.S.C. 2703.

~~(12)~~*(13)* "Gambling device" means a mechanical, electromechanical, or electronic device, machine, slot machine, instrument, apparatus, contrivance, scheme, or system used or intended for use in any gambling activity.

~~(13)~~*(14)* "Gambling enterprise" means an activity, scheme, or agreement or an attempted activity, scheme, or agreement to provide gambling or a gambling device to the public.

~~(14)~~*(15)* (a) "Gift enterprise" means a gambling activity in which persons have qualified to obtain property to be awarded by purchasing or agreeing to purchase goods or services.

(b) The term does not mean:

(i) a cash or merchandise attendance prize or premium that county fair commissioners of agricultural fairs and rodeo associations may give away at public drawings at fairs and rodeos;

(ii) a promotional game of chance; or

(iii) an amusement game regulated under Title 23, chapter 6.

~~(15)~~*(16)* "Gross proceeds" means gross revenue received less prizes paid out.

~~(16)~~*(17)* "House player" means a person participating in a card game who has a financial relationship with the operator, card room contractor, or dealer or who has received money or chips from the operator, card room contractor, or dealer to participate in a card game.

~~(17)~~*(18)* "Illegal gambling device" means a gambling device not specifically authorized by statute or by the rules of the department. The term includes:

(a) a ticket or card, by whatever name known, containing concealed numbers or symbols that may match numbers or symbols designated in advance as prize winners, including a pull tab, punchboard, push card, tip board, pickle ticket, break-open, or jar game, except for one used under Title 23, chapter 7, or under part 5 of this chapter or in a promotional game of chance approved by the department; and

(b) an apparatus, implement, or device, by whatever name known, specifically designed to be used in conducting an illegal gambling enterprise, including a faro box, faro layout, roulette wheel, roulette table, craps table, or slot machine, except as provided in 23-5-153.

~~(18)~~*(19)* "Illegal gambling enterprise" means a gambling enterprise that violates or is not specifically authorized by a statute or a rule of the department. The term includes:

(a) a card game, by whatever name known, involving any bank or fund from which a participant may win money or other consideration and that receives money or other consideration lost by the participant and includes the card games of blackjack, twenty-one, jacks or better, baccarat, or chemin de fer;

(b) a dice game, by whatever name known, in which a participant wagers on the outcome of the roll of one or more dice, including craps, hazard, or chuck-a-luck, but not including activities authorized by 23-5-160;

(c) sports betting, by whatever name known, in which a person places a wager on the outcome of an athletic event, including bookmaking, parlay bets, or sultan sports cards, but not including those activities authorized in Title 23, chapter 4, and parts 2, 5, and 8 of this chapter;

(d) credit gambling; and

(e) internet gambling.

~~(19)~~*(20)* (a) "Internet gambling", by whatever name known, includes but is not limited to the conduct of any legal or illegal gambling enterprise through the use of communications technology that allows a person using money, paper checks, electronic checks, electronic transfers of money, credit cards, debit cards, or any other instrumentality to transmit to a computer information to assist in the placing of a bet or wager and corresponding information related to the display of the game, game outcomes, or other similar information.

(b) The term does not include the operation of a simulcast facility or advance deposit wagering with a licensed advance deposit wagering hub operator allowed by Title 23, chapter 4, or the state lottery provided for in Title 23, chapter 7. If all aspects of the gaming are conducted on Indian lands in conformity with federal statutes and with administrative regulations of the national Indian gaming commission, the term does not include class II gaming or class III gaming as defined by 25 U.S.C. 2703.

~~(20)~~*(21)* "Keno" means a game of chance in which prizes are awarded using a card with 8 horizontal rows and 10 columns on which a player may pick up to 10 numbers. A keno caller, using authorized equipment, shall select at random at least 20 numbers out of numbers between 1 and 80, inclusive.

~~(21)~~*(22)* "Keno caller" means a person 18 years of age or older who, using authorized equipment, announces the order of the numbers drawn in live keno.

~~(22)~~*(23)* "License" means a license for an operator, dealer, card room contractor, manufacturer of devices not legal in Montana, sports tab game seller, manufacturer of electronic live bingo or keno equipment, other manufacturer, distributor, or route operator that is issued to a person by the department.

~~(23)~~*(24)* "Licensee" means a person who has received a license from the department.

~~(24)~~*(25)* "Live card game" or "card game" means a card game that is played in public between persons on the premises of a licensed gambling operator or in a senior citizen center.

~~(25)~~*(26)* (a) "Lottery" means a scheme, by whatever name known, for the disposal or distribution of property among persons who have paid or promised to pay valuable consideration for the chance of obtaining the property or a portion of it or for a share or interest in the property upon an agreement, understanding, or expectation that it is to be distributed or disposed of by lot or chance.

(b) The term does not mean lotteries authorized under Title 23, chapter 7.

~~(26)~~*(27)* "Manufacturer" means a person who:

(a) assembles from raw materials or subparts a completed piece of equipment or pieces of equipment of any kind to be used as a gambling device and who sells the equipment directly to a licensed distributor, route operator, or operator; or

(b) possesses gambling devices or components of gambling devices for the purpose of testing them.

~~(27)~~*(28)* "Nonprofit organization" means a nonprofit corporation or nonprofit charitable, religious, scholastic, educational, veterans', fraternal, beneficial, civic, senior citizens', or service organization established ~~for purposes other than to conduct a gambling activity~~ *to support charitable activities, scholarships or educational grants, or community service projects*.

~~(28)~~*(29)* "Operator" means a person who purchases, receives, or acquires, by lease or otherwise, and operates or controls for use in public a gambling device or gambling enterprise authorized under parts 1 through 8 of this chapter.

~~(29)~~*(30)* "Permit" means approval from the department to make available for public play a gambling device or gambling enterprise approved by the department pursuant to parts 1 through 8 of this chapter.

~~(30)~~*(31)* "Person" or "persons" means both natural and artificial persons and all partnerships, corporations, associations, clubs, fraternal orders, and societies, including religious and charitable organizations.

~~(31)~~*(32)* "Premises" means the physical building or property within or upon which a licensed gambling activity occurs, as stated on an operator's license application and approved by the department.

~~(32)~~*(33)* "Promotional game of chance" means a scheme, by whatever name known, for the disposal or distribution of property among persons who have not paid or are not expected to pay any valuable consideration or who have not purchased or are not expected to purchase any goods or services for a chance to obtain the property, a portion of it, or a share in it. The property is disposed of or distributed by simulating a gambling enterprise authorized by parts 1 through 8 of this chapter or by operating a device or enterprise approved by the department that was manufactured or intended for use for purposes other than gambling.

~~(33)~~*(34)* "Public gambling" means gambling conducted in:

(a) a place, building, or conveyance to which the public has access or may be permitted to have access;

(b) a place of public resort, including but not limited to a facility owned, managed, or operated by a partnership, corporation, association, club, fraternal order, or society, including a religious or charitable organization; or

(c) a place, building, or conveyance to which the public does not have access if players are publicly solicited or the gambling activity is conducted in a predominantly commercial manner.

~~(34)~~*(35)* "Raffle" means a form of lottery in which each participant pays valuable consideration for a ticket to become eligible to win a prize. Winners must be determined by a random selection process approved by department rule.

~~(35)~~*(36)* "Route operator" means a person who:

(a) purchases from a licensed manufacturer, route operator, or distributor equipment of any kind for use in a gambling activity;

(b) leases the equipment to a licensed operator for use by the public; and

(c) may sell to a licensed operator equipment that had previously been authorized to be operated on a premises.

~~(36)~~*(37)* "Senior citizen center" means a facility operated by a nonprofit or governmental organization that provides services to senior citizens in the form of daytime or evening educational or recreational activities and does not provide living accommodations to senior citizens. Services qualifying under this

definition must be recognized in the state plan on aging adopted by the department of public health and human services.

~~(37)~~*(38)* (a) "Slot machine" means a mechanical, electrical, electronic, or other gambling device, contrivance, or machine that, upon insertion of a coin, currency, token, credit card, or similar object or upon payment of any valuable consideration, is available to play or operate, the play or operation of which, whether by reason of the skill of the operator or application of the element of chance, or both, may deliver or entitle the person playing or operating the gambling device to receive cash, premiums, merchandise, tokens, or anything of value, whether the payoff is made automatically from the machine or in any other manner.

(b) This definition does not apply to video gambling machines authorized under part 6 of this chapter.

~~(38)~~*(39)* "Video gambling machine" is a gambling device specifically authorized by part 6 of this chapter and the rules of the department."

Section 2. Section 23-5-115, MCA, is amended to read:

"23-5-115. Powers and duties of department — licensing. (1) The department shall administer the provisions of parts 1 through 8 of this chapter.

(2) The department shall adopt rules to administer and implement parts 1 through 8 of this chapter.

(3) The department shall provide licensing procedures, prescribe necessary application forms, and grant or deny license applications.

(4) The department shall, as a prerequisite to the issuance of a license pursuant to the authority contained in this chapter, require the applicant to submit fingerprints for the purpose of a criminal background investigation by the department and the federal bureau of investigation.

(5) The applicant shall sign a release of information to the department and is responsible to the department for the payment of all fees associated with the criminal background check.

~~(4)~~*(6)* The department shall prescribe recordkeeping requirements for licensees, provide a procedure for inspection of records, provide a method for collection of taxes, and establish penalties for the delinquent reporting and payment of required taxes.

~~(5)~~*(7)* The department may suspend, revoke, deny, or place a condition on a license issued under parts 1 through 8 of this chapter.

~~(6)~~*(8)* The department may not make public or otherwise disclose confidential criminal justice information, as defined in 44-5-103, information obtained in the tax reporting processes, personal information protected by an individual privacy interest, or trade secrets, as defined in 30-14-402, specifically identified and for which there are reasonable grounds of privilege asserted by the party claiming the privilege.

~~(7)~~*(9)* The department shall assess, collect, and disburse any fees, taxes, or charges authorized under parts 1 through 8 of this chapter."

Section 3. Section 23-5-157, MCA, is amended to read:

"23-5-157. Gambling on cash basis — penalties. (1) (a) In every gambling activity, except raffles as authorized in 23-5-413 and card games authorized in part 3 of this chapter and normally scored using points, the consideration paid for the chance to play must be made in cash. A check or ~~credit~~ *debit* card may be used to obtain cash to participate in a gambling activity. A

participant shall present the cash needed to play the game as the game is being played. If a check or ~~credit~~ *debit* card is used to obtain cash on the premises of a licensee then it must be delivered and accepted unconditionally. A licensee or employee of a licensee may not hold a check or other evidence of indebtedness for redemption pending the outcome of a gambling activity.

(b) Credit gambling is prohibited. Credit gambling is offering or accepting as part of the price of participation in a gambling activity or as payment of a debt incurred in a gambling activity:

(i) a check*,* ~~or~~ credit card*, or debit card* held pending the outcome of a gambling activity;

(ii) a loan of any kind at any time from or on behalf of a licensee;

(iii) any form of deferred payment, including a note, IOU, post-dated check, hold check, or other evidence of indebtedness; or

(iv) a check issued or delivered that is accepted by the licensee with the knowledge that it will not be paid by the depository.

(2) A person who violates this section is guilty of a criminal offense under 23-5-156 and must be punished in accordance with 23-5-161 or 23-5-162."

Section 4. Section 23-5-324, MCA, is amended to read:

"23-5-324. Card room contractor's license — fee — submission of contract. (1) It is a misdemeanor for a person to enter into a contract with a licensed operator to operate one or more live card game tables on the operator's premises without obtaining a card room contractor's license from the department.

(2) The department shall charge an annual license fee of $150 for issuing or renewing a card room contractor's license. The department shall retain the fee for administrative purposes.

(3) The applicant shall submit at the time of application for a card room contractor's license a copy of ~~the~~ *a proposed lease* agreement ~~entered into~~ with ~~the~~ *a* licensed operator."

Section 5. Section 23-5-412, MCA, is amended to read:

"23-5-412. Card prices and prizes — exception. (1) Except as provided in subsection (3):

(a) the price for an individual bingo or keno card may not exceed 50 cents;

(b) a prize may not exceed the value of $100 for each individual bingo game or keno card; and

(c) it is unlawful to, in any manner, combine any bingo or keno games so as to increase the ultimate value of the prize.

(2) Bingo and keno prizes may be paid in either tangible personal property or cash.

(3) (a) A variation of the game of keno, as approved by the department, in which a player selects three or more numbers and places a wager on various combinations of these numbers is permissible if:

(i) no more than 50 cents is wagered on each combination of numbers; and

(ii) a winning combination does not pay more than $100.

(b) A variation of the game of bingo, as approved by the department, in which prizes may be awarded for each winning bingo pattern on a card is permissible if:

(i) no more than 50 cents is wagered on each bingo pattern; and

(ii) a winning pattern does not pay more than $100.

(4) Any bingo card other than a standard card with 5 columns and 25 squares with 1 number appearing in each square or any card that allows the player to print numbers on the card must be approved by the department prior to being offered for play.

~~(4)~~*(5)* A player may give a keno caller a card with instructions on the card to play that card and its marked numbers for up to the number of successive games that the house allows and that the player has indicated on the card, upon payment of the price per game times the number of successive games indicated. The player shall remain on the house premises until the card is played or withdrawn. The caller shall keep the card until the end of the number of games indicated, and the department may by rule provide that at that time the caller shall pay the player any prizes won.

~~(5)~~*(6)* If a licensed operator conducts a promotional game of chance involving bingo or keno, the prize limit provided for in subsection (1) applies to prizes awarded as a result of the promotional game of chance."

Section 6. Section 23-5-413, MCA, is amended to read:

"23-5-413. Raffle prizes ~~— permits — exceptions~~ — ***investigations — rulemaking.*** (1) (a) ~~Except as provided in subsections (1)(b) and (1)(c), a permit must be issued by the board of county commissioners for each raffle conducted within its jurisdiction. The permit must be issued before the raffle may be conducted.~~ *The department shall investigate all violations of this part.*

(b) ~~If tickets for a raffle are to be sold in more than one county, a permit must be obtained only in the county where the winners of the raffle are to be determined.~~ *The department may adopt rules to require recordkeeping for receipts and payouts under this part and to establish procedures to ensure the fair selection of winners.*

~~(c) If a raffle is to be conducted by a religious corporation sole or a nonprofit organization, as defined in 23-5-112, a county permit is not required.~~

(2) *(a)* ~~Except for a religious corporation sole or a nonprofit organization, a~~ *A* person or organization conducting a raffle shall own all prizes to be awarded as part of the raffle before the sale of any tickets.

(b) The value of a prize awarded for an individual ticket for a raffle conducted by a person or an organization may not exceed $5,000. Prizes may not be combined in any manner to increase the ultimate value of the prize awarded for each ticket.

(c) The provisions of subsections (2)(a) and (2)(b) do not apply to a nonprofit organization, a college, a university, a public school district as provided in 20-6-101 and 20-6-701, or a nonpublic school as described in 20-5-102(2)(e). The proceeds from the sale of tickets for a raffle conducted by a nonprofit organization, college, university, or school district may be used only for charitable purposes or to pay for prizes and may not be used for the administrative costs of conducting the raffle.

~~(3) A person who has conducted a raffle must submit an accounting to the board of county commissioners within 30 days following the completion of the raffle.~~

~~(4)~~*(3) (a)* The sale of raffle tickets authorized by this part is restricted to events and participants within the geographic confines of the state.

(b) The sale of raffle tickets may not be conducted over the internet. All raffle announcements or advertisements conducted over the internet must include this sale restriction, the name of the organization offering the raffle, and all raffle terms.

~~(5) The value of a prize awarded for an individual ticket for a raffle conducted by a person or an organization, other than a religious corporation sole or a nonprofit organization, may not exceed $5,000. The prize may be in the form of cash, other intangible personal property, tangible personal property, or real property. Prizes may not be combined in any manner to increase the ultimate value of the prize awarded for each ticket.~~

~~(6) (a) A religious corporation sole or a nonprofit organization shall comply with the requirements in subsections (3) and (4).~~

~~(b) The proceeds from the sale of tickets for a raffle conducted by a religious corporation sole or a nonprofit organization may be used only for charitable purposes or to pay for prizes. Proceeds may not be used for the administrative cost of conducting the raffle.~~

~~(c) (i) The value of a prize awarded for an individual ticket for a raffle conducted by a religious corporation sole or a nonprofit organization may equal or exceed $5,000 if the prize is in the form of:~~

~~(A) tangible personal property; or~~

~~(B) real property the fair market value of which has been certified in writing by an appraiser licensed under 37-54-201.~~

~~(ii) If the value of the prize is less than $5,000, the prize may be in the form of cash, other intangible personal property, tangible personal property, or real property.~~"

Section 7. Section 23-5-621, MCA, is amended to read:

"23-5-621. Rules. (1) The department shall adopt rules that:

(a) implement 23-5-637;

(b) describe the video gambling machines authorized by this part and state the specifications for video gambling machines authorized by this part, including a description of the images and the minimum area of a screen that depicts a bingo, poker, or keno game;

(c) allow video gambling machines to be imported into this state and used for the purposes of trade shows, exhibitions, and similar activities;

(d) allow each video gambling machine to offer any combination of approved poker, keno, and bingo games within the same video gambling machine cabinet if the owner of the video gambling machine has received approval to report video gambling machine information utilizing an approved automated accounting and reporting system or has entered into an agreement with the department to utilize an approved automated accounting and reporting system;

(e) allow, on an individual license basis, licensed machine owners and operators of machines that utilize an approved automated accounting and reporting system to:

(i) electronically acquire and use for an individual licensed premises the information and data collected for business management, accounting, and payroll purposes; however, the rules must specify that the data made available as a result of an approved automated accounting and reporting system may not be used by licensees for player tracking purposes; and

(ii) acquire and use, at the expense of a licensee, a department-approved site controller;

(f) minimize, whenever possible, the recordkeeping and retention requirements for video gambling machines that utilize an approved automated accounting and reporting system.

(2) The department's rules for an approved automated accounting and reporting system must, at a minimum:

(a) provide for confidentiality of information received through the approved automated accounting and reporting system within the limits prescribed by ~~23-5-115(6)~~ *23-5-115(8)* and 23-5-116;

(b) prescribe specifications for maintaining the security and integrity of the approved automated accounting and reporting system;

(c) limit and prescribe the circumstances for electronic issuance of video gambling machine permits and electronic transfer of funds for payment of taxes, fees, or penalties to the department;

(d) describe specifications and a review and testing process for approved automated accounting and reporting systems to be utilized by licensed operators, including the requirements for electronically captured data; and

(e) prescribe the frequency of reporting from an approved automated accounting and reporting system and provide exceptions for geographically isolated video gambling operators."

Section 8. Associated gambling business. (1) The department may adopt rules for the licensing of associated gambling businesses, including but not limited to accounting software vendors and video gambling machine recyclers.

(2) The licensing of an associated gambling business may consider only the legality of the product being sold and the suitability of the owners of the business as provided in 23-5-176.

(3) The annual fee for an associated gambling business license is $100.

Section 9. Codification instruction. [Section 8] is intended to be codified as an integral part of Title 23, chapter 5, part 1, and the provisions of Title 23, chapter 5, part 1, apply to [section 8].

Section 10. Effective date. [This act] is effective on passage and approval.

Section 11. Applicability. [This act] applies to applications for gambling licenses made on or after [the effective date of this act].

Approved April 24, 2009

CHAPTER NO. 356

[SB 108]

AN ACT REVISING CUSTODY LAWS RELATING TO MILITARY SERVICE; PRECLUDING A COURT FROM CONSIDERING MILITARY SERVICE ALONE AS A DETRIMENT TO THE BEST INTEREST OF THE CHILD IN CHILD CUSTODY PROCEEDINGS; ESTABLISHING AN EXPEDITED HEARING PROCEDURE WHEN A PARENT RECEIVES MILITARY SERVICE ORDERS; PROVIDING THAT A COURT-ORDERED MODIFICATION OF A PARENTING PLAN BASED ON MILITARY SERVICE ORDERS OF A PARENT IS TEMPORARY; ALLOWING VISITATION

RIGHTS TO CERTAIN FAMILY MEMBERS WHEN A PARENT RECEIVES MILITARY SERVICE ORDERS; PRECLUDING A COURT FROM CONSIDERING MILITARY SERVICE ALONE IN PARENTING PLANS; AND AMENDING SECTIONS 40-4-212, 40-4-216, 40-4-219, 40-4-228, AND 40-4-234, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 40-4-212, MCA, is amended to read:

"40-4-212. Best interest of child. (1) The court shall determine the parenting plan in accordance with the best interest of the child. The court shall consider all relevant parenting factors, which may include but are not limited to:

(a) the wishes of the child's parent or parents;

(b) the wishes of the child;

(c) the interaction and interrelationship of the child with the child's parent or parents and siblings and with any other person who significantly affects the child's best interest;

(d) the child's adjustment to home, school, and community;

(e) the mental and physical health of all individuals involved;

(f) physical abuse or threat of physical abuse by one parent against the other parent or the child;

(g) chemical dependency, as defined in 53-24-103, or chemical abuse on the part of either parent;

(h) continuity and stability of care;

(i) developmental needs of the child;

(j) whether a parent has knowingly failed to pay birth-related costs that the parent is able to pay, which is considered to be not in the child's best interests;

(k) whether a parent has knowingly failed to financially support a child that the parent is able to support, which is considered to be not in the child's best interests;

(l) whether the child has frequent and continuing contact with both parents, which is considered to be in the child's best interests unless the court determines, after a hearing, that contact with a parent would be detrimental to the child's best interests. In making that determination, the court shall consider evidence of physical abuse or threat of physical abuse by one parent against the other parent or the child, including but not limited to whether a parent or other person residing in that parent's household has been convicted of any of the crimes enumerated in 40-4-219(8)(b).

(m) adverse effects on the child resulting from continuous and vexatious parenting plan amendment actions.

(2) When determining the best interest of the child of a parent in military service, the court shall consider all relevant parenting factors provided in subsection (1) and may not determine the best interest of the child based only upon the parent's military service.

~~(2)~~*(3)* A de facto parenting arrangement, in the absence of a prior parenting decree, does not require the child's parent or parents to prove the factors set forth in 40-4-219.

~~(3)~~*(4)* The following are rebuttable presumptions and apply unless contrary to the best interest of the child:

(a) A parenting plan action brought by a parent within 6 months after a child support action against that parent is vexatious.

(b) A motion to amend a final parenting plan pursuant to 40-4-219 is vexatious if a parent seeks to amend a final parenting plan without making a good faith effort to comply with the provisions of the parenting plan or with dispute resolution provisions of the final parenting plan."

Section 2. Section 40-4-216, MCA, is amended to read:

"40-4-216. Hearings. (1) Parenting plan proceedings ~~shall~~ *must* receive priority in being set for hearing.

(2) Upon motion of a parent who has received military service orders, the court shall, for good cause shown, hold an expedited hearing in parenting or visitation matters instituted under 40-4-228(6) if the military service, as defined in 10-1-1003, of the parent has a material effect on the parent's ability or anticipated ability to appear in person at a hearing scheduled in an unexpedited manner.

~~(2)~~*(3)* The court may tax as costs the payment of necessary travel and other expenses incurred by any person whose presence at the hearing the court considers necessary to determine the best interest of the child.

~~(3)~~*(4)* The court, without a jury, shall determine questions of law and fact. If it finds that a public hearing may be detrimental to the child's best interest, the court may exclude the public from a parenting hearing but may admit any person who has a direct and legitimate interest in the particular case or a legitimate educational or research interest in the work of the court.

~~(4)~~*(5)* If the court finds it necessary that the record of any interview, report, investigation, or testimony in a parenting proceeding be kept secret to protect the child's welfare, the court may make an appropriate order sealing the record."

Section 3. Section 40-4-219, MCA, is amended to read:

"40-4-219. Amendment of parenting plan — mediation. (1) The court may in its discretion amend a prior parenting plan if it finds, upon the basis of facts that have arisen since the prior plan or that were unknown to the court at the time of entry of the prior plan, that a change has occurred in the circumstances of the child and that the amendment is necessary to serve the best interest of the child. In determining the child's best interest under this section, the court may, in addition to the criteria in 40-4-212, also consider whether:

(a) the parents agree to the amendment;

(b) the child has been integrated into the family of the petitioner with consent of the parents;

(c) the child is 14 years of age or older and desires the amendment;

(d) one parent has willfully and consistently:

(i) refused to allow the child to have any contact with the other parent; or

(ii) attempted to frustrate or deny contact with the child by the other parent; or

(e) one parent has changed or intends to change the child's residence in a manner that significantly affects the child's contact with the other parent.

(2) A court may modify a de facto parenting arrangement in accordance with the factors set forth in 40-4-212.

(3) The court shall presume a parent is not acting in the child's best interest if the parent does any of the acts specified in subsection (1)(d) or (8).

(4) The court may amend the prior parenting plan based on subsection (1)(e) to provide a new residential schedule for parental contact with the child and to apportion transportation costs between the parents.

(5) Attorney fees and costs must be assessed against a party seeking frivolous or repeated amendment if the court finds that the amendment action is vexatious and constitutes harassment.

(6) A parenting plan may be amended upon the death of one parent pursuant to 40-4-221.

(7) As used in this section, "prior parenting plan" means a parenting determination contained in a judicial decree or order made in a parenting proceeding. In proceedings for amendment under this section, a proposed amended parenting plan must be filed and served with the motion for amendment and with the response to the motion for amendment. Preference must be given to carrying out the parenting plan.

(8) (a) If a parent or other person residing in that parent's household has been convicted of any of the crimes listed in subsection (8)(b), the other parent or any other person who has been granted rights to the child pursuant to court order may file an objection to the current parenting order with the court. The parent or other person having rights to the child pursuant to court order shall give notice to the other parent of the objection as provided by the Montana Rules of Civil Procedure, and the other parent has 20 days from the notice to respond. If the parent who receives notice of objection fails to respond within 20 days, the parenting rights of that parent are suspended until further order of the court. If that parent responds and objects, a hearing must be held within 30 days of the response.

(b) This subsection (8) applies to the following crimes:

(i) deliberate homicide, as described in 45-5-102;

(ii) mitigated deliberate homicide, as described in 45-5-103;

(iii) sexual assault, as described in 45-5-502;

(iv) sexual intercourse without consent, as described in 45-5-503;

(v) deviate sexual conduct with an animal, as described in 45-2-101 and prohibited under 45-5-505;

(vi) incest, as described in 45-5-507;

(vii) aggravated promotion of prostitution of a child, as described in 45-5-603(1)(b);

(viii) endangering the welfare of children, as described in 45-5-622;

(ix) partner or family member assault of the type described in 45-5-206(1)(a);

(x) sexual abuse of children, as described in 45-5-625.

(9) Except in cases of physical abuse or threat of physical abuse by one parent against the other parent or the child, or when a parent has been convicted of a crime enumerated in subsection (8)(b), the court may, in its discretion, order the parties to participate in a dispute resolution process to assist in resolving any conflicts between the parties regarding amendment of the parenting plan. The dispute resolution process may include counseling or mediation by a specified person or agency, and court action.

(10) (a) Except as provided in subsection (10)(b), a court-ordered or de facto modification of a parenting plan based in whole or in part on military service orders of a parent is temporary and reverts to the previous parenting plan at the end of the military service. If a motion for an amendment of a parenting plan is filed after a parent returns from military service, the court may not consider a parent's absence due to that military service in its determination of the best interest of the child.

(b) A parent who has performed or is performing military service, as defined in 10-1-1003, may consent to a temporary or permanent modification of a parenting plan:

(i) for the duration of the military service; or

(ii) that continues past the end of the military service."

Section 4. Section 40-4-228, MCA, is amended to read:

"40-4-228. Parenting and visitation matters between natural parent and third party. (1) In cases when a nonparent seeks a parental interest in a child under 40-4-211 or visitation with a child, the provisions of this chapter apply unless a separate action is pending under Title 41, chapter 3.

(2) A court may award a parental interest to a person other than a natural parent when it is shown by clear and convincing evidence that:

(a) the natural parent has engaged in conduct that is contrary to the child-parent relationship; and

(b) the nonparent has established with the child a child-parent relationship, as defined in 40-4-211, and it is in the best interests of the child to continue that relationship.

(3) For purposes of an award of visitation rights under this section, a court may order visitation based on the best interests of the child.

(4) For purposes of this section, voluntarily permitting a child to remain continuously in the care of others for a significant period of time so that the others stand in loco parentis to the child is conduct that is contrary to the parent-child relationship.

(5) It is not necessary for the court to find a natural parent unfit before awarding a parental interest to a third party under this section.

(6) If the parent receives military service orders that involve moving a substantial distance from the parent's residence or otherwise have a material effect on the parent's ability to parent the child for the period the parent is called to military service, as defined in 10-1-1003, the court may grant visitation rights to a family member of the parent with a close and substantial relationship to the minor child during the parent's absence if granting visitation rights is in the best interests of the child as determined by 40-4-212."

Section 5. Section 40-4-234, MCA, is amended to read:

"40-4-234. Final parenting plan criteria. (1) In every dissolution proceeding, proceeding for declaration of invalidity of marriage, parenting plan proceeding, or legal separation proceeding that involves a child, each parent or both parents jointly shall submit to the court, in good faith, a proposed final plan for parenting the child, which may include the allocation of parenting functions. A final parenting plan must be incorporated into any final decree or amended decree, including cases of dissolution by default. As used in this section, parenting functions means those aspects of the parent-child relationship in

which the parent makes decisions and performs functions necessary for the care and growth of the child, which may include:

(a) maintaining a loving, stable, consistent, and nurturing relationship with the child;

(b) attending to the daily needs of the child, such as feeding, physical care, development, and grooming, supervision, spiritual growth and development, health care, day care, and engaging in other activities that are appropriate to the developmental level of the child and that are within the social and economic circumstances of the particular family;

(c) attending to adequate education for the child, including remedial or other education essential to the best interest of the child;

(d) ensuring the interactions and interrelationship of the child with the child's parents and siblings and with any other person who significantly affects the child's best interest; and

(e) exercising appropriate judgment regarding the child's welfare, consistent with the child's developmental level and the family's social and economic circumstances.

(2) Based on the best interest of the child, a final parenting plan may include, at a minimum, provisions for:

(a) designation of a parent as custodian of the child, solely for the purposes of all other state and federal statutes that require a designation or determination of custody, but the designation may not affect either parent's rights and responsibilities under the parenting plan;

(b) designation of the legal residence of both parents and the child, except as provided in 40-4-217;

(c) a residential schedule specifying the periods of time during which the child will reside with each parent, including provisions for holidays, birthdays of family members, vacations, and other special occasions;

(d) finances to provide for the child's needs;

(e) any other factors affecting the physical and emotional health and well-being of the child;

(f) periodic review of the parenting plan when requested by either parent or the child or when circumstances arise that are foreseen by the parents as triggering a need for review, such as attainment by the child of a certain age or if a change in the child's residence is necessitated;

(g) sanctions that will apply if a parent fails to follow the terms of the parenting plan, including contempt of court;

(h) allocation of parental decisionmaking authority regarding the child's:

(i) education;

(ii) spiritual development; and

(iii) health care and physical growth;

(i) the method by which future disputes concerning the child will be resolved between the parents, other than court action; and

(j) the unique circumstances of the child or the family situation that the parents agree will facilitate a meaningful, ongoing relationship between the child and parents.

(3) In approving a final parenting plan for a child of a parent in military service, the court may not disapprove the plan only because of the parent's military service.

~~(3)~~*(4)* The court may in its discretion order the parties to participate in a dispute resolution process to assist in resolving any conflicts between the parties regarding adoption of the parenting plan. The dispute resolution process may include counseling or mediation by a specified person or agency or court action.

~~(4)~~*(5)* Each parent may make decisions regarding the day-to-day care and control of the child while the child is residing with that parent, and either parent may make emergency decisions affecting the child's safety or health. When mutual decisionmaking is designated in the parenting plan but cannot be achieved regarding a particular issue, the parents shall make a good faith effort to resolve the issue through any dispute resolution process provided for in the final parenting plan.

~~(5)~~*(6)* If a parent fails to comply with a provision of the parenting plan, the other parent's obligations under the parenting plan are not affected.

~~(6)~~*(7)* At the request of either parent or appropriate party, the court shall order that the parenting plan be sealed except for access by the parents, guardian, or other person having custody of the child."

Approved April 24, 2009

CHAPTER NO. 357

[SB 198]

AN ACT CLASSIFYING CERTAIN BIOMASS GENERATION FACILITIES UP TO 25 MEGAWATTS IN NAMEPLATE CAPACITY AS CLASS FOURTEEN PROPERTY; INCLUDING CLASS FOURTEEN BIOMASS GENERATION FACILITIES WITH WIND GENERATION FACILITIES RELATING TO CERTAIN TRANSMISSION LINES AS FACILITIES UNDER THE MAJOR FACILITY SITING ACT; AMENDING SECTIONS 15-6-137, 15-6-141, 15-6-156, 15-6-157, AND 75-20-104, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-6-137, MCA, is amended to read:

"15-6-137. Class seven property — description — taxable percentage. (1) Except as provided in subsection (2), class seven property includes:

(a) all property owned by cooperative rural electrical associations that serve less than 95% of the electricity consumers within the incorporated limits of a city or town, except rural electric cooperative properties described in 15-6-141(1)(a);

(b) electric transformers and meters; electric light and power substation machinery; natural gas measuring and regulating station equipment, meters, and compressor station machinery owned by noncentrally assessed public utilities; and tools used in the repair and maintenance of this property.

(2) Class seven property does not include wind generation facilities *and biomass generation facilities* classified under 15-6-157.

(3) Class seven property is taxed at 8% of its market value."

Section 2. Section 15-6-141, MCA, is amended to read:

"15-6-141. Class nine property — description — taxable percentage. (1) Class nine property includes:

(a) centrally assessed allocations of an electric power company or centrally assessed allocations of an electric power company that owns or operates transmission or distribution facilities or both, including, if congress passes legislation that allows the state to tax property owned by an agency created by congress to transmit or distribute electrical energy, allocations of properties constructed, owned, or operated by a public agency created by congress to transmit or distribute electrical energy produced at privately owned generating facilities, not including rural electric cooperatives. However, rural electric cooperatives' property, except wind generation facilities *and biomass generation facilities* classified under 15-6-157, used for the sole purpose of serving customers representing less than 95% of the electric consumers located within the incorporated limits of a city or town of more than 3,500 persons in which a centrally assessed electric power company also owns property or serving an incorporated municipality with a population that is greater than 3,500 persons formerly served by a public utility that after January 1, 1998, received service from the facilities of an electric cooperative is included. For purposes of this subsection (1)(a), "property used for the sole purpose" does not include a headquarters, office, shop, or other similar facility.

(b) allocations for centrally assessed natural gas companies having a major distribution system in this state; and

(c) centrally assessed companies' allocations except:

(i) electrical generation facilities classified under 15-6-156;

(ii) all property classified under 15-6-157;

(iii) all property classified under 15-6-158 and 15-6-159;

(iv) property owned by cooperative rural electric and cooperative rural telephone associations and classified under 15-6-135;

(v) property owned by organizations providing telephone communications to rural areas and classified under 15-6-135;

(vi) railroad transportation property included in 15-6-145;

(vii) airline transportation property included in 15-6-145; and

(viii) telecommunications property included in 15-6-156.

(2) Class nine property is taxed at 12% of market value."

Section 3. Section 15-6-156, MCA, is amended to read:

"15-6-156. Class thirteen property — description — taxable percentage. (1) Except as provided in subsections (2)(a) through (2)(g), class thirteen property includes:

(a) electrical generation facilities, except wind generation facilities *and biomass generation facilities* classified under 15-6-157, of a centrally assessed electric power company;

(b) electrical generation facilities, except wind generation facilities *and biomass generation facilities* classified under 15-6-157, owned or operated by an exempt wholesale generator or an entity certified as an exempt wholesale generator pursuant to ~~section 32 of the Public Utility Holding Company Act of 1935, 15 U.S.C. 79z-5a~~ *42 U.S.C. 16451*;

(c) noncentrally assessed electrical generation facilities, except wind generation facilities *and biomass generation facilities* classified under 15-6-157, owned or operated by any electrical energy producer; and

(d) allocations of centrally assessed telecommunications services companies.

(2) Class thirteen property does not include:

(a) property owned by cooperative rural electric cooperative associations classified under 15-6-135;

(b) property owned by cooperative rural electric cooperative associations classified under 15-6-137 or 15-6-157;

(c) allocations of electric power company property under 15-6-141;

(d) electrical generation facilities included in another class of property;

(e) property owned by cooperative rural telephone associations and classified under 15-6-135;

(f) property owned by organizations providing telecommunications services and classified under 15-6-135; and

(g) generation facilities that are exempt under 15-6-225.

(3) (a) For the purposes of this section, "electrical generation facilities" means any combination of a physically connected generator or generators, associated prime movers, and other associated property, including appurtenant land and improvements and personal property, that are normally operated together to produce electric power. The term includes but is not limited to generating facilities that produce electricity from coal-fired steam turbines, oil or gas turbines, or turbine generators that are driven by falling water.

(b) The term does not include electrical generation facilities used for noncommercial purposes or exclusively for agricultural purposes.

(c) The term also does not include a qualifying small power production facility, as that term is defined in 16 U.S.C. 796(17), that is owned and operated by a person not primarily engaged in the generation or sale of electricity other than electric power from a small power production facility and classified under 15-6-134 and 15-6-138.

(4) Class thirteen property is taxed at 6% of its market value."

Section 4. Section 15-6-157, MCA, is amended to read:

"15-6-157. Class fourteen property — description — taxable percentage. (1) Class fourteen property includes:

(a) wind generation facilities of a centrally assessed electric power company;

(b) wind generation facilities owned or operated by an exempt wholesale generator or an entity certified as an exempt wholesale generator pursuant to ~~section 32 of the Public Utility Holding Company Act of 1935, 15 U.S.C. 79z-5a~~ *42 U.S.C. 16451*;

(c) noncentrally assessed wind generation facilities owned or operated by any electrical energy producer;

(d) wind generation facilities owned or operated by cooperative rural electric associations described under 15-6-137;

(e) biomass generation facilities up to 25 megawatts in nameplate capacity of a centrally assessed electric power company;

(f) biomass generation facilities up to 25 megawatts in nameplate capacity owned or operated by an exempt wholesale generator or an entity certified as an exempt wholesale generator pursuant to 42 U.S.C. 16451;

(g) noncentrally assessed biomass generation facilities up to 25 megawatts in nameplate capacity owned or operated by any electrical energy producer;

(h) biomass generation facilities up to 25 megawatts in nameplate capacity owned or operated by cooperative rural electric associations described under 15-6-137;

~~(e)~~*(i)* all property of a biodiesel production facility, as defined in 15-24-3102, that has commenced construction after June 1, 2007;

~~(f)~~*(j)* all property of a biogas production facility, as defined in 15-24-3102, that has commenced construction after June 1, 2007;

~~(g)~~*(k)* all property of a biomass gasification facility, as defined in 15-24-3102;

~~(h)~~*(l)* all property of a coal gasification facility, as defined in 15-24-3102, except for property in subsection ~~(1)(k)~~ *(1)(o)* of this section, that sequesters carbon dioxide;

~~(i)~~*(m)* all property of an ethanol production facility, as defined in 15-24-3102, that has commenced construction after June 1, 2007;

~~(j)~~*(n)* all property of a geothermal facility, as defined in 15-24-3102;

~~(k)~~*(o)* all property of an integrated gasification combined cycle facility, as defined in 15-24-3102, that sequesters carbon dioxide, as required by 15-24-3111(4)(c);

~~(l)~~*(p)* all property or a portion of the property of a renewable energy manufacturing facility, as defined in 15-24-3102, that has commenced construction after June 1, 2007;

~~(m)~~*(q)* all property of a natural gas combined cycle facility;

~~(n)~~*(r)* equipment that is used to capture and to prepare for transport carbon dioxide that will be sequestered or injected for the purpose of enhancing the recovery of oil and gas, other than that equipment at coal combustion plants of the types that are generally in commercial use as of December 31, 2007, that commence construction after December 31, 2007;

~~(o)~~*(s)* high-voltage direct-current transmission lines and associated equipment and structures, including converter stations and interconnections, other than property classified under 15-6-159, that:

(i) originate in Montana with a converter station located in Montana east of the continental divide and that are constructed after July 1, 2007;

(ii) are certified under the Montana Major Facility Siting Act; and

(iii) provide access to energy markets for Montana electrical generation facilities listed in this section that commenced construction after June 1, 2007;

~~(p)~~*(t)* all property of electric transmission lines, including substations, that originate at facilities specified in this subsection (1), with at least 90% of electricity carried by the line originating at facilities specified in this subsection (1) and terminating at an existing transmission line or substation that has commenced construction after June 1, 2007;

~~(q)~~*(u)* the qualified portion of an alternating current transmission line and its associated equipment and structures, including interconnections, that has commenced construction after June 1, 2007.

(2) (a) The qualified portion of an alternating current transmission line in subsection ~~(1)(q)~~ *(1)(u)* is that percentage, as determined by the department of environmental quality, of rated transmission capacity of the line contracted for on a firm basis by buyers or sellers of electricity generated by facilities specified in subsection (1) that are located in Montana.

(b) The department of revenue shall classify the total value of an alternating current transmission line in accordance with the determination made by the department of environmental quality pursuant to subsection (2)(a).

(c) The owner of property described under this subsection (2) shall disclose the location of the generation facilities specified in subsection (1) and information sufficient to demonstrate that there is a firm contract for transmission capacity available throughout the year. For purposes of the initial qualification, the owner is not required to disclose financial terms and conditions of contracts beyond that needed for classification.

(3) Class fourteen property does not include facilities:

(a) at which the standard prevailing rate of wages for heavy construction, as provided in 18-2-401(13)(a), was not paid during the construction phase; or

(b) that are exempt under 15-6-225.

(4) For the purposes of this section, *the following definitions apply:*

(a) "~~wind~~ *"Wind* generation facilities" means any combination of a physically connected wind turbine or turbines, associated prime movers, and other associated property, including appurtenant land and improvements and personal property, that are normally operated together to produce electric power from wind.

(b) "Biomass generation facilities" means any combination of boilers, generators, associated prime movers, and other associated property, including appurtenant land and improvements and personal property, that are normally operated together to produce electric power from the burning of organic material other than coal, petroleum, natural gas, or any products derived from coal, petroleum, or natural gas, with the use of natural gas or other fuels allowed for ignition and to stabilize boiler operations.

(5) (a) The department of environmental quality shall determine whether to certify that a transmission line meets the criteria of subsection ~~(1)(o)~~ *(1)(s)*, ~~(1)(p)~~ *(1)(t)*, or ~~(1)(q)~~ *(1)(u)*, as applicable, based on an application provided for in 15-24-3112. The department of environmental quality shall review the certification 10 years after the line is operational, and if the property no longer meets the requirements of subsection ~~(1)(o)~~ *(1)(s)*, ~~(1)(p)~~ *(1)(t)*, or ~~(1)(q)~~ *(1)(u)*, the certification must be revoked.

(b) If the department of revenue finds that a certification previously granted was based on an application that the applicant knew was false or fraudulent, the property must be placed in class nine under 15-6-141. If the application was fraudulent, the applicant may be liable for additional taxes, penalty, and interest from the time that the certification was in effect.

(6) Class fourteen property is taxed at 3% of its market value."

Section 5. Section 75-20-104, MCA, is amended to read:

"75-20-104. Definitions. In this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Addition thereto" means the installation of new machinery and equipment that would significantly change the conditions under which the facility is operated.

(2) "Application" means an application for a certificate submitted in accordance with this chapter and the rules adopted under this chapter.

(3) (a) "Associated facilities" includes but is not limited to transportation links of any kind, aqueducts, diversion dams, pipelines, storage ponds, reservoirs, and any other device or equipment associated with the delivery of the energy form or product produced by a facility.

(b) The term does not include a transmission substation, a switchyard, voltage support, or other control equipment or a facility or a natural gas or crude oil gathering line 25 inches or less in inside diameter.

(4) "Board" means the board of environmental review provided for in 2-15-3502.

(5) "Certificate" means the certificate of compliance issued by the department under this chapter that is required for the construction or operation of a facility.

(6) "Commence to construct" means:

(a) any clearing of land, excavation, construction, or other action that would affect the environment of the site or route of a facility but does not mean changes needed for temporary use of sites or routes for nonutility purposes or uses in securing geological data, including necessary borings to ascertain foundation conditions;

(b) the fracturing of underground formations by any means if the activity is related to the possible future development of a gasification facility or a facility employing geothermal resources but does not include the gathering of geological data by boring of test holes or other underground exploration, investigation, or experimentation;

(c) the commencement of eminent domain proceedings under Title 70, chapter 30, for land or rights-of-way upon or over which a facility may be constructed;

(d) the relocation or upgrading of an existing facility defined by subsection (8)(a) or (8)(b), including upgrading to a design capacity covered by subsection (8)(a), except that the term does not include normal maintenance or repair of an existing facility.

(7) "Department" means the department of environmental quality provided for in 2-15-3501.

(8) "Facility" means:

(a) each electric transmission line and associated facilities of a design capacity of more than 69 kilovolts, except that the term:

(i) does not include an electric transmission line and associated facilities of a design capacity of 230 kilovolts or less and 10 miles or less in length;

(ii) does not include an electric transmission line with a design capacity of more than 69 kilovolts but less than 230 kilovolts for which the person planning to construct the line has obtained right-of-way agreements or options for a right-of-way from more than 75% of the owners who collectively own more than 75% of the property along the centerline;

(iii) does not include an electric transmission line that is less than 150 miles in length and extends from an electrical generation facility, as defined in 15-24-3001(4), or a wind generation facility *or biomass generation facility*, as defined in 15-6-157, to the point at which the transmission line connects to a regional transmission grid at an existing transmission substation or other

facility for which the person planning to construct the line has obtained right-of-way agreements or options for a right-of-way from more than 75% of the owners who collectively own more than 75% of the property along the centerline;

(iv) does not include an upgrade to an existing transmission line to increase that line's capacity within an existing easement or right-of-way; and

(v) does not include a transmission substation, a switchyard, voltage support, or other control equipment;

(b) (i) each pipeline, whether partially or wholly within the state, greater than 25 inches in inside diameter and 50 miles in length, and associated facilities, except that the term does not include:

(A) a pipeline within the boundaries of the state that is used exclusively for the irrigation of agricultural crops or for drinking water; or

(B) a pipeline greater than 25 inches in inside diameter and 50 miles in length for which the person planning to construct the pipeline has obtained right-of-way agreements or options for a right-of-way from more than 75% of the owners who collectively own more than 75% of the property along the centerline;

(ii) each pipeline, whether partially or wholly within the state, greater than 17 inches in inside diameter and 30 miles in length, and associated facilities used to transport coal suspended in water;

(c) any use of geothermal resources, including the use of underground space in existence or to be created, for the creation, use, or conversion of energy, designed for or capable of producing geothermally derived power equivalent to 25 million Btu's per hour or more or any addition thereto, except pollution control facilities approved by the department and added to an existing plant; or

(d) for the purposes of 75-20-204 only, a plant, unit, or other facility capable of generating 50 megawatts of hydroelectric power or more or any addition thereto.

(9) "Person" means any individual, group, firm, partnership, corporation, limited liability company, cooperative, association, government subdivision, government agency, local government, or other organization or entity.

(10) "Transmission substation" means any structure, device, or equipment assemblage, commonly located and designed for voltage regulation, circuit protection, or switching necessary for the construction or operation of a proposed transmission line.

(11) "Upgrade" means to increase the electrical carrying capacity of a transmission line by actions including but not limited to:

(a) installing larger conductors;

(b) replacing insulators;

(c) replacing pole or tower structures; or

(d) changing structure spacing, design, or guying.

(12) "Utility" means any person engaged in any aspect of the production, storage, sale, delivery, or furnishing of heat, electricity, gas, hydrocarbon products, or energy in any form for ultimate public use."

Section 6. Applicability. [This act] applies to tax years beginning after December 31, 2009.

Approved April 24, 2009

CHAPTER NO. 358

[SB 231]

AN ACT REQUIRING A GOVERNMENTAL ENTITY TO PREPARE A SERVICE AREA REPORT TO DOCUMENT THE CALCULATION OF IMPACT FEES; AMENDING SECTIONS 7-6-1602, AND 7-6-1603, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-6-1602, MCA, is amended to read:

"7-6-1602. Calculation of impact fees — documentation required — ordinance or resolution — requirements for impact fees. (1) For each public facility for which an impact fee is imposed, the governmental entity shall prepare and approve *a service area report*.

(2) The service area report is a written analysis that must ~~documentation that~~:

(a) ~~describes~~ *describe* existing conditions of the facility;

(b) ~~establishes level of service~~ *establish level-of-service* standards;

(c) ~~forecasts~~ *forecast* future additional needs for service for a defined period of time;

(d) ~~identifies~~ *identify* capital improvements necessary to meet future needs for service;

(e) ~~identifies~~ *identify* those capital improvements needed for continued operation and maintenance of the facility;

(f) ~~makes~~ *make* a determination as to whether one service area or more than one service area is necessary to establish a correlation between impact fees and benefits;

(g) ~~makes~~ *make* a determination as to whether one service area or more than one service area for transportation facilities is needed to establish a correlation between impact fees and benefits;

(h) ~~establishes~~ *establish* the methodology and time period over which the governmental entity will assign the proportionate share of capital costs for expansion of the facility to provide service to new development within each service area;

(i) ~~establishes~~ *establish* the methodology that the governmental entity will use to exclude operations and maintenance costs and correction of existing deficiencies from the impact fee;

(j) ~~establishes~~ *establish* the amount of the impact fee that will be imposed for each unit of increased service demand; and

(k) ~~has~~ *have* a component of the budget of the governmental entity that:

(i) schedules construction of public facility capital improvements to serve projected growth;

(ii) projects costs of the capital improvements;

(iii) allocates collected impact fees for construction of the capital improvements; and

(iv) covers at least a 5-year period and is reviewed and updated at least every 2 years.

(3) The service area report is a written analysis that must contain documentation of sources and methodology used for purposes of subsection (2) and must document how each impact fee meets the requirements of subsection (7).

~~(2)~~*(4)* The ~~data sources and methodology~~ *service area report* ~~supporting~~ *that supports* adoption and calculation of an impact fee must be available to the public upon request.

~~(3)~~*(5)* The amount of each impact fee imposed must be based upon the actual cost of public facility expansion or improvements or reasonable estimates of the cost to be incurred by the governmental entity as a result of new development. The calculation of each impact fee must be in accordance with generally accepted accounting principles.

~~(4)~~*(6)* The ordinance or resolution adopting the impact fee must include a time schedule for periodically updating the documentation required under subsection ~~(1)~~ *(2)*.

~~(5)~~*(7)* An impact fee must meet the following requirements:

(a) The amount of the impact fee must be reasonably related to and reasonably attributable to the development's share of the cost of infrastructure improvements made necessary by the new development.

(b) The impact fees imposed may not exceed a proportionate share of the costs incurred or to be incurred by the governmental entity in accommodating the development. The following factors must be considered in determining a proportionate share of public facilities capital improvements costs:

(i) the need for public facilities capital improvements required to serve new development; and

(ii) consideration of payments for system improvements reasonably anticipated to be made by or as a result of the development in the form of user fees, debt service payments, taxes, and other available sources of funding the system improvements.

(c) Costs for correction of existing deficiencies in a public facility may not be included in the impact fee.

(d) New development may not be held to a higher level of service than existing users unless there is a mechanism in place for the existing users to make improvements to the existing system to match the higher level of service.

(e) Impact fees may not include expenses for operations and maintenance of the facility."

Section 2. Section 7-6-1603, MCA, is amended to read:

"7-6-1603. Collection and expenditure of impact fees — refunds or credits — mechanism for appeal required. (1) The collection and expenditure of impact fees must comply with this part. The collection and expenditure of impact fees must be reasonably related to the benefits accruing to the development paying the impact fees. The ordinance or resolution adopted by the governmental entity must include the following requirements:

(a) Upon collection, impact fees must be deposited in a special proprietary fund, which must be invested with all interest accruing to the fund.

(b) A governmental entity may impose impact fees on behalf of local districts.

(c) If the impact fees are not collected or spent in accordance with the impact fee ordinance or resolution or in accordance with 7-6-1602, any impact fees that were collected must be refunded to the person who owned the property at the time that the refund was due.

(2) All impact fees imposed pursuant to the authority granted in this part must be paid no earlier than the date of issuance of a building permit if a building permit is required for the development or no earlier than the time of wastewater or water service connection or well or septic permitting.

(3) A governmental entity may recoup costs of excess capacity in existing capital facilities, when the excess capacity has been provided in anticipation of the needs of new development, by requiring impact fees for that portion of the facilities constructed for future users. The need to recoup costs for excess capacity must have been documented pursuant to 7-6-1602 in a manner that demonstrates the need for the excess capacity. This part does not prevent a governmental entity from continuing to assess an impact fee that recoups costs for excess capacity in an existing facility. The impact fees imposed to recoup the costs to provide the excess capacity must be based on the governmental entity's actual cost of acquiring, constructing, or upgrading the facility and must be no more than a proportionate share of the costs to provide the excess capacity.

(4) Governmental entities may accept the dedication of land or the construction of public facilities in lieu of payment of impact fees if:

(a) the need for the dedication or construction is clearly documented pursuant to 7-6-1602;

(b) the land proposed for dedication for the public facilities to be constructed is determined to be appropriate for the proposed use by the governmental entity;

(c) formulas or procedures for determining the worth of proposed dedications or constructions are established as part of the impact fee ordinance or resolution; and

(d) a means to establish credits against future impact fee revenue has been created as part of the adopting ordinance or resolution if the dedication of land or construction of public facilities is of worth in excess of the impact fee due from an individual development.

(5) Impact fees may not be imposed for remodeling, rehabilitation, or other improvements to an existing structure or for rebuilding a damaged structure unless there is an increase in units that increase service demand as described in ~~7-6-1602(1)(j)~~ *7-6-1602(2)(j)*. If impact fees are imposed for remodeling, rehabilitation, or other improvements to an existing structure or use, only the net increase between the old and new demand may be imposed.

(6) This part does not prevent a governmental entity from granting refunds or credits:

(a) that it considers appropriate and that are consistent with the provisions of 7-6-1602 and this chapter; or

(b) in accordance with a voluntary agreement, consistent with the provisions of 7-6-1602 and this chapter, between the governmental entity and the individual or entity being assessed the impact fees.

(7) An impact fee represents a fee for service payable by all users creating additional demand on the facility.

(8) An impact fee ordinance or resolution must include a mechanism whereby a person charged an impact fee may appeal the charge if the person believes an error has been made."

Section 3. Effective date. [This act] is effective July 1, 2009.

Approved April 24, 2009

CHAPTER NO. 359

[SB 234]

AN ACT REQUIRING INSURANCE COVERAGE FOR AUTISM SPECTRUM DISORDERS; AMENDING SECTIONS 33-1-102, 33-22-706, 33-31-111, AND 33-35-306, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Coverage of autism spectrum disorders. (1) Each group disability policy, certificate of insurance, or membership contract that is delivered, issued for delivery, renewed, extended, or modified in this state must provide coverage for diagnosis and treatment of autism spectrum disorders for a covered child 18 years of age or younger.

(2) Coverage under this section must be provided to a child who is diagnosed with one of the following disorders as defined by the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders:

(a) autistic disorder;

(b) Asperger's disorder; or

(c) pervasive developmental disorder not otherwise specified.

(3) (a) Coverage under this section must include:

(i) habilitative or rehabilitative care that is prescribed, provided, or ordered by a licensed physician or licensed psychologist, including but not limited to professional, counseling, and guidance services and treatment programs that are medically necessary to develop and restore, to the maximum extent practicable, the functioning of the covered child;

(ii) medications prescribed by a physician licensed under Title 37, chapter 3;

(iii) psychiatric or psychological care; and

(iv) therapeutic care that is provided by a speech-language pathologist, audiologist, occupational therapist, or physical therapist licensed in this state.

(b) (i) Habilitative and rehabilitative care includes medically necessary interactive therapies derived from evidence-based research, including applied behavior analysis, which is also known as Lovaas therapy, discrete trial training, pivotal response training, intensive intervention programs, and early intensive behavioral intervention.

(ii) Applied behavior analysis covered under this section must be provided by an individual who is licensed by the behavior analyst certification board or is certified by the department of public health and human services as a family support specialist with an autism endorsement.

(4) (a) Coverage for treatment of autism spectrum disorders under this section may be limited to a maximum benefit of:

(i) $50,000 a year for a child 8 years of age or younger; and

(ii) $20,000 a year for a child 9 years of age through 18 years of age.

(b) Benefits provided under this section may not be construed as limiting physical health benefits that are otherwise available to the covered child.

(5) (a) Coverage under this section may be subject to deductibles, coinsurance, and copayment provisions.

(b) Special deductible, coinsurance, copayment, or other limitations that are not generally applicable to other medical care covered under the plan may not be imposed on the coverage for autism spectrum disorders provided for under this section.

(6) When treatment is expected to require continued services, the insurer may request that the treating physician provide a treatment plan consisting of diagnosis, proposed treatment by type and frequency, the anticipated duration of treatment, the anticipated outcomes stated as goals, and the reasons the treatment is medically necessary. The treatment plan must be based on evidence-based screening criteria. The insurer may ask that the treatment plan be updated every 6 months.

(7) As used in this section, "medically necessary" means any care, treatment, intervention, service, or item that is prescribed, provided, or ordered by a physician or psychologist licensed in this state and that will or is reasonably expected to:

(a) prevent the onset of an illness, condition, injury, or disability;

(b) reduce or improve the physical, mental, or developmental effects of an illness, condition, injury, or disability; or

(c) assist in achieving maximum functional capacity in performing daily activities, taking into account both the functional capacity of the recipient and the functional capacities that are appropriate for a child of the same age.

(8) This section applies to the state employee group insurance program, the university system employee group insurance program, any employee group insurance program of a city, town, school district, or other political subdivision of this state, and any self-funded multiple employer welfare arrangement that is not regulated by the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1001, et seq.

(9) This section does not apply to disability income, hospital indemnity, medicare supplement, accident-only, vision, dental, specific disease, or long-term care policies.

Section 2. Section 33-1-102, MCA, is amended to read:

"33-1-102. Compliance required — exceptions — health service corporations — health maintenance organizations — governmental insurance programs — service contracts. (1) A person may not transact a business of insurance in Montana or a business relative to a subject resident, located, or to be performed in Montana without complying with the applicable provisions of this code.

(2) The provisions of this code do not apply with respect to:

(a) domestic farm mutual insurers as identified in chapter 4, except as stated in chapter 4;

(b) domestic benevolent associations as identified in chapter 6, except as stated in chapter 6; and

(c) fraternal benefit societies, except as stated in chapter 7.

(3) This code applies to health service corporations as prescribed in 33-30-102. The existence of the corporations is governed by Title 35, chapter 2, and related sections of the Montana Code Annotated.

(4) This code does not apply to health maintenance organizations or to managed care community networks, as defined in 53-6-702, to the extent that the existence and operations of those organizations are governed by chapter 31 or to the extent that the existence and operations of those networks are governed by Title 53, chapter 6, part 7. The department of public health and human services is responsible to protect the interests of consumers by providing complaint, appeal, and grievance procedures relating to managed care community networks and health maintenance organizations under contract to provide services under Title 53, chapter 6.

(5) This code does not apply to workers' compensation insurance programs provided for in Title 39, chapter 71, parts 21 and 23, and related sections.

(6) The department of public health and human services may limit the amount, scope, and duration of services for programs established under Title 53 that are provided under contract by entities subject to this title. The department of public health and human services may establish more restrictive eligibility requirements and fewer services than may be required by this title.

(7) ~~This~~ *Except as otherwise provided in Title 33, chapter 22, this* code does not apply to the state employee group insurance program established in Title 2, chapter 18, part 8.

(8) This code does not apply to insurance funded through the state self-insurance reserve fund provided for in 2-9-202.

(9) (a) ~~This~~ *Except as otherwise provided in Title 33, chapter 22, this* code does not apply to any arrangement, plan, or interlocal agreement between political subdivisions of this state in which the political subdivisions undertake to separately or jointly indemnify one another by way of a pooling, joint retention, deductible, or self-insurance plan.

(b) ~~This~~ *Except as otherwise provided in Title 33, chapter 22, this* code does not apply to any arrangement, plan, or interlocal agreement between political subdivisions of this state or any arrangement, plan, or program of a single political subdivision of this state in which the political subdivision provides to its officers, elected officials, or employees disability insurance or life insurance through a self-funded program.

(10) (a) This code does not apply to the marketing of, sale of, offering for sale of, issuance of, making of, proposal to make, and administration of a service contract.

(b) A "service contract" means a contract or agreement for a separately stated consideration for a specific duration to perform the repair, replacement, or maintenance of property or to indemnify for the repair, replacement, or maintenance of property if an operational or structural failure is due to a defect in materials or manufacturing or to normal wear and tear, with or without an additional provision for incidental payment or indemnity under limited circumstances, including but not limited to towing, rental, and emergency road service. A service contract may provide for the repair, replacement, or maintenance of property for damage resulting from power surges or accidental damage from handling. A service contract does not include motor club service as defined in 61-12-301.

(11) (a) Subject to 33-18-201 and 33-18-242, this code does not apply to insurance for ambulance services sold by a county, city, or town or to insurance sold by a third party if the county, city, or town is liable for the financial risk under the contract with the third party as provided in 7-34-103.

(b) If the financial risk for ambulance service insurance is with an entity other than the county, city, or town, the entity is subject to the provisions of this code."

Section 3. Section 33-22-706, MCA, is amended to read:

"33-22-706. (Temporary) **Coverage for severe mental illness — definition.** (1) Except as provided in 33-22-262(3) and subject to 33-22-262(4), a policy or certificate of health insurance or disability insurance that is delivered, issued for delivery, renewed, extended, or modified in this state must provide a level of benefits for the necessary care and treatment of severe mental illness, as defined in subsection (6), that is no less favorable than that level provided for other physical illness generally. Benefits for treatment of severe mental illness may be subject to managed care provisions contained in the policy or certificate.

(2) Benefits provided pursuant to subsection (1) include but are not limited to:

(a) inpatient hospital services;

(b) outpatient services;

(c) rehabilitative services;

(d) medication;

(e) services rendered by a licensed physician, licensed advanced practice registered nurse with a specialty in mental health, licensed social worker, licensed psychologist, or licensed professional counselor when those services are part of a treatment plan recommended and authorized by a licensed physician; and

(f) services rendered by a licensed advanced practice registered nurse with prescriptive authority and specializing in mental health.

(3) Benefits provided pursuant to this section must be included when determining maximum lifetime benefits, copayments, and deductibles.

(4) (a) This section applies to health service benefits provided by:

(i) individual and group health and disability insurance;

(ii) individual and group hospital or medical expense insurance;

(iii) medical subscriber contracts;

(iv) membership contracts of a health service corporation;

(v) health maintenance organizations; and

(vi) the comprehensive health association created by 33-22-1503.

(b) This section does not apply to the following coverages:

(i) blanket;

(ii) short-term travel;

(iii) accident only;

(iv) limited or specific disease;

(v) Title XVIII of the Social Security Act (medicare); or

(vi) any other similar coverage under state or federal government plans.

(5) This section does not limit benefits for an illness or condition that does not constitute a severe mental illness, as defined in subsection (6), but that does constitute a mental illness, as defined in 33-22-702.

(6) As used in this section, "severe mental illness" means the following disorders as defined by the American psychiatric association:

(a) schizophrenia;

(b) schizoaffective disorder;

(c) bipolar disorder;

(d) major depression;

(e) panic disorder;

(f) obsessive-compulsive disorder~~; and~~*; and*

~~(g) autism~~ *(g) autism*.

(7) Coverage for a child with autism who is 18 years of age or younger must comply with [section 1(3) through (5)] if the child is diagnosed with:

(a) autistic disorder;

(b) Asperger's disorder; or

(c) pervasive developmental disorder not otherwise specified. (Terminates June 30, 2009—sec. 14, Ch. 325, L. 2003.)

33-22-706. (Effective July 1, 2009) **Coverage for severe mental illness — definition.** (1) A policy or certificate of health insurance or disability insurance that is delivered, issued for delivery, renewed, extended, or modified in this state must provide a level of benefits for the necessary care and treatment of severe mental illness, as defined in subsection (6), that is no less favorable than that level provided for other physical illness generally. Benefits for treatment of severe mental illness may be subject to managed care provisions contained in the policy or certificate.

(2) Benefits provided pursuant to subsection (1) include but are not limited to:

(a) inpatient hospital services;

(b) outpatient services;

(c) rehabilitative services;

(d) medication;

(e) services rendered by a licensed physician, licensed advanced practice registered nurse with a specialty in mental health, licensed social worker, licensed psychologist, or licensed professional counselor when those services are part of a treatment plan recommended and authorized by a licensed physician; and

(f) services rendered by a licensed advanced practice registered nurse with prescriptive authority and specializing in mental health.

(3) Benefits provided pursuant to this section must be included when determining maximum lifetime benefits, copayments, and deductibles.

(4) (a) This section applies to health service benefits provided by:

(i) individual and group health and disability insurance;

(ii) individual and group hospital or medical expense insurance;

(iii) medical subscriber contracts;

(iv) membership contracts of a health service corporation;

(v) health maintenance organizations; and

(vi) the comprehensive health association created by 33-22-1503.

(b) This section does not apply to the following coverages:

(i) blanket;

(ii) short-term travel;

(iii) accident only;

(iv) limited or specific disease;

(v) Title XVIII of the Social Security Act (medicare); or

(vi) any other similar coverage under state or federal government plans.

(5) This section does not limit benefits for an illness or condition that does not constitute a severe mental illness, as defined in subsection (6), but that does constitute a mental illness, as defined in 33-22-702.

(6) As used in this section, "severe mental illness" means the following disorders as defined by the American psychiatric association:

(a) schizophrenia;

(b) schizoaffective disorder;

(c) bipolar disorder;

(d) major depression;

(e) panic disorder;

(f) obsessive-compulsive disorder~~; and~~*; and*

~~(g) autism~~ *(g) autism*.

(7) Coverage for a child with autism who is 18 years of age or younger must comply with [section 1(3) through (5)] if the child is diagnosed with:

(a) autistic disorder;

(b) Asperger's disorder; or

(c) pervasive developmental disorder not otherwise specified."

Section 4. Section 33-31-111, MCA, is amended to read:

"33-31-111. (Temporary) **Statutory construction and relationship to other laws.** (1) Except as otherwise provided in this chapter, the insurance or health service corporation laws do not apply to a health maintenance organization authorized to transact business under this chapter. This provision does not apply to an insurer or health service corporation licensed and regulated pursuant to the insurance or health service corporation laws of this state except with respect to its health maintenance organization activities authorized and regulated pursuant to this chapter.

(2) Solicitation of enrollees by a health maintenance organization granted a certificate of authority or its representatives is not a violation of any law relating to solicitation or advertising by health professionals.

(3) A health maintenance organization authorized under this chapter is not practicing medicine and is exempt from Title 37, chapter 3, relating to the practice of medicine.

(4) This chapter does not exempt a health maintenance organization from the applicable certificate of need requirements under Title 50, chapter 5, parts 1 and 3.

(5) This section does not exempt a health maintenance organization from the prohibition of pecuniary interest under 33-3-308 or the material transaction disclosure requirements under 33-3-701 through 33-3-704. A health maintenance organization must be considered an insurer for the purposes of 33-3-308 and 33-3-701 through 33-3-704.

(6) This section does not exempt a health maintenance organization from:

(a) prohibitions against interference with certain communications as provided under chapter 1, part 8;

(b) the provisions of Title 33, chapter 22, part 19;

(c) the requirements of 33-22-134 and 33-22-135;

(d) network adequacy and quality assurance requirements provided under chapter 36, except as provided in 33-22-262; or

(e) the requirements of Title 33, chapter 18, part 9.

(7) Except as provided in 33-22-262, the provisions of Title 33, chapter 1, parts 12 and 13, Title 33, chapter 2, part 19, 33-2-1114, 33-2-1211, 33-2-1212, 33-3-422, 33-3-431, 33-15-308, Title 33, chapter 17, Title 33, chapter 19, 33-22-107, 33-22-129, 33-22-131, 33-22-136, 33-22-141, 33-22-142, 33-22-152, 33-22-244, 33-22-246, 33-22-247, 33-22-514, *[section 1],* 33-22-521, 33-22-523, 33-22-524, 33-22-526, and 33-22-706 apply to health maintenance organizations. (Terminates June 30, 2009—sec. 14, Ch. 325, L. 2003.)

33-31-111. (Effective July 1, 2009) **Statutory construction and relationship to other laws.** (1) Except as otherwise provided in this chapter, the insurance or health service corporation laws do not apply to a health maintenance organization authorized to transact business under this chapter. This provision does not apply to an insurer or health service corporation licensed and regulated pursuant to the insurance or health service corporation laws of this state except with respect to its health maintenance organization activities authorized and regulated pursuant to this chapter.

(2) Solicitation of enrollees by a health maintenance organization granted a certificate of authority or its representatives is not a violation of any law relating to solicitation or advertising by health professionals.

(3) A health maintenance organization authorized under this chapter is not practicing medicine and is exempt from Title 37, chapter 3, relating to the practice of medicine.

(4) This chapter does not exempt a health maintenance organization from the applicable certificate of need requirements under Title 50, chapter 5, parts 1 and 3.

(5) This section does not exempt a health maintenance organization from the prohibition of pecuniary interest under 33-3-308 or the material transaction disclosure requirements under 33-3-701 through 33-3-704. A health maintenance organization must be considered an insurer for the purposes of 33-3-308 and 33-3-701 through 33-3-704.

(6) This section does not exempt a health maintenance organization from:

(a) prohibitions against interference with certain communications as provided under chapter 1, part 8;

(b) the provisions of Title 33, chapter 22, part 19;

(c) the requirements of 33-22-134 and 33-22-135;

(d) network adequacy and quality assurance requirements provided under chapter 36; or

(e) the requirements of Title 33, chapter 18, part 9.

(7) Title 33, chapter 1, parts 12 and 13, Title 33, chapter 2, part 19, 33-2-1114, 33-2-1211, 33-2-1212, 33-3-422, 33-3-431, 33-15-308, Title 33, chapter 17, Title 33, chapter 19, 33-22-107, 33-22-129, 33-22-131, 33-22-136, 33-22-141, 33-22-142, 33-22-152, 33-22-244, 33-22-246, 33-22-247, 33-22-514, *[section 1],* 33-22-521, 33-22-523, 33-22-524, 33-22-526, and 33-22-706 apply to health maintenance organizations."

Section 5. Section 33-35-306, MCA, is amended to read:

"33-35-306. Application of insurance code to arrangements. (1) In addition to this chapter, self-funded multiple employer welfare arrangements are subject to the following provisions:

(a) 33-1-111;

(b) Title 33, chapter 1, part 4, but the examination of a self-funded multiple employer welfare arrangement is limited to those matters to which the arrangement is subject to regulation under this chapter;

(c) Title 33, chapter 1, part 7;

(d) 33-3-308;

(e) Title 33, chapter 18, except 33-18-242;

(f) Title 33, chapter 19;

(g) 33-22-107, 33-22-131, 33-22-134, 33-22-135, 33-22-141, 33-22-142, and 33-22-152; and

(h) 33-22-512, *[section 1],* 33-22-525, and 33-22-526.

(2) Except as provided in this chapter, other provisions of Title 33 do not apply to a self-funded multiple employer welfare arrangement that has been issued a certificate of authority that has not been revoked."

Section 6. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 33, chapter 22, part 5, and the provisions of Title 33, chapter 22, apply to [section 1].

Section 7. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 8. Effective date. [This act] is effective January 1, 2010.

Section 9. Applicability. [This act] applies to contracts or policies issued or renewed on or after [the effective date of this act].

Approved April 24, 2009

CHAPTER NO. 360

[SB 281]

AN ACT REVISING LAWS GOVERNING DRIVER'S LICENSE SUSPENSIONS; AMENDING SECTIONS 46-6-310, 46-9-401, 61-5-214, AND 61-5-218, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-6-310, MCA, is amended to read:

"46-6-310. Notice to appear. (1) Whenever a peace officer is authorized to arrest a person without a warrant, the officer may instead issue the person a notice to appear.

(2) The notice must:

(a) be in writing;

(b) state the person's name and address, if known;

(c) set forth the nature of the offense;

(d) be signed by the issuing officer; ~~and~~

(e) direct the person to appear before a court at a certain time and place*; and*

(f) state that failure to appear may result in the suspension of the person's driver's license.

(3) Upon failure of the person to appear, a summons or arrest warrant may be issued."

Section 2. Section 46-9-401, MCA, is amended to read:

"46-9-401. Forms of bail. (1) Bail may be furnished in the following ways:

(a) by a deposit with the court of an amount equal to the required bail of cash, stocks, bonds, certificates of deposit, or other personal property approved by the court;

(b) by pledging real estate situated within the state with an unencumbered equity, not exempt, owned by the defendant or sureties at a value double the amount of the required bail;

(c) by posting a written undertaking executed by the defendant and by two sufficient sureties;

(d) by posting a commercial surety bond executed by the defendant and by a qualified agent for and on behalf of the surety company; or

(e) by posting an offender's driver's license in lieu of bail if the summons describes a violation of any offense ~~in Title 61, chapters 3 through 10, except chapter 8, part 4,~~ *as provided in 61-5-214* and if the offender is the holder of an unexpired driver's license.

(2) The amount of the bond must ensure the appearance of the defendant at all times required through all stages of the proceeding including trial de novo, if any, and unless the bond is denied by the court pursuant to 46-9-107, must remain in effect until final sentence is pronounced in open court.

(3) This chapter does not prohibit a surety from surrendering the defendant pursuant to 46-9-510 in a case in which the surety feels insecure in accepting liability for the defendant.

(4) Whenever a driver's license is accepted in lieu of bail, the judge shall return the driver's license to the defendant:

(a) after the required bail has been posted or there has been a final determination of the charge; and

(b) if the defendant pleaded guilty or was convicted, after a $25 administrative fee has been paid to the court."

Section 3. Section 61-5-214, MCA, is amended to read:

"61-5-214. Mandatory suspension for failure to appear or ~~pay fine~~ *comply with criminal sentence* — administrative fee — notice. (1) The department shall suspend the driver's license or driving privilege of a person

upon receipt of a report from the court, certified under penalty of law and in a form prescribed by the department, that the person:

(a) ~~is charged with or convicted of a violation of chapters 3 through 10 of this title or fails to comply with a sentence imposed pursuant to 46-18-201;~~ *failed to appear upon an issued complaint, summons, or court order after being charged with a misdemeanor violation under Title 45 or Title 61, chapters 3 through 10, or after posting a driver's license in lieu of bail as provided in 46-9-401(1)(e); or*

(b) ~~(i) failed to post the set bond amount or appear upon an issued complaint, summons, or court order;~~

~~(ii) after posting a driver's license in lieu of bail, failed to appear upon an issued complaint, summons, or court order; or~~

~~(iii) when assessed a fine, costs, or restitution of $100 or more, failed to pay the fine, costs, or restitution; and~~

~~(c) received prior written notice that the driver's license or driving privileges of the person would be suspended upon:~~

~~(i) failure to post bond or appear on an issued complaint, summons, or court order;~~

~~(ii) failure to appear after posting a driver's license in lieu of bond; or~~

~~(iii) failure to pay assessed fines, costs, or restitution.~~ *failed to comply with a sentence imposed pursuant to 46-18-201, including but not limited to the payment of a fine, costs, or restitution as provided in 46-18-201(6).*

(2) The suspension continues in effect until the court notifies the department that:

(a) the person has either appeared in court or ~~paid the~~ *complied with the sentence imposed pursuant to 46-18-201, including the payment of any* assessed fines, costs, or restitution; and

(b) the person has paid the court an administrative fee of $25 if the court was holding the offender's driver's license in lieu of bail under 44-1-1102, 46-9-302, or 46-9-401.

(3) *(a)* ~~The~~ *Before a report is submitted under this section, a person must be given written notice that the failure to appear on a criminal charge or comply with a criminal sentence may result in the suspension of the person's driver's license or driving privilege. Initial* notice ~~required under this section may~~ *of the possibility of a license suspension must either* be included on the summons or complaint and notice to appear form given to the person when charges are initially filed or ~~may~~ be contained in a court order, either hand-delivered to the person while in court or sent by ~~first-class~~ *certified* mail, postage prepaid, to the most current address for that person received by or on record with the court.

(b) The initial notice must be followed by a written warning from the court, sent by first-class mail, advising the person that a license suspension is imminent ~~and of the probable consequences of a suspension~~ unless*, by a specified date, the failure to appear or comply is remedied or* the person appears ~~or pays within a specified number of days~~ *before the court to contest the impending license suspension*.

(4) The court shall deposit any administrative fee received under subsection (2)(b) in the appropriate county or city general fund."

Section 4. Section 61-5-218, MCA, is amended to read:

"61-5-218. License reinstatement fee following license suspension or revocation. (1) Except as provided in subsection (2), a person whose driver's license, other than a commercial driver's license, or driving privilege has been suspended or revoked shall pay a reinstatement fee of $100 to the department to have the driver's license or driving privilege reinstated.

(2) *(a)* A person whose driver's license or driving privilege was suspended or revoked under 61-5-205 or 61-8-402 shall pay a reinstatement fee as required by 61-2-107.

(b) A driver's license or driving privilege that was suspended or revoked under 61-5-207 must be reinstated without payment of a reinstatement fee.

(c) The reinstatement fee required under subsection (1) must be waived by the department when a court notifies the department that the person has satisfied the requirements of 61-5-214(2) and the court has determined that the person is indigent under the standards set forth in 47-1-111.

(3) The department shall deposit the fees collected under subsection (1) in the general fund."

Section 5. Effective date. [This act] is effective July 1, 2009.

Approved April 24, 2009

CHAPTER NO. 361

[SB 286]

AN ACT REVISING AND CLARIFYING THE MILK CONTROL LAWS; TRANSFERRING CERTAIN FUNCTIONS FROM THE DEPARTMENT OF LIVESTOCK TO THE BOARD OF MILK CONTROL; AMENDING SECTIONS 81-1-101, 81-23-101, 81-23-103, 81-23-104, 81-23-201, 81-23-202, 81-23-203, 81-23-204, 81-23-302, 81-23-303, 81-23-401, 81-23-402, 81-23-404, 81-23-405, AND 81-23-406, MCA; REPEALING SECTIONS 81-23-304 AND 81-23-305, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 81-1-101, MCA, is amended to read:

"81-1-101. Definitions. Unless the context requires otherwise, in Title 81, the following definitions apply:

(1) "Board" means the board of livestock provided for in 2-15-3102*, except as provided in Title 81, chapter 23*.

(2) "Department" means the department of livestock provided for in Title 2, chapter 15, part 31."

Section 2. Section 81-23-101, MCA, is amended to read:

"81-23-101. Definitions. (1) Unless the context requires otherwise, in this chapter, the following definitions apply:

(a) "Board" means the board of milk control provided for in 2-15-3105.

(b) (i) "Class" refers to the classes of utilization of milk that the ~~department shall define~~ *board defines* by rule.

(ii) In adopting rules under this subsection (1)(b), the ~~department~~ *board* shall use the current definitions of classes of utilization of milk that are found in ~~Title~~ 7 CFR, part 1000.40, except that the ~~department~~ *board* may combine any of the classes of milk provided for in the federal definitions into a single class.

(c) "Consumer" means a person or an agency, other than a dealer, who purchases milk for consumption or use.

(d) "Dealer" means a producer, distributor, producer-distributor, jobber, or independent contractor.

(e) *(i)* "Distributor" means a person purchasing milk from any source, either in bulk or in packages, and distributing it for consumption in this state. The term includes what are commonly known as jobbers and independent contractors.

(ii) The term~~, however, excludes~~ *does not include* a person purchasing milk from a dealer licensed under this chapter~~,~~ for resale over the counter at retail or for consumption on the premises.

(f) "Licensee" means a person who holds a license from the ~~department~~ *board*.

(g) "Market" means an area of the state designated by the ~~department~~ *board* as a natural marketing area.

(h) "Milk" means the lacteal secretion of a dairy animal or animals, including those secretions when raw and when cooled, pasteurized, standardized, homogenized, recombined, concentrated fresh, or otherwise processed and all of which are designated as grade A by a constituted health authority and including those secretions that are in any manner rendered sterile or aseptic, notwithstanding whether they are regulated by any health authority of this or any other state or nation.

(i) "Person" means an individual, firm, corporation, or cooperative association or the dairy operated by the department of corrections at the Montana state prison.

(j) "Producer" means a person who produces milk for consumption in this state~~, selling~~ *and sells* it to a distributor.

(k) "Producer prices" means those prices at which milk owned by a producer is sold in bulk to a distributor.

(l) "Producer-distributor" means a person both producing and distributing milk for consumption in this state.

(m) "Retailer" means a person selling milk in bulk or in packages over the counter at retail or for consumption on the premises and includes but is not limited to retail stores of all types, restaurants, boardinghouses, fraternities, sororities, confectioneries, public and private schools, including colleges and universities, and both public and private institutions and instrumentalities of all types and description.

(2) The ~~department~~ *board* may assign new milk products *not provided for under 7 CFR, part 1000.40,* to the class that the ~~department~~ *board* considers proper."

Section 3. Section 81-23-103, MCA, is amended to read:

"81-23-103. General powers of ~~department~~ *department and board.* (1) The ~~department~~ *board* shall supervise, regulate, and control the milk industry of this state, including the production, processing, storage, distribution, and sale of milk sold for consumption in this state. *The board shall conduct hearings and make determinations under this chapter and under board rules and orders promulgated pursuant to this chapter.* This chapter does not affect the status, force, or operation of any provision of public health laws,

county board of health rules, or municipal ordinances for the promotion or protection of the public health.

(2) The ~~department~~ *department* may cooperate with the department of public health and human services, a county or city board of health, or the department of agriculture in enforcing this chapter.

~~(2)~~*(3)* The ~~department shall investigate~~ *department shall assist the board by investigating* all matters pertaining to the production, processing, storage, distribution, and sale of milk in this state and ~~shall conduct hearings on any subject pertinent to the administration of this chapter. The department~~ *by bringing proceedings to enforce the orders of the board. The department, in exercising its enforcement duties,* may subpoena milk dealers, their records, books, and accounts, and any other person from whom information may be desired or considered necessary to carry out the purposes and intent of this chapter. The ~~department~~ *department* may take depositions of witnesses who are sick or absent from the state or who cannot otherwise appear in person before the ~~department~~ *department* at its offices. The ~~department~~ *department* shall give at least 10 days' notice to the proposed witness.

(4) The department shall provide staff to the board as provided in 2-15-121 to assist in technical, enforcement, and regulatory activities."

Section 4. Section 81-23-104, MCA, is amended to read:

"81-23-104. Rules and orders. The ~~department~~ *board* may adopt and enforce rules and orders necessary to carry out the provisions of this chapter and any orders adopted under it by the ~~department or the~~ board. A rule or order ~~shall~~ *must* be posted for public inspection in the main office of the department for 30 days, and a copy ~~shall~~ *must* be filed in the office of the department. A copy ~~shall~~ *must* also be sent by registered or certified letter to the secretary of each area, except in the case of an order directed only to a person or persons named in it, which ~~shall~~ *must* be served by personal delivery of a copy or by mailing a copy to each person to whom the order is directed or, in the case of a corporation, to any officer or agent of the corporation upon whom a summons may be served in accordance with laws of this state. The posting, in the main office of the department, of a rule or order not required to be personally served as provided in this section and the filing in the office of the department is sufficient notice to all persons affected by the rule or order. A rule or order when properly posted and filed or served, as provided in this section, has the force of law."

Section 5. Section 81-23-201, MCA, is amended to read:

"81-23-201. Licenses to producers, producer-distributors, distributors, and jobbers. In any market where the provisions of this chapter apply, it is unlawful for a producer, producer-distributor, distributor, or jobber to produce, transport, process, store, handle, distribute, buy, or sell milk unless the dealer is properly licensed as provided by this chapter. It is unlawful for a person to buy, sell, handle, process, or distribute milk ~~which he~~ *that the person* knows or has reason to believe has been previously dealt with or handled in violation of any provision of this chapter. The ~~department~~ *board* may decline to grant a license or may suspend or revoke a license already granted~~,~~ upon due cause and after hearings."

Section 6. Section 81-23-202, MCA, is amended to read:

"81-23-202. Licenses — disposition of income. (1) A producer, producer-distributor, distributor, or jobber may not engage in the business of producing or selling milk subject to this chapter in this state without first having obtained a license from the department~~,~~ as provided in 81-22-202~~,~~ or, in

the case of milk entering this state from another state or foreign nation, without complying with the requirements of the Montana Food, Drug, and Cosmetic Act and without being licensed under this chapter by the ~~department~~ *board*. The annual fee for the license ~~from the department~~ is $2*,* ~~and~~ is due before July 1*,* and must be deposited by the department in the general fund. The license required by this chapter is in addition to any other license required by state law or any municipality of this state. This chapter applies to every part of the state of Montana.

(2) In addition to the annual license fee, the ~~department~~ *board* shall, in each year, before April 1, for the purpose of securing funds to administer and enforce this chapter, levy an assessment upon producers, producer-distributors, and distributors as follows:

(a) a fee per hundredweight on the total volume of all milk subject to this chapter produced and sold by a producer-distributor;

(b) a fee per hundredweight on the total volume of all milk subject to this chapter sold by a producer;

(c) a fee per hundredweight on the total volume of all milk subject to this chapter sold by a distributor, excepting that which is sold to another distributor.

(3) The ~~department~~ *board* shall adopt rules fixing the amount of each fee. The amounts may not exceed levels sufficient to provide for the administration of this chapter. The fee assessed on a producer or on a distributor may not be more than one-half the fee assessed on a producer-distributor.

(4) (a) In addition to the fees established in subsections (1) through (3), the department shall assess a fee per hundredweight on the volume of all classes of milk produced and sold by a person licensed by the department to be used for the administration of the milk inspection and milk diagnostic laboratory functions of the department. The fee must be established pursuant to 81-1-102(2).

(b) A person licensed by the department shall report to the department on a monthly basis the volume of milk produced. All reporting documentation must be submitted on forms approved or provided by the department.

(5) The assessments upon producer-distributors, producers, and distributors must be paid quarterly before January 15, April 15, July 15, and October 15 of each year. The amount of the assessments must be computed by applying the fee designated by the ~~department~~ *board* and the fee established in subsection (4) to the volume of milk sold in the preceding calendar quarter.

(6) Failure of a producer-distributor, producer, or distributor to pay an assessment when due is a violation of this chapter, and a license under this chapter automatically terminates and is void. A terminated license must be reinstated by the ~~department~~ *board* upon payment of a delinquency fee equal to 30% of the assessment that was due.

(7) All assessments required by this chapter must be deposited by the department in the state special revenue fund. All costs of administering chapter 22 and this chapter, including the salaries of employees and assistants, per diem and expenses of board members, and all other disbursements necessary to carry out the purpose of chapter 22 and this chapter, must be paid out of the board money in that fund.

(8) The ~~department~~ *board* may, if it finds the costs of administering and enforcing this chapter can be derived from lower rates, amend its rules to fix the rates at a less amount on or before April 1 in any year."

Section 7. Section 81-23-203, MCA, is amended to read:

"81-23-203. Application for licenses. An applicant for license to operate as a producer, producer-distributor, distributor, or jobber shall file a signed application upon a blank prepared by the ~~department~~ *department* and containing the information required by the ~~department~~ *board*. The application must certify the applicant to be the holder of all licenses required by the ~~department~~ *board* for the conduct of the applicant's business or, in the case of milk entering this state from another state or foreign nation, compliance with the requirements of the Montana Food, Drug, and Cosmetic Act. The application must be accompanied by the license fee required to be paid."

Section 8. Section 81-23-204, MCA, is amended to read:

"81-23-204. Declining, suspending, and revoking licenses — penalties in lieu of suspension or revocation. (1) The ~~department~~ *board* may refuse to grant a license or may suspend or revoke a license already granted for due cause upon due notice and after hearing. The violation of any provisions of this chapter or of any lawful order or rule of the board ~~or department~~, the failure or refusal to make required statements or reports, or failure to pay license or assessment fees are causes for which the ~~department~~ *board* may suspend or revoke a license.

(2) In place of suspension or revocation of a license, the ~~department~~ *board* may assess a civil penalty not to exceed $500 per day for each daily failure to comply with or each daily violation of the provisions of this chapter or of any lawful order or rule of the ~~department or~~ board. *A penalty may not be assessed until after the cause of the penalty has been upheld following the notice and hearing requirements of subsection (1).* If the person against whom a civil penalty is assessed fails to pay the civil penalty immediately, the ~~department~~ *board* shall collect the civil penalty by a civil proceeding in the district court of the first judicial district. This penalty ~~shall~~ *must* be construed as civil and not criminal in nature. Any ~~moneys~~ *money* received by the ~~department~~ *board* as a result of collection of civil penalties ~~shall~~ *must* be paid into the state special revenue fund as provided by 81-23-403."

Section 9. Section 81-23-302, MCA, is amended to read:

"81-23-302. Establishment of minimum prices. (1) The board shall, by adopting rules, fix minimum producer prices for classes of utilization of milk as defined by the ~~department~~ *board*.

(2) The board shall establish prices by means of flexible formulas that must be devised so that the formulas bring about automatic changes in all minimum prices that are justified on the basis of changes in production, supply, processing, distribution, and retailing costs.

(3) The board shall consider the balance between production and consumption of milk, the costs of production and distribution, and prices in adjacent and neighboring areas and states so that minimum prices that are fair and equitable to producers and consumers may result.

(4) The board shall, when publishing notice of proposed rulemaking under authority of this section, set forth the specific factors that must be taken into consideration in establishing the formulas and, in particular, in determining costs of production and of the actual dollars and cents costs of production that preliminary studies and investigations of auditors or accountants in the department's employment indicate will or should be shown at the hearing so that all interested parties will have an opportunity to be heard and to question or rebut the considerations as a matter of record.

(5) Specific factors may include but are not limited to the following items:

(a) current and prospective supplies of milk in relation to current and prospective demands for milk for all purposes;

(b) the cost factors in producing milk, which must include among other things the prices paid by farmers generally, as used in parity calculations of the United States department of agriculture, prices paid by farmers for dairy feed in particular, and farm wage rates in this state;

(c) the alternative opportunities, both farm and nonfarm, open to milk producers, which must include among other things the prices received by farmers for all products other than milk, the prices received by farmers for beef cattle, and the percentage of unemployment in the state and nation as determined by appropriate state and federal agencies;

(d) the prices of butter, nonfat dry milk, and cheese;

(e) the need, if any, for freight or transportation charges to be deducted by distributors from producer prices for bulk milk.

(6) If the board at any time proposes to base all or part of an official order establishing or revising milk pricing formulas upon facts within its own knowledge, as distinguished from evidence that may be presented to it by the consuming public or the milk industry, the board shall, when publishing notice of proposed rulemaking under authority of this section, notify the consuming public and the milk industry of the specific facts within its own knowledge that it will consider so that all interested parties will have an opportunity to be heard and to question or rebut the facts as a matter of record.

(7) The board, after consideration of the evidence produced, shall make written findings and conclusions and shall fix by official rule the formula under which minimum producer prices for milk must be computed.

(8) This section may not be construed as requiring the board to promulgate a specific number of formulas, but it must be construed liberally so that the board may adopt a reasonable method of expression to accomplish the objective set forth in subsection (7).

(9) Each rule establishing or revising milk pricing formulas must classify milk by forms, classes, grades, or uses as the board considers advisable and must specify the minimum prices for the forms, classes, grades, and uses.

(10) Distributors who have processing facilities in this state shall, whenever possible, purchase milk from Montana producers for the processing of products to be sold in this state if milk is available from Montana producers at the price set by the board.

(11) The board shall adopt rules to regulate transportation rates that distributors, contract haulers, and others charge producers for interplant transportation of milk. An allowance for transportation of milk between plants may not be permitted unless it is found by the board to be necessary to permit the movement of milk in the public interest. The board may promulgate rules regarding the requirement for first call on Montana milk supplies~~,~~ as provided in subsection (10). Rules must be coordinated with those adopted pursuant to fair trade practices under 81-23-303.

(12) All milk purchased by a distributor must be purchased on a uniform basis. The basis to be used must be established by the board after the producers and the distributors have been consulted.

(13) The board may amend a rule in the same manner provided in this section for the original establishment of milk pricing formulas. The board may in its discretion, when it determines that the need exists, give notice of and hold

statewide public hearings affecting establishment or revision of milk pricing formulas.

(14) Upon petition of a distributor or a majority of a distributor's producers, the board shall hold a hearing to receive and consider evidence regarding the advisability and need for a base or quota plan as a method of payment by that distributor of producer prices. If the board finds that the evidence presented at the hearing warrants the establishment of a base or quota plan, the board shall proceed by order to establish the base or quota plan.

(15) (a) Upon petition by 10% or 20 of the licensed producers in Montana, whichever is less, or upon petition by a licensed producer-distributor or distributor, the board shall hold a hearing to receive and consider evidence regarding the advisability and need for a statewide pooling arrangement as a method of payment of producer prices, provided that at the hearing, the board shall, among other things, specifically receive and consider evidence concerning production and marketing practices that have historically prevailed statewide. If the board finds that the evidence presented at the hearing warrants the establishment of a statewide pooling arrangement, the board shall proceed by order to establish the arrangement. An order is not effective until it is approved in a referendum conducted by the board by mail among affected producers, producer-distributors, and distributors. The order must be approved by a majority of the producers, producer-distributors, and distributors voting, representing more than 50% of the milk produced in Montana that is to be included in the proposed pool, based on each producer's average monthly production for the 12 months immediately preceding the referendum. If the board finds it necessary, the board may conduct more than one referendum on any order.

(b) The order of the board establishing the statewide pooling arrangement may include other provisions that the board considers necessary for the proper and efficient operation of the pool. These provisions may include but are not limited to:

(i) a statewide base or quota plan contemplated in subsection (14);

(ii) the establishment of a pool settlement fund to be administered by the department for the purpose of receiving payments from pool distributors or making payments to them as necessary in order to operate and administer the statewide pool; and

(iii) the establishment of a pool expense fund for the purpose of offsetting the costs to the department of administering the pool, funded by a special levy assessed against each pool producer.

(c) During the initial startup of a statewide pool, the department may draw from existing cash reserves to fund a pool settlement fund and a pool expense fund, but withdrawals from the cash reserve must be reimbursed.

(d) An order of the board establishing a statewide pooling arrangement that has been approved in a referendum may be rescinded in the same manner as provided for approval of the order under subsection (15)(a). The order may be amended without a referendum if, prior to amending the order, the board gives written notice of its intended action and holds a public hearing.

(16) The requirements of this section concerning notices of hearings for the establishment of milk pricing formulas apply to any hearings regarding base or quota plans or statewide pooling arrangements or abandonment of base or quota plans or statewide pooling arrangements.

(17) Rules adopted pursuant to this section must be ~~enforced and~~ audited for compliance by the department *and enforced by the board. An enforcement action is subject to the provisions of [section 16].*"

Section 10. Section 81-23-303, MCA, is amended to read:

"81-23-303. Rules of fair trade practices. The ~~department~~ *board* may adopt reasonable rules governing fair trade practices as they pertain to the transaction of business among licensees under this chapter and among licensees and the general public. Except for provisions regarding the requirement for first call on Montana milk supplies, as provided in 81-23-302(10), and rules adopted pursuant to 81-23-302(11), fair trade practice rules must contain but are not limited to provisions prohibiting the following methods of doing business that are unfair, unlawful, and not in the public interest:

(1) the payment, allowance, or acceptance of secret rebates, secret refunds, or unearned discounts by a person, whether in the form of money or otherwise;

(2) the giving of milk, cream, dairy products, services, or articles of any kind, except to bona fide charities, for the purpose of securing or retaining the fluid milk or fluid cream business of a customer;

(3) the extension to certain customers of special prices or services not available to all customers who purchase milk of like quantity under like terms and conditions;

(4) the payment of a price lower than the applicable producer price, established by the board, by a distributor to a producer for milk that is distributed to any person, including agencies of the federal, state, or local government."

Section 11. Section 81-23-401, MCA, is amended to read:

"81-23-401. Entry, inspection, and investigation. The department may enter, at all reasonable hours, all places where milk is produced, processed, bottled, handled, or stored or where the books, papers, records, or documents relative to those transactions are kept, and may inspect and copy them in any place in this state. The ~~department~~ *department* may administer oaths and take testimony for the purpose of ascertaining facts which, in the judgment of the ~~department~~ *department*, are necessary to administer this chapter."

Section 12. Section 81-23-402, MCA, is amended to read:

"81-23-402. Reports of dealers — accounting system — records. (1) *(a)* The department may require licensees to file *reports* with it ~~reports~~ at reasonable or regular times ~~which~~ *that* the ~~department~~ *board* may require, showing the licensee's production, sale, or distribution of milk and any information considered *necessary* by the ~~department necessary which~~ *board that* pertains to the production, sale, or distribution of milk, either under oath or otherwise, as the ~~department~~ *board* may direct. Failure or refusal to file a report when directed to do so is grounds for the revocation of the license and is a violation for which the licensee may be fined as provided by this chapter, one or both, at the discretion of the ~~department~~ *board*.

(b) The department and the board may request only the records necessary for establishing milk prices pursuant to this chapter. The department shall provide licensees with information concerning procedures a licensee may use to assert a claim of confidentiality with respect to constitutionally protected information that must be submitted to the department, such as trade secret or proprietary information.

(2) The ~~department~~ *board* shall adopt a uniform system of accounting to be used by the distributor to account for the usage of all milk received by the distributor.

(3) A distributor and producer-distributor shall keep:

(a) a record of all milk, cream, or dairy products received, detailed as to location, names and addresses of suppliers, prices paid, deductions or charges made, and the use to which the milk or cream was put;

(b) a record of the quantity of each kind of milk or dairy product manufactured and the quantity and price of milk or dairy products sold;

(c) a complete record of all milk, cream, or dairy products sold, classified as to kind and grade, showing where sold, and the amount received in payment;

(d) a record of the wastage or loss of milk or dairy products;

(e) a record of the items of handling expense;

(f) a record of all refrigeration facilities sold for storage purposes to any person, showing types, sizes, and location of the facilities and the original or duplicate original of all agreements covering sales for them;

(g) other records ~~which~~ *that* the ~~department~~ *board* considers necessary for the proper enforcement of this chapter."

Section 13. Section 81-23-404, MCA, is amended to read:

"81-23-404. Cooperation with other governmental agencies. In order to secure a uniform system of milk control, the ~~department~~ *board* shall confer and cooperate with the proper authorities of other states and of the United States, including the secretary of agriculture of the United States, and for those purposes, the ~~department~~ *board* may conduct joint hearings, issue joint or concurrent orders, and exercise all its powers under this chapter."

Section 14. Section 81-23-405, MCA, is amended to read:

"81-23-405. Violations made misdemeanors — penalties. (1) A person who produces, sells, distributes, or handles milk in any way, except as a consumer, without a license from the ~~department~~ *board* as required by this chapter or who violates a lawful rule of the department or board is guilty of a misdemeanor punishable by a fine not exceeding $600. Each day's violation is a separate offense.

(2) The district courts have original jurisdiction in all criminal actions for violations of this chapter and in all civil actions for the recovery or enforcement of penalties provided for in this chapter. All of those actions, both criminal and civil, ~~shall~~ *must* be tried in the district court.

(3) The county attorneys, in their respective counties, shall diligently prosecute all violations of this chapter."

Section 15. Section 81-23-406, MCA, is amended to read:

"81-23-406. Additional remedies. The ~~department~~ *board* may begin any proceeding at law or in equity as may appear necessary to enforce compliance with this chapter or to enforce compliance with an order or rule of the board or department adopted under this chapter or to obtain a judicial interpretation of any of them. In addition to any other remedy, the ~~department~~ *board* may apply to the district court of the district where the action arises for relief by injunction, mandamus, or any other appropriate remedy in equity without being compelled to allege or prove that an adequate remedy at law does not otherwise exist. The ~~department~~ *board* may not be required to post bond in an action to which it is a

party whether upon appeal or otherwise. All legal actions may be brought by or against the board or department in the name of the department ~~of livestock~~, and it is not necessary in an action to which the department is a party that the action be brought by or against this state on relation of the department. The ~~department~~ *board* may sue by its own attorney, and it may also call upon a county attorney to represent it in the district court of the county attorney's county or the attorney general to represent it on appeal to the supreme court, or it may associate its own attorney with either in court."

Section 16. Appeal of action or decision. An entity receiving notice of a violation of a provision of this chapter may within 60 days of receiving the notice from the department or board submit a request to the board for a contested case proceeding pursuant to Title 2, chapter 4, part 6. Upon receiving a request, the board shall appoint a hearings examiner to conduct the hearing and issue a proposal for decision. The board shall issue a final decision within 90 days of receiving the proposal for decision.

Section 17. Repealer. Sections 81-23-304 and 81-23-305, MCA, are repealed.

Section 18. Codification instruction. [Section 16] is intended to be codified as an integral part of Title 81, chapter 23, part 4, and the provisions of Title 81, chapter 23, part 4, apply to [section 16].

Section 19. Effective date. [This act] is effective July 1, 2009.

Section 20. Termination. [Sections 1 through 16] terminate June 30, 2011.

Approved April 24, 2009

CHAPTER NO. 362

[SB 350]

AN ACT PROVIDING FOR ROUTINE HIV SCREENING AND INCORPORATING THE SCREENING INTO THE PATIENT'S GENERAL INFORMED CONSENT FOR MEDICAL CARE; INCORPORATING PRENATAL SCREENING FOR HIV-RELATED CONDITIONS INTO THE PREGNANT PATIENT'S GENERAL INFORMED CONSENT FOR MEDICAL CARE; PROVIDING FOR LABOR AND DELIVERY HIV SCREENING IN CERTAIN CIRCUMSTANCES; AMENDING SECTIONS 50-16-702, 50-16-1003, 50-16-1008, 50-16-1009, AND 50-16-1013, MCA; AND REPEALING SECTION 50-16-1007, MCA.

WHEREAS, in 2008, 22 people in Montana received a new HIV diagnosis and 514 people are reported to be living with HIV/AIDS in Montana; and

WHEREAS, an estimated 21% of people living with HIV/AIDS in the U.S. are unaware of their infection; and

WHEREAS, it has been shown that people who are not aware of their HIV-positive status are more likely to transmit the disease than those who know their status; and

WHEREAS, universal screening of pregnant women would significantly reduce the chances of a newborn contracting HIV during the birthing process; and

WHEREAS, public health would be served by facilitating informed, voluntary, and confidential use of tests designed to reveal HIV infection; and

WHEREAS, public health would also be served by expanding the availability of informed, voluntary, and confidential HIV diagnostic testing and making HIV diagnostic testing a routine part of general medical care; and

WHEREAS, making HIV diagnostic testing a routine part of general medical care is the national recommendation by the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention.

Be it enacted by the Legislature of the State of Montana:

Section 1. Screening and pretest information. (1) Screening for HIV-related conditions must be considered routine and must be incorporated into the patient's general informed consent for medical care on the same basis as other screening and diagnostic tests.

(2) Screening for HIV-related conditions must be voluntary and undertaken with the patient's knowledge and understanding that HIV diagnostic testing is planned.

(3) Patients must be informed orally or in writing that HIV diagnostic testing will be performed.

(4) If a patient declines an HIV diagnostic test, this decision must be documented in the patient's medical record.

Section 2. Prenatal HIV screening. (1) Screening for HIV-related conditions must be considered routine and must be incorporated into the pregnant patient's general informed consent for medical care on the same basis as other routine prenatal screening and diagnostic tests.

(2) Screening for HIV-related conditions in pregnant patients must be voluntary and undertaken with the patient's knowledge and understanding that HIV diagnostic testing is planned.

(3) Pregnant patients must be informed orally or in writing that HIV diagnostic testing will be performed.

(4) If a pregnant patient declines an HIV diagnostic test, this decision must be documented in the patient's medical record.

(5) Physicians and other health care providers licensed to provide prenatal care to pregnant women may:

(a) offer an HIV diagnostic test in the third trimester to pregnant women who were not tested earlier in the pregnancy; and

(b) offer a repeat HIV diagnostic test in the third trimester of pregnancy, preferably before 36 weeks of gestation, to each of their pregnant patients at high risk for acquiring HIV-related conditions.

Section 3. Labor and delivery HIV screening. Physicians and other health care providers licensed to provide prenatal care to pregnant women shall, if medically indicated:

(1) offer a rapid HIV diagnostic test to pregnant women in labor with unknown or undocumented HIV status;

(2) offer antiretroviral prophylaxis without waiting for the results of the confirmatory test if a rapid HIV diagnostic test or a standard HIV diagnostic test is positive.

Section 4. Section 50-16-702, MCA, is amended to read:

"50-16-702. Notification of exposure to infectious disease — report of exposure to disease. (1) (a) If an emergency services provider acting in an official capacity attends a patient prior to or during transport or assists in

transporting a patient to a health care facility and the emergency services provider has had an exposure, the emergency services provider may request the designated officer to submit the form required by department rule to the health care facility on the emergency services provider's behalf. The form must be provided for in rules adopted by the department and must include the emergency services provider's name and other information required by the department, including a description of the exposure. The designated officer shall submit the completed form to the health care facility receiving the patient as soon as possible after the request for submission by the emergency services provider. Submission of the form to the health care facility is an indication that the emergency services provider was exposed and a verification that the designated officer and the emergency services provider believe that the emergency services provider was exposed.

(b) If the exposure described on the form occurred in a manner that may allow infection by HIV, as defined in 50-16-1003, by a mode of transmission recognized by the *U.S. department of health and human services,* centers for disease control and prevention, then submission of the form to the health care facility constitutes a request to the patient's physician to ~~seek consent for performance of~~ *perform* an ~~HIV-related~~ *HIV diagnostic* test pursuant to ~~50-16-1007(10)~~ *[section 1]*.

(c) Upon receipt of the report of exposure from a designated officer, the health care facility shall notify the designated officer in writing whether or not a determination has been made that the patient has or does not have an infectious disease. If a determination has been made and the patient has been found:

(i) to have an infectious disease, the information required by 50-16-703 must be provided by the health care facility;

(ii) to not have an infectious disease, the date on which the patient was transported to the health care facility must be provided by the health care facility.

(2) If a health care facility receiving a patient determines that the patient has an airborne infectious disease, the health care facility shall, within 48 hours after the determination was made, notify the designated officer and the department of that fact. The notice to the department must include the name of the emergency services organization that transported the patient to the health care facility. The department shall, within 24 hours after receiving the notice, notify the designated officer of the emergency services provider who transported the patient.

(3) A designated officer who receives the notification from a health care facility required by 50-16-703(2) or by subsection (1)(c) of this section shall immediately provide the information contained in the notification to the emergency services provider for whom the report of exposure was filed or who was exposed to a patient with an airborne infectious disease."

Section 5. Section 50-16-1003, MCA, is amended to read:

"50-16-1003. Definitions. As used in this part, the following definitions apply:

(1) "AIDS" means acquired immune deficiency syndrome as further defined by the department in accordance with standards promulgated by the *U.S. department of health and human services,* centers for disease control ~~of the United States public health service~~ *and prevention*.

(2) "Antiretroviral prophylaxis" means a specific drug regime preventing mother-to-child transmission of HIV infections.

~~(2)~~*(3)* "Contact" means a person who has been exposed to the test subject in a manner, voluntary or involuntary, that may allow HIV transmission in accordance with modes of transmission recognized by the *U.S. department of health and human services,* centers for disease control ~~of the United States public health service~~ *and prevention*.

~~(3)~~*(4)* "Department" means the department of public health and human services provided for in 2-15-2201.

~~(4)~~*(5)* "Health care facility" means a health care institution, private or public, including but not limited to a hospital, nursing home, clinic, blood bank, blood center, sperm bank, or laboratory.

~~(5)~~*(6)* "Health care provider" means a person who is licensed, certified, or otherwise authorized by the laws of this state or who is licensed, certified, or otherwise authorized by the laws of another state to provide health care in the ordinary course of business or practice of a profession. The term does not include a person who provides health care solely through the sale or dispensing of drugs or medical devices.

~~(6)~~*(7)* "HIV" means the human immunodeficiency virus, identified as the causative agent of AIDS, and all HIV and HIV-related viruses that damage the cellular branch of the human immune or neurological systems and leave the infected person immunodeficient or neurologically impaired.

~~(7)~~*(8)* "HIV-related condition" means a chronic disease resulting from infection with HIV, including but not limited to AIDS and asymptomatic seropositivity for HIV.

~~(8)~~*(9)* ~~"HIV-related~~ *"HIV diagnostic* test" means a test approved by the federal food and drug administration, including but not limited to an enzyme immunoassay and a western blot, that is designed to detect the presence of HIV or antibodies to HIV.

~~(9) "Informed consent" means a freely executed oral or written grant of permission by the subject of an HIV-related test, by the subject's legal guardian, or, if there is no legal guardian and the subject of the test is unconscious or otherwise mentally incapacitated, by the subject's next of kin or significant other or a person designated by the subject in hospital records to act on the person's behalf to perform an HIV-related test after the receipt of pretest counseling.~~

~~(10) "Legal guardian" means a person appointed by a court to assume legal authority for another who has been found incapacitated or, in the case of a minor, a person who has legal custody of the minor.~~

~~(11)~~*(10)* "Local board" means a county, city, city-county, or district board of health.

~~(12) "Local health officer" means a county, city, city-county, or district health officer appointed by the local board.~~

~~(13) "Next of kin" means an individual who is a parent, adult child, grandparent, adult sibling, or legal spouse of a person.~~

~~(14)~~*(11)* "Person" means an individual, corporation, organization, or other legal entity.

~~(15) "Posttest counseling" means counseling, conducted at the time that the HIV-related test results are given, and includes, at a minimum, written materials provided by the department.~~

~~(16) "Pretest counseling" means the provision of counseling to the subject prior to conduct of an HIV-related test, including, at a minimum, written materials developed and provided by the department.~~

(12) "Rapid HIV diagnostic test" means a federally approved test designed to assist in time-sensitive diagnosis of HIV infections.

~~(17) "Release of test results" means a written authorization for disclosure of HIV-related test results that:~~

~~(a) is signed and dated by the person tested or the person authorized to act for the person tested; and~~

~~(b) specifies the nature of the information to be disclosed and to whom disclosure is authorized.~~

~~(18) "Significant other" means an individual living in a current spousal relationship with another individual but who is not legally a spouse of that individual.~~"

Section 6. Section 50-16-1008, MCA, is amended to read:

"50-16-1008. Testing of donors of organs, tissues, and semen required — penalty. (1) Prior to donation of an organ, semen, or tissues, ~~HIV-related~~ *HIV diagnostic* testing of a prospective donor, in accordance with nationally accepted standards adopted by the department by rule, is required unless the transplantation of an indispensable organ is necessary to save a patient's life and there is not sufficient time to perform an ~~HIV-related~~ *HIV diagnostic* test.

(2) A knowing or purposeful violation of this section is a misdemeanor punishable by a fine of up to $1,000 or imprisonment of up to 6 months, or both."

Section 7. Section 50-16-1009, MCA, is amended to read:

"50-16-1009. Confidentiality of records — notification of contacts — penalty for unlawful disclosure. (1) A person may not disclose or be compelled to disclose the identity of a subject of an ~~HIV-related~~ *HIV diagnostic* test or the results of a test in a manner that permits identification of the subject of the test, except to the extent allowed under the Uniform Health Care Information Act, Title 50, chapter 16, part 5, the Government Health Care Information Act, Title 50, chapter 16, part 6, or applicable federal law.

(2) If a health care provider informs the subject of an ~~HIV-related~~ *HIV diagnostic* test that the results are positive, the provider shall encourage the subject to notify persons who are potential contacts. If the subject is unable or unwilling to notify all contacts, the health care provider may ask the subject to disclose voluntarily the identities of the contacts and to authorize notification of those contacts by a health care provider. A notification may state only that the contact may have been exposed to HIV and may not include the time or place of possible exposure or the identity of the subject of the test.

(3) A person who discloses or compels another to disclose confidential health care information in violation of this section is guilty of a misdemeanor punishable by a fine of $1,000 or imprisonment for 1 year, or both."

Section 8. Section 50-16-1013, MCA, is amended to read:

"50-16-1013. Civil remedy. (1) A person aggrieved by a violation of this part has a right of action in the district court and may recover for each violation:

(a) against a person who negligently violates a provision of this part, damages of $5,000 or actual damages, whichever is greater;

(b) against a person who intentionally or recklessly violates a provision of this part, damages of $20,000 or actual damages, whichever is greater;

(c) reasonable attorney fees; and

(d) other appropriate relief, including injunctive relief.

(2) An action under this section must be commenced within 3 years after the cause of action accrues.

(3) The department may maintain a civil action to enforce this part in which the court may order any relief permitted under subsection (1).

(4) Nothing in this section limits the rights of a subject of an ~~HIV-related~~ *HIV diagnostic* test to recover damages or other relief under any other applicable law or cause of action.

(5) Nothing in this part may be construed to impose civil liability or criminal sanctions for disclosure of an ~~HIV-related~~ *HIV diagnostic* test result in accordance with any reporting requirement for a diagnosed case of AIDS or an HIV-related condition by the department or the *U.S. department of health and human services,* centers for disease control ~~of the United States public health service~~ *and prevention*."

Section 9. Repealer. Section 50-16-1007, MCA, is repealed.

Section 10. Codification instruction. [Sections 1 through 3] are intended to be codified as an integral part of Title 50, chapter 16, part 10, and the provisions of Title 50, chapter 16, part 10, apply to [sections 1 through 3].

Approved April 24, 2009

CHAPTER NO. 363

[SB 356]

AN ACT PROVIDING FOR THE LICENSURE OF MANUFACTURED HOME DEALERS BY THE DEPARTMENT OF JUSTICE; ESTABLISHING LICENSE APPLICATION REQUIREMENTS; REQUIRING BONDS; AND PROVIDING RULEMAKING AUTHORITY TO THE DEPARTMENT.

Be it enacted by the Legislature of the State of Montana:

Section 1. Manufactured home dealers — licensure — bond requirements — rulemaking. (1) (a) Except as provided in subsection (1)(b), a person may not engage in the business of buying, selling, exchanging, accepting on consignment, or acting as a broker of a manufactured home that is not titled in the person's name unless the person is the holder of a manufactured home dealer's license issued by the department.

(b) This section does not apply to a person buying, selling, exchanging, accepting on consignment, or acting as a broker of a used manufactured home that is not titled in the person's name.

(2) (a) The department shall issue a manufactured home dealer's license to any person it determines is qualified to hold the license under the provisions of this section. The department may adopt rules establishing requirements for licensure.

(b) A manufactured home dealer's license authorizes the licensee to:

(i) sell any new manufactured home that is covered under a franchise agreement between the licensee and the manufacturer, importer, or distributor of the manufactured home;

(ii) sell any used manufactured home;

(iii) negotiate the purchase, sale, or exchange of a manufactured home from another licensed dealer or another person on behalf of a client when the licensee does not store, display, or take ownership of the manufactured home purchased, sold, or exchanged.

(3) A license issued by the department is valid until:

(a) voluntarily returned to the department for surrender and cancellation upon the cessation of the licensee's business operations; or

(b) suspended or revoked for a violation of this section or any other laws relating to the sale of a manufactured home.

(4) (a) An applicant for a manufactured home dealer's license shall submit a written application to the department. The application must be signed by the applicant and contain a verification by the applicant, under penalty of law, that the information contained in the application is true and correct. Any information provided in the license application process is subject to independent verification by the department or an authorized representative of the department. The department shall by rule establish the requirements for the application.

(b) After examining a license application and conducting any investigation necessary to verify the information contained in the application, if the department is satisfied that the applicant qualifies for the issuance of a license under the provisions of this section and rules adopted pursuant to this section, the department shall issue the license. The department may refuse, after examination and investigation, to issue a license to an applicant who is not qualified for licensure or whose prior financial or other activities or criminal record, as determined by the department:

(i) poses a threat to the effective regulation of manufactured home dealers;

(ii) poses a threat to the public interest of the state; or

(iii) creates a danger of illegal or deceptive practices being used in the conduct of the proposed dealership.

(5) The application provided to the department must contain but is not limited to the following information:

(a) the name under which the applicant intends to conduct business and the applicant's name, street address, and, if different, mailing address for the business;

(b) the name, date of birth, and social security number of any person who:

(i) possesses or will possess an ownership interest in the business for which the license is sought;

(ii) is a corporate officer or the managing member of a business entity applying for the license; or

(iii) is or will be designated by the applicant to manage or oversee the applicant's business;

(c) the geographic location of the physical lot or lots upon which manufactured homes will be displayed for sale and of a permanent nonresidential building that will be maintained as an office to store the actual physical or electronic records resulting from the purchase, sale, trade, or consignment of manufactured homes for which licensure is sought. The office may be a manufactured home or a site-built structure. The lot must be large

enough to contain the office and have space to display a minimum of two double-wide units. An applicant may use more than one location to display manufactured homes for sale if the maximum distance between each display lot does not exceed 200 feet and if the distance between a display lot and the building in which sales records are stored does not exceed 1,000 feet.

(d) for each geographic location specified in the application, evidence of the applicant's compliance with applicable local land use planning, zoning, and business permitting requirements, if any. Evidence of compliance may be documented by means of a written verification of compliance signed by the authorized representative of the local land use planning or zoning board or the local business-permitting agency.

(e) a diagram or plat showing the geographic location, lot dimensions, and building and sign placement for the applicant's proposed established place of business, along with two or more photographs of the geographic location, building premises, and sign, as prescribed by the department. A dealer shall display at the dealer's established place of business at least one sign stating the name of the business and indicating that manufactured homes are offered for sale, trade, or consignment. The letters of the sign must be at least 6 inches in height and clearly visible and readable to the major avenue of traffic at a minimum distance of 150 feet.

(6) If an applicant intends to maintain more than one established place of business, the applicant shall file a separate license application for each proposed place of business and otherwise qualify for licensure at each place separately.

(7) Each application under this section must be accompanied by a $50 fee.

(8) (a) An applicant for a manufactured home dealer's license shall also file a bond of $50,000 with each application.

(b) All bonds must be conditioned upon the applicant conducting the business in accordance with the requirements of the law. All bonds must be approved by the department, filed with the department, and renewed annually.

(9) (a) As used in this section, "manufactured home" means a residential dwelling built in a factory in accordance with the United States department of housing and urban development code and the federal Manufactured Home Construction and Safety Standards.

(b) The term does not include a mobile home or housetrailer as defined in 15-24-201.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 61, chapter 12, and the provisions of Title 61, chapter 12, apply to [section 1].

Approved April 27, 2009

CHAPTER NO. 364

[SB 430]

AN ACT REMOVING THE REQUIREMENT THAT COAL MINE OPERATORS REPORT TONS OF COAL SOLD TO PURCHASERS; CLARIFYING THE PROCEDURE TO COMPUTE OIL AND NATURAL GAS TAX IN ABSENCE OF A STATEMENT; CLARIFYING WHEN THE PENALTY PROVISIONS FOR DELINQUENT BENTONITE TAX AND THE WHOLESALE ENERGY TRANSACTION TAX RETURNS APPLY;

DIRECTING INITIAL CIGARETTE TAX APPEALS TO THE DEPARTMENT OF REVENUE RATHER THAN TO THE STATE TAX APPEAL BOARD; AMENDING SECTIONS 15-35-104, 15-36-313, 15-39-105, 15-72-112, 16-11-105, 16-11-149, AND 72-3-1006, MCA; AND PROVIDING A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-35-104, MCA, is amended to read:

"15-35-104. Quarterly statement and payment of tax. Each coal mine operator shall compute the severance tax due on ~~each quarter-year's worth of~~ production *for each calendar quarter* on forms prescribed by the department. The statement ~~shall indicate~~ *must show* the tonnage produced, the average Btu value of the production, the contract sales price received for the production, and ~~such~~ other information ~~as~~ *that* the department may require. ~~Each coal mine operator shall provide a statement of the tons of coal sold to each purchaser for the quarter.~~ The completed form ~~in duplicate~~, with the tax payment, ~~shall~~ *must* be delivered to the department not later than 30 days following the close of the quarter. The form ~~shall~~ *must* be signed by the operator if the operator is an individual or by an officer of the coal mine operator if the operator is a business entity. A person operating more than one coal mine in this state may include all of ~~his~~ *the person's* mines in one statement. The department may grant a reasonable extension of time for filing statements and payment of taxes due upon good cause shown ~~therefor~~."

Section 2. Section 15-36-313, MCA, is amended to read:

"15-36-313. Procedure to compute tax in absence of statement — estimation of tax — failure to file penalty and interest. (1) If the operator fails to file any statement required by 15-36-311 within the time required, the department shall~~, immediately after the time has expired,~~ ascertain the number of barrels of oil or cubic feet of gas produced and sold by the person in this state during the quarter and during each month of the quarter. The department also shall determine the average value of the barrels of oil produced and sold during each month or the average value of cubic feet of gas produced and sold during each month and fix the amount of the taxes due from the person for the quarter.

(2) The department shall impose penalty and interest as provided in 15-1-216. The department shall mail to the taxpayer a notice, pursuant to 15-1-211, of the tax, penalty, and interest proposed to be assessed. The taxpayer may seek review of the determination pursuant to 15-1-211. The notice must contain a statement that if payment is not made, a warrant for distraint may be filed. The department may waive any penalty pursuant to 15-1-206."

Section 3. Section 15-39-105, MCA, is amended to read:

"15-39-105. Penalties and interest for violation. (1) (a) A person who fails to file a statement as required by 15-39-102 must be assessed a penalty as provided in 15-1-216. The department may waive the penalty as provided in 15-1-206.

(b) A person who fails to file the statement required by 15-39-102 and to pay the tax *on or* before the due date must be assessed a penalty and interest as provided in 15-1-216. The department may waive any penalty pursuant to 15-1-206.

(2) A person who purposely fails to pay the tax when due must be assessed an additional penalty as provided in 15-1-216~~(2)~~."

Section 4. Section 15-72-112, MCA, is amended to read:

"15-72-112. Penalties and interest for violation. (1) (a) A person who fails to file a return as required by 15-72-110 must be assessed a penalty as provided in 15-1-216. The department may waive the penalty as provided in 15-1-206.

(b) A person who fails to file the return required by 15-72-110 and to pay the tax *on or* before the due date must be assessed penalty and interest as provided in 15-1-216. The department may waive any penalty pursuant to 15-1-206.

(2) A person who purposely fails to pay the tax when due must be assessed an additional penalty as provided in 15-1-216."

Section 5. Section 16-11-105, MCA, is amended to read:

"16-11-105. Rulemaking authority of department of justice. The department of justice may adopt rules to implement 16-11-103, 16-11-118, 16-11-124, 16-11-141, 16-11-142, *and* 16-11-147~~, and 16-11-149~~."

Section 6. Section 16-11-149, MCA, is amended to read:

"16-11-149. Hearings before ~~state tax appeal board~~ *department.* *(1)* A person aggrieved by any action of the department or its authorized agents taken to enforce the tax provisions of this part, except for a revocation of a license pursuant to 16-11-144, may apply to the ~~state tax appeal board~~ *department*, in writing, for a hearing or rehearing within 30 days after the action of the department or its authorized agents.

(2) The ~~board~~ *department* shall promptly consider the application, set the application for hearing, and notify the applicant of the time and place fixed for the hearing or rehearing, which may be at its office or in the county of the applicant. After the hearing or rehearing, the ~~board~~ *department* may make any further or other order on the grounds that it may consider proper and lawful and shall furnish a copy to the applicant.

(3) The department, on its own initiative, may order a contested case hearing on any matter concerned with licensing, as defined in 2-4-102, in connection with the administration of this part upon at least 10 days' notice in writing to the person or persons to be investigated.

(4) A person may appeal a final order of the department to the state tax appeal board as provided in 15-2-302."

Section 7. Section 72-3-1006, MCA, is amended to read:

"72-3-1006. Certificate. (1) In probate proceedings under this code requiring the filing of a *duplicate* United States estate tax return *with the department of revenue pursuant to 72-16-906*, a final distribution to successors may not be made and petitions may not be granted under 72-3-1001, 72-3-1002, 72-3-1003, or 72-3-1004, unless there has been filed with the clerk:

(a) a certificate from the department of revenue stating that any estate tax due on the assets of the estate has been paid or that no tax is payable; or

(b) an agreement with the department of revenue for extension of time for payment of estate taxes.

(2) This section does not prohibit a partial distribution that may become necessary in the course of administration."

Section 8. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to tax periods beginning after December 31, 2008.

Approved April 24, 2009

CHAPTER NO. 365

[SB 442]

AN ACT ESTABLISHING THE SHAKEN BABY SYNDROME EDUCATION PROGRAM; REQUIRING THE PREPARATION AND DISTRIBUTION OF SHAKEN BABY SYNDROME EDUCATIONAL MATERIALS; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Information on shaken baby syndrome — program. (1) There is a shaken baby syndrome education program established in the department.

(2) The department shall:

(a) develop educational materials that present readily comprehensible information on shaken baby syndrome; and

(b) post the materials on the department's website in an easily accessible format.

(3) The materials required to be produced by this section must be distributed at no cost to the recipients.

(4) For purposes of [sections 1 and 2], the following definitions apply:

(a) "Child care facility" means a day-care center, day-care facility, family day-care home, or group day-care home as those terms are defined in 52-2-703.

(b) "Department" means the department of public health and human services provided for in 2-15-2201.

(c) "Hospital" means a hospital, as defined in 50-5-101, that regularly provides maternity, pediatric, or obstetrical care.

(d) "Parent" means either parent, unless the parents are not married or are separated or divorced, in which case, the term means the custodial parent. The term also means a prospective adoptive parent or foster parent with whom the child is placed.

(e) "Shaken baby syndrome" means damage to the brain of an infant or young child, including but not limited to swelling that impedes the supply of oxygen to the brain or any degree of brain damage that results from the infant or young child having been forcefully shaken.

Section 2. Information on shaken baby syndrome — distribution. A copy of the shaken baby syndrome educational materials developed under [section 1] must be distributed in the following manner:

(1) by childbirth educators and staff of pediatric physicians' offices and obstetricians' offices to an expectant parent who uses the services of the educators or physicians;

(2) by a hospital in which a child is born to the child's parent before the child is discharged from the facility;

(3) by service providers under the MIAMI project, provided for in 50-19-311, to a child's parent during visits conducted in accordance with that project;

(4) by each child-care facility operating in this state to each of its employees; and

(5) by groups or entities that offer classes for babysitters.

Section 3. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 50, chapter 16, part 1, and the provisions of Title 50 apply to [sections 1 and 2].

Section 4. Effective dates. (1) Except as provided in subsection (2), [this act] is effective July 1, 2009.

(2) [Section 2] is effective November 1, 2009.

Approved April 24, 2009

CHAPTER NO. 366

[SB 451]

AN ACT REPEALING THE MEGALANDFILL SITING LAWS; AMENDING SECTION 75-1-208, MCA; REPEALING SECTIONS 75-10-901, 75-10-902, 75-10-903, 75-10-906, 75-10-907, 75-10-908, 75-10-909, 75-10-910, 75-10-913, 75-10-914, 75-10-916, 75-10-917, 75-10-918, 75-10-919, 75-10-920, 75-10-921, 75-10-922, 75-10-923, 75-10-924, 75-10-925, 75-10-926, 75-10-927, 75-10-928, 75-10-929, 75-10-930, 75-10-933, 75-10-934, 75-10-935, 75-10-938, 75-10-939, 75-10-940, 75-10-941, 75-10-942, 75-10-943, 75-10-944, 75-10-945, 75-10-950, 75-10-951, 75-10-952, 75-10-953, AND 75-10-954, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-1-208, MCA, is amended to read:

"75-1-208. Environmental review procedure. (1) (a) Except as provided in 75-1-205(4) and subsection (1)(b) of this section, an agency shall comply with this section when completing any environmental review required under this part.

(b) To the extent that the requirements of this section are inconsistent with federal requirements, the requirements of this section do not apply to an environmental review that is being prepared jointly by a state agency pursuant to this part and a federal agency pursuant to the National Environmental Policy Act or to an environmental review that must comply with the requirements of the National Environmental Policy Act.

(2) A project sponsor may, after providing a 30-day notice, appear before the environmental quality council at any regularly scheduled meeting to discuss issues regarding the agency's environmental review of the project. The environmental quality council shall ensure that the appropriate agency personnel are available to answer questions.

(3) If a project sponsor experiences problems in dealing with the agency or any consultant hired by the agency regarding an environmental review, the project sponsor may submit a written request to the agency director requesting a meeting to discuss the issues. The written request must sufficiently state the issues to allow the agency to prepare for the meeting. If the issues remain unresolved after the meeting with the agency director, the project sponsor may submit a written request to appear before the appropriate board, if any, to discuss the remaining issues. A written request to the appropriate board must sufficiently state the issues to allow the agency and the board to prepare for the meeting.

(4) (a) Subject to the requirements of subsection (5), to ensure a timely completion of the environmental review process, an agency is subject to the time

limits listed in this subsection (4) unless other time limits are provided by law. All time limits are measured from the date the agency receives a complete application. An agency has:

(i) 60 days to complete a public scoping process, if any;

(ii) 90 days to complete an environmental review unless a detailed statement pursuant to 75-1-201(1)(b)(iv) or 75-1-205(4) is required; and

(iii) 180 days to complete a detailed statement pursuant to 75-1-201(1)(b)(iv).

(b) The period of time between the request for a review by a board and the completion of a review by a board under 75-1-201(1)(b)(iv)(C)(III) or (8) or subsection (10) of this section may not be included for the purposes of determining compliance with the time limits established for conducting an environmental review under this subsection or the time limits established for permitting in 75-2-211, 75-2-218, ~~75-10-922,~~ 75-20-216, 75-20-231, 76-4-125, 82-4-122, 82-4-231, 82-4-337, and 82-4-432.

(5) An agency may extend the time limits in subsection (4) by notifying the project sponsor in writing that an extension is necessary and stating the basis for the extension. The agency may extend the time limit one time, and the extension may not exceed 50% of the original time period as listed in subsection (4). After one extension, the agency may not extend the time limit unless the agency and the project sponsor mutually agree to the extension.

(6) If the project sponsor disagrees with the need for the extension, the project sponsor may request that the appropriate board, if any, conduct a review of the agency's decision to extend the time period. The appropriate board may, at its discretion, submit an advisory recommendation to the agency regarding the issue.

(7) (a) Except as provided in subsection (7)(b), if an agency has not completed the environmental review by the expiration of the original or extended time period, the agency may not withhold a permit or other authority to act unless the agency makes a written finding that there is a likelihood that permit issuance or other approval to act would result in the violation of a statutory or regulatory requirement.

(b) Subsection (7)(a) does not apply to a permit granted under Title 75, chapter 2, or under Title 82, chapter 4, parts 1 and 2.

(8) Under this part, an agency may only request that information from the project sponsor that is relevant to the environmental review required under this part.

(9) An agency shall ensure that the notification for any public scoping process associated with an environmental review conducted by the agency is presented in an objective and neutral manner and that the notification does not speculate on the potential impacts of the project.

(10) An agency may not require the project sponsor to provide engineering designs in greater detail than that necessary to fairly evaluate the proposed project. The project sponsor may request that the appropriate board, if any, review an agency's request regarding the level of design detail information that the agency believes is necessary to conduct the environmental review. The appropriate board may, at its discretion, submit an advisory recommendation to the agency regarding the issue.

(11) An agency shall, when appropriate, consider the cumulative impacts of a proposed project. However, related future actions may only be considered when these actions are under concurrent consideration by any agency through

preimpact statement studies, separate impact statement evaluations, or permit processing procedures."

Section 2. Repealer. Sections 75-10-901, 75-10-902, 75-10-903, 75-10-906, 75-10-907, 75-10-908, 75-10-909, 75-10-910, 75-10-913, 75-10-914, 75-10-916, 75-10-917, 75-10-918, 75-10-919, 75-10-920, 75-10-921, 75-10-922, 75-10-923, 75-10-924, 75-10-925, 75-10-926, 75-10-927, 75-10-928, 75-10-929, 75-10-930, 75-10-933, 75-10-934, 75-10-935, 75-10-938, 75-10-939, 75-10-940, 75-10-941, 75-10-942, 75-10-943, 75-10-944, 75-10-945, 75-10-950, 75-10-951, 75-10-952, 75-10-953, and 75-10-954, MCA, are repealed.

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 27, 2009

CHAPTER NO. 367

[SB 462]

AN ACT CREATING A SEPARATE LIEN ON OIL OR GAS OR THE PROCEEDS OF OIL OR GAS FOR INTEREST OWNERS; CLARIFYING RIGHTS OF PURCHASERS; PROVIDING A PROCESS FOR CLAIMING A SECURITY INTEREST AND LIEN; PROVIDING A PERSONAL RIGHT OF ACTION; PROVIDING FOR PRIORITY OVER CERTAIN CONSTRUCTION LIENS; AND AMENDING SECTIONS 71-3-124, 71-3-1002, AND 71-3-1011, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Short title. [Sections 1 through 7] may be cited as the "Montana Oil and Gas Owners' Lien Act".

Section 2. Definitions. As used in [sections 1 through 7], the following definitions apply:

(1) "First purchaser" means the first person who under contract purchases oil or gas from an interest owner at or after the time the oil or gas is severed.

(2) "Interest owner" means a person:

(a) who owns an entire or a fractional interest of any kind or nature in the oil or gas at the time it is severed; or

(b) who has a right, either express or implied, to receive a monetary payment determined by the value of the severed oil or gas.

(3) "Leasehold" means a tenant's leasehold interest, as defined in 30-2A-103, in property on which the oil or gas well is located.

(4) "Operator" means any person engaged in the severance of oil or gas on the operator's own behalf, on behalf of the operator and other persons, or on behalf of other persons.

(5) "Person" means any individual, executor, administrator, agent, trustee, or receiver or an estate, institution, business trust, trust of any other kind, firm, corporation, partnership, cooperative, limited liability company, limited liability partnership, sole proprietorship, government agency, association, or any other group acting as a unit.

(6) "Purchaser" means a person who under contract purchases oil or gas from a first purchaser.

(7) "Severed" or "severance" means the taking, extraction, or production from the leasehold of oil or gas in any manner.

Section 3. Extent of lien — dispute resolution — notice — buyer in ordinary course of business. (1) To secure payment from the sale of oil or gas, an interest owner, subject to [section 6(2)] and subsection (4) of this section, has a continuing security interest in and the right to a lien upon the severed oil or gas or the proceeds from the sale of severed oil or gas to the extent of the interest owner's interest until the purchase price has been paid to the interest owner.

(2) If there is a bona fide dispute about the amount due to the interest owner, the security interest and lien do not accrue if the person holding the proceeds upon which the interest owner's security interest and lien are based makes a good faith determination of the amount of payment due to the interest owner and pays the interest owner that amount.

(3) (a) To have effect, a security interest or lien claimed under [sections 1 through 7] must be perfected as provided in [section 5], and a copy of the notice of the lien, as provided in [section 5], must be provided by an interest owner claiming the security interest or lien to other interest owners, if any, and to the operator, first purchaser, or purchaser by registered or certified mail.

(b) A security interest or lien is not valid under [sections 1 through 7] unless the provisions in subsection (3)(a) have been met.

(4) (a) A buyer in the ordinary course of business, as described in Title 30, chapter 9A, and subsection (4)(b) of this section, is entitled to the severed oil or gas free of the security interest and a lien filed by the interest owner under [sections 1 through 7].

(b) A buyer in the ordinary course of business is:

(i) a first purchaser or purchaser who has paid the purchase price for severed oil or gas to the interest owner; or

(ii) a person who pays the purchase price for severed oil or gas to a person authorized to receive payment on behalf of an interest owner.

(c) The property of the first purchaser or purchaser described under subsection (4)(b)(ii) also is free from and not subject to a security interest or lien granted to an interest owner under [sections 1 through 7].

Section 4. Validity of lien — transferability. (1) The security interest and lien granted to an interest owner under [sections 1 through 7] are not dependent on the interest owner's or operator's possession of the severed oil or gas.

(2) A change or transfer of the actual or constructive possession of or title to the severed oil or gas from an interest owner or an operator to a first purchaser or purchaser does not void or impair the security interest or lien.

Section 5. Perfection of lien — verified notice — effect of instruments — effective date. (1) An interest owner who does not receive proceeds or payment for severed oil or gas when the proceeds are due may perfect the security interest and lien claimed under [section 3] by filing a notice, as provided in subsection (2), in the office of the county clerk and recorder in which the leasehold is located.

(2) A sworn affidavit must be in substantially the following form:

NOTICE OF OIL AND GAS OWNER'S LIEN

Notice is hereby given that: [name of interest owner for whom notice is filed], whose address is [address of named interest owner] claims [a fractional or decimal] interest in the oil or gas severed or proceeds of the sale from the [name

of the leasehold], operated by [name and address of the operator]. The leasehold is located on the following [described land] in [name of county], Montana.

Oil or gas severed from the leasehold has been and is now or may be taken and the above-named interest owner has a security interest in and lien upon the oil or gas and the oil or gas proceeds to secure payment under the provisions of the Montana Oil and Gas Owners' Lien Act.

The signatories of this notice recognize that, if a sworn affidavit is not filed within 90 days of the time in which the payment to [the interest owner] is due, the security interest is not perfected and [the interest owner] does not receive a priority over any perfected security interest in the oil or gas described in this notice or the proceeds of the oil or gas described in this notice.

Dated:.....

Signed by [interest owner].....

(3) An instrument filed with the county clerk and recorder that accompanies the notice filed in subsection (1) is effective as a financing statement recognized under Title 30, chapter 9A, with or without the signature of the debtor. An instrument described in this subsection may be terminated in the same manner as a financing statement under the provisions of Title 30, chapter 9A.

(4) (a) Upon filing of the notice, as provided in this section, the effective date of the interest owner's security interest and lien is the date on which the oil or gas severance occurred.

(b) Except as provided in [section 6(2)] and subsection (4)(c) of this section, a security interest and lien filed under this section have priority over the rights of any person whose rights or claims arise or attach to the severed oil or gas for which the purchase price has not been paid or to the proceeds of oil or gas if the oil or gas has been sold, including the severed oil or gas or the oil or gas proceeds that arise or attach between the time the security interest and lien attach and the time of filing.

(c) The security interest and the lien filed under this section do not have a priority over the security interest or lien previously created and perfected under Title 71, chapter 3, part 10, or an operating agreement or other voluntary agreement for the development and operation of the leasehold.

Section 6. Rights of first purchasers. (1) The following are not affected by the provisions of [sections 1 through 7] or the filing of any instrument permitted under [sections 1 through 7]:

(a) transfer of the legal title to oil or gas from an interest owner or operator to a first purchaser;

(b) ownership of oil or gas before the oil or gas is severed, as reflected by records affecting real property; or

(c) the right of a first purchaser to take or receive oil or gas under the terms of a division order or a similar agreement for the sale and purchase of oil or gas.

(2) A first purchaser or purchaser is free to transport oil or gas products out of the state or to sell oil or gas products without permission or release of a lien perfected under [section 5].

Section 7. Expiration of lien — enforcement — consolidation — costs — personal actions — other rights and remedies. (1) A security interest and lien claimed by an interest owner under [section 3] and perfected under [section 5] are attached to oil or gas that has not been paid for or to the proceeds of oil or gas if the oil or gas has been sold. The security interest and lien

expire 1 year after the date of the filing of the notice of the lien under [section 5] unless within that year the interest owner files a personal right of action, as provided in subsection (2), in a court of competent jurisdiction in the county in which the leasehold is located. The interest owner may request an extension of the security interest and lien as part of the personal right of action filing.

(2) Any number of persons claiming security interests and liens with respect to the oil or gas from the same leasehold may join a personal right of action. The court may consolidate any separate personal rights of action.

(3) The court may allow to the prevailing party costs as provided in 71-3-124 and any money paid for copying or obtaining records filed under [sections 1 through 7].

(4) If the personal right of action is commenced after the filing of an instrument, as provided in [section 5], the instrument must be considered as a lien upon the severed oil or gas or on the proceeds from the sale of the severed oil or gas, if sold, to the extent of the interest owner's claim for payment of the amount due the interest owner or the amount of the security interest and lien recorded under [section 5] by the interest owner. The security interest and lien may be further enforced as provided in 71-3-124.

(5) The provisions of [sections 1 through 7] do not impair or affect the right of a person to whom a debt may be due to maintain a personal right of action to recover the debt against a person who is liable for the debt.

(6) The provisions of [sections 1 through 7] are cumulative to the provisions of Title 30, chapter 9A, and not a limitation on or a substitution or impairment of any rights or remedies provided to a creditor against a debtor under Title 30, chapter 9A.

Section 8. Section 71-3-124, MCA, is amended to read:

"71-3-124. Filing costs and attorney fees to be recovered on foreclosure of liens — offer of judgment. (1) In an action to foreclose any of the liens provided for ~~by part~~ *in Title 71, chapter 3, part* 3, 4, 5, 6, 8, or 10 ~~of this chapter~~ *or [sections 1 through 7]*, the court shall allow as costs the money paid and attorney fees incurred for filing and recording the lien and reasonable attorney fees in the district and supreme courts. The costs and attorney fees must be allowed to each claimant whose lien is established, and the reasonable attorney fees must be allowed to the defendant against whose property a lien is claimed if the lien is not established.

(2) In an action to foreclose any of the liens provided for ~~by part~~ *in Title 71, chapter 3, part* 3, 4, 5, 6, 8, or 10 ~~of this chapter~~ *or [sections 1 through 7]*, a defendant may make an offer of judgment as authorized in Rule 68, M.R.Civ.P. If the lienholder rejects the offer to allow judgment to be taken against the defendant and the lienholder obtains a judgment that is not more favorable than the offer, the lienholder shall, in addition to the costs allowed under Rule 68, M.R.Civ.P., pay the attorney fees incurred after the offer is made."

Section 9. Section 71-3-1002, MCA, is amended to read:

"71-3-1002. Lien for labor and materials furnished for use on leasehold for oil and gas purposes or pipelines — *exceptions.* (1) Any person, corporation, or partnership ~~which shall~~ *that* under ~~contract,~~ expressed or implied~~,~~ *contract* with the owner of any leasehold for oil and gas purposes or the owner of any gas pipe or oil pipeline or with the trustee or agent of ~~such~~ *the* owner~~, perform~~ *performs* labor or ~~furnish~~ *furnishes* material or services used in the digging, drilling, torpedoing, completing, operating, or repairing of any oil or

gas well or oil or gas pipeline or who ~~shall furnish~~ *furnishes* any material or services or ~~perform~~ *performs* any labor in constructing or putting together any of the machinery used in digging, drilling, torpedoing, operating, completing, or repairing any oil or gas well or oil or gas pipeline, whether or not ~~such~~ *the* material is incorporated ~~therein~~ *into* or becomes a part ~~thereof, shall~~ *of the oil or gas well or oil or gas pipeline, may* have a lien for the amount due ~~therefor~~, including *associated* transportation and mileage charges ~~connected therewith~~ and interest from the date the ~~same~~ *amount* was due, upon*:*

(a) the whole of ~~such~~ *the* leasehold or oil or gas pipeline~~,~~*;*

(b) the appurtenances ~~thereon, and upon~~ *on the leasehold or oil or gas pipeline;*

(c) all material owned by the owner of ~~such~~ *the* leasehold or oil or gas pipeline and used in the digging, drilling, torpedoing, completing, operating, or repairing of ~~any such~~ *the* oil or gas well or oil or gas pipeline ~~and upon~~*;*

(d) all oil or gas wells located on ~~such~~ *the* leasehold ~~and upon~~*; and*

(e) all oil or gas produced from ~~such~~ *the* leasehold ~~and the proceeds thereof inuring to the working interest therein as such working interest existed on the date the labor was first performed or materials or services were first furnished~~*, subject to the provisions of [sections 1 through 7].*

(2) ~~However, in the event~~ *If* labor is performed for, or materials or services are furnished to, the owner of the working interest in only a portion of the acreage covered by a lease, the lien granted ~~herein shall~~ *under subsection (1) must* be restricted to ~~such~~ *the* portion of the acreage *that is covered by the lease*.

(3) ~~The~~ *A* lien ~~herein~~ granted ~~shall~~ *under subsection (1) does* not extend to any royalty interests, overriding royalty interests, or oil payments created prior to the date the first item of material or services are furnished or the date the first labor is performed."

Section 10. Section 71-3-1011, MCA, is amended to read:

"71-3-1011. Notice to purchaser of oil and gas. *(1)* ~~Anything in this part to the contrary notwithstanding, any~~ *Any* lien claimed ~~by virtue of~~ *under* this part ~~insofar as it may extend~~ *that extends* to oil or gas or the proceeds of the sale of oil or gas ~~shall not be effective against any purchaser of such oil or gas~~ *is subject to the provisions of [sections 1 through 7] and must meet the requirements of subsection (2) of this section before taking effect.* ~~until written~~

(2) (a) Written notice of ~~such~~ *a* claim ~~has been~~ *must be* delivered to ~~such~~ *a* purchaser at ~~his~~ *the purchaser's* residence or principal place of business. ~~Such~~ *A* notice ~~shall~~ *must* state the name of the claimant, ~~his~~ *the claimant's* address, the amount for which the lien is claimed, and a description of the interest upon which the lien is claimed. ~~Such~~ *The* notice ~~shall~~ *must* be delivered personally to the purchaser or by registered or certified letter deposited in the United States mail.

(b) Until ~~such~~ *the* notice is delivered as ~~above~~ provided *in subsection (2)(a),* ~~no such~~ *a* purchaser ~~shall be~~ *is not* liable to the claimant for any oil or gas produced ~~from the interest~~ upon which the lien is claimed or *money from* the *sale of* proceeds ~~thereof, except to the extent of such part of the purchase price of such oil or gas or the proceeds thereof as may be owing by such purchaser at the time of delivery of such written notice~~ *of the oil or gas upon which the lien is claimed*. ~~Such~~ *A* purchaser shall withhold payments for ~~such~~ oil or gas runs to the extent of the lien amount *being* claimed until delivery of notice in writing that the claim has been paid."

Section 11. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

Section 12. Codification instruction. [Sections 1 through 7] are intended to be codified as an integral part of Title 71, chapter 3, and the provisions of Title 71, chapter 3, apply to [sections 1 through 7].

Section 13. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Approved April 27, 2009

CHAPTER NO. 368

[SB 464]

AN ACT PROHIBITING A PERSON CONDUCTING A REMEDIAL ACTION FROM INCLUDING A COVENANT NOT TO SUE IN A CONTRACT WITH A PROPERTY OWNER; PROVIDING CERTAIN EXCEPTIONS; ESTABLISHING A CIVIL PENALTY; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Prohibition of covenant not to sue — exceptions. (1) Except as provided in subsections (2) and (3), a person may not include a covenant not to sue in a contract with a property owner for remedial action of a listed site.

(2) A contract between a property owner and a person conducting a remedial action on a listed site may, by mutual agreement, include a covenant not to sue if the person conducting the remedial action has:

(a) provided the property owner with a copy of a plan approved by the department or the United States environmental protection agency describing all of the remedial actions that will occur on the property owner's land; and

(b) held a public meeting in the county where the listed site is located to collect public comment on the remedial action plan.

(3) This section does not apply to contracts or access agreements in which remuneration of at least $1,000 is a part of the contract or access agreement.

(4) As used in this section, the following definitions apply:

(a) "Department" means the department of environmental quality provided for in 2-15-3501.

(b) "Listed site" means one or more tracts of land, buildings, structures, or other facilities containing a hazardous or deleterious substance that have been listed by the department pursuant to Title 75, chapter 10, part 7, or placed on the national priorities list pursuant to 42 U.S.C. 9601, et seq.

Section 2. Civil penalty. (1) A district court may assess a civil penalty of not more than $1,000 per day upon a person that violates the provisions of [section 1].

(2) An action under this section is not a bar to enforcement by injunction or other appropriate civil remedy.

(3) The penalty provided for in subsection (1) is recoverable in an action brought by the property owner. The action must be filed in the district court of the county in which the violation occurred.

Section 3. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 75, chapter 10, and the provisions of Title 75, chapter 10, apply to [sections 1 and 2].

Section 4. Effective date. [This act] is effective July 1, 2009.

Section 5. Applicability. [This act] applies to covenants and agreements entered into on or after [the effective date of this act].

Approved April 27, 2009

CHAPTER NO. 369

[HB 4]

AN ACT APPROPRIATING MONEY THAT WOULD USUALLY BE APPROPRIATED BY BUDGET AMENDMENT TO VARIOUS STATE AGENCIES FOR THE FISCAL YEAR ENDING JUNE 30, 2009; PROVIDING THAT CERTAIN APPROPRIATIONS CONTINUE INTO STATE AND FEDERAL FISCAL YEARS 2010 AND 2011; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Time limits. The appropriations contained in [section 2] are intended to provide necessary expenditures for the years for which the appropriations are made. The unspent balance of an appropriation reverts to the fund from which it was appropriated upon conclusion of the final fiscal year for which its expenditures are authorized by [sections 1 and 2].

Section 2. Appropriations. The following money is appropriated, subject to the terms and conditions of [sections 1 and 2]:

Agency and Program

Judicial Branch

Supreme Court Operations

All remaining fiscal year 2009 federal budget amendment authority for the 2008 court improvement training and the 2008 court improvement data share is authorized to continue into federal fiscal year 2010.

All remaining fiscal year 2009 federal budget amendment authority for the 2009 court improvement training grant and the 2009 court improvement data share grant is authorized to continue into federal fiscal year 2011.

District Court Operations

All remaining fiscal year 2009 federal budget amendment authority for the adult drug treatment court grant in the 7th Judicial District and the drug court grant for 10 other district courts is authorized to continue into state fiscal year 2011.

Secretary of State

Business and Government Services

All remaining fiscal year 2009 federal budget amendment authority for help America vote and the help America vote part II grant is authorized to continue into federal fiscal year 2011.

Crime Control Division

Justice System Support Services

All remaining fiscal year 2009 federal budget amendment authority for the crime prevention grant is authorized to continue into state fiscal year 2010.

All remaining fiscal year 2009 federal budget amendment authority for the anti-gang initiative grant is authorized to continue into federal fiscal year 2010.

All remaining fiscal year 2009 federal budget amendment authority for the project safe neighborhoods grant is authorized to continue into federal fiscal year 2011.

Department of Justice

Office of Consumer Protection

Solomon arbitration settlement	FY 2009	$6,000	State Special

All remaining fiscal year 2009 state special budget amendment authority for the solomon arbitration settlement is authorized to continue into federal fiscal year 2009.

Highway Patrol Division

All remaining fiscal year 2009 federal budget amendment authority for the Rocky Mountain high intensity drug trafficking area grant is authorized to continue into state fiscal year 2010.

Division of Criminal Investigations

Internet crimes against children task force	FY 2009	$8,000	Federal

Forensic Science Division

All remaining fiscal year 2009 federal budget amendment authority for the forensic science DNA backlog reduction grant is authorized to continue into state fiscal year 2010.

Motor Vehicle Division

Commercial driver's license information system modernization program	FY 2009	$479,546	Federal

All remaining fiscal year 2009 federal budget amendment authority for the commercial driver's license information system modernization program is authorized to continue into state fiscal year 2011.

Montana Arts Council

Promotion of the Arts

Montana current partnership agreement	FY 2009	$155,057	Federal

All remaining fiscal year 2009 federal budget amendment authority for the Montana current partnership agreement is authorized to continue into state fiscal year 2010.

Library Commission

Statewide Library Resources

All remaining fiscal year 2009 federal budget amendment authority for archiving, distribution, and development of natural resources geographic information for the natural resources conservation service is authorized to continue into state fiscal year 2010.

Historical Society

Research Center

Museum and library services grant	FY 2009	$2,987	Federal

All remaining fiscal year 2009 federal budget amendment authority for the museum and library services grant is authorized to continue into state fiscal year 2010.

Education

Obscene in the extreme	FY 2009	$638	Federal

All remaining fiscal year 2009 federal budget amendment authority for the teaching with primary sources enhancement grant is authorized to continue into state fiscal year 2010.

Historic Preservation Program

All remaining fiscal year 2009 federal budget amendment authority for the preserve America III grant for heritage and preservation networking for increased tourism across Montana and the natural resources conservation service grant for continued access of cultural resource databases is authorized to continue into state fiscal year 2010.

Department of Fish, Wildlife, and Parks

Fisheries Division

Westslope cutthroat trout restoration	FY 2009	$25,068	Federal

All remaining fiscal year 2009 federal budget amendment authority for the prevention of aquatic nuisance species boat inspections grant, the Big Hole arctic grayling landowner outreach and technical assistance grant, the Montana aquatic nuisance species management plan grant, and the grant for a conservation geneticist to provide expertise and assistance to staff to determine parental origin, genetic health, and population sizes of various breeds of trout and pallid sturgeon is authorized to continue into state fiscal year 2010.

All remaining fiscal year 2009 federal budget amendment authority for the westslope cutthroat trout restoration grant, the Goose Creek renovation grant, and the inventory of water diversions in western Montana grant is authorized to continue into state fiscal year 2011.

All remaining fiscal year 2009 federal budget amendment authority for the upper Missouri River basin pallid sturgeon study is authorized to continue into federal fiscal year 2010.

All remaining fiscal year 2009 federal budget amendment authority for the westslope cutthroat management plan for the Smith River, the westslope cutthroat trout restoration plan on the Helena national forest streams, the grant for the westslope cutthroat trout recovery efforts in the Elkhorn mountains and upper Missouri River drainage, the Republican Canal fish screens grant, the arctic grayling recovery and Big Hole River habitat restoration grant, and the Hedge Canal fish screens grant is authorized to continue into federal fiscal year 2011.

Enforcement Division

All remaining fiscal year 2009 federal budget amendment authority for the Tip-Montana grant is authorized to continue into state fiscal year 2010.

All remaining fiscal year 2009 federal budget amendment authority for Tip-Montana dispatchers is authorized to continue into federal fiscal year 2011.

Wildlife Division

All remaining fiscal year 2009 federal budget amendment authority for the long-term integrity of the northern Yellowstone winter range grant and the Kootenai Tribe subgrant is authorized to continue into state fiscal year 2010.

All remaining fiscal year 2009 federal budget amendment authority for the wolf recovery plan in Montana, the swift fox population census grant, and the Yellowstone grizzly bear conservation strategy implementation project grant is authorized to continue into state fiscal year 2011.

All remaining fiscal year 2009 federal budget amendment authority for the development of projects to restore, protect, and enhance wetland areas in northeastern Montana, the Montana forest legacy program grant, the grizzly bear work in western Montana grant, the grant to trap, collar, and monitor grizzly bears and their activities on land within and adjacent to the northern continental divide ecosystem, and the grant to monitor avian influenza is authorized to continue into federal fiscal year 2011.

Parks Division

All remaining fiscal year 2009 federal budget amendment authority for the Blackfoot River recreation management partnership grant and the grant for management of commercial, competitive, and organized group activities on public land and related water resources within the Madison River corridor is authorized to continue into federal fiscal year 2011.

Capital Outlay Program

All remaining fiscal year 2009 federal budget amendment authority for the development and construction of ecologically sound fish screens is authorized to continue into federal fiscal year 2011.

Management and Finance

All remaining fiscal year 2009 federal budget amendment authority for the documentation of the agricultural and timber sectors of Montana's economy grant and the Blackfoot River easement grant is authorized to continue into state fiscal year 2010.

All remaining fiscal year 2009 federal budget amendment authority for the improvement of interagency coordination and management of fish and wildlife resources across southeastern Montana is authorized to continue into federal fiscal year 2011.

Department of Environmental Quality

Central Management Program

All remaining fiscal year 2009 federal budget amendment authority for the exchange network grant is authorized to continue into federal fiscal year 2010.

Remediation Division

Environmental Quality Protection Fund

Burlington Northern Santa Fe Livingston cleanup site	FY 2009	$500,000	State Special

All remaining fiscal year 2009 federal budget amendment authority for the Libby/Troy asbestos project is authorized to continue into state fiscal year 2010.

All remaining fiscal year 2009 federal budget amendment authority for the documenting and finalizing of site workloads resulting in the closure of many underground leaking storage tank sites and the grant to incorporate collaborative methods to reduce the quantity of contaminated water discharging from the Anaconda mine workings into Belt Creek is authorized to continue into federal fiscal year 2010.

All remaining fiscal year 2009 federal budget amendment authority for the abandoned mine lands program and the great divide sand tailings project is authorized to continue into federal fiscal year 2011.

Permitting and Compliance Division

All remaining fiscal year 2009 federal budget amendment authority for the counter-terror grant and the underground storage tank operator training program is authorized to continue into state fiscal year 2010.

Department of Transportation

General Operations Program

All remaining fiscal year 2009 federal budget amendment authority for the Pacific Region joint and cooperative project is authorized to continue into state fiscal year 2010.

Highways and Engineering Division

All remaining fiscal year 2009 federal budget amendment authority for the Montana height modernization program is authorized to continue into federal fiscal year 2011.

Aeronautics Program

All remaining fiscal year 2009 federal budget amendment authority for the small community air service development grant is authorized to continue into the state fiscal year 2011.

Department of Livestock

Centralized Services Program

All remaining fiscal year 2009 dedicated private funds budget amendment authority for the compensation to livestock owners for losses of livestock due to wolf predation is authorized to continue into federal fiscal year 2011.

Department of Natural Resources and Conservation

Oil and Gas Conservation Division

Underground injection control class II grant	FY 2009	$41,880	Federal

All remaining fiscal year 2009 federal budget amendment authority for the underground injection control class II grant is authorized to continue into federal fiscal year 2009.

Water Resources Division

All remaining fiscal year 2009 federal budget amendment authority for the Willow Creek dam breach analysis reports, the cooperative technical partners grant, the Milk River water conservation planning and implementation plan, the development of a digital flood insurance rate map for Lewis and Clark County, the completion of the digital flood insurance rate map for Cascade County, and the design and construction of the main canal siphon replacement for the East Fork of Rock Creek Dam and Reservoir is authorized to continue into state fiscal year 2010.

Forestry/Trust Lands

Bureau of land management prescribed burning activities	FY 2009	$1,584	Federal
Hazardous fuel reduction work on adjacent nonfederal lands	FY 2009	$2,000,000	Federal

All remaining fiscal year 2009 federal budget amendment authority for bureau of land management prescribed burning activities, federal forest service prescribed burning activities, maintenance and repairs on the Richards Peak lookout, inspection of fire suppression equipment, audit and contractor

training, the review of proposals submitted under various equipment solicitations, seasonal employee firefighting training on prescribed burning activities, and the water handling equipment inspections grant is authorized to continue into state fiscal year 2010.

All remaining fiscal year 2009 federal budget amendment authority for hazardous fuel reduction work, aviation equipment, and the habitat conservation plan grant is authorized to continue into federal fiscal year 2010.

All remaining fiscal year 2009 federal budget amendment authority for the forest restoration grant is authorized to continue into state fiscal year 2011.

All remaining fiscal year 2009 federal budget amendment authority for the northwestern Montana prescribed burn assistance grant, the southwestern Montana prescribed burn assistance grant, the hazardous fuel reduction work on nonfederal lands adjacent to national forest lands, the state fire assistance and general forest health assistance grant, and the local government fire personnel training grant is authorized to continue into federal fiscal year 2011.

Department of Administration

Information Technical Services Division

All remaining fiscal year 2009 federal budget amendment authority for the purchase of enhanced technology for tribal and urban E911 phone systems is authorized to continue into state fiscal year 2010.

All remaining fiscal year 2009 federal budget amendment authority for the interoperability Montana project is authorized to continue into federal fiscal year 2010.

All remaining fiscal year 2009 federal budget amendment authority for the grant to establish a control database containing public land survey system corner control information is authorized to continue into federal fiscal year 2011.

Department of Agriculture

Agricultural Development

All remaining fiscal year 2009 federal budget amendment authority for the grant to enhance the competitiveness of Montana specialty crops is authorized to continue into state fiscal year 2010.

All remaining fiscal year 2009 federal budget amendment authority for the specialty crop block grant is authorized to continue into state fiscal year 2011.

Department of Corrections

Montana Correctional Enterprise Program

All remaining fiscal year 2009 federal budget amendment authority for postsecondary education programs to assist and encourage incarcerated individuals to acquire education and job skills and for related services is authorized to continue into federal fiscal year 2010.

Department of Commerce

Community Development Program

All remaining fiscal year 2009 federal budget amendment authority for the community development disaster block grant is authorized to continue into state fiscal year 2010.

All remaining fiscal year 2009 federal budget amendment authority for the neighborhood stabilization program grant is authorized to continue into federal fiscal year 2011.

Housing Division

All remaining fiscal year 2009 federal budget amendment authority for the foreclosure mitigation grant is authorized to continue into state fiscal year 2010.

All remaining fiscal year 2009 federal budget amendment authority for the grant to address chronic homelessness in Cascade, Flathead, and Yellowstone Counties is authorized to continue into state fiscal year 2011.

Department of Labor and Industry

Workforce Services Division

All remaining fiscal year 2009 federal budget amendment authority for the Stimson Lumber dislocated workers national emergency grant, the workforce incentive grant, and the workforce innovation regional economic development grant is authorized to continue into state fiscal year 2010.

All remaining fiscal year 2009 federal budget amendment authority for the Flathead County dislocated workers national emergency grant is authorized to continue into federal fiscal year 2010.

Unemployment Insurance Division

Additional unemployment insurance administration and emergency unemployment compensation grant	FY 2009	$907,025	Federal

All remaining fiscal year 2009 federal budget amendment authority for the emergency unemployment compensation grant is authorized to continue into state fiscal year 2011.

All remaining fiscal year 2009 federal budget amendment authority for the additional unemployment insurance administration and emergency unemployment compensation grant is authorized to continue into federal fiscal year 2011.

Department of Military Affairs

Army National Guard Program

All remaining fiscal year 2009 federal budget amendment authority for the unexploded ordnance work at the Limestone Hills training area is authorized to continue into federal fiscal year 2011.

Disaster and Emergency Services

2008 predisaster mitigation competitive grant	FY 2009	$335,637	Federal

All remaining fiscal year 2009 federal budget amendment authority for the 2005 predisaster mitigation competitive grant, the 2007 buffer zone protection program, and the homeland security strategy implementation grant is authorized to continue into state fiscal year 2010.

All remaining fiscal year 2009 federal budget amendment authority for the 2007 predisaster mitigation competitive grant, the improvement of interoperable emergency communications grant, and the public safety interoperable communications grant is authorized to continue into federal fiscal year 2010.

All remaining fiscal year 2009 federal budget amendment authority for the 2008 predisaster mitigation competitive grant, the 2008 operation stonegarden grant, the homeland security strategy grant, and the 2008 buffer zone protection program grant is authorized to continue into federal fiscal year 2011.

Department of Public Health and Human Services

Human and Community Services

All remaining fiscal year 2009 federal budget amendment authority for the home heating and weatherization program and the development and implementation of a paperless food stamp case file system and online food stamp application system is authorized to continue into federal fiscal year 2010.

All remaining fiscal year 2009 federal budget amendment authority for the food stamp performance bonus grant is authorized to continue into federal fiscal year 2011.

Director's Office

All remaining fiscal year 2009 federal budget amendment authority for the Medicaid infrastructure grant is authorized to continue into state fiscal year 2011.

Quality Assurance Division

All remaining fiscal year 2009 federal budget amendment authority for the medicaid transform grant is authorized to continue into state fiscal year 2010.

Addictive and Mental Disorders Division

Submission of substance abuse client data for treatment admissions and discharges grant	FY 2009	$150,000	Federal

All remaining fiscal year 2009 federal budget amendment authority for the submission of substance abuse client data for treatment admissions and discharges grant is authorized to continue into state fiscal year 2010.

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 28, 2009

CHAPTER NO. 370

[HB 6]

AN ACT IMPLEMENTING THE RENEWABLE RESOURCE GRANT AND LOAN PROGRAM; APPROPRIATING MONEY TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR GRANTS UNDER THE RENEWABLE RESOURCE GRANT AND LOAN PROGRAM; PRIORITIZING GRANTS AND AMOUNTS; ESTABLISHING CONDITIONS FOR GRANTS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Appropriations from natural resources projects state special revenue account. (1) There is appropriated from the natural resources projects state special revenue account established in 15-38-302 to the department of natural resources and conservation up to:

(a) $100,000 to be used for emergency projects;

(b) $800,000 to be used for planning grants to be awarded by the department over the course of the biennium;

(c) $300,000 to be used for irrigation development grants to be awarded by the department over the course of the biennium; and

(d) $50,000 to be used for water project private grants to be awarded by the department over the course of the biennium.

(2) There is appropriated from the natural resources projects state special revenue account established in 15-38-302 to the department of natural resources and conservation $8,654,593 that is available in the natural resources projects state special revenue account for grants to political subdivisions and local governments during the 2011 biennium. The funds in this section must be awarded by the department to the named entities for the described purposes and in the described grant amounts set out in subsection (3), subject to the conditions set forth in [sections 1 through 3] and the contingencies described in the renewable resource grant and loan program January 2009 report to the 61st legislature. The legislature, pursuant to 85-1-605, approves the grants listed in subsection (3), with grants to be made in the order indicated in the prioritized list of projects and activities. Funds must be awarded up to the amounts approved in this section in the following order of priority until available funds are expended. Funds not accepted or used by higher-ranked projects must be provided for projects farther down the priority list that would not otherwise receive funding. Any remaining project funds may be used for any renewable resource program projects authorized under this section or for reclamation and development program projects authorized by the 61st legislature in House Bill No. 7. With the exception of planning grants, any projects that are funded by the reclamation and development grants program may not be funded under [sections 1 through 3].

(3) The following are the prioritized grant projects:

RENEWABLE RESOURCE GRANT AND LOAN PROGRAM

Applicant/Project	Grant Amount
Dutton, Town of	
(Dutton Wastewater System Improvements)	$100,000
Philipsburg, Town of	
(Philipsburg Wastewater System Improvements)	$100,000
Upper Lower River Road Water and Sewer District	
(Upper Lower River Road Phase 3 Water and Wastewater System Improvements)	$100,000
Fort Peck Tribes	
(Fort Peck Tribes Lateral L-56 Rehabilitation Project)	$100,000
Bitterroot Irrigation District	
(Bitterroot Irrigation District Siphon 1: Phase 1)	$100,000
Milk River Irrigation Project	
(Milk River Systemwide GeoIrrigation Mapping Project)	$65,004
Big Sandy, Town of	
(Big Sandy Wastewater Improvement Project)	$100,000
Beaverhead Conservation District	
(Big Hole Spring Creek Kalsta Spring Creek Water Quality Enhancement)	$97,485
Montana Department of Natural Resources and Conservation — Water Resources Division	
(Ruby Dam Rehabilitation Project)	$100,000

Nashua, Town of	
(Nashua Water System Improvements)	$100,000
Hysham Irrigation District	
(Pump Station Electrical Improvements Project)	$100,000
Yellowstone County	
(West Billings Flood Control and Groundwater Recharge Study)	$100,000
Clinton Irrigation District	
(Main Canal Rehabilitation Project)	$99,610
Hardin, City of	
(Hardin Wastewater System Improvements)	$100,000
Lewistown, City of	
(Lewistown Wastewater System Improvements)	$100,000
Winifred, Town of	
(Winifred Wastewater System Improvements)	$100,000
Gildford County Water and Sewer District	
(Gildford Wastewater System Improvements)	$100,000
Melstone, Town of	
(Melstone Water System Improvements)	$100,000
Hysham Irrigation District	
(Flow Monitoring/Data Transfer Project)	$100,000
Choteau, City of	
(Choteau Wastewater System Improvements)	$100,000
Wolf Creek County Water and Sewer District	
(Wolf Creek Wastewater System Improvements)	$100,000
Lower Musselshell Conservation District	
(Lost Horse Creek Siphon Pipeline Rehabilitation)	$100,000
Whitefish, City of	
(Whitefish Wastewater System Improvements)	$100,000
Gardiner-Park County Water and Sewer District	
(Gardiner Wastewater System Improvements)	$100,000
Department of Natural Resources and Conservation — Water Resources Division	
(Twodot Canal Rehabilitation Project)	$100,000
Cascade, Town of	
(Cascade Water System Improvements)	$100,000
Sweet Grass County Conservation District	
(Post-Kellogg Diversion Structure Infrastructure Rehabilitation)	$100,000
Wibaux, Town of	
(Wibaux Wastewater System Improvements)	$100,000
Ravalli County Environmental Health	
(Bitterroot Valley Septic Systems Impact Evaluation Model)	$100,000

Bynum Teton County Water and Sewer District	
(Bynum Water System Improvements)	$100,000
Lake County	
(Lake County Mapping Project)	$100,000
Ravalli County	
(Ravalli County Phase II Mapping)	$100,000
Judith Gap, Town of	
(Judith Gap Water and Wastewater System Improvements)	$100,000
Crow Tribe	
(Crow Agency Wastewater System Improvements Phase IIIA)	$100,000
Stevensville, Town of	
(Stevensville Wastewater Improvements Project)	$100,000
Flathead County	
(Bigfork Stormwater System Improvements)	$100,000
Kevin, Town of	
(Kevin Water System Improvements)	$100,000
Em-Kayan Village Water and Sewer District	
(Em-Kayan Village Water System Improvements)	$100,000
Broadview, Town of	
(Broadview Water System Improvements)	$100,000
Department of Natural Resources and Conservation — Water Resources Division	
(Deadman's Basin Terminal Outlet Replacement Project)	$100,000
Big Horn Conservation District	
(Water Reservations Efficiencies)	$33,706
Department of Natural Resources and Conservation — Water Resources Division	
(Martinsdale Reservoir Dam Drain Project)	$100,000
Loma County Water and Sewer District	
(Loma Water System Improvements)	$100,000
Woods Bay Homesites WSD	
(Woods Bay WW System Improvements)	$100,000
Sheaver's Creek Water and Sewer District	
(Sheaver's Creek Wastewater System Improvements)	$100,000
Bozeman, City of	
(Hyalite Creek Source Water Protection Barrier Project)	$100,000
Greater Woods Bay Sewer District	
(Greater Woods Bay Wastewater System Improvements)	$100,000
Virginia City, Town of	
(Virginia City Wastewater System Improvements)	$100,000

Helena Valley Irrigation District	
(Helena Valley Irrigation District Main Canal Lining Project)	$100,000
Flathead County	
(Flathead Regional Wastewater Management Group)	$89,993
North Baker Water and Sewer District	
(North Baker Wastewater System Improvements)	$100,000
Valier, Town of	
(Valier Water System Improvements)	$100,000
Flathead Joint Board of Control	
(Flathead Joint Board of Control Jocko K Canal Lining)	$100,000
Sweet Grass County	
(Yellowstone Greycliff Study)	$80,000
Cut Bank, City of	
(Cut Bank Water System Improvements)	$100,000
Confederated Salish and Kootenai Tribes	
(Upper Jocko S Canal Lining Project)	$100,000
St. Ignatius, Town of	
(St. Ignatius Water System Improvements)	$100,000
Missoula County	
(Lewis and Clark Subdivision RSID Water System Improvements)	$100,000
Bridger Pines County Water and Sewer District	
(Bridger Pines Wastewater System Improvements)	$100,000
Ennis, Town of	
(Ennis Water System Improvements)	$100,000
Laurel, City of	
(Laurel Water System Improvements)	$100,000
Fort Smith Water and Sewer District	
(Fort Smith Water System Improvements)	$100,000
Troy, City of	
(Troy Water System Improvements)	$100,000
Department of Natural Resources and Conservation — Water Resources Division	
(Nevada Creek Canal Design and Construction Project)	$100,000
Granite County	
(Granite County Solid Waste Improvements)	$100,000
Harlowton, City of	
(Harlowton Water System Improvements)	$100,000
Jette Meadows Water and Sewer District	
(Jette Meadows Water System Improvements)	$100,000
Homestead Acres County Water and Sewer District	
(Homestead Acres Water System Improvements)	$100,000

South Chester Water District	
(South Chester Water System Improvements)	$100,000
Bigfork Water and Sewer District	
(Bigfork Wastewater System Improvements)	$100,000
Greenacres County Water and Sewer District	
(Greenacres Water System Improvements)	$100,000
Livingston, City of	
(Livingston Anaerobic Digester Improvements and Composting)	$100,000
Eureka, Town of	
(Eureka Water System Improvements)	$100,000
Manhattan, Town of	
(Manhattan Water System Improvements)	$100,000
Stevensville, Town of	
(Stevensville Water System Improvements)	$100,000
Buffalo Rapids Project District II	
(Conversion of Laterals 2.9/7.6 to Pipeline)	$100,000
Flathead Basin Commission	
(Mapping the Impacts of Septic Systems: A Shallow Ground Water Study)	$100,000
Daly Ditches Irrigation District	
(Hedge Canal Diversion Dam Replacement)	$100,000
Fort Shaw Irrigation District	
(Water Quality and Quantity Improvement)	$100,000
East Bench Irrigation District	
(East Bench Irrigation District Sweetwater Seepage Area Canal Lining)	$100,000
Montana State University — Montana Watercourse	
(Watershed Education for Real Estate Agents)	$19,333
Shelby, City of	
(Shelby Wastewater System Improvements)	$100,000
Buffalo Rapids Project District II	
(Fish Screen Buffalo Rapids Irrigation District)	$100,000
Sweet Grass County Water and Sewer District	
(Sweet Grass Water System Improvements)	$100,000
Gore Hill County Water District	
(Gore Hill Water System Improvements)	$100,000
Whitefish County Water and Sewer District	
(Investigation of Septic Leachate to Littoral Areas of Whitefish Lake)	$70,000
Richland County Conservation District	
(Lower Yellowstone Ground Water Reservation)	$100,000

Montana State University — Montana Water Center

(Decisionmaker's Guide to Montana's Water) $99,462

Ronan, City of

(Ronan Water System Improvements) $100,000

(4) For grant projects for which the department of natural resources and conservation also has recommended a loan, the authorization for the loan is contained in House Bill No. 8.

(5) There is appropriated from the natural resources projects state special revenue account established in 15-38-302 to the department of natural resources and conservation up to $2.1 million that is available in the natural resources projects state special revenue account for renewable resource grants approved by the 60th legislature. The treasure state endowment program shall reduce its grant to the department of natural resources and conservation by the amount expended under this subsection.

(6) To the entities listed in this section, this appropriation constitutes a valid obligation of these funds for purposes of encumbering the funds within the 2011 biennium pursuant to 17-7-302.

Section 2. Conditions of grants. Disbursement of funds under [sections 1 through 3] for grants is subject to the following conditions that must be met by project sponsors:

(1) approval of a scope of work and budget for the project by the department of natural resources and conservation. Changes in the project scope of work or budget that reduce the public or natural resource benefits as presented in department reports and applicant testimony to the 61st legislature may result in the proportional reduction in grant amount.

(2) documented commitment of other funds required for project completion;

(3) satisfactory completion of conditions described in the recommendation section of the project narrative in the renewable resource grant and loan program project recommendations and biennium report submitted to the 61st legislature for the 2011 biennium or, in the case of emergency applications, conditions specified at the time of written notification of approved grant authority;

(4) execution of a grant agreement with the department; and

(5) accomplishment of other specific requirements considered necessary by the department to accomplish the purpose of the grant as evidenced from the application to the department or from the proposal to the legislature.

Section 3. Appropriations established. For any entity of state government that receives a grant under [sections 1 and 2], an appropriation is established for the amount of the grant listed in [section 1(3)]. Grants to state entities from prior bienniums are reauthorized for completion of contract work.

Section 4. Review of previously authorized grants. Recipients of renewable resource grants authorized by previous legislatures that have not completed startup conditions must be notified by the department of natural resources and conservation that the legislature, at the next regular session, will review renewable resource grants to determine if the commitment of the renewable resource grant should be withdrawn.

Section 5. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

Section 6. Coordination instruction. If the total transfers for the renewable resource grants and loans water projects in section 51-F, item 5, of House Bill No. 645 is reduced below a total of $4,148,796, then the appropriation of $8,654,593 from the natural resources projects state special revenue account for grants to political subdivisions and local governments in [section 1 of this act] is reduced by a like amount.

Section 7. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 8. Effective date. [This act] is effective on passage and approval.

Approved April 28, 2009

CHAPTER NO. 371

[HB 7]

AN ACT APPROPRIATING MONEY TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR GRANTS FOR DESIGNATED PROJECTS UNDER THE RECLAMATION AND DEVELOPMENT GRANTS PROGRAM; PRIORITIZING GRANTS AND AMOUNTS; ESTABLISHING CONDITIONS FOR GRANTS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Appropriations for reclamation and development grants. (1) There is appropriated to the department of natural resources and conservation from the natural resources projects state special revenue account, established in 15-38-302, up to $800,000 to be used for planning reclamation and development grants to be awarded by the department over the course of the 2011 biennium.

(2) The amount of $6,227,122 is appropriated to the department of natural resources and conservation from the natural resources projects state special revenue account from funds allocated for the purpose of making reclamation and development grants.

(3) The funds appropriated in subsection (2) must be awarded by the department to the entities listed in [section 2] for the prescribed purposes and in the prescribed grant amounts, subject to the conditions provided in [sections 2 through 4].

Section 2. Approved grants and projects. (1) The legislature approves the grants listed in subsection (2), to be made in the order of priority as indicated within the following list of projects and activities. If the conditions in [sections 3 and 4] are met, funds must be awarded up to the amounts approved in this section in order of priority. Funds not accepted by grantees or funds not used by higher-ranked projects and activities must be provided for projects and activities lower on the priority list that would not otherwise receive funding. Any remaining project funds may be used for reclamation and development planning grants authorized under [section 1] or renewable resource program projects authorized by the 61st legislature in House Bill No. 6. Descriptions of the various projects and activities and specific conditions established for each project and activity are contained within the department of natural resources

and conservation's reclamation and development grants program report to the 61st legislature for the 2011 biennium.

(2) The following are the grants program prioritized projects and activities:

Applicant/Project	Grant Amount
Montana Board of Oil and Gas Conservation	
(2009 Northern District Orphaned Well Plug and Abandonment and Site Restoration)	$300,000
(2009 Southern District Orphaned Well Plug and Abandonment and Site Restoration)	$300,000
Montana Department of Natural Resources and Conservation	
(Reliance Refinery)	$300,000
Shelby, City of	
(Shelby Refinery)	$300,000
Missoula County	
(St. Louis Creek Mine Reclamation)	$300,000
Montana Department of Environmental Quality	
(Spring Meadow Lake Reclamation Project)	$300,000
Cascade County Commission	
(County Shops Remediation of Wood Treatment Preservatives)	$300,000
Montana Department of Environmental Quality	
(McLaren Tailings Reclamation Project)	$300,000
Lewistown, City of	
(Reclamation of Berg Lumber Mill Site)	$300,000
Ryegate, Town of	
(Former Ryegate Conoco)	$259,200
Park County	
(Fleshman Creek Urban Restoration Project)	$300,000
Butte-Silver Bow City-County Government	
(Butte Mining District Reclamation and Protection)	$300,000
Missoula County	
(Ninemile Creek Mining District Reclamation)	$200,800
Montana Department of Environmental Quality	
(Beal Mountain Mine, Waste Rock Dump Soil Cover)	$300,000
Lewis and Clark Conservation District	
(York Gulch Old Amber Mine Reclamation)	$83,207
Ruby Valley Conservation District	
(Big Hole Cooperative Ditch Improvement Project)	$239,658
Montana Department of Natural Resources and Conservation	
(Monitoring Coal-Bed Methane Development Effects on Surface Water Quality of the Tongue and Powder Rivers)	$195,000
Flathead Basin Commission	
(Flathead Lake Mapping Project)	$294,977

Jefferson County	
(Ground Water Quality Assessment with Emphasis on Radionuclides)	$300,000
Meagher County Conservation District	
(Hydrologic Framework and Water Budget of the Upper Smith River Watershed)	$300,000
Custer County Conservation District	
(Yellowstone River Riparian Restoration)	$177,881
Cascade County Commission	
(Sustainable Water Supplies from the Madison Aquifer, Central Montana)	$286,792
Butte-Silver Bow City-County Government	
(Irrigation Demonstration Project for Butte Acidic Mine Waters — On-Site Treatment and Resource Recovery)	$289,607

(3) If the Reliance Refinery Cleanup is fully funded in House Bill No. 2, then the grant request for the Montana Department of Natural Resources and Conservation (Reliance Refinery) project in subsection (2) is withdrawn and $70,000 is granted to the Clark Fork River Basin Task Force for the water management plan project.

(4) To the entities listed in this section, this appropriation constitutes a valid obligation of these funds for purposes of encumbering the funds within the 2011 biennium pursuant to 17-7-302.

Section 3. Coordination of fund sources for grants program projects. A sponsor of a grants program project who has applied for a grant for that project under both the reclamation and development grants program and the renewable resource grant and loan program may not receive duplicate funding.

Section 4. Conditions of grants. Disbursement of grant funds under [sections 1 through 5] is subject to the following conditions that must be met by the project sponsor:

(1) A scope of work and budget for the project must be approved by the department of natural resources and conservation. Reduction in a scope of work or budget may not affect priority activities or improvements.

(2) Other funds required for project completion must have been committed, and the commitment must be documented.

(3) The project sponsor shall show satisfactory completion of conditions described in the recommendation section of the project narrative of the reclamation and development grants program report to the legislature for the 2011 biennium.

(4) An agreement between the department and the project sponsor must be executed in a timely manner, taking into consideration any changed conditions or circumstances that govern the administration and disbursement of funds.

(5) Any other specific requirements considered necessary by the department must be met to accomplish the purpose of the grant as evidenced from the application to the department or as defined by the legislature.

Section 5. Other appropriations. There is appropriated to any entity of state government that receives a grant under [sections 1 through 4] the amount

of the grant upon award of the grant by the department of natural resources and conservation. Grants to state entities from a prior biennium are reauthorized for completion of contract work.

Section 6. Coordination instruction. If the total transfers for the reclamation and development grants and loans reclamation projects in section 51-F, item 6, of House Bill No. 645 is reduced below a total of $1,794,266, then the appropriation of $6,227,122 from the natural resources projects state special revenue account for reclamation and development grants in [section 1 of this act] is reduced by a like amount.

Section 7. Effective date. [This act] is effective on passage and approval.

Approved April 28, 2009

CHAPTER NO. 372

[HB 8]

AN ACT APPROVING RENEWABLE RESOURCE PROJECTS AND AUTHORIZING LOANS; REAUTHORIZING RENEWABLE RESOURCE PROJECTS AUTHORIZED BY THE 60TH LEGISLATURE; APPROPRIATING MONEY TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR LOANS UNDER THE RENEWABLE RESOURCE GRANT AND LOAN PROGRAM; AUTHORIZING THE ISSUANCE OF COAL SEVERANCE TAX BONDS; AUTHORIZING THE CREATION OF A STATE DEBT AND APPROPRIATING COAL SEVERANCE TAXES FOR DEBT SERVICE; PLACING CERTAIN CONDITIONS UPON LOANS; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Approval of renewable resource projects and authorization to provide loans. (1) The legislature finds that the renewable resource projects listed in this section meet the provisions of 17-5-702. The department of natural resources and conservation is authorized to make loans to the political subdivisions of state government and local governments listed in subsection (2) in amounts not to exceed the loan amounts listed for each project from the proceeds of the bonds authorized in [section 3].

(2) The interest rate for the projects in this group is 4.5% or the rate at which the state bonds are sold, whichever is lower, for up to 20 years.

Loan	Amount
BITTER ROOT IRRIGATION DISTRICT	
Bitter Root Irrigation District Siphon 1: Phase 1	$508,370
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION - WATER RESOURCES DIVISION	
Ruby Dam Rehabilitation Project	$8,000,000
Deadman's Basin Terminal Outlet Replacement Project	$400,000

Section 2. Projects not completing requirements — projects reauthorized. (1) The legislature finds that the following renewable resource projects that were approved by the 60th legislature in Chapter 364, Laws of 2007, may not complete the requirements necessary to obtain the loan funds prior to June 30, 2009. The projects described in this section are reauthorized. The department of natural resources and conservation is authorized to make

loans to the political subdivisions of state government and local governments listed in subsections (2) and (3) in amounts not to exceed the loan amounts listed for each project from the proceeds of the bonds authorized in [section 3].

(2) The interest rate for the projects in this group is 3% or the rate at which the state bonds are sold, whichever is lower, for up to 20 years.

Loan	Amount
MILL CREEK IRRIGATION DISTRICT	
Mill Lake Dam Rehabilitation	$600,000
Refinance Existing Debt or Rehabilitation of Existing Water or Wastewater Facilities	$3,000,000

(3) The interest rate for the project in this group is 3% or the rate at which the state bonds are sold, whichever is lower, for up to 13 years.

Loan	Amount
DALY DITCHES IRRIGATION DISTRICT	
Republican Canal Diversion Dam Replacement	$268,815

(4) The interest rate for the project in this group is 4.5% or the rate at which the state bonds are sold, whichever is lower, for up to 30 years.

Loan	Amount
SUNSET IRRIGATION DISTRICT	
Gravity Flow Irrigation Pipelines	$1,465,266

Section 3. Coal severance tax bonds authorized. (1) The legislature finds that Title 17, chapter 5, part 7, provides for the issuance of coal severance tax bonds for financing specific approved renewable resource projects as part of the state renewable resource grant and loan program. Available funds from previous sales of coal severance tax bonds, plus any additional principal amount on bonds as may be necessary, pursuant to the conditions in 85-1-605, to fund emergency loans, as authorized and approved in accordance with 85-1-605(4), may also be used for the projects approved in [sections 1 through 7]. The board of examiners is authorized to issue coal severance tax bonds in an amount not to exceed $20,058,795, of which $13,973,636 is to be used to finance the projects approved in [sections 1 and 2], $3,468,795 is to be used to finance additional loans in lieu of grants listed in House Bill No. 6, and up to $2,616,364 is to be used to establish a reserve for the bonds. Proceeds of the bonds are appropriated to the department of natural resources and conservation for financing the projects identified in [sections 1 and 2] and may be used as authorized in 85-1-605(4). Loans made under 85-1-605(4) must bear interest at the rate borne by the state bonds unless the legislature in a subsequent session provides for a lower interest rate, in which case the rate must be reduced to the rate specified by the legislature.

(2) In connection with the issuance of coal severance tax bonds, the board of examiners may pay the principal and interest on the bonds when due from the debt service account and in all other respects manage and use the funds within each special bond account for the benefit of the bonds. The board of examiners shall exercise its discretion to enhance the marketability of the bonds and to secure the most advantageous financial arrangements for the state.

(3) Earnings on bond proceeds prior to the completion of any loan must be allocated to the debt service account to pay the debt service on the bonds during

this period. Earnings in excess of debt service, if any, must be allocated to the renewable resource grant and loan program state special revenue account.

(4) Loan repayments from loans financed with coal severance tax bonds are pledged, dedicated, and appropriated to the debt service account in the state treasury for the benefit of bonds approved for loans under this section.

Section 4. Conditions of loans. (1) Disbursement of funds under [sections 1 through 7] for loans is subject to the following conditions that must be met by project sponsors:

(a) approval of a scope of work and budget for the project by the department of natural resources and conservation. Reductions in a scope of work or budget may not affect priority activities or improvements.

(b) documented commitment of other funds required for project completion;

(c) satisfactory completion of conditions described in the recommendations section of the project narrative in the renewable resource grant and loan program project evaluations and recommendations report for the biennium;

(d) execution of a loan agreement with the department; and

(e) accomplishment of other specific requirements considered necessary by the department to accomplish the purpose of the loan as evidenced from the application to the department or from the proposal to the legislature.

(2) Each sponsor authorized for a loan from coal severance tax bond proceeds may be required to pay to the department a pro rata share of the bond issuance costs and the administrative costs incurred by the department to complete the loan transaction.

Section 5. Private and discount purchase of loans. Loans to political subdivisions and local government entities and bonds, warrants, and notes issued in evidence of the loans may be made, purchased by, and sold to the department of natural resources and conservation at a discount and at a private negotiated sale, notwithstanding the provisions of any other law applicable to political subdivisions or local government entities.

Section 6. Appropriations established. For any entity of state government that receives a loan under [sections 1 through 7], an appropriation is established for the amount of the loan upon award of the loan by the department of natural resources and conservation.

Section 7. Creation of state debt — appropriation of coal severance tax — bonding provisions. (1) Because [section 3] authorizes the creation of a state debt, a vote of two-thirds of the members of each house is required for enactment of [section 3].

(2) The legislature, through the enactment of [sections 1 through 7] by a vote of three-fourths of the members of each house of the legislature, as required by Article IX, section 5, of the Montana constitution, pledges, dedicates, and appropriates from the coal severance tax bond fund all money necessary for the payment of principal and interest not otherwise provided for on the coal severance tax bonds authorized by [section 3] to be issued pursuant to Title 17, chapter 5, part 7, and pursuant to the provisions of [sections 1 through 7] and the general resolution for this bond program that has been adopted by the board of examiners under the authority provided in Title 17, chapter 5, part 7.

Section 8. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is

invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 9. Effective date. [This act] is effective July 1, 2009.

Approved April 28, 2009

CHAPTER NO. 373

[HB 55]

AN ACT REQUIRING THE YOUTH COURT TO IMPOSE RESTRICTIONS ON A DELINQUENT YOUTH'S RESIDENCY IF THE YOUTH HAS BEEN ADJUDICATED FOR A SEXUAL OFFENSE AND HAS BEEN DETERMINED TO BE A LEVEL 3 SEXUAL OFFENDER; REQUIRING NOTIFICATION TO SCHOOL DISTRICTS; AMENDING SECTIONS 41-5-215 AND 41-5-1513, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 41-5-215, MCA, is amended to read:

"41-5-215. Youth court and department records — notification of school. (1) Formal youth court records, including reports of preliminary inquiries, petitions, motions, other filed pleadings, court findings, verdicts, and orders and decrees on file with the clerk of court are public records and are open to public inspection until the records are sealed under 41-5-216.

(2) Social, medical, and psychological records, youth assessment materials, predispositional studies, and supervision records of probationers are open only to the following:

(a) the youth court and its professional staff;

(b) representatives of any agency providing supervision and having legal custody of a youth;

(c) any other person, by order of the court, having a legitimate interest in the case or in the work of the court;

(d) any court and its probation and other professional staff or the attorney for a convicted party who had been a party to proceedings in the youth court when considering the sentence to be imposed upon the party;

(e) the county attorney;

(f) the youth who is the subject of the report or record, after emancipation or reaching the age of majority;

(g) a member of a county interdisciplinary child information team formed under 52-2-211 who is not listed in this subsection (2);

(h) members of a local interagency staffing group provided for in 52-2-203;

(i) persons allowed access to the reports referred to under 45-5-624(7); and

(j) persons allowed access under 42-3-203.

(3) (a) Notwithstanding the requirements of 20-5-321(1)(d) or (1)(e) and subject to the provisions of subsection (3)(b) of this section, the youth court shall notify the school district that the youth presently attends or the school district that the youth has applied to attend of a youth's suspected drug use or criminal activity if after an investigation has been completed:

(i) the youth has admitted the allegation or a petition has been filed with the youth court; and

(ii) a juvenile probation officer has reason to believe that a youth is currently involved with drug use or other criminal activity that has a bearing on the safety of children.

(b) Notification under subsection (3)(a) may not be given for status offenses.

(c) In addition to the notice requirements in subsection (3)(a), the youth court shall provide notice to the superintendent of a school district for a level 3 sexual offender as provided in 41-5-1513(3).

~~(c)~~*(d)* A school district may not refuse to accept the student if refusal violates the federal Individuals With Disabilities Education Act or the federal Americans With Disabilities Act of 1990.

~~(d)~~*(e)* The administrative officials of the school district may enforce school disciplinary procedures that existed at the time of the admission or adjudication. The information may not be further disclosed and may not be made part of the student's permanent records.

(4) In all cases, a victim is entitled to all information concerning the identity and disposition of the youth, as provided in 41-5-1416.

(5) The school district may disclose, without consent, personally identifiable information from an education record of a pupil to the youth court and law enforcement authorities pertaining to violations of the Montana Youth Court Act or criminal laws by the pupil. The youth court or law enforcement authorities receiving the information shall certify in writing to the school district that the information will not be disclosed to any other party except as provided under state law without the prior consent of the parent or guardian of the pupil.

(6) Any part of records information secured from records listed in subsection (2), when presented to and used by the court in a proceeding under this chapter, must also be made available to the counsel for the parties to the proceedings."

Section 2. Section 41-5-1513, MCA, is amended to read:

"41-5-1513. Disposition — delinquent youth — restrictions. (1) If a youth is found to be a delinquent youth, the youth court may enter its judgment making one or more of the following dispositions:

(a) any one or more of the dispositions provided in 41-5-1512;

(b) subject to 41-5-1504, 41-5-1512(1)(o)(i), and 41-5-1522, commit the youth to the department for placement in a state youth correctional facility and recommend to the department that the youth not be released until the youth reaches 18 years of age. The provisions of 41-5-355 relating to alternative placements apply to placements under this subsection (1)(b). The court may not place a youth adjudicated to be a delinquent youth in a state youth correctional facility for an act that would be a misdemeanor if committed by an adult unless:

(i) the youth committed four or more misdemeanors in the prior 12 months;

(ii) a psychiatrist or a psychologist licensed by the state or a licensed clinical professional counselor or a licensed clinical social worker has evaluated the youth and recommends placement in a state youth correctional facility; and

(iii) the court finds that the youth will present a danger to the public if the youth is not placed in a state youth correctional facility.

(c) subject to the provisions of subsection ~~(5)~~ *(6)*, require a youth found to be a delinquent youth, as the result of the commission of an offense that would be a violent offense, as defined in 46-23-502, if committed by an adult, to register and remain registered as a violent offender pursuant to Title 46, chapter 23, part 5.

The youth court shall retain jurisdiction in a disposition under this subsection to ensure registration compliance.

(d) in the case of a delinquent youth who has been adjudicated for a sexual offense, as defined in 46-23-502, and is required to register as a sexual offender pursuant to Title 46, chapter 23, part 5, exempt the youth from the duty to register if the court finds that:

(i) the youth has not previously been found to have committed or been adjudicated for a sexual offense, as defined in 46-23-502; and

(ii) registration is not necessary for protection of the public and that relief from registration is in the public's best interest;

(e) in the case of a delinquent youth who is determined by the court to be a serious juvenile offender, the judge may specify that the youth be placed in a state youth correctional facility, subject to the provisions of subsection (2), if the judge finds that the placement is necessary for the protection of the public. The court may order the department to notify the court within 5 working days before the proposed release of a youth from a youth correctional facility. Once a youth is committed to the department for placement in a state youth correctional facility, the department is responsible for determining an appropriate date of release or an alternative placement.

(f) impose a fine as authorized by law if the violation alleged would constitute a criminal offense if committed by an adult.

(2) If a youth has been adjudicated for a sexual offense, as defined in 46-23-502, the youth court shall:

(a) prior to disposition, order a psychosexual evaluation that must comply with the provisions of 46-18-111;

(b) designate the youth's risk level pursuant to 46-23-509; ~~and~~

(c) require completion of sexual offender treatment*; and*

(d) for a youth designated under this section and 46-23-509 as a level 3 offender, impose upon the youth those restrictions required for adult offenders by 46-18-255(2), unless the youth is approved by the youth court or the department for placement in a home, program, or facility for delinquent youth. Restrictions imposed pursuant to this subsection (2)(d) terminate when the jurisdiction of the youth court terminates pursuant to 41-5-205 unless those restrictions are terminated sooner by an order of the court. However, if a youth's case is transferred to district court pursuant to 41-5-203, 41-5-206, 41-5-208, or 41-5-1605, any remaining part of the restriction imposed pursuant to this subsection (2)(d) is transferred to the jurisdiction of the district court and the supervision of the offender is transferred to the department.

(3) For a youth designated under this section and 46-23-509 as a level 3 offender, the youth court if the youth is under the youth court's jurisdiction or the department if the youth is under the department's jurisdiction shall notify in writing the superintendent of the school district in which the youth is enrolled of the adjudication, any terms of probation or parole, and the facts of the offense for which the youth was adjudicated, except the name of the victim, and provide a copy of the court's disposition order to the superintendent.

~~(3)~~*(4)* The court may not order a local government entity to pay for care, treatment, intervention, or placement. A court may not order a local government entity to pay for evaluation and in-state transportation of a youth, except as provided in 52-5-109.

~~(4)~~*(5)* The court may not order a state government entity to pay for care, treatment, intervention, placement, or evaluation that results in a deficit in the annual allocation established for that district under 41-5-130 without approval from the cost containment review panel.

~~(5)~~*(6)* The duration of registration for a youth who is required to register as a sexual or violent offender must be as provided in 46-23-506, except that the court may, based on specific findings of fact, order a lesser duration of registration."

Section 3. Effective date. [This act] is effective on passage and approval.

Section 4. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to a delinquent youth, as defined in 41-5-103, adjudicated for the commission of a sexual offense, as defined in 46-23-502, before [the effective date of this act] but for whom no disposition has been ordered pursuant to 41-5-1513.

Approved April 28, 2009

CHAPTER NO. 374

[HB 108]

AN ACT CREATING A CRIME VICTIMS COMPENSATION ACCOUNT; STATUTORILY APPROPRIATING THE ACCOUNT; PROVIDING THAT CERTAIN RESTITUTION MONEY PAID BY A CRIMINAL OFFENDER MUST BE DEPOSITED IN A STATE SPECIAL REVENUE ACCOUNT FOR CRIME VICTIMS COMPENSATION; AMENDING SECTIONS 17-7-502, 46-18-236, 46-18-241, 46-18-250, 46-18-251, 53-1-107, 53-9-104, 53-9-132, 53-9-133, AND 53-30-132, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Crime victims compensation account. There is an account in the state special revenue fund for crime victims compensation. The money in the account is statutorily appropriated, as provided in 17-7-502, to the department of justice for the purposes provided in this part.

Section 2. Section 17-7-502, MCA, is amended to read:

"17-7-502. Statutory appropriations — definition — requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-17-105; 5-11-120; 5-11-407; 5-13-403; 7-4-2502; 10-1-1202; 10-1-1303; 10-2-603; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-121; 15-1-218; 15-23-706; 15-31-906; 15-35-108; 15-36-332; 15-37-117; 15-39-110; 15-65-121; 15-70-101; 15-70-369; 15-70-601; 16-11-509; 17-3-106; 17-3-212;

17-3-222; 17-3-241; 17-6-101; 17-7-304; 18-11-112; 19-3-319; 19-6-404; 19-6-410; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 19-20-607; 19-21-203; 20-8-107; 20-9-534; 20-9-622; 20-26-1503; 22-3-1004; 23-4-105; 23-4-202; 23-4-204; 23-4-302; 23-4-304; 23-5-306; 23-5-409; 23-5-612; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503; 41-5-2011; 42-2-105; 44-1-504; 44-12-206; 44-13-102; 50-4-623; 53-1-109; 53-6-703; *[section 1];* 53-24-108; 53-24-206; 60-11-115; 61-3-415; 69-3-870; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 76-13-150; 77-1-108; 77-2-362; 80-2-222; 80-4-416; 80-5-510; 80-11-518; 82-11-161; 87-1-513; 90-1-115; 90-1-205; 90-3-1003; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 4, Ch. 497, L. 1999, the inclusion of 15-38-202 terminates July 1, 2014; pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, and secs. 3 and 6, Ch. 481, L. 2003, the inclusion of 15-35-108 terminates June 30, 2010; pursuant to sec. 17, Ch. 593, L. 2005, the inclusion of 15-31-906 terminates January 1, 2010; pursuant to sec. 73, Ch. 44, L. 2007, the inclusion of 19-6-410 terminates upon the death of the last recipient eligible under 19-6-709(2) for the supplemental benefit provided by 19-6-709; and pursuant to sec. 6, Ch. 2, Sp. L. September 2007, the inclusion of 76-13-150 terminates June 30, 2009.)"

Section 3. Section 46-18-236, MCA, is amended to read:

"46-18-236. Imposition of charge upon conviction or forfeiture — administration. (1) Except as provided in subsection (2), there must be imposed by all courts of original jurisdiction on a person upon conviction for any conduct made criminal by state statute or upon forfeiture of bond or bail a charge that is in addition to other taxable court costs, fees, or fines, as follows:

(a) $15 for each misdemeanor charge;

(b) the greater of $20 or 10% of the fine levied for each felony charge; and

(c) an additional $50 for each misdemeanor and felony charge under Title 45, 61-8-401, or 61-8-406.

(2) If a convicting court determines under 46-18-231 and 46-18-232 that the person is not able to pay the fine and costs or that the person is unable to pay within a reasonable time, the court shall waive payment of the charge imposed by this section.

(3) The charges imposed by this section are not fines and must be imposed in addition to any fine and may not be used in determining the jurisdiction of any court.

(4) When the payment of a fine is to be made in installments over a period of time, the charges imposed by this section must be collected from the first payment made and each subsequent payment as necessary if the first payment is not sufficient to cover the charges.

(5) The charges collected under subsection (1), except those collected under subsections (1)(a) and (1)(b) by a justice's court, must be deposited with the appropriate local government finance officer or treasurer. If a city municipal court or city or town court is the court of original jurisdiction, the charges collected under subsection (1) must be deposited with the city or town finance officer or treasurer. If a district court or justice's court is the court of original jurisdiction, the charges collected under subsection (1) must be deposited with the county finance officer or treasurer. If the court of original jurisdiction is a court within a consolidated city-county government within the meaning of Title 7, chapter 3, the charges collected under subsection (1) must be deposited with the finance officer or treasurer of the consolidated government.

(6) (a) A city or town finance officer or treasurer may retain the charges collected under subsections (1)(a) and (1)(b) by a city municipal court or a city or town court and may use that money for the payment of salaries of the city or town attorney and deputies.

(b) Each county finance officer or treasurer may retain the charges collected under subsections (1)(a) and (1)(b) by district courts for crimes committed or alleged to have been committed within that county. The county finance officer or treasurer shall use the money for the payment of salaries of its deputy county attorneys and for the payment of other salaries in the office of the county attorney, and any funds not needed for those salaries may be used for the payment of any other county salaries.

(7) (a) Except as provided in subsection (7)(b), each county, city, or town finance officer or treasurer may retain the charges collected under subsection (1)(c) for payment of the expenses of a victim and witness advocate program, including a program operated by a private, nonprofit organization, that provides the services specified in Title 40, chapter 15, and Title 46, chapter 24, and that is operated or used by the county, city, or town.

(b) The appropriate county, city, or town finance officer or treasurer shall deposit $1 of each charge collected under subsection (1)(c) in the collecting court's fund for mitigation of administrative costs incurred by the court in the collection of the charge. The funds deposited under this subsection (7)(b) are not subject to allocation under 46-18-251.

(c) Except as provided in subsection (7)(b), if the county, city, or town does not operate or use a victim and witness advocate program, all charges collected under subsection (1)(c) must be paid to the crime victims compensation and assistance program *in the department of justice for deposit* in the ~~department of justice for deposit in the state general fund to be used to provide services to crime victims as provided in Title 53, chapter 9, part 1~~ *account provided for in [section 1]*."

Section 4. Section 46-18-241, MCA, is amended to read:

"46-18-241. Condition of restitution. (1) As provided in 46-18-201, a sentencing court shall, as part of the sentence, require an offender to make full restitution to any victim who has sustained pecuniary loss, including a person suffering an economic loss. The duty to pay full restitution under the sentence remains with the offender or the offender's estate until full restitution is paid and is a condition of any probation or parole.

(2) (a) The court shall require the offender to pay the cost of supervising the payment of restitution, as provided in 46-18-245, if the offender is able to pay, by paying an amount equal to 10% of the amount of restitution ordered, but not less than $5.

(b) A felony offender shall pay the restitution and cost of supervising the payment of restitution to the department of corrections until the offender has fully paid the restitution and the cost of supervising the payment of restitution. The department shall pay the restitution to the person or entity to whom the court ordered restitution to be paid*, except that if a victim has been compensated under Title 53, chapter 9, part 1, the restitution must be paid to the crime victims compensation and assistance program in the department of justice for deposit in the account provided for in [section 1]*. The department may contract with a government agency or private entity for the collection of the payments for restitution and the cost of collecting the payments for restitution during the period following state supervision or state custody of the offender. The department shall adopt rules to implement this subsection (2)(b).

(c) In a misdemeanor case, payment of restitution and of the cost of supervising the payment of restitution must be made to the court until the offender has fully paid the restitution and the cost of supervising the payment of restitution. The court shall disburse the money to the entity employing the person ordered to supervise restitution under 46-18-245, which shall disburse the restitution to the person or entity to whom the court ordered restitution to be paid*, except that if a victim has been compensated under Title 53, chapter 9, part 1, the restitution must be paid to the crime victims compensation and assistance program in the department of justice for deposit in the account provided for in [section 1]*.

(3) If at any time the court finds that, because of circumstances beyond the offender's control, the offender is not able to pay any restitution, the court may order the offender to perform community service during the time that the offender is unable to pay. The offender must be given a credit against restitution due at the rate of the hours of community service times the state minimum wage in effect at the time that the community service is performed."

Section 5. Section 46-18-250, MCA, is amended to read:

"46-18-250. Victim's location unknown — payments to restitution fund — use of restitution fund. (1) If the location of a victim on whose behalf restitution is being paid is unknown, the court may order that restitution payments made on that victim's behalf be deposited in a fund known as the county restitution fund. Subject to the availability of money in the fund, if the location of a victim whose restitution payments were deposited in the county restitution fund becomes known, the county shall refund to the victim payments that were deposited in the fund.

(2) Money in the restitution fund may be used to provide payments on behalf of offenders who are ordered to pay restitution but, ~~due to~~ *because of* circumstances beyond their control, are unable to obtain employment or are unable to obtain employment sufficient to make restitution payments and sustain themselves and their dependents. The offender may perform community service, and for each hour of community service performed, the victim ~~shall~~ *must* receive an amount equal to the minimum hourly wage from the county restitution fund. A judge may order an offender to perform community service work for restitution payments upon a finding that the offender would not otherwise be able to make restitution payments and that there are funds available in the county restitution fund for payments to the victim.

(3) Money in the county restitution fund that is due to a victim under this part must be paid to the crime victims compensation and assistance program in

the department of justice for deposit in the ~~state general fund~~ *account provided for in [section 1]* if payments have been made to or on behalf of the victim from the state. Payment from the county restitution fund to the crime victims compensation and assistance program in the department of justice for deposit in the ~~state general fund~~ *account provided for in [section 1]* may be made only from money paid by the offender who caused the injury or death that resulted in the payment from the account."

Section 6. Section 46-18-251, MCA, is amended to read:

"46-18-251. Allocation of fines, costs, restitution, and other charges. (1) Except as provided in 46-18-236(7)(b), if ~~an~~ *a misdemeanor* offender is subjected to any combination of fines, costs, restitution, charges, or other payments arising out of the same criminal proceeding, money ~~collected~~ *that the court collects* from the offender must be allocated as provided in this section. *A felony offender shall pay restitution to the department of corrections, and other fines and costs must be paid to the court and allocated as provided in this section.*

(2) Except as otherwise provided in 46-18-236(7)(b) and this section, if a defendant is subject to payment of restitution and any combination of fines, costs, charges under the provisions of 46-18-236, or other payments, 50% of all money collected from the defendant must be applied to payment of restitution and the balance must be applied to other payments in the following order:

(a) payment of charges imposed pursuant to 46-18-236;

(b) payment of supervisory fees imposed pursuant to 46-23-1031;

(c) payment of costs imposed pursuant to 46-18-232 or 46-18-233;

(d) payment of fines imposed pursuant to 46-18-231 or 46-18-233; and

(e) any other payments ordered by the court.

(3) The money applied under subsection (2) to the payment of restitution must be paid in the following order:

(a) to the victim until the victim's unreimbursed pecuniary loss is satisfied;

(b) to the crime victims compensation and assistance program in the department of justice for deposit in the ~~state general fund~~ *account provided for in [section 1]* until the state is fully reimbursed for compensation to the victim provided pursuant to Title 53, chapter 9, part 1;

(c) to any other government agency that has compensated the victim for the victim's pecuniary loss; and

(d) to any insurance company that has compensated the victim for the victim's pecuniary loss.

(4) If any fines, costs, charges, or other payments remain unpaid after all of the restitution has been paid, any additional money collected must be applied to payment of those fines, costs, charges, or other payments. If any restitution remains unpaid after all of the fines, costs, charges, or other payments have been paid, any additional money collected must be applied toward payment of the restitution."

Section 7. Section 53-1-107, MCA, is amended to read:

"53-1-107. Inmate financial transactions and trust account system. (1) An inmate of a state prison, as defined in 53-30-101(3)(c)(i) through (3)(c)(iii) and (3)(c)(v), shall use the prison inmate trust account system administered by the department of corrections to send money out of or receive money in the facility unless the department grants the inmate an exception. The department

may charge an inmate a minimum fee, not to exceed $2 each month, to administer the inmate's account.

(2) The department may, consistent with administrative rules adopted by the department, use a portion of the funds in an inmate's account to:

(a) satisfy court-ordered restitution, whether or not restitution is a condition of probation or parole;

(b) satisfy court-ordered child support;

(c) satisfy court-ordered fines, fees, or costs;

(d) pay for the inmate's medical and dental expenses and costs of incarceration; and

(e) pay any other fees, costs, expenses, or monetary sanctions ordered by a court or imposed by a state prison and pay reasonable claims by a debt collection or financial institution.

(3) (a) Money taken under subsection (2) for the payment of restitution must be paid in the following order:

(i) to the victim until the victim's unreimbursed pecuniary loss is satisfied;

(ii) to the crime victims compensation and assistance program in the department of justice for deposit in the ~~state general fund~~ *account provided for in [section 1]* until the state is fully reimbursed for compensation to the victim provided pursuant to Title 53, chapter 9, part 1;

(iii) to any other government agency that has compensated the victim for the victim's pecuniary loss; and

(iv) to any insurance company that has compensated the victim for the victim's pecuniary loss.

(b) If there is a balance of money in the inmate's account after payments under subsection (2), the department may allow the balance to accumulate in a savings subaccount for the inmate.

(4) The department shall adopt rules establishing the prison inmate trust account system and criteria for the use of funds under this section. The rules must contain clear guidelines regarding the use of funds that ensure payment under subsection (2) and that inhibit an inmate's ability to deal in contraband or illegal acts within or outside the state prison.

(5) An inmate is responsible for the inmate's medical and dental expenses and is obligated to repay the department for reasonable costs incurred by the department for the inmate's medical and dental expenses. The department may investigate, identify, take in any manner allowed by law for the satisfaction of a judgment, and use to pay the inmate's medical and dental expenses any assets of the inmate or any income of the inmate from sources outside the state prison that is not deposited in the account provided for in subsection (1)."

Section 8. Section 53-9-104, MCA, is amended to read:

"53-9-104. Powers and duties of office. (1) The office shall:

(a) adopt rules to implement this part;

(b) prescribe forms for applications for compensation;

(c) determine all matters relating to claims for compensation; and

(d) require any person contracting directly or indirectly with an individual convicted of a qualifying crime for any book, photograph, movie, television production, or play prepared for a commercial purpose that is based directly

upon the crime or for the sale of an item owned or obtained by an individual convicted of a qualifying crime or obtained, produced, or gained directly through unique knowledge about the crime or preparation for the crime to deposit any proceeds paid or owed to the individual under the terms of the contract into an escrow fund for the benefit of any victims of the qualifying crime and any dependents of a deceased victim, to be held for a period of time that the office may determine is reasonably necessary to perfect the claims of the victims or dependents. Deposited proceeds may also be used to reimburse the office of state public defender, provided for in 47-1-201, for costs associated with providing assigned counsel for the charged person. Each victim and dependent of a deceased victim is entitled to actual and unreimbursed damages of all kinds or $5,000, whichever is greater. Proceeds remaining after payments to victims, dependents of deceased victims, and the state for any public defender or any attorney assigned for the charged person must be ~~deposited in the state general fund~~ *paid to the crime victims compensation and assistance program in the department of justice for deposit in the account provided for in [section 1]*.

(2) The office may:

(a) request and obtain from prosecuting attorneys and law enforcement officers investigations and data to enable the office to determine whether and the extent to which a claimant qualifies for compensation. A statute providing confidentiality for a claimant's juvenile court records does not apply to proceedings under this part.

(b) request and obtain from a health care provider medical reports that are relevant to the physical condition of a claimant or from an insurance carrier, agent, or claims adjuster insurance payment information that is relevant to expenses claimed by a claimant if the office has made reasonable efforts to obtain from the claimant a release of the records or information. No civil or criminal liability arises from the release of information requested under this subsection (2)(b).

(c) subpoena witnesses and other prospective evidence, administer oaths or affirmations, conduct hearings, and receive relevant, nonprivileged evidence;

(d) take notice of judicially cognizable facts and general, technical, and scientific facts within its specialized knowledge;

(e) require that law enforcement agencies and officials take reasonable care that victims be informed about the existence of this part and the procedure for applying for compensation under this part; and

(f) establish a victims assistance coordinating and planning program."

Section 9. Section 53-9-132, MCA, is amended to read:

"53-9-132. Subrogation. (1) If a claimant seeks compensation under this part and compensation is awarded, the office is entitled to full subrogation against a judgment or recovery received by the claimant against the offender or a collateral source arising from the criminally injurious conduct committed by the offender for all compensation paid under this part. The office's right of subrogation is a first lien on the judgment or recovery. If the claimant does not institute the action against the offender or collateral source within 1 year from the date the criminally injurious conduct occurred, the office may institute the action in the name of the claimant or the claimant's personal representative. *Funds recovered under this section must be paid to the crime victims compensation and assistance program in the department of justice for deposit in the account provided for in [section 1].*

(2) If the claimant institutes the action, the office shall pay a proportional share of costs and attorney fees if it recovers under its subrogation interest.

(3) If the office institutes the action in the name of the claimant or the claimant's personal representative and the recovery is in excess of the amount of compensation paid to the claimant and costs incurred by the office in pursuit of the action, the excess must be paid to the claimant.

(4) If a judgment or recovery includes both damages for bodily injury or death for which the office has paid compensation under this part and damages for which the office has not paid compensation, then the office's subrogation interest applies only to that proportion of the judgment or recovery for which it has paid compensation. In a civil action in a court of this state arising out of criminally injurious conduct, the judge, on timely motion, shall direct the jury to return a special verdict indicating separately the amounts of the various items of damages awarded. A claimant may not make recoveries against the offender or collateral source in such a way as to avoid and preclude the office from receiving its proper subrogation share as provided in this section. The office shall release its lien provided for in subsection (1) upon receipt of its subrogation share."

Section 10. Section 53-9-133, MCA, is amended to read:

"53-9-133. Effect of award on probation and parole of offender. (1) When placing any convicted person on probation, the court may set as a condition of probation the payment to the state of an amount equal to any benefits paid by the office to a victim or a victim's dependents. The court may set a repayment schedule and modify it as circumstances change.

(2) Payment of the debt may be made a condition of parole subject to modification based on a change in circumstances.

(3) Funds received by the crime victims compensation and assistance program must be deposited in the account established in [section 1]."

Section 11. Section 53-30-132, MCA, is amended to read:

"53-30-132. Inmate participation and status in prison work programs — prison industries and vocational training program — wages and benefits. (1) The department of corrections may:

(a) establish prison industries that will result in the production or manufacture of products and the rendering of services that may be needed by any department or agency of the state or any political subdivision of the state, by any agency of the federal government, by any other states or their political subdivisions, or by nonprofit organizations and that will assist in the rehabilitation of inmates in institutions;

(b) obtain federal certification of specific prison industries programs in order to gain access to interstate markets for prison industries products;

(c) contract with private industry for the sale of goods or components manufactured or produced in shops under its jurisdiction and for the employment of inmates in federally certified prison industries programs;

(d) print catalogs describing goods manufactured or produced by prison industries and distribute the catalogs;

(e) fix the sale price for goods produced or manufactured by prison industries. Prices may not exceed prices existing in the open market for goods of comparable quality.

(f) require a correctional facility to purchase needed goods from other correctional facilities;

(g) provide for the repair and maintenance of property and equipment of institutions by inmates;

(h) provide for the removal of graffiti from property and equipment of institutions and the removal of litter from the property of institutions, public roads, and public parks by inmates;

(i) provide for construction projects, up to the aggregate sum of $200,000 for each project, performed by inmates. The department of administration may:

(i) exempt projects authorized by this subsection from the provisions of Title 18, chapter 2, relating to construction, public bidding, bonding, or contracts; and

(ii) exempt inmates who provide labor for those projects from the labor and wage requirements of Title 18, chapter 2, part 4. Inmates providing labor for projects under this subsection must be paid a rate of pay as provided in subsection (5).

(j) provide for the repair and maintenance by prison industries of furniture and equipment of any state agency;

(k) provide for the manufacture by prison industries of motor vehicle license plates and other related articles;

(l) sell manufactured or agricultural products and livestock on the open market;

(m) provide for the manufacture by prison industries of highway, road, and street marking signs for the use of the state or any of its political subdivisions, except when the manufacture of the signs is in violation of a collective bargaining contract;

(n) pay an inmate from receipts from the sale of products produced or manufactured or services rendered in a program in which the inmate is working;

(o) collect 15% of the gross wages paid to an inmate employed in a federally certified prison industries program, to be deposited in a department restitution fund and used to satisfy any unpaid restitution obligation of the inmate or, if the obligation has been fully paid or no restitution was ordered, for transfer quarterly to the crime victims compensation and assistance program in the department of justice for deposit in the ~~state general fund as provided in Title 53, chapter 9, part 1~~ *account provided for in [section 1]*; and

(p) collect from an inmate employed in a federally certified prison industries program charges for room and board consistent with charges established by the director for inmates assigned to prerelease centers.

(2) Except as provided in subsection (3), furniture made in the prison may be purchased by state agencies in accordance with the procurement provisions under Title 18, chapter 4. All other prison-made furniture may be sold only through licensed wholesale or retail furniture outlets or through export firms for sale to international markets.

(3) Any state institution, facility, or program operated by the department of corrections may purchase prison-made furniture without complying with the procurement provisions under Title 18, chapter 4.

(4) While engaged in on-the-job training and production, inmates not employed in a federally certified prison industries program may be paid a wage

in accordance with subsection (5). Inmates employed in a federally certified prison industries program must be paid as provided in subsection (5).

(5) (a) Except as provided for in subsection (5)(b), payment for the performance of work may be based on the following criteria:

(i) knowledge and skill;

(ii) attitude toward authority;

(iii) physical effort;

(iv) responsibility for equipment and materials; and

(v) regard for safety of others.

(b) The maximum rate of pay must be determined by the appropriation established for the program, except that an inmate employed in a federally certified prison industries program must be paid at a rate not less than the rate paid for similar work in the locality where the inmate performs the work.

(6) Premiums for workers' compensation and occupational disease coverage for federally certified prison industries programs must be paid by the prison industries program or by the department of corrections. If the department of corrections pays the premium, reimbursement for premium payments for workers' compensation and occupational disease coverage must be made to the department of corrections by the private company contracting with the federally certified prison industries program for services and products.

(7) Inmates not working in a federally certified prison industries training program are not employees, either public or private, and employment rights accorded other classes of workers do not apply to the inmates. Inmates working in a federally certified prison industry program are entitled to coverage and benefits as provided in 39-71-744.

(8) Able-bodied persons committed to a state prison as adult offenders must be required to perform work as provided for by the department of corrections, including the manufacture of products or the rendering of services. In order to ensure the public safety, the department may secure inmates performing work."

Section 12. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 53, chapter 9, part 1, and the provisions of Title 53, chapter 9, part 1, apply to [section 1].

Section 13. Effective date. [This act] is effective July 1, 2009.

Section 14. Termination. [This act] terminates June 30, 2015.

Approved April 28, 2009

CHAPTER NO. 375

[HB 110]

AN ACT REVISING LAWS RELATING TO THE PROCUREMENT OF STATE OFFICE SPACE; SETTING SIZE AND TERM LIMITS; REQUIRING LEGISLATIVE APPROVAL FOR CERTAIN BUILDING LEASES ENTERED INTO BY THE STATE; REQUIRING THE CONSOLIDATION OF THE HELENA OFFICES OF STATE AGENCIES UNDER CERTAIN CIRCUMSTANCES; PROVIDING FOR REPORTS ON SPACE ALLOCATION; AND AMENDING SECTION 2-17-101, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-17-101, MCA, is amended to read:

"2-17-101. Allocation of space — *leasing* — *definition*. (1) The department of administration shall determine the space required by state agencies other than the university system and shall allocate space in buildings owned or leased by the state, based on each agency's need. To efficiently and effectively allocate space, the department ~~periodically~~ shall identify the amount, location, and nature of space used by each agency*, including summary information on average cost per square foot for each municipality, and report this to the office of budget and program planning and to the legislative fiscal analyst by September 1 of each even-numbered year*.

(2) An agency requiring additional space shall notify the department. The department, in consultation with the agency, shall determine the amount and nature of the space needed and locate space within a building owned or leased by the state*, including buildings in Helena and in other areas,* to meet the agency's requirements. If space is not available in a building owned or leased by the state, the department shall locate space to be leased in an appropriate *existing* building *or a build-to-lease building, including buildings in Helena and in other areas,* or recommend alternatives to leasing, such as remodeling or exchanging space with another agency. A state agency may not lease, rent, or purchase *real* property ~~for quarters~~ without prior approval of the department.

(3) (a) The location of the chambers for the house of representatives must be determined in the sole discretion of the house of representatives. The location of the chambers *for* ~~of~~ the senate must be determined in the sole discretion of the senate.

(b) Subject to 2-17-108, the department, with the advice of the legislative council, shall allocate other space for the use of the legislature, including but not limited to space for committee rooms and legislative offices.

(4) ~~For state agencies located in a city other than Helena, the~~ *The* department shall consolidate the offices of ~~these~~ *state* agencies in a single, central location within ~~the city~~ *a municipality* whenever the consolidation would result in a cost savings to the state while permitting sufficient space and facilities for the agencies. The department may purchase, lease, or acquire, by exchange or otherwise, land and buildings in ~~the city~~ *a municipality* to achieve consolidation. Offices of the law enforcement services division and motor vehicle division of the department of justice are exempted from consolidation.

(5) Any lease for more than 40,000 square feet or for a term of more than 20 years must be submitted as part of the long-range building program and approved by the legislature before the department of administration may proceed with the lease. Multiple leases in the same building entered into within any 60-day period are to be aggregated for purposes of this threshold calculation. When immediate relocation of agency employees is required due to a public exigency, the requirements of this subsection do not apply, but the new lease must be reported as required by subsection (1).

(6) The department shall include language in every lease providing that if funds are not appropriated or otherwise made available to support continued performance of the lease in subsequent fiscal periods, the lease must be canceled.

(7) "Public exigency" means that due to unforeseen circumstances a facility occupied by state employees is uninhabitable due to immediate conditions that adversely impact the health or safety of the occupants of the facility."

Approved April 28, 2009

CHAPTER NO. 376

[HB 128]

AN ACT REVISING AND CLARIFYING THE APPROPRIATION OF BOND PROCEEDS FOR AEROSPACE TRANSPORTATION AND TECHNOLOGY PROJECTS; APPROPRIATING BOND PROCEEDS; AMENDING SECTION 17-5-820, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-5-820, MCA, is amended to read:

"17-5-820. Authorization of bonds. (1) The board of examiners is authorized to issue and sell general obligation bonds in an amount not exceeding $20 million in accordance with the terms and in the manner required by Title 17, chapter 5, part 8, for the purpose of financing and acquiring infrastructure improvements as enumerated in 7-15-4288 for aerospace transportation and technology projects recommended by the department of commerce in accordance with the authority granted to the board by this section. The bonds are in addition to any other authorization to the board to issue and sell general obligation bonds and subject to the conditions set forth in this section.

(2) The department of commerce may request the board of examiners to issue the bonds for one or more specified projects in one or more series, but the total amount of bonds issued may not exceed $20 million. Bond proceeds ~~are~~ *must be* appropriated to the department of commerce, and the department of commerce is authorized to acquire or construct the infrastructure improvements, to contract with the city or county in which a project is located, to contract with an airport authority, as defined in 67-1-101, a local port authority, as described in 7-14-1101, or a regional port authority, as described in 7-14-1102, to contract with a certified regional development corporation, as defined in 90-1-116, or upon a determination that it is in the best interest of the project, to contract with the developer of an approved project for the acquisition or construction of the infrastructure improvement. The plans and specifications for the infrastructure to be financed from the proceeds of the bonds must be prepared by an engineer or architect, licensed and bonded in Montana, and the state must be named as an additional insured under any contract, performance bond, or other documents for the design of any improvements to be financed by the state. The plans and specifications must be reviewed and approved by the department of commerce after consultation with the architecture and engineering division of the department of administration. The design and acquisition or construction of the infrastructure for approved projects are not, with the exception of Title 18, chapter 2, part 4, subject to the public procurement requirements contained in Title 18. All construction contracts entered into for the construction of improvements to be financed under this section must name the state as an additional insured if the state is not otherwise party to the contract. All improvements financed with bond proceeds must be owned by the state, and the use must be governed by a development agreement between the state and the developer of the project. The agreement may provide for the lease or the use of the infrastructure at less than fair market value, taking into consideration the number of jobs to be created by the project, the salary range of the jobs, the amount of capital contributed by the developer, and the projected tax revenue to be received by the state and local governments from the project over the term of the lease or use agreement. The agreement must require the contractor to insure for liability and workers' compensation claims during construction and must provide the project developer with the right of

first refusal for the purchase of any real property and improvements financed by the bonds at fair market value. Fair market value must be determined by a certified appraiser. For purposes of this section, state and local governments may not provide telecommunications or other services in competition with private providers unless private providers cannot provide the services.

(3) It is the intent of the legislature that state individual and corporate income taxes and state property taxes generated by the aerospace transportation and technology infrastructure development projects will be at least equal to the projected amount of the debt service to be paid by the state for the bonds authorized by this section over the term of the bonds. Prior to requesting the board of examiners to issue the bonds, the department of commerce shall determine that the developer of a proposed project has the financial ability to implement the project based upon the audited financial statements of the developer. When requesting the board to issue the bonds, the department of commerce shall present to the *legislative finance committee and to the* department of administration for presentation to the board the following:

(a) evidence satisfactory to the board that each aerospace transportation and technology infrastructure development project has committed itself to locate its project in Montana; and

(b) a certificate signed by the director of the office of budget and program planning that the proposed project will, over the term of the bonds, generate state individual and corporate income taxes and state property taxes at least equal to the total aggregate amount of principal and interest on the bonds over the term of the bonds. In preparing the analysis for the report on the projected tax revenue from the project, the multiplier effect may be taken into account, using the number of jobs, the salary levels for the jobs, and the estimated date of hire for each position that the developer will commit to create as part of the development agreement. The development agreement must provide that if the developer has not created the total number of jobs at the estimated salaries by the date specified in the development agreement and assumed for purposes of meeting the projections, the state may terminate the lease or use of the improvements upon 30 days' notice. If the department of commerce is unable to enter into a new lease or use agreement for the improvements that is advantageous to the state, the state may sell the facility to the highest and best bidder and use the proceeds of the sale to redeem the outstanding bonds.

(4) In determining whether to recommend to the board of examiners that improvements should be constructed by the state from the proceeds of the bonds for a project, the department of commerce may take into consideration only the following factors:

(a) whether the project is eligible for financing;

(b) whether there is sufficient evidence to demonstrate the developer's ability to implement the project;

(c) the projected tax revenue report;

(d) whether the project as proposed and situated can obtain the necessary zoning, building, and environmental permits required; and

(e) whether the project is in the public interest.

(5) In recommending the amount of bonds to be issued for a qualified project, the department of commerce shall independently determine that the proposed estimated cost of the project is not in excess of what is required for the project and independently verify the projected costs of designing and constructing the

improvements proposed to be financed exclusive of any development fee to the developer. The authorized bond proceeds must be used for projects on a first-come, first-served basis."

Section 2. Appropriation of bond proceeds. There is appropriated to the department of commerce up to $20 million of the bond proceeds authorized by 17-5-820 for the purpose of funding qualified projects as provided in 17-5-820.

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 28, 2009

CHAPTER NO. 377

[HB 152]

AN ACT CREATING THE QUALITY SCHOOLS FACILITY GRANT PROGRAM; PROVIDING FOR FUNDING OF THE PROGRAM THROUGH THE SCHOOL FACILITY AND TECHNOLOGY ACCOUNT; PROVIDING FOR ADMINISTRATION OF THE PROGRAM THROUGH THE DEPARTMENT OF COMMERCE; ESTABLISHING CRITERIA AND PRIORITIES FOR THE AWARD OF GRANTS; DEPOSITING CERTAIN TIMBER HARVEST REVENUE, CERTAIN MINERAL ROYALTIES, AND POWER SITE RENTAL PAYMENTS IN THE SCHOOL FACILITY AND TECHNOLOGY ACCOUNT; STATUTORILY APPROPRIATING $1 MILLION A YEAR FOR GRANTS FOR SCHOOL TECHNOLOGY PURPOSES; APPROPRIATING $12 MILLION TO THE DEPARTMENT OF COMMERCE TO AWARD SCHOOL FACILITY PROJECT GRANTS, MATCHING PLANNING GRANTS, AND EMERGENCY GRANTS TO PUBLIC SCHOOL DISTRICTS FOR SCHOOL FACILITIES DURING THE 2011 BIENNIUM; AMENDING SECTIONS 17-6-340, 20-9-342, 20-9-343, 20-9-516, 20-9-534, 20-9-620, 20-9-622, AND 77-4-208, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

WHEREAS, in keeping with Montana's constitutional requirements for school funding and the Montana Supreme Court's decision in Columbia Falls Elementary School District No. 6 v. State, 2005 MT 69, 326 Mont. 304, 109 P.3d 257 (2005), the 2005 Legislature directed that a school funding system providing a "basic system of free quality public elementary and secondary schools" must include, among other things, consideration of funding for school facilities; and

WHEREAS, in its December 2005 Special Session, the Legislature appropriated $2.5 million from the general fund to the Department of Administration for the completion of a condition and needs assessment and energy audit of K-12 public school facilities; and

WHEREAS, in the May 2007 Special Session, the Legislature established a school facility improvement account in the state special revenue fund to provide money to schools to implement the recommendations of the school facility condition and needs assessment and energy audit following its completion and provided for the transfer of money into the account to be used as determined by the 2009 Legislature; and

WHEREAS, the Department of Administration has completed its conditions and needs assessment and energy audit of Montana's K-12 public schools and has made recommendations for improvements related to safety and energy conservation and to extend the life of school facilities; and

WHEREAS, the Department of Commerce efficiently and effectively administers the Treasure State Endowment Program to assist local governments in funding infrastructure projects; and

WHEREAS, the Legislature seeks to commit ongoing state resources to school facilities by establishing a program to administer the award to public school districts for school facility project grants, matching planning grants, and emergency grants using the Treasure State Endowment Program as a model.

Be it enacted by the Legislature of the State of Montana:

Section 1. Short title. [Sections 1 through 9] may be cited as the "Quality Schools Facility Grant Program Act".

Section 2. Purpose. The purpose of [sections 1 through 9] is to establish a mechanism to distribute grants to public school districts for school facility and technology projects from the school facility and technology account established in 20-9-516. The account is to be used to assist schools in addressing major deferred maintenance, energy efficiency, critical infrastructure needs, emergency facility needs, and technological improvements and establishes an ongoing flow of state revenue into the account. Grants must be distributed for projects that:

(1) enhance the quality of life and protect the health, safety, and welfare of Montana's public school students;

(2) ensure the successful delivery of an educational system that meets the accreditation standards provided for in 20-7-111;

(3) extend the life of Montana's existing public school facilities;

(4) promote energy conservation and reduction;

(5) integrate technology into Montana's education framework to support student educational needs for the 21st century; and

(6) are fiscally responsible by considering both long-term and short-term needs of the public school district, the local community, and the state.

Section 3. Definitions. As used in [sections 1 through 9], the following definitions apply:

(1) "Account" means the school facility and technology account provided for in 20-9-516.

(2) "Department" means the department of commerce established in 2-15-1801.

(3) "Emergency" means the imminent threat or actual occurrence of an event causing immediate peril to life, property, or the environment that can be averted or minimized with timely action.

(4) "Program" means the quality schools facility grant program established in [section 4].

(5) "Public school district" means a district as defined in 20-6-101 or a K-12 school district as defined in 20-6-701.

(6) "School" has the meaning provided for in 20-6-501.

(7) "School facility project" means a project to support a basic system of free quality public elementary and secondary schools under 20-9-309 that involves:

(a) construction of a school facility;

(b) major repairs or deferred maintenance to an existing school facility;

(c) major improvements or enhancements to an existing school facility; or

(d) information technology infrastructure, including installations, upgrades, or improvements to an existing school facility or facilities.

Section 4. Quality schools facility grant program — legislature to authorize grants — types of grants available. (1) There is a quality schools facility grant program funded by the account.

(2) As provided in [section 5], the legislature shall authorize the following types of financial assistance to public school districts under [sections 1 through 9]:

(a) grants to public school districts for school facility projects;

(b) matching planning grants to public school districts for the planning of school facility projects; and

(c) emergency grants to public school districts for a school facility project that is necessitated by an emergency.

Section 5. Procedure for approval of projects — role of department and governor — approval by legislature. (1) The department shall:

(a) receive proposals for school facility projects from public school districts;

(b) assist public school districts in preparing cost estimates for projects;

(c) as appropriate, consult with other state agencies, including but not limited to the department of administration and the office of public instruction;

(d) with the exception of emergency grants and matching planning grants, prepare and submit to the governor a list of recommendations as to projects and the form and amount of financial assistance for each project, prioritized in accordance with the requirements of [section 6];

(e) report to each regular session of the legislature the status of all school facility projects for which grants were approved by a previous legislature but have not been completed;

(f) award matching planning grants, in accordance with rules adopted by the department, to public school districts for the planning of school facility projects within the limits of legislative appropriations for this purpose. The department shall prioritize the award of matching planning grants in accordance with the requirements of [section 6]. The department shall report to the governor and the legislature regarding each matching planning grant awarded during a biennium.

(g) award emergency grants to public school districts in accordance with rules adopted by the department and within the limits of legislative appropriations for this purpose. The department shall report to the governor and the legislature regarding each emergency grant awarded during a biennium.

(2) The governor shall review the projects recommended by the department under subsection (1)(d) and submit to the legislature a list of recommendations as to projects and the form and amount of financial assistance for each project.

(3) (a) The legislature shall:

(i) consider the governor's recommendations, approve grants to public school districts for school facility projects, and appropriate money to the department from the account to fund the grants that have been approved, after the deduction of administrative expenses by the department; and

(ii) authorize funding and appropriate money to the department from the account to be awarded to public school districts by the department for matching

planning grants and emergency grants, after the deduction of administrative expenses by the department.

(b) Grants approved by the legislature are dependent on the availability of funds and will be made available by the department in the order that the grant recipient satisfies the conditions described in [section 7].

Section 6. Priorities for projects — application of criteria — consideration of project attributes — adjustments for educationally relevant factors. (1) In preparing recommendations to the governor under [section 5], the department shall apply the following criteria to applications for school facility projects in the listed order of priority:

(a) projects that solve urgent and serious public health or safety problems or that enable public school districts to meet state or federal health or safety standards;

(b) projects that provide improvements necessary to bring school facilities up to current local, state, and federal codes and standards;

(c) projects that enhance a public school district's ability to offer specific services related to the requirements of the accreditation standards provided for in 20-7-111;

(d) projects that provide long-term, cost-effective benefits through energy-efficient design;

(e) projects that incorporate long-term, cost-effective benefits to school facilities, including the technology needs of school facilities; and

(f) projects that enhance educational opportunities for students.

(2) In applying the criteria under subsection (1), the department shall consider, without preference or priority, the following attributes of a school facility project application:

(a) the need for financial assistance;

(b) the fiscal capacity of the public school district to meet the conditions established in [section 7];

(c) past efforts to ensure sound, effective, long-term planning and management of the school facility and attempts to address school facility needs with local resources;

(d) the ability to obtain funds from sources other than the funds provided under [sections 1 through 9]; and

(e) the importance of the project and support for the project from the community.

(3) Before making its recommendations to the governor, the department may make adjustments to its ranking of the projects based on the educationally relevant factors established in 20-9-309. Before making any adjustments, the department may consult with the office of public instruction concerning the educationally relevant factors.

Section 7. Conditions for grants. Disbursement of grant funds by the department for projects approved by the legislature under [section 5] is subject to the following conditions:

(1) A grant agreement must be executed between the department and the grant recipient.

(2) The scope of work and budget for the project must be consistent with the application submitted by the grant recipient, reviewed by the department, and

approved by the legislature. The department will consider requests to reduce the scope of a project in accordance with rules adopted by the department.

(3) The grant recipient shall document that any matching funds required for completion of the project or to conduct project planning are firmly committed.

(4) The grant recipient must have an established financial accounting system that the department can reasonably ensure conforms to generally accepted accounting principles.

(5) The project must adhere to the design standards required by applicable regulatory agencies. Recipients of program funds for projects that are not subject to any design standards shall comply with generally accepted industry standards.

(6) The grant recipient shall satisfy other specific requirements considered necessary by the department to accomplish the purpose of the project as described in the application to the department.

Section 8. Disbursement of funds — department discretion when actual expenses are less than projected expenses. (1) The department shall disburse grant funds on a reimbursement basis as grant recipients incur eligible project expenses.

(2) If actual project expenses are lower than the projected project expenses, the department may, at its discretion:

(a) direct an outright or partial reduction in the amount of grant funds provided to the grant recipient; or

(b) allow the use of the remaining authorized program grant amounts for the completion of additional school facility improvements directly related to the approved school facility project that will further enhance the school facility.

Section 9. Department to adopt rules. The department shall adopt rules necessary to implement [sections 1 through 9], including but not limited to rules regarding:

(1) application guidelines and deadlines;

(2) the evaluation process and ranking of applications;

(3) grant award conditions, including requirements for matching funds;

(4) scope and procedures for the award of matching planning grants and emergency grants;

(5) amendments to grant awards; and

(6) grant administration, including but not limited to requirements for:

(a) the project's startup;

(b) compliance with other federal, state, or local laws, regulations, or requirements;

(c) financial management related to the project;

(d) property acquisition;

(e) project and grant management;

(f) project monitoring; and

(g) project closeout procedures.

Section 10. Department to award grants for 2011 biennium — appropriation — report to legislature. (1) For the 2011 biennium only, after receiving and evaluating proposals, the department may award to public

school districts school facility project grants, matching planning grants, and emergency grants. The total grants awarded by the department under this section may not exceed the legislative appropriation in subsection (2). In awarding grants under this subsection, all definitions and requirements of [sections 1 through 8] and rules adopted under [section 9] apply except that the department need not submit its recommendations to the governor and legislative approval is not required for the award of specific grants.

(2) There is appropriated to the department of commerce from the school facility and technology account $12 million, from which the department may deduct its administrative expenses, to be used for the award of grants to public school districts during the 2011 biennium as provided in subsection (1). Of this appropriation, $900,000 is to be used for matching planning grants to public school districts and $100,000 is to be used for emergency grants to public school districts. The appropriations designated for matching planning grants and for emergency grants may be used only for those purposes and may not be used for grants to public school districts for school facility projects.

(3) The department shall report to the 2011 legislature on all grants approved by the department under this section during the 2011 biennium.

Section 11. Section 17-6-340, MCA, is amended to read:

"17-6-340. Purchase of permanent fund mineral estate. The department of natural resources and conservation may purchase the mineral production rights held by the public school fund established in Article X, section 2, of the Montana constitution for fair market value. If the department of natural resources and conservation purchases mineral production rights, any royalty payments received by the board that are not used to reimburse the coal severance tax trust fund for the loan used for purchasing the mineral production rights must be deposited in the guarantee account provided for in 20-9-622 and transferred to the school facility ~~improvement~~ *and technology* account provided for in 20-9-516."

Section 12. Section 20-9-342, MCA, is amended to read:

"20-9-342. Deposit of interest and income money by state board of land commissioners. ~~The~~ *Except as provided in 20-9-516, the* state board of land commissioners shall annually deposit the interest and income money for each calendar year into the guarantee account, provided for in 20-9-622, for state equalization aid by the last business day of February following the calendar year in which the money was received."

Section 13. Section 20-9-343, MCA, is amended to read:

"20-9-343. Definition of and revenue for state equalization aid. (1) As used in this title, the term "state equalization aid" means revenue as required in this section for:

(a) distribution to the public schools for guaranteed tax base aid, BASE aid, *and* state reimbursement for school facilities~~, and grants for school technology purchases~~; and

(b) negotiated payments authorized under 20-7-420(3) up to $500,000 a biennium.

(2) The superintendent of public instruction may spend throughout the biennium funds appropriated for the purposes of guaranteed tax base aid, BASE aid for the BASE funding program, state reimbursement for school facilities, *and* negotiated payments authorized under 20-7-420(3)~~, and school technology purchases~~.

(3) ~~From July 1, 2001, through June 30, 2003, the following money must be paid into the guarantee account provided for in 20-9-622 for the public schools of the state as indicated:~~

~~(a) interest and income money described in 20-9-341 and 20-9-342; and~~

~~(b) investment income earned by investing interest and income money described in 20-9-341 and 20-9-342.~~

~~(4) Beginning July 1, 2003, the~~ *The* following money must be paid into the guarantee account provided for in 20-9-622 for the public schools of the state as indicated:

(a) ~~(i)~~ subject to ~~subsection (4)(a)(ii)~~ *20-9-516(2)(a)*, interest and income money described in 20-9-341 and 20-9-342; and

~~(ii) an amount of money equal to the income money attributable to the difference between the average sale value of 18 million board feet and the total income produced from the annual timber harvest on common school trust lands during the fiscal year, which is statutorily appropriated, pursuant to 20-9-534, to be used for the purposes of 20-9-533;~~

(b) investment income earned by investing interest and income money described in 20-9-341 and 20-9-342."

Section 14. Section 20-9-516, MCA, is amended to read:

"20-9-516. School facility ~~improvement~~ *and technology* account. *(1)* There is a school facility ~~improvement~~ *and technology* account in the state special revenue fund provided for in 17-2-102. The purpose of the account is to provide money to schools ~~to implement the recommendations of the school facility condition and needs assessment and energy audit conducted pursuant to section 1, Chapter 1, Special Laws of December 2005,~~ for:

~~(1)~~*(a)* major deferred maintenance;

~~(2)~~*(b)* improving energy efficiency in school facilities; ~~or~~

~~(3)~~*(c)* critical infrastructure in school districts*;*

(d) emergency facility needs; and

(e) technological improvements.

(2) There must be deposited in the account:

(a) an amount of money equal to the income attributable to the difference between the average sale value of 18 million board feet and the total income produced from the annual timber harvest on common school trust lands during the fiscal year;

(b) the mineral royalties transferred from the guarantee account as provided in 20-9-622; and

(c) the rental income received from power site leases as provided in 77-4-208."

Section 15. Section 20-9-534, MCA, is amended to read:

"20-9-534. ~~School technology purchases~~ *Statutory appropriation for school technology purposes.* *(1) The amount of $1 million a year is statutorily appropriated, as provided in 17-7-502, from the school facility and technology account established in 20-9-516 for grants for school technology purposes.*

(2) By September 1, the superintendent of public instruction shall allocate the annual ~~amount~~ *statutory appropriation* for ~~grants for~~ school technology ~~purchases~~ *purposes* to each district based on the ratio that each district's BASE budget bears to the statewide BASE budget amount for all school districts

multiplied by the amount of money provided in 20-9-343 for the purposes of 20-9-533 in the prior fiscal year. ~~The grants for school technology purchases are statutorily appropriated, as provided in 17-7-502.~~"

Section 16. Section 20-9-620, MCA, is amended to read:

"20-9-620. Definition. (1) As used in 20-9-621, 20-9-622, and this section, "distributable revenue" means, except for that portion of revenue described in ~~20-9-343(4)(a)(ii)~~ *20-9-516(2)(a)* and available on or after July 1, 2003, 77-1-607, and 77-1-613, 95% of all revenue from the management of school trust lands and the permanent fund, including timber sale proceeds, lease fees, interest, dividends, and net realized capital gains.

(2) The term does not include mineral royalties or land sale proceeds that are deposited directly in the permanent fund or net unrealized capital gains that remain in the permanent fund until realized."

Section 17. Section 20-9-622, MCA, is amended to read:

"20-9-622. Guarantee account. (1) There is a guarantee account in the state special revenue fund. The guarantee account is intended to:

(a) stabilize the long-term growth of the permanent fund; and

(b) maintain a constant and increasing distributable revenue stream. All realized capital gains and all distributable revenue must be deposited in the guarantee account. Except as provided in ~~subsections~~ *subsection* (2) ~~and (3)~~, the guarantee account is statutorily appropriated, as provided in 17-7-502, for distribution to school districts through school equalization aid as provided in 20-9-343.

(2) As long as a portion of the coal severance tax loan authorized in section 8, Chapter 418, Laws of 2001, is outstanding, the department of natural resources and conservation shall monthly transfer from the guarantee account to the general fund an amount that represents the amount of interest income that would be earned from the investment of the amount of the loan that is currently outstanding. When the loan is fully paid, all mineral royalties deposited in the guarantee account must be transferred to the school facility ~~improvement~~ *and technology* account pursuant to 17-6-340.

~~(3) The revenue distributed through 20-9-534 must be used for the purposes of 20-9-533.~~"

Section 18. Section 77-4-208, MCA, is amended to read:

"77-4-208. Rental for power sites — *deposit of rental money in proper accounts.* *(1)* The rental *payment* to the state *for power sites* must be paid annually or semiannually, and ~~such~~ *the* rental ~~shall~~ *may* not be less than the full market value of the estate or interest disposed of through the granting of the lease or license~~,~~. ~~such~~ *The* value ~~to~~ *must* be carefully ascertained from all available sources.

(2) Ninety-five percent of all rental payments received under this section must be deposited in the school facility and technology account provided for in 20-9-516. The remaining 5% of the rental payments received must be deposited annually in the public school permanent fund provided for in 20-9-621."

Section 19. Codification instruction. [Sections 1 through 9] are intended to be codified as an integral part of Title 90, chapter 6, and the provisions of Title 90, chapter 6, apply to [sections 1 through 9].

Section 20. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is

invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 21. Effective date. [This act] is effective on passage and approval.

Section 22. Applicability. [Section 18] applies to rental payments beginning January 1, 2011.

Approved April 28, 2009

CHAPTER NO. 378

[HB 171]

AN ACT RETAINING THE REGULATION OF PROFESSIONAL BOXING AND ELIMINATING ALL OTHER LAWS REGULATING PROFESSIONAL AND SEMIPROFESSIONAL COMBATIVE EVENTS; AMENDING SECTIONS 23-3-301, 23-3-402, 23-3-404, 23-3-405, 23-3-501, 23-3-502, 23-3-601, 23-3-602, AND 23-3-603, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 23-3-301, MCA, is amended to read:

"23-3-301. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

~~(1) "Combative events" means a match, exhibition, contest, show, or tournament involving contestants in boxing, wrestling, mud wrestling, martial arts, or any other combative practice as defined by the department by rule.~~

~~(2)~~*(1)* "Contestant" means a professional ~~or semiprofessional~~ practitioner of boxing~~, wrestling, mud wrestling, martial arts, or any other combative practice~~ as defined by the department by rule.

~~(3)~~*(2)* "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(3) "Professional boxing" means a match, exhibition, contest, show, or tournament involving the sport of professional boxing as defined by the department by rule, consistent with federal law governing boxing safety.

(4) "Program" means a set of operations governed by the statutes in this chapter and the rules adopted by the department under this chapter."

Section 2. Section 23-3-402, MCA, is amended to read:

"23-3-402. Enforcement of rules. (1) The department may designate in writing a representative to act specifically on behalf of the department but only within the scope of the written authority.

(2) The representative shall attend and supervise a ~~combative~~ *professional boxing* event and has the authority from the department to enforce rules adopted under this chapter."

Section 3. Section 23-3-404, MCA, is amended to read:

"23-3-404. Jurisdiction — license required — contestant participation. (1) The department has sole management, control, and jurisdiction over each professional ~~or semiprofessional combative~~ *boxing* event involving recognition, a prize, or a purse and at which an admission fee is charged, either directly or indirectly, in the form of dues or otherwise, to be held within the state~~, except a combative event conducted:~~

~~(a) by a university, college, or high school; or~~

~~(b) by the military~~.

(2) An organization or individual may not conduct a ~~combative~~ *professional boxing* event within the department's jurisdiction unless the organization or individual is the holder of an appropriate license granted by the department.

(3) A referee, manager, or judge may not participate in a ~~combative~~ *professional boxing* event within the department's jurisdiction unless:

(a) the individual is licensed by the department; and

(b) the ~~combative~~ *professional boxing* event is conducted by an organization or individual licensed by the department.

(4) A contestant may not participate in a ~~combative~~ *professional boxing* event within the department's jurisdiction unless:

(a) the contestant is licensed by the department;

(b) the ~~combative~~ *professional boxing* event is conducted by an organization or individual licensed by the department; and

(c) the department has not suspended the right of the contestant to participate under 23-3-603."

Section 4. Section 23-3-405, MCA, is amended to read:

"23-3-405. Rules. (1) The department may adopt rules for the administration and enforcement of this chapter.

(2) (a) The rules must include the granting, suspension, and revocation of licenses and the qualification requirements for those to be licensed to conduct ~~combative~~ *professional boxing* events or to be licensed as referees, managers, or judges. License qualifications must include appropriate knowledge, experience, and integrity.

(b) The rules may include but are not limited to the following:

(i) the labeling of a match as a championship match;

(ii) the number and length of rounds and the weight of gloves;

(iii) the extent and timing of the physical examination of contestants;

(iv) the attendance of a referee and the referee's powers and duties; and

(v) review of decisions made by officials.

(3) The rules must:

(a) meet or exceed the safety codes required by recognized professional boxing~~, wrestling, and other~~ organizations conducting ~~combative~~ *professional boxing* events;

(b) provide reasonable measures for the fair conduct of the ~~combative~~ *professional boxing* events and for the protection of the health and safety of the contestants;

(c) require a physical examination of each contestant prior to each ~~combative~~ *professional boxing* event;

(d) provide for the qualifications of judges, referees, and seconds and for their payment by the promoter; and

(e) provide for the attendance at ringside of one or more of the following and require the promoter to pay for that person's attendance:

(i) a licensed physician as defined in 37-3-102;

(ii) a licensed physician assistant as defined in 37-20-401; or

(iii) a licensed advanced practice registered nurse as defined in 37-8-102."

Section 5. Section 23-3-501, MCA, is amended to read:

"23-3-501. Licenses — fees. (1) The department may issue a license to a professional ~~or semiprofessional~~ promoter of ~~combative~~ *professional boxing* events, whether an individual or organization, for the sole purpose of conducting professional ~~or semiprofessional combative~~ *boxing* events.

(2) The department may issue licenses to qualified referees, managers, contestants, seconds, trainers, and judges.

(3) A license issued in accordance with subsections (1) and (2) expires on the date set by department rule.

(4) Each application for a license under this section must be accompanied by a fee, as provided in 37-1-134, set by the department."

Section 6. Section 23-3-502, MCA, is amended to read:

"23-3-502. Bond — conditions. (1) A license to conduct professional ~~or semiprofessional combative~~ *boxing* events may not be issued unless the licensee has executed a bond in the sum of not less than $5,000.

(2) The bond must be conditioned on faithful compliance by the licensee with the provisions of this chapter and the rules of the department."

Section 7. Section 23-3-601, MCA, is amended to read:

"23-3-601. Report of ticket sales — tax on gross receipts — disposition of money received. (1) An individual or organization licensed to conduct a ~~combative~~ *professional boxing* event shall, within 24 hours after the completion of each ~~combative~~ event, furnish to the department a written report, verified by one of its officers or owners, showing the number of tickets sold for the ~~combative~~ event, the amount of gross proceeds, and other matters that the department prescribes and shall also within 24 hours pay to the department a tax of 5% of its total gross receipts after deducting the federal admission tax, if any, from the sale of tickets.

(2) All taxes and fees collected by the department under this chapter must be deposited in the state special revenue fund for the use of the program, subject to 37-1-101(6)."

Section 8. Section 23-3-602, MCA, is amended to read:

"23-3-602. Examination of books and records on failure to make report or on unsatisfactory report — penalty for failure to pay tax. (1) If an individual or organization fails to make a report of a ~~combative~~ *professional boxing* event at the time prescribed by 23-3-601 or if the report is unsatisfactory to the department, the department may examine the books and records of the individual or organization and subpoena and examine witnesses under oath for the purpose of determining the total amount of its gross receipts for a ~~combative~~ *professional boxing* event and the amount of tax due under this chapter.

(2) If the individual or organization remains in default in the payment of tax ascertained to be due for a period of 20 days after notice to the individual or organization of the amount due, the delinquent individual or organization forfeits its license and is disqualified from receiving a new license."

Section 9. Section 23-3-603, MCA, is amended to read:

"23-3-603. Discipline. (1) A license issued under the provisions of this chapter may, after notice and opportunity for hearing, be revoked or suspended

by the department for a violation of the provisions of this chapter or any rule of the department.

(2) The department may, after notice and opportunity for hearing, reprimand any contestant or suspend, for a period not to exceed 1 year, the contestant's right to participate in any ~~combative~~ *professional boxing* event conducted by any licensee for:

(a) conduct unbecoming a contestant while engaged in or arising directly from any ~~combative~~ *professional boxing* event;

(b) failure to compete in good faith or engaging in any sham ~~combative~~ *professional boxing* event; or

(c) the use of threatening or abusive language toward officials or spectators."

Section 10. Effective date. [This act] is effective on passage and approval.

Approved April 28, 2009

CHAPTER NO. 379

[HB 224]

AN ACT ESTABLISHING A LOAN REIMBURSEMENT PROGRAM FOR REGISTERED PROFESSIONAL NURSES WORKING AT THE MONTANA STATE PRISON AND MONTANA STATE HOSPITAL; PROVIDING AN APPROPRIATION; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Institutional nursing incentive program. (1) There is a loan reimbursement program for an individual who is licensed to practice as a registered professional nurse pursuant to 37-8-406 and who works at the Montana state prison or the Montana state hospital.

(2) (a) The board of regents shall, subject to available appropriations, pay up to 50% of a loan balance of $30,000 for a registered professional nurse working at the Montana state prison or the Montana state hospital who applies for the program and submits proof of the balance related to loans for nursing education.

(b) The reimbursement under this section is limited to a maximum of $3,750 a year for 4 years and must be based on a participant's actual loan balance.

(c) An individual with a loan balance of less than $1,000 is not eligible for the program provided for in this section.

(3) (a) The board of regents shall reimburse a participant in the loan reimbursement program at the end of every 12-month period that the participant works at either the Montana state prison or the Montana state hospital. The amount to be reimbursed as determined in subsection (2) must be reimbursed in equal annual installments over 4 years as long as the participant continues to work at either facility.

(b) A participant who works less than a full 12-month period must receive a reimbursement that is prorated to reflect the amount of time worked during that 12-month period.

(c) The reimbursement payment by the board of regents must be to the participant and the loan institution.

Section 2. Appropriation. (1) There is appropriated from the general fund to the board of regents $37,500 in each year of the biennium beginning July 1,

2009, to provide loan reimbursements to registered professional nurses as provided in [section 1].

(2) The appropriation may not be spent on administrative costs related to the institutional nursing incentive program.

Section 3. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 20, chapter 26, part 15, and the provisions of Title 20, chapter 26, part 15, apply to [section 1].

Section 4. Effective date. [This act] is effective July 1, 2009.

Approved April 28, 2009

CHAPTER NO. 380

[HB 258]

AN ACT APPROPRIATING MONEY TO THE STATE AUDITOR FOR TAX CREDITS, PREMIUM ASSISTANCE PAYMENTS, AND PREMIUM INCENTIVE PAYMENTS FROM THE SMALL BUSINESS HEALTH INSURANCE POOL; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Appropriation. (1) There is appropriated $6 million from the state special revenue fund established in 53-6-1201 to the state auditor for the 2011 biennium to add participants to the small business health insurance pool and the tax credit program established in Title 33, chapter 22, part 20, and to revise premium assistance and incentive levels to reflect increased premium levels.

(2) The appropriation in subsection (1) is in addition to any other appropriation for funding the small business health insurance pool and tax credit program and for the cost of administering the tax credits, the purchasing pool, the premium incentive payments, and the premium assistance payments as provided in Title 33, chapter 22, part 20.

Section 2. Effective date. [This act] is effective July 1, 2009.

Approved April 28, 2009

CHAPTER NO. 381

[HB 312]

AN ACT REVISING THE QUALIFICATIONS FOR RESORT AREAS AND RESORT COMMUNITIES; REVISING THE POPULATION CAP BASED ON THE MOST RECENT FEDERAL CENSUS FOR AN AREA OR A COMMUNITY TO QUALIFY AS A RESORT AREA OR RESORT COMMUNITY; AND AMENDING SECTION 7-6-1501, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-6-1501, MCA, is amended to read:

"7-6-1501. Resort tax — definitions. As used in 7-6-1501 through 7-6-1509, the following definitions apply:

(1) "Luxuries" means any gift item, luxury item, or other item normally sold to the public or to transient visitors or tourists. The term does not include food purchased unprepared or unserved, medicine, medical supplies and services, appliances, hardware supplies and tools, or any necessities of life.

(2) "Medical supplies" means items that are sold to be used for curative, prosthetic, or medical maintenance purposes, whether or not prescribed by a physician.

(3) "Medicine" means substances sold for curative or remedial properties, including both physician prescribed and over-the-counter medications.

(4) "Resort area" means an area that:

(a) is an unincorporated area and is a defined contiguous geographic area;

(b) has a population of less than 2,500 according to the most recent federal census ~~or federal estimate~~;

(c) derives the major portion of its economic well-being from businesses catering to the recreational and personal needs of persons traveling to or through the area for purposes not related to their income production; and

(d) has been designated by the department of commerce as a resort area prior to its establishment by the county commissioners as provided in 7-6-1508.

(5) "Resort community" means a community that:

(a) is an incorporated municipality;

(b) has a population of less than ~~5,500~~ *5,500* according to the most recent federal census ~~or federal estimate~~;

(c) derives the primary portion of its economic well-being related to current employment from businesses catering to the recreational and personal needs of persons traveling to or through the municipality for purposes not related to their income production; and

(d) has been designated by the department of commerce as a resort community."

Section 2. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Approved April 28, 2009

CHAPTER NO. 382

[HB 315]

AN ACT INCREASING THE MAXIMUM PENSION AND ANNUITY INCOME EXCLUSION BY PROVIDING FOR INFLATION ADJUSTMENTS TO THE EXCLUSION AMOUNT AND THE INCOME CAP; AMENDING SECTIONS 15-30-111, 19-2-1004, 19-17-407, 19-18-612, 19-19-504, 19-20-706, AND 19-21-212, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-30-111, MCA, is amended to read:

"15-30-111. Adjusted gross income. (1) Adjusted gross income is the taxpayer's federal adjusted gross income as defined in section 62 of the Internal Revenue Code, 26 U.S.C. 62, and in addition includes the following:

(a) (i) interest received on obligations of another state or territory or county, municipality, district, or other political subdivision of another state, except to the extent that the interest is exempt from taxation by Montana under federal law;

(ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code, 26 U.S.C. 852(b)(5), that are attributable to the interest referred to in subsection (1)(a)(i);

(b) refunds received of federal income tax, to the extent that the deduction of the tax resulted in a reduction of Montana income tax liability;

(c) that portion of a shareholder's income under subchapter S. of Chapter 1 of the Internal Revenue Code that has been reduced by any federal taxes paid by the subchapter S. corporation on the income;

(d) depreciation or amortization taken on a title plant as defined in 33-25-105;

(e) the recovery during the tax year of an amount deducted in any prior tax year to the extent that the amount recovered reduced the taxpayer's Montana income tax in the year deducted;

(f) if the state taxable distribution of an estate or trust is greater than the federal taxable distribution of the same estate or trust, the difference between the state taxable distribution and the federal taxable distribution of the same estate or trust for the same tax period; and

(g) except for exempt-interest dividends described in subsection (2)(a)(ii), for tax years commencing after December 31, 2002, the amount of any dividend to the extent that the dividend is not included in federal adjusted gross income.

(2) Notwithstanding the provisions of the Internal Revenue Code, adjusted gross income does not include the following, which are exempt from taxation under this chapter:

(a) (i) all interest income from obligations of the United States government, the state of Montana, or a county, municipality, district, or other political subdivision of the state and any other interest income that is exempt from taxation by Montana under federal law;

(ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code, 26 U.S.C. 852(b)(5), that are attributable to the interest referred to in subsection (2)(a)(i);

(b) interest income earned by a taxpayer who is 65 years of age or older in a tax year up to and including $800 for a taxpayer filing a separate return and $1,600 for each joint return;

(c) (i) except as provided in subsection (2)(c)(ii), the first ~~$3,600~~ *$3,600* of all pension and annuity income received as defined in 15-30-101;

(ii) for pension and annuity income described under subsection (2)(c)(i), as follows:

(A) each taxpayer filing singly, head of household, or married filing separately shall reduce the total amount of the exclusion provided in subsection (2)(c)(i) by ~~$2~~ *$2* for every $1 of federal adjusted gross income in excess of $30,000 as shown on the taxpayer's return;

(B) in the case of married taxpayers filing jointly, if both taxpayers are receiving pension or annuity income or if only one taxpayer is receiving pension or annuity income, the exclusion claimed as provided in subsection (2)(c)(i) must be reduced by ~~$2~~ *$2* for every $1 of federal adjusted gross income in excess of $30,000 as shown on their joint return;

(d) all Montana income tax refunds or tax refund credits;

(e) gain required to be recognized by a liquidating corporation under 15-31-113(1)(a)(ii);

(f) all tips or gratuities that are covered by section 3402(k) or service charges that are covered by section 3401 of the Internal Revenue Code of 1954, 26 U.S.C. 3402(k) or 3401, as amended and applicable on January 1, 1983, received by a person for services rendered to patrons of premises licensed to provide food, beverage, or lodging;

(g) all benefits received under the workers' compensation laws;

(h) all health insurance premiums paid by an employer for an employee if attributed as income to the employee under federal law;

(i) all money received because of a settlement agreement or judgment in a lawsuit brought against a manufacturer or distributor of "agent orange" for damages resulting from exposure to "agent orange";

(j) principal and income in a medical care savings account established in accordance with 15-61-201 or withdrawn from an account for eligible medical expenses, as defined in 15-61-102, of the taxpayer or a dependent of the taxpayer or for the long-term care of the taxpayer or a dependent of the taxpayer;

(k) principal and income in a first-time home buyer savings account established in accordance with 15-63-201 or withdrawn from an account for eligible costs, as provided in 15-63-202(7), for the first-time purchase of a single-family residence;

(l) contributions withdrawn from a family education savings account or earnings withdrawn from a family education savings account for qualified higher education expenses, as defined in 15-62-103, of a designated beneficiary;

(m) the recovery during the tax year of any amount deducted in any prior tax year to the extent that the recovered amount did not reduce the taxpayer's Montana income tax in the year deducted;

(n) if the federal taxable distribution of an estate or trust is greater than the state taxable distribution of the same estate or trust, the difference between the federal taxable distribution and the state taxable distribution of the same estate or trust for the same tax period;

(o) deposits, not exceeding the amount set forth in 15-30-603, deposited in a Montana farm and ranch risk management account, as provided in 15-30-601 through 15-30-605, in any tax year for which a deduction is not provided for federal income tax purposes;

(p) income of a dependent child that is included in the taxpayer's federal adjusted gross income pursuant to the Internal Revenue Code. The child is required to file a Montana personal income tax return if the child and taxpayer meet the filing requirements in 15-30-142.

(q) principal and income deposited in a health care expense trust account, as defined in 2-18-1303, or withdrawn from the account for payment of qualified health care expenses as defined in 2-18-1303; and

(r) that part of the refundable credit provided in 33-22-2006 that reduces Montana tax below zero.

(3) A shareholder of a DISC that is exempt from the corporation license tax under 15-31-102(1)(l) shall include in the shareholder's adjusted gross income the earnings and profits of the DISC in the same manner as provided by section 995 of the Internal Revenue Code, 26 U.S.C. 995, for all periods for which the DISC election is effective.

(4) A taxpayer who, in determining federal adjusted gross income, has reduced the taxpayer's business deductions by an amount for wages and salaries

for which a federal tax credit was elected under sections 38 and 51(a) of the Internal Revenue Code, 26 U.S.C. 38 and 51(a), is allowed to deduct the amount of the wages and salaries paid regardless of the credit taken. The deduction must be made in the year that the wages and salaries were used to compute the credit. In the case of a partnership or small business corporation, the deduction must be made to determine the amount of income or loss of the partnership or small business corporation.

(5) Married taxpayers filing a joint federal return who are required to include part of their social security benefits or part of their tier 1 railroad retirement benefits in federal adjusted gross income may split the federal base used in calculation of federal taxable social security benefits or federal taxable tier 1 railroad retirement benefits when they file separate Montana income tax returns. The federal base must be split equally on the Montana return.

(6) Married taxpayers filing a joint federal return who are allowed a capital loss deduction under section 1211 of the Internal Revenue Code, 26 U.S.C. 1211, and who file separate Montana income tax returns may claim the same amount of the capital loss deduction that is allowed on the federal return. If the allowable capital loss is clearly attributable to one spouse, the loss must be shown on that spouse's return; otherwise, the loss must be split equally on each return.

(7) In the case of passive and rental income losses, married taxpayers filing a joint federal return and who file separate Montana income tax returns are not required to recompute allowable passive losses according to the federal passive activity rules for married taxpayers filing separately under section 469 of the Internal Revenue Code, 26 U.S.C. 469. If the allowable passive loss is clearly attributable to one spouse, the loss must be shown on that spouse's return; otherwise, the loss must be split equally on each return.

(8) Married taxpayers filing a joint federal return in which one or both of the taxpayers are allowed a deduction for an individual retirement contribution under section 219 of the Internal Revenue Code, 26 U.S.C. 219, and who file separate Montana income tax returns may claim the same amount of the deduction that is allowed on the federal return. The deduction must be attributed to the spouse who made the contribution.

(9) (a) Married taxpayers filing a joint federal return who are allowed a deduction for interest paid for a qualified education loan under section 221 of the Internal Revenue Code, 26 U.S.C. 221, and who file separate Montana income tax returns may claim the same amount of the deduction that is allowed on the federal return. The deduction may be split equally on each return or in proportion to each taxpayer's share of federal adjusted gross income.

(b) Married taxpayers filing a joint federal return who are allowed a deduction for qualified tuition and related expenses under section 222 of the Internal Revenue Code, 26 U.S.C. 222, and who file separate Montana income tax returns may claim the same amount of the deduction that is allowed on the federal return. The deduction may be split equally on each return or in proportion to each taxpayer's share of federal adjusted gross income.

(10) A taxpayer receiving retirement disability benefits who has not attained 65 years of age by the end of the tax year and who has retired as permanently and totally disabled may exclude from adjusted gross income up to $100 a week received as wages or payments in lieu of wages for a period during which the employee is absent from work due to the disability. If the adjusted gross income before this exclusion exceeds $15,000, the excess reduces the exclusion by an

equal amount. This limitation affects the amount of exclusion, but not the taxpayer's eligibility for the exclusion. If eligible, married individuals shall apply the exclusion separately, but the limitation for income exceeding $15,000 is determined with respect to the spouses on their combined adjusted gross income. For the purpose of this subsection, "permanently and totally disabled" means unable to engage in any substantial gainful activity by reason of any medically determined physical or mental impairment lasting or expected to last at least 12 months.

(11) An individual who contributes to one or more accounts established under the Montana family education savings program may reduce adjusted gross income by the lesser of $3,000 or the amount of the contribution. In the case of married taxpayers, each spouse is entitled to a reduction, not in excess of $3,000, for the spouses' contributions to the accounts. Spouses may jointly elect to treat half of the total contributions made by the spouses as being made by each spouse. The reduction in adjusted gross income under this subsection applies only with respect to contributions to an account of which the account owner, as defined in 15-62-103, is the taxpayer, the taxpayer's spouse, or the taxpayer's child or stepchild if the taxpayer's child or stepchild is a Montana resident. The provisions of subsection (1)(e) do not apply with respect to withdrawals of contributions that reduced adjusted gross income.

(12) (a) A taxpayer may exclude the amount of the loan payment received pursuant to subsection (12)(a)(iv), not to exceed $5,000, from the taxpayer's adjusted gross income if the taxpayer:

(i) is a health care professional licensed in Montana as provided in Title 37;

(ii) is serving a significant portion of a designated geographic area, special population, or facility population in a federally designated health professional shortage area, a medically underserved area or population, or a federal nursing shortage county as determined by the secretary of health and human services or by the governor;

(iii) has had a student loan incurred as a result of health-related education; and

(iv) has received a loan payment during the tax year made on the taxpayer's behalf by a loan repayment program described in subsection (12)(b) as an incentive to practice in Montana.

(b) For the purposes of subsection (12)(a), a loan repayment program includes a federal, state, or qualified private program. A qualified private loan repayment program includes a licensed health care facility, as defined in 50-5-101, that makes student loan payments on behalf of the person who is employed by the facility as a licensed health care professional.

(13) By November 1 of each year, the department shall multiply the amount of pension and annuity income contained in subsection (2)(c)(i) and the federal adjusted gross income amounts in subsection (2)(c)(ii) by the inflation factor for that tax year, but using the year 2009 consumer price index, and rounding the results to the nearest $10. The resulting amounts are effective for that tax year and must be used as the basis for the exemption determined under subsection (2)(c). (Subsection (2)(f) terminates on occurrence of contingency—sec. 3, Ch. 634, L. 1983; subsection (2)(o) terminates on occurrence of contingency—sec. 9, Ch. 262, L. 2001.)"

Section 2. Section 19-2-1004, MCA, is amended to read:

"19-2-1004. Exemption from taxes and legal process. Except as provided in 19-2-907 and 19-2-909, the right of a person to any benefit or payment from a retirement system or plan and the money in the system or plan's pension trust fund is not:

(1) subject to execution, garnishment, attachment, or any other process;

(2) subject to state, county, or municipal taxes except for:

(a) a benefit or annuity received in excess of ~~$3,600 or adjusted by an~~ *the* amount determined pursuant to 15-30-111(2)(c)~~(ii)~~; or

(b) a refund of a member's regular contributions picked up by an employer after June 30, 1985, as provided in 19-3-315, 19-5-402, 19-6-402, 19-7-403, 19-8-502, 19-9-710, or 19-13-601; or

(3) assignable except as specifically provided in this chapter."

Section 3. Section 19-17-407, MCA, is amended to read:

"19-17-407. Exemption from taxation and legal process. (1) The ~~first $3,600 or the~~ amount determined pursuant to 15-30-111(2)(c)~~(ii)~~ of benefits received under this part is exempt from state, county, and municipal taxation.

(2) Benefits received under this part are not subject to execution, garnishment, attachment, or any other process."

Section 4. Section 19-18-612, MCA, is amended to read:

"19-18-612. Protection of benefits from legal process and taxation — nonassignability. (1) Except for execution or withholding for the payment of child support or for the payment of spousal support for a spouse or former spouse who is the custodial parent of the child, payments made or to be made under this chapter are not subject to judgments, garnishment, execution, or other legal process. A person entitled to a pension may not assign the right, and the association and trustees may not recognize any assignment or pay over any sum assigned.

(2) The ~~first $3,600 or the~~ amount determined pursuant to 15-30-111(2)(c)~~(ii)~~ of benefits received under this part is exempt from state, county, and municipal taxation."

Section 5. Section 19-19-504, MCA, is amended to read:

"19-19-504. Protection of benefits from legal process and taxation. (1) Except for execution or withholding for the payment of child support or for the payment of spousal support for a spouse or former spouse who is the custodial parent of the child, the benefits provided for in this part are not subject to execution, garnishment, attachment, or the operation of bankruptcy, insolvency, or other process of law and are unassignable except as specifically provided in 19-19-505.

(2) ~~The first $3,600 or the~~ *The* amount determined pursuant to 15-30-111(2)(c)~~(ii)~~ of benefits received under this part is exempt from state, county, and municipal taxation."

Section 6. Section 19-20-706, MCA, is amended to read:

"19-20-706. Exemption from taxation and legal process. Except as provided in 19-20-305 and 19-20-306, the retirement allowances or any other benefits accrued or accruing to any person under the provisions of the retirement system and the accumulated contributions and cash and securities in the various funds of the retirement system are:

(1) exempted from any state, county, or municipal tax of the state of Montana except for:

(a) a retirement allowance received in excess of ~~$3,600 or adjusted by an~~ *the* amount determined pursuant to 15-30-111(2)(c)~~(ii)~~; or

(b) a withdrawal paid under 19-20-603 of a member's contributions picked up by an employer after June 30, 1985, as provided in 19-20-602;

(2) not subject to execution, garnishment, attachment by trustee process or otherwise, in law or equity, or any other process; and

(3) unassignable except as specifically provided in this chapter."

Section 7. Section 19-21-212, MCA, is amended to read:

"19-21-212. Exemption from taxation, legal process, and assessments. Except for execution or withholding for the payment of child support or for the payment of spousal support for a spouse or former spouse who is the custodial parent of the child, contracts, benefits, and contributions under the optional retirement program and the earnings on the contributions are:

(1) except for a retirement allowance received in excess of ~~$3,600 or adjusted by an~~ *the* amount determined pursuant to 15-30-111(2)(c)~~(ii)~~, exempt from any state, county, or municipal tax;

(2) not subject to execution, garnishment, attachment, or other process;

(3) not covered or assessable by an insurance guaranty association; and

(4) unassignable except as specifically provided in the contracts."

Section 8. Effective date. [This act] is effective on passage and approval.

Section 9. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2008.

Approved April 28, 2009

CHAPTER NO. 383

[HB 333]

AN ACT ALLOWING THE BUREAU OF MINES AND GEOLOGY TO CONDUCT GEOTHERMAL RESEARCH; GRANTING UTILITIES NEAR GEOTHERMAL SITES THE ABILITY TO PARTICIPATE IN RESEARCH AND DEVELOPMENT OF THE SITE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Montana has unique geological features that include significant geothermal resources; and

WHEREAS, other states in the region are actively exploring and developing these resources for energy production purposes; and

WHEREAS, existing data and analyses of these resources is now largely outdated, and advances in technology, increased energy prices, and increased interest in low-carbon energy sources has increased interest by electric utilities and independent power producers in the state's geothermal resources.

Be it enacted by the Legislature of the State of Montana:

Section 1. Geothermal research. (1) Subject to subsection (2), the Montana bureau of mines and geology may conduct geothermal research that:

(a) characterizes the geothermal resource base in Montana;

(b) tests high-temperature and high-pressure drilling technologies benefiting geothermal well construction; and

(c) determines reservoir characterization, monitoring, and modeling necessary for commercial application in Montana.

(2) If the research is conducted on private property, the bureau must have written agreements with:

(a) the surface property owner and any owners of the geothermal resource for access and use of the site for research purposes; and

(b) subject to subsections (3) and (4), the utility, as defined in 69-5-102, with a service area nearest the research site if the utility intends to commercially develop the site.

(3) If the utility with a service area nearest the research site intends to develop the site for future commercial use, the utility shall:

(a) contribute, at a minimum, 25% of the research costs as determined by the bureau for research at the site; and

(b) have an agreement in place with the surface property owner and any owners of the geothermal resource where the research site is located for future development of the geothermal resource.

(4) If the utility with a service area nearest the research site does not intend to develop the site for commercial use, the utility with a service area next nearest the site may enter into a written agreement pursuant to subsection (2)(b). If a utility does not intend to develop the site for future commercial use, the agreement pursuant to subsection (2)(b) is not required.

(5) In determining the utility with a service area nearest the site, all measurements must be made on the shortest vector that can be drawn from the line nearest the service area to the nearest portion of the geothermal site.

(6) Prior to September 1 of each even-numbered year, the bureau shall update the energy and telecommunications interim committee on research conducted pursuant to this section and funding received pursuant to [section 2].

(a) a ranking of the top five locations in Montana that offer the best opportunity for near-term development of geothermal energy; and

(b) an estimate of the cost associated with development of each site.

Section 2. Authority to accept gifts, grants, contributions, and reimbursements. The Montana bureau of mines and geology may accept gifts, grants, contributions pursuant to [section 1(3)], and reimbursements to be used for the purposes of [section 1].

Section 3. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 90, and the provisions of Title 90 apply to [sections 1 and 2].

Section 4. Effective date. [This act] is effective July 1, 2009.

Approved April 28, 2009

CHAPTER NO. 384

[HB 478]

AN ACT DEFINING "SMALL PLANT VENDOR"; EXEMPTING SMALL PLANT VENDORS FROM LICENSURE FEES; REVISING INSPECTION AND INFESTATION PROCEDURES TO INCLUDE SMALL PLANT VENDORS; REVISING UNLAWFUL ACTS AND PENALTIES; AMENDING SECTIONS 80-7-105, 80-7-106, 80-7-108, 80-7-109, 80-7-110, 80-7-122,

80-7-133, AND 80-7-135, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 80-7-105, MCA, is amended to read:

"80-7-105. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Firm" means an individual, company, partnership, association, or corporation.

(2) "Landscape service" means a firm that buys, sells, or resells nursery stock.

(3) "Nursery" means the business or location where nursery stock is grown or offered for sale or resale or as part of a landscape service.

(4) "Nursery stock" means botanically classified plants or parts of plants, including but not limited to tropical potted plants, aquatic plants, cut trees and their products, and turf or sod grass. The following plants and plant materials may not be considered nursery stock:

(a) field crop plants and seeds;

(b) pasture grasses;

(c) cut plants not for propagation;

(d) fruits or vegetables for human or animal consumption;

(e) cut trees and products that are going to be processed to a point that they no longer represent a pest risk; and

(f) plant debris for disposal or processing.

(5) "Nursery stock certification" means the process by which the nursery stock or other plants have been inspected and found to meet certification standards established by department rule.

(6) "Plant dealer" means a firm that buys plants or plant products from a producer for the purpose of offering the plants or plant products for sale or resale or as part of a landscape service.

(7) "Plant inspection certificate" means a document issued by the department or the plant pest regulatory agency of another state that declares that the nursery stock, plants, or plant material grown by the firm named on the certificate is apparently free of injurious plant pests.

(8) "Plant pest" means an insect, weed, fungus, virus, bacteria, or other organism that can directly or indirectly injure or cause damage in a plant or a product of a plant and that meets the criteria as a pest established by department rule. For purposes of this chapter, noxious weeds, as defined in 7-22-2101(8)(a)(i), or other exotic weeds are defined as plant pests.

(9) "Small plant vendor" means a Montana firm engaged in the business of selling or distributing nursery stock that:

(a) grows in Montana the nursery stock offered for sale or distribution; and

(b) has gross annual sales of less than $1,000 in a calendar year."

Section 2. Section 80-7-106, MCA, is amended to read:

"80-7-106. License required — application and payment of license fee — *exemption*. (1) A firm, nursery, or plant dealer engaging in the business of selling or distributing nursery stock in this state shall obtain a license for each location from the department.

(2) The license must be in the name of the firm, nursery, or plant dealer seeking the license and expires on the anniversary date established by rule by the board of review established in 30-16-302. The applicant shall provide information that the department finds necessary to carry out the provisions and purposes of this chapter and in the form determined by rule by the board of review established in 30-16-302.

(3) The department shall establish license fees by rule. License fees may be no less than $95 or more than $125. If the department determines that the revenue from the license fee is inadequate to accomplish the purposes of this chapter, the department may by rule increase the fee within the statutory limit.

(4) A new applicant or a firm, nursery, or plant dealer failing to renew a license on or before the annual anniversary date provided for in subsection (2) shall pay an additional nonrefundable late fee of $25 for each license.

(5) An out-of-state firm that imports nursery stock into Montana for resale by a licensed Montana nursery or plant dealer is not required to obtain a license if the firm is licensed in the state of origin of the nursery stock and if that state extends a similar exemption to Montana firms.

(6) The fees required by the provisions of this section may be paid by credit card and may be discounted for payment processing charges paid by the department to a third party.

(7) A small plant vendor must be licensed but is exempt from the license fee requirements of this section."

Section 3. Section 80-7-108, MCA, is amended to read:

"80-7-108. Nursery stock inspection — fees. (1) The department may enter the premises of a *licensed* firm, nursery, or plant dealer *or of a small plant vendor* during regular business hours for the purpose of inspecting nursery stock or other materials for possible plant pests or for determining licensure compliance. An inspection fee may not be assessed if the department requests the inspection.

(2) A firm, nursery, ~~or~~ plant dealer*, or small plant vendor* may request the inspection of nursery stock, plants, or other materials by giving the department 5 days' notice prior to the time when the nursery stock, plants, or other materials are ready for inspection. A firm, nursery, ~~or~~ plant dealer*, or small plant vendor* requesting an inspection shall pay a fee as established by department rule. The fee must cover the actual costs of inspection, surveys, and other services required to issue the plant inspection certificate.

(3) The department may issue a plant inspection certificate based on the results of a nursery stock or other plant inspection or inspection survey."

Section 4. Section 80-7-109, MCA, is amended to read:

"80-7-109. Duty to notify department of infestation. A firm, nursery, ~~or~~ plant dealer*, or small plant vendor* with nursery stock or other materials that are infected or infested with plant pests shall notify the department. The firm, nursery, ~~or~~ plant dealer*, or small plant vendor* shall comply with the instructions of the department for the control of the plant pests."

Section 5. Section 80-7-110, MCA, is amended to read:

"80-7-110. Removal of nursery stock — assessment of costs. (1) If a firm, nursery, ~~or~~ plant dealer*, or small plant vendor* that owns nursery stock or other materials infected or infested with any injurious plant pest fails to comply with the instructions of the department for the destruction or control of the injurious plant pest or the destruction of the infested or infected nursery stock or

other material within the time specified by the department, the department may condemn, remove, or destroy the nursery stock or other material or treat it with a proper remedy at the expense of the owner.

(2) If an owner fails to pay the actual cost of the removal, treatment, or destruction within 30 days after notice has been mailed to the owner at the owner's last-known post-office address and to any purchaser of the property under contract for deed at the purchaser's last-known post-office address, the cost becomes a lien on the land of the owner and must be added by the county treasurer to the taxes upon the property and collected as other taxes."

Section 6. Section 80-7-122, MCA, is amended to read:

"80-7-122. Nursery stock certification. At the request of a licensed firm, nursery, or plant dealer~~,~~ *or of a small plant vendor,* the department may inspect nursery stock for the purpose of nursery stock certification. The department shall establish certification standards, inspection procedures, and fees by department rule."

Section 7. Section 80-7-133, MCA, is amended to read:

"80-7-133. Acts made unlawful — penalty. (1) It is unlawful for a firm, nursery, ~~or~~ plant dealer*, or small plant vendor* to:

(a) fail to properly identify nursery stock offered for sale. Identification must include but is not limited to the scientific name, common name, and variety, except with regard to mixed annual plantings. Each nursery plant offered for sale as a separate plant must be identified. A single means of identification is allowed on each bundle of bare root seedlings, liners, or hedging grade nursery stock.

(b) falsely represent or misrepresent the name, age, variety, or class of any nursery stock sold or offered for sale;

(c) falsely represent or state that any nursery stock offered for sale, sold, or delivered was grown in a certain location, when in fact the nursery stock was grown in another location;

(d) deceive or defraud any firm in the sale of any nursery stock by substituting inferior or different varieties or ages from those ordered;

(e) bring into this state, offer for sale or distribution within this state, or ship, sell, or deliver upon any sale any nursery stock that is infected or infested with a plant pest dangerous to the horticultural interests of the state or that violates any federal or state quarantine; or

(f) sell or distribute nursery stock, cut decorative plants, or aquatic plants declared to be noxious weeds as defined in 7-22-2101.

(2) In case of misrepresentation, false representation, deceit, fraud, substitution, or sale and distribution of noxious weeds, the firm, nursery, ~~or~~ plant dealer*, or small plant vendor* is subject to punishment as provided in 80-7-135 and is liable to a party damaged or injured to the extent of all damages sustained, which may be recovered in a civil action in any court of competent jurisdiction."

Section 8. Section 80-7-135, MCA, is amended to read:

"80-7-135. Penalty for violation. (1) A firm, nursery, ~~or~~ plant dealer*, or small plant vendor* that violates or aids in the violation of a provision of this part or of the rules, orders, or quarantines of the department adopted under Title 2, chapter 4, and this part commits a civil offense and is subject to a civil penalty of not more than $1,000 for each violation.

(2) Assessment of a civil penalty may be made in conjunction with another warning, order, or administrative action authorized by this chapter. A civil penalty collected under this section must be deposited in the nursery account established in 80-7-123 for education, training, research, and development for the nursery industry pursuant to rules established by the department.

(3) The department shall establish by rule:

(a) a penalty schedule that establishes the types of penalties and the amounts, not to exceed $1,000, for initial and subsequent offenses; and

(b) other matters necessary for the administration of civil penalties.

(4) Sections 80-7-105, 80-7-106, 80-7-108, 80-7-109, 80-7-122, 80-7-123, and this section may not be construed as requiring the department or its agents to report violations of this part when the department believes that the public interest will be best served by a suitable notice of warning."

Section 9. Coordination instruction. If Senate Bill No. 38 is not passed and approved, then [this act] is void.

Section 10. Effective date. [This act] is effective on passage and approval.

Approved April 28, 2009

CHAPTER NO. 385

[HB 578]

AN ACT CREATING THE MONTANA HEALTH CORPS ACT; PROVIDING FOR ENROLLMENT OF RETIRED PHYSICIANS IN THE HEALTH CORPS; PROVIDING FOR HOME HEALTH CARE VISITS TO PATIENTS ELIGIBLE FOR MEDICARE OR MEDICAID; LIMITING CHARGES MADE BY HEALTH CORPS MEMBERS; LIMITING THE LIABILITY OF HEALTH CORPS MEMBERS; GRANTING RULEMAKING AUTHORITY; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Short title. [Sections 1 through 7] may be cited as the "Montana Health Corps Act".

Section 2. Purpose — establishment of program. (1) The purpose of [sections 1 through 7] is to:

(a) provide primary outpatient care to individuals eligible for medicare or medicaid by retired physicians at affordable prices;

(b) keep the elderly or infirm in their homes longer; and

(c) provide home health care visits for patients who have difficulty in traveling.

(2) The board shall adopt rules to establish the program. The rules must provide procedures for enrolling retired physicians in the health corps and procedures under which physicians or health care facilities may refer medicare or medicaid patients to members of the health corps.

Section 3. Definitions. As used in [sections 1 through 7], unless the context requires otherwise, the following definitions apply:

(1) "Health care" has the meaning provided in 50-16-504.

(2) "Health care facility" has the meaning provided in 50-5-101.

Section 4. Eligibility for participation. A retired physician who is properly licensed and in good standing in Montana may participate in the health corps provided for in [sections 1 through 7]. The board shall accept applications for participation in the health corps and provide written guidelines to participants in the health corps concerning the provisions of [sections 1 through 7] and rules adopted to implement [sections 1 through 7].

Section 5. Referral of patients to program — visits — charges. (1) The board shall adopt rules under which physicians or health care facilities may refer medicare or medicaid patients to the health corps program.

(2) A health corps member shall make home visitations to eligible patients for the purpose of providing health care to eligible patients.

(3) A health corps member may charge $10 for a patient contact or visit and may submit a charge to medicare or medicaid.

Section 6. Limitation on liability. A physician who renders health care within the scope of the physician's license to a patient under [sections 1 through 7] is not liable to a patient or other person for civil damages resulting from the rendering of the care unless the damages were the result of gross negligence or willful or wanton acts or omissions by the physician. Each patient must be given notice that under state law the physician may not be held legally liable for ordinary negligence for services provided under the health corps program.

Section 7. Termination of participation in health corps. The board may take disciplinary action against a physician participating in the health corps program as provided in Title 37 and may terminate a physician's participation in the health corps program based upon the disciplinary action.

Section 8. No appropriation. It is the intent of the legislature that the requirements of [this act] be conducted within existing levels of funding.

Section 9. Codification instruction. [Sections 1 through 7] are intended to be codified as an integral part of Title 37, chapter 3, and the provisions of Title 37, chapter 3, apply to [sections 1 through 7].

Section 10. Effective date. [This act] is effective July 1, 2009.

Approved April 28, 2009

CHAPTER NO. 386

[HB 583]

AN ACT SUPPORTING A NETWORK OF FOUR ESTABLISHED MONTANA FOOD AND AGRICULTURAL DEVELOPMENT CENTERS ADMINISTERED BY THE DEPARTMENT OF AGRICULTURE; PROVIDING A FUND TRANSFER; PROVIDING AN APPROPRIATION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the lack of infrastructure in Montana for adding value to the state's agricultural products is a primary barrier to our state capturing a significant portion of the $3 billion that Montanans spend each year on food; and

WHEREAS, this lack of infrastructure is inhibiting the ability of farmers and ranchers and other agricultural entrepreneurs to serve markets for food, farm-based renewable energy, and other value-added agricultural markets, both within the state and outside the state; and

WHEREAS, producing for local markets on a family or community scale can reconnect Montana's rural and urban economies and enhance stewardship of Montana's natural and human resources; and

WHEREAS, consumer demand for Montana-based, sustainably grown, nutritious, and affordable food in Montana exceeds supply; and

WHEREAS, farm-derived renewable energy and biofuels hold promise to increase the profitability of family farm and ranch operations, promote domestic energy production, and lessen our dependence on foreign sources of energy; and

WHEREAS, previous investment and capacity built in the state for supporting value-added agricultural development needs to be maintained; and

WHEREAS, increasing technical assistance to Montana's food and agricultural entrepreneurs can help keep more of the state's food, agricultural, and energy dollars circulating in Montana communities.

Be it enacted by the Legislature of the State of Montana:

Section 1. Montana food and agricultural development program — definition. (1) There is a program administered by the department to promote Montana food and agricultural development. The program must fund four Montana food and agricultural development centers that were established before January 1, 2009, and that are charged with:

(a) developing Montana's capacity to produce food and value-added agricultural products, including farm-derived renewable energy; and

(b) providing technical assistance and other services to community-based food, agriculture, and farm-derived renewable energy entrepreneurs.

(2) Technical assistance includes but is not limited to business assistance, product development, marketing, nutritional analysis and labeling, education, assistance with food safety regulation compliance, training to educate business professionals and entrepreneurs on industry dynamics and technology of specific bioproduct industries, and evaluating existing and developing technologies.

(3) Each center must be a certified regional development corporation or a nonprofit organization that serves at least a four-county region.

(4) As used in this section, "farm-derived renewable energy" means renewable energy produced from products developed by farmers and ranchers, as well as entrepreneurs, using Montana farm and ranch products.

Section 2. Fund transfer. There is transferred $250,000 from the research and commercialization state special revenue account established in 90-3-1002 to the state general fund in each year of the biennium, to be spent in accordance with 90-3-1003(4).

Section 3. Appropriation. The following amounts are appropriated to the department of agriculture from the general fund for each of the fiscal years 2010 and 2011 to establish and administer the Montana food and agricultural development program as provided in [section 1]:

	FY 2010	FY 2011
Four centers, operation	$240,000	$240,000
Administration	$10,000	$10,000
Total	$250,000	$250,000

Section 4. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 80, chapter 11, and the provisions of Title 80, chapter 11, apply to [section 1].

Section 5. Coordination instruction. If [this act] is passed and approved and House Bill No. 123 fails, then the fund transfer provided for in [section 2 of this act] for fiscal year 2011 is void.

Section 6. Effective date. [This act] is effective July 1, 2009.

Approved April 28, 2009

CHAPTER NO. 387

[HB 615]

AN ACT CREATING AN ONLINE MOTOR VEHICLE LIABILITY INSURANCE VERIFICATION SYSTEM; PROVIDING FOR LAW ENFORCEMENT USE OF THE SYSTEM; PROVIDING FOR A FUNDING MECHANISM AND OPERATING ACCOUNT FOR THE VERIFICATION SYSTEM; RAISING CERTAIN VEHICLE REGISTRATION FEES; ALLOWING THE DEPARTMENT OF JUSTICE TO SET REINSTATEMENT AND AUTHORIZED USER FEES; ALLOWING INSURERS TO DISCLOSE CERTAIN INFORMATION TO BE USED IN THE SYSTEM; GRANTING THE DEPARTMENT RULEMAKING AUTHORITY TO ADMINISTER THE SYSTEM; AMENDING SECTIONS 33-19-306, 61-3-321, 61-6-101, 61-6-102, 61-6-103, 61-6-105, AND 61-6-302, MCA; REPEALING SECTION 61-6-106, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Creation of online motor vehicle liability insurance verification system. (1) The department, in cooperation with the commissioner of insurance, shall establish an accessible common carrier-based motor vehicle liability insurance verification system to verify the compliance of a motor vehicle owner or operator with motor vehicle liability policy requirements under 61-6-103, 61-6-301, and 61-6-302 and facilitate or monitor proof of financial responsibility filings under 61-6-133 and 61-6-134.

(2) The department may contract with a private vendor or vendors to establish and maintain the system.

(3) The system must:

(a) send requests to insurers for verification of motor vehicle liability insurance using electronic services established by the insurers, through the internet, world wide web, or a similar proprietary or common carrier electronic system in compliance with the specifications and standards of the insurance industry committee on motor vehicle administration and other applicable industry standards;

(b) include appropriate provisions to secure its data against unauthorized access and to maintain a record of all requests and responses;

(c) be accessible, without fee, to authorized personnel of the department, the courts, law enforcement personnel, county treasurers, and authorized agents under the provisions of 61-3-116;

(d) interface, wherever possible, with existing department and law enforcement systems;

(e) receive insurance data file transfers from insurers under specifications and standards set forth in subsection (3)(a) to identify vehicles that are not covered by an insurance policy;

(f) provide a means by which low-volume insurers that are unable to deploy an online interface with the system can report insurance policy data to the department or its designee for inclusion in the system;

(g) provide a means to track separately or distinguish motor vehicles that are subject to a certificate of self-insurance under 61-6-143, a surety or indemnity bond under 61-6-137 or 61-6-301, or a deposit of cash or securities under 61-6-138;

(h) be available 24 hours a day, 7 days a week, subject to reasonable allowances for scheduled maintenance or temporary system failures, to verify the insurance status of any vehicle in a manner prescribed by the department; and

(i) be installed and operational no later than July 1, 2011, following an appropriate testing period of not less than 6 months.

(4) The provisions of Title 2, chapter 6, parts 1 and 2, do not apply to the information contained in the verification system.

(5) Every insurer shall cooperate with the department in establishing and maintaining the system and shall provide access to motor vehicle liability policy status information to verify liability coverage for:

(a) a vehicle insured by that company that is registered in this state; and

(b) if available, for a vehicle that is insured by that company or that is operated in this state and that is the subject of an accident investigation regardless of where the vehicle is registered.

Section 2. Law enforcement use of verification system. (1) Notwithstanding the requirements of 61-6-302, a peace officer or authorized employee of a law enforcement agency may, during the course of a traffic stop or accident investigation, access the verification system provided under [section 1] to verify whether a motor vehicle is covered by a valid motor vehicle liability policy that meets the requirements of 61-6-103 and 61-6-301.

(2) (a) Except as provided in subsection (2)(b), the response received from the system supersedes an insurance card produced by a vehicle owner or operator, and notwithstanding the display of an insurance card by the owner or operator, the peace officer may issue a complaint and notice to appear to the owner or operator for a violation of 61-6-301 or 61-6-302.

(b) Subsection (2)(a) does not apply if the vehicle is:

(i) covered under a commercial automobile insurance coverage policy;

(ii) part of a self-insured fleet as provided in 61-6-143; or

(iii) included in an insurance binder, as allowed by 33-15-411, that has not been entered into the system at the time the system is accessed under subsection (1) of this section.

(3) Except upon reasonable cause to believe that a driver has violated another traffic regulation or that the driver's vehicle is unsafe or not equipped as required by law, a peace officer may not use the verification system to stop a driver for operating a motor vehicle in violation of 61-6-301.

Section 3. Online motor vehicle liability insurance verification operating account. (1) There is an online motor vehicle liability insurance verification operating account in the state special revenue fund, as provided in 17-2-102.

(2) Fees imposed under 61-3-321(20) or established and collected under 61-6-105 must be deposited in the account.

(3) The money in the online motor vehicle liability insurance verification operating account must be used by the department to pay costs directly incurred in the operation, maintenance, and enhancement of the online motor vehicle liability insurance verification system established under [section 1].

Section 4. Section 33-19-306, MCA, is amended to read:

"33-19-306. Disclosure limitations and conditions. (1) Except as provided in this section, a licensee may not disclose personal or privileged information about an individual collected or received in connection with an insurance transaction.

(2) Disclosure may be made with the written authorization of the individual. The authorization must be in the form provided in 33-19-206.

(3) Disclosure limited to that which is reasonably necessary may be made to a person to enable the person to provide information to the disclosing licensee for the purpose of detecting or preventing criminal activity, fraud, material misrepresentation, or material nondisclosure in connection with an insurance transaction. A person to whom information is disclosed pursuant to this subsection shall agree in writing not to further disclose the information, but this requirement for an agreement does not prevent disclosure of information that is necessary to obtain further information for the purposes set forth in this subsection.

(4) (a) Disclosure may be made between licensees if the information disclosed is limited to that which is reasonably necessary:

(i) to detect or prevent criminal activity, fraud, material misrepresentation, or material nondisclosure in connection with insurance transactions; or

(ii) for either the disclosing or receiving licensee to perform its insurance function.

(b) A licensee receiving information pursuant to this subsection (4) may not further disclose the information unless otherwise permitted by this section.

(5) Disclosure may be made to a medical care institution, a medical professional, or the individual to whom the information pertains if that information is reasonably necessary for the following purposes:

(a) verifying insurance coverage or benefits;

(b) informing an individual of a medical problem of which the individual may not be aware;

(c) conducting an operations or services audit; or

(d) determining the reasonableness or necessity of medical services.

(6) Disclosure:

(a) may be made to an insurance regulatory authority;

(b) must be made as required by law; and

(c) must be or may be made to the commissioner as required or permitted by law.

(7) Disclosure may be made by a licensee or an insurance-support organization to a law enforcement or other government authority or to an insurance regulatory agency:

(a) to protect the interests of a licensee in preventing, investigating, or prosecuting the perpetration of fraud upon a licensee; ~~or~~

(b) if the licensee or insurance-support organization reasonably believes that illegal activities have been conducted by the individual*; or*

(c) as provided in [section 1].

(8) Disclosure that is limited to that which is reasonably necessary may be made as otherwise permitted or required by law.

(9) Disclosure that is limited to that which is reasonably necessary may be made in response to a facially valid administrative or judicial order, including a search warrant or subpoena.

(10) (a) Except as provided in subsection (10)(b), disclosure that is limited to that which is reasonably necessary may be made for the purpose of conducting actuarial or research studies if:

(i) an individual is not identified in any actuarial or research report;

(ii) materials allowing the individual to be identified are returned or destroyed as soon as they are no longer needed; and

(iii) the actuarial or research organization agrees not to further disclose the information without the individual's separate, written authorization.

(b) Disclosure of information may be made for:

(i) health research that is subject to the approval of an institutional review board and the requirements of federal law and regulations governing biomedical research; or

(ii) epidemiological or drug therapy outcomes research that requires information that has been made anonymous to protect the identity of the patient through coding or encryption.

(11) Disclosure may be made to a party or a representative of a party to a proposed sale, transfer, merger, or consolidation of all or part of the business of the licensee or insurance-support organization if:

(a) prior to the consummation of the sale, transfer, merger, or consolidation only information is disclosed that is reasonably necessary to enable the recipient to make business decisions about the purchase, transfer, merger, or consolidation; and

(b) the recipient agrees not to further disclose the information without the individual's separate, written authorization.

(12) (a) Disclosure that is limited to that which is reasonably necessary may be made to a licensee's affiliate as follows:

(i) to allow use of the information in connection with an audit of the licensee;

(ii) to enable a licensee to perform an insurance function; or

(iii) as allowed by 33-19-307.

(b) A licensee disclosing pursuant to this section must have a written agreement with the affiliate that the affiliate will not use or further disclose information received except to carry out the purposes set forth in subsection (12)(a) and that if further disclosure is necessary to meet those purposes, the disclosure will be made only to the licensee or to a person who agrees in writing to be bound by the same prohibition on use and disclosure. A disclosure allowed by 33-19-307 is governed by that section.

(13) Disclosure that is limited to that which is reasonably necessary may be made to an insurance-support organization to perform insurance-support services for the licensee. The insurance-support organization may redisclose the information to the extent necessary to provide its services to its member or subscriber licensees and other insurance-support organizations or as otherwise permitted by law, but not for a marketing purpose.

(14) Disclosure may be made to a group policyholder for the purpose of reporting claims experience or conducting an audit of the licensee's operations or services if the information disclosed is reasonably necessary for the group policyholder to conduct the review or audit and the group policyholder agrees not to further disclose the information without the individual's separate, written authorization. Medical record information disclosed pursuant to this subsection must be edited to prevent the identification of the applicant, policyholder, or certificate holder. Employer audits that are required by the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1001, et seq., as amended, are not subject to the provisions of this subsection.

(15) Disclosure that is limited to that which is reasonably necessary may be made to a professional peer review organization for the purpose of reviewing the service or conduct of a medical care institution or medical professional if the professional peer review organization agrees not to further disclose the information without the individual's separate, written authorization.

(16) Disclosure that is limited to that which is reasonably necessary may be made to a governmental authority as required by federal or state law or for the purpose of determining the individual's eligibility for health benefits for which the governmental authority may be liable.

(17) Disclosure that is limited to that which is reasonably necessary may be made to a certificate holder or policyholder for the purpose of providing information regarding the status of an insurance transaction. Disclosure pursuant to this subsection may not be made to a group policyholder without a separate, written authorization from the individual.

(18) Disclosure may be made to a person contractually engaged to provide services to enable a licensee to perform an insurance function, or to perform an insurance function on behalf of a licensee, if the person agrees in writing that the person will not use or further disclose information obtained or developed pursuant to the engagement except to carry out the limited purpose of the engagement and that if further disclosure is necessary to perform the insurance function, that disclosure will be made only to the licensee or to a person who agrees in writing to be bound by the same prohibitions on use and disclosure.

(19) If a licensee has to disclose personal or privileged information in order to perform an insurance function and disclosure is not permitted under another exception in this section, disclosure may be made to a person other than a licensee if the disclosure is limited to that which is reasonably necessary to enable the person to perform services or an insurance function for the disclosing licensee and if the person is notified by the licensee that the person is prohibited from:

(a) using the information other than to carry out the limited purpose for which the information is disclosed; and

(b) disclosing the information other than to the licensee and as allowed in subsection (3).

(20) Disclosure may be made to a lienholder, mortgagee, assignee, lessor, or other person shown on the records of an insurance institution or insurance producer as having a legal interest in a policy of insurance if:

(a) medical record information is not disclosed; and

(b) the information disclosed is limited to that which is reasonably necessary to permit the person with a legal interest in the policy to protect that person's interests in that policy.

(21) Disclosure may be made to provide information to insurance rate advisory organizations, guaranty funds or agencies, agencies that are rating a licensee, persons that are assessing the licensee's compliance with industry standards, and the licensee's attorneys, accountants, and auditors if the disclosure is limited to that which is reasonably necessary to enable the person or entity to perform services or an insurance function for the disclosing licensee and if the person or entity is notified by the licensee that the person or entity is prohibited from using the information, other than to carry out the limited purpose for which the information is disclosed.

(22) Notwithstanding any other provision of this chapter, disclosure for a marketing purpose may be made only as allowed by 33-19-307.

(23) Nothing in this section may be construed to prevent the disclosure of personal information that is otherwise discoverable pursuant to the Montana Rules of Civil Procedure.

(24) The commissioner may adopt rules creating additional exceptions to disclosure restrictions for the purpose of allowing a licensee or insurance-support organization to carry out a necessary insurance function. The commissioner shall adopt rules establishing the methods that must be used by licensees to prevent identification as described in subsection (14)."

Section 5. Section 61-3-321, MCA, is amended to read:

"61-3-321. Registration fees of vehicles and vessels — certain vehicles exempt from registration fees — disposition of fees. (1) Except as otherwise provided in this section, registration fees must be paid upon registration or, if applicable, renewal of registration of motor vehicles, snowmobiles, watercraft, trailers, semitrailers, and pole trailers as provided in subsections (2) through ~~(19)~~ *(20)*:

(2) Unless a light vehicle is permanently registered under 61-3-562, the annual registration fee for light vehicles, trucks and buses under 1 ton, and logging trucks less than 1 ton is as follows:

(a) if the vehicle is 4 or less years old, $217;

(b) if the vehicle is 5 through 10 years old, $87; and

(c) if the vehicle is 11 or more years old, $28;

(3) Except as provided in subsection (14), the one-time registration fee based on the declared weight of a trailer, semitrailer, or pole trailer is as follows:

(a) if the declared weight is less than 6,000 pounds, $61.25; or

(b) if the declared weight is 6,000 pounds or more, $148.25.

(4) Except as provided in subsection (14), the one-time registration fee for motor vehicles owned and operated solely as collector's items pursuant to 61-3-411, based on the weight of the vehicle, is as follows:

(a) 2,850 pounds and over, $10; and

(b) under 2,850 pounds, $5.

(5) Except as provided in subsection (14), the one-time registration fee for off-highway vehicles other than a quadricycle or motorcycle is $61.25.

(6) The annual registration fee for heavy trucks, buses, and logging trucks in excess of 1 ton is $22.75.

(7) (a) The annual registration fee for a motor home, based on the age of the motor home, is as follows:

(i) less than 2 years old, $282.50;

(ii) 2 years old and less than 5 years old, $224.25;

(iii) 5 years old and less than 8 years old, $132.50; and

(iv) 8 years old and older, $97.50.

(b) The owner of a motor home that is 11 years old or older and that is subject to the registration fee under this section may permanently register the motor home upon payment of:

(i) a one-time registration fee of $237.50; and

(ii) if applicable, five times the renewal fees for personalized license plates under 61-3-406.

(8) (a) Except as provided in subsection (14), the one-time registration fee for motorcycles and quadricycles registered for use on public highways is $53.25, and the one-time registration fee for motorcycles and quadricycles registered for both off-road use and for use on the public highways is $114.50.

(b) An additional fee of $16 must be collected for the registration of each motorcycle or quadricycle as a safety fee, which must be deposited in the state motorcycle safety account provided for in 20-25-1002.

(9) Except as provided in subsection (14), the one-time registration fee for travel trailers, based on the length of the travel trailer, is as follows:

(a) under 16 feet in length, $72; and

(b) 16 feet in length or longer, $152.

(10) Except as provided in subsection (14), the one-time registration fee for a motorboat, sailboat, personal watercraft, or motorized pontoon required to be numbered under 23-2-512 is as follows:

(a) for a personal watercraft or a motorboat, sailboat, or motorized pontoon less than 16 feet in length, $65.50;

(b) for a motorboat, sailboat, or motorized pontoon at least 16 feet in length but less than 19 feet in length, $125.50; and

(c) for a motorboat, sailboat, or motorized pontoon 19 feet in length or longer, $295.50.

(11) (a) Except as provided in subsections (11)(b) and (14), the one-time registration fee for a snowmobile is $60.50.

(b) (i) A snowmobile that is licensed by a Montana business and is owned exclusively for the purpose of daily rental to customers is assessed:

(A) a fee of $40.50 in the first year of registration; and

(B) if the business reregisters the snowmobile for a second year, a fee of $20.

(ii) If the business reregisters the snowmobile for a third year, the snowmobile must be permanently registered and the business is assessed the registration fee imposed in subsection (11)(a).

(12) A fee of $5 must be collected when a new set of standard license plates, a new single standard license plate, or a replacement set of special license plates required under 61-3-332 is issued. The $5 fee imposed under this subsection does not apply when previously issued license plates are transferred under 61-3-335. All registration fees imposed under this section must be paid if the vehicle to which the plates are transferred is not currently registered.

(13) The provisions of this part with respect to the payment of registration fees do not apply to and are not binding upon motor vehicles, trailers, semitrailers, snowmobiles, watercraft, or tractors owned or controlled by the United States of America or any state, county, city, or special district, as defined in 18-8-202, or to a vehicle or vessel that meets the description of property exempt from taxation under 15-6-201(1)(a), (1)(c), (1)(d), (1)(e), (1)(f), (1)(g), (1)(i), (1)(j), (1)(l), or (1)(m), 15-6-203, or 15-6-215, except as provided in 61-3-520.

(14) Whenever ownership of a trailer, semitrailer, pole trailer, off-highway vehicle, motorcycle, quadricycle, travel trailer, motor home, motorboat, sailboat, personal watercraft, motorized pontoon, snowmobile, or motor vehicle owned and operated solely as a collector's item pursuant to 61-3-411 is transferred, the new owner shall title and register the vehicle or vessel as required by this chapter and pay the fees imposed under this section.

(15) A person eligible for a waiver under 61-3-460 is exempt from the fees required under this section.

(16) Except as otherwise provided in this section, revenue collected under this section must be deposited in the state general fund.

(17) The fees imposed by subsections (2) through (11) are not required to be paid by a dealer for the enumerated vehicles or vessels that constitute inventory of the dealership.

(18) (a) Unless a person exercises the option in subsection (18)(b), an additional fee of $4 must be collected for each light vehicle registered under this part. This fee must be accounted for and transmitted separately from the registration fee. The fee must be deposited in an account in the state special revenue fund to be used for state parks, for fishing access sites, and for the operation of state-owned facilities. Of the $4 fee, the department of fish, wildlife, and parks shall use $3.50 for state parks, 25 cents for fishing access sites, and 25 cents for the operation of state-owned facilities at Virginia City and Nevada City.

(b) A person who registers a light vehicle may, at the time of annual registration, certify that the person does not intend to use the vehicle to visit state parks and fishing access sites and may make a written election not to pay the additional $4 fee provided for in subsection (18)(a). If a written election is made, the fee may not be collected.

(19) For each light vehicle, trailer, semitrailer, pole trailer, heavy truck, motor home, motorcycle, quadricycle, and travel trailer subject to a registration fee under this section, an additional fee of $5 must be collected and forwarded to the state for deposit in the account established in 44-1-504.

(20) *(a) Until December 31, 2011, for each light vehicle, trailer, semitrailer, pole trailer, heavy truck, motor home, motorcycle, quadricycle, and travel trailer subject to a registration fee under this section, an additional fee of $1 must be collected and forwarded to the state for deposit in the online motor vehicle liability insurance verification account established in [section 3].*

(b) Beginning January 1, 2012, for each light vehicle, trailer, semitrailer, pole trailer, heavy truck, motor home, motorcycle, quadricycle, and travel trailer subject to a registration fee under this section, an additional fee of 50 cents must be collected and forwarded to the state for deposit in the online motor vehicle liability insurance verification account established in [section 3].

(21) This section does not apply to a motor vehicle, trailer, semitrailer, or pole trailer that is governed by 61-3-721."

Section 6. Section 61-6-101, MCA, is amended to read:

"61-6-101. Short title. This part may be cited as the "Motor Vehicle ~~Safety-Responsibility~~ *Insurance Responsibility and Verification* Act"."

Section 7. Section 61-6-102, MCA, is amended to read:

"61-6-102. Definitions. As used in this part, unless the context clearly indicates a different meaning, the following definitions apply:

(1) "Commercial automobile insurance coverage" means any coverage provided to an insured, regardless of number of vehicles or entities covered, under a commercial, garage, or truckers coverage form and rated from a commercial manual or rating rule. Vehicle type and ownership are not the primary factors in underwriting the coverage or rating the coverage. The rating may be subject to individual risk characteristics, including but not limited to experience rating, schedule rating, loss rating, or deductible rating.

(2) "Insurer" means an authorized insurer, as defined in 33-1-201, who issues or renews a motor vehicle liability policy.

~~(1)~~*(3)* "Judgment" means any judgment that has become final by expiration without appeal of the time within which an appeal might have been perfected or by final affirmation on appeal rendered by a court of competent jurisdiction of any state or of the United States upon a cause of action arising out of the ownership, maintenance, or use of any motor vehicle, for damages, including damages for care and loss of services, because of bodily injury to or death of any person or for damages because of injury to or destruction of property, including the loss of use of property, or upon a cause of action on an agreement of settlement for damages.

~~(2)~~*(4)* "License" means ~~any~~ *a driver's* license *as defined in 61-1-101*~~, temporary instruction permit, or temporary license issued under the laws of this state pertaining to the licensing of persons to operate motor vehicles~~.

(5) "Low-volume insurer" means an insurer that provides motor vehicle liability policies for fewer than 500 vehicles in this state.

(6) (a) "Motor vehicle liability policy" means a policy of insurance issued or renewed by an insurer to a person who owns or operates a motor vehicle that meets or exceeds the minimum coverage limits under 61-6-103, including a policy certified as provided in 61-6-133 as proof of financial responsibility.

(b) A certificate filed for a nonresident as proof of financial responsibility under 61-6-134 must be treated as a motor vehicle liability policy under this part.

~~(3)~~*(7)* "Nonresident's operating privilege" means the privilege conferred upon a nonresident by the laws of this state pertaining to the operation by the nonresident of a motor vehicle or the use of a motor vehicle owned by the nonresident in this state.

~~(4)~~*(8)* "Person" means every natural person, firm, partnership, association, or corporation.

~~(5)~~*(9)* "Proof of financial responsibility" means proof of ability to respond in damages for liability on account of accidents occurring subsequent to the effective date of the proof of financial responsibility, arising out of the ownership, maintenance, or use of a motor vehicle.

~~(6)~~*(10)* "State" means any state, territory, or possession of the United States, the District of Columbia, or any province of the Dominion of Canada.

(11) "Suspension" means the withdrawal by action of the department of a motor vehicle's registration, as defined in 61-1-101, for a period of time prescribed by department rule.

(12) "System" means the online motor vehicle liability insurance verification system created in [section 1]."

Section 8. Section 61-6-103, MCA, is amended to read:

"61-6-103. Motor vehicle liability policy ~~defined~~ *minimum limits — other requirements.* (1) ~~A "motor vehicle liability policy", as the term is used in this part, means an owner's or operator's policy of liability insurance, certified as provided in 61-6-133 or 61-6-134 as proof of financial responsibility and issued, except as otherwise provided in 61-6-134, by an insurance carrier duly authorized to transact business in this state, to or for the benefit of the person named therein as insured.~~

~~(2) The owner's policy of liability insurance~~ *A motor vehicle liability policy* must:

(a) designate by explicit description or by appropriate reference all motor vehicles with respect to ~~which~~ *the* coverage ~~is thereby~~ to be granted; and

(b) insure the person named ~~therein~~ *in the policy* and any other person, as insured, using any motor vehicle or motor vehicles with the express or implied permission of the named insured, against loss from the liability imposed by law for damages arising out of the ownership, maintenance, or use of the motor vehicle or motor vehicles within the United States of America or the Dominion of Canada, subject to limits exclusive of interest and costs, with respect to each motor vehicle, as follows:

(i) $25,000 because of bodily injury to or death of one person in any one accident and subject to ~~said~~ *the* limit for one person;

(ii) $50,000 because of bodily injury to or death of two or more persons in any one accident; and

(iii) $10,000 because of injury to or destruction of property of others in any one accident.

~~(3)~~*(2)* An operator's policy of liability insurance must insure the person named as insured ~~therein~~ *in the policy* against loss from the liability imposed upon ~~him~~ *the operator* by law for damages arising out of the use by ~~him~~ *the operator* of any motor vehicle not owned by ~~him~~ *the operator*, within the same territorial limits and subject to the same limits of liability ~~as~~ *that* are set forth ~~above~~ *in subsection (1)* with respect to the operator's policy of liability insurance.

~~(4)~~*(3)* A motor vehicle liability policy must state the name and address of the named insured, the coverage afforded by the policy, the premium charged ~~therefor~~ *for the policy*, the policy period, and the limits of liability and contain an agreement or be endorsed that insurance is provided ~~thereunder~~ *under the policy* in accordance with the coverage defined in this part as respects bodily injury and death or property damage, or both, and is subject to all the provisions of this part.

~~(5)~~*(4)* A motor vehicle liability policy need not insure any liability under any workers' compensation law or any liability on account of bodily injury to or death of an employee of the insured while engaged in the employment, other than domestic, of the insured or while engaged in the operation, maintenance, or repair of a motor vehicle or any liability for damage to property owned by, rented to, in charge of, or transported by the insured.

~~(6)~~*(5)* A motor vehicle liability policy is subject to the following provisions, which need not be contained ~~therein~~ *in the policy*:

(a) The liability of the insurance carrier with respect to the insurance required by this part becomes absolute whenever injury or damage covered by the motor vehicle liability policy occurs. The policy may not be canceled or annulled as to the liability by any agreement between the insurance carrier and the insured after the occurrence of the injury or damage. ~~No~~ *A* statement made by the insured or on ~~his~~ behalf *of the insured* and ~~no~~ *a* violation of the policy may *not* defeat or void the policy.

(b) The satisfaction by the insured of a judgment for the injury or damage may not be a condition precedent to the right or duty of the insurance carrier to make payment on account of the injury or damage.

(c) The insurance carrier has the right to settle any claim covered by the policy, and if the settlement is made in good faith, the amount is deductible from the limits of liability specified in subsection ~~(2)(b)~~ *(1)(b)*.

(d) The policy, the written application ~~therefor~~ *for the policy*, if any, and any rider or endorsement ~~which~~ *that* does not conflict with the provisions of this part constitute the entire contract between the parties.

~~(7)~~*(6)* A motor vehicle policy is not subject to cancellation, termination, nonrenewal, or premium increase due to injury or damage incurred by the insured or operator unless the insured or operator is found to have violated a traffic law or ordinance of the state or a city, is found negligent or contributorily negligent in a court of law or by the arbitration proceedings contained in chapter 5 of Title 27, or pays damages to another party, whether by settlement or otherwise. ~~In no event may a~~ *A* premium *may not* be increased during the term of the policy unless there is a change in exposure.

~~(8)~~*(7)* Any policy ~~which~~ *that* grants the coverage required for a motor vehicle liability policy may also grant any lawful coverage in excess of or in addition to the coverage specified for a motor vehicle liability policy, and the excess or additional coverage is not subject to the provisions of this part. With respect to a policy ~~which~~ *that* grants the excess or additional coverage, the term "motor vehicle liability policy" applies only to that part of the coverage ~~which is~~ required by this section.

~~(9)~~*(8)* ~~Any~~ *A* motor vehicle liability policy may provide that the insured shall reimburse the insurance carrier for any payment the insurance carrier would not have been obligated to make under the terms of the policy except for the provisions of this part.

~~(10)~~*(9)* ~~Any~~ *A* motor vehicle liability policy may provide for the prorating of the insurance ~~thereunder~~ *under the policy* with other valid and collectible insurance.

~~(11)~~*(10)* The requirements for a motor vehicle liability policy may be fulfilled by the policies of one or more insurance carriers, which policies together meet ~~such~~ *the* requirements.

~~(12)~~*(11)* ~~Any~~ *A* binder issued pending the issuance of a motor vehicle liability policy fulfills the requirements for ~~such~~ a policy.

~~(13)~~*(12)* A reduced limits endorsement may not be issued by ~~any~~ *a* company to be attached to ~~any~~ *a* policy issued in compliance with this section."

Section 9. Section 61-6-105, MCA, is amended to read:

"61-6-105. Department to administer law and make rules. *(1)* The department shall administer and enforce the provisions of this part and may make rules necessary for ~~its~~ administration *of the online motor vehicle liability insurance verification system.*

(2) The rules must:

(a) establish standards and procedures for accessing the system by authorized personnel of the department, the courts, law enforcement personnel, and any other entities authorized by the department that are consistent with specifications and standards of the insurance industry committee on motor vehicle administration and other applicable industry standards;

(b) provide for the suspension of a vehicle's registration if:

(i) a person fails to respond to a written inquiry from the department or its designee concerning the insurance status of a vehicle;

(ii) a person misrepresents or provides false information to the department or its designee regarding the operational status or use of a vehicle for which liability insurance is mandatory;

(iii) the department has reason to believe that a vehicle owner is not complying with the mandatory liability insurance provisions of 61-6-301; or

(iv) the department receives a report from a court that a person has been convicted of a violation of 61-6-301 or 61-6-302 and the surrender of the vehicle registration receipt and license plates under 61-6-304 has been ordered;

(c) prohibit the reinstatement of a vehicle's registration and the new registration of a vehicle unless the applicable reinstatement fees have been paid;

(d) set a fee for the reinstatement of a vehicle's registration following a suspension imposed by the department. The fee may not exceed $100 and is in addition to any other fine or penalty prescribed by law.

(e) provide for periodic insurance data file transfers from insurers under specifications and standards set forth in [section 1] to identify vehicles that are not covered by an insurance policy and to monitor ongoing compliance with mandatory vehicle liability insurance requirements; and

(f) ~~may~~ provide for ~~hearings upon request of persons~~ *a hearing for a person* aggrieved by ~~orders or acts of~~ *a suspension order issued by* the department under the provisions of this part.

(3) The department may adopt additional rules to:

(a) assist authorized users in interpreting responses received from the system and determining the appropriate action to be taken as a result of a response; and

(b) otherwise clarify system operations and business rules."

Section 10. Section 61-6-302, MCA, is amended to read:

"61-6-302. Proof of compliance. (1) The registration receipt required by 61-3-322 must contain a statement that unless the vehicle is eligible for an exemption under 61-6-303, it is unlawful to operate the vehicle without a valid motor vehicle liability insurance policy, a certificate of self-insurance, or a

posted indemnity bond, as required by 61-6-301. *If the card is issued under a commercial automobile insurance policy or a self-insured fleet, the card must indicate the status as "commercially insured" or "fleet".*

(2) Each person shall carry in a motor vehicle being operated by the person an insurance card approved by the department but issued by the insurance carrier to the motor vehicle owner as proof of compliance with 61-6-301. A motor vehicle operator shall exhibit the insurance card upon demand of a justice of the peace, a city or municipal judge, a peace officer, a highway patrol officer, or a field deputy or inspector of the department. A person commits an offense under this subsection if the person fails to carry the insurance card in a motor vehicle or fails to exhibit the insurance card upon demand of a person specified in this subsection. ~~However, a person charged with violating this subsection may not be convicted if~~

(3) Beginning July 1, 2011, a person charged with violating subsection (2) may not be convicted if:

(a) the arresting officer or another person authorized to access information from the online verification system under [section 2] submits to the system a request that provides proof of insurance valid at the time of arrest; or

(b) if the system under [section 1] is not available, the person produces in court or the office of the arresting officer proof of insurance valid at the time of arrest.

(4) In lieu of charging an operator who is not the owner of the vehicle with violating subsection (2), the officer may issue a complaint and notice to appear charging the owner with a violation of 61-6-301 and serve the complaint and notice to appear on the owner of the vehicle:

(a) personally; or

(b) by certified mail, return receipt requested, at the address for the owner listed on the registration receipt for the vehicle or, following query through available law enforcement systems, at the address maintained for the vehicle's owner by the jurisdiction in which the vehicle is titled and registered, or both."

Section 11. Repealer. Section 61-6-106, MCA, is repealed.

Section 12. Codification instruction. (1) [Sections 1 and 3] are intended to be codified as an integral part of Title 61, chapter 6, part 1, and the provisions of Title 61, chapter 6, part 1, apply to [sections 1 and 3].

(2) [Section 2] is intended to be codified as an integral part of Title 61, chapter 6, part 3, and the provisions of Title 61, chapter 6, part 3, apply to [section 2].

Section 13. Effective date. [This act] is effective January 1, 2010.

Approved April 28, 2009

CHAPTER NO. 388

[HB 634]

AN ACT PROVIDING FOR THE TRANSPORTATION OF INDIVIDUALS WHO MAY BE SUFFERING FROM MENTAL ILLNESS TO THE STATE HOSPITAL FOR INVOLUNTARY COMMITMENT OR TREATMENT; ALLOCATING COSTS; REQUIRING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO ADOPT RULES AND PROVIDE A REPORT; CREATING A STATE SPECIAL REVENUE ACCOUNT;

PROVIDING AN APPROPRIATION; AMENDING SECTIONS 7-32-2144 AND 53-21-132, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Transportation of individuals for involuntary commitment or treatment to state hospital. (1) The department shall develop and implement or contract for services to provide transportation to and from the state hospital for individuals who need to be involuntarily committed to or treated by the state hospital pursuant to the provisions contained in Title 53, chapter 21. A county may choose to not use the services.

(2) (a) Transportation may be provided only for those individuals who have no personal means of transportation to or from the state hospital.

(b) The provisions of this section do not apply to transportation costs of individuals who are voluntarily admitted to a mental health facility under Title 53, chapter 21, or of individuals who are to be admitted to the state hospital pursuant to Title 46.

(3) The transportation service provided for in subsection (1) must include provisions for:

(a) the procurement and use of vehicles suited for the purposes of the service;

(b) the qualifications, training, and safety of individuals providing the service and the safety and dignity of individuals transported by the service;

(c) a written policy for the use of mechanical or medical restraints that provides for the restraint of individuals being transported only for those situations in which the safety of the individuals being transported or providing the transportation clearly requires the use of restraints;

(d) discharge planning that is coordinated with the transportation of individuals who are to be released from the state hospital; and

(e) the payment by a county of fees, commensurate with costs, for services provided:

(i) by the department when the county is seeking the involuntary commitment or treatment of the individual at the state hospital. The fees must be deposited in the account provided for in [section 4].

(ii) by a county containing a regional medical center if it provides for transportation to the state hospital under this section.

(4) If restraints are used while an individual is being transported to the state hospital, the individual must be given a physical examination upon arrival at the state hospital to determine whether any injury to the individual has occurred during the period of transportation.

(5) If an individual cannot for any reason be transported by the service provided pursuant to this section or if a county chooses to not use the service, a sheriff may be used by the county seeking the involuntary commitment or treatment of the individual under the provisions contained in 7-32-2144.

(6) The department shall adopt rules to implement this section.

Section 2. Section 7-32-2144, MCA, is amended to read:

"7-32-2144. Mileage and expenses of sheriff for delivery of prisoners and mentally ill persons. (1) A *Subject to the provisions of [section 1], a* sheriff delivering prisoners at the state prison or a juvenile correctional facility or mentally ill persons at the Montana state hospital or other mental health

facility is entitled to actual expenses necessarily incurred in their transportation. The expenses include the expenses of the sheriff in going to and returning from the institution. The sheriff shall take vouchers for every item of expense. The amount of these expenses, as shown by the vouchers when presented by the sheriff, must be audited and allowed by the governor or by the board of county commissioners, as the case may be, and paid out of the same money and in the same manner as are other expense claims against the state or counties. No other compensation may be received by sheriffs for the expenses.

(2) Unless otherwise provided, while in the discharge of civil and criminal duties, the sheriff is entitled to a mileage allowance, as provided in 2-18-503. The sheriff must also be reimbursed for actual and necessarily incurred expenses for transporting, lodging, and feeding persons ordered by the court, as provided in 2-18-501 through 2-18-503. The county is not liable for and the board of county commissioners may not pay for any claim of the sheriff or other officer for any other expenses incurred in travel or for expenses in cases for which mileage is allowed under this section."

Section 3. Section 53-21-132, MCA, is amended to read:

"53-21-132. Cost of examination and commitment. (1) *(a)* ~~The~~ Except as provided in subsection (1)(b), the cost of psychiatric precommitment examination, detention, treatment, and ~~taking~~ *transportation of* a person who is suffering from a mental disorder and who requires commitment to a mental health facility must be paid pursuant to subsection (2)(a).

(b) Transportation costs to the state hospital for involuntary commitment or treatment must be covered as provided in [section 1].

(c) ~~The~~ *A* sheriff *transporting persons pursuant to 7-32-2144* must be allowed the actual expenses incurred in taking a committed person to the facility, as provided by 7-32-2144.

(2) (a) The costs of precommitment psychiatric detention, precommitment psychiatric examination, and precommitment psychiatric treatment of the respondent and any cost associated with testimony during an involuntary commitment proceeding by a professional person acting pursuant to 53-21-123 must be billed to the following entities in the listed order of priority:

(i) the respondent, the parent or guardian of a respondent who is a minor, or the respondent's private insurance carrier, if any;

(ii) a public assistance program, such as medicaid, for a qualifying respondent; or

(iii) the county of residence of the respondent in an amount not to exceed the amount paid for the service by a public assistance program.

(b) The county of residence is not required to pay costs of treatment and custody of the respondent after the respondent is committed pursuant to this part. Precommitment costs related to the use of two-way electronic audio-video communication in the county of commitment must be paid by the county in which the person resides at the time that the person is committed. The costs of the use of two-way electronic audio-video communication from the state hospital for a patient who is under a voluntary or involuntary commitment to the state hospital must be paid by the state. The fact that a person is examined, hospitalized, or receives medical, psychological, or other mental health treatment pursuant to this part does not relieve a third party from a contractual obligation to pay for the cost of the examination, hospitalization, or treatment.

(3) The adult respondent or the parent or guardian of a minor shall pay the cost of treatment and custody ordered pursuant to 53-21-127, except to the extent that the adult or minor is eligible for public mental health program funds.

(4) A community service provider that is a private, nonpublic provider may not be required to treat or treat without compensation a person who has been committed."

Section 4. Transportation for involuntary commitment or treatment account. There is a transportation for involuntary commitment or treatment account in the state special revenue fund. The account must be used to lower transportation costs for counties seeking the involuntary commitment or treatment of an individual. Money is payable into the account as provided in [section 1]. Income and earnings on the account must be deposited in the account. The account must be administered by the department.

Section 5. Report to legislature. (1) The department of public health and human services shall provide regular interim reports on the status of the program and program expenditures to the legislative finance committee and the children, families, health, and human services interim committee.

(2) The department shall report to the legislature, as provided for in 5-11-210, the following information for the program established in [section 1] for each year of the biennium:

(a) the number of individuals transported by the program, by county;

(b) the costs to the department for the program;

(c) the amount of fees paid by counties to the state;

(d) the amount, if any, collected from third-party payors for transportation costs; and

(e) the number of times restraints were used when transporting individuals and the reasons why restraints were used.

Section 6. Appropriation. There is appropriated $750,000 for each fiscal year of the biennium beginning July 1, 2009, from the state special revenue account created in [section 4] to the department for the purposes described in [section 1].

Section 7. Codification instruction. [Sections 1 and 4] are intended to be codified as an integral part of Title 53, chapter 21, and the provisions of Title 53, chapter 21, apply to [sections 1 and 4].

Section 8. Effective date. [This act] is effective July 1, 2009.

Section 9. Termination. [This act] terminates June 30, 2011.

Approved April 28, 2009

CHAPTER NO. 389

[HB 636]

AN ACT EXCLUDING FROM CORPORATE GROSS INCOME AND FROM INDIVIDUAL ADJUSTED GROSS INCOME THE AMOUNT OF THE GAIN RECOGNIZED FROM THE SALE OR EXCHANGE OF A MOBILE HOME PARK TO CERTAIN ENTITIES; AMENDING SECTION 15-30-111, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Capital gain exclusion from sale of mobile home park. (1) The following amount of the gain recognized from the sale or exchange of a mobile home park as defined in 70-33-103 is excluded from adjusted gross income or gross income under chapter 30 or 31:

(a) 100% of the recognized gain for a mobile home park with 50 or fewer lots; or

(b) 50% of the recognized gain for a mobile home park with more than 50 lots.

(2) To qualify for the exclusion under this section, the sale must be made to:

(a) a tenants' association or a mobile home park residents' association;

(b) a nonprofit organization under section 501(c)(3) of the Internal Revenue Code that purchases a mobile home park on behalf of tenants' association or mobile home park residents' association;

(c) a county housing authority created under Title 7, chapter 15, part 21; or

(d) a municipal housing authority created under Title 7, chapter 15, parts 44 and 45.

(3) A corporation, an individual, a partnership, an S. corporation, or a disregarded entity qualifies for the exclusion under this section. If the exclusion allowed under this section is taken by a partnership, an S. corporation, or a disregarded entity, the exclusion must be attributed to shareholders, partners, or other owners, using the same proportion used to report the partnership's, S. corporation's, or disregarded entity's income or loss for Montana income tax purposes.

(4) For the purpose of this section, "tenants' association" or "mobile home park residents' association" means a group of six or more tenants who reside in a mobile home park, have organized for the purpose of eventual purchase of the mobile home park, have established bylaws of the association, and have obtained the approval by vote of at least 51% of the residents of the mobile home park to purchase the mobile home park.

(5) Property subject to an income or corporate tax exclusion under this section is not eligible for a property tax exemption under Title 15, chapter 6, part 2, while the property is used as a mobile home park.

Section 2. Section 15-30-111, MCA, is amended to read:

"15-30-111. Adjusted gross income. (1) Adjusted gross income is the taxpayer's federal adjusted gross income as defined in section 62 of the Internal Revenue Code, 26 U.S.C. 62, and in addition includes the following:

(a) (i) interest received on obligations of another state or territory or county, municipality, district, or other political subdivision of another state, except to the extent that the interest is exempt from taxation by Montana under federal law;

(ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code, 26 U.S.C. 852(b)(5), that are attributable to the interest referred to in subsection (1)(a)(i);

(b) refunds received of federal income tax, to the extent that the deduction of the tax resulted in a reduction of Montana income tax liability;

(c) that portion of a shareholder's income under subchapter S. of Chapter 1 of the Internal Revenue Code that has been reduced by any federal taxes paid by the subchapter S. corporation on the income;

(d) depreciation or amortization taken on a title plant as defined in 33-25-105;

(e) the recovery during the tax year of an amount deducted in any prior tax year to the extent that the amount recovered reduced the taxpayer's Montana income tax in the year deducted;

(f) if the state taxable distribution of an estate or trust is greater than the federal taxable distribution of the same estate or trust, the difference between the state taxable distribution and the federal taxable distribution of the same estate or trust for the same tax period; and

(g) except for exempt-interest dividends described in subsection (2)(a)(ii), for tax years commencing after December 31, 2002, the amount of any dividend to the extent that the dividend is not included in federal adjusted gross income.

(2) Notwithstanding the provisions of the Internal Revenue Code, adjusted gross income does not include the following, which are exempt from taxation under this chapter:

(a) (i) all interest income from obligations of the United States government, the state of Montana, or a county, municipality, district, or other political subdivision of the state and any other interest income that is exempt from taxation by Montana under federal law;

(ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code, 26 U.S.C. 852(b)(5), that are attributable to the interest referred to in subsection (2)(a)(i);

(b) interest income earned by a taxpayer who is 65 years of age or older in a tax year up to and including $800 for a taxpayer filing a separate return and $1,600 for each joint return;

(c) (i) except as provided in subsection (2)(c)(ii), the first $3,600 of all pension and annuity income received as defined in 15-30-101;

(ii) for pension and annuity income described under subsection (2)(c)(i), as follows:

(A) each taxpayer filing singly, head of household, or married filing separately shall reduce the total amount of the exclusion provided in subsection (2)(c)(i) by $2 for every $1 of federal adjusted gross income in excess of $30,000 as shown on the taxpayer's return;

(B) in the case of married taxpayers filing jointly, if both taxpayers are receiving pension or annuity income or if only one taxpayer is receiving pension or annuity income, the exclusion claimed as provided in subsection (2)(c)(i) must be reduced by $2 for every $1 of federal adjusted gross income in excess of $30,000 as shown on their joint return;

(d) all Montana income tax refunds or tax refund credits;

(e) gain required to be recognized by a liquidating corporation under 15-31-113(1)(a)(ii);

(f) all tips or gratuities that are covered by section 3402(k) or service charges that are covered by section 3401 of the Internal Revenue Code of 1954, 26 U.S.C. 3402(k) or 3401, as amended and applicable on January 1, 1983, received by a person for services rendered to patrons of premises licensed to provide food, beverage, or lodging;

(g) all benefits received under the workers' compensation laws;

(h) all health insurance premiums paid by an employer for an employee if attributed as income to the employee under federal law;

(i) all money received because of a settlement agreement or judgment in a lawsuit brought against a manufacturer or distributor of "agent orange" for damages resulting from exposure to "agent orange";

(j) principal and income in a medical care savings account established in accordance with 15-61-201 or withdrawn from an account for eligible medical expenses, as defined in 15-61-102, of the taxpayer or a dependent of the taxpayer or for the long-term care of the taxpayer or a dependent of the taxpayer;

(k) principal and income in a first-time home buyer savings account established in accordance with 15-63-201 or withdrawn from an account for eligible costs, as provided in 15-63-202(7), for the first-time purchase of a single-family residence;

(l) contributions withdrawn from a family education savings account or earnings withdrawn from a family education savings account for qualified higher education expenses, as defined in 15-62-103, of a designated beneficiary;

(m) the recovery during the tax year of any amount deducted in any prior tax year to the extent that the recovered amount did not reduce the taxpayer's Montana income tax in the year deducted;

(n) if the federal taxable distribution of an estate or trust is greater than the state taxable distribution of the same estate or trust, the difference between the federal taxable distribution and the state taxable distribution of the same estate or trust for the same tax period;

(o) deposits, not exceeding the amount set forth in 15-30-603, deposited in a Montana farm and ranch risk management account, as provided in 15-30-601 through 15-30-605, in any tax year for which a deduction is not provided for federal income tax purposes;

(p) income of a dependent child that is included in the taxpayer's federal adjusted gross income pursuant to the Internal Revenue Code. The child is required to file a Montana personal income tax return if the child and taxpayer meet the filing requirements in 15-30-142.

(q) principal and income deposited in a health care expense trust account, as defined in 2-18-1303, or withdrawn from the account for payment of qualified health care expenses as defined in 2-18-1303; ~~and~~

(r) that part of the refundable credit provided in 33-22-2006 that reduces Montana tax below zero*; and*

(s) the amount of the gain recognized from the sale or exchange of a mobile home park as provided in [section 1].

(3) A shareholder of a DISC that is exempt from the corporation license tax under 15-31-102(1)(l) shall include in the shareholder's adjusted gross income the earnings and profits of the DISC in the same manner as provided by section 995 of the Internal Revenue Code, 26 U.S.C. 995, for all periods for which the DISC election is effective.

(4) A taxpayer who, in determining federal adjusted gross income, has reduced the taxpayer's business deductions by an amount for wages and salaries for which a federal tax credit was elected under sections 38 and 51(a) of the Internal Revenue Code, 26 U.S.C. 38 and 51(a), is allowed to deduct the amount of the wages and salaries paid regardless of the credit taken. The deduction must be made in the year that the wages and salaries were used to compute the credit. In the case of a partnership or small business corporation, the deduction must be made to determine the amount of income or loss of the partnership or small business corporation.

(5) Married taxpayers filing a joint federal return who are required to include part of their social security benefits or part of their tier 1 railroad retirement benefits in federal adjusted gross income may split the federal base used in calculation of federal taxable social security benefits or federal taxable tier 1 railroad retirement benefits when they file separate Montana income tax returns. The federal base must be split equally on the Montana return.

(6) Married taxpayers filing a joint federal return who are allowed a capital loss deduction under section 1211 of the Internal Revenue Code, 26 U.S.C. 1211, and who file separate Montana income tax returns may claim the same amount of the capital loss deduction that is allowed on the federal return. If the allowable capital loss is clearly attributable to one spouse, the loss must be shown on that spouse's return; otherwise, the loss must be split equally on each return.

(7) In the case of passive and rental income losses, married taxpayers filing a joint federal return and who file separate Montana income tax returns are not required to recompute allowable passive losses according to the federal passive activity rules for married taxpayers filing separately under section 469 of the Internal Revenue Code, 26 U.S.C. 469. If the allowable passive loss is clearly attributable to one spouse, the loss must be shown on that spouse's return; otherwise, the loss must be split equally on each return.

(8) Married taxpayers filing a joint federal return in which one or both of the taxpayers are allowed a deduction for an individual retirement contribution under section 219 of the Internal Revenue Code, 26 U.S.C. 219, and who file separate Montana income tax returns may claim the same amount of the deduction that is allowed on the federal return. The deduction must be attributed to the spouse who made the contribution.

(9) (a) Married taxpayers filing a joint federal return who are allowed a deduction for interest paid for a qualified education loan under section 221 of the Internal Revenue Code, 26 U.S.C. 221, and who file separate Montana income tax returns may claim the same amount of the deduction that is allowed on the federal return. The deduction may be split equally on each return or in proportion to each taxpayer's share of federal adjusted gross income.

(b) Married taxpayers filing a joint federal return who are allowed a deduction for qualified tuition and related expenses under section 222 of the Internal Revenue Code, 26 U.S.C. 222, and who file separate Montana income tax returns may claim the same amount of the deduction that is allowed on the federal return. The deduction may be split equally on each return or in proportion to each taxpayer's share of federal adjusted gross income.

(10) A taxpayer receiving retirement disability benefits who has not attained 65 years of age by the end of the tax year and who has retired as permanently and totally disabled may exclude from adjusted gross income up to $100 a week received as wages or payments in lieu of wages for a period during which the employee is absent from work due to the disability. If the adjusted gross income before this exclusion exceeds $15,000, the excess reduces the exclusion by an equal amount. This limitation affects the amount of exclusion, but not the taxpayer's eligibility for the exclusion. If eligible, married individuals shall apply the exclusion separately, but the limitation for income exceeding $15,000 is determined with respect to the spouses on their combined adjusted gross income. For the purpose of this subsection, "permanently and totally disabled" means unable to engage in any substantial gainful activity by reason of any medically determined physical or mental impairment lasting or expected to last at least 12 months.

(11) An individual who contributes to one or more accounts established under the Montana family education savings program may reduce adjusted gross income by the lesser of $3,000 or the amount of the contribution. In the case of married taxpayers, each spouse is entitled to a reduction, not in excess of $3,000, for the spouses' contributions to the accounts. Spouses may jointly elect to treat half of the total contributions made by the spouses as being made by each spouse. The reduction in adjusted gross income under this subsection applies only with respect to contributions to an account of which the account owner, as defined in 15-62-103, is the taxpayer, the taxpayer's spouse, or the taxpayer's child or stepchild if the taxpayer's child or stepchild is a Montana resident. The provisions of subsection (1)(e) do not apply with respect to withdrawals of contributions that reduced adjusted gross income.

(12) (a) A taxpayer may exclude the amount of the loan payment received pursuant to subsection (12)(a)(iv), not to exceed $5,000, from the taxpayer's adjusted gross income if the taxpayer:

(i) is a health care professional licensed in Montana as provided in Title 37;

(ii) is serving a significant portion of a designated geographic area, special population, or facility population in a federally designated health professional shortage area, a medically underserved area or population, or a federal nursing shortage county as determined by the secretary of health and human services or by the governor;

(iii) has had a student loan incurred as a result of health-related education; and

(iv) has received a loan payment during the tax year made on the taxpayer's behalf by a loan repayment program described in subsection (12)(b) as an incentive to practice in Montana.

(b) For the purposes of subsection (12)(a), a loan repayment program includes a federal, state, or qualified private program. A qualified private loan repayment program includes a licensed health care facility, as defined in 50-5-101, that makes student loan payments on behalf of the person who is employed by the facility as a licensed health care professional. (Subsection (2)(f) terminates on occurrence of contingency—sec. 3, Ch. 634, L. 1983; subsection (2)(o) terminates on occurrence of contingency—sec. 9, Ch. 262, L. 2001.)"

Section 3. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 15, chapter 31, part 1, and the provisions of Title 15, chapter 31, part 1, apply to [section 1].

Section 4. Effective date. [This act] is effective on passage and approval.

Section 5. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2008.

Approved April 28, 2009

CHAPTER NO. 390

[HB 655]

AN ACT CREATING THE HORSE OWNER AMNESTY ACT; ALLOWING CERTAIN HORSE OWNERS TO SURRENDER A HORSE TO THE DEPARTMENT OF LIVESTOCK AT A LICENSED LIVESTOCK MARKET UPON PAYMENT OF A FEE; PROVIDING FOR THE DISPOSAL OF THE HORSE BY PUBLIC AUCTION OR ADOPTION; PROHIBITING THE HORSE

OWNER FROM BEING CHARGED WITH ANIMAL CRUELTY; CREATING A HORSE OWNER AMNESTY SPECIAL REVENUE ACCOUNT; PROVIDING A STATUTORY APPROPRIATION TO THE DEPARTMENT; GRANTING THE DEPARTMENT RULEMAKING AUTHORITY AND AUTHORITY TO SET CERTAIN FEES; AND AMENDING SECTION 17-7-502, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Short title. [Sections 1 through 4] may be referred to as the "Horse Owner Amnesty Act".

Section 2. Horse owner amnesty for horse transferred to department at licensed livestock market — fees. (1) A horse owner may surrender ownership of a horse to the department at a licensed livestock market, as defined in 81-8-213, if the owner is unable to provide food and water of sufficient quantity and quality to sustain the animal's normal health.

(2) The owner shall pay to the department a fee to be set by rule by the department.

(3) Except as provided in subsections (4) and (5), the department shall sell the horse at a public auction.

(4) A licensed veterinarian may euthanize a horse if the veterinarian determines it to be medically necessary after an inspection of the horse.

(5) The department may allow a surrendered horse to be adopted if a suitable placement can be made and after payment of:

(a) a fee to be set by the department by rule; and

(b) the costs incurred by the department or the public livestock market to maintain the horse.

(6) The fees imposed and the proceeds collected under subsections (2), (3), and (5) must be deposited in the special revenue account provided for in [section 3].

(7) A person surrendering a horse to the department under the provisions of this section may not be charged with or prosecuted for cruelty towards animals pursuant to 45-8-211 or 45-8-217.

Section 3. Horse owner amnesty special revenue account. (1) There is a horse owner amnesty account in the state special revenue fund. Money must be deposited in the account pursuant to [section 1(6)] and subsection (2) of this section.

(2) Money received by the state in the form of gifts, grants, reimbursements, or allocations from any source to be used for the purposes of defraying the costs of [sections 1 through 4] must be deposited in the account.

(3) The money in the account is statutorily appropriated, as provided in 17-7-502, to the department of livestock, which shall use the funds to defray the costs of [sections 1 through 4].

Section 4. Rulemaking. The department may adopt rules to administer [sections 1 through 4], including but not limited to rules to:

(1) set fees for horse surrender and adoption;

(2) determine what, if any, proof of financial hardship may be required before an owner may surrender a horse;

(3) create procedures for the adoption of surrendered horses;

(4) reimburse licensed livestock markets for expenses incurred in the upkeep of surrendered horses; and

(5) allow a person who has surrendered a horse to buy the horse back if the person's financial circumstances change and the horse has not been sold or adopted.

Section 5. Section 17-7-502, MCA, is amended to read:

"17-7-502. Statutory appropriations — definition — requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-17-105; 5-11-120; 5-11-407; 5-13-403; 7-4-2502; 10-1-1202; 10-1-1303; 10-2-603; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-121; 15-1-218; 15-23-706; 15-31-906; 15-35-108; 15-36-332; 15-37-117; 15-39-110; 15-65-121; 15-70-101; 15-70-369; 15-70-601; 16-11-509; 17-3-106; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-7-304; 18-11-112; 19-3-319; 19-6-404; 19-6-410; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 19-20-607; 19-21-203; 20-8-107; 20-9-534; 20-9-622; 20-26-1503; 22-3-1004; 23-4-105; 23-4-202; 23-4-204; 23-4-302; 23-4-304; 23-5-306; 23-5-409; 23-5-612; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503; 41-5-2011; 42-2-105; 44-1-504; 44-12-206; 44-13-102; 50-4-623; 53-1-109; 53-6-703; 53-24-108; 53-24-206; 60-11-115; 61-3-415; 69-3-870; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 76-13-150; 77-1-108; 77-2-362; 80-2-222; 80-4-416; 80-5-510; 80-11-518; *[section 3];* 82-11-161; 87-1-513; 90-1-115; 90-1-205; 90-3-1003; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 4, Ch. 497, L. 1999, the inclusion of 15-38-202 terminates July 1, 2014; pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, and secs. 3 and 6, Ch. 481, L. 2003, the inclusion of 15-35-108 terminates June 30, 2010; pursuant to sec. 17, Ch. 593, L. 2005, the inclusion of 15-31-906 terminates January 1, 2010; pursuant to sec. 73, Ch. 44, L. 2007, the inclusion of 19-6-410 terminates upon the death of the last recipient eligible under 19-6-709(2) for the supplemental benefit provided by 19-6-709; and pursuant to sec. 6, Ch. 2, Sp. L. September 2007, the inclusion of 76-13-150 terminates June 30, 2009.)"

Section 6. Codification instruction. [Sections 1 through 3] are intended to be codified as an integral part of Title 81, and the provisions of Title 81 apply to [sections 1 through 3].

Approved April 28, 2009

CHAPTER NO. 391

[HB 656]

AN ACT REVISING THE ADMINISTRATION OF AGENCY LIQUOR STORES; INCREASING THE VOLUME SALES AMOUNT FOR DETERMINING AGENCY LIQUOR SALES COMMISSIONS TO ACCOUNT FOR INFLATION; PROVIDING FOR FUTURE INCREASES IN THE COMMISSION AMOUNT TO BE DETERMINED BY A LIQUOR-SPECIFIC INFLATIONARY ADJUSTMENT TO BE DETERMINED BY THE DEPARTMENT OF REVENUE; AND AMENDING SECTION 16-2-101, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 16-2-101, MCA, is amended to read:

"16-2-101. Establishment and closure of agency liquor stores — agency franchise agreement — kinds and prices of liquor. (1) The department shall enter into agency franchise agreements to operate agency liquor stores as the department finds feasible for the wholesale and retail sale of liquor.

(2) (a) The department may from time to time fix the posted prices at which the various classes, varieties, and brands of liquor may be sold, and the posted prices must be the same at all agency liquor stores.

(b) (i) The department shall supply from the state liquor warehouse to agency liquor stores the various classes, varieties, and brands of liquor for resale at the state posted price to persons who hold liquor licenses and to all other persons at the retail price established by the agent.

(ii) (A) According to the ordering and delivery schedule set by the department, an agency liquor store may place a liquor order with the department at its state liquor warehouse in the manner to be established by the department.

(B) The agency liquor store's purchase price is the department's posted price less the agency liquor store's commission rate and less the agency liquor store's weighted average discount ratio. For purposes of this subsection (2)(b)(ii)(B), for agency liquor stores or employee-operated state liquor stores that were operating on June 30, 1994, the weighted average discount ratio is the ratio between an agency liquor store's or the employee-operated state liquor store's full case discount sales divided by the agency liquor store's or employee-operated state liquor store's gross sales, based on fiscal year 1994 reported sales, times the state discount rate for case lot sales, as provided in 16-2-201, divided by the state discount rate for full case lot sales in effect on June 30, 1994. For all other stores that are placed in service after June 30, 1994, the weighted average discount ratio is the average ratio in fiscal year 1994 for similar sized stores for 1 year of operation. The weighted average discount ratio must be computed on the store's first 12 months of operation.

(C) All liquor purchased from the state liquor warehouse by an agency liquor store must be paid for within 60 days of the date on which the department invoices the liquor to the agency liquor store.

(c) An agency liquor store may sell table wine at retail for off-premises consumption.

(3) Agency liquor stores may not be located in or adjacent to grocery stores in communities with populations over 3,000.

(4) *(a)* Agency liquor stores must receive commissions payable as follows:

~~(a)~~*(i)* ~~(i)~~*(A)* a 10% commission for agencies in communities with less than 3,000 in population, unless adjusted pursuant to subsection (6); or

~~(ii)~~*(B)* a commission established by competitive bidding unless adjusted pursuant to subsection (6) for agencies in communities with 3,000 or more in population; plus

~~(b)~~*(ii)* for agency liquor stores operating under a renewed franchise agreement or that have been operated for at least 3 years under an original franchise agreement, a percentage based upon the total annual dollar volume of sales in the previous fiscal year, as follows:

~~(i)~~*(A)* for agency liquor stores with a volume of sales of ~~$500,000~~ *$560,000* or more, 0.875% beginning July 1, ~~2004~~ *2009*;

~~(ii)~~*(B)* for agency liquor stores with a volume of sales of less than ~~$500,000~~ *$560,000*, 1.5% beginning July 1, ~~2004~~ *2009*; or

~~(iii)~~*(C)* for a city with more than one agency liquor store, in lieu of the addition to a commission increase provided in subsection ~~(4)(b)(i)~~ *(4)(a)(ii)(A)* or ~~(4)(b)(ii)~~ *(4)(a)(ii)(B)*, for each agency liquor store in the city, an addition to its commission rate equal to the increase granted the agency liquor store with the lowest commission rate.

(b) The department shall by April 1 of each year determine the dollar values of sales volumes in subsections (4)(a)(ii)(A) and (4)(a)(ii)(B) by using an inflation factor based on the change in the cost of liquor to agency liquor stores during the prior calendar year. The department shall establish the method of determining the inflation factor by rule using a liquor-specific base such as the annual change in the cost per case of the 25 items with the highest sales volume for a calendar year or another appropriate method of measuring the change in liquor prices.

(5) An agency franchise agreement must:

(a) be effective for a 10-year period and must be renewed at the existing commission rate for additional 10-year periods if the requirements of the agency franchise agreement have been satisfactorily performed;

(b) require the agent to maintain comprehensive general liability insurance and liquor liability insurance throughout the term of the agency franchise agreement in an amount established by the department of administration. The insurance policy must:

(i) declare the department as an additional insured; and

(ii) hold the state harmless and agree to defend and indemnify the state in a cause of action arising from or in connection with the agent's negligent acts or activities in the execution and performance of the agency franchise agreement.

(c) provide that upon termination by the department for cause or upon mutual termination, the agent is liable for any outstanding liquor purchase invoices. If payment is not made within the appropriate time, the department may immediately repossess all liquor inventory, wherever located.

(d) specify the reasonable service and space requirements that the agent will provide throughout the term of the agency franchise agreement.

(6) (a) The commission percentage that the department pays the agent under subsection (4)(a) may be reviewed every 3 years at the request of either party. If the agent concurs, the department may adjust the commission percentage to be paid during the remaining term of the agency franchise agreement or until the next time the commission percentage is reviewed, if that is sooner than the term of the agency franchise agreement, to a commission percentage that is equal to the average commission percentage being paid agents with similar sales volumes if:

(i) the agent's commission percentage is less than the average; and

(ii) all the requirements of the agency franchise agreement have been satisfactorily performed.

(b) The adjusted commission percentage determined under subsection (6)(a) may be greater than the average commission paid agents with similar sales volume:

(i) if the agent demonstrates that:

(A) the agent has experienced cost increases that are beyond the agent's control, including but not limited to increases in the federally established minimum wage or escalation in prevailing rent; and

(B) the average commission percentage is insufficient to yield net income commensurate with net income experienced before the cost increases occurred; and

(ii) if the department demonstrates that it is unable to indicate adjustments in the requirements specified in the agent's franchise agreement that will eliminate the impact of cost increases.

(7) The liability insurance requirement may be reviewed every 3 years at the request of either the agent or the department. If the agent concurs, the department may adjust the requirements to be effective during the remaining term of the agency franchise agreement if the adjustments adequately protect the state from risks associated with the agent's negligent acts or activities in the execution and performance of the agency franchise agreement. The amount of liability insurance coverage may not be less than the minimum requirements of the department of administration.

(8) (a) The department may terminate an agency franchise agreement if the agent has not satisfactorily performed the requirements of the agency franchise agreement because the agent:

(i) charges retail prices that are less than the department's posted price for liquor, sells liquor to persons who hold liquor licenses at less than the posted price, or sells liquor at case discounts greater than the discount provided for in 16-2-201 to persons who hold liquor licenses;

(ii) fails to maintain sufficient liability insurance;

(iii) has not maintained a quantity and variety of product available for sale commensurate with demand, delivery cycle, repayment schedule, mixed case shipments from the department, and the ability to purchase special orders;

(iv) at an agency liquor store located 35 miles or more from the nearest agency liquor store, has operated the agency liquor store in a manner that makes the premises unsanitary or inaccessible for the purpose of making purchases of liquor; or

(v) fails to comply with the express terms of the agency franchise agreement.

(b) The department shall give an agent 30 days' notice of its intent to terminate the agency franchise agreement for cause and specify the unmet requirements. The agent may contest the termination and request a hearing within 30 days of the date of notice. If a hearing is requested, the department shall suspend its termination order until after a final decision has been made pursuant to the Montana Administrative Procedure Act.

(c) In the case of failure to make timely payments to the department for liquor purchased, the department may terminate the agency franchise agreement and immediately repossess any liquor purchased and in the possession of the agent. If an agency franchise agreement is terminated, the agent may contest the termination and request a hearing within 30 days of the department's repossession of the liquor. The agency liquor store shall remain closed until a final decision has been reached following a hearing held pursuant to the Montana Administrative Procedure Act.

(9) An agency franchise agreement may be terminated upon mutual agreement by the agent and the department.

(10) An agent may assign an agency franchise agreement to a person who, upon approval of the department, is named agent in the agency franchise agreement, with the rights, privileges, and responsibilities of the original agent for the remaining term of the agency franchise agreement. The agent shall notify the department of an intent to assign the agency franchise agreement 60 days before the intended effective date of the assignment. The department may not unreasonably withhold approval of an assignment request.

(11) A person or entity may not hold an ownership interest in more than one agency liquor store.

(12) The department shall maintain sufficient inventory in the state warehouse in order to meet a monthly service level of at least 97%."

Approved April 28, 2009

CHAPTER NO. 392

[SB 18]

AN ACT REVISING THE LAWS GOVERNING FISCAL NOTES; SUBSTITUTING A SPONSOR'S FISCAL NOTE REBUTTAL FOR A SPONSOR'S FISCAL NOTE; PROVIDING FOR THE CONTENT OF A SPONSOR'S FISCAL NOTE REBUTTAL; CLARIFYING THE CONTENT OF FISCAL NOTES; AMENDING SECTIONS 5-4-204 AND 5-4-205, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 5-4-204, MCA, is amended to read:

"5-4-204. Submission of fiscal note — sponsor's fiscal note *rebuttal* — distribution to legislators. (1) A completed fiscal note must be submitted by the budget director to the presiding officer who requested it. Upon receipt of the completed fiscal note, the presiding officer shall notify the sponsor of the bill for which the fiscal note was prepared that the fiscal note has been completed and is available for review. Within 24 hours following notification, the sponsor shall:

(a) notify the presiding officer that the sponsor concurs with the completed fiscal note;

(b) request additional time, not to exceed 24 hours, to consult with the budget director on the fiscal note; or

(c) elect to prepare a sponsor's fiscal note *rebuttal* as provided in subsection (4).

(2) (a) If the sponsor concurs with the completed fiscal note prepared by the budget director or elects to prepare a sponsor's fiscal note *rebuttal*, the presiding officer shall refer the completed fiscal note prepared by the budget director to the committee considering the bill. If the bill is printed, the note must be reproduced and placed on the members' desks.

(b) If the sponsor requests additional time to consult with the budget director, the presiding officer shall notify the sponsor and the budget director of the time, not to extend beyond the time limitation specified in subsection (1)(b), by which:

(i) the budget director shall submit a revised completed fiscal note to the presiding officer;

(ii) the sponsor shall notify the presiding officer that the sponsor concurs with the original completed fiscal note; or

(iii) the sponsor shall elect to prepare a sponsor's fiscal note *rebuttal* as provided in subsection (4).

(3) At the time specified as provided in subsection (2)(b), the presiding officer shall refer the original or, if revised, the revised fiscal note to the committee considering the bill. If the bill is printed, the note must be reproduced and placed on the members' desks.

(4) (a) If a sponsor elects to prepare a sponsor's fiscal note *rebuttal*, the sponsor shall prepare the fiscal note *rebuttal on a form*~~, as~~ provided ~~in 5-4-205,~~ *by the legislative services division* and return the completed sponsor's fiscal note *rebuttal form* to the presiding officer within 4 days of the election to prepare a sponsor's fiscal note *rebuttal. The form must identify the bill number, the sponsor of the bill, the date prepared, the version of the fiscal note being rebutted, the reasons the sponsor disagrees with the fiscal note, the items or assumptions in the fiscal note that the sponsor believes are incorrect, and the sponsor's estimate of the fiscal impact, if an estimate is available.*

(b) The presiding officer may grant additional time to the sponsor to prepare the sponsor's fiscal note *rebuttal*.

(c) Upon receipt of the completed sponsor's fiscal note *rebuttal form*, the presiding officer shall refer it to the committee hearing the bill. If the bill is printed, the ~~note~~ *form* must be identified as a sponsor's fiscal note *rebuttal*, reproduced, and placed on the members' desks."

Section 2. Section 5-4-205, MCA, is amended to read:

"5-4-205. Contents of notes. *(1)* Fiscal notes ~~shall~~ *must*, ~~where~~ *when* possible, show in dollar amounts the estimated increase or decrease in ~~revenues~~ *revenue* or expenditures, costs ~~which~~ *that* may be absorbed without additional funds, and long-range financial implications. ~~No~~ *A* comment or opinion relative to *the* merits of the bill ~~shall~~ *may not* be included~~;~~ *in the fiscal note.* ~~however~~ *However*, technical or mechanical defects may be noted.

(2) It is the legislature's intent that a fiscal note be prepared as an objective analysis of the fiscal impact of legislation. The fiscal note should represent only the estimate of the revenue and expenditures that would result from the implementation of the legislation, if enacted, and may not in any way reflect the

views or opinions of the preparing agencies, the sponsor, or other interested parties. Changes in revenue must be estimated for each reported year based upon appropriate revenue estimating methodologies for the source of revenue described and should reflect a change from the official revenue estimate provided for in 5-5-227. Expenditures must be estimated as the amount required for implementing the legislation, if enacted, in excess of or as a reduction to the present law base level of expenditures in each reported year regardless of whether or not the preparing agency determines that it can absorb the costs in its proposed budget.

(3) The fiscal note must clearly differentiate between facts and assumptions made in the preparation of the fiscal note while maintaining a logical flow of both fact and assumption in presenting how the fiscal impact is determined."

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 28, 2009

CHAPTER NO. 393

[SB 38]

AN ACT GENERALLY REVISING LAWS GOVERNING NURSERIES AND PLANT DEALERS; REVISING LICENSING PROVISIONS AND FEES APPLIED TO SELLERS OF NURSERY STOCK; AMENDING SECTION 80-7-106, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 80-7-106, MCA, is amended to read:

"80-7-106. License required — application and payment of license fee. (1) A firm, nursery, or plant dealer engaging in the business of selling or distributing nursery stock in this state shall obtain a license ~~for each location~~ from the department. *If the firm, nursery, or plant dealer sells or distributes nursery stock at more than one location, the firm, nursery, or plant dealer shall obtain:*

(a) one license if its combined annual gross sales are less than $10,000; and

(b) a license for each location if its gross annual sales are $10,000 or more.

(2) The license must be in the name of the firm, nursery, or plant dealer seeking the license and expires on the anniversary date established by rule by the board of review established in 30-16-302. The applicant shall provide information that the department finds necessary to carry out the provisions and purposes of this chapter and in the form determined by rule by the board of review established in 30-16-302.

(3) *(a)* ~~The department shall establish license fees by rule. License fees may be no less than $95 or more than $125. If the department determines that the revenue from the license fee is inadequate to accomplish the purposes of this chapter, the department may by rule increase the fee within the statutory limit.~~ *A firm, nursery, or plant dealer that earns less than $1,000 in gross annual sales of nursery stock must be licensed but is exempt from licensing fees.*

(b) A firm, nursery, or plant dealer that earns $1,000 but less than $3,000 in gross annual sales of nursery stock shall pay a license fee of $50.

(c) A firm, nursery, or plant dealer that earns $3,000 but less than $10,000 in gross annual sales of nursery stock shall pay a license fee of $125.

(d) A firm, nursery, or plant dealer that earns $10,000 or more in gross annual sales of nursery stock shall pay a license fee of $160.

(e) The department may seek verification from the department of revenue as to whether the income thresholds established in this section have been met.

(4) A new applicant or a firm, nursery, or plant dealer failing to renew a license on or before the annual anniversary date provided for in subsection (2) shall pay an additional nonrefundable late fee of $25 for each license.

~~(5) An out-of-state firm that imports nursery stock into Montana for resale by a licensed Montana nursery or plant dealer is not required to obtain a license if the firm is licensed in the state of origin of the nursery stock and if that state extends a similar exemption to Montana firms.~~

~~(6)~~*(5)* The fees required by the provisions of this section may be paid by credit card and may be discounted for payment processing charges paid by the department to a third party."

Section 2. Coordination instruction. (1) If House Bill No. 478 is not passed and approved, then [this act] is void.

(2) If both House Bill No. 478 and [this act] are passed and approved, then [section 1] of House Bill No. 478, amending 80-7-105, is void and 80-7-105 must be amended as follows:

"80-7-105. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Firm" means an individual, company, partnership, association, or corporation.

(2) "Landscape service" means a firm that buys, sells, or resells nursery stock.

(3) "Nursery" means the business or location where nursery stock is grown or offered for sale or resale or as part of a landscape service.

(4) "Nursery stock" means botanically classified plants or parts of plants, including but not limited to tropical potted plants, aquatic plants, cut trees and their products, and turf or sod grass. The following plants and plant materials may not be considered nursery stock:

(a) field crop plants and seeds;

(b) pasture grasses;

(c) cut plants not for propagation;

(d) fruits or vegetables for human or animal consumption;

(e) cut trees and products that are going to be processed to a point that they no longer represent a pest risk; and

(f) plant debris for disposal or processing.

(5) "Nursery stock certification" means the process by which the nursery stock or other plants have been inspected and found to meet certification standards established by department rule.

(6) "Plant dealer" means a firm that buys plants or plant products from a producer for the purpose of offering the plants or plant products for sale or resale or as part of a landscape service.

(7) "Plant inspection certificate" means a document issued by the department or the plant pest regulatory agency of another state that declares that the nursery stock, plants, or plant material grown by the firm named on the certificate is apparently free of injurious plant pests.

(8) "Plant pest" means an insect, weed, fungus, virus, bacteria, or other organism that can directly or indirectly injure or cause damage in a plant or a product of a plant and that meets the criteria as a pest established by department rule. For purposes of this chapter, noxious weeds, as defined in 7-22-2101(8)(a)(i), or other exotic weeds are defined as plant pests.

(9) "Small plant vendor" means a Montana firm that is engaged in the business of selling or distributing nursery stock, including coniferous Christmas decorations, and that:

(a) grows in Montana the nursery stock offered for sale or distribution; and

(b) has gross annual sales of less than $1,000 in a calendar year."

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 28, 2009

CHAPTER NO. 394

[SB 48]

AN ACT STANDARDIZING THE STATUTES RELATED TO TAX INCREMENT FINANCING DISTRICTS BY CORRECTING CERTAIN INTERNAL REFERENCES AND TERMINOLOGY AND BY ENSURING CONSISTENT APPLICATION OF CERTAIN STATUTES TO EACH TYPE OF TAX INCREMENT FINANCING DISTRICT; AMENDING SECTIONS 7-15-4282, 7-15-4283, 7-15-4284, 7-15-4286, 7-15-4288, 7-15-4290, 7-15-4292, 7-15-4293, 7-15-4294, 7-15-4295, 7-15-4296, 7-15-4299, 7-15-4301, 7-15-4302, 7-15-4304, 7-15-4324, AND 17-5-820, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-15-4282, MCA, is amended to read:

"7-15-4282. Authorization for tax increment financing. Any urban renewal plan~~,~~ as defined in 7-15-4206, industrial district ordinance~~,~~ adopted pursuant to 7-15-4299, ~~or~~ technology district ordinance~~,~~ adopted pursuant to 7-15-4295, *or aerospace transportation and technology district ordinance adopted pursuant to 7-15-4296* may contain a provision or be amended to contain a provision for the segregation and application of tax increments~~,~~ as provided in 7-15-4282 through ~~7-15-4292~~ *7-15-4299*."

Section 2. Section 7-15-4283, MCA, is amended to read:

"7-15-4283. Definitions related to tax increment financing. For purposes of 7-15-4282 through ~~7-15-4292 and 7-15-4297 through~~ 7-15-4299, the following definitions apply unless otherwise provided or indicated by the context:

(1) "Actual taxable value" means the taxable value of taxable property at any time, as calculated from the *last equalized* assessment roll ~~last equalized~~.

(2) "Aerospace transportation and technology district" means a tax increment financing aerospace transportation and technology district created pursuant to 7-15-4296.

(3) "Aerospace transportation and technology infrastructure development project" means a project undertaken within or for an aerospace transportation and technology district that consists of any of the activities authorized by 7-15-4288.

(4) "Base taxable value" means the actual taxable value of all taxable property within an urban renewal area, industrial district, technology district, or aerospace transportation and technology district prior to the effective date of a tax increment financing provision. This value may be adjusted as provided in 7-15-4287 or 7-15-4293.

(5) "Incremental taxable value" means the amount, if any, by which the actual taxable value at any time exceeds the base taxable value of all property within an urban renewal area, industrial district, technology district, or aerospace transportation and technology district subject to taxation.

(6) "Industrial district" means a tax increment financing industrial district created pursuant to *7-15-4297 through* 7-15-4299.

(7) "Industrial infrastructure development project" means a project undertaken within or for an industrial district that consists of any of the activities authorized by 7-15-4288.

(8) "Municipality"~~, for the purpose of an industrial district created pursuant to 7-15-4297 through 7-15-4299 and operating pursuant to 7-15-4282 through 7-15-4293 and part 43 of this chapter,~~ means any incorporated city or town, county, or city-county consolidated local government *for the purposes of:*

(a) an industrial district operating pursuant to 7-15-4282 through 7-15-4294 and Title 7, chapter 15, part 43;

(b) a technology district operating pursuant to 7-15-4282 through 7-15-4294 and Title 7, chapter 15, part 43; or

(c) an aerospace transportation and technology district operating pursuant to 7-15-4282 through 7-15-4294 and Title 7, chapter 15, part 43.

(9) "Tax increment" means the collections realized from extending the tax levies, expressed in mills, of all taxing bodies in which the urban renewal area, industrial district, technology district, aerospace transportation and technology district, or a part of an area or district is located against the incremental taxable value.

(10) "Tax increment provision" means a provision for the segregation and application of tax increments as authorized by 7-15-4282 through ~~7-15-4292~~ *7-15-4299.*

(11) "Taxes" means all taxes levied by a taxing body against property on an ad valorem basis.

(12) "Taxing body" means any *incorporated* city~~,~~ *or* town, county, *city-county consolidated local government,* school district, or other political subdivision or governmental unit of the state, including the state, that levies taxes against property within the urban renewal area, industrial district, technology district, or an aerospace transportation and technology district.

(13) "Technology district" means a tax increment financing district created pursuant to 7-15-4295.

(14) "Technology infrastructure development project" means a project undertaken within or for a technology district that consists of any of the activities authorized by 7-15-4288."

Section 3. Section 7-15-4284, MCA, is amended to read:

"7-15-4284. Filing of tax increment provisions plan or district ordinance. (1) The clerk of the municipality shall file a certified copy of each urban renewal plan, industrial district ordinance, ~~or~~ technology district ordinance*, or aerospace transportation and technology district ordinance* or an

amendment to any of them containing a tax increment provision with the department of revenue.

(2) A certified copy of each plan, ordinance, or amendment must also be filed with the clerk or other appropriate officer of each of the affected taxing bodies."

Section 4. Section 7-15-4286, MCA, is amended to read:

"7-15-4286. Procedure to determine and disburse tax increment. (1) Mill rates of taxing bodies for taxes levied after the effective date of the tax increment provision must be calculated on the basis of the sum of the taxable value, as shown by the last equalized assessment roll, of all taxable property located outside the urban renewal area, industrial district, ~~or~~ technology district*, or aerospace transportation and technology district* and the base taxable value of all taxable property located within the area or district. The mill rate determined must be levied against the sum of the actual taxable value of all taxable property located within as well as outside the area or district.

(2) (a) The tax increment, if any, received in each year from the levy of the combined mill rates of all the affected taxing bodies against the incremental taxable value within the area or district, except for the university system mills levied and assessed against property, must be paid into a special fund held by the treasurer of the municipality and used as provided in 7-15-4282 through ~~7-15-4292~~ *7-15-4299*.

(b) The balance of the taxes collected in each year must be paid to each of the taxing bodies as otherwise provided by law."

Section 5. Section 7-15-4288, MCA, is amended to read:

"7-15-4288. Costs that may be paid by tax increment financing. The tax increments may be used by the municipality to pay the following costs of or incurred in connection with an urban renewal project, industrial infrastructure development project, technology infrastructure development project, or aerospace transportation and technology infrastructure development project:

(1) land acquisition;

(2) demolition and removal of structures;

(3) relocation of occupants;

(4) the acquisition, construction, and improvement of infrastructure, industrial infrastructure, technology infrastructure, or aerospace transportation and technology infrastructure that includes streets, roads, curbs, gutters, sidewalks, pedestrian malls, alleys, parking lots and offstreet parking facilities, sewers, sewer lines, sewage treatment facilities, storm sewers, waterlines, waterways, water treatment facilities, natural gas lines, electrical lines, telecommunications lines, rail lines, rail spurs, bridges, spaceports for reusable launch vehicles with associated runways and launch, recovery, fuel manufacturing, and cargo holding facilities, publicly owned buildings, and any public improvements authorized by *Title 7, chapter 12,* parts 41 through 45 ~~of chapter 12,~~*; Title 7, chapter 13,* parts 42 and 43 ~~of chapter 13,~~*;* and *Title 7, chapter 14,* part 47*,* ~~of chapter 14~~ and items of personal property to be used in connection with improvements for which the foregoing costs may be incurred;

(5) costs incurred in connection with the redevelopment activities allowed under 7-15-4233;

(6) acquisition of infrastructure-deficient areas or portions of areas;

(7) administrative costs associated with the management of the urban renewal area, industrial district, technology district, or aerospace transportation and technology district;

(8) assemblage of land for development or redevelopment by private enterprise or public agencies, including sale, initial leasing, or retention by the municipality itself at its fair value;

(9) the compilation and analysis of pertinent information required to adequately determine the *needs of an urban renewal project in an urban renewal area, the* infrastructure needs of secondary, value-adding industries in the industrial district, the needs of a technology infrastructure development project in the technology district, or the needs of an aerospace transportation and technology infrastructure development project in the aerospace transportation and technology district;

(10) the connection of the urban renewal area, industrial district, technology district, or aerospace transportation and technology district to existing infrastructure outside the district;

(11) the provision of direct assistance, through industrial infrastructure development projects, technology *infrastructure* development projects, or aerospace transportation and technology infrastructure development projects, to secondary, value-adding industries to assist in meeting their infrastructure and land needs within the district; and

(12) the acquisition, construction, or improvement of facilities or equipment for reducing, preventing, abating, or eliminating pollution."

Section 6. Section 7-15-4290, MCA, is amended to read:

"7-15-4290. Use of property taxes and other revenue for payment of bonds. (1) (a) The tax increment derived from an urban renewal area may be pledged for the payment of revenue bonds issued for urban renewal projects or of general obligation bonds, revenue bonds, or special assessment bonds issued to pay urban renewal costs described in 7-15-4288 and 7-15-4289.

(b) The tax increment derived from an industrial district may be pledged for the payment of revenue bonds issued for industrial infrastructure development projects or of general obligation bonds, revenue bonds, or special assessment bonds issued to pay industrial district costs described in 7-15-4288 and 7-15-4289.

(c) The tax increment derived from a technology district may be pledged for the payment of revenue bonds issued for technology infrastructure development projects or of general obligation bonds, revenue bonds, or special assessment bonds issued to pay technology district costs described in 7-15-4288 and 7-15-4289.

(d) The tax increment derived from an aerospace transportation and technology district may be pledged for the payment of revenue bonds issued for aerospace transportation and technology infrastructure development projects or of general obligation bonds, revenue bonds, or special assessment bonds issued to pay aerospace transportation and technology district costs described in 7-15-4288 and 7-15-4289.

(2) A municipality issuing bonds pursuant to subsection (1) may, by resolution of its governing body, enter into a covenant for the security of the bondholders, detailing the calculation and adjustment of the tax increment and the taxable value on which it is based and, after a public hearing, pledging or appropriating other revenue of the municipality, except property taxes

prohibited by subsection (3), to the payment of the bonds if collections of the tax increment are insufficient.

(3) Property taxes, except the tax increment derived from property within the area or district and tax collections used to pay for services provided to the municipality by a project, may not be applied to the payment of bonds issued pursuant to 7-15-4301 for which a tax increment has been pledged."

Section 7. Section 7-15-4292, MCA, is amended to read:

"7-15-4292. Termination of tax increment financing — exception. (1) The tax increment provision terminates upon the later of:

(a) the 15th year following its adoption; or

(b) the payment or provision for payment in full or discharge of all bonds for which the tax increment has been pledged and the interest on the bonds.

(2) (a) Except as provided in subsection (2)(b), any amounts remaining in the special fund or any reserve fund after termination of the tax increment provision must be distributed among the various taxing bodies in proportion to their property tax revenue from the *area or* district.

(b) Upon termination of the tax increment provision, a municipality may retain and use in accordance with the provisions of the urban renewal plan:

(i) funds remaining in the special fund or a reserve fund related to a binding loan commitment, construction contract, or development agreement for an approved urban renewal project that a municipality entered into before the termination of a tax increment provision;

(ii) loan repayments received after the date of termination of the tax increment provision from loans made pursuant to a binding loan commitment; or

(iii) funds from loans previously made pursuant to a loan program established under an urban renewal plan.

(3) After termination of the tax increment provision, all taxes must be levied upon the actual taxable value of the taxable property in the urban renewal area, the industrial district, ~~or~~ the technology district*, or the aerospace transportation and technology district* and must be paid ~~into the funds~~ *to each* of the ~~respective~~ taxing bodies *as provided by law*.

(4) Bonds secured in whole or in part by a tax increment provision may not be issued after the 15th anniversary of tax increment provisions. However, if bonds secured by a tax increment provision are outstanding on the applicable anniversary, additional bonds secured by the tax increment provision may be issued if the final maturity date of the bonds is not later than the final maturity date of any bonds then outstanding and secured by the tax increment provision."

Section 8. Section 7-15-4293, MCA, is amended to read:

"7-15-4293. Adjustment of base taxable value following change of law. (1) If the base taxable value of an urban renewal area, an industrial district, ~~or~~ a technology district*, or an aerospace transportation and technology district* is affected after its original determination by a statutory, administrative, or judicial change in the method of appraising property, the tax rate applied to it, the tax exemption status of property, or the taxable valuation of property if the change in taxable valuation is based on conditions existing at the time the base year was established, the governing body of the municipality may request the department of revenue to estimate the base taxable value so that the tax increment resulting from the increased incremental value is

sufficient to pay all principal and interest on the bonds as those payments become due.

(2) If a tax increment financing district created after January 1, 2002, has not issued bonds, the governing body of a municipality may request the department of revenue to adjust the base taxable value to account for a loss of taxable revenue resulting from the state granting property in the *area or* district tax-exempt status within the first year of creation of the tax increment financing district. The municipality shall give notice of and hold a public hearing on the proposed change."

Section 9. Section 7-15-4294, MCA, is amended to read:

"7-15-4294. Assessment agreements. (1) A municipality may enter into a written agreement with any private person:

(a) establishing a minimum market value of land, existing improvements, or improvements or equipment to be constructed or acquired; and

(b) requiring the individual to pay an annual tax deficiency fee whenever the property that is the subject of the agreement is valued by the department of revenue for property tax purposes at a market value that is less than the value established by the agreement. The amount of the deficiency fee may not exceed the difference between the property taxes that would have been imposed on the property based on the minimum value of the property expressed in the agreement and the property taxes that are imposed on the property based on the market value established by the department of revenue.

(2) The property that is the subject of the agreement must be located or installed in an urban renewal area, *an* industrial district, *a technology district, an* aerospace transportation and technology district, or any other area or district that is subject to a tax increment financing provision.

(3) The minimum value established by the agreement may be fixed or may increase or decrease in later years from the initial minimum value as provided in the agreement.

(4) The agreement creates a lien on the property pursuant to 71-3-1506 and must be filed and recorded in the office of the county clerk and recorder in each county in which the property or any part of the property is located. Recording an agreement constitutes notice of the agreement to anyone who acquires any interest in the property that is the subject of the agreement, and the agreement is binding upon the person acquiring the interest.

(5) An agreement made pursuant to subsection (1) may be modified or terminated by mutual consent of the current parties to the agreement. Modification or termination of an agreement must be approved by the governing body of the municipality. A document modifying or terminating an agreement must be filed in the office of the county clerk and recorder in each county in which the property or any part of the property is located.

(6) An agreement entered into pursuant to subsection (1) or modified pursuant to subsection (5) terminates on the earliest of:

(a) the date on which conditions in the agreement for termination are satisfied;

(b) the termination date specified in the agreement; or

(c) the date when the tax increment is no longer paid to the municipality under 7-15-4292.

(7) ~~Nothing in this~~ *This* section ~~limits~~ *does not limit* a municipality's authority to enter into contracts other than tax deficiency agreements as described in this section."

Section 10. Section 7-15-4295, MCA, is amended to read:

"7-15-4295. Technology districts. (1) A local governing body, by ordinance and following a public hearing, may authorize the creation of a technology district for technology infrastructure development projects. The purpose of a technology district is ~~for~~ the development of infrastructure to encourage the location and retention of technology *infrastructure* development projects in the state. The tenants of a technology district must be businesses or organizations engaged in technology-based operations within Montana that through the employment of knowledge or labor add value to a product, process, or export service that results in the creation of new wealth and for which at least 50% of the sales of the business or organization occur outside of Montana or the business or organization is a manufacturing company with at least 50% of its sales to other Montana companies that have 50% of their sales occurring outside of Montana.

(2) A technology district:

(a) must consist of a continuous area with an accurately described boundary that is large enough to host a diversified tenant base of multiple independent tenants;

(b) must be zoned for use in accordance with the area growth policy, as defined in 76-1-103;

(c) may not comprise any property included within an existing urban renewal area*,* ~~district or~~ industrial ~~infrastructure development~~ district*, or aerospace transportation and technology district* created pursuant to this part;

(d) must, prior to its creation, be found to be deficient in infrastructure improvements necessary for technology development;

(e) must, prior to its creation, have in place a formally adopted comprehensive development plan that ensures that the district can host a diversified tenant base of multiple independent tenants; and

(f) may not be designed to serve the needs of a single district tenant or group of nonindependent tenants.

(3) A technology district may use tax increment financing pursuant to the provisions of 7-15-4282 through ~~7-15-4293~~ *7-15-4294*."

Section 11. Section 7-15-4296, MCA, is amended to read:

"7-15-4296. Aerospace transportation and technology districts. (1) A local governing body, by ordinance and following a public hearing, may authorize the creation of an aerospace transportation and technology district for aerospace transportation and technology infrastructure development projects if the proposed aerospace transportation and technology district:

(a) consists of a continuous area with an accurately described boundary;

(b) is zoned for use in accordance with the area growth policy document;

(c) does not include any property included within an existing urban renewal area*,* ~~district or~~ industrial ~~infrastructure development~~ district*, or technology district* created pursuant to this part;

(d) is found to be deficient in infrastructure improvements for industrial development; and

(e) has as its purpose the development of infrastructure to encourage the location and retention of aerospace transportation and technology infrastructure development projects in the state.

(2) An aerospace transportation and technology district may use tax increment financing pursuant to the provisions of 7-15-4282 through ~~7-15-4293~~ *7-15-4294*."

Section 12. Section 7-15-4299, MCA, is amended to read:

"7-15-4299. Industrial districts. (1) A local governing body, by ordinance and following a public hearing, may authorize the creation of an industrial district for industrial infrastructure development projects if the proposed industrial district:

(a) consists of a continuous area with an accurately described boundary;

(b) is zoned for light or heavy industrial use in accordance with the area growth policy document;

(c) does not include any property included within an existing urban renewal area*, technology district, or aerospace transportation and technology* district created pursuant to this part;

(d) is found to be deficient in infrastructure improvements for industrial development; and

(e) has as its purpose the development of infrastructure to encourage the growth and retention of secondary, value-adding industries.

(2) An industrial district may use tax increment financing pursuant to the provisions of 7-15-4282 through ~~7-15-4293~~ *7-15-4294*."

Section 13. Section 7-15-4301, MCA, is amended to read:

"7-15-4301. Authorization to issue urban renewal bonds, industrial infrastructure development bonds, *technology infrastructure development bonds,* aerospace transportation and technology infrastructure development bonds, ~~technology infrastructure development bonds,~~ and refunding bonds. (1) A municipality may:

(a) issue bonds from time to time, in its discretion, to finance the undertaking of any urban renewal project, industrial infrastructure development project, *technology infrastructure development project, or* aerospace transportation and technology infrastructure development project~~, or technology infrastructure development project~~ under *Title 7, chapter 15,* part 42*,* and this part, including, without limiting the generality of projects, the payment of principal and interest upon any advances for surveys and plans for the projects; and

(b) issue refunding bonds for the payment or retirement of bonds previously issued by it.

(2) ~~The~~ *Except as provided in 7-15-4302,* bonds may not pledge the general credit of the municipality and must be made payable, as to both principal and interest, solely from the income, proceeds, revenue, and funds of the municipality derived from or held in connection with its undertaking and carrying out of urban renewal projects, industrial infrastructure development projects, *technology infrastructure development project, or* aerospace transportation and technology infrastructure development projects~~, or technology infrastructure development projects~~ under *Title 7, chapter 15,* part 42*,* and this part, including the tax increment received and pledged by the municipality pursuant to 7-15-4282 through ~~7-15-4292~~ *7-15-4299*, and, if the

income, proceeds, revenue, and funds of the municipality are insufficient for the payment, from other revenue of the municipality pledged to the payment. Payment of the bonds, both as to principal and interest, may be further secured by a pledge of any loan, grant, or contribution from the federal government or other source in aid of any urban renewal projects, industrial infrastructure development projects, *technology infrastructure development project, or* aerospace transportation and technology infrastructure development projects~~, or technology infrastructure development projects~~ of the municipality under *Title 7, chapter 15,* part 42*,* and this part or by a mortgage on all or part of any projects.

(3) Bonds issued under this section must be authorized by resolution or ordinance of the local governing body."

Section 14. Section 7-15-4302, MCA, is amended to read:

"7-15-4302. Authorization to issue general obligation bonds. (1) For the purpose of 7-15-4267 or for the purpose of aiding in the planning, undertaking, or carrying out of an urban renewal project*,* ~~or an~~ industrial infrastructure development project*, technology infrastructure development project, or aerospace transportation and technology infrastructure project* of a municipality, the municipality, in addition to any authority to issue bonds pursuant to 7-15-4301, may issue and sell its general obligation bonds.

(2) Any bonds issued pursuant to this section ~~shall~~ *must* be issued in the manner and within the limitations prescribed by the laws of this state for the issuance and authorization of bonds by ~~such~~ *the* municipality for public purposes generally.

(3) Aiding in the planning, undertaking, or carrying out of an approved urban renewal project*,* ~~or an~~ industrial infrastructure development project*, technology infrastructure development project, or aerospace transportation and technology infrastructure project* is considered a single purpose for the issuance of general obligation bonds, and the proceeds of the bonds authorized for ~~any such~~ *a* project may be used to finance the exercise of ~~any and all~~ *the* powers conferred upon the municipality by *Title 7, chapter 15, part 42, and* this part ~~and part 42 which~~ *that* are necessary or proper to complete the project in accordance with the approved plan*,* ~~or~~ industrial district ordinance*, technology district ordinance, or aerospace transportation and technology district ordinance* and any modification ~~thereof~~ *to the ordinance that is* duly adopted by the local governing body."

Section 15. Section 7-15-4304, MCA, is amended to read:

"7-15-4304. Presumption of regularity of bond issuance. In a suit, action, or proceeding involving the validity or enforceability of~~,~~ or security for~~,~~ any bond issued under *Title 7, chapter 15,* part 42*,* and this part, a bond reciting in substance that it has been issued by the municipality in connection with an urban renewal project, industrial infrastructure development project, ~~or~~ technology infrastructure development project*, or aerospace transportation and technology infrastructure development project* is conclusively considered to have been issued for that purpose and the project is conclusively considered to have been planned, located, and carried out in accordance with the provisions of *Title 7, chapter 15,* part 42*,* and this part."

Section 16. Section 7-15-4324, MCA, is amended to read:

"7-15-4324. Special bond provisions when tax increment financing is involved. (1) Bonds issued under this part for which a tax increment is pledged pursuant to 7-15-4282 through ~~7-15-4292~~ *7-15-4299* must be designed

to mature not later than 25 years from their date of issue and must mature in years and amounts so that the principal and interest due on the bonds in each year may not exceed the estimated tax increment, payments in lieu of taxes or other amounts agreed to be paid by the property owners in a district, and other estimated revenue, including proceeds of the bonds available for payment of interest on the bonds, pledged to their payment to be received in that year.

(2) The governing body, in the resolution or ordinance authorizing the bonds, shall determine the estimated tax increment, payments in lieu of taxes or other amounts agreed to be paid by the property owners in ~~a~~ *an area or* district, and other revenue, if any, for each year the bonds are to be outstanding. In calculating the costs under 7-15-4288 for which the bonds are issued, the municipality may include an amount sufficient to pay interest on the bonds prior to receipt of tax increments pledged and sufficient for the payment of the bonds and to fund any reserve fund in respect of the bonds."

Section 17. Section 17-5-820, MCA, is amended to read:

"17-5-820. Authorization of bonds. (1) The board of examiners is authorized to issue and sell general obligation bonds in an amount not exceeding $20 million in accordance with the terms and in the manner required by Title 17, chapter 5, part 8, for the purpose of financing and acquiring infrastructure improvements as enumerated in 7-15-4288 for aerospace transportation and technology *infrastructure development* projects recommended by the department of commerce in accordance with the authority granted to the board by this section. The bonds are in addition to any other authorization to the board to issue and sell general obligation bonds and subject to the conditions set forth in this section.

(2) The department of commerce may request the board of examiners to issue the bonds for one or more specified projects in one or more series, but the total amount of bonds issued may not exceed $20 million. Bond proceeds are appropriated to the department of commerce, and the department of commerce is authorized to acquire or construct the infrastructure improvements, to contract with the *incorporated* city or *town,* county*, or city-county consolidated local government* in which a project is located, to contract with an airport authority~~,~~ as defined in 67-1-101, a local port authority~~,~~ as described in 7-14-1101, or a regional port authority~~,~~ as described in 7-14-1102, to contract with a certified regional development corporation~~,~~ as defined in 90-1-116, or*,* upon a determination that it is in the best interest of the project*,* to contract with the developer of an approved project for the acquisition or construction of the infrastructure improvement. The plans and specifications for the infrastructure to be financed from the proceeds of the bonds must be prepared by an engineer or architect~~,~~ *who is* licensed and bonded in Montana, and the state must be named as an additional insured under any contract, performance bond, or other documents for the design of any improvements to be financed by the state. The plans and specifications must be reviewed and approved by the department of commerce after consultation with the architecture and engineering division of the department of administration. The design and acquisition or construction of the infrastructure for approved projects are not, with the exception of Title 18, chapter 2, part 4, subject to the public procurement requirements contained in Title 18. All construction contracts entered into for the construction of improvements to be financed under this section must name the state as an additional insured if the state is not otherwise party to the contract. All improvements financed with bond proceeds must be owned by the state, and the use must be governed by a development agreement between the state and the

developer of the project. The agreement may provide for the lease or the use of the infrastructure at less than fair market value, taking into consideration the number of jobs to be created by the project, the salary range of the jobs, the amount of capital contributed by the developer, and the projected tax revenue to be received by the state and local governments from the project over the term of the lease or use agreement. The agreement must require the contractor to insure for liability and workers' compensation claims during construction and must provide the project developer with the right of first refusal for the purchase of any real property and improvements financed by the bonds at fair market value. Fair market value must be determined by a certified appraiser. For purposes of this section, state and local governments may not provide telecommunications or other services in competition with private providers unless private providers cannot provide the services.

(3) It is the intent of the legislature that state individual and corporate income taxes and state property taxes generated by the aerospace transportation and technology infrastructure development projects will be at least equal to the projected amount of the debt service to be paid by the state for the bonds authorized by this section over the term of the bonds. Prior to requesting the board of examiners to issue the bonds, the department of commerce shall determine that the developer of a proposed project has the financial ability to implement the project based upon the audited financial statements of the developer. When requesting the board to issue the bonds, the department of commerce shall present to the department of administration for presentation to the board the following:

(a) evidence satisfactory to the board that *the developer of* each aerospace transportation and technology infrastructure development project has committed itself to locate its project in Montana; and

(b) a certificate signed by the director of the office of budget and program planning that the proposed project will, over the term of the bonds, generate state individual and corporate income taxes and state property taxes at least equal to the total aggregate amount of principal and interest on the bonds over the term of the bonds. In preparing the analysis for the report on the projected tax revenue from the project, the multiplier effect may be taken into account, using the number of jobs, the salary levels for the jobs, and the estimated date of hire for each position that the developer will commit to create as part of the development agreement. The development agreement must provide that if the developer has not created the total number of jobs at the estimated salaries by the date specified in the development agreement and assumed for purposes of meeting the projections, the state may terminate the lease or use of the improvements upon 30 days' notice. If the department of commerce is unable to enter into a new lease or use agreement for the improvements that is advantageous to the state, the state may sell the facility to the highest and best bidder and use the proceeds of the sale to redeem the outstanding bonds.

(4) In determining whether to recommend to the board of examiners that improvements should be constructed by the state from the proceeds of the bonds for a project, the department of commerce may take into consideration only the following factors:

(a) whether the project is eligible for financing;

(b) whether there is sufficient evidence to demonstrate the developer's ability to implement the project;

(c) the projected tax revenue report;

(d) whether the project as proposed and situated can obtain the necessary zoning, building, and environmental permits required; and

(e) whether the project is in the public interest.

(5) In recommending the amount of bonds to be issued for a qualified project, the department of commerce shall independently determine that the proposed estimated cost of the project is not in excess of what is required for the project and independently verify the projected costs of designing and constructing the improvements proposed to be financed exclusive of any development fee to the developer. The authorized bond proceeds must be used for projects on a first-come, first-served basis."

Section 18. Effective date. [This act] is effective on passage and approval.

Approved April 28, 2009

CHAPTER NO. 395

[SB 55]

AN ACT GENERALLY REVISING MONTANA FERTILIZER LAWS; PROHIBITING POLITICAL SUBDIVISIONS FROM REGULATING COMMERCIAL FERTILIZERS AND SOIL AMENDMENTS; REVISING DEFINITIONS; REVISING INSPECTION, ANALYSIS, APPLICATION, REGISTRATION, LICENSING, LABELING, ASSESSMENT, PENALTY, PUBLICATION, AND ENFORCEMENT PROVISIONS APPLICABLE TO FERTILIZERS; AND AMENDING SECTIONS 7-1-111, 75-10-701, 80-10-101, 80-10-102, 80-10-103, 80-10-201, 80-10-202, 80-10-204, 80-10-205, 80-10-206, 80-10-207, 80-10-208, 80-10-209, 80-10-303, AND 80-15-302, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Regulation of commercial fertilizers and soil amendments by political subdivision prohibited. (1) Except as provided in subsection (2), a political subdivision may not regulate the registration, packaging, labeling, sale, storage, distribution, use, or application of commercial fertilizers or soil amendments. A political subdivision may not adopt or continue in effect any local legislation relating to the registration, packaging, labeling, sale, storage, distribution, use, or application of commercial fertilizers or soil amendments. Local legislation adopted or continued in violation of this section is void and unenforceable.

(2) (a) A political subdivision may enter into a cooperative agreement with the department concerning the use and application of commercial fertilizers or soil amendments.

(b) Nothing in subsection (1) prevents a political subdivision from adopting or implementing zoning regulations or fire codes governing the physical location or siting of fertilizer manufacturing, storage, and sales facilities.

Section 2. Section 7-1-111, MCA, is amended to read:

"7-1-111. Powers denied. A local government unit with self-government powers is prohibited from exercising the following:

(1) any power that applies to or affects any private or civil relationship, except as an incident to the exercise of an independent self-government power;

(2) any power that applies to or affects the provisions of 7-33-4128 or Title 39 (labor, collective bargaining for public employees, unemployment

compensation, or workers' compensation), except that subject to those provisions, it may exercise any power of a public employer with regard to its employees;

(3) any power that applies to or affects the public school system, except that a local unit may impose an assessment reasonably related to the cost of any service or special benefit provided by the unit and shall exercise any power that it is required by law to exercise regarding the public school system;

(4) any power that prohibits the grant or denial of a certificate of public convenience and necessity;

(5) any power that establishes a rate or price otherwise determined by a state agency;

(6) any power that applies to or affects any determination of the department of environmental quality with regard to any mining plan, permit, or contract;

(7) any power that applies to or affects any determination by the department of environmental quality with regard to a certificate of compliance;

(8) any power that defines as an offense conduct made criminal by state statute, that defines an offense as a felony, or that fixes the penalty or sentence for a misdemeanor in excess of a fine of $500, 6 months' imprisonment, or both, except as specifically authorized by statute;

(9) any power that applies to or affects the right to keep or bear arms, except that a local government has the power to regulate the carrying of concealed weapons;

(10) any power that applies to or affects a public employee's pension or retirement rights as established by state law, except that a local government may establish additional pension or retirement systems;

(11) any power that applies to or affects the standards of professional or occupational competence established pursuant to Title 37 (professions and occupations) as prerequisites to the carrying on of a profession or occupation;

(12) except as provided in 7-3-1105, 7-3-1222, or 7-31-4110, any power that applies to or affects Title 75, chapter 7, part 1 (streambeds), or Title 87 (fish and wildlife);

(13) any power that applies to or affects landlords, as defined in 70-24-103, when that power is intended to license landlords or to regulate their activities with regard to tenants beyond what is provided in Title 70, chapters 24 and 25. This subsection is not intended to restrict a local government's ability to require landlords to comply with ordinances or provisions that are applicable to all other businesses or residences within the local government's jurisdiction.

(14) subject to 7-32-4304, any power to enact ordinances prohibiting or penalizing vagrancy~~.~~*;*

(15) subject to [section 1], any power to regulate the registration, packaging, labeling, sale, storage, distribution, use, or application of commercial fertilizers or soil amendments, except that a local government may enter into a cooperative agreement with the department of agriculture concerning the use and application of commercial fertilizers or soil amendments. This subsection is not intended to prevent or restrict a local government from adopting or implementing zoning regulations or fire codes governing the physical location or siting of fertilizer manufacturing, storage, and sales facilities."

Section 3. Section 75-10-701, MCA, is amended to read:

"75-10-701. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Department" means the department of environmental quality provided for in 2-15-3501.

(2) "Director" means the director of the department.

(3) "Environment" means any surface water, ground water, drinking water supply, land surface or subsurface strata, or ambient air within the state of Montana or under the jurisdiction of the state of Montana.

(4) (a) "Facility" means:

(i) any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft; or

(ii) any site or area where a hazardous or deleterious substance has been deposited, stored, disposed of, placed, or otherwise come to be located.

(b) The term does not include any consumer product in consumer use.

(5) "Fiduciary" means a trustee, executor, administrator, personal representative, custodian, conservator, guardian, or receiver acting or holding property for the exclusive benefit of another person. The term does not include:

(a) a person who has previously owned or operated the property in a nonfiduciary capacity; or

(b) a person acting as fiduciary with respect to a trust or other fiduciary estate that has no objectively reasonable or substantial purpose apart from avoidance of or limitation of liability under this part. For the purposes of 75-10-715(9), the term does not include the state, a state agency, or a political subdivision of the state acting as trustee of natural resources within the state of Montana.

(6) "Foreclosure" means acquisition of title to property through foreclosure, purchase at foreclosure sale, assignment or acquisition of title in lieu of foreclosure, repossession in the case of a lease financing transaction, or acquisition of a right to title or other agreement in full or partial settlement of a loan obligation.

(7) "Fund" means the environmental quality protection fund established in 75-10-704.

(8) "Hazardous or deleterious substance" means a substance that because of its quantity, concentration, or physical, chemical, or infectious characteristics may pose an imminent and substantial threat to public health, safety, or welfare or the environment and is:

(a) a substance that is defined as a hazardous substance by section 101(14) of the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. 9601(14)~~, as amended~~;

(b) a substance identified by the administrator of the United States environmental protection agency as a hazardous substance pursuant to section 102 of CERCLA, 42 U.S.C. 9602~~, as amended~~;

(c) a substance that is defined as a hazardous waste pursuant to section 1004(5) of the Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6903(5), ~~as amended,~~ including a substance listed or identified in 40 CFR 261; or

(d) any petroleum product.

(9) "Household" means single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, day-use recreational areas, or similar structures or areas.

(10) "Household refuse" means garbage, trash, and sanitary wastes in septic tanks that are derived from a household.

(11) "Institutional control" means a restriction on the use of real property that mitigates the risk posed to public health, safety, and welfare and the environment. Institutional controls include but are not limited to:

(a) deed restrictions;

(b) easements;

(c) reservations;

(d) covenants, either restrictive or affirmative; and

(e) other mechanisms or physical restrictions for controlling present and future land use, including controlled ground water areas, that are placed upon real property to mitigate the risk to public health, safety, and welfare and the environment.

(12) "Natural resources" means land, fish, wildlife, biota, air, surface water, ground water, drinking water supplies, and any other resources within the state of Montana owned, managed, held in trust, or otherwise controlled by or appertaining to the state of Montana or a political subdivision of the state.

(13) "Orphan share" means the percentage share of remedial action costs for a facility that is attributable, under the procedures in 75-10-742 through 75-10-751, to identified but bankrupt or defunct persons who are not an affiliate of any viable person, unless affiliated by stock ownership.

(14) "Orphan share fund" means the fund for the orphan share account established in 75-10-743.

(15) (a) "Owns or operates" means owning, leasing, operating, managing activities at, or exercising control over the operation of a facility.

(b) The term does not include holding the indicia of ownership of a facility primarily to protect a security interest in the facility or other location unless the holder has participated in the management of the facility. The term does not apply to the state or a local government that acquired ownership or control through bankruptcy, tax delinquency, abandonment, lien foreclosure, or other circumstances in which the government acquires title by virtue of its function as sovereign, unless the state or local government has caused or contributed to the release or threatened release of a hazardous or deleterious substance from the facility. ~~The term also does not include the owner or operator of the Milltown dam licensed under part 1 of the Federal Power Act (FERC license No. 2543-004) if a hazardous or deleterious substance has been released into the environment upstream of the dam and has subsequently come to be located in the reservoir created by the dam, unless the owner or operator is a person who would otherwise be liable for a release or threatened release under 75-10-715(1).~~ *The term also does not include the owner or operator of the Milltown dam licensed under part 1 of the Federal Power Act (FERC license No. 2543-004) if a hazardous or deleterious substance has been released into the environment upstream of the dam and has subsequently come to be located in the reservoir created by the dam unless the owner or operator is a person who would otherwise be liable for a release or threatened release under 75-10-715(1).*

(16) "Person" means an individual, trust, firm, joint-stock company, joint venture, consortium, commercial entity, partnership, association, corporation, commission, state or state agency, political subdivision of the state, interstate body, or the federal government, including a federal agency.

(17) "Petroleum product" includes gasoline, crude oil (except for crude oil at production facilities subject to regulation under Title 82), fuel oil, diesel oil or fuel, lubricating oil, oil sludge or refuse, and any other petroleum-related product or waste or fraction of the product or waste that is liquid at standard conditions of temperature and pressure (60 degrees F and 14.7 pounds per square inch absolute).

(18) "Reasonably anticipated future uses" means likely future land or resource uses that take into consideration:

(a) local land and resource use regulations, ordinances, restrictions, or covenants;

(b) historical and anticipated uses of the facility;

(c) patterns of development in the immediate area; and

(d) relevant indications of anticipated land use from the owner of the facility and local planning officials.

(19) "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing of a hazardous or deleterious substance directly into the environment (including the abandonment or discarding of barrels, containers, and other closed receptacles containing any hazardous or deleterious substance), but excludes releases confined to the indoor workplace environment, the use of pesticides as defined in 80-8-102~~(30)~~ when they are applied in accordance with approved federal and state labels, and the use of commercial fertilizers, as defined in 80-10-101~~(2)~~, when applied as part of accepted agricultural practice.

(20) "Remedial action" includes all notification, investigation, administration, monitoring, cleanup, restoration, mitigation, abatement, removal, replacement, acquisition, enforcement, legal action, health studies, feasibility studies, and other actions necessary or appropriate to respond to a release or threatened release.

(21) "Remedial action contract" means a written contract or agreement entered into by a remedial action contractor with the state, or with a potentially liable person acting pursuant to an order or request issued by the department, the United States, or any federal agency, to provide a remedial action with respect to a release or threatened release of a hazardous or deleterious substance.

(22) "Remedial action contractor" means:

(a) any person who enters into and is carrying out a remedial action contract; or

(b) any person who is retained or hired by a person described in subsection (22)(a) to provide services relating to a remedial action.

(23) "Remedial action costs" means reasonable costs that are attributable to or associated with a remedial action at a facility, including but not limited to the costs of administration, investigation, legal or enforcement activities, contracts, feasibility studies, or health studies."

Section 4. Section 80-10-101, MCA, is amended to read:

"80-10-101. Definitions. As used in this chapter, the following definitions apply:

(1) "Brand" means a term, design, or trademark used in connection with one or several grades of commercial fertilizer.

(2) "Blending" means the physical mixing or combining, including mixing through simultaneous or sequential application, of any combination of materials to produce a uniform mixture of:

(a) one or more fertilizer materials with one or more filler materials; or

(b) two or more fertilizer materials.

~~(2)~~*(3) (a)* "Commercial fertilizer" includes any substance containing one or more recognized plant nutrients ~~which~~ *that* is used for its plant nutrient content and ~~which~~ *that* is designed for use or claimed to have value in promoting plant growth, yield, or quality of the crop.

(b) Commercial fertilizer includes the following types of fertilizer:

~~(a) "Bulk fertilizer"~~ *(i) Bulk fertilizer* is commercial fertilizer (dry or liquid) distributed in nonpackage form or in containers of greater than 1,000 pounds.

~~(b) "Fertilizer materials" is a~~ *(ii) Fertilizer material is* commercial fertilizer ~~which~~ *that* either:

~~(i)~~*(A)* contains important quantities of not more than one of the primary plant nutrients ~~(nitrogen, phosphoric acid, and potash)~~;

~~(ii)~~*(B)* has ~~approximately~~ 85% *or more* of its plant nutrient content present in the form of a single chemical compound; or

~~(iii)~~*(C)* is derived from a plant or animal residue or byproduct or a natural material deposit ~~which~~ *that* has been processed in such a way that its content of primary plant nutrients has not been materially changed except by purification and concentration.

~~(c) "Mixed fertilizers" is a~~ *(iii) Mixed fertilizer is* commercial fertilizer (dry or liquid) containing any combination or mixture of fertilizer materials.

~~(d) "Packaged fertilizer" is commercial fertilizer (dry or liquid) distributed in sealed containers of 1,000 pounds or less.~~

~~(e) "Specialty fertilizer" is a~~ *(iv) Specialty fertilizer is* commercial fertilizer (dry or liquid) distributed primarily for nonfarm use~~, such as home gardens, lawns, shrubbery, flowers, golf courses, municipal parks, cemeteries, greenhouses, and nurseries~~ and includes commercial fertilizers used for research or experimental purposes.

(4) "Custom blend" means a fertilizer blended according to specifications provided to a blender in a soil test nutrient recommendation or to meet a specific consumer request prior to blending.

(5) "Deficiency" means the amount of nutrient found by analysis to be less than that guaranteed. Deficiency may result from a lack of nutrient ingredients or a lack of uniformity.

~~(3)~~*(6)* "Distribute" means to offer for sale, sell, barter, or otherwise supply commercial fertilizers *or soil amendments*.

~~(4)~~*(7)* "Distributor" means any person who distributes.

~~(5)~~*(8)* "Grade" means the percentages of total nitrogen, available ~~phosphorus or phosphoric acid~~ *phosphate*, and ~~soluble potassium or~~ soluble potash stated in whole numbers in the same terms, order, and percentages as in

the guaranteed analysis. *Specialty fertilizers may be guaranteed in fractional units of less than 1% of total nitrogen, available phosphate, and soluble potash.* ~~However, fertilizer~~ *Fertilizer* materials, bonemeal, manures, and similar ~~raw~~ materials may be guaranteed in fractional units.

(9) "Guaranteed analysis" means the minimum percentage of plant nutrients as described in 80-10-102.

(10) "Investigational allowance" means an allowance for variations inherent in the taking, preparation, and analysis of an official sample of fertilizer.

(11) "Label" means the display of all written, printed, or graphic matter on a container, or a statement accompanying a fertilizer or soil amendment.

(12) "Labeling" means all written, printed, or graphic matter on or accompanying any fertilizer or soil amendment and advertisements, brochures, websites, posters, and television and radio announcements used in promoting the sale of a fertilizer or soil amendment.

~~(6)~~*(13)* "Licensee" means ~~any person who has obtained a license from the department so he may legally distribute commercial fertilizer other than specialty fertilizers or soil amendment in this state~~ *a person licensed under 80-10-202.*

(14) "Local legislation" means but is not limited to any ordinance, motion, resolution, amendment, regulation, or rule adopted by a political subdivision.

~~(7) "Manipulated manures" means substances composed primarily of excreta, plant remains, or mixtures of such substances which have been processed in any manner, including the addition of plant nutrients, drying, grinding, and other means.~~

~~(8)~~*(15)* "Manufacture" means the formulation, mixing, blending, or further processing of commercial fertilizers or soil amendments.

~~(9)~~*(16)* "Manufacturer" ~~is~~ *means* a person who manufactures commercial fertilizer or soil amendments.

~~(10)~~*(17)* "Official sample" means any sample of commercial fertilizer taken by the department and ~~so~~ designated *as official* by the department.

(18) "Other ingredients" means nonsoil amending ingredients present in soil amendments.

~~(11)~~*(19)* "Percent or percentage" means the percentage by weight.

~~(12)~~*(20)* "Person" means an individual, partnership, association, firm, or corporation.

(21) "Political subdivision" means any local government entity, including but not limited to any city, county, town, or municipal corporation and any other corporate or political body that is responsible for government activities in a geographic area smaller than the state.

(22) "Primary nutrient" means the total nitrogen (N), available phosphate (P_2O_5), and soluble potash (K_2O).

(23) "Quarterly" means the periods from January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31.

~~(13)~~*(24)* "Registrant" means the person who registers *a* commercial fertilizer ~~and/or~~ *or a* soil amendment.

~~(14)~~*(25) (a)* "Soil amendment" means any ~~material not included under commercial fertilizer or those products subject to the Federal Insecticide,~~

~~Fungicide, and Rodenticide Act, as amended, which is added to soil or to plants for purposes of influencing the growth, yield, or quality of the crop, soil flora or fauna, or other soil characteristics~~ *substance that is intended to improve the physical or chemical characteristics of soil.*

(b) The term does not include commercial fertilizers, unmanipulated animal or vegetable manures, pesticides, and other ingredients that are exempted from the definition by rule.

(26) "Supplier" means a person who distributes fertilizers or soil amendments into Montana.

~~(15)~~*(27)* "Ton" means a net weight of 2,000 pounds avoirdupois.

(28) "Unmanipulated animal or vegetable manures" means substances composed primarily of excreta, plant remains, or mixtures of those substances that have not been processed in any manner, including the addition of plant nutrients, drying, grinding, and other means."

Section 5. Section 80-10-102, MCA, is amended to read:

"80-10-102. Guaranteed analysis. (1) ~~Until the department prescribes the alternative form under subsection (2) of this section, "guaranteed analysis" means~~ *Guaranteed analysis is* the minimum percentage of plant nutrients claimed in the following order and form:

(a) The following plant nutrients ~~shall~~ *must* be guaranteed:

Total nitrogen (N) ---------- %

Available ~~phosphoric acid~~ *phosphate* (P_2O_5) ----------%

Soluble potash (K_2O) ----------%

(b) For unacidulated mineral phosphatic materials and basic slag, ~~bonemeal~~ *bone*, tankage, and other organic phosphatic materials, the total ~~phosphoric acid~~ *phosphate* and degree of fineness may also be guaranteed.

(c) Guarantees for plant nutrients other than nitrogen, phosphorus, and potassium may be permitted or required by rules adopted by the department. The guarantees for other nutrients ~~shall~~ *must* be expressed in the form of the element. The sources of other nutrients, including but not limited to oxides, salt, and chelates, may be required to be stated on the application for registration and may be included ~~as a parenthetical statement~~ on the label. Other beneficial substances or compounds, determinable by laboratory methods, also may be guaranteed by permission of the department. *When any plant nutrients or other substances or compounds are guaranteed, they are subject to inspection and analysis in accordance with the methods and regulations prescribed by the department.*

(d) Potential basicity or acidity expressed in terms of calcium carbonate equivalent in multiples of 100 pounds per ton ~~shall~~ *must* be guaranteed when required by regulation.

~~(2) If the department finds, after public hearing, that the requirement for expressing the guaranteed analysis of phosphorus and potassium in elemental form would not impose an economic hardship on distributors and users of fertilizer by reason of conflicting labeling requirements among the states, it may require by department rule that the guaranteed analysis be in the following form:~~

~~Total nitrogen (N) ----------%~~

~~Available phosphorus (P) ----------%~~

~~Soluble potassium (K) ----------%~~

~~(3) The effective date of the rule may not be less than 6 months following the adoption of the rule. For a period of 2 years following the effective date of the rule, the equivalent of phosphorus and potassium may also be shown in the form of phosphoric acid and potash. However, after the effective date of a rule requiring that phosphorus and potassium be shown in the elemental form, the guaranteed analysis for nitrogen, phosphorus, and potassium is the grade for those elements.~~

~~(4)~~*(2)* Soil amendments ~~shall~~ *must* guarantee ~~the minimum quantity of~~ each ~~active~~ *soil amending* ingredient *and the total other ingredients* in terms approved by the department or ~~in terms as~~ set forth in rules issued by the department. ~~They shall~~ *Soil amendments must* also meet any other requirements established by ~~rule by the~~ department *rule*."

Section 6. Section 80-10-103, MCA, is amended to read:

"80-10-103. Assessment to fund educational and experimental programs — collection. ~~Moneys~~ *Money* to fund 80-10-104 through 80-10-106 must be produced by an assessment of 35 cents per ton of fertilizer ~~sold within~~ *manufactured in or distributed into* Montana. Collections ~~shall~~ *must* be made in accordance with procedures in 80-10-207 and ~~shall be collected from~~ *payment is the responsibility of* the *in-state* manufacturer *or of the supplier if the fertilizer is not manufactured in Montana*."

Section 7. Section 80-10-201, MCA, is amended to read:

"80-10-201. Registration. (1) *(a)* Each brand and grade of fertilizer and each soil amendment except unmanipulated animal ~~and~~ *or* vegetable manures must be registered by ~~or~~ *the manufacturer or the supplier* on behalf of the manufacturer before distribution in this state. The application for registration must be submitted to the department on a form ~~furnished or~~ approved by the department and must be accompanied by*:*

(i) a nonrefundable fee of $20 per grade for each fertilizer and for each soil amendment ~~with exception of specialty fertilizers, which must be registered at~~*;*

(ii) a nonrefundable fee of $35 *for* each *specialty fertilizer; and*

(iii) a fee of $10 for each commercial and specialty fertilizer to be used for ground water protection, as required in 80-15-302(3).

(b) Upon approval, the department shall furnish a copy of the registration to the applicant. All registrations expire on December 31 of each year.

(2) (a) The application for registration must include:

(i) the brand and grade;

(ii) the guaranteed analysis;

(iii) the source of each plant food element guaranteed;

(iv) the name and address of the registrant;

(v) the net weight for packaged products;

~~(v)~~*(vi)* ~~a~~ *an electronic* copy ~~or facsimile~~ of each label and ~~of promotional material~~ *labeling* when requested by the department; and

~~(vi)~~*(vii)* analytical information on nutrient ingredients and nonnutrient ingredients as required by rule.

(b) The department shall require the applicant to furnish replicated data, performed by a reputable investigator whose work is recognized as acceptable

by the director of the agricultural experiment station or ~~his~~ *the director's* designee, verifying any claims for effectiveness or agricultural value of any fertilizer or soil amendment product that is not generally recognized as having the values claimed at the use rates recommended.

(3) A distributor ~~may~~ *or licensee is* not ~~be~~ required to register any brand ~~or~~ *and* grade of commercial fertilizer that is already registered under this section by another person.

(4) Registration is not required for custom blends resulting from blending of registered products.

~~(4)~~*(5)* A manufacturer *or supplier* may not ~~reregister~~ *register* a product until full payment of the assessment fees provided for in 80-10-103 and 80-10-207 has been received by the department *for each product*."

Section 8. Section 80-10-202, MCA, is amended to read:

"80-10-202. License required. ~~No~~ *A* person ~~shall~~ *may not* distribute in this state any type of fertilizer or soil amendment, except unmanipulated animal or vegetable manures or specialty fertilizer, until a license to distribute has been obtained from the department for each facility distributing into this state and for each handling facility in this state. All new applicants or those failing to renew their licenses by January 1 of each year shall pay a nonrefundable $75 fee for each license. ~~The department may exempt, by rule, manufacturers.~~ All licenses expire on December 31 of each year and are subject to the following:

(1) The application for license ~~shall~~ *must* be on forms ~~provided~~ *approved* by the department.

~~(2) The licensee is not required to register a grade of fertilizer registered by the manufacturer or blended to grade from registered products by the licensee.~~

~~(3)~~*(2)* License renewals received by the department prior to January 1 of each year must be accompanied by a fee of $50 for each license.

(3) Before distributing any commercial fertilizer or soil amendment into the state, a person must be licensed as a supplier."

Section 9. Section 80-10-204, MCA, is amended to read:

"80-10-204. Labeling. (1) ~~Any~~ *All* commercial fertilizer distributed in this state in ~~packages shall~~ *containers must* have affixed to ~~or printed on~~ the container a label setting forth in clearly legible and conspicuous form *the following information*:

(a) ~~the~~ net weight;

(b) ~~the~~ name and address of the ~~manufacturer~~ *registrant* or ~~distributor guaranteeing the analysis~~ *guarantor*;

(c) ~~the~~ brand ~~and product name~~;

(d) ~~the~~ grade*, except if no primary nutrients are claimed*;

(e) ~~the~~ guaranteed analysis;

(f) directions for use of the fertilizer by the end user; and

~~(f)~~*(g)* other requirements as established by rule.

(2) Any bin in the state in which commercial fertilizer is stored for distribution must have affixed to or printed on it a label setting forth in clearly legible and conspicuous form:

(a) the guaranteed analysis of the product in the bin; and

(b) other requirements established by rule.

(3) All commercial fertilizer delivered in this state in bulk, whether a manufactured grade or blended grade, ~~shall~~ *must* be accompanied by a clearly legible document ~~which shall~~ *that must* be supplied to the purchaser at the time of delivery ~~and at the time his invoice is delivered~~. The document ~~shall~~ *must* show:

(a) net weight;

(b) name and address of the distributor ~~or manufacturer guaranteeing the analysis~~*, registrant, or guarantor*;

(c) guaranteed analysis or, on ~~blended~~ *custom-blended* fertilizer, the net weight and guaranteed analysis of each ingredient added; and

(d) other requirements as established by rule.

(4) *(a)* When distributed in containers, soil amendments ~~shall~~ *must* have a label affixed to ~~or printed on~~ the container~~. When delivered in bulk the label shall be clearly legible and shall accompany the delivery of the product. This label shall be supplied to the purchaser at the time of delivery and at the time of invoicing. The label shall contain~~ *setting forth in clearly legible and conspicuous form* the following information:

~~(a)~~*(i)* net weight;

~~(b)~~*(ii)* name and address of the registrant or ~~licensee who is responsible for the product~~ *guarantor*;

~~(c)~~*(iii)* brand and product name;

~~(d)~~*(iv)* guaranteed analysis;

(v) soil amending ingredients listed in the following form:

Name of ingredient (identify and list all)%

Total other ingredients%;

(vi) purpose of the product; and

~~(e)~~*(vii)* other requirements, such as particle size, as established by rule.

(b) In the case of bulk shipments of soil amendments, the information required in subsection (4)(a) must be in clearly legible written or printed form, must accompany delivery, and must be supplied to the purchaser at the time of delivery."

Section 10. Section 80-10-205, MCA, is amended to read:

"80-10-205. Misbranding and adulteration prohibited. *(1)* ~~No~~ *A* person ~~shall~~ *may not* distribute a misbranded ~~or adulterated~~ fertilizer or soil amendment. A ~~commercial~~ fertilizer or soil amendment is misbranded if ~~it~~:

~~(1)~~*(a)* ~~carries any~~ *its labeling is* false or misleading ~~statement upon or attached to the container or if false or misleading statements concerning its agricultural value are made on the container or in any advertising matter accompanying or associated with the product~~ *in any manner*;

~~(2)~~*(b) it* is distributed under the name of another *fertilizer or soil amendment* product;

~~(3)~~*(c) it* is not labeled as required in 80-10-204 and in accordance with rules prescribed under this chapter;

(d) adequate warning statements or directions for use that may be necessary to protect plant life, animals, humans, aquatic life, soil, or water are not shown on the label; or

~~(4)~~*(e) it* purports to be or is represented as a ~~commercial~~ fertilizer *or soil amendment* or is represented as containing a plant nutrient*,* ~~or commercial~~ fertilizer*, or soil amendment ingredient* unless that plant nutrient*,* ~~or commercial~~ fertilizer*, or soil amendment* conforms to the definition of identity, if any, prescribed by rule of the department. In adopting this type *of* rule, the department shall give ~~due regard~~ *consideration* to commonly accepted definitions and official fertilizer *and soil amendment* terms as issued by the association of American plant food control officials.

(2) A person may not distribute an adulterated fertilizer or soil amendment product. A fertilizer or soil amendment is adulterated if:

(a) it contains any deleterious or harmful substance in sufficient amount to render it injurious to beneficial plant life, animals, humans, aquatic life, soil, or water when applied in accordance with directions for use on the label;

(b) its composition falls below or differs from that which it is purported to possess by its labeling; or

(c) it contains crop seed or weed seed."

Section 11. Section 80-10-206, MCA, is amended to read:

"80-10-206. Inspection, sampling, and analysis. (1) The department~~, in cooperation with the agricultural experiment station of Montana state university-Bozeman, shall~~ *may* sample, inspect, analyze, and test commercial fertilizers and soil amendments distributed in this state at a time and place and to an extent necessary to determine whether the commercial fertilizers or soil amendments are in compliance with this chapter. The department may enter ~~upon~~ any public or private premises during regular business hours in order to have access to commercial fertilizers or soil amendments subject to this chapter.

(2) The methods of analysis and sampling ~~shall~~ *must* be those adopted by the department from sources such as those of the association of official analytical chemists. The results of analysis, together with additional information the department considers advisable, ~~shall~~ *must* be transmitted promptly to the manufacturer and to the dealer or person in whose possession the product was sampled.

(3) The department, in determining whether any *deficiency occurred in a* commercial fertilizer ~~is deficient in plant food~~ or soil amendment ~~is deficient~~, ~~shall~~ *must* be guided solely by the official sample obtained and analyzed as provided for in subsections (1) and (2) ~~of this section~~. *The department may arrange with other laboratories for specific analyses conducted as part of an official analysis.*

(4) If on the basis of an inspection or the analysis of the official sample a commercial fertilizer or soil amendment is found to be subject to penalty or other legal action, the department shall forward to the ~~registrant~~ *responsible party* notification of the violation ~~at least 10 days before its report is made public~~. If ~~during that period~~ no adequate evidence to the contrary is made available to the department, the report becomes official.

(5) Upon request, the department shall furnish to the ~~registrant~~ *responsible party* a portion of any sample found subject to penalty or other legal action. *The responsible party may challenge the department's determination of a violation within 30 days following the responsible party's receipt of the analysis. Upon receipt of the challenge, the department shall forward a portion of the remainder of the official sample to any recognized chemical laboratory of the responsible party's choice for analysis. If the results differ significantly from the*

department's analysis, the responsible party may request a referee analysis by a referee laboratory chosen by the department. Results of the referee analysis must be reported to the responsible party and to the department, and the referee analysis is considered official. If the department's initial analysis is sustained following a referee analysis, the responsible party that requested the referee analysis shall pay the costs of the referee analysis."

Section 12. Section 80-10-207, MCA, is amended to read:

"80-10-207. Fees. (1) (a) ~~A manufacturer registering under 80-10-201(1)~~ *Each in-state manufacturer or out-of-state supplier* shall pay to the department fees on all commercial fertilizer distributed in this state, except specialty fertilizers and unmanipulated animal ~~and~~ *or* vegetable manures~~, provided that sales~~. *Sales* to manufacturers or exchanges between ~~them~~ *manufacturers* are exempt. The fees are *as follows*:

(i) ~~for inspection of fertilizers other than anhydrous ammonia, 20 cents per ton.~~ The department may by rule adjust the inspection fee to maintain adequate funding for the administration of this part. The fee may not be less than 20 cents per ton or more than 25 cents per ton. A change in fee becomes effective on the first day of a reporting period. All *in-state* manufacturers *and out-of-state suppliers of nonexempt products* must be given notice of a change in fees before the effective date.

(ii) ~~for inspection of anhydrous ammonia, 65 cents per ton.~~ The department may by rule adjust the anhydrous ammonia inspection fee to maintain adequate funding for the administration and enforcement of part 5 of this chapter. The fee may not be less than 65 cents per ton or more than $1.30 per ton. A change in fee becomes effective on the first day of a reporting period. All ~~registrants and~~ *in-state* manufacturers *and out-of-state suppliers* of anhydrous ammonia must be given notice of a change in fees before the effective date of the fee adjustment.

(iii) ~~for assessment, the fee prescribed in 80-10-103.~~ The assessment fee *prescribed in 80-10-103* must be used to fund educational and experimental programs as provided in 80-10-103 through 80-10-106.

(b) If fertilizer *material* or soil amendment ~~material~~ is added to fertilizer for which a fee has been paid under subsection (1)(a), ~~a fee must be paid under that subsection, but only on the added fertilizer or soil amendment~~ *a fee is due only on the fertilizer material or soil amendment for which a fee has not been paid*.

(2) There must be paid to the department on all soil amendments distributed in this state an inspection fee of 10 cents per ton subject to the following provisions:

(a) sales to manufacturers or exchanges between them are exempt; and

(b) when less than 50 tons of *a* registered soil amendment is sold in a ~~6-month~~ *quarterly reporting* period, ~~there must be paid to the department a fee of $5 for each soil amendment for each 6-month period in lieu of the fee of 10 cents per ton. Inspection fees must be used by the department for administration of this part~~ *no payment is due*.

(3) (a) (i) Each licensee who distributes a soil amendment or commercial fertilizer, except specialty fertilizer and unmanipulated *animal or vegetable* manures, to an unlicensed ~~or unregistered~~ person in this state shall file with the department on forms ~~furnished or~~ approved by the department a semiannual statement for the periods ending June 30 and December 31 setting forth the number of net tons of each commercial fertilizer ~~or~~ *and* soil amendment distributed in this state during the 6-month period. The report is due on or

before the 30th day of the month following the close of each period. *There are no fees associated with the semiannual report.*

(ii) Each *in-state* manufacturer ~~who registers or a person who registers on the manufacturer's behalf~~ *and out-of-state supplier who distributes* a soil amendment or commercial fertilizer in this state *to a person regardless of their license status*, except specialty fertilizer and unmanipulated *animal or vegetable* manures, shall file with the department on forms ~~furnished or~~ approved by the department a ~~monthly~~ *quarterly* statement setting forth the number of net tons of each ~~registered~~ commercial fertilizer and soil amendment distributed in this state during the ~~month~~ *quarter* and to whom it was distributed. The report is due on or before ~~the 30th day of the following month~~ *30 days after the end of the quarterly reporting period*. The *in-state* manufacturer or ~~person registering on behalf of the manufacturer~~ *out-of-state supplier* shall pay the fees set forth in subsection (1) at that time.

(b) If the tonnage report required by subsection (3)(a)(ii) is not filed and the payment of fees is not made within 30 days after the end of the *quarterly reporting* period, a collection fee ~~amounting to 10%~~ of *15% annual percentage rate on* the amount due but not less than $10 must be assessed against the *in-state* manufacturer *or out-of-state supplier,* and the amount of fees due constitutes a debt and becomes the basis of a judgment against the *in-state* manufacturer *or out-of-state supplier*.

(4) Except as provided in subsection (5), all fees collected for licenses, registration, and inspection and money collected as penalties must be deposited in the state treasury to the credit of the state special revenue fund for the purpose of administering this chapter, including the cost of equipment and facilities and the cost of inspecting, analyzing, and examining commercial fertilizer and soil amendments manufactured or distributed in this state. Reserve funds may be invested by the department with interest credited to the state special revenue fund.

(5) All fees collected under subsection (1)(a)(ii) must be deposited in the state treasury to the credit of the state special revenue fund, anhydrous ammonia account, for the administration and enforcement of part 5 of this chapter and the rules adopted under part 5. The department may direct the board of investments to invest the funds collected under subsection (1)(a)(ii) pursuant to the provisions of 17-6-201. The income from the investment must be deposited in the anhydrous ammonia account in the state special revenue fund."

Section 13. Section 80-10-208, MCA, is amended to read:

"80-10-208. Penalties. (1) A penalty of two times the commercial value of the deficiency, as determined by the ~~dealer's or manufacturer's price on the date of sampling of the deficiency or deficiencies, shall~~ *retail price based on a semiannual state survey, may* be assessed:

(a) if the analysis shows that a commercial fertilizer is deficient in one or more of its guaranteed primary ~~plant foods (NPK)~~ *nutrients* beyond the investigational allowance as established by regulation; or

(b) if the overall index value of the fertilizer is below the level established by regulation.

(2) When a commercial fertilizer is subject to a penalty under both subsections (1)(a) and (1)(b), the larger penalty applies.

(3) Deficiencies beyond the investigational allowances as established by regulation in any other constituent covered under ~~subsections (1)(b),(1)(c), and~~

~~(1)(d) of 80-10-102 which~~ *80-10-102(1)(b), (1)(c), and (1)(d) that* the registrant is required to or may guarantee ~~shall~~ *may* be evaluated, and penalties ~~shall~~ *may* be assessed at two times the commercial value of the deficiency as determined by the ~~dealer's~~ retail price ~~on the date of sampling~~ *based on a semiannual state survey*.

(4) Nothing contained in this section ~~shall prevent~~ *prevents* any person from appealing the department's decision to a court of competent jurisdiction.

(5) All penalties assessed under this section ~~shall~~ *must* be paid to the consumer of the lot, not to exceed 100 tons, of commercial fertilizer represented by the sample analyzed within 3 months after the date of notice from the department to the ~~registrant or licensee~~ *responsible party*. If at the end of the 3-month period the consumer cannot be found, receipts ~~shall~~ *must* be taken and promptly forwarded to the department for deposit in the state special revenue fund as provided in 80-10-207.

(6) If the department cannot reasonably determine the lot size, then the lot size is considered to be 2 tons for the purposes of calculating the commercial value of the deficiency.

(7) A deficiency in an official sample of mixed fertilizer that results from nonuniformity is not distinguishable from a deficiency to actual plant nutrient shortage and is subject to official action."

Section 14. Section 80-10-209, MCA, is amended to read:

"80-10-209. Publications. The department ~~shall~~ *may* publish ~~at least annually~~ *by electronic or other means annual* information concerning the sales of commercial fertilizers and soil amendments, together with data on their production and use as it considers advisable, and ~~shall~~ *may* report the results of the analyses based on official samples of commercial fertilizers and soil amendments sold in this state."

Section 15. Section 80-10-303, MCA, is amended to read:

"80-10-303. Violations — enforcement proceedings — judicial review. (1) If it appears from the examination of any commercial fertilizer or from the inspection of any anhydrous ammonia facility that this chapter or the rules adopted under this chapter have been violated, the department shall give notice of the violations to the registrant, licensee, distributor, or possessor from whom the sample was taken. A person notified ~~shall~~ *must* be given an opportunity to be heard under rules of the department. If it appears after a hearing, either in the presence or absence of the person notified, that this chapter or rules issued under this chapter have been violated, the department may certify the facts to the proper prosecuting attorney.

(2) A person who violates this chapter or the rules adopted under this chapter or who obstructs, prevents, or attempts to prevent the department from performing its duty ~~under this chapter is guilty of a misdemeanor and shall~~ *may* be fined not less than $300 or more than $500 for the first violation and not less than $300 or more than $1,000 for a subsequent violation. In all ~~prosecutions~~ *actions* under this chapter involving the composition of a lot of commercial fertilizer, a certified copy of the official analysis of the department is prima facie evidence of the composition.

(3) Nothing in this chapter requires the department to report for prosecution or for the beginning of seizure proceedings minor violations of this chapter when it believes that the public interest will be best served by a suitable notice of warning in writing.

(4) A prosecuting attorney to whom a violation is reported shall prosecute the violator in a court of competent jurisdiction without delay.

(5) The department may apply for and the court may grant a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this chapter or any rule adopted under the chapter notwithstanding the existence of other remedies at law. The injunction ~~shall~~ *must* be issued without bond.

(6) If an in-state manufacturer or supplier fails to pay a fee required under 80-10-207, the manufacturer or supplier may be fined an amount up to $1,000 or twice the fee that should have been paid, whichever is higher. If a supplier fails to obtain a license as required in 80-10-202(3), the supplier may be assessed a civil penalty of $500 for each quarter that the supplier fails to be licensed, in addition to any other amounts owed to the state.

~~(6)~~*(7)* If a person adversely affected by an act, order, or ruling made by the department under this chapter is not entitled to a hearing before the department to determine ~~his~~ *the person's* rights, ~~he~~ *the person* may within 45 days sue in the district court of any county where the alleged violation giving rise to the department's act, order, or ruling occurred~~,~~ for new trial of the issues bearing upon the act, order, or ruling. After the trial the court may issue and enforce those orders, judgments, or decrees it considers proper, just, and equitable."

Section 16. Section 80-15-302, MCA, is amended to read:

"80-15-302. Special funding. (1) A fee of $95 is assessed for the registration of pesticides in addition to the fee imposed by 80-8-201(4).

(2) The money collected from the registration fee established by subsection (1) must be deposited in the state special revenue fund as follows:

(a) Each of the following state agencies must be credited $15,000 for purposes of administering or assisting the department in administering this chapter:

(i) department of environmental quality; and

(ii) Montana state university-Bozeman extension service.

(b) The department must be credited with the remainder of the registration fee money to use in administering this chapter.

(3) A fee of $10 is assessed for the registration of fertilizers in addition to the ~~fee~~ *fees* imposed by 80-10-201(1)*(a)(i) and (1)(a)(ii)*. The additional fee must be used for the ground water protection responsibilities of the department relating to fertilizers. Revenues collected from this fee must be credited to the commercial fertilizer agricultural chemical ground water account within the state special revenue fund for the administration of this chapter.

(4) The department may direct the board of investments to invest the portion of the money collected under this section that is credited to the department pursuant to the provisions of 17-6-201. The income from the investments must be deposited in the state special revenue fund and credited to the department."

Section 17. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 80, chapter 10, part 1, and the provisions of Title 80, chapter 10, part 1, apply to [section 1].

Section 18. Effective date. [This act] is effective July 1, 2009.

Approved April 28, 2009

CHAPTER NO. 396

[SB 97]

AN ACT REVISING LAWS GOVERNING THE PETROLEUM TANK RELEASE CLEANUP FUND; REVISING REIMBURSEMENT AND ELIGIBILITY PROVISIONS; REVISING THE CONDITIONS FOR IMPOSING A CLEANUP FEE ON GASOLINE, FUEL, AND HEATING OIL DISTRIBUTED IN MONTANA; GRANTING RULEMAKING AUTHORITY; AMENDING SECTIONS 75-11-302, 75-11-307, 75-11-309, AND 75-11-314, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-11-302, MCA, is amended to read:

"75-11-302. Definitions. Except as provided in subsections (2), ~~(15)~~ *(14)*, and (25), the following definitions apply to this part:

(1) "Accidental release" means a sudden or nonsudden release, neither expected nor intended by the tank owner or operator, of petroleum or petroleum products from a storage tank that results in a need for corrective action or compensation for third-party bodily injury or property damage.

(2) "Aviation gasoline" means aviation fuel as defined in 15-70-201. For the purposes of this chapter, aviation gasoline does not include JP-4 jet fuel sold to a federal defense fuel supply center.

(3) "Board" means the petroleum tank release compensation board established in 2-15-2108.

(4) "Bodily injury" means physical injury, sickness, or disease sustained by an individual, including death that results from the physical injury, sickness, or disease at any time.

(5) "Claim" means a written request prepared and submitted by an owner or operator or an agent of the owner or operator for reimbursement of expenses caused by an accidental release from a petroleum storage tank.

(6) "Corrective action" means investigation, monitoring, cleanup, restoration, abatement, removal, and other actions necessary to respond to a release.

(7) "Department" means the department of environmental quality provided for in 2-15-3501.

(8) "Distributor" means a person who is licensed to sell gasoline, as provided in 15-70-202, and who:

(a) in the state of Montana, engages in the business of producing, refining, manufacturing, or compounding gasoline, aviation gasoline, special fuel, or heating oil for sale, use, or distribution;

(b) imports gasoline, aviation gasoline, special fuel, or heating oil for sale, use, or distribution in this state;

(c) engages in wholesale distribution of gasoline, aviation gasoline, special fuel, or heating oil in this state;

(d) is an exporter;

(e) is a dealer licensed as of January 1, 1969, except a dealer at an established airport; or

(f) either blends gasoline with ethanol or blends heating oil with waste oil.

~~(9) "Double-walled tank system" means a petroleum storage tank and associated product piping that is designed and constructed with rigid inner and outer walls separated by an interstitial space and that is capable of being monitored for leakage. The design and construction of these tank systems must meet standards of the department and the department of justice fire prevention and investigation bureau. The material used in construction must be compatible with the liquid to be stored in the system, and the system must be designed to prevent the release of any stored liquid.~~

~~(10)~~*(9)* "Eligible costs" means expenses reimbursable under 75-11-307.

~~(11)~~*(10)* "Export" means to transport out of the state of Montana, by means other than in the fuel supply tank of a motor vehicle, gasoline, aviation gasoline, special fuel, or heating oil received from a refinery or pipeline terminal within the state of Montana.

~~(12)~~*(11)* "Exporter" means a person who transports, by means other than in the fuel supply tank of a motor vehicle, gasoline, aviation gasoline, special fuel, or heating oil received from a refinery or pipeline terminal within the state of Montana to a destination outside the state of Montana for sale, use, or consumption beyond the boundaries of the state of Montana.

~~(13)~~*(12)* "Fee" means the petroleum storage tank cleanup fee provided for in 75-11-314.

~~(14)~~*(13)* "Fund" means the petroleum tank release cleanup fund established in 75-11-313.

~~(15)~~*(14)* "Gasoline" means gasoline as defined in 15-70-201. For the purposes of this chapter, gasoline does not include JP-4 jet fuel sold to a federal defense fuel supply center.

~~(16)~~*(15)* "Heating oil" means petroleum that is No. 1, No. 2, No. 4-light, No. 4-heavy, No. 5-light, No. 5-heavy, and No. 6 technical grades of fuel oil; other residual fuel oils, including navy special fuel oil and bunker C; and other fuels when used as substitutes for one of these fuel oils. Heating oil is typically used in the operation of heating equipment, boilers, or furnaces.

~~(17)~~*(16)* "Import" means to receive into a person's possession or custody first after its arrival and coming to rest at a destination within the state any gasoline, aviation gasoline, special fuel, or heating oil shipped or transported into this state from a point of origin outside this state, other than in the fuel supply tank of a motor vehicle.

~~(18)~~*(17)* "Operator" means a person in control of or having responsibility for the daily operation of a petroleum storage tank.

~~(19)~~*(18)* (a) "Owner" means:

(i) a person that holds title to, controls, or possesses an interest in a petroleum storage tank; or

(ii) a person that owns the property on which a petroleum storage tank from which a release occurred was located.

(b) The term does not include a person that holds an interest in a storage tank solely for financial security, unless through foreclosure or other related actions the holder of a security interest has taken possession of the tank.

~~(20)~~*(19)* "Person" means an individual, firm, trust, estate, partnership, company, association, joint-stock company, syndicate, consortium, commercial entity, corporation, or agency of state or local government.

~~(21)~~*(20)* "Petroleum" or "petroleum products" means crude oil or any fraction of crude oil that is liquid at standard conditions of temperature and pressure (60 degrees F and 14.7 pounds per square inch absolute) or motor fuel blend, such as ethanol-blended gasoline, and that is not augmented or compounded by more than a de minimis amount of another substance.

~~(22)~~*(21)* "Petroleum storage tank" means a tank that contains or contained petroleum or petroleum products and that is:

(a) an underground storage tank as defined in 75-11-503;

(b) a storage tank that is situated in an underground area, such as a basement, cellar, mine, drift, shaft, or tunnel;

(c) an aboveground storage tank with a capacity less than 30,000 gallons; or

(d) aboveground or underground pipes associated with tanks under subsections ~~(22)(b)~~ *(21)(b)* and ~~(22)(c)~~ *(21)(c)*, except that pipelines regulated under the following laws are excluded:

(i) the Natural Gas Pipeline Safety Act of 1968, ~~(~~49 U.S.C. 1671, et seq.~~)~~;

(ii) the Hazardous Liquid Pipeline Safety Act of 1979, ~~(~~49 U.S.C. 2001, et seq.~~)~~; and

(iii) state law comparable to the provisions of law referred to in subsections ~~(22)(d)(i)~~ *(21)(d)(i)* and ~~(22)(d)(ii)~~ *(21)(d)(ii)*, if the facility is intrastate.

(22) "Properly designed and installed double-walled tank system" means a petroleum storage tank and associated product piping that is designed and constructed with rigid inner and outer walls separated by an interstitial space and that is capable of being monitored for leakage. The design and construction of these tank systems must meet any applicable standards of the department and the department of justice fire prevention and investigation bureau. The material used in construction must be compatible with the liquid to be stored in the system, and the system must be designed to prevent the release of any stored liquid.

(23) "Property damage" means:

(a) physical injury to tangible property, including loss of use of that property caused by the injury; or

(b) loss of use of tangible property that is not physically injured.

(24) "Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing of petroleum or petroleum products from a petroleum storage tank into ground water, surface water, surface soils, or subsurface soils.

(25) "Special fuel" means those combustible liquids commonly referred to as diesel fuel or another volatile liquid of less than 46 degrees A.P.I. (American petroleum institute) gravity test, except liquid petroleum gas. For the purposes of this chapter, special fuel does not include diesel fuel sold to a railroad or a federal defense fuel supply center."

Section 2. Section 75-11-307, MCA, is amended to read:

"75-11-307. Reimbursement for expenses caused by release. (1) Subject to the availability of money from the fund under subsection ~~(5)~~ *(7)*, an owner or operator who is eligible under 75-11-308 and who complies with 75-11-309 and any rules adopted to implement those sections must be reimbursed by the board from the fund for the following eligible costs caused by a release from a petroleum storage tank:

(a) corrective action costs as required by a department-approved corrective action plan, except if the corrective action plan addresses releases of substances

other than petroleum products from an eligible petroleum storage tank, the board may reimburse only the costs that would have reasonably been incurred if the only release at the site was the release of the petroleum or petroleum products from the eligible petroleum storage tank; and

(b) compensation paid to third parties for bodily injury or property damage. The board may not reimburse for property damage until the corrective action is completed.

(2) An owner or operator may not be reimbursed from the fund for the following expenses:

(a) corrective action costs or the costs of bodily injury or property damage paid to third parties that are determined by the board to be ineligible for reimbursement;

(b) costs for bodily injury and property damage, other than corrective action costs, incurred by the owner or operator;

(c) penalties or payments for damages incurred under actions by the department, board, or federal, state, local, or tribal agencies or other government entities involving judicial or administrative enforcement activities and related negotiations;

(d) attorney fees and legal costs of the owner, the operator, or a third party;

(e) costs for the repair or replacement of a tank or piping or costs of other materials, equipment, or labor related to the operation, repair, or replacement of a tank or piping;

(f) expenses incurred before April 13, 1989, for owners or operators seeking reimbursement from the petroleum tank release cleanup fund and expenses incurred before May 15, 1991, for owners or operators seeking reimbursement from the petroleum tank release cleanup fund for a tank storing heating oil for consumptive use on the premises where it is stored or for a farm or residential tank with a capacity of 1,100 gallons or less that is used for storing motor fuel for noncommercial purposes;

(g) expenses exceeding the maximum reimbursements provided for in subsection (4); ~~and~~

(h) costs for which an owner or operator has received reimbursement or payment from an insurer or other third party; and

~~(h)~~*(i)* expenses for work completed by or on behalf of the owner or operator more than 5 years prior to the owner's or operator's request for reimbursement. This limitation does not apply to claims for compensation paid to third parties for bodily injury or property damage. The running of the 5-year limitation period is suspended by an appeal of the board's denial of eligibility for reimbursement. If a written request for hearing is filed under 75-11-309, the suspension of the 5-year limitation period is effective from the date of the board's initial eligibility denial to the date on which the initial eligibility denial is overturned or reversed by the board, a district court, or the state supreme court, whichever occurs latest. The board may grant reasonable extensions of this limitation period if it is shown that the need for the extension is not due to the negligence of the owner or operator or agent of the owner or operator.

(3) An owner or operator may designate a person as an agent to receive the reimbursement if the owner or operator remains legally responsible for all costs and liabilities incurred as a result of the release.

(4) Subject to the availability of funds under subsection ~~(5)~~ *(7)*:

(a) for releases eligible for reimbursement from the ~~petroleum tank release cleanup~~ fund that are discovered and reported on or after April 13, 1989, from a tank storing heating oil for consumptive use on the premises where it is stored or from a farm or residential tank with a capacity of 1,100 gallons or less that is used for storing motor fuel for noncommercial purposes, the board shall reimburse an owner or operator for:

~~(i) 50% of the first $10,000 of eligible costs and 100% of subsequent eligible costs, up to a maximum total reimbursement of $495,000:~~

~~(A) for single-walled tank system releases; and~~

~~(B) for double-walled tank system releases for which the release date was prior to October 1, 1993; or~~

~~(ii)~~*(i)* 100% of the eligible costs, up to a maximum total reimbursement of $500,000, for properly designed and installed double-walled tank system ~~accidental~~ releases that were discovered and reported on or after October 1, 1993*, and before October 1, 2009; or*

(ii) 50% of the first $10,000 of eligible costs and 100% of subsequent eligible costs, up to a maximum total reimbursement of $495,000 for all other releases; and

(b) for all other releases eligible for reimbursement from the ~~petroleum tank release cleanup~~ fund that are discovered and reported on or after April 13, 1989, the board shall reimburse an owner or operator for:

~~(i) 50% of the first $35,000 of eligible costs and 100% of subsequent eligible costs, up to a maximum total reimbursement of $982,500:~~

~~(A) for single-walled tank system releases; and~~

~~(B) for double-walled tank system releases for which the release date was prior to October 1, 1993; or~~

~~(ii)~~*(i)* 100% of the eligible costs, up to a maximum total reimbursement of $1 million, for properly designed and installed double-walled tank system ~~accidental~~ releases that were discovered and reported on or after October 1, 1993*, and before October 1, 2009; or*

(ii) 50% of the first $35,000 of eligible costs and 100% of subsequent eligible costs, up to a maximum total reimbursement of $982,500 for all other releases.

(5) If an insurer pays or reimburses an owner or operator for costs that qualify as eligible costs under subsection (1), the costs paid or reimbursed by the insurer:

(a) are considered to have been paid by the owner or operator toward satisfaction of the 50% share requirements of subsection (4)(a)(ii) or (4)(b)(ii) if the owner or operator receives the payment or reimbursement before applying for reimbursement from the board;

(b) are not reimbursable from the fund; and

(c) except for the amount considered to have been paid by the owner or operator pursuant to subsection (5)(a), are considered to have been reimbursed from the fund for purposes of determining when the board has paid the maximum amount payable from the fund under subsection (4)(a)(ii) or (4)(b)(ii).

~~(5)~~*(6)* If the fund does not contain sufficient money to pay approved claims for eligible costs, a reimbursement may not be made and the fund and the board are not liable for making any reimbursement for the costs at that time. When the fund contains sufficient money, eligible costs must be reimbursed subsequently in the order in which they were approved by the board."

Section 3. Section 75-11-309, MCA, is amended to read:

"75-11-309. Procedures for reimbursement of eligible costs. (1) An owner or operator seeking reimbursement for eligible costs and the department shall comply with the following procedures:

(a) If an owner or operator discovers or is provided evidence that a release may have occurred from the owner's or operator's petroleum storage tank, the owner or operator shall immediately notify the department of the release and conduct an initial response to the release in accordance with state and federal laws and rules to protect the public health and safety and the environment.

(b) Except for a tank for which a permit is sought under 75-11-308(1)(b)(iii) and that is closed within 120 days of discovery of the release, following discovery of the release, the petroleum storage tank must remain in compliance with applicable state and federal laws and rules that the board determines pertain to prevention and mitigation of petroleum releases.

(c) The owner or operator shall conduct a thorough investigation of the release, report the findings to the department, and, as determined necessary by the department, prepare and submit for approval by the department a corrective action plan that conforms with state, tribal (when applicable), and federal corrective action requirements.

(d) (i) The department shall review the corrective action plan and forward a copy to a local government office and, when applicable, a tribal government office with jurisdiction over a corrective action for the release. The local or tribal government office shall inform the department if it wants any modification of the proposed plan.

(ii) Based on its own review and comments received from a local government, tribal government, or other source, the department may approve the proposed corrective action plan, make or request the owner or operator to modify the proposed plan, or prepare its own plan for compliance by the owner or operator. A plan finally approved by the department through any process provided in this subsection (1)(d) is the approved corrective action plan.

(iii) After the department approves a corrective action plan, a local government or tribal government may not impose different corrective action requirements on the owner or operator.

(e) The department shall notify the owner or operator of its approval of a corrective action plan and shall promptly submit a copy of the approved corrective action plan to the board.

(f) The owner or operator shall implement the corrective action plan or plans approved by the department until the release is resolved. The department may oversee the implementation of the plan, require reports and monitoring from the owner or operator, undertake inspections, and otherwise exercise its authority concerning corrective action under Title 75, chapter 10, part 7, Title 75, chapter 11, part 5, and other applicable law and rules.

(g) (i) The owner or operator shall document in the manner required by the board all expenses incurred in preparing and implementing the corrective action plan. The owner or operator shall submit claims and substantiating documents to the board in the form and manner required by the board.

(ii) The board shall review each claim and determine if the claims are actual, reasonable, and necessary costs of responding to the release and implementing the corrective action plan.

(iii) If the board requires additional information to determine if a claimed cost is actual, reasonable, and necessary, the board may request comment from the department and the owner or operator.

(iv) If the department determines that an owner or operator is failing to properly implement a corrective action plan, it shall notify the board.

(h) The owner or operator shall document, in the manner required by the board, any payments to a third party for bodily injury or property damage caused by a release. The owner or operator shall submit claims and substantiating documents to the board in the form and manner required by the board.

(i) In addition to the documentation in subsections (1)(g) and (1)(h), when the release is claimed to have originated from a *properly designed and installed* double-walled tank system, the owner or operator shall document, in the manner required by the board, the following:

(i) the date that the release was discovered; *and*

(ii) that the originating tank was part of a *properly designed and installed* double-walled tank system ~~as defined in 75-11-302; and~~

~~(iii) that the double-walled tank system was properly installed and made of materials and constructed in accordance with applicable department regulations~~.

(2) If an owner or operator is issued an administrative order for failure to comply with requirements imposed by or pursuant to Title 75, chapter 11, part 5, or rules adopted pursuant to Title 75, chapter 11, part 5, all reimbursement of claims submitted after the date of the order must be suspended. Upon a written determination by the department that the owner or operator has returned to compliance with the requirements of Title 75, chapter 11, part 5, or rules adopted pursuant to Title 75, chapter 11, part 5, suspended and future claims may be reimbursed according to criteria established by the board. In establishing the criteria, the board shall consider the effect and duration of the noncompliance.

(3) The board shall review each claim received under subsections (1)(g) and (1)(h), make the determination required by this subsection, inform the owner or operator of its determination, and, as appropriate, reimburse the owner or operator from the fund. Before approving a reimbursement, the board shall affirmatively determine that:

(a) the expenses for which reimbursement is claimed:

(i) are eligible costs; and

(ii) were actually, necessarily, and reasonably incurred for the preparation or implementation of a corrective action plan approved by the department or for payments to a third party for bodily injury or property damage; and

(b) the owner or operator:

(i) is eligible for reimbursement under 75-11-308; and

(ii) has complied with this section and any rules adopted pursuant to this section. Upon a determination by the board that the owner or operator has not complied with this section or rules adopted pursuant to this section, all reimbursement of pending and future claims must be suspended. Upon a determination by the board that the owner or operator has returned to compliance with this section or rules adopted pursuant to this section, suspended and future claims may be reimbursed according to criteria

established by the board. In establishing the criteria, the board shall consider the effect and duration of the noncompliance.

(4) *(a)* If an owner or operator disagrees with a board determination under subsection (3), the owner or operator may submit a written request for a hearing before the board.

(b) A written request for a hearing must be received by the board within 120 days after notice of the board's determination is served on the owner or operator by certified mail. The notice of determination must advise the owner or operator of the 120-day time limit for submitting a written request for a hearing to the board. Not less than 50 days or more than 60 days after the board serves the notice of determination, the board shall serve on the owner or operator a second notice by certified mail advising the owner or operator of the deadline for requesting a hearing. Service by certified mail is complete on the date shown on the certified mail receipt.

(c) If a written request is received within 120 days, the ~~The~~ hearing must be held at a meeting of the board or as otherwise permitted under the Montana Administrative Procedure Act no later than 120 days following receipt of the request or at a time mutually agreed to by the board and the owner or operator.

(d) If a written request is not received within 120 days, the determination of the board is final.

(5) The board shall obligate money for reimbursement of eligible costs of owners and operators in the order that the costs are finally approved by the board.

(6) (a) The board may, at the request of an owner or operator, guarantee in writing the reimbursement of eligible costs that have been approved by the board but for which money is not currently available from the fund for reimbursement.

(b) The board may, at the request of an owner or operator, guarantee in writing reimbursement of eligible costs not yet approved by the board, including estimated costs not yet incurred. A guarantee for payment under this subsection (6)(b) does not affect the order in which money in the fund is obligated under subsection (5).

(c) When considering a request for a guarantee of payment, the board may require pertinent information or documentation from the owner or operator. The board may grant or deny, in whole or in part, any request for a guarantee."

Section 4. Section 75-11-314, MCA, is amended to read:

"75-11-314. Petroleum storage tank cleanup fee — collection — penalties — warrant for distraint — statute of limitations. (1) Except as provided in subsection (4), each distributor shall pay to the department of transportation a petroleum storage tank cleanup fee for each gallon of gasoline, aviation gasoline, special fuel, or heating oil distributed by the distributor within the state and upon which the fee has not been paid by any other distributor. The fee must equal:

~~(a) 1 cent for each gallon of gasoline distributed from July 1, 1989, through June 30, 1991;~~

~~(b)~~*(a)* 0.75 cent for each gallon of gasoline ~~distributed after July 1, 1991~~;

~~(c)~~*(b)* 0.75 cent for each gallon of aviation gasoline ~~distributed after July 1, 1993~~;

~~(d)~~*(c)* 0.75 cent for each gallon of special fuel ~~distributed after July 1, 1993~~; and

~~(e)~~*(d)* 0.75 cent for each gallon of heating oil ~~distributed after July 1, 1993~~.

(2) Gasoline, aviation gasoline, special fuel, and heating oil exported or sold for export out of the state must be included in the measure of a distributor's fee.

(3) Ethanol that is blended with gasoline to be sold as ethanol-blended gasoline is subject to the fee provided in subsection (1).

(4) A fee may not be imposed or collected beginning on the first day of the first month in the first calendar quarter after the unobligated balance in the fund equals or exceeds ~~$8~~ *$10* million. Whenever the unobligated fund balance, less claims anticipated for board approval within the next 90 days, is less than ~~$4~~ *$6* million, the department of transportation shall, within 30 days, notify distributors by mail that the fee is reinstated beginning on the first day of the first month that begins no less than 30 days after the date of the notice. Once reinstated, the fee must be imposed and collected until the unobligated fund balance again equals or exceeds ~~$8~~ *$10* million.

(5) The department of transportation shall collect the fee in the same manner as the basic gasoline license tax under Title 15, chapter 70, part 2. The provisions of 15-70-103, 15-70-111, 15-70-202, 15-70-205, 15-70-206, 15-70-208 through 15-70-212, 15-70-221(2), and 15-70-232 apply to the fee. The provisions of 15-70-204, 15-70-207, 15-70-221(1), and 15-70-222 through 15-70-224 do not apply to the fee."

Section 5. Applicability. [Section 2(5)(a) and (5)(c)] apply to requests for reimbursement submitted to the petroleum tank release cleanup fund after [the effective date of this act].

Approved April 28, 2009

CHAPTER NO. 397

[SB 131]

AN ACT REQUIRING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO DESIGNATE THE WILDLAND-URBAN INTERFACE PARCELS IN EACH COUNTY USING CERTAIN CRITERIA; REQUIRING THE DEPARTMENT TO CREATE AND MAINTAIN MAPS OF THE WILDLAND-URBAN INTERFACE PARCELS; REQUIRING THE USE OF A COMMUNITY WILDFIRE PROTECTION PLAN IF ONE HAS BEEN ADOPTED; PROHIBITING ADDITIONAL OR INCREASED FEES IF LOCATION IN A WILDLAND-URBAN INTERFACE IS THE ONLY CRITERIA; PROVIDING AN APPROPRIATION; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Designation of wildland-urban interface parcels. (1) Prior to January 1, 2012, and subject to the provisions of this section, the department shall identify the parcels of property in the state that are considered to be wildland-urban interface parcels, delineate those parcels on maps, and ensure that the maps and information on the maps is available to the public, local governing bodies, and governmental fire agencies organized under Title 7, chapter 33.

(2) (a) Except as provided in subsection (2)(b), the department shall identify a county's wildland-urban interface parcels based on the wildland-urban

interface designation developed as part of the county's completion of a community wildfire protection plan under 16 U.S.C. 6501, et seq., the Healthy Forests Restoration Act of 2003.

(b) If a community wildfire protection plan has not been adopted, the department shall:

(i) provide notice to the county governing body that the department intends to designate the wildland-urban interface within the county's jurisdictional boundary;

(ii) allow up to 18 months for the county to complete and adopt a community wildfire protection plan if a county had begun the process of developing a plan prior to receiving the notice from the department under subsection (2)(b)(i);

(iii) review and consider the analysis of the potential for fire and wildland fire required in 76-1-601(3)(j) of the county's growth policy, if a growth policy has been adopted;

(iv) consult with the county governing body and governmental fire agencies organized under Title 7, chapter 33, regarding appropriate parcels to designate as wildland-urban interface parcels; and

(v) clearly identify and make available to the county governing body and governmental fire agencies the criteria the department intends to use in designating parcels.

(3) Location of a property within the wildland-urban interface designated under this section may not be the sole reason for assessing additional fire protection fees, impact fees, or other fees against the property.

(4) The department shall report its progress in designating wildland-urban interface parcels to an appropriate interim legislative committee assigned to study wildland fire suppression or to the environmental quality council.

(5) The department shall review each county's wildland-urban interface designation every 5 years, make changes as necessary, and maintain accurate maps and other identifying information.

Section 2. Appropriation. There is appropriated to the department of natural resources and conservation $147,327 in fiscal year 2010 and $140,527 in fiscal year 2011 from federal special revenue for the purpose of [this act] only. If the department does not receive federal funds for this purpose, the department shall proceed with the requirements of [this act] to the extent possible using existing resources.

Section 3. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 76, chapter 13, part 1, and the provisions of Title 76, chapter 13, part 1, apply to [section 1].

Section 4. Effective date. [This act] is effective on passage and approval.

Approved April 28, 2009

CHAPTER NO. 398

[SB 176]

AN ACT PROVIDING A LIMITED EXEMPTION FROM CONTINUING EDUCATION REQUIREMENTS FOR INDIVIDUALS WHO EXECUTE ONLY SURETY BONDS; AMENDING SECTION 33-17-1203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-17-1203, MCA, is amended to read:

"33-17-1203. Continuing education — basic requirements — exceptions. (1) Unless exempt under subsection (3):

(a) an individual licensed to act as an insurance producer, adjuster, or consultant other than an individual licensed *only for surety bail bonds or* for limited lines credit insurance shall, during each 24-month period, complete at least 24 credit hours of approved continuing education;

(b) an individual licensed to act as an insurance producer only for *surety bail bonds or for* limited lines credit insurance shall, during each biennium, complete 5 credit hours of approved continuing education in the areas of insurance law, ethics, or *topics specific to surety bail bonds or* limited lines credit insurance;

(c) an individual licensed as an insurance producer, adjuster, or consultant shall, during each biennium, complete at least 1 credit hour of approved continuing education on changes in Montana insurance statutes and administrative rules.

(2) The commissioner may, for good cause, grant an extension of time, not to exceed 1 year, during which the requirements imposed by subsection (1) may be completed.

(3) The minimum continuing education requirements do not apply to:

(a) an individual holding a temporary license issued under 33-17-216; ~~or~~ *or*

(b) an insurance producer, adjuster, or consultant otherwise exempted by the commissioner."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 28, 2009

CHAPTER NO. 399

[SB 204]

AN ACT CREATING A MONTANA CENTENNIAL FARM AND RANCH PROGRAM; PROVIDING FOR THE ADMINISTRATION OF THE PROGRAM; AND GRANTING RULEMAKING AUTHORITY FOR THE PROGRAM TO THE MONTANA HISTORICAL SOCIETY.

WHEREAS, farmers and ranchers produce more than just food; they also contribute to the state's economy, maintain open spaces, and support family businesses; and

WHEREAS, Montana farm and ranch families have played a vital role in Montana's past and will continue to be important to our future; and

WHEREAS, many Montana farm and ranch families have withstood pressure from development, drought, and tough economic times in order to maintain their rural heritage.

Be it enacted by the Legislature of the State of Montana:

Section 1. Purpose. The purpose of [sections 1 through 3] is to recognize and celebrate the agricultural traditions of the state by identifying those places that represent the perseverance and stewardship of Montana families on their farms and ranches. The Montana centennial farm and ranch program

accomplishes this purpose by acknowledging the strength and determination of these families and their efforts to preserve their agricultural traditions, through issuance of a certificate designating a qualified property as a centennial farm or ranch.

Section 2. Montana centennial farm and ranch program. (1) There is a Montana centennial farm and ranch program to recognize Montana farm and ranch families that have owned or lived on their land for 100 years or more.

(2) A Montana farm or ranch family may apply for a centennial farm or ranch designation and a certificate through the program if the family:

(a) has owned or lived on the farm or ranch for 100 years or more;

(b) submits an application to the Montana historical society; and

(c) pays the fee set by the historical society to cover the application process and the certificate.

Section 3. Administration of program — fee — rules. (1) The Montana centennial farm and ranch program is administered by the Montana historical society.

(2) The historical society may adopt rules for administering the program, including but not limited to rules:

(a) creating the application form and process;

(b) setting the application fee;

(c) creating guidelines for accepting or declining applications; and

(d) designing and awarding certificates to qualifying families.

(3) The fee provided for in this section must be deposited in an account in the state special revenue fund and may be used by the historical society only for maintaining the program.

Section 4. Codification instruction. [Sections 1 through 3] are intended to be codified as an integral part of Title 22, chapter 3, and the provisions of Title 22, chapter 3, apply to [sections 1 through 3].

Approved April 28, 2009

CHAPTER NO. 400

[SB 214]

AN ACT INCREASING PENALTIES FOR THEFT OF A COMMONLY DOMESTICATED HOOFED ANIMAL AND FOR ILLEGAL BRANDING OR ALTERING OR OBSCURING A BRAND; REQUIRING MANDATORY COMMUNITY SERVICE IF A PRISON SENTENCE IS DEFERRED; PROVIDING FOR FORFEITURE OF PROPERTY FOR THE THEFT OF A COMMONLY DOMESTICATED HOOFED ANIMAL AND FOR ILLEGAL BRANDING OR ALTERING OR OBSCURING A BRAND; AMENDING SECTIONS 45-2-311, 45-6-301, AND 45-6-327, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Forfeiture for theft of commonly domesticated hoofed animal or illegal branding or altering or obscuring of brand. (1) The following property is subject to criminal forfeiture under this section:

(a) money, raw materials, products, equipment, and other property of any kind that is used or intended for use in the theft of a commonly domesticated hoofed animal or illegal branding or altering or obscuring a brand in violation of 45-6-301 or 45-6-327;

(b) property used or intended for use as a container for property enumerated in subsection (1)(a);

(c) except as provided in subsection (2), a conveyance, including an aircraft, vehicle, or vessel, used or intended for use to facilitate the theft of a commonly domesticated hoofed animal or illegal branding or altering or obscuring a brand in violation of 45-6-301 or 45-6-327;

(d) books, records, research products and materials, formulas, microfilm, tapes, and data used or intended for use in connection with the theft of a commonly domesticated hoofed animal or illegal branding or altering or obscuring a brand in violation of 45-6-301 or 45-6-327;

(e) everything of value furnished or intended to be furnished in exchange for a commonly domesticated hoofed animal in violation of 45-6-301 or 45-6-327 and all proceeds traceable to the exchange;

(f) money, negotiable instruments, securities, and weapons used or intended to be used to facilitate a violation of 45-6-301 or 45-6-327; and

(g) personal property constituting or derived from proceeds obtained directly or indirectly from theft of a commonly domesticated hoofed animal or from illegal branding or altering or obscuring a brand in violation of 45-6-301 or 45-6-327.

(2) A conveyance is not subject to criminal forfeiture under this section unless the owner or other person in charge of the conveyance knowingly used the conveyance or knowingly consented to its use for the purpose of theft of a commonly domesticated hoofed animal or illegal branding or altering or obscuring a brand in violation of 45-6-301 or 45-6-327.

(3) Criminal forfeiture under this section of property that is encumbered by a bona fide security interest is subject to that interest if the secured party did not use or consent to the use of the property in connection with the theft of a commonly domesticated hoofed animal or illegal branding or altering or obscuring a brand in violation of 45-6-301 or 45-6-327.

(4) Property subject to criminal forfeiture under this section may be seized under the following circumstances:

(a) A peace officer who has probable cause to make an arrest for the theft of a commonly domesticated hoofed animal or for illegal branding or altering or obscuring a brand in violation of 45-6-301 or 45-6-327 may seize a conveyance obtained with proceeds derived from the violation or used to facilitate the violation and shall immediately deliver the conveyance to the peace officer's law enforcement agency to be held as evidence until a criminal forfeiture is declared or a release is ordered.

(b) Property subject to criminal forfeiture under this section may be seized by a peace officer under a search warrant issued by a court having jurisdiction over the property.

(c) Seizure without a warrant may be made if:

(i) the seizure is incident to an arrest or a search under a search warrant issued for another purpose or an inspection under an administrative inspection warrant;

(ii) the property was the subject of a prior judgment in favor of the state in a criminal proceeding or a criminal forfeiture proceeding based on Title 44, chapter 12, or this section;

(iii) a peace officer has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

(iv) a peace officer has probable cause to believe that the property was used or is intended to be used during the theft of a commonly domesticated hoofed animal or illegal branding or altering or obscuring a brand in violation of 45-6-301 or 45-6-327.

(5) A forfeiture proceeding under subsection (1) must be commenced within 45 days of the seizure of the property involved.

(6) The procedure for forfeiture proceedings in 44-12-201 through 44-12-204 applies to property seized pursuant to this section.

(7) Upon conviction, the property subject to criminal forfeiture is forfeited to the state and must be disposed of in accordance with the provisions of [section 2].

Section 2. Disposition of property and proceeds of sale. (1) If the court finds that property seized pursuant to the theft of a commonly domesticated hoofed animal or illegal branding or altering or obscuring a brand was not used for the purpose charged or that the property listed in [section 1(1)] was used without the knowledge or consent of the owner, it shall order the property released to the owner of record as of the date of the seizure.

(2) If the court finds that the property was used for the purpose charged and that the property listed in [section 1(1)] was used with the knowledge or consent of the owner, the property must be disposed of as follows:

(a) If proper proof of the claim is presented at the hearing by the holder of a security interest, the court shall order the property released to the holder of the security interest if the amount due the holder of the security interest is equal to or in excess of the value of the property as of the date of seizure. If the amount due the holder of the security interest is less than the value of the property, the property, if it is sold, must be sold at public auction by the department of livestock in the same manner provided by law for the sale of property under execution or the department of livestock may return the property to the holder of the security interest without proceeding with an auction. The property may not be sold to an officer or employee of the department of livestock or to a person related to a department officer or employee by blood or marriage.

(b) If no claimant exists and the department of livestock wishes to retain the property for its official use, it may do so. If the property is not to be retained, it must be sold as provided in subsection (2)(a).

(c) If a claimant who has presented proper proof of a claim exists and the department of livestock wishes to retain the property for its official use, it may do so if it compensates the claimant in the amount of the security interest outstanding at the time of the seizure.

(3) In making a disposition of property under this section, the court may take any action to protect the rights of innocent persons.

(4) Whenever property is seized, forfeited, and sold under the provisions of this section, the net proceeds of the sale must be distributed as follows:

(a) to the holders of security interests who have presented proper proof of their claims, if any, up to the amount of their interests in the property; and

(b) the remainder, if any, to the credit of the department of livestock to be used in enforcement activities related to the theft of commonly domesticated hoofed animals and illegal branding or altering or obscuring a brand.

Section 3. Section 45-2-311, MCA, is amended to read:

"45-2-311. Criminal responsibility of corporations. (1) A corporation may be prosecuted for the commission of an offense only if:

(a) the offense is a misdemeanor, is defined by 45-5-204, 45-6-315, 45-6-317, 45-6-318, 45-6-326, ~~45-6-327,~~ 45-8-113, 45-8-114, 45-8-212, 45-8-214, 82-1-201, or 82-10-104, or is defined by another statute that clearly indicates a legislative purpose to impose liability on a corporation and an agent of the corporation performs the conduct that is an element of the offense while acting within the scope of the agent's office or employment and in behalf of the corporation, except that any limitation in the defining statute concerning the corporation's accountability for certain agents or under certain circumstances is applicable; or

(b) the commission of the offense is authorized, requested, commanded, or performed by the board of directors or by a high managerial agent who is acting within the scope of that agent's employment in behalf of the corporation.

(2) A corporation's proof that the high managerial agent having supervisory responsibility over the conduct that is the subject matter of the offense exercised due diligence to prevent the commission of the offense is a defense to a prosecution for any offense to which subsection (1)(a) refers, other than an offense for which absolute liability is imposed. This subsection is inapplicable if the legislative purpose of the statute defining the offense is inconsistent with the provisions of this subsection.

(3) For the purposes of this section:

(a) "agent" means any director, officer, servant, employee, or other person who is authorized to act in behalf of the corporation;

(b) "high managerial agent" means an officer of the corporation or any other agent who has a position of comparable authority for the formulation of corporate policy or the supervision of subordinate employees in a managerial capacity."

Section 4. Section 45-6-301, MCA, is amended to read:

"45-6-301. Theft. (1) A person commits the offense of theft when the person purposely or knowingly obtains or exerts unauthorized control over property of the owner and:

(a) has the purpose of depriving the owner of the property;

(b) purposely or knowingly uses, conceals, or abandons the property in a manner that deprives the owner of the property; or

(c) uses, conceals, or abandons the property knowing that the use, concealment, or abandonment probably will deprive the owner of the property.

(2) A person commits the offense of theft when the person purposely or knowingly obtains by threat or deception control over property of the owner and:

(a) has the purpose of depriving the owner of the property;

(b) purposely or knowingly uses, conceals, or abandons the property in a manner that deprives the owner of the property; or

(c) uses, conceals, or abandons the property knowing that the use, concealment, or abandonment probably will deprive the owner of the property.

(3) A person commits the offense of theft when the person purposely or knowingly obtains control over stolen property knowing the property to have been stolen by another and:

(a) has the purpose of depriving the owner of the property;

(b) purposely or knowingly uses, conceals, or abandons the property in a manner that deprives the owner of the property; or

(c) uses, conceals, or abandons the property knowing that the use, concealment, or abandonment probably will deprive the owner of the property.

(4) A person commits the offense of theft when the person purposely or knowingly obtains or exerts unauthorized control over any part of any public assistance provided under Title 52 or 53 by a state or county agency, regardless of the original source of assistance, by means of:

(a) a knowingly false statement, representation, or impersonation; or

(b) a fraudulent scheme or device.

(5) A person commits the offense of theft when the person purposely or knowingly obtains or exerts or helps another obtain or exert unauthorized control over any part of any benefits provided under Title 39, chapter 71, by means of:

(a) a knowingly false statement, representation, or impersonation; or

(b) deception or other fraudulent action.

(6) (a) A person commits the offense of theft when the person purposely or knowingly commits insurance fraud as provided in 33-1-1202 or 33-1-1302;

(b) purposely or knowingly diverts or misappropriates insurance premiums as provided in 33-17-1102; or

(c) purposely or knowingly receives small business health insurance premium incentive payments or premium assistance payments or tax credits under Title 33, chapter 22, part 20, to which the person is not entitled.

(7) A person commits the offense of theft of property by embezzlement when, with the purpose to deprive the owner of the property, the person:

(a) purposely or knowingly obtains or exerts unauthorized control over property of the person's employer or over property entrusted to the person; or

(b) purposely or knowingly obtains by deception control over property of the person's employer or over property entrusted to the person.

(8) (a) Except as provided in subsection (8)(b), a person convicted of the offense of theft of property not exceeding $1,000 in value shall be fined an amount not to exceed $1,000 or be imprisoned in the county jail for a term not to exceed 6 months, or both. A person convicted of a second offense shall be fined $1,000 or be imprisoned in the county jail for a term not to exceed 6 months, or both. A person convicted of a third or subsequent offense shall be fined $1,000 and be imprisoned in the county jail for a term of not less than 30 days or more than 6 months.

(b) *(i)* Except as provided in subsection (8)(c), a person convicted of the offense of theft of property exceeding $1,000 in value~~, theft of any commonly domesticated hoofed animal,~~ or theft of any amount of anhydrous ammonia for the purpose of manufacturing dangerous drugs shall be fined an amount not to exceed $50,000 or be imprisoned in a state prison for a term not to exceed 10 years, or both.

(ii) A person convicted of the theft of any commonly domesticated hoofed animal shall be fined an amount of not less than $5,000 or more than $50,000 or be imprisoned in a state prison for a term not to exceed 10 years, or both. If a prison term is deferred, the court shall order the offender to perform 416 hours of community service during a 1-year period, in the offender's county of residence. In addition to the fine and imprisonment, the offender's property is subject to criminal forfeiture pursuant to [sections 1 and 2].

(c) A person convicted of the offense of theft of property exceeding $10,000 in value by embezzlement shall be imprisoned in a state prison for a term of not less than 1 year or more than 10 years and may be fined an amount not to exceed $50,000. The court may, in its discretion, place the person on probation with the requirement that restitution be made under terms set by the court. If the terms are not met, the required prison term may be ordered.

(9) Amounts involved in thefts committed pursuant to a common scheme or the same transaction, whether from the same person or several persons, may be aggregated in determining the value of the property."

Section 5. Section 45-6-327, MCA, is amended to read:

"45-6-327. Illegal branding or altering or obscuring ~~a~~ *of* brand. (1) A person commits the offense of illegal branding or altering or obscuring a brand if ~~he~~ *the person* marks or brands any commonly domesticated hoofed animal or removes, covers, alters, or defaces any existing mark or brand on any commonly domesticated hoofed animal with the purpose ~~to obtain or exert~~ *of obtaining or exerting* unauthorized control over ~~said~~ *the* animal or with the purpose ~~to conceal, misrepresent, transfer, or prevent~~ *of concealing, misrepresenting, transferring, or preventing* identification of ~~said~~ *the* animal.

(2) A person convicted of the offense of illegal branding or altering or obscuring a brand shall be imprisoned in the state prison for ~~any~~ *a* term not to exceed 10 years or be fined an amount *of* not ~~to exceed~~ *less than $5,000 or more than* $50,000, or both. *If a prison term is deferred, the court shall order the offender to perform 416 hours of community service during a 1-year period, in the offender's county of residence. In addition to the fine and imprisonment, the offender's property is subject to criminal forfeiture pursuant to [sections 1 and 2].*"

Section 6. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 45, chapter 6, part 3, and the provisions of Title 45, chapter 6, part 3, apply to [sections 1 and 2].

Section 7. Effective date. [This act] is effective on passage and approval.

Section 8. Applicability. [This act] applies to proceedings begun on or after [the effective date of this act].

Approved April 28, 2009

CHAPTER NO. 401

[SB 260]

AN ACT CLARIFYING THE TAX AND REPORTING REQUIREMENTS OF PUBLICLY TRADED PARTNERSHIPS; DEFINING THE RECAPTURE OF MONTANA SOURCE DEPRECIATION AND DEPLETION IN REGARD TO THE SALE BY A NONRESIDENT OF AN INTEREST IN A PUBLICLY TRADED PARTNERSHIP DOING BUSINESS IN MONTANA; CLARIFYING THAT THE BENEFICIAL OWNERS OF TRADED OWNERSHIP INTERESTS

OF THE PARTNERSHIPS ARE TAXED; PROVIDING THAT A PUBLICLY TRADED PARTNERSHIP IS EXEMPT FROM COMPOSITE RETURN AND WITHHOLDING REQUIREMENTS IF IT FILES AN ANNUAL INFORMATION RETURN IDENTIFYING CERTAIN BENEFICIAL OWNERS OF TRADED OWNERSHIP INTERESTS OF THE PARTNERSHIP; AMENDING SECTIONS 15-30-101, 15-30-1102, AND 15-30-1113, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-30-101, MCA, is amended to read:

"15-30-101. Definitions. For the purpose of this chapter, unless otherwise required by the context, the following definitions apply:

(1) "Base year structure" means the following elements of the income tax structure:

(a) the tax brackets established in 15-30-103, but unadjusted by 15-30-103(2), in effect on June 30 of the taxable year;

(b) the exemptions contained in 15-30-112, but unadjusted by 15-30-112(6), in effect on June 30 of the taxable year;

(c) the maximum standard deduction provided in 15-30-122, but unadjusted by 15-30-122(2), in effect on June 30 of the taxable year.

(2) "Consumer price index" means the consumer price index, United States city average, for all items, for all urban consumers (CPI-U), using the 1982-84 base of 100, as published by the bureau of labor statistics of the U.S. department of labor.

(3) "Corporation" or "C. corporation" means a corporation, limited liability company, or other entity:

(a) that is treated as an association for federal income tax purposes;

(b) for which a valid election under section 1362 of the Internal Revenue Code (26 U.S.C. 1362) is not in effect; and

(c) that is not a disregarded entity.

(4) "Department" means the department of revenue.

(5) "Disregarded entity" means a business entity:

(a) that is disregarded as an entity separate from its owner for federal tax purposes, as provided in United States treasury regulations 301.7701-2 or 301.7701-3, 26 CFR 301.7701-2 or 26 CFR 301.7701-3, or as those regulations may be labeled or amended; or

(b) that is a qualified subchapter S. subsidiary that is not treated as a separate corporation, as provided in section 1361(b)(3) of the Internal Revenue Code (26 U.S.C. 1361(b)(3)).

(6) "Dividend" means:

(a) any distribution made by a C. corporation out of its earnings and profits to its shareholders or members, whether in cash or in other property or in stock of the corporation, other than stock dividends; and

(b) any distribution made by an S. corporation treated as a dividend for federal income tax purposes.

(7) "Fiduciary" means a guardian, trustee, executor, administrator, receiver, conservator, or any person, whether individual or corporate, acting in any fiduciary capacity for any person, trust, or estate.

(8) "Foreign C. corporation" means a corporation that is not engaged in or doing business in Montana, as provided in 15-31-101.

(9) "Foreign government" means any jurisdiction other than the one embraced within the United States, its territories, and its possessions.

(10) "Gross income" means the taxpayer's gross income for federal income tax purposes as defined in section 61 of the Internal Revenue Code (26 U.S.C. 61) or as that section may be labeled or amended, excluding unemployment compensation included in federal gross income under the provisions of section 85 of the Internal Revenue Code (26 U.S.C. 85) as amended.

(11) "Inflation factor" means a number determined for each tax year by dividing the consumer price index for June of the tax year by the consumer price index for June 2005.

(12) "Information agents" includes all individuals and entities acting in whatever capacity, including lessees or mortgagors of real or personal property, fiduciaries, brokers, real estate brokers, employers, and all officers and employees of the state or of any municipal corporation or political subdivision of the state, having the control, receipt, custody, disposal, or payment of interest, rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable annual or periodical gains, profits, and income with respect to which any person or fiduciary is taxable under this chapter.

(13) "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended, or as it may be labeled or further amended. References to specific provisions of the Internal Revenue Code mean those provisions as they may be otherwise labeled or further amended.

(14) "Knowingly" is as defined in 45-2-101.

(15) "Limited liability company" means a limited liability company, domestic limited liability company, or a foreign limited liability company as defined in 35-8-102.

(16) "Limited liability partnership" means a limited liability partnership as defined in 35-10-102.

(17) "Lottery winnings" means income paid either in lump sum or in periodic payments to:

(a) a resident taxpayer on a lottery ticket; or

(b) a nonresident taxpayer on a lottery ticket purchased in Montana.

(18) (a) "Montana source income" means:

(i) wages, salary, tips, and other compensation for services performed in the state or while a resident of the state;

(ii) gain attributable to the sale or other transfer of tangible property located in the state, sold or otherwise transferred while a resident of the state, or used or held in connection with a trade, business, or occupation carried on in the state;

(iii) gain attributable to the sale or other transfer of intangible property received or accrued while a resident of the state;

(iv) interest received or accrued while a resident of the state or from an installment sale of real property or tangible commercial or business personal property located in the state;

(v) dividends received or accrued while a resident of the state;

(vi) net income or loss derived from a trade, business, profession, or occupation carried on in the state or while a resident of the state;

(vii) net income or loss derived from farming activities carried on in the state or while a resident of the state;

(viii) net rents from real property and tangible personal property located in the state or received or accrued while a resident of the state;

(ix) net royalties from real property and from tangible real property to the extent the property is used in the state or the net royalties are received or accrued while a resident of the state. The extent of use in the state is determined by multiplying the royalties by a fraction, the numerator of which is the number of days of physical location of the property in the state during the royalty period in the tax year and the denominator of which is the number of days of physical location of the property everywhere during all royalty periods in the tax year. If the physical location is unknown or unascertainable by the taxpayer, the property is considered used in the state in which it was located at the time the person paying the royalty obtained possession.

(x) patent royalties to the extent the person paying them employs the patent in production, fabrication, manufacturing, or other processing in the state, a patented product is produced in the state, or the royalties are received or accrued while a resident of the state;

(xi) net copyright royalties to the extent printing or other publication originates in the state or the royalties are received or accrued while a resident of the state;

(xii) partnership income, gain, loss, deduction, or credit or item of income, gain, loss, deduction, or credit:

(A) derived from a trade, business, occupation, or profession carried on in the state;

(B) derived from the sale or other transfer or the rental, lease, or other commercial exploitation of property located in the state; or

(C) taken into account while a resident of the state;

(xiii) an S. corporation's separately and nonseparately stated income, gain, loss, deduction, or credit or item of income, gain, loss, deduction, or credit:

(A) derived from a trade, business, occupation, or profession carried on in the state;

(B) derived from the sale or other transfer or the rental, lease, or other commercial exploitation of property located in the state; or

(C) taken into account while a resident of the state;

(xiv) social security benefits received or accrued while a resident of the state;

(xv) taxable individual retirement account distributions, annuities, pensions, and other retirement benefits received while a resident of the state; ~~and~~

(xvi) any other income attributable to the state, including but not limited to lottery winnings, state and federal tax refunds, nonemployee compensation, recapture of tax benefits, and capital loss addbacks*; and*

(xvii) in the case of a nonresident who sells the nonresident's interest in a publicly traded partnership doing business in Montana, the gain described in section 751 of the Internal Revenue Code, 26 U.S.C. 751, multiplied by the Montana apportionment factor. If the net gain or loss resulting from the use of the

apportionment factor as provided in this subsection (18)(a)(xvii) does not fairly and equitably represent the nonresident taxpayer's business activity interest, then the nonresident taxpayer may petition for, or the department may require with respect to any and all of the partnership interest, the employment of another method to effectuate an equitable allocation or apportionment of the nonresident's income. This subsection (18)(a)(xvii) is intended to preserve the rights and privileges of a nonresident taxpayer and align those rights with taxpayers who are afforded the same rights under 15-1-601 and 15-31-312.

(b) The term does not include:

(i) compensation for military service of members of the armed services of the United States who are not Montana residents and who are residing in Montana solely by reason of compliance with military orders and does not include income derived from their personal property located in the state except with respect to personal property used in or arising from a trade or business carried on in Montana; or

(ii) interest paid on loans held by out-of-state financial institutions recognized as such in the state of their domicile, secured by mortgages, trust indentures, or other security interests on real or personal property located in the state, if the loan is originated by a lender doing business in Montana and assigned out-of-state and there is no activity conducted by the out-of-state lender in Montana except periodic inspection of the security.

(19) "Net income" means the adjusted gross income of a taxpayer less the deductions allowed by this chapter.

(20) "Nonresident" means a natural person who is not a resident.

(21) "Paid", for the purposes of the deductions and credits under this chapter, means paid or accrued or paid or incurred, and the terms "paid or accrued" and "paid or incurred" must be construed according to the method of accounting upon the basis of which the taxable income is computed under this chapter.

(22) "Partner" means a member of a partnership or a manager or member of any other entity, if treated as a partner for federal income tax purposes.

(23) "Partnership" means a general or limited partnership, limited liability partnership, limited liability company, or other entity, if treated as a partnership for federal income tax purposes.

(24) "Pass-through entity" means a partnership, an S. corporation, or a disregarded entity.

(25) "Pension and annuity income" means:

(a) systematic payments of a definitely determinable amount from a qualified pension plan, as that term is used in section 401 of the Internal Revenue Code (26 U.S.C. 401), or systematic payments received as the result of contributions made to a qualified pension plan that are paid to the recipient or recipient's beneficiary upon the cessation of employment;

(b) payments received as the result of past service and cessation of employment in the uniformed services of the United States;

(c) lump-sum distributions from pension or profit-sharing plans to the extent that the distributions are included in federal adjusted gross income;

(d) distributions from individual retirement, deferred compensation, and self-employed retirement plans recognized under sections 401 through 408 of the Internal Revenue Code (26 U.S.C. 401 through 408) to the extent that the

distributions are not considered to be premature distributions for federal income tax purposes; or

(e) amounts received from fully matured, privately purchased annuity contracts after cessation of regular employment.

(26) "Purposely" is as defined in 45-2-101.

(27) "Received", for the purpose of computation of taxable income under this chapter, means received or accrued, and the term "received or accrued" must be construed according to the method of accounting upon the basis of which the taxable income is computed under this chapter.

(28) "Resident" applies only to natural persons and includes, for the purpose of determining liability to the tax imposed by this chapter with reference to the income of any taxable year, any person domiciled in the state of Montana and any other person who maintains a permanent place of abode within the state even though temporarily absent from the state and who has not established a residence elsewhere.

(29) "S. corporation" means an incorporated entity for which a valid election under section 1362 of the Internal Revenue Code (26 U.S.C. 1362) is in effect.

(30) "Stock dividends" means new stock issued, for surplus or profits capitalized, to shareholders in proportion to their previous holdings.

(31) "Tax year" means the taxpayer's taxable year for federal income tax purposes.

(32) "Taxable income" means the adjusted gross income of a taxpayer less the deductions and exemptions provided for in this chapter.

(33) "Taxpayer" includes any person, entity, or fiduciary, resident or nonresident, subject to a tax or other obligation imposed by this chapter and unless otherwise specifically provided does not include a C. corporation."

Section 2. Section 15-30-1102, MCA, is amended to read:

"15-30-1102. Income or license tax involving pass-through entities — information returns required. (1) Except as otherwise provided:

(a) a partnership is not subject to taxes imposed in Title 15, chapter 30 or 31;

(b) an S. corporation is not subject to the taxes imposed in Title 15, chapter 30 or 31; and

(c) a disregarded entity is not subject to the taxes imposed in Title 15, chapter 30 or 31.

(2) Except as otherwise provided, each partner of a partnership described in subsection (1)(a), each shareholder of an S. corporation described in subsection (1)(b), and each partner, shareholder, member, or other owner of an entity described in subsection (1)(c), the first-tier pass-through entity, is subject to the taxes provided in this chapter, if an individual, trust, or estate, and to the taxes provided in Title 15, chapter 31, if a C. corporation. If a partner, shareholder, member, or other owner of an entity described in subsection (1) is itself a pass-through entity, any individual, trust, or estate to which the first-tier pass-through entity's Montana source income is directly or indirectly passed through is subject to the taxes provided in this chapter and any C. corporation to which the first-tier pass-through entity's Montana source income is directly or indirectly passed through is subject to the taxes provided in Title 15, chapter 31.

(3) Income realized for federal income tax purposes by a financial institution that has elected to be treated as an S. corporation under subchapter S. of

Chapter 1 of the Internal Revenue Code and by its shareholders that is attributable to the financial institution's change from the bad debt reserve method of accounting provided in section 585 of the Internal Revenue Code, 26 U.S.C. 585, is not taxable under Title 15, chapter 30 or 31, to the extent that the aggregate deductions allowed for federal income tax purposes under 26 U.S.C. 585 exceeded the aggregate deductions that the financial institution is allowed under 15-31-114(1)(b)(i).

(4) A publicly traded partnership as defined in section 7704(b) of the Internal Revenue Code, 26 U.S.C. 7704(b), that is treated as a partnership for the purposes of the Internal Revenue Code is exempt from paying tax under Title 15, chapter 30, as long as it is in compliance with 15-30-1113.

~~(4)~~*(5)* (a) A partnership that has Montana source income shall on or before the 15th day of the 4th month following the close of its annual accounting period file an information return on forms prescribed by the department and a copy of its federal partnership return. The return must include:

(i) the name, address, and social security or federal identification number of each partner;

(ii) the partnership's Montana source income;

(iii) each partner's distributive share of Montana source income, gain, loss, deduction, or credit or item of income, gain, loss, deduction, or credit;

(iv) each partner's distributive share of income, gain, loss, deduction, or credit or item of income, gain, loss, deduction, or credit from all sources; and

(v) any other information the department prescribes.

(b) An S. corporation that has Montana source income shall on or before the 15th day of the 3rd month following the close of its annual accounting period file an information return on forms prescribed by the department and a copy of its federal S. corporation return. The return must include:

(i) the name, address, and social security or federal identification number of each shareholder;

(ii) the S. corporation's Montana source income and each shareholder's pro rata share of separately and nonseparately stated Montana source income, gain, loss, deduction, or credit or item of income, gain, loss, deduction, or credit;

(iii) each shareholder's pro rata share of separately and nonseparately stated income, gain, loss, deduction, or credit or item of income, gain, loss, deduction, or credit from all sources; and

(iv) any other information the department prescribes.

(c) A disregarded entity that has Montana source income shall furnish the information and file the returns the department prescribes. The return must include:

(i) the name, address, and social security or federal identification number of each member or other owner during the tax year;

(ii) the entity's Montana source income; and

(iii) any other information the department prescribes.

(d) (i) Except as provided in subsection ~~(4)(d)(ii)~~ *(5)(d)(ii)*, a pass-through entity that fails to file an information return required by this section by the due date, including any extension, must be assessed a late filing penalty of $10 multiplied by the number of the entity's partners, shareholders, members, or other owners at the close of the tax year for each month or fraction of a month,

not to exceed 5 months, that the entity fails to file the information return. The department may waive the penalty imposed by this subsection ~~(4)(d)(i)~~ *(5)(d)(i)* as provided in 15-1-206.

(ii) The penalty imposed under subsection ~~(4)(d)(i)~~ *(5)(d)(i)* may not be imposed on a pass-through entity that has 10 or fewer partners, shareholders, members, or other owners, each of whom:

(A) is an individual, an estate of a deceased individual, or a C. corporation;

(B) has filed any required return or other report with the department by the due date, including any extension of time, for the return or report; and

(C) has paid all taxes when due."

Section 3. Section 15-30-1113, MCA, is amended to read:

"15-30-1113. Consent or withholding. (1) A pass-through entity that is required to file an information return as provided in 15-30-1102 and that has a partner, shareholder, member, or other owner who is a nonresident individual, a foreign C. corporation, or a pass-through entity that itself has any partner, shareholder, member, or other owner that is a nonresident individual, foreign C. corporation, or pass-through entity shall, on or before the due date, including extensions, for the information return:

(a) with respect to any partner, shareholder, member, or other owner who is a nonresident individual:

(i) file a composite return;

(ii) file an agreement of the individual nonresident to:

(A) file a return in accordance with the provisions of 15-30-142;

(B) timely pay all taxes imposed with respect to income of the pass-through entity; and

(C) be subject to the personal jurisdiction of the state for the collection of income taxes and related interest, penalties, and fees imposed with respect to the income of the pass-through entity; or

(iii) remit an amount equal to the highest marginal tax rate in effect under 15-30-103 multiplied by the nonresident individual's share of Montana source income reflected on the pass-through entity's information return;

(b) with respect to any partner, shareholder, member, or other owner that is a foreign C. corporation:

(i) file a composite return;

(ii) file the foreign C. corporation's agreement to:

(A) file a return in accordance with the provisions of 15-31-111;

(B) timely pay all taxes imposed with respect to income of the pass-through entity; and

(C) be subject to the personal jurisdiction of the state for the collection of corporation license and income taxes and related interest, penalties, and fees imposed with respect to the income of the pass-through entity; or

(iii) remit an amount equal to the tax rate in effect under 15-31-121 multiplied by the foreign C. corporation's share of Montana source income reflected on the pass-through entity's information return; and

(c) with respect to any partner, shareholder, member, or other owner that is a pass-through entity, also referred to in this section as a "second-tier pass-through entity":

(i) file a composite return;

(ii) file a statement of the pass-through entity partner, shareholder, member, or other owner setting forth the name, address, and social security or federal identification number of each of that entity's partners, shareholders, members, or other owners and information that establishes that its share of Montana source income will be fully accounted in individual income or corporation license or income tax returns filed with the state; or

(iii) remit an amount equal to the highest marginal tax rate in effect under 15-30-103 multiplied by its share of Montana source income reflected on the pass-through entity's information return.

(2) Any amount paid by a pass-through entity with respect to a nonresident individual pursuant to subsection (1)(a)(iii) must be considered as a payment on the account of the nonresident individual for the income tax imposed on the nonresident individual for the tax year pursuant to 15-30-105. On or before the due date, including extensions, of the pass-through entity's information return provided in 15-30-1102, the pass-through entity shall furnish to the nonresident individual a record of the amount of tax paid on the individual's behalf.

(3) Any amount paid by a pass-through entity with respect to a foreign C. corporation pursuant to subsection (1)(b)(iii) must be considered as a payment on the account of the foreign C. corporation for the corporation license tax imposed on the foreign C. corporation for the tax year pursuant to 15-31-101 or the corporation income tax imposed on the foreign C. corporation for the tax year pursuant to 15-31-403. On or before the due date, including extensions, of the pass-through entity's information return provided in 15-30-1102, the pass-through entity shall furnish to the foreign C. corporation a record of the amount of tax paid on its behalf.

(4) Any amount paid by a pass-through entity with respect to a second-tier pass-through entity pursuant to subsection (1)(c)(iii) must be considered as payment on the account of the individual, trust, estate, or C. corporation to which Montana source income is directly or indirectly passed through and must be claimed as the distributable share of a refundable credit of the pass-through entity partner, shareholder, member, or other owner on behalf of which the amount was paid. On or before the due date, including extensions, of the pass-through entity's information return provided in 15-30-1102, the pass-through entity shall furnish to the second-tier pass-through entity a record of the refundable credit that may be claimed for the amount paid on its behalf.

(5) A pass-through entity is entitled to recover a payment made pursuant to subsection (1)(a)(iii), (1)(b)(iii), or (1)(c)(iii) from the partner, shareholder, member, or other owner on whose behalf the payment was made.

(6) Following the department's notice to a pass-through entity that a nonresident individual or foreign C. corporation did not file a return or timely pay all taxes as provided in subsection (1), the pass-through entity must, with respect to any tax year thereafter for which the nonresident individual or foreign C. corporation is not included in the pass-through entity's composite return, remit the amount described in subsection (1)(a)(iii) for the nonresident individual and the amount described in subsection (1)(b)(iii) for the foreign C. corporation.

(7) A publicly traded partnership described in 15-30-1102(4) that agrees to file an annual information return reporting the name, address, and taxpayer identification number for each person or entity that has an interest in the partnership that results in Montana source income or that has sold its interest in

the partnership during the tax year is exempt from the composite return and withholding requirements of Title 15, chapter 30. A publicly traded partnership shall provide the department with the information in an electronic form that is capable of being sorted and exported. Compliance with this subsection does not relieve a person or entity from its obligation to pay Montana income taxes.

~~(7)~~*(8)* Nothing in this section may be construed as modifying the provisions of Article IV(18) of 15-1-601 and 15-31-312 allowing a taxpayer to petition for and the department to require methods to fairly represent the extent of the taxpayer's business activity in the state."

Section 4. Effective date. [This act] is effective on passage and approval.

Section 5. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2008.

Approved April 28, 2009

CHAPTER NO. 402

[SB 264]

AN ACT AUTHORIZING THE MONTANA FACILITY FINANCE AUTHORITY TO FINANCE CERTAIN PROJECTS FOR FOR-PROFIT OR NONPROFIT CORPORATIONS AND ORGANIZATIONS; PROVIDING FOR TAXATION OF THOSE PROJECTS; AMENDING SECTIONS 90-7-102 AND 90-7-104, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 90-7-102, MCA, is amended to read:

"90-7-102. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Authority" means the Montana facility finance authority created in 2-15-1815.

(2) "Capital reserve account" means the account established in 90-7-317.

(3) "Costs" means costs allowed under 90-7-103.

(4) "Eligible facility" means any eligible facility as defined in 90-7-104.

(5) (a) "Institution" means any public or private:

(i) nonprofit hospital, corporation, or other organization authorized to provide or operate an eligible facility in this state; ~~or~~

(ii) nonprofit prerelease center, corporation, or other organization authorized to operate a prerelease center in this state*; or*

(iii) for-profit or nonprofit corporation or other organization authorized to provide for or to operate a project or a facility with qualified small issue bond financing pursuant to section 144(a) of the Internal Revenue Code, 26 U.S.C. 144(a).

(b) The term also includes the following, provided that the entity is a nonprofit entity or is controlled by one or more nonprofit entities:

(i) a network of health care providers, regardless of how it is organized;

(ii) an integrated health care delivery system;

(iii) a joint venture or partnership between or among health care providers;

(iv) a purchasing alliance composed of health care providers;

(v) any health insurers and third-party administrators that are participants in a system, network, joint venture, or partnership that provides health services through one or more health facilities.

(6) "Participating institution" means an institution that undertakes the financing, refunding, or refinancing of obligations on the construction or acquisition of an eligible facility pursuant to the provisions of this chapter.

(7) "Revenue" means, with respect to eligible facilities, the rents, fees, charges, interest, principal repayments, and other income received or to be received by the authority from any source on account of the eligible facilities."

Section 2. Section 90-7-104, MCA, is amended to read:

"90-7-104. Eligible facility. (1) The term "eligible facility" means any structure or building suitable for use as:

(a) a hospital, clinic, nursing home, or other health care facility as defined in 50-5-101;

(b) a public health center, as defined in 7-34-2102;

(c) a facility for persons with disabilities;

(d) a chemical dependency treatment facility;

(e) a nursing school;

(f) a medical teaching facility;

(g) a laboratory;

(h) a dental care facility;

(i) a prerelease center;

(j) a diagnostic, treatment, or surgical center;

(k) a facility providing services for the elderly; ~~or~~

(l) applicable to a project or a facility with qualified small issue bond financing pursuant to section 144(a) of the Internal Revenue Code, 26 U.S.C. 144(a); or

~~(l)~~*(m)* a structure or facility related to any of the uses enumerated in subsections (1)(a) through ~~(1)(k)~~ *(1)(l)* or required or useful for the operation of an eligible facility. These related facilities include supporting service structures and all necessary, useful, and related equipment, furnishings, and appurtenances and include without limitation the acquisition, preparation, and development of all lands and real and personal property necessary or convenient as a site for any of the uses enumerated in subsections (1)(a) through ~~(1)(k)~~ *(1)(l)*.

(2) An eligible facility does not include:

(a) items such as food, fuel, supplies, or other items that are customarily considered as current operating expenses; and

(b) a structure used or to be used primarily for sectarian instruction or study or as a place for devotional activities or religious worship."

Section 3. Taxation of projects. (1) Regardless of whether the title to a project is held by the authority or a trustee acting for the authority, if the project is being financed by the authority on behalf of a for-profit corporation or other organization, the project is subject to taxation to the same extent, in the same manner, and under the same procedures as privately owned property in similar circumstances if the project is leased to or held by private interests on both the assessment date and the date the county commissioners set the mill levies in any year. The project is not subject to taxation in any year during which it is not

leased to or held by private interests on both the assessment date and the date the county commissioners set the mill levy.

(2) When personal property owned by the authority or a trustee acting for the authority is taxed under this section and the personal property taxes on the personal property are delinquent, levy by warrant for distraint for collection of the delinquent taxes may be made only on the personal property against which the taxes were levied.

Section 4. Procedure prior to financing certain projects. (1) In addition to meeting the other requirements contained in this chapter or in state or federal law, the requirements of subsections (2) through (4) must be met before financing is provided for a project described in 90-7-104(1)(l).

(2) The authority shall find that the financing is in the public interest. In order to determine whether or not the financing is in the public interest, a public hearing must be conducted in the following manner:

(a) the city or county in which the project will be located must be notified, and the city and county shall, within 14 days after receipt of the notice, notify the board if it elects to conduct the hearing; or

(b) if a request for a local hearing is not received by the authority within 14 days after the notification in subsection (2)(a), the authority may hold the hearing at a time and place it determines.

(3) Notice of the hearing must be published at least once a week for 2 weeks prior to the date set for the hearing by publication in a newspaper of general circulation in the city or county where the hearing will be held and the project will be located. The notice must include the time and place of the hearing, a general description of the nature and location of the project, the name of the lessee, borrower, or user of the project and the maximum principal amount of the financing to be provided by the authority.

(4) If the hearing required by subsection (2) is conducted by a local government, the governing body of the local government shall notify the authority of its determination of whether the financing is in the public interest within 14 days after the completion of the public hearing.

Section 5. Codification instruction. [Sections 3 and 4] are intended to be codified as an integral part of Title 90, chapter 7, and the provisions of Title 90, chapter 7, apply to [sections 3 and 4].

Section 6. Effective date. [This act] is effective July 1, 2009.

Approved April 28, 2009

CHAPTER NO. 403

[SB 271]

AN ACT PROVIDING FOR REGULATION AND LICENSURE OF MARRIAGE AND FAMILY THERAPISTS; PROVIDING DEFINITIONS; PROVIDING LICENSURE REQUIREMENTS AND PRIVILEGES FOR MARRIAGE AND FAMILY THERAPISTS; PROVIDING CERTAIN EXEMPTIONS FROM LICENSURE AS MARRIAGE AND FAMILY THERAPISTS; PROVIDING PENALTIES; AMENDING SECTION 37-22-201, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Purpose. The legislature finds and declares that because the profession of marriage and family therapy affects the public safety and welfare of the lives of people in this state, the purpose of [sections 1 through 5] is to provide for the common good by ensuring the ethical, qualified, and professional practice of marriage and family therapy. [Sections 1 through 5] and the rules adopted by the board under 37-22-201 set standards of qualification, education, training, and experience and are intended to establish professional ethics for those who seek to practice marriage and family therapy as licensed marriage and family therapists.

Section 2. Definitions. As used in [sections 1 through 5], the following definitions apply:

(1) "Board" means the board of social work examiners and professional counselors established in 2-15-1744.

(2) "Department" means the department of labor and industry.

(3) "Licensee" means a person licensed under [sections 1 through 5].

(4) "Marriage and family therapy" means the diagnosis and treatment of mental and emotional disorders within the context of interpersonal relationships, including marriage and family systems. Marriage and family therapy involves the professional application of psychotherapeutic and family system theories and techniques, counseling, consultation, treatment planning, and supervision in the delivery of services to individuals, couples, and families.

(5) "Practice of marriage and family therapy" means the provision of professional marriage and family therapy services to individuals, couples, and families, singly or in groups, for a fee, monetary or otherwise, either directly or through public or private organizations.

(6) "Qualified supervisor" means a supervisor determined by the board to meet standards established by the board for supervision of clinical services.

(7) "Recognized educational institution" means:

(a) an educational institution that grants a bachelor's, master's, or doctoral degree and that is recognized by the board and by a regional accrediting body; or

(b) a postgraduate training institute accredited by the commission on accreditation for marriage and family therapy education.

Section 3. License requirements — exemptions — temporary permit. (1) An applicant for a license shall pay an application fee set by the board by rule. The board may provide a separate, combined fee for persons licensed by the board holding dual licenses. An applicant for a license under this section shall also complete an application on a form provided by the department and provide documentation to the board that the applicant:

(a) (i) has a master's degree or a doctoral degree in marriage and family therapy from a recognized educational institution or a degree from a program accredited by the commission on accreditation for marriage and family therapy education; or

(ii) has a graduate degree in an allied field from a recognized educational institution and graduate level work that the board determines to be the equivalent of a master's degree in marriage and family therapy or marriage and family counseling;

(b) has successfully passed an examination prescribed by the board;

(c) has worked under the direct supervision of a qualified supervisor for at least 3,000 hours, including 1,000 hours of face-to-face client contact in the

practice of marriage and family therapy, of which up to 500 hours may be accumulated while achieving the educational credentials listed in subsection (1)(a); and

(d) is of good moral character. Being of good moral character includes in its meaning that the applicant has not been convicted by a court of competent jurisdiction of a crime described by board rule as being of a nature that renders the applicant unfit to practice marriage and family therapy.

(2) An applicant is exempt from the examination requirement in subsection (1)(b) if the board is satisfied that:

(a) the applicant is licensed, certified, or registered under the laws of a state or territory of the United States that imposes substantially the same requirements as [sections 1 through 5] and has passed an examination similar to that required by the board;

(b) for applications received before July 1, 2011, the applicant is a clinical member of the American association for marriage and family therapy and is a current resident of this state; or

(c) the applicant is licensed as a clinical social worker under Title 37, chapter 22, or as a clinical professional counselor under Title 37, chapter 23, and has practiced marriage and family therapy within the state for a period prescribed by the board.

(3) A person is exempt from licensure as a marriage and family therapist if the person practices marriage and family therapy:

(a) under qualified supervision in a training institution or facility or other supervisory arrangements approved by the board and uses the title of intern;

(b) as part of the person's duties as a member of the clergy or priesthood; or

(c) under a temporary permit that the board may issue under rules adopted to allow a 1-year temporary permit to an applicant for licensure pending examination for a license or processing of the application for a license. An applicant with a temporary permit under this subsection shall use the title of "licensed marriage and family therapy candidate".

Section 4. Representation to public as licensed marriage and family therapist. (1) Upon issuance of a license in accordance with [sections 1 through 5], a licensee may:

(a) advertise services as a marriage and family therapist;

(b) use the title of "licensed marriage therapist", "licensed marital therapist", or "licensed marriage and family therapist"; and

(c) practice marriage and family therapy.

(2) Subsection (1) does not prohibit:

(a) individuals licensed as professional counselors, social workers, psychiatric nurses, psychologists, or physicians or members of the clergy or other qualified members of professional groups, identified by board rule, from advertising or performing marriage and family therapy services in a manner consistent with the accepted standards of their respective professions. Only licensees under [sections 1 through 5] may use any title described in subsection (1)(b).

(b) persons employed by or acting as a volunteer for a federal, state, county, or municipal agency or an educational, research, or charitable institution from

providing counseling if the practice of marriage and family therapy is a part of the duties of the office or position.

Section 5. Violations — penalties. (1) It is a misdemeanor for a person to knowingly:

(a) indicate that the person is a licensed marriage and family therapist without being licensed under [sections 1 through 5];

(b) obtain or attempt to obtain a license by bribery or fraudulent representation; or

(c) make a false statement on any form used by the board to implement [sections 1 through 5] or the rules adopted under [sections 1 through 5].

(2) A person convicted under this section shall be imprisoned in the county jail for a period not exceeding 6 months or be fined not more than $500, or both. A person convicted of a second or a subsequent offense under this section shall be punished by both a fine and imprisonment.

Section 6. Section 37-22-201, MCA, is amended to read:

"37-22-201. Duties of board. The board:

(1) shall recommend prosecutions for violations of 37-22-411 ~~and~~, 37-23-311, *and [sections 1 through 5]* to the attorney general or the appropriate county attorney, or both;

(2) shall meet at least once every 3 months to perform the duties described in Title 37, chapters 1~~, 22,~~ and 23*, [sections 1 through 5], and this chapter*. The board may, once a year by a consensus of board members, determine that there is no necessity for a board meeting.

(3) shall adopt rules that set professional, practice, and ethical standards for social workers*, marriage and family therapists,* and professional counselors and other rules as may be reasonably necessary for the administration of chapter 23*, [sections 1 through 5],* and this chapter; and

(4) may adopt rules governing the issuance of licenses of special competence in particular areas of practice as a licensed professional counselor. The board shall establish criteria for each particular area for which a license is issued."

Section 7. Codification instruction. [Sections 1 through 5] are intended to be codified as an integral part of Title 37, and the provisions of Title 37 apply to [sections 1 through 5].

Section 8. Effective date. [This act] is effective July 1, 2009.

Approved April 28, 2009

CHAPTER NO. 404

[SB 303]

AN ACT REQUIRING THAT SECTIONS OF THE STATE WATER PLAN ADDRESS VARIOUS WATER ISSUES WITHIN THE CLARK FORK, MISSOURI, AND YELLOWSTONE RIVER BASINS; CREATING WATER USER COUNCILS; AND AMENDING SECTION 85-1-203, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 85-1-203, MCA, is amended to read:

"85-1-203. State water plan. (1) The department shall gather from any source reliable information relating to Montana's water resources and prepare

from the information a continuing comprehensive inventory of the water resources of the state. In preparing this inventory, the department may*:*

(a) conduct studies;

(b) adopt studies made by other competent water resource groups, including federal, regional, state, or private agencies;

(c) perform research or employ other competent agencies to perform research on a contract basis; and

(d) hold public hearings in affected areas at which all interested parties must be given an opportunity to appear.

(2) The department shall formulate and adopt and amend, extend, or add to a comprehensive, coordinated multiple-use water resources plan known as the "state water plan". The state water plan may be formulated and adopted in sections, *with some of* these sections corresponding with hydrologic divisions of the state. The state water plan must set out a progressive program for the conservation, development, ~~and~~ utilization*, and sustainability* of the state's water resources and propose the most effective means by which these water resources may be applied for the benefit of the people, with due consideration of alternative uses and combinations of uses.

(3) Sections of the state water plan must be completed for the Missouri, Yellowstone, and Clark Fork river basins, submitted to the 2015 legislature, and updated at least every 20 years. These basinwide plans must include:

(a) an inventory of consumptive and nonconsumptive uses associated with existing water rights;

(b) an estimate of the amount of surface and ground water needed to satisfy new future demands;

(c) analysis of the effects of frequent drought and new or increased depletions on the availability of future water supplies;

(d) proposals for the best means, such as an evaluation of opportunities for storage of water by both private and public entities, to satisfy existing water rights and new water demands;

(e) possible sources of water to meet the needs of the state; and

(f) any legislation necessary to address water resource concerns in these basins.

(4) (a) The department shall create a water user council in both the Yellowstone and Missouri River basins that is inclusive and representative of all water interests and interests in those basins. For the Clark Fork basin, the department shall continue to utilize the Clark Fork River basin task force established pursuant to 85-2-350.

(b) The councils in the Missouri and Yellowstone River basins consist of representatives of existing watershed groups or councils within the basins.

(c) Each council may have up to 20 members.

(d) Each water user council shall make recommendations to the department on the basinwide plans required by subsection (3).

(5) Before adopting the state water plan or any section of the plan, the department shall hold public hearings in the state or in an area of the state encompassed by a section of the plan if adoption of a section is proposed. Notice of the hearing or hearings must be published for 2 consecutive weeks in a newspaper of general county circulation in each county encompassed by the proposed plan or section of the plan at least 30 days prior to the hearing.

~~(3)~~*(6)* The department shall submit to the environmental quality council established in 5-16-101 and to the legislature at the beginning of each regular session the state water plan or any section of the plan or amendments, additions, or revisions to the plan that the department has formulated and adopted.

~~(4)~~*(7)* The legislature, by joint resolution, may revise the state water plan.

~~(5)~~*(8)* The department shall prepare a continuing inventory of the ground water resources of the state. The ground water inventory must be included in the comprehensive water resources inventory described in subsection (1) but must be a separate component of the inventory.

~~(6)~~*(9)* The department shall publish the comprehensive inventory, the state water plan, the ground water inventory, or any part of each, and the department may assess and collect a reasonable charge for these publications.

~~(7)~~*(10)* In developing and revising the state water plan as provided in this section, the department shall consult with the environmental quality council established in 5-16-101 and solicit the advice of the ~~committee~~ *environmental quality council* in carrying out its duties under this section."

Section 2. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

Approved April 28, 2009

CHAPTER NO. 405

[SB 305]

AN ACT AMENDING AND CLARIFYING ASPECTS OF THE MONTANA SUBDIVISION AND PLATTING ACT; PROVIDING CONSEQUENCES FOR FAILURE TO COMPLY WITH ESTABLISHED SUBDIVISION REVIEW TIMELINES; GENERALLY INCREASING THE PREDICTABILITY OF THE SUBDIVISION REVIEW PROCESS; AMENDING SECTIONS 76-3-510, 76-3-604, AND 76-4-125, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, the Montana Subdivision and Platting Act (the Act) is designed to balance the rights of landowners with public health, safety, and general welfare; and

WHEREAS, if the Act is not clear and predictable, neither landowners nor the public health, safety, and general welfare can be effectively protected; and

WHEREAS, land use regulations should be designed to permit and promote economic growth in the state; and

WHEREAS, certain provisions of the Act have proven over time to be unclear and to promote unpredictability in the process; and

WHEREAS, it is believed that these modifications will promote clarity, efficiency, predictability, and increased public participation in the process.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 76-3-510, MCA, is amended to read:

"76-3-510. Payment for extension of capital facilities. *(1)* A local government may require a subdivider to pay or guarantee payment for part or all of the costs of extending capital facilities related to public health and safety,

including but not limited to public roads, sewer lines, water supply lines, and storm drains to a subdivision. The costs must reasonably reflect the expected impacts directly attributable to the subdivision. A local government may not require a subdivider to pay or guarantee payment for part or all of the costs of constructing or extending capital facilities related to education.

(2) All fees, costs, or other money paid by a subdivider under this section must be expended on the capital facilities for which the payments were required."

Section 2. Section 76-3-604, MCA, is amended to read:

"76-3-604. Review of subdivision application — review for required elements and sufficiency of information. (1) (a) Within 5 working days of receipt of a subdivision application submitted in accordance with any deadlines established pursuant to 76-3-504(3) and receipt of the review fee submitted as provided in 76-3-602, the reviewing agent or agency shall determine whether the application contains all of the listed materials as required by 76-3-504(1)(a) and shall notify the subdivider or, with the subdivider's written permission, the subdivider's agent of the reviewing agent's or agency's determination.

(b) If the reviewing agent or agency determines that elements are missing from the application, the reviewing agent or agency shall identify those elements in the notification.

(2) (a) Within 15 working days after the reviewing agent or agency notifies the subdivider or the subdivider's agent that the application contains all of the required elements as provided in subsection (1), the reviewing agent or agency shall determine whether the application and required elements contain detailed, supporting information that is sufficient to allow for the review of the proposed subdivision under the provisions of this chapter and the local regulations adopted pursuant to this chapter and shall notify the subdivider or, with the subdivider's written permission, the subdivider's agent of the reviewing agent's or agency's determination.

(b) If the reviewing agent or agency determines that information in the application is not sufficient to allow for review of the proposed subdivision, the reviewing agent or agency shall identify the insufficient information in its notification.

(c) A determination that an application contains sufficient information for review as provided in this subsection (2) does not ensure that the proposed subdivision will be approved or conditionally approved by the governing body and does not limit the ability of the reviewing agent or agency or the governing body to request additional information during the review process.

(3) The time limits provided in subsections (1) and (2) apply to each submittal of the application until:

(a) a determination is made that the application contains the required elements and sufficient information; and

(b) the subdivider or the subdivider's agent is notified.

(4) After the reviewing agent or agency has notified the subdivider or the subdivider's agent that an application contains sufficient information as provided in subsection (2), the governing body shall approve, conditionally approve, or deny the proposed subdivision within 60 working days *or 80 working days if the proposed subdivision contains 50 or more lots*, based on its determination of whether the application conforms to the provisions of this chapter and to the local regulations adopted pursuant to this chapter, unless:

(a) the subdivider and the reviewing agent or agency agree to an extension or suspension of the review period, not to exceed 1 year; or

(b) a subsequent public hearing is scheduled and held as provided in 76-3-615.

(5) (a) If the governing body fails to comply with the time limits under subsection (4), the governing body shall pay to the subdivider a financial penalty of $50 per lot per month or a pro rata portion of a month, not to exceed the total amount of the subdivision review fee collected by the governing body for the subdivision application, until the governing body denies, approves, or conditionally approves the subdivision.

(b) The provisions of subsection (5)(a) do not apply if the review period is extended or suspended pursuant to subsection (4).

~~(5)~~*(6)* If the governing body denies or conditionally approves the proposed subdivision, it shall send the subdivider a letter, with the appropriate signature, that complies with the provisions of 76-3-620.

~~(6)~~*(7)* (a) The governing body shall collect public comment submitted at a hearing or hearings regarding the information presented pursuant to 76-3-622 and shall make any comments submitted or a summary of the comments submitted available to the subdivider within 30 days after conditional approval or approval of the subdivision application and preliminary plat.

(b) The subdivider shall, as part of the subdivider's application for sanitation approval, forward the comments or the summary provided by the governing body to the:

(i) reviewing authority provided for in Title 76, chapter 4, for subdivisions that will create one or more parcels containing less than 20 acres; and

(ii) local health department or board of health for proposed subdivisions that will create one or more parcels containing 20 acres or more and less than 160 acres.

~~(7)~~*(8)* (a) For a proposed subdivision that will create one or more parcels containing less than 20 acres, the governing body may require approval by the department of environmental quality as a condition of approval of the final plat.

(b) For a proposed subdivision that will create one or more parcels containing 20 acres or more, the governing body may condition approval of the final plat upon the subdivider demonstrating, pursuant to 76-3-622, that there is an adequate water source and at least one area for a septic system and a replacement drainfield for each lot.

~~(8)~~*(9)* (a) Review and approval, conditional approval, or denial of a proposed subdivision under this chapter may occur only under those regulations in effect at the time a subdivision application is determined to contain sufficient information for review as provided in subsection (2).

(b) If regulations change during the review periods provided in subsections (1) and (2), the determination of whether the application contains the required elements and sufficient information must be based on the new regulations."

Section 3. Section 76-4-125, MCA, is amended to read:

"76-4-125. Review of subdivision application — land divisions excluded from review. (1) Except as provided in subsection (2), an application for review of a subdivision must be submitted to the reviewing authority. The review by the reviewing authority must be as follows:

(a) At any time after the developer has submitted an application under the Montana Subdivision and Platting Act, the developer shall present a subdivision application to the reviewing authority. The application must include preliminary plans and specifications for the proposed development, whatever information the developer feels necessary for its subsequent review, any public comments or summaries of public comments collected as provided in 76-3-604~~(6)~~*(7)*, and information required by the reviewing authority. Subdivision fees assessed by the reviewing authority must accompany the application. If the proposed development includes onsite sewage disposal facilities, the developer shall notify the designated agent of the local board of health prior to presenting the subdivision application to the reviewing authority. The agent may conduct a preliminary site assessment to determine whether the site meets applicable state and local requirements.

(b) Except as provided in 75-1-205(4) and 75-1-208(4)(b), the department shall make a final decision on the proposed subdivision within 60 days after the submission of a complete application and payment of fees to the reviewing authority unless an environmental impact statement is required, at which time this deadline may be increased to 120 days. The reviewing authority may not request additional information for the purpose of extending the time allowed for a review and final decision on the proposed subdivision. If the department approves the subdivision, the department shall issue a certificate of subdivision approval indicating that it has approved the plans and specifications and that the subdivision is not subject to a sanitary restriction.

(2) A subdivision excluded from the provisions of chapter 3 must be submitted for review according to the provisions of this part, except that the following divisions or parcels, unless the exclusions are used to evade the provisions of this part, are not subject to review:

(a) the exclusions cited in 76-3-201 and 76-3-204;

(b) divisions made for the purpose of acquiring additional land to become part of an approved parcel, provided that water or sewage disposal facilities may not be constructed on the additional acquired parcel and that the division does not fall within a previously platted or approved subdivision;

(c) divisions made for purposes other than the construction of water supply or sewage and solid waste disposal facilities as the department specifies by rule;

(d) divisions located within jurisdictional areas that have adopted growth policies pursuant to chapter 1 or within first-class or second-class municipalities for which the governing body certifies, pursuant to 76-4-127, that adequate storm water drainage and adequate municipal facilities will be provided; and

(e) subject to the provisions of subsection (3), a remainder of an original tract created by segregating a parcel from the tract for purposes of transfer if:

(i) the remainder is served by a public or multiple-user sewage system approved before January 1, 1997, pursuant to local regulations or this chapter; or

(ii) the remainder is 1 acre or larger and has an individual sewage system serving a discharge source that was in existence prior to April 29, 1993, and, if required when installed, the system was approved pursuant to local regulations or this chapter.

(3) Consistent with the applicable provisions of 50-2-116, a local health officer may require that, prior to the filing of a plat or a certificate of survey subject to review under this part for the parcel to be segregated from the

remainder referenced in subsection (2)(e)(ii), the remainder include acreage or features sufficient to accommodate a replacement drainfield."

Section 4. Effective date. [This act] is effective on passage and approval.

Approved April 28, 2009

CHAPTER NO. 406

[SB 310]

AN ACT PROHIBITING A WAIVER OF RIGHT TO PROTEST AS A CONDITION OF SUBDIVISION APPROVAL; AND AMENDING SECTION 76-3-608, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 76-3-608, MCA, is amended to read:

"76-3-608. Criteria for local government review. (1) The basis for the governing body's decision to approve, conditionally approve, or deny a proposed subdivision is whether the subdivision application, preliminary plat, applicable environmental assessment, public hearing, planning board recommendations, or additional information demonstrates that development of the proposed subdivision meets the requirements of this chapter. A governing body may not deny approval of a proposed subdivision based solely on the subdivision's impacts on educational services.

(2) The governing body shall issue written findings of fact that weigh the criteria in subsection (3), as applicable.

(3) A subdivision proposal must undergo review for the following primary criteria:

(a) except when the governing body has established an exemption pursuant to subsection (6) of this section or except as provided in 76-3-509, 76-3-609(2) or (4), or 76-3-616, the impact on agriculture, agricultural water user facilities, local services, the natural environment, wildlife and wildlife habitat, and public health and safety;

(b) compliance with:

(i) the survey requirements provided for in part 4 of this chapter;

(ii) the local subdivision regulations provided for in part 5 of this chapter; and

(iii) the local subdivision review procedure provided for in this part;

(c) the provision of easements for the location and installation of any planned utilities; and

(d) the provision of legal and physical access to each parcel within the proposed subdivision and the required notation of that access on the applicable plat and any instrument of transfer concerning the parcel.

(4) The governing body may require the subdivider to design the proposed subdivision to reasonably minimize potentially significant adverse impacts identified through the review required under subsection (3). The governing body shall issue written findings to justify the reasonable mitigation required under this subsection (4).

(5) (a) In reviewing a proposed subdivision under subsection (3) and when requiring mitigation under subsection (4), a governing body may not

unreasonably restrict a landowner's ability to develop land, but it is recognized that in some instances the unmitigated impacts of a proposed development may be unacceptable and will preclude approval of the subdivision.

(b) When requiring mitigation under subsection (4), a governing body shall consult with the subdivider and shall give due weight and consideration to the expressed preference of the subdivider.

(6) The governing body may exempt proposed subdivisions that are entirely within the boundaries of designated geographic areas from the review criteria in subsection (3)(a) if all of the following requirements have been met:

(a) the governing body has adopted a growth policy pursuant to chapter 1 that:

(i) addresses the criteria in subsection (3)(a);

(ii) evaluates the impact of development on the criteria in subsection (3)(a);

(iii) describes zoning regulations that will be implemented to address the criteria in subsection (3)(a); and

(iv) identifies one or more geographic areas where the governing body intends to authorize an exemption from review of the criteria in subsection (3)(a); and

(b) the governing body has adopted zoning regulations pursuant to chapter 2, part 2 or 3, that:

(i) apply to the entire area subject to the exemption; and

(ii) address the criteria in subsection (3)(a), as described in the growth policy.

(7) A governing body may conditionally approve or deny a proposed subdivision as a result of the water and sanitation information provided pursuant to 76-3-622 or public comment received pursuant to 76-3-604 on the information provided pursuant to 76-3-622 only if the conditional approval or denial is based on existing subdivision, zoning, or other regulations that the governing body has the authority to enforce.

(8) A governing body may not require as a condition of subdivision approval that a property owner waive a right to protest the creation of a special improvement district or a rural improvement district for capital improvement projects that does not identify the specific capital improvements for which protest is being waived. A waiver of a right to protest may not be valid for a time period longer than 20 years after the date that the final subdivision plat is filed with the county clerk and recorder."

Approved April 28, 2009

CHAPTER NO. 407

[SB 369]

AN ACT REVISING LOCAL GOVERNMENT NOXIOUS WEED LAWS; REVISING THE PROCEDURES FOR NOTIFICATION AND COMPLIANCE WITH REGARD TO NOXIOUS WEED CONTROL MEASURES; ELIMINATING THE PROVISION FOR AN ADMINISTRATIVE HEARING FOR A PERSON WHO IS ADVERSELY AFFECTED BY A WEED DISTRICT BOARD DECISION; AMENDING SECTIONS 7-22-2123 AND 7-22-2124, MCA; REPEALING SECTION 7-22-2110, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-22-2123, MCA, is amended to read:

"7-22-2123. Procedure in case of noncompliance. (1) When a complaint has been made or the board has reason to believe that noxious weeds described in this part are present upon a person's land within the district ~~in violation of the law~~, that person must be notified by mail or telephone of the complaint and the board may request inspection of the land. The board or its authorized agent and the landowner or the landowner's representative shall inspect the land at an agreeable time, within 10 days of notification of the landowner. If *within 10 days* after ~~reasonable effort~~ *notification* the board is unable to gain cooperation of the person, the board or its authorized agent may enter and inspect the land to determine if the complaint is valid.

(2) If noxious weeds are found, the board or coordinator shall notify the person or the person's representative and seek voluntary compliance with the district noxious weed management program. If voluntary compliance ~~is not possible, notice of noncompliance must be sent to the person by certified mail~~ *or cooperation has not occurred within 10 days of the notification required under this subsection, the person is considered to be in noncompliance and is subject to appropriate control measures pursuant to 7-22-2124*.

~~(3) The notice must specify:~~

~~(a) the basis for the determination of noncompliance;~~

~~(b) the geographic location of the area of noncompliance, by legal description or other reasonably identifiable description;~~

~~(c) measures to be undertaken in order to comply with the district's management criteria;~~

~~(d) a reasonable period of time, not less than 10 days, in which compliance measures must be initiated; and~~

~~(e) the right of the person to request, within the time specified in subsection (3)(d), an administrative hearing as provided by 7-22-2110.~~

~~(4)~~*(3)* A person is considered *to be* in compliance if the person submits and the board accepts a proposal to undertake specified control measures and is in compliance as long as the person performs according to the terms of the proposal. *The proposal must include a requirement that the person notify the board as measures in the proposal are taken.* If the measures proposed to be taken extend beyond the current growing season, the proposal and acceptance must be in writing.

~~(5)~~*(4)* In accepting or rejecting a proposal, the board shall consider the economic impact on the person and the person's neighbors, practical biological and environmental limitations, and alternative control methods to be used."

Section 2. Section 7-22-2124, MCA, is amended to read:

"7-22-2124. Destruction of weeds by board. (1) If corrective action is not taken *within the time specified in 7-22-2123(2)* and a proposal is not made and accepted ~~or a request for an administrative hearing is not made within the time specified in the notice~~ *as provided in 7-22-2123(3),* the board may enter upon the person's land and institute appropriate control measures. In that case, the board shall submit a bill to the person, itemizing hours of labor, material, and equipment time, together with a penalty not exceeding ~~50%~~ *25%* of the total cost incurred *except that a penalty may not be assessed if contact was not made with the landowner or the landowner's representative pursuant to 7-22-2123. When the penalty is collected, it must be credited to the noxious weed fund created*

pursuant to 7-22-2141 to be used for appropriate control measures pursuant to this section. Labor and equipment must be valued at the current rate paid for commercial management operations in the district. The bill must specify and order a payment due date of 30 days from the date the bill is sent. The board may enter into an agreement with a commercial applicator, as defined in 80-8-102, to destroy the weeds. The commercial applicator shall agree to carry any insurance required by the board.

(2) A copy of the bill must also be submitted by the board to the county clerk and recorder.

(3) If a person receiving an order to take corrective action requests an ~~administrative hearing~~ *injunction or stay of the corrective action in district court within 10 days of receipt of the order*, the board may not institute control measures until the matter is finally resolved, except in case of an emergency. In that case, the person is liable for costs as provided in subsection (1) only to the extent determined appropriate by the board, commissioners, or court that finally resolves the matter."

Section 3. Repealer. Section 7-22-2110, MCA, is repealed.

Section 4. Effective date. [This act] is effective on passage and approval.

Approved April 28, 2009

CHAPTER NO. 408

[SB 404]

AN ACT REVISING LAWS RELATING TO THE LOCATION OF SHOOTING PRESERVES; AMENDING SECTION 87-4-502, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-4-502, MCA, is amended to read:

"87-4-502. Size, location, and posting of preserves. Operating licenses or permits may be issued to any person, partnership, association, or corporation for the operation of shooting preserves that meet the *following* requirements ~~hereinafter prescribed~~:

(1) Each shooting preserve ~~shall~~ *must* be restricted to not more than ~~1,280~~ *1,920* contiguous acres ~~and shall not~~ *and must* be located ~~closer than 10 miles from another preserve and in areas which will~~ *in areas that will* not substantially reduce hunting areas available to the public as determined by the department.

(2) The exterior boundaries of each shooting preserve ~~shall~~ *must* be clearly defined and posted with signs erected around the extremity at intervals of 250 feet or less."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 28, 2009

CHAPTER NO. 409

[SB 427]

AN ACT ESTABLISHING THE MONTANA CONTAMINATED PROPERTY COMPENSATION AND RESTORATION ACT; REVISING DAMAGES

AWARDED FOR CONTAMINATION OF REAL PROPERTY; DEFINING "RESTORATION DAMAGES" AND "SPECIAL USE PROPERTY"; ESTABLISHING A PROVISION FOR BURDEN OF PROOF FOR A COMMON LAW CLAIM FOR CONTAMINATION OF SPECIAL USE PROPERTY; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Short title — scope. (1) [Sections 1 through 5] may be cited as the "Montana Contaminated Property Compensation and Restoration Act".

(2) [Sections 1 through 5] apply only to common law claims brought in judicial proceedings on behalf of private interests of individuals or entities.

Section 2. Definitions. For purposes of [sections 1 through 5], the following definitions apply:

(1) "Department" means the department of environmental quality provided for in 2-15-3501.

(2) (a) "Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing of petroleum or petroleum products from a petroleum storage tank into ground water, surface water, surface soils, or subsurface soils that occurred from a petroleum storage tank, as defined in 75-11-302.

(b) The term does not include a release from the following petroleum storage tanks:

(i) a tank located at a refinery or a terminal of a refiner;

(ii) a tank located at an oil and gas production facility; or

(iii) a tank that is or was previously under the ownership or control of a railroad, except for a tank that was operated by a lessee of a railroad in the course of nonrailroad operations.

(3) "Restoration damages" means the amount of compensation determined necessary by a trier of fact to restore a contaminated special use property to its function and use prior to the contamination upon which a common law claim is based. The term includes reasonable attorney fees and costs incurred by the plaintiff.

(4) "Special use property" means real property contaminated by a release from a petroleum storage tank, as defined in 75-11-302, that is found by a trier of fact to have personal value to the plaintiff not reflected in the market value of the property or to have unique public, historic, cultural, or religious value not reflected in the market value of the property.

Section 3. Restoration damages for contamination of special use property. (1) Restoration damages for a common law claim alleging contamination of special use property may be granted by the trier of fact and may only be obtained pursuant to [sections 1 through 5].

(2) Nothing in this section precludes the award of other damages allowed under common law and statute.

Section 4. Use of restoration damages — request for trust account. (1) Restoration damages awarded pursuant to [section 3], exclusive of damages awarded for attorney fees and costs, must be used to conduct any remedial and corrective action necessary to restore the special use property for which the damages were awarded to its function and use prior to the contamination for which the damages were awarded.

(2) Any party may request that a court awarding restoration damages may also order that those damages be deposited in a segregated trust account at a commercial bank or trust company to ensure compliance with subsection (1). The plaintiff may create a trust to be overseen by a qualified professional to restore the special use property.

Section 5. Burden of proof. The plaintiff in an action for restoration damages resulting from the contamination of special use property has the burden of proof to show that a property meets the definition of a special use property.

Section 6. Codification instruction. [Sections 1 through 5] are intended to be codified as an integral part of Title 75, chapter 11, and the provisions of Title 75, chapter 11, apply to [sections 1 through 5].

Section 7. Nonseverability. It is the intent of the legislature that each part of [this act] is essentially dependent upon every other part, and if one part is held unconstitutional or invalid, all other parts are invalid.

Section 8. Effective date. [This act] is effective on passage and approval.

Section 9. Applicability. [This act] applies to judicial proceedings begun on or after [the effective date of this act].

Approved April 28, 2009

CHAPTER NO. 410

[SB 457]

AN ACT CREATING A SCENIC-HISTORIC BYWAYS PILOT PROJECT; DESIGNATING CERTAIN HIGHWAYS THAT MAY BE INCLUDED IN THE PROJECT; AMENDING THE DEPARTMENT OF TRANSPORTATION'S RULEMAKING AUTHORITY FOR ADMINISTERING THE PROJECT; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.

WHEREAS, since the inception on the Montana scenic-historic byway program, no scenic-historic byways designations have been applied for by local jurisdictions, nor granted by the Montana Department of Transportation; and

WHEREAS, adjoining states have acquired millions of dollars of federal highway funds for local scenic-historic byway projects; and

WHEREAS, Montana's lack of a viable state scenic-historic byway program has resulted in loss of opportunities to acquire grant funding for scenic-historic byway projects by local jurisdictions including Indian Tribes; and

WHEREAS, designation of a scenic-historic byway can have positive economic, quality of life, and educational outcomes for communities and the state; and

WHEREAS, the designation of a scenic-historic byway does not diminish authorities of existing jurisdictions for local land planning or management, nor does it create any new authorities; and

WHEREAS, applications for designation of a local road as a state scenic-historic byway must be prepared locally following local processes in consultation with local citizens and road administrators; and

WHEREAS, the Montana Department of Transportation has concluded that a scenic-historic byways program is feasible in Montana and that the Department is capable of incorporating a program into its administrative responsibilities; and

WHEREAS, current state law on scenic-historic byways protects private property rights but requires local jurisdictions to make assurances that are difficult to comply with; and

WHEREAS, Montana has roads with outstanding qualifications for scenic-historic byway designation and these roads have significant need for new funding opportunities for project funding.

Be it enacted by the Legislature of the State of Montana:

Section 1. Scenic-historic byways pilot project. There is a scenic-historic byways pilot project to allow locally developed applications submitted by the local government or governments of jurisdiction to the scenic-historic byways program established in 60-2-601 to be considered, approved, or rejected by the department pursuant to the rules adopted in 60-2-602. The department shall offer to review applications for designations involving the following highways:

(1) the warrior trail highway as designated in 60-1-214;

(2) the trail of the arrow, consisting of parts of U.S. highway routes 418, 313, 463, and 451 from the Crow reservation boundary on route 418 to Pryor, Saint Xavier, Lodge Grass, and Crow Agency to the start of the warrior trail highway;

(3) black otter trail road in swords park in Billings;

(4) Montana route 1, also known as the pintler scenic route, between the interstate exits at Anaconda and Drummond;

(5) looking glass road on U.S. highway 49 from Kiowa junction to East Glacier;

(6) giant springs road in Great Falls from river road to 67th street;

(7) bureau of Indian affairs route 114 and county road 234; and

(8) Harding way highway from Butte to Whitehall.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 60, chapter 2, part 6, and the provisions of Title 60, chapter 2, part 6, apply to [section 1].

Section 3. Effective date. [This act] is effective July 1, 2009.

Section 4. Termination. [This act] terminates July 1, 2019.

Approved April 28, 2009

CHAPTER NO. 411

[SB 467]

AN ACT REQUIRING THAT BEFORE A TAX DEED SALE MAY BE HELD A TITLE GUARANTEE MUST BE OBTAINED ON THE PROPERTY AND NOTICE MUST BE GIVEN TO ALL PARTIES, OTHER THAN UTILITIES, LISTED ON THE TITLE GUARANTEE; AND AMENDING SECTIONS 15-18-212, 15-18-213, AND 15-18-216, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-18-212, MCA, is amended to read:

"15-18-212. Notice — proof of notice — penalty for failure to notify. (1) Not more than 60 days prior to and not more than 60 days following the expiration of the redemption period provided in 15-18-111, a notice must be given as follows:

(a) for each property for which there has been issued to the county a tax lien sale certificate or for which the county is otherwise listed as the purchaser or assignee, the county clerk and recorder shall notify ~~all persons considered interested parties in the property~~ *the parties as required in subsection (4)* and the current occupant of the property, if any, that a tax deed may be issued to the county unless the property tax lien is redeemed prior to the expiration date of the redemption period; or

(b) for each property for which there has been issued a tax lien sale certificate to a purchaser other than the county or for which an assignment has been made, the purchaser or assignee, as appropriate, shall notify ~~all persons considered interested~~ *the* parties ~~in the property~~ *as required in subsection (4)*, if any, that a tax deed will be issued to the purchaser or assignee unless the property tax lien is redeemed prior to the expiration date of the redemption period.

(2) (a) Except as provided in subsection (2)(b), if the county is the purchaser, an assignment has not been made, and the board of county commissioners has not directed the county treasurer to issue a tax deed during the period described in subsection (1) but the board of county commissioners at a time subsequent to the period described in subsection (1) does direct the county treasurer to issue a tax deed, the county clerk and recorder shall provide notification to ~~all interested~~ *the* parties *as required in subsection (4)* and the current occupant, if any, in the manner provided in subsection (1)(a). The notification required under this subsection must be made not less than 60 days or more than 120 days prior to the date on which the county treasurer will issue the tax deed.

(b) If the county commissioners direct the county treasurer to issue a tax deed within 6 months after giving the notice required by subsection (1)(a), additional notice need not be given.

(3) (a) If a purchaser other than the county or an assignee fails or neglects to give notice as required by subsection (1)(b) and the failure or neglect is evidenced by failure of the purchaser or assignee to file proof of notice with the county clerk and recorder as required in subsection (8), the county treasurer shall notify the purchaser or assignee of the obligation to give notice under subsection (1)(b). The notice of obligation may be sent by certified mail, return receipt requested, to the purchaser or assignee at the address contained on the tax lien sale certificate provided for in 15-17-212 or on the assignment form provided for in 15-17-323.

(b) If within 120 days after the county treasurer mails the notice of obligation the purchaser or assignee fails to give notice as required by subsection (1)(b), as evidenced by failure to file proof of notice with the county clerk and recorder as required in subsection (8), the county treasurer shall cancel the property tax lien evidenced by the tax lien sale certificate or the assignment. Upon cancellation of the property tax lien, the county treasurer shall file or record with the county clerk and recorder a notice of cancellation on a form provided for in 15-18-217.

(4) *(a)* The notice required under subsections (1) and (2) must be made by certified mail, return receipt requested, to ~~each interested party and~~ the current occupant, if any, of the property *and to each party, other than a utility, listed on a property title guarantee,* ~~*ordered on the property by the person required to give notice*~~ *provided that:*

(i) the guarantee has been approved by the insurance commissioner and issued by a licensed title insurance producer; and

(ii) the guarantee was ordered on the property by the person required to give notice.

(b) The address to which the notice must be sent is, for each ~~interested~~ party, the address disclosed by the records in the office of the county clerk and recorder or in the title *guarantee* and, for the occupant, the street address or other known address of the subject property.

(5) In all cases in which the address of an interested party is not known, the person required to give notice shall, within the period described in subsection (1) or not less than 60 days or more than 120 days prior to the date upon which the county treasurer will otherwise issue a tax deed, whichever is appropriate, commence publishing once a week for 2 successive weeks, in the official newspaper of the county or another newspaper as the board of county commissioners may by resolution designate, a notice containing the information contained in subsection (6), plus:

(a) the name of the ~~interested~~ party for whom the address is unknown;

(b) a statement that the address of the ~~interested~~ party is unknown;

(c) a statement that the published notice meets the legal requirements for notice of a pending tax deed issuance; and

(d) a statement that the ~~interested~~ party's rights in the property may be in jeopardy.

(6) The notices required by subsections (1), (2), and (5) must contain the following:

(a) a statement that a property tax lien exists on the property as a result of a property tax delinquency;

(b) a description of the property on which the taxes are or were delinquent, which must be the same as the description of the property on the tax lien sale certificate or in the record described in 15-17-214(2)(b);

(c) the date that the property taxes became delinquent;

(d) the date that the property tax lien attached as the result of a tax lien sale;

(e) the amount of taxes due, including penalties, interest, and costs, as of the date of the notice of pending tax deed issuance, which amount must include a separate listing of the delinquent taxes, penalties, interest, and costs that must be paid for the property tax lien to be liquidated;

(f) the name and address of the purchaser;

(g) the name of the assignee if an assignment was made as provided in 15-17-323;

(h) the date that the redemption period expires or expired;

(i) a statement that if all taxes, penalties, interest, and costs are not paid to the county treasurer on or prior to the date on which the redemption period expires or on or prior to the date on which the county treasurer will otherwise issue a tax deed, a tax deed may be issued to the purchaser on the day following the date on which the redemption period expires or on the date on which the county treasurer will otherwise issue a tax deed; and

(j) the business address and telephone number of the county treasurer who is responsible for issuing the tax deed.

(7) The amount of interest and costs provided for in subsection (6)(e) continues to accrue until the date of redemption. The total amount of interest

and costs that must be paid for redemption must be calculated by the county treasurer as of the date of payment.

(8) Proof of notice in whatever manner given must be filed with the county clerk and recorder. If the purchaser or assignee is other than the county, the proof of notice must be filed with the county clerk and recorder within 30 days of the mailing or publishing of the notice. If the purchaser or assignee is the county, the proof of notice must be filed before the issuance of the tax deed under this chapter. Once filed, the proof of notice is prima facie evidence of the sufficiency of the notice.

(9) A county or any officer of a county may not be held liable for any error of notification."

Section 2. Section 15-18-213, MCA, is amended to read:

"15-18-213. Form of tax deed — prima facie evidence. (1) The form of a tax deed issued under the provisions of this chapter, executed by a county treasurer, must be made in substance as follows:

This deed is made by ..... (name of county treasurer), county treasurer of the county of ..... (name of county), in the state of Montana, to ..... (name of purchaser, the purchaser's agent, or assignee), as provided by the laws of the state of Montana:

Whereas, there was assessed for ..... (year) the following real property ..... (description of the property); and

Whereas, the taxes for ..... (year) levied against the property amounted to $ .....; and

Whereas, the taxes were not paid and a property tax lien for the payment of the taxes attached and was sold to ..... (name of purchaser or the purchaser's agent or assignee) on ..... (date, including year) for the sum of $ ....., which amount included delinquent taxes in the amount of $ ....., penalties in the amount of $ ....., interest in the amount of $ ....., and other costs in the amount of $ .....; and

Whereas, a tax lien sale certificate was issued and filed or the sale otherwise recorded as required by law; and

Whereas, notice was given to ~~interested~~ *required* parties in accordance with 15-18-212 that the issuance of a tax deed was pending; and

Whereas, the property tax lien has not been redeemed by ..... (name of former owner) or any other person entitled to redeem it.

Now, therefore, I, ... (treasurer's name), county treasurer of the county of ....., in the state of Montana, in consideration of the sum of $ ..... paid, hereby grant to ..... (name of purchaser or the purchaser's agent or assignee) all the property situated in ..... County, state of Montana, described in this document.

Witness my hand on this date ..... (date, including year).

.....County Treasurer

.....County

(2) A tax deed executed in substantially the form provided in subsection (1) is prima facie evidence that:

(a) the property was assessed as required by law;

(b) the taxes were levied in accordance with law;

(c) the taxes were not paid when due;

(d) notice of tax lien sale was given and a property tax lien was sold at the proper time and place as provided by law;

(e) the property was not redeemed, and proper notice of a pending tax deed issuance was made as required by law;

(f) the person who executed the deed was legally authorized to do so; and

(g) if the real property was sold to pay delinquent taxes on personal property, the real property belonged to the person liable to pay the personal property tax."

Section 3. Section 15-18-216, MCA, is amended to read:

"15-18-216. Form of proof of notice. Section 15-18-212 requires that proof of notice must be filed with the county clerk. The proof of notice may be made as follows:

PROOF OF NOTICE

I, ... (Name and Address), acting as or on behalf of the owner of the property tax lien, have complied with the notice requirements of Title 15, chapter 18, MCA, as follows:

1. A "Notice of Issuance of Tax Deed" was mailed to the owners, current occupant, and ~~interested~~ parties, as ~~that term is defined in section 15-18-111(3)~~ *required by 15-18-212*, MCA. A copy of each notice is attached or is on file in the office of the county clerk.

2. The notices were mailed by certified mail, return receipt requested. Copies of the return receipts are attached or are on file in the office of the county clerk.

3. Notice was given to ~~interested~~ parties with unknown addresses by publishing in the official newspaper of the county, which is ....., on ..... and ..... . Proof of publication is attached.

DATED: .....

.....

(Signature)

SUBSCRIBED AND SWORN TO before me this ..... (Date).

.....

Notary Public for the State of Montana

Residing in .....

My Commission Expires ....."

Approved April 28, 2009

CHAPTER NO. 412

[SB 491]

AN ACT REVISING THE METHOD FOR DETERMINING THE PORTION OF THE PROPERTY TAX LEVY BY POLITICAL SUBDIVISIONS FOR GROUP BENEFIT INSURANCE CONTRIBUTIONS THAT ARE NOT SUBJECT TO THE PROPERTY TAX LIMITATION LAW; PROVIDING A TRANSITION PROVISION; AMENDING SECTIONS 2-9-212, 2-18-703, AND 15-10-420, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-9-212, MCA, is amended to read:

"2-9-212. Political subdivision tax levy to pay ~~premiums~~ *contributions.* (1) Subject to 15-10-420 and subsection (2) of this section, a political subdivision, except for a school district, may levy an annual property tax in the amount necessary to fund the ~~premium~~ *contribution* for insurance, deductible reserve fund, and self-insurance reserve fund as authorized in this section and to pay the principal and interest on bonds or notes issued pursuant to 2-9-211(5).

(2) (a) If a political subdivision ~~made~~ *makes* contributions for group benefits under 2-18-703 ~~on or before July 1, 2001, the increase in the political subdivision's property tax levy for the political subdivision's premium contributions~~*, the amount in excess of the base contribution as determined under 2-18-703(4)(c)* for group benefits under 2-18-703 ~~beyond the amount of contributions in effect at the beginning of the last fiscal year~~ is not subject to the mill levy calculation limitation provided for in 15-10-420. Levies implemented under this section must be calculated separately from the mill levies calculated under 15-10-420 and are not subject to the inflation factor described in 15-10-420(1)(a).

(i) Contributions for group benefits paid wholly or in part from user charges generated by proprietary funds, as defined by generally accepted accounting principles, are not included in the amount exempted from the mill levy calculation limitation provided for in 15-10-420.

(ii) If tax-billing software is capable, the county treasurer shall list separately the cumulative mill levy or dollar amount on the tax notice sent to each taxpayer under 15-16-101(2). The amount must also be reported to the department of administration pursuant to 7-6-4003. The mill levy must be described as the permissive medical levy.

(b) Each year prior to implementing a levy under subsection (2)(a), after notice of the hearing given under 7-1-2121 or 7-1-4127, a public hearing must be held regarding any proposed increases.

(c) A levy under this section in the previous year may not be included in the amount of property taxes that a governmental entity is authorized to levy for the purposes of determining the amount that the governmental entity may assess under the provisions of 15-10-420(1)(a). When a levy under this section decreases or is no longer levied, the revenue may not be combined with the revenue determined in 15-10-420(1)(a).

(3) (a) For the purposes of this section, "group benefits" means group hospitalization, health, medical, surgical, life, and other similar and related group benefits provided to officers and employees of political subdivisions, including flexible spending account benefits and payments in lieu of group benefits.

(b) The term does not include casualty insurance as defined in 33-1-206, marine insurance as authorized in 33-1-209 and 33-1-221 through 33-1-229, property insurance as defined in 33-1-210, surety insurance as defined in 33-1-211, and title insurance as defined in 33-1-212."

Section 2. Section 2-18-703, MCA, is amended to read:

"2-18-703. Contributions. (1) Each agency, as defined in 2-18-601, and the state compensation insurance fund shall contribute the amount specified in this section toward the group benefits cost.

(2) For employees defined in 2-18-701 and for members of the legislature, the employer contribution for group benefits is $557 a month from January 2007 through December 2007, $590 a month from January 2008 through December 2008, and $626 for January 2009 and for each succeeding month. For employees of the Montana university system, the employer contribution for group benefits is $557 a month from July 2006 through June 2007, $590 a month from July 2007 through June 2008, and $626 for July 2008 and for each succeeding month. If a state employee is terminated to achieve a reduction in force, the continuation of contributions for group benefits beyond the termination date is subject to negotiation under 39-31-305. Permanent part-time, seasonal part-time, and temporary part-time employees who are regularly scheduled to work less than 20 hours a week are not eligible for the group benefit contribution. An employee who elects not to be covered by a state-sponsored group benefit plan may not receive the state contribution. A portion of the employer contribution for group benefits may be applied to an employee's costs for participation in Part B of medicare under Title XVIII of the Social Security Act, as amended, if the state group benefit plan is the secondary payer and medicare the primary payer.

(3) For employees of elementary and high school districts ~~and of local government units~~, the employer's ~~premium~~ contributions may exceed but may not be less than $10 a month. ~~Subject to the public hearing requirement provided in 2-9-212(2)(b), the increase in a local government's property tax levy for premium contributions for group benefits beyond the amount of contributions in effect on the first day of the last fiscal year is not subject to the mill levy calculation limitation provided for in 15-10-420.~~

(4) (a) For employees of political subdivisions, as defined in 2-9-101, except school districts, the employer's contributions may exceed but may not be less than $10 a month.

(b) Subject to the public hearing requirement provided in 2-9-212(2)(b), the amount in excess of the base contribution of a local government's property tax levy for contributions for group benefits as determined in subsection (4)(c) is not subject to the mill levy calculation limitation provided for in 15-10-420.

(c) Subject to subsections (4)(c)(i) and (4)(c)(ii), the base contribution is determined by multiplying the average annual contribution for each employee on July 1, 1999, times the number of employees for whom the employer makes contributions for group benefits under 2-9-212 on July 1 of each fiscal year.

(i) If a political subdivision did not make contributions for group benefits on or before July 1, 1999, and subsequently does so, the base contribution is determined by multiplying the average annual contribution for each employee in the first year the political subdivision provides contributions for group benefits times the number of employees for whom the employer makes contributions for group benefits under 2-9-212 on July 1 of each fiscal year.

(ii) If a political subdivision has made contributions for group benefits but has not previously levied for contributions in excess of the base contribution, the political subdivision's base is determined by multiplying the average annual contribution for each employee at the beginning of the fiscal year immediately preceding the year in which the levy will first be levied times the number of employees for whom the employer made contributions for group benefits under 2-9-212 in that fiscal year.

~~(4)~~*(5)* Unused employer contributions for any state employee must be transferred to an account established for this purpose by the department of

administration and upon transfer may be used to offset losses occurring to the group of which the employee is eligible to be a member.

~~(5)~~*(6)* Unused employer contributions for any government employee may be transferred to an account established for this purpose by a self-insured government and upon transfer may be used to offset losses occurring to the group of which the employee is eligible to be a member or to increase the reserves of the group.

~~(6)~~*(7)* The laws prohibiting discrimination on the basis of marital status in Title 49 do not prohibit bona fide group insurance plans from providing greater or additional contributions for insurance benefits to employees with dependents than to employees without dependents or with fewer dependents."

Section 3. Section 15-10-420, MCA, is amended to read:

"15-10-420. Procedure for calculating levy. (1) (a) Subject to the provisions of this section, a governmental entity that is authorized to impose mills may impose a mill levy sufficient to generate the amount of property taxes actually assessed in the prior year plus one-half of the average rate of inflation for the prior 3 years. The maximum number of mills that a governmental entity may impose is established by calculating the number of mills required to generate the amount of property tax actually assessed in the governmental unit in the prior year based on the current year taxable value, less the current year's value of newly taxable property, plus one-half of the average rate of inflation for the prior 3 years.

(b) A governmental entity that does not impose the maximum number of mills authorized under subsection (1)(a) may carry forward the authority to impose the number of mills equal to the difference between the actual number of mills imposed and the maximum number of mills authorized to be imposed. The mill authority carried forward may be imposed in a subsequent tax year.

(c) For the purposes of subsection (1)(a), the department shall calculate one-half of the average rate of inflation for the prior 3 years by using the consumer price index, U.S. city average, all urban consumers, using the 1982-84 base of 100, as published by the bureau of labor statistics of the United States department of labor.

(2) A governmental entity may apply the levy calculated pursuant to subsection (1)(a) plus any additional levies authorized by the voters, as provided in 15-10-425, to all property in the governmental unit, including newly taxable property.

(3) (a) For purposes of this section, newly taxable property includes:

(i) annexation of real property and improvements into a taxing unit;

(ii) construction, expansion, or remodeling of improvements;

(iii) transfer of property into a taxing unit;

(iv) subdivision of real property; and

(v) transfer of property from tax-exempt to taxable status.

(b) Newly taxable property does not include an increase in value that arises because of an increase in the incremental value within a tax increment financing district.

(4) (a) For the purposes of subsection (1), the taxable value of newly taxable property includes the release of taxable value from the incremental taxable value of a tax increment financing district because of:

(i) a change in the boundary of a tax increment financing district;

(ii) an increase in the base value of the tax increment financing district pursuant to 7-15-4287; or

(iii) the termination of a tax increment financing district.

(b) If a tax increment financing district terminates prior to the certification of taxable values as required in 15-10-202, the increment value is reported as newly taxable property in the year in which the tax increment financing district terminates. If a tax increment financing district terminates after the certification of taxable values as required in 15-10-202, the increment value is reported as newly taxable property in the following tax year.

(c) For the purpose of subsection (3)(a)(iv), the subdivision of real property includes the first sale of real property that results in the property being taxable as class four property or as nonqualified agricultural land as described in 15-6-133(1)(c).

(5) Subject to subsection (8), subsection (1)(a) does not apply to~~:~~

~~(a)~~ school district levies established in Title 20~~; or~~

~~(b) the portion of a governmental entity's property tax levy for premium contributions for group benefits excluded under 2-9-212 or 2-18-703~~.

(6) For purposes of subsection (1)(a), taxes imposed do not include net or gross proceeds taxes received under 15-6-131 and 15-6-132.

(7) In determining the maximum number of mills in subsection (1)(a), the governmental entity may increase the number of mills to account for a decrease in reimbursements.

(8) The department shall calculate, on a statewide basis, the number of mills to be imposed for purposes of 15-10-107, 20-9-331, 20-9-333, 20-9-360, 20-25-423, and 20-25-439. However, the number of mills calculated by the department may not exceed the mill levy limits established in those sections. The mill calculation must be established in whole mills. If the mill levy calculation does not result in a whole number of mills, then the calculation must be rounded up to the nearest whole mill.

(9) (a) The provisions of subsection (1) do not prevent or restrict:

(i) a judgment levy under 2-9-316, 7-6-4015, or 7-7-2202;

(ii) a levy to repay taxes paid under protest as provided in 15-1-402;

(iii) an emergency levy authorized under 10-3-405, 20-9-168, or 20-15-326; ~~or~~

(iv) a levy for the support of a study commission under 7-3-184~~.~~*; or*

(v) the portion that is the amount in excess of the base contribution of a governmental entity's property tax levy for contributions for group benefits excluded under 2-9-212 or 2-18-703.

(b) A levy authorized under subsection (9)(a) may not be included in the amount of property taxes actually assessed in a subsequent year.

(10) A governmental entity may levy mills for the support of airports as authorized in 67-10-402, 67-11-301, or 67-11-302 even though the governmental entity has not imposed a levy for the airport or the airport authority in either of the previous 2 years and the airport or airport authority has not been appropriated operating funds by a county or municipality during that time.

(11) The department may adopt rules to implement this section. The rules may include a method for calculating the percentage of change in valuation for

purposes of determining the elimination of property, new improvements, or newly taxable property in a governmental unit."

Section 4. Transition. (1) Except as provided in subsection (2), a political subdivision that levied mills for group contributions pursuant to 2-18-703 in fiscal year 2009 may for the fiscal years 2010 through 2014 levy the greater of:

(a) the dollar amount levied in 2009; or

(b) the amount determined in 2-18-703.

(2) The actual dollar amount under subsection (1)(a) may not include an amount for group benefits paid from user charges described in 2-9-212(2)(a)(i).

Section 5. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 6. Effective date. [This act] is effective July 1, 2009.

Approved April 28, 2009

CHAPTER NO. 413

[SB 508]

AN ACT REVISING MOTOR VEHICLE LAWS; CREATING AN ONLINE MOTOR VEHICLE LIABILITY INSURANCE VERIFICATION SYSTEM; PROVIDING FOR LAW ENFORCEMENT USE OF THE SYSTEM; PROVIDING FOR A CONTRACT BETWEEN THE DEPARTMENT OF JUSTICE AND MONTANA CORRECTIONAL ENTERPRISES TO MANUFACTURE AND DISTRIBUTE LICENSE PLATES; CREATING A VEHICLE INSURANCE VERIFICATION AND LICENSE PLATE OPERATING ACCOUNT; CREATING A LICENSE PLATE PRODUCTION OPERATING ACCOUNT; ALLOWING INSURERS TO PROVIDE CERTAIN INFORMATION TO BE USED IN THE SYSTEM; REQUIRING THAT A VEHICLE OWNER COMPLY WITH MANDATORY MOTOR VEHICLE LIABILITY INSURANCE REQUIREMENTS BEFORE REGISTERING OR RENEWING REGISTRATION FOR A VEHICLE; PROVIDING FOR THE DEPOSIT OF CERTAIN FEES IN THE OPERATING ACCOUNTS; REVISING CERTAIN LICENSE PLATE FEES; REQUIRING REPLACEMENT OF LICENSE PLATES THAT ARE A CERTAIN AGE OR OLDER; ALLOWING PERSONALIZED LICENSE PLATES TO BE ISSUED FOR SPECIAL MILITARY PLATES; REVISING PROVISIONS FOR THE GENERIC SPECIALTY LICENSE PLATE SPONSOR FEE; GRANTING THE DEPARTMENT OF JUSTICE RULEMAKING AUTHORITY TO ADMINISTER THE ONLINE MOTOR VEHICLE LIABILITY INSURANCE VERIFICATION SYSTEM, THE REISSUANCE OF LICENSE PLATES, AND THE CONTRACT WITH MONTANA CORRECTIONAL ENTERPRISES; ALLOWING THE DEPARTMENT OF JUSTICE TO SET CERTAIN REINSTATEMENT FEES; REVISING LAWS GOVERNING PLACEMENT OF TAIL LAMPS; AMENDING SECTIONS 33-19-306, 61-3-301, 61-3-303, 61-3-312, 61-3-315, 61-3-321, 61-3-332, 61-3-333, 61-3-407, 61-3-465, 61-3-478, 61-3-480, 61-3-535, 61-3-562, 61-6-101, 61-6-102, 61-6-103, 61-6-105, 61-6-302, AND 61-9-204, MCA; REPEALING SECTION 61-6-106, MCA; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Creation of online motor vehicle liability insurance verification system. (1) The department, in cooperation with the commissioner of insurance, shall establish an accessible common carrier-based motor vehicle insurance verification system to verify the compliance of a motor vehicle owner or operator with motor vehicle liability policy requirements under 61-6-103, 61-6-301, and 61-6-302 and facilitate or monitor proof of financial responsibility filings under 61-6-133 and 61-6-134.

(2) The department may contract with a private vendor or vendors to establish and maintain the system.

(3) The system must:

(a) send requests to insurers for verification of motor vehicle liability insurance using electronic services established by the insurers, through the internet, world wide web, or a similar proprietary or common carrier electronic system in compliance with the specifications and standards of the insurance industry committee on motor vehicle administration and other applicable industry standards;

(b) include appropriate provisions to secure its data against unauthorized access and to maintain a record of all requests and responses;

(c) be accessible, without fee, to authorized personnel of the department, the courts, law enforcement personnel, county treasurers, and authorized agents under the provisions of 61-3-116;

(d) interface, wherever possible, with existing department and law enforcement systems;

(e) receive insurance data file transfers from insurers under specifications and standards set forth in subsection (3)(a) to identify vehicles that are not covered by an insurance policy;

(f) provide a means by which low-volume insurers that are unable to deploy an online interface with the system can report insurance policy data to the department or its designee for inclusion in the system;

(g) provide a means to track separately or distinguish motor vehicles that are subject to a certificate of self-insurance under 61-6-143, a surety or indemnity bond under 61-6-137 or 61-6-301, or a deposit of cash or securities under 61-6-138;

(h) be available 24 hours a day, 7 days a week, subject to reasonable allowances for scheduled maintenance or temporary system failures, to verify the insurance status of any vehicle in a manner prescribed by the department; and

(i) be installed and operational no later than July 1, 2011, following an appropriate testing period of not less than 6 months.

(4) The provisions of Title 2, chapter 6, parts 1 and 2, do not apply to the information contained in the verification system.

(5) Every insurer shall cooperate with the department in establishing and maintaining the system and shall provide access to motor vehicle liability policy status information to verify liability coverage for:

(a) a vehicle insured by that company that is registered in this state; and

(b) if available, for a vehicle that is insured by that company or that is operated in this state and that is the subject of an accident investigation regardless of where the vehicle is registered.

Section 2. Law enforcement use of verification system. (1) Notwithstanding the requirements of 61-6-302, a peace officer or authorized employee of a law enforcement agency may, during the course of a traffic stop or accident investigation, access the verification system provided under [section 1] to verify whether a motor vehicle is covered by a valid motor vehicle liability policy that meets the requirements of 61-6-103 and 61-6-301.

(2) (a) Except as provided in subsection (2)(b), the response received from the system supersedes an insurance card produced by a vehicle owner or operator, and notwithstanding the display of an insurance card by the owner or operator, the peace officer may issue a complaint and notice to appear to the owner or operator for a violation of 61-6-301 or 61-6-302.

(b) Subsection (2)(a) does not apply if the vehicle is:

(i) covered under a commercial automobile insurance coverage policy;

(ii) part of a self-insured fleet as provided in 61-6-143; or

(iii) included in an insurance binder, as allowed by 33-15-411, that has not been entered into the system at the time the system is accessed under subsection (1) of this section.

(3) Except upon reasonable cause to believe that a driver has violated another traffic regulation or that the driver's vehicle is unsafe or not equipped as required by law, a peace officer may not use the verification system to stop a driver for operating a motor vehicle in violation of 61-6-301.

Section 3. Vehicle insurance verification and license plate operating account. (1) There is a vehicle insurance verification and license plate operating account in the state special revenue fund type as provided in 17-2-102.

(2) Fees imposed under 61-3-321(7)(b)(ii) and (12), 61-3-333, 61-3-465(1)(b)(i), 61-3-480(2)(c)(i), or 61-3-562(1)(a)(ii) or established and collected under 61-6-105 must be deposited in the account.

(3) The money in the vehicle insurance verification and license plate operating account must be used by the department to pay costs incurred in or associated with the operation, maintenance, and enhancement of the online motor vehicle liability insurance verification system established under [section 1] and the contract required in [section 4] for the manufacture and distribution of license plates by Montana correctional enterprises.

Section 4. Manufacture and distribution of license plates. (1) The department shall contract with Montana correctional enterprises for the manufacture, inventory control, storage, and distribution of all license plates issued under this chapter.

(2) The contract must include provisions for payment to Montana correctional enterprises after license plates are shipped to the department, the office of a county treasurer, or a vehicle owner, as directed by the department or at the request of a vehicle owner.

(3) The contract must require Montana correctional enterprises to provide the necessary interface to support the automated ordering of license plates by the department or as directed by the department and to acquire and use readability software to assess any new plate design or manufactured plate and, if requested by the department, any previously issued license plates.

Section 5. Montana correctional enterprises license plate production operating account. (1) There is a license plate production operating account of the internal service fund type, as provided in 17-2-102.

(2) All payments received by the Montana correctional enterprises program under a contract related to the manufacture of license plates or fees paid under 61-3-478 must be deposited in the account.

(3) The money in the license plate production operating account must be used by Montana correctional enterprises for the operation and enhancement of its license plate manufacturing enterprise.

Section 6. Section 33-19-306, MCA, is amended to read:

"33-19-306. Disclosure limitations and conditions. (1) Except as provided in this section, a licensee may not disclose personal or privileged information about an individual collected or received in connection with an insurance transaction.

(2) Disclosure may be made with the written authorization of the individual. The authorization must be in the form provided in 33-19-206.

(3) Disclosure limited to that which is reasonably necessary may be made to a person to enable the person to provide information to the disclosing licensee for the purpose of detecting or preventing criminal activity, fraud, material misrepresentation, or material nondisclosure in connection with an insurance transaction. A person to whom information is disclosed pursuant to this subsection shall agree in writing not to further disclose the information, but this requirement for an agreement does not prevent disclosure of information that is necessary to obtain further information for the purposes set forth in this subsection.

(4) (a) Disclosure may be made between licensees if the information disclosed is limited to that which is reasonably necessary:

(i) to detect or prevent criminal activity, fraud, material misrepresentation, or material nondisclosure in connection with insurance transactions; or

(ii) for either the disclosing or receiving licensee to perform its insurance function.

(b) A licensee receiving information pursuant to this subsection (4) may not further disclose the information unless otherwise permitted by this section.

(5) Disclosure may be made to a medical care institution, a medical professional, or the individual to whom the information pertains if that information is reasonably necessary for the following purposes:

(a) verifying insurance coverage or benefits;

(b) informing an individual of a medical problem of which the individual may not be aware;

(c) conducting an operations or services audit; or

(d) determining the reasonableness or necessity of medical services.

(6) Disclosure:

(a) may be made to an insurance regulatory authority;

(b) must be made as required by law; and

(c) must be or may be made to the commissioner as required or permitted by law.

(7) Disclosure may be made by a licensee or an insurance-support organization to a law enforcement or other government authority or to an insurance regulatory agency:

(a) to protect the interests of a licensee in preventing, investigating, or prosecuting the perpetration of fraud upon a licensee; ~~or~~

(b) if the licensee or insurance-support organization reasonably believes that illegal activities have been conducted by the individual*; or*

(c) as provided in [section 1].

(8) Disclosure that is limited to that which is reasonably necessary may be made as otherwise permitted or required by law.

(9) Disclosure that is limited to that which is reasonably necessary may be made in response to a facially valid administrative or judicial order, including a search warrant or subpoena.

(10) (a) Except as provided in subsection (10)(b), disclosure that is limited to that which is reasonably necessary may be made for the purpose of conducting actuarial or research studies if:

(i) an individual is not identified in any actuarial or research report;

(ii) materials allowing the individual to be identified are returned or destroyed as soon as they are no longer needed; and

(iii) the actuarial or research organization agrees not to further disclose the information without the individual's separate, written authorization.

(b) Disclosure of information may be made for:

(i) health research that is subject to the approval of an institutional review board and the requirements of federal law and regulations governing biomedical research; or

(ii) epidemiological or drug therapy outcomes research that requires information that has been made anonymous to protect the identity of the patient through coding or encryption.

(11) Disclosure may be made to a party or a representative of a party to a proposed sale, transfer, merger, or consolidation of all or part of the business of the licensee or insurance-support organization if:

(a) prior to the consummation of the sale, transfer, merger, or consolidation only information ~~is disclosed~~ that is reasonably necessary to enable the recipient to make business decisions about the purchase, transfer, merger, or consolidation *is disclosed*; and

(b) the recipient agrees not to further disclose the information without the individual's separate, written authorization.

(12) (a) Disclosure that is limited to that which is reasonably necessary may be made to a licensee's affiliate as follows:

(i) to allow use of the information in connection with an audit of the licensee;

(ii) to enable a licensee to perform an insurance function; or

(iii) as allowed by 33-19-307.

(b) A licensee disclosing pursuant to this section must have a written agreement with the affiliate that the affiliate will not use or further disclose information received except to carry out the purposes set forth in subsection (12)(a) and that if further disclosure is necessary to meet those purposes, the disclosure will be made only to the licensee or to a person who agrees in writing to be bound by the same prohibition on use and disclosure. A disclosure allowed by 33-19-307 is governed by that section.

(13) Disclosure that is limited to that which is reasonably necessary may be made to an insurance-support organization to perform insurance-support services for the licensee. The insurance-support organization may redisclose the

information to the extent necessary to provide its services to its member or subscriber licensees and other insurance-support organizations or as otherwise permitted by law, but not for a marketing purpose.

(14) Disclosure may be made to a group policyholder for the purpose of reporting claims experience or conducting an audit of the licensee's operations or services if the information disclosed is reasonably necessary for the group policyholder to conduct the review or audit and the group policyholder agrees not to further disclose the information without the individual's separate, written authorization. Medical record information disclosed pursuant to this subsection must be edited to prevent the identification of the applicant, policyholder, or certificate holder. Employer audits that are required by the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1001, et seq., as amended, are not subject to the provisions of this subsection.

(15) Disclosure that is limited to that which is reasonably necessary may be made to a professional peer review organization for the purpose of reviewing the service or conduct of a medical care institution or medical professional if the professional peer review organization agrees not to further disclose the information without the individual's separate, written authorization.

(16) Disclosure that is limited to that which is reasonably necessary may be made to a governmental authority as required by federal or state law or for the purpose of determining the individual's eligibility for health benefits for which the governmental authority may be liable.

(17) Disclosure that is limited to that which is reasonably necessary may be made to a certificate holder or policyholder for the purpose of providing information regarding the status of an insurance transaction. Disclosure pursuant to this subsection may not be made to a group policyholder without a separate, written authorization from the individual.

(18) Disclosure may be made to a person contractually engaged to provide services to enable a licensee to perform an insurance function, or to perform an insurance function on behalf of a licensee, if the person agrees in writing that the person will not use or further disclose information obtained or developed pursuant to the engagement except to carry out the limited purpose of the engagement and that if further disclosure is necessary to perform the insurance function, that disclosure will be made only to the licensee or to a person who agrees in writing to be bound by the same prohibitions on use and disclosure.

(19) If a licensee has to disclose personal or privileged information in order to perform an insurance function and disclosure is not permitted under another exception in this section, disclosure may be made to a person other than a licensee if the disclosure is limited to that which is reasonably necessary to enable the person to perform services or an insurance function for the disclosing licensee and if the person is notified by the licensee that the person is prohibited from:

(a) using the information other than to carry out the limited purpose for which the information is disclosed; and

(b) disclosing the information other than to the licensee and as allowed in subsection (3).

(20) Disclosure may be made to a lienholder, mortgagee, assignee, lessor, or other person shown on the records of an insurance institution or insurance producer as having a legal interest in a policy of insurance if:

(a) medical record information is not disclosed; and

(b) the information disclosed is limited to that which is reasonably necessary to permit the person with a legal interest in the policy to protect that person's interests in that policy.

(21) Disclosure may be made to provide information to insurance rate advisory organizations, guaranty funds or agencies, agencies that are rating a licensee, persons that are assessing the licensee's compliance with industry standards, and the licensee's attorneys, accountants, and auditors if the disclosure is limited to that which is reasonably necessary to enable the person or entity to perform services or an insurance function for the disclosing licensee and if the person or entity is notified by the licensee that the person or entity is prohibited from using the information, other than to carry out the limited purpose for which the information is disclosed.

(22) Notwithstanding any other provision of this chapter, disclosure for a marketing purpose may be made only as allowed by 33-19-307.

(23) ~~Nothing in this~~ *This* section may *not* be construed to prevent the disclosure of personal information that is otherwise discoverable pursuant to the Montana Rules of Civil Procedure.

(24) The commissioner may adopt rules creating additional exceptions to disclosure restrictions for the purpose of allowing a licensee or insurance-support organization to carry out a necessary insurance function. The commissioner shall adopt rules establishing the methods that must be used by licensees to prevent identification as described in subsection (14)."

Section 7. Section 61-3-301, MCA, is amended to read:

"61-3-301. Registration — license plate required — display. (1) (a) Except as provided in 61-4-120, 61-4-129, and subsection (1)(b) of this section, a person may not operate a motor vehicle, trailer, semitrailer, pole trailer, or travel trailer upon the public highways of Montana unless the motor vehicle, trailer, semitrailer, pole trailer, or travel trailer is properly registered and has the proper license plates conspicuously displayed on the motor vehicle, trailer, semitrailer, pole trailer, or travel trailer. A license plate must be securely fastened to prevent it from swinging and may not be obstructed from plain view.

(b) A motorcycle, quadricycle, trailer, semitrailer, pole trailer, or travel trailer must have a single license plate displayed on the rear of the vehicle. A custom vehicle or street rod registered under 61-3-320(1)(b) or (1)(c)(iii) may display a single license plate firmly attached to the rear exterior of the custom vehicle or street rod. All other motor vehicles must have one license plate displayed on the front and one license plate displayed on the rear of the motor vehicle.

(c) A person may not display on a motor vehicle, trailer, semitrailer, pole trailer, or travel trailer at the same time a number assigned to it under any motor vehicle law except as provided in this chapter.

(2) A person may not purchase or display on a motor vehicle, trailer, semitrailer, pole trailer, or travel trailer a license plate bearing the number assigned to any county, as provided in 61-3-332, other than the county where the vehicle is domiciled or the county where the trailer, semitrailer, pole trailer, or travel trailer is domiciled at the time of application for registration.

(3) It is unlawful to:

(a) display license plates issued to one motor vehicle, trailer, semitrailer, pole trailer, or travel trailer on any other motor vehicle, trailer, semitrailer, pole trailer, or travel trailer unless legally transferred as provided by statute;

(b) repaint old license plates to resemble current license plates; or

(c) display a prior design of standard license plates ~~issued under 61-3-332(3)(a) or special license plates issued under 61-3-332(8) or 61-3-421 more than 18 months after a new design of standard license plates or special license plates has been issued,~~ *including military, veteran, and amateur radio license plates, or any license plates that have been issued for 5 or more years after the replacement of the license plates is required under 61-3-332(3)(a),* except as provided in 61-3-332~~(3)(b) and (3)(c)~~*(3)(c) and (3)(d)*, 61-3-448, or 61-3-468.

(4) For the purposes of this section, "conspicuously displayed" means that the required license plates are obviously visible and firmly attached to:

(a) the front bumper and the rear bumper of a motor vehicle equipped with front and rear bumpers, except for a custom vehicle or street rod as provided in subsection (1)(b); or

(b) a clearly visible location on the rear of a trailer, semitrailer, pole trailer, or travel trailer."

Section 8. Section 61-3-303, MCA, is amended to read:

"61-3-303. Original registration — process — fees. (1) Except as provided in 61-3-324, a Montana resident who owns a motor vehicle, trailer, semitrailer, or pole trailer operated or driven upon the public highways of this state shall register the motor vehicle, trailer, semitrailer, or pole trailer in the office of the county treasurer in the county where the owner is domiciled.

(2) Except as provided in subsection (3) *and subsection (11)*, the county treasurer shall register any vehicle for which:

(a) as of the date that the motor vehicle, trailer, semitrailer, or pole trailer is to be registered, the owner delivers an application for a certificate of title to the department, its authorized agent, or a county treasurer; or

(b) the county treasurer confirms that the department has an electronic record of title for the motor vehicle, trailer, semitrailer, or pole trailer as provided under 61-3-101.

(3) (a) A county treasurer may register a motor vehicle, trailer, semitrailer, or pole trailer for which a certificate of title and registration were issued in another jurisdiction and for which registration is required under 61-3-701 after the county treasurer examines the current out-of-jurisdiction registration certificate or receipt and receives payment of the fees required in 61-3-701. The county treasurer may ask the motor vehicle, trailer, semitrailer, or pole trailer owner to provide additional information, prescribed by the department, to ensure that the electronic record of registration maintained by the department is complete.

(b) A county treasurer may register a motor vehicle, trailer, semitrailer, or pole trailer for which the new owner cannot, due to circumstances beyond the new owner's control, surrender a previously assigned certificate of title. The new owner may submit an application for certificate of title, subject to the registration renewal limitations of 61-3-312.

(4) Upon registering a motor vehicle, trailer, semitrailer, or pole trailer for the first time in this state, the county treasurer shall:

(a) update the electronic record of title, if any, maintained for the vehicle by the department under 61-3-101;

(b) assign a registration period for the vehicle under 61-3-311;

(c) determine the vehicle's age, if required, under 61-3-501;

(d) determine the amount of fees, including local option taxes or fees, to be paid under subsection (5); and

(e) assign and issue license plates for the vehicle under 61-3-331.

(5) Unless otherwise provided by law, a person registering a motor vehicle shall pay to the county treasurer:

(a) the fees in lieu of tax or registration fees as required for:

(i) a light vehicle under 61-3-321 or 61-3-562, in addition to, if applicable, any local option tax or fee under 61-3-537 or 61-3-570;

(ii) a motor home under 61-3-321;

(iii) a travel trailer under 61-3-321;

(iv) a motorcycle or quadricycle under 61-3-321;

(v) a bus, a truck having a manufacturer's rated capacity of more than 1 ton, or a truck tractor under 61-3-321 and 61-3-529; or

(vi) a trailer under 61-3-321;

(b) a donation of $1 or more if the person indicates that the person wishes to donate to promote awareness and education efforts for procurement of organ and tissue donations in Montana to favorably impact anatomical gifts; and

(c) a donation of $1 or more if the person indicates that the person wishes to donate to promote education on, support for, and awareness of traumatic brain injury.

(6) The county treasurer may not issue a registration receipt or license plates for the motor vehicle, trailer, semitrailer, or pole trailer to the owner unless the owner makes the payments required by subsection (5).

(7) The department may make full and complete investigation of the registration status of the motor vehicle, trailer, semitrailer, or pole trailer. A person seeking to register a motor vehicle, trailer, semitrailer, or pole trailer under this section shall provide additional information to support the registration to the department if requested.

(8) Revenue that accrues from the voluntary donation provided in subsection (5)(b) must be forwarded by the respective county treasurer to the department of revenue for deposit in the state special revenue fund to the credit of an account established by the department of public health and human services to support activities related to awareness and education efforts for procurement of organ and tissue donations for anatomical gifts.

(9) (a) Except as provided in subsection (9)(b), the fees in lieu of tax, taxes, and fees imposed on or collected from the registration of a travel trailer, motorcycle, or quadricycle or a trailer, semitrailer, or pole trailer that has a declared weight of less than 26,000 pounds are required to be paid only once during the time that the travel trailer, motorcycle, quadricycle, trailer, semitrailer, or pole trailer is owned by the same person who registered the travel trailer, motorcycle, quadricycle, trailer, semitrailer, or pole trailer. Once registered, a travel trailer, motorcycle, quadricycle, trailer, semitrailer, or pole trailer is registered permanently unless ownership is transferred.

(b) Whenever ownership of a travel trailer, motorcycle, quadricycle, trailer, semitrailer, or pole trailer is transferred, the new owner is required to register the travel trailer, motorcycle, quadricycle, trailer, semitrailer, or pole trailer as if it were being registered for the first time, including paying all of the required fees in lieu of tax, taxes, and fees.

(10) Revenue that accrues from the voluntary donation provided in subsection (5)(c) must be forwarded by the respective county treasurer to the department of revenue for deposit in the state special revenue fund to the credit of the account established in 2-15-2218 to support activities related to education regarding prevention of traumatic brain injury.

(11) Beginning July 1, 2011, the county treasurer shall use the online motor vehicle liability insurance verification system provided in [section 1] to verify that the vehicle owner has complied with the requirements of 61-6-301. Unless the verification system is temporarily unavailable, the county treasurer may not issue license plates to a motor vehicle when compliance with 61-6-301 cannot be verified."

Section 9. Section 61-3-312, MCA, is amended to read:

"61-3-312. Renewal of registration — exceptions — grace period. (1) Except as provided in 61-3-313 and 61-3-721, the registration of a motor vehicle under this chapter must be renewed on or before the last day of the month of the motor vehicle's registration period following the expiration of the motor vehicle's registration.

(2) ~~A~~ *Except as provided in subsection (4), a* person may renew a motor vehicle's registration by submitting full payment for the fees or taxes required under 61-3-303 *and 61-3-321(12)* to the department, an authorized agent, or a county treasurer in any county of this state.

(3) The department, an authorized agent, or a county treasurer may use the online motor vehicle liability insurance verification system provided in [section 1] to verify proof of compliance with 61-6-301.

(4) Beginning July 1, 2011, and except when the verification system is temporarily unavailable, a registration may not be renewed when compliance with 61-6-301 cannot be determined using the verification system.

(5) Except as provided in 61-3-315, the registration period originally assigned under 61-3-311 must be retained and the duration of the renewed registration is determined in accordance with 61-3-311. A registration receipt is valid for the registration period for which it is issued.

~~(2)~~*(6)* The owner of a motor vehicle subject to registration renewal under the provisions of this section is considered to have renewed the motor vehicle's registration in a timely manner if the owner submits full payment for the required fees or taxes, as prescribed in the mail renewal notice from the department, to the department, an authorized agent, or a county treasurer on or before the last day of the month of the motor vehicle's registration period *and if, beginning July 1, 2011, the department, authorized agent, or county treasurer determines the owner is in compliance with 61-6-301 using the verification system provided in [section 1].*

~~(3)~~*(7)* The department, an authorized agent, or a county treasurer may not renew the registration of a motor vehicle for which ownership has been transferred and that was originally registered without being titled under the provisions of 61-3-303(3)(b) unless:

(a) the previously issued certificate of title has been surrendered to the department, an authorized agent, or the county treasurer and the process for issuing a certificate of title has been completed; or

(b) the person to whom ownership of the motor vehicle has been transferred presents an affidavit and bond in support of the application for a certificate of title as permitted in 61-3-208."

Section 10. Section 61-3-315, MCA, is amended to read:

"61-3-315. Rules — early renewal. The department shall adopt rules for the implementation and administration of the registration of motor vehicles under this chapter. The rules adopted by the department pursuant to this section must allow for:

(1) early renewal of registration for motor vehicles when an owner of a motor vehicle presents extenuating circumstances; ~~and~~

(2) simultaneous registration of multiple motor vehicles that have common ownership*;*

(3) verification of compliance with 61-6-301 before registering or renewing a registration of a vehicle or issuing new license plates required by 61-3-332(3);

(4) automated mailing of license plates by the department or its authorized agent, including an agent under contract with the department pursuant to [section 4]; and

(5) devising a method to place license plates that are issued on or before January 1, 2010, and renewed on or after January 1, 2010, on the 5-year reissuance cycle in a manner that minimizes production peaks and valleys."

Section 11. Section 61-3-321, MCA, is amended to read:

"61-3-321. Registration fees of vehicles and vessels — certain vehicles exempt from registration fees — disposition of fees. (1) Except as otherwise provided in this section, registration fees must be paid upon registration or, if applicable, renewal of registration of motor vehicles, snowmobiles, watercraft, trailers, semitrailers, and pole trailers as provided in subsections (2) through (19):

(2) Unless a light vehicle is permanently registered under 61-3-562, the annual registration fee for light vehicles, trucks and buses under 1 ton, and logging trucks less than 1 ton is as follows:

(a) if the vehicle is 4 or less years old, $217;

(b) if the vehicle is 5 through 10 years old, $87; and

(c) if the vehicle is 11 or more years old, $28;

(3) Except as provided in subsection (14), the one-time registration fee based on the declared weight of a trailer, semitrailer, or pole trailer is as follows:

(a) if the declared weight is less than 6,000 pounds, $61.25; or

(b) if the declared weight is 6,000 pounds or more, $148.25.

(4) Except as provided in subsection (14), the one-time registration fee for motor vehicles owned and operated solely as collector's items pursuant to 61-3-411, based on the weight of the vehicle, is as follows:

(a) 2,850 pounds and over, $10; and

(b) under 2,850 pounds, $5.

(5) Except as provided in subsection (14), the one-time registration fee for off-highway vehicles other than a quadricycle or motorcycle is $61.25.

(6) The annual registration fee for heavy trucks, buses, and logging trucks in excess of 1 ton is $22.75.

(7) (a) The annual registration fee for a motor home, based on the age of the motor home, is as follows:

(i) less than 2 years old, $282.50;

(ii) 2 years old and less than 5 years old, $224.25;

(iii) 5 years old and less than 8 years old, $132.50; and

(iv) 8 years old and older, $97.50.

(b) The owner of a motor home that is 11 years old or older and that is subject to the registration fee under this section may permanently register the motor home upon payment of:

(i) a one-time registration fee of $237.50; ~~and~~

(ii) *unless a new set of license plates is being issued, an insurance verification fee of $5, which must be deposited in the account established under [section 3]; and*

(iii) if applicable, five times the renewal fees for personalized license plates under 61-3-406.

(8) (a) Except as provided in subsection (14), the one-time registration fee for motorcycles and quadricycles registered for use on public highways is $53.25, and the one-time registration fee for motorcycles and quadricycles registered for both off-road use and for use on the public highways is $114.50.

(b) An additional fee of $16 must be collected for the registration of each motorcycle or quadricycle as a safety fee, which must be deposited in the state motorcycle safety account provided for in 20-25-1002.

(9) Except as provided in subsection (14), the one-time registration fee for travel trailers, based on the length of the travel trailer, is as follows:

(a) under 16 feet in length, $72; and

(b) 16 feet in length or longer, $152.

(10) Except as provided in subsection (14), the one-time registration fee for a motorboat, sailboat, personal watercraft, or motorized pontoon required to be numbered under 23-2-512 is as follows:

(a) for a personal watercraft or a motorboat, sailboat, or motorized pontoon less than 16 feet in length, $65.50;

(b) for a motorboat, sailboat, or motorized pontoon at least 16 feet in length but less than 19 feet in length, $125.50; and

(c) for a motorboat, sailboat, or motorized pontoon 19 feet in length or longer, $295.50.

(11) (a) Except as provided in subsections (11)(b) and (14), the one-time registration fee for a snowmobile is $60.50.

(b) (i) A snowmobile that is licensed by a Montana business and is owned exclusively for the purpose of daily rental to customers is assessed:

(A) a fee of $40.50 in the first year of registration; and

(B) if the business reregisters the snowmobile for a second year, a fee of $20.

(ii) If the business reregisters the snowmobile for a third year, the snowmobile must be permanently registered and the business is assessed the registration fee imposed in subsection (11)(a).

(12) *(a)* ~~A~~ *Except as provided in subsection (12)(b), a* fee of ~~$5~~ *$10* must be collected when a new set of standard license plates, a new single standard license plate, or a replacement set of special license plates required under 61-3-332 is issued. The ~~$5~~ *$10* fee imposed under this subsection does not apply when previously issued license plates are transferred under 61-3-335. All

registration fees imposed under this section must be paid if the vehicle to which the plates are transferred is not currently registered.

(b) Until January 1, 2015, an additional fee of $15 must be collected if a vehicle owner elects to keep the same license plate number from license plates issued on or after January 1, 2006, but before January 1, 2010, when replacement of those plates is required under 61-3-332(3).

(c) The fees imposed in this subsection (12) must be deposited in the account established under [section 3], except $2 of the fee imposed in subsection (12)(a) must be deposited in the state general fund.

(13) The provisions of this part with respect to the payment of registration fees do not apply to and are not binding upon motor vehicles, trailers, semitrailers, snowmobiles, watercraft, or tractors owned or controlled by the United States of America or any state, county, city, or special district, as defined in 18-8-202, or to a vehicle or vessel that meets the description of property exempt from taxation under 15-6-201(1)(a), (1)(c), (1)(d), (1)(e), (1)(f), (1)(g), (1)(i), (1)(j), (1)(l), or (1)(m), 15-6-203, or 15-6-215, except as provided in 61-3-520.

(14) Whenever ownership of a trailer, semitrailer, pole trailer, off-highway vehicle, motorcycle, quadricycle, travel trailer, motor home, motorboat, sailboat, personal watercraft, motorized pontoon, snowmobile, or motor vehicle owned and operated solely as a collector's item pursuant to 61-3-411 is transferred, the new owner shall title and register the vehicle or vessel as required by this chapter and pay the fees imposed under this section.

(15) A person eligible for a waiver under 61-3-460 is exempt from the fees required under this section.

(16) Except as otherwise provided in this section, revenue collected under this section must be deposited in the state general fund.

(17) The fees imposed by subsections (2) through (11) are not required to be paid by a dealer for the enumerated vehicles or vessels that constitute inventory of the dealership.

(18) (a) Unless a person exercises the option in subsection (18)(b), an additional fee of $4 must be collected for each light vehicle registered under this part. This fee must be accounted for and transmitted separately from the registration fee. The fee must be deposited in an account in the state special revenue fund to be used for state parks, for fishing access sites, and for the operation of state-owned facilities. Of the $4 fee, the department of fish, wildlife, and parks shall use $3.50 for state parks, 25 cents for fishing access sites, and 25 cents for the operation of state-owned facilities at Virginia City and Nevada City.

(b) A person who registers a light vehicle may, at the time of annual registration, certify that the person does not intend to use the vehicle to visit state parks and fishing access sites and may make a written election not to pay the additional $4 fee provided for in subsection (18)(a). If a written election is made, the fee may not be collected.

(19) For each light vehicle, trailer, semitrailer, pole trailer, heavy truck, motor home, motorcycle, quadricycle, and travel trailer subject to a registration fee under this section, an additional fee of $5 must be collected and forwarded to the state for deposit in the account established in 44-1-504.

(20) This section does not apply to a motor vehicle, trailer, semitrailer, or pole trailer that is governed by 61-3-721."

Section 12. Section 61-3-332, MCA, is amended to read:

"61-3-332. Standard license plates. (1) In addition to special license plates, collegiate license plates, generic specialty license plates, and fleet license plates authorized under this chapter, a separate series of standard license plates must be issued for motor vehicles, quadricycles, travel trailers, trailers, semitrailers, and pole trailers registered in this state or offered for sale by a vehicle dealer licensed in this state. Standard license plates issued to licensed vehicle dealers must be readily distinguishable from license plates issued to vehicles owned by other persons.

(2) (a) Except as provided in 61-3-479 and subsections (2)(b), (3)(b), and (3)(c) of this section, all standard license plates for motor vehicles, trailers, semitrailers, or pole trailers must bear a distinctive marking, as determined by the department, and be furnished by the department. In years when standard license plates are not ~~issued~~ *reissued for a vehicle*, the department shall provide a registration decal that must be affixed to the rear license plate of the vehicle.

(b) For light vehicles that are permanently registered as provided in 61-3-562 and motor vehicles described in 61-3-303(9) that are permanently registered, the department shall provide a distinctive registration decal indicating that the motor vehicle is permanently registered. The registration decal must be affixed to the rear license plate of the permanently registered motor vehicle.

(c) For a travel trailer, motorcycle, quadricycle, trailer, semitrailer, or pole trailer that is permanently registered as provided in 61-3-313(2), the department may use the word or an abbreviation for the word "permanent" on the plate in lieu of issuing a registration decal for the plate.

(3) (a) *(i)* Beginning January 1, 2010, and every ~~4~~ *5* years after that date, the department shall ~~manufacture and issue new~~ *design* standard license plates to replace previously issued standard license plates ~~upon renewal~~. *For the purposes of this subsection (3), all military, veteran, and amateur radio license plates and any license plate with a wheelchair design, excluding collegiate or generic specialty plates with a wheelchair design, are treated as standard license plates.*

(ii) License plates issued on or after January 1, 2010, must be replaced with the most recent design of standard license plates or a new replacement collegiate or generic speciality license plate if, upon renewal of registration under 61-3-332, the license plates are 5 or more years old or will become older than 5 years during the registration period.

(iii) License plates issued on or before January 1, 2010, must be replaced with the most recent design of standard license plates or a new replacement collegiate or generic specialty license plate in accordance with the implementation schedule adopted by the department under 61-3-315. Until January 1, 2015, and upon payment of the fee required in 61-3-321(12)(b), a vehicle owner may elect to keep the same license plate number from license plates issued on or after January 1, 2006, but before January 1, 2010, when replacement of those plates is required under this subsection.

(b) A motor vehicle that is registered for a 13-month to a 24-month period, as provided in 61-3-311, may display the license plate and plate design in effect at the time of registration for the entire registration period.

(c) A light vehicle ~~described in subsection (2)(b)~~ *described in subsection (2)(b)* or a motor home that is permanently registered ~~may display the license plate and plate design in effect at the time of registration for the entire period that the~~

~~light vehicle or motor home is permanently registered~~ *may display the license plate and plate design in effect at the time of registration for the entire period that the light vehicle or motor home is permanently registered.*

(d) The provisions of this subsection (3) do not apply to a travel trailer, motorcycle, quadricycle, trailer, semitrailer, or pole trailer.

(e) The requirements of this subsection (3) apply to collegiate license plates authorized under 61-3-461 through 61-3-468, generic specialty license plates authorized under 61-3-472 through 61-3-481, commemorative centennial license plates authorized under 61-3-448, and special military or veteran license plates authorized under 61-3-458.

(4) For trailers and motor vehicles, other than motorcycles and quadricycles, plates must be of metal 6 inches wide and 12 inches in length. Except for generic specialty license plates, the outline of the state of Montana must be used as a distinctive border on all license plates, and the word "Montana" must be placed on each license plate. All license plates must be treated with a reflectorized background material according to specifications prescribed by the department.

(5) The distinctive registration numbers for standard license plates must begin with a number one or with a letter-number combination, such as "A 1" or "AA 1", or any other similar combination of letters and numbers. Except for special license plates, collegiate license plates, generic specialty license plates, and fleet license plates, the distinctive registration number or letter-number combination assigned to the motor vehicle must appear on the plate preceded by the number of the county and appearing in horizontal order on the same horizontal baseline. The county number must be separated from the distinctive registration number by a separation mark unless a letter-number combination is used. The dimensions of the numerals and letters must be determined by the department, and all county and registration numbers must be of equal height.

(6) For the use of exempt motor vehicles, trailers, semitrailers, or pole trailers and motor vehicles, trailers, semitrailers, or pole trailers that are exempt from the registration fee as provided in 61-3-321, in addition to the markings provided in this section, standard license plates must bear the following distinctive markings:

(a) For motor vehicles, trailers, semitrailers, or pole trailers owned by the state, the department may designate the prefix number for the various state departments. All numbered plates issued to state departments must bear the words "State Owned", and a year number may not be indicated on the plates because these numbered plates are of a permanent nature and will be replaced by the department only when the physical condition of numbered plates requires it.

(b) For motor vehicles, trailers, semitrailers, or pole trailers that are owned by the counties, municipalities, and special districts, as defined in 18-8-202, organized under the laws of Montana and not operating for profit, and that are used and operated by officials and employees in the line of duty and for motor vehicles on loan from the United States government or the state of Montana to, or owned by, the civil air patrol and used and operated by officials and employees in the line of duty, there must be placed on the standard license plates assigned, in a position that the department may designate, the letter "X" or the word "EXEMPT". Distinctive registration numbers for plates assigned to motor vehicles, trailers, semitrailers, or pole trailers of each of the counties in the state and those of the municipalities and special districts that obtain plates within each county must begin with number one and be numbered consecutively.

Because these standard license plates are of a permanent nature, they are subject to replacement by the department only when the physical condition of the license plates requires it and a year number may not be displayed on the plates.

(7) For the purpose of this chapter, the several counties of the state are assigned numbers as follows: Silver Bow, 1; Cascade, 2; Yellowstone, 3; Missoula, 4; Lewis and Clark, 5; Gallatin, 6; Flathead, 7; Fergus, 8; Powder River, 9; Carbon, 10; Phillips, 11; Hill, 12; Ravalli, 13; Custer, 14; Lake, 15; Dawson, 16; Roosevelt, 17; Beaverhead, 18; Chouteau, 19; Valley, 20; Toole, 21; Big Horn, 22; Musselshell, 23; Blaine, 24; Madison, 25; Pondera, 26; Richland, 27; Powell, 28; Rosebud, 29; Deer Lodge, 30; Teton, 31; Stillwater, 32; Treasure, 33; Sheridan, 34; Sanders, 35; Judith Basin, 36; Daniels, 37; Glacier, 38; Fallon, 39; Sweet Grass, 40; McCone, 41; Carter, 42; Broadwater, 43; Wheatland, 44; Prairie, 45; Granite, 46; Meagher, 47; Liberty, 48; Park, 49; Garfield, 50; Jefferson, 51; Wibaux, 52; Golden Valley, 53; Mineral, 54; Petroleum, 55; Lincoln, 56. Any new counties must be assigned numbers by the department as they are formed, beginning with the number 57.

(8) ~~(a)~~ Each type of special license plate approved by the legislature, except collegiate license plates authorized in 61-3-463 and generic specialty license plates authorized in 61-3-472 through 61-3-481, must be a separate series of plates, numbered as provided in subsection (5), except that the county number must be replaced by a design that distinguishes each separate plate series. Unless otherwise specifically stated in this section, the special plates are subject to the same rules and laws as govern the issuance of standard license plates, must be placed or mounted on a motor vehicle, trailer, semitrailer, or pole trailer owned by the person who is eligible to receive them, with the registration decal affixed to the rear license plate of the motor vehicle, trailer, semitrailer, or pole trailer, and must be removed upon sale or other disposition of the motor vehicle, trailer, semitrailer, or pole trailer.

~~(b) Beginning January 1, 2008, and every succeeding 4 years, the department shall manufacture and issue a new set of special license plates, bearing the same design and, if requested by the owner, the same plate number to replace, upon renewal of the registration of a motor vehicle under 61-3-314 and payment of the new plate fee provided for in 61-3-321, any special license plates issued prior to the prescribed date. This requirement applies to collegiate license plates authorized under 61-3-461 through 61-3-468, generic specialty license plates authorized under 61-3-472 through 61-3-481, and commemorative centennial license plates authorized under 61-3-448.~~

(9) (a) A Montana resident who is eligible to receive a special parking permit under 49-4-301 may, upon written application on a form prescribed by the department, be issued a special license plate with a design or decal bearing a representation of a wheelchair as the symbol of a person with a disability.

(b) If the motor vehicle to which the license plate is attached is permanently registered, the owner of the motor vehicle shall provide, upon request of a person authorized to enforce special parking laws or ordinances in this or any state, evidence of continued eligibility to use the license plate in the form of a valid special parking permit issued to or renewed by the vehicle owner under 49-4-304 and 49-4-305.

(c) A person with a permanent condition, as provided in 49-4-301(2)(b), who has been issued a special license plate upon written application, as provided in this subsection (9), is not required to reapply upon reregistration of the motor vehicle.

(10) The provisions of this section do not apply to a motor vehicle, trailer, semitrailer, or pole trailer that is registered as part of a fleet, as defined in 61-3-712, and that is subject to the provisions of 61-3-711 through 61-3-733."

Section 13. Section 61-3-333, MCA, is amended to read:

"61-3-333. Replacing license plates or decals. (1) Except as provided in subsection (2), if one or both license plates registered to a motor vehicle, quadricycle, travel trailer, trailer, semitrailer, or pole trailer or the registration decal for the motor vehicle, quadricycle, travel trailer, trailer, semitrailer, or pole trailer is mutilated or destroyed, the owner of the registered motor vehicle or trailer may obtain a set of replacement license plates, a replacement license plate, or a duplicate registration decal upon filing a sworn declaration stating that fact and payment of a fee of ~~$5~~ *$10*.

(2) If the owner requests that the replacement license plate or plates bear the same background and license plate number as the plate or plates that were destroyed or mutilated, the duplicate license plate or plates may be issued upon payment of a fee of ~~$5~~ *$15*.

(3) The fees imposed in this section must be deposited in the account established in [section 3], except $2 of the fee imposed in subsection (1) must be deposited in the state general fund."

Section 14. Section 61-3-407, MCA, is amended to read:

"61-3-407. Personalized license plates for disabled — ~~special~~ *military,* veteran, and generic specialty license plates. Subject to the provisions of 61-3-405 and 61-3-406, an application for standard license plates bearing a wheelchair as the symbol of a person with a disability under 61-3-332(9), special *military or* veteran license plates under 61-3-458~~(3)~~, or generic specialty license plates under 61-3-472 through 61-3-481 may be combined with an application for personalized plates. The application must be made on a form supplied by the department."

Section 15. Section 61-3-465, MCA, is amended to read:

"61-3-465. Issuance — application — additional fee — disposition. (1) The department shall issue or renew collegiate license plates upon receipt of an application that shows:

(a) compliance with 61-3-303, 61-3-311, and 61-3-312; and

(b) payment to the county treasurer of:

(i) an initial application and manufacturing fee of ~~$5~~ *$10*, when required; and

(ii) an annual scholarship donation of $30 for the benefit of the institution named in the application.

(2) Once each month, the county treasurer shall, as provided in 15-1-504, transfer to the state the total of the amounts collected for:

(a) the initial application and manufacturing fee for deposit in the state general fund; and

(b) scholarship donations provided for in subsection (1)(b)(ii), along with a schedule showing the number of collegiate license plates issued and the total donations received for the benefit of each institution.

(3) Once each month, an amount equal to the total donations credited to that institution and transferred to the state by the county treasurers during the preceding month must be distributed to the student academic scholarship fund or foundation of each institution.

(4) The amount of $8 of the fee imposed in subsection (1)(b)(i) must be deposited in the account established in [section 3] and $2 of the fee must be deposited in the state general fund."

Section 16. Section 61-3-478, MCA, is amended to read:

"61-3-478. Generic specialty license plate sponsor fee — ~~exception~~. (1) ~~Except as provided in subsection (2), upon~~ *Upon* approval of an organization's application to sponsor a generic specialty license plate and before a sponsor's generic specialty license plates may be manufactured, the department shall assess and the sponsor shall pay a $4,000 fee to ~~reimburse~~ the department of corrections ~~for the~~ *Montana correctional enterprises* prison industries training program. ~~for~~ *The fee covers* the initial costs incurred *by Montana correctional enterprises* in producing the generic specialty license plates for the sponsor.

(2) ~~In lieu of the fee required in subsection (1), a minimum of 400 applications for a sponsor's generic specialty license plates must be filed and prepaid with the department before the generic specialty license plates may be manufactured and issued.~~ *The fee imposed in subsection (1) must be deposited in the Montana correctional enterprises license plate production operating account provided for in [section 5].*"

Section 17. Section 61-3-480, MCA, is amended to read:

"61-3-480. Fees for generic specialty license plates — disposition. (1) In addition to the other fees and taxes imposed by law, an eligible person who applies for a generic specialty license plate shall pay an administrative fee of ~~$15~~ *$20* and, except as provided in 61-3-479(1)(b), the donation fee specified by the sponsor.

(2) The county treasurer shall, upon receipt of the fees:

(a) deposit $5 of the ~~$15~~ *$20* administrative fee in the county general fund;

(b) notwithstanding any other provisions of Title 7, Title 17, or this title and unless otherwise provided in 61-3-479(1)(b), accept the donation fee paid by the plate purchaser; and

(c) as provided in 15-1-504, once each month, transmit to the state for distribution:

(i) $10 of the ~~$15~~ *$20* administrative fee ~~to the state general fund~~ *for deposit in the account provided in [section 3]*;

(ii) $5 of the administrative fee to the state general fund; and

~~(ii)~~*(iii)* all donation fees provided for in subsections (1) and (3), along with a schedule showing the number and type of generic specialty license plates issued and total donations received for the benefit of each sponsor of a generic specialty license plate issued or renewed, to each respective sponsor.

(3) If the donation fee is required by a sponsor upon renewal of generic specialty license plates, the fee must be paid to the county treasurer upon renewal of registration and transmitted to the state as prescribed in subsection (2).

(4) Once each month, the state shall distribute to the generic specialty license plate liaison designated by a sponsor under 61-3-475(1)(c) or 61-3-476(1)(c) an amount equal to the total donations credited to that sponsor and transferred to the department of revenue by the county treasurers during the preceding month."

Section 18. Section 61-3-535, MCA, is amended to read:

"61-3-535. Motor vehicle registration renewal — reminder notice and renewal by mail. (1) The owner of a motor vehicle~~, trailer, semitrailer, or pole trailer~~ subject to renewal of registration under 61-3-312 may renew the registration of a motor vehicle~~, trailer, semitrailer, or pole trailer~~ by mail or by electronic methods when the value, age, length, weight, or other criteria used to determine the tax or fee for a particular type of motor vehicle~~, trailer, semitrailer, or pole trailer is~~ *are* available to the department by electronic means.

(2) Any mail renewal procedure developed by the department must*:*

(a) include a procedure to facilitate automated handling of mail renewal*, including issuance of replacement plates when required by statute;* ~~and must~~

(b) include a procedure to verify compliance with 61-6-301 using the system provided in [section 1]; and

(c) provide for a written reminder notice by mail to the owner of a motor vehicle~~, trailer, semitrailer, or pole trailer~~ of the requirement to renew the vehicle's registration."

Section 19. Section 61-3-562, MCA, is amended to read:

"61-3-562. Permanent registration — transfer of light vehicle ownership — rules. (1) (a) The owner of a light vehicle 11 years old or older subject to the registration fee, as provided in 61-3-321(2), may permanently register the light vehicle upon payment of a $87.50 registration fee, the applicable registration and license fees under 61-3-412, if applicable, the administrative fee and the annual one-time-only donation fee for a generic specialty license plate under 61-3-480, and an amount equal to five times the local option motor vehicle tax or flat fee on vehicles under 61-3-537 and, ~~if~~ *as* applicable, ~~when personalized plates under 61-3-406 are being issued or renewed,~~ either:

(i) *(A)* the original fee and four times the renewal fee for personalized plates; or

~~(ii)~~*(B)* five times the renewal fees for personalized plates*; or*

(ii) if a new set of license plates is not being issued, an insurance verification fee of $5, which must be deposited in the account established under [section 3].

(b) The following series of license plates may not be used for purposes of permanent registration of a light vehicle:

(i) Montana national guard license plates issued under 61-3-458(2)(b);

(ii) reserve armed forces license plates issued under 61-3-458(2)(c);

(iii) amateur radio operator license plates issued under 61-3-422; and

(iv) collegiate license plates issued under 61-3-465.

(2) In addition to the fees described in subsection (1), an owner of a truck with a manufacturer's rated capacity of 1 ton or less that is permanently registered shall pay five times the applicable fees imposed under 61-10-201.

(3) The owner of a motor vehicle that is permanently registered under this section is not subject to additional registration fees or to other motor vehicle registration fees described in this section for as long as the owner owns the vehicle.

(4) The county treasurer shall once each month remit to the state the amounts collected under this section, other than the local option motor vehicle tax or flat fee, for the purposes of 61-3-321(2) and 61-10-201. The county treasurer shall retain the local option motor vehicle tax or flat fee.

(5) (a) The permanent registration of a light vehicle allowed by this section may not be transferred to a new owner. If the light vehicle is transferred to a new owner, the department shall cancel the light vehicle's permanent registration.

(b) Upon transfer of a light vehicle registered under this section to a new owner, the new owner shall apply for a certificate of title under 61-3-201 and 61-3-216 and register the light vehicle under 61-3-303."

Section 20. Section 61-6-101, MCA, is amended to read:

"61-6-101. Short title. This part may be cited as the "Motor Vehicle ~~Safety-Responsibility~~ *Insurance Responsibility and Verification* Act"."

Section 21. Section 61-6-102, MCA, is amended to read:

"61-6-102. Definitions. As used in this part, unless the context clearly indicates a different meaning, the following definitions apply:

(1) "Commercial automobile insurance coverage" means any coverage provided to an insured, regardless of number of vehicles or entities covered, under a commercial, garage, or truckers coverage form and rated from a commercial manual or rating rule. Vehicle type and ownership are not the primary factors in underwriting the coverage or rating the coverage. The rating may be subject to individual risk characteristics, including but not limited to experience rating, schedule rating, loss rating, or deductible rating.

(2) "Insurer" means an authorized insurer, as defined in 33-1-201, who issues or renews a motor vehicle liability policy.

~~(1)~~*(3)* "Judgment" means any judgment that has become final by expiration without appeal of the time within which an appeal might have been perfected or by final affirmation on appeal rendered by a court of competent jurisdiction of any state or of the United States upon a cause of action arising out of the ownership, maintenance, or use of any motor vehicle, for damages, including damages for care and loss of services, because of bodily injury to or death of any person or for damages because of injury to or destruction of property, including the loss of use of property, or upon a cause of action on an agreement of settlement for damages.

~~(2)~~*(4)* "License" means ~~any~~ *a driver's* license *as defined in 61-1-101*~~, temporary instruction permit, or temporary license issued under the laws of this state pertaining to the licensing of persons to operate motor vehicles~~.

(5) "Low-volume insurer" means an insurer that provides motor vehicle liability policies for fewer than 500 vehicles in this state.

(6) (a) "Motor vehicle liability policy" means a policy of insurance issued or renewed by an insurer to a person who owns or operates a motor vehicle that meets or exceeds the minimum coverage limits under 61-6-103, including a policy certified as provided in 61-6-133 as proof of financial responsibility.

(b) A certificate filed for a nonresident as proof of financial responsibility under 61-6-134 must be treated as a motor vehicle liability policy under this part.

~~(3)~~*(7)* "Nonresident's operating privilege" means the privilege conferred upon a nonresident by the laws of this state pertaining to the operation by the nonresident of a motor vehicle or the use of a motor vehicle owned by the nonresident in this state.

~~(4)~~*(8)* "Person" means every natural person, firm, partnership, association, or corporation.

~~(5)~~*(9)* "Proof of financial responsibility" means proof of ability to respond in damages for liability on account of accidents occurring subsequent to the

effective date of the proof of financial responsibility, arising out of the ownership, maintenance, or use of a motor vehicle.

~~(6)~~*(10)* "State" means any state, territory, or possession of the United States, the District of Columbia, or any province of the Dominion of Canada.

(11) "Suspension" means the withdrawal, by action of the department, of a motor vehicle's registration, as defined in 61-1-101, for a period of time prescribed by department rule.

(12) "System" means the online motor vehicle liability insurance verification system created in [section 1]."

Section 22. Section 61-6-103, MCA, is amended to read:

"61-6-103. Motor vehicle liability policy ~~defined~~ *minimum limits — other requirements.* (1) ~~A "motor vehicle liability policy", as the term is used in this part, means an owner's or operator's policy of liability insurance, certified as provided in 61-6-133 or 61-6-134 as proof of financial responsibility and issued, except as otherwise provided in 61-6-134, by an insurance carrier duly authorized to transact business in this state, to or for the benefit of the person named therein as insured.~~

~~(2) The owner's policy of liability insurance~~ *A motor vehicle liability policy* must:

(a) designate by explicit description or by appropriate reference all motor vehicles with respect to ~~which~~ *the* coverage ~~is thereby~~ to be granted; and

(b) insure the person named ~~therein~~ *in the policy* and any other person, as insured, using any motor vehicle or motor vehicles with the express or implied permission of the named insured, against loss from the liability imposed by law for damages arising out of the ownership, maintenance, or use of the motor vehicle or motor vehicles within the United States of America or the Dominion of Canada, subject to limits exclusive of interest and costs, with respect to each motor vehicle, as follows:

(i) $25,000 because of bodily injury to or death of one person in any one accident and subject to ~~said~~ *the* limit for one person;

(ii) $50,000 because of bodily injury to or death of two or more persons in any one accident; and

(iii) $10,000 because of injury to or destruction of property of others in any one accident.

~~(3)~~*(2)* An operator's policy of liability insurance must insure the person named as insured ~~therein~~ *in the policy* against loss from the liability imposed upon ~~him~~ *the operator* by law for damages arising out of the use by ~~him~~ *the operator* of any motor vehicle not owned by ~~him~~ *the operator*, within the same territorial limits and subject to the same limits of liability ~~as~~ *that* are set forth ~~above~~ *in subsection (1)* with respect to the operator's policy of liability insurance.

~~(4)~~*(3)* A motor vehicle liability policy must state the name and address of the named insured, the coverage afforded by the policy, the premium charged ~~therefor~~ *for the policy*, the policy period, and the limits of liability and contain an agreement or be endorsed that insurance is provided ~~thereunder~~ *under the policy* in accordance with the coverage defined in this part as respects bodily injury and death or property damage, or both, and is subject to all the provisions of this part.

~~(5)~~*(4)* A motor vehicle liability policy need not insure any liability under any workers' compensation law or any liability on account of bodily injury to or death

of an employee of the insured while engaged in the employment, other than domestic, of the insured or while engaged in the operation, maintenance, or repair of a motor vehicle or any liability for damage to property owned by, rented to, in charge of, or transported by the insured.

~~(6)~~*(5)* A motor vehicle liability policy is subject to the following provisions, which need not be contained ~~therein~~ *in the policy*:

(a) The liability of the insurance carrier with respect to the insurance required by this part becomes absolute whenever injury or damage covered by the motor vehicle liability policy occurs. The policy may not be canceled or annulled as to the liability by any agreement between the insurance carrier and the insured after the occurrence of the injury or damage. ~~No~~ *A* statement made by the insured or on ~~his~~ behalf *of the insured* and ~~no~~ *a* violation of the policy may *not* defeat or void the policy.

(b) The satisfaction by the insured of a judgment for the injury or damage may not be a condition precedent to the right or duty of the insurance carrier to make payment on account of the injury or damage.

(c) The insurance carrier has the right to settle any claim covered by the policy, and if the settlement is made in good faith, the amount is deductible from the limits of liability specified in subsection ~~(2)(b)~~ *(1)(b)*.

(d) The policy, the written application ~~therefor~~ *for the policy*, if any, and any rider or endorsement ~~which~~ *that* does not conflict with the provisions of this part constitute the entire contract between the parties.

~~(7)~~*(6)* A motor vehicle policy is not subject to cancellation, termination, nonrenewal, or premium increase due to injury or damage incurred by the insured or operator unless the insured or operator is found to have violated a traffic law or ordinance of the state or a city, is found negligent or contributorily negligent in a court of law or by the arbitration proceedings contained in chapter 5 of Title 27, or pays damages to another party, whether by settlement or otherwise. ~~In no event may a~~ *A* premium *may not* be increased during the term of the policy unless there is a change in exposure.

~~(8)~~*(7)* Any policy ~~which~~ *that* grants the coverage required for a motor vehicle liability policy may also grant any lawful coverage in excess of or in addition to the coverage specified for a motor vehicle liability policy, and the excess or additional coverage is not subject to the provisions of this part. With respect to a policy ~~which~~ *that* grants the excess or additional coverage, the term "motor vehicle liability policy" applies only to that part of the coverage ~~which is~~ required by this section.

~~(9)~~*(8)* ~~Any~~ *A* motor vehicle liability policy may provide that the insured shall reimburse the insurance carrier for any payment the insurance carrier would not have been obligated to make under the terms of the policy except for the provisions of this part.

~~(10)~~*(9)* ~~Any~~ *A* motor vehicle liability policy may provide for the prorating of the insurance ~~thereunder~~ *under the policy* with other valid and collectible insurance.

~~(11)~~*(10)* The requirements for a motor vehicle liability policy may be fulfilled by the policies of one or more insurance carriers, which policies together meet ~~such~~ *the* requirements.

~~(12)~~*(11)* Any binder issued pending the issuance of a motor vehicle liability policy fulfills the requirements for ~~such a~~ *the* policy.

~~(13)~~*(12)* A reduced limits endorsement may not be issued by ~~any~~ *a* company to be attached to ~~any~~ *a* policy issued in compliance with this section."

Section 23. Section 61-6-105, MCA, is amended to read:

"61-6-105. Department to administer law and make rules. *(1)* The department shall administer and enforce the provisions of this part and may make rules necessary for ~~its~~ *the* administration *of the online motor vehicle liability insurance system.*

(2) The rules must:

(a) establish standards and procedures for accessing the system by authorized personnel of the department, the courts, law enforcement personnel, and any other entities authorized by the department that are consistent with specifications and standards of the insurance industry committee on motor vehicle administration and other applicable industry standards;

(b) provide for the suspension of a vehicle's registration when:

(i) a person fails to respond to a written inquiry from the department or its designee concerning the insurance status of a vehicle;

(ii) a person misrepresents or provides false information to the department or its designee regarding the operational status or use of a vehicle for which liability insurance is mandatory;

(iii) the department has reason to believe that a vehicle owner is not complying with the mandatory liability insurance requirements of 61-6-301; or

(iv) the department receives a report from a court that a person has been convicted of a violation of 61-6-301 or 61-6-302 and the surrender of the vehicle registration receipt and license plates under 61-6-304 has been ordered;

(c) prohibit the reinstatement of a vehicle's registration and the new registration of a vehicle unless the applicable reinstatement fees have been paid;

(d) set a fee for the reinstatement of a vehicle's registration following a suspension imposed by the department. The fee may not exceed $100 and is in addition to any other fine or penalty prescribed by the law.

(e) provide for periodic insurance data file transfers from insurers under specifications and standards set forth in [section 1] to identify vehicles that are not covered by an insurance policy and to monitor ongoing compliance with mandatory vehicle liability insurance requirements;

(f) provide for random checks to identify vehicles that are not covered by an insurance policy; and

(g) ~~may~~ provide for ~~hearings upon request of persons~~ *a hearing for a person* aggrieved by ~~orders or acts of~~ *a suspension order issued by* the department under the provisions of this part.

(3) The department may adopt additional rules to:

(a) assist authorized users in interpreting responses received from the system and determining the appropriate action to be taken as a result of a response; and

(b) otherwise clarify system operations and business rules."

Section 24. Section 61-6-302, MCA, is amended to read:

"61-6-302. Proof of compliance. (1) The registration receipt required by 61-3-322 must contain a statement that unless the vehicle is eligible for an exemption under 61-6-303, it is unlawful to operate the vehicle without a valid motor vehicle liability insurance policy, a certificate of self-insurance, or a posted indemnity bond, as required by 61-6-301.

(2) Each person shall carry in a motor vehicle being operated by the person an insurance card approved by the department but issued by the insurance carrier to the motor vehicle owner as proof of compliance with 61-6-301. *If the card is issued under a commercial automobile insurance policy or a self-insured fleet, the card must indicate the status as "commercially insured" or "fleet".* A motor vehicle operator shall exhibit the insurance card upon demand of a justice of the peace, a city or municipal judge, a peace officer, a highway patrol officer, or a field deputy or inspector of the department. A person commits an offense under this subsection if the person fails to carry the insurance card in a motor vehicle or fails to exhibit the insurance card upon demand of a person specified in this subsection. ~~However, a person charged with violating this subsection may not be convicted if~~*(3) Beginning July 1, 2011, a person charged with violating subsection (2) may not be convicted if:*

(a) the arresting officer or another person authorized to access information from the online motor vehicle liability insurance verification system under [section 2] submits to the system a request that provides proof of insurance valid at the time of arrest; or

(b) if the system under [section 1] is not available, the person produces in court or the office of the arresting officer proof of insurance valid at the time of arrest.

(4) In lieu of charging an operator who is not the owner of a vehicle with violating subsection (2), the officer may issue a complaint and notice to appear charging the owner with a violation of 61-6-301 and serve the complaint and notice to appear on the owner of the vehicle:

(a) personally; or

(b) by certified mail, return receipt requested, at the address for the owner listed on the registration receipt for the vehicle or, following query through available law enforcement systems, at the address maintained for the vehicle's owner by the jurisdiction in which the vehicle is titled and registered, or both."

Section 25. Section 61-9-204, MCA, is amended to read:

"61-9-204. Taillamps. (1) A motor vehicle, trailer, semitrailer, and pole trailer and any other vehicle that is being drawn at the end of a combination of vehicles must be equipped with at least one properly functioning taillamp mounted on the rear that emits a red light plainly visible from a distance of 500 feet to the rear, except that in the case of a combination of vehicles, only the taillamp on the rearmost vehicle need actually be seen from the distance specified. The vehicles mentioned in this subsection, other than a motorcycle, quadricycle, motor-driven cycle, or truck tractor, registered in this state and manufactured or assembled after January 1, 1956, must be equipped with at least two properly functioning taillamps*, with at least one* mounted on *each side of* the rear *of the vehicle,* that emit a red light plainly visible from a distance of 1,000 feet to the rear of the vehicle.

(2) A taillamp upon a vehicle must be located at a height of not more than 72 inches or less than 15 inches.

(3) Either a taillamp or a separate lamp must illuminate with a white light the rear registration plate and render it clearly legible from a distance of 50 feet to the rear. A taillamp or taillamps, together with a separate lamp for illuminating the rear registration plate, must be lighted whenever the headlamps are lighted.

(4) Taillamps are not required on a motorcycle that is registered under 61-3-411 as a collector's item, but the motorcycle may not be operated on a highway or street from one-half hour after sunset to one-half hour before sunrise or when persons and vehicles are not clearly discernible at a distance of 500 feet unless it is equipped with the required taillamps.

(5) A person may not operate a motor vehicle on a highway with taillamps that are covered by a lens or a plastic cover or with a tinted or colored material, substance, system, or component placed on or in front of rear lamps, taillamps, license plate lamps, or rear lamp combinations that obscures the taillamps or diminishes the distance of visibility required by this section.

(6) (a) A custom vehicle or street rod may use a blue dot taillight, as defined in subsection (6)(b), as a stop lamp, a rear signal lamp, or a rear reflector.

(b) "Blue dot taillight" means a red lamp installed in the rear of a motor vehicle containing a blue or purple insert that is not more than 1 inch in diameter."

Section 26. Repealer. Section 61-6-106, MCA, is repealed.

Section 27. Codification instruction. (1) [Sections 1 and 3] are intended to be codified as an integral part of Title 61, chapter 6, part 1, and the provisions of Title 61, chapter 6, part 1, apply to [sections 1 and 3].

(2) [Section 2] is intended to be codified as an integral part of Title 61, chapter 6, part 3, and the provisions of Title 61, chapter 6, part 3, apply to [section 2].

(3) [Section 4] is intended to be codified as an integral part of Title 61, chapter 3, part 3, and the provisions of Title 61, chapter 3, part 3, apply to [section 4].

(4) [Section 5] is intended to be codified as an integral part of Title 53, chapter 30, part 1, and the provisions of Title 53, chapter 30, part 1, apply to [section 5].

Section 28. Coordination instruction. If both House Bill No. 615 and [this act] are passed and approved, then House Bill No. 615 is void.

Section 29. Effective dates. (1) Except as provided in subsections (2) and (3), [this act] is effective October 1, 2009.

(2) [Sections 5, 14, 16, and 25 and this section] are effective on passage and approval.

(3) [Sections 7 through 9, 11 through 13, 15, 17, and 19] are effective January 1, 2010.

Approved April 28, 2009

CHAPTER NO. 414

[SB 511]

AN ACT ESTABLISHING A SACRAMENTAL WINE LICENSE FOR THE RETAIL SALE OF SACRAMENTAL WINE TO A CHURCH OR OTHER ESTABLISHED RELIGIOUS ORGANIZATION EXCLUSIVELY FOR OFF-PREMISES USE; AMENDING SECTION 16-1-106, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Sacramental wine license. (1) The department may issue a sacramental wine license to an establishment located in Montana that sells sacramental wine at retail to rabbis, priests, pastors, ministers, or other officials of churches or other established religious organizations exclusively for their off-premises use as sacramental wine or for other religious purposes.

(2) An application for a license under this section must be accompanied by a fee of $200, which constitutes the first annual license fee. The annual license renewal fee is $100.

(3) Unless the sacramental wine is purchased on-site at the premises of the licensed retailer, an establishment selling sacramental wine for religious purposes shall deliver directly to the religious organization's premises using the establishment's own employees and equipment.

(4) A sacramental wine licensee shall maintain records of all wine sales made during the preceding 2 years and shall allow the department access to the records when requested so that the department can ascertain whether the limitations of subsection (1) are being complied with.

(5) Upon receipt of a completed application for a license under this section, the department may request that the department of justice make a background investigation of all matters relating to the application.

(6) Based on the results of the investigation or in exercising its sound discretion, the department shall determine whether:

(a) the applicant is qualified to receive a license;

(b) the applicant's premises are suitable for the carrying on of the business; and

(c) the requirements of this code and the rules promulgated by the department are being met and complied with.

(7) License applications submitted under this section are not subject to the provisions of 16-4-203 and 16-4-207.

(8) If the premises proposed for licensing under this section are a new or remodeled structure, the department may issue a conditional license prior to completion of the premises upon reasonable evidence that the premises will be suitable for the carrying on of business as a bona fide establishment for selling sacramental wine.

Section 2. Section 16-1-106, MCA, is amended to read:

"16-1-106. Definitions. As used in this code, the following definitions apply:

(1) "Agency franchise agreement" means an agreement between the department and a person appointed to sell liquor and table wine as a commission merchant rather than as an employee.

(2) "Agency liquor store" means a store operated under an agency franchise agreement in accordance with this code for the purpose of selling liquor at either the posted or the retail price for off-premises consumption.

(3) "Alcohol" means ethyl alcohol, also called ethanol, or the hydrated oxide of ethyl.

(4) "Alcoholic beverage" means a compound produced and sold for human consumption as a drink that contains more than 0.5% of alcohol by volume.

(5) "Beer" means a malt beverage containing not more than 7% of alcohol by weight.

(6) "Beer importer" means a person other than a brewer who imports malt beverages.

(7) "Brewer" means a person who produces malt beverages.

(8) "Community" means:

(a) in an incorporated city or town, the area within the incorporated city or town boundaries;

(b) in an unincorporated city or area, the area identified by the federal bureau of the census as a community for census purposes; and

(c) in a consolidated local government, the area of the consolidated local government not otherwise incorporated.

(9) "Department" means the department of revenue, unless otherwise specified, and includes the department of justice with respect to receiving and processing, but not granting or denying, an application under a contract entered into under 16-1-302.

(10) "Hard cider" means an alcoholic beverage that is made from the alcoholic fermentation of the juices of apples or pears and that contains not less than 0.5% alcohol by volume and not more than 6.9% alcohol by volume, including but not limited to flavored, sparkling, or carbonated cider.

(11) "Immediate family" means a spouse, dependent children, or dependent parents.

(12) "Import" means to transfer beer or table wine from outside the state of Montana into the state of Montana.

(13) "Liquor" means an alcoholic beverage except beer and table wine.

(14) "Malt beverage" means an alcoholic beverage made by the fermentation of an infusion or decoction, or a combination of both, in potable brewing water, of malted barley with or without hops or their parts or their products and with or without other malted cereals and with or without the addition of unmalted or prepared cereals, other carbohydrates, or products prepared from carbohydrates and with or without other wholesome products suitable for human food consumption.

(15) "Package" means a container or receptacle used for holding an alcoholic beverage.

(16) "Posted price" means the wholesale price of liquor for sale to persons who hold liquor licenses as fixed and determined by the department and in addition an excise and license tax as provided in this code. *In the case of sacramental wine, the wholesale price may not exceed the sum of the department's cost to acquire the sacramental wine, the department's current freight rate to agency liquor stores, and a 20% markup.*

(17) "Proof gallon" means a U.S. gallon of liquor at 60 degrees on the Fahrenheit scale that contains 50% of alcohol by volume.

(18) "Public place" means a place, building, or conveyance to which the public has or may be permitted to have access and any place of public resort.

(19) "Retail price" means the price established by an agent for the sale of liquor to persons who do not hold liquor licenses. The retail price may not be less than the department's posted price.

(20) "Rules" means rules adopted by the department or the department of justice pursuant to this code.

(21) "Sacramental wine" means wine that is manufactured and sold exclusively for use as sacramental wine or for other religious purposes.

~~(21)~~*(22)* "Special event", as it relates to an application for a beer and wine special permit, means a short, infrequent, out-of-the-ordinary occurrence, such as a picnic, fair, reception, or sporting contest.

~~(22)~~*(23)* "State liquor warehouse" means a building owned or under control of the department for the purpose of receiving, storing, transporting, or selling alcoholic beverages to agency liquor stores.

~~(23)~~*(24)* "Storage depot" means a building or structure owned or operated by a brewer at any point in the state of Montana off and away from the premises of a brewery, which building or structure is equipped with refrigeration or cooling apparatus for the storage of beer and from which a brewer may sell or distribute beer as permitted by this code.

~~(24)~~*(25)* "Subwarehouse" means a building or structure owned or operated by a licensed beer wholesaler or table wine distributor, located at a site in Montana other than the site of the beer wholesaler's or table wine distributor's warehouse or principal place of business, and used for the receiving, storage, and distribution of beer or table wine as permitted by this code.

~~(25)~~*(26)* "Table wine" means wine that contains not more than 16% alcohol by volume and includes cider.

~~(26)~~*(27)* "Table wine distributor" means a person importing into or purchasing in Montana table wine for sale or resale to retailers licensed in Montana.

~~(27)~~*(28)* "Warehouse" means a building or structure located in Montana that is owned or operated by a licensed beer wholesaler or table wine distributor for the receiving, storage, and distribution of beer or table wine as permitted by this code.

~~(28)~~*(29)* "Wine" means an alcoholic beverage made from or containing the normal alcoholic fermentation of the juice of sound, ripe fruit or other agricultural products without addition or abstraction, except as may occur in the usual cellar treatment of clarifying and aging, and that contains more than 0.5% but not more than 24% of alcohol by volume. Wine may be ameliorated to correct natural deficiencies, sweetened, and fortified in accordance with applicable federal regulations and the customs and practices of the industry. Other alcoholic beverages not defined in this subsection but made in the manner of wine and labeled and sold as wine in accordance with federal regulations are also wine."

Section 3. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 16, chapter 4, part 3, and the provisions of Title 16, chapter 4, part 3, apply to [section 1].

Section 4. Effective date. [This act] is effective on passage and approval.

Approved April 28, 2009

CHAPTER NO. 415

[HB 173]

AN ACT CREATING A PILOT PROJECT TO HELP LOCAL PUBLIC HEALTH AGENCIES UNDERTAKE ACTIVITIES RELATED TO MEETING NATIONAL GUIDELINES; PROVIDING FOR AN ALLOCATION OF FUNDS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Montana law gives local public health agencies the authority and responsibility to undertake efforts to protect the public health and educate the public on health-related issues; and

WHEREAS, funding for local public health agencies varies widely across the state because of variations in local funding resources; and

WHEREAS, the National Association of County and City Health Officials, American Public Health Association, National Association of Local Boards of Health, and Association of State and Territorial Health Officials recognize that local public health agencies across the country are served by a system unique to each agency based on available financial, medical, and other resources; and

WHEREAS, these national public health organizations are developing a national accreditation program to guide the basic activities that local public health agencies should carry out regardless of the makeup of their local health systems.

Be it enacted by the Legislature of the State of Montana:

Section 1. Pilot project for implementing national public health standards. (1) Subject to available funding, the department of public health and human services shall administer a pilot project to assist local public health agencies, as defined in 50-1-101, with preparing for national accreditation by using nationally recognized public health standards and guidelines that are based on the 10 essential public health services as outlined by the national association of county and city health officials, the centers for disease control and prevention, the public health accreditation board, and other national public health organizations. The public health standards and guidelines include but are not limited to the operational definition of a functional local health department and the national public health performance standards.

(2) The department shall:

(a) develop grant application and review criteria in accordance with this section;

(b) establish protocol, policy, goals, strategies, and timelines for the local public health agencies selected for the pilot project;

(c) establish evaluation criteria for the pilot project;

(d) provide materials and training to pilot project counties; and

(e) complete and submit a final report to the 2011 legislature as provided in 5-11-210.

(3) To the extent that it receives applications that meet grant review criteria established by the department in accordance with this section, the department shall award grants to eight local public health agencies, including a tribal health department. The grant awards must be made, in consultation with the public health system improvement task force established by the department, to:

(a) two local public health agencies in counties with populations of 40,000 or more residents;

(b) one local public health agency in a county with a population of between 20,000 and 40,000 residents;

(c) two local public health agencies in counties with populations of 5,000 to 20,000 residents; and

(d) three local public health agencies in counties with populations of fewer than 5,000 residents.

(4) A local public health agency selected for a grant shall demonstrate, through the application process, how it will use the funds to:

(a) prepare for national accreditation using the types of nationally recognized public health guidelines and standards described in subsection (1);

(b) effectively participate in a self-assessment of the local public health agency's capacity to deliver the 10 essential public health services as outlined in the nationally recognized public health guidelines and standards described in subsection (1);

(c) work with the department and the public health system improvement task force to ensure proper use of the grant, including participation in a process to evaluate the pilot project efforts; and

(d) complete measurement criteria established by the department and the public health system improvement task force.

(5) The department and the public health system improvement task force shall:

(a) serve as a resource for the local public health agencies selected for the pilot project as they prepare for national accreditation using nationally recognized public health standards and guidelines as described in subsection (1). In this capacity, the task force shall participate in:

(i) regularly scheduled conference calls; and

(ii) at least two meetings a year that are held in one of the counties in which the pilot project agencies are located;

(b) ensure that the technical assistance and training needs of the pilot project agencies are met; and

(c) assess the results of the pilot project.

(6) The public health system improvement task force and the pilot project agencies shall report the following information to the appropriate interim committees of the legislature by September 15, 2010:

(a) the estimated costs of becoming accredited agencies through the national accreditation program, based on their experiences in the pilot project, including information that explains how the costs were determined;

(b) their assessments of the ability of Montana's local public health agencies serving jurisdictions with varying population sizes in becoming accredited agencies through the national accreditation program, including funding and other resource management issues and challenges they encountered;

(c) suggestions for preparing local public health agencies for national accreditation that are relevant to the populations each pilot project agency serves;

(d) the public health benefits created by the pilot project activities for residents within each pilot project agency's jurisdiction;

(e) how their efforts met the nationally recognized public health standards and guidelines described in subsection (1); and

(f) recommendations for improving the local public health system and creating a sustainable model for local public health agencies in Montana.

Section 2. Allocation of available funds. (1) If funds are made available for the program in [section 1], then the funds must be allocated as follows:

(a) grants of $25,000 a year in each year of the biennium to each of eight local public health agencies selected as provided in [section 1]; and

(b) $50,000 for the biennium to pay for the department's expenses in administering the grant program, providing technical assistance to the local public health agencies, and reimbursing the costs of travel for members of the public health system improvement task force as provided in 2-18-501 through 2-18-503.

(2) If less than $450,000 is available for the program provided for in [section 1], then the funding must be prorated on the basis of the allocations in subsection (1).

Section 3. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

Section 4. Effective date. [This act] is effective July 1, 2009.

Approved April 30, 2009

CHAPTER NO. 416

[HB 418]

AN ACT AUTHORIZING INVESTOR-OWNED EQUINE SLAUGHTER OR PROCESSING FACILITIES; PROHIBITING A COURT FROM GRANTING AN INJUNCTION TO STOP OR DELAY THE CONSTRUCTION OF AN EQUINE SLAUGHTER OR PROCESSING FACILITY BASED ON LEGAL CHALLENGES OR APPEALS OF A PERMIT, LICENSE, CERTIFICATE, OR OTHER APPROVAL ISSUED IN CONJUNCTION WITH ENVIRONMENTAL LAWS; SETTING BONDING REQUIREMENTS; AND AMENDING SECTIONS 75-1-201, 75-2-104, 75-5-614, 75-5-621, 75-5-641, 81-9-111, 81-9-112, 81-9-115, 81-9-116, 81-9-201, 81-9-229, AND 81-9-230, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Equine slaughter or processing facilities — no injunction to stop — damages allowed for delay. (1) A court of this state may not issue an injunction stopping or delaying the construction of an equine slaughter or processing facility licensed pursuant to 81-9-201 based on a challenge or appeal of a permit, license, certificate, or other approval issued in conjunction with a proposed equine slaughter or processing facility based on the provisions of:

(a) Title 75, chapter 1, parts 1 through 3;

(b) Title 75, chapter 2, parts 1 through 4;

(c) Title 75, chapter 5, part 4;

(d) Title 75, chapter 10, part 1 and parts 3 through 13; or

(e) Title 81, chapter 9, part 2.

(2) If a person files an action against the operation of an equine slaughter or processing facility and does not prevail, the person is liable for all financial losses the facility suffers if the court issues an injunction that halts operations while the action is pending.

Section 2. Judicial review of equine slaughter or processing facilities — surety bond — attorney fees — venue. (1) (a) If an action is filed in district court to challenge the issuance of a license, permit, certificate, or other approval for an equine slaughter or processing facility pursuant to Title 75 or Title 81, chapter 9, the court shall require a surety bond of the person filing the action. The bond must be set at an amount representing 20% of the

estimated cost of building the facility or the operational costs of an existing facility.

(b) The bonding requirements of this subsection (1) do not apply to an indigent person.

(2) If the bond required under subsection (1) is not paid within 30 days of the filing of the action, the action must be dismissed.

(3) An action to challenge a decision to issue a license, permit, certificate, or other approval must be brought in the county or district court jurisdiction in which the facility will be built. If a facility would be located in more than one county, the action may be brought in any of the counties or district court jurisdictions in which the facility would be built.

(4) If the court determines that a judicial action challenging a license, permit, certificate, or other approval for an equine slaughter or processing plant was without merit or was for an improper purpose designed to harass, cause delay, or improperly interfere with the ongoing operation of a facility, the court may award attorney fees and costs incurred in defending the action.

(5) This section does not prevent a defendant in an action brought pursuant to this section from filing an action or counterclaim for any claim for relief available by law and does not limit the recovery that may be obtained in a claim for relief.

Section 3. Section 75-1-201, MCA, is amended to read:

"75-1-201. General directions — environmental impact statements. (1) The legislature authorizes and directs that, to the fullest extent possible:

(a) the policies, regulations, and laws of the state must be interpreted and administered in accordance with the policies set forth in parts 1 through 3;

(b) under this part, all agencies of the state, except the legislature and except as provided in subsection (2), shall:

(i) use a systematic, interdisciplinary approach that will ensure:

(A) the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking that may have an impact on the human environment; and

(B) that in any environmental review that is not subject to subsection (1)(b)(iv), when an agency considers alternatives, the alternative analysis will be in compliance with the provisions of subsections (1)(b)(iv)(C)(I) through (1)(b)(iv)(C)(III) and, if requested by the project sponsor or if determined by the agency to be necessary, subsection (1)(b)(iv)(C)(IV);

(ii) identify and develop methods and procedures that will ensure that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking, along with economic and technical considerations;

(iii) identify and develop methods and procedures that will ensure that state government actions that may impact the human environment are evaluated for regulatory restrictions on private property, as provided in subsection (1)(b)(iv)(D);

(iv) include in each recommendation or report on proposals for projects, programs, and other major actions of state government significantly affecting the quality of the human environment a detailed statement on:

(A) the environmental impact of the proposed action;

(B) any adverse environmental effects that cannot be avoided if the proposal is implemented;

(C) alternatives to the proposed action. An analysis of any alternative included in the environmental review must comply with the following criteria:

(I) any alternative proposed must be reasonable, in that the alternative must be achievable under current technology and the alternative must be economically feasible as determined solely by the economic viability for similar projects having similar conditions and physical locations and determined without regard to the economic strength of the specific project sponsor;

(II) the agency proposing the alternative shall consult with the project sponsor regarding any proposed alternative, and the agency shall give due weight and consideration to the project sponsor's comments regarding the proposed alternative;

(III) if the project sponsor believes that an alternative is not reasonable as provided in subsection (1)(b)(iv)(C)(I), the project sponsor may request a review by the appropriate board, if any, of the agency's determination regarding the reasonableness of the alternative. The appropriate board may, at its discretion, submit an advisory recommendation to the agency regarding the issue. The agency may not charge the project sponsor for any of its activities associated with any review under this section. The period of time between the request for a review and completion of a review under this subsection may not be included for the purposes of determining compliance with the time limits established for environmental review in 75-1-208.

(IV) the agency shall complete a meaningful no-action alternative analysis. The no-action alternative analysis must include the projected beneficial and adverse environmental, social, and economic impact of the project's noncompletion.

(D) any regulatory impacts on private property rights, including whether alternatives that reduce, minimize, or eliminate the regulation of private property rights have been analyzed. The analysis in this subsection (1)(b)(iv)(D) need not be prepared if the proposed action does not involve the regulation of private property.

(E) the relationship between local short-term uses of the human environment and the maintenance and enhancement of long-term productivity;

(F) any irreversible and irretrievable commitments of resources that would be involved in the proposed action if it is implemented;

(G) the customer fiscal impact analysis, if required by 69-2-216; and

(H) the details of the beneficial aspects of the proposed project, both short-term and long-term, and the economic advantages and disadvantages of the proposal;

(v) in accordance with the criteria set forth in subsection (1)(b)(iv)(C), study, develop, and describe appropriate alternatives to recommend courses of action in any proposal that involves unresolved conflicts concerning alternative uses of available resources;

(vi) recognize the national and long-range character of environmental problems and, when consistent with the policies of the state, lend appropriate support to initiatives, resolutions, and programs designed to maximize national cooperation in anticipating and preventing a decline in the quality of the world environment;

(vii) make available to counties, municipalities, institutions, and individuals advice and information useful in restoring, maintaining, and enhancing the quality of the environment;

(viii) initiate and use ecological information in the planning and development of resource-oriented projects; and

(ix) assist the environmental quality council established by 5-16-101;

(c) prior to making any detailed statement as provided in subsection (1)(b)(iv), the responsible state official shall consult with and obtain the comments of any state agency that has jurisdiction by law or special expertise with respect to any environmental impact involved and with any local government, as defined in 7-12-1103, that may be directly impacted by the project. The responsible state official shall also consult with and obtain comments from any state agency with respect to any regulation of private property involved. Copies of the statement and the comments and views of the appropriate state, federal, and local agencies that are authorized to develop and enforce environmental standards must be made available to the governor, the environmental quality council, and the public and must accompany the proposal through the existing agency review processes.

(d) a transfer of an ownership interest in a lease, permit, license, certificate, or other entitlement for use or permission to act by an agency, either singly or in combination with other state agencies, does not trigger review under subsection (1)(b)(iv) if there is not a material change in terms or conditions of the entitlement or unless otherwise provided by law.

(2) The department of public service regulation, in the exercise of its regulatory authority over rates and charges of railroads, motor carriers, and public utilities, is exempt from the provisions of parts 1 through 3.

(3) (a) In any action challenging or seeking review of an agency's decision that a statement pursuant to subsection (1)(b)(iv) is not required or that the statement is inadequate, the burden of proof is on the person challenging the decision. Except as provided in subsection (3)(b), in a challenge to the adequacy of a statement, a court may not consider any issue relating to the adequacy or content of the agency's environmental review document or evidence that was not first presented to the agency for the agency's consideration prior to the agency's decision. A court may not set aside the agency's decision unless it finds that there is clear and convincing evidence that the decision was arbitrary or capricious or not in compliance with law. A customer fiscal impact analysis pursuant to 69-2-216 or an allegation that the customer fiscal impact analysis is inadequate may not be used as the basis of any action challenging or seeking review of the agency's decision.

(b) When new, material, and significant evidence or issues relating to the adequacy or content of the agency's environmental review document are presented to the district court that had not previously been presented to the agency for its consideration, the district court shall remand the new evidence or issue relating to the adequacy or content of the agency's environmental review document back to the agency for the agency's consideration and an opportunity to modify its findings of fact and administrative decision before the district court considers the evidence or issue relating to the adequacy or content of the agency's environmental review document within the administrative record under review. Immaterial or insignificant evidence or issues relating to the adequacy or content of the agency's environmental review document may not be remanded to the agency. The district court shall review the agency's findings

and decision to determine whether they are supported by substantial, credible evidence within the administrative record under review.

(4) To the extent that the requirements of subsections (1)(b)(iv)(C)(I) and (1)(b)(iv)(C)(III) are inconsistent with federal requirements, the requirements of subsections (1)(b)(iv)(C)(I) and (1)(b)(iv)(C)(III) do not apply to an environmental review that is being prepared by a state agency pursuant to this part and a federal agency pursuant to the National Environmental Policy Act or to an environmental review that is being prepared by a state agency to comply with the requirements of the National Environmental Policy Act.

(5) (a) The agency may not withhold, deny, or impose conditions on any permit or other authority to act based on parts 1 through 3 of this chapter.

(b) Nothing in this subsection (5) prevents a project sponsor and an agency from mutually developing measures that may, at the request of a project sponsor, be incorporated into a permit or other authority to act.

(c) Parts 1 through 3 of this chapter do not confer authority to an agency that is a project sponsor to modify a proposed project or action.

(6) (a) (i) A challenge to an agency action under this part may only be brought against a final agency action and may only be brought in district court or in federal court, whichever is appropriate.

(ii) Any action or proceeding challenging a final agency action alleging failure to comply with or inadequate compliance with a requirement under this part must be brought within 60 days of the action that is the subject of the challenge.

(iii) For an action taken by the board of land commissioners or the department of natural resources and conservation under Title 77, "final agency action" means the date that the board of land commissioners or the department of natural resources and conservation issues a final environmental review document under this part or the date that the board approves the action that is subject to this part, whichever is later.

(b) Any action or proceeding under subsection (6)(a)(ii) must take precedence over other cases or matters in the district court unless otherwise provided by law.

(c) Any judicial action or proceeding brought in district court under subsection (6)(a) involving an equine slaughter or processing facility must comply with [sections 1 and 2].

(7) The director of the agency responsible for the determination or recommendation shall endorse in writing any determination of significance made under subsection (1)(b)(iv) or any recommendation that a determination of significance be made.

(8) A project sponsor may request a review of the significance determination or recommendation made under subsection (7) by the appropriate board, if any. The appropriate board may, at its discretion, submit an advisory recommendation to the agency regarding the issue. The period of time between the request for a review and completion of a review under this subsection may not be included for the purposes of determining compliance with the time limits established for environmental review in 75-1-208."

Section 4. Section 75-2-104, MCA, is amended to read:

"75-2-104. Limitations — personal cause of action unabridged — venue. (1) This chapter may not be construed to:

(a) grant to the board any jurisdiction or authority with respect to air contamination existing solely within commercial and industrial plants, works, or shops;

(b) affect the relations between employers and employees with respect to or arising out of any condition of air contamination or air pollution;

(c) supersede or limit the applicability of any law or ordinance relating to sanitation, industrial health, or safety; or

(d) abridge, limit, impair, create, enlarge, or otherwise affect substantively or procedurally the right of a person to damages or other relief on account of injury to persons or property and to maintain an action or other appropriate proceeding.

(2) A judicial challenge to a permit issued pursuant to this chapter by a party other than the permit applicant or permitholder must include the party to whom the permit was issued unless otherwise agreed to by the permit applicant or permitholder. All judicial challenges of permits for projects with a project cost, as determined by the court, of more than $1 million must have precedence over any civil cause of a different nature pending in that court. If the court determines that the challenge was without merit or was for an improper purpose, such as to harass, to cause unnecessary delay, or to impose needless or increased cost in litigation, the court may award attorney fees and costs incurred in defending the action.

(3) An action to challenge a permit decision pursuant to this chapter must be brought in the county in which the permitted activity will occur. If an activity will occur in more than one county, the action may be brought in any of the counties in which the activity will occur.

(4) A judicial action or proceeding pursuant to this chapter for an equine slaughter or processing facility must comply with [sections 1 and 2]."

Section 5. Section 75-5-614, MCA, is amended to read:

"75-5-614. Injunctions authorized. (1) ~~The~~ *Except as provided in [section 1], the* department is authorized to commence a civil action seeking appropriate relief, including a permanent or temporary injunction, for a violation that would be subject to a compliance order under 75-5-613. An action under this subsection may be commenced in the district court of the county where a violation occurs or is threatened, and the court has jurisdiction to restrain the violation and to require compliance.

(2) ~~The~~ *Except as provided in [section 1], the* department may bring an action for an injunction against the continuation of an alleged violation of the terms or conditions of a permit issued by the department or any rule or effluent standard promulgated under this chapter or against a person who fails to comply with an emergency order issued by the department under 75-5-621 or a final order of the board. The court to which the department applies for an injunction may issue a temporary injunction if it finds that there is reasonable cause to believe that the allegations of the department are true, and it may issue a temporary restraining order pending action on the temporary injunction."

Section 6. Section 75-5-621, MCA, is amended to read:

"75-5-621. Emergencies. (1) Notwithstanding other provisions of this chapter, if the department finds that a person is committing or is about to commit an act in violation of this chapter or an order or rule issued under this chapter that, if it occurs or continues, will cause substantial pollution the harmful effects of which will not be remedied immediately after the commission

or cessation of the act, the department may order the person to stop, avoid, or moderate the act so that the substantial injury will not occur. The order is effective immediately upon receipt by the person to whom it is directed, unless the department provides otherwise.

(2) Notice of the order must conform to the requirements of 75-5-611(1) so far as practicable. The notice must indicate that the order is an emergency order.

(3) Upon issuing an order, the department shall fix a place and time for a hearing before the board, not later than 5 days after issuing the order unless the person to whom the order is directed requests a later time. The department may deny a request for a later time if it finds that the person to whom the order is directed is not complying with the order. The hearing must be conducted in the manner specified in 75-5-611. As soon as practicable after the hearing, the board shall affirm, modify, or set aside the order of the department. The order of the board must be accompanied by the information required in 75-5-611(6). An action for review of the order of the board may be initiated in the manner specified in 75-5-641. ~~The~~ *Except as provided in [section 1], the* initiation of an action or taking of an appeal may not stay the effectiveness of the order unless the court finds that the board did not have reasonable cause to issue an order under this section."

Section 7. Section 75-5-641, MCA, is amended to read:

"75-5-641. Appeals from board orders — review by district court. (1) An appeal of an order of the board ~~shall~~ *must* be in the district court of the county in which the alleged source of pollution is located.

(2) A person interested in the order may intervene, in the manner provided by the rules of civil procedure, if ~~he~~ *the person* shows good cause. An intervenor is a party for the purposes of this chapter.

(3) The attorney general shall represent the board if requested, or the department may appoint special counsel for the proceedings, subject to the approval of the attorney general.

(4) ~~The~~ *Except as provided in [section 1], the* initiation of an action for review or the taking of an appeal does not stay the effectiveness of ~~any~~ *an* order of the board unless the court finds that there is probable cause to believe:

(a) that refusal to grant a stay will cause serious harm to the affected party; and

(b) that ~~any~~ *a* violation found by the board will not continue or, if it does continue, ~~any~~ *the* harmful effects on state waters will be remedied immediately on the cessation of the violation.

(5) If a court does not stay the effectiveness of an order of the board, it may enforce compliance with that order by issuing a temporary restraining order or an injunction at the request of the board."

Section 8. Section 81-9-111, MCA, is amended to read:

"81-9-111. Hide certificates — inspection of hides before disposal — person slaughtering cattle *or horses* to exhibit hides. (1) ~~Every~~ *A* person or persons, firm, corporation, or association slaughtering cattle *or horses* for its own use must before selling, destroying, or otherwise disposing of the hide or hides from ~~such~~ *the* cattle *or horses* have the ~~same~~ *hide or hides* inspected by an officer authorized to make ~~such~~ *the* inspection and secure a certificate of inspection as ~~herein~~ provided for *in this part*.

(2) ~~It shall be unlawful for any~~ *A* person or persons, firm, corporation, or association ~~to~~ *may not* sell, offer for sale, destroy, or otherwise dispose of ~~any~~ *a*

hide or hides from slaughtered cattle ~~which~~ *or horses that* have not been inspected and identified by an authorized inspector.

(3) It ~~shall be~~ *is* the duty of any person or persons, firm, corporation, or association slaughtering cattle *or horses*, for ~~his own~~ *personal* use or otherwise, upon demand of an authorized inspector, to exhibit the *cattle or horse* hide or hides ~~of such animal or animals~~ for inspection or certificate issued by a hide buyer or ~~some~~ evidence of inspection by an authorized inspector."

Section 9. Section 81-9-112, MCA, is amended to read:

"81-9-112. Inspection and marking of hides and meat of slaughtered cattle *or horses* — records — bill of sale — when inspection not necessary. (1) All slaughtering establishments required to be licensed under 81-9-201 shall maintain the hide of an animal in its entirety with tail and ears attached for each animal slaughtered until inspected by a state or deputy state stock inspector in the county where the animal was slaughtered. The inspector shall mark the hide in the manner prescribed by the department. This inspection may be waived for ~~those~~ animals inspected by a state or deputy state stock inspector on a preslaughter inspection.

(2) Each dressed carcass of ~~such~~ *a slaughtered* animal ~~shall~~ *must* be stamped with an ink stamp in a manner specified by the department. The inspector shall keep a record and issue a certificate of inspection as specified by the department, giving the name and address of the establishment or person, the serial number of the inspection of the hide, the brand on the hide, *if applicable,* the date of inspection, and the place where the inspection was made. The inspector shall forward a copy of the inspection certificate to the department and issue one copy to the person requesting the inspection.

(3) When ownership of the carcass and hide presented is claimed on a bill of sale, the officer making the inspection shall demand and receive the original bill of sale~~, which shall be attached~~ *and attach it* to the inspector's certificate sent to the county clerk and recorder. When the bills of sale cover cattle *or horses* not included in the inspection, the inspector shall issue to the owner of the bill of sale a receipt for the bill of sale. The receipt ~~shall~~ *must* describe the balance of the cattle *or horses* covered by the original bill of sale.

(4) ~~Any~~ *A* person who kills ~~beef or veal~~ *livestock* in good faith for ~~his~~ *the person's* own use ~~shall not be~~ *is not* required to have ~~such~~ *the* meat inspected or stamped."

Section 10. Section 81-9-115, MCA, is amended to read:

"81-9-115. Unlawful to purchase uninspected hide or carcass — exception. ~~No~~ *A* person, firm, corporation, or association may *not* purchase the hide or carcass or any part ~~thereof of any beef or veal~~ *of livestock slaughtered in a facility licensed pursuant to 81-9-201* without the inspection or identification ~~herein provided for~~ *required by this part*. The provision of this section does not apply to ~~any~~ *a* person who purchases from a licensed meat establishment ~~beef or veal~~ *meat* in quantities less than one quarter of an animal."

Section 11. Section 81-9-116, MCA, is amended to read:

"81-9-116. Officers' authority concerning enforcement — seizure and sale of meat held in violation. ~~Any~~ *An* officer having authority to make the inspection ~~herein~~ provided for *in this part* may enter into and inspect meat establishments required to be licensed under 81-9-201 or places where ~~beef~~ *meat* is handled in quantities, for the purpose of determining whether the provisions of this part have been complied with. ~~In case~~ *If* meat is found ~~which~~ *that* is being

held in violation of the provisions of this part, the officers may seize the ~~same~~ *meat*. All *seized* meat ~~so seized shall~~ *must* be sold under the direction of a stock inspector, sheriff, or other officer authorized, at either public or private sale, for the best price obtainable, and the proceeds ~~shall~~ *must* be paid to the county treasurer of the county in which ~~said~~ *the* meat is seized for the benefit of the general fund of ~~said~~ *the* county."

Section 12. Section 81-9-201, MCA, is amended to read:

"81-9-201. Meat establishment license — fees and renewals. (1) It is unlawful for a person, firm, or corporation to engage in the business of slaughtering livestock or poultry, including the operation of a mobile slaughter facility as defined in 81-9-217, or processing, storing, or wholesaling livestock or poultry products without having a license issued by the department. The department shall establish an annual fee for a license issued under this section, to be paid into the state special revenue fund for the use of the department.

(2) All licenses expire each year on the anniversary date established by rule by the board of review established in 30-16-302 and must be renewed by the department on request of the licensee. However, when the department finds that the establishment for which the license is issued is not conducted in accordance with the rules and orders of the board made under 81-2-102, the department shall revoke the license and may not renew it until the establishment is in a sanitary condition in accordance with department rules.

(3) Investor-owned equine slaughter or processing facilities must be licensed pursuant to this section.

~~(3)~~*(4)* A person, firm, or corporation violating this section or any rule or order promulgated by authority of 81-2-102 is guilty of a misdemeanor and upon conviction shall be fined not more than $500."

Section 13. Section 81-9-229, MCA, is amended to read:

"81-9-229. Assignment of inspectors. (1) The chief shall assign inspectors to each official establishment and may assign one inspector to two or more establishments.

(2) No establishment may slaughter or process ~~any~~ cattle, buffalo, *horses,* sheep, swine, goats, or poultry unless ~~there is~~ an assigned inspector *is* present. The hours of the day and days of each week, including holidays or weekends, when the establishment is slaughtering or processing meat must be satisfactorily arranged between the chief and each establishment. Establishments shall pay overtime fees to the board when services are rendered in excess of 8 hours a day or on holidays or weekends."

Section 14. Section 81-9-230, MCA, is amended to read:

"81-9-230. Antemortem and postmortem inspection required. (1) Official establishments must have an antemortem inspection. The inspector assigned to each establishment shall examine each animal immediately prior to slaughter ~~for the purpose of eliminating~~ *to eliminate* all unfit animals and ~~segregating~~ *segregate* for more thorough examination all animals suspected of being affected with a condition that might influence their disposition on postmortem inspection. The unfit animals may not enter the slaughtering facilities of the plant. The suspected animals ~~which after inspection~~ *that* are permitted to be slaughtered *after inspection* must be handled separately from the regular kill and given a special postmortem examination.

(2) Official establishments must have a postmortem inspection. The postmortem inspection must be made at the time the animals are slaughtered.

The inspectors shall examine the cervical lymph glands, the skeletal lymph glands, the viscera and organs, with their lymph glands, and all exposed surfaces of the carcasses of all cattle, buffalo, *horses,* sheep, swine, and goats. The examination must be conducted in the slaughtering facilities of the establishment during the slaughtering operations.

(3) The chief or any of ~~his~~ *the chief's* inspectors may have a laboratory designated by the board make pathogenic examination of animals or *animal* parts ~~thereof~~ for completion of antemortem or postmortem inspection."

Section 15. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 81, chapter 9, part 2, and the provisions of Title 81, chapter 9, part 2, apply to [sections 1 and 2].

Approved May 1, 2009

CHAPTER NO. 417

[HB 459]

AN ACT CREATING THE MONTANA VIRTUAL ACADEMY; PROVIDING FOR THE ACADEMY'S PURPOSES AND GOVERNANCE; REQUIRING A REPORT TO THE LEGISLATURE; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Montana virtual academy — purposes — governance. (1) There is a Montana virtual academy at a unit of the Montana university system.

(2) The purposes of the Montana virtual academy are to:

(a) make distance learning opportunities available to all school-age children through public school districts in the state of Montana;

(b) offer high-quality instructors who are licensed and endorsed in Montana and courses that are in compliance with all relevant education and distance learning rules, standards, and policies; and

(c) emphasize the core subject matters required under the accreditation standards, offer advanced courses for dual credit in collaboration with the Montana university system, and offer enrichment courses.

(3) The Montana virtual academy must be governed by a board with equal representation from:

(a) the commissioner of higher education or a designee;

(b) the superintendent of public instruction or a designee;

(c) a Montana licensed and endorsed classroom teacher appointed by the board of public education;

(d) a Montana licensed school district administrator appointed by the board of public education;

(e) a trustee of a Montana school district appointed by the board of public education;

(f) the dean of the school of education of the hosting unit of the Montana university system or a designee as a nonvoting member; and

(g) the two officers provided for in subsection (5) as nonvoting members.

(4) The governing board shall elect a presiding officer and vice presiding officer to 2-year terms without limitation on the number of terms.

(5) The governing board shall hire a program director and a curriculum director who shall serve as chief executive officer and vice chief executive officer respectively on the governing board in a nonvoting capacity. The program director shall develop and, upon approval of the governing board, implement policies and guidelines for the Montana virtual academy pertaining to:

(a) course offerings;

(b) software and hardware selection;

(c) instructor selection;

(d) partnering school agreements;

(e) instructor training and curriculum development;

(f) course evaluation;

(g) grant opportunities; and

(h) other activities that are essential to the success of a statewide distance learning program.

Section 2. Report to legislature. The governing board shall provide the 62nd legislature with a report that details:

(1) how the line item funding in House Bill No. 645 cited in [section 4] was spent; and

(2) future funding requirements and recommendations, instructor standards, curriculum development issues, and evaluation of the software for implementing a seamless educational distance learning continuum in the state of Montana.

Section 3. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 20, chapter 7, and the provisions of Title 20, chapter 7, apply to [section 1].

Section 4. Coordination instruction. If both House Bill No. 645 and [this act] are passed and approved and if House Bill No. 645 does not include line item funding for the Montana virtual academy for the purposes of [this act], then [this act] is void.

Section 5. Effective date. [This act] is effective July 1, 2009.

Approved May 3, 2009

CHAPTER NO. 418

[HB 464]

AN ACT CREATING THE ADVANCING AGRICULTURAL EDUCATION IN MONTANA PROGRAM ACCOUNT; AND PROVIDING FOR THE USE OF THE ACCOUNT.

Be it enacted by the Legislature of the State of Montana:

Section 1. Advancing agricultural education in Montana program account. (1) There is an advancing agricultural education in Montana program account in the state special revenue fund provided for in 17-2-102.

(2) Money in the account must be used by the office of public instruction for addressing the stability of and making improvements to Montana's agricultural education programs. The office of public instruction shall adopt rules to implement the national quality program standards.

(3) (a) Each agricultural education program in the state that completes the national quality program standard evaluation as adopted by rule and submits a plan of improvement to the office of public instruction's agricultural education specialist must receive a one-time payment of $500.

(b) Each agricultural education program in the state that submits a detailed budget to increase the quality of its agricultural education program based on the plan of improvement may receive a one-time payment of up to $1,000.

(c) Each school that adds agricultural education to its curriculum and recruits and retains an endorsed agricultural education teacher must receive a one-time payment of up to $7,500.

(d) Program administrators in Bozeman and Helena must receive a total of $11,250 annually for the costs of providing a minimum of one onsite visit each year to each participating school.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 20, chapter 7, part 3, and the provisions of Title 20, chapter 7, part 3, apply to [section 1].

Approved May 3, 2009

CHAPTER NO. 419

[HB 657]

AN ACT REQUIRING THE REVENUE AND TRANSPORTATION INTERIM COMMITTEE TO APPOINT A SUBCOMMITTEE TO CONDUCT A STUDY OF THE CLASSIFICATION, VALUATION, AND TAXATION OF OIL AND NATURAL GAS PROPERTY; PROVIDING AN APPROPRIATION; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, oil and natural gas production machinery and equipment, gathering lines, other related property, and transmission lines make up a significant portion of the property tax base of many taxing units in the state; and

WHEREAS, continuous oil and natural gas property that is operated in more than one county or more than one state has been centrally assessed, classified as class nine property under section 15-6-141, MCA, and taxed at 12% of its market value; and

WHEREAS, Omimex Canada Ltd. has been centrally assessed by the Montana Department of Revenue and classified as class nine property; and

WHEREAS, the Montana Supreme Court held in Omimex Canada, Ltd. v. State, Department of Revenue that the description of class nine property does not include the physical attributes of Omimex's property and that Omimex's property must be classified as class eight property and taxed at 3% of market value; and

WHEREAS, the overall effect of the Montana Supreme Court decision significantly reduces property tax collections by millions of dollars in counties and school districts across the state; and

WHEREAS, the Montana Supreme Court decision did not deal with constitutional issues raised by Omimex, including due process and equal protection; and

WHEREAS, the Montana Supreme Court decision is symptomatic of the uncertainty regarding the classification, valuation, and taxation of oil and natural gas property; and

WHEREAS, competing legislation has been introduced in the 61st Legislature to deal with the Supreme Court decision and other matters related to the classification, valuation, and taxation of oil and natural gas property; and

WHEREAS, any legislation, if enacted, may not resolve the ambiguity regarding the classification, valuation, and taxation of oil and natural gas property and may contain unintended consequences.

Be it enacted by the Legislature of the State of Montana:

Section 1. Interim study of taxation of oil and natural gas property. (1) The revenue and transportation interim committee provided for in 5-5-227 shall conduct an interim study on the classification, valuation, and taxation of oil and natural gas property. The study must include:

(a) an overview of how oil and natural gas markets function, including the effects of state and federal regulatory policy on the operation of these markets;

(b) an inventory of the ownership of oil and natural gas property subject to central assessment or local assessment;

(c) a review of the department of revenue's policies, procedures, and practices for the valuation of locally assessed and centrally assessed oil and natural gas property;

(d) an analysis of the importance of oil and natural gas property to the property tax base of taxing jurisdictions, including the state;

(e) an analysis of state tax appeal board and court decisions affecting the classification, valuation, and taxation of oil and natural gas property;

(f) the development of an appropriate policy of taxing oil and natural gas property that takes into account the balance of the financial needs of taxing jurisdictions within the state and the equitable taxation of oil and natural gas property.

(2) (a) The revenue and transportation interim committee shall establish a subcommittee to conduct the study and report to the full committee. The subcommittee members must be appointed by the presiding officer of the committee in concurrence with the vice presiding officer. The subcommittee must include six members, three from each political party and three from each house, who are legislators appointed to the revenue and transportation interim committee.

(b) The subcommittee shall request the advice and assistance of private and public oil and natural gas associations, local governments and school districts, taxpayer groups, the department of revenue, and other entities the subcommittee considers appropriate.

(c) Any final recommendations and other work products that will be represented as being produced or endorsed by the revenue and transportation interim committee must be finally approved by the revenue and transportation interim committee.

(3) The revenue and transportation interim committee shall complete the study by September 15, 2010, and report its findings and recommendations to the 62nd legislature.

Section 2. Appropriation. There is appropriated from the general fund to the legislative services division $20,000 for the biennium beginning July 1, 2009, for use by the revenue and transportation interim committee for the purposes provided in [section 1].

Section 3. Effective date. [This act] is effective on passage and approval.

Approved May 2, 2009

CHAPTER NO. 420

[HB 659]

AN ACT DIRECTING THE STATE ADMINISTRATION AND VETERANS' AFFAIRS INTERIM COMMITTEE TO EXAMINE AND RECOMMEND TO THE 62ND LEGISLATURE FUNDING AND BENEFIT CHANGES IN THE STATEWIDE PUBLIC EMPLOYEES' AND TEACHERS' RETIREMENT SYSTEMS; PROVIDING AN APPROPRIATION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Article VIII, section 15, of the Montana Constitution requires all public retirement systems to be funded on an actuarially sound basis; and

WHEREAS, the recent economic collapse of the financial markets in the United States has severely affected the market value of investments and adversely affected the funding of Montana's statewide retirement systems; and

WHEREAS, the July 1, 2008, actuarial valuation for the Teachers' Retirement System (TRS) showed that current contribution rates will not amortize the system's unfunded liability within the 30-year amortization period considered to be the benchmark for actuarial soundness; and

WHEREAS, if investment earnings for TRS continue to dramatically decline, even with contribution increases, the system's liabilities may not amortize in any length of time unless significant funding is provided and TRS is redesigned to reduce the accrual of benefit liabilities; and

WHEREAS, based on actuarial projections that take into consideration continued market declines since the actuarial valuation of July 1, 2008, for the retirement systems administered by the public employees' retirement board, the unfunded liabilities in the public employees', game wardens' and peace officers', and sheriffs' retirement systems may also not amortize in any length of time without increased contributions and benefit or plan design changes; and

WHEREAS, an appropriate interim committee of the Legislature should examine the funding and benefits in all of the statewide retirement systems, which include the public employees', teachers', judges', game wardens' and peace officers', sheriffs', firefighters' unified, municipal police officers', and volunteer firefighters' retirement systems, review options for changing benefits and plan design, consider the purpose of retirement plans as a part of an overall compensation package for public employees, and develop legislation for consideration by the next Legislature; and

WHEREAS, such an examination and the development of legislation to implement plan redesign and funding changes will require that the committee be authorized to hire actuarial and other expert consulting services.

Be it enacted by the Legislature of the State of Montana:

Section 1. Interim committee to examine and recommend changes to statewide retirement systems. (1) In addition to fulfilling its duties under 5-5-228(2)(a), the state administration and veterans' affairs interim committee established in 5-5-228 shall:

(a) review current trends and best practices in public retirement plan design and funding;

(b) examine various options for changes to each of the statewide retirement plans administered by the public employees' retirement board, such as but not limited to changes in:

(i) the benefit formula multiplier for each year of service;

(ii) the minimum age at which a retirement plan member is eligible for full benefits or for reduced, early retirement benefits; and

(iii) the minimum years of service required for a retirement plan member to be eligible for full retirement benefits or for reduced, early retirement benefits.

(2) With respect to the teachers' retirement system, the committee shall compare and contrast various options for redesigning the system, including money purchase plan design options and other alternative and hybrid defined benefit plan options, and shall develop legislation to implement a redesign of the teachers' retirement system that:

(a) ensures members will have a guaranteed benefit in retirement;

(b) provides that the employer and employee shall share in some manner the risk of actuarial gains and losses and allows for the adjustment of employer and employee contributions accordingly;

(c) is sustainable and funded on an actuarially sound basis;

(d) provides benefits designed to attract and retain qualified and competent employees in a competitive labor market and to facilitate effective workforce management;

(e) complies with the federal Internal Revenue Code governing tax-qualified public pension plans;

(f) provides that the system is administered by the teachers' retirement board and provides that system assets are invested by the board of investments, as required by the Montana constitution; and

(g) provides a foundation for financial security in retirement, taking into consideration that:

(i) a retirement plan is only one part of an employee's compensation package that also includes salary, health insurance benefits, and other benefits;

(ii) an employer-sponsored public retirement plan is not intended to be the sole provider of income to an employee in retirement; and

(iii) deferred compensation, personal savings and investments, and social security should be part of an employee's financial planning for retirement.

(3) (a) The committee may hire consulting services as needed.

(b) The public employees' retirement and teachers' retirement boards and their respective staffs shall provide requested information and actuarial analysis to the extent feasible within the framework of the retirement boards' fiduciary and constitutional responsibilities.

(c) The board of investments and its staff shall also provide requested information and analysis to the extent feasible and consistent with its fiduciary and constitutional responsibilities.

(4) The committee shall involve public employers, public employees, members of the current public employees' retirement systems, public employee and retiree representative organizations, public retirement plan administrators, and other interested parties in the process of developing options and recommendations.

(5) Subject to 5-5-211, the speaker of the house and the senate committee on committees are encouraged to:

(a) consult with the legislative council to determine the most appropriate number of members and support staff for the state administration and veterans' affairs interim committee; and

(b) appoint members from the 61st legislature's standing house and senate state administration committees, house appropriations committee, and senate finance and claims committee to the extent feasible.

Section 2. Appropriation. There is appropriated from the general fund to the legislative services division $200,000 for the purposes of [section 1].

Section 3. Effective date. [This act] is effective July 1, 2009.

Approved April 30, 2009

CHAPTER NO. 421

[HB 670]

AN ACT PROVIDING FOR LOCAL GOVERNMENT AND SCHOOL DISTRICT DISCRETION TO ABATE PROPERTY TAXES ON CERTAIN COMMERCIAL OR INDUSTRIAL REAL PROPERTY AND PERSONAL PROPERTY TO FACILITATE THE CONTINUED OPERATION OF THE BUSINESS USING THE PROPERTY; REQUIRING JOINT APPROVAL OF THE ABATEMENT BY AFFECTED GOVERNING BODIES; PROVIDING FOR THE RECAPTURE OF THE TAX BENEFIT; AMENDING SECTIONS 15-6-134 AND 15-6-138, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Purpose. The purpose of [sections 1 through 3] is to facilitate the reopening and continued operation of a commercial or industrial property by reducing the taxable value of property subject to taxation under 15-6-134 and 15-6-138.

Section 2. Reduction in assessment of taxable value of commercial and industrial property — application — approval. (1) (a) For property tax years 2009, 2010, and 2011, the governing bodies of a county or consolidated local government unit, incorporated city or town, if the property is located in the city or town, and school district may jointly reduce by 95% the taxable value of commercial real property improvements, personal property, or any combination of that property, other than land, that is subject to taxation. The reduction in taxable value under this section applies only to commercial or industrial property taxed under 15-6-134 or 15-6-138. A taxpayer that has not been operating the property for at least 6 months immediately preceding the request for reduction in taxable value and that does not intend to use the property for at least 6 months following the reduction in taxable value qualifies under this section.

(b) (i) Except as provided in subsection (1)(b)(ii), an application for the reduction in taxable value allowed under this section must be made to the affected local governing bodies by April 15 of the property tax year.

(ii) An application for the reduction in taxable value allowed under this section for property tax year 2009 must be made to the affected local governing bodies by May 15, 2009.

(c) For the purposes of [section 3] and this section, a local governing body includes the board of trustees of a school district.

(2) (a) In order for a taxpayer to receive the tax benefits described in subsection (1), the governing bodies of the affected county or consolidated local government unit, incorporated city or town, if the property is located in the city or town, and school district must have approved by a separate, joint resolution for each commercial or industrial property, following due notice as defined in 76-15-103 and a public hearing, the taxable value reduction provided for in subsection (1) for the respective jurisdictions. The presiding officer of the governing body of the affected county or consolidated local government unit is the presiding officer of the joint meeting of the affected taxing jurisdictions. If the property is located in more than one county, the presiding officer of the governing body of the county in which most of the property is located is the presiding officer of the joint meeting.

(b) For the purpose of this subsection (2), each affected governing body shall provide due notice of the joint meeting.

(c) Subject to 15-10-420, the governing bodies may end the tax benefits by majority vote at any time, but the tax benefits may not be denied a commercial or industrial business that previously qualified for the benefits in the tax year.

(d) The joint resolution provided for in subsection (2)(a) must include a description of the improvements and personal property that qualify for the tax treatment that is to be allowed in the taxing jurisdictions. The joint resolution may provide that commercial real property improvements, personal property, or any combination of that property, other than land, is eligible for the tax benefits described in subsection (1).

(3) The joint resolution must state that the reduction in taxable value is in the best interest of the governing body, based on full disclosure of all pertinent financial information by the owner of the real and personal property as required by the local governing body. The joint resolution must be approved by a majority vote of the governing body of each affected taxing jurisdiction referred to in subsection (2)(a).

(4) The governing bodies may refuse to reduce the taxable value of the property if they determine that the business is restructuring the ownership of the property for the primary purpose of escaping payment of property taxes or if the governing bodies determine that the reduction in taxable value is not in the best interest of the local governments.

(5) The reduction in taxable value granted by the joint resolution may be only for the current tax year. The governing bodies may grant a reduction in taxable value for the same owner of the property in the subsequent tax year under the provisions of this section, but they may not grant a reduction in taxable value for more than 3 tax years as provided in this section. The tax benefit granted under this section applies for the entire tax year.

(6) The tax benefits may not be granted under this section if the business owes delinquent property taxes for prior tax years.

(7) (a) If the reduction in taxable value is granted by a majority vote of the governing body of each affected taxing jurisdiction, the reduction applies only to mills levied in the affected county or consolidated local government unit, the affected incorporated city or town, and the affected school district.

(b) The benefit described in subsection (1) does not apply to levies or assessments required under Title 15, chapter 10, 20-9-331, 20-9-333, or 20-9-360 or otherwise required under state law.

(8) Within 15 days of approving the joint resolution to grant a reduction of taxable value but not later than July 15 of the tax year the reduction is granted, the governing body of the affected county or consolidated local government unit shall notify the department of the approval by each of the affected governing bodies. Upon receipt of the notification of approval by the governing body of the affected county or consolidated local government unit, the department shall make the assessment change pursuant to this section for each affected taxing jurisdiction.

Section 3. Exclusions from other property tax reductions — recapture. (1) If a taxable value decrease is taken pursuant to [sections 1 through 3], other property tax reductions, including but not limited to 15-24-1402, 15-24-1501, and 15-24-1502, are not allowed in the tax year the decrease is taken under [sections 1 through 3].

(2) Property taxes abated from the reduction in taxable value allowed by [section 2] are subject to recapture by each local governing body if the ownership or use of the property does not meet the requirements of [section 2] or the joint resolution required by [section 2(2)(a)]. The recapture is equal to the amount of taxes avoided, plus interest and penalties for nonpayment of property taxes as provided in 15-16-102, during any period in which the abatement was in effect. The amount recaptured, including penalty and interest, must be distributed by the treasurer to funds and accounts subject to the abatement in the same ratio as the property tax was abated. A recapture of taxes abated is not allowed with regard to property ceasing to qualify for the abatement by reason of an involuntary conversion or if the property is transferred to another person and the person maintains the same or similar level of operation of the commercial or industrial property. The recapture of abated taxes may be canceled, in whole or in part, if a local governing body determines that the taxpayer's failure to meet the requirements of this section is a result of circumstances beyond the control of the taxpayer.

Section 4. Section 15-6-134, MCA, is amended to read:

"15-6-134. Class four property — description — taxable percentage. (1) Class four property includes:

(a) subject to 15-6-222 and subsections (1)(f) and (1)(g) of this section, all land, except that specifically included in another class;

(b) subject to 15-6-222 and subsections (1)(f) and (1)(g) of this section, all improvements, including trailers, manufactured homes, or mobile homes used as a residence, except those specifically included in another class;

(c) the first $100,000 or less of the taxable market value of any improvement on real property, including trailers, manufactured homes, or mobile homes, and appurtenant land not exceeding 5 acres owned or under contract for deed and actually occupied for at least 7 months a year as the primary residential dwelling of any person whose total income from all sources, including net business income and otherwise tax-exempt income of all types but not including social security income paid directly to a nursing home, is not more than $15,000 for a single person or $20,000 for a married couple or a head of household, as adjusted according to subsection (2)(b)(ii). For the purposes of this subsection (1)(c), net business income is gross income less ordinary operating expenses but before deducting depreciation or depletion allowance, or both.

(d) all golf courses, including land and improvements actually and necessarily used for that purpose, that consist of at least nine holes and not less than 700 lineal yards;

(e) subject to 15-6-222(1), all improvements on land that is eligible for valuation, assessment, and taxation as agricultural land under 15-7-202, including 1 acre of real property beneath improvements on land described in 15-6-133(1)(c). The 1 acre must be valued at market value.

(f) (i) single-family residences, including trailers, manufactured homes, or mobile homes;

(ii) rental multifamily dwelling units;

(iii) appurtenant improvements to the residences or dwelling units, including the parcels of land upon which the residences and dwelling units are located and any leasehold improvements; and

(iv) vacant residential lots; and

(g) (i) commercial buildings and the parcels of land upon which they are situated; and

(ii) vacant commercial lots.

(2) Class four property is taxed as follows:

(a) Except as provided in 15-24-1402, 15-24-1501, ~~and~~ 15-24-1502, *and [section 1],* property described in subsections (1)(a), (1)(b), and (1)(e) through (1)(g) of this section is taxed at:

(i) 3.22% of its taxable market value in tax year 2005;

(ii) 3.14% of its taxable market value in tax year 2006;

(iii) 3.07% of its taxable market value in tax year 2007; and

(iv) 3.01% of its taxable market value in tax years after 2007.

(b) (i) Property qualifying under the property tax assistance program in subsection (1)(c) is taxed at the rate provided in subsection (2)(a) of its taxable market value multiplied by a percentage figure based on income and determined from the following table:

Income Single Person	Income Married Couple Head of Household	Percentage Multiplier
$0 - $6,000	$0 - $8,000	20%
$6,001 - $9,200	$8,001 - $14,000	50%
$9,201 - $15,000	$14,001 - $20,000	70%

(ii) The income levels contained in the table in subsection (2)(b)(i) must be adjusted for inflation annually by the department. The adjustment to the income levels is determined by:

(A) multiplying the appropriate dollar amount from the table in subsection (2)(b)(i) by the ratio of the PCE for the second quarter of the year prior to the year of application to the PCE for the second quarter of 1995; and

(B) rounding the product thus obtained to the nearest whole dollar amount.

(iii) "PCE" means the implicit price deflator for personal consumption expenditures as published quarterly in the Survey of Current Business by the bureau of economic analysis of the U.S. department of commerce.

(c) Property described in subsection (1)(d) is taxed at one-half the taxable percentage rate established in subsection (2)(a).

(3) Within the meaning of comparable property, as defined in 15-1-101, property assessed as commercial property is comparable only to other property

assessed as commercial property and property assessed as other than commercial property is comparable only to other property assessed as other than commercial property."

Section 5. Section 15-6-138, MCA, is amended to read:

"15-6-138. Class eight property — description — taxable percentage. (1) Class eight property includes:

(a) all agricultural implements and equipment that are not exempt under 15-6-207 or 15-6-220;

(b) all mining machinery, fixtures, equipment, tools that are not exempt under 15-6-219, and supplies except those included in class five;

(c) all oil and gas production machinery, fixtures, equipment, including pumping units, oil field storage tanks, water storage tanks, water disposal injection pumps, gas compressor and dehydrator units, communication towers, gas metering shacks, treaters, gas separators, water flood units, gas boosters, and similar equipment that is skidable, portable, or movable, tools that are not exempt under 15-6-219, and supplies except those included in class five;

(d) all manufacturing machinery, fixtures, equipment, tools, except a certain value of hand-held tools and personal property related to space vehicles, ethanol manufacturing, and industrial dairies and milk processors as provided in 15-6-220, and supplies except those included in class five;

(e) all goods and equipment that are intended for rent or lease, except goods and equipment that are specifically included and taxed in another class;

(f) special mobile equipment as defined in 61-1-101;

(g) furniture, fixtures, and equipment, except that specifically included in another class, used in commercial establishments as defined in this section;

(h) x-ray and medical and dental equipment;

(i) citizens' band radios and mobile telephones;

(j) radio and television broadcasting and transmitting equipment;

(k) cable television systems;

(l) coal and ore haulers;

(m) theater projectors and sound equipment; and

(n) all other property that is not included in any other class in this part, except that property that is subject to a fee in lieu of a property tax.

(2) As used in this section, "coal and ore haulers" means nonhighway vehicles that exceed 18,000 pounds an axle and that are primarily designed and used to transport coal, ore, or other earthen material in a mining or quarrying environment.

(3) "Commercial establishment" includes any hotel, motel, office, petroleum marketing station, or service, wholesale, retail, or food-handling business.

(4) ~~Class~~ *Except as provided in 15-24-1402 and [section 1], class* eight property is taxed at 3% of its market value.

(5) The class eight property of a person or business entity that owns an aggregate of $20,000 or less in market value of class eight property is exempt from taxation."

Section 6. Codification instruction. [Sections 1 through 3] are intended to be codified as an integral part of Title 15, chapter 24, and the provisions of Title 15, chapter 24, apply to [sections 1 through 3].

Section 7. Effective date. [This act] is effective on passage and approval.

Section 8. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to property tax years beginning after December 31, 2008.

Approved April 30, 2009

CHAPTER NO. 422

[SB 158]

AN ACT INCREASING THE NUMBER OF DISTRICT COURT JUDGES; PROVIDING FOR ADDITIONAL JUDGES IN THE 1ST, 11TH, AND 13TH JUDICIAL DISTRICTS TO BE ELECTED AT THE NOVEMBER 2010 GENERAL ELECTION; AMENDING SECTION 3-5-102, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 3-5-102, MCA, is amended to read:

"3-5-102. Number of judges. In each judicial district, there must be the following number of judges of the district court:

(1) in the 2nd, 7th, 16th, 20th, and 21st districts, two judges each;

(2) in the 18th district, three judges;

~~(2)~~*(3)* in the 1st, *4th, 8th, and* 11th~~, and 18th~~ districts, ~~three~~ *four* judges each;

~~(3) in the 4th and 8th districts, four judges;~~

(4) in the 13th district, ~~five~~ *six* judges;

(5) in all other districts, one judge each."

Section 2. Election of judges. The additional judges for the 1st, 11th, and 13th judicial districts must be elected at the general election to be held in November 2010 for a 6-year term to begin January 3, 2011.

Section 3. Contingent voidness. If House Bill No. 2 is passed and approved and if it does not provide funding for personal services and operating expenses to support the additional judges provided for in [this act], then [this act] is void.

Section 4. Effective date. [This act] is effective January 1, 2010.

Approved May 2, 2009

CHAPTER NO. 423

[SB 300]

AN ACT INCREASING THE ASSESSMENT ON FERTILIZER SOLD IN MONTANA AND ADJUSTING THE PERCENTAGES OF THE ASSESSMENT TO BE USED BY THE COOPERATIVE EXTENSION SERVICE AND THE AGRICULTURAL EXPERIMENT STATION; AMENDING SECTIONS 80-10-103 AND 80-10-104, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 80-10-103, MCA, is amended to read:

"80-10-103. Assessment to fund educational and experimental programs — collection. ~~Moneys~~ *Money* to fund 80-10-104 through 80-10-106 must be produced by an assessment of ~~35~~ *75* cents per ton of fertilizer sold within Montana. Collections ~~shall~~ *must* be made in accordance with procedures in 80-10-207 and ~~shall~~ *must* be collected from the manufacturer."

Section 2. Section 80-10-104, MCA, is amended to read:

"80-10-104. Allocation of assessment. The assessment ~~shall~~ *provided in 80-10-103 must* be collected by the department and up to 1% ~~shall~~ *must* be retained by the department for costs of collection. The balance ~~shall~~ *must* be deposited in the state special revenue fund with ~~50%~~ *25%* for use by the cooperative extension service and ~~50%~~ *75%* for use by the agricultural experiment station in programs recommended by the fertilizer advisory committee provided for in 2-15-1516 and approved by the respective directors."

Section 3. Effective date. [This act] is effective July 1, 2009.

Approved May 2, 2009

CHAPTER NO. 424

[SB 396]

AN ACT PROVIDING AN EXEMPTION FOR A REPLACEMENT APPROPRIATION FOR A WATER RIGHT FOR CERTAIN CHANGES IN POINTS OF DIVERSION; AND AMENDING SECTION 85-2-402, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 85-2-402, MCA, is amended to read:

"85-2-402. Changes in appropriation rights — definition. (1) (a) The right to make a change in appropriation right subject to the provisions of this section in an existing water right, a permit, or a state water reservation is recognized and confirmed. In a change in appropriation right proceeding under this section, there is no presumption that an applicant for a change in appropriation right cannot establish lack of adverse effect prior to the adjudication of other rights in the source of supply pursuant to this chapter. Except as provided in 85-2-410 and subsections (15) and (16) of this section, an appropriator may not make a change in an appropriation right without the approval of the department or, if applicable, of the legislature. An applicant shall submit a correct and complete application.

(b) If an application involves a change in a point of diversion, conveyance, or place of use located on national forest system lands, the application is not correct and complete until the applicant has submitted proof to the department of any written special use authorization required by federal law for the proposed change in occupancy, use, or traverse of national forest system lands for the purpose of diversion, impoundment, storage, transportation, withdrawal, use, or distribution of water.

(c) As used in this part, "national forest system lands" has the same meaning as that provided in 85-20-1401, Article I.

(2) Except as provided in subsections (4) through (6), (15), ~~and~~ (16)*, and (18)* and, if applicable, subject to subsection (17), the department shall approve a change in appropriation right if the appropriator proves by a preponderance of evidence that the following criteria are met:

(a) The proposed change in appropriation right will not adversely affect the use of the existing water rights of other persons or other perfected or planned

uses or developments for which a permit or certificate has been issued or for which a state water reservation has been issued under part 3.

(b) Except for a change in appropriation right for instream flow to protect, maintain, or enhance streamflows to benefit the fishery resource pursuant to 85-2-436 or a temporary change in appropriation right authorization to maintain or enhance streamflows to benefit the fishery resource pursuant to 85-2-408 or a change in appropriation right to instream flow to protect, maintain, or enhance streamflows pursuant to 85-2-320, the proposed means of diversion, construction, and operation of the appropriation works are adequate.

(c) The proposed use of water is a beneficial use.

(d) Except for a change in appropriation right for instream flow to protect, maintain, or enhance streamflows to benefit the fishery resource pursuant to 85-2-436 or a temporary change in appropriation right authorization pursuant to 85-2-408 or a change in appropriation right to instream flow to protect, maintain, or enhance streamflows pursuant to 85-2-320, the applicant has a possessory interest, or the written consent of the person with the possessory interest, in the property where the water is to be put to beneficial use or, if the proposed change involves a point of diversion, conveyance, or place of use on national forest system lands, the applicant has any written special use authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of diversion, impoundment, storage, transportation, withdrawal, use, or distribution of water.

(e) If the change in appropriation right involves salvaged water, the proposed water-saving methods will salvage at least the amount of water asserted by the applicant.

(f) The water quality of an appropriator will not be adversely affected.

(g) The ability of a discharge permitholder to satisfy effluent limitations of a permit issued in accordance with Title 75, chapter 5, part 4, will not be adversely affected.

(3) The applicant is required to prove that the criteria in subsections (2)(f) and (2)(g) have been met only if a valid objection is filed. A valid objection must contain substantial credible information establishing to the satisfaction of the department that the criteria in subsection (2)(f) or (2)(g), as applicable, may not be met.

(4) The department may not approve a change in purpose of use or place of use of an appropriation of 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water unless the appropriator proves by a preponderance of evidence that:

(a) the criteria in subsection (2) are met; and

(b) the proposed change in appropriation right is a reasonable use. A finding of reasonable use must be based on a consideration of:

(i) the existing demands on the state water supply, as well as projected demands for water for future beneficial purposes, including municipal water supplies, irrigation systems, and minimum streamflows for the protection of existing water rights and aquatic life;

(ii) the benefits to the applicant and the state;

(iii) the effects on the quantity and quality of water for existing uses in the source of supply;

(iv) the availability and feasibility of using low-quality water for the purpose for which application has been made;

(v) the effects on private property rights by any creation of or contribution to saline seep; and

(vi) the probable significant adverse environmental impacts of the proposed use of water as determined by the department pursuant to Title 75, chapter 1, or Title 75, chapter 20.

(5) The department may not approve a change in purpose of use or place of use for a diversion that results in 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water being consumed unless:

(a) the applicant proves by clear and convincing evidence and the department finds that the criteria in subsections (2) and (4) are met; and

(b) for the withdrawal and transportation of appropriated water for out-of-state use, the department then petitions the legislature and the legislature affirms the decision of the department after one or more public hearings.

(6) The state of Montana has long recognized the importance of conserving its public waters and the necessity to maintain adequate water supplies for the state's water requirements, including requirements for federal non-Indian and Indian reserved water rights held by the United States for federal reserved lands and in trust for the various Indian tribes within the state's boundaries. Although the state of Montana also recognizes that, under appropriate conditions, the out-of-state transportation and use of its public waters are not in conflict with the public welfare of its citizens or the conservation of its waters, the following criteria must be met before out-of-state use may occur:

(a) The department and, if applicable, the legislature may not approve a change in appropriation right for the withdrawal and transportation of appropriated water for use outside the state unless the appropriator proves by clear and convincing evidence and, if applicable, the legislature approves after one or more public hearings that:

(i) depending on the volume of water diverted or consumed, the applicable criteria and procedures of subsection (2) or (4) are met;

(ii) the proposed out-of-state use of water is not contrary to water conservation in Montana; and

(iii) the proposed out-of-state use of water is not otherwise detrimental to the public welfare of the citizens of Montana.

(b) In determining whether the appropriator has proved by clear and convincing evidence that the requirements of subsections (6)(a)(ii) and (6)(a)(iii) will be met, the department and, if applicable, the legislature shall consider the following factors:

(i) whether there are present or projected water shortages within the state of Montana;

(ii) whether the water that is the subject of the proposed change in appropriation might feasibly be transported to alleviate water shortages within the state of Montana;

(iii) the supply and sources of water available to the applicant in the state where the applicant intends to use the water; and

(iv) the demands placed on the applicant's supply in the state where the applicant intends to use the water.

(c) When applying for a change in appropriation right to withdraw and transport water for use outside the state, the applicant shall submit to and

comply with the laws of the state of Montana governing the appropriation and use of water.

(7) For any application for a change in appropriation right involving 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water, the department shall give notice of the proposed change in appropriation right in accordance with 85-2-307 and shall hold one or more hearings in accordance with 85-2-309 prior to its approval or denial of the proposed change in appropriation right. The department shall provide notice and may hold one or more hearings upon any other proposed change in appropriation right if it determines that the proposed change in appropriation right might adversely affect the rights of other persons.

(8) The department or the legislature, if applicable, may approve a change in appropriation right subject to the terms, conditions, restrictions, and limitations that it considers necessary to satisfy the criteria of this section, including limitations on the time for completion of the change in appropriation right. The department may extend time limits specified in the change in appropriation right approval under the applicable criteria and procedures of 85-2-312(3).

(9) Upon actual application of water to the proposed beneficial use within the time allowed, the appropriator shall notify the department that the appropriation has been completed. The notification must contain a certified statement by a person with experience in the design, construction, or operation of appropriation works describing how the appropriation was completed.

(10) If a change in appropriation right is not completed as approved by the department or legislature or if the terms, conditions, restrictions, and limitations of the change in appropriation right approval are not complied with, the department may, after notice and opportunity for hearing, require the appropriator to show cause why the change in appropriation right approval should not be modified or revoked. If the appropriator fails to show sufficient cause, the department may modify or revoke the change in appropriation right approval.

(11) The original of a change in appropriation right approval issued by the department must be sent to the applicant, and a duplicate must be kept in the office of the department in Helena.

(12) A person holding an issued permit or change in appropriation right approval that has not been perfected may change the place of diversion, place of use, purpose of use, or place of storage by filing an application for change in appropriation right pursuant to this section.

(13) A change in appropriation right contrary to the provisions of this section is invalid. An officer, agent, agency, or employee of the state may not knowingly permit, aid, or assist in any manner an unauthorized change in appropriation right. A person or corporation may not, directly or indirectly, personally or through an agent, officer, or employee, attempt to change an appropriation right except in accordance with this section.

(14) The department may adopt rules to implement the provisions of this section.

(15) (a) An appropriator may change an appropriation right for a replacement well without the prior approval of the department if:

(i) the appropriation right is for:

(A) ground water outside the boundaries of a controlled ground water area; or

(B) ground water inside the boundaries of a controlled ground water area and if the provisions of the order declaring the controlled ground water area do not restrict a change in appropriation right;

(ii) the change in appropriation right is to replace an existing well and the existing well will no longer be used;

(iii) the rate and volume of the appropriation from the replacement well are equal to or less than that of the well being replaced and do not exceed:

(A) 450 gallons a minute for a municipal well; or

(B) 35 gallons a minute and 10 acre-feet a year for all other wells;

(iv) the water from the replacement well is appropriated from the same aquifer as the water appropriated from the well being replaced; and

(v) a timely, correct and complete notice of replacement well is submitted to the department as provided in subsection (15)(b).

(b) (i) After completion of a replacement well and appropriation of ground water for a beneficial use, the appropriator shall file a notice of replacement well with the department on a form provided by the department.

(ii) (A) The department shall review the notice of replacement well and shall issue an authorization of a change in an appropriation right if all of the criteria in subsection (15)(a) have been met and the notice is correct and complete.

(B) If the replacement well is located on national forest system lands, the notice is not correct and complete under this subsection (15) until the appropriator has submitted proof of any written special use authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of constructing the replacement well.

(iii) The department may not issue an authorization of a change in appropriation right until a correct and complete notice of replacement well has been filed with the department. The department shall return a defective notice to the appropriator, along with a description of defects in the notice. The appropriator shall refile a corrected and completed notice of replacement well within 30 days of notification of defects or within a further time as the department may allow, not to exceed 6 months.

(iv) If a notice of replacement well is not completed within the time allowed, the appropriator shall:

(A) cease appropriation of water from the replacement well pending approval by the department; and

(B) submit an application for a change in appropriation right to the department pursuant to subsections (1) through (3).

(c) The provisions of this subsection (15) do not apply to an appropriation right abandoned under 85-2-404.

(d) For each well that is replaced under this subsection (15), the appropriator shall follow the well abandonment procedures, standards, and rules adopted by the board of water well contractors pursuant to 37-43-202.

(e) The provisions of subsections (2), (3), (9), and (10) do not apply to a change in appropriation right that meets the requirements of subsection (15)(a).

(16) (a) An appropriator may change an appropriation right without the prior approval of the department for the purpose of constructing a redundant

water supply well in a public water supply system, as defined in 75-6-102, if the redundant water supply well:

(i) withdraws water from the same ground water source as the original well; and

(ii) is required by a state or federal agency.

(b) The priority date of the redundant water supply well is the same as the priority date of the original well. Only one well may be used at one time.

(c) Within 60 days of completion of a redundant water supply well, the appropriator shall file a notice of construction of the well with the department on a form provided by the department. The department may return a defective notice of construction to the appropriator for correction and completion. If the redundant water supply well is located on national forest system lands, the notice is not correct and complete under this subsection until the appropriator has submitted proof of any written special use authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of constructing the redundant water supply well.

(d) The provisions of subsections (9) and (10) do not apply to a change in appropriation right that meets the requirements of this subsection (16).

(17) The department shall accept and process an application for a change in appropriation right for instream flow to protect, maintain, or enhance streamflows pursuant to 85-2-320 and this section and to benefit the fishery resource pursuant to 85-2-436 and this section.

(18) (a) An appropriator may change an appropriation right for a replacement point of diversion without the prior approval of the department if:

(i) the existing point of diversion is inoperable due to natural causes or deteriorated infrastructure;

(ii) there are no other changes to the water right;

(iii) the capacity of the diversion is not increased;

(iv) there are no points of diversion or intervening water rights between the existing point of diversion and the replacement point of diversion or the appropriator obtains written waivers from all intervening water right holders;

(v) the replacement point of diversion is on the same surface water source and is located as close as reasonably practicable to the existing point of diversion;

(vi) the replacement point of diversion replaces an existing point of diversion and the existing point of diversion will no longer be used;

(vii) the appropriator can show that the existing point of diversion has been used in the 10 years prior to the notice for change of appropriation right for a replacement point of diversion;

(viii) the appropriator can show the change will not increase access to water availability, change the method of irrigation, if applicable, or increase the amount of water diverted, used, or consumed; and

(ix) a timely, correct and complete notice of replacement point of diversion is submitted to the department as provided in subsection (18)(b).

(b) (i) Within 60 days after completion of a replacement point of diversion, the appropriator shall file a notice of replacement point of diversion with the department on a form provided by the department.

(ii) The department shall review the notice of replacement point of diversion and shall issue an authorization of a change in an appropriation right if all of the

criteria in subsection (18)(a) have been met and the notice is correct and complete. The department may inspect the diversion to confirm that the criteria under subsection (18)(a) have been met. If the department issues an authorization of a change in an appropriation right for a replacement point of diversion, the department shall prepare a notice of the authorization and provide notice of the authorization in the same manner as required in 85-2-307 for applications.

(iii) The department may not issue an authorization of a change in appropriation right until a correct and complete notice of replacement point of diversion has been filed with the department. The department shall return a defective notice to the appropriator, along with a description of defects in the notice. The appropriator shall refile a corrected and completed notice of replacement point of diversion within 30 days of notification of defects or within a further time as the department may allow, not to exceed 6 months.

(iv) If a notice of replacement point of diversion is not filed and completed within the time allowed or if the department determines the criteria under (18)(a) have not been met, the appropriator shall:

(A) cease appropriation of water from the replacement point of diversion pending approval by the department; and

(B) submit an application for a change in appropriation right to the department pursuant to subsections (1) through (3).

(c) The provisions of this subsection (18) do not apply to an appropriation right abandoned under 85-2-404.

(d) The provisions of subsections (2), (3), (9), and (10) do not apply to a change in appropriation right that meets the requirements of subsection (18)(a).

(e) (i) An appropriator may file a correct and complete objection with the department alleging that the change in appropriation right for a replacement point of diversion will adversely affect the use of the existing water rights of other persons or other perfected or planned uses or developments for which a permit or certificate has been issued or for which a state water reservation has been issued under Title 85, chapter 2, part 3.

(ii) If the department determines after a contested case hearing between the appropriator and the objector that the rights of other appropriators have been or will be adversely affected, it may revoke the change or make the change subject to terms, conditions, restrictions, or limitations necessary to protect the rights of other appropriators.

(iii) The burden of proof to prove lack of adverse effect at the hearing is on the appropriator changing the point of diversion."

Approved May 2, 2009

CHAPTER NO. 425

[SB 100]

AN ACT INCREASING THE COAL SEVERANCE TAX ALLOCATION TO THE OIL, GAS, AND COAL NATURAL RESOURCE ACCOUNT; AMENDING SECTION 15-35-108, MCA; AND PROVIDING EFFECTIVE DATES, APPLICABILITY DATES, AND TERMINATION DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-35-108, MCA, is amended to read:

"15-35-108. (Temporary) **Disposal of severance taxes.** Severance taxes collected under this chapter must, in accordance with the provisions of 17-2-124, be allocated as follows:

(1) Fifty percent of total coal severance tax collections is allocated to the trust fund created by Article IX, section 5, of the Montana constitution. The trust fund money must be deposited in the fund established under 17-6-203(6) and invested by the board of investments as provided by law.

(2) The amount of 12% of coal severance tax collections is allocated to the long-range building program account established in 17-7-205.

(3) The amount of 5.46% must be credited to an account in the state special revenue fund to be allocated by the legislature for provision of basic library services for the residents of all counties through library federations and for payment of the costs of participating in regional and national networking, conservation districts, and the Montana Growth Through Agriculture Act. Expenditures of the allocation may be made only from this account. Money may not be transferred from this account to another account other than the general fund. Any unreserved fund balance at the end of each fiscal year must be deposited in the general fund.

(4) The amount of 1.27% must be allocated to a permanent fund account for the purpose of parks acquisition or management. Income from this permanent fund account, excluding unrealized gains and losses, must be appropriated for the acquisition, development, operation, and maintenance of any sites and areas described in 23-1-102.

(5) The amount of 0.95% must be allocated to the debt service fund type to the credit of the renewable resource loan debt service fund.

(6) The amount of 0.63% must be allocated to a trust fund for the purpose of protection of works of art in the capitol and for other cultural and aesthetic projects. Income from this trust fund account, excluding unrealized gains and losses, must be appropriated for protection of works of art in the state capitol and for other cultural and aesthetic projects.

(7) The amount of ~~2.9%~~ *5.8%* must be credited to the oil, gas, and coal natural resource account established in 90-6-1001.

(8) After the allocations are made under subsections (2) through (7), $250,000 for the fiscal year must be credited to the coal and uranium mine permitting and reclamation program account established in 82-4-244.

(9) (a) Subject to subsection (9)(b), all other revenue from severance taxes collected under the provisions of this chapter must be credited to the general fund of the state.

(b) The interest income from $140 million of the coal severance tax permanent fund that is deposited in the general fund is statutorily appropriated, as provided in 17-7-502, on an annual basis as follows:

(i) $65,000 to the cooperative development center;

(ii) $1.25 million for the growth through agriculture program provided for in Title 90, chapter 9;

(iii) $3.65 million to the research and commercialization state special revenue account created in 90-3-1002;

(iv) to the department of commerce:

(A) $125,000 for a small business development center;

(B) $50,000 for a small business innovative research program;

(C) $425,000 for certified regional development corporations;

(D) $200,000 for the Montana manufacturing extension center at Montana state university-Bozeman; and

(E) $300,000 for export trade enhancement. (Terminates June 30, 2010—sec. 6, Ch. 481, L. 2003.)

15-35-108. (Effective July 1, 2010) **Disposal of severance taxes.** Severance taxes collected under this chapter must, in accordance with the provisions of 17-2-124, be allocated as follows:

(1) Fifty percent of total coal severance tax collections is allocated to the trust fund created by Article IX, section 5, of the Montana constitution. The trust fund money must be deposited in the fund established under 17-6-203(6) and invested by the board of investments as provided by law.

(2) The amount of 12% of coal severance tax collections is allocated to the long-range building program account established in 17-7-205.

(3) The amount of 5.46% must be credited to an account in the state special revenue fund to be allocated by the legislature for provision of basic library services for the residents of all counties through library federations and for payment of the costs of participating in regional and national networking, conservation districts, and the Montana Growth Through Agriculture Act. Expenditures of the allocation may be made only from this account. Money may not be transferred from this account to another account other than the general fund. Any unreserved fund balance at the end of each fiscal year must be deposited in the general fund.

(4) The amount of 1.27% must be allocated to a permanent fund account for the purpose of parks acquisition or management. Income from this permanent fund account, excluding unrealized gains and losses, must be appropriated for the acquisition, development, operation, and maintenance of any sites and areas described in 23-1-102.

(5) The amount of 0.95% must be allocated to the debt service fund type to the credit of the renewable resource loan debt service fund.

(6) The amount of 0.63% must be allocated to a trust fund for the purpose of protection of works of art in the capitol and for other cultural and aesthetic projects. Income from this trust fund account, excluding unrealized gains and losses, must be appropriated for protection of works of art in the state capitol and for other cultural and aesthetic projects.

(7) The amount of ~~2.9%~~ *5.8%* must be credited to the oil, gas, and coal natural resource account established in 90-6-1001.

(8) After the allocations are made under subsections (2) through (7), $250,000 for the fiscal year must be credited to the coal and uranium mine permitting and reclamation program account established in 82-4-244.

(9) All other revenue from severance taxes collected under the provisions of this chapter must be credited to the general fund of the state."

Section 2. Effective date — coordination. (1) Except as provided in subsection (2), [this act] is effective July 1, 2011.

(2) If House Bill No. 645 is not passed and approved in a form that includes funding for the purposes of [this act], then [this act] is effective July 1, 2009.

Section 3. Applicability — coordination. (1) Except as provided in subsection (2), [this act] applies to severance tax collections from coal produced after June 30, 2011.

(2) If House Bill No. 645 is not passed and approved in a form that includes funding for the purposes of [this act], then [this act] applies to severance tax collections from coal produced after June 30, 2009.

Section 4. Termination — coordination. (1) Except as provided in subsection (2), [this act] terminates September 30, 2015.

(2) If House Bill No. 645 is not passed and approved in a form that includes funding for the purposes of [this act], then [this act] terminates September 30, 2013.

Approved May 4, 2009

CHAPTER NO. 426

[SB 117]

AN ACT REVISING STATUTORY APPROPRIATIONS; ELIMINATING CERTAIN STATUTORY APPROPRIATIONS CONCERNING VARIOUS MISCELLANEOUS PROVISIONS; TRANSFERRING THE AUTHORIZED USE OF THE STATUTORY APPROPRIATION FOR THE OPTIONAL RETIREMENT PROGRAM FOR THE ADMINISTRATIVE OFFICERS AND MEMBERS OF THE INSTRUCTIONAL AND SCIENTIFIC STAFF OF THE MONTANA UNIVERSITY SYSTEM FROM THE STATE TREASURER TO THE BOARD OF REGENTS; CONSOLIDATING CERTAIN HORSERACING STATUTORY APPROPRIATIONS INTO ONE STATUTORY APPROPRIATION; ELIMINATING AN INVALID STATUTORY APPROPRIATION RELATIVE TO THE CERCLA MATCH DEBT SERVICE FUND; AMENDING SECTIONS 17-7-304, 17-7-502, 19-21-203, 23-4-105, 23-4-202, 23-4-204, 23-4-302, 23-4-304, 44-1-504, 53-6-703, 75-10-622, 80-5-510, AND 87-1-513, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-7-304, MCA, is amended to read:

"17-7-304. Disposal of unexpended appropriations. (1) All money appropriated for any specific purpose except that appropriated for the university system units listed in subsection (2) [or state money appropriated for the state children's health insurance program provided for in Title 53, chapter 4, part 10,] and except as provided in subsection (4) must, after the expiration of the time for which appropriated, revert to the several funds and accounts from which originally appropriated. However, any unexpended balance in any specific appropriation may be used for the years for which the appropriation was made or may be used to fund the provisions of 2-18-1203 through 2-18-1205 and 19-2-706 in the succeeding year.

(2) Except as provided in 17-2-108 and subsection (3) of this section, all money appropriated for the university of Montana campuses at Missoula, Butte, Dillon, and Helena and the Montana state university campuses at Bozeman, Billings, Havre, and Great Falls, the agricultural experiment station with central offices at Bozeman, the forest and conservation experiment station with central offices at Missoula, the cooperative extension service with central offices at Bozeman, and the bureau of mines and geology with central offices in Butte must, after the expiration of the time for which appropriated, revert to an

account held by the board of regents. The board of regents is authorized to maintain a fund balance~~. There is a statutory appropriation, as provided in 17-7-502~~, *and* to use the funds held in this account in accordance with a long-term plan for major and deferred maintenance expenditures and equipment or fixed assets purchases prepared by the affected university system units and approved by the board of regents. The affected university system units may, with the approval of the board of regents, modify the long-term plan at any time to address changing needs and priorities. The board of regents shall communicate the plan to each legislature, to the finance committee when requested by the committee, and to the office of budget and program planning.

(3) Subsection (2) does not apply to reversions that are the result of a reduction in spending directed by the governor pursuant to 17-7-140. Any amount that is a result of a reduction in spending directed by the governor must revert to the fund or account from which it was originally appropriated.

(4) (a) Subject to subsection (4)(b), after the end of a fiscal year, 30% of the money appropriated to an agency for that year by the general appropriations act for personal services, operating expenses, and equipment, by fund type, and remaining unexpended and unencumbered at the end of the year may be reappropriated to be spent during the following 2 years for any purpose that is consistent with the goals and objectives of the agency. The dollar amount of the 30% amount that may be carried forward and spent must be determined by the office of budget and program planning.

(b) (i) Any portion of the 30% of the unexpended and unencumbered money referred to in subsection (4)(a) that was appropriated to a legislative branch entity may be deposited in the account established in 5-11-407.

(ii) After the end of a biennium, any portion of the unexpended and unencumbered money appropriated for the operation of the preceding legislature in a separate appropriation act may be deposited in the account established in 5-11-407. The approving authority shall determine the portion of the unexpended and unencumbered money that is deposited in the account. (Bracketed language terminates on occurrence of contingency—sec. 7, Ch. 565, L. 2005.)"

Section 2. Section 17-7-502, MCA, is amended to read:

"17-7-502. Statutory appropriations — definition — requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-17-105; 5-11-120; 5-11-407; 5-13-403; 7-4-2502; 10-1-1202; 10-1-1303; 10-2-603; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-121; 15-1-218; 15-23-706; 15-31-906; 15-35-108; 15-36-332; 15-37-117; 15-39-110; 15-65-121; 15-70-101; 15-70-369; 15-70-601; 16-11-509; 17-3-106; 17-3-212; 17-3-222; 17-3-241; 17-6-101; ~~17-7-304;~~ 18-11-112; 19-3-319; 19-6-404; 19-6-410;

19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 19-20-607; 19-21-203; 20-8-107; 20-9-534; 20-9-622; 20-26-1503; 22-3-1004; 23-4-105; ~~23-4-202; 23-4-204; 23-4-302; 23-4-304;~~ 23-5-306; 23-5-409; 23-5-612; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503; 41-5-2011; 42-2-105; ~~44-1-504;~~ 44-12-206; 44-13-102; 50-4-623; 53-1-109; ~~53-6-703;~~ 53-24-108; 53-24-206; 60-11-115; 61-3-415; 69-3-870; 75-1-1101; ~~75-5-1108;~~ ~~75-6-214;~~ *75-5-1108; 75-6-214;* 75-11-313; 76-13-150; 77-1-108; 77-2-362; 80-2-222; 80-4-416; ~~80-5-510;~~ 80-11-518; 82-11-161; ~~87-1-513;~~ 90-1-115; 90-1-205; 90-3-1003; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; ~~pursuant to sec. 4, Ch. 497, L. 1999, the inclusion of 15-38-202 terminates July 1, 2014;~~ pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, and secs. 3 and 6, Ch. 481, L. 2003, the inclusion of 15-35-108 terminates June 30, 2010; pursuant to sec. 17, Ch. 593, L. 2005, the inclusion of 15-31-906 terminates January 1, 2010; pursuant to sec. 73, Ch. 44, L. 2007, the inclusion of 19-6-410 terminates upon the death of the last recipient eligible under 19-6-709(2) for the supplemental benefit provided by 19-6-709; and pursuant to sec. 6, Ch. 2, Sp. L. September 2007, the inclusion of 76-13-150 terminates June 30, 2009.)"

Section 3. Section 19-21-203, MCA, is amended to read:

"19-21-203. Contributions — supplemental and plan choice rate contributions. The following provisions apply to program participants not otherwise covered under 19-21-214:

(1) (a) Each program participant shall contribute an amount equal to the member's contribution required under 19-20-602.

(b) (i) Each month, the board of regents shall calculate an amount equal to 1% of each participant's earned compensation~~,~~ *and* total the amounts calculated~~, and certify to the state treasurer the total amount for all participants combined~~.

(ii) ~~Within 1 week of receiving notice of the certified amount, the state treasurer shall transfer the certified amount from the general fund to the board of regents. Upon receipt of the amount transferred, the~~ *The* board ~~[~~of regents~~]~~ shall allocate and deposit to the account of each participant the amount calculated for that participant under subsection (1)(b)(i). The amounts ~~transferred~~ *allocated* under this subsection (1)(b)(ii) are statutorily appropriated *to the board of regents from the general fund*, as provided in 17-7-502.

(c) The board of regents shall contribute an amount that, when added to the sum of the participant's contribution plus the contribution made under subsection (1)(b)(ii), is equal to 13% of the participant's earned compensation.

(2) (a) The board of regents may:

(i) reduce the participant's contribution rate established in subsection (1) to an amount not less than 6% of the participant's earned compensation; and

(ii) increase the employer's contribution rate to an amount not greater than 6% of the participant's earned compensation.

(b) Notwithstanding the supplemental contributions required under 19-20-604 and subsection (5) of this section, the sum of the participant's contributions made under subsection (1)(a), the state's contributions made under subsection (1)(b), and the employer's contributions made under subsection (1)(c) must remain at 13% of the participant's earned compensation.

(3) The board of regents shall determine whether the participant's contribution is to be made by salary reduction under section 403(b) of the Internal Revenue Code, 26 U.S.C. 403(b), as amended, or by employer pickup under section 414(h)(2) of that code, 26 U.S.C. 414(h)(2), as amended.

(4) The disbursing officer of the employer or other official designated by the board of regents shall pay both the participant's contribution and the appropriate portion of the board of regents' contribution to the designated company or companies for the benefit of the participant.

(5) The board of regents shall make the supplemental contributions to the teachers' retirement system, as provided in 19-20-621, to discharge the obligation incurred by the Montana university system for the past service liability incurred by active, inactive, and retired members of the teachers' retirement system."

Section 4. Section 23-4-105, MCA, is amended to read:

"23-4-105. Authority of board. The board shall license and regulate racing, match bronc rides, and wild horse rides and review race meets held in this state under this chapter. All percentages withheld from amounts wagered, *amounts set aside pursuant to 23-4-202(4)(d), percentages collected pursuant to 23-4-204(3), percentages collected pursuant to 23-4-302(3) and (5)(b)(iii), and money collected pursuant to 23-4-304(1)(a) and (1)(b)* must be deposited in a state special revenue account and are statutorily appropriated to the board as provided in 17-7-502. The board shall then distribute all funds collected under 23-4-202(4)(d), 23-4-204(3), ~~and~~ 23-4-302(3) *and (5)(b)(iii), and 23-4-304(1)(a) and (1)(b)* to live race purses or for other purposes for the good of the existing horseracing industry. If the board decides to authorize new forms of racing, including new forms of simulcast racing, not currently authorized in Montana the board shall do so after holding public hearings to determine the effects of these forms of racing on the existing saddle racing program in Montana. The board shall consider both the economic and safety impacts on the existing racing and breeding industry."

Section 5. Section 23-4-202, MCA, is amended to read:

"23-4-202. Penalty for violations of law — authority of board — judicial review. (1) (a) A person holding a race meet or an owner, trainer, or jockey participating in a race meet, except a participant in a match bronc ride or a wild horse ride, without first being licensed under this chapter or a person violating this chapter is guilty of a misdemeanor.

(b) A person operating a parimutuel facility, parimutuel network, or simulcast parimutuel network that conducts fantasy sports league wagering without first being licensed under this chapter or a person violating this chapter is guilty of a misdemeanor.

(2) The board or, upon the board's authorization, the board of stewards of a race meet at which the stewards officiate may exclude from racecourses a person whom the board or board of stewards considers detrimental to the best interest of racing as defined by rules of the board.

(3) As its own formal act or through an act of a board of stewards of a race meet, the board may suspend or revoke any license issued by the department to a licensee and assess a fine, not to exceed $1,000, against a licensee who violates any of the provisions of this chapter or any rule or order of the board. In addition to the suspension or revocation and fine, the board may prohibit application for relicensure for a 2-year period. Fines collected under this subsection must be deposited in the general fund.

(4) The board shall promulgate rules implementing this chapter, including the right to a hearing for individuals against whom action is taken or proposed under this chapter. The rules may include provisions for the following:

(a) summary imposition of penalty by the stewards of a race meet, including a fine and license suspension, subject to review under the contested case provisions of the Montana Administrative Procedure Act;

(b) stay of a summary imposition of penalty by either the board or board of stewards;

(c) retention of purses pending final disposition of complaints, protests, or appeals of stewards' rulings;

(d) setting aside of up to 3% of exotic wagering on races, including simulcast races, to be deposited in a state special revenue account ~~and statutorily appropriated to the board as provided in 17-7-502~~. The board shall then distribute all funds collected under this subsection *(4)(d)* to live race purses or for other purposes that the board considers appropriate for the good of the existing horseracing industry.

(e) using 2% of exotic wagering on live racing to be immediately and equally distributed to all purses except stakes races;

(f) assessment of penalty and interest on the late payment of fines, which must be paid before licenses are reinstated;

(g) definition of exotic forms of wagering on races to be allowed;

(h) standards for simulcast facilities;

(i) conduct and supervision of simulcast races and parimutuel betting or wagering on simulcast races;

(j) conduct and supervision of parimutuel facilities, parimutuel networks, simulcast parimutuel networks, and parimutuel wagering on fantasy sports leagues conducted at parimutuel facilities;

(k) conduct and supervision of match bronc rides and wild horse rides; and

(l) conduct and supervision of advance deposit wagering.

(5) The district court of the first judicial district of the state has exclusive jurisdiction for judicial review of cases arising under this chapter."

Section 6. Section 23-4-204, MCA, is amended to read:

"23-4-204. Race exclusively for Montana-bred horses — bonus for winner. (1) For the purpose of encouraging the breeding in this state of valuable registered horses, at least one race each day at each race meet must be limited to horses bred in this state unless, in the board's judgment, there is an insufficient number of Montana-bred horses for the race. If in the opinion of the board sufficient competition cannot be had among this class of horses, the race may be eliminated for the day and a substitute race provided instead. Races with exclusively Montana-bred horses must be run for 20% higher purses than

races in comparable conditions that are not run with exclusively Montana-bred horses.

(2) The licensee conducting the race meet shall pay a sum equal to 10% of the first money of every purse won by a horse bred in this state to the breeder of the horse within 30 days of the end of the race meet. Only the money contributed by the licensee conducting the race meet may be considered in computing the bonus.

(3) Three percent of exotic wagering on a simulcast race must be deposited in a state special revenue account. ~~Those funds are statutorily appropriated to the board as provided in 17-7-502.~~ The board shall then distribute all funds collected under this subsection to live race purses or for other purposes that the board considers appropriate for the good of the existing horseracing industry."

Section 7. Section 23-4-302, MCA, is amended to read:

"23-4-302. Distribution of deposits — breakage. (1) Each licensee conducting the parimutuel system for a simulcast race meet shall distribute all funds deposited in any pool to the winner of the parimutuel pool, less an amount that in the case of exotic wagering on races may not exceed 26% and in all other races may not exceed 20% of the total deposits plus the odd cents of all redistribution to be based on each dollar deposited exceeding a sum equal to the next lowest multiple of 10, known as "breakage".

(2) Each licensee conducting the parimutuel system for a simulcast race meet shall distribute all funds deposited with the licensee in any pool for the simulcast race meet, less an amount that in the case of exotic wagering on these races may not exceed 26%, unless the signal originator percentage is higher, in which case the Montana simulcast licensee may adopt the same percentage withheld as the place where the signal originated, and that in all other of these races may not exceed 20% of the total deposits plus the odd cents of all redistribution to be based on each dollar deposited exceeding a sum equal to the next lowest multiple of 10, known as "breakage".

(3) Each licensee conducting a parimutuel system for a simulcast race meet shall deduct 1% of the total amount wagered on the race meet and deposit it in a state special revenue account. ~~The funds deposited are statutorily appropriated to the board as provided in 17-7-502.~~ The board shall then distribute all funds collected under this subsection to live race purses or for other purposes that the board considers appropriate for the good of the existing horseracing industry.

(4) (a) Source market fees from licensed advance deposit wagering hub operators must be deposited by the board in the board's state special revenue account.

(b) The board shall pay 80% of the source market fees generated between May 1 and the following April 30 to live race meet licensees based on each live race meet licensee's percentage of the total annual on-track parimutuel handle during the previous live race season. Prior to the beginning of each year's live race season, the correct percentage must be distributed by the board to each live race meet licensee to be used for race purses or other purposes that the board considers appropriate for the good of the horseracing industry.

(c) Ten percent of the source market fees paid to the board in a calendar year may be retained by the board for the payment of administrative expenses. One-half of the remaining 10% of the source market fees paid to the board in a calendar year must, by January 31 of the following calendar year, be paid to the owner bonus program and the other one-half to the breeder bonus program.

(5) (a) The parimutuel network licensee conducting fantasy sports league wagering shall distribute all funds deposited in the pool to the winner of the parimutuel pool less the takeout amount of 26% of the total deposits.

(b) The takeout amount must be distributed as follows:

(i) 15.3846% to the parimutuel facility licensee;

(ii) 23.0769% to the parimutuel network licensee as an administrative fee; and

(iii) 61.5385% to the board's special revenue account. No more than ~~$316,000 for fiscal year 2008, or~~ 10% ~~for succeeding fiscal years,~~ of the amount collected under this subsection (5)(b)(iii) may be appropriated by the legislature for administration of this chapter. The remaining portion collected under this subsection (5)(b)(iii) ~~is statutorily appropriated, as provided in 17-7-502,~~ *must be deposited in a state special revenue account.* ~~to the~~ *The* board *shall then distribute this portion* ~~for distribution~~ to live race purses and for other purposes that the board considers appropriate for the good of the existing horseracing industry.

(c) The odd cents of all redistribution based on each dollar deposited that exceeds a sum equal to the next lowest multiple of 10, known as "breakage", as well as unclaimed winning tickets from each parimutuel pool, must be distributed to the parimutuel network licensee."

Section 8. Section 23-4-304, MCA, is amended to read:

"23-4-304. Gross receipts — department's percentage — collection and allocation. (1) (a) Each live race meet licensee shall pay to the department within 5 days following receipt by the licensee 1% of the gross receipts of each day's parimutuel betting at each race meet. At the end of each race meet the licensee shall prepare a report to the department showing the amount of the overpayments and underpayments. If the report shows the underpayments to be in excess of the overpayments, the balance must be paid to the department. Money paid to the department may be used for the expenses incurred in carrying out this chapter. The licensee shall, at the same time, pay to the department all funds collected under 23-4-202(4)(d) on exotic wagering on races. These funds must be deposited in a state special revenue account. The board shall then distribute all funds collected under 23-4-202(4)(d) to live race purses or for other purposes that the board considers appropriate for the good of the existing horseracing industry.

(b) Each licensed simulcast facility shall pay to the department either 1% of the gross receipts of each day's parimutuel betting at each race meet or the actual cost to the board of regulating the simulcast race meet, whichever is higher. The money must be paid to the department within 5 days after receipt of the money by the licensee. At the end of each race meet the licensed simulcast facility shall prepare a report to the department showing the amount of the overpayments and underpayments. If the report shows the underpayments to be in excess of the overpayments, the balance must be paid to the department. Money paid to the department must be deposited in an account in the state special revenue fund and must be used for the administration of this chapter. The licensed simulcast facility shall, at the same time, pay to the department all funds collected under 23-4-202(4)(d) on exotic wagering on races. These funds must be deposited in a state special revenue account. The board shall then distribute all funds collected under 23-4-202(4)(d) to live race purses or for other purposes that the board considers appropriate for the good of the existing horseracing industry.

(c) The licensed parimutuel network conducting fantasy sports league wagering shall pay the funds distributed pursuant to 23-4-302(5)(b)(iii) to the department within 10 days after receipt of the money by the licensee.

(2) Prior to the beginning of the live racing season, funds collected under 23-4-202(4)(d) must be distributed by the department, after first passing through a state special revenue account, to be used for race purses that are distributed to each live race meet by the board or for other purposes that the board considers appropriate for the good of the horseracing industry.

~~(3) Except for funds collected under subsection (1)(c), the funds collected under this section and deposited in a state special revenue account are statutorily appropriated to the board as provided in 17-7-502.~~"

Section 9. Section 44-1-504, MCA, is amended to read:

"44-1-504. Special revenue account to partially fund highway patrol officers' salaries — ~~statutory appropriation~~. (1) There is an account in the state special revenue fund provided for in 17-2-102.

(2) The money in the account is *for* ~~statutorily appropriated, as provided in 17-7-502, to~~ the department of justice to fund, pursuant to 2-18-303(6):

(a) the base salary and associated operating costs for highway patrol officer positions; and

(b) biennial salary increases for highway patrol officers."

Section 10. Section 53-6-703, MCA, is amended to read:

"53-6-703. Managed care community network. (1) A managed care community network shall comply with the federal requirements for prepaid health plans as provided in 42 CFR, part 434.

(2) A managed care community network may contract with the department to provide any combination of medicaid-covered health care services that is acceptable to the department.

(3) The department, prior to entering into a contract, shall require that a managed care community network demonstrate to the department its ability to bear the level of financial risk being assumed by servicing enrollees under a contract for comprehensive physical or mental health care services. The department shall by rule adopt criteria for assessing the financial solvency of a network. The rules must consider risk-bearing and management techniques and protections against financial insolvency if a managed care community network is declared insolvent or bankrupt, as determined appropriate by the department. The rules must also consider whether a network has sufficiently demonstrated its financial solvency and net worth. The department's criteria must be based on sound actuarial, financial, and accounting principles. The department is responsible for monitoring compliance with the rules. The department shall provide for independent review of any contract provisions and contract compliance with the financial solvency rules.

(4) A managed care community network may not begin operation before the approval of any necessary federal waivers and the completion of the review of an application submitted to the department. The department may charge the applicant an application review fee for the department's actual cost of review of the application. The fee must be adopted by rule by the department. Fees collected by the department must be deposited in an account in the special revenue fund ~~and are statutorily appropriated, as provided in 17-7-502,~~ to *be used by* the department to defray the cost of application review.

(5) A health care delivery system that contracts with the department under the program may not be required to provide or arrange for any health care or medical service, procedure, or product that violates religious or moral teachings and beliefs if that health care delivery system is owned, controlled, or sponsored by or affiliated with a religious institution or religious organization but must comply with the notice requirements of 53-6-705(4)(c)."

Section 11. Section 75-10-622, MCA, is amended to read:

"75-10-622. CERCLA match debt service fund. (1) There is a CERCLA match debt service fund within the debt service fund type established in 17-2-102.

(2) The state pledges, allocates, and directs to be credited to the CERCLA match debt service fund money from the resource indemnity and ground water assessment tax, as provided in 15-38-106, and from the CERCLA cost recovery account, as provided in 75-10-631.

~~(3) Money in the CERCLA match debt service fund is statutorily appropriated, as provided in 17-7-502(4).~~"

Section 12. Section 80-5-510, MCA, is amended to read:

"80-5-510. Administration of fees. Filing fees and reimbursed costs must be deposited in the seed account established in 80-5-132 for the purpose of funding costs of investigation and alternative dispute resolution. Funds deposited under this section are ~~statutorily appropriated, as provided in 17-7-502,~~ to pay actual expenses incurred by the department to administer the alternative dispute resolution program provided for in this part."

Section 13. Section 87-1-513, MCA, is amended to read:

"87-1-513. Disposition of proceeds of sale. (1) The money obtained upon the sale of seized property must be retained and accounted for by the department when the person having the property in possession at the time of seizure is prosecuted or when a prosecution of the person is pending. If the person charged with violation of the law is found guilty of or forfeits bond for violation of the fish and game laws of the state, the money received for the sale of seized property must be paid over to the state treasurer and be deposited to the credit of the fish and game fund, except as provided in subsection (2). If the party from whom the property was taken is not found guilty of any violation of the fish and game laws of this state, the money must be paid to the party from whom the game birds, wild animals, fish, or parts or portions thereof were taken. An officer is not liable for any damage on account of any search, examination, seizure, or sale. When wild animals, game birds, or fish are seized as provided in this part and the person or persons who killed or captured the wild animals, game birds, or fish cannot be ascertained or when the animals sold were killed pursuant to 87-1-225, then the money received from the sale of the wild animals, game birds, or fish must be paid directly to the state treasurer. The cost of advertising notice of sale, as required by 87-1-511, must be paid from the fish and game fund.

(2) The proceeds, after the department's cost of conducting the sale and costs incurred in donating game animal meat are deducted, from the sale of seized game animal meat must be deposited in the state special revenue fund to the credit of the department of public health and human services ~~and are statutorily appropriated, as provided in 17-7-502, to the department of public health and human services~~ for the purposes of awarding grants to the Montana food bank network in this state. Money from the grants awarded to the Montana food bank network must be used for the processing of donated game animal meat. Any

grant funds remaining after donated game animal meat is processed may be used for other appropriate purposes by the Montana food bank network."

Section 14. Effective date. [This act] is effective July 1, 2009.

Approved May 4, 2009

CHAPTER NO. 427

[SB 164]

AN ACT EXPANDING THE GOOD NEIGHBOR POLICY TO INCLUDE RECREATIONAL LAND AND WATER ACQUIRED BY THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS FOR PUBLIC HUNTING, FISHING, TRAPPING, AND OUTDOOR RECREATION AND ESTABLISHING MAINTENANCE PRIORITIES FOR THAT LAND; DEFINING "MAINTENANCE" AS APPLIED TO PUBLIC RECREATIONAL LAND AND WATER; REQUIRING THAT A PERCENTAGE ABOVE THE PURCHASE PRICE OF THE DEPARTMENT'S ACQUIRED LAND OR WATER RIGHTS BE BUDGETED FOR MAINTENANCE; ESTABLISHING A MAINTENANCE ACCOUNT; PROVIDING A STATUTORY APPROPRIATION; AMENDING SECTIONS 17-7-502, 23-1-126, 23-1-127, AND 87-1-209, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-7-502, MCA, is amended to read:

"17-7-502. Statutory appropriations — definition — requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-17-105; 5-11-120; 5-11-407; 5-13-403; 7-4-2502; 10-1-1202; 10-1-1303; 10-2-603; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-121; 15-1-218; 15-23-706; 15-31-906; 15-35-108; 15-36-332; 15-37-117; 15-39-110; 15-65-121; 15-70-101; 15-70-369; 15-70-601; 16-11-509; 17-3-106; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-7-304; 18-11-112; 19-3-319; 19-6-404; 19-6-410; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 19-20-607; 19-21-203; 20-8-107; 20-9-534; 20-9-622; 20-26-1503; 22-3-1004; 23-4-105; 23-4-202; 23-4-204; 23-4-302; 23-4-304; 23-5-306; 23-5-409; 23-5-612; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503; 41-5-2011; 42-2-105; 44-1-504; 44-12-206; 44-13-102; 50-4-623; 53-1-109; 53-6-703; 53-24-108; 53-24-206; 60-11-115; 61-3-415; 69-3-870; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 76-13-150; 77-1-108; 77-2-362; 80-2-222; 80-4-416; 80-5-510; 80-11-518; 82-11-161; *[section 5];* 87-1-513; 90-1-115; 90-1-205; 90-3-1003; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 4, Ch. 497, L. 1999, the inclusion of 15-38-202 terminates July 1, 2014; pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, and secs. 3 and 6, Ch. 481, L. 2003, the inclusion of 15-35-108 terminates June 30, 2010; pursuant to sec. 17, Ch. 593, L. 2005, the inclusion of 15-31-906 terminates January 1, 2010; pursuant to sec. 73, Ch. 44, L. 2007, the inclusion of 19-6-410 terminates upon the death of the last recipient eligible under 19-6-709(2) for the supplemental benefit provided by 19-6-709; and pursuant to sec. 6, Ch. 2, Sp. L. September 2007, the inclusion of 76-13-150 terminates June 30, 2009.)"

Section 2. Section 23-1-126, MCA, is amended to read:

"23-1-126. Good neighbor policy — public recreational ~~lands~~ *land*. (1) The good neighbor policy of public land use, as applied to public recreational ~~lands~~ *land*, seeks a goal of no impact upon adjoining private and public ~~lands~~ *land* by preventing impact on ~~those~~ *the* adjoining ~~lands~~ *land* from noxious weeds, trespass, litter, noise and light pollution, streambank erosion, and loss of privacy. *To facilitate the good neighbor policy regarding impact to adjoining land from noxious weeds, the department of fish, wildlife, and parks shall, prior to purchasing any land where noxious weeds are present, develop a noxious weed management agreement that complies with the county weed management district's noxious weed management program, as required in 7-22-2154.*

(2) In order to implement the good neighbor policy expeditiously, the legislature finds it necessary to require the department of fish, wildlife, and parks to place maintenance as a priority*:*

(a) over additional development at all state parks and fishing access sites*; and*

(b) on recreational land or water acquired pursuant to 87-1-209 for public hunting, fishing, trapping, or outdoor recreation.

(3) The restriction in subsection (2) does not apply to:

~~(a) development and improvement projects for which the legislature has appropriated funds prior to October 1, 1999;~~

~~(b)~~*(a)* activities directly related to the historic preservation, restoration, or protection of assets in state parks;

~~(c)~~*(b)* at the discretion of the department of fish, wildlife, and parks, projects on the Missouri reach of the Missouri-Madison hydropower project or the Clark Fork basin hydropower project, undertaken pursuant to the federal energy regulatory commission's hydropower relicensing requirements and in conjunction with private entities, political subdivisions of the state of Montana, and federal agencies;

~~(d)~~*(c)* at the discretion of the department of fish, wildlife, and parks, projects on Fort Peck reservoir undertaken in conjunction with the U.S. army corps of engineers; or

~~(e)~~*(d)* partnership projects as designated within the park master plan.

(4) Any development in state parks and fishing access sites beyond those defined as maintenance in 23-1-127*(1)* must be approved by the legislature."

Section 3. Section 23-1-127, MCA, is amended to read:

"23-1-127. Maintenance priority — maintenance defined. *(1)* With regard to state parks and fishing access sites, implementation of the good neighbor policy requires that priority is to be given to maintenance of existing facilities, rather than to development or improvement. As used in 23-1-126*(2)(a)* and this ~~section~~ *subsection*, "maintenance" means:

~~(1)~~*(a) weed control;*

(b) fence installation and repair of existing fences;

(c) placing, cleaning, and stocking of latrines;

~~(2)~~*(d)* garbage and litter removal;

~~(3) fence installation and repair of existing fences;~~

~~(4) weed control;~~

~~(5)~~*(e)* implementation of safety and health measures required by law to protect the public;

~~(6)~~*(f)* upkeep of established trails, roads, parking areas, boat docks, and similar facilities existing in state parks and fishing access sites on October 1, 1999;

~~(7)~~*(g)* in-kind replacement of existing facilities, including electric lines or facilities, or replacement of those existing facilities with facilities that have less impact on the state park or fishing access site;

~~(8)~~*(h)* erosion control;

~~(9)~~*(i)* streambank stabilization;

~~(10)~~*(j)* erection of barriers necessary to preserve riparian vegetation and habitat;

~~(11)~~*(k)* minimal signage necessary to inform users of appropriate state park or fishing access site use and applicable regulations and of historical, natural, cultural, geographical, and geological features in the area;

~~(12)~~*(l)* measures necessary to ensure compliance with the federal Americans With Disabilities Act of 1990, when applicable;

~~(13)~~*(m)* planting of native trees, grasses, and shrubs for habitat stabilization and privacy shielding;

~~(14)~~*(n)* installation of fire rings, picnic tables, and trash collection facilities; and

~~(15)~~*(o)* other necessary activities and expenditures consistent with the good neighbor policy and the intent of 23-1-126, 23-1-128, and this section, including new trails, new boat ramps, and necessary new access roads into and within the state park or fishing access site.

(2) With regard to recreational land or water rights acquired pursuant to 87-1-209 for public hunting, fishing, trapping, or outdoor recreation, implementation of the good neighbor policy requires that priority is to be given to maintenance. As used in 23-1-126(2)(b) and this subsection, "maintenance" means:

(a) weed control;

(b) garbage and litter removal;

(c) repair of existing fences;

(d) implementation of safety and health measures required by law to protect the public;

(e) in-kind replacement of existing facilities, including electric lines or facilities, or replacement of those existing facilities with facilities that have less impact on the land or water;

(f) erosion control;

(g) streambank stabilization;

(h) erection of barriers necessary to preserve riparian vegetation and habitat;

(i) planting of native trees, grasses, and shrubs for habitat stabilization; and

(j) other necessary activities and expenditures consistent with the good neighbor policy and the intent of 23-1-126 and this section."

Section 4. Section 87-1-209, MCA, is amended to read:

"87-1-209. Acquisition and sale of ~~lands~~ *land* or ~~waters~~ *water*. (1) The department, with the consent of the commission and, in the case of land acquisition involving more than 100 acres or $100,000 in value, the approval of the board of land commissioners, may acquire by purchase, lease, agreement, gift, or devise and may acquire easements upon ~~lands~~ *land* or ~~waters~~ *water* for the purposes listed in this subsection. *Any acquisition of land or water rights for purposes of this subsection, except that portion of acquisitions made with funds provided under 87-1-242(1), must include an additional 20% above the purchase price to be used for maintenance of land or water acquired by the department. The additional amount above the purchase price or $300,000, whichever is less, must be deposited in the account established in [section 5]. As used in this subsection, "maintenance" means that term as defined in and consistent with the good neighbor policy in 23-1-127(2).* The department may develop, operate, and maintain acquired ~~lands~~ *land* or ~~waters~~ *water rights*:

(a) for fish hatcheries or nursery ponds;

(b) as ~~lands~~ *land* or water suitable for game, bird, fish, or fur-bearing animal restoration, propagation, or protection;

(c) for public hunting, fishing, or trapping areas;

(d) to capture, propagate, transport, buy, sell, or exchange any game, birds, fish, fish eggs, or fur-bearing animals needed for propagation or stocking purposes or to exercise control measures of undesirable species;

(e) for state parks and outdoor recreation;

(f) to extend and consolidate by exchange, ~~lands~~ *land* or ~~waters~~ *water rights* suitable for these purposes.

(2) The department, with the consent of the commission, may acquire by condemnation, as provided in Title 70, chapter 30, ~~lands~~ *land* or structures for the preservation of historical or archaeological sites that are threatened with destruction or alteration.

(3) (a) Subject to section 2(3), Chapter 560, Laws of 2005, the department, with the consent of the commission, may dispose of ~~lands~~ *land* and water rights acquired by it on those terms after public notice as required by subsection (3)(b) of this section, without regard to other laws that provide for sale or disposal of state ~~lands~~ *land* and with or without reservation, as it considers necessary and advisable. The department, with the consent of the commission, may convey

department ~~lands~~ *land* and water rights for full market value to other governmental entities or to adjacent landowners without regard to the requirements of subsection (3)(b) or (3)(c) if the land is less than 10 acres or if the full market value of the interest to be conveyed is less than $20,000. When the department conveys land or water rights to another governmental entity or to an adjacent landowner pursuant to this subsection, the department, in addition to giving notice pursuant to subsection (3)(b), shall give notice by mail to the landowners whose property adjoins the department property being conveyed.

(b) Subject to section 2(3), Chapter 560, Laws of 2005, notice of sale describing the ~~lands~~ *land* or ~~waters~~ *water rights* to be disposed of must be published once a week for 3 successive weeks in a newspaper with general circulation printed and published in the county where the ~~lands~~ *land* or ~~waters are~~ *water right is* situated or, if a newspaper is not published in that county, then in any newspaper with general circulation in that county.

(c) The notice must advertise for cash bids to be presented to the director within 60 days from the date of the first publication. Each bid must be accompanied by a cashier's check or cash deposit in an amount equal to 10% of the amount bid. The highest bid must be accepted upon payment of the balance due within 10 days after mailing notice by certified mail to the highest bidder. If that bidder defaults on payment of the balance due, then the next highest bidders must be similarly notified in succession until a sale is completed. Deposits must be returned to the unsuccessful bidders except bidders defaulting after notification.

(d) The department shall reserve the right to reject any bids that do not equal or exceed the full market value of the ~~lands~~ *land* ~~and~~ ~~waters~~ *or water right* as determined by the department. If the department does not receive a bid that equals or exceeds fair market value, it may then sell the ~~lands~~ *land* or water rights at private sale. The price accepted on any private sale must exceed the highest bid rejected in the bid process.

(4) When necessary and advisable for the management and use of department property, the director is authorized to grant or acquire from willing sellers right-of-way easements for purposes of utilities, roads, drainage facilities, ditches for water conveyance, and pipelines if the full market value of the interest to be acquired is less than $20,000. Whenever possible, easements must include a weed management plan. Approval of the commission is not required for grants and acquisitions made pursuant to this subsection. In granting any right-of-way pursuant to this subsection, the department shall obtain a fair market value, but the department is not otherwise required to follow the disposal requirements of subsection (3). The director shall report any easement grant or acquisition made pursuant to this subsection to the commission at its next regular meeting.

(5) The department shall convey ~~lands~~ *land* and water rights without covenants of warranty by deed executed by the governor or in the governor's absence or disability by the lieutenant governor, attested by the secretary of state and further countersigned by the director.

(6) The department, with the consent of the commission, is authorized to utilize the installment contract method to facilitate the acquisition of wildlife management areas in which game and nongame fur-bearing animals and game and nongame birds may breed and replenish and areas that provide access to fishing sites for the public. The total cost of installment contracts may not exceed the cost of purchases authorized by the department and appropriated by the legislature.

(7) The department is authorized to enter into leases of land under its control in exchange for services to be provided by the lessee on the leased land."

Section 5. Maintenance account — annual report. (1) There is a maintenance account in the state special revenue fund. In addition to the funds set aside for maintenance of land or water acquired by the department pursuant to 87-1-209(1), the department shall also deposit into the maintenance account:

(a) funds dedicated for development and maintenance of real property used for wildlife habitat under 87-1-242(4)(a);

(b) interest earned on the account; and

(c) any other money that the department considers appropriate or necessary for maintenance of the department's land or water.

(2) Funds deposited in the account are statutorily appropriated, as provided in 17-7-502, to the department and may be used only for maintenance of any land or water acquired by the department.

(3) (a) The department shall provide an annual report regarding deposits into and withdrawals from the account established in subsection (1) to the oversight subcommittee of the environmental quality council for the purpose of demonstrating the use of funds in the account toward the good neighbor policy.

(b) The report must describe the types of maintenance completed by fish, wildlife, and parks region and maintenance plans for the subsequent fiscal year.

(c) The report is due to the environmental quality council by September 1 following the end of each fiscal year.

Section 6. Codification instruction. [Section 5] is intended to be codified as an integral part of Title 87, chapter 1, part 2, and the provisions of Title 87, chapter 1, part 2, apply to [section 5].

Section 7. Effective date. [This act] is effective on passage and approval.

Section 8. Termination. [This act] terminates June 30, 2013.

Approved May 4, 2009

CHAPTER NO. 428

[SB 268]

AN ACT REVISING THE LAW REQUIRING CERTAIN VEHICLES TO SECURE CERTAIN LOADS WHEN TRAVELING ON A PUBLIC HIGHWAY; AND AMENDING SECTION 61-8-370, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-8-370, MCA, is amended to read:

"61-8-370. Securing of load — requirement — *exemptions.* *(1)* A person operating a loaded vehicle on a public highway ~~for the purpose of transporting solid waste as defined in 75-10-203, except a commercial motor vehicle or a vehicle transporting unprocessed agricultural products,~~ shall ~~attach, cover, or otherwise~~ *load the vehicle or* secure the load sufficiently to prevent littering or creating an obstruction dangerous to the public traveling on the highway.

(2) The following vehicles are exempt from the provisions in subsection (1):

(a) a commercial motor vehicle that is operating in compliance with state and federal laws and requirements governing the securing of loads;

(b) a vehicle transporting processed or unprocessed agricultural products or inputs, including but not limited to fertilizer, manure, and pesticides;

(c) a vehicle performing road maintenance; and

(d) a vehicle in a marked construction zone."

Approved May 4, 2009

CHAPTER NO. 429

[SB 343]

AN ACT CREATING THE MONTANA AQUATIC INVASIVE SPECIES ACT; ESTABLISHING THE INVASIVE SPECIES ACCOUNT; DEFINING DEPARTMENTAL RESPONSIBILITIES; ENCOURAGING COOPERATION AMONG PUBLIC AND PRIVATE ENTITIES; GRANTING RULEMAKING AUTHORITY; AUTHORIZING THE USE OF MANAGEMENT AREAS TO PREVENT THE SPREAD OF AQUATIC INVASIVE SPECIES; PROVIDING FOR THE PREVENTION AND CONTROL OF INFESTATIONS; AUTHORIZING INSPECTION OF THE EXTERIOR OF VESSELS FOR AQUATIC INVASIVE SPECIES; PROHIBITING THE TRANSFER OR TRANSPORT OF AQUATIC INVASIVE SPECIES; PROVIDING EXCEPTIONS; AUTHORIZING EMERGENCY DECLARATIONS; PROVIDING CIVIL AND CRIMINAL PENALTIES; AMENDING SECTIONS 10-3-312, 87-1-506, AND 87-5-721, MCA; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, invasive species can wreak damage on the economy, environment, recreational opportunities, and human health; and

WHEREAS, aquatic invasive species, including Eurasian watermilfoil, the quagga mussel, and the zebra mussel, pose new and imminent threats, which if left unchecked could cost millions of dollars not only in damage to Montana waterways, rivers, and lakes, to water storage, delivery, and irrigation systems, to hydroelectric power structures and systems, and to aquatic ecosystems, but also to the entire state economy; and

WHEREAS, the enormous impact caused by the zebra mussel is clearly demonstrated in the eastern United States where the species was first observed in Lake Ontario in 1988 and spread to Lake Michigan and the Finger Lakes Region in New York State by the following year; and

WHEREAS, the United States Geological Survey estimates that $5 billion has been spent thus far in the Great Lakes Basin alone for damages caused by and control efforts for the zebra mussel; and

WHEREAS, the zebra mussel was first discovered in Lake Mead in January 2007 and has now spread to Lakes Mojave and Havasu and the Colorado River, impacting the states of Arizona, Nevada, and California, as well as to Pueblo Reservoir in Colorado, San Justo Reservoir in California, and Electric Lake in Utah; and

WHEREAS, Eurasian watermilfoil, the zebra mussel, and the quagga mussel are easily carried on vessels used in infested water and then transported to another body of water if the vessel has not been properly cleaned; and

WHEREAS, Eurasian watermilfoil is already present in Montana and unless Montana takes action now to prevent the infestation of its waters with the zebra mussel and quagga mussel it is only a matter of time before their introduction in this state occurs; and

WHEREAS, the most cost-effective way of dealing with an aquatic invasive species is preventing an infestation from occurring.

Be it enacted by the Legislature of the State of Montana:

Section 1. Short title. [Sections 1 through 14] may be cited as the "Montana Aquatic Invasive Species Act".

Section 2. Legislative findings and purpose. (1) The legislature finds that:

(a) invasive species can wreak damage on the economy, environment, recreational opportunities, and human health in Montana;

(b) there is reason to be concerned about the further introduction, importation, and infestation of Eurasian watermilfoil (Myriophyllum spicatum) and the introduction, importation, and infestation of additional invasive species not yet present in Montana, such as the zebra mussel (Dreissena polymorpha) and the quagga mussel (Dreissena bugensis), that could cause catastrophic damage to not only our waterways, rivers, and lakes, our water storage, delivery, and irrigation systems, our hydroelectric power structures and systems, and our aquatic ecosystems, but also to the entire state economy;

(c) as infestations of threatening invasive species move ever closer to Montana's borders, protecting Montana against these species is of utmost importance to the state economy, environment, recreational opportunities, and human health for the benefit of all Montanans;

(d) preventing the introduction, importation, and infestation of invasive species is the most effective and least costly strategy for combating invasive species that, once established, are often difficult to control or eradicate;

(e) the use of check stations, at which the exterior of vessels may be inspected for the presence of invasive species and cleaned if an invasive species is detected, is an effective way to prevent the introduction, importation, and infestation of invasive species that are easily transferred from infested areas to uninfested areas when proper precautions are not taken; and

(f) preventing the introduction, importation, and infestation of invasive species is best accomplished through coordinated educational and management activities.

(2) The purpose of [sections 1 through 14] is to establish a mechanism for Montana to take concerted action to detect, control, and manage invasive species, including preventing further introduction, importation, and infestation, by educating the public about the threat of these species, coordinating public and private efforts and expertise to combat these species, and authorizing the use of check stations to prevent the intrastate movement of invasive species from infested areas to uninfested areas to protect the state's economy, environment, recreational opportunities, and human health for the benefit of all Montanans.

Section 3. Definitions. As used in [sections 1 through 14], the following definitions apply:

(1) "Departments" means the department of agriculture and the department of fish, wildlife, and parks.

(2) "Invasive species" means, upon the mutual agreement of the directors of the departments of agriculture and fish, wildlife, and parks, a nonnative, aquatic species that has caused, is causing, or is likely to cause harm to the economy, environment, recreational opportunities, or human health.

(3) "Invasive species management area" means a designation made by a department for a specific area, for a body or bodies of water, or for the entire state for a specific or indeterminate amount of time that regulates invasive species or potential carriers of invasive species within the boundaries of that area.

(4) "Person" means an individual, partnership, corporation, association, limited partnership, limited liability company, governmental subdivision, agency, or public or private organization of any character.

(5) "Vessel" has the meaning provided in 61-1-101.

Section 4. Invasive species account. (1) There is an invasive species account in the state special revenue fund. The account is administered by the department of agriculture.

(2) Money transferred from the general fund or received from any other lawful source, including but not limited to gifts, grants, donations, securities, or other assets, public or private, may be deposited in the account.

(3) Subject to subsection (4), money deposited in the account must be used to accomplish the purposes of [sections 1 through 14].

(4) Any private contribution deposited in the account for a particular purpose, as stated by the donor, must be used exclusively for that purpose.

(5) Any interest and earnings on the account must be retained in the account.

Section 5. Cooperative agreement for invasive species detection and control. (1) In order to implement, administer, and accomplish the purposes of [sections 1 through 14], the departments, collectively or individually, shall enter into a cooperative agreement with each other or may enter into an agreement with any person with the appropriate expertise and administrative capacity to perform the obligations of the agreement.

(2) Prior to entering an agreement with a person other than a department, the departments shall work in collaboration with each other to coordinate their respective responsibilities in order to further the purposes of [sections 1 through 14].

(3) A cooperative agreement may include provisions for funding to implement the agreement.

(4) The overall coordinating authority is the department of agriculture.

Section 6. Departmental responsibilities. (1) The departments shall prepare a list of invasive species and identify those departments and other public agencies with jurisdiction over each species on the list. The jurisdiction of each department for the prevention and control of invasive species is according to the department's powers and duties as established by law.

(2) For those invasive species under the jurisdiction of more than one department, the departments with jurisdiction, through cooperative agreement, shall seek to clarify and coordinate their respective responsibilities.

(3) Working in collaboration with each other, the departments, individually or collectively, shall develop and adopt an invasive species strategic plan or plans to accomplish the purposes of [sections 1 through 14]. The plan or plans shall identify and prioritize threats and determine appropriate actions, in the following order of priority, related to:

(a) public awareness and education;

(b) prevention and detection of invasive species, including the use of invasive species management areas authorized under [section 8];

(c) management, control, and restoration of infested areas; and

(d) emergency response.

(4) The departments shall implement education and outreach programs that increase public knowledge and understanding of prevention, early detection, and control of invasive species.

Section 7. Rulemaking authority. Unless otherwise provided in Title 81, chapters 2 and 7, or this chapter each of the departments may adopt rules for the prevention, early detection, and control of invasive species under the departments' jurisdiction, including rules for the:

(1) implementation of an invasive species strategic plan;

(2) transportation of an invasive species or any agent likely to be a carrier of an invasive species;

(3) designation, regulation, and treatment of an invasive species management area, including rules pertaining to the movement of vessels within, to, or from the area and the inspection and cleaning of the exterior of vessels moving within, to, or from the area; and

(4) manner in which vessels, including bilges, livewells, bait containers, and other boating-related equipment, traveling in the state must be cleaned to ensure that they are free from the presence of an invasive species.

Section 8. Invasive species management area — authorization. (1) When an invasive species is identified as infesting or threatening an area, the department with jurisdiction over that invasive species may designate and administer an invasive species management area for a specific area of land, for a body or bodies of water, or for the entire state for a specific or indeterminate amount of time to prevent and control the infestation or spread of that invasive species.

(2) To the extent practicable, prior to the designation of an invasive species management area, the department making the designation shall coordinate with all of the departments in order to further the purposes of [sections 1 through 14].

(3) The designation of an invasive species management area must specify:

(a) the invasive species present or considered threatening; and

(b) (i) subject to subsection (3)(b)(ii), the method or methods for preventing the introduction of the species or controlling or eradicating the species, including regulations pertaining to the movement of vessels within, to, and from the area and whether check stations will be used to inspect and clean the exterior of vessels moving within, to, or from the area.

(ii) If the invasive species management area encompasses the entire state, departmental authority to prescribe requirements for cleaning and inspecting the exterior of vessels traveling within the state is limited to those vessels required to stop at a check station pursuant to [section 11(3)(b)].

(4) As far as practical, signs indicating that an invasive species management area is in place must be posted in an effective manner at access points to the designated area and along the boundaries and within the area. The signs must include information about the specific regulations that apply to the area. The signs must be paid for with funds from the invasive species account established

in [section 4]. The departments may coordinate with any other governmental entity for the posting of signs.

Section 9. Arrangements with landowners. (1) The department designating an invasive species management area pursuant to [section 8] shall work cooperatively with any affected land managers and landowners within the boundaries of the designated area to establish prevention, treatment, control, and eradication methods best suited for the invasive species infesting or threatening the area.

(2) If negotiations with a land manager or landowner fail, the designating department may arrange for the prevention, treatment, control, and eradication of the designated species as it relates to water infrastructure, including but not limited to hydroelectric, municipal, recreational, and irrigation equipment, without the consent of the land manager or landowner. To the extent possible, the arrangements by the department must be made in a manner best suited to preventing, treating, controlling, and eradicating the invasive species, while minimizing disturbances and adverse impacts to the landowner.

Section 10. Invasive species management area — regulation. (1) The owner, operator, or person in possession of any vessel authorized for use in an invasive species management area shall comply with any regulations imposed pursuant to [section 8(3)(b)].

(2) After use in a body of water within an invasive species management area, all vessels, bait containers, livewells, bilges, and other boating-related equipment, excluding marine sanitary systems, must be drained in a way that does not impact any state waters before being transported on land or a public highway, as defined in 61-1-101, except where allowed by the department of fish, wildlife, and parks.

(3) In a body of water designated as an invasive species management area, taking from the water or possessing any bait animal, dead or alive, including but not limited to crayfish, leeches, and minnows, is prohibited unless approved by the department of fish, wildlife, and parks.

Section 11. Check stations. (1) Departments shall establish a check station within or adjacent to an invasive species management area to prevent the introduction, importation, infestation, and spread of the invasive species for which the designation was issued.

(2) At a check station, the departments may examine the exterior of vessels for the presence of an invasive species and compliance with regulations imposed under [section 8(3)(b)] and with this section.

(3) (a) Except as provided in subsection (3)(b), the owner, operator, or person in possession of a vessel shall stop at any check station unless a medical emergency makes stopping likely to result in death or serious bodily injury.

(b) If a check station is established under regulations pertaining to a statewide invasive species management area, a stop at that check station is required only for a vehicle transporting a vessel, excluding vessels that have never been used.

(4) If during an inspection of the exterior of a vessel the presence of an invasive species is detected upon the exterior of the vessel, that vessel may not leave the check station until it is cleaned and decontaminated in a manner established in accordance with [section 8(3)(b)].

Section 12. Invasive species possession and transfer prohibited — exceptions. (1) Except as provided in subsection (2), a person may not import,

purchase, sell, barter, distribute, propagate, transport, introduce, or possess an invasive species except:

(a) when transporting a specimen to any of the departments or another destination as directed by any of the departments in a sealed container for the purpose of containing, identifying, or reporting the presence of the species or for an approved educational purpose;

(b) when done by a government agency for an approved purpose;

(c) with a proper permit issued by the state or federal government; or

(d) as allowed by rule.

(2) A person who learns of the presence of an invasive species on that person's vessel or property shall notify the department with primary jurisdiction of the species immediately. If the person complies with department requirements for the treatment, control, and eradication of the invasive species, the person must be considered to be in compliance with this section and is not subject to penalties under [section 14]. This subsection does not apply to a person who purposely or knowingly introduces or attempts to introduce an invasive species in Montana.

Section 13. Emergency response. (1) The governor may declare an invasive species emergency if the introduction or spread of an invasive species has occurred or is imminent.

(2) If an emergency is declared pursuant to subsection (1), the governor may authorize the expenditure of funds pursuant to 10-3-312.

Section 14. Penalty. (1) Except as provided in subsection (2), the following penalties apply:

(a) The offense of negligently violating the provisions of [sections 10 through 12] or rules adopted under [sections 10 through 12] pertaining to an invasive species management area is a misdemeanor punishable by a fine not to exceed $500.

(b) The offense of purposely or knowingly violating the provisions of [sections 10 through 12] or rules adopted under [sections 10 through 12] pertaining to an invasive species management area is a misdemeanor punishable by a fine not to exceed $1,000.

(c) Purposely or knowingly attempting to introduce an invasive species in Montana is a felony. Any person found guilty under this subsection (1)(c) is subject to a criminal penalty of up to 2 years in prison, a fine not to exceed $5,000, or both. A person convicted of violating this subsection (1)(c) may also be required to pay restitution for any cost incurred to mitigate the effect of the violation.

(d) A civil penalty not to exceed $250 may be imposed on any person who violates any other provision of [sections 10 through 12] or rules adopted under [sections 10 through 12] not enumerated in subsections (1)(a) through (1)(c).

(2) A warning without penalty may be issued to any person violating the provisions of [sections 10 through 12] or rules adopted under [sections 10 through 12] if it is determined that a warning best serves the public interest.

(3) Civil penalties collected under this section must be deposited in the general fund.

Section 15. Section 10-3-312, MCA, is amended to read:

"10-3-312. Maximum expenditure by governor — appropriation. (1) Whenever *a disaster or* an emergency, including an energy emergency as defined in 90-4-302 *or an invasive species emergency declared under [section 13]*, ~~or a disaster~~ is declared by the governor, there is statutorily appropriated to the office of the governor, as provided in 17-7-502, and, subject to subsection (2), the governor is authorized to expend from the general fund an amount not to exceed $16 million in any biennium, minus any amount appropriated pursuant to 10-3-310 in the same biennium. The statutory appropriation in this subsection may be used by any state agency designated by the governor.

(2) In the event of the recovery of money expended under this section, the spending authority must be reinstated to a level reflecting the recovery.

(3) If a disaster is declared by the president of the United States, there is statutorily appropriated to the office of the governor, as provided in 17-7-502, and the governor is authorized to expend from the general fund an amount not to exceed $500,000 during the biennium to meet the state's share of the individual and family grant programs as provided in 42 U.S.C. 5178. The statutory appropriation in this subsection may be used by any state agency designated by the governor."

Section 16. Section 87-1-506, MCA, is amended to read:

"87-1-506. Enforcement powers of wardens. (1) A warden may:

(a) serve a subpoena issued by a court for the trial of a violator of the fish and game laws;

(b) search, without a warrant, any tent not used as a residence, any boat, vehicle, box, locker, basket, creel, crate, game bag, or package, or their contents upon probable cause to believe that any fish and game law or department rule for the protection, conservation, or propagation of game, fish, birds, or fur-bearing animals has been violated;

(c) search, with a search warrant, any dwelling house or other building;

(d) seize game, fish, game birds, and fur-bearing animals and any parts of them taken or possessed in violation of the law or the rules of the department;

(e) seize and hold, subject to law or the orders of the department, devices that have been used to unlawfully take game, fish, birds, or fur-bearing animals;

(f) arrest, in accordance with Title 46, chapter 6, a violator of a fish and game law or rule of the department, violation of which is a misdemeanor;

(g) enforce the disorderly conduct and public nuisance laws, 45-8-101 and 45-8-111, as they apply to the operation of motorboats on all waters of the state;

(h) as provided for in 37-47-345, investigate and make arrests for violations of the provisions of Title 37, chapter 47, and of any rules adopted pursuant to that chapter relating to the regulation of outfitters and guides in the state; ~~and~~

(i) enforce the provisions of [sections 10 through 12] and rules adopted under [sections 10 through 12] for those invasive species that are under the department's jurisdiction; and

~~(i)~~*(j)* exercise the other powers of peace officers in the enforcement of the fish and game laws, the rules of the department, and judgments obtained for violation of those laws or rules.

(2) The meat of game animals that are seized pursuant to subsection (1)(d) must be donated directly to the Montana food bank network~~,~~ or to public or charitable institutions~~,~~ to the extent reasonably feasible. Any meat that the

department is unable to donate must be sold pursuant to 87-1-511, with the proceeds to be distributed as provided in 87-1-513(2)."

Section 17. Section 87-5-721, MCA, is amended to read:

"87-5-721. Penalty — license and permit revocation and denial. (1) Except as provided in subsection (2), a person who violates a provision of this part is guilty of a misdemeanor punishable as provided in 87-1-102, and the department, upon conviction of the person, shall revoke any license or permit issued by it under this title to the person and deny any application by the person for a license or permit under this title for a period not to exceed 2 years from the date of the conviction.

(2) A person who intentionally imports, introduces, or transplants fish in violation of this part:

(a) is guilty of an offense punishable by a fine of not less than $500 or more than $5,000 and imprisonment for up to 1 year. A sentencing court may consider an appropriate amount of community service in lieu of imprisonment. A sentencing court may not defer or suspend $500 of the fine amount.

(b) is civilly liable for the amount necessary to eliminate or mitigate the effects of the violation. The damages may be recovered on behalf of the public by the department or by the county attorney of the county in which the violation occurred, in a civil action in a court of competent jurisdiction. Money recovered by the department or a county attorney must be deposited in the state special revenue fund as provided in 87-1-601(1).

(c) upon conviction or forfeiture of bond or bail, shall forfeit from the date of conviction or forfeiture any current hunting, fishing, or trapping license issued under this title and the privilege to hunt, fish, or trap in this state for not less than 24 months. If the time necessary to eliminate or mitigate the effects of the violation exceeds 24 months, a person may be required to forfeit the privilege to hunt, fish, or trap in this state for more than 24 months. If the effects of the violation cannot be eliminated or mitigated, a person may be required to forfeit the privilege to hunt, fish, or trap in this state for the lifetime of that person.

(3) Any exotic wildlife held in violation of this part must be shipped out of state, returned to the point of origin, or destroyed within ~~6 months of a conviction or sooner if ordered by the court~~ *a time set by the department, not to exceed 6 months*. The person in possession of the exotic wildlife may choose the method of disposition. If the person in possession of the exotic wildlife does not comply with this requirement, the department may confiscate and then house, transport, or destroy the unlawfully held exotic wildlife. The department may charge any person convicted of a violation of this part for the costs associated with the handling, housing, transporting, or destroying of the exotic wildlife."

Section 18. Codification instruction. [Sections 1 through 14] are intended to be codified as an integral part of Title 80, chapter 7, and the provisions of Title 80, chapter 7, apply to [sections 1 through 14].

Section 19. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 20. Effective date. [This act] is effective July 1, 2009.

Approved May 4, 2009

CHAPTER NO. 430

[SB 399]

AN ACT PROVIDING CHILDREN WITH MENTAL HEALTH NEEDS WITH IN-STATE SERVICE ALTERNATIVES TO OUT-OF-STATE PLACEMENT; ESTABLISHING DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES INFORMATION COLLECTION AND REPORTING REQUIREMENTS REGARDING HIGH-RISK CHILDREN WITH MULTIAGENCY SERVICE NEEDS; AND AMENDING SECTION 52-2-302, MCA.

WHEREAS, the 1993 Montana Legislature recognized that some Montana children have mental health and other needs that require services from multiple agencies; and

WHEREAS, the 1993 Legislature expressed a desire to provide services to these children in their homes or communities whenever possible and to use out-of-state providers as a last resort; and

WHEREAS, subsequent legislatures have strengthened the policy first established in 1993 by encouraging development of an array of in-state services so that children placed out of state may return home and children in the state can remain in their homes, community, or state; and

WHEREAS, the state of Montana has sought and obtained federal funds to help plan for local services that can keep children with multiagency service needs in their homes and communities; and

WHEREAS, information from the Department of Public Health and Human Services indicates that out-of-state placement of children continues and has increased in recent years.

Be it enacted by the Legislature of the State of Montana:

Section 1. Development and use of in-state pool of providers. In order to accomplish the goals of 52-2-301, the department shall establish a pool of qualified in-state providers identified as willing and able to meet the significant needs of high-risk children with multiagency service needs who are currently placed or may be placed out of state. The department shall design a process in which licensed providers qualify for the pool by demonstrating their ability to provide mental health services for children:

(1) through use of available federal and state special revenue and state general fund money; and

(2) in accordance with the state's goal of using a wraparound philosophy of care.

Section 2. Out-of-state placement monitoring and reporting. (1) The department shall collect the following information regarding high-risk children with multiagency service needs:

(a) the number of children placed out of state;

(b) the reasons each child was placed out of state;

(c) the costs for each child placed out of state;

(d) the efforts the department made to avoid out-of-state placements, including:

(i) the number of in-state providers the department contacted about developing service alternatives for a child in or at risk of being placed in an out-of-state facility;

(ii) whether any in-state providers submitted a plan for service alternatives for the child to the department; and

(iii) if a plan for service alternatives was submitted, the reasons the plan was not implemented and the out-of-state placement was determined to be necessary;

(e) the number of children for whom plans for service alternatives were developed, implemented, and resulted in the return of a child from an out-of-state placement or prevented a child from being placed out of state; and

(f) other planning efforts to prepare for a child's return to the state.

(2) On an ongoing basis, the department shall attempt to reduce out-of-state placements.

(3) The department shall report biannually to the children, families, health, and human services interim committee concerning the information it has collected under this section and the results of the efforts it has made to reduce out-of-state placements.

Section 3. Section 52-2-302, MCA, is amended to read:

"52-2-302. Definitions. The following definitions apply to this part:

(1) (a) "High-risk child with multiagency service needs" means a child under 18 years of age who is seriously emotionally disturbed, who is placed or who imminently may be placed in an out-of-home setting, and who has a need for collaboration from more than one state agency in order to address the child's needs.

(b) The term does not include a child incarcerated in a state youth correctional facility.

(2) "Least restrictive and most appropriate setting" means a setting in which a high-risk child with multiagency service needs is served:

(a) within the child's family or community; or

(b) outside the child's family or community where the needed services are not available within the child's family or community and where the setting is determined to be the most appropriate alternative setting based on:

(i) the safety of the child and others;

(ii) ethnic and cultural norms;

(iii) preservation of the family;

(iv) services needed by the child and the family;

(v) the geographic proximity to the child's family and community if proximity is important to the child's treatment.

(3) "Provider" means an agency of state or local government, a person, or a program authorized to provide treatment or services to a high-risk child with multiagency service needs who is suffering from mental, behavioral, or emotional disorders.

(4) "Services" has the meaning as defined in 52-2-202.

(5) "System of care" means an integrated service support system that:

(a) emphasizes the strengths of the child and the child's family;

(b) is comprehensive and individualized; and

(c) provides for:

(i) culturally competent and developmentally appropriate services in the least restrictive and most appropriate setting;

(ii) full involvement of families and providers as partners;

(iii) interagency collaboration; and

(iv) unified care and treatment planning at the individual child level.

(6) "Wraparound philosophy of care" means a planning process that is designed to address the needs of a child and the child's family and that:

(a) empowers the family to take the lead in making decisions affecting the planning for support systems and services;

(b) reflects the family's values, preferences, culture, strengths, and needs;

(c) emphasizes community-based natural and informal support systems;

(d) involves collaboration among members of a team that is developed with involvement of the family and that includes agencies, providers, and others who offer support to the child and family;

(e) provides services in the least restrictive and most accessible setting possible; and

(f) contains measurable outcomes that are regularly reviewed by the team and adjusted as necessary."

Section 4. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 52, chapter 2, part 3, and the provisions of Title 52, chapter 2, part 3, apply to [sections 1 and 2].

Approved May 4, 2009

CHAPTER NO. 431

[SB 425]

AN ACT REVISING LAWS RELATED TO THE FUNDING AND OPERATION OF THE FORT PECK MULTISPECIES FISH HATCHERY; AMENDING SECTION 87-3-235, MCA; REPEALING SECTION 87-3-236, MCA; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-3-235, MCA, is amended to read:

"87-3-235. Fort Peck multispecies fish hatchery established. (1) There is a multispecies fish hatchery near Fort Peck dam. The purpose of the hatchery is to provide healthy warm water game fish to improve the warm water fishing opportunities in Montana ~~with minimal impact on cold water fish populations~~ *with minimal impact on cold water fish populations*. Administration of the hatchery must be by the department, consistent with the department's authority provided for in 87-3-201.

(2) The multispecies hatchery is intended to use 96 acres of rearing ponds to produce warm water species. The hatchery is to employ land available through long-term lease from the U.S. army corps of engineers. It is intended that the hatchery use free, high-quality water from the dredge cut adjacent to Fort Peck dam. Electric power for the hatchery may be purchased from Fort Peck dam at the lowest available rate.

(3) ~~Warm~~ *Propagation of warm* water species, ~~to be propagated at the hatchery may include~~ *including but not limited to* largemouth bass (Micropterus salmoides), smallmouth bass (Micropterus dolomieui), walleye (~~Stizostedion vitreum~~ *Sander vitreus*), sauger (~~Stizostedion canadense~~ *Sander*

canadensis), black crappie (Pomoxis nigromaculatus), white crappie (Pomoxis annularis), channel catfish (Ictalurus punctatus), yellow perch (Perca flavescens), northern pike (Esox lucius), pallid sturgeon (Scaphirhynchus albus), paddlefish (Polyodon spathula), tiger muskellunge, other warm water species classified as species of special concern, threatened, or endangered, and bait fish, including cisco (Coregonus artedii)*, must be given priority over the propagation of any cold water species at the hatchery. To the greatest extent possible, the department shall maximize the production of warm water species at the hatchery. The propagation of cold water species may not displace or reduce the propagation of warm water species at the hatchery. The department may not produce more than 750,000 cold water fish at the hatchery each year.* ~~The hatchery may also include raceways for salmon.~~

(4) Costs for hatchery ~~construction,~~ operation, maintenance, and personnel are to be funded with revenue in the warm water game fish accounts established in 87-3-236*, revenue in the general license account, or any federal funding available to the department*. ~~It is intended that the hatchery be constructed in stages as revenue becomes available in the warm water game fish accounts established in 87-3-236.~~"

Section 2. Section 87-3-235, MCA, is amended to read:

"87-3-235. Fort Peck multispecies fish hatchery established. (1) There is a multispecies fish hatchery near Fort Peck dam. The purpose of the hatchery is to provide healthy warm water game fish to improve the warm water fishing opportunities in Montana ~~with minimal impact on cold water fish populations~~ *with minimal impact on cold water fish populations*. Administration of the hatchery must be by the department, consistent with the department's authority provided for in 87-3-201.

(2) The multispecies hatchery is intended to use 96 acres of rearing ponds to produce warm water species. The hatchery is to employ land available through long-term lease from the U.S. army corps of engineers. It is intended that the hatchery use free, high-quality water from the dredge cut adjacent to Fort Peck dam. Electric power for the hatchery may be purchased from Fort Peck dam at the lowest available rate.

(3) ~~Warm~~ *Propagation of warm* water species*,* ~~to be propagated at the hatchery may include~~ *including but not limited to* largemouth bass (Micropterus salmoides), smallmouth bass (Micropterus dolomieui), walleye (~~Stizostedion vitreum~~ *Sander vitreus*), sauger (~~Stizostedion canadense~~ *Sander canadensis*), black crappie (Pomoxis nigromaculatus), white crappie (Pomoxis annularis), channel catfish (Ictalurus punctatus), yellow perch (Perca flavescens), northern pike (Esox lucius), pallid sturgeon (Scaphirhynchus albus), paddlefish (Polyodon spathula), tiger muskellunge, other warm water species classified as species of special concern, threatened, or endangered, and bait fish, including cisco (Coregonus artedii)*, must be given priority over the propagation of any cold water species at the hatchery. To the greatest extent possible, the department shall maximize the production of warm water species at the hatchery. The propagation of cold water species may not displace or reduce the propagation of warm water species at the hatchery. The department may not produce more than 750,000 cold water fish at the hatchery each year.* ~~The hatchery may also include raceways for salmon.~~

(4) Costs for hatchery ~~construction,~~ operation, maintenance, and personnel are to be funded with ~~revenue in the warm water game fish accounts established in 87-3-236~~ *revenue in the general license account or any federal funding*

available to the department. ~~It is intended that the hatchery be constructed in stages as revenue becomes available in the warm water game fish accounts established in 87-3-236.~~"

Section 3. Repealer. Section 87-3-236, MCA, is repealed.

Section 4. Effective date. (1) Except as provided in subsection (2), [this act] is effective on passage and approval.

(2) [Sections 2 and 3] are effective March 1, 2012.

Approved May 4, 2009

CHAPTER NO. 432

[SB 475]

AN ACT REQUIRING NOTICE OF OIL AND GAS LEASE SALES; AND SETTING A NOMINATION DEADLINE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Notice of lease sale required. (1) Within 15 days of the previous oil and gas lease sale, the department shall publish the date and place of the upcoming sale in a publication of general circulation in Montana and on the department's website.

(2) (a) The department shall accept nominations of tracts for an upcoming sale until 77 days prior to the date of the sale.

(b) Upon receipt of a nomination by the department, the location of the tracts is public information.

(3) At least twice, the department shall publish a notice containing the time and place of the sale, a statement that all sales will be by competitive oral bidding, and the number of tracts in each county offered for sale at the time of the notice on the department's website and in a publication of general circulation in Montana:

(a) not less than 63 days before the date of an upcoming sale; and

(b) between 21 days and 35 days before the date of the sale.

(4) In a publication of general circulation in each county where a tract is nominated for sale, the department shall publish a notice in compliance with subsection (3), except that each notice only needs to contain the number of tracts nominated for sale in that county and notice that a description and maps of tracts nominated are available on the department's website.

(5) The department shall publish on its website a description and maps of all tracts to be offered for sale.

(6) (a) Except as provided in subsection (6)(b), the department shall provide notice by first-class mail to surface owners of a tract being offered for sale using the most current known property owners of record as shown in the records of the county clerk and recorder of the county where the tract is located.

(b) The notice in subsection (6)(a) is not required if the surface is managed by the department pursuant to Title 77, chapter 1.

(7) The notice required by subsection (6) must contain the time and place of the sale, a statement that all sales will be by competitive oral bidding, and a description and area map of each tract offered for sale.

Section 2. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

Section 3. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 77, chapter 3, part 4, and the provisions of Title 77, chapter 3, part 4, apply to [section 1].

Approved May 4, 2009

CHAPTER NO. 433

[SB 509]

AN ACT PROVIDING THAT COSTS OF WASHING AND CLEANING OF COAL MINED FROM AN UNDERGROUND MINE ARE NOT INCLUDED IN THE CONTRACT SALES PRICE OF COAL; REVISING WHEN THE DEPARTMENT MAY IMPUTE THE VALUE OF COAL; AMENDING SECTIONS 15-23-701, 15-23-703, 15-35-102, AND 15-35-107, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, AN APPLICABILITY DATE, AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-23-701, MCA, is amended to read:

"15-23-701. Reporting gross yield from coal. ~~(1)~~ Each person engaged in mining coal must, on or before March 31 each year, file with the department of revenue a statement of the gross yield from each coal mine owned or worked by ~~such~~ *the* person in the preceding calendar year and the value ~~thereof~~ *of the coal*. The statement ~~shall~~ *must* be in the form prescribed by the department, which may be coordinated with the form used under 15-35-104 and must be verified by an officer of the firm. The statement ~~shall~~ *must* include:

~~(a)~~*(1)* the name and address of the owner or lessee or operator of the mine;

~~(b)~~*(2)* the location of the mine;

~~(c)~~*(3)* the tons of coal extracted, treated, and sold from the mine during the ~~taxable~~ *tax* period;

~~(d)~~*(4)* the gross yield or value in dollars and cents derived from the contract sales price as defined in 15-35-102.

~~(2) Whenever value is imputed under 15-35-107(1)(b), that value shall be used for purposes of reporting the value of the gross yield of coal under this section.~~"

Section 2. Section 15-23-703, MCA, is amended to read:

"15-23-703. Taxation of gross proceeds — taxable value for county classification and guaranteed tax base aid to schools. (1) The department shall compute from the reported gross proceeds from coal a tax roll that must be transmitted to the county treasurer on or before September 15 each year. The department may not levy or assess any mills against the reported gross proceeds of coal but shall levy a tax of 5% against the value of the reported gross proceeds as provided in 15-23-701~~(1)(d)~~*(4)*. The county treasurer shall give full notice to each coal producer of the taxes due and shall collect the taxes.

(2) For county classification and all nontax purposes, the taxable value of the gross proceeds of coal is 45% of the contract sales price as defined in 15-35-102.

(3) Except as provided in subsection (6), the county treasurer shall calculate and distribute to the state, county, and eligible school districts in the county the amount of the coal gross proceeds tax, determined by multiplying the unit value calculated in 15-23-705 times the tons of coal extracted, treated, and sold on which the coal gross proceeds tax was owed during the preceding calendar year.

(4) Except as provided in subsections (5), (6), and (8), the county treasurer shall credit the amount determined under subsection (3) and the amounts received under 15-23-706:

(a) to the state and to the counties that levied mills in fiscal year 1990 against 1988 production in the relative proportions required by the levies for state and county purposes in the same manner as property taxes were distributed in fiscal year 1990 in the taxing jurisdiction; and

(b) to school districts in the county that either levied mills in school fiscal year 1990 against 1988 production or used nontax revenue, such as impact aid money, as provided in 20 U.S.C. 7701, et seq., in lieu of levying mills against production, in the same manner that property taxes collected or property taxes that would have been collected would have been distributed in the 1990 school fiscal year in the school district.

(5) (a) If the total tax liability in a taxing jurisdiction exceeds the amount determined in subsection (3), the county treasurer shall, immediately following the distribution from taxes paid on May 31 of each year, send the excess revenue, excluding any protested coal gross proceeds tax revenue, to the department for redistribution as provided in 15-23-706.

(b) If the total tax liability in a taxing jurisdiction is less than the amount determined in subsection (3), the taxing jurisdiction is entitled to a redistribution as provided by 15-23-706.

(6) The board of county commissioners of a county may direct the county treasurer to reallocate the distribution of coal gross proceeds taxes that would have gone to a taxing unit, as provided in subsection (4)(a), to another taxing unit or taxing units, other than an elementary school or high school, within the county under the following conditions:

(a) The county treasurer shall first allocate the coal gross proceeds taxes to the taxing units within the county in the same proportion that all other property tax proceeds were distributed in the county in fiscal year 1990.

(b) If the allocation in subsection (6)(a) exceeds the total budget for a taxing unit, the commissioners may direct the county treasurer to allocate the excess to any taxing unit within the county.

(7) The board of trustees of an elementary or high school district may reallocate the coal gross proceeds taxes distributed to the district by the county treasurer under the following conditions:

(a) The district shall first allocate the coal gross proceeds taxes to the budgeted funds of the district in the same proportion that all other property tax proceeds were distributed in the district in fiscal year 1990.

(b) If the allocation under subsection (7)(a) exceeds the total budget for a fund, the trustees may allocate the excess to any budgeted fund of the school district.

(8) The county treasurer shall credit all taxes collected under this part from coal mines that began production after December 31, 1988, in the relative proportions required by the levies for state, county, and school district purposes

in the same manner as property taxes were distributed in the previous fiscal year."

Section 3. Section 15-35-102, MCA, is amended to read:

"15-35-102. Definitions. As used in this chapter, the following definitions apply:

(1) "Agreement" means a signed contract that is valid under Montana law between a coal mine operator and a purchaser or broker for the sale of coal that is produced in Montana.

(2) (a) "Base consumption level" for a purchaser, except as provided in subsection (2)(b), applies only for the term of an agreement in effect as of December 31, 1984, and means the lesser of:

(i) the volume of coal purchased during calendar year 1986 from all Montana coal mine operators; or

(ii) the greater of:

(A) the arithmetic average volume of coal purchased during calendar years 1983 and 1984 from all Montana coal mine operators; or

(B) 90% of the maximum tonnage provided for in any agreement executed prior to January 1, 1985, for which the highest scheduled minimum quantity of coal stipulated by the terms of the agreement as they existed on January 1, 1985, has not been purchased at any time during the term of the agreement, plus the arithmetic average volume of coal purchased during calendar years 1983 and 1984 from all Montana coal mine operators under all other agreements.

(b) If the volume calculated in subsection (2)(a)(i) is less than one-third of the volume calculated in subsection (2)(a)(ii), the base consumption level is the volume calculated in subsection (2)(a)(ii).

(3) (a) Except as provided in subsection (3)(b), "base production level" for a coal mine operator applies only for the term of an agreement in effect as of December 31, 1984, and means the lesser of:

(i) the arithmetic average volume of coal produced in Montana and sold to a purchaser in calendar years 1983 and 1984; or

(ii) the volume of coal produced in Montana and sold to a purchaser in 1986.

(b) If the amount calculated in subsection (3)(a)(ii) is less than one-third of the amount calculated in subsection (3)(a)(i), the base production level is the amount calculated in subsection (3)(a)(i).

(4) "Broker" means any person who resells Montana coal.

(5) "Coal washing" means any treatment to remove impurities from underground mined coal. Coal washing may include but is not limited to operations such as flotation, air, water, or heavy media separation, drying, and related handling.

~~(5)~~*(6)* "Contract sales price" means either the price of coal extracted and prepared for shipment f.o.b. mine, excluding that amount charged by the seller to pay taxes paid on production, or a price imputed by the department under 15-35-107. Contract sales price includes all royalties paid on production, no matter how the royalties are calculated. However, with respect to royalties paid to the government of the United States, the state of Montana, or a federally recognized Indian tribe, the contract sales price includes 15 cents per ton. *Contract sales price does not include the costs specific to the act of coal washing.*

~~(6)~~*(7)* "Department" means the department of revenue.

~~(7)~~*(8)* "Energy conversion process" includes any process by which coal in the solid state is transformed into slurry, gas, electrical energy, or any other form of energy.

~~(8)~~*(9)* "Incremental production" means that quantity of coal produced annually by a coal mine operator and sold to a qualified purchaser that exceeds the base production level of the coal mine operator for that purchaser, but only to the extent the quantity of coal exceeds that purchaser's base consumption level from all Montana producers.

(10) "Prepared for shipment" includes but is not limited to services such as in-mine movement, crushing, sizing, screening, storing, mixing, loading, treatment with substances including chemicals or oils, and other preparation of the coal for disposition.

~~(9)~~*(11)* "Produced" means severed from the earth.

~~(10)~~*(12)* "Purchaser" means a person who purchases or contracts to purchase Montana coal directly from a coal mine operator or indirectly from a broker and who utilizes that coal in any industrial, commercial, or energy conversion process. A coal broker or any other third party intermediary is not a purchaser under the provisions of this chapter.

~~(11)~~*(13)* "Qualified purchaser" means a purchaser whose purchases of Montana coal in any given year exceed the purchaser's base consumption level. A purchaser of Montana coal who enters into a coal agreement with another purchaser or a broker that causes a reduction in the base consumption level of a purchaser is not a qualified purchaser.

~~(12)~~*(14)* "Strip mining" is defined in 82-4-203 and includes "surface mining".

~~(13)~~*(15)* "Taxes paid on production" includes any tax paid to the federal, state, or local governments upon the quantity of coal produced as a function of either the volume or the value of production and does not include any tax upon the value of mining equipment, machinery, or buildings and lands, any tax upon a person's net income derived in whole or in part from the sale of coal, or any license fee.

~~(14)~~*(16)* "Ton" means 2,000 pounds.

~~(15)~~*(17)* "Underground mining" means a coal mining method utilizing shafts and tunnels and as further defined in 82-4-203."

Section 4. Section 15-35-107, MCA, is amended to read:

"15-35-107. When value of coal may be imputed — procedure. (1) The department may ~~or shall at the request of the taxpayer~~ impute a value to the coal ~~which~~ *that* approximates market value f.o.b. mine in a case where:

(a) the operator of a coal mine is using the produced coal in an energy-conversion or other manufacturing process; *or*

~~(b) the operator of a coal mine refines the coal by drying, cleaning, or other processing designed to improve the quality of the coal;~~

~~(c)~~*(b)* a person sells coal under a contract ~~which~~ *that* is not an arm's-length agreement~~; or~~

~~(d) a person neglects or refuses to file a statement under 15-23-701 or a statement and tax return under this chapter~~.

(2) For purposes of subsection (1)~~(b)~~, "market value f.o.b. mine" means the value of the coal subsequent to ~~primary and secondary crushing but prior to drying, cleaning, or other processing~~ *being prepared for shipment on the mode of transportation taken to its final destination*.

(3) When imputing value, the department may apply the factors used by the federal government under 26 U.S.C. 613, or that provision as it may be labeled or amended, in determining gross income from mining or the department may apply any other or additional criteria it considers appropriate. Each subject taxpayer shall upon request by the department furnish a copy of its federal income tax return, with any amendments, filed for the year in which the value of coal is being imputed and copies of the contracts under which it is selling coal at the time. When the department's estimate of market value is contested in any proceeding, the burden of proof is on the contesting party."

Section 5. Effective date. [This act] is effective on passage and approval.

Section 6. Applicability. [This act] applies to coal mined after June 30, 2009.

Section 7. Termination. The amendment in [section 3(5)] defining "coal washing" and the amendment in [section 3(6)] revising the definition of "contract sales price" terminate July 1, 2017.

Approved May 4, 2009

CHAPTER NO. 434

[HB 3]

AN ACT APPROPRIATING MONEY TO VARIOUS STATE AGENCIES FOR THE FISCAL YEAR ENDING JUNE 30, 2009; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Time limits. The appropriations contained in [section 2] are intended to provide necessary and ordinary expenditures for the fiscal year ending June 30, 2009. Except as provided in [section 2], the unspent balance of any appropriation must revert to the appropriate fund.

Section 2. Appropriations — authorization to expend money. (1) Except as provided in subsection (2), the following money is appropriated, subject to the terms and conditions of [section 1]:

Agency and Program	Amount	Fund
Department of Natural Resources and Conservation		
Wildfire suppression	$3,633,432	State Special Revenue
Department of Livestock		
Brucellosis	$2,375,784	General Fund
Crime Control Division		
Domestic violence program	$15,000	State Special Revenue
Department of Justice		
Montana Highway Patrol	$175,000	General Fund
Office of Public Defender		
Appellate Defender	$292,000	General Fund
Office of Public Instruction		
Pupil Transportation	$360,000	General Fund

Commissioner of Political Practices

Legal Fees	$36,000	General Fund
Legal Judgment	$225,000	General Fund

(2) For expenditures from the Brucellosis appropriation for public information and education, the department of livestock shall contract with the extension service in the Montana university system for education and communication program services. The balance remaining in the Brucellosis appropriation on June 30, 2009, up to $2 million, is appropriated for fiscal year 2010.

Section 3. Effective date. [This act] is effective on passage and approval.

Approved May 5, 2009

CHAPTER NO. 435

[HB 10]

AN ACT APPROPRIATING MONEY FOR INFORMATION TECHNOLOGY CAPITAL PROJECTS FOR THE BIENNIUM ENDING JUNE 30, 2011; PROVIDING FOR MATTERS RELATING TO THE APPROPRIATIONS; PROVIDING FOR A TRANSFER OF FUNDS FROM THE GENERAL FUND TO THE LONG-RANGE INFORMATION TECHNOLOGY PROGRAM ACCOUNT; PROVIDING FOR THE DEVELOPMENT AND ACQUISITION OF NEW INFORMATION TECHNOLOGY SYSTEMS FOR THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES, THE DEPARTMENT OF ADMINISTRATION, THE DEPARTMENT OF REVENUE, AND THE DEPARTMENT OF LABOR AND INDUSTRY; AUTHORIZING THE ISSUANCE OF EMPLOYMENT SECURITY REVENUE BONDS; PLEDGING FUNDS IN THE EMPLOYMENT SECURITY ACCOUNT FOR THE REPAYMENT OF THE BONDS; PROVIDING TERMS AND CONDITIONS FOR THE BONDS; AUTHORIZING THE CREATION OF STATE DEBT; AMENDING SECTION 39-51-409, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Definitions. For the purposes of [sections 1 through 4], the following definitions apply:

(1) "Chief information officer" has the meaning provided in 2-17-506.

(2) "Information technology" has the meaning provided in 2-17-506.

(3) "Information technology capital project" means a group of interrelated information technology activities that are planned and executed in a structured sequence to create a unique product or service.

(4) "LRITP" means the long-range information technology program account in the capital projects fund type.

Section 2. Appropriations and authorizations. (1) All business application systems funded under this section must have a plan approved by the chief information officer for the design, definition, creation, storage, and security of the data associated with the application system. The security aspects of the plan must address but are not limited to authentication and granting of system privileges, safeguards against unauthorized access to or disclosure of sensitive information, and, consistent with state records retention policies, plans for the removal of sensitive data from the system when it is no longer

needed. It is the intent of this subsection that specific consideration be given to the potential sharing of data with other state agencies in the design, definition, creation, storage, and security of the data.

(2) Funds may not be released for the project until the chief information officer and budget director approve the plans described in subsection (1).

(3) The following money is appropriated to the department of administration to be used only for the indicated information technology capital projects:

Agency/Project	LRITP	State Special Revenue	Federal Special Revenue	Total
DEPARTMENT OF REVENUE				
Efficiency through Imaging	3,366,178			3,366,178
DEPARTMENT OF LABOR AND INDUSTRY				
Building Standards		2,400,000		2,400,000
Licensing Standards		2,250,000		2,250,000
Unemployment Insurance Tax Modernization		16,735,567	3,000,000	19,735,567
DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES				
Medicaid Management Information System Replacement	3,500,000		62,000,000	65,500,000
SECRETARY OF STATE				
Information Management System	1,500,000			1,500,000

(4) The projects for which funds are appropriated to the department of public health and human services in [section 3] and this section and those projects authorized in section 14, Chapter 3, Special Laws of May 2007, are authorized for the transfer of appropriations and authority within the long-range information technology fund type and among department of public health and human services projects. The projects for which funds are appropriated to the department of public health and human services in [section 3] and this section and those projects authorized in section 14, Chapter 3, Special Laws of May 2007, are authorized for the transfer of appropriations and authority within the federal special revenue fund type and among department of public health and human services projects. The department of public health and human services shall report changes to appropriations and authority related to the information technology projects in section 14, Chapter 3, Special Laws of May 2007, and in [section 3] and this section to the interim legislative finance committee upon occurrence.

(5) The department of labor and industry is authorized to transfer appropriations between federal and state special revenue funds for purposes of funding the unemployment insurance tax modernization project. To reduce state risk, a scoring preference for bidders of not less than 10% of the total scoring for the request for proposals for the unemployment insurance tax modernization project must be established and may be given only to vendors who have installed in at least one other state a substantially similar project, that meets all federal department of labor reporting requirements. In responding to the request for proposals, each vendor shall identify in what states the vendor's substantially similar project has been installed, how long it has been in production, and whether the project meets all federal department of labor reporting requirements.

(6) For the item Medicaid Management Information System Replacement in subsection (3), the department of public health and human services shall provide a work plan with milestones, goals, and measures to guide the medicaid management information system replacement to the Legislative Finance Committee at its June 2009 meeting. At each legislative finance committee meeting, the department shall provide an update on its activities and progress toward achieving elements of the work plan in a format developed in conjunction with the legislative finance committee. To reduce state risk, a vendor who successfully bids on the medicaid management information system replacement project must have experience, proven performance, corporate resources, and corporate qualifications in large-scale data processing system development along with health care claims processing experience in system planning, design, development, implementation, and operation. In responding to the request for proposals, each vendor shall identify whether the vendor's proposed solution is substantially similar to a project that has been installed in another state, how long the project has been in production, and whether the project has been approved by the centers for medicare and medicaid services.

Section 3. Information technology appropriations. (1) The following projects and funds are appropriated for the biennium ending June 30, 2011, to the indicated agency to be used only for the specified projects:

Agency/Project	General Fund	Federal Special Revenue	Total
DEPARTMENT OF ADMINISTRATION			
Interoperability Montana Equipment	1,000,000		1,000,000
Enterprise System Services Center Equipment	3,500,000		3,500,000

(2) For the item in subsection (1) for Interoperability Montana Equipment, the department shall exercise due diligence in determining the appropriateness, effectiveness, and reliability of technology and equipment, taking into consideration input and advice from system users, including field personnel and a broad representation of use groups. Recommendations for acquisition of technology and equipment should be reported to the information technology board established in 2-15-1021.

Section 4. Fund transfers. The following amounts are transferred from the general fund to the LRITP:

(1) $3,433,089 for fiscal year 2010; and

(2) $3,433,089 for fiscal year 2011.

Section 5. Bond authorization. The board of examiners may issue and sell employment security revenue bonds of the state, in accordance with the provisions of [sections 5 through 12], in an aggregate principal amount not to exceed $15 million for the unemployment insurance tax modernization project approved in [section 2] and to pay costs associated with the sale and issuance of the bonds, including funding a debt service reserve.

Section 6. Employment security revenue bond debt service account — deposit of bond proceeds. (1) There is an employment security revenue bond debt service account in the debt service fund type. The state treasurer shall transfer proceeds of employment security assessments deposited in the employment security account, established in 39-51-409, to the employment security revenue bond debt service account as required by the resolution authorizing the bonds or the trust indenture.

(2) The proceeds of the bonds, other than premiums and accrued interest received, must be deposited in an unemployment insurance tax modernization account to fund the unemployment insurance tax modernization project approved in [section 2].

(3) Premiums and accrued interest must be deposited in the employment security revenue bond debt service account. No more than the principal and interest on the bonds due in any year may be retained in the employment security revenue bond debt service account.

(4) Interest and investment earnings on the debt service account must be retained in the account.

Section 7. State pledge of employment security assessments — use of employment security account. The employment security assessments imposed pursuant to 39-51-404 must be pledged to the payment of the principal, interest, and redemption premium, if any, of the employment security revenue bonds authorized in [section 5]. The pledge is and remains at all times a first lien and prior charge upon the pledged employment security assessments. Funds in the employment security account may be used for the payment of employment security revenue bonds to the extent that employment security assessments deposited in the employment security revenue bond debt service account is not sufficient for payment of the bonds.

Section 8. Continued assessment and collection — deposit in employment security account. The legislature shall provide for the continued assessment, collection, and deposit of the employment security assessments described in 39-51-404 in the amounts necessary to pay the principal of and premium and interest on the employment security revenue bonds as long as they are outstanding. The payment of principal, interest, and premium of the employment security revenue bonds is considered an administrative expense.

Section 9. Form — principal and interest — fiscal agent — bonds authorized. (1) The employment security revenue bonds may be issued by the board of examiners in one or more series, at public or private sale, in denominations and form, in fully registered form, with provisions for the conversion or exchange, bearing interest at a rate or rates or the method of determining the rate or rates, maturing at times, not more than 10 years from date of issue, subject to redemption at earlier times and prices and upon notice, and payable at the office of a fiscal agency of the state that the board shall determine, subject to the limitations contained in [sections 5 through 12]. Any action taken by the board of examiners under [sections 5 through 12] must be approved by at least a majority vote of its members.

(2) In all other respects, the board of examiners is authorized to prescribe the form and terms of the bonds and shall do whatever is lawful and necessary for their issuance and payment.

(3) Bonds and any interest coupons attached to the bonds must be signed by the members of the board of examiners, and the bonds must be issued under the great seal of the state of Montana. The bonds and coupons may be executed with facsimile signatures and seal in the manner and subject to the limitations prescribed by law. The state treasurer shall keep a record of all bonds issued and sold.

(4) The board of examiners may employ a fiscal agent and a bond registrar and transfer agent to assist in the performance of its duties under [sections 5 through 12].

(5) In connection with the issuance and sale of bonds, the board of examiners may arrange for lines of credit or letters of credit with any bank, firm, or person for the purpose of providing an additional source of repayment for bonds issued pursuant to [sections 5 through 12]. Amounts drawn on the lines of credit may be evidenced by negotiable or nonnegotiable notes or other evidences of indebtedness, containing terms and conditions that the board of examiners may authorize in the resolution approving the bonds.

(6) Additional employment security revenue bonds, other than refunding bonds, may not be issued until the pledge in favor of the employment security revenue bonds is satisfied and discharged.

Section 10. Trust indenture. (1) In the discretion of the board of examiners, bonds issued under [sections 5 through 12] may be secured by a trust indenture by and between the board and a trustee, which may be any trust company or bank having the powers of a trust company inside or outside of the state. In addition to provisions that the board of examiners determines to be necessary and appropriate to secure the bonds, provide for the rights of the bondholders, and ensure compliance with all applicable law, the trust indenture must contain provisions that:

(a) govern the custody, safeguarding, and disbursement of all money held by the trustee under the trust indenture; and

(b) permit representatives of the state treasurer, department of administration, or department of labor and industry, upon reasonable notice and at reasonable times, to inspect the trustee's books and records concerning the trust indenture.

(2) A trust indenture or an executed counterpart of a trust indenture developed pursuant to [sections 5 through 12] must be filed with the secretary of state. The filing of a trust indenture or an executed counterpart in the office of the secretary of state is constructive notice of its content to all persons from the time of filing, and the recording of the trust indenture or its content is not necessary.

Section 11. Provisions for protecting bondholders. The resolution of the board of examiners providing for the issuance of bonds or the trust indenture may contain provisions for protecting and enforcing the rights and remedies of the bondholders that are reasonable, proper, and not in violation of law, including covenants setting forth the duties of the state, the board, and the departments, boards, or agencies of state government in relation to the unemployment insurance tax modernization project financed with the proceeds of the bonds and the custody, safeguarding, and application of all money. The trust indenture may set forth the rights and remedies of the bondholders customary in trust indentures, deeds of trusts, and mortgages securing bonds or debentures of corporations. The enumeration of particular powers granted by this section does not impair any general grant of power contained in [sections 5 through 12].

Section 12. Pledge of the state. In accordance with the constitutions of the United States and the state of Montana, the state pledges that it will not in any way impair the obligations of any agreement between the state and the holders of notes and bonds issued by the state under [sections 5 through 12].

Section 13. Section 39-51-409, MCA, is amended to read:

"39-51-409. Employment security account. (1) There is an account in the state special revenue fund called the employment security account.

(2) Money deposited in the employment security account may be appropriated to the department for payment of:

(a) unemployment insurance benefits;

(b) expenses incurred in the administration of the unemployment insurance program;

(c) expenses incurred in collecting money deposited in the account;

(d) expenses incurred for the employment offices established in 39-51-307, including expenses for providing services to the business community;

(e) expenses incurred for the apprenticeship and training program;

(f) expenses for displaced homemaker programs provided for under 39-7-305;

(g) expenses for department research and analysis functions that provide employment, wage, and economic data; ~~and~~

(h) expenses for department functions pertaining to wage and hour laws, prevailing wages, and collective bargaining*; and*

(i) principal, interest, and redemption premium on employment security revenue bonds authorized in [section 5].

(3) ~~The~~ *Except as provided in [sections 6 and 12], the* department may transfer funds from the employment security account to the unemployment insurance fund account provided for in 39-51-402 upon receiving approval from the budget director that the transfer will not decrease the money in the account below the level appropriated by the legislature to provide for the employment services programs identified in subsection (2).

(4) The department may transfer appropriation authority in employment services programs between the federal special revenue and the state special revenue fund types."

Section 14. Two-thirds vote required. Because [section 5] authorizes the creation of state debt, Article VIII, section 8, of the Montana constitution requires a vote of two-thirds of the members of each house of the legislature for passage.

Section 15. Contingent voidness — reduction of appropriation. If a vote of two-thirds of the members of each house of the legislature is not received, then [sections 5 through 13] are void and the state special revenue fund appropriation in [section 2] to the department of labor and industry for the unemployment insurance tax modernization project is reduced by $14 million.

Section 16. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 17. Effective date. [This act] is effective on passage and approval.

Approved May 5, 2009

CHAPTER NO. 436

[HB 52]

AN ACT ESTABLISHING A GROUND WATER INVESTIGATION PROGRAM; PROVIDING FOR PRIORITIZATION OF SUBBASINS BY THE GROUND WATER ASSESSMENT STEERING COMMITTEE; ADDING A

MEMBER OF THE DEVELOPMENT COMMUNITY TO THE GROUND WATER ASSESSMENT STEERING COMMITTEE; PROVIDING A CONTINGENT APPROPRIATION FOR THE PROGRAM; AMENDING SECTION 2-15-1523, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Ground water investigation program — advisory committee. (1) The Montana bureau of mines and geology shall develop and implement a ground water investigation program for the purpose of collecting and compiling ground water and aquifer data. The program shall gather data, compile existing information, conduct field studies, and prepare a detailed hydrogeologic assessment report for each subbasin. The program shall develop a monitoring plan and a hydrogeologic model for each subbasin for which a report is prepared.

(2) The ground water assessment steering committee, established by 2-15-1523, shall prioritize subbasins for investigation based upon current and anticipated growth of agriculture, industry, housing, and commercial activity. Permit applications for the development of surface water or ground water and the timing of adjudication of water rights may be taken into account in prioritizing subbasins.

Section 2. Section 2-15-1523, MCA, is amended to read:

"2-15-1523. Ground water assessment steering committee. (1) There is a ground water assessment steering committee consisting of an employee of each of the following state agencies that have responsibility for ground water protection, management, or information. The member must be appointed by the head of the respective state agency:

(a) the department of natural resources and conservation;

(b) the department of environmental quality;

(c) the department of agriculture; and

(d) the Montana state library, natural resource information system.

(2) The ground water assessment steering committee may include representatives of the following agencies and units of government with expertise or management responsibility related to ground water and representatives of the organizations and groups specified in subsection (2)(h), who shall serve as ex officio members:

(a) the legislative services division;

(b) the board of oil and gas conservation;

(c) the Montana bureau of mines and geology;

(d) a unit of the university system, other than the Montana bureau of mines and geology, appointed by the board of regents of higher education for the Montana university system;

(e) a county government, appointed by an organization of Montana counties;

(f) a city, town, or city-county government, appointed by an organization of Montana cities and towns;

(g) each principal federal agency that has responsibility for ground water protection, management, or research, appointed by the Montana head of the respective federal agency; and

(h) one representative of each of the following, appointed by the governor:

(i) agricultural water users;

(ii) industrial water users; ~~and~~

(iii) a conservation or ecological protection organization*; and*

(iv) the development community.

(3) The ground water assessment steering committee shall elect a presiding officer from its voting members.

(4) The Montana bureau of mines and geology shall provide staff support to the committee."

Section 3. Appropriation. There is appropriated $4.2 million from the state general fund to the Montana bureau of mines and geology for developing and implementing the ground water investigation program described in [section 1].

Section 4. Contingent voidness. If House Bill No. 2 is passed and approved and if it contains an appropriation of at least $4.2 million for the ground water investigation program described in [section 1], then [section 3] is void.

Section 5. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 85, chapter 2, part 5, and the provisions of Title 85, chapter 2, part 5, apply to [section 1].

Section 6. Effective date. [This act] is effective July 1, 2009.

Approved May 5, 2009

CHAPTER NO. 437

[HB 85]

AN ACT CREATING A GRANT PROGRAM FOR EMERGENCY MEDICAL SERVICE PROVIDERS; ESTABLISHING ELIGIBILITY REQUIREMENTS AND REVIEW CRITERIA; AUTHORIZING THE DEPARTMENT OF TRANSPORTATION TO ADOPT RULES; PROVIDING A CONTINGENT APPROPRIATION; PROVIDING DEFINITIONS; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Legislative findings — purpose. The legislature finds that the provision of prehospital emergency medical service is a critical component of Montana's health care system because these prehospital services can improve the medical outcomes for people suffering medical emergencies and may improve the safety of motorists on Montana roads by providing emergency response to vehicle crashes. The legislature further finds that emergency medical service providers in many of Montana's rural areas have difficulty in continuing their operations because of demographic and economic circumstances. It is the purpose of [sections 1 through 7] to establish a grant program that will support emergency medical service providers by creating a source of funds to cover the costs of buying and maintaining the equipment that an emergency medical service needs in order to be ready to respond to calls.

Section 2. Definitions. As used in [sections 1 through 7], the following definitions apply:

(1) "Aircraft" has the same meaning given in 67-1-101. The term includes any fixed-wing airplane or helicopter.

(2) (a) "Ambulance" means a privately or publicly owned motor vehicle or aircraft that is maintained and used for the transportation of patients.

(b) The term does not include:

(i) a motor vehicle or aircraft owned by or operated under the direct control of the United States; or

(ii) air transportation services, such as charter or fixed-based operators, that are regulated by the federal aviation administration and that offer no special medical services or provide only transportation to patients or persons at the direction or under the supervision of an independent physician.

(3) "Board" means the Montana state board of medical examiners provided for in 2-15-1731.

(4) "Department" means the department of transportation provided for in 2-15-2501.

(5) "Emergency medical service" means a prehospital or interhospital emergency medical transportation or treatment service provided by an ambulance or nontransporting medical unit.

(6) "Emergency medical technician" means a person who has been specially trained in emergency care in a training program approved by the board and licensed by the board as having demonstrated a level of competence suitable to treat victims of injury or other emergent condition.

(7) (a) "Emergency response vehicle" means a vehicle used for the dedicated purpose of responding to emergency medical calls.

(b) The term does not include a vehicle used for an individual's personal purposes.

(8) "Nontransporting medical unit" means an aggregate of persons who are organized to respond to a call for emergency medical service and to treat a patient until the arrival of an ambulance. Nontransporting medical units provide any one of varying types and levels of service defined by department of public health and human services rule but may not transport patients.

(9) (a) "Patient" means an individual who is sick, injured, wounded, or otherwise incapacitated or helpless.

(b) The term does not include an individual who is nonambulatory and who needs transportation assistance solely because that individual is confined to a wheelchair as the individual's usual means of mobility.

(10) "Person" means an individual, firm, partnership, association, corporation, company, group of individuals acting together for a common purpose, or organization of any kind, including a governmental agency other than the United States.

(11) "Volunteer emergency medical technician" means an individual who is licensed pursuant to Title 50, chapter 6, part 2, and provides emergency medical care:

(a) on the days and the times of the day chosen by the individual; and

(b) for an emergency medical service other than:

(i) a private ambulance company, unless the care is provided without compensation and outside of the individual's regular work schedule; or

(ii) a private business or a public agency, as defined in 7-1-4121, that employs the individual on a regular basis with a regular, hourly wage to provide emergency medical care as part of the individual's job duties.

Section 3. Emergency medical services grant program — eligibility — matching funds. (1) The department shall provide competitive grants to

emergency medical service providers for acquiring or leasing ambulances or emergency response vehicles or for purchasing equipment, other than routine medical supplies, for any of the following purposes:

(a) training;

(b) communications; or

(c) providing medical care to a patient.

(2) A licensed emergency medical service may apply for a grant if:

(a) it has been in operation at least 12 months;

(b) it bills for services at a level that is at least equivalent to the medicare billing level; and

(c) a majority of its active emergency medical technicians are volunteer emergency medical technicians.

(3) An emergency medical service is ineligible for grant funding if it is either a private business or a public agency, as defined in 7-1-4121, and employs the majority of its emergency medical technicians on a regular basis with a regular, hourly wage.

(4) An eligible emergency medical service applying for a grant under this section shall provide a 10% match for any grant funds received.

(5) The department shall award grants on an annual basis using the criteria contained in [section 4].

(6) Up to 5% of the annual appropriation for the program may be distributed for emergency purposes each year as provided in [section 7].

Section 4. Grant review criteria. When evaluating grant applications the department shall consider the following factors:

(1) demonstrated need;

(2) size of the geographic area covered by the emergency medical service;

(3) distance from other emergency medical service providers in the geographic region;

(4) distance from the closest hospital;

(5) number of calls in the previous calendar year; and

(6) number of volunteer emergency medical technicians on the active call roster.

Section 5. Grant awards — appeals. (1) If the department denies an application for a grant, the applicant may appeal the decision in writing to the director of the department.

(2) After considering the emergency medical service provider's appeal and the rules in place for reviewing and awarding grants, the director shall affirm or deny the appeal in writing.

(3) There is no further appeal if the director denies the appeal.

Section 6. Rulemaking authority. (1) The department shall adopt rules necessary for the administration of [sections 1 through 7].

(2) The rules must include but are not limited to:

(a) the weighting of the criteria listed in [section 4] for scoring purposes;

(b) allowable reasons for not awarding a grant;

(c) the appeal process for an emergency medical service provider that does not receive a grant; and

(d) reporting requirements for grant recipients.

Section 7. Emergency grant appropriations. (1) In a documented situation that the department considers to be an emergency for which an eligible emergency medical service provider cannot pay, the department may provide funding to repair or replace a vehicle or equipment that has been damaged or destroyed.

(2) Emergency funding may be provided only for vehicles or equipment eligible for grant funding, as provided in [section 3].

(3) Normal replacement of an ambulance or equipment may not be considered an emergency.

Section 8. Coordination instruction. (1) If House Bill No. 2 is not passed and approved or if House Bill No. 2 does not contain an appropriation of $1 million for each fiscal year for the purposes of [this act], then there is appropriated from the highway nonrestricted account provided for in 15-70-125 to the department of transportation the difference between $1 million in each fiscal year and the amount appropriated in House Bill No. 2 for the purposes of [this act].

(2) The department of transportation is authorized to decrease the contingent appropriation from the highway nonrestricted account in subsection (1) and there is appropriated from the federal special revenue fund the amount of money appropriated in subsection (1) if federal funds are available for the purposes of [this act].

Section 9. Codification instruction. [Sections 1 through 7] are intended to be codified as an integral part of Title 61, chapter 2, and the provisions of Title 61, chapter 2, apply to [sections 1 through 7].

Section 10. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

Section 11. Effective date. [This act] is effective July 1, 2009.

Section 12. Termination. [Sections 1 through 7] terminate June 30, 2011.

Approved May 5, 2009

CHAPTER NO. 438

[HB 97]

AN ACT EXTENDING THE APPLICATION OF THE BOND VALIDATING ACT; AMENDING SECTION 17-5-205, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-5-205, MCA, is amended to read:

"17-5-205. Application. The application of the Bond Validating Act, Title 17, chapter 5, part 2, is extended to bonds issued and proceedings taken prior to ~~February 1, 2007~~ *[the effective date of this act]*."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved May 5, 2009

CHAPTER NO. 439

[HB 98]

AN ACT AUTHORIZING STATE AGENCIES TO ENTER INTO ENERGY PERFORMANCE CONTRACTS; AMENDING SECTIONS 18-2-101, 18-4-132, 90-4-1101, 90-4-1102, 90-4-1103, 90-4-1104, 90-4-1105, 90-4-1106, 90-4-1107, 90-4-1108, AND 90-4-1109, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. State agency performance contracts — exempt. Energy performance contracts entered into by state agencies pursuant to Title 90, chapter 4, part 11, are exempt from this part.

Section 2. Section 18-2-101, MCA, is amended to read:

"18-2-101. Definitions of building, costs, and construction. In part 1 of this chapter, with the exception of 18-2-104, 18-2-107, 18-2-113, 18-2-114, 18-2-122, and 18-2-123:

(1) *(a)* "building" includes a building, facility, or structure:

~~(a)~~*(i)* constructed or purchased wholly or in part with state money;

~~(b)~~*(ii)* at a state institution;

~~(c)~~*(iii)* owned or to be owned by a state agency, including the department of transportation; or

~~(d)~~*(iv)* constructed for the use or benefit of the state with federal or private money as provided in 18-2-102(2)(d);

~~(2)~~*(b)* "building" does not include a building, facility, or structure:

~~(a)~~*(i)* owned or to be owned by a county, city, town, school district, or special improvement district;

~~(b)~~*(ii)* used as a component part of an environmental remediation or abandoned mine land reclamation project, a highway, or a water conservation project, unless the building will require a continuing state general fund financial obligation after the environmental remediation or abandoned mine land reclamation project is completed; or

~~(c)~~*(iii)* leased or to be leased by a state agency;

~~(3)~~*(2) (a)* "construction" includes the construction, alteration, repair, maintenance, and remodeling of a building and the equipping and furnishing of a building during construction, alteration, repair, maintenance, and remodeling;

(b) "construction" does not include work performed under an energy performance contract entered into pursuant to Title 90, chapter 4, part 11;

~~(4)~~*(3)* "costs" means those expenses defined in 17-5-801."

Section 3. Section 18-4-132, MCA, is amended to read:

"18-4-132. Application. (1) This chapter applies to:

(a) the expenditure of public funds irrespective of their source, including federal assistance money, by this state acting through a governmental body under any contract, except a contract exempted from this chapter by this section or by another statute;

(b) a procurement of supplies or services that is at no cost to the state and from which income may be derived by the vendor and to a procurement of

supplies or services from which income or a more advantageous business position may be derived by the state; and

(c) the disposal of state supplies.

(2) This chapter or rules adopted pursuant to this chapter do not prevent any governmental body or political subdivision from complying with the terms and conditions of any grant, gift, bequest, or cooperative agreement.

(3) This chapter does not apply to:

(a) either grants or contracts between the state and its political subdivisions or other governments, except as provided in part 4;

(b) construction contracts;

(c) expenditures of or the authorized sale or disposal of equipment purchased with money raised by student activity fees designated for use by the student associations of the university system;

(d) contracts entered into by the Montana state lottery that have an aggregate value of less than $250,000;

(e) contracts entered into by the state compensation insurance fund to procure insurance-related services;

(f) employment of:

(i) a registered professional engineer, surveyor, real estate appraiser, or registered architect;

(ii) a physician, dentist, pharmacist, or other medical, dental, or health care provider;

(iii) an expert witness hired for use in litigation, a hearings officer hired in rulemaking and contested case proceedings under the Montana Administrative Procedure Act, or an attorney as specified by executive order of the governor;

(iv) consulting actuaries;

(v) a private consultant employed by the student associations of the university system with money raised from student activity fees designated for use by those student associations;

(vi) a private consultant employed by the Montana state lottery;

(vii) a private investigator licensed by any jurisdiction;

(viii) a claims adjuster; or

(ix) a court reporter appointed as an independent contractor under 3-5-601;

(g) electrical energy purchase contracts by the university of Montana or Montana state university, as defined in 20-25-201. Any savings accrued by the university of Montana or Montana state university in the purchase or acquisition of energy must be retained by the board of regents of higher education for university allocation and expenditure.

(h) the purchase or commission of art for a museum or public display; ~~or~~

(i) contracting under 47-1-216 of the Montana Public Defender Act*; or*

(j) contracting under Title 90, chapter 4, part 11.

(4) (a) Food products produced in Montana may be procured by either standard procurement procedures or by direct purchase. Montana-produced food products may be procured by direct purchase when:

(i) the quality of available Montana-produced food products is substantially equivalent to the quality of similar food products produced outside the state;

(ii) a vendor is able to supply Montana-produced food products in sufficient quantity; and

(iii) a bid for Montana-produced food products either does not exceed or reasonably exceeds the lowest bid or price quoted for similar food products produced outside the state. A bid reasonably exceeds the lowest bid or price quoted when, in the discretion of the person charged by law with the duty to purchase food products for a governmental body, the higher bid is reasonable and capable of being paid out of that governmental body's existing budget without any further supplemental or additional appropriation.

(b) The department shall adopt any rules necessary to administer the optional procurement exception established in this subsection (4).

(5) As used in this section, the following definitions apply:

(a) "Food" means articles normally used by humans as food or drink, including articles used for components of articles normally used by humans as food or drink.

(b) "Produced" means planted, cultivated, grown, harvested, raised, collected, processed, or manufactured."

Section 4. Section 90-4-1101, MCA, is amended to read:

"90-4-1101. Legislative findings and policy. (1) The legislature finds that:

(a) conserving energy in local government *and state agency* buildings and vehicles will have a beneficial effect on the overall supply of energy and can result in cost savings for taxpayers;

(b) conserving water can result in cost savings for taxpayers; and

(c) energy performance contracts are a means by which local government units *and state agencies* can achieve energy and water conservation without an initial capital outlay.

(2) It is the policy of the state of Montana to promote efficient use of energy and water resources in local government *and state agency* buildings and energy conservation in vehicles by authorizing local government units *and state agencies* to enter into energy performance contracts."

Section 5. Section 90-4-1102, MCA, is amended to read:

"90-4-1102. Definitions. As used in this part, the following definitions apply:

(1) "Conservation measure" means a study, audit, improvement, equipment, alternative energy system, or change in operating practices that is designed to provide energy, water, or operational cost savings at least equivalent to the amount expended by a local government unit *or state agency* for the study, audit, improvement, or equipment.

(2) "Conservation-related cost savings" means cost savings in the operating budget of a local government unit *or state agency* that are a direct result of conservation measures implemented pursuant to an energy performance contract.

(3) "Department" means the department of environmental quality provided for in 2-15-3501.

(4) "Energy performance contract" means a contract between a local government unit *or a state agency* and a qualified provider for evaluation, recommendation, and implementation of one or more conservation measures, evaluation of conservation-related cost savings, and a guarantee of cost savings.

(5) "Investment grade energy audit" means a comprehensive building energy systems audit, performed by a professional engineer licensed in the state of Montana, for the purpose of identifying and documenting conservation measures, cost savings factors, and estimated conservation-related cost savings from the conservation measures identified.

(6) "Local government unit" means a county, an incorporated city or town, a city-county consolidated government, a school district, a special district, or a community college district.

(7) "Person" means an individual, corporation, partnership, firm, association, cooperative, limited liability company, limited liability partnership, or any other similar entity.

(8) "Qualified provider" means a person that:

(a) is experienced in the design, implementation, and installation of conservation measures and building improvement measures;

(b) has the technical capabilities to ensure that the conservation measures and building improvement measures generate conservation-related cost savings; and

(c) has the financial ability to guarantee performance.

(9) "State agency" has the meaning provided in 90-4-602."

Section 6. Section 90-4-1103, MCA, is amended to read:

"90-4-1103. Authority to enter into energy performance contracts. (1) A local government unit *or a state agency* may enter into an energy performance contract with a qualified provider under the procedures provided in 90-4-1104 or 90-4-1105.

(2) Nothing in this part prevents a local government unit *or a state agency* from contracting for conservation measures under any other legal authority."

Section 7. Section 90-4-1104, MCA, is amended to read:

"90-4-1104. Selection of qualified providers for energy performance contracts. (1) A local government unit *or a state agency* may solicit submissions of qualifications to enter into an energy performance contract and proposals for investment grade energy audits. The local government unit *or the state agency* shall give at least 14 days' public notice of a request for qualifications and proposals. The notice must be published at least once a week for 2 consecutive weeks in a newspaper of general circulation in the area where the local government unit *or the state agency* intends to institute the conservation measures, and requests for proposals must be sent to at least three vendors known to be offering energy performance contracts. The notice must invite qualified providers to submit qualifications and proposals for investment grade energy audits.

(2) The local government unit *or the state agency* shall evaluate qualifications and proposals according to the following capabilities and criteria:

(a) knowledge of design, engineering, installation, maintenance, and repairs associated with energy performance contracts;

(b) experience in postinstallation project monitoring, data collection, and reporting of savings;

(c) ability to guarantee conservation savings;

(d) management capability;

(e) ability to arrange long-term financing or to integrate existing financial resources, such as utility rebates and intercap loans, into projects; and

(f) experience with projects of similar size and scope.

(3) The local government unit *or the state agency* shall negotiate a contract with the most qualified provider at a price that the local government unit *or the state agency* determines fair and reasonable, taking into account the scope of the services rendered. If the local government unit *or the state agency* is unable to negotiate a satisfactory contract with the most qualified provider, negotiations with that firm must be formally terminated and the local government unit *or the state agency* shall select the next most qualified provider until an agreement is reached or the process is terminated."

Section 8. Section 90-4-1105, MCA, is amended to read:

"90-4-1105. Alternative selection process. The department may solicit requests for qualifications and proposals for qualified providers to offer energy performance contracts to local government units *or state agencies*. The department shall give at least 14 days' public notice of a request for qualifications and proposals. The notice must be published at least once a week for 2 consecutive weeks in at least two major daily newspapers in Montana, posted on the department's website, and sent to vendors known by the department to be offering energy performance contracts. The department shall evaluate the qualifications on the basis of the capabilities and criteria contained in 90-4-1104(2). The department may then select qualified providers and negotiate energy performance contract terms with each qualified provider that may be used by a local government unit *or a state agency* as the basis for its energy performance contract with that qualified provider without following the process provided in 90-4-1104."

Section 9. Section 90-4-1106, MCA, is amended to read:

"90-4-1106. Award of energy performance contracts. (1) A local government unit *or a state agency* may select and negotiate with a qualified provider identified through the processes provided in 90-4-1104 or 90-4-1105.

(2) Upon selection of a qualified provider, the local government unit *or state agency* shall enter into a contract with the qualified provider. If this qualified provider does not employ a professional engineer licensed in the state of Montana, the qualified provider shall hire one to prepare an investment grade energy audit. The investment grade energy audit serves as the basis for the terms of an energy performance contract. The investment grade energy audit becomes the property of the local government unit *or the state agency*.

(3) If the local government unit *or the state agency* determines that the investment grade energy audit does not provide sufficient conservation-related cost savings, it shall pay the cost of the investment grade energy audit and decline to enter into the energy performance contract.

(4) If the local government unit *or the state agency* determines that the investment grade energy audit provides sufficient conservation-related cost savings, it shall notify the qualified provider. The qualified provider shall provide the local government unit *or the state agency* with plans for the proposed conservation measures that have been prepared by an engineer licensed to practice in Montana and that comply with applicable building and safety codes.

(5) Upon receipt of the information required by subsection (4), the local government unit *or the state agency* may negotiate the conservation measures to be included in the energy performance contract and enter into the energy

performance contract. The energy performance contract may include the option of payment of the costs of the investment grade energy audit and plans provided pursuant to subsection (4) through project financing."

Section 10. Section 90-4-1107, MCA, is amended to read:

"90-4-1107. Term and conditions of energy performance contracts. (1) The term of an energy performance contract must be a minimum of 3 years and may be up to the useful life of the conservation measures or 20 years, whichever is less.

(2) An energy performance contract must require the qualified provider to:

(a) guarantee the conservation-related cost savings to the extent necessary to pay for the conservation measures, including financing charges incurred over the life of the contract;

(b) monitor the reductions in energy consumption and the cost savings attributable to the conservation measures installed pursuant to the energy performance contract; and

(c) annually prepare and provide a report to the local government unit *or the state agency*, documenting the performance of the conservation measures."

Section 11. Section 90-4-1108, MCA, is amended to read:

"90-4-1108. Assistance to local governments *and state agencies.* The department may develop model documents and provide technical assistance to local government units *and state agencies* in the procurement of energy performance contracts and related services."

Section 12. Section 90-4-1109, MCA, is amended to read:

"90-4-1109. Contracts and agreements not general obligation of local government unit *or state.* Payment obligations of a local government unit *or a state agency* pursuant to an energy performance contract are not general obligations of the local government unit *or the state* and are collectible only from conservation-related cost savings provided in the energy performance contract and other revenue, if any, pledged in the energy performance contract."

Section 13. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 18, chapter 2, part 3, and the provisions of Title 18, chapter 2, part 3, apply to [section 1].

Section 14. Effective date. [This act] is effective on passage and approval.

Approved May 5, 2009

CHAPTER NO. 440

[HB 135]

AN ACT DIRECTING THAT STATE FUNDS FOR MITIGATION MEASURES REQUIRED BY THE FORT BELKNAP-MONTANA WATER RIGHTS COMPACT BE MADE AVAILABLE TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION; APPROPRIATING $1 MILLION TO THE DEPARTMENT FOR THE PURPOSES OF SATISFYING THE STATE'S COST-SHARE OBLIGATIONS UNDER THE FORT BELKNAP-MONTANA COMPACT; AMENDING SECTION 85-20-1004, MCA; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, it is the policy of the state to seek negotiated settlements of federal and Indian reserved water rights claims in Montana under Title 85, chapter 2, part 7, MCA; and

WHEREAS, pursuant to this policy, the State of Montana entered into a water rights compact with the Fort Belknap Indian Community of the Fort Belknap Reservation, which was ratified by the Legislature in 2001 and is codified at 85-20-1001; and

WHEREAS, the compact contains provisions requiring state and federal cost sharing; and

WHEREAS, under the cost-sharing provisions of the compact, the state has agreed to contribute $5 million to the Fort Belknap Tribes for the construction of a dam and reservoir on Peoples Creek; and

WHEREAS, the state anticipates that the planning, design, and construction of the reservoir on Peoples Creek may commence in the 2011 biennium.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 85-20-1004, MCA, is amended to read:

"85-20-1004. Mitigation account. (1) A private purpose trust account, called the mitigation account, is established, as provided for in 17-2-102, for deposit of funds and interest on funds appropriated by the state for mitigation measures required by Article VI of the compact.

(2) On approval of a final decree pursuant to Article VII of the compact, the funds and interest on funds in the mitigation account must be made available to the ~~United States bureau of reclamation~~ *department of natural resources and conservation* to cover the state's cost-share for construction of mitigation measures chosen on completion of a feasibility study and appropriate state and federal environmental review ~~by the bureau of reclamation~~ and on consideration of the economic development plan authorized by 85-20-1008."

Section 2. General fund transfer. There is transferred for the 2011 biennium $1 million from the general fund to the Peoples Creek minimum flow account established in 85-20-1007.

Section 3. Appropriation. There is appropriated to the department of natural resources and conservation from the Peoples Creek minimum flow account established in 85-20-1007 $1 million for the purposes of and subject to 85-20-1007.

Section 4. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

Section 5. Effective date. [This act] is effective July 1, 2009.

Approved May 5, 2009

CHAPTER NO. 441

[HB 154]

AN ACT REVISING LAWS RELATING TO THE FIRE SUPPRESSION ACCOUNT; REVISING THE PURPOSE OF THE ACCOUNT; REMOVING THE STATUTORY APPROPRIATION OF THE ACCOUNT; APPROPRIATING MONEY FOR FIRE PREVENTION AND SUPPRESSION FOR THE 2011 BIENNIUM; AUTHORIZING EXPENDITURES FROM THE ACCOUNT FOR UNPAID FIRE COSTS; AMENDING SECTIONS 17-7-502 AND 76-13-150, MCA; REPEALING SECTION 6, CHAPTER 2, SPECIAL LAWS OF SEPTEMBER 2007; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-7-502, MCA, is amended to read:

"17-7-502. Statutory appropriations — definition — requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-17-105; 5-11-120; 5-11-407; 5-13-403; 7-4-2502; 10-1-1202; 10-1-1303; 10-2-603; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-121; 15-1-218; 15-23-706; 15-31-906; 15-35-108; 15-36-332; 15-37-117; 15-39-110; 15-65-121; 15-70-101; 15-70-369; 15-70-601; 16-11-509; 17-3-106; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-7-304; 18-11-112; 19-3-319; 19-6-404; 19-6-410; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 19-20-607; 19-21-203; 20-8-107; 20-9-534; 20-9-622; 20-26-1503; 22-3-1004; 23-4-105; 23-4-202; 23-4-204; 23-4-302; 23-4-304; 23-5-306; 23-5-409; 23-5-612; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503; 41-5-2011; 42-2-105; 44-1-504; 44-12-206; 44-13-102; 50-4-623; 53-1-109; 53-6-703; 53-24-108; 53-24-206; 60-11-115; 61-3-415; 69-3-870; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; ~~76-13-150;~~ 77-1-108; 77-2-362; 80-2-222; 80-4-416; 80-5-510; 80-11-518; 82-11-161; 87-1-513; 90-1-115; 90-1-205; 90-3-1003; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 4, Ch. 497, L. 1999, the inclusion of 15-38-202 terminates July 1, 2014; pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, and secs. 3 and 6, Ch. 481, L. 2003, the inclusion of 15-35-108 terminates June 30, 2010; pursuant to sec. 17, Ch. 593, L. 2005, the inclusion of 15-31-906 terminates January 1, 2010; pursuant to sec. 73, Ch. 44, L. 2007, the inclusion of 19-6-410 terminates upon the death of the last recipient eligible under 19-6-709(2) for the supplemental benefit provided by 19-6-709; and pursuant to sec. 6, Ch. 2, Sp. L. September 2007, the inclusion of 76-13-150 terminates June 30, 2009.)"

Section 2. Section 76-13-150, MCA, is amended to read:

"76-13-150. ~~(Temporary)~~ **Fire suppression account — fund transfer.** (1) There is a fire suppression account in the state special revenue fund to the credit of the department.

(2) ~~The department of administration shall transfer from the state general fund to the account the amount necessary to achieve a $40 million fund balance.~~

~~The transfer must be made at the beginning of each fiscal year.~~ The legislature may transfer money from other funds to the account.

(3) Funds received for restitution by private parties must be deposited in the account.

(4) Money in the account may be used only for the purpose of paying *expenses for fire prevention, including fuel mitigation, grants for the purchase of fire suppression equipment for county cooperatives, and* fire suppression costs.

~~(5) Beginning July 1, 2008, the money in the account is statutorily appropriated, as provided in 17-7-502, to the department for use as provided in this section.~~

~~(6)~~*(5)* Interest earned on the balance of the account is retained in the account. ~~(Terminates June 30, 2009—sec. 6, Ch. 2, Sp. L. September 2007.)~~"

Section 3. Authorization to pay unpaid fire costs from appropriation for fire prevention and suppression. (1) Funds in the fire suppression account may be used to pay unpaid fire suppression costs incurred by the state in fiscal year 2008.

(2) (a) Subject to subsection (2)(b), there is appropriated to the department of natural resources and conservation up to $30 million for the 2011 biennium from the fire suppression account in the state special revenue fund to be used for the purposes described in 76-13-150.

(b) If at least $15 million of the money remains unspent and unencumbered in the account on May 1, 2010, the department may spend no more than $2 million of the amount appropriated in subsection (2)(a) on fire prevention, fuel mitigation projects, and grants for the purchase of fire suppression equipment for county cooperatives.

Section 4. Repealer. Section 6, Chapter 2, Special Laws of September 2007, is repealed.

Section 5. Effective date. [This act] is effective on passage and approval.

Approved May 5, 2009

CHAPTER NO. 442

[HB 194]

AN ACT STATUTORILY APPROPRIATING THE COUNTY PAYMENTS FROM THE HARD-ROCK MINING IMPACT TRUST ACCOUNT; AMENDING SECTIONS 17-7-502, 90-6-304, AND 90-6-331, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-7-502, MCA, is amended to read:

"17-7-502. Statutory appropriations — definition — requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-17-105; 5-11-120; 5-11-407; 5-13-403; 7-4-2502; 10-1-1202; 10-1-1303; 10-2-603; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-121; 15-1-218; 15-23-706; 15-31-906; 15-35-108; 15-36-332; 15-37-117; 15-39-110; 15-65-121; 15-70-101; 15-70-369; 15-70-601; 16-11-509; 17-3-106; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-7-304; 18-11-112; 19-3-319; 19-6-404; 19-6-410; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 19-20-607; 19-21-203; 20-8-107; 20-9-534; 20-9-622; 20-26-1503; 22-3-1004; 23-4-105; 23-4-202; 23-4-204; 23-4-302; 23-4-304; 23-5-306; 23-5-409; 23-5-612; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503; 41-5-2011; 42-2-105; 44-1-504; 44-12-206; 44-13-102; 50-4-623; 53-1-109; 53-6-703; 53-24-108; 53-24-206; 60-11-115; 61-3-415; 69-3-870; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 76-13-150; 77-1-108; 77-2-362; 80-2-222; 80-4-416; 80-5-510; 80-11-518; 82-11-161; 87-1-513; 90-1-115; 90-1-205; 90-3-1003; *90-6-331;* and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 4, Ch. 497, L. 1999, the inclusion of 15-38-202 terminates July 1, 2014; pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, and secs. 3 and 6, Ch. 481, L. 2003, the inclusion of 15-35-108 terminates June 30, 2010; pursuant to sec. 17, Ch. 593, L. 2005, the inclusion of 15-31-906 terminates January 1, 2010; pursuant to sec. 73, Ch. 44, L. 2007, the inclusion of 19-6-410 terminates upon the death of the last recipient eligible under 19-6-709(2) for the supplemental benefit provided by 19-6-709; and pursuant to sec. 6, Ch. 2, Sp. L. September 2007, the inclusion of 76-13-150 terminates June 30, 2009.)"

Section 2. Section 90-6-304, MCA, is amended to read:

"90-6-304. Accounts established. (1) There is within the state agency fund type a hard-rock mining impact account. Money is payable into this account from payments made by a mining developer in compliance with the written guarantee from the developer to meet the increased costs of public services and facilities as specified in the impact plan provided for in 90-6-307. The state treasurer shall draw warrants from this account upon order of the board.

(2) There is within the state special revenue fund a hard-rock mining impact trust account. Within this trust account, there is established a reserve amount not to exceed $100,000.

(a) Money within the hard-rock mining impact trust account may be used:

(i) for the administrative and operating expenses of the board, as provided by 90-6-303(4);

(ii) to establish and maintain the reserve amount; and

(iii) for distribution to the counties of origin, as provided by 90-6-331 and this section.

(b) Money within the hard-rock mining impact trust account may be used for the administrative and operating expenses of the board if:

(i) the revenue provided under 15-37-117(1)(b) is less than the amount appropriated for the administrative and operating expenses of the board; or

(ii) the use of the reserve amount of revenue is necessary to allow the board to meet its quasi-judicial responsibilities under 90-6-307, 90-6-311, or 90-6-403(3).

(3) Money is payable into the hard-rock mining impact trust account under the provisions of 15-37-117. After first deducting the administrative and operating expenses of the board, as provided in 90-6-303, and then establishing and maintaining the reserve amount of $100,000, as provided in subsection (2) of this section, the remaining money must be segregated within the account by county of origin. ~~The state treasurer shall draw warrants from this account upon order of the board.~~"

Section 3. Section 90-6-331, MCA, is amended to read:

"90-6-331. ~~Fund transfer~~ *Payment to counties — statutory appropriation.* Prior to each October 31, all money segregated by county in the hard-rock mining impact trust account following allocation to the hard-rock mining impact trust account established in 90-6-304(2) as of *the immediately preceding* September 30 ~~immediately preceding~~ must be ~~transferred~~ *paid* to the county for which the funds have been held in deposit. *The payments to the counties are statutorily appropriated as provided in 17-7-502.* The funds ~~transferred~~ *received by the county* must be deposited in the county hard-rock mine trust account established in 7-6-2225."

Section 4. Effective date. [This act] is effective July 1, 2009.

Section 5. Termination. [This act] terminates June 30, 2019.

Approved May 5, 2009

CHAPTER NO. 443

[HB 301]

AN ACT INCLUDING REASONABLE PARALEGAL FEES AS A COMPONENT OF ATTORNEY FEES THAT MAY BE AWARDED TO A PREVAILING PARTY IN CERTAIN CASES; DEFINING "PARALEGAL"; AMENDING SECTIONS 25-10-302 AND 37-61-215, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Paralegal fees as component of attorney fees. In any case or proceeding in which attorney fees are awarded to the prevailing party, the court may, as a component of the attorney fees, include reasonable fees of a paralegal, as defined in [section 2].

Section 2. Paralegal defined — use of title. (1) As used in [section 1] and this section, "paralegal" means a person qualified through education, training, or work experience who is employed or retained to perform, under supervision by a licensed attorney, substantive legal work that:

(a) requires a substantial knowledge of legal concepts; and

(b) in the absence of the paralegal, would be performed by an attorney.

(2) An individual may use the title "paralegal" if the individual:

(a) has received an associate's degree in paralegal studies from an accredited institution or a baccalaureate degree in paralegal studies from an accredited college or university;

(b) has received a baccalaureate degree in any discipline from an accredited college or university and has completed not less than 18 semester credits of course work offered by a qualified paralegal studies program;

(c) has received certification by the national association of legal assistants or the national federation of paralegal associations;

(d) has received a high school diploma or its equivalent, has performed not less than 4,800 hours of substantive legal work under the supervision of a licensed attorney documented by the certification of the attorney or attorneys under whom the work was done, and has completed at least 5 hours of approved continuing legal education in the area of legal ethics and professional responsibility; or

(e) has graduated from an accredited law school and has not been disbarred or suspended from the practice of law by any jurisdiction.

(3) A person may not practice as a paralegal except under the supervision of a licensed attorney and is prohibited from engaging in the unauthorized practice of law.

Section 3. Section 25-10-302, MCA, is amended to read:

"25-10-302. Inclusion of attorney's fees in bill of costs. The attorney fees mentioned in 25-10-303, 30-9A-607, 71-1-233, and 71-3-124 *and paralegal fees as a component of attorney fees as provided in [section 1]* need not be included in the cost bill if they are made a part of the judgment."

Section 4. Section 37-61-215, MCA, is amended to read:

"37-61-215. Allowance of ~~attorneys'~~ *attorney* fees to unlicensed persons forbidden — *authorized paralegal fees.* *(1)* It ~~shall be~~ *is* unlawful for any court within this state to allow ~~attorneys'~~ *attorney* fees in any action or proceeding before ~~said~~ *the* court in which ~~attorneys'~~ *attorney* fees are allowed by law to either party to ~~such~~ *an* action or proceeding when ~~such~~ *the* party is represented by anyone other than a duly admitted or licensed attorney at law.

(2) This section does not prevent the award of paralegal fees as a component of attorney fees as provided in [section 1]."

Section 5. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 25, chapter 10, part 3, and the provisions of Title 25, chapter 10, apply to [sections 1 and 2].

Section 6. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 7. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 8. Applicability. [This act] applies to actions and proceedings filed on or after [the effective date of this act].

Approved May 5, 2009

CHAPTER NO. 444

[HB 332]

AN ACT REVISING THE LAWS RELATING TO SCHOOLS; REVISING THE LAWS PERTAINING TO THE LOCATION OF AND NOTICE REQUIREMENTS FOR CERTAIN SCHOOL BOARD MEETINGS; EXPANDING THE DISCIPLINARY POWERS OF SCHOOL ADMINISTRATORS; CLARIFYING THE LAWS GOVERNING STUDENT SUSPENSIONS; AND AMENDING SECTIONS 20-3-322, 20-5-201, AND 20-5-202, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-3-322, MCA, is amended to read:

"20-3-322. Meetings and quorum. (1) The trustees of a district shall hold at least the following number of regular meetings:

(a) an organization meeting, as prescribed by 20-3-321;

(b) a final budget meeting, as prescribed by 20-9-131; and

(c) *(i)* in first-class elementary districts, not less than one regular meeting each month; or

~~(d)~~*(ii)* in any other district, regular meetings at least quarterly.

(2) *(a)* The trustees of the district shall adopt a policy setting the day and time for the minimum number of regular school meetings prescribed in subsection (1)(c)*(i)* or ~~(1)(d)~~ *(1)(c)(ii)* and, in addition, any other regular meeting days the trustees wish to establish. Except for an unforeseen emergency *or as provided in subsection (2)(b)*, meetings must be conducted in school buildings or, upon the unanimous vote of the trustees, in a publicly accessible building located within the district.

(b) This section does not prohibit the trustees from meeting outside the boundaries of the school district for collaboration or cooperation on educational issues with other school boards, educational agencies, or cooperatives. Adequate notice of the meeting as well as an agenda must be provided to the public in advance. Decisionmaking may only occur at a properly noticed meeting held within the school district's boundaries.

(3) Special meetings of the trustees may be called by the presiding officer or any two members of the trustees by giving each member a 48-hour written notice of the meeting, except that the 48-hour notice is waived in an unforeseen emergency *or to consider a violation of the student code of conduct, as defined in accordance with district policy, within a week of graduation*.

(4) Business may not be transacted by the trustees of a district unless it is transacted at a regular meeting or a properly called special meeting. A quorum for any meeting is a majority of the trustees' membership. All trustee meetings must be public meetings, as prescribed by 2-3-201, except that the trustees may recess to an executive session under the provisions of 2-3-203.

(5) For the purposes of ~~subsection (3)~~ *this section*, "unforeseen emergency" means a storm, fire, explosion, community disaster, insurrection, act of God, or other unforeseen destruction or impairment of school district property that affects the health and safety of the trustees, students, or district employees or the educational functions of the district."

Section 2. Section 20-5-201, MCA, is amended to read:

"20-5-201. Duties and sanctions. (1) A pupil ~~shall~~:

(a) *shall* comply with the policies of the trustees and the rules of the school that the pupil attends;

(b) *shall* pursue the required course of instruction;

(c) *shall* submit to the authority of the teachers, principal, and district superintendent of the district; and

(d) ~~be~~ *is* subject to the control and authority of the teachers, principal, and district superintendent while the pupil is in school or on school premises, on the way to and from school, or during intermission or recess.

(2) A pupil who ~~continually and willfully~~ disobeys the provisions of this section, shows open defiance of the authority vested in school personnel by this section, defaces or damages any school building, school grounds, furniture, equipment, book belonging to the district, ~~or~~ harms or threatens to harm another person or the person's property*, or otherwise violates district policy regarding pupil conduct* is ~~liable for~~ *subject to* punishment, suspension, or expulsion under the provisions of this title. When a pupil defaces or damages school property*,* the pupil's parent or guardian is liable for the cost of repair or replacement upon the complaint of the teacher, principal, superintendent, or any trustee and the proof of any damage.

(3) In addition to the sanctions prescribed in this section, ~~the trustees of~~ *the trustees of* a high school district may deny a high school pupil the honor of participating in the graduation exercise or exclude a high school pupil from participating in school activities. The ~~trustees~~ *trustees* may not take action under this subsection until the incident or infraction causing the consideration has been investigated and the ~~trustees~~ *trustees have* ~~have~~ determined that the high school pupil was involved in the incident or infraction.

(4) (a) A school district may withhold the grades, diploma, or transcripts of a pupil who is responsible for the cost of school materials or the loss or damage of school property until the pupil or the pupil's parent or guardian satisfies the obligation.

(b) A school district that decides to withhold a pupil's grades, diploma, or transcripts from the pupil and the pupil's parent or guardian pursuant to subsection (4)(a) shall:

(i) upon receiving notice that the pupil has transferred to another school district in the state, notify the pupil's parent or guardian in writing that the school district to which the pupil has transferred will be requested to withhold the pupil's grades, diploma, or transcripts until any obligation has been satisfied;

(ii) forward appropriate grades or transcripts to the school to which the pupil has transferred;

(iii) at the same time, notify the school district of any financial obligation of the pupil and request the withholding of the pupil's grades, diploma, or transcripts until any obligations are met;

(iv) when the pupil or the pupil's parent or guardian satisfies the obligation, inform the school district to which the pupil has transferred; and

(v) adopt a policy regarding a process for a pupil or the pupil's parent or guardian to appeal the school district's decision to request that another school district withhold a pupil's grades, diploma, or transcripts.

(c) Upon receiving notice that a school district has requested the withholding of the grades, diploma, or transcripts of a pupil under this

subsection (4), a school district to which the pupil has transferred shall withhold the grades, diploma, or transcripts of the pupil until it receives notice~~,~~ from the district that initiated the decision~~,~~ that the decision has been rescinded under the terms of subsection (4)(a)."

Section 3. Section 20-5-202, MCA, is amended to read:

"20-5-202. Suspension and expulsion. (1) As provided in 20-4-302, 20-4-402, and 20-4-403, a pupil may be suspended by a teacher, superintendent, or principal. The trustees of the district shall adopt a policy defining the authority and procedure to be used by a teacher, superintendent, or principal in ~~suspending~~ *the suspension of* a pupil and *in* defining the circumstances and procedures by which the trustees may expel a pupil. Expulsion is *any removal of a pupil for more than 20 school days without the provision of educational services and is* a disciplinary action available only to the trustees. *A pupil may be suspended from school for an initial period not to exceed 10 school days. Upon a finding by a school administrator that the immediate return to school by a pupil would be detrimental to the health, welfare, or safety of others or would be disruptive of the educational process, a pupil may be suspended for one additional period not to exceed 10 school days if the pupil is granted an informal hearing with the school administrator prior to the additional suspension and if the decision to impose the additional suspension does not violate the Individuals With Disabilities Education Act, 20 U.S.C. 1400, et seq.*

(2) The trustees of a district shall adopt a policy for the expulsion of a student who is determined to have brought a firearm, as defined in 18 U.S.C. 921, to school and for referring the matter to the appropriate local law enforcement agency. A student who is determined to have brought a firearm to school under this subsection must be expelled from school for a period of not less than 1 year, except that the trustees may authorize the school administration to modify the requirement for expulsion of a student on a case-by-case basis. A decision to change the placement of a student with a disability who has been expelled pursuant to this section must be made in accordance with the Individuals With Disabilities Education Act.

(3) In accordance with 20-4-302, 20-4-402, 20-4-403, and subsection (1) of this section, a teacher, a superintendent, or a principal shall suspend immediately for good cause a student who is determined to have brought a firearm to school.

(4) Nothing in this section prevents a school district from:

(a) offering instructional activities related to firearms or allowing a firearm to be brought to school for instructional activities sanctioned by the district; or

(b) providing educational services in an alternative setting to a student who has been expelled from the student's regular school setting."

Approved May 5, 2009

CHAPTER NO. 445

[HB 483]

AN ACT REVISING ENVIRONMENTAL LAWS RELATED TO ENERGY DEVELOPMENT PROJECTS; REVISING BOARD OF ENVIRONMENTAL REVIEW HEARING REQUEST PROCEDURES; REQUIRING A WRITTEN UNDERTAKING TO BE GIVEN BY CERTAIN PARTIES REQUESTING A HEARING OR A STAY BEFORE A COURT OR THE BOARD OF

ENVIRONMENTAL REVIEW; MODIFYING THE EXPIRATION DATE REQUIREMENTS FOR A PERMIT OR LICENSE UNDER THE AIR QUALITY LAWS; CLARIFYING THE USE OF BEST AVAILABLE CONTROL TECHNOLOGY REGULATIONS AND GUIDANCE; ESTABLISHING DEADLINES FOR THE BOARD OF ENVIRONMENTAL REVIEW TO ISSUE A FINAL DECISION UNDER THE AIR QUALITY LAWS AND THE MAJOR FACILITY SITING ACT; AMENDING SECTIONS 2-4-623, 2-4-702, 75-2-103, 75-2-211, 75-5-103, AND 75-20-223, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Energy development project — hearing and procedures. (1) (a) When the department approves or denies the application for a permit under 75-2-211 for an energy development project, the applicant or a person who has provided the department with formal comments and who is directly and adversely affected by the department's decision may request a hearing before the board. If the department provided an opportunity for public comment on the application, the request for a hearing must be limited to those issues raised in comments made to the department during the comment period unless the issues are related to a material change in federal or state law made during the comment period, to a judicial decision issued after the comment period, or to a material change to the draft permit, which was submitted for public comment, made by the department in the final permit decision and upon which the public did not have a meaningful opportunity to comment. The request for hearing must be filed within 30 days after the department renders its decision. An affidavit setting forth the grounds for the request must be filed with the request for a hearing.

(b) (i) If a hearing is requested by a person other than the applicant for or permittee of an energy development project, the applicant or permittee may, by filing a written election with the board within 15 days of receipt of the request for hearing, elect to have the matter proceed to hearing before the board or to have the matter submitted directly to the district court for judicial review of the agency decision. The party who requests the hearing may elect to have the matter submitted either to the board for a hearing or to the district court for judicial review by submitting a written election to the board with the request for hearing. If there are conflicting elections between the parties, the matter must proceed to district court.

(ii) If the applicant or permittee is not the person who requested the hearing and has elected to have the matter submitted to the district court, the person who submitted the request for a hearing shall file a petition for review of the permit decision within 15 days of receipt of notice from the permittee. If the person who requested the hearing has elected to have the matter proceed to district court, that person shall file a petition in district court within 15 days of filing the request.

(iii) The petition must be limited to matters raised in the request for hearing and must be filed in the county in which the facility is located.

(iv) If a party does not elect to submit the matter directly to district court, the matter must proceed through the contested case process before the board pursuant to the Montana Administrative Procedure Act.

(v) The board or the district court shall apply the laws and rules in place when the department issued its decision, and the board or the district court may not consider any issue that was not presented to the department for the

department's consideration during the formal comment period unless the issue is related to a material change in federal or state law made during the comment period, to a judicial decision issued after the comment period or to a material change to the draft permit, which was submitted for public comment, made by the department in the final permit decision and upon which the public did not have a meaningful opportunity to comment.

(c) (i) Except as provided in subsection (1)(c)(ii), if the person requesting the hearing is not the applicant or permittee of an energy development project, the board or the district court shall require a written undertaking to be given by the party requesting the hearing for the payment of costs and damages incurred by the permit applicant and its employees if the request for a hearing or judicial review was for an improper purpose designed to harass, cause unnecessary delay, or improperly interfere with the issuance of the permit without a reasonable basis in law or fact.

(ii) The board or the district court may not require a written undertaking if the party requesting the hearing is an indigent person.

(d) If grounds for requesting the hearing are based on alleged error in applying best available control technology requirements, the board or the district court shall give deference to the best available control technology determination made by the department. The board or the district court may not reject the best available control technology determination unless the determination was incorrect as a matter of law or the factual basis for the determination was clearly erroneous.

(2) The board shall issue a final decision within 4 months from the close of the hearing on the merits or, if no hearing is held, within 3 months from the date that briefing by the parties is complete unless the applicant or permittee and the party other than the applicant or permittee agree in writing to an extension of time. The board shall require the parties to prepare the case for hearing without unreasonable delay.

(3) (a) Any requirement in a permit to commence construction, installation, or alteration within a certain time period is tolled during a contested case or judicial review proceeding, but not by more than 12 months, unless the applicant or permittee in its discretion waives the tolling in writing.

(b) If there are multiple appeals of one permit, tolling under this subsection (3) may not exceed a total of 12 months for all appeals.

(c) The applicant may not engage in construction during the period that the time period is tolled under subsection (3)(a).

(4) The department shall, for good cause shown, waive for up to 1 year any requirement that construction of an energy development project must proceed with due diligence. During the period that a waiver is in effect, an air quality permit does not expire because construction of an energy development project failed to proceed with due diligence.

Section 2. Section 2-4-623, MCA, is amended to read:

"2-4-623. Final orders — notification — availability. (1) (a) A final decision or order adverse to a party in a contested case must be in writing. A final decision must include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, must be accompanied by a concise and explicit statement of the underlying facts supporting the findings. ~~A~~ *Except as provided in [section 1] and 75-20-223, a* final decision must be issued within 90 days after a contested case is considered to be submitted for a final

decision unless, for good cause shown, the period is extended for an additional time not to exceed 30 days.

(b) If an agency intends to issue a final written decision in a contested case that grants or denies relief and the relief that is granted or denied differs materially from a final agency decision that was orally announced on the record, the agency may not issue the final written decision without first providing notice to the parties and an opportunity to be heard before the agency.

(2) Findings of fact must be based exclusively on the evidence and on matters officially noticed.

(3) Each conclusion of law must be supported by authority or by a reasoned opinion.

(4) If, in accordance with agency rules, a party submitted proposed findings of fact, the decision must include a ruling upon each proposed finding.

(5) Parties must be notified by mail of any decision or order. Upon request, a copy of the decision or order must be delivered or mailed in a timely manner to each party and to each party's attorney of record.

(6) Each agency shall index and make available for public inspection all final decisions and orders, including declaratory rulings under 2-4-501. An agency decision or order is not valid or effective against any person or party, and it may not be invoked by the agency for any purpose until it has been made available for public inspection as required in this section. This provision is not applicable in favor of any person or party who has actual knowledge of the decision or order or when a state statute or federal statute or regulation prohibits public disclosure of the contents of a decision or order."

Section 3. Section 2-4-702, MCA, is amended to read:

"2-4-702. Initiating judicial review of contested cases. (1) (a) ~~A~~ *Except as provided in [section 1] and 75-20-223, a* person who has exhausted all administrative remedies available within the agency and who is aggrieved by a final written decision in a contested case is entitled to judicial review under this chapter. This section does not limit use of or the scope of judicial review available under other means of review, redress, relief, or trial de novo provided by statute.

(b) A party who proceeds before an agency under the terms of a particular statute may not be precluded from questioning the validity of that statute on judicial review, but the party may not raise any other question not raised before the agency unless it is shown to the satisfaction of the court that there was good cause for failure to raise the question before the agency.

(2) (a) Except as provided in *[section 1], 75-2-211, and* subsection (2)(c) *of this section*, proceedings for review must be instituted by filing a petition in district court within 30 days after service of the final written decision of the agency or, if a rehearing is requested, within 30 days after the written decision is rendered. Except as otherwise provided by statute or subsection (2)(d), the petition must be filed in the district court for the county where the petitioner resides or has the petitioner's principal place of business or where the agency maintains its principal office. Copies of the petition must be promptly served upon the agency and all parties of record.

(b) The petition must include a concise statement of the facts upon which jurisdiction and venue are based, a statement of the manner in which the petitioner is aggrieved, and the ground or grounds specified in 2-4-704(2) upon which the petitioner contends to be entitled to relief. The petition must demand

the relief to which the petitioner believes the petitioner is entitled, and the demand for relief may be in the alternative.

(c) If a petition for review is filed pursuant to 33-16-1012(2)(c), the workers' compensation court, rather than the district court, has jurisdiction and the provisions of this part apply to the workers' compensation court in the same manner as the provisions of this part apply to the district court.

(d) If a petition for review is filed challenging a licensing or permitting decision made pursuant to Title 75 or Title 82, the petition for review must be filed in the county where the facility is located or proposed to be located or where the action is proposed to occur.

(3) Unless otherwise provided by statute, the filing of the petition may not stay enforcement of the agency's decision. The agency may grant or the reviewing court may order a stay upon terms that it considers proper, following notice to the affected parties and an opportunity for hearing. A stay may be issued without notice only if the provisions of 27-19-315 through 27-19-317 are met.

(4) Within 30 days after the service of the petition or within further time allowed by the court, the agency shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under review. By stipulation of all parties to the review proceedings, the record may be shortened. A party unreasonably refusing to stipulate to limit the record may be required by the court to pay the additional costs. The court may require or permit subsequent corrections or additions to the record."

Section 4. Section 75-2-103, MCA, is amended to read:

"75-2-103. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Advisory council" means the air pollution control advisory council provided for in 2-15-2106.

(2) "Air contaminant" means dust, fumes, mist, smoke, other particulate matter, vapor, gas, odorous substances, or any combination thereof.

(3) "Air pollutants" means one or more air contaminants that are present in the outdoor atmosphere, including those pollutants regulated pursuant to section 7412 and Subchapter V of the federal Clean Air Act, 42 U.S.C. 7401, et seq.

(4) "Air pollution" means the presence of air pollutants in a quantity and for a duration that are or tend to be injurious to human health or welfare, animal or plant life, or property or that would unreasonably interfere with the enjoyment of life, property, or the conduct of business.

(5) "Associated supporting infrastructure" means:

(a) electric transmission and distribution facilities;

(b) pipeline facilities;

(c) aboveground ponds and reservoirs and underground storage reservoirs;

(d) rail transportation;

(e) aqueducts and diversion dams;

(f) devices or equipment associated with the delivery of an energy form or product produced at an energy development project; or

(g) other supporting infrastructure, as defined by board rule, that is necessary for an energy development project.

~~(5)~~*(6)* "Board" means the board of environmental review provided for in 2-15-3502.

~~(6)~~*(7)* (a) "Commercial hazardous waste incinerator" means:

(i) an incinerator that burns hazardous waste; or

(ii) a boiler or industrial furnace subject to the provisions of 75-10-406.

(b) Commercial hazardous waste incinerator does not include a research and development facility that receives federal or state research funds and that burns hazardous waste primarily to test and evaluate waste treatment remediation technologies.

~~(7)~~*(8)* "Department" means the department of environmental quality provided for in 2-15-3501.

~~(8)~~*(9)* "Emission" means a release into the outdoor atmosphere of air contaminants.

(10) (a) "Energy development project" means each plant, unit, or other development and associated developments, including any associated supporting infrastructure, designed for or capable of:

(i) generating electricity;

(ii) producing gas derived from coal;

(iii) producing liquid hydrocarbon products;

(iv) refining crude oil or natural gas;

(v) producing alcohol to be blended for ethanol-blended gasoline and that are eligible for a tax incentive pursuant to Title 15, chapter 70, part 5;

(vi) producing biodiesel and that are eligible for a tax incentive for the production of biodiesel pursuant to 15-32-701; or

(vii) transmitting electricity through an electric transmission line with a design capacity of equal to or greater than 50 kilovolts.

(b) The term does not include a nuclear facility as defined in 75-20-1202.

~~(9)~~*(11)* "Environmental protection law" means a law contained in or an administrative rule adopted pursuant to Title 75, chapter 2, 5, 10, or 11.

~~(10)~~*(12)* "Hazardous waste" means:

(a) a substance defined as hazardous under 75-10-403 or defined as hazardous in department administrative rules adopted pursuant to Title 75, chapter 10, part 4; or

(b) a waste containing 2 parts or more per million of polychlorinated biphenyl (PCB).

~~(11)~~*(13)* (a) "Incinerator" means any single- or multiple-chambered combustion device that burns combustible material, alone or with a supplemental fuel or with catalytic combustion assistance, primarily for the purpose of removal, destruction, disposal, or volume reduction of any portion of the input material.

(b) Incinerator does not include:

(i) safety flares used to combust or dispose of hazardous or toxic gases at industrial facilities, such as refineries, gas sweetening plants, oil and gas wells, sulfur recovery plants, or elemental phosphorus plants;

(ii) space heaters that burn used oil;

(iii) wood-fired boilers; or

(iv) wood waste burners, such as tepee, wigwam, truncated cone, or silo burners.

~~(12)~~*(14)* "Medical waste" means any waste that is generated in the diagnosis, treatment, or immunization of human beings or animals, in medical research on humans or animals, or in the production or testing of biologicals. The term includes:

(a) cultures and stocks of infectious agents;

(b) human pathological wastes;

(c) waste human blood or products of human blood;

(d) sharps;

(e) contaminated animal carcasses, body parts, and bedding that were known to have been exposed to infectious agents during research;

(f) laboratory wastes and wastes from autopsy or surgery that were in contact with infectious agents; and

(g) biological waste and discarded material contaminated with blood, excretion, exudates, or secretions from humans or animals.

~~(13)~~*(15)* (a) "Oil or gas well facility" means a well that produces oil or natural gas. The term includes:

(i) equipment associated with the well and used for the purpose of producing, treating, separating, or storing oil, natural gas, or other liquids produced by the well; and

(ii) a group of wells under common ownership or control that produce oil or natural gas and that share common equipment used for the purpose of producing, treating, separating, or storing oil, natural gas, or other liquids produced by the wells.

(b) The equipment referred to in subsection ~~(13)(a)~~ *(15)(a)* includes but is not limited to wellhead assemblies, amine units, prime mover engines, phase separators, heater treater units, dehydrator units, tanks, and connecting tubing.

(c) The term does not include equipment such as compressor engines used for transmission of oil or natural gas.

~~(14)~~*(16)* "Person" means an individual, a partnership, a firm, an association, a municipality, a public or private corporation, the state or a subdivision or agency of the state, a trust, an estate, an interstate body, the federal government or an agency of the federal government, or any other legal entity and includes persons resident in Canada.

~~(15)~~*(17)* "Principal" means a principal of a corporation, including but not limited to a partner, associate, officer, parent corporation, or subsidiary corporation.

~~(16)~~*(18)* "Small business stationary source" means a stationary source that:

(a) is owned or operated by a person who employs 100 or fewer individuals;

(b) is a small business concern as defined in the Small Business Act, 15 U.S.C. 631, et seq.;

(c) is not a major stationary source as defined in Subchapter V of the federal Clean Air Act, 42 U.S.C. 7661, et seq.;

(d) emits less than 50 tons per year of an air pollutant;

(e) emits less than a total of 75 tons per year of all air pollutants combined; and

(f) is not excluded from this definition under 75-2-108(3).

~~(17)~~*(19)* (a) "Solid waste" means all putrescible and nonputrescible solid, semisolid, liquid, or gaseous wastes, including but not limited to garbage; rubbish; refuse; ashes; swill; food wastes; commercial or industrial wastes; medical waste; sludge from sewage treatment plants, water supply treatment plants, or air pollution control facilities; construction, demolition, or salvage wastes; dead animals, dead animal parts, offal, animal droppings, or litter; discarded home and industrial appliances; automobile bodies, tires, interiors, or parts thereof; wood products or wood byproducts and inert materials; styrofoam and other plastics; rubber materials; asphalt shingles; tarpaper; electrical equipment, transformers, or insulated wire; oil or petroleum products or oil or petroleum products and inert materials; treated lumber and timbers; and pathogenic or infectious waste.

(b) Solid waste does not include municipal sewage, industrial wastewater effluents, mining wastes regulated under the mining and reclamation laws administered by the department of environmental quality, or slash and forest debris regulated under laws administered by the department of natural resources and conservation."

Section 5. Section 75-2-211, MCA, is amended to read:

"75-2-211. Permits for construction, installation, alteration, or use. (1) The board shall by rule provide for the issuance, modification, suspension, revocation, and renewal of a permit issued under this part.

(2) (a) Except as provided in 75-1-208(4)(b), 75-2-234, and subsections (2)(b) and (2)(c) of this section, not later than 180 days before construction, installation, or alteration begins or as a condition of use of any machine, equipment, device, or facility that the board finds may directly or indirectly cause or contribute to air pollution or that is intended primarily to prevent or control the emission of air pollutants, the owner or operator shall file with the department the appropriate permit application on forms available from the department.

(b) Except as provided in subsection (2)(e), the owner or operator of an oil or gas well facility shall file the permit application with the department no later than January 3, 2006, or 60 days after the initial well completion date, whichever is later. For purposes of this section, the initial well completion date for an oil or gas well facility is:

(i) for an oil or gas well facility producing oil, the date when the first oil is produced through wellhead equipment into lease tanks from the ultimate producing interval after casing has been run; and

(ii) for an oil or gas well facility producing gas, the date when the oil or gas well facility is capable of producing gas through wellhead equipment from the ultimate producing interval after casing has been run.

(c) An owner or operator who complies with subsection (2)(b) may construct, install, or use equipment necessary to complete or operate an oil or gas well facility without a permit until the department's decision on the application is final. If the owner or operator does not comply with subsection (2)(b), the owner or operator may not operate the oil or gas well facility and is liable for a violation of this section for every day of construction, installation, or operation of the facility.

(d) The board shall adopt rules establishing air emission control requirements applicable to an oil or gas well facility during the time from the initial well completion date until the department's decision on the application is final.

(e) The provisions of subsections (2)(b) and (2)(c) do not apply to an oil or gas well facility subject to the federal air permitting provisions of 42 U.S.C. 7475 or 7503.

(3) The permit program administered by the department pursuant to this section must include the following:

(a) requirements and procedures for permit applications, including standard application forms;

(b) requirements and procedures for submittal of information necessary to determine the location, quantity, and type of emissions;

(c) procedures for public notice and opportunity for comment or public hearing, as appropriate;

(d) procedures for providing notice and an opportunity for comment to contiguous states and federal agencies, as appropriate;

(e) requirements for inspection, monitoring, recordkeeping, and reporting;

(f) procedures for the transfer of permits;

(g) requirements and procedures for suspension, modification, and revocation of permits by the department;

(h) requirements and procedures for appropriate emission limitations and other requirements, including enforceable measures necessary to ensure compliance with those limitations and requirements;

(i) requirements and procedures for permit modification and amendment; and

(j) requirements and procedures for issuing a single permit authorizing emissions from similar operations at multiple temporary locations, which permit may include conditions necessary to ensure compliance with the requirements of this chapter at all authorized locations and a requirement that the owner or operator notify the department in advance of each change in location.

(4) This section does not restrict the board's authority to adopt regulations providing for a single air quality permit system.

(5) Department approval of an application to transfer a portable emission source from one location to another is exempt from the provisions of 75-1-201(1).

(6) The department may, for good cause shown, waive or shorten the time required for filing the appropriate applications.

(7) The department shall require that applications for permits be accompanied by any plans, specifications, and other information that it considers necessary.

(8) An application is not considered filed until the applicant has submitted all fees required under 75-2-220 and all information and completed application forms required pursuant to subsections (2), (3), and (7) of this section. If the department fails to notify the applicant in writing within 30 days after the purported filing of an application that the application is incomplete and fails to list the reasons why the application is considered incomplete, the application is considered filed as of the date of the purported filing.

(9) (a) Except as provided in 75-1-205(4) and 75-1-208(4)(b), if an application for a permit requires the preparation of an environmental impact statement under the Montana Environmental Policy Act, Title 75, chapter 1, parts 1 through 3, the department shall notify the applicant in writing of the approval or denial of the application:

(i) within 180 days after the department's receipt of a filed application, as provided in subsection (8), if the department prepares the environmental impact statement;

(ii) within 30 days after issuance of the final environmental impact statement by the lead agency if a state agency other than the department has been designated by the governor as lead agency for preparation of the environmental impact statement; or

(iii) if the application is for a machine, equipment, a device, or a facility at an operation that requires a permit under Title 82, chapter 4, part 1, 2, or 3, within 30 days of issuance of the final environmental impact statement in accordance with time requirements of Title 82, chapter 4, part 1, 2, or 3.

(b) If an application does not require the preparation of an environmental impact statement, is not subject to the provisions of 75-2-215, and is not subject to the federal air quality permitting provisions of 42 U.S.C. 7475, 7503, or 7661, the department shall notify the applicant in writing within 60 days after its receipt of a filed application, as provided in subsection (8), of its approval or denial of the application, except as provided in subsection (14).

(c) If an application does not require the preparation of an environmental impact statement and is subject to the federal air permitting provisions of 42 U.S.C. 7475, 7503, or 7661, the department shall notify the applicant, in writing, within 75 days after its receipt of a filed application, as provided in subsection (8), of its approval or denial of the application.

(d) Except as provided in subsection (9)(e), if an application does not require the preparation of an environmental impact statement and is subject to the provisions of 75-2-215, the department shall notify the applicant of its approval or denial of the application, in writing, within 75 days after its receipt of a filed application, as provided in subsection (8).

(e) If an application for a permit is for the construction, installation, alteration, or use of a source that is also required to obtain a license pursuant to 75-10-221 or a permit pursuant to 75-10-406, the department shall prepare a single environmental review document pursuant to Title 75, chapter 1, for the permit required under this section and the license or permit required under 75-10-221 or 75-10-406 and act on the applications within the time period provided for in 75-2-215(3)(e).

(f) The time for notification may be extended for 30 days by written agreement of the department and the applicant. Additional 30-day extensions may be granted by the department upon the request of the applicant. Notification of approval or denial may be served personally or by certified mail on the applicant or the applicant's agent.

(g) Failure by the department to act in a timely manner does not constitute approval or denial of the application. This does not limit or abridge the right of any person to seek available judicial remedies to require the department to act in a timely manner.

(10) ~~When~~ *Except as provided in [section 1], when* the department approves or denies the application for a permit under this section, a person who is ~~jointly~~

~~or severally~~ *directly and* adversely affected by the department's decision may request a hearing before the board. The request for hearing must be filed within 15 days after the department renders its decision. An affidavit setting forth the grounds for the request must be filed within 30 days after the department renders its decision. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing before the board under this subsection.

(11) *Except as provided in [section 1]:*

(a) ~~The~~ *the* department's decision on the application is not final until 15 days have elapsed from the date of the decision.*;*

(b) ~~The~~ *the* filing of a request for hearing does not stay the department's decision. However, the board may order a stay upon receipt of a petition and a finding, after notice and opportunity for hearing, that:

(i) the person requesting the stay is entitled to the relief demanded in the request for a hearing; or

(ii) continuation of the permit during the appeal would produce great or irreparable injury to the person requesting the stay.

(c) ~~Upon~~ *upon* granting a stay, the board may require a written undertaking to be given by the party requesting the stay for the payment of costs and damages incurred by the permit applicant and its employees if the board determines that the permit was properly issued. When requiring an undertaking, the board shall use the same procedures and limitations as are provided in 27-19-306(2) through (4) for undertakings on injunctions.

(12) The board shall provide, by rule, a period of 30 days in which the public may submit comments on draft air quality permits for applications that:

(a) are subject to the federal air quality permitting provisions of 42 U.S.C. 7475, 7503, or 7661;

(b) are subject to the requirements of 75-2-215; or

(c) require the preparation of an environmental impact statement.

(13) The board shall provide, by rule, a period of 15 days in which the public may submit comments on draft air quality permits not subject to subsection (12).

(14) The board shall provide, by rule, the basis upon which the department may extend by 15 days:

(a) the period as provided in subsection (13) in which the public may submit comments on draft air quality permits not subject to subsection (12); and

(b) the period for notifying an applicant of its final decision on approval or denial of an application, as provided in subsection (9)(b).

(15) (a) The board may adopt rules for issuance, modification, suspension, revocation, renewal, or creation of:

(i) general permits covering multiple similar sources; or

(ii) other permits covering multiple similar sources.

(b) Rules adopted pursuant to subsection (15)(a) may provide for construction and operation under the permit upon authorization by the department or upon notice to the department."

Section 6. Section 75-5-103, MCA, is amended to read:

"75-5-103. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Associated supporting infrastructure" means:

(a) electric transmission and distribution facilities;

(b) pipeline facilities;

(c) aboveground ponds and reservoirs and underground storage reservoirs;

(d) rail transportation;

(e) aqueducts and diversion dams;

(f) devices or equipment associated with the delivery of an energy form or product produced at an energy development project; or

(g) other supporting infrastructure, as defined by board rule, that is necessary for an energy development project.

~~(1)~~*(2)* "Board" means the board of environmental review provided for in 2-15-3502.

~~(2)~~*(3)* "Contamination" means impairment of the quality of state waters by sewage, industrial wastes, or other wastes, creating a hazard to human health.

~~(3)~~*(4)* "Council" means the water pollution control advisory council provided for in 2-15-2107.

~~(4)~~*(5)* (a) "Currently available data" means data that is readily available to the department at the time a decision is made, including information supporting its previous lists of water bodies that are threatened or impaired.

(b) The term does not mean new data to be obtained as a result of department efforts.

~~(5)~~*(6)* "Degradation" means a change in water quality that lowers the quality of high-quality waters for a parameter. The term does not include those changes in water quality determined to be nonsignificant pursuant to 75-5-301(5)(c).

~~(6)~~*(7)* "Department" means the department of environmental quality provided for in 2-15-3501.

~~(7)~~*(8)* "Disposal system" means a system for disposing of sewage, industrial, or other wastes and includes sewage systems and treatment works.

~~(8)~~*(9)* "Effluent standard" means a restriction or prohibition on quantities, rates, and concentrations of chemical, physical, biological, and other constituents that are discharged into state waters.

(10) (a) "Energy development project" means each plant, unit, or other development and associated developments, including any associated supporting infrastructure, designed for or capable of:

(i) generating electricity;

(ii) producing gas derived from coal;

(iii) producing liquid hydrocarbon products;

(iv) refining crude oil or natural gas;

(v) producing alcohol to be blended for ethanol-blended gasoline and that are eligible for a tax incentive pursuant to Title 15, chapter 70, part 5;

(vi) producing biodiesel and that are eligible for a tax incentive for the production of biodiesel pursuant to 15-32-701; or

(vii) transmitting electricity through an electric transmission line with a design capacity of equal to or greater than 50 kilovolts.

(b) The term does not include a nuclear facility as defined in 75-20-1202.

~~(9)~~*(11)* "Existing uses" means those uses actually attained in state waters on or after July 1, 1971, whether or not those uses are included in the water quality standards.

~~(10)~~*(12)* "High-quality waters" means all state waters, except:

(a) ground water classified as of January 1, 1995, within the "III" or "IV" classifications established by the board's classification rules; and

(b) surface waters that:

(i) are not capable of supporting any one of the designated uses for their classification; or

(ii) have zero flow or surface expression for more than 270 days during most years.

~~(11)~~*(13)* "Impaired water body" means a water body or stream segment for which sufficient credible data shows that the water body or stream segment is failing to achieve compliance with applicable water quality standards.

~~(12)~~*(14)* "Industrial waste" means a waste substance from the process of business or industry or from the development of any natural resource, together with any sewage that may be present.

~~(13)~~*(15)* "Interested person" means a person who has a real property interest, a water right, or an economic interest that is or may be directly and adversely affected by the department's preliminary decision regarding degradation of state waters, pursuant to 75-5-303. The term includes a person who has requested authorization to degrade high-quality waters.

~~(14)~~*(16)* "Load allocation" means the portion of a receiving water's loading capacity that is allocated to one of its existing or future nonpoint sources or to natural background sources.

~~(15)~~*(17)* "Loading capacity" means the mass of a pollutant that a water body can assimilate without a violation of water quality standards. For pollutants that cannot be measured in terms of mass, it means the maximum change that can occur from the best practicable condition in a surface water without causing a violation of the surface water quality standards.

~~(16)~~*(18)* "Local department of health" means the staff, including health officers, employed by a county, city, city-county, or district board of health.

~~(17)~~*(19)* "Metal parameters" includes but is not limited to aluminum, antimony, arsenic, beryllium, barium, cadmium, chromium, copper, fluoride, iron, lead, manganese, mercury, nickel, selenium, silver, thallium, and zinc.

~~(18)~~*(20)* "Mixing zone" means an area established in a permit or final decision on nondegradation issued by the department where water quality standards may be exceeded, subject to conditions that are imposed by the department and that are consistent with the rules adopted by the board.

~~(19)~~*(21)* "Other wastes" means garbage, municipal refuse, decayed wood, sawdust, shavings, bark, lime, sand, ashes, offal, night soil, oil, grease, tar, heat, chemicals, dead animals, sediment, wrecked or discarded equipment, radioactive materials, solid waste, and all other substances that may pollute state waters.

~~(20)~~*(22)* "Outstanding resource waters" means:

(a) state surface waters located wholly within the boundaries of areas designated as national parks or national wilderness areas as of October 1, 1995; or

(b) other surface waters or ground waters classified by the board under the provisions of 75-5-316 and approved by the legislature.

~~(21)~~*(23)* "Owner or operator" means a person who owns, leases, operates, controls, or supervises a point source.

~~(22)~~*(24)* "Parameter" means a physical, biological, or chemical property of state water when a value of that property affects the quality of the state water.

~~(23)~~*(25)* "Person" means the state, a political subdivision of the state, institution, firm, corporation, partnership, individual, or other entity and includes persons resident in Canada.

~~(24)~~*(26)* "Point source" means a discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or vessel or other floating craft, from which pollutants are or may be discharged.

~~(25)~~*(27)* (a) "Pollution" means:

(i) contamination or other alteration of the physical, chemical, or biological properties of state waters that exceeds that permitted by Montana water quality standards, including but not limited to standards relating to change in temperature, taste, color, turbidity, or odor; or

(ii) the discharge, seepage, drainage, infiltration, or flow of liquid, gaseous, solid, radioactive, or other substance into state water that will or is likely to create a nuisance or render the waters harmful, detrimental, or injurious to public health, recreation, safety, or welfare, to livestock, or to wild animals, birds, fish, or other wildlife.

(b) A discharge, seepage, drainage, infiltration, or flow that is authorized under the pollution discharge permit rules of the board is not pollution under this chapter. Activities conducted under the conditions imposed by the department in short-term authorizations pursuant to 75-5-308 are not considered pollution under this chapter.

~~(26)~~*(28)* "Sewage" means water-carried waste products from residences, public buildings, institutions, or other buildings, including discharge from human beings or animals, together with ground water infiltration and surface water present.

~~(27)~~*(29)* "Sewage system" means a device for collecting or conducting sewage, industrial wastes, or other wastes to an ultimate disposal point.

~~(28)~~*(30)* "Standard of performance" means a standard adopted by the board for the control of the discharge of pollutants that reflects the greatest degree of effluent reduction achievable through application of the best available demonstrated control technology, processes, operating methods, or other alternatives, including, when practicable, a standard permitting no discharge of pollutants.

~~(29)~~*(31)* (a) "State waters" means a body of water, irrigation system, or drainage system, either surface or underground.

(b) The term does not apply to:

(i) ponds or lagoons used solely for treating, transporting, or impounding pollutants; or

(ii) irrigation waters or land application disposal waters when the waters are used up within the irrigation or land application disposal system and the waters are not returned to state waters.

~~(30)~~*(32)* "Sufficient credible data" means chemical, physical, or biological monitoring data, alone or in combination with narrative information, that supports a finding as to whether a water body is achieving compliance with applicable water quality standards.

~~(31)~~*(33)* "Threatened water body" means a water body or stream segment for which sufficient credible data and calculated increases in loads show that the water body or stream segment is fully supporting its designated uses but threatened for a particular designated use because of:

(a) proposed sources that are not subject to pollution prevention or control actions required by a discharge permit, the nondegradation provisions, or reasonable land, soil, and water conservation practices; or

(b) documented adverse pollution trends.

~~(32)~~*(34)* "Total maximum daily load" or "TMDL" means the sum of the individual waste load allocations for point sources and load allocations for both nonpoint sources and natural background sources established at a level necessary to achieve compliance with applicable surface water quality standards.

~~(33)~~*(35)* "Treatment works" means works, including sewage lagoons, installed for treating or holding sewage, industrial wastes, or other wastes.

~~(34)~~*(36)* "Waste load allocation" means the portion of a receiving water's loading capacity that is allocated to one of its existing or future point sources.

~~(35)~~*(37)* "Water quality protection practices" means those activities, prohibitions, maintenance procedures, or other management practices applied to point and nonpoint sources designed to protect, maintain, and improve the quality of state waters. Water quality protection practices include but are not limited to treatment requirements, standards of performance, effluent standards, and operating procedures and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from material storage.

~~(36)~~*(38)* "Water well" means an excavation that is drilled, cored, bored, washed, driven, dug, jetted, or otherwise constructed and intended for the location, diversion, artificial recharge, or acquisition of ground water.

~~(37)~~*(39)* "Watershed advisory group" means a group of individuals who wish to participate in an advisory capacity in revising and reprioritizing the list of water bodies developed under 75-5-702 and in the development of TMDLs under 75-5-703, including those groups or individuals requested by the department to participate in an advisory capacity as provided in 75-5-704."

Section 7. Written undertaking. (1) Except as provided in subsection (2), if the person requesting a hearing under 75-5-611 is not the applicant or permittee of an energy development project, the district court shall require a written undertaking to be given by the party requesting the hearing for the payment of costs and damages incurred by the applicant or permittee if the request for judicial review was for an improper purpose designed to harass, cause unnecessary delay, or improperly interfere with the issuance of the permit without a reasonable basis in law or fact.

(2) The district court may not require a written undertaking if the party requesting the hearing is an indigent person.

Section 8. Section 75-20-223, MCA, is amended to read:

"75-20-223. Board review of department decisions. (1) *(a)* A person aggrieved by the final decision of the department on an application for a

certificate or the issuance of an air or water quality decision, opinion, order, certification, or permit under this chapter may within 30 days appeal the decision to the board ~~under the contested case procedures of Title 2, chapter 4, part 6~~. *Except as provided in this section, the contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing before the board.*

(b) If the department provided an opportunity for public comment on the application, the request for a hearing must be limited to those issues the party has raised in comments made to the department during the comment period, unless the issues are related to a material change in law made during the comment period, to a judicial decision issued after the comment period, or to a material change to the draft permit, which was submitted for public comment, made by the department in the final permit decision and upon which the public did not have a meaningful opportunity to comment. The request for hearing must be filed within 30 days after the department renders its decision. An affidavit setting forth the grounds for the request must be filed with the request for a hearing.

(c) If a hearing is requested by a person other than the applicant or permittee, the applicant or permittee may, by filing a written election with the board, within 15 days of receipt of the request for hearing, elect to have the matter proceed to hearing before the board or to have the matter submitted directly to the district court for judicial review of the agency decision. The party who requests the hearing may elect to have the matter submitted either to the board for a hearing or to the district court for judicial review by submitting a written election to the board with the request for hearing. If there are conflicting elections between the parties, the matter must proceed to district court. If the applicant or permittee is not the person who requested the hearing and has elected to have the matter submitted to the district court, the person who submitted the request for a hearing shall file a petition for review of the permit decision within 15 days of receipt of notice from the permittee. If the person who requested the hearing has elected to have the matter proceed to district court, that person shall file a petition in district court within 15 days of filing the request. The petition must be limited to matters raised in the request for hearing and must be filed in the county in which the facility is located. If the applicant or permittee fails to make an election, the matter must proceed through the contested case process before the board pursuant to the Montana Administrative Procedure Act. The board or the district court shall apply the laws and rules in place when the department issued its decision, and the board or the district court may not consider any issue from a party that was not presented to the department for the department's consideration during the formal comment period unless the issue is related to a material change in law made during the comment period, to a judicial decision issued after the comment period, or to a material change to the draft permit, which was submitted for public comment, made by the department in the final permit decision and upon which the public did not have a meaningful opportunity to comment.

(2) A person aggrieved by the final decision of the department on an application for amendment of a certificate may within 15 days appeal the decision to the board ~~under the contested case procedures of Title 2, chapter 4, part 6.~~ *as provided in subsections (1)(b) and (1)(c).*

(3) A person aggrieved by the department's decision not to include an environmental impact statement or analysis in the department's findings pursuant to 75-20-216 may within 30 days appeal the decision ~~to the board~~

~~under the contested case procedures of Title 2, chapter 4, part 6.~~ *as provided in subsections (1)(b) and (1)(c).*

(4) The board shall issue a final decision within 4 months from the close of the hearing on the merits or, if no hearing is held, within 3 months from the date that briefing by the parties is complete unless the applicant and the party other than the applicant agree in writing to an extension of time.

~~(4)~~*(5)* A customer fiscal impact analysis required by 69-2-216 may not be used as the basis of an appeal of a final decision by the department."

Section 9. Codification instruction. (1) [Section 1] is intended to be codified as an integral part of Title 75, chapter 2, part 2, and the provisions of Title 75, chapter 2, part 2, apply to [section 1].

(2) [Section 7] is intended to be codified as an integral part of Title 75, chapter 5, part 6, and the provisions of Title 75, chapter 5, part 6, apply to [section 7].

Section 10. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 11. Effective date. [This act] is effective on passage and approval.

Section 12. Applicability. [This act] applies to judicial and board of environmental review hearing and appeal proceedings initiated on or after [the effective date of this act].

Approved May 5, 2009

CHAPTER NO. 446

[HB 486]

AN ACT GENERALLY REVISING LAND USE LAWS; CLARIFYING SUBDIVISION REVIEW FOR CONDOMINIUMS; INCLUDING SAND AND GRAVEL RESOURCES AMONG THE ITEMS THAT MUST BE MAPPED IN A GROWTH POLICY; CHANGING PETITION AND PROTEST DEFINITIONS FOR PLANNING AND ZONING DISTRICTS; REVISING THE MEMBERSHIP OF PLANNING AND ZONING COMMISSIONS; ALLOWING A COUNTY COMMISSION TO VOID A PLANNING AND ZONING DISTRICT UNDER A CERTAIN CONDITION; REQUIRING A COUNTY TO ATTEMPT TO OBTAIN COMPLIANCE WITH CERTAIN ZONING REGULATIONS BEFORE FILING A COMPLAINT; REVISING PUBLIC NOTICE REQUIREMENTS FOR ZONING AND REQUIRING PUBLIC NOTICE FOR INTERIM ZONING; REQUIRING A TIME LIMIT FOR PROVIDING A WRITTEN DECISION FOR A SUBDIVISION APPLICATION; ALLOWING A GOVERNING BODY TO REQUIRE THAT IMPROVEMENTS TO PROTECT PUBLIC HEALTH AND SAFETY BE COMPLETED BEFORE ALLOWING BONDING OR OTHER REASONABLE SECURITY; ESTABLISHING WHEN A PARK DEDICATION MAY BE REQUIRED FOR A FIRST MINOR SUBDIVISION FROM A TRACT OF RECORD; AMENDING SECTIONS 70-23-301, 76-1-601, 76-2-101, 76-2-102, 76-2-107, 76-2-202, 76-2-203, 76-2-205, 76-2-206, 76-2-210, 76-2-304, 76-3-207, 76-3-504, 76-3-506, 76-3-507, 76-3-510, 76-3-608, 76-3-609, 76-3-610, 76-3-620, 76-3-621, AND 76-3-625, MCA; REPEALING SECTION 76-3-210, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND APPLICABILITY DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 70-23-301, MCA, is amended to read:

"70-23-301. Contents of declaration. A declaration ~~shall~~ *must* contain:

(1) a description of the land, whether leased or in fee simple, on which the building is *located* or is to be located;

(2) the name by which the property ~~shall~~ *will* be known and a general description of the building, including the number of stories and basements, the number of units, and the principal materials of which it is constructed;

(3) the unit designation, location, approximate area of each unit, and any other data necessary for proper identification;

(4) a description of the general common elements and the percentage of the interest of each unit owner ~~therein~~ *in the common elements*;

(5) a description of the limited common elements, if any, stating to which units their use is reserved and in what percentage;

(6) a statement of the use for which the building and each of the units is intended;

(7) the name of a person to receive service of process in the cases provided in 70-23-901 and the residence or place of business of ~~such~~ *the* person which ~~shall~~ *must* be within the county in which the property is located;

(8) *an exhibit containing certification from the applicable local government that the condominiums are either exempt from review under 76-3-203 or have been approved following review under Title 76, chapter 3, parts 5 and 6; and*

(9) any other details regarding the property that the person executing the declaration considers desirable."

Section 2. Section 76-1-601, MCA, is amended to read:

"76-1-601. Growth policy — contents. (1) A growth policy may cover all or part of the jurisdictional area.

(2) The extent to which a growth policy addresses the elements listed in subsection (3) is at the full discretion of the governing body.

(3) A growth policy must include:

(a) community goals and objectives;

(b) maps and text describing an inventory of the existing characteristics and features of the jurisdictional area, including:

(i) land uses;

(ii) population;

(iii) housing needs;

(iv) economic conditions;

(v) local services;

(vi) public facilities;

(vii) natural resources; ~~and~~

(viii) sand and gravel resources; and

~~(viii)~~*(ix)* other characteristics and features proposed by the planning board and adopted by the governing bodies;

(c) projected trends for the life of the growth policy for each of the following elements:

(i) land use;

(ii) population;

(iii) housing needs;

(iv) economic conditions;

(v) local services;

(vi) natural resources; and

(vii) other elements proposed by the planning board and adopted by the governing bodies;

(d) a description of policies, regulations, and other measures to be implemented in order to achieve the goals and objectives established pursuant to subsection (3)(a);

(e) a strategy for development, maintenance, and replacement of public infrastructure, including drinking water systems, wastewater treatment facilities, sewer systems, solid waste facilities, fire protection facilities, roads, and bridges;

(f) an implementation strategy that includes:

(i) a timetable for implementing the growth policy;

(ii) a list of conditions that will lead to a revision of the growth policy; and

(iii) a timetable for reviewing the growth policy at least once every 5 years and revising the policy if necessary;

(g) a statement of how the governing bodies will coordinate and cooperate with other jurisdictions that explains:

(i) if a governing body is a city or town, how the governing body will coordinate and cooperate with the county in which the city or town is located on matters related to the growth policy;

(ii) if a governing body is a county, how the governing body will coordinate and cooperate with cities and towns located within the county's boundaries on matters related to the growth policy;

(h) a statement explaining how the governing bodies will:

(i) define the criteria in 76-3-608(3)(a); and

(ii) evaluate and make decisions regarding proposed subdivisions with respect to the criteria in 76-3-608(3)(a);

(i) a statement explaining how public hearings regarding proposed subdivisions will be conducted; and

(j) an evaluation of the potential for fire and wildland fire in the jurisdictional area, including whether or not there is a need to:

(i) delineate the wildland-urban interface; and

(ii) adopt regulations requiring:

(A) defensible space around structures;

(B) adequate ingress and egress to and from structures and developments to facilitate fire suppression activities; and

(C) adequate water supply for fire protection.

(4) A growth policy may:

(a) include one or more neighborhood plans. A neighborhood plan must be consistent with the growth policy.

(b) establish minimum criteria defining the jurisdictional area for a neighborhood plan;

(c) establish an infrastructure plan that, at a minimum, includes:

(i) projections, in maps and text, of the jurisdiction's growth in population and number of residential, commercial, and industrial units over the next 20 years;

(ii) for a city, a determination regarding if and how much of the city's growth is likely to take place outside of the city's existing jurisdictional area over the next 20 years and a plan of how the city will coordinate infrastructure planning with the county or counties where growth is likely to take place;

(iii) for a county, a plan of how the county will coordinate infrastructure planning with each of the cities that project growth outside of city boundaries and into the county's jurisdictional area over the next 20 years;

(iv) for cities, a land use map showing where projected growth will be guided and at what densities within city boundaries;

(v) for cities and counties, a land use map that designates infrastructure planning areas adjacent to cities showing where projected growth will be guided and at what densities;

(vi) using maps and text, a description of existing and future public facilities necessary to efficiently serve projected development and densities within infrastructure planning areas, including, whenever feasible, extending interconnected municipal street networks, sidewalks, trail systems, public transit facilities, and other municipal public facilities throughout the infrastructure planning area. For the purposes of this subsection (4)(c)(vi), public facilities include but are not limited to drinking water treatment and distribution facilities, sewer systems, wastewater treatment facilities, solid waste disposal facilities, parks and open space, schools, public access areas, roads, highways, bridges, and facilities for fire protection, law enforcement, and emergency services;

(vii) a description of proposed land use management techniques and incentives that will be adopted to promote development within cities and in an infrastructure planning area, including land use management techniques and incentives that address issues of housing affordability;

(viii) a description of how and where projected development inside municipal boundaries for cities and inside designated joint infrastructure planning areas for cities and counties could adversely impact:

(A) threatened or endangered wildlife and critical wildlife habitat and corridors;

(B) water available to agricultural water users and facilities;

(C) the ability of public facilities, including schools, to safely and efficiently service current residents and future growth;

(D) a local government's ability to provide adequate local services, including but not limited to emergency, fire, and police protection;

(E) the safety of people and property due to threats to public health and safety, including but not limited to wildfire, flooding, erosion, water pollution, hazardous wildlife interactions, and traffic hazards;

(F) natural resources, including but not limited to forest lands, mineral resources, *sand and gravel resources,* streams, rivers, lakes, wetlands, and ground water; and

(G) agricultural lands and agricultural production; and

(ix) a description of measures, including land use management techniques and incentives, that will be adopted to avoid, significantly reduce, or mitigate the adverse impacts identified under subsection (4)(c)(viii).

(5) The planning board may propose and the governing bodies may adopt additional elements of a growth policy in order to fulfill the purpose of this chapter."

Section 3. Section 76-2-101, MCA, is amended to read:

"76-2-101. Planning and zoning commission and district. (1) Subject to the provisions of subsection (5), whenever the public interest or convenience may require and upon petition of 60% of the affected ~~freeholders~~ *real property owners in the proposed district*, the board of county commissioners may create a planning and zoning district and appoint a planning and zoning commission consisting of seven members.

(2) A planning and zoning district may not be created in an area that has been zoned by an incorporated city pursuant to 76-2-310 and 76-2-311.

(3) For the purposes of this part, the word "district" means any area that consists of not less than 40 acres.

(4) Except as provided in subsection (5), an action challenging the creation of a planning and zoning district must begin within ~~5 years~~ *6 months* after the date of the order by the board of county commissioners creating the district.

(5) If ~~freeholders~~ *real property owners* representing 50% of the titled property ownership in the district protest the establishment of the district within 30 days of its creation, the board of county commissioners may not create the district. An area included in a district protested under this subsection may not be included in a zoning district petition under this section for a period of 1 year."

Section 4. Section 76-2-102, MCA, is amended to read:

"76-2-102. Organization and operation of commission. (1) The planning and zoning commission consists of ~~the~~ three county commissioners, *either* the county surveyor *or the county clerk and recorder*, two citizen members, each of whom resides in a different planning and zoning district~~,~~ *or, if only one district exists in a county or is proposed, both from that district,* and a county official appointed by the county commissioners. The citizen members must be appointed by the board of county commissioners to 2-year staggered terms, with one member initially appointed to a 2-year term and the remaining member initially appointed to a 1-year term. Members of the commission shall serve without compensation other than reimbursement for authorized expenses and must be residents of the county in which they serve.

(2) The commission may appoint necessary employees and fix their compensation with the approval of the board of county commissioners, select a presiding officer to serve for 1 year, appoint a secretary to keep permanent and complete records of its proceedings, and adopt rules governing the transaction of its business.

(3) Subject to 15-10-420, the finances necessary for the transaction of the planning and zoning commission's business and to pay the expenses of the employees and justified expenses of the commission's members must be paid from a levy on the taxable value of all taxable property within the district."

Section 5. Section 76-2-107, MCA, is amended to read:

"76-2-107. Preparation of resolutions and other materials. *(1)* The planning and zoning commission may, for the benefit and welfare of the county, prepare and submit to the board of county commissioners drafts of resolutions for the purpose of carrying out the development districts or any part ~~thereof~~ *of the development districts* previously adopted by the commission, including zoning and land use regulations, the making of official maps, and the preservation of the integrity ~~thereof~~ *of the development districts and the official maps* and including procedure for appeals from decisions made under the authority of ~~such~~ *the* regulations and regulations for the conservation of the natural resources of the county. The board of county commissioners is ~~hereby~~ authorized to adopt ~~such~~ *these* resolutions.

(2) Notwithstanding the provisions of 76-2-104 and subsection (1) of this section, if the planning and zoning commission is unable to make and adopt a development pattern or to adopt a development district, the board of county commissioners may adopt a resolution to void a planning and zoning district created pursuant to 76-2-101."

Section 6. Section 76-2-202, MCA, is amended to read:

"76-2-202. Establishment of zoning districts — regulations. (1) (a) Within the unincorporated portions of a jurisdictional area that has been established under provisions of 76-1-501 through 76-1-503 or 76-1-504 through 76-1-507, *and for the purposes provided in 76-2-201,* the board of county commissioners may by resolution ~~establish zoning districts and zoning regulations for all or part of the jurisdictional area~~ *establish zoning regulations for a part or all of the jurisdictional area or divide the county into zoning districts with zoning regulations that are considered best suited to carry out the purposes of this part. By establishing zoning regulations, the board may regulate the erection, construction, reconstruction, alteration, repair, location, or use of buildings or structures or the use of land*.

(b) An action challenging the creation of a zoning district *or adoption of zoning regulations* must be commenced within ~~5 years~~ *6 months* after the date of the order by the board of county commissioners creating the district *or adopting the regulations*.

~~(2) Within some zoning districts, it is lawful and within others it is unlawful to erect, construct, alter, or maintain certain buildings or to carry on certain trades, industries, or callings.~~

~~(3)~~*(2)* In a proceeding for a permit or variance to place manufactured housing within a residential zoning district, there is a rebuttable presumption that placement of a manufactured home will not adversely affect property values of conventional housing.

~~(4) Within each district the height and bulk of future buildings and the area of the yards, courts, and other open spaces and the future uses of the land or buildings must be limited and future building setback lines must be established.~~

~~(5)~~*(3)* ~~All regulations must be uniform for each class or kind of buildings throughout a district, but the~~ *The* regulations in one district may differ from those in other districts.

~~(6)~~*(4)* As used in this section, "manufactured housing" means a ~~single-family~~ dwelling *for a single household*, built offsite in a factory on or after January 1, 1990, that is placed on a permanent foundation, is at least 1,000 square feet in size, has a pitched roof and siding and roofing materials that are customarily, as defined by local regulations, used on site-built homes, and is in compliance with the applicable prevailing standards of the United States department of housing

and urban development at the time of its production. A manufactured home does not include a mobile home or housetrailer, as defined in 15-1-101.

~~(7)~~*(5)* ~~Nothing contained in this~~ *This* section may *not* be construed to limit conditions imposed in historic districts, local design review standards, existing covenants, or the ability to enter into covenants pursuant to Title 70, chapter 17, part 2."

Section 7. Section 76-2-203, MCA, is amended to read:

"76-2-203. Criteria and guidelines for zoning regulations. (1) Zoning regulations must be:

(a) made in accordance with the growth policy ~~or a master plan, as provided for in 76-2-201(2)~~; and

(b) designed to:

~~(i) lessen congestion in the streets;~~

~~(ii)~~*(i)* secure safety from fire~~, panic,~~ and other dangers;

~~(iii)~~*(ii)* promote public health*, public safety,* and general welfare; *and*

~~(iv) provide adequate light and air;~~

~~(v) prevent the overcrowding of land;~~

~~(vi) avoid undue concentration of population; and~~

~~(vii)~~*(iii)* facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements.

(2) ~~Zoning regulations must be made with reasonable consideration, among other things, to~~ *In the adoption of zoning regulations, the board of county commissioners shall consider:*

(a) reasonable provision of adequate light and air;

(b) the effect on motorized and nonmotorized transportation systems;

(c) compatible urban growth in the vicinity of cities and towns that at a minimum must include the areas around municipalities;

(d) the character of the district and its peculiar suitability for particular uses*;* and

(e) ~~with a view to~~ conserving the value of buildings and encouraging the most appropriate use of land throughout the jurisdictional area.

(3) Zoning regulations must, as nearly as possible, be made compatible with the zoning ordinances of ~~the municipality within the jurisdictional area~~ *nearby municipalities*."

Section 8. Section 76-2-205, MCA, is amended to read:

"76-2-205. Procedure for adoption of regulations and boundaries. The board of county commissioners shall observe the following procedures in the establishment or revision of boundaries for zoning districts and in the adoption or amendment of zoning regulations:

(1) Notice of a public hearing on the proposed zoning district boundaries and of regulations for the zoning district ~~must be published once a week for 2 weeks in a newspaper of general circulation within the county. The notice~~ must*:*

(a) state:

~~(a)~~*(i)* the boundaries of the proposed district;

~~(b)~~*(ii)* the general character of the proposed zoning regulations;

~~(e)~~*(iii)* the time and place of the public hearing;

~~(d)~~*(iv)* that the proposed zoning regulations are on file for public inspection at the office of the county clerk and recorder*;*

(b) be posted not less than 45 days before the public hearing in at least five public places, including but not limited to public buildings and adjacent to public rights-of-way, within the proposed district; and

(c) be published once a week for 2 weeks in a newspaper of general circulation within the county.

(2) At the public hearing, the board of county commissioners shall give the public an opportunity to be heard regarding the proposed zoning district and regulations.

(3) After the public hearing, the board of county commissioners shall review the proposals of the planning board and shall make any revisions or amendments that it determines to be proper.

(4) The board of county commissioners may pass a resolution of intention to create a zoning district and to adopt zoning regulations for the district.

(5) The board of county commissioners shall publish notice of passage of the resolution of intention once a week for 2 weeks in a newspaper of general circulation within the county. The notice must state:

(a) the boundaries of the proposed district;

(b) the general character of the proposed zoning regulations;

(c) that the proposed zoning regulations are on file for public inspection at the office of the county clerk and recorder;

(d) that for 30 days after first publication of this notice, the board of county commissioners will receive written protests to the creation of the zoning district or to the zoning regulations from persons owning real property within the district whose names appear on the last-completed assessment roll of the county.

(6) Within 30 days after the expiration of the protest period, the board of county commissioners may in its discretion adopt the resolution creating the zoning district or establishing the zoning regulations for the district. However, if 40% of the ~~freeholders~~ *real property owners* within the district whose names appear on the last-completed assessment roll or if ~~freeholders~~ *real property owners* representing 50% of the titled property ownership whose property is taxed for agricultural purposes under 15-7-202 or whose property is taxed as forest land under Title 15, chapter 44, part 1, have protested the establishment of the district or adoption of the regulations, the board of county commissioners may not adopt the resolution and a further zoning resolution may not be proposed for the district for a period of 1 year."

Section 9. Section 76-2-206, MCA, is amended to read:

"76-2-206. Interim zoning map or regulation. (1) ~~The~~ *Subject to subsection (3), the* board of county commissioners may ~~adopt~~ *establish* an interim zoning ~~map~~ *district* or *interim* regulation as an emergency measure in order to promote the public health, safety, morals, and general welfare if:

(a) the purpose of the interim zoning ~~map~~ *district* or *interim* regulation is to classify and regulate those uses and related matters that constitute the emergency; and

(b) the county:

(i) is conducting or in good faith intends to conduct studies within a reasonable time; or

(ii) has held or is holding a hearing for the purpose of considering any of the following:

(A) a growth policy;

(B) zoning regulations; or

(C) a revision to a growth policy, to a master plan, as provided for in 76-1-604(6) and 76-2-201(2), or to zoning regulations pursuant to this part.

(2) ~~An interim~~ *A* resolution *for an interim zoning district or interim regulation* must be limited to 1 year from the date it becomes effective. ~~The~~ *Subject to subsection (3), the* board of county commissioners may extend the ~~interim~~ resolution for 1 year, but not more than one extension may be made.

(3) The board of county commissioners shall observe the following procedures in the establishment of an interim zoning district or interim regulation:

(a) Notice of a public hearing on the proposed interim zoning district boundaries or of the interim regulation must be published once a week for 2 weeks in a newspaper of general circulation within the county. The notice must state:

(i) the boundaries of the proposed district;

(ii) the specific emergency or exigent circumstance compelling the establishment of the proposed interim zoning district or interim regulation;

(iii) the general character of the proposed interim zoning district or interim regulation;

(iv) the time and place of the public hearing; and

(v) that the proposed interim zoning district or interim regulation is on file for public inspection at the office of the county clerk and recorder.

(b) At the public hearing, the board of county commissioners shall give the public an opportunity to be heard regarding the proposed establishment of an interim zoning district or interim regulation.

(c) After the hearing, the board of county commissioners may adopt a resolution to establish an interim zoning district or interim regulation."

Section 10. Section 76-2-210, MCA, is amended to read:

"76-2-210. Enforcement of zoning provisions. (1) ~~In case~~ *If* any building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained or any building, structure, or land is used in violation of this part or of any resolution ~~made under authority conferred hereby, the proper authorities of~~ *adopted under this part,* the county, in addition to other remedies, may institute any appropriate action or proceedings to*:*

(a) prevent ~~such~~ *the* unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, or use; ~~to~~

(b) restrain, correct, or abate ~~such~~ *a* violation; ~~to~~

(c) prevent the occupancy of ~~such~~ *the* building, structure, or land; or ~~to~~

(d) prevent any illegal act, conduct, business, or use in or ~~about such~~ *near the* premises.

(2) For the purposes of enforcing subsections (1)(a) through (1)(c), the county shall attempt to obtain voluntary compliance at least 30 days before filing a

complaint for a violation of this part that is subject to the penalties under 76-2-211.

~~(2)~~*(3)* The board of county commissioners may appoint enforcing officers to supervise and enforce the provisions of the zoning resolutions."

Section 11. Section 76-2-304, MCA, is amended to read:

"76-2-304. ~~Purposes of zoning~~ *Criteria and guidelines for zoning regulations.* (1) Zoning regulations must be:

(a) ~~except as provided in subsection (3),~~ made in accordance with a growth policy; and

(b) designed to:

~~(i) lessen congestion in the streets;~~

~~(ii)~~*(i)* secure safety from fire~~, panic,~~ and other dangers;

~~(iii)~~*(ii)* promote *public* health*, public safety,* and the general welfare; *and*

~~(iv) provide adequate light and air;~~

~~(v) prevent the overcrowding of land;~~

~~(vi) avoid undue concentration of population; and~~

~~(vii)~~*(iii)* facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements.

(2) ~~Zoning regulations must be made with reasonable consideration, among other things, to~~ *In the adoption of zoning regulations, the municipal governing body shall consider:*

(a) reasonable provision of adequate light and air;

(b) the effect on motorized and nonmotorized transportation systems;

(c) promotion of compatible urban growth;

(d) the character of the district and its peculiar suitability for particular uses*;* and

(e) ~~with a view to~~ conserving the value of buildings and encouraging the most appropriate use of land throughout the ~~municipality~~ *jurisdictional area*.

~~(3) Until October 1, 2006, zoning regulations may be adopted or revised in accordance with a master plan that was adopted pursuant to Title 76, chapter 1, before October 1, 1999.~~"

Section 12. Section 76-3-207, MCA, is amended to read:

"76-3-207. Divisions *or aggregations* of land exempted from review but subject to survey requirements and zoning regulations — exceptions — fees for examination of division. (1) Except as provided in subsection (2), unless the method of disposition is adopted for the purpose of evading this chapter, the following divisions *or aggregations* of land are not subdivisions under this chapter but are subject to the surveying requirements of 76-3-401 for divisions *or aggregations* of land ~~not amounting to~~ *other than* subdivisions and are subject to applicable zoning regulations adopted under Title 76, chapter 2:

(a) divisions made outside of platted subdivisions for the purpose of relocating common boundary lines between adjoining properties;

(b) divisions made outside of platted subdivisions for the purpose of a single gift or sale in each county to each member of the landowner's immediate family;

(c) divisions made outside of platted subdivisions by gift, sale, or agreement to buy and sell in which the parties to the transaction enter a covenant running with the land and revocable only by mutual consent of the governing body and the property owner that the divided land will be used exclusively for agricultural purposes;

(d) for five or fewer lots within a platted subdivision, *the* relocation of common boundaries ~~and the aggregation of lots~~; ~~and~~

(e) divisions made for the purpose of relocating a common boundary line between a single lot within a platted subdivision and adjoining land outside a platted subdivision. A restriction or requirement on the original platted lot or original unplatted parcel continues to apply to those areas.

(f) aggregation of parcels or lots when a certificate of survey or subdivision plat shows that the boundaries of the original parcels have been eliminated and the boundaries of a larger aggregate parcel are established. A restriction or requirement on the original platted lot or original unplatted parcel continues to apply to those areas.

(2) Notwithstanding the provisions of subsection (1):

(a) within a platted subdivision filed with the county clerk and recorder, a division*, redesign, or rearrangement* of lots that results in an increase in the number of lots or that redesigns or rearranges six or more lots must be reviewed and approved by the governing body ~~and~~ *before* an amended plat ~~must~~ *may* be filed with the county clerk and recorder;

(b) a change in use of the land exempted under subsection (1)(c) for anything other than agricultural purposes subjects the division to ~~the provisions~~ *review under parts 5 and 6* of this chapter.

(3) (a) Subject to subsection (3)(b), a division of land may not be made under this section unless the county treasurer has certified that all real property taxes and special assessments assessed and levied on the land to be divided have been paid.

(b) (i) If a division of land includes centrally assessed property and the property taxes applicable to the division of land are not specifically identified in the tax assessment, the department of revenue shall prorate the taxes applicable to the land being divided on a reasonable basis. The owner of the centrally assessed property shall ensure that the prorated real property taxes and special assessments are paid on the land being sold before the division of land is made.

(ii) The county treasurer may accept the amount of the tax prorated pursuant to this subsection (3)(b) as a partial payment of the total tax that is due.

(4) The governing body may examine a division *or aggregation* of land to determine whether or not the requirements of this chapter apply to the division *or aggregation* and may establish reasonable fees, not to exceed $200, for the examination."

Section 13. Section 76-3-504, MCA, is amended to read:

"76-3-504. Subdivision regulations — contents. (1) The subdivision regulations adopted under this chapter must, at a minimum:

(a) list the materials that must be included in a subdivision application in order for the application to be determined to contain the required elements for the purposes of the review required in 76-3-604(1);

(b) except as provided in ~~76-3-210,~~ 76-3-509, ~~or~~ 76-3-609, *or 76-3-616,* require the subdivider to submit to the governing body an environmental assessment as prescribed in 76-3-603;

(c) establish procedures consistent with this chapter for the submission and review of subdivision applications and amended applications;

(d) prescribe the form and contents of preliminary plats and the documents to accompany final plats;

(e) provide for the identification of areas that, because of natural or human-caused hazards, are unsuitable for subdivision development. The regulations must prohibit subdivisions in these areas unless the hazards can be eliminated or overcome by approved construction techniques or other mitigation measures authorized under 76-3-608(4) and (5). Approved construction techniques or other mitigation measures may not include building regulations as defined in 50-60-101 other than those identified by the department of labor and industry as provided in 50-60-901.

(f) prohibit subdivisions for building purposes in areas located within the floodway of a flood of 100-year frequency, as defined by Title 76, chapter 5, or determined to be subject to flooding by the governing body;

(g) prescribe standards for:

(i) the design and arrangement of lots, streets, and roads;

(ii) grading and drainage;

(iii) subject to the provisions of 76-3-511, water supply and sewage and solid waste disposal that meet the:

(A) regulations adopted by the department of environmental quality under 76-4-104 for subdivisions that will create one or more parcels containing less than 20 acres; and

(B) standards provided in 76-3-604 and 76-3-622 for subdivisions that will create one or more parcels containing 20 acres or more and less than 160 acres; and

(iv) the location and installation of public utilities;

(h) provide procedures for the administration of the park and open-space requirements of this chapter;

(i) provide for the review of subdivision applications by affected public utilities and those agencies of local, state, and federal government identified during the preapplication consultation conducted pursuant to subsection (1)(q) or those having a substantial interest in a proposed subdivision. A public utility or agency review may not delay the governing body's action on the application beyond the time limits specified in this chapter, and the failure of any agency to complete a review of an application may not be a basis for rejection of the application by the governing body.

(j) when a subdivision creates parcels with lot sizes averaging less than 5 acres, require the subdivider to:

(i) reserve all or a portion of the appropriation water rights owned by the owner of the land to be subdivided and transfer the water rights to a single entity for use by landowners within the subdivision who have a legal right to the water and reserve and sever any remaining surface water rights from the land;

(ii) if the land to be subdivided is subject to a contract or interest in a public or private entity formed to provide the use of a water right on the subdivision lots, establish a landowner's water use agreement administered through a single

entity that specifies administration and the rights and responsibilities of landowners within the subdivision who have a legal right and access to the water; or

(iii) reserve and sever all surface water rights from the land;

(k) (i) except as provided in subsection (1)(k)(ii), require the subdivider to establish ditch easements in the subdivision that:

(A) are in locations of appropriate topographic characteristics and sufficient width to allow the physical placement and unobstructed maintenance of open ditches or belowground pipelines for the delivery of water for irrigation to persons and lands legally entitled to the water under an appropriated water right or permit of an irrigation district or other private or public entity formed to provide for the use of the water right on the subdivision lots;

(B) are a sufficient distance from the centerline of the ditch to allow for construction, repair, maintenance, and inspection of the ditch; and

(C) prohibit the placement of structures or the planting of vegetation other than grass within the ditch easement without the written permission of the ditch owner.

(ii) Establishment of easements pursuant to this subsection (1)(k) is not required if:

(A) the average lot size is 1 acre or less and the subdivider provides for disclosure, in a manner acceptable to the governing body, that adequately notifies potential buyers of lots that are classified as irrigated land and may continue to be assessed for irrigation water delivery even though the water may not be deliverable; or

(B) the water rights are removed or the process has been initiated to remove the water rights from the subdivided land through an appropriate legal or administrative process and if the removal or intended removal is denoted on the preliminary plat. If removal of water rights is not complete upon filing of the final plat, the subdivider shall provide written notification to prospective buyers of the intent to remove the water right and shall document that intent, when applicable, in agreements and legal documents for related sales transactions.

(l) require the subdivider, unless otherwise provided for under separate written agreement or filed easement, to file and record ditch easements for unobstructed use and maintenance of existing water delivery ditches, pipelines, and facilities in the subdivision that are necessary to convey water through the subdivision to lands adjacent to or beyond the subdivision boundaries in quantities and in a manner that are consistent with historic and legal rights;

(m) require the subdivider to describe, dimension, and show public utility easements in the subdivision on the final plat in their true and correct location. The public utility easements must be of sufficient width to allow the physical placement and unobstructed maintenance of public utility facilities for the provision of public utility services within the subdivision.

(n) establish whether the governing body, its authorized agent or agency, or both will hold public hearings;

(o) establish procedures describing how the governing body or its agent or agency will address information presented at the hearing or hearings held pursuant to 76-3-605 and 76-3-615;

(p) establish criteria that the governing body or reviewing authority will use to determine whether a proposed method of disposition using the exemptions

provided in 76-3-201 or 76-3-207 is an attempt to evade the requirements of this chapter. The regulations must provide for an appeals process to the governing body if the reviewing authority is not the governing body.

(q) establish a preapplication process that:

(i) requires a subdivider to meet with the *authorized* agent or agency, other than the governing body, that is designated by the governing body to review subdivision applications prior to the subdivider submitting the application;

(ii) requires, for informational purposes only, identification of the state laws, local regulations, and growth policy provisions, if a growth policy has been adopted, that may apply to the subdivision review process;

(iii) requires a list to be made available to the subdivider of the public utilities, those agencies of local, state, and federal government, and any other entities that may be contacted for comment on the subdivision application and the timeframes that the public utilities, agencies, and other entities are given to respond. If, during the review of the application, the agent or agency designated by the governing body contacts a public utility, agency, or other entity that was not included on the list originally made available to the subdivider, the agent or agency shall notify the subdivider of the contact and the timeframe for response.

(iv) requires that a preapplication meeting take place no more than 30 days from the date that the *authorized* agent or agency receives a written request for a preapplication meeting from the subdivider; and

(v) establishes a time limit after a preapplication meeting by which an application must be submitted as provided in 76-3-604.*;*

(r) requires that the written decision required by 76-3-620 must be provided to the applicant within 30 working days following a decision by the governing body to approve, conditionally approve, or deny a subdivision.

(2) In order to accomplish the purposes described in 76-3-501, the subdivision regulations adopted under 76-3-509 and this section may include provisions that are consistent with this section that promote cluster development.

(3) The governing body may establish deadlines for submittal of subdivision applications."

Section 14. Section 76-3-506, MCA, is amended to read:

"76-3-506. Provision for granting variances. *(1)* Subdivision regulations may authorize the governing body*, after a public hearing on the variance request before the governing body or its designated agent or agency,* to grant variances from the regulations when strict compliance will result in undue hardship and when it is not essential to the public welfare.

(2) Any variance granted pursuant to this section must be based on specific variance criteria contained in the subdivision regulations.

(3) A minor subdivision as provided for in 76-3-609(2) is not subject to the public hearing requirement of this section."

Section 15. Section 76-3-507, MCA, is amended to read:

"76-3-507. Provision for ~~bonding~~ *security* requirements to ensure construction of public improvements. (1) Except as provided in ~~subsection~~ *subsections* (2) *and (4)*, the governing body shall require the subdivider to complete required improvements within the *proposed* subdivision prior to the approval of the final plat.

(2) (a) In lieu of the completion of the construction of any public improvements prior to the approval of a final plat, the governing body shall at the subdivider's option allow the subdivider to provide or cause to be provided a bond or other reasonable security, in an amount and with surety and conditions satisfactory to the governing body, providing for and securing the construction and installation of the improvements within a period specified by the governing body and expressed in the bonds or other security. The governing body shall reduce bond *or security* requirements commensurate with the completion of improvements.

(b) In lieu of requiring a bond or other means of security for the construction or installation of all the required public improvements under subsection (2)(a), the governing body may approve an incremental payment or guarantee plan. The improvements in a prior increment must be completed or the payment or guarantee of payment for the costs of the improvements incurred in a prior increment must be satisfied before development of future increments.

(3) Approval by the governing body of a final plat prior to the completion of required improvements and without the provision of the security required under subsection (2) is not an act of a legislative body for the purposes of 2-9-111.

(4) The governing body may require a percentage of improvements or specific types of improvements necessary to protect public health and safety to be completed before allowing bonding or other reasonable security under subsection (2)(a) for purposes of filing a final plat. The requirement is applicable to approved preliminary plats."

Section 16. Section 76-3-510, MCA, is amended to read:

"76-3-510. Payment for extension of capital facilities. *(1)* A local government may require a subdivider to pay or guarantee payment for part or all of the costs of extending capital facilities related to public health and safety, including but not limited to public roads, sewer lines, water supply lines, and storm drains to a subdivision. The costs must reasonably reflect the expected impacts directly attributable to the subdivision. A local government may not require a subdivider to pay or guarantee payment for part or all of the costs of constructing or extending capital facilities related to education.

(2) All fees, costs, or other money paid by a subdivider under this section must be expended on the capital facilities for which the payments were required."

Section 17. Section 76-3-608, MCA, is amended to read:

"76-3-608. Criteria for local government review. (1) The basis for the governing body's decision to approve, conditionally approve, or deny a proposed subdivision is whether the subdivision application, preliminary plat, applicable environmental assessment, public hearing, planning board recommendations, or additional information demonstrates that development of the proposed subdivision meets the requirements of this chapter. A governing body may not deny approval of a proposed subdivision based solely on the subdivision's impacts on educational services.

(2) The governing body shall issue written findings of fact that weigh the criteria in subsection (3), as applicable.

(3) A subdivision proposal must undergo review for the following primary criteria:

(a) except when the governing body has established an exemption pursuant to subsection (6) of this section or except as provided in 76-3-509, 76-3-609(2) or (4), or 76-3-616, the impact on agriculture, agricultural water user facilities,

local services, the natural environment, wildlife, ~~and~~ wildlife habitat, and public health and safety;

(b) compliance with:

(i) the survey requirements provided for in part 4 of this chapter;

(ii) the local subdivision regulations provided for in part 5 of this chapter; and

(iii) the local subdivision review procedure provided for in this part;

(c) the provision of easements *within and to the proposed subdivision* for the location and installation of any planned utilities; and

(d) the provision of legal and physical access to each parcel within the proposed subdivision and the required notation of that access on the applicable plat and any instrument of transfer concerning the parcel.

(4) The governing body may require the subdivider to design the proposed subdivision to reasonably minimize potentially significant adverse impacts identified through the review required under subsection (3). The governing body shall issue written findings to justify the reasonable mitigation required under this subsection (4).

(5) (a) In reviewing a proposed subdivision under subsection (3) and when requiring mitigation under subsection (4), a governing body may not unreasonably restrict a landowner's ability to develop land, but it is recognized that in some instances the unmitigated impacts of a proposed development may be unacceptable and will preclude approval of the subdivision.

(b) When requiring mitigation under subsection (4), a governing body shall consult with the subdivider and shall give due weight and consideration to the expressed preference of the subdivider.

~~(6) The governing body may exempt proposed subdivisions that are entirely within the boundaries of designated geographic areas from the review criteria in subsection (3)(a) if all of the following requirements have been met:~~

~~(a) the governing body has adopted a growth policy pursuant to chapter 1 that:~~

~~(i) addresses the criteria in subsection (3)(a);~~

~~(ii) evaluates the impact of development on the criteria in subsection (3)(a);~~

~~(iii) describes zoning regulations that will be implemented to address the criteria in subsection (3)(a); and~~

~~(iv) identifies one or more geographic areas where the governing body intends to authorize an exemption from review of the criteria in subsection (3)(a); and~~

~~(b) the governing body has adopted zoning regulations pursuant to chapter 2, part 2 or 3, that:~~

~~(i) apply to the entire area subject to the exemption; and~~

~~(ii) address the criteria in subsection (3)(a), as described in the growth policy~~.

~~(7)~~*(6)* A governing body may conditionally approve or deny a proposed subdivision as a result of the water and sanitation information provided pursuant to 76-3-622 or public comment received pursuant to 76-3-604 on the information provided pursuant to 76-3-622 only if the conditional approval or denial is based on existing subdivision, zoning, or other regulations that the governing body has the authority to enforce."

Section 18. Section 76-3-609, MCA, is amended to read:

"76-3-609. Review procedure for minor subdivisions — determination of sufficiency of application — governing body to adopt regulations. (1) Minor subdivisions must be reviewed as provided in this section and subject to the applicable local regulations adopted pursuant to 76-3-504.

(2) If the tract of record proposed to be subdivided has not been subdivided or created by a subdivision under this chapter or has not resulted from a tract of record that has had more than five parcels created from that tract of record under 76-3-201 or 76-3-207 since July 1, 1973, then the proposed subdivision is a first minor subdivision from a tract of record and, when legal and physical access to all lots is provided, must be reviewed as follows:

(a) Except as provided in subsection (2)(b), the governing body shall approve, conditionally approve, or deny the first minor subdivision from a tract of record within 35 working days of a determination by the reviewing agent or agency that the application contains required elements and sufficient information for review. The determination and notification to the subdivider must be made in the same manner as is provided in 76-3-604(1) through (3).

(b) The subdivider and the reviewing agent or agency may agree to an extension or suspension of the review period, not to exceed 1 year.

(c) Except as provided in subsection ~~(2)(d)(iii)~~ *(2)(d)(ii)*, an application must include a summary of the probable impacts of the proposed subdivision based on the criteria described in 76-3-608(3).

(d) The following requirements do not apply to the first minor subdivision from a tract of record as provided in subsection (2):

(i) the requirement to prepare an environmental assessment;

~~(ii) the requirement to hold a hearing on the subdivision application pursuant to 76-3-605;~~ and

~~(iii)~~*(ii)* the requirement to review the subdivision for the criteria contained in 76-3-608(3)(a) if the minor subdivision is proposed in the portion of a jurisdictional area that has adopted zoning regulations that address the criteria in 76-3-608(3)(a).

(e) *The governing body or its authorized agent or agency may not hold a public hearing or a subsequent public hearing under 76-3-615 for a first minor subdivision from a tract of record as described in subsection (2).*

(f) The governing body may adopt regulations that establish requirements for the expedited review of the first minor subdivision from a tract of record. The following apply to a proposed subdivision reviewed under the regulations:

(i) *except as provided in subsection (2)(d), the provisions of* 76-3-608(3); and

(ii) the provisions of Title 76, chapter 4, part 1, whenever approval is required by those provisions.

(3) Except as provided in 76-3-616 and subsection (4) of this section, any minor subdivision that is not a first minor subdivision from a tract of record, as provided in subsection (2), is a subsequent minor subdivision and must be reviewed as provided in 76-3-601 through 76-3-605, 76-3-608, 76-3-610 through 76-3-614, and 76-3-620.

(4) The governing body may adopt subdivision regulations that establish requirements for review of subsequent minor subdivisions that meet or exceed

the requirements that apply to the first minor subdivision, as provided in subsection (2) and this chapter.

(5) (a) Review and approval, conditional approval, or denial of a subdivision under this chapter may occur only under those regulations in effect at the time that a subdivision application is determined to contain sufficient information for review as provided in subsection (2).

(b) If regulations change during the period that the application is reviewed for required elements and sufficient information, the determination of whether the application contains the required elements and sufficient information must be based on the new regulations."

Section 19. Section 76-3-610, MCA, is amended to read:

"76-3-610. Effect of approval of application and preliminary plat. (1) Upon approving or conditionally approving an application and preliminary plat, the governing body shall provide the subdivider with a dated and signed statement of approval. This approval must be in force for not more than 3 calendar years or less than 1 calendar year. At the end of this period the governing body may, at the request of the subdivider, extend its approval for no more than 1 calendar year, except that the governing body may extend its approval for a period of more than 1 year if that approval period is included as a specific condition of a written agreement between the governing body and the subdivider, according to 76-3-507.

(2) ~~After~~ *Except as provided in 76-3-507, after* the application and preliminary plat are approved, the governing body and its subdivisions may not impose any additional conditions as a prerequisite to final plat approval if the approval is obtained within the original or extended approval period as provided in subsection (1)."

Section 20. Section 76-3-620, MCA, is amended to read:

"76-3-620. Review requirements — written statement. In addition to the requirements of 76-3-604 and 76-3-609, following any decision by the governing body to deny or conditionally approve a proposed subdivision, the governing body shall*, in accordance with the time limit established in 76-3-504(1)(r),* prepare a written statement that must be provided to the applicant, that must be made available to the public, and that:

(1) includes information regarding the appeal process for the denial or imposition of conditions;

(2) identifies the regulations and statutes that are used in reaching the decision to deny or impose conditions and explains how they apply to the decision to deny or impose conditions;

(3) provides the facts and conclusions that the governing body relied upon in making its decision to deny or impose conditions and references documents, testimony, or other materials that form the basis of the decision; and

(4) provides the conditions that apply to the preliminary plat approval and that must be satisfied before the final plat may be approved."

Section 21. Section 76-3-621, MCA, is amended to read:

"76-3-621. Park dedication requirement. (1) Except as provided in 76-3-509 or subsections (2), (3), and (6) through (9) of this section, a subdivider shall dedicate to the governing body a cash or land donation equal to:

(a) 11% of the area of the land proposed to be subdivided into parcels of one-half acre or smaller;

(b) 7.5% of the area of the land proposed to be subdivided into parcels larger than one-half acre and not larger than 1 acre;

(c) 5% of the area of the land proposed to be subdivided into parcels larger than 1 acre and not larger than 3 acres; and

(d) 2.5% of the area of the land proposed to be subdivided into parcels larger than 3 acres and not larger than 5 acres.

(2) When a subdivision is located totally within an area for which density requirements have been adopted pursuant to a growth policy under chapter 1 or pursuant to zoning regulations under chapter 2, the governing body may establish park dedication requirements based on the community need for parks and the development densities identified in the growth policy or regulations. Park dedication requirements established under this subsection are in lieu of those provided in subsection (1) and may not exceed 0.03 acres per dwelling unit.

(3) A park dedication may not be required for:

(a) land proposed for subdivision into parcels larger than 5 acres;

(b) subdivision into parcels that are all nonresidential;

(c) a subdivision in which parcels are not created, except when that subdivision provides permanent multiple spaces for recreational camping vehicles, mobile homes, or condominiums; ~~or~~

(d) a subdivision in which only one additional parcel is created*; or*

(e) except as provided in subsection (8), a first minor subdivision from a tract of record as described in 76-3-609(2).

(4) The governing body, in consultation with the subdivider and the planning board or park board that has jurisdiction, may determine suitable locations for parks and playgrounds and, giving due weight and consideration to the expressed preference of the subdivider, may determine whether the park dedication must be a land donation, cash donation, or a combination of both. When a combination of land donation and cash donation is required, the cash donation may not exceed the proportional amount not covered by the land donation.

(5) (a) In accordance with the provisions of subsections (5)(b) and (5)(c), the governing body shall use the dedicated money or land for development, acquisition, or maintenance of parks to serve the subdivision.

(b) The governing body may use the dedicated money to acquire, develop, or maintain, within its jurisdiction, parks or recreational areas or for the purchase of public open space or conservation easements only if:

(i) the park, recreational area, open space, or conservation easement is within a reasonably close proximity to the proposed subdivision; and

(ii) the governing body has formally adopted a park plan that establishes the needs and procedures for use of the money.

(c) The governing body may not use more than 50% of the dedicated money for park maintenance.

(6) The local governing body shall waive the park dedication requirement if:

(a) (i) the preliminary plat provides for a planned unit development or other development with land permanently set aside for park and recreational uses sufficient to meet the needs of the persons who will ultimately reside in the development; and

(ii) the area of the land and any improvements set aside for park and recreational purposes equals or exceeds the area of the dedication required under subsection (1);

(b) (i) the preliminary plat provides long-term protection of critical wildlife habitat; cultural, historical, or natural resources; agricultural interests; or aesthetic values; and

(ii) the area of the land proposed to be subdivided, by virtue of providing long-term protection provided for in subsection (6)(b)(i), is reduced by an amount equal to or exceeding the area of the dedication required under subsection (1);

(c) the area of the land proposed to be subdivided, by virtue of a combination of the provisions of subsections (6)(a) and (6)(b), is reduced by an amount equal to or exceeding the area of the dedication required under subsection (1); or

(d) (i) the subdivider provides for land outside of the subdivision to be set aside for park and recreational uses sufficient to meet the needs of the persons who will ultimately reside in the subdivision; and

(ii) the area of the land and any improvements set aside for park and recreational uses equals or exceeds the area of dedication required under subsection (1).

(7) The local governing body may waive the park dedication requirement if:

(a) the subdivider provides land outside the subdivision that affords long-term protection of critical wildlife habitat, cultural, historical, or natural resources, agricultural interests, or aesthetic values; and

(b) the area of the land to be subject to long-term protection, as provided in subsection (7)(a), equals or exceeds the area of the dedication required under subsection (1).

~~(8) A local governing body may, at its discretion, require a park dedication for a minor subdivision. A local governing body that chooses to require a park dedication shall specify in regulations the circumstances under which a park dedication will be required.~~

(8) (a) A local governing body may, at its discretion, require a park dedication for:

(i) a subsequent minor subdivision as described in 76-3-609(3); or

(ii) a first minor subdivision from a tract of record as described in 76-3-609(2) if:

(A) the subdivision plat indicates development of condominiums or other multifamily housing;

(B) zoning regulations permit condominiums or other multifamily housing; or

(C) any of the lots are located within the boundaries of a municipality.

(b) A local governing body that chooses to require a park dedication shall specify in regulations the circumstances under which a park dedication will be required.

(9) Subject to the approval of the local governing body and acceptance by the school district trustees, a subdivider may dedicate a land donation provided in subsection (1) to a school district, adequate to be used for school facilities or buildings.

(10) For the purposes of this section:

(a) "cash donation" is the fair market value of the unsubdivided, unimproved land; and

(b) "dwelling unit" means a residential structure in which a person or persons reside.

(11) A land donation under this section may be inside or outside of the subdivision."

Section 22. Section 76-3-625, MCA, is amended to read:

"76-3-625. Violations — actions against governing body. (1) A person who has filed with the governing body an application for a subdivision under this chapter may bring an action in district court to sue the governing body to recover actual damages caused by a final action, decision, or order of the governing body or a regulation adopted pursuant to this chapter that is arbitrary or capricious.

(2) A party identified in subsection (3) who is aggrieved by a decision of the governing body to approve, conditionally approve, or deny an application and preliminary plat for a proposed subdivision or a final subdivision plat may, within 30 days ~~after the~~ *from the date of the written* decision, appeal to the district court in the county in which the property involved is located. The petition must specify the grounds upon which the appeal is made.

(3) The following parties may appeal under the provisions of subsection (2):

(a) the subdivider;

(b) a landowner with a property boundary contiguous to the proposed subdivision or a private landowner with property within the county or municipality where the subdivision is proposed if that landowner can show a likelihood of material injury to the landowner's property or its value;

(c) the county commissioners of the county where the subdivision is proposed; and

(d) (i) a first-class municipality, as described in 7-1-4111, if a subdivision is proposed within 3 miles of its limits;

(ii) a second-class municipality, as described in 7-1-4111, if a subdivision is proposed within 2 miles of its limits; and

(iii) a third-class municipality or a town, as described in 7-1-4111, if a subdivision is proposed within 1 mile of its limits.

(4) For the purposes of this section, "aggrieved" means a person who can demonstrate a specific personal and legal interest, as distinguished from a general interest, who has been or is likely to be specially and injuriously affected by the decision."

Section 23. Repealer. Section 76-3-210, MCA, is repealed.

Section 24. Effective date. [This act] is effective on passage and approval.

Section 25. Applicability. (1) [Sections 13, 20, and 22], concerning adoption of regulations and time references in the regulations, apply upon adoption of regulations under [section 13] or on May 1, 2010, whichever occurs first.

(2) [Section 2] applies upon adoption of a new growth policy or upon revision of an existing growth policy.

(3) [Section 21] applies upon revision of subdivision regulations or on December 31, 2010, whichever occurs first.

Approved May 5, 2009

CHAPTER NO. 447

[HB 531]

AN ACT TO PROHIBIT THE USE OF AN AUTOMATED ENFORCEMENT SYSTEM TO ENFORCE A TRAFFIC CONTROL DEVICE; PROVIDING EXCEPTIONS; AMENDING SECTIONS 61-8-203 AND 61-8-206, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-8-203, MCA, is amended to read:

"61-8-203. Department of transportation to place traffic control devices on highways it maintains and approve traffic control devices on highways under its jurisdiction. (1) The department of transportation shall place and maintain traffic control devices, conforming to its manual and specifications, upon all highways maintained by the department of transportation that the department considers necessary to carry out the provisions of ~~this chapter and~~ chapter 9 *and this chapter* or to regulate, warn, or guide traffic.

(2) A local authority or other entity may not place or maintain a traffic control device upon a highway under the jurisdiction of the department of transportation except with the department's permission.

(3) The unauthorized erection of a sign, marker, emblem, or other traffic control device on a highway under the jurisdiction of the department of transportation by any other entity is a misdemeanor and is punishable as provided in 61-8-712.

(4) The erection or maintenance of a sign, marker, emblem, or traffic control device on a highway under the jurisdiction of the department of transportation is subject to the rules and specifications that the department adopts and publishes in the interest of public safety and convenience.

(5) (a) An automated enforcement system designed to detect traffic violations that is attached to a traffic control device may not be used to enforce traffic laws.

(b) Subsection (5)(a) does not apply to automated enforcement systems attached to traffic control devices at railroad grade crossings."

Section 2. Section 61-8-206, MCA, is amended to read:

"61-8-206. Local traffic control devices. *(1)* Local authorities in their respective jurisdictions shall place and maintain ~~such~~ traffic control devices upon highways under their jurisdiction ~~as~~ *that* they ~~may deem~~ *consider* necessary to indicate and to carry out the provisions of this chapter or local traffic ordinances or to regulate, warn, or guide traffic. All ~~such~~ traffic control devices ~~hereafter erected shall~~ *must* conform to the state manual and specifications.

(2) (a) An automated enforcement system designed to detect traffic violations that is attached to a traffic control device may not be used to enforce traffic laws.

(b) Subsection (2)(a) does not apply to automated enforcement systems attached to traffic control devices at railroad grade crossings."

Section 3. Effective date. [This act] is effective on passage and approval.

Approved May 5, 2009

CHAPTER NO. 448

[HB 536]

AN ACT REVISING IGNITION INTERLOCK DEVICE REQUIREMENTS; AMENDING SECTIONS 61-5-208, 61-8-442, AND 61-8-733, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-5-208, MCA, is amended to read:

"61-5-208. Period of suspension or revocation — limitation on issuance of probationary license — notation on driver's license. (1) The department may not suspend or revoke a driver's license or privilege to drive a motor vehicle on the public highways, except as permitted by law.

(2) (a) Except as provided in 61-2-302, a person whose license or privilege to drive a motor vehicle on the public highways has been suspended or revoked may not have the license, endorsement, or privilege renewed or restored until the revocation or suspension period has been completed.

(b) When a person is convicted or forfeits bail or collateral not vacated for a first offense of operating or being in actual physical control of a motor vehicle while under the influence of alcohol or any drug or a combination of alcohol or drugs or for a first offense of operation of a motor vehicle by a person with alcohol concentration of 0.08 or more, the department shall, upon receiving a report of conviction or forfeiture of bail or collateral not vacated, suspend the driver's license or driving privilege of the person for a period of 6 months. Upon receiving a report of a conviction or forfeiture of bail or collateral for a second, third, or subsequent offense within 5 years of the first offense, the department shall suspend the license or driving privilege of the person for a period of 1 year and may not issue a probationary license during the period of suspension *unless the person completes at least 45 days of the 1-year suspension and the report of conviction includes a recommendation from the court that a probationary driver's license be issued subject to the requirements of 61-8-442*. If the 1-year suspension period passes and the person has not completed a chemical dependency education course, treatment, or both, as ordered by the sentencing court, the license suspension remains in effect until the course, treatment, or both, are completed.

(c) For the purposes of subsection (2)(b), a person is considered to have committed a second, third, or subsequent offense if fewer than 5 years have passed between the date of an offense that resulted in a prior conviction and the date of the offense that resulted in the most recent conviction.

(3) (a) Except as provided in subsection (3)(b), the period of suspension or revocation for a person convicted of any offense that makes mandatory the suspension or revocation of the person's driver's license commences from the date of conviction or forfeiture of bail.

(b) A suspension commences from the last day of the prior suspension or revocation period if the suspension is for a conviction of driving with a suspended or revoked license.

(4) If a person is convicted of a violation of 61-8-401 or 61-8-406 while operating a commercial motor vehicle, the department shall suspend the person's driver's license as provided in 61-8-802.

(5) (a) A driver's license that is issued after a license revocation to a person described in subsection (5)(b) must be clearly marked with a notation that conveys the term of the person's probation restrictions.

(b) The provisions of subsection (5)(a) apply to a license issued to a person for whom a court has reported a felony conviction under 61-8-731, the judgment for which has as a condition of probation that the person may not operate a motor vehicle unless:

(i) operation is authorized by the person's probation officer; or

(ii) a motor vehicle operated by the person is equipped with an ignition interlock device."

Section 2. Section 61-8-442, MCA, is amended to read:

"61-8-442. Driving under influence of alcohol or drugs — driving with excessive alcohol concentration — ignition interlock device. (1) In addition to the punishments provided in 61-8-714 and 61-8-722, regardless of disposition and if a probationary license is recommended by the court, the court may, for a person convicted of a first offense under 61-8-401 or 61-8-406, restrict the person to driving only a motor vehicle equipped with a functioning ignition interlock device during the probationary period and require the person to pay the reasonable cost of leasing, installing, and maintaining the device.

(2) If a person is convicted of a second or subsequent violation of 61-8-401 or 61-8-406, in addition to the punishments provided in 61-8-714 and 61-8-722, regardless of disposition, the court shall*:*

(a) if recommending that a probationary license be issued to the person, restrict the person to driving only a motor vehicle equipped with a functioning ignition interlock device during the probationary period and require the person to pay the reasonable cost of leasing, installing, and maintaining the device; or

(b) order that each motor vehicle owned by the person at the time of the offense be ~~either:~~

~~(a)~~ seized and subjected to the forfeiture procedure provided under 61-8-421~~;~~ ~~or~~.

~~(b) during the 12-month period beginning with the end of the period of driver's license revocation, equipped with a functioning ignition interlock device and require the person to pay the reasonable cost of leasing, installing, and maintaining the device.~~

(3) Any restriction imposed under this section must be included in a report of the conviction made by the court to the department in accordance with 61-11-101 and placed upon the person's driving record maintained by the department in accordance with 61-11-102.

(4) The duration of a restriction imposed under this section must be monitored by the department."

Section 3. Section 61-8-733, MCA, is amended to read:

"61-8-733. Driving under influence of alcohol or drugs — driving with excessive alcohol concentration — forfeiture of vehicle. (1) On the second or subsequent conviction of a violation of 61-8-401 or 61-8-406 or a second or subsequent conviction under 61-5-212 when the reason for the suspension or revocation was that the person was convicted of a violation of 61-8-401 or 61-8-406 or a similar offense under the laws of any other state or the suspension was under 61-8-402 or 61-8-409 or a similar law of any other state for refusal to take a test for alcohol or drugs requested by a peace officer who believed that the person might be driving under the influence, the court, in addition to the punishments provided in 61-5-212, 61-8-714, and 61-8-722 and any other penalty imposed by law, shall*:*

(a) if recommending that a probationary license be issued to the person, restrict the person to driving only a motor vehicle equipped with a functioning ignition interlock device during the probationary period and require the person to pay the reasonable cost of leasing, installing, and maintaining the device; or

(b) order that each motor vehicle owned by the person at the time of the offense be ~~either~~ seized and subjected to the procedure provided under 61-8-421 ~~or. equipped with an ignition interlock device as provided under 61-8-442.~~

(2) A vehicle used by a person as a common carrier in the transaction of business as a common carrier is not subject to forfeiture unless it appears that the owner or other person in charge of the vehicle consented to or was privy to the violation. A vehicle may not be forfeited under this section for any act or omission established by the owner to have been committed or omitted by a person other than the owner while the vehicle was unlawfully in the possession of a person other than the owner in violation of the criminal laws of this state or the United States.

(3) Forfeiture of a vehicle encumbered by a security interest is subject to the secured person's interest if the person did not know and could not have reasonably known of the unlawful possession, use, or other act on which the forfeiture is sought."

Section 4. Applicability. [This act] applies to offenses committed on or after [the effective date of this act].

Approved May 5, 2009

CHAPTER NO. 449

[HB 557]

AN ACT DIRECTING THE BOARD OF ENVIRONMENTAL REVIEW TO ADOPT RULES FOR THE APPROVAL OF REGIONAL PUBLIC WATER SUPPLY SYSTEMS; AMENDING SECTION 75-6-103, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Rules for regional public water supply systems. The board shall adopt rules for approval of regional public water supply systems established by a regional water authority pursuant to Title 75, chapter 6, part 3. The rules must:

(1) include procedures for the construction of regional public water supply systems, including regulatory provisions for a series of project segments over the construction period of the project as contained in the final engineering report, as may be amended and approved by the United States bureau of reclamation, that addresses the:

(a) approval of design and construction standards that may not be subject to change for 72 months;

(b) issuance of deviations from design and construction standards to remain in effect for 72 months; and

(c) approval of an individual regional water supply system's standard construction contract documents and provisions for amendments to those documents to remain in effect for the construction period of the project;

(2) implement plan and specification review periods or deviation request approval periods for storage, pumping, and distribution portions of a regional public water supply system of not more than 40 calendar days for the initial review by the department and not more than 20 working days for any subsequent reviews;

(3) avoid duplicate processes and regulations by coordinating and incorporating the review and approval process applicable to a regional public water supply system by the United States bureau of reclamation.

Section 2. Section 75-6-103, MCA, is amended to read:

"75-6-103. Duties of board. (1) The board has general supervision over all state waters that are directly or indirectly being used by a person for a public water supply system or domestic purposes or as a source of ice.

(2) The board shall, subject to the provisions of 75-6-116 *and as provided in [section 1]*, adopt rules and standards concerning:

(a) maximum contaminant levels for waters that are or will be used for a public water supply system;

(b) fees, as described in 75-6-108, for services rendered by the department;

(c) monitoring, recordkeeping, and reporting by persons who own or operate public water supply systems;

(d) requiring public notice to all users of a public water supply system when a person has been granted a variance or exemption or is in violation of this part or a rule or order issued pursuant to this part;

(e) the siting, construction, operation, and modification of a public water supply system or public sewage system;

(f) the review of the technical, managerial, and financial capacity of a proposed public water supply system or public sewage system, as necessary to ensure the capability of the system to meet the requirements of this part;

(g) the collection and analysis of samples of water used for drinking or domestic purposes;

(h) the issuance of variances and exemptions as authorized by the federal Safe Drinking Water Act and this part;

(i) administrative enforcement procedures and administrative penalties authorized under this part;

(j) standards and requirements for the review and approval of programs that may be voluntarily submitted by suppliers of public water supply systems to prevent water supply contamination from a cross-connection, including provisions to exempt cross-connections from the standards and requirements if all connected systems are department-approved public water supply systems; and

(k) any other requirement necessary for the protection of public health as described in this part.

(3) Board rules must provide for the following:

(a) *except as provided in [section 1],* a water supply or water distribution facility reviewed and approved by the department is not subject to changes in department design and construction criteria for a period of 36 months after written approval of the facility is issued by the department;

(b) except for facilities subject to permit requirements under Title 75, chapter 5, part 4, *and except as provided under rules adopted pursuant to*

[section 1], a system of water supply, drainage, wastewater, or sewage reviewed and approved under this section is not subject to changes in department design or construction criteria for a period of 36 months after written approval is issued by the department;

(c) plans and specifications for a portion of a facility or system subject to a 36-month limit on criteria changes pursuant to subsections (3)(a) and (3)(b), but not constructed within the 36-month timeframe, must be resubmitted for department review and approval before construction of that portion of the facility;

(d) the provisions of this subsection (3) may not limit an applicant's ability to alter a proposed project that is otherwise in conformance with applicable laws, rules, standards, and criteria.

(4) The board may issue orders necessary to fully implement the provisions of this part."

Section 3. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 75, chapter 6, part 1, and the provisions of Title 75, chapter 6, part 1, apply to [section 1].

Section 4. Applicability. [This act] applies to plans and specifications for a regional public water supply system submitted after [the effective date of this act].

Approved May 5, 2009

CHAPTER NO. 450

[HB 598]

AN ACT EXEMPTING EMPLOYMENT OF A CONTRACT MUSICIAN FROM COVERAGE UNDER THE WORKERS' COMPENSATION ACT; AMENDING SECTION 39-71-401, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-71-401, MCA, is amended to read:

"39-71-401. Employments covered and ~~employments exempted~~ *exemptions — elections — notice.* (1) Except as provided in subsection (2), the Workers' Compensation Act applies to all employers and to all employees. An employer who has any employee in service under any appointment or contract of hire, expressed or implied, oral or written, shall elect to be bound by the provisions of compensation plan No. 1, 2, or 3. Each employee whose employer is bound by the Workers' Compensation Act is subject to and bound by the compensation plan that has been elected by the employer.

(2) Unless the employer elects coverage for these employments under this chapter and an insurer allows an election, the Workers' Compensation Act does not apply to any of the following ~~employments~~:

(a) household or domestic employment;

(b) casual employment;

(c) employment of a dependent member of an employer's family for whom an exemption may be claimed by the employer under the federal Internal Revenue Code;

(d) employment of sole proprietors, working members of a partnership, working members of a limited liability partnership, or working members of a member-managed limited liability company, except as provided in subsection (3);

(e) employment of a real estate, securities, or insurance salesperson paid solely by commission and without a guarantee of minimum earnings;

(f) employment as a direct seller as defined by 26 U.S.C. 3508;

(g) employment for which a rule of liability for injury, occupational disease, or death is provided under the laws of the United States;

(h) employment of a person performing services in return for aid or sustenance only, except employment of a volunteer under 67-2-105;

(i) employment with a railroad engaged in interstate commerce, except that railroad construction work is included in and subject to the provisions of this chapter;

(j) employment as an official, including a timer, referee, umpire, or judge, at an amateur athletic event;

(k) employment of a person performing services as a newspaper carrier or freelance correspondent if the person performing the services or a parent or guardian of the person performing the services in the case of a minor has acknowledged in writing that the person performing the services and the services are not covered. As used in this subsection (2)(k):

(i) "freelance correspondent" means a person who submits articles or photographs for publication and is paid by the article or by the photograph; and

(ii) "newspaper carrier":

(A) means a person who provides a newspaper with the service of delivering newspapers singly or in bundles; and

(B) does not include an employee of the paper who, incidentally to the employee's main duties, carries or delivers papers.

(l) cosmetologist's services and barber's services as referred to in 39-51-204(1)(e);

(m) a person who is employed by an enrolled tribal member or an association, business, corporation, or other entity that is at least 51% owned by an enrolled tribal member or members, whose business is conducted solely within the exterior boundaries of an Indian reservation;

(n) employment of a jockey who is performing under a license issued by the board of horseracing from the time that the jockey reports to the scale room prior to a race through the time that the jockey is weighed out after a race if the jockey has acknowledged in writing, as a condition of licensing by the board of horseracing, that the jockey is not covered under the Workers' Compensation Act while performing services as a jockey;

(o) employment of a trainer, assistant trainer, exercise person, or pony person who is performing services under a license issued by the board of horseracing while on the grounds of a licensed race meet;

(p) employment of an employer's spouse for whom an exemption based on marital status may be claimed by the employer under 26 U.S.C. 7703;

(q) a person who performs services as a petroleum land professional. As used in this subsection, a "petroleum land professional" is a person who:

(i) is engaged primarily in negotiating for the acquisition or divestiture of mineral rights or in negotiating a business agreement for the exploration or development of minerals;

(ii) is paid for services that are directly related to the completion of a contracted specific task rather than on an hourly wage basis; and

(iii) performs all services as an independent contractor pursuant to a written contract.

(r) an officer of a quasi-public or a private corporation or manager of a manager-managed limited liability company who qualifies under one or more of the following provisions:

(i) the officer or manager is not engaged in the ordinary duties of a worker for the corporation or the limited liability company and does not receive any pay from the corporation or the limited liability company for performance of the duties;

(ii) the officer or manager is engaged primarily in household employment for the corporation or the limited liability company;

(iii) the officer or manager either:

(A) owns 20% or more of the number of shares of stock in the corporation or owns 20% or more of the limited liability company; or

(B) owns less than 20% of the number of shares of stock in the corporation or limited liability company if the officer's or manager's shares when aggregated with the shares owned by a person or persons listed in subsection (2)(r)(iv) total 20% or more of the number of shares in the corporation or limited liability company; or

(iv) the officer or manager is the spouse, child, adopted child, stepchild, mother, father, son-in-law, daughter-in-law, nephew, niece, brother, or sister of a corporate officer who meets the requirements of subsection (2)(r)(iii)(A) or (2)(r)(iii)(B);

(s) a person who is an officer or a manager of a ditch company as defined in 27-1-731;

(t) service performed by an ordained, commissioned, or licensed minister of a church in the exercise of the church's ministry or by a member of a religious order in the exercise of duties required by the order;

(u) service performed to provide companionship services, as defined in 29 CFR 552.6, or respite care for individuals who, because of age or infirmity, are unable to care for themselves when the person providing the service is employed directly by a family member or an individual who is a legal guardian;

(v) employment of a person performing the services of an intrastate or interstate common or contract motor carrier when hired by an individual or entity who meets the definition of a broker, as provided in 49 U.S.C. 13102;

(w) employment of a person who is not an employee or worker in this state as defined in 39-71-118(10);

(x) employment of a person who is working under an independent contractor exemption certificate;

(y) employment of an athlete by or on a team or sports club engaged in a contact sport. As used in this subsection, "contact sport" means a sport that includes significant physical contact between the athletes involved. Contact

sports include but are not limited to football, hockey, roller derby, rugby, lacrosse, wrestling, and boxing.

(z) a musician performing under a written contract.

(3) (a) (i) A person who regularly and customarily performs services at locations other than the person's own fixed business location shall elect to be bound personally and individually by the provisions of compensation plan No. 1, 2, or 3 unless the person has waived the rights and benefits of the Workers' Compensation Act by obtaining an independent contractor exemption certificate from the department pursuant to 39-71-417.

(ii) Application fees or renewal fees for independent contractor exemption certificates must be deposited in the state special revenue account established in 39-9-206 and must be used to offset the certification administration costs.

(b) A person who holds an independent contractor exemption certificate may purchase a workers' compensation insurance policy and with the insurer's permission elect coverage for the certificate holder.

(c) For the purposes of this subsection (3), "person" means a sole proprietor, a working member of a partnership, a working member of a limited liability partnership, or a working member of a member-managed limited liability company.

(4) (a) A corporation or a manager-managed limited liability company shall provide coverage for its employees under the provisions of compensation plan No. 1, 2, or 3. A quasi-public corporation, a private corporation, or a manager-managed limited liability company may elect coverage for its corporate officers or managers, who are otherwise exempt under subsection (2), by giving a written notice in the following manner:

(i) if the employer has elected to be bound by the provisions of compensation plan No. 1, by delivering the notice to the board of directors of the corporation or to the management organization of the manager-managed limited liability company; or

(ii) if the employer has elected to be bound by the provisions of compensation plan No. 2 or 3, by delivering the notice to the board of directors of the corporation or to the management organization of the manager-managed limited liability company and to the insurer.

(b) If the employer changes plans or insurers, the employer's previous election is not effective and the employer shall again serve notice to its insurer and to its board of directors or the management organization of the manager-managed limited liability company if the employer elects to be bound.

(5) The appointment or election of an employee as an officer of a corporation, a partner in a partnership, a partner in a limited liability partnership, or a member in or a manager of a limited liability company for the purpose of exempting the employee from coverage under this chapter does not entitle the officer, partner, member, or manager to exemption from coverage.

(6) Each employer shall post a sign in the workplace at the locations where notices to employees are normally posted, informing employees about the employer's current provision of workers' compensation insurance. A workplace is any location where an employee performs any work-related act in the course of employment, regardless of whether the location is temporary or permanent, and includes the place of business or property of a third person while the employer has access to or control over the place of business or property for the purpose of carrying on the employer's usual trade, business, or occupation. The

sign must be provided by the department, distributed through insurers or directly by the department, and posted by employers in accordance with rules adopted by the department. An employer who purposely or knowingly fails to post a sign as provided in this subsection is subject to a $50 fine for each citation."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved May 5, 2009

CHAPTER NO. 451

[HB 662]

AN ACT LICENSING AND REGULATING MASSAGE THERAPISTS; ESTABLISHING A BOARD OF MASSAGE THERAPISTS; PROVIDING RULEMAKING AUTHORITY FOR THE BOARD; ESTABLISHING QUALIFICATIONS FOR LICENSURE; PROVIDING PENALTIES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Short title. [Sections 1 through 9] may be cited as the "Massage Therapy Licensing Act".

Section 2. Purpose. (1) The legislature finds that the practice of massage therapy affects the health, safety, and welfare of the people of this state and declares that the practice of massage therapy contributes to choice in health care.

(2) It is the purpose of [sections 1 through 9] to regulate the massage therapy profession, to create a board of massage therapy that will issue massage therapy licenses in accordance with [sections 1 through 9] and the board's rules, and to define the terminology describing competencies of the massage therapy profession.

Section 3. Definitions. As used in [sections 1 through 9], the following definitions apply:

(1) "Board" means the board of massage therapy provided for in [section 10].

(2) "Department" means the department of labor and industry provided for in 2-15-1701.

(3) "Massage therapist", "licensed massage therapist", "L.M.T.", "masseur", or "masseuse" means a person who is licensed by the board to practice massage therapy. The terms are equivalent terms, and any derivation of the phrases or any letters implying the phrases are equivalent terms. Any reference to any one of the terms in [sections 1 through 9] includes the others.

(4) (a) (i) "Massage therapy" when provided by a massage therapist means the application of a system of structured touch, pressure, positioning, or holding to soft tissues of the body, Swedish massage, effleurage, petrissage, tapotement, percussion, friction, vibration, compression, passive and active stretching or movement within the normal anatomical range of motion, the external application of water, heat, cold, lubricants, salts, skin brushing, or other topical preparations not classified as prescription drugs, providing information for self-care stress management, and the determination of whether massage is contraindicated and whether referral to another health care practitioner is recommended.

(ii) The techniques described in subsection (4)(a)(i) must be applied by the massage therapist through the use of hands, forearms, elbows, knees, or feet or through the use of hand-held tools that mimic or support the action of the hands and are primarily intended to enhance or restore health and well-being by promoting pain relief, stress reduction, and relaxation.

(b) The term does not include providing examinations for the purpose of diagnosis, providing treatments that are outside the scope of massage therapy, or attempts to adjust, manipulate, or mobilize any articulations of the body or spine by the use of high-velocity, low-amplitude thrusting force, exercise, exercise instruction or prescription, or the use of tape when applied to restrict joint movement, manual or mechanical traction when applied to the spine or extremities for the purposes of joint mobilization or manipulation, injection therapy, laser therapy, microwave diathermy, electrical stimulation, ultrasound, iontophoresis, or phonophoresis.

Section 4. Exemptions — rules. (1) The provisions of [sections 1 through 9] do not limit or regulate the scope of practice of any other profession licensed under the laws of this state, including but not limited to medicine, dentistry, osteopathy, podiatry, nursing, physical therapy, chiropractic, acupuncture, veterinary medicine, occupational therapy, naturopathic medicine, cosmetology, manicuring, barbering, esthetics, electrology, professional counseling, social work, psychology, or athletic training.

(2) A continuing education course instructor is not required to be licensed as a massage therapist.

(3) A massage therapy student, when enrolled in a board-approved program and while practicing the skills of massage therapy designated as a school-sanctioned activity and under the supervision of a licensed massage therapist, is not required to be licensed.

(4) The provisions of [sections 1 through 9] do not limit or regulate the practice of Native American traditional healing or faith healing.

(5) (a) The provisions of [sections 1 through 9] do not limit or regulate the practice of any person who uses:

(i) touch, words, and directed movement to deepen awareness of existing patterns of movement in the body, as well as to suggest new possibilities of movement. Exempt practices under this subsection (5)(a)(i) include but are not limited to the Feldenkrais method of somatic education, the Trager approach to movement education, and body-mind centering.

(ii) touch to affect the human energy systems, energy meridians, or energy fields. Exempted practices under this subsection (5)(a)(ii) include but are not limited to polarity bodywork therapy, Asian bodywork therapy, acupressure, jin shin do, qigong, reiki, shiatsu, and tui na.

(iii) touch to effect change on the integration of the structure of the physical body. Exempt practices under this subsection (5)(a)(iii) include but are not limited to the Rolf method of structural integration, Rolfing, and Hellerwork.

(iv) touch to affect the reflex areas located in the hands, feet, and outer ears. Exempt practices under this subsection (5)(a)(iv) include but are not limited to reflexology.

(b) The exemptions in subsection (5)(a) apply only if:

(i) the person is recognized by or meets the established requirements of either a professional organization or credentialing agency that represents or

certifies the respective practice based on a minimum level of training, demonstration of competence, and adherence to ethical standards; and

(ii) the person's services are not designated as or implied to be massage therapy.

Section 5. Powers and duties of board — rulemaking authority. The board shall:

(1) adopt rules necessary or proper to administer and enforce [sections 1 through 9];

(2) adopt rules that endorse equivalent licensure examinations of another state or territory of the United States, the District of Columbia, or a foreign country and that may include licensure by reciprocity;

(3) adopt rules establishing reasonable requirements for continuing education, which must require 12 hours of continuing education to be completed in each 2-year period;

(4) meet as often as necessary for the conduct of business but at least twice a year; and

(5) take disciplinary action necessary to protect the public as provided for in Title 37, chapter 1.

Section 6. License required — enjoining unlawful practice. (1) As of July 1, 2010, a person who is not eligible for a license under [section 8] may not practice or purport to practice massage therapy without first obtaining a license under the provisions of [section 7].

(2) A person who is not licensed as a massage therapist under this section or [section 8], whose license has been suspended or revoked, or whose license has lapsed and has not been revived may not use the words or letters "massage therapist", "licensed massage therapist", "L.M.T.", "masseur", or "masseuse" or any other letters, words, or insignia indicating or implying that the person is a licensed massage therapist or in any way, orally, in writing, or in print or by sign, directly or by implication, purport to be a massage therapist. A person who knowingly violates the provisions of this subsection is guilty of a misdemeanor as provided in [section 9].

Section 7. Qualifications for licensure. (1) To be eligible for licensure as a massage therapist as provided in [section 6], an applicant:

(a) shall submit an application on a form provided by the department;

(b) shall include with the application the application fee set by the board;

(c) must posses a high school diploma or its equivalent;

(d) must be at least 18 years of age; and

(e) must be of good moral character.

(2) The applicant, in addition to the requirements established in subsection (1), is required to:

(a) successfully complete a massage therapy program of a minimum of 500 hours of study that meets or exceeds the curriculum guidelines established by any program or organization accredited by the national commission for certifying agencies or its equivalent or successor and receive a passing score on an examination prescribed by the board; or

(b) possess an equivalent current license, certification, or registration in good standing from another state.

Section 8. Initial licensure — grandfather clause. (1) As of July 1, 2010, the board shall issue a massage therapy license to an applicant who applies or has applied for a license by paying the application fee and by providing a signed affidavit to the board that the applicant has engaged in the practice of massage therapy for at least 100 hours in Montana prior to applying for a massage therapy license under this section and that the applicant meets the requirements of [section 7(1)(a), (1)(b), (1)(d), and (1)(e)]. The board shall by rule establish the application fee not later than January 1, 2010.

(2) (a) A license issued under this section is valid for the same initial period as a license issued under [section 7] and is subject to the same renewal requirements and renewal fees as a license issued under [section 7].

(b) A person may not apply for licensure under this section after July 1, 2012.

Section 9. Penalty. Any person who knowingly violates any provisions of [sections 1 through 9] is guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than $500 or by imprisonment in the county jail for a term of not more than 6 months, or both.

Section 10. Board of massage therapy. (1) There is a board of massage therapy.

(2) The board consists of five members appointed by the governor with the consent of the senate. The members are:

(a) one representative of the public who is not a medical practitioner or an owner of a school that educates massage therapists and is not engaged in or directly connected with the practice of massage therapy;

(b) one member who is a licensed health care provider in good standing in Montana and who is not an owner of a school that educates massage therapists; and

(c) three massage therapists, none of whom may be an owner of a school that educates massage therapists, who have been actively engaged in the practice of massage therapy for at least 3 years prior to being appointed to the board. None of the three massage therapists may belong to the same national professional association. After the initial appointments are made to establish the board, each of the three members must be licensed as a massage therapist under [sections 1 through 9].

(3) Members shall serve 4-year, staggered terms. The governor may remove a member from the board for neglect of duty required by law, for incompetence, or for unprofessional or dishonorable conduct.

(4) The governor shall make the initial appointments to the board as follows:

(a) one person who is a massage therapist to serve a 2-year term;

(b) one person who is a massage therapist to serve a 3-year term; and

(c) one person who is a massage therapist to serve a 4-year term.

(5) At the expiration of terms provided in subsection (4), the governor shall appoint the person designated to fill each position to a 4-year term.

(6) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121.

Section 11. Codification instruction. (1) [Sections 1 through 9] are intended to be codified as an integral part of Title 37, and the provisions of Title 37 apply to [sections 1 through 9].

(2) [Section 10] is intended to be codified as an integral part of Title 2, chapter 15, part 17, and the provisions of Title 2, chapter 15, part 17, apply to [section 10].

Section 12. Effective date. [This act] is effective on passage and approval.

Approved May 5, 2009

CHAPTER NO. 452

[SB 119]

AN ACT REQUIRING A MEDICAID PROGRAM FOR WORKERS WITH DISABILITIES; ESTABLISHING ELIGIBILITY REQUIREMENTS; PROVIDING FOR COST SHARING; AMENDING SECTIONS 53-6-113 AND 53-6-131, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Medicaid program for workers with disabilities — purpose — eligibility — participant costs. (1) If appropriations specific for this purpose are provided by the legislature and federal approval of the necessary amendments to the state medicaid plan is secured, the department shall administer a medicaid program that allows individuals with disabilities to participate in the medicaid program if they obtain employment that increases their incomes above eligibility limits. Participants in the program may be required to pay a portion of the costs for participation. The purpose of the program is to support employment for individuals with disabilities by providing medicaid coverage to individuals who would otherwise be ineligible for medicaid due to earnings that exceed the medicaid program's income limits.

(2) The medicaid program provided for under this section must be implemented in accordance with the provisions of 42 U.S.C 1396a(a)(10)(A)(ii)(XIII) and (r)(2).

(3) An employed individual is eligible for the program if the individual:

(a) has a net family income that is less than 250% of the federal poverty level;

(b) would be categorically eligible for medicaid because the individual is disabled as defined under Title XVI of the Social Security Act, 42 U.S.C. 1382c, except that the person has or has had earnings above the level for substantial gainful activity;

(c) has income and resources equal to or below the income and resource limits established by the department by rule, which may be less stringent than the income and resource limits for supplemental security income benefits; and

(d) satisfies all other eligibility criteria established by the department by rule.

(4) The department may establish:

(a) requirements for the employment status of participants, the verification of employment status, and permissible temporary breaks in employment;

(b) requirements, limitations, and definitions pertaining to the income and resources of participants;

(c) only to the extent allowed under 42 U.S.C. 1396o, requirements for payment of premiums, deductions, and cost sharing as a condition for participating in the program.

(5) The department shall, to the extent allowed by appropriations levels and under applicable state and federal law, coordinate the medicaid program provided for under this section with other state and federal programs and resources that promote opportunities for persons with disabilities to retain, regain, and maintain employment.

Section 2. Section 53-6-113, MCA, is amended to read:

"53-6-113. Department to adopt rules. (1) The department ~~of public health and human services~~ shall adopt appropriate rules necessary for the administration of the Montana medicaid program as provided for in this part and that may be required by federal laws and regulations governing state participation in medicaid under Title XIX of the Social Security Act, 42 U.S.C. 1396, et seq., as amended.

(2) The department shall adopt rules that are necessary to further define for the purposes of this part the services provided under 53-6-101 and to provide that services being used are medically necessary and that the services are the most efficient and cost-effective available. The rules may establish the amount, scope, and duration of services provided under the Montana medicaid program, including the items and components constituting the services.

(3) The department shall establish by rule the rates for reimbursement of services provided under this part. The department may in its discretion set rates of reimbursement that it determines necessary for the purposes of the program. In establishing rates of reimbursement, the department may consider but is not limited to considering:

(a) the availability of appropriated funds;

(b) the actual cost of services;

(c) the quality of services;

(d) the professional knowledge and skills necessary for the delivery of services; and

(e) the availability of services.

(4) The department shall specify by rule those professionals who may deliver or direct the delivery of particular services.

(5) The department may provide by rule for payment by a recipient of a portion of the reimbursements established by the department for services provided under this part.

(6) The department may adopt rules consistent with this part to govern eligibility for the Montana medicaid program*, including the medicaid program provided for in [section 1]*. Rules may include but are not limited to financial standards and criteria for income and resources, treatment of resources, nonfinancial criteria, family responsibilities, residency, application, termination, definition of terms, confidentiality of applicant and recipient information, and cooperation with the state agency administering the child support enforcement program under Title IV-D of the Social Security Act, 42 U.S.C. 651, et seq. The department may not apply financial criteria below $15,000 for resources other than income in determining the eligibility of a child under 19 years of age for poverty level-related children's medicaid coverage groups, as provided in 42 U.S.C. 1396a(l)(1)(B) through (l)(1)(D).

(7) The department may adopt rules limiting eligibility based on criteria more restrictive than that provided in 53-6-131 if required by Title XIX of the

Social Security Act, 42 U.S.C. 1396, et seq., as may be amended, or if funds appropriated are not sufficient to provide medical care for all eligible persons.

(8) The department may adopt rules necessary for the administration of medicaid managed care systems. Rules to be adopted may include but are not limited to rules concerning:

(a) participation in managed care;

(b) selection and qualifications for providers of managed care; and

(c) standards for the provision of managed care.

(9) Subject to subsection (6), the department shall establish by rule income limits for eligibility for extended medical assistance of persons receiving section 1931 medicaid benefits, as defined in 53-4-602, who lose eligibility because of increased income to the assistance unit, as that term is defined in the rules of the department, as provided in 53-6-134, and shall also establish by rule the length of time for which extended medical assistance will be provided. The department, in exercising its discretion to set income limits and duration of assistance, may consider the amount of funds appropriated by the legislature."

Section 3. Section 53-6-131, MCA, is amended to read:

"53-6-131. Eligibility requirements. (1) Medical assistance under the Montana medicaid program may be granted to a person who is determined by the department of public health and human services, in its discretion, to be eligible as follows:

(a) The person receives or is considered to be receiving supplemental security income benefits under Title XVI of the Social Security Act, 42 U.S.C. 1381, et seq., and does not have income or resources in excess of the applicable medical assistance limits.

(b) The person would be eligible for assistance under the program described in subsection (1)(a) if that person were to apply for that assistance.

(c) The person is in a medical facility that is a medicaid provider and, but for residence in the facility, the person would be receiving assistance under the program in subsection (1)(a).

(d) The person is under 21 years of age and in foster care under the supervision of the state or was in foster care under the supervision of the state and has been adopted as a child with special needs.

(e) The person meets the nonfinancial criteria of the categories in subsections (1)(a) through (1)(d) and:

(i) the person's income does not exceed the income level specified for federally aided categories of assistance and the person's resources are within the resource standards of the federal supplemental security income program; or

(ii) the person, while having income greater than the medically needy income level specified for federally aided categories of assistance:

(A) has an adjusted income level, after incurring medical expenses, that does not exceed the medically needy income level specified for federally aided categories of assistance or, alternatively, has paid in cash to the department the amount by which the person's income exceeds the medically needy income level specified for federally aided categories of assistance; and

(B) has resources that are within the resource standards of the federal supplemental security income program.

(f) The person is a qualified pregnant woman or child as defined in 42 U.S.C. 1396d(n).

(g) The person is under 19 years of age and lives with a family having a combined income that does not exceed 185% of the federal poverty level. The department may establish lower income levels to the extent necessary to maximize federal matching funds provided for in 53-4-1104.

(2) The department may establish income and resource limitations. Limitations of income and resources must be within the amounts permitted by federal law for the medicaid program. Any otherwise applicable eligibility resource test prescribed by the department does not apply to enrollees in the healthy Montana kids plan provided for in 53-4-1104.

(3) The Montana medicaid program shall pay, as required by federal law, the premiums necessary for medicaid-eligible persons participating in the medicare program and may, within the discretion of the department, pay all or a portion of the medicare premiums, deductibles, and coinsurance for a qualified medicare-eligible person or for a qualified disabled and working individual, as defined in section 6408(d)(2) of the federal Omnibus Budget Reconciliation Act of 1989, Public Law 101-239, who:

(a) has income that does not exceed income standards as may be required by the Social Security Act; and

(b) has resources that do not exceed standards that the department determines reasonable for purposes of the program.

(4) The department may pay a medicaid-eligible person's expenses for premiums, coinsurance, and similar costs for health insurance or other available health coverage, as provided in 42 U.S.C. 1396b(a)(1).

(5) In accordance with waivers of federal law that are granted by the secretary of the U.S. department of health and human services, the department of public health and human services may grant eligibility for basic medicaid benefits as described in 53-6-101 to an individual receiving section 1931 medicaid benefits, as defined in 53-4-602, as the specified caretaker relative of a dependent child under the section 1931 medicaid program. A recipient who is pregnant, meets the criteria for disability provided in Title II of the Social Security Act, 42 U.S.C. 416, et seq., or is less than 21 years of age is entitled to full medicaid coverage, as provided in 53-6-101.

(6) The department, under the Montana medicaid program, may provide, if a waiver is not available from the federal government, medicaid and other assistance mandated by Title XIX of the Social Security Act, 42 U.S.C. 1396, et seq., as may be amended, and not specifically listed in this part to categories of persons that may be designated by the act for receipt of assistance.

(7) Notwithstanding any other provision of this chapter, medical assistance must be provided to infants and pregnant women whose family income does not exceed 133% of the federal poverty threshold, as provided in 42 U.S.C. 1396a(a)(10)(A)(ii)(IX) and 42 U.S.C. 1396a(l)(2)(A)(i), and whose family resources do not exceed standards that the department determines reasonable for purposes of the program.

(8) Subject to appropriations, the department may cooperate with and make grants to a nonprofit corporation that uses donated funds to provide basic preventive and primary health care medical benefits to children whose families are ineligible for the Montana medicaid program and who are ineligible for any

other health care coverage, are under 19 years of age, and are enrolled in school if of school age.

(9) A person described in subsection (7) must be provided continuous eligibility for medical assistance, as authorized in 42 U.S.C. 1396a(e)(5) through a(e)(7).

(10) Full medical assistance under the Montana medicaid program may be granted to an individual during the period in which the individual requires treatment of breast or cervical cancer, or both, or of a precancerous condition of the breast or cervix, if the individual:

(a) has been screened for breast and cervical cancer under the Montana breast and cervical health program funded by the centers for disease control and prevention program established under Title XV of the Public Health Service Act, 42 U.S.C. 300k, or in accordance with federal requirements;

(b) needs treatment for breast or cervical cancer, or both, or a precancerous condition of the breast or cervix;

(c) is not otherwise covered under creditable coverage, as provided by federal law or regulation;

(d) is not eligible for medical assistance under any mandatory categorically needy eligibility group; and

(e) has not attained 65 years of age.

(11) Subject to the limitation in [section 1], the department shall provide medicaid coverage to workers with disabilities as provided in [section 1] and in accordance with 42 U.S.C. 1396a(a)(10)(A)(ii)(XIII) and (r)(2) and 42 U.S.C. 1396o."

Section 4. Transition. During the biennium beginning July 1, 2009, the department shall implement the program provided for in [this act] using existing staff.

Section 5. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 53, chapter 6, part 1, and the provisions of Title 53, chapter 6, apply to [section 1].

Section 6. Effective date. [This act] is effective July 1, 2009.

Approved May 5, 2009

CHAPTER NO. 453

[SB 235]

AN ACT EXPANDING THE EXEMPTION FROM LICENSING AS A PSYCHOLOGIST TO INCLUDE PSYCHOLOGICAL TESTING, EVALUATION, AND ASSESSMENT BY QUALIFIED MEMBERS OF OTHER PROFESSIONS; CLARIFYING THAT THE QUALIFIED MEMBERS OF OTHER PROFESSIONS INCLUDE LICENSED PROFESSIONAL COUNSELORS; AND AMENDING SECTIONS 37-17-104 AND 37-23-102, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-17-104, MCA, is amended to read:

"37-17-104. Exemptions. *(1)* ~~This~~ *Except as provided in subsection (2), this* chapter does not prevent:

~~(1)~~*(a)* qualified members of other professions, such as physicians, social workers, lawyers, pastoral counselors, *professional counselors licensed under Title 37, chapter 23,* or educators, from doing work of a psychological nature consistent with their training if they do not hold themselves out to the public by a title or description incorporating the words "psychology", "psychologist", "psychological", or "psychologic";

~~(2)~~*(b)* the activities, services, and use of an official title clearly delineating the nature and level of training on the part of a person in the employ of a federal, state, county, or municipal agency or of other political subdivisions or an educational institution, business corporation, or research laboratory insofar as these activities and services are a part of the duties of the office or position within the confines of the agency or institution;

~~(3)~~*(c)* the activities and services of a student, intern, or resident in psychology pursuing a course of study at an accredited university or college or working in a generally recognized training center if these activities and services constitute a part of the supervised course of study of the student, intern, or resident in psychology;

~~(4)~~*(d)* the activities and services of a person who is not a resident of this state in rendering consulting psychological services in this state when these services are rendered for a period which does not exceed, in the aggregate, 60 days during a calendar year if the person is authorized under the laws of the state or country of that person's residence to perform these activities and services~~; however~~. *However*, these persons shall report to the department the nature and extent of the services in this state prior to providing those services if the services are to exceed 10 days in a calendar year~~;~~.

~~(5)~~*(e)* a person authorized by the laws of the state or country of the person's former residence to perform activities and services, who has recently become a resident of this state and who has submitted a completed application for a license in this state, from performing the activities and services pending disposition of the person's application; and

~~(6)~~*(f)* the offering of lecture services.

(2) Those qualified members of other professions described in subsection (1)(a) may indicate and hold themselves out as performing psychological testing, evaluation, and assessment, as described in 37-17-102(4)(b), provided that they are qualified to administer the test and make the evaluation or assessment.

(3) The board of social work examiners and professional counselors shall adopt rules that qualify a licensee under Title 37, chapter 22 or 23, to perform psychological testing, evaluation, and assessment. The rules for licensed clinical social workers and professional counselors must be consistent with the guidelines of their respective national associations. Final rules must be adopted by October 1, 2010. A qualified licensee providing services under this exemption shall comply with the rules no later than 1 year from the date of adoption of the rules."

Section 2. Section 37-23-102, MCA, is amended to read:

"37-23-102. Definitions. As used in this chapter, the following definitions apply:

(1) "Board" means the board of social work examiners and professional counselors established under 2-15-1744.

(2) "Licensee" means a person licensed under this chapter.

(3) "Professional counseling" means engaging in methods and techniques that include:

(a) counseling, which means the therapeutic process of:

(i) conducting assessments and diagnoses for the purpose of establishing treatment goals and objectives; or

(ii) planning, implementing, and evaluating treatment plans that use treatment interventions to facilitate human development and to identify and remediate mental, emotional, or behavioral disorders and associated distresses that interfere with mental health;

(b) assessment, which means selecting, administering, scoring, and interpreting instruments*, including psychological tests, evaluations, and assessments,* designed to assess an individual's aptitudes, attitudes, abilities, achievement, interests, and personal characteristics and using nonstandardized methods and techniques for understanding human behavior in relation to coping with, adapting to, or changing life situations;

(c) counseling treatment intervention, which means those cognitive, affective, behavioral, and systemic counseling strategies, techniques, and methods common to the behavioral sciences that are specifically implemented in the context of a therapeutic relationship. Other treatment interventions include developmental counseling, guidance, and consulting to facilitate normal growth and development, including educational and career development~~; and~~.

(d) referral, which means evaluating information to identify needs or problems of an individual and to determine the advisability of referral to other specialists, informing the individual of the judgment, and communicating as requested or considered appropriate with the referral sources."

Approved May 5, 2009

CHAPTER NO. 454

[SB 290]

AN ACT REQUIRING THE ENERGY AND TELECOMMUNICATIONS INTERIM COMMITTEE TO REVIEW THE STATE ENERGY POLICY EACH INTERIM AND RECOMMEND CHANGES TO THE LEGISLATURE; AMENDING SECTIONS 90-4-1001 AND 90-4-1003, MCA; REPEALING SECTION 90-4-1002, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 90-4-1001, MCA, is amended to read:

"90-4-1001. State energy policy goal statement. (1) It is the policy of the state of Montana to promote energy *efficiency,* conservation, production, and consumption of a reliable and efficient mix of energy sources that represent the least social, environmental, and economic costs and the greatest long-term benefits to Montana citizens.

(2) In pursuing this goal, it is the policy of the state of Montana to:

(a) recognize that the state's energy system operates within the larger context of and is influenced by regional, national, and international energy markets;

(b) ~~maintain a continual process to~~ review this energy policy statement and any future changes *pursuant to 90-4-1003* so that Montana's energy strategy

will provide for a balance between a sustainable environment and a viable economy; and

(c) adopt a state transportation energy policy as provided in 90-4-1010 and an alternative fuels policy and implementing guidelines as provided in 90-4-1011."

Section 2. Section 90-4-1003, MCA, is amended to read:

"90-4-1003. Energy policy development process. (1) *(a)* ~~The~~ *Except as provided for in subsection (1)(b), each interim, the energy and telecommunications interim committee established in 5-5-230* ~~department and the committee, in cooperation with the consumer counsel and the public service commission,~~ shall ~~maintain a continual process to develop the components of a comprehensive~~ *review the* state energy policy~~.~~ *and recommend potential changes to the state energy policy,*

~~(2) Because of limited state resources and the need to focus intensive effort on specific issues of importance, the development of a comprehensive state energy policy must occur on an incremental basis. As the need arises, the department, in cooperation with the appropriate state agencies and with extensive public involvement, shall identify and recommend to the committee specific components of a state energy policy for development under the consensus process described in~~ *pursuant to* subsection ~~(3)~~ *(2).*

(b) During the 2009-2010 interim, the committee shall consult with a broad representation of stakeholders, including appropriate state agencies and the public, and focus on the following issues to be included in a revised state energy policy:

(i) increasing the supply of low-cost electricity with coal-fired generation;

(ii) rebuilding and extending electric transmission lines;

(iii) maximizing state land use for energy generation;

(iv) increasing energy efficiency standards for new construction;

(v) promoting conservation;

(vi) promoting energy efficiency incentives;

(vii) promoting alternative energy systems;

(viii) reducing regulations that increase ratepayers' energy costs; and

(ix) integrating wind energy.

~~(3)~~*(2)* ~~(a) Upon selection of a specific energy policy component, the~~ *Except as provided in subsection (1)(b), the* committee shall ~~assign to a working group composed of representatives of the parties with a stake in that specific component the task of developing consensus recommendations for that component of state energy policy.~~

~~(b) The working group must include the broadest possible~~ *consult with a broad* representation of stakeholders*, including appropriate state agencies and the public,* in *developing* the issues to be included within the ~~specific component of~~ *proposed, revised* state energy policy *each interim*.

~~(c) Whenever possible, the working group shall use a consensus process to develop recommendations for a specific energy policy component to be submitted to the committee. Recommendations that are not based upon consensus must be so noted by the working group. Upon consideration of the working group's recommendations, the~~

(3) Each biennium, the committee shall forward its recommendations to the legislature and to the appropriate state agencies for adoption.

~~(d) The department shall:~~

~~(i) provide staff support to the working group, including policy analysis, data gathering, research, technical analysis, and administrative support;~~

~~(ii) provide administrative coordination among the appropriate state agencies in the energy policy development process;~~

~~(iii) prepare reports for and make recommendations to the committee; and~~

~~(iv) consult regularly with the committee to coordinate each agency's activities.~~

(4) In carrying out ~~their~~ *its* responsibilities under this section, ~~the department and~~ the committee ~~may contract with experts, consultants, and facilitators and may seek funding from a variety of private and public sources for technical and other assistance necessary~~ *shall use its interim budget, as allocated by the legislative council, and rely on the input of locally available experts and staff research* to accomplish ~~their~~ *its* responsibilities."

Section 3. Repealer. Section 90-4-1002, MCA, is repealed.

Section 4. Effective date. [This act] is effective on passage and approval.

Approved May 5, 2009

CHAPTER NO. 455

[SB 400]

AN ACT LIMITING DISMISSALS IN JUSTICES' COURT; AMENDING SECTION 25-31-409, MCA; AND REPEALING SECTION 25-33-208, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 25-31-409, MCA, is amended to read:

"25-31-409. ~~Alias~~ *Limitation on dismissal — alias* summons. *(1) A case is not subject to dismissal by the court for nonservice or failure to proceed during the time that the summons is valid.*

(2) If the summons is returned without being served upon any or all of the defendants, the justice, upon the ~~demand~~ *request* of the plaintiff, may issue an alias summons in the same form as the original. The justice may, within 2 years from the date of the filing of the complaint, issue as many alias summonses as may be ~~demanded~~ *requested* by the plaintiff."

Section 2. Repealer. Section 25-33-208, MCA, is repealed.

Approved May 5, 2009

CHAPTER NO. 456

[SB 446]

AN ACT REVISING HOSPITAL LAWS TO PROVIDE LICENSING REQUIREMENTS FOR SPECIALTY HOSPITALS; REQUIRING AN IMPACT STUDY BEFORE A SPECIALTY HOSPITAL IS LICENSED; REQUIRING PAYMENT NONDISCRIMINATION AND CHARITY CARE POLICIES FOR HOSPITALS; REQUIRING HOSPITALS TO ENSURE 24-HOUR EMERGENCY CARE; AMENDING SECTIONS 50-5-101 AND 50-5-245, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-5-101, MCA, is amended to read:

"50-5-101. Definitions. As used in parts 1 through 3 of this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Accreditation" means a designation of approval.

(2) "Accreditation association for ambulatory health care" means the organization nationally recognized by that name that surveys ambulatory surgical centers upon their requests and grants accreditation status to the ambulatory surgical centers that it finds meet its standards and requirements.

(3) "Activities of daily living" means tasks usually performed in the course of a normal day in a resident's life that include eating, walking, mobility, dressing, grooming, bathing, toileting, and transferring.

(4) "Adult day-care center" means a facility, freestanding or connected to another health care facility, that provides adults, on a regularly scheduled basis, with the care necessary to meet the needs of daily living but that does not provide overnight care.

(5) (a) "Adult foster care home" means a private home or other facility that offers, except as provided in 50-5-216, only light personal care or custodial care to four or fewer disabled adults or aged persons who are not related to the owner or manager of the home by blood, marriage, or adoption or who are not under the full guardianship of the owner or manager.

(b) As used in this subsection (5), the following definitions apply:

(i) "Aged person" means a person as defined by department rule as aged.

(ii) "Custodial care" means providing a sheltered, family-type setting for an aged person or disabled adult so as to provide for the person's basic needs of food and shelter and to ensure that a specific person is available to meet those basic needs.

(iii) "Disabled adult" means a person who is 18 years of age or older and who is defined by department rule as disabled.

(iv) (A) "Light personal care" means assisting the aged person or disabled adult in accomplishing such personal hygiene tasks as bathing, dressing, and hair grooming and supervision of prescriptive medicine administration.

(B) The term does not include the administration of prescriptive medications.

(6) "Affected person" means an applicant for a certificate of need, a health care facility located in the geographic area affected by the application, an agency that establishes rates for health care facilities, or a third-party payer who reimburses health care facilities in the area affected by the proposal.

(7) "Assisted living facility" means a congregate residential setting that provides or coordinates personal care, 24-hour supervision and assistance, both scheduled and unscheduled, and activities and health-related services.

(8) "Capital expenditure" means:

(a) an expenditure made by or on behalf of a health care facility that, under generally accepted accounting principles, is not properly chargeable as an expense of operation and maintenance; or

(b) a lease, donation, or comparable arrangement that would be a capital expenditure if money or any other property of value had changed hands.

(9) "Certificate of need" means a written authorization by the department for a person to proceed with a proposal subject to 50-5-301.

(10) "Chemical dependency facility" means a facility whose function is the treatment, rehabilitation, and prevention of the use of any chemical substance, including alcohol, that creates behavioral or health problems and endangers the health, interpersonal relationships, or economic function of an individual or the public health, welfare, or safety.

(11) "Clinical laboratory" means a facility for the microbiological, serological, chemical, hematological, radiobioassay, cytological, immunohematological, pathological, or other examination of materials derived from the human body for the purpose of providing information for the diagnosis, prevention, or treatment of a disease or assessment of a medical condition.

(12) "College of American pathologists" means the organization nationally recognized by that name that surveys clinical laboratories upon their requests and accredits clinical laboratories that it finds meet its standards and requirements.

(13) "Commission on accreditation of rehabilitation facilities" means the organization nationally recognized by that name that surveys rehabilitation facilities upon their requests and grants accreditation status to a rehabilitation facility that it finds meets its standards and requirements.

(14) "Comparative review" means a joint review of two or more certificate of need applications that are determined by the department to be competitive in that the granting of a certificate of need to one of the applicants would substantially prejudice the department's review of the other applications.

(15) "Congregate" means the provision of group services designed especially for elderly or disabled persons who require supportive services and housing.

(16) "Construction" means the physical erection of a health care facility and any stage of the physical erection, including groundbreaking, or remodeling, replacement, or renovation of an existing health care facility.

(17) "Council on accreditation" means the organization nationally recognized by that name that surveys behavioral treatment programs, chemical dependency treatment programs, residential treatment facilities, and mental health centers upon their requests and grants accreditation status to programs and facilities that it finds meet its standards and requirements.

(18) "Critical access hospital" means a facility that is located in a rural area, as defined in 42 U.S.C. 1395ww(d)(2)(D), and that has been designated by the department as a critical access hospital pursuant to 50-5-233.

(19) "Department" means the department of public health and human services provided for in 2-15-2201.

(20) "End-stage renal dialysis facility" means a facility that specializes in the treatment of kidney diseases and includes freestanding hemodialysis units.

(21) "Federal acts" means federal statutes for the construction of health care facilities.

(22) "Governmental unit" means the state, a state agency, a county, municipality, or political subdivision of the state, or an agency of a political subdivision.

(23) (a) "Health care facility" or "facility" means all or a portion of an institution, building, or agency, private or public, excluding federal facilities, whether organized for profit or not, that is used, operated, or designed to provide

health services, medical treatment, or nursing, rehabilitative, or preventive care to any individual. The term includes chemical dependency facilities, critical access hospitals, end-stage renal dialysis facilities, home health agencies, home infusion therapy agencies, hospices, hospitals, infirmaries, long-term care facilities, intermediate care facilities for the developmentally disabled, medical assistance facilities, mental health centers, outpatient centers for primary care, outpatient centers for surgical services, rehabilitation facilities, residential care facilities, and residential treatment facilities.

(b) The term does not include offices of private physicians, dentists, or other physical or mental health care workers regulated under Title 37, including licensed addiction counselors.

(24) "Home health agency" means a public agency or private organization or subdivision of the agency or organization that is engaged in providing home health services to individuals in the places where they live. Home health services must include the services of a licensed registered nurse and at least one other therapeutic service and may include additional support services.

(25) "Home infusion therapy agency" means a health care facility that provides home infusion therapy services.

(26) "Home infusion therapy services" means the preparation, administration, or furnishing of parenteral medications or parenteral or enteral nutritional services to an individual in that individual's residence. The services include an educational component for the patient, the patient's caregiver, or the patient's family member.

(27) "Hospice" means a coordinated program of home and inpatient health care that provides or coordinates palliative and supportive care to meet the needs of a terminally ill patient and the patient's family arising out of physical, psychological, spiritual, social, and economic stresses experienced during the final stages of illness and dying and that includes formal bereavement programs as an essential component. The term includes:

(a) an inpatient hospice facility, which is a facility managed directly by a medicare-certified hospice that meets all medicare certification regulations for freestanding inpatient hospice facilities; and

(b) a residential hospice facility, which is a facility managed directly by a licensed hospice program that can house three or more hospice patients.

(28) (a) "Hospital" means a facility providing, by or under the supervision of licensed physicians, services for medical diagnosis, treatment, rehabilitation, and care of injured, disabled, or sick individuals. Except as otherwise provided by law, services provided ~~may or may not~~ *must* include ~~obstetrical care,~~ *medical personnel available to provide* emergency care *on site 24 hours a day*~~, or~~ *and may include* any other service allowed by state licensing authority. A hospital has an organized medical staff that is on call and available within 20 minutes, 24 hours a day, 7 days a week, and provides 24-hour nursing care by licensed registered nurses. The term includes:

(i) hospitals specializing in providing health services for psychiatric, developmentally disabled, and tubercular patients; and

(ii) specialty hospitals.

(b) The term does not include critical access hospitals.

(c) The emergency care requirement for a hospital that specializes in providing health services for psychiatric, developmentally disabled, or tubercular patients is satisfied if the emergency care is provided within the scope

of the specialized services provided by the hospital and by providing 24-hour nursing care by licensed registered nurses.

(29) "Infirmary" means a facility located in a university, college, government institution, or industry for the treatment of the sick or injured, with the following subdefinitions:

(a) an "infirmary—A" provides outpatient and inpatient care;

(b) an "infirmary—B" provides outpatient care only.

(30) (a) "Intermediate care facility for the developmentally disabled" means a facility or part of a facility that provides intermediate developmental disability care for two or more persons.

(b) The term does not include community homes for persons with developmental disabilities that are licensed under 53-20-305 or community homes for persons with severe disabilities that are licensed under 52-4-203.

(31) "Intermediate developmental disability care" means the provision of intermediate nursing care services, health-related services, and social services for persons with a developmental disability, as defined in 53-20-102, or for persons with related problems.

(32) "Intermediate nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed nurse to patients not requiring 24-hour nursing care.

(33) "Joint commission on accreditation of healthcare organizations" means the organization nationally recognized by that name that surveys health care facilities upon their requests and grants accreditation status to a health care facility that it finds meets its standards and requirements.

(34) "Licensed health care professional" means a licensed physician, physician assistant, advanced practice registered nurse, or registered nurse who is practicing within the scope of the license issued by the department of labor and industry.

(35) (a) "Long-term care facility" means a facility or part of a facility that provides skilled nursing care, residential care, intermediate nursing care, or intermediate developmental disability care to a total of two or more individuals or that provides personal care.

(b) The term does not include community homes for persons with developmental disabilities licensed under 53-20-305; community homes for persons with severe disabilities, licensed under 52-4-203; youth care facilities, licensed under 52-2-622; hotels, motels, boardinghouses, roominghouses, or similar accommodations providing for transients, students, or individuals who do not require institutional health care; or juvenile and adult correctional facilities operating under the authority of the department of corrections.

(36) "Medical assistance facility" means a facility that meets both of the following:

(a) provides inpatient care to ill or injured individuals before their transportation to a hospital or that provides inpatient medical care to individuals needing that care for a period of no longer than 96 hours unless a longer period is required because transfer to a hospital is precluded because of inclement weather or emergency conditions. The department or its designee may, upon request, waive the 96-hour restriction retroactively and on a case-by-case basis if the individual's attending physician, physician assistant, or nurse practitioner determines that the transfer is medically inappropriate and would jeopardize the health and safety of the individual.

(b) either is located in a county with fewer than six residents a square mile or is located more than 35 road miles from the nearest hospital.

(37) "Mental health center" means a facility providing services for the prevention or diagnosis of mental illness, the care and treatment of mentally ill patients, the rehabilitation of mentally ill individuals, or any combination of these services.

(38) "Nonprofit health care facility" means a health care facility owned or operated by one or more nonprofit corporations or associations.

(39) "Offer" means the representation by a health care facility that it can provide specific health services.

(40) (a) "Outdoor behavioral program" means a program that provides treatment, rehabilitation, and prevention for behavioral problems that endanger the health, interpersonal relationships, or educational functions of a youth and that:

(i) serves either adjudicated or nonadjudicated youth;

(ii) charges a fee for its services; and

(iii) provides all or part of its services in the outdoors.

(b) "Outdoor behavioral program" does not include recreational programs such as boy scouts, girl scouts, 4-H clubs, or other similar organizations.

(41) "Outpatient center for primary care" means a facility that provides, under the direction of a licensed physician, either diagnosis or treatment, or both, to ambulatory patients and that is not an outpatient center for surgical services.

(42) "Outpatient center for surgical services" means a clinic, infirmary, or other institution or organization that is specifically designed and operated to provide surgical services to patients not requiring hospitalization and that may include recovery care beds.

(43) "Patient" means an individual obtaining services, including skilled nursing care, from a health care facility.

(44) "Person" means an individual, firm, partnership, association, organization, agency, institution, corporation, trust, estate, or governmental unit, whether organized for profit or not.

(45) "Personal care" means the provision of services and care for residents who need some assistance in performing the activities of daily living.

(46) "Practitioner" means an individual licensed by the department of labor and industry who has assessment, admission, and prescription authority.

(47) "Recovery care bed" means, except as provided in 50-5-235, a bed occupied for less than 24 hours by a patient recovering from surgery or other treatment.

(48) "Rehabilitation facility" means a facility that is operated for the primary purpose of assisting in the rehabilitation of disabled individuals by providing comprehensive medical evaluations and services, psychological and social services, or vocational evaluation and training or any combination of these services and in which the major portion of the services is furnished within the facility.

(49) "Resident" means an individual who is in a long-term care facility or in a residential care facility.

(50) "Residential care facility" means an adult day-care center, an adult foster care home, an assisted living facility, or a retirement home.

(51) "Residential psychiatric care" means active psychiatric treatment provided in a residential treatment facility to psychiatrically impaired individuals with persistent patterns of emotional, psychological, or behavioral dysfunction of such severity as to require 24-hour supervised care to adequately treat or remedy the individual's condition. Residential psychiatric care must be individualized and designed to achieve the patient's discharge to less restrictive levels of care at the earliest possible time.

(52) "Residential treatment facility" means a facility operated for the primary purpose of providing residential psychiatric care to individuals under 21 years of age.

(53) "Retirement home" means a building or buildings in which separate living accommodations are rented or leased to individuals who use those accommodations as their primary residence.

(54) "Skilled nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed registered nurse on a 24-hour basis.

(55) (a) "Specialty hospital" means a subclass of hospital that is exclusively engaged in the diagnosis, care, or treatment of one or more of the following categories:

(i) patients with a cardiac condition;

(ii) patients with an orthopedic condition;

(iii) patients undergoing a surgical procedure; or

(iv) patients treated for cancer-related diseases and receiving oncology services.

(b) For purposes of this subsection (55), a specialty hospital may provide other services for medical diagnosis, treatment, rehabilitation, and care of injured, disabled, or sick individuals as otherwise provided by law if the care encompasses 35% or less of the hospital services.

(c) The term "specialty hospital" does not include:

(i) psychiatric hospitals;

(ii) rehabilitation hospitals;

(iii) children's hospitals;

(iv) long-term care hospitals; or

(v) critical access hospitals.

(56) "State health care facilities plan" means the plan prepared by the department to project the need for health care facilities within Montana and approved by the governor and a statewide health coordinating council appointed by the director of the department.

(57) "Swing bed" means a bed approved pursuant to 42 U.S.C. 1395tt to be used to provide either acute care or extended skilled nursing care to a patient."

Section 2. Hospital discrimination based on ability to pay prohibited — charity care requirements. (1) Except as provided in subsection (3), a hospital must have in writing:

(a) a policy applying to all patients, including medicaid and medicare patients, that prohibits discrimination based on a patient's ability to pay; and

(b) a charity care policy consistent with industry standards applicable to the area the facility serves and the tax status of the hospital.

(2) A hospital may not transfer a patient to another hospital or health care facility based on the patient's ability to pay for health care services.

(3) A specialty hospital must have in writing a charity care policy consistent with industry standards for nonprofit hospitals irrespective of the tax status of the specialty hospital.

Section 3. Transfer of hospital patients. In cases where the federal Emergency Medical Treatment and Active Labor Act, 42 U.S.C. 1395dd, does not apply, a hospital may not transfer a patient to another hospital using only a call to a 9-1-1 service. The hospital shall:

(1) before the transfer, provide notice to the other hospital, including the reason for the transfer; and

(2) during the transfer, provide the medical records related to the patient's current hospitalization.

Section 4. Section 50-5-245, MCA, is amended to read:

"50-5-245. Department to license specialty hospitals — standards — rulemaking — moratorium. (1) Subject to subsection (4), the department shall license specialty hospitals using the requirements for licensure of hospitals and the procedure provided for in parts 1 and 2 of this chapter.

(2) ~~The~~ *Prior to approving an application under this section, the* department shall adopt rules that are necessary to implement and administer this section.

(3) Notwithstanding the requirements of subsection (1), the department may not *accept an application or issue a* license *for* a specialty hospital ~~until~~ *before* July 1, 2009.

(4) A health care facility licensed by the department and in existence on May 8, 2007, may not change its licensure status in order to qualify for licensure as a specialty hospital unless the health care facility is licensed as a hospital *and the hospital is not subject to the provisions of [section 5] and subsections (5) through (9) of this section*.

(5) A specialty hospital meets the 24-hour emergency care requirements for a hospital, as defined in 50-5-101, if it has an agreement with a hospital in the area served by the specialty hospital stating that the hospital will provide 24-hour emergency care to patients of the specialty hospital.

(6) A specialty hospital applying for a license must have:

(a) a charity care policy meeting the provisions of [section 2] and, if applicable, subsection (9) of this section; and

(b) a joint venture relationship with a hospital; or

(c) a signed statement from a nonprofit hospital in the community acknowledging that the hospital declined a bona fide, good faith opportunity to participate in a joint venture with the applicant.

(7) A specialty hospital owned by physicians and proposed as a joint venture with a nonprofit hospital in the community may be licensed if:

(a) the majority of partnering physicians hold active privileges with the joint venture hospital; and

(b) the partnering hospital holds an ownership interest of at least 50%.

(8) This section does not prohibit physicians who are partners in a specialty hospital that is proposed as a joint venture from managing the specialty hospital.

(9) The charity care policy for a specialty hospital applying as a joint venture with a nonprofit hospital in the community must be the same as the policy used by the nonprofit hospital."

Section 5. Specialty hospital application process — impact study. (1) The application process for a specialty hospital must include an impact study that analyzes the financial and operational impacts of the proposed specialty hospital on existing health care facilities in the service area.

(2) An applicant for a specialty hospital license shall:

(a) provide the department with a list of independent consultants who could conduct the impact study required under this section; and

(b) pay the costs of the impact study.

(3) The department shall:

(a) approve a consultant to conduct an impact study from among the consultants submitted by the applicant or from a list of consultants known to the department;

(b) determine the scope of the study necessary to assess the potential positive and adverse impacts on access to health care services in the applicant's proposed service area; and

(c) provide an opportunity for public comment and participation in the study process, including the opportunity to comment on the list of consultants provided by an applicant pursuant to subsection (2)(a).

(4) The scope of the study established by the department may include but is not limited to:

(a) the impact on health care costs in the service area;

(b) the impacts on access to emergency care, mental health care, and other subsidized services provided in the service area; and

(c) the operational impacts on existing health care facilities located in the service area.

(5) The impact study must be completed within 180 days of the date the department establishes the scope of the study.

(6) If the department finds, based on the results of the impact study and public comment, that a proposed specialty hospital would adversely affect an existing hospital or the community's access to health care services, the department shall:

(a) impose conditions on the applicant and on the specialty hospital, if licensed, to mitigate the adverse impact on the community; or

(b) deny a license to the applicant.

Section 6. Codification instruction. (1) [Sections 2 and 3] are intended to be codified as an integral part of Title 50, chapter 5, part 1, and the provisions of Title 50, chapter 5, part 1, apply to [sections 2 and 3].

(2) [Section 5] is intended to be codified as an integral part of Title 50, chapter 5, part 2, and the provisions of Title 50, chapter 5, apply to [section 5].

Section 7. Coordination instruction. If both Senate Bill No. 439 and [this act] are passed and approved, then Senate Bill No. 439 is void.

Section 8. Effective date. [This act] is effective July 1, 2009.

Approved May 5, 2009

CHAPTER NO. 457

[HB 9]

AN ACT ESTABLISHING PRIORITIES FOR CULTURAL AND AESTHETIC PROJECTS GRANT AWARDS; APPROPRIATING MONEY FOR CULTURAL AND AESTHETIC GRANTS; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Appropriation of cultural and aesthetic grant funds — priority of disbursement. (1) The Montana arts council shall award grants for projects authorized by and limited to the amounts appropriated by [section 2] and this section. Money must be disbursed in priority order, first to projects covered under subsection (3) and second to projects listed in [section 2].

(2) The Montana arts council shall disburse money to projects authorized by [section 2] through grant contracts between the Montana arts council and the grant recipient. The award contract must bind the parties to conditions, if any, listed with the appropriation in [section 2].

(3) There is appropriated from the cultural and aesthetic projects trust fund account to the Montana historical society $30,000 for the biennium ending July 1, 2011, for care and conservation of capitol complex artwork.

Section 2. Appropriation of cultural and aesthetic grant funds. The following projects are approved, and $885,400 is appropriated to the Montana arts council for the biennium ending June 30, 2011, from the cultural and aesthetic projects trust fund account:

Grant #	Grantee	Grant Amount
A. Special Projects $4,500 or Less		
1406	Upper Swan Valley Historical Society	$3,500
1407	Yellowstone Ballet Company	$4,500
1405	Signatures From Big Sky	$4,500
1404	Sanders County Historical Soc./USFS Region 1	$4,500
1402	Miles City Speaker's Bureau	$4,000
1403	Montana Storytelling Roundup, Inc.	$4,500
1401	Granite County Museum & Cultural Center	$2,000
1400	Council for the Arts, Lincoln	$1,800
B. Special Projects		
1432	Montana Alliance for Arts Education	$5,000
1418	Glacier National Park	$4,900
1424	Humanities Montana	$13,900
1430	Missoula Art Museum	$12,000
1440	Russell Museum	$13,900
1414	CoMotion Dance	$6,000
1408	Alpine Artisans, Inc.	$7,300
1416	Fort Peck Fine Arts Council	$11,000
1411	Butte-Silver Bow Public Archives	$14,000
1436	Museum of the Rockies	$10,000
1421	Headwaters Dance Company	$10,000

1410	Butte Citizens for Preservation and Revitalization	$8,400
1426	KUFM Montana Public Radio	$10,000
1423	Hockaday Museum of Art	$10,400
1427	Livingston Depot Foundation	$5,000
1415	Emerson Cultural Center	$8,400
1417	Friends of the Museum of the Plains Indian	$3,000
1425	International Choral Festival	$6,200
1412	Butte-Silver Bow Public Library	$10,000
1433	Montana Historical Society	$10,400
1428	Mai Wah Society - Museum	$6,000
1435	Montana Museum of Art and Culture	$10,700
1437	Musikanten Montana	$2,000
1409	Big Sky Repertory Theatre	$10,700
1434	Montana Mandolin Society	$2,000
1438	North Valley Music School	$9,300
1413	Butte Symphony Association	$1,000
1419	Glacier Symphony and Chorale	$7,500
1420	Hamilton Players, Inc.	$5,000
1422	Helena Symphony Orchestra & Chorale	$20,000
C. Operational Support		
1467	Montana Arts	$9,000
1475	Museums Association of Montana	$12,500
1468	Montana Dance Arts Association	$9,000
1469	Montana Performing Arts Consortium	$15,000
1472	Montana Association of Symphony Orchestras	$12,500
1473	Museum and Art Gallery Director's Association	$12,000
1470	Montana Preservation Alliance	$12,000
1483	Shakespeare in the Parks	$10,400
1448	Big Horn Arts and Crafts Association	$13,500
1488	Western Heritage Center	$10,400
1460	Holter Museum of Art	$15,000
1462	MCT, Inc.	$12,000
1444	Alberta Bair Theater	$11,100
1447	Beaverhead County Museum	$12,000
1445	Archie Bray Foundation	$10,400
1446	Art Mobile of Montana	$13,300
1449	Billings Symphony Society	$15,000
1492	Yellowstone Art Museum	$13,900
1458	Great Falls Symphony	$10,000
1457	Grandstreet Theatre	$9,000
1461	Intermountain Opera Association	$7,500

1482	Schoolhouse History and Art Center	$20,000
1459	Helena Presents - Myrna Loy Center	$12,000
1455	Custer County Art Center	$15,000
1485	Sunburst Community Foundation	$8,000
1478	Pondera Arts Council	$5,900
1480	Rimrock Opera Company	$5,900
1453	Carbon County Historical Society	$13,300
1479	Pondera Historical Association	$8,000
1466	Montana Agriculture Center and Museum	$9,000
1456	District 7 HRDC Growth Thru Art	$13,300
1487	VSA Arts of Montana	$8,000
1491	Writer's Voice (Billings YMCA)	$13,700
1481	Rocky Mountain Ballet Theater	$7,000
1477	Paris Gibson Square Museum of Art	$13,900
1450	Bozeman Symphony Society	$9,000
1452	Carbon County Arts Guild and Depot	$9,600
1465	MonDak Historical and Art Society	$15,300
1464	Missoula Cultural Council	$3,000
1463	Mission Valley Friends of the Arts	$2,000
1451	Butte Center for the Performing Arts	$10,000
1486	Vigilante Theatre Company	$6,000
1454	Copper Village Museum and Arts Center	$9,500
1474	Museum of the Beartooths - Stillwater Historical Society	$10,000
1484	Southwest Montana Arts Council	$10,000
1490	World Museum of Mining	$11,100
1489	Whitefish Theatre Company	$10,000
1471	Montana Repertory Theatre	$20,000
1476	Northwest History Museum - Central School	$20,000
——	Great Falls History Museum	$2,000

D. Capital Expenditure

1503	Sanders County	$11,100
1501	Polson-Flathead Historical Museum	$10,000
1494	Billings Preservation Society	$12,000
1495	City of Great Falls - Mansfield Center	$5,000
1497	City of Shelby	$5,000
1499	Mineral County Museum and Historical Society	$2,000
1502	Ravalli County Museum	$5,000
1498	Clay Arts Guild of Helena	$2,000
1500	Old Trail Museum	$4,000

Section 3. Reversion of grant money. On July 1, 2011, the unencumbered balance of the 2011 biennium grants reverts to the cultural and aesthetic projects trust fund account provided for in 15-35-108.

Section 4. Reduction of grants on pro rata basis. (1) Except for the appropriation provided for in [section 1(3)], if money in the cultural and aesthetic projects trust fund account is insufficient to fund projects at the appropriation levels contained in [section 2], reductions to projects with funding greater than $4,500 will be made on a pro rata basis.

(2) If the interest earnings of the cultural trust in the 2011 biennium are over $20,000 below the projected earnings of $1.3 million, then the grants for the Helena Symphony Orchestra & Chorale, Montana Repertory Theatre, Northwest History Museum, Great Falls History Museum, and Old Trail Museum projects may be reduced to provide adequate funds for all other projects.

Section 5. Effective date. [This act] is effective July 1, 2009.

Approved May 6, 2009

CHAPTER NO. 458

[HB 11]

AN ACT APPROPRIATING MONEY TO THE DEPARTMENT OF COMMERCE FOR FINANCIAL ASSISTANCE TO LOCAL GOVERNMENT INFRASTRUCTURE PROJECTS THROUGH THE TREASURE STATE ENDOWMENT PROGRAM; AUTHORIZING GRANTS FROM THE TREASURE STATE ENDOWMENT STATE SPECIAL REVENUE ACCOUNT; PLACING CONDITIONS UPON GRANTS AND FUNDS; APPROPRIATING MONEY TO THE DEPARTMENT OF COMMERCE FOR EMERGENCY GRANTS; APPROPRIATING MONEY TO THE DEPARTMENT OF COMMERCE FOR PRELIMINARY ENGINEERING GRANTS; APPROPRIATING MONEY FROM THE TREASURE STATE ENDOWMENT REGIONAL WATER SYSTEM STATE SPECIAL REVENUE ACCOUNT TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR FINANCIAL ASSISTANCE TO REGIONAL WATER AUTHORITIES FOR REGIONAL WATER PROJECTS; TERMINATING CERTAIN PRIOR TREASURE STATE ENDOWMENT GRANTS; AMENDING SECTION 90-6-701, MCA, AND SECTION 1, CHAPTER 383, LAWS OF 2007; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Appropriations from treasure state endowment state special revenue account. (1) There is appropriated to the department of commerce $17.8 million of the interest earnings from the treasure state endowment state special revenue account and any funds appropriated to the department in [section 11] remaining after all obligations to fund eligible projects identified in [section 1(3)] have been fully met, to be used to finance grants authorized by this section.

(2) The funds appropriated in this section must be used by the department to make grants to the governmental entities listed in subsection (3) for the described purposes and in amounts not to exceed the amounts set out in subsection (3). The appropriations are subject to the conditions set forth in [sections 2 and 3] and described in the treasure state endowment program 2011

biennium report to the 61st legislature. The legislature, pursuant to 90-6-710, authorizes the grants for the projects listed in subsection (3). The department shall commit funds to projects listed in subsection (3), up to the amounts authorized, based on the manner of disbursement set forth in [section 3] until interest earnings deposited into the treasure state endowment state special revenue account during the 2011 biennium are expended.

(3) The following applicants and projects are authorized for grants and listed in the order of their priority:

Applicant/Project	Grant Amount
1. Philipsburg, Town of (wastewater)	$750,000
2. Ravalli County (bridge)	137,193
3. Sweet Grass County (bridge)	93,360
4. Melstone, Town of (water)	625,000
5. Fergus County (bridge)	167,200
6. Rudyard County Water and Sewer District (wastewater)	319,000
7. Cascade, Town of (water)	625,000
8. Powell County (bridge)	304,248
9. Wolf Creek County Water and Sewer District (wastewater)	750,000
10. Judith Gap, Town of (water-wastewater)	750,000
11. Gardiner-Park County Water and Sewer District (wastewater)	358,000
12. Winifred, Town of (wastewater)	500,000
13. Beaverhead County (bridge)	290,668
14. Sweet Grass Community County Water and Sewer District (water)	625,000
15. Nashua, Town of (water)	421,300
16. Laurel, City of (water)	625,000
17. Homestead Acres Water and Sewer District (water)	573,325
18. Crow Tribe (water-wastewater)	750,000
19. Carbon County (bridge)	492,915
20. Lewis and Clark County (bridge)	456,628
21. Madison County (bridge)	413,203
22. Cut Bank, City of (water)	500,000
23. Broadview, Town of (water)	500,000
24. St. Ignatius, Town of (water)	253,000
25. Jefferson County (bridge)	160,690
26. Stillwater County (bridge)	292,979
27. Wibaux, Town of (wastewater)	500,000
28. Bigfork County Water and Sewer District (wastewater)	750,000
29. Choteau, City of (wastewater)	500,000
30. Valier, Town of (water)	625,000
31. Carter-Chouteau County Water and Sewer District (water)	750,000
32. Hardin, City of (wastewater)	500,000
33. Upper and Lower River Road Water and Sewer District (water-wastewater)	500,000

34. Gildford County Water and Sewer District (wastewater)	538,000
35. Big Sandy, Town of (wastewater)	500,000
36. Ronan, City of (water)	750,000
37. Granite County (solid waste)	197,000
38. Seeley Lake Sewer District (wastewater)	750,000
39. Dutton, Town of (wastewater)	500,000
40. Blaine County (bridge)	384,160
41. Loma County Water and Sewer District (water)	750,000
42. Harlowton, Town of (water)	500,000
43. Kevin, Town of (water)	500,000
44. Flathead County (for Bigfork) (stormwater)	625,000
45. Woods Bay Homesites Water and Sewer District (wastewater)	730,000
46. Lockwood, (wastewater)	500,000
47. Shelby, City of (wastewater)	625,000
48. Whitefish, City of (wastewater)	500,000
49. Eureka, Town of (water)	625,000
50. Troy, City of (water)	715,000
51. Fallon County North Baker Water and Sewer District (wastewater)	120,000
52. Sheaver's Creek Water and Sewer District (wastewater)	600,000
53. Yellowstone County (bridge)	228,753
54. Gore Hill County Water District (water)	250,300
55. South Chester County Water District (water)	131,000
56. Livingston, City of (wastewater/solid waste)	500,000
57. Flathead County Water and Sewer District (Happy Valley) (water)	500,000
58. Bynum Teton County Water and Sewer District (water)	567,000
59. Bozeman, City of (wastewater)	500,000
60. Fort Smith Water and Sewer District (water)	500,000
61. Jette Meadows Water and Sewer District (water)	750,000
62. Greater Woods Bay Sewer District (wastewater)	488,000
63. Em-Kayan Village Water and Sewer District (water)	290,619
64. Stevensville, Town of (water)	500,000
65. Bridger Pines County Water and Sewer District (wastewater)	400,000
66. Brockton, Town of (wastewater)	750,000

(4) If sufficient funds are available, this section constitutes a valid obligation of funds to the grant recipients listed in subsection (3) for purposes of encumbering the treasure state endowment state special revenue account funds during the 2011 biennium pursuant to 17-7-302. However, a grant recipient's entitlement to receive funds is dependent on the grant recipient's compliance with the conditions described in [section 3(1)] and on the availability of funds.

(5) Funding for projects numbered 1 through 33 in subsection (3) will be provided only so long as there are sufficient funds available from the amount that was deposited into the treasure state endowment state special revenue account during the biennium ending June 30, 2011. Funding for these projects

will be made available in the order that the grant recipients satisfy the conditions described in [section 3(1)]. Once all funds appropriated in subsection (1) for the biennium are totally committed to projects numbered 1 through 33 in subsection (3) that have satisfied the conditions described in [section 3(1)], the obligation to any remaining projects will cease.

(6) Projects numbered 34 through 66 listed in subsection (3) may receive grant funds in the order that the grant recipients satisfy the conditions described in [section 3(1)] only so long as there are sufficient funds from the amount appropriated in subsection (1). Once all funds appropriated in subsection (1) are totally committed to projects numbered 34 through 66 in subsection (3) that have satisfied the conditions described in [section 3(1)], the obligation to remaining projects will cease. If funds appropriated in subsection (1) are insufficient to fund any of the projects that have satisfied the conditions described in [section 3(1)] prior to June 30, 2011, the treasure state endowment program shall fund the projects by borrowing money from the board of investments pursuant to 90-6-701(1)(b). There is appropriated to the department of commerce up to $6,512,000 of funds borrowed from the board of investments.

(7) In the event that any remaining funds deposited into the treasure state endowment state special revenue account during the 2011 biennium are insufficient to fully fund any one of the grant recipients listed in subsection (3), the department may make the remaining funds available to the first grant recipient that has satisfied the conditions described in [section 3(1)] and that is able to firmly commit the balance of the amount necessary to fund the project in its entirety.

(8) Grant recipients shall complete all of the conditions described in [section 3(1)] by December 31, 2012, or the grant contract will be terminated.

Section 2. Approval of grants — completion of biennial appropriation. (1) The legislature, pursuant to 90-6-701, authorizes grants for the projects identified in [section 1(3)].

(2) The authorization of these grants completes a biennial appropriation from the treasure state endowment special revenue account provided for in 17-5-703(3)(c).

Section 3. Conditions of grants — disbursement of funds. (1) The disbursement of grant funds under [sections 1 through 3] for the projects specified in [section 1(3)] is subject to completion of the following conditions:

(a) The grant recipient shall execute a grant agreement with the department of commerce.

(b) The grant recipient shall document that other matching funds required for completion of the project are firmly committed.

(c) The grant recipient must have a project management plan that is approved by the department.

(d) The grant recipient must be in compliance with the auditing and reporting requirements provided for in 2-7-503 and have established a financial accounting system that the department can reasonably ensure conforms to generally accepted accounting principles. Tribal governments shall comply with auditing and reporting requirements provided for in OMB Circular A-133.

(e) The grant recipient shall satisfactorily comply with any conditions described in the application (project) summaries section of the treasure state endowment program 2011 biennium report to the 61st legislature.

(f) The grant recipient shall satisfy other specific requirements considered necessary by the department to accomplish the purpose of the project as evidenced by the application to the department.

(2) With the exception of bridges, all projects must adhere to the design standards required by the department of environmental quality. Recipients of treasure state endowment program funds that are not subject to the department of environmental quality design standards must adhere to generally accepted industry standards, such as Recommended Standards for Wastewater Facilities or Recommended Standards for Water Works, published by the Great Lakes-Upper Mississippi River Board of State and Provincial Public Health and Environmental Managers, latest edition.

(3) Recipients of treasure state endowment program funds are subject to the requirements of the department of commerce as described in the most recent edition of the treasure state endowment program project administration manual, adopted by the department through the administrative rulemaking process.

Section 4. Other powers and duties of department. (1) The department of commerce shall disburse grant funds on a reimbursement basis as grant recipients incur eligible project expenses.

(2) If actual project expenses are lower than the projected expense of the project, the department may, at its discretion:

(a) reduce the amount of grant funds to be provided to grant recipients in proportion to all other project funding sources;

(b) authorize the use of the remaining authorized grant amounts for the construction of additional infrastructure components directly related to the approved project that will further enhance the overall system; or

(c) reduce the amount of grant funds to be provided so that the grant recipient's projected average residential user rates do not become lower than their target rate as determined by the department.

(3) If the grant recipient obtains a greater amount of grant funds than was contained in the treasure state endowment program application, the department may reduce the amount of the treasure state endowment program grant funds to be provided to ensure that the grant recipient continues to meet the threshold requirements contained in program guidelines for receiving the larger treasure state endowment program grant.

Section 5. Appropriations from treasure state endowment state special revenue account for emergency grants. There is appropriated to the department of commerce $100,000 for the biennium beginning July 1, 2009, from the interest earnings of the treasure state endowment state special revenue account for the purpose of providing local governments, as defined in 90-6-701, with emergency grants for infrastructure projects, as defined in 90-6-701.

Section 6. Appropriations from treasure state endowment state special revenue account for preliminary engineering grants. There is appropriated to the department of commerce $900,000 for the biennium beginning July 1, 2009, from the interest earnings of the treasure state endowment state special revenue account for the purpose of providing local governments, as defined in 90-6-701, with preliminary engineering grants for infrastructure projects as defined in 90-6-701.

Section 7. Appropriation from treasure state endowment regional water system special revenue account. (1) There is appropriated $15 million to the department of natural resources and conservation from the interest earnings of the treasure state endowment regional water system special revenue account and other funds to finance the state's share of regional water system projects authorized by this section and as set forth in 90-6-715.

(2) The dry prairie rural water authority and the north central Montana regional water authority are authorized to receive funds.

(3) A regional water authority's receipt of funds is dependent on the authority's compliance with the conditions described in [section 9(1)].

(4) This section constitutes a valid obligation of funds to the regional water authorities listed in subsection (2) for purposes of encumbering the treasure state endowment regional water system special revenue account funds received during the 2011 biennium under 17-7-302.

Section 8. Approval of funds — completion of appropriation. (1) The legislature, pursuant to 90-6-715, authorizes funds for the regional water authorities identified in [section 7(2)].

(2) The authorization of these funds completes an appropriation from the treasure state endowment regional water system special revenue account provided for in 17-5-703(3)(d).

Section 9. Conditions — manner of disbursement of funds. (1) The disbursement of funds under [sections 7 and 8] is subject to completion of the following conditions:

(a) The regional water authority shall execute an agreement with the department of natural resources and conservation.

(b) The regional water authority must have a project management plan that is approved by the department.

(c) The regional water authority shall establish a financial accounting system that the department can reasonably ensure conforms to generally accepted accounting principles.

(d) The regional water authority shall provide the department with a detailed preliminary engineering report.

(2) The department shall disburse funds on a reimbursement basis as the regional water authority incurs eligible project expenses.

Section 10. Section 90-6-701, MCA, is amended to read:

"90-6-701. Treasure state endowment program created — definitions. (1) (a) There is a treasure state endowment program that consists of:

(i) the treasure state endowment fund established in 17-5-703;

(ii) the infrastructure portion of the coal severance tax bond program provided for in 17-5-701(2).

(b) The treasure state endowment program may borrow from the board of investments to provide additional financial assistance for local government infrastructure projects under this part, provided that no part of the loan may be made from retirement funds.

(2) Interest from the treasure state endowment fund and from proceeds of the sale of bonds under 17-5-701(2) may be used to provide financial assistance for local government infrastructure projects under this part*, to provide funding*

to the department of commerce for the administrative costs of the treasure state endowment program, and to repay loans from the board of investments.

(3) As used in this part, the following definitions apply:

(a) "Infrastructure projects" means:

(i) drinking water systems;

(ii) wastewater treatment;

(iii) sanitary sewer or storm sewer systems;

(iv) solid waste disposal and separation systems, including site acquisition, preparation, or monitoring; or

(v) bridges.

(b) "Local government" means an incorporated city or town, a county, a consolidated local government, a tribal government, a county or multicounty water, sewer, or solid waste district, or an authority as defined in 75-6-304.

(c) "Treasure state endowment fund" means the coal severance tax infrastructure endowment fund established in 17-5-703(1)(b).

(d) "Treasure state endowment program" means the local government infrastructure investment program established in subsection (1).

(e) "Tribal government" means a federally recognized Indian tribe within the state of Montana."

Section 11. Section 1, Chapter 383, Laws of 2007, is amended to read:

"**Section 1. Appropriation from treasure state endowment state special revenue account.** (1) There is appropriated to the department of commerce ~~$17,333,653~~ *up to $40,173,080* of the interest earnings from the treasure state endowment state special revenue account *and from other funds* to finance grants authorized by this section.

(2) The funds appropriated in this section must be used by the department to make grants to the governmental entities listed in subsection (3) for the described purposes and in amounts not to exceed the amounts set out in subsection (3). The appropriations are subject to the conditions set forth in [sections 2 and 3] and described in the treasure state endowment program 2009 biennium report to the 60th legislature. The legislature, pursuant to 90-6-710, authorizes the grants for the projects listed in subsection (3). The department shall commit funds to projects listed in subsection (3), up to the amounts authorized, based on the manner of disbursement set forth in [section 3] until interest earnings *and other funds* deposited into the treasure state endowment state special revenue account during the 2009 biennium are expended.

(3) The following applicants and projects are authorized for grants:

Applicant/Project	Grant Amount
1. Lewis and Clark County for the Woodlawn Addition (water)	$596,420
2. Bainville, Town of (wastewater)	715,000
3. Madison County (bridge)	370,100
4. Sweet Grass County (bridge)	151,493
5. Powell County (bridge)	263,074
6. Circle, Town of (wastewater)	750,000
7. Harlem, City of (water)	750,000
8. Jordan, Town of (wastewater)	700,000

9. Thompson Falls, City of (water)	363,000
10. Twin Bridges, Town of (wastewater)	750,000
11. Seeley Lake-Missoula County Water District (water)	750,000
12. Fergus County (bridge)	238,362
13. Sunny Meadows-Missoula County Water and Sewer District (water)	325,000
14. Tri-County Water District (water)	313,500
15. Blaine County (bridge)	617,017
~~16. Loma County Water and Sewer District (water)~~	~~750,000~~
17. Ekalaka, Town of (water and wastewater)	706,369
18. Stillwater County (bridge)	407,500
19. Sheridan, Town of (wastewater)	750,000
~~20. Carter-Chouteau County Water and Sewer District (water)~~	~~750,000~~
21. Bigfork County Water and Sewer District (wastewater)	750,000
22. Dayton-Lake County Water and Sewer District (wastewater)	750,000
23. Judith Basin County (bridge)	192,215
24. Pinesdale, Town of (water)	750,000
25. Power-Teton County Water and Sewer District (water)	604,286
26. Superior, Town of (water)	600,000
27. RAE Subdivision County Water and Sewer District No. 313 (water)	750,000
28. Jefferson County (bridge)	295,800
29. Fort Benton, City of (stormwater)	750,000
30. Laurel, City of (wastewater)	750,000
31. Yellowstone County (bridge)	97,079
32. Neihart, Town of (water)	223,000
33. Three Forks, City of (wastewater)	750,000
34. Manhattan, Town of (water)	600,000
35. Cut Bank, City of (water)	550,000
36. Whitehall, Town of (wastewater)	750,000
37. Crow Tribe (wastewater)	750,000
38. Big Sandy, Town of (wastewater)	750,000
39. Fairfield, Town of (wastewater)	750,000
40. Hamilton, City of (wastewater)	750,000
41. Gallatin County/Hebgen Lake Estates (wastewater)	750,000
42. Shelby, City of (water)	750,000
43. Whitefish, City of (wastewater)	750,000
44. Panoramic Mountain River Heights (water)	191,500
45. Custer County (bridge)	63,750
46. Brady, Town of (wastewater)	750,000
47. Elk Meadows (water)	410,000
48. Polson, City of (water)	750,000
49. Darby, Town of (water)	750,000

50. Goodan-Keil (water)	532,250
51. Butte-Silver Bow (water)	750,000
52. Columbia Falls, City of (wastewater)	750,000
53. North Valley County (water)	750,000
54. Saltese, Town of (wastewater)	390,000
55. Red Lodge, City of (water)	750,000
56. Black Eagle, Town of (water)	365,000

(4) This section constitutes a valid obligation of funds to the grant recipients listed in subsection (3) for purposes of encumbering the treasure state endowment state special revenue account funds *and other funds* during the 2009 biennium pursuant to 17-7-302. However, a grant recipient's entitlement to receive funds is dependent on the grant recipient's compliance with the conditions described in [section 3(1)] and on the availability of funds.

(5) Funding for projects numbered 1 through 56 in subsection (3) ~~and for the department of natural resources and conservation project in subsection (6)~~ will be provided from interest earnings *and other funds* deposited into the treasure state endowment special revenue account during the biennium ending June 30, 2009*, for the projects that have satisfied the conditions described in [section 3(1)] prior to June 30, 2009*. Funding for the projects listed in subsection (3) will be made available in the order that the grant recipients satisfy the conditions described in [section 3(1)]. ~~If funds appropriated in subsection (1) are insufficient to fund any of the projects that have satisfied the conditions described in [section 3(1)] prior to June 30, 2009, the treasure state endowment program must fund the projects by borrowing money from the board of investments pursuant to 90-6-701(1)(b) for those projects that have satisfied the conditions described in [section 3(1)] by June 30, 2009. There is appropriated to the department of commerce up to $17,563,890 for funds borrowed from the board of investments.~~

~~(6) Up to $2,200,000 is granted to the department of natural resources and conservation in fiscal year 2009, which must be used to fund local government renewable resource projects. The grant may only be awarded for the amount of anticipated shortfall in funding all of the renewable resource program grants authorized in [section 1(3) of House Bill No. 6]. Any unexpended funds remaining from this grant on July 1, 2009, will be remitted to the department of commerce, treasure state endowment program, to be used for repayment of loans.~~"

Section 12. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

Section 13. Coordination instruction. (1) If the total transfers for the treasure state endowment program TSEP infrastructure in section 51-F, item 3, of House Bill No. 645 is reduced below a total of $23 million, the appropriation of $40,173,080 from the treasure state endowment state special revenue account in [section 11 of this act] is reduced by a like amount.

(2) If the total transfers for the treasure state endowment program regional water system in section 51-F, item 3, of House Bill No. 645 is reduced below a total of $8 million, the appropriation of $15 million from the treasure state endowment regional water system special revenue account in [section 7 of this act] is reduced by a like amount.

Section 14. Effective dates. (1) Except as provided in subsection (2), [this act] is effective on passage and approval.

(2) [Section 10] is effective July 1, 2011.

Approved May 6, 2009

CHAPTER NO. 459

[HB 123]

AN ACT REDUCING THE STATUTORY APPROPRIATIONS FOR THE GROWTH THROUGH AGRICULTURE PROGRAM AND FOR RESEARCH AND COMMERCIALIZATION PROJECTS; EXTENDING THE TERMINATION DATE FOR CERTAIN ALLOCATIONS AND STATUTORY APPROPRIATIONS OF THE INTEREST INCOME FROM $140 MILLION OF THE COAL SEVERANCE TAX PERMANENT FUND; AMENDING SECTION 15-35-108, MCA, SECTION 3, CHAPTER 481, LAWS OF 2003, AND SECTION 6, CHAPTER 481, LAWS OF 2003; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-35-108, MCA, is amended to read:

"15-35-108. (Temporary) **Disposal of severance taxes.** Severance taxes collected under this chapter must, in accordance with the provisions of 17-2-124, be allocated as follows:

(1) Fifty percent of total coal severance tax collections is allocated to the trust fund created by Article IX, section 5, of the Montana constitution. The trust fund money must be deposited in the fund established under 17-6-203(6) and invested by the board of investments as provided by law.

(2) The amount of 12% of coal severance tax collections is allocated to the long-range building program account established in 17-7-205.

(3) The amount of 5.46% must be credited to an account in the state special revenue fund to be allocated by the legislature for provision of basic library services for the residents of all counties through library federations and for payment of the costs of participating in regional and national networking, conservation districts, and the Montana Growth Through Agriculture Act. Expenditures of the allocation may be made only from this account. Money may not be transferred from this account to another account other than the general fund. Any unreserved fund balance at the end of each fiscal year must be deposited in the general fund.

(4) The amount of 1.27% must be allocated to a permanent fund account for the purpose of parks acquisition or management. Income from this permanent fund account, excluding unrealized gains and losses, must be appropriated for the acquisition, development, operation, and maintenance of any sites and areas described in 23-1-102.

(5) The amount of 0.95% must be allocated to the debt service fund type to the credit of the renewable resource loan debt service fund.

(6) The amount of 0.63% must be allocated to a trust fund for the purpose of protection of works of art in the capitol and for other cultural and aesthetic projects. Income from this trust fund account, excluding unrealized gains and losses, must be appropriated for protection of works of art in the state capitol and for other cultural and aesthetic projects.

(7) The amount of 2.9% must be credited to the oil, gas, and coal natural resource account established in 90-6-1001.

(8) After the allocations are made under subsections (2) through (7), $250,000 for the fiscal year must be credited to the coal and uranium mine permitting and reclamation program account established in 82-4-244.

(9) (a) Subject to subsection (9)(b), all other revenue from severance taxes collected under the provisions of this chapter must be credited to the general fund of the state.

(b) The interest income from $140 million of the coal severance tax permanent fund that is deposited in the general fund is statutorily appropriated, as provided in 17-7-502, on an annual basis as follows:

(i) $65,000 to the cooperative development center;

(ii) ~~$1.25 million~~ *$625,000* for the growth through agriculture program provided for in Title 90, chapter 9;

(iii) ~~$3.65~~ *$1.275* million to the research and commercialization state special revenue account created in 90-3-1002;

(iv) to the department of commerce:

(A) $125,000 for a small business development center;

(B) $50,000 for a small business innovative research program;

(C) $425,000 for certified regional development corporations;

(D) $200,000 for the Montana manufacturing extension center at Montana state university-Bozeman; and

(E) $300,000 for export trade enhancement. (Terminates June 30, ~~2010~~ *2019*—~~sec. 6, Ch. 481, L. 2003~~.)

15-35-108. (Effective July 1, ~~2010~~ *2019*) **Disposal of severance taxes.** Severance taxes collected under this chapter must, in accordance with the provisions of 17-2-124, be allocated as follows:

(1) Fifty percent of total coal severance tax collections is allocated to the trust fund created by Article IX, section 5, of the Montana constitution. The trust fund money must be deposited in the fund established under 17-6-203(6) and invested by the board of investments as provided by law.

(2) The amount of 12% of coal severance tax collections is allocated to the long-range building program account established in 17-7-205.

(3) The amount of 5.46% must be credited to an account in the state special revenue fund to be allocated by the legislature for provision of basic library services for the residents of all counties through library federations and for payment of the costs of participating in regional and national networking, conservation districts, and the Montana Growth Through Agriculture Act. Expenditures of the allocation may be made only from this account. Money may not be transferred from this account to another account other than the general fund. Any unreserved fund balance at the end of each fiscal year must be deposited in the general fund.

(4) The amount of 1.27% must be allocated to a permanent fund account for the purpose of parks acquisition or management. Income from this permanent fund account, excluding unrealized gains and losses, must be appropriated for the acquisition, development, operation, and maintenance of any sites and areas described in 23-1-102.

(5) The amount of 0.95% must be allocated to the debt service fund type to the credit of the renewable resource loan debt service fund.

(6) The amount of 0.63% must be allocated to a trust fund for the purpose of protection of works of art in the capitol and for other cultural and aesthetic projects. Income from this trust fund account, excluding unrealized gains and losses, must be appropriated for protection of works of art in the state capitol and for other cultural and aesthetic projects.

(7) The amount of 2.9% must be credited to the oil, gas, and coal natural resource account established in 90-6-1001.

(8) After the allocations are made under subsections (2) through (7), $250,000 for the fiscal year must be credited to the coal and uranium mine permitting and reclamation program account established in 82-4-244.

(9) All other revenue from severance taxes collected under the provisions of this chapter must be credited to the general fund of the state."

Section 2. Section 3, Chapter 481, Laws of 2003, is amended to read:

"**Section 3.** Section 10, Chapter 10, Special Laws of May 2000, is amended to read:

"**Section 10. Termination.** (1) [Section 1] terminates June 30, 2001.

(2) ~~[Sections 2 through 4]~~ *[Sections 2 and 4]* terminate June 30, 2005.

(3) [Section 3] terminates June 30, ~~2010~~ 2019.""

Section 3. Section 6, Chapter 481, Laws of 2003, is amended to read:

"**Section 6. Termination.** [Section 1] terminates June 30, ~~2010~~ *2019*."

Section 4. Effective dates. (1) [Section 1] is effective July 1, 2010.

(2) [Sections 2, 3, and 5 and this section] are effective October 1, 2009.

Section 5. Termination. [Section 1] terminates June 30, 2013.

Approved May 6, 2009

CHAPTER NO. 460

[HB 158]

AN ACT PROVIDING FOR TRIBAL GOVERNMENTAL ELIGIBILITY FOR ALL GRANTS AND LOANS UNDER THE BIG SKY ECONOMIC DEVELOPMENT PROGRAM; AND AMENDING SECTIONS 90-1-201, 90-1-202, 90-1-203, 90-1-204, AND 90-1-205, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 90-1-201, MCA, is amended to read:

"90-1-201. Big sky economic development program — definitions. (1) (a) There is a big sky economic development program that consists of:

(i) the big sky economic development fund established in 17-5-703; and

(ii) the economic development special revenue account provided for in 90-1-205.

(b) Interest and income from the big sky economic development fund may be used to administer the big sky economic development program and to provide financial assistance for qualified economic development purposes under this part.

(2) As used in this part, the following definitions apply:

(a) "Certified regional development corporation" has the meaning provided in 90-1-116.

(b) "Department" means the department of commerce provided for in 2-15-1801.

(c) "Economic development organization" means:

(i) (A) a private, nonprofit corporation, as provided in Title 35, chapter 2, that is exempt from taxation under section 501(c)(3) or 501(c)(6) of the Internal Revenue Code, 26 U.S.C. 501(c)(3) or 501(c)(6);

(B) an entity certified by the department under 90-1-116; or

(C) an entity established by a local government; or

(ii) an entity actively engaged in economic development and business assistance work in a region of the state.

(d) "High-poverty county" means a county in this state in which 14% or more of people of all ages are in poverty as determined by the U.S. bureau of the census estimates for the most current year available.

(e) "Local government" means a ~~tribal government,~~ county, consolidated government, city, town, or district or local public entity with the authority to spend or receive public funds.

(f) "Tribal government" means any one of the seven federally recognized tribal governments of Montana and the Little Shell Band of Chippewa Indians."

Section 2. Section 90-1-202, MCA, is amended to read:

"90-1-202. Purpose. The legislature finds and declares that economic development is a public purpose. The purpose of the big sky economic development program is to assist in economic development for Montana that will:

(1) create good-paying jobs for Montana residents;

(2) promote long-term, stable economic growth in Montana;

(3) encourage local economic development organizations;

(4) create partnerships between the state, local governments, *tribal governments,* and local economic development organizations that are interested in pursuing these same economic development goals;

(5) retain or expand existing businesses;

(6) provide a better life for future generations through greater economic growth and prosperity in Montana; and

(7) encourage workforce development, including workforce training and job creation, in high-poverty counties by providing targeted assistance."

Section 3. Section 90-1-203, MCA, is amended to read:

"90-1-203. Types of financial assistance available. (1) The department shall provide for and make grants and loans available to local governments *and tribal governments* for economic development projects and to certified regional development corporations from the money in the economic development special revenue account provided for in 90-1-205.

(2) A grant or loan may not be used for a project that would result in the transfer or relocation of jobs from one part of the state to another part of the state."

Section 4. Section 90-1-204, MCA, is amended to read:

"90-1-204. Priorities for funding — rulemaking. (1) The department must receive proposals for grants and loans from local governments *and tribal governments*. A local government shall work with an economic development organization on a proposal. The department shall work with the local government and the economic development organization *or with an applicant tribal government* in preparing cost estimates for a proposed project. In reviewing proposals, the department may consult with other state agencies with expertise pertinent to the proposal.

(2) (a) The department shall adopt rules necessary to implement the big sky economic development program. In adopting rules, the department shall look to the rules adopted for the treasure state endowment program and other similar state programs. To the extent feasible, the department shall make the rules compatible with those other programs. To the extent feasible, the department shall employ an approach pertaining to the use of funds so that, except as provided in subsection (2)(b), the needs of rural areas are balanced with the needs of the state's urban centers.

(b) For high-poverty counties, the department shall employ an approach pertaining to the use of funds that is intended to lower poverty levels in the county to a percentage at which the county no longer is defined as a high-poverty county.

(c) The rules must provide for the types of uses of funds available under the big sky economic development program. The types of uses of funds by:

(i) local governments *and tribal governments* include but are not limited to:

(A) a reduction in the interest rate of a commercial loan for the expansion of a basic sector company;

(B) a grant or low-interest loan for relocation expenses for a basic sector company; and

(C) rental assistance or lease buy-downs for a relocation or expansion project for a basic sector company;

(ii) a certified regional development corporation *or a tribal government* include:

(A) support for business improvement districts and central business district redevelopment;

(B) industrial development;

(C) feasibility studies;

(D) creation and maintenance of baseline community profiles; and

(E) matching funds for federal funds, including but not limited to brownfields funds and natural resource damage funds.

(d) (i) The rules must provide for distribution methods for financial assistance available to local governments *and tribal governments*. The rules must provide for distribution based upon the number of jobs expected to be created because of the funding.

(ii) Funding may not exceed $5,000 for each expected job, except that funding for a project in a high-poverty county may not exceed $7,500 for each expected job.

(iii) The rules must require equal matching funds for a grant or loan, except that the rules for a grant or a loan in a high-poverty county may allow a 50% to 100% match requirement for the high-poverty county.

(e) The rules may provide for greater incentives for a high-poverty county.

(f) The rules must provide for the full or partial repayment of a grant if the new jobs or some of the new jobs for which a grant is given are not created.

(g) A grant or loan may be made only for a new job that has an average weekly wage that meets or exceeds the current average weekly wage of the county in which the employees are to be principally employed."

Section 5. Section 90-1-205, MCA, is amended to read:

"90-1-205. Economic development special revenue account. (1) There is an economic development state special revenue account. The account receives earnings from the big sky economic development fund as provided in 17-5-703. The money in the account may be used only as provided in this part.

(2) The money in the account is statutorily appropriated, as provided in 17-7-502, to the department. Of the money that is deposited in the account that is not used for administrative expenses:

(a) 75% must be allocated for distribution to local governments *and tribal governments* to be used for job creation efforts; and

(b) 25% must be ~~distributed~~ *allocated for distribution* to certified regional development corporations*,* ~~and~~ economic development organizations that are located in a county that is not part of a certified regional development corporation*, and tribal governments*."

Section 6. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

Approved May 6, 2009

CHAPTER NO. 461

[HB 213]

AN ACT ESTABLISHING A SOUTHWESTERN MONTANA STATE VETERANS' HOME IN BEAVERHEAD, DEER LODGE, JEFFERSON, MADISON, POWELL, OR SILVER BOW COUNTY; ESTABLISHING A SITE SELECTION COMMITTEE; ALLOCATING A PORTION OF CIGARETTE TAX MONEY TO AN ACCOUNT FOR USE IN CONSTRUCTION OF THE SOUTHWESTERN MONTANA STATE VETERANS' HOME SUBJECT TO APPROPRIATION BY THE 62ND LEGISLATURE; AMENDING SECTIONS 10-2-401, 10-2-416, 16-11-119, 53-1-402, 53-1-413, 53-1-602, AND 53-6-1201, MCA; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. State veterans' home in southwestern Montana. (1) A southwestern Montana state veterans' home is established at a site determined as provided for in this section.

(2) The governor shall, by June 1, 2009, appoint a site selection committee, which shall select a site in Beaverhead, Deer Lodge, Jefferson, Madison, Powell, or Silver Bow County for the state veterans' nursing home.

(3) (a) The voting membership of the committee consists of six honorably discharged veterans of the United States armed forces. One member must be appointed from each county listed in subsection (2).

(b) Representatives of the state departments of administration, public health and human services, and military affairs shall serve as nonvoting members of the committee.

(4) The committee shall:

(a) establish objective criteria in compliance with federal law and state health requirements for the selection of the most favorable site for a state veterans' home;

(b) solicit proposals from communities interested in becoming the location for the state veterans' home;

(c) organize and conduct public hearings in each of the interested communities for the purpose of gathering input and information; and

(d) prepare and forward its designation of the most favorable location for the state veterans' home to the governor no later than April 1, 2010.

(5) The designation of the site selection committee is binding.

(6) The committee's expenses must be paid by the senior and long-term care division of the department of public health and human services.

(7) The department of administration shall direct the architecture and engineering division to prepare a long-range building plan for the state veterans' home in southwestern Montana pursuant to 17-7-202.

Section 2. Account — state veterans' home in southwestern Montana. There is an account in the state special revenue fund established in 17-2-102. The cigarette tax collections allocated in 16-11-119(1)(b) must be deposited in the account. Money deposited in the account is subject to appropriation by the 62nd legislature and may be used only for capital construction of a state veterans' home in southwestern Montana at the site selected pursuant to [section 1].

Section 3. Section 10-2-401, MCA, is amended to read:

"10-2-401. Location and function of homes — persons admitted. The institutions at Columbia Falls*,* ~~and~~ in eastern Montana*, and in southwestern Montana* are the Montana veterans' homes, and their primary function is to provide a home and subsistence for veterans. The department of public health and human services may also admit spouses or surviving spouses of veterans to the homes if space allows."

Section 4. Section 10-2-416, MCA, is amended to read:

"10-2-416. Pledge to continue operation and maintenance. Pursuant to 38 U.S.C. 8134 and 8135(a)(6), the state shall appropriate funds either from the general fund or from funds generated under 16-11-111 to the department of public health and human services for financial support necessary to provide for continued operation and maintenance of the state ~~home~~ *homes* for veterans in eastern Montana *and southwestern Montana*. The department of public health and human services may contract with a private vendor to provide for the operation of the eastern Montana veterans' home *and the southwestern Montana veterans' home* and may charge the contract vendor a rental fee for the maintenance and upkeep of the facility."

Section 5. Section 16-11-119, MCA, is amended to read:

"16-11-119. Disposition of taxes. (1) Cigarette taxes collected under the provisions of 16-11-111 must, in accordance with the provisions of 17-2-124, be deposited as follows:

(a) 8.3% or $2 million, whichever is greater, in the state special revenue fund to the credit of the department of public health and human services for the operation and maintenance of state veterans' nursing homes;

(b) for fiscal years ending June 30, 2010, and June 30, 2011, 1.2% in the state special revenue fund to the credit of the account established in [section 2] for the construction of the state veterans' home in southwestern Montana.

~~(b)~~*(c)* 2.6% in the long-range building program account provided for in 17-7-205;

~~(c)~~*(d)* 44% in the state special revenue fund to the credit of the health and medicaid initiatives account provided for in 53-6-1201; and

~~(d)~~*(e)* the remainder to the state general fund.

(2) If money in the state special revenue fund for the operation and maintenance of state veterans' nursing homes exceeds $2 million at the end of the fiscal year, the excess must be transferred to the state general fund.

(3) The taxes collected on tobacco products, other than cigarettes, must in accordance with the provisions of 17-2-124 be deposited as follows:

(a) one-half in the state general fund; and

(b) one-half in the state special revenue fund account for health and medicaid initiatives provided for in 53-6-1201."

Section 6. Section 53-1-402, MCA, is amended to read:

"53-1-402. Residents and financially responsible persons liable for cost of care. (1) A resident and a financially responsible person are liable to the department for the resident's cost of care as provided in this part. The cost of care includes the applicable per diem and ancillary charges or all-inclusive rate charges for the care of residents in the following institutions:

(a) Montana state hospital;

(b) Montana developmental center;

(c) Montana veterans' home;

(d) eastern Montana veterans' home;

(e) southwestern Montana veterans' home;

~~(e)~~*(f)* Montana mental health nursing care center; and

~~(f)~~*(g)* Montana chemical dependency treatment center.

(2) The eastern Montana veterans' home may assess charges on either a per diem and ancillary charge basis or an all-inclusive rate basis if the department contracts with a private vendor to operate the facility as provided for in 10-2-416.

(3) The Montana state hospital and the Montana mental health nursing center may determine the cost of care using an all-inclusive rate or per diem and ancillary charges if the department contracts with a private entity to operate a mental health managed care program."

Section 7. Section 53-1-413, MCA, is amended to read:

"53-1-413. Deposit of payments and collections. (1) Except as provided in 90-7-220, 90-7-221, and this section, the department shall deposit payments and collections of charges for a resident's cost of care in the state treasury to the credit of the general fund.

(2) Payments and collections for services provided to residents of the Montana veterans' ~~home~~ *homes* must be deposited in the special revenue account for the benefit of the ~~home~~ *homes*. Payments and collections for services provided to residents of the Montana chemical dependency treatment center must be deposited in the state special revenue account for the facility."

Section 8. Section 53-1-602, MCA, is amended to read:

"53-1-602. Department of public health and human services. (1) The following components are in the department of public health and human services to carry out the purposes of the department:

(a) mental health services, consisting of the following institutional components for care and treatment of the mentally ill pursuant to Title 53, chapter 21:

(i) the Montana state hospital; and

(ii) the Montana mental health nursing care center;

(b) a community services component, consisting of appropriate services for the care and treatment of the mentally ill pursuant to Title 53, chapter 21, part 10;

(c) chemical dependency services, consisting of appropriate detoxification, inpatient, intensive outpatient, outpatient, prevention, education, and other necessary chemical dependency services pursuant to Title 53, chapter 24;

(d) an institutional and residential component of the developmental disabilities system for those persons with developmental disabilities who require institutional or residential care according to Title 53, chapter 20, which component consists of the Montana developmental center; and

(e) the veterans' nursing homes for the nursing home and domiciliary care of honorably discharged veterans as provided by law, consisting of:

(i) the Montana veterans' home; ~~and~~

(ii) the eastern Montana veterans' home at Glendive*; and*

(iii) the southwestern Montana veterans' home.

(2) A state institution may not be moved, discontinued, or abandoned without the consent of the legislature."

Section 9. Section 53-6-1201, MCA, is amended to read:

"53-6-1201. Special revenue fund — health and medicaid initiatives. (1) There is a health and medicaid initiatives account in the state special revenue fund established by 17-2-102. This account is to be administered by the department of public health and human services.

(2) There must be deposited in the account:

(a) money from cigarette taxes deposited under ~~16-11-119(1)(c)~~ *16-11-119(1)(d)*;

(b) money from taxes on tobacco products other than cigarettes deposited under 16-11-119(3)(b); and

(c) any interest and income earned on the account.

(3) This account may be used only to provide funding for:

(a) the state funds necessary to take full advantage of available federal matching funds in order to maximize enrollment of eligible children under the children's health insurance program, provided for under Title 53, chapter 4, part 10, and to provide outreach to the eligible children. The increased revenue in this account is intended to increase enrollment rates for eligible children in the program and not to be used to support existing levels of enrollment based upon appropriations for the biennium ending June 30, 2005.

(b) a new need-based prescription drug program established by the legislature for children, seniors, chronically ill, and disabled persons that does not supplant similar services provided under any existing program;

(c) increased medicaid services and medicaid provider rates. The increased revenue is intended to increase medicaid services and medicaid provider rates and not to supplant the general fund in the trended traditional level of appropriation for medicaid services and medicaid provider rates.

(d) an offset to loss of revenue to the general fund as a result of new tax credits;

(e) funding new programs to assist eligible small employers with the costs of providing health insurance benefits to eligible employees;

(f) the cost of administering the tax credit, the purchasing pool, and the premium incentive payments and premium assistance payments as provided in Title 33, chapter 22, part 20; and

(g) providing a state match for the medicaid program for premium incentive payments or premium assistance payments to the extent that a waiver is granted by federal law as provided in 53-2-216.

(4) ~~(a) Except for $1 million appropriated for the startup costs of 53-6-1004 and 53-6-1005, the money appropriated for fiscal year 2006 for the programs in subsections (3)(b) and (3)(d) through (3)(g) may not be expended until the office of budget and program planning has certified that $25 million has been deposited in the account provided for in this section or December 1, 2005, whichever occurs earlier.~~

~~(b)~~*(a)* On or before July 1, the budget director shall calculate a balance required to sustain each program in subsection (3) for each fiscal year of the biennium. If the budget director certifies that the reserve balance will be sufficient, then the agencies may expend the revenue for the programs as appropriated. If the budget director determines that the reserve balance of the revenue will not support the level of appropriation, the budget director shall notify each agency. Upon receipt of the notification, the agency shall adjust the operating budget for the program to reflect the available revenue as determined by the budget director.

~~(c)~~*(b)* Until the programs or credits described in subsections (3)(b) and (3)(d) through (3)(g) are established, the funding must be used exclusively for the purposes described in subsections (3)(a) and (3)(c).

(5) The phrase "trended traditional level of appropriation", as used in subsection (3)(c), means the appropriation amounts, including supplemental appropriations, as those amounts were set based on eligibility standards, services authorized, and payment amount during the past five biennial budgets.

(6) The department of public health and human services may adopt rules to implement this section."

Section 10. Effective dates. (1) Except as provided in subsection (2), [this act] is effective on passage and approval.

(2) [Sections 5 and 9] are effective July 1, 2009.

Approved May 6, 2009

CHAPTER NO. 462

[HB 279]

AN ACT PROHIBITING THE DEPARTMENT OF TRANSPORTATION FROM RECOVERING INDIRECT COSTS FOR THE COMMUNITY TRANSPORTATION ENHANCEMENT PROGRAM; AND AMENDING SECTION 17-1-106, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-1-106, MCA, is amended to read:

"17-1-106. Agency recovery of indirect costs — *exemption*. (1) An agency receiving nongeneral funds shall, in accordance with all applicable regulations, guidelines, or grant rules governing those funds, negotiate indirect cost reimbursement amounts and methodologies so that the agency may recover indirect costs.

(2) An agency, except for a unit of the university system, that applies for or otherwise receives funds through federal or private grants or contracts that do not allow the agency to fully recover indirect costs shall notify and must receive written approval from its approving authority prior to accepting the funds.

(3) The department of transportation may not recover indirect costs from a local government for the community transportation enhancement program.

~~(3)~~*(4)* An agency, except for a unit of the university system, may not, as part of the grant or contract proposal or negotiation process, waive or otherwise forfeit the agency's ability to recover indirect costs that are otherwise allowable costs under the program, except for intra-agency or interagency grants or contracts. For grants or contracts for which the entity providing the funds limits administrative cost reimbursements or indirect cost recoveries by regulation, policy, or guideline, statewide and agency indirect costs paid originally from the general fund must be claimed first, other indirect costs must be claimed second, agency direct costs of administration must be claimed third, and program direct costs must be claimed last. For grants or contracts for which there is no limit on indirect costs or administrative costs, indirect and administrative costs must be claimed first and direct program costs must be claimed last.

~~(4)~~*(5)* Each agency receiving federal funds and not directly charging a grant or program for the recovery of indirect costs shall submit an indirect cost proposal to the appropriate federal agency. The department shall provide technical assistance to an agency on how to build an indirect cost proposal.

~~(5)~~*(6)* Except as provided for a unit of the university system under 20-25-427, indirect costs recovered by an agency to pay the agency's indirect costs under 17-1-105 must be deposited as provided in 17-1-105. All other indirect costs must be deposited in the fund from which the indirect costs were originally paid."

Approved May 6, 2009

CHAPTER NO. 463

[HB 602]

AN ACT REVISING PROVISIONS ON THE USE OF STATE-OWNED VEHICLES; ESTABLISHING RESTRICTIONS ON COMMUTING FROM AN EMPLOYEE'S RESIDENCE TO A WORKSITE; AMENDING SECTION 2-17-411, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Limit on use of state vehicle to commute to worksite — definitions. (1) Except as provided in subsection (2), a state-owned vehicle may not be used by a state agency employee to commute from the employee's residence to the employee's worksite.

(2) (a) The department director may authorize an exception to subsection (1) if the commute from an employee's residence to the employee's worksite is less than 30 miles, the employee is required to be on call for quick response to an emergency that threatens life or property and on-call duty is a specifically identified duty in the employee's position description, and employees in the position have frequently responded to emergency calls in the past 6 months.

(b) Any exception authorized pursuant to subsection (2)(a) and the rationale for the exception must be documented in a memorandum or letter signed by the employee's department director and kept on file with the agency head. A copy of the letter or memorandum must be sent to the governor.

(c) This section does not apply:

(i) to the psychiatrist employed by the department of corrections and assigned to the Montana state prison;

(ii) when the vehicle is, in effect, the employee's worksite; or

(iii) when 24-hour use of a state-owned vehicle is specifically authorized by law for an elected or appointed state official and use of the vehicle is considered part of the official's compensation package.

(3) Using a state-owned vehicle to commute between the employee's residence and a worksite that is more than 30 miles from the employee's residence is not permitted under any circumstance unless that use is authorized by the employee's department director pursuant to rules adopted under 2-17-424, the rationale for the exception is documented in a memorandum or letter signed by the employee's department director and kept on file with the agency head, and a copy of the letter or memorandum is sent to the governor.

(4) As used in this section, "state agency" or "agency" means any office, board, commission, department, or other entity of the executive, judicial, or legislative branch of state government, including the university system.

Section 2. Section 2-17-411, MCA, is amended to read:

"2-17-411. Motor pool — department of transportation — exceptions. (1) The department of transportation's motor pool is responsible for the acquisition, operation, maintenance, repair, and administration of all motor vehicles in the custody of the motor pool.

(2) ~~This~~ *Except as provided in [section 1], this* part does not apply to a motor vehicle used in the service of the governor~~,~~ *or* the attorney general~~, or the highway patrol~~.

(3) This part does not apply to a motor vehicle used in the service of the highway patrol."

Section 3. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 2, chapter 17, part 4, and the provisions of Title 2, chapter 17, part 4, apply to [section 1].

Section 4. Effective date. [This act] is effective on passage and approval.

Approved May 6, 2009

CHAPTER NO. 464

[HB 644]

AN ACT APPROPRIATING $200,000 FROM THE STATE GENERAL FUND TO BE USED BY THE DEPARTMENT OF COMMERCE TO PROVIDE FUNDING FOR CULTURAL DEVELOPMENT IN BUTTE-SILVER BOW; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the lingering effects of changes in mining practices worldwide and in southwestern Montana, and the general and specific ripple effects of those changes, have reduced the availability of cultural resources and the frequency, nature, and scope of cultural events in southwestern Montana, especially in Butte-Silver Bow; and

WHEREAS, diminishing access to cultural resources and cultural events is only one of the ripple effects felt by the residents of and visitors to southwestern Montana in general and Butte-Silver Bow in particular; and

WHEREAS, the reinvigoration of cultural resources and cultural events within Butte-Silver Bow has the potential to create new jobs and stimulate greater economic vitality in Butte-Silver Bow specifically and in southwestern Montana generally; and

WHEREAS, in 2008, Butte-Silver Bow hosted the 70th National Folk Festival, the oldest multicultural festival in the nation, and will host the event in 2009 and 2010; and

WHEREAS, an estimated 75,000 people attended the 2008 Festival, a number that is expected to double in 2009, with an economic impact of $8 million in the Southwest Montana trade area; and

WHEREAS, the success of the 2008 National Folk Festival demonstrates that cultural events can provide a sustainable basis for economic activity; and

WHEREAS, although events like the National Folk Festival bring entertainment, people, and money into the host community and the surrounding area, funding is also necessary to plan and produce the events; and

WHEREAS, the late Representative George Groesbeck, Jr. recognized the importance of attracting cultural events to Montana communities, not only to bolster local economies but to provide residents and tourists with a unique opportunity to experience the wide range of music, art, and dance that multicultural events like the National Folk Festival bring to a community; and

WHEREAS, it is the policy of the National Folk Festival to offer this cultural event at no charge to maximize the opportunity for the general public; and

WHEREAS, the current economic climate in Montana and the nation makes it difficult to fund the planning and production of events like the National Folk Festival.

Be it enacted by the Legislature of the State of Montana:

Section 1. Appropriation. (1) There is appropriated $200,000 from the state general fund to the department of commerce for the biennium beginning July 1, 2009, for the sole purpose of assisting Butte-Silver Bow in the reinvigoration of cultural resources and cultural events within Butte-Silver Bow through grants or loans to the Butte-Silver Bow consolidated government, to the Butte-Silver Bow economic development authority, or to other entities within Butte-Silver Bow whose primary purpose is the expansion or

enhancement of the cultural resources and cultural opportunities available within Butte-Silver Bow.

Section 2. Effective date. [This act] is effective July 1, 2009.

Approved May 6, 2009

CHAPTER NO. 465

[SB 65]

AN ACT GENERALLY REVISING TRUST LAND FUNDING LAWS; DEFINING "DISTRIBUTABLE REVENUE"; PROVIDING A NEW FUNDING FORMULA; REVISING LAWS GOVERNING TRUST LAND ADMINISTRATION ACCOUNTS AND THEIR USES; CREATING AN EARNINGS RESERVE ACCOUNT; CREATING THE FOREST IMPROVEMENT ACCOUNT; ELIMINATING THE RESOURCE DEVELOPMENT ACCOUNT, THE RECREATIONAL USE ACCOUNT, THE STATE TIMBER SALE ACCOUNT, AND THE STATE SPECIAL REVENUE ACCOUNT FOR COMMERCIAL LEASING RENTAL PAYMENTS; TRANSFERRING UNENCUMBERED BALANCES; REQUIRING THE BOARD OF REGENTS TO DESIGNATE HOW CERTAIN TIMBER SALE PROCEEDS ARE DISTRIBUTED; AMENDING SECTIONS 17-2-107, 17-3-1003, 18-2-107, 20-9-341, 20-9-620, 20-25-422, 77-1-101, 77-1-108, 77-1-109, 77-1-127, 77-1-605, 77-1-613, 77-1-802, 77-1-808, 77-1-809, 77-1-810, 77-1-815, 77-1-905, 77-2-328, 77-2-362, 77-5-204, AND 77-5-219, MCA; REPEALING SECTIONS 77-1-602, 77-1-604, 77-1-606, 77-1-607, 77-1-608, AND 77-1-609, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-2-107, MCA, is amended to read:

"17-2-107. Accurate accounting records and interentity loans. (1) The department shall record receipts and disbursements for treasury funds and for accounting entities within treasury funds and shall maintain records in a manner that reflects the total cash and invested balance of each fund and each accounting entity. The department shall adopt the necessary procedures to ensure that interdepartmental or intradepartmental transfers of money or loans do not result in inflation of figures reflecting total governmental costs and revenue.

(2) (a) ~~Subject~~ *Except as provided in 77-1-108 and subject* to 17-2-105, when the expenditure of an appropriation from a fund designated in 17-2-102(1) through (3) is necessary and the cash balance in the accounting entity from which the appropriation was made is insufficient, the department may authorize a temporary loan, bearing no interest, of unrestricted money from other accounting entities if there is reasonable evidence that the income will be sufficient to repay the loan within 1 calendar year and if the loan is recorded in the state accounting records. An accounting entity receiving a loan or an accounting entity from which a loan is made may not be so impaired that all proper demands on the accounting entity cannot be met even if the loan is extended.

(b) (i) When an expenditure from a fund or subfund designated in 17-2-102(4) is necessary and the cash balance in the fund or subfund from which the expenditure is to be made is insufficient, the commissioner of higher education may authorize a temporary loan, bearing interest as provided in

subsection (4) of this section, of money from the agency's other funds or subfunds if there is reasonable evidence that the income will be sufficient to repay the loan within 1 calendar year and if the loan is recorded in the state accounting records. A fund or subfund receiving a loan or from which a loan is made may not be so impaired that all proper demands on the fund or subfund cannot be met even if the loan is extended.

(ii) One accounting entity within each fund or subfund designated in 17-2-102(4) must be established for the sole purpose of recording loans between the funds or subfunds. This accounting entity is the only accounting entity within each fund or subfund that may receive a loan or from which a loan may be made.

(c) A loan made under subsection (2)(a) or (2)(b) must be repaid within 1 calendar year of the date on which the loan is approved unless it is extended under subsection (3) or by specific legislative authorization.

(3) Under unusual circumstances, the director of the department or the board of regents may grant one extension for up to 1 year for a loan made under subsection (2)(a) or (2)(b). The director or board shall prepare a written justification and proposed repayment plan for each loan extension authorized and shall furnish a copy of the written justification and proposed repayment plan to the house appropriations and senate finance and claims committees at the next legislative session.

(4) Any loan from the current unrestricted subfund to funds designated in 17-2-102(4)(a)(iv) and (4)(b) through (4)(f) must bear interest at a rate equivalent to the previous fiscal year's average rate of return on the board of investments' short-term investment pool.

(5) If for 2 consecutive fiscal yearends a loan or an extension of a loan has been authorized to the same accounting entity as provided in subsection (2) or (3), the department or the commissioner of higher education shall submit to the legislative finance committee by September 1 of the following fiscal year a written report containing an explanation as to why the second loan or extension was made, an analysis of the solvency of the accounting entity or accounting entities within the university fund or subfund, and a plan for repaying the loans.

(6) If for 2 consecutive fiscal yearends an accounting entity in a fund or subfund designated in 17-2-102(4) has a negative cash balance, the commissioner of higher education shall submit to the legislative finance committee by September 1 of the following fiscal year a written report containing an explanation as to why the accounting entity has a negative cash balance, an analysis of the solvency of the accounting entity, and a plan to address any problems concerning the accounting entity's negative cash balance or solvency.

(7) (a) An accounting entity in a fund designated in 17-2-102(1) through (3) may not have a negative cash balance at fiscal yearend. The department may, however, allow a fund type within each agency to carry a negative balance at any point during the fiscal year if the negative cash balance does not exist for more than 7 working days.

(b) (i) Except as provided in subsection (7)(b)(ii) of this section, a unit of the university system shall maintain a positive cash balance in the funds and subfunds designated in 17-2-102(4).

(ii) If a fund or subfund inadvertently has a negative cash balance, the department may allow the fund or subfund to carry the negative cash balance for no more than 7 working days. If the negative cash balance exists for more

than 7 working days, a transaction may not be processed through the statewide accounting system for that fund or subfund.

(8) Notwithstanding the provisions of subsections (2) through (4), the department may authorize loans to accounting entities in the federal and state special revenue funds with long-term repayment whenever necessary because of the timing of the receipt of agreed-upon reimbursements from federal, private, or other governmental entity sources for disbursements made. If possible, the loans must be made from funds other than the general fund. The department may approve the loans if the requesting agency can demonstrate that the total loan balance does not exceed total receivables from federal, private, or other governmental entity sources and receivables have been billed on a timely basis. The loan must be repaid under terms and conditions that may be determined by the department or by specific legislative authorization.

(9) A loan may not be authorized under this section to any fund or accounting entity that is owed federal or other third-party funds unless the requesting agency certifies to the agency approving the loan that it has and will continue to bill the federal government or other third party for the requesting agency's share of costs incurred in the fund or accounting entity on the earliest date allowable under federal or other third-party regulations applicable to the program. The requesting agency shall recertify its timely billing status to the agency that approved the loan at least monthly during the term of the loan. If at any time the requesting agency fails to recertify the timely billing, the agency that approved the loan shall cancel the loan and return the money to its original source."

Section 2. Section 17-3-1003, MCA, is amended to read:

"17-3-1003. Support of state institutions. (1) For the support and endowment of each state institution, there is annually and perpetually appropriated, after any deductions made under 77-1-109, ~~Title 77, chapter 1, part 6, and 77-2-362,~~ the income from all permanent endowments for the institution and from all land grants as provided by law. All money received or collected in connection with permanent endowments by all higher educational institutions, reformatory, custodial and penal institutions, state hospitals, and sanitariums, for any purpose, except revenue pledged to secure the payment of principal and interest of obligations incurred for the purchase, construction, equipment, or improvement of facilities at units of the Montana university system and for the refunding of obligations or money that constitutes temporary deposits, all or part of which may be subject to withdrawal or repayment, must be paid to the state treasurer, who shall deposit the money to the credit of the proper fund.

(2) Except as provided in subsections (1) and (3), all money received from the investment of grants of a state institution and all money received from the leasing of lands granted to a state institution must be deposited with the state treasurer of Montana for each institution, to the credit of the state special revenue fund.

(3) Except as provided in 77-1-109 *and subsection (4) of this section*, all money received from the sale of timber from lands granted to a state institution must be deposited to the credit of the permanent trust fund for the support of the institution.

(4) The board of regents shall designate, at least once a biennium, whether the timber sale proceeds from Montana university system lands must be distributed to the beneficiaries or placed in the permanent fund."

Section 3. Section 18-2-107, MCA, is amended to read:

"18-2-107. Deposit of capitol building grant revenue. (1) The state treasurer shall deposit in a capital projects fund all revenue from the capitol building land grant after any deductions made under 77-1-109~~, Title 77, chapter 1, part 6, and 77-2-362~~.

(2) The funds must be held and dedicated for the purpose of constructing capitol buildings or additions to buildings in accordance with the provisions of section 12 of The Enabling Act."

Section 4. Section 20-9-341, MCA, is amended to read:

"20-9-341. Definition of interest and income money. (1) ~~As~~ *Subject to deductions made under 77-1-109, as* used in this title, the term "interest and income money" means the total of the following revenue, as provided for by Article X, section 5, of the 1972 Montana constitution:

(a) 95% of the interest received from the investment of the public school fund;

(b) 95% of the interest received from the investment of any other school funds held in trust by the state board of land commissioners;

(c) 95% of the income received from the leasing of or sale of timber from state school lands ~~after any deductions that may be made under the provisions of Title 77, chapter 1, part 6~~; and

(d) 95% of any other income derived from any other covenant affecting the use of state school lands.

(2) The remaining 5% of the revenue described in subsections (1)(a) through (1)(d) must be annually credited to the public school fund after any deductions made under 77-1-109."

Section 5. Section 20-9-620, MCA, is amended to read:

"20-9-620. Definition. (1) As used in 20-9-621, 20-9-622, and this section, "distributable revenue" means, except for that portion of revenue described in 20-9-343(4)(a)(ii) and ~~available on or after July 1, 2003, 77-1-607, and 77-1-613~~ *77-1-109*, 95% of all revenue from the management of school trust lands and the permanent fund, including timber sale proceeds, lease fees, interest, dividends, and net realized capital gains.

(2) The term does not include mineral royalties or land sale proceeds that are deposited directly in the permanent fund or net unrealized capital gains that remain in the permanent fund until realized."

Section 6. Section 20-25-422, MCA, is amended to read:

"20-25-422. Support of university system. (1) For the support and endowment of the university, there is annually and perpetually appropriated:

(a) the university fund income, the proceeds and revenue from the grant of any estate or interest disposed of pursuant to 20-25-307, and all other sums of money appropriated by law to the university fund after any deductions made under 77-1-109 ~~and Title 77, chapter 1, part 6~~;

(b) all tuition and matriculation fees; and

(c) all contributions derived from public or private bounty.

(2) The entire income of all the funds must be placed at the disposal of the board of regents by transfer to its treasurer and must be kept separate and distinct from all other funds. The income must be used solely for the support of

the colleges and departments of the university or those connected with the colleges and departments.

(3) All means derived from other public or private bounty must be exclusively devoted to the specific objects designated by the donor."

Section 7. Section 77-1-101, MCA, is amended to read:

"77-1-101. Definitions. Unless the context requires otherwise and except for the definition of state land in 77-1-701, in this title, the following definitions apply:

(1) "Board" means the board of land commissioners provided for in Article X, section 4, of the Montana constitution.

(2) "Commercial or concentrated recreational use" means any recreational use that is organized, developed, or coordinated, whether for profit or otherwise. Commercial or concentrated recreational use includes all outfitting activity and all activities not included within the definition of general recreational use.

(3) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(4) "Distributable revenue" applies to all land trusts managed by the board, except property held pursuant to the Morrill Act of 1862, 7 U.S.C. 301 through 308, and the Morrill Act of 1890, 7 U.S.C. 321 through 329, and includes:

(a) 95% of all revenue from the management of school trust lands and the common school permanent fund;

(b) 95% of the interest and income described in 20-9-341, less any unrealized gains or losses;

(c) the income received from the leasing, licensing, or other use of state trust lands; and

(d) subject to 17-3-1003, the proceeds and income from the sale of timber from capitol building land grant and university system lands.

~~(4)~~*(5)* (a) "General recreational use" includes noncommercial and nonconcentrated hunting, fishing, and other activities determined by the board to be compatible with the use of state lands.

(b) ~~General recreational use~~ *The term* does not include the use of streams and rivers by the public under the stream access laws provided in Title 23, chapter 2, part 3.

~~(5)~~*(6)* "Legally accessible state lands" means state lands that can be accessed by:

(a) dedicated public road, right-of-way, or easement;

(b) public waters;

(c) adjacent federal, state, county, or municipal land if the land is open to public use; or

(d) adjacent contiguous private land if permission to cross the land has been secured from the landowner. The granting of permission by a private landowner to cross private property in a particular instance does not subject the state land that is accessed to general recreational use by members of the public, other than those granted permission.

~~(6)~~*(7)* "Noxious weeds" or "weeds" means any exotic plant species established or that may be introduced in the state that may render land unfit for agriculture, forestry, livestock, wildlife, or other beneficial uses or that may harm native plant communities and that is designated:

(a) as a statewide noxious weed by rule of the department of agriculture; or

(b) as a district noxious weed by a district weed board organized under 7-22-2103.

~~(7)~~*(8)* (a) "State land" or "lands" means:

(i) lands granted to the state by the United States for any purpose, either directly or through exchange for other lands;

(ii) lands deeded or devised to the state from any person; and

(iii) lands that are the property of the state through the operation of law.

(b) The term does not include:

(i) lands that the state conveys through the issuance of patent;

(ii) lands that are used for building sites, campus grounds, or experimental purposes by a state institution and that are the property of that institution;

(iii) lands that the board of regents of higher education has authority to dispose of pursuant to 20-25-307; or

(iv) lands acquired through investments under the provisions of 17-6-201.

~~(8)~~*(9)* "Weed management" or "control" has the meaning provided in 7-22-2101."

Section 8. Section 77-1-108, MCA, is amended to read:

"77-1-108. Trust land administration account — *administrative costs — appropriation.* (1) There is a trust land administration account in the state special revenue fund. Money in the account is available to the department by appropriation and must be used to pay the costs of administering state trust lands. *This includes the cost of managing assets, including but not limited to real property and monetary assets.*

(2) Appropriations from the account for each fiscal year may not exceed ~~the sum of 1 1/8% of the book value balance in the permanent funds administered by the department,~~ *an amount equal to 25% of the distributable revenue, as defined in 77-1-101, generated in the fiscal year completed prior to the legislative session that will appropriate money for the next biennium. This excludes revenue generated by the forest improvement fee provided for in 77-5-204* ~~other than the fund containing proceeds derived from land granted to the state pursuant to the Morrill Act of 1862, 7 U.S.C. 301 through 308, and the Morrill Act of 1890, 7 U.S.C. 321 through 329, on the first day of January preceding the new biennium and 10% of the revenue deposited in the capitol building land grant trust fund in the last-completed fiscal year prior to the new biennium~~.

(3) (a) Pursuant to subsection (1), the administrative costs must be determined for each land trust. The department may adopt rules regarding the calculation of administrative costs as necessary.

(b) Each fiscal year, the department shall compare administrative costs for each land trust to the amount of revenue that land trust generates for the account. If the amount of revenue deposited pursuant to 77-1-109(2) exceeds the administrative costs for a specific land trust, the excess revenue must be distributed as provided in subsection (4) of this section.

(c) If revenue deposited from a specific land trust is insufficient to defray the administrative costs associated with managing that land trust and the money held for that trust in the earnings reserve account, established in [section 23], is also insufficient, the board may receive a general fund loan pursuant to 17-2-107 to offset the difference. A general fund loan made pursuant to this subsection

(3)(c) must be repaid within 5 years and must bear interest at a rate of return equal to that earned by the board of investments' short-term investment pool during that period.

~~(3)~~*(4) (a)* Except as provided in ~~subsection (4)~~ *subsections (4)(b) and (5), up to one-third of the* unreserved *distributable revenue* ~~funds~~ remaining in the account at the end of a fiscal year ~~must~~ *may* be transferred to *the earnings reserve account, provided for in [section 23], and accounted for by trust. The remaining unreserved revenue must be transferred to* each of the permanent funds in proportionate shares to each fund's contribution to the account ~~as calculated in 77-1-109(3)~~.

(b) At the end of the fiscal year, unreserved funds received pursuant to 77-1-109(2)(a)(ii) and (2)(a)(iii) must be transferred to each of the permanent funds or to the appropriate trust or distributed to the beneficiary in proportionate shares to each fund's contribution to the account.

~~(4)(a)~~*(5) (a)* The amount of $80,000 each biennium is transferred from the state general fund to an account in the state special revenue fund. The account is statutorily appropriated, as provided in 17-7-502, to the department for the purposes of administering the land granted to the state pursuant to the Morrill Act of 1862, 7 U.S.C. 301 through 308, and the Morrill Act of 1890, 7 U.S.C. 321 through 329. Any unexpended portion of the statutory appropriation may be retained in the account and used for the administration of the Morrill Act land.

(b) At the end of each fiscal year, the department shall pay from the appropriation in subsection ~~(4)~~ *(5)*(a) to the trust containing proceeds derived from land granted to the state pursuant to the Morrill Act of 1862, 7 U.S.C. 301 through 308, and the Morrill Act of 1890, 7 U.S.C. 321 through 329, an amount calculated to be the cost of administering the investment of the fund derived from that trust. The payment must be based upon the percentage that the Morrill Act fund constitutes of the total fund derived from all trust lands. *If the appropriation in subsection (5)(a) is insufficient to pay the calculated administrative cost, a general fund loan may be used pursuant to 17-2-107 to offset the difference.*"

Section 9. Section 77-1-109, MCA, is amended to read:

"77-1-109. Deposits of proceeds in trust land administration account. *(1) The amount of money that is deposited into the trust land administration account established in 77-1-108 may not exceed an amount equal to 25% of distributable revenue generated in the fiscal year completed prior to the legislative session that will appropriate money for the next biennium. This excludes revenue generated by the forest improvement fee provided for in 77-5-204.*

~~(1)~~*(2)* (a) *Subject to subsection (1), the* ~~The~~ department shall~~, until the deposit equals the amount appropriated for the fiscal year pursuant to 77-1-108,~~ deposit into the trust land administration account ~~created by 77-1-108~~ the following:

(i) distributable revenue;

~~(i) mineral royalties;~~

~~(ii)~~*(ii)* the proceeds or income from the sale of easements and timber, except timber from public school and Montana university system lands;

(iii) ~~5% of the interest and income annually credited to the public school fund in accordance with 20-9-341~~ *mineral royalties*; and

(iv) fees collected pursuant to 77-2-328.

(b) As deposits are made, they must be identified and accounted for by trust.

~~(b)~~*(c)* The department may not make deductions from interest or income generated from lands granted to the state pursuant to the Morrill Act of 1862, 7 U.S.C. 301 through 308, and the Morrill Act of 1890, 7 U.S.C. 321 through 329.

~~(2)~~*(3)* After the deposits in subsection ~~(1)~~ *(2)* have been made, the remainder of the proceeds, other than proceeds from timber from Montana university system lands and other than those purchased pursuant to 17-6-340, must be deposited in ~~the appropriate permanent fund and the capitol building land grant trust fund~~ *accordance with 17-3-1003, 18-2-107, and 20-9-341(2).* Timber proceeds from university system lands must be paid over to the state treasurer, who shall deposit the money to the credit of the proper fund for use as provided in 17-3-1003~~(1)~~. Royalty payments purchased pursuant to 17-6-340 must be used as provided in that section and 20-9-622.

~~(3) The amount of money that is deposited into the trust land administration account may not exceed 1 1/8% of the book value balance in each of the permanent funds, other than the fund containing proceeds derived from lands granted to the state pursuant to the Morrill Act of 1862, 7 U.S.C. 301 through 308, and the Morrill Act of 1890, 7 U.S.C. 321 through 329, administered by the department on the first day of January preceding the new biennium and 10% of the previous fiscal year revenue deposited into the capitol building land grant trust fund.~~"

Section 10. Section 77-1-127, MCA, is amended to read:

"77-1-127. Department authorized to control weeds — billing for weed control. (1) If the lessee, licensee, or permittee fails to take corrective action or if a request for an administrative hearing is not made within the time specified in the notice, the department may enter state land covered by the lease, license, or permit and institute appropriate weed control measures. The department may enter into an agreement with a commercial applicator, as defined in 80-8-102, or with the appropriate weed management district organized under 7-22-2102 to control the weeds. The commercial applicator or the weed management district shall agree to carry any insurance required by the department.

(2) The department shall submit a bill to the lessee, licensee, or permittee itemizing the hours of labor, material, and equipment time and listing the actual total cost incurred by the department to take the weed control measures, together with a penalty not exceeding 50% of the total cost. The bill must specify and order a payment due date of 30 days from the date the bill is sent. If payment is not received within 30 days, the department may cancel the lease, license, or permit. Money recovered under this section must be placed in the ~~resource development~~ *trust land administration* account established in ~~77-1-604~~ *77-1-108*, except that penalties collected must be distributed annually to the trusts for the lands on which the weed control action was taken.

(3) If a person receiving an order to take corrective action requests an administrative hearing, the department may not institute control measures until the matter is finally resolved, except in case of an emergency. In an emergency, the person is liable for department costs allowed by this section only to the extent determined appropriate by the director or the court that finally resolves the matter."

Section 11. Section 77-1-605, MCA, is amended to read:

"77-1-605. Types of *resource* developments. *(1)* The developments contemplated *by this part* may include those projects that will develop or

conserve the various state land resources, including water, both surface and underground, grazing land, agricultural land, ~~and~~ timber land*, and other land* to the benefit of the state. They may also include expenses necessary to perfect title to lands claimed by the state ~~which~~ *that* are suitable for development and other expenses or costs ~~which~~ *that* in the judgment of the board are desirable or necessary in order to develop or increase the value of the land or the revenue ~~therefrom~~ *from the land*.

(2) The department may use funds appropriated from the trust land administration account provided for in 77-1-108 for the purposes of subsection (1)."

Section 12. Section 77-1-613, MCA, is amended to read:

"77-1-613. ~~Deduction of portion of income received from~~ *Administrative costs associated with* sale of timber from state trust lands ~~— creation of account~~. (1) ~~There is an account in the state special revenue fund called the state timber sale account. Money in the account may be appropriated by the legislature for use by the department in the manner set out in this section to enhance the revenue creditable to the trusts. There must be placed in the account an amount from timber sales on state lands, other than land granted to the state pursuant to the Morrill Act of 1862, 7 U.S.C. 301 through 308, and the Morrill Act of 1890, 7 U.S.C. 321 through 329, each fiscal year equal to the amount appropriated from the account for the corresponding fiscal year~~ *The department may use funds appropriated from the trust land administration account provided for in 77-1-108 for timber sale preparation, documentation, administration, and contract harvesting costs*.

~~(2) Timber sale program funds deducted under subsection (1) must be directly applied to timber sale preparation, timber sale documentation, and contract harvesting costs as provided in 77-5-219.~~

~~(3)~~*(2)* In order to increase the volume of timber sold at the earliest possible time while continuing to meet the requirements of applicable state and federal laws and in order to avoid unnecessary delays and extra costs that would result from increasing its permanent staff, the department may contract for services that will enable achievement of the purposes of this section and that will achieve the highest net return to the trusts.

~~(4)~~*(3)* To maximize overall return to the trusts, the timely salvage of timber must be considered. However, salvage timber sales may not adversely affect the implementation of green timber sales programs *conducted pursuant to 77-5-201*."

Section 13. Section 77-1-802, MCA, is amended to read:

"77-1-802. (Temporary) **Recreational use — fee.** (1) The fee for recreational use on state trust land must attain full market value whether the license is sold on an individual basis or on a group basis through an agreement with the department of fish, wildlife, and parks as provided in 77-1-815.

(2) Money received by the department from the sale of recreational use licenses must be credited as follows:

(a) Except as provided in subsection (2)(b), license fees must be apportioned on a pro rata basis to the land trusts, in proportion to the respective trust's percentage of acreage in the total acreage of all state land trusts.

(b) ~~Two dollars from the fee for each license~~ *Revenue from recreational use license fees*, less 50 cents *from the fee for each license that must* ~~to~~ be returned to the license dealer as a commission, *is distributable revenue and* must be

deposited *pursuant to 77-1-109 and used to pay for administrative costs as provided in 77-1-108* ~~in the state lands recreational use account established by 77-1-808~~.

(3) The department may contract with the department of fish, wildlife, and parks for the distribution and sale of recreational use licenses through the license agents appointed by and the administrative offices of the department of fish, wildlife, and parks and in accordance with the provisions of Title 87, chapter 2, part 9. (Void on occurrence of contingency—sec. 8, Ch. 596, L. 2003.)

77-1-802. (Effective on occurrence of contingency) **Recreational use license — fee.** (1) The fee for a recreational use license must attain full market value.

(2) Money received by the department from the sale of recreational use licenses must be credited as follows:

(a) Except as provided in subsection (2)(b), license fees must be apportioned on a pro rata basis to the land trusts, in proportion to the respective trust's percentage contribution to the total acreage of all state land trusts.

(b) ~~Two dollars from the fee for each license~~ *Revenue from recreational use license fees*, less 50 cents *from the fee for each license that must* ~~to~~ be returned to the license dealer as a commission, *is distributable revenue and* must be deposited *pursuant to 77-1-109 and used to pay for administrative costs as provided in 77-1-108* ~~in the state lands recreational use account established by 77-1-808~~.

(3) The department may contract with the department of fish, wildlife, and parks for the distribution and sale of recreational use licenses through the license agents appointed by and the administrative offices of the department of fish, wildlife, and parks and in accordance with the provisions of Title 87, chapter 2, part 9."

Section 14. Section 77-1-808, MCA, is amended to read:

"77-1-808. (Temporary) **State lands recreational use ~~account~~.** ~~(1) There is a state lands recreational use account in the state special revenue fund provided for in 17-2-102.~~

~~(2) There must be deposited in the account:~~

~~(a) all revenue received from the recreational use license established by 77-1-802;~~

~~(b) 10% of the revenue received as a result of an agreement with the department of fish, wildlife, and parks for the use and impacts of hunting, fishing, and trapping as provided in 77-1-815; and~~

~~(c) money received by the department in the form of legislative appropriations, reimbursements, gifts, federal funds, or appropriations from any source intended to be used for the purposes of this account.~~

~~(3)~~ Money ~~deposited in the~~ *appropriated for the purpose of managing recreational use of* state lands ~~recreational use account~~ must be used by the department for the following purposes:

~~(a)~~*(1)* compensation pursuant to 77-1-809 for damage to the improvements of leases that has been proved to be caused by recreational users;

~~(b)~~*(2)* assistance in weed control management necessary as a result of recreational use of state lands;

~~(c)~~*(3)* protection of the resource value of the trust assets;

~~(d)~~*(4)* administration and management for the implementation of recreational use of state lands; and

~~(e)~~*(5)* maintenance of roads necessary for public recreational use of state trust land. (Void on occurrence of contingency—sec. 8, Ch. 596, L. 2003.)

77-1-808. (Effective on occurrence of contingency) **State lands recreational use account.** ~~(1) There is a state lands recreational use account in the state special revenue fund provided for in 17-2-102.~~

~~(2) There must be deposited in the account:~~

~~(a) all revenue received from the recreational use license established by 77-1-802; and~~

~~(b) money received by the department in the form of legislative appropriations, reimbursements, gifts, federal funds, or appropriations from any source intended to be used for the purposes of this account.~~

~~(3)~~ Money ~~deposited in the~~ *appropriated for the purpose of managing recreational use of* state lands ~~recreational use account~~ must be used by the department for the following purposes:

~~(a)~~*(1)* compensation pursuant to 77-1-809 for damage to the improvements of leases that has been proved to be caused by recreational users;

~~(b)~~*(2)* assistance in weed control management necessary as a result of recreational use of state lands;

~~(c)~~*(3)* protection of the resource value of the trust assets; and

~~(d)~~*(4)* administration and management for the implementation of recreational use of state lands."

Section 15. Section 77-1-809, MCA, is amended to read:

"77-1-809. Compensation for damage to improvements, growing crops, or livestock. A lessee may apply to the department for reimbursement of documented costs of repair to or replacement of improvements, growing crops, or livestock damaged by recreational users of state lands. The application must include an affidavit by the applicant setting forth the nature of the loss, allegations and reasonable proof supporting the involvement of recreational users, and documentation of repair or replacement costs. Upon review of the application and supporting proof and upon additional investigation as required, the department shall grant, modify, or deny the claim. The department, by reason of payment to the lessee for damage to improvements, is entitled to be subrogated to the rights of the lessee to recover the amount paid from the party causing the damage. Payments under this section must be made from appropriations from the ~~state lands recreational use~~ *trust land administration* account established by ~~77-1-808~~ *77-1-108*, and the liability of the department for damage payments is limited to ~~the available appropriation~~ *10% of revenue received from the recreational use fee and deposited in the account*. Claim applications are to be considered in the order they are received."

Section 16. Section 77-1-810, MCA, is amended to read:

"77-1-810. Weed control management. (1) The department shall establish a weed control management program for the control of noxious weeds reasonably proved to be caused by the recreational use of state lands. The department may by rule establish a noxious weed management program that may include direct compensation for noxious weed control activities or participation in district and county weed control projects or department-initiated weed control activities.

(2) Funding for this program must come from appropriations from the ~~state lands recreational use~~ *trust land administration* account ~~pursuant to 77-1-808~~ *provided for in 77-1-108*."

Section 17. Section 77-1-815, MCA, is amended to read:

"77-1-815. (Temporary) **Recreational use agreement for hunting, fishing, and trapping on legally accessible state trust land.** (1) The board is authorized to enter into an agreement with the department of fish, wildlife, and parks to compensate state trust land beneficiaries for the use and impacts associated with hunting, fishing, and trapping on legally accessible state trust land as defined in department rule. The department may impose restrictions it considers necessary to coordinate the uses of state trust land or to preserve the purposes of the various trust lands. Hunting, fishing, and trapping on state trust land must be conducted in accordance with rules and provisions provided in this part.

(2) An agreement may be issued to the department of fish, wildlife, and parks for a term of up to 10 years. Through this agreement, the board shall recover for the beneficiaries of the trust the full market value for the use and impacts associated with hunting, fishing, and trapping on legally accessible state trust land. ~~Ten percent of the gross receipts from the agreement must be deposited in the state lands recreational use account established in 77-1-808. The remaining 90%~~ *The department may use funds appropriated from the trust land administration account provided for in 77-1-108 to implement and manage the agreement. Except as provided for in 17-7-304, any unexpended amount in the account that resulted from recreational use fees* must be apportioned on a pro rata basis to the land trusts, in proportion to the respective trust's percentage of acreage in the total acreage of all state land trusts.

(3) Any agreement entered into is subject to the following conditions:

(a) The department maintains sole discretion, throughout the term of the agreement, with regard to identifying legally accessible parcels, coordinating uses on state trust land, and *making* any other necessary state trust land management decisions.

(b) An agreement between the department and the department of fish, wildlife, and parks may not convey any additional authority to the department of fish, wildlife, and parks.

(4) During any period that the department of fish, wildlife, and parks and the department have reached an agreement as provided in subsection (1), an individual recreational use license under 77-1-801 or 77-1-802 may not be required for a member of the public to hunt, fish, or trap upon legally accessible state trust land. (Void on occurrence of contingency—sec. 8, Ch. 596, L. 2003.)"

Section 18. Section 77-1-905, MCA, is amended to read:

"77-1-905. Rental provisions for commercial leasing — payments and credits — administration — lease options. (1) The first year's annual rental payment for state trust land leased for commercial purposes must be paid by cashier's check, and payment is due upon execution of the lease. The department may require the lessee of state trust land for commercial purposes to pay the department's cost of the request for proposals process, including publication and other reasonable expenses. Failure to pay the first year's rental at the time of lease execution must result in the cancellation of the lease and forfeiture of all money paid. In the event of cancellation or in the event that the successful proposer is offered and does not accept the lease, the board may enter

into negotiations with other persons who submitted a proposal for commercial purposes in response to the department request for proposals on that tract.

(2) The board shall specify in any commercial lease an annual rental equal to the full market rental value of the land. The annual rent may not be less than the product of the appraised value of the land multiplied by a rate that is 2 percentage points a year less than the rate of return of the unified investment program administered by the board of investments pursuant to 17-6-201. The rate of return from the unified investment program used in this subsection must be determined no less than 30 days prior to the execution of the competitive bid. A commercial lease may include a rental adjustment formula established by the board that periodically adjusts the annual rent provided for in the lease at frequencies specified in the lease. The board may allow a credit against the annual rent due for payments made by the lessee on behalf of the state of Montana for construction of structures and improvements, special improvement district assessments, annexation fees, or other city or county fees attributable to the state's property interest in land leased for commercial purposes. The board may accept as lawful consideration in-kind payments of services or materials equal to the full market value of the rent calculated to be owed on any commercial lease. A lease issued under this part may include an amortization schedule to be used to determine the value to the lessee of improvements when the lease is terminated.

(3) ~~Except for rent received from lands granted to the state pursuant to the Morrill Act of 1862, 7 U.S.C. 301 through 308, and the Morrill Act of 1890, 7 U.S.C. 321 through 329, the~~ *The* department may use ~~up to 10% of the annual rent received from a commercial lease~~ *funds appropriated from the trust land administration account provided for in 77-1-108* to contract with realtors, property managers, surveyors, legal counsel, or lease administrators to administer the commercial lease, either singly or in common with other leases, or to provide assistance to the department in the administration of commercial leases.

(4) In anticipation of entering into a commercial lease, the board may issue an option to lease at a rental rate that the board determines to be appropriate. An option to lease may not exceed a term of 2 years. An option to lease may not be construed to grant a right of immediate possession or control over the land but may only preserve the optionholder's exclusive right to obtain a commercial lease on the land in the future."

Section 19. Section 77-2-328, MCA, is amended to read:

"77-2-328. Additional rules — deposit of fees. The board may prescribe any additional rules for the conduct of sales of state land as in its judgment the interests of the state may demand. The rules may not include a deduction of fees from land granted to the state pursuant to the Morrill Act of 1862, 7 U.S.C. 301 through 308, and the Morrill Act of 1890, 7 U.S.C. 321 through 329. Any fees collected by a rule adopted pursuant to this section must be deposited in the trust land administration account as provided in ~~77-1-108~~ *77-1-109*."

Section 20. Section 77-2-362, MCA, is amended to read:

"77-2-362. State land bank fund — statutory appropriation — rules. (1) There is a state land bank fund. The proceeds from the sale of state trust land authorized by 77-2-361 through 77-2-367 must be deposited into the state land bank fund. The purpose of the state land bank fund is to temporarily hold proceeds from the sale of trust land pending the purchase of other land, easements, or improvements for the benefit of the beneficiaries of the respective

trusts. A separate record of the proceeds received from the sale of trust land for each of the respective trusts must be maintained. Proceeds from the sale of lands that are part of a trust land grant may be used only to purchase land for the same trust.

(2) (a) Proceeds deposited in the state land bank fund, except earnings on those proceeds, are statutorily appropriated, as provided in 17-7-502, to the department for the purposes described in 77-2-361 through 77-2-367. All earnings on the proceeds deposited in the state land bank fund are subject to the provisions of Article X, sections 5 and 10, of the Montana constitution.

(b) ~~Except as provided in subsection (2)(c), up to 10% of the proceeds in the state land bank fund~~ *Funds appropriated from the trust land administration account provided for in 77-1-108* may be used by the department to fund the transactional costs of buying, selling, appraising, or marketing real property. Transactional costs may include realtor's fees, title reports, title insurance, legal fees, and other costs that may be necessary to complete a conveyance of real property.

(c) Proceeds from the sale of lands held pursuant to the Morrill Act of 1862, 7 U.S.C. 301 through 308, and the Morrill Act of 1890, 7 U.S.C. 321 through 328, may not be used for any transactional costs or trust administration purposes for those lands.

(d) The department may hold proceeds from the sale of state land in the state land bank fund for a period not to exceed 10 years after the effective date of each sale. If, by the end of the 10th year, the proceeds from the subject land sale have not been encumbered to purchase other lands, easements, or improvements within the state, the proceeds from that sale must be deposited in the public school fund or in the permanent fund of the respective trust as required by law, along with any earnings on the proceeds from the land sale, unless the time period is extended by the legislature.

(3) The board shall adopt rules providing for the implementation and administration of the state land bank fund, purchases, and sales."

Section 21. Section 77-5-204, MCA, is amended to read:

"77-5-204. Sale of timber — fee for forest improvement. (1) The board may sell timber on state lands or other forest products removed from state lands, as provided in 77-5-214 through 77-5-219, at a per-unit price when, in the board's judgment, it is in the best interest of the state, provided that live timber is not sold for less than full market value.

(2) Timber sold or cut from state lands must be cut and removed under rules that may be prescribed by the board for standing timber preservation and fire prevention. In all cases, the board shall require the person cutting the timber to pile and burn or otherwise dispose of the brush and slash in the manner that may be prescribed by the board.

(3) Before the sale of timber is granted, the value of the timber must be appraised under the direction of the department, upon the request and subject to the approval of the board. An appraisal must show as nearly as possible the per-unit value, when appropriate, of all merchantable forest products.

(4) In addition to the price of the forest products established under subsection (1), the board may require a timber or other forest product purchaser to pay a fee for forest improvement unless the timber is to be harvested from land granted to the state pursuant to the Morrill Act of 1862, 7 U.S.C. 301 through 308, and the Morrill Act of 1890, 7 U.S.C. 321 through 329. Revenue

from the fee must be deposited in the ~~state special revenue fund~~ *forest improvement account, established in [section 24],* to the credit of the department and, as appropriated by the legislature, may be used only for:

(a) disposing of logging slash;

(b) acquiring access and maintaining roads necessary for timber harvesting on state lands;

(c) reforesting, thinning, and otherwise improving the condition and income potential of forested state lands; and

(d) complying with legal requirements for timber harvesting."

Section 22. Section 77-5-219, MCA, is amended to read:

"77-5-219. Contract harvesting account — authorized expenditures — termination. (1) An account, called the contract harvesting account, must be created as a subaccount of the ~~timber sale~~ *trust land administration* account established in ~~77-1-613~~ *77-1-108*, in which to deposit gross revenue and for the payment of expenditures associated with contract harvesting sales. All proceeds of the sale of forest products from a contract harvesting sale must be deposited into this account and must be retained in the account to be used to pay for all contract harvesting costs, as provided in subsection (2).

(2) Expenditures may be credited against the account for contract harvesting costs. Personnel services costs for state employees may not be credited against the account.

(3) An amount equal to the contract harvesting costs must be retained in the account and must be deducted from the gross proceeds to determine the net proceeds. The net proceeds from the sale of the forest products must be distributed to the appropriate trust.

(4) An initial account balance must be created by transferring up to $500,000 into the contract harvesting account from the ~~timber sale~~ *trust land administration* account.

(5) If the contract harvesting program is terminated or discontinued for more than 10 years, any balance remaining in the contract harvesting account in excess of $500,000 must be distributed to the appropriate trust. The remaining balance up to $500,000 must be transferred back to the ~~timber sale~~ *trust land administration* account provided for in ~~77-1-613~~ *77-1-108*."

Section 23. Earnings reserve account. (1) There is an earnings reserve account in the state special revenue fund.

(2) Funds are deposited in the earnings reserve account in accordance with the provisions of 77-1-108(4)(a) and must be accounted for by trust.

(3) The balance of this account may not exceed two times the appropriation to the trust land administration account for the last completed fiscal year prior to the legislative session that will appropriate money for the next biennium.

(4) The earnings reserve account must be invested. Any interest earned must be deposited in the earnings reserve account in proportionate share to each fund's contribution to the account.

Section 24. Forest improvement account. (1) There is a forest improvement account in the state special revenue fund.

(2) Forest improvement fees collected pursuant to 77-5-204 must be deposited in the forest improvement account and accounted for by trust.

(3) Funds in the forest improvement account must be invested. Any interest earned must be deposited in the forest improvement account in proportionate share to each fund's contribution to the account.

Section 25. Unencumbered balances — transfer. (1) Except as provided in 17-7-304, any unencumbered fund balances remaining at the end of the fiscal year prior to [the effective date of this act] must be transferred to the earnings reserve account, established in [section 23], from the former:

(a) resource development account;

(b) state timber sale account;

(c) state lands recreational use account; and

(d) state special revenue account into which commercial leasing revenue was deposited pursuant to 77-1-905(3).

(2) The distribution of any unencumbered balances must occur:

(a) in proportionate share to each fund's contribution to the accounts; and

(b) within 3 months of [the effective date of this act].

Section 26. Repealer. Sections 77-1-602, 77-1-604, 77-1-606, 77-1-607, 77-1-608, and 77-1-609, MCA, are repealed.

Section 27. Codification instruction. [Section 23] is intended to be codified as an integral part of Title 77, chapter 1, part 1, and the provisions of Title 77, chapter 1, part 1, apply to [section 23].

Section 28. Codification instruction. [Section 24] is intended to be codified as an integral part of Title 77, chapter 5, part 2, and the provisions of Title 77, chapter 5, part 2, apply to [section 24].

Section 29. Effective date. [This act] is effective July 1, 2009.

Approved May 6, 2009

CHAPTER NO. 466

[SB 171]

AN ACT CREATING THE OFFENSE OF DAMAGE TO RENTAL PROPERTY; PROVIDING A PENALTY; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Damage to rental property. (1) A tenant commits the offense of damage to rental property if the tenant purposely or knowingly destroys, defaces, damages, impairs, or removes any part of the premises with a value of at least $1,000 over the amount of any damage deposit or, if no damage deposit was paid, a value of at least $1,000 in violation of 70-24-321(2) or 70-33-321(3).

(2) A person convicted of the offense of damage to rental property shall be fined an amount not to exceed $1,000 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

(3) A person convicted of damage to rental property must be ordered to make restitution in an amount and manner to be set by the court pursuant to 46-18-201(5) and 46-18-241 through 46-18-249.

(4) A prosecution under this section is independent of and does not constitute a waiver of any of the rights, duties, obligations, and remedies otherwise provided for under Title 70, chapter 24 or 33.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 45, chapter 6, part 1, and the provisions of Title 45, chapter 6, part 1, apply to [section 1].

Section 3. Effective date. [This act] is effective on passage and approval.

Section 4. Applicability. [This act] applies to criminal acts committed on or after [the effective date of this act].

Approved May 6, 2009

CHAPTER NO. 467

[SB 263]

AN ACT REVISING LAWS GOVERNING THE OFFICE OF STATE PUBLIC DEFENDER; REQUIRING ASSIGNED COUNSEL TO FILE CERTAIN COSTS WITH THE DISTRICT COURT; CLARIFYING THAT AN ASSIGNMENT OF COUNSEL BY THE OFFICE OF STATE PUBLIC DEFENDER IS SUBJECT TO INQUIRY AND DENIAL BY A COURT; AMENDING SECTIONS 46-8-113 AND 47-1-111, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-8-113, MCA, is amended to read:

"46-8-113. Payment by defendant for assigned counsel — *costs to be filed with court.* (1) As part of or as a condition under a sentence imposed under the provisions of this title, the court ~~may~~ *shall* require a convicted defendant to pay the costs of counsel assigned to represent the defendant *as follows, except as provided in subsections (2)~~.~~ and (3):*

(a) in every misdemeanor case, $150; and

(b) in every felony case, $500.

(2) Costs must be limited to costs incurred by the office of state public defender, provided for in 47-1-201, for providing the defendant with counsel in the criminal proceeding.~~.~~ *If the criminal proceeding includes a jury trial, counsel assigned by the office of state public defender shall file with the court a statement of the hours spent on the case and the costs and expenses incurred and, except as provided in subsection (3), the court shall require the defendant to pay the costs of counsel and other costs and expenses as reflected in the statement.*

(3) The court may not sentence a defendant to pay the costs for assigned counsel unless the defendant is or will be able to pay them. In determining the amount and method of payment of costs, the court shall take into account the financial resources of the defendant and the nature of the burden that payment of costs will impose.

(4) A defendant who has been sentenced to pay costs may at any time petition the court that sentenced the defendant for remission of the payment of costs or of any unpaid portion of the costs. If it appears to the satisfaction of the court that payment of the amount due will impose manifest hardship on the defendant or the defendant's immediate family, the court may remit all or part of the amount due in costs or modify the method of payment."

Section 2. Section 47-1-111, MCA, is amended to read:

"47-1-111. Eligibility — determination of indigence — rules. (1) (a) ~~Beginning July 1, 2006, when~~ *When* a court orders the office to assign counsel,

the office shall immediately assign counsel prior to a determination under this section.

(b) If the person for whom counsel has been assigned is later determined pursuant to this section to be ineligible for public defender services, the office shall immediately notify the court so that the court's order may be rescinded.

(c) A person for whom counsel is assigned is entitled to the full benefit of public defender services until the court's order requiring the assignment is rescinded.

(d) Any determination pursuant to this section is subject to the review and approval of the court. *The propriety of an assignment of counsel by the office is subject to inquiry by the court, and the court may deny an assignment.*

(2) (a) An applicant who is eligible for a public defender only because the applicant is indigent shall also provide a detailed financial statement and sign ~~an~~ *an* affidavit.

(b) The application, financial statement, and affidavit must be on a form prescribed by the commission.

(c) Information disclosed in the application, financial statement, or affidavit is not admissible in a civil or criminal action except when offered for impeachment purposes or in a subsequent prosecution of the applicant for perjury or false swearing.

(d) The office may not withhold the timely provision of public defender services for delay or failure to fill out an application. However, a court may find a person in civil contempt of court for a person's unreasonable delay or failure to comply with the provisions of this subsection (2).

(3) An applicant is indigent if:

(a) the applicant's gross household income, as defined in 15-30-171, is at or less than 133% of the poverty level set according to the most current federal poverty guidelines updated periodically in the federal register by the United States department of health and human services under the authority of 42 U.S.C. 9902(2); or

(b) the disposable income and assets of the applicant and the members of the applicant's household are insufficient to retain competent private counsel without substantial hardship to the applicant or the members of the applicant's household.

(4) A determination of indigence may not be denied based solely on an applicant's ability to post bail or solely because the applicant is employed.

(5) A determination may be modified by the office or the court if additional information becomes available or if the applicant's financial circumstances change.

(6) The commission shall establish procedures and adopt rules to implement this section. Commission procedures and rules:

(a) must ensure that the eligibility determination process is fair and consistent statewide;

(b) must allow a qualified private attorney to represent an applicant if the attorney agrees to accept from the applicant a compensation rate that will not constitute a substantial financial hardship to the applicant or the members of the applicant's household;

(c) may provide for the use of other public or private agencies or contractors to conduct eligibility screening under this section;

(d) must avoid unnecessary duplication of processes; and

(e) must prohibit individual public defenders from performing eligibility screening pursuant to this section."

Section 3. Contingent voidness. If House Bill No. 2 is passed and approved and does not include the restoration of the $250,000 per year general fund reduction in the Office of State Public Defender related to the passage and approval of [this act], then [this act] is void.

Section 4. Effective date. [This act] is effective July 1, 2009.

Approved May 6, 2009

CHAPTER NO. 468

[SB 322]

AN ACT REVISING LAWS RELATED TO APICULTURE; REQUIRING AN APPLICATION FEE FOR A NEW REGISTRATION OF AN APIARY SITE; REVISING APIARY REREGISTRATION, LOCATION, ABANDONMENT, INSPECTION, QUARANTINE, FEE, AND PENALTY PROVISIONS; EXEMPTING HOBBYIST APIARY SITES FROM REGISTRATION PROVISIONS; AMENDING SECTIONS 80-6-101, 80-6-102, 80-6-103, 80-6-104, 80-6-111, 80-6-112, 80-6-113, 80-6-114, 80-6-201, 80-6-202, 80-6-203, AND 80-6-303, MCA; AND REPEALING SECTIONS 80-6-105 AND 80-6-115, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Application fee. At the time a new application to register an apiary site is submitted to the department by an owner or applicant not currently registered in the department's apiary database, the owner or applicant shall pay an application fee. The fee may not be less than $10 or more than $100. The department may adjust the fee by rule to maintain adequate funding for this part.

Section 2. Section 80-6-101, MCA, is amended to read:

"80-6-101. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Apiary" means a location where one or more colonies of bees are kept or one or more hives containing honeycombs or bee combs are kept.

(2) "Bee diseases" means a disease or abnormal condition of egg, larval, pupal, or adult stages of bees. Specific bee diseases that are subject to regulation under parts 1 through 3 of this chapter must be designated by department rule.

(3) "Bees" means any stage ~~of the bees in the genus~~ Apis *mellifera and all European subspecies*.

(4) "Colony" means the *bees and the* hive and all equipment used in connection with ~~the~~ *that* hive.

(5) "Department" means the department of agriculture, provided for in 2-15-3001.

(6) "Equipment" means hives, supers, frames, veils, gloves, or any apparatus, tools, machines, or other devices used in the handling and manipulation of bees, honey, wax, and hives ~~and~~. *The term* includes containers of honey and wax used in an apiary or in transporting bees and their products and *includes* apiary supplies.

(7) "Family unit" means two or more persons living together or residing in the same dwelling, house, or other place of residence.

(8) "General apiary *site*" means an apiary *site* other than a pollination apiary *site*, landowner apiary *site*, or hobbyist apiary *site*.

(9) "Hive" means a frame hive, box hive, box, barrel, log gum, skep, or other receptacle or container or a part of a container, natural or artificial, used as a domicile for bees.

(10) "Hobbyist apiary *site*" means an apiary ~~owned~~ *site registered* by a hobbyist beekeeper.

(11) "Hobbyist beekeeper" means a person who owns a total of no more than five hives.

(12) *(a)* "Landowner" means the person who has the use and exclusive possession of the land upon which ~~a landowner~~ *the* apiary is to be registered.

(b) ~~However,~~ *The term does not include* a person leasing or renting land for the primary purpose of locating or establishing an apiary ~~is not considered a landowner~~.

(13) "Landowner apiary *site*" means an apiary ~~owned~~ *site registered* by a landowner ~~as defined in this section~~.

(14) "Persons" means individuals, associations, partnerships, or corporations.

(15) "Pest" means the African honeybee (Apis mellifera scutellata *and Apis mellifera capensis*), those honeybees Africanized by interbreeding with the African honeybee, and any other parasite or predator that attacks the egg, larval, pupal, or adult stages of the honeybee that are subject to regulation under parts 1 through 3 of this chapter as identified by rule of the department.

(16) "Pollination apiary *site*" means an apiary ~~operated~~ *site registered* for pollination of a commercial seed, fruit, or other commercial agricultural product as provided in 80-6-112."

Section 3. Section 80-6-102, MCA, is amended to read:

"80-6-102. Registration *classes — reregistration — fees.* (1) ~~A~~ *Except as provided in 80-6-114, a* person who owns or possesses an apiary in the state shall, before April 1 each year, ~~register~~ *reregister* the apiary *site. A person who owns or possesses any bees, hives, colonies, or beekeeping equipment in this state or who owns or possesses an apiary in this state and who fails or refuses to register or reregister as provided in this part is subject to a civil penalty as set forth in 80-6-303.*

(2) (a) Before a certificate of registration may be issued for an apiary site, the owner or applicant for a certificate shall pay a reregistration fee to the department.

(b) The annual fee for reregistering an apiary site may not be less than $10 or more than $50. The department may adjust the fee by rule to maintain adequate funding for this part.

(c) If, after reregistration, additional or new apiary sites are authorized for a registered apiary, fees must be paid by the registrant in accordance with subsection (2)(b).

(d) A site reregistration not applied for by April 1 of each year is a delinquent reregistration and is subject to a penalty fee of 10% of the regular reregistration fee or $10, whichever is greater.

(3) (a) A registrant who fails to apply for reregistration by April 1 of each year must be notified of the delinquency by the department. Notification must be by certified mail, addressed to the registrant at the registrant's most recent address listed in the department's apiary registration files and is considered sufficient when deposited in a United States post office box or mail box on or before April 21.

(b) If a delinquent reregistration is not reregistered by June 1, the registration is forfeited and all rights under the registration are terminated. After June 1, apiary sites that have not been reregistered may be deleted from the registration database.

(4) There are four classes of apiary *site* registration. The conditions under which the department may issue certificates of registration for each class are specified in 80-6-111 through ~~80-6-115~~ *80-6-114*.

~~(2) Applications shall be made to the department for registration application blanks.~~

~~(3)~~*(5)* Registration application blanks ~~shall~~ *must* be furnished by the department. The applicant shall provide the following information:

(a) a statement of the *applicant's* name ~~and place of residence~~*, telephone number, and mailing address*;

~~(b) the number of colonies of bees, hives, and equipment in the apiary;~~

~~(c)~~*(b)* the location of the apiary *site*, ~~setting forth~~ specifically the ~~location by sectional division to the~~ nearest quarter section, ~~and the~~ *section,* township*,* and range *or the GPS coordinates of the site* ~~and, if within the corporate limits of a town or city, the number of the lot and block in the town or city~~;

~~(d)~~*(c)* the name of the *current* owner, renter, or occupant of the land on which the apiary *site* is located*;* ~~and,~~

(d) when the application is for a new apiary *site* being registered for the first time, the application must also show that the owner, renter, or occupant of the land has consented *in writing* to the apiary being located on ~~his~~ *that* land;

~~(e) the date when the apiary was first established;~~

~~(f)~~*(e)* the class of apiary *site* registration for which application is being made; and

~~(g)~~*(f)* other information *that* the department may require under rules adopted by it for the protection, safety, and welfare of the public and the beekeeping industry.

~~(4)~~*(6)* Upon receipt of the application and payment of the fees prescribed, the department may issue ~~a certificate~~ *certificates* of registration for ~~an~~ *the* apiary *sites*, setting forth the name of the owner, the specific ~~location~~ *locations*, ~~the number of colonies of bees or size of the apiary authorized under the registration,~~ and the class of apiary *sites* authorized by the registration.

~~(5)~~*(7)* In issuing certificates of registration for ~~apiaries~~ *apiary sites*, if there is a conflict between applicants with respect to location, the department shall give preference to the applicant having the oldest ~~continuous~~ *continuously* registered apiary *site*.

~~(6) Certificates of registration may not be issued for new apiaries which are within such close proximity to established registered apiaries that there is or may be danger of spread of disease or pests or that the proximity will or may interfere with the proper feeding and honey flow of established apiaries.~~

~~(7) Before registering new apiaries, the department shall give at least 10 days' notice by certified mail to all registered apiarists likely to be affected by the proposed new apiary so that any party affected may file written protests with the department against registering the new apiary. If a written protest is filed, the department may require a hearing. Notice of the time and place of the hearing shall be given all parties interested by certified mail at least 10 days before the date set for the hearing.~~

(8) Suitable evidence of registration ~~furnished by the department shall~~ *must* be posted by the apiary registrant in a conspicuous place at or near the apiary *site*. If an owner has more than one apiary *site*, suitable evidence of registration ~~furnished by the department shall~~ *must* be posted at each apiary *site*. *If the identity of hives cannot be determined, the apiary site may be quarantined by the department and all hives may be removed, destroyed, sold at public auction, or handled in another appropriate manner at the discretion of the department.*

~~(9) A registration not applied for by April 1 of each year is a late registration and incurs an added penalty of 10% of the regular registration fee or $10, whichever is greater. Registrants who fail to apply for reregistration by April 1 of each year shall be notified of their delinquency by the department. The notification shall be by certified mail and is sufficient if deposited in a United States post office or mail box and addressed to the registrant at his last address appearing in the apiary registration files of the department at least 10 days before May 1. The registration of an apiary for which application for reregistration is not made by May 1 of each year is forfeited and all rights under the registration terminate.~~

~~(10) Any person who owns or possesses any bees, hives, colonies, or beekeeping equipment in this state or who owns or possesses an apiary in this state and who fails or refuses to register the same as provided in this part is guilty of a misdemeanor and upon conviction thereof is subject to the penalties set forth in 80-6-303.~~

~~(11) Nothing contained in this section or in 80-6-111 through 80-6-115 shall be construed as invalidating, canceling, amending, terminating, or extending any certificate of registration issued by the department prior to October 1, 1981. All such previously issued certificates of registration remain in effect for the period for which they were issued; subject, however, to forfeiture, lapse, abandonment, and termination in the manner provided by law.~~

(9) A reregistration may not be granted pursuant to this section if a civil penalty due under 80-6-303 has not been paid."

Section 4. Section 80-6-103, MCA, is amended to read:

"80-6-103. Changing locations — ~~enlarging or selling apiaries~~ *transfer of apiary sites.* (1) An owner of ~~an established~~ *a* registered apiary *site* may not change the location of the apiary *site* without first receiving from the department authorization to establish the new apiary *site if the apiary site is outside the currently registered quarter-section*. In making the application, ~~he~~ *the owner* shall specify the location of the apiary *site* with the same particularity as in the application for original registration.

(2) If the new apiary *site* is not used within 60 days after a new certificate of registration is issued, the certificate of registration lapses and all rights under the registration terminate. ~~Registrations for new apiaries may not be issued for greater areas than the applicant can show are reasonably necessary for his needs consistent with good beekeeping practice.~~

~~(2)~~*(3)* A registered apiary *site* may be ~~sold or~~ transferred ~~to a purchaser~~ subject to parts 1 through 3 *of this chapter* if all bees and equipment on the apiary *site* are sold to the ~~purchaser~~ *transferee*.

~~(3) No person may increase the number of hives on an apiary to exceed the number of hives authorized by his certificate of registration for that apiary, except that a person may increase the number of hives on a general apiary beyond the number authorized by the certificate of registration in order to protect his bees during adverse weather or crop conditions or to protect his bees and hives from bears or other predators. A person may also enlarge a general apiary during the spring buildup and in the fall after the end of the honey season in order to gather his bees for shipment out of the state or to winter his bees on that apiary.~~

~~(4) A person enlarging an apiary so as to exceed the number of hives herein allowed is guilty of a misdemeanor and is subject to the penalties set forth in 80-6-303.~~"

Section 5. Section 80-6-104, MCA, is amended to read:

"80-6-104. Apiaries — termination of rights — abandonment. (1) ~~The~~ *Except for a hobbyist apiary site, the* registration of an apiary ~~which is~~ *site that is* not stocked with ~~bees during at least part of the normal build-up or honey-producing season is forfeited and all rights under the certificate of registration terminate~~ *at least 10 working hives for 10 consecutive days between April 1 and October 1 of each year is considered forfeited. Exceptions may be granted by the department if sites cannot be used because of a natural disaster or other circumstances. When an exception is granted, movement of hives must be to other registered apiary sites.*

(2) ~~An~~ *If an* apiary *site is* not regularly attended in accordance with good beekeeping practice~~, which~~ *and that lack of attendance* comprises a hazard or threat to disease or pest control in the beekeeping industry*,* ~~or which~~ *if* by reason of its physical condition or construction *an apiary site* cannot be inspected, or *if an* ~~any~~ apiary *site is* not registered in accordance with 80-6-102, *the apiary site* may be considered ~~an~~ abandoned ~~apiary~~ and *the bees and equipment at the site* may be seized by the department.

(3) Any pest-infected *equipment,* ~~or~~ diseased equipment, or equipment ~~which~~ *that* by reason of its physical condition or construction cannot be inspected may be burned~~, and the remainder~~.

(4) Abandoned equipment and bees may be sold *by the department* at public auction. Proceeds, after the cost of the sale is deducted, ~~shall~~ *may* be returned to the former owner or ~~his~~ *the owner's* estate*, if the owner is known, or placed in the apiary account in 80-6-315 if the owner cannot be determined*.

(5) Before burning or selling any equipment, the department shall give the owner or person in charge *of the apiary site* a written notice at least 5 days before the burning or sale. The notice ~~shall~~ *must* be ~~given~~ by certified mail or personal service upon the owner or person in charge of the ~~property~~ *apiary site*. If the owner or person in charge *of the apiary site* cannot be located, a certified letter sent to the owner's ~~last~~ *most recent* address registered with the department is sufficient notice under this section. *At least 5 days before the burning or sale, a legal notice must also be published in a newspaper in the county where the equipment was found.*

(6) Before burning any equipment pursuant to subsection (3), the department shall notify the owner of the land on which the apiary site is located."

Section 6. Section 80-6-111, MCA, is amended to read:

"80-6-111. General apiary *site* registrations. (1) In order to control, limit, and prevent the spread of bee diseases, pests, and other contagious or infectious diseases among bees, hives, and apiaries and to control, limit, and prevent interference with the proper feeding and honey flow*, as it relates to bee health* of established apiaries, general ~~apiaries registered to different persons on October 1, 1981,~~ *apiary sites* must be located 3 or more miles apart~~,~~ except as otherwise provided in this part. The department ~~shall~~ *may* not register or issue a certificate of registration for any ~~general~~ apiary *site* ~~that is located less than 3 miles from a general apiary registered to another person,~~ except as ~~otherwise~~ provided in this section.

(2) A person may register a general apiary *site* that is situated less than 3 miles from another general apiary ~~he~~ *site that person* has registered ~~so long as~~ *if* the location of the general apiary *site* being applied for is 3 or more miles from general ~~apiaries~~ *apiary sites* registered to other persons.

(3) A general apiary *site* may be registered even ~~though~~ *if* it is less than 3 miles from any registered pollination apiary *site*, landowner apiary *site*, or hobbyist apiary *site*.

(4) *(a)* A person with an existing apiary *site* that is located less than 3 miles from an existing general apiary *site* ~~registered to another person~~ may register ~~his~~ *that* apiary *site* as a general apiary *site* under the following conditions:

~~(a) his apiary was established and registered with the department as a general apiary under the department's rules in effect prior to July 1, 1981;~~

~~(b)~~*(i)* ~~his~~ *the existing* apiary *site* is registered with the department as a general apiary *site* as of July 1, 1981; ~~and~~

~~(c)~~*(ii)* the registration of ~~his~~ *the existing* apiary *site* has not been forfeited or abandoned under the provisions of 80-6-102~~(9)~~*(3)* or 80-6-104.

(b) General apiary sites registered prior to July 1, 1981, may be moved if authorized by the department.

(5) Certificates of registration may not be issued for new apiary sites that are within such close proximity to established registered apiary sites that there is or may be danger of the spread of disease or pests or if the proximity will or may interfere with the proper feeding and honey flow of established apiaries.

(6) Before registering new apiary sites, the department shall give at least 10 days' notice by certified mail to all registered apiarists who are likely to be affected by the proposed new apiary site. Any affected party may file a written protest with the department against registering the new apiary site. If a written protest is filed, the department may require a hearing. Notice of the time and place of the hearing must be given to all interested parties by certified mail at least 10 days before the date set for the hearing. If a hearing is held, the department in its discretion may issue or refuse to issue the new apiary site registration."

Section 7. Section 80-6-112, MCA, is amended to read:

"80-6-112. Pollination apiary *site* registrations. (1) The department may grant pollination apiary *site* registrations to commercial seed ~~and~~ *producers,* fruit producers*,* or other commercial agricultural producers under the following conditions:

(a) (i) the applicant must own, lease, or rent the land upon which the pollination apiary *site* is to be located and the applicant must use the land for the

purpose of growing a commercial seed, fruit, or other crop ~~which~~ *that* is dependent upon bees or other insects for pollination;

(ii) the applicant ~~does~~ *may* not own the bees or the hives ~~which~~ *that* are to be placed upon the pollination apiary *site*; and

(iii) the only purpose of the *pollination* apiary *site* is to pollinate a commercial agricultural crop.

(b) The applicant shall provide the department with all pertinent information necessary to determine if pollination ~~apiaries~~ *apiary sites* are needed to *adequately* pollinate the applicant's crop ~~adequately~~.

(c) The department may refuse to register a pollination apiary *site* based upon its own investigation ~~of the matter~~, but if the department approves the application, it shall specify the number and location of pollination ~~apiaries~~ *apiary sites* needed for the purpose of *adequately* pollinating the applicant's commercial agricultural crop ~~adequately~~.

(2) A pollination apiary *site* registration is valid only for the time ~~period~~ specified by the department, and all pollination apiaries must be removed within 2 weeks after the full bloom period of the crop to be pollinated.

(3) ~~No~~ *A* certificate of registration of a pollination apiary *site* may *not* be leased, assigned, or transferred ~~and no person other~~. *A person, other* than the pollination apiary *site* registrant, may *not* exercise any rights or privileges, directly or indirectly, authorized by the certificate of registration.

(4) The department shall attempt to notify any general apiarist with registered apiary sites located within 3 miles of a proposed pollination apiary site of the potential location of the proposed pollination apiary site."

Section 8. Section 80-6-113, MCA, is amended to read:

"80-6-113. Landowner apiary *site* registrations. (1) The department may grant landowner apiary *site* registrations under the following conditions:

(a) The applicant must be a landowner~~, as defined in 80-6-101,~~ and must own the land upon which the apiary *site* will be located.

(b) The applicant must own the bees and the hives that will be placed on the apiary *site*.

(c) The bees and the hives must be personally managed and operated by the applicant.

(2) ~~No~~ *A* certificate of registration of a landowner apiary *site* may *not* be leased, assigned, or transferred~~, and no person other~~. *A person, other* than the landowner apiary *site* registrant, may *not* exercise any rights or privileges, directly or indirectly, authorized by the certificate of registration.

(3) The department shall attempt to notify any general apiarist with registered apiary sites located within 3 miles of a proposed landowner apiary site of the potential location of the landowner apiary site.

(4) When a landowner apiary business changes to a general apiary business, the landowner apiary sites established and registered with the department as landowner apiary sites under the department's rules in effect prior to July 1, 2009, remain valid regardless of location with regard to other apiary sites, including general apiary sites within 3 miles, as long as the registration of the landowner apiary sites has not been forfeited or abandoned pursuant to 80-6-102 or 80-6-104."

Section 9. Section 80-6-114, MCA, is amended to read:

"80-6-114. Hobbyist apiary *site* — *voluntary* registrations. *(1) A hobbyist apiary site is exempt from the registration provisions of this part, but a hobbyist beekeeper may voluntarily register with the department under this section. A hobbyist beekeeper voluntarily registering a site shall pay any required registration fee but is not required to reregister pursuant to 80-6-102.*

~~(1)~~*(2)* The department may grant hobbyist apiary *site* registrations to hobbyist beekeepers under the following conditions:

(a) The applicant ~~must~~ *may* not own a total of more than five hives, and all of the hives must be placed on the hobbyist apiary *site*.

(b) The applicant must own the bees and the hives and must personally manage and operate the bees and the hives.

(c) Only one hobbyist *apiary site* registration is allowed *for* an applicant and only two hobbyist apiary *site* registrations are allowed *for* a family unit.

~~(d) If the department determines that too many hobbyist apiaries are being registered within too close proximity of each other or of other established apiaries so that there is or may be danger of the spread of bee diseases, pests, or other contagious or infectious diseases among bees or apiaries or that there will be interference with the proper feeding and honey flow of established apiaries, the department may refuse to grant any further hobbyist registrations in the locality and area of the danger, in accordance with 80-6-102(6).~~

~~(2)~~*(3)* ~~No~~ *A* certificate of registration of a hobbyist apiary *site* may *not* be leased, assigned, or transferred~~, and no person other~~. *A person, other* than the hobbyist apiary *site* registrant, may *not* exercise any rights or privileges, directly or indirectly, authorized by the certificate of registration."

Section 10. Section 80-6-201, MCA, is amended to read:

"80-6-201. Apiaries — powers and duties of ~~the~~ department. (1) To prevent the spread of pests and contagious and infectious disease among bees and apiaries, the department may:

(a) enter private land containing an apiary site and fly over or enter any farm, railroad right-of-way, or other grounds or premises containing an apiary site to determine the health or ownership of the bees. The department shall provide at least 24 hours' notice to a private landowner before entering private land.

~~(a)~~*(b)* order the transfer of colonies of bees from hives or containers that cannot be properly examined for brood or other diseases to other hives or containers;

~~(b)~~*(c)* order disinfection of any ~~bee~~ *bees*, ~~beehive~~ *hives*, brood comb, or any other equipment that is infected or contaminated with disease or pests and burn ~~any~~ *the* infected or contaminated ~~bee~~ *bees*, ~~beehive~~ *hives*, brood comb, or any other equipment if, in its judgment, disinfection will not remove the infection or contamination. Before burning any property, the department shall give the ~~owner or~~ person ~~in charge~~ *to whom the apiary site is registered or the owner of an unregistered hobbyist apiary site* a written notice at least 5 days before the date the property will be burned. The notice must be given by certified mail or personal service ~~upon the owner or person in charge of the property~~. *Before burning any equipment, the department shall notify the owner of the land on which the apiary site is located.*

~~(c)~~*(d)* quarantine any apiary *site* where pests, foulbrood, or any *other* contagious or infectious diseases are present ~~and, during the~~ *with the following conditions:*

(i) During the quarantine, *the department shall* prevent the removal from the apiary *site* of any bees or equipment except under a special permit issued by the department permitting the removal under conditions prescribed by ~~it~~ *the department*.

(ii) A person may not sell or offer for sale any apiary *site*, bees, or equipment under quarantine unless a permit authorizing the sale or removal is issued by the department.

(iii) Written notice of quarantine must be posted by the department, owner, or person in charge at the quarantined apiary *site* at a conspicuous place, and a copy must be personally served or sent by certified mail to the owner of the apiary *site at the owner's last-known address* or *to the* person in charge. The quarantine continues in effect until it is ordered removed and a copy of the removal order *is* served in the same manner.

(iv) The owner or person in charge of the quarantined apiary site may enter the premises for standard care and maintenance of the bees.

~~(d)~~*(e)* establish by rule interior and exterior quarantines to prevent the entry or spread of diseases or pests that are not known to occur in Montana;

~~(e)~~*(f)* inspect apiaries, hives, equipment, or premises for the presence of disease or pests;

(g) inspect any apiary site at the request of and at the expense of any interested party;

~~(f)~~*(h)* promulgate and enforce rules adopted pursuant to parts 1 through 3 *of this chapter*.

(2) A person failing to comply with a rule, order, or provision of a quarantine pursuant to this section is subject to penalties provided for in 80-6-303.

(3) The department may provide disease and pest inspection, sampling, and laboratory analysis services for a fee. The department shall adopt rules setting the fee commensurate with costs and establishing procedures for sampling and analysis.

(4) The department may enter into agreements with the United States department of agriculture, other federal agencies, other states, municipal authorities, and individual Montana beekeepers in carrying out the provisions of this part."

Section 11. Section 80-6-202, MCA, is amended to read:

"80-6-202. Inspection of bees or used beekeeping equipment transported interstate. (1) ~~A person may not transport or bring into the state bees or used~~ *Bees and* beekeeping equipment ~~or containers, including honey to be extracted~~, unless under a ~~compliance agreement~~ *certificate of health that allows for seasonal transportation of bees and beekeeping equipment into Montana without inspection,* ~~or certified and marked as being apparently pest- and disease-free by an official responsible for apiary regulations of the state from which they are being moved~~ *that are transported into Montana from another state must be certified as pest-free and disease-free by either the originating state or by the department. A person who transports bees or beekeeping equipment into Montana shall present the required certification to the department. If the bees or beekeeping equipment cannot be certified as pest-free and disease-free, the bees or beekeeping equipment must be treated appropriately under the supervision of a federal authority, a representative of the originating state, or a representative of the department.*

(2) The department must be advised in advance of the date of entry and the destination of the bees or material. Used equipment or bees transported into the state may be quarantined by the department, in accordance with 80-6-201~~(1)(c)~~*(1)(d)*, from the time they enter the state until they have been inspected and found to be apparently free of pests and diseases or until they have been in use while under quarantine for a minimum of 90 days ~~and at least until the following July 1~~. The beekeeping materials are also subject to quarantine as provided in this section.

(3) The department may also inspect and certify as being apparently ~~pest-~~*pest-free* and disease-free bees or beekeeping equipment to be transported from Montana to a state that requires an inspection in the state of origin.

~~(2)~~*(4)* (a) The costs of making the inspections provided for in ~~subsection (1)~~ *subsections (1) through (3)* must be paid ~~in advance~~ by the owner of the bees or equipment *following the inspection*.

(b) Inspection fees for persons without a valid Montana ~~compliance agreement~~ *inspection* must include:

(i) per diem pursuant to Title 2, chapter 18, part 5;

(ii) necessary traveling expenses; *and*

(iii) an hourly rate established by department rule~~; and~~

~~(iv) except as provided in this subsection (2)(b)(iv), a fee of $75 for the issuance of a certificate of health~~. The department may adjust the fee by rule to maintain adequate funding for this part. The fee may not be less than $50 or more than ~~$100~~ *$150*.

(c) Persons transporting bees interstate with a valid Montana ~~compliance agreement~~ *certificate of health* shall pay inspection fees that include:

(i) per diem pursuant to Title 2, chapter 18, part 5;

(ii) necessary traveling expenses; and

(iii) ~~except as provided in this subsection (2)(c)(iii),~~ a fee ~~of $75~~ for the issuance of a certificate of health*, which may not be less than $50 or more than $150*. The department may adjust the fee by rule to maintain adequate funding for this part. ~~The fee may not be less than $50 or more than $100.~~

(d) If inspection by an official of any other state is considered insufficient for the protection of the Montana bee industry by the department, the department shall ~~so~~ state *that fact* by public statement. Importation of bees or beekeeping materials, including honey for extracting, from that other state must be denied unless the materials, bees, or honey is first inspected by the department and there is obtained from ~~it~~ *the department* a certificate of inspection showing that the materials, bees, or honey is apparently free from pests and contagious or infectious disease. The costs of making the inspection must be paid by the person requesting it, and inspection may be made at any point outside this state convenient to the person making the inspection. The department may require that the costs of making the inspection be paid in advance, and the costs must include:

(i) per diem pursuant to Title 2, chapter 18, part 5;

(ii) necessary traveling expenses;

(iii) an hourly rate established by department rule; and

(iv) ~~except as provided in this subsection (2)(d)(iv),~~ a fee ~~of $75~~ for the issuance of the certificate of inspection. The department may adjust the fee by

rule to maintain adequate funding for this part. The fee may not be less than $50 or more than ~~$100~~ *$150*."

Section 12. Section 80-6-203, MCA, is amended to read:

"80-6-203. Importation of bees in ~~combless~~ packages *or queen cages*. A person or common carrier may not transport or bring *bees* into this state ~~bees~~ in ~~combless~~ packages *or queen cages* unless ~~they~~ *the packages or queen cages* are accompanied by a certificate of health issued by the official inspector of the state or country from which they came."

Section 13. Section 80-6-303, MCA, is amended to read:

"80-6-303. Penalty. (1) *(a)* ~~A~~ *Except as provided in subsection (2), a* person violating or aiding in the violation of parts 1 through 3 *of this chapter* or rules adopted under parts 1 through 3 is subject to ~~one or both of the following penalties:~~

~~(a)~~ an administrative civil penalty of not more than ~~$1,000~~ *$1,000* for each offense. Assessment of a penalty under this subsection (1)~~(a)~~ may be made in conjunction with any other warning, order, or administrative action that is issued by the department under this part. The proceeds of an administrative civil penalty must be deposited in the state special revenue account provided for in 80-6-315.

~~(b) if the offense is a misdemeanor, a fine of not less than $25 or more than $500 or imprisonment in the county jail not exceeding 1 year, or both.~~

(b) A person who is assessed a penalty for violating parts 1 through 3 of this chapter is also subject to payment of costs incurred by the department for inspections or investigations related to the violation.

(2) (a) A person violating or aiding in the violation of the provisions of 80-6-202 is subject to an administrative civil penalty of not more than $10,000 for each offense. Assessment of a penalty under this subsection (2)(a) may be made in conjunction with any other warning, order, or administrative action that is issued by the department under this part. The proceeds of an administrative civil penalty must be deposited in the state special revenue account provided for in 80-6-315.

(b) A person who is assessed a penalty for violating 80-6-315 is also subject to payment of costs incurred by the department for inspections or investigations related to the violation.

~~(2)~~*(3)* The department shall establish by rule a penalty matrix that schedules the types of penalties, the amounts of penalties for initial and subsequent offenses, and any other matters necessary for the administration of civil penalties under subsection (1)~~(a)~~. The issuance of a civil penalty is subject to the contested case procedures of Title 2, chapter 4, part 6.

~~(3)~~*(4)* This part may not be construed as requiring the department or its representatives to report violations of this part when it is believed that the public interest will be best served by a suitable notice of warning."

Section 14. Repealer. Sections 80-6-105 and 80-6-115, MCA, are repealed.

Section 15. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 80, chapter 6, part 1, and the provisions of Title 80, chapter 6, part 1, apply to [section 1].

Approved May 6, 2009

CHAPTER NO. 469

[SB 360]

AN ACT GENERALLY REVISING THE MONTANA MAJOR FACILITY SITING ACT; CLARIFYING THE DEFINITION OF "FACILITY"; AMENDING SECTION 75-20-104, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-20-104, MCA, is amended to read:

"75-20-104. Definitions. In this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Addition thereto" means the installation of new machinery and equipment that would significantly change the conditions under which the facility is operated.

(2) "Application" means an application for a certificate submitted in accordance with this chapter and the rules adopted under this chapter.

(3) (a) "Associated facilities" includes but is not limited to transportation links of any kind, aqueducts, diversion dams, pipelines, storage ponds, reservoirs, and any other device or equipment associated with the delivery of the energy form or product produced by a facility.

(b) The term does not include a transmission substation, a switchyard, voltage support, or other control equipment or a facility or a natural gas or crude oil gathering line 25 inches or less in inside diameter.

(4) "Board" means the board of environmental review provided for in 2-15-3502.

(5) "Certificate" means the certificate of compliance issued by the department under this chapter that is required for the construction or operation of a facility.

(6) "Commence to construct" means:

(a) any clearing of land, excavation, construction, or other action that would affect the environment of the site or route of a facility but does not mean changes needed for temporary use of sites or routes for nonutility purposes or uses in securing geological data, including necessary borings to ascertain foundation conditions;

(b) the fracturing of underground formations by any means if the activity is related to the possible future development of a gasification facility or a facility employing geothermal resources but does not include the gathering of geological data by boring of test holes or other underground exploration, investigation, or experimentation;

(c) the commencement of eminent domain proceedings under Title 70, chapter 30, for land or rights-of-way upon or over which a facility may be constructed;

(d) the relocation or upgrading of an existing facility defined by subsection (8)(a) or (8)(b), including upgrading to a design capacity covered by subsection (8)(a), except that the term does not include normal maintenance or repair of an existing facility.

(7) "Department" means the department of environmental quality provided for in 2-15-3501.

(8) "Facility" means:

(a) each electric transmission line and associated facilities of a design capacity of more than 69 kilovolts, except that the term:

(i) does not include an electric transmission line and associated facilities of a design capacity of 230 kilovolts or less and 10 miles or less in length;

(ii) does not include an electric transmission line with a design capacity of more than 69 kilovolts but less than 230 kilovolts for which the person planning to construct the line has obtained right-of-way agreements or options for a right-of-way from more than 75% of the owners who collectively own more than 75% of the property along the centerline;

(iii) does not include an electric transmission line that is less than 150 miles in length and extends from an electrical generation facility, as defined in 15-24-3001(4), or a wind generation facility, as defined in 15-6-157, to the point at which the transmission line connects to a regional transmission grid at an existing transmission substation or other facility for which the person planning to construct the line has obtained right-of-way agreements or options for a right-of-way from more than 75% of the owners who collectively own more than 75% of the property along the centerline;

(iv) does not include an upgrade to an existing transmission line to increase that line's capacity ~~within an~~ *to less than or equal to 230 kilovolts, including construction outside the* existing easement or right-of-way~~;~~. *Except for a newly acquired easement or right-of-way necessary to comply with electromagnetic field standards, a newly acquired easement or right-of-way outside the existing easement or right-of-way as described in this subsection (8)(a)(iv) may not exceed a total of 10 miles in length or be more than 10% of the existing transmission right-of-way, whichever is greater, and the purpose of the easement must be to avoid sensitive areas or inhabited areas.* ~~and~~

(v) does not include a transmission substation, a switchyard, voltage support, or other control equipment;

(b) (i) each pipeline, whether partially or wholly within the state, greater than 25 inches in inside diameter and 50 miles in length, and associated facilities, except that the term does not include:

(A) a pipeline within the boundaries of the state that is used exclusively for the irrigation of agricultural crops or for drinking water; or

(B) a pipeline greater than 25 inches in inside diameter and 50 miles in length for which the person planning to construct the pipeline has obtained right-of-way agreements or options for a right-of-way from more than 75% of the owners who collectively own more than 75% of the property along the centerline;

(ii) each pipeline, whether partially or wholly within the state, greater than 17 inches in inside diameter and 30 miles in length, and associated facilities used to transport coal suspended in water;

(c) any use of geothermal resources, including the use of underground space in existence or to be created, for the creation, use, or conversion of energy, designed for or capable of producing geothermally derived power equivalent to ~~25 million Btu's per hour~~ *50 megawatts* or more or any addition thereto, except pollution control facilities approved by the department and added to an existing plant; or

(d) for the purposes of 75-20-204 only, a plant, unit, or other facility capable of generating 50 megawatts of hydroelectric power or more or any addition thereto.

(9) "Person" means any individual, group, firm, partnership, corporation, limited liability company, cooperative, association, government subdivision, government agency, local government, or other organization or entity.

(10) "Sensitive areas" means government-designated areas that have been recognized for their importance to Montana's wildlife, wilderness, culture, and historic heritage, including but not limited to national wildlife refuges, state wildlife management areas, federal areas of critical environmental concern, state parks and historic sites, designated wilderness areas, wilderness study areas, designated wild and scenic rivers, or national parks, monuments, or historic sites.

~~(10)~~*(11)* "Transmission substation" means any structure, device, or equipment assemblage, commonly located and designed for voltage regulation, circuit protection, or switching necessary for the construction or operation of a proposed transmission line.

~~(11)~~*(12)* "Upgrade" means to increase the electrical carrying capacity of a transmission line by actions including but not limited to:

(a) installing larger conductors;

(b) replacing insulators;

(c) replacing pole or tower structures; or

(d) changing structure spacing, design, or guying.

~~(12)~~*(13)* "Utility" means any person engaged in any aspect of the production, storage, sale, delivery, or furnishing of heat, electricity, gas, hydrocarbon products, or energy in any form for ultimate public use."

Section 2. Effective date. [This act] is effective on passage and approval.

Section 3. Applicability. [This act] applies to applications filed after [the effective date of this act].

Approved May 6, 2009

CHAPTER NO. 470

[SB 418]

AN ACT ALLOWING A TAXPAYER TO APPLY FOR RELIEF FROM JOINT AND SEVERAL LIABILITY UNDER THE INDIVIDUAL INCOME TAX; AUTHORIZING THE DEPARTMENT TO ADOPT RULES ON RELIEF FROM JOINT AND SEVERAL LIABILITY; UPDATING CERTAIN PROVISIONS RELATING TO THE INDIVIDUAL INCOME TAX EXEMPTION FOR A QUALIFYING CHILD; REQUIRING CONSISTENCY BETWEEN THE DEDUCTION PERMITTED AN ESTATE OR TRUST FOR TAXES PAID OR ACCRUED DURING A YEAR WITH THE DEDUCTION ALLOWED FOR INDIVIDUAL TAXPAYERS; CLARIFYING THE EXTENSION OF TIME ALLOWED FOR FILING AN INDIVIDUAL INCOME TAX RETURN; MAKING TECHNICAL CORRECTIONS REGARDING THE SUSPENSION OF THE STATUTE OF LIMITATIONS UNDER THE INDIVIDUAL INCOME TAX; CLARIFYING WHEN THE DEPARTMENT MUST PAY INTEREST TO INDIVIDUAL INCOME TAXPAYERS FOR LATE-FILED RETURNS; AMENDING SECTIONS 15-30-112, 15-30-136, 15-30-142, 15-30-144, 15-30-146, AND 15-30-149, MCA; AND PROVIDING EFFECTIVE DATES AND APPLICABILITY DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Relief from joint and several liability on joint return — limitations — rules. (1) A taxpayer who has obtained relief from joint and several liability under section 6015 of the Internal Revenue Code, 26 U.S.C. 6015, may apply to the department for relief from joint and several liability of the tax imposed by Title 15, chapter 30. The taxpayer must have filed a Montana joint return for each of the tax years for which relief is sought under this section.

(2) In applying for relief under this section, the taxpayer shall provide the department with the following:

(a) the tax years for which relief is sought;

(b) complete copies of all correspondence sent to and received from the internal revenue service;

(c) any court order stating that the taxpayer's spouse or former spouse is responsible for paying the Montana individual income tax liability; and

(d) other information demonstrating that it would be unfair to hold the taxpayer responsible for the tax, penalty, and interest.

(3) If the department determines, after consideration of the facts and circumstances presented by the taxpayer, that it would be unfair to hold the taxpayer responsible for some or all of the tax, penalty, and interest, the department shall grant the taxpayer relief from joint and several liability. The relief from joint and several liability granted by the department:

(a) must be based on the same circumstances for which relief was granted the taxpayer by the internal revenue service; and

(b) may not exceed the relief granted by the internal revenue service.

(4) The department shall adopt rules to implement and administer this section, including but not limited to establishing procedures for applying for relief allowed under this section.

Section 2. Section 15-30-112, MCA, is amended to read:

"15-30-112. Exemptions — *inflation adjustment.* (1) ~~Except as provided in~~ *Subject to* subsection (6), ~~in the case of~~ an individual~~,~~ *is allowed as deductions in computing taxable income* the exemptions provided by subsections (2) through (5) ~~must be allowed as deductions in computing taxable income~~.

(2) (a) An exemption of $1,900 is allowed for all taxpayers.

(b) An additional exemption of $1,900 is allowed for the spouse of the taxpayer if a separate return is made by the taxpayer and if the spouse, for the calendar year in which the tax year of the taxpayer begins, does not have gross income and is not the dependent of another taxpayer.

(3) (a) An additional exemption of $1,900 is allowed for the taxpayer if the taxpayer has attained the age of 65 before the close of the taxpayer's tax year.

(b) An additional exemption of $1,900 is allowed for the spouse of the taxpayer if a separate return is made by the taxpayer and if the spouse has attained the age of 65 before the close of the tax year and, for the calendar year in which the tax year of the taxpayer begins, does not have gross income and is not the dependent of another taxpayer.

(4) (a) An additional exemption of $1,900 is allowed for the taxpayer if the taxpayer is blind at the close of the taxpayer's tax year.

(b) An additional exemption of $1,900 is allowed for the spouse of the taxpayer if a separate return is made by the taxpayer and if the spouse is blind and, for the calendar year in which the tax year of the taxpayer begins, does not

have gross income and is not the dependent of another taxpayer. For the purposes of this subsection (4)(b), the determination of whether the spouse is blind must be made as of the close of the tax year of the taxpayer, except that if the spouse dies during the tax year, the determination must be made as of the time of death.

(c) For purposes of this subsection (4), an individual is blind only if the person's central visual acuity does not exceed 20/200 in the better eye with correcting lenses or if visual acuity is greater than 20/200 but is accompanied by a limitation in the fields of vision to an extent that the widest diameter of the visual field subtends an angle no greater than 20 degrees.

(5) (a) An exemption of $1,900 is allowed for each dependent:

(i) whose gross income for the calendar year in which the tax year of the taxpayer begins is less than ~~$800~~ *or equal to the exemption amount provided in subsection (2)(a)*; or

(ii) who is a *qualifying* child ~~of the taxpayer and who:~~

~~(A) has not attained the age of 19 years at the close of the calendar year in which the tax year of the taxpayer begins; or~~

~~(B) is~~ *as defined in section 152 of the Internal Revenue Code, 26 U.S.C. 152, including* a student *as defined in that section*.

(b) An exemption is not allowed under this subsection for a dependent who has made a joint return with the dependent's spouse for the tax year beginning in the calendar year in which the tax year of the taxpayer begins.

~~(c) For purposes of subsection (5)(a)(ii), the term "child" means an individual who is a son, stepson, daughter, or stepdaughter of the taxpayer.~~

~~(d) For purposes of subsection (5)(a)(ii)(B), the term "student" means an individual who, during each of 5 calendar months during the calendar year in which the tax year of the taxpayer begins:~~

~~(i) is a full-time student at an educational institution; or~~

~~(ii) is pursuing a full-time course of institutional on-farm training under the supervision of an accredited agent of an educational institution or of a state or political subdivision of a state. For purposes of this subsection (5)(d)(ii), the term "educational institution" means only an educational institution that normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on.~~

(6) The department, by November 1 of each year, shall multiply all the exemptions provided in this section by the inflation factor for that tax year and round the product to the nearest $10. The resulting adjusted exemptions are effective for that tax year and must be used in calculating the tax imposed in 15-30-103."

Section 3. Section 15-30-136, MCA, is amended to read:

"15-30-136. Computation of income of estates or trusts — exemption. (1) Except as otherwise provided in this chapter, "gross income" of estates or trusts means all income from whatever source derived in the tax year, including but not limited to the following items:

(a) dividends;

(b) interest received or accrued, including interest received on obligations of another state or territory or a county, municipality, district, or other political subdivision of the state, but excluding interest income from obligations of:

(i) the United States government or the state of Montana;

(ii) a school district *in the state*; or

(iii) a county, municipality, district, or other political subdivision of the state;

(c) income from partnerships and other fiduciaries;

(d) gross rents and royalties;

(e) gain from sale or exchange of property, including those gains that are excluded from gross income for federal fiduciary income tax purposes by section 641(c) of the Internal Revenue Code of 1954 (now deleted);

(f) gross profit from trade or business; and

(g) refunds recovered on federal income tax, to the extent that the deduction of the tax resulted in a reduction of Montana income tax liability.

(2) In computing net income, there are allowed as deductions:

(a) interest expenses deductible for federal tax purposes according to section 163 of the Internal Revenue Code, 26 U.S.C. 163;

(b) taxes paid or accrued within the tax year, including but not limited to federal income ~~tax~~ *taxes to the extent allowed a single taxpayer under 15-30-121(1)(b)*, but excluding Montana income ~~tax~~ *taxes*;

(c) that fiduciary's portion of depreciation or depletion that is deductible for federal tax purposes according to sections 167, 611, and 642 of the Internal Revenue Code, 26 U.S.C. 167, 611, and 642;

(d) charitable contributions that are deductible for federal tax purposes according to section 642(c) of the Internal Revenue Code, 26 U.S.C. 642(c);

(e) administrative expenses claimed for federal income tax purposes, according to sections 212 and 642(g) of the Internal Revenue Code, 26 U.S.C. 212 and 642(g);

(f) losses from fire, storm, shipwreck, or other casualty or from theft, to the extent not compensated for by insurance or otherwise, that are deductible for federal tax purposes according to section 165 of the Internal Revenue Code, 26 U.S.C. 165;

(g) net operating loss deductions allowed for federal income tax under section 642(d) of the Internal Revenue Code, 26 U.S.C. 642(d), except estates may not claim losses that are deductible on the decedent's final return;

(h) Montana income tax refunds or tax refund credits.

(3) The following additional deductions are allowed in deriving taxable income of estates and trusts:

(a) any amount of income for the tax year ~~currently~~ required to be distributed to beneficiaries for the year;

(b) any other amounts properly paid or credited or required to be distributed for the tax year.

(4) The exemption allowed for estates and trusts is that exemption provided in 15-30-112(2)(a) and (6)."

Section 4. Section 15-30-142, MCA, is amended to read:

"15-30-142. Returns and payment of tax — penalty and interest — refunds — credits — *inflation adjustment.* (1) For both resident and nonresident taxpayers, each single individual and each married individual not filing a joint return with a spouse and having a gross income for the tax year of

more than $3,560, as adjusted under the provisions of subsection (6), and married individuals not filing separate returns and having a combined gross income for the tax year of more than $7,120, as adjusted under the provisions of subsection (6), are liable for a return to be filed on forms and according to rules that the department may prescribe. The gross income amounts referred to in ~~the preceding sentence~~ *this subsection (1)* must be increased by $1,900, as adjusted under the provisions of 15-30-112(6), for each additional personal exemption allowance that the taxpayer is entitled to claim for the taxpayer and the taxpayer's spouse under 15-30-112(3) and (4).

(2) In accordance with instructions set forth by the department, each taxpayer who is married and living with *a* husband or wife and is required to file a return may, at the taxpayer's option, file a joint return with *the* husband or wife even though one of the spouses has neither gross income nor deductions. If a joint return is made, the tax must be computed on the aggregate taxable income and*, subject to [section 1],* the liability with respect to the tax is joint and several. If a joint return has been filed for a tax year, the spouses may not file separate returns after the time for filing the return of either has expired unless the department consents.

(3) If a taxpayer is unable to make the taxpayer's own return, the return must be made by an authorized agent or by a guardian or other person charged with the care of the person or property of the taxpayer.

(4) All taxpayers, including but not limited to those subject to the provisions of 15-30-202 and 15-30-241, shall compute the amount of income tax payable and shall, on or before the date required by this chapter for filing a return, pay to the department any balance of income tax remaining unpaid after crediting the amount withheld, as provided by 15-30-202, and any payment made by reason of an estimated tax return provided for in 15-30-241. However, the tax computed must be greater by $1 than the amount withheld and paid by estimated return as provided in this chapter. If the amount of tax withheld and the payment of estimated tax exceed by more than $1 the amount of income tax as computed, the taxpayer is entitled to a refund of the excess.

(5) If the department determines that the amount of tax due is greater than the amount of tax computed by the taxpayer on the return, the department shall mail a notice to the taxpayer as provided in 15-30-323 of the additional tax proposed to be assessed, including penalty and interest as provided in 15-1-216.

(6) By November 1 of each year, the department shall multiply the minimum amount of gross income necessitating the filing of a return by the inflation factor for the tax year. These adjusted amounts are effective for that tax year, and persons who have gross incomes less than these adjusted amounts are not required to file a return.

(7) Individual income tax forms distributed by the department for each tax year must contain instructions and tables based on the adjusted base year structure for that tax year."

Section 5. Section 15-30-144, MCA, is amended to read:

"15-30-144. Time for filing — extensions of time. (1) A return must be made to the department on or before the 15th day of the 4th month following the close of the taxpayer's fiscal year, or if the return is made on the basis of the calendar year, then the return must be made on or before the 15th day of April following the close of the calendar year. Each return must set forth those facts that the department considers necessary for the proper enforcement of this chapter. There must be ~~annexed~~ *attached* to the return the affidavit or

affirmation of the persons making the return to the effect that the statements contained in the return are true. Blank forms of return must be furnished by the department upon application, but failure to secure the form does not relieve any taxpayer of the obligation to make any return required under this chapter. Each taxpayer liable for a tax under this chapter shall pay a minimum tax of $1.

~~(2) An automatic 4-month extension of time for filing a return is allowed, provided that:~~

~~(a) on or before the due date of the return, the taxpayer has applied with the internal revenue service for a 4-month extension of time for filing the taxpayer's federal individual income tax return for the same tax year. The extension of time for filing a return is not an extension of time for the payment of taxes.~~

~~(b) the taxpayer has paid by estimated tax payments, withholding tax, or a combination of estimated tax payments and withholding tax 90% of the current year's tax liability or 100% of the previous year's tax liability.~~

~~(3) An additional 2-month extension of time for filing a return is automatically allowed provided that the taxpayer has applied with the internal revenue service for an additional 2-month extension of time for filing the taxpayer's federal individual income tax return for the same tax year and has satisfied the requirements of subsection (2)(b).~~

(2) (a) Subject to subsections (2)(b) and (2)(c), a taxpayer is allowed an automatic extension of time for filing the taxpayer's return of up to 6 months following the date prescribed for filing of the tax return.

(b) On or before the due date of the return, the taxpayer shall pay by estimated tax payments, withholding tax, or a combination of estimated tax payments and withholding tax 90% of the current year's tax liability or 100% of the previous year's tax liability.

(c) The remaining tax, penalty, and interest of the current year's tax liability not paid under subsection (2)(b) must be paid when the return is filed. Penalty and interest must be added to the tax due as provided in 15-1-216.

(3) The department may grant an additional extension of time for the filing of a return whenever in its judgment good cause exists.

(4) The extension of time for filing a return is not an extension of time for the payment of taxes."

Section 6. Section 15-30-146, MCA, is amended to read:

"15-30-146. Tolling of statute of limitations. The running of the statute of limitations provided for under 15-30-145 ~~shall~~ *must* be suspended during any period that the federal statute of limitations for collection of federal income tax has been suspended by written agreement signed by the taxpayer or when the taxpayer has instituted an action ~~which~~ *that* has the effect of suspending the running of the federal statute of limitations and for 1 additional year. If the taxpayer fails to file ~~a record of changes in federal taxable income or~~ an amended *Montana* return as required by 15-30-304, the statute of limitations ~~shall~~ *does* not apply until 5 years from the date the federal changes become final or the amended federal return was filed. If the taxpayer omits from gross income an amount properly includable ~~therein which~~ *as gross income and the amount* is in excess of 25% of the amount of adjusted gross income stated in the return, the statute of limitations ~~shall~~ *does* not apply for 2 additional years from the time specified in 15-30-145."

Section 7. Section 15-30-149, MCA, is amended to read:

"15-30-149. Credits and refunds — period of limitations. (1) If the department discovers from the examination of a return or upon a claim filed by a taxpayer or upon final judgment of a court that the amount of income tax collected is in excess of the amount due or that any penalty or interest was erroneously or illegally collected, the amount of the overpayment must be credited against any income tax, penalty, or interest then due from the taxpayer and the balance of the excess must be refunded to the taxpayer.

(2) (a) A credit or refund under the provisions of this section may be allowed only if, prior to the expiration of the period provided by 15-30-146 and 15-30-147, the taxpayer files a claim or the department determines there has been an overpayment.

(b) If an overpayment of tax results from a net operating loss carryback, the overpayment may be refunded or credited within the period that expires on the 15th day of the 40th month following the close of the tax year of the net operating loss if that period expires later than 5 years from the due date of the return for the year to which the net operating loss is carried back.

(3) Within 6 months after a claim for refund is filed, the department shall examine the claim and either approve or disapprove it. If the claim is approved, the credit or refund must be made to the taxpayer within 60 days after the claim is approved. If the claim is disallowed, the department shall notify the taxpayer and a review of the determination of the department may be pursued as provided in 15-1-211.

(4) *(a)* Interest is allowed on overpayments at the same rate as charged on delinquent taxes as provided in 15-1-216. ~~Interest~~ *Except as provided in subsection (4)(b), interest* is payable from the due date of the return or from the date of the overpayment, whichever date is later, to the date the department approves refunding or crediting of the overpayment. With respect to tax paid by withholding or by ~~estimate~~ *estimated tax payments*, the date of overpayment is the date on which the return for the tax year was due. Interest does not accrue on an overpayment if the taxpayer elects to have it applied to the taxpayer's estimated tax for the succeeding ~~taxable~~ *tax* year. Interest does not accrue during any period *for which* the processing of a claim for refund is delayed more than 30 days by reason of failure of the taxpayer to furnish information requested by the department for the purpose of verifying the amount of the overpayment. Interest is not allowed if:

~~(a)~~*(i)* the overpayment is refunded within 45 days from the date the return is due or the date the return is filed, whichever date is later;

~~(b)~~*(ii)* the overpayment results from the carryback of a net operating loss; or

~~(c)~~*(iii)* the amount of interest is less than $1.

(b) Subject to the provisions of subsection (4)(a)(i), if the return is filed after the time prescribed for filing in 15-30-144, including any extension, interest is payable from the date the return was filed.

(5) An overpayment not made incident to a bona fide and orderly discharge of an actual income tax liability or one reasonably assumed to be imposed by this law is not considered an overpayment with respect to which interest is allowable."

Section 8. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 15, chapter 30, part 3, and the provisions of Title 15, chapter 30, part 3, apply to [section 1].

Section 9. Coordination instruction. If House Bill No. 261 is not passed and approved, then [section 3 of this act], amending 15-30-136, is void.

Section 10. Effective dates. (1) Except as provided in subsection (2), [this act] is effective October 1, 2009.

(2) [Sections 1, 4, and 11(2) and this section] are effective on passage and approval.

Section 11. Applicability — retroactive applicability. (1) Except as provided in subsection (2), [this act] applies to tax periods beginning after December 31, 2009.

(2) [Sections 1 and 4] apply retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2002.

Approved May 6, 2009

CHAPTER NO. 471

[SB 439]

AN ACT EXTENDING THE MORATORIUM ON LICENSURE OF SPECIALTY HOSPITALS; AMENDING SECTION 50-5-245, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-5-245, MCA, is amended to read:

"50-5-245. Department to license specialty hospitals — standards — rulemaking — moratorium. (1) Subject to subsection (4), the department shall license specialty hospitals using the requirements for licensure of hospitals and the procedure provided for in parts 1 and 2 of this chapter.

(2) The department shall adopt rules that are necessary to implement and administer this section.

(3) Notwithstanding the requirements of subsection (1), the department may not license a specialty hospital until July 1, ~~2009~~ *2011*.

(4) A health care facility licensed by the department and in existence on May 8, 2007, may not change its licensure status in order to qualify for licensure as a specialty hospital unless the health care facility is licensed as a hospital."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved May 6, 2009

CHAPTER NO. 472

[SB 465]

AN ACT REVISING AND CLARIFYING THE LAWS RELATED TO THE TREATMENT OF PROPERTY CONSISTING OF THE BED OF NAVIGABLE RIVERS AND STREAMS; PROVIDING FOR A REDUCTION FROM GRAZING LAND BEFORE A REDUCTION FROM CURRENT LAND USE FOR PROPERTY TAX PURPOSES; PROVIDING THAT IN A DISPUTE OVER THE OWNERSHIP OF THE BED OF A RIVER OR STREAM A PRESUMPTION MAY NOT BE MADE BASED UPON THE TAX STATUS OF THE PROPERTY; CLARIFYING THE OWNERSHIP OF STRUCTURES; CLARIFYING THE ABILITY TO CONTROL NOXIOUS WEEDS; AMENDING

SECTIONS 61-8-371, 77-1-111, 77-1-126, 77-1-127, 77-1-806, 77-1-809, 77-3-442, 77-6-113, 77-6-115, 77-6-302, 77-6-303, AND 77-6-501, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, the Department of Natural Resources and Conservation has asserted regulatory jurisdiction over the beds of various rivers and streams based on the premise that the streams are navigable and that the state therefore owns the riverbeds and streambeds; and

WHEREAS, very few Montana rivers or streams have been adjudicated as navigable, either in whole or in part; and

WHEREAS, it is not economically feasible for either the Department of Revenue or the Department of Natural Resources and Conservation to obtain judicial determinations of riverbed or streambed ownership by statewide quiet title actions, yet that ownership determination may not be made legally by unilateral administrative decisions; and

WHEREAS, if the Department of Natural Resources and Conservation wishes to assert regulatory control over the bed of a river or stream that has not been adjudicated to be navigable and was not determined navigable at the time of the original federal government surveys of the public land as evidenced by the recorded and monumented surveys of the meander lines of the river, it is required to provide written notice of the claim of state ownership to the affected property owners; and

WHEREAS, because the present claims of state ownership of riverbeds and streambeds is contrary to longstanding administrative practice and because the test for navigability depends upon evidence concerning the log floating capability of a stream at the time of statehood, there is no presumption of correctness attached to a navigability claim made by any state agency.

Be it enacted by the Legislature of the State of Montana:

Section 1. Findings. The legislature finds that:

(1) for 120 years since the admission of Montana as a state in 1889, the department of revenue and its predecessor agencies have taxed some landowners whose property abuts a river or stream on the assumption that those riparian landowners owned the property to the middle of the river or stream;

(2) in Montana v. United States, 450 U.S. 544 (1981), the United States supreme court recognized that if a river or stream is not navigable, the abutting riparian landowners own the land in the bed of the stream to the middle of the stream, but if a river or stream is navigable, the state owns the bed of the river or stream, having acquired ownership from the United States when the state was admitted to the union, and therefore Montana owns the bed of the Bighorn River where it flows through the Crow reservation;

(3) for the purpose of determining the ownership of a riverbed or streambed, the test of navigability is whether logs could be floated in the stream at the time of statehood as stated in Montana Coalition for Stream Access v. Curran, 210 Mont. 38, 682 P.2d 163 (1984), based upon The Montello, 87 U.S. 430 (1874), Sierra Pacific Power Co. v. Federal Energy Regulatory Commission, 681 F.2d 1134 (9th Cir. 1982), and State of Oregon v. Riverfront Protection Association, 672 F.2d 792 (9th Cir. 1982);

(4) beginning with tax assessments that were effective January 1, 2008, the lien date for real property taxes, the department of revenue reassessed the property of riparian landowners whose land abuts various rivers and streams by

reducing the amount of land assessed based upon the premise that the landowners did not own to the middle of the river or stream because the river or stream was navigable and these reassessments, if correct, have enormous impact upon the riparian landowners because they affect land titles, acreage owned, qualification for various conservation and price support programs, and ownership of water diversion facilities and other structures that the riparian landowners have constructed for water usage;

(5) the 2008 reassessments were made by simply sending out tax bills without any notice that they were based upon a claim of state ownership of the riverbeds or streambeds and some riparian landowners have paid the first installment of 2008 real property taxes based upon the reassessments without realizing that a claim of state ownership of the riverbeds and streambeds was the basis for the reassessments;

(6) procedural due process requires that if a claim of change in ownership is involved, the state agency involved shall afford the affected property owners both notice of the claim and the opportunity to be heard;

(7) the 2008 real property tax assessments based upon claims of state ownership did not comply with the constitutional requirement for procedural due process and under that circumstance payment by the property owners of taxes based on the reassessment does not constitute acquiesence in the underlying state ownership claim;

(8) The department of revenue is required to provide written notice to the affected property owners of the state's claim of ownership so that the affected property owners have a fair opportunity to be heard and to dispute the government's claim.

Section 2. Adjustment of taxes for formerly taxed property — presumption of taxability. (1) If the department reduces the amount of taxable property owned by a person or entity because of a determination that the property consists of the bed of a navigable river or stream, the department shall, as applicable, reduce the amount of tract land that is taxable or grazing land that is taxable before reducing the amount of irrigated land or nonirrigated land that is taxable.

(2) In the absence of adjudication by a court of competent jurisdiction of the ownership of the bed of any river or stream, it is the policy of the state that the department shall assess all land that is part of the bed and banks of a river or stream to the owner of record of the property.

(3) The department shall notify landowners of their right to request and shall provide upon request a revised assessment for tax year 2008 for the bed of any stream:

(a) not adjudicated to be navigable by a court of competent jurisdiction; or

(b) not determined navigable at the time of the original federal government surveys of the public land as evidenced by the recorded and monumented surveys of the meander lines of the river.

Section 3. No presumption from tax status of property. In a dispute over the title to the bed of a river or stream, a presumption may not be made based upon whether the department of revenue considers the property to be taxable or nontaxable.

Section 4. Irrigation structures, utility structures, and bridges of formerly taxable land — water rights. (1) If an irrigation structure, a utility structure, or a bridge was placed on land that consists of the bed of a navigable

river or stream, the irrigation structure, utility structure, or bridge remains the property of the original owner or the original owner's successors in interest or assignees. Access to the irrigation structures, utility structures, and bridges described in this section for the purposes of operation, maintenance, repair, enhancement, or improvement may not be impeded by the state.

(2) The change of designation of the bed of a navigable river or stream from a taxable to a nontaxable status may not interfere with or impede the exercise of a water right, including a livestock watering right for which a claim was not required to be filed pursuant to 85-2-212 and 85-2-222.

Section 5. Section 61-8-371, MCA, is amended to read:

"61-8-371. Operation of motor vehicle or off-highway vehicle below high-water mark on certain state or federal lands prohibited — exceptions. (1) Except as provided in *77-1-111(3), 77-1-806(4), and* subsections (2) and (3) *of this section*, a person may not operate a motor vehicle or an off-highway vehicle below the ordinary high-water mark, as defined in 23-2-301, of class I or class II waters, as defined in 23-2-301, that occurs on state or federal lands or below the ordinary high-water mark of class I waters flowing through private lands, within that portion of the streambed that is covered with water.

(2) A motor vehicle or an off-highway vehicle may be operated below the ordinary high-water mark on state or federal lands on an established road or trail that enters or crosses a stream, but the stream crossing must be by the shortest practical or designated route to the road or trail on the opposite bank.

(3) The prohibition in subsection (1) does not apply to:

(a) off-highway or motor vehicle use that occurs on state or federal land that is designated for off-highway or motor vehicle use below the ordinary high-water mark if the use is in accordance with the requirements of the authorization;

(b) off-highway or motor vehicle use conducted on state or federal land pursuant to and in accordance with a specific written authorization from the appropriate land management agency for that use below the ordinary high-water mark; and

(c) operation of an off-highway vehicle by a nonambulatory person who is using the vehicle for recreational use, as defined in 23-2-301, as long as operation of the vehicle is prudent and minimizes destruction.

(4) The state may authorize the use of a motor vehicle or off-highway vehicle on state property below the ordinary high-water mark only when the state has determined that the use will have a minimal impact on the streambed and on the fish and wildlife ecology of the stream or river. Federal land management agencies are requested to apply the same criteria when authorizing use of federal land."

Section 6. Section 77-1-111, MCA, is amended to read:

"77-1-111. Court actions. (1) All actions for the recovery of money due under this title or for the cancellation of leases or for the cancellation of certificates of purchase or patents or for the recovery of state lands, actions of forcible entry and detainer, actions for ejectment, and all other actions affecting any state lands ~~shall be~~ *are* controlled, as to venue, by the provisions of the rules of civil procedure relating to the place of trial of civil actions and ~~shall~~ *must* be conducted by the attorney general.

(2) When ~~so~~ requested by the attorney general, the county attorney of each county in the state shall represent the state in all foreclosure proceedings,

collections of delinquent rentals, actions for trespass on state lands, and in all other state land matters that may arise in ~~his~~ *the county attorney's* county. The county attorney ~~shall~~ *is* not ~~be~~ entitled to charge the state any compensation for ~~such~~ services beyond ~~his~~ *the county attorney's* regular salary.

(3) The use of a ford or crossing on a navigable river or stream may not be considered a trespass."

Section 7. Section 77-1-126, MCA, is amended to read:

"77-1-126. Notice of noncompliance. (1) When the department finds that noxious weeds on leased state land or on state land subject to a license or permit have not been controlled as required by 7-22-2116, the lease, the license, or the permit, the department shall contact the lessee, licensee, or permittee and require that a weed management and control program be implemented. The lessee, licensee, or permittee may request that an inspection of the state land be made with department staff. The department shall seek voluntary compliance with a noxious weed management and control program for the state lands prior to issuing a notice of noncompliance. If the lessee, licensee, or permittee fails to implement a weed management and control program when directed by the department, the department shall notify the lessee, licensee, or permittee by mail of the noncompliance. The notice must specify:

(a) the basis for the determination of noncompliance;

(b) the geographic location of the area of noncompliance by legal description or other reasonably identifiable description;

(c) measures to be undertaken in order to comply with the weed control responsibilities of the lease, license, or permit;

(d) a reasonable period of time, not less than 15 days, in which compliance measures must be initiated;

(e) the right of the person to request, within 15 days, an administrative hearing as provided by 77-1-128; and

(f) the right of the person to request an extension if the measures in subsection (1)(c) cannot be implemented due to climatic or growing conditions.

(2) At least 2 weeks prior to sending a notice of noncompliance, the department shall send by certified mail to the lessee, licensee, or permittee a final notice that the weed management and control program has not been implemented.

(3) This section may not be construed to interfere with the right of the owner of property adjacent to a navigable river or stream to control noxious weeds on the land adjacent to the navigable river or stream."

Section 8. Section 77-1-127, MCA, is amended to read:

"77-1-127. Department authorized to control weeds — billing for weed control. (1) If the lessee, licensee, or permittee fails to take corrective action or if a request for an administrative hearing is not made within the time specified in the notice, the department may enter state land covered by the lease, license, or permit and institute appropriate weed control measures. The department may enter into an agreement with a commercial applicator, as defined in 80-8-102, or with the appropriate weed management district organized under 7-22-2102 to control the weeds. The commercial applicator or the weed management district shall agree to carry any insurance required by the department.

(2) The department shall submit a bill to the lessee, licensee, or permittee itemizing the hours of labor, material, and equipment time and listing the actual total cost incurred by the department to take the weed control measures, together with a penalty not exceeding 50% of the total cost. The bill must specify and order a payment due date of 30 days from the date the bill is sent. If payment is not received within 30 days, the department may cancel the lease, license, or permit. Money recovered under this section must be placed in the resource development account established in 77-1-604, except that penalties collected must be distributed annually to the trusts for the lands on which the weed control action was taken.

(3) If a person receiving an order to take corrective action requests an administrative hearing, the department may not institute control measures until the matter is finally resolved, except in case of an emergency. In an emergency, the person is liable for department costs allowed by this section only to the extent determined appropriate by the director or the court that finally resolves the matter.

(4) This section may not be construed to interfere with the right of the owner of property adjacent to a navigable river or stream to control noxious weeds on the land adjacent to the navigable river or stream."

Section 9. Section 77-1-806, MCA, is amended to read:

"77-1-806. Prior notification to lessee of recreational use — trespass — penalty. (1) If a lessee of state lands under this part desires to be notified prior to anyone entering upon ~~his~~ *the* leasehold, the lessee shall post, at customary access points, signs provided or authorized by the department. The signs must set forth the lessee's or ~~his~~ *the lessee's* agent's name, address, telephone number, and method of notification. The lessee or ~~his~~ *the lessee's* agent ~~shall make himself~~ *must be* available to receive notice from recreational users or provide an alternative means for notice as prescribed by rule. When state land is posted, recreational users shall contact and identify themselves to the lessee or ~~his~~ *the lessee's* agent for the purposes of minimizing impact upon the leasehold interest and learning the specific boundaries of adjacent unfenced private property.

(2) Each recreational user of state lands shall obtain permission of the lessee or ~~his~~ *the lessee's* agent before entering the adjacent private property owned by the lessee. Entry to private property from adjacent state lands without permission of the landowner or ~~his~~ *the landowner's* agent is an absolute liability offense. A violator of this subsection is guilty of a misdemeanor and shall be fined not less than $50 or more than $500, imprisoned in the county jail for not more than 6 months, or both.

(3) A person may be found guilty of the offense described in subsection (2) regardless of the absence of fencing or failure to post a notice in accordance with 45-6-201.

(4) The use of a ford or crossing on a navigable river or stream by the adjacent landowner may not be considered a trespass for the purposes of this section."

Section 10. Section 77-1-809, MCA, is amended to read:

"77-1-809. Compensation for damage to improvements, growing crops, or livestock. A lessee may apply to the department for reimbursement of documented costs of repair to or replacement of improvements, growing crops, or livestock damaged by recreational users of state lands. *For the purpose of this section, improvements includes the structures described in [section 4].* The application must include an affidavit by the applicant setting forth the nature of

the loss, allegations and reasonable proof supporting the involvement of recreational users, and documentation of repair or replacement costs. Upon review of the application and supporting proof and upon additional investigation as required, the department shall grant, modify, or deny the claim. The department, by reason of payment to the lessee for damage to improvements, is entitled to be subrogated to the rights of the lessee to recover the amount paid from the party causing the damage. Payments under this section must be made from appropriations from the state lands recreational use account established by 77-1-808, and the liability of the department for damage payments is limited to the available appropriation. Claim applications are to be considered in the order they are received."

Section 11. Section 77-3-442, MCA, is amended to read:

"77-3-442. Disposition of property of lessee upon termination of lease. (1) Upon the termination for any cause of a lease issued under this part, the former lessee has 6 months after the date of the termination to remove from the premises all machinery, fixtures, improvements, buildings, and equipment belonging to the lessee, except for casing in the wells and other equipment or apparatus necessary for the preservation of any oil or gas well or wells *and the structures described in [section 4]*. As to the casing, equipment, and apparatus, any succeeding lessee or, in the event there is no succeeding lessee, the state wishing to have the property left upon the premises shall pay a reasonable value for the property to the former lessee.

(2) If the succeeding lessee or the board is unable to agree with the former lessee upon the reasonable cash value of the casing, equipment, and apparatus, the succeeding lessee or, if there is no succeeding lessee, the state shall pay in cash to the former lessee a sum fixed as a reasonable price by a board of three appraisers, one of whom must be chosen by the successful bidder, one by the former lessee, and the third by the two appraisers chosen. If a person refuses to appoint an appraiser within 15 days of a request to do so by the department, the department may appoint an appraiser for that person. The appraisal must be reported to the respective parties in writing and is final and conclusive.

(3) ~~Unless~~ *Except as provided in [section 4], unless* the department gives written authorization, the former lessee may not remain in possession or manage the land and property formerly covered by the lease. During the time the former lessee remains in authorized possession, the lessee may retain the same share of the products of the premises as inured to the lessee during the term of the lease. ~~If~~ *Except as provided in [section 4], if* the state or other bidder does not desire any of the lessee's property as provided in this section, the lessee shall properly plug all wells and remove all of the lessee's property from the premises."

Section 12. Section 77-6-113, MCA, is amended to read:

"77-6-113. Lease conditions — cancellation. (1) It ~~shall be~~ *is* a condition of all leases of agricultural or grazing state lands that:

(a) in the case of agricultural lands, the lessee shall observe the ordinary rules for good management of agricultural lands and shall handle the leased land with the view of maintaining its productivity and minimizing wind and soil erosion and noxious weeds and planting crops with a view of securing the greatest yields of good quality; and

(b) in the case of grazing lands, the lessee shall observe the ordinary rules for good range management and shall manipulate the numbers, class, distribution, and season of the range use and the handling, feeding, breeding, and marketing

of grazing livestock with a view of securing the production of the maximum of livestock and livestock products, consistent with the conservation of the land resources and the perpetuation of its productivity, and to these ends the state land lease may not be abused by overgrazing.

(2) For the gross violation of any of these rules, the lease involved ~~shall~~ *must* be canceled by the department, subject to the appeal procedure provided in 77-6-211.

(3) This section may not be construed to interfere with the right of the owner of property adjacent to a navigable river or stream to control noxious weeds on the land adjacent to the navigable river or stream."

Section 13. Section 77-6-115, MCA, is amended to read:

"77-6-115. Acquisition of water right by lessee — *limitation.* (1) ~~The~~ *Subject to subsection (4), the* lessee of state lands may at any time prior to 1 year before the expiration of ~~his~~ *the* lease make application to the board for permission to secure a water right to the land under ~~his~~ *the* lease. ~~Such~~ *The* application ~~shall~~ *must* be in writing~~, shall~~ *and must* show how much of the land can be irrigated, the permanency of the water supply, and the probable cost of placing the land under irrigation. If the proposed plan meets with the approval of the board, permission ~~shall~~ *must* be granted the lessee to secure the desired water right for the land and to place the ~~same~~ *land* under irrigation.

(2) ~~If such~~ *Subject to subsection (4), if the* water right becomes a permanent and valuable improvement, then in case of the sale or lease of the ~~lands~~ *land* to other parties, the former lessee ~~shall be~~ *is* entitled to receive compensation in the amount of the reasonable value ~~thereof~~ *of the improvement*, as in the case of other improvements, from the new lessee or the purchaser.

(3) These provisions ~~shall~~ *may* not be ~~so~~ construed ~~as~~ to make the state liable to the lessee for the payment of the cost or value of ~~such~~ irrigation improvements.

(4) A water right acquired under this section may not interfere with a water right used in conjunction with a structure described in [section 4]."

Section 14. Section 77-6-302, MCA, is amended to read:

"77-6-302. Compensation for improvements — actual costs. (1) ~~Prior~~ *Except for the improvements described in [section 4], prior* to renewal of a lease, the department shall request from the lessee a listing of improvements on the land associated with the lease, including the reasonable value of the improvements. This information must be provided to any party requesting to bid on the lease. ~~When~~ *Except for the improvements described in [section 4], when* another person becomes the lessee of the ~~lands~~ *land*, the person shall pay to the former lessee the reasonable value of the improvements. The reasonable value may not be less than the full market value of the improvements.

(2) If the former lessee is unable to produce records establishing the reasonable value or if the former lessee and the new lessee are unable to agree on the reasonable value of the improvements, the value must be ascertained and fixed as provided in 77-6-306. The former lessee shall initiate this process within 60 days of notification from the department that there is a new lessee. The department notification must include an explanation of the requirements of 77-6-306. Failure to initiate the process within this time period results in all improvements*, except those described in [section 4],* becoming the property of the state.

(3) Upon the termination of a lease, the department may grant a license to the former lessee to remove the movable improvements from the land. Upon authorization, the movable improvements must be removed within 60 days or they become the property of the state unless the department for good cause grants additional time for the removal. The department shall charge the former lessee for the period of time that the improvements remain on the land after the termination of the lease."

Section 15. Section 77-6-303, MCA, is amended to read:

"77-6-303. Determination of compensation. (1) In determining the value of ~~these~~ *the* improvements *described in 77-6-302*, consideration ~~shall~~ *must* be given to their original cost, their present condition, their ~~suitableness~~ *suitability* for the uses ordinarily made of the ~~lands~~ *land* on which they are located, and to the general state of cultivation of the land, its productive capacity as affected by former use, and its condition with reference to the infestation of noxious weeds. Consideration ~~shall~~ *must* be given to all actual improvements and to all known effects that the use and occupancy of the land have had upon its productive capacity and ~~desirableness~~ *desirability* for the new lessee.

(2) However, if any of the improvements ~~consists~~ *consist* of ~~breaking (meaning~~ the original plowing of the land~~)~~ and 1 year's crops have been raised on the land after the ~~breaking~~ *plowing*, the compensation for the ~~breaking~~ *improvement* may not exceed $2.50 per acre, and if two or more crops have been raised on the land after the ~~breaking~~ *original plowing*, the ~~breaking shall~~ *original plowing may* not be considered as an improvement to the land."

Section 16. Section 77-6-501, MCA, is amended to read:

"77-6-501. Agricultural leases. (1) ~~As to~~ *For* agricultural ~~lands~~ *land*, all leases except lease renewals upon which the lessee has made improvements at the lessee's expense, as provided in subsection (3), must be continued or made upon a crop share rental basis of not less than one-fourth of the annual crops to the state or the usual landlord's share prevailing in the district, whichever is greater. The board may, however, approve special crop share rentals of less than one-fourth for high production cost crops, such as but not limited to potatoes and sugar beets, or for high production cost methods when these methods would result in more income to the state. The board may not delegate the authority to approve special crop share rentals.

(2) Except in the case of cash lease renewals under subsection (3), if it is in the best interests of the state, the department may authorize a lease upon other bases than crop share, but in these cases, the rental must at least equal the value of the usual landlord's share prevailing in the district under similar circumstances, and the department shall set forth in the records the conditions of the case and the rental to be charged.

(3) ~~In~~ *Subject to [section 4], in* a case in which the lessee has made substantial improvements for irrigation purposes to the lease at the lessee's own expense, the department shall authorize a cash lease renewal at not less than $15 an acre on the portion of the lease that has been improved.

(4) For all agricultural leases issued through competitive bidding provided for under 77-6-202 or 77-6-205, the department shall require on any competitive bid greater than a one-third crop share a minimum annual guarantee of not less than $15 an acre."

Section 17. Codification instruction. (1) [Section 2] is intended to be codified as an integral part of Title 15, chapter 24, part 12, and the provisions of Title 15, chapter 24, part 12, apply to [section 2].

(2) [Section 3] is intended to be codified as an integral part of Title 26, chapter 1, part 6, and the provisions of Title 26, chapter 1, part 6, apply to [section 3].

(3) [Section 4] is intended to be codified as an integral part of Title 77, chapter 1, part 1, and the provisions of Title 77, chapter 1, part 1, apply to [section 4].

Section 18. Effective date. [This act] is effective on passage and approval.

Approved May 6, 2009

CHAPTER NO. 473

[SB 476]

AN ACT REVISING THE CRIME OF THEFT AND OTHER OFFENSES AGAINST PROPERTY; RAISING THE MONETARY THRESHOLD FOR FELONY THEFT AND OTHER OFFENSES AGAINST PROPERTY AND REVISING PENALTIES; AND AMENDING SECTIONS 45-2-101, 45-6-101, 45-6-103, 45-6-104, 45-6-301, 45-6-309, 45-6-311, 45-6-312, 45-6-313, 45-6-316, 45-6-317, 45-6-325, 45-6-332, 45-6-341, AND 45-7-210, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 45-2-101, MCA, is amended to read:

"45-2-101. General definitions. Unless otherwise specified in the statute, all words must be taken in the objective standard rather than in the subjective, and unless a different meaning plainly is required, the following definitions apply in this title:

(1) "Acts" has its usual and ordinary meaning and includes any bodily movement, any form of communication, and when relevant, a failure or omission to take action.

(2) "Administrative proceeding" means a proceeding the outcome of which is required to be based on a record or documentation prescribed by law or in which a law or a regulation is particularized in its application to an individual.

(3) "Another" means a person or persons other than the offender.

(4) (a) "Benefit" means gain or advantage or anything regarded by the beneficiary as gain or advantage, including benefit to another person or entity in whose welfare the beneficiary is interested.

(b) Benefit does not include an advantage promised generally to a group or class of voters as a consequence of public measures that a candidate engages to support or oppose.

(5) "Bodily injury" means physical pain, illness, or an impairment of physical condition and includes mental illness or impairment.

(6) "Child" or "children" means any individual or individuals under 18 years of age, unless a different age is specified.

(7) "Cohabit" means to live together under the representation of being married.

(8) "Common scheme" means a series of acts or omissions motivated by a purpose to accomplish a single criminal objective or by a common purpose or plan that results in the repeated commission of the same offense or that affects the same person or the same persons or the property of the same person or persons.

(9) "Computer" means an electronic device that performs logical, arithmetic, and memory functions by the manipulation of electronic or magnetic impulses and includes all input, output, processing, storage, software, or communication facilities that are connected or related to that device in a system or network.

(10) "Computer network" means the interconnection of communication systems between computers or computers and remote terminals.

(11) "Computer program" means an instruction or statement or a series of instructions or statements, in a form acceptable to a computer, that in actual or modified form permits the functioning of a computer or computer system and causes it to perform specified functions.

(12) "Computer services" include but are not limited to computer time, data processing, and storage functions.

(13) "Computer software" means a set of computer programs, procedures, and associated documentation concerned with the operation of a computer system.

(14) "Computer system" means a set of related, connected, or unconnected devices, computer software, or other related computer equipment.

(15) "Conduct" means an act or series of acts and the accompanying mental state.

(16) "Conviction" means a judgment of conviction or sentence entered upon a plea of guilty or nolo contendere or upon a verdict or finding of guilty of an offense rendered by a legally constituted jury or by a court of competent jurisdiction authorized to try the case without a jury.

(17) "Correctional institution" means a state prison, detention center, multijurisdictional detention center, private detention center, regional correctional facility, private correctional facility, or other institution for the incarceration of inmates under sentence for offenses or the custody of individuals awaiting trial or sentence for offenses.

(18) "Deception" means knowingly to:

(a) create or confirm in another an impression that is false and that the offender does not believe to be true;

(b) fail to correct a false impression that the offender previously has created or confirmed;

(c) prevent another from acquiring information pertinent to the disposition of the property involved;

(d) sell or otherwise transfer or encumber property without disclosing a lien, adverse claim, or other legal impediment to the enjoyment of the property, whether the impediment is or is not of value or is or is not a matter of official record; or

(e) promise performance that the offender does not intend to perform or knows will not be performed. Failure to perform, standing alone, is not evidence that the offender did not intend to perform.

(19) "Defamatory matter" means anything that exposes a person or a group, class, or association to hatred, contempt, ridicule, degradation, or disgrace in society or to injury to the person's or its business or occupation.

(20) "Deprive" means:

(a) to withhold property of another:

(i) permanently;

(ii) for such a period as to appropriate a portion of its value; or

(iii) with the purpose to restore it only upon payment of reward or other compensation; or

(b) to dispose of the property of another and use or deal with the property so as to make it unlikely that the owner will recover it.

(21) "Deviate sexual relations" means sexual contact or sexual intercourse between two persons of the same sex or any form of sexual intercourse with an animal.

(22) "Document" means, with respect to offenses involving the medicaid program, any application, claim, form, report, record, writing, or correspondence, whether in written, electronic, magnetic, microfilm, or other form.

(23) "Felony" means an offense in which the sentence imposed upon conviction is death or imprisonment in a state prison for a term exceeding 1 year.

(24) "Forcible felony" means a felony that involves the use or threat of physical force or violence against any individual.

(25) A "frisk" is a search by an external patting of a person's clothing.

(26) "Government" includes a branch, subdivision, or agency of the government of the state or a locality within it.

(27) "Harm" means loss, disadvantage, or injury or anything so regarded by the person affected, including loss, disadvantage, or injury to a person or entity in whose welfare the affected person is interested.

(28) A "house of prostitution" means a place where prostitution or promotion of prostitution is regularly carried on by one or more persons under the control, management, or supervision of another.

(29) "Human being" means a person who has been born and is alive.

(30) An "illegal article" is an article or thing that is prohibited by statute, rule, or order from being in the possession of a person subject to official detention.

(31) "Inmate" means a person who is confined in a correctional institution.

(32) (a) "Intoxicating substance" means a controlled substance, as defined in Title 50, chapter 32, and an alcoholic beverage, including but not limited to a beverage containing 1/2 of 1% or more of alcohol by volume.

(b) Intoxicating substance does not include dealcoholized wine or a beverage or liquid produced by the process by which beer, ale, port, or wine is produced if it contains less than 1/2 of 1% of alcohol by volume.

(33) An "involuntary act" means an act that is:

(a) a reflex or convulsion;

(b) a bodily movement during unconsciousness or sleep;

(c) conduct during hypnosis or resulting from hypnotic suggestion; or

(d) a bodily movement that otherwise is not a product of the effort or determination of the actor, either conscious or habitual.

(34) "Juror" means a person who is a member of a jury, including a grand jury, impaneled by a court in this state in an action or proceeding or by an officer authorized by law to impanel a jury in an action or proceeding. The term "juror" also includes a person who has been drawn or summoned to attend as a prospective juror.

(35) "Knowingly"—a person acts knowingly with respect to conduct or to a circumstance described by a statute defining an offense when the person is aware of the person's own conduct or that the circumstance exists. A person acts knowingly with respect to the result of conduct described by a statute defining an offense when the person is aware that it is highly probable that the result will be caused by the person's conduct. When knowledge of the existence of a particular fact is an element of an offense, knowledge is established if a person is aware of a high probability of its existence. Equivalent terms, such as "knowing" or "with knowledge", have the same meaning.

(36) "Medicaid" means the Montana medical assistance program provided for in Title 53, chapter 6.

(37) "Medicaid agency" has the meaning in 53-6-155.

(38) "Medicaid benefit" means the provision of anything of pecuniary value to or on behalf of a recipient under the medicaid program.

(39) (a) "Medicaid claim" means a communication, whether in oral, written, electronic, magnetic, or other form:

(i) that is used to claim specific services or items as payable or reimbursable under the medicaid program; or

(ii) that states income, expense, or other information that is or may be used to determine entitlement to or the rate of payment under the medicaid program.

(b) The term includes related documents submitted as a part of or in support of the claim.

(40) "Mentally defective" means that a person suffers from a mental disease or defect that renders the person incapable of appreciating the nature of the person's own conduct.

(41) "Mentally incapacitated" means that a person is rendered temporarily incapable of appreciating or controlling the person's own conduct as a result of the influence of an intoxicating substance.

(42) "Misdemeanor" means an offense for which the sentence imposed upon conviction is imprisonment in the county jail for a term or a fine, or both, or for which the sentence imposed is imprisonment in a state prison for a term of 1 year or less.

(43) "Negligently"—a person acts negligently with respect to a result or to a circumstance described by a statute defining an offense when the person consciously disregards a risk that the result will occur or that the circumstance exists or when the person disregards a risk of which the person should be aware that the result will occur or that the circumstance exists. The risk must be of a nature and degree that to disregard it involves a gross deviation from the standard of conduct that a reasonable person would observe in the actor's situation. "Gross deviation" means a deviation that is considerably greater than lack of ordinary care. Relevant terms, such as "negligent" and "with negligence", have the same meaning.

(44) "Nolo contendere" means a plea in which the defendant does not contest the charge or charges against the defendant and neither admits nor denies the charge or charges.

(45) "Obtain" means:

(a) in relation to property, to bring about a transfer of interest or possession, whether to the offender or to another; and

(b) in relation to labor or services, to secure the performance of the labor or service.

(46) "Obtains or exerts control" includes but is not limited to the taking, the carrying away, or the sale, conveyance, or transfer of title to, interest in, or possession of property.

(47) "Occupied structure" means any building, vehicle, or other place suitable for human occupancy or night lodging of persons or for carrying on business, whether or not a person is actually present, including any outbuilding that is immediately adjacent to or in close proximity to an occupied structure and that is habitually used for personal use or employment. Each unit of a building consisting of two or more units separately secured or occupied is a separate occupied structure.

(48) "Offender" means a person who has been or is liable to be arrested, charged, convicted, or punished for a public offense.

(49) "Offense" means a crime for which a sentence of death or of imprisonment or a fine is authorized. Offenses are classified as felonies or misdemeanors.

(50) (a) "Official detention" means imprisonment resulting from a conviction for an offense, confinement for an offense, confinement of a person charged with an offense, detention by a peace officer pursuant to arrest, detention for extradition or deportation, or lawful detention for the purpose of the protection of the welfare of the person detained or for the protection of society.

(b) Official detention does not include supervision of probation or parole, constraint incidental to release on bail, or an unlawful arrest unless the person arrested employed physical force, a threat of physical force, or a weapon to escape.

(51) "Official proceeding" means a proceeding heard or that may be heard before a legislative, a judicial, an administrative, or another governmental agency or official authorized to take evidence under oath, including any referee, hearings examiner, commissioner, notary, or other person taking testimony or deposition in connection with the proceeding.

(52) "Other state" means a state or territory of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

(53) "Owner" means a person other than the offender who has possession of or other interest in the property involved, even though the interest or possession is unlawful, and without whose consent the offender has no authority to exert control over the property.

(54) "Party official" means a person who holds an elective or appointive post in a political party in the United States by virtue of which the person directs or conducts or participates in directing or conducting party affairs at any level of responsibility.

(55) "Peace officer" means a person who by virtue of the person's office or public employment is vested by law with a duty to maintain public order or to make arrests for offenses while acting within the scope of the person's authority.

(56) "Pecuniary benefit" is benefit in the form of money, property, commercial interests, or anything else the primary significance of which is economic gain.

(57) "Person" includes an individual, business association, partnership, corporation, government, or other legal entity and an individual acting or purporting to act for or on behalf of a government or subdivision of government.

(58) "Physically helpless" means that a person is unconscious or is otherwise physically unable to communicate unwillingness to act.

(59) "Possession" is the knowing control of anything for a sufficient time to be able to terminate control.

(60) "Premises" includes any type of structure or building and real property.

(61) "Property" means a tangible or intangible thing of value. Property includes but is not limited to:

(a) real estate;

(b) money;

(c) commercial instruments;

(d) admission or transportation tickets;

(e) written instruments that represent or embody rights concerning anything of value, including labor or services, or that are otherwise of value to the owner;

(f) things growing on, affixed to, or found on land and things that are part of or affixed to a building;

(g) electricity, gas, and water;

(h) birds, animals, and fish that ordinarily are kept in a state of confinement;

(i) food and drink, samples, cultures, microorganisms, specimens, records, recordings, documents, blueprints, drawings, maps, and whole or partial copies, descriptions, photographs, prototypes, or models thereof;

(j) other articles, materials, devices, substances, and whole or partial copies, descriptions, photographs, prototypes, or models thereof that constitute, represent, evidence, reflect, or record secret scientific, technical, merchandising, production, or management information or a secret designed process, procedure, formula, invention, or improvement; and

(k) electronic impulses, electronically processed or produced data or information, commercial instruments, computer software or computer programs, in either machine- or human-readable form, computer services, any other tangible or intangible item of value relating to a computer, computer system, or computer network, and copies thereof.

(62) "Property of another" means real or personal property in which a person other than the offender has an interest that the offender has no authority to defeat or impair, even though the offender may have an interest in the property.

(63) "Public place" means a place to which the public or a substantial group has access.

(64) (a) "Public servant" means an officer or employee of government, including but not limited to legislators, judges, and firefighters, and a person participating as a juror, adviser, consultant, administrator, executor, guardian, or court-appointed fiduciary. The term "public servant" includes one who has been elected or designated to become a public servant.

(b) The term does not include witnesses.

(65) "Purposely"—a person acts purposely with respect to a result or to conduct described by a statute defining an offense if it is the person's conscious object to engage in that conduct or to cause that result. When a particular purpose is an element of an offense, the element is established although the purpose is conditional, unless the condition negatives the harm or evil sought to

be prevented by the law defining the offense. Equivalent terms, such as "purpose" and "with the purpose", have the same meaning.

(66) (a) "Serious bodily injury" means bodily injury that:

(i) creates a substantial risk of death;

(ii) causes serious permanent disfigurement or protracted loss or impairment of the function or process of a bodily member or organ; or

(iii) at the time of injury, can reasonably be expected to result in serious permanent disfigurement or protracted loss or impairment of the function or process of a bodily member or organ.

(b) The term includes serious mental illness or impairment.

(67) "Sexual contact" means touching of the sexual or other intimate parts of the person of another, directly or through clothing, in order to knowingly or purposely:

(a) cause bodily injury to or humiliate, harass, or degrade another; or

(b) arouse or gratify the sexual response or desire of either party.

(68) (a) "Sexual intercourse" means penetration of the vulva, anus, or mouth of one person by the penis of another person, penetration of the vulva or anus of one person by a body member of another person, or penetration of the vulva or anus of one person by a foreign instrument or object manipulated by another person to knowingly or purposely:

(i) cause bodily injury or humiliate, harass, or degrade; or

(ii) arouse or gratify the sexual response or desire of either party.

(b) For purposes of subsection (68)(a), any penetration, however slight, is sufficient.

(69) "Solicit" or "solicitation" means to command, authorize, urge, incite, request, or advise another to commit an offense.

(70) "State" or "this state" means the state of Montana, all the land and water in respect to which the state of Montana has either exclusive or concurrent jurisdiction, and the air space above the land and water.

(71) "Statute" means an act of the legislature of this state.

(72) "Stolen property" means property over which control has been obtained by theft.

(73) A "stop" is the temporary detention of a person that results when a peace officer orders the person to remain in the peace officer's presence.

(74) "Tamper" means to interfere with something improperly, meddle with it, make unwarranted alterations in its existing condition, or deposit refuse upon it.

(75) "Telephone" means any type of telephone, including but not limited to a corded, uncorded, cellular, or satellite telephone.

(76) "Threat" means a menace, however communicated, to:

(a) inflict physical harm on the person threatened or any other person or on property;

(b) subject any person to physical confinement or restraint;

(c) commit a criminal offense;

(d) accuse a person of a criminal offense;

(e) expose a person to hatred, contempt, or ridicule;

(f) harm the credit or business repute of a person;

(g) reveal information sought to be concealed by the person threatened;

(h) take action as an official against anyone or anything, withhold official action, or cause the action or withholding;

(i) bring about or continue a strike, boycott, or other similar collective action if the person making the threat demands or receives property that is not for the benefit of groups that the person purports to represent; or

(j) testify or provide information or withhold testimony or information with respect to another's legal claim or defense.

(77) (a) "Value" means the market value of the property at the time and place of the crime or, if the market value cannot be satisfactorily ascertained, the cost of the replacement of the property within a reasonable time after the crime. If the offender appropriates a portion of the value of the property, the value must be determined as follows:

(i) The value of an instrument constituting an evidence of debt, such as a check, draft, or promissory note, is considered the amount due or collectible. The figure is ordinarily the face amount of the indebtedness less any portion of the indebtedness that has been satisfied.

(ii) The value of any other instrument that creates, releases, discharges, or otherwise affects any valuable legal right, privilege, or obligation is considered the amount of economic loss that the owner of the instrument might reasonably suffer by virtue of the loss of the instrument.

(iii) The value of electronic impulses, electronically produced data or information, computer software or programs, or any other tangible or intangible item relating to a computer, computer system, or computer network is considered to be the amount of economic loss that the owner of the item might reasonably suffer by virtue of the loss of the item. The determination of the amount of economic loss includes but is not limited to consideration of the value of the owner's right to exclusive use or disposition of the item.

(b) When it cannot be determined if the value of the property is more or less than ~~$1,000~~ *$1,500* by the standards set forth in subsection (77)(a), its value is considered to be an amount less than ~~$1,000~~ *$1,500*.

(c) Amounts involved in thefts committed pursuant to a common scheme or the same transaction, whether from the same person or several persons, may be aggregated in determining the value of the property.

(78) "Vehicle" means a device for transportation by land, water, or air or by mobile equipment, with provision for transport of an operator.

(79) "Weapon" means an instrument, article, or substance that, regardless of its primary function, is readily capable of being used to produce death or serious bodily injury.

(80) "Witness" means a person whose testimony is desired in an official proceeding, in any investigation by a grand jury, or in a criminal action, prosecution, or proceeding."

Section 2. Section 45-6-101, MCA, is amended to read:

"45-6-101. Criminal mischief. (1) A person commits the offense of criminal mischief if the person knowingly or purposely:

(a) injures, damages, or destroys any property of another or public property without consent;

(b) without consent tampers with property of another or public property so as to endanger or interfere with persons or property or its use;

(c) damages or destroys property with the purpose to defraud an insurer; or

(d) fails to close a gate previously unopened that the person has opened, leading in or out of any enclosed premises. This does not apply to gates located in cities or towns.

(2) A person convicted of criminal mischief must be ordered to make restitution in an amount and manner to be set by the court. The court shall determine the manner and amount of restitution after full consideration of the convicted person's ability to pay the restitution. Upon good cause shown by the convicted person, the court may modify any previous order specifying the amount and manner of restitution. Full payment of the amount of restitution ordered must be made prior to the release of state jurisdiction over the person convicted.

(3) A person convicted of the offense of criminal mischief shall be fined not to exceed ~~$1,000~~ *$1,500* or be imprisoned in the county jail for any term not to exceed 6 months, or both. If the offender commits the offense of criminal mischief and causes pecuniary loss in excess of ~~$1,000~~ *$1,500*, injures or kills a commonly domesticated hoofed animal, or causes a substantial interruption or impairment of public communication, transportation, supply of water, gas, or power, or other public services, the offender shall be fined an amount not to exceed $50,000 or be imprisoned in the state prison for a term not to exceed 10 years, or both.

(4) Amounts involved in criminal mischiefs committed pursuant to a common scheme or the same transaction, whether against the public or the same person or several persons, may be aggregated in determining pecuniary loss."

Section 3. Section 45-6-103, MCA, is amended to read:

"45-6-103. Arson. (1) A person commits the offense of arson when, by means of fire or explosives, the person knowingly or purposely:

(a) damages or destroys a structure, vehicle, personal property (other than a vehicle) that exceeds ~~$1,000~~ *$1,500* in value, crop, pasture, forest, or other real property that is property of another without consent;

(b) damages or destroys a structure, vehicle, crop, pasture, forest, or other property that the person owns or has a possessory interest in, with the purpose of obtaining a pecuniary or other gain through fraud or deception; or

(c) places another person in danger of death or bodily injury, including a firefighter responding to or at the scene of a fire or explosion.

(2) A person convicted of the offense of arson shall be imprisoned in the state prison for a term not to exceed 20 years or be fined an amount not to exceed $50,000, or both."

Section 4. Section 45-6-104, MCA, is amended to read:

"45-6-104. Desecration of capitol, place of worship, cemetery, or public memorial. (1) In this section, "capitol" means the Montana state capitol building and any permanent monuments on the capitol grounds.

(2) A person commits the offense of desecration if the person purposely:

(a) defiles or defaces the capitol or a place of worship, cemetery, or public memorial;

(b) places on or attaches to the capitol or a place of worship, cemetery, or public memorial any mark, design, or material not properly a part of the capitol, place of worship, cemetery, or public memorial; or

(c) injures, damages, or destroys any portion of the capitol or of a place of worship, cemetery, or public memorial.

(3) A person convicted of the offense of desecration shall be:

(a) incarcerated for any term not to exceed 6 months or be fined an amount not to exceed $500, or both, if the damage does not exceed ~~$1,000~~ *$1,500*; or

(b) imprisoned in the state prison for any term not to exceed 10 years or be fined an amount not to exceed $50,000, or both, if there is ~~$1,000~~ *$1,500* or more of damage.

(4) With regard to the capitol, this section does not apply to displays or actions authorized by the department of administration."

Section 5. Section 45-6-301, MCA, is amended to read:

"45-6-301. Theft. (1) A person commits the offense of theft when the person purposely or knowingly obtains or exerts unauthorized control over property of the owner and:

(a) has the purpose of depriving the owner of the property;

(b) purposely or knowingly uses, conceals, or abandons the property in a manner that deprives the owner of the property; or

(c) uses, conceals, or abandons the property knowing that the use, concealment, or abandonment probably will deprive the owner of the property.

(2) A person commits the offense of theft when the person purposely or knowingly obtains by threat or deception control over property of the owner and:

(a) has the purpose of depriving the owner of the property;

(b) purposely or knowingly uses, conceals, or abandons the property in a manner that deprives the owner of the property; or

(c) uses, conceals, or abandons the property knowing that the use, concealment, or abandonment probably will deprive the owner of the property.

(3) A person commits the offense of theft when the person purposely or knowingly obtains control over stolen property knowing the property to have been stolen by another and:

(a) has the purpose of depriving the owner of the property;

(b) purposely or knowingly uses, conceals, or abandons the property in a manner that deprives the owner of the property; or

(c) uses, conceals, or abandons the property knowing that the use, concealment, or abandonment probably will deprive the owner of the property.

(4) A person commits the offense of theft when the person purposely or knowingly obtains or exerts unauthorized control over any part of any public assistance provided under Title 52 or 53 by a state or county agency, regardless of the original source of assistance, by means of:

(a) a knowingly false statement, representation, or impersonation; or

(b) a fraudulent scheme or device.

(5) A person commits the offense of theft when the person purposely or knowingly obtains or exerts or helps another obtain or exert unauthorized control over any part of any benefits provided under Title 39, chapter 71, by means of:

(a) a knowingly false statement, representation, or impersonation; or

(b) deception or other fraudulent action.

(6) (a) A person commits the offense of theft when the person purposely or knowingly commits insurance fraud as provided in 33-1-1202 or 33-1-1302;

(b) purposely or knowingly diverts or misappropriates insurance premiums as provided in 33-17-1102; or

(c) purposely or knowingly receives small business health insurance premium incentive payments or premium assistance payments or tax credits under Title 33, chapter 22, part 20, to which the person is not entitled.

(7) A person commits the offense of theft of property by embezzlement when, with the purpose to deprive the owner of the property, the person:

(a) purposely or knowingly obtains or exerts unauthorized control over property of the person's employer or over property entrusted to the person; or

(b) purposely or knowingly obtains by deception control over property of the person's employer or over property entrusted to the person.

(8) (a) Except as provided in subsection (8)(b), a person convicted of the offense of theft of property not exceeding ~~$1,000~~ *$1,500* in value shall be fined an amount not to exceed ~~$1,000~~ *$1,500* or be imprisoned in the county jail for a term not to exceed 6 months, or both. A person convicted of a second offense shall be fined ~~$1,000~~ *$1,500* or be imprisoned in the county jail for a term not to exceed 6 months, or both. A person convicted of a third or subsequent offense shall be fined ~~$1,000~~ *$1,500* and be imprisoned in the county jail for a term of not less than 30 days or more than 6 months.

(b) Except as provided in subsection (8)(c), a person convicted of the offense of theft of property exceeding ~~$1,000~~ *$1,500* in value, theft of any commonly domesticated hoofed animal, or theft of any amount of anhydrous ammonia for the purpose of manufacturing dangerous drugs shall be fined an amount not to exceed $50,000 or be imprisoned in a state prison for a term not to exceed 10 years, or both.

(c) A person convicted of the offense of theft of property exceeding $10,000 in value by embezzlement shall be imprisoned in a state prison for a term of not less than 1 year or more than 10 years and may be fined an amount not to exceed $50,000. The court may, in its discretion, place the person on probation with the requirement that restitution be made under terms set by the court. If the terms are not met, the required prison term may be ordered.

(9) Amounts involved in thefts committed pursuant to a common scheme or the same transaction, whether from the same person or several persons, may be aggregated in determining the value of the property."

Section 6. Section 45-6-309, MCA, is amended to read:

"45-6-309. Failure to return rented or leased personal property. (1) A person commits the offense of failure to return rented or leased personal property if, without notice to and permission of the lessor, the person purposely and knowingly fails to return the property within 48 hours after the time provided for return in the rental agreement, provided that clear written notice, in bold print, of the date and time when return of the property is required and of the penalty prescribed in this section is stated in the rental or lease agreement.

(2) Presentation to the lessor by the lessee of identification that is false for the purpose of obtaining a rental or lease agreement constitutes prima facie evidence of commission of the offense.

(3) After the rental or lease period specified in the rental or lease agreement has expired, failure to return rented or leased personal property within 72 hours of written demand by the lessor, sent by certified mail to the renter or lessee at the address given at the time of entering the rental or lease agreement, constitutes prima facie evidence of commission of the offense.

(4) (a) A person convicted of failure to return rented or leased personal property not exceeding ~~$1,000~~ *$1,500* in value shall be fined not to exceed ~~$1,000~~ *$1,500* or be imprisoned in the county jail for a term not to exceed 6 months, or both.

(b) A person convicted of failure to return rented or leased personal property exceeding ~~$1,000~~ *$1,500* in value shall be imprisoned in the state prison for a term not to exceed 10 years."

Section 7. Section 45-6-311, MCA, is amended to read:

"45-6-311. Unlawful use of a computer. (1) A person commits the offense of unlawful use of a computer if the person knowingly or purposely:

(a) obtains the use of any computer, computer system, or computer network without consent of the owner;

(b) alters or destroys or causes another to alter or destroy a computer program or computer software without consent of the owner; or

(c) obtains the use of or alters or destroys a computer, computer system, computer network, or any part thereof as part of a deception for the purpose of obtaining money, property, or computer services from the owner of the computer, computer system, computer network, or part thereof or from any other person.

(2) A person convicted of the offense of unlawful use of a computer involving property not exceeding ~~$1,000~~ *$1,500* in value shall be fined not to exceed ~~$1,000~~ *$1,500* or be imprisoned in the county jail for a term not to exceed 6 months, or both. A person convicted of the offense of unlawful use of a computer involving property exceeding ~~$1,000~~ *$1,500* in value shall be fined not more than 2 1/2 times the value of the property used, altered, destroyed, or obtained or be imprisoned in the state prison for a term not to exceed 10 years, or both."

Section 8. Section 45-6-312, MCA, is amended to read:

"45-6-312. Unauthorized acquisition or transfer of food stamps. (1) A person commits the offense of unauthorized acquisition or transfer of food stamps if the person knowingly:

(a) acquires, purchases, possesses, or uses any food stamp or coupon that the person is not entitled to; or

(b) transfers, sells, trades, gives, or otherwise disposes of any food stamp or coupon to another person not entitled to receive or use it.

(2) A person convicted of an offense under this section shall be fined not more than ~~$1,000~~ *$1,500* or be imprisoned in the county jail for not more than 6 months, or both. A person convicted of an offense under this section, which offense is part of a common scheme or in which the value of the food stamps exceeds ~~$1,000~~ *$1,500*, shall be fined not more than $50,000 or be imprisoned in the state prison for not more than 10 years, or both.

(3) As used in this section, "food stamp or coupon" means any stamp, coupon, or type of certification provided for the purchase of eligible food pursuant to the Food Stamp Act of 1977, 7 U.S.C. 2011 through 2029, or any similar public assistance program."

Section 9. Section 45-6-313, MCA, is amended to read:

"45-6-313. Medicaid fraud. (1) A person commits the offense of medicaid fraud when:

(a) the person obtains a medicaid payment or benefit for the person or another person by purposely or knowingly making, submitting, or authorizing the making or submitting of a false or misleading medicaid claim, statement, representation, application, or document to a medicaid agency for a service or item that the person is not entitled to under applicable statutes or under rules adopted under Title 2, chapter 4;

(b) the person purposely or knowingly:

(i) solicits, accepts, offers, or provides any remuneration, including but not limited to a kickback, bribe, or rebate, other than an amount legally payable under the medical assistance program, for furnishing services or items for which payment may be made under the medicaid program or in return for purchasing, leasing, ordering, arranging for, or recommending the purchasing, leasing, or ordering of any services or items from a provider for which payment may be made under the medicaid program; or

(ii) makes, offers, or accepts a remuneration, a rebate of a fee, or a charge for referring a recipient to another provider for the furnishing of services or items for which payment may be made under the medicaid program; or

(c) the person, with respect to a managed care contract, health maintenance organization contract, or similar contract or subcontract under the medicaid program, purposely or knowingly fails or refuses to provide covered medically necessary services to eligible recipients as required by the contract.

(2) Any conduct or activity that does not violate or that is protected under the provisions of, or federal regulations adopted under, 42 U.S.C. 1395nn or 42 U.S.C. 1320a-7b(b), as may be amended, is not considered an offense under subsection (1)(b), and the conduct or activity must be accorded the same protections allowed under federal laws and regulations.

(3) In a prosecution for a violation of this section, it is a defense if the person acted in reliance upon the written authorization or advice of the department.

(4) (a) A person convicted of the offense of medicaid fraud involving payments, benefits, or claims not exceeding ~~$1,000~~ *$1,500* in value shall be fined an amount not to exceed ~~$1,000~~ *$1,500* or be imprisoned in the county jail for a term not to exceed 6 months, or both. A person convicted of a second offense shall be fined ~~$1,000~~ *$1,500* and be imprisoned in the county jail for a term not less than 10 days or more than 6 months. A person convicted of a third or subsequent offense shall be fined ~~$1,000~~ *$1,500* and be imprisoned in the county jail for a term not less than 30 days or more than 1 year.

(b) A person convicted of the offense of medicaid fraud involving payments, benefits, or claims exceeding ~~$1,000~~ *$1,500* in value shall be fined an amount not to exceed the greater of $50,000 or 10 times the value of the payments obtained or be imprisoned in the state prison for a term not to exceed 10 years, or both.

(c) For purposes of imposing sentence for a conviction under subsection (1)(b), the value of payments or benefits involved is the greater of the value of medicaid payments or benefits received as a result of the illegal conduct or activity or the value of the remuneration, rebate, or charge involved.

(d) Amounts involved in medicaid fraud committed pursuant to a common scheme or the same transaction may be aggregated in determining the value involved.

(e) A person convicted of the offense of medicaid fraud must be suspended from participation in the medicaid program:

(i) for any period of time not less than 1 year for a first offense, or the person may be permanently terminated from participation in the medical assistance program;

(ii) for any period of time not less than 3 years for a second offense, or the person may be permanently terminated from participation in the medical assistance program; or

(iii) permanently for a third offense.

(5) In addition to any other penalty provided by law, a person convicted of medicaid fraud is not entitled to bill or collect from the recipient, the medicaid program, or any other third-party payor for the services or items involved and shall repay to the medicaid program any payments or benefits obtained by any person for the services or items involved.

(6) The establishment of the criminal offenses specified in this section does not preclude the application of any other provision of law."

Section 10. Section 45-6-316, MCA, is amended to read:

"45-6-316. Issuing a bad check. (1) A person commits the offense of issuing a bad check when the person issues or delivers a check or other order upon a real or fictitious depository for the payment of money knowing that it will not be paid by the depository.

(2) If the offender has an account with the depository, failure to make good the check or other order within 5 days after written notice of nonpayment has been received by the issuer is prima facie evidence that the offender knew that it would not be paid by the depository.

(3) A person convicted of issuing a bad check shall be fined not to exceed ~~$1,000~~ *$1,500* or be imprisoned in the county jail for any term not to exceed 6 months, or both. If the offender has engaged in issuing bad checks that are part of a common scheme or if the value of any property, labor, or services obtained or attempted to be obtained exceeds ~~$1,000~~ *$1,500*, the offender shall be fined not to exceed $50,000 or be imprisoned in the state prison for any term not to exceed 10 years, or both."

Section 11. Section 45-6-317, MCA, is amended to read:

"45-6-317. Deceptive practices. (1) A person commits the offense of deceptive practices when the person purposely or knowingly:

(a) causes another, by deception or threat, to execute a document disposing of property or a document by which a pecuniary obligation is incurred;

(b) makes or directs another to make a false or deceptive statement addressed to the public or any person for the purpose of promoting or procuring the sale of property or services;

(c) makes or directs another to make a false or deceptive statement to any person respecting the financial condition of the person making or directing another to make the statement for the purpose of procuring a loan or credit or accepts a false or deceptive statement from any person who is attempting to procure a loan or credit regarding that person's financial condition; or

(d) obtains or attempts to obtain property, labor, or services by any of the following means:

(i) using a credit card that was issued to another without the other's consent;

(ii) using a credit card that has been revoked or canceled;

(iii) using a credit card that has been falsely made, counterfeited, or altered in any material respect;

(iv) using the pretended number or description of a fictitious credit card;

(v) using a credit card that has expired when the credit card clearly indicates the expiration date.

(2) A person convicted of the offense of deceptive practices shall be fined not to exceed ~~$1,000~~ *$1,500* or imprisoned in the county jail for a term not to exceed 6 months, or both. If the deceptive practices are part of a common scheme or the value of any property, labor, or services obtained or attempted to be obtained exceeds ~~$1,000~~ *$1,500*, the offender shall be fined not to exceed $50,000 or be imprisoned in the state prison for a term not to exceed 10 years, or both."

Section 12. Section 45-6-325, MCA, is amended to read:

"45-6-325. Forgery. (1) A person commits the offense of forgery when with purpose to defraud the person knowingly:

(a) without authority makes or alters a document or other object apparently capable of being used to defraud another in a manner that it purports to have been made by another or at another time or with different provisions or of different composition;

(b) issues or delivers the document or other object knowing it to have been thus made or altered;

(c) possesses with the purpose of issuing or delivering any such document or other object knowing it to have been thus made or altered; or

(d) possesses with knowledge of its character any plate, die, or other device, apparatus, equipment, or article specifically designed for use in counterfeiting or otherwise forging written instruments.

(2) A purpose to defraud means the purpose of causing another to assume, create, transfer, alter, or terminate any right, obligation, or power with reference to any person or property.

(3) A document or other object capable of being used to defraud another includes but is not limited to one by which any right, obligation, or power with reference to any person or property may be created, transferred, altered, or terminated.

(4) A person convicted of the offense of forgery shall be fined not to exceed ~~$1,000~~ *$1,500* or be imprisoned in the county jail for any term not to exceed 6 months, or both. If the forgery is part of a common scheme or if the value of the property, labor, or services obtained or attempted to be obtained exceeds ~~$1,000~~ *$1,500*, the offender shall be fined not to exceed $50,000 or be imprisoned in the state prison for any term not to exceed 20 years, or both."

Section 13. Section 45-6-332, MCA, is amended to read:

"45-6-332. Theft of identity. (1) A person commits the offense of theft of identity if the person purposely or knowingly obtains personal identifying information of another person and uses that information for any unlawful purpose, including to obtain or attempt to obtain credit, goods, services, financial information, or medical information in the name of the other person without the consent of the other person.

(2) (a) A person convicted of the offense of theft of identity if no economic benefit was gained or was attempted to be gained or if an economic benefit of less

than ~~$1,000~~ *$1,500* was gained or attempted to be gained shall be fined an amount not to exceed ~~$1,000~~ *$1,500*, imprisoned in the county jail for a term not to exceed 6 months, or both.

(b) A person convicted of the offense of theft of identity if an economic benefit of ~~$1,000~~ *$1,500* or more was gained or attempted to be gained shall be fined an amount not to exceed $10,000, imprisoned in a state prison for a term not to exceed 10 years, or both.

(3) As used in this section, "personal identifying information" includes but is not limited to the name, date of birth, address, telephone number, driver's license number, social security number or other federal government identification number, tribal identification card number, place of employment, employee identification number, mother's maiden name, financial institution account number, credit card number, or similar identifying information relating to a person.

(4) If restitution is ordered, the court may include, as part of its determination of an amount owed, payment for any costs incurred by the victim, including attorney fees and any costs incurred in clearing the credit history or credit rating of the victim or in connection with any civil or administrative proceeding to satisfy any debt, lien, or other obligation of the victim arising as a result of the actions of the defendant."

Section 14. Section 45-6-341, MCA, is amended to read:

"45-6-341. Money laundering. (1) A person commits the offense of money laundering if the person knowingly:

(a) receives or acquires the proceeds of, or engages in transactions involving proceeds of, any activity that is unlawful under the laws of the United States or the state in which the activity occurred;

(b) gives, sells, transfers, trades, invests, conceals, transports, or otherwise makes available anything of value that the person knows is intended to be used for the purpose of committing or furthering the commission of any activity that is unlawful under the laws of the United States or the state in which the committing or furthering of the commission of the activity occurs;

(c) directs, plans, organizes, initiates, finances, manages, supervises, or facilitates the transportation or transfer of proceeds that the person knows are derived from any activity that is unlawful under the laws of the United States or the state in which the activity occurred; or

(d) conducts a financial transaction involving proceeds that the person knows are derived from any activity that is unlawful under the laws of the United States or the state in which the activity occurred when the transaction is designed in whole or in part to conceal or disguise the nature, location, source, ownership, or control of the proceeds or to avoid a transaction reporting requirement under federal law.

(2) A person convicted of money laundering shall be fined an amount not to exceed ~~$1,000~~ *$1,500* or be imprisoned in the county jail for a term not to exceed 6 months, or both. If the money laundering is part of a common scheme or if the value of the proceeds or item of value exceeds ~~$1,000~~ *$1,500*, the person shall be fined not to exceed $50,000 or be imprisoned in the state prison for a term not to exceed 20 years, or both.

(3) (a) Upon conviction, the court shall order the following property possessed by a person convicted of money laundering to be forfeited:

(i) money, including digital currency, and raw materials, products, equipment of any kind, and any other personal property involved in the money laundering;

(ii) personal property constituting or derived from proceeds obtained directly or indirectly from the money laundering; and

(iii) real property, including any right, title, and interest in any lot or tract of land and any appurtenances or improvements, that is directly used or intended to be used in any manner to commit or facilitate the commission of, or that is derived from or maintained by the proceeds resulting from, the money laundering.

(b) The sheriff of the county where forfeited property is located shall sell the property at auction. The proceeds of the sale must be deposited in the state general fund.

(4) For purposes of this section, "digital currency" means money represented by digital information that is stored, spent, and transferred electronically by a person as part of a financial transaction."

Section 15. Section 45-7-210, MCA, is amended to read:

"45-7-210. False claim to public agency. (1) A person commits an offense under this section if the person knowingly presents for allowance, for payment, or for the purpose of concealing, avoiding, or decreasing an obligation to pay a false or fraudulent claim, bill, account, voucher, or writing to a public agency, public servant, or contractor authorized to allow or pay valid claims presented to a public agency.

(2) (a) Except as provided in subsection (2)(b), a person convicted of an offense under this section shall be fined not to exceed ~~$1,000~~ *$1,500* or imprisoned in the county jail for a term not to exceed 6 months, or both.

(b) If a false or fraudulent claim is knowingly submitted as part of a common scheme or if the value of the claim or the aggregate value of one or more claims exceeds ~~$1,000~~ *$1,500*, a person convicted of an offense under this section shall be fined not to exceed $10,000 or imprisoned in the state prison for a term not to exceed 10 years, or both."

Approved May 6, 2009

CHAPTER NO. 474

[SB 498]

AN ACT REGULATING CARBON SEQUESTRATION; REQUIRING A PERMIT FOR A CARBON DIOXIDE INJECTION WELL; AUTHORIZING THE BOARD OF OIL AND GAS CONSERVATION TO REGULATE THE INJECTION OF CARBON DIOXIDE; AFFIRMING THE DOMINANCE OF A MINERAL ESTATE; ESTABLISHING FEES FOR ADMINISTERING A CARBON SEQUESTRATION PROGRAM AND LONG-TERM OVERSIGHT OF WELLS; REQUIRING NOTICE OF CARBON DIOXIDE INJECTION WELLS; REQUIRING THE BOARD TO SOLICIT AND CONSIDER COMMENTS FROM THE DEPARTMENT OF ENVIRONMENTAL QUALITY PRIOR TO ISSUING AN INJECTION PERMIT AND PRIOR TO ISSUING A CERTIFICATE OF COMPLETION; REQUIRING THE BOARD TO SOLICIT AND CONSIDER COMMENTS FROM THE DEPARTMENT OF ENVIRONMENTAL QUALITY PRIOR TO TRANSFERRING LIABILITY TO THE STATE; REQUIRING TESTING AFTER ISSUANCE OF A

CERTIFICATE OF COMPLETION AND PRIOR TO TRANSFER OF LIABILITY; ALLOWING FOR THE TRANSFER OF TITLE TO SEQUESTERED CARBON DIOXIDE TO THE STATE AFTER BOARD CERTIFICATION; ALLOWING UNITIZATION FOR GEOLOGIC STORAGE RESERVOIRS; EXEMPTING A CARBON DIOXIDE INJECTION WELL FROM GROUND WATER PERMIT REQUIREMENTS; AMENDING SECTIONS 70-30-105, 75-5-103, 75-5-401, 77-3-430, 82-10-402, 82-11-101, 82-11-104, 82-11-111, 82-11-118, 82-11-122, 82-11-123, 82-11-127, 82-11-136, 82-11-137, 82-11-161, 82-11-163, 82-11-201, 82-11-204, 82-11-205, AND 82-11-214, MCA; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Preservation of property rights. (1) Title 82, chapter 11, parts 1 and 2, and the issuance of a permit for a carbon dioxide injection well pursuant to Title 82, chapter 11, parts 1 and 2, do not:

(a) prejudice the rights of property owners within a geologic storage reservoir to exercise rights that have not been committed to a storage reservoir; or

(b) prevent a mineral owner or mineral lessee from drilling through or near a storage reservoir to explore for and develop minerals, provided that the drilling, production, and related activities comply with board requirements that preserve the storage reservoir's integrity and implement Title 82, chapter 11, parts 1 and 2.

(2) Title 82, chapter 11, parts 1 and 2, may not be construed to:

(a) change or alter common law in accordance with 1-1-108 as it relates to the rights belonging to or the dominance of the mineral estate, including but not limited to the right to mine, drill, or recomplete a well, to inject substances to facilitate production, or to implement enhanced recovery for the purposes of recovery of oil, gas, or other minerals;

(b) impede or impair the ability of an oil and gas operator to inject carbon dioxide for enhanced recovery or to establish, verify, register, and sell emission reduction credits or attributes associated with the project;

(c) change or alter common law or statutory provisions regarding the ownership of surface or subsurface rights;

(d) diminish, impair, or in any way affect the rights of a natural gas public utility, as defined in 82-10-301, to own, operate, or control a gas storage reservoir in use prior to [the effective date of this section]; or

(e) apply within the exterior boundaries of any federally recognized Indian reservation within the state of Montana unless the governing body of the tribe adopts a carbon sequestration law and enters into a cooperative agreement with the state.

(3) If the ownership of the geologic storage reservoir cannot be determined from the deeds or severance documents related to the property by reviewing statutory or common law, it is presumed that the surface owner owns the geologic storage reservoir.

Section 2. Geologic storage reservoir administrative fee — account established. (1) (a) A geologic storage operator shall pay to the board a fee on each ton of carbon dioxide injected for storage for the purpose of carrying out the state's responsibility to monitor and manage geologic storage reservoirs. If a geologic storage operator chooses to indefinitely accept liability pursuant to [section 4(9)(a)], the board shall remit the fee to the operator. If a geologic

storage operator is required to maintain liability pursuant to [section 4(9)(b)], the board may not remit the fee.

(b) The fee must be in the amount set by board rule.

(c) The amount must be based on the anticipated actual expenses that the board will incur in monitoring and managing geologic storage reservoirs during their postclosure phases.

(2) There is a geologic storage reservoir program account in the special revenue fund.

(3) (a) Each fiscal year there must be deposited in the account the fees collected pursuant to [section 5(2)(b)] and subsection (1) of this section, to be used by the board for monitoring and managing geologic storage reservoirs pursuant to [section 4(6) and (8)].

(b) Funds received from bonds or other surety as authorized in 82-11-123(1)(f) and [section 4] must be deposited in the account.

(4) Interest and earnings on the funds in the geologic storage reservoir program account accrue to that account.

Section 3. Liability for carbon dioxide during injection. (1) Until the certificate of project completion is issued pursuant to [section 4(1)] and title to the stored carbon dioxide and geologic storage reservoir is transferred to the state pursuant to [section 4(8)], the geologic storage operator is liable for the operation and management of the carbon dioxide injection well, the geologic storage reservoir, and the injected or stored carbon dioxide.

(2) Bond or other surety furnished pursuant to 82-11-123(1)(f) must be adequate to meet the requirements of subsection (1).

(3) For the purposes of [section 4] and this section, "title" includes title to the geologic storage reservoir and the stored carbon dioxide.

Section 4. Certificate of completion — department of environmental quality participation — transfer of liability. (1) Pursuant to subsection (3), after carbon dioxide injections into a reservoir end and upon completion of the certification requirements pursuant to subsections (4) and (5), the board shall issue the geologic storage operator a certificate of project completion.

(2) The board:

(a) shall adopt rules pursuant to 82-11-111 necessary for implementing subsection (4) of this section, including rules for public notice and hearing; and

(b) may, pursuant to 82-11-111, adopt any other rules necessary for administration of this section.

(3) The certificate may not be issued until at least 15 years after carbon dioxide injections end.

(4) Subject to subsection (5), the certificate may be issued only if the geologic storage operator:

(a) is in full compliance with regulations governing the geologic storage reservoir pursuant to this part;

(b) shows that the geologic storage reservoir will retain the carbon dioxide stored in it;

(c) shows that all wells, equipment, and facilities to be used in the postclosure period are in good condition and retain mechanical integrity;

(d) shows that it has plugged wells, removed equipment and facilities, and completed reclamation work as required by the board;

(e) shows that the carbon dioxide in the geologic storage reservoir has become stable, which means that it is essentially stationary or chemically combined or, if it is migrating or may migrate, that any migration will not cross the geologic storage reservoir boundary; and

(f) shows that the geologic storage operator will continue to provide adequate bond or other surety after receiving the certificate of completion for at least 15 years following issuance of the certificate of completion and that the operator continues to accept liability for the geologic storage reservoir and the stored carbon dioxide.

(5) (a) Prior to issuing a certificate of completion, the board shall solicit, document, consider, and address comments from the department of environmental quality.

(b) Notwithstanding subsection (5)(a), the board makes the final decision on issuance of the certificate.

(6) After issuing a certificate of completion, the board shall ensure adequate monitoring by the operator of the wells and reservoir, verifying compliance with subsection (4), for a period of 15 years.

(7) (a) Following the monitoring and verification required in subsection (6) and subject to subsections (7)(b) and (7)(c), if the geologic storage operator has title to the geologic storage reservoir and the stored carbon dioxide, the geologic storage operator may transfer title to the geologic storage reservoir and to the stored carbon dioxide to the state.

(b) Prior to a transfer of title, the monitoring pursuant to subsection (6) must show that:

(i) the reservoir and wells are in full compliance with regulations pursuant to this part; and

(ii) the reservoir will maintain its structural integrity and will not allow carbon dioxide to move out of one stratum into another or pollute drinking water supplies.

(c) (i) Prior to a transfer of title, the board shall solicit, document, consider, and address comments from the department of environmental quality.

(ii) The board shall make a recommendation to the board of land commissioners as to whether title should transfer to the state.

(iii) Notwithstanding subsections (7)(c)(i) and (7)(c)(ii), the board of land commissioners shall make the final decision on the transfer of title.

(8) If liability is transferred pursuant to subsection (7):

(a) title is transferred, without payment or any compensation, to the state;

(b) title acquired by the state includes all rights and interests in and all responsibilities associated with the geologic storage reservoir and the stored carbon dioxide;

(c) the geologic storage operator and all persons who generated any injected carbon dioxide are released from all regulatory requirements and liability associated with the geologic storage reservoir and the stored carbon dioxide;

(d) any bonds or other surety posted by the geologic storage operator must be released; and

(e) monitoring and managing the geologic storage reservoir and the stored carbon dioxide is the state's responsibility to be overseen by the board until the federal government assumes responsibility for the long-term monitoring and management of geologic storage reservoirs and stored carbon dioxide.

(9) (a) If the operator does not transfer title to the state pursuant to subsection (7), the operator indefinitely accepts liability, except as provided in subsection (10), for the stored carbon dioxide and the geologic storage reservoir.

(b) If the operator is found not to be in compliance with subsection (7)(b), the operator retains liability until the operator is able to meet the requirements.

(10) After receiving a certificate of completion, every 15 years after completing the monitoring and verification required by subsection (6), an operator may petition the board and request to transfer liability to the state and be released from liability pursuant to subsection (8). An operator who petitions the board pursuant to this subsection (10) may not request that the fee required by [section 2(1)] or [section 5(2)(b)] be remitted.

Section 5. Conversion of enhanced recovery wells. (1) A well regulated under this chapter in which carbon dioxide is injected for the purpose of enhancing the recovery of oil and gas may be converted to a carbon dioxide injection well.

(2) (a) The board shall develop rules with regard to the conversion of wells referred to in subsection (1) to carbon dioxide injection wells. The rules must be in accordance with all application, permitting, and regulatory requirements for carbon dioxide injection wells pursuant to this part.

(b) The rules must include provisions for a fee to be paid by the owner of a converted well in an amount equivalent to the fee required to be paid by a geologic storage operator pursuant to [section 2(1)].

(3) Wells converted to carbon dioxide injection wells pursuant to this section are subject to carbon dioxide injection well and geologic storage reservoir regulations pursuant to this chapter, including requirements for bonding or other surety, the issuance of a certificate of completion, and acceptance or transfer of liability.

Section 6. Makoshika Park requirements. (1) Except as provided in subsection (3), on lands managed as Makoshika state park pursuant to Title 23, chapter 1, and under the control of the department of fish, wildlife, and parks by grant, acquisition, lease, easement, or other means, a person may not:

(a) drill, construct, convert, or operate an oil or gas well, stratigraphic test well, or core hole;

(b) conduct vibroseis, drill a seismic shot hole, or set a surface charge;

(c) explore for oil or gas in a manner that damages the land surface; or

(d) construct or place any surface facility associated with oil or gas exploration or development.

(2) The prohibitions in subsection (1) do not preclude the development of geologic storage reservoirs or of oil or gas resources from beneath Makoshika state park through directional drilling or access from property outside the boundaries of the state park provided that the surface resources of the state park are not disturbed.

(3) The prohibitions listed in subsection (1) do not apply to geologic storage reservoirs or to oil or gas resources within Makoshika state park that are owned by a private person, nor do the prohibitions apply to school trust lands within

the boundaries of the park. The state acknowledges the mineral rights of Dawson County and the state school trust and the private property rights of persons owning private mineral rights within Makoshika state park. The department of fish, wildlife, and parks is directed to conduct negotiations with the owners of mineral rights within Makoshika state park with the purpose of acquiring those rights in the name of the state.

Section 7. Section 70-30-105, MCA, is amended to read:

"70-30-105. Taking of underground natural gas storage reservoir — effect on owner's right to drill. (1) The taking of any sand, stratum, or formation for use as an underground natural gas storage reservoir is without prejudice to the rights of the owner or owners of the land or of the oil, gas, or other mineral rights in the land to drill or bore through the sand, stratum, or formation taken for use as an underground natural gas storage reservoir in order to explore for, produce, process, treat, or market any oil, gas, or other minerals that might be contained in the land above or below the sand, stratum, or formation taken.

(2) Any additional cost or expense required to be incurred in order to protect the underground natural gas storage reservoir against pollution and the escape of the gas from the reservoir by reason of boring or drilling through the sand, stratum, or formation used as an underground natural gas storage reservoir must be paid by the persons, firm, or corporation owning the underground natural gas storage reservoir at the time of the boring or drilling.

(3) After [the effective date of this section], if the sand, stratum, or formation is used as a geologic storage reservoir as defined in 82-11-101, it may not be taken for use as an underground natural gas storage reservoir."

Section 8. Section 75-5-103, MCA, is amended to read:

"75-5-103. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Board" means the board of environmental review provided for in 2-15-3502.

(2) "Contamination" means impairment of the quality of state waters by sewage, industrial wastes, or other wastes, creating a hazard to human health.

(3) "Council" means the water pollution control advisory council provided for in 2-15-2107.

(4) (a) "Currently available data" means data that is readily available to the department at the time a decision is made, including information supporting its previous lists of water bodies that are threatened or impaired.

(b) The term does not mean new data to be obtained as a result of department efforts.

(5) "Degradation" means a change in water quality that lowers the quality of high-quality waters for a parameter. The term does not include those changes in water quality determined to be nonsignificant pursuant to 75-5-301(5)(c).

(6) "Department" means the department of environmental quality provided for in 2-15-3501.

(7) "Disposal system" means a system for disposing of sewage, industrial, or other wastes and includes sewage systems and treatment works.

(8) "Effluent standard" means a restriction or prohibition on quantities, rates, and concentrations of chemical, physical, biological, and other constituents that are discharged into state waters.

(9) "Existing uses" means those uses actually attained in state waters on or after July 1, 1971, whether or not those uses are included in the water quality standards.

(10) "High-quality waters" means all state waters, except:

(a) ground water classified as of January 1, 1995, within the "III" or "IV" classifications established by the board's classification rules; and

(b) surface waters that:

(i) are not capable of supporting any one of the designated uses for their classification; or

(ii) have zero flow or surface expression for more than 270 days during most years.

(11) "Impaired water body" means a water body or stream segment for which sufficient credible data shows that the water body or stream segment is failing to achieve compliance with applicable water quality standards.

(12) "Industrial waste" means a waste substance from the process of business or industry or from the development of any natural resource, together with any sewage that may be present.

(13) "Interested person" means a person who has a real property interest, a water right, or an economic interest that is or may be directly and adversely affected by the department's preliminary decision regarding degradation of state waters, pursuant to 75-5-303. The term includes a person who has requested authorization to degrade high-quality waters.

(14) "Load allocation" means the portion of a receiving water's loading capacity that is allocated to one of its existing or future nonpoint sources or to natural background sources.

(15) "Loading capacity" means the mass of a pollutant that a water body can assimilate without a violation of water quality standards. For pollutants that cannot be measured in terms of mass, it means the maximum change that can occur from the best practicable condition in a surface water without causing a violation of the surface water quality standards.

(16) "Local department of health" means the staff, including health officers, employed by a county, city, city-county, or district board of health.

(17) "Metal parameters" includes but is not limited to aluminum, antimony, arsenic, beryllium, barium, cadmium, chromium, copper, fluoride, iron, lead, manganese, mercury, nickel, selenium, silver, thallium, and zinc.

(18) "Mixing zone" means an area established in a permit or final decision on nondegradation issued by the department where water quality standards may be exceeded, subject to conditions that are imposed by the department and that are consistent with the rules adopted by the board.

(19) "Other wastes" means garbage, municipal refuse, decayed wood, sawdust, shavings, bark, lime, sand, ashes, offal, night soil, oil, grease, tar, heat, chemicals, dead animals, sediment, wrecked or discarded equipment, radioactive materials, solid waste, and all other substances that may pollute state waters.

(20) "Outstanding resource waters" means:

(a) state surface waters located wholly within the boundaries of areas designated as national parks or national wilderness areas as of October 1, 1995; or

(b) other surface waters or ground waters classified by the board under the provisions of 75-5-316 and approved by the legislature.

(21) "Owner or operator" means a person who owns, leases, operates, controls, or supervises a point source.

(22) "Parameter" means a physical, biological, or chemical property of state water when a value of that property affects the quality of the state water.

(23) "Person" means the state, a political subdivision of the state, institution, firm, corporation, partnership, individual, or other entity and includes persons resident in Canada.

(24) "Point source" means a discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or vessel or other floating craft, from which pollutants are or may be discharged.

(25) (a) "Pollution" means:

(i) contamination or other alteration of the physical, chemical, or biological properties of state waters that exceeds that permitted by Montana water quality standards, including but not limited to standards relating to change in temperature, taste, color, turbidity, or odor; or

(ii) the discharge, seepage, drainage, infiltration, or flow of liquid, gaseous, solid, radioactive, or other substance into state water that will or is likely to create a nuisance or render the waters harmful, detrimental, or injurious to public health, recreation, safety, or welfare, to livestock, or to wild animals, birds, fish, or other wildlife.

(b) A discharge, seepage, drainage, infiltration, or flow that is authorized under the pollution discharge permit rules of the board is not pollution under this chapter. Activities conducted under the conditions imposed by the department in short-term authorizations pursuant to 75-5-308 are not considered pollution under this chapter.

(c) Contamination of ground water within the boundaries of a geologic storage reservoir, as defined in 82-11-101, by a carbon dioxide injection well in accordance with a permit issued pursuant to Title 82, chapter 11, part 1, is not pollution and does not require a mixing zone.

(26) "Sewage" means water-carried waste products from residences, public buildings, institutions, or other buildings, including discharge from human beings or animals, together with ground water infiltration and surface water present.

(27) "Sewage system" means a device for collecting or conducting sewage, industrial wastes, or other wastes to an ultimate disposal point.

(28) "Standard of performance" means a standard adopted by the board for the control of the discharge of pollutants that reflects the greatest degree of effluent reduction achievable through application of the best available demonstrated control technology, processes, operating methods, or other alternatives, including, when practicable, a standard permitting no discharge of pollutants.

(29) (a) "State waters" means a body of water, irrigation system, or drainage system, either surface or underground.

(b) The term does not apply to:

(i) ponds or lagoons used solely for treating, transporting, or impounding pollutants; or

(ii) irrigation waters or land application disposal waters when the waters are used up within the irrigation or land application disposal system and the waters are not returned to state waters.

(30) "Sufficient credible data" means chemical, physical, or biological monitoring data, alone or in combination with narrative information, that supports a finding as to whether a water body is achieving compliance with applicable water quality standards.

(31) "Threatened water body" means a water body or stream segment for which sufficient credible data and calculated increases in loads show that the water body or stream segment is fully supporting its designated uses but threatened for a particular designated use because of:

(a) proposed sources that are not subject to pollution prevention or control actions required by a discharge permit, the nondegradation provisions, or reasonable land, soil, and water conservation practices; or

(b) documented adverse pollution trends.

(32) "Total maximum daily load" or "TMDL" means the sum of the individual waste load allocations for point sources and load allocations for both nonpoint sources and natural background sources established at a level necessary to achieve compliance with applicable surface water quality standards.

(33) "Treatment works" means works, including sewage lagoons, installed for treating or holding sewage, industrial wastes, or other wastes.

(34) "Waste load allocation" means the portion of a receiving water's loading capacity that is allocated to one of its existing or future point sources.

(35) "Water quality protection practices" means those activities, prohibitions, maintenance procedures, or other management practices applied to point and nonpoint sources designed to protect, maintain, and improve the quality of state waters. Water quality protection practices include but are not limited to treatment requirements, standards of performance, effluent standards, and operating procedures and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from material storage.

(36) "Water well" means an excavation that is drilled, cored, bored, washed, driven, dug, jetted, or otherwise constructed and intended for the location, diversion, artificial recharge, or acquisition of ground water.

(37) "Watershed advisory group" means a group of individuals who wish to participate in an advisory capacity in revising and reprioritizing the list of water bodies developed under 75-5-702 and in the development of TMDLs under 75-5-703, including those groups or individuals requested by the department to participate in an advisory capacity as provided in 75-5-704."

Section 9. Section 75-5-401, MCA, is amended to read:

"75-5-401. Board rules for permits — ground water exclusions. (1) Except as provided in subsection (5), the board shall adopt rules:

(a) governing application for permits to discharge sewage, industrial wastes, or other wastes into state waters, including rules requiring the filing of plans and specifications relating to the construction, modification, or operation of disposal systems;

(b) governing the issuance, denial, modification, or revocation of permits. The board may not require a permit for a water conveyance structure or for a natural spring if the water discharged to state waters does not contain industrial waste, sewage, or other wastes. Discharge to surface water of ground

water that is not altered from its ambient quality does not constitute a discharge requiring a permit under this part if:

(i) the discharge does not contain industrial waste, sewage, or other wastes;

(ii) the water discharged does not cause the receiving waters to exceed applicable standards for any parameters; and

(iii) to the extent that the receiving waters in their ambient state exceed standards for any parameters, the discharge does not increase the concentration of the parameters.

(c) governing authorization to discharge under a general permit for storm water associated with construction activity. These rules must allow an owner or operator to notify the department of the intent to be covered under the general permit. This notice of intent must include a signed pollution prevention plan that requires the applicant to implement best management practices in accordance with the general permit. The rules must authorize the owner or operator to discharge under the general permit on receipt of the notice and plan by the department.

(2) The rules must allow the issuance or continuance of a permit only if the department finds that operation consistent with the limitations of the permit will not result in pollution of any state waters, except that the rules may allow the issuance of a temporary permit under which pollution may result if the department ensures that the permit contains a compliance schedule designed to meet all applicable effluent standards and water quality standards in the shortest reasonable period of time.

(3) The rules must provide that the department may revoke a permit if the department finds that the holder of the permit has violated its terms, unless the department also finds that the violation was accidental and unforeseeable and that the holder of the permit corrected the condition resulting in the violation as soon as was reasonably possible.

(4) The board may adopt rules governing reclamation of sites disturbed by construction, modification, or operation of permitted activities for which a bond is voluntarily filed by a permittee pursuant to 75-5-405, including rules for the establishment of criteria and procedures governing release of the bond or other surety and release of portions of a bond or other surety.

(5) Discharges of sewage, industrial wastes, or other wastes into state ground waters from the following activities or operations are not subject to the ground water permit requirements adopted under subsections (1) through (4):

(a) discharges or activities at wells injecting fluids associated with oil and gas exploration and production regulated under the federal underground injection control program;

(b) disposal by solid waste management systems licensed pursuant to 75-10-221;

(c) individuals disposing of their own normal household wastes on their own property;

(d) hazardous waste management facilities permitted pursuant to 75-10-406;

(e) water injection wells, reserve pits, and produced water pits used in oil and gas field operations and approved pursuant to Title 82, chapter 11;

(f) agricultural irrigation facilities;

(g) storm water disposal or storm water detention facilities;

(h) subsurface disposal systems for sanitary wastes serving individual residences;

(i) in situ mining of uranium facilities controlled under Title 82, chapter 4, part 2;

(j) mining operations subject to operating permits or exploration licenses in compliance with The Strip and Underground Mine Reclamation Act, Title 82, chapter 4, part 2, or the metal mine reclamation laws, Title 82, chapter 4, part 3; ~~or~~

(k) projects reviewed under the provisions of the Montana Major Facility Siting Act, Title 75, chapter 20~~.~~*; or*

(l) a carbon dioxide injection well for which a permit has been issued pursuant to Title 82, chapter 11, part 1.

(6) Notwithstanding the provisions of 75-5-301(4), mixing zones for activities excluded from permit requirements under subsection (5) of this section must be established by the permitting agency for those activities in accordance with 75-5-301(4)(a) through (4)(c).

(7) Notwithstanding the exclusions set forth in subsection (5), any excluded source that the department determines may be causing or is likely to cause violations of ground water quality standards may be required to submit monitoring information pursuant to 75-5-602.

(8) The board may adopt rules identifying other activities or operations from which a discharge of sewage, industrial wastes, or other wastes into state ground waters is not subject to the ground water permit requirements adopted under subsections (1) through (4).

(9) The board may adopt rules authorizing general permits for categories of point source discharges. The rules may authorize discharge upon issuance of an individual authorization by the department or upon receipt of a notice of intent to be covered under the general permit."

Section 10. Section 77-3-430, MCA, is amended to read:

"77-3-430. Pooling agreements and unit operations. Nothing contained in this or in prior related laws prevents the board from entering into agreements for the pooling of acreage with others for unit operations for the *storage of carbon dioxide in a geologic storage reservoir or the* production of oil or gas or both and the apportionment of oil or gas royalties or both on an acreage or other equitable basis and from modifying leases with respect to delay rentals, delay drilling penalties, and royalties in accordance with ~~such~~ pooling agreements and ~~such~~ unit plans of operation. However, ~~such~~ agreements may not change the percentage of royalties ~~to be~~ paid to the state from the percentages ~~as~~ fixed in its leases. The board may modify existing pooling and unit agreements ~~so as~~ to commit the state lands included ~~therein~~ *in the pooling or unit agreements* for as long as the unitized substance or substances for which the state lands are committed ~~is~~ *are* produced from any lands in the unit."

Section 11. Section 82-10-402, MCA, is amended to read:

"82-10-402. Inventory of abandoned wells and seismic operations — reclamation procedures. (1) The board of oil and gas conservation shall maintain a record of the abandoned oil or gas wells, injection wells, sumps, and seismographic shot holes in the state that disturb land, water, or wildlife resources to a degree not in compliance with plugging, pollution prevention, and reclamation rules of the board. This record must be compiled from petitions or written statements from the owners of surface rights or lessees.

(2) The board shall check the record compiled under subsection (1) against its drilling records and shall determine and list the name of the person who abandoned the well, sump, or hole, whenever this information is available. When a person ~~so~~ listed applies to the board for a new drilling permit, the board may issue the permit only after approving a plan by which the applicant will reclaim the land disturbed by ~~his~~ *the applicant's* abandoned wells, sumps, or holes within 3 years.

(3) When the person who abandoned a well, sump, or hole cannot be identified or located or when the person does not have sufficient financial resources to pay for complete reclamation, the board may then reclaim the disturbed land with funds available from the oil and gas production damage mitigation account in a manner consistent with the requirements for the use of the account provided in 82-11-161 and 82-11-164.

(4) As used in subsection (3), "well" includes a class II injection well, as defined in 82-11-101, for which a drilling permit or a permit authorizing use of a well for that purpose was granted by the board after June 30, 1989, and water source wells used in connection with enhanced recovery projects.

(5) When the person who abandoned a carbon dioxide injection well, as defined in 82-11-101, cannot be identified or located to pay for complete reclamation, the board may then reclaim the disturbed land with funds available in the geologic storage reservoir program account."

Section 12. Section 82-11-101, MCA, is amended to read:

"82-11-101. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Administrator" means the administrator of the division of oil and gas conservation.

(2) "Board" means the board of oil and gas conservation provided for in 2-15-3303.

(3) "Carbon dioxide" means carbon dioxide produced by anthropogenic sources that is of such purity and quality that it will not compromise the safety of a geologic storage reservoir and will not compromise those properties of a geologic storage reservoir that allow the reservoir to effectively enclose and contain a stored gas.

(4) (a) "Carbon dioxide injection well" means a well that injects carbon dioxide for the underground storage of carbon dioxide in a geologic storage reservoir.

(b) The term does not include a class II injection well in which carbon dioxide is injected for the purpose of enhancing the recovery of oil and gas.

~~(3)~~*(5)* "Class II injection well" means a well, as defined by the federal environmental protection agency or any successor agency, that injects fluids:

(a) that have been brought to the surface in connection with oil or natural gas production;

(b) for purposes of enhancing the ultimate recovery of oil or natural gas; or

(c) for purposes of storing liquid hydrocarbons.

~~(4)~~*(6)* "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

~~(5)~~*(7)* "Determinations" means those decisions delegated to the state by or under authority of the Natural Gas Policy Act of 1978 or any successor or similar legislation relating to oil and gas.

~~(6)~~*(8)* "Enhanced recovery" means the increased recovery from a pool achieved by artificial means or by the application of energy extrinsic to the pool; ~~such~~ artificial means or application includes pressuring, cycling, pressure maintenance, or injection into the pool of any substance or form of energy as is contemplated in secondary recovery and tertiary programs but does not include the injection in a well of a substance or form of energy for the sole purpose of aiding in the lifting of fluids in the well or stimulating of the reservoir at or near the well by mechanical, chemical, thermal, or explosive means.

~~(7)~~*(9)* "Field" means the general area underlaid by one or more pools.

~~(8)~~*(10)* "Fluid" means any material or substance that flows or moves, whether in a semisolid, liquid, sludge, gas, or any other form or state.

(11) "Geologic storage operator" means a person holding or applying for a carbon dioxide injection well permit.

(12) (a) "Geologic storage reservoir" means a subsurface sedimentary stratum, formation, aquifer, cavity, or void, whether natural or artificially created, including vacant or filled reservoirs, saline formations, and coal seams suitable for or capable of being made suitable for injecting and storing carbon dioxide.

(b) The term does not include a natural gas storage reservoir. However, the owner of a natural gas storage reservoir may convert a depleted natural gas storage reservoir into a geologic storage reservoir to be used pursuant to Title 82, chapter 11, parts 1 and 2.

~~(9)~~*(13)* "Owner" means the person who has the right to drill into and produce from a pool and to appropriate the oil or gas the person produces from a pool either for the person or others or for the person and others, and the term includes all persons holding that authority by or through the person with the right to drill.

~~(10)~~*(14)* "Person" means any natural person, corporation, association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary, or other representative of any kind and includes any agency or instrumentality of the state or any governmental subdivision of the state.

~~(11)~~*(15)* "Pollution" means contamination or other alteration of the physical, chemical, or biological properties of any state waters that exceeds that permitted by state water quality standards or standards adopted by the board, including but not limited to the disposal, discharge, seepage, drainage, infiltration, flow, or injection of any liquid, gaseous, solid, or other substance into any state waters that will or is likely to create a nuisance or render the waters harmful, detrimental, or injurious to public health, recreation, safety, welfare, livestock, wild animals, birds, fish, or other wildlife. A disposal, discharge, seepage, drainage, infiltration, flow, or injection of fluid that is authorized under a rule, permit, or order of the board is not pollution under this chapter.

~~(12)~~*(16)* "Pool" means an underground reservoir containing a common accumulation of oil or gas or both~~;~~. ~~each~~ *Each* zone of a structure ~~which~~ *that* is completely separated from any other zone in the same structure is a pool~~, as that term is used in this chapter~~. *For the purposes of unitization pursuant to Title 82, chapter 11, part 2, "pool" also includes an underground reservoir for the long-term storage of carbon dioxide after [the effective date of this section].*

~~(13)~~*(17)* "Producer" means the owner of a well or wells capable of producing oil or gas or both.

~~(14)~~*(18)* "Responsible person" means a person who is determined by the board under 82-10-402 to have abandoned an oil or gas well, injection well, disposal well, water source well, drill site, sump, seismographic shot hole, or other area where oil and gas drilling and production operations were conducted.

~~(15)~~*(19)* "State waters" means any body of water, either surface or underground.

(20) "Verification and monitoring" means measuring the amount of carbon dioxide stored at a specific geologic storage reservoir, checking the site for leaks or deterioration of storage integrity, and ensuring that carbon dioxide is stored in a way that is permanent and not harmful to the ecosystem. The term includes:

(a) using models to show, before injection is allowed, that injected carbon dioxide will be securely stored. Modeling includes but is not limited to consideration of seismic activity, possible paths for fugitive emissions, and chemical reactions in the geologic formation.

(b) tracking plume behavior after injection of carbon dioxide, including the use of pressure monitoring; and

(c) establishing a system of leak monitors.

~~(16)~~*(21)* (a) "Waste" means:

(i) physical waste, as that term is generally understood in the oil and gas industry;

(ii) the inefficient, excessive, or improper use of or the unnecessary dissipation of reservoir energy;

(iii) the location, spacing, drilling, equipping, operating, or producing of any oil or gas well or wells in a manner ~~which~~ *that* causes or tends to cause reduction in the quantity of oil or gas ultimately recoverable from a pool under prudent and proper operations or ~~which~~ *that* causes or tends to cause unnecessary or excessive surface loss or destruction of oil or gas; and

(iv) the inefficient storing of oil or gas.

(b) (i) ~~(~~The production of oil or gas from any pool or by any well to the full extent that the well or pool can be produced in accordance with methods designed to result in maximum ultimate recovery, as determined by the board, is not waste within the meaning of ~~this definition~~ *subsection (21)(a)*.~~)~~

~~(b)~~*(ii)* The loss of gas to the atmosphere during coal mining operations is not waste within the meaning of ~~this definition~~ *subsection (21)(a)*."

Section 13. Section 82-11-104, MCA, is amended to read:

"82-11-104. Construction — no conflict with board of land commissioners' authority. ~~No provision of this~~ *This* chapter may *not* be construed to conflict with 77-3-430, granting the board of land commissioners the authority to enter into pooling and unitization agreements for the *storage of carbon dioxide in a geologic storage reservoir or the* production of oil or gas with others, provided that state lands are subject to the provisions of this chapter concerning spacing and statutory pooling and unitization in the absence of voluntary pooling and unitization agreements."

Section 14. Section 82-11-111, MCA, is amended to read:

"82-11-111. Powers and duties of board. (1) The board shall ~~make such investigations as~~ *investigate matters* it considers proper to determine whether waste exists or is imminent or whether other facts exist which justify any action by the board under the authority granted by this chapter ~~with respect thereto~~.

(2) Subject to the administrative control of the department under 2-15-121, the board shall:

(a) require measures to be taken to prevent contamination of or damage to surrounding land or underground strata caused by drilling operations and production, including but not limited to regulating the disposal or injection of water*, carbon dioxide,* and disposal of oil field wastes;

(b) classify wells as oil or gas wells*, carbon dioxide injection wells,* or class II injection wells for purposes material to the interpretation or enforcement of this chapter;

(c) adopt and enforce rules and orders to effectuate the purposes and the intent of this chapter.

(3) The board shall determine and prescribe what producing wells ~~shall be~~ *are* defined as "stripper wells" and what wells ~~shall be~~ *are* defined as "wildcat wells" and make ~~such~~ orders ~~as~~ *that* in its judgment are required to protect those wells and provide that stripper wells may be produced to capacity if it is considered necessary in the interest of conservation to do so.

(4) With respect to any pool ~~from which gas was~~ *with gas* being produced by a gas well on or prior to April 1, 1953, this chapter does not authorize the board to limit or restrain the rate*,* ~~(~~daily or otherwise~~)~~*,* of production of gas from that pool by any well then or ~~thereafter~~ *after April 1, 1953,* drilled and producing from that pool to less than the rate at which the well can be produced without adversely affecting the quantity of gas ultimately recoverable by the well.

(5) ~~The~~ *Subject to subsection (7), the* board has exclusive jurisdiction over *carbon dioxide injection wells, geologic storage reservoirs,* all class II injection wells*,* and all pits and ponds in relation to those injection wells. The board may:

(a) issue, suspend, revoke, modify, or deny permits to operate *carbon dioxide injection wells and* class II injection wells, consistent with rules made by it *and pursuant to 82-11-123*~~;~~*. If a permit for a carbon dioxide injection well is revoked, an operator may not seek a refund of application or permitting fees or fees paid pursuant to [section 2] or [section 5(2)(b)].*

(b) examine plans and other information needed to determine whether a permit should be issued or require changes in plans as a condition to the issuance of a permit;

(c) clearly specify in a permit any limitations imposed as to the volume and characteristics of the fluids to be injected and the operation of the well;

(d) authorize its staff to enter upon any public or private property at reasonable times to:

(i) investigate conditions relating to violations of permit conditions;

(ii) have access to and copy records required under this chapter;

(iii) inspect monitoring equipment or methods; and

(iv) sample fluids which the operator *or geologic storage operator* is required to sample; and

(e) adopt standards for the design, construction, testing, and operation of *carbon dioxide injection wells and* class II injection wells.

(6) The board shall determine, for the purposes of using the oil and gas production damage mitigation account established in 82-11-161 *or the geologic storage reservoir program account established in [section 2]*:

(a) when the person responsible for an abandoned well, sump, or hole cannot be identified or located, or if the person is identified or located, when the person does not have sufficient financial resources to properly plug the well, sump, or hole; or

(b) when a previously abandoned well, sump, or hole is the cause of potential environmental problems and ~~no~~ *a* responsible party ~~can~~ *cannot* be identified or located or, if a responsible party can be identified and located, the person does not have sufficient financial resources to correct the problems.

(7) (a) Before holding a hearing on a proposed permit for a carbon dioxide injection well, the board shall solicit, document, consider, and address comments from the department of environmental quality on the proposal.

(b) Notwithstanding subsection (7)(a), the board makes the final decision on issuance of a permit.

(8) Solely for the purposes of administering carbon dioxide injection wells under this part, carbon dioxide within a geologic storage reservoir is not a pollutant, nuisance, or a hazardous or deleterious substance."

Section 15. Section 82-11-118, MCA, is amended to read:

"82-11-118. Fees for processing applications. (1) The board shall establish a fee schedule to defray the expenses incurred for processing an application from *a geologic storage operator or* an operator or producer of oil seeking approval of a new or expanded enhanced recovery project, as defined in 15-36-303. The fee must be paid by the owner*, geologic storage operator,* or operator seeking approval of the project.

(2) The board shall, by rule, determine the amount of the fee based on the complexity of processing the application."

Section 16. Section 82-11-122, MCA, is amended to read:

"82-11-122. Notice of intention to drill or conduct seismic operations — notice to surface owner. *(1)* It is unlawful to commence the drilling of a well for oil or gas without first filing with the board written notice of intention to drill and obtaining a drilling permit as provided in 82-11-134. After the permit is issued, an oil and gas developer or operator as defined under 82-10-502 shall comply with the notice requirements of 82-10-503 before commencing drilling operations. It is unlawful to conduct seismic explorations without first giving the board a copy of the notice of intention to explore filed with the county under 82-1-103.

(2) It is unlawful to commence the drilling of a carbon dioxide injection well without first filing with the board written notice of intention to drill and obtaining a drilling permit. Prior to issuing the permit, the board shall provide notice of an application for a permit. The notice must be:

(a) published in a newspaper of general circulation in each county where the carbon dioxide injection well and geologic storage reservoir is located; and

(b) mailed to all surface owners, mineral claimants, mineral owners, lessees, and other owners of record of subsurface interests that are located within 1 mile of the proposed boundary of the geologic storage reservoir."

Section 17. Section 82-11-123, MCA, is amended to read:

"82-11-123. Requirements for oil and gas *and carbon dioxide injection* operations. *(1)* Subject to the administrative control of the department under 2-15-121, the board shall require:

~~(1)~~*(a)* identification of ownership of *carbon dioxide injection wells, carbon dioxide, geologic storage reservoirs, and* oil or gas wells, producing properties, and tanks;

~~(2)~~*(b)* the making and filing of acceptable well logs, including bottom-hole temperatures*,* ~~(~~in order to facilitate the discovery of potential geothermal energy sources~~)~~, the making and filing of reports on well locations, and the filing of directional surveys, geological sample logs, mud logs, core descriptions, and ordinary core analysis, if made~~;~~. ~~however~~ *However*, logs of exploratory or wildcat wells need not be filed for a period of 6 months following completion of those wells~~;~~.

~~(3)~~*(c)* the drilling, casing, producing, and plugging of wells*, carbon dioxide injection wells,* and class II injection wells in a manner that prevents the escape of *carbon dioxide,* oil*,* or gas out of one stratum into another, the intrusion of water into *carbon dioxide,* oil*,* or gas strata, blowouts, cave-ins, seepages, and fires and the pollution of fresh water supplies by *carbon dioxide,* oil, gas, salt, or brackish water;

~~(4)~~*(d)* the restoration of surface lands to their previous grade and productive capability after a well is plugged or a seismographic shot hole has been utilized and necessary measures to prevent adverse hydrological effects from the well or hole, unless the surface owner agrees in writing, with the approval of the board or its representatives, to a different plan of restoration;

~~(5)~~*(e) except as provided in subsection (1)(f),* the furnishing of a reasonable bond with good and sufficient surety, conditioned for performance of the duty to properly plug each dry or abandoned well. The bond may be forfeited in its entirety by the board for failure to perform the duty to properly plug each dry or abandoned well and may not be canceled or absolved if the well fails to produce oil or gas in commercial quantities, until:

~~(a)~~*(i)* the board determines the well is properly plugged and abandoned as provided in the board's rules; or

~~(b)~~*(ii)* the requirements of 82-11-163 are met.

(f) the furnishing of reasonable bond or other surety for a carbon dioxide injection well, geologic storage reservoir, and the carbon dioxide stored in the reservoir with good and sufficient surety for performance of the duty to operate and manage a carbon dioxide injection well, geologic storage reservoir, and the carbon dioxide stored in the reservoir and to properly plug and reclaim each carbon dioxide injection well. The bond or other surety may be forfeited in its entirety by the board for failure to perform the duty to properly manage and operate a well, reservoir, and stored carbon dioxide or to plug a well. Except as provided in [section 4(8)], the bond or other surety may not be canceled or absolved.

~~(6)~~*(g)* proper gauging or other measuring of oil and gas produced and saved to determine the quantity and quality of oil and gas;

~~(7)~~*(h)* that every person who produces, transports, or stores oil or gas or injects or disposes of water *or carbon dioxide* in this state shall make available within this state for a period of 5 years complete and accurate records of the quantities. The records must be available for examination by the board or its employees at all reasonable times. The person shall file with the board reports as it may prescribe with respect to quantities, transportations, and storages of the oil, gas, *carbon dioxide,* or water.

~~(8)~~*(i)* the installation, use, and maintenance of monitoring equipment or methods in the operation of *carbon dioxide injection wells and* class II injection wells.

(2) In addition to the requirements of subsection (1), the geologic carbon dioxide injection well permitting system must include:

(a) recordkeeping and reporting requirements sufficient to measure the effectiveness of carbon dioxide injection wells and geologic storage reservoirs;

(b) characterization of the injection zone and aquifers above and below the injection zone that may be affected, including applicable pressure and fluid chemistry data to describe the projected effects of injection activities;

(c) verification and monitoring at geologic storage reservoirs;

(d) mitigation of leaks, including the ability to stop the leaking of carbon dioxide and to address impacts of leaks;

(e) adequate baseline monitoring of drinking water wells within 1 mile of the perimeter of the geologic storage reservoir; and

(f) at a minimum, requirements pursuant to applicable federal regulatory standards established by:

(i) the Energy Independence and Security Act of 2007, Public Law 110-140, and subsequent acts;

(ii) the Safe Drinking Water Act, 42 U.S.C. 300f, et seq.; and

(iii) the underground injection control program, 40 CFR, parts 144 through 147."

Section 18. Section 82-11-127, MCA, is amended to read:

"82-11-127. Prohibited activity ~~— Makoshika state park~~. (1) A person may not:

(a) cause pollution of any state waters or place or cause to be placed any liquid, gaseous, solid, or other substance in a location where the substance is likely to cause pollution of any state waters;

(b) violate any provision set forth in a permit or stipulation, including but not limited to limitations and conditions contained in it;

(c) violate an order issued pursuant to this chapter; or

(d) violate a provision of this chapter.

(2) A person may not drill, construct, convert, or operate a class II injection well *or a carbon dioxide injection well* or drill an oil or gas well or stratigraphic test well or core hole as described under 82-11-134 without a valid permit or order from the board.

~~(3) Except as provided in subsection (5), on lands managed as Makoshika state park, pursuant to Title 23, chapter 1, and under the control of the department of fish, wildlife, and parks, by grant, acquisition, lease, easement, or other means, a person may not:~~

~~(a) drill, construct, convert, or operate an oil or gas well, stratigraphic test well, or core hole;~~

~~(b) conduct vibroseis, drill a seismic shot hole, or set a surface charge;~~

~~(c) explore for oil or gas in a manner that damages the land surface; or~~

~~(d) construct or place any surface facility associated with oil or gas exploration or development.~~

~~(4) The prohibitions in subsection (3) do not preclude the development of oil or gas resources from beneath Makoshika state park through directional drilling or access from property outside the boundaries of the state park provided that the surface resources of the state park are not disturbed.~~

~~(5) The prohibitions listed in subsection (3) do not apply to oil or gas resources within Makoshika state park that are owned by a private person, nor do the prohibitions apply to school trust lands within the boundaries of the park. The state acknowledges the mineral rights of Dawson County and the state school trust and the private property rights of persons owning private mineral rights within Makoshika state park. The department of fish, wildlife, and parks is directed to conduct negotiations with the owners of mineral rights within Makoshika state park, with the purpose of acquiring those rights in the name of the state, and to report the results of the negotiations to the legislature no later than January 8, 2001.~~"

Section 19. Section 82-11-136, MCA, is amended to read:

"82-11-136. Expenditure of funds from bonds for plugging wells. *(1)* The board may accept and expend all funds received by it from bonds for properly plugging dry or abandoned wells as authorized in ~~82-11-123(5)~~ *82-11-123(1)(e)*.

(2) The board may accept and expend all funds received by it from bonds for properly plugging abandoned carbon dioxide injection wells as authorized in 82-11-123(1)(f)."

Section 20. Section 82-11-137, MCA, is amended to read:

"82-11-137. Class II injection well operating fee — *carbon dioxide injection well operating fee.* (1) For the purpose of providing funds for defraying the expenses of operating and enforcing*:*

(a) the class II injection well regulatory program, as defined by the federal environmental protection agency or any successor agency, each operator of a class II injection well may be required to pay an annual operating fee not to exceed $300 per injection well*; and*

(b) the carbon dioxide injection well regulatory program, each geologic storage operator of a carbon dioxide injection well may be required to pay an annual operating fee not to exceed $5,000 per injection well.

(2) The department shall collect the operating fee at ~~such~~ *a* time ~~as the~~ *established by* board ~~may prescribe by~~ rule. All money collected under this section must be forwarded to the state treasurer for deposit in the state special revenue fund and must be used for the purpose prescribed in subsection (1).

(3) The board shall, by rule adopted pursuant to the provisions of the Montana Administrative Procedure Act, fix the amount of the fee described in subsection (1) and may from time to time reduce or increase the amount ~~thereof~~ *of the fee* as the expenses chargeable against the state special revenue fund may require. However, the assessment fixed by the board may not exceed the limits prescribed in subsection (1). The amount of the fee must be expressed in dollars."

Section 21. Section 82-11-161, MCA, is amended to read:

"82-11-161. Oil and gas production damage mitigation account — statutory appropriation. (1) There is an oil and gas production damage mitigation account within the state special revenue fund established in 17-2-102. The oil and gas production damage mitigation account is controlled by the board.

(2) At the beginning of each biennium, there must be allocated to the oil and gas production damage mitigation account $50,000 from the interest income of the resource indemnity trust fund, except that if at the beginning of a biennium the unobligated cash balance in the oil and gas production damage mitigation account:

(a) equals or exceeds $200,000, no allocation will be made; or

(b) is less than $200,000, then an amount less than or equal to the difference between the unobligated cash balance and $200,000, but not more than $50,000, must be allocated to the oil and gas production damage mitigation account from the interest income of the resource indemnity trust fund.

(3) In addition to the allocation provided in subsection (2), there must be deposited in the oil and gas production damage mitigation account all funds received by the board pursuant to ~~82-11-136~~ *82-11-136(1)*.

(4) If a sufficient balance exists in the account, funds are statutorily appropriated, as provided in 17-7-502, from the oil and gas production damage mitigation account, upon the authorization of the board, to pay the reasonable costs of properly plugging a well and either reclaiming or restoring, or both, a drill site or other drilling or producing area damaged by oil and gas operations if the board determines that the well, sump, hole, drill site, or drilling or producing area has been abandoned and the responsible person cannot be identified or located or if the responsible person fails or refuses to properly plug, reclaim, or restore the well, sump, hole, drill site, or drilling or producing area within a reasonable time after demand by the board. ~~The~~ *However, the* responsible person shall~~, however,~~ pay costs to the extent of that person's available resources and is subsequently liable to fully reimburse the account or is subject to a lien on property as provided in 82-11-164 for costs expended from the account to properly plug, reclaim, or restore the well, sump, hole, drill site, or drilling or producing area and to mitigate any damage for which the person is responsible.

(5) Interest from funds in the oil and gas production damage mitigation account accrues to that account."

Section 22. Section 82-11-163, MCA, is amended to read:

"82-11-163. Landowner's bond on noncommercial well. If the owner of the surface land upon which has been drilled a well that fails to produce oil or gas in commercial quantities acquires the well for domestic purposes, the board may cancel and absolve the bond required in ~~82-11-123~~ *82-11-123(1)(e)* upon its acceptance of surety in the form of a certificate of deposit or a surety bond in the amount of $5,000 for a single well or in the amount of $10,000 for more than one well or in the form of a property bond of two times the value of the required certificate of deposit or surety bond. The release of the certificate of deposit, surety bond, or property bond must be conditioned on proof provided by the landowner that the well has been properly plugged."

Section 23. Section 82-11-201, MCA, is amended to read:

"82-11-201. Establishment of well spacing units. (1) To prevent or to assist in preventing waste of oil or gas prohibited by this chapter, to avoid the drilling of unnecessary wells, or to protect correlative rights, the board, upon its own motion or upon application of an interested person, after hearing, may by order establish:

(a) temporary spacing units on a statewide basis or for defined areas within the state for *carbon dioxide injection wells,* oil, gas, or oil and gas wells drilled to varying depths; and

(b) permanent spacing units for a discovered pool, except in those pools that, prior to April 1, 1953, have been developed to ~~such~~ an extent that it would be impracticable or unreasonable to establish spacing units at the existing stage of development.

(2) The size and the shape of temporary spacing units must be established to promote the orderly development of unproven areas and must be uniform throughout the surface area and depths covered by the unit. A temporary spacing unit must remain in effect until superseded by an order issued by the board or until a permanent spacing unit is established.

(3) Permanent spacing units do not need to be uniform in size or shape but must result in the efficient and economic development of the pool as a whole. In establishing permanent spacing units, the acreage to be embraced within a unit and the shape of the unit must be determined by the board based upon evidence introduced at the hearing. The board may divide a pool into zones and establish spacing units for each zone if necessary for a purpose mentioned in subsection (1) or to facilitate production through the use of innovative drilling and completion methods. The spacing units within the zone may differ in size and shape from spacing units in any other zone but may not be smaller than the maximum area that can be efficiently and economically drained by one well.

(4) An order establishing temporary or permanent spacing units may permit only one well to be drilled and produced from the common source of supply on any spacing unit, and the well must be drilled at a location authorized by the order, with an exception as may be reasonably necessary. The exception may be included if, upon application, notice, and hearing, the board finds that the spacing unit is located on the edge of a pool or field and adjacent to a producing unit or, for some other reason, that the requirement to drill the well at the authorized location on the spacing unit would be inequitable or unreasonable. The board shall take action to offset any advantage that the person securing the exception may have over other producers by reason of drilling the well as an exception. The order must include provisions to prevent production from the spacing unit from being more than its just and equitable share of the producible oil and gas in the pool.

(5) An order establishing temporary or permanent spacing units for a pool must cover all lands determined or believed to be underlaid by the pool and may be modified after notice and hearing by the board to include additional areas subsequently determined to be underlaid by the pool.

(6) The board, upon application, notice, and hearing, may increase or decrease the size of a temporary or permanent spacing unit or permit the drilling of additional wells in a spacing unit for a purpose mentioned in subsection (1)."

Section 24. Section 82-11-204, MCA, is amended to read:

"82-11-204. Hearing on operation of pool as unit. (1) *(a)* The board, upon the application of persons owning leasehold interests underlying 60% of the surface within the delineated area, shall hold a hearing to consider the need for the operation as a unit of one or more pools or parts ~~thereof~~ *of the pools* in a field for enhanced recovery purposes ~~as~~ *related* to oil or oil and gas, to increase ultimate recovery, or to prevent waste of gas from pools or portions of pools where gas only is produced.

(b) The board, upon the application of persons owning or holding subsurface storage rights of 60% of the storage capacity of the proposed storage area, shall

hold a hearing to consider the need for the operation of a unit for the long-term storage of carbon dioxide.

(2) *(a)* At least 60 days prior to application, the applicant shall, by registered or certified mail, notify all known persons owning an interest in the oil and gas within the proposed unit area as disclosed by the records of the county or counties ~~in which~~ *where* the proposed unit area is situated, at those persons' ~~last known~~ *last-known* addresses, of the applicant's intention to make the application.

(b) At least 60 days prior to application, if the application is for a carbon dioxide storage reservoir, the applicant shall, by registered or certified mail, notify all persons with an ownership interest in the surface, subsurface storage rights, and the subsurface minerals within the proposed unit area as disclosed by the records of the county or counties where the proposed unit area is situated, at those persons' last-known addresses, of the applicant's intention to make the application.

(c) At the same time producers ~~shall~~ *must* be furnished with a plan of unit operations. Upon written request of an operator of a lease ~~which~~ *that* is in whole or in part within the confines of the proposed delineated area, the applicant shall furnish the operator with copies of any exhibits to be submitted to the board at the time of hearing."

Section 25. Section 82-11-205, MCA, is amended to read:

"82-11-205. Board order for unit operation — criteria. The board shall make an order providing for the unit operation of a pool or pools or part ~~thereof~~ *of the pools or of a geologic storage reservoir* if it determines, based on evidence presented at the hearing, that:

(1) ~~such~~ *the* operation is reasonably necessary to increase the ultimate recovery of oil or gas *or the operation is necessary for the long-term storage of carbon dioxide*;

(2) the value of the estimated additional recovery of oil or gas less royalties or, as to gas pools only, the value of the economies to be effected, exceeds the estimated additional cost incident to conducting ~~such~~ *the* operations; and

(3) *(a)* the full areal extent of the pool or pools or part ~~thereof~~ *of the pools* has been reasonably defined and determined by drilling operations*; or*

(b) in the case of a geologic storage reservoir, the full areal extent of the project has been reasonably defined and determined by drilling operations, geologic interpretation, seismic information, or other information acceptable to the board."

Section 26. Section 82-11-214, MCA, is amended to read:

"82-11-214. Title to oil and gas rights not affected by board order. Except to the extent that the parties affected ~~so~~ agree *and in accordance with [section 4(8)]*, an order providing for unit operations does not result in a transfer of all or any part of the title of any person to the *carbon dioxide rights or* oil and gas rights in any tract in the unit area. All property, whether real or personal, that may be acquired in the conduct of unit operations ~~hereunder shall~~ *under this part must* be acquired for the account of the owners within the unit area and ~~shall be~~ *are* the property of those owners in the proportion that the expenses of unit operations are charged."

Section 27. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

Section 28. Codification instruction. [Sections 1 through 6] are intended to be codified as an integral part of Title 82, chapter 11, part 1, and the provisions of Title 82, chapter 11, part 1, apply to [sections 1 through 6].

Section 29. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 30. Transition — contingent implementation. If the United States environmental protection agency adopts regulations allowing states to apply for primacy over carbon dioxide sequestration wells under the federal underground injection control program adopted by the environmental protection agency, the board of oil and gas conservation shall in consultation with the department of environmental quality and the department of natural resources and conservation develop draft rules to implement [this act] and seek primacy.

Section 31. Effective dates — contingency. (1) [Sections 2 through 26] are effective on the date that the board of oil and gas conservation is granted primacy to administer activities at carbon dioxide sequestration wells by the United States environmental protection agency.

(2) [Sections 1 and 27 through 30 and this section] are effective on passage and approval.

(3) The board of oil and gas conservation shall provide a copy of the grant of primacy provided for in subsection (1) to the code commissioner.

Approved May 6, 2009

CHAPTER NO. 475

[SB 507]

AN ACT GENERALLY REVISING AND CLARIFYING LAWS RELATED TO THE TREATMENT OF PROPERTY CONSISTING OF THE BED OF NAVIGABLE RIVERS; REQUIRING AUTHORIZATION FROM THE BOARD OF LAND COMMISSIONERS FOR USES ON THE BEDS OF NAVIGABLE RIVERS; REQUIRING THE BOARD OF LAND COMMISSIONERS TO ADOPT RULES FOR PROVIDING EASEMENTS, LEASES, OR LICENSES FOR USES ON THE BEDS OF NAVIGABLE RIVERS; CLARIFYING THE AUTHORITY OF THE BOARD OF LAND COMMISSIONERS TO GRANT EASEMENTS; AND AMENDING SECTION 77-2-101, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Legislative findings — purpose. (1) The legislature finds that:

(a) Article IX, section 3, of the Montana constitution provides that the use of all water that is or may be appropriated for sale, rent, distribution, or other beneficial use, the right-of-way over the lands of others for all ditches, drains, flumes, canals, and aqueducts necessarily used in connection with the beneficial use, and the sites for reservoirs necessary for collecting and storing water are a public use;

(b) a person who has historically used the bed of a navigable river in conjunction with a legal use of water or for other uses or a person who desires to use the bed of a navigable river in conjunction with a legal use of water or for other uses must be able to do so provided that statutory provisions are met;

(c) owners of property adjacent to navigable rivers in Montana have historically been assessed property taxes on the beds of navigable rivers on the premise that the riverbeds are the property of the adjacent property owners;

(d) the historic payment of property taxes on the bed of a navigable river constitutes adequate compensation for any past use of the riverbed and relieves the owner of adjacent property of the duty to compensate the state for past use of the riverbed;

(e) any person who uses the bed of a navigable river after [the effective date of this act] shall apply to the state for a lease, license, or easement and pay full market value for the use of the riverbed; and

(f) the department has not consistently required payment for riverbed uses over time.

(2) The purpose of [sections 1 through 8] is to clarify the historic and future use of the beds of navigable rivers and how the state should be compensated for that use.

Section 2. Definitions. For the purposes of [sections 1 through 8], the following definitions apply:

(1) "Footprint" means a structure or other constructed interruption or modification to the bed of a navigable river below the low-water mark as provided in 70-16-201.

(2) "Full market value" means an amount calculated based upon the area of a footprint and the fair market value as determined by rule or statute. The annual payment for a license issued under [sections 1 through 8] is $150.

(3) "Navigable river" means a river that:

(a) was determined navigable at the time of the original federal government surveys of the public land as evidenced by the recorded and monumented surveys of the meander lines of the river; or

(b) has been adjudicated as navigable by a court of competent jurisdiction.

Section 3. Historic use of navigable riverbeds — authorization required — exemptions. (1) A person using the bed of a navigable river below the low-water mark without written authorization from the department prior to [the effective date of this act] who wants to continue use of the bed of a navigable river after [the effective date of this act] shall file for authorization of the use on a form prescribed by the department for a lease, license, or easement by July 15, 2015.

(2) The application must include:

(a) an application fee of $50;

(b) a notarized affidavit:

(i) demonstrating that the applicant or the applicant's predecessor in interest used the bed of a river that has been determined navigable pursuant to [section 8] and that the use continues;

(ii) describing the acreage covered by the footprint prior to [the effective date of this act]; and

(iii) demonstrating that the use applied for under this section is the use shown in the evidence provided in subsection (2)(c); and

(c) (i) aerial photographs demonstrating the use to which the application for authorization applies; or

(ii) other evidence of the use to which the application for authorization applies.

(3) The department shall issue the authorization for a lease, license, or easement if:

(a) the applicant provides evidence to satisfy the requirements of subsection (2);

(b) the applicant pays the application fee and the full market value of the footprint acreage;

(c) the department has, if necessary, made a site inspection of the use to which the application for authorization applies;

(d) the authorization is only for the acreage of the footprint historically used by the applicant or the applicant's predecessor in interest; and

(e) the authorization is approved by the board. The authorization must be approved if the requirements of this section are met.

(4) Proceeds from the application fee must be deposited in the account in [section 4] and must be used by the department to administer the provisions of this section.

(5) The full market value collected pursuant to subsection (3)(b) must be deposited in the appropriate trust fund established for receipt of income from the land over which an authorized use is granted.

(6) Issuance of an authorization pursuant to this section is exempt from the requirements of Title 22, chapter 3, part 4, and Title 75, chapter 1, parts 1 and 2.

(7) The department shall waive the survey requirements of 77-2-102 if the department determines that there is sufficient information available to define the boundaries of the proposed use for the purposes of recording the easement or issuing a license or lease.

(8) The requirements of this section do not apply to footprints:

(a) related to hunting, fishing, or trapping;

(b) that existed prior to November 8, 1889;

(c) for which the applicant can show an easement obtained from a state agency prior to [the effective date of this act]; or

(d) associated with a power site regulated pursuant to Title 77, chapter 4, part 2.

Section 4. Historic riverbed use account. (1) There is an account in the state special revenue fund into which the fees collected pursuant to [section 3] must be deposited.

(2) The funds in the account may be used only for administering the provisions of [section 3].

Section 5. Navigable riverbed uses — lease, license, or easement required — challenges. (1) (a) After [the effective date of this act], the department shall require a person who proposes to use the bed of a navigable river up to the low-water mark to obtain a lease, license, or easement pursuant to the provisions of this title.

(b) The requirements of subsection (1)(a) do not apply to footprints related to hunting, fishing, or trapping.

(2) An applicant for authorization to use the bed of a navigable river pursuant to [section 3] or for a lease, license, or easement under this section may challenge the requirement of the authorization based on the navigability of the

river, the location of footprint related to the low-water mark, or other factors. There is no presumption of navigability because an entity has applied for or received a lease, license, or easement.

Section 6. Easement transferable — relocation of structure — increased footprint. (1) An easement granted pursuant to [section 3 or 5] runs with the benefited land and may be transferred or assigned.

(2) (a) Pursuant to rules adopted under [section 7], the holder of a lease, license, or easement under [section 3 or 5] may relocate a footprint and associated facilities due to the natural relocation of a navigable river or other factors.

(b) (i) The holder of a lease, license, or easement shall provide written notice to the department when a footprint or associated facilities are proposed to be relocated.

(ii) The holder of a lease, license, or easement for water diversion structures associated with a water right may increase the size of the footprint if the increase is necessary to accomplish the purpose for which the lease, license, or easement was granted if the holder pays full market value for the portion of the footprint that is greater than the original footprint and the applicant has the appropriate state or federal permits.

(3) Section 77-1-805 applies to the use of navigable rivers for which leases, licenses, or easements for the use of the bed have been granted.

Section 7. Board to adopt rules. To fulfill the requirement of [sections 1 through 8], the board shall adopt rules to:

(1) determine the full market value for the use of a bed of a navigable river and establish a minimum payment for leases and easements;

(2) allow an applicant to choose to apply for a lease, license, or easement depending on the type of proposed use and the duration of the use; and

(3) allow the holder of a lease, license, or easement for water diversion structures associated with a water right to relocate a footprint based on certain circumstances, including but not limited to natural relocation of a navigable river.

Section 8. Ownership of beds of navigable rivers. The board or the department may only require a lease, license, or easement for the use of the bed of a river that has been adjudicated as navigable for title purposes by a court of competent jurisdiction or was meandered by official government survey at the time of statehood.

Section 9. Section 77-2-101, MCA, is amended to read:

"77-2-101. Easements for specific uses. (1) Upon proper application as provided in 77-2-102, the board may grant easements on state lands for the following purposes:

(a) schoolhouse sites and grounds;

(b) public parks;

(c) community buildings;

(d) cemeteries;

(e) conservation purposes:

(i) to the department of fish, wildlife, and parks for parcels that are surrounded by or adjacent to land owned by the department of fish, wildlife, and parks as of January 1, 2001;

(ii) to a nonprofit corporation for parcels that are surrounded by or adjacent to land owned by that same nonprofit corporation as of January 1, 2001; and

(iii) to a nonprofit corporation for the Owen Sowerwine natural area located within section 16, township 28 north, range 21 west, in Flathead County; and

(f) for other public uses.

(2) The board may grant easements on state lands for the following purposes:

(a) right-of-way across or upon any portion of state lands for any public highway or street, any ditch, reservoir, railroad, private road, or telegraph or telephone line, or any other public use as defined in 70-30-102; ~~or~~

(b) any private building or private sewage system that encroaches on state lands*; or*

(c) the use of the bed of a navigable river pursuant to [section 3 or 5]."

Section 10. Codification instruction. [Sections 1 through 8] are intended to be codified as an integral part of Title 77, chapter 1, and the provisions of Title 77, chapter 1, apply to [sections 1 through 8].

Section 11. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 12. Contingent voidness. If the supreme court determines that the beds of navigable rivers are not owned by the state or are not school trust lands, [this act] is void.

Approved May 6, 2009

CHAPTER NO. 476

[SB 510]

AN ACT AUTHORIZING A BOARD OF COUNTY COMMISSIONERS TO AUTHORIZE A 50 PERCENT LOCAL ABATEMENT OF THE COAL GROSS PROCEEDS TAX FROM A NEW OR EXPANDING UNDERGROUND COAL MINE; PROVIDING THAT THE ABATEMENT CAN LAST FOR 5 OR 10 YEARS; REQUIRING NOTIFICATION OF ALL AFFECTED SCHOOL DISTRICTS; PROVIDING FOR THE DISTRIBUTION OF THE REDUCED TAX COLLECTIONS; AMENDING SECTION 15-23-703, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. New or expanding underground mines — tax abatement. (1) A county may abate taxation under this chapter for production from a new or expanding underground coal mine by 50% for 5 or 10 years by directing the department to levy the tax at a lower tax rate as provided in 15-23-703(1)(b).

(2) An abatement must be authorized by the governing body of a county. Before an abatement authorization is effective, the school boards of all affected school districts must be notified of the abatement. The authorization must be made by a resolution of the county governing body after a public hearing. The county governing body shall publish notice of the hearing in a newspaper that meets the requirements of 7-1-2121. The notice must be published twice, with at least 6 days separating publications. The first publication may be no more than

30 days prior to the hearing and the last publication must be at least 3 days prior to the hearing.

(3) An abatement authorization may be made for a 5-tax-year period, and upon expiration of that period, it may be authorized for one more 5-tax-year period. An abatement authorization must be made prior to the beginning of the property tax year in which abatement is in effect. The department must be notified of each abatement authorization prior to the beginning of the tax year.

(4) (a) Production from a new underground mine is all production from a mine that in the year prior to the tax year in which the first abatement will apply had production of less than 500,000 tons of coal and the production during the course of the abatement period is estimated to be and actually amounts to at least five times the preabatement production amount.

(b) Production from an expanding underground mine is that portion of the mine's production that exceeds the average production for the previous 3 years. To qualify for the abatement, the total of the prior average production and the new production may not decrease during the time of the abatement.

Section 2. Section 15-23-703, MCA, is amended to read:

"15-23-703. Taxation of gross proceeds — taxable value for county classification and guaranteed tax base aid to schools. (1) *(a)* The department shall compute from the reported gross proceeds from coal a tax roll that must be transmitted to the county treasurer on or before September 15 each year. The department may not levy or assess any mills against the reported gross proceeds of coal but shall*, subject to subsection (1)(b),* levy a tax ~~of 5%~~ *of 5%* against the value of the reported gross proceeds as provided in 15-23-701(1)(d). The county treasurer shall give full notice to each coal producer of the taxes due and shall collect the taxes.

(b) If the county grants a tax abatement for production from a new or expanding underground mine as provided in [section 1], the department shall levy a tax at a rate that would, after providing for payment to the state of the amount attributable to all applicable state mill levies as if the tax rate were 5%, reduce the tax received by county taxing jurisdictions and any school district on the new or expanded production by 50%.

(2) For county classification and all nontax purposes, the taxable value of the gross proceeds of coal is 45% of the contract sales price as defined in 15-35-102.

(3) Except as provided in ~~subsection~~ *subsections* (6) *and (7)*, the county treasurer shall calculate and distribute to the state, county, and eligible school districts in the county the amount of the coal gross proceeds tax, determined by multiplying the unit value calculated in 15-23-705 times the tons of coal extracted, treated, and sold on which the coal gross proceeds tax was owed during the preceding calendar year.

(4) Except as provided in subsections (5), (6), *(7),* and ~~(8)~~ *(9)*, the county treasurer shall credit the amount determined under subsection (3) and the amounts received under 15-23-706:

(a) to the state and to the counties that levied mills in fiscal year 1990 against 1988 production in the relative proportions required by the levies for state and county purposes in the same manner as property taxes were distributed in fiscal year 1990 in the taxing jurisdiction; and

(b) to school districts in the county that either levied mills in school fiscal year 1990 against 1988 production or used nontax revenue, such as impact aid

money, as provided in 20 U.S.C. 7701, et seq., in lieu of levying mills against production, in the same manner that property taxes collected or property taxes that would have been collected would have been distributed in the 1990 school fiscal year in the school district.

(5) (a) If the total tax liability in a taxing jurisdiction exceeds the amount determined in subsection (3), the county treasurer shall, immediately following the distribution from taxes paid on May 31 of each year, send the excess revenue, excluding any protested coal gross proceeds tax revenue, to the department for redistribution as provided in 15-23-706.

(b) If the total tax liability in a taxing jurisdiction is less than the amount determined in subsection (3), the taxing jurisdiction is entitled to a redistribution as provided by 15-23-706.

(6) If there is a distribution of coal gross proceeds from a new or expanding underground mine with a tax abatement as provided under [section 1], the county treasurer shall distribute:

(a) the state's share of the coal gross proceeds determined under subsection (1)(b) in the relative proportion required by the appropriate levies for state purposes; and

(b) the county's share and any school district's share of the coal gross proceeds determined under subsection (1)(b) as provided in this section.

~~(6)~~*(7)* The board of county commissioners of a county may direct the county treasurer to reallocate the distribution of coal gross proceeds taxes that would have gone to a taxing unit, as provided in subsection (4)(a), to another taxing unit or taxing units, other than an elementary school or high school, within the county under the following conditions:

(a) The county treasurer shall first allocate the coal gross proceeds taxes to the taxing units within the county in the same proportion that all other property tax proceeds were distributed in the county in fiscal year 1990.

(b) If the allocation in subsection ~~(6)(a)~~ *(7)(a)* exceeds the total budget for a taxing unit, the commissioners may direct the county treasurer to allocate the excess to any taxing unit within the county.

~~(7)~~*(8)* The board of trustees of an elementary or high school district may reallocate the coal gross proceeds taxes distributed to the district by the county treasurer under the following conditions:

(a) The district shall first allocate the coal gross proceeds taxes to the budgeted funds of the district in the same proportion that all other property tax proceeds were distributed in the district in fiscal year 1990.

(b) If the allocation under subsection ~~(7)(a)~~ *(8)(a)* exceeds the total budget for a fund, the trustees may allocate the excess to any budgeted fund of the school district.

~~(8)~~*(9)* The county treasurer shall credit all taxes collected under this part from coal mines that began production after December 31, 1988, in the relative proportions required by the levies for state, county, and school district purposes in the same manner as property taxes were distributed in the previous fiscal year."

Section 3. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 15, chapter 23, part 7, and the provisions of Title 15, chapter 23, part 7, apply to [section 1].

Section 4. Coordination instruction. If House Bill No. 588 and [this act] are both passed and approved and if both contain a section amending 15-23-703, then the sections amending 15-23-703 are void and 15-23-703 must be amended as follows:

"15-23-703. Taxation of gross proceeds — taxable value for county classification and ~~guaranteed tax base aid to schools~~ *nontax purposes*. (1) *(a)* The department shall compute from the reported *value of coal* gross proceeds ~~from coal~~ a tax roll that must be transmitted to the county treasurer on or before September 15 *of* each year. The department may not levy or assess any mills against ~~the reported~~ *coal* gross proceeds ~~of coal~~ but shall*, subject to subsection (1)(b),* levy a tax of 5% against the value of ~~the reported gross proceeds~~ *coal* as provided in 15-23-701(1)(d). The county treasurer shall give full notice to each coal producer of the taxes due and shall collect the taxes.

(b) If the county grants a tax abatement for production from a new or expanding underground mine as provided in [section 1], the department shall levy a tax at a rate that would, after providing for payment to the state of the amount attributable to all applicable state mill levies as if the tax rate were 5%, reduce the tax received by county taxing jurisdictions and any school district on the new or expanded production by 50%.

(2) For county classification and all nontax purposes, the taxable value of the gross proceeds of coal is 45% of the contract sales price as defined in 15-35-102.

~~(3) Except as provided in subsection (6), the county treasurer shall calculate and distribute to the state, county, and eligible school districts in the county the amount of the coal gross proceeds tax, determined by multiplying the unit value calculated in 15-23-705 times the tons of coal extracted, treated, and sold on which the coal gross proceeds tax was owed during the preceding calendar year.~~

~~(4) Except as provided in subsections (5), (6), and (8), the county treasurer shall credit the amount determined under subsection (3) and the amounts received under 15-23-706:~~

~~(a) to the state and to the counties that levied mills in fiscal year 1990 against 1988 production in the relative proportions required by the levies for state and county purposes in the same manner as property taxes were distributed in fiscal year 1990 in the taxing jurisdiction; and~~

~~(b) to school districts in the county that either levied mills in school fiscal year 1990 against 1988 production or used nontax revenue, such as impact aid money, as provided in 20 U.S.C. 7701, et seq., in lieu of levying mills against production, in the same manner that property taxes collected or property taxes that would have been collected would have been distributed in the 1990 school fiscal year in the school district.~~

~~(5) (a) If the total tax liability in a taxing jurisdiction exceeds the amount determined in subsection (3), the county treasurer shall, immediately following the distribution from taxes paid on May 31 of each year, send the excess revenue, excluding any protested coal gross proceeds tax revenue, to the department for redistribution as provided in 15-23-706.~~

~~(b) If the total tax liability in a taxing jurisdiction is less than the amount determined in subsection (3), the taxing jurisdiction is entitled to a redistribution as provided by 15-23-706.~~

(3) (a) Except as provided in subsections (4) and (7) and subject to subsection (3)(b), coal gross proceeds taxes must be allocated to the state, county, and school

districts in the same relative proportions as the taxes were distributed in fiscal year 1990.

(b) The county treasurer shall multiply the coal gross proceeds taxes collected in the county under this part by the relative proportions determined for the state, county, and school districts under subsection (3)(a). Those amounts must be distributed as follows:

(i) the state share must be distributed in the relative proportions required by levies for state purposes in the same manner as property taxes were distributed in fiscal year 1990;

(ii) except as provided in subsection (5), the county share must be distributed in the relative proportions required by levies for county purposes, other than an elementary school or high school, in the same manner as property taxes were distributed in the previous fiscal year;

(iii) except as provided in subsection (6), the school districts' share must be distributed in the relative proportions required by levies for school district purposes in the same manner as property taxes were distributed in the previous fiscal year.

(4) If there is a distribution of coal gross proceeds from a new or expanding underground mine with a tax abatement as provided under [section 1], the county treasurer shall distribute:

(a) the state's share of the coal gross proceeds determined under subsection (1)(b) in the relative proportion required by the appropriate levies for state purposes; and

(b) the county's share and any school district's share of the coal gross proceeds determined under subsection (1)(b) as provided in this section.

~~(6)~~*(5)* The board of county commissioners of a county may direct the county treasurer to reallocate the distribution of coal gross proceeds taxes that would have gone to a taxing unit, as provided in subsection ~~(4)(a)~~ *(3)(b)(i)*, to another taxing unit or taxing units, other than an elementary school or high school, within the county under the following conditions:

(a) The county treasurer shall first allocate the coal gross proceeds taxes to the taxing units within the county in the same proportion that all other property tax proceeds were distributed in the county in *the previous* fiscal year ~~1990~~.

(b) If the allocation in subsection ~~(6)(a)~~ *(5)(a)* exceeds the total budget ~~for~~ *of* a taxing unit, the commissioners may direct the county treasurer to ~~allocate~~ *reallocate* the excess to any taxing unit within the county.

~~(7)~~*(6)* The board of trustees of an elementary or high school district may reallocate the coal gross proceeds taxes distributed to the district by the county treasurer under the following conditions:

(a) The district shall first allocate the coal gross proceeds taxes to the budgeted funds of the district in the same proportion that all other property tax proceeds were distributed in the district in *the previous* fiscal year ~~1990~~.

(b) If the allocation under subsection ~~(7)(a)~~ *(6)(a)* exceeds the total budget for a fund, the trustees may ~~allocate~~ *reallocate* the excess to any budgeted fund of the school district.

~~(8)~~*(7)* ~~The~~ *Except as provided in subsections (8) and (9), the* county treasurer shall credit all taxes collected under this part from coal mines that began production after December 31, 1988, in the relative proportions required by the

levies for state, county, and school district purposes in the same manner as property taxes were distributed in the previous fiscal year.

(8) The board of county commissioners of a county may direct the county treasurer to reallocate the distribution of coal gross proceeds under subsection (7) in the same manner as provided in subsection (5).

(9) The board of trustees of an elementary or high school district may reallocate the coal gross proceeds taxes distributed to the district by the county treasurer under subsection (7) in the same manner as provided in subsection (6)."

Section 5. Applicability. [This act] applies to tax years beginning after December 31, 2009.

Approved May 6, 2009

CHAPTER NO. 477

[HB 678]

AN ACT REVISING LAWS RELATED TO OPENCUT MINING; ESTABLISHING AN OPENCUT FUND AND ANNUAL FEE; EXEMPTING CERTAIN OPENCUT OPERATIONS FROM THE RESOURCE INDEMNITY AND GROUND WATER ASSESSMENT TAX; REVISING THE OPENCUT PERMITTING PROCESS; AMENDING SECTIONS 15-38-104, 15-38-106, 15-38-113, 82-4-405, 82-4-424, 82-4-432, AND 82-4-437, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND APPLICABILITY DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Opencut fund — use of fund. (1) There is an account in the state special revenue fund established by 17-2-102 to be known as the opencut fund.

(2) There must be deposited in the account 85% of the money received from the fee established in 82-4-437.

(3) Money in the fund must be spent for the purposes of administering and enforcing this part.

Section 2. Section 15-38-104, MCA, is amended to read:

"15-38-104. Tax on mineral production. (1) Except as provided in *15-38-113 and* subsections (2) through (5) *of this section*, the annual tax to be paid by a person engaged in or carrying on the business of mining, extracting, or producing a mineral is $25, plus an additional amount computed on the gross value of product that was derived from the business work or operation within this state during the calendar year immediately preceding at the rate of 1/2 of 1% of the amount of gross value of product at the time of extraction from the ground, if in excess of $5,000. Unless otherwise provided in a contract or lease, the pro rata share of any royalty owner or owners may be deducted from any settlements under the lease or leases or division of proceeds orders or other contracts.

(2) The annual tax to be paid by a person engaged in or carrying on the business of mining, extracting, or producing:

(a) talc is $25 plus an additional amount computed on the gross value of product for talc derived from the business work or operation within this state during the calendar year immediately preceding at the rate of 4% of the gross value of product in excess of $625; and

(b) coal is $25 plus an additional amount computed on the gross value of product for coal produced in Montana during the calendar year immediately preceding at the rate of 0.4% of the gross value of product in excess of $6,250.

(3) The annual tax to be paid by a person engaged in or carrying on the business of mining, extracting, or producing vermiculite is $25 plus an additional amount computed on the gross value of product for vermiculite derived from the business work or operation within this state during the calendar year immediately preceding at the rate of 2% of the gross value of product in excess of $1,250.

(4) The annual tax to be paid by a person engaged in or carrying on the business of mining, extracting, or producing limestone for the production of quicklime is $25 plus an additional amount computed on the gross value of product for limestone derived from the business work or operation within this state during the calendar year immediately preceding at the rate of 10% of the gross value of product in excess of $250.

(5) The annual tax to be paid by a person engaged in or carrying on the business of mining, extracting, or producing industrial garnets and associated byproducts is $25 plus an additional amount computed on the gross value of product for industrial garnets and associated byproducts derived from the business work or operation within this state during the calendar year immediately preceding at the rate of 1% on the gross value of product in excess of $2,500."

Section 3. Section 15-38-106, MCA, is amended to read:

"15-38-106. Payment of tax — records — collection of taxes — refunds. (1) The tax imposed by this chapter must be paid by each person to which the tax applies, on or before the due date of the annual statement established in 15-38-105, on the value of product in the year preceding January 1 of the year in which the tax is paid. The tax must be paid to the department at the time that the statement of yield for the preceding calendar year is filed with the department.

(2) The department shall, in accordance with the provisions of 17-2-124, deposit the proceeds from the resource indemnity and ground water assessment tax *and money deposited pursuant to 82-4-424(3)* in the following order:

(a) annually in due course, from the proceeds of the tax to the CERCLA match debt service fund provided in 75-10-622, the amount necessary, as certified by the department of environmental quality, after crediting to the CERCLA match debt service fund amounts transferred from the CERCLA cost recovery account established under 75-10-631, to pay the principal of, premium, if any, and interest during the next fiscal year on bonds or notes issued pursuant to 75-10-623;

(b) $366,000 of the proceeds from the tax in the ground water assessment account established by 85-2-905;

(c) for the biennium beginning July 1, 2007, $150,000 of the proceeds from the tax in the water storage state special revenue account established in 85-1-631;

(d) 50% of the remaining proceeds from the tax divided equally between the environmental quality protection fund established in 75-10-704 and the hazardous waste/CERCLA special revenue account established in 75-10-621; and

(e) all remaining proceeds from the tax in the natural resources projects state special revenue account, established in 15-38-302, for the purpose of making grants to be used for mineral development reclamation projects and renewable resource projects.

(3) Each person to whom the tax applies shall keep records in accordance with 15-38-105, and the records are subject to inspection by the department upon reasonable notice during normal business hours.

(4) The department shall examine the statement and compute the taxes to be imposed, and the amount computed by the department is the tax imposed, assessed against, and payable by the taxpayer. If the tax found to be due is greater than the amount paid, the excess must be paid by the taxpayer to the department within 30 days after written notice of the amount of deficiency is mailed by the department to the taxpayer. If the tax imposed is less than the amount paid, the difference must be applied as a tax credit against tax liability for subsequent years or refunded if requested by the taxpayer."

Section 4. Section 15-38-113, MCA, is amended to read:

"15-38-113. Exemption from resource indemnity and ground water assessment tax. *The following persons are exempt from the resource indemnity and ground water assessment tax:*

(1) ~~A~~ *a* person who has paid the license tax on a metal mine under the provisions of Title 15, chapter 37, part 1,~~, is exempt from the resource indemnity and ground water assessment tax.~~

(2) ~~A~~ *a* person who has paid the tax on oil and natural gas production under the provisions of Title 15, chapter 36, part 3~~, is exempt from the resource indemnity and ground water assessment tax.~~*;*

(3) a person who holds a permit pursuant to Title 82, chapter 4, part 4, and is subject to the fee provided for in 82-4-437(2); or

(4) a county, city, or town that holds a permit pursuant to Title 82, chapter 4, part 4."

Section 5. Section 82-4-405, MCA, is amended to read:

"82-4-405. Inapplicability to government. ~~The~~ *(1) Except as provided in subsection (2), the* provisions of this part relating to ~~fees or~~ *fees or* bonds do not apply to the federal government or its agencies, the state of Montana, counties, cities, or towns.

(2) Counties, cities, and towns are responsible for the fee required pursuant to 82-4-437(2)."

Section 6. Section 82-4-424, MCA, is amended to read:

"82-4-424. Receipt and expenditure of funds — disposition of penalties and other money. (1) The department may receive any federal funds, state funds, or any other funds for the reclamation of affected land. The department may cause the reclamation work to be done by its employees, by employees of other governmental agencies, by soil conservation districts, or through contracts with qualified persons.

(2) All penalties and other money paid under the provisions of this part, *except annual fees,* must be deposited in the environmental rehabilitation and response account in the state special revenue fund provided for in 75-1-110. Funds held by the department as bond or as a result of bond forfeiture that are no longer needed for reclamation and for which the department is not able to locate a surety or other person who owns the funds after diligent search must be

deposited in the environmental rehabilitation and response account in the state special revenue fund.

(3) The department shall deposit 85% of proceeds from annual fees into the opencut fund established in [section 1] and transfer 15% of the proceeds from the fees to the department of revenue for distribution in accordance with 15-38-106."

Section 7. Section 82-4-432, MCA, is amended to read:

"82-4-432. Application for permit — contents — issuance — amendment. (1) An application for a permit must be made using forms furnished by the department and must contain the following:

(a) the name of the applicant and, if other than the owner of the land, the name and address of the owner;

(b) the type of operation to be conducted;

(c) the estimated volume of overburden and materials to be removed;

(d) the location of the proposed opencut operation by legal description and county;

(e) the date when the opencut operation is proposed to commence; and

(f) a statement that the applicant has the legal right to mine the designated materials in the lands described.

(2) The application must be accompanied by:

(a) a bond or security meeting the requirements as set out in this part;

(b) a statement from the local governing body having jurisdiction over the area to be mined certifying that the proposed sand and gravel opencut operation complies with applicable local zoning regulations adopted under Title 76, chapter 2;

(c) a plan of operation that ~~meets~~ *addresses* the requirements of 82-4-434 *and rules adopted pursuant to this part related to 82-4-434*; ~~and~~

(d) written documentation that the landowner has been consulted about the proposed plan of operation*; and*

(e) a list of surface owners of land located within one-half mile of the boundary of the proposed opencut permit area using the most current known owners of record as shown in the records of the county clerk and recorder in the county where the proposed opencut operation is located.

(3) If, prior to applying for a permit, a person notifies the department of the intention to submit an application and requests that the department examine the area to be mined, the department shall examine the area and make recommendations to the person regarding the proposed opencut operation. The person may request a meeting with the department. The department shall hold a meeting if requested.

(4) (a) *(i)* Except as provided in 75-1-208(4)(b), upon receipt of an application ~~containing all items listed in subsections (1) and (2)~~, the department shall, within ~~30~~ *5 working* days, review the application~~, inspect the proposed site,~~ and notify the person *as to* whether or not the ~~department believes that the~~ application is ~~acceptable~~ *complete*. An application is ~~acceptable~~ *complete* if it ~~complies with all requirements of~~ *contains the items listed in* subsections (1) and (2). If the department determines that the application is not ~~acceptable~~ *complete*, the department shall ~~include in the notification~~ *notify the applicant in writing and include* a detailed identification of ~~all deficiencies~~ *information necessary to make the application complete*.

~~(b) Within 30 days of receipt of the applicant's responses to the identified deficiencies, the department shall notify the applicant if the application is acceptable or not. If the application is unacceptable, the notice must include a detailed explanation of the remaining deficiencies.~~

(ii) The time limit provided in subsection (4)(a)(i) applies to each submittal of the application until the department determines that the application is complete.

(b) (i) A determination that an application is complete does not ensure that the application is acceptable and does not limit the department's ability to request additional information or inspect the site during the review process.

(ii) Upon determining that an application is complete, the department shall begin reviewing the application for acceptability pursuant to this section.

(iii) The department shall accept public comment throughout the review process.

(c) The department may declare an application abandoned and void if:

(i) the applicant fails to respond to the department's written request for more information within 1 year; and

(ii) the department notifies the applicant of its intent to abandon the application and the applicant fails to provide information within 30 days.

(d) The department shall notify the applicant when an application is complete and post the complete application on the department's website.

(5) Within 15 days after the department sends notice of a complete application to the applicant, the applicant shall provide public notice, which must include:

(a) the name, address, and telephone number of the applicant;

(b) a description of the acreage, the estimated volume of overburden and materials to be removed, the type of materials to be removed, the facilities, the duration of activities, and the access points of the proposed opencut operation;

(c) a legal description of the proposed opencut operation and a map showing the location of the proposed opencut operation and immediately surrounding property; and

(d) on a form provided by the department, information on how to request a public meeting pursuant to this section.

(6) To provide public notice, the applicant shall:

(a) publish notice at least twice in a newspaper of general circulation in the locality of the proposed opencut operation;

(b) mail the notice by first-class mail to the board of county commissioners of the county in which the proposed opencut operation is located and to surface owners of land located within one-half mile of the boundary of the proposed opencut permit area using the most current known owners of record as shown in the records of the county clerk and recorder in the county where the proposed opencut operation is located;

(c) post the notice in at least two prominent locations at the site of the proposed opencut operation, including near a public road if possible; and

(d) provide the department with the names and addresses of those notified pursuant to subsection (6)(b).

(7) (a) Except as provided in subsection (7)(b), the department shall accept requests for a public meeting for 45 days after the department sends notice to the applicant of a complete application. Within this period, unless a public meeting

is required pursuant to subsection (9), the department shall notify the applicant as to whether or not the application is acceptable pursuant to subsection (10).

(b) If the applicant and the department mutually agree or the applicant submits documentation to the department showing that a public meeting will not be required pursuant to subsection (9), the department shall inform the applicant within 30 days of the notice of a complete application as to whether or not the application is acceptable pursuant to subsection (10).

(8) If a public meeting is required pursuant to subsection (9), within 30 days from the closing date of the public meeting request period in subsection (7), the department shall:

(a) hold a meeting; and

(b) notify the applicant as to whether or not the application is acceptable pursuant to subsection (10) or that the application requires an extended review pursuant to [section 8].

(9) (a) The department shall hold a public meeting in the area of the proposed opencut operation at the request of:

(i) the applicant; or

(ii) at least 30% of the property owners or 10 property owners, whichever is greater, notified pursuant to this section.

(b) To provide notice for a public meeting, the department shall notify by first-class mail the property owners on the list provided by the applicant pursuant to this section and the board of county commissioners in the county where the proposed opencut operation is located.

(10) (a) An application is acceptable if it complies with the requirements of subsections (1) and (2) and includes a plan of operation that satisfies the requirements of 82-4-434 and rules adopted pursuant to this part related to 82-4-434. If the department determines that the application is not acceptable, the department shall notify the applicant in writing and include a detailed identification of all deficiencies.

(b) Within 10 working days of receipt of the applicant's response to the identified deficiencies, the department shall review the responses and notify the applicant as to whether or not the application is acceptable. If the application is unacceptable, the department shall notify the applicant in writing and include a detailed identification of the deficiencies.

~~(c) The department may for sufficient cause extend either or both of the 30-day review periods for an additional 30 days if it notifies the applicant of the extension prior to the end of the respective original 30-day period. The department shall include in the notification of extension the reason for the extension.~~

~~(d)~~*(c)* If the application is acceptable, the department shall issue a permit to the operator that entitles the operator to engage in the opencut operation on the land described in the application.

~~(5)~~*(11) (a)* An operator may amend a permit by submitting an amendment application to the department. Upon receipt of the amendment application, the department shall review it in accordance with the requirements and procedures in ~~subsection (4)~~ *this section*. If the amendment application is acceptable, the department shall issue an amendment to the original permit.

(b) An application for an amendment is not subject to the public notice or public meeting requirements of this section or an extended review pursuant to

[section 8] unless it proposes an increase in permitted acreage of 50% or more of the amount of permitted acreage in the original permit.

(c) For amendment applications not subject to the public notice and public meeting requirements of this section, the department shall, within 45 days of notifying the applicant that the application is complete, notify the applicant as to whether or not the application is acceptable pursuant to subsection (10) or that the application requires an extended review pursuant to [section 8].

(12) The department shall publish a copy of an acceptable permit or amendment on its website."

Section 8. Extended review — criteria — timeframes. (1) The department may subject an opencut application to an extended review if the department determines that comments received at a public meeting held pursuant to 82-4-432 reveal substantial issues not adequately satisfied in the proposed plan of operation.

(2) (a) For a complete application subject to an extended review, the department shall, within 60 days from the date the department determines the application warrants an extended review, inspect the proposed site if the department determines an inspection is necessary and notify the applicant as to whether or not the application is acceptable pursuant to 82-4-432. If the application is unacceptable, the notice must include a detailed explanation of the deficiencies.

(b) Within 30 days of receipt of the applicant's response to the identified deficiencies, the department shall review the responses and notify the applicant as to whether or not the application is acceptable. If the application is unacceptable, the department shall notify the applicant in writing and include a detailed identification of the deficiencies.

(c) The department may for sufficient cause extend either or both of the review periods in subsection (2)(a) or (2)(b) for an additional 30 days if it notifies the applicant of the extension prior to the end of the respective original period. The department shall include in the notification of extension the reason for the extension.

(d) If the application is acceptable, the department shall issue a permit or a permit amendment to the operator that entitles the operator to engage in the opencut operation on the land described in the application.

Section 9. Section 82-4-437, MCA, is amended to read:

"82-4-437. Annual report — *fee.* *(1)* For each permitted operation, the operator shall file an annual report on a form furnished by the department. The report must contain the information and be submitted at times provided in rules of the board.

(2) (a) Except as provided in subsection (2)(b), each permitted operation shall submit with the annual report a fee of 2.5 cents per cubic yard of material mined during the period covered by the report.

(b) Permitted operations that mine, extract, or produce bentonite are not subject to the fee in this section."

Section 10. Codification instruction. [Sections 1 and 8] are intended to be codified as an integral part of Title 82, chapter 4, part 4, and the provisions of Title 82, chapter 4, part 4, apply to [sections 1 and 8].

Section 11. Effective date. [This act] is effective on passage and approval.

Section 12. Applicability — retroactive applicability. (1) Except as provided in subsection (4), [sections 1 through 6 and 9] apply retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2007.

(2) Except as provided in subsection (3), [sections 7 and 8] apply to permit applications and amendment applications pursuant to 82-4-432 submitted after [the effective date of this act].

(3) [Section 7(4)(c)] applies retroactively, within the meaning of 1-2-109, to permit applications and amendment applications submitted prior to [the effective date of this act].

(4) The exemption provided for in 15-38-113(4) applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2000, for counties, cities, and towns.

Approved May 8, 2009

CHAPTER NO. 478

[HB 5]

AN ACT GENERALLY REVISING LAWS RELATING TO CAPITAL PROJECTS; INCLUDING ENERGY CONSERVATION PROJECTS AS CAPITAL PROJECTS; APPROPRIATING MONEY FOR CAPITAL PROJECTS FOR THE BIENNIUM ENDING JUNE 30, 2011; PROVIDING FOR OTHER MATTERS RELATING TO THE APPROPRIATIONS; PROVIDING FOR A TRANSFER OF FUNDS FROM THE STATE GENERAL FUND TO THE LONG-RANGE BUILDING PROGRAM ACCOUNT; CREATING AN ENERGY CONSERVATION CAPITAL PROJECTS ACCOUNT; PROVIDING FOR TRANSFERS OF FUNDS FROM THE STATE GENERAL FUND TO THE ENERGY CONSERVATION REPAYMENT ACCOUNT AND THE ENERGY CONSERVATION CAPITAL PROJECTS ACCOUNT; AUTHORIZING COMMUNITY COLLEGES TO PARTICIPATE IN THE ENERGY CONSERVATION PROGRAM; REQUIRING PAYMENT OF INTEREST ON ENERGY CONSERVATION PROJECT COSTS; REQUIRING THE INCLUSION OF ENERGY SAVINGS IN THE EXECUTIVE BUDGET; AMENDING SECTIONS 17-7-111, 17-7-123, 90-4-602, AND 90-4-615, MCA, AND SECTION 2, CHAPTER 560, LAWS OF 2005; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Definitions. For the purposes of [sections 1 through 12], unless otherwise stated, the following definitions apply:

(1) "Authority only" means approval provided by the legislature to expend money that does not require an appropriation, including grants, donations, auxiliary funds, proprietary funds, and university funds.

(2) "Capital project" means the acquisition of land or improvements or the planning, capital construction, renovation, furnishing, or major repair projects authorized in [sections 1 through 12].

(3) "LRBP" means the long-range building program account in the capital projects fund type.

(4) "Other funding sources" means money other than LRBP, state special revenue, or federal special revenue money that accrues to an agency under the provisions of law.

Section 2. Capital project appropriations and authorizations. The following money is appropriated for the indicated capital projects to the department of environmental quality for state building energy conservation funds and from all other indicated sources to the department of administration. Funds not requiring legislative appropriation are included for the purpose of authorization. The department of administration is authorized to transfer the appropriations and/or authority among the necessary fund types for these projects:

Agency/Project	LRBP Fund	State Special Revenue	Federal Special Revenue	Other Funding Sources	Authority Only	Total
MONTANA SCHOOL FOR THE DEAF AND BLIND						
Energy and Facility Improvements	250,000			25,000		275,000
Other funds consist of state building energy conservation funds.						
DEPARTMENT OF ADMINISTRATION						
Renovation and Energy Improvements						
State Liquor Warehouse				2,210,000		2,210,000
Other funds consist of 460,000 of state building energy conservation funds and 1,750,000 of proprietary funds.						
Mechanical and Energy Projects						
Capitol Complex			1,924,000		1,600,000	3,524,000
Federal special revenue funds consist of federal funds received pursuant to the American Recovery and Reinvestment Act of 2009, Public Law 111-5, for state energy programs.						
Authority-only funds consist of general services division internal service funds.						
Energy Related Deferred Maintenance, Statewide	1,073,568		1,276,432			2,350,000
Federal special revenue funds consist of federal funds received pursuant to the American Recovery and Reinvestment Act of 2009, Public Law 111-5, for state energy programs.						
Spending Authority, Utility Energy Conservation Funds					2,000,000	2,000,000
Authority-only funds consist of utility company grants, rebates and incentives.						
Hazardous Materials Abatement, Statewide	400,000					400,000
Roof Repairs and Replacements, Statewide	1,310,000		700,000			2,010,000
Elevator and ADA Modifications, Capitol Complex					1,450,000	1,450,000
Authority-only funds consist of general services division internal service funds.						
Repair/Preserve Building Envelopes, Statewide	1,500,000					1,500,000
Code/Deferred Maintenance, Statewide	1,150,000					1,150,000
Infrastructure Repairs, State Capitol	500,000				300,000	800,000
Authority-only funds consist of general services division internal service funds.						
Parking Lot Upgrades, Capitol Complex					250,000	250,000
Authority-only funds consist of general services division internal service funds.						
Upgrade Fire Protection Systems, Statewide	800,000					800,000
Campus Master Planning, Statewide	200,000	100,000			200,000	500,000
Authority-only funds may include federal special revenue, auxiliary, donations, grants, and higher education funds.						
DEPARTMENT OF CORRECTIONS						
Energy Conservation Improvements	1,260,000		2,610,000	10,000	500,000	4,380,000

Federal special revenue funds consist of federal funds received pursuant to the American Recovery and Reinvestment Act of 2009, Public Law 111-5, for state energy programs.

Other funds consist of state building energy conservation funds.

Authority-only funds may include federal special revenue, donations, grants, and proprietary funds.

Alternative Energy-Biomass Boiler, MT State Prison			250,000	740,000	990,000

Other funds consist of state building energy conservation funds.

Emergency Power System, MT State Prison	500,000				500,000
Renovate Low Support, MT State Prison	1,660,000				1,660,000
New Building for Youth Transition Center, Great Falls	1,310,000				1,310,000
Improve Food Production	300,000				300,000
DEPARTMENT OF FISH, WILDLIFE, AND PARKS					
Hatchery Maintenance		575,000	275,000		850,000
Administration Facilities Repair and Maintenance		1,390,000			1,390,000
DEPARTMENT OF MILITARY AFFAIRS					
Energy Conservation Improvements			885,000	265,000	1,150,000

Other funds consist of state building energy conservation funds.

Storm Water Improvements/Infrastructure, Phase 3, Fort Harrison		1,600,000		1,600,000	
Paving Parking Lots, Statewide	100,000		100,000		200,000
MONTANA UNIVERSITIES AND COLLEGES					
Code Compliance/Deferred Maintenance					
Montana University System	3,600,000			1,000,000	4,600,000

Authority-only funds may include federal special revenue, auxiliary, donations, grants, and higher education funds.

Animal Bioscience Facility, MSU-Bozeman	2,500,000				2,500,000
Renovate Existing Laboratory Facilities, MSU-Bozeman				7,500,000	7,500,000

Authority is hereby granted to Montana state university to convert existing laboratories to long-term use and to make capital improvements in the indicated amount contingent upon receipt of federal special revenue, grants, or both.

Federal special revenue funds consist of federal funds received pursuant to the American Recovery and Reinvestment Act of 2009, Public Law 111-5.

Simulated Hospital and Child Care Center, MSU-Great Falls College of Technology	1,600,000			500,000	2,100,000

Authority only funds may include federal special revenue, auxiliary, donations, grants, and higher education funds.

Funds must be used for construction costs. Any remaining funds will be redirected to construction projects at Montana colleges of technology.

UM-Helena College of Technology Project Completion	850,000				850,000
DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES					
Improve Medical Services, MT Developmental Center, Boulder	450,000				450,000
DEPARTMENT OF TRANSPORTATION					
Equipment Storage Buildings, Statewide		1,175,000			1,175,000
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION					
Energy/Major Repairs and Small Projects, Statewide	1,000,000				1,000,000

Building Addition, Billings Oil and Gas Office		1,300,000			1,300,000
DEPARTMENT OF AGRICULTURE					
Renovation and Energy Upgrades, State Grain Lab, Great Falls	525,000				525,000

Section 3. Fund transfers. (1) Subject to subsection (4), there is transferred from the state general fund $2.6 million in fiscal year 2010 and $2.6 million in fiscal year 2011 to the long-range building program account in the capital projects fund type for the projects enumerated in [sections 2 and 4].

(2) Subject to subsection (4), there is transferred from the state general fund $10.4 million in fiscal year 2010 and $2.957 million in fiscal year 2011 to the energy conservation capital projects account in the capital projects fund type for the projects enumerated in [sections 2 and 4].

(3) Subject to subsection (4), there is transferred from the state general fund $1 million in fiscal year 2010 and $500,000 in fiscal year 2011 to the energy conservation repayment account created in 90-4-615 to be available to the department of environmental quality by appropriation to fund the costs of the state building energy conservation program.

(4) In order to maintain an adequate general fund ending balance, if at any time during the 2011 biennium, the office of budget and program planning projects a 2011 biennium unreserved general fund ending balance of less than $125 million, the office of budget and program planning may direct the department of administration to reduce the fund transfers in subsections (1) through (3). The department of administration shall transfer the funds on a schedule approved by the office of budget and program planning that enables the statewide management goals for cash flow and for fund balance. If the projected unreserved general fund ending balance increases at a later point in the biennium, the fund transfers may be increased back up to the original authorized level. The office of budget and program planning may not direct fund transfers to be reduced below the level of encumbrance obligations made against the appropriation at the time of the reduction.

Section 4. Capital improvements. (1) The following money is appropriated to the department of fish, wildlife, and parks in the indicated amounts for the purpose of making capital improvements to statewide facilities. Funds not requiring legislative appropriation are included for the purpose of authorization:

Agency/Project	LRBP Fund	State Special Revenue	Federal Special Revenue	Other Funding Sources	Authority Only	Total
Future Fisheries		1,150,000				1,150,000
Community Fishing Ponds		50,000				50,000
Clearwater Fish Barrier		825,000	25,000			850,000
Upland Game Bird Program		1,041,400				1,041,400
Wildlife Habitat Maintenance		1,010,000				1,010,000
Migratory Bird Stamp Program		620,000				620,000
Bighorn Sheep		150,000				150,000
Parks Program		3,040,000	2,000,000			5,040,000
Fishing Access Site Protection		900,000				900,000
Grant Programs/Federal Projects		320,000	1,500,000			1,820,000

(2) The following money is appropriated to the department of commerce, Montana heritage preservation and development commission, in the indicated

amount for the purpose of making capital improvements to facilities located in Virginia City, Nevada City, and Reeder's Alley:

Agency/Project	LRBP Fund	State Special Revenue	Federal Special Revenue	Other Funding Sources	Authority Only	Total
Historic Preservation & Supporting Improvements, MHC Properties Statewide	750,000					750,000

(3) Authority is being granted to the university of Montana in the indicated amount for the purpose of making capital improvements to campus facilities. Authority-only funds may include federal special revenue, donations, grants, and higher education funds. All costs for the operations and maintenance of any new improvements constructed under this authorization must be paid by the university of Montana with nonstate revenue.

Agency/Project	LRBP Fund	State Special Revenue	Federal Special Revenue	Other Funding Sources	Authority Only	Total
General Spending Authority, UM-All Campuses					6,000,000	6,000,000
Interdisciplinary Science Building Finish Out, UM-Missoula					8,000,000	8,000,000

Authority is hereby granted to the university of Montana to make capital improvements for the interdisciplinary science building finish out in the indicated amount contingent upon receipt of federal special revenue as part of funds made available pursuant to the American Recovery and Reinvestment Act of 2009, Public Law 111-5, through competitive grants. All costs for the operation and maintenance of the improvements constructed under this appropriation must be paid by the university of Montana from nonstate sources.

(4) Authority is being granted to Montana state university in the indicated amount for the purpose of making capital improvements to campus facilities. Authority-only funds may include federal special revenue, donations, grants, and higher education funds. All costs for the operations and maintenance of new improvements constructed under this authorization must be paid by Montana state university from nonstate sources.

Agency/Project	LRBP Fund	State Special Revenue	Federal Special Revenue	Other Funding Sources	Authority Only	Total
General Spending Authority, MSU-All Campuses					5,000,000	5,000,000

(5) The following money is appropriated to the department of military affairs in the indicated amount for the purpose of making capital improvements to statewide facilities. All costs for the operation and maintenance of any new improvements constructed with these funds must be paid by the department of military affairs with nonstate revenue.

Agency/Project	LRBP Fund	State Special Revenue	Federal Special Revenue	Other Funding Sources	Authority Only	Total
Federal Spending Authority			2,000,000			2,000,000

(6) The following money is appropriated to the department of transportation in the indicated amounts for the purpose of making capital improvements as indicated:

Agency/Project	LRBP Fund	State Special Revenue	Federal Special Revenue	Other Funding Sources	Authority Only	Total
Statewide Maintenance, Repair and Small Projects		2,625,000				2,625,000
US Highway 93 Projects		24,100,000				24,100,000

(7) The following money is appropriated to the department of environmental quality in the indicated amounts for the purpose of making capital improvements as indicated:

Agency/Project	LRBP Fund	State Special Revenue	Federal Special Revenue	Other Funding Sources	Authority Only	Total
Department of Public Health and Human Services Energy Projects, Statewide	2,132,000			2,132,000		

Federal special revenue funds consist of federal funds received pursuant to the American Recovery and Reinvestment Act of 2009, Public Law 111-5, for state energy programs.

Energy Projects at Community Colleges, Statewide			1,000,000			1,000,000

Federal special revenue funds consist of federal funds received pursuant to the American Recovery and Reinvestment Act of 2009, Public Law 111-5, for state energy programs.

Cabinet Agency Energy Projects, Statewide			5,375,000			5,375,000

Federal special revenue funds consist of federal funds received pursuant to the American Recovery and Reinvestment Act of 2009, Public Law 111-5, for state energy programs.

Energy Conservation Improvements, Montana University System			8,697,000			8,697,000

Federal special revenue funds consist of federal funds received pursuant to the American Recovery and Reinvestment Act of 2009, Public Law 111-5, for state energy programs.

(8) The following money is appropriated to the department of natural resources and conservation in the indicated amounts for the purpose of making capital improvements as indicated:

Agency/Project	LRBP Fund	State Special Revenue	Federal Special Revenue	Other Funding Sources	Authority Only	Total
Rehabilitation of State-Owned Dams		575,000				575,000
Rehabilitation of Ruby Dam		5,000,000				5,000,000

Section 5. Land acquisition appropriations. The following money is appropriated to the department of fish, wildlife, and parks in the indicated amounts for purposes of land acquisition, land leasing, easement purchase, or development agreements:

Agency/Project	LRBP Fund	State Special Revenue	Federal Special Revenue	Other Funding Sources	Authority Only	Total
Fishing Access Site Acquisition		500,000	100,000			600,000
Habitat Montana		8,110,000				8,110,000
Hunting Access		2,500,000				2,500,000

Section 6. Montana stimulus capital improvements. (1) The following money is appropriated for the indicated capital projects from the indicated sources to the department of administration. Funds not requiring legislative appropriation are included for the purpose of authorization. The department of administration is authorized to transfer the appropriations, authority, or both among the necessary fund types for these projects.

Agency/Project	LRBP Fund	State Special Revenue	Federal Special Revenue	Other Funding Sources	Authority Only	Total
Exterior Envelope Improvements, Montana Law Enforcement Academy	425,000					425,000
Facility Repairs and Improvements, WATCh East	650,000					650,000
Facility Repairs and Improvements, DNRC Swan and Stillwater Units	400,000					400,000
Renovate Low Support, Phase 2, Montana State Prison	1,240,000					1,240,000
Renovate Main Hall, Phase 2, UM-Western	6,000,000					6,000,000
Renovation/Addition to Spratt Building, Montana State Hospital	1,640,000					1,640,000
Montana Veterans' Home Improvements, Statewide	1,200,000					1,200,000
Consolidate DNRC Divisions, Missoula	350,000					350,000
Office of Public Assistance, Wolf Point	2,250,000					2,250,000
Statewide Facilities Planning	400,000					400,000
Central Land Office Building Renovation/ Replacement, DNRC	1,600,000					1,600,000
Energy Conservation Improvements, Montana University System	12,300,000				4,500,000	16,800,000

The highest priority use of funds provided in this appropriation is to augment projects initiated with the state energy program funds received pursuant to the American Recovery and Reinvestment Act of 2009, Public Law 111-5, and appropriated in [section 4] for the Montana university system to address related modernization, repairs, and renovation costs that the department of administration considers prudent to construct within the same project. If the federal state energy program funds are exhausted, the remaining funds in this appropriation may be used to entirely fund additional energy conservation projects and related improvements.

Rose Creek Hatchery			5,000,000			5,000,000

Federal special revenue funds consist of federal funds received pursuant to the American Recovery and Reinvestment Act of 2009, Public Law 111-5.

(2) The following money is appropriated to the department of military affairs in the indicated amounts for the purpose of making capital improvements to statewide facilities. Funds not requiring legislative appropriation are included for the purpose of authorization. All costs for the operation and maintenance of any new improvements constructed with these funds must be paid by the department of military affairs with nonstate revenue.

Agency/Project	LRBP Fund	State Special Revenue	Federal Special Revenue	Other Funding Sources	Authority Only	Total
Construct Female Latrines - Department of Military Affairs, Culbertson and Malta			451,800			451,800

Federal special revenue funds consist of federal funds received pursuant to the American Recovery and Reinvestment Act of 2009, Public Law 111-5, for national guard operations and maintenance.

Helicopter Dip Site - Department of Military Affairs, Fort Harrison			279,268			279,268

Federal special revenue funds consist of federal funds received pursuant to the American Recovery and Reinvestment Act of 2009, Public Law 111-5, for national guard operations and maintenance.

Vault Modifications - Department of Military Affairs, Statewide			500,000			500,000

Federal special revenue funds consist of federal funds received pursuant to the American Recovery and Reinvestment Act of 2009, Public Law 111-5, for national guard operations and maintenance.

(3) The following money is appropriated to the department of fish, wildlife, and parks in the indicated amounts for the purpose of making capital improvements to statewide facilities. Funds not requiring legislative appropriation are included for the purpose of authorization.

Agency/Project	LRBP Fund	State Special Revenue	Federal Special Revenue	Other Funding Sources	Authority Only	Total
Mobley Diversion Watershed			300,000			300,000
Federal special revenue funds consist of federal funds received pursuant to the American Recovery and Reinvestment Act of 2009, Public Law 111-5.						
Fort Peck Hatchery Infrastructure			720,000			720,000
Federal special revenue funds consist of federal funds received pursuant to the American Recovery and Reinvestment Act of 2009, Public Law 111-5.						
Fort Peck Hatchery Hydroelectric Generation			9,200,000			9,200,000
Federal special revenue funds consist of federal funds received pursuant to the American Recovery and Reinvestment Act of 2009, Public Law 111-5.						
Willow Creek Feeder Canal Project			1,250,000			1,250,000
Federal special revenue funds consist of federal funds received pursuant to the American Recovery and Reinvestment Act of 2009, Public Law 111-5.						
Vandalia Fish Passage			5,000,000			5,000,000
Federal special revenue funds consist of federal funds received pursuant to the American Recovery and Reinvestment Act of 2009, Public Law 111-5.						

Section 7. Transfer of appropriations — definition. (1) The department of fish, wildlife, and parks and the department of transportation are authorized to transfer the appropriations and authority, as appropriate, in [sections 4 and 5] among the necessary fund types for these projects.

(2) (a) The department of environmental quality may transfer appropriations between projects in [section 2 or 4] to respond to energy-saving opportunities.

(b) For purposes of this subsection (2), "energy-saving opportunities" means opportunities to achieve energy cost savings that will be technically infeasible or uneconomical if the project is delayed until specific legislative approval can be obtained.

(3) The department of administration may transfer appropriations and authority, as appropriate, between projects in [section 2 or 6] to maximize utilization of the federal funds received pursuant to the American Recovery and Reinvestment Act of 2009, Public Law 111-5.

Section 8. Reappropriation of remaining balance to Montana tech. (1) Any portion of the Augment Petroleum, Bureau of Mines and Geology, UM-MT Tech project appropriation of $5.2 million of long-range building program (LRBP) funds appropriated in section 2, Chapter 3, Special Laws of May 2007, that is unexpended for the project is reappropriated for the following projects:

Mining and Geology Building, HVAC Upgrade, UM-MT Tech	$530,000
Health Sciences Building, ADA Accessible Bathrooms on Floors 1 and 2 and Elevator, UM-MT Tech	$1,930,000
Evaluation of Main Hall Structure, UM-MT Tech	$40,000

(2) There are no additional operations and maintenance costs associated with the new projects, and energy upgrades will offset the costs of operating the new elevator.

Section 9. Planning and design. The department of administration may proceed with the planning and design of capital projects prior to the receipt of other funding sources. The department may use interaccount loans in accordance with 17-2-107 to pay planning and design costs incurred before the receipt of funds from other funding sources.

Section 10. Capital projects — contingent funds. If a capital project is financed, in whole or in part, with appropriations contingent upon the receipt of funds from other funding sources, the department of administration may not let the project for bid until the agency has submitted a financial plan for approval by the director of the department of administration. A financial plan may not be approved by the director if:

(1) the level of funding provided under the financial plan deviates substantially from the funding level provided in [sections 2 through 5] for that project; or

(2) the scope of the project is substantially altered or revised from the preliminary plans presented for that project in the 2011 biennium long-range building program presented to the 61st legislature.

Section 11. Review by department of environmental quality. The department of environmental quality shall review capital projects authorized in [sections 2 through 7] for potential inclusion in the state building energy conservation program under Title 90, chapter 4, part 6. When a review shows that a capital project will result in energy improvements, that project must be submitted to the energy conservation program for funding consideration. Funding provided under the energy conservation program guidelines must be used to offset or add to the authorized funding for the project, and the amount will be dependent on the annual utility savings resulting from the facility improvement. Agencies must be notified of potential funding after the review.

Section 12. Legislative consent. The appropriations authorized in [sections 1 through 11] constitute legislative consent for the capital projects contained in [sections 1 through 11] within the meaning of 18-2-102.

Section 13. Section 17-7-111, MCA, is amended to read:

"17-7-111. Preparation of state budget — agency program budgets — form distribution and contents. (1) (a) To prepare a state budget, the executive branch, the legislature, and the citizens of the state need information that is consistent and accurate. Necessary information includes detailed disbursements by fund type for each agency and program for the appropriate time period, recommendations for creating a balanced budget, and recommended disbursements and estimated receipts by fund type and fund category.

(b) Subject to the requirements of this chapter, the budget director and the legislative fiscal analyst shall by agreement:

(i) establish necessary standards, formats, and other matters necessary to share information between the agencies and to ensure that information is consistent and accurate for the preparation of the state's budget; and

(ii) provide for the collection and provision of budgetary and financial information that is in addition to or different from the information otherwise required to be provided pursuant to this section.

(2) In the preparation of a state budget, the budget director shall, not later than the date specified in 17-7-112(1), distribute to all agencies the proper forms and instructions necessary for the preparation of budget estimates by the budget director. These forms must be prescribed by the budget director to procure the information required by subsection (3). The forms must be submitted to the budget director by the date provided in 17-7-112(2)(a) or the agency's budget is subject to preparation based upon estimates as provided in 17-7-112(5). The budget director may refuse to accept forms that do not comply with the provisions of this section or the instructions given for completing the forms.

(3) The agency budget request must set forth a balanced financial plan for the agency completing the forms for each fiscal year of the ensuing biennium. The plan must consist of:

(a) a consolidated agency budget summary of funds subject to appropriation or enterprise funds that transfer profits to the general fund or to an account subject to appropriation for the current base budget expenditures, including statutory appropriations, and for each present law adjustment and new proposal request setting forth the aggregate figures of the full-time equivalent personnel positions (FTE) and the budget, showing a balance between the total proposed disbursements and the total anticipated receipts, together with the other means of financing the budget for each fiscal year of the ensuing biennium, contrasted with the corresponding figures for the last-completed fiscal year and the fiscal year in progress;

(b) a schedule of the actual and projected receipts, disbursements, and solvency of each fund for the current biennium and estimated for the subsequent biennium;

(c) a statement of the agency mission and a statement of goals and objectives for each program of the agency. The goals and objectives must include, in a concise form, sufficient specific information and quantifiable information to enable the legislature to formulate an appropriations policy regarding the agency and its programs and to allow a determination, at some future date, on whether the agency has succeeded in attaining its goals and objectives.

(d) actual FTE and disbursements for the completed fiscal year of the current biennium, estimated FTE and disbursements for the current fiscal year, and the agency's request for the ensuing biennium, by program;

(e) actual disbursements for the completed fiscal year of the current biennium, estimated disbursements for the current fiscal year, and the agency's recommendations for the ensuing biennium, by disbursement category;

(f) for only agencies with more than 20 FTE, a plan to reduce the proposed base budget for the general appropriations act and the proposed state pay plan to 95% of the current base budget or lower if directed by the budget director. Each agency plan must include base budget reductions that reflect the required percentage reduction by fund type for the general fund and state special revenue fund types. Exempt from the calculations of the 5% target amounts are legislative audit costs, administratively attached entities that hire their own staff under 2-15-121, and state special revenue accounts that do not transfer their investment earnings or fund balances to the general fund. The plan must include:

(i) a prioritized list of services that would be eliminated or reduced;

(ii) for each service included in the prioritized list, the savings that would result from the elimination or reduction; and

(iii) the consequences or impacts of the proposed elimination or reduction of each service.

(g) a reference for each new information technology proposal stating whether the new proposal is included in the approved agency information technology plan as required in 2-17-523; ~~and~~

(h) energy cost saving information as required by [section 17]; and

~~(h)~~*(i)* other information the budget director feels is necessary for the preparation of a budget.

(4) The budget director shall prepare and submit to the legislative fiscal analyst in accordance with 17-7-112:

(a) detailed recommendations for the state long-range building program. Each recommendation must be presented by institution, agency, or branch, by funding source, with a description of each proposed project.

(b) a statewide project budget summary as provided in 2-17-526;

(c) the proposed pay plan schedule for all executive branch employees at the program level by fund, with the specific cost and funding recommendations for each agency. Submission of a pay plan schedule under this subsection is not an unfair labor practice under 39-31-401.

(d) agency proposals for the use of cultural and aesthetic project grants under Title 22, chapter 2, part 3, the renewable resource grant and loan program under Title 85, chapter 1, part 6, the reclamation and development grants program under Title 90, chapter 2, part 11, and the treasure state endowment program under Title 90, chapter 6, part 7.

(5) The board of regents shall submit, with its budget request for each university unit in accordance with 17-7-112, a report on the university system bonded indebtedness and related finances as provided in this subsection (5). The report must include the following information for each year of the biennium, contrasted with the same information for the last-completed fiscal year and the fiscal year in progress:

(a) a schedule of estimated total bonded indebtedness for each university unit by bond indenture;

(b) a schedule of estimated revenue, expenditures, and fund balances by fiscal year for each outstanding bond indenture, clearly delineating the accounts relating to each indenture and the minimum legal funding requirements for each bond indenture; and

(c) a schedule showing the total funds available from each bond indenture and its associated accounts, with a list of commitments and planned expenditures from such accounts, itemized by revenue source and project for each year of the current and ensuing bienniums.

(6) (a) The department of revenue shall make Montana individual income tax information available by removing names, addresses, and social security numbers and substituting in their place a state accounting record identifier number. Except for the purposes of complying with federal law, the department may not alter the data in any other way.

(b) The department of revenue shall provide the name and address of a taxpayer on written request of the budget director when the values on the requested return, including estimated payments, are considered necessary by the budget director to properly analyze state revenue and are of a sufficient magnitude to materially affect the analysis and when the identity of the

taxpayer is necessary to evaluate the effect of the return or payments on the analysis being performed."

Section 14. Section 17-7-123, MCA, is amended to read:

"17-7-123. Form of executive budget. (1) The budget submitted must set forth a balanced financial plan for funds subject to appropriation and enterprise funds that transfer profits to the general fund or to accounts subject to appropriation for each accounting entity and for the state government for each fiscal year of the ensuing biennium. The base level plan must consist of:

(a) a consolidated budget summary setting forth the aggregate figures of the budget in a manner that shows a balance between the total proposed disbursements and the total anticipated receipts, together with the other means of financing the budget for each fiscal year of the ensuing biennium, contrasted with the corresponding figures for the last-completed fiscal year and the fiscal year in progress. The consolidated budget summary must be supported by explanatory schedules or statements.

(b) budget and full-time equivalent personnel position comparisons by agency, program, and appropriated funds for the current and subsequent biennium;

(c) the departmental mission and a statement of goals and objectives for the department;

(d) base budget disbursements for the completed fiscal year of the current biennium, estimated comparable disbursements for the current fiscal year, and the proposed present law base budget plus new proposals, if any, for each department and each program of the department;

(e) a statement containing recommendations of the governor for the ensuing biennium by program and disbursement category, including:

(i) explanations of appropriation and revenue measures included in the budget that involve policy changes;

(ii) matters not included as a part of the budget bill but included as a part of the executive budget, such as the state employee pay plan, programs funded through separate appropriations measures, and other matters considered necessary for comprehensive public and legislative consideration of the state budget; and

(iii) a summary of budget requests that include proposed expenditures on information technology resources. The summary must include funding, program references, and a decision package reference;

(f) a report on:

(i) enterprise funds not subject to the requirements of subsections (1)(a) through (1)(e), including retained earnings and contributed capital, projected operations and charges, and projected fund balances; and

(ii) fees and charges in the internal service fund type, including changes in the level of fees and charges, projected use of the fees and charges, and projected fund balances. Fees and charges in the internal service fund type must be approved by the legislature in the general appropriations act. Fees and charges in a biennium may not exceed the level approved by the legislature in the general appropriations act effective for that biennium.

(g) energy cost saving information as required by [section 17] and energy conservation program information as required by 90-4-606; and

~~(g)~~*(h)* any other financial or budgetary material agreed to by the budget director and the legislative fiscal analyst.

(2) The statement of departmental goals and objectives and the schedule for each fund required in 17-7-111(3)(b) of the executive budget are not required to be printed but must be available in the office of budget and program planning and on the internet."

Section 15. Section 90-4-602, MCA, is amended to read:

"90-4-602. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Board" means the board of examiners provided for in 2-15-1007.

(2) "Cost" includes the expenses related to planning, design, construction, and installation of energy conservation improvements and any administrative expenses of the department incurred in the performance of its duties under the energy conservation program.

(3) "Department" means the department of environmental quality provided for in 2-15-3501.

(4) "Energy conservation program" means a program for the financing, acquisition, construction, and installation of *alternative* energy ~~saving~~ *systems, as defined in 15-32-102, or* equipment, systems, and improvements in state-owned buildings, structures, and facilities *that save energy or water*.

(5) "Energy conservation program bonds" includes all series of bonds issued to finance any portion of the energy conservation program.

(6) "Energy cost savings" means the savings in utility costs to a state agency as a result of an energy conservation program.

(7) "Participating state agency" means, for a state-owned building, structure, or facility, the state agency that pays the utilities for that building.

~~(7)~~*(8)* "State agency" means:

(a) each executive, legislative, or judicial branch department, office, or agency; ~~and~~

(b) the university system*; and*

(c) a community college district."

Section 16. Section 90-4-615, MCA, is amended to read:

"90-4-615. Energy conservation repayment account. (1) There is an energy conservation repayment account in the state special revenue fund established in 17-2-102.

(2) There must be deposited in the energy conservation repayment account:

(a) the amount of energy costs saved as a result of ~~the acquisition, installation, and construction of energy saving equipment, systems, or improvements~~ *energy conservation projects* in state buildings, facilities, or structures using ~~general fund~~ appropriations ~~to~~ *from the energy conservation capital projects account or the general fund for* the energy conservation program ~~until total payments to the account for a project equal the cost of the project, including the cost of the investment grade energy audit on the project and the design of the project~~; ~~and~~

(b) interest earned on the account*;*

(c) interest earned on the energy conservation capital projects account created in [section 18]; and

(d) funds transferred to the account by the legislature.

(3) Money in the energy conservation repayment account is available to the department of environmental quality by appropriation to fund the costs of the energy conservation program *for:*

(a) conducting energy analysis;

(b) data collection and analysis;

(c) program administration and oversight; and

(d) monitoring the results of state building energy conservation projects.

(4) If the unencumbered funds in the account at the end of a biennium exceed $2 million, the department shall transfer to the energy conservation capital projects account the amount of funds in excess of $2 million."

Section 17. Transfer of energy savings from projects. (1) In preparing the executive budget each biennium, for each state agency participating in the state energy conservation program by using appropriations from the general fund or the energy conservation capital projects account created in [section 18], the governor shall include an estimate of the energy cost savings expected for that agency in each year of the biennium.

(2) Each session, the legislature shall review the governor's submission pursuant to 90-4-606 and subsection (1) of this section and, unless the legislature disapproves, shall include in the general appropriations act authority for each participating state agency to transfer funds in an amount equal to the agency's estimated energy cost savings to the energy conservation repayment account established in 90-4-615. These transfers must continue until the cost of the project, including energy analysis, acquisition and installation costs of energy saving equipment or systems, and the cost of the construction of improvements in state buildings, facilities, or structures, plus annual interest payments of 3% of the unpaid balance of the cost of the project, has been paid into the energy conservation repayment account.

(3) The current level utility appropriations of state agencies participating in the energy conservation program must be reduced by the sum of the amounts approved to be transferred pursuant to subsection (2).

(4) Upon request of the department, each participating state agency shall transfer the amounts approved pursuant to subsection (2).

Section 18. Energy conservation capital projects account. (1) There is an energy conservation capital projects account in the capital projects fund type established in 17-2-102.

(2) There must be deposited in the account:

(a) money transferred from the energy conservation repayment account; and

(b) other amounts transferred to the account by the legislature.

(3) Money in the account is available to the department by appropriation and must be used to pay the costs of the acquisition, installation, and construction of energy saving equipment, systems, or improvements in state buildings, facilities, or structures.

Section 19. Reappropriation of energy conservation projects. The remaining balances on energy conservation projects previously approved by the legislature are reappropriated for the purposes of the original appropriation until the projects are completed.

Section 20. Section 2, Chapter 560, Laws of 2005, is amended to read:

"**Section 2. Capital projects appropriations and authorizations.** (1) Subject to [section 9(2)], the following money is appropriated for the indicated capital projects from the indicated sources to the department of administration. Funds not requiring legislative appropriation are included for the purpose of authorization. The department of administration is authorized to transfer either or both the appropriations and authority among the necessary fund types for these projects:

Agency/Project	LRBP	Other Funding Sources	
MONTANA SCHOOL FOR THE DEAF AND BLIND			
Facility Improvements, Montana School for the Deaf and Blind	$398,000		
DEPARTMENT OF ADMINISTRATION			
Roof Repair and Replacement, Statewide	3,076,242	$206,500	Federal Special Revenue
Repair/Preserve Building Exteriors, Statewide	497,500		
Window Repairs and Replacement, Statewide	1,268,625		
Deferred Maintenance, Montana Law Enforcement Academy	761,175		
Hazardous Materials Abatement, Statewide	497,500		
Code/Deferred Maintenance Projects, Statewide	1,255,989	90,000	Federal Special Revenue
Repair Deteriorated Campus Infrastructure, Statewide	547,250		
Major Maintenance and Repairs to State Capitol	497,500		
Upgrade Fire Alarm Systems, Statewide	398,000		
Repair Elevators, Capitol Complex	796,000		
Upgrade 1100 North Last Chance Gulch	1,201,960		
DPHHS Commodity Warehouse Expansion, Helena		2,000,000	Federal Special Revenue
Public Restrooms, Virginia City and Nevada City	99,450		
Public Safety Learning Center, Montana Law Enforcement Academy		3,450,000	Federal Special Revenue
Long-range Building Program Funding Interim Project	8,000		
Capitol Annex or Alternatives Feasibility Study		500,000	Capitol Land Grant Funds
MONTANA HISTORICAL SOCIETY			
Montana Historical Society Building, Helena		30,000,000	Donations and Grants
Authority is granted to the department of administration in the indicated amount for the construction of a new historical society building.			
DEPARTMENT OF CORRECTIONS			
Improve Water System, Montana State Prison	124,375		
Improve High-Side Kitchen Ventilation, Montana State Prison	116,714		
Improve Perimeter Security, Montana State Prison	1,393,000		
DEPARTMENT OF FISH, WILDLIFE, AND PARKS			
Hatchery Maintenance, Statewide		575,000	State Special Revenue
		575,000	Federal Special Revenue
Rose Creek Hatchery		1,700,000	State Special Revenue

Fort Peck Storage/Office Space		50,000	State Special Revenue
		150,000	Federal Special Revenue
Administrative Facilities Repair, Maintenance and Improvements		800,000	State Special Revenue
DEPARTMENT OF MILITARY AFFAIRS			
Federal Spending Authority		2,100,000	Federal Special Revenue
Western Montana Veterans' Cemetery, Missoula		3,200,000	Federal Special Revenue
Montana State Veterans' Cemetery Columbarium, Fort Harrison		500,000	Federal Special Revenue
MONTANA UNIVERSITIES AND COLLEGES			
ADA/Code/Deferred Maintenance Projects, Montana University System	1,393,000		
Upgrade Steam Distribution System, UM-Missoula	5,905,325	3,060,000	Auxiliary Funds
Upgrade HVAC Systems, Pershing and Brockman Halls, MSU-Northern	521,380		
Heating System Improvements, Academic Center and McMullen Halls, MSU-Billings	243,775		
Mining and Geology Building Mechanical System Renovation, UM-Butte	915,400		
Upgrade Health Sciences HVAC System, Phase 2, UM-Missoula	965,150		
Renovate Domestic Water Distribution System, UM-Dillon	182,185		
Classroom/Laboratory Upgrades, Montana University System	995,000		
Facility Repairs and Improvements, MSU-Billings	542,275		
Heating Plant Phase 3, MSU-Bozeman	945,250		
Renovate HVAC Systems, Science Complex 3rd and 4th Floors, UM-Missoula	606,950		
Water/Sewer System Repairs and Maintenance, MSU-Bozeman	248,750	250,000	Auxiliary Funds
Upgrade Primary Electrical Distribution, MSU-Bozeman	746,250	750,000	Auxiliary Funds
Facility Repairs and Improvements, MSU-Agricultural Experiment Stations	477,600		
MSU-Agricultural Experiment Station Projects	646,750		
Campus Improvements, MSU-Northern	636,800	300,000	Auxiliary Funds
New Construction, Consolidate Campus, UM-Missoula College of Technology		24,500,000	Federal Special Revenue, Donations, Grants, and Higher Education Funds

Authority is granted to the department of administration in the indicated amount for the purpose of constructing a new university of Montana-Missoula college of technology.

Native American Study Center, UM-Missoula		2,500,000	Federal Special Revenue, Donations, Grants, and Higher Education Funds

Authority is granted to the department of administration in the indicated amount for the purpose of constructing the Native American center. This authority augments $3,500,000 of existing authority for this capital improvement.

New Gallery Space, UM-Missoula		6,000,000	Federal Special Revenue, Donations, Grants, and Higher Education Funds

Authority is granted to the department of administration in the indicated amount for the purpose of constructing new gallery space.

New Forestry Complex, UM-Missoula	20,000,000	Federal Special Revenue, Donations, Grants, and Higher Education Funds

Authority is granted to the department of administration in the indicated amount for the purpose of constructing the new forestry complex.

MBMG/Petroleum Building, UM-Tech, Butte	5,400,000	Federal Special Revenue, Donations, Grants, and Higher Education Funds

Authority is granted to the department of administration in the indicated amount for the purpose of constructing the MBMG/petroleum building.

Research Lab Facility, UM-Missoula	3,000,000	Federal Special Revenue, Donations, Grants, and Higher Education Funds

Authority is granted to the department of administration in the indicated amount for the purpose of constructing the research lab facility. Any increase in costs for the operations and maintenance of the research lab facility must be paid by the university of Montana with nonstate revenue.

Law Building ADA Improvements/ Renovation/Expansion, UM-Missoula	500,000	

This state money augments $5,000,000 of existing authority for this project.

School of Journalism Building, UM-Missoula	500,000	

This state money augments $12,000,000 of existing authority for this project.

VisComm Black Box Theater, MSU-Bozeman	2,750,000	Federal Special Revenue, Donations, Grants, and Higher Education Funds

Authority is granted to the department of administration in the indicated amount for the purpose of constructing the new viscomm black box theater.

Animal Bioscience Building, MSU-Bozeman	7,500,000	Federal Special Revenue, Donations, Grants, and Higher Education Funds

Authority is granted to the department of administration in the indicated amount for the purpose of constructing the new animal bioscience building. This authority augments $5,000,000 of existing authority for this capital improvement.

Museum of the Rockies, MSU-Bozeman	12,000,000	Federal Special Revenue, Donations, Grants, and Higher Education Funds

Authority is granted to the department of administration in the indicated amount for the purpose of constructing improvements to the museum of the rockies.

Native American Student Center, MSU-Bozeman	8,000,000	Federal Special Revenue, Donations, Grants, and Higher Education Funds

Authority is granted to the department of administration in the indicated amount for the purpose of constructing the new Native American student center.

DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES

Facility Improvements, Montana State Hospital, Warm Springs	592,523		
Facility Improvements, Montana Developmental Center, Boulder	218,044		
Demolish Abandoned Buildings, Public Health and Human Services	1,741,250		
Stabilize Old Administration Building, Montana Developmental Center, Boulder	179,100		
Housing for High-Risk Behaviors	2,529,290		
Special Care Unit Renovations, Eastern Montana Veterans' Home, Glendive		475,000	State Special Revenue
Facility Renovation and Improvements, Montana Veterans' Home, Columbia Falls		465,000	State Special Revenue
Construct Chapel, Montana State Hospital, Warm Springs		350,000	Donations and Grants

Authority is granted to the department of administration in the indicated amount for the purpose of constructing the chapel at the Montana state hospital in Warm Springs.

DEPARTMENT OF TRANSPORTATION		
Equipment Storage Buildings, Statewide	635,000	State Special Revenue
Chiller/Cooling Towers Replacement, Helena Headquarters	350,000	State Special Revenue
Office Addition, Billings	500,000	State Special Revenue
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION		
Replace Clearwater Unit Fire Cache	248,750	
OFFICE OF THE GOVERNOR		
Historic and Cultural Properties Interim Study	20,000	

(2) (a) For the purpose of constructing a privately funded chapel at the Montana state hospital in Warm Springs, the department of administration may waive, in whole or in part, the requirements pertaining to:

(i) bidding and bonding for state building projects in Title 18;

(ii) labor requirements in Title 18; and

(iii) contractor registration in Title 39.

(b) The waiver pursuant to subsection (2)(a) may be exercised in the following circumstances:

(i) to obtain the volunteer services and donated materials from members of the public, civic organizations, and other entities;

(ii) to obtain the compensated services of contractors who are donating significant amounts of labor, time, and materials; and

(iii) to meet the terms and conditions for receipt of major sums of money from private or public funding sources, including individual donations.

(3) (a) For the purpose of selling the Jocko fish hatchery to the Confederated Salish and Kootenai tribes and in exchange for constructing and improving the fish hatchery at the Rose Creek hatchery, the department of fish, wildlife, and parks may waive, in whole or in part, the requirements pertaining to:

(i) public bids for land disposal in 87-1-209(3); and

(ii) the real property trust fund in 87-1-601.

(b) The waiver pursuant to subsection (3)(a) may be exercised only under the circumstances described in subsection (3)(a). The waiver does not affect the department's requirement to obtain full market value pursuant to Article X, section 11, of the Montana constitution.

(4) It is the intent of the legislature that the department of administration plan and construct a Montana historical society building at the 6th avenue and Roberts street site in Helena, Montana, with the remaining balance of the $7.5 million of bonds authorized in Chapter 499, Laws of 2005, and the $30 million in donation and grant authority in this section."

Section 21. Codification instruction. [Sections 17 through 19] are intended to be codified as an integral part of Title 90, chapter 4, part 6, and the provisions of Title 90, chapter 4, part 6, apply to [sections 17 through 19].

Section 22. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 23. Effective date. [This act] is effective on passage and approval.

Section 24. Retroactive applicability. [Section 18] applies retroactively, within the meaning of 1-2-109, to May 2, 2005.

Approved May 10, 2009

CHAPTER NO. 479

[HB 130]

AN ACT PROVIDING FOR STATE MATCHING FUNDS TO BE GRANTED TO COUNTIES FOR CRISIS INTERVENTION, JAIL DIVERSION, INVOLUNTARY PRECOMMITMENT, AND SHORT-TERM INPATIENT TREATMENT COSTS FOR THE MENTALLY ILL; REQUIRING RULEMAKING; PROVIDING IMPLEMENTATION INSTRUCTIONS; REQUIRING A REPORT; AND PROVIDING EFFECTIVE DATES.

WHEREAS, the 2007 Legislature passed House Joint Resolution No. 26, requesting an interim legislative study to examine diversion of mentally ill adults from the justice system, and House Joint Resolution No. 50, requesting a study to examine county precommitment costs related to involuntary commitment proceedings; and

WHEREAS, these studies were assigned to the Law and Justice Interim Committee; and

WHEREAS, after 14 months of testimony and examination of data and information from all stakeholders, the Law and Justice Interim Committee identified crisis intervention and jail diversion to be the most critical need and the most effective way to divert mentally ill individuals from the criminal justice system and recommends this bill as part of a package of bills to address this need; and

WHEREAS, the lack of local crisis intervention and jail diversion alternatives means counties must rely on the Montana State Hospital for emergency and court-ordered detention and evaluation, which increases county costs, strains the Montana State Hospital, and diverts resources from community-based services; and

WHEREAS, sections 53-21-138 and 53-21-139, MCA, originally enacted by the 1991 Legislature, provide a solid statutory framework for diversion of mentally ill adults from the justice system but do not provide state funding; and

WHEREAS, state matching funds granted to counties based on certain criteria, including the commitment of county and other local funds, is an appropriate way to share costs and provide incentives for local resources to be spent on community-based treatment capacity rather than on jail capacity or on transportation to and capacity in the Montana State Hospital; and

WHEREAS, crisis intervention team training and collaboration between local law enforcement officers, mental health professionals, and private corporations can offer creative solutions that should be encouraged and sustained; and

WHEREAS, counties should be encouraged to participate in a county self-insurance pool to help pay for unpredictable and sometimes financially catastrophic precommitment costs.

Be it enacted by the Legislature of the State of Montana:

Section 1. State matching fund grants for county crisis intervention, jail diversion, precommitment, and short-term inpatient

treatment costs. (1) As soon as possible after July 1 of each year, from funds appropriated by the legislature for the purposes of this section, the department shall grant to each eligible county state matching funds for:

(a) jail diversion and crisis intervention services to implement 53-21-138 and 53-21-139;

(b) insurance coverage against catastrophic precommitment costs, if a county insurance pool is established pursuant to 2-9-211; and

(c) short-term inpatient treatment.

(2) Grant amounts must be based on available funding and the prospects that a county or multicounty plan submitted pursuant to subsection (3) will, if implemented, reduce admissions to the state hospital for emergency and court-ordered detention and evaluation and ultimately result in cost savings to the state. The department shall develop a sliding scale for state grants based upon the historical county use of the state hospital with a high-use county receiving a lower percentage of matching funds. The sliding scale must be based upon the number of commitments by county compared to total commitments and upon the population of each county compared to the state population.

(3) In order to be eligible for the state matching funds, a county shall, in the time and manner prescribed by the department:

(a) apply for the funds and include in the grant application a detailed plan for how the county and other local entities will collaborate and commit local funds for the mental health services listed in subsection (1);

(b) develop and submit to the department a county or multicounty jail diversion and crisis intervention services strategic plan pursuant to 53-21-138 and 53-21-139, including a plan for community-based or regional emergency and court-ordered detention and examination services and short-term inpatient treatment;

(c) participate in a statewide or regional county insurance plan for precommitment costs under 53-21-132, if a statewide or regional insurance plan has been established, as authorized under 2-9-211;

(d) participate in a statewide or regional jail suicide prevention program, if one has been established by the department for the state or for the region in which the county is situated; and

(e) collect and report data and information on county jail diversion, crisis intervention, and short-term inpatient treatment services in the form and manner prescribed by the department to support program evaluation and measure progress on performance goals.

(4) The department shall adopt rules by August 1, 2009, to implement the provisions of this section.

Section 2. Implementation — report. (1) Implementation of the grant program established in [section 1] may be conducted in phases. However, it is the legislature's intent that the grant program be fully implemented by no later than September 1, 2009.

(2) Upon request, the department shall report to the law and justice interim committee established in 5-5-226 on the implementation status of [section 1].

Section 3. Codification instruction — instructions to code commissioner. (1) [Section 1] is intended to be codified as an integral part of Title 53, chapter 21, and the provisions of Title 53, chapter 21, apply to [section 1].

(2) Sections 53-21-138 and 53-21-139 are intended to be renumbered and codified with [section 1] as an integral new part of Title 53, chapter 21.

Section 4. Coordination instruction. If both House Bill No. 645 and [this act] are passed and approved and if House Bill No. 645 does not include line item funding for a community mental health crisis services demonstration project for the purposes of [this act], then [this act] is void.

Section 5. Effective dates. (1) Except as provided in subsection (2), [this act] is effective July 1, 2009.

(2) [Sections 1(4) and 4 and this section] are effective on passage and approval.

Approved May 9, 2009

CHAPTER NO. 480

[HB 131]

AN ACT REQUIRING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO CONTRACT FOR CRISIS BEDS AND EMERGENCY AND COURT-ORDERED DETENTION BEDS FOR THE MENTALLY ILL; REQUIRING RULEMAKING; PROVIDING TARGET IMPLEMENTATION DATES; REQUIRING A REPORT; AND PROVIDING EFFECTIVE DATES.

WHEREAS, the 2007 Legislature passed House Joint Resolution No. 26, requesting an interim legislative study to examine diversion of mentally ill adults from the justice system, and House Joint Resolution No. 50, requesting an interim legislative study to examine county precommitment costs related to involuntary commitment proceedings; and

WHEREAS, these studies were assigned to the Law and Justice Interim Committee; and

WHEREAS, this bill is one in a package of bills recommended by the Law and Justice Interim Committee to address diversion of mentally ill adults from the justice system to appropriate treatment; and

WHEREAS, the Law and Justice Interim Committee found that one of the biggest challenges to diverting mentally ill individuals from the justice system is a lack of community-based mental health treatment beds; and

WHEREAS, 63% of admissions to the Montana State Hospital, whose daily census routinely exceeds its licensed capacity of 189, are for emergency and court-ordered detention and evaluation; and

WHEREAS, 38% of emergency and court-ordered admissions to the Montana State Hospital do not result in commitments; and

WHEREAS, it is preferable for these psychiatric services to be provided locally and without fiscal pressure driving treatment decisions or decisions about whether to file an involuntary commitment petition; and

WHEREAS, the costs for local hospitals to provide psychiatric treatment services is very high and counties help pay some of these costs only after an involuntary commitment petition has been filed and only in an amount that would have been paid by a public assistance program; and

WHEREAS, these high unrecoverable costs can deter hospitals from providing community-based psychiatric treatment beds; and

WHEREAS, current involuntary commitment laws and funding mechanisms create tensions between mental health professionals concerned

about the medical necessity for treatment, hospitals concerned that county funding is available only after an involuntary commitment petition is filed, county attorneys concerned that medical necessity is not necessarily legal sufficiency for an involuntary commitment petition, and county commissioners concerned about county costs after a commitment petition is filed; and

WHEREAS, some mental health facilities may be able to provide inpatient psychiatric services at lower cost by providing services in a nonhospital mental health facility or through a telepsychiatry linkage with a psychiatric unit at a community hospital or with the Montana State Hospital; and

WHEREAS, by contracting with private providers for dedicated local or regional psychiatric treatment beds at rates that would help subsidize county funding and reduce the risks to private providers, the state can become a partner in fostering creative local solutions that reduce emergency admissions to the Montana State Hospital.

Be it enacted by the Legislature of the State of Montana:

Section 1. Department to contract for detention beds — rulemaking. (1) To the extent funding is appropriated for the purposes of this section, for each service area, as defined in 53-21-1001, the department shall contract with a mental health facility for psychiatric treatment beds that may be used for:

(a) inpatient crisis intervention services needed prior to an involuntary commitment petition being filed; and

(b) emergency detention under 53-21-129 and court-ordered detention under 53-21-124 after an involuntary commitment petition has been filed but before final disposition.

(2) Contracting pursuant to this section must take into consideration county strategic plans developed pursuant to 53-21-138 and 53-21-139 and local need for precommitment and short-term inpatient treatment services.

(3) Each contract must provide that for payment of costs for detention, evaluation, and treatment pursuant to subsection (1), the facility shall bill for payment of costs in the order of priority provided for under 53-21-132(2)(a).

(4) Each contract must require the collection and reporting of fiscal and program data in the time and manner prescribed by the department to support program evaluation and measure progress on performance objectives. The department shall establish baseline data on emergency and court-ordered detention admissions to the state hospital from each county and analyze the effect of contracting under this section on state hospital admissions.

(5) The department shall adopt rules to implement this section.

Section 2. Implementation — report. (1) The provisions of [section 1] may be implemented in phases. However, it is the legislature's intent that contracted beds be operational in at least one service area by no later than July 1, 2010, and that full implementation be completed by no later than July 1, 2011.

(2) Upon request, the department shall report to the law and justice interim committee established in 5-5-226 on the implementation status of contracting under [section 1].

Section 3. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 53, chapter 21, and the provisions of Title 53, chapter 21, apply to [section 1].

Section 4. Coordination instruction. If both House Bill No. 645 and [this act] are passed and approved and if House Bill No. 645 does not include line item funding for a community mental health crisis services demonstration project for the purposes of [this act], then [this act] is void.

Section 5. Effective dates. (1) Except as provided in subsection (2), [this act] is effective July 1, 2009.

(2) [Sections 1(5) and 4 and this section] are effective on passage and approval.

Approved May 9, 2009

CHAPTER NO. 481

[HB 132]

AN ACT PROVIDING THAT A RESPONDENT IN AN INVOLUNTARY COMMITMENT CASE MAY AGREE TO SHORT-TERM INPATIENT TREATMENT IN LIEU OF FACING A COMMITMENT HEARING; AMENDING COURT PROCESS AND PROFESSIONAL EXAMINATION PROVISIONS; SPECIFYING SHORT-TERM INPATIENT TREATMENT PARAMETERS AND PATIENT RIGHTS; PROVIDING FOR A REPORT; AMENDING SECTIONS 53-21-102, 53-21-122, 53-21-123, 53-21-162, AND 53-21-1001, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-21-102, MCA, is amended to read:

"53-21-102. Definitions. As used in this ~~part~~ *chapter*, the following definitions apply:

(1) "Abuse" means any willful, negligent, or reckless mental, physical, sexual, or verbal mistreatment or maltreatment or misappropriation of personal property of any person receiving treatment in a mental health facility that insults the psychosocial, physical, or sexual integrity of any person receiving treatment in a mental health facility.

(2) "Behavioral health inpatient facility" means a facility or a distinct part of a facility of 16 beds or less licensed by the department that is capable of providing secure, inpatient psychiatric services, including services to persons with mental illness and co-occurring chemical dependency.

(3) "Board" or "mental disabilities board of visitors" means the mental disabilities board of visitors created by 2-15-211.

(4) "Commitment" means an order by a court requiring an individual to receive treatment for a mental disorder.

(5) "Court" means any district court of the state of Montana.

(6) "Department" means the department of public health and human services provided for in 2-15-2201.

(7) "Emergency situation" means a situation in which any person is in imminent danger of death or bodily harm from the activity of a person who appears to be suffering from a mental disorder and appears to require commitment.

(8) "Friend of respondent" means any person willing and able to assist a person suffering from a mental disorder and requiring commitment or a person alleged to be suffering from a mental disorder and requiring commitment in dealing with legal proceedings, including consultation with legal counsel and

others. The friend of respondent may be the next of kin, the person's conservator or legal guardian, if any, representatives of a charitable or religious organization, or any other person appointed by the court to perform the functions of a friend of respondent set out in this part. Only one person may at any one time be the friend of respondent within the meaning of this part. In appointing a friend of respondent, the court shall consider the preference of the respondent. The court may at any time, for good cause, change its designation of the friend of respondent.

(9) (a) "Mental disorder" means any organic, mental, or emotional impairment that has substantial adverse effects on an individual's cognitive or volitional functions.

(b) The term does not include:

(i) addiction to drugs or alcohol;

(ii) drug or alcohol intoxication;

(iii) mental retardation; or

(iv) epilepsy.

(c) A mental disorder may co-occur with addiction or chemical dependency.

(10) "Mental health facility" or "facility" means the state hospital, the Montana mental health nursing care center, or a hospital, a behavioral health inpatient facility, a mental health center, a residential treatment facility, or a residential treatment center licensed or certified by the department that provides treatment to children or adults with a mental disorder. A correctional institution or facility or jail is not a mental health facility within the meaning of this part.

(11) "Mental health professional" means:

(a) a certified professional person;

(b) a physician licensed under Title 37, chapter 3;

(c) a professional counselor licensed under Title 37, chapter 23;

(d) a psychologist licensed under Title 37, chapter 17;

(e) a social worker licensed under Title 37, chapter 22; or

(f) an advanced practice registered nurse, as provided for in 37-8-202, with a clinical specialty in psychiatric mental health nursing.

(12) (a) "Neglect" means failure to provide for the biological and psychosocial needs of any person receiving treatment in a mental health facility, failure to report abuse, or failure to exercise supervisory responsibilities to protect patients from abuse and neglect.

(b) The term includes but is not limited to:

(i) deprivation of food, shelter, appropriate clothing, nursing care, or other services;

(ii) failure to follow a prescribed plan of care and treatment; or

(iii) failure to respond to a person in an emergency situation by indifference, carelessness, or intention.

(13) "Next of kin" includes but is not limited to the spouse, parents, adult children, and adult brothers and sisters of a person.

(14) "Patient" means a person committed by the court for treatment for any period of time or who is voluntarily admitted for treatment for any period of time.

(15) "Peace officer" means any sheriff, deputy sheriff, marshal, police officer, or other peace officer.

(16) "Professional person" means:

(a) a medical doctor;

(b) an advanced practice registered nurse, as provided for in 37-8-202, with a clinical specialty in psychiatric mental health nursing;

(c) a licensed psychologist; or

(d) a person who has been certified, as provided for in 53-21-106, by the department.

(17) "Reasonable medical certainty" means reasonable certainty as judged by the standards of a professional person.

(18) "Respondent" means a person alleged in a petition filed pursuant to this part to be suffering from a mental disorder and requiring commitment.

(19) "State hospital" means the Montana state hospital."

Section 2. Section 53-21-122, MCA, is amended to read:

"53-21-122. Petition for commitment — filing of — initial hearing on. (1) The petition must be filed with the clerk of court, who shall immediately notify the judge.

(2) The judge shall consider the petition. If the judge finds no probable cause, the petition must be dismissed. If the judge finds probable cause and the respondent does not have private counsel present, the judge may order the office of state public defender, provided for in 47-1-201, to immediately assign counsel for the respondent, and the respondent must be brought before the court with the respondent's counsel. The respondent must be advised of the respondent's constitutional rights, the respondent's rights under this part, and the substantive effect of the petition. *The respondent must also be advised that the professional person appointed to conduct the examination under 53-21-123 will include in the professional person's report a recommendation about whether the respondent should be diverted from involuntary commitment to short-term inpatient treatment provided for in [sections 5 and 6].* The respondent may at this appearance object to the finding of probable cause for filing the petition. The judge shall appoint a professional person and a friend of respondent and set a date and time for the hearing on the petition that may not be on the same day as the initial appearance and that may not exceed 5 days, including weekends and holidays, unless the fifth day falls upon a weekend or holiday and unless additional time is requested on behalf of the respondent. The desires of the respondent must be taken into consideration in the appointment of the friend of respondent.

(3) If a judge is not available in the county in person, the clerk shall notify a resident judge by telephone and shall read the petition to the judge. The judge may do all things necessary through the clerk of court by telephone as if the judge were personally present, including ordering the office of state public defender, provided for in 47-1-201, to immediately provide assigned counsel. The judge, through the clerk of court, may also order that the respondent be brought before a justice of the peace with the respondent's counsel to be advised of the respondent's constitutional rights, the respondent's rights under this part, and the contents of the order, as well as to furnish the respondent with a copy of the order. *The respondent must also be advised that the professional person appointed to conduct the examination under 53-21-123 will include in the professional person's report a recommendation about whether the respondent*

should be diverted from involuntary commitment to short-term inpatient treatment provided for in [sections 5 and 6]. The justice of the peace shall ascertain the desires of the respondent with respect to the assignment of counsel or the hiring of private counsel, pursuant to 53-21-116 and 53-21-117, and this information must be immediately communicated to the resident judge."

Section 3. Section 53-21-123, MCA, is amended to read:

"53-21-123. Examination of respondent following initial hearing — recommendation of professional person. (1) Following the initial hearing, whether before a judge or justice of the peace, the respondent must be examined by the professional person without unreasonable delay. The examination may not exceed a period of 4 hours. The professional person shall immediately notify the county attorney of the findings in person or by phone and shall make a written report of the examination to the court, with copies to the respondent's attorney and the county attorney.

(2) (a) The professional person shall include in the report a recommendation about whether the respondent should be diverted from involuntary commitment to short-term inpatient treatment provided for under [sections 5 and 6].

(b) If the professional person recommends commitment, the professional person's written report must contain a statement of the professional person's recommendations to the court for disposition under 53-21-127.

~~(2)~~*(3)* The following action must be taken based on the professional person's findings:

(a) If the professional person recommends dismissal, the professional person shall additionally notify counsel and the respondent must be released and the petition dismissed. However, the county attorney may, upon good cause shown, request the court to order an additional, but no more than one, examination by a different professional person for a period of no more than 4 hours.

(b) *If the professional person recommends diversion from involuntary commitment to short-term inpatient treatment, the court shall suspend the commitment hearing unless the county attorney or the respondent's attorney objects within 24 hours of receiving notice of the professional person's recommendation.*

(c) If the court finds that commitment proceedings should continue, the hearing must be held as scheduled.

~~(3)~~*(4)* The court may not order further evaluation pending the hearing unless sound medical reasons require additional time for a complete evaluation. The reasons must be set forth in the order, along with the amount of additional time needed."

Section 4. Section 53-21-162, MCA, is amended to read:

"53-21-162. Establishment of patient treatment plan — patient's rights. (1) Each patient admitted as an inpatient to a mental health facility must have a comprehensive physical and mental examination and review of behavioral status within 48 hours after admission to the mental health facility*, except as provided in [section 6]*.

(2) Each patient must have an individualized treatment plan. This plan must be developed by appropriate professional persons, including a psychiatrist, and must be implemented no later than 10 days after the patient's admission*, except as provided in [section 6].* Each individualized treatment plan must contain:

(a) a statement of the nature of the specific problems and specific needs of the patient;

(b) a statement of the least restrictive treatment conditions necessary to achieve the purposes of hospitalization;

(c) a description of treatment goals, with a projected timetable for their attainment;

(d) a statement and rationale for the plan of treatment for achieving these goals;

(e) a specification of staff responsibility for attaining each treatment goal;

(f) criteria for release to less restrictive treatment conditions; and

(g) a notation of any therapeutic tasks and labor to be performed by the patient.

(3) Overall development, implementation, and supervision of the treatment plan must be assigned to an appropriate professional person.

(4) The inpatient mental health facility shall periodically reevaluate the patient and revise the individualized treatment plan based on changes in the patient's condition. At a minimum, the treatment plan must be reviewed:

(a) at the time of any transfer within the facility;

(b) at the time of discharge;

(c) upon any major change in the patient's condition;

(d) at the conclusion of the initial estimated length of stay and subsequent estimated lengths of stay;

(e) no less than every 90 days; and

(f) at each of the times specified in subsections (4)(a) through (4)(e), by a treatment team that includes at least one professional person who is not primarily responsible for the patient's treatment plan.

(5) A patient has the right:

(a) to ongoing participation, in a manner appropriate to the patient's capabilities, in the planning of mental health services to be provided and in the revision of the plan;

(b) to a reasonable explanation of the following, in terms and language appropriate to the patient's condition and ability to understand:

(i) the patient's general mental condition and, if given a physical examination, the patient's physical condition;

(ii) the objectives of treatment;

(iii) the nature and significant possible adverse effects of recommended treatments;

(iv) the reasons why a particular treatment is considered appropriate;

(v) the reasons why access to certain visitors may not be appropriate; and

(vi) any appropriate and available alternative treatments, services, or providers of mental health services; and

(c) not to receive treatment established pursuant to the treatment plan in the absence of the patient's informed, voluntary, and written consent to the treatment, except treatment:

(i) during an emergency situation if the treatment is pursuant to or documented contemporaneously by the written order of a responsible mental health professional; or

(ii) permitted under the applicable law in the case of a person committed to a facility by a court.

(6) In the case of a patient who lacks the capacity to exercise the right to consent to treatment described in subsection (5)(c), the right must be exercised on behalf of the patient by a guardian appointed pursuant to the provisions of Title 72, chapter 5.

(7) The department shall develop procedures for initiating limited guardianship proceedings in the case of a patient who appears to lack the capacity to exercise the right to consent described in subsection (5)(c)."

Section 5. Short-term inpatient treatment — process — placement — length — conditions for proceeding with commitment hearing. (1) When a commitment hearing has been suspended pursuant to 53-21-123(3)(b) so that the respondent may be diverted to short-term inpatient treatment, the professional person who conducted the examination shall, with the concurrence of the county attorney, recommend to the court an appropriate placement in a mental health facility with available short-term treatment beds.

(2) Short-term inpatient treatment may not exceed 14 days, except pending a commitment hearing scheduled pursuant to subsection (5).

(3) Subject to the provisions of this section, a respondent may be released before completing 14 days of treatment if the professional person responsible for the respondent's treatment plan determines that the respondent no longer requires inpatient treatment. However, the county attorney and the respondent's attorney must be notified at least 24 hours before a respondent is released.

(4) When a respondent is released, the professional person shall notify the court and the court shall dismiss the commitment petition.

(5) The court must be notified and shall proceed with a commitment hearing within 5 business days of receiving notice of any of the following circumstances:

(a) the professional person responsible for the respondent's treatment plan determines that the respondent should not be released after 14 days of treatment because, in the professional person's judgment, an emergency situation would exist if the respondent were released;

(b) the respondent refuses treatment;

(c) the respondent's attorney requests the respondent's release before the 14-day treatment period is completed; or

(d) the county attorney objects to the respondent's release within 24 hours of being notified of the respondent's pending release as required in subsection (3).

Section 6. Treatment and discharge plan — safety — rights. (1) For each respondent admitted as an inpatient to a mental health facility for short-term inpatient treatment pursuant to [sections 5 and 6], the provisions of 53-21-162 and 53-21-180 apply, except as follows:

(a) the comprehensive physical and mental examination and review of behavioral status must be completed within 24 hours of admission;

(b) the individualized treatment plan must be implemented no later than 3 days after the admission; and

(c) a discharge plan must be developed prior to discharge.

(2) Short-term inpatient treatment must be provided in a manner that considers the safety of the respondent, other patients, staff, and the general public.

(3) A respondent in a mental health facility for short-term inpatient treatment is entitled to all of the rights and protections provided in part 1 of this chapter.

Section 7. Section 53-21-1001, MCA, is amended to read:

"53-21-1001. Definitions. As used in this part, the following definitions apply:

(1) "Community mental health center" means a licensed mental health center that provides comprehensive public mental health services in a multicounty region under contract with the department, counties, or one or more service area authorities.

~~(2) "Department" means the department of public health and human services as provided for in 2-15-2201.~~

~~(3)~~*(2)* "Licensed mental health center" means an entity licensed by the department of public health and human services to provide mental health services and has the same meaning as mental health center as defined in 50-5-101.

~~(4)~~*(3)* "Service area" means a region of the state as defined by the department by rule within which mental health services are administered.

~~(5)~~*(4)* "Service area authority" means an entity, as provided for in 53-21-1006, that has incorporated to collaborate with the department for the planning and oversight of mental health services within a service area."

Section 8. Report. Upon request, the department shall report to the law and justice interim committee established in 5-5-226 on the use of the short-term inpatient treatment process established in [sections 5 and 6].

Section 9. Codification instruction. [Sections 5 and 6] are intended to be codified as an integral part of Title 53, chapter 21, and the provisions of Title 53, chapter 21, apply to [sections 5 and 6].

Section 10. Effective date. [This act] is effective July 1, 2009.

Approved May 9, 2009

CHAPTER NO. 482

[HB 331]

AN ACT REVISING LAWS RELATING TO LICENSED ESTABLISHMENTS; REVISING THE LICENSE FEES FOR ESTABLISHMENTS; AMENDING SECTIONS 50-50-103, 50-50-205, 50-51-204, 50-52-202, AND 50-57-205, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-50-103, MCA, is amended to read:

"50-50-103. Department authorized to adopt rules — advisory council. (1) To protect public health, the department may adopt rules relating to the operation of establishments defined in 50-50-102, including coverage of food, personnel, food equipment and utensils, sanitary facilities and controls, construction and fixtures, and housekeeping.

(2) (a) The department and local health authorities may not adopt rules prohibiting the sale of baked goods and preserves by nonprofit organizations or by persons at farmer's markets.

(b) The department and local health authorities may not require that foods sold pursuant to this subsection (2) be prepared in certified or commercial kitchens.

(3) *(a)* The department shall ~~use~~ *establish* a food safety task force or advisory council to assist in the development of administrative rules or *to review any* proposed legislation *related to the provisions of this chapter*.

(b) The task force or advisory council must be composed of equal numbers of representatives of the food establishments and representatives of state and local government.

(c) ~~Administrative~~ *The department shall present administrative* rules and any legislation to be proposed by the department ~~must be presented~~ to the task force or advisory council prior to its proposal or introduction. *When the department learns of proposed legislation related to the provisions of this chapter that has not been proposed by the department, the department shall provide copies of that legislation for review by the task force or advisory council and shall provide to the legislature any comments of the task force or advisory council.*"

Section 2. Section 50-50-205, MCA, is amended to read:

"50-50-205. License fee — late fee — preemption of local authority — exception. (1) (a) ~~Except as provided in subsection (1)(b), for each license issued, the~~ *The* department shall collect *for each license issued or renewed* a fee ~~of $90~~ *as provided in subsection (1)(b).* ~~It shall deposit 90% of~~ *Of* the fees collected under this section, *90% must be deposited* into the local board inspection fund account created in 50-2-108, 5% ~~of the fees~~ into the general fund, and 5% ~~of the fees~~ into the account provided for in 50-50-216.

~~(b) For each license issued to an establishment that does not have more than two employees working at any one time, the department shall collect a fee of $60, which must be deposited in accordance with the percentages provided in subsection (1)(a).~~

(b) License fees are:

(i) $85 for each license issued to an establishment that does not have more than two employees working at any one time; and

(ii) $115 for establishments not referred to in subsection (1)(b)(i).

(2) *(a)* In addition to the license fee required under subsection (1), the department shall collect a late fee *of $25* from any licensee who has failed to submit a license renewal fee prior to the expiration of the licensee's current license and who operates an establishment governed by this part in the next licensing year.

(b) The late fee ~~is $25 and~~ must be deposited in the account provided for in 50-50-216.

(3) A county or other local government may not impose an inspection fee or charge in addition to the fee provided for in subsection (1) unless a violation of this chapter or rule persists and is not corrected after two visits to the establishment.

(4) The fees in subsections (1) and (2) may be paid by credit card and may be discounted for payment processing charges paid by the department to a third

party. However, the discounting of license fees may not reduce the fees paid into the local board inspection fund account established in 50-2-108."

Section 3. Section 50-51-204, MCA, is amended to read:

"50-51-204. License fee — late fee. (1) *(a)* ~~There shall be paid to the department with each application for such~~ *The department shall collect fees for each* license *required under 50-51-201* or for *each annual license* renewal ~~of such license an annual license fee of $40~~ *as provided in subsection (1)(b).* The department shall deposit 85% of the fees collected under this section into the local board inspection fund account created in 50-2-108, 11.25% of the fees into the general fund, and 3.75% of the fees into the account provided for in 50-51-110.

(b) Initial and renewal license fees are:

(i) $40 annually for an establishment with no more than 10 rooms available for rental;

(ii) $80 annually for an establishment with more than 10 but not more than 25 rooms available for rental; and

(iii) $160 annually for an establishment with more than 25 rooms available for rental.

(2) *(a)* In addition to the license *renewal* fee required under subsection (1), the department shall collect a late fee *of $25* from any licensee who has failed to submit a license renewal fee prior to the expiration of ~~his~~ *the licensee's* current license and who operates an establishment governed by this part in the next licensing year.

(b) The late fee ~~is $25 and~~ must be deposited in the account provided for in 50-51-110."

Section 4. Section 50-52-202, MCA, is amended to read:

"50-52-202. License fee — late fee. (1) *(a)* Each application ~~shall~~ *for a new license required under 50-52-103 or a license renewal must* be accompanied by a fee ~~of $40~~ *as provided in subsection (1)(b).*

(b) License fees are:

(i) $40 annually for a campground or trailer court with no more than 10 spaces available for rental;

(ii) $60 annually for a campground or trailer court with more than 10 but not more than 25 spaces available for rental; and

(iii) $120 annually for a campground or trailer court with more than 25 spaces available for rental.

(2) ~~The~~ *Of the fees collected under subsection (1), the* department shall deposit 85% ~~of the fees collected under subsection (1)~~ into the local board inspection fund account created in 50-2-108, 11.25% ~~of the fees~~ into the general fund, and 3.75% ~~of the fees collected under subsection (1)~~ into the account provided for in 50-52-210.

(3) *(a)* In addition to the license *renewal* fee required under subsection (1), the department shall collect a late fee *of $25* from any licensee who has failed to submit a license renewal fee prior to the expiration of ~~his~~ *the licensee's* current license and who operates an establishment governed by this part in the next licensing year.

(b) The late fee ~~is $25 and~~ must be deposited in the account provided for in 50-52-210."

Section 5. Section 50-57-205, MCA, is amended to read:

"50-57-205. License fee — late renewal fee — allocation of fees. (1) For each annual license issued *or renewed*, the department shall collect a fee ~~of $90. For an operation containing an establishment and a retail food establishment, as provided in 50-57-201(3), the department shall collect one fee of $90 for each license~~ *of $115*.

~~(2)~~*(2)* A person operating an establishment who fails to renew a license by the expiration date provided in 50-57-206 and who operates the establishment in the license year for which an annual renewal fee was not paid shall, upon renewal, pay to the department a late renewal fee of $25 in addition to the annual renewal fee required by subsection ~~(1)~~ *(1)*. Payment of the late renewal fee does not relieve the operator of responsibility for operating without a license.

~~(3)~~*(3)* The department shall deposit the annual fees collected under subsection ~~(1)~~ *(1)* as follows:

(a) 90% into the state special revenue fund to the credit of the local board inspection fund account, created in 50-2-108;

(b) 5% into the general fund; and

(c) 5% into the account created in 50-57-213 in the state special revenue fund.

~~(4)~~*(4)* The department shall deposit all of the fees collected under subsection ~~(2)~~ *(2)* into the account created by 50-57-213 in the state special revenue fund."

Section 6. Effective date. [This act] is effective on passage and approval.

Approved May 10, 2009

CHAPTER NO. 483

[HB 658]

AN ACT GENERALLY REVISING TAX LAWS; MITIGATING THE EFFECTS OF PROPERTY TAX REAPPRAISAL; PHASING IN CHANGES TO THE TAX RATES FOR CLASS THREE AND FOUR PROPERTY; PHASING IN CHANGES TO THE TAX RATES OF CLASS TEN PROPERTY; ESTABLISHING EXEMPTION RATES FOR RESIDENTIAL AND COMMERCIAL CLASS FOUR PROPERTY; REVISING THE LOW-INCOME PROPERTY TAX ASSISTANCE PROGRAM; REVISING THE EXTENDED PROPERTY TAX ASSISTANCE PROGRAM; CHANGING THE WAY THE VALUE OF CERTAIN NEWLY CONSTRUCTED PROPERTY IS DETERMINED FOR LOCAL GOVERNMENT MILL LEVY AUTHORITY; REVISING THE METHOD FOR VALUING AGRICULTURAL PROPERTY BY INCREASING WATER LABOR COSTS FOR IRRIGATED LAND AND PROVIDING THAT ALFALFA HAY ADJUSTED TO 80 PERCENT OF THE SALES PRICE IS THE BASE CROP FOR NONIRRIGATED LAND; REVISING THE DETERMINATION OF THE CAPITALIZATION RATE FOR THE VALUATION OF FOREST LANDS; ESTABLISHING A FOREST LANDS TAXATION ADVISORY COMMITTEE TO ADVISE THE DEPARTMENT OF REVENUE IN ITS DETERMINATION OF THE VALUE OF FOREST LANDS; PROVIDING FOR THE APPOINTMENT AND TERMS OF THE MEMBERS OF THE COMMITTEE; REQUIRING NOTICE OF PROPERTY TAX ASSISTANCE PROGRAMS ON CLASSIFICATION AND APPRAISAL NOTICES AND PROPERTY TAX BILLS; EXTENDING APPLICATION DEADLINES FOR THE LOW-INCOME PROPERTY TAX ASSISTANCE

PROGRAM AND THE DISABLED OR DECEASED VETERANS' RESIDENCE PROPERTY TAX EXEMPTION PROGRAM; CHANGING THE REPORTING REQUIREMENTS RELATING TO TAX INCREMENT FINANCING; REQUESTING THAT THE REVENUE AND TRANSPORTATION INTERIM COMMITTEE REVIEW PROPERTY TAX ASSISTANCE TO TAXPAYERS; PROVIDING AN APPROPRIATION; AMENDING SECTIONS 7-15-4285, 15-6-134, 15-6-143, 15-6-193, 15-6-222, 15-7-102, 15-7-111, 15-7-201, 15-10-420, 15-16-101, AND 15-44-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-15-4285, MCA, is amended to read:

"7-15-4285. Determination and report of original, actual, and incremental taxable values. The department of revenue shall, ~~immediately~~ upon receipt of ~~the~~ *a qualified* tax increment provision and each succeeding year, calculate and report to the municipality and to any other affected taxing body *in accordance with Title 15, chapter 10, part 2,* the base, actual, and incremental taxable values of the property."

Section 2. Section 15-6-134, MCA, is amended to read:

"15-6-134. Class four property — description — taxable percentage. (1) Class four property includes:

(a) subject to 15-6-222 and subsections (1)(f) and (1)(g) of this section, all land, except that specifically included in another class;

(b) subject to 15-6-222 and subsections (1)(f) and (1)(g) of this section, all improvements, including trailers, manufactured homes, or mobile homes used as a residence, except those specifically included in another class;

(c) the first ~~$100,000~~ *$100,000* or less of the taxable market value of any improvement on real property, including trailers, manufactured homes, or mobile homes, and appurtenant land not exceeding 5 acres owned or under contract for deed and actually occupied for at least 7 months a year as the primary residential dwelling of ~~any person whose total income from all sources, including net business income and otherwise tax-exempt income of all types but not including social security income paid directly to a nursing home, is not more than $15,000 for a single person or $20,000 for a married couple or a head of household, as adjusted according to subsection (2)(b)(ii). For the purposes of this subsection (1)(c), net business income is gross income less ordinary operating expenses but before deducting depreciation or depletion allowance, or both~~ *one or more qualified claimants:*

(i) for tax year 2009, whose federal adjusted gross income did not exceed the thresholds established in subsection (2)(b)(i); or

(ii) for tax years after tax year 2009, whose total household income did not exceed the thresholds established in subsection (2)(b)(i).

(d) all golf courses, including land and improvements actually and necessarily used for that purpose, that consist of at least nine holes and not less than 700 lineal yards;

(e) subject to 15-6-222(1), all improvements on land that is eligible for valuation, assessment, and taxation as agricultural land under 15-7-202, including 1 acre of real property beneath improvements on land described in 15-6-133(1)(c). The 1 acre must be valued at market value.

(f) (i) single-family residences, including trailers, manufactured homes, or mobile homes;

(ii) rental multifamily dwelling units;

(iii) appurtenant improvements to the residences or dwelling units, including the parcels of land upon which the residences and dwelling units are located and any leasehold improvements; and

(iv) vacant residential lots; and

(g) (i) commercial buildings and the parcels of land upon which they are situated; and

(ii) vacant commercial lots.

(2) Class four property is taxed as follows:

(a) Except as provided in 15-24-1402, 15-24-1501, and 15-24-1502, property described in subsections (1)(a), (1)(b), and (1)(e) through (1)(g) of this section is taxed at:

(i) ~~3.22%~~ *2.93%* of its taxable market value in tax year ~~2005~~ *2009*;

(ii) ~~3.14%~~ *2.82%* of its taxable market value in tax year ~~2006~~ *2010*;

(iii) ~~3.07%~~ *2.72%* of its taxable market value in tax year ~~2007~~ *2011*;

(iv) 2.63% of its taxable market value in tax year 2012;

(v) 2.54% of its taxable market value in tax year 2013; and

~~(iv)~~*(vi)* ~~3.01%~~ *2.47%* of its taxable market value in tax years after ~~2007~~ *2013*.

(b) (i) Property qualifying under the property tax assistance program in subsection (1)(c) is taxed at the rate provided in subsection (2)(a) of its taxable market value multiplied by a percentage figure based on *the* income *for the preceding calendar year of the owner or owners who occupied the property as their primary residence* and determined from the following table:

Income Single Person	Income Married Couple Head of Household	Percentage Multiplier
$0 - ~~$6,000~~	$0 - ~~$8,000~~	20%
$6,000	*$8,000*	
~~$6,001~~ - ~~$9,200~~	~~$8,001~~ - ~~$14,000~~	50%
$6,001 $9,200	*$8,001 $14,000*	
~~$9,201~~ - ~~$15,000~~	~~$14,001~~ - ~~$20,000~~	70%
$9,201 $15,000	*$14,001 $20,000*	

(ii) The income levels contained in the table in subsection (2)(b)(i) must be adjusted for inflation annually by the department. The adjustment to the income levels is determined by:

(A) multiplying the appropriate dollar ~~amount~~ *amount* from the table in subsection (2)(b)(i) by the ratio of the PCE for the second quarter of the year prior to the year of application to the PCE for the second quarter of 1995; and

(B) rounding the product thus obtained to the nearest whole dollar amount.

(iii) "PCE" means the implicit price deflator for personal consumption expenditures as published quarterly in the Survey of Current Business by the bureau of economic analysis of the U.S. department of commerce.

(c) Property described in subsection (1)(d) is taxed at one-half the taxable percentage rate established in subsection (2)(a).

~~(3)~~*(3)* Within the meaning of comparable property, as defined in 15-1-101, property assessed as commercial property is comparable only to other property assessed as commercial property and property assessed as other than commercial property is comparable only to other property assessed as other than commercial property.

(4) (a) As used in this section, "qualified claimants" means one or more owners who:

(i) occupied the residence as their primary residence for more than 7 months during the preceding calendar year;

(ii) had combined income for the preceding calendar year that does not exceed the threshold provided in subsection (2)(b); and

(iii) file a claim for assistance on a form that the department prescribes on or before April 15 of the year for which the assistance is claimed.

(b) For the purposes of subsection (1)(c), total household income is the income as reported on the tax return or returns required by chapter 30 or 31 for the year in which the assistance is being claimed excluding losses, depletion, and depreciation and before any federal or state adjustments to income. In cases in which the claimant is not required to file a tax return under chapter 30 or 31, household income means the household's total income as it would have been calculated under this subsection (4)(b) if the claimant had been required to file a return.

(c) The combined income of two or more owners who are qualified claimants:

(i) may not exceed the married couple and head of household thresholds provided in subsection (2)(b); and

(ii) determines the amount of tax reduction under subsection (2)(b)."

Section 3. Section 15-6-143, MCA, is amended to read:

"15-6-143. Class ten property — description — taxable percentage. (1) Class ten property includes all forest lands as defined in 15-44-102.

(2) Class ten property ~~is taxed at 0.79% of its forest productivity value in tax year 1999, and the rate is reduced by 0.11% each year until the property~~ is taxed at*:*

(a) for tax year 2009, ~~0.35%~~ *0.34%* of its forest productivity value*;*

(b) for tax year 2010, 0.33% of its forest productivity value;

(c) for tax year 2011, 0.32% of its forest productivity value;

(d) for tax year 2012, 0.31% of its forest productivity value;

(e) for tax year 2013, 0.3% of its forest productivity value; and

(f) for tax years after 2013, 0.29% of its forest productivity value."

Section 4. Section 15-6-193, MCA, is amended to read:

"15-6-193. Extended property tax assistance — phasein. (1) For the purpose of mitigating extraordinary market value increases during revaluation cycles that begin after December 31, 2008, the rate of taxation of ~~class four residential dwellings and appurtenant land not to exceed 5 acres otherwise set in 15-6-134(2)(a)~~ *qualified residences* is adjusted in this section for properties with extraordinary increases in market value with owners that meet income requirements.

(2) An annual application on a form provided by the department is required to receive a tax rate adjustment under this section. The application must be

signed under oath. A tax rate adjustment may be granted only for the current tax year and may not be granted for a previous year.

(3) A rate adjustment may not be granted for:

(a) any property that was sold or for which the ownership was changed after December 31 of the last year of the previous revaluation cycle unless the change in ownership is between husband and wife or parent and child with only nominal actual consideration or the change is pursuant to a divorce decree;

(b) the value of new construction, including remodeling, on the property occurring after December 31 of the last year of the previous revaluation cycle that is greater than 25% of the market value of the improvements; or

(c) a land use change occurring after December 31 of the last year of the previous revaluation cycle that increases the market value of the land by more than 25%.

(4) For the purposes of determining the adjustment in the class four property tax rate in this section, the following provisions apply for revaluation cycles beginning after December 31, 2008:

~~(a) (i) The percentage increase in taxable value is measured as the percentage change in taxable value before reappraisal to the taxable value after reappraisal. The taxable value before reappraisal is calculated by multiplying the value before reappraisal times the result of 1.00 minus the homestead exemption before reappraisal times the tax rate before reappraisal. The taxable value after reappraisal is calculated by multiplying the market value after reappraisal times the result of 1.00 minus the homestead exemption after reappraisal times the tax rate after reappraisal.~~

~~(ii) The tax rate before reappraisal is the tax rate that was in effect during the last year of the previous reappraisal cycle.~~

~~(iii) The tax rate after reappraisal is the tax rate that will be in effect during the last year of the current reappraisal cycle.~~

~~(iv) The homestead exemption before reappraisal is the homestead exemption that was in effect during the last year of the previous reappraisal cycle.~~

~~(v) The homestead exemption after reappraisal is the homestead exemption that will be in effect during the last year of the current reappraisal cycle.~~

~~(b) The dollar increase in tax liability is measured as the percentage change in tax liability before reappraisal to the tax liability after reappraisal. The tax liability before reappraisal is calculated by multiplying the value before reappraisal times the result of 1.00 minus the homestead exemption before reappraisal times the tax rate before reappraisal times the mill levy applied to the property before reappraisal. The tax liability after reappraisal is calculated by multiplying the market value after reappraisal times the result of 1.00 minus the homestead exemption after reappraisal times the tax rate after reappraisal times the mill levy applied to the property before reappraisal. The mill levy applied to the property before reappraisal is the total of all mills applied to the property in the last year of the previous reappraisal cycle.~~

~~(c) Total household income is the sum of the income of all members of the household and all other persons who are owners of the property. Income, as used in this section, includes income from all sources, including net business income and otherwise tax-exempt income of all types but not including social security income paid directly to a nursing home. Net business income is gross income less ordinary expenses but before deducting depreciation or depletion allowance, or~~

~~both. For an entity, as defined in subsection (8), income also includes the income of any natural person or entity that is a trustee of or controls 25% or more of the entity. A household is an association of persons who live in the same dwelling, sharing its furnishings, facilities, accommodations, and expenses. For single-family rental dwellings, total household income does not include the income of the tenant.~~

~~(d) The phase-in value is the valuation change made pursuant to 15-7-111(3) since the last reappraisal.~~

~~(5) (a) If total household income is $25,000 or less, the percentage increase in taxable value is greater than 24%, and the dollar increase in taxable liability is $250 or greater, then the property qualifies for an adjusted tax rate. The adjusted tax rate must be calculated such that the total increase in taxable value over the reappraisal cycle is 24% and such that the change in taxable value is phased in over the reappraisal cycle in equal increments.~~

~~(b) If total household income is greater than $25,000 but less than or equal to $50,000, the percentage increase in taxable value is greater than 30%, and the dollar increase in taxable liability is $250 or greater, then the property qualifies for an adjusted tax rate. The adjusted tax rate must be calculated such that the total increase in taxable value over the reappraisal cycle is 30% and such that the change in taxable value is phased in over the reappraisal cycle in equal increments.~~

~~(c) If total household income is greater than $50,000 but less than or equal to $75,000, the percentage increase in taxable value is greater than 30%, and the dollar increase in taxable liability is $250 or greater, then the property qualifies for an adjusted tax rate. The adjusted tax rate will be calculated such that the total increase in taxable value over the reappraisal cycle is 36% and such that the change in taxable value is phased in over the reappraisal cycle in equal increments.~~

(a) The change in taxable value before reappraisal is the 2008 tax year value adjusted for any new construction or destruction that occurred in the 2008 tax year. The taxable value before reappraisal for the 2009 tax year and subsequent years is the same as the 2008 tax year value if no new construction, destruction, land splits, land use changes, land reclassifications, land productivity changes, improvement grade changes, or other changes are made to the property during 2008 or subsequent tax years.

(b) The percentage increase in taxable value is measured as the percentage change in taxable value before reappraisal to the taxable value after reappraisal. The taxable value before reappraisal is calculated by multiplying the value before reappraisal in 2009 times 0.66 times 0.0301. The taxable value after reappraisal is calculated by multiplying the 2009 market value after reappraisal times 0.53 times 0.0247.

(c) The dollar increase in tax liability is measured as the change in tax liability before reappraisal to the tax liability after reappraisal. The tax liability before reappraisal is calculated by multiplying the value before reappraisal in 2009 times 0.66 times 0.0301 times the tax year 2008 mill levy applied to the property. The tax liability after reappraisal is calculated by multiplying the 2009 market value after reappraisal times 0.53 times 0.0247 times the tax year 2008 mill levy applied to the property. The tax year 2008 mill levy is the total of all mills applied to the property for fiscal year 2009.

(d) Total household income is the sum of the income of all members of the household and all other persons who are owners of the property. Income, as used

in this section, includes income from all sources, including net business income and otherwise tax-exempt income of all types but not including social security income paid directly to a nursing home. Net business income is gross income less ordinary expenses but before deducting depreciation or depletion allowance, or both. For an entity, as defined in subsection (8), income also includes the income of any natural person or entity that is a trustee of or controls 25% or more of the entity. A household is an association of persons who live in the same dwelling, sharing its furnishings, facilities, accommodations, and expenses. For single-family rental dwellings, total household income does not include the income of the tenant.

(e) The phase-in value is the valuation change made pursuant to 15-7-111(3) since the last reappraisal.

(5) (a) If total household income is $25,000 or less, the percentage increase in taxable value is greater than 24%, and the dollar increase in taxable liability is $250 or greater, then the property qualifies for an adjusted tax rate as follows:

(i) For tax year 2009, the tax rate is 0.03269 times the value before reappraisal divided by the 2009 phase-in value.

(ii) For tax year 2010, the tax rate is 0.03546 times the value before reappraisal divided by the 2010 phase-in value.

(iii) For tax year 2011, the tax rate is 0.03823 times the value before reappraisal divided by the 2011 phase-in value.

(iv) For tax year 2012, the tax rate is 0.04115 times the value before reappraisal divided by the 2012 phase-in value.

(v) For tax year 2013, the tax rate is 0.04374 times the value before reappraisal divided by the 2013 phase-in value.

(vi) For tax year 2014 and after, the tax rate is 0.04648 times the value before reappraisal divided by the 2014 phase-in value.

(b) If total household income is greater than $25,000 but less than or equal to $50,000, the percentage increase in taxable value is greater than 30%, and the dollar increase in taxable liability is $250 or greater, then the property qualifies for an adjusted tax rate as follows:

(i) For tax year 2009, the tax rate is 0.03301 times the value before reappraisal divided by the 2009 phase-in value.

(ii) For tax year 2010, the tax rate is 0.03612 times the value before reappraisal divided by the 2010 phase-in value.

(iii) For tax year 2011, the tax rate is 0.03925 times the value before reappraisal divided by the 2011 phase-in value.

(iv) For tax year 2012, the tax rate is 0.04257 times the value before reappraisal divided by the 2012 phase-in value.

(v) For tax year 2013, the tax rate is 0.0456 times the value before reappraisal divided by the 2013 phase-in value.

(vi) For tax year 2014 and after, the tax rate is 0.04873 times the value before reappraisal divided by the 2014 phase-in value.

(c) If total household income is greater than $50,000 but less than or equal to $75,000, the percentage increase in taxable value is greater than 36%, and the dollar increase in taxable liability is $250 or greater, then the property qualifies for an adjusted tax rate as follows:

(i) For tax year 2009, the tax rate is 0.03332 times the value before reappraisal divided by the 2009 phase-in value.

(ii) For tax year 2010, the tax rate is 0.03678 times the value before reappraisal divided by the 2010 phase-in value.

(iii) For tax year 2011, the tax rate is 0.04028 times the value before reappraisal divided by the 2011 phase-in value.

(iv) For tax year 2012, the tax rate is 0.04399 times the value before reappraisal divided by the 2012 phase-in value.

(v) For tax year 2013, the tax rate is 0.04739 times the value before reappraisal divided by the 2013 phase-in value.

(vi) For tax year 2014 and after, the tax rate is 0.0598 times the value before reappraisal divided by the 2014 phase-in value.

(d) The adjusted tax rate computed under this subsection (5) must be rounded to the nearest 1/100 of 1%.

(6) A person who applies for a tax rate adjustment under this section shall provide the department with documentation of total household income and other information that the department considers necessary to determine the person's eligibility for the tax rate adjustment. Documents provided to the department to determine eligibility for a tax rate adjustment are subject to the confidentiality provisions in 15-30-303.

(7) A person who applies for a tax rate adjustment and submits a false or fraudulent application for a tax rate adjustment is guilty of false swearing under 45-7-202.

(8) For the purposes of this section~~,~~*:*

(a) "entity" means:

~~(a)~~*(i)* a corporation, fiduciary, or pass-through entity, as those terms are defined in 15-30-101; and

~~(b)~~*(ii)* an association, joint-stock company, syndicate, trust or estate, or any other nonnatural person*; and*

(b) "qualified residence" means any class four residential dwelling in Montana that is a single-family dwelling unit, unit of a multiple-unit dwelling, trailer, manufactured home, or mobile home and as much of the surrounding land, not exceeding 1 acre, as is reasonably necessary for its use as a dwelling actually occupied by itself or in combination with another class four residential dwelling in Montana for at least 7 months a year."

Section 5. Section 15-6-222, MCA, is amended to read:

"15-6-222. Residential and commercial improvements — percentage of value exempt. (1) *(a)* ~~The~~ *Except as provided in subsection (1)(b), the* following percentage of the market value of residential property described in 15-6-134(1)(e) and (1)(f) is exempt from property taxation:

~~(a)~~*(i)* ~~32%~~ *36.8%* for tax year ~~2005~~ *2009*;

~~(b)~~*(ii)* ~~32.6%~~ *39.5%* for tax year ~~2006~~ *2010*;

~~(c)~~*(iii)* ~~33.2%~~ *41.8%* for tax year ~~2007~~ *2011*;

(iv) 44% for tax year 2012;

(v) 45.5% for tax year 2013;

~~(d)~~*(vi)* ~~34%~~ *47%* for tax year ~~2008~~ *2014* and succeeding tax years.

(b) For single-family residential dwellings, the exemption provided under subsection (1)(a) is applied to the first $1.5 million or less in market value.

(2) The following percentage of the market value of commercial property described in 15-6-134(1)(g) is exempt from property taxation:

(a) ~~13.8%~~ *14.2%* for tax year ~~2005~~ *2009*;

(b) ~~14.2%~~ *15.9%* for tax year ~~2006~~ *2010*;

(c) ~~14.6%~~ *17.5%* for tax year ~~2007~~ *2011*;

(d) 19% for tax year 2012;

(e) 20.3% for tax year 2013;

~~(d)~~*(f)* ~~15%~~ *21.5%* for tax year ~~2008~~ *2014* and succeeding tax years."

Section 6. Section 15-7-102, MCA, is amended to read:

"15-7-102. Notice of classification and appraisal to owners — appeals. (1) (a) Except as provided in 15-7-138, the department shall mail to each owner or purchaser under contract for deed a notice of the classification of the land owned or being purchased and the appraisal of the improvements on the land only if one or more of the following changes pertaining to the land or improvements have been made since the last notice:

(i) change in ownership;

(ii) change in classification;

(iii) except as provided in subsection (1)(b), change in valuation; or

(iv) addition or subtraction of personal property affixed to the land.

(b) After the first year, the department is not required to mail the notice provided for in subsection (1)(a)(iii) if the change in valuation is the result of an annual incremental change in valuation caused by the phasing in of a reappraisal under 15-7-111 or the application of the exemptions under 15-6-222 or caused by an incremental change in the tax rate.

(c) The notice must include the following for the taxpayer's informational purposes:

(i) a notice of the availability of all the property tax assistance programs available to property taxpayers, including the property tax assistance program under 15-6-134, the extended property tax assistance program under 15-6-193, the disabled or deceased veterans' residence exemption under 15-6-211, and the residential property tax credit for the elderly under 15-30-171 through 15-30-179;

~~(i)~~*(ii)* the total amount of mills levied against the property in the prior year; and

~~(ii)~~*(iii)* a statement that the notice is not a tax bill.

(d) Any misinformation provided in the information required by subsection (1)(c) does not affect the validity of the notice and may not be used as a basis for a challenge of the legality of the notice.

(2) (a) Except as provided in subsection (2)(c), the department shall assign each assessment to the correct owner or purchaser under contract for deed and mail the notice of classification and appraisal on a standardized form, adopted by the department, containing sufficient information in a comprehensible manner designed to fully inform the taxpayer as to the classification and appraisal of the property and of changes over the prior tax year.

(b) The notice must advise the taxpayer that in order to be eligible for a refund of taxes from an appeal of the classification or appraisal, the taxpayer is required to pay the taxes under protest as provided in 15-1-402.

(c) The department is not required to mail the notice of classification and appraisal to a new owner or purchaser under contract for deed unless the department has received the transfer certificate from the clerk and recorder as provided in 15-7-304 and has processed the certificate before the notices required by subsection (2)(a) are mailed. The department shall notify the county tax appeal board of the date of the mailing.

(3) If the owner of any land and improvements is dissatisfied with the appraisal as it reflects the market value of the property as determined by the department or with the classification of the land or improvements, the owner may request an assessment review by submitting an objection in writing to the department, on forms provided by the department for that purpose, within 30 days after receiving the notice of classification and appraisal from the department. The review must be conducted informally and is not subject to the contested case procedures of the Montana Administrative Procedure Act. As a part of the review, the department may consider the actual selling price of the property, independent appraisals of the property, and other relevant information presented by the taxpayer in support of the taxpayer's opinion as to the market value of the property. The department shall give reasonable notice to the taxpayer of the time and place of the review. After the review, the department shall determine the correct appraisal and classification of the land or improvements and notify the taxpayer of its determination. In the notification, the department shall state its reasons for revising the classification or appraisal. When the proper appraisal and classification have been determined, the land must be classified and the improvements appraised in the manner ordered by the department.

(4) Whether a review as provided in subsection (3) is held or not, the department may not adjust an appraisal or classification upon the taxpayer's objection unless:

(a) the taxpayer has submitted an objection in writing; and

(b) the department has stated its reason in writing for making the adjustment.

(5) A taxpayer's written objection to a classification or appraisal and the department's notification to the taxpayer of its determination and the reason for that determination are public records. The department shall make the records available for inspection during regular office hours.

(6) If any property owner feels aggrieved by the classification or appraisal made by the department after the review provided for in subsection (3), the property owner has the right to first appeal to the county tax appeal board and then to the state tax appeal board, whose findings are final subject to the right of review in the courts. The appeal to the county tax appeal board must be filed within 30 days after notice of the department's determination is mailed to the taxpayer. A county tax appeal board or the state tax appeal board may consider the actual selling price of the property, independent appraisals of the property, and other relevant information presented by the taxpayer as evidence of the market value of the property. If the county tax appeal board or the state tax appeal board determines that an adjustment should be made, the department shall adjust the base value of the property in accordance with the board's order."

Section 7. Section 15-7-111, MCA, is amended to read:

"15-7-111. Periodic revaluation of certain taxable property. (1) The department shall administer and supervise a program for the revaluation of all taxable property within classes three, four, and ten. All other property must be revalued annually.

(2) The department shall value and phase in the value of newly constructed, remodeled, or reclassified property in a manner consistent with the valuation within the same class and the values established pursuant to subsection (1). The department shall adopt rules for determining the assessed valuation and phased-in value of new, remodeled, or reclassified property within the same class.

(3) The revaluation of class three, four, and ten property is complete on December 31, 2008. The amount of the change in valuation from the 2002 base year for each property in classes three, four, and ten must be phased in each year at the rate of 16.66% of the change in valuation.

(4) During the end of the second and fourth year of each revaluation cycle, the department shall provide the revenue and transportation interim committee with a sales assessment ratio study of residences to be used to allow the committee to be apprised of the housing market and value trends.

~~(3)~~*(5)* The department of revenue shall administer and supervise a program for the revaluation of all taxable property within classes three, four, and ten. A comprehensive written reappraisal plan must be promulgated by the department. The reappraisal plan adopted must provide that all class three, four, and ten property in each county is revalued by January 1, ~~2009~~ *2015*, effective for January 1, ~~2009~~ *2015*, and each succeeding 6 years. The resulting valuation changes must be phased in for each year until the next reappraisal. If a percentage of change for each year is not established, then the percentage of phasein for each year is 16.66%."

Section 8. Section 15-7-201, MCA, is amended to read:

"15-7-201. Legislative intent — value of agricultural property. (1) Because the market value of many agricultural properties is based upon speculative purchases that do not reflect the productive capability of agricultural land, it is the legislative intent that bona fide agricultural properties be classified and assessed at a value that is exclusive of values attributed to urban influences or speculative purposes.

(2) Agricultural land must be classified according to its use, which classifications include but are not limited to irrigated use, nonirrigated use, and grazing use.

(3) Within each class, land must be subclassified by production categories. Production categories are determined from the productive capacity of the land based on yield.

(4) In computing the agricultural land valuation schedules to take effect on the date when each revaluation cycle takes effect pursuant to 15-7-111, the department of revenue shall determine the productive capacity value of all agricultural lands using the formula V = I/R where:

(a) V is the per-acre productive capacity value of agricultural land in each land use and production category;

(b) I is the per-acre net income of agricultural land in each land use and production category and is to be determined as provided in subsection (5); and

(c) R is the capitalization rate and, unless the advisory committee recommends a different rate and the department adopts the recommended

capitalization rate by rule, is equal to 6.4%. This capitalization rate must remain in effect until the next revaluation cycle.

(5) (a) Net income must be determined separately in each land use based on production categories.

(b) Net income must be based on commodity price data, which may include grazing fees, crop and livestock share arrangements, cost of production data, and water cost data for the base period using the best available data.

(i) Commodity price data and cost of production data for the base period must be obtained from the Montana Agricultural Statistics, the Montana crop and livestock reporting service, and other sources of publicly available information if considered appropriate by the advisory committee.

(ii) Crop share and livestock share arrangements are based on typical agricultural business practices and average landowner costs.

(iii) Allowable water costs consist only of the per-acre labor costs, energy costs of irrigation, and, unless the advisory committee recommends otherwise and the department adopts the recommended cost by rule, a base water cost of ~~$5.50~~ *$15* for each acre of irrigated land. Total allowable water costs may not exceed ~~$40~~ *$50* for each acre of irrigated land. Labor and energy costs must be determined as follows:

(A) Labor costs are ~~zero~~ *$5 an acre* for pivot sprinkler irrigation systems; ~~$4.50~~ *$10* an acre for tow lines, side roll, and lateral sprinkler irrigation systems; and ~~$9~~ *$15* an acre for hand-moved and flood irrigation systems.

(B) Energy costs must be based on per-acre energy costs incurred in the energy cost base year, which is the calendar year immediately preceding the year specified by the department in 15-7-103(5). By July 1 of the year following the energy cost base year, an owner of irrigated land shall provide the department, on a form prescribed by the department, with energy costs incurred in that energy cost base year. In the event that no energy costs were incurred in the energy cost base year, the owner of irrigated land shall provide the department with energy costs from the most recent year available. The department shall adjust the most recent year's energy costs to reflect costs in the energy cost base year.

(c) The base crop for valuation of irrigated land is ~~alfalfa hay~~ *alfalfa hay adjusted to 80% of the sales price*, ~~adjusted to 80% of sales price,~~ and the base crop for valuation of nonirrigated land is *spring* wheat. The base unit for valuation of grazing lands is animal unit months (AUM), defined as the average monthly requirement of pasture forage to support a 1,000-pound cow with a calf or its equivalent.

(d) Unless the advisory committee recommends a different base period and the department adopts the recommended base period by rule, the base period used to determine net income must be the most recent 7 years for which data is available prior to the date the revaluation cycle ends. Unless the advisory committee recommends a different averaging method and the department adopts the recommended averaging method by rule, data referred to in subsection (5)(b) must be averaged, but the average must exclude the lowest and highest yearly data in the period.

(6) The department shall compile data and develop valuation manuals adopted by rule to implement the valuation method established by subsections (4) and (5).

(7) The governor shall appoint an advisory committee of persons knowledgeable in agriculture and agricultural economics. The advisory committee shall include one member of the Montana state university-Bozeman, college of agriculture, staff. The advisory committee shall:

(a) compile and review data required by subsections (4) and (5);

(b) recommend to the department any adjustments to data or to landowners' share percentages if required by changes in government agricultural programs, market conditions, or prevailing agricultural practices;

(c) recommend appropriate base periods and averaging methods to the department;

(d) evaluate the appropriateness of the capitalization rate and recommend a rate to the department;

(e) verify for each class of land that the income determined in subsection (5) reasonably approximates that which the average Montana farmer or rancher could have attained; and

(f) recommend agricultural land valuation schedules to the department. With respect to irrigated land, the recommended value of irrigated land may not be below the value that the land would have if it were not irrigated."

Section 9. Section 15-10-420, MCA, is amended to read:

"15-10-420. Procedure for calculating levy. (1) (a) Subject to the provisions of this section, a governmental entity that is authorized to impose mills may impose a mill levy sufficient to generate the amount of property taxes actually assessed in the prior year plus one-half of the average rate of inflation for the prior 3 years. The maximum number of mills that a governmental entity may impose is established by calculating the number of mills required to generate the amount of property tax actually assessed in the governmental unit in the prior year based on the current year taxable value, less the current year's value of newly taxable property, plus one-half of the average rate of inflation for the prior 3 years.

(b) A governmental entity that does not impose the maximum number of mills authorized under subsection (1)(a) may carry forward the authority to impose the number of mills equal to the difference between the actual number of mills imposed and the maximum number of mills authorized to be imposed. The mill authority carried forward may be imposed in a subsequent tax year.

(c) For the purposes of subsection (1)(a), the department shall calculate one-half of the average rate of inflation for the prior 3 years by using the consumer price index, U.S. city average, all urban consumers, using the 1982-84 base of 100, as published by the bureau of labor statistics of the United States department of labor.

(2) A governmental entity may apply the levy calculated pursuant to subsection (1)(a) plus any additional levies authorized by the voters, as provided in 15-10-425, to all property in the governmental unit, including newly taxable property.

(3) (a) For purposes of this section, newly taxable property includes:

(i) annexation of real property and improvements into a taxing unit;

(ii) construction, expansion, or remodeling of improvements;

(iii) transfer of property into a taxing unit;

(iv) subdivision of real property; and

(v) transfer of property from tax-exempt to taxable status.

(b) Newly taxable property does not include an increase in value that arises because of an increase in the incremental value within a tax increment financing district.

(4) (a) For the purposes of subsection (1), the taxable value of newly taxable property includes the release of taxable value from the incremental taxable value of a tax increment financing district because of:

(i) a change in the boundary of a tax increment financing district;

(ii) an increase in the base value of the tax increment financing district pursuant to 7-15-4287; or

(iii) the termination of a tax increment financing district.

(b) If a tax increment financing district terminates prior to the certification of taxable values as required in 15-10-202, the increment value is reported as newly taxable property in the year in which the tax increment financing district terminates. If a tax increment financing district terminates after the certification of taxable values as required in 15-10-202, the increment value is reported as newly taxable property in the following tax year.

(c) For the purpose of subsection (3)(a)(ii), the value of newly taxable class four property that was constructed, expanded, or remodeled property since the completion of the last reappraisal cycle is the current year market value of that property less the previous year market value of that property.

~~(c)~~*(d)* For the purpose of subsection (3)(a)(iv), the subdivision of real property includes the first sale of real property that results in the property being taxable as class four property or as nonqualified agricultural land as described in 15-6-133(1)(c).

(5) Subject to subsection (8), subsection (1)(a) does not apply to:

(a) school district levies established in Title 20; or

(b) the portion of a governmental entity's property tax levy for premium contributions for group benefits excluded under 2-9-212 or 2-18-703.

(6) For purposes of subsection (1)(a), taxes imposed do not include net or gross proceeds taxes received under 15-6-131 and 15-6-132.

(7) In determining the maximum number of mills in subsection (1)(a), the governmental entity may increase the number of mills to account for a decrease in reimbursements.

(8) The department shall calculate, on a statewide basis, the number of mills to be imposed for purposes of 15-10-107, 20-9-331, 20-9-333, 20-9-360, 20-25-423, and 20-25-439. However, the number of mills calculated by the department may not exceed the mill levy limits established in those sections. The mill calculation must be established in ~~whole~~ *tenths of* mills. If the mill levy calculation does not result in ~~a whole number~~ *an even tenth* of ~~mills~~ *a mill*, then the calculation must be rounded up to the nearest ~~whole~~ *tenth of a* mill.

(9) (a) The provisions of subsection (1) do not prevent or restrict:

(i) a judgment levy under 2-9-316, 7-6-4015, or 7-7-2202;

(ii) a levy to repay taxes paid under protest as provided in 15-1-402;

(iii) an emergency levy authorized under 10-3-405, 20-9-168, or 20-15-326; or

(iv) a levy for the support of a study commission under 7-3-184.

(b) A levy authorized under subsection (9)(a) may not be included in the amount of property taxes actually assessed in a subsequent year.

(10) A governmental entity may levy mills for the support of airports as authorized in 67-10-402, 67-11-301, or 67-11-302 even though the governmental entity has not imposed a levy for the airport or the airport authority in either of the previous 2 years and the airport or airport authority has not been appropriated operating funds by a county or municipality during that time.

(11) The department may adopt rules to implement this section. The rules may include a method for calculating the percentage of change in valuation for purposes of determining the elimination of property, new improvements, or newly taxable property in a governmental unit."

Section 10. Section 15-16-101, MCA, is amended to read:

"15-16-101. Treasurer to publish notice — manner of publication. (1) Within 10 days after the receipt of the property tax record, the county treasurer shall publish a notice specifying:

(a) that one-half of all taxes levied and assessed will be due and payable before 5 p.m. on the next November 30 or within 30 days after the notice is postmarked and that unless paid prior to that time the amount then due will be delinquent and will draw interest at the rate of 5/6 of 1% a month from the time of delinquency until paid and 2% will be added to the delinquent taxes as a penalty;

(b) that one-half of all taxes levied and assessed will be due and payable on or before 5 p.m. on the next May 31 and that unless paid prior to that time the taxes will be delinquent and will draw interest at the rate of 5/6 of 1% a month from the time of delinquency until paid and 2% will be added to the delinquent taxes as a penalty; and

(c) the time and place at which payment of taxes may be made.

(2) (a) The county treasurer shall send to the last-known address of each taxpayer a written notice, postage prepaid, showing the amount of taxes and assessments due for the current year and the amount due and delinquent for other years. The written notice must include:

(i) the taxable value of the property;

(ii) the total mill levy applied to that taxable value;

(iii) itemized city services and special improvement district assessments collected by the county;

(iv) the number of the school district in which the property is located; ~~and~~

(v) the amount of the total tax due that is levied as city tax, county tax, state tax, school district tax, and other tax*; and*

(iv) a notice of the availability of all the property tax assistance programs available to property taxpayers, including the property tax assistance program under 15-6-134, the extended property tax assistance program under 15-6-193, the disabled or deceased veterans' residence exemption under 15-6-211, and the residential property tax credit for the elderly under 15-30-171 through 15-30-179.

(b) If the property is the subject of a tax lien sale for which a tax lien sale certificate has been issued under 15-17-212, the notice must also include, in a manner calculated to draw attention, a statement that the property is the subject of a tax lien sale and that the taxpayer may contact the county treasurer for complete information.

(3) The municipality shall, upon request of the county treasurer, provide the information to be included under subsection (2)(a)(iii) ready for mailing.

(4) The notice in every case must be published once a week for 2 weeks in a weekly or daily newspaper published in the county, if there is one, or if there is not, then by posting it in three public places. Failure to publish or post notices does not relieve the taxpayer from any tax liability. Any failure to give notice of the tax due for the current year or of delinquent tax will not affect the legality of the tax.

(5) If the department revises an assessment that results in an additional tax of $5 or less, an additional tax is not owed and a new tax bill does not need to be prepared."

Section 11. Section 15-44-103, MCA, is amended to read:

"15-44-103. Legislative intent — value of forest lands — valuation zones. (1) In order to encourage landowners of private forest lands to retain and improve their holdings of forest lands, to promote better forest practices, and to encourage the investment of capital in reforestation, forest lands must be classified and assessed under the provisions of this section.

(2) The forest productivity value of forest land must be determined by:

(a) capitalizing the value of the mean annual net wood production at the culmination of mean annual increment plus other agriculture-related income, if any; less

(b) annualized expenses, including but not limited to the establishment, protection, maintenance, improvement, and management of the crop over the rotation period.

(3) To determine the forest productivity value of forest lands, the department shall:

(a) divide the state into appropriate forest valuation zones, with each zone designated so as to recognize the uniqueness of marketing areas, timber types, growth rates, access, operability, and other pertinent factors of that zone; and

(b) establish a uniform system of forest land classification that takes into consideration the productive capacity of the site to grow forest products and furnish other associated agricultural uses.

(4) In computing the forest land valuation schedules for each forest valuation zone ~~to take effect on January 1, 1994~~, the department shall determine the productive capacity value of all forest lands in each forest valuation zone using the formula V = I/R, where:

(a) V is the per-acre forest productivity value of the forest land;

(b) I is the per-acre net income of forest lands in each valuation zone and is determined by the department using the formula I = (M x SV) + AI - C, where:

(i) I is the per-acre net income;

(ii) M is the mean annual net wood production;

(iii) SV is the stumpage value;

(iv) AI is the per-acre agriculture-related income; and

(v) C is the per-unit cost of the forest product and agricultural product produced, if any; and

(c) R is the capitalization rate determined by the department as provided in subsection (6).

(5) Net income must:

(a) be calculated for each year of a base period, which is the most recent 5-year period for which data is available;

(b) be based on a rolling average of stumpage value of timber harvested within the forest valuation zone and on the associated production cost data for the base period from sources considered appropriate by the department; and

(c) include agriculture-related net income for the same time period as the period used to determine average stumpage values.

(6) The capitalization rate must be calculated for each year of the base period and is the ~~annual~~ average ~~interest rate on agricultural loans as reported by the Northwest farm credit services, agricultural credit association of Spokane, Washington~~ *capitalization rate determined by the department after consultation with the forest lands taxation advisory committee*, plus the effective tax rate. *The capitalization rate must be adopted by rule. However, the capitalization rate for each year of the base period for tax years 2009 through 2014 may not be less than 8%.*

(7) The effective tax rate must be calculated for each year of the base period by dividing the total estimated tax due on forest lands subject to the provisions of this section by the total forest value of those lands.

(8) For the purposes of this section, if forest service sales are used in the determination of stumpage values, the department shall take into account purchaser road credits.

(9) In determining the forest productivity value of forest lands and in computing the forest land valuation schedules, the department shall use information and data provided by the university of Montana-Missoula.

(10) (a) There is a forest lands taxation advisory committee consisting of:

(i) four members with expertise in forest matters, one appointed by the majority leader of the senate, one by the minority leader of the senate, one by the majority leader of the house of representatives, and one by the minority leader of the house of representatives; and

(ii) three members appointed by the governor, one who is an industrial forest landowner, one who is a nonindustrial forest landowner, and one who is a county commissioner.

(b) The terms of the members expire on June 30 of the first year of each reappraisal cycle.

(c) The advisory committee shall:

(i) review data required by subsections (2) through (6), (8), and (9), including data on productivity value, stumpage value, wood production, capitalization rate, net income, and agriculture-related income;

(ii) recommend to the department any adjustments to data if required by changes in government forest land programs, market conditions, or prevailing forest lands practices;

(iii) recommend appropriate base periods and averaging methods to the department;

(iv) verify for each forest valuation zone and forest land classification under subsection (3) that the income determined in subsection (5) reasonably approximates that which the average Montana forest landowner could have attained; and

(v) recommend forest land valuation schedules to the department."

Section 12. Extension of 2009 deadlines relating to property taxation. As a result of the changes in the mitigation strategy of reappraisal for

class three, four, and ten property enacted by the 61st legislature, it may not be possible to comply with certain statutory deadlines relating to appraisals, assessments, reimbursements, budgets, and collection of property taxes. The state appraisal and assessment process may be delayed, which in turn may cause delays for the tax appeal boards, school districts, and local government taxing jurisdiction budgeting and collection processes. Therefore, for tax year 2009, all deadlines are extended as necessary and reasonable, except that the time limits allowed for filing an appeal remain the same as provided by law in order to allow for the orderly and efficient assessment and collection of taxes.

Section 13. Application deadline extensions. Because the application deadlines for the property tax assistance program in 15-6-134(1)(c) and the disabled or deceased veterans' residence property tax exemption program under 15-6-211 will have passed by [the effective date of this act], the application deadlines for those programs have been extended for tax year 2009 to July 15, 2009.

Section 14. Revenue and transportation interim committee review of property tax assistance. The revenue and transportation interim committee is requested, under the committee's oversight duties, as provided in 5-5-227, to review methods of providing assistance to property taxpayers, including circuit breaker programs and assistance to low-income, veteran, and elderly property owners and whether the assistance should be accomplished through income tax or property taxation means.

Section 15. Appropriation — contingency. (1) There is appropriated $1,587,053 from the general fund to the department of revenue for the biennium ending June 30, 2011, for the administration of [this act].

(2) If there is a specific appropriation for the administration of the mitigation of reappraisal pursuant to [this act] in House Bill No. 2, then the appropriation made in subsection (1) is void.

Section 16. Coordination instruction. If both Senate Bill No. 115 and [this act] are passed and approved, then [section 1 of Senate Bill No. 115], amending 15-6-134, is void.

Section 17. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 18. Effective date. [This act] is effective on passage and approval.

Section 19. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2008.

Approved May 10, 2009

CHAPTER NO. 484

[HB 669]

AN ACT CREATING A DISTRESSED WOOD PRODUCTS INDUSTRY REVOLVING LOAN PROGRAM; GRANTING RULEMAKING AUTHORITY; AUTHORIZING A LOAN APPLICATION FEE; REQUIRING OUTCOME MEASURES; PROVIDING A STATUTORY APPROPRIATION; AMENDING SECTION 17-7-502, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Revolving loan program for distressed wood products industry — finding. (1) Due to the current, well-documented decline in the wood products industry in Montana, the legislature finds that there is a need to assist the Montana wood products industry as a whole through a revolving loan program.

(2) There is a special revenue account called the distressed wood products industry revolving loan account to the credit of the department of commerce.

(3) (a) The distressed wood products industry revolving loan account consists of money deposited into the account from an appropriation in House Bill No. 645 and money from any other source. Any interest earned by the account must be deposited into the account and used to sustain the program.

(b) Loan repayments and any interest generated from loan repayments may be used as revolving loans for the wood products industry or for primary sector businesses statewide and are not subject to the provisions of this section.

(4) In any biennium, up to 36% of the funds in the distressed wood products industry revolving loan account, not to exceed $2.7 million, may be used as matching funds to secure additional federal money. Except as provided in subsection (3)(b), federal funds must be deposited in a federal special revenue account and used for loans in accordance with [sections 1 through 4]. State matching funds must be deposited in a special revenue account called the distressed wood products matching fund.

(5) (a) Funds from the distressed wood products industry revolving loan account may be loaned to:

(i) individuals, including private contractors related to the wood products industry; or

(ii) businesses defined as small businesses pursuant to the regulations promulgated by the United States small business administration pursuant to 13 CFR 121, et seq.

(b) Loans made pursuant to this subsection (5) must be made to individuals or small businesses that are part of the critical, primary wood processing infrastructure and have suffered economic hardships.

(6) Loans must be used to sustain and grow the wood products industry in Montana. Loans may be used for:

(a) the purchase or lease of land or equipment;

(b) updating infrastructure, including retrofitting of infrastructure to facilitate new uses;

(c) working capital;

(d) debt service;

(e) matching funds for grants or other loans that comply with the intent of this section; or

(f) any other use the department determines would sustain and grow the wood products industry.

(7) (a) A loan may not exceed $2 million and the loan must be repaid within 15 years.

(b) A loan recipient may apply for another loan pursuant to this section 2 years or more after the date the previous loan was approved.

Section 2. Administration of revolving loan account — rulemaking authority. (1) The department of commerce may adopt rules to implement [sections 1 through 4] establishing:

(a) eligibility criteria, including demonstrated need, criteria for defining capital investments, feasibility to create and retain jobs, financial capacity to repay the loans, estimated return on investment, and other matters that the department considers necessary to ensure repayment of loans and to encourage maximum use of the account;

(b) terms and conditions for the loans, including repayment schedules and interest; and

(c) a loan application fee.

(2) Loans must be made at a low interest rate. The department may set the interest rate at an amount that will cover its administrative costs, but the rate may not be less than 1% a year. The department may determine terms and conditions of loans, including recovery of funds in the event of default.

Section 3. Outcome measures. (1) The department of commerce shall develop reasonable outcome measures by which the success of the distressed wood products industry loan program provided for in [sections 1 through 4] must be measured on an annual basis. Minimal outcome that must be measured includes:

(a) the uses of loan funds that provided the best overall results; and

(b) a determination of the overall success of the loan program, including but not limited to the number of jobs created or retained, pay levels, financial status, reports on project activities, the growth of a local economy, and the taxable value of property or equipment.

(2) The department may require information from entities receiving loans in order to measure outcome.

(3) In accordance with 5-11-210, the department shall provide a status report of the distressed wood products industry loan account to the economic affairs interim committee provided for in 5-5-223.

Section 4. Use of funds — statutory appropriation. Money in the distressed wood products industry revolving loan account, the distressed wood products matching fund, and the related federal special revenue fund is statutorily appropriated, as provided in 17-7-502, for the purpose of administering [sections 1 through 3].

Section 5. Section 17-7-502, MCA, is amended to read:

"17-7-502. Statutory appropriations — definition — requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-17-105; 5-11-120; 5-11-407; 5-13-403; 7-4-2502; 10-1-1202; 10-1-1303; 10-2-603; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-121; 15-1-218; 15-23-706; 15-31-906; 15-35-108; 15-36-332; 15-37-117; 15-39-110; 15-65-121; 15-70-101; 15-70-369; 15-70-601; 16-11-509; 17-3-106; 17-3-212;

17-3-222; 17-3-241; 17-6-101; 17-7-304; 18-11-112; 19-3-319; 19-6-404; 19-6-410; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 19-20-607; 19-21-203; 20-8-107; 20-9-534; 20-9-622; 20-26-1503; 22-3-1004; 23-4-105; 23-4-202; 23-4-204; 23-4-302; 23-4-304; 23-5-306; 23-5-409; 23-5-612; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503; 41-5-2011; 42-2-105; 44-1-504; 44-12-206; 44-13-102; 50-4-623; 53-1-109; 53-6-703; 53-24-108; 53-24-206; 60-11-115; 61-3-415; 69-3-870; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 76-13-150; 77-1-108; 77-2-362; 80-2-222; 80-4-416; 80-5-510; 80-11-518; 82-11-161; 87-1-513; 90-1-115; *[section 4];* 90-1-205; 90-3-1003; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 4, Ch. 497, L. 1999, the inclusion of 15-38-202 terminates July 1, 2014; pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, and secs. 3 and 6, Ch. 481, L. 2003, the inclusion of 15-35-108 terminates June 30, 2010; pursuant to sec. 17, Ch. 593, L. 2005, the inclusion of 15-31-906 terminates January 1, 2010; pursuant to sec. 73, Ch. 44, L. 2007, the inclusion of 19-6-410 terminates upon the death of the last recipient eligible under 19-6-709(2) for the supplemental benefit provided by 19-6-709; and pursuant to sec. 6, Ch. 2, Sp. L. September 2007, the inclusion of 76-13-150 terminates June 30, 2009.)"

Section 6. Codification instruction. [Sections 1 through 4] are intended to be codified as an integral part of Title 90, and the provisions of Title 90 apply to [sections 1 through 4].

Section 7. Coordination instruction. If House Bill No. 674 is not passed, then [this act] is void.

Section 8. Coordination instruction. If [this act] and House Bill No. 645 are both passed and approved, then [section 25] of House Bill No. 645 relating to the distressed wood products industry recovery program is void and the appropriation for the distressed wood products industry recovery program provided for in House Bill No. 645 must be deposited in the distressed wood products industry revolving loan account provided for in [this act].

Section 9. Effective date. [This act] is effective on passage and approval.

Approved May 9, 2009

CHAPTER NO. 485

[HB 674]

AN ACT GENERALLY REVISING LAWS RELATING TO CERTAIN STATE LANDS; AUTHORIZING THE CREATION OF STATE DEBT THROUGH THE ISSUANCE OF GENERAL OBLIGATION BONDS FOR PURCHASE AND MANAGEMENT OF REAL PROPERTY AND APPURTENANCES FOR SUSTAINABLE FOREST MANAGEMENT, RECREATIONAL USE, AND INCOME-GENERATING POTENTIAL; APPROPRIATING THE PROCEEDS

OF THE BONDS FOR PURCHASE AND MANAGEMENT OF REAL PROPERTY AND APPURTENANCES FOR SUSTAINABLE FOREST MANAGEMENT, RECREATIONAL USE, AND INCOME-GENERATING POTENTIAL; PROVIDING CONSIDERATIONS FOR THE BOARD OF LAND COMMISSIONERS TO TAKE INTO ACCOUNT WHEN DETERMINING WHETHER TO REQUEST THE ISSUANCE OF BONDS; PROVIDING FOR THE OFFSETTING OF LAND PURCHASES; PROVIDING FOR THE DISPOSITION OF INTEREST AND INCOME; REQUIRING NOTICE ON LAND ACQUISITIONS FOR THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS; REQUIRING THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO PAY AN AMOUNT EQUAL TO TAXES ON LAND PURCHASES; PROVIDING A STATUTORY APPROPRIATION; AMENDING SECTIONS 17-5-803, 17-7-502, 87-1-209, AND 87-1-603, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Public school land acquisition account. (1) There is a public school land acquisition account in the state special revenue fund established in 17-2-102. The account must be administered by the department.

(2) Money in the account may be used only for the purpose of purchasing and managing interests in and appurtenances to real property in accordance with [section 2].

(3) After deductions are made pursuant to 77-1-109 and 77-1-613, the net interest and income earned on real property and appurtenances purchased with funds from the account must be distributed to the school facility improvement account provided for in 20-9-516.

Section 2. Public school land purchases — considerations — distributions. (1) The board may request the board of examiners to issue bonds for the purpose of purchasing interests in and appurtenances to real property selected by the board in accordance with the requirements of this section. Upon issuance of the bonds, the board shall purchase the real property and its appurtenances.

(2) Prior to requesting the issuance of bonds under subsection (1), the board shall consider the following:

(a) the income-generating potential of the real property and appurtenances;

(b) the opportunity for sustainable forest management activities and outcomes as described in 76-13-701 and 76-13-702; and

(c) the opportunity for recreational use of the real property and appurtenances consistent with Title 77, chapter 1, part 8.

(3) Prior to requesting the issuance of bonds, the board or the department, at the board's direction, shall complete a cost-benefit analysis of potential real property and appurtenance purchases. This cost-benefit analysis must be made available to the public upon request.

(4) Prior to purchasing any real property and appurtenances, the board shall determine that the benefits of the purchase are significant and that the financial risks are prudent. In order to reach that determination, the board shall examine the purchase of any real property and appurtenances as if the board had a fiduciary duty as a reasonably prudent trustee of a perpetual trust. For the purposes of this section, that duty requires the board to:

(a) discharge its duties with the care, skill, and diligence that a prudent person acting in a similar capacity with the same resources and familiar with

similar matters should exercise in the conduct of an enterprise of similar character and aims;

(b) manage the land holdings purchased pursuant to [section 1] and this section in accordance with an asset management plan to minimize the risk of loss and maximize the sustained rate of return;

(c) discharge its duties and powers solely in the interest of and for the benefit of the trust; and

(d) discharge its duties subject to the fiduciary standards set forth in 72-34-114.

(5) All interests in real property and appurtenances acquired under this section must be managed pursuant to Title 77.

Section 3. Offsetting purchases. To the extent practical and consistent with the board's powers and duties pursuant to 77-1-202, the board shall offset purchases made pursuant to [sections 1 and 2] by selling an equal amount of land.

Section 4. Section 17-5-803, MCA, is amended to read:

"17-5-803. Form — principal and interest — fiscal agent — bond registrar and transfer agent — deposit of proceeds. (1) Subject to the limitations contained in this part and in the bond act and in the furtherance of each bond act, bonds may be issued by the board upon request of the department. The bonds may be issued in the denominations and form, whether payable to bearer or registered as to principal or both principal and interest, with provisions for conversion or exchange, and for the issuance of temporary bonds bearing interest at a rate or rates, maturing at times not exceeding 30 years from date of issue, subject to redemption at earlier times and prices and on notice, and payable at the office of the fiscal agency of the state as the board determines.

(2) In all other respects, the board is authorized to prescribe the form and terms of the bonds and do whatever is lawful and necessary for their issuance and payment. Action taken by the board under this part must be by a majority vote of its members. The state treasurer shall keep a record of all bonds issued and sold.

(3) The board is authorized to employ a fiscal agent and a bond registrar and transfer agent to assist in the performance of its duties under this part.

(4) The board, in its discretion, is authorized to pay all costs of issuance of bonds, including without limitation rating agency fees, printing costs, legal fees, bank or trust company fees, costs to employ persons or firms to assist in the sale of the bonds, line of credit fees and charges, and all other amounts related to the costs of issuing the bonds from amounts available for these purposes in the general fund or from the proceeds of the bonds.

(5) ~~All~~ *Unless otherwise provided in statute authorizing a bond, all* proceeds of bonds and notes issued under this part must be deposited in the capital projects account, except that any premiums and accrued interest received and the proceeds of refunding bonds or notes must be deposited in the debt service account."

Section 5. Section 17-7-502, MCA, is amended to read:

"17-7-502. Statutory appropriations — definition — requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-17-105; 5-11-120; 5-11-407; 5-13-403; 7-4-2502; 10-1-1202; 10-1-1303; 10-2-603; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-121; 15-1-218; 15-23-706; 15-31-906; 15-35-108; 15-36-332; 15-37-117; 15-39-110; 15-65-121; 15-70-101; 15-70-369; 15-70-601; 16-11-509; 17-3-106; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-7-304; 18-11-112; 19-3-319; 19-6-404; 19-6-410; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 19-20-607; 19-21-203; 20-8-107; 20-9-534; 20-9-622; 20-26-1503; 22-3-1004; 23-4-105; 23-4-202; 23-4-204; 23-4-302; 23-4-304; 23-5-306; 23-5-409; 23-5-612; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503; 41-5-2011; 42-2-105; 44-1-504; 44-12-206; 44-13-102; 50-4-623; 53-1-109; 53-6-703; 53-24-108; 53-24-206; 60-11-115; 61-3-415; 69-3-870; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 76-13-150; 77-1-108; 77-2-362; 80-2-222; 80-4-416; 80-5-510; 80-11-518; 82-11-161; 87-1-513; *87-1-603;* 90-1-115; 90-1-205; 90-3-1003; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 4, Ch. 497, L. 1999, the inclusion of 15-38-202 terminates July 1, 2014; pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, and secs. 3 and 6, Ch. 481, L. 2003, the inclusion of 15-35-108 terminates June 30, 2010; pursuant to sec. 17, Ch. 593, L. 2005, the inclusion of 15-31-906 terminates January 1, 2010; pursuant to sec. 73, Ch. 44, L. 2007, the inclusion of 19-6-410 terminates upon the death of the last recipient eligible under 19-6-709(2) for the supplemental benefit provided by 19-6-709; and pursuant to sec. 6, Ch. 2, Sp. L. September 2007, the inclusion of 76-13-150 terminates June 30, 2009.)"

Section 6. Section 87-1-209, MCA, is amended to read:

"87-1-209. Acquisition and sale of lands or waters. (1) ~~The~~ *Subject to [section 7], the* department, with the consent of the commission and, in the case of land acquisition involving more than 100 acres or $100,000 in value, the approval of the board of land commissioners, may acquire by purchase, lease, agreement, gift, or devise and may acquire easements upon lands or waters for the purposes listed in this subsection. The department may develop, operate, and maintain acquired lands or waters:

(a) for fish hatcheries or nursery ponds;

(b) as lands or water suitable for game, bird, fish, or fur-bearing animal restoration, propagation, or protection;

(c) for public hunting, fishing, or trapping areas;

(d) to capture, propagate, transport, buy, sell, or exchange any game, birds, fish, fish eggs, or fur-bearing animals needed for propagation or stocking purposes or to exercise control measures of undesirable species;

(e) for state parks and outdoor recreation;

(f) to extend and consolidate by exchange, lands or waters suitable for these purposes.

(2) The department, with the consent of the commission, may acquire by condemnation, as provided in Title 70, chapter 30, lands or structures for the preservation of historical or archaeological sites that are threatened with destruction or alteration.

(3) (a) Subject to section 2(3), Chapter 560, Laws of 2005, the department, with the consent of the commission, may dispose of lands and water rights acquired by it on those terms after public notice as required by subsection (3)(b) of this section, without regard to other laws that provide for sale or disposal of state lands and with or without reservation, as it considers necessary and advisable. The department, with the consent of the commission, may convey department lands and water rights for full market value to other governmental entities or to adjacent landowners without regard to the requirements of subsection (3)(b) or (3)(c) if the land is less than 10 acres or if the full market value of the interest to be conveyed is less than $20,000. When the department conveys land or water rights to another governmental entity or to an adjacent landowner pursuant to this subsection, the department, in addition to giving notice pursuant to subsection (3)(b), shall give notice by mail to the landowners whose property adjoins the department property being conveyed.

(b) Subject to section 2(3), Chapter 560, Laws of 2005, notice of sale describing the lands or waters to be disposed of must be published once a week for 3 successive weeks in a newspaper with general circulation printed and published in the county where the lands or waters are situated or, if a newspaper is not published in that county, then in any newspaper with general circulation in that county.

(c) The notice must advertise for cash bids to be presented to the director within 60 days from the date of the first publication. Each bid must be accompanied by a cashier's check or cash deposit in an amount equal to 10% of the amount bid. The highest bid must be accepted upon payment of the balance due within 10 days after mailing notice by certified mail to the highest bidder. If that bidder defaults on payment of the balance due, then the next highest bidders must be similarly notified in succession until a sale is completed. Deposits must be returned to the unsuccessful bidders except bidders defaulting after notification.

(d) The department shall reserve the right to reject any bids that do not equal or exceed the full market value of the lands and waters as determined by the department. If the department does not receive a bid that equals or exceeds fair market value, it may then sell the lands or water rights at private sale. The price accepted on any private sale must exceed the highest bid rejected in the bid process.

(4) When necessary and advisable for the management and use of department property, the director is authorized to grant or acquire from willing sellers right-of-way easements for purposes of utilities, roads, drainage facilities, ditches for water conveyance, and pipelines if the full market value of the interest to be acquired is less than $20,000. Whenever possible, easements

must include a weed management plan. Approval of the commission is not required for grants and acquisitions made pursuant to this subsection. In granting any right-of-way pursuant to this subsection, the department shall obtain a fair market value, but the department is not otherwise required to follow the disposal requirements of subsection (3). The director shall report any easement grant or acquisition made pursuant to this subsection to the commission at its next regular meeting.

(5) The department shall convey lands and water rights without covenants of warranty by deed executed by the governor or in the governor's absence or disability by the lieutenant governor, attested by the secretary of state and further countersigned by the director.

(6) ~~The~~ *Subject to [section 7], the* department, with the consent of the commission, is authorized to utilize the installment contract method to facilitate the acquisition of wildlife management areas in which game and nongame fur-bearing animals and game and nongame birds may breed and replenish and areas that provide access to fishing sites for the public. The total cost of installment contracts may not exceed the cost of purchases authorized by the department and appropriated by the legislature.

(7) The department is authorized to enter into leases of land under its control in exchange for services to be provided by the lessee on the leased land."

Section 7. Notice of proposed land acquisitions. (1) For all land acquisitions proposed pursuant to 87-1-209, the department shall provide notice to the board of county commissioners in the county where the proposed acquisition is located.

(2) The notice must be provided at least 30 days before the proposed acquisition appears before the commission for its consent.

(3) The notice must include:

(a) a description of the proposed acquisition, including acreage and the use proposed by the department;

(b) an estimate of the measures and costs the department plans to undertake in furtherance of the proposed use, including operating, staffing, and maintenance costs;

(c) an estimate of the property taxes payable on the proposed acquisition and a statement that if the department acquires the land pursuant to 87-1-603, the department would pay a sum equal to the amount of taxes that would be payable on the county assessment of the property if it was taxable to a private citizen; and

(d) a draft agenda of the meeting at which the proposed acquisition will be presented to the commission and information on how the board of county commissioners may provide comment.

Section 8. Section 87-1-603, MCA, is amended to read:

"87-1-603. Payments to counties for department-owned land — exceptions. *(1) Except as provided in subsection (3), before* ~~Before~~ November 30 of each year, the treasurer of each county in which the department owns any land shall describe the land, state the number of acres in each parcel, and request the drawing of a warrant to the county in a sum equal to the amount of taxes ~~which~~ *that* would be payable on county assessment of the property ~~were it~~ *if it was* taxable to a private citizen. The director shall approve or disapprove the request. The director may disapprove a request only if the director finds it to be inconsistent with this section. If the director disapproves a request, the director

shall return it with an explanation detailing the reasons for the disapproval to the appropriate county treasurer for correction. If the director approves a request, the director shall transmit it to the department of administration, which shall draw a warrant payable to the county in the amount shown on the request and shall send the warrant to the county treasurer. The warrant is payable out of any funds to the credit of the department of fish, wildlife, and parks. A payment may not be made to a county in which the department owns less than 100 acres. A payment may not be made to a county for lands owned by the department for game or bird farms or for fish hatchery purposes or lands acquired and managed for the purposes of Title 23, chapter 1.

(2) After [the effective date of this act], for every department purchase of land, the department shall notify the treasurer in the county where land was purchased.

(3) (a) After [the effective date of this act] and before November 30 of each subsequent year, the treasurer of each county in which the department owns land purchased after [the effective date of this act] shall describe the land, state the number of acres in each parcel, and request the drawing of a warrant to the county in a sum equal to the amount of taxes that would be payable on county assessment of the property if it was taxable to a private citizen.

(b) The director shall approve or disapprove the request. The director may disapprove a request only if the director finds it to be inconsistent with this subsection (3). If the director disapproves a request, the director shall return it with an explanation detailing the reasons for the disapproval to the appropriate county treasurer for correction. If the director approves a request, the director shall transmit it to the department of administration, which shall draw a warrant payable to the county in the amount shown on the request and shall send the warrant to the county treasurer. The warrant is payable out of any funds to the credit of the department of fish, wildlife, and parks.

(c) All land purchased by the department after [the effective date of this act] is subject to this subsection (3).

(4) The amount to be paid to each county pursuant to this section is statutorily appropriated, as provided in 17-7-502."

Section 9. Authorization of bonds. Upon request of the board of land commissioners, the board of examiners is authorized to issue and sell general obligation bonds in an amount not exceeding $21 million for the purchase of interests in and appurtenances to real property described in [section 2] in addition to the amount of general obligation bonds outstanding or authorized on January 1, 2009. The proceeds from the bonds sold under this section must be deposited in the public school land acquisition account established in [section 1]. The bonds must be sold and issued in accordance with the terms and in the manner required by Title 17, chapter 5, part 8.

Section 10. Appropriation of bond proceeds. Up to $21 million is appropriated to the board of land commissioners from the public school land acquisition account from the proceeds of the bonds authorized in [section 9] and investment earnings on the account for the purchase of interests in and appurtenances to real property by the board as authorized in [section 2].

Section 11. Codification instruction. (1) [Sections 1 through 3] are intended to be codified as an integral part of Title 77, chapter 1, part 2, and the provisions of Title 77, chapter 1, part 2, apply to [sections 1 through 3].

(2) [Section 7] is intended to be codified as an integral part of Title 87, chapter 1, part 2, and the provisions of Title 87, chapter 1, part 2, apply to [section 7].

Section 12. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 13. Coordination instruction. If House Bill No. 669 is not passed or if there is not an appropriation in House Bill No. 645 to provide loans to the wood products industry, then this act is void.

Section 14. Two-thirds vote required. Because [section 9] authorizes the creation of state debt, Article VIII, section 8, of the Montana constitution requires a vote of two-thirds of the members of each house of the legislature for passage.

Section 15. Effective date. [This act] is effective on passage and approval.

Approved May 10, 2009

CHAPTER NO. 486

[HB 676]

AN ACT IMPLEMENTING THE GENERAL APPROPRIATIONS ACT; ELIMINATING GENERAL FUND TRANSFERS TO THE HIGHWAY NONRESTRICTED STATE SPECIAL REVENUE ACCOUNT; RESTRICTING TRANSFERS OF CIGARETTE TAXES ALLOCATED FOR THE SUPPORT OF VETERANS' NURSING HOMES; REVISING THE DEFINITION OF PRESENT LAW BASE FOR THE ENSUING BUDGET CYCLE; REQUIRING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO DEVELOP ALTERNATIVE METHODS OF DELIVERING SERVICES AND TO DEVELOP GOALS, MILESTONES, AND MEASURES TO GUIDE THE REVIEW OF ALTERNATIVES; RESTRICTING THE TRANSFER OF THE UNRESERVED BALANCE IN THE COAL SEVERANCE TAX COMBINED ACCOUNT; PROVIDING AN INCREASE IN EACH YEAR OF THE 2011 BIENNIUM IN THE BASIC ENTITLEMENT AND THE TOTAL PER-ANB ENTITLEMENT; REQUIRING REPORTS BY THE OFFICE OF PUBLIC DEFENDER; REQUIRING THE ADOPTION OF RULES RELATING TO THE WORKING CARETAKER RELATIVE PROGRAM UNDER TANF; AUTHORIZING MONEY IN THE TOBACCO SETTLEMENT ACCOUNT AND THE HEALTH AND MEDICAID INITIATIVES ACCOUNT TO BE USED FOR THE HEALTHY MONTANA KIDS PLAN; REQUIRING NOTICE TO ENROLLEES OF RESTRICTIONS ON ACCESS TO HEALTH CARE PROVIDERS; PROVIDING THAT CONTRACTS TO IMPLEMENT THE CHILDREN'S HEALTH INSURANCE PROGRAM MAY NOT RESTRICT ACCESS TO HEALTH CARE PROVIDERS; CHANGING THE LEAF-CUTTING BEE ENTERPRISE FUND TO A STATE SPECIAL REVENUE ACCOUNT; PROVIDING A FUND TRANSFER FROM THE WATER ADJUDICATION STATE SPECIAL REVENUE ACCOUNT TO THE NATURAL RESOURCES OPERATIONS STATE SPECIAL REVENUE ACCOUNT; PROVIDING A FUND TRANSFER FROM THE ENVIRONMENTAL QUALITY PROTECTION FUND TO THE NATURAL RESOURCES OPERATIONS STATE SPECIAL REVENUE ACCOUNT; PROVIDING A FUND TRANSFER FROM THE JUNK VEHICLE FUND TO

THE NATURAL RESOURCES OPERATIONS STATE SPECIAL REVENUE ACCOUNT; REQUIRING A REPORT BY THE DEPARTMENT OF TRANSPORTATION ON EMERGENCY MEDICAL SERVICES GRANTS; REVISING THE ALLOCATION OF PREMIUM TAXES; PROVIDING CONDITIONS FOR THE SELECTION OF THE VENDOR FOR THE VEHICLE INSURANCE VERIFICATION SYSTEM; ELIMINATING THE RENAL DISEASE TREATMENT PROGRAM; AMENDING SECTIONS 2-15-3004, 7-14-112, 10-2-112, 10-2-603, 10-3-801, 15-1-122, 15-35-108, 15-38-301, 16-11-119, 17-6-606, 17-7-102, 17-7-111, 17-7-304, 20-9-306, 33-2-708, 47-1-201, 53-4-212, 53-4-1005, 53-4-1007, 53-4-1012, 53-4-1201, 75-10-704, 80-6-1109, AND 85-2-280, MCA; REPEALING SECTIONS 15-30-169, 50-44-101, 50-44-102, AND 50-44-103, MCA; AND PROVIDING AN EFFECTIVE DATE, APPLICABILITY DATES, AND TERMINATION DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-3004, MCA, is amended to read:

"2-15-3004. Montana alfalfa seed committee — composition — allocation. (1) There is a Montana alfalfa seed committee composed of eight members as follows:

(a) five members appointed by the governor who are citizens of Montana and who are actively engaged in the growing of alfalfa seed within the state, deriving a substantial portion of their income from handling, packing, shipping, buying, or selling alfalfa seed, or acting as a broker or factor of alfalfa seed. These five members must be compensated as provided in 80-11-305.

(b) two members appointed by the governor who are citizens of Montana and who are actively engaged in the growing of alfalfa seed within the state and the rearing of alfalfa leaf-cutting bees. Each member must be compensated from the ~~enterprise fund~~ *state special revenue account* established in 80-6-1109 at $25 for each day in which the member is engaged in the official business of the committee, plus expenses as provided for in 2-18-501 through 2-18-503.

(c) the director of the department of agriculture or the director's authorized representative.

(2) A list of nominees for appointment may be submitted to the governor by the Montana alfalfa seed association, the Montana seed trade association, the Montana seed growers association, and any other organization representing alfalfa seed growers or dealers. Names of nominees must be submitted at least 91 days before the expiration of a committee member's term. The governor shall appoint members from among the persons nominated.

(3) The appointed members serve staggered terms of 3 years. The initial appointments are as follows: two members for 1-year terms, two members for 2-year terms, and three members for 3-year terms.

(4) The committee is allocated to the department of agriculture for administrative purposes only as prescribed in 2-15-121."

Section 2. Section 7-14-112, MCA, is amended to read:

"7-14-112. Senior citizen and persons with disabilities transportation services account — use. (1) There is a senior citizen and persons with disabilities transportation services account in the state special revenue fund. Money must be deposited in the account pursuant to ~~15-1-122(3)(c)~~ *15-1-122(2)(e)*.

(2) Except as provided in subsection (6), the account must be used to provide operating funds or matching funds for operating grants pursuant to 49 U.S.C.

5311 to counties, incorporated cities and towns, transportation districts, or nonprofit organizations for transportation services for persons 60 years of age or older and for persons with disabilities.

(3) (a) Subject to the conditions of subsection (3)(b), the department of transportation is authorized to award grants to counties, incorporated cities and towns, transportation districts, and nonprofit organizations for transportation services using guidelines established in the state management plan for the purposes described in 49 U.S.C. 5310 and 5311.

(b) Priority for awarding grants must be determined according to the following factors:

(i) the most recent census or federal estimate of persons 60 years of age or older and persons with disabilities in the area served by a county, incorporated city or town, transportation district, or nonprofit organization;

(ii) the annual number of trips provided by the transportation provider to persons 60 years of age or older and to persons with disabilities in the transportation service area;

(iii) the ability of the transportation provider to provide matching money in an amount determined by the department of transportation; and

(iv) the coordination of services as required in subsection (5).

(4) The department of transportation shall ensure that the available funding is distributed equally among the five transportation districts provided in 2-15-2502.

(5) In awarding grants, the department of transportation shall give preference to proposals that:

(a) include the establishment of a transit authority to coordinate service area or regional transportation services;

(b) address and document the transportation needs within the community, county, and service area or region;

(c) identify all other transportation providers in the community, county, and service area or region;

(d) explain how services are going to be coordinated with the other transportation providers in the service area or region;

(e) indicate how services are going to be expanded to meet the unmet needs of senior citizens and disabled persons within the community, county, and service area or region who are dependent upon public transit;

(f) include documentation of coordination with other local transportation programs within the community, county, and service area or region, including:

(i) utilization of existing resources and equipment to maximize the delivery of service; and

(ii) the projected increase in ridership and expansion of service;

(g) invite school districts to participate or be included in the transportation coordination efforts within the community, county, and service area or region; and

(h) at a minimum, comply with the provisions in subsections (5)(b) through (5)(f).

(6) Any money remaining after grants have been awarded to transportation providers who provide transportation services for persons 60 years of age or

older and persons with disabilities may be awarded to other transportation providers for operating costs or matching funds for operating grants for the purposes described in 49 U.S.C. 5311 other than for transportation services for persons 60 years of age or older or persons with disabilities."

Section 3. Section 10-2-112, MCA, is amended to read:

"10-2-112. Veterans' services special revenue account — sources of funds — designated uses. (1) There is a veterans' services account in the state special revenue fund, established pursuant to 17-2-102(1)(b), to the credit of the board.

(2) Money transferred pursuant to ~~15-1-122(3)(d)~~ *15-1-122(2)(d)* from license plate sales as described in 10-2-114 and from gifts, grants, or donations must be deposited in the veterans' services account.

(3) Legislative appropriations of money in the veterans' services account must be used for the purposes identified in 10-2-102 or other functions authorized by the board.

(4) There is a veterans' services federal account in the federal special revenue fund established for federal funds received under 10-2-106."

Section 4. Section 10-2-603, MCA, is amended to read:

"10-2-603. Special revenue account — use of funds — solicitation. (1) There is an account in the special revenue fund to the credit of the board for the state veterans' cemeteries.

(2) Plot allowances, donations to the cemetery program, and fund transfers pursuant to ~~15-1-122(3)(d)~~ *15-1-122(2)(d)* must be deposited into the account.

(3) The account is statutorily appropriated, as provided in 17-7-502, to the board and may be used only for the construction, maintenance, operation, and administration of the state veterans' cemeteries.

(4) The board shall solicit veterans' license plate sales and donations on behalf of the state veterans' cemeteries."

Section 5. Section 10-3-801, MCA, is amended to read:

"10-3-801. Account created for funding search and rescue operations — rules. (1) There is an account in the state special revenue fund established in 17-2-102. The account must be administered by the disaster and emergency services division of the department exclusively for the purposes of search and rescue as provided in this section. The department may retain up to 5% of the money in the account to pay its costs of administering this section.

(2) There must be deposited in the account:

(a) fund transfers pursuant to ~~15-1-122(3)(f)~~ *15-1-122(2)(f)*;

(b) fund transfers pursuant to 87-1-601(9). These funds may be used only as provided in 87-1-601(9).

(c) all money received by the department in the form of gifts, grants, reimbursements, or appropriations from any source intended to be used for search and rescue operations.

(3) (a) Not less than 50% of the money in the account must be used by the department to defray costs of:

(i) local search and rescue units for search and rescue missions conducted through a county sheriff's office at a maximum of $3,000 for each rescue mission, regardless of the number of counties or county search and rescue organizations involved. To fulfill the purposes of this subsection (3)(a)(i), the department shall

transmit reimbursement money to the county treasurer, who shall deposit the funds in a separate search and rescue fund accessible by the local search and rescue unit that requested the reimbursement. The county treasurer shall notify the reimbursed local search and rescue unit by mail when the deposit occurs.

(ii) a county sheriff's office at a maximum of $3,000 for each rescue mission, regardless of the number of counties or county search and rescue organizations involved.

(b) The remaining money in the account may be used by the department:

(i) to match local funds for the purchase of equipment for use by local search and rescue units at a maximum of $2,000 for each unit in a calendar year. The cost-sharing match must be 35% local funds to 65% from the account.

(ii) for reimbursement of expenses related to the training of search and rescue volunteers.

(4) The department may adopt rules to implement the proper administration of the account. The rules may include:

(a) a method of reimbursing local search and rescue units or a county sheriff's office, on a case-by-case basis, for authorized search and rescue operations conducted pursuant to subsection (3)(a), including verification of search missions, claims procedures, fiscal accountability, and the number and circumstances of search missions involving persons engaged in hunting, fishing, and trapping in a fiscal year;

(b) methods for processing requests for equipment matching funds and training funds made pursuant to subsection (3)(b), including any verification and accounting necessary to ensure that the provisions of subsection (3)(b) are met, and determining the percentage of all search missions involving persons engaged in hunting, fishing, or trapping in a fiscal year;

(c) a system involving input from representatives of county sheriff organizations and state and local search and rescue organizations for assistance in verifying and processing claims for reimbursement, equipment, and training; and

(d) a method for compiling and keeping current a contact list of all search and rescue units in Montana and in neighboring states and provinces in order to ensure collaboration, communication, and cooperation between the various county search and rescue units and between the department and the county units and dedication of a page on the department's website for posting the contact list and other relevant search and rescue information."

Section 6. Section 15-1-122, MCA, is amended to read:

"15-1-122. Fund transfers. (1) There is transferred from the state general fund to the adoption services account, provided for in 42-2-105, a base amount of $36,764, and the amount of the transfer must be increased by 10% in each succeeding fiscal year.

~~(2) There is transferred from the state general fund to the department of transportation state special revenue nonrestricted account a base amount of $3,050,205, increased by 1.5% in each succeeding fiscal year.~~

~~(3)~~*(2)* For each fiscal year, there is transferred from the state general fund to the accounts, entities, or recipients indicated the following amounts:

(a) to the motor vehicle recycling and disposal program provided for in Title 75, chapter 10, part 5, 1.48% of the motor vehicle revenue deposited in the state

general fund in each fiscal year. The amount of 9.48% of the allocation in each fiscal year must be used for the purpose of reimbursing the hired removal of abandoned vehicles. Any portion of the allocation not used for abandoned vehicle removal reimbursement must be used as provided in 75-10-532.

(b) to the noxious weed state special revenue account provided for in 80-7-816, 1.50% of the motor vehicle revenue deposited in the state general fund in each fiscal year;

(c) to the department of fish, wildlife, and parks:

(i) 0.46% of the motor vehicle revenue deposited in the state general fund, with the applicable percentage to be:

(A) used to:

(I) acquire and maintain pumpout equipment and other boat facilities, 4.8% in each fiscal year;

(II) administer and enforce the provisions of Title 23, chapter 2, part 5, 19.1% in each fiscal year;

(III) enforce the provisions of 23-2-804, 11.1% in each fiscal year; and

(IV) develop and implement a comprehensive program and to plan appropriate off-highway vehicle recreational use, 16.7% in each fiscal year; and

(B) deposited in the state special revenue fund established in 23-1-105 in an amount equal to 48.3% in each fiscal year;

(ii) 0.10% of the motor vehicle revenue deposited in the state general fund in each fiscal year, with 50% of the amount to be used for enforcing the purposes of 23-2-601, 23-2-602, 23-2-611, 23-2-614 through 23-2-618, 23-2-621, 23-2-622, 23-2-631 through 23-2-635, and 23-2-641 through 23-2-644 and 50% of the amount designated for use in the development, maintenance, and operation of snowmobile facilities; and

(iii) 0.16% of the motor vehicle revenue deposited in the state general fund in each fiscal year to be deposited in the motorboat account to be used as provided in 23-2-533;

(d) 0.64% of the motor vehicle revenue deposited in the state general fund in each fiscal year, with 24.55% to be deposited in the state veterans' cemetery account provided for in 10-2-603 and with 75.45% to be deposited in the veterans' services account provided for in 10-2-112(1);

(e) 0.30% of the motor vehicle revenue deposited in the state general fund in each fiscal year for deposit in the state special revenue fund to the credit of the senior citizens and persons with disabilities transportation services account provided for in 7-14-112; and

(f) to the search and rescue account provided for in 10-3-801, 0.04% of the motor vehicle revenue deposited in the state general fund in each fiscal year.

~~(4)~~*(3)* For the purposes of this section, "motor vehicle revenue deposited in the state general fund" means revenue received from:

(a) fees for issuing a motor vehicle title paid pursuant to 61-3-203;

(b) fees, fees in lieu of taxes, and taxes for vehicles, vessels, and snowmobiles registered or reregistered pursuant to 61-3-321 and 61-3-562;

(c) GVW fees for vehicles registered for licensing pursuant to Title 61, chapter 3, part 3; and

(d) all money collected pursuant to 15-1-504(3).

~~(5)~~*(4)* The amounts transferred from the general fund to the designated recipient must be appropriated as state special revenue in the general appropriations act for the designated purposes."

Section 7. Section 15-35-108, MCA, is amended to read:

"15-35-108. (Temporary) **Disposal of severance taxes.** Severance taxes collected under this chapter must, in accordance with the provisions of 17-2-124, be allocated as follows:

(1) Fifty percent of total coal severance tax collections is allocated to the trust fund created by Article IX, section 5, of the Montana constitution. The trust fund money must be deposited in the fund established under 17-6-203(6) and invested by the board of investments as provided by law.

(2) The amount of 12% of coal severance tax collections is allocated to the long-range building program account established in 17-7-205.

(3) The amount of 5.46% must be credited to an account in the state special revenue fund to be allocated by the legislature for provision of basic library services for the residents of all counties through library federations and for payment of the costs of participating in regional and national networking, conservation districts, ~~and~~ the Montana Growth Through Agriculture Act. Expenditures of the allocation may be made only from this account. Money may not be transferred from this account to another account other than the general fund. ~~Any~~ *Beginning July 1, 2012, any* unreserved fund balance at the end of each fiscal year must be deposited in the general fund.

(4) The amount of 1.27% must be allocated to a permanent fund account for the purpose of parks acquisition or management. Income from this permanent fund account, excluding unrealized gains and losses, must be appropriated for the acquisition, development, operation, and maintenance of any sites and areas described in 23-1-102.

(5) The amount of 0.95% must be allocated to the debt service fund type to the credit of the renewable resource loan debt service fund.

(6) The amount of 0.63% must be allocated to a trust fund for the purpose of protection of works of art in the capitol and for other cultural and aesthetic projects. Income from this trust fund account, excluding unrealized gains and losses, must be appropriated for protection of works of art in the state capitol and for other cultural and aesthetic projects.

(7) The amount of 2.9% must be credited to the oil, gas, and coal natural resource account established in 90-6-1001.

(8) After the allocations are made under subsections (2) through (7), $250,000 for the fiscal year must be credited to the coal and uranium mine permitting and reclamation program account established in 82-4-244.

(9) (a) Subject to subsection (9)(b), all other revenue from severance taxes collected under the provisions of this chapter must be credited to the general fund of the state.

(b) The interest income from $140 million of the coal severance tax permanent fund that is deposited in the general fund is statutorily appropriated, as provided in 17-7-502, on an annual basis as follows:

(i) $65,000 to the cooperative development center;

(ii) $1.25 million for the growth through agriculture program provided for in Title 90, chapter 9;

(iii) $3.65 million to the research and commercialization state special revenue account created in 90-3-1002;

(iv) to the department of commerce:

(A) $125,000 for a small business development center;

(B) $50,000 for a small business innovative research program;

(C) $425,000 for certified regional development corporations;

(D) $200,000 for the Montana manufacturing extension center at Montana state university-Bozeman; and

(E) $300,000 for export trade enhancement. (Terminates June 30, 2010—sec. 6, Ch. 481, L. 2003.)

15-35-108. (Effective July 1, 2010) **Disposal of severance taxes.** Severance taxes collected under this chapter must, in accordance with the provisions of 17-2-124, be allocated as follows:

(1) Fifty percent of total coal severance tax collections is allocated to the trust fund created by Article IX, section 5, of the Montana constitution. The trust fund money must be deposited in the fund established under 17-6-203(6) and invested by the board of investments as provided by law.

(2) The amount of 12% of coal severance tax collections is allocated to the long-range building program account established in 17-7-205.

(3) The amount of 5.46% must be credited to an account in the state special revenue fund to be allocated by the legislature for provision of basic library services for the residents of all counties through library federations and for payment of the costs of participating in regional and national networking, conservation districts, ~~and~~ the Montana Growth Through Agriculture Act. Expenditures of the allocation may be made only from this account. Money may not be transferred from this account to another account other than the general fund. ~~Any~~ *Beginning July 1, 2012, any* unreserved fund balance at the end of each fiscal year must be deposited in the general fund.

(4) The amount of 1.27% must be allocated to a permanent fund account for the purpose of parks acquisition or management. Income from this permanent fund account, excluding unrealized gains and losses, must be appropriated for the acquisition, development, operation, and maintenance of any sites and areas described in 23-1-102.

(5) The amount of 0.95% must be allocated to the debt service fund type to the credit of the renewable resource loan debt service fund.

(6) The amount of 0.63% must be allocated to a trust fund for the purpose of protection of works of art in the capitol and for other cultural and aesthetic projects. Income from this trust fund account, excluding unrealized gains and losses, must be appropriated for protection of works of art in the state capitol and for other cultural and aesthetic projects.

(7) The amount of 2.9% must be credited to the oil, gas, and coal natural resource account established in 90-6-1001.

(8) After the allocations are made under subsections (2) through (7), $250,000 for the fiscal year must be credited to the coal and uranium mine permitting and reclamation program account established in 82-4-244.

(9) All other revenue from severance taxes collected under the provisions of this chapter must be credited to the general fund of the state."

Section 8. Section 15-38-301, MCA, is amended to read:

"15-38-301. Natural resources operations state special revenue account created — revenue allocated — appropriations from account. (1) There is a natural resources operations state special revenue account within the state special revenue fund established in 17-2-102.

(2) Except to the extent required to be credited to the renewable resource loan debt service fund pursuant to 85-1-603, there must be paid into the natural resources operations state special revenue account:

(a) the interest income of the resource indemnity trust fund as provided in and subject to the conditions of 15-38-202;

(b) the metal mines license tax proceeds as provided in 15-37-117(1)(d);

(c) the oil and natural gas production tax as provided in 15-36-331; ~~and~~

(d) any fees or charges collected by the department pursuant to 85-1-616 for the servicing of loans, including arrangements for obtaining security interests*; and*

(e) fund transfers by the legislature.

(3) Appropriations may be made from the natural resources operations state special revenue account for administrative expenses, including salaries and expenses for personnel and equipment, office space, and other expenses necessarily incurred in the administration of natural resources operations."

Section 9. Section 16-11-119, MCA, is amended to read:

"16-11-119. Disposition of taxes. (1) Cigarette taxes collected under the provisions of 16-11-111 must, in accordance with the provisions of 17-2-124, be deposited as follows:

(a) 8.3% or $2 million, whichever is greater, in *an account in* the state special revenue fund to the credit of the department of public health and human services for the operation and maintenance of state veterans' nursing homes~~;~~*. The department of public health and human services may not expend more money from the account than is appropriated by the legislature. Subject to subsection (2) of this section, the department may not transfer funds in the account or expenditure authority related to the account pursuant to 17-7-139, 17-7-301, or 17-8-101.*

(b) 2.6% in the long-range building program account provided for in 17-7-205;

(c) 44% in the ~~state special revenue fund to the credit of the~~ health and medicaid initiatives account provided for in 53-6-1201; and

(d) the remainder to the state general fund.

(2) If money in the state special revenue ~~fund~~ *account* for the operation and maintenance of state veterans' nursing homes exceeds $2 million at the end of the fiscal year, the excess must be transferred to the state general fund.

(3) The taxes collected on tobacco products, other than cigarettes, must in accordance with the provisions of 17-2-124 be deposited as follows:

(a) one-half in the state general fund; and

(b) one-half in the state special revenue fund account for health and medicaid initiatives provided for in 53-6-1201."

Section 10. Section 17-6-606, MCA, is amended to read:

"17-6-606. Tobacco settlement accounts — purpose — uses. (1) The purpose of this section is to dedicate a portion of the tobacco settlement proceeds to fund statewide programs for tobacco disease prevention designed to:

(a) discourage children from starting use of tobacco;

(b) assist adults in quitting use of tobacco;

(c) provide funds for the ~~children's health insurance program~~ *healthy Montana kids plan provided for in Title 53, chapter 4, part 11*; and

(d) provide funds for the comprehensive health association programs.

(2) An amount equal to 32% of the total yearly tobacco settlement proceeds received after June 30, 2003, must be deposited in a state special revenue account. Subject to subsection (5), the funds referred to in this subsection may be used only for funding statewide programs for tobacco disease prevention designed to prevent children from starting tobacco use and to help adults who want to quit tobacco use. The department of public health and human services shall manage the tobacco disease prevention programs and shall adopt rules to implement the programs. In adopting rules, the department shall consider the standards contained in Best Practices for Comprehensive Tobacco Control Programs—August 1999 or its successor document, published by the U.S. department of health and human services, centers for disease control and prevention.

(3) An amount equal to 17% of the total yearly tobacco settlement proceeds received after June 30, 2003, must be deposited in a state special revenue account. Subject to subsection (5), the funds referred to in this subsection may be used only for:

(a) matching funds to secure the maximum amount of federal funds for the ~~Children's Health Insurance Program Act~~ *healthy Montana kids plan* provided for in Title 53, chapter 4, part ~~10~~ *11*; and

(b) programs of the comprehensive health association provided for in Title 33, chapter 22, part 15, with funding use subject to 33-22-1513.

(4) Funds deposited in a state special revenue account, as provided in subsection (2) or (3), that are not appropriated within 2 years after the date of deposit must be transferred to the trust fund.

(5) The legislature shall appropriate money from the state special revenue accounts provided for in this section for programs for tobacco disease prevention, for the programs referred to in the subsection establishing the account, and for funding the tobacco prevention advisory board.

(6) Programs funded under this section that are private in nature may be funded through contracted services."

Section 11. Section 17-7-102, MCA, is amended to read:

"17-7-102. (Temporary) **Definitions.** As used in this chapter, the following definitions apply:

(1) "Additional services" means different services or more of the same services.

(2) "Agency" means all offices, departments, boards, commissions, institutions, universities, colleges, and any other person or any other administrative unit of state government that spends or encumbers public money by virtue of an appropriation from the legislature under 17-8-101.

(3) "Approving authority" means:

(a) the governor or the governor's designated representative for executive branch agencies;

(b) the chief justice of the supreme court or the chief justice's designated representative for judicial branch agencies;

(c) the speaker for the house of representatives;

(d) the president for the senate;

(e) appropriate legislative committees or a designated representative for legislative branch agencies; or

(f) the board of regents of higher education or its designated representative for the university system.

(4) (a) "Base budget" means the resources for the operation of state government that are of an ongoing and nonextraordinary nature in the current biennium. The base budget for the state general fund and state special revenue funds may not exceed that level of funding authorized by the previous legislature.

(b) The term does not include funding for water adjudication if the accountability benchmarks contained in 85-2-271 are not met.

(5) "Budget amendment" means a temporary appropriation as provided in Title 17, chapter 7, part 4.

(6) "Emergency" means a catastrophe, disaster, calamity, or other serious unforeseen and unanticipated circumstance that has occurred subsequent to the time that an agency's appropriation was made, that was clearly not within the contemplation of the legislature and the governor, and that affects one or more functions of a state agency and the agency's expenditure requirements for the performance of the function or functions.

(7) "Funds subject to appropriation" means those funds required to be paid out of the treasury as set forth in 17-8-101.

(8) "Necessary" means essential to the public welfare and of a nature that cannot wait until the next legislative session for legislative consideration.

(9) "New proposals" means requests to provide new nonmandated services, to change program services, to eliminate existing services, or to change sources of funding. For purposes of establishing the present law base, the distinction between new proposals and the adjustments to the base budget to develop the present law base is to be determined by the existence of constitutional or statutory requirements for the proposed expenditure. Any proposed increase or decrease that is not based on those requirements is considered a new proposal.

(10) *(a)* "Present law base" means*, subject to subsection (10)(b),* that level of funding needed under present law to maintain operations and services at the level authorized by the previous legislature, including but not limited to:

~~(a)~~*(i)* changes resulting from legally mandated workload, caseload, or enrollment increases or decreases;

~~(b)~~*(ii)* changes in funding requirements resulting from constitutional or statutory schedules or formulas;

~~(c)~~*(iii)* inflationary or deflationary adjustments; and

~~(d)~~*(iv)* elimination of nonrecurring appropriations.

(b) For the budget for the 2011 legislative session, present law base must be adjusted by reducing general fund budgets by the equivalent of that portion of the 2% across-the-board reduction assessed by the 61st legislature on selected agencies that was allocated by those agencies to personal services in the 2011 biennium. The director of the governor's office of budget and program planning and the legislative fiscal analyst shall agree on a mechanism for determining how agencies have allocated this reduction.

(11) "Program" means a principal organizational or budgetary unit within an agency.

(12) "Requesting agency" means the agency of state government that has requested a specific budget amendment.

(13) "University system unit" means the board of regents of higher education; office of the commissioner of higher education; university of Montana, with campuses at Missoula, Butte, Dillon, and Helena; Montana state university, with campuses at Bozeman, Billings, Havre, and Great Falls; the agricultural experiment station, with central offices at Bozeman; the forest and conservation experiment station, with central offices at Missoula; the cooperative extension service, with central offices at Bozeman; the bureau of mines and geology, with central offices at Butte; the fire services training school at Great Falls; and the community colleges at Miles City, Glendive, and Kalispell. (Terminates June 30, 2020—sec. 11, Ch. 319, L. 2007.)

17-7-102. (Effective July 1, 2020) **Definitions.** As used in this chapter, the following definitions apply:

(1) "Additional services" means different services or more of the same services.

(2) "Agency" means all offices, departments, boards, commissions, institutions, universities, colleges, and any other person or any other administrative unit of state government that spends or encumbers public money by virtue of an appropriation from the legislature under 17-8-101.

(3) "Approving authority" means:

(a) the governor or the governor's designated representative for executive branch agencies;

(b) the chief justice of the supreme court or the chief justice's designated representative for judicial branch agencies;

(c) the speaker for the house of representatives;

(d) the president for the senate;

(e) appropriate legislative committees or a designated representative for legislative branch agencies; or

(f) the board of regents of higher education or its designated representative for the university system.

(4) "Base budget" means the resources for the operation of state government that are of an ongoing and nonextraordinary nature in the current biennium. The base budget for the state general fund and state special revenue funds may not exceed that level of funding authorized by the previous legislature.

(5) "Budget amendment" means a temporary appropriation as provided in Title 17, chapter 7, part 4.

(6) "Emergency" means a catastrophe, disaster, calamity, or other serious unforeseen and unanticipated circumstance that has occurred subsequent to the time that an agency's appropriation was made, that was clearly not within the contemplation of the legislature and the governor, and that affects one or more functions of a state agency and the agency's expenditure requirements for the performance of the function or functions.

(7) "Funds subject to appropriation" means those funds required to be paid out of the treasury as set forth in 17-8-101.

(8) "Necessary" means essential to the public welfare and of a nature that cannot wait until the next legislative session for legislative consideration.

(9) "New proposals" means requests to provide new nonmandated services, to change program services, to eliminate existing services, or to change sources of funding. For purposes of establishing the present law base, the distinction between new proposals and the adjustments to the base budget to develop the present law base is to be determined by the existence of constitutional or statutory requirements for the proposed expenditure. Any proposed increase or decrease that is not based on those requirements is considered a new proposal.

(10) "Present law base" means that level of funding needed under present law to maintain operations and services at the level authorized by the previous legislature, including but not limited to:

(a) changes resulting from legally mandated workload, caseload, or enrollment increases or decreases;

(b) changes in funding requirements resulting from constitutional or statutory schedules or formulas;

(c) inflationary or deflationary adjustments; and

(d) elimination of nonrecurring appropriations.

(11) "Program" means a principal organizational or budgetary unit within an agency.

(12) "Requesting agency" means the agency of state government that has requested a specific budget amendment.

(13) "University system unit" means the board of regents of higher education; office of the commissioner of higher education; university of Montana, with campuses at Missoula, Butte, Dillon, and Helena; Montana state university, with campuses at Bozeman, Billings, Havre, and Great Falls; the agricultural experiment station, with central offices at Bozeman; the forest and conservation experiment station, with central offices at Missoula; the cooperative extension service, with central offices at Bozeman; the bureau of mines and geology, with central offices at Butte; the fire services training school at Great Falls; and the community colleges at Miles City, Glendive, and Kalispell."

Section 12. Section 17-7-111, MCA, is amended to read:

"17-7-111. Preparation of state budget — agency program budgets — form distribution and contents. (1) (a) To prepare a state budget, the executive branch, the legislature, and the citizens of the state need information that is consistent and accurate. Necessary information includes detailed disbursements by fund type for each agency and program for the appropriate time period, recommendations for creating a balanced budget, and recommended disbursements and estimated receipts by fund type and fund category.

(b) Subject to the requirements of this chapter, the budget director and the legislative fiscal analyst shall by agreement:

(i) establish necessary standards, formats, and other matters necessary to share information between the agencies and to ensure that information is consistent and accurate for the preparation of the state's budget; and

(ii) provide for the collection and provision of budgetary and financial information that is in addition to or different from the information otherwise required to be provided pursuant to this section.

(2) In the preparation of a state budget, the budget director shall, not later than the date specified in 17-7-112(1), distribute to all agencies the proper forms

and instructions necessary for the preparation of budget estimates by the budget director. These forms must be prescribed by the budget director to procure the information required by subsection (3). The forms must be submitted to the budget director by the date provided in 17-7-112(2)(a) or the agency's budget is subject to preparation based upon estimates as provided in 17-7-112(5). The budget director may refuse to accept forms that do not comply with the provisions of this section or the instructions given for completing the forms.

(3) ~~The~~ *Subject to subsections (7) and (8), the* agency budget request must set forth a balanced financial plan for the agency completing the forms for each fiscal year of the ensuing biennium. The plan must consist of:

(a) a consolidated agency budget summary of funds subject to appropriation or enterprise funds that transfer profits to the general fund or to an account subject to appropriation for the current base budget expenditures, including statutory appropriations, and for each present law adjustment and new proposal request setting forth the aggregate figures of the full-time equivalent personnel positions (FTE) and the budget, showing a balance between the total proposed disbursements and the total anticipated receipts, together with the other means of financing the budget for each fiscal year of the ensuing biennium, contrasted with the corresponding figures for the last-completed fiscal year and the fiscal year in progress;

(b) a schedule of the actual and projected receipts, disbursements, and solvency of each fund for the current biennium and estimated for the subsequent biennium;

(c) a statement of the agency mission and a statement of goals and objectives for each program of the agency. The goals and objectives must include, in a concise form, sufficient specific information and quantifiable information to enable the legislature to formulate an appropriations policy regarding the agency and its programs and to allow a determination, at some future date, on whether the agency has succeeded in attaining its goals and objectives.

(d) actual FTE and disbursements for the completed fiscal year of the current biennium, estimated FTE and disbursements for the current fiscal year, and the agency's request for the ensuing biennium, by program;

(e) actual disbursements for the completed fiscal year of the current biennium, estimated disbursements for the current fiscal year, and the agency's recommendations for the ensuing biennium, by disbursement category;

(f) for only agencies with more than 20 FTE, a plan to reduce the proposed base budget for the general appropriations act and the proposed state pay plan to 95% of the current base budget or lower if directed by the budget director. Each agency plan must include base budget reductions that reflect the required percentage reduction by fund type for the general fund and state special revenue fund types. Exempt from the calculations of the 5% target amounts are legislative audit costs, administratively attached entities that hire their own staff under 2-15-121, and state special revenue accounts that do not transfer their investment earnings or fund balances to the general fund. The plan must include:

(i) a prioritized list of services that would be eliminated or reduced;

(ii) for each service included in the prioritized list, the savings that would result from the elimination or reduction; and

(iii) the consequences or impacts of the proposed elimination or reduction of each service.

(g) a reference for each new information technology proposal stating whether the new proposal is included in the approved agency information technology plan as required in 2-17-523; and

(h) other information the budget director feels is necessary for the preparation of a budget.

(4) The budget director shall prepare and submit to the legislative fiscal analyst in accordance with 17-7-112:

(a) detailed recommendations for the state long-range building program. Each recommendation must be presented by institution, agency, or branch, by funding source, with a description of each proposed project.

(b) a statewide project budget summary as provided in 2-17-526;

(c) the proposed pay plan schedule for all executive branch employees at the program level by fund, with the specific cost and funding recommendations for each agency. Submission of a pay plan schedule under this subsection is not an unfair labor practice under 39-31-401.

(d) agency proposals for the use of cultural and aesthetic project grants under Title 22, chapter 2, part 3, the renewable resource grant and loan program under Title 85, chapter 1, part 6, the reclamation and development grants program under Title 90, chapter 2, part 11, and the treasure state endowment program under Title 90, chapter 6, part 7.

(5) The board of regents shall submit, with its budget request for each university unit in accordance with 17-7-112, a report on the university system bonded indebtedness and related finances as provided in this subsection (5). The report must include the following information for each year of the biennium, contrasted with the same information for the last-completed fiscal year and the fiscal year in progress:

(a) a schedule of estimated total bonded indebtedness for each university unit by bond indenture;

(b) a schedule of estimated revenue, expenditures, and fund balances by fiscal year for each outstanding bond indenture, clearly delineating the accounts relating to each indenture and the minimum legal funding requirements for each bond indenture; and

(c) a schedule showing the total funds available from each bond indenture and its associated accounts, with a list of commitments and planned expenditures from such accounts, itemized by revenue source and project for each year of the current and ensuing bienniums.

(6) (a) The department of revenue shall make Montana individual income tax information available by removing names, addresses, and social security numbers and substituting in their place a state accounting record identifier number. Except for the purposes of complying with federal law, the department may not alter the data in any other way.

(b) The department of revenue shall provide the name and address of a taxpayer on written request of the budget director when the values on the requested return, including estimated payments, are considered necessary by the budget director to properly analyze state revenue and are of a sufficient magnitude to materially affect the analysis and when the identity of the taxpayer is necessary to evaluate the effect of the return or payments on the analysis being performed.

(7) (a) The department of public health and human services' budget request for the 2013 biennium must identify changes necessary to reduce the 2013

biennium expenditures to the level funded in the general appropriations act. The department may include changes such as reducing administrative costs, developing more cost-efficient methods to deliver services, limiting the number of medicaid services that adults may receive, changing medicaid services included in the Montana medicaid state plan, changing eligibility or level-of-care requirements for medicaid waiver services, limiting or changing services that are fully state-funded, or implementing other initiatives that reduce state funds. Achieving the necessary general fund reduction in the 2013 biennium budget request may not include shifting costs to state special revenue funds.

(b) The department of public health and human services shall prepare a work plan with goals, milestones, and measures to guide its review of alternatives to identify, evaluate, and select initiatives to reduce ongoing state spending in its 2013 biennium budget submission. The department shall submit the work plan, goals, milestones, and measures to the legislative finance committee at its first meeting after the adjournment of the 2009 legislative session for its review and comment. The department shall provide an update of its budget reduction for review and comment at each legislative finance committee meeting in a format developed with and agreed upon by the committee.

(8) Each agency budget request for the 2013 biennium must include the adjustments to present law base specified in 17-7-102(10)(b)."

Section 13. Section 17-7-304, MCA, is amended to read:

"17-7-304. Disposal of unexpended appropriations. (1) All money appropriated for any specific purpose except that appropriated for the university system units listed in subsection (2) ~~[or state money appropriated for the state children's health insurance program provided for in Title 53, chapter 4, part 10,]~~ and except as provided in subsection (4) must, after the expiration of the time for which appropriated, revert to the several funds and accounts from which originally appropriated. However, any unexpended balance in any specific appropriation may be used for the years for which the appropriation was made or may be used to fund the provisions of 2-18-1203 through 2-18-1205 and 19-2-706 in the succeeding year.

(2) Except as provided in 17-2-108 and subsection (3) of this section, all money appropriated for the university of Montana campuses at Missoula, Butte, Dillon, and Helena and the Montana state university campuses at Bozeman, Billings, Havre, and Great Falls, the agricultural experiment station with central offices at Bozeman, the forest and conservation experiment station with central offices at Missoula, the cooperative extension service with central offices at Bozeman, and the bureau of mines and geology with central offices in Butte must, after the expiration of the time for which appropriated, revert to an account held by the board of regents. The board of regents is authorized to maintain a fund balance. There is a statutory appropriation, as provided in 17-7-502, to use the funds held in this account in accordance with a long-term plan for major and deferred maintenance expenditures and equipment or fixed assets purchases prepared by the affected university system units and approved by the board of regents. The affected university system units may, with the approval of the board of regents, modify the long-term plan at any time to address changing needs and priorities. The board of regents shall communicate the plan to each legislature, to the finance committee when requested by the committee, and to the office of budget and program planning.

(3) Subsection (2) does not apply to reversions that are the result of a reduction in spending directed by the governor pursuant to 17-7-140. Any

amount that is a result of a reduction in spending directed by the governor must revert to the fund or account from which it was originally appropriated.

(4) (a) Subject to subsection (4)(b), after the end of a fiscal year, 30% of the money appropriated to an agency for that year by the general appropriations act for personal services, operating expenses, and equipment, by fund type, and remaining unexpended and unencumbered at the end of the year may be reappropriated to be spent during the following 2 years for any purpose that is consistent with the goals and objectives of the agency. The dollar amount of the 30% amount that may be carried forward and spent must be determined by the office of budget and program planning.

(b) (i) Any portion of the 30% of the unexpended and unencumbered money referred to in subsection (4)(a) that was appropriated to a legislative branch entity may be deposited in the account established in 5-11-407.

(ii) After the end of a biennium, any portion of the unexpended and unencumbered money appropriated for the operation of the preceding legislature in a separate appropriation act may be deposited in the account established in 5-11-407. The approving authority shall determine the portion of the unexpended and unencumbered money that is deposited in the account. ~~(Bracketed language terminates on occurrence of contingency—sec. 7, Ch. 565, L. 2005.)~~"

Section 14. Section 20-9-306, MCA, is amended to read:

"20-9-306. Definitions. As used in this title, unless the context clearly indicates otherwise, the following definitions apply:

(1) "BASE" means base amount for school equity.

(2) "BASE aid" means:

(a) direct state aid for 44.7% of the basic entitlement and 44.7% of the total per-ANB entitlement for the general fund budget of a district;

(b) guaranteed tax base aid for an eligible district for any amount up to 35.3% of the basic entitlement, up to 35.3% of the total per-ANB entitlement budgeted in the general fund budget of a district, and 40% of the special education allowable cost payment;

(c) the total quality educator payment;

(d) the total at-risk student payment;

(e) the total Indian education for all payment; and

(f) the total American Indian achievement gap payment.

(3) "BASE budget" means the minimum general fund budget of a district, which includes 80% of the basic entitlement, 80% of the total per-ANB entitlement, 100% of the total quality educator payment, 100% of the total at-risk student payment, 100% of the total Indian education for all payment, 100% of the total American Indian achievement gap payment, and 140% of the special education allowable cost payment.

(4) "BASE budget levy" means the district levy in support of the BASE budget of a district, which may be supplemented by guaranteed tax base aid if the district is eligible under the provisions of 20-9-366 through 20-9-369.

(5) "BASE funding program" means the state program for the equitable distribution of the state's share of the cost of Montana's basic system of public elementary schools and high schools, through county equalization aid as provided in 20-9-331 and 20-9-333 and state equalization aid as provided in

20-9-343, in support of the BASE budgets of districts and special education allowable cost payments as provided in 20-9-321.

(6) "Basic entitlement" means:

(a) for each high school district:

(i) ~~$236,552~~ *$246,085* for fiscal year ~~2008~~ *2010*; and

(ii) ~~$243,649~~ *$253,468* for each succeeding fiscal year;

(b) for each elementary school district or K-12 district elementary program without an approved and accredited junior high school, 7th and 8th grade program, or middle school:

(i) ~~$21,290~~ *$22,141* for fiscal year ~~2008~~ *2010*;

(ii) ~~$21,922~~ *$22,805* for each succeeding fiscal year; and

(c) for each elementary school district or K-12 district elementary program with an approved and accredited junior high school, 7th and 8th grade program, or middle school:

(i) for kindergarten through grade 6 elementary program:

(A) ~~$21,290~~ *$22,141* for fiscal year ~~2008~~ *2010*; and

(B) ~~$21,922~~ *$22,805* for each succeeding fiscal year; plus

(ii) for an approved and accredited junior high school program, 7th and 8th grade program, or middle school:

(A) ~~$60,275~~ *$62,704* for fiscal year ~~2008~~ *2010*; and

(B) ~~$62,083~~ *$64,585* for each succeeding fiscal year.

(7) "Budget unit" means the unit for which the ANB of a district is calculated separately pursuant to 20-9-311.

(8) "Direct state aid" means 44.7% of the basic entitlement and 44.7% of the total per-ANB entitlement for the general fund budget of a district and funded with state and county equalization aid.

(9) "Maximum general fund budget" means a district's general fund budget amount calculated from the basic entitlement for the district, the total per-ANB entitlement for the district, the total quality educator payment, the total at-risk student payment, the total Indian education for all payment, the total American Indian achievement gap payment, and the greater of:

(a) 175% of special education allowable cost payments; or

(b) the ratio, expressed as a percentage, of the district's special education allowable cost expenditures to the district's special education allowable cost payment for the fiscal year that is 2 years previous, with a maximum allowable ratio of 200%.

(10) "Over-BASE budget levy" means the district levy in support of any general fund amount budgeted that is above the BASE budget and below the maximum general fund budget for a district.

(11) "Total American Indian achievement gap payment" means the payment resulting from multiplying $200 times the number of American Indian students enrolled in the district as provided in 20-9-330.

(12) "Total at-risk student payment" means the payment resulting from the distribution of any funds appropriated for the purposes of 20-9-328.

(13) "Total Indian education for all payment" means the payment resulting from multiplying $20.40 times the ANB of the district or $100 for each district, whichever is greater, as provided for in 20-9-329.

(14) "Total per-ANB entitlement" means the district entitlement resulting from the following calculations and using either the current year ANB or the 3-year ANB provided for in 20-9-311:

(a) for a high school district or a K-12 district high school program, a maximum rate of ~~$5,861~~ *$6,097* for fiscal year ~~2008~~ *2010* and ~~$6,037~~ *$6,280* for each succeeding fiscal year for the first ANB, decreased at the rate of 50 cents per ANB for each additional ANB of the district up through 800 ANB, with each ANB in excess of 800 receiving the same amount of entitlement as the 800th ANB;

(b) for an elementary school district or a K-12 district elementary program without an approved and accredited junior high school, 7th and 8th grade program, or middle school, a maximum rate of ~~$4,579~~ *$4,763* for fiscal year ~~2008~~ *2010* and ~~$4,716~~ *$4,906* for each succeeding fiscal year for the first ANB, decreased at the rate of 20 cents per ANB for each additional ANB of the district up through 1,000 ANB, with each ANB in excess of 1,000 receiving the same amount of entitlement as the 1,000th ANB; and

(c) for an elementary school district or a K-12 district elementary program with an approved and accredited junior high school, 7th and 8th grade program, or middle school, the sum of:

(i) a maximum rate of ~~$4,579~~ *$4,763* for fiscal year ~~2008~~ *2010* and ~~$4,716~~ *$4,906* for each succeeding fiscal year for the first ANB for kindergarten through grade 6, decreased at the rate of 20 cents per ANB for each additional ANB up through 1,000 ANB, with each ANB in excess of 1,000 receiving the same amount of entitlement as the 1,000th ANB; and

(ii) a maximum rate of ~~$5,861~~ *$6,097* for fiscal year ~~2008~~ *2010* and ~~$6,037~~ *$6,280* for each succeeding fiscal year for the first ANB for grades 7 and 8, decreased at the rate of 50 cents per ANB for each additional ANB for grades 7 and 8 up through 800 ANB, with each ANB in excess of 800 receiving the same amount of entitlement as the 800th ANB.

(15) "Total quality educator payment" means the payment resulting from multiplying $3,036 for fiscal year 2008 and $3,042 for each succeeding fiscal year times the number of full-time equivalent educators as provided in 20-9-327."

Section 15. Section 33-2-708, MCA, is amended to read:

"33-2-708. Fees and licenses. (1) (a) Except as provided in 33-17-212(2), the commissioner shall collect a fee of $1,900 from each insurer applying for or annually renewing a certificate of authority to conduct the business of insurance in Montana.

(b) The commissioner shall collect certain additional fees as follows:

(i) nonresident insurance producer's license:

(A) application for original license, including issuance of license, if issued, $100;

(B) biennial renewal of license, $50;

(C) lapsed license reinstatement fee, $100;

(ii) resident insurance producer's license lapsed license reinstatement fee, $100;

(iii) surplus lines insurance producer's license:

(A) application for original license and for issuance of license, if issued, $50;

(B) biennial renewal of license, $100;

(C) lapsed license reinstatement fee, $200;

(iv) insurance adjuster's license:

(A) application for original license, including issuance of license, if issued, $50;

(B) biennial renewal of license, $100;

(C) lapsed license reinstatement fee, $200;

(v) insurance consultant's license:

(A) application for original license, including issuance of license, if issued, $50;

(B) biennial renewal of license, $100;

(C) lapsed license reinstatement fee, $200;

(vi) viatical settlement broker's license:

(A) application for original license, including issuance of license, if issued, $50;

(B) biennial renewal of license, $100;

(C) lapsed license reinstatement fee, $200;

(vii) resident and nonresident rental car entity producer's license:

(A) application for original license, including issuance of license, if issued, $100;

(B) quarterly filing fee, $25;

(viii) an original notification fee for a life insurance producer acting as a viatical settlement broker, in accordance with 33-20-1303(2)(b), $50;

(ix) 50 cents for each page for copies of documents on file in the commissioner's office.

(c) The commissioner may adopt rules to determine the date by which a nonresident insurance producer, a surplus lines insurance producer, an insurance adjuster, or an insurance consultant is required to pay the fee for the biennial renewal of a license.

(2) (a) The commissioner shall charge a fee of $75 for each course or program submitted for review as required by 33-17-1204 and 33-17-1205, but may not charge more than $1,500 to a sponsoring organization submitting courses or programs for review in any biennium.

(b) Insurers and associations composed of members of the insurance industry are exempt from the charge in subsection (2)(a).

(3) (a) ~~Except as provided in subsection (3)(b), the~~ *Except as provided in subsection (3)(b), the* commissioner shall promptly deposit with the state treasurer to the credit of the general fund all fines and penalties and those amounts received pursuant to 33-2-311, 33-2-705, 33-28-201, and 50-3-109.

~~(b) The commissioner shall deposit 33% of the money collected under 33-2-705 in the special revenue account provided for in 53-4-1115.~~

(b) The commissioner shall deposit 16.67% of the money collected under 33-2-705 in the special revenue account provided for in 53-4-1115.

~~(c)~~*(c)* All other fees collected by the commissioner pursuant to Title 33 and the rules adopted under Title 33 must be deposited in the state special revenue fund to the credit of the state auditor's office.

(4) All fees are considered fully earned when received. In the event of overpayment, only those amounts in excess of $10 will be refunded."

Section 16. Section 47-1-201, MCA, is amended to read:

"47-1-201. Office of state public defender — personnel — compensation — expenses — *reports.* (1) There is an office of state public defender. The office must be located in Butte, Montana. The head of the office is the chief public defender, who is supervised by the commission.

(2) The chief public defender must be an attorney licensed to practice law in the state. The chief public defender is appointed by and serves at the pleasure of the commission. The position of chief public defender is exempt from the state classification and pay plan, as provided in 2-18-103. The commission shall establish compensation for the position commensurate with the position's duties and responsibilities, taking into account the compensation paid to prosecutors with similar responsibilities.

(3) The chief public defender shall hire or contract for and supervise other personnel necessary to perform the function of the office and to implement the provisions of this chapter, including but not limited to:

(a) the following personnel who are exempt from the state classification and pay plan, as provided in 2-18-103:

(i) an administrative director, who must be experienced in business management and contract management;

(ii) a chief appellate defender;

(iii) a chief contract manager to oversee and enforce the contracting program;

(iv) a training coordinator, appointed as provided in 47-1-210;

(v) deputy public defenders, as provided in 47-1-215; and

(b) assistant public defenders; and

(c) other necessary administrative and professional support staff for the office.

(4) Positions established pursuant to subsections (3)(b) and (3)(c) are classified positions, and persons in those positions are entitled to salaries, wages, benefits, and expenses as provided in Title 2, chapter 18.

(5) ~~Beginning July 1, 2006, the~~ *The* following expenses are payable by the office if the expense is incurred at the request of a public defender:

(a) witness and interpreter fees and expenses provided in Title 26, chapter 2, part 5, and 46-15-116; and

(b) transcript fees, as provided in 3-5-604.

(6) If the costs to be paid pursuant to this section are not paid directly, reimbursement must be made within 30 days of the receipt of a claim.

(7) The office may accept gifts, grants, or donations, which must be deposited in the account provided for in 47-1-110.

(8) The chief public defender shall establish procedures to provide for the approval, payment, recording, reporting, and management of defense expenses paid pursuant to this section.

(9) (a) The office of public defender is required to report data for each fiscal year representing the caseload for the entire public defender system to the legislative finance committee. The report must include data for both employee and contract attorneys, the number of new cases opened, the number of cases closed, the number of cases that remain open and active, the number of cases that remain open but are inactive, and the average number of days between case

opening and closure for each case type. The report for fiscal year 2009 must be provided to the legislative finance committee by January 1, 2010, and the report for fiscal year 2010 must be provided to the legislative finance committee by September 30, 2010.

(b) The office of public defender is required to report to the legislative finance committee for each fiscal year on the amount of funds collected as reimbursement for services rendered, including the number of cases for which a collection is made, the number of cases for which an amount is owed, the amount collected, and the amount remaining unpaid. The report for fiscal year 2009 must be provided to the legislative finance committee by January 1, 2010, and the report for fiscal year 2010 must be provided to the legislative finance committee by September 30, 2010."

Section 17. Section 53-4-212, MCA, is amended to read:

"53-4-212. Department to ~~make~~ *adopt* rules. (1) The department shall ~~make~~ *adopt* rules and take action as necessary or desirable for the administration of public assistance programs.

(2) ~~The~~ *Subject to subsection (3), the* department shall adopt rules that may include but are not limited to rules concerning:

(a) eligibility requirements, including gross and net income limitations, resource limitations, and income and resource exclusions;

(b) amounts of assistance, methods for computing benefit amounts, and the length of time for which benefits may be granted;

(c) the degree of kinship required for a person to qualify as a specified caretaker relative in order to be eligible for assistance;

(d) procedures and policies for employment and training programs, requirements for participation in employment and training programs, and exemptions, if any, from participation requirements;

(e) requirements for specified caretaker relatives, including cooperation with assessments, the number of hours of participation required for each month, specific activities required to address employment barriers, and other terms of performance;

(f) eligibility for and terms and conditions of child-care assistance for financial assistance recipients, including maximum amounts of assistance payable and amounts of copayments required by specified caretaker relatives;

(g) eligibility criteria and participation requirements for nonfinancial assistance recipients;

(h) terms of ineligibility or sanctions against a specified caretaker relative or other family member who fails to enter into a family investment agreement, as provided for in 53-4-606, or to comply with the individual's obligations under the agreement, including the length of the period of ineligibility, if any;

(i) requirements, if any, for participation in the employment and training demonstration project;

(j) eligibility for and terms and conditions of extended medical assistance benefits;

(k) reporting requirements;

(l) sanctions, disqualification, or other penalties for failure or refusal to comply with the rules or requirements of a public assistance program;

(m) exemptions from the 60-month limitation on assistance provided in 53-4-231 based on hardship or for families that include an individual who has

been battered or subjected to extreme cruelty, as defined in section 103 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 42 U.S.C. 608, including but not limited to the duration of the exemption;

(n) individuals who must be included as members of an assistance unit;

(o) categories of aliens who may receive assistance, if any;

(p) requirements relating to the assignment of child and medical support rights and cooperation in establishing paternity and obtaining child and medical support;

(q) requirements for eligibility and other terms and conditions of other programs to strengthen and preserve families;

(r) special eligibility or participation requirements applicable to teenage parents, if any;

(s) conditions under which assistance may be continued when an adult or a dependent child is temporarily absent from the home and the length of time for which assistance may be continued;

(t) any random drug testing or reporting requirements for persons who are required to comply with the conditions provided under 53-4-231(3) and graduated sanctions that may include terms of ineligibility for violations of conditions of supervision or treatment requirements. The department may enter into agreements with the department of corrections regarding testing and reporting on offenders under the supervision of the department of corrections.

(u) approved educational programs, appropriate educational courses of study, employee assessment instruments, and administration of the Montana parents as scholars program provided for in 53-4-209.

(3) By October 1, 2009, the department shall adopt rules establishing a net income limit of 250% of the current federal poverty level for federal funds or state general fund money used for participating families in the child care for working caretaker relatives program. The department may incorporate an earned income work disregard of $200 and an additional 25% disregard from the household's gross income to determine the household's net income."

Section 18. Section 53-4-1005, MCA, is amended to read:

"53-4-1005. (Temporary) **Benefits provided.** (1) Benefits provided to participants in the program may include but are not limited to:

(a) inpatient and outpatient hospital services;

(b) physician and advanced practice registered nurse services;

(c) laboratory and x-ray services;

(d) well-child and well-baby services;

(e) immunizations;

(f) clinic services;

(g) dental services;

(h) prescription drugs;

(i) mental health and substance abuse treatment services;

(j) hearing and vision exams; and

(k) eyeglasses.

(2) The department shall adopt rules, pursuant to its authority under 53-4-1009, allowing it to cover significant dental needs beyond those covered in the basic plan. Expenditures under this subsection may not exceed $100,000 in state funds, plus any matched federal funds, each fiscal year.

~~(3) The department is specifically prohibited from providing payment for birth control contraceptives under this program.~~

(3) The department is specifically prohibited from providing payment for birth control contraceptives under this program.

(4) The department shall notify enrollees of any restrictions on access to health care providers, of any restrictions on the availability of services by out-of-state providers, and of the methodology for an out-of-state provider to be an eligible provider. (Terminates on occurrence of contingency—sec. 15, Ch. 571, L. 1999; sec. 3, Ch. 169, L. 2007.)"

Section 19. Section 53-4-1007, MCA, is amended to read:

"53-4-1007. (Temporary) **Department may contract for services.** (1) The department of public health and human services may administer the program directly or contract with insurance companies or other entities to provide services for a set monthly or yearly fee based on the number of participants in the program and the types of services provided or based on a fee for service as established by the department.

(2) The department of public health and human services may contract for a health care service based on a fee for service when the department does not contract for a health care service through an insurance plan, a health maintenance organization, or a managed care plan. *A contract entered into or renewed on or after [the effective date of this act] may not limit enrollee access to providers who are willing to provide services at the rates provided for under the program.* In operating the program and providing health services, the department may:

(a) pay providers on a fee-for-service basis in a self-funded program and contract with an insurance company, third-party administrator, or other entity to provide administrative services, including but not limited to processing and payment of claims with program funds;

(b) purchase health coverage for eligible children from an insurance company or other entity through premiums, capitated payments, or other appropriate methods;

(c) purchase health coverage as provided in subsection (2)(b) for some types of health services and contract directly with providers for other types of health services on a fee-for-service basis; or

(d) pay providers on a fee-for-service basis and directly provide administrative services in a self-funded program.

(3) If the department of public health and human services contracts with an insurance company or other entity to administer the program as provided in subsection (2)(b) or (2)(c), not more than 12% of the contract payment may be used for administrative expenses, including:

(a) direct and indirect expenses as specified in 33-22-1514;

(b) risk charges; and

(c) any applicable assessments, fees, and taxes.

(4) If the department operates the program by providing administrative services under subsection (2)(a), (2)(c), or (2)(d), the department's administrative expense may not exceed the lesser of 10% of total program expenses or the applicable federal limitation, excluding costs for federally required audits.

(5) (a) An insurance company or other entity that contracts with the department for a fully insured contract as provided in subsection (2)(b) shall

calculate the surplus account balance at the end of each contract year and may retain an amount equal to 50% of the risk charge allowed under the contract. The remainder of the surplus balance must be deposited in the state special revenue account provided for in 53-4-1012.

(b) For the purposes of this subsection (5):

(i) "risk charge" means the percentage of the administrative expense allowed in the contract for assuming the risk;

(ii) "surplus account balance" means funds that remain after all claims and all administrative expenses have been paid for a claim period. (Terminates on occurrence of contingency—sec. 15, Ch. 571, L. 1999; sec. 7, Ch. 565, L. 2005; sec. 5, Ch. 129, L. 2007.)"

Section 20. Section 53-4-1012, MCA, is amended to read:

"53-4-1012. (Temporary) **State special revenue account.** (1) There is an account in the state special revenue fund to the credit of the state children's health insurance program administered by the department of public health and human services. Any interest or income derived from the account must be deposited in the account.

(2) Money deposited in this account must be used by the department to cover ~~additional~~ children, ~~to expand eligibility within the limits provided in 53-4-1004,~~ to reduce or maintain premiums, to pay health care claims, or to establish and maintain a reserve.

~~(3) The department shall transfer the unexpended balance of an appropriation into the account provided for in subsection (1) at the expiration of the appropriation to be used for the purposes stated in subsection (2).~~ (Terminates on occurrence of contingency—sec. 7, Ch. 565, L. 2005; sec. 5, Ch. 129, L. 2007.)"

Section 21. Section 53-6-1201, MCA, is amended to read:

"53-6-1201. Special revenue fund — health and medicaid initiatives. (1) There is a health and medicaid initiatives account in the state special revenue fund established by 17-2-102. This account is to be administered by the department of public health and human services.

(2) There must be deposited in the account:

(a) money from cigarette taxes deposited under 16-11-119(1)(c);

(b) money from taxes on tobacco products other than cigarettes deposited under 16-11-119(3)(b); and

(c) any interest and income earned on the account.

(3) This account may be used only to provide funding for:

(a) the state funds necessary to take full advantage of available federal matching funds in order to *administer the plan and* maximize enrollment of eligible children under the ~~children's health insurance program~~ *healthy Montana kids plan*, provided for under Title 53, chapter 4, part ~~10~~ *11*, and to provide outreach to the eligible children.*;* ~~The increased revenue in this account is intended to increase enrollment rates for eligible children in the program and not to be used to support existing levels of enrollment based upon appropriations for the biennium ending June 30, 2005.~~

(b) a new need-based prescription drug program established by the legislature for children, seniors, chronically ill, and disabled persons that does not supplant similar services provided under any existing program;

(c) increased medicaid services and medicaid provider rates. The increased revenue is intended to increase medicaid services and medicaid provider rates and not to supplant the general fund in the trended traditional level of appropriation for medicaid services and medicaid provider rates.

(d) an offset to loss of revenue to the general fund as a result of new tax credits;

(e) funding new programs to assist eligible small employers with the costs of providing health insurance benefits to eligible employees;

(f) the cost of administering the tax credit, the purchasing pool, and the premium incentive payments and premium assistance payments as provided in Title 33, chapter 22, part 20; and

(g) providing a state match for the medicaid program for premium incentive payments or premium assistance payments to the extent that a waiver is granted by federal law as provided in 53-2-216.

(4) ~~(a) Except for $1 million appropriated for the startup costs of 53-6-1004 and 53-6-1005, the money appropriated for fiscal year 2006 for the programs in subsections (3)(b) and (3)(d) through (3)(g) may not be expended until the office of budget and program planning has certified that $25 million has been deposited in the account provided for in this section or December 1, 2005, whichever occurs earlier.~~

~~(b)~~*(a)* On or before July 1, the budget director shall calculate a balance required to sustain each program in subsection (3) for each fiscal year of the biennium. If the budget director certifies that the reserve balance will be sufficient, then the agencies may expend the revenue for the programs as appropriated. If the budget director determines that the reserve balance of the revenue will not support the level of appropriation, the budget director shall notify each agency. Upon receipt of the notification, the agency shall adjust the operating budget for the program to reflect the available revenue as determined by the budget director.

~~(c)~~*(b)* Until the programs or credits described in subsections (3)(b) and (3)(d) through (3)(g) are established, the funding must be used exclusively for the purposes described in subsections (3)(a) and (3)(c).

(5) The phrase "trended traditional level of appropriation", as used in subsection (3)(c), means the appropriation amounts, including supplemental appropriations, as those amounts were set based on eligibility standards, services authorized, and payment amount during the past five biennial budgets.

(6) The department of public health and human services may adopt rules to implement this section."

Section 22. Section 75-10-704, MCA, is amended to read:

"75-10-704. Environmental quality protection fund. (1) ~~There~~ *Subject to legislative fund transfers, there* is in the state special revenue fund an environmental quality protection fund to be administered as a revolving fund by the department. The department is authorized to expend amounts from the fund necessary to carry out the purposes of this part.

(2) The fund may be used by the department only to carry out the provisions of this part and for remedial actions taken by the department pursuant to this part in response to a release of hazardous or deleterious substances.

(3) The department shall:

(a) except as provided in subsection (7), establish and implement a system, including the preparation of a priority list, for prioritizing sites for remedial action based on potential effects on human health and the environment; and

(b) investigate, negotiate, and take legal action, as appropriate, to identify liable persons, to obtain the participation and financial contribution of liable persons for the remedial action, to achieve remedial action, and to recover costs and damages incurred by the state.

(4) There must be deposited in the fund:

(a) all penalties, forfeited financial assurance, natural resource damages, and remedial action costs recovered pursuant to 75-10-715;

(b) all administrative penalties assessed pursuant to 75-10-714 and all civil penalties assessed pursuant to 75-10-711(5);

(c) funds allocated to the fund by the legislature;

(d) proceeds from the resource indemnity and ground water assessment tax as authorized by 15-38-106;

(e) funds received from the interest income of the resource indemnity trust fund pursuant to 15-38-202;

(f) funds received from the interest income of the fund;

(g) funds received from settlements pursuant to 75-10-719(7); and

(h) funds received from the interest paid pursuant to 75-10-722.

(5) Whenever a legislative appropriation is insufficient to carry out the provisions of this part and additional money remains in the fund, the department shall seek additional authority to spend money from the fund through the budget amendment process provided for in Title 17, chapter 7, part 4.

(6) Whenever the amount of money in the fund is insufficient to carry out remedial action, the department may apply to the governor for a grant from the environmental contingency account established pursuant to 75-1-1101.

(7) (a) There is established a state special revenue account for all funds donated or granted from private parties to remediate a specific release at a specific facility. There must be deposited into the account the interest income earned on the account. A person is not liable under 75-10-715 solely as a result of contributing to this account.

(b) Funds donated or granted for a specific project pursuant to this subsection (7) must be accumulated in the fund until the balance of the donated or granted funds is sufficient, as determined by the department, to remediate the facility pursuant to the requirements of 75-10-721 for which the funds are donated.

(c) If the balance of the fund created in this subsection (7), as determined by the department pursuant to the requirements of 75-10-721, is not sufficient to remediate the facility within 1 year from the date of the initial contribution, all donated or granted funds, including any interest on those donated or granted funds, must be returned to the grantor.

(d) If the balance for a specific project is determined by the department to be sufficient to remediate the facility pursuant to the requirements of 75-10-721, the department shall give that site high priority for remedial action, using the funds donated under this subsection (7).

(e) This subsection (7) is not intended to delay, to interfere with, or to diminish the authority or actions of the department to investigate, negotiate,

and take legal action, as appropriate, to identify liable persons, to obtain the participation and financial contribution of liable persons for the remedial action, to achieve remedial action, and to recover costs and damages incurred by the state.

(f) The department shall expend the funds in a manner that maximizes the application of the funds to physically remediating the specific release.

(8) (a) A person may donate in-kind services to remediate a specific release at a specific facility pursuant to subsection (7). A person who donates in-kind services is not liable under 75-10-715 solely as a result of the contribution of in-kind services.

(b) A person who donates in-kind services with respect to remediating a specific release at a specific facility is not liable under this part to any person for injuries, costs, damages, expenses, or other liability that results from the release or threatened release, including but not limited to claims for indemnification or contribution and claims by third parties for death, personal injury, illness, loss of or damage to property, or economic loss.

(c) Immunity from liability, pursuant to subsection (8)(b), does not apply in the case of a release that is caused by conduct of the entity providing in-kind services that is negligent or grossly negligent or that constitutes intentional misconduct.

(d) When a person is liable under 75-10-715 for costs or damages incurred as a result of a release or threatened release of a hazardous or deleterious substance, the person may not avoid that liability or responsibility under 75-10-711 by subsequent donations of money or in-kind services under the provisions of subsection (7) and this subsection (8).

(e) Any donated in-kind services that are employed as part of a remedial action pursuant to this subsection (8) must be approved by the department as appropriate remedial action."

Section 23. Section 80-6-1109, MCA, is amended to read:

"80-6-1109. Fees to be set by rule — self-supporting program — ~~enterprise fund~~ *account* established. (1) Fees authorized to be charged by this part must be set by committee rule. The fees must be designed to reimburse the committee for costs incurred in providing services and carrying out its duties under this part. It is the intent of the legislature that committee activities under this part be self-supporting.

(2) There is an ~~enterprise~~ *account in the state special revenue* fund known as the leaf-cutting bee ~~fund~~ *account* for use by the committee. Fees collected under this part must be paid into the leaf-cutting bee ~~fund~~ *account*.

(3) The committee may direct the board of investments to invest money from the ~~fund~~ *account* pursuant to the provisions of the unified investment program. The income from ~~such~~ investments must be credited to the leaf-cutting bee ~~fund~~ *account*."

Section 24. Section 85-2-280, MCA, is amended to read:

"85-2-280. (Temporary) **Water adjudication account.** (1) There is a water adjudication account within the state special revenue fund created in 17-2-102.

(2) (a) ~~For~~ *Subject to legislative fund transfers, for* the period ~~beginning July 1, 2005, and~~ ending June 30, 2015, there is allocated to the department and the water court up to $2.6 million, plus the approved inflation factor contained in the revenue estimating resolution, each fiscal year from the water adjudication

account for the sole purpose of funding the water adjudication program. These funds may not be used for the purpose of updating or maintaining a computer database.

(b) For the period beginning July 1, 2015, and ending June 30, 2020, there is allocated to the department and the water court up to $1 million, plus the approved inflation factor contained in the revenue estimating resolution, each fiscal year from the account for the sole purpose of funding the water adjudication program.

(c) The allocations in subsections (2)(a) and (2)(b) are subject to appropriation by the legislature.

(3) Interest and income earnings on the water adjudication account must be deposited in the account.

(4) Money remaining in the water adjudication account on June 30, 2020, must be transferred to the water right appropriation account provided for in 85-2-318.

(5) If the accountability benchmarks contained in 85-2-271 are not met, expenditures from the account in the previous biennium may not be included in the department's base budget, as defined in 17-7-102, for the current biennium. (Terminates June 30, 2020—sec. 18, Ch. 288, L. 2005; sec. 11, Ch. 319, L. 2007.)"

Section 25. Emergency medical services grants. The department of transportation shall report to the governor and the legislative finance committee not later than November 1 of the year preceding a regular session of the legislature regarding emergency medical services grants that are awarded during each biennium. The report must include a listing of all grant requests and a listing of grants awarded, including a summary of the use of grant funds.

Section 26. Legislative intent. It is the intent of the legislature that the appropriation in House Bill No. 2 for an FTE in the veterans' affairs program be attached to the veterans service office in Missoula and that the FTE, on average, spend 2 days each week in Hamilton, 2 days each week in Polson, and 1 day each week in Missoula.

Section 27. Emergency medical service grant program reports. The department of transportation shall report to the children, families, health, and human services interim committee twice during each year of the interim on the results of the emergency medical service grant program funded in House Bill No. 2. The reports must include grants submitted, grants processed and awarded, and the remaining balance of the appropriation.

Section 28. Fund transfers. (1) By August 15, 2009, there must be transferred $2,064,139 from the water adjudication state special revenue account provided for in 85-2-280 to the natural resources operations state special revenue account established in 15-38-301.

(2) By August 15, 2009, there must be transferred $600,000 from the environmental quality protection fund established in 75-10-704 to the natural resources operations state special revenue account established in 15-38-301.

(3) There is transferred $300,000 from the junk vehicle fund as authorized in 75-10-532 to the natural resources operations state special revenue account established in 15-38-301.

Section 29. Vehicle insurance verification system — vendor requirement. In order to reduce state risk, a vendor who successfully bids on the vehicle insurance verification system project must have installed in at least two other states a substantially similar system, which must be in production.

Section 30. Repealer. Sections 15-30-169, 50-44-101, 50-44-102, and 50-44-103, MCA, are repealed.

Section 31. Codification instruction. [Section 25] is intended to be codified as an integral part of Title 61, chapter 2, and the provisions of Title 61, chapter 2, apply to [section 25].

Section 32. Coordination instruction. If House Bill No. 152 and [this act] are both passed and approved, then [section 22] of House Bill No. 152 must be amended as follows:

"NEW SECTION. **Section 22. Applicability.** [Section 18] applies to rental payments beginning January 1, ~~2011~~ *2012*."

Section 33. Effective date. [This act] is effective July 1, 2009.

Section 34. Applicability. (1) [Section 7] applies retroactively, within the meaning of 1-2-109, to the fiscal year ending June 30, 2009.

(2) [Section 14] applies to school budgets for school fiscal years beginning on or after July 1, 2009.

Section 35. Termination. (1) [Sections 9 through 11] terminate June 30, 2011.

(2) [Section 15] terminates June 30, 2013.

Approved May 10, 2009

CHAPTER NO. 487

[SB 489]

AN ACT REVISING TAXATION LAWS RELATED TO PIPELINES; CLARIFYING THAT REGULATED NATURAL GAS AND OIL PIPELINES AND COMMON CARRIER PIPELINES ARE TAXED AS CLASS NINE PROPERTY AND THAT OIL AND GAS PRODUCTION PROPERTY, INCLUDING FLOW LINES AND GATHERING LINES, IS TAXED AS CLASS EIGHT PROPERTY; AMENDING SECTIONS 15-6-138, 15-6-141, 15-23-101, AND 15-23-301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-6-138, MCA, is amended to read:

"15-6-138. Class eight property — description — taxable percentage. (1) Class eight property includes:

(a) all agricultural implements and equipment that are not exempt under 15-6-207 or 15-6-220;

(b) all mining machinery, fixtures, equipment, tools that are not exempt under 15-6-219, and supplies except those included in class five;

(c) ~~all~~ *for* oil and gas production*, all:*

(i) machinery~~,~~*;*

(ii) fixtures~~,~~*;*

(iii) equipment, including *flow lines and gathering lines,* pumping units, oil field storage tanks, water storage tanks, water disposal injection pumps, gas compressor and dehydrator units, communication towers, gas metering shacks, treaters, gas separators, water flood units, *and* gas boosters, ~~and similar~~ *together with* equipment that is skidable, portable, or movable~~,~~*;*

(iv) tools that are not exempt under 15-6-219~~,~~*;* and

(v) supplies except those included in class five;

(d) all manufacturing machinery, fixtures, equipment, tools, except a certain value of hand-held tools and personal property related to space vehicles, ethanol manufacturing, and industrial dairies and milk processors as provided in 15-6-220, and supplies except those included in class five;

(e) all goods and equipment that are intended for rent or lease, except goods and equipment that are specifically included and taxed in another class;

(f) special mobile equipment as defined in 61-1-101;

(g) furniture, fixtures, and equipment, except that specifically included in another class, used in commercial establishments as defined in this section;

(h) x-ray and medical and dental equipment;

(i) citizens' band radios and mobile telephones;

(j) radio and television broadcasting and transmitting equipment;

(k) cable television systems;

(l) coal and ore haulers;

(m) theater projectors and sound equipment; and

(n) all other property that is not included in any other class in this part, except that property that is subject to a fee in lieu of a property tax.

(2) As used in this section, *the following definitions apply:*

(a) "coal and ore haulers" means nonhighway vehicles that exceed 18,000 pounds an axle and that are primarily designed and used to transport coal, ore, or other earthen material in a mining or quarrying environment*; and*

(b) "flow lines and gathering lines" means pipelines used to transport all or part of the oil or gas production from an oil or gas well to an interconnection with a common carrier pipeline as defined in 69-13-101, a pipeline carrier as defined in 49 U.S.C. 15102(2), or a rate-regulated natural gas transmission or oil transmission pipeline regulated by the public service commission or the federal energy regulatory commission.

(3) "Commercial establishment" includes any hotel, motel, office, petroleum marketing station, or service, wholesale, retail, or food-handling business.

(4) Class eight property is taxed at 3% of its market value.

(5) The class eight property of a person or business entity that owns an aggregate of $20,000 or less in market value of class eight property is exempt from taxation.

(6) The gas gathering facilities of a stand-alone gas gathering company providing gas gathering services to third parties on a contractual basis, owning more than 500 miles of gas gathering lines in Montana, and centrally assessed in tax years prior to 2009 must be treated as a natural gas transmission pipeline subject to central assessment under 15-23-101. For purposes of this subsection, the gas gathering line ownership of all affiliated companies, as defined in section 1504(a) of the Internal Revenue Code, 26 U.S.C. 1504(a), must be aggregated for purposes of determining the 500-mile threshold."

Section 2. Section 15-6-141, MCA, is amended to read:

"15-6-141. Class nine property — description — taxable percentage. (1) Class nine property includes:

(a) centrally assessed allocations of an electric power company or centrally assessed allocations of an electric power company that owns or operates transmission or distribution facilities or both, including, if congress passes

legislation that allows the state to tax property owned by an agency created by congress to transmit or distribute electrical energy, allocations of properties constructed, owned, or operated by a public agency created by congress to transmit or distribute electrical energy produced at privately owned generating facilities, not including rural electric cooperatives. However, rural electric cooperatives' property, except wind generation facilities classified under 15-6-157, used for the sole purpose of serving customers representing less than 95% of the electric consumers located within the incorporated limits of a city or town of more than 3,500 persons in which a centrally assessed electric power company also owns property or serving an incorporated municipality with a population that is greater than 3,500 persons formerly served by a public utility that after January 1, 1998, received service from the facilities of an electric cooperative is included. For purposes of this subsection (1)(a), "property used for the sole purpose" does not include a headquarters, office, shop, or other similar facility.

(b) allocations for centrally assessed natural gas ~~companies having a major distribution system in this state~~ *distribution utilities, rate-regulated natural gas transmission or oil transmission pipelines regulated by either the public service commission or the federal energy regulatory commission, a common carrier pipeline as defined in 69-13-101, a pipeline carrier as defined in 49 U.S.C. 15102(2), or the gas gathering facilities specified in 15-6-138(6)*; and

(c) centrally assessed companies' allocations except:

(i) electrical generation facilities classified under 15-6-156;

(ii) all property classified under 15-6-157;

(iii) all property classified under 15-6-158 and 15-6-159;

(iv) property owned by cooperative rural electric and cooperative rural telephone associations and classified under 15-6-135;

(v) property owned by organizations providing telephone communications to rural areas and classified under 15-6-135;

(vi) railroad transportation property included in 15-6-145;

(vii) airline transportation property included in 15-6-145; and

(viii) telecommunications property included in 15-6-156.

(2) Class nine property is taxed at 12% of market value."

Section 3. Section 15-23-101, MCA, is amended to read:

"15-23-101. Properties centrally assessed. The department shall centrally assess each year:

(1) the railroad transportation property of railroads and railroad car companies operating in more than one county in the state or more than one state;

(2) property owned by a corporation or other person operating a single and continuous property operated in more than one county or more than one state~~,~~ ~~including but not limited to~~ *including but not limited to:*

(a) telegraph, telephone, microwave, and electric power or transmission lines;

(b) rate-regulated natural gas *transmission* or oil *transmission* pipelines *regulated by the public service commission or the federal energy regulatory commission;*

(c) common carrier pipelines as defined in 69-13-101 or a pipeline carrier as defined in 49 U.S.C. 15102(2);

(d) natural gas distribution utilities;

(e) the gas gathering facilities specified in 15-6-138(6);

(f) canals, ditches, flumes, or like properties*;* and ~~including,~~

(g) if congress passes legislation that allows the state to tax property owned by an agency created by congress to transmit or distribute electrical energy, property constructed, owned, or operated by a public agency created by congress to transmit or distribute electrical energy produced at privately owned generating facilities, not including rural electric cooperatives;

(3) all property of scheduled airlines;

(4) the net proceeds of mines, except bentonite mines;

(5) the gross proceeds of coal mines; and

(6) property described in subsections (1) and (2) that is subject to the provisions of Title 15, chapter 24, part 12."

Section 4. Section 15-23-301, MCA, is amended to read:

"15-23-301. Officers of certain public utility companies to furnish statement to department. The president, secretary, or managing agent *of a corporation* or ~~such~~ *any* other officer ~~as~~ *that* the department ~~of revenue~~ may designate ~~of any corporation~~ and each person or association of persons owning or operating a telegraph, telephone, microwave, *or* electric power~~,~~ or transmission line, *a* natural gas ~~pipeline,~~ *distribution utility, a rate-regulated natural gas transmission or* oil *transmission* pipeline *regulated by the public service commission or the federal energy regulatory commission, a common carrier pipeline as defined in 69-13-101, a pipeline carrier as defined in 49 U.S.C. 15102(2), or any* canal, ditch, flume, or other property, other than real estate not included in *a* right-of-way, ~~and which constitute~~ *that constitutes* a single and continuous property throughout more than one county or state, ~~must~~ *shall* each year furnish the department *with* a statement, signed and sworn to by one of ~~such~~ *the* officers or by the person or one of the persons forming ~~such~~ *the* association, showing in detail for the year ending on December 31 immediately preceding ~~as follows~~:

(1) the whole number of miles of ~~said~~ property in the state and, ~~where~~ *if* the property is partly out of the state, the whole number of miles ~~without~~ *outside of* the state and the whole number of miles within the state owned or operated by ~~such~~ *the* corporation, person, or association;

(2) the total value of the entire property and plant, both within and ~~without~~ *outside of* the state, and the total value of that portion of the ~~same~~ *property and plant* within the state;

(3) a complete description of the property within the state, giving the points of entrance into and the points of exit from the state and the points of entrance into and the points of exit from each county, with a statement of the total number of miles in each county in the state;

(4) ~~such~~ other information regarding ~~such~~ *the* property as may be required by the department."

Section 5. Effective date. [This act] is effective on passage and approval.

Section 6. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to the property tax year beginning after December 31, 2008.

Approved May 10, 2009

CHAPTER NO. 488

[HB 2]

AN ACT APPROPRIATING MONEY TO VARIOUS STATE AGENCIES FOR THE BIENNIUM ENDING JUNE 30, 2011; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Short title. [This act] may be cited as "The General Appropriations Act of 2009".

Section 2. First level expenditures. The agency and program appropriation tables in the legislative fiscal analyst narrative accompanying this bill, showing first level expenditures and funding for the 2011 biennium, are adopted as legislative intent.

Section 3. Severability. If any section, subsection, sentence, clause, or phrase of [this act] is for any reason held unconstitutional, the decision does not affect the validity of the remaining portions of [this act].

Section 4. Appropriation control. An appropriation item designated "Biennial" may be spent in either year of the biennium. An appropriation item designated "Restricted" may be used during the biennium only for the purpose designated by its title and as presented to the legislature. An appropriation item designated "One Time Only" or "OTO" may not be included in the present law base for the 2013 biennium. The office of budget and program planning shall establish a separate appropriation on the statewide accounting, budgeting, and human resource system for any item designated "Biennial", "Restricted", "One Time Only", or "OTO". The office of budget and program planning shall establish at least one appropriation on the statewide accounting, budgeting, and human resource system for any appropriation that appears as a separate line item in [this act].

Section 5. Program definition. As used in [this act], "program" has the same meaning as defined in 17-7-102, is consistent with the management and accountability structure established on the statewide accounting, budgeting, and human resource system, and is identified as a major subdivision of an agency ordinally numbered with an Arabic numeral.

Section 6. Personal services funding — 2013 biennium. (1) Except as provided in subsection (2), present law and new proposal funding budget requests for the 2013 biennium submitted under Title 17, chapter 7, part 1, by each executive, judicial, and legislative branch agency must include funding of first level personal services separate from funding of other expenditures. The funding of first level personal services by accounting entity or equivalent for each fiscal year must be shown at the fourth reporting level or equivalent in the budget request for the 2013 biennium submitted by November 1 to the legislative fiscal analyst by the office of budget and program planning.

(2) The provisions of subsection (1) do not apply to the Montana university system.

Section 7. Totals not appropriations. The totals shown in [this act] are for informational purposes only and are not appropriations.

Section 8. Effective date. [This act] is effective July 1, 2009.

Section 9. Appropriations. The following money is appropriated for the respective fiscal years:

Fiscal 2010						Fiscal 2011					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
				A. GENERAL GOVERNMENT							
LEGISLATIVE BRANCH (1104)											
1. Legislative Services (20) (Biennial)											
6,787,778	930,781	0	0	0	7,718,559	7,100,735	348,702	0	0	0	7,449,437
2. Legislative Committees and Activities (21) (Biennial)											
784,458	0	0	0	0	784,458	292,657	0	0	0	0	292,657
3. Fiscal Analysis and Review (27) (Biennial)											
1,941,643	0	0	0	0	1,941,643	1,917,626	0	0	0	0	1,917,626
4. Audit and Examination (28) (Biennial)											
2,237,551	1,726,327	0	0	0	3,963,878	2,340,447	1,646,392	0	0	0	3,986,839
Total											
11,751,430	2,657,108	0	0	0	14,408,538	11,651,465	1,995,094	0	0	0	13,646,559

Legislative Services includes unspecified reductions in general fund money of $239,126 in fiscal year 2010 and $239,125 in fiscal year 2011. The agency may allocate these reductions in funding among programs when developing 2011 biennium operating plans.

Fiscal Analysis and Review includes one-time-only money of $97,713 general fund money in fiscal year 2010 and $53,592 general fund money in fiscal year 2011 for monitoring of the federal American Recovery and Reinvestment Act of 2009.

CONSUMER COUNSEL (1112)											
1. Administration Program (01)											
0	1,376,585	0	0	0	1,376,585	0	1,387,560	0	0	0	1,387,560
Total											
0	1,376,585	0	0	0	1,376,585	0	1,387,560	0	0	0	1,387,560
GOVERNOR'S OFFICE (3101)											
1. Executive Office Program (01)											
2,733,434	0	0	0	0	2,733,434	2,738,417	0	0	0	0	2,738,417

Fiscal 2010						Fiscal 2011					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
2. Executive Residence Operations (02)											
111,784	0	0	0	0	111,784	112,102	0	0	0	0	112,102
3. Air Transportation Program (03)											
334,368	8,000	0	0	0	342,368	254,724	8,000	0	0	0	262,724
4. Office of Budget and Program Planning (04)											
1,628,187	0	0	0	0	1,628,187	1,645,347	0	0	0	0	1,645,347
a. Legislative Audit (Restricted/Biennial)											
17,445	0	0	0	0	17,445	0	0	0	0	0	0
5. Indian Affairs (05)											
177,688	0	0	0	0	177,688	178,220	0	0	0	0	178,220
6. Centralized Services (06)											
308,260	0	0	0	0	308,260	308,181	0	0	0	0	308,181
a. Legislative Audit (Restricted/Biennial)											
38,377	0	0	0	0	38,377	0	0	0	0	0	0
b. Computer Replacement (OTO)											
85,515	0	0	0	0	85,515	37,820	0	0	0	0	37,820
7. Lieutenant Governor (12)											
346,889	0	0	0	0	346,889	347,169	0	0	0	0	347,169
8. Citizens' Advocate Office (16)											
73,008	24,500	0	0	0	97,508	73,104	24,500	0	0	0	97,604
9. Mental Disabilities Board of Visitors (20)											
387,531	0	0	0	0	387,531	387,885	0	0	0	0	387,885
Total											
6,242,486	32,500	0	0	0	6,274,986	6,082,969	32,500	0	0	0	6,115,469

Executive Office Program includes unspecified increases in general fund money of $88,742 in fiscal year 2010 and $91,497 in fiscal year 2011. The agency may allocate these increases in funding among programs when developing 2011 biennium operating plans.

Fiscal 2010						Fiscal 2011					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
SECRETARY OF STATE (3201)											
1. Business and Government Services (01)											
a. HAVA Interest (Biennial/OTO)											
0	0	1,400,000	0	0	1,400,000	0	0	0	0	0	0
Total											
0	0	1,400,000	0	0	1,400,000	0	0	0	0	0	0
COMMISSIONER OF POLITICAL PRACTICES (3202)											
1. Administration (01)											
437,570	0	0	0	0	437,570	435,075	0	0	0	0	435,075
a. Legislative Audit (Restricted/Biennial)											
7,675	0	0	0	0	7,675	0	0	0	0	0	0
b. IT Application Completion (Restricted/Biennial)											
20,000	0	0	0	0	20,000	20,000	0	0	0	0	20,000
c. Legal Costs (Biennial/OTO)											
40,000	0	0	0	0	40,000	0	0	0	0	0	0
Total											
505,245	0	0	0	0	505,245	455,075	0	0	0	0	455,075

Administration includes unspecified reductions in general fund money of $8,953 in fiscal year 2010 and $8,952 in fiscal year 2011. The agency may allocate these reductions in funding among programs when developing 2011 biennium operating plans.

OFFICE OF THE STATE AUDITOR (3401)											
1. Central Management (01)											
0	1,287,003	0	0	0	1,287,003	0	1,296,164	0	0	0	1,296,164
a. Legislative Audit (Restricted/Biennial)											

Fiscal 2010						Fiscal 2011					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
0	10,471	0	0	0	10,471	0	0	0	0	0	0
b. New Office Space — Central Management (Restricted)											
0	26,638	0	0	0	26,638	0	45,029	0	0	0	45,029
2. Insurance Program (03)											
0	16,023,996	0	0	0	16,023,996	0	16,384,346	0	0	0	16,384,346
a. Legislative Audit (Restricted/Biennial)											
0	27,831	0	0	0	27,831	0	0	0	0	0	0
b. New Office Space — Insurance (Restricted)											
0	141,694	0	0	0	141,694	0	243,739	0	0	0	243,739
c. Forms Analyst (Restricted/OTO)											
0	47,551	0	0	0	47,551	0	40,551	0	0	0	40,551
3. Securities (04)											
0	860,805	0	0	0	860,805	0	874,328	0	0	0	874,328
a. Legislative Audit (Restricted/Biennial)											
0	4,959	0	0	0	4,959	0	0	0	0	0	0
b. New Office Space — Securities (Restricted)											
0	33,757	0	0	0	33,757	0	57,666	0	0	0	57,666
c. Securities Division — New Legal FTE (OTO)											
0	87,871	0	0	0	87,871	0	84,313	0	0	0	84,313
Total											
0	18,552,576	0	0	0	18,552,576	0	19,026,136	0	0	0	19,026,136

The item for Forms Analyst is restricted to funding for personal services to comply with provisions of 33-1-501, specifically to ensure that the commissioner makes a determination on submitted forms prior to triggering the automatic approval provision contained in 33-1-501(2)(b).

DEPARTMENT OF REVENUE (5801)

1. Director's Office (01)											
4,314,823	107,056	0	88,873	0	4,510,752	4,382,131	107,128	0	89,023	0	4,578,282

Fiscal 2010						Fiscal 2011					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
a. Legislative Audit (Restricted/Biennial)											
215,309	0	1,000	0	0	216,309	0	0	0	0	0	0
b. Restoration of Unspecified Reduction (OTO)											
250,000	0	0	0	0	250,000	250,000	0	0	0	0	250,000
2. Information Technology and Processing (02)											
13,011,140	131,017	0	75,696	0	13,217,853	13,037,029	131,014	0	75,828	0	13,243,871
3. Liquor Control Division (03)											
0	0	0	2,215,545	0	2,215,545	0	0	0	2,222,967	0	2,222,967
a. Overtime or Temporary Staff for Demand (Restricted)											
0	0	0	50,000	0	50,000	0	0	0	50,000	0	50,000
b. Termination Payouts (Restricted)											
0	0	0	40,000	0	40,000	0	0	0	40,000	0	40,000
4. Citizen Services and Resource Management (05)											
1,996,299	147,774	0	50,371	0	2,194,444	1,999,041	147,840	0	50,340	0	2,197,221
5. Business and Income Taxes Division (07)											
9,907,343	357,169	203,232	0	0	10,467,744	9,932,846	357,301	203,388	0	0	10,493,535
a. Reduce Smoking Through Tax Compliance (OTO)											
0	177,782	0	0	0	177,782	0	177,951	0	0	0	177,951
b. Abandoned Property Program Workload Impacts (OTO)											
0	115,212	0	0	0	115,212	0	103,662	0	0	0	103,662
c. SB 503 — Montana Economic Stimulus Act											
86,166	0	0	0	0	86,166	77,066	0	0	0	0	77,066
6. Property Assessment Division (08)											
20,046,388	64,495	0	0	0	20,110,883	20,119,209	64,470	0	0	0	20,183,679
a. HB 658 — Mitigate Reappraisal (OTO)											
808,646	0	0	0	0	808,646	778,407	0	0	0	0	778,407
Total											

Fiscal 2010						Fiscal 2011					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
50,636,114	1,100,505	204,232	2,520,485	0	54,461,336	50,575,729	1,089,366	203,388	2,528,158	0	54,396,641

Director's Office includes unspecified reductions in general fund money of $1,252,852 in fiscal year 2010 and $1,252,852 in fiscal year 2011. The agency may allocate these reductions in funding among programs when developing 2011 biennium operating plans.

The agency may allocate Restoration of Unspecified Reduction among programs when developing 2011 biennium operating plans.

Liquor control division proprietary funds necessary to maintain adequate inventories, pay freight charges, and transfer profits and taxes to appropriate accounts are appropriated from the liquor enterprise fund (06005) to the department in the amounts not to exceed $129 million in fiscal year 2010 and $141 million in fiscal year 2011.

If Senate Bill No. 503 is not passed and approved, SB 503 — Montana Economic Stimulus Act is void.

If House Bill No. 658 is not passed and approved, HB 658 — Mitigate Reappraisal is void.

DEPARTMENT OF ADMINISTRATION (6101)

1. Director's Office (01)											
79,576	1,587	37,133	0	0	118,296	79,591	1,587	37,133	0	0	118,311
a. Legislative Audit (Restricted/Biennial)											
57,202	0	0	0	0	57,202	0	0	0	0	0	0
2. State Accounting Division (03)											
1,295,058	0	11,606	49,614	0	1,356,278	1,298,487	0	11,606	49,614	0	1,359,707
3. Architecture and Engineering Program (04)											
0	1,944,561	0	0	0	1,944,561	0	1,954,747	0	0	0	1,954,747
a. Legislative Audit (Restricted/Biennial)											
0	1,493	0	0	0	1,493	0	0	0	0	0	0
b. HB 213 — Establish Southwestern Montana Veterans' Home (OTO)											
0	32,253	0	0	0	32,253	0	0	0	0	0	0
4. General Services Program (06)											
2,100,067	53,271	0	0	0	2,153,338	2,131,697	53,254	0	0	0	2,184,951
a. Legislative Audit (Restricted/Biennial)											

	Fiscal 2010						Fiscal 2011					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
0	57	0	0	0	57	0	0	0	0	0	0
5. Information Technology Services Division (07)											
530,311	2,075,179	526,264	0	0	3,131,754	532,541	2,075,582	0	0	0	2,608,123
a. Legislative Audit (Restricted/Biennial)											
2,143	1,340	0	0	0	3,483	0	0	0	0	0	0
b. SB 57 — Revise Laws Governing Special Districts											
0	42,000	0	0	0	42,000	0	35,850	0	0	0	35,850
6. Banking and Financial Division (14)											
0	3,517,678	0	0	0	3,517,678	0	3,631,527	0	0	0	3,631,527
a. Legislative Audit (Restricted/Biennial)											
0	2,846	0	0	0	2,846	0	0	0	0	0	0
b. Replacement Computers (OTO)											
0	36,300	0	0	0	36,300	0	6,000	0	0	0	6,000
c. SB 351 — Revise Residential Mortgage Licensing Law											
0	37,912	0	0	0	37,912	0	30,970	0	0	0	30,970
7. Montana State Lottery (15)											
0	0	0	7,218,817	0	7,218,817	0	0	0	7,228,564	0	7,228,564
a. Legislative Audit (Restricted/Biennial)											
0	0	0	107,918	0	107,918	0	0	0	0	0	0
8. Health Care and Benefits Division (21)											
0	43,116	0	0	0	43,116	0	43,116	0	0	0	43,116
9. State Human Resources Division (23)											
1,605,461	0	0	0	0	1,605,461	1,609,139	0	0	0	0	1,609,139
a. Training Development Specialist Fund Shift (OTO)											
36,681	0	0	0	0	36,681	66,173	0	0	0	0	66,173
10. State Tax Appeal Board (37)											
492,681	0	0	0	0	492,681	494,135	0	0	0	0	494,135
a. 2009 Reappraisal Costs (OTO)											

Fiscal 2010						Fiscal 2011					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
36,400	0	0	0	0	36,400	21,000	0	0	0	0	21,000
Total											
6,235,580	7,789,593	575,003	7,376,349	0	21,976,525	6,232,763	7,832,633	48,739	7,278,178	0	21,392,313

If House Bill No. 213 is not passed and approved, HB 213 — Establish Southwestern Montana Veterans' Home is void.

General Services Program includes unspecified reductions in general fund money of $580,071 in fiscal year 2010 and $580,071 in fiscal year 2011. The agency may allocate these reductions in funding among programs when developing 2011 biennium operating plans.

DEPARTMENT OF COMMERCE (6501)

1. Business Resources Division (51)											
2,125,074	2,340,732	4,087,915	0	0	8,553,721	2,125,975	2,341,000	4,093,757	0	0	8,560,732
a. Legislative Audit (Restricted/Biennial)											
4,088	1,362	3,635	0	0	9,085	0	0	0	0	0	0
b. New Worker Training (OTO)											
1,876,619	0	0	0	0	1,876,619	1,876,633	0	0	0	0	1,876,633
c. 2010 Decennial Census (OTO)											
51,085	0	0	0	0	51,085	39,397	0	0	0	0	39,397
d. Montana Main Street Program (OTO)											
125,000	0	0	0	0	125,000	125,000	0	0	0	0	125,000
e. Indian Country Economic Development (Restricted/Biennial/OTO)											
798,496	0	0	0	0	798,496	798,496	0	0	0	0	798,496
f. Biomedical Research Grant (Restricted/OTO)											
0	2,500,000	0	0	0	2,500,000	0	0	0	0	0	0
g. High-Performance Computing (OTO)											
1,000,000	0	0	0	0	1,000,000	1,000,000	0	0	0	0	1,000,000
2. Montana Promotion Division (52)											
0	750,000	0	0	0	750,000	0	750,000	0	0	0	750,000

Fiscal 2010						Fiscal 2011					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
a. Legislative Audit (Restricted/Biennial)											
0	25,226	0	0	0	25,226	0	0	0	0	0	0
3. Energy Promotion and Development Division (55)											
a. Energy Promotion Division (Restricted/OTO)											
455,000	0	0	0	0	455,000	455,000	0	0	0	0	455,000
4. Community Development Division (60)											
535,911	1,130,161	7,906,321	0	0	9,572,393	539,183	1,132,898	7,904,454	0	0	9,576,535
a. Legislative Audit (Restricted/Biennial)											
3,002	2,401	2,563	0	0	7,966	0	0	0	0	0	0
b. Hard Rock Mining Reserve (Restricted)											
0	100,000	0	0	0	100,000	0	100,000	0	0	0	100,000
c. Coal Board Local Impact Grants (Biennial)											
0	4,336,784	0	0	0	4,336,784	0	1,399,859	0	0	0	1,399,859
5. Housing Division (74)											
0	150,000	9,111,779	0	0	9,261,779	0	150,000	9,222,285	0	0	9,372,285
a. Legislative Audit (Restricted/Biennial)											
0	0	5,040	0	0	5,040	0	0	0	0	0	0
6. Director's Office/Management Services Division (81)											
0	0	725,648	0	0	725,648	0	0	725,648	0	0	725,648
Total											
6,974,275	11,336,666	21,842,901	0	0	40,153,842	6,959,684	5,873,757	21,946,144	0	0	34,779,585

Business Resources Division includes unspecified reductions in general fund money of $54,421 in fiscal year 2010 and $54,421 in fiscal year 2011. The agency may allocate these reductions in funding among programs when developing 2011 biennium operating plans.

The line item for New Worker Training is to provide training funds for businesses to train and educate both new and existing employees, which will result in the retention and creation of high-wage and high-skilled jobs that will increase the earning potential and employment opportunities for Montana employees and enhance the state's economy. The line item for New Worker Training is intended to be implemented using a framework similar to that established under the Primary

	Fiscal 2010						Fiscal 2011					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
Sector Business Workforce Training Act provided for in Title 39, chapter 11, except that the New Worker Training appropriation line item is to be used to train and educate both new and existing employees.												
The department is appropriated up to $800,000 for the 2011 biennium from the state special revenue account established in 90-6-304 for the purposes of disbursing hard rock mining impact funds to the impacted counties pursuant to 90-6-331 if revenue exceeds the appropriated amount in [this act]. If House Bill No. 194 is passed and approved in a form that creates a statutory appropriation for that purpose, this language appropriation is void.												
If Senate Bill No. 100 is not passed and approved, the appropriation for Coal Board Local Impact Grants is reduced by $1,336,784 state special revenue in fiscal year 2010 and $1,399,859 state special revenue in fiscal year 2011.												
DEPARTMENT OF LABOR AND INDUSTRY (6602)												
1. Workforce Services Division (01)												
737,193	8,188,740	18,512,549	0	0	27,438,482	737,571	8,189,858	18,505,345	0	0	27,432,774
a. Community College Student Growth Account (Restricted)												
275,000	0	0	0	0	275,000	275,000	0	0	0	0	275,000
2. Unemployment Insurance Division (02)												
0	3,608,758	8,831,722	0	0	12,440,480	0	3,736,669	8,531,573	0	0	12,268,242
3. Commissioner's Office/Centralized Services Division (03)												
258,549	767,869	572,014	90,370	0	1,688,802	259,026	767,287	572,161	90,226	0	1,688,700
4. Employment Relations Division (04)												
1,188,380	10,018,677	655,467	0	0	11,862,524	1,189,424	10,003,124	656,283	0	0	11,848,831
a. WorkSafeMT (Biennial/OTO)												
0	1,000,000	0	0	0	1,000,000	0	0	0	0	0	0
5. Business Standards Division (05)												
0	14,454,050	0	0	0	14,454,050	0	14,419,340	0	0	0	14,419,340
6. Montana Community Services (07)												
122,451	39,432	2,763,873	0	0	2,925,756	122,501	39,370	2,763,817	0	0	2,925,688
7. Workers' Compensation Court (09)												
0	658,737	0	0	0	658,737	0	658,617	0	0	0	658,617

Fiscal 2010						Fiscal 2011					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
Total											
2,581,573	38,736,263	31,335,625	90,370	0	72,743,831	2,583,522	37,814,265	31,029,179	90,226	0	71,517,192

Workforce Services Division includes unspecified reductions in general fund money of $46,633 in fiscal year 2010 and $46,633 in fiscal year 2011. The agency may allocate these reductions in funding among programs when developing 2011 biennium operating plans.

If House Bill No. 662 is not passed and approved, the appropriation to the Business Standards Division is reduced by $32,648 of state special revenue in fiscal year 2010 and by $18,558 of state special revenue in fiscal year 2011.

If Senate Bill No. 271 is not passed and approved, the appropriation to the Business Standards Division is reduced by $10,981 of state special revenue in fiscal year 2010.

If House Bill No. 578 is not passed and approved, the appropriation to the Business Standards Division is reduced by $12,661 of state special revenue in fiscal year 2010.

If House Bill No. 171 is not passed and approved, the appropriation in Business Standards Division is increased by $41,081 of state special revenue in fiscal year 2010 and by $41,081 of state special revenue in fiscal year 2011.

The Workers' Compensation Court is appropriated up to $20,000 in state special revenue for the 2011 biennium to contract for replacement judges when the workers' compensation judge must be recused from a case.

DEPARTMENT OF MILITARY AFFAIRS (6701)

1. Centralized Services (01)											
529,240	0	226,767	0	0	756,007	529,818	0	227,111	0	0	756,929
a. Legislative Audit (Restricted/Biennial)											
4,184	0	0	0	0	4,184	0	0	0	0	0	0
2. Challenge Program (02)											
1,282,877	0	1,982,838	0	0	3,265,715	1,284,405	0	1,985,722	0	0	3,270,127
a. Legislative Audit (Restricted/Biennial)											
2,791	0	4,187	0	0	6,978	0	0	0	0	0	0
3. National Guard Scholarship Program (03) (Biennial)											
250,000	0	0	0	0	250,000	250,000	0	0	0	0	250,000

	Fiscal 2010						Fiscal 2011					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
4. Starbase Program (04)											
0	0	363,241	0	0	363,241	0	0	363,270	0	0	363,270
a. Legislative Audit (Restricted/Biennial)											
0	0	698	0	0	698	0	0	0	0	0	0
5. Army National Guard Program (12)											
1,245,953	0	12,938,797	0	0	14,184,750	1,376,364	0	13,082,702	0	0	14,459,066
a. Legislative Audit (Restricted/Biennial)											
12,211	0	25,469	0	0	37,680	0	0	0	0	0	0
6. Air National Guard Program (13)											
370,468	0	3,548,881	0	0	3,919,349	371,945	0	3,572,870	0	0	3,944,815
a. Legislative Audit (Restricted/Biennial)											
1,047	0	3,838	0	0	4,885	0	0	0	0	0	0
7. Disaster and Emergency Services (21)											
1,067,831	332,478	14,206,017	0	0	15,606,326	1,070,181	302,477	14,208,239	0	0	15,580,897
a. Legislative Audit (Restricted/Biennial)											
5,583	0	5,582	0	0	11,165	0	0	0	0	0	0
8. Veterans' Affairs Program (31)											
883,293	1,072,685	0	0	0	1,955,978	884,749	1,074,713	0	0	0	1,959,462
a. Legislative Audit (Restricted/Biennial)											
1,396	2,791	0	0	0	4,187	0	0	0	0	0	0
Total											
5,656,874	1,407,954	33,306,315	0	0	40,371,143	5,767,462	1,377,190	33,439,914	0	0	40,584,566

Centralized Services includes unspecified reductions in general fund money of $116,575 in fiscal year 2010 and $116,575 in fiscal year 2011. The agency may allocate these reductions in funding among programs when developing 2011 biennium operating plans.

TOTAL SECTION A											
90,583,577	82,989,750	88,664,076	9,987,204	0	272,224,607	90,308,669	76,428,501	86,667,364	9,896,562	0	263,301,096

Fiscal 2010						Fiscal 2011					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
				B. HEALTH AND HUMAN SERVICES							
DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES (6901)											
1. Human and Community Services Division (02)											
31,646,022	1,274,369	199,055,582	0	0	231,975,973	32,523,389	1,276,101	207,275,022	0	0	241,074,512
a. Family Economic Security Grant Program											
0	0	2,000,000	0	0	2,000,000	0	0	2,000,000	0	0	2,000,000
b. Child Care for Working Caretaker Relatives (Restricted)											
0	0	466,704	0	0	466,704	0	0	485,072	0	0	485,072
c. Food Banks (Restricted/OTO)											
0	0	750,000	0	0	750,000	0	0	750,000	0	0	750,000
d. Rent Increases (Restricted)											
150,797	1,573	156,071	0	0	308,441	163,073	1,701	168,777	0	0	333,551
e. Renewable Energy Certificates											
0	0	0	0	0	0	0	65,625	0	0	0	65,625
f. Additional Universal System Benefits											
0	89,920	0	0	0	89,920	0	179,840	0	0	0	179,840
2. Child and Family Services Division (03)											
32,915,112	2,507,540	26,690,146	0	0	62,112,798	34,113,235	2,507,539	27,672,052	0	0	64,292,826
a. Annualization of Tribal General Fund (Restricted)											
227,000	0	987,000	0	0	1,214,000	227,000	0	987,000	0	0	1,214,000
b. Rent Increases (Restricted)											
190,189	0	106,982	0	0	297,171	206,148	0	115,958	0	0	322,106
3. Director's Office (04)											
3,696,357	327,216	7,175,285	0	0	11,198,858	3,697,624	327,108	7,174,006	0	0	11,198,738
4. Child Support Enforcement Division (05)											
2,215,067	1,646,710	5,654,298	0	0	9,516,075	3,174,109	1,652,159	5,672,394	0	0	10,498,662

Fiscal 2010						Fiscal 2011					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
a. Rent Increases (Restricted)											
65,292	0	126,854	0	0	192,146	61,057	0	118,628	0	0	179,685
5. Business and Financial Services Division (06)											
3,490,788	1,102,632	4,656,891	0	0	9,250,311	3,526,294	1,116,499	4,699,222	0	0	9,342,015
a. Legislative Audit (Restricted/Biennial)											
157,557	10,628	194,656	0	0	362,841	0	0	0	0	0	0
6. Public Health and Safety Division (07)											
2,611,399	17,324,600	43,595,374	0	0	63,531,373	2,645,967	17,322,014	45,171,025	0	0	65,139,006
a. Tobacco Prevention Activities (Restricted)											
0	720,000	0	0	0	720,000	0	720,000	0	0	0	720,000
b. Offset Contraceptive Costs (Restricted)											
500,000	0	0	0	0	500,000	500,000	0	0	0	0	500,000
7. Quality Assurance Division (08)											
2,735,079	251,871	6,138,159	0	0	9,125,109	2,703,200	252,031	6,185,716	0	0	9,140,947
8. Technology Services Division (09)											
4,265,432	1,081,607	11,451,382	0	0	16,798,421	4,271,133	1,082,787	11,458,140	0	0	16,812,060
a. Universal Serial Bus (USB) Device Encryption (Biennial)											
14,558	2,354	17,254	0	0	34,166	0	0	0	0	0	0
b. Rent Increases (Restricted)											
26,160	5,414	37,477	0	0	69,051	28,059	5,797	40,016	0	0	73,872
9. Disability Services Division (10)											
55,180,831	4,566,174	89,798,560	0	0	149,545,565	56,044,487	4,566,702	90,655,003	0	0	151,266,192
a. MTAP New Technologies (Biennial)											
0	800,000	0	0	0	800,000	0	800,000	0	0	0	800,000
b. Structural Balance Adjustment (OTO)											
1,252,469	193,457	4,279,278	0	0	5,725,204	1,322,868	193,457	4,306,868	0	0	5,823,193
c. Transitions Coordination (Restricted/OTO)											
50,004	0	0	0	0	50,004	50,019	0	0	0	0	50,019

	Fiscal 2010						Fiscal 2011					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
d. Rent Increases (Restricted)											
84,529	6,496	54,965	0	0	145,990	90,517	6,957	58,859	0	0	156,333
e. Autism Home — Bozeman (Restricted/Biennial/OTO)											
400,000	0	0	0	0	400,000	0	0	0	0	0	0
10. Health Resources Division (11)											
119,148,495	23,573,568	322,263,666	0	0	464,985,729	127,732,185	26,026,240	341,006,836	0	0	494,765,261
a. Hospital Utilization Fee (Restricted)											
0	22,011,707	74,277,475	0	0	96,289,182	0	22,460,950	75,793,424	0	0	98,254,374
b. Medicaid for Workers With Disabilities											
35,001	0	72,660	0	0	107,661	81,760	0	166,224	0	0	247,984
c. PharmAssist Program (Restricted)											
0	234,980	0	0	0	234,980	0	234,980	0	0	0	234,980
d. Big Sky Rx (Biennial)											
0	3,200,000	0	0	0	3,200,000	0	3,200,000	0	0	0	3,200,000
e. Healthy Montana Kids (Restricted/Biennial)											
0	25,960,000	86,762,536	0	0	112,722,536	0	0	0	0	0	0
f. Structural Balance Adjustment (OTO)											
6,602,567	2,194,059	21,764,232	0	0	30,560,858	7,169,677	2,337,318	22,906,474	0	0	32,413,469
g. Medicaid Funding for Certain Transplants for Adults (Restricted/OTO)											
703,168	0	2,372,809	0	0	3,075,977	997,877	0	2,035,183	0	0	3,033,060
h. HIV Testing											
43,335	0	89,961	0	0	133,296	46,542	0	96,752	0	0	143,294
11. Senior and Long-Term Care Division (22)											
54,677,632	30,326,045	157,886,638	0	0	242,890,315	54,813,843	31,301,593	158,129,042	0	0	244,244,478
a. Eastern Montana Veterans' Home Maintenance (OTO)											
0	40,000	0	0	0	40,000	0	40,000	0	0	0	40,000
b. Structural Balance Adjustment (OTO)											
2,476,265	1,443,052	9,775,408	0	0	13,694,725	2,482,536	1,511,626	9,797,167	0	0	13,791,329

	Fiscal 2010						Fiscal 2011				
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
c. Community Waiver Services (Restricted/OTO)											
1,170,996	150,004	2,652,568	0	0	3,973,568	1,539,981	150,019	3,456,203	0	0	5,146,203
d. Resource Facilitation Service — TBI (Restricted/OTO)											
100,000	0	0	0	0	100,000	100,000	0	0	0	0	100,000
e. Assisted Living Facility Rate Increase (Restricted/OTO)											
179,000	0	580,291	0	0	759,291	310,000	0	731,695	0	0	1,041,695
12. Addictive and Mental Disorders Division (33)											
64,355,585	8,422,010	40,241,117	0	0	113,018,712	65,585,660	8,957,218	42,349,845	0	0	116,892,723
a. Mental Health Services Plan Drugs (Biennial)											
0	3,433,968	0	0	0	3,433,968	0	3,433,968	0	0	0	3,433,968
b. Structural Balance Adjustment (OTO)											
318,879	424,354	1,919,848	0	0	2,663,081	374,740	453,799	2,057,998	0	0	2,886,537
c. Mental Health Diversion (Restricted/Biennial)											
1,240,866	0	0	0	0	1,240,866	1,239,454	0	0	0	0	1,239,454
Total											
392,926,431	153,326,308	1,124,052,127	0	0	1,670,304,866	407,822,434	132,184,028	1,073,520,601	0	0	1,613,527,063

Funds in Healthy Montana Kids may be used only to fund program costs for the healthy Montana kids program.

Funding for Child Care for Working Caretaker Relatives is contingent upon passage of House Bill No. 676, requiring the human and community services division to implement means testing at 250% of the current federal poverty level by October 1, 2009. Funding for Child Care for Working Caretaker Relatives may be expended only by the human and community services division for child care assistance for working grandparents or caretaker relatives providing care for children in place of their parents.

Funding in Annualization of Tribal General Fund may be expended only by the Child and Family Services Division for Title IV-E contracts with tribal governments.

Public Health and Safety Division, Tobacco Prevention Activities includes $90,000 each year of the biennium for each of the eight Montana tribes. The funding must be used for tribal tobacco use prevention programs that meet the same requirements as other community-based contractors providing tobacco use prevention programs.

Fiscal 2010						Fiscal 2011					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

Offset Contraceptive Costs may only be used by Title X clinics for contraceptive costs or as state match for a federal family planning waiver.

Technology Services Division includes a reduction in general fund money of $3,598,925 each year of the biennium. The agency may allocate this reduction in funding among divisions when developing 2011 biennium operating plans.

Funding for the MTAP New Technologies includes $800,000 in biennial state special revenue in fiscal year 2010 and fiscal year 2011 for the Montana telecommunications access program that is contingent upon passage of federal communication commission regulations requiring states to pay for new technologies related to video relay service (VRS) and internet protocol relay (IP).

Hospital Utilization Fee is contingent upon passage and approval of House Bill No. 71. Funds in Hospital Utilization Fee may be used only for payments to hospitals for medicaid-eligible services.

Health Resources Division includes a reduction of $1,250,000 in general fund money in each year of the biennium. The agency may allocate this reduction in funding among programs when developing 2011 biennium operating plans.

Health Resources Division, Medicaid for Workers With Disabilities is contingent upon passage and approval of Senate Bill No. 119.

Healthy Montana Kids includes funding for 24.00 FTE, with 12.00 of the FTE funded for the 2011 biennium only. Healthy Montana Kids may be allocated among programs to support functions related to administration of the healthy Montana kids program.

HIV Testing is contingent upon passage and approval of Senate Bill No. 350.

Community Waiver Services funding may be used only to expand medicaid community waiver services, pay the state supplement payment increases due to the expansion, and provide additional informational resources for aged and disabled persons.

If House Bill No. 224 is not passed and approved, the general fund appropriation for Addictive and Mental Disorders Division is increased by $18,750 in general fund money each year of the biennium.

Mental Health Diversion is contingent upon passage and approval of House Bill No. 130, House Bill No. 131, or House Bill No. 132 and may be used only to implement those bills.

TOTAL SECTION B											
392,926,431	153,326,308	1,124,052,127	0	0	1,670,304,866	407,822,434	132,184,028	1,073,520,601	0	0	1,613,527,063

Fiscal 2010						Fiscal 2011					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
			C. NATURAL RESOURCES AND TRANSPORTATION								
DEPARTMENT OF FISH, WILDLIFE, AND PARKS (5201)											
1. Information Services Division (01)											
0	4,495,508	123,666	0	0	4,619,174	0	4,503,936	124,582	0	0	4,628,518
a. Core Technology Replacement (Restricted)											
0	53,700	0	0	0	53,700	0	50,000	0	0	0	50,000
2. Field Services Division (02)											
0	9,031,578	348,721	0	0	9,380,299	0	9,053,522	349,252	0	0	9,402,774
a. Block Management (OTO)											
0	850,000	0	0	0	850,000	0	850,000	0	0	0	850,000
b. Game Damage Herders (Restricted/OTO)											
0	23,000	0	0	0	23,000	0	23,000	0	0	0	23,000
c. Come Home to Hunt Pilot Project (Restricted)											
0	493,000	0	0	0	493,000	0	493,000	0	0	0	493,000
3. Fisheries Division (03)											
0	5,217,066	8,271,104	0	0	13,488,170	0	5,238,252	8,300,167	0	0	13,538,419
a. Private Lands Fishing Access (Restricted/OTO)											
0	25,000	0	0	0	25,000	0	25,000	0	0	0	25,000
b. Invasive Species Management (Restricted/OTO)											
0	31,278	94,485	0	0	125,763	0	31,297	94,510	0	0	125,807
4. Law Enforcement Division (04)											
0	9,037,058	354,148	0	0	9,391,206	0	9,078,530	353,678	0	0	9,432,208
5. Wildlife Division (05)											
0	5,370,178	4,610,140	0	0	9,980,318	0	5,430,907	4,662,566	0	0	10,093,473
a. State Wildlife Grants (Restricted/Biennial)											
0	0	276,975	0	0	276,975	0	0	276,975	0	0	276,975
b. Auction Accounts (Restricted/Biennial)											

Fiscal 2010						Fiscal 2011					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
0	91,000	0	0	0	91,000	0	91,000	0	0	0	91,000
c. Nongame Wildlife Funding (Restricted)											
0	25,000	0	0	0	25,000	0	25,000	0	0	0	25,000
d. Migratory Bird Funding (Restricted/OTO)											
0	40,000	0	0	0	40,000	0	40,000	0	0	0	40,000
e. Urban Wildlife (OTO)											
0	44,445	44,446	0	0	88,891	0	44,525	44,526	0	0	89,051
6. Parks Division (06)											
0	8,334,701	283,180	0	0	8,617,881	0	8,357,664	284,164	0	0	8,641,828
a. Snowmobile Equipment (Biennial)											
0	150,000	0	0	0	150,000	0	150,000	0	0	0	150,000
b. State Parks and FAS Operations and Maintenance (Restricted/OTO)											
0	199,243	0	0	0	199,243	0	199,410	0	0	0	199,410
7. Conservation Education Division (08)											
0	2,866,431	721,825	0	0	3,588,256	0	2,874,170	722,339	0	0	3,596,509
a. Operating Adjustment (Restricted/OTO)											
0	30,000	0	0	0	30,000	0	30,000	0	0	0	30,000
8. Management and Finance (09)											
0	9,912,249	107,647	0	0	10,019,896	0	9,918,602	106,977	0	0	10,025,579
a. Legislative Audit (Restricted/Biennial)											
0	94,897	16,746	0	0	111,643	0	0	0	0	0	0
Total											
0	56,415,332	15,253,083	0	0	71,668,415	0	56,507,815	15,319,736	0	0	71,827,551

If House Bill No. 674 is not passed and approved, Field Services Division is increased by $437,861 state special revenue and $143,393 federal special revenue in fiscal year 2010 and $481,083 state special revenue and $154,477 federal special revenue in fiscal year 2011.

If House Bill No. 585 is not passed and approved, Come Home to Hunt Pilot Project is void.

	Fiscal 2010						Fiscal 2011					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
If Senate Bill No. 425 is not passed and approved, Fisheries Division is reduced by $80,000 federal special revenue in fiscal year 2010 and fiscal year 2011.											
DEPARTMENT OF ENVIRONMENTAL QUALITY (5301)											
1. Central Management Program (10)											
252,326	1,290,152	315,561	0	0	1,858,039	252,997	1,291,329	316,510	0	0	1,860,836
a. Nonproprietary Operating Adjustments (OTO)											
17,047	199,475	183,265	0	0	399,787	18,566	203,433	186,183	0	0	408,182
2. Planning, Prevention, and Assistance Division (20)											
2,946,271	2,273,984	7,956,358	0	0	13,176,613	2,951,476	2,097,913	7,975,361	0	0	13,024,750
3. Enforcement Division (30)											
564,204	454,067	294,443	0	0	1,312,714	565,445	455,062	295,088	0	0	1,315,595
a. Enforcement Operating Adjustments (OTO)											
41,425	33,341	21,619	0	0	96,385	45,469	36,596	23,730	0	0	105,795
4. Remediation Division (40)											
0	6,009,143	7,496,947	0	0	13,506,090	0	6,029,028	7,530,496	0	0	13,559,524
a. Basin Creek Mine — Closure Plan (Biennial/OTO)											
0	375,000	0	0	0	375,000	0	375,000	0	0	0	375,000
b. Beal Mountain Mine — Closure Plan (Biennial/OTO)											
0	130,000	0	0	0	130,000	0	130,000	0	0	0	130,000
c. KRY Site Remediation Oversight (Restricted/Biennial/OTO)											
0	1,200,000	0	0	0	1,200,000	0	1,200,000	0	0	0	1,200,000
d. Accelerated Remediation (Biennial/OTO)											
0	364,000	0	0	0	364,000	0	364,000	0	0	0	364,000
5. Permitting and Compliance Division (50)											
1,595,184	16,435,227	6,721,075	0	0	24,751,486	1,631,821	16,450,096	6,698,556	0	0	24,780,473
a. Hard Rock/Major Facility Siting (Restricted/Biennial)											
0	1,700,000	50,000	0	0	1,750,000	0	1,700,000	50,000	0	0	1,750,000
b. Air Quality Support (Restricted)											

Fiscal 2010						Fiscal 2011					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
0	125,000	0	0	0	125,000	0	125,000	0	0	0	125,000
c. Restoration of Unspecified Reduction (OTO)											
250,000	0	0	0	0	250,000	250,000	0	0	0	0	250,000
6. Petroleum Tank Release Compensation Board (90)											
0	729,722	0	0	0	729,722	0	733,945	0	0	0	733,945
Total											
5,666,457	31,319,111	23,039,268	0	0	60,024,836	5,715,774	31,191,402	23,075,924	0	0	59,983,100

Central Management Program includes a reduction in general fund money of $104,256 in fiscal year 2010 and $104,257 in fiscal year 2011. The agency may allocate these reductions in funding among programs when developing 2011 biennium operating plans.

The department is authorized to decrease federal special revenue in the water pollution control and/or drinking water revolving loan programs and to increase state special revenue by a like amount within the special administration account when the amount of federal capitalization funds have been expended or when federal funds and bond proceeds will be used for other program purposes as authorized in law providing for the distribution of funds.

Permitting and Compliance Division includes a reduction in general fund money of $535,866 in fiscal year 2010 and $537,194 in fiscal year 2011. The agency may allocate these reductions in funding among programs when developing 2011 biennium operating plans.

If Senate Bill No. 360 is not passed and approved, then Permitting and Compliance Division is reduced by $8,720 general fund in fiscal year 2010 and by $33,888 in fiscal year 2011.

If House Bill No. 678 is not passed and approved, Permitting and Compliance Division is reduced by $297,442 state special revenue in fiscal year 2010 and $286,733 state special revenue in fiscal year 2011.

The agency may allocate Restoration of Unspecified Reduction among programs when developing 2011 biennium operating plans.

The department is appropriated up to $500,000 of the funds recovered under the petroleum tank compensation board subrogation program in the 2011 biennium for the purpose of paying contract expenses related to the recovery of funds.

DEPARTMENT OF TRANSPORTATION (5401)

1. General Operations Program (01) (Biennial)											
0	23,529,206	1,551,153	0	0	25,080,359	0	23,512,063	1,551,740	0	0	25,063,803

	Fiscal 2010						Fiscal 2011					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
a. Legislative Audit (Restricted/Biennial)	0	160,488	0	0	0	160,488	0	0	0	0	0	0
b. Surface Transportation Litigation (Restricted/Biennial/OTO)	2,600,000	0	0	0	0	2,600,000	0	0	0	0	0	0
c. Merchant Credit Card Fees (Restricted/OTO)	0	52,590	0	0	0	52,590	0	84,383	0	0	0	84,383
2. Construction Program (02) (Biennial)	0	77,828,008	302,198,444	0	0	380,026,452	0	77,161,872	300,801,313	0	0	377,963,185
3. Maintenance Program (03) (Biennial)	0	113,741,078	7,934,447	0	0	121,675,525	0	113,291,549	7,175,189	0	0	120,466,738
4. Motor Carrier Services Division (22)	0	8,218,581	2,962,602	0	0	11,181,183	0	8,206,927	3,029,205	0	0	11,236,132
a. Performance Registration Information Systems (OTO)	0	0	173,562	0	0	173,562	0	0	0	0	0	0
5. Aeronautics Program (40)	0	900,117	0	0	0	900,117	0	899,877	0	0	0	899,877
a. Aeronautics Grants (Biennial)	0	800,000	0	0	0	800,000	0	0	0	0	0	0
b. Aeronautics Loans (Biennial)	0	800,000	0	0	0	800,000	0	0	0	0	0	0
c. Airport Pavement Preservation (Biennial)	0	250,000	0	0	0	250,000	0	0	0	0	0	0
d. State System Plan (Biennial)	0	15,000	285,000	0	0	300,000	0	0	0	0	0	0
6. Rail, Transit, and Planning Division (50) (Biennial)	0	3,993,503	18,710,401	0	0	22,703,904	0	3,996,121	18,571,091	0	0	22,567,212
a. Emergency Medical Services Grants (Restricted/Biennial)	0	1,000,000	0	0	0	1,000,000	0	1,000,000	0	0	0	1,000,000

Fiscal 2010						Fiscal 2011					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
b. Senior Transportation (Restricted/Biennial/OTO)											
0	300,000	0	0	0	300,000	0	0	0	0	0	0
Total											
2,600,000	231,588,571	333,815,609	0	0	568,004,180	0	228,152,792	331,128,538	0	0	559,281,330

The department may adjust appropriations in the general operations, construction, maintenance, and transportation planning programs between state special revenue and federal special revenue funds if the total state special revenue authority for these programs is not increased by more than 10% of the total appropriations established by the legislature for each program.

All federal special revenue appropriations in the department are biennial.

All appropriations in the general operations, construction, maintenance, and transportation planning programs are biennial.

All remaining federal pass-through grant appropriations for highway traffic safety, including reversions for the 2009 biennium, are authorized to continue and are appropriated in fiscal year 2010 and fiscal year 2011.

State special revenue for Emergency Medical Services Grants may be decreased and federal special revenue increased by a like amount if federal funds are available for the purposes of House Bill No. 85.

Senior Transportation may be used only for the purposes identified in 7-14-112. If House Bill No. 645 does not include a transfer of $300,000 from the general fund to the senior citizen and persons with disabilities transportation services account established by 7-14-112, Senior Transportation is void.

DEPARTMENT OF LIVESTOCK (5603)

1. Centralized Services Program (01)											
49,554	2,188,427	300,000	0	0	2,537,981	49,317	2,184,822	300,000	0	0	2,534,139
a. Legislative Audit (Restricted/Biennial)											
0	34,889	0	0	0	34,889	0	0	0	0	0	0
b. Livestock Loss Mitigation Funding (Restricted/Biennial/OTO)											
150,000	0	0	0	0	150,000	0	0	0	0	0	0
2. Diagnostic Laboratory Program (03)											
441,457	1,315,221	9,853	0	0	1,766,531	448,192	1,567,694	9,850	0	0	2,025,736

	Fiscal 2010						Fiscal 2011					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
a. Information Technology Staff Training (OTO)											
0	11,500	0	0	0	11,500	0	0	0	0	0	0
b. Milk Contract Attorney (Restricted/OTO)											
0	10,000	0	0	0	10,000	0	10,000	0	0	0	10,000
c. Lab Funding Shortfall (OTO)											
172,350	0	0	0	0	172,350	11,100	0	0	0	0	11,100
d. Lab Server (Restricted/OTO)											
0	13,250	0	0	0	13,250	0	0	0	0	0	0
e. Milk Lab Incubator (OTO)											
0	1,442	0	0	0	1,442	0	0	0	0	0	0
f. Storage Container (OTO)											
0	3,200	0	0	0	3,200	0	0	0	0	0	0
g. Air Conditioner — Lab Server Room (OTO)											
0	7,500	0	0	0	7,500	0	0	0	0	0	0
h. Remodel PCR Area (OTO)											
0	17,500	0	0	0	17,500	0	0	0	0	0	0
3. Animal Health Division (04)											
0	662,580	846,045	0	0	1,508,625	0	661,086	849,060	0	0	1,510,146
a. Animal Health Vehicle Replacement (OTO)											
0	26,000	0	0	0	26,000	0	26,000	0	0	0	26,000
b. Animal Health System (Biennial/OTO)											
98,100	0	0	0	0	98,100	0	0	0	0	0	0
c. Brucellosis Herd Plan (OTO)											
250,000	169,447	0	0	0	419,447	250,000	455,274	0	0	0	705,274
4. Milk and Egg Program (05)											
0	288,367	34,455	0	0	322,822	0	292,939	34,453	0	0	327,392
a. Milk & Egg Bureau Vehicle Replacement (OTO)											
0	26,000	0	0	0	26,000	0	26,000	0	0	0	26,000

Fiscal 2010						Fiscal 2011					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
5. Brands Enforcement Division (06)											
2,943	3,041,467	0	0	0	3,044,410	2,940	3,048,576	0	0	0	3,051,516
a. Firearm Replacement (OTO)											
0	15,000	0	0	0	15,000	0	0	0	0	0	0
b. Brands — Rerecord (OTO)											
0	0	0	0	0	0	0	179,981	0	0	0	179,981
c. Brands System Upgrade (Biennial/OTO)											
0	172,350	0	0	0	172,350	0	11,100	0	0	0	11,100
d. Brands — Vehicle Replacement (OTO)											
0	87,726	0	0	0	87,726	0	87,726	0	0	0	87,726
6. Meat and Poultry Inspection Program (10)											
591,410	6,413	591,410	0	0	1,189,233	593,700	6,407	593,700	0	0	1,193,807
a. Meat Inspection Computers (OTO)											
8,750	0	8,750	0	0	17,500	8,750	0	8,750	0	0	17,500
Total											
1,764,564	8,098,279	1,790,513	0	0	11,653,356	1,363,999	8,557,605	1,795,813	0	0	11,717,417

The Centralized Services Program includes a reduction in general fund money of $22,240 in fiscal year 2010 and $22,240 in fiscal year 2011. The agency may allocate these reductions in funding among programs when developing 2011 biennium operating plans.

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION (5706)

1. Centralized Services (21)											
1,989,142	593,856	184,508	0	0	2,767,506	2,034,058	596,616	166,827	0	0	2,797,501
a. Legislative Audit (Restricted/Biennial)											
122,110	0	0	0	0	122,110	0	0	0	0	0	0
b. Legal Imaging (OTO)											
5,000	0	5,000	0	0	10,000	5,000	0	5,000	0	0	10,000
2. Oil and Gas Conservation Division (22)											

Fiscal 2010						Fiscal 2011					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
0	2,036,891	134,942	0	0	2,171,833	0	2,052,183	134,942	0	0	2,187,125
a. Office Equipment (Biennial/OTO)											
0	50,000	0	0	0	50,000	0	50,000	0	0	0	50,000
b. North American Prospect Expo (OTO)											
0	7,500	0	0	0	7,500	0	7,500	0	0	0	7,500
c. Oil & Gas Workshop for Educators (OTO)											
0	62,500	0	0	0	62,500	0	62,500	0	0	0	62,500
d. Board of Oil and Gas Conservation Technical FTE (Restricted)											
0	74,654	0	0	0	74,654	0	74,676	0	0	0	74,676
e. CBM — Water Production Study (Biennial/OTO)											
50,000	0	0	0	0	50,000	0	0	0	0	0	0
3. Conservation and Resource Development Division (23)											
1,404,615	3,122,479	295,764	0	0	4,822,858	1,417,635	3,144,005	295,736	0	0	4,857,376
a. Montana Rural Water Systems (Biennial/OTO)											
101,500	0	0	0	0	101,500	101,500	0	0	0	0	101,500
b. Drinking Water Loan Assistance (Restricted/OTO)											
0	200,000	0	0	0	200,000	0	200,000	0	0	0	200,000
c. Conservation District Grants (Restricted/OTO)											
0	80,000	0	0	0	80,000	0	80,000	0	0	0	80,000
4. Water Resources Division (24)											
7,939,854	4,573,119	167,173	0	0	12,680,146	8,004,757	4,618,759	167,190	0	0	12,790,706
a. Update State Water Plan (Restricted/OTO)											
154,735	0	0	0	0	154,735	152,085	0	0	0	0	152,085
5. Reserved Water Rights Compact Commission (25)											
591,382	0	0	0	0	591,382	594,389	0	0	0	0	594,389
6. Forestry and Trust Lands (35)											
10,017,778	15,894,216	1,308,850	0	0	27,220,844	10,082,373	16,028,083	1,309,960	0	0	27,420,416
a. Land Banking Private Funds (Biennial)											

Fiscal 2010						Fiscal 2011					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
0	122,000	0	0	0	122,000	0	122,000	0	0	0	122,000
b. Trust Land Management Database Upgrade (OTO)											
0	65,000	0	0	0	65,000	0	65,000	0	0	0	65,000
c. Forest Management Software Integration (OTO)											
0	83,000	0	0	0	83,000	0	0	0	0	0	0
d. Reliance Refinery Cleanup (Restricted/Biennial/OTO)											
0	5,100,000	0	0	0	5,100,000	0	4,500,000	0	0	0	4,500,000
e. Navigable Rivers											
0	10,000	0	0	0	10,000	0	10,000	0	0	0	10,000
Total											
22,376,116	32,075,215	2,096,237	0	0	56,547,568	22,391,797	31,611,322	2,079,655	0	0	56,082,774

Centralized Services includes unspecified reductions in general fund money of $750,000 in fiscal year 2010 and $750,000 in fiscal year 2011. The agency may allocate these reductions in funding among programs when developing 2011 biennium operating plans.

If House Bill No. 575 is not passed and approved, CBM — Water Production Study is void.

The department is appropriated up to $600,000 for the 2011 biennium from the state special revenue account established in 85-1-617 for the purchase of prior liens on property held as loan security as required by 85-1-618.

The department is authorized to decrease federal special revenue in the pollution control and/or drinking water revolving fund loan programs and increase state special revenue by a like amount within the special administration account when the amount of federal EPA CAP funds has been expended or federal funds and bond proceeds will be used for other program purposes as authorized in law providing for the distribution of funds.

There is appropriated up to $1 million in state special revenue for the 2011 biennium from the coal bed methane account to fund potential landowner or water right holder claims for emergency loss of water related to coal bed methane development.

If Montana Rural Water Systems receives federal funding during the 2011 biennium, Montana Rural Water Systems is reduced by a like amount.

If House Bill No. 676 is not passed and approved with an amendment to the coal tax shared fund, Conservation District Grants is void.

Fiscal 2010						Fiscal 2011					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

During the 2011 biennium, up to $1 million in funds currently in or to be deposited in the Broadwater replacement and renewal account is appropriated to the department for repairing or replacing equipment at the Broadwater hydropower facility.

During the 2011 biennium, up to $100,000 in interest earned on the Broadwater water users account is appropriated to the department for the purpose of repair, improvement, or rehabilitation of the Broadwater-Missouri diversion project.

During the 2011 biennium, up to $500,000 in funds currently in or to be deposited in the state project hydropower earnings account is appropriated for the purpose of repairing, improving, or rehabilitating department state water projects, and up to $70,000 may be used for the support of the Upper Clark Fork Steering Committee or the Clark Fork River Task Force.

If Senate Bill No. 303 is not passed and approved, Update State Water Plan is void.

If House Bill No. 674 is not passed and approved, Forestry and Trust Lands is reduced by $25,000 state special revenue in fiscal year 2010 and in fiscal year 2011.

The department may use up to $600,000 of Reliance Refinery Cleanup funds for grants to community partners for the purpose of furthering or expediting remediation or redevelopment activities.

If Senate Bill No. 507 is not passed and approved, Navigable Rivers is void.

DEPARTMENT OF AGRICULTURE (6201)

1. Central Management Division (15)											
133,640	754,719	145,672	142,351	0	1,176,382	136,916	755,074	145,669	142,344	0	1,180,003
a. Legislative Audit (Restricted/Biennial)											
43,262	0	0	0	0	43,262	0	0	0	0	0	0
b. Grant Application System (Biennial/OTO)											
0	60,000	0	0	0	60,000	0	0	0	0	0	0
c. Content Management System (Biennial/OTO)											
0	40,000	10,000	0	0	50,000	0	0	0	0	0	0
d. Web-Based Agriculture Product Registration System (Biennial/OTO)											
0	120,000	0	0	0	120,000	0	0	0	0	0	0
2. Agricultural Sciences Division (30)											
309,698	6,484,468	2,199,319	0	0	8,993,485	310,112	6,473,351	2,200,846	0	0	8,984,309

Fiscal 2010						Fiscal 2011					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
a. Analytical Lab Equipment (Biennial/OTO)											
0	350,000	0	0	0	350,000	0	0	0	0	0	0
b. Invasive Species Council (Biennial/OTO)											
333,500	0	0	0	0	333,500	333,500	0	0	0	0	333,500
c. Fertilizer Check-Off Research											
0	200,152	0	0	0	200,152	0	200,152	0	0	0	200,152
3. Agricultural Development Division (50)											
564,182	5,172,084	40,260	466,902	0	6,243,428	564,401	5,183,594	40,259	468,301	0	6,256,555
a. Growth Through Agriculture Grants (Restricted/OTO)											
0	80,000	0	0	0	80,000	0	80,000	0	0	0	80,000
Total											
1,384,282	13,261,423	2,395,251	609,253	0	17,650,209	1,344,929	12,692,171	2,386,774	610,645	0	17,034,519

If Senate Bill No. 300 is not passed and approved, Fertilizer Check-Off Research is void.

Agricultural Development Division includes a reduction in general fund money of $21,043 in fiscal year 2010 and $21,043 in fiscal year 2011. The agency may allocate these reductions in funding among programs when developing 2011 biennium operating plans.

If House Bill No. 676 is not passed and approved with an amendment to the coal tax shared fund, Growth Through Agriculture Grants is void.

TOTAL SECTION C											
33,791,419	372,757,931	378,389,961	609,253	0	785,548,564	30,816,499	368,713,107	375,786,440	610,645	0	775,926,691

	Fiscal 2010						Fiscal 2011				
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
				D. JUDICIAL BRANCH, LAW ENFORCEMENT, JUSTICE							
JUDICIARY (2110)											
1. Supreme Court Operations (01)											
9,322,553	198,236	124,915	0	0	9,645,704	9,367,710	223,236	124,929	0	0	9,715,875
a. Legislative Audit (Restricted/Biennial)											
45,355	0	0	0	0	45,355	0	0	0	0	0	0
2. Boards and Commissions (02)											
273,112	71,238	0	0	0	344,350	274,132	71,249	0	0	0	345,381
a. Judicial Standards (Restricted/Biennial)											
22,762	0	0	0	0	22,762	0	0	0	0	0	0
3. Law Library (03)											
901,258	0	0	0	0	901,258	908,896	0	0	0	0	908,896
4. District Court Operations (04)											
23,415,402	382,180	0	0	0	23,797,582	24,005,185	406,683	0	0	0	24,411,868
5. Water Courts Supervision (05)											
0	1,576,678	0	0	0	1,576,678	0	1,585,315	0	0	0	1,585,315
6. Clerk of Court (06)											
471,815	0	0	0	0	471,815	472,001	0	0	0	0	472,001
Total											
34,452,257	2,228,332	124,915	0	0	36,805,504	35,027,924	2,286,483	124,929	0	0	37,439,336

If Senate Bill No. 158 is not passed and approved, the general fund appropriation for District Court Operations is reduced by $560,327 in fiscal year 2011.

District Court Operations includes a reduction in general fund money of $711,448 each year of the biennium. The branch may allocate these reductions in funding among programs when developing 2011 biennium operating plans.

CRIME CONTROL DIVISION (4107)

1. Justice System Support Service (01)

Fiscal 2010						Fiscal 2011					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
1,458,529	14,014	520,172	0	0	1,992,715	1,465,949	14,063	522,156	0	0	2,002,168
a. Federal Grant Administration — 0.5 FTE (OTO)											
0	0	18,117	0	0	18,117	0	0	18,121	0	0	18,121
b. NIBRS Web Enhancement (Restricted/Biennial/OTO)											
64,000	0	64,000	0	0	128,000	0	0	0	0	0	0
c. Juvenile Detention Center Reporting (OTO)											
8,000	0	0	0	0	8,000	8,000	0	0	0	0	8,000
d. Pass-Through Grants (Biennial)											
904,559	150,000	5,757,230	0	0	6,811,789	904,559	150,000	5,757,230	0	0	6,811,789
Total											
2,435,088	164,014	6,359,519	0	0	8,958,621	2,378,508	164,063	6,297,507	0	0	8,840,078

Justice System Support Service includes a reduction in general fund money of $47,915 each year of the biennium. The agency may allocate these reductions in funding among programs when developing 2011 biennium operating plans.

All remaining pass-through grant appropriations, up to $100,000 in general fund money, $180,000 in state special revenue, and $7 million in federal funds, including reversions, for the 2009 biennium are authorized to continue and are appropriated in fiscal year 2010 and fiscal year 2011.

DEPARTMENT OF JUSTICE (4110)

1. Legal Services Division (01)											
4,903,123	459,773	566,913	0	0	5,929,809	4,973,814	487,159	570,462	0	0	6,031,435
a. Forensic Rape Exam Program (Restricted)											
2,500	0	0	0	0	2,500	2,500	0	0	0	0	2,500
b. Major Litigation — Yellowstone Compact (Restricted/Biennial/OTO)											
300,000	0	0	0	0	300,000	300,000	0	0	0	0	300,000
2. Office of Consumer Protection (02)											
0	1,728,684	0	0	0	1,728,684	0	1,724,016	0	0	0	1,724,016
3. Gambling Control Division (07)											
0	2,857,350	0	1,059,108	0	3,916,458	0	2,860,056	0	1,060,086	0	3,920,142

	Fiscal 2010						Fiscal 2011					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
a. Gambling Database (Biennial/OTO)	0	50,000	0	0	0	50,000	0	50,000	0	0	0	50,000
4. Motor Vehicle Division (12)	7,551,016	7,545,295	0	628,122	0	15,724,433	7,573,289	9,256,924	0	628,278	0	17,458,491
a. Debt Payments (Biennial)	0	1,046,873	0	0	0	1,046,873	0	931,425	0	0	0	931,425
5. Highway Patrol Division (13)	198,213	27,960,020	0	0	0	28,158,233	199,439	28,053,335	0	0	0	28,252,774
6. Division of Criminal Investigation (18)	5,465,635	3,040,750	1,169,898	0	0	9,676,283	5,476,475	3,047,303	1,172,728	0	0	9,696,506
a. Law Enforcement Academy Base Adjustment (OTO)	0	40,000	0	0	0	40,000	0	50,000	0	0	0	50,000
b. Meth Watch (Restricted/Biennial/OTO)	250,000	0	0	0	0	250,000	250,000	0	0	0	0	250,000
7. Central Services Division (28)	473,198	647,522	0	71,099	0	1,191,819	474,742	649,629	0	72,142	0	1,196,513
a. Legislative Audit (Restricted/Biennial)	30,588	41,832	0	846	0	73,266	0	0	0	0	0	0
8. Information Technology Services Division (29)	3,471,764	121,229	2,268	13,404	0	3,608,665	3,480,584	121,258	2,268	13,408	0	3,617,518
9. Forensic Sciences Division (32)	3,444,695	302,710	0	0	0	3,747,405	3,460,733	302,618	0	0	0	3,763,351
a. Lab Equipment Replacement (Biennial/OTO)	55,750	0	0	0	0	55,750	55,750	0	0	0	0	55,750
Total	26,146,482	45,842,038	1,739,079	1,772,579	0	75,500,178	26,247,326	47,533,723	1,745,458	1,773,914	0	77,300,421

Fiscal 2010						Fiscal 2011					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

Legal Services Division includes a reduction in general fund money of $522,269 each year of the biennium. The agency may allocate these reductions in funding among programs when developing 2011 biennium operating plans.

If Senate Bill No. 117 is not passed and approved, state special revenue for Highway Patrol Division is decreased by $4,468,221 in fiscal year 2010 and by $4,481,164 in fiscal year 2011.

Funding in Division of Criminal Investigation includes $189,728 general fund money for fiscal year 2010 and $177,028 general fund money for fiscal year 2011 that is contingent upon the nonavailability of federal grant funds to support computer crimes investigations and must be reduced dollar-for-dollar by the amount of any federal grant funds received to support computer crimes investigations.

PUBLIC SERVICE COMMISSION (4201)

1. Public Service Regulation Program (01)											
0	3,437,837	25,405	0	0	3,463,242	0	3,450,598	25,405	0	0	3,476,003
a. Legislative Audit (Restricted/Biennial)											
0	24,422	0	0	0	24,422	0	0	0	0	0	0
b. Retirement Payout (Biennial)											
0	102,941	0	0	0	102,941	0	102,942	0	0	0	102,942
c. Computer Replacement (OTO)											
0	31,955	0	0	0	31,955	0	0	0	0	0	0
Total											
0	3,597,155	25,405	0	0	3,622,560	0	3,553,540	25,405	0	0	3,578,945

OFFICE OF STATE PUBLIC DEFENDER (6108)

1. Office of State Public Defender (01)											
18,938,030	43,456	0	0	0	18,981,486	18,886,797	43,456	0	0	0	18,930,253
a. Relocate Lewis and Clark County Office Due to SB 158 Impact (Restricted/OTO)											
59,043	0	0	0	0	59,043	7,556	0	0	0	0	7,556
2. Office of Appellate Defender (02)											
873,976	0	0	0	0	873,976	875,210	0	0	0	0	875,210

Fiscal 2010						Fiscal 2011					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
Total											
19,871,049	43,456	0	0	0	19,914,505	19,769,563	43,456	0	0	0	19,813,019

Office of State Public Defender includes a reduction in general fund money of $402,817 each year of the biennium. The agency may allocate these reductions in funding among programs when developing 2011 biennium operating plans.

Funding in Relocate Lewis and Clark County Office Due to SB 158 Impact is contingent upon and passage and approval of Senate Bill No. 158. If Senate Bill No. 158 is not passed and approved, funding in Relocate Lewis and Clark County Office Due to SB 158 Impact is void.

DEPARTMENT OF CORRECTIONS (6401)

1. Administration and Support Services (01)											
16,127,887	368,433	0	86,987	0	16,583,307	16,106,512	368,215	0	83,703	0	16,558,430
a. Legislative Audit (Restricted/Biennial)											
108,155	0	0	0	0	108,155	0	0	0	0	0	0
b. PREA Supplies (Biennial/OTO)											
15,000	0	0	0	0	15,000	0	0	0	0	0	0
c. Collection Unit System (OTO)											
0	455,000	0	0	0	455,000	0	55,000	0	0	0	55,000
2. Community Corrections (02) (Biennial)											
54,957,327	712,796	0	0	0	55,670,123	59,859,201	716,030	0	0	0	60,575,231
a. MH Meds and Services (Restricted)											
183,399	0	0	0	0	183,399	183,399	0	0	0	0	183,399
3. Secure Facilities (03) (Biennial)											
73,072,401	257,543	38,808	0	0	73,368,752	74,670,093	257,543	38,808	0	0	74,966,444
a. MSP Equipment (OTO)											
50,000	0	0	0	0	50,000	0	0	0	0	0	0
b. MSP Video Equipment (Biennial/OTO)											
65,000	0	0	0	0	65,000	0	0	0	0	0	0
c. MWP Maintenance and Supplies (Biennial/OTO)											

Fiscal 2010						Fiscal 2011					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
75,000	0	0	0	0	75,000	0	0	0	0	0	0
4. Montana Correctional Enterprises (04)											
962,154	1,893,827	88,316	565,495	0	3,509,792	965,016	1,893,827	88,305	565,425	0	3,512,573
a. Canteen (OTO)											
0	28,000	0	0	0	28,000	0	0	0	0	0	0
b. License Plate Budget (OTO)											
1,099,499	0	0	0	0	1,099,499	0	0	0	0	0	0
5. Juvenile Corrections (05)											
19,621,384	846,365	6,955	0	0	20,474,704	19,667,883	846,365	6,955	0	0	20,521,203
a. Riverside Repairs (Biennial/OTO)											
150,000	0	0	0	0	150,000	0	0	0	0	0	0
Total											
166,487,206	4,561,964	134,079	652,482	0	171,835,731	171,452,104	4,136,980	134,068	649,128	0	176,372,280

Community Corrections includes a reduction in general fund money of $3,440,653 each year of the biennium. The agency may allocate these reductions in funding among programs when developing 2011 biennium operating plans.

Community Corrections includes an increase of $1,500,000 in general fund money in fiscal year 2011. The agency may allocate this increase in funding among programs when developing 2011 biennium operating plans.

Community Corrections includes $392,625 in general fund money in fiscal year 2010 and $785,249 in general fund money in fiscal year 2011 that may be used only for provider rate increases for contracted community corrections services such as prerelease centers and treatment programs.

Funding in MH Meds and Services may be used only for offenders leaving secure care or at risk of returning to secure care, who are under the supervision of the department of corrections, who meet the criteria for serious mental illness, and who are not eligible for or have not yet been enrolled in a public benefit program. Funding may be used to provide: a prescription benefit of up to a 60-day supply of psychotropic medications upon release from an institution; short-term medication purchases for offenders who become unstable and need medications; or mental health services, including services necessary to obtain a written prescription and medication management.

If House Bill No. 224 is not passed and approved, the general fund appropriation for Secure Facilities is increased by $18,750 in fiscal year 2010 and $18,750 in fiscal year 2011.

Fiscal 2010						Fiscal 2011					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

Secure Facilities includes $215,349 in general fund money in fiscal year 2010 and $430,697 in general fund money in fiscal year 2011 that my be used only for provider rate increases for contracted beds operated by private for-profit providers.

If Senate Bill No. 508 is not passed and approved, general fund money in Montana Correctional Enterprises is increased by $1,099,499 in fiscal year 2010 and $1,099,648 in fiscal year 2011 and the item License Plate Budget is void. If Senate Bill No. 508 is not passed and approved, $2,886,308 in general fund money is appropriated as a restricted, biennial, one-time-only appropriation to support the reissue of license plates as required in 61-3-332.

TOTAL SECTION D											
249,392,082	56,436,959	8,382,997	2,425,061	0	316,637,099	254,875,425	57,718,245	8,327,367	2,423,042	0	323,344,079

Fiscal 2010						Fiscal 2011					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
				E. EDUCATION							
OFFICE OF SUPERINTENDENT OF PUBLIC INSTRUCTION (3501)											
1. OPI Administration (06)											
9,093,505	226,276	16,787,287	0	0	26,107,068	9,148,604	226,357	21,188,076	0	0	30,563,037
a. Teacher Stipends (OTO)											
15,000	6,000	0	0	0	21,000	15,000	6,000	0	0	0	21,000
2. Distribution to Public Schools (09)											
0	0	138,029,444	0	0	138,029,444	0	0	142,354,444	0	0	142,354,444
a. BASE Aid (Restricted/Biennial)											
528,670,835	0	0	0	0	528,670,835	541,158,569	0	0	0	0	541,158,569
b. At-Risk Payment (Restricted/Biennial)											
1	0	0	0	0	1	1	0	0	0	0	1
c. Special Education (Restricted/Biennial)											
40,413,567	0	0	0	0	40,413,567	40,413,567	0	0	0	0	40,413,567
d. Transportation (Restricted/Biennial)											
12,338,475	0	0	0	0	12,338,475	12,338,475	0	0	0	0	12,338,475
e. School Facility Reimbursement (Restricted/Biennial)											
9,744,392	0	0	0	0	9,744,392	9,744,392	0	0	0	0	9,744,392
f. In-State Treatment (Restricted/Biennial)											
787,800	0	0	0	0	787,800	787,800	0	0	0	0	787,800
g. Secondary Vocational Education (Restricted/Biennial)											
1,000,000	0	0	0	0	1,000,000	1,000,000	0	0	0	0	1,000,000
h. Adult Basic Education (Restricted/Biennial)											
524,998	0	0	0	0	524,998	524,998	0	0	0	0	524,998
i. Gifted and Talented (Restricted/Biennial)											
246,982	0	0	0	0	246,982	246,982	0	0	0	0	246,982
j. School Food (Restricted/Biennial)											

Fiscal 2010						Fiscal 2011					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
648,655	0	0	0	0	648,655	648,655	0	0	0	0	648,655
k. HB 124 Block Grants (Restricted/Biennial)											
51,757,156	0	0	0	0	51,757,156	52,150,511	0	0	0	0	52,150,511
l. State Tuition Payments (Restricted/Biennial)											
477,230	0	0	0	0	477,230	477,230	0	0	0	0	477,230
m. Traffic Safety Distribution (Restricted/Biennial)											
0	750,000	0	0	0	750,000	0	750,000	0	0	0	750,000
n. HB 464 — Advancing Agricultural Education in Montana (Restricted/Biennial)											
110,750	0	0	0	0	110,750	113,250	0	0	0	0	113,250
Total											
655,829,346	982,276	154,816,731	0	0	811,628,353	668,768,034	982,357	163,542,520	0	0	833,292,911

OPI Administration includes a reduction in general fund money of $185,838 each year of the biennium. The agency may allocate these reductions in funding among programs when developing 2011 biennium operating plans.

BASE Aid reflects an increase in the basic entitlement and in the per-ANB entitlements of 1% in fiscal year 2010 and 1% in fiscal year 2011.

The office of public instruction may distribute funds from the appropriation for In-State Treatment to public school districts for the purpose of providing for educational costs of children with significant behavioral or physical needs.

All revenue up to $1.1 million per year in the traffic education account for distribution to schools under the provisions of 20-7-506 and 61-5-121 is appropriated as provided in Title 20, chapter 7, part 5.

If House Bill No. 464 is not passed and approved, the item for HB 464 — Advancing Agricultural Education in Montana is void.

All appropriations for federal special revenue programs in state level activities and in local education activities and all general fund appropriations in local educational activities are biennial.

BOARD OF PUBLIC EDUCATION (5101)

1. Administration (01)											
221,171	186,049	0	0	0	407,220	223,717	185,632	0	0	0	409,349

Fiscal 2010						Fiscal 2011					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
Total											
221,171	186,049	0	0	0	407,220	223,717	185,632	0	0	0	409,349

Administration includes a reduction in general fund money of $4,540 each year of the biennium. The agency may allocate these reductions in funding among programs when developing 2011 biennium operating plans.

SCHOOL FOR THE DEAF AND BLIND (5113)

1. Administration Program (01)											
450,627	3,751	0	0	0	454,378	446,985	3,939	0	0	0	450,924
a. Legislative Audit (Restricted/Biennial)											
34,889	0	0	0	0	34,889	0	0	0	0	0	0
2. General Services Program (02)											
539,726	0	0	0	0	539,726	539,544	0	0	0	0	539,544
3. Student Services (03)											
1,307,141	0	19,160	0	0	1,326,301	1,311,561	0	19,160	0	0	1,330,721
4. Education (04)											
3,558,182	330,539	63,813	0	0	3,952,534	3,546,753	344,990	63,813	0	0	3,955,556
Total											
5,890,565	334,290	82,973	0	0	6,307,828	5,844,843	348,929	82,973	0	0	6,276,745

Education includes a reduction in general fund money of $76,381 each year of the biennium. The agency may allocate these reductions in funding among programs when developing 2011 biennium operating plans.

MONTANA ARTS COUNCIL (5114)

1. Promotion of the Arts (01)											
458,925	209,500	0	0	0	668,425	456,702	211,705	0	0	0	668,407
a. Legislative Audit (Restricted/Biennial)											
8,190	3,580	9,163	0	0	20,933	0	0	0	0	0	0

	Fiscal 2010						Fiscal 2011				
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
b. Federal Funds (Biennial)											
0	0	591,675	0	0	591,675	0	0	596,485	0	0	596,485
Total											
467,115	213,080	600,838	0	0	1,281,033	456,702	211,705	596,485	0	0	1,264,892

Promotion of the Arts includes a reduction in general fund money of $9,427 each year of the biennium. The agency may allocate these reductions in funding among programs when developing 2011 biennium operating plans.

MONTANA STATE LIBRARY COMMISSION (5115)

1. Statewide Library Resources (01)											
2,538,648	803,530	620,578	0	0	3,962,756	2,752,830	803,523	620,661	0	0	4,177,014
a. Legislative Audit (Restricted/Biennial)											
20,933	0	0	0	0	20,933	0	0	0	0	0	0
b. LSTA and State Share (Biennial)											
205,660	0	790,630	0	0	996,290	0	0	190,529	0	0	190,529
c. Library Courier Services Pilot Project (Restricted/OTO)											
0	80,000	0	0	0	80,000	0	80,000	0	0	0	80,000
Total											
2,765,241	883,530	1,411,208	0	0	5,059,979	2,752,830	883,523	811,190	0	0	4,447,543

Statewide Library Resources includes a reduction in general fund money of $13,736 in fiscal year 2010 and $13,737 in fiscal year 2011. The agency may allocate these reductions in funding among programs when developing 2011 biennium operating plans.

If House Bill No. 676 is not passed and approved with an amendment to the coal tax shared fund, Library Courier Services Pilot Project is void.

MONTANA HISTORICAL SOCIETY (5117)

1. Administration Program (01)											
1,130,370	113,171	107,865	433,318	0	1,784,724	1,145,958	113,396	107,865	424,602	0	1,791,821

Fiscal 2010						Fiscal 2011					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
a. Legislative Audit (Restricted/Biennial)											
38,377	0	0	0	0	38,377	0	0	0	0	0	0
2. Research Center (02)											
857,883	0	0	99,983	0	957,866	862,506	0	0	98,986	0	961,492
3. Museum Program (03)											
306,351	25,000	0	71,951	0	403,302	310,557	25,000	0	65,250	0	400,807
4. Publications (04)											
98,830	0	0	339,268	0	438,098	99,107	0	0	340,295	0	439,402
5. Education Program (05)											
212,307	0	0	33,068	0	245,375	206,557	0	0	33,068	0	239,625
6. Historic Preservation Program (06)											
63,993	0	555,804	3,949	0	623,746	65,463	0	555,804	3,958	0	625,225
Total											
2,708,111	138,171	663,669	981,537	0	4,491,488	2,690,148	138,396	663,669	966,159	0	4,458,372

Administration Program includes a reduction in general fund money of $11,717 each year of the biennium. The agency may allocate these reductions in funding among programs when developing 2011 biennium operating plans.

MONTANA UNIVERSITY SYSTEM, INCLUDING OFFICE OF THE COMMISSIONER OF HIGHER EDUCATION AND EDUCATIONAL UNITS AND AGENCIES (5100)

1. OCHE — Administration (01)											
1,506,806	0	272,383	90,795	0	1,869,984	1,515,912	0	267,424	89,141	0	1,872,477
a. Legislative Audit (Restricted/Biennial)											
42,075	0	0	0	0	42,075	0	0	0	0	0	0
2. OCHE — Student Assistance Program (02)											
13,142,896	100,920	193,306	0	0	13,437,122	13,671,773	98,969	193,306	0	0	13,964,048
a. Loan Reimbursement Program for Montana State Hospital and Montana State Prison Registered Professional Nurses (Restricted/Biennial)											
37,500	0	0	0	0	37,500	37,500	0	0	0	0	37,500

Fiscal 2010						Fiscal 2011					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
3. OCHE — Improving Teacher Quality (03)											
0	0	223,789	0	0	223,789	0	0	223,795	0	0	223,795
4. OCHE — Community College Assistance (04) (Biennial)											
8,535,484	0	0	0	0	8,535,484	8,535,483	0	0	0	0	8,535,483
5. Legislative Audit (Restricted/Biennial)											
40,751	0	0	0	0	40,751	0	0	0	0	0	0
6. OCHE — Educational Outreach and Diversity (06)											
71,277	0	6,892,152	0	0	6,963,429	71,318	0	5,776,167	0	0	5,847,485
7. OCHE — Workforce Development (08)											
90,065	0	6,331,932	0	0	6,421,997	90,062	0	6,332,958	0	0	6,423,020
8. OCHE — Appropriation Distribution Transfers (09)											
129,325,832	20,040,323	0	0	0	149,366,155	131,637,454	18,340,323	0	0	0	149,977,777
a. Legislative Audit (Restricted/Biennial)											
614,220	0	0	0	0	614,220	0	0	0	0	0	0
b. Montana State University-Northern — Biodiesel Research (Biennial/OTO)											
400,000	0	0	0	0	400,000	0	0	0	0	0	0
c. Agricultural Experiment Station											
12,404,983	0	0	0	0	12,404,983	12,334,981	0	0	0	0	12,334,981
d. Extension Service											
5,795,626	0	0	0	0	5,795,626	5,795,319	0	0	0	0	5,795,319
e. Forest and Conservation Experiment Station											
1,165,732	0	0	0	0	1,165,732	1,165,732	0	0	0	0	1,165,732
f. Bureau of Mines and Geology											
1,932,049	841,886	0	0	0	2,773,935	1,931,930	841,886	0	0	0	2,773,816
g. Fire Services Training School											
751,611	0	0	0	0	751,611	750,424	0	0	0	0	750,424
9. Tribal College Assistance Program (11) (Biennial)											
450,002	0	0	0	0	450,002	450,002	0	0	0	0	450,002

Fiscal 2010						Fiscal 2011					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
10. OCHE — Guaranteed Student Loan (12)											
0	0	39,310,533	0	0	39,310,533	0	0	43,248,516	0	0	43,248,516
a. Legislative Audit (Restricted/Biennial)											
0	0	20,724	0	0	20,724	0	0	0	0	0	0
11. OCHE — Board of Regents (13)											
48,894	0	0	0	0	48,894	51,367	0	0	0	0	51,367
Total											
176,355,803	20,983,129	53,244,819	90,795	0	250,674,546	178,039,257	19,281,178	56,042,166	89,141	0	253,451,742

Items designated as OCHE — Administration (01), Student Assistance Program (02), Improving Teacher Quality (03), Educational Outreach and Diversity (06), Workforce Development (08), Appropriation Distribution Transfers (09) [excluding Agriculture Experiment Station, Extension Service, Forest and Conservation Experiment Station, Bureau of Mines and Geology, Bureau Ground Water Program, and Fire Services Training School], Guaranteed Student Loan (12), and Board of Regents (13) are a single biennial lump-sum appropriation.

General fund money, state and federal special revenue, and proprietary fund revenue appropriated to the board of regents are included in all Montana university system programs (5100). All other public funds received by units of the Montana university system (other than plant funds appropriated in House Bill No. 5, relating to long-range building) are appropriated to the board of regents and may be expended under the provisions of 17-7-138(2). The board of regents shall allocate the appropriations to individual university system units, as defined in 17-7-102(13), according to board policy.

The Montana university system, except the office of the commissioner of higher education and the community colleges, shall provide the office of budget and program planning and the legislative fiscal division banner access to the entire university system's banner information system, except for information pertaining to individual students or individual employees that is protected by Article II, sections 9 and 10, of the Montana constitution, 20-25-515, or the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. 1232g.

The Montana university system shall provide the electronic data required for human resource data for the current unrestricted operating funds into the MBARS system. The salary and benefit data provided must reflect approved board of regents operating budgets.

If House Bill No. 645 does not include $58,014 of general fund money in fiscal year 2010 and $57,893 of general fund money in fiscal 2011 to fund the present law increase for the distance learning program in the office of the commissioner of higher education, then OCHE — Administration is increased by $58,014 of general fund money in fiscal year 2010 and by $57,893 of general fund money in fiscal year 2011.

OCHE — Administration includes a reduction in general fund money of $768,428 in fiscal year 2010 and $768,426 in fiscal year 2011. The agency may allocate these reductions in funding among programs when developing 2011 biennium operating plans.

Fiscal 2010						Fiscal 2011					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

The appropriation in OCHE — Student Assistance Program, Loan Reimbursement Program for Montana State Hospital and Montana State Prison Registered Professional Nurses is contingent upon passage and approval of House Bill No. 224.

Total audit costs are estimated to be $81,700 for the community colleges for the biennium. The general fund appropriation for each community college provides 49.9% of the total audit costs in the 2009 biennium. The remaining 50.1% of these costs must be paid from funds other than those appropriated for OCHE — Community College Assistance. Audit costs for the biennium may not exceed $28,900 for Dawson, $28,900 for Miles, and $23,900 for Flathead Valley community college.

OCHE — Community College Assistance includes a reduction in general fund money of $174,609 in fiscal year 2010 and $174,610 in fiscal year 2011. The agency may allocate these reductions in funding among programs when developing 2011 biennium operating plans.

The variable cost of education for each full-time equivalent student at the community colleges, including Summitnet, is $2,194 for each year of the 2009 biennium. The general fund appropriation for OCHE — Community College Assistance in [this act], the general fund appropriation for Community College Assistance — Restore to Governor's December 15 Budget in House Bill No. 645, and the federal special revenue appropriation for Community Colleges Tuition Mitigation in House Bill No. 645 provide 50.8% of the fixed cost of education plus 50.8% of the variable cost of education for each full-time equivalent student in fiscal year 2010 and fiscal year 2011. The remaining percentage of the budget must be paid from funds other than those appropriated in House Bill No. 2 or House Bill No. 645.

The sum of the general fund appropriation for OCHE — Community College Assistance in [this act], the general fund appropriation for Community College Assistance — Restore to Governor's December 15 Budget in House Bill No. 645, and the federal special revenue appropriation for Community Colleges Tuition Mitigation in House Bill No. 645 is calculated to fund education in the community colleges for an estimated 2,434 resident FTE students in fiscal year 2010 and 2,535 resident FTE students in fiscal year 2011. If total resident FTE student enrollment in the community colleges is greater than the estimated number for the biennium, the community colleges shall serve the additional students without a state general fund contribution. If actual resident FTE student enrollment is less than the estimated number for the biennium, the community colleges shall revert general fund money to the state in accordance with 17-7-142.

Revenue anticipated to be received by the Montana university system units and colleges of technology include interest earnings and other revenue of $1,042,488 each year of the 2011 biennium. These amounts are appropriated for current unrestricted operating expenses as a biennial lump-sum appropriation and are in addition to the funds shown in OCHE.

Revenue anticipated to be received by the agricultural experiment station includes:

(1) interest earnings and other revenue of $60,308 each year of the 2011 biennium; and

(2) federal revenue of $2,195,157 each year of the 2011 biennium.

Revenue anticipated to be received by the extension services includes:

	Fiscal 2010						Fiscal 2011					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

(1) interest earnings of $14,000 each year of the 2011 biennium; and

(2) federal revenue of $2,201,529 each year of the 2011 biennium.

Anticipated interest revenue of $425 in each year of the 2011 biennium is appropriated to the forest and conservation experiment station for current unrestricted operating expenses. This amount is in addition to that shown in OCHE — Appropriation Distribution Transfers.

Anticipated sales revenue of $45,000 in fiscal year 2010 and $48,000 in fiscal year 2011 is appropriated to the Bureau of Mines and Geology for current unrestricted operating expenses. This amount is in addition to that shown in OCHE — Appropriation Distribution Transfers.

Anticipated interest revenue of $1,500 each year of the 2011 biennium is appropriated to Fire Services Training School for current unrestricted operating expenses. This amount is in addition to that shown in OCHE — Appropriation Distribution Transfers.

OCHE — Appropriation Distribution Transfers includes $1,195,300 for the 2011 biennium that must be transferred to the energy conservation program account and used to retire the general obligation bonds sold to fund energy improvements through the state energy conservation program. The costs of this transfer in each year of the biennium are: university of Montana-Missoula, $112,500 in fiscal year 2010 and $101,500 in fiscal year 2011; Montana tech of the university of Montana, $37,000 in fiscal year 2010 and $37,000 in fiscal year 2011; western Montana college of the university of Montana, $103,650 in fiscal year 2010 and $102,650 in fiscal year 2011; Helena college of technology of the university of Montana, $6,000 in fiscal year 2010 and $6,000 in fiscal year 2011; Montana state university-Bozeman, $58,000 in fiscal year 2010 and $58,000 in fiscal year 2011; Montana state university-Billings, $144,500 in fiscal year 2010 and $133,700 in fiscal year 2011; Montana state university-northern, $63,400 in fiscal year 2010 and $58,400 in fiscal year 2011; and Montana state university-Great Falls college of technology, $86,500 in fiscal year 2010 and $86,500 in fiscal year 2011.

The Montana university system shall pay $88,506 for the 2011 biennium in current funds in support of the Montana natural resource information system (NRIS) located at the Montana state library. Quarterly payments must be made upon receipt of the bills from the state library, up to the total amount appropriated.

OCHE — Appropriation Distribution Transfers includes a reduction in general fund money of $2,669,158 in fiscal year 2010 and $2,669,158 in fiscal year 2011. The agency may allocate these reductions in funding among programs when developing 2011 biennium operating plans.

TOTAL SECTION E											
844,237,352	23,720,525	210,820,238	1,072,332	0	1,079,850,447	858,775,531	22,031,720	221,739,003	1,055,300	0	1,103,601,554
TOTAL STATE FUNDING											
1,610,930,861	689,231,473	1,810,309,399	14,093,850	0	4,124,565,583	1,642,598,558	657,075,601	1,766,040,775	13,985,549	0	4,079,700,483

Section 10. Rates. Internal service fund type fees and charges established by the legislature for the 2011 biennium in compliance with 17-7-123(1)(f)(ii) are as follows:

	Fiscal 2010	Fiscal 2011
DEPARTMENT OF REVENUE – 5801		
1. Business and Income Taxes Division		
Delinquent Account Collection Fee (percent of amount collected)	5%	5%
DEPARTMENT OF ADMINISTRATION — 6101		
1. Director's Office		
a. Management Services Unit		
Total Allocation of Costs, excluding portion of unit for HR	$1,002,940	$1,016,821
Portion of Unit for Human Resources Charges Per FTE of User Programs	$553	$567
2. State Accounting Division		
a. SABHRS Finance and Budget Bureau		
SABHRS Services Fee (total allocation of costs)	$4,507,446	$4,344,459
b. Warrant Writer		
Mailer	$0.72121	$0.72446
Nonmailer	$0.30121	$0.29446
Emergency	$13.64547	$13.64872
Duplicates	$3.26014	$3.26339
Externals		
Externals - Payroll	$0.20503	$0.19882
Externals - Universities	$0.12229	$0.11531
Direct Deposit		
Direct Deposit - Mailer	$0.76229	$0.77531
Direct Deposit - No Advice Printed	$0.12229	$0.11531
Unemployment Insurance		
Mailer - Print Only	$0.17892	$0.17915
Direct Deposit - No Advice Printed	$0.45380	$0.42970
3. General Services Division		
a. Facilities Management Bureau		
Office Rent (per sq. ft.)	$8.869	$9.002
Warehouse Rent (per sq. ft.)	$4.804	$5.010
Grounds Maintenance (per sq. ft)	$0.541	$0.543
Project Management - in-house	15%	15%
Project Management - contracted	5%	5%
b. Print and Mail Services		
Internal Printing		

Impression Cost		
1-20	$0.0762	$0.0762
21-100	$0.0336	$0.0336
101-1000	$0.0193	$0.0193
1001-5000	$0.0078	$0.0078
5000 +	$0.0039	$0.0039
Color Copy		
8 1/2 x 11	$0.25	$0.25
11 x 17	$0.50	$0.50
Ink		
Black per Sheet	$0.0002	$0.0002
Color	$15.00	$15.00
Special Mix	$25.00	$25.00
Large Format Color per ft.	$12.70	$12.70
Collating Machine	$0.0072	$0.0072
Collating Hand	$0.60	$0.60
Stapling Hand	$0.018	$0.018
Stapling In-line	$0.012	$0.012
Saddle Stitch	$0.036	$0.036
Folding (base + per sheet)	$12.00 + $0.006	$12.00 + $0.006
Folding Rt Angle (base + per sheet)	$12.00 + $0.006	$12.00 + $0.006
Folding In-line	$0.036	$0.036
Punching Standard 3-hole	$0.0012	$0.0012
Punching Nonstandard (base + per sheet)	$3.60 + $0.0012	$3.60 + $0.0012
Cutting	$0.66	$0.66
Padding	$0.0024	$0.0024
Scoring, perf, num (setup + duplicating rate)	$6.00 + Dup Rate	$6.00 + Dup Rate
Perfect Binding (setup + per sheet)	$18.00 + $0.66	$18.00 + $0.66
Spiral Binding	$0.69	0.69
Laminating		
8 1/2 x 11	$0.57	$0.57
11 x 17	$0.85	$0.85
Tape Binding	$0.60	$0.60
Tabs	$0.60	$0.60
Transparencies	$0.60	$0.60

Shrink Wrapping	$0.30	$0.30
Hand Work Production	$0.60	$0.60
Overtime	$22.15	$22.15
Desktop	$46.36	$46.36
Scan	$9.52	$9.52
Proof	$0.25	$0.25
Programming	$45.46	$45.46
File Transfer	$22.73	$22.73
Variable Data	$0.009	$0.009
CD Duplicating	$1.75	$1.75
DVD Duplicating	$3.50	$3.50
Silver Plates		
8.5 x 11	$9.20	$9.20
11 x 17	$10.35	$10.35
CTP Plates		
8.5 x 11	$9.20	$9.20
11 x 17	$10.35	$10.35
External Printing		
Percent of invoice markup	6.73%	6.73%
Photocopy Pool		
Percent of invoice markup	15.9%	15.9%
Mail Preparation		
Tabbing	$0.021	$0.021
Labeling	$0.021	$0.021
Ink Jet	$0.034	$0.034
Inserting	$0.03	$0.03
Winsort	$0.062	$0.062
Permit Mailings	$0.062	$0.062
Mail Operations		
Machinable	$0.043	$0.043
Nonmachinable	$0.080	$0.080
Seal Only	$0.020	$0.020
Postcards	$0.049	$0.049
Certified Mail	$0.614	$0.614
Registered Mail	$0.614	$0.614
International Mail	$0.400	$0.400
Flats	$0.110	$0.110
Priority	$0.614	$0.614
Express Mail	$0.614	$0.614
USPS Parcels	$0.400	$0.400
Insured mail	$0.614	$0.614

Media Mail	$0.307	$0.307
Standard Mail	$0.200	$0.200
Postage Due	$0.061	$0.061
Fee Due	$0.061	$0.061
Tapes	$0.245	$0.245
Express Services	$0.500	$0.500
Interagency Mail	$281,917 yearly	$281,917 yearly
Postal Contract (Capitol)	$38,976 yearly	$38,976 yearly
c. Central Stores Program		
Markup as a Percentage of Retail Cost of Goods Sold	25%	25%
4. Information Technology Services Division		
Rates Maintained/Based Upon FMM Model		
Operations of the Division	30-Day Working Capital Reserve	
5. Health Care and Benefits Division		
a. Workers' Compensation Management Program		
Administrative Fee (per payroll warrant per pay period)	$1.29	$1.12
6. State Human Resources Division		
a. Intergovernmental Training		
Open Enrollment Courses		
Two-Day Course (per participant)	$185	$187
One-Day Course (per participant)	$118	$120
Half-Day Course (per participant)	$90	$93
Eight-Day Management Series (per participant)	$560	$565
Six-Day Management Series (per participant)	$430	$435
Four-Day Administrative Assistant Series (per participant)	$325	$330
Contracted Courses		
Full Day of Training (flat fee)	$820	$825
Half Day of Training (flat fee)	$560	$565
b. Human Resources Information System Fee		
Per payroll warrant advice per pay period	$9.37	$8.04
7. Risk Management & Tort Defense		
Auto Liability, Comprehensive, and Collision (total allocation to agencies)	$1,135,000	$1,135,000
Aviation (total allocation to agencies)	$212,451	$212,451
General Liability (total allocation to agencies)	$6,750,000	$6,750,000
Property/Miscellaneous (total allocations to agencies)	$4,200,000	$4,200,000

DEPARTMENT OF COMMERCE – 6501

1. Board of Investments		
For the purposes of [this act], the legislature defines "rates" as the total collections necessary to operate the board of investments as follows:		
a. Administration Charge (total)	$4,819,844	$4,768,607
2. Director's Office/Management Services		
a. Management Services Indirect Charge Rate	12.95%	12.95%

DEPARTMENT OF LABOR AND INDUSTRY – 6602

1. Centralized Services Division		
a. Office of Information Technology	$121	$121
b. Cost Allocation Plan	9.73%	9.25%
. c. Hearing Bureau		
Administrative Law Judge	$90	$90
Paralegal	$50	$50
d. Office of Legal Services	$95	$95

DEPARTMENT OF FISH, WILDLIFE, & PARKS — 5201

1. Vehicle and Aircraft Rates		
Per Mile Rates		
a. Sedans	$0.45	$0.46
b. Vans	$0.52	$0.53
c. Utilities	$0.57	$0.58
d. Pickup 1/2 ton	$0.52	$0.53
e. Pickup 3/4 ton	$0.60	$0.61
Per Hour Rates		
f. Two-Place Single Engine	$108.07	$129.69
g. Partnavia	$514.56	$617.47
h. Turbine Helicopters	$576.10	$691.32
2. Duplicating Center		
Per Copy		
a. 1-20	$0.060	$0.065
b. 21-100	$0.045	$0.050
c. 101 - 1,000	$0.040	$0.045
d. 1,001- 5,000	$0.030	$0.035
e. color copies	$0.250	$0.250
Bindery		
a. Collating (per sheet)	$0.010	$0.010
b. Hand Stapling (per set)	$0.020	$0.020
c. Saddle Stitch (per set)	$0.035	$0.035
d. Folding (per set)	$0.010	$0.010
e. Punching (per set)	$0.005	$0.005
f. Cutting (per minute)	$0.600	$0.600

3. Warehouse Overhead Rate	18%	18%

DEPARTMENT OF ENVIRONMENTAL QUALITY — 5301

Indirect Rate

a. Personal Services	24%	24%
b. Operating Expenditures	4%	4%

DEPARTMENT OF TRANSPORTATION — 5401

1. State Motor Pool

In the motor pool program, if the price of gasoline goes above $3.71, Tier 2 rates may be charged if approved by the Office of Budget and Program Planning. If the price of gasoline goes above $4.21, Tier 3 rates may be charged if approved by the Office of Budget and Program Planning.

Tier one

a. Class 02 (small utilities)		
Per Hour Assigned	$2.543	$2.428
Per Mile Operated	$0.176	$0.176
b. Class 03 (hybrid SUV)		
Per Hour Assigned	$1.690	$2.323
Per Mile Operated	$0.129	$0.128
c. Class 04 (large utilities)		
Per Hour Assigned	$2.347	$2.359
Per Mile Operated	$0.208	$0.210
d. Class 05 (hybrid sedans)		
Per Hour Assigned	$2.355	$2.610
Per Mile Operated	$0.093	$0.094
e. Class 06 (midsize compacts)		
Per Hour Assigned	$1.733	$1.749
Per Mile Operated	$0.134	$0.135
d. Class 07 (small pickups)		
Per Hour Assigned	$1.667	$1.678
Per Mile Operated	$0.199	$0.201
e. Class 11 (large pickups)		
Per Hour Assigned	$1.797	$1.831
Per Mile Operated	$0.207	$0.209
f. Class 12 (vans – all types)		
Per Hour Assigned	$1.825	$1.858
Per Mile Operated	$0.198	$0.200

Tier two (contingent $3.71/gallon)

a. Class 02 (small utilities)		
Per Hour Assigned	$2.543	$2.428
Per Mile Operated	$0.200	$0.200
b. Class 03 (hybrid SUV)		
Per Hour Assigned	$1.690	$2.323

Per Mile Operated	$0.146	$0.144
c. Class 04 (large utilities)		
Per Hour Assigned	$2.347	$2.359
Per Mile Operated	$0.239	$0.241
d. Class 05 (hybrid sedans)		
Per Hour Assigned	$2.355	$2.610
Per Mile Operated	$0.105	$0.107
e. Class 06 (midsize compacts)		
Per Hour Assigned	$1.733	$1.749
Per Mile Operated	$0.151	$0.153
d. Class 07 (small pickups)		
Per Hour Assigned	$1.667	$1.678
Per Mile Operated	$0.225	$0.228
e. Class 11 (large pickups)		
Per Hour Assigned	$1.797	$1.831
Per Mile Operated	$0.236	$0.238
f. Class 12 (vans – all types)		
Per Hour Assigned	$1.825	$1.858
Per Mile Operated	$0.224	$0.227
Tier three (contingent $4.21/gallon)		
a. Class 02 (small utilities)		
Per Hour Assigned	$2.543	$2.428
Per Mile Operated	$0.225	$0.224
b. Class 03 (hybrid SUV)		
Per Hour Assigned	$1.690	$2.323
Per Mile Operated	$0.164	$0.161
c. Class 04 (large utilities)		
Per Hour Assigned	$2.347	$2.359
Per Mile Operated	$0.271	$0.272
d. Class 05 (hybrid sedans)		
Per Hour Assigned	$2.355	$2.610
Per Mile Operated	$0.118	$0.119
e. Class 06 (midsize compacts)		
Per Hour Assigned	$1.733	$1.749
Per Mile Operated	$0.169	$0.171
d. Class 07 (small pickups)		
Per Hour Assigned	$1.667	$1.678
Per Mile Operated	$0.252	$0.254
e. Class 11 (large pickups)		
Per Hour Assigned	$1.797	$1.831
Per Mile Operated	$0.266	$0.268

f. Class 12 (vans – all types)		
Per Hour Assigned	$1.825	$1.858
Per Mile Operated	$0.251	$0.253
2. Equipment Program		
All of Program Operations	60-day working capital reserve	
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION — 5706		
1. Air Operations Program		
a. Bell UH-1H	$1,210	$1,210
b. Bell Jet Ranger	$515	$515
c. Cessna 180 Series	$170	$170
DEPARTMENT OF JUSTICE – 4110		
1. Agency Legal Services		
a. Attorney (per hour)	$93.00	$93.00
b. Investigator (per hour)	$53.00	$53.00
DEPARTMENT OF CORRECTIONS - 6401		
1. Labor Charge for Motor Vehicle Maintenance (per hour)	$26.50	$26.50
2. Supply Fee as a Percentage of Actual Costs of Parts	3%	3%
3. Parts	Actual Cost	Actual Cost
4. Cook/Chill Rate — Base Tray Price (no delivery)	$1.69	$1.69
5. Delivery Charge Per Mile	$0.50	$0.50
6. Delivery Charge Per Hour	$35.00	$35.00
7. Spoilage Percentage All Customers	4%	4%
8. Overhead Charge		
a. Montana State Hospital — Supplies Only	12%	12%
b. Montana State Hospital — Except Supplies	6%	6%
c. Montana State Prison — Supplies Only	77%	77%
d. Montana State Prison — Except Supplies	41%	41%
e. Treasure State Correctional Training Center — Supplies Only	11%	11%
f. Treasure State Correctional Training Center — Except Supplies	6%	6%
OFFICE OF PUBLIC INSTRUCTION - 3501		
1. OPI Indirect Cost Pool		
a. Unrestricted Rate	24%	24%
b. Restricted Rate	16.3%	16.3%

Approved May 14, 2009

CHAPTER NO. 489

[HB 645]

AN ACT IMPLEMENTING THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009; PROVIDING APPROPRIATIONS OF FEDERAL FUNDS AND OTHER FUNDS AVAILABLE BECAUSE OF THE RECEIPT OF FEDERAL FUNDS; REVISING STATUTES TO IMPLEMENT THE RECEIPT AND EXPENDITURE OF THE FEDERAL FUNDS AND THE FUNDS AVAILABLE BECAUSE OF THE RECEIPT OF THE FEDERAL FUNDS; AUTHORIZING THE ADOPTION OF RETROACTIVE ADMINISTRATIVE RULES; REVISING THE ALLOCATION OF THE HOSPITAL BED TAX; REVISING INDIRECT COST RECOVERY LAWS; REVISING THE DEFINITIONS OF BASE BUDGET AND PRESENT LAW BASE FOR THE NEXT STATE BUDGET CYCLE; CLARIFYING THE PAYMENT OF SCHOOL DISTRICT EMPLOYEE RETIREMENT COSTS FOR THE ENSUING BIENNIUM; REVISING THE BASE PERIOD FOR UNEMPLOYMENT BENEFITS; PROVIDING FOR A PART-TIME WORK SEARCH AND PARTICIPATION IN WORKER TRAINING FOR UNEMPLOYMENT PURPOSES; REVISING THE USE OF THE HEALTH AND MEDICAID INITIATIVES ACCOUNT; INCREASING THE ELIGIBILITY FOR CASH ASSISTANCE BENEFITS FROM THE TANF BLOCK GRANT; CLARIFYING WATER POLLUTION LAWS AND THE USE OF FEDERAL FUNDS FOR WATER PROJECTS; REVISING THE ALTERNATIVE ENERGY LOAN PROGRAM; ESTABLISHING THE DISTRESSED WOOD PRODUCTS INDUSTRY RECOVERY PROGRAM; PROVIDING FOR A QUICK START ENERGY PROGRAM WITHIN THE DEPARTMENT OF COMMERCE FOR QUICK START ENERGY EFFICIENCY IMPROVEMENTS FOR SCHOOL FACILITIES; REVISING THE PRIORITIES FOR FUNDING UNDER THE BIG SKY ECONOMIC DEVELOPMENT PROGRAM; PROVIDING FOR THE ALLOCATION AND AUTHORIZATION OF THE TYPES OF BONDS MADE AVAILABLE UNDER THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009; AUTHORIZING THE MONTANA FACILITY FINANCE AUTHORITY TO FINANCE CERTAIN PROJECTS FOR FOR-PROFIT OR NONPROFIT CORPORATIONS AND ORGANIZATIONS; PROVIDING FOR TAXATION OF THOSE PROJECTS; PROVIDING FOR THE DISTRIBUTION OF FUNDS FOR IMPROVEMENTS FOR SCHOOL FACILITIES; AUTHORIZING A PERMISSIVE SCHOOL LEVY FOR THE BASE BUDGET; AUTHORIZING A SCHOOL DISTRICT LEVY FOR THE OVER-BASE BUDGET; ESTABLISHING THE ENERGY DEVELOPMENT AND DEMONSTRATION GRANT PROGRAM; PROVIDING A FUND TRANSFER FROM THE STATE GENERAL FUND TO THE SENIOR CITIZEN AND PERSONS WITH DISABILITIES TRANSPORTATION SERVICES ACCOUNT; EXTENDING THE HOSPITAL BED TAX; AMENDING SECTIONS 2-4-306, 7-7-2255, 7-7-2501, 7-7-4255, 7-7-4421, 7-7-4501, 7-12-2171, 7-15-4290, 7-15-4301, 7-15-4302, 15-66-102, 17-1-106, 17-2-124, 17-5-504, 17-5-803, 17-5-922, 17-5-1506, 17-7-102, 17-7-402, 17-7-502, 20-9-403, 20-9-433, 20-9-501, 20-25-402, 20-25-427, 39-51-201, 52-3-115, 53-4-212, 53-6-149, 53-6-1201, 75-5-1102, 75-5-1107, 75-6-202, 75-6-226, 75-25-101, 75-25-102, 90-1-204, 90-5-101, 90-5-103, 90-7-102, AND 90-7-104, MCA, SECTION 20, CHAPTER 390, LAWS OF 2003, SECTIONS 4 AND 7, CHAPTER 606, LAWS OF 2005, SECTIONS 4, 5, 6, AND 8, CHAPTER 517, LAWS OF 2007, AND SECTION 9-B, CHAPTER 5, SPECIAL LAWS OF MAY 2007; AND PROVIDING AN

IMMEDIATE EFFECTIVE DATE, A RETROACTIVE APPLICABILITY DATE, AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-4-306, MCA, is amended to read:

"2-4-306. Filing, format, and adoption and effective dates — dissemination of emergency rules. (1) Each agency shall file with the secretary of state a copy of each rule adopted by it or a reference to the rule as contained in the proposal notice. A rule is adopted on the date that the adoption notice is filed with the secretary of state and is effective on the date referred to in subsection (4), except that if the secretary of state requests corrections to the adoption notice, the rule is adopted on the date that the revised notice is filed with the secretary of state.

(2) Pursuant to 2-15-401, the secretary of state may prescribe rules to effectively administer this chapter, including rules regarding the format, style, and arrangement for notices and rules that are filed pursuant to this chapter, and may refuse to accept the filing of any notice or rule that is not in compliance with this chapter. The secretary of state shall keep and maintain a permanent register of all notices and rules filed, including superseded and repealed rules, that must be open to public inspection and shall provide copies of any notice or rule upon request of any person. Unless otherwise provided by statute, the secretary of state may require the payment of the cost of providing copies.

(3) If the appropriate administrative rule review committee has conducted a poll of the legislature in accordance with 2-4-403, the results of the poll must be published with the rule if the rule is adopted by the agency.

(4) ~~Each~~ *Subject to subsection (6), each* rule is effective after publication in the register, as provided in 2-4-312, except that:

(a) if a later date is required by statute or specified in the rule, the later date is the effective date;

(b) subject to applicable constitutional or statutory provisions:

(i) a temporary rule is effective immediately upon filing with the secretary of state or at a stated date following publication in the register; and

(ii) an emergency rule is effective at a stated date following publication in the register or immediately upon filing with the secretary of state if the agency finds that this effective date is necessary because of imminent peril to the public health, safety, or welfare. The agency's finding and a brief statement of reasons for the finding must be filed with the rule. The agency shall, in addition to the required publication in the register, take appropriate and extraordinary measures to make emergency rules known to each person who may be affected by them.

(c) if, following written administrative rule review committee notification to an agency under 2-4-305(9), the committee meets and under 2-4-406(1) objects to all or some portion of a proposed rule before the proposed rule is adopted, the proposed rule or portion of the proposed rule objected to is not effective until the day after final adjournment of the regular session of the legislature that begins after the notice proposing the rule was published by the secretary of state, unless, following the committee's objection under 2-4-406(1):

(i) the committee withdraws its objection under 2-4-406 before the proposed rule is adopted; or

(ii) the rule or portion of a rule objected to is adopted with changes that in the opinion of a majority of the committee members, as communicated in writing to

the committee presiding officer and staff, make it comply with the committee's objection and concerns.

(5) ~~An~~ *Subject to subsection (6), an* agency may not enforce, implement, or otherwise treat as effective a rule proposed or adopted by the agency until the effective date of the rule as provided in this section. Nothing in this subsection prohibits an agency from enforcing an established policy or practice of the agency that existed prior to the proposal or adoption of the rule as long as the policy or practice is within the scope of the agency's lawful authority.

(6) For purposes of implementing and complying with the American Recovery and Reinvestment Act of 2009, Public Law 111-5, an agency may adopt and implement a rule retroactive to February 17, 2009, provided that the retroactive applicability date is clearly stated in the agency's proposed and adopted rule."

Section 2. Section 7-7-2255, MCA, is amended to read:

"7-7-2255. Form and execution of bonds. (1) At the time of the sale of the bonds or at a meeting held after the sale, the board of county commissioners shall adopt a resolution providing for the issuance of the bonds, prescribing the form of the bonds, whether amortization bonds or serial bonds, ~~and~~ providing the manner of execution of the bonds*, and if applicable, specifying whether the bonds are tax credit bonds as provided in [section 44], recovery zone economic development bonds or recovery zone facility bonds as provided in [section 45], or qualified energy conservation bonds as provided in [section 46]*.

(2) Each county bond and each coupon attached to the bond must be signed by or bear the facsimile signatures of the presiding officer of the board of county commissioners and the county treasurer and must be attested by the county clerk, provided that one signature of a county official or the bond registrar must be a manual signature. Each bond may have the county seal or its facsimile imprinted on the bond."

Section 3. Section 7-7-2501, MCA, is amended to read:

"7-7-2501. Authority to issue revenue bonds — refunding revenue bonds. (1) A county may issue county revenue bonds in the same manner and with the same effect as provided in chapter 7, part 44, of this title for issuance of municipal revenue bonds. County revenue bonds may be issued to finance any project or activity enumerated in chapter 16, part 21, of this title or in Title 75, chapter 10, part 1. Revenue from the project for which the bonds are issued is the only revenue upon which a lien under the provisions of 7-7-4431 may apply. A lien may not attach to other revenue or other property within the county.

(2) A county may refund revenue bonds issued under the authority provided in subsection (1) by the method provided in either part 45 or part 46 of chapter 7.

(3) In construing, for purposes of this section, the provisions of parts 44, 45, or 46 of chapter 7, "municipal" is considered to refer to the county and "governing body" is considered to refer to the board of county commissioners whenever the board of county commissioners is acting pursuant to subsection (1).

(4) If applicable, the county shall specify whether the bonds are tax credit bonds as provided in [section 44], recovery zone economic development bonds or recovery zone facility bonds as provided in [section 45], or qualified energy conservation bonds as provided in [section 46]."

Section 4. Section 7-7-4255, MCA, is amended to read:

"7-7-4255. Form and execution of bonds. (1) At the time of the sale of the bonds or at a meeting held after the sale, the city or town council shall adopt a resolution providing for the issuance of the bonds, prescribing the form of the bonds, whether amortization or serial bonds, ~~and~~ providing the manner of execution of the bonds*, and if applicable, specifying whether the bonds are tax credit bonds as provided in [section 44], recovery zone economic development bonds or recovery zone facility bonds as provided in [section 45], or qualified energy conservation bonds as provided in [section 46]*.

(2) Each bond and each coupon attached to a bond must be signed by or bear the facsimile signatures of the mayor and the treasurer of the city or town and must be attested by the city or town clerk, provided that one signature of a city or town official or the bond registrar must be a manual signature. Each bond may have the city or town seal or its facsimile imprinted on the bond."

Section 5. Section 7-7-4421, MCA, is amended to read:

"7-7-4421. Authority to issue revenue bonds. *(1)* In addition to the powers ~~which~~ *that* it may now have, any municipality ~~shall have~~ *has* power under this part to:

~~(1)~~*(a)* issue its bonds to finance in whole or in part the cost of the acquisition, purchase, construction, reconstruction, improvement, betterment, or extension of any undertaking;

~~(2)~~*(b)* pledge to the punctual payment of ~~said~~ *the* bonds issued under ~~this part or~~ part 45 *or this part* and interest ~~thereon~~ *on the bonds* an amount of the ~~revenues~~ *revenue* of ~~such~~ *the* undertaking*,* ~~(~~including improvements, betterments, or extensions ~~thereto~~ thereafter constructed or acquired~~)~~*,* or of any part of ~~such~~ *the* undertaking sufficient to pay ~~said~~ *the* bonds and interest as ~~the same shall become~~ *they become* due, with ~~such~~ *an* amount consisting of all or any part or portion of ~~such~~ *the* revenue, and create and maintain reasonable reserves ~~therefor~~ *for the bonds*.

(2) If applicable, the municipality shall specify whether the bonds are tax credit bonds as provided in [section 44], recovery zone economic development bonds or recovery zone facility bonds as provided in [section 45], or qualified energy conservation bonds as provided in [section 46]."

Section 6. Section 7-7-4501, MCA, is amended to read:

"7-7-4501. Authority to issue refunding revenue bonds. (1) In addition to the powers ~~which~~ *that* it ~~now~~ may have, any municipality ~~shall have~~ *has* the power under this part to refund bonds issued for any of the purposes listed in 7-7-4421(1)*(a)*, whether issued under authority of part 45 or of any other applicable law.

(2) Refunding revenue bonds issued as authorized in this section ~~shall be~~ *are* governed by all of the provisions of part 44, except 7-7-4433 and 7-7-4434, as fully as bonds issued for the initial financing of any undertaking and by the further provisions of this part.

(3) Bonds may be issued to refund interest as well as principal actually due and payable if the ~~revenues~~ *revenue* pledged ~~therefor are~~ *is* not sufficient, but not to refund any bonds or interest due ~~which can~~ *that may* be paid from ~~revenues~~ *revenue* then on hand."

Section 7. Section 7-12-2171, MCA, is amended to read:

"7-12-2171. Details relating to rural improvement district bonds and warrants. (1) (a) The bonds and warrants must be drawn against either the construction or maintenance fund created for the special improvement

district and must bear interest from the date of registration until called for redemption or paid in full. Bonds or warrants sold at a private, negotiated sale may bear interest at a rate varying periodically at the time or times and on the terms determined by the board of county commissioners. The terms determined by the board of county commissioners may include the establishment of a maximum rate of interest or the convertibility to a fixed rate of interest.

(b) Variable rate bonds may be sold at a private negotiated sale if the principal amount of the bonds is $500,000 or less and the board of county commissioners obtains separate written opinions from underwriters of Montana rural improvement district bonds stating the bonds are not marketable through a competitive bond sale. Bonds sold in principal amounts below $250,000 do not require a marketability opinion.

(c) The interest must be payable annually or semiannually, at the discretion of the board of county commissioners, on the dates that the board prescribes. The warrants or bonds must bear the signatures of the presiding officer of the board and the county clerk and may bear the corporate seal of the county. The warrants or bonds must be registered in the office of the county clerk and the county treasurer, and if interest coupons are attached to the warrants or bonds, the interest coupons must also be registered and must bear the signatures of the presiding officer of the board and the county clerk. The coupons may bear the facsimile signatures of the officers in the discretion of the board.

(2) The bonds must be in denominations of $100 or fractions or multiples of $100, may be issued in installments, and may extend over a period not to exceed 30 years. However, if federal loans are available for improvements, repayment may extend over a period not to exceed 40 years. For the purposes of this subsection, the term of a bond issue commences on July 1 of the fiscal year in which the county first levies to pay principal and interest on the bonds.

(3) If applicable, the board of county commissioners shall specify whether the bonds are tax credit bonds as provided in [section 44], recovery zone economic development bonds or recovery zone facility bonds as provided in [section 45], or qualified energy conservation bonds as provided in [section 46]."

Section 8. Section 7-15-4290, MCA, is amended to read:

"7-15-4290. Use of property taxes and other revenue for payment of bonds. (1) (a) The tax increment derived from an urban renewal area may be pledged for the payment of revenue bonds issued for urban renewal projects or of general obligation bonds, revenue bonds, or special assessment bonds issued to pay urban renewal costs described in 7-15-4288 and 7-15-4289.

(b) The tax increment derived from an industrial district may be pledged for the payment of revenue bonds issued for industrial infrastructure development projects or of general obligation bonds, revenue bonds, or special assessment bonds issued to pay industrial district costs described in 7-15-4288 and 7-15-4289.

(c) The tax increment derived from a technology district may be pledged for the payment of revenue bonds issued for technology infrastructure development projects or of general obligation bonds, revenue bonds, or special assessment bonds issued to pay technology district costs described in 7-15-4288 and 7-15-4289.

(2) A municipality issuing bonds pursuant to subsection (1) may, by resolution of its governing body, enter into a covenant for the security of the bondholders, detailing the calculation and adjustment of the tax increment and the taxable value on which it is based and, after a public hearing, pledging or

appropriating other revenue of the municipality, except property taxes prohibited by subsection (3), to the payment of the bonds if collections of the tax increment are insufficient.

(3) Property taxes, except the tax increment derived from property within the area or district and tax collections used to pay for services provided to the municipality by a project, may not be applied to the payment of bonds issued pursuant to 7-15-4301 for which a tax increment has been pledged.

(4) If applicable, the municipality shall specify whether the bonds are tax credit bonds as provided in [section 44], recovery zone economic development bonds or recovery zone facility bonds as provided in [section 45], or qualified energy conservation bonds as provided in [section 46]."

Section 9. Section 7-15-4301, MCA, is amended to read:

"7-15-4301. Authorization to issue urban renewal bonds, industrial infrastructure development bonds, aerospace transportation and technology infrastructure development bonds, technology infrastructure development bonds, and refunding bonds. (1) A municipality may:

(a) issue bonds from time to time, in its discretion, to finance the undertaking of any urban renewal project, industrial infrastructure development project, aerospace transportation and technology infrastructure development project, or technology infrastructure development project under part 42 and this part, including, without limiting the generality of projects, the payment of principal and interest upon any advances for surveys and plans for the projects; and

(b) issue refunding bonds for the payment or retirement of bonds previously issued by it.

(2) The bonds may not pledge the general credit of the municipality and must be made payable, as to both principal and interest, solely from the income, proceeds, revenue, and funds of the municipality derived from or held in connection with its undertaking and carrying out of urban renewal projects, industrial infrastructure development projects, aerospace transportation and technology infrastructure development projects, or technology infrastructure development projects under part 42 and this part, including the tax increment received and pledged by the municipality pursuant to 7-15-4282 through 7-15-4292, and, if the income, proceeds, revenue, and funds of the municipality are insufficient for the payment, from other revenue of the municipality pledged to the payment. Payment of the bonds, both as to principal and interest, may be further secured by a pledge of any loan, grant, or contribution from the federal government or other source in aid of any urban renewal projects, industrial infrastructure development projects, aerospace transportation and technology infrastructure development projects, or technology infrastructure development projects of the municipality under part 42 and this part or by a mortgage on all or part of any projects.

(3) Bonds issued under this section must be authorized by resolution or ordinance of the local governing body.

(4) If applicable, the governing body of the municipality shall specify whether the bonds are tax credit bonds as provided in [section 44], recovery zone economic development bonds or recovery zone facility bonds as provided in [section 45], or qualified energy conservation bonds as provided in [section 46]."

Section 10. Section 7-15-4302, MCA, is amended to read:

"7-15-4302. Authorization to issue general obligation bonds. (1) For the purpose of 7-15-4267 or for the purpose of aiding in the planning, undertaking, or carrying out of an urban renewal project or an industrial infrastructure development project of a municipality, the municipality, in addition to any authority to issue bonds pursuant to 7-15-4301, may issue and sell its general obligation bonds.

(2) Any bonds issued pursuant to this section ~~shall~~ *must* be issued in the manner and within the limitations prescribed by the laws of this state for the issuance and authorization of bonds by ~~such~~ *the* municipality for public purposes generally.

(3) Aiding in the planning, undertaking, or carrying out of an approved urban renewal project or an industrial infrastructure development project is considered a single purpose for the issuance of general obligation bonds, and the proceeds of the bonds authorized for any ~~such~~ project may be used to finance the exercise of any and all powers conferred upon the municipality by ~~this part and~~ part 42 ~~which~~ *and this part that* are necessary or proper to complete the project in accordance with the approved plan or industrial district ordinance and any modification ~~thereof~~ *of the plan* duly adopted by the local governing body.

(4) If applicable, the municipality shall specify whether the bonds are tax credit bonds as provided in [section 44], recovery zone economic development bonds or recovery zone facility bonds as provided in [section 45], or qualified energy conservation bonds as provided in [section 46]."

Section 11. Section 15-66-102, MCA, is amended to read:

"15-66-102. (Temporary) **Utilization fee for inpatient bed days.** (1) Each hospital in the state shall pay to the department a utilization fee:

~~(a) in the amount of $27.70 for each inpatient bed day between January 1, 2006, and June 30, 2007;~~

~~(b) in the amount of $47 for each inpatient bed day between July 1, 2007, and December 31, 2007;~~

~~(c) in the amount of $43 for each inpatient bed day between January 1, 2008, and December 31, 2008;~~

~~(d)~~*(a)* in the amount of $48 for each inpatient bed day between January 1, 2009, and December 31, 2009; and

~~(e)~~*(b)* beginning January 1, 2010, in the amount of $50 for each inpatient bed day.

(2) ~~All~~ *Subject to subsection (3), all* proceeds from the collection of utilization fees, including penalties and interest, must, in accordance with the provisions of 17-2-124, be deposited to the credit of the department of public health and human services in a state special revenue account as provided in 53-6-149.

(3) The following amounts must be deposited in the state general fund:

(a) for state fiscal year 2009, proceeds in excess of $16,232,795;

(b) for state fiscal year 2010, proceeds in excess of $18,505,269; and

(c) for state fiscal year 2011, proceeds in excess of $19,818,193. (Void on occurrence of contingency—sec. 18, Ch. 390, L. 2003. Terminates June 30, 2009—secs. 5, 6, 8, Ch. 517, L. 2007.)"

Section 12. Section 17-1-106, MCA, is amended to read:

"17-1-106. Agency recovery of indirect costs. (1) An agency receiving nongeneral funds shall, in accordance with all applicable regulations,

guidelines, or grant rules governing those funds, negotiate indirect cost reimbursement amounts and methodologies so that the agency may recover indirect costs.

(2) ~~An~~ *Except for funds received pursuant to the American Recovery and Reinvestment Act of 2009, Public Law 111-5, an* agency, except for a unit of the university system, that applies for or otherwise receives funds through federal or private grants or contracts that do not allow the agency to fully recover indirect costs shall notify and must receive written approval from its approving authority prior to accepting the funds.

(3) An agency, except for a unit of the university system, may not, as part of the grant or contract proposal or negotiation process, waive or otherwise forfeit the agency's ability to recover indirect costs that are otherwise allowable costs under the program, except for intra-agency or interagency grants or contracts. For grants or contracts for which the entity providing the funds limits administrative cost reimbursements or indirect cost recoveries by regulation, policy, or guideline, statewide and agency indirect costs paid originally from the general fund must be claimed first, other indirect costs must be claimed second, agency direct costs of administration must be claimed third, and program direct costs must be claimed last. For grants or contracts for which there is no limit on indirect costs or administrative costs, indirect and administrative costs must be claimed first and direct program costs must be claimed last.

(4) Each agency receiving federal funds and not directly charging a grant or program for the recovery of indirect costs shall submit an indirect cost proposal to the appropriate federal agency. The department shall provide technical assistance to an agency on how to build an indirect cost proposal.

(5) Except as provided for a unit of the university system under 20-25-427, indirect costs recovered by an agency to pay the agency's indirect costs under 17-1-105 must be deposited as provided in 17-1-105. All other indirect costs must be deposited in the fund from which the indirect costs were originally paid."

Section 13. Section 17-2-124, MCA, is amended to read:

"17-2-124. Disposition of money from certain designated license and other taxes. (1) The state treasurer shall deposit to the credit of the appropriate fund in accordance with the provisions of subsection (3) all money received from the collection of taxes and fees.

(2) The department of revenue shall deposit to the credit of the state general fund all money received from the collection of license taxes and all net revenue and receipts from all sources, other than certain fees, under Title 16, chapters 1 through 4 and 6.

(3) ~~The~~ *Except for the utilization fee collected under 15-66-102 during fiscal year 2009, the* distribution of tax and fee revenue must be made according to the provisions of the law governing allocation of the tax or fee that were in effect for the period in which the tax or fee revenue was recorded for accounting purposes. Tax revenue must be recorded as prescribed by the department of administration, pursuant to 17-1-102(2) and (4), in accordance with generally accepted accounting principles.

(4) All refunds of taxes or fees must be attributed to the funds in which the taxes or fees are currently being recorded. All refunds of interest and penalties must be attributed to the funds in which the interest and penalties are currently being recorded."

Section 14. Section 17-5-504, MCA, is amended to read:

"17-5-504. Forms, interest, and maturity. ~~Such~~ *General obligation highway* bonds ~~shall~~ *must* be issued by the board, upon request of the department of administration, in ~~such~~ *the* denominations and form, whether payable to bearer or registered as to principal or both principal and interest, with ~~such~~ provisions for conversion or exchange and for the issuance of notes in anticipation of the execution and delivery of definitive bonds, bearing interest, maturing at ~~such~~ times not exceeding 20 years from *the* date of issue, subject to redemption at ~~such~~ earlier times and prices and upon ~~such~~ notice, and payable at the office of ~~such~~ *the* fiscal agent of the state, ~~as~~ *that* the board shall determine, subject to the limitations contained ~~herein~~ *in this part. If applicable, the board shall specify whether the bonds are tax credit bonds as provided in [section 44].*"

Section 15. Section 17-5-803, MCA, is amended to read:

"17-5-803. Form — principal and interest — fiscal agent — bond registrar and transfer agent — deposit of proceeds. (1) Subject to the limitations contained in this part and in the bond act and in the furtherance of each bond act, bonds may be issued by the board upon request of the department. The bonds may be issued in the denominations and form, whether payable to bearer or registered as to principal or both principal and interest, with provisions for conversion or exchange, and for the issuance of temporary bonds bearing interest at a rate or rates, maturing at times not exceeding 30 years from date of issue, subject to redemption at earlier times and prices and on notice, and payable at the office of the fiscal agency of the state as the board determines.

(2) In all other respects, the board is authorized to prescribe the form and terms of the bonds and do whatever is lawful and necessary for their issuance and payment. Action taken by the board under this part must be by a majority vote of its members. The state treasurer shall keep a record of all bonds issued and sold.

(3) The board is authorized to employ a fiscal agent and a bond registrar and transfer agent to assist in the performance of its duties under this part.

(4) The board, in its discretion, is authorized to pay all costs of issuance of bonds, including without limitation rating agency fees, printing costs, legal fees, bank or trust company fees, costs to employ persons or firms to assist in the sale of the bonds, line of credit fees and charges, and all other amounts related to the costs of issuing the bonds from amounts available for these purposes in the general fund or from the proceeds of the bonds.

(5) All proceeds of bonds and notes issued under this part must be deposited in the capital projects account, except that any premiums and accrued interest received and the proceeds of refunding bonds or notes must be deposited in the debt service account.

(6) If applicable, the board shall specify whether the bonds are tax credit bonds as provided in [section 44]."

Section 16. Section 17-5-922, MCA, is amended to read:

"17-5-922. Form — principal and interest — fiscal agent — bonds authorized. (1) Each series of bonds may be issued by the board at public or private sale, in ~~such~~ *the* denominations and form, whether payable to bearer or registered as to principal or both principal and interest, with ~~such~~ provisions for the conversion or exchange, bearing interest at ~~such~~ *the* rate or rates or the method of determining ~~such~~ *the* rate or rates, maturing at ~~such~~ times, not more than 40 years from date of issue, subject to redemption at ~~such~~ earlier times and

prices and upon ~~such~~ notice, and payable at the office of a fiscal agency of the state ~~as~~ *that* the board shall determine, subject to the limitations contained in this part. Any action taken by the board under this part must be approved by at least a majority vote of its members.

(2) In all other respects the board is authorized to prescribe the form and terms of the bonds and shall do whatever is lawful and necessary for their issuance and payment.

(3) Bonds and any interest coupons appurtenant ~~thereto~~ *to the bonds* must be signed by the members of the board, and the bonds must be issued under the great seal of the state of Montana. The bonds and coupons may be executed with facsimile signatures and seal in the manner and subject to the limitations prescribed by law. The state treasurer shall keep a record of all ~~such~~ bonds issued and sold.

(4) The board may employ a fiscal agent and a bond registrar and transfer agent to assist in the performance of its duties under this part.

(5) In connection with the issuance and sale of bonds, the board may arrange for lines of credit or letters of credit with any bank, firm, or person for the purpose of providing an additional source of repayment for bonds issued pursuant to this part. Amounts drawn on ~~such~~ lines of credit may be evidenced by negotiable or nonnegotiable notes or other evidences of indebtedness, containing ~~such~~ terms and conditions ~~as~~ *that* the board may authorize in the resolution approving the ~~same~~ *notes or evidences of indebtedness*.

(6) ~~No~~ *Not* more than $150 million of bonds issued under this part may be outstanding at any time. ~~No additional~~ *Additional* bonds, other than refunding bonds, may *not* be issued until the pledge in favor of the highway revenue bonds is satisfied and discharged.

(7) If applicable, the board shall specify whether the bonds are tax credit bonds as provided in [section 44]."

Section 17. Section 17-5-1506, MCA, is amended to read:

"17-5-1506. Bonds and notes for projects and major projects. (1) The board may by resolution issue negotiable notes and bonds in a principal amount ~~as~~ *that* the board determines necessary to provide sufficient funds for achieving any of its purposes, including the payment of interest on notes and bonds of the board, establishment of reserves to secure the notes and bonds, including the reserve funds created under 17-5-1515, and all other expenditures of the board incident to and necessary or convenient to carry out this part.

(2) The board may by resolution, from time to time, issue notes to renew notes and bonds or to pay notes, including interest, and whenever it considers refunding expedient, refund any bonds by the issuance of new bonds, whether or not the bonds to be refunded have matured, or issue bonds partly to refund bonds outstanding and partly for any of its other purposes.

(3) Except as otherwise expressly provided by resolution of the board, every issue of its bonds is an obligation of the board payable out of any revenue, assets, or money of the board, subject only to agreements with the holders of particular notes or bonds pledging particular ~~revenues~~ *revenue*, assets, or money.

(4) The notes and bonds must be authorized by resolutions of the board, bear a date, and mature at the times the resolutions provide. A note may not mature more than 5 years from the date of its issue. A bond may not mature more than 40 years from the date of its issue. The bonds may be issued as serial bonds payable in annual installments, as term bonds, or as a combination ~~thereof~~ *of*

serial and term bonds. The notes and bonds must bear interest at a stated rate or rates or at a rate or rate determination as stated, be in denominations, be in a form, either coupon or registered, carry registration privileges, be executed in a manner, be payable in a medium of payment, at places inside or outside the state, and be subject to terms of redemption as provided in resolutions. The notes and bonds of the board may be sold at public or private sale, at prices above or below par, as determined by the board, and in a manner ~~such~~ that interest on the bonds is either exempt from or subject to federal income tax. *If applicable, the board shall specify whether the bonds are tax credit bonds as provided in [section 44].*

(5) The bonds issued under this part are exempt from the Montana Securities Act, but copies of all prospectus and disclosure documents must be deposited with the state securities commissioner for public inspection.

(6) The total amount of bonds secured under 17-5-1515 outstanding at any one time, except bonds as to which the board's obligations have been satisfied and discharged by refunding or bonds for which reserves for payment or other means of payment have been provided, may not exceed $100 million."

Section 18. Section 17-7-102, MCA, is amended to read:

"17-7-102. (Temporary) **Definitions.** As used in this chapter, the following definitions apply:

(1) "Additional services" means different services or more of the same services.

(2) "Agency" means all offices, departments, boards, commissions, institutions, universities, colleges, and any other person or any other administrative unit of state government that spends or encumbers public money by virtue of an appropriation from the legislature under 17-8-101.

(3) "Approving authority" means:

(a) the governor or the governor's designated representative for executive branch agencies;

(b) the chief justice of the supreme court or the chief justice's designated representative for judicial branch agencies;

(c) the speaker for the house of representatives;

(d) the president for the senate;

(e) appropriate legislative committees or a designated representative for legislative branch agencies; or

(f) the board of regents of higher education or its designated representative for the university system.

(4) (a) "Base budget" means the resources for the operation of state government that are of an ongoing and nonextraordinary nature in the current biennium. The base budget for the state general fund and state special revenue funds may not exceed that level of funding authorized by the previous legislature. *For the biennium beginning July 1, 2011, the term includes items specified in [section 85].*

(b) The term does not include funding for water adjudication if the accountability benchmarks contained in 85-2-271 are not met.

(5) "Budget amendment" means a temporary appropriation as provided in Title 17, chapter 7, part 4.

(6) "Emergency" means a catastrophe, disaster, calamity, or other serious unforeseen and unanticipated circumstance that has occurred subsequent to the time that an agency's appropriation was made, that was clearly not within the contemplation of the legislature and the governor, and that affects one or more functions of a state agency and the agency's expenditure requirements for the performance of the function or functions.

(7) "Funds subject to appropriation" means those funds required to be paid out of the treasury as set forth in 17-8-101.

(8) "Necessary" means essential to the public welfare and of a nature that cannot wait until the next legislative session for legislative consideration.

(9) "New proposals" means requests to provide new nonmandated services, to change program services, to eliminate existing services, or to change sources of funding. For purposes of establishing the present law base, the distinction between new proposals and the adjustments to the base budget to develop the present law base is to be determined by the existence of constitutional or statutory requirements for the proposed expenditure. Any proposed increase or decrease that is not based on those requirements is considered a new proposal.

(10) "Present law base" means that level of funding needed under present law to maintain operations and services at the level authorized by the previous legislature, including but not limited to:

(a) changes resulting from legally mandated workload, caseload, or enrollment increases or decreases;

(b) changes in funding requirements resulting from constitutional or statutory schedules or formulas;

(c) inflationary or deflationary adjustments; ~~and~~

(d) elimination of nonrecurring appropriations*; and*

(e) items specified in [section 85].

(11) "Program" means a principal organizational or budgetary unit within an agency.

(12) "Requesting agency" means the agency of state government that has requested a specific budget amendment.

(13) "University system unit" means the board of regents of higher education; office of the commissioner of higher education; university of Montana, with campuses at Missoula, Butte, Dillon, and Helena; Montana state university, with campuses at Bozeman, Billings, Havre, and Great Falls; the agricultural experiment station, with central offices at Bozeman; the forest and conservation experiment station, with central offices at Missoula; the cooperative extension service, with central offices at Bozeman; the bureau of mines and geology, with central offices at Butte; the fire services training school at Great Falls; and the community colleges at Miles City, Glendive, and Kalispell. (Terminates June 30, 2020—sec. 11, Ch. 319, L. 2007.)

17-7-102. (Effective July 1, 2020) **Definitions.** As used in this chapter, the following definitions apply:

(1) "Additional services" means different services or more of the same services.

(2) "Agency" means all offices, departments, boards, commissions, institutions, universities, colleges, and any other person or any other administrative unit of state government that spends or encumbers public money by virtue of an appropriation from the legislature under 17-8-101.

(3) "Approving authority" means:

(a) the governor or the governor's designated representative for executive branch agencies;

(b) the chief justice of the supreme court or the chief justice's designated representative for judicial branch agencies;

(c) the speaker for the house of representatives;

(d) the president for the senate;

(e) appropriate legislative committees or a designated representative for legislative branch agencies; or

(f) the board of regents of higher education or its designated representative for the university system.

(4) "Base budget" means the resources for the operation of state government that are of an ongoing and nonextraordinary nature in the current biennium. The base budget for the state general fund and state special revenue funds may not exceed that level of funding authorized by the previous legislature.

(5) "Budget amendment" means a temporary appropriation as provided in Title 17, chapter 7, part 4.

(6) "Emergency" means a catastrophe, disaster, calamity, or other serious unforeseen and unanticipated circumstance that has occurred subsequent to the time that an agency's appropriation was made, that was clearly not within the contemplation of the legislature and the governor, and that affects one or more functions of a state agency and the agency's expenditure requirements for the performance of the function or functions.

(7) "Funds subject to appropriation" means those funds required to be paid out of the treasury as set forth in 17-8-101.

(8) "Necessary" means essential to the public welfare and of a nature that cannot wait until the next legislative session for legislative consideration.

(9) "New proposals" means requests to provide new nonmandated services, to change program services, to eliminate existing services, or to change sources of funding. For purposes of establishing the present law base, the distinction between new proposals and the adjustments to the base budget to develop the present law base is to be determined by the existence of constitutional or statutory requirements for the proposed expenditure. Any proposed increase or decrease that is not based on those requirements is considered a new proposal.

(10) "Present law base" means that level of funding needed under present law to maintain operations and services at the level authorized by the previous legislature, including but not limited to:

(a) changes resulting from legally mandated workload, caseload, or enrollment increases or decreases;

(b) changes in funding requirements resulting from constitutional or statutory schedules or formulas;

(c) inflationary or deflationary adjustments; and

(d) elimination of nonrecurring appropriations.

(11) "Program" means a principal organizational or budgetary unit within an agency.

(12) "Requesting agency" means the agency of state government that has requested a specific budget amendment.

(13) "University system unit" means the board of regents of higher education; office of the commissioner of higher education; university of Montana, with campuses at Missoula, Butte, Dillon, and Helena; Montana state university, with campuses at Bozeman, Billings, Havre, and Great Falls; the agricultural experiment station, with central offices at Bozeman; the forest and conservation experiment station, with central offices at Missoula; the cooperative extension service, with central offices at Bozeman; the bureau of mines and geology, with central offices at Butte; the fire services training school at Great Falls; and the community colleges at Miles City, Glendive, and Kalispell."

Section 19. Section 17-7-402, MCA, is amended to read:

"17-7-402. Budget amendment requirements. (1) Except as provided in subsection (7), a budget amendment may not be approved:

(a) by the approving authority, except a budget amendment to spend:

(i) additional federal revenue*, including grant funds or other funds received pursuant to the American Recovery and Reinvestment Act of 2009, Public Law 111-5*;

(ii) additional tuition collected by the Montana university system;

(iii) additional revenue deposited in the internal service funds within the department or the office of the commissioner of higher education as a result of increased service demands by state agencies;

(iv) Montana historical society enterprise revenue resulting from sales to the public;

(v) additional revenue that is deposited in funds other than the general fund and that is from the sale of fuel for those agencies participating in the Montana public vehicle fueling program established by Executive Order 22-91;

(vi) revenue resulting from the sale of goods produced or manufactured by the industries program of an institution within the department of corrections;

(vii) revenue collected for the administration of the state grain laboratory under the provisions of Title 80, chapter 4, part 7;

(viii) revenue collected for the Water Pollution Control State Revolving Fund Act under the provisions of Title 75, chapter 5, part 11;

(ix) revenue collected for the Drinking Water State Revolving Fund Act under the provisions of Title 75, chapter 6, part 2;

(x) state special revenue adjustments required to allocate costs for leave or terminal leave within an agency in accordance with federal circular A-87; or

(xi) revenue generated from fees collected by the department of justice for dissemination of criminal history record information pursuant to Title 44, chapter 5, part 3;

(b) by the approving authority if the budget amendment contains any significant ascertainable commitment for any present or future increased general fund support;

(c) by the approving authority for the expenditure of money in the state special revenue fund unless:

(i) an emergency justifies the expenditure;

(ii) the expenditure is authorized under subsection (1)(a); or

(iii) the expenditure is exempt under subsection (5);

(d) by the approving authority unless it will provide additional services;

(e) by the approving authority for any matter*, other than the receipt of federal funds pursuant to the American Recovery and Reinvestment Act of 2009, Public Law 111-5, that are not allocated or appropriated in House Bill No. 645,* of which the requesting agency had knowledge at a time when the proposal could have been presented to an appropriation subcommittee, the house appropriations committee, or the senate finance and claims committee of the most recent legislative session open to that matter, except when the legislative finance committee is given specific notice by the approving authority that significant identifiable events, specific to Montana and pursuant to provisions or requirements of Montana state law, have occurred since the matter was raised with or presented for consideration by the legislature; or

(f) to extend beyond June 30 of the last year of any biennium, except that budget amendments for federal funds may extend to the end of the federal fiscal year.

(2) A general fund loan made pursuant to 17-2-107 does not constitute a significant ascertainable commitment of present general fund support.

(3) Subject to subsection (1)(f), all budget amendments must itemize planned expenditures by fiscal year.

(4) Each budget amendment must be submitted by the approving authority to the budget director and the legislative fiscal analyst.

(5) Money from nonstate or nonfederal sources that would be deposited in the state special revenue fund and that is restricted by law or by the terms of a written agreement, such as a contract, trust agreement, or donation, is exempt from the requirements of this part.

(6) An appropriation for a nonrecurring item that would usually be the subject of a budget amendment must be submitted to the legislature for approval during a legislative session between January 1 and the senate hearing on the budget amendment bill. The bill may include authority to spend money in the current fiscal year and in both fiscal years of the next biennium.

(7) A budget amendment to spend state funds, other than from the general fund, required for matching funds in order to receive a grant is exempt from the provisions of subsection (1)."

Section 20. Section 17-7-502, MCA, is amended to read:

"17-7-502. Statutory appropriations — definition — requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-17-105; 5-11-120; 5-11-407; 5-13-403; 7-4-2502; 10-1-1202; 10-1-1303; 10-2-603; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-121; 15-1-218; 15-23-706; 15-31-906; 15-35-108; 15-36-332; 15-37-117; 15-39-110;

15-65-121; 15-70-101; 15-70-369; 15-70-601; 16-11-509; 17-3-106; *[section 53];* 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-7-304; 18-11-112; 19-3-319; 19-6-404; 19-6-410; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 19-20-607; 19-21-203; 20-8-107; 20-9-534; 20-9-622; 20-26-1503; 22-3-1004; 23-4-105; 23-4-202; 23-4-204; 23-4-302; 23-4-304; 23-5-306; 23-5-409; 23-5-612; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503; 41-5-2011; 42-2-105; 44-1-504; 44-12-206; 44-13-102; 50-4-623; 53-1-109; 53-6-703; 53-24-108; 53-24-206; 60-11-115; 61-3-415; 69-3-870; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 76-13-150; 77-1-108; 77-2-362; 80-2-222; 80-4-416; 80-5-510; 80-11-518; 82-11-161; 87-1-513; 90-1-115; 90-1-205; 90-3-1003; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 4, Ch. 497, L. 1999, the inclusion of 15-38-202 terminates July 1, 2014; pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, and secs. 3 and 6, Ch. 481, L. 2003, the inclusion of 15-35-108 terminates June 30, 2010; pursuant to sec. 17, Ch. 593, L. 2005, the inclusion of 15-31-906 terminates January 1, 2010; pursuant to sec. 73, Ch. 44, L. 2007, the inclusion of 19-6-410 terminates upon the death of the last recipient eligible under 19-6-709(2) for the supplemental benefit provided by 19-6-709; and pursuant to sec. 6, Ch. 2, Sp. L. September 2007, the inclusion of 76-13-150 terminates June 30, 2009.)"

Section 21. Section 20-9-403, MCA, is amended to read:

"20-9-403. Bond issues for certain purposes. (1) The trustees of a school district may issue and negotiate general obligation bonds or impact aid bonds of the school district for the purpose of:

(a) building, altering, repairing, buying, furnishing, equipping, purchasing lands for, or obtaining a water supply for a school, teacherage, dormitory, gymnasium, other building, or combination of buildings for school purposes;

(b) buying a school bus or buses;

(c) providing the necessary money to redeem matured bonds, maturing bonds, or coupons appurtenant to bonds when there is not sufficient money to redeem them;

(d) providing the necessary money to redeem optional or redeemable bonds when it is for the best interest of the school district to issue refunding bonds;

(e) funding a judgment against the district, including the repayment of tax protests lost by the district; or

(f) funding a debt service reserve account that may be required for impact aid revenue bonds.

(2) Money realized from the sale of bonds issued on the credit of a high school district may not be used for any of the purposes listed in subsection (1) in an elementary school district, and the money may be used for any of the purposes listed in subsection (1) for a junior high school but only to the extent that the 9th grade of the high school is served.

(3) If applicable, the trustees shall specify whether the bonds are qualified school construction bonds as described in [section 43(1)] or tax credit bonds as provided in [section 44]."

Section 22. Section 20-9-433, MCA, is amended to read:

"20-9-433. Form and execution of school district bonds. (1) At the time of the sale of the bonds or at a meeting held after the sale, the trustees shall adopt a resolution or indenture of trust providing for the issuance of the bonds, prescribing the form of the bonds, whether amortization or serial bonds, and prescribing the manner of execution of the bonds. *If applicable, the trustees shall specify whether the bonds are qualified school construction bonds as described in [section 43(1)] or tax credit bonds as provided in [section 44].*

(2) Each bond and coupon attached to a bond must be signed by or bear the facsimile signatures of the presiding officer of the trustees and the school district clerk, provided that one signature of a school official or the bond registrar must be a manual signature."

Section 23. Section 20-9-501, MCA, is amended to read:

"20-9-501. Retirement costs and retirement fund. (1) The trustees of a district or the management board of a cooperative employing personnel who are members of the teachers' retirement system or the public employees' retirement system, who are covered by unemployment insurance, or who are covered by any federal social security system requiring employer contributions shall establish a retirement fund for the purposes of budgeting and paying the employer's contributions to the systems as provided in subsection (2)(a). The district's or the cooperative's contribution for each employee who is a member of the teachers' retirement system must be calculated in accordance with Title 19, chapter 20, part 6. The district's or the cooperative's contribution for each employee who is a member of the public employees' retirement system must be calculated in accordance with 19-3-316. The district's or the cooperative's contributions for each employee covered by any federal social security system must be paid in accordance with federal law and regulation. The district's or the cooperative's contribution for each employee who is covered by unemployment insurance must be paid in accordance with Title 39, chapter 51, part 11.

(2) (a) The district or the cooperative shall pay the employer's contributions to the retirement, federal social security, and unemployment insurance systems from the retirement fund for the following:

(i) a district employee whose salary and health-related benefits, if any health-related benefits are provided to the employee, are paid from state or local funding sources;

(ii) a cooperative employee whose salary and health-related benefits, if any health-related benefits are provided to the employee, are paid from the cooperative's interlocal cooperative fund if the fund is supported solely from districts' general funds and state special education allowable cost payments, pursuant to 20-9-321, or are paid from the miscellaneous programs fund, provided for in 20-9-507, from money received from the medicaid program, pursuant to 53-6-101;

(iii) a district employee whose salary and health-related benefits, if any health-related benefits are provided to the employee, are paid from the district's school food services fund provided for in 20-10-204; ~~and~~

(iv) a district employee whose salary and health-related benefits, if any health-related benefits are provided to the employee, are paid from the district impact aid fund, pursuant to 20-9-514*; and*

(v) for the 2011 biennium only, a district employee whose salary and health-related benefits, if any health-related benefits are provided to the employee, are budgeted in the district general fund but are paid from state fiscal stabilization funds received pursuant the American Recovery and Reinvestment Act of 2009, Public Law 111-5.

(b) For an employee whose benefits are not paid from the retirement fund, the district or the cooperative shall pay the employer's contributions to the retirement, federal social security, and unemployment insurance systems from the funding source that pays the employee's salary.

(3) The trustees of a district required to make a contribution to a system referred to in subsection (1) shall include in the retirement fund of the final budget the estimated amount of the employer's contribution. After the final retirement fund budget has been adopted, the trustees shall pay the employer contributions to the systems in accordance with the financial administration provisions of this title.

(4) When the final retirement fund budget has been adopted, the county superintendent shall establish the levy requirement by:

(a) determining the sum of the money available to reduce the retirement fund levy requirement by adding:

(i) any anticipated money that may be realized in the retirement fund during the ensuing school fiscal year;

(ii) oil and natural gas production taxes;

(iii) coal gross proceeds taxes under 15-23-703;

(iv) countywide school retirement block grants distributed under 20-9-631;

(v) any fund balance available for reappropriation as determined by subtracting the amount of the end-of-the-year fund balance earmarked as the retirement fund operating reserve for the ensuing school fiscal year by the trustees from the end-of-the-year fund balance in the retirement fund. The retirement fund operating reserve may not be more than 35% of the final retirement fund budget for the ensuing school fiscal year and must be used for the purpose of paying retirement fund warrants issued by the district under the final retirement fund budget.

(vi) any other revenue anticipated that may be realized in the retirement fund during the ensuing school fiscal year, excluding any guaranteed tax base aid.

(b) notwithstanding the provisions of subsection (9), subtracting the money available for reduction of the levy requirement, as determined in subsection (4)(a), from the budgeted amount for expenditures in the final retirement fund budget.

(5) The county superintendent shall:

(a) total the net retirement fund levy requirements separately for all elementary school districts, all high school districts, and all community college districts of the county, including any prorated joint district or special education cooperative agreement levy requirements; and

(b) report each levy requirement to the county commissioners on the fourth Monday of August as the respective county levy requirements for elementary district, high school district, and community college district retirement funds.

(6) The county commissioners shall fix and set the county levy or district levy in accordance with 20-9-142.

(7) The net retirement fund levy requirement for a joint elementary district or a joint high school district must be prorated to each county in which a part of the district is located in the same proportion as the district ANB of the joint district is distributed by pupil residence in each county. The county superintendents of the counties affected shall jointly determine the net retirement fund levy requirement for each county as provided in 20-9-151.

(8) The net retirement fund levy requirement for districts that are members of special education cooperative agreements must be prorated to each county in which the district is located in the same proportion as the special education cooperative budget is prorated to the member school districts. The county superintendents of the counties affected shall jointly determine the net retirement fund levy requirement for each county in the same manner as provided in 20-9-151, and the county commissioners shall fix and levy the net retirement fund levy for each county in the same manner as provided in 20-9-152.

(9) The county superintendent shall calculate the number of mills to be levied on the taxable property in the county to finance the retirement fund net levy requirement by dividing the amount determined in subsection (5)(a) by the sum of:

(a) the amount of guaranteed tax base aid that the county will receive for each mill levied, as certified by the superintendent of public instruction; and

(b) the taxable valuation of the district divided by 1,000.

(10) The levy for a community college district may be applied only to property within the district.

(11) The county superintendent of each county shall submit a report of the revenue amounts used to establish the levy requirements for county school funds supporting elementary and high school district retirement obligations to the superintendent of public instruction not later than the second Monday in September. The report must be completed on forms supplied by the superintendent of public instruction."

Section 24. Permissive levy. If an appropriation for a 3% increase in the basic entitlement and per-ANB entitlement in each fiscal year is contained in [section 85], then a school district may impose a permissive levy, calculated in accordance with 20-9-141, to fund the local share of the BASE budget.

Section 25. Over-BASE budget levy. If an appropriation for a 3% increase in the basic entitlement and per-ANB entitlement in each fiscal year is contained in [section 85], then a district may impose an over-BASE budget levy, calculated in accordance with 20-9-141, to fund the over-BASE budget. Districts shall comply with voting requirements as provided in 20-9-353.

Section 26. Section 20-25-402, MCA, is amended to read:

"20-25-402. Borrowing by regents. *(1)* In carrying out the powers provided in 20-25-107, 20-25-301, and 20-25-302, the regents may:

~~(1)~~*(a)* borrow money for any purpose or purposes stated in parts 3 and 4 of this chapter, including, if considered desirable by the regents, the payment of interest on the money borrowed for a facility during the construction ~~thereof~~ *of the facility* and for 1 year ~~thereafter~~ *after construction* and the creation of a reserve for the payment of bond principal and interest;

~~(2)~~*(b)* make purchases on a time or installment basis;

~~(3)~~*(c)* issue bonds, notes, and other securities, negotiable or otherwise, secured as provided in this section, including bearer bonds with appurtenant interest coupons, which ~~shall~~ *must* be fully negotiable notwithstanding any limitation on the source of payment ~~thereof~~ *of the bonds, notes, or securities*, or fully registered bonds or bonds registered as to ownership of principal only;

~~(4)~~*(d)* pledge for the payment of the purchase price of any facility or of the principal and interest on bonds, notes, or other securities authorized in this chapter or otherwise obligate:

~~(a)~~*(i)* the net income received from rents, board, or both in housing, food service, and other facilities;

~~(b)~~*(ii)* receipts from student building, activity, union, and other special fees prescribed by the regents for all students; and

~~(c)~~*(iii) (A)* other income in the form of gifts, bequests, contributions, *or* federal grants of funds, including the proceeds or income from grants of lands or other real or personal property;

(B) receipts from athletic and other contests, exhibitions, and performances; and

(C) collections of admissions and other charges for the use of facilities, including all use by other persons, firms, and corporations for athletic and other contests, exhibitions, and performances and for the conduct of their business, educational, or governmental functions;

~~(5)~~*(e)* make payments on loans or purchases from any other available income not obligated for those purposes, including receipts from sale of materials, equipment, and fixtures of the facilities or from sales of the facilities themselves, other than land;

~~(6)~~*(f)* secure any bonds authorized ~~hereunder~~ *under this section* by a trust indenture between the regents and any bank or trust company within or ~~without~~ *outside of* the state of Montana or by a resolution establishing covenants of the regents with the holders of ~~such~~ *the* bonds relating to:

~~(a)~~*(i)* the construction, operation, use, and insurance of the facilities;

~~(b)~~*(ii)* the segregation, expenditure, and audit of accounts of the bond proceeds and of the income pledged;

~~(c)~~*(iii)* the establishment and collection of rents, charges, admissions, and fees sufficient to provide net income adequate for prompt payment of principal and interest on bonds and creation and maintenance of reserves for that purpose; and

~~(d)~~*(iv)* ~~such~~ other matters ~~as~~ *that* the regents may determine to be necessary or desirable for the security and marketability of the bonds;

~~(7)~~*(g) subject to the following provisions,* issue and sell or exchange bonds, secured as provided in this section, for the refunding of any outstanding bonds or other obligations issued by the regents ~~before or after January 29, 1971, subject to the following provisions~~:

~~(a)~~*(i)* refunding bonds may, with the consent of the holders of the bonds to be refunded ~~thereby~~, be exchanged at par plus accrued interest for all or part of ~~such~~ *the* bonds or may be sold at a price not less than par plus accrued interest. They may be secured by a pledge of the same revenue as the bonds refunded or by a pledge of different or additional revenues received at the same unit of the university. ~~Nothing herein shall~~ *This subsection (1)(g) may not* require the holder of any outstanding bond to accept payment ~~thereof~~ *of the bond* or the

delivery of a refunding bond in exchange ~~therefor~~ *for the bond*, except in accordance with the terms of the outstanding bond. Bonds may be issued to refund interest as well as principal actually due and payable if the ~~revenues~~ *revenue* pledged ~~therefor~~ *for the bonds* are not sufficient, but not to refund any bonds or interest due ~~which~~ *that* can be paid from ~~revenues~~ *revenue* then on hand.

~~(b)~~*(ii)* refunding bonds may bear interest at a rate lower or higher than the bonds refunded ~~thereby~~ *by the refunding bonds* if they are issued to refund matured principal or interest for the payment of which ~~revenues~~ *revenue* on hand ~~are~~ *is* not sufficient ~~or if they are issued to refund before maturity bonds issued before January 1, 1965~~, for the purpose of releasing ~~revenues~~ *revenue* required for payment of the outstanding bonds permitting the pledge ~~thereof~~ *of the revenue* for the security of other bonds as well as the refunding bonds, subject to the rights of the holders of the outstanding bonds until those bonds are fully paid and redeemed. Except as authorized in the preceding sentence, refunding bonds ~~shall~~ *may* not be issued unless their average annual interest rate, computed to their stated maturity dates and excluding any premium from ~~such~~ *the* computation, is at least 3/8 of 1% less than the average annual interest rate on the bonds refunded ~~thereby~~, computed to their respective stated maturity dates.

~~(c)~~*(iii)* in any case ~~where~~ *in which* refunding bonds are issued and sold 6 months or more before the earliest date on which all bonds refunded ~~thereby~~ *by the refunding bonds* mature or are prepayable in accordance with their terms, the proceeds of the refunding bonds, including any premium and accrued interest, ~~shall~~ *must* be deposited in escrow with a suitable bank or trust company having its principal place of business within or ~~without~~ *outside of* the state, which is a member of the federal reserve system and has a combined capital and surplus *of* not less than $1 million*,* and ~~shall~~ *must* be invested in the amount and in securities maturing on the dates and bearing interest at the rates ~~which~~ *that* will be required to provide funds sufficient to pay when due the interest to accrue on each bond refunded to its maturity or, if it is prepayable, to the earliest prior date upon which the bond may be called for redemption from the proceeds of the refunding bonds and to pay and redeem the principal amount of each bond at maturity or, if prepayable, on that redemption date and any premium required for redemption on that date. The resolution or indenture authorizing the refunding bonds ~~shall~~ *must* irrevocably appropriate for these purposes the escrow fund and all income ~~therefrom~~ *from the escrow fund* and ~~shall~~ *must* provide for the call of all prepayable bonds in accordance with their terms. The securities to be purchased with ~~such~~ *the* escrow funds ~~shall~~ *must* be limited to general obligations of the United States, securities ~~whose~~ *for which* principal and interest payments are guaranteed by the United States, and securities issued by the following United States government agencies~~:~~*, including only* banks for cooperatives, federal home loan banks, federal intermediate credit banks, federal land banks, and the federal national mortgage association. The securities ~~shall~~ *must* be purchased simultaneously with the delivery of the refunding bonds.

~~(d)~~*(iv)* ~~revenues~~ *revenue* or other funds on hand~~,~~ in excess of the amount pledged by resolutions or indentures authorizing outstanding bonds for the payment of principal and interest currently due ~~thereon~~ *on the outstanding bonds* and reserves securing ~~such~~ *the* payment~~,~~ may be used to pay the expenses incurred by the regents for the purpose of refunding, including but without limitation the cost of advertising and printing refunding bonds, legal and

financial advice and assistance in connection ~~therewith~~ *with refunding the bonds*, and the reasonable and customary charges of escrow agents and paying agents. ~~Revenues~~ *Revenue* and other funds on hand, including reserves pledged for the payment and security of outstanding revenue bonds, may be deposited in an escrow fund created for the retirement of those bonds and may be invested and disbursed as provided in subsection ~~(7)(c) hereof~~ *(1)(g)(iii)* to the extent consistent with the resolutions or indentures authorizing ~~such~~ *the* outstanding bonds.

~~(8)~~*(h)* sell bonds and sell or exchange refunding bonds issued ~~hereunder~~ *under this section* in the manner and upon the terms as to maturities, interest rates, and redemption privileges and for the price that the regents determine with the approval of the department of administration.

(2) If applicable, the regents shall specify whether the bonds issued under this section are tax credit bonds as provided in [section 44]."

Section 27. Section 20-25-427, MCA, is amended to read:

"20-25-427. Allocation of indirect cost reimbursements. ~~Any~~ *Subject to the conditions contained in the American Recovery and Reinvestment Act of 2009, Public Law 111-5, any* reimbursement for indirect costs associated with a grant to or contract with the Montana university system or any of its units is allocated to the designated subfund of the current fund, as provided in 17-2-102, for distribution to the unit receiving the grant or under the contract."

Section 28. Section 39-51-201, MCA, is amended to read:

"39-51-201. General definitions. As used in this chapter, unless the context clearly requires otherwise, the following definitions apply:

(1) "Annual payroll" means the total amount of wages paid by an employer, regardless of the time of payment, for employment during a calendar year.

(2) "Base period" means*:*

(a) the first 4 of the last 5 completed calendar quarters immediately preceding the first day of an individual's benefit year.*;*

(b) if the individual does not have sufficient wages to qualify for benefits under subsection (2)(a), the 4 most recently completed calendar quarters immediately preceding the first day of the individual's benefit year;

(c) ~~However,~~ in the case of a combined-wage claim pursuant to the arrangement approved by the secretary of labor of the United States, ~~the base period is~~ the period applicable under the unemployment law of the paying state.*; or*

(d) ~~For~~ *for* an individual who fails to meet the qualifications of 39-51-2105 or a similar statute of another state because of a temporary total disability, as defined in 39-71-116, or a similar statute of another state or the United States, ~~the base period means~~ the first 4 quarters of the last 5 completed calendar quarters preceding the disability if a claim for unemployment benefits is filed within 24 months of the date on which the individual's disability was incurred.

(3) "Benefit year", with respect to any individual, means the 52-consecutive-week period beginning with the first day of the calendar week in which the individual files a valid claim for benefits, except that the benefit year is 53 weeks if filing a new valid claim would result in overlapping any quarter of the base year of a previously filed new claim. A subsequent benefit year may not be established until the expiration of the current benefit year. However, in the case of a combined-wage claim pursuant to the arrangement approved by the

secretary of labor of the United States, the base period is the period applicable under the unemployment law of the paying state.

(4) "Benefits" means the money payments payable to an individual, as provided in this chapter, with respect to the individual's unemployment.

(5) "Board" means the board of labor appeals provided for in Title 2, chapter 15, part 17.

(6) "Calendar quarter" means the period of 3 consecutive calendar months ending on March 31, June 30, September 30, or December 31.

(7) "Contributions" means the money payments to the state unemployment insurance fund required by this chapter but does not include assessments under 39-51-404.

(8) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(9) (a) "Domestic or household service" means employment of persons other than members of the household for the purpose of tending to the aid and comfort of the employer or members of the employer's family, including but not limited to housecleaning and yard work.

(b) The term does not include employment beyond the scope of normal household or domestic duties, such as home health care or domiciliary care.

(10) "Employing unit" means any individual or organization, including the state government and any of its political subdivisions or instrumentalities or an Indian tribe or tribal unit, partnership, association, trust, estate, joint-stock company, insurance company, limited liability company or limited liability partnership that has filed with the secretary of state, or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or the trustee's successor, or legal representative of a deceased person in whose employ one or more individuals perform or performed services within this state, except as provided under 39-51-204(1)(a) and (1)(q). All individuals performing services within this state for any employing unit that maintains two or more separate establishments within this state are considered to be employed by a single employing unit for all the purposes of this chapter. Each individual employed to perform or assist in performing the work of any agent or employee of an employing unit is considered to be employed by the employing unit for the purposes of this chapter, whether the individual was hired or paid directly by the employing unit or by the agent or employee, provided that the employing unit has actual or constructive knowledge of the work.

(11) "Employment office" means a free public employment office or branch of an office operated by this state or maintained as a part of a state-controlled system of public employment offices or other free public employment offices operated and maintained by the United States government or its instrumentalities as the department may approve.

(12) "Fund" means the unemployment insurance fund established by this chapter to which all contributions and payments in lieu of contributions must be paid and from which all benefits provided under this chapter must be paid.

(13) "Gross misconduct" means a criminal act, other than a violation of a motor vehicle traffic law, for which an individual has been convicted in a criminal court or has admitted or conduct that demonstrates a flagrant and wanton disregard of and for the rights, title, or interest of a fellow employee or the employer.

(14) "Hospital" means an institution that has been licensed, certified, or approved by the state as a hospital.

(15) "Independent contractor" means an individual working under an independent contractor exemption certificate provided for in 39-71-417.

(16) "Indian tribe" means an Indian tribe as defined in the Indian Self-Determination and Education Assistance Act, 25 U.S.C. 450b(e).

(17) (a) "Institution of higher education", for the purposes of this part, means an educational institution that:

(i) admits as regular students only individuals having a certificate of graduation from a high school or the recognized equivalent of a certificate;

(ii) is legally authorized in this state to provide a program of education beyond high school;

(iii) provides an educational program for which the institution awards a bachelor's or higher degree or provides a program that is acceptable for full credit toward a bachelor's or higher degree, a program of postgraduate or postdoctoral studies, or a program of training to prepare students for gainful employment in a recognized occupation; and

(iv) is a public or other nonprofit institution.

(b) All universities in this state are institutions of higher education for purposes of this part.

(18) "Licensed and practicing health care provider" means a health care provider who is primarily responsible for the treatment of a person seeking unemployment insurance benefits and who is:

(a) licensed to practice in this state as:

(i) a physician under Title 37, chapter 3;

(ii) a dentist under Title 37, chapter 4;

(iii) an advanced practice registered nurse under Title 37, chapter 8, and recognized as a nurse practitioner or certified nurse specialist by the board of nursing, established in 2-15-1734;

(iv) a physical therapist under Title 37, chapter 11;

(v) a chiropractor under Title 37, chapter 12;

(vi) a clinical psychologist under Title 37, chapter 17; or

(vii) a physician assistant under Title 37, chapter 20; or

(b) with respect to a person seeking unemployment insurance benefits who resides outside of this state, a health care provider licensed or certified as a member of one of the professions listed in subsection (18)(a) in the jurisdiction where the person seeking the benefit lives.

(19) "No-additional-cost service" has the meaning provided in section 132 of the Internal Revenue Code, 26 U.S.C. 132.

(20) "State" includes, in addition to the states of the United States of America, the District of Columbia, Puerto Rico, the Virgin Islands, and Canada.

(21) "Taxes" means contributions and assessments required under this chapter but does not include penalties or interest for past-due or unpaid contributions or assessments.

(22) "Tribal unit" means an Indian tribe and any tribal subdivision or subsidiary or any business enterprise that is wholly owned by that tribe.

(23) "Unemployment insurance administration fund" means the unemployment insurance administration fund established by this chapter from which administrative expenses under this chapter must be paid.

(24) (a) "Wages", unless specifically exempted under subsection (24)(b), means all remuneration payable for personal services, including the cash value of all remuneration paid in any medium other than cash. The reasonable cash value of remuneration payable in any medium other than cash must be estimated and determined pursuant to rules prescribed by the department. The term includes but is not limited to:

(i) commissions, bonuses, and remuneration paid for overtime work, holidays, vacations, and sickness periods;

(ii) severance or continuation pay, backpay, and any similar pay made for or in regard to previous service by the employee for the employer, other than retirement or pension benefits from a qualified plan; and

(iii) tips or other gratuities received by the employee, to the extent that the tips or gratuities are documented by the employee to the employer for tax purposes.

(b) The term does not include:

(i) the amount of any payment made by the employer for employees, if the payment was made for:

(A) retirement or pension pursuant to a qualified plan as defined under the provisions of the Internal Revenue Code;

(B) sickness or accident disability under a workers' compensation policy;

(C) medical or hospitalization expenses in connection with sickness or accident disability, including health insurance for the employee or the employee's immediate family; or

(D) death, including life insurance for the employee or the employee's immediate family;

(ii) employee expense reimbursements or allowances for meals, lodging, travel, subsistence, or other expenses, as set forth in department rules;

(iii) a no-additional-cost service; or

(iv) wage subsidies received pursuant to the alternative trade adjustment assistance for older workers program, 19 U.S.C. 2318.

(25) "Week" means a period of 7 consecutive calendar days ending at midnight on Saturday.

(26) "Weekly benefit amount" means the amount of benefits that an individual would be entitled to receive for 1 week of total unemployment."

Section 29. Part-time work search — eligibility for benefits. (1) Except as provided in subsection (2), an individual may not be denied regular unemployment compensation benefits solely because the individual is seeking only part-time work, as that term is defined in rules adopted by the department.

(2) In order to be qualified for benefits under subsection (1), the majority of the individual's workweeks in the base period must have been part-time.

Section 30. Participation in worker training program — eligibility for training benefits. (1) Subject to the requirements of this section, training benefits are available to an individual who has exhausted all rights to regular unemployment compensation benefits and who is attending an approved worker training program.

(2) An unemployed individual who is participating and making satisfactory progress in a state-approved training program or a job training program authorized by the Workforce Investment Act of 1998 that is necessary for the individual's reemployment is eligible to receive training benefits if, as determined by the department:

(a) the individual was:

(i) separated from a declining occupation; or

(ii) involuntarily and indefinitely separated from employment as a result of a permanent reduction of operations at the individual's place of employment;

(b) the training enhances the individual's marketable skills and earning power; and

(c) the training is targeted to those industries or skills that are in demand within the labor market.

(3) Benefits must be paid under this section at the individual's average weekly benefit amount during the applicable benefit year and under the same terms and conditions as regular benefits.

(4) Benefits are payable under this section only for weeks during which the individual is attending an approved training program.

(5) An employer's account may not be charged for payment of benefits to an individual under this section.

Section 31. Section 52-3-115, MCA, is amended to read:

"52-3-115. Older Montanans trust fund. (1) There is an older Montanans trust fund within the permanent fund type. The trust fund is subject to legislative appropriation as provided in this section.

(2) *(a)* The money in the fund may be used to create new, innovative services or to expand existing services for the benefit of Montana residents 60 years of age or older that will enable those Montanans to live an independent lifestyle in the least restrictive setting and will promote the dignity of and respect for those Montanans. The interest and income produced by the trust fund and appropriated to the department by the legislature is intended to increase services referred to in this subsection and not to supplant other sources of revenue for those programs in the trended traditional level~~, as used in 53-6-1201,~~ of appropriations for those services.

(b) As used in subsection (2)(a), the phrase "trended traditional level of appropriations" means the appropriation amounts, including supplemental appropriations, as those amounts were set based on eligibility standards, services authorized, and payment amount during the past five biennial budgets.

(3) The department may accept contributions and gifts for the trust fund in money or other forms, and when accepted, the contributions and gifts must be deposited in the trust fund.

(4) Interest and income earned on money in the trust fund must be retained within the fund except as provided in this section. Until the year 2015, if assets in the fund reach the following amounts, money may be appropriated by the legislature and used in the following amounts for the programs specified in subsection (2):

(a) When the fund balance reaches $20 million, 50% of the interest earned may be appropriated.

(b) When the fund balance reaches $50 million, 60% of the interest earned may be appropriated.

(c) When the fund balance reaches $100 million, 80% of the interest earned may be appropriated.

(5) On and after January 1, 2015, 90% of the interest earned on the trust fund may be appropriated for the programs specified in subsection (2).

(6) The department shall provide to the legislature a biennial report of the expenditures of the money appropriated from the older Montanans trust fund as provided in 5-11-210."

Section 32. Section 53-4-212, MCA, is amended to read:

"53-4-212. Department to make rules. (1) The department shall make rules and take action as necessary or desirable for the administration of public assistance programs.

(2) ~~The~~ *Subject to subsection (3), the* department shall adopt rules that may include but are not limited to rules concerning:

(a) eligibility requirements, including gross and net income limitations, resource limitations, and income and resource exclusions;

(b) amounts of assistance, methods for computing benefit amounts, and the length of time for which benefits may be granted;

(c) the degree of kinship required for a person to qualify as a specified caretaker relative in order to be eligible for assistance;

(d) procedures and policies for employment and training programs, requirements for participation in employment and training programs, and exemptions, if any, from participation requirements;

(e) requirements for specified caretaker relatives, including cooperation with assessments, the number of hours of participation required for each month, specific activities required to address employment barriers, and other terms of performance;

(f) eligibility for and terms and conditions of child-care assistance for financial assistance recipients, including maximum amounts of assistance payable and amounts of copayments required by specified caretaker relatives;

(g) eligibility criteria and participation requirements for nonfinancial assistance recipients;

(h) terms of ineligibility or sanctions against a specified caretaker relative or other family member who fails to enter into a family investment agreement, as provided for in 53-4-606, or to comply with the individual's obligations under the agreement, including the length of the period of ineligibility, if any;

(i) requirements, if any, for participation in the employment and training demonstration project;

(j) eligibility for and terms and conditions of extended medical assistance benefits;

(k) reporting requirements;

(l) sanctions, disqualification, or other penalties for failure or refusal to comply with the rules or requirements of a public assistance program;

(m) exemptions from the 60-month limitation on assistance provided in 53-4-231 based on hardship or for families that include an individual who has been battered or subjected to extreme cruelty, as defined in section 103 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 42 U.S.C. 608, including but not limited to the duration of the exemption;

(n) individuals who must be included as members of an assistance unit;

(o) categories of aliens who may receive assistance, if any;

(p) requirements relating to the assignment of child and medical support rights and cooperation in establishing paternity and obtaining child and medical support;

(q) requirements for eligibility and other terms and conditions of other programs to strengthen and preserve families;

(r) special eligibility or participation requirements applicable to teenage parents, if any;

(s) conditions under which assistance may be continued when an adult or a dependent child is temporarily absent from the home and the length of time for which assistance may be continued;

(t) any random drug testing or reporting requirements for persons who are required to comply with the conditions provided under 53-4-231(3) and graduated sanctions that may include terms of ineligibility for violations of conditions of supervision or treatment requirements. The department may enter into agreements with the department of corrections regarding testing and reporting on offenders under the supervision of the department of corrections.

(u) approved educational programs, appropriate educational courses of study, employee assessment instruments, and administration of the Montana parents as scholars program provided for in 53-4-209.

(3) The department shall raise the eligibility standard for individuals receiving cash assistance benefits from the federal TANF block grant from at or below 30% of the 2002 federal poverty level to at or below 30% of the 2009 federal poverty level for the period from July 1, 2009, through September 30, 2010. Beginning October 1, 2010, the department shall reduce the eligibility standard to 30% of the 2006 federal poverty level. If the TANF caseload increases to a point that expenditures jeopardize the TANF block grant, the department, after consultation with the legislative finance committee, may lower the eligibility standard as provided in subsection (2)."

Section 33. Section 53-6-149, MCA, is amended to read:

"53-6-149. (Temporary) **State special revenue fund account — administration.** (1) There is a hospital medicaid reimbursement account in the state special revenue fund provided for in 17-2-102.

(2) ~~All~~ *Except as provided in 15-66-102(3), all* money collected under 15-66-102 must be deposited in the account.

(3) Money in the account must be used by the department of public health and human services to provide funding for increases in medicaid payments to hospitals and for the costs of collection of the fee and other administrative activities associated with the implementation of increases in the medicaid payments to hospitals. (Terminates June 30, 2009—sec. 5, Ch. 517, L. 2007.)"

Section 34. Medicaid reserve account. There is a medicaid reserve account in the state special revenue fund provided for in 17-2-102. Money in the account must be used by the department for medicaid benefits after June 30, 2011. Any interest or income earned on the account must be deposited in the account. Each calendar quarter through December 31, 2010, the amount recovered under the federal medical assistance percentage hold harmless provision of the American Recovery and Reinvestment Act of 2009, Public Law 111-5, must be transferred to the medicaid reserve account.

Section 35. Section 53-6-1201, MCA, is amended to read:

"53-6-1201. Special revenue fund — health and medicaid initiatives. (1) There is a health and medicaid initiatives account in the state special revenue fund established by 17-2-102. This account is to be administered by the department of public health and human services.

(2) There must be deposited in the account:

(a) money from cigarette taxes deposited under 16-11-119(1)(c);

(b) money from taxes on tobacco products other than cigarettes deposited under 16-11-119(3)(b); and

(c) any interest and income earned on the account.

(3) This account may be used only to provide funding for:

(a) the state funds necessary to take full advantage of available federal matching funds in order to maximize enrollment of eligible children under the children's health insurance program, provided for under Title 53, chapter 4, part 10, and to provide outreach to the eligible children~~.~~; ~~. The increased revenue in this account is intended to increase enrollment rates for eligible children in the program and not to be used to support existing levels of enrollment based upon appropriations for the biennium ending June 30, 2005.~~

(b) a new need-based prescription drug program established by the legislature for children, seniors, chronically ill *persons*, and disabled persons that does not supplant similar services provided under any existing program;

(c) increased medicaid services and medicaid provider rates~~.~~; ~~. The increased revenue is intended to increase medicaid services and medicaid provider rates and not to supplant the general fund in the trended traditional level of appropriation for medicaid services and medicaid provider rates.~~

(d) an offset to loss of revenue to the general fund as a result of new tax credits;

(e) funding new programs to assist eligible small employers with the costs of providing health insurance benefits to eligible employees;

(f) the cost of administering the tax credit, the purchasing pool, and the premium incentive payments and premium assistance payments as provided in Title 33, chapter 22, part 20; and

(g) providing a state match for the medicaid program for premium incentive payments or premium assistance payments to the extent that a waiver is granted by federal law as provided in 53-2-216.

(4) (a) ~~Except for $1 million appropriated for the startup costs of 53-6-1004 and 53-6-1005, the money appropriated for fiscal year 2006 for the programs in subsections (3)(b) and (3)(d) through (3)(g) may not be expended until the office of budget and program planning has certified that $25 million has been deposited in the account provided for in this section or December 1, 2005, whichever occurs earlier.~~

~~(b)~~ On or before July 1, the budget director shall calculate a balance required to sustain each program in subsection (3) for each fiscal year of the biennium. If the budget director certifies that the reserve balance will be sufficient, then the agencies may expend the revenue for the programs as appropriated. If the budget director determines that the reserve balance of the revenue will not support the level of appropriation, the budget director shall notify each agency. Upon receipt of the notification, the agency shall adjust the operating budget for the program to reflect the available revenue as determined by the budget director.

~~(c)~~*(b)* Until the programs or credits described in subsections (3)(b) and (3)(d) through (3)(g) are established, the funding must be used exclusively for the purposes described in subsections (3)(a) and (3)(c).

~~(5) The phrase "trended traditional level of appropriation", as used in subsection (3)(c), means the appropriation amounts, including supplemental appropriations, as those amounts were set based on eligibility standards, services authorized, and payment amount during the past five biennial budgets.~~

~~(6)~~*(5)* The department of public health and human services may adopt rules to implement this section."

Section 36. Section 75-5-1102, MCA, is amended to read:

"75-5-1102. Definitions. Unless the context requires otherwise, in this part, the following definitions apply:

(1) "Administrative costs" means costs incurred by the department and the department of natural resources and conservation in the administration of the program, including but not limited to costs of servicing loans and issuing debt; program startup costs; financial, management, and legal consulting fees; and reimbursement costs for support services from other state agencies.

(2) "Cost" means, with reference to a project, all capital costs incurred or to be incurred by a municipality or a private person, including but not limited to engineering, construction, financing, and other fees, interest during construction, and a reasonable allowance for contingencies to the extent permitted by the federal act and regulations promulgated under the federal act.

(3) "Federal act" means the Federal Water Pollution Control Act, also known as the Clean Water Act, 33 U.S.C. 1251 through 1387, as amended*, including conditions and exclusions contained in the American Recovery and Reinvestment Act of 2009, Public Law 111-5*.

(4) "Intended use plan" means the annual plan adopted by the department and submitted to the environmental protection agency that describes how the state intends to use the money in the revolving fund.

(5) "Loan" means a loan of money from the revolving fund to a municipality or a private person.

(6) "Municipality" means any state agency, city, town, or other public body created pursuant to state law, including an authority as defined in 75-6-304.

(7) "Private person" means an individual, corporation, partnership, or other nongovernmental legal entity.

(8) "Program" means the water pollution control state revolving fund program established by this part.

(9) "Project" means an activity that is eligible for financing by the program under the federal act, including treatment works, as defined under section 1292 of the federal act (33 U.S.C. 1292), and nonpoint source pollution control under section 1329 of the federal act (33 U.S.C. 1329), and for which a municipality or private person makes an application for a loan or other financial assistance.

(10) "Revolving fund" means the fund established by 75-5-1106."

Section 37. Section 75-5-1107, MCA, is amended to read:

"75-5-1107. Uses of revolving fund. *(1)* Money in the revolving fund must be used to:

~~(1)~~*(a)* make loans to municipalities to finance all or a portion of the cost of a project and to make loans to private persons to finance all or a portion of the cost of nonpoint source pollution control projects;

~~(2)~~*(b)* buy or refinance debt obligations of municipalities that were issued to finance projects within the state at or below market rates, provided that the obligations were incurred after March 7, 1985;

~~(3)~~*(c)* guarantee or purchase insurance for obligations of municipalities that were issued to finance projects in order to enhance credit or reduce interest rates;

~~(4)~~*(d)* provide a source of revenue or security for general obligation bonds the proceeds of which are deposited in the revolving fund;

~~(5)~~*(e)* provide loan guarantees for similar revolving funds established by municipalities;

~~(6)~~*(f)* earn interest on fund accounts; and

~~(7)~~*(g)* pay reasonable administrative costs of the program not to exceed 4% of all federal grant awards to the fund or the maximum amount allowed under the federal act.

(2) Money received by the state under the American Recovery and Reinvestment Act of 2009, Public Law 111-5, as capitalization grants for a state revolving fund may be used by the department or the department of natural resources and conservation to provide additional subsidization to eligible recipients in the form of forgiveness of the principal of a loan to the extent permitted or required by federal law and subject to satisfaction of conditions on loans described in 75-5-1113."

Section 38. Section 75-6-202, MCA, is amended to read:

"75-6-202. Definitions. Unless the context requires otherwise, in this part, the following definitions apply:

(1) "Administrative costs" means costs incurred by the department and the department of natural resources and conservation in the administration of the program, including but not limited to:

(a) costs of servicing loans and issuing debt;

(b) program startup costs;

(c) financial, management, and legal consulting fees; and

(d) reimbursement costs for support services from other state agencies.

(2) "Community water system" means a public water system that is owned by a private person or a municipality and that serves at least 15 service connections used by year-round residents of the area served by the system or regularly serves at least 25 year-round residents. The term does not include a public water system that is owned by the federal government.

(3) "Cost" means, with reference to a project, all capital costs incurred or to be incurred for a public water system, including but not limited to:

(a) engineering, financing, and other fees;

(b) interest during construction;

(c) construction; and

(d) a reasonable allowance for contingencies to the extent permitted by the federal act and rules promulgated under the federal act.

(4) "Department" means the department of environmental quality provided for in 2-15-3501.

(5) "Disadvantaged community" means one in which the service area of a public water system meets the affordability criteria established by rule adopted pursuant to this part.

(6) "Federal act" means the federal Safe Drinking Water Act, 42 U.S.C. 300f, et seq., as that act read on May 5, 1997*, and including conditions and exclusions contained in the American Recovery and Reinvestment Act of 2009, Public Law 111-5*.

(7) "Indian tribe" means an Indian tribe that has a federally recognized governing body carrying out substantial governmental duties and powers over any area.

(8) "Intended use plan" means the annual plan adopted by the department and submitted to the environmental protection agency that describes how the state intends to use the money in the revolving fund.

(9) "Loan" means a loan of money from the revolving fund for project costs.

(10) "Municipality" means a state agency, city, town, or other public body, including an authority as defined in 75-6-304, created pursuant to state law or an Indian tribe.

(11) "Noncommunity water system" means a public water system that is not a community water system.

(12) "Nonprofit noncommunity water system" means a noncommunity water system owned by an organization that is organized under Montana law and that qualifies as a tax-exempt organization under the provisions of section 501(c)(3) of the Internal Revenue Code.

(13) "Private person" means an individual, corporation, partnership, or other nongovernmental legal entity.

(14) "Program" means the drinking water state revolving fund program established by this part.

(15) "Project" means improvements or activities that are:

(a) to be undertaken for a public water system and that are of a type that will facilitate compliance with the national primary drinking water regulations applicable to the system; or

(b) to further the health protection objectives of the federal act.

(16) "Public water system" means a system for the provision to the public of water for human consumption, through pipes or other constructed conveyances, if that system has at least 15 service connections or regularly serves at least 25 individuals. The term includes any collection, treatment, storage, and distribution facilities under control of an operator of a system that are used primarily in connection with a system and any collection or pretreatment storage facilities not under control of an operator and that are used primarily in connection with a system.

(17) "Revolving fund" means the drinking water state revolving fund established by 75-6-211."

Section 39. Section 75-6-226, MCA, is amended to read:

"75-6-226. Loan subsidy for disadvantaged communities. (1) Notwithstanding any other provision in this part, if the program makes a loan pursuant to 75-6-221(1) to a disadvantaged community or to a community that the department expects to become a disadvantaged community as a result of a proposed project, the department may provide additional subsidization in the form of a reduced interest rate, the forgiveness of principal, or a combination of both.

(2) The total annual amount of loan subsidies made by the department pursuant to subsection (1) may not exceed 30% of the capitalization grant received by the department for each fiscal year.

(3) Notwithstanding any other provision in this part, money received by the state under the American Recovery and Reinvestment Act of 2009, Public Law 111-5, as capitalization grants for a state revolving fund may be used by the department or the department of natural resources and conservation to provide additional subsidization to eligible recipients in the form of forgiveness of the principal of a loan to the extent permitted or required by federal law and subject to satisfaction of conditions on loans described in 75-6-224."

Section 40. Section 75-25-101, MCA, is amended to read:

"75-25-101. Alternative energy revolving loan account. (1) There is a special revenue account called the alternative energy revolving loan account to the credit of the department of environmental quality.

(2) The alternative energy revolving loan account consists of money deposited into the account from air quality penalties from 75-2-401 and 75-2-413 and money from any other source. Any interest earned by the account and any interest that is generated from a loan repayment must be deposited into the account and used to sustain the program.

(3) Funds from the alternative energy revolving loan account may be used to provide loans to individuals, small businesses, units of local government, units of the university system, and nonprofit organizations for the purpose of building alternative energy systems, as defined in 15-32-102:

(a) to generate energy for their own use;

(b) for net metering as defined in 69-8-103; and

(c) for capital investments by those entities for energy conservation purposes, as defined in 15-32-102, when done in conjunction with an alternative energy system.

(4) *(a)* ~~The~~ *Except as provided in subsection (4)(b), the* amount of a loan may not exceed $40,000, and the loan must be repaid within 10 years.

(b) For loans made using money obtained by the department of environmental quality from the federal government under the American Recovery and Reinvestment Act of 2009, Public Law 111-5, the amount of a loan may not exceed $100,000 and the loan must be repaid within 15 years. The department may establish a loan limit of less than $100,000 based on the amount of money received from the federal government and the department's projected number of applications and application amounts."

Section 41. Section 75-25-102, MCA, is amended to read:

"75-25-102. Administration of revolving loan account — rulemaking authority. (1) The department of environmental quality shall adopt rules establishing:

(a) eligibility criteria, including criteria for defining residences, small businesses, and nonprofit organizations, criteria for defining capital investments for energy conservation purposes, ownership of the alternative energy facility, financial capacity to repay the loans, estimated return on investment in the alternative energy and energy conservation, and other matters that the department considers necessary to ensure repayment of loans and to encourage maximum use of the fund for alternative energy and net metering uses;

(b) processes and procedures for disbursing loans, including the agencies or organizations that are allowed to process the loan application for the department; and

(c) terms and conditions for the loans, including repayment schedules and interest.

(2) The department shall solicit assistance in the development and operation of the program from individuals familiar with financial services and persons knowledgeable in alternative energy systems.

(3) Administrative costs charged to the account may not exceed 10% of the total loans or $23,000 a year, whichever is greater. Legal fees and costs associated with collection of debt on principal are not considered administrative costs.

(4) ~~The loan repayment period may not exceed 10 years.~~ The loans must be made at a low interest rate. The department may set the interest rate at an amount that will cover its administrative costs, but the rate may not be less than 1% a year. The department may seek recovery of the amount of principal loaned in the event of default."

Section 42. Section 90-1-204, MCA, is amended to read:

"90-1-204. Priorities for funding — rulemaking. (1) The department must receive proposals for grants and loans from local governments. A local government shall work with an economic development organization on a proposal. The department shall work with the local government and the economic development organization in preparing cost estimates for a proposed project. In reviewing proposals, the department may consult with other state agencies with expertise pertinent to the proposal.

(2) (a) The department shall adopt rules necessary to implement the big sky economic development program. In adopting rules, the department shall look to the rules adopted for the treasure state endowment program and other similar state programs. To the extent feasible, the department shall make the rules compatible with those other programs. To the extent feasible, the department shall employ an approach pertaining to the use of funds so that, except as provided in subsection (2)(b), the needs of rural areas are balanced with the needs of the state's urban centers.

(b) For high-poverty counties, the department shall employ an approach pertaining to the use of funds that is intended to lower poverty levels in the county to a percentage at which the county no longer is defined as a high-poverty county.

(c) The rules must provide for the types of uses of funds available under the big sky economic development program. The types of uses of funds by:

(i) local governments include but are not limited to:

(A) a reduction in the interest rate of a commercial loan for the expansion of a basic sector company;

(B) a grant or low-interest loan for relocation expenses for a basic sector company; and

(C) rental assistance or lease buy-downs for a relocation or expansion project for a basic sector company;

(ii) a certified regional development corporation include:

(A) support for business improvement districts and central business district redevelopment;

(B) industrial development;

(C) feasibility studies;

(D) creation and maintenance of baseline community profiles; and

(E) matching funds for federal funds, including but not limited to brownfields funds and natural resource damage funds.

(d) (i) The rules must provide for distribution methods for financial assistance available to local governments. ~~The~~ *Except for local government projects funded in [House Bill No. 645], the* rules must provide for distribution based upon the number of jobs expected to be created because of the funding.

(ii) ~~Funding~~ *Except for local government projects funded in [House Bill No. 645], funding* may not exceed $5,000 for each expected job, except that funding for a project in a high-poverty county may not exceed $7,500 for each expected job.

(iii) ~~The~~ *Except for local government projects funded in [House Bill No. 645], the* rules must require equal matching funds for a grant or loan, except that the rules for a grant or a loan in a high-poverty county may allow a 50% to 100% match requirement for the high-poverty county.

(e) ~~The~~ *Except for local government projects funded in [House Bill No. 645], the* rules may provide for greater incentives for a high-poverty county.

(f) ~~The~~ *Except for local government projects funded in [House Bill No. 645], the* rules must provide for the full or partial repayment of a grant if the new jobs or some of the new jobs for which a grant is given are not created.

(g) ~~A~~ *Except for local government projects funded in [House Bill No. 645], a* grant or loan may be made only for a new job that has an average weekly wage that meets or exceeds the current average weekly wage of the county in which the employees are to be principally employed."

Section 43. Allocation of bonding limits — American Recovery and Reinvestment Act of 2009. Unless the regulations adopted by the United States secretary of the treasury specify otherwise:

(1) the office of public instruction is responsible for allocating the state's share of qualified school construction bonds as authorized in section 1521 of the American Recovery and Reinvestment Act of 2009, Public Law 111-5, and the state's allocated share of qualified zone academy bonds as authorized in section 54E of the Internal Revenue Code, 26 U.S.C. 54E;

(2) the department of administration is responsible for allocating the state's share of qualified energy conservation bonds as authorized in section 54D of the Internal Revenue Code 26 U.S.C. 54D, as amended by section 1112 of the American Recovery and Reinvestment Act of 2009, Public Law 111-5; and

(3) the department of administration, in consultation with the department of commerce, is responsible for allocating the state's share of recovery zone economic development bonds and recovery zone facility bonds, as authorized in section 1401 of the American Recovery and Reinvestment Act of 2009, Public Law 111-5.

Section 44. Tax credit bonds. (1) As used in this section, "tax credit bond" means any general obligation bond, impact aid revenue bond, special improvement district bond, revenue bond, industrial development bond, tax increment bond, or any other bond of the state or a political subdivision that has been duly authorized and is eligible for designation as and has been designated as a qualified tax credit bond under section 54A, section 54D, section 54E,

section 54F, or section 54AA of the Internal Revenue Code, 26 U.S.C. 54A, 54D, 54E, 54F, or 54AA.

(2) Any bond issued as a tax credit bond may be issued and sold at public or private sale, may be payable and mature as to principal and interest, if any, on any date or dates, may be subject to redemption in whole or in part as determined by the governing body of the issuer, and may have other terms and conditions that the issuer considers to be necessary and appropriate.

(3) The governing body of the issuer of any tax credit bond is authorized to enter into agreements and make covenants that may be necessary to provide for the sale and security of the bond, including investment of funds and accounts to repay the bond.

Section 45. Recovery zone economic development bonds and recovery zone facility bonds. (1) Subject to the conditions and provisions contained in the American Recovery and Reinvestment Act of 2009, Public Law 111-5, and the availability of allocation as determined in [section 43], cities and counties are authorized to designate economic recovery zones and issue recovery zone economic development bonds and recovery zone facility bonds to finance the costs of recovery zone projects and facilities eligible under the American Recovery and Reinvestment Act of 2009, Public Law 111-5.

(2) The bonds must be authorized by the governing body of the city or county in accordance with the applicable provisions of Montana law, unless otherwise provided in [section 44]. The governing body is authorized to enter into agreements and make covenants that may be necessary to provide for the sale and security of the bonds, subject to the following limitations:

(a) if the bonds that are issued under this section pledge the city's or county's credit or taxing power, they must be authorized in accordance with the provisions of Title 7, chapter 7, part 22 or 42, as appropriate;

(b) if the bonds are payable from and secured solely by the revenue from a governmentally owned and operated facility or undertaking, they must be authorized in accordance with the provisions of Title 7, chapter 7, part 44;

(c) if the bonds are payable from special assessments levied against benefited property, the project must be eligible for special assessment financing and must be authorized in accordance with the provisions of Title 7, chapter 12, part 21 or parts 41 and 42, as appropriate;

(d) if the bonds are payable from tax increment revenue, the project to be financed must be eligible for tax increment financing and the project must be approved and the bonds must be authorized in accordance with the provisions of Title 7, chapter 15, parts 42 and 43;

(e) if the bonds are industrial development revenue bonds of the issuer, the bonds must be authorized in accordance with the provisions of Title 90, chapter 5, part 1.

Section 46. Qualified energy conservation bonds. (1) Subject to the conditions and provisions contained in section 54D of the Internal Revenue Code, 26 U.S.C. 54D, as amended by the American Recovery and Reinvestment Act of 2009, Public Law 111-5, and the availability of an allocation, cities and counties are authorized to issue qualified energy conservation bonds to finance projects for qualified energy conservation purposes and are authorized to undertake the qualified energy conservation purposes and programs within the meaning of the section 54D of the Internal Revenue Code, 26 U.S.C. 54D, as

amended by the American Recovery and Reinvestment Act of 2009, Public Law 111-5.

(2) The bonds must be authorized by the governing body of the city or county in accordance with the provisions of applicable Montana law, except as otherwise provided in [section 44]. The governing body is authorized to enter into agreements and make covenants that may be necessary to provide for the sale and security of the bonds, subject to the following limitations:

(a) if the bonds that are to be issued under this section pledge the city's or county's credit or taxing power, they must be authorized in accordance with the provisions of Title 7, chapter 7, part 22 or 42, as appropriate;

(b) if the bonds to be issued under this section are payable from and secured solely by the revenue derived or generated from a qualified energy conservation program or project, they must be authorized in accordance with the provisions of Title 7, chapter 7, part 44;

(c) if the bonds are payable from special assessments levied against benefited property, the project must be eligible for special assessment financing and must be authorized in accordance with the provisions of Title 7, chapter 12, part 21 or parts 41 and 42, as appropriate;

(d) if the bonds are payable from tax increment revenue, the project to be financed must be eligible for tax increment financing and the project must be approved and the bonds must be authorized in accordance with the provisions of Title 7, chapter 15, parts 42 and 43;

(e) if the bonds are industrial development revenue bonds of the issuer, the bonds must be authorized in accordance with the provisions of Title 90, chapter 5, part 1.

Section 47. Section 90-5-101, MCA, is amended to read:

"90-5-101. Definitions. As used in this part, unless the context otherwise requires, the following definitions apply:

(1) "Agricultural enterprises" includes but is not limited to producing, warehousing, storing, fattening, treating, handling, distributing, or selling farm products or livestock.

(2) "Bonds" means bonds, refunding bonds, notes, or other obligations issued by a municipality or county under the authority of this part, including without limitation short-term bonds or notes issued in anticipation of the issuance of long-term bonds or notes.

(3) "Electric energy generation facility" means any combination of a physically connected generator or generators, associated prime movers, and other associated property and transmission facilities and upgrades and improvements of transmission facilities, including appurtenant land and improvements and personal property, that are normally operated together to produce and transfer electric power. The term includes but is not limited to generating facilities that produce and transfer electricity from coal-fired steam turbines, oil or gas turbines, wind turbines, solar power sources, fuel cells, or turbine generators that are driven by falling water.

(4) "Family services provider" means organizations, including nonprofit corporations, that provide human services for children and adults, including but not limited to early care services for children, youth services, health services, social services, habilitative services, rehabilitative services, preventive care, and supportive services, and training, educational, and referral activities in support of human services.

(5) "Governing body" means the board or body in which the general legislative powers of the municipality or county are vested.

(6) "Higher education facilities" means any real or personal properties required or useful for the operation of an institution of higher education.

(7) "Institution of higher education" means any private, nonprofit corporation or institution within the state of Montana:

(a) authorized to provide or operate educational facilities; and

(b) providing a program of education beyond the high school level.

(8) "Mortgage" means a mortgage or deed of trust or other security device.

(9) "Municipality" means any incorporated city or town in the state.

(10) "Project" means*:*

(a) any land~~;~~*,* any building or other improvement~~;~~*,* and any other real or personal ~~properties~~ *property* considered necessary in connection with the improvement, whether or not now in existence, that must be suitable for use for commercial, manufacturing, agricultural, or industrial enterprises;

(b) recreation or tourist facilities;

(c) local, state, and federal governmental facilities;

(d) multifamily housing, hospitals, long-term care facilities, community-based facilities for individuals who are persons with developmental disabilities as defined in 53-20-102, or medical facilities;

(e) higher education facilities;

(f) electric energy generation facilities;

(g) family services provider facilities;

(h) any facilities that are used or considered necessary to create or produce any intangible item, as defined in section 197(d)(1)(C)(iii) of the Internal Revenue Code, 26 U.S.C. 197(d)(1)(C)(iii), including any patent, copyright, formula, process, design, pattern, knowledge, format, or other similar intangible item;

(i) the production of energy using an alternative renewable energy source as defined in 15-6-225; and

(j) any combination of ~~these~~ projects *in subsections (10)(a) through (10)(i)*."

Section 48. Section 90-5-103, MCA, is amended to read:

"90-5-103. Limited obligation bonds — form and contents — sale — negotiability — filing. (1) All bonds issued by a municipality or county under the authority of this part must be limited obligations of the municipality or county. Bonds and interest coupons issued under the authority of this part may not constitute or give rise to a pecuniary liability of the municipality or county or a charge against its general credit or taxing powers. This limitation must be plainly stated upon the face of each of the bonds.

(2) The bonds referred to in subsection (1) may be executed and delivered at any time and from time to time, be in form and denominations, be of tenor, be in registered or bearer form either as to principal or interest, or both, be payable in installments and at a time or times not exceeding 40 years from the bonds date, be payable at a place or places, bear interest at a rate or rates, be evidenced in a manner, be redeemable prior to maturity, with or without premium, and contain provisions not inconsistent with this part as considered in the best interest of the municipality or county and provided for in the proceedings of the governing body under whose authority the bonds must be authorized to be issued.

(3) Any bonds issued under the authority of this part may be sold at public or private sale in a manner, at a time or times, and at a price above or below par as may be agreed upon by the lessee of the project or the borrower of the funds. The municipality or county may pay all expenses, premiums, and commissions that the governing body may consider necessary or advantageous in connection with the authorization, sale, and issuance of the bonds from the proceeds of the sale of the bonds or from the revenue of the projects.

(4) All bonds issued under the authority of this part and all interest coupons applicable to the bonds must be construed to be negotiable instruments despite the fact that they are payable solely from a specified source.

(5) All bonds issued under the authority of this part must be filed with the securities commissioner within 10 days of the date of their issue. The filing must include the name of the issuing authority, the name and address of the person or entity on whose behalf the bonds are issued, the amount of the bond issue, the date of the bond issue, and any other information that the securities commissioner may request. Failure to comply with this section does not affect the validity of the bond issue.

(6) If applicable, the governing body of the municipality or county shall specify whether the bonds are tax credit bonds as provided in [section 44], recovery zone economic development bonds or recovery zone facility bonds as provided in [section 45], or qualified energy conservation bonds as provided in [section 46]."

Section 49. Section 90-7-102, MCA, is amended to read:

"90-7-102. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Authority" means the Montana facility finance authority created in 2-15-1815.

(2) "Capital reserve account" means the account established in 90-7-317.

(3) "Costs" means costs allowed under 90-7-103.

(4) "Eligible facility" means any eligible facility as defined in 90-7-104.

(5) (a) "Institution" means any public or private:

(i) nonprofit hospital, corporation, or other organization authorized to provide or operate an eligible facility in this state; ~~or~~

(ii) nonprofit prerelease center, corporation, or other organization authorized to operate a prerelease center in this state*; or*

(iii) for-profit or nonprofit corporation or other organization authorized to provide for or to operate a project or a facility with qualified small issue bond financing pursuant to section 144(a) of the Internal Revenue Code, 26 U.S.C. 144(a).

(b) The term also includes the following, provided that the entity is a nonprofit entity or is controlled by one or more nonprofit entities:

(i) a network of health care providers, regardless of how it is organized;

(ii) an integrated health care delivery system;

(iii) a joint venture or partnership between or among health care providers;

(iv) a purchasing alliance composed of health care providers;

(v) any health insurers and third-party administrators that are participants in a system, network, joint venture, or partnership that provides health services through one or more health facilities.

(6) "Participating institution" means an institution that undertakes the financing, refunding, or refinancing of obligations on the construction or acquisition of an eligible facility pursuant to the provisions of this chapter.

(7) "Revenue" means, with respect to eligible facilities, the rents, fees, charges, interest, principal repayments, and other income received or to be received by the authority from any source on account of the eligible facilities."

Section 50. Section 90-7-104, MCA, is amended to read:

"90-7-104. Eligible facility. (1) The term "eligible facility" means any structure or building suitable for use as:

(a) a hospital, clinic, nursing home, or other health care facility as defined in 50-5-101;

(b) a public health center, as defined in 7-34-2102;

(c) a facility for persons with disabilities;

(d) a chemical dependency treatment facility;

(e) a nursing school;

(f) a medical teaching facility;

(g) a laboratory;

(h) a dental care facility;

(i) a prerelease center;

(j) a diagnostic, treatment, or surgical center;

(k) a facility providing services for the elderly; ~~or~~

(l) applicable to a project or a facility with qualified small issue bond financing pursuant to section 144(a) of the Internal Revenue Code, 26 U.S.C. 144(a); or

~~(l)~~*(m)* a structure or facility related to any of the uses enumerated in subsections (1)(a) through ~~(1)(k)~~ *(1)(l)* or required or useful for the operation of an eligible facility. These related facilities include supporting service structures and all necessary, useful, and related equipment, furnishings, and appurtenances and include without limitation the acquisition, preparation, and development of all lands and real and personal property necessary or convenient as a site for any of the uses enumerated in subsections (1)(a) through ~~(1)(k)~~ *(1)(l).*

(2) An eligible facility does not include:

(a) items such as food, fuel, supplies, or other items that are customarily considered as current operating expenses; and

(b) a structure used or to be used primarily for sectarian instruction or study or as a place for devotional activities or religious worship."

Section 51. Taxation of projects. (1) Regardless of whether the title to a project is held by the authority or a trustee acting for the authority, if the project is being financed by the authority on behalf of a for-profit corporation or other organization, the project is subject to taxation to the same extent, in the same manner, and under the same procedures as privately owned property in similar circumstances if the project is leased to or held by private interests on both the assessment date and the date the county commissioners set the mill levies in any year. The project is not subject to taxation in any year during which it is not leased to or held by private interests on both the assessment date and the date the county commissioners set the mill levy.

(2) When personal property owned by the authority or a trustee acting for the authority is taxed under this section and the personal property taxes on the personal property are delinquent, levy by warrant for distraint for collection of the delinquent taxes may be made only on the personal property against which the taxes were levied.

Section 52. Procedure prior to financing certain projects. (1) In addition to meeting the other requirements contained in this chapter or in state or federal law, the requirements of subsections (2) through (4) must be met before financing is provided for a project described in 90-7-104(1)(l).

(2) The authority shall find that the financing is in the public interest. In order to determine whether or not the financing is in the public interest, a public hearing must be conducted in the following manner:

(a) the city or county in which the project will be located must be notified, and the city and county shall, within 14 days after receipt of the notice, notify the board if it elects to conduct the hearing; or

(b) if a request for a local hearing is not received by the authority within 14 days after the notification in subsection (2)(a), the authority may hold the hearing at a time and place it determines.

(3) Notice of the hearing must be published at least once a week for 2 weeks prior to the date set for the hearing by publication in a newspaper of general circulation in the city or county where the hearing will be held and the project will be located. The notice must include the time and place of the hearing, a general description of the nature and location of the project, the name of the lessee, borrower, or user of the project and the maximum principal amount of the financing to be provided by the authority.

(4) If the hearing required by subsection (2) is conducted by a local government, the governing body of the local government shall notify the authority of its determination of whether the financing is in the public interest within 14 days after the completion of the public hearing.

Section 53. Earnings — statutory appropriation. If the federal government directs that funds received under the American Recovery and Reinvestment Act of 2009, Public Law 111-5, must be invested and that the earnings must be expended for the same purpose as the funds generating the earnings, then the earnings are statutorily appropriated, as provided in 17-7-502, for the same purpose as the funds generating the earnings.

Section 54. Dissemination of information — reporting and accountability. The office of the governor shall develop and maintain a website to serve as the official website for the state of Montana for implementing the reporting and accountability requirements of the American Recovery and Reinvestment Act of 2009, Public Law 111-5. The office shall develop requirements for reporting and posting information to the website, and these requirements are applicable to any recipient of funds from an appropriation in House Bill No. 645.

Section 55. Distressed wood products industry recovery program — findings — loans and grants — rulemaking. (1) Due to the current, well-documented decline in the wood products industry in Montana, the legislature finds that there is a need to assist the Montana wood products industry as a whole through a multifaceted and integrally related grant and loan program.

(2) Businesses that may be eligible under the program for loans, grants, or loans and grants include but are not limited to sawmills, plywood plants, paper

and linerboard manufacturers, bark and byproducts-related businesses, round wood producers, wood chip processors, loggers, log haulers, biochar and biomass producers, and other innovative manufacturers and processors of wood products.

(3) (a) The department of commerce shall use money appropriated for the distressed wood products industry to implement the program.

(b) Money appropriated to the department of commerce may be used by the department to, among other things:

(i) provide state matching funds to federal agencies to create loan or grant programs that will benefit the types of businesses listed in subsection (2), including the commingling of appropriated funds with federal funds as needed to meet federal regulations and grant requirements; and

(ii) provide loans, grants, or both loans and grants to the types of businesses listed in subsection (2).

(c) Repayments of loans to the department of commerce may be used by the department as revolving loan funds for primary sector business throughout the state.

(4) The department of commerce may adopt rules necessary to implement the program. Rules adopted by the department must be based upon similar finance programs administered by the department and must include:

(a) sufficient business plan and financial information to allow a reasonable determination regarding the potential feasibility of the business to create and retain jobs and, in the case of loans, to make repayments to the department;

(b) annual information from each assisted business for the term of the grant or loan agreement regarding jobs created and retained, pay levels, financial status, and reports on overall project activities; and

(c) loan and grant amounts for each job, funding limits, and matching fund requirements.

Section 56. Rulemaking. The department of commerce may adopt rules to implement the broadband mapping program funded in [House Bill No. 645].

Section 57. Distribution of local government, tribal government, and school funds. (1) Of the $45 million appropriated to the department of commerce for distribution to local governments, tribal governments, and school districts in [section 85], $10 million must be allocated to Montana counties, $10 million must be allocated to Montana cities and towns, and $5 million must be allocated to tribal governments. The department may retain 1.13% of the amount of the grants to counties, cities, towns, tribal governments, and school districts for administrative purposes. The distributions to tribal governments must be made available through the state-tribal economic development commission as provided in 90-1-130 through 90-1-135. The commission shall provide funding for projects that are available for immediate commencement to improve infrastructure or improve energy efficiency. The funds are intended to be allocated to complete priority projects as determined by the appropriate tribal government, but each tribe must be allocated at least $200,000. The funds appropriated to the department of commerce for local governments must be distributed pursuant to Title 90, chapter 1, part 2. The funds allocated to local governments must be distributed as follows:

(a) each county must receive $100,000 plus the proportional share of the funds remaining from the $10 million based upon a blending of the distribution formulas contained in 15-70-101(2)(b) and (3); and

(b) each city and town must receive $5,000 plus a proportional share of the funds remaining from the $10 million. The proportional share is calculated by allocating 50% of the remaining funds to each city and town based upon the distribution formula in 15-70-101(2)(c) and 50% of the remaining funds to each city and town based upon the percentage that the population of each city or town bears to the total population of all cities and towns.

(2) Funds received by a county, city, or town pursuant to subsection (1) may be used for:

(a) the following county projects: Beaverhead, county courthouse repair; Big Horn, Little Horn road reconstruction; Blaine, county building improvements; Broadwater, county road chip seal; Carbon, West Fork road expansion; Carter, gravel crushing; Cascade, county building energy performance contract; Chouteau, county road repair and reconstruction; Custer, county road and buildings, including Silo Loop road, Pine Hills improvement, and county building repair and remodel; Daniels, county road gravel screening/crushing; Dawson, county building repair/remodel/construction; Deer Lodge, street light renovation; Fallon, county road and parks shop building; Fergus, Scott Crossing bridge replacement; Flathead, Mennonite Church and Creston roads construction; Gallatin, fairgrounds restroom construction and replacement; Garfield, county building heating/cooling system replacement; Glacier, Glacier County jail/detention center; Golden Valley, fire hall and roads; Granite, Metesch Lane bridge replacement; Hill, Sheppard and Bulhook roads pavement overlay; Jefferson, Boulder south campus sewer replacement; Judith Basin, replace Arrow Creek and Judith River bridge; Lake, South Valley Creek bridge replacement, Skyline bridge repair, and courthouse weatherization; Lewis and Clark, Lewis and Clark County fairgrounds plaza; Liberty, Liberty senior center; Lincoln, Tobacco Valley industrial park infrastructure improvements and Kootenai business park improvements; Madison, Madison County office renovation and bridge improvement projects; McCone, geothermal heat loop courthouse retrofit; Meagher, county building energy efficiency and handicap accessability updates; Mineral, Mineral County jail and courthouse restoration and repair; Missoula, Big Flat road reconstruction; Musselshell, Goffena bridge replacement; Park, 9th Street bridge replacement; Petroleum, courthouse windows, Dovetail Creek crossing, and Petroleum County road upgrade; Phillips, courthouse parking lot and sidewalk projects; Pondera, Pondera County community and senior center remodel; Powder River, Powder River County fire hall; Powell, energy efficient windows and boiler for county courthouse; Prairie, county fairgrounds grandstand replacement and Terry park facilities renovation; Ravalli, Ambrose Creek road pavement preservation; Richland, Spring Lake road reconstruction; Roosevelt, energy efficient courthouse windows project; Rosebud, Ingomar water and sewer project and Forsyth library elevator project; Sanders, high bridge reconstruction; Sheridan, county road gravel and engineering, county road gravel crushing, Plentywood bypass route; Silver Bow, county road repair and maintenance; Stillwater, county courthouse and bridge; Sweet Grass, Pioneer medical center renovation; Teton, county nursing home and county road gravel; Toole, energy efficient lighting for Toole County hospital; Treasure, county building renovations; Valley, Valley County detention center addition; Wheatland, county road shop and Harlowtown fire hall; Wibaux, county fairgrounds exhibit building; Yellowstone, Clapper Flat and Vandaveer roads and courthouse remodel; and

(b) the following city and town projects: Alberton, street repairs and paving; Anaconda-Deer Lodge, street light renovation; Bainville, Simard Park improvements — sprinkler systems and sidewalks; Baker, storm drain

installation on South Montana 7 and Secondary 322; Bearcreek, town hall renovation and repairs; Belgrade, street intersection reconstruction and sidewalk extension; Belt, replace concrete water storage tank; Big Sandy, sewer main replacement and resurface Johannnes Avenue; Big Timber, Anderson Street asphalt overlay project; Billings, reconstruction of Alkali Creek Road; Boulder, water system treatment project; Bozeman, water system treatment project, water reclamation facility — water treatment plant design, recreation facility improvements, sidewalks and restroom upgrades in parks, and debris removal; Bridger, street and sidewalk repairs; Broadus, addition to city hall for police department and sewer lagoon repairs; Broadview, general repairs and maintenance; Brockton, wastewater system repairs and street and alley repairs; Browning, new fire hall; Butte-Silver Bow, road repairs and maintenance; Cascade, one block sewer main replacement; Chester, chip seal town streets; Chinook, city hall repair and improvements and paint armory building; Choteau, city hall-fire station remodel and replace unit heaters in Pavilion building; Circle, purchase street patcher equipment and sewer treatment plant; Clyde Park, construction of Lathrop Street; Colstrip, Orchard lift station replacement; Columbia Falls, street construction and improvements; Columbus, replace curb, gutter, and sidewalk on Pike Avenue; Conrad, replace hydrants and valves and overlay Dakota Street; Culbertson, architecture design of new fire hall; Cut Bank, final engineering and design work for Railroad Street; Darby, water system improvement project; Deer Lodge, phase 1 sewer rehabilitation collection system; Denton, water-sewer upgrades, building repairs, and street repairs; Dillon, Glendale street project; Dodson, street repairs; Drummond, street repairs and park maintenance; Dutton, city park improvements; East Helena, renovate city hall; Ekalaka, bridge and street repair; Ennis, town hall expansion and remodel project; Eureka, repair main arterial road; Fairfield, design and erect new fire hall, televise sewer lines, and replace hydrants; Fairview, park bathrooms renovation; Flaxville, water storage tank repairs; Forsyth, water storage tank and water works repairs; Fort Benton, chip seal city streets, U.S. highway 87 repairs, and airport runway improvements; Fort Peck, replace aging fire hydrants; Froid, water storage reservoir replacement; Fromberg, street and sidewalk repairs; Geraldine, main sewer line extension; Glasgow, rehabilitate southside lift station; Glendive, street reconstruction; Grass Range, water, sewer, and street repairs; Great Falls, West Bank street and right-of-way improvement and civic center roof repair; Hamilton, Tenth street reconstruction; Hardin, new fire hall; Harlem, city hall renovation and weatherization and street maintenance; Harlowton, replace sidewalks and install handicapped curbs; Havre, new lift station and recoat concrete water tank; Helena, Centennial Park trail system construction; Hingham, sewer project, street and sidewalk repairs, and fire hydrants; Hobson, extend water to boulevard on Main Street; Hot Springs, remodel fire hall and repair streets; Hysham, overlay town streets; Ismay, general repairs and maintenance; Joliet, sewer and water improvements; Jordan, improve existing streets; Judith Gap, Fourth Avenue street improvements; Kalispell, street projects; Kevin, drainage, culvert, and road repairs; Laurel, open ditch mitigation near middle school; Lavina, install new water system; Lewistown, chip seal streets; Libby, sewer main extension to Cabinet Heights; Lima, regravel streets and park shelter; Livingston, safety and building repairs to Sacajawea Park and repairs to sidewalks and streets; Lodge Grass, sewer lagoon; Malta, water and sewer line repairs and maintenance and street paving and repairs; Manhattan, sidewalk extensions, repairs, and maintenance; Medicine Lake, sewer lagoon maintenance, water tower, and waterworks repairs; Melstone, install fire hydrants, water and sewer installation to

community center, and sidewalks, curbs, and gutters; Miles City, stormwater system sediment removal and debris removal; Missoula, ADA sidewalk ramps and North Higgins streetscape; Moore, street repairs and capital improvements; Nashua, sewer and water main replacements; Neihart, streets and capital improvements; Opheim, water system and general repairs; Outlook, connect water system to new well; Philipsburg, replace water and sewer lines; Pinesdale, capital improvements and repairs; Plains, city hall renovations including ADA bathrooms and furnace and air conditioning; Plentywood, engineering study of wastewater treatment system, replace sidewalk at city hall and add gutter system, and chip seal streets; Plevna, culvert and drainage improvements and chip seal streets; Polson, Riverside water main replacement; Poplar, street repairs after water line installation; Red Lodge, roof repairs on city hall and police station; Rexford, community center siding and repairs; Richey, road repairs and maintenance; Ronan, repair and overlay Third Avenue Northwest; Roundup, curbs, gutters, and sidewalks on Second Avenue East; Ryegate, city park improvements; Saco, street repairs and maintenance; Saint Ignatius, street paving and pedestrian path and other park repairs; Scobey, weatherize city hall; Shelby, street repairs; Sheridan, street repairs and maintenance; Sidney, Twenty-Second Avenue Northwest reconstruction; Stanford, street intersection improvements and replacements; Stevensville, repair and replace roof on town hall complex building; Sunburst, resurface streets, ADA curbs and gutters, and other street repair; Superior, water construction phase II, street repairs, and renovate park buildings; Terry, park improvements; Thompson Falls, street repairs and replace water meters with radio read meters; Three Forks, pave streets and equip parks and recreation facilities; Townsend, Broadway sidewalk replacement; Troy, city hall restoration; Twin Bridges, public walking path connecting parks; Valier, install water tank, new water meters, and water lines and trunks; Virginia City, remodel and relocate city hall; Walkerville, street improvements; West Yellowstone, wastewater improvements; Westby, resurface streets; White Sulphur Springs, patch and repair city streets; Whitefish, new emergency services building; Whitehall, new ambulance building, wastewater improvements, and debris removal; Wibaux, remodel park bathroom as handicapped accessible; Winifred, drainage projects; Winnett, street drainage improvements; Wolf Point, gate valve and hydrant replacement; or

(c) projects approved by the department of commerce for the following purposes:

(i) designing, erecting, repairing, and remodeling public buildings or making energy efficiency improvements to public buildings;

(ii) designing, constructing, and repairing sewers, storm sewers, sewage treatment and disposal plants, waterworks, and reservoirs;

(iii) designing, constructing, and repairing bridges, docks, wharves, breakwaters, and piers;

(iv) designing, constructing, reconstructing, improving, maintaining, and repairing roads;

(v) acquiring, opening, or widening any street and improving the street by designing, constructing, reconstructing, and repairing pavement, gutters, sidewalks, curbs, and vehicle parking strips;

(vi) designing, building, renovating, and equipping parks and other recreation facilities; and

(vii) installing street lighting.

(3) The governing body of a county, city, or town may choose to propose to the department of commerce an alternate project to those listed in subsections (2)(a) and (2)(b) based on the criteria in subsection (2)(c). If the alternate project meets the criteria in subsection (2)(c), the department shall approve the project.

(4) The department of commerce shall distribute $20 million of the appropriation for Distribution to School Districts and Local and Tribal Governments to school districts based upon the formula for distributing the quality educator payment provided for in 20-9-327. A school district shall use the funds received pursuant to this section for deferred maintenance on school facilities and for making energy efficiency improvements.

(5) A recipient of funds under this section must expend the funds by September 30, 2010. Unexpended funds must revert to the state and be deposited in the state general fund. The department of commerce shall disburse the funds to recipients as quickly as possible.

Section 58. Quick start energy grants. (1) There is a quick start energy program within the department of commerce for quick start energy efficiency improvement grants to public school districts for projects that provide long-term, cost-effective benefits to school facilities.

(2) A public school district may submit an application to the department of commerce for quick start energy efficiency improvement grant funding for:

(a) an energy audit or evaluation of the potential for energy savings in a school facility by a prequalified energy auditor; or

(b) energy efficiency improvements that are based on an energy audit or evaluation and that are expected to achieve measurable energy efficiency to a school facility and cost savings to the public school district.

(3) In awarding grants under this section, the department of commerce shall consider the potential for energy savings in a public school facility based on the age, energy use, function, and condition of the building. The department shall give priority to schools operating out of temporary facilities.

(4) The department of commerce may consult with the department of environmental quality and the architecture and engineering division of the department of administration in the review and evaluation of quick start grant applications.

(5) The department of commerce shall distribute quick start energy program funds on a reimbursement basis from May 15, 2009, until September 30, 2009. Any quick start funds not obligated under this section for reimbursement to a public school district by September 30, 2009, must be used as provided in [section 85] for the School Facilities Program Administration and Grants line item appropriation.

(6) The department of commerce shall collect information regarding the cost savings to public school districts that make energy efficiency improvements based on grant funding received under subsection (2)(b).

(7) The department of commerce shall consult with the office of public instruction on the disbursement of quick start grants and shall make every attempt to accommodate large schools, small schools, urban schools, and rural schools.

(8) Quick start grants made under this program are subject to review by the legislative finance committee.

Section 59. Energy development and demonstration grant program. (1) There is an energy development and demonstration grant program within the department of environmental quality to fund technology development and demonstration:

(a) advancing the development and utilization of energy storage systems, including but not limited to mediums, such as accumulators, fuel cells, and batteries, that store energy that may be drawn upon at a later date for use;

(b) developing storage systems specifically designed to store energy generated from eligible renewable resources as defined in 69-3-2003, including but not limited to compressed air energy storage systems;

(c) promoting the efficiency, environmental performance, and cost-competitiveness of energy storage systems beyond the current level of technology; and

(d) advancing the development of alternative energy systems as defined in 15-32-102.

(2) Entities that may be eligible for grants include but are not limited to units of the Montana university system, agricultural research centers, or private entities or research centers.

(3) Money appropriated to the department of environmental quality for the purpose of the energy development and demonstration grant program may be used by the department for providing individual grants in amounts up to $500,000 and for administrative costs of 1% of the grant award.

(4) The grant application may include:

(a) a project plan sufficient to allow a reasonable determination regarding the potential feasibility of advancing energy storage or alternative energy systems;

(b) a business plan to allow a reasonable determination regarding the financial feasibility of the project; and

(c) a reporting process to ensure progress toward project goals.

~~**Section 60. Welcome home loan program.** The department of commerce shall develop a mortgage loan program to assist first-time home buyers with down payment and closing costs. The program must provide for lending institutions to make short-term loans of $5,000 to qualified first-time home buyers. The loans must be paid by June 30, 2010. The department may require the home buyer to pledge federal tax credits to the loan repayment.~~

~~**Section 61. Contingent loan acquisition account — fund transfer.** (1) There is a contingent loan acquisition account in the state special revenue fund. The amount of $2 million is transferred from the state general fund to the account.~~

~~(2) The board of housing may use money in the account to purchase loans made under [section 60] that are not paid by June 30, 2010. Money remaining in the account on August 1, 2010, must revert to the general fund.~~

Section 62. Fund transfer. There is transferred $300,000 from the state general fund to the senior citizen and persons with disabilities transportation services account.

Section 63. Allocation and distribution of increased state support for schools. The superintendent of public instruction shall allocate and distribute the funds appropriated in [section 85] for Increase State Support for Schools With Education Stabilization Funds as follows:

(1) for fiscal year 2010:

(a) recalculate the basic entitlement and per-ANB entitlement by multiplying the basic entitlement and per-ANB entitlement for fiscal year 2010 in 20-9-306 by 1.02;

(b) calculate the BASE budget, maximum general fund budget, direct state aid, and guaranteed tax base aid for each school district using the recalculated basic and per-ANB entitlements; and

(c) distribute K-12 BASE aid to school districts in accordance with the payment schedule in 20-9-344 from the appropriations in House Bill No. 2 and [this act]; and

(2) for fiscal year 2011:

(a) recalculate the basic entitlement and per-ANB entitlement by multiplying the basic entitlement and per-ANB entitlement for fiscal year 2011 in 20-9-306 by 1.02;

(b) calculate the BASE budget, maximum general fund budget, direct state aid, and guaranteed tax base aid for each school district using the recalculated basic and per-ANB entitlements; and

(c) distribute K-12 BASE aid to school districts in accordance with the payment schedule in 20-9-344 from the appropriations in House Bill No. 2 and [this act].

Section 64. Section 20, Chapter 390, Laws of 2003, is amended to read:

"**Section 20. Termination.** [This act] terminates June 30, ~~2005~~ *2011*."

Section 65. Section 4, Chapter 606, Laws of 2005, is amended to read:

"**Section 4.** Section 20, Chapter 390, Laws of 2003, is amended to read:

"**Section 20. Termination.** [This act] terminates June 30, ~~2005~~ *~~2007~~ 2011*.""

Section 66. Section 7, Chapter 606, Laws of 2005, is amended to read:

"**Section 7. Termination.** [This act] terminates June 30, ~~2007~~ *2011*."

Section 67. Section 4, Chapter 517, Laws of 2007, is amended to read:

"**Section 4.** Section 20, Chapter 390, Laws of 2003, is amended to read:

"**Section 20. Termination.** [This act] terminates June 30, ~~2005~~ *~~2009~~ 2011*.""

Section 68. Section 5, Chapter 517, Laws of 2007, is amended to read:

"**Section 5.** Section 4, Chapter 606, Laws of 2005, is amended to read:

"**Section 4.** Section 20, Chapter 390, Laws of 2003, is amended to read:

"**Section 20. Termination.** [This act] terminates June 30, ~~2005~~ *~~2007~~ ~~2009~~ 2011*."""

Section 69. Section 6, Chapter 517, Laws of 2007, is amended to read:

"**Section 6.** Section 7, Chapter 606, Laws of 2005, is amended to read:

"**Section 7. Termination.** [This act] terminates June 30, ~~2007~~ *~~2009~~ 2011*.""

Section 70. Section 8, Chapter 517, Laws of 2007, is amended to read:

"**Section 8. Termination.** [Sections 1 through 3] terminate June 30, ~~2009~~ *2011*."

Section 71. Section 9-B, items 4b and 10, Chapter 5, Special Laws of May 2007, is amended to read:

Fiscal 2008						Fiscal 2009					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
"4. Child Support Enforcement Division (05)											
b. Child Support Deficit Reduction Act (Restricted/OTO)											
1,620,765	0	0	0	0	1,620,765	~~2,154,589~~ *507,675*	0	0	0	0	~~2,154,589~~ *507,675*
10. Health Resources Division (11)											
123,698,117	19,947,092	341,190,786	0	0	484,835,995	~~134,719,465~~ *85,719,465*	19,749,092	367,644,813	0	0	~~522,113,370~~ *473,113,370*
a. Health Resources Division Administration/Reporting											
232,550	12,726	281,657	0	0	526,933	234,655	12,841	284,208	0	0	531,704
b. Direct Care Worker Wage Increase (Restricted)											
18,036	300,000	695,142	0	0	1,013,178	19,050	300,000	694,128	0	0	1,013,178
c. Provider Rate Increase (Restricted)											
0	1,620,277	2,100,682	0	0	3,720,959	1,222,681	1,646,566	4,247,683	0	0	7,116,930
d. Hospital Utilization Fee (Restricted)											
0	17,503,843	38,222,192	0	0	55,726,035	0	20,324,595	44,183,150	0	0	64,507,745
e. Family Planning Waiver (OTO)											
348,297	0	2,743,296	0	0	3,091,593	347,669	0	2,742,669	0	0	3,090,338
f. Prescription Drug Discount Program (Restricted)											
0	1,389,441	0	0	0	1,389,441	0	2,037,846	0	0	0	2,037,846
g. Equalize Campus-Based Rates (Restricted)											
23,785	0	69,943	0	0	93,728	54,261	0	159,558	0	0	213,819
h. Raise Physician Reimbursement (Restricted)											
0	0	0	0	0	0	520,306	0	1,522,928	0	0	2,043,234
i. Medicaid Eligibility for Pregnant Women to 150% (Restricted)											
0	943,117	2,061,397	0	0	3,004,514	0	1,216,532	2,646,701	0	0	3,863,233
j. Revise Medically Needy Income Level (Restricted)											
371,647	0	1,092,864	0	0	1,464,511	743,295	0	2,175,611	0	0	2,918,906
k. Big Sky Rx Premium Assistance (Restricted/Biennial)											
0	9,674,920	0	0	0	9,674,920	0	0	0	0	0	0

The department may allocate the reduction of funds in the Health Resources Division among programs and line items that contain medicaid or Title IV-E funding."

Section 72. Coordination instruction. (1) Subject to subsection (2), if House Bill No. 2 is passed and approved and if [this act] appropriates funds:

(a) to the department of commerce for:

(i) Indian country economic development in the amount of $1,596,992, then the general fund appropriation for that purpose in House Bill No. 2 is void;

(ii) high-performance computing in the amount of $2,000,000, then the general fund appropriation for that purpose in House Bill No. 2 is void;

(iii) the energy promotion and development division in the amount of $910,000, then the general fund appropriation for that purpose in House Bill No. 2 is void; and

(iv) the Montana main street program in the amount of $250,000, then the general fund appropriation for that purpose in House Bill No. 2 is void;

(b) to the office of public instruction for Stabilization Funding for K-12 Education, then the general fund appropriation for BASE aid in House Bill No. 2 is reduced by $14,613,477 in FY 2010 and $25,779,699 in FY 2011;

(c) to office of the commissioner of higher education for appropriation distribution transfers, then the general fund appropriation for that purpose in House Bill No. 2 is reduced by $29,762,223 in FY 2010 and$29,762,224 in FY 2011; and

(d) to the office of the commissioner of higher education for Replace 6-Mill Levy Revenue Shortfall With Federal General Stabilization Funds, then the state special revenue fund appropriation in House Bill No. 2 is reduced by $1,447,296 in fiscal year 2010 and $1,046,625 in fiscal year 2011.

(2) If the amount of an appropriation described in subsection (1) is for an amount less than the amount specified in subsection (1), then the corresponding appropriation for that purpose contained in House Bill No. 2 is not void, but is reduced by the amount appropriated in [section 85].

Section 73. Coordination instruction. (1) Subject to subsection (4), if House Bill No. 5 is passed and approved and if [this act] provides fund transfers from the general fund to:

(a) the state energy conservation repayment account in the department of environmental quality in the amount of $750,000 per year, then the transfers of $1 million in FY 2010 and $500,000 in FY 2011 in section 3 of House Bill No. 5 for the state building energy conservation program are void;

(b) the state energy conservation capital projects account in the department of environmental quality in the amount of $750,000 per fiscal year and if the total appropriations of the federal funds received pursuant to the American Recovery and Reinvestment Act of 2009, Public Law 111-5, to the department of environmental quality in [House Bill No. 5] is in the amount of $17 million or greater, then the transfers of $10,400,000 in FY 2010 and $2,957,000 in FY 2011 in section 3 of House Bill No. 5 for the energy conservation projects are void.

(2) Subject to subsection (3), if House Bill No. 5 is passed and approved and if the total of the line item general fund transfers in House Bill No. 645 for long range building is $5.2 million or more, then the transfers of $2.6 million in FY 2010 and $2.6 million in FY 2011 in section 3 of House Bill No. 5 for long-range building are void.

(3) If the amount of a fund transfer described in subsection (1) or an allocation described in subsection (2) is for an amount less than the amount specified in subsections (1) and (2), then the corresponding transfer or allocation

for that purpose contained in House Bill No. 5 is not void, but is reduced by the amount transferred or allocated in [section 85].

Section 74. Coordination instruction. (1) Subject to subsection (3), if House Bill No. 10 is passed and approved and if [this act] contains:

(a) an appropriation of $1 million in general fund to the department of administration for interoperability Montana, then the general fund appropriation for that purpose in House Bill No. 10 is void;

(b) an appropriation of $3.5 million in general fund to the department of administration for the enterprise system services center equipment, then the general fund appropriation for that purpose in House Bill No. 10 is void.

(2) Subject to subsection (3), if House Bill No. 10 is passed and approved and if [this act] does not contain a transfer of general fund of $1.5 million for the secretary of state for the SOS information management system, then the appropriation for that purpose in House Bill No. 10 is void.

(3) If the amount of an appropriation described in subsections (1) and (2) is for an amount less than the amount specified in subsections (1) and (2), then the corresponding appropriation for that purpose contained in House Bill No. 10 is not void, but is reduced by the amount appropriated in [section 85].

~~**Section 75. Coordination instruction.** (1) Subject to subsection (2), if House Bill No. 13 is passed and approved and if [this act] contains an appropriation for:~~

~~(a) personal services contingency in the amount of $4 million, then the general fund appropriation for that purpose in House Bill No. 13 is void;~~

~~(b) labor/management training initiative in the amount of $75,000, then the general fund appropriation for that purpose in House Bill No. 13 is void; and~~

~~(c) the $450 individual pay adjustments in the amount of $3,065,451, then the general fund appropriation for that purpose in House Bill No. 13 is void.~~

~~(2) If the amount of an appropriation described in subsection (1) is for an amount less than the amount specified in subsection (1), then the corresponding appropriation for that purpose contained in House Bill No. 13 is not void, but is reduced by the amount of the difference between the amount specified in subsection (1) and the amount appropriated in [section 85].~~

Section 76. Coordination instruction. (1) Subject to subsection (2), if House Bill No. 135 is passed and approved and if [this act] contains a fund transfer for the Fort Belknap-Montana water rights compact in the amount of $1 million, then the general fund transfer to the Peoples Creek minimum flow account in House Bill No. 135 is void.

(2) If the amount of the fund transfer described in subsection (1) is for an amount less than the amount specified in subsection (1), then the corresponding fund transfer for that purpose contained in House Bill No. 135 is not void, but is reduced by the amount of the difference between the amount specified in subsection (1) and the amount transferred in [section 85].

Section 77. Coordination instruction. (1) Subject to subsection (2), if House Bill No. 161 is passed and approved and if [this act] contains a fund transfer for the Blackfeet Tribe water rights compact in the amount of $4 million, then the general fund transfer to the Blackfeet Tribe water rights compact infrastructure account in House Bill No. 161 is void.

(2) If the amount of the fund transfer described in subsection (1) is for an amount less than the amount specified in subsection (1), then the corresponding

fund transfer for that purpose contained in House Bill No. 161 is not void, but is reduced by the amount of the difference between the amount specified in subsection (1) and the amount transferred in [section 85].

Section 78. Codification instruction. (1) [Sections 29 and 30] are intended to be codified as an integral part of Title 39, chapter 51, part 21, and the provisions of Title 39, chapter 51, part 21, apply to [sections 29 and 30].

(2) [Section 34] is intended to be codified as an integral part of Title 53, chapter 6, part 1, and the provisions of Title 53, chapter 6, part 1, apply to [section 34].

(3) [Section 53] is intended to be codified as an integral part of Title 17, chapter 3, part 1, and the provisions of Title 17, chapter 3, part 1, apply to [section 53].

(4) [Sections 55 and 56] are intended to be codified as an integral part of Title 90, chapter 1, part 1, and the provisions of Title 90, chapter 1, part 1, apply to [sections 55 and 56].

(5) [Sections 43 and 44] are intended to be codified as an integral part of Title 17, chapter 5, part 1, and the provisions of Title 17, chapter 5, part 1, apply to [sections 43 and 44].

(6) [Sections 45 and 46] are intended to be codified as an integral part of Title 7, chapter 7, part 1, and the provisions of Title 7, chapter 7, part 1, apply to [sections 45 and 46].

(7) [Sections 51 and 52] are intended to be codified as an integral part of Title 90, chapter 7, and the provisions of Title 90, chapter 7, apply to [sections 51 and 52].

Section 79. Contingent voidness. (1) If the federal government refuses to participate in or denies approval of any state plan amendment related to [section 11] for medicaid payments to hospitals, then [section 11] is void.

(2) The department of public health and human services shall notify the code commissioner of the occurrence of any determination made pursuant to subsection (1) and the date of the occurrence.

Section 80. Effective date. [This act] is effective on passage and approval.

Section 81. Retroactive applicability. [Sections 36 and 38] apply retroactively, within the meaning of 1-2-109, to February 17, 2009.

Section 82. Termination. [Sections 1, 11 through 13, 18, 19, 27, 31 through 33, 35 through 42, 57, 58, 60, and 61] terminate June 30, 2011.

~~**Section 83. Voided appropriation — use — appropriation.** If a general fund appropriation contained in [section 85] is voided or vetoed, then the amount of the voided or vetoed general fund appropriation is appropriated to the department of commerce. The department shall use 25% of the appropriation for distribution to counties pursuant to [section 57(1)(a)], 25% of the appropriation for distribution to cities and towns pursuant to [section 57(1)(b)], 25% of the appropriation for distribution to tribal governments pursuant to [section 57(1)], and 25% for distribution to school districts pursuant to [section 57(4)].~~

Section 84. Appropriation control. An appropriation item in [section 85] that is designated "Restricted" may be used during the biennium only for the purpose designated by its title and as presented to the legislature.

Section 85. Appropriations — fund transfers — allocations. The following money is appropriated for the respective fiscal years. Appropriations

may be transferred among FY 2009, FY 2010, and FY 2011. The office of budget and program planning is authorized to transfer up to $2 million of the appropriations, authority, or both in this section between the general fund and the federal special revenue fund for the purpose of making adjustments to maintain necessary maintenance of effort and other requirements of the American Recovery and Reinvestment Act of 2009, Public Law 111-5, for the use of both the state general fund and the federal state fiscal stabilization funds.

Fiscal 2010						Fiscal 2011					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
				A. GENERAL GOVERNMENT							
LEGISLATIVE BRANCH (1104)											
1. Legislative Committees and Activities (21)											
117,084	0	0	0	0	117,084	121,520	0	0	0	0	121,520
Total											
117,084	0	0	0	0	117,084	121,520	0	0	0	0	121,520

~~If Senate Bill No. 100 is not passed and approved, the general fund appropriation in the amount of $117,084 in fiscal year 2010 and in the amount of $121,520 in fiscal year 2011 for Legislative Committees and Activities is void.~~

~~GOVERNOR'S OFFICE (3101)~~

~~1. Office of Budget and Program Planning (04)~~

~~a. HB13 — Personal Services Contingency~~

~~4,000,000 0 0 0 0 4,000,000 0 0 0 0 0 0~~

~~b. HB 13 — Labor/Management Training Initiative~~

~~75,000 0 0 0 0 75,000 0 0 0 0 0 0~~

~~c. HB 13 — $450 One-Time Payment~~

~~3,065,451 0 0 0 0 3,065,451 0 0 0 0 0 0~~

~~Total~~

~~7,140,451 0 0 0 0 7,140,451 0 0 0 0 0 0~~

DEPARTMENT OF COMMERCE (6501)

1. Business Resources Division (51)

a. Montana Main Street Program

125,000 0 0 0 0 125,000 125,000 0 0 0 0 125,000

b. Indian Country Economic Development

Fiscal 2010						Fiscal 2011					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
798,496	0	0	0	0	798,496	798,496	0	0	0	0	798,496
c. Distressed Wood Products Industry											
3,752,548	0	0	0	0	3,752,548	3,747,452	0	0	0	0	3,747,452
d. Community Development Block Grant											
0	0	914,939	0	0	914,939	0	0	914,939	0	0	914,939
e. Community Service Planning Grant											
25,000	0	0	0	0	25,000	0	0	0	0	0	0
f. Biomass Energy Study											
475,000	0	0	0	0	475,000	0	0	0	0	0	0
g. Montana Agro-Energy Industrial Park (Restricted)											
150,000	0	0	0	0	150,000	150,000	0	0	0	0	150,000
h. High-Performance Computing											
1,000,000	0	0	0	0	1,000,000	1,000,000	0	0	0	0	1,000,000
i. New Worker Training Program											
655,698	0	0	0	0	655,698	655,698	0	0	0	0	655,698
2. Energy Promotion and Development Division (55)											
a. Energy Promotion Division											
255,000	0	0	0	0	255,000	255,000	0	0	0	0	255,000
3. Community Development Division (60)											
a. TSEP Operations											
0	81,158	0	0	0	81,158	0	79,415	0	0	0	79,415
b. Distribution to School Districts and Local and Tribal Governments											
25,000,000	20,000,000	0	0	0	45,000,000	0	0	0	0	0	0
c. Historic Preservation Competitive Grants											
2,000,000	0	0	0	0	2,000,000	2,000,000	0	0	0	0	2,000,000
4. Housing Division (74)											

Fiscal 2010						Fiscal 2011					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
a. Tax Credit Assistance Program											
0	0	3,909,180	0	0	3,909,180	0	0	3,909,180	0	0	3,909,180
b. Housing Credit Exchange											
0	0	15,389,250	0	0	15,389,250	0	0	15,389,250	0	0	15,389,250
~~c. Welcome Home Loan Program~~											
~~0~~	~~2,000,000~~	~~0~~	~~0~~	~~0~~	~~2,000,000~~	~~0~~	~~0~~	~~0~~	~~0~~	~~0~~	~~0~~
5. Director's Office/Management Services Division (81)											
a. Broadband Mapping											
300,000	0	0	0	0	300,000	0	0	0	0	0	0
b. School Facilities Program Administration and Grants											
0	0	0	0	0	0	0	34,000	0	0	0	34,000
c. Quick Start Energy Grants											
0	14,950,000	0	0	0	14,950,000	0	0	0	0	0	0
Total											
34,536,742	37,031,158	20,213,369	0	0	91,781,269	8,731,646	113,415	20,213,369	0	0	29,058,430

Montana Agro-Energy Industrial Park is restricted to grant funding for the development of the Montana Agro-Energy Industrial Park.

The line item for Biomass Energy Study may be used to fund biomass project feasibility studies, installation of biomass energy boilers, or biomass program staff within the department of natural resources and conservation in order to increase biomass utilization accomplishments.

The line item for New Worker Training is to provide training funds for businesses to train and educate both new and existing employees, the purpose of which is the retention and creation of high-wage and high-skilled jobs that will increase the earning potential and employment opportunities for Montana employees and enhance the state's economy. The line item for New Worker Training is intended to be implemented using a framework similar to that established under the Primary Sector Business Workforce Training Act provided for in Title 39, chapter 11, except that the New Worker Training appropriation line item is to be used to train and educate both new and existing employees.

~~The line item and general fund appropriation in the amount of $1,311,396 for New Worker Training is contingent upon passage and approval of Senate Bill No. 100. If Senate Bill No. 100 is not passed and approved, the appropriation for New Worker Training is void.~~

Fiscal 2010						Fiscal 2011					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

If Senate Bill No. 100 is not passed and approved, there is an appropriation to the Community Development Division in the amount of $4.5 million general fund for fiscal year 2010 for the provision of grants by the coal board established in 2-15-1821.

The line item appropriation for Broadband Mapping may be used to develop a statewide broadband inventory map pursuant to the provisions of Title VI of the American Recovery and Reinvestment Act of 2009, Public Law 111-5.

Except as provided in [sections 57 and 58], the line item appropriation for the School Facilities Program Administration and Grants is to be used in the same manner as provided in section 10 of HB 152.

The item for Historic Preservation Competitive Grants is for the awarding of grants to public or private entities for the preservation of historic sites within the state of Montana based on a competitive criteria created by the department, as guided by the legislature, that may include:

(1) the degree of economic stimulus or economic activity, including job creation and work creation for Montana contractors and service workers;

(2) the timing of the project, including the access to matching funds if needed and approval of permits so the work can be completed without delay;

(3) the historic or heritage value related to the state of Montana;

(4) the successful track record or experience of the organization directing the project; and

(5) the expected ongoing economic benefit to the state as a result of the project completion.

The amount of $50,000 of the line item for Historic Preservation Competitive Grants must be used for the restoration and preservation of the historic Daly mansion.

The amount of $40,000 of the line item for Historic Preservation Competitive Grants must be allocated to the historic St. Mary's mission maintenance and restoration project.

The amount of $180,000 of the line item for Historic Preservation Competitive Grants must be used for the restoration and preservation of the travelers' rest historic site.

The amount of 2.71% of the appropriation for the line item for Historic Preservation Competitive Grants may be used for administrative expenses to implement the program.

~~The amount of $1 million of the general fund appropriation for Historic Preservation Competitive Grants is contingent upon passage and approval of Senate Bill No. 100.~~

	Fiscal 2010						Fiscal 2011					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
DEPARTMENT OF LABOR AND INDUSTRY (6602)											
1. Workforce Services Division (01)											
a. Workforce Investment Act — Adult											
0	0	1,246,876	0	0	1,246,876	0	0	0	0	0	0
b. Workforce Investment Act — Youth											
0	0	2,947,501	0	0	2,947,501	0	0	0	0	0	0
c. Workforce Investment Act — Dislocated Workers											
0	0	1,728,008	0	0	1,728,008	0	0	0	0	0	0
d. Employment Services											
0	0	1,104,669	0	0	1,104,669	0	0	0	0	0	0
e. Community Service Employment for Older Americans											
0	0	147,000	0	0	147,000	0	0	0	0	0	0
f. Temporary Extension of TAA											
0	0	1,202,742	0	0	1,202,742	0	0	400,914	0	0	400,914
g. Reemployment Services to Benefit UI Claimants											
0	0	1,380,835	0	0	1,380,835	0	0	460,279	0	0	460,279
2. Unemployment Insurance Division (02)											
a. Extend Emergency Unemployment Compensation Program											
0	0	1,968,103	0	0	1,968,103	0	0	0	0	0	0
b. Temporary Extension of TAA											
0	0	113,242	0	0	113,242	0	0	73,585	0	0	73,585
c. Increase in Unemployment Compensation Program											
0	0	190,628	0	0	190,628	0	0	0	0	0	0
d. Special Transfer for Unemployment Compensation Modernization											
0	0	340,271	0	0	340,271	0	0	154,748	0	0	154,748
e. Special Transfer in Federal FY 2009 for Administration											

Fiscal 2010						Fiscal 2011					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
0	0	834,416	0	0	834,416	0	0	560,280	0	0	560,280
3. Office of Community Service (07)											
a. AmeriCorps Grant											
0	0	500,000	0	0	500,000	0	0	0	0	0	0
Total											
0	0	13,704,291	0	0	13,704,291	0	0	1,649,806	0	0	1,649,806
DEPARTMENT OF MILITARY AFFAIRS (6701)											
1. Army National Guard Program (12)											
a. Culbertson Armory — Female Latrines Allocation											
0	0	225,900	0	0	225,900	0	0	0	0	0	0
b. Malta Armory — Female Latrines Allocation											
0	0	225,900	0	0	225,900	0	0	0	0	0	0
c. Fort Harrison — Helicopter Dip Site Allocation											
0	0	279,268	0	0	279,268	0	0	0	0	0	0
d. Statewide Armories — Vault Modifications Allocation											
0	0	500,000	0	0	500,000	0	0	0	0	0	0
e. Billings — Water Recycler											
0	0	18,500	0	0	18,500	0	0	0	0	0	0
f. Fort Harrison Building 412 Mechanical System											
0	0	30,000	0	0	30,000	0	0	0	0	0	0
g. Military Museum and IED — Fort Harrison											
1,000,000	0	0	0	0	1,000,000	0	0	0	0	0	0
Total											
1,000,000	0	1,279,568	0	0	2,279,568	0	0	0	0	0	0

Fiscal 2010						Fiscal 2011					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

There is allocated $225,900 federal stimulus to the Army National Guard Program for the Culbertson Armory — Female Latrines project, which has been approved by the national guard bureau.

There is allocated $225,900 federal stimulus funds to the Army National Guard Program for the Malta Armory — Female Latrines project, which has been approved by the national guard bureau.

There is allocated $500,000 federal stimulus to the Army National Guard Program for the Statewide Armories — Vault Modifications project, which has been approved by the national guard bureau.

There is allocated $279,268 federal stimulus funds to the Army National Guard Program for the Fort Harrison — Helicopter Dip Site project, which has been approved by the national guard bureau.

Military Museum and IED — Fort Harrison consists of $250,000 for a military museum and $750,000 for IED training.

TOTAL SECTION A											
42,794,277	37,031,158	35,197,228	0	0	115,022,663	8,853,166	113,415	21,863,175	0	0	30,829,756

Fiscal 2010						Fiscal 2011					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
				B. HEALTH AND HUMAN SERVICES							
DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES (6901)											
1. Human and Community Services Division (02)											
a. Child Care Development Block Grant — FY 2009											
0	0	718,736	0	0	718,736	0	0	0	0	0	0
b. Child Care Development Block Grant — FY 2010-11											
0	0	2,873,503	0	0	2,873,503	0	0	2,155,127	0	0	2,155,127
c. Community Services Block Grant — FY 2009											
0	0	1,692,000	0	0	1,692,000	0	0	0	0	0	0
d. Community Services Block Grant — FY 2010-11											
0	0	2,256,000	0	0	2,256,000	0	0	564,000	0	0	564,000
e. TANF Emergency Funds — FY 2009											
0	0	1,765,870	0	0	1,765,870	0	0	0	0	0	0
f. TANF Emergency Funds — FY 2010-11											
0	0	2,185,332	0	0	2,185,332	0	0	1,638,999	0	0	1,638,999
g. SNAP — Food Stamps — FY 2009											
0	0	5,983,625	0	0	5,983,625	0	0	0	0	0	0
h. SNAP — Food Stamps — FY 2010-11											
0	0	21,503,078	0	0	21,503,078	0	0	21,415,578	0	0	21,415,578
i. Food Distribution on Reservations — FY 2009											
0	0	69,300	0	0	69,300	0	0	0	0	0	0
j. Food Distribution on Reservations — FY 2010-11											
0	0	77,000	0	0	77,000	0	0	7,700	0	0	7,700
k. Emergency Food Assistance — FY 2009											
0	0	32,750	0	0	32,750	0	0	0	0	0	0
l. Emergency Food Assistance — FY 2010-11											
0	0	43,667	0	0	43,667	0	0	10,916	0	0	10,916

Fiscal 2010						Fiscal 2011					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
m. Weatherization — FY 2009											
0	0	3,382,460	0	0	3,382,460	0	0	0	0	0	0
n. Weatherization — FY 2010-11											
0	0	13,529,841	0	0	13,529,841	0	0	10,147,380	0	0	10,147,380
o. Homeless Prevention/Emergency Food & Shelter — FY 2009											
0	0	187,500	0	0	187,500	0	0	0	0	0	0
p. Homeless Prevention/Emergency Food & Shelter — FY 2010-11											
0	0	1,875,000	0	0	1,875,000	0	0	1,687,500	0	0	1,687,500
q. Food for Food Banks (Restricted)											
250,000	0	0	0	0	250,000	250,000	0	0	0	0	250,000
r. Homeless Prevention/Emergency Food & Shelter — General Fund (Restricted)											
750,000	0	0	0	0	750,000	750,000	0	0	0	0	750,000
2. Director's Office (04)											
a. VISTA — FY 2010-11											
0	0	50,000	0	0	50,000	0	0	50,000	0	0	50,000
b. Provider Rate Increase (Restricted)											
4,650,830	19,829	8,343,733	0	0	13,014,392	10,333,165	41,231	16,111,921	0	0	26,486,317
3. Child Support Enforcement Division (05)											
a. CSED — Temporarily Restore Federal Matching Funds — FY 2009											
0	0	1,646,914	0	0	1,646,914	0	0	0	0	0	0
b. CSED — Temporarily Restore Federal Matching Funds — FY 2010-11											
0	0	2,040,176	0	0	2,040,176	0	0	619,235	0	0	619,235
4. Public Health and Safety Division (07)											
a. WIC — FY 2010-11											
0	0	783,000	0	0	783,000	0	0	700,000	0	0	700,000
b. County Health Grants — Asbestos — FY 2010-11											

Fiscal 2010						Fiscal 2011					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
0	0	1,000,000	0	0	1,000,000	0	0	1,000,000	0	0	1,000,000
c. Prevention and Wellness Fund — FY 2010-11											
0	0	2,100,000	0	0	2,100,000	0	0	2,100,000	0	0	2,100,000
d. HB 173 — Implementing National Public Health Standards (Restricted)											
200,000	0	0	0	0	200,000	200,000	0	0	0	0	200,000
5. Operations and Technology Division (09)											
a. Health Information Technology — FY 2010-11											
357,000	0	0	0	0	357,000	357,000	0	0	0	0	357,000
6. Disability Services Division (10)											
a. IDEA — Infants and Families — FY 2010-11											
0	0	1,069,921	0	0	1,069,921	0	0	1,069,922	0	0	1,069,922
b. Vocational Rehabilitation State Grants — FY 2010-11											
0	0	1,315,737	0	0	1,315,737	0	0	1,000,000	0	0	1,000,000
7. Health Resources Division (11)											
a. FMAP — FY 2009											
0	0	54,000,000	0	0	54,000,000	0	0	0	0	0	0
b. FMAP — FY 2010-11											
0	0	78,000,000	0	0	78,000,000	0	0	31,000,000	0	0	31,000,000
c. Medicaid Caseload — FY 2010-11											
18,433,433	0	52,973,315	0	0	71,406,748	22,219,989	0	77,461,776	0	0	99,681,765
d. Sustain System of Care and Kids Management Authorities (Restricted)											
333,500	0	0	0	0	333,500	333,500	0	0	0	0	333,500
e. Indian Property Exclusion in Medicaid Determination											
231,764	0	751,536	0	0	983,300	310,188	0	732,110	0	0	1,042,298
f. Transitional Medicaid											
196,432	0	636,968	0	0	833,400	248,020	0	585,380	0	0	833,400

	Fiscal 2010						Fiscal 2011				
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
8. Senior and Long-Term Care Division (22)											
a. Aging Services Programs — FY 2010-11											
0	0	250,000	0	0	250,000	0	0	250,000	0	0	250,000
b. Nonmedicaid Community Aging Services (Restricted)											
58,919	0	1,441,081	0	0	1,500,000	58,918	0	1,441,082	0	0	1,500,000
c. Direct Care Worker Wage Increase — SLTC Services (Restricted)											
1,915,738	0	6,210,533	0	0	8,126,271	2,446,846	0	5,775,303	0	0	8,222,149
9. Addictive and Mental Disorders Division (33)											
a. Community Mental Health Crisis Services Demonstration Project (Restricted/Biennial)											
25,000	0	0	0	0	25,000	0	0	0	0	0	0
b. Implement HB 130 (Biennial/Restricted)											
475,000	0	0	0	0	475,000	0	0	0	0	0	0
Total											
27,877,616	19,829	270,788,576	0	0	298,686,021	37,507,626	41,231	177,523,929	0	0	215,072,786

The House Bill No. 2 base general fund appropriations for the Human and Community Services Division for benefits are reduced by $668,397 in FY 2010 and $1,375,485 in FY 2011.

The lesser of $668,397 or actual total fiscal year 2010 expenditures from Human and Community Services Division, Child Care Development Block Grant — FY 2010-11 may be included in the base budget for the purposes of 17-7-111 for the 2013 biennium budget in accordance with [section 18]. These expenditures may be funded with general fund in the present law base for the 2013 biennium executive budget in accordance with [section 18].

Homeless Prevention/Emergency Food & Shelter — General Fund may be used by the Human and Community Services Division only to allow human resource development councils to assist shelters throughout the state in the four components identified for shelters in the federal grant:

(1) essential services to homeless families;

(2) one-time payments for homeless prevention services;

(3) maintenance funding in support of existing emergency shelters and domestic violence facilities that provide shelter, food, and individual support services; and

	Fiscal 2010						Fiscal 2011					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

(4) rehabilitation or conversion of buildings for homeless shelters.

Provider Rate Increase may be used only to fund a provider rate increase. Funds may be allocated among programs. Provider Rate Increase may not be used to raise rates paid to providers pursuant to 53-6-125.

HB 173 — Implementing National Public Health Standards may be used only to make grants to local public health agencies. ~~The line item and general fund appropriation in the amount of $400,000 over the biennium for HB 173 — Implementing National Public Health Standards is contingent upon passage and approval of Senate Bill No. 100. If Senate Bill No. 100 is not passed and approved, the appropriation for HB 173 — Implementing National Public Health Standards is void.~~

In granting the funds for Health Information Technology — 2010-11, the department shall seek a nonprofit entity that is governed by a board of directors made up of members who provide a good geographic and demographic representation of the state and who represent the constituents interested in health care information technology, including but not limited to physicians, health care facilities, insurers, telemedicine providers, and government agencies.

Total fiscal year 2010 expenditures from CSED — Temporarily Restore Federal Matching Funds — FY 2010-11 may be included in the base budget for the purposes of 17-7-111 for the 2013 biennium budget in accordance with [section 18]. These expenditures may be funded with general fund in the present law base for the 2013 biennium executive budget in accordance with [section 18].

The House Bill No. 2 base general fund appropriations for the Health Resources Division for benefits are reduced by $71 million in FY 2010 and $26 million in FY 2011. The agency may redistribute funding between programs to realign funding sources for medicaid and Title IV-E funding.

Total fiscal year 2010 expenditures from FMAP — FY 2010-11 may be included in the base budget for the purposes of 17-7-111 for the 2013 biennium budget in accordance with [section 18]. These expenditures may be funded with general fund in the present law base for the 2013 biennium executive budget in accordance with [section 18].

The total collections of enhanced FMAP include $146 million that reduces state general fund expenditures, $14 million of additional general fund revenue from institutional reimbursements and the hospital utilization fee, and $3 million of additional federal expenditures for schools which does not impact general fund.

Medicaid Caseload — FY2010-11:

(1) may be used only to transfer funds eligible for reserve under the American Recovery and Reinvestment Act of 2009, Public Law 111-5, Title V, section 5001, to a state special revenue account;

(2) may be used only to pay medicaid benefits above the level appropriated in House Bill No. 2 excluding the healthy Montana kids program; and

(3) includes an appropriation of up to $1 million of general fund and $1 million of federal funds for administration directly attributable to the American Recovery and Reinvestment Act of 2009, Public Law 111-5, or to medicaid benefits.

Fiscal 2010						Fiscal 2011					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

Direct Care Worker Wage Increase — SLTC Services must be used to raise provider rates for medicaid services to allow for wage increases or lump-sum payments to workers who provide direct care and ancillary services.

Community Mental Health Crisis Services Demonstration Project is contingent upon passage and approval of House Bill No. 130, House Bill No. 131, or House Bill No. 132 and may be used only to implement those bills.

Implement HB 130 is contingent upon passage and approval of House Bill No. 130. If House Bill No. 130 is not passed and approved, Implement HB 130 must be used for matching grants for mental health crisis centers.

TOTAL SECTION B											
27,877,616	19,829	270,788,576	0	0	298,686,021	37,507,626	41,231	177,523,929	0	0	215,072,786

Fiscal 2010						Fiscal 2011					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
			C. NATURAL RESOURCES AND TRANSPORTATION								
DEPARTMENT OF ENVIRONMENTAL QUALITY (5301)											
1. Planning, Prevention, and Assistance Division (20)											
a. State Energy Programs											
0	0	5,509,281	0	0	5,509,281	0	0	3,202,719	0	0	3,202,719
b. Energy Efficiency Block Grant											
0	0	7,253,289	0	0	7,253,289	0	0	323,711	0	0	323,711
c. Drinking Water SRF — Administration											
0	0	388,673	0	0	388,673	0	0	313,400	0	0	313,400
d. Clean Water SRF — Administration											
0	0	382,034	0	0	382,034	0	0	307,828	0	0	307,828
e. Water Quality Grant											
0	0	193,886	0	0	193,886	0	0	0	0	0	0
f. Diesel Emissions Reduction Act (DERA) Grant											
0	0	1,033,287	0	0	1,033,287	0	0	666,713	0	0	666,713
g. Energy Storage Grant Program											
0	0	1,000,000	0	0	1,000,000	0	0	0	0	0	0
h. Energy Storage Grant Program Additional Funding (Restricted)											
0	0	0	0	0	0	0	0	1,000,000	0	0	1,000,000
2. Remediation Division (40)											
a. Leaking Underground Storage Tanks											
0	0	1,075,491	0	0	1,075,491	0	0	924,509	0	0	924,509
3. Permitting and Compliance Division (50)											
a. Drinking Water SRF — Administration											
0	0	607,297	0	0	607,297	0	0	535,057	0	0	535,057

Fiscal 2010						Fiscal 2011					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
b. Permitting and Compliance Division Administration — Federal Stimulus											
359,794	0	0	0	0	359,794	367,918	0	0	0	0	367,918
c. Permitting and Compliance Division Administration — FY 2009											
101,500	0	0	0	0	101,500	0	0	0	0	0	0
Total											
461,294	0	17,443,238	0	0	17,904,532	367,918	0	7,273,937	0	0	7,641,855

Energy Storage Grant Program Additional Funding is appropriated only if the federal allocation for the state energy program exceeds $25.8 million and the excess funding is not restricted to another purpose.

DEPARTMENT OF TRANSPORTATION (5401)

1. Construction Program (02)

a. Highway Funding											
0	0	132,000,000	0	0	132,000,000	0	0	88,000,000	0	0	88,000,000

2. Transportation Planning Division (50)

a. Transit Formula Funding											
0	0	9,367,026	0	0	9,367,026	0	0	6,244,684	0	0	6,244,684
~~b. Rail Transit Authority~~											
~~49,354~~	~~0~~	~~0~~	~~0~~	~~0~~	~~49,354~~	~~50,000~~	~~0~~	~~0~~	~~0~~	~~0~~	~~50,000~~
Total											
49,354	0	141,367,026	0	0	141,416,380	50,000	0	94,244,684	0	0	94,294,684

~~If Senate Bill No. 291 is not passed and approved, Rail Transit Authority is void.~~

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION (5706)

1. Centralized Services Division (21)

Fiscal 2010						Fiscal 2011					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
a. Drinking Water — SRF											
0	0	75,140	0	0	75,140	0	0	75,712	0	0	75,712
2. Conservation and Resource Development Division (23)											
a. Drinking Water — SRF											
0	0	10,530,000	0	0	10,530,000	0	0	0	0	0	0
b. Clean Water — SRF											
0	0	10,385,146	0	0	10,385,146	0	0	20,000	0	0	20,000
c. Water Project Administration											
230,000	0	0	0	0	230,000	230,000	0	0	0	0	230,000
3. Reserved Water Rights Compact Commission (25)											
a. Blackfeet Water Compact (transfer)											
4,000,000	0	0	0	0	4,000,000	0	0	0	0	0	0
b. Fort Belknap Water Compact (transfer)											
1,000,000	0	0	0	0	1,000,000	0	0	0	0	0	0
4. Forestry and Trust Lands (35)											
a. USFS State and Private Forestry Assistance											
0	0	4,250,000	0	0	4,250,000	0	0	4,250,000	0	0	4,250,000
Total											
5,230,000	0	25,240,286	0	0	30,470,286	230,000	0	4,345,712	0	0	4,575,712
TOTAL SECTION C											
5,740,648	0	184,050,550	0	0	189,791,198	647,918	0	105,864,333	0	0	106,512,251

Fiscal 2010						Fiscal 2011					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
				D. JUDICIAL BRANCH, LAW ENFORCEMENT, JUSTICE							
JUDICIARY (2110)											
1. Supreme Court Operations (01)											
a. Self-Help Law Program											
250,000	0	0	0	0	250,000	250,000	0	0	0	0	250,000
Total											
250,000	0	0	0	0	250,000	250,000	0	0	0	0	250,000
~~The amount of $250,000 of the general fund appropriation for Self-Help Law Program is contingent upon passage and approval of Senate Bill No. 100.~~											
CRIME CONTROL DIVISION (4107)											
1. Justice System Support Service (01)											
a. Byrne/JAG Grant											
0	0	3,165,819	0	0	3,165,819	0	0	0	0	0	0
b. Crime Victims Assistance Grant											
0	0	564,000	0	0	564,000	0	0	0	0	0	0
c. Violence Against Women Grant											
0	0	916,955	0	0	916,955	0	0	0	0	0	0
Total											
0	0	4,646,774	0	0	4,646,774	0	0	0	0	0	0
DEPARTMENT OF JUSTICE (4110)											
1. Legal Services Division (01)											
a. Crime Victims Compensation Grant											
0	0	90,582	0	0	90,582	0	0	90,582	0	0	90,582

	Fiscal 2010						Fiscal 2011					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
2. Division of Criminal Investigation (18)												
~~a. Meth Watch~~												
~~500,000~~	~~0~~	~~0~~	~~0~~	~~0~~	~~500,000~~	~~0~~	~~0~~	~~0~~	~~0~~	~~0~~	~~0~~
b. Internet Crimes Against Children Grants												
0	0	403,670	0	0	403,670	0	0	0	0	0	0
Total												
500,000	0	494,252	0	0	994,252	0	0	90,582	0	0	90,582
DEPARTMENT OF CORRECTIONS (6401)												
1. Community Corrections (02)												
a. Remove Vacancy Savings for 24-7 Staff/Reduce Overtime												
0	0	73,225	0	0	73,225	0	0	73,620	0	0	73,620
2. Secure Care (03)												
a. Remove Vacancy Savings for 24-7 Staff/Reduce Overtime												
0	0	997,547	0	0	997,547	0	0	1,002,781	0	0	1,002,781
3. Juvenile Corrections (05)												
a. Remove Vacancy Savings for 24-7 Staff/Reduce Overtime												
0	0	282,040	0	0	282,040	0	0	283,346	0	0	283,346
Total												
0	0	1,352,812	0	0	1,352,812	0	0	1,359,747	0	0	1,359,747
TOTAL SECTION D												
750,000	0	6,493,838	0	0	7,243,838	250,000	0	1,450,329	0	0	1,700,329

Fiscal 2010						Fiscal 2011					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
				E. EDUCATION							
OFFICE OF SUPERINTENDENT OF PUBLIC INSTRUCTION (3501)											
1. OPI Administration (06)											
a. Title I-A Improvement — FY 2009											
0	0	468,150	0	0	468,150	0	0	0	0	0	0
b. Title II-D Education Technology — FY 2009											
0	0	160,469	0	0	160,469	0	0	0	0	0	0
c. Title I-A — FY 2009											
0	0	415,800	0	0	415,800	0	0	0	0	0	0
d. McKinney-Vento (Homeless Assistance) — FY 2010-11											
0	0	22,400	0	0	22,400	0	0	0	0	0	0
e. Montana Learning Center (Restricted)											
50,000	0	0	0	0	50,000	0	0	0	0	0	0
2. Distribution to Public Schools (09)											
a. School Lunch Equipment											
0	0	247,461	0	0	247,461	0	0	0	0	0	0
b. Title I — FY 2009											
0	0	34,234,200	0	0	34,234,200	0	0	0	0	0	0
c. IDEA — Special Education											
0	0	36,708,056	0	0	36,708,056	0	0	0	0	0	0
d. Education Technology — FY 2009											
0	0	3,048,906	0	0	3,048,906	0	0	0	0	0	0
e. Title I-A Improvement — FY 2009											
0	0	8,894,850	0	0	8,894,850	0	0	0	0	0	0
f. IDEA Part B (Section 619 Preschool) — FY 2010-11											
0	0	1,260,947	0	0	1,260,947	0	0	0	0	0	0

	Fiscal 2010						Fiscal 2011				
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
g. McKinney-Vento (Homeless Assistance) — FY 2010-11											
0	0	201,600	0	0	201,600	0	0	0	0	0	0
h. Special Education — Maintenance of Effort — FY 2009											
1,233,764	0	0	0	0	1,233,764	1,233,764	0	0	0	0	1,233,764
i. Stabilization Funding for K-12 Education											
0	0	14,613,477	0	0	14,613,477	0	0	25,779,699	0	0	25,779,699
j. Increase State Support for Schools With Education Stabilization Funds											
0	0	10,717,552	0	0	10,717,552	0	0	10,993,075	0	0	10,993,075
Total											
1,283,764	0	110,993,868	0	0	112,277,632	1,233,764	0	36,772,774	0	0	38,006,538

Montana Learning Center funding may be used only for deferred maintenance on facilities or for making energy efficiency improvements at the Montana learning center.

For the 2011 biennium, the first source of funding of the school district guaranteed tax base aid and direct state aid is the federal appropriation for Stabilization Funding for K-12 Education.

Total fiscal year 2010 expenditures from the line item Stabilization Funding for K-12 Education may be included in the base budget for the purposes of 17-7-111 for the 2013 biennium budget in accordance with [section 18]. These expenditures may be funded with general fund in the present law base for the 2013 biennium executive budget in accordance with [section 18].

MONTANA SCHOOL FOR THE DEAF AND BLIND (5113)

1. Education Program (04)

a. Special Needs Equipment											
34,507	0	0	0	0	34,507	18,000	0	0	0	0	18,000
Total											
34,507	0	0	0	0	34,507	18,000	0	0	0	0	18,000

MONTANA ARTS COUNCIL (5114)

Fiscal 2010						Fiscal 2011					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
1. National Endowment for the Arts											
0	0	145,500	0	0	145,500	0	0	145,500	0	0	145,500
Total											
0	0	145,500	0	0	145,500	0	0	145,500	0	0	145,500

MONTANA LIBRARY COMMISSION (5115)

1. Statewide Library Resources (01)											
a. Expansion of Reading Services for the Blind											
323,000	0	0	0	0	323,000	0	0	0	0	0	0
Total											
323,000	0	0	0	0	323,000	0	0	0	0	0	0

MONTANA UNIVERSITY SYSTEM, INCLUDING OFFICE OF THE COMMISSIONER OF HIGHER EDUCATION AND EDUCATIONAL UNITS AND AGENCIES (5100)

1. OCHE – Administration (01)											
a. Distance Learning											
1,000,000	0	0	0	0	1,000,000	1,000,000	0	0	0	0	1,000,000
b. Virtual Academy											
1,000,000	0	0	0	0	1,000,000	1,000,000	0	0	0	0	1,000,000
2. OCHE – Community College Assistance (04)											
a. Community College Assistance — Restore to Governor's December 15 Budget (Restricted/OTO)											
606,189	0	0	0	0	606,189	671,586	0	0	0	0	671,586
b. Community College Assistance											
137,944	0	762,056	0	0	900,000	113,299	0	786,701	0	0	900,000
c. Community Colleges Tuition Mitigation											

Fiscal 2010						Fiscal 2011					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
0	0	776,851	0	0	776,851	0	0	824,024	0	0	824,024
3. OCHE – Appropriation Distribution Transfers (09)											
a. Tuition Mitigation for Resident Students Funded With Education General Funds											
3,154,033	0	0	0	0	3,154,033	2,506,230	0	0	0	0	2,506,230
b. Stabilization Funding for Higher Education											
0	0	29,762,223	0	0	29,762,223	0	0	29,762,224	0	0	29,762,224
c. Montana University System Tuition Mitigation and Increased Access to Distance Learning for Resident Students Funded With General Government State Fiscal Stabilization Funds											
0	0	5,966,490	0	0	5,966,490	0	0	6,580,345	0	0	6,580,345
d. PBS Satellite Delivery											
200,000	0	0	0	0	200,000	200,000	0	0	0	0	200,000
e. Agricultural Experiment Station — Sawfly Research (Restricted)											
250,000	0	0	0	0	250,000	250,000	0	0	0	0	250,000
~~f. Agricultural Experiment Station — Equipment and Infrastructure~~											
~~1,000,000~~	~~0~~	~~0~~	~~0~~	~~0~~	~~1,000,000~~	~~1,000,000~~	~~0~~	~~0~~	~~0~~	~~0~~	~~1,000,000~~
g. Montana Extension Service — Local Government Centers (Restricted)											
150,000	0	0	0	0	150,000	150,000	0	0	0	0	150,000
h. Replace 6-Mill Levy Revenue Shortfall With Federal General Stabilization Funds											
0	0	1,447,296	0	0	1,447,296	0	0	1,046,625	0	0	1,046,625
4. OCHE – Tribal College Assistance (11)											
a. Tribal College Assistance											
450,000	0	0	0	0	450,000	450,000	0	0	0	0	450,000
Total											
7,948,166	0	38,714,916	0	0	46,663,082	7,341,115	0	38,999,919	0	0	46,341,034

The line item appropriation for Distance Learning is to be used to facilitate access and affordability of 2-year colleges by:

Fiscal 2010						Fiscal 2011					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

(1) centralizing distance learning courses into a single unified web-based student enrollment system for admissions and financial assistance to enhance access and degree completion; and

(2) coordinating with the superintendent of public instruction on at least five early college degree programs in a Montana Big Sky Career Pathway for high school students to have access to college courses in the classroom or virtually in order to obtain a high school diploma and associate degree in 5 years.

The amount of $1,800,000 total funds over the biennium for Community College Assistance must be allocated as follows: $400,000 to Flathead Valley community college, $700,000 to Miles community college, and $700,000 to Dawson community college.

Total fiscal year 2010 expenditures from the line item Stabilization Funding for Higher Education may be included in the base budget for the purposes of 17-7-111 for the 2013 biennium budget in accordance with [section 18]. These expenditures may be funded with general fund in the present law base for the 2013 biennium executive budget in accordance with [section 18].

The line item appropriation for Agricultural Experiment Station — Sawfly Research is restricted to sawfly research.

~~The line item appropriation for Agricultural Experiment Station — Equipment and Infrastructure is restricted to purchases for infrastructure and equipment for agricultural experiment stations.~~

The line item appropriation for Montana Extension Service — Local Government Centers is restricted to expenditures for the local government center program in the Montana extension service.

Any local education agency or institution of higher education that receives funding under this program shall ensure that the agency or institution will meet the intentions and legal requirements of the American Recovery and Reinvestment Act of 2009, Public Law 111-5.

TOTAL SECTION E											
9,589,437	0	149,854,284	0	0	159,443,721	8,592,879	0	75,918,193	0	0	84,511,072

Fiscal 2010						Fiscal 2011					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
				F. LONG-RANGE PLANNING							
STATEWIDE AGENCY (9999)											
1. Long-Range Building Program — HB 5 (01)											
a. Long-Range Building Program Additional Transfer											
7,248,486	0	0	0	0	7,248,486	6,544,914	0	0	0	0	6,544,914
b. Long-Range Building Program Allocation											
0	0	638,216	0	0	638,216	0	0	638,216	0	0	638,216
c. Long-Range Building Program Transfer											
1,792,586	0	0	0	0	1,792,586	1,792,586	0	0	0	0	1,792,586
d. State Energy Conservation Capital Projects Account Allocation											
0	0	6,519,000	0	0	6,519,000	0	0	6,519,000	0	0	6,519,000
e. State Energy Conservation Repayment Account Transfer											
750,000	0	0	0	0	750,000	750,000	0	0	0	0	750,000
f. MUS Energy Conservation Improvements Transfer and Allocation											
6,150,000	0	3,850,000	0	0	10,000,000	6,150,000	0	4,850,000	0	0	11,000,000
g. MUS Energy Conservation Additional Funds (Restricted)											
0	0	0	0	0	0	0	0	1,000,000	0	0	1,000,000
h. University of Montana-Western — Main Hall Transfer											
3,000,000	0	0	0	0	3,000,000	3,000,000	0	0	0	0	3,000,000
i. State Energy Conservation Capital Projects Account Transfer											
750,000	0	0	0	0	750,000	750,000	0	0	0	0	750,000
2. Information Technology Projects — HB 10 (02)											
a. Enterprise System Services Center Equipment (Department of Administration)											
1,750,000	0	0	0	0	1,750,000	1,750,000	0	0	0	0	1,750,000
b. Interoperability Montana (Department of Administration)											
500,000	0	0	0	0	500,000	500,000	0	0	0	0	500,000

	Fiscal 2010						Fiscal 2011					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
c. SOS Information Management System Transfer											
750,000	0	0	0	0	750,000	750,000	0	0	0	0	750,000
3. Treasure State Endowment Program — HB 11 (03)											
a. Regional Water System Transfer											
4,000,000	0	0	0	0	4,000,000	4,000,000	0	0	0	0	4,000,000
b. TSEP Infrastructure Transfer											
11,500,000	0	0	0	0	11,500,000	11,500,000	0	0	0	0	11,500,000
4. Other Transfers (05)											
a. School Facilities Account (HB 152) Transfer											
35,034,000	0	0	0	0	35,034,000	0	0	0	0	0	0
5. Renewable Resource Grants and Loans — HB 6 (07)											
a. Water Projects Transfer											
2,074,398	0	0	0	0	2,074,398	2,074,398	0	0	0	0	2,074,398
6. Reclamation and Development Grants and Loans — HB 7 (08)											
a. Reclamation Projects Transfer											
897,133	0	0	0	0	897,133	897,133	0	0	0	0	897,133
Total											
76,196,603	0	11,007,216	0	0	87,203,819	40,459,031	0	13,007,216	0	0	53,466,247
TOTAL SECTION F											
76,196,603	0	11,007,216	0	0	87,203,819	40,459,031	0	13,007,216	0	0	53,466,247

MUS Energy Conservation Additional Funds is appropriated only if the federal allocation for the state energy program in the department of environmental quality exceeds $25.8 million and the excess funding is not restricted to another purpose.

Fiscal 2010						Fiscal 2011					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

~~The amount of $1 million of the general fund appropriation for Enterprise System Services Center Equipment is contingent upon passage and approval of Senate Bill No. 100.~~

TOTAL STATE FUNDING

162,948,581	37,050,987	657,391,692	0	0	857,391,260	96,310,620	154,646	395,627,175	0	0	492,092,441

Approved May 14, 2009

RESOLUTIONS

Adopted by the

SIXTY-FIRST LEGISLATURE
IN REGULAR SESSION

Held at Helena, the Seat of Government
January 5, 2009, through April 28, 2009

COMPILED BY MONTANA
LEGISLATIVE SERVICES DIVISION

House Joint Resolutions

HOUSE JOINT RESOLUTION NO. 4

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA ENCOURAGING CONGRESS TO INCREASE GUBERNATORIAL AUTHORITY WITH RESPECT TO HAZARDOUS FUELS EMERGENCIES AND REDUCTION.

WHEREAS, according to the Montana Legislature's Fire Suppression Interim Committee, with limited state resources and current fuel and climatic conditions, it is likely that communities in Montana will burn and that firefighters and members of the public will be seriously injured or killed; and

WHEREAS, the contributing factors of drought, extensive tree mortality due to insect infestation, and current federal land management policies that allow for extensive accumulations of biomass make Montana's forest lands highly susceptible to catastrophic and environmentally destructive wildfires that threaten public health, safety, and welfare; and

WHEREAS, U.S. Department of the Interior research has confirmed that reducing hazardous biomass fuels away from communities limits the risk of catastrophic wildfires; and

WHEREAS, reducing and using biomass has multiple benefits outside of wildfire mitigation, including alternative energy generation; and

WHEREAS, legislation is needed granting a governor authority to declare a crisis when the severity of fire danger from fuels on identified federal lands within that state poses a significant threat to public health and safety or there would be a probable loss of homes and property if wildfires occur; and

WHEREAS, upon the declaration of a crisis, responsible federal agencies should expedite a mitigation plan to reduce forest fuels, mitigation planning should be excluded under the National Environmental Policy Act appeal process, and any claimant filing a court action against the plan should be required to post a damage bond of 10% of the value of the property that would be protected under a mitigation plan; and

WHEREAS, adoption of these proactive hazardous fuels emergency measures will enhance Montana's ability to manage hazardous fuels in order to reduce the risk of catastrophic and environmentally destructive wildfires.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the United States Congress enact legislation increasing gubernatorial authority with respect to hazardous fuels emergencies and reduction.

(2) That the Secretary of State send copies of this resolution to the President of the United States; the Western Governors' Association; the Montana Congressional Delegation; and the National Association of Counties.

Adopted April 3, 2009

HOUSE JOINT RESOLUTION NO. 6

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE SUPERINTENDENT OF PUBLIC INSTRUCTION AND THE BOARD OF PUBLIC EDUCATION TO WORK WITH THE EDUCATION AND LOCAL GOVERNMENT INTERIM COMMITTEE ON DEVELOPING K-12 SHARED POLICY GOALS AND ACCOUNTABILITY MEASURES THAT CAN BE USED BY LEGISLATORS, THE EDUCATION COMMUNITY, AND THE PUBLIC TO EVALUATE PROGRESS TOWARD THE GOALS AND USED BY THE MONTANA LEGISLATURE TO GUIDE ITS FUNDING DECISIONS.

WHEREAS, Article VIII, section 12, of the Montana Constitution vests the Legislature with the responsibility to ensure strict accountability of all revenue received and money spent by the state, counties, cities, and all other local governmental entities; and

WHEREAS, Article X, section 9, of the Montana Constitution states that the Board of Public Education shall exercise general supervision over the public school system; and

WHEREAS, section 20-3-106, MCA, grants supervision of certain aspects of the public schools and districts of the state to the Superintendent of Public Instruction; and

WHEREAS, entities of the education system have increasingly, and to positive effect, shared leadership between themselves and with the Education and Local Government Interim Committee; and

WHEREAS, agreement upon shared policy goals and accountability measures for the K-12 public education system, agreed upon by the Superintendent of Public Instruction, Board of Public Education, and Education and Local Government Interim Committee, would represent an important advance in interagency cooperation and the quality of education policymaking; and

WHEREAS, shared policy goals must be systematically tied to accountability measures in order to ensure timely and effective implementation of policies.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That shared policy goals and corresponding accountability measures be identified and developed by the Superintendent of Public Instruction and Board of Public Education in consultation with the Education and Local Government Interim Committee.

Adopted March 12, 2009

HOUSE JOINT RESOLUTION NO. 7

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE IMMEDIATE MODIFICATION OF INEFFECTIVE FEDERAL LAND MANAGEMENT AND WILDFIRE POLICIES IN ORDER TO PROTECT THE HEALTH, SAFETY, AND WELFARE OF MONTANA'S COMMUNITIES.

WHEREAS, according to the Montana Legislature's Fire Suppression Interim Committee, with limited state and federal resources and current fuel

and climatic conditions, it is likely that communities in Montana will burn and that firefighters and members of the public will be seriously injured or killed; and

WHEREAS, the contributing factors of drought, extensive tree mortality due to insect infestation, and ineffective federal land management policies that allow for extensive accumulations of biomass make Montana's forest lands highly susceptible to catastrophic and environmentally destructive wildfires that put Montana communities in imminent danger; and

WHEREAS, without safe and aggressive initial attack on wildfires on all federal lands that have the potential to move to state or private land, the public health, safety, and welfare is threatened, the state's fire suppression costs will substantially increase, and damage to property and natural resources will continue to grow.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the United States Congress and the President of the United States immediately modify federal land management and wildfire policies to ensure that:

(a) there is safe and aggressive initial attack on wildfires on all federal lands if there is a potential for the fire to move to state or private land;

(b) state and local governments may actively engage in land and wildfire management operations on federal land in order to protect the public health, safety, and welfare; and

(c) federal forest road closures that may restrict access to areas for wildland fire suppression be minimized.

(2) That the Secretary of State send copies of this resolution to the President of the United States, the Montana Congressional Delegation, the Secretary of Agriculture, the Secretary of the Interior, the Chief of the United States Forest Service, the Regional Forester of the United States Forest Service Region 1, and the Director of the Bureau of Land Management.

Adopted March 21, 2009

HOUSE JOINT RESOLUTION NO. 8

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA ENDORSING THE OPPORTUNITY PROVIDED BY RICHLAND COUNTY TO CREATE A COMBINED FACILITY FOR THE RICHLAND COUNTY EXTENSION OFFICE AND THE MONTANA STATE UNIVERSITY MONTANA AGRICULTURAL EXPERIMENT STATION AT THE EASTERN AGRICULTURAL RESEARCH CENTER, SIDNEY, MONTANA.

WHEREAS, the Richland County Commissioners have concluded that the local community and the region would be best served by joining the functions and facilities of the Richland County Extension Office with the MAES Eastern Agricultural Research Center; and

WHEREAS, the State of Montana can provide a land lease to Richland County through existing authorities and procedures with the Montana Board of Regents or the State Land Board, or both; and

WHEREAS, the Richland County Commissioners have agreed to provide all financial resources necessary to fund the construction of the $700,000 building for the Richland County Extension Service, including offices, support rooms, a large meeting room, and shared lobby space, connected to the research facility.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the combined MAES Eastern Agricultural Research Center and Richland County Extension Office would serve to provide enhanced efficiencies and improved research and education opportunities for eastern Montana and the citizens of Montana; and

(2) That the Legislature authorizes construction of a $700,000 building for the Richland County Extension Office if, in addition to the $700,000 for construction, an agreement is signed between the Board of Regents and Richland County that ensures payment of all associated operating and maintenance costs by Richland County for the life of the building or until the building is sold; and

(3) That this resolution constitutes consent as provided in 18-2-102.

Adopted March 4, 2009

HOUSE JOINT RESOLUTION NO. 9

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA RECOGNIZING THE SERVICE OF MONTANANS IN THE ARMED FORCES OF THE UNITED STATES.

WHEREAS, all Americans have the right, by virtue of wearing the noble title of citizen, to great personal freedoms in the pursuit of life, liberty, and happiness; and

WHEREAS, the history of our young country demonstrates countless examples of bravery and personal sacrifice in order to preserve the freedoms and liberties of the collective citizenry; and

WHEREAS, since September 11, 2001, the nation has once again called upon those who have dedicated their lives to the defense of the nation to stand up against forces that wish ill upon the United States; and

WHEREAS, Montanans have always answered the call to defend the nation, and Montanans will continue to serve and lead in the global war on terror; and

WHEREAS, Montanans serving in every branch of service, both active duty and guard and reserves, have been deployed in the global war on terror at great personal sacrifice to themselves and their families; and

WHEREAS, a number of Montanans have made the ultimate sacrifice in Operation Enduring Freedom and Operation Iraqi Freedom; and

WHEREAS, we as Montanans will continue to support these heroes as they return home to face the challenge of rejoining family, friends, and community.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Montana Legislature recognize the dedication, professionalism, and bravery of all Montanans who have served and will serve in the armed forces of the United States as a part of the global war on terror.

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to the Montana Congressional Delegation, the respective Secretaries of the United States Army, Navy, and Air Force, the Commandant of the United States Coast Guard, and the Adjutant General of the Montana National Guard.

BE IT FURTHER RESOLVED, that the Secretary of State include with the copies sent to the respective Secretaries of the Army, Navy, and Air Force, the Commandant of the United States Coast Guard, and the Adjutant General of the Montana National Guard a request that the respective Secretaries, the Commandant, and the Adjutant General use every means available to provide a copy of this resolution to each member of the Armed Forces who hails from Montana.

BE IT FURTHER RESOLVED, that the purpose and intent of this resolution is to convey to Montana service personnel that the heartfelt thanks of all Montanans are extended to them, that we are proud of them, that they are in our prayers, and that we send them best wishes for a safe return.

Adopted April 7, 2009

HOUSE JOINT RESOLUTION NO. 14

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA SUPPORTING THE UPDATE IN THE U.S. DEPARTMENT OF THE INTERIOR REGULATIONS THAT PROVIDE GUIDANCE AND CONTROLS FOR THE POSSESSION AND TRANSPORTATION OF FIREARMS IN NATIONAL PARK AREAS AND NATIONAL WILDLIFE REFUGES, TO REFLECT CURRENT STATE LAWS AUTHORIZING THE POSSESSION OF CONCEALED FIREARMS, WHILE MAINTAINING EXISTING REGULATORY PROVISIONS THAT ENSURE VISITOR SAFETY AND RESOURCE PROTECTION; AND URGING THE MONTANA ATTORNEY GENERAL, IF IT IS DETERMINED THAT THE ATTORNEY GENERAL HAS STANDING, TO INTERVENE ON BEHALF OF THE STATE IN LAWSUITS THAT SEEK TO BLOCK THE UPDATED REGULATIONS.

WHEREAS, on December 5, 2008, the Assistant Secretary of the Interior for Fish and Wildlife and Parks announced that the Department of the Interior had finalized updated regulations governing the possession and transportation of firearms in national parks and wildlife refuges; and

WHEREAS, a notice proposing adoption of this regulatory change and requesting public comment was first posted in the Federal Register on April 30, 2008, in Volume 73, Number 84; and

WHEREAS, following the public comment period, final regulations were posted in the Federal Register formally adopting these regulations on December 10, 2008, in Volume 73, Number 238; and

WHEREAS, the new regulations allow possession of concealed weapons consistent with the state laws of the state in which the public land is located; and

WHEREAS, Article II, section 12, of the Montana Constitution preserves the right of any person to bear arms in self-defense and provides that the right may not be called in question; and

WHEREAS, Montana law specifically permits qualified persons to carry concealed weapons and regulates the activity in sections 45-8-321 through 45-8-330, MCA; and

WHEREAS, the regulation change by the Department of the Interior has updated federal policy regarding self-defense on public lands to more accurately reflect Montana culture and Montana law authorizing the possession of concealed firearms; and

WHEREAS, following finalization of the regulations by the Department of the Interior, several groups filed suit in federal court in Washington, D.C., in an attempt to block the updated regulations, including the Brady Campaign to Prevent Gun Violence, the National Parks Conservation Association, and the Coalition of National Park Service Retirees.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the Senate and the House of Representatives strongly support the updated regulation by the U.S. Department of the Interior regarding the possession and transportation of firearms in national park areas and national wildlife refuges and ardently oppose the attempts to block the updated federal regulation in federal court.

(2) That the updated federal regulation be affirmed as more consistent with Montana culture and Montana law than the prior regulation.

(3) That the Montana Attorney General, if the Attorney General determines that the Attorney General has standing, be strongly urged to intervene on behalf of the state and Montana citizens in the lawsuits filed to block the updated federal regulation in order to assert and protect the rights and prerogatives of the people of Montana.

(4) That the Montana Governor be urged to support this resolution.

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to the Montana Congressional Delegation, the Governor of Montana, and the Montana Attorney General within 10 days of adoption of this resolution.

Adopted April 3, 2009

HOUSE JOINT RESOLUTION NO. 15

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY TO EVALUATE THE FEASIBILITY OF AND FUNDING SOURCES FOR A MONETARY INCENTIVE PROGRAM TO ENCOURAGE AND COMPENSATE PRIVATE LANDOWNERS WHO GRANT PUBLIC ACCESS TO THEIR PROPERTY FOR RECREATIONAL AND TOURISM-RELATED ACTIVITIES.

WHEREAS, recreational and tourism-related activities, including access to public and private lands for camping, picnicking, canoeing, viewing wildlife and scenery, boating, hiking, bicycling, and four-wheeling, are of great benefit to all Montanans and the state economy; and

WHEREAS, a respectful balance should be struck between the goals of providing public access and preserving private property rights; and

WHEREAS, there is concern that public access to an increasing number of private acres is in jeopardy, as private landowners utilize other income generators on their property that preclude allowing public access for recreational and tourism-related activities; and

WHEREAS, providing monetary incentives to private landowners has proven an effective tool through the block management and hunting and fishing access enhancement programs of the Department of Fish, Wildlife, and Parks to secure public access for hunters and anglers; and

WHEREAS, providing monetary incentives to private landowners who grant public access for recreational and tourism-related activities could be an effective tool for enhancing these opportunities in the state, as well as a less expensive alternative to current state efforts to obtain public access by purchasing property or easements that allow public access to private property.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate interim committee, pursuant to section 5-5-217, MCA, or direct sufficient staff resources to evaluate the feasibility of and possible funding sources for creating a program, similar in mission to the block management and hunting and fishing access enhancement programs of the Department of Fish, Wildlife, and Parks, that would provide monetary incentives on a per-user-day basis to private landowners who grant public access to their property for recreational and tourism-related activities.

BE IT FURTHER RESOLVED, that if the study is assigned to staff, any findings or conclusions be presented to and reviewed by an appropriate committee designated by the Legislative Council.

BE IT FURTHER RESOLVED, that all aspects of the study, including presentation and review requirements, be concluded prior to September 15, 2010.

BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions, comments, or recommendations of the appropriate committee, be reported to the 62nd Legislature.

Adopted April 3, 2009

HOUSE JOINT RESOLUTION NO. 17

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO EXAMINE THE USE OF MEDICATION AIDES IN NURSING HOMES AND TO PROVIDE A REPORT TO THE 62ND LEGISLATURE.

WHEREAS, nursing homes in Montana are experiencing a shortage of licensed nursing staff, particularly in the state's most rural communities; and

WHEREAS, the shortage is likely to only worsen as the baby boom generation continues to age and to seek health care services; and

WHEREAS, facilities are turning to agencies that supply traveling nurses to staff uncovered shifts in a practice that is not only expensive but also affects the delivery of care because the nurses are not familiar with the residents for whom they are caring; and

WHEREAS, to ensure availability of staff to provide care, there is a need to revise the service delivery in nursing homes to use resources that are available in Montana; and

WHEREAS, many states have developed a program of education, training, and certification to allow unlicensed assistive personnel, including certified nursing assistants, to become medication aides who are able to administer medications in nursing homes; and

WHEREAS, the establishment of this level of health care worker may help relieve the nursing shortage and improve the quality of care for nursing home residents by taking pressure off licensed nurses and providing them with more time for assessment and other complex nursing functions, by having medication aides who know the residents administer medications instead of traveling nurses who are not familiar with the residents, and by improving retention and recruitment of certified nursing assistants through a career ladder approach; and

WHEREAS, establishing a nursing home medication aide program in Montana is a complex situation that requires study to obtain information from and cooperation among multiple agencies and organizations; and

WHEREAS, a study of this nature is best accomplished with the assistance of parties that will be involved in regulating nursing homes, nursing services, and medication aides and with the assistance of service providers, professionals, consumers, and advocacy groups who hold vital information.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Department of Public Health and Human Services work in cooperation with the Department of Labor and Industry, the Board of Nursing, and other stakeholders to examine the use of medication aides in nursing homes and to develop a report for the 2011 Legislature that would discuss all provisions necessary for the safe and effective use of medication aides in nursing homes.

BE IT FURTHER RESOLVED, that the study should include but is not limited to:

(1) identifying other states where the use of medication aides is allowed in nursing homes in order to obtain and review information from those states about:

(a) the qualifications of medication aides, including the level and type of education and training required;

(b) the level of supervision by licensed nurses that may be required for medication aides;

(c) the restrictions on the types of medications or routes of medication administration for medication aides;

(d) the liability and licensure issues related to supervision by licensed nurses;

(e) any study, evaluation, or analysis completed by other states related to the use of medication aides;

(f) the problems encountered and successes achieved in the use of medication aides;

(g) the structure for the regulation and licensure or certification of medication aides; and

(h) other information considered pertinent to the study; and

(2) obtaining and reviewing information from appropriate state or national organizations related to the use of medication aides, including but not limited to the National Council of State Boards of Nursing and the American Society of Consultant Pharmacists.

BE IT FURTHER RESOLVED, that the Department of Public Health and Human Services in cooperation with the Department of Labor and Industry and the Board of Nursing identify and include in the study and in the development of any report the affected parties and stakeholders, including individuals or associations representing nursing homes, nurses, and medication aides, as well as other service providers and professionals, consumers, and advocacy groups.

BE IT FURTHER RESOLVED, that the Department of Public Health and Human Services report at least quarterly to the Children, Families, Health, and Human Services Interim Committee on the status of the study and that the Department prepare a final report, including any findings, conclusions, comments, or recommendations for the 62nd Legislature.

Adopted March 11, 2009

HOUSE JOINT RESOLUTION NO. 22

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA EXPRESSING THE OPINION OF THE LEGISLATURE THAT THE 50TH ANNIVERSARY OF MONTANA'S GIFT TO THE UNITED STATES OF THE STATUE OF CHARLES M. RUSSELL AND THE PENDING 25TH ANNIVERSARY OF MONTANA'S GIFT TO THE UNITED STATES OF THE STATUE OF JEANNETTE RANKIN DESERVE RECOGNITION AND CELEBRATION.

WHEREAS, in the same year that Montana became a territory of the United States in 1864, President Abraham Lincoln signed legislation creating the national Statuary Hall, which stated in part: "...the President is hereby authorized to invite each and all the States to provide and furnish statues, in marble or bronze, not exceeding two in number for each State, of deceased persons who have been citizens thereof, and illustrious for their historic renown or for distinguished civic or military services such as each State may deem to be worthy of this national commemoration; and when so furnished the same shall be placed in the Old Hall of the House of Representatives, in the Capitol of the United States, which is set apart, or so much thereof as may be necessary, as a national statuary hall for the purpose herein indicated"; and

WHEREAS, in the year 1889 Montana was admitted into the Union as a state, thus conferring the right to provide and furnish two statues to be placed in Statuary Hall at the nation's Capitol; and

WHEREAS, in 1929 Montana Governor Erickson signed legislation approving Charles M. Russell as the first Montana citizen to be chosen for national commemoration in Statuary Hall; and

WHEREAS, on March 19, 1959, the State of Montana, after a large Montana parade accompanied by a large celebratory gathering in the nation's Capitol, formally gave to the United States for placement in Statuary Hall a bronze statue of Charles M. Russell sculpted by artist John B. Weaver; and

WHEREAS, the statue of Charles M. Russell has been on continuous display for 50 years as of March 19, 2009, and the State of Montana should officially

recognize through this resolution the 50th Anniversary of Montana's gift of the Charles M. Russell statue to the United States; and

WHEREAS, in 1983, Montana Governor Schwinden signed legislation approving Jeannette Rankin as the second Montana citizen to be chosen for national commemoration in Statuary Hall; and

WHEREAS, on May 1, 1985, emissaries of the State of Montana, accompanied by a large celebratory gathering in the nation's Capitol, formally gave to the United States for placement in Statuary Hall a bronze statue of Jeannette Rankin sculpted by artist Mary Theresa Mimnaugh; and

WHEREAS, the statue of Jeannette Rankin will have been on continuous display for 25 years as of May 1, 2010, and the State of Montana should officially recognize through this resolution the pending 25th Anniversary of Montana's gift of the Jeannette Rankin statue to the United States.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Senate and House of Representatives are of the opinion that the 50th Anniversary on March 19, 2009, of Montana's gift to the United States of the statue of Charles M. Russell and the pending 25th Anniversary on May 1, 2010, of Montana's gift to the United States of the statue of Jeannette Rankin deserve recognition and celebration.

Adopted March 18, 2009

HOUSE JOINT RESOLUTION NO. 25

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO EXAMINE ISSUES RELATED TO THE DETERMINATION OF MEDICAID ELIGIBILITY FOR NURSING HOME CARE AND TO PROVIDE A REPORT TO THE 62ND LEGISLATURE.

WHEREAS, frail elderly Montanans who need nursing home care and their families who assist them are experiencing difficulties with the application process by which Medicaid eligibility is determined; and

WHEREAS, it is often difficult for family members to obtain all of the documentation required because some of the original transactions occurred 30 or more years ago; and

WHEREAS, Montana nursing homes often wait months for eligibility to be determined and receive no payment during this period of time; and

WHEREAS, the federal and state laws and regulations related to Medicaid eligibility are very complex and subject to changing interpretation, making it difficult for those applying for Medicaid to understand and comply; and

WHEREAS, it is important that procedures and interpretations used in determining eligibility be understandable and reasonable, while at the same time ensuring that only those who meet eligibility criteria are deemed eligible to receive Medicaid benefits.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Department of Public Health and Human Services work in cooperation with all appropriate stakeholders, including nursing home care

providers, consumers, and other interested parties, to examine the issues related to difficulties being encountered by nursing homes and those seeking medical assistance for a nursing home stay.

BE IT FURTHER RESOLVED, that the study should include but is not limited to:

(1) identifying and examining difficulties experienced by those applying for Medicaid nursing home services;

(2) identifying and examining difficulties experienced by nursing homes related to the admission and care of those applying for Medicaid assistance;

(3) identifying and examining which parts of the eligibility determination process are dictated by state or federal laws and regulations;

(4) identifying and examining which parts of the eligibility determination process are based on state interpretations, policies, and procedures;

(5) identifying and examining any possible solutions to the issues and concerns presented by consumers and providers, including but not limited to discussion of expanded use of hardship provisions, more clarity with respect to expectations, establishment of parameters for what constitutes a good faith effort to obtain information sought by the state, provision of more specific information about the legal basis for denial of eligibility, financial relief to facilities that admit residents in crisis pending eligibility determination, and ability of applicants to transfer or assign annuities, life insurance policies, and property to the state when there is a dispute about the liquidity or value of the property;

(6) identifying and examining any costs related to identified solutions; and

(7) identifying and examining any other issues and concerns considered pertinent to the study.

BE IT FURTHER RESOLVED, that the Department of Public Health and Human Services report at least quarterly to the Children, Families, Health, and Human Services Interim Committee on the status of the study and that the Department prepare a final report, including any findings, conclusions, comments, or recommendations for the 62nd Legislature.

Adopted March 21, 2009

HOUSE JOINT RESOLUTION NO. 27

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING EDUCATORS, JOURNALISTS, AND PUBLIC SPEAKERS TO LEARN THE NAME OF EACH TRIBE IN MONTANA IN THE TRIBE'S OWN LANGUAGE AND TO USE THOSE NAMES.

WHEREAS, the U.S. Senate on December 9, 2008, passed Senate Resolution No. 719 celebrating American Indian and Alaska Native contributions to the United States and acknowledging the influence that the Iroquois, who call themselves the Haudenosaunne, and their concepts of freedom of speech, the separation of governmental powers, and checks and balances had on the drafting of the U.S. Constitution; and

WHEREAS, Article X, section 1, of the Montana Constitution declares that the State of Montana recognizes the distinct and unique cultural heritage of the

American Indians and is committed in its educational goals to the preservation of their cultural integrity; and

WHEREAS, it is fitting for the State of Montana to also recognize the contributions and heritage of the people who formed the first communities and nations in Montana; and

WHEREAS, the names commonly used to refer to the 12 American Indian tribes in Montana are not the names the people of these tribes use when referring to themselves in their own language; and

WHEREAS, to honor American Indian heritage in Montana, we should endeavor to learn to write and speak the name of each tribe in the tribe's own language; and

WHEREAS, if our educators, journalists, and public speakers learned and used these names when writing and speaking, the use of each tribe's name as used in the tribe's own language would become more common and the cultural and linguistic heritage of Montana's first peoples would be honored and preserved.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That all educators, journalists, and public speakers in Montana be urged to learn and use, when writing and speaking, the names of each tribe in Montana as used in the tribe's own language, as follows:

(1) Amskapi Pikuni (Blackfeet, Blackfeet Reservation);

(2) A'aniinen (Gros Ventres, Fort Belknap Reservation);

(3) Apsaalooke (Crow, Crow Reservation);

(4) Dakota (Sioux, Fort Peck Reservation);

(5) K'tanaxa (Kootenai, Flathead Reservation);

(6) Nakoda (Assiniboine, Fort Belknap Reservation);

(7) Nakona (Assiniboine, Fort Peck Reservation);

(8) Anishinabe (Chippewa, Rocky Boy's Reservation and Little Shell Tribe);

(9) Qlispe (Pend d'Oreille, Flathead Reservation);

(10) Sqeilo (Salish, Flathead Reservation);

(11) Tse' tsehestahese (Cheyenne, Northern Cheyenne Reservation); and

(12) Ne-iyah-wahk (Cree, Rocky Boy's Reservation).

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to every tribe, school district, newspaper, and elected statewide, district, and county official in this state.

Adopted March 18, 2009

HOUSE JOINT RESOLUTION NO. 29

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA DESIGNATING MAY 12 AS RHEUMATOID ARTHRITIS AWARENESS DAY IN MONTANA.

WHEREAS, rheumatoid arthritis is an autoimmune disease that affects approximately 1.3 million Americans in all population groups; and

WHEREAS, nearly 70% of rheumatoid arthritis cases involve women; and

WHEREAS, a person suffering from rheumatoid arthritis has antibodies that target joint tissues and organs, often resulting in inflamed or thickened tissue linings and excess joint fluid; and

WHEREAS, rheumatoid arthritis may cause symptoms such as joint pain, swelling, inflammation and redness, fatigue, stiffness, weakness, muscle pain, loss of appetite, depression, and anemia; and

WHEREAS, if rheumatoid arthritis is left untreated, serious consequences can occur, including damage to the body's cartilage, bones, tendons, and ligaments, and these may, in turn, lead to joint deformity or destruction as well as a loss of joint function; and

WHEREAS, rheumatoid arthritis negatively affects Montana's economy by making it difficult for those afflicted with rheumatoid arthritis to work; and

WHEREAS, rheumatoid arthritis is not a curable disease but is treatable in consultation with a physician; and

WHEREAS, there is a severe shortage of rheumatologists in Montana; and

WHEREAS, there is a need to raise awareness in Montana regarding rheumatoid arthritis.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Montana Legislature designate May 12 as Rheumatoid Arthritis Awareness Day in Montana to help raise awareness of rheumatoid arthritis and increase treatment options for sufferers of rheumatoid arthritis.

BE IT FURTHER RESOLVED, that the Legislative Services Division post the designation of this day on the Montana Legislature's website.

Adopted March 14, 2009

HOUSE JOINT RESOLUTION NO. 30

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THAT AN APPROPRIATE INTERIM OR STATUTORY COMMITTEE BE DESIGNATED TO STUDY WILDLAND FIRE SUPPRESSION.

WHEREAS, the Legislature created the Fire Suppression Committee during the September 2007 special legislative session, which was convened to appropriate the state's share of costs of the extreme 2007 wildland fire season; and

WHEREAS, the Fire Suppression Committee was charged with studying fire and land management policies and strategies with an eye toward examining ways to mitigate costs to state taxpayers; and

WHEREAS, the Fire Suppression Committee met at least monthly for a year to learn about the various aspects of wildland fire suppression, forest and grassland management, the wildland-urban interface, how fire costs are calculated, and how local, state, and federal agencies handle jurisdictional issues and policy differences; and

WHEREAS, after soliciting and receiving extensive public comment and traveling to seven communities around the state, the Fire Suppression Committee developed detailed predictions, conclusions, and recommendations for action aimed at private citizens and local, state, and federal wildland fire

agencies, all of which are provided in the committee's final report to the Legislature; and

WHEREAS, the Fire Suppression Committee agrees with those who have predicted that wildland fire seasons will only increase in duration, severity, and costs and its members believe that unless certain measures are taken, firefighters will be injured, communities will be destroyed, and lives may be lost; and

WHEREAS, an appropriate interim or statutory committee should be requested to continue the work of the Fire Suppression Committee, track each of the recommendations made by the Fire Suppression Committee, and monitor any legislation and appropriations made by the 61st Legislature to implement any Fire Suppression Committee recommendations.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate interim or statutory committee, pursuant to section 5-5-217, MCA, or direct sufficient staff resources to:

(1) analyze whether and how each of the recommendations made by the Fire Suppression Committee established by Chapter 1, Special Laws of September 2007, in its 2008 report to the 61st Legislature has been implemented and which of those recommendations should be amended or reinforced;

(2) examine additional needs of local and state fire suppression entities;

(3) further investigate state and federal forest management policies, including how those policies may contribute to an increased number of wildfires, greater safety risk to firefighters and the public, and compromised effectiveness of fire suppression efforts, and avenues the Legislature may pursue to effect changes in those policies;

(4) examine the impact of climate change on forest lands; and

(5) examine any other aspect of wildland fire suppression and land management that the interim committee determines to be appropriate.

BE IT FURTHER RESOLVED, that if the study is assigned to staff, any findings or conclusions be presented to and reviewed by an appropriate committee designated by the Legislative Council.

BE IT FURTHER RESOLVED, that all aspects of the study, including presentation and review requirements, be concluded prior to September 15, 2010.

BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions, comments, or recommendations of the appropriate committee, be reported to the 62nd Legislature.

Adopted April 7, 2009

HOUSE JOINT RESOLUTION NO. 32

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY TO EVALUATE THE ECONOMIC IMPACT OF HISTORIC PRESERVATION AND STRATEGIES FOR HISTORIC PRESERVATION.

WHEREAS, the State of Montana has a broad and diverse history that is reflected by its rich cultural legacy and outstanding heritage assets; and

WHEREAS, the State and the people of Montana value their history and heritage assets; and

WHEREAS, historic preservation, state stewardship, and heritage activities are embraced by many Montanans as ideals that reflect the best interests of communities and Montana; and

WHEREAS, preservation of historic and archeological resources, including buffalo jumps, tepee rings, battlefields, historic communities, heritage barns, centennial farms and ranches, historic mine yards, rail yards, schools, libraries, courthouses, neighborhoods, and commercial districts, is directly linked to maintaining our quality of life and identity of communities; and

WHEREAS, the State of Montana owns more than 1,000 historic properties and buildings and is responsible for their stewardship on behalf of the people of Montana. Many more are owned by federal, local, and tribal governments and by nonprofit and private entities interested in maintaining and protecting them.

WHEREAS, preservation of historic places and cultural resources is a proven method of economic stimulus that may provide substantial economic and cultural benefits to Montanans; and

WHEREAS, preservation of heritage resources is encouraged and facilitated through public support, investment, and incentives; and

WHEREAS, heritage programs in Montana adopted by various communities, including Montana Main Street, Preserve America, and Certified Local Government Preservation Programs, would be greatly enhanced through an ongoing, adequate state partnership and support; and

WHEREAS, many communities have expressed interest in participating in such programs if additional financial assistance were available; and

WHEREAS, policies such as fully funding the State Historic Preservation Office, the Montana Heritage Preservation and Development Commission, and state parks, maintaining an up-to-date inventory and assessment of state-owned heritage properties, and encouraging preservation statewide through the Montana Main Street Program, local and cultural districts, local preservation programs, state heritage tourism programs, a statewide revolving fund, enhanced state tax credits, local government bonding, the Cultural and Aesthetic Trust, and other potential funding mechanisms are in the interest of all Montanans and are all programs that deserve further evaluation.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF Montana:

That the Legislative Council be requested to designate an appropriate interim committee, pursuant to section 5-5-217, MCA, or direct sufficient staff resources to:

(1) conduct research on the impacts of historic preservation investment in Montana, including the stimulation of state and local commerce, the potential for collaborative heritage tourism programs and state heritage areas, and the development of incentive programs, such as revolving funds;

(2) evaluate the potential for state funding incentives with respect to offsetting the capital costs of sensitive historic renovation, including facade improvement and conversion of underutilized buildings to mixed residential and commercial functions;

(3) analyze the potential for implementing state programs to encourage preservation as a centerpiece for local economic development and tourism,

including the feasibility of expanding the Montana Main Street Program to support local efforts among participating communities in economic development and downtown revitalization;

(4) evaluate for effectiveness existing mechanisms for funding state historic preservation;

(5) explore a variety of currently unused historic preservation funding mechanisms that could be implemented on the state level to provide an ongoing revenue stream for support and encouragement of state agencies engaged in preservation heritage tourism;

(6) investigate the potential to leverage additional federal, local, and other private funding sources; and

(7) review existing statutory tools and their effectiveness in providing adequate oversight and encouraging stewardship of Montana's historic and cultural properties.

BE IT FURTHER RESOLVED, that if the study is assigned to staff, any findings or conclusions be presented to and reviewed by an appropriate committee designated by the Legislative Council.

BE IT FURTHER RESOLVED, that all aspects of the study, including presentation and review requirements, be concluded prior to September 15, 2010.

BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions, comments, or recommendations of the appropriate committee, be reported to the 62nd Legislature.

Adopted April 28, 2009

HOUSE JOINT RESOLUTION NO. 33

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AND ACCEPTING THE FUNDS AVAILABLE TO THE STATE OF MONTANA UNDER THE AMERICAN RECOVERY AND REINVESTMENT ACT AND CERTIFYING THAT THE STATE OF MONTANA WILL USE THE FUNDS TO CREATE JOBS AND PROMOTE ECONOMIC GROWTH.

WHEREAS, the federal American Recovery and Reinvestment Act requires that states certify that they will request the funds by April 3, 2009; and

WHEREAS, the Act provides that either the Governor or the Legislature through joint resolution may apply on behalf of the state, and both the Executive and Legislative Branches of state government believe that these funds are essential for Montana's economy; and

WHEREAS, the funds made available to the state of Montana are essential to create jobs and aid in Montana's economic recovery; and

WHEREAS, the funds provide significant funding for Montana highways, bridges, water projects, and other infrastructure projects that directly put Montana workers back to work; and

WHEREAS, funding is provided for Montana schools to make school buildings energy efficient, and those energy savings result in property tax savings by reducing costs for education; and

WHEREAS, funding is provided that allows the state of Montana discretion to set its own priorities to ensure that programs important to this state remain in place; and

WHEREAS, the federal funds made available to the state of Montana are in fact federal taxes paid by Montana citizens; and

WHEREAS, House Bill No. 645 gives the Legislature the ability to appropriate the American Recovery and Reinvestment Act funds in a fiscally responsible manner.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the state of Montana requests the funds available to the state of Montana under the American Recovery and Reinvestment Act and accepts those funds and certifies that the state of Montana will use the funds to create jobs and promote economic growth.

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to the Director of the Office of Management and Budget and to the Montana Congressional Delegation.

Adopted April 1, 2009

HOUSE JOINT RESOLUTION NO. 35

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM LEGISLATIVE STUDY OF PAY POLICIES AND PRACTICES ON BONUSES FOR STATE GOVERNMENT EMPLOYEES; ARTICULATING POLICY GOALS; AND REQUIRING A REPORT OF FINDINGS AND RECOMMENDATIONS TO THE 62ND LEGISLATURE.

WHEREAS, controversy over bonuses called attention to the topic of bonus payments for state employees and resulted in the introduction of three bills to restrict bonuses for certain types of employees and at certain times; and

WHEREAS, the three bills were House Bill No. 358 by Representative Bergren, House Bill No. 576 by Representative Warburton, and House Bill No. 594 by Representative Hunter; and

WHEREAS, each bill took a different approach to restricting bonuses and was aimed at a different issue related to bonus payments; and

WHEREAS, the House State Administration Committee heard each bill, tabled each bill because of unresolved questions on the bill, conducted informational and discussion sessions about pay and bonuses in state government, and decided that an interim legislative study on bonuses should be requested to encompass the issues raised by the tabled bills; and

WHEREAS, an interim legislative study will enable a thorough examination of pay policies and practices concerning bonuses paid to state employees and facilitate a systematic approach to drafting legislation for the next legislative session; and

WHEREAS, if interim committee workload precludes a full-fledged committee study, the study objectives outlined in this resolution can be accomplished through a staff white paper.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the Legislative Council be requested to designate an appropriate interim committee, pursuant to section 5-5-217, MCA, or direct sufficient staff resources to:

(a) review each state agency's policies and practices on providing bonuses and compare and contrast how bonuses are paid to classified versus nonclassified employees within and among the agencies;

(b) examine how money appropriated for the 2008-2009 biennium under section 2-18-303(2), MCA, for purposes including but not limited to market progression, job performance, or employee competencies was used;

(c) examine whether any bonuses paid since July 1, 2007, were paid according to established guidelines and procedures and whether bonuses are considered an effective or necessary pay administration tool;

(d) identify and analyze issues and options related to how bonuses are or should be paid; and

(e) develop conclusions and offer recommendations, including any necessary implementing legislation, on how best to meet the policy goals listed in subsection (2) with respect to bonuses.

(2) That the legislative study of bonuses described in subsection (1) be conducted in the context of the following policy goals:

(a) transparency to avoid possible impropriety or the appearance of impropriety;

(b) accountability and oversight to ensure established procedures are followed and that there is ongoing monitoring and periodic review of policies and practices;

(c) equity within and among agencies to ensure that there is a sound rationale for flexible policies, variable practices, and exceptions; and

(d) definition and clarity in statewide as well as agency standards and guidelines governing how and why bonuses are to be given to employees in classified as well as nonclassified positions.

BE IT FURTHER RESOLVED, that the study include an examination of the pay and bonuses of only those employees whose compensation is within the scope of House Bill No. 13, the pay plan bill covering both classified and nonclassified positions in state government.

BE IT FURTHER RESOLVED, that if the study is assigned to staff, the study's findings and conclusions, including any suggested legislation, be presented to and reviewed by an appropriate committee designated by the Legislative Council.

BE IT FURTHER RESOLVED, that all aspects of the study, including presentation and review requirements, be concluded prior to September 15, 2010.

BE IT FURTHER RESOLVED, that the final results of the study, including the study's findings, conclusions, recommendations, and suggested legislation, be reported to the 62nd Legislature.

Adopted April 20, 2009

HOUSE JOINT RESOLUTION NO. 36

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY OF HOW TO ENHANCE ECONOMIC SECURITY OF MONTANANS THROUGH FAMILY ASSET BUILDING, EDUCATION IN HOME OWNERSHIP AND PERSONAL FINANCE, AND DEVELOPMENT OF SMALL BUSINESSES.

WHEREAS, the current economic conditions in the country and this state have increased unemployment to a seasonally adjusted 5.6% in January 2009 from a low of 3.3% in 2006, a situation aggravated, in part, by national conditions related to home mortgage problems, misuse of credit, and lack of personal savings; and

WHEREAS, a study by the University of Montana Bureau of Business and Economic Research for Montana Kids Count indicated that in 2006, through no fault of their own, 8% of Montana's children were in extreme poverty in families at 50% of the federal poverty level; and

WHEREAS, the Legislature recognizes that wealth in families goes beyond financial wealth but that lack of income in and of itself is associated with societal ills such as crime, a higher dropout rate, an inability to pursue an education that maximizes potential earnings, food insecurity, and an inability to access child care that allows single parents in particular to work at a full-time job with benefits; and

WHEREAS, the Legislature supports policies that empower not just the families shaken by current economic conditions but all those in long-term poverty and all Montana families and children who need tools that can build economic self-sufficiency and full participation in the Montana economy; and

WHEREAS, the current economic conditions and concerns about the future stability of Social Security benefits underscore the need for personal retirement savings so that all families have access to the so-called three-legged stool of retirement support: pensions, Social Security, and personal retirement or savings accounts; and

WHEREAS, better coordination of services among public, private, and nonprofit entities has the potential to expand resources used to boost family security in Montana and reduce poverty.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate interim committee, pursuant to section 5-5-217, MCA, or direct sufficient staff resources to examine the tools that public and private partnerships can provide to improve economic self-sufficiency, reviewing particularly policies related to:

(1) building family assets, including the use of individual development accounts to promote home ownership, decrease debt, increase personal savings, and appropriately use and access credit;

(2) workforce development, including increased education, training, and retraining in combination with economic development opportunities;

(3) state regulation of credit, lending, and credit counseling; and

(4) private, local, and state services or social support systems that provide a safety net for families not yet able to build assets, retrain, or access credit of any kind.

BE IT FURTHER RESOLVED, that the study:

(1) examine ways to increase effective delivery of services to those in poverty;

(2) include input from representatives of: families receiving temporary assistance for needy families, food banks, homeless shelters, veterans, senior citizens, tribal governments, day-care centers, banks, insurers, credit unions, pay-day lenders, pawnshop owners, and credit counseling services; and

(3) include policy recommendations for the 62nd Legislature.

BE IT FURTHER RESOLVED, that if the study is assigned to staff, any findings or conclusions be presented to and reviewed by an appropriate committee designated by the Legislative Council.

BE IT FURTHER RESOLVED, that all aspects of the study, including presentation and review requirements, be concluded prior to September 15, 2010.

BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions, comments, or recommendations of the appropriate committee, be reported to the 62nd Legislature.

Adopted April 21, 2009

HOUSE JOINT RESOLUTION NO. 39

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THAT AN INTERIM COMMITTEE STUDY THE DEVELOPMENT OF ADDITIONAL COMMUNITY SERVICES FOR INDIVIDUALS WITH DEVELOPMENTAL DISABILITIES AND CO-OCCURRING MENTAL ILLNESS OR CERTAIN BEHAVIORS.

WHEREAS, the Montana Legislature has passed statutes with the purpose, as stated in section 53-20-101, MCA, of providing developmentally disabled individuals with services that whenever possible will help them live in their communities in the least restrictive environment possible; and

WHEREAS, individuals with developmental disabilities who have mental illnesses also need to be served with care and compassion in the least restrictive environment that serves the individuals and the community; and

WHEREAS, studies in previous legislative interims have addressed issues regarding services for mentally ill Montanans, but have not addressed the specific issue of serving persons with developmental disabilities who also have mental illness; and

WHEREAS, developmentally disabled people who also are mentally ill may exhibit challenging or aggressive behaviors that put them at risk of involvement in the criminal justice system, where they are unlikely to receive the treatment and habilitation services they need and where they are at risk of victimization by other suspected and convicted offenders; and

WHEREAS, the Montana Legislature has an interest in reviewing community services for people with developmental disabilities who have mental illness or challenging or aggressive behaviors and in providing a forum for stakeholders to discuss options that may provide both urban and rural communities with flexibility in providing services, based on their varying levels of resources.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate interim committee, pursuant to section 5-5-217, MCA, or direct sufficient staff resources to study and monitor the development of community services for developmentally disabled children and adults with mental illness across the state and to respond to any underlying issues that have limited the development of community services.

BE IT FURTHER RESOLVED, that the committee include in its study of community services the following topics:

(1) the ways in which community services should be planned for, prioritized, developed, and provided at the community level;

(2) the types of community services that should be provided and the populations they could appropriately serve;

(3) ways to encourage cooperation between and within communities in the planning, development, and provision of community services;

(4) funding and cost considerations in the provision of community services;

(5) the ways in which individuals may be identified and served in the community at the youngest possible age; and

(6) any other topics identified by the committee.

BE IT FURTHER RESOLVED, that the study engage the public and relevant stakeholders, including the Department of Public Health and Human Services and Department of Corrections, to identify any barriers to providing services and to develop findings and recommendations for the next legislative session.

BE IT FURTHER RESOLVED, that if the study is assigned to staff, any findings or conclusions be presented to and reviewed by an appropriate committee designated by the Legislative Council.

BE IT FURTHER RESOLVED, that all aspects of the study, including presentation and review requirements, be concluded prior to September 15, 2010.

BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions, comments, or recommendations of the appropriate committee, be reported to the 62nd Legislature.

Adopted April 24, 2009

House Resolutions

HOUSE RESOLUTION NO. 1

A RESOLUTION OF THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA ADOPTING THE HOUSE RULES.

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the following rules be adopted:

RULES OF THE MONTANA
HOUSE OF REPRESENTATIVES

CHAPTER 1

Administration

H10-10. House officers — definitions. (1) House officers include a Speaker, a Speaker pro tempore, majority and minority leaders, and majority and minority whips (section 5-2-221, MCA).

(2) A majority of representatives voting elects the Speaker and Speaker pro tempore from the House membership. A majority of each caucus voting nominates House members to the remaining offices, and those nominees are considered to have been elected by a majority vote of the House.

(3) (a) "Majority leader" means the leader of the majority party, elected by the caucus as provided in 5-2-221.

(b) "Majority party" means the party with the most members, subject to subsection (4).

(c) "Minority leader" means the leader of the minority party, elected by the caucus as provided in 5-2-221.

(d) "Minority party" means the party with the second most members, subject to subsection (4).

(4) If there are an equal number of members of the two parties with the most members, then the majority party is the party of the Speaker and the minority party is the other party with an equal number of members.

H10-20. Speaker's duties. (1) The Speaker is the presiding officer of the House, with authority for administration, order, decorum, and the interpretation and enforcement of rules in all House deliberations.

(2) The Speaker shall see that all members conduct themselves in a civil manner in accordance with accepted standards of parliamentary conduct. The Speaker may, when necessary, order the Sergeant-at-Arms to clear the aisles and seat the members of the House so that business may be conducted in an orderly manner.

(3) Signs, placards, or other objects of a similar nature are not permitted in the rooms, lobby, gallery, or on the floor of the House. The Speaker may order the galleries, lobbies, or hallway cleared in case of disturbance or disorderly conduct.

(4) The Speaker shall sign all necessary certifications by the House, including enrolled bills and resolutions, journals (section 5-11-201, MCA), subpoenas, and payrolls.

(5) The Speaker shall arrange the agendas for second and third readings each legislative day. Representatives may amend the agendas as provided in H40-130.

(6) The Speaker is the chief officer of the House, with authority for all House employees.

(7) The Speaker may name any member to perform the duties of the chair. If the House is not in session and the Speaker pro tempore is not available, the Speaker shall name a member who shall call the House to order and preside during the Speaker's absence.

(8) Upon request of the Minority Leader, the Speaker will submit a request for a fiscal note on any bill.

H10-30. Speaker-elect. During the transition period between the party organization caucuses and the election of House officers, the Speaker-elect has the responsibilities and authority appropriate to organize the House (section 5-2-202, MCA). Authority includes approving presession expenditures.

H10-40. Speaker pro tempore duties. The Speaker pro tempore shall, in the absence or inability of the Speaker, call the House to order and perform all other duties of the chair in presiding over the deliberations of the House and shall perform other duties and exercise other responsibilities as may be assigned by the Speaker.

H10-50. Majority Leader. The primary functions of the majority leader usually relate to floor duties. The duties of the majority leader may include but are not limited to:

(1) being the lead speaker for the majority party during floor debates;

(2) helping the Speaker develop the calendar;

(3) assisting the Speaker with program development, policy formation, and policy decisions; and

(4) presiding over the majority caucus meetings; and

(5) other duties as assigned by the caucus.

H10-60. Majority Whip. The duties of the majority whip may include but are not limited to:

(1) assisting the majority leader;

(2) ensuring member attendance;

(3) counting votes;

(4) generally communicating the majority position; and

(5) other duties as assigned by the caucus.

H10-70. Minority Leader. The minority leader is the principal leader of the minority caucus. The duties of the minority leader may include but are not limited to:

(1) developing the minority position;

(2) negotiating with the majority party;

(3) directing minority caucus activities on the chamber floor;

(4) leading debate for the minority; and

(5) other duties as assigned by the caucus.

H10-80. Minority Whip. The major responsibilities for the minority whip may include but are not limited to:

(1) assisting the minority leader on the floor;

(2) counting votes;

(3) ensuring attendance of minority party members; and

(4) other duties as assigned by the caucus.

H10-90. Employees. (1) The Speaker shall appoint a Chief Clerk and Sergeant-at-Arms and may appoint a Chaplain, subject to confirmation of the House (section 5-2-221, MCA).

(2) The Speaker shall employ necessary staff or delegate that function to the employees designated in subsection (1). All House staff hired to date will be retained.

(3) The secretary for a standing or select committee is generally responsible to the committee chair but shall work under the direction of the Chief Clerk.

(4) The Speaker and majority and minority leaders may each appoint a private secretary.

H10-100. Chief Clerk's duties. The Chief Clerk, under the supervision of the Speaker, is the chief administrative officer of the House and is responsible to:

(1) supervise all House employees;

(2) have custody of all records and documents of the House;

(3) supervise the handling of legislation in the House, the House journal, and other House publications; deliver to the Secretary of State at the close of each session the House journal, bill and resolution records, and all original House bills and joint resolutions; collect minutes and exhibits from all House committees and subcommittees and arrange to have them printed on archival paper and copied in an electronic format within a reasonable time after each meeting. An electronic copy will be provided to the Legislative Services Division and the State Law Library of Montana. The archival paper copy will be delivered to the Montana Historical Society.

H10-110. Duties of Sergeant-at-Arms. The Sergeant-at-Arms shall:

(1) under the direction of the Speaker and the Chief Clerk, have charge of and maintain order in the House, its lobbies, galleries, and hallways and all other rooms in the Capitol assigned for the use of the House;

(2) be present whenever the House is in session and at any other time as directed by the presiding officer;

(3) execute the commands of the House and serve the writs and processes issued by the authority of the House and directed by the Speaker;

(4) supervise assistants to the Sergeant-at-Arms, who shall aid in the performance of prescribed duties and who have the same authority, subject to the control of the Speaker;

(5) clear the floor and anteroom of the House of all persons not entitled to the privileges of the floor prior to the convening of each session of the House;

(6) bring in absent members when so directed under a call of the House;

(7) enforce the distribution of any printed matter in the House chambers and anteroom in accordance with H20-70;

(8) enforce parking regulations applicable to areas of the Capitol complex under the control of the House;

(9) supervise the doorkeeper; and

(10) supervise the pages.

H10-120. Legislative aides. (1) A legislative aide is a person specifically designated by a representative to assist that representative in performing legislative duties. A representative may sponsor one legislative aide a session by written notification to the Sergeant-at-Arms.

(2) No representative may designate a second legislative aide in the same session without the approval of the House Rules Committee.

(3) A legislative aide must be of legal age unless otherwise approved by the House Rules Committee.

(4) The Sergeant-at-Arms shall issue distinctive identification tags to legislative aides. The cost must be paid by the sponsoring representative.

H10-130. Legislative interns. A legislative intern is a person designated under Title 5, chapter 6, MCA.

H10-140. House journal. (1) The House shall keep a journal, which is the official record of House actions (Montana Constitution, Art. V, Sec. 10). The journal must be prepared under the direction of the Speaker.

(2) Records of the following proceedings must be entered on the journal:

(a) the taking and subscription of the constitutional oath by representatives (Montana Constitution, Art. III, Sec. 3; 5-2-214);

(b) committee reports;

(c) messages from the Governor;

(d) messages from the Senate;

(e) every motion, the name of the representative presenting it, and its disposition;

(f) the introduction of legislation in the House;

(g) consideration of legislation subsequent to introduction;

(h) on final passage of legislation, the names of the representatives and their vote on the question (Montana Constitution, Art. V, Sec. 11);

(i) roll call votes; and

(j) upon a request by two representatives before a vote is taken, the names of the representatives and their votes on the question.

(3) The Chief Clerk shall provide to the Legislative Services Division such information as may be required for the publication of the daily journal.

(4) Any representative may examine the daily journal and propose corrections. The Speaker may direct a correction to be made when suggested subject to objection by the House.

(5) The Speaker shall authenticate the House journal after the close of the session (section 5-11-201, MCA).

(6) The Legislative Services Division shall publish and distribute the House journal (sections 5-11-202 and 5-11-203, MCA). The title of each bill must be listed in the index of the published session journal.

H10-150. Votes recorded and public. Every vote of each representative on each substantive question in the House, in any committee, or in Committee of the Whole must be recorded and made public (Montana Constitution, Art. V, Sec. 11).

H10-160. Duration of legislative day. A legislative day ends either 24 hours after the House convenes for that day or at the time the House convenes for the following legislative day, whichever is earlier. (See Joint Rule 10-20.)

CHAPTER 2

Decorum

H20-10. Addressing the House — recognition. (1) When a member desires to speak to or address any matter to the House, the member should rise and respectfully address the Speaker or the presiding officer.

(2) The Speaker or presiding officer may ask, "For what purpose does the member rise?" or "For what purpose does the member seek recognition?" and

may then decide if recognition is to be granted. There is no appeal from the Speaker's or presiding officer's decision.

H20-20. Questions of order and privilege. (1) The Speaker shall decide all questions of order and privilege, subject to an appeal by any representative seconded by two representatives. The question on appeal is, "Shall the decision of the chairman be sustained?".

(2) Responses to parliamentary inquiries and decisions of recognition may not be appealed.

(3) Questions of order and privilege, in order of precedence, are:

(a) those affecting the collective rights, safety, dignity, and integrity of the House; and

(b) those affecting the rights, reputation, and conduct of individual representatives.

(4) A member may not address the House on a question of privilege between the time:

(a) an undebatable motion is offered and the vote is taken on the motion;

(b) the previous question is ordered and the vote is taken on the proposition included under the previous question; or

(c) a motion to lay on the table is offered and the vote is taken on the motion.

H20-30. Limits on lobbying. Lobbying on the House floor and in the anteroom is prohibited during a daily session, 2 hours before the session, and 2 hours after the session.

H20-40. Admittance to the House floor. (1) The following persons may be admitted to the House floor during a daily session: present and former legislators; legislative employees necessary for the conduct of the session; accredited news staff; and members' spouses and children. The Speaker may allow exceptions to this rule.

(2) Only a member may sit in a member's chair when the House is in session.

H20-50. Dilatory motions or questions. The House has a right to protect itself from dilatory motions or questions used for the purpose of delaying or obstructing business. The presiding officer shall decide if motions (except a call of the House) or questions are dilatory. This decision may be appealed to the House.

H20-60. Lobbying by employees. (1) A legislative employee, intern, or aide of either house is prohibited from lobbying, although a legislative committee may request testimony from a person so restricted.

(2) The Speaker may discipline or discharge any House employee violating this prohibition. The Speaker may withdraw the privileges of any House aide or intern violating this prohibition.

H20-70. Papers distributed on desks. A paper concerning proposed legislation may not be placed on representatives' desks unless it is authorized by a member and permission has been granted by the Speaker. The Sergeant-at-Arms shall direct its distribution. This restriction does not apply to material prepared by staff and placed on a representative's desk at the request of the representative.

H20-80. Violation of rules. (1) If a member, in speaking or otherwise, violates the rules of the House, the Speaker shall, or the majority or minority

leader may, call the member to order, in which case the member called to order must be seated immediately.

(2) The member called to order may move for an appeal to the House and if the motion is seconded by two members, the matter must be submitted to the House for determination by majority vote. The motion is nondebatable.

(3) If the decision of the House is in favor of the member called to order, the member may proceed. If the decision is against the member, the member may not proceed.

(4) If a member is called to order, the matter may be referred to the Rules Committee by the majority or minority leader. The Committee may recommend to the House that the member be censured or be subject to other action. The House shall act upon the recommendation of the Committee.

CHAPTER 3

Committees

H30-10. House standing committees — appointments — classification. (1) Each standing committee must be composed of an equal number of members of each political party. The Speaker shall determine the total number of members and after good faith consultation with the minority leader shall appoint the members to the standing committees.

(2) The standing committees of the House are as follows:

(a) class one committees:

(i) Appropriations;

(ii) Business and Labor;

(iii) Judiciary;

(iv) State Administration; and

(v) Taxation;

(b) class two committees:

(i) Education;

(ii) Federal Relations, Energy, and Telecommunications;

(iii) Human Services;

(iv) Natural Resources; and

(v) Transportation;

(c) class three committees:

(i) Agriculture;

(ii) Fish, Wildlife, and Parks; and

(iii) Local Government; and

(d) on call committees:

(i) Ethics;

(ii) Rules; and

(iii) Legislative Administration.

(3) A class 1 committee is scheduled to meet Monday through Friday. A class 2 committee is scheduled to meet Monday, Wednesday, and Friday. A class 3 committee is scheduled to meet Tuesday and Thursday. Unless a class is prescribed for a committee, it meets upon the call of the chair.

(4) The Legislative Council shall review the workload of the standing committees to determine if any change is indicated in the class of a standing committee for the next legislative session. The Legislative Council's recommendations must be submitted to the leadership nominated or elected at the presession caucus provided for in 5-2-201.

(5) (a) The Democrats will chair the following standing committees: Agriculture; Appropriations; Business and Labor; Education; Fish, Wildlife, and Parks; Federal Relations, Energy, and Telecommunications; Human Services; and Rules.

(b) The Republicans will chair the following standing committees: Ethics; Judiciary; Legislative Administration; Local Government; Natural Resources; State Administration; Taxation; and Transportation.

(c) The Speaker shall appoint the Democratic committee chairmen and vice chairmen and the minority leader, in consultation with the Speaker, shall appoint the Republican committee chairmen and vice chairmen. The power to remove a chairman, vice chairman, or member from a committee resides in the Speaker for Democratic members and with the minority leader for Republican members.

(6) There will be six subcommittees of the Committee on Appropriations. The Democrats will chair the subcommittees on Education, General Government and Transportation, Health and Human Services, and Natural Resources. The Republicans will chair the subcommittees on Corrections and Long-Range Planning.

(7) The Speaker shall give notice of each appointment to the Chief Clerk for publication.

(8) The Speaker may, in the Speaker's discretion or as authorized by the House, create and appoint select committees, designating the chairman and vice chairman of the select committee. Select committees may request or receive legislation in the same manner as a standing committee and are subject to the rules of standing committees.

H30-20. Chairman's duties. (1) The principal duties of the chairman of standing or select committees are to:

(a) preside over meetings of the committee and to put all questions;

(b) maintain order and decide all questions of order subject to appeal to the committee;

(c) supervise and direct staff of the committee;

(d) have the committee secretary keep the official record of the minutes;

(e) sign reports of the committee and submit them promptly to the Chief Clerk;

(f) appoint subcommittees to perform on a formal or an informal basis as provided in subsection (2); and

(g) inform the Speaker of committee activity.

(2) With the exception of the House Appropriations subcommittees, a subcommittee of a standing committee may be appointed by the chairman of the committee. A subcommittee must be composed of an equal number of members from each political party. The chairman of the standing committee shall appoint the chairman of the subcommittee.

H30-30. Quorum — officers as members. (1) A quorum of a committee is a majority of the members of the committee. A quorum of a committee must be present at a meeting to act officially. A quorum of a committee may transact business, and a majority of the quorum, even though it is a minority of the committee, is sufficient for committee action.

(2) The Speaker, the majority leader, and the minority leader are ex officio, nonvoting members of all House committees. They may count toward establishing a quorum.

H30-40. Meetings. (1) All meetings of committees must be open to the public at all times, subject always to the power and authority of the chairman to maintain safety, order, and decorum. The date, time, and place of committee meetings must be posted.

(2) A committee or subcommittee may be assembled for:

(a) a public hearing at which testimony is to be heard and at which official action may be taken on bills, resolutions, or other matters;

(b) a formal meeting at which the committees may discuss and take official action on bills, resolutions, or other matters without testimony; or

(c) a work session at which the committee may discuss bills, resolutions, or other matters but take no formal action.

(3) All committees meet at the call of the chairman or upon the request of a majority of the members of the committee directed to and with the approval of the Speaker.

(4) All committees shall provide for and give public notice, reasonably calculated to give actual notice to interested persons, of the time, place, and subject matter of regular and special meetings. All committees are encouraged to provide at least 3 legislative days notice to members of committees and the general public. However, a meeting may be held upon notice appropriate to the circumstances.

(5) A committee may not meet during the time the House is in session without leave of the Speaker. Any member attending such a meeting must be considered excused to attend business of the House subject to a call of the House.

(6) All meetings of committees must be recorded and the minutes must be available to the public within a reasonable time after the meeting. The official record must contain at least the following information:

(a) the time and place of each meeting of the committee;

(b) committee members present, excused, or absent;

(c) the names and addresses of persons appearing before the committee, whom each represents, and whether the person is a proponent, opponent, or other witness;

(d) all motions and their disposition;

(e) the results of all votes;

(f) references to the recording log, sufficient to serve as an index to the original recording; and

(g) testimony and exhibits submitted in writing.

H30-50. Procedures. (1) The chairman shall notify the sponsor of any bill pending before the committee of the time and place it will be considered.

(2) A standing or select committee may not take up referred legislation unless the sponsor or one of the cosponsors is present or unless the sponsor has given written consent. The chairman shall attempt to not schedule Senate bills while the Senate is in session.

(3) The committee shall act on each bill in its possession:

(a) by reporting the bill out of the committee:

(i) with the recommendation that it be referred to another committee;

(ii) favorably as to passage; or

(iii) unfavorably; or

(b) by tabling the measure in committee.

(4) The committee may not report a bill to the House without recommendation.

(5) The committee may recommend that a bill on which it has made a favorable recommendation by unanimous vote be placed on the consent calendar. A tie vote in a standing committee on the question of a recommendation to the whole House on a matter before the committee, for example on a question of whether a bill is recommended as "do pass" or "do not pass", does not result in the matter passing out to the whole House for consideration without recommendation.

(6) In reporting a measure out of committee, a committee shall include in its report:

(a) the measure in the form reported out;

(b) the recommendation of the committee;

(c) an identification of all substantive changes; and

(d) a fiscal note, if required.

(7) If a measure is withdrawn from a committee and brought to the House floor for debate on second reading on that day without a committee recommendation, the bill does not include amendments formally adopted by the committee because committee amendments are merely recommendations to the House that are formally adopted when the committee report is accepted by the House.

(8) A second to any motion offered in a committee is not required in order for the motion to be considered by the committee.

(9) The vote of each member on all committee actions must be recorded. All motions may be adopted only on the affirmative vote of a majority of the members voting.

(10) A motion to take a bill from the table may be adopted by the affirmative vote of a majority of the members present at any meeting of the committee.

(11) An action formally taken by a committee may not be altered in the committee except by reconsideration and further formal action of the committee.

(12) A committee may reconsider any action as long as the matter remains in the possession of the committee. A committee member need not have voted with the prevailing side in order to move reconsideration.

(13) Any legislation requested by a committee requires three-fourths of all members of the committee to vote in favor of the question to allow the committee

to request the drafting or introduction of legislation. Votes requesting drafting and introduction of committee legislation may be taken jointly or separately.

(14) The chairman shall decide points of order.

(15) The privileges of committee members include the following:

(a) to participate freely in committee discussions and debate;

(b) to offer motions;

(c) to assert points of order and privilege;

(d) to question witnesses upon recognition by the chairman;

(e) to offer any amendment to any bill; and

(f) to vote, either by being present or by proxy, using a standard form or through the vice chairman or minority vice chairman.

(16) Any meeting of a committee held through the use of telephone or other electronic communication must be conducted in accordance with Chapter 3 of the House Rules.

(17) A committee may consolidate into one bill any two or more related bills referred to it whenever legislation may be simplified by the consolidation.

(18) Committee procedure must be informal, but when any questions arise on committee procedure, the rules or practices of the House are applicable except as stated in the House Rules.

H30-60. Public testimony. (1) Testimony from proponents, opponents, and informational witnesses must be allowed on every bill or resolution before a standing or select committee. All persons, other than the sponsor, offering testimony shall register on the committee witness list.

(2) Any person wishing to offer testimony to a committee hearing a bill or resolution must be given a reasonable opportunity to do so, orally or in writing. Written testimony may not be required of any witness, but all witnesses must be encouraged to submit a statement in writing for the committee's official record.

(3) The chairman may order the committee room cleared of visitors if there is disorderly conduct. During committee meetings, visitors may not speak unless called upon by the chairman. Restrictions on time available for testimony may be announced.

(4) The number of people in a committee room may not exceed the maximum posted by the State Fire Marshal. The chairman shall maintain that limit.

(5) In any committee meeting, the use of cameras, television, radio, or any form of telecommunication equipment is allowed, but the chairman may designate the areas of the hearing room from which the equipment must be operated. Cell phone use is allowed only at the discretion of the chairman.

CHAPTER 4

Legislation

H40-10. Introduction deadlines. If a representative accepts drafted legislation from the Legislative Services Division after the deadline for preintroduction, the representative may not introduce that legislation after 2 legislative days from the time the bill was accepted from the Legislative Services Division.

H40-20. House resolutions. (1) A House resolution is used to adopt or amend House rules, make recommendations on the districting and

apportionment plan (Montana Constitution, Art. V, Sec. 14), express the sentiment of the House, or assist House operations.

(2) As to drafting, introduction, and referral, a House resolution is treated as a bill. A House resolution may be requested and introduced at any time. Final passage of a House resolution is determined by the Committee of the Whole report. A House resolution does not progress to third reading.

(3) The Chief Clerk shall transmit a copy of each passed House resolution to the Senate and the Secretary of State.

H40-30. Cosponsors. (1) Prior to submitting legislation to the Chief Clerk for introduction, the chief sponsor may add representatives and senators as cosponsors by having them sign the legislation.

(2) After legislation is submitted for introduction but before the legislation returns from the first House committee, the chief sponsor may add or remove cosponsors by filing a cosponsor form with the Chief Clerk. This filing must be noted by the Chief Clerk for the record on Order of Business No. 11.

H40-40. Introduction — receipt. (1) During a session, proposed House legislation may be introduced in the House by submitting it, endorsed with the signature of a representative as chief sponsor, to the Chief Clerk for introduction. Except for the first 15 bill numbers that may be reserved for preintroduced legislation, in each session of the Legislature, the proposed legislation must be numbered consecutively by type in the order of receipt. Submission and numbering of properly endorsed legislation constitutes introduction.

(2) Preintroduction of legislation prior to a session under provisions of the joint rules constitutes introduction in the House.

(3) Acknowledgment by the Chief Clerk of receipt of legislation or other matters transmitted from the Senate for consideration by the House constitutes introduction of the Senate legislation in the House or receipt by the House for purposes of applying time limits contained in the House rules. All legislation may be referred to a committee prior to being read across the rostrum as provided in H40-50.

(4) Acknowledgment by the Chief Clerk of receipt of messages from the Senate or other elected officials constitutes receipt by the House for purposes of any applicable time limit. Senate legislation or messages received from the Senate or elected officials are subject to all other rules.

H40-50. First reading. Legislation properly introduced or received in the House must be announced across the rostrum and public notice provided. This announcement constitutes first reading, and no debate or motion is in order except that a representative may question adherence to rules. Acknowledgment by the Chief Clerk of receipt of legislation transmitted from the Senate commences the time limit for consideration of the legislation. All legislation received by the House may be referred to a committee prior to being read across the rostrum.

H40-60. One reading per day. Except on the final legislative day, legislation may receive no more than one reading per legislative day. On the final legislative day, legislation may receive more than one reading.

H40-70. Referral. (1) The Speaker shall refer to a House committee, joint select committee, or joint special committee all properly introduced House legislation and transmitted Senate legislation in conformity to the committee jurisdiction.

(2) Legislation may not receive final passage and approval unless it has been referred to a House committee, joint select committee, or joint special committee.

H40-80. Rereferral — normal progression. (1) Except as provided in subsection (2), legislation that is in the possession of the House and that has not been finally disposed of may be rereferred to a House committee by House motion approved by not less than three-fifths of the members present and voting.

(2) Legislation that is in the possession of the House and that has been reported from a committee with a do pass or be concurred in recommendation may be rereferred to a House committee by a majority vote.

(3) The normal progress of legislation through the House consists of the following steps in the order listed: introduction; referral to a standing or select committee; a report from the committee; second reading; and third reading.

H40-90. Legislation withdrawn from committee. Legislation may be withdrawn from a House committee by House motion approved by not less than three-fifths of the members present and voting.

H40-100. Standing committee reports. (1) A House standing committee recommendation of "do pass" or "be concurred in" must be announced across the rostrum and, if there is no objection to form, is considered adopted.

(2) A recommendation of "do not pass" or "be not concurred in" must be announced across the rostrum and, on the following legislative day, may be debated and adopted or rejected on Order of Business No. 2. A motion to reject an adverse committee report must be approved by not less than three-fifths of the members voting. Failure to adopt a motion to reject an adverse committee report constitutes adoption of the report.

(3) If the House rejects an adverse committee report, the bill progresses to second reading, as scheduled by the Speaker, with any amendments recommended by the committee.

H40-110. Consent calendar procedure. (1) Noncontroversial bills and simple and joint resolutions may be recommended for the consent calendar by a standing committee and processed according to the following provisions:

(a) To be eligible for the consent calendar, the legislation must receive a unanimous vote by the members of the standing committee in attendance (do pass, do pass as amended). In addition, a motion must be made and passed unanimously to place the legislation on the consent calendar and this action reflected in the committee report. Appropriation or revenue bills may not be recommended for the consent calendar.

(b) The legislation must then be sent to be processed and reproduced as a third reading version and specifically marked as a "consent calendar" item.

(2) Other legislation may be placed on the consent calendar by agreement between the Speaker and the minority leader following a positive recommendation by a standing committee. The legislation must be sent to be processed as a second reading version but must be specifically announced and posted as a "consent calendar" item.

(3) Legislation must be posted immediately (as soon as it is received appropriately printed) on the consent calendar and must remain there for 1 legislative day before consideration under Order of Business No. 11, special orders of the day. At that time, the presiding officer shall announce

consideration of the consent calendar and allow "reasonable time" for questions and answers upon request. No debate is allowed.

(4) If any one representative submits a written objection to the placement of legislation on the consent calendar, the legislation must be removed from the consent calendar and added to the regular second reading board.

(5) Consent calendar legislation will be considered on Order of Business No. 8, third reading of bills, following the regular third reading agenda, as separately noted on the agenda.

(6) Legislation on the consent calendar must be considered individually with the roll call vote spread on the journal as the final vote in the House.

(7) Legislation passed on the consent calendar must then be transmitted to the Senate. Legislation must be appropriately printed prior to transmittal.

H40-120. Legislation requiring other than a majority vote. Legislation that requires other than a majority vote for final passage needs only a majority vote for any action that is taken prior to third reading and that normally requires a majority vote.

H40-130. Amending House second and third reading agendas. (1) A majority of representatives present may rearrange or remove legislation from either the second or third reading agenda on that legislative day.

(2) Legislation may be added to the second or third reading agenda on that legislative day on a motion approved by not less than three-fifths of the members present and voting.

H40-140. Second reading. (1) Legislation returned from committee may be placed on second reading unless otherwise ordered by the House.

(2) The House shall form itself into a Committee of the Whole to consider business on second reading. The Committee of the Whole may debate legislation, attach amendments, and recommend approval or disapproval of legislation.

(3) Except on the final legislative day, at least 1 legislative day must elapse between the time legislation is reported from committee and the time it is considered on second reading.

(4) If a motion to recommend that a bill "do pass" or "be concurred in" fails in the Committee of the Whole, the obverse, i.e., a recommendation that the bill "do not pass" or "be not concurred in", is considered to have passed. If a motion to recommend that a bill "do not pass" or "be not concurred in" fails in the Committee of the Whole, the obverse, i.e., a recommendation that the bill "do pass" or "be concurred in", is considered to have passed.

(5) An amendment attached to legislation by the Committee of the Whole remains unless removed by further legislative action.

(6) When the Committee of the Whole reports to the House, the House shall adopt or reject the Committee of the Whole report. If the House rejects the Committee of the Whole report, the legislation remains on second reading, as amended by the Committee of the Whole, unless the House orders otherwise.

(7) A representative may move to segregate legislation from the Committee of the Whole report before the report is adopted. Segregated legislation, as amended by the Committee of the Whole, must be placed on second reading unless the House orders otherwise. Amendments adopted by the Committee of the Whole on segregated legislation remain adopted unless reconsidered or unless the legislation is rereferred to a committee.

H40-150. Amendments in the Committee of the Whole. (1) All Committee of the Whole amendments must be checked by the House amendments coordinator for format, style, clarity, consistency, and other factors, in accordance with the most recent Bill Drafting Manual published by the Legislative Services Division, before the amendment may be accepted at the rostrum. The amendment form must include the date and time the amendment is submitted for that check.

(2) An amendment submitted to the rostrum for consideration by the Committee of the Whole must be marked as checked by the amendments coordinator and signed by a representative. Unless the majority leader, the minority leader, and sponsor agree, amendments must be printed and placed on the members' desks prior to consideration.

(3) An amendment may not be proposed until the sponsor has opened on a bill.

(4) A copy of every amendment rejected by the Committee of the Whole must be kept as part of the official records.

(5) An amendment may not change the original purpose of the bill.

H40-160. Motions in the Committee of the Whole. (1) When the House resolves itself into a Committee of the Whole, the only motions in order are to:

(a) amend;

(b) recommend passage or nonpassage;

(c) recommend concurrence or nonconcurrence;

(d) reconsider;

(e) pass consideration;

(f) call for cloture;

(g) rise, rise and report, or rise and report progress and beg leave to sit again; and

(h) to change the order in which legislation is placed on the agenda.

(2) Subsections (1)(d) through (1)(g) are nondebatable but may be amended. Once a motion under subsection (1)(b) or (1)(c) is made, a contrary motion is not in order.

(3) If a quorum of representatives is not present during second reading, the Committee of the Whole may not conduct business on legislation and a motion for a call of the House without a quorum is in order.

H40-170. Limits on debate in the Committee of the Whole. (1) Except as provided in H40-180, a representative may not speak more than once on the motion and may speak for no more than 5 minutes. The representative who makes the motion may speak a second time for 5 minutes in order to close.

(2) After at least two proponents and two opponents have spoken on a question and 30 minutes have elapsed, a motion to call for cloture is in order. Approval by not less than two-thirds of the members present and voting is required to sustain a motion for cloture. Notwithstanding the passage of a motion to end debate, the sponsor of the motion on which debate was ended may close.

(3) By previous agreement of the majority leader and the minority leader:

(a) a lead proponent and a lead opponent may be granted additional time to speak on a bill;

(b) a bill or resolution may be allocated a predetermined amount of time for debate and number of speakers.

H40-180. Special provisions for debate on the general appropriations bill. (1) The Appropriations Committee chairman, in presenting the bill, is not subject to the 5-minute speaking limitation.

(2) Each appropriations subcommittee chairman shall fully present the chairman's portion of the bill. A subcommittee chairman is not subject to the 5-minute speaking limitation.

(3) After the presentation by the subcommittee chairman, the respective section of the bill is open for debate, questions, and amendments. A proposed amendment to the general appropriations act may not be divided.

(4) An amendment that affects more than one section of the bill must be offered when the first section affected is considered.

(5) Following completion of the debate on each section, that section is closed and may not be reopened except by majority vote.

(6) If a member moves to reopen a section for amendment, only the amendment of that member may be entertained. Another member wishing to amend the same section shall make a separate motion to reopen the section.

(7) Debate on the motion to reopen a section is limited to the question of reopening the section. The amendment itself may not be debated at that time. This limitation does not prohibit the member from explaining the amendment to be considered.

H40-190. Engrossing. (1) After legislation is passed on second reading, it must be engrossed within 48 hours under the direction of the Speaker. The Speaker may grant additional time for engrossing.

(2) When the legislation that has passed second reading, as amended, has been correctly engrossed, it must be placed on third reading on the following legislative day. If the bill is not amended, the bill must be sent to printing and must be placed on third reading on the legislative day after receipt. On the final legislative day, the correctly engrossed legislation may be placed on third reading on the same legislative day. For the purposes of this rule, "engrossing" means placing amendments in a bill. (See Joint Rule 40-150.)

H40-200. Third reading. (1) All bills, joint resolutions, and Senate amendments to House bills and joint resolutions passing second reading must be placed on third reading the day following the receipt of the engrossing or other appropriate printing report.

(2) Legislation on third reading may not be amended or debated.

(3) The Speaker shall state the question on legislation on third reading. If a majority of the representatives voting does not approve the legislation, it fails to pass third reading.

H40-210. Senate legislation in the House. Senate legislation properly transmitted to the House must be treated as House legislation.

H40-220. Senate amendments to House legislation. (1) When the Senate has properly returned House legislation with Senate amendments, the House shall announce the amendments on Order of Business No. 4, and the Speaker shall place them on second reading for debate. The Speaker may rerefer House legislation with Senate amendments to a committee for a hearing if the Senate amendments constitute a significant change in the House

legislation. The second reading vote is limited to consideration of the Senate amendments.

(2) If the House accepts Senate amendments, the House shall place the final form of the legislation on third reading to determine if the legislation, as amended, is passed or if the required vote is obtained.

(3) If the House rejects the Senate amendments, the House may request the Senate to recede from its amendments or may direct appointment of a conference committee and request the Senate to appoint a like committee.

(4) Conference committees must be composed of an equal number of members from each political party. The members of conference committees must be appointed by the Speaker and the minority leader after good faith consultation. The Speaker and the minority leader shall appoint the members of their respective parties.

H40-230. Conference committee reports. (1) When a House conference committee files a report, the report must be announced under Order of Business No. 3. A tie vote in a conference committee on the question of a recommendation to the whole House on a matter referred for a conference results in the matter passing out to the whole House for consideration without recommendation.

(2) The House may debate and adopt or reject the conference committee report on second reading on any legislative day. The House may reconsider its action in rejecting a conference committee report under rules for reconsideration, H50-160.

(3) If both the House and the Senate adopt the same conference committee report on legislation requiring more than a majority vote for final passage, the House, following approval of the conference committee report on third reading, shall place the final form of the legislation on third reading to determine if the required vote is obtained.

(4) If the House rejects a conference committee report, the committee continues to exist unless dissolved by the Speaker or by motion. The committee may file a subsequent report.

(5) A House conference committee may confer regarding matters assigned to it with any Senate conference committee with like jurisdiction and submit recommendations for consideration of the House.

H40-240. Enrolling. (1) When House legislation has passed both houses, it must be enrolled within 48 hours under the direction of the Speaker. The Speaker may grant additional time for enrolling.

(2) The chief sponsor of the legislation shall examine the enrolled legislation and, if it has no enrolling errors, shall, within 1 legislative day, certify the legislation as correctly enrolled.

(3) The correctly enrolled legislation must be delivered to the Speaker, who shall sign the legislation.

(4) After the legislation has been reported correctly enrolled but before it is signed, any representative may examine the legislation. (See Joint Rule 40-160.)

H40-250. Governor's amendments. (1) When the Governor returns a bill with recommended amendments, the House shall announce the amendments under Order of Business No. 5.

(2) The House may debate and adopt or reject the Governor's recommended amendments on second reading on any legislative day.

(3) If both the House and the Senate accept the Governor's recommended amendments on a bill that requires more than a majority vote for final passage, the House shall place the final form of the legislation on third reading to determine if the required vote is obtained.

H40-260. Governor's veto. (1) When the Governor returns a bill with a veto, the House shall announce the veto under Order of Business No. 5.

(2) On any legislative day, a representative may move to override the Governor's veto by a two-thirds vote under Order of Business No. 9.

CHAPTER 5

Floor Actions

H50-10. Attendance. (1) A representative, unless excused, is required to be present at every sitting of the House.

(2) A representative may request in writing to be excused for a specified cause by the representative's party leader. This excused absence is not a leave with cause from a call of the House.

H50-20. Quorum. (1) A quorum of the House is fifty-one representatives (Montana Constitution, Art. V, Sec. 10).

(2) Any representative may question the lack of a quorum at any time a vote is not being taken. The question is nondebatable, may not be amended, and is resolved by a roll call.

(3) The House may not conduct business without a quorum, except that representatives present may convene, compel the attendance of absent representatives, or adjourn.

H50-30. Call of the House without a quorum. (1) In the absence of a quorum, a majority of the representatives present may compel the attendance of absent representatives through a call of the House without a quorum. The motion for the call is nondebatable, may not be amended, and is in order at any time it has been established that a quorum is not present.

(2) During a call of the House, all business is suspended. No motion is in order except a motion to adjourn or to remove the call.

(3) When a quorum has been achieved under the call, the call is automatically lifted. The call may also be lifted by adjournment or by two-thirds of the representatives present and voting.

H50-40. Call of the House with a quorum. (1) If a quorum is present but at least one representative is excused or absent, one-third of the representatives present and voting may order a call of the House with a quorum.

(2) The motion for a call is nondebatable, may not be amended, and is in order at any time a vote is not being taken, except that a call of the House with a quorum is not allowed in the Committee of the Whole.

(3) During a call of the House, all business is suspended. No motion is in order except a motion to adjourn or to remove the call.

(4) When all representatives are present, except those on leave with cause, the call is automatically lifted. The call may also be lifted by adjournment or by two-thirds of the representatives present and voting.

H50-50. Leave with cause. (1) During a call of the House, a representative with an overriding medical or personal reason may request a leave with cause.

(2) If the representative is present at the time of the call, the Speaker may approve a request for a leave with cause.

(3) If the representative is not present at the time of the call, two-thirds of the representatives present and voting may approve a request for leave with cause.

(4) During a call of the House, a representative on leave with cause may not cast an absentee vote.

H50-60. Opening and order of business. The opening of each legislative day must include an invocation, the pledge of allegiance, and roll call. Following the opening, the order of business of the House is as follows:

(1) communications and petitions;

(2) reports of standing committees;

(3) reports of select committees;

(4) messages from the Senate;

(5) messages from the Governor;

(6) first reading and commitment of bills;

(7) second reading of bills;

(8) third reading of bills;

(9) motions;

(10) unfinished business;

(11) special orders of the day; and

(12) announcement of committee meetings.

H50-70. Motions. (1) Any representative may propose a motion allowed by the rules for the order of business under which the motion is offered for the consideration of the House. Unless otherwise specified in rule or law, a majority of representatives voting is necessary and sufficient to decide a motion.

(2) Seconds to motions on the House floor are not required.

(3) Absentee votes are not allowed on votes that are specified as "representatives present and voting".

(4) The majority leader shall make routine procedural motions required to conduct the business of the House.

H50-80. Limits on debate of debatable motions. (1) Except for the representative who places a debatable motion before the body, no representative may speak more than once on the question unless a unanimous House consents. The representative who places the motion may close.

(2) No representative may speak for more than 10 minutes on the same question, except that a representative may have 5 minutes to close.

H50-90. Nondebatable motions. (1) A representative has the right to understand any question before the House and, usually under the administration of the presiding officer, may ask questions to exercise this right.

(2) The following motions are nondebatable:

(a) to adjourn;

(b) for a call of the House;

(c) to recess or rise;

(d) for parliamentary inquiry;

(e) to table or take from the table;

(f) to call for the previous question or cloture;

(g) to amend a nondebatable motion;

(h) to divide a question;

(i) to suspend the rules;

(j) all incidental motions, such as motions relating to voting or of a general procedural nature; and

(k) to appeal a call to order.

H50-100. Questions. A representative may, through the presiding officer, ask questions of another representative during a floor session. There is no limit on questions and answers, except as provided in H20-50.

H50-110. Amending motions — limitations. (1) A representative may move to amend the specific provisions of a motion without changing its substance.

(2) No more than one motion to amend a motion is in order at any one time.

(3) A motion for a call of the House, for the previous question, to table, or to take from the table may not be amended.

H50-120. Substitute motions. (1) When a question is before the House, no substitute motion may be made except the following, which have precedence in the order listed:

(a) to adjourn;

(b) for a call of the House;

(c) to recess or rise;

(d) for a question of privilege;

(e) to table;

(f) to call for the previous question or cloture;

(g) to postpone consideration to a day certain;

(h) to refer to a committee; and

(i) to propose amendments.

(2) Nothing in this section allows a motion that would not otherwise be allowed under a particular order of business.

(3) (a) Except as provided in subsection (3)(b), no more than one substitute motion is in order at any one time.

(b) A motion for cloture is in order on a substitute motion to amend.

H50-130. Withdrawing motions. A representative who proposes a motion may withdraw it before it is voted on or amended.

H50-140. Dividing a question. Except as provided in H40-180(3), a representative may request to divide a question as a matter of right if it includes two or more propositions so distinct that they can be separated and if at least one substantive question remains after one substantive question is removed.

H50-150. Previous question. (1) If a majority of representatives present and voting adopts a motion for the previous question, debate is closed on the question and it must be brought to a vote. The Speaker may not entertain a motion to end debate unless at least one proponent and one opponent have spoken on the question.

(2) Notwithstanding the passage of a motion to end debate, the sponsor of the motion on which debate was ended may close.

H50-160. Questions requiring other than a majority vote. The following questions require the vote specified for each condition:

100 House Members

(1) a motion to approve a bill to appropriate the principal of the tobacco settlement trust fund pursuant to Article XII, section 4, of the Montana Constitution (two-thirds);

(2) a motion to approve a bill to appropriate the principal of the coal severance tax trust fund pursuant to Article IX, section 5, of the Montana Constitution (three-fourths);

(3) a motion to approve a bill to appropriate highway revenue, as described in Article VIII, section 6, of the Montana Constitution, for purposes other than therein described (three-fifths);

(4) a motion to approve a bill to authorize creation of state debt pursuant to Article VIII, section 8, of the Montana Constitution (two-thirds);

(5) a motion to appropriate the principal of the noxious weed management trust fund pursuant to Article IX, section 6, of the Montana Constitution (three-fourths);

(6) a motion to temporarily suspend a joint rule governing the procedure for handling bills pursuant to Joint Rule 60-10(2) (two-thirds).

Members Present and Voting

(1) a motion to override the Governor's veto pursuant to H40-260 and Article VI, section 10(3), of the Montana Constitution (two-thirds);

(2) a call of the House with a quorum pursuant to H50-40(1) (one-third);

(3) a motion to lift a call of the House pursuant to H50-30(3) or H50-40(4) (two-thirds);

(4) a motion to rerefer a bill from one committee to another pursuant to H40-80(1) (three-fifths);

(5) a motion to withdraw a bill from a committee pursuant to H40-90 (three-fifths);

(6) a motion to add legislation to the second or third reading agenda on that day pursuant to H40-130(2) (three-fifths);

(7) a motion to remove legislation from its normal progress through the House as provided under H40-80(3) and reassign it unless otherwise specifically provided by these rules, such as H40-80(2) (three-fifths);

(8) a motion to change a vote pursuant to H50-210 (unanimous);

(9) a motion to call for cloture pursuant to H40-170(2) (two-thirds);

(10) a motion to take from the table in Committee of the Whole (three-fifths);

(11) a motion to approve a bill conferring immunity from suit as described in Article II, section 18, of the Montana Constitution (two-thirds).

Members Voting

(1) a motion to amend rules pursuant to H70-10(2) or suspend rules pursuant to H70-30 (two-thirds);

(2) a motion to overturn an adverse committee report pursuant to H40-100(2) (three-fifths);

(3) a motion to record a vote pursuant to H50-200(2) (one representative);

(4) a motion to record a vote in the journal (two representatives);

(5) an appeal of the ruling of the presiding officer pursuant to H20-20(1) or H20-80(2) (three representatives);

(6) a motion to speak more than once on a debatable motion pursuant to H50-80(1) (unanimous vote);

(7) a motion to appeal the presiding officer's interpretation of the rules to the House Rules Committee pursuant to H70-50 (15 representatives).

Entire Legislature

(1) a motion to approve a bill proposing to amend the Montana Constitution pursuant to Article XIV, section 8, of the Montana Constitution (two-thirds of the entire Legislature).

H50-170. Reconsideration. (1) Any representative may, within 1 legislative day of a vote, move to reconsider the House vote on any matter still within the control of the House.

(2) A motion for reconsideration, unless tabled or replaced by a substitute motion, must be disposed of when made.

(3) When a motion for reconsideration fails, the question is finally settled. A motion for reconsideration may not be renewed or reconsidered.

(4) A motion to recall legislation from the Senate constitutes a motion to reconsider and is subject to the same rules.

(5) A motion for reconsideration is not in order on a vote to postpone to a day certain or to table legislation.

(6) There may be only one reconsideration vote on a specific issue on a legislative day.

H50-180. Renewing procedural motions. The House may renew a procedural motion if further House business has intervened.

H50-190. Tabling. (1) Under Order of Business No. 9, a representative may move to table any question, motion, or legislation before the House except the question of a quorum or a call of the House. The motion is nondebatable and may not be amended.

(2) When a matter has been tabled, a representative may move to take it from the table under Order of Business No. 9 on any legislative day.

H50-200. Voting. (1) The representatives shall vote to decide any motion or question properly before the House. Each representative has one vote.

(2) The House may, without objection, use a voice vote on procedural motions that are not required to be recorded in the journal. If a representative rises and objects, the House shall record the vote.

(3) The House shall record the vote on all substantive questions. If the voting system is inoperable, the Chief Clerk shall record the representatives' votes by other means.

(4) A member who is present shall vote unless the member has disclosed a conflict of interest to the House. A member may be present for a vote by electronic means.

H50-210. Changing a vote. (1) A representative may move to change the representative's vote within 1 legislative day of the vote. The motion is nondebatable. The motion must be made on Order of Business No. 9, motions. All of the members present and voting are required to consent to the change in order for it to be effective.

(2) The representative making the motion shall first specify the bill number, the question, and the original vote tally. A vote may not be changed if it would affect the outcome of legislation.

(3) A vote change must be entered into the journal as a notation that the member's vote was changed. The original printed vote will not be reprinted to reflect the change.

(4) An error caused by a malfunction of the voting system may be corrected without a vote.

H50-220. Absentee votes. (1) An excused representative may file an absentee vote authorization form to vote during the excused absence on any vote for which absentee voting is allowed.

(2) An excused representative shall sign an absentee vote authorization form that specifies the motion and the desired vote.

(3) The absentee vote authorization form must be handed in at the rostrum by the party whip or designated representative before voting on the motion has commenced.

(4) The absentee vote authorization may be revoked before the vote by the member who signed the authorization.

(5) Absentee voting is not allowed on third reading.

H50-230. Recess. The House may stand at ease or recess under any order of business by order of the Speaker or a majority vote. The recess may be ended at the call of the chair or at a time specified.

H50-240. Adjournment for a legislative day. (1) A representative may move that the House adjourn for that legislative day. The motion is nondebatable and may be made under any order of business except Order of Business No. 7.

(2) A motion to adjourn for a legislative day must specify a date and time for the House to convene on the subsequent legislative day.

H50-250. Adjournment sine die. A representative may move that the House adjourn for the session. The motion is nondebatable and may be made under any order of business except Order of Business No. 7.

CHAPTER 6

Motions

H60-10. Proposal for consideration. (1) Every question presented to the House or a committee must be submitted as a definite proposition.

(2) A representative has the right to understand any question before the House and, under the authority of the presiding officer, may ask questions to exercise this right.

H60-20. Nondebatable motions. The following motions, in addition to any other motion specifically designated, must be decided without debate:

(1) to adjourn;

(2) for a call of the House;

(3) to recess or rise;

(4) for parliamentary inquiry;

(5) to table or to take from the table;

(6) to call for the previous question or for cloture;

(7) to amend a nondebatable motion;

(8) to divide a question;

(9) to suspend the rules; and

(10) all incidental motions, such as motions relating to voting or of a general procedural nature.

H60-30. Motions allowed during debate. (1) When a question is under debate, only the following motions are in order. The motions have precedence in the following order:

(a) to adjourn;

(b) for a call of the House;

(c) to recess or rise;

(d) for a question of privilege;

(e) to table or take from the table;

(f) to call for the previous question or cloture;

(g) to postpone consideration to a day certain;

(h) to refer or rerefer; and

(i) to propose amendments.

(2) This section does not allow a motion that would not otherwise be allowed under a particular order of business.

(3) Only one substitute motion is in order at any time.

H60-40. Motions to adjourn or recess. (1) A motion to adjourn or recess is always in order, except:

(a) when the House is voting on another motion;

(b) when the previous question has been ordered and before the final vote;

(c) when a member entitled to the floor has not yielded for that purpose; or

(d) when business has not been transacted after the defeat of a motion to adjourn or recess.

(2) The vote by which a motion to adjourn or recess is carried or fails is not subject to a motion to reconsider.

H60-50. Motion to table. (1) A motion to table, if carried, has the effect of postponing action on the proposition to which it was applied until superseded by a motion to take from the table.

(2) The vote by which a motion to table is carried or fails cannot be reconsidered.

(3) A motion to table is not in order after the previous question has been ordered.

H60-60. Motion to postpone. A motion to postpone to a day certain may be amended and is debatable within narrow limits. The merits of the proposition that is the subject of the motion to postpone may not be debated.

H60-70. Motion to refer. When a motion is made to refer a subject to a standing committee or select committee, the question on the referral to a standing committee must be put first.

H60-80. Terms of debate on motion to refer or rerefer. (1) A motion to refer or rerefer is debatable within narrow limits. The merits of the proposition that is the subject of the motion may not be debated.

(2) A motion to refer or rerefer with instructions is fully debatable.

H60-100. Moving the previous question after a motion to table. (1) If a motion to table is made directly to a main motion, a motion for the previous question is not in order.

(2) If an amendment to a main motion is pending and a motion to table is made, the previous question may be called on the main motion, the pending amendment, and the motion to table the amendment.

H60-110. Standard motions. The following are standard motions:

(1) moving House bills or resolutions on second reading, "Mister/Madam Chairman, I move that when this committee does rise and report after having under consideration House Bill ___, that it recommend the same (do pass)/(do pass as amended)/(do not pass)."

(2) moving Senate bills and Senate amendments to House bills, "Mister/Madam Chairman, I move that when this committee does rise and report after having under consideration Senate Bill ___/Senate amendments to House Bill ___, that it recommend the same (be concurred in)/(be not concurred in)."

(3) Committee of the Whole floor amendments, "Mister/Madam Chairman, I move that House Bill ___/Senate Bill ___ be amended and request that the amendment be posted and deemed read."

(4) introducing visitors, "Mister/Madam Speaker/Chairman, I request that we be off the record and out of the journal."

(5) changing a vote, "Mister Speaker, I would like my vote changed on House Bill ___/Senate Bill ___ from (yes/no) to (yes/no). The question on the bill was ( ) with a vote tally of ____ for and ____ against."

(6) question another representative, "Mister/Madam Speaker/Chairman, would Representative ___ yield to a question?"

CHAPTER 7

Rules

H70-10. House rules. (1) The House may adopt, through a House resolution passed by a majority of its members, rules to govern its proceedings.

(2) After adoption of the House rules, two-thirds of the representatives voting must vote in favor of the question to amend the rules.

(3) The Speaker shall refer to the House Rules Committee all resolutions for House rules.

(4) The House Rules Committee shall report all resolutions for House rules within 1 legislative day of referral.

H70-20. Tenure of rules. Rules adopted by the House remain in effect until removed by House resolution or until a new House is elected and takes office.

H70-30. Suspension of rules. The House may suspend a House rule on a motion approved by not less than two-thirds of the members voting.

H70-40. Supplementary rules. Mason's Manual of Legislative Procedure (2000) governs House proceedings in all cases not covered by House rules.

H70-50. Interpreting rules. The Speaker shall interpret all questions on House rules, subject to appeal by any 15 representatives to the House Rules Committee. Unless the delay would cause legislation to fail to meet a scheduled deadline, the House Rules Committee may consider and report on the appeal on

the next legislative day. The decision of the House Rules Committee may be appealed to the House by any representative.

H70-60. Joint rules superseded. A House rule, insofar as it relates to the internal proceedings of the House, supersedes a joint rule.

Appendix

(1) Except as provided in subsections (2) through (4), legislation dealing with an enumerated subject must be referred to a standing committee as follows:

Agriculture: Agriculture; country of origin labeling for products; crops; crop insurance; farm subsidies; fuel produced from grain; grazing (other than state land leases); irrigation; livestock; poultry; and weed control.

Appropriations: Appropriations for the Legislature, general government, and bonding, including supplemental appropriations and the coal severance tax.

Business and Labor: Alcohol regulation other than taxation; associations; corporations; credit transactions; employment; financial institutions; gambling; insurance; labor unions; partnerships; private sector pensions and pension plans; professions and occupations other than the practice of law; salaries and wages; sales; secured transactions; securities regulation other than criminal provisions; sports other than hunting, fishing, and competition water sports; trade regulation; unemployment insurance; the Uniform Commercial Code; and workers' compensation.

Education: Higher education; home schools; K-12 education; religion in schools; school buildings and other structures; school libraries and university system libraries; school safety; school sports; school staff other than teachers; school transportation; students; teachers; and vocational education and training.

Ethics: Ethical standards applicable to members, officers, and employees of the House and ethical standards for lobbyists.

Federal Relations, Energy, and Telecommunications: Energy generation and transmission; Indian reservations; international relations; interstate cooperation and compacts, except those relating to law enforcement and water compacts; relations with the federal government; relations with sovereign Indian tribes; telecommunications; and utilities other than municipal utilities.

Fish, Wildlife, and Parks: Fish; fishing; hunting; outdoor recreation; parks other than those owned by local governments; relations with federal and state governments concerning fish and wildlife; Virginia City and Nevada City; water sports; and wildlife.

Human Services: Developmentally disabled persons; disabled persons; health; health and disability insurance; housing; human services; mental illness or incapacity; retirement other than pensions and pension plans; senior citizens; tobacco regulation other than taxation; and welfare.

Judiciary: Abortion; arbitration and mediation; civil procedure; constitutional amendments; consumer protection; contracts; corrections; courts; criminal law; criminal procedure; discrimination; evidence; family law; fees imposed by or relating to the court system; guaranty; human rights; impeachment; indemnity; judicial system; landlord and tenant; law enforcement; liability and immunity from liability; minors; practice of law;

privacy; property law; religion other than in schools; state law library; surety; torts; and trusts and estates.

Legislative Administration: Interim committees and matters related to legislative administration, staffing patterns, budgets, equipment, operations, and expenditures.

Local Government: Cities; consolidated governments; counties; libraries and parks owned or operated by local governments; local development; local government finance and revenue; local government officers and employees, local planning; special districts and other political subdivisions, except school districts; towns; and zoning.

Natural Resources: Board of Land Commissioners; dams, except for electrical generation; emission standards; environmental protection; extractive activities; fires and fire protection, except for a local government fire department; forests and forestry; hazardous waste; mines and mining; natural gas; natural resources; oil; pollution; solid waste; state land, except state parks; water and water rights; water bodies and water courses; and water compacts.

Rules: House rules; joint rules; legislative procedure; jurisdictions of committees; and rules of decorum.

State Administration: Administrative rules; arts and antiquities; ballots; elections; initiative and referendum procedures; military affairs; public contracts and procurement; public employee retirement systems; state buildings; state employees; state employee benefits; state equipment and property, except state lands and state parks; state government generally; state-owned libraries other than the state law library; veterans; and voting.

Taxation: Taxes other than fuel taxes.

Transportation: Fuel taxes; highways; railroads; roads; traffic regulation; transportation generally; vehicles; and vehicle safety.

(2) If a select committee is created to address a specific subject, then bills relating to that subject must be assigned to the select committee.

(3) (a) If legislation deals with more than one subject and the subjects are assigned to more than one committee, the bill must be assigned to a class one committee before a class two committee and to a class two committee before a class three committee. If there is a conflict of subjects between the same class of committees, then the bill must be assigned by the Speaker.

(b) If a bill contains substantive provisions dealing with policy and an appropriation, the bill must be referred to the committee with jurisdiction over the subject addressed in the policy provisions. If the bill is reported from the committee to which it was assigned, the Speaker may rerefer the bill to the Appropriations Committee. The referral must be announced to the House. The rereferral does not require action or approval by the House, but may be overturned by a majority vote.

(4) If a committee chair upon consultation with the vice chair determines that the committee cannot effectively process all bills assigned to the committee because of time limitations, the chair shall, in writing, request the Speaker to reassign specific bills. The Speaker shall reassign the bills to an appropriate committee. The reassignments must be announced to the House. The reassignments do not require action or approval by the House, but may be overturned by a three-fifths vote.

Adopted January 13, 2009

HOUSE RESOLUTION NO. 2

A RESOLUTION OF THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA ENCOURAGING AND COMMENDING EFFORTS BY MONTANA'S SCHOOL DISTRICTS TO DEVELOP AND IMPLEMENT BULLYING PREVENTION PROGRAMS.

WHEREAS, it has been well established that bullying is harmful to the mental health of both the victim and the bully; and

WHEREAS, the adverse effects on mental health can be extensive and long-lasting; and

WHEREAS, existing bullying prevention programs have resulted in a significant reduction in bullying.

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the members of this House of Representatives encourage and commend efforts by Montana's school districts to develop and implement research-based bullying prevention programs.

(2) That the Chief Clerk of the House send copies of this resolution to every school district in the state.

Adopted March 3, 2009

Senate Joint Resolutions

SENATE JOINT RESOLUTION NO. 1

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA ADOPTING THE JOINT LEGISLATIVE RULES.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the following Joint Rules be adopted:

JOINT RULES OF THE MONTANA SENATE AND HOUSE OF REPRESENTATIVES

CHAPTER 10

Administration

10-10. Time of meeting. Each house may order its time of meeting.

10-20. Legislative day — duration. (1) If either house is in session on a given day, that day constitutes a legislative day.

(2) A legislative day for a house ends either 24 hours after that house convenes for the day or at the time the house convenes for the following legislative day, whichever is earlier.

10-30. Schedules. The presiding officer of each house shall coordinate its schedule to accommodate the workload of the other house.

10-40. Adjournment — recess — meeting place. A house may not, without the consent of the other, adjourn or recess for more than 3 days or to any

place other than that in which the two houses are sitting (Montana Constitution, Art. V, Sec. 10(5)).

10-50. Access of press. Subject to the presiding officer's discretion on issues of decorum and order, an accredited press representative may not be prohibited from photographing, televising, or recording a legislative meeting or hearing.

10-60. Conflict of interest. A member who has a personal or private interest in any measure or bill proposed or pending before the Legislature shall disclose the fact to the house to which the member belongs. (section 2-2-112, MCA)

10-70. Telephone calls and internet access. (1) Long-distance telephone calls made by a member while the Legislature is in session or while the member is in travel status are considered official legislative business. These include but are not limited to calls made to constituencies, places of business, and family members. A member's access to the internet through a permissible server is a proper use of the state communication system if the use is for legislative business or is within the scope of permissible use of long-distance telephone calls.

(2) Session staff, including aides and interns, may use telephones for long-distance calls only if specifically authorized to do so by their legislative sponsor or supervisor. Sponsoring members and supervisors are accountable for use of state telephones and internet access by their staff, including aides and interns, and may not authorize others to use state phones or state servers to access the internet.

(3) Permanent staff of the Legislature shall comply with executive branch rules applying to the use of state telephones.

10-80. Joint employees. The presiding officers of each house, acting together, shall:

(1) hire joint employees; and

(2) review a dispute or complaint involving the competency or decorum of a joint employee, and dismiss, suspend, or retain the employee.

10-85. Harassment prohibited. (1) Legislators and legislative employees have the right to work free of harassment on account of race, color, sex, culture, social origin or condition, or religious ideas when performing services in furtherance of legislative responsibilities, whether the offender is an employer, employee, legislator, lobbyist, or member of the public.

(2) A violation of this policy must be reported to the party leader in the appropriate house if the offended party is a legislator or to the presiding officer if the offended party is the party leader. The presiding officer may refer the matter to the rules committee of the applicable house, and the offender is subject to discipline or censure, as appropriate.

(3) If the offended party is an employee of the house of representatives or the senate, the violation must be reported to the employee's supervisor or, if the offender is the supervisor for the house of representatives or the senate, the report should be made to the chief clerk of the house of representatives or to the secretary of the senate, as appropriate. If the offended party is a permanent legislative employee, the report should be made to the employee's supervisor or, if the offender is the supervisor, to the appropriate division director. If the offender is a division director, the report should be made to the presiding officer of the appropriate statutory committee.

(4) If the offended party is a supervisor for the house of representatives or the senate, the violation must be reported to the chief clerk of the house of representatives or to the secretary of the senate, as appropriate. If the offended party is a supervisor of permanent legislative employees, the violation must be reported to the appropriate division director. If the offender is a division director, the report should be made to the presiding officer of the appropriate statutory committee.

(5) The chief clerk or the secretary shall report the violation to the presiding officer. The presiding officer may refer the matter to the rules committee. If the offender is an employee or supervisor, the employee or supervisor is subject to discipline or discharge.

10-90. Legislative interns. Qualifications for legislative interns are specified in Title 5, chapter 6, MCA.

10-100. Legislative Services Division. (1) The staff of the Legislative Services Division shall serve both houses as required.

(2) Staff members shall:

(a) maintain personnel files for legislative employees; and

(b) prepare payrolls for certification and signature by the presiding officer and prepare a monthly financial report.

(3) The Legislative Services Division shall train journal clerks for both houses.

10-120. Engrossing and enrolling staff — duties. (1) The Legislative Services Division shall provide all engrossing and enrolling staff.

(2) The duties of the engrossing and enrolling staff are:

(a) to engross or enroll any bill or resolution delivered to them within 48 hours after it has been received, unless further time is granted in writing by the presiding officer of the house in which the bill originated; and

(b) to correct clerical errors, absent the objection of the sponsor of a bill, resolution, or amendment and the Secretary of the Senate or the Chief Clerk of the House of Representatives in any bill or amendment originating in the house by which the Clerk or Secretary is employed. The following kinds of clerical errors may be corrected:

(i) errors in spelling;

(ii) errors in numbering sections;

(iii) additions or deletions of underlining or lines through matter to be stricken;

(iv) material copied incorrectly from the Montana Code Annotated;

(v) errors in outlining or in internal references;

(vi) an error in a title caused by an amendment;

(vii) an error in a catchline caused by an amendment;

(viii) errors in references to the Montana Code Annotated; and

(ix) other nonconformities of an amendment with Bill Drafting Manual form.

(3) The engrossing and enrolling staff shall give notice in writing of the clerical correction to the Secretary of the Senate or the Chief Clerk of the House, who shall give notice to the sponsor of the bill or amendment. The form must be filed in the office of the amendments coordinator. A party receiving notice may register an objection to the correction by filing the objection in writing with the

Secretary of the Senate or the Chief Clerk of the House by the end of the next legislative day following receipt of the notice. The Senate or House shall vote on whether or not to uphold the objection. If the objection is upheld, the Secretary of the Senate or the Chief Clerk of the House shall notify the Executive Director of the Legislative Services Division, and the engrossing staff shall change the bill to remove the correction or corrections to which the objection was made.

(4) For the purposes of this rule, "engrossing" means placing amendments in a bill.

10-130. Bills. (1) A bill must be sponsored by a member of the Legislature.

(2) A bill must be:

(a) printed on paper with numbered lines;

(b) numbered at the foot of each page (except page 1);

(c) backed with a page of substantial material that includes spaces for notations for tracking the progress of the bill; and

(d) introduced. Introduction constitutes the first reading of the bill.

(3) In a section amending an existing statute, matter to be stricken out must be indicated with a line through the words or part to be deleted, and new matter must be underlined.

(4) Sections of the Montana Code Annotated repealed or amended in a bill must be stated in the title.

(5) Introduced bills must be reproduced on white paper and distributed to members.

(6) An introduced bill may not be withdrawn.

10-140. Voting. (1) A bill may not become a law except by vote of the constitutionally required majority of all the members present and voting in each house (Montana Constitution, Art. V, Sec. 11(1)). On final passage, the vote must be taken by ayes and noes and the names of those voting entered on the journal (Montana Constitution, Art. V, Sec. 11(2)).

(2) Any vote in one house on a bill proposing an amendment to The Constitution of the State of Montana under circumstances in which there exists the mathematical possibility of obtaining the necessary two-thirds vote of the Legislature will cause the bill to progress as though it had received the majority vote.

(3) This rule does not prevent a committee from tabling a bill proposing an amendment to The Constitution of the State of Montana.

10-150. Recording and publication of voting. (1) Every vote of each member on each substantive question in the Legislature, in any committee, or in Committee of the Whole must be recorded and made available to the public. On final passage of any bill or joint resolution, the vote must be taken by ayes and noes and the names entered on the journal.

(2) (a) Roll call votes must be taken by ayes and noes and the names entered on the journal on adopting an adverse committee report and on those motions made in Committee of the Whole to:

(i) amend;

(ii) recommend passage or nonpassage;

(iii) recommend concurrence or nonconcurrence; or

(iv) indefinitely postpone.

(b) The text of all proposed amendments in Committee of the Whole must be recorded.

(3) A roll call vote must be taken on nonsubstantive questions on the request of two members who may, on any vote, request that the ayes and noes be spread upon the journal.

(4) Roll call votes and other votes that are to be made public but are not specifically required to be spread upon the journal must be entered in the minutes of the appropriate committee or of the appropriate house (Montana Constitution, Art. V, Sec. 11(2)). A copy of the minutes must be filed with the Montana Historical Society. If electronically recorded minutes are kept for a committee, a written log conforming to section 2-3-212(2), MCA, must also be kept.

10-160. Journal. Each house shall:

(1) supply the Legislative Services Division with the contents of the daily journal to be stored on an automated system;

(2) examine its journal and order correction of any errors; and

(3) make a daily journal available to all members.

10-170. Journals — authentication — availability. (1) The journal of the Senate must be authenticated by the signature of the President and the journal of the House of Representatives must be authenticated by the signature of the Speaker.

(2) The Legislative Services Division shall make the completed journals available to the public (sections 5-11-201 through 5-11-203, MCA).

CHAPTER 30

Committees

30-10. Joint committee chair. Except as provided in Joint Rule 30-50 concerning the joint meetings of the Senate Finance and Claims Committee and the House Appropriations Committee, the chair of the Senate committee is the chair of all joint committees.

30-20. Voting in joint committees. (1) Except for Rules Committees and conference committees, a member of a joint committee votes individually and not by the house to which the committee member belongs.

(2) Because the Rules Committees and conference committees are joint meetings of separate committees, in those committees the committees from each house vote separately. A majority of each committee shall agree before any action may be taken, unless otherwise specified by individual house rules.

30-30. Conference committees. (1) If either house requests a conference committee and appoints a committee for the purpose of discussing an amendment on which the two houses cannot agree, the other house shall appoint a committee for the same purpose. The time and place of all conference committee meetings must be agreed upon by their chairs and announced from the rostrum. This announcement is in order at any time. Failure to make this announcement does not affect the validity of the legislation being considered. A conference committee meeting must be conducted as an open meeting, and minutes of the meeting must be kept.

(2) A conference committee, having conferred, shall report to the respective houses the result of its conference. A conference committee shall confine itself to consideration of the disputed amendment. The committee may recommend:

(a) acceptance or rejection of each disputed amendment in its entirety; or

(b) further amendment of the disputed amendment.

(3) If either house requests a free conference committee and the other house concurs, appointments must be made in the same manner as provided in subsection (1). A free conference committee may discuss and propose amendments to a bill in its entirety and is not confined to a particular amendment. However, a free conference committee is limited to consideration of amendments that are within the scope of the title of the introduced bill.

30-40. Conference committee — enrolling. A conference committee report must give clerical instructions for a corrected reference bill and for enrolling by referring to the reference bill version.

30-50. Committee consideration of appropriation bills. (1) All general appropriation bills must first be considered by a joint subcommittee composed of designated members of the Senate Finance and Claims Committee and the House Appropriations Committee, and then by each committee separately.

(2) Joint meetings of the House Appropriations Committee and the Senate Finance and Claims Committee must be held upon call of the chair of the House Appropriations Committee, who is chair of the joint committee.

(3) The committee chair of the Senate Finance and Claims Committee or of the House Appropriations Committee may be a voting member in the joint subcommittees if:

(a) either house has fewer members on the joint subcommittees;

(b) the chair represents the house with fewer members on the subcommittees; and

(c) the chair is present for the vote at the time that a question is called. A vote may not be held open to facilitate voting by a chair.

30-60. Estimation of revenue. The Revenue and Transportation Interim Committee shall introduce a House joint resolution for the purpose of estimating revenue that may be available for appropriation by the Legislature. (5-5-227, MCA)

30-70. Appointment of interim committees. As provided for in section 5-5-211(6), MCA, 50% of interim committees must be selected from the following legislative standing committees:

(1) Economic Affairs Interim Committee:

(a) Senate Agriculture, Livestock, and Irrigation Committee;

(b) Senate Business, Labor, and Economic Affairs Committee;

(c) Senate Finance and Claims Committee;

(d) House Agriculture Committee;

(e) House Business and Labor Committee;

(f) House Federal Relations, Energy, and Telecommunications Committee; and

(g) House Appropriations Committee;

(2) Education and Local Government Interim Committee:

(a) Senate Education and Cultural Resources Committee;

(b) Senate Local Government Committee;

(c) Senate Finance and Claims Committee;

(d) House Education Committee;

(e) House Local Government Committee; and

(f) House Appropriations Committee;

(3) Children, Families, Health, and Human Services Interim Committee:

(a) Senate Public Health, Welfare, and Safety Committee;

(b) Senate Finance and Claims Committee;

(c) House Human Services Committee; and

(d) House Appropriations Committee;

(4) Law and Justice Interim Committee:

(a) Senate Judiciary Committee;

(b) Senate Finance and Claims Committee;

(c) House Judiciary Committee; and

(d) House Appropriations Committee;

(5) Revenue and Transportation Interim Committee:

(a) Senate Taxation Committee;

(b) Senate Highways and Transportation Committee;

(c) Senate Finance and Claims Committee;

(d) House Taxation Committee;

(e) House Transportation Committee; and

(f) House Appropriations Committee;

(6) State Administration and Veterans' Affairs Interim Committee:

(a) Senate State Administration Committee;

(b) Senate Finance and Claims Committee;

(c) House State Administration Committee; and

(d) House Appropriations Committee;

(7) Energy and Telecommunications Interim Committee:

(a) Senate Energy Committee;

(b) House Federal Relations, Energy, and Telecommunications Committee;

(c) House Appropriations Committee; and

(d) Senate Finance and Claims Committee.

CHAPTER 40

Legislation

40-10. Amendment to state constitution. A bill must be used to propose an amendment to The Constitution of the State of Montana. The bill is not subject to the veto of the Governor (Montana Constitution, Art. VI, Sec. 10(1)).

40-20. Appropriation bills. (1) All appropriation bills must originate in the House of Representatives.

(2) Appropriation bills for the operation of the Legislature must be introduced by the chair of the House Appropriations Committee.

40-30. Effective dates. (1) Except as provided in subsections (2) through (4), a statute takes effect on October 1 following its passage and approval unless a different time is prescribed in the enacting legislation.

(2) A law appropriating public funds for a public purpose takes effect on July 1 following its passage and approval unless a different time is prescribed in the enacting legislation.

(3) A statute providing for the taxation or imposition of a fee on motor vehicles takes effect on the first day of January following its passage and approval unless a different time is prescribed in the enacting legislation.

(4) A joint resolution takes effect on its passage unless a different time is prescribed in the joint resolution (sections 1-2-201 and 1-2-202, MCA).

40-40. Bill requests and introduction — limits and procedures. (1) Prior to a regular session, a person entitled to serve in that session, referred to as a "member", or a legislative committee is entitled to request bill drafting services from the Legislative Services Division, subject to the following limits:

(a) Prior to 5 p.m. on December 5 preceding a regular session of the Legislature, a member may request an unlimited number of bills and resolutions to be prepared by the Legislative Services Division for introduction in the regular session.

(b) After 5 p.m. on December 5, a member may request no more than seven bills or resolutions to be prepared by the Legislative Services Division. At least five of the seven bills or resolutions must be requested before the regular session convenes.

(c) After December 5, a member, in the member's discretion, may grant to any other member any of the remaining bill or resolution requests the granting member has not used. A bill requested by an individual may not be transferred to another legislator but may be introduced by another legislator. The requestor must pick up the bill and sign a receipt indicating delivery of the bill and may either introduce the bill or give the bill to another legislator for introduction.

(d) These limitations on bill and resolution requests do not apply to:

(i) Code Commissioner bills;

(ii) a bill or resolution requested by a standing committee; and

(iii) a bill or resolution requested by a member at the request of a newly elected state official if so designated.

(2) (a) Except as provided in subsection (2)(b) or this subsection, the staff of the Legislative Services Division shall work on bill draft requests in the order received. After a member has requested the drafting of five bills, the sixth bill request and all subsequent bill requests of that member must receive a lower drafting priority than all other bills of members not in excess of five per member. The Speaker of the House, the minority leader of the House, the President of the Senate, and the minority leader of the Senate may each direct the staff of the Legislative Services Division to assign a higher priority to 10 draft requests. The staff of the Legislative Services Division shall assign a higher priority to any bill draft request when jointly directed by the President of the Senate, the minority leader of the Senate, the Speaker of the House, and the minority leader of the House.

(b) Except for bill draft requests described in subsection (1)(d)(iii), if a draft bill has not been received by the Legislative Services Division by November 15 for a bill by request of an agency or entity, the draft loses its priority under this rule.

(3) Bills and resolutions must be reviewed by the staff of the Legislative Services Division prior to introduction for proper format, style, and legal form.

The staff of the Legislative Services Division shall store bills on the automated bill drafting equipment and shall print and deliver them to the requesting members. The original bill back must be signed to indicate review by the Legislative Services Division. A bill may not be introduced unless it is so signed.

(4) (a) During a session, a bill may be introduced by endorsing it with the name of a member and presenting it to the Chief Clerk of the House of Representatives or the Secretary of the Senate. Bills or joint resolutions may be sponsored jointly by Senate and House members. A jointly sponsored bill must be introduced in the house in which the member whose name appears first on the bill is a member. The chief joint sponsor's name must appear immediately to the right of the first sponsor's name, and the chief sponsor may not be changed. Except as provided in subsection (4)(b), in each session of the Legislature, bills, joint resolutions, and simple resolutions must be numbered consecutively in separate series in the order of their receipt.

(b) The first 15 House bills may be reserved for preintroduced bills.

(5) (a) Any bill proposed by an interim or statutory legislative committee or introduced by request of an administrative or executive agency or department must be so indicated by placing after the names of the sponsors the phrase "By Request of the..... (Name of committee or agency)". The phrase may not be added to an introduced bill and may not be placed on a bill whose subject matter was requested by an agency or statutory or interim committee prior to the convening of the session. Unless requested by an individual member, a bill draft request submitted at the request of an agency must be submitted to, reviewed by, and requested by the appropriate interim or statutory committee. Except as provided in subsection (5)(b), an agency or committee bill request must be preintroduced or the request is canceled. Preintroduction must occur no later than 5 p.m. on December 15th prior to the convening of a regular legislative session. Preintroduction is accomplished when the Legislative Services Division receives a signed preintroduction form.

(b) The preintroduction requirement does not apply to an office held by an elected official during the official's first year in that office or to bills requested by a joint select or joint special committee appointed prior to the convening of the legislative session to address a specific issue.

(6) Bills may be preintroduced, numbered, and reproduced prior to a legislative session by the staff of the Legislative Services Division. Actual signatures of persons entitled to serve as members in the ensuing session may be obtained on a consent form from the Legislative Services Division and the sponsor's name printed on the bill. Additional sponsors may be added on motion of the chief sponsor at any time prior to a standing committee report on the bill. These names will be forwarded to the Legislative Services Division to be included on the face of the bill following standing committee approval.

40-50. Schedules for drafting requests and bill introduction. (1) The following schedule must be followed for submission of drafting requests.

	Request Deadline 5:00 P.M. Legislative Day
• General Bills and Resolutions	10
• Revenue Bills	17

• Committee Bills and Resolutions	36
• Committee Revenue Bills	62
• Committee Bills implementing provisions of a general appropriation act	75
• Interim study resolutions	75
• Appropriation Bills	No Deadline
• Resolutions to express confirmation of appointments	No Deadline
• Bills repealing or directing the amendment or adoption of administrative rules and joint resolutions advising or requesting the repeal, amendment, or adoption of administrative rules	No Deadline

(2) Bills and resolutions must be introduced within 2 legislative days after delivery. Failure to comply with the introduction deadline results in the bill draft being canceled.

40-60. Joint resolutions. (1) A joint resolution must be adopted by both houses and is not approved by the Governor. It may be used to:

(a) express desire, opinion, sympathy, or request of the Legislature;

(b) recognize relations with other governments, sister states, political subdivisions, or similar governmental entities;

(c) request, but not require, a legislative entity to conduct an interim study;

(d) adopt, amend, or repeal the joint rules;

(e) approve construction of a state building under section 18-2-102 or 20-25-302, MCA;

(f) deal with disasters and emergencies under Title 10, specifically as provided in sections 10-3-302(3), 10-3-303(3), 10-3-303(4), and 10-3-505(5), MCA;

(g) submit a negotiated settlement under section 39-31-305(3), MCA;

(h) declare or terminate an energy emergency under section 90-4-310, MCA;

(i) ratify or propose amendments to the United States Constitution;

(j) advise or request the repeal, amendment, or adoption of a rule in the Administrative Rules of Montana; or

(k) approve the organization of a new community college district under section 20-15-209, MCA.

(2) A joint resolution may not be used for purposes of congratulating or recognizing an individual or group achievement. Recognition of individual or group achievements is handled on special orders of the day.

(3) Except as otherwise provided in these rules or The Constitution of the State of Montana, a joint resolution is treated in all respects as a bill.

(4) A copy of every joint resolution must be transmitted after adoption to the Secretary of State by the Secretary of the Senate or the Chief Clerk of the House.

40-65. Appropriation required for bills requesting interim studies. A bill including a request for an interim study may not be transmitted to the Governor unless the bill contains an appropriation sufficient to conduct the

study. A fiscal note may be requested for a bill requesting an interim study if the appropriation does not appear to be sufficient.

40-70. Bills with same purpose — vetoes. (1) A bill may not be introduced or received in a house after that house, during that session, has finally rejected a bill designed to accomplish the same purpose, except with the approval of the Rules Committee of the house in which the bill is offered for introduction or reception.

(2) Failure to override a veto does not constitute final rejection.

40-80. Reproduction of full statute required. A statute may not be amended or its provisions extended by reference to its title only, but the statute section that is amended or extended must be reproduced or published at length.

40-90. Bills — original purpose. A law may not be passed except by bill. A bill may not be so altered or amended on its passage through either house as to change its original purpose (Montana Constitution, Art. V, Sec. 11(1)).

40-100. Fiscal notes. (1) As provided in Title 5, chapter 4, part 2, MCA, all bills reported out of a committee of the Legislature having a potential effect on the revenues, expenditures, or fiscal liability of the state, local governments, or public schools, except appropriation measures carrying specific dollar amounts, must include a fiscal note incorporating an estimate of the fiscal effect. The Legislative Services Division staff shall indicate at the top of each bill prepared for introduction that a fiscal note may be necessary under this rule. Fiscal notes must be requested by the presiding officer of either house, who, at the time of introduction or after adoption of substantive amendments to an introduced bill, shall determine the need for the note, based on the Legislative Services Division staff recommendation.

(2) The Legislative Services Division shall make available an electronic copy of any bill for which it has been determined a fiscal note may be necessary to the Budget Director immediately after the bill has been prepared for introduction and delivered to the requesting member. The Budget Director may proceed with the preparation of a fiscal note in anticipation of a subsequent formal request. A bill with financial implications for a local government or school district must comply with subsection (4).

(3) The Budget Director, in cooperation with the governmental entity or entities affected by the bill, is responsible for the preparation of the fiscal note. Except as provided in subsection (4), the Budget Director shall return the fiscal note within 6 days unless further time is granted by the presiding officer or committee making the request, based upon a written statement from the Budget Director that additional time is necessary to properly prepare the note.

(4) (a) A bill that may require a local government or school district to perform an activity or provide a service or facility that requires the direct expenditure of additional funds without a specific means to finance the activity, service, or facility in violation of section 1-2-112 or 1-2-113, MCA, must be accompanied, at the time that the bill is presented for introduction, by an estimate of all direct and indirect fiscal impacts on the local government or school district. The estimate of the fiscal impacts must be prepared by the Budget Director in cooperation with a local government or school district affected by the bill.

(b) The Budget Director has 10 days to prepare the estimate. Upon completion of the estimate, the Budget Director shall submit it to the presiding officer and the chief sponsor of the bill.

(5) A completed fiscal note must be submitted by the Budget Director to the presiding officer who requested it. The presiding officer shall notify the bill's

chief sponsor of the completed fiscal note and request the chief sponsor's signature. The chief sponsor has 1 legislative day after delivery to review the fiscal note and to discuss the findings with the Budget Director, if necessary. After the legislative day has elapsed, all fiscal notes must be reproduced and placed on the members' desks, either with or without the chief sponsor's signature.

(6) A fiscal note must, if possible, show in dollar amounts:

(a) the estimated increase or decrease in revenues or expenditures;

(b) costs that may be absorbed without additional funds; and

(c) long-range financial implications.

(7) The fiscal note may not include any comment or opinion relative to merits of the bill. However, technical or mechanical defects in the bill may be noted.

(8) A fiscal note also may be requested, through the presiding officer, on a bill and on an amended bill by:

(a) a committee considering the bill;

(b) a majority of the members of the house in which the bill is to be considered, at the time of second reading; or

(c) the chief sponsor.

(9) The Budget Director shall make available on request to any member of the Legislature all background information used in developing a fiscal note.

(10) If a bill requires a fiscal note, the bill may not be reported from a committee for second reading unless the bill is accompanied by the fiscal note or, if required, an updated fiscal note reflecting committee action.

40-110. Sponsor's fiscal note. (1) If a sponsor elects to request the preparation of a sponsor's fiscal note pursuant to section 5-4-204, MCA, the sponsor shall make the election as provided and return the completed sponsor's fiscal note to the presiding officer within 4 days of the election.

(2) The presiding officer may grant additional time to the sponsor for preparation of the sponsor's fiscal note.

(3) Upon receipt of the completed sponsor's fiscal note, the presiding officer shall refer it to the committee hearing the bill. If the bill is printed, the note must be identified as a sponsor's fiscal note, reproduced, and placed on the members' desks.

(4) The Legislative Services Division shall provide forms for preparation of sponsors' fiscal notes and shall print the completed sponsors' fiscal notes on a different color paper than the fiscal notes prepared by the Budget Director.

40-120. Substitute bills. (1) A committee may recommend that every clause in a bill be changed and that entirely new material be substituted so long as the new material is relevant to the title and subject of the original bill. The substitute bill is considered an amendment and not a new bill.

(2) The proper form of reporting a substitute bill by a committee is to propose amendments to strike out all of the material following the enacting clause, to substitute the new material, and to recommend any necessary changes in the title of the bill.

(3) If a committee report is adopted that recommends a substitute for a bill originating in the other house, the substitute bill must be printed and reproduced.

40-130. Reading of bills. Prior to passage, a bill, other than a bill requested by a joint select or joint special committee as provided in 40-40(5)(b), must be read three times in the house in which it is under consideration. It may be read either by title or by summary of title. Introduction constitutes the first reading of the bill.

40-140. Second reading — bill reproduction. (1) If the majority of a house adopts a recommendation for the passage of a bill originating in that house after the bill has been returned from a committee with amendments, the bill must be reproduced on yellow paper with all amendments incorporated into the copies.

(2) If a bill has been returned from a committee without amendments, only the first sheet must be reproduced on yellow paper, and the remainder of the text may be incorporated by reference to the preceding version of the entire bill.

(3) A bill requested by and heard by a joint select or joint special committee, as provided in 40-40(5)(b), may be referred directly to second reading. If the bill is passed by the house of origin, the bill must be transmitted to the other house, and if the bill was not amended, it may be placed on second reading without the need for referral to a committee.

40-150. Engrossing. (1) When a bill has been reported favorably by Committee of the Whole of the house in which it originated and the report has been adopted, the bill must be engrossed if the bill is amended. Committee of the Whole amendments must be included in the engrossed bill. If the bill is not amended, the bill must be sent to printing. The bill must be placed on the calendar for third reading on the legislative day after receipt.

(2) Copies of the engrossed bill to be distributed to members are reproduced on blue paper. If a bill is unamended by the Committee of the Whole and contains no clerical errors, it is not required to be reprinted. Only the first sheet must be reproduced on blue paper, with the remainder of the text incorporated by reference to the preceding version of the entire bill.

(3) If a bill is amended by a standing committee in the second house, the amendments must be included in a tan-colored bill and distributed in the second house for second reading consideration. If the bill is amended in Committee of the Whole, the amendments must be included in a salmon-colored reference bill and distributed in the second house for third reading. If the bill passes on third reading, copies of the reference bill must be distributed in the original house. The original house may request from the second house a specified number of copies of the amendments to be printed.

40-160. Enrolling. (1) When a bill has passed both houses, it must be enrolled. An original and two duplicate printed copies of the bill must be enrolled, free from all errors, with a margin of two inches at the top and one inch on each side. In sections amending existing statutes, new matter must be underlined and deleted matter must be shown as stricken.

(2) When the enrolling is completed, the bill must be examined by the sponsor.

(3) The correctly enrolled bill must be delivered to the presiding officer of the house in which the bill originated. The presiding officer shall sign the original and two copies of each bill not later than the next legislative day after it has been reported correctly enrolled, unless the bill is delivered on the last legislative day, in which case the presiding officer shall sign it that day. The fact of signing must be announced by the presiding officer and entered upon the journal no later than the next legislative day. At any time after the report of a bill correctly

enrolled and before the signing, if a member signifies a desire to examine the bill, the member must be permitted to do so. The bill then must be transmitted to the other house where the same procedure must be followed.

(4) A bill that has passed both houses of the Legislature by the 90th day may be:

(a) enrolled;

(b) clerically corrected by the presiding officers, if necessary;

(c) signed by the presiding officers; and

(d) delivered to the Governor or, in the case of a bill proposing a referendum, to the Secretary of State, not later than 5 working days after the 90th legislative day.

(5) All journal entries authorized under this rule must be entered on the journal for the 90th day.

(6) The original and two copies signed by the presiding officer of each house must be presented to the Governor or the Secretary of State, as applicable, in return for a receipt. A report then must be made to the house of the day of the presentation, which must be entered on the journal.

(7) The original must be filed with the Secretary of State. Signed copies with chapter numbers assigned pursuant to section 5-11-204, MCA, must be filed with the Clerk of the Supreme Court and the Legislative Services Division.

40-170. Amendment by second house. (1) Amendments to a bill by the second house may not be further amended by the house in which the bill originated, but must be either accepted or rejected. A bill amended by the second house when the effect of the combined amendments is to return the bill to the form that the bill passed the house in which the bill originated is not considered to have been amended and need not be returned to the house of origin for acceptance or rejection of the amendments. If the amendments are rejected, a conference committee may be requested by the house in which the bill originated. If the amendments are accepted and the bill is of a type requiring more than a majority vote for passage, the bill again must be placed on third reading in the house of origin.

(2) The vote on third reading after concurrence in amendments is the vote of the house of origin that must be used to determine if the required number of votes has been cast.

40-180. Final action on a bill. (1) When a bill being heard by the second house has received its third reading or has been rejected, the second house shall transmit it as soon as possible to the original house with notice of the second house's action.

(2) A bill that reduces revenue and that contains a contingent voidness provision may not be transmitted to the Governor unless there is an identified corresponding reduction in an appropriation contained in the general appropriations act.

40-190. Transmittal of bills between houses. (1) Each house shall transmit to the other with any bill all relevant papers.

(2) When a House bill is transmitted to the Senate, the Secretary of the Senate shall give a dated receipt for the bill to the Chief Clerk of the House. When a Senate bill is transmitted to the House of Representatives, the Chief Clerk of the House shall give a dated receipt to the Secretary of the Senate.

(3) Transmitted bills must be referred to committee and scheduled for hearing.

40-200. Transmittal deadlines. (1) (a) A bill or amendment transmitted after the deadline established in this subsection (1) may be considered by the receiving house only upon approval of two-thirds of its members present and voting. If the receiving house does not so vote, the bill or amendment must be held pending in the house to which it was transmitted.

(b) (i) A bill, except for an appropriation bill, a revenue bill, an interim study resolution, or amendments considered by joint committee, must be transmitted from one house to the other on or before the 45th legislative day.

(ii) Amendments, except to appropriation bills, bills implementing the general appropriations bill, the revenue estimating resolution, interim study resolutions, and revenue bills, must be transmitted from one house to the other on or before the 73rd legislative day.

(c) (i) Revenue bills must be transmitted to the other house on or before the 71st legislative day.

(ii) Amendments to revenue bills, received from the other house, must be transmitted to the house of origin on or before the 82nd legislative day.

(iii) A revenue bill is one that either increases or decreases revenue.

(d) (i) Appropriation bills and any bill implementing provisions of a general appropriation bill must be transmitted to the Senate on or before the 67th legislative day.

(ii) Senate amendments to appropriation bills must be transmitted by the Senate to the House on or before the 80th legislative day.

(2) (a) A joint resolution introduced for the purpose of estimating revenue available for appropriation by the Legislature must be transmitted to the Senate no later than the 60th legislative day.

(b) Amendments to the revenue estimating resolution must be transmitted to the House no later than the 82nd legislative day.

(3) Bills repealing or directing the amendment or adoption of administrative rules and joint resolutions advising or requesting the repeal, amendment, or adoption of administrative rules may be transmitted at any time during a session.

(4) Interim study resolutions must be transmitted from one house to the other on or before the 85th legislative day.

40-210. Governor's veto. (1) Except as provided in 40-65 and 40-180, each bill passed by the Legislature must be submitted to the Governor for the Governor's signature. This does not apply to:

(a) bills proposing amendments to The Constitution of the State of Montana;

(b) bills ratifying proposed amendments to the United States Constitution;

(c) resolutions; and

(d) referendum measures of the Legislature.

(2) If the Governor does not sign or veto the bill within 10 days after its delivery, the bill becomes law.

(3) The Governor shall return a vetoed bill to the Legislature with a statement of reasons for the veto.

(4) If after receipt of a veto message, two-thirds of the members of each house present approve the bill, it becomes law.

(5) If the Legislature is not in session when the Governor vetoes a bill, the Governor shall return the bill with reasons for the veto to the Legislature as provided by law. The Legislature may be polled on a bill that it approved by two-thirds of the members present or it may be reconvened to reconsider any bill so vetoed (Montana Constitution, Art. VI, Sec. 10).

(6) The Governor may veto items in appropriation bills, and in these instances the procedure must be the same as upon veto of an entire bill (Montana Constitution, Art. VI, Sec. 10).

40-220. Response to Governor's veto. (1) When the presiding officer receives a veto message, the presiding officer shall read it to the members over the rostrum. After the reading, a member may move that the Governor's veto be overridden.

(2) A vote on the motion is determined by roll call. If two-thirds of the members present vote "aye", the veto is overridden. If two-thirds of the members present do not vote "aye", the veto is sustained.

40-230. Governor's recommendations for amendment. (1) The Governor may return any bill to the Legislature with recommendations for amendment. The Governor's recommendations for amendment must be considered first by the house in which the bill originated.

(2) If the Legislature passes the bill in accordance with the Governor's recommendations, it shall return the bill to the Governor for reconsideration. The Governor may not return a bill to the Legislature a second time for amendment.

(3) If the Governor returns a bill to the originating house with recommendations for amendment, the house shall reconsider the bill under its rules relating to amendments offered in Committee of the Whole.

(4) The bill then is subject to the following procedures:

(a) The originating house shall transmit to the second house, for consideration under its rules relating to amendments in Committee of the Whole, the bill and the originating house's approval or disapproval of the Governor's recommendations.

(b) If both houses approve the Governor's recommendations, the bill must be returned to the Governor for reconsideration.

(c) If both houses disapprove the Governor's recommendations, the bill must be returned to the Governor for reconsideration.

(d) If one house disapproves the Governor's recommendations and the other house approves, then either house may request a conference committee, which may be a free conference committee.

(i) If both houses adopt a conference committee report, the bill in accordance with the report must be returned to the Governor for reconsideration.

(ii) If a conference committee fails to reach agreement or if its report is not adopted by both houses, the Governor's recommendations must be considered not approved and the bill must be returned to the Governor for further consideration.

CHAPTER 60

Rules

60-10. Suspension of joint rule — change in rules. (1) A joint rule may be repealed or amended only with the concurrence of both houses, under the procedures adopted by each house for the repeal or amendment of its own rules.

(2) A joint rule governing the procedure for handling bills may be temporarily suspended by the consent of two-thirds of the members of either house, insofar as it applies to the house suspending it.

(3) Any Rules Committee report recommending a change in the joint rules must be referred to the other house. Any new rule or any change in the rules of either house must be transmitted to the other house for informational purposes.

(4) Upon adoption of any change, the Secretary of the Senate and the Chief Clerk of the House of Representatives shall provide the office of the Legislative Services Division:

(a) one copy of all motions or resolutions amending Senate, House, or joint rules; and

(b) copies of all minutes and reports of the Rules Committees.

60-20. Reference to Mason's Manual. Mason's Manual of Legislative Procedure (2000) governs the proceedings of the Senate and the House of Representatives in all cases not covered by these rules.

60-30. Publication and distribution of joint rules. (1) The Legislative Services Division shall codify and publish in one volume:

(a) the rules of the Senate;

(b) the rules of the House of Representatives; and

(c) the joint rules of the Senate and the House of Representatives.

(2) After the rules have been published, the Legislative Services Division shall distribute copies as directed by the Senate and the House of Representatives.

60-40. Tenure of joint rules. The joint rules remain in effect until removed by a joint resolution or until a new Legislature is elected and takes office.

Adopted January 26, 2009

SENATE JOINT RESOLUTION NO. 2

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY TO REEXAMINE THE COMMUNITY COLLEGE ESTABLISHMENT PROCESS; AND REQUIRING THAT THE FINAL RESULTS OF THE STUDY BE REPORTED TO THE 62ND LEGISLATURE.

WHEREAS, the community college establishment process is provided for in Title 20, chapter 15, part 2, MCA; and

WHEREAS, during the 2007-2008 interim this process was used for the first time; and

WHEREAS, this first test of the community college establishment process raised questions as to what entity is best suited to bear certain responsibilities and costs of the process.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate interim committee, pursuant to section 5-5-217, MCA, or direct sufficient staff resources to:

(1) conduct a comprehensive review of the community college establishment process;

(2) identify the entities best suited to take responsibility for receiving voter petitions, order the election of trustees, call for the nominations of trustee candidates, give election notices, conduct elections, certify election results, and take statutory steps to create a new community college district; and

(3) identify the costs incurred in fulfilling these responsibilities and how those costs might be funded.

BE IT FURTHER RESOLVED, that the Office of the Commissioner of Higher Education, the Montana Secretary of State, and the former participants in the Bitterroot Valley Community College establishment process be adequately consulted during every facet of this study.

BE IT FURTHER RESOLVED, that if the study is assigned to staff, any findings or conclusions be presented to and reviewed by an appropriate committee designated by the Legislative Council.

BE IT FURTHER RESOLVED, that all aspects of the study, including presentation and review requirements, be concluded prior to September 15, 2010.

BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions, comments, or recommendations of the appropriate committee, be reported to the 62nd Legislature.

Adopted March 10, 2009

SENATE JOINT RESOLUTION NO. 3

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY TO CONSIDER THE POSSIBLE ESTABLISHMENT OF A MONTANA SCHOLARSHIP PROGRAM; AND REQUIRING THAT THE FINAL RESULTS OF THE STUDY BE REPORTED TO THE 62ND LEGISLATURE.

WHEREAS, scholarship programs should provide financial incentives as a reward for good academic performance, promote academic success by requiring completion of a rigorous high school core curriculum, and keep Montana's best and brightest in the state to pursue postsecondary education opportunities; and

WHEREAS, only one in two Montana high school graduates go on to college; and

WHEREAS, less than one in five higher education students get a 4-year degree from the Montana University System in 4 years; and

WHEREAS, according to the National Association of State Student Grant and Aid Programs, Montana ranks only 38th in terms of state funding per student; and

WHEREAS, Montana's current student financial aid portfolio is loan-driven, but student access to higher education comes more from grants than loans; and

WHEREAS, the affordability and accessibility of higher education is emphasized in the first "shared policy goal" agreed to by the Commissioner of Higher Education, the Montana Board of Regents, and the Postsecondary Education Policy and Budget Interim Subcommittee of the Montana Legislature.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate interim committee, pursuant to section 5-5-217, MCA, or direct sufficient staff resources to:

(1) prepare a comprehensive inventory and description of the financial assistance programs available to Montana students; and

(2) study the possibility of consolidating the state funds that are currently dedicated to Baker Grants, Montana Higher Education Grants, Supplemental Educational Opportunity Grants, Perkins Loans, Governor's Postsecondary Scholarships, and Montana University System Honors Scholarships into one centrally administered comprehensive Montana Scholarship Program.

BE IT FURTHER RESOLVED, that this study also consider if and how:

(1) student financial aid that is currently derived from waivers and university foundations might also support a Montana Scholarship Program; and

(2) nontraditional students, including displaced workers, trying to reenter the educational system might also use a Montana Scholarship Program; and

(3) the Board of Regents, Commissioner of Higher Education, Montana University System, Superintendent of Public Instruction, Board of Public Education, and members of the public can be fully engaged in this study.

BE IT FURTHER RESOLVED, that if the study is assigned to staff, any findings or conclusions be presented to and reviewed by an appropriate committee designated by the Legislative Council.

BE IT FURTHER RESOLVED, that all aspects of the study, including presentation and review requirements, be concluded prior to September 15, 2010.

BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions, comments, or recommendations of the appropriate committee, be reported to the 62nd Legislature.

Adopted April 21, 2009

SENATE JOINT RESOLUTION NO. 5

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING CONTINUED MONITORING OF EFFORTS TO MAKE HEALTH CARE COSTS MORE UNDERSTANDABLE.

WHEREAS, the process of establishing prices for health care procedures involves multiple and complex factors; and

WHEREAS, the costs to Montanans for the same procedure may vary widely depending on whether a person has insurance coverage and on where and by whom the procedure is performed; and

WHEREAS, even for Montanans with insurance, the out-of-pocket costs for the same procedures may vary depending on the parameters of an individual's insurance policy; and

WHEREAS, Montanans will be able to make better-informed decisions that best meet their personal needs if they are able to obtain information about health care procedures and costs by region, facility, and provider; and

WHEREAS, the Children, Families, Health, and Human Services Interim Committee discussed this issue of transparency in health care pricing with representatives of health care facilities, providers, and insurers during the 2007-08 interim; and

WHEREAS, MHA - An Association of Montana Health Care Providers is in the process of developing a website, independent of legislative activities, that is designed to make health care pricing information available by facility, region, and provider; and

WHEREAS, the 2007-08 Children, Families, Health, and Human Services Interim Committee believed the MHA's independent website held promise for providing much-needed information to Montanans and that monitoring of this and other pricing transparency efforts should continue in the 2009-10 interim.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That MHA and representatives of health care facilities, providers, and insurers provide updates as needed to the Children, Families, Health, and Human Services Interim Committee during the 2009-10 interim about the MHA website and other transparency-related efforts.

BE IT FURTHER RESOLVED, that the Committee determine whether the MHA website is meeting the needs of Montanans and whether additional steps should be taken to improve a consumer's ability to obtain understandable information about health care procedures and prices.

Adopted March 16, 2009

SENATE JOINT RESOLUTION NO. 6

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING 24-HOUR COMMERCIAL SERVICE AT THE PORT OF ENTRY-TURNER.

WHEREAS, there is only one 24-hour commercial entry on the border between the State of Montana and the Canadian Province of Saskatchewan; and

WHEREAS, there is an escalating amount of commercial traffic serving the oil sands region in Canada and newly developed oil fields in the Bakken formation in Montana, as well as traffic serving other commercial opportunities in Saskatchewan, Alberta, and Manitoba; and

WHEREAS, increases in commercial traffic also include manufacturers and suppliers located in the midwestern, southern, and western United States hauling freight to Saskatchewan, Alberta, and Manitoba; and

WHEREAS, an organization promoting rural development in Saskatchewan and Montana has asked the province's government to encourage the use of

Saskatchewan's Highway 37 from the Port of Entry-Turner/Port of Climax and Highway 4 north of Swift Current to Saskatoon as an alternate north-south transportation corridor from the United States; and

WHEREAS, Saskatchewan Highway 37 connects to Montana Secondary Highway 241 at the Port of Entry-Turner, which serves as an arterial connector to U.S. Highway 2 at Harlem, with U.S. Highway 2 connecting to Interstate 15 at Shelby, and Montana Secondary Highway 241 also leads to Montana Highway 66 at Fort Belknap, which connects to U.S. Highway 191 and eventually to Interstate 90 at Billings; and

WHEREAS, the practicality of developing this trade corridor is contingent on a 24-hour border crossing facility at the Port of Entry-Turner; and

WHEREAS, 24-hour service at the Port of Entry-Turner and the development of an alternate trade corridor between Montana and Saskatchewan would remove a trade and travel barrier for development of oil and gas, coal, bioenergy, wind, agriculture, tourism, and other industries that require efficient access to markets, thus encouraging new investment and thereby supporting the economic development vision for Montana by promoting investment in central and eastern Montana, including five of the state's Indian reservations; and

WHEREAS, Montana State University-Northern in Havre could see a significant influx of students from southwestern Saskatchewan; and

WHEREAS, a central and inexpensive upgraded commercial port at the Port of Entry-Turner would enhance security surveillance of the border both east and west of this location.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the House of Representatives and the Senate of the State of Montana urge Governor Schweitzer and Montana's Congressional Delegation, as well as the Governor's Office of Economic Development and the Montana Department of Transportation, to work with the U.S. Department of Homeland Security and the Federal Highway Administration to develop 24-hour commercial service at the Port of Entry-Turner and to fund the necessary expansion of infrastructure that would make that service possible.

BE IT FURTHER RESOLVED, that the Montana Secretary of State forward copies of this resolution to the President of the United States, the Prime Minister of Canada, the Governor of Montana, the Premier of Saskatchewan, Montana's Congressional Delegation, the Canadian Minister of Citizenship and Immigration, the Canadian Minister of Public Safety and Emergency Preparedness, the Director of the U.S. Department of Homeland Security, the Director of the U.S. Federal Highway Administration, the Saskatchewan Minister of International and Intergovernmental Relations, the Saskatchewan Minister of Enterprise and Innovation, the Director of the Montana Department of Transportation, the Director of the Montana Department of Commerce, the Chief Development Officer of the Governor's Office of Economic Development, the Speaker of the Legislative Assembly of Saskatchewan, the Saskatchewan Minister of Highways and Infrastructure, the Mayors of the Village of Climax, Town of Eastend, Town of Shaunavon, Village of Frontier, and Town of Gull Lake, and the Reeve of the Rural Municipality of Frontier.

Adopted March 16, 2009

SENATE JOINT RESOLUTION NO. 8

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE BOARD OF REGENTS, COMMISSIONER OF HIGHER EDUCATION, SUPERINTENDENT OF PUBLIC INSTRUCTION, AND BOARD OF PUBLIC EDUCATION TO WORK WITH THE EDUCATION AND LOCAL GOVERNMENT INTERIM COMMITTEE ON DEVELOPING K-20 SHARED POLICY GOALS AND ACCOUNTABILITY MEASURES THAT CAN BE USED BY LEGISLATORS, THE EDUCATION COMMUNITY, AND THE PUBLIC TO EVALUATE PROGRESS TOWARD THE GOALS AND BY THE MONTANA LEGISLATURE TO GUIDE ITS FUNDING DECISIONS.

WHEREAS, Article VIII, section 12, of the Montana Constitution vests the Legislature with the responsibility to ensure strict accountability of all revenue received and money spent by the state, counties, cities, and all other local governmental entities; and

WHEREAS, Article X, section 9, of the Montana Constitution vests the Board of Regents with full power, responsibility, and authority to supervise, manage, and control the Montana University System, and requires the appointment of a Commissioner of Higher Education who serves as the chief executive officer of the Montana University System; and

WHEREAS, Article X, section 9, of the Montana Constitution states that the Board of Public Education shall exercise general supervision over the public school system; and

WHEREAS, section 20-3-106, MCA, grants supervision of certain aspects of the public schools and districts of the state to the Superintendent of Public Instruction; and

WHEREAS, Article X, section 8, of the Montana Constitution states that the elected board of trustees in each school district shall exercise supervision and control of schools in the district; and

WHEREAS, agencies of the education community have increasingly, and to positive effect, shared leadership between themselves and with their counterpart Education and Local Government Interim Committee; and

WHEREAS, agreement upon shared policy goals and accountability measures for the entire K-20 public education system, signed by the Board of Regents, Commissioner of Higher Education, Superintendent of Public Instruction, Board of Public Education, and Education and Local Government Interim Committee, would represent an important advance in interagency cooperation and the quality of education policymaking; and

WHEREAS, shared policy goals must be systematically tied to accountability measures in order to ensure timely and effective implementation of policy.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That shared policy goals and corresponding accountability measures be identified and developed by the Board of Regents, Commissioner of Higher Education, Superintendent of Public Instruction, and Board of Public Education in consultation with the Education and Local Government Interim Committee.

(2) That the goals and measures may include but are not limited to K-20 efforts to:

(a) improve the affordability and availability of distance learning;

(b) reduce the remediation rate of students entering postsecondary education; and

(c) improve the dual enrollment process.

Adopted March 12, 2009

SENATE JOINT RESOLUTION NO. 9

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY OF THE STUDENT FINANCIAL ASSISTANCE SYSTEM IN MONTANA AND REQUIRING THAT THE FINAL RESULTS OF THE STUDY BE REPORTED TO THE 62ND LEGISLATURE.

WHEREAS, problems in the national guaranteed student loan secondary market relative to the auction-rate bond market have impacted the Montana Higher Education Student Assistance Corporation, a private, nonprofit corporation providing a secondary market for student loans in Montana, and its affiliate the Student Assistance Foundation and have raised concerns about the availability of loan funds for Montana students; and

WHEREAS, the Montana Guaranteed Student Loan Program is a state agency under the management of the Montana Board of Regents through the staff of the Commissioner of Higher Education; and

WHEREAS, institutions of the Montana University System have also taken part in the Federal Direct Student Loan Program; and

WHEREAS, recent federal legislation is expected to provide relief to guaranteed student loan lenders for the 2008-2009 academic year and additional changes in federal student loan programs are anticipated; and

WHEREAS, the availability of student loans in Montana has a major impact on the entire student assistance and financial aid program for Montana resident students, which is funded with $23.8 million of general fund money in the 2009 biennium; and

WHEREAS, the Montana Higher Education Student Assistance Corporation, the Montana Family Education Savings Program Oversight Committee, the Student Loan Advisory Council, and the Governor's Postsecondary Scholarship Advisory Council each work with and advise the Board of Regents on different aspects of student financial assistance for Montana residents.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate the Legislative Finance Committee, pursuant to section 5-5-217, MCA, or to direct sufficient staff resources, to study and make recommendations upon:

(1) the cumulative availability and amount of all sources of financial aid to Montana students;

(2) the student loan system in Montana with a specific focus on an analysis of the Guaranteed Student Loan Program, particularly its costs and benefits and how the program is working in Montana, along with a comparative analysis of the Federal Direct Student Loan Program, particularly its costs and benefits and how that program could work in Montana;

(3) the student assistance financial aid programs in Montana with a specific focus on the availability and utilization of financial aid to Montana students and on the analysis of loan default rates and options for identifying manageable levels of student debt load for Montana resident students in order to identify appropriate funding benchmarks for student financial assistance and tuition; and

(4) the policy options related to state funding of need-based financial aid versus merit-based financial aid for Montana resident students; and

(5) the governance structure and efficiency of the boards, committees, and councils that make recommendations to and advise the Board of Regents on student financial assistance programs with a focus on improving efficiencies and effectiveness in the governance models to enhance access to financial resources by Montana resident students.

BE IT FURTHER RESOLVED, that this study and its recommendations be contained in a report to be presented to and reviewed by the Legislative Finance Committee prior to September 15, 2010, that includes:

(1) policy options for the Legislature to consider, including whether the state should continue with the Guaranteed Student Loan Program and, if so, whether any changes are recommended to that program including additional governmental oversight relative to the Montana Higher Education Student Assistance Corporation or whether the state should change to the Federal Direct Student Loan Program, together with an outline of the process required in order to effectuate the change;

(2) an assessment of the change to the Federal Direct Student Loan Program on primary and secondary student loan providers in Montana, particularly the Montana Higher Education Student Assistance Corporation; and

(3) recommendations on a streamlined governance structure of student financial assistance programs that enhance access to financial resources by Montana resident students.

BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions, comments, or recommendations of the committee, be reported to the 62nd Legislature.

Adopted April 6, 2009

SENATE JOINT RESOLUTION NO. 13

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA COMMEMORATING THE CENTENNIAL OF GLACIER NATIONAL PARK.

WHEREAS, on May 11, 1910, President William Howard Taft signed into law Senate Bill S.5648 establishing Glacier National Park as the country's 10th national park for the benefit and enjoyment of the people of the United States; and

WHEREAS, Glacier National Park is widely recognized as a crown jewel of the National Park System, providing for the perpetual protection of more than 1 million acres of public lands in Montana, which are enjoyed by more than 2 million visitors annually; and

WHEREAS, members of the Blackfeet Tribe and the Confederated Salish and Kootenai Tribes maintain spiritual, traditional, and cultural relationships

with the landscape of Glacier National Park that date back thousands of years; and

WHEREAS, in 1932, acts of the United States Congress and the Canadian Parliament designated Glacier National Park and Waterton Lakes National Park the first International Peace Park to permanently commemorate the long-existing relationship of peace and goodwill between the people and governments of the United States and Canada; and

WHEREAS, Glacier National Park supports the unique Montana way of life, providing access to enjoy and use some of the most spectacular scenery, land, and water anywhere on earth; and

WHEREAS, Glacier National Park is a driver of Montana's economy, providing significant economic benefits through nonresident expenditures, providing good-paying jobs, attracting investment dollars, and providing an unmatched quality of life; and

WHEREAS, Glacier National Park is the headwaters of North America, setting the gold standard for clean water and providing downstream benefits for water users in Montana and beyond; and

WHEREAS, Glacier National Park and adjacent protected areas form the core of the greater crown of the continent ecosystem, the most intact ecosystem in the continental United States; and

WHEREAS, Glacier National Park provides essential habitat for native wildlife species cherished by generations of Montanans, including the Montana state animal, the grizzly bear, and the Montana state fish, the blackspotted cutthroat trout.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the Senate and House of Representatives:

(a) applaud the extraordinary vision of individuals, including George Bird Grinnell, whose advocacy resulted in the creation of Glacier National Park;

(b) recognize the awe-inspiring beauty of Glacier National Park's majestic peaks, glaciers, waters, and vistas;

(c) honor the longstanding, special relationship of the Blackfeet, Salish, and Kootenai Tribes with the landscape of Glacier National Park;

(d) celebrate the 100th anniversary of the creation of Glacier National Park;

(e) support continued good relations of peace and friendship with our Canadian neighbors through measures by both countries' governments to ensure the Waterton-Glacier International Peace Park remains vibrant, healthy, and productive; and

(f) urge Montana's Congressional Delegation to support local communities and Glacier National Park for the next 100 years by providing adequate funds for park infrastructure and management and by introducing federal initiatives that protect Glacier's significant natural assets and economic benefits for future generations.

(2) That the Secretary of State send copies of this resolution to the Montana Congressional Delegation, the Majority Leader of the United States Senate, and the Speaker of the United States House of Representatives.

Adopted March 5, 2009

SENATE JOINT RESOLUTION NO. 14

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY TO EXAMINE THE POSSIBILITY OF STATE AGENCIES DEVELOPING AND MAINTAINING JOINT LABORATORY FACILITIES FOR TESTING RELATED TO WILDLIFE, LIVESTOCK, AGRICULTURE, AND PUBLIC HEALTH; AND REQUIRING THAT THE FINAL RESULTS OF THE STUDY BE REPORTED TO THE 62ND LEGISLATURE.

WHEREAS, several state agencies maintain separate laboratories for testing related to wildlife, livestock, agriculture, and public health; and

WHEREAS, some state laboratories face space and budget constraints; and

WHEREAS, potential efficiencies could exist to encourage development and maintenance of shared laboratory facilities; and

WHEREAS, the state could save money if existing laboratories could be consolidated.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate interim committee, pursuant to section 5-5-217, MCA, or direct staff resources to:

(1) conduct a review of existing laboratory facilities operated by the state of Montana;

(2) identify areas of potential overlap or similarity of testing procedures among state laboratories conducting testing related to wildlife, livestock, agriculture, and public health;

(3) explore the possibility of consolidating laboratories, as well as the benefits and drawbacks of consolidation;

(4) identify potential savings to the state if two or more laboratories could be consolidated into a shared laboratory; and

(5) examine potential sharing arrangements that could be made between state agencies that wish to or should share laboratory space.

BE IT FURTHER RESOLVED, that if the study is assigned to staff, any findings or conclusions be presented to and reviewed by an appropriate committee designated by the Legislative Council.

BE IT FURTHER RESOLVED, that all aspects of the study, including presentation and review requirements, be concluded prior to September 15, 2010.

BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions, comments, or recommendations of the appropriate committee, be reported to the 62nd Legislature.

Adopted March 10, 2009

SENATE JOINT RESOLUTION NO. 15

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA EXPRESSING SUPPORT FOR THE DECISION BY THE UNITED STATES FISH AND

WILDLIFE SERVICE TO DELIST THE GRAY WOLF AND URGING THE MONTANA DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO DEFEND THE DECISION TO DELIST THE GRAY WOLF AGAINST ANY LEGAL CHALLENGE.

WHEREAS, in 2002, the gray wolf population in Montana, Idaho, and Wyoming achieved the biological requirement of a minimum of 30 breeding pairs and at least 300 wolves in a metapopulation in the Northern Rocky Mountains, a threshold established by the United States Fish and Wildlife Service to conclude that the gray wolf is recovered and should be delisted; and

WHEREAS, the tri-state wolf population has remained on the rise with an estimated 107 breeding pairs and 1,513 wolves total at the end of 2007, including an estimated 39 breeding pairs and 422 wolves in Montana; and

WHEREAS, the Montana Department of Fish, Wildlife, and Parks has developed a wolf management plan that is broadly supported by people in the state and has been approved by the United States Fish and Wildlife Service as a plan that will maintain a secure, viable population of gray wolves in Montana after they are removed from the federal endangered species list; and

WHEREAS, the Montana Department of Fish, Wildlife, and Parks is committed to the recovery of the gray wolf and is prepared to assume full responsibility for the management of this native species; and

WHEREAS, state management of the gray wolf is the preferred alternative to federal management of resident wildlife; and

WHEREAS, the United States Fish and Wildlife Service first delisted the gray wolf, effective March 28, 2008, but its decision was prevented from taking effect when the United States District Court in Missoula enjoined the decision on July 18, 2008, and the United States Fish and Wildlife Service requested that the court vacate the final federal rule to delist the gray wolf and remand it back to the service, a request granted by the court on October 14, 2008, officially relisting the gray wolf as an endangered species; and

WHEREAS, the United States Fish and Wildlife Service has completed the reevaluation of its proposal to delist the gray wolf, has reevaluated the wolf management plans proposed by the states of Montana, Wyoming, and Idaho that would take effect upon delisting, has accepted public comment on those plans, has determined that, although Wyoming's plan is not sufficient to conserve Wyoming's portion of the recovered Northern Rockies wolf population, the plans of Montana and Idaho are sufficient to again delist the gray wolf in Montana and Idaho; and

WHEREAS, President Barack Obama put a hold on certain policy decisions made by the administration of former President George W. Bush, including the decision to delist the gray wolf, so that they could be reviewed; and

WHEREAS, on March 6, 2009, the administration of President Barack Obama affirmed the decision of the United States Fish and Wildlife Service to delist the gray wolf; and

WHEREAS, the decision by the United States Fish and Wildlife Service to again delist the gray wolf is expected to face legal challenges and be delayed in court.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the 61st Legislature:

(1) energetically supports the transfer of management of the gray wolf to the state of Montana;

(2) defends the efforts of the Montana Department of Fish, Wildlife, and Parks and the United States Fish and Wildlife Service to remove the gray wolf from the federal and state endangered species lists;

(3) urges President Barack Obama and his administration to fully implement the decision of the United States Fish and Wildlife Service to delist the gray wolf because the population is recovered and Montana's plan and laws to manage wolves are federally approved and will maintain a recovered, delisted population;

(4) if the decision to delist the gray wolf is challenged in court, urges the Montana Department of Fish, Wildlife, and Parks to vigorously defend its actions and information used to support the delisting of the gray wolf; and

(5) should the decision to delist the gray wolf be overturned in court, urges the Montana Department of Fish, Wildlife, and Parks to find a viable proposal to delist the gray wolf as soon as possible.

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to the President of the United States, the Montana Congressional Delegation, the Majority Leader of the United States Senate, the Speaker of the United States House of Representatives, the Secretary of the United States Department of the Interior, and the Director of the United States Fish and Wildlife Service.

Adopted April 6, 2009

SENATE JOINT RESOLUTION NO. 16

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY TO INVESTIGATE THE ISSUES OF UNDERINSURED AND UNINSURED MOTORISTS IN MONTANA, CALCULATE THE COST TO MONTANA'S CITIZENS, AND PRESENT FINDINGS AND RECOMMENDATIONS TO THE 62ND LEGISLATURE.

WHEREAS, section 61-6-301, MCA, mandates motor vehicle insurance; and

WHEREAS, it is unlawful to operate a motor vehicle upon a public highway in Montana without certification and proof of insurance; and

WHEREAS, while the exact number of uninsured motorists is difficult to ascertain by the very nature of the noncompliance with state law, the number of motorists without insurance in Montana is unacceptably high; and

WHEREAS, the high cost of mandatory vehicle insurance is making compliance by low-income households very difficult and the purchase of adequate coverage above the required limits financially difficult for those who do buy insurance; and

WHEREAS, fines, punishment, loss of driving privileges, and other penalties often result in loss of employment and produce a further stress on law enforcement and social services and yet increased compliance is not being achieved; and

WHEREAS, a public policy resolution to this situation is difficult to achieve within the confines of a legislative session; and

WHEREAS, it is the duty of the Legislature to take those actions necessary, legislative or otherwise, to promote increased adherence to current state law in the interest of public health, economic viability, and safety.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate interim committee, pursuant to section 5-5-217, MCA, or direct sufficient staff resources to:

(1) study the issues of underinsured and uninsured motorists in Montana to determine the extent of the problem and the impact to:

(a) public agencies dealing with law enforcement, transportation, and local government generally;

(b) the health care community;

(c) the insurance industry; and

(d) Montana citizens injured or otherwise aggrieved by underinsured and uninsured motorists;

(2) study and compile policy actions from other states, as available, that have improved compliance with regard to motor vehicle insurance; and

(3) study and develop potential legislative actions to increase adherence to current state laws, amend state law as considered applicable, and provide recommendations to state agencies as necessary.

BE IT FURTHER RESOLVED, that if the study is assigned to staff, any findings or conclusions be presented to and reviewed by an appropriate committee designated by the Legislative Council.

BE IT FURTHER RESOLVED, that all aspects of the study, including presentation and review requirements, be concluded prior to September 15, 2010.

BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions, comments, or recommendations of the appropriate committee, be reported to the 62nd Legislature.

Adopted March 16, 2009

SENATE JOINT RESOLUTION NO. 19

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE U.S. FISH AND WILDLIFE SERVICE TO MANAGE THE CHARLES M. RUSSELL NATIONAL WILDLIFE REFUGE IN A MANNER THAT IS CONSISTENT WITH THE ENABLING LEGISLATION AND WITH LOCAL MONTANA NEEDS AND VALUES; AND REQUESTING BETTER COMMUNICATION WITH SURROUNDING CONSERVATION DISTRICTS.

WHEREAS, Executive Order No. 7509, dated December 11, 1936, established the Fort Peck Game Range, which was converted in 1976 to the Charles M. Russell National Wildlife Refuge (CMR), for the conservation and development of natural wildlife resources and for the protection and improvement of public grazing lands and natural forage resources; and

WHEREAS, Montana conservation districts are political subdivisions of the State of Montana, authorized by the Legislature in 1939, whose primary

function is to conduct local activities to promote the conservation of natural resources in the district; and

WHEREAS, land management approaches used on the CMR directly impact adjacent private lands; and

WHEREAS, wildlife managed on the CMR consistently travel outside the refuge onto private land, creating environmental and economic impacts such as the spread of disease and noxious weeds; and

WHEREAS, the availability of livestock grazing on the CMR greatly influences private land use, conservation practices, and local economies surrounding the CMR; and

WHEREAS, weed infestations originating on the CMR are spread to and have negative impacts on surrounding private land; and

WHEREAS, the U.S. Fish and Wildlife Service is drafting a comprehensive conservation plan for the CMR that will guide the agency's management actions through 2025; and

WHEREAS, final CMR management decisions are made by U.S. Fish and Wildlife Service staff in Denver, Colorado, but the staff is not directly impacted by those management decisions, while owners of private land surrounding the refuge who are represented by Montana conservation districts, are directly impacted by those management decisions.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the State of Montana formally requests that the U.S. Fish and Wildlife Service manage the Charles M. Russell National Wildlife Refuge in a manner that is consistent with the enabling legislation, taking into account local natural resource conservation needs.

BE IT FURTHER RESOLVED, that the U.S. Fish and Wildlife Service be urged to conduct more open and timely communication with Montana conservation districts surrounding the Charles M. Russell National Wildlife Refuge in developing the comprehensive conservation plan and in managing and conserving the natural resources of the refuge in a manner that is sensitive to the impacts of the refuge on owners of adjacent private land.

BE IT FURTHER RESOLVED, that the Secretary of State send a copy of this resolution to the Montana Congressional Delegation and to the Director of the U.S. Fish and Wildlife Service.

Adopted April 27, 2009

SENATE JOINT RESOLUTION NO. 22

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THAT THE GOVERNOR'S OFFICE PROVIDE AN ASSESSMENT OF STATE-OWNED AIRCRAFT TO DETERMINE A PHASED REPLACEMENT OR RETIREMENT SCHEDULE.

WHEREAS, in reviewing the Governor's air transportation program, concerns arose on the age and condition of the state aircraft assigned to the Governor's Office and other state-owned aircraft; and

WHEREAS, current efforts for maintenance require inspections and regular service intervals but the age of the aircraft will require eventual replacement; and

WHEREAS, the House Joint Appropriations Subcommittee on General Government believes that it is reasonable and prudent to ensure that state-owned aircraft are in good condition and have up-to-date avionics for the safety of the Governor, the pilots, and other state employees; and

WHEREAS, an assessment and preparation of a long-term phased replacement schedule will assist the Governor and the Legislature in planning for the expenses related to maintenance and replacement of state aircraft; and

WHEREAS, some state-owned aircraft may not even be cost-effective and a cost/benefit analysis would be useful.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Governor's Office conduct an assessment and analysis of state aircraft to determine an appropriate and phased replacement or retirement schedule for the state's fleet of aircraft prior to the commencement of the 2011 Legislature.

BE IT FURTHER RESOLVED, that the assessment have a primary focus on the Governor's aircraft and a secondary focus on other current state aircraft assets.

BE IT FURTHER RESOLVED, that the Governor provide a report to the Legislative Finance Committee prior to the 2011 Legislative Session.

Adopted March 23, 2009

SENATE JOINT RESOLUTION NO. 28

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY TO EVALUATE METHODS FOR INCREASING RECYCLING AND SOLID WASTE RECOVERY WITHIN THE STATE OF MONTANA.

WHEREAS, increased recycling rates will provide substantial economic and environmental benefits to Montanans; and

WHEREAS, recycling is a value-added manufacturing process that provides jobs for Montanans; and

WHEREAS, recycling reduces energy consumption associated with the manufacturing of products from raw materials and reduces landfill usage by diverting solid waste; and

WHEREAS, rural areas have a need for infrastructure support to increase recycling; and

WHEREAS, electronic waste and household hazardous waste present unique recycling challenges that may require additional programs; and

WHEREAS, the Montana Integrated Waste Management Act proposes increasing Montana solid waste recycling rates to 19% by 2011 and 22% by 2015 using a variety of methods, including source reduction, reuse, recycling, and composting.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate interim committee, pursuant to section 5-5-217, MCA, or direct sufficient staff resources to:

(1) evaluate and propose potential methods for increasing the recycling rates in the state of Montana;

(2) analyze methods to promote market development of recycled materials;

(3) analyze options to address rural recycling challenges;

(4) propose programs to address electronic and household hazardous waste; and

(5) evaluate funding alternatives.

BE IT FURTHER RESOLVED, that if the study is assigned to staff, any findings or conclusions be presented to and reviewed by an appropriate committee designated by the Legislative Council.

BE IT FURTHER RESOLVED, that all aspects of the study, including presentation and review requirements, be concluded prior to September 15, 2010.

BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions, comments, or recommendations of the appropriate committee, be reported to the 62nd Legislature.

Adopted April 21, 2009

SENATE JOINT RESOLUTION NO. 29

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY TO EXAMINE THE RETENTION AND PRESERVATION OF BIOLOGICAL EVIDENCE BY STATE AND LOCAL LAW ENFORCEMENT AGENCIES.

WHEREAS, the value of properly preserved biological evidence has been enhanced by the discovery of modern DNA testing methods, which allow law enforcement to improve its crime-solving potential; and

WHEREAS, tapping the potential of preserved biological evidence requires the proper identification, collection, preservation, storage, cataloguing, and organization of the evidence; and

WHEREAS, updating preservation policies can save valuable law enforcement resources, personnel hours, and storage space; and

WHEREAS, "cold" case investigations are hindered by an inability to access biological evidence that was collected in connection with criminal investigations; and

WHEREAS, innocent people mistakenly convicted of the serious crimes for which biological evidence is probative cannot prove their innocence if the evidence is not accessible for testing in appropriate circumstances; and

WHEREAS, simple but crucial enhancements to protocols for properly preserving biological evidence can solve old crimes, enhance public safety, and settle claims of innocence.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate interim committee, pursuant to section 5-5-217, MCA, or direct sufficient staff resources to study the retention and preservation of biological evidence by state and local law enforcement agencies, including:

(1) identifying current practices and challenges of state and local law enforcement agencies and other entities charged with preserving biological evidence;

(2) considering practices and standards developed to improve preservation of biological practices in other states;

(3) recommending changes to existing definitions, practices, and statutes that will improve the accessibility of biological evidence in felony cases and improve the efficiency of agencies that dedicate valuable law enforcement resources to processing and preserving biological evidence;

(4) recommending statewide standards regarding proper identification, collection, preservation, storage, cataloguing, and organization of biological evidence; and

(5) recommending essential components of training programs for law enforcement officers and other relevant employees who are charged with preserving and retrieving biological evidence.

BE IT FURTHER RESOLVED, that the committee use methods such as working groups, public hearings, or panel discussions to solicit concerns and information from the public and stakeholders, including the Department of Justice, county and local law enforcement agencies, tribal governments, the Office of the Public Defender, Montana Association of Clerk and Recorders, an organization dedicated to investigating postconviction claims of innocence, a victims' rights organization, and other stakeholders identified by the committee.

BE IT FURTHER RESOLVED, that if the study is assigned to staff, any findings or conclusions be presented to and reviewed by an appropriate committee designated by the Legislative Council.

BE IT FURTHER RESOLVED, that all aspects of the study, including presentation and review requirements, be concluded prior to September 15, 2010.

BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions, comments, or recommendations of the appropriate committee, be reported to the 62nd Legislature.

Adopted April 21, 2009

SENATE JOINT RESOLUTION NO. 30

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY TO EXAMINE THE PREMIUM COST DRIVERS IN MONTANA'S WORKERS' COMPENSATION SYSTEM AND LAWS RELATED TO THE MONTANA STATE FUND AND TO PROPOSE LEGISLATION FOR CONSIDERATION BY THE 62ND LEGISLATURE TO ADDRESS THE PREMIUM COST DRIVERS AND THE MONTANA STATE FUND.

WHEREAS, Montana has the second highest workers' compensation premium rates in the nation, according to the 2008 Oregon Workers' Compensation Premium Rate Ranking Summary; and

WHEREAS, Montana recorded 6.3 injuries for every 100 full-time equivalent workers in 2007 or 1.5 times the comparable national data of 4.2 injuries for every 100 full-time equivalent workers; and

WHEREAS, Montana's medical costs account for 69% of benefit dollars, according to the National Council for Compensation Insurance State Advisory Forum Report, 2008, and in 2004 Montana's medical benefits were more than 77% greater than the national average, ranking Montana second of 46 jurisdictions surveyed nationwide for the share of medical benefits in workers' compensation costs; and

WHEREAS, the time spent off work after an injury is 26% higher in Montana than the national average, according to the National Council for Compensation Insurance State Advisory Forum Report, 2008; and

WHEREAS, the Labor-Management Advisory Council on Workers' Compensation consisting of equal representation of the two primary workers' compensation stakeholders groups, namely management and labor, was formed in December 2006 under agency order by the Commissioner of Labor and Industry and was commissioned to identify and research the primary cost drivers in workers' compensation; and

WHEREAS, a February 2009 Legislative Audit Division report concluded that legal compliance risks faced by the Montana State Fund may be higher because of an internal and external lack of regulatory oversight mechanisms, which is of potential significance because of Montana State Fund's current market dominance of 67% of a market that is shared with private carriers providing workers' compensation insurance, excluding self-insured employers; and

WHEREAS, statutory direction for the Montana State Fund to operate as a self-sustaining business in a manner similar to that of a privately operated mutual insurance business has resulted in the Montana State Fund developing compensation and incentive plans and premium and other performance measures similar to those of private companies.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate interim committee, pursuant to section 5-5-217, MCA, or direct sufficient staff resources to conduct a review of Montana's workers' compensation premium cost drivers as compared to premium cost drivers in other Western states with similar industries. The review is to include:

(1) the frequency of claims by types of claims;

(2) medical costs, in particular:

(a) duration and availability of and access to medical treatments;

(b) use of utilization and treatment guidelines and their effectiveness in other jurisdictions; and

(c) evaluation of the impact on cost containment and access to medical treatment resulting from changes to medical fee schedules implemented by the department of labor and industry in 2007 and 2008;

(3) research and analysis on whether Montana should include presumptions regarding occupational diseases associated with specific occupations;

(4) recommendations on the appropriate payment of attorney fees in cases involving medical benefits;

(5) evaluation of and recommendations on exemptions in workers' compensation;

(6) structural issues in Montana, particularly as they relate to the three-tiered system involving self-insurers, private carriers, and the Montana State Fund.

BE IT FURTHER RESOLVED, that the study identify any additional areas that impact premium cost drivers and request the Labor-Management Advisory Council on Workers' Compensation to research these areas and the interaction between workers and employers that may affect the premium cost drivers.

BE IT FURTHER RESOLVED, that the study incorporate reports from the Labor-Management Advisory Council and stakeholders involved in workers' compensation insurance, including injured workers, attorneys or other representatives for injured workers, insurers, and employers, and that the material from the study be compiled into a report and draft legislation for consideration by the 62nd Legislature.

BE IT FURTHER RESOLVED, that the study examine the operation and structure of the Montana State Fund, the Montana State Fund's relationship with state government and other insurers, and state oversight of the Montana State Fund.

BE IT FURTHER RESOLVED, that if the study is assigned to staff, any findings or conclusions be presented to and reviewed by an appropriate committee designated by the Legislative Council.

BE IT FURTHER RESOLVED, that all aspects of the study, including presentation and review requirements, be concluded prior to September 15, 2010.

BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions, comments, or recommendations of the appropriate committee, be reported to the 62nd Legislature.

Adopted April 21, 2009

SENATE JOINT RESOLUTION NO. 35

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THAT AN INTERIM COMMITTEE STUDY MATTERS RELATED TO HEALTH CARE.

WHEREAS, an estimated 19% of the Montana population lacks health insurance coverage; and

WHEREAS, health insurance and access to health care services continue to be of concern at both the federal and state levels; and

WHEREAS, both the Montana Legislature and the U.S. Congress are considering changes involving publicly funded health care programs and reforms to the health care system in general; and

WHEREAS, the Legislature has an interest in following federal health care reforms to determine whether opportunities exist to tailor those reforms to best meet the needs and circumstances of Montana; and

WHEREAS, the costs of medical care make it more difficult for American companies to compete in the world and the cost of health care makes it harder for small businesses to survive; and

WHEREAS, families are struggling to keep up with out-of-pocket costs for health care; and

WHEREAS, Montanans and the Montana Legislature may benefit from ongoing analysis of proposed health care reforms and how they may affect the state.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate interim committee, pursuant to section 5-5-217, MCA, or direct sufficient staff resources to study ongoing federal and state efforts related to health care reform and to make recommendations on state-level initiatives for consideration by the 62nd Legislature.

BE IT FURTHER RESOLVED, that the Legislative Council assign the study to the Children, Families, Health, and Human Services Interim Committee and that this be the primary study assigned to the committee so that committee members can focus on health care.

BE IT FURTHER RESOLVED, that the study efforts include the following items and activities:

(1) compiling information from existing sources on the extent to which Montanans lack health insurance coverage or are unable to afford health insurance, as well as the extent to which publicly funded programs provide health insurance coverage to Montanans;

(2) reviewing existing information and studies on the number and location of health care providers to determine ways to strengthen the primary care system, including an evaluation of medical education opportunities, and to improve education and training opportunities for allied health professionals;

(3) monitoring and evaluating health care changes at the federal level to determine:

(a) whether and how the changes will affect existing health care programs and services available to Montanans;

(b) how the changes may fit with any state-level programs initiated by the 61st Legislature or carried out by the Department of Public Health and Human Services; and

(c) recommend action to be taken through state agencies or through legislation to take advantage of or build on the federal changes;

(4) monitoring the use of federal funds and other sources of funding to develop a health information technology system;

(5) monitoring state and federal efforts related to preventing disease, managing chronic diseases, and promoting health-improvement efforts; and

(6) considering health care reforms proposed by Montana groups involved in health care issues to determine how they would, if enacted or adopted, affect Montanans and whether legislative action would be needed to enact the proposals.

BE IT FURTHER RESOLVED, that the study engage the public and relevant stakeholders in discussions related to health care policies and to any resulting strategies designed to provide residents with access to quality health care services at affordable costs.

BE IT FURTHER RESOLVED, that the study work with the public and relevant stakeholders to make serious recommendations on ways to reduce the costs of health care.

BE IT FURTHER RESOLVED, that all aspects of the study, including presentation and review requirements, be completed prior to September 15, 2010.

BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions, comments, or recommendations of the appropriate committee, be reported to the 62nd Legislature.

Adopted April 22, 2009

SENATE JOINT RESOLUTION NO. 37

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY OF THE FILING OPTIONS FOR MARRIED TAXPAYERS UNDER MONTANA'S INDIVIDUAL INCOME TAX LAW.

WHEREAS, it is generally advantageous for married taxpayers to file a joint return for federal income tax purposes; and

WHEREAS, most states require married taxpayers to file state individual income tax returns using the same filing status that they use in filing federal income tax returns; and

WHEREAS, Montana is one of the few states that allow married taxpayers to file separately on the same tax form; and

WHEREAS, married taxpayers filing separately on the same tax form in Montana could not use certain federal tax deductions that were allowed married taxpayers filing jointly; and

WHEREAS, the Montana Legislature had to enact legislation to specifically allow these federal deductions on the state tax return; and

WHEREAS, the different individual income tax filing methods for married taxpayers contribute to the complexity of compliance with and administration of the state's individual income tax laws; and

WHEREAS, the Montana Legislature has not undertaken a systematic evaluation of the effects of allowing married taxpayers to file separately on the same form.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate interim committee, pursuant to section 5-5-217, MCA, or direct sufficient staff resources to:

(1) review the rationale for allowing married taxpayers in Montana to file separately on the same form and review the legislative history related to how married taxpayers may choose to file individual income tax returns;

(2) evaluate the benefits and drawbacks of revising the method for filing individual income tax returns by married taxpayers, including an analysis of changes to tax rate schedules if the existing method of filing were changed; and

(3) consider policy options related to the filing method used by married taxpayers.

BE IT FURTHER RESOLVED, that if the study is assigned to staff, any findings or conclusions be presented to and reviewed by an appropriate committee designated by the Legislative Council.

BE IT FURTHER RESOLVED, that all aspects of the study, including presentation and review requirements, be concluded prior to September 15, 2010.

BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions, comments, or recommendations of the appropriate committee, be reported to the 62nd Legislature.

Adopted April 21, 2009

SENATE JOINT RESOLUTION NO. 39

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM LEGISLATIVE STUDY OF DRIVING UNDER THE INFLUENCE OF ALCOHOL OR DRUGS IN MONTANA.

WHEREAS, Montana law prohibits individuals from driving under the influence of alcohol or drugs; and

WHEREAS, Montana law in this area has become a complex patchwork of statutes arising from federal mandates, initiatives by legislators or task forces, and case-specific circumstances; and

WHEREAS, law enforcement officers, prosecutors, public defenders, courts, addiction counselors, treatment professionals, probation officers, and driver control analysts struggle to interpret these statutes and apply the results to the wide range of circumstances that these offenders present; and

WHEREAS, first-time convictions of driving under the influence rose 19% from 2004 to 2008; and

WHEREAS, there was a 16% increase in repeat offenses from 2004 to 2008, including second or subsequent DUI and felony DUI; and

WHEREAS, implied consent refusals increased 24% from 2004 to 2008; and

WHEREAS, the Montana Highway Patrol reports that in 2007 there were 324 drivers involved in 249 fatal crashes, and 123 of those involved drivers under the influence; and

WHEREAS, the Montana Highway Patrol reports that in 2007 there were 9,541 drivers involved in injury crashes, and 1,161 of those involved drivers under the influence; and

WHEREAS, Montana continues to see an increase of 3% to 5% each year since 2000 in driving under the influence convictions; and

WHEREAS, statistical analysis suggests that the conviction-to-arrest rates in Montana may be as low as 1 to 1.5 and as high as 1 to 6; and

WHEREAS, a Montana Highway Patrol survey shows 96% of Montanans think that driving under the influence is a problem; and

WHEREAS, it is the duty of the Legislature to protect the safety of the public on public highways.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate interim committee or statutory committee, pursuant to 5-5-217, MCA, or direct sufficient staff resources to study the issue of driving under the influence of

alcohol or drugs generally and determine any legislation that might augment current law to reduce the incidence of this crime. The study should:

(1) identify strengths and weaknesses in Montana's driving under the influence statutes, as well as possible alternative penalty and enforcement provisions or new technologies that might aid Montana's enforcement of driving under the influence laws and reduce the incidence of repeat offenses;

(2) examine laws and enforcement practices in other states, including license suspensions, technology, and available resources;

(3) examine Montana's current rates of incarceration due to driving under the influence convictions, current incarceration and treatment capacities, and possible alternatives; and

(4) analyze whether there is a culture of acceptance of driving under the influence in Montana that might account for the prevalence of driving under the influence problems in Montana and what, if anything, the Legislature might do to address the issue.

BE IT FURTHER RESOLVED, that if the study is assigned to staff, any findings or conclusions be presented to and reviewed by an appropriate committee designated by the Legislative Council.

BE IT FURTHER RESOLVED, that all aspects of the study, including presentation and review requirements, be concluded prior to September 15, 2010.

BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions, comments, or recommendations of the appropriate committee, be reported to the 62nd Legislature.

Adopted April 24, 2009

Senate Resolutions

SENATE RESOLUTION NO. 1

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA ADOPTING THE SENATE RULES.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the following rules be adopted:

RULES OF THE MONTANA SENATE

CHAPTER 1

Administration

S10-10. Officers of the Senate. The officers of the Senate are the officers listed and elected in accordance with Title 5, chapter 2, part 2, MCA.

S10-20. Term of office. The term of office for the officers and employees of the Senate established by law is until the succeeding Legislature is organized. This rule may not be construed to mean the staff will be full-time employees during an interim.

S10-30. President, President pro tempore, and other officers. (1) The Senate shall, at the beginning of each regular session, and at other times as may be necessary, elect a Senator as President and a Senator as President pro tempore.

(2) The Senate shall choose its other officers and is the judge of the elections, returns, and qualifications of the Senators.

S10-40. Voting by presiding officer. Any Senator, when acting as presiding officer of the Senate, shall vote as any other Senator.

S10-50. Presiding officer and duties. (1) The presiding officer of the Senate is the President of the Senate, who must be chosen in accordance with law.

(2) The President shall take the chair on every legislative day at the hour to which the Senate adjourned at the last sitting.

(3) The President may name a Senator to perform the duties of the President when the President pro tempore is not present in the Senate chamber. The Senator who is named is vested during that time with all the powers of the President.

(4) The President has general control over the assignment of rooms for the Senate and shall preserve order and decorum. The President may order the galleries and lobbies cleared in case of disturbance or disorderly conduct.

(5) The President shall issue cards to the media to allow floor access, and reporters holding the cards are subject to placement on the floor by the President. The President may administer this rule through the office of the Secretary of the Senate.

(6) The President shall sign all necessary certifications of the Senate, including enrolled bills and resolutions, journals, subpoenas, and payrolls. The President's signature must be attested by the Secretary of the Senate.

(7) The President shall approve the calendar for each legislative day.

(8) The President is the chief administrative officer of the Senate, with authority for the general supervision of all Senate employees. The President may seek the advice and counsel of the Legislative Administration Committee.

(9) The President of the Senate is the authorized approving authority of the Senate during the term of election to that office.

(10) The President shall refer bills to committee upon introduction or reception in the office of the Secretary of the Senate.

S10-60. Succession. (1) In case of the absence or disqualification of the President, the President pro tempore of the Senate shall perform the duties of the President until the vacancy is filled or the disability removed.

(2) Whenever the President pro tempore of the Senate is of the opposite political party from that of the President, the following procedure applies:

(a) If the President dies while in office, the members of the Senate have the right to immediately nominate and elect an acting President of the same party.

(b) If the President is absent for 2 or more legislative days or at any time after the 85th legislative day or at any time during special session of the Legislature and wants to appoint an acting President during the President's absence, the President may do so, or the members of the Senate have the right to immediately nominate and elect an acting President of the President's caucus.

(c) An acting President of the Senate has the powers of the President and supersedes the powers of the President pro tempore.

S10-70. President-elect. The President-elect nominated by the appropriate party caucus held in accordance with section 5-2-201, MCA, has the responsibility and authority to assume the duties of President of the Senate.

S10-80. Legislative Administration Committee duties. (1) The Legislative Administration Committee shall consider matters relating to legislative administration, staffing patterns, budgets, equipment, operations, and expenditures.

(2) The committee has authority to act in the interim to prepare for future legislative sessions.

(3) The committee shall approve contracts for purchase or lease of equipment and supplies for the Senate, subject to the approval of the President.

(4) The committee shall consider disputes or complaints involving the competency or decorum of legislative employees referred to it by the President and recommend dismissal, suspension, or retention of employees.

(5) The chair of the Legislative Administration Committee may, upon approval of the President, have purchase orders and requisitions prepared and forwarded to the accounting office in the Legislative Services Division.

S10-90. Majority Leader. The primary functions of the majority leader usually relate to floor duties. The duties of the majority leader may include but are not limited to:

(1) being the lead speaker for the majority party during floor debates;

(2) helping the President develop the calendar;

(3) assisting the President with program development, policy formation, and policy decisions;

(4) presiding over the majority caucus meetings; and

(5) other duties as assigned by the caucus.

S10-100. Majority Whip. The duties of the majority whip may include but are not limited to:

(1) assisting the majority leader;

(2) ensuring member attendance;

(3) counting votes;

(4) generally communicating the majority position; and

(5) other duties as assigned by the caucus.

S10-110. Minority Leader. The minority leader is the principal leader of the minority caucus. The duties of the minority leader may include but are not limited to:

(1) developing the minority position;

(2) negotiating with the majority party;

(3) directing minority caucus activities on the chamber floor;

(4) leading debate for the minority; and

(5) other duties as assigned by the caucus.

S10-120. Minority Whip. The major responsibilities for the minority whip may include but are not limited to:

(1) assisting the minority leader on the floor;

(2) counting votes;

(3) ensuring attendance of minority party members; and

(4) other duties as assigned by the caucus.

S10-130. Senate employees. (1) In addition to the employees appointed by the President in accordance with section 5-2-221, MCA, the Senate shall employ staff recommended by the leadership and the Legislative Administration Committee as necessary to perform the functions of the Senate.

(2) The Secretary of the Senate shall designate a secretary to take and transcribe minutes of committee meetings for each standing committee. A committee secretary is immediately responsible to the chair, but shall work under the overall direction of the Secretary of the Senate, subject to authority of the committee chair.

(3) The President, majority leader, and minority leader may each appoint a private secretary.

S10-140. Secretary of the Senate and duties. The Secretary of the Senate works under the direction of the President. The responsibilities of the Secretary of the Senate include:

(1) performing the duties prescribed by law or other provisions of these rules;

(2) serving as parliamentary advisor to the Senate;

(3) compiling and maintaining the calendar for approval by the President;

(4) keeping the leadership informed on the progress and workload of the Senate;

(5) transmitting bills with appropriate messages to the House of Representatives as instructed by action of the Senate;

(6) keeping and maintaining records of the Senate; and

(7) supervision of the Senate employees, except as otherwise provided.

S10-150. Sergeant-at-Arms duties. Under the direction of the President, the Sergeant-at-Arms shall:

(1) maintain order as directed by the President or chair of the Committee of the Whole;

(2) enforce the lobbying rules of the Senate;

(3) supervise the employees assigned to the Sergeant's office;

(4) receive, distribute, and maintain supplies, equipment, and other inventory of the Senate, along with records of purchase and disposal in accordance with law;

(5) perform duties as required by other rules and the Senate.

S10-160. Legislative aides. Each Senator may designate one person of legal age to serve as an aide during the session. Exceptions to this policy may be approved by the Rules Committee. The Senator shall register an aide with the Secretary of the Senate and arrange for the purchase of a name tag with the Sergeant-at-Arms.

S10-170. Senate journal. (1) The Senate shall keep and authenticate a journal of its proceedings as required by law and the rules.

(2) The Secretary of the Senate will supervise the preparation of the journal by the journal clerks trained by the Legislative Services Division under the direction of the President.

(3) In addition to the proceedings required by law to be recorded, the journal must include:

(a) committee reports;

(b) every motion, the name of the Senator presenting it, and its disposition;

(c) the introduction of legislation in the Senate;

(d) consideration of legislation subsequent to introduction;

(e) roll call votes;

(f) messages from the Governor and the House of Representatives;

(g) every amendment, the name of the Senator presenting it, and its disposition;

(h) the names of Senators and their votes on any question upon a request by two Senators before a vote is taken; and

(i) any other records the Senate directs by rule or action.

(4) The Secretary of the Senate shall provide information that may be necessary for the preparation of the daily journal for printing by the Legislative Services Division. Upon approval by the President, the daily journal must be reproduced and made available.

(5) Any Senator may examine the daily journal and propose corrections. Without objection by the Senate, the President may direct the correction to be made.

(6) The President shall authenticate the original daily journal, from time to time, and the Secretary of the Senate shall, as appropriate, deliver it to the Legislative Services Division to be prepared for publication and distribution in accordance with law.

CHAPTER 2

Decorum

S20-10. Questions of order. The President of the Senate shall decide all questions of order, subject to an appeal by any Senator seconded by two other Senators. A Senator may not speak more than once on an appeal without the consent of a majority of the Senate.

S20-20. Violation of rules — call to order. (1) If a Senator, in speaking or otherwise, violates the rules of the Senate, the President shall, or the majority leader or minority floor leader may, call the Senator to order, in which case the Senator called to order must be seated immediately.

(2) The Senator called to order may move for an appeal to the Senate, and if the motion is seconded by two Senators, the matter must be submitted to the Senate for determination by majority vote. The motion is nondebatable.

(3) If the decision of the Senate is in favor of the Senator called to order, the Senator may proceed. If the decision is against the Senator, the Senator may not proceed.

(4) If a Senator is called to order, the matter may be referred to the Rules Committee by the minority or majority leader. The Committee may recommend to the Senate that the Senator be censured or be subject to other action. Censure consists of an official public reprimand of a Senator for inappropriate behavior. The Senate shall act upon the recommendation of the Committee.

S20-30. Questions of privilege. (1) Questions of privilege in order of precedence are those:

(a) affecting the collective rights, safety, dignity, or integrity of the proceedings of the Senate; and

(b) affecting the rights, reputation, or conduct of individual Senators in their capacity as Senators.

(2) A Senator may not address the Senate on a question of privilege between the time:

(a) an undebatable motion is offered and the vote is taken on the motion;

(b) the previous question is ordered and the vote is taken on the proposition included under the previous question; or

(c) a motion to lay on the table is offered and the vote is taken on the motion.

S20-40. Recognition by chair. A Senator desiring to speak shall rise and address the presiding officer and, once being recognized, shall speak standing in place. The presiding officer may grant permission for a speaker to speak from elsewhere in the chamber. When two or more Senators rise at the same time, the presiding officer shall name the order of the speakers.

S20-50. Floor privileges. (1) When the Senate is in session no person is permitted in the chambers except:

(a) legislators;

(b) legislative officers and employees whose presence is necessary for the conduct of business of the session;

(c) accredited members of the news media; and

(d) former legislators (not currently registered as lobbyists).

(2) The President may make exceptions for visiting dignitaries.

(3) Beginning 1 hour before and ending one-half hour after adjournment, no person is permitted in the chambers except those authorized as exceptions under subsection (1) or (2).

S20-60. Communications to Senate. A communication to the Senate must be addressed to the President and must bear the name of the person submitting it. The President shall decide if the communication bears including in the calendar.

S20-70. Distribution of materials on floor. (1) Subject to subsection (2), material may not be distributed on the Senators' desks in the chamber unless the material bears the signature of the bearer and a Senator and has been approved by the President.

(2) Subsection (1) does not apply to material written by staff at the request of a Senator and placed on the Senator's desk.

CHAPTER 3

Committees

S30-10. Committee appointments. (1) There is a Committee on Committees consisting of six members. If the Senate is evenly divided between parties, the committee shall consist of six Senators, three from the majority party and three from the minority party.

(2) The Committee on Committees shall, with the approval of the Senate, appoint the members of Senate standing committees, select committees, and joint committees. Prior to making committee assignments, the Committee on Committees shall take into consideration the recommendations of the minority leader for minority committee assignments.

(3) The President of the Senate shall appoint all conference committees and special committees, with the advice of the majority leader and minority leader.

(4) The Senate may change the membership of any committee on 1 day's notice.

S30-20. Standing committees — classification. (1) The standing committees of the Senate are as follows:

(a) class one committees:

(i) Business, Labor, and Economic Affairs;

(ii) Finance and Claims;

(iii) Judiciary; and

(iv) Taxation;

(b) class two committees:

(i) Education and Cultural Resources;

(ii) Local Government;

(iii) Natural Resources;

(iv) Public Health, Welfare, and Safety; and

(v) State Administration;

(c) class three committees:

(i) Agriculture, Livestock, and Irrigation;

(ii) Energy;

(iii) Fish and Game; and

(iv) Highways and Transportation; and

(d) on call committees:

(i) Ethics;

(ii) Legislative Administration; and

(iii) Rules.

(2) A class 1 committee is scheduled to meet Monday through Friday. A class 2 committee is scheduled to meet Monday, Wednesday, and Friday. A class 3 committee is scheduled to meet Tuesday and Thursday. Unless a class is prescribed for a committee, it meets upon the call of the chair.

(3) The Legislative Council shall review the workload of the standing committees to determine if any change is indicated in the class of a standing committee for the next legislative session. The Legislative Council's recommendations must be submitted to the leadership nominated or elected at the presession caucus provided for in 5-2-201.

S30-40. Ex officio members — quorum. (1) A quorum of a committee is a majority of the members of the committee. A quorum of a committee must be present at a meeting to act officially. A quorum of a committee may transact business, and a majority of the quorum, even though it is a minority of the committee, is sufficient for committee action.

(2) The majority leader and the minority leader are ex officio members of all committees in order to establish a quorum.

S30-50. Chair's duties. (1) The chair of a committee is the presiding officer of that committee and is responsible for:

(a) maintaining order within the committee room and its environs;

(b) scheduling hearings and executive action;

(c) supervising committee work, including the appointment of subcommittees to act on a formal or informal basis; and

(d) authenticating committee reports by signing them and submitting them promptly to the Secretary of the Senate. The chair shall sign business reports reflecting action taken in each committee meeting that enable the preparation of committee minutes. The minutes must be printed on archival paper.

(2) The Secretary of the Senate shall arrange to have the minutes copied in an electronic format. An electronic copy will be provided to the Legislative Services Division and the State Law Library of Montana. The archival paper copy must be delivered to the Montana Historical Society.

S30-60. Meetings. (1) All meetings of committees must be open to the public at all times, subject always to the power and authority of the chair to maintain safety, order, and decorum. The date, time, and place of committee meetings must be announced.

(2) Notice of a committee hearing must be made by posting the date, time, and subject of the hearing in a conspicuous public place not less than 3 legislative days in advance of the hearing. This 3-day notice requirement does not apply to hearings scheduled:

(a) prior to the third legislative day;

(b) less than 10 legislative days before the transmittal deadline applicable to the subject of the hearing;

(c) to consider confirmation of a gubernatorial appointment received less than 10 legislative days before the last scheduled day of a legislative session; or

(d) due to appropriate circumstances.

(3) When a committee hearing is scheduled with less than 3 days' notice, the committee chair shall use all practical means to disseminate notice of the hearing to the public.

(4) Notice of conference committee hearings must be given as provided in Joint Rule 30-30.

(5) A committee or subcommittee may be assembled for:

(a) a public hearing at which testimony is to be heard and at which official action may be taken on bills, resolutions, or other matters;

(b) a formal meeting at which the committees may discuss and take official action on bills, resolutions, or other matters without testimony; or

(c) a work session at which the committee may discuss bills, resolutions, or other matters but take no formal action.

(6) All committees meet at the call of the chair or upon the request of a majority of the members of the committee.

(7) A committee may not meet during the time the Senate is in session without leave of the President. Any Senator attending a meeting while the Senate is in session must be considered excused to attend business of the Senate subject to a call of the Senate.

(8) All meetings of committees must be recorded and the minutes must be available to the public within a reasonable time after the meeting. The official record must contain at least the following information:

(a) the time and place of each meeting of the committee;

(b) committee members present, excused, or absent;

(c) the names and addresses of persons appearing before the committee, whom each represents, and whether the person is a proponent, opponent, or other witness;

(d) all motions and their disposition;

(e) the results of all votes; and

(f) all testimony and exhibits.

(9) If a bill is heard in a joint committee, it must be referred to a standing committee. The standing committee is not required to hold an additional hearing but shall take executive action and may report the bill to the committee of the whole.

(10) A bill or resolution may not be considered or become a law unless referred to a committee and returned from a committee.

(11) A bill may be rereferred at any time before its passage.

S30-70. Procedures. (1) The chair shall notify the sponsor of any bill pending before the committee of the time and place it will be considered.

(2) A standing or select committee may not hear legislation unless the sponsor or one of the cosponsors is present or unless the sponsor has given written consent.

(3) (a) Subject to subsection (3)(b), the committee shall act on each bill in its possession:

(i) by reporting the bill out of the committee:

(A) with the recommendation that it be referred to another committee;

(B) favorably as to passage; or

(C) unfavorably; or

(ii) by tabling the measure in committee.

(b) At the written request of the sponsor, a committee may finally dispose of a bill without a hearing. Except as provided in S30-60(7), a bill may not be reported from a committee without a hearing.

(4) The committee may not report a bill to the Senate without recommendation.

(5) In reporting a measure out of committee, a committee shall include in its report:

(a) the measure in the form reported out;

(b) the recommendation of the committee;

(c) an identification of all proposed changes; and

(d) a fiscal note, if required.

(6) If a measure is taken from a committee and brought to the Senate floor for debate on second reading on that day without a committee recommendation, the bill does not include amendments formally adopted by the committee because committee amendments are merely recommendations to the Senate that are formally adopted when the committee report is accepted by the Senate.

(7) A second to any motion offered in a committee is not required in order for the motion to be considered by the committee.

(8) The vote of each member on all committee actions must be recorded and reported in the committee minutes. All motions may be adopted only on the affirmative vote of a majority of the members voting.

(9) A motion to take a bill from the table may be adopted by the affirmative vote of a majority of the members present at any meeting of the committee.

(10) An action formally taken by a committee may not be altered in the committee except by reconsideration and further formal action of the committee.

(11) A committee may reconsider any action as long as the matter remains in the possession of the committee. A bill is in the possession of the committee until a report on the bill is made to the committee of the whole. A committee member need not have voted with the prevailing side in order to move reconsideration.

(12) The chair shall decide points of order.

(13) The privileges of committee members include the following:

(a) to participate freely in committee discussions and debate;

(b) to offer motions;

(c) to assert points of order and privilege;

(d) to question witnesses upon recognition by the chair;

(e) to offer any amendment to any bill; and

(f) to vote, either by being present or by proxy, using a standard form.

(14) Any meeting of a committee held through the use of telephone or other electronic communication must be conducted in accordance with Chapter 3 of the Senate Rules.

(15) A committee may consolidate into one bill any two or more related bills referred to it whenever legislation may be simplified by the consolidation.

(16) Committee procedure must be informal, but when any questions arise on committee procedure, the rules or practices of the Senate are applicable except as stated in the Senate Rules.

S30-80. Public testimony. (1) Testimony from proponents, opponents, and informational witnesses must be allowed on every bill or resolution before a standing or select committee. All persons, other than the sponsor, offering testimony shall register on the committee witness list.

(2) Any person wishing to offer testimony to a committee hearing a bill or resolution must be given a reasonable opportunity to do so, orally or in writing, subject to time constraints. Written testimony may not be required of any witness, but all witnesses must be encouraged to submit a statement in writing for the committee's official record.

(3) The chair may order the committee room cleared of visitors if there is disorderly conduct. During committee meetings, visitors may not speak unless called upon by the chair. Restrictions on time available for testimony may be announced.

(4) The number of people in a committee room may not exceed the maximum posted by the State Fire Marshall. The chair shall maintain that limit.

(5) In any committee meeting, the use of cameras, television, radio, or any form of telecommunication equipment is allowed, but the chair may designate the areas of the hearing room from which the equipment must be operated. Cell phone use is at the discretion of the chair.

S30-100. Pairs prohibited — absentee or proxy voting. Pairs in standing committee are prohibited. Standing and select committees may by a majority vote of the committee authorize Senators to vote in absentia while engaged in other legislative business. Authorization for absentee or proxy voting must be reflected in the committee minutes.

S30-140. Reconsideration in committee. A committee may at any time prior to submitting a report to the Secretary of the Senate reconsider its previous action on legislation.

S30-150. Committee requested legislation. (1) (a) Except as provided in subsection (1)(b), at least three-fourths of all the members of a standing committee must have voted in favor of the question to allow the committee to request the drafting and introduction of legislation.

(b) The Finance and Claims Committee may request the drafting and introduction of legislation by a majority vote of all of the members of the committee.

(2) The chair of a committee shall introduce, or shall designate a member of the committee to introduce, legislation requested by the committee. The introduced bill must be referred to the requesting committee.

S30-160. Ethics Committee. (1) The Ethics Committee shall meet only upon the call of the chair after the referral of an issue from the Rules Committee or to consider a request for a determination pursuant to subsection (4). The Rules Committee may be convened to consider the referral of a matter to the Ethics Committee upon the request of a Senator. The Rules Committee shall prepare a written statement of the specific question or issue to be addressed by the Ethics Committee. The issues referred to the Ethics Committee must be related to the actions of a Senator during a legislative session.

(2) The matters that may be referred to the Ethics Committee are:

(a) a violation of:

(i) 2-2-103;

(ii) 2-2-104;

(iii) 2-2-111;

(iv) 2-2-112;

(b) the use or threatened use of a Senator's position for personal or personal business benefit or advantage; or

(c) any other violation of law by a Senator while acting in the capacity of Senator.

(3) If there is a recommendation from the Ethics Committee, the recommendation is made to the Senate.

(4) As provided in 2-2-112, a Senator may seek a determination from the Ethics Committee concerning the possibility of a personal conflict of interest.

CHAPTER 4

Legislation

S40-10. Types of legislation. The only types of legislation that may be introduced in the Senate are those that have been drafted and approved by the Legislative Services Division and signed by a Senator as chief sponsor. The types of legislation allowed include:

(1) bills of any subject, except appropriations;

(2) joint resolutions, which may be used for any purpose specified in Joint Rule 40-60; and

(3) simple resolutions, which may:

(a) adopt or amend Senate rules;

(b) provide for the internal affairs of the Senate;

(c) express confirmation of the Governor's appointments; or

(d) make recommendations concerning the districting and apportionment plan as provided by Article V, section 14(4), of the Montana Constitution.

S40-20. Introduction — first reading. (1) Upon receiving a bill or resolution from a Senator, the Secretary of the Senate shall assign an appropriate sequential number, which constitutes introduction of the legislation. Legislation properly introduced or received in the Senate must be announced across the rostrum and public notice provided. This announcement constitutes first reading, and no debate or motion is in order except that a Senator may question adherence to rules. Acknowledgment by the Secretary of the Senate of receipt of legislation transmitted from the House commences the time limit for consideration of the legislation. All legislation received by the Senate may be referred to a committee prior to being read across the rostrum.

(2) Bills and resolutions preintroduced as provided in Joint Rule 40-40 may be assigned to committee and printed prior to the legislative session. The Legislative Services Division is responsible for ensuring the preintroduction intent from each Senator and presenting the preintroduced legislation to the Secretary of the Senate.

(3) Upon referral to committee, the Secretary of the Senate shall publicly post a listing of the bill or resolution by a summary of its title, together with a notation of the committee to which it has been assigned.

(4) The sponsor may ask the Legislative Services Division to change or correct a short title used on the bill status system.

S40-30. Additional sponsors. (1) Additional sponsors may be added on motion of the chief sponsor at any time prior to a standing committee report on the bill or resolution. Forms for adding sponsors will be supplied on request by the Secretary of the Senate.

(2) Upon passage of the motion, the names of the additional sponsors will be printed in the journal and the form containing the signatures of the additional sponsors will be forwarded to the Legislative Services Division with the original bill for the inclusion of the names in subsequent printings of the bill or resolution.

S40-40. Reading limitations. (1) Every bill must be read three times prior to passage, either by title or by summary of title as provided in these rules.

(2) A bill or resolution may not have more than one reading on the same day except the last legislative day.

(3) An amendment may not be offered on third reading.

S40-60. Scheduling for second reading. (1) All bills and resolutions that have been reported by a committee or withdrawn from a committee by motion, accepted by the Senate, and reproduced must be scheduled for consideration by Committee of the Whole.

(2) Until the 50th legislative day, 1 day must elapse between receiving the legislation from printing and scheduling for second reading for consideration by

Committee of the Whole unless a printed version of an unamended bill is available.

(3) The majority leader shall arrange legislation on the agenda in the order in which the bills will be considered, unless otherwise ordered by the Senate or Committee of the Whole.

CHAPTER 5

Floor Action

S50-10. Attendance — mandatory voting — quorum. (1) Unless excused, Senators must be present at every sitting of the Senate and shall vote on questions put before the Senate.

(2) A majority of the Senate shall constitute a quorum to do business, but a smaller number may adjourn from day to day and compel the attendance of absent Senators, in the manner and under penalties as the Senate may prescribe (Montana Constitution, Art. V, sec. 10(2)).

S50-20. Orders of business. After prayer, roll call, and report on the journal, the order of business of the Senate is as follows:

(1) communications and petitions;

(2) reports of standing committees;

(3) reports of select committees;

(4) messages from the Governor;

(5) messages from the House of Representatives;

(6) motions;

(7) first reading and commitment of bills;

(8) second reading of bills (Committee of the Whole);

(9) third reading of bills;

(10) unfinished business;

(11) special orders of the day; and

(12) announcement of committee meetings.

To revert to or pass to a new order of business requires only a majority vote. Unless otherwise specified in the motion to recess, the Senate shall revert to Order of Business No. 1 when reconvening after a recess.

S50-30. Limitations on debate. A Senator may not speak more than twice on any one motion or question without unanimous consent of the Senate, unless the Senator has introduced or proposed the motion or question under debate, in which case the Senator may speak twice and also close the debate. However, a Senator who has spoken may not speak again on the same motion or question to the exclusion of a Senator who has not spoken.

S50-40. Procedure upon offering a motion. (1) When a motion is offered it must be restated by the presiding officer. If requested by the presiding officer or a Senator, it must be reduced to writing, presented at the rostrum, and read aloud by the Secretary.

(2) A motion may be withdrawn by the Senator offering it at any time before it is amended or voted upon.

S50-50. Precedence of motions. (1) When a question is under debate only the following privileged and subsidiary motions may be made:

(a) to adjourn;

(b) for a call of the Senate;

(c) to recess;

(d) question of privilege;

(e) to lay on the table;

(f) for the previous question;

(g) to postpone to a certain day;

(h) to refer or commit;

(i) to amend; and

(j) to postpone indefinitely.

(2) The motions listed in subsection (1) have precedence in the order listed.

(3) A question may be indefinitely postponed by a majority roll call of all Senators present and voting. When a bill or resolution is postponed indefinitely, it is finally rejected and may not be acted upon again except upon a motion of reconsideration.

(4) A motion or proposition on a subject different from that under consideration may not be accepted unless a substitute motion is in order.

S50-60. Nondebatable motions. The following motions are not debatable:

(1) to adjourn;

(2) for a call of the Senate;

(3) to recess or rise;

(4) for parliamentary inquiry;

(5) for suspension of the rules;

(6) to lay on the table;

(7) for the previous question;

(8) to limit, extend the limits of, or to close debate;

(9) to amend an undebatable motion;

(10) to divide a question;

(11) to pass business in Committee of the Whole;

(12) to take from the table;

(13) a decision of the presiding officer, unless appealed or unless the presiding officer submits the question to the Senate for advice or decision; and

(14) all incidental motions, such as motions relating to voting or other questions of a general procedural nature.

S50-70. Amending motions. (1) Subject to subsection (2), no more than one amendment and no more than one substitute motion may be made to a motion. This rule permits the main motion and two modifying motions.

(2) A motion for a call of the Senate, for the previous question, to table, or to take from the table may not be amended.

S50-80. Previous question. (1) Except as provided in subsection (2), the effect of calling for the previous question, if adopted, is to close debate immediately, to prevent the offering of amendments or other subsidiary motions, and to bring to vote promptly the immediately pending main question and the adhering subsidiary motions, whether on appeal or otherwise.

(2) When the previous question is ordered on any debatable question on which there has been no debate, the question may be debated for one-half hour, one-half of that time to be given to the proponents and one-half to the opponents. The sponsor of the main motion on which the previous question is adopted may close on the motion.

(3) A call of the Senate is not in order after the previous question is ordered unless it appears upon an actual count by the presiding officer that a quorum is not present.

S50-90. Reconsideration. (1) Any Senator may, on the day the vote was taken or on the next day the Senate is in session, move to reconsider the question. A motion to reconsider is a debatable motion, but the debate is limited to the motion. The debate on a motion to reconsider may not address the substance of the matter for which reconsideration is sought.

(2) A motion to reconsider may not be withdrawn after the next legislative day without the unanimous consent of the Senate, and thereafter any Senator may call it up for consideration. A motion to reconsider must be disposed of when made unless a proper substitute motion is made and adopted.

(3) A motion to recall a bill from the House of Representatives constitutes notice to reconsider and must be acted on as a motion to reconsider. A motion to reconsider or to recall a bill from the House of Representatives may be made only under Order of Business No. 6 and, under that order of business, takes precedence over all motions except motions to recess or adjourn.

(4) When a motion to reconsider is laid on the table, a two-thirds majority is required to take it from the table. When a motion to reconsider fails, the question is finally and conclusively settled.

(5) If a motion to reconsider third reading action is carried, there may not be further action until the succeeding legislative day.

S50-100. Dividing a question. A Senator may request to divide a question if it includes two or more propositions so distinct in substance that if one thing is taken away a substantive question will remain.

S50-110. Rules for questions requiring other than a majority vote. (1) When a question requires more than a majority vote for final passage, a majority vote is sufficient to decide any question relating to the question prior to third reading.

(2) Any vote in the Senate on a bill proposing an amendment to the Montana Constitution under circumstances in which there exists the mathematical possibility of obtaining the necessary two-thirds vote of the Legislature will cause the bill to progress as though it had received the majority vote. This rule does not prevent a committee from indefinitely postponing or tabling a bill proposing an amendment to the Montana Constitution.

(3) If a bill has been amended in the House of Representatives and the amendments are accepted by the Senate, the bill must again be placed on third reading in the Senate to determine if the required number of votes has been cast.

S50-120. Committee reports to Senate. (1) Reports of standing committees must be read on Order of Business No. 2, and, subject to subsection (4), debate may not be had on any report.

(2) On an adverse committee report, the sponsor may respond to the chair of the committee making the report.

(3) Any Senator seeking a reconsideration of the Senate's action on the adoption of a committee report shall do so on Order of Business No. 6 by motion to reconsider. Any Senator may make the reconsideration motion and need not have voted on the prevailing side. This rule applies notwithstanding any joint rule to the contrary. The reconsideration motion must be made within 1 legislative day of the adoption of the committee report and is not in order if the bill has been considered in Committee of the Whole.

(4) (a) Subject to subsection (4)(b), the Rules Committee and conference committees may report at any time, except during a call of the Senate, when a vote is being taken, or during Committee of the Whole.

(b) The Rules Committee may report during Committee of the Whole on matters referred to the Committee by the Committee of the Whole.

S50-130. Conference committee reports. (1) When a conference committee report is filed with the Secretary of the Senate, the report must be read under Order of Business No. 3, select committees, and placed on the calendar the succeeding legislative day for consideration on second reading. If recommended favorably by the Committee of the Whole, it may be considered on third reading the same legislative day.

(2) If both the Senate and the House of Representatives adopt the same conference committee report on legislation requiring more than a majority vote for final passage, the Senate, following approval of the conference committee report on third reading, shall place the final form of the legislation on third reading to determine if the required vote is obtained.

(3) If the Senate rejects a conference committee report, the committee continues to exist unless dissolved by the President or by motion. The committee may file a subsequent report.

(4) A Senate conference committee may confer regarding matters assigned to it with any House conference committee with like jurisdiction and submit recommendations for consideration of the Senate.

S50-140. Second reading. (1) The Senate may resolve itself into a Committee of the Whole for consideration of business on second reading, by approval of a motion for that purpose.

(2) After a Committee of the Whole has been formed, the President shall appoint a chair to preside.

(3) All legislation considered in the Committee of the Whole must be read by a summary of its title. The sponsor shall make an opening statement, proposed amendments must be considered, and then the bill must be considered in its entirety.

(4) Prior to adoption of the Committee of the Whole report, a Senator may move to segregate legislation. If the motion prevails, the legislation remains on second reading.

(5) When a Committee of the Whole report on legislation is rejected, the legislation remains on second reading.

S50-150. Committee of the Whole amendments. (1) All Committee of the Whole amendments must be prepared, stipulating the date and time of preparation and staff approval, and delivered to the Secretary of the Senate for reading before the amendment is voted on.

(2) Each amendment, rejected or adopted, must be printed in the journal, along with the name of the sponsor and the vote on each.

S50-160. Motions in Committee of the Whole. (1) All proper motions on second reading are debatable.

(2) The only motions in order during Committee of the Whole are to:

(a) amend;

(b) recommend passage or nonpassage;

(c) recommend concurrence or nonconcurrence;

(d) indefinitely postpone;

(e) pass consideration;

(f) rise;

(g) rise and report;

(h) rise and report progress and ask leave to sit again; or

(i) change the order in which legislation is placed on the agenda.

S50-170. Committee of the Whole — generally. (1) The Committee of the Whole may not appoint subcommittees.

(2) The Committee of the Whole may not punish its members for misconduct, but may report disorder to the Senate.

S50-180. Voting on second reading. (1) On Order of Business No. 8, in addition to other methods, a recorded vote may be made in the following manner: the chair may call for a voice vote to accept or reject a question. If the vote is other than unanimous, the chair may ask that the lesser number on the question indicate their vote by standing. The Secretary will then record the vote of those standing. The chair may then rule that unless excused those not standing and present have voted on the prevailing side of the question and that their vote be recorded as voting on the prevailing side. If there was a unanimous voice vote, all those present will be recorded as having voted for the question.

(2) A motion on second reading must be disposed of by a positive vote.

S50-190. Third reading procedure. (1) Unless rereferred to a committee by a majority vote after the adoption of the committee of the whole report but before moving to another order of business, all legislation passing second reading must be placed on third reading the day following the receipt of the engrossing or other appropriate printing report.

(2) On Order of Business No. 9 the Secretary shall read the title and the President shall state the question as follows: "Senate bill number (or other appropriate identification)..... having been read three several times, the question is, shall the bill (or other appropriate identification) pass the Senate?"

(3) If an electronic voting system is used, the President shall state "Those in favor vote yes and those opposed vote no" and the Secretary will sound the signal and open the board for voting. After a reasonable pause the presiding officer asks "Has every member voted?" (reasonable pause), "Does any member wish to change his or her vote?" (reasonable pause), "The Secretary will record the vote."

S50-200. Senate voting — changing a vote. (1) A roll call vote must be taken on the request of two Senators, if the request occurs before the vote is taken.

(2) On a roll call vote the names of the Senators must be called alphabetically, unless an electronic voting system is used. A Senator may not vote after the decision is announced from the chair. A Senator may not explain a vote until after the decision is announced from the chair.

(3) A Senator may move to change the Senator's vote, on any recorded vote, within 1 legislative day of the vote. The Senator making the motion shall first specify the bill number, the date of the vote, and the original vote tally. A vote may not be changed if it would affect the outcome of legislation. The motion is nondebatable. If none of the Senators present object, the change must be entered into the journal.

(4) If any Senator objects to the request in subsection (3), the Senator making the request may move to suspend the rules to allow the Senator to change the Senator's vote.

(5) An error caused by a malfunction of the voting system may be corrected without a vote within 10 minutes of the malfunction.

S50-210. Pairs. (1) Two Senators may pair on a question that will be determined by a majority vote. On a question requiring a two-thirds vote for adoption, three Senators may pair, with two Senators for the question and one Senator against. Pairing is permitted only when one of the paired Senators is excused when the vote is taken.

(2) An agreement to pair must be in writing and dated and signed by the Senators agreeing to be bound and must specify the duration of the pair. When an agreement to pair is filed with the Secretary of the Senate, it binds the Senators signing until the expiration of time for which it was signed, unless the paired Senators sooner appear and ask that the agreement be canceled.

(3) Pairs in Committee of the Whole are prohibited.

S50-220. Call of the Senate. (1) In the absence of a quorum, a majority of Senators present may compel the attendance of absent Senators by ordering a call of the Senate.

(2) If a quorum is present, five Senators may order a call of the Senate.

(3) On a call of the Senate, a Senator who refuses to attend may be arrested by the Sergeant-at-Arms or any other person, as the majority of the Senators present direct. When the attendance of an absent Senator is secured and the Senate refuses to excuse the Senator's absence, the Senator may not be paid any expense payments while absent and is liable for the expenses incurred in procuring the Senator's attendance.

(4) During a call of the Senate, all business must be suspended. After a call has been ordered, no motion is in order except a motion to adjourn or remove the call. The call may be removed by a two-thirds vote of the members present.

S50-230. House amendments to Senate legislation. (1) When the House has properly returned Senate legislation with House amendments, the Senate shall announce the amendments on Order of Business No. 5 and the President shall place them on second reading for debate. The President may rerefer Senate legislation with House amendments to a committee for a hearing if the House amendments constitute a significant change in the Senate legislation. The second reading vote is limited to consideration of the House amendments.

(2) If the Senate accepts House amendments, the Senate shall place the final form of the legislation on third reading to determine if the legislation, as amended, is passed or if the required vote is obtained.

(3) If the Senate rejects the House amendments, the Senate may request the House to recede from its amendments or may direct appointment of a conference committee and request the House to appoint a like committee.

S50-240. Governor's amendments. (1) When the Governor returns a bill with recommended amendments, the Senate shall announce the amendments under Order of Business No. 4.

(2) The Senate may debate and adopt or reject the Governor's recommended amendments on second reading on any legislative day.

(3) If both the Senate and the House of Representatives accept the Governor's recommended amendments on a bill that requires more than a majority vote for final passage, the Senate shall place the final form of the legislation on third reading to determine if the required vote is obtained.

S50-250. Governor's veto. (1) When the Governor returns a bill with a veto, the Senate shall announce the veto under Order of Business No. 4.

(2) On any legislative day, a Senator may move to override the Governor's veto by a two-thirds vote under Order of Business No. 6.

CHAPTER 6

Rules

S60-10. Senate rules. (1) A motion to amend or adopt a rule of the Senate must be referred to the Rules Committee without debate. A rule of the Senate may be amended or adopted only with the concurrence of a majority of the Senate and after 1 day's notice.

(2) A rule may be suspended temporarily by a two-thirds vote.

S60-20. Mason's Manual of Legislative Procedure. Mason's Manual of Legislative Procedure (2000) governs the proceedings of the Senate in all cases not covered by these rules.

CHAPTER 7

Nominations from the Governor

S70-10. Nominations. (1) The Governor shall nominate and, by and with the consent of the Senate, appoint all officers whose offices are established by the Montana Constitution or which may be created by law and for whom appointment or election is not otherwise provided.

(2) If during a recess of the Senate a vacancy occurs in any office subject to Senate confirmation, the Governor shall appoint some fit person to discharge the duties of the office until the next meeting of the Senate, when the Governor shall nominate a person to fill the office.

S70-20. Introduction and first reading of nominations. (1) Nominations received from the Governor must be:

(a) received by the President;

(b) delivered to the Secretary of the Senate;

(c) read under Order of Business No. 4, messages from the Governor; and

(d) referred to committee. The President of the Senate may refer any individual nomination contained in a list received from the Governor to any standing committee.

(2) The procedure in subsection (1) constitutes introduction and first reading of the nominations.

(3) The Secretary shall distribute a copy of the list of nominations to each Senator.

S70-30. Committee process. (1) (a) The committee shall research each nominee and may request biographical information from the Governor for each nominee if none has been provided.

(b) The committee chair shall submit a bill draft request on behalf of the committee for a simple resolution to include the nominees specified by the committee chair. These bill draft requests will not count against any bill draft request limit imposed on members. When the resolution has been prepared and introduced, the committee shall hold a hearing on the resolution after appropriate public notice has been made.

(2) Following the hearings, the committee shall issue preliminary standing committee reports to be distributed to each Senator, stating the committee's recommendations concerning the nominees.

(3) (a) If a Senator wishes to have an individual nominee, or group of nominees, considered by the Senate separately from the group of nominees recommended by the committee, the Senator may request of the chair of the committee that the nominee or nominees be considered by a separate resolution.

(b) A Senator shall request separate consideration of a nominee within 3 days of receipt of the preliminary standing committee report. The committee chair shall honor this request.

(4) After waiting 3 days from the day of distribution of the preliminary standing committee report, the committee chair shall issue a final standing committee report and deliver the report to the Secretary of the Senate.

(a) If a nominee is to be separated from the resolution, the final standing committee report must include an amendment deleting that nominee.

(b) When a nominee has been separated at the request of a Senator, the committee chair shall submit a bill draft request on behalf of the committee for a simple resolution to include only the nominee so separated. When the resolution has been prepared and introduced, the committee shall take executive action on the resolution. When a hearing on the separated nomination was held prior to the committee's preliminary standing committee report, an additional hearing is not required to be held before the committee takes action on the separate resolution. After the committee's executive action, the committee chair shall issue a standing committee report.

(5) If a resolution contains only one nominee, the committee shall dispense with the preliminary standing committee report and shall issue a final standing committee report to be distributed to each Senator stating the committee's recommendation concerning the nominee.

(6) The Secretary will read the reports under Order of Business No. 2, reports of standing committees.

(7) After the report has been read, the resolution must be placed on Order of Business No. 11 the next legislative day for consideration by the Senate. Motions to approve or disapprove of the resolution are in order and may be debated.

Appendix A

List of Questions Requiring Other Than a Majority Vote

The following questions require the vote specified:

(1) a call of the Senate with a quorum pursuant to S50-220(2) (five Senators);

(2) a motion to lift a call of the Senate pursuant to S50-220(4) (two-thirds of the members present);

(3) a motion to amend or suspend rules pursuant to S60-10 (two-thirds);

(4) a motion to override the Governor's veto pursuant to S50-250 and Article VI, section 10(3), of the Montana Constitution (two-thirds);

(5) a motion to approve a bill to appropriate the principal of the coal trust fund pursuant to Article IX, section 5, of the Montana Constitution (three-fourths of each house);

(6) a motion to approve a bill to appropriate highway revenue as described in Article VIII, section 6, of the Montana Constitution for purposes other than those described in that section (three-fifths of each house);

(7) a motion to approve a bill proposing to amend the Montana Constitution pursuant to Article XIV, section 8, of the Montana Constitution (two-thirds of the entire Legislature);

(8) an appeal of the ruling of the presiding officer pursuant to S20-10 (one Senator, seconded by two other Senators);

(9) a motion to approve a bill conferring immunity from suit as described in Article II, section 18, of the Montana Constitution (two-thirds);

(10) a motion to approve a bill to appropriate the principal of the tobacco settlement trust fund pursuant to Article XII, section 4, of the Montana Constitution (two-thirds); and

(11) a motion to appropriate the principal of the noxious weed management trust fund pursuant to Article IX, section 6, of the Montana Constitution (three-fourths).

Adopted January 14, 2009

SENATE RESOLUTION NO. 2

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENTS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 15, 2009, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointments, below designated, that have been submitted to the Senate by the Governor pursuant to 5-5-302, MCA:

(1) As members of the Air Pollution Control Advisory Council, in accordance with 2-15-2106, MCA:

Don Potts, Missoula, Montana, appointed to serve at the pleasure of the Governor.

Bovard Tiberi, Bozeman, Montana, appointed to serve at the pleasure of the Governor.

(2) As members of the Alternative Health Care Board, in accordance with 2-15-1730, MCA:

Kathleen Stevens, Billings, Montana, appointed to a term ending September 1, 2011.

Nancy Aagenes, Helena, Montana, appointed to a term ending September 1, 2011.

Margaret Beeson, Billings, Montana, appointed to a term ending September 1, 2012.

(3) As members of the Board of Architects and Landscape Architects, in accordance with 2-15-1761, MCA:

Carl Thuesen, Billings, Montana, appointed to a term ending March 27, 2010.

Shelly Engler, Bozeman, Montana, appointed to a term ending March 27, 2010.

Teresa Wilson, Butte, Montana, appointed to a term ending March 27, 2010.

Bayliss Ward, Bozeman, Montana, appointed to a term ending March 27, 2011.

(4) As members of the Montana Arts Council, in accordance with 22-2-101, MCA:

Jackie Parsons, Browning, Montana, appointed to a term ending February 1, 2013.

Kathleen M. Schlepp, Miles City, Montana, appointed to a term ending February 1, 2013.

Arlene Parisot, Helena, Montana, appointed to a term ending February 1, 2013.

Tracy Linder, Molt, Montana, appointed to a term ending February 1, 2013.

Corwin "Corky" Clairmont, Ronan, Montana, appointed to a term ending February 1, 2013.

Jane Deschner, Billings, Montana, appointed to a term ending February 1, 2012.

(5) As members of the State Banking Board, in accordance with 2-15-1025, MCA:

Evelyn Casterline, Vida, Montana, appointed to a term ending July 1, 2010.

Mark Huber, Helena, Montana, appointed to a term ending July 1, 2010.

Carolyn Colman, Great Falls, Montana, appointed to a term ending July 1, 2011.

John King, Kalispell, Montana, appointed to a term ending July 1, 2011.

(6) (a) As members of the Board of Barbers and Cosmetologists, in accordance with 2-15-1747, MCA:

Maggie Burton-Blize, Missoula, Montana, appointed to a term ending October 1, 2012.

Angela Printz, Livingston, Montana, appointed to a term ending October 1, 2012.

Jamie Ausk Crisafulli, Glendive, Montana, appointed to a term ending October 1, 2013.

Wendell Petersen, Missoula, Montana, appointed to a term ending October 1, 2013.

William A. Graves, Great Falls, Montana, appointed to a term ending October 1, 2013.

(b) In addition, the term dates of two members of the Board of Barbers and Cosmetologists submitted to the 2007 Montana State Senate and confirmed

upon passage of Senate Resolution 4, L. 2007, are corrected and resubmitted as follows:

Maxine Collins, Helena, Montana, appointed to a term ending October 1, 2010. Ms. Collins' term was listed in SR 4 as ending in 2008.

Delores Lund, Plentywood, Montana, appointed to a term ending October 1, 2010. Ms. Lund's term was listed in SR 4 as ending in 2008.

(7) As members of the Montana Capital Investment Board, in accordance with 90-10-201, MCA:

Gary Buchanan, Billings, Montana, appointed to a term ending January 1, 2011.

Robert W. Minto, Missoula, Montana, appointed to a term ending January 1, 2011.

Robert Pancich, Great Falls, Montana, appointed to a term ending January 1, 2009.

Lawrence A. Anderson, Great Falls, Montana, appointed to a term ending January 1, 2009.

Ellen Feaver, Helena, Montana, appointed to a term ending January 1, 2009.

(8) As a member of the Board of Chiropractors, in accordance with 2-15-1737, MCA:

Scott Hansing, Helena, Montana, appointed to a term ending January 1, 2011.

(9) As members of the Board of Clinical Laboratory Science Practitioners, in accordance with 2-15-1753, MCA:

Rosemary Shively, Helena, Montana, appointed to a term ending April 16, 2011.

Charliene Staffanson, Deer Lodge, Montana, appointed to a term ending April 16, 2011.

Barbara Henderson, Miles City, Montana, appointed to a term ending April 16, 2011.

(10) As members of the Board of County Printing, in accordance with 2-15-1026, MCA:

Dan Killoy, Miles City, Montana, appointed to a term ending April 1, 2009.

Calvin J. Oraw, Sidney, Montana, appointed to a term ending April 1, 2009.

Marianne Roose, Eureka, Montana, appointed to a term ending April 1, 2009.

Milton Wester, Laurel, Montana, appointed to a term ending April 1, 2009.

(11) As a member of the Board of Dentistry, in accordance with 2-15-1732, MCA:

Aimee R. Ameline, Great Falls, Montana, appointed to a term ending March 29, 2013.

(12) As members of the State Electrical Board, in accordance with 2-15-1764, MCA:

Marlene Egan, Helena, Montana, appointed to a term ending July 1, 2012.

Jack Fisher, Butte, Montana, appointed to a term ending July 1, 2013.

(13) As a member of the Montana Facility Finance Authority, in accordance with 2-15-1815, MCA:

Matthew B. Thiel, Missoula, Montana, appointed to a term ending January 1, 2011.

(14) As members of the Board of Funeral Service, in accordance with 2-15-1743, MCA:

Ronald E. Brothers, Hamilton, Montana, appointed to a term ending July 1, 2012.

Bart Thompson, Helena, Montana, appointed to a term ending July 1, 2012.

John Tarr, Helena, Montana, appointed to a term ending July 1, 2012.

William Cronin, Havre, Montana, appointed to a term ending July 1, 2013.

(15) As a member of the Board of Hail Insurance, in accordance with 2-15-3003, MCA:

Gary Gollehon, Brady, Montana, appointed to a term ending April 18, 2011.

(16) As members of the Board of Hearing Aid Dispensers, in accordance with 2-15-1740, MCA:

Stephen Kramer, Billings, Montana, appointed to a term ending July 1, 2010.

Gene W. Bukowski, Au.D., Billings, Montana, appointed to a term ending July 1, 2010.

(17) As members of the Montana Historical Society Board of Trustees, in accordance with 22-3-104, MCA:

Sharon Lincoln, Billings, Montana, appointed to a term ending July 1, 2013.

Janene Caywood, Missoula, Montana, appointed to a term ending July 1, 2013.

Ed Smith, Helena, Montana, appointed to a term ending July 1, 2013.

(18) As members of the Board of Horseracing, in accordance with 2-15-3106, MCA:

Susan Austin, Kalispell, Montana, appointed to a term ending January 20, 2010.

Charles (Al) Carruthers, Butte, Montana, appointed to a term ending January 20, 2010.

John Ostlund, Billings, Montana, appointed to a term ending January 20, 2010.

Ray "Topper" Tracy, Stevensville, Montana, appointed to a term ending January 20, 2010.

Susan Egbert, Helena, Montana, appointed to a term ending January 20, 2011.

(19) As members of the Livestock Loss Reduction and Mitigation Board, in accordance with 2-15-3110, MCA:

Elaine Allestad, Big Timber, Montana, appointed to a term ending January 1, 2011.

Larry Trexler, Hamilton, Montana, appointed to a term ending January 1, 2011.

Hilliard McDonald, Judith Gap, Montana, appointed to a term ending January 1, 2011.

Janelle Holden, Livingston, Montana, appointed to a term ending January 1, 2009.

Brad Radtke, Drummond, Montana, appointed to a term ending January 1, 2009.

Whitney Wankel, Bozeman, Montana, appointed to a term ending January 1, 2009.

James Cross, Kalispell, Montana, appointed to a term ending January 1, 2009.

(20) As members of the Board of Medical Examiners, in accordance with 2-15-1731, MCA:

Patrick Boylan, Corvallis, Montana, appointed to a term ending September 1, 2009.

James Upchurch, Hardin, Montana, appointed to a term ending September 1, 2011.

Mary Anne Guggenheim, Helena, Montana, appointed to a term ending September 1, 2011.

Dean Center, Bozeman, Montana, appointed to a term ending September 1, 2012. Dr. Center's original appointment was made on June 20, 2007, to fill a vacancy through September 1, 2008.

(21) As members of the Board of Nursing, in accordance with 2-15-1734, MCA:

Sharon Dschaak, Wolf Point, Montana, appointed to a term ending July 1, 2011.

Laura Weiss, Great Falls, Montana, appointed to a term ending July 1, 2011.

Kathy Hayden, Missoula, Montana, appointed to a term ending July 1, 2012.

Heather Onstad, Helena, Montana, appointed to a term ending July 1, 2012.

(22) As members of the Board of Nursing Home Administrators, in accordance with 2-15-1735, MCA:

Carla Neiman, Plains, Montana, appointed to a term ending May 28, 2012.

Ken Chase, Billings, Montana, appointed to a term ending May 28, 2011.

Joshua Brown, Columbia Falls, Montana, appointed to a term ending May 28, 2012.

Thomas Klotz, Glasgow, Montana, appointed to a term ending May 28, 2013.

(23) As a member of the Board of Occupational Therapy Practice, in accordance with 2-15-1749, MCA:

Amy J. Gilbertson, Great Falls, Montana, appointed to a term ending December 31, 2011.

(24) As members of the Board of Optometry, in accordance with 2-15-1736, MCA:

Delores Hill, Mosby, Montana, appointed to a term ending April 3, 2011.

Douglas Kimball, Bozeman, Montana, appointed to a term ending April 3, 2011.

Randall Hoch, Lewistown, Montana, appointed to a term ending April 3, 2012.

(25) As members of the Board of Personnel Appeals, in accordance with 2-15-1705, MCA:

Jack A. Holstrom, Helena, Montana, appointed to a term ending January 1, 2012.

Quinton Nyman, Helena, Montana, appointed to a term ending January 1, 2009.

(26) As members of the Board of Pharmacy, in accordance with 2-15-1733, MCA:

Susan Hagen, Glasgow, Montana, appointed to a term ending July 1, 2012.

Frances Carlson, Great Falls, Montana, appointed to a term ending July 1, 2013.

Rebekah Matovich, Billings, Montana, appointed to a term ending July 1, 2013.

Lee Ann Bradley, Missoula, Montana, appointed to a term ending July 1, 2010.

(27) As members of the Board of Physical Therapy Examiners, in accordance with 2-15-1748, MCA:

Robin Peterson Smith, Billings, Montana, appointed to a term ending July 1, 2010.

Ron Peterson, Cascade, Montana, appointed to a term ending July 1, 2009.

Richard Smith, Missoula, Montana, appointed to a term ending July 1, 2011.

(28) As members of the Board of Plumbers, in accordance with 2-15-1765, MCA:

David Lindeen, Huntley, Montana, appointed to a term ending May 4, 2011.

Debi Friede, Havre, Montana, appointed to a term ending May 4, 2011.

Steve Carey, Frenchtown, Montana, appointed to a term ending May 4, 2011.

Marc Golz, Helena, Montana, appointed to a term ending May 4, 2011.

Scott Lemert, Livingston, Montana, appointed to a term ending May 4, 2011.

Jeffrey Gruizenga, Billings, Montana, appointed to a term ending May 4, 2012.

(29) As members of the Board of Private Alternative Adolescent Residential or Outdoor Programs, in accordance with 2-15-1745, MCA:

John Santa, Kalispell, Montana, appointed to a term ending April 19, 2011.

Mary Alexine, Eureka, Montana, appointed to a term ending April 19, 2011.

Darcie Kelly, Helena, Montana, appointed to a term ending April 19, 2011.

Penny James, Trout Creek, Montana, appointed to a term ending April 19, 2011.

Tim Callahan, Great Falls, Montana, appointed to a term ending April 19, 2011.

(30) As members of the Board of Private Security, in accordance with 2-15-1781, MCA:

Mark Chaput, Billings, Montana, appointed to a term ending August 1, 2010.

Raymond Murray, Missoula, Montana, appointed to a term ending August 1, 2011.

Holly Dershem-Bruce, Glendive, Montana, appointed to a term ending August 1, 2011.

(31) As members of the Professional Engineers and Land Surveyors, in accordance with 2-15-1763, MCA:

Casey E. Johnston, Butte, Montana, appointed to a term ending July 1, 2011.

Vic Cundy, Bozeman, Montana, appointed to a term ending July 1, 2011.

James Hahn, Billings, Montana, appointed to a term ending July 1, 2011.

Tom Tanner, Arlee, Montana, appointed to a term ending July 1, 2011.

(32) As members of the Board of Psychologists, in accordance with 2-15-1741, MCA:

Marla Lemons, Butte, Montana, appointed to a term ending September 1, 2011.

Linda Holden, Valier, Montana, appointed to a term ending September 1, 2012.

Susan Mattocks, Miles City, Montana, appointed to a term ending September 1, 2013.

(33) As members of the Board of Public Accountants, in accordance with 2-15-1756, MCA:

Beatrice Rosenleaf, Anaconda, Montana, appointed to a term ending July 1, 2012.

Jack Meyer, Missoula, Montana, appointed to a term ending July 1, 2012.

(34) As members of the Public Employees Retirement Board, in accordance with 2-15-1009, MCA:

Dianna Porter, Butte, Montana, appointed to a term ending April 1, 2013.

Darcy Halpin, Belgrade, Montana, appointed to a term ending April 1, 2013.

Loren Bough, Big Sky, Montana, appointed to a term ending April 1, 2009.

(35) As members of the Public Safety Officer Standards and Training Council, in accordance with 44-4-402, MCA:

Winnie Ore, Helena, Montana, appointed to a term ending January 1, 2011.

Mike Anderson, Havre, Montana, appointed to a term ending January 1, 2011.

Bonnie Wallem, Kalispell, Montana, appointed to a term ending January 1, 2009.

Mike Reddick, Helena, Montana, appointed to a term ending January 1, 2009.

James Marble, Stevensville, Montana, appointed to a term ending January 1, 2011.

Tony Harbaugh, Miles City, Montana, appointed to a term ending January 1, 2009.

Steve Barry, Helena, Montana, appointed to a term ending January 1, 2009.

Levi Talkington, Lewistown, Montana, appointed to a term ending January 1, 2011.

Dennis McCave, Billings, Montana, appointed to a term ending January 1, 2009.

Frances Weeks, Poplar, Montana, appointed to a term ending January 1, 2011.

Robert M. McCarthy, Butte, Montana, appointed to a term ending January 1, 2011.

Raymond Murray, Missoula, Montana, appointed to a term ending January 1, 2009.

Hannah Tillman, Crow Agency, Montana, appointed to a term ending January 1, 2009.

(36) As a member of the Board of Radiologic Technologists, in accordance with 2-15-1738, MCA:

Mike Nielsen, Billings, Montana, appointed to a term ending July 1, 2010.

(37) As members of the Board of Real Estate Appraisers, in accordance with 2-15-1758, MCA:

Dennis Hoeger, Bozeman, Montana, appointed to a term ending May 1, 2010.

Jennifer McGinnis, Polson, Montana, appointed to a term ending May 1, 2010.

Marilyn Rose, Great Falls, Montana, appointed to a term ending May 1, 2010.

Peter Fontana, Great Falls, Montana, appointed to a term ending May 1, 2011.

Kraig P. Kosena, Missoula, Montana, appointed to a term ending May 1, 2011.

(38) As members of the Board of Realty Regulation, in accordance with 2-15-1757, MCA:

Shirley McDermott, Laurel, Montana, appointed to a term ending May 9, 2011.

C.E. "Abe" Abramson, Missoula, Montana, appointed to a term ending May 9, 2011.

Connie Wardell, Billings, Montana, appointed to a term ending May 9, 2011.

Larry Milless, Corvallis, Montana, appointed to a term ending May 9, 2011.

Pat M. Goodover II, Great Falls, Montana, appointed to a term ending May 9, 2012.

(39) As a member of the Board of Research and Commercialization Technology, in accordance with 2-15-1819, MCA:

Jim Davison, Anaconda, Montana, appointed to a term ending July 1, 2009.

(40) As members of the Board of Respiratory Care Practitioners, in accordance with 2-15-1750, MCA:

Thomas Fallang, Butte, Montana, appointed to a term ending January 1, 2011.

Carl Hallenborg, Helena, Montana, appointed to a term ending January 1, 2011.

(41) As members of the Board of Sanitarians, in accordance with 2-15-1751, MCA:

James Zabrocki, Miles City, Montana, appointed to a term ending July 1, 2010.

Kathleen Driscoll, Hamilton, Montana, appointed to a term ending July 1, 2011.

Gene Townsend, Three Forks, Montana, appointed to a term ending July 1, 2011.

Gerald Cormier, Billings, Montana, appointed to a term ending July 1, 2011.

(42) As members of the Board of Social Work Examiners and Professional Counselors, in accordance with 2-15-1744, MCA:

Ann Gilkey, Helena, Montana, appointed to a term ending January 1, 2011.

Linda Crummett, Billings, Montana, appointed to a term ending January 1, 2013.

Treasa Glinnwater, Ronan, Montana, appointed to a term ending January 1, 2013.

John Lynn, Missoula, Montana, appointed to a term ending January 1, 2013.

Henry Pretty On Top, Lodge Grass, Montana, appointed to a term ending January 1, 2013.

(43) As members of the Board of Speech-Language Pathologists and Audiologists, in accordance with 2-15-1739, MCA:

Sharon Dinstel, Colstrip, Montana, appointed to a term ending December 31, 2010.

James L. Sias, Ronan, Montana, appointed to a term ending December 31, 2010.

Cheri Fjare, Big Timber, Montana, appointed to a term ending December 31, 2010.

Tina Hoagland, Billings, Montana, appointed to a term ending December 31, 2011.

Lynn Harris, Missoula, Montana, appointed to a term ending December 31, 2011.

(44) As members of the State Compensation Insurance Fund Board, in accordance with 2-15-1019, MCA:

Joe Dwyer, Billings, Montana, appointed to a term ending April 28, 2011.

Wallace M. Yovetich, Billings, Montana, appointed to a term ending April 28, 2011.

Boyd Taylor, Butte, Montana, appointed to a term ending April 28, 2011.

Thomas R. Heisler, Great Falls, Montana, appointed to a term ending April 28, 2009.

(45) As a member of the State Tax Appeal Board, in accordance with 15-2-101, MCA:

Karen E. Powell, Helena, Montana, appointed to a term ending January 1, 2015.

(46) As members of the Board of Veterans' Affairs, in accordance with 2-15-1205, MCA:

C.E. Crookshanks, Missoula, Montana, appointed to a term ending August 1, 2011.

Lloyd Jackson, Pablo, Montana, appointed to a term ending August 1, 2011.

Bob Pavlovich, Butte, Montana, appointed to a term ending August 1, 2011.

Harvey Rattey, Glendive, Montana, appointed to a term ending August 1, 2011.

James Heffernan, Helena, Montana, appointed to a term ending August 1, 2011.

Donald Kettner, Glendive, Montana, appointed to a term ending August 1, 2012.

(47) As members of the Board of Veterinary Medicine, in accordance with 2-15-1742, MCA:

Barbara Calm, Kila, Montana, appointed to a term ending July 31, 2012.

Kim K. Baker, Hot Springs, Montana, appointed to a term ending July 31, 2010.

Jean Lindley, Miles City, Montana, appointed to a term ending July 31, 2011.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 61st Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointments and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted March 14, 2009

SENATE RESOLUTION NO. 3

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENTS TO THE TRANSPORTATION COMMISSION MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 15, 2009, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointments, below designated, that have been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As members of the Transportation Commission, in accordance with section 2-15-2502, MCA:

Barb Skelton, Billings, Montana, appointed to a term ending January 1, 2013.

Rick Griffith, Butte, Montana, appointed to a term ending January 1, 2013.

Diann Seymour-Winterburn, Helena, Montana, appointed to a term ending January 1, 2013.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 61st Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointments and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted February 23, 2009

SENATE RESOLUTION NO. 4

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENT TO THE BOARD OF REGENTS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 15, 2009, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointment, below designated, that has been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As a student member of the Board of Regents, in accordance with section 2-15-1508, MCA:

Mitchell Jessen, Dillon, Montana, appointed to a term ending June 30, 2009.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 61st Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointment and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted February 20, 2009

SENATE RESOLUTION NO. 5

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENT TO THE BOARD OF PUBLIC EDUCATION MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 15, 2009, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointment, below designated, that has been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As a member of the Board of Public Education, in accordance with section 2-15-1508, MCA:

Bernard Olson, Lakeside, Montana, appointed to a term ending February 1, 2015.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 61st Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointment and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted February 20, 2009

SENATE RESOLUTION NO. 6

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE

APPOINTMENT MADE BY THE GOVERNOR TO THE BOARD OF REGENTS AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 15, 2009, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointment, below designated, that has been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As a member of the Board of Regents, in accordance with section 2-15-1508, MCA:

Clayton Christian, Missoula, Montana, appointed to a term ending February 1, 2015.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 61st Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointment and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted February 20, 2009

SENATE RESOLUTION NO. 7

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENT MADE BY THE GOVERNOR TO THE BOARD OF LIVESTOCK AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 15, 2009, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointment, below designated, that has been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As a member of the Board of Livestock, in accordance with section 2-15-3102, MCA:

Brett DeBruycker, Dutton, Montana, appointed to a term ending March 1, 2009.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 61st Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointment and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted February 21, 2009

SENATE RESOLUTION NO. 9

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENTS MADE BY THE GOVERNOR AND SUBMITTED BY

WRITTEN COMMUNICATION DATED FEBRUARY 26, 2009, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointments, below designated, that have been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

(1) As members of the Board of Aeronautics, in accordance with section 2-15-2506, MCA:

Tricia McKenna, Bozeman Montana, for a term ending January 1, 2013.

Bill Hunt Jr., Shelby, Montana, for a term ending January 1, 2013.

Fred Leistiko, Kalispell, Montana, for a term ending January 1, 2013.

Roger Lincoln, Gildford, Montana, for a term ending January 1, 2013.

Ted Schye, Fort Peck, Montana, for a term ending January 1, 2013.

(2) As a member of the Board of Architects and Landscape Architects, in accordance with section 2-15-1761, MCA:

James G. Shepard, Billings, Montana, for a term ending March 27, 2012.

(3) As members of the Capital Investment Board, in accordance with section 90-10-201, MCA:

Lawrence A. Anderson, Great Falls, Montana, for a term ending January 1, 2013.

Ellen Feaver, Helena, Montana, for a term ending January 1, 2013.

Robert Pancich, Great Falls, Montana, for a term ending January 1, 2013.

(4) As members of the Board of Chiropractors, in accordance with section 2-15-1737, MCA:

John Sando, Butte, Montana, for a term ending January 1, 2012.

Alice Whiteman, Missoula, Montana, for a term ending January 1, 2012.

(5) As a member of the Board of Clinical Laboratory Science Practitioners, in accordance with section 2-15-1753, MCA:

Wendy Palmer, Raynesford, Montana, for a term ending April 16, 2012.

(6) As members of the Coal Board, in accordance with section 2-15-1821, MCA:

Gerald Navratil, Sidney, Montana, for a term ending January 1, 2013.

John Williams, Colstrip, Montana, for a term ending January 1, 2013.

Dan Dutton, Belfry, Montana, for a term ending January 1, 2013.

Chad Fenner, Hardin, Montana, for a term ending January 1, 2013.

(7) As members of the Board of Crime Control, in accordance with section 2-15-2006, MCA:

Mike Anderson, Havre, Montana, for a term ending January 1, 2013.

Mikie Baker-Hajek, Great Falls, Montana, for a term ending January 1, 2013.

Steve Bullock, Helena, Montana, for a term ending January 1, 2013.

James R. Cashell, Bozeman, Montana, for a term ending January 1, 2013.

Lyndon Erickson, Glasgow, Montana, for a term ending January 1, 2013.

Harold F. Hanser, Billings, Montana, for a term ending January 1, 2013.

Pamela B. Kennedy, Kalispell, Montana, for a term ending January 1, 2013.

Steve McArthur, Butte, Montana, for a term ending January 1, 2013.

Nickolas C. Murnion, Jordan, Montana, for a term ending January 1, 2013.

Bonnie Wallem, Kalispell, Montana, for a term ending January 1, 2013.

(8) As members of the Board of Dentistry, in accordance with section 2-15-1732, MCA:

Jennifer Porter, Bozeman, Montana, for a term ending March 29, 2014.

Dale Chamberlain, Lewistown, Montana, for a term ending March 29, 2014.

(9) As a member of the State Electrical Board, in accordance with section 2-15-1764, MCA:

Rick Hutchinson, Black Eagle, Montana, for a term ending July 1, 2014.

(10) As members of the Montana Facility Finance Authority, in accordance with section 2-15-1815, MCA:

James W. (Bill) Kearns, Townsend, Montana, for a term ending January 1, 2013.

Richard King, Missoula, Montana, for a term ending January 1, 2013.

Jon Marchi, Polson, Montana, for a term ending January 1, 2013.

Larry Putnam, Helena, Montana, for a term ending January 1, 2013.

(11) As a member of the Board of Hail Insurance, in accordance with section 2-15-3003, MCA:

Trudy Laas Skari, Chester, Montana, for a term ending April 18, 2012.

(12) As members of the Human Rights Commission, in accordance with section 2-15-1706, MCA:

Maria Beltran, Billings, Montana, for a term ending January 1, 2013.

Linda Minich, Jefferson City, Montana, for a term ending January 1, 2013.

Allen Secher, Whitefish, Montana, for a term ending January 1, 2013.

(13) As members of the Board of Labor Appeals, in accordance with section 2-15-1704, MCA:

Norman Grosfield, Helena, Montana, for a term ending January 1, 2013.

Brian Boland, Great Falls, Montana, for a term ending January 1, 2013.

(14) As members of the Board of Occupational Therapy Practice, in accordance with section 2-15-1749, MCA:

Lynn Yocom, Anaconda, Montana, for a term ending December 31, 2012.

Sue Furey, Missoula, Montana, for a term ending December 31, 2012.

(15) As members of the Board of Oil and Gas Conservation, in accordance with section 2-15-3303, MCA:

Donald D. Bradshaw, Fort Benton, Montana, for a term ending January 1, 2013.

Linda Nelson, Medicine Lake, Montana, for a term ending January 1, 2013.

Wayne Smith, Valier, Montana, for a term ending January 1, 2013.

Jay Gunderson, Billings, Montana, for a term ending January 1, 2013.

(16) As a member of the Board of Optometry, in accordance with section 2-15-1736, MCA:

Rock E. Svennungsen, Shelby, Montana, for a term ending April 3, 2013.

(17) As members of the Board of Personnel Appeals, in accordance with section 2-15-1705, MCA:

Quinton Nyman, Helena, Montana, for a term ending January 1, 2013.

James (Jay) Reardon, Helena, Montana, for a term ending January 1, 2013.

Karla Stanton, Billings, Montana, for a term ending January 1, 2013.

(18) As a member of the Board of Professional Engineers and Land Surveyors, in accordance with section 2-15-1763, MCA:

Hal Jacobson, Helena, Montana, for a term ending July 1, 2010.

(19) As a member of the Board of Public Accountants, in accordance with section 2-15-1756, MCA:

Linda Harris, Absarokee, Montana, for a term ending July 1, 2013.

(20) As members of the Board of Public Assistance, in accordance with section 2-15-2203, MCA:

Amy D. Christensen, Helena, Montana, for a term ending January 1, 2013.

Scott Sorensen, Whitefish, Montana, for a term ending January 1, 2013.

(21) As a member of the Public Employees Retirement Board, in accordance with section 2-15-1009, MCA:

Timm Twardoski, Helena, Montana, for a term ending April 1, 2011.

(22) As members of the Montana Public Safety Officer Standards and Training Council, in accordance with section 44-4-402, MCA:

Steve Barry, Helena, Montana, for a term ending January 1, 2013.

Tony Harbaugh, Miles City, Montana, for a term ending January 1, 2013.

Georgette Hogan, Hardin, Montana, for a term ending January 1, 2011.

Robert M. McCarthy, Butte, Montana, for a term ending January 1, 2013.

Dennis McCave, Billings, Montana, for a term ending January 1, 2013.

Raymond Murray, Missoula, Montana, for a term ending January 1, 2013.

Bonnie Wallem, Kalispell, Montana, for a term ending January 1, 2013.

Greg Watson, Whitehall, Montana, for a term ending January 1, 2013.

(23) As members of the Board of Radiologic Technologists, in accordance with section 2-15-1738, MCA:

Hugh Cecil, Kalispell, Montana, for a term ending July 1, 2011.

Anna L. Hazen, Fort Benton, Montana, for a term ending July 1, 2011.

Charlotte Kelley, Clancy, Montana, for a term ending July 1, 2011.

Charles McCubbins, Columbia Falls, Montana, for a term ending July 1, 2011.

(24) As a member of the Board of Research and Commercialization Technology, in accordance with section 2-15-1819, MCA:

Mr. Michael Dolson, Plains, Montana, for a term ending July 1, 2010.

(25) As members of the Board of Respiratory Care Practitioners, in accordance with section 2-15-1750, MCA:

Eileen Carney, Libby, Montana, for a term ending January 1, 2013.

Leonard Bates, Wolf Creek, Montana, for a term January 1, 2013.

Tony Jay Miller, Joplin, Montana, for a term ending January 1, 2013.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 61st Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointments and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted March 21, 2009

SENATE RESOLUTION NO. 10

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENT MADE BY THE GOVERNOR TO THE BOARD OF LIVESTOCK AND SUBMITTED BY WRITTEN COMMUNICATION DATED FEBRUARY 26, 2009, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointment to the Board of Livestock, below designated, that has been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As member of the Board of Livestock, in accordance with section 2-15-3102, MCA:

Ed Waldner, Chester, Montana, for a term ending March 1, 2011.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 61st Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointment and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted March 26, 2009

SENATE RESOLUTION NO. 11

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENT MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED FEBRUARY 26, 2009, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointment, below designated, that has been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As a member of the Board of Environmental Review, in accordance with section 2-15-3502, MCA:

Mr. Marvin Miller, Butte, Montana, appointed for a term ending January 1, 2013.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 61st Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointment and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 8, 2009

SENATE RESOLUTION NO. 12

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENT MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED FEBRUARY 26, 2009, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointment, below designated, that has been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As a member of the Board of Environmental Review, in accordance with section 2-15-3502, MCA:

Mr. Joseph Whalen, Miles City, Montana, appointed for a term ending January 1, 2013.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 61st Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointment and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 8, 2009

SENATE RESOLUTION NO. 13

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENT MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED FEBRUARY 26, 2009, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointment, below designated, that has been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As a member of the Board of Environmental Review, in accordance with section 2-15-3502, MCA:

Ms. Robin Shropshire, Helena, Montana, appointed for a term ending January 1, 2013.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 61st Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointment

and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 8, 2009

SENATE RESOLUTION NO. 18

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENTS MADE BY THE GOVERNOR TO THE BOARD OF LIVESTOCK AND SUBMITTED BY WRITTEN COMMUNICATION DATED MARCH 18, 2009, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointments, below designated, that have been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As members of the Board of Livestock, in accordance with section 2-15-3102, MCA:

Janice French, Hobson, Montana, for a term ending March 1, 2015.

Brett DeBruycker, Dutton, Montana, for a term ending March 1, 2015.

Jeffery Lewis, Corvallis, Montana, for a term ending March 1, 2011.

John H. Lehfeldt, Lavina, Montana, for a term ending March 1, 2013.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 61st Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointments and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 6, 2009

SENATE RESOLUTION NO. 19

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENT MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED MARCH 23, 2009, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointment, below designated, that has been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As Director of the Department of Environmental Quality, in accordance with section 2-15-111, MCA:

Mr. Richard Opper, Helena, Montana, appointed to serve a term at the pleasure of the Governor.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 61st Legislature of the State of Montana does hereby concur in, confirm, and consent to the above nomination and that the Secretary of the Senate immediately deliver a copy of this

resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 6, 2009

SENATE RESOLUTION NO. 20

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENT MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED MARCH 23, 2009, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointment, below designated, that has been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As Director of the Department of Natural Resources and Conservation, in accordance with section 2-15-111, MCA:

Ms. Mary Sexton, Helena, Montana, appointed to serve a term at the pleasure of the Governor.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 61st Legislature of the State of Montana does hereby concur in, confirm, and consent to the above nomination and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 6, 2009

SENATE RESOLUTION NO. 21

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENT OF THE COMMISSIONER OF LABOR AND INDUSTRY MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED MARCH 24, 2009, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointment, below designated, that has been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As Commissioner of Labor and Industry, in accordance with sections 2-15-111 and 2-15-1701, MCA:

Mr. Keith Kelly, Helena, Montana, appointed to serve a term at the pleasure of the Governor.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 61st Legislature of the State of Montana does hereby concur in, confirm, and consent to the above nomination and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 8, 2009

SENATE RESOLUTION NO. 22

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENT OF THE DIRECTOR OF THE DEPARTMENT OF COMMERCE MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED MARCH 23, 2009, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointment, below designated, that has been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As Director of the Department of Commerce, in accordance with sections 2-15-111 and 2-15-1801, MCA:

Mr. Anthony J. Preite, Helena, Montana, appointed to serve a term at the pleasure of the Governor.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 61st Legislature of the State of Montana does hereby concur in, confirm, and consent to the above nomination and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 8, 2009

SENATE RESOLUTION NO. 23

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENT OF THE DIRECTOR OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED MARCH 25, 2009, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointment, below designated, that has been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As Director of the Department of Public Health and Human Services, in accordance with section 2-15-111, MCA:

Ms. Anna Whiting Sorrell, Helena, Montana, appointed to serve a term at the pleasure of the Governor.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 61st Legislature of the State of Montana does hereby concur in, confirm, and consent to the above nomination and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 8, 2009

SENATE RESOLUTION NO. 25

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENT MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED MARCH 24, 2009, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointment, below designated, that has been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As Director of the Department of Fish, Wildlife, and Parks, in accordance with section 2-15-111, MCA:

Mr. Joseph Maurier, Helena, Montana, appointed to serve a term at the pleasure of the Governor.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 61st Legislature of the State of Montana does hereby concur in, confirm, and consent to the above nomination and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 15, 2009

SENATE RESOLUTION NO. 28

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENTS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED MARCH 18, 2009, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointments, below designated, that have been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

(1) As members of the Hard Rock Mining Impact Board, in accordance with section 2-15-1822, MCA:

Edward M. Tinsley, Helena, Montana, for a term ending January 1, 2013.

Mary Ellen Cremer, Big Timber, Montana, for a term ending January 1, 2013.

Joe Michaletz, Helena, Montana, for a term ending January 1, 2013.

(2) As members of the Board of Horseracing, in accordance with section 2-15-3106, MCA:

Mike Tatsey, Valier, Montana, for a term ending January 20, 2012.

Carol Lambert, Broadus, Montana, for a term ending January 20, 2012.

(3) As members of the Board of Housing, in accordance with section 2-15-1814, MCA:

Audrey Black Eagle, Lodge Grass, Montana, for a term ending January 1, 2013.

J.P. Crowley, Helena, Montana, for a term ending January 1, 2013.

Jeff Rupp, Bozeman, Montana, for a term ending January 1, 2013.

Elizabeth Scanlin, Red Lodge, Montana, for a term ending January 1, 2013.

(4) As members of the Milk Control Board, in accordance with section 2-15-3105, MCA:

Gary A. Parker, Fort Shaw, Montana, for a term ending January 1, 2013.

James Prinkki, Roberts, Montana, for a term ending January 1, 2013.

Larry Van Dyke, Bozeman, Montana, for a term ending January 1, 2013.

(5) As a member of the Board of Nursing, in accordance with section 2-15-1734, MCA:

Connie Reichelt, Havre, Montana, for a term ending July 1, 2013.

(6) As members of the Board of Pardons and Parole, in accordance with section 2-15-2302, MCA:

Teresa McCann O'Connor, Billings, Montana, for a term ending January 1, 2013.

John Ward, Helena, Montana, for a term ending January 1, 2013.

Samuel Lemaich, Missoula, Montana, for a term ending January 1, 2013.

(7) As a member of the Board of Radiologic Technologists, in accordance with section 2-15-1738, MCA:

Kelli Bush, Butte, Montana, for a term ending July 1, 2012.

(8) As a member of the Board of Realty Regulation, in accordance with section 2-15-1757, MCA:

Lucinda Willis, Polson, Montana, for a term ending May 9, 2013.

(9) As members of the State Compensation Insurance Fund Board, in accordance with section 2-15-1019, MCA:

James Swanson, Glendive, Montana, for a term ending April 28, 2013.

Jane DeBruycker, Dutton, Montana, for a term ending April 28, 2013.

Ken Johnson, Missoula, Montana, for a term ending April 28, 2013.

Thomas R. Heisler, Great Falls, Montana, for a term ending April 28, 2013.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 61st Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointments and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 8, 2009

SENATE RESOLUTION NO. 29

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENT OF THE DIRECTOR OF THE DEPARTMENT OF AGRICULTURE MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED MARCH 24, 2009, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointment, below designated, that has been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As Director of the Department of Agriculture, in accordance with sections 2-15-111 and 2-15-3001, MCA:

Mr. Ron de Yong, Helena, Montana, appointed to serve a term at the pleasure of the Governor.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 61st Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointment and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 15, 2009

SENATE RESOLUTION NO. 30

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENT MADE BY THE GOVERNOR TO THE PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL AND SUBMITTED BY WRITTEN COMMUNICATION DATED MARCH 23, 2009, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointment, below designated, that has been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As a member of the Pacific Northwest Electric Power and Conservation Planning Council, in accordance with section 90-4-402, MCA:

Ms. Rhonda Whiting, Missoula, Montana, appointed to serve a term at the pleasure of the Governor.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 61st Legislature of the State of Montana does hereby concur in, confirm, and consent to the above nomination and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 15, 2009

SENATE RESOLUTION NO. 31

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENT MADE BY THE GOVERNOR TO THE PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL AND SUBMITTED BY WRITTEN COMMUNICATION DATED MARCH 24, 2009, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointment, below designated, that has been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As a member of the Pacific Northwest Electric Power and Conservation Planning Council, in accordance with section 90-4-402, MCA:

Mr. Bruce Measure, Helena, Montana, appointed to serve a term at the pleasure of the Governor.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 61st Legislature of the State of Montana does hereby concur in, confirm, and consent to the above nomination and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 15, 2009

SENATE RESOLUTION NO. 32

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENT OF THE DIRECTOR OF THE DEPARTMENT OF TRANSPORTATION MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED MARCH 24, 2009, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointment, below designated, that has been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As the Director of the Department of Transportation, in accordance with sections 2-15-111 and 2-15-2501, MCA:

Jim Lynch, Kalispell, Montana, appointed to serve a term at the pleasure of the Governor.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 61st Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointment and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 7, 2009

SENATE RESOLUTION NO. 33

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENTS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED MARCH 23, 2009, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointments, below designated, that have been submitted to the Senate by the Governor pursuant to 5-5-302:

(1) As a member of the Montana Arts Council, in accordance with section 22-2-102, MCA:

Mark Kuipers, Missoula, Montana, for a term ending February 1, 2010.

(2) As a member of the Board of Barbers and Cosmetologists, in accordance with section 2-15-1747, MCA:

Thayne Orton, Florence, Montana, for a term ending October 1, 2012.

(3) As a member of the Board of Crime Control, in accordance with section 2-15-2006, MCA:

Angela Russell, Lodge Grass, Montana, for a term ending January 1, 2011.

(4) As members of the Montana Historical Society Board of Trustees, in accordance with section 22-3-104, MCA:

Lee Rostad, Martinsdale, Montana, for a term ending July 1, 2014.

Jim Utterback, Helena, Montana, for a term ending July 1, 2014.

Jim Court, Billings, Montana, for a term ending July 1, 2014.

Steve Carney, Scobey, Montana, for a term ending July 1, 2012.

(5) As a member of the Board of Nursing Home Administrators, in accordance with section 2-15-1735, MCA:

Loren Hines, Butte, Montana, for a term ending May 28, 2014.

(6) As members of the Board of Physical Therapy Examiners, in accordance with section 2-15-1748, MCA:

Kim Miller, Virginia City, Montana, for a term ending July 1, 2012.

Patti Jo Lane, Great Falls, Montana, for a term ending July 1, 2012.

(7) As a member of the Board of Private Security, in accordance with section 2-15-1781, MCA:

Daniel Taylor, Glasgow, Montana, for a term ending August 1, 2009.

(8) As members of the Board of Professional Engineers and Professional Land Surveyors, in accordance with section 2-15-1763, MCA:

John Neil, Great Falls, Montana, for a term ending July 1, 2013.

Tom Heinecke, Kalispell, Montana, for a term ending July 1, 2013.

(9) As members of the Board of Real Estate Appraisers, in accordance with section 2-15-1758, MCA:

Kathleen Susan Gallaher, Bozeman, Montana, for a term ending May 1, 2012.

Darwin Ernst, Hamilton, Montana, for a term ending May 1, 2012.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 61st Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointments and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 17, 2009

SENATE RESOLUTION NO. 34

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENTS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED APRIL 2, 2009, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointments, below designated, that have been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

(1) As members of the County Printing Board, in accordance with section 2-15-1026, MCA:

Dan Killoy, Miles City, Montana, appointed to a term ending April 1, 2011.

Calvin J. Oraw, Sidney, Montana, appointed to a term ending April 1, 2011.

Marianne Roose, Eureka, Montana, appointed to a term ending April 1, 2011.

Milton Wester, Laurel, Montana, appointed to a term ending April 1, 2011.

Laura Obert, Townsend, Montana, appointed to a term ending April 1, 2011.

(2) Appointed as a member to the Board of Funeral Service, in accordance with section 2-15-1743, MCA:

R.J. Brown, Lewistown, Montana, appointed to a term ending July 1, 2014.

(3) Appointed as members to the Board of Hearing Aid Dispensers, in accordance with section 2-15-1740, MCA:

Lee Frantz Oines, Missoula, Montana, appointed to a term ending July 1, 2011.

Jim Lieberg, Helena, Montana, appointed to a term ending July 1, 2011.

Mervin Michel, Great Falls, Montana, appointed to a term ending July 1, 2012.

Brian Bolenbaugh, Missoula, Montana, appointed to a term ending July 1, 2012.

(4) Appointed as members to the Livestock Loss Reduction and Mitigation Board, in accordance with section 2-15-3110, MCA:

Brad Radtke, Drummond, Montana, appointed to a term ending January 1, 2013.

Whitney Wankel, Bozeman, Montana, appointed to a term ending January 1, 2013.

James Cross, Kalispell, Montana, appointed to a term ending January 1, 2013.

Michael Leahy, Bozeman, Montana, appointed to a term ending January 1, 2013.

John Herman, Hot Springs, Montana, appointed to a term ending January 1, 2011.

(5) Appointed as a member to the Board of Pharmacy, in accordance with section 2-15-1733, MCA:

Michael Bertagnolli, Three Forks, Montana, appointed to a term ending July 1, 2014.

(6) Appointed as a member to the Board of Plumbers, in accordance with section 2-15-1765, MCA:

Donna L. Paulson, Great Falls, Montana, appointed to a term ending May 4, 2013.

(7) Appointed as a member to the Board of Public Accountants, in accordance with section 2-15-1756, MCA:

Rick Reisig, Great Falls, Montana, appointed to a term ending July 1, 2013.

(8) Appointed as members to the Public Employees Retirement Board, in accordance with section 2-15-1009, MCA:

Terrence M. Smith, Bozeman, Montana, appointed to a term ending April 1, 2014.

Patrick McKittrick, Great Falls, Montana, appointed to a term ending April 1, 2014.

(9) Appointed as a member to the Board of Sanitarians, in accordance with section 2-15-1751, MCA:

Rodney Fink, Columbus, Montana, appointed to a term ending July 1, 2012.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 61st Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointments and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 17, 2009

SENATE RESOLUTION NO. 35

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO AN APPOINTMENT TO THE MILK CONTROL BOARD MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED MARCH 18, 2009, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointment, below designated, that has been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As a member of the Board of Milk Control, in accordance with section 2-15-3105, MCA:

Jerrold A. Weissman, Great Falls, Montana, for a term ending January 1, 2011.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 61st Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointment and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 17, 2009

SENATE RESOLUTION NO. 36

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENT OF THE DIRECTOR OF REVENUE MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED MARCH 23, 2009, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointment, below designated, that has been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As Director of Revenue, in accordance with sections 2-15-111 and 2-15-1302, MCA:

Mr. Dan R. Bucks, Helena, Montana, appointed to serve a term at the pleasure of the Governor.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 61st Legislature of the State of Montana does hereby concur in, confirm, and consent to the above nomination and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 23, 2009

SENATE RESOLUTION NO. 37

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENTS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED APRIL 2, 2009, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointments, below designated, that have been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

Appointed as members to the Board of Investments, in accordance with section 2-15-1808, MCA:

Elouise Cobell, Browning, Montana, appointed to a term ending January 1, 2013.

Teresa Olcott Cohea, Helena, Montana, appointed to a term ending January 1, 2013.

Jack Prothero, Great Falls, Montana, appointed to a term ending January 1, 2013.

James Turcotte, Helena, Montana, appointed to a term ending January 1, 2013.

Patrick McKittrick, Great Falls, Montana, appointed to a term ending January 1, 2013.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 61st Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointments and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 21, 2009

SENATE RESOLUTION NO. 38

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENT TO THE BOARD OF PUBLIC EDUCATION MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED APRIL 2, 2009, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointment, below designated, that has been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As a member of the Board of Public Education, in accordance with section 2-15-1508, MCA:

John Edwards, Billings, Montana, appointed to a term ending February 1, 2016.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 61st Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointment and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 17, 2009

2008 BALLOT ISSUES

Approved by Voters in the November 2008 General Election

LEGISLATIVE REFERENDUM NO. 118

AN ACT REFERRED BY THE LEGISLATURE

The 2007 Legislature submitted this proposal for a vote. This proposal asks Montana voters to continue the 6-mill levy to support the university system. Without voter approval, the current 6 mill levy to support the university system will expire in January 2009. If passed, this proposal would be effective on January 1, 2009 and terminate January 1, 2019.

According to 2009 revenue estimates, the projected annual revenue from the 6-mill levy is $12,505,000 for 2007 and is estimated to grow at an average growth rate of 3.36% each year through tax year 2018.

The complete text of LR-118 follows:

AN ACT SUBMITTING A 6-MILL LEVY FOR SUPPORT OF THE MONTANA UNIVERSITY SYSTEM TO THE ELECTORATE; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Tax levy for university system. There is levied upon the taxable value of all real estate and personal property subject to taxation in the state of Montana 6 mills for the support, maintenance, and improvement of the Montana university system. The funds raised from the levy must be deposited in the state special revenue fund.

Section 2. Codification instruction. Section 1 is intended to be codified as an integral part of Title 15, chapter 10, part 1, and the provisions of Title 15, chapter 10, part 1, apply to section 1.

Section 3. Effective dates. (1) Except as provided in subsection (2), this act is effective upon approval by the electorate.

(2) If approved by the electorate, section 1 is effective January 1, 2009.

Section 4. Termination. Section 1 terminates January 1, 2019.

Section 5. Submission to electorate. This act shall be submitted to the qualified electors of Montana at the general election to be held in November 2008 by printing on the ballot the full title of this act and the following:

☐ FOR imposing a levy of 6 mills for the support of the Montana university system.

☐ AGAINST imposing a levy of 6 mills for the support of the Montana university system.

Legislative Referendum No. 118 was approved by the following vote at the General Election held November 4, 2008:

For:	264,158
Against:	200,957

INITIATIVE NO. 155

A LAW PROPOSED BY INITIATIVE PETITION

I-155 establishes the Healthy Montana Kids plan to expand and coordinate health coverage for uninsured children under the Children's Health Insurance Program (CHIP), the Montana Medicaid Program, and employer-sponsored health insurance. The State Health Department may: raise income eligibility

levels for children under CHIP and Medicaid; simplify transitions between CHIP and Medicaid coverage; provide assistance for children in employer-sponsored insurance; and work with health care providers, schools, organizations, and agencies to encourage enrollment of uninsured children. Funding for I-155 will come from a share of the insurance premium tax and federal matching funds.

I-155 costs an estimated $22 million of state funds, paid from the treasury with a share of current revenues from the insurance premium tax. Actual expenditures will depend on other factors, including the amount of federal matching dollars and enrollment.

The complete text of I-155 follows:

Be it enacted by the People of the State of Montana:

NEW SECTION. **Section 1. Short title.** [Sections 1 through 9] may be cited as the "Healthy Montana Kids Plan Act".

NEW SECTION. **Section 2. Purpose.** The purposes of [sections 1 through 9] are to:

(1) create the healthy Montana kids plan, which offers health coverage to uninsured children by increasing eligibility for the children's health insurance program and the Montana medicaid program and by helping families cover their children under employer-sponsored plans;

(2) provide for active enrollment of children in the plan; and

(3) fully utilize available federal funds to provide health coverage for children.

NEW SECTION. **Section 3. Definitions.** For purposes of [sections 1 through 9], the following definitions apply:

(1) "Comprehensive" means health insurance having benefits at least as extensive as those provided under the children's health insurance program.

(2) "Department" means the department of public health and human services provided for in 2-15-2201.

(3) "Enrollee" means a child who is enrolled or in the process of being enrolled in the plan, including children already enrolled in the programs described in [section 4(2)].

(4) (a) "Enrollment partner" means an organization or individual approved by the department to assist in enrolling eligible children in the plan.

(b) An enrollment partner may be but is not limited to:

(i) a licensed health care provider;

(ii) a school;

(iii) a community-based organization; or

(iv) a government agency.

(5) "Health coverage" means a program administered by the department or a disability insurance plan, referred to in 33-1- 207(1)(b), that provides public or private health insurance for children.

(6) "Income" has the meaning provided in 15-30-171(9)(a).

(7) "Plan" means the healthy Montana kids plan established in [section 4].

(8) "Premium" means the amount of money charged to provide coverage under a public or private health coverage plan.

(9) "Presumptive eligibility" has the meaning provided in 42 CFR 457.355.

NEW SECTION. **Section 4. Healthy Montana kids plan.** (1) There is a healthy Montana kids plan that provides comprehensive health coverage to uninsured children who are residents of the state.

(2) The plan includes and coordinates access to health coverage for enrollees in the children's health insurance program and the Montana medicaid program.

(3) The department shall administer the plan.

(4) To the extent permitted by federal law, the department shall use the name of the plan on documents associated with programs described in subsection (2), including but not limited to advertising, brochures, applications, and membership cards.

(5) State funding of the plan is contingent upon the availability of federal matching funds through the children's health insurance program or the Montana medicaid program.

NEW SECTION. **Section 5. Rulemaking — active enrollment — plan coordination.** (1) The department shall adopt rules necessary to implement [sections 1 through 9], including plan administration, plan enrollment, outreach efforts, and standards of performance to allow enrollment partners to assist in enrolling children in the plan or other health coverage plans administered by the department.

(2) The rules must:

(a) establish a process for identifying and approving enrollment partners;

(b) create and define an active enrollment process;

(c) promote seamless movement between programs described in [section 4(2)];

(d) promote accessible enrollment through enrollment partners;

(e) provide, to the extent permitted by law, a single point of access in the department for plan members;

(f) define income for purposes of determining eligibility for children's health coverage programs within the plan;

(g) provide for presumptive eligibility; and

(h) encourage enrollment partners to actively enroll as many eligible, uninsured children as possible in the plan or in an employer-sponsored plan as described in [section 6].

(3) The rules may include the development of enrollment partner training, technical assistance programs, and performance measures.

(4) The rules may provide for an exemption from the active enrollment process based upon an individual showing of:

(a) religious conviction;

(b) private insurance that offers creditable coverage, as defined in 42 U.S.C. 300gg(c), obtained by the parents for the child from a private group or individual health insurance issuer or under a self-funded employer health plan; or

(c) other compelling circumstances.

(5) The rules governing eligibility and premium assistance must be consistent with [sections 1 through 9]. Rules may include but are not limited to financial standards and criteria for income, nonfinancial criteria, family

responsibility, residency, the application process, termination of eligibility, definition of terms, and confidentiality of applicant and recipient information.

NEW SECTION. **Section 6. Enrollment in employer-sponsored plans.** The department may:

(1) provide premium assistance to families who have access to one or more employer-sponsored comprehensive group health insurance plans in order to provide coverage for eligible children. The premium assistance may not exceed the cost of coverage for that child under the plan.

(2) provide assistance to employers who establish a premium-only health benefits plan under section 125 of the Internal Revenue Code, 26 U.S.C. 125, for the purpose of enrolling children in such a plan and allowing their families to pay any premium with pretax dollars.

NEW SECTION. **Section 7. Federal financial participation.** The department shall request any necessary state plan amendments or waivers of federal requirements in order to allow receipt of the maximum available federal funds to facilitate implementation of [sections 1 through 9], subject to appropriation of necessary matching state funds.

NEW SECTION. **Section 8. Exemption from resource test.** An otherwise applicable eligibility resource test provided for in 53-6-113(6) and 53-6-131(7) does not apply to plan applicants.

NEW SECTION. **Section 9. Special revenue account.** (1) There is an account in the state special revenue fund to the credit of the department for the purposes provided in subsection (2). There must be paid into the account the amounts collected under 33-2-708(3)(b). Any interest or income derived from the account must be deposited in the account.

(2) Money in the account:

(a) is to be used solely to cover the number of additional enrollees in the plan that exceeds the number of enrollees as of [the effective date of this act], within the limits provided in 53-4-1004, 53-6-131, and [sections 1 through 9], and to cover the costs of enrollment, including premium assistance, under [section 6(1)], and to pay administrative costs associated with expanded eligibility, and to establish and maintain a reserve; and

(b) may be used only to match federal funds available under the children's health insurance program and the Montana medicaid program.

(3) The unexpended balance of an appropriation from the account must remain in the account and may be used only for the purposes stated in subsection (2).

(4) The special revenue account does not affect and is not exclusive of any other sources of funding for the programs described in [section 4(2)], including the special revenue account provided for in 53-4-1012.

(5) If the department determines that there is insufficient funding for the purposes of subsection (2), it may reduce eligibility requirements for participants in the children's health insurance program as provided in 53-4-1004(4).

Section 10. Section 33-2-708, MCA, is amended to read:

"**33-2-708. Fees and licenses.** (1) (a) Except as provided in 33-17-212(2), the commissioner shall collect a fee of $1,900 from each insurer applying for or annually renewing a certificate of authority to conduct the business of insurance in Montana.

(b) The commissioner shall collect certain additional fees as follows:

(i) nonresident insurance producer's license:

(A) application for original license, including issuance of license, if issued, $100;

(B) biennial renewal of license, $50;

(C) lapsed license reinstatement fee, $100;

(ii) resident insurance producer's license lapsed license reinstatement fee, $100;

(iii) surplus lines insurance producer's license:

(A) application for original license and for issuance of license, if issued, $50;

(B) biennial renewal of license, $100;

(C) lapsed license reinstatement fee, $200;

(iv) insurance adjuster's license:

(A) application for original license, including issuance of license, if issued, $50;

(B) biennial renewal of license, $100;

(C) lapsed license reinstatement fee, $200;

(v) insurance consultant's license:

(A) application for original license, including issuance of license, if issued, $50;

(B) biennial renewal of license, $100;

(C) lapsed license reinstatement fee, $200;

(vi) viatical settlement broker's license:

(A) application for original license, including issuance of license, if issued, $50;

(B) biennial renewal of license, $100;

(C) lapsed license reinstatement fee, $200;

(vii) resident and nonresident rental car entity producer's license:

(A) application for original license, including issuance of license, if issued, $100;

(B) quarterly filing fee, $25;

(viii) an original notification fee for a life insurance producer acting as a viatical settlement broker, in accordance with 33-20-1303(2)(b), $50;

(ix) 50 cents for each page for copies of documents on file in the commissioner's office.

(c) The commissioner may adopt rules to determine the date by which a nonresident insurance producer, a surplus lines insurance producer, an insurance adjuster, or an insurance consultant is required to pay the fee for the biennial renewal of a license.

(2) (a) The commissioner shall charge a fee of $75 for each course or program submitted for review as required by 33-17-1204 and 33-17-1205, but may not charge more than $1,500 to a sponsoring organization submitting courses or programs for review in any biennium.

(b) Insurers and associations composed of members of the insurance industry are exempt from the charge in subsection (2)(a).

(3) (a) ~~The~~ Except as provided in subsection (3)(b), the commissioner shall promptly deposit with the state treasurer to the credit of the general fund all fines and penalties and those amounts received pursuant to 33-2-311, 33-2-705, 33-28-201, and 50-3-109.

(b) The commissioner shall deposit 33% of the money collected under 33-2-705 in the special revenue account provided for [section 9].

(c) All other fees collected by the commissioner pursuant to Title 33 and the rules adopted under Title 33 must be deposited in the state special revenue fund to the credit of the state auditor's office.

(4) All fees are considered fully earned when received. In the event of overpayment, only those amounts in excess of $10 will be refunded."

Section 11. Section 53-4-1004, MCA, is amended to read:

"**53-4-1004.** (Temporary) **Eligibility for program — rulemaking.** (1) To be considered eligible for the program, a child:

(a) must be 18 years of age or younger;

(b) must have a combined family income at or below ~~175%~~ 250% of the federal poverty level or at a lower level determined by the department of public health and human services as provided in subsection (4);

(c) may not already be covered by private insurance that offers creditable coverage, as defined in 42 U.S.C. 300gg(c), for 3 months prior to enrollment in the program or since birth, whichever period is less;

(d) may not be eligible for medicaid benefits; and

(e) must be a United States citizen or qualified alien and a Montana resident.

(2) The department of public health and human services shall adopt rules that establish the program's criteria for residency. The criteria must conform as nearly as practicable with the residency requirements for medicaid eligibility.

(3) Subject to 53-4-1009(3), rules governing eligibility may also include financial standards and criteria for income and resources, treatment of resources, and nonfinancial criteria.

(4) If the department determines that there is insufficient funding for the program, it may lower the percentage of the federal poverty level established in subsection (1)(b) in order to reduce the number of persons who may be eligible to participate or may limit the amount, scope, or duration of specific services provided. (Terminates on occurrence of contingency—sec. 15, Ch. 571, L. 1999.)"

Section 12. Section 53-6-131, MCA, is amended to read:

"**53-6-131. Eligibility requirements.** (1) Medical assistance under the Montana medicaid program may be granted to a person who is determined by the department of public health and human services, in its discretion, to be eligible as follows:

(a) The person receives or is considered to be receiving supplemental security income benefits under Title XVI of the Social Security Act, 42 U.S.C. 1381, et seq., and does not have income or resources in excess of the applicable medical assistance limits.

(b) The person would be eligible for assistance under the program described in subsection (1)(a) if that person were to apply for that assistance.

(c) The person is in a medical facility that is a medicaid provider and, but for residence in the facility, the person would be receiving assistance under the program in subsection (1)(a).

(d) The person is under 21 years of age and in foster care under the supervision of the state or was in foster care under the supervision of the state and has been adopted as a child with special needs.

(e) The person meets the nonfinancial criteria of the categories in subsections (1)(a) through (1)(d) and:

(i) the person's income does not exceed the income level specified for federally aided categories of assistance and the person's resources are within the resource standards of the federal supplemental security income program; or

(ii) the person, while having income greater than the medically needy income level specified for federally aided categories of assistance:

(A) has an adjusted income level, after incurring medical expenses, that does not exceed the medically needy income level specified for federally aided categories of assistance or, alternatively, has paid in cash to the department the amount by which the person's income exceeds the medically needy income level specified for federally aided categories of assistance; and

(B) has resources that are within the resource standards of the federal supplemental security income program.

(f) The person is a qualified pregnant woman or child as defined in 42 U.S.C. 1396d(n).

(g) The person is under 19 years of age and lives with a family having a combined income that does not exceed 185% of the federal poverty level. The Department may establish lower income levels to the extent necessary to maximize federal matching funds provided for in [section 4].

(2) The department may establish income and resource limitations. Limitations of income and resources must be within the amounts permitted by federal law for the medicaid program. Any otherwise applicable eligibility resource test prescribed by the department does not apply to enrollees in the healthy Montana kids plan provided for in [section 4].

(3) The Montana medicaid program shall pay, as required by federal law, the premiums necessary for medicaid-eligible persons participating in the medicare program and may, within the discretion of the department, pay all or a portion of the medicare premiums, deductibles, and coinsurance for a qualified medicare-eligible person or for a qualified disabled and working individual, as defined in section 6408(d)(2) of the federal Omnibus Budget Reconciliation Act of 1989, Public Law 101-239, who:

(a) has income that does not exceed income standards as may be required by the Social Security Act; and

(b) has resources that do not exceed standards that the department determines reasonable for purposes of the program.

(4) The department may pay a medicaid-eligible person's expenses for premiums, coinsurance, and similar costs for health insurance or other available health coverage, as provided in 42 U.S.C. 1396b(a)(1).

(5) In accordance with waivers of federal law that are granted by the secretary of the U.S. department of health and human services, the department of public health and human services may grant eligibility for basic medicaid benefits as described in 53-6-101 to an individual receiving section 1931

medicaid benefits, as defined in 53-4-602, as the specified caretaker relative of a dependent child under the section 1931 medicaid program. A recipient who is pregnant, meets the criteria for disability provided in Title II of the Social Security Act, 42 U.S.C. 416, et seq., or is less than 21 years of age is entitled to full medicaid coverage, as provided in 53-6-101.

(6) The department, under the Montana medicaid program, may provide, if a waiver is not available from the federal government, medicaid and other assistance mandated by Title XIX of the Social Security Act, 42 U.S.C. 1396, et seq., as may be amended, and not specifically listed in this part to categories of persons that may be designated by the act for receipt of assistance.

(7) Notwithstanding any other provision of this chapter, medical assistance must be provided to infants and pregnant women whose family income does not exceed 133% of the federal poverty threshold, as provided in 42 U.S.C. 1396a(a)(10)(A)(ii)(IX) and 42 U.S.C. 1396a(l)(2)(A)(i), and whose family resources do not exceed standards that the department determines reasonable for purposes of the program.

(8) Subject to appropriations, the department may cooperate with and make grants to a nonprofit corporation that uses donated funds to provide basic preventive and primary health care medical benefits to children whose families are ineligible for the Montana medicaid program and who are ineligible for any other health care coverage, are under 19 years of age, and are enrolled in school if of school age.

(9) A person described in subsection (7) must be provided continuous eligibility for medical assistance, as authorized in 42 U.S.C. 1396a(e)(5) through a(e)(7).

(10) Full medical assistance under the Montana medicaid program may be granted to an individual during the period in which the individual requires treatment of breast or cervical cancer, or both, or of a precancerous condition of the breast or cervix, if the individual:

(a) has been screened for breast and cervical cancer under the Montana breast and cervical health program funded by the centers for disease control and prevention program established under Title XV of the Public Health Service Act, 42 U.S.C. 300k, or in accordance with federal requirements;

(b) needs treatment for breast or cervical cancer, or both, or a precancerous condition of the breast or cervix;

(c) is not otherwise covered under creditable coverage, as provided by federal law or regulation;

(d) is not eligible for medical assistance under any mandatory categorically needy eligibility group; and

(e) has not attained 65 years of age."

NEW SECTION. **Section 13. Codification instruction.** [Sections 1 through 9] are intended to be codified as an integral part of Title 53, chapter 4, and the provisions of Title 53, chapter 4, apply to [sections 1 through 9].

NEW SECTION. **Section 14. Contingent termination.** (1) [Section 11], amending 53-4-1004, terminates on the date that the director of the department of public health and human services certifies to the governor that the federal government has terminated the program or that the federal funding for the program has been discontinued.

(2) The governor shall transmit a copy of the certification to the code commissioner.

(3) Any excess funds remaining upon the termination of the program must be transferred to the general fund.

NEW SECTION. **Section 15. Effective date.** This act is effective upon approval by the electorate.

Initiative No. 118 was approved by the following vote at the General Election held November 4, 2008:

For:	329,289
Against:	141,701

TABLES

Code Sections Affected
Session Laws Affected
Senate Bill to Chapter Number
House Bill to Chapter Number
Chapter Number to Bill Number
Effective Dates by Chapter Number
Effective Dates by Date
Session Law to Code
2006 Ballot Issues

CODE SECTIONS AFFECTED

This table was compiled before the codification process was completed. It does not reflect certain sections affected by name change amendments. All other substantive changes are reflected. Those sections for which renumbering is not attributed to a particular chapter and bill number were renumbered by the Code Commissioner under the authority of 1-11-204(3)(a)(ii).

Title-Chapter-Section	Action	Chapter	Bill Number
1-1-228	enacted	Ch. 93	SB 196
1-1-229	enacted	Ch. 333	HB 238
1-5-401	amended	Ch. 319	SB 299
1-5-402	amended	Ch. 319	SB 299
1-5-416	amended	Ch. 319	SB 299
1-5-419	amended	Ch. 319	SB 299
1-5-610	amended	Ch. 319	SB 299
1-11-204	amended	Ch. 160	HB 54
2-2-102	amended	Ch. 77	HB 426
2-4-101	amended	Ch. 152	SB 20
2-4-102	amended	Ch. 2	SB 7
2-4-110	amended	Ch. 21	SB 90
2-4-302	amended	Ch. 21	SB 90
2-4-305	amended	Ch. 21	SB 90
	amended	Ch. 152	SB 20
	amended	Ch. 270	SB 123
	amended	Ch. 303	HB 475
2-4-306	amended	Ch. 303	HB 475
	amended	Ch. 489	HB 645
2-4-311	amended	Ch. 303	HB 475
2-4-312	amended	Ch. 21	SB 90
2-4-313	amended	Ch. 303	HB 475
2-4-623	amended	Ch. 445	HB 483
2-4-702	amended	Ch. 445	HB 483
2-5-103	amended	Ch. 2	SB 7
2-6-109	amended	Ch. 125	HB 283
2-6-501	enacted	Ch. 163	HB 155
2-6-502	enacted	Ch. 163	HB 155
2-6-503	enacted	Ch. 163	HB 155
2-6-504	enacted	Ch. 163	HB 155
2-7-501	amended	Ch. 351	SB 8
2-8-501	enacted	Ch. 125	HB 283
2-9-212	amended	Ch. 412	SB 491
2-15-102	amended	Ch. 164	HB 193
2-15-149	amended	Ch. 164	HB 193
2-15-217	amended	Ch. 164	HB 193
2-15-225	amended	Ch. 164	HB 193
2-15-1027	repealed	Ch. 9	SB 24
2-15-1205	amended	Ch. 164	HB 193
2-15-1523	amended	Ch. 436	HB 52
2-15-1704	amended	Ch. 88	SB 150
2-15-1705	amended	Ch. 65	HB 136
2-15-1731	amended	Ch. 82	SB 77
2-15-1733	amended	Ch. 247	SB 275
2-15-1738	amended	Ch. 109	HB 80
2-15-1740	amended	Ch. 109	HB 80
2-15-1741	amended	Ch. 109	HB 80
2-15-1744	amended	Ch. 109	HB 80
2-15-1748	amended	Ch. 109	HB 80
2-15-1750	amended	Ch. 109	HB 80
2-15-1753	amended	Ch. 109	HB 80

2-15-1756	amended	Ch. 109	HB 80
2-15-1781	amended	Ch. 2	SB 7
2-15-1782	enacted	Ch. 451	HB 662
2-15-2302	amended	Ch. 242	HB 591
2-15-3004	amended	Ch. 486	HB 676
2-15-3006	amended	Ch. 15	HB 100
2-15-3112	amended	Ch. 14	HB 90
2-15-3113	amended	Ch. 2	SB 7
2-16-612	amended	Ch. 188	HB 197
2-16-614	amended	Ch. 188	HB 197
2-17-101	amended	Ch. 375	HB 110
2-17-411	amended	Ch. 463	HB 602
2-17-425	enacted	Ch. 463	HB 602
2-17-807	amended	Ch. 46	SB 252
2-17-808	amended	Ch. 46	SB 252
2-18-101	amended	Ch. 7	HB 13
2-18-110	repealed	Ch. 7	HB 13
2-18-202	amended	Ch. 7	HB 13
2-18-207	repealed	Ch. 7	HB 13
2-18-301	amended	Ch. 7	HB 13
2-18-303	amended	Ch. 7	HB 13
2-18-501	amended	Ch. 91	SB 170
2-18-601	amended	Ch. 185	HB 144
2-18-620	repealed	Ch. 185	HB 144
2-18-702	amended	Ch. 145	SB 208
2-18-703	amended	Ch. 7	HB 13
	amended	Ch. 412	SB 491
2-18-1204	amended	Ch. 7	HB 13
3-1-1001	amended	Ch. 12	SB 125
3-5-102	amended	Ch. 422	SB 158
3-5-510	amended	Ch. 52	HB 242
3-5-604	amended	Ch. 154	SB 197
3-7-311	amended	Ch. 103	HB 39
3-15-201	amended	Ch. 52	HB 242
3-15-204	amended	Ch. 52	HB 242
3-15-313	amended	Ch. 167	HB 372
5-2-202	amended	Ch. 250	HB 23
5-2-304	amended	Ch. 284	HB 170
5-4-204	amended	Ch. 392	SB 18
5-4-205	amended	Ch. 392	SB 18
5-4-306	amended	Ch. 102	HB 192
5-5-202	amended	Ch. 285	SB 22
5-5-231	enacted	Ch. 285	SB 22
5-11-402	amended	Ch. 250	HB 23
7-1-111	amended	Ch. 395	SB 55
7-1-201	amended	Ch. 286	SB 57
7-1-202	amended	Ch. 286	SB 57
7-1-2111	amended	Ch. 57	HB 38
7-1-4127	amended	Ch. 97	SB 296
7-2-2723	amended	Ch. 2	SB 7
7-2-2743	amended	Ch. 2	SB 7
7-3-121	amended	Ch. 2	SB 7
7-3-122	amended	Ch. 2	SB 7
7-3-124	amended	Ch. 2	SB 7
7-3-154	amended	Ch. 2	SB 7
7-3-4465	amended	Ch. 291	SB 148
7-4-501	amended	Ch. 122	HB 230
7-4-505	amended	Ch. 122	HB 230
7-4-506	amended	Ch. 122	HB 230
7-4-2101	amended	Ch. 291	SB 148
7-4-2102	amended	Ch. 291	SB 148
7-4-2104	amended	Ch. 291	SB 148
7-4-2105	amended	Ch. 291	SB 148

7-4-2108 . . . . . amended . . . . . Ch. 291 . . . . . SB 148
7-4-2111 . . . . . amended . . . . . Ch. 291 . . . . . SB 148
7-4-2208 . . . . . amended . . . . . Ch. 123 . . . . . HB 244
7-4-2312 . . . . . amended . . . . . Ch. 291 . . . . . SB 148
7-4-2503 . . . . . amended . . . . . Ch. 133 . . . . . HB 545
amended . . . . . Ch. 291 . . . . . SB 148
7-4-2504 . . . . . amended . . . . . Ch. 291 . . . . . SB 148
7-4-2505 . . . . . amended . . . . . Ch. 2 . . . . . SB 7
7-4-2525 . . . . . amended . . . . . Ch. 291 . . . . . SB 148
7-4-2715 . . . . . amended . . . . . Ch. 291 . . . . . SB 148
7-4-4202 . . . . . repealed . . . . . Ch. 291 . . . . . SB 148
7-5-2129 . . . . . amended . . . . . Ch. 291 . . . . . SB 148
7-5-2150 . . . . . enacted . . . . . Ch. 69 . . . . . HB 245
7-5-2401 . . . . . renumbered 18-7-401 . . . . . Ch. 148 . . . . . HB 67
7-5-2402 . . . . . renumbered 18-7-402 . . . . . Ch. 148 . . . . . HB 67
7-5-2403 . . . . . renumbered 18-7-403 . . . . . Ch. 148 . . . . . HB 67
7-5-2404 . . . . . amended and renumbered 18-7-404 . . . . . Ch. 148 . . . . . HB 67
7-5-2405 . . . . . renumbered 18-7-405 . . . . . Ch. 148 . . . . . HB 67
7-5-2411 . . . . . renumbered 18-7-411 . . . . . Ch. 148 . . . . . HB 67
7-5-2412 . . . . . renumbered 18-7-412 . . . . . Ch. 148 . . . . . HB 67
7-5-2413 . . . . . renumbered 18-7-413 . . . . . Ch. 148 . . . . . HB 67
7-5-2414 . . . . . renumbered 18-7-414 . . . . . Ch. 148 . . . . . HB 67
7-6-201 . . . . . amended . . . . . Ch. 291 . . . . . SB 148
7-6-1501 . . . . . amended . . . . . Ch. 381 . . . . . HB 312
7-6-1602 . . . . . amended . . . . . Ch. 358 . . . . . SB 231
7-6-1603 . . . . . amended . . . . . Ch. 358 . . . . . SB 231
7-6-2426 . . . . . amended . . . . . Ch. 45 . . . . . SB 215
7-6-2527 . . . . . amended . . . . . Ch. 38 . . . . . SB 98
amended . . . . . Ch. 286 . . . . . SB 57
7-6-4020 . . . . . amended . . . . . Ch. 351 . . . . . SB 8
7-6-4035 . . . . . amended . . . . . Ch. 351 . . . . . SB 8
7-6-4413 . . . . . amended . . . . . Ch. 291 . . . . . SB 148
7-7-140 . . . . . enacted . . . . . Ch. 489 . . . . . HB 645
7-7-141 . . . . . enacted . . . . . Ch. 489 . . . . . HB 645
7-7-2101 . . . . . amended . . . . . Ch. 286 . . . . . SB 57
7-7-2255 . . . . . amended . . . . . Ch. 489 . . . . . HB 645
7-7-2501 . . . . . amended . . . . . Ch. 489 . . . . . HB 645
7-7-4255 . . . . . amended . . . . . Ch. 489 . . . . . HB 645
7-7-4402 . . . . . amended . . . . . Ch. 248 . . . . . SB 294
amended . . . . . Ch. 265 . . . . . SB 9
7-7-4421 . . . . . amended . . . . . Ch. 489 . . . . . HB 645
7-7-4424 . . . . . amended . . . . . Ch. 248 . . . . . SB 294
7-7-4501 . . . . . amended . . . . . Ch. 489 . . . . . HB 645
7-8-2215 . . . . . amended . . . . . Ch. 291 . . . . . SB 148
7-8-2219 . . . . . amended . . . . . Ch. 170 . . . . . HB 623
7-8-2301 . . . . . amended . . . . . Ch. 170 . . . . . HB 623
7-8-2308 . . . . . amended . . . . . Ch. 170 . . . . . HB 623
7-8-2402 . . . . . amended . . . . . Ch. 170 . . . . . HB 623
7-8-2502 . . . . . amended . . . . . Ch. 170 . . . . . HB 623
7-8-2504 . . . . . amended . . . . . Ch. 170 . . . . . HB 623
7-8-4201 . . . . . amended . . . . . Ch. 170 . . . . . HB 623
7-10-101 . . . . . enacted . . . . . Ch. 351 . . . . . SB 8
7-10-102 . . . . . enacted . . . . . Ch. 351 . . . . . SB 8
7-10-103 . . . . . enacted . . . . . Ch. 351 . . . . . SB 8
7-10-104 . . . . . enacted . . . . . Ch. 351 . . . . . SB 8
7-10-105 . . . . . enacted . . . . . Ch. 351 . . . . . SB 8
7-10-106 . . . . . enacted . . . . . Ch. 351 . . . . . SB 8
7-10-110 . . . . . enacted . . . . . Ch. 351 . . . . . SB 8
7-10-115 . . . . . enacted . . . . . Ch. 351 . . . . . SB 8
7-10-201 . . . . . enacted . . . . . Ch. 351 . . . . . SB 8
7-10-202 . . . . . enacted . . . . . Ch. 351 . . . . . SB 8
7-10-205 . . . . . enacted . . . . . Ch. 351 . . . . . SB 8
7-10-206 . . . . . enacted . . . . . Ch. 351 . . . . . SB 8

7-10-207	enacted	Ch. 351	SB	8
7-10-208	enacted	Ch. 351	SB	8
7-10-209	enacted	Ch. 351	SB	8
7-10-215	enacted	Ch. 351	SB	8
7-10-216	enacted	Ch. 351	SB	8
7-10-217	enacted	Ch. 351	SB	8
7-10-218	enacted	Ch. 351	SB	8
7-10-219	enacted	Ch. 351	SB	8
7-10-220	enacted	Ch. 351	SB	8
7-10-221	enacted	Ch. 351	SB	8
7-10-222	enacted	Ch. 351	SB	8
7-11-1001	enacted	Ch. 286	SB	57
7-11-1002	enacted	Ch. 286	SB	57
7-11-1003	enacted	Ch. 286	SB	57
7-11-1006	enacted	Ch. 286	SB	57
7-11-1007	enacted	Ch. 286	SB	57
7-11-1008	enacted	Ch. 286	SB	57
7-11-1011	enacted	Ch. 286	SB	57
7-11-1012	enacted	Ch. 286	SB	57
7-11-1013	enacted	Ch. 286	SB	57
7-11-1014	enacted	Ch. 286	SB	57
7-11-1015	enacted	Ch. 286	SB	57
7-11-1021	enacted	Ch. 286	SB	57
7-11-1022	enacted	Ch. 286	SB	57
7-11-1023	enacted	Ch. 286	SB	57
7-11-1024	enacted	Ch. 286	SB	57
7-11-1025	enacted	Ch. 286	SB	57
7-11-1026	enacted	Ch. 286	SB	57
7-11-1027	enacted	Ch. 286	SB	57
7-11-1028	enacted	Ch. 286	SB	57
7-11-1029	enacted	Ch. 286	SB	57
7-11-1101	repealed	Ch. 286	SB	57
7-11-1102	amended	Ch. 286	SB	57
7-11-1105	repealed	Ch. 286	SB	57
7-11-1106	repealed	Ch. 286	SB	57
7-11-1107	repealed	Ch. 286	SB	57
7-11-1111	repealed	Ch. 286	SB	57
7-11-1112	amended	Ch. 286	SB	57
7-12-2103	amended	Ch. 342	HB	449
7-12-2105	amended	Ch. 342	HB	449
7-12-2109	amended	Ch. 342	HB	449
7-12-2112	amended	Ch. 342	HB	449
7-12-2153	amended	Ch. 349	HB	630
7-12-2171	amended	Ch. 489	HB	645
7-12-2172	amended	Ch. 287	SB	58
7-12-2182	amended	Ch. 349	HB	630
7-12-2185	amended	Ch. 349	HB	630
7-12-2186	amended	Ch. 349	HB	630
7-12-4001	repealed	Ch. 286	SB	57
7-12-4169	amended	Ch. 349	HB	630
7-12-4204	amended	Ch. 287	SB	58
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13-2-221	amended	Ch. 56	HB 37
13-2-222	amended	Ch. 297	HB 19
13-2-301	amended	Ch. 297	HB 19
13-2-304	amended	Ch. 297	HB 19
13-2-402	amended	Ch. 297	HB 19

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13-3-103 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
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13-4-106 . . . . . amended . . . . . Ch. 297 . . . . . HB 19
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13-10-201 . . . . . amended . . . . . Ch. 292 . . . . . SB 156
13-10-203 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
13-10-208 . . . . . amended . . . . . Ch. 292 . . . . . SB 156
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13-10-501 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
13-10-503 . . . . . amended . . . . . Ch. 292 . . . . . SB 156
13-10-507 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
13-10-601 . . . . . amended . . . . . Ch. 292 . . . . . SB 156
13-10-602 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
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13-12-210 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
13-13-118 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
13-13-120 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
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13-13-205 . . . . . amended . . . . . Ch. 297 . . . . . HB 19
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13-13-602 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
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13-15-106 . . . . . amended . . . . . Ch. 217 . . . . . SB 124
13-15-107 . . . . . amended . . . . . Ch. 2 . . . . . SB 7
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13-36-104	amended	Ch.	56	HB 37
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13-37-125	amended	Ch.	56	HB 37
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13-37-202	amended	Ch.	56	HB 37
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13-37-205	amended	Ch.	56	HB 37
13-37-206	amended	Ch.	56	HB 37
13-37-207	amended	Ch.	56	HB 37
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13-37-403	enacted	Ch.	347	HB 622
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15-2-104 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
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15-6-191. . . . . repealed . . . . . Ch. 6 . . . . . SB 115
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15-6-193 . . . . . amended . . . . . Ch. 483 . . . . . HB 658
15-6-201 . . . . . amended . . . . . Ch. 286 . . . . . SB 57
15-6-202 . . . . . amended . . . . . Ch. 343 . . . . . HB 487
15-6-211 . . . . . amended . . . . . Ch. 6 . . . . . SB 115
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15-7-102 . . . . . amended . . . . . Ch. 483 . . . . . HB 658
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15-7-134. . . . . repealed . . . . . Ch. 2 . . . . . SB 7
15-7-201 . . . . . amended . . . . . Ch. 483 . . . . . HB 658
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15-16-503 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
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15-18-212 . . . . . amended . . . . . Ch. 411 . . . . . SB 467
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15-30-112 . . . . . renumbered 15-30-2114 . . . . . Ch. 147 . . . . . HB 24
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20-3-308	amended	Ch.	56	HB	37
20-3-309	amended	Ch.	56	HB	37
20-3-310	amended	Ch.	56	HB	37
20-3-311	amended	Ch.	56	HB	37
20-3-312	amended	Ch.	60	HB	57
20-3-313	amended	Ch.	132	HB	432
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20-5-107	amended	Ch.	56	HB	37
20-5-111	amended	Ch.	56	HB	37
20-5-201	amended	Ch.	444	HB	332
20-5-202	amended	Ch.	444	HB	332
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20-7-329	amended	Ch.	2	SB	7
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30-10-324	amended	Ch.	2	SB	7
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30-11-110	amended	Ch.	56	HB	37
30-11-111	amended	Ch.	56	HB	37
30-11-113	amended	Ch.	56	HB	37
30-11-114	amended	Ch.	56	HB	37
30-11-201	amended	Ch.	56	HB	37
30-11-202	amended	Ch.	56	HB	37
30-11-203	amended	Ch.	56	HB	37
30-11-205	amended	Ch.	56	HB	37
30-11-206	amended	Ch.	56	HB	37
30-11-207	amended	Ch.	56	HB	37
30-11-211	amended	Ch.	56	HB	37
30-11-213	amended	Ch.	56	HB	37
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30-11-220	amended	Ch.	56	HB	37
30-11-221	amended	Ch.	56	HB	37
30-11-223	amended	Ch.	56	HB	37
30-11-302	amended	Ch.	56	HB	37
30-11-502	amended	Ch.	56	HB	37
30-11-503	amended	Ch.	56	HB	37
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30-11-508	amended	Ch.	56	HB	37
30-11-510	amended	Ch.	56	HB	37
30-11-511	amended	Ch.	56	HB	37
30-11-512	amended	Ch.	56	HB	37
30-11-513	amended	Ch.	56	HB	37
30-11-514	amended	Ch.	56	HB	37
30-11-515	amended	Ch.	109	HB	80
30-11-601	amended	Ch.	56	HB	37
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30-11-603	amended	Ch.	56	HB	37
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30-11-605	amended	Ch.	56	HB	37
30-11-606	amended	Ch.	56	HB	37
30-11-607	amended	Ch.	56	HB	37
30-11-701	amended	Ch.	168	HB	387
30-11-703	amended	Ch.	56	HB	37
30-11-713	amended	Ch.	56	HB	37
30-11-806	amended	Ch.	56	HB	37
30-11-807	amended	Ch.	56	HB	37
30-12-202	amended	Ch.	56	HB	37
30-12-205	amended	Ch.	56	HB	37
30-12-211	amended	Ch.	56	HB	37
30-12-406	amended	Ch.	56	HB	37
30-12-504	amended	Ch.	56	HB	37
30-13-112	repealed	Ch.	291	SB	148
30-13-131	amended	Ch.	56	HB	37
30-13-133	amended	Ch.	56	HB	37
30-13-135	amended	Ch.	56	HB	37

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30-13-301 . . . . . amended . . . . . Ch. 177 . . . . . SB 250
30-13-333 . . . . . amended . . . . . Ch. 177 . . . . . SB 250
30-13-338. . . . . enacted . . . . . Ch. 177 . . . . . SB 250
30-14-112 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
30-14-113 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
30-14-114 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
30-14-132 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
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30-14-204 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
30-14-213 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
30-14-221 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
30-14-303 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
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30-14-1112 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
30-14-2101. . . . . enacted . . . . . Ch. 338 . . . . . HB 318
30-14-2102. . . . . enacted . . . . . Ch. 338 . . . . . HB 318
30-14-2103. . . . . enacted . . . . . Ch. 338 . . . . . HB 318
30-14-2104. . . . . enacted . . . . . Ch. 338 . . . . . HB 318
30-14-2501 . . . . . amended . . . . . Ch. 240 . . . . . HB 542
30-14-2502 . . . . . amended . . . . . Ch. 240 . . . . . HB 542
30-14-2503 . . . . . amended . . . . . Ch. 240 . . . . . HB 542
30-20-101. . . . . enacted . . . . . Ch. 205 . . . . . HB 246
30-20-102. . . . . enacted . . . . . Ch. 205 . . . . . HB 246
30-20-103. . . . . enacted . . . . . Ch. 205 . . . . . HB 246
30-20-104. . . . . enacted . . . . . Ch. 205 . . . . . HB 246
30-20-105. . . . . enacted . . . . . Ch. 205 . . . . . HB 246
30-20-106. . . . . enacted . . . . . Ch. 205 . . . . . HB 246
30-22-101. . . . . enacted . . . . . Ch. 316 . . . . . SB 247
30-22-102. . . . . enacted . . . . . Ch. 316 . . . . . SB 247
30-22-103. . . . . enacted . . . . . Ch. 316 . . . . . SB 247
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31-1-108 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
31-1-212 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
31-1-222 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
31-1-231 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
31-1-232 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
31-1-234 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
31-1-236 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
31-1-243 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
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31-1-305 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
31-1-402 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
31-1-502 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
31-1-704 . . . . . amended . . . . . Ch. 81 . . . . . SB 54
31-1-705 . . . . . amended . . . . . Ch. 81 . . . . . SB 54
31-1-707. . . . . enacted . . . . . Ch. 81 . . . . . SB 54
31-1-711 . . . . . amended . . . . . Ch. 81 . . . . . SB 54
31-1-722 . . . . . amended . . . . . Ch. 81 . . . . . SB 54
31-1-729. . . . . enacted . . . . . Ch. 81 . . . . . SB 54
31-1-805 . . . . . amended . . . . . Ch. 134 . . . . . SB 47
31-1-810 . . . . . amended . . . . . Ch. 134 . . . . . SB 47
31-1-828. . . . . enacted . . . . . Ch. 134 . . . . . SB 47
31-1-829. . . . . enacted . . . . . Ch. 134 . . . . . SB 47
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31-2-103 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
31-2-104 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
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31-2-202	amended	Ch.	56	HB	37
31-2-203	amended	Ch.	56	HB	37
31-2-204	amended	Ch.	56	HB	37
31-2-205	amended	Ch.	56	HB	37
31-2-209	amended	Ch.	56	HB	37
31-2-210	amended	Ch.	56	HB	37
31-2-212	amended	Ch.	56	HB	37
31-2-214	amended	Ch.	56	HB	37
31-2-215	amended	Ch.	56	HB	37
31-2-220	amended	Ch.	56	HB	37
31-2-221	amended	Ch.	56	HB	37
31-2-224	amended	Ch.	56	HB	37
31-2-225	amended	Ch.	56	HB	37
31-2-229	amended	Ch.	56	HB	37
31-2-329	amended	Ch.	56	HB	37
31-2-333	amended	Ch.	56	HB	37
31-3-102	amended	Ch.	56	HB	37
31-3-113	amended	Ch.	56	HB	37
31-3-114	amended	Ch.	56	HB	37
31-3-121	amended	Ch.	56	HB	37
31-3-123	amended	Ch.	56	HB	37
31-3-131	amended	Ch.	56	HB	37
32-1-206	amended	Ch.	56	HB	37
32-1-403	amended	Ch.	56	HB	37
32-1-421	amended	Ch.	56	HB	37
32-1-430	amended	Ch.	324	SB	375
32-1-451	amended	Ch.	56	HB	37
32-1-463	amended	Ch.	56	HB	37
32-1-466	amended	Ch.	56	HB	37
32-1-471	amended	Ch.	56	HB	37
32-1-474	amended	Ch.	56	HB	37
32-1-506	amended	Ch.	56	HB	37
32-1-510	amended	Ch.	56	HB	37
32-1-535	amended	Ch.	56	HB	37
32-1-807	amended	Ch.	56	HB	37
32-1-808	amended	Ch.	56	HB	37
32-1-903	amended	Ch.	56	HB	37
32-1-905	amended	Ch.	56	HB	37
32-1-906	amended	Ch.	56	HB	37
32-1-907	amended	Ch.	56	HB	37
32-1-908	amended	Ch.	56	HB	37
32-1-910	amended	Ch.	56	HB	37
32-2-108	amended	Ch.	56	HB	37
32-2-109	amended	Ch.	56	HB	37
32-2-209	amended	Ch.	56	HB	37
32-2-210	amended	Ch.	56	HB	37
32-2-212	amended	Ch.	56	HB	37
32-2-232	amended	Ch.	56	HB	37
32-2-233	amended	Ch.	56	HB	37
32-2-241	amended	Ch.	56	HB	37
32-2-245	amended	Ch.	56	HB	37
32-2-254	amended	Ch.	56	HB	37
32-2-255	amended	Ch.	56	HB	37
32-2-307	amended	Ch.	56	HB	37
32-2-401	amended	Ch.	56	HB	37
32-2-403	amended	Ch.	56	HB	37
32-2-404	amended	Ch.	56	HB	37
32-2-408	amended	Ch.	56	HB	37
32-2-409	amended	Ch.	56	HB	37
32-3-406	amended	Ch.	56	HB	37
32-3-407	amended	Ch.	56	HB	37
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32-3-507	amended	Ch. 56	HB	37
32-3-604	amended	Ch. 324	SB	375
32-3-605	amended	Ch. 56	HB	37
32-4-203	amended	Ch. 56	HB	37
32-4-205	amended	Ch. 56	HB	37
32-4-301	amended	Ch. 56	HB	37
32-5-304	amended	Ch. 56	HB	37
32-6-106	amended	Ch. 56	HB	37
32-6-302	amended	Ch. 56	HB	37
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32-7-103	amended	Ch. 56	HB	37
32-7-108	amended	Ch. 56	HB	37
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32-9-102	amended	Ch. 321	SB	351
32-9-103	amended	Ch. 321	SB	351
32-9-104	amended	Ch. 321	SB	351
32-9-105	enacted	Ch. 321	SB	351
32-9-106	enacted	Ch. 321	SB	351
32-9-107	enacted	Ch. 321	SB	351
32-9-108	repealed	Ch. 321	SB	351
32-9-109	amended	Ch. 321	SB	351
32-9-110	amended	Ch. 321	SB	351
32-9-112	enacted	Ch. 321	SB	351
32-9-113	enacted	Ch. 321	SB	351
32-9-114	enacted	Ch. 321	SB	351
32-9-115	repealed	Ch. 321	SB	351
32-9-116	amended	Ch. 321	SB	351
32-9-117	amended	Ch. 321	SB	351
32-9-118	amended	Ch. 321	SB	351
32-9-119	repealed	Ch. 321	SB	351
32-9-120	enacted	Ch. 321	SB	351
32-9-121	amended	Ch. 321	SB	351
32-9-122	amended	Ch. 321	SB	351
32-9-123	amended	Ch. 321	SB	351
32-9-124	amended	Ch. 321	SB	351
32-9-125	amended	Ch. 321	SB	351
32-9-126	amended	Ch. 321	SB	351
32-9-127	enacted	Ch. 321	SB	351
32-9-128	enacted	Ch. 321	SB	351
32-9-129	enacted	Ch. 321	SB	351
32-9-130	amended	Ch. 321	SB	351
32-9-133	amended	Ch. 321	SB	351
32-9-145	enacted	Ch. 321	SB	351
32-9-148	enacted	Ch. 321	SB	351
32-9-150	enacted	Ch. 321	SB	351
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32-9-160	enacted	Ch. 321	SB	351
32-10-101	repealed	Ch. 321	SB	351
32-10-102	repealed	Ch. 321	SB	351
32-10-103	repealed	Ch. 321	SB	351
32-10-201	repealed	Ch. 321	SB	351
32-10-202	repealed	Ch. 321	SB	351
32-10-203	repealed	Ch. 321	SB	351
32-10-204	repealed	Ch. 321	SB	351
32-10-207	repealed	Ch. 321	SB	351
32-10-208	repealed	Ch. 321	SB	351
32-10-209	repealed	Ch. 321	SB	351
32-10-301	repealed	Ch. 321	SB	351
32-10-302	repealed	Ch. 321	SB	351
32-10-303	repealed	Ch. 321	SB	351
32-10-309	repealed	Ch. 321	SB	351

32-10-310	repealed	Ch. 321	SB	351
32-10-401	repealed	Ch. 321	SB	351
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32-10-402	repealed	Ch. 321	SB	351
32-10-403	repealed	Ch. 321	SB	351
32-10-404	repealed	Ch. 321	SB	351
32-10-405	repealed	Ch. 321	SB	351
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32-10-502	repealed	Ch. 321	SB	351
32-10-503	repealed	Ch. 321	SB	351
32-10-504	repealed	Ch. 321	SB	351
32-10-505	repealed	Ch. 321	SB	351
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32-10-512	repealed	Ch. 321	SB	351
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33-1-111	amended	Ch. 2	SB	7
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33-1-601	amended	Ch. 271	SB	133
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33-1-613	amended	Ch. 56	HB	37
33-1-1301	amended	Ch. 272	SB	151
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33-1-1303	amended	Ch. 272	SB	151
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33-2-112	amended	Ch. 56	HB	37
33-2-116	amended	Ch. 56	HB	37
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33-2-120	amended	Ch. 56	HB	37
33-2-121	amended	Ch. 56	HB	37
33-2-127	amended	Ch. 56	HB	37
33-2-205	amended	Ch. 56	HB	37
33-2-208	amended	Ch. 56	HB	37
33-2-211	amended	Ch. 56	HB	37
33-2-214	amended	Ch. 56	HB	37
33-2-301	amended	Ch. 271	SB	133
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33-2-305	amended	Ch. 271	SB	133
	amended	Ch. 313	SB	127
33-2-306	amended	Ch. 56	HB	37
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33-2-308	amended	Ch. 56	HB	37
33-2-309	amended	Ch. 56	HB	37
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33-2-311	amended	Ch. 56	HB	37
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33-2-705 . . . . . amended . . . . . Ch. 309 . . . . . HB 635
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33-2-1104 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
33-2-1105 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
33-2-1106 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
33-2-1120 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
33-2-1122 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
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33-2-1211 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
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33-2-1310 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
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33-2-1323 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
33-2-1333 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
33-2-1334 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
33-2-1341 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
33-2-1344 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
33-2-1345 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
33-2-1347 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
33-2-1348 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
33-2-1352 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
33-2-1353 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
33-2-1355 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
33-2-1357 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
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33-2-1360 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
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33-2-1364 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
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33-2-1366 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
33-2-1367 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
33-2-1368 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
33-2-1369 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
33-2-1370 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
33-2-1372 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
33-2-1374 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
33-2-1377 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
33-2-1379 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
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33-2-1381 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
33-2-1382 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
33-2-1383 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
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33-2-1387 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
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33-3-218 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
33-3-301 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
33-3-308 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
33-3-309 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
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33-3-412 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
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33-3-436 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
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33-3-602	amended	Ch.	56	HB	37
33-3-604	amended	Ch.	56	HB	37
33-4-302	amended	Ch.	56	HB	37
33-4-316	amended	Ch.	56	HB	37
33-4-402	amended	Ch.	56	HB	37
33-4-411	amended	Ch.	56	HB	37
33-4-502	amended	Ch.	271	SB	133
33-4-503	amended	Ch.	271	SB	133
33-4-504	amended	Ch.	271	SB	133
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33-4-509	amended	Ch.	56	HB	37
33-5-202	amended	Ch.	56	HB	37
33-5-303	amended	Ch.	56	HB	37
33-5-403	amended	Ch.	56	HB	37
33-5-404	amended	Ch.	56	HB	37
33-5-405	amended	Ch.	56	HB	37
33-5-406	amended	Ch.	56	HB	37
33-5-407	amended	Ch.	56	HB	37
33-5-409	amended	Ch.	56	HB	37
33-5-412	amended	Ch.	56	HB	37
33-6-102	amended	Ch.	56	HB	37
33-6-401	amended	Ch.	56	HB	37
33-7-119	amended	Ch.	56	HB	37
33-7-120	amended	Ch.	56	HB	37
33-7-121	amended	Ch.	56	HB	37
33-7-208	amended	Ch.	56	HB	37
33-7-209	amended	Ch.	56	HB	37
33-7-216	amended	Ch.	56	HB	37
33-7-307	amended	Ch.	56	HB	37
33-7-411	amended	Ch.	56	HB	37
33-9-102	amended	Ch.	56	HB	37
33-10-108	amended	Ch.	56	HB	37
33-10-109	amended	Ch.	56	HB	37
33-10-115	amended	Ch.	56	HB	37
33-14-203	amended	Ch.	56	HB	37
33-14-204	amended	Ch.	56	HB	37
33-14-301	amended	Ch.	56	HB	37
33-14-302	amended	Ch.	56	HB	37
33-15-103	amended	Ch.	56	HB	37
33-15-201	amended	Ch.	56	HB	37
33-15-206	amended	Ch.	56	HB	37
33-15-327	amended	Ch.	56	HB	37
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33-15-402	amended	Ch.	56	HB	37
33-15-511	amended	Ch.	56	HB	37
33-15-512	amended	Ch.	56	HB	37
33-15-513	amended	Ch.	56	HB	37
33-15-514	amended	Ch.	56	HB	37
33-16-111	amended	Ch.	56	HB	37
33-16-112	amended	Ch.	56	HB	37
33-16-113	amended	Ch.	56	HB	37
33-16-114	amended	Ch.	56	HB	37
33-16-204	amended	Ch.	56	HB	37
33-16-206	amended	Ch.	56	HB	37
33-16-211	amended	Ch.	56	HB	37
33-16-223	amended	Ch.	56	HB	37
33-16-224	amended	Ch.	56	HB	37
33-16-305	amended	Ch.	56	HB	37
33-17-102	amended	Ch.	313	SB	127
33-17-211	amended	Ch.	271	SB	133

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33-17-214 . . . . . amended . . . . . Ch. 271 . . . . . SB 133
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33-17-231 . . . . . amended . . . . . Ch. 271 . . . . . SB 133
33-17-301 . . . . . amended . . . . . Ch. 271 . . . . . SB 133
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33-17-1001 . . . . . amended . . . . . Ch. 271 . . . . . SB 133
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33-17-1103 . . . . . amended . . . . . Ch. 271 . . . . . SB 133
33-17-1203 . . . . . amended . . . . . Ch. 313 . . . . . SB 127
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33-17-1204 . . . . . amended . . . . . Ch. 271 . . . . . SB 133
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33-18-203 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
33-18-221 . . . . . amended . . . . . Ch. 192 . . . . . HB 291
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33-18-223 . . . . . amended . . . . . Ch. 192 . . . . . HB 291
33-18-224 . . . . . amended . . . . . Ch. 192 . . . . . HB 291
33-18-1003 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
33-18-1004 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
33-19-105 . . . . . amended . . . . . Ch. 271 . . . . . SB 133
33-19-205 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
33-19-306 . . . . amended (voided by sec. 28, Ch. 413) . . . . . Ch. 387 . . . . . HB 615
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33-20-1307 . . . . . amended . . . . . Ch. 271 . . . . . SB 133
33-20-1308 . . . . . amended . . . . . Ch. 272 . . . . . SB 151
33-20-1314 . . . . . amended . . . . . Ch. 272 . . . . . SB 151
33-20-1318. . . . . enacted . . . . . Ch. 272 . . . . . SB 151
33-21-104 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
33-21-111 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
33-21-113 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
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33-21-204 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
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33-22-112 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
33-22-123. . . . . enacted . . . . . Ch. 262 . . . . . HB 544
33-22-125 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
33-22-135 . . . . . amended . . . . . Ch. 67 . . . . . HB 151
33-22-137. . . . . enacted . . . . . Ch. 271 . . . . . SB 133
33-22-142 . . . . . amended . . . . . Ch. 271 . . . . . SB 133
33-22-206 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
33-22-208 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
33-22-222 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
33-22-224 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
33-22-227 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
33-22-232 . . . . . amended . . . . . Ch. 271 . . . . . SB 133
33-22-244 . . . . . amended . . . . . Ch. 207 . . . . . HB 264
33-22-302 . . . . . amended . . . . . Ch. 271 . . . . . SB 133
33-22-401. . . . . repealed . . . . . Ch. 143 . . . . . SB 141
33-22-502 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
33-22-507 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
33-22-510 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
33-22-515. . . . . enacted . . . . . Ch. 359 . . . . . SB 234

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33-22-602	amended	Ch. 271	SB 133
33-22-604	amended	Ch. 56	HB 37
33-22-706	amended	Ch. 359	SB 234
33-22-1001	amended	Ch. 56	HB 37
33-22-1602	amended	Ch. 56	HB 37
33-22-1809	amended	Ch. 271	SB 133
33-22-1816	amended	Ch. 87	SB 135
33-22-2004	amended	Ch. 87	SB 135
33-22-2006	amended	Ch. 87	SB 135
33-22-2007	amended	Ch. 87	SB 135
33-22-2008	amended	Ch. 87	SB 135
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33-23-216	amended	Ch. 56	HB 37
33-24-102	amended	Ch. 56	HB 37
33-25-216	amended	Ch. 56	HB 37
33-25-302	amended	Ch. 56	HB 37
33-25-401	amended	Ch. 56	HB 37
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33-26-107	amended	Ch. 56	HB 37
33-28-102	amended	Ch. 28	HB 160
33-28-104	amended	Ch. 271	SB 133
33-28-105	amended	Ch. 28	HB 160
33-28-107	amended	Ch. 28	HB 160
33-28-201	amended	Ch. 28	HB 160
33-28-202	amended	Ch. 28	HB 160
33-28-207	amended	Ch. 28	HB 160
33-30-102	amended	Ch. 271	SB 133
33-30-105	amended	Ch. 56	HB 37
33-30-303	amended	Ch. 56	HB 37
33-30-1002	amended	Ch. 56	HB 37
33-30-1005	amended	Ch. 56	HB 37
33-30-1006	amended	Ch. 56	HB 37
33-30-1009	amended	Ch. 56	HB 37
33-30-1102	amended	Ch. 56	HB 37
33-31-102	amended	Ch. 195	HB 365
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33-31-111	amended	Ch. 271	SB 133
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33-31-201	amended	Ch. 56	HB 37
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33-31-221	amended	Ch. 56	HB 37
33-31-311	amended	Ch. 271	SB 133
33-31-312	amended	Ch. 56	HB 37
33-31-402	amended	Ch. 56	HB 37
33-31-403	amended	Ch. 56	HB 37
33-31-404	amended	Ch. 56	HB 37
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35-1-451	amended	Ch. 56	HB 37
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35-1-453	amended	Ch. 56	HB 37
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35-1-837 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
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35-2-727 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
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35-9-201 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
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35-17-206	amended	Ch. 56	HB	37
35-17-303	amended	Ch. 56	HB	37
35-17-311	amended	Ch. 56	HB	37
35-17-313	amended	Ch. 56	HB	37
35-17-401	amended	Ch. 56	HB	37
35-17-505	amended	Ch. 56	HB	37
35-18-312	amended	Ch. 56	HB	37
35-18-314	amended	Ch. 56	HB	37
35-18-405	amended	Ch. 56	HB	37
35-18-501	amended	Ch. 56	HB	37
35-20-101	amended	Ch. 56	HB	37
35-20-102	amended	Ch. 56	HB	37
35-20-103	amended	Ch. 56	HB	37
35-20-208	amended	Ch. 56	HB	37
35-20-209	amended	Ch. 56	HB	37
35-20-216	amended	Ch. 56	HB	37
35-20-302	amended	Ch. 56	HB	37
35-20-304	amended	Ch. 56	HB	37
35-21-810	amended	Ch. 208	HB	386
37-1-205	amended	Ch. 56	HB	37
37-1-316	amended	Ch. 109	HB	80
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37-1-410	amended	Ch. 109	HB	80
37-2-102	amended	Ch. 56	HB	37
37-2-103	amended	Ch. 56	HB	37
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37-2-106	amended	Ch. 56	HB	37
37-2-201	amended	Ch. 56	HB	37
37-2-303	amended	Ch. 56	HB	37
37-2-304	enacted	Ch. 158	SB	432
37-2-311	amended	Ch. 56	HB	37
37-2-312	amended	Ch. 56	HB	37
37-3-102	amended	Ch. 109	HB	80
37-3-203	amended	Ch. 326	SB	401
37-3-208	amended	Ch. 326	SB	401
37-3-305	amended	Ch. 109	HB	80
37-3-306	amended	Ch. 109	HB	80
37-3-308	amended	Ch. 109	HB	80
37-3-310	amended	Ch. 56	HB	37
37-3-311	amended	Ch. 109	HB	80
37-3-321	amended	Ch. 56	HB	37
37-3-323	amended	Ch. 109	HB	80
37-3-325	amended	Ch. 56	HB	37
37-3-326	amended	Ch. 56	HB	37
37-3-328	amended	Ch. 56	HB	37
37-3-342	amended	Ch. 109	HB	80
37-3-401	amended	Ch. 326	SB	401
37-3-801	enacted	Ch. 385	HB	578
37-3-802	enacted	Ch. 385	HB	578
37-3-803	enacted	Ch. 385	HB	578
37-3-804	enacted	Ch. 385	HB	578
37-3-805	enacted	Ch. 385	HB	578
37-3-806	enacted	Ch. 385	HB	578
37-3-807	enacted	Ch. 385	HB	578
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37-4-325	amended	Ch. 56	HB	37
37-4-341	enacted	Ch. 315	SB	226
37-4-501	amended	Ch. 56	HB	37
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37-4-511	amended	Ch. 56	HB	37
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37-7-306. . . . . enacted . . . . . Ch. 293 . . . . . SB 174
37-7-506 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
37-7-509 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
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37-7-1402 . . . . . amended . . . . . Ch. 299 . . . . . HB 409
37-7-1403. . . . . enacted . . . . . Ch. 299 . . . . . HB 409
37-7-1404. . . . . enacted . . . . . Ch. 299 . . . . . HB 409
37-7-1405. . . . . enacted . . . . . Ch. 299 . . . . . HB 409
37-7-1408 . . . . . amended . . . . . Ch. 299 . . . . . HB 409
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37-9-201 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
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37-9-301 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
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37-12-324 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
37-13-315 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
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37-15-301 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
37-16-102 . . . . . amended . . . . . Ch. 34 . . . . . SB 53
37-16-103 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
37-16-202 . . . . . amended . . . . . Ch. 109 . . . . . HB 80
37-16-303 . . . . . amended . . . . . Ch. 34 . . . . . SB 53
37-16-304 . . . . . amended . . . . . Ch. 34 . . . . . SB 53
37-16-402 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
37-16-405 . . . . . amended . . . . . Ch. 109 . . . . . HB 80
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37-17-104 . . . . . amended . . . . . Ch. 453 . . . . . SB 235
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37-17-313 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
37-18-102 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
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37-18-313 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
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37-18-502 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
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37-19-901. . . . . enacted . . . . . Ch. 208 . . . . . HB 386
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37-19-903. . . . . enacted . . . . . Ch. 208 . . . . . HB 386
37-19-904. . . . . enacted . . . . . Ch. 208 . . . . . HB 386
37-19-905. . . . . enacted . . . . . Ch. 208 . . . . . HB 386
37-19-906. . . . . enacted . . . . . Ch. 208 . . . . . HB 386
37-19-907. . . . . enacted . . . . . Ch. 208 . . . . . HB 386
37-19-908. . . . . enacted . . . . . Ch. 208 . . . . . HB 386
37-19-909. . . . . enacted . . . . . Ch. 208 . . . . . HB 386
37-21-101 . . . . . repealed . . . . . Ch. 109 . . . . . HB 80
37-21-201 . . . . . repealed . . . . . Ch. 109 . . . . . HB 80
37-21-301 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
repealed . . . . . Ch. 109 . . . . . HB 80
37-21-302 . . . . . repealed . . . . . Ch. 109 . . . . . HB 80
37-21-405 . . . . . repealed . . . . . Ch. 109 . . . . . HB 80
37-21-406 . . . . . repealed . . . . . Ch. 109 . . . . . HB 80

37-22-102	amended	Ch. 199	HB 530
37-22-201	amended	Ch. 403	SB 271
37-22-401	amended	Ch. 56	HB 37
37-22-411	amended	Ch. 56	HB 37
37-23-102	amended	Ch. 453	SB 235
37-23-301	amended	Ch. 56	HB 37
37-24-301	amended	Ch. 56	HB 37
37-25-302	amended	Ch. 56	HB 37
37-25-303	amended	Ch. 109	HB 80
37-25-304	amended	Ch. 56	HB 37
37-26-401	amended	Ch. 56	HB 37
37-26-402	amended	Ch. 56	HB 37
37-29-201	amended	Ch. 109	HB 80
37-29-405	amended	Ch. 56	HB 37
37-33-401	enacted	Ch. 451	HB 662
37-33-402	enacted	Ch. 451	HB 662
37-33-403	enacted	Ch. 451	HB 662
37-33-404	enacted	Ch. 451	HB 662
37-33-405	enacted	Ch. 451	HB 662
37-33-501	enacted	Ch. 451	HB 662
37-33-502	enacted	Ch. 451	HB 662
37-33-503	enacted	Ch. 451	HB 662
37-33-504	enacted	Ch. 451	HB 662
37-35-201	amended	Ch. 109	HB 80
37-35-202	amended	Ch. 109	HB 80
37-36-202	amended	Ch. 109	HB 80
37-37-101	enacted	Ch. 403	SB 271
37-37-102	enacted	Ch. 403	SB 271
37-37-201	enacted	Ch. 403	SB 271
37-37-202	enacted	Ch. 403	SB 271
37-37-301	enacted	Ch. 403	SB 271
37-40-102	amended	Ch. 56	HB 37
37-40-301	amended	Ch. 56	HB 37
37-40-312	amended	Ch. 56	HB 37
37-42-201	amended	Ch. 56	HB 37
37-42-305	amended	Ch. 56	HB 37
37-43-102	amended	Ch. 56	HB 37
37-43-201	amended	Ch. 56	HB 37
37-43-302	amended	Ch. 56	HB 37
37-43-305	amended	Ch. 56	HB 37
37-43-306	amended	Ch. 56	HB 37
37-43-308	amended	Ch. 56	HB 37
37-47-302	amended	Ch. 109	HB 80
37-47-404	amended	Ch. 109	HB 80
37-50-101	amended	Ch. 109	HB 80
37-50-102	amended	Ch. 109	HB 80
37-50-203	amended	Ch. 109	HB 80
37-50-301	amended	Ch. 109	HB 80
37-50-314	amended	Ch. 109	HB 80
37-50-323	repealed	Ch. 109	HB 80
37-50-324	repealed	Ch. 109	HB 80
37-50-325	enacted	Ch. 109	HB 80
37-50-330	amended	Ch. 109	HB 80
37-50-335	amended	Ch. 109	HB 80
37-50-341	amended	Ch. 109	HB 80
37-50-401	amended	Ch. 109	HB 80
37-50-402	amended	Ch. 109	HB 80
37-50-403	amended	Ch. 56	HB 37
37-51-201	amended	Ch. 56	HB 37
37-51-323	amended	Ch. 56	HB 37
37-51-503	amended	Ch. 56	HB 37
37-51-504	amended	Ch. 56	HB 37
37-51-511	amended	Ch. 56	HB 37

37-53-102	amended	Ch. 56	HB	37
	amended	Ch. 317	SB	269
37-53-104	amended	Ch. 317	SB	269
37-53-202	amended	Ch. 317	SB	269
37-53-203	amended	Ch. 317	SB	269
37-53-204	amended	Ch. 317	SB	269
37-53-205	amended	Ch. 317	SB	269
37-53-211	repealed	Ch. 317	SB	269
37-53-212	repealed	Ch. 317	SB	269
37-53-214	repealed	Ch. 317	SB	269
37-53-301	amended	Ch. 56	HB	37
	amended	Ch. 317	SB	269
37-53-302	amended	Ch. 317	SB	269
37-53-303	amended	Ch. 317	SB	269
37-53-304	amended	Ch. 317	SB	269
37-53-305	amended	Ch. 56	HB	37
37-53-307	amended	Ch. 317	SB	269
37-53-308	amended	Ch. 317	SB	269
37-53-401	repealed	Ch. 317	SB	269
37-53-402	repealed	Ch. 317	SB	269
37-53-403	amended	Ch. 56	HB	37
	repealed	Ch. 317	SB	269
37-53-504	repealed	Ch. 317	SB	269
37-53-505	repealed	Ch. 317	SB	269
37-54-412	amended	Ch. 56	HB	37
37-54-415	amended	Ch. 56	HB	37
37-54-416	amended	Ch. 56	HB	37
37-60-101	amended	Ch. 194	HB	354
37-60-103	amended	Ch. 194	HB	354
37-60-104	amended	Ch. 56	HB	37
37-60-105	amended	Ch. 194	HB	354
37-60-301	amended	Ch. 194	HB	354
37-60-304	amended	Ch. 194	HB	354
37-60-401	amended	Ch. 56	HB	37
37-60-404	amended	Ch. 56	HB	37
37-61-201	amended	Ch. 56	HB	37
37-61-203	amended	Ch. 56	HB	37
37-61-207	amended	Ch. 56	HB	37
37-61-210	amended	Ch. 56	HB	37
37-61-214	amended	Ch. 56	HB	37
37-61-215	amended	Ch. 443	HB	301
37-61-301	amended	Ch. 56	HB	37
37-61-309	amended	Ch. 56	HB	37
37-61-401	amended	Ch. 56	HB	37
37-61-402	amended	Ch. 56	HB	37
37-61-404	amended	Ch. 56	HB	37
37-61-405	amended	Ch. 56	HB	37
37-61-406	amended	Ch. 56	HB	37
37-61-407	amended	Ch. 56	HB	37
37-61-408	amended	Ch. 56	HB	37
37-61-412	amended	Ch. 56	HB	37
37-61-416	amended	Ch. 56	HB	37
37-61-417	amended	Ch. 56	HB	37
37-61-418	amended	Ch. 56	HB	37
37-61-420	amended	Ch. 56	HB	37
37-65-103	amended	Ch. 56	HB	37
37-65-301	amended	Ch. 56	HB	37
37-66-104	amended	Ch. 56	HB	37
37-66-105	amended	Ch. 56	HB	37
37-66-302	amended	Ch. 56	HB	37
37-66-303	amended	Ch. 56	HB	37
37-66-308	amended	Ch. 56	HB	37
37-68-101	amended	Ch. 257	HB	374

37-68-102	amended	Ch. 257	HB 374
37-68-103	amended	Ch. 56	HB 37
	amended	Ch. 257	HB 374
37-68-201	amended	Ch. 257	HB 374
37-68-301	amended	Ch. 257	HB 374
37-68-302	amended	Ch. 257	HB 374
37-68-303	amended	Ch. 56	HB 37
	amended	Ch. 257	HB 374
37-68-304	amended	Ch. 257	HB 374
37-68-305	amended	Ch. 257	HB 374
37-68-307	repealed	Ch. 257	HB 374
37-68-311	amended	Ch. 257	HB 374
37-68-314	amended	Ch. 56	HB 37
	repealed	Ch. 257	HB 374
37-68-315	amended	Ch. 257	HB 374
37-68-322	amended	Ch. 257	HB 374
37-69-103	amended	Ch. 56	HB 37
37-69-303	amended	Ch. 56	HB 37
37-69-324	amended	Ch. 56	HB 37
37-72-203	amended	Ch. 56	HB 37
37-72-301	amended	Ch. 56	HB 37
39-1-103	amended	Ch. 56	HB 37
39-2-102	amended	Ch. 56	HB 37
39-2-104	enacted	Ch. 185	HB 144
39-2-303	amended	Ch. 56	HB 37
39-2-401	amended	Ch. 56	HB 37
39-2-402	amended	Ch. 56	HB 37
39-2-403	amended	Ch. 56	HB 37
39-2-404	amended	Ch. 56	HB 37
39-2-405	amended	Ch. 56	HB 37
39-2-406	amended	Ch. 56	HB 37
39-2-407	amended	Ch. 56	HB 37
39-2-408	amended	Ch. 56	HB 37
39-2-409	amended	Ch. 56	HB 37
39-2-410	amended	Ch. 56	HB 37
39-2-411	amended	Ch. 56	HB 37
39-2-501	amended	Ch. 56	HB 37
39-2-502	amended	Ch. 56	HB 37
39-2-601	amended	Ch. 56	HB 37
39-2-605	amended	Ch. 56	HB 37
39-2-606	amended	Ch. 56	HB 37
39-2-701	amended	Ch. 56	HB 37
39-2-702	amended	Ch. 56	HB 37
39-2-703	amended	Ch. 56	HB 37
39-2-704	amended	Ch. 56	HB 37
39-2-802	amended	Ch. 56	HB 37
39-2-803	amended	Ch. 56	HB 37
39-3-102	amended	Ch. 56	HB 37
39-3-103	amended	Ch. 56	HB 37
39-3-204	amended	Ch. 26	HB 101
39-3-205	amended	Ch. 26	HB 101
39-3-209	amended	Ch. 56	HB 37
39-3-210	amended	Ch. 56	HB 37
39-3-211	amended	Ch. 56	HB 37
39-3-214	amended	Ch. 56	HB 37
39-3-215	amended	Ch. 56	HB 37
39-3-404	amended	Ch. 56	HB 37
39-3-503	amended	Ch. 56	HB 37
39-3-506	amended	Ch. 56	HB 37
39-3-507	amended	Ch. 56	HB 37
39-3-508	amended	Ch. 56	HB 37
39-3-509	amended	Ch. 56	HB 37
39-3-511	amended	Ch. 56	HB 37

39-3-512 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
39-3-513 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
39-3-516 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
39-3-517 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
39-3-519 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
39-4-101 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
39-4-102 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
39-4-103 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
39-4-107 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
39-4-110 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
39-4-112 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
39-8-202 . . . . . amended . . . . . Ch. 112 . . . . . HB 119
39-29-111 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
39-30-206 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
39-30-207 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
39-31-204 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
39-31-305 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
39-31-311 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
39-31-401 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
39-31-402 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
39-31-404 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
39-31-406 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
39-32-102 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
39-32-109 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
39-33-101 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
39-33-102 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
39-33-103 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
39-33-202 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
39-34-103 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
39-51-102 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
39-51-201 . . . . . amended . . . . . Ch. 25 . . . . . HB 76
amended . . . . . Ch. 489 . . . . . HB 645
39-51-206 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
39-51-301 . . . . . amended . . . . . Ch. 25 . . . . . HB 76
39-51-305 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
39-51-309 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
39-51-310 . . . . . amended . . . . . Ch. 25 . . . . . HB 76
39-51-403 . . . . . amended . . . . . Ch. 2 . . . . . SB 7
amended . . . . . Ch. 88 . . . . . SB 150
39-51-404 . . . . . amended . . . . . Ch. 25 . . . . . HB 76
39-51-406 . . . . . amended . . . . . Ch. 10 . . . . . SB 29
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39-51-407 . . . . . amended . . . . . Ch. 25 . . . . . HB 76
39-51-408 . . . . . amended . . . . . Ch. 25 . . . . . HB 76
39-51-409 . . . . . amended . . . . . Ch. 435 . . . . . HB 10
39-51-501 . . . . . amended . . . . . Ch. 88 . . . . . SB 150
39-51-503 . . . . . amended . . . . . Ch. 2 . . . . . SB 7
amended . . . . . Ch. 25 . . . . . HB 76
39-51-504 . . . . . amended . . . . . Ch. 25 . . . . . HB 76
39-51-601 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
39-51-602 . . . . . amended . . . . . Ch. 25 . . . . . HB 76
39-51-603 . . . . . amended . . . . . Ch. 88 . . . . . SB 150
39-51-1105 . . . . . amended . . . . . Ch. 25 . . . . . HB 76
amended . . . . . Ch. 88 . . . . . SB 150
39-51-1121 . . . . . amended . . . . . Ch. 25 . . . . . HB 76
39-51-1125 . . . . . amended . . . . . Ch. 25 . . . . . HB 76
39-51-1212 . . . . . amended . . . . . Ch. 25 . . . . . HB 76
39-51-1213 . . . . . amended . . . . . Ch. 25 . . . . . HB 76
39-51-1215 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
39-51-1216 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
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39-51-1301 . . . . . amended . . . . . Ch. 88 . . . . . SB 150

39-51-1302	amended	Ch. 25	HB 76
	amended	Ch. 56	HB 37
39-51-1306	amended	Ch. 56	HB 37
39-51-2101	amended	Ch. 88	SB 150
39-51-2104	amended	Ch. 88	SB 150
39-51-2107	amended	Ch. 56	HB 37
39-51-2112	enacted	Ch. 88	SB 150
39-51-2113	enacted	Ch. 88	SB 150
39-51-2115	enacted	Ch. 489	HB 645
39-51-2116	enacted	Ch. 489	HB 645
39-51-2201	amended	Ch. 25	HB 76
39-51-2304	amended	Ch. 25	HB 76
39-51-2305	amended	Ch. 56	HB 37
39-51-2306	amended	Ch. 25	HB 76
39-51-2307	amended	Ch. 88	SB 150
39-51-2401	amended	Ch. 25	HB 76
	amended	Ch. 56	HB 37
39-51-2402	amended	Ch. 88	SB 150
39-51-2403	amended	Ch. 88	SB 150
39-51-2405	amended	Ch. 25	HB 76
	amended	Ch. 88	SB 150
39-51-2408	amended	Ch. 25	HB 76
39-51-2509	amended	Ch. 56	HB 37
39-51-3101	amended	Ch. 56	HB 37
39-51-3102	amended	Ch. 56	HB 37
39-51-3103	amended	Ch. 56	HB 37
39-51-3104	amended	Ch. 56	HB 37
	repealed	Ch. 88	SB 150
39-51-3201	amended	Ch. 88	SB 150
39-51-3202	amended	Ch. 88	SB 150
39-51-3203	amended	Ch. 56	HB 37
39-51-3204	amended	Ch. 25	HB 76
39-51-3206	amended	Ch. 88	SB 150
39-51-3207	amended	Ch. 88	SB 150
39-71-107	amended	Ch. 112	HB 119
39-71-117	amended	Ch. 112	HB 119
39-71-118	amended	Ch. 112	HB 119
	amended	Ch. 312	SB 84
39-71-123	amended	Ch. 112	HB 119
39-71-201	amended	Ch. 27	HB 138
	amended	Ch. 112	HB 119
39-71-307	amended	Ch. 112	HB 119
39-71-320	enacted	Ch. 125	HB 283
39-71-401	amended	Ch. 234	HB 378
	amended	Ch. 450	HB 598
39-71-403	amended	Ch. 17	HB 126
39-71-411	amended	Ch. 56	HB 37
39-71-412	amended	Ch. 56	HB 37
39-71-417	amended	Ch. 120	HB 204
39-71-441	enacted	Ch. 112	HB 119
39-71-501	amended	Ch. 112	HB 119
39-71-506	amended	Ch. 112	HB 119
39-71-509	amended	Ch. 56	HB 37
39-71-515	amended	Ch. 56	HB 37
39-71-518	amended	Ch. 56	HB 37
39-71-520	amended	Ch. 112	HB 119
39-71-541	enacted	Ch. 112	HB 119
39-71-601	amended	Ch. 112	HB 119
39-71-613	amended	Ch. 112	HB 119
39-71-704	amended	Ch. 112	HB 119
39-71-711	amended	Ch. 112	HB 119
39-71-712	amended	Ch. 112	HB 119
39-71-726	amended	Ch. 56	HB 37

39-71-727	amended	Ch. 112	HB 119
39-71-743	amended	Ch. 112	HB 119
39-71-905	amended	Ch. 112	HB 119
39-71-915	amended	Ch. 112	HB 119
39-71-1503	amended	Ch. 27	HB 138
39-71-2102	amended	Ch. 56	HB 37
39-71-2115	enacted	Ch. 112	HB 119
39-71-2311	amended	Ch. 218	SB 192
39-71-2331	enacted	Ch. 218	SB 192
39-71-2332	enacted	Ch. 218	SB 192
39-71-2339	amended	Ch. 112	HB 119
39-71-2352	amended	Ch. 2	SB 7
39-71-2401	amended	Ch. 56	HB 37
39-71-2901	amended	Ch. 20	SB 42
39-71-2905	amended	Ch. 112	HB 119
39-71-2910	amended	Ch. 56	HB 37
39-71-2914	amended	Ch. 56	HB 37
39-73-102	amended	Ch. 56	HB 37
39-73-104	amended	Ch. 2	SB 7
	amended	Ch. 112	HB 119
39-73-105	amended	Ch. 56	HB 37
39-73-108	amended	Ch. 56	HB 37
39-73-111	amended	Ch. 56	HB 37
39-74-101	enacted	Ch. 238	HB 517
39-74-102	enacted	Ch. 238	HB 517
39-74-103	enacted	Ch. 238	HB 517
39-74-104	enacted	Ch. 238	HB 517
39-74-105	enacted	Ch. 238	HB 517
40-1-201	amended	Ch. 56	HB 37
40-1-207	amended	Ch. 56	HB 37
40-1-311	amended	Ch. 249	SB 311
40-1-312	amended	Ch. 56	HB 37
40-1-404	amended	Ch. 56	HB 37
40-2-103	amended	Ch. 56	HB 37
40-2-104	amended	Ch. 56	HB 37
40-2-106	amended	Ch. 327	SB 441
40-2-107	amended	Ch. 56	HB 37
40-2-108	amended	Ch. 56	HB 37
40-2-109	amended	Ch. 56	HB 37
40-2-202	amended	Ch. 56	HB 37
40-2-203	amended	Ch. 56	HB 37
40-2-205	amended	Ch. 56	HB 37
40-2-206	amended	Ch. 56	HB 37
40-2-207	amended	Ch. 56	HB 37
40-2-210	amended	Ch. 56	HB 37
40-2-302	amended	Ch. 56	HB 37
40-3-113	amended	Ch. 56	HB 37
40-3-116	amended	Ch. 56	HB 37
40-3-124	amended	Ch. 56	HB 37
40-3-125	amended	Ch. 56	HB 37
40-4-131	amended	Ch. 56	HB 37
40-4-203	amended	Ch. 56	HB 37
40-4-207	amended	Ch. 56	HB 37
40-4-211	amended	Ch. 210	HB 403
40-4-212	amended	Ch. 356	SB 108
40-4-216	amended	Ch. 356	SB 108
40-4-219	amended	Ch. 356	SB 108
40-4-228	amended	Ch. 356	SB 108
40-4-234	amended	Ch. 356	SB 108
40-5-214	amended	Ch. 56	HB 37
40-5-225	amended	Ch. 184	HB 133
40-5-303	amended	Ch. 223	HB 95
40-5-403	amended	Ch. 184	HB 133

40-5-419	enacted	Ch. 184	HB 133
40-5-601	amended	Ch. 184	HB 133
	amended	Ch. 223	HB 95
40-5-701	amended	Ch. 223	HB 95
40-5-907	amended	Ch. 184	HB 133
40-6-104	amended	Ch. 56	HB 37
40-6-114	amended	Ch. 56	HB 37
40-6-119	amended	Ch. 154	SB 197
40-6-202	amended	Ch. 56	HB 37
40-6-214	amended	Ch. 56	HB 37
40-6-217	amended	Ch. 56	HB 37
40-6-235	amended	Ch. 56	HB 37
40-6-236	amended	Ch. 56	HB 37
40-6-601	amended	Ch. 210	HB 403
40-6-602	amended	Ch. 210	HB 403
40-9-102	amended	Ch. 92	SB 182
40-9-103	enacted	Ch. 220	SB 405
41-1-201	amended	Ch. 56	HB 37
41-1-202	amended	Ch. 56	HB 37
41-1-302	amended	Ch. 56	HB 37
41-1-303	amended	Ch. 56	HB 37
41-1-305	amended	Ch. 56	HB 37
41-1-306	amended	Ch. 56	HB 37
	amended	Ch. 179	SB 340
41-1-406	amended	Ch. 56	HB 37
41-1-407	amended	Ch. 56	HB 37
41-1-501	amended	Ch. 179	SB 340
41-1-502	enacted	Ch. 179	SB 340
41-1-503	enacted	Ch. 179	SB 340
41-2-103	amended	Ch. 2	SB 7
41-3-101	amended	Ch. 196	HB 397
41-3-102	amended	Ch. 179	SB 340
41-3-205	amended	Ch. 2	SB 7
41-3-437	amended	Ch. 210	HB 403
41-3-438	amended	Ch. 179	SB 340
	amended	Ch. 210	HB 403
41-3-439	amended	Ch. 210	HB 403
41-4-101	amended	Ch. 56	HB 37
41-5-103	amended	Ch. 2	SB 7
41-5-105	amended	Ch. 56	HB 37
41-5-215	amended	Ch. 54	SB 256
	amended	Ch. 373	HB 55
41-5-216	amended	Ch. 54	SB 256
41-5-322	amended	Ch. 2	SB 7
41-5-331	amended	Ch. 2	SB 7
	amended	Ch. 37	SB 91
41-5-333	amended	Ch. 37	SB 91
41-5-1201	amended	Ch. 2	SB 7
41-5-1202	amended	Ch. 2	SB 7
41-5-1203	amended	Ch. 2	SB 7
41-5-1204	amended	Ch. 2	SB 7
41-5-1205	amended	Ch. 2	SB 7
41-5-1301	amended	Ch. 2	SB 7
41-5-1302	amended	Ch. 2	SB 7
41-5-1304	amended	Ch. 2	SB 7
41-5-1401	amended	Ch. 2	SB 7
41-5-1404	amended	Ch. 56	HB 37
41-5-1411	amended	Ch. 56	HB 37
41-5-1432	amended	Ch. 2	SB 7
41-5-1501	amended	Ch. 2	SB 7
41-5-1511	amended	Ch. 2	SB 7
41-5-1512	amended	Ch. 2	SB 7
41-5-1513	amended	Ch. 373	HB 55

41-5-1525	amended	Ch. 223	HB	95
41-5-1701	amended	Ch. 2	SB	7
41-5-1703	amended	Ch. 2	SB	7
41-5-1706	amended	Ch. 2	SB	7
41-5-1901	amended	Ch. 56	HB	37
41-6-106	amended	Ch. 56	HB	37
42-2-216	amended	Ch. 56	HB	37
42-2-409	amended	Ch. 151	HB	367
42-4-211	enacted	Ch. 151	HB	367
42-7-105	amended	Ch. 151	HB	367
44-1-104	amended	Ch. 56	HB	37
44-1-201	amended	Ch. 56	HB	37
44-1-303	amended	Ch. 2	SB	7
	amended	Ch. 56	HB	37
44-1-503	amended	Ch. 56	HB	37
44-1-504	amended	Ch. 7	HB	13
	amended	Ch. 426	SB	117
44-1-512	amended	Ch. 56	HB	37
44-1-513	amended	Ch. 56	HB	37
44-1-516	amended	Ch. 56	HB	37
44-1-611	amended	Ch. 56	HB	37
44-1-801	amended	Ch. 56	HB	37
44-1-803	amended	Ch. 56	HB	37
44-1-805	amended	Ch. 56	HB	37
44-1-806	amended	Ch. 90	SB	160
44-1-808	amended	Ch. 56	HB	37
44-1-902	amended	Ch. 90	SB	160
44-1-903	amended	Ch. 56	HB	37
44-1-909	enacted	Ch. 90	SB	160
44-1-910	amended	Ch. 56	HB	37
44-1-1103	amended	Ch. 56	HB	37
44-2-301	amended	Ch. 56	HB	37
44-2-313	amended	Ch. 56	HB	37
44-2-402	amended	Ch. 56	HB	37
44-3-213	amended	Ch. 56	HB	37
44-3-404	amended	Ch. 56	HB	37
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44-4-903	amended	Ch. 56	HB	37
44-4-904	amended	Ch. 56	HB	37
44-4-1101	enacted	Ch. 103	HB	39
44-4-1102	enacted	Ch. 103	HB	39
44-5-215	amended	Ch. 56	HB	37
44-11-102	amended	Ch. 56	HB	37
44-11-201	amended	Ch. 56	HB	37
44-11-304	amended	Ch. 56	HB	37
44-12-102	amended	Ch. 56	HB	37
44-12-103	amended	Ch. 56	HB	37
44-12-204	amended	Ch. 56	HB	37
44-12-205	amended	Ch. 56	HB	37
45-1-205	amended	Ch. 348	HB	628
45-2-101	amended	Ch. 473	SB	476
45-2-202	amended	Ch. 56	HB	37
45-2-203	amended	Ch. 56	HB	37
45-2-212	amended	Ch. 56	HB	37
45-2-213	amended	Ch. 56	HB	37
45-2-301	amended	Ch. 56	HB	37
45-2-302	amended	Ch. 56	HB	37
45-2-303	amended	Ch. 56	HB	37
45-2-311	amended	Ch. 400	SB	214
45-2-312	amended	Ch. 56	HB	37
45-3-102	amended	Ch. 56	HB	37

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45-3-104 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
45-3-105 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
45-3-106 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
45-3-107 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
45-3-108 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
45-3-109 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
45-3-110. . . . . enacted . . . . . Ch. 332 . . . . . HB 228
45-3-111. . . . . enacted . . . . . Ch. 332 . . . . . HB 228
45-3-112. . . . . enacted . . . . . Ch. 332 . . . . . HB 228
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45-4-103 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
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45-5-204 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
45-5-221 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
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45-5-511 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
45-5-604 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
45-5-611 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
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45-5-625 . . . . . amended . . . . . Ch. 198 . . . . . HB 407
45-6-101 . . . . . amended . . . . . Ch. 121 . . . . . HB 223
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45-6-102 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
45-6-103 . . . . . amended . . . . . Ch. 473 . . . . . SB 476
45-6-104 . . . . . amended . . . . . Ch. 473 . . . . . SB 476
45-6-106. . . . . enacted . . . . . Ch. 466 . . . . . SB 171
45-6-201 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
45-6-202 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
45-6-203 . . . . . amended . . . . . Ch. 121 . . . . . HB 223
45-6-204 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
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45-6-205 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
45-6-301 . . . . . amended . . . . . Ch. 400 . . . . . SB 214
amended . . . . . Ch. 473 . . . . . SB 476
45-6-302 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
45-6-305 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
45-6-308 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
45-6-309 . . . . . amended . . . . . Ch. 473 . . . . . SB 476
45-6-311 . . . . . amended . . . . . Ch. 473 . . . . . SB 476
45-6-312 . . . . . amended . . . . . Ch. 2 . . . . . SB 7
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45-6-313 . . . . . amended . . . . . Ch. 473 . . . . . SB 476
45-6-314 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
45-6-315 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
45-6-316 . . . . . amended . . . . . Ch. 473 . . . . . SB 476
45-6-317 . . . . . amended . . . . . Ch. 473 . . . . . SB 476
45-6-318 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
45-6-319 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
45-6-325 . . . . . amended . . . . . Ch. 473 . . . . . SB 476
45-6-326 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
45-6-327 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
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45-6-328. . . . . enacted . . . . . Ch. 400 . . . . . SB 214
45-6-329. . . . . enacted . . . . . Ch. 400 . . . . . SB 214
45-6-332 . . . . . amended . . . . . Ch. 473 . . . . . SB 476
45-6-341 . . . . . amended . . . . . Ch. 473 . . . . . SB 476
45-7-101 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
45-7-103 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
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45-7-104 . . . . . amended . . . . . Ch. 56 . . . . . HB 37

45-7-201 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
45-7-203 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
45-7-204 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
45-7-205 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
45-7-206 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
45-7-207 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
45-7-210 . . . . . amended . . . . . Ch. 473 . . . . . SB 476
45-7-301 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
45-7-303 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
45-7-304 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
45-7-305 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
45-7-308 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
45-7-309 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
45-7-401 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
45-7-501 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
45-8-101 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
45-8-103 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
45-8-104 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
45-8-106 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
45-8-111 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
45-8-112 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
45-8-113 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
45-8-114 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
45-8-115 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
45-8-201 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
45-8-203 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
45-8-207 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
45-8-210 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
45-8-214 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
45-8-215 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
45-8-316 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
45-8-321 . . . . . amended . . . . . Ch. 332 . . . . . HB 228
45-8-325 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
45-8-327 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
45-8-331 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
45-8-333 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
45-8-334 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
45-8-335 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
45-8-336 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
45-8-339 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
45-8-340 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
45-8-405 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
45-9-104 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
45-9-105 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
45-9-106 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
45-9-114 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
45-9-115 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
45-9-121 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
45-9-127 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
45-10-102 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
45-10-103 . . . . . amended . . . . . Ch. 156 . . . . . SB 325
45-10-105 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
46-1-1112 . . . . . amended . . . . . Ch. 3 . . . . . SB 10
46-2-101 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
46-4-101 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
46-4-110 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
46-4-111 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
46-4-113 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
46-4-202 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
46-4-205 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
46-4-207 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
46-4-307. . . . . enacted . . . . . Ch. 198 . . . . . HB 407
46-4-406. . . . . enacted . . . . . Ch. 214 . . . . . HB 534

46-4-407	enacted	Ch. 214	HB 534
46-4-408	enacted	Ch. 214	HB 534
46-4-409	enacted	Ch. 214	HB 534
46-4-410	enacted	Ch. 214	HB 534
46-4-411	enacted	Ch. 214	HB 534
46-5-313	enacted	Ch. 332	HB 228
46-6-310	amended	Ch. 360	SB 281
46-6-412	amended	Ch. 56	HB 37
46-6-502	amended	Ch. 332	HB 228
46-7-101	amended	Ch. 56	HB 37
46-8-113	amended	Ch. 467	SB 263
46-9-111	amended	Ch. 56	HB 37
46-9-203	amended	Ch. 56	HB 37
46-9-206	amended	Ch. 56	HB 37
46-9-301	amended	Ch. 56	HB 37
46-9-401	amended	Ch. 360	SB 281
46-9-502	amended	Ch. 56	HB 37
46-11-301	amended	Ch. 56	HB 37
46-11-303	amended	Ch. 56	HB 37
46-11-313	amended	Ch. 56	HB 37
46-11-331	amended	Ch. 56	HB 37
46-11-332	amended	Ch. 56	HB 37
46-11-401	amended	Ch. 56	HB 37
46-12-104	amended	Ch. 56	HB 37
46-12-203	amended	Ch. 56	HB 37
46-14-311	amended	Ch. 268	SB 96
46-16-131	enacted	Ch. 332	HB 228
46-16-603	amended	Ch. 56	HB 37
46-16-606	amended	Ch. 56	HB 37
46-17-302	amended	Ch. 56	HB 37
	amended	Ch. 335	HB 269
46-18-111	amended	Ch. 268	SB 96
46-18-112	amended	Ch. 53	SB 35
46-18-201	amended	Ch. 128	HB 308
46-18-207	amended	Ch. 39	SB 103
46-18-230	enacted	Ch. 180	SB 341
46-18-232	amended	Ch. 56	HB 37
	amended	Ch. 180	SB 341
46-18-233	amended	Ch. 56	HB 37
46-18-236	amended	Ch. 374	HB 108
46-18-241	amended	Ch. 66	HB 149
	amended	Ch. 374	HB 108
46-18-246	amended	Ch. 66	HB 149
46-18-250	amended	Ch. 374	HB 108
46-18-251	amended	Ch. 374	HB 108
46-18-702	amended	Ch. 56	HB 37
46-18-703	amended	Ch. 56	HB 37
46-18-705	amended	Ch. 56	HB 37
46-19-101	amended	Ch. 53	SB 35
46-19-102	amended	Ch. 327	SB 441
46-19-203	amended	Ch. 56	HB 37
46-19-204	amended	Ch. 56	HB 37
46-19-301	amended	Ch. 56	HB 37
46-19-401	amended	Ch. 56	HB 37
46-20-204	amended	Ch. 56	HB 37
46-20-707	amended	Ch. 56	HB 37
46-21-111	amended	Ch. 221	SB 447
46-21-201	amended	Ch. 51	HB 205
46-22-103	amended	Ch. 56	HB 37
46-23-207	amended	Ch. 56	HB 37
46-23-316	amended	Ch. 56	HB 37
46-23-508	amended	Ch. 2	SB 7
46-23-1020	enacted	Ch. 228	HB 177

46-23-1022 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
46-23-1031 . . . . . amended . . . . . Ch. 66 . . . . . HB 149
46-24-204 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
46-30-101 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
46-30-202 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
46-30-211 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
46-30-212 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
46-30-213 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
46-30-214 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
46-30-215 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
46-30-217 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
46-30-218 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
46-30-225 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
46-30-226 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
46-30-227 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
46-30-228 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
46-30-229 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
46-30-301 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
46-30-302 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
46-30-303 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
46-30-304 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
46-30-305 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
46-30-402 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
46-30-403 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
46-30-404 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
46-30-405 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
46-30-412 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
46-31-101 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
46-31-204 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
47-1-111 . . . . . amended . . . . . Ch. 467 . . . . . SB 263
47-1-201 . . . . . amended . . . . . Ch. 486 . . . . . HB 676
49-1-101 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
49-1-202 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
49-2-202 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
49-2-301 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
49-2-310 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
49-2-311 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
49-3-209 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
49-4-102 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
49-4-302 . . . . . amended . . . . . Ch. 233 . . . . . HB 373
49-4-304 . . . . . amended . . . . . Ch. 233 . . . . . HB 373
49-4-502 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
49-4-503 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
49-4-504 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
49-4-505 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
49-4-508 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
49-4-509 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
50-2-120 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
50-2-121 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
50-2-122 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
50-2-124 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
50-4-510. . . . . enacted . . . . . Ch. 206 . . . . . HB 263
50-4-511. . . . . enacted . . . . . Ch. 206 . . . . . HB 263
50-4-512. . . . . enacted . . . . . Ch. 206 . . . . . HB 263
50-4-516. . . . . enacted . . . . . Ch. 207 . . . . . HB 264
50-4-517. . . . . enacted . . . . . Ch. 207 . . . . . HB 264
50-4-518. . . . . enacted . . . . . Ch. 207 . . . . . HB 264
50-4-805 . . . . . amended . . . . . Ch. 336 . . . . . HB 280
50-5-101 . . . . . amended . . . . . Ch. 2 . . . . . SB 7
amended . . . . . Ch. 456 . . . . . SB 446
50-5-117 . . . . . amended . . . . . Ch. 310 . . . . . SB 26
50-5-121. . . . . enacted . . . . . Ch. 456 . . . . . SB 446
50-5-122. . . . . enacted . . . . . Ch. 456 . . . . . SB 446

50-5-207	amended	Ch. 310	SB	26
50-5-212	amended	Ch. 56	HB	37
50-5-245	amended	Ch. 456	SB	446
	amended (voided by sec. 7, Ch. 456)	Ch. 471	SB	439
50-5-246	enacted	Ch. 456	SB	446
50-5-1105	amended	Ch. 56	HB	37
50-5-1106	amended	Ch. 56	HB	37
50-6-104	amended	Ch. 150	HB	93
50-6-105	enacted	Ch. 150	HB	93
50-6-201	amended	Ch. 150	HB	93
50-6-202(3)	enacted	Ch. 82	SB	77
50-6-203	amended	Ch. 150	HB	93
50-6-302	amended	Ch. 150	HB	93
	amended	Ch. 354	SB	79
50-6-313	amended	Ch. 56	HB	37
50-6-317	amended	Ch. 56	HB	37
	amended	Ch. 150	HB	93
50-6-322	enacted	Ch. 354	SB	79
50-6-323	amended	Ch. 150	HB	93
50-6-503	amended	Ch. 2	SB	7
50-9-103	amended	Ch. 56	HB	37
50-11-101	enacted	Ch. 126	HB	288
50-11-102	enacted	Ch. 126	HB	288
50-11-103	enacted	Ch. 126	HB	288
50-15-108	amended	Ch. 56	HB	37
50-15-114	amended	Ch. 56	HB	37
50-15-202	amended	Ch. 139	HB	106
50-15-204	amended	Ch. 139	HB	106
50-15-302	amended	Ch. 56	HB	37
50-15-402	amended	Ch. 56	HB	37
50-16-103	enacted	Ch. 365	SB	442
50-16-104	enacted	Ch. 365	SB	442
50-16-522	amended	Ch. 56	HB	37
50-16-543	amended	Ch. 56	HB	37
50-16-544	amended	Ch. 56	HB	37
50-16-553	amended	Ch. 56	HB	37
50-16-702	amended	Ch. 362	SB	350
50-16-1003	amended	Ch. 362	SB	350
50-16-1007	repealed	Ch. 362	SB	350
50-16-1008	amended	Ch. 362	SB	350
50-16-1009	amended	Ch. 362	SB	350
50-16-1013	amended	Ch. 362	SB	350
50-16-1014	enacted	Ch. 362	SB	350
50-16-1015	enacted	Ch. 362	SB	350
50-16-1016	enacted	Ch. 362	SB	350
50-17-112	amended	Ch. 56	HB	37
50-18-106	amended	Ch. 56	HB	37
50-19-101	amended	Ch. 2	SB	7
50-19-322	amended	Ch. 10	SB	29
50-20-106	amended	Ch. 56	HB	37
50-20-108	amended	Ch. 56	HB	37
50-21-104	amended	Ch. 56	HB	37
50-21-106	amended	Ch. 56	HB	37
50-23-102	amended	Ch. 56	HB	37
50-30-107	amended	Ch. 56	HB	37
50-30-204	amended	Ch. 56	HB	37
50-30-205	amended	Ch. 56	HB	37
50-30-301	amended	Ch. 56	HB	37
50-30-302	amended	Ch. 56	HB	37
50-30-305	amended	Ch. 56	HB	37
50-30-307	amended	Ch. 56	HB	37
50-31-108	amended	Ch. 56	HB	37
50-31-504	amended	Ch. 56	HB	37

50-31-507	amended	Ch.	56	HB 37
50-31-509	amended	Ch.	56	HB 37
50-32-205	amended	Ch.	61	HB 70
50-32-302	amended	Ch.	56	HB 37
50-32-311	amended	Ch.	56	HB 37
50-32-401	amended	Ch.	56	HB 37
50-41-101	repealed	Ch.	109	HB 80
50-41-102	repealed	Ch.	109	HB 80
50-41-103	repealed	Ch.	109	HB 80
50-41-104	repealed	Ch.	109	HB 80
50-41-105	amended	Ch.	56	HB 37
	repealed	Ch.	109	HB 80
50-41-106	repealed	Ch.	109	HB 80
50-41-107	repealed	Ch.	109	HB 80
50-42-105	amended	Ch.	56	HB 37
50-43-106	amended	Ch.	56	HB 37
50-44-101	repealed	Ch.	486	HB 676
50-44-102	repealed	Ch.	486	HB 676
50-44-103	repealed	Ch.	486	HB 676
50-46-102	amended	Ch.	156	SB 325
50-46-103	amended	Ch.	156	SB 325
50-46-201	amended	Ch.	156	SB 325
50-46-205	amended	Ch.	156	SB 325
50-46-206	amended	Ch.	156	SB 325
50-50-103	amended	Ch.	482	HB 331
50-50-205	amended	Ch.	482	HB 331
50-50-215	amended	Ch.	56	HB 37
50-50-304	amended	Ch.	56	HB 37
50-50-402	amended	Ch.	56	HB 37
50-50-403	amended	Ch.	56	HB 37
50-51-107	amended	Ch.	56	HB 37
50-51-204	amended	Ch.	56	HB 37
	amended	Ch.	482	HB 331
50-51-215	amended	Ch.	56	HB 37
50-52-202	amended	Ch.	56	HB 37
	amended	Ch.	482	HB 331
50-52-209	amended	Ch.	56	HB 37
50-57-205	amended	Ch.	482	HB 331
50-60-102	amended	Ch.	300	HB 420
50-60-106	amended	Ch.	300	HB 420
50-60-301	amended	Ch.	300	HB 420
50-60-502	amended	Ch.	56	HB 37
50-60-515	amended	Ch.	56	HB 37
50-60-802	amended	Ch.	300	HB 420
50-61-116	amended	Ch.	56	HB 37
50-62-104	amended	Ch.	56	HB 37
50-62-110	amended	Ch.	56	HB 37
50-63-403	amended	Ch.	56	HB 37
50-70-101	repealed	Ch.	27	HB 138
50-70-102	repealed	Ch.	27	HB 138
50-70-103	repealed	Ch.	27	HB 138
50-70-104	repealed	Ch.	27	HB 138
50-70-105	repealed	Ch.	27	HB 138
50-70-107	repealed	Ch.	27	HB 138
	amended	Ch.	56	HB 37
50-70-108	repealed	Ch.	27	HB 138
50-70-109	repealed	Ch.	27	HB 138
50-70-111	repealed	Ch.	27	HB 138
50-70-112	repealed	Ch.	27	HB 138
50-70-113	repealed	Ch.	27	HB 138
50-70-114	repealed	Ch.	27	HB 138
50-70-115	repealed	Ch.	27	HB 138
	amended	Ch.	56	HB 37

50-70-116 . . . repealed . . . Ch. 27 . . . HB 138
50-70-117 . . . repealed . . . Ch. 27 . . . HB 138
50-70-118 . . . repealed . . . Ch. 27 . . . HB 138
50-71-101 . . . repealed . . . Ch. 27 . . . HB 138
50-71-102 . . . amended and renumbered 50-71-204 . . . Ch. 27 . . . HB 138
50-71-103 . . . repealed . . . Ch. 27 . . . HB 138
50-71-104 . . . repealed . . . Ch. 27 . . . HB 138
50-71-105 . . . repealed . . . Ch. 27 . . . HB 138
50-71-106 . . . repealed . . . Ch. 27 . . . HB 138
50-71-107 . . . repealed . . . Ch. 27 . . . HB 138
50-71-108 . . . repealed . . . Ch. 27 . . . HB 138
50-71-109 . . . repealed . . . Ch. 27 . . . HB 138
50-71-110 . . . repealed . . . Ch. 27 . . . HB 138
50-71-111 . . . enacted . . . Ch. 27 . . . HB 138
50-71-112 . . . enacted . . . Ch. 27 . . . HB 138
50-71-113 . . . enacted . . . Ch. 27 . . . HB 138
50-71-114 . . . enacted . . . Ch. 27 . . . HB 138
50-71-115 . . . enacted . . . Ch. 27 . . . HB 138
50-71-116 . . . enacted . . . Ch. 27 . . . HB 138
50-71-117 . . . enacted . . . Ch. 27 . . . HB 138
50-71-118 . . . enacted . . . Ch. 27 . . . HB 138
50-71-119 . . . enacted . . . Ch. 27 . . . HB 138
50-71-120 . . . enacted . . . Ch. 27 . . . HB 138
50-71-121 . . . enacted . . . Ch. 27 . . . HB 138
50-71-122 . . . enacted . . . Ch. 27 . . . HB 138
50-71-123 . . . enacted . . . Ch. 27 . . . HB 138
50-71-201 . . . amended . . . Ch. 56 . . . HB 37
50-71-203 . . . amended . . . Ch. 56 . . . HB 37
50-71-204 . . . formerly 50-71-102 . . . Ch. 27 . . . HB 138
50-71-301 . . . repealed . . . Ch. 27 . . . HB 138
50-71-302 . . . repealed . . . Ch. 27 . . . HB 138
50-71-303 . . . repealed . . . Ch. 27 . . . HB 138
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50-71-311 . . . repealed . . . Ch. 27 . . . HB 138
50-71-312 . . . repealed . . . Ch. 27 . . . HB 138
50-71-313 . . . repealed . . . Ch. 27 . . . HB 138
50-71-314 . . . repealed . . . Ch. 27 . . . HB 138
50-71-315 . . . repealed . . . Ch. 27 . . . HB 138
50-71-316 . . . repealed . . . Ch. 27 . . . HB 138
50-71-321 . . . repealed . . . Ch. 27 . . . HB 138
50-71-322 . . . repealed . . . Ch. 27 . . . HB 138
50-71-323 . . . repealed . . . Ch. 27 . . . HB 138
50-71-324 . . . repealed . . . Ch. 27 . . . HB 138
50-71-325 . . . repealed . . . Ch. 27 . . . HB 138
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50-71-326 . . . repealed . . . Ch. 27 . . . HB 138
50-71-327 . . . repealed . . . Ch. 27 . . . HB 138
50-71-331 . . . repealed . . . Ch. 27 . . . HB 138
50-71-332 . . . repealed . . . Ch. 27 . . . HB 138
50-71-333 . . . repealed . . . Ch. 27 . . . HB 138
50-71-334 . . . repealed . . . Ch. 27 . . . HB 138
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50-72-204 . . . amended . . . Ch. 56 . . . HB 37
50-72-205 . . . amended . . . Ch. 56 . . . HB 37
50-73-102 . . . amended . . . Ch. 27 . . . HB 138
amended . . . Ch. 56 . . . HB 37
50-73-205 . . . amended . . . Ch. 56 . . . HB 37
50-73-207 . . . amended . . . Ch. 56 . . . HB 37
50-73-305 . . . amended . . . Ch. 56 . . . HB 37
50-73-307 . . . amended . . . Ch. 56 . . . HB 37
50-73-401 . . . amended . . . Ch. 56 . . . HB 37
50-73-402 . . . amended . . . Ch. 27 . . . HB 138
50-73-404 . . . amended . . . Ch. 56 . . . HB 37

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50-73-409	amended	Ch. 27	HB 138
50-73-410	amended	Ch. 56	HB 37
50-73-411	amended	Ch. 56	HB 37
50-73-412	amended	Ch. 56	HB 37
50-73-413	amended	Ch. 56	HB 37
50-74-203	amended	Ch. 56	HB 37
50-74-214	amended	Ch. 56	HB 37
50-74-215	amended	Ch. 56	HB 37
50-74-217	amended	Ch. 56	HB 37
50-74-311	amended	Ch. 56	HB 37
50-76-101	amended	Ch. 56	HB 37
50-76-108	amended	Ch. 56	HB 37
50-77-102	amended	Ch. 56	HB 37
50-78-204	amended	Ch. 56	HB 37
50-78-305	amended	Ch. 56	HB 37
50-78-402	amended	Ch. 56	HB 37
50-79-501	amended	Ch. 56	HB 37
52-2-302	amended	Ch. 430	SB 399
52-2-310	enacted	Ch. 430	SB 399
52-2-311	enacted	Ch. 430	SB 399
52-2-723	amended	Ch. 56	HB 37
52-3-115	amended	Ch. 489	HB 645
52-3-410	enacted	Ch. 320	SB 330
52-3-503	amended	Ch. 320	SB 330
52-3-602	amended	Ch. 56	HB 37
52-3-813	amended	Ch. 2	SB 7
52-5-105	amended	Ch. 56	HB 37
52-5-114	amended	Ch. 56	HB 37
53-1-107	amended	Ch. 374	HB 108
53-1-202	amended	Ch. 312	SB 84
53-1-301	repealed	Ch. 312	SB 84
53-1-302	repealed	Ch. 312	SB 84
53-1-303	repealed	Ch. 312	SB 84
53-1-304	repealed	Ch. 312	SB 84
53-1-402	amended	Ch. 461	HB 213
53-1-413	amended	Ch. 461	HB 213
53-1-602	amended	Ch. 461	HB 213
53-2-107	amended	Ch. 56	HB 37
53-2-110	amended	Ch. 184	HB 133
53-2-612	amended	Ch. 153	SB 82
53-2-613	amended	Ch. 184	HB 133
53-2-1215	enacted	Ch. 325	SB 388
53-2-1216	enacted	Ch. 325	SB 388
53-2-1217	enacted	Ch. 325	SB 388
53-2-1218	enacted	Ch. 325	SB 388
53-2-1219	enacted	Ch. 325	SB 388
53-2-1220	enacted	Ch. 325	SB 388
53-4-212	amended	Ch. 486	HB 676
	amended	Ch. 489	HB 645
53-4-1004	amended	Ch. 87	SB 135
53-4-1005	amended	Ch. 486	HB 676
53-4-1007	amended	Ch. 486	HB 676
53-4-1012	amended	Ch. 486	HB 676
53-5-901	amended	Ch. 56	HB 37
53-6-113	amended	Ch. 452	SB 119
53-6-131	amended	Ch. 165	HB 214
	amended	Ch. 452	SB 119
53-6-149	amended	Ch. 489	HB 645
53-6-151	enacted	Ch. 489	HB 645
53-6-165	amended	Ch. 153	SB 82
53-6-167	amended	Ch. 153	SB 82
53-6-168	amended	Ch. 153	SB 82

53-6-178	amended	Ch. 153	SB 82
53-6-195	enacted	Ch. 452	SB 119
53-6-702	amended	Ch. 195	HB 365
53-6-703	amended	Ch. 426	SB 117
53-6-1201	amended	Ch. 2	SB 7
	amended	Ch. 461	HB 213
	amended	Ch. 486	HB 676
	amended	Ch. 489	HB 645
53-7-204	amended	Ch. 10	SB 29
53-9-104	amended	Ch. 374	HB 108
53-9-113	enacted	Ch. 374	HB 108
53-9-132	amended	Ch. 374	HB 108
53-9-133	amended	Ch. 374	HB 108
53-19-106	amended	Ch. 56	HB 37
53-19-110	amended	Ch. 56	HB 37
53-19-309	amended	Ch. 2	SB 7
53-20-125	amended	Ch. 2	SB 7
53-20-128	amended	Ch. 2	SB 7
53-20-131	amended	Ch. 56	HB 37
53-20-133	amended	Ch. 2	SB 7
53-20-145	amended	Ch. 56	HB 37
53-20-164	amended	Ch. 56	HB 37
53-20-209	amended	Ch. 56	HB 37
53-20-221	enacted	Ch. 281	SB 463
53-20-222	enacted	Ch. 281	SB 463
53-21-102	amended	Ch. 80	SB 40
	amended	Ch. 481	HB 132
53-21-105	amended	Ch. 56	HB 37
53-21-114	amended	Ch. 56	HB 37
53-21-117	amended	Ch. 56	HB 37
53-21-118	amended	Ch. 56	HB 37
53-21-119	amended	Ch. 56	HB 37
53-21-122	amended	Ch. 80	SB 40
	amended	Ch. 481	HB 132
53-21-123	amended	Ch. 481	HB 132
53-21-125	amended	Ch. 56	HB 37
53-21-132	amended	Ch. 388	HB 634
53-21-133	amended	Ch. 56	HB 37
53-21-138	renumbered 53-21-1201	Ch. 479	HB 130
53-21-139	renumbered 53-21-1202	Ch. 479	HB 130
53-21-140	amended	Ch. 42	SB 157
53-21-141	amended	Ch. 56	HB 37
53-21-142	amended	Ch. 56	HB 37
53-21-146	amended	Ch. 56	HB 37
53-21-148	amended	Ch. 56	HB 37
53-21-162	amended	Ch. 481	HB 132
53-21-163	amended	Ch. 56	HB 37
53-21-167	amended	Ch. 56	HB 37
53-21-168	amended	Ch. 56	HB 37
53-21-183	amended	Ch. 56	HB 37
53-21-187	amended	Ch. 56	HB 37
53-21-604	enacted	Ch. 388	HB 634
53-21-605	enacted	Ch. 388	HB 634
53-21-1001	amended	Ch. 481	HB 132
53-21-1201	formerly 53-21-138	Ch. 479	HB 130
53-21-1202	formerly 53-21-139	Ch. 479	HB 130
53-21-1203	enacted	Ch. 479	HB 130
53-21-1204	enacted	Ch. 480	HB 131
53-21-1205	enacted	Ch. 481	HB 132
53-21-1206	enacted	Ch. 481	HB 132
53-22-101	amended	Ch. 56	HB 37
53-22-104	amended	Ch. 10	SB 29
53-22-105	amended	Ch. 56	HB 37

53-30-104 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
53-30-131 . . . . . amended . . . . . Ch. 312 . . . . . SB 84
53-30-132 . . . . . amended . . . . . Ch. 312 . . . . . SB 84
amended . . . . . Ch. 374 . . . . . HB 108
53-30-133 . . . . . amended . . . . . Ch. 312 . . . . . SB 84
53-30-134. . . . . enacted . . . . . Ch. 413 . . . . . SB 508
53-30-142 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
53-30-503 . . . . . amended . . . . . Ch. 286 . . . . . SB 57
60-1-201 . . . . . amended . . . . . Ch. 241 . . . . . HB 563
60-1-215. . . . . enacted . . . . . Ch. 140 . . . . . HB 304
60-1-216. . . . . enacted . . . . . Ch. 141 . . . . . HB 311
60-2-113 . . . . . amended . . . . . Ch. 48 . . . . . HB 120
60-2-133 . . . . . amended . . . . . Ch. 273 . . . . . SB 222
60-2-606. . . . . enacted . . . . . Ch. 410 . . . . . SB 457
60-4-205 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
60-5-111 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
60-7-204 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
60-11-201 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
61-1-101 . . . . . amended . . . . . Ch. 83 . . . . . SB 88
amended . . . . . Ch. 353 . . . . . SB 73
61-2-105 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
61-2-106 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
61-2-109. . . . . enacted . . . . . Ch. 486 . . . . . HB 676
61-2-201 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
61-2-204 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
61-2-207 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
61-2-501. . . . . enacted . . . . . Ch. 437 . . . . . HB 85
61-2-502. . . . . enacted . . . . . Ch. 437 . . . . . HB 85
61-2-503. . . . . enacted . . . . . Ch. 437 . . . . . HB 85
61-2-504. . . . . enacted . . . . . Ch. 437 . . . . . HB 85
61-2-505. . . . . enacted . . . . . Ch. 437 . . . . . HB 85
61-2-506. . . . . enacted . . . . . Ch. 437 . . . . . HB 85
61-2-507. . . . . enacted . . . . . Ch. 437 . . . . . HB 85
61-3-103 . . . . . amended . . . . . Ch. 41 . . . . . SB 152
61-3-208 . . . . . amended . . . . . Ch. 235 . . . . . HB 380
61-3-223 . . . . . amended . . . . . Ch. 41 . . . . . SB 152
61-3-224 . . . . . amended . . . . . Ch. 41 . . . . . SB 152
61-3-301 . . . . . amended . . . . . Ch. 413 . . . . . SB 508
61-3-303 . . . . . amended . . . . . Ch. 41 . . . . . SB 152
amended . . . . . Ch. 413 . . . . . SB 508
61-3-312 . . . . . amended . . . . . Ch. 413 . . . . . SB 508
61-3-315 . . . . . amended . . . . . Ch. 413 . . . . . SB 508
61-3-321 . . . . . amended (voided by sec. 28, Ch. 413) . . . . . Ch. 387 . . . . . HB 615
amended . . . . . Ch. 413 . . . . . SB 508
61-3-332 . . . . . amended . . . . . Ch. 413 . . . . . SB 508
61-3-333 . . . . . amended . . . . . Ch. 413 . . . . . SB 508
61-3-338. . . . . enacted . . . . . Ch. 413 . . . . . SB 508
61-3-407 . . . . . amended . . . . . Ch. 233 . . . . . HB 373
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61-3-414. . . . . enacted . . . . . Ch. 337 . . . . . HB 306
61-3-426 . . . . . amended . . . . . Ch. 233 . . . . . HB 373
61-3-455 . . . . . amended . . . . . Ch. 337 . . . . . HB 306
61-3-458 . . . . . amended . . . . . Ch. 233 . . . . . HB 373
amended . . . . . Ch. 337 . . . . . HB 306
61-3-459 . . . . . amended . . . . . Ch. 233 . . . . . HB 373
61-3-465 . . . . . amended . . . . . Ch. 413 . . . . . SB 508
61-3-474 . . . . . amended . . . . . Ch. 41 . . . . . SB 152
61-3-478 . . . . . amended . . . . . Ch. 312 . . . . . SB 84
amended . . . . . Ch. 413 . . . . . SB 508
61-3-480 . . . . . amended . . . . . Ch. 413 . . . . . SB 508
61-3-509 . . . . . amended . . . . . Ch. 41 . . . . . SB 152
61-3-535 . . . . . amended . . . . . Ch. 413 . . . . . SB 508
61-3-562 . . . . . amended . . . . . Ch. 413 . . . . . SB 508

61-3-710 . . . . . amended . . . . . Ch. 16 . . . . . HB 125
61-4-106 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
61-4-128 . . . . . amended . . . . . Ch. 2 . . . . . SB 7
61-4-132 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
61-4-201 . . . . . amended . . . . . Ch. 308 . . . . . HB 567
61-4-202 . . . . . amended . . . . . Ch. 308 . . . . . HB 567
61-4-204 . . . . . amended . . . . . Ch. 308 . . . . . HB 567
61-4-205 . . . . . amended . . . . . Ch. 308 . . . . . HB 567
61-4-207 . . . . . amended . . . . . Ch. 308 . . . . . HB 567
61-4-208 . . . . . amended . . . . . Ch. 308 . . . . . HB 567
61-4-209 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
61-4-210 . . . . . amended . . . . . Ch. 308 . . . . . HB 567
61-4-212. . . . . enacted . . . . . Ch. 308 . . . . . HB 567
61-4-406 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
61-5-116 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
61-5-208 . . . . . amended . . . . . Ch. 41 . . . . . SB 152
amended . . . . . Ch. 448 . . . . . HB 536
61-5-214 . . . . . amended . . . . . Ch. 360 . . . . . SB 281
61-5-218 . . . . . amended . . . . . Ch. 360 . . . . . SB 281
61-5-304 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
61-5-401 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
61-5-403 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
61-5-405 . . . . . amended . . . . . Ch. 348 . . . . . HB 628
61-6-101 . . . . . amended (voided by sec. 28, Ch. 413) . . . . . Ch. 387 . . . . . HB 615
amended . . . . . Ch. 413 . . . . . SB 508
61-6-102 . . . . . amended (voided by sec. 28, Ch. 413) . . . . . Ch. 387 . . . . . HB 615
amended . . . . . Ch. 413 . . . . . SB 508
61-6-103 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
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amended . . . . . Ch. 413 . . . . . SB 508
61-6-105 . . . . . amended (voided by sec. 28, Ch. 413) . . . . . Ch. 387 . . . . . HB 615
amended . . . . . Ch. 413 . . . . . SB 508
61-6-106 . . . . . repealed (voided by sec. 28, Ch. 413) . . . . . Ch. 387 . . . . . HB 615
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75-2-212 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
75-2-213. . . . . enacted . . . . . Ch. 445 . . . . . HB 483
75-2-225 . . . . . amended . . . . . Ch. 159 . . . . . HB 21
75-2-226 . . . . . amended . . . . . Ch. 159 . . . . . HB 21
75-2-411 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
75-5-103 . . . . . amended . . . . . Ch. 267 . . . . . SB 95
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75-5-306 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
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75-5-610. . . . . enacted . . . . . Ch. 445 . . . . . HB 483
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75-5-621 . . . . . amended . . . . . Ch. 416 . . . . . HB 418
75-5-641 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
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75-5-902. . . . . enacted . . . . . Ch. 245 . . . . . SB 200
75-5-903. . . . . enacted . . . . . Ch. 245 . . . . . SB 200
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75-5-905. . . . . enacted . . . . . Ch. 245 . . . . . SB 200
75-5-1102 . . . . . amended . . . . . Ch. 489 . . . . . HB 645
75-5-1107 . . . . . amended . . . . . Ch. 489 . . . . . HB 645
75-5-1113 . . . . . amended . . . . . Ch. 342 . . . . . HB 449
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75-7-205	amended	Ch. 56	HB 37
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75-10-102	amended	Ch. 2	SB 7
75-10-103	amended	Ch. 2	SB 7
75-10-112	amended	Ch. 2	SB 7
75-10-212	amended	Ch. 56	HB 37
75-10-213	amended	Ch. 243	SB 68
75-10-214	amended	Ch. 56	HB 37
75-10-223	amended	Ch. 56	HB 37
75-10-233	amended	Ch. 56	HB 37
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75-10-626	amended	Ch. 10	SB 29
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75-10-704	amended	Ch. 486	HB 676
75-10-733	amended	Ch. 117	HB 153
75-10-735	amended	Ch. 117	HB 153
75-10-736	amended	Ch. 117	HB 153
75-10-743	amended	Ch. 266	SB 71
75-10-745	amended	Ch. 266	SB 71
75-10-756	enacted	Ch. 368	SB 464
75-10-757	enacted	Ch. 368	SB 464
75-10-901	repealed	Ch. 366	SB 451
75-10-902	repealed	Ch. 366	SB 451
75-10-903	repealed	Ch. 366	SB 451
75-10-906	repealed	Ch. 366	SB 451
75-10-907	repealed	Ch. 366	SB 451
75-10-908	repealed	Ch. 366	SB 451
75-10-909	repealed	Ch. 366	SB 451
75-10-910	repealed	Ch. 366	SB 451
75-10-913	repealed	Ch. 366	SB 451
75-10-914	repealed	Ch. 366	SB 451
75-10-916	repealed	Ch. 366	SB 451
75-10-917	repealed	Ch. 366	SB 451
75-10-918	repealed	Ch. 366	SB 451
75-10-919	repealed	Ch. 366	SB 451
75-10-920	repealed	Ch. 366	SB 451
75-10-921	repealed	Ch. 366	SB 451
75-10-922	repealed	Ch. 366	SB 451
75-10-923	repealed	Ch. 366	SB 451
75-10-924	repealed	Ch. 366	SB 451
75-10-925	repealed	Ch. 366	SB 451
75-10-926	repealed	Ch. 366	SB 451
75-10-927	repealed	Ch. 366	SB 451
75-10-928	repealed	Ch. 366	SB 451
75-10-929	repealed	Ch. 366	SB 451
75-10-930	repealed	Ch. 366	SB 451
75-10-933	repealed	Ch. 366	SB 451
75-10-934	repealed	Ch. 366	SB 451
75-10-935	repealed	Ch. 366	SB 451
75-10-938	repealed	Ch. 366	SB 451
75-10-939	repealed	Ch. 366	SB 451
75-10-940	amended	Ch. 56	HB 37
	repealed	Ch. 366	SB 451
75-10-941	amended	Ch. 56	HB 37
	repealed	Ch. 366	SB 451
75-10-942	repealed	Ch. 366	SB 451
75-10-943	repealed	Ch. 366	SB 451

75-10-944	repealed	Ch. 366	SB	451
75-10-945	repealed	Ch. 366	SB	451
75-10-950	repealed	Ch. 366	SB	451
75-10-951	repealed	Ch. 366	SB	451
75-10-952	repealed	Ch. 366	SB	451
75-10-953	repealed	Ch. 366	SB	451
75-10-954	repealed	Ch. 366	SB	451
75-10-1007	amended	Ch. 2	SB	7
75-10-1401	enacted	Ch. 200	HB	593
75-10-1402	enacted	Ch. 200	HB	593
75-10-1403	enacted	Ch. 200	HB	593
75-10-1404	enacted	Ch. 200	HB	593
75-10-1405	enacted	Ch. 200	HB	593
75-10-1410	enacted	Ch. 200	HB	593
75-10-1411	enacted	Ch. 200	HB	593
75-10-1501	enacted	Ch. 296	SB	424
75-10-1502	enacted	Ch. 296	SB	424
75-10-1503	enacted	Ch. 296	SB	424
75-10-1504	enacted	Ch. 296	SB	424
75-10-1505	enacted	Ch. 296	SB	424
75-10-1506	enacted	Ch. 296	SB	424
75-10-1507	enacted	Ch. 296	SB	424
75-10-1508	enacted	Ch. 296	SB	424
75-10-1509	enacted	Ch. 296	SB	424
75-11-302	amended	Ch. 396	SB	97
75-11-307	amended	Ch. 396	SB	97
75-11-309	amended	Ch. 396	SB	97
75-11-314	amended	Ch. 396	SB	97
75-11-601	enacted	Ch. 409	SB	427
75-11-602	enacted	Ch. 409	SB	427
75-11-603	enacted	Ch. 409	SB	427
75-11-604	enacted	Ch. 409	SB	427
75-11-605	enacted	Ch. 409	SB	427
75-16-104	amended	Ch. 56	HB	37
75-20-104	amended	Ch. 357	SB	198
	amended	Ch. 469	SB	360
75-20-223	amended	Ch. 445	HB	483
75-20-404	amended	Ch. 56	HB	37
75-20-405	amended	Ch. 56	HB	37
75-20-409	amended	Ch. 56	HB	37
75-20-411	amended	Ch. 56	HB	37
75-25-101	amended	Ch. 489	HB	645
75-25-102	amended	Ch. 489	HB	645
76-1-222	amended	Ch. 56	HB	37
76-1-601	amended	Ch. 446	HB	486
76-2-101	amended	Ch. 446	HB	486
76-2-102	amended	Ch. 446	HB	486
76-2-107	amended	Ch. 446	HB	486
76-2-202	amended	Ch. 446	HB	486
76-2-203	amended	Ch. 446	HB	486
76-2-205	amended	Ch. 446	HB	486
76-2-206	amended	Ch. 446	HB	486
76-2-210	amended	Ch. 446	HB	486
76-2-221	amended	Ch. 56	HB	37
76-2-226	amended	Ch. 56	HB	37
76-2-227	amended	Ch. 56	HB	37
76-2-304	amended	Ch. 446	HB	486
76-2-321	amended	Ch. 56	HB	37
76-2-326	amended	Ch. 56	HB	37
76-2-327	amended	Ch. 56	HB	37
76-3-207	amended	Ch. 446	HB	486
76-3-210	repealed	Ch. 446	HB	486
76-3-303	amended	Ch. 56	HB	37

76-3-405	amended	Ch. 56	HB 37
76-3-411	enacted	Ch. 258	HB 404
76-3-504	amended	Ch. 446	HB 486
76-3-506	amended	Ch. 446	HB 486
76-3-507	amended	Ch. 446	HB 486
76-3-510	amended	Ch. 405	SB 305
	amended	Ch. 446	HB 486
76-3-511	amended	Ch. 2	SB 7
76-3-604	amended	Ch. 405	SB 305
76-3-608	amended	Ch. 406	SB 310
	amended	Ch. 446	HB 486
76-3-609	amended	Ch. 446	HB 486
76-3-610	amended	Ch. 446	HB 486
76-3-620	amended	Ch. 446	HB 486
76-3-621	amended	Ch. 446	HB 486
76-3-625	amended	Ch. 446	HB 486
76-4-110	amended	Ch. 56	HB 37
76-4-125	amended	Ch. 405	SB 305
76-4-134	enacted	Ch. 279	SB 392
76-5-103	amended	Ch. 113	HB 129
	amended	Ch. 124	HB 270
76-5-201	amended	Ch. 113	HB 129
76-5-402	amended	Ch. 124	HB 270
76-7-204	amended	Ch. 2	SB 7
76-13-104	amended	Ch. 172	SB 111
76-13-108	amended	Ch. 56	HB 37
76-13-123	amended	Ch. 2	SB 7
76-13-145	enacted	Ch. 397	SB 131
76-13-150	amended	Ch. 441	HB 154
76-13-211	amended	Ch. 2	SB 7
76-13-213	amended	Ch. 173	SB 143
76-13-402	amended	Ch. 2	SB 7
76-13-405	amended	Ch. 2	SB 7
76-13-406	amended	Ch. 2	SB 7
76-13-413	amended	Ch. 56	HB 37
76-13-423	amended	Ch. 56	HB 37
76-13-702	amended	Ch. 58	HB 44
	amended	Ch. 115	HB 139
76-13-801	enacted	Ch. 289	SB 113
76-13-802	enacted	Ch. 289	SB 113
76-14-105	amended	Ch. 56	HB 37
76-15-101	amended	Ch. 56	HB 37
76-15-312	amended	Ch. 56	HB 37
76-15-313	amended	Ch. 56	HB 37
76-15-315	amended	Ch. 56	HB 37
76-15-408	amended	Ch. 2	SB 7
76-15-515	amended	Ch. 36	SB 78
76-15-526	amended	Ch. 56	HB 37
76-15-604	amended	Ch. 56	HB 37
76-15-606	amended	Ch. 56	HB 37
76-15-710	amended	Ch. 56	HB 37
76-15-722	amended	Ch. 56	HB 37
76-15-723	amended	Ch. 56	HB 37
77-1-101	amended	Ch. 465	SB 65
77-1-104	amended	Ch. 56	HB 37
77-1-108	amended	Ch. 465	SB 65
77-1-109	amended	Ch. 465	SB 65
77-1-111	amended	Ch. 56	HB 37
	amended	Ch. 472	SB 465
77-1-112	amended	Ch. 56	HB 37
77-1-114	amended	Ch. 56	HB 37
77-1-115	amended	Ch. 56	HB 37
77-1-121	amended	Ch. 239	HB 529

77-1-122 . . . . . enacted . . . . . Ch. 239 . . . . . HB 529
77-1-126 . . . . . amended . . . . . Ch. 472 . . . . . SB 465
77-1-127 . . . . . amended . . . . . Ch. 465 . . . . . SB 65
amended . . . . . Ch. 472 . . . . . SB 465
77-1-132 . . . . . enacted . . . . . Ch. 465 . . . . . SB 65
77-1-134 . . . . . enacted . . . . . Ch. 472 . . . . . SB 465
77-1-201 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
77-1-218 . . . . . enacted . . . . . Ch. 485 . . . . . HB 674
77-1-219 . . . . . enacted . . . . . Ch. 485 . . . . . HB 674
77-1-220 . . . . . enacted . . . . . Ch. 485 . . . . . HB 674
77-1-602 . . . . . repealed . . . . . Ch. 465 . . . . . SB 65
77-1-604 . . . . . repealed . . . . . Ch. 465 . . . . . SB 65
77-1-605 . . . . . amended . . . . . Ch. 465 . . . . . SB 65
77-1-606 . . . . . repealed . . . . . Ch. 465 . . . . . SB 65
77-1-607 . . . . . repealed . . . . . Ch. 465 . . . . . SB 65
77-1-608 . . . . . repealed . . . . . Ch. 465 . . . . . SB 65
77-1-609 . . . . . repealed . . . . . Ch. 465 . . . . . SB 65
77-1-613 . . . . . amended . . . . . Ch. 465 . . . . . SB 65
77-1-702 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
77-1-801 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
77-1-802 . . . . . amended . . . . . Ch. 465 . . . . . SB 65
77-1-805 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
77-1-806 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
amended . . . . . Ch. 472 . . . . . SB 465
77-1-808 . . . . . amended . . . . . Ch. 465 . . . . . SB 65
77-1-809 . . . . . amended . . . . . Ch. 465 . . . . . SB 65
amended . . . . . Ch. 472 . . . . . SB 465
77-1-810 . . . . . amended . . . . . Ch. 465 . . . . . SB 65
77-1-815 . . . . . amended . . . . . Ch. 465 . . . . . SB 65
77-1-905 . . . . . amended . . . . . Ch. 465 . . . . . SB 65
77-1-1101 . . . . . enacted . . . . . Ch. 475 . . . . . SB 507
77-1-1102 . . . . . enacted . . . . . Ch. 475 . . . . . SB 507
77-1-1103 . . . . . enacted . . . . . Ch. 475 . . . . . SB 507
77-1-1104 . . . . . enacted . . . . . Ch. 475 . . . . . SB 507
77-1-1105 . . . . . enacted . . . . . Ch. 475 . . . . . SB 507
77-1-1106 . . . . . enacted . . . . . Ch. 475 . . . . . SB 507
77-1-1107 . . . . . enacted . . . . . Ch. 475 . . . . . SB 507
77-1-1108 . . . . . enacted . . . . . Ch. 475 . . . . . SB 507
77-2-101 . . . . . amended . . . . . Ch. 475 . . . . . SB 507
77-2-105 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
77-2-315 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
77-2-324 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
77-2-328 . . . . . amended . . . . . Ch. 465 . . . . . SB 65
77-2-329 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
77-2-332 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
77-2-333 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
77-2-334 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
77-2-335 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
77-2-336 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
77-2-362 . . . . . amended . . . . . Ch. 2 . . . . . SB 7
amended . . . . . Ch. 465 . . . . . SB 65
77-2-363 . . . . . amended . . . . . Ch. 209 . . . . . HB 402
77-2-366 . . . . . amended . . . . . Ch. 209 . . . . . HB 402
77-3-102 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
77-3-104 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
77-3-115 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
77-3-307 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
77-3-409 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
77-3-411 . . . . . enacted . . . . . Ch. 432 . . . . . SB 475
77-3-426 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
77-3-430 . . . . . amended . . . . . Ch. 474 . . . . . SB 498
77-3-442 . . . . . amended . . . . . Ch. 472 . . . . . SB 465
77-4-108 . . . . . amended . . . . . Ch. 56 . . . . . HB 37

77-4-121	amended	Ch. 56	HB 37
77-4-128	amended	Ch. 56	HB 37
77-4-129	amended	Ch. 56	HB 37
77-4-208	amended	Ch. 377	HB 152
77-5-204	amended	Ch. 465	SB 65
77-5-212	amended	Ch. 108	HB 78
77-5-216	amended	Ch. 116	HB 140
77-5-219	amended	Ch. 465	SB 65
77-5-224	enacted	Ch. 465	SB 65
77-6-108	amended	Ch. 56	HB 37
77-6-112	amended	Ch. 56	HB 37
77-6-113	amended	Ch. 472	SB 465
77-6-115	amended	Ch. 56	HB 37
	amended	Ch. 472	SB 465
77-6-201	amended	Ch. 56	HB 37
77-6-209	amended	Ch. 56	HB 37
77-6-212	amended	Ch. 56	HB 37
77-6-302	amended	Ch. 472	SB 465
77-6-303	amended	Ch. 472	SB 465
77-6-401	amended	Ch. 56	HB 37
77-6-501	amended	Ch. 472	SB 465
80-2-104	amended	Ch. 56	HB 37
80-2-202	amended	Ch. 56	HB 37
80-2-241	amended	Ch. 56	HB 37
80-2-243	amended	Ch. 56	HB 37
80-3-314	amended	Ch. 191	HB 290
80-3-321	amended	Ch. 191	HB 290
80-4-406	amended	Ch. 56	HB 37
80-4-424	amended	Ch. 56	HB 37
80-4-428	amended	Ch. 56	HB 37
80-4-430	amended	Ch. 56	HB 37
80-4-504	amended	Ch. 56	HB 37
80-4-506	amended	Ch. 56	HB 37
80-4-521	amended	Ch. 56	HB 37
80-4-522	amended	Ch. 56	HB 37
80-4-523	amended	Ch. 56	HB 37
80-4-524	amended	Ch. 56	HB 37
80-4-529	amended	Ch. 56	HB 37
80-4-530	amended	Ch. 56	HB 37
80-4-537	amended	Ch. 56	HB 37
80-4-539	amended	Ch. 56	HB 37
80-4-605	amended	Ch. 56	HB 37
80-4-711	amended	Ch. 19	HB 368
80-5-510	amended	Ch. 426	SB 117
80-6-101	amended	Ch. 468	SB 322
80-6-102	amended	Ch. 56	HB 37
	amended	Ch. 468	SB 322
80-6-103	amended	Ch. 56	HB 37
	amended	Ch. 468	SB 322
80-6-104	amended	Ch. 56	HB 37
	amended	Ch. 468	SB 322
80-6-105	repealed	Ch. 468	SB 322
80-6-106	enacted	Ch. 468	SB 322
80-6-111	amended	Ch. 56	HB 37
	amended	Ch. 468	SB 322
80-6-112	amended	Ch. 468	SB 322
80-6-113	amended	Ch. 468	SB 322
80-6-114	amended	Ch. 468	SB 322
80-6-115	repealed	Ch. 468	SB 322
80-6-201	amended	Ch. 468	SB 322
80-6-202	amended	Ch. 468	SB 322
80-6-203	amended	Ch. 468	SB 322
80-6-303	amended	Ch. 468	SB 322

80-6-1105 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
80-6-1109 . . . . . amended . . . . . Ch. 486 . . . . . HB 676
80-7-105 . . . . . amended (voided by sec. 2, Ch. 393) . . . . . Ch. 384 . . . . . HB 478
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80-7-106 . . . . . amended . . . . . Ch. 384 . . . . . HB 478
amended . . . . . Ch. 393 . . . . . SB 38
80-7-108 . . . . . amended . . . . . Ch. 384 . . . . . HB 478
80-7-109 . . . . . amended . . . . . Ch. 384 . . . . . HB 478
80-7-110 . . . . . amended . . . . . Ch. 384 . . . . . HB 478
80-7-122 . . . . . amended . . . . . Ch. 384 . . . . . HB 478
80-7-133 . . . . . amended . . . . . Ch. 384 . . . . . HB 478
80-7-135 . . . . . amended . . . . . Ch. 384 . . . . . HB 478
80-7-505 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
80-7-908 . . . . . amended . . . . . Ch. 10 . . . . . SB 29
80-7-1001. . . . . enacted . . . . . Ch. 429 . . . . . SB 343
80-7-1002. . . . . enacted . . . . . Ch. 429 . . . . . SB 343
80-7-1003. . . . . enacted . . . . . Ch. 429 . . . . . SB 343
80-7-1004. . . . . enacted . . . . . Ch. 429 . . . . . SB 343
80-7-1005. . . . . enacted . . . . . Ch. 429 . . . . . SB 343
80-7-1006. . . . . enacted . . . . . Ch. 429 . . . . . SB 343
80-7-1007. . . . . enacted . . . . . Ch. 429 . . . . . SB 343
80-7-1008. . . . . enacted . . . . . Ch. 429 . . . . . SB 343
80-7-1009. . . . . enacted . . . . . Ch. 429 . . . . . SB 343
80-7-1010. . . . . enacted . . . . . Ch. 429 . . . . . SB 343
80-7-1011. . . . . enacted . . . . . Ch. 429 . . . . . SB 343
80-7-1012. . . . . enacted . . . . . Ch. 429 . . . . . SB 343
80-7-1013. . . . . enacted . . . . . Ch. 429 . . . . . SB 343
80-7-1014. . . . . enacted . . . . . Ch. 429 . . . . . SB 343
80-7-1104 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
80-8-102 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
80-8-103 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
80-8-108 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
80-8-202 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
80-8-206 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
80-8-208 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
80-8-301 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
80-8-303 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
80-10-101 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
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80-10-102 . . . . . amended . . . . . Ch. 395 . . . . . SB 55
80-10-103 . . . . . amended . . . . . Ch. 395 . . . . . SB 55
amended . . . . . Ch. 423 . . . . . SB 300
80-10-104 . . . . . amended . . . . . Ch. 423 . . . . . SB 300
80-10-110. . . . . enacted . . . . . Ch. 395 . . . . . SB 55
80-10-201 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
amended . . . . . Ch. 395 . . . . . SB 55
80-10-202 . . . . . amended . . . . . Ch. 395 . . . . . SB 55
80-10-204 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
amended . . . . . Ch. 395 . . . . . SB 55
80-10-205 . . . . . amended . . . . . Ch. 395 . . . . . SB 55
80-10-206 . . . . . amended . . . . . Ch. 395 . . . . . SB 55
80-10-207 . . . . . amended . . . . . Ch. 395 . . . . . SB 55
80-10-208 . . . . . amended . . . . . Ch. 395 . . . . . SB 55
80-10-209 . . . . . amended . . . . . Ch. 395 . . . . . SB 55
80-10-211 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
80-10-303 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
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80-10-503 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
80-11-204 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
80-11-224 . . . . . amended . . . . . Ch. 10 . . . . . SB 29
80-11-305 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
80-11-308 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
80-11-311 . . . . . amended . . . . . Ch. 56 . . . . . HB 37

80-11-404	amended	Ch.	56	HB	37
80-11-405	amended	Ch.	15	HB	100
	amended	Ch.	56	HB	37
80-11-416	amended	Ch.	56	HB	37
80-11-801	amended	Ch.	70	HB	247
80-11-901	enacted	Ch.	386	HB	583
80-12-202	amended	Ch.	56	HB	37
80-12-203	amended	Ch.	18	HB	168
	amended	Ch.	56	HB	37
80-12-211	amended	Ch.	56	HB	37
80-12-310	amended	Ch.	56	HB	37
80-15-218	amended	Ch.	56	HB	37
80-15-302	amended	Ch.	395	SB	55
81-1-101	amended	Ch.	361	SB	286
81-1-202	amended	Ch.	56	HB	37
81-1-301	amended	Ch.	56	HB	37
81-1-302	amended	Ch.	56	HB	37
81-2-101	amended	Ch.	56	HB	37
81-2-109	amended	Ch.	56	HB	37
81-2-112	amended	Ch.	56	HB	37
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81-2-206	amended	Ch.	56	HB	37
81-2-208	amended	Ch.	56	HB	37
81-2-209	amended	Ch.	56	HB	37
81-2-303	amended	Ch.	56	HB	37
81-2-502	amended	Ch.	56	HB	37
81-2-602	amended	Ch.	56	HB	37
81-2-703	amended	Ch.	56	HB	37
81-3-106	amended	Ch.	56	HB	37
81-3-203	amended	Ch.	56	HB	37
	amended	Ch.	290	SB	126
81-3-204	amended	Ch.	56	HB	37
81-3-205	amended	Ch.	56	HB	37
81-3-211	amended	Ch.	290	SB	126
81-3-214	repealed	Ch.	23	SB	130
	amended	Ch.	56	HB	37
81-3-223	amended	Ch.	56	HB	37
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81-3-233	amended	Ch.	56	HB	37
81-4-104	amended	Ch.	56	HB	37
81-4-108	amended	Ch.	56	HB	37
81-4-207	amended	Ch.	56	HB	37
81-4-208	amended	Ch.	56	HB	37
81-4-212	amended	Ch.	56	HB	37
81-4-220	amended	Ch.	56	HB	37
81-4-308	amended	Ch.	56	HB	37
81-4-322	amended	Ch.	56	HB	37
81-4-326	amended	Ch.	56	HB	37
81-4-327	amended	Ch.	56	HB	37
81-4-405	amended	Ch.	56	HB	37
81-4-406	amended	Ch.	56	HB	37
81-4-410	amended	Ch.	56	HB	37
81-4-505	amended	Ch.	56	HB	37
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81-4-506	amended	Ch.	56	HB	37
81-4-507	amended	Ch.	56	HB	37
81-4-508	amended	Ch.	56	HB	37
81-4-509	amended	Ch.	56	HB	37
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81-4-512	amended	Ch.	56	HB	37
81-4-513	amended	Ch.	56	HB	37
81-4-603	amended	Ch.	56	HB	37

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81-5-103 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
81-6-102 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
81-7-102 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
81-7-115 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
81-7-203 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
81-7-204 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
81-7-403 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
81-7-501 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
81-8-215 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
81-8-232 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
81-8-235 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
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81-8-261 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
81-8-263 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
81-8-274 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
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81-9-112 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
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81-9-201 . . . . . amended . . . . . Ch. 416 . . . . . HB 418
81-9-218 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
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81-9-230 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
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81-9-240. . . . . enacted . . . . . Ch. 416 . . . . . HB 418
81-9-241. . . . . enacted . . . . . Ch. 416 . . . . . HB 418
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81-9-315 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
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81-9-402 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
81-9-403 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
81-10-101. . . . . enacted . . . . . Ch. 390 . . . . . HB 655
81-10-102. . . . . enacted . . . . . Ch. 390 . . . . . HB 655
81-10-103. . . . . enacted . . . . . Ch. 390 . . . . . HB 655
81-10-104. . . . . enacted . . . . . Ch. 390 . . . . . HB 655
81-20-204 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
81-20-209 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
81-21-102 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
81-22-203 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
81-22-205 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
81-22-207 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
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81-22-415 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
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81-23-103 . . . . . amended . . . . . Ch. 361 . . . . . SB 286
81-23-104 . . . . . amended . . . . . Ch. 361 . . . . . SB 286
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81-23-202 . . . . . amended . . . . . Ch. 361 . . . . . SB 286
81-23-203 . . . . . amended . . . . . Ch. 361 . . . . . SB 286
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81-23-303	amended	Ch. 361	SB	286
81-23-304	repealed	Ch. 361	SB	286
81-23-305	amended	Ch. 56	HB	37
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81-23-401	amended	Ch. 361	SB	286
81-23-402	amended	Ch. 361	SB	286
81-23-403	amended	Ch. 56	HB	37
81-23-404	amended	Ch. 361	SB	286
81-23-405	amended	Ch. 361	SB	286
81-23-406	amended	Ch. 361	SB	286
81-23-407	enacted	Ch. 361	SB	286
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82-1-108	amended	Ch. 56	HB	37
82-1-202	amended	Ch. 56	HB	37
82-1-203	amended	Ch. 56	HB	37
82-2-101	amended	Ch. 56	HB	37
82-2-102	amended	Ch. 56	HB	37
82-2-103	amended	Ch. 56	HB	37
82-2-105	amended	Ch. 56	HB	37
82-2-106	amended	Ch. 56	HB	37
82-2-107	amended	Ch. 56	HB	37
82-2-108	amended	Ch. 56	HB	37
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82-2-112	amended	Ch. 56	HB	37
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82-2-203	amended	Ch. 56	HB	37
82-2-205	amended	Ch. 56	HB	37
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82-2-405	amended	Ch. 56	HB	37
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82-2-701	enacted	Ch. 276	SB	297
82-2-702	enacted	Ch. 276	SB	297
82-4-142	amended	Ch. 56	HB	37
82-4-235	amended	Ch. 72	HB	278
82-4-238	amended	Ch. 56	HB	37
82-4-239	amended	Ch. 78	SB	5
82-4-355	amended	Ch. 56	HB	37
82-4-371	amended	Ch. 78	SB	5
82-4-405	amended	Ch. 477	HB	678
82-4-424	amended	Ch. 477	HB	678
82-4-432	amended	Ch. 477	HB	678
82-4-437	amended	Ch. 477	HB	678
82-4-438	enacted	Ch. 477	HB	678
82-4-439	enacted	Ch. 477	HB	678
82-10-103	amended	Ch. 56	HB	37
82-10-401	amended	Ch. 56	HB	37
82-10-402	amended	Ch. 56	HB	37
	amended	Ch. 474	SB	498
82-10-506	amended	Ch. 56	HB	37
82-10-507	amended	Ch. 56	HB	37
82-11-101	amended	Ch. 474	SB	498
82-11-103	amended	Ch. 56	HB	37
82-11-104	amended	Ch. 474	SB	498
82-11-110	enacted	Ch. 329	SB	449
82-11-111	amended	Ch. 329	SB	449
	amended	Ch. 474	SB	498
82-11-117	amended	Ch. 56	HB	37
82-11-118	amended	Ch. 474	SB	498
82-11-122	amended	Ch. 474	SB	498
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82-11-127	amended	Ch. 474	SB	498
82-11-136	amended	Ch. 474	SB	498
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82-11-141	amended	Ch. 56	HB	37
82-11-142	amended	Ch. 56	HB	37
82-11-151	amended	Ch. 56	HB	37
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82-11-180	enacted	Ch. 474	SB	498
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82-11-182	enacted	Ch. 474	SB	498
82-11-183	enacted	Ch. 474	SB	498
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82-11-201	amended	Ch. 244	SB	136
	amended	Ch. 474	SB	498
82-11-204	amended	Ch. 474	SB	498
82-11-205	amended	Ch. 474	SB	498
82-11-206	amended	Ch. 56	HB	37
82-11-207	amended	Ch. 311	SB	76
82-11-209	amended	Ch. 56	HB	37
82-11-212	amended	Ch. 56	HB	37
82-11-214	amended	Ch. 474	SB	498
82-11-303	amended	Ch. 56	HB	37
82-11-304	amended	Ch. 56	HB	37
82-11-305	amended	Ch. 56	HB	37
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82-15-204	amended	Ch. 56	HB	37
82-15-205	amended	Ch. 56	HB	37
85-1-203	amended	Ch. 404	SB	303
85-1-619	amended	Ch. 2	SB	7
85-1-622	amended	Ch. 56	HB	37
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85-2-105	amended	Ch. 285	SB	22
85-2-114	amended	Ch. 103	HB	39
85-2-122	amended	Ch. 103	HB	39
85-2-132	amended	Ch. 56	HB	37
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85-2-214	amended	Ch. 56	HB	37
85-2-217	amended	Ch. 5	SB	39
85-2-218	amended	Ch. 56	HB	37
85-2-224	amended	Ch. 56	HB	37
85-2-234	amended	Ch. 56	HB	37
85-2-280	amended	Ch. 486	HB	676
85-2-306	amended	Ch. 86	SB	120
85-2-307	amended	Ch. 251	HB	40
85-2-308	amended	Ch. 251	HB	40
85-2-309	amended	Ch. 251	HB	40
85-2-310	amended	Ch. 251	HB	40
85-2-344	amended	Ch. 2	SB	7
85-2-362	amended	Ch. 104	HB	41
85-2-364	amended	Ch. 104	HB	41
85-2-401	amended	Ch. 251	HB	40
85-2-402	amended	Ch. 86	SB	120
	amended	Ch. 424	SB	396
85-2-405	amended	Ch. 56	HB	37
85-2-412	amended	Ch. 56	HB	37
85-2-413	amended	Ch. 56	HB	37
85-2-416	amended	Ch. 56	HB	37
85-2-418	amended	Ch. 56	HB	37
85-2-501	amended	Ch. 86	SB	120
85-2-506	amended	Ch. 86	SB	120
85-2-507	repealed	Ch. 86	SB	120

85-2-508	amended	Ch.	86	SB	120
85-2-509	repealed	Ch.	86	SB	120
85-2-511	repealed	Ch.	86	SB	120
85-2-513	repealed	Ch.	86	SB	120
85-2-518	repealed	Ch.	86	SB	120
85-2-520	repealed	Ch.	86	SB	120
85-2-523	enacted	Ch.	86	SB	120
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85-2-525	enacted	Ch.	436	HB	52
85-2-702	amended	Ch.	5	SB	39
85-2-704	amended	Ch.	5	SB	39
85-2-804	amended	Ch.	56	HB	37
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85-3-301	amended	Ch.	56	HB	37
85-3-411	amended	Ch.	56	HB	37
85-3-421	amended	Ch.	56	HB	37
85-5-102	amended	Ch.	56	HB	37
85-5-103	amended	Ch.	56	HB	37
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85-5-105	amended	Ch.	56	HB	37
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85-5-406	amended	Ch.	56	HB	37
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85-7-1506	amended	Ch.	56	HB	37
85-7-1507	amended	Ch.	56	HB	37
85-7-1508	amended	Ch.	56	HB	37
85-7-1615	amended	Ch.	56	HB	37
85-7-1618	amended	Ch.	56	HB	37
85-7-1703	amended	Ch.	56	HB	37
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85-7-2114	amended	Ch.	56	HB	37
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85-8-402	amended	Ch.	56	HB	37
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85-9-401	amended	Ch. 56	HB	37
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85-9-421	amended	Ch. 56	HB	37
85-9-502	amended	Ch. 56	HB	37
85-9-504	amended	Ch. 56	HB	37
85-9-628	amended	Ch. 56	HB	37
85-20-104	amended	Ch. 56	HB	37
85-20-105	amended	Ch. 56	HB	37
85-20-106	amended	Ch. 56	HB	37
85-20-901	amended	Ch. 44	SB	201
85-20-904	amended	Ch. 44	SB	201
85-20-1004	amended	Ch. 440	HB	135
85-20-1501	enacted	Ch. 204	HB	161
85-20-1505	amended	Ch. 204	HB	161
85-20-1601	enacted	Ch. 280	SB	426
87-1-102	amended	Ch. 121	HB	223
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	amended	Ch. 253	HB	222
87-1-201	amended	Ch. 10	SB	29
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87-1-204	amended	Ch. 56	HB	37
87-1-205	amended	Ch. 56	HB	37
87-1-206	amended	Ch. 56	HB	37
87-1-207	amended	Ch. 56	HB	37
87-1-208	amended	Ch. 56	HB	37
87-1-209	amended	Ch. 427	SB	164
	amended	Ch. 485	HB	674
87-1-210	amended	Ch. 56	HB	37
87-1-217	amended	Ch. 275	SB	228
87-1-218	enacted	Ch. 485	HB	674
87-1-225	amended	Ch. 56	HB	37
87-1-230	enacted	Ch. 427	SB	164
87-1-247	amended	Ch. 306	HB	499
87-1-250	amended	Ch. 306	HB	499
87-1-251	enacted	Ch. 306	HB	499
87-1-266	amended	Ch. 114	HB	137
87-1-270	amended	Ch. 304	HB	480
87-1-272	amended	Ch. 2	SB	7
87-1-302	amended	Ch. 56	HB	37
87-1-304	amended	Ch. 13	HB	74
87-1-402	amended	Ch. 56	HB	37
87-1-501	amended	Ch. 56	HB	37
87-1-503	amended	Ch. 32	HB	296
87-1-504	amended	Ch. 2	SB	7
87-1-505	amended	Ch. 2	SB	7
87-1-506	amended	Ch. 429	SB	343
87-1-511	amended	Ch. 56	HB	37
87-1-513	amended	Ch. 426	SB	117
87-1-601	amended	Ch. 330	HB	42
87-1-603	amended	Ch. 485	HB	674
87-1-621	enacted	Ch. 330	HB	42
87-1-701	amended	Ch. 56	HB	37
87-1-704	amended	Ch. 56	HB	37
87-2-105	amended	Ch. 68	HB	172
87-2-106	amended	Ch. 253	HB	222
87-2-112	amended	Ch. 56	HB	37
87-2-126	enacted	Ch. 68	HB	172
87-2-201	amended	Ch. 2	SB	7
87-2-203	amended	Ch. 56	HB	37
87-2-204	amended	Ch. 56	HB	37

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87-2-525	enacted	Ch. 174	SB 185
87-2-526	enacted	Ch. 345	HB 585
87-2-602	amended	Ch. 56	HB 37
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87-2-702	amended	Ch. 136	SB 184
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87-2-803	amended	Ch. 193	HB 317
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87-2-805	amended	Ch. 131	HB 383
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87-2-1001	amended	Ch. 130	HB 366
87-2-1002	amended	Ch. 56	HB 37
87-2-1003	amended	Ch. 130	HB 366
87-3-101	amended	Ch. 229	HB 218
87-3-123	amended	Ch. 56	HB 37
87-3-130	amended	Ch. 294	SB 202
87-3-206	amended	Ch. 56	HB 37
87-3-221	amended	Ch. 56	HB 37
87-3-235	amended	Ch. 431	SB 425
87-3-236	repealed 3/1/2012	Ch. 431	SB 425
87-3-405	amended	Ch. 56	HB 37
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87-3-507	amended	Ch. 56	HB 37
87-4-301	amended	Ch. 56	HB 37
87-4-303	amended	Ch. 56	HB 37
87-4-502	amended	Ch. 408	SB 404
87-4-602	amended	Ch. 56	HB 37
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87-5-102	amended	Ch. 301	HB 443
87-5-108	amended	Ch. 56	HB 37
87-5-131	amended	Ch. 275	SB 228
87-5-721	amended	Ch. 429	SB 343
87-5-725	enacted	Ch. 119	HB 203
90-1-104	amended	Ch. 164	HB 193
90-1-112	amended	Ch. 309	HB 635
90-1-117	enacted	Ch. 215	HB 572
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90-1-131	amended	Ch. 164	HB 193
90-1-132	amended	Ch. 164	HB 193
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90-1-147	amended	Ch. 215	HB 572
90-1-175	enacted	Ch. 489	HB 645
90-1-201	amended	Ch. 460	HB 158
90-1-202	amended	Ch. 460	HB 158
90-1-203	amended	Ch. 460	HB 158
90-1-204	amended	Ch. 460	HB 158
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90-1-205	amended	Ch. 460	HB 158
90-1-501	enacted	Ch. 484	HB 669
90-1-502	enacted	Ch. 484	HB 669
90-1-503	enacted	Ch. 484	HB 669

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90-2-1111 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
90-3-1003 . . . . . amended . . . . . Ch. 30 . . . . . HB 207
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90-3-1301 . . . . . enacted . . . . . Ch. 383 . . . . . HB 333
90-3-1302 . . . . . enacted . . . . . Ch. 383 . . . . . HB 333
90-4-201 . . . . . amended . . . . . Ch. 10 . . . . . SB 29
90-4-305 . . . . . amended . . . . . Ch. 56 . . . . . HB 37
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Ch. 712, sec. 9	repealed	159	HB 21
Laws of 1995			
Chapter 542, sec. 4, 5	repealed	159	HB 21
Laws of 1997			
Chapter 411, sec. 1	repealed	159	HB 21
Laws of 2001			
Chapter 398, sec. 4, 5, 6, 7	repealed	159	HB 21
Chapter 516, sec. 8	repealed	159	HB 21
Laws of 2003			
Chapter 81, sec. 4	repealed	40	SB 140
Chapter 390, sec. 20	repealed	222	HB 71
Chapter 390, sec. 20	amended	489	HB 645
Chapter 481, sec. 3, 6	amended	459	HB 123
Chapter 567, sec. 10	repealed	84	SB 89
Laws of 2005			
Chapter 23	repealed	40	SB 140
Chapter 129, sec. 3, 5	repealed	159	HB 21
Chapter 169, sec. 4	repealed	84	SB 89
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Chapter 185	repealed	40	SB 140
Chapter 351, sec. 6	repealed	310	SB 26
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Chapter 383, sec. 1	amended	458	HB 11
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? . . . . . Ch. 240 . . . . . HB 542
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? . . . . . Ch. 474 . . . . . SB 498
(§§ 2-26, Effective on the date that the board of oil and gas conservation is granted primacy to administer activities at carbon dioxide sequestration wells by the United States environmental protection agency.)

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	84	50-6-503
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	124	Directions to code commissioner
3	1	46-1-1112
4	1	15-37-103
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	3	Retroactive applicability
5	1	85-2-217
	2	85-2-702
	3	85-2-704
	4	Notification to tribal governments
	5	Effective date
6	1	15-6-134 (Voided by sec. 16, Ch. 483)
	2	15-6-211
	3	15-16-102
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	5	Effective date
	6	Retroactive applicability
7	1	2-18-101
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	4	2-18-303
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	8	15-2-102
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	11	Repealer
	12	Effective date
8	1	17-7-111
	2	17-7-112
	3	Effective date
9	1	Repealer
	2	Effective date
10	1	16-11-124
	2	17-5-911
	3	17-5-912
	4	17-7-113
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	17	87-1-201
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	19	Repealer
11	1	15-31-322
	2	Effective date
	3	Retroactive applicability
12	1	3-1-1001
	2	Effective date
13	1	87-1-304
	2	Effective date
14	1	2-15-3112
	2	Effective date
15	1	2-15-3006
	2	80-11-405
	3	Effective date
16	1	61-3-710

	2	Effective date
17	1	39-71-403
	2	Effective date
18	1	80-12-203
	2	Effective date
19	1	80-4-711
	2	Effective date
20	1	39-71-2901
	2	Effective date
21	1	2-4-110
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	5	Effective date
22	1	15-70-221
	2	67-1-301
	3	Effective date
	4	Applicability
23	1	Repealer
	2	Effective date
24	1	15-30-301
	2	Effective date
25	1	39-51-201
	2	39-51-301
	3	39-51-310
	4	39-51-404
	5	39-51-406
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	10	39-51-602
	11	39-51-1105
	12	39-51-1121
	13	39-51-1125
	14	39-51-1212
	15	39-51-1213
	16	39-51-1302
	17	39-51-2201
	18	39-51-2304
	19	39-51-2306
	20	39-51-2401
	21	39-51-2405
	22	39-51-2408
	23	39-51-3204
	24	Effective date
26	1	39-3-204
	2	39-3-205
	3	Effective date
27	1	50-71-111
	2	50-71-112
	3	50-71-113
	4	50-71-114
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	18	50-73-102
	19	50-73-402
	20	50-73-406
	21	50-73-409
	22	Repealer
	23	Notification to tribal governments
	24	Codification instruction — directions to code commissioner
	25	Saving clause
	26	Effective date
28	1	33-2-1903
	2	33-28-102
	3	33-28-105
	4	33-28-107
	5	33-28-201
	6	33-28-202
	7	33-28-207
	8	Effective date
29	1	18-2-501
	2	Effective date
30	1	69-3-2003
	2	90-3-1003
	3	Effective date
31	1	69-3-2004
32	1	87-1-503
	2	Notification to tribal governments
	3	Effective date
33	1	15-35-108
	2	15-36-304
	3	15-36-331
	4	15-36-332
	5	90-6-1001
	6	Effective date
34	1	37-16-102
	2	37-16-303
	3	37-16-304
35	1	69-1-115
	2	69-1-111
	3	69-1-112
	4	69-3-327
	5	Repealer
	6	Codification instruction
36	1	76-15-515
	2	Effective date
37	1	41-5-331
	2	41-5-333
38	1	7-6-2527
	2	Effective date
39	1	46-18-207
	2	Effective date
	3	Applicability
40	1	Repealer
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41	1	61-3-103
	2	61-3-223
	3	61-3-224
	4	61-3-303
	5	61-3-474
	6	61-3-509
	7	61-5-208
	8	61-11-102
	9	Effective date
42	1	53-21-140
43	1	70-20-113
	2	70-24-303
44	1	85-20-901
	2	85-20-904
	3	Effective dates
	4	Retroactive applicability
45	1	7-6-2426
46	1	2-17-807
	2	2-17-808
	3	Effective date
47	1	22-1-301
	2	22-1-328
	3	22-1-329
	4	22-1-330
	5	Notification to tribal governments
	6	Effective date
48	1	18-2-303
	2	60-2-113
	3	Effective date
49	1	10-1-104
	2	Applicability
50	1	33-1-1401
	2	33-1-1402
	3	33-1-1403
	4	Codification instruction
	5	Effective date
51	1	46-21-201
	2	Applicability
52	1	3-5-510
	2	3-15-201
	3	3-15-204
	4	Effective date
53	1	46-18-112
	2	46-19-101
54	1	41-5-215
	2	41-5-216
	3	Effective date
55	1	69-8-402
	2	Effective date
56	1	10-1-201
	2	10-1-202
	3	10-1-206
	4	10-1-302
	5	10-1-405
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	17	10-3-112
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2594	80-6-1105
2595	80-7-505
2596	80-7-1104
2597	80-8-102
2598	80-8-103
2599	80-8-108
2600	80-8-202
2601	80-8-206
2602	80-8-208
2603	80-8-301
2604	80-8-303
2605	80-10-101
2606	80-10-201
2607	80-10-204
2608	80-10-211
2609	80-10-303
2610	80-10-503
2611	80-11-204
2612	80-11-305
2613	80-11-308
2614	80-11-311
2615	80-11-404
2616	80-11-405
2617	80-11-416
2618	80-12-202
2619	80-12-203
2620	80-12-211
2621	80-12-310
2622	80-15-218
2623	81-1-202
2624	81-1-301
2625	81-1-302
2626	81-2-101
2627	81-2-109
2628	81-2-112
2629	81-2-201
2630	81-2-204
2631	81-2-206
2632	81-2-208
2633	81-2-209
2634	81-2-303
2635	81-2-502
2636	81-2-602
2637	81-2-703
2638	81-3-106
2639	81-3-203
2640	81-3-204
2641	81-3-205
2642	81-3-214
2643	81-3-223
2644	81-3-231
2645	81-3-233
2646	81-4-104
2647	81-4-108
2648	81-4-207
2649	81-4-208
2650	81-4-212
2651	81-4-220
2652	81-4-308
2653	81-4-322
2654	81-4-326
2655	81-4-327
2656	81-4-405
2657	81-4-406
2658	81-4-410
2659	81-4-505
2660	81-4-506
2661	81-4-507
2662	81-4-508
2663	81-4-509
2664	81-4-512
2665	81-4-513
2666	81-4-603
2667	81-5-103
2668	81-6-102
2669	81-7-102
2670	81-7-115
2671	81-7-203
2672	81-7-204
2673	81-7-403
2674	81-7-501
2675	81-8-215
2676	81-8-232
2677	81-8-235
2678	81-8-251
2679	81-8-261
2680	81-8-263
2681	81-8-274
2682	81-8-278
2683	81-8-312
2684	81-8-315
2685	81-8-702
2686	81-8-704
2687	81-9-111
2688	81-9-112
2689	81-9-114
2690	81-9-218
2691	81-9-220
2692	81-9-230
2693	81-9-235
2694	81-9-313
2695	81-9-314
2696	81-9-315
2697	81-9-316
2698	81-9-402
2699	81-9-403
2700	81-20-204
2701	81-20-209
2702	81-21-102
2703	81-22-203
2704	81-22-205
2705	81-22-207
2706	81-22-402
2707	81-22-415
2708	81-23-201
2709	81-23-305
2710	81-23-403
2711	82-1-105
2712	82-1-108
2713	82-1-202
2714	82-1-203
2715	82-2-101
2716	82-2-102
2717	82-2-103
2718	82-2-105
2719	82-2-106
2720	82-2-107
2721	82-2-108
2722	82-2-109
2723	82-2-112
2724	82-2-114
2725	82-2-115
2726	82-2-203
2727	82-2-205
2728	82-2-401
2729	82-2-402
2730	82-2-405
2731	82-2-421
2732	82-4-142
2733	82-4-238
2734	82-4-355
2735	82-10-103
2736	82-10-401
2737	82-10-402
2738	82-10-506
2739	82-10-507
2740	82-11-103
2741	82-11-117
2742	82-11-141
2743	82-11-142
2744	82-11-151
2745	82-11-206
2746	82-11-209
2747	82-11-212
2748	82-11-303
2749	82-11-304
2750	82-11-305
2751	82-11-306
2752	82-15-204
2753	82-15-205
2754	85-1-622
2755	85-2-132
2756	85-2-134
2757	85-2-214
2758	85-2-218
2759	85-2-224

2760	85-2-234
2761	85-2-405
2762	85-2-412
2763	85-2-413
2764	85-2-416
2765	85-2-418
2766	85-2-804
2767	85-3-301
2768	85-3-411
2769	85-3-421
2770	85-5-102
2771	85-5-103
2772	85-5-104
2773	85-5-105
2774	85-5-108
2775	85-5-109
2776	85-5-110
2777	85-5-202
2778	85-5-302
2779	85-5-401
2780	85-5-402
2781	85-5-405
2782	85-5-406
2783	85-7-1504
2784	85-7-1506
2785	85-7-1507
2786	85-7-1508
2787	85-7-1615
2788	85-7-1618
2789	85-7-1703
2790	85-7-1811
2791	85-7-1901
2792	85-7-1912
2793	85-7-1924
2794	85-7-2017
2795	85-7-2027
2796	85-7-2114
2797	85-7-2115
2798	85-7-2116
2799	85-7-2133
2800	85-7-2153
2801	85-7-2166
2802	85-8-111
2803	85-8-115
2804	85-8-119
2805	85-8-121
2806	85-8-307
2807	85-8-308
2808	85-8-312
2809	85-8-314
2810	85-8-321
2811	85-8-345
2812	85-8-362
2813	85-8-364
2814	85-8-402
2815	85-8-403
2816	85-8-404
2817	85-8-612
2818	85-9-103
2819	85-9-304
2820	85-9-401
2821	85-9-402
2822	85-9-421
2823	85-9-502
2824	85-9-504
2825	85-9-628
2826	85-20-104
2827	85-20-105
2828	85-20-106
2829	87-1-204

2830	87-1-205	
2831	87-1-206	
2832	87-1-207	
2833	87-1-208	
2834	87-1-210	
2835	87-1-225	
2836	87-1-302	
2837	87-1-402	
2838	87-1-501	
2839	87-1-511	
2840	87-1-701	
2841	87-1-704	
2842	87-2-112	
2843	87-2-203	
2844	87-2-204	
2845	87-2-602	
2846	87-2-604	
2847	87-2-1002	
2848	87-3-123	
2849	87-3-206	
2850	87-3-221	
2851	87-3-405	
2852	87-3-506	
2853	87-3-507	
2854	87-4-301	
2855	87-4-303	
2856	87-4-602	
2857	87-4-702	
2858	87-4-703	
2859	87-4-704	
2860	87-4-705	
2861	87-4-903	
2862	87-4-904	
2863	87-4-915	
2864	87-4-1002	
2865	87-4-1003	
2866	87-5-108	
2867	90-2-1111	
2868	90-4-305	
2869	90-4-309	
2870	90-4-314	
2871	90-4-317	
2872	90-5-202	
2873	90-6-120	
2874	90-6-204	
2875	90-6-303	
2876	90-7-319	
57	1	7-1-2111
	2	15-1-402
	3	15-10-420
	4	15-24-1703
	5	15-36-331
	6	15-39-110
	7	90-6-309
	8	Repealer
	9	Effective date
58	1	76-13-702
	2	Effective date
59	1	20-4-502
	2	Effective date
60	1	20-3-312
	2	20-6-411
	3	20-6-414
	4	20-6-422
	5	20-6-704
	6	Effective date
	7	Applicability
61	1	50-32-205
	2	Effective date
62	1	16-4-801

	2	Effective date
63	1	10-3-118
	2	10-3-119
	3	10-3-120
	4	10-3-103
	5	10-3-111
	6	Codification instruction
64	1	17-8-402
	2	17-8-403
	3	17-8-404
	4	17-8-405
	5	17-8-406
	6	17-8-407
	7	17-8-410
	8	17-8-411
	9	17-8-412
	10	17-8-413
	11	Repealer
	12	Codification instruction
	13	Effective date
65	1	2-15-1705
	2	Effective date
66	1	46-18-241
	2	46-18-246
	3	46-23-1031
	4	Effective date
67	1	33-22-135
	2	Effective date
68	1	87-2-126
	2	87-2-105
	3	Codification instruction
	4	Effective date
69	1	7-5-2150
	2	Codification instruction
	3	Effective date
70	1	80-11-801
	2	Effective date
71	1	10-3-801
72	1	82-4-235
	2	Contingent voidness
73	1	75-5-305
	2	75-5-317
	3	75-5-325
74	1	69-4-103
	2	Codification instruction
	3	Effective date
75	1	7-32-303
76	1	61-11-101
	2	Effective date
	3	Applicability
77	1	2-2-102
	2	67-11-104
78	1	82-4-239
	2	82-4-371
	3	Effective date
79	1	Repealer
80	1	53-21-102
	2	53-21-122
	3	Effective date
81	1	31-1-707
	2	31-1-729
	3	31-1-704
	4	31-1-705
	5	31-1-711

	6	31-1-722
	7	Codification instruction
82	1	50-6-202(3)
	2	2-15-1731
	3	Codification instruction
	4	Effective date
83	1	61-1-101
	2	61-8-310
	3	61-8-726
84	1	Repealer
	2	Effective date
85	1	75-6-103
86	1	85-2-306
	2	85-2-402
	3	85-2-501
	4	85-2-523
	5	85-2-506
	6	85-2-508
	7	85-2-524
	8	Repealer
	9	Saving clause
	10	Codification instruction
	11	Effective date
87	1	33-22-1816
	2	33-22-2004
	3	33-22-2006
	4	33-22-2007
	5	33-22-2008
	6	53-4-1004
	7	Contingent voidness
	8	Effective dates
88	1	2-15-1704
	2	39-51-2112
	3	39-51-2113
	4	35-8-304
	5	39-51-403
	6	39-51-501
	7	39-51-603
	8	39-51-1105
	9	39-51-1216
	10	39-51-1301
	11	39-51-2101
	12	39-51-2104
	13	39-51-2307
	14	39-51-2402
	15	39-51-2403
	16	39-51-2405
	17	39-51-3201
	18	39-51-3202
	19	39-51-3206
	20	39-51-3207
	21	Repealer
	22	Codification instruction
	23	Effective dates
89	1	13-17-501
	2	13-17-502
	3	13-17-503
	4	13-17-504
	5	13-17-505
	6	13-17-506
	7	13-17-507
	8	13-17-508
	9	13-17-509
	10	13-1-101
	11	13-1-303
	12	13-15-401
	13	13-15-502
	14	Codification instruction
90	1	44-1-909
	2	44-1-806
	3	44-1-902
	4	Codification instruction
	5	Effective date
91	1	2-18-501
	2	Effective date
92	1	40-9-102
	2	Applicability
93	1	1-1-228
	2	Notification to tribal governments
	3	Codification instruction
94	1	13-37-216
95	1	7-33-2129
96	1	7-13-2303
	2	Effective date
97	1	7-1-4127
	2	Effective date
98	1	45-7-103
99	1	69-2-217
100	1	7-12-4429
101	1	16-1-106
102	1	5-4-306
	2	Effective date
103	1	3-7-311
	2	17-7-502
	3	85-2-114
	4	85-2-122
	5	44-4-1101
	6	44-4-1102
	7	Codification instruction
	8	Effective date
104	1	75-5-410
	2	85-2-362
	3	85-2-364
	4	Coordination instruction
	5	Coordination instruction
	6	Effective date
	7	Applicability
105	1	17-3-211
	2	17-3-212
	3	17-3-213
	4	Effective date
106	1	90-9-102
	2	90-9-103
	3	90-9-202
	4	90-9-203
	5	90-9-301
	6	90-9-306
	7	90-9-307
	8	90-9-311
	9	90-9-401
	10	90-9-402
	11	90-9-308
	12	90-9-309
	13	90-9-310
	14	Repealer
	15	Codification instruction
	16	Saving clause
	17	Effective date
107	1	75-1-110
	2	Effective date
108	1	77-5-212
	2	Saving clause
	3	Effective date
109	1	37-50-325
	2	2-15-1738
	3	2-15-1740
	4	2-15-1741
	5	2-15-1744
	6	2-15-1748
	7	2-15-1750
	8	2-15-1753
	9	2-15-1756
	10	23-3-501
	11	30-11-515
	12	37-1-316
	13	37-1-410
	14	37-3-102
	15	37-3-305
	16	37-3-306
	17	37-3-308
	18	37-3-311
	19	37-3-323
	20	37-3-342
	21	37-4-501
	22	37-8-202
	23	37-9-203
	24	37-9-301
	25	37-9-302
	26	37-9-305
	27	37-9-312
	28	37-10-302
	29	37-16-202
	30	37-16-405
	31	37-16-411
	32	37-16-413
	33	37-18-302
	34	37-25-303
	35	37-29-201
	36	37-35-201
	37	37-35-202
	38	37-36-202
	39	37-47-302
	40	37-47-404
	41	37-50-101
	42	37-50-102
	43	37-50-203
	44	37-50-301
	45	37-50-314
	46	37-50-330
	47	37-50-335
	48	37-50-341
	49	37-50-401
	50	37-50-402
	51	Repealer
	52	Codification instruction
	53	Saving clause
	54	Severability
110	1	10-4-301
	2	Effective date
111	1	10-4-102
	2	10-4-302
	3	10-4-313
	4	Effective date
112	1	39-71-441
	2	39-71-2115

	3	39-71-541
	4	39-8-202
	5	39-71-107
	6	39-71-117
	7	39-71-118
	8	39-71-123
	9	39-71-201
	10	39-71-307
	11	39-71-501
	12	39-71-506
	13	39-71-520
	14	39-71-601
	15	39-71-613
	16	39-71-704
	17	39-71-711
	18	39-71-712
	19	39-71-727
	20	39-71-743
	21	39-71-905
	22	39-71-915
	23	39-71-2339
	24	39-71-2905
	25	39-73-104
	26	Notification to tribal governments
	27	Codification instructions
	28	Saving clause
	29	Effective dates
	30	Retroactive applicability
113	1	76-5-103
	2	76-5-201
	3	Saving clause
	4	Effective date
114	1	87-1-266
	2	Effective date
115	1	76-13-702
	2	Effective date
116	1	77-5-216
	2	Federal funding for forest health concerns — authorized expenditure (Voided by sec. 4, Ch. 289)
	3	Effective date
117	1	75-10-733
	2	75-10-735
	3	75-10-736
118	1	69-3-2003
	2	90-3-1003
	3	Effective date
	4	Retroactive applicability
119	1	87-5-725
	2	Codification instruction
	3	Effective date
120	1	39-71-417
121	1	23-1-106
	2	45-6-101
	3	45-6-203
	4	87-1-102
122	1	7-4-501
	2	7-4-505
	3	7-4-506
	4	Effective date
123	1	7-4-2208
	2	Effective date
124	1	76-5-103
	2	76-5-402
125	1	2-8-501
	2	39-71-320
	3	2-6-109
	4	Codification instruction
	5	Effective date
126	1	50-11-101
	2	50-11-102
	3	50-11-103
	4	Codification instruction
127	1	69-3-1413
	2	69-3-1414
	3	69-3-1415
	4	69-3-1416
	5	69-3-1402
	6	69-3-1404
	7	Codification instruction
	8	Effective date
	9	Applicability
128	1	46-18-201
	2	Effective date
129	1	19-20-732
	2	19-20-731 (Voided and replaced by sec. 9, Ch. 298)
	3	Codification instruction
	4	Effective date — applicability
	5	Termination
130	1	87-2-1001
	2	87-2-1003
	3	Effective date
131	1	87-2-805
	2	Effective date
132	1	20-3-313
	2	Effective date
133	1	7-4-2503
134	1	31-1-828
	2	31-1-829
	3	31-1-805
	4	31-1-810
	5	Codification instruction
135	1	17-7-213
	2	17-7-201
	3	Codification instruction
	4	Effective date
	5	Applicability
136	1	87-2-702
	2	Effective date
137	1	20-7-420
	2	20-9-311
	3	20-9-707
	4	Effective date — applicability
138	1	70-24-205
	2	Codification instruction
139	1	50-15-202
	2	50-15-204
140	1	60-1-215
	2	Codification instruction
	3	Effective date
141	1	60-1-216
	2	Codification instruction
	3	Effective date
142	1	7-32-305
	2	Codification instruction
	3	Effective date
143	1	Repealer
	2	Effective date
144	1	20-4-401
145	1	2-18-702
	2	Effective date
146	1	61-9-321
	2	61-9-501
	3	61-9-503
147	1	Instructions to code commissioner
	2	15-30-111 (Renumbered 15-30-2110)
	3	15-30-114 (Renumbered 15-30-2116)
	4	15-30-171 (Renumbered 15-30-2337)
	5	15-30-172 (Renumbered 15-30-2338)
	6	15-30-174 (Renumbered 15-30-2339)
	7	15-30-176 (Renumbered 15-30-2340)
	8	15-30-177 (Renumbered 15-30-2341)
	9	Repealer
148	1	7-5-2404 (Renumbered 18-7-404)
	2	Instructions to code commissioner
	3	Effective date
149	1	20-5-503
	2	Effective date
	3	Retroactive applicability
150	1	50-6-104
	2	50-6-105
	3	50-6-201
	4	50-6-203
	5	50-6-302
	6	50-6-317
	7	50-6-323
	8	Codification instruction
151	1	42-4-211
	2	42-2-409
	3	42-7-105
	4	Codification instruction
152	1	2-4-101

	2	2-4-305
	3	Effective date
153	1	53-2-612
	2	53-6-165
	3	53-6-167
	4	53-6-168
	5	53-6-178
	6	Effective date
154	1	3-5-604
	2	40-6-119
	3	Effective date
155	1	61-11-203
156	1	45-10-103
	2	50-46-102
	3	50-46-103
	4	50-46-201
	5	50-46-205
	6	50-46-206
157	1	27-1-736
	2	Effective date
158	1	28-10-103
	2	37-1-316
	3	37-2-304
	4	Codification instruction
	5	Effective date
159	1	75-2-225
	2	75-2-226
	3	Repealer
	4	Effective date
160	1	1-11-204
	2	Effective date
161	1	19-1-402
	2	19-1-503
	3	19-1-813
	4	19-1-825
	5	Repealer
162	1	13-37-230
163	1	2-6-501
	2	2-6-502
	3	2-6-503
	4	2-6-504
	5	Codification instruction
164	1	2-15-102
	2	2-15-149
	3	2-15-217
	4	2-15-225
	5	2-15-1205
	6	22-2-602
	7	90-1-104
	8	90-1-131
	9	90-1-132
	10	90-1-133
	11	90-11-101
	12	90-11-102
	13	Name change — directions to code commissioner
	14	Effective date
165	1	53-6-131
	2	Effective date
166	1	37-2-104
167	1	3-15-313
168	1	30-11-701
	2	Effective date
	3	Applicability
169	1	16-4-306
	2	Codification instruction
	3	Effective date
170	1	7-8-2219
	2	7-8-2301
	3	7-8-2308
	4	7-8-2402
	5	7-8-2502
	6	7-8-2504
	7	7-8-4201
	8	7-15-4262
	9	Effective date
171	1	7-33-2001
172	1	76-13-104
	2	Effective date
173	1	76-13-213
	2	Effective date
174	1	87-2-525
	2	Codification instruction
	3	Effective date
175	1	87-2-704
	2	Effective date
176	1	25-9-601
	2	25-9-602
	3	25-9-603
	4	25-9-605
	5	25-9-606
	6	25-9-607
	7	25-9-610
	8	25-9-611
	9	25-9-612
	10	Repealer
	11	Codification instruction
	12	Saving clause
	13	Applicability
177	1	30-13-301
	2	30-13-338
	3	30-13-333
	4	Codification instruction
	5	Effective date
178	1	20-9-204
179	1	41-1-306
	2	41-1-501
	3	41-1-502
	4	41-1-503
	5	41-3-102
	6	41-3-438
	7	Codification instruction
180	1	46-18-230
	2	46-18-232
	3	Codification instruction
	4	Effective date
181	1	16-1-101
	2	16-3-221
	3	16-3-222
	4	Severability
	5	Saving clause
	6	Effective date
182	1	71-3-531
	2	71-3-538
	3	Codification instruction
183	1	15-1-122
	2	Transfer to adoption services account
	3	Effective dates
184	1	17-4-105
	2	40-5-225
	3	40-5-403
	4	40-5-419
	5	40-5-601
	6	40-5-907
	7	53-2-110
	8	53-2-613
	9	Codification instruction
	10	Saving clause
	11	Effective dates
185	1	39-2-104
	2	2-18-601
	3	Repealer
	4	Codification instruction
	5	Saving clause
	6	Effective date
186	1	Sec. 17, Ch. 593, L. 2005
	2	Sec. 9, Ch. 367, L. 2007
	3	Effective date
187	1	16-4-420
	2	Saving clause
	3	Effective date
	4	Applicability
188	1	2-16-612
	2	2-16-614
189	1	87-2-805
	2	Effective date
190	1	Report to legislature — purpose — requirements
	2	Effective date
191	1	80-3-314
	2	80-3-321
	3	Effective date
192	1	33-18-221
	2	33-18-222
	3	33-18-223
	4	33-18-224
	5	Effective date
193	1	87-2-803
194	1	37-60-101
	2	37-60-103
	3	37-60-105
	4	37-60-301
	5	37-60-304
195	1	33-31-102
	2	33-31-201
	3	53-6-702
	4	Effective date
196	1	41-3-101
197	1	16-1-102
	2	16-1-106
	3	16-3-244
198	1	45-5-625
	2	46-4-307
	3	Codification instruction
199	1	37-22-102
200	1	75-10-1401
	2	75-10-1402
	3	75-10-1403
	4	75-10-1404
	5	75-10-1405
	6	75-10-1410

	7	75-10-1411
	8	75-1-110
	9	Codification instruction
	10	Saving clause
	11	Effective date
201	1	7-14-2134
	2	23-2-312
	3	23-2-313
	4	Codification instruction
	5	Nonseverability
	6	Effective date
202	1	10-1-501
	2	Effective date
203	1	61-6-302
	2	Effective date
204	1	85-20-1501
	2	85-20-1505
	3	General fund transfer (Voided by sec. 77, Ch. 489)
	4	Appropriation
	5	Notification to tribal governments
	6	Codification instruction
	7	Effective date
205	1	30-20-101
	2	30-20-102
	3	30-20-103
	4	30-20-104
	5	30-20-105
	6	30-20-106
	7	Codification instruction
	8	Applicability
206	1	50-4-510
	2	50-4-511
	3	50-4-512
	4	Codification instruction
207	1	33-22-244
	2	33-22-521
	3	50-4-516
	4	50-4-517
	5	50-4-518
	6	Codification instruction
	7	Effective date
208	1	37-19-901
	2	37-19-902
	3	37-19-903
	4	37-19-904
	5	37-19-905
	6	37-19-906
	7	37-19-907
	8	37-19-908
	9	37-19-909
	10	35-21-810
	11	37-19-101
	12	Codification instruction
209	1	77-2-363
	2	77-2-366
	3	Effective date
210	1	40-4-211
	2	40-6-601
	3	40-6-602
	4	41-3-437
	5	41-3-438
	6	41-3-439
	7	72-5-223
	8	72-5-225
211	1	70-33-314
	2	Effective date
212	1	13-15-206
213	1	20-9-406
	2	20-9-502
214	1	46-4-406
	2	46-4-407
	3	46-4-408
	4	46-4-409
	5	46-4-410
	6	46-4-411
	7	Codification instruction
215	1	90-1-117
	2	90-1-118
	3	90-1-119
	4	90-1-147
	5	Codification instruction
	6	Effective date
216	1	19-9-207
	2	Effective date
217	1	13-13-204
	2	13-15-106
	3	Effective date
218	1	39-71-2331
	2	39-71-2332
	3	39-71-2311
	4	Codification instruction
	5	Effective date — applicability
219	1	13-13-212
	2	Effective date
220	1	40-9-103
	2	Codification instruction
	3	Effective date
221	1	46-21-111
222	1	Repealer
	2	Repealer
	3	Repealer
	4	Effective date
223	1	40-5-303
	2	40-5-601
	3	40-5-701
	4	41-5-1525
	5	Effective date
	6	Retroactive applicability
224	1	61-8-906
	2	69-12-102
225	1	17-7-111
	2	17-7-123
	3	17-8-101
	4	Effective date
226	1	17-7-138
	2	17-7-139
	3	Effective date
227	1	10-1-108
	2	17-7-502
	3	Effective date
228	1	46-23-1020
	2	Codification instruction
229	1	87-1-102
	2	87-3-101
	3	87-3-506
	4	Effective date
230	1	13-14-113
231	1	69-13-101
	2	69-13-102
	3	69-13-201
	4	69-13-301
	5	69-13-302
	6	69-13-303
232	1	69-3-2003
	2	69-3-2005
	3	90-3-1003
	4	90-4-1202
	5	Effective date
	6	Retroactive applicability
233	1	49-4-302
	2	49-4-304
	3	61-3-407
	4	61-3-426
	5	61-3-458
	6	61-3-459
	7	Effective date
234	1	39-71-401
	2	Effective date
235	1	61-3-208
	2	Effective date
236	1	72-5-601
	2	72-5-602
	3	72-5-603
	4	72-5-604
	5	72-5-605
	6	72-5-606
	7	72-5-611
	8	72-5-612
	9	72-5-613
	10	72-5-614
	11	72-5-615
	12	72-5-616
	13	72-5-617
	14	72-5-618
	15	72-5-619
	16	72-5-624
	17	72-5-625
	18	72-5-629
	19	72-5-630
	20	72-5-631
	21	72-5-636
	22	72-5-637
	23	72-5-638
	24	72-5-102
	25	72-5-304
	26	Repealer
	27	Codification instruction
237	1	72-5-101
	2	72-5-321
	3	Effective date
238	1	39-74-101
	2	39-74-102
	3	39-74-103
	4	39-74-104
	5	39-74-105
	6	Codification instruction
	7	Effective date

239	1	77-1-122
	2	77-1-121
	3	Codification instruction
	4	Effective date
	5	Applicability
240	1	30-14-2501
	2	30-14-2502 (Temporary)
	3	30-14-2502 (Effective on contingency)
	4	30-14-2503
	5	Severability
	6	Effective date — contingent effective date — contingent termination date
	7	Applicability
241	1	7-14-2622
	2	7-14-2101
	3	60-1-201
	4	Codification instruction
242	1	2-15-2302
	2	Notification to tribal governments
	3	Saving clause
	4	Effective date
243	1	75-10-213
	2	Effective date
244	1	82-11-201
	2	Effective date
245	1	75-5-901
	2	75-5-902
	3	75-5-903
	4	75-5-904
	5	75-5-905
	6	75-7-411
	7	Codification instruction
	8	Effective date
246	1	7-14-4403
247	1	2-15-1733
248	1	7-7-4402
	2	7-7-4424
	3	Effective date
249	1	40-1-311
250	1	5-2-202
	2	5-11-402
	3	Effective date
251	1	85-2-102
	2	85-2-307
	3	85-2-308
	4	85-2-309
	5	85-2-310
	6	85-2-401
	7	85-2-804
	8	Effective date
	9	Applicability
252	1	13-37-226
	2	13-37-228
253	1	87-1-102
	2	87-2-106
	3	Effective date
254	1	28-2-2104
255	1	10-3-101
	2	10-3-103
	3	10-3-111
	4	10-3-302
	5	10-3-303
	6	10-3-110
	7	Codification instruction
256	1	61-8-347
	2	61-8-348
	3	61-8-349
	4	61-8-350
	5	61-8-713
	6	61-8-813
257	1	37-68-101
	2	37-68-102
	3	37-68-103
	4	37-68-201
	5	37-68-301
	6	37-68-302
	7	37-68-303
	8	37-68-304
	9	37-68-305
	10	37-68-311
	11	37-68-315
	12	37-68-322
	13	Repealer
258	1	76-3-411
	2	Codification instruction
259	1	16-1-401
	2	Effective date
	3	Applicability
260	1	15-70-320
	2	15-70-301
	3	Codification instruction
	4	Effective date
	5	Applicability
261	1	10-1-1009
	2	Effective date
262	1	33-22-123
	2	Codification instruction
263	1	45-6-204
264	1	15-23-703 (Voided and replaced by sec. 4, Ch. 476)
	2	17-7-502
	3	Repealer
	4	Notification to tribal governments
	5	Effective date
	6	Applicability
265	1	7-7-4402
	2	Effective date
266	1	75-10-743
	2	75-10-745
267	1	75-5-103
	2	75-5-313
	3	Codification instruction
268	1	46-14-311
	2	46-18-111
	3	Effective date
	4	Applicability
269	1	81-4-603
270	1	2-4-305
	2	Effective date
271	1	33-1-601
	2	33-2-116
	3	33-2-301
	4	33-2-305
	5	33-2-306
	6	33-4-502
	7	33-4-503
	8	33-4-504
	9	33-17-211
	10	33-17-212
	11	33-17-214
	12	33-17-231
	13	33-17-301
	14	33-17-1001
	15	33-17-1002
	16	33-17-1103
	17	33-17-1204
	18	33-19-105
	19	33-20-606
	20	33-20-1303
	21	33-20-1307
	22	33-21-113
	23	33-22-101
	24	33-22-137
	25	33-22-142
	26	33-22-232
	27	33-22-302
	28	33-22-530
	29	33-22-602
	30	33-22-1809
	31	33-28-104
	32	33-30-102
	33	33-31-102
	34	33-31-111
	35	33-31-311
	36	Codification instruction
	37	Effective date
	38	Applicability
272	1	33-1-1301
	2	33-1-1302
	3	33-1-1304
	4	33-1-1303
	5	33-20-1308
	6	33-20-1314
	7	33-20-1318
	8	Codification instruction
	9	Severability
	10	Effective dates
273	1	60-2-133
274	1	13-37-226
275	1	87-1-217
	2	87-5-131
	3	Effective date
276	1	82-2-701
	2	82-2-702
	3	Codification instruction
	4	Effective date
277	1	18-2-413
	2	18-2-414
	3	18-2-415
	4	18-2-416
	5	18-2-417
	6	15-6-157
	7	15-6-158
	8	15-6-159
	9	15-24-3111
	10	15-70-522
	11	18-2-401
	12	18-2-402

	13	18-2-403
	14	18-2-407
	15	18-2-411
	16	18-2-412
	17	69-3-2005
	18	Codification instruction
	19	Saving clause
	20	Effective date
278	1	13-21-104
	2	13-21-201
	3	13-21-207
	4	13-21-210
	5	Report by secretary of state
	6	Effective date
279	1	76-4-134
	2	Codification instruction
	3	Effective date
280	1	85-20-1601
	2	Codification instruction
	3	Effective date
281	1	53-20-221
	2	53-20-222
	3	Codification instruction
	4	Effective date
282	1	19-20-101
	2	19-20-302
	3	19-20-305
	4	19-20-401
	5	19-20-409
	6	19-20-603
	7	19-20-605
	8	19-20-701
	9	19-20-702
	10	19-20-703
	11	19-20-718
	12	19-20-731 (Voided by sec. 8, Ch. 298)
	13	19-20-804
	14	19-20-905
	15	19-20-1001
	16	19-20-1003
	17	19-20-1004
	18	20-15-106
	19	20-15-403
	20	Repealer
	21	Codification instruction
	22	Effective date
	23	Retroactive applicability
283	1	19-2-303
	2	19-2-506
	3	19-2-704
	4	19-2-710
	5	19-2-715
	6	19-2-801
	7	19-2-908
	8	19-3-201
	9	19-3-316
	10	19-3-403
	11	19-3-504
	12	19-3-513
	13	19-3-906
	14	19-3-1015
	15	19-3-1106
	16	19-3-1210
	17	19-3-2111
	18	19-3-2133
	19	19-5-601
	20	19-5-612
	21	19-5-801
	22	19-5-802
	23	19-6-612
	24	19-7-404
	25	19-7-612
	26	19-8-712
	27	19-9-904
	28	19-9-1101
	29	19-13-104
	30	19-13-704
	31	19-13-803
	32	19-13-804
	33	19-17-107
	34	19-17-401
	35	19-17-408
	36	19-17-504
	37	Effective date
284	1	5-2-304
	2	19-2-303
	3	19-2-602
	4	19-2-902
	5	19-2-907
	6	19-2-1001
	7	19-2-1002
	8	19-2-1005
	9	19-2-1011
	10	19-2-1013
	11	19-3-315
	12	19-3-412
	13	19-3-1501
	14	19-3-2123
	15	19-3-2126
	16	19-5-701
	17	19-7-1001
	18	19-8-801
	19	19-9-301
	20	19-9-1206
	21	19-9-1208
	22	19-13-210
	23	19-13-301
	24	19-2-1014
	25	Codification instruction
	26	Effective date
	27	Retroactive applicability
285	1	5-5-231
	2	5-5-202
	3	85-2-105
	4	Codification instruction
	5	Effective date
286	1	7-11-1001
	2	7-11-1002
	3	7-11-1003
	4	7-11-1006
	5	7-11-1007
	6	7-11-1008
	7	7-11-1011
	8	7-11-1012
	9	7-11-1013
	10	7-11-1014
	11	7-11-1015
	12	7-11-1021
	13	7-11-1022
	14	7-11-1023
	15	7-11-1024
	16	7-11-1025
	17	7-11-1026
	18	7-11-1027
	19	7-11-1028
	20	7-11-1029
	21	22-1-712
	22	7-1-201
	23	7-1-202
	24	7-6-2527
	25	7-7-2101
	26	7-11-1102
	27	7-11-1112
	28	7-13-2511
	29	7-13-2512
	30	7-14-2138
	31	7-16-2105
	32	7-16-2109
	33	7-21-3411
	34	7-22-2512
	35	15-6-201
	36	20-15-403
	37	53-30-503
	38	70-30-102
	39	Repealer
	40	Codification instruction
	41	Codification instruction
	42	Saving clause
	43	Transition
	44	Effective date
287	1	7-12-2172
	2	7-12-4204
	3	Effective date
288	1	15-38-202
	2	Effective date
289	1	76-13-801 (Amended by sec. 3, Ch. 289)
	2	76-13-802 (Voided and replaced by sec. 4, Ch. 289)
	3	Coordination instruction
	4	Coordination instruction
	5	Codification instruction
	6	Effective date
	7	Termination
290	1	81-3-203
	2	81-3-211
	3	Effective date
291	1	7-3-4465
	2	7-4-2101
	3	7-4-2102
	4	7-4-2104
	5	7-4-2105
	6	7-4-2108
	7	7-4-2111
	8	7-4-2312
	9	7-4-2503
	10	7-4-2504
	11	7-4-2525
	12	7-4-2715
	13	7-5-2129
	14	7-6-201
	15	7-6-4413

	16	7-8-2215
	17	7-14-2712
	18	7-21-2116
	19	7-21-2303
	20	7-21-2305
	21	7-21-2306
	22	7-21-2308
	23	7-21-2404
	24	7-21-2407
	25	7-21-2408
	26	7-21-2409
	27	7-21-2410
	28	7-21-2503
	29	7-21-2507
	30	7-21-3101
	31	7-21-3105
	32	7-21-3107
	33	7-21-3212
	34	7-33-2314
	35	81-4-505
	36	81-4-509
	37	Repealer
292	1	13-10-201
	2	13-10-208
	3	13-10-325
	4	13-10-326
	5	13-10-405
	6	13-10-503
	7	13-10-601
	8	13-12-201
	9	13-14-112
	10	13-14-113
	11	13-25-203
	12	13-25-205
	13	13-26-103
	14	13-35-107
	15	13-37-126
293	1	37-7-101
	2	37-7-306
	3	37-7-201
	4	Codification
294	1	87-3-130
	2	Effective date
295	1	15-6-219
	2	Applicability
296	1	75-10-1501
	2	75-10-1502
	3	75-10-1503
	4	75-10-1504
	5	75-10-1505
	6	75-10-1506
	7	75-10-1507
	8	75-10-1508
	9	75-10-1509
	10	Notification to tribal governments
	11	Codification instruction
	12	Effective date
297	1	13-1-101
	2	13-1-108
	3	13-1-113
	4	13-1-115
	5	13-2-110
	6	13-2-116
	7	13-2-220
	8	13-2-222
	9	13-2-301
	10	13-2-304
	11	13-2-402
	12	13-3-205
	13	13-3-206
	14	13-4-102
	15	13-4-106
	16	13-4-202
	17	13-4-203
	18	13-10-211
	19	13-13-204
	20	13-13-205
	21	13-13-212
	22	13-13-213
	23	13-13-214
	24	13-13-222
	25	13-13-241
	26	13-13-301
	27	13-15-107
	28	13-17-103
	29	13-17-203
	30	13-17-212
	31	13-19-102
	32	13-19-105
	33	13-19-106
	34	13-19-204
	35	13-19-205
	36	13-19-206
	37	13-19-207
	38	13-19-301
	39	13-19-303
	40	13-19-304
	41	13-19-305
	42	13-19-306
	43	13-19-307
	44	13-19-308
	45	13-19-310
	46	13-19-311
	47	13-19-312
	48	13-19-313
	49	13-19-314
	50	13-21-203
	51	13-21-210
	52	13-27-311
	53	13-37-226
	54	20-20-107
	55	20-20-109
	56	20-20-203
	57	20-20-418
	58	Codification instruction
	59	Coordination instruction
298	1	19-20-733 (Replaced by sec. 7, Ch. 298)
	2	19-20-501
	3	19-20-605
	4	19-20-703
	5	19-20-731 (Voided and replaced by sec. 9, Ch. 298)
	6	Codification instruction
	7	Coordination instruction
	8	Coordination instruction
	9	Coordination instruction
	10	Effective date
299	1	37-7-1403
	2	37-7-1404
	3	37-7-1405
	4	37-7-101
	5	37-7-1401
	6	37-7-1402
	7	37-7-1408
	8	Codification instruction
300	1	50-60-102
	2	50-60-106
	3	50-60-301
	4	50-60-802
301	1	87-5-102
	2	Effective date
302	1	28-2-2201
	2	28-2-2202
	3	Codification instruction
303	1	2-4-305
	2	2-4-306
	3	2-4-311
	4	2-4-313
304	1	87-1-270
	2	87-2-805
	3	Effective date
305	1	20-6-105
	2	Effective date
306	1	87-1-247
	2	87-1-250
	3	87-1-251
	4	Codification instruction
	5	Effective date
307	1	70-1-522
	2	70-1-521
	3	70-17-203
	4	70-17-204
	5	70-17-206
	6	70-20-306
	7	70-23-308
	8	70-23-506
	9	70-23-601
	10	Codification instruction
308	1	61-4-201
	2	61-4-202
	3	61-4-204
	4	61-4-205
	5	61-4-207
	6	61-4-208
	7	61-4-210
	8	61-4-212
	9	Codification instruction
	10	Severability
	11	Effective date
309	1	33-2-705
	2	90-1-112
	3	Repealer
	4	Effective date
310	1	50-5-117
	2	50-5-207
	3	Repealer
	4	Effective date
311	1	82-11-207
	2	Effective date
312	1	39-71-118
	2	53-1-202
	3	53-30-131
	4	53-30-132

	5	53-30-133
	6	61-3-478
	7	Repealer
	8	Retroactive applicability
313	1	33-2-301
	2	33-2-305
	3	33-2-306
	4	33-17-102
	5	33-17-212
	6	33-17-214
	7	33-17-1001
	8	33-17-1203
	9	Effective date
	10	Applicability
314	1	70-22-115
	2	Codification instruction
315	1	37-4-341
	2	Codification instruction
316	1	30-22-101
	2	30-22-102
	3	30-22-103
	4	Codification instruction
317	1	37-53-102
	2	37-53-104
	3	37-53-202
	4	37-53-203
	5	37-53-204
	6	37-53-205
	7	37-53-301
	8	37-53-302
	9	37-53-303
	10	37-53-304
	11	37-53-307
	12	37-53-308
	13	Repealer
318	1	15-35-102
	2	15-35-103
	3	Notification to tribal governments
	4	Effective date
	5	Applicability
319	1	1-5-401
	2	1-5-402
	3	1-5-416
	4	1-5-419
	5	1-5-610
	6	Effective date
320	1	52-3-503
	2	52-3-410
	3	Reporting requirement
	4	Codification instruction
321	1	32-9-101
	2	32-9-102
	3	32-9-103
	4	32-9-104
	5	32-9-129
	6	32-9-105
	7	32-9-106
	8	32-9-107
	9	32-9-109
	10	32-9-110
	11	32-9-112
	12	32-9-113
	13	32-9-116
	14	32-9-114
	15	32-9-117
	16	32-9-127
	17	32-9-120
	18	32-9-118
	19	32-9-121
	20	32-9-122
	21	32-9-128
	22	32-9-123
	23	32-9-145
	24	32-9-148
	25	32-9-124
	26	32-9-125
	27	32-9-126
	28	32-9-150
	29	32-9-151
	30	32-9-155
	31	32-9-130
	32	32-9-133
	33	32-9-160
	34	Repealer
	35	Codification instruction
	36	Severability
	37	Contingent suspension
	38	Effective date
322	1	15-70-204
	2	Effective date
323	1	15-17-121
	2	15-17-212
324	1	32-1-430
	2	32-3-604
	3	32-10-401
325	1	53-2-1215
	2	53-2-1216
	3	53-2-1217
	4	53-2-1218
	5	53-2-1219
	6	53-2-1220
	7	Codification instruction
	8	Contingent voidness
326	1	37-3-203
	2	37-3-208
	3	37-3-401
	4	Effective date
327	1	40-2-106
	2	46-19-102
328	1	72-30-102
	2	72-30-207
	3	72-30-208
	4	72-30-209
	5	72-30-210
	6	Effective date
329	1	82-11-111
	2	82-11-110
	3	Codification instruction
330	1	17-7-502
	2	87-1-201
	3	87-1-621 (Temporary — terminates June 30, 2013)
	4	87-1-621 (Effective July 1, 2013)
	5	87-1-601
	6	Codification instruction
	7	Effective dates
	8	Termination
331	1	27-1-751
	2	27-1-752
	3	27-1-753
	4	27-1-754
	5	Codification instruction
	6	Severability
	7	Two-thirds vote required
	8	Effective date
	9	Applicability
332	1	45-3-110
	2	45-3-111
	3	45-3-112
	4	45-3-103
	5	46-5-313
	6	70-24-110
	7	45-8-321
	8	46-6-502
	9	46-16-131
	10	Codification instruction
	11	Effective date
333	1	1-1-229
	2	Codification instruction
334	1	15-32-102
	2	15-32-201
	3	Effective date
	4	Retroactive applicability
335	1	46-17-302
	2	61-7-118
	3	Effective date
336	1	50-4-805
	2	Notification to tribal governments
	3	Effective date
337	1	61-3-414
	2	61-3-455
	3	61-3-458
	4	No appropriation
	5	Codification instruction
	6	Effective date
338	1	30-14-2101
	2	30-14-2102
	3	30-14-2103
	4	30-14-2104
	5	Codification instruction
339	1	27-5-116
	2	27-5-211
	3	27-5-312
	4	Codification instruction
340	1	61-10-141
	2	61-10-144
341	1	17-5-1302
	2	17-5-1312
	3	17-5-2201
	4	Effective date
342	1	7-12-2103
	2	7-12-2105

	3	7-12-2109
	4	7-12-2112
	5	7-13-2256
	6	7-13-2301
	7	7-13-2302
	8	17-5-305
	9	17-5-803
	10	69-7-112
	11	75-5-1113
	12	Effective date
343	1	15-6-138
	2	15-6-202
	3	15-24-301
	4	Effective date
	5	Applicability
344	1	15-1-409
	2	15-1-402
	3	Codification instruction
	4	Applicability
345	1	87-2-526
	2	Codification instruction
	3	Effective date
	4	Termination
346	1	27-18-101
	2	27-18-202
	3	27-18-203
	4	27-18-204
	5	27-18-1502
	6	Effective date
347	1	13-37-402
	2	13-37-403
	3	Effective date
	4	Retroactive applicability
348	1	45-1-205
	2	61-5-405
349	1	7-12-2153
	2	7-12-2182
	3	7-12-2185
	4	7-12-2186
	5	7-12-4169
	6	7-12-4222
	7	7-12-4225
	8	7-12-4227
	9	Effective date
350	1	7-15-4293 (Amended by sec. 2, Ch. 350)
	2	Coordination instruction
	3	Effective date
	4	Retroactive applicability
351	1	7-10-101
	2	7-10-102
	3	7-10-103
	4	7-10-104
	5	7-10-105
	6	7-10-106
	7	7-10-110
	8	7-10-115
	9	7-10-201
	10	7-10-202
	11	7-10-205
	12	7-10-206
	13	7-10-207
	14	7-10-208
	15	7-10-209
	16	7-10-215
	17	7-10-216
	18	7-10-217
	19	7-10-218
	20	7-10-219
	21	7-10-220
	22	7-10-221
	23	7-10-222
	24	2-7-501
	25	7-6-4020
	26	7-6-4035
	27	15-10-420
	28	Notification to tribal governments
	29	Codification instruction
	30	Saving clause
	31	Effective date
352	1	87-2-803
	2	Effective date
353	1	61-1-101
354	1	50-6-302
	2	50-6-322
	3	Codification instruction
	4	Effective date
355	1	23-5-112
	2	23-5-115
	3	23-5-157
	4	23-5-324
	5	23-5-412
	6	23-5-413
	7	23-5-621
	8	23-5-178
	9	Codification instruction
	10	Effective date
	11	Applicability
356	1	40-4-212
	2	40-4-216
	3	40-4-219
	4	40-4-228
	5	40-4-234
357	1	15-6-137
	2	15-6-141
	3	15-6-156
	4	15-6-157
	5	75-20-104
	6	Applicability
358	1	7-6-1602
	2	7-6-1603
	3	Effective date
359	1	33-22-515
	2	33-1-102
	3	33-22-706
	4	33-31-111
	5	33-35-306
	6	Codification instruction
	7	Saving clause
	8	Effective date
	9	Applicability
360	1	46-6-310
	2	46-9-401
	3	61-5-214
	4	61-5-218
	5	Effective date
361	1	81-1-101
	2	81-23-101
	3	81-23-103
	4	81-23-104
	5	81-23-201
	6	81-23-202
	7	81-23-203
	8	81-23-204
	9	81-23-302
	10	81-23-303
	11	81-23-401
	12	81-23-402
	13	81-23-404
	14	81-23-405
	15	81-23-406
	16	81-23-407
	17	Repealer
	18	Codification instruction
	19	Effective date
	20	Termination
362	1	50-16-1014
	2	50-16-1015
	3	50-16-1016
	4	50-16-702
	5	50-16-1003
	6	50-16-1008
	7	50-16-1009
	8	50-16-1013
	9	Repealer
	10	Codification instruction
363	1	61-12-901
	2	Codification instruction
364	1	15-35-104
	2	15-36-313
	3	15-39-105
	4	15-72-112
	5	16-11-105
	6	16-11-149
	7	72-3-1006
	8	Retroactive applicability
365	1	50-16-103
	2	50-16-104
	3	Codification instruction
	4	Effective dates
366	1	75-1-208
	2	Repealer
	3	Effective date
367	1	71-3-1601
	2	71-3-1602
	3	71-3-1603
	4	71-3-1604
	5	71-3-1605
	6	71-3-1606
	7	71-3-1607
	8	71-3-124
	9	71-3-1002
	10	71-3-1011
	11	Notification to tribal governments
	12	Codification instruction
	13	Saving clause
368	1	75-10-756
	2	75-10-757
	3	Codification instruction

	4	Effective date
	5	Applicability
369	1	Time limits
	2	Appropriations
	3	Effective date
370	1	Appropriations from natural resources projects state special revenue account
	2	Conditions of grants
	3	Appropriations established
	4	Review of previously authorized grants
	5	Notification to tribal governments
	6	Coordination instruction
	7	Severability
	8	Effective date
371	1	Appropriations for reclamation and development grants
	2	Approved grants and projects
	3	Coordination of fund sources for grants program projects
	4	Conditions of grants
	5	Other appropriations
	6	Coordination instruction
	7	Effective date
372	1	Approval of renewable resource projects and authorization to provide loans
	2	Projects not completing requirements — projects reauthorized
	3	Coal severance tax bonds authorized
	4	Conditions of loans
	5	Private and discount purchase of loans
	6	Appropriations established
	7	Creation of state debt — appropriation of coal severance tax — bonding provisions
	8	Severability
	9	Effective date
373	1	41-5-215
	2	41-5-1513
	3	Effective date
	4	Retroactive applicability
374	1	53-9-113
	2	17-7-502
	3	46-18-236
	4	46-18-241
	5	46-18-250
	6	46-18-251
	7	53-1-107
	8	53-9-104
	9	53-9-132
	10	53-9-133
	11	53-30-132
	12	Codification instruction
	13	Effective date
	14	Termination
375	1	2-17-101
376	1	17-5-820
	2	Appropriation of bond proceeds
	3	Effective date
377	1	90-6-801
	2	90-6-802
	3	90-6-803
	4	90-6-809
	5	90-6-810
	6	90-6-811
	7	90-6-812
	8	90-6-818
	9	90-6-819
	10	Department to award grants for 2011 biennium — appropriation — report to legislature
	11	17-6-340
	12	20-9-342
	13	20-9-343
	14	20-9-516
	15	20-9-534
	16	20-9-620
	17	20-9-622
	18	77-4-208
	19	Codification instruction
	20	Severability
	21	Effective date
	22	Applicability (Amended by sec. 32, Ch. 486)
378	1	23-3-301
	2	23-3-402
	3	23-3-404
	4	23-3-405
	5	23-3-501
	6	23-3-502
	7	23-3-601
	8	23-3-602
	9	23-3-603
	10	Effective date
379	1	20-26-1511
	2	Appropriation
	3	Codification instruction
	4	Effective date
380	1	Appropriation
	2	Effective date
381	1	7-6-1501
	2	Saving clause
382	1	15-30-111
	2	19-2-1004
	3	19-17-407
	4	19-18-612
	5	19-19-504
	6	19-20-706
	7	19-21-212
	8	Effective date
	9	Retroactive applicability
383	1	90-3-1301
	2	90-3-1302
	3	Codification instruction
	4	Effective date
384	1	80-7-105 (Voided and replaced by sec. 2, Ch. 393)
	2	80-7-106
	3	80-7-108
	4	80-7-109
	5	80-7-110
	6	80-7-122
	7	80-7-133
	8	80-7-135
	9	Coordination instruction
	10	Effective date
385	1	37-3-801
	2	37-3-802
	3	37-3-803
	4	37-3-804
	5	37-3-805
	6	37-3-806
	7	37-3-807
	8	No appropriation
	9	Codification instruction
	10	Effective date
386	1	80-11-901
	2	Fund transfer
	3	Appropriation
	4	Codification instruction
	5	Coordination instruction
	6	Effective date
387	1	Creation of online motor vehicle liability insurance verification system (Voided by sec. 28, Ch. 413)
	2	Law enforcement use of verification system (Voided by sec. 28, Ch. 413)
	3	Online motor vehicle liability insurance verification operating account (Voided by sec. 28, Ch. 413)
	4	33-19-306 (Voided by sec. 28, Ch. 413)

	5	61-3-321 (Voided by sec. 28, Ch. 413)
	6	61-6-101 (Voided by sec. 28, Ch. 413)
	7	61-6-102 (Voided by sec. 28, Ch. 413)
	8	61-6-103 (Voided by sec. 28, Ch. 413)
	9	61-6-105 (Voided by sec. 28, Ch. 413)
	10	61-6-302 (Voided by sec. 28, Ch. 413)
	11	Repealer (Voided by sec. 28, Ch. 413)
	12	Codification instruction (Voided by sec. 28, Ch. 413)
	13	Effective date (Voided by sec. 28, Ch. 413)
388	1	53-21-604
	2	7-32-2144
	3	53-21-132
	4	53-21-605
	5	Report to legislature
	6	Appropriation
	7	Codification instruction
	8	Effective date
	9	Termination
389	1	15-31-163
	2	15-30-111
	3	Codification instruction
	4	Effective date
	5	Retroactive applicability
390	1	81-10-101
	2	81-10-102
	3	81-10-103
	4	81-10-104
	5	17-7-502
	6	Codification instruction
391	1	16-2-101
392	1	5-4-204
	2	5-4-205
	3	Effective date
393	1	80-7-106
	2	Coordination instruction (Amends 80-7-105)
	3	Effective date
394	1	7-15-4282
	2	7-15-4283
	3	7-15-4284
	4	7-15-4286
	5	7-15-4288
	6	7-15-4290
	7	7-15-4292
	8	7-15-4293
	9	7-15-4294
	10	7-15-4295
	11	7-15-4296
	12	7-15-4299
	13	7-15-4301
	14	7-15-4302
	15	7-15-4304
	16	7-15-4324
	17	17-5-820
	18	Effective date
395	1	80-10-110
	2	7-1-111
	3	75-10-701
	4	80-10-101
	5	80-10-102
	6	80-10-103
	7	80-10-201
	8	80-10-202
	9	80-10-204
	10	80-10-205
	11	80-10-206
	12	80-10-207
	13	80-10-208
	14	80-10-209
	15	80-10-303
	16	80-15-302
	17	Codification instruction
	18	Effective date
396	1	75-11-302
	2	75-11-307
	3	75-11-309
	4	75-11-314
	5	Applicability
397	1	76-13-145
	2	Appropriation
	3	Codification instruction
	4	Effective date
398	1	33-17-1203
	2	Effective date
399	1	22-3-1201
	2	22-3-1202
	3	22-3-1203
	4	Codification instruction
400	1	45-6-328
	2	45-6-329
	3	45-2-311
	4	45-6-301
	5	45-6-327
	6	Codification instruction
	7	Effective date
	8	Applicability
401	1	15-30-101
	2	15-30-1102
	3	15-30-1113
	4	Effective date
	5	Retroactive applicability
402	1	90-7-102
	2	90-7-104
	3	90-7-116
	4	90-7-225
	5	Codification instruction
	6	Effective date
403	1	37-37-101
	2	37-37-102
	3	37-37-201
	4	37-37-202
	5	37-37-301
	6	37-22-201
	7	Codification instruction
	8	Effective date
404	1	85-1-203
	2	Notification to tribal governments
405	1	76-3-510
	2	76-3-604
	3	76-4-125
	4	Effective date
406	1	76-3-608
407	1	7-22-2123
	2	7-22-2124
	3	Repealer
	4	Effective date
408	1	87-4-502
	2	Effective date
409	1	75-11-601
	2	75-11-602
	3	75-11-603
	4	75-11-604
	5	75-11-605
	6	Codification instruction
	7	Nonseverability
	8	Effective date
	9	Applicability
410	1	60-2-606
	2	Codification instruction
	3	Effective date
	4	Termination
411	1	15-18-212
	2	15-18-213
	3	15-18-216
412	1	2-9-212
	2	2-18-703
	3	15-10-420
	4	Transition
	5	Saving clause
	6	Effective date
413	1	61-6-157
	2	61-6-309
	3	61-6-158
	4	61-3-338
	5	53-30-134
	6	33-19-306
	7	61-3-301
	8	61-3-303
	9	61-3-312
	10	61-3-315
	11	61-3-321
	12	61-3-332
	13	61-3-333
	14	61-3-407
	15	61-3-465
	16	61-3-478
	17	61-3-480
	18	61-3-535
	19	61-3-562
	20	61-6-101
	21	61-6-102
	22	61-6-103
	23	61-6-105

	24	61-6-302
	25	61-9-204
	26	Repealer
	27	Codification instruction
	28	Coordination instruction
	29	Effective dates
414	1	16-4-313
	2	16-1-106
	3	Codification instruction
	4	Effective date
415	1	Pilot project for implementing national public health standards
	2	Allocation of available funds
	3	Notification to tribal governments
	4	Effective date
416	1	81-9-240
	2	81-9-241
	3	75-1-201
	4	75-2-104
	5	75-5-614
	6	75-5-621
	7	75-5-641
	8	81-9-111
	9	81-9-112
	10	81-9-115
	11	81-9-116
	12	81-9-201
	13	81-9-229
	14	81-9-230
	15	Codification instruction
417	1	20-7-1201
	2	Report to legislature
	3	Codification instruction
	4	Coordination instruction
	5	Effective date
418	1	20-7-334
	2	Codification instruction
419	1	Interim study of taxation of oil and natural gas property
	2	Appropriation
	3	Effective date
420	1	Interim committee to examine and recommend changes to statewide retirement systems
	2	Appropriation
	3	Effective date
421	1	15-24-2101
	2	15-24-2102
	3	15-24-2103
	4	15-6-134
	5	15-6-138
	6	Codification instruction
	7	Effective date
	8	Retroactive applicability
422	1	3-5-102
	2	Election of judges
	3	Contingent voidness
	4	Effective date
423	1	80-10-103
	2	80-10-104
	3	Effective date
424	1	85-2-402
425	1	15-35-108
	2	Effective date — coordination
	3	Applicability — coordination
	4	Termination — coordination
426	1	17-7-304
	2	17-7-502
	3	19-21-203
	4	23-4-105
	5	23-4-202
	6	23-4-204
	7	23-4-302
	8	23-4-304
	9	44-1-504
	10	53-6-703
	11	75-10-622
	12	80-5-510
	13	87-1-513
	14	Effective date
427	1	17-7-502
	2	23-1-126
	3	23-1-127
	4	87-1-209
	5	87-1-230
	6	Codification instruction
	7	Effective date
	8	Termination
428	1	61-8-370
429	1	80-7-1001
	2	80-7-1002
	3	80-7-1003
	4	80-7-1004
	5	80-7-1005
	6	80-7-1006
	7	80-7-1007
	8	80-7-1008
	9	80-7-1009
	10	80-7-1010
	11	80-7-1011
	12	80-7-1012
	13	80-7-1013
	14	80-7-1014
	15	10-3-312
	16	87-1-506
	17	87-5-721
	18	Codification instruction
	19	Severability
	20	Effective date
430	1	52-2-310
	2	52-2-311
	3	52-2-302
	4	Codification instruction
431	1	87-3-235
	2	87-3-235 (Effective March 1, 2012)
	3	Repealer (Effective March 1, 2012)
	4	Effective date
432	1	77-3-411
	2	Notification to tribal governments
	3	Codification instruction
433	1	15-23-701
	2	15-23-703
	3	15-35-102
	4	15-35-107
	5	Effective date
	6	Applicability
	7	Termination
434	1	Time limits
	2	Appropriations — authorization to expend money
	3	Effective date
435	1	Definitions
	2	Appropriations and authorizations
	3	Information technology appropriations
	4	Fund transfers
	5	Bond authorization
	6	Employment security revenue bond debt service account — deposit of bond proceeds
	7	State pledge of employment security assessments — use of employment security account
	8	Continued assessment and collection — deposit in employment security account
	9	Form — principal and interest — fiscal agent — bonds authorized
	10	Trust indenture
	11	Provisions for protecting bondholders
	12	Pledge of the state
	13	39-51-409
	14	Two-thirds vote required
	15	Contingent voidness —

		reduction of appropriation
	16	Severability
	17	Effective date
436	1	85-2-525
	2	2-15-1523
	3	Appropriation
	4	Contingent voidness
	5	Codification instruction
	6	Effective date
437	1	61-2-501
	2	61-2-502
	3	61-2-503
	4	61-2-504
	5	61-2-505
	6	61-2-506
	7	61-2-507
	8	Coordination instruction
	9	Codification instruction
	10	Notification to tribal governments
	11	Effective date
	12	Termination
438	1	17-5-205
	2	Effective date
439	1	18-2-317
	2	18-2-101
	3	18-4-132
	4	90-4-1101
	5	90-4-1102
	6	90-4-1103
	7	90-4-1104
	8	90-4-1105
	9	90-4-1106
	10	90-4-1107
	11	90-4-1108
	12	90-4-1109
	13	Codification instruction
	14	Effective date
440	1	85-20-1004
	2	General fund transfer (Voided by sec. 76, Ch. 489)
	3	Appropriation
	4	Notification to tribal governments
	5	Effective date
441	1	17-7-502
	2	76-13-150
	3	Authorization to pay unpaid fire costs from appropriation for fire prevention and suppression
	4	Repealer
	5	Effective date
442	1	17-7-502
	2	90-6-304
	3	90-6-331
	4	Effective date
	5	Termination
443	1	25-10-304
	2	25-10-305
	3	25-10-302
	4	37-61-215
	5	Codification instruction
	6	Saving clause
	7	Severability
	8	Applicability
444	1	20-3-322
	2	20-5-201
	3	20-5-202
445	1	75-2-213
	2	2-4-623
	3	2-4-702
	4	75-2-103
	5	75-2-211
	6	75-5-103
	7	75-5-610
	8	75-20-223
	9	Codification instruction
	10	Severability
	11	Effective date
	12	Applicability
446	1	70-23-301
	2	76-1-601
	3	76-2-101
	4	76-2-102
	5	76-2-107
	6	76-2-202
	7	76-2-203
	8	76-2-205
	9	76-2-206
	10	76-2-210
	11	76-2-304
	12	76-3-207
	13	76-3-504
	14	76-3-506
	15	76-3-507
	16	76-3-510
	17	76-3-608
	18	76-3-609
	19	76-3-610
	20	76-3-620
	21	76-3-621
	22	76-3-625
	23	Repealer
	24	Effective date
	25	Applicability
447	1	61-8-203
	2	61-8-206
	3	Effective date
448	1	61-5-208
	2	61-8-442
	3	61-8-733
	4	Applicability
449	1	75-6-131
	2	75-6-103
	3	Codification instruction
	4	Applicability
450	1	39-71-401
	2	Effective date
451	1	37-33-401
	2	37-33-402
	3	37-33-403
	4	37-33-404
	5	37-33-405
	6	37-33-501
	7	37-33-502
	8	37-33-503
	9	37-33-504
	10	2-15-1782
	11	Codification instruction
	12	Effective date
452	1	53-6-195
	2	53-6-113
	3	53-6-131
	4	Transition
	5	Codification instruction
	6	Effective date
453	1	37-17-104
	2	37-23-102
454	1	90-4-1001
	2	90-4-1003
	3	Repealer
	4	Effective date
455	1	25-31-409
	2	Repealer
456	1	50-5-101
	2	50-5-121
	3	50-5-122
	4	50-5-245
	5	50-5-246
	6	Codification instruction
	7	Coordination instruction
	8	Effective date
457	1	Appropriation of cultural and aesthetic grant funds — priority of disbursement
	2	Appropriation of cultural and aesthetic grant funds
	3	Reversion of grant money
	4	Reduction of grants on pro rata basis
	5	Effective date
458	1	Appropriations from treasure state endowment state special revenue account
	2	Approval of grants — completion of biennial appropriation
	3	Conditions of grants — disbursement of funds
	4	Other powers and duties of department
	5	Appropriations from treasure state endowment state special revenue account for emergency grants

	6	Appropriations from treasure state endowment state special revenue account for preliminary engineering grants
	7	Appropriation from treasure state endowment regional water system special revenue account
	8	Approval of funds — completion of appropriation
	9	Conditions — manner of disbursement of funds
	10	90-6-701
	11	Sec. 1, Ch. 383, L. 2007
	12	Notification to tribal governments
	13	Coordination instruction
	14	Effective dates
459	1	15-35-108
	2	Sec. 3, Ch. 481, L. 2003
	3	Sec. 6, Ch. 481, L. 2003
	4	Effective dates
	5	Termination
460	1	90-1-201
	2	90-1-202
	3	90-1-203
	4	90-1-204
	5	90-1-205
	6	Notification to tribal governments
461	1	State veterans' home in southwestern Montana
	2	Account — state veterans' home in southwestern Montana
	3	10-2-401
	4	10-2-416
	5	16-11-119
	6	53-1-402
	7	53-1-413
	8	53-1-602
	9	53-6-1201
	10	Effective dates
462	1	17-1-106
463	1	2-17-425
	2	2-17-411
	3	Codification instruction
	4	Effective date
464	1	Appropriation
	2	Effective date
465	1	17-2-107
	2	17-3-1003
	3	18-2-107
	4	20-9-341
	5	20-9-620
	6	20-25-422
	7	77-1-101
	8	77-1-108
	9	77-1-109
	10	77-1-127
	11	77-1-605
	12	77-1-613
	13	77-1-802
	14	77-1-808
	15	77-1-809
	16	77-1-810
	17	77-1-815
	18	77-1-905
	19	77-2-328
	20	77-2-362
	21	77-5-204
	22	77-5-219
	23	77-1-132
	24	77-5-224
	25	Unencumbered balances — transfer
	26	Repealer
	27	Codification instruction
	28	Codification instruction
	29	Effective date
466	1	45-6-106
	2	Codification instruction
	3	Effective date
	4	Applicability
467	1	46-8-113
	2	47-1-111
	3	Contingent voidness
	4	Effective date
468	1	80-6-106
	2	80-6-101
	3	80-6-102
	4	80-6-103
	5	80-6-104
	6	80-6-111
	7	80-6-112
	8	80-6-113
	9	80-6-114
	10	80-6-201
	11	80-6-202
	12	80-6-203
	13	80-6-303
	14	Repealer
	15	Codification instruction
469	1	75-20-104
	2	Effective date
	3	Applicability
470	1	15-30-2646
	2	15-30-112
	3	15-30-136 (Voided by sec. 9, Ch. 470)
	4	15-30-142
	5	15-30-144
	6	15-30-146
	7	15-30-149
	8	Codification instruction
	9	Coordination instruction
	10	Effective dates
	11	Applicability — retroactive applicability
471	1	50-5-245 (Voided by sec. 7, Ch. 456)
	2	Effective date (Voided by sec. 7, Ch. 456)
472	1	Findings
	2	15-24-1209
	3	26-1-624
	4	77-1-134
	5	61-8-371
	6	77-1-111
	7	77-1-126
	8	77-1-127
	9	77-1-806
	10	77-1-809
	11	77-3-442
	12	77-6-113
	13	77-6-115
	14	77-6-302
	15	77-6-303
	16	77-6-501
	17	Codification instruction
	18	Effective date
473	1	45-2-101
	2	45-6-101
	3	45-6-103
	4	45-6-104
	5	45-6-301
	6	45-6-309
	7	45-6-311
	8	45-6-312
	9	45-6-313
	10	45-6-316
	11	45-6-317
	12	45-6-325
	13	45-6-332
	14	45-6-341
	15	45-7-210
474	1	82-11-180
	2	82-11-181
	3	82-11-182
	4	82-11-183
	5	82-11-184
	6	82-11-185
	7	70-30-105
	8	75-5-103
	9	75-5-401
	10	77-3-430
	11	82-10-402
	12	82-11-101
	13	82-11-104
	14	82-11-111
	15	82-11-118
	16	82-11-122
	17	82-11-123
	18	82-11-127
	19	82-11-136
	20	82-11-137
	21	82-11-161
	22	82-11-163
	23	82-11-201

	24	82-11-204
	25	82-11-205
	26	82-11-214
	27	Notification to tribal governments
	28	Codification instruction
	29	Saving clause
	30	Transition — contingent implementation
	31	Effective dates — contingency
475	1	77-1-1101
	2	77-1-1102
	3	77-1-1103
	4	77-1-1104
	5	77-1-1105
	6	77-1-1106
	7	77-1-1107
	8	77-1-1108
	9	77-2-101
	10	Codification instruction
	11	Severability
	12	Contingent voidness
476	1	15-23-715
	2	15-23-703 (Voided and replaced by sec. 4, Ch. 476)
	3	Codification instruction
	4	Coordination instruction
	5	Applicability
477	1	82-4-438
	2	15-38-104
	3	15-38-106
	4	15-38-113
	5	82-4-405
	6	82-4-424
	7	82-4-432
	8	82-4-439
	9	82-4-437
	10	Codification instruction
	11	Effective date
	12	Applicability — retroactive applicability
478	1	Definitions
	2	Capital project appropriations and authorizations
	3	Fund transfers
	4	Capital improvements
	5	Land acquisition appropriations
	6	Montana stimulus capital improvements
	7	Transfer of appropriations — definition
	8	Reappropriation of remaining balance to Montana tech
	9	Planning and design
	10	Capital projects — contingent funds
	11	Review by department of environmental quality
	12	Legislative consent
	13	17-7-111
	14	17-7-123
	15	90-4-602
	16	90-4-615
	17	90-4-616
	18	90-4-617
	19	90-4-618
	20	Sec. 2, Ch. 560, L. 2005
	21	Codification instruction
	22	Severability
	23	Effective date
	24	Retroactive applicability
479	1	53-21-1203
	2	Implementation — report
	3	Codification instruction — instructions to code commissioner
	4	Coordination instruction
	5	Effective dates
480	1	53-21-1204
	2	Implementation — report
	3	Codification instruction
	4	Coordination instruction
	5	Effective dates
481	1	53-21-102
	2	53-21-122
	3	53-21-123
	4	53-21-162
	5	53-21-1205
	6	53-21-1206
	7	53-21-1001
	8	Report
	9	Codification instruction
	10	Effective date
482	1	50-50-103
	2	50-50-205
	3	50-51-204
	4	50-52-202
	5	50-57-205
	6	Effective date
483	1	7-15-4285
	2	15-6-134
	3	15-6-143
	4	15-6-193
	5	15-6-222
	6	15-7-102
	7	15-7-111
	8	15-7-201
	9	15-10-420
	10	15-16-101
	11	15-44-103
	12	Extension of 2009 deadlines relating to property taxation
	13	Application deadline extensions
	14	Revenue and transportation interim committee review of property tax assistance
	15	Appropriation — contingency
	16	Coordination instruction
	17	Saving clause
	18	Effective date
	19	Retroactive applicability
484	1	90-1-501
	2	90-1-502
	3	90-1-503
	4	90-1-504
	5	17-7-502
	6	Codification instruction
	7	Coordination instruction
	8	Coordination instruction
	9	Effective date
485	1	77-1-218
	2	77-1-219
	3	77-1-220
	4	17-5-803
	5	17-7-502
	6	87-1-209
	7	87-1-218
	8	87-1-603
	9	Authorization of bonds
	10	Appropriation of bond proceeds
	11	Codification instruction
	12	Severability
	13	Coordination instruction
	14	Two-thirds vote required
	15	Effective date
486	1	2-15-3004
	2	7-14-112
	3	10-2-112
	4	10-2-603
	5	10-3-801
	6	15-1-122
	7	15-35-108
	8	15-38-301
	9	16-11-119
	10	17-6-606
	11	17-7-102
	12	17-7-111

	13	17-7-304
	14	20-9-306
	15	33-2-708
	16	47-1-201
	17	53-4-212
	18	53-4-1005
	19	53-4-1007
	20	53-4-1012
	21	53-6-1201
	22	75-10-704
	23	80-6-1109
	24	85-2-280
	25	61-2-109
	26	Legislative intent
	27	Emergency medical service grant program reports
	28	Fund transfers
	29	Vehicle insurance verification system — vendor requirement
	30	Repealer
	31	Codification instruction
	32	Coordination instruction
	33	Effective date
	34	Applicability
	35	Termination
487	1	15-6-138
	2	15-6-141
	3	15-23-101
	4	15-23-301
	5	Effective date
	6	Retroactive applicability
488	1	Short title
	2	First level expenditures
	3	Severability
	4	Appropriation control
	5	Program definition
	6	Personal services funding — 2013 biennium
	7	Totals not appropriations
	8	Effective date
	9	Appropriations
	10	Rates
489	1	2-4-306
	2	7-7-2255
	3	7-7-2501
	4	7-7-4255
	5	7-7-4421
	6	7-7-4501
	7	7-12-2171
	8	7-15-4290
	9	7-15-4301
	10	7-15-4302
	11	15-66-102
	12	17-1-106
	13	17-2-124
	14	17-5-504
	15	17-5-803
	16	17-5-922
	17	17-5-1506
	18	17-7-102
	19	17-7-402
	20	17-7-502
	21	20-9-403
	22	20-9-433
	23	20-9-501
	24	Permissive levy
	25	Over-BASE budget levy
	26	20-25-402
	27	20-25-427
	28	39-51-201
	29	39-51-2115
	30	39-51-2116
	31	52-3-115
	32	53-4-212
	33	53-6-149
	34	53-6-151
	35	53-6-1201
	36	75-5-1102
	37	75-5-1107
	38	75-6-202
	39	75-6-226
	40	75-25-101
	41	75-25-102
	42	90-1-204
	43	17-5-116
	44	17-5-117
	45	7-7-140
	46	7-7-141
	47	90-5-101
	48	90-5-103
	49	90-7-102
	50	90-7-104
	51	90-7-230
	52	90-7-229
	53	17-3-112
	54	Dissemination of information — reporting and accountability
	55	Distressed wood products industry recovery program — findings — loans and grants — rulemaking (Voided by sec. 8, Ch. 484)
	56	90-1-175
	57	Distribution of local government, tribal government, and school funds
	58	Quick start energy grants
	59	90-4-1005
	60	Welcome home loan program (Line-item vetoed)
	61	Contingent loan acquisition account — fund transfer (Line-item vetoed)
	62	Fund transfer
	63	Allocation and distribution of increased state support for schools
	64	Sec. 20, Ch. 390, L. 2003
	65	Sec. 4, Ch. 606, L. 2005
	66	Sec. 7, Ch. 606, L. 2005
	67	Sec. 4, Ch. 517, L. 2007
	68	Sec. 5, Ch. 517, L. 2007
	69	Sec. 6, Ch. 517, L. 2007
	70	Sec. 8, Ch. 517, L. 2007
	71	Sec. 9-B, items 4b and 10, Ch. 5, Special L. May 2007
	72	Coordination instruction
	73	Coordination instruction
	74	Coordination instruction
	75	Coordination instruction (Line-item vetoed)
	76	Coordination instruction
	77	Coordination instruction
	78	Codification instruction
	79	Contingent voidness
	80	Effective date
	81	Retroactive applicability
	82	Termination
	83	Voided appropriation — use — appropriation (Line-item vetoed)
	84	Appropriation control
	85	Appropriations — fund transfers — allocations

2008 BALLOT ISSUES

Legislative Referendum

LR	Sec.	MCA
118	1	15-10-108
	2	Codification instruction
	3	Effective dates
	4	Termination
	5	Submission to electorate

Initiative

Init.	Sec.	MCA
155	1	53-4-1101
	2	53-4-1102
	3	53-4-1103
	4	53-4-1104
	5	53-4-1105
	6	53-4-1108
	7	53-4-1109
	8	53-4-1110
	9	53-4-1115
	10	33-2-708
	11	53-4-1004
	12	53-6-131
	13	Codification instruction
	14	Contingent termination
	15	Effective date

LAWS

Enacted by the

SIXTIETH LEGISLATURE
IN SPECIAL SESSION

Held at Helena, the Seat of Government
September 5, 2007

Explanatory Note: Section 5-11-205, MCA, provides that new parts of existing statutes be printed in italics and that deleted provisions be shown as stricken.

COMPILED BY MONTANA
LEGISLATIVE SERVICES DIVISION

OFFICERS AND MEMBERS OF THE MONTANA SENATE

SEPTEMBER 2007

50 Members

26 Democrats 24 Republicans

OFFICERS

President.....Mike Cooney
President Pro Tempore .....Dan Harrington
Majority Leader .....Carol Williams
Majority Whips .....Lane Larson, Lynda Moss
Minority Leader .....Corey Stapleton
Minority Whips .....Greg Barkus, Dan McGee
Secretary of the Senate .....John Mudd

MEMBERS

Name	Party	District	Preferred Mailing Address
Bales, Keith	(R)	20	HC 39 Box 33, Otter MT 59062-9703
Balyeat, Joe	(R)	34	6909 Rising Eagle Rd, Bozeman MT 59715-8621
Barkus, Gregory	(R)	4	PO Box 2647, Kalispell MT 59903-2647
Black, Jerry	(R)	14	445 O'Haire Blvd, Shelby MT 59474-1950
Brown, Roy	(R)	25	PO Box 22273, Billings MT 59104-2273
Brueggeman, John	(R)	6	321 Lakeview Dr, Polson MT 59860-9317
Cobb, John	(R)	9	PO Box 388, Augusta MT 59410-0388
Cocchiarella, Vicki	(D)	47	515 8th Ave, Helena MT 59601-3778
Cooney, Mike	(D)	40	713 Pyrite Court, Helena MT 59601-5877
Curtiss, Aubyn	(R)	1	PO Box 216, Fortine MT 59918-0216
Elliott, Jim	(D)	7	100 Trout Creek Rd, Trout Creek MT 59874-9609
Esp, John	(R)	31	PO Box 1024, Big Timber MT 59011-1024
Essmann, Jeff	(R)	28	2101 PO Box 80945, Billings MT 59108-0945
Gallus, Steve	(D)	37	2319 Harvard Ave, Butte MT 59701-3854
Gebhardt, Kelly	(R)	23	PO Box 724, Roundup MT 59072-0724
Gillan, Kim	(D)	24	750 Judicial Ave, Billings MT 59105-2130
Hansen, Ken (Kim)	(D)	17	PO Box 686, Harlem MT 59526-0686
Harrington, Dan	(D)	38	1201 N Excelsior Ave, Butte MT 59701-8505
Hawks, Bob	(D)	33	703 W Koch St, Bozeman MT 59715-4477
Jackson, Verdell	(R)	5	555 Wagner Ln, Kalispell MT 59901-8079
Jent, Larry	(D)	32	1201 S 3rd St, Bozeman MT 59715-5503
Juneau, Carol	(D)	8	PO Box 55, Browning MT 59417-0055
Kaufmann, Christine	(D)	41	825 Breckenridge St, Helena MT 59601-4433
Kitzenberg, Sam	(D)	18	130 Bonnie St Apt 1, Glasgow MT 59230-2101
Laible, Rick	(R)	44	PO Box 370, Darby MT 59829-0370
Larson, Lane	(D)	22	1417 Cedar Canyon Rd, Billings MT 59101-6440
Laslovich, Jesse	(D)	43	112 Mountain View St, Anaconda MT 59711-1616
Lewis, Dave	(R)	42	5871 Collins Rd, Helena MT 59602-9584
Lind, Greg	(D)	50	PO Box 16720, Missoula MT 59808-6720
McGee, Daniel	(R)	29	1925 Pinyon Dr, Laurel MT 59044-9381
Moss, Lynda	(D)	26	552 Highland Park Dr, Billings MT 59102-1046
Murphy, Terry	(R)	39	893 Boulder Cutoff Rd, Cardwell MT 59721
O'Neil, Jerry	(R)	3	985 Walsh Rd, Columbia Falls MT 59912-9044
Pease, Gerald	(D)	21	PO Box 556, Lodge Grass MT 59050-0556
Perry, Gary	(R)	35	3325 W Cedar Meadow Ln, Manhattan MT 59741-8240
Peterson, Jim	(R)	15	RR 1 Box 2, Buffalo MT 59418-9501
Ryan, Don	(D)	10	2101 7th Ave S, Great Falls MT 59405-2821
Schmidt, Trudi	(D)	11	4029 6th Ave S, Great Falls MT 59405-3746

Shockley, Jim	(R)	45	PO Box 608, Victor MT 59875-0608
Smith, Frank	(D)	16	PO Box 729, Poplar MT 59255-0729
Squires, Carolyn	(D)	48	2111 S 10th St W, Missoula MT 59801-3412
Stapleton, Corey	(R)	27	2015 Eastridge Dr, Billings MT 59102-7904
Steinbeisser, Donald	(R)	19	11918 County Rd 348, Sidney MT 59270-9620
Story, Robert	(R)	30	133 Valley Creek Rd, Park City MT 59063-8040
Tash, Bill	(R)	36	240 Vista Dr, Dillon MT 59725-3111
Tropila, Joseph	(D)	13	209 2nd St NW, Great Falls MT 59404-1301
Tropila, Mitch	(D)	12	PO Box 2286, Great Falls MT 59403-2286
Wanzenried, David	(D)	49	903 Sky Dr, Missoula MT 59804-3121
Weinberg, Dan	(D)	2	575 Delrey Rd, Whitefish MT 59937-8042
Williams, Carol	(D)	46	3533 Lincoln Hills Pt, Missoula MT 59802

OFFICERS AND MEMBERS OF THE MONTANA HOUSE OF REPRESENTATIVES

SEPTEMBER 2007

100 Members

50 Republicans 49 Democrats 1 Constitutionalist

OFFICERS

Speaker ..... Scott Sales
Speaker Pro Tempore ..... Debby Barrett
Majority Leader ..... Michael Lange
Majority Whips ..... Tom McGillvray, Gary MacLaren
Minority Leader ..... John Parker
Deputy Minority Leader ..... Bob Bergren
Minority Floor Leader ..... Art Noonan
Minority Whips ..... Margarett Campbell, Dave McAlpin
Minority Caucus Leader ..... Dan Villa
Chief Clerk of the House ..... Marilyn Miller

MEMBERS

Name	Party	District	Preferred Mailing Address
Ankney, Duane	(R)	43	PO Box 2138, Colstrip MT 59323-2138
Arntzen, Elsie	(R)	53	850 Senora Ave, Billings MT 59105-2051
Augare, Shannon	(D)	16	PO Box 2031, Browning MT 59417-2031
Barrett, Debby	(R)	72	18580 MT Hwy 324, Dillon MT 59725-8031
Beck, Bill	(R)	6	PO Box 2049, Whitefish MT 59937-2049
Becker, Arlene	(D)	52	1440 Lewis Ave, Billings MT 59101-4240
Bergren, Bob	(D)	33	1132 26th Ave W, Havre MT 59501-8609
Bixby, Norma	(D)	41	PO Box 1165, Lame Deer MT 59043-1165
Blasdel, Mark	(R)	10	PO Box 291, Somers MT 59932-0291
Boggio, Scott	(R)	59	HC 50 Box 4754, Red Lodge MT 59068-4754
Branae, Gary	(D)	54	415 Yellowstone Ave, Billings MT 59101-1730
Butcher, Edward	(R)	29	PO Box 89, Winifred MT 59489-0089
Caferro, Mary	(D)	80	PO Box 1036, Helena MT 59624-1036
Callahan, Tim	(D)	21	728 36 Ave NE, Great Falls MT 59404-1132
Campbell, Margarett	(D)	31	PO Box 228, Poplar MT 59255-0228
Clark, Edith	(R)	28	PO Box 34, Sweetgrass MT 59484-0034
Cohenour, Jill	(D)	78	2610 Colt Dr, East Helena MT 59635-3442
Cordier, Douglas	(D)	3	1930 Tamarack Ln, Columbia Falls MT 59912-8816
Dickenson, Sue	(D)	25	620 Riverview Dr E, Great Falls MT 59404-1637
Driscoll, Robyn	(D)	51	724 N 16th St, Billings MT 59101-0418
Dutton, Ernie	(R)	56	2046 Mariposa Ln, Billings MT 59102-2347
Ebinger, Bob	(D)	62	128 S Yellowstone St, Livingston MT 59047-2634
Erickson, Ron	(D)	93	3250 Pattee Canyon Rd, Missoula MT 59803-1703
Everett, George	(R)	5	1344 Helena Flats Rd, Kalispell MT 59901-6548
Franklin, Eve	(D)	24	PO Box 6507, Great Falls MT 59406-6507
French, Julie	(D)	36	PO Box 356, Scobey MT 59263-0356
Furey, Timothy	(D)	91	280 Hellgate Dr, Missoula MT 59802-8739
Gallik, Dave	(D)	79	1124 Billings Ave, Helena MT 59601-3505
Glaser, William	(R)	44	1402 Indian Creek Rd, Huntley MT 59037-9338
Grinde, Wanda	(D)	48	1910 Bannack Dr, Billings MT 59105-4236
Groesbeck, George	(D)	74	2044 Carolina Ave, Butte MT 59701-6025
Hamilton, Robin	(D)	92	330 Daly Ave, Missoula MT 59801-4338
Hands, Betsy	(D)	99	1337 Sherwood St, Missoula MT 59802-2301
Hawk, Ray	(R)	90	NW 4878 Hoblitt Ln, Florence MT 59833-6832
Heinert, Ralph	(R)	1	PO Box 577, Libby MT 59923-0577
Hendrick, Gordon	(R)	14	PO Box 262, Superior MT 59872-0262
Henry, Teresa	(D)	96	204 Chestnut St, Missoula MT 59801-1809

Hilbert, Edward	(R)	38	120 Hillcrest Ave, Glendive MT 59330-2815
Himmelberger, Dennis	(R)	47	PO Box 22272, Billings MT 59104-2272
Hiner, Cynthia	(D)	85	1027 Kentucky St, Deer Lodge MT 59722-2041
Hollenbaugh, Galen	(D)	81	907 N Ewing St, Helena MT 59601-3405
Ingraham, Pat	(R)	13	PO Box 1151, Thompson Falls MT 59873-1151
Jacobson, Hal	(D)	82	4813 US Hwy 12 W, Helena MT 59601-9694
Jayne, Joey	(D)	15	299 Lumpry Rd, Arlee MT 59821-9747
Jones, Llew	(R)	27	1102 4th Ave SW, Conrad MT 59425-1919
Jones, William	(R)	9	567 East Village Dr, Bigfork MT 59911-6152
Jopek, Mike	(D)	4	PO Box 4272, Whitefish MT 59937-4272
Jore, Rick	(C)	12	30488 Mount Harding Ln, Ronan MT 59864-9446
Kasten, Dave	(R)	30	113 Bob Fudge Rd, Brockway MT 59214-8706
Keane, Jim	(D)	75	2131 Wall St, Butte MT 59701-5527
Kerns, Krayton	(R)	58	1408 Golf Course Rd, Laurel MT 59044-3600
Klock, Harry	(R)	83	PO Box 308, Harlowton MT 59036-0308
Koopman, Roger	(R)	70	811 S Tracy Ave, Bozeman MT 59715-5325
Kottel, Deborah	(D)	20	6301 43rd St SW, Great Falls MT 59404-5249
Lake, Bob	(R)	88	PO Box 2096, Hamilton MT 59840-2096
Lambert, Carol	(R)	39	PO Box 2, Broadus MT 59317-0002
Lange, Michael	(R)	55	208 Fair Park Dr, Billings MT 59102-5734
MacLaren, Gary	(R)	89	429 Curlew Orchard Rd, Victor MT 59875-9519
Malcolm, Bruce	(R)	61	2319 Hwy 89 S, Emigrant MT 59027-6023
McAlpin, Dave	(D)	94	800 Woodworth Ave, Missoula MT 59801-7046
McChesney, Bill	(D)	40	316 Missouri Ave, Miles City MT 59301-4140
McGillvray, Tom	(R)	50	3642 Donna Dr, Billings MT 59102-1119
McNutt, Walter	(R)	37	110 12th Ave SW, Sidney MT 59270-3614
Mendenhall, Scott	(R)	77	214 Solomon Mountain Rd, Clancy MT 59634-9213
Milburn, Mike	(R)	19	276 Chestnut Valley Rd, Cascade MT 59421-8204
Morgan, Penny	(R)	57	3401 Waterloo Cir, Billings MT 59101-8000
Musgrove, John	(D)	34	810 8th St, Havre MT 59501-4127
Noonan, Art	(D)	73	1621 Whitman Ave, Butte MT 59701-5380
Nooney, Bill	(R)	100	PO Box 4892, Missoula MT 59806-4892
O'Hara, Jesse	(R)	18	2221 Holly Ct, Great Falls MT 59404-3562
Olson, Alan	(R)	45	18 Halfbreed Creek Rd, Roundup MT 59072-6524
Parker, John	(D)	23	PO Box 558, Great Falls MT 59403-0558
Peterson, Ken	(R)	46	424 48th St W, Billings MT 59106-2306
Phillips, Mike	(D)	66	615 S Black Ave, Bozeman MT 59715-5303
Pomnichowski, JP	(D)	63	222 Westridge Dr, Bozeman MT 59715-6025
Raser, Holly	(D)	98	4304 Spurgin Rd, Missoula MT 59804-4520
Reinhart, Michele	(D)	97	PO Box 5945, Missoula MT 59806-5945
Rice, Diane	(R)	71	PO Box 216, Harrison MT 59735-0216
Ripley, Rick	(R)	17	8920 MT Hwy 200, Wolf Creek MT 59648-8639
Ross, John	(R)	60	129 N Stillwater Rd, Absarokee MT 59001-6235
Sales, Scott	(R)	68	5200 Bostwick Rd, Bozeman MT 59715-7721
Sands, Diane	(D)	95	4487 Nicole Ct, Missoula MT 59803-2791
Sesso, Jon	(D)	76	155 W Granite, Butte MT 59701-9256
Sinrud, John	(R)	67	284 Frontier Dr, Bozeman MT 59718-7975
Small-Eastman, Veronica	(D)	42	PO Box 262, Lodge Grass MT 59050-0262
Sonju, Jon	(R)	7	PO Box 2954, Kalispell MT 59903-2954
Stahl, Wayne	(R)	35	PO Box 345, Saco MT 59261-0345
Stoker, Ron	(R)	87	PO Box 1059, Darby MT 59829-1059
Taylor, Janna	(R)	11	PO Box 233, Dayton MT 59914-0233
Thomas, Bill	(D)	26	1200 Adobe Dr, Great Falls MT 59404-3732
Van Dyk, Kendall	(D)	49	PO Box 441, Billings MT 59103-0441
Villa, Dan	(D)	86	1619 W Park Ave, Anaconda MT 59711-1831
Vincent, Chas	(R)	2	5957 Champion Rd, Libby MT 59923
Ward, John	(R)	84	4525 Glass Dr, Helena MT 59602-9509
Wells, Jack	(R)	69	150 Coulee Dr, Bozeman MT 59718-7717
Wilmer, Franke	(D)	64	7205 Lorelei Dr, Bozeman MT 59715-8925
Wilson, Bill	(D)	22	1305 2nd Ave N, Great Falls MT 59401-3217
Windy Boy, Jonathan	(D)	32	PO Box 269, Box Elder MT 59521-0269
Wiseman, Brady	(D)	65	3247 Gardenbrook Ln, Bozeman MT 59715-0686
Witte, Craig	(R)	8	131 Collier Ln, Kalispell MT 59901-4621

CHAPTER NO. 1

[HB 1]

AN ACT PROVIDING RECOVERY FUNDS FOR THE STATUTORY APPROPRIATION FOR EMERGENCIES AND DISASTERS; PROVIDING FOR A STUDY OF STATE FIRE SUPPRESSION METHODS AND COSTS; REQUIRING A REPORT ON IMPLEMENTING AUDIT RECOMMENDATIONS; PROVIDING APPROPRIATIONS FOR FIRE SUPPRESSION AND FOR DISASTER RESPONSE AND RECOVERY ACTIVITIES; PROVIDING AN APPROPRIATION FOR THE FIRE SUPPRESSION STUDY; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Fire suppression committee — study. (1) There is a fire suppression committee established to conduct a comprehensive fire suppression study.

(2) The committee consists of six senators appointed by the committee on committees and six representatives appointed by the speaker of the house. Three senators and three representatives must be members of the majority party, and three senators and three representatives must be members of the minority party.

(3) The legislative services division shall provide staff assistance to the committee, and the committee may receive staff assistance from the legislative fiscal division and the legislative audit division. The committee shall conduct meetings in Miles City, Libby, Thompson Falls, Lewistown, and Hamilton.

(4) The study must include:

(a) an investigation of firefighting operations in Montana, including operations on tribal land and private land, by the state and federal governments and the management policies affecting the success of those operations;

(b) an investigation of the efficient use of fire suppression resources, including equipment and firefighters;

(c) an investigation of impacts of operations on private land and on the effective use of private resources to fight fires; and

(d) an investigation of state and federal forest management policies and how those policies may contribute to an increased number of wildfires, greater safety risk to firefighters, or compromised effectiveness of fire suppression efforts.

(5) The fire suppression committee shall complete the study by September 15, 2008, and report to the 61st legislature on its findings and recommendations, including any recommendations for legislation.

Section 2. Report on implementing audit recommendations. The department of natural resources and conservation shall prepare a report to the governor and the 61st legislature on its progress in implementing the 27 recommendations of the legislative audit division contained in the December 2004 performance audit entitled "Wildland Fire Administration".

Section 3. Appropriations. (1) There is appropriated $39 million from the state general fund to the department of natural resources and conservation for wildfire suppression and for wildfire disaster response and recovery activities in Montana.

(2) There is appropriated $3 million from the general fund to the department of military affairs for fiscal year 2008 for wildfire suppression and for wildfire disaster response and recovery activities in Montana.

(3) Of the $42 million appropriated to the departments of natural resources and conservation and military affairs for fiscal year 2008, up to $16 million is intended to be treated as the recovery of money previously expended under 10-3-312 in fiscal year 2008.

(4) The amounts appropriated in [this act] may not be used to purchase or lease capital assets on a long-term basis.

Section 4. Appropriation. There is appropriated from the state general fund to the legislative services division $200,000 for the purpose of conducting the study provided for in [section 1].

Section 5. Effective date. [This act] is effective on passage and approval.

Approved September 17, 2007

CHAPTER NO. 2

[HB 3]

AN ACT CREATING A FIRE SUPPRESSION ACCOUNT TO BE USED FOR FIRE SUPPRESSION COSTS; PROVIDING FUNDING FOR THE ACCOUNT FROM REIMBURSEMENTS FROM PRIVATE PARTIES FOR FIRE SUPPRESSION COSTS; STATUTORILY APPROPRIATING THE MONEY IN THE ACCOUNT; TRANSFERRING FUNDS FROM THE STATE GENERAL FUND TO THE FIRE SUPPRESSION ACCOUNT; AMENDING SECTION 17-7-502, MCA; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Fire suppression account — fund transfer. (1) There is a fire suppression account in the state special revenue fund to the credit of the department of natural resources and conservation.

(2) The department of administration shall transfer from the state general fund to the account the amount necessary to achieve a $40 million fund balance. The transfer must be made at the beginning of each fiscal year. The legislature may transfer money from other funds to the account.

(3) Funds received for restitution by private parties must be deposited in the account.

(4) Money in the account may be used only for the purpose of paying fire suppression costs.

(5) Beginning July 1, 2008, the money in the account is statutorily appropriated, as provided in 17-7-502, to the department for use as provided in this section.

(6) Interest earned on the balance of the account is retained in the account.

Section 2. Section 17-7-502, MCA, is amended to read:

"17-7-502. Statutory appropriations — definition — requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-17-105; 5-11-120; 5-11-407; 5-13-403; 7-4-2502; 10-1-1202; 10-1-1303; 10-2-603; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-1-121; 15-1-218; 15-23-706; 15-31-906; 15-35-108; 15-36-332; 15-37-117; 15-39-110; 15-65-121; 15-70-101; 15-70-369; 15-70-601; 16-11-509; 17-3-106; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-7-304; 18-11-112; 19-3-319; 19-6-404; 19-6-410; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 19-20-607; 19-21-203; 20-8-107; 20-9-534; 20-9-622; 20-26-1503; 22-3-1004; 23-4-105; 23-4-202; 23-4-204; 23-4-302; 23-4-304; 23-5-306; 23-5-409; 23-5-612; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503; 41-5-2011; 42-2-105; 44-1-504; 44-12-206; 44-13-102; 50-4-623; 53-1-109; 53-6-703; 53-24-108; 53-24-206; 60-11-115; 61-3-415; 69-3-870; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; *[section 1];* 77-1-108; 77-2-362; 80-2-222; 80-4-416; 80-5-510; 80-11-518; 82-11-161; 87-1-513; 90-1-115; 90-1-205; 90-3-1003; 90-9-306; and section 2, Chapter 6, Special Laws of May 2007.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to Ch. 422, L. 1997, the inclusion of 15-1-111 terminates on July 1, 2008, which is the date that section is repealed; pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 4, Ch. 497, L. 1999, the inclusion of 15-38-202 terminates July 1, 2014; pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, and secs. 3 and 6, Ch. 481, L. 2003, the inclusion of 15-35-108 terminates June 30, 2010; pursuant to sec. 17, Ch. 593, L. 2005, the inclusion of 15-31-906 terminates January 1, 2010; pursuant to sec. 73, Ch. 44, L. 2007, the inclusion of 19-6-410 terminates upon the death of the last recipient eligible under 19-6-709(2) for the supplemental benefit provided by 19-6-709; and pursuant to sec. 10, Ch. 6, Sp. L. May 2007, the inclusion of section 2, Chapter 6, Special Laws of May 2007, terminates July 1, 2008.)"

Section 3. Fund transfer. The amount of $40 million is transferred from the state general fund to the fire suppression account established in [section 1].

Section 4. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 76, chapter 13, and the provisions of Title 76, chapter 13, apply to [section 1].

Section 5. Effective date. (1) Except as provided in subsection (2), [this act] is effective on passage and approval.

(2) [Section 2] is effective July 1, 2008.

Section 6. Termination. [This act] terminates June 30, 2009.

Approved September 17, 2007

CHAPTER NO. 3

[HB 4]

AN ACT APPROPRIATING MONEY FOR THE OPERATION OF THE LEGISLATURE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Appropriations. The following amounts are appropriated from the state general fund for costs of the special legislative session of September 2007:

LEGISLATIVE BRANCH (1104)	
1. Senate (25)	$41,570
2. House of Representatives (26)	78,842
3. Legislative Services Division (22)	11,907

Section 2. Effective date. [This act] is effective on passage and approval.

Approved September 17, 2007

CODE SECTIONS AFFECTED

Title-Chapter-Section	Action	Chapter	Bill Number
17-7-502	amended	Ch. 2	HB 3
76-13-150	enacted	Ch. 2	HB 3

HOUSE BILL TO CHAPTER NUMBER

Bill Number	Chapter Number
HB 1	1
HB 3	2
HB 4	3

CHAPTER NUMBER TO BILL NUMBER

Chapter Number	Bill Number
Ch. 1	HB 1
Ch. 2	HB 3
Ch. 3	HB 4

EFFECTIVE DATES BY CHAPTER NUMBER

Chapter Number	Bill Number	Effective Date
Ch. 1	HB 1	09/17/2007
Ch. 2 §§ 1 and 3-6	HB 3	09/17/2007
§ 2		07/01/2008
Ch. 3	HB 4	09/17/2007

EFFECTIVE DATES BY DATE

Effective Date	Chapter Number	Bill Number
09/17/2007	Ch. 1.	HB 1
09/17/2007	Ch. 2. §§ 1 and 3-6	HB 3
09/17/2007	Ch. 3.	HB 4
07/01/2008	Ch. 2. § 2	HB 3

SESSION LAW TO CODE

Ch.	Sec.	MCA
1	1	Fire suppression committee — study
	2	Report on implementing audit recommendations
	3	Appropriations
	4	Appropriation
	5	Effective date
2	1	76-13-150
	2	17-7-502
	3	Fund transfer
	4	Codification instruction
	5	Effective date
	6	Termination
3	1	Appropriations
	2	Effective date

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